

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

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.*

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 is to be offered at trial, the following procedure shall be  
11 followed:

12 (a) (I) A written motion ~~shall~~ MUST be made at least thirty-five  
13 days prior to trial, unless later for good cause shown, to the court and to  
14 the opposing parties stating that the moving party has an offer of proof ~~of~~  
15 ~~the relevancy and materiality of evidence of specific instances of the~~  
16 ~~victim's or witness' prior or subsequent sexual conduct, or opinion~~  
17 ~~evidence of the victim's or witness' sexual conduct, or reputation evidence~~  
18 ~~of the victim's or witness' sexual conduct, or evidence that the victim or~~  
19 ~~witness has a history of false reporting of sexual assaults that is proposed~~  
20 ~~to be presented~~ ARTICULATING FACTS THAT WOULD SUPPORT A JUDICIAL  
21 FINDING THAT THE EVIDENCE OVERCOMES THE PRESUMPTION OF  
22 IRRELEVANCE AND THAT THE PROBATIVE VALUE OF EVIDENCE OF SPECIFIC  
23 INSTANCES OF THE VICTIM'S OR WITNESS'S PRIOR OR SUBSEQUENT SEXUAL  
24 CONDUCT, OPINION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL  
25 CONDUCT, REPUTATION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL  
26 CONDUCT, OR EVIDENCE THAT THE VICTIM OR WITNESS HAS A HISTORY OF  
27 FALSE REPORTING OF UNLAWFUL SEXUAL BEHAVIOR IS NOT

1 SUBSTANTIALLY OUTWEIGHED BY THE PRESUMPTIVE UNFAIR PREJUDICE,  
2 CONFUSION OF THE ISSUES, MISLEADING OF THE JURY, OR UNFAIR INVASION  
3 OF THE PRIVACY OF THE VICTIM OR WITNESS.

4 (II) IF THE MOVING PARTY INTENDS TO OFFER EVIDENCE  
5 CONCERNING A HISTORY OF FALSE REPORTING OF SEXUAL ASSAULTS  
6 PURSUANT TO SUBSECTION (2)(a)(I) OF THIS SECTION, THE PARTY MUST  
7 ALSO ARTICULATE FACTS THAT WOULD, BY A PREPONDERANCE OF THE  
8 EVIDENCE, DEMONSTRATE THAT THE VICTIM OR WITNESS HAS MADE A  
9 REPORT OF SEXUAL ASSAULT THAT WAS DEMONSTRABLY FALSE OR FALSE  
10 IN FACT PRIOR TO OR SUBSEQUENT TO THE ALLEGED OFFENSE.

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

23 (4) (a) EVIDENCE OF THE VICTIM'S MANNER OF DRESS OR  
24 HAIRSTYLE AT THE TIME OF, PRIOR TO, OR SUBSEQUENT TO THE ALLEGED  
25 OFFENSE IS NOT ADMISSIBLE AS EVIDENCE OF THE VICTIM'S CONSENT TO  
26 SEXUAL CONTACT, SEXUAL PENETRATION, OR SEXUAL INTRUSION BY THE  
27 DEFENDANT IN A CASE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS

1     DEFINED IN SECTION 16-22-102 (9); AN OFFENSE DESCRIBED IN PART 4 OF  
2     ARTICLE 7 OF THIS TITLE 18; OR AN ATTEMPT OR CONSPIRACY TO COMMIT  
3     ANY OF THOSE OFFENSES.

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

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

10            (II) EVIDENCE OF THE VOLUNTARY OR CONSENSUAL REMOVAL OF  
11     THE VICTIM'S CLOTHING.

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

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