

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 14-0998.01 Michael Dohr x4347

HOUSE BILL 14-1378

HOUSE SPONSORSHIP

Stephens and Pabon, Fischer, Landgraf, McNulty, Navarro, Szabo

SENATE SPONSORSHIP

King and Hodge,

House Committees
Judiciary

Senate Committees
Judiciary

SENATE
Amended 3rd Reading
May 5, 2014

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING THE POSTING OF A PRIVATE IMAGE ON**
102 **SOCIAL MEDIA WITHOUT CONSENT TO CAUSE SERIOUS**
103 **EMOTIONAL DISTRESS.**

SENATE
Amended 2nd Reading
May 2, 2014

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>.)

HOUSE
Amended 3rd Reading
April 28, 2014

The bill makes it a crime for a person 18 years of age or older, with the intent to cause serious emotional distress, to post, add to a post, or otherwise distribute through the use of social media any photograph, video, or other image containing the intimate parts of an identified or

HOUSE
Amended 2nd Reading
April 25, 2014

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.

identifiable person 18 years of age or older, without the depicted person's consent, after the depicted person communicated to the actor an expectation that the image would remain private and such conduct results in serious emotional distress. The crime is a class 1 misdemeanor. In addition to any other sentence, the court shall impose a fine of at least \$10,000 and order the image removed from the internet.

A person convicted of the crime may apply to have the conviction record sealed if he or she has not been convicted of another crime in 5 years after the completion of his or her sentence.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-7-107 and
3 18-7-108 as follows:

4 **18-7-107. Posting a private image for harassment - definitions.**

5 (1) (a) AN ACTOR WHO IS EIGHTEEN YEARS OF AGE OR OLDER COMMITS
6 THE OFFENSE OF POSTING A PRIVATE IMAGE FOR HARASSMENT IF HE OR SHE
7 POSTS OR DISTRIBUTES THROUGH THE USE OF SOCIAL MEDIA OR ANY WEB
8 SITE ANY PHOTOGRAPH, VIDEO, OR OTHER IMAGE DISPLAYING THE PRIVATE
9 INTIMATE PARTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON EIGHTEEN
10 YEARS OF AGE OR OLDER:

11 (I) WITH THE INTENT TO HARASS THE DEPICTED PERSON AND
12 INFLECT SERIOUS EMOTIONAL DISTRESS UPON THE DEPICTED PERSON;

13 (II) (A) WITHOUT THE DEPICTED PERSON'S CONSENT; OR

14 (B) WHEN THE ACTOR KNEW OR SHOULD HAVE KNOWN THAT THE
15 DEPICTED PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE
16 WOULD REMAIN PRIVATE; AND

17 (III) THE CONDUCT RESULTS IN SERIOUS EMOTIONAL DISTRESS OF
18 THE DEPICTED PERSON.

19 (b) POSTING A PRIVATE IMAGE FOR HARASSMENT IS A CLASS 1
20 MISDEMEANOR.

1 (c) NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-501 (1)
2 (a), IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE, THE
3 COURT SHALL FINE THE DEFENDANT UP TO TEN THOUSAND DOLLARS. THE
4 FINES COLLECTED PURSUANT TO THIS PARAGRAPH (b) SHALL BE CREDITED
5 TO THE CRIME VICTIM COMPENSATION FUND CREATED IN SECTION
6 24-4.1-117, C.R.S. ___

7 (2) IT SHALL NOT BE AN OFFENSE UNDER THIS SECTION IF THE
8 PHOTOGRAPH, VIDEO, OR IMAGE IS RELATED TO A NEWSWORTHY EVENT.

9 (3) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT UNDER
10 ANY SECTION OF LAW PROVIDING FOR GREATER PUNISHMENT.

11 (4) (a) AN INDIVIDUAL WHOSE PRIVATE INTIMATE PARTS HAVE
12 BEEN POSTED IN ACCORDANCE WITH THIS SECTION MAY BRING A CIVIL
13 ACTION AGAINST THE PERSON WHO CAUSED THE POSTING OF THE PRIVATE
14 IMAGES AND IS ENTITLED TO INJUNCTIVE RELIEF, THE GREATER OF TEN
15 THOUSAND DOLLARS OR ACTUAL DAMAGES INCURRED AS A RESULT OF THE
16 POSTING OF THE PRIVATE IMAGES, EXEMPLARY DAMAGES, AND
17 REASONABLE ATTORNEY'S FEES AND COSTS.

