ADVANCE SHEET HEADNOTE
October 13, 2025

2025 CO 59

No. 25SA29, *In re People of Int. of S.G.H.*—Preliminary Hearing—Probable Cause—Sexual Exploitation of a Child—Possession of Sexually Exploitative Material—§ 18-6-403, C.R.S. (2024)—Generative Artificial Intelligence—2025 Statutory Amendments—Legislative Intent—Statutory History—Legislative History.

In this original proceeding, the supreme court addresses whether the district court erred in finding probable cause as to all six counts of sexual exploitation of a child filed against S.G.H., a juvenile, pursuant to section 18-6-403, C.R.S. (2024). S.G.H. is accused of using a generative-AI tool to blend authentic images of three classmates' actual faces and clothed bodies with computer-generated images of naked intimate body parts so as to make his classmates appear unclothed.

The supreme court concludes that the relevant statutory provisions in effect on the dates of the charged offenses did not prohibit S.G.H.'s alleged conduct. More specifically, the supreme court determines that the images at issue do not fall within the scope of the definition of "sexually exploitative material" (an element of the charged offenses), as that term was defined during the relevant timeframe. The 2025 legislative amendments to that definition and neighboring

provisions corroborate this conclusion. These amendments did not merely clarify existing law; they changed it to account for advances in generative-AI technology.

Because the district court erred in finding probable cause as to all six charges, the supreme court makes absolute the rule to show cause. The case is therefore remanded with instructions for the district court to dismiss the charges against S.G.H.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 59

Supreme Court Case No. 25SA29
Original Proceeding Pursuant to C.A.R. 21
Morgan County District Court Case No. 24JD11
Honorable J. Robert Lowenbach, Senior Judge

In Re
Petitioner:

The People of the State of Colorado,

In the Interest of

Juvenile:

S.G.H.,

and Concerning

Respondent:

C.H.

Order Made Absolute
en banc
October 13, 2025

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Isaac Asimov, the famed writer, once lamented that "[t]he saddest aspect of life right now is that science gathers knowledge faster than society gathers wisdom." Isaac Asimov's Book of Science and Nature Quotations 281 (Isaac Asimov & Jason A. Shulman eds., Weidenfeld & Nicolson, N.Y., 1988). Although this statement appears in a publication from 1988, it continues to resonate in 2025.

¶2 In this case, we are concerned with generative artificial intelligence ("generative AI"), which is at the epicenter of modern science. Generative AI—and its ability to gather, build upon, and create from existing knowledge—is here to stay. And while generative-AI tools bring a wide range of transformative benefits and the boundless promise to revolutionize human potential, their accelerated proliferation is seemingly outpacing human wisdom.

¶3 Generative-AI tools went mainstream within the last couple of years. And we are now beginning to see the cracks emerging in their use.

¶4 Aided by a generative-AI tool, S.G.H., a young teenager, allegedly manipulated non-explicit photographs of several classmates. Specifically, S.G.H. is accused of using a generative-AI tool to blend authentic images of three classmates' actual faces and clothed bodies with computer-generated images portraying naked intimate body parts to make it appear as though the classmates are nude.

¶5 Alarmingly, this is by no means an isolated incident. Schools throughout the country have recently seen an uptick in the use of "deepfake technology" to transform authentic photographs of female students into "fraudulent images of nude bodies."[1] Hannah Fry, *Laguna Beach High School Investigates 'Inappropriate' AI-Generated Images of Students*, L.A. Times (Apr. 2, 2024), https://www.latimes.com/california/story/2024-04-02/laguna-beach-high-school-investigating-creation-of-ai-generated-images-of-students [https://perma.cc/M6TV-VNDX]. And accessing this technology requires no more than "a cellphone." *Id.*

¶6 Every state has laws prohibiting the nonconsensual distribution of *authentic* intimate images, and the federal government recently enacted a similar measure. BallotPedia, *Nonconsensual Pornography (Revenge Porn) Laws in the United States*, https://ballotpedia.org/Nonconsensual_pornography_(revenge_porn)_laws_in_the_United_States [https://perma.cc/ZRP8-V5XJ]. But "few laws in the United States" specifically protect minors from exploitation through the use of generative-AI tools, and many current statutes do not cover computer-generated explicit images that use real people's faces. Natasha Singer, *Spurred by Teen Girls, States*

[1] Deepfake technology uses generative AI to create hyper-realistic images, audio, or videos of people engaged in falsified actions. *See United States v. Streett*, 434 F. Supp. 3d 1125, 1185 n.28 (D.N.M. 2020).

