

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0316.01 Michael Dohr x4347

HOUSE BILL 21-1143

HOUSE SPONSORSHIP

Froelich and Soper,

SENATE SPONSORSHIP

Danielson,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING FORENSIC MEDICAL EVIDENCE OF SEXUAL ASSAULT.

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>.)

The bill requires the medical professional collecting the medical evidence to inform a victim of the contact information for the nearest sexual assault victim's advocate or confidential victim's advocate, the length of time that medical evidence must be preserved, and the victim's right to be notified of the destruction of the medical evidence.

The bill creates the following rights, upon request, for victims of a sex crime:

- The right to be notified that evidence has been submitted

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.

- for testing;
- The right to be notified when the law enforcement agency has received the results of the analysis;
- The right to be informed of whether a DNA sample was obtained from the analysis and whether or not there are matches to DNA profiles in state or federal databases;
- The right to be informed at least 60 days prior to the destruction of forensic medical evidence collected in connection with the alleged sex offense;
- The right to file, prior to the expiration of the 60-day period, an objection to the destruction of the forensic medical evidence;
- The right to be informed of any change in status of the case, including if the case has been closed or reopened; and
- The right to receive a physical document identifying the rights under law after the exam has been completed.

The bill directs a law enforcement agency to maintain the medical evidence until the statute of limitation has run on the crime and for an additional 10 years if the victim objects to its destruction.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
 3 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) Promote improved long-term outcomes for victims; and
- 11 (III) Improve investigations and lead to stronger prosecutions.

12 (b) In 2005, 42 U.S.C. sec. 3796gg-4 (b)(3) of the federal
 13 "Violence Against Women Act" made clear victims of sexual assault
 14 cannot be charged, directly or indirectly, for a medical forensic exam and

1 the associated testing of any evidence. The "Violence Against Women
2 Act" also stated victims do not have to work with law enforcement to
3 receive a medical forensic exam. Collectively, these provisions are known
4 as forensic compliance.

5 (c) Through bills in 2008, 2013, and 2015, the state of Colorado
6 came into compliance with the federal "Violence Against Women Act"
7 forensic compliance provisions and created Colorado's current statutory
8 structure that enables victims to determine a course of action with
9 multidisciplinary responders acting from the victims' decisions. This
10 included establishing the sexual assault victim emergency payment
11 program, section 18-3-407.5 (3)(b), C.R.S., to pay for the evidence
12 collection portion of the medical forensic exam collected pursuant to
13 section 12-240-139 (1)(b), C.R.S.

14 (d) Victims of sexual assault who decide to undergo a medical
15 forensic exam often experience frustration while waiting for the results
16 of the DNA analysis. The process is lengthy and sometimes opaque, and
17 currently there are no safeguards for victims to ensure they know the
18 status or outcome of evidence testing. Communication about their
19 evidence's progress is disparate and can leave victims feeling unsupported
20 and forgotten.

21 (e) There are several survivor rights the state of Colorado should
22 enshrine to ensure survivors are receiving the best possible care and
23 response from the criminal justice system.

24 **SECTION 2.** In Colorado Revised Statutes, 12-240-139, **add**
25 (1)(b)(V) as follows:

26 **12-240-139. Injuries to be reported - penalty for failure to**
27 **report - immunity from liability - definitions.** (1) (b) (V) A LICENSEE

1 OR NURSE WHO PERFORMS A MEDICAL FORENSIC EXAMINATION AS
2 DESCRIBED IN SUBSECTION (1)(b)(I) OF THIS SECTION SHALL INFORM THE
3 VICTIM:

4 (A) OF THE CONTACT INFORMATION FOR THE NEAREST SEXUAL
5 ASSAULT VICTIM'S ADVOCATE IF THE VICTIM MAKES A LAW ENFORCEMENT
6 REPORT PURSUANT TO SECTION 12-240-139 (1)(b)(I)(A);

7 (B) OF THE CONTACT INFORMATION FOR THE NEAREST
8 COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO SECTION 13-90-107
9 (1)(k)(II) IF THE VICTIM MAKES A MEDICAL REPORT PURSUANT TO SECTION
10 12-240-139 (1)(b)(I)(B) OR AN ANONYMOUS REPORT PURSUANT TO
11 SECTION 12-240-139 (1)(b)(I)(C); AND

12 (C) THAT ANY FORENSIC MEDICAL EVIDENCE COLLECTED MUST BE
13 MAINTAINED UNTIL AFTER THE ASSAILANT MAY NO LONGER BE
14 PROSECUTED FOR THE CRIME AND THAT THE VICTIM MUST BE NOTIFIED
15 PRIOR TO THE DESTRUCTION OF SUCH EVIDENCE.