18 (b) AN INDIVIDUAL WHOSE PRIVATE INTIMATE PARTS HAVE BEEN
19 POSTED IN ACCORDANCE WITH THIS SECTION SHALL RETAIN A
20 PROTECTABLE RIGHT OF AUTHORSHIP REGARDING THE COMMERCIAL USE
21 OF THE PRIVATE IMAGE.

22 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE
23 LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS
24 DEFINED IN THE 47 U.S.C. 230 (f) (2), AN INFORMATION SERVICE, AS
25 DEFINED IN 47 U.S.C. 153, OR A TELECOMMUNICATIONS SERVICE, AS
26 DEFINED IN 47 U.S.C. 153, FOR CONTENT PROVIDED BY ANOTHER PERSON.

27 (6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT

1 OTHERWISE REQUIRES:

2 (a) "NEWSWORTHY EVENT" MEANS A MATTER OF PUBLIC INTEREST,
3 PUBLIC CONCERN, OR RELATED TO A PUBLIC FIGURE WHO IS INTIMATELY
4 INVOLVED IN THE RESOLUTION OF IMPORTANT PUBLIC QUESTIONS, OR BY
5 REASON OF HIS OR HER FAME SHAPE EVENTS IN AREAS OF CONCERN TO
6 SOCIETY.

7 (b) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR
8 THE PERINEUM OR THE ANUS ___ OR THE PUBES OF ANY PERSON OR THE
9 BREAST OF A FEMALE.

10 (c) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING
11 AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA
12 NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW
13 USER-GENERATED CONTENT, INCLUDING BUT NOT LIMITED TO VIDEOS,
14 STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT
15 MESSAGES, ELECTRONIC MAIL, OR INTERNET WEB SITE PROFILES.

16 **18-7-108. Posting a private image for pecuniary gain -**
17 **definitions. (1) (a) AN ACTOR WHO IS EIGHTEEN YEARS OF AGE OR OLDER**
18 **COMMITS THE OFFENSE OF POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN**
19 **IF HE OR SHE POSTS OR DISTRIBUTES THROUGH SOCIAL MEDIA OR ANY WEB**
20 **SITE ANY PHOTOGRAPH, VIDEO, OR OTHER IMAGE DISPLAYING THE PRIVATE**
21 **INTIMATE PARTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON EIGHTEEN**
22 **YEARS OF AGE OR OLDER:**

23 **(I) WITH THE INTENT TO OBTAIN A PECUNIARY BENEFIT FROM ANY**
24 **PERSON AS A RESULT OF THE POSTING, VIEWING, OR REMOVAL OF THE**
25 **PRIVATE IMAGE; AND**

26 **(II) (A) WHEN THE ACTOR HAS NOT OBTAINED THE DEPICTED**
27 **PERSON'S CONSENT; OR**

1 (B) WHEN THE ACTOR KNEW OR SHOULD HAVE KNOWN THAT THE
2 DEPICTED PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE
3 WOULD REMAIN PRIVATE.

4 (b) POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IS A CLASS 1
5 MISDEMEANOR.

6 (c) NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-501 (1)
7 (a), IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE, THE
8 COURT SHALL FINE THE DEFENDANT UP TO TEN THOUSAND DOLLARS. THE
9 FINES COLLECTED PURSUANT TO THIS PARAGRAPH (b) SHALL BE CREDITED
10 TO THE CRIME VICTIM COMPENSATION FUND CREATED IN SECTION
11 24-4.1-117, C.R.S.

12 (2) IT SHALL NOT BE AN OFFENSE UNDER THIS SECTION IF THE
13 PHOTOGRAPH, VIDEO, OR IMAGE IS RELATED TO A NEWSWORTHY EVENT.

14 (3) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT UNDER
15 ANY SECTION OF LAW PROVIDING FOR GREATER PUNISHMENT.

16 (4) (a) AN INDIVIDUAL WHOSE PRIVATE INTIMATE PARTS HAVE
17 BEEN POSTED IN ACCORDANCE WITH THIS SECTION MAY BRING A CIVIL
18 ACTION AGAINST THE PERSON WHO CAUSED THE POSTING OF THE PRIVATE
19 IMAGES AND IS ENTITLED TO INJUNCTIVE RELIEF, THE GREATER OF TEN
20 THOUSAND DOLLARS OR ACTUAL DAMAGES INCURRED AS A RESULT OF THE
21 POSTING OF THE PRIVATE IMAGES, EXEMPLARY DAMAGES, AND
22 REASONABLE ATTORNEY'S FEES AND COSTS.

