

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0945.01 Debbie Haskins x2045

HOUSE BILL 16-1389

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HOUSE SPONSORSHIP

Joshi,

SENATE SPONSORSHIP

(None),

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House Committees

State, Veterans, & Military Affairs

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING SAFETY PROCEDURES FOR CHILDREN DURING THE  
102 COLLECTION OF PHOTOGRAPHIC EVIDENCE OF CHILD ABUSE OR  
103 NEGLECT.

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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/bills summaries>.)*

Current law in the "Colorado Children's Code" allows certain specified medical professionals and law enforcement officials who reasonably believe a child has been abused or neglected to take or cause to be taken color photographs of the areas of trauma visible on the child so that those photographs may be used as evidence of the child abuse 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.*

neglect.

The bill amends the law to more clearly distinguish what parts of the child's body, including private areas, may be photographed and by whom. The bill also creates different standards of conduct for government employees and nongovernmental employees.

Under the bill, a government employee who reasonably believes a child has been abused or neglected may take or cause to be taken color photographs of the areas of trauma or abuse visible in plain sight on the child. "Visible in plain sight on the child" is defined as an area of the child's body that is normally viewable by the public and that could be observed visually without removal or rearrangement of the child's clothing. "Visible in plain sight on the child" does not include a private area of the child. The bill also defines "private area of the child". "Government employee" is defined as a person employed by the government or acting under the color of state law. "Government" is defined as the state, any county, city and county, municipality, law enforcement agency, and any school district.

If a government employee reasonably believes that a private area of a child suspected of being abused or neglected needs to be examined or photographed as evidence of trauma or abuse or as evidence of the absence of trauma or abuse, the government employee shall not examine, unclothe, or rearrange clothing covering private areas, or ask the child to remove or rearrange his or her clothing covering private areas, and shall not take color photographs of the child unless the government employee has:

- ! Obtained the consent of a parent, guardian, or legal custodian of the child or obtained consent from a child who is 15 years of age or older and less than 18 years of age; or
- ! Obtained a court order, if the parent, guardian, or legal custodian, or the child, if between the ages of 15 and 18, refuses to give consent, ordering that the child be presented to and examined and evaluated by an independent medical provider, a sexual assault nurse examiner (SANE), or the child's own physician; or
- ! A reasonable belief that exigent circumstances exist that constitute a medical emergency, in conjunction with a call to 911, or a reasonable suspicion that the child is in immediate threat of serious bodily injury and that the examination and photographing of the private areas of the child is reasonably necessary to treat or prevent serious bodily injury to the child.

Under the bill, certain medical professionals who are not government employees and who reasonably believe a child has been abused or neglected may take or cause to be taken color photographs of the areas of trauma or abuse visible in plain sight on the child, and may

take or cause to be taken color photographs of the private areas of the child if such actions:

- ! Are performed for bona fide medical purposes and in a manner that is consistent with reasonable medical practices; or
- ! Are performed with the consent of a parent, guardian, or legal custodian of the child, or with the consent of a child who is 15 years of age or older and less than 18 years of age; or
- ! Are performed pursuant to a court order, if the parent, guardian, or legal custodian, or the child, if between the ages of 15 and 18, refuses to give consent, ordering that the child be presented to and examined and evaluated by an independent medical provider, a sexual assault nurse examiner, or the child's own physician.

The bill does not prevent a coroner or a medical examiner from taking color photographs of a deceased child in connection with an investigation.

The state board of human services is required to adopt rules that create child safety policies and safeguards applicable to county employees and others who are taking photographs pursuant to the bill relating to the taking of photographs of the private areas of children by county employees, the security and storage of any photographs or digital images of the children, and training regarding how to conduct legal searches and the appropriateness of searches of children.