Move to Ban Deepfake Nudes, The N.Y. Times (Apr. 22, 2024), https://www.nytimes.com/2024/04/22/technology/deepfake-ai-nudes-high-school-laws.html [https://perma.cc/2ARR-DD3V].

¶7 Because the distribution of nonconsensual explicit images "can potentially circulate online for a lifetime, threatening [victims'] mental health, reputations, and physical safety," many federal and state lawmakers have recently undertaken significant efforts to curb the use of generative-AI tools for exploitative purposes. *Id.* But generative AI is advancing at a stride that far exceeds our lawmakers' ability to keep up, so legislators have been scrambling after finding themselves behind the eight ball. *See id.*

¶8 Colorado is among those states that have been slow off the mark to address the use of explicit images created with generative AI. To our legislature's credit, it recently stepped up and bridged the generative-AI gap that existed in the relevant statutes. But that was *after* S.G.H. had been charged in this case with six counts of sexual exploitation of a child (two counts for each victim), so any recent legislative amendments cannot serve as a lifeline for the People here.

¶9 The People nevertheless contend that they need no rescuing by the recent amendments because the law in effect on the dates of the charged offenses prohibited S.G.H.'s alleged conduct. According to the People, the amendments merely clarified that such conduct is prohibited. We disagree.

¶10 We conclude that the relevant statutory provisions in effect on the dates of the charged offenses did not prohibit S.G.H.'s alleged conduct. Contrary to the People's position, we perceive the amendments approved earlier this year as changing, rather than merely clarifying, existing law. Of particular interest here, the amendments closed the generative-AI loophole that existed in our statutes governing the sexual exploitation of a child.

¶11 Because the district court determined there was probable cause to believe S.G.H. violated the statutory provisions under which he was charged, it erred. Accordingly, we make absolute the order to show cause and remand the case with instructions for the district court to dismiss the charges against S.G.H.

I. Facts and Procedural History

¶12 In December 2023, Weldon Valley High School received an automated alert indicating that the school email account of S.G.H., one of its students, had inappropriate content. After searching S.G.H.'s Chromebook, the police discovered nude images featuring the faces of three underaged female classmates. A detective then determined that S.G.H. had used generative AI to digitally manipulate non-explicit photographs of the classmates. Specifically, the detective discerned that S.G.H. had morphed the authentic images of his classmates' actual faces and clothed bodies with computer-generated images of naked intimate parts,

distorting the authentic photographs in such a way as to make his classmates appear unclothed.

¶13 The People brought a delinquency petition in juvenile court against S.G.H., who was fourteen years old at the time. They initially charged him with three counts of sexual exploitation of a child under section 18-6-403(3)(b), C.R.S. (2024) ("subsection (3)(b)"). These counts alleged that S.G.H. had knowingly "prepared, arranged for, published, produced, promoted, made, sold, financed, offered, exhibited, advertised, dealt in, distribute[d], transport[ed] or transfer[red] to another person, or ma[d]e[] accessible to another person any *sexually exploitative material*."[2] (Emphasis added.) Relying on a different subsection of the same statute, the People later added three more counts of sexual exploitation of a child, alleging that S.G.H. had "knowingly accessed with intent to view, viewed, possessed or controlled any *sexually exploitative material* for any purpose." § 18-6-403(3)(b.5) ("subsection (3)(b.5)") (emphasis added).

