

OPINION

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"There is no hope for the satisfied man."

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The Post Editorials

Sexting bill gives DAs proper tools

Last year Colorado became ground zero in the national debate over how the law should handle teen sexting. After a sexting scandal broke out at Cañon City High School, it became clear that current law was so harsh that it wasn't even a legitimate option for prosecutors.

Not only is possession of explicit photos of minors a felony, but it carries the requirement of having to register as a sex offender. That's an absurd punishment for such behavior among teens.

Fortunately, a bipartisan coalition of lawmakers is tackling the issue with House Bill 1058, which would make it a Class 2 misdemeanor offense for a juvenile to distribute, display, publish or possess any sexually explicit image of a minor — with an affirmative defense if the juvenile didn't request the image and took steps to get rid of it. It's a good proposal, and is scheduled to be taken up in a House committee Tuesday.

However, critics of the bill have stepped forward to insist that it doesn't go far enough. They fear victims whose nude photos are distributed could be treated no different from the offender, or they object to potentially punishing the consensual exchange of photos.

Some argue that teens will exchange such photos no matter what the law says.

Amy Adele Hasinoff, a professor of communication at the University of Colorado Denver, is one such critic. In an op-ed Monday in The New York Times, Hasinoff wrote, "These new laws may seem like a measured solution to the problem of charging teenage sexters with child pornography felonies. However, once they have the option of lesser penalties, prosecutors are more likely to press charges — not only against teenagers who distribute private images without permission, but also against those who sext consensually."

We very much doubt her forecast. In our crystal ball, prosecutors are likely to press charges when there have been complaints, and complaints will generally occur when someone's nude photo is shared without permission or when someone receives a photo they did not request.

And while it's all well and good to talk about the consensual exchange of nude photos between, say, two 15-year-olds, the fact is they lose control over those images forever. Are they really mature enough to understand the implications — how they'll feel, for example, if their partner sends out those pictures six months or six years later to dozens of friends?

As Arapahoe County District Attorney George Brauchler reminded us, kids have committed suicide over far less humiliation. "What we are trying to do, in my opinion," he told The Denver Post last month, "is to discourage juveniles from making decisions that could harm them."

One of the bill's sponsors, Sen. Linda Newell, D-Littleton, told us there may be an amendment to further reduce the charge for consensual sexting for the first offense to meet critics halfway. And that may be appropriate. But decriminalizing possession altogether, as some advocates seek, would be a mistake, in part because it would jeopardize the ability of prosecutors to seize images and give a youth a fresh start without the prospect of future embarrassment.

It is true, of course, that some juveniles will engage in sexting whether it's illegal or not. But why is that considered a compelling argument? Some will drink alcohol, too, but that doesn't mean we should repeal laws against youth drinking.

HB 1058 is an appropriate response to a phenomenon of the digital age that current law simply never foresaw.

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