

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 24-0448.01 Jacob Baus x2173

HOUSE BILL 24-1072

HOUSE SPONSORSHIP

Bird and Frizell,

SENATE SPONSORSHIP

Kirkmeyer and Fields,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASED EVIDENTIARY REQUIREMENTS IN CRIMINAL**
102 **PROCEEDINGS FOR PROTECTION OF VICTIMS OF SEXUAL**
103 **ASSAULTS.**

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, certain evidence of a victim's or witness's prior or subsequent sexual conduct is presumed irrelevant, but there is an exception for evidence of the victim's or witness's prior or subsequent sexual conduct with the defendant. The bill eliminates this exception.

The bill expands the criminal rape shield law to prohibit the

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

HOUSE
Amended 2nd Reading
March 4, 2024

admission of evidence of:

- The victim's manner of dress or hairstyle as evidence of the victim's consent; or
- A victim's behavioral or mental health that is offered by a defendant who is a psychotherapist who is accused of unlawful sexual behavior, unless the court finds that the evidence is relevant to a material issue to the case.

The bill amends what a moving party must show to the court and to opposing parties and what the court must find in order to introduce evidence that is presumed to be irrelevant under the criminal rape shield law.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Sexual violence is a significant public safety and health
5 concern in Colorado;

6 (b) Sexual violence has a serious long-term impact on mental and
7 physical health, resulting in trillions of dollars in costs in the United
8 States;

9 (c) According to the department of public health and environment,
10 one in three Coloradans has experienced sexual violence and eighty
11 percent of those experiences occur prior to the victim turning twenty-five.
12 Furthermore, the likelihood of experiencing sexual violence increases if
13 the person experienced sexual violence prior to the victim turning
14 eighteen.

15 (d) According to the centers for disease control and prevention in
16 the federal department of health and human services, more than one-third
17 of sexual assaults are committed by an intimate partner, leading to a
18 significant crossover of intimate partner violence and sexual violence;

19 (e) Sexual crimes are the most unreported crimes due to many

1 factors, including fear of retaliation, feelings of shame, self-blame, fear
2 of blame, fear of disbelief, fear of the criminal justice process, and
3 complex trauma caused by experiencing sexual violence committed by an
4 intimate partner or friend;

5 (f) The successful prosecution of sexual offenders is abysmally
6 low due to societal myths about sexual crimes resulting in victim blaming,
7 as well as the high rate of victims opting not to participate in the criminal
8 justice system because of a lack of protection from harassment and
9 humiliation;

10 (g) The purpose of section 18-3-407, Colorado Revised Statutes,
11 amended in this act and commonly referred to as the "rape shield statute",
12 is to protect victims and witnesses of sexual crimes from humiliation
13 caused by public disclosure of their intimate lives absent a preliminary
14 showing that evidence will be relevant and that the probative value of the
15 evidence is not substantially outweighed by the presumed prejudicial
16 impact of the evidence on the victim's or witness's privacy and to confuse
17 the issues in the case; and

18 (h) Victims and witnesses of sexual crimes should not be
19 subjected to psychological or emotional abuse in the courtroom as a price
20 for their cooperation in the prosecution, and the defendant must be
21 provided due process in defending against the allegations. Unless victims
22 and witnesses are protected from unnecessary and humiliating inquiries
23 into their sexual history, they will continue to remain silent regarding
24 sexual abuse.

25 (2) Therefore, the general assembly declares it necessary to
26 protect victims and witnesses from irrelevant, humiliating, and degrading
27 interrogation while simultaneously protecting an accused person's right

1 to present a defense. Accordingly, section 18-3-407, Colorado Revised
2 Statutes, must be strengthened and clarified to address barriers that
3 victims face in reporting and participating in the criminal justice process.