¶14 Before the preliminary hearing, S.G.H. moved to dismiss the charges, arguing that the images in question didn't depict any "actual naked children"

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[2] In December 2023, when S.G.H. allegedly committed the crimes charged, our legislature defined "[s]exually exploitative material" as certain specifically identified material "that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct." § 18-6-403(2)(j). This definition is at the heart of the parties' disagreement. We quote it in its entirety and explore it in depth later in this opinion.

because the intimate parts portrayed in each image appeared to be of an "adult female body" that was "completely computer generated." And, added S.G.H., each charge required proof of "sexually exploitative material," which, on the dates of the charged offenses, included neither simulated female breasts and genitalia nor digitally created or altered images of children. § 18-6-403(2)(j) ("subsection (2)(j)").

¶15 The People filed a timely response opposing the motion. But the court elected to proceed with the preliminary hearing before ruling on the motion. Following the preliminary hearing, the court asked for further briefing on the motion, and the parties obliged.

¶16 The court ultimately denied S.G.H.'s motion to dismiss. It concluded that the legislature intended to include within the definition of "sexually exploitative material" in effect in December 2023 the "behavior of a person using digital means to create an image bearing some of [a] child's actual body parts but adding simulated images of intimate body parts." In so doing, the court seemed to place a lot of stock in the following excerpt from section 18-6-403:

> The general assembly hereby finds and declares: . . . that a child below the age of eighteen years is incapable of giving informed consent to the use of his or her body for a sexual purpose; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

§ 18-6-403(1). After denying the motion to dismiss, the court found probable cause as to all six charges.

¶17 S.G.H. then invoked our original jurisdiction pursuant to C.A.R. 21. He raised two issues in his C.A.R. 21 petition: (1) "Whether the use of Artificial Intelligence to digitally create intimate parts can qualify as 'sexually exploitative material' for purposes of a charge of Sexual Exploitation of a Child"; and (2) "Whether there is probable cause in this case for Sexual Exploitation of a Child, where S.G.H. is accused of using Artificial Intelligence to digitally create intimate parts." We issued an order to show cause.

¶18 As we mentioned earlier, today we make absolute our order to show cause. Before explaining our decision, however, we discuss the exercise of our original jurisdiction.

II. Original Jurisdiction

¶19 Whether we exercise our original jurisdiction under C.A.R. 21 is a matter entirely within our discretion. *People v. Sotade*, 2025 CO 38, ¶ 11, 570 P.3d 491, 494. C.A.R. 21 is narrow in scope: It provides "an extraordinary remedy that is limited in both purpose and availability." *People v. Rosas*, 2020 CO 22, ¶ 19, 459 P.3d 540, 545 (quoting *Villas at Highland Park Homeowners Ass'n v. Villas at Highland Park, LLC*, 2017 CO 53, ¶ 22, 394 P.3d 1144, 1151). The exercise of our original jurisdiction is justified "when an appellate remedy would be inadequate, when a

party may otherwise suffer irreparable harm, or when a petition raises issues of significant public importance that we have not yet considered." *Id.* (quoting *People v. Rowell*, 2019 CO 104, ¶ 9, 453 P.3d 1156, 1159).

¶20 S.G.H. contends that this is an appropriate case for the exercise of our original jurisdiction both because it presents an issue of first impression that has significant public importance and because he lacks an adequate appellate remedy. We agree.

¶21 First, as S.G.H. reminds us, generative AI is constantly in the news nowadays and is becoming ubiquitous. It is important for our communities to understand the legal ramifications of certain uses of this technology. Therefore, it makes sense for us to take this opportunity to shed light on the matter.

¶22 Second, as mentioned, we conclude today that there is no probable cause to believe S.G.H. violated the version of the statute under which he was charged in this case. Were we to decline to exercise our original jurisdiction, it would force S.G.H., a juvenile, to risk being improperly adjudicated a delinquent and unjustly sentenced before being able to raise on direct appeal the arguments he presents in his C.A.R. 21 petition. Accordingly, any appellate remedy would be inadequate.

¶23 Having established that this is an appropriate case in which to exercise our original jurisdiction, we proceed to analyze the merits of the issues in S.G.H.'s

petition. As usual, we get the analytical ball rolling by identifying the standard of review.