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

2           **SECTION 1.** In Colorado Revised Statutes, **amend** 19-3-306 as  
3 follows:

4           **19-3-306. Child safety policy regarding the collection of**  
5 **evidence of abuse - rules - color photographs and X rays - definitions.**

6 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
7 REQUIRES:

8           (a) "GOVERNMENT" MEANS THE STATE; ANY COUNTY, CITY AND  
9 COUNTY, MUNICIPALITY, OR LAW ENFORCEMENT AGENCY; AND ANY  
10 SCHOOL DISTRICT.

11           (b) "GOVERNMENT EMPLOYEE" MEANS A PERSON EMPLOYED BY

1 THE GOVERNMENT OR ACTING UNDER THE COLOR OF STATE LAW.

2 (c) "PRIVATE AREA OF THE CHILD" MEANS THE CHILD'S GENITALS,  
3 PUBIC AREA, BUTTOCKS, BREASTS, OR DEVELOPING OR UNDEVELOPED  
4 BREAST AREA.

5 (d) "SEXUAL ASSAULT NURSE EXAMINER" OR "SANE" HAS THE  
6 SAME MEANING AS SET FORTH IN SECTION 23-5-143 (2) (d), C.R.S.

7 (e) "VISIBLE IN PLAIN SIGHT ON THE CHILD" MEANS AN AREA OF  
8 THE CHILD'S BODY THAT IS NORMALLY VIEWABLE BY THE PUBLIC AND  
9 THAT COULD BE OBSERVED VISUALLY WITHOUT REMOVAL OR  
10 REARRANGEMENT OF THE CHILD'S CLOTHING. "VISIBLE IN PLAIN SIGHT ON  
11 THE CHILD" DOES NOT INCLUDE A PRIVATE AREA OF THE CHILD.

12 (2) A GOVERNMENT EMPLOYEE WHO REASONABLY BELIEVES A  
13 CHILD HAS BEEN ABUSED OR NEGLECTED MAY TAKE OR CAUSE TO BE  
14 TAKEN COLOR PHOTOGRAPHS OF THE AREAS OF TRAUMA OR ABUSE VISIBLE  
15 IN PLAIN SIGHT ON THE CHILD. IF A GOVERNMENT EMPLOYEE REASONABLY  
16 BELIEVES THAT A PRIVATE AREA OF THE CHILD NEEDS TO BE EXAMINED OR  
17 PHOTOGRAPHED AS EVIDENCE OF TRAUMA OR ABUSE OR AS EVIDENCE OF  
18 THE ABSENCE OF TRAUMA OR ABUSE, THE GOVERNMENT EMPLOYEE SHALL  
19 NOT EXAMINE, UNCLOTHE, OR REARRANGE CLOTHING COVERING PRIVATE  
20 AREAS OF THE CHILD, OR ASK THE CHILD TO REMOVE OR REARRANGE  
21 CLOTHING COVERING PRIVATE AREAS OF THE CHILD, AND SHALL NOT TAKE  
22 COLOR PHOTOGRAPHS OF THE CHILD UNLESS THE GOVERNMENT EMPLOYEE  
23 HAS:

24 (a) OBTAINED THE CONSENT OF A PARENT, GUARDIAN, OR LEGAL  
25 CUSTODIAN OF THE CHILD, OR OBTAINED CONSENT FROM A CHILD WHO IS  
26 FIFTEEN YEARS OF AGE OR OLDER AND LESS THAN EIGHTEEN YEARS OF  
27 AGE; OR

1 (b) OBTAINED A COURT ORDER, IF THE PARENT, GUARDIAN, OR  
2 LEGAL CUSTODIAN, OR THE CHILD, IF OF THE AGE SPECIFIED IN PARAGRAPH  
3 (a) OF THIS SUBSECTION (2), REFUSES TO GIVE CONSENT, ORDERING THAT  
4 THE CHILD BE PRESENTED TO AND EXAMINED AND EVALUATED BY AN  
5 INDEPENDENT MEDICAL PROVIDER, A SEXUAL ASSAULT NURSE EXAMINER,  
6 OR THE CHILD'S OWN PHYSICIAN; OR