23 (b) AN INDIVIDUAL WHOSE PRIVATE INTIMATE PARTS HAVE BEEN
24 POSTED IN ACCORDANCE WITH THIS SECTION SHALL RETAIN A
25 PROTECTABLE RIGHT OF AUTHORSHIP REGARDING THE COMMERCIAL USE
26 OF THE PRIVATE IMAGE.

27 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE

1 LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS
2 DEFINED IN THE 47 U.S.C. 230 (f) (2), AN INFORMATION SERVICE, AS
3 DEFINED IN 47 U.S.C. 153, OR A TELECOMMUNICATIONS SERVICE, AS
4 DEFINED IN 47 U.S.C. 153, FOR CONTENT PROVIDED BY ANOTHER PERSON.

5 (6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
6 OTHERWISE REQUIRES:

7 (a) "NEWSWORTHY EVENT" MEANS A MATTER OF PUBLIC INTEREST,
8 PUBLIC CONCERN, OR RELATED TO PUBLIC FIGURE WHO IS INTIMATELY
9 INVOLVED IN THE RESOLUTION OF IMPORTANT PUBLIC QUESTIONS, OR BY
10 REASON OF HIS OR HER FAME SHAPE EVENTS IN AREAS OF CONCERN TO
11 SOCIETY.

12 (b) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR
13 THE PERINEUM OR THE ANUS OR THE PUBES OF ANY PERSON OR THE
14 BREAST OF A FEMALE.

15 (c) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING
16 AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA
17 NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW
18 USER-GENERATED CONTENT, INCLUDING BUT NOT LIMITED TO VIDEOS,
19 STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT
20 MESSAGES, ELECTRONIC MAIL, OR INTERNET WEB SITE PROFILES.

21 **SECTION 2.** In Colorado Revised Statutes, **add** 24-72-308.4 as
22 follows:

23 **24-72-308.4. Sealing of criminal conviction records**
24 **information for posting an intimate photograph of a person on the**
25 **internet.** (1) (a) IF A PERSON WAS CONVICTED OF POSTING A PRIVATE
26 IMAGE FOR HARASSMENT IN VIOLATION OF SECTION 18-7-107, C.R.S., OR
27 POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IN VIOLATION OF SECTION

1 18-7-108, C.R.S., AND THE PERSON HAS COMPLETED THE SENTENCE,
2 INCLUDING PAYMENT OF THE FINE, AND THE PERSON HAS NOT BEEN
3 CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR AT LEAST FIVE YEARS
4 AFTER THE DATE HE OR SHE COMPLETED HIS OR HER SENTENCE, HE OR SHE
5 MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH THE
6 CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION FOR
7 POSTING INTIMATE PHOTOGRAPHS OF PERSONS IS LOCATED FOR THE
8 SEALING OF THE CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING
9 INFORMATION.

10 (b) (I) UPON THE FILING OF A PETITION, THE COURT SHALL REVIEW
11 THE PETITION AND DETERMINE WHETHER THE PETITION IS SUFFICIENT ON
12 ITS FACE. IF THE COURT DETERMINES THAT THE PETITION ON ITS FACE IS
13 INSUFFICIENT OR IF THE COURT DETERMINES THAT, AFTER TAKING
14 JUDICIAL NOTICE OF MATTERS OUTSIDE THE PETITION, THE PETITIONER IS
15 NOT ENTITLED TO RELIEF UNDER THIS SECTION, THE COURT SHALL ENTER
16 AN ORDER DENYING THE PETITION AND MAIL A COPY OF THE ORDER TO THE
17 PETITIONER OR, AS PERMITTED, SERVE THE ORDER UNDER SUPREME COURT
18 RULES. THE COURT'S ORDER SHALL SPECIFY THE REASONS FOR THE DENIAL
19 OF THE PETITION.

