

HB1302_L.011

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.HB17-1302 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. **Legislative declaration.** (1) The general
4 assembly hereby finds and declares that:

5 (a) Currently when a juvenile engages in sexting behavior, usually
6 the only available offense with which to charge that juvenile is sexual
7 exploitation of a child, which is a class 3 felony;

8 (b) It is necessary to provide in statute the ability of all law
9 enforcement, including district attorneys, to charge lower level offenses
10 or civil infractions in addition to providing other diversionary programs
11 that can more appropriately address the conduct involved in cases
12 involving sexting behavior;

13 (c) It is imperative that, for any offense charged or civil infraction
14 issued, the court have the discretion to impose appropriate sanctions that
15 are consistent with the objectives of the Colorado children's code; and

16 (d) In order to track and assess the efficacy of creating these new
17 offenses and their impact on any reduction in the filing of felony charges,
18 the impact on the number of diversion or alternative case resolution
19 programs, the level of education provided to teens on issues related to
20 sexting behavior, and any discernable impact on teen sexting behavior,
21 the judicial department, school safety resource officers, and district
22 attorneys' offices should track the number of cases, including the offenses
23 involved, the number of juveniles who participated in the education
24 programs provided for in this legislation, and who provided those
25 programs.

26 (2) Therefore, the general assembly is creating the crimes of
27 posting private images by a juvenile and possessing private images by a
28 juvenile and the civil infraction of exchange of a private image by a
29 juvenile.

30 **SECTION 2.** In Colorado Revised Statutes, 16-22-103, amend
31 (5)(a) introductory portion and (5)(a)(III) as follows:

32 **16-22-103. Sex offender registration - required - applicability**
33 **- exception.** (5) (a) Notwithstanding any provision of this article ARTICLE
34 22 to the contrary, if, pursuant to a motion filed by a person described in
35 this subsection (5) or on its own motion, a court determines that the
36 registration requirement specified in this section would be unfairly
37 punitive and that exempting the person from the registration requirement



1 IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE, A SEXUALLY
2 EXPLICIT IMAGE OF HIMSELF OR HERSELF WHEN THE RECIPIENT DID NOT
3 SOLICIT OR REQUEST TO BE SUPPLIED WITH THE IMAGE AND SUFFERED
4 EMOTIONAL DISTRESS!

5 (2) A JUVENILE COMMITS THE OFFENSE OF POSSESSING A PRIVATE
6 IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR ELECTRONIC
7 MEANS, KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OF ANOTHER
8 PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS THAN FOUR
9 YEARS YOUNGER THAN THE JUVENILE WITHOUT THE DEPICTED PERSON'S
10 PERMISSION; EXCEPT THAT IT IS NOT A VIOLATION OF THIS SUBSECTION (2)
11 IF THE JUVENILE:

12 (a) TOOK REASONABLE STEPS TO EITHER DESTROY OR DELETE THE
13 IMAGE WITHIN SEVENTY-TWO HOURS AFTER INITIALLY VIEWING THE
14 IMAGE; OR

15 (b) REPORTED THE INITIAL VIEWING OF SUCH IMAGE TO LAW
16 ENFORCEMENT OR A SCHOOL RESOURCE OFFICER WITHIN SEVENTY-TWO
17 HOURS AFTER INITIALLY VIEWING THE IMAGE.

18 (3) A JUVENILE COMMITS THE CIVIL INFRACTION OF EXCHANGE OF
19 A PRIVATE IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR
20 ELECTRONIC MEANS:

21 (a) KNOWINGLY SENDS A SEXUALLY EXPLICIT IMAGE OF HIMSELF
22 OR HERSELF TO ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF
23 AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE, AND THE
24 IMAGE DEPICTS ONLY THE SENDER AND NO OTHER PERSON AND THE
25 SENDER REASONABLY BELIEVED THAT THE RECIPIENT HAD SOLICITED OR
26 OTHERWISE AGREED TO THE TRANSMITTAL OF THE IMAGE; OR

27 (b) KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OF
28 ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS
29 THAN FOUR YEARS YOUNGER THAN THE JUVENILE, AND THE IMAGE
30 DEPICTS ONLY THE SENDER AND NO OTHER PERSON AND THE JUVENILE
31 REASONABLY BELIEVED THAT THE DEPICTED PERSON HAD TRANSMITTED
32 THE IMAGE OR OTHERWISE AGREED TO THE TRANSMITTAL OF THE IMAGE.

33 (4) IT IS AN AFFIRMATIVE DEFENSE TO SUBSECTION (1), (2), OR (3)
34 OF THIS SECTION IF A JUVENILE IS COERCED, THREATENED, OR INTIMATED
35 INTO DISTRIBUTING, DISPLAYING, PUBLISHING, POSSESSING, OR
36 EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A PERSON UNDER EIGHTEEN
37 YEARS OF AGE.

