



Sexting: New Legislation/HB17- 1302 (C.R.S. § 18-7-109)

Juvenile Posting/Possessing/Exchanging Private Images

- Prior to the enactment of this law, prosecutors' only option for charging teen sexting behavior (even among consenting friends) was felony exploitation of a child. The new law, which applies to behavior on or after January 1, 2018, is a tiered approach which separates abusive forms of sexting (such as malicious distribution) from consensual electronic exchange of explicit images:

| Offense | Committed if juvenile: | Penalty | Enhanced to: |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| POSTING | Knowingly distributes, displays or publishes image another who is at least 14 or is less than 4 years younger <i>without permission</i> ; OR of him/herself if the recipient didn't request it and suffered emotional distress; OR the poster knew or should have known that the depicted person had a reasonable expectation of privacy. | <u>Class 2 Misdemeanor</u> | <u>Class 1 Misdemeanor</u> if: Intent to coerce, intimidate, threaten, or cause emotional distress; OR Prior posting of a private image and completion of a diversion or educational program; OR a prior adjudication; OR Posted 3 or more images of separate persons. |
| POSSESSION | Knowingly possesses image of another who is at least 14 or is less than 4 years younger <i>without permission</i> . | <u>Petty Offense</u> | <u>Class 2 Misdemeanor</u> if: possessor has 10 or more images depicting 3 or more separate persons. |
| EXCHANGING | Knowingly sends an image of self to another who is at least 14 or is less than 4 years younger and reasonably believed the recipient agreed; or Knowingly possesses an image of another who is at least 14 or is less than 4 years younger and reasonably believed depicted person agreed. | <u>Civil Infraction</u> May be required to participate in an educational program designed by CSSRC or a fine up to \$50 which may be waived. | |

- Felony charges are still available under aggravating circumstances, but the court may not charge sexual exploitation AND posting of an image by a juvenile under the same facts. Juveniles MAY NOT be charged with felony exploitation if their conduct is limited to the elements of petty offense (*possession*) or civil infraction (*exchange*) under this law. Additionally, the court has discretion to exempt first offenders from the sex offender registry where their conduct meets the elements of posting or possessing private images by a juvenile.
- It is an **affirmative defense** if the juvenile takes reasonable steps to delete or report the image to law enforcement or an SRO within 72 hours of viewing, or if the juvenile was coerced, threatened or intimidated.
- Calls for a comprehensive education program (to be developed by the CSSRC by June 1, 2018) regarding risks, consequences, and defenses to charges of sexting behavior.
- Requires the court to order juvenile to be assessed for suitability to participate in restorative justice practices and encourages each D.A. to develop a diversion or alternative program for first offenders who violate the law.
- Records are expunged within 42 days after completion of the sentence or alternative program.