III. Analysis

A. Standard of Review

¶24 We review questions of statutory interpretation de novo. *Bonde v. People*, 2025 CO 24, ¶ 14, 569 P.3d 109, 113. Our "fundamental responsibility in construing a statute is to ascertain and give effect to the legislature's intent and purpose in enacting it." *Id.* We look first to the words and phrases of the statute, giving them their plain and ordinary meaning. *McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389. But we read such words and phrases in context and in accordance with the rules of grammar and common usage. *Id.* Additionally, we construe the statutory scheme as a whole, giving consistent, harmonious, and sensible effect to all its parts while avoiding interpretations that would either render any words or phrases superfluous or lead to illogical or absurd results. *Id.* at ¶ 38, 442 P.3d at 389.

¶25 If a statute is unambiguous, we do not look beyond its plain language; instead, we apply it as written. *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). However, if a statute is reasonably susceptible to multiple interpretations and is thus ambiguous, we consider other tools of statutory construction, including the

statutory history, *see Carrera v. People*, 2019 CO 83, ¶ 18, 449 P.3d 725, 729,[3] as well as the consequences of a given construction, the goals to be achieved by the statute, and the statute's legislative history, *see McCoy*, ¶ 38, 442 P.3d at 389.

¶26 After a statute is signed into law, "[a] legislative amendment either clarifies [it] or changes [it], and we presume that by amending [it] the legislature has intended to change it." *City of Colo. Springs v. Powell*, 156 P.3d 461, 465 (Colo. 2007). This presumption may be rebutted, but only through a showing that the legislature's sole intent was "to clarify an ambiguity in the statute by amending it." *Id.* When we are called upon to determine whether a legislative amendment was a change or a clarification, we use a three-part analysis: First, we look at the legislative history surrounding the amendment (as distinguished from the legislative history of the original statutory provision); second, we consider the plain language used by the General Assembly in the amendment; and third, we

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[3] We explained in *Carrera* that statutory history, which refers to the evolution of a statute as it is revised by the legislature over time, should not be confused with legislative history, which refers to the behind-the-scenes legislative process of enacting or amending a statute. *Carrera*, ¶ 24 n.6, 449 P.3d at 730 n.6. Thus, while statutory history encompasses revisions to the text of a statute after the statute has taken effect, legislative history encompasses, among other things, bill sponsor comments made as the legislature works to either enact a statute or adopt a statutory amendment. *Id.*; *see also Colo. Oil & Gas Conservation Comm'n v. Martinez*, 2019 CO 3, ¶ 30 n.2, 433 P.3d 22, 29 n.2.

assess whether the statutory provision being construed was ambiguous before it was amended. *Id.*

B. The Images in Question Do Not Come Within the Scope of the Definition of "Sexually Exploitative Material" in Effect in December 2023

¶27 All six charges of sexual exploitation of a child (three charged pursuant to subsection (3)(b) and three charged pursuant to subsection (3)(b.5)) require proof of "sexually exploitative material." § 18-6-403(3)(b), (b.5). Indeed, as pertinent here, a person commits sexual exploitation of a child if "he or she knowingly":

> (b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, distributes, transports or transfers to another person, or makes accessible to another person, including, but not limited to, through digital or electronic means, any *sexually exploitative material*; or
>
> (b.5) Accesses with intent to view, views, possesses, or controls any *sexually exploitative material* for any purpose . . . .

Id. (emphases added).[4]

¶28 As of December 2023, when the offenses charged allegedly occurred, our legislature defined "sexually exploitative material" as

> any photograph, motion picture, video, recording or broadcast of moving visual images, livestream, print, negative, slide, or other mechanically, electronically, chemically, or digitally *reproduced* visual

[4] Subsections (3)(b) and (3)(b.5) have not been amended between December 2023 and now.