38 (5) (a) POSTING A PRIVATE IMAGE BY A JUVENILE IS A CLASS 2
39 MISDEMEANOR; EXCEPT THAT IT IS A CLASS 1 MISDEMEANOR IF:

40 (I) THE JUVENILE COMMITTED THE OFFENSE WITH THE INTENT TO
41 COERCE, INTIMIDATE, THREATEN, OR OTHERWISE CAUSE EMOTIONAL
42 DISTRESS TO THE DEPICTED PERSON; OR

43 (II) THE JUVENILE HAD PREVIOUSLY POSTED A PRIVATE IMAGE AND

1 COMPLETED A DIVERSION PROGRAM OR EDUCATION PROGRAM FOR THE
2 ACT PURSUANT TO THE PROVISIONS OF THIS SECTION OR HAD A PRIOR
3 ADJUDICATION FOR POSTING A PRIVATE IMAGE BY A JUVENILE; OR

4 (III) THE JUVENILE DISTRIBUTED, DISPLAYED, OR PUBLISHED
5 THREE OR MORE IMAGES THAT DEPICTED THREE OR MORE SEPARATE AND
6 DISTINCT PERSONS.

7 (b) POSSESSING A PRIVATE IMAGE BY A JUVENILE IS A PETTY
8 OFFENSE; EXCEPT THAT IT IS A CLASS 2 MISDEMEANOR IF THE UNSOLICITED
9 POSSESSOR OF THE IMAGE POSSESSED TEN OR MORE SEPARATE IMAGES
10 THAT DEPICTED THREE OR MORE SEPARATE AND DISTINCT PERSONS.

11 (c) EXCHANGE OF A PRIVATE IMAGE BY A JUVENILE IS A CIVIL
12 INFRACTION AND IS PUNISHABLE BY PARTICIPATION IN A PROGRAM
13 DESIGNED BY THE SCHOOL SAFETY RESOURCE CENTER OR OTHER
14 APPROPRIATE PROGRAM ADDRESSING THE RISKS AND CONSEQUENCES OF
15 EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A JUVENILE OR A FINE OF UP
16 TO FIFTY DOLLARS, WHICH MAY BE WAIVED BY THE COURT UPON A
17 SHOWING OF INDIGENCY. IF THE JUVENILE FAILS TO APPEAR IN RESPONSE
18 TO A CIVIL INFRACTION CITATION OR FAILS TO COMPLETE THE REQUIRED
19 CLASS OR PAY THE IMPOSED FEE, THE COURT MAY ISSUE AN ORDER TO
20 SHOW CAUSE REQUIRING THE JUVENILE'S APPEARANCE IN COURT AND
21 IMPOSE ADDITIONAL AGE-APPROPRIATE PENALTIES. THE COURT SHALL NOT
22 ISSUE A WARRANT FOR THE ARREST OF THE JUVENILE OR IMPOSE
23 INCARCERATION AS A PENALTY.

24 (d) IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE
25 FOR A VIOLATION OF SECTION 18-7-109 (1), THE COURT SHALL ORDER THE
26 JUVENILE BE ASSESSED FOR SUITABILITY TO PARTICIPATE IN RESTORATIVE
27 JUSTICE PRACTICES, IF AVAILABLE, AND, UPON A DETERMINATION OF
28 SUITABILITY, THE COURT SHALL INFORM THE VICTIM ABOUT THE
29 POSSIBILITY OF RESTORATIVE JUSTICE PRACTICES AS DEFINED IN SECTION
30 18-1-901 (3)(o.5). THE COURT SHALL NOT CONSIDER THE VICTIM'S
31 UNWILLINGNESS TO PARTICIPATE IN RESTORATIVE JUSTICE PRACTICES
32 WHEN DETERMINING OTHER SENTENCING OPTIONS.

33 (e) EACH DISTRICT ATTORNEY IS ENCOURAGED TO DEVELOP A
34 DIVERSION PROGRAM FOR JUVENILES WHO VIOLATE THE PROVISIONS OF
35 THIS SECTION AND OFFER THE PROGRAM TO A JUVENILE WHO IS ALLEGED
36 TO HAVE VIOLATED THIS SECTION FOR THE FIRST TIME. IF THE
37 JURISDICTION DOES NOT HAVE A DIVERSION PROGRAM, THE DISTRICT
38 ATTORNEY IS ENCOURAGED TO PROVIDE ALTERNATIVE PROGRAMMING
39 DESIGNED TO ALLOW THE JUVENILE TO AVOID ANY ADJUDICATION.

