

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

February 13, 2020

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB20-1228 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 2, after line 1 insert:
2 **"SECTION 1. Legislative declaration.** (1) The general
3 assembly finds and declares that:
4 (a) There has been a philosophical shift and accompanying
5 statutory changes at the state and federal level regarding response to
6 sexual assault victims. That shift acknowledges that providing
7 victim-centered reporting options can:
8 (I) Begin to restore the power and control victims lose during an
9 assault;
10 (II) Promotes improved long-term outcomes for victims; and
11 (III) Improves investigations and stronger prosecutions.
12 (b) In 2005, the federal "Violence Against Women Act", 42
13 U.S.C. sec. 3796gg-4 (b)(3), made clear victims of sexual assault cannot
14 be charged, directly or indirectly, for a medical forensic exam and the
15 associated testing of any evidence. The "Violence Against Women Act"
16 also stated victims do not have to work with law enforcement to receive
17 a medical forensic exam. Collectively, these provisions are known as
18 forensic compliance.
19 (c) Through bills in 2008, 2013, and 2015, the state of Colorado
20 came into compliance with the federal "Violence Against Women Act"
21 forensic compliance provisions and created Colorado's current statutory
22 structure that enables victims to determine a course of action with
23 multidisciplinary responders acting from the victims' decisions. This
24 included establishing the sexual assault victim emergency payment

1 program, section 18-3-407.5 (3)(b), to pay for the evidence collection
2 portion of the medical forensic exam collected pursuant to section
3 12-240-139 (1)(b).

4 (d) Victims of sexual assault who decide to undergo a medical
5 forensic exam often experience frustration while waiting for the results
6 of the DNA analysis. A lengthy and sometimes opaque process, there are
7 currently no safeguards for victims to ensure they know the status or
8 outcome of evidence testing. Communication about their evidence's
9 progress is disparate and can leave victims feeling unsupported and
10 forgotten.

11 (e) Establishing a confidential tracking system for survivors to
12 know the status of their forensic medical evidence is one part of the
13 solution. However, a nexus of issues affecting sexual assault victims'
14 access to medical forensic exams and payment options prior to their
15 evidence even being sent for testing exists. At this time, Colorado has no
16 consistent and consolidated evaluation data on the efficacy of its sexual
17 assault forensic compliance laws and the associated interplay of medical
18 forensic evidence knowledge, access, cost, and payment that collectively
19 create the conditions for such evidence to be tested in the first place.
20 These issues must be evaluated prior to the implementation of a tracking
21 system to ensure the best possible infrastructure, medical, and criminal
22 justice response exists for survivors of sexual assault in Colorado.

23 (f) While such an evaluation project is underway, there are several
24 survivor rights the state of Colorado should enshrine to ensure survivors
25 are receiving the best possible care and response from the criminal justice
26 system."

27 Renumber succeeding sections accordingly.

28 Page 2, strike lines 12 and 13 and substitute:

29 "(2) (a) THE DIVISION, IN CONJUNCTION WITH A STATEWIDE
30 COALITION THAT ADVOCATES FOR VICTIMS OF SEXUAL ASSAULT, SHALL
31 CONVENE A STATEWIDE MULTIDISCIPLINARY COMMITTEE TO STUDY HOW
32 TO IMPLEMENT A STATEWIDE TRACKING SYSTEM TO ALLOW A VICTIM OF
33 SEXUAL ASSAULT TO TRACK THE STATUS OF THE VICTIM'S FORENSIC
34 MEDICAL EVIDENCE. THE COMMITTEE MUST INCLUDE:

35 (I) LAW ENFORCEMENT, INCLUDING THE COLORADO BUREAU OF
36 INVESTIGATION;

37 (II) SYSTEM AND COMMUNITY-BASED ADVOCATES;

38 (III) MEDICAL PROFESSIONALS;