> material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.[5]

§ 18-6-403(2)(j) (emphasis added).[6]

¶29 The People gloss over the materials listed in this definition, focusing instead on the prohibited conduct under subsections (3)(b) and (3)(b.5). More specifically, the People assert that there is probable cause to believe S.G.H. violated subsection (3)(b) because they presented evidence at the preliminary hearing that he *prepared, produced, or made* sexually exploitative material. Along the same lines, the People contend that there is probable cause as to the charges filed pursuant to subsection (3)(b.5) because they presented evidence at the preliminary hearing that S.G.H. *possessed or controlled* sexually exploitative material.

¶30 To be sure, subsection (3)(b) makes it illegal to prepare, produce, or make sexually exploitative material, and subsection (3)(b.5) makes it illegal to possess or control sexually exploitative material. But if what someone prepares, produces, makes, possesses, or controls doesn't qualify as sexually exploitative material, no crime has been committed. So, the material is just as essential as the conduct.

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[5] In light of our resolution of S.G.H.'s petition, we need not address whether each of the images in question "depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct."

[6] Unlike subsections (3)(b) and (3)(b.5), subsection (2)(j) has been amended since December 2023; it was amended earlier this year. We inspect those amendments later.

¶31 Tellingly, the People's answer brief does not identify which enumerated material in the definition of "sexually exploitative material" in effect in December 2023 encompasses the images in question. In our view, the images under scrutiny do not fall within any of the listed materials in that definition.

¶32 The images recovered from S.G.H.'s email account are not photographs,[7] motion pictures, videos, recordings or broadcasts of moving visual images, livestreams, prints, negatives, or slides. *See* § 18-6-403(2)(j). That leaves "mechanically, electronically, chemically, or digitally reproduced visual material." *Id.* As the People impliedly agree, the images collected from S.G.H.'s email account were not "mechanically, electronically, [or] chemically" reproduced. *Id.* No, the images are digital. But while they are digital, there is no evidence in the record that they were "reproduced." *See id.* This is the death knell in the People's case: Even according to the People's own brief, S.G.H. prepared, produced, made,

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[7] While the composite images allegedly created by S.G.H. may appear photographic in form, we perceive a significant distinction between those images, which synthesized computer-generated and original properties, and a photograph. A "photograph" is a "picture or likeness" obtained by "photography," which refers to the process of producing images through the precise action of exposing "radiant energy" on a "sensitive surface" such as a film or an optical sensor. *Photograph*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/photograph [https://perma.cc/9WWH-J4AG]; *Photography*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/photography [https://perma.cc/UV62-62P3]. By contrast, the images found in S.G.H.'s email account did not originate from photographic processes.

possessed, and/or controlled the images found in his email account; there is no assertion in the answer brief that S.G.H. *reproduced* the images at issue—digitally or otherwise.

¶33 True, during oral arguments, the People contended that the images seized by law enforcement were "digitally reproduced." But even overlooking the untimeliness of this assertion, it fails to move the needle.

¶34 The General Assembly did not define "reproduced" in subsection (2)(j), and that word has multiple possible meanings. *See, e.g.*, *Reproduce*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/reproduce [https://perma.cc/5MKF-BX4F] (defining "reproduce" in seven variations). Therefore, in discerning our General Assembly's intent, we take a peek behind the legislative curtain and consider both the statutory history and the legislative history of subsection (2)(j). *See Carrera*, ¶ 18, 449 P.3d at 729; *McCoy*, ¶ 38, 442 P.3d at 389.

¶35 The term "reproduced" was incorporated into the original version of subsection 2(j) in 1979, almost half a century ago. Ch. 173, sec. 1, § 18-6-403(2)(j), 1979 Colo. Sess. Laws 737, 738. Approximately two decades later, in House Bill 98-1177, subsection (2)(j) was modified to include "digital[]" reproductions. Ch. 139, sec. 3, § 18-6-403(2)(j), 1998 Colo. Sess. Laws 389, 398.