4 **SECTION 2.** In Colorado Revised Statutes, 18-3-407, **amend** (1),
5 (2) introductory portion, (2)(a), and (2)(e); and **add** (4) as follows:

6 **18-3-407. Victim's and witness's prior history - evidentiary**
7 **hearing - victim's identity - protective order.** (1) ~~Evidence~~ SUBJECT TO
8 CONSTITUTIONAL LIMITATIONS, EVIDENCE of specific instances of the
9 victim's or a witness's prior or subsequent sexual conduct, opinion
10 evidence of the victim's or a witness's sexual conduct, and reputation
11 evidence of the victim's or a witness's sexual conduct may be admissible
12 only at trial and shall not be admitted in any other proceeding except at
13 a proceeding pursuant to ~~paragraph (c) of subsection (2)~~ SUBSECTION
14 (2)(c) of this section. At trial, such evidence ~~shall be~~ IS presumed to be
15 irrelevant except EVIDENCE OF SPECIFIC INSTANCES OF SEXUAL ACTIVITY
16 SHOWING THE SOURCE OR ORIGIN OF SEMEN, PREGNANCY, DISEASE, OR
17 ANY SIMILAR EVIDENCE OF SEXUAL INTERCOURSE OFFERED FOR THE
18 PURPOSE OF SHOWING THAT THE ACT OR ACTS CHARGED WERE OR WERE
19 NOT COMMITTED BY THE DEFENDANT.

20 (a) ~~Evidence of the victim's or witness' prior or subsequent sexual~~
21 ~~conduct with the actor;~~

22 (b) ~~Evidence of specific instances of sexual activity showing the~~
23 ~~source or origin of semen, pregnancy, disease, or any similar evidence of~~
24 ~~sexual intercourse offered for the purpose of showing that the act or acts~~
25 ~~charged were or were not committed by the defendant.~~

26

27 (2) In any criminal prosecution for class 4 felony internet luring

1 of a child, as described in section 18-3-306 (3) or under sections 18-3-402
2 to 18-3-405.5, 18-3-504, 18-6-301, 18-6-302, 18-6-403, 18-6-404, and
3 any offense described in part 4 of article 7 of this ~~title~~ TITLE 18, or for
4 attempt or conspiracy to commit any of ~~said~~ THESE crimes, if evidence,
5 that is not excepted under subsection (1) of this section, of specific
6 instances of the victim's or a witness's prior or subsequent sexual conduct;
7 ~~or~~ opinion evidence of the victim's or a witness's sexual conduct; ~~or~~
8 reputation evidence of the victim's or a witness's sexual conduct; or
9 evidence that the victim or a witness has ~~a history of false reporting of~~
10 ~~sexual assaults~~ AT LEAST ONE INCIDENT OF FALSE REPORTING OF
11 UNLAWFUL SEXUAL BEHAVIOR PRIOR TO OR SUBSEQUENT TO THE ALLEGED
12 OFFENSE is to be offered at trial, the following procedure shall be
13 followed:

14 (a) (I) A written motion ~~shall~~ MUST be made at least thirty-five
15 days prior to trial, unless later for good cause shown, to the court and to
16 the opposing parties stating that the moving party has an offer of proof ~~of~~
17 ~~the relevancy and materiality of evidence of specific instances of the~~
18 ~~victim's or witness' prior or subsequent sexual conduct, or opinion~~
19 ~~evidence of the victim's or witness' sexual conduct, or reputation evidence~~
20 ~~of the victim's or witness' sexual conduct, or evidence that the victim or~~
21 ~~witness has a history of false reporting of sexual assaults that is proposed~~
22 ~~to be presented~~ ARTICULATING FACTS THAT WOULD SUPPORT A JUDICIAL
23 FINDING THAT THE EVIDENCE OVERCOMES THE PRESUMPTION OF
24 IRRELEVANCE AND THAT THE PROBATIVE VALUE OF EVIDENCE OF SPECIFIC
25 INSTANCES OF THE VICTIM'S OR WITNESS'S PRIOR OR SUBSEQUENT SEXUAL
26 CONDUCT, OPINION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL
27 CONDUCT, REPUTATION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL

1 CONDUCT, OR EVIDENCE THAT THE VICTIM OR WITNESS HAS AT LEAST ONE
2 INCIDENT OF FALSE REPORTING OF UNLAWFUL SEXUAL BEHAVIOR PRIOR TO
3 OR SUBSEQUENT TO THE ALLEGED OFFENSE THAT IS NOT SUBSTANTIALLY
4 OUTWEIGHED BY THE PRESUMPTIVE UNFAIR PREJUDICE, CONFUSION OF THE
5 ISSUES, MISLEADING OF THE JURY, OR UNFAIR INVASION OF THE PRIVACY
6 OF THE VICTIM OR WITNESS.