39 (IV) DISTRICT ATTORNEYS; AND

1 (V) OTHER KEY STAKEHOLDERS.
2 (b) TO ENSURE ANY TRACKING SYSTEM IMPLEMENTED IN THE
3 STATE OF COLORADO IS THE MOST HELPFUL IT CAN BE FOR VICTIMS OF
4 SEXUAL ASSAULT AND PRACTITIONERS, THE COMMITTEE CREATED
5 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION SHALL, AS SOON AS
6 PRACTICABLE, BUT NO LATER THAN DECEMBER 1, 2021:
7 (I) RESEARCH FORENSIC MEDICAL EVIDENCE COLLECTION COSTS
8 FOR LAW ENFORCEMENT AGENCIES IN RELATION TO THEIR OVERALL
9 EVIDENCE BUDGETS AND THE EFFECTS OF THIS ON THEIR ABILITY TO PAY
10 FOR MEDICAL FORENSIC EXAMS AS REQUIRED BY SECTION 18-3-407.5 (1);
11 (II) DETERMINE THE AVERAGE COSTS OF MEDICAL FORENSIC
12 EXAMS STATEWIDE AND WHETHER THE CURRENT SEXUAL ASSAULT VICTIM
13 EMERGENCY PAYMENT PROGRAM PAYMENT LIMITS PURSUANT TO SECTION
14 18-3-407.7 (2)(c) ARE SUFFICIENT TO MEET THE NEED;
15 (III) DETERMINE WHETHER VICTIMS ARE RECEIVING MEDICAL BILLS
16 THEY ARE PROHIBITED FROM RECEIVING PURSUANT TO 42 U.S.C. SEC.
17 3796gg-4 (b)(3);
18 (IV) ASSESS WHETHER LAW ENFORCEMENT AGENCIES ARE
19 SENDING FORENSIC MEDICAL EVIDENCE FOR TESTING WITHIN TWENTY-ONE
20 DAYS AS REQUIRED BY THE RULE PROMULGATED PURSUANT TO SECTION
21 24-33.5-113;
22 (V) RESEARCH WHETHER VICTIMS ARE BEING ENCOURAGED TO
23 DECLINE A MEDICAL FORENSIC EVIDENCE EXAM, INCLUDING INTIMATE
24 PARTNER VIOLENCE CASES OF ASSAULT BY STRANGULATION AS DESCRIBED
25 IN SECTION 18-3-202 (1)(g), BECAUSE LAW ENFORCEMENT CANNOT
26 AFFORD TO PAY THE COST OF EVIDENCE COLLECTION PURSUANT TO
27 SECTION 18-3-407.5 (1);".