¶36 Importantly, in the summary of House Bill 98-1177, the legislature described its intent in expanding subsection (2)(j) to include digital reproductions. The

legislature explained that it was seeking to prevent the "*distribut[ion]*" of the images referenced in subsection (2)(j) through "digital means." Off. of Legis. Legal Servs., *Digest of Bills Enacted by the Sixty-First General Assembly: 1998 Second Regular Session* 37 (June 1998), https://leg.colorado.gov/sites/default/files/digest1998.pdf [https://perma.cc/H8BS-QSH8] (emphasis added).

¶37 For three reasons, we infer from the statutory and legislative histories of subsection (2)(j) that "digitally reproduced" does not include the explicit images allegedly created by S.G.H. using generative AI. First, given that the term "digitally reproduced" was integrated into the subsection (2)(j) definition of sexually exploitative material in 1998, decades before generative-AI tools became widespread, it is all but impossible that the legislature envisioned images created using that technology as falling within the scope of "digitally reproduced." Second, the legislature's express intent in bringing certain "digitally reproduced" images within the scope of the subsection (2)(j) definition of sexually exploitative material was to target the digital *distribution* of copies of forbidden images, not the digital *production* of such images.[8] And third, despite using "produced" (or a variation of it) multiple times in section 18-6-403, including when describing the crime of sexual exploitation of a child in subsection (3)(b), the legislature chose to

[8] There is no evidence in the record that S.G.H. distributed the images at issue.

omit that word (and any variation of it) from the subsection (2)(j) definition of sexually exploitative material in effect in December 2023, opting instead to use "reproduced" in that definition.

¶38 Reproduction in this context implies fidelity to the source. Indeed, photographs, motion pictures, videos, and the other items listed in subsection (2)(j) all faithfully capture a visual image. They do not distort, manipulate, modify, or fabricate a visual image. In this case, we deal with distortion, manipulation, modification, and fabrication, not reproduction: The images stored in S.G.H.'s email account are fabricated images that were digitally *produced* by distorting, manipulating, or modifying photographs.

¶39 Because the People did not present any evidence that the activity S.G.H. engaged in involved the digital *reproduction* of images or otherwise met the definition of sexually exploitative material, they failed to establish probable cause to believe that he violated either subsection (3)(b) or subsection (3)(b.5). Therefore, we conclude that the district court erred in finding probable cause as to all six charges.

¶40 Notably, the legislature's 2025 amendments to subsection (2)(j) and neighboring provisions corroborate our determination that the images retrieved from S.G.H.'s email account do not fall within the scope of the definition of

sexually exploitative material in effect in December 2023. We turn our attention to those amendments next.

C. Recent Legislative Amendments to Subsection (2)(j) and Neighboring Provisions Support Our Conclusion

¶41 Earlier this year, our General Assembly passed Senate Bill 25-288, the "Preventing Unauthorized Disclosure of Intimate Digital Depictions Act." § 13-21-1501, C.R.S. (2025). In connection with that enactment, it amended subsection (2)(j) and a handful of other provisions. Of particular relevance here, it extended the definition of sexually exploitative material in subsection (2)(j) to include "[a] realistic visual depiction, which has been *created, altered, or produced by digitization or computer-generated means*, that depicts *an identifiable child, in whole or in part,* engaged in, participating in, observing, or being used for explicit sexual conduct." Ch. 339, sec. 2, § 18-6-403(2)(j)(II), 2025 Colo. Sess. Laws 1819, 1825–26 (emphases added). Further, it added a definition for "[d]igitization" in section 18-6-403(2)(b.7). Ch. 339, sec. 2, § 18-6-403(2)(b.7), 2025 Colo. Sess. Laws 1819, 1826 (stating that digitization has the same meaning as in section 18-7-107(6)(i), C.R.S. (2025): "*creating or altering* visual or printed matter in a realistic manner using images of another person or *computer-generated images*, regardless of whether the creation or alteration is accomplished manually or through an automated process" (emphases added)).