7 (II) IF THE MOVING PARTY INTENDS TO OFFER EVIDENCE
8 CONCERNING AT LEAST ONE INCIDENT OF FALSE REPORTING OF UNLAWFUL
9 SEXUAL BEHAVIOR PRIOR TO OR SUBSEQUENT TO THE ALLEGED OFFENSE
10 PURSUANT TO SUBSECTION (2)(a)(I) OF THIS SECTION, THE PARTY MUST
11 ALSO ARTICULATE FACTS THAT WOULD, BY A PREPONDERANCE OF THE
12 EVIDENCE, DEMONSTRATE THAT THE VICTIM OR WITNESS HAS MADE A
13 REPORT OF SEXUAL ASSAULT THAT WAS DEMONSTRABLY FALSE OR FALSE
14 IN FACT PRIOR TO OR SUBSEQUENT TO THE ALLEGED OFFENSE.

15 (e) At the conclusion of the hearing, or by written order if no
16 hearing is held, if the court finds that the evidence proposed to be offered
17 regarding the sexual conduct of the victim or witness ~~is relevant to a~~
18 ~~material issue to the case~~ OVERCOMES THE PRESUMPTION OF
19 IRRELEVANCE, IS RELEVANT TO A MATERIAL ISSUE TO THE CASE, AND THAT
20 THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY
21 OUTWEIGHED BY THE PROBABILITY THAT ITS ADMISSION WILL CREATE
22 UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, MISLEADING OF THE JURY,
23 OR UNFAIR INVASION OF THE PRIVACY OF THE VICTIM OR WITNESS, the
24 court shall order that evidence may be introduced and prescribe the nature
25 of the evidence or questions to be permitted. The moving party may then
26 offer evidence pursuant to the order of the court.

27 (4) (a) EVIDENCE OF THE VICTIM'S MANNER OF DRESS OR

1 HAIRSTYLE AT THE TIME OF, PRIOR TO, OR SUBSEQUENT TO THE ALLEGED
2 OFFENSE IS NOT ADMISSIBLE AS EVIDENCE OF THE VICTIM'S CONSENT TO
3 SEXUAL CONTACT, SEXUAL PENETRATION, OR SEXUAL INTRUSION BY THE
4 DEFENDANT IN A CASE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS
5 DEFINED IN SECTION 16-22-102 (9); AN OFFENSE DESCRIBED IN PART 4 OF
6 ARTICLE 7 OF THIS TITLE 18; OR AN ATTEMPT OR CONSPIRACY TO COMMIT
7 ANY OF THOSE OFFENSES.

8 (b) FOR PURPOSES OF THIS SECTION, "MANNER OF DRESS" DOES
9 NOT MEAN:

10 (I) TESTIMONY OR PHYSICAL EVIDENCE OF THE VICTIM'S CLOTHING
11 OR ITS PHYSICAL CONDITION AT THE TIME OF, PRIOR TO, OR SUBSEQUENT
12 TO THE ALLEGED OFFENSE, OFFERED AS EVIDENCE FOR A PURPOSE OTHER
13 THAN THE VICTIM'S CONSENT; OR

14 (II) EVIDENCE OF THE VOLUNTARY OR CONSENSUAL REMOVAL OF
15 THE VICTIM'S CLOTHING.

16 **SECTION 3. Effective date - applicability.** This act takes effect
17 July 1, 2024, and applies to proceedings occurring on or after said date.

18 **SECTION 4. Safety clause.** The general assembly finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, or safety or for appropriations for
21 the support and maintenance of the departments of the state and state
22 institutions.