

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0021.02 Michael Dohr x4347

HOUSE BILL 19-1250

HOUSE SPONSORSHIP

Herod,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING SEX OFFENSES COMMITTED BY A PEACE OFFICER, AND, IN**
102 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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://leg.colorado.gov>.)

Under current law, sexual assault is a class 4 felony and unlawful sexual contact is a class 1 misdemeanor subject to a modified sentencing range as an extraordinary risk crime. When the offense is committed by a peace officer, the bill classifies sexual assault as a class 3 felony and unlawful sexual contact as a class 4 felony.

The bill creates the offense of unlawful sexual conduct by a peace

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

HOUSE
Amended 2nd Reading
April 12, 2019

officer. A peace officer commits the offense when he or she knowingly engages in sexual contact, sexual intrusion, or sexual penetration:

- ! When the peace officer encounters the victim for the purpose of law enforcement or in the performance of the officer's duties;
- ! When the peace officer knows at the time of the unlawful sexual conduct that the victim is the subject of an active investigation; or
- ! When the peace officer makes any show of authority in connection with the unlawful sexual conduct.

Unlawful sexual conduct by a peace officer is a class 4 felony when the offense is committed by sexual contact and is a class 3 felony when the offense is committed by sexual intrusion or sexual penetration. An offender convicted of unlawful sexual conduct by a peace officer is required to register as a sex offender. An offender convicted of class 3 felony unlawful sexual conduct by a peace officer is subject to lifetime supervision.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-3-402, **amend**
3 (4)(c) and (4)(d); and **add** (4)(f) as follows:

4 **18-3-402. Sexual assault.** (4) Sexual assault is a class 3 felony
5 if it is attended by any one or more of the following circumstances:

6 (c) The actor causes submission of the victim by threatening to
7 retaliate in the future against the victim, or any other person, and the
8 victim reasonably believes that the actor will execute this threat. As used
9 in this paragraph (c) SUBSECTION (4)(c), "to retaliate" includes threats of
10 kidnapping, death, serious bodily injury, or extreme pain; ~~or~~

11 (d) The actor has substantially impaired the victim's power to
12 appraise or control the victim's conduct by employing, without the
13 victim's consent, any drug, intoxicant, or other means for the purpose of
14 causing ~~submission~~. SUBMISSION; OR

15 (f) THE ACTOR IS A PEACE OFFICER, AS DESCRIBED IN ARTICLE 2.5
16 OF TITLE 16.

1 **SECTION 2.** In Colorado Revised Statutes, 18-3-404, **amend**
2 (2)(b) as follows:

3 **18-3-404. Unlawful sexual contact.** (2) (b) Notwithstanding the
4 provisions of ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF
5 THIS SECTION, unlawful sexual contact is a class 4 felony if the actor
6 compels the victim to submit by use of such force, intimidation, or threat
7 as specified in section 18-3-402 (4)(a), (4)(b), or (4)(c); ~~or~~ if the actor
8 engages in the conduct described in ~~paragraph (g) of subsection (1)~~
9 SUBSECTION (1)(g) of this section or subsection (1.5) of this section; OR
10 IF THE ACTOR IS A PEACE OFFICER, AS DESCRIBED IN ARTICLE 2.5 OF TITLE
11 16.

12 **SECTION 3.** In Colorado Revised Statutes, **add** 18-3-405.7 as
13 follows:

14 **18-3-405.7. Unlawful sexual conduct by a peace officer -**
15 **definition.** (1) A PEACE OFFICER COMMITS UNLAWFUL SEXUAL CONDUCT
16 BY A PEACE OFFICER BY KNOWINGLY ENGAGING IN SEXUAL CONTACT,
17 SEXUAL INTRUSION, OR SEXUAL PENETRATION, UNDER ANY OF THE
18 FOLLOWING CIRCUMSTANCES:

19 (a) IN THE SAME ENCOUNTER, THE PEACE OFFICER CONTACTS THE
20 VICTIM FOR THE PURPOSE OF LAW ENFORCEMENT OR ~~CONTACTS THE~~
21 ~~VICTIM IN THE EXERCISE OF THE~~ OFFICER'S EMPLOYMENT ACTIVITIES OR
22 DUTIES;