20 (II) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT
21 ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE
22 COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL SET
23 A DATE FOR A HEARING, AND THE PETITIONER SHALL NOTIFY THE
24 PROSECUTING ATTORNEY BY CERTIFIED MAIL AT LEAST TEN DAYS PRIOR TO
25 THE HEARING, THE ARRESTING AGENCY, AND ANY OTHER PERSON OR
26 AGENCY IDENTIFIED BY THE PETITIONER. EXCEPT AS PROVIDED FOR IN
27 SECTION 18-1.3-101 (10) (c), C.R.S., AFTER THE HEARING DESCRIBED IN

1 THIS SUBPARAGRAPH (II) IS CONDUCTED AND IF THE COURT FINDS THAT
2 THE HARM TO THE PRIVACY OF THE PETITIONER OR DANGERS OF
3 UNWARRANTED ADVERSE CONSEQUENCES TO THE PETITIONER OUTWEIGH
4 THE PUBLIC INTEREST IN RETAINING THE RECORDS, THE COURT MAY ORDER
5 SUCH RECORDS, EXCEPT BASIC IDENTIFICATION INFORMATION, TO BE
6 SEALED.

7
8 ==
9 (c) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS
10 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
11 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
12 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.
13 THE DEFENDANT SHALL SUBMIT A VERIFIED COPY OF THE DEFENDANT'S
14 CRIMINAL HISTORY WITH THE PETITION AT THE TIME OF FILING, CURRENT
15 THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE
16 FILING OF THE PETITION, TO THE COURT BUT NO LATER THAN THE TENTH
17 DAY AFTER THE PETITION IS FILED. THE DEFENDANT IS RESPONSIBLE FOR
18 OBTAINING AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL
19 HISTORY. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION
20 RECORDS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE
21 THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE
22 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE
23 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL
24 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.
25 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
26 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
27 WERE SEALED.

(d) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY

1 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW
2 ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING
3 ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A
4 CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING
5 CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION
6 SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE
7 AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING
8 ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION
9 OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY
10 SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY
11 OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF
12 A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN
13 ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL
14 ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY
15 REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS
16 AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE
17 FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

18 (e) A DEFENDANT MAY PETITION THE COURT FOR THE SEALING OF
19 CONVICTION RECORDS PURSUANT TO THIS SECTION ONLY ONCE DURING
20 ANY TWELVE-MONTH PERIOD. THE COURT SHALL DISMISS A SECOND OR
21 SUBSEQUENT PETITION FILED WITHIN ANY TWELVE-MONTH PERIOD.

22 (f) A PETITION TO SEAL CONVICTION RECORDS PURSUANT TO THIS
23 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
24 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
25 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.

26 (g) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
27 SUBSECTION (1), UPON THE ENTRY OF AN ORDER TO SEAL THE CONVICTION

1 RECORDS, THE DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY
2 PROPERLY REPLY, UPON AN INQUIRY IN THE MATTER, THAT PUBLIC
3 CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

4 (h) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
5 SUBSECTION (1), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER
6 SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE
7 COURT ONLY UPON PETITION BY THE DEFENDANT.

8 (i) (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
9 SUBSECTION (1), EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES,
10 OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION
11 OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO
12 DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION
13 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION
14 CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE
15 A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION
16 RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN
17 CRIMINALLY CONVICTED.

18 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (i)
19 DO NOT PRECLUDE THE BAR COMMITTEE OF THE COLORADO STATE BOARD
20 OF LAW EXAMINERS FROM MAKING FURTHER INQUIRIES INTO THE FACT OF
21 A CONVICTION THAT COMES TO THE ATTENTION OF THE BAR COMMITTEE
22 THROUGH OTHER MEANS. THE BAR COMMITTEE OF THE COLORADO STATE
23 BOARD OF LAW EXAMINERS HAS A RIGHT TO INQUIRE INTO THE MORAL AND
24 ETHICAL QUALIFICATIONS OF AN APPLICANT, AND THE APPLICANT DOES
25 NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER
26 REFUSAL TO ANSWER A QUESTION CONCERNING SEALED CONVICTION
27 RECORDS THAT HAVE COME TO THE ATTENTION OF THE BAR COMMITTEE

1 THROUGH OTHER MEANS.

2 (III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I)
3 OF THIS PARAGRAPH (i), THE DEPARTMENT OF EDUCATION MAY REQUIRE
4 A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE
5 WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE
6 DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE
7 DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE
8 CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE
9 EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT
10 JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING
11 THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE
12 PENDING PETITION TO SEAL.

13 (IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO
14 UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING
15 THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL
16 SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW
17 OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

18 (j) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST
19 ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS
20 THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT
21 GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY
22 DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS
23 FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS
24 AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE
25 WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

26 (k) NOTHING IN THIS SECTION AUTHORIZES THE PHYSICAL
27 DESTRUCTION OF ANY CONVICTION RECORDS.