7 (c) A REASONABLE BELIEF THAT EXIGENT CIRCUMSTANCES EXIST  
8 THAT CONSTITUTE A MEDICAL EMERGENCY, IN CONJUNCTION WITH A CALL  
9 TO 911, OR A REASONABLE SUSPICION THAT THE CHILD IS IN IMMEDIATE  
10 THREAT OF SERIOUS BODILY INJURY AND THAT THE EXAMINATION AND  
11 PHOTOGRAPHING OF THE PRIVATE AREAS OF THE CHILD IS REASONABLY  
12 NECESSARY TO TREAT OR PREVENT SERIOUS BODILY INJURY TO THE CHILD.

13 ~~(†)~~ (3) Any PERSON WHO IS NOT A GOVERNMENT EMPLOYEE  
14 SUBJECT TO SUBSECTION (2) OF THIS SECTION AND WHO IS A child health  
15 associate, person licensed to practice medicine in this state, registered  
16 nurse or licensed practical nurse, hospital personnel engaged in the  
17 admission, examination, care, or treatment of patients, ~~medical examiner,~~  
18 ~~coroner,~~ social worker, OR psychologist ~~or local law enforcement officer~~  
19 AND who has before him OR HER a child he OR SHE reasonably believes  
20 has been abused or neglected may take or cause to be taken color  
21 photographs of the areas of trauma OR ABUSE visible IN PLAIN SIGHT on  
22 the child, ~~If medically indicated, such person may take or cause to be~~  
23 ~~taken X rays of the child.~~ AND MAY TAKE OR CAUSE TO BE TAKEN COLOR  
24 PHOTOGRAPHS OF THE PRIVATE AREAS OF THE CHILD, IF SUCH ACTIONS:

25 (a) ARE PERFORMED FOR BONA FIDE MEDICAL PURPOSES AND  
26 PERFORMED IN A MANNER THAT IS CONSISTENT WITH REASONABLE  
27 MEDICAL PRACTICES; OR

1 (b) ARE PERFORMED WITH THE CONSENT OF A PARENT, GUARDIAN,  
2 OR LEGAL CUSTODIAN OF THE CHILD OR WITH THE CONSENT OF A CHILD  
3 WHO IS FIFTEEN YEARS OF AGE OR OLDER AND LESS THAN EIGHTEEN YEARS  
4 OF AGE; OR

5 (c) ARE PERFORMED PURSUANT TO A COURT ORDER, IF THE  
6 PARENT, GUARDIAN, OR LEGAL CUSTODIAN, OR THE CHILD, IF OF THE AGE  
7 SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, REFUSES  
8 TO GIVE CONSENT, ORDERING THAT THE CHILD BE PRESENTED TO AND  
9 EXAMINED AND EVALUATED BY AN INDEPENDENT MEDICAL PROVIDER, A  
10 SEXUAL ASSAULT NURSE EXAMINER, OR THE CHILD'S OWN PHYSICIAN.

11 (4) IF MEDICALLY INDICATED, THE MEDICAL PROFESSIONALS  
12 DESCRIBED IN SUBSECTION (3) OF THIS SECTION MAY TAKE OR CAUSE TO  
13 BE TAKEN X RAYS OF THE CHILD.

14 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT  
15 A CORONER OR A MEDICAL EXAMINER FROM TAKING COLOR PHOTOGRAPHS  
16 OF A DECEASED CHILD IN CONNECTION WITH AN INVESTIGATION.

17 ~~(2)~~ (6) Copies or duplicate originals of any color photographs  
18 which show evidence of child abuse ~~shall~~ MUST be immediately  
19 forwarded to the county department or to the local law enforcement  
20 agency. Original photographs ~~shall~~ MUST be made available upon the  
21 request of such department or agency. X rays which show evidence of  
22 child abuse or copies of the X-ray report, or both, ~~shall~~ MUST be made  
23 available upon request to the county department or the local law  
24 enforcement agency. Any person who forwards original photographs or  
25 X rays pursuant to this section shall maintain copies or duplicate originals  
26 ~~thereof~~ OF THE PHOTOGRAPHS OR X RAYS.