28 Page 2, line 14, strike "(a)" and substitute "(VI)".

29 Page 2, line 16, strike "(b)" and substitute "(VII)".

30 Page 3, line 5 strike "(c)" and substitute "(VIII)".

31 Page 3, line 8, strike "(d)" and substitute "(IX)".

32 Page 3, line 10, strike "(e)" and substitute "(X)".

33 Page 3, line 11, strike "(2);" and substitute "(2) AND REDUCING
34 ADMINISTRATIVE REQUIREMENTS;".

- 1 Page 3, line 12, strike "(f)" and substitute "(XI)".
- 2 Page 3, line 15, strike "(g)" and substitute "(XII)".
- 3 Page 4, line 5, strike "OF" and substitute "IF THE VICTIM MAKES A LAW
4 ENFORCEMENT REPORT PURSUANT TO SECTION 12-240-139 (1)(b)(I)(A),
5 OF".
- 6 Page 4, line 6, strike "AND".
- 7 Page 4, after line 6 insert:
8 "(B) IF THE VICTIM MAKES A MEDICAL REPORT PURSUANT TO
9 SECTION 12-240-139 (1)(b)(I)(B) OR AN ANONYMOUS REPORT PURSUANT
10 TO SECTION 12-240-139 (1)(b)(I)(A), OF THE CONTACT INFORMATION FOR
11 THE NEAREST COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO
12 13-90-107 (1)(k)(I); AND".
- 13 Reletter succeeding sub-subparagraph accordingly.
- 14 Page 4, after line 10 insert:
15 "SECTION 4. In Colorado Revised Statutes, add 12-255-133.5
16 as follows:
17 **12-255-133.5. Licensee duties related to medical forensic
18 evidence.** (1) A LICENSEE WHO PERFORMS A MEDICAL FORENSIC
19 EXAMINATION AS DESCRIBED IN SECTION 12-240-139 (1)(b)(I) SHALL
20 INFORM THE VICTIM:
21 (a) IF THE VICTIM MAKES A LAW ENFORCEMENT REPORT PURSUANT
22 TO SECTION 12-240-139 (1)(b)(I)(A), OF THE CONTACT INFORMATION FOR
23 THE NEAREST SEXUAL ASSAULT VICTIM ADVOCATE;
24 (b) IF THE VICTIM MAKES A MEDICAL REPORT PURSUANT TO
25 SECTION 12-240-139 (1)(b)(I)(B) OR AN ANONYMOUS REPORT PURSUANT
26 TO SECTION 12-240-139 (1)(b)(I)(A), OF THE CONTACT INFORMATION FOR
27 THE NEAREST COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO
28 13-90-107 (1)(k)(I); AND
29 (c) THAT ANY FORENSIC MEDICAL EVIDENCE COLLECTED MUST BE
30 MAINTAINED UNTIL AFTER THE ASSAILANT MAY NO LONGER BE
31 PROSECUTED FOR THE CRIME AND THAT THE VICTIM MUST BE NOTIFIED
32 PRIOR TO THE DESTRUCTION OF SUCH EVIDENCE.".
- 33 Renumber succeeding sections accordingly.

1 Page 4, strike line 16 and substitute:
2 "(b.8) FOR A VICTIM WHO HAS HAD FORENSIC MEDICAL EVIDENCE
3 COLLECTED PURSUANT TO SECTION 12-240-139 (1)(b) THAT HAS NOT".

4 Page 4, after line 17 insert:
5 "(I) THE RIGHT TO BE NOTIFIED THAT THE FORENSIC MEDICAL
6 EVIDENCE HAS BEEN SUBMITTED TO AN ACCREDITED CRIME LAB FOR
7 TESTING AS REQUIRED BY TO THE RULES PROMULGATED PURSUANT TO
8 SECTION 24-33.5-113;

9 (II) THE RIGHT TO BE NOTIFIED WHEN THE LAW ENFORCEMENT
10 AGENCY HAS RECEIVED THE RESULTS OF THE MEDICAL FORENSIC EVIDENCE
11 DNA ANALYSIS FROM THE ACCREDITED CRIME LABORATORY;"

12 Page 4, line 18, strike "(I)" and substitute "(III)".

13 Page 4, line 21, strike "(II)" and substitute "(IV)".

14 Page 5, line 3, strike "GUILTY," and substitute "GUILTY OR WHEN A LAW
15 ENFORCEMENT REPORT OR A MEDICAL REPORT IS FILED PURSUANT TO
16 SECTION 12-240-139 (1)(b)(I),".

17 Page 5, strike lines 15 through 27 and substitute:
18 "**SECTION 7.** In Colorado Revised Statutes, 18-3-407.5, **amend**
19 (3)(c) as follows:

20 **18-3-407.5. Victim evidence - forensic evidence - electronic lie**
21 **detector exam without victim's consent prohibited.** (3) (c) When
22 personnel at a medical facility perform a medical forensic examination
23 that includes the collection of evidence based on the request of a victim
24 of a sexual offense and the medical facility performing the examination
25 knows where the crime occurred, the facility shall contact the law
26 enforcement agency in whose jurisdiction the crime occurred regarding
27 preservation of the evidence. If the medical facility does not know where
28 the crime occurred, the facility shall contact its local law enforcement
29 agency regarding preservation of the evidence. Notwithstanding any other
30 statutory requirements regarding storage of biological evidence, the law
31 enforcement agency contacted by the medical facility shall retrieve the
32 evidence from the facility and ~~store it for at least two years~~ MAINTAIN IT
33 PURSUANT TO SECTION 18-1-1103, UNLESS A VICTIM OBJECTS TO ITS
34 DESTRUCTION PURSUANT TO SECTION 24-4.1-303 IN WHICH CASE IT MUST
35 BE MAINTAINED FOR AN ADDITIONAL TEN YEARS."

1 Page 6, strike lines 1 through 4.

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