16 **SECTION 3.** In Colorado Revised Statutes, **add** 12-255-133.5 as
17 follows:

18 **12-255-133.5. Licensee duties related to medical forensic**
19 **evidence.** (1) A LICENSEE WHO PERFORMS A MEDICAL FORENSIC
20 EXAMINATION AS DESCRIBED IN SECTION 12-240-139 (1)(b)(I) SHALL
21 INFORM THE VICTIM:

22 (a) OF THE CONTACT INFORMATION FOR THE NEAREST SEXUAL
23 ASSAULT VICTIM ADVOCATE IF THE VICTIM MAKES A LAW ENFORCEMENT
24 REPORT PURSUANT TO SECTION 12-240-139 (1)(b)(I)(A);

25 (b) OF THE CONTACT INFORMATION FOR THE NEAREST
26 COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO SECTION 13-90-107
27 (1)(k)(II) IF THE VICTIM MAKES A MEDICAL REPORT PURSUANT TO SECTION

1 12-240-139 (1)(b)(I)(B) OR AN ANONYMOUS REPORT PURSUANT TO
2 SECTION 12-240-139 (1)(b)(I)(C); AND

3 (c) THAT ANY FORENSIC MEDICAL EVIDENCE COLLECTED MUST BE
4 MAINTAINED UNTIL AFTER THE ASSAILANT MAY NO LONGER BE
5 PROSECUTED FOR THE CRIME AND THAT THE VICTIM MUST BE NOTIFIED
6 PRIOR TO THE DESTRUCTION OF SUCH EVIDENCE.

7 **SECTION 4.** In Colorado Revised Statutes, 24-4.1-302.5, **add**
8 (1)(b.8) as follows:

9 **24-4.1-302.5. Rights afforded to victims - definitions.** (1) In
10 order to preserve and protect a victim's rights to justice and due process,
11 each victim of a crime has the following rights:

12 (b.8) FOR A VICTIM WHO HAS HAD FORENSIC MEDICAL EVIDENCE
13 COLLECTED PURSUANT TO SECTION 12-240-139 (1)(b) THAT HAS NOT
14 RESULTED IN A CONVICTION OR PLEA OF GUILTY, THE RIGHT TO BE
15 NOTIFIED, UPON REQUEST, OF THE STATUS AND LOCATION OF THE VICTIM'S
16 FORENSIC MEDICAL EVIDENCE INCLUDING:

17 (I) THE RIGHT TO BE NOTIFIED THAT THE FORENSIC MEDICAL
18 EVIDENCE HAS BEEN SUBMITTED TO AN ACCREDITED CRIME LAB FOR
19 TESTING AS REQUIRED BY THE RULES PROMULGATED PURSUANT TO
20 SECTION 24-33.5-113;

21 (II) THE RIGHT TO BE NOTIFIED WHEN THE LAW ENFORCEMENT
22 AGENCY HAS RECEIVED THE RESULTS OF THE MEDICAL FORENSIC EVIDENCE
23 DNA ANALYSIS FROM THE ACCREDITED CRIME LABORATORY;

24 (III) THE RIGHT TO BE INFORMED OF WHETHER A DNA SAMPLE
25 WAS OBTAINED FROM THE ANALYSIS AND WHETHER OR NOT THERE ARE
26 MATCHES TO DNA PROFILES IN STATE OR FEDERAL DATABASES;