1 (1) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE
2 CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING
3 FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE
4 THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED
5 PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF
6 EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY
7 BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

8 (2) **Rules of discovery - rules of evidence - witness testimony.**
9 COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO
10 THIS SECTION DO NOT LIMIT THE OPERATIONS OF:

11 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO
12 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY
13 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL
14 COURT; OR

15 (b) THE PROVISIONS OF SECTION 13-90-101, C.R.S., CONCERNING
16 WITNESS TESTIMONY.

17 **SECTION 3.** In Colorado Revised Statutes, **add 24-72-609** as
18 follows:

19 **24-72-609. Sealing of criminal conviction records information**
20 **for posting an intimate photograph of a person on the internet.**

21 (1) (a) IF A PERSON WHO WAS CONVICTED OF POSTING A PRIVATE IMAGE
22 FOR HARASSMENT IN VIOLATION OF SECTION 18-7-107, C.R.S., OR POSTING
23 A PRIVATE IMAGE FOR PECUNIARY GAIN IN VIOLATION OF SECTION
24 18-7-108, C.R.S., HAS COMPLETED THE SENTENCE, INCLUDING PAYMENT
25 OF THE FINE, AND HAS NOT BEEN CONVICTED OF ANOTHER CRIMINAL
26 OFFENSE FOR AT LEAST FIVE YEARS AFTER THE DATE HE OR SHE
27 COMPLETED HIS OR HER SENTENCE, HE OR SHE MAY PETITION THE DISTRICT

1 COURT OF THE DISTRICT IN WHICH THE CONVICTION RECORD PERTAINING
2 TO THE DEFENDANT'S CONVICTION FOR POSTING AN INTIMATE
3 PHOTOGRAPH OF A PERSON IS LOCATED FOR THE SEALING OF THE
4 CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING INFORMATION.

5 (b) UPON THE FILING OF A PETITION, THE COURT SHALL REVIEW
6 THE PETITION AND DETERMINE WHETHER THE PETITION IS SUFFICIENT ON
7 ITS FACE. IF THE COURT DETERMINES THAT THE PETITION ON ITS FACE IS
8 INSUFFICIENT OR IF THE COURT DETERMINES THAT, AFTER TAKING
9 JUDICIAL NOTICE OF MATTERS OUTSIDE THE PETITION, THE PETITIONER IS
10 NOT ENTITLED TO RELIEF UNDER THIS SECTION, THE COURT SHALL ENTER
11 AN ORDER DENYING THE PETITION AND MAIL A COPY OF THE ORDER TO THE
12 PETITIONER OR, AS PERMITTED, SERVE THE ORDER UNDER SUPREME COURT
13 RULES. THE COURT'S ORDER SHALL SPECIFY THE REASONS FOR THE DENIAL
14 OF THE PETITION.

15 (c) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT
16 ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE
17 COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL SET
18 A DATE FOR A HEARING, AND THE PETITIONER SHALL NOTIFY THE
19 PROSECUTING ATTORNEY BY CERTIFIED MAIL AT LEAST TEN DAYS PRIOR TO
20 THE HEARING, THE ARRESTING AGENCY, AND ANY OTHER PERSON OR
21 AGENCY IDENTIFIED BY THE PETITIONER. EXCEPT AS PROVIDED FOR IN
22 SECTION 18-1.3-101 (10) (c), C.R.S., AFTER THE HEARING DESCRIBED IN
23 THIS PARAGRAPH (c) IS CONDUCTED AND IF THE COURT FINDS THAT THE
24 HARM TO THE PRIVACY OF THE PETITIONER OR DANGERS OF
25 UNWARRANTED ADVERSE CONSEQUENCES TO THE PETITIONER OUTWEIGH
26 THE PUBLIC INTEREST IN RETAINING THE CONVICTION RECORDS, THE
27 COURT MAY ORDER SUCH RECORDS, EXCEPT BASIC IDENTIFICATION

1 INFORMATION, TO BE SEALED. IN MAKING THIS DETERMINATION, THE
2 COURT SHALL, AT A MINIMUM, CONSIDER THE FACTORS IN SECTION
3 24-72-604(1) (c). ==

4 **SECTION 4. Effective date - applicability.** This act takes effect
5 July 1, 2014; except that section 2 takes effect only if Senate Bill 14-206
6 does not become law, and section 3 of this act takes effect only if Senate
7 Bill 14-206 becomes law and applies to offenses committed on or after
8 said date.

9 **SECTION 5. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.