¶42 Consistent with these revisions, the General Assembly added references in the legislative declaration in section 18-6-403 to both "the use of *all or part of the child's image* to create sexually exploitative material" and "*the creation* or the mere possession or control of *computer-generated* material or digital depictions using *all or part of the image of a child* in sexually exploitative material." Ch. 339, sec. 2, § 18-6-403(1), (1.5), 2025 Colo. Sess. Laws 1819, 1825 (emphases added). Moreover, the General Assembly changed "private image" to "private intimate image or intimate digital depiction" in section 18-6-403(3.5). That provision now states that a juvenile's conduct that's limited to either (1) the elements of the petty offense of "possession of a private intimate image or intimate digital depiction by a juvenile" or (2) the elements of the civil infraction of the "exchange of a private intimate image or intimate digital depiction by a juvenile," as described in section 18-7-109(2) and 18-7-109(3), C.R.S. (2025), respectively, may not be prosecuted pursuant to subsection (3)(b) or subsection (3)(b.5). Ch. 339, sec. 2, § 18-6-403(3.5), 2025 Colo. Sess. Laws 1819, 1826. Correspondingly, in section 18-7-109, the legislature defined new terms: "[c]omputer-generated," "[d]igital depiction," "[i]ntimate digital depiction," "[g]enerative AI," and "[i]mage editing software," among others. Ch. 339, sec. 6, § 18-7-109(8)(c), (e), (i), (j), (k), 2025 Colo. Sess. Laws 1819, 1836–37.

¶43 The People nevertheless urge that these amendments simply *clarified* what was already prohibited in December 2023. But that's a hard sell. The amendments' legislative history and plain language, as well as the lack of ambiguity in the statutory provisions in effect before the amendments, convince us that the amendments actually *changed* existing law. *See Powell*, 156 P.3d at 465.

D. The 2025 Legislative Amendments Didn't Merely Clarify the Law; They Changed It

1. Plain Language

¶44 We see no language in the statutory amendments highlighted above that overcomes the presumption that they constitute changes to existing law. *See id.*, 156 P.3d at 466. To the contrary, the plain language of the amendments appears to recognize that "modifications and additions to the existing statute[s] were necessary" in light of advances in technology. *Id.* Indeed, the additions to the legislative declaration in section 18-6-403 suggest that the legislature was concerned with, among other things, the existing law's shortcomings vis-à-vis "*the creation* or the mere possession or control of *computer-generated material or digital depictions using all or part of the image of a child* in sexually exploitative material." Ch. 339, sec. 2, § 18-6-403(1.5), 2025 Colo. Sess. Laws 1819, 1825 (emphases added). And some of the new statutory definitions address, for the first time, the use of "[c]omputer-generated" images, "[g]enerative AI," "[d]igital depiction," and

"image editing software." Ch. 339, sec. 6, § 18-7-109(8)(c), (e), (i), (j), 2025 Colo. Sess. Laws 1819, 1836–37.

¶45 Most importantly for our purposes, the legislature amended the definition of "sexually exploitative material" in subsection (2)(j). First, whereas the pre-2025 law included only the "reproduc[tion]" of specified visual depictions, the 2025 amendments now also include the "creat[ion], alter[ation], or produc[tion]" of the same visual depictions. Ch. 339, sec. 2, § 18-6-403(2)(j), 2025 Colo. Sess. Laws 1819, 1826. Second, whereas the pre-2025 law referred to "mechanical[], electronic[], chemical[], or digital[]" means, the 2025 amendments now also include "digitization or computer-generated means." *Id.* And third, whereas the pre-2025 law referred only to depictions of "a child," the 2025 amendments now refer to depictions of an identifiable child "in whole or in part." *Id.* These are modifying, not clarifying, revisions to the definition of "sexually exploitative material" in subsection (2)(j) to align legislation with innovation.

¶46 In short, the 2025 amendments didn't simply clarify the existing law. They changed it by contemporizing it based on advances in generative-AI technology. We move on, then, to the next factor in the analysis.