27 (7) THE STATE BOARD SHALL ADOPT RULES THAT CREATE CHILD

1 SAFETY POLICIES AND SAFEGUARDS APPLICABLE TO EMPLOYEES OF  
2 COUNTY DEPARTMENTS AND TO OTHER PERSONS AS DESCRIBED IN  
3 SUBSECTIONS (2) AND (3) OF THIS SECTION RELATING TO THE TAKING OF  
4 PHOTOGRAPHS OF THE PRIVATE AREAS OF CHILDREN AND THE SECURITY  
5 AND STORAGE OF ANY PHOTOGRAPHS OR DIGITAL IMAGES OF THE  
6 CHILDREN. IN ADOPTING SUCH RULES, THE STATE BOARD SHALL ADOPT  
7 RULES THAT:

8 (a) ESTABLISH SAFEGUARDS FOR THE PHOTOGRAPHING OF A CHILD,  
9 INCLUDING HOW AND WHERE THE PHOTOGRAPHS CAN BE TAKEN IN THE  
10 LEAST INTRUSIVE WAY AND WITHOUT TRAUMATIZING THE CHILD;

11 (b) SET FORTH THE REQUIREMENTS FOR NOTIFYING A PARENT,  
12 GUARDIAN, OR LEGAL CUSTODIAN OF A CHILD ABOUT THE NEED TO DO AN  
13 ASSESSMENT THAT INVOLVES A VISUAL EXAMINATION OF THE CHILD'S  
14 PRIVATE AREAS, INCLUDING WHETHER THE CHILD'S PRIVATE AREAS NEED  
15 TO BE EXAMINED, AND OBTAINING THE CONSENT OF THE PARENT,  
16 GUARDIAN, OR LEGAL CUSTODIAN OR APPROPRIATELY NOTIFYING PARENTS  
17 OF A COURT ORDER;

18 (c) ESTABLISH REQUIREMENTS AND SAFEGUARDS FOR TAKING,  
19 STORING, AND SECURING PHOTOGRAPHS OR DIGITAL IMAGES OF CHILDREN,  
20 INCLUDING WHETHER PHOTOGRAPHS OR DIGITAL IMAGES MAY BE TAKEN  
21 ON EMPLOYEES' CELL PHONES; WHAT PROCEDURES ARE REQUIRED TO BE  
22 FOLLOWED FOR THE STORAGE OF PHOTOGRAPHS OR DIGITAL IMAGES  
23 TAKEN ON CELL PHONES; HOW THAT DATA IS MANAGED, STORED, AND  
24 DELETED; SAFEGUARDS FOR LIMITING ACCESS TO STORED OR PRINTED  
25 PHOTOGRAPHS OR DIGITAL IMAGES ONLY TO THE EMPLOYEES THAT ARE  
26 WORKING ON THE CHILD'S PARTICULAR CASE; THE USE OF PASSWORD  
27 PROTECTIONS; AND SAFEGUARDS TO PREVENT THE PHOTOGRAPHS OR

1 DIGITAL IMAGES FROM BEING ACCESSED AND USED AS CHILD  
2 PORNOGRAPHY; AND

3 (d) REQUIRE TRAINING ON CONDUCTING LEGAL SEARCHES UNDER  
4 THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ON  
5 HOW TO PERFORM APPROPRIATE SEARCHES OF PRIVATE AREAS OF  
6 CHILDREN IN WAYS THAT DO NOT VIOLATE THEIR PRIVACY AND THAT  
7 MINIMIZE THE TRAUMA TO THE CHILD WHO IS BEING SEARCHED.

8 **SECTION 2. Safety clause.** The general assembly hereby finds,  
9 determines, and declares that this act is necessary for the immediate  
10 preservation of the public peace, health, and safety.