

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0998.01 Michael Dohr x4347

HOUSE BILL 14-1378

---

HOUSE SPONSORSHIP

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

SENATE SPONSORSHIP

(None),

---

**House Committees**  
Judiciary

**Senate Committees**

---

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.**

---

**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 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

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 as  
3 follows:  
4           **18-7-107. Posting a private image - definitions.** (1) (a) A  
5 PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER COMMITS THE OFFENSE  
6 OF POSTING A PRIVATE IMAGE IF HE OR SHE, WITH THE INTENT TO CAUSE  
7 SERIOUS EMOTIONAL DISTRESS, POSTS, ADDS TO A POST, OR OTHERWISE  
8 DISTRIBUTES THROUGH THE USE OF SOCIAL MEDIA ANY PHOTOGRAPH,  
9 VIDEO, OR OTHER IMAGE CONTAINING THE INTIMATE PARTS, AS DEFINED  
10 IN SECTION 18-3-401 (2), OF AN IDENTIFIED OR IDENTIFIABLE PERSON  
11 EIGHTEEN YEARS OF AGE OR OLDER, WITHOUT THE DEPICTED PERSON'S  
12 CONSENT, AFTER THE DEPICTED PERSON COMMUNICATED TO THE ACTOR  
13 AN EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE AND SUCH  
14 CONDUCT RESULTS IN SERIOUS EMOTIONAL DISTRESS.  
15           (b) POSTING A PRIVATE IMAGE IS A CLASS 1 MISDEMEANOR.  
16 NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-501 (1) (a), IN  
17 ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE, THE COURT  
18 SHALL FINE THE DEFENDANT TEN THOUSAND DOLLARS AND SHALL ORDER  
19 THE PERSON OR THE ENTITY WHERE THE PHOTOS ARE POSTED OR  
20 PUBLISHED TO REMOVE ALL PHOTOGRAPHS OF THE VICTIM THAT SHOW THE

1 VICTIM'S INTIMATE PARTS.

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

4 (3) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING  
5 AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA  
6 NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW  
7 USER-GENERATED CONTENT, INCLUDING BUT NOT LIMITED TO VIDEOS,  
8 STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT  
9 MESSAGES, ELECTRONIC MAIL, OR INTERNET WEB SITE PROFILES.

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

12 **24-72-308.4. Sealing of criminal conviction records**  
13 **information for posting an intimate photograph of a person on the**  
14 **internet.** (1) (a) IF A PERSON WAS CONVICTED OF POSTING A PRIVATE  
15 IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S., AND THE PERSON HAS  
16 COMPLETED THE SENTENCE, INCLUDING PAYMENT OF THE FINE, AND THE  
17 PERSON HAS NOT BEEN CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR  
18 AT LEAST FIVE YEARS AFTER THE DATE HE OR SHE COMPLETED HIS OR HER  
19 SENTENCE, HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT  
20 IN WHICH THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S  
21 CONVICTION FOR POSTING INTIMATE PHOTOGRAPHS OF PERSONS IS  
22 LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR  
23 BASIC IDENTIFYING INFORMATION.

24 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS  
25 SUBSECTION (1) FOR THE SEALING OF A RECORD OF CONVICTION FOR  
26 POSTING A PRIVATE IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S.,  
27 THE COURT SHALL ORDER THE RECORD SEALED AFTER:

1 (I) THE PETITION IS FILED; AND

2 (II) THE FILING FEE IS PAID.

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

22 (d) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY  
23 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW  
24 ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING  
25 ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A  
26 CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING  
27 CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION

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

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

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

21 (g) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS  
22 SUBSECTION (1), UPON THE ENTRY OF AN ORDER TO SEAL THE CONVICTION  
23 RECORDS, THE DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY  
24 PROPERLY REPLY, UPON AN INQUIRY IN THE MATTER, THAT PUBLIC  
25 CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

26 (h) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS  
27 SUBSECTION (1), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER

1 SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE  
2 COURT ONLY UPON PETITION BY THE DEFENDANT.

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

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

24 (III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I)  
25 OF THIS PARAGRAPH (i), THE DEPARTMENT OF EDUCATION MAY REQUIRE  
26 A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE  
27 WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE

1 DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE  
2 DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE  
3 CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE  
4 EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT  
5 JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING  
6 THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE  
7 PENDING PETITION TO SEAL.

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

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

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

23 (l) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE  
24 CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING  
25 FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE  
26 THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED  
27 PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF

1 EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY  
2 BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

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

6 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO  
7 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY  
8 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL  
9 COURT; OR

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

12 **SECTION 3. Effective date - applicability.** This act takes effect  
13 July 1, 2014, and applies to offenses committed on or after said date.

14 **SECTION 4. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety.