

**Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0755.01 Michael Dohr

**SENATE BILL 10-128**

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**SENATE SPONSORSHIP**

**Hudak,** Newell, Carroll M., Steadman

**HOUSE SPONSORSHIP**

**Rice,**

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**Senate Committees**

Judiciary  
Finance

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING INVASION OF PRIVACY.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill moves the crime of invasion of privacy for sexual gratification from the unlawful sexual contact statute into its own statute. The bill increases the penalty for the crime of invasion of privacy for sexual gratification to a class 6 felony when either:

- ! The defendant has been previously convicted of an unlawful sexual behavior offense; or
- ! The defendant observed a person under the age of 18 years

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

during the commission of the crime.

Currently, the crime of invasion of privacy may be committed by capturing an image of another person's intimate parts without the person's consent. The bill adds "live feed" as a means of capturing the image and includes observing a person's intimate parts as a means of committing the offense.

The bill reduces the penalty for eavesdropping from a class 6 felony to a class 1 misdemeanor.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Repeal.** 18-3-404 (1.7), Colorado Revised Statutes,  
3 is repealed.

4 **SECTION 2.** Part 4 of article 3 of title 18, Colorado Revised  
5 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
6 read:

7 **18-3-405.6. Invasion of privacy for sexual gratification.** (1) A  
8 PERSON WHO KNOWINGLY OBSERVES OR TAKES A PHOTOGRAPH OF  
9 ANOTHER PERSON'S INTIMATE PARTS WITHOUT THAT PERSON'S CONSENT,  
10 IN A SITUATION WHERE THE PERSON OBSERVED OR PHOTOGRAPHED HAS A  
11 REASONABLE EXPECTATION OF PRIVACY, FOR THE PURPOSE OF THE  
12 OBSERVER'S OWN SEXUAL GRATIFICATION, COMMITS UNLAWFUL INVASION  
13 OF PRIVACY FOR SEXUAL GRATIFICATION.

14 (2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF  
15 THIS SUBSECTION (2), INVASION OF PRIVACY FOR SEXUAL GRATIFICATION  
16 IS A CLASS 1 MISDEMEANOR AND IS AN EXTRAORDINARY RISK CRIME  
17 SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION  
18 18-1.3-501 (3).

19 (b) INVASION OF PRIVACY FOR SEXUAL GRATIFICATION IS A CLASS  
20 6 FELONY AND IS AN EXTRAORDINARY RISK CRIME SUBJECT TO THE  
21 MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10) IF

1 EITHER OF THE FOLLOWING CIRCUMSTANCES EXIST:

2 (I) THE OFFENSE IS COMMITTED SUBSEQUENT TO A PRIOR  
3 CONVICTION, AS DEFINED IN SECTION 16-22-102 (3), C.R.S., FOR  
4 UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9),  
5 C.R.S.; OR

6 (II) THE PERSON KNOWINGLY OBSERVES OR TAKES A PHOTOGRAPH  
7 OF THE INTIMATE PARTS OF A PERSON UNDER FIFTEEN YEARS OF AGE. THIS  
8 SUBPARAGRAPH (II) SHALL NOT APPLY IF THE DEFENDANT IS LESS THAN  
9 FOUR YEARS OLDER THAN THE PERSON OBSERVED OR PHOTOGRAPHED.

10 (3) FOR PURPOSES OF THIS SECTION, "PHOTOGRAPH" INCLUDES A  
11 PHOTOGRAPH, MOTION PICTURE, VIDEOTAPE, LIVE FEED, PRINT, NEGATIVE,  
12 SLIDE, OR OTHER MECHANICALLY, ELECTRONICALLY, OR CHEMICALLY  
13 PRODUCED OR REPRODUCED VISUAL MATERIAL.

14 **SECTION 3.** 18-7-801, Colorado Revised Statutes, is amended  
15 to read:

16 **18-7-801. Criminal invasion of privacy.** (1) A person who  
17 knowingly OBSERVES OR takes a photograph of another person's intimate  
18 parts, as defined in section 18-3-401 (2), without that person's consent, in  
19 a situation where the person OBSERVED OR photographed has a reasonable  
20 expectation of privacy, commits criminal invasion of privacy.

21 (2) Criminal invasion of privacy is a class 2 misdemeanor.

22 (3) For the purposes of this section, "photograph" includes a  
23 photograph, motion picture, videotape, LIVE FEED, print, negative, slide,  
24 or other mechanically, electronically, digitally, or chemically reproduced  
25 visual material.

26 **SECTION 4.** 18-9-304 (2), Colorado Revised Statutes, is  
27 amended to read:

1           **18-9-304. Eavesdropping prohibited - penalty.**

2           (2) Eavesdropping is a ~~class 6 felony~~ CLASS 1 MISDEMEANOR.

