

CHAPTER 123

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 24-1072

BY REPRESENTATIVE(S) Bird and Frizell, Boesecker, Clifford, Duran, English, Froelich, Hamrick, Kipp, Lieder, Lindstedt, Lukens, Marvin, Snyder, Soper, Titone, Willford, McCluskie, Garcia, Lindsay, McLachlan, Parenti, Sirota, Valdez, Weinberg; also SENATOR(S) Kirkmeyer and Fields, Bridges, Cutter, Exum, Gardner, Ginal, Gonzales, Jaquez Lewis, Kolker, Liston, Marchman, Michaelson Jenet, Mullica, Pelton B., Pelton R., Priola, Roberts, Rodriguez, Smallwood, Will, Winter F., Zenzinger, Fenberg.

AN ACT**CONCERNING INCREASED EVIDENTIARY REQUIREMENTS IN CRIMINAL PROCEEDINGS FOR PROTECTION OF VICTIMS OF SEXUAL ASSAULTS.**

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

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

- (a) Sexual violence is a significant public safety and health concern in Colorado;
- (b) Sexual violence has a serious long-term impact on mental and physical health, resulting in trillions of dollars in costs in the United States;
- (c) According to the department of public health and environment, one in three Coloradans has experienced sexual violence and eighty percent of those experiences occur prior to the victim turning twenty-five. Furthermore, the likelihood of experiencing sexual violence increases if the person experienced sexual violence prior to the victim turning eighteen.
- (d) According to the centers for disease control and prevention in the federal department of health and human services, more than one-third of sexual assaults are committed by an intimate partner, leading to a significant crossover of intimate partner violence and sexual violence;
- (e) Sexual crimes are the most unreported crimes due to many factors, including fear of retaliation, feelings of shame, self-blame, fear of blame, fear of disbelief, fear

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

of the criminal justice process, and complex trauma caused by experiencing sexual violence committed by an intimate partner or friend;

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

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

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

(2) Therefore, the general assembly declares it necessary to protect victims and witnesses from irrelevant, humiliating, and degrading interrogation while simultaneously protecting an accused person's right to present a defense. Accordingly, section 18-3-407, Colorado Revised Statutes, must be strengthened and clarified to address barriers that victims face in reporting and participating in the criminal justice process.

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

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

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

~~(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered~~

for the purpose of showing that the act or acts charged were or were not committed by the defendant.

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

(a) (I) A written motion ~~shall~~ MUST be made at least thirty-five days prior to trial, unless later for good cause shown, to the court and to the opposing parties stating that the moving party has an offer of proof ~~of the relevancy and materiality of evidence of specific instances of the victim's or witness' prior or subsequent sexual conduct, or opinion evidence of the victim's or witness' sexual conduct, or reputation evidence of the victim's or witness' sexual conduct, or evidence that the victim or witness has a history of false reporting of sexual assaults that is proposed to be presented~~ ARTICULATING FACTS THAT WOULD SUPPORT A JUDICIAL FINDING THAT THE EVIDENCE OVERCOMES THE PRESUMPTION OF IRRELEVANCE AND THAT THE PROBATIVE VALUE OF EVIDENCE OF SPECIFIC INSTANCES OF THE VICTIM'S OR WITNESS'S PRIOR OR SUBSEQUENT SEXUAL CONDUCT, OPINION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL CONDUCT, REPUTATION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL CONDUCT, OR EVIDENCE THAT THE VICTIM OR WITNESS HAS AT LEAST ONE INCIDENT OF FALSE REPORTING OF UNLAWFUL SEXUAL BEHAVIOR PRIOR TO OR SUBSEQUENT TO THE ALLEGED OFFENSE THAT IS NOT SUBSTANTIALLY OUTWEIGHED BY THE PRESUMPTIVE UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, MISLEADING OF THE JURY, OR UNFAIR INVASION OF THE PRIVACY OF THE VICTIM OR WITNESS.

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

(e) At the conclusion of the hearing, or by written order if no hearing is held, if the court finds that the evidence proposed to be offered regarding the sexual conduct of the victim or witness ~~is relevant to a material issue to the case~~ OVERCOMES THE PRESUMPTION OF IRRELEVANCE, IS RELEVANT TO A MATERIAL ISSUE TO THE CASE, AND THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE PROBABILITY THAT ITS ADMISSION WILL CREATE UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, MISLEADING OF THE JURY, OR UNFAIR INVASION OF THE PRIVACY OF THE VICTIM OR WITNESS, the court shall order

that evidence may be introduced and prescribe the nature of the evidence or questions to be permitted. The moving party may then offer evidence pursuant to the order of the court.

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

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

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

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

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

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

Approved: April 24, 2024