23 (b) AT THE TIME OF THE SEXUAL CONTACT, INTRUSION, OR
24 PENETRATION, THE PEACE OFFICER KNOWS THAT THE VICTIM IS THE
25 SUBJECT OF AN ACTIVE INVESTIGATION; OR

26 (c) ~~IN FURTHERANCE OF SEXUAL CONTACT, INTRUSION, OR~~
27 ~~PENETRATION, THE PEACE OFFICER MAKES ANY SHOW OF REAL OR~~

1 **APPARENT AUTHORITY.**

2 (2) (a) UNLAWFUL SEXUAL CONDUCT BY A PEACE OFFICER UNDER
3 CIRCUMSTANCES WHEN THE VICTIM IS SUBJECT TO SEXUAL CONTACT IS A
4 CLASS 4 FELONY.

5 (b) UNLAWFUL SEXUAL CONDUCT BY A PEACE OFFICER UNDER
6 CIRCUMSTANCES IN WHICH SEXUAL INTRUSION OR PENETRATION IS
7 INFLECTED ON THE VICTIM IS A CLASS 3 FELONY.

8 (3) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
9 OTHERWISE REQUIRES, "PEACE OFFICER" MEANS ANY PERSON DESCRIBED
10 IN ARTICLE 2.5 OF TITLE 16.

11 (4) IT IS NOT A DEFENSE TO THIS SECTION THAT THE VICTIM
12 CONSENTED TO THE SEXUAL CONTACT, INTRUSION, OR PENETRATION.

13 (5) THIS SECTION DOES NOT APPLY TO SEXUAL CONTACT OR
14 INTRUSION THAT OCCURS INCIDENT TO A LAWFUL SEARCH.

15 **SECTION 4.** In Colorado Revised Statutes, 16-11.7-102, **amend**
16 the introductory portion, (3)(x), and (3)(y); and **add** (3)(z) as follows:

17 **16-11.7-102. Definitions.** As used in this ~~article~~ ARTICLE 11.7,
18 unless the context otherwise requires:

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

21 (x) Public indecency, committed in violation of section 18-7-301
22 (2)(b), ~~C.R.S.~~, if a second offense is committed within five years of the
23 previous offense or a third or subsequent offense is committed; ~~or~~

24 (y) Invasion of privacy for sexual gratification, as described in
25 section 18-3-405.6; ~~C.R.S.~~ OR

26 (z) UNLAWFUL SEXUAL CONDUCT BY A PEACE OFFICER, IN
27 VIOLATION OF SECTION 18-3-405.7.

1 **SECTION 5.** In Colorado Revised Statutes, 16-22-102, **amend**
2 (9)(aa) and (9)(bb); and **add** (9)(cc) as follows:

3 **16-22-102. Definitions.** As used in this article 22, unless the
4 context otherwise requires:

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

8 (aa) Invasion of privacy for sexual gratification, in violation of
9 section 18-3-405.6; ~~C.R.S.~~ or

10 (bb) Second degree kidnapping, if committed in violation of
11 section 18-3-302 (3)(a); ~~C.R.S.~~ OR

12 (cc) UNLAWFUL SEXUAL CONDUCT BY A PEACE OFFICER, IN
13 VIOLATION OF SECTION 18-3-405.7.

14 **SECTION 6.** In Colorado Revised Statutes, 18-1.3-1003, **amend**
15 (5)(a)(XI) and (5)(a)(XII); and **add** (5)(a)(XIII) as follows:

16 **18-1.3-1003. Definitions.** As used in this part 10, unless the
17 context otherwise requires:

18 (5) (a) "Sex offense" means any of the following offenses:

19 (XI) Class 4 felony internet luring of a child, in violation of
20 section 18-3-306 (3); or

21 (XII) Internet sexual exploitation of a child, in violation of ~~section~~
22 ~~18-3-405.4.~~ SECTION 18-3-405.4; OR

23 (XIII) CLASS 3 FELONY UNLAWFUL SEXUAL CONDUCT BY A PEACE
24 OFFICER, IN VIOLATION OF SECTION 18-3-405.7.