27 (IV) THE RIGHT TO BE INFORMED AT LEAST SIXTY DAYS PRIOR TO

1 THE DESTRUCTION OF FORENSIC MEDICAL EVIDENCE COLLECTED IN
2 CONNECTION WITH THE ALLEGED SEX OFFENSE;

3 (V) THE RIGHT TO FILE, PRIOR TO THE EXPIRATION OF THE
4 SIXTY-DAY PERIOD, AN OBJECTION WITH THE LAW ENFORCEMENT AGENCY,
5 THE COLORADO BUREAU OF INVESTIGATION, OR THE ACCREDITED CRIME
6 LABORATORY THAT IS PROPOSING TO DESTROY THE FORENSIC MEDICAL
7 EVIDENCE;

8 (VI) THE RIGHT TO BE INFORMED OF ANY CHANGE IN STATUS OF
9 THE CASE, INCLUDING IF THE CASE HAS BEEN CLOSED OR REOPENED; AND

10 (VII) THE RIGHT TO RECEIVE A PHYSICAL DOCUMENT IDENTIFYING
11 THE RIGHTS UNDER LAW AFTER THE EXAM HAS BEEN COMPLETED.

12 **SECTION 5.** In Colorado Revised Statutes, 24-4.1-303, **add**
13 (14.9) as follows:

14 **24-4.1-303. Procedures for ensuring rights of victims of**
15 **crimes.** (14.9) (a) IF, IN A CASE OF AN ALLEGED SEX OFFENSE THAT HAS
16 NOT RESULTED IN A CONVICTION OR PLEA OF GUILTY OR WHEN A LAW
17 ENFORCEMENT REPORT OR A MEDICAL REPORT IS FILED PURSUANT TO
18 SECTION 12-240-139 (1)(b)(I), THE LAW ENFORCEMENT AGENCY, THE
19 COLORADO BUREAU OF INVESTIGATION, OR THE ACCREDITED CRIME
20 LABORATORY WITH CUSTODY OF FORENSIC MEDICAL EVIDENCE WANTS TO
21 DESTROY THE EVIDENCE, IT SHALL NOTIFY THE VICTIM AT LEAST SIXTY
22 DAYS PRIOR TO THE DESTRUCTION OF THE FORENSIC MEDICAL EVIDENCE.

23 (b) WHEN A VICTIM OBJECTS TO THE DESTRUCTION OF FORENSIC
24 MEDICAL EVIDENCE AFTER RECEIVING NOTICE PURSUANT TO SUBSECTION
25 (14.9)(a) OF THIS SECTION, THE LAW ENFORCEMENT AGENCY, THE
26 COLORADO BUREAU OF INVESTIGATION, OR THE ACCREDITED CRIME
27 LABORATORY SHALL RETAIN THE FORENSIC MEDICAL EVIDENCE FOR AN

1 ADDITIONAL TEN YEARS.

2 **SECTION 6.** In Colorado Revised Statutes, 18-3-407.5, **amend**
3 (3)(c) as follows:

4 **18-3-407.5. Victim evidence - forensic evidence - electronic lie**
5 **detector exam without victim's consent prohibited.** (3) (c) When
6 personnel at a medical facility perform a medical forensic examination
7 that includes the collection of evidence based on the request of a victim
8 of a sexual offense and the medical facility performing the examination
9 knows where the crime occurred, the facility shall contact the law
10 enforcement agency in whose jurisdiction the crime occurred regarding
11 preservation of the evidence. If the medical facility does not know where
12 the crime occurred, the facility shall contact its local law enforcement
13 agency regarding preservation of the evidence. Notwithstanding any other
14 statutory requirements regarding storage of biological evidence, the law
15 enforcement agency contacted by the medical facility shall retrieve the
16 evidence from the facility and ~~store it for at least two years~~ MAINTAIN IT
17 PURSUANT TO SECTION 18-1-1103, UNLESS A VICTIM OBJECTS TO ITS
18 DESTRUCTION PURSUANT TO SECTION 24-4.1-303, IN WHICH CASE THE LAW
19 ENFORCEMENT AGENCY MUST MAINTAIN IT FOR AN ADDITIONAL TEN
20 YEARS.

21 **SECTION 7. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, or safety.