3           **SECTION 5.** 18-1.3-401 (10) (b) (XIII) and (10) (b) (XIV),  
4 Colorado Revised Statutes, are amended, and the said 18-1.3-401 (10) (b)  
5 is further amended BY THE ADDITION OF A NEW  
6 SUBPARAGRAPH, to read:

7           **18-1.3-401. Felonies classified - presumptive penalties.**

8           (10) (b) Crimes that present an extraordinary risk of harm to society shall  
9 include the following:

10           (XIII) Stalking, as described in section 18-9-111 (4); ~~and~~

11           (XIV) Sale or distribution of materials to manufacture controlled  
12 substances, as described in section 18-18-412.7; AND

13           (XV) FELONY INVASION OF PRIVACY FOR SEXUAL GRATIFICATION,  
14 AS DESCRIBED IN SECTION 18-3-405.6.

15           **SECTION 6.** 18-1.3-501 (3) (b) (IV) and (3) (b) (V), Colorado  
16 Revised Statutes, are amended, and the said 18-1.3-501 (3) (b) is further  
17 amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

18           **18-1.3-501. Misdemeanors classified - penalties.**

19           (3) (b) Misdemeanors that present an extraordinary risk of harm to  
20 society shall include the following:

21           (IV) Second and all subsequent violations of a protection order as  
22 defined in section 18-6-803.5 (1.5) (a.5); ~~and~~

23           (V) Misdemeanor failure to register as a sex offender, as  
24 described in section 18-3-412.5; AND

25           (VI) MISDEMEANOR INVASION OF PRIVACY FOR SEXUAL  
26 GRATIFICATION, AS DESCRIBED IN SECTION 18-3-405.6.

27           **SECTION 7.** 18-3-408.5, Colorado Revised Statutes, is amended

1 to read:

2 **18-3-408.5. Jury instruction on consent - when required.**

3 (1) In any criminal prosecution ~~under section 18-3-402 (1) (a) or~~  
4 ~~18-3-404 (1) (a), (1) (c), (1) (d), or (1.7) or under section 18-3-402 (1)~~  
5 ~~(b), (1) (c), or (1) (e) or 18-3-403 (1) (a) or (1) (b), for offenses~~  
6 ~~committed before July 1, 2000, FOR A CRIME LISTED IN SUBSECTION (2) OF~~  
7 ~~THIS SECTION or for attempt or conspiracy to commit any~~ A crime listed  
8 in SUBSECTION (2) OF this section, upon request of any party to the  
9 proceedings, the jury shall be instructed on the definition of consent as set  
10 forth in section 18-3-401 (1.5). Notwithstanding the provisions of section  
11 18-1-505 (4), an instruction on the definition of consent given pursuant  
12 to this section shall not constitute an affirmative defense, but shall only  
13 act as a defense to the elements of the offense.

14 (2) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL  
15 APPLY TO THE FOLLOWING CRIMES:

16 (a) SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402 (1) (a);

17 (b) SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402 (1) (b),  
18 (1) (c), OR (1) (e), AS THEY EXISTED PRIOR TO JULY 1, 2000, FOR OFFENSES  
19 COMMITTED PRIOR TO JULY 1, 2000;

20 (c) SEXUAL ASSAULT IN THE SECOND DEGREE AS DESCRIBED IN  
21 SECTION 18-3-403 (1) (a) OR (1) (b), AS THEY EXISTED PRIOR TO JULY 1,  
22 2000, FOR OFFENSES COMMITTED PRIOR TO JULY 1, 2000;

23 (d) UNLAWFUL SEXUAL CONTACT AS DESCRIBED IN SECTION  
24 18-3-404 (1) (a), (1) (c), OR (1) (d);

25 (e) UNLAWFUL SEXUAL CONTACT AS DESCRIBED IN SECTION  
26 18-3-404 (1.7), AS IT EXISTED PRIOR TO JULY 1, 2010, FOR OFFENSES  
27 COMMITTED PRIOR TO JULY 1, 2010; OR

1 (f) INVASION OF PRIVACY FOR SEXUAL GRATIFICATION AS  
2 DESCRIBED IN SECTION 18-3-405.6.

3 **SECTION 8.** 16-22-102 (9) (x) and (9) (y), Colorado Revised  
4 Statutes, are amended, and the said 16-22-102 (9) is further amended BY  
5 THE ADDITION OF A NEW PARAGRAPH, to read:

6 **16-22-102. Definitions.** As used in this article, unless the context  
7 otherwise requires:

8 (9) "Unlawful sexual behavior" means any of the following  
9 offenses or criminal attempt, conspiracy, or solicitation to commit any of  
10 the following offenses:

11 (x) Class 4 felony internet luring of a child, in violation of section  
12 18-3-306 (3), C.R.S.; or

13 (y) Internet sexual exploitation of a child, in violation of section  
14 18-3-405.4, C.R.S.; OR

15 (z) INVASION OF PRIVACY FOR SEXUAL GRATIFICATION, IN  
16 VIOLATION OF SECTION 18-3-405.6, C.R.S.

17 **SECTION 9. Specified effective date - applicability.** This act  
18 shall take effect July 1, 2010, and shall apply to offenses committed on  
19 or after said date.

20 **SECTION 10. Safety clause.** The general assembly hereby finds,  
21 determines, and declares that this act is necessary for the immediate  
22 preservation of the public peace, health, and safety.