



HB 16 1058: Misuse of Electronic Images by a Juvenile

Sponsored by Representative Yeulin Willett and Senator Linda Newell

Our Concerns:

1. Victims of malicious and abusive sexting may be reluctant to report the crime out of fear that they themselves may be charged with a crime. Whether or not they are actually charged with a crime, the perception that they could potentially be charged may keep some victims from reporting.
2. How will law enforcement determine the *primary aggressor* in cases where teens are coerced, threatened or intimidated into taking and sending a sexually explicit image of themselves? If criteria such as who sent the most images or who sent the most sexually explicit images are used, then victims could be determined to be the primary aggressor and, if charged with a crime, **might not be eligible to receive Crime Victim's Compensation benefits** to access resources for emotional injuries sustained that may occur as a result of their victimization.
3. Two 17-year-old teens could legally have sex but if they were to create a sexually explicit digital image of themselves, even for their own use, under HB 16 1058 they could be charged with the crime of misuse of an electronic image by a juvenile. In the state of Colorado, the age of consent to participate in sexual activity is 17-years-old. Close-in-age exemptions also exist allowing 16 and 17-year-olds to engage in sexual intercourse with partners who are less than 10-years older, and minors younger than 15-years-old under this exemption are allowed to engage in sexual intercourse with those less than 4-years older. **Close-in-age exemptions or "Romeo and Juliet laws" are designed to prevent the prosecution of underage couples who engage in consensual sex when both participants are significantly close in age to each other, and one or both are below the age of consent.**ⁱ
4. HB 16 1058 does not adequately separate the abusive forms of sexting, such as maliciously distributing a private image, from the relatively harmless practice of consensual sexting. A 2009 study conducted by the Crimes Against Children Research Center revealed that 7% of child pornography production arrests were made against consensually sexting teens.ⁱⁱ These cases did not involve adults or aggravating circumstances. Rather, these incidents involved pictures taken in romantic relationships or for sexual attention-seeking among adolescents. **Laws intended to protect children should not be used to punish them when the activity was mutually consensual and, therefore, there is no discernible victim.**

Who Opposes HB 16 1058?

American Civil Liberties Union of Colorado

Amy A. Hasinoff, Assistant professor of Communication at the University of Colorado Denver and author of *Sexting Panic: Rethinking Criminalization, Privacy, and Consent* (2015)

Colorado Coalition Against Domestic Violence

Colorado Coalition Against Sexual Assault

Colorado Criminal Defense Bar

Colorado Youth Matter

IMPACT Personal Safety of Colorado

One Colorado

Rocky Mountain Children's Law Center

The Blue Bench

Safe Shelter of St. Vrain Valley

ⁱ Wolak et al. "Trends in Arrests for Child Pornography Production" [see p. 2 for data that 7% of child pornography production arrests in 2009 were consensually sexting teens]

ⁱⁱ Hasinoff, "Should teens have the right to sext? Yes."