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**

SENATE SPONSORSHIP

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A BILL FOR AN ACT

CONCERNING INVASION OF PRIVACY, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SENATE
3rd Reading Unamended
April 21, 2010

SENATE
Amended 2nd Reading
April 20, 2010

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.

unlawful sexual behavior offense; or

! The defendant observed a person under the age of 18 years 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.

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

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 Repeal. 18-3-404 (1.7), Colorado Revised Statutes, is repealed.

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

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

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

(b) INVASION OF PRIVACY FOR SEXUAL GRATIFICATION IS A CLASS 6 FELONY AND IS AN EXTRAORDINARY RISK CRIME SUBJECT TO THE

MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10) IF EITHER OF THE FOLLOWING CIRCUMSTANCES EXIST:

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

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

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

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

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

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

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

SECTION 4. 18-9-304 (2), Colorado Revised Statutes, is

amended to read:

18-9-304. Eavesdropping prohibited - penalty. (2) Eavesdropping is a ~~class 6 felony~~ CLASS 1 MISDEMEANOR.

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

18-1.3-401. Felonies classified - presumptive penalties. (10) (b) Crimes that present an extraordinary risk of harm to society shall include the following:

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

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

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

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

18-1.3-501. Misdemeanors classified - penalties. (3) (b) Misdemeanors that present an extraordinary risk of harm to society shall include the following:

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

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

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

SECTION 7. 18-3-408.5, Colorado Revised Statutes, is amended to read:

18-3-408.5. Jury instruction on consent - when required. (1) In any criminal prosecution ~~under section 18-3-402 (1) (a) or 18-3-404 (1) (a), (1) (c), (1) (d), or (1.7) or under section 18-3-402 (1) (b), (1) (c), or (1) (e) or 18-3-403 (1) (a) or (1) (b), for offenses committed before July 1, 2000,~~ FOR A CRIME LISTED IN SUBSECTION (2) OF THIS SECTION or for attempt or conspiracy to commit ~~any~~ A crime listed in SUBSECTION (2) OF this section, upon request of any party to the proceedings, the jury shall be instructed on the definition of consent as set forth in section 18-3-401 (1.5). Notwithstanding the provisions of section 18-1-505 (4), an instruction on the definition of consent given pursuant to this section shall not constitute an affirmative defense, but shall only act as a defense to the elements of the offense.

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

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

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

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

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

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

COMMITTED PRIOR TO JULY 1, 2010;

(f) INVASION OF PRIVACY FOR SEXUAL GRATIFICATION AS DESCRIBED IN SECTION 18-3-405.6; OR

(g) CRIMINAL INVASION OF PRIVACY IN VIOLATION OF SECTION 18-7-801.

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

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

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

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

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

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

SECTION 9. 16-11.7-102 (3) (v) and (3) (w), Colorado Revised Statutes, are amended, and the said 16-11.7-102 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

16-11.7-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "Sex offense" means any felony or misdemeanor offense described in this subsection (3) as follows:

(v) Class 4 felony internet luring of a child, in violation of section

18-3-306 (3), C.R.S.; ~~or~~

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

(x) INVASION OF PRIVACY FOR SEXUAL GRATIFICATION, AS DESCRIBED IN SECTION 18-3-405.6, C.R.S.

SECTION 10. Article 18 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-18-105. Appropriation to comply with section 2-2-703 - SB 10-128 - repeal. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT SENATE BILL 10-128, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SEVENTH GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2012, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, C.R.S., THE SUM OF EIGHTY-THREE THOUSAND EIGHT HUNDRED SIXTY-ONE DOLLARS ($83,861).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 2013, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWENTY-EIGHT THOUSAND FOURTEEN DOLLARS ($28,014).

(c) FOR THE FISCAL YEAR BEGINNING JULY 1, 2014, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL

FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FOUR THOUSAND FOUR HUNDRED EIGHTY-TWO DOLLARS ($4,482).

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

SECTION 11. 24-75-302 (2) (y), Colorado Revised Statutes, is amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation. (2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2012, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount that shall accrue pursuant to this subsection (2) shall be as follows:

(y) On July 1, 2012, one hundred twelve thousand six hundred forty-nine dollars pursuant to H.B. 08-1115, enacted at the second regular session of the sixty-sixth general assembly; plus three hundred seventy-five thousand four hundred ninety-five dollars pursuant to S.B. 08-239, enacted at the second regular session of the sixty-sixth general ~~assembly.~~ ASSEMBLY; PLUS EIGHTY-THREE THOUSAND EIGHT HUNDRED SIXTY-ONE DOLLARS PURSUANT TO S.B. 10-128, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SEVENTH GENERAL ASSEMBLY.

SECTION 12. Specified effective date - applicability. (1) Sections 3, 4, 9, and 10 of this act shall take effect July 1, 2010, and shall apply to offenses committed on or after said date.

(2) The remaining sections of this act shall take effect on July 1,

2012, and shall apply to offenses committed on or after said date.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.