40 (6) THE COURT SHALL ORDER ALL RECORDS IN A JUVENILE
41 DELINQUENCY CASE IN THE CUSTODY OF THE COURT, AND ANY RECORDS
42 RELATED TO THE CASE AND CHARGES IN THE CUSTODY OF ANY OTHER
43 AGENCY, PERSON, COMPANY, OR ORGANIZATION, THAT ARE RELATED TO

1 AN OFFENSE PURSUANT TO THIS SECTION EXPUNGED WITHIN FORTY-TWO
2 DAYS AFTER THE COMPLETION OF THE SENTENCE OR OTHER ALTERNATIVE
3 PROGRAM.

4 (7) A PERSON WHO IS A VICTIM OF A VIOLATION OF SUBSECTION (1),
5 (2), OR (3) OF THIS SECTION IS ELIGIBLE FOR COMPENSATION AND SERVICES
6 PURSUANT TO PART 1 OF ARTICLE 4.1 OF TITLE 24.

7 (8) AS USED IN THIS SECTION:

8 (a) "JUVENILE" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.

9 (b) "SEXUALLY EXPLICIT IMAGE" MEANS ANY ELECTRONIC OR
10 DIGITAL PHOTOGRAPH, VIDEO, OR VIDEO DEPICTION OF THE EXTERNAL
11 GENITALIA OR PERINEUM OR ANUS OR BUTTOCKS OR PUBES OF ANY PERSON
12 OR THE BREAST OF A FEMALE PERSON.

13 **SECTION 5.** In Colorado Revised Statutes, 19-2-104, **amend**
14 (1)(a)(I) as follows:

15 **19-2-104. Jurisdiction.** (1) Except as otherwise provided by law,
16 the juvenile court shall have exclusive original jurisdiction in
17 proceedings:

18 (a) Concerning any juvenile ten years of age or older who has
19 violated:

20 (I) Any federal or state law, except nonfelony state traffic, game
21 and fish, and parks and recreation laws or rules; the offenses specified in
22 section 18-13-121, ~~C.R.S.~~, concerning tobacco products; the offense
23 specified in section 18-13-122, ~~C.R.S.~~, concerning the illegal possession
24 or consumption of ethyl alcohol or marijuana by an underage person or
25 illegal possession of marijuana paraphernalia by an underage person; and
26 the offenses specified in section 18-18-406 (5)(a)(I), (5)(b)(I), and
27 (5)(b)(II), ~~C.R.S.~~, concerning marijuana and marijuana concentrate; AND
28 THE CIVIL INFRACTION IN SECTION 18-7-109 (3) CONCERNING EXCHANGE
29 OF A PRIVATE IMAGE BY A JUVENILE;

30 **SECTION 6.** In Colorado Revised Statutes, 24-33.5-1803,
31 **amend (3)(k) and (3)(l); and add (3)(m) as follows:**

32 **24-33.5-1803. School safety resource center - created - duties**
33 **- repeal.** (3) The center has the following duties:

34 (k) To provide suggestions for school resource officer training to
35 the peace officers standards and training board, pursuant to section
36 24-31-312; and

37 (l) To provide materials and training as described in section
38 24-33.5-1809 to personnel in school districts and charter schools, parents,
39 and students regarding the awareness and prevention of child sexual
40 abuse and assault; AND

41 (m) BY JUNE 1, 2018, TO MAKE AVAILABLE A MODEL PROGRAM
42 THAT CONFORMS WITH SECTION 22-1-128, REGARDING THE RISKS AND
43 CONSEQUENCES OF SEXTING FOR SCHOOL DISTRICTS TO USE, WHICH

1 CURRICULUM MUST INCLUDE INFORMATION INFORMING STUDENTS OF THE
2 PROVISIONS OF SECTION 18-7-109, INCLUDING THAT, IF A STUDENT
3 RECEIVES A SEXUALLY EXPLICIT IMAGE IN VIOLATION OF SECTION
4 18-7-109, THE STUDENT CAN AVOID ADJUDICATION AS A JUVENILE
5 DELINQUENT BY TAKING REASONABLE STEPS TO EITHER DESTROY OR
6 DELETE OR REPORT THE INITIAL VIEWING OF THE IMAGE WITHIN
7 SEVENTY-TWO HOURS AFTER RECEIVING THE IMAGE.

8 **SECTION 7. Accountability.** Two years after this act becomes
9 law and in accordance with section 2-2-1201, Colorado Revised Statutes,
10 the legislative service agencies of the Colorado general assembly shall
11 conduct a post-enactment review of the implementation of this act
12 utilizing the information contained in the legislative declaration set forth
13 in section 1 of this act.

14 **SECTION 8. Effective date - applicability.** This act takes effect
15 January 1, 2018, and applies to offenses committed on or after said date.

16 **SECTION 9. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety."

19 Page 1, line 102, strike "JUVENILE." and substitute "JUVENILE, AND, IN
20 CONNECTION THEREWITH, REQUIRING A POST-ENACTMENT REVIEW OF
21 THE IMPLEMENTATION OF THIS ACT."

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