2. Legislative History

¶47 The legislative history is also a compelling indicator that the 2025 amendments changed the existing law. For example, Robert Rodriguez, Senate

Majority Leader and a sponsor of the 2025 legislation, explained that the purpose of the bill was to put Colorado "on the same level" as thirty-seven other states and the federal government, which had already enacted laws to criminalize the possession, creation, and distribution of computer-generated or computer-edited child sexual abuse material. Hearing on S.B. 288 before the S. Judiciary Comm., 75th Gen. Assemb., 1st Sess. (Apr. 21, 2025). He expressed concern that perpetrators in Colorado were able to use parts of images of real children to create "composite images" that were unidentifiable as a particular child. *Id.* According to Senator Rodriguez, the updated definitions were necessary to reach the improper use of the latest technology. *Id.* As part of his comments, he specifically referenced updating the definition of sexually exploitative material in subsection (2)(j) to help close "the technological loophole" in our criminal statutes. *Id.*

¶48 In line with Senator Rodriguez's remarks, the bill summary in one version of Senate Bill 25-288 indicated that the 2025 legislation created a civil cause of action against those who disclose or threaten to disclose, among other things, a false visual depiction of another individual that has been produced by using generative AI or other computer-generated means. S.B. 25-288, 75th Gen. Assemb., 1st Sess. (as re-revised, May 6, 2025), https://leg.colorado.gov/sites/default/files/documents/2025A/bills/2025a_288_rer.pdf [https://perma.cc/3XWM-QBNY]. Those who addressed the legislature were by and large in lockstep with

this summary and Senator Rodriguez's statements. Hearing on S.B. 288 before the S. Judiciary Comm., 75th Gen. Assemb., 1st Sess. (Apr. 21, 2025). Even the Office of the Colorado State Public Defender, which opposed the bill, acknowledged that catching our criminal statutes up to the new technology did "make sense." *Id.* (statement of James Karbach, Colo. State Pub. Def., Dir. Of Legis. Pol'y and External Commc'ns).

¶49 We now conclude that the legislative history of the 2025 amendments, like the amendments' plain language, falls squarely on the *change* side (not the *clarify* side) of the ledger. That leaves the final factor in the analysis.

3. No Ambiguity in Need of Clarification

¶50 We must determine whether the 2025 amendments were prompted by any ambiguity in the law in need of clarification. *Powell*, 156 P.3d at 468. The People have not identified any such ambiguity, and we are aware of none.[9] This wasn't a situation in which the legislature believed there was confusion about the language in subsection (2)(j). Rather, this was a situation in which the legislature realized that subsection (2)(j) had become outmoded as a result of advances in generative-

[9] Although we earlier observed that there is no statutory definition of "reproduced," a word that has multiple possible meanings, the legislature didn't set out to amend subsection (2)(j) in 2025 to clarify that aspect of the definition of sexually exploitative material. Instead, it enhanced that definition by adding an entirely new paragraph in subsection (2)(j) to account for advances in generative-AI technology.

AI technology. Accordingly, this factor, too, reflects a legislative intent to change, not clarify, existing law.

IV. Conclusion

¶51 For the foregoing reasons, we conclude that the law in effect in December 2023 did not prohibit S.G.H.'s alleged conduct. Therefore, the district court erred in denying the motion to dismiss. Accordingly, we remand the case to the district court with instructions to dismiss the charges brought against S.G.H.[10]

¶52 We would be remiss if we failed to make clear that we do not condone S.G.H.'s alleged conduct. Computer-generated explicit images often have a devastating impact on victims. We understand, of course, that our decision today means that the People will not have an opportunity to seek justice for the three named victims. Unfortunately, it took our legislature time to catch up to the recent advances in generative-AI technology. But regardless of the reason for this delay, S.G.H. cannot be penalized based on statutory provisions that came into effect after he allegedly engaged in the appalling conduct in question. As undesirable as it may be to deprive the named victims of their day in court in this proceeding, it is the result the law requires and thus the one we reach. In so doing, we are ever mindful that "[r]esult-oriented justice is . . . directly contrary to the concept of the

[10] Given our disposition, we do not reach S.G.H.'s First Amendment challenge.

rule of law." *Leaming v. Unified Sch. Dist. No. 214*, 750 P.2d 1041, 1054 (Kan. 1988) (Herd, J., dissenting).