25 **SECTION 7.** In Colorado Revised Statutes, 18-1.3-1007, **amend**
26 (1)(a)(III) as follows:

27 **18-1.3-1007. Probation - intensive supervision program.**

1 (1) (a) The judicial department shall establish an intensive supervision
2 probation program for sex offenders sentenced to probation pursuant to
3 this part 10. In addition, the court shall require a person, as a condition of
4 probation, to participate in the intensive supervision probation program
5 established pursuant to this section if the person is convicted of one of the
6 following offenses and sentenced to probation:

7 (III) Any of the offenses specified in section 16-22-102 (9)(j),
8 (9)(k), (9)(l), (9)(n), (9)(o), (9)(p), (9)(q), (9)(r), ~~or~~ (9)(s), ~~C.R.S.~~ OR
9 (9)(cc);

10 **SECTION 8.** In Colorado Revised Statutes, **add** 17-18-127 as
11 follows:

12 **17-18-127. Appropriation to comply with section 2-2-703 -**
13 **H.B. 19-1250 - repeal.** (1) PURSUANT TO SECTION 2-2-703, THE
14 FOLLOWING STATUTORY APPROPRIATIONS ARE MADE IN ORDER TO
15 IMPLEMENT HOUSE BILL 19-1250, ENACTED IN 2019:

16 (a) FOR THE 2019-20 STATE FISCAL YEAR, ONE HUNDRED
17 SEVENTY-EIGHT THOUSAND FOUR HUNDRED SEVENTY-ONE DOLLARS IS
18 APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN
19 SECTION 24-75-302, TO THE CORRECTIONS EXPANSION RESERVE FUND
20 CREATED IN SECTION 17-1-116.

21 (b) FOR THE 2020-21 STATE FISCAL YEAR, THIRTY-NINE THOUSAND
22 SEVEN HUNDRED ONE DOLLARS IS APPROPRIATED TO THE DEPARTMENT
23 FROM THE GENERAL FUND.

24 (c) FOR THE 2021-22 STATE FISCAL YEAR, FORTY-THREE THOUSAND
25 NINE HUNDRED SIXTEEN DOLLARS IS APPROPRIATED TO THE DEPARTMENT
26 FROM THE GENERAL FUND.

27 (d) FOR THE 2022-23 STATE FISCAL YEAR, FORTY-THREE THOUSAND

1 THREE HUNDRED ELEVEN DOLLARS IS APPROPRIATED TO THE DEPARTMENT
2 FROM THE GENERAL FUND.

3 (e) FOR THE 2023-24 STATE FISCAL YEAR, FORTY-ONE THOUSAND
4 FOUR HUNDRED NINETY-ONE DOLLARS IS APPROPRIATED TO THE
5 DEPARTMENT FROM THE GENERAL FUND.

6 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2024.

7 SECTION 9. In Colorado Revised Statutes, 24-75-302, add
8 (2)(gg) as follows:

9 24-75-302. Capital construction fund - capital assessment fees
10 - calculation - information technology capital account - repeal.

11 (2) The controller shall transfer a sum as specified in this subsection (2)
12 from the general fund to the capital construction fund as moneys become
13 available in the general fund during the fiscal year beginning on July 1 of
14 the fiscal year in which the transfer is made. Transfers between funds
15 pursuant to this subsection (2) are not appropriations subject to the
16 limitations of section 24-75-201.1. The amounts transferred pursuant to
17 this subsection (2) are as follows:

18 (gg) FOR THE 2019-20 FISCAL YEAR, ONE HUNDRED
19 SEVENTY-EIGHT THOUSAND FOUR HUNDRED SEVENTY-ONE DOLLARS
20 PURSUANT TO H.B. 19-1250, ENACTED IN 2019.

21 SECTION 10. Effective date - applicability. This act takes
22 effect July 1, 2019, and applies to offenses committed on or after said
23 date.

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