

CHAPTER 160

COURTS

HOUSE BILL 18-1243

BY REPRESENTATIVE(S) Foote and Wist, Arndt, Becker K., Beckman, Benavidez, Bridges, Buck, Buckner, Catlin, Coleman, Covarrubias, Danielson, Esgar, Exum, Garnett, Ginal, Gray, Hamner, Herod, Hooton, Jackson, Kennedy, Kraft-Tharp, Landgraf, Lawrence, Lee, Liston, Lontine, Lundeen, McKean, McLachlan, Melton, Michaelson Jenet, Pabon, Pettersen, Rankin, Ransom, Reyher, Roberts, Rosenthal, Saine, Salazar, Sandridge, Sias, Singer, Valdez, Van Winkle, Weissman, Williams D., Wilson, Winter, Young, Duran;
also SENATOR(S) Coram and Fields, Cooke, Court, Crowder, Garcia, Gardner, Guzman, Jones, Kagan, Kefalas, Kerr, Martinez Humenik, Moreno, Tate, Todd.

AN ACT**CONCERNING ENACTMENT OF A CIVIL RAPE SHIELD LAW.**

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

SECTION 1. In Colorado Revised Statutes, **add** 13-25-138 as follows:

13-25-138. Victim's and witness's prior sexual conduct history - evidentiary hearing - victim's identity - protective order. (1) EVIDENCE OF SPECIFIC INSTANCES OF THE VICTIM'S PRIOR OR SUBSEQUENT SEXUAL CONDUCT, OPINION EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT, AND REPUTATION EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT IS PRESUMED IRRELEVANT AND IS NOT ADMISSIBLE IN A CIVIL PROCEEDING INVOLVING ALLEGED SEXUAL MISCONDUCT EXCEPT:

(a) EVIDENCE OF THE VICTIM'S PRIOR OR SUBSEQUENT SEXUAL CONDUCT WITH THE DEFENDANT;

(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 ALLEGED WERE OR WERE NOT COMMITTED BY THE DEFENDANT.

(2) IF A PARTY INTENDS TO OFFER EVIDENCE UNDER SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION, THE PARTY SHALL:

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

(a) FILE A WRITTEN MOTION AT LEAST SIXTY-THREE 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 PRIOR OR SUBSEQUENT SEXUAL CONDUCT, OR OPINION EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT, OR REPUTATION EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT THAT IS PROPOSED TO BE PRESENTED. THE WRITTEN MOTION MUST BE ACCOMPANIED BY AN AFFIDAVIT IN WHICH THE OFFER OF PROOF IS STATED.

(b) NOTIFY THE ALLEGED VICTIM OR ALLEGED VICTIM'S REPRESENTATIVE.

(3) (a) BEFORE ADMITTING EVIDENCE UNDER THIS SECTION, THE COURT SHALL CONDUCT AN IN CAMERA HEARING AND PROVIDE THE ALLEGED VICTIM AND PARTIES A RIGHT TO ATTEND AND BE HEARD. UNLESS THE COURT ORDERS OTHERWISE, THE MOTION, RELATED MATERIALS, AND THE HEARING RECORD ARE CONFIDENTIAL. A PARTY MAKING A MOTION UNDER THIS SECTION SHALL STATE IN THE CAPTION THAT THE MOTION IS CONFIDENTIAL.

(b) AT THE CONCLUSION OF THE HEARING, IF THE COURT FINDS THAT THE EVIDENCE PROPOSED TO BE OFFERED REGARDING THE SEXUAL CONDUCT OF THE VICTIM IS RELEVANT TO A MATERIAL ISSUE TO THE CASE, 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.

(c) ALL MOTIONS AND SUPPORTING DOCUMENTS FILED PURSUANT TO THIS SECTION MUST BE FILED UNDER SEAL AND MAY BE UNSEALED ONLY IF THE COURT RULES THAT THE EVIDENCE IS ADMISSIBLE AND THE CASE PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE EVIDENCE CONTAINED IN THE MOTION IS ADMISSIBLE, ONLY THAT PORTION OF THE MOTION AND SUPPORTING DOCUMENTS PERTAINING TO THE ADMISSIBLE PORTION MAY BE UNSEALED.

(d) THE COURT SHALL SEAL ALL COURT TRANSCRIPTS, TAPE RECORDINGS, AND RECORDS OF PROCEEDINGS, OTHER THAN MINUTE ORDERS OF A HEARING HELD PURSUANT TO THIS SECTION. THE COURT MAY UNSEAL THE TRANSCRIPTS, TAPE RECORDINGS, AND RECORDS ONLY IF THE COURT RULES THAT THE EVIDENCE IS ADMISSIBLE AND THE CASE PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE EVIDENCE IS ADMISSIBLE, ONLY THE PORTION OF THE HEARING PERTAINING TO THE ADMISSIBLE EVIDENCE MAY BE UNSEALED.

(4) IN A CIVIL PROCEEDING, AT ANY TIME UPON MOTION OF THE PLAINTIFF OR ON THE COURT'S OWN MOTION, THE COURT MAY ISSUE A PROTECTIVE ORDER PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE CONCERNING DISCLOSURE OF INFORMATION RELATING TO THE VICTIM. THE COURT MAY PUNISH A VIOLATION OF A PROTECTIVE ORDER BY CONTEMPT OF COURT.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 25, 2018