

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

ENGROSSED

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

LLS NO. 20-0866.01 Jerry Barry x4341

HOUSE BILL 20-1228

HOUSE SPONSORSHIP

Froelich,

SENATE SPONSORSHIP

Danielson,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING FORENSIC MEDICAL EVIDENCE OF SEXUAL ASSAULT, AND,**
102 **IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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 division of criminal justice in the department of public safety (division) to research the creation of a statewide system to track forensic medical evidence related to a sexual assault (medical evidence) whereby victims may access specified information concerning the medical evidence. The division shall report its findings to specified committees of the general assembly.

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.*

HOUSE
Amended 2nd Reading
March 6, 2020

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

If a conviction or plea has not been entered in a case, the bill requires the entity holding the medical evidence to notify the victim prior to the medical evidence being destroyed and to maintain the medical evidence for an additional 10 years if the victim objects to the destruction.

The bill requires the executive director of the department of public safety to promulgate rules requiring the entity holding medical evidence to maintain the medical evidence until the statute of limitations on commencing a criminal action has passed.

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) Promotes improved long-term outcomes for victims; and

11 (III) Improves investigations and stronger prosecutions.

12 (b) In 2005, the federal "Violence Against Women Act", 42
13 U.S.C. sec. 3796gg-4 (b)(3), made clear victims of sexual assault cannot
14 be charged, directly or indirectly, for a medical forensic exam and the
15 associated testing of any evidence. The "Violence Against Women Act"
16 also stated victims do not have to work with law enforcement to receive
17 a medical forensic exam. Collectively, these provisions are known as
18 forensic compliance.

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

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

17 (e) Establishing a confidential tracking system for survivors to
18 know the status of their forensic medical evidence is one part of the
19 solution. However, a nexus of issues affecting sexual assault victims'
20 access to medical forensic exams and payment options prior to their
21 evidence even being sent for testing exists. At this time, Colorado has no
22 consistent and consolidated evaluation data on the efficacy of its sexual
23 assault forensic compliance laws and the associated interplay of medical
24 forensic evidence knowledge, access, cost, and payment that collectively
25 create the conditions for such evidence to be tested in the first place.
26 These issues must be evaluated prior to the implementation of a tracking
27 system to ensure the best possible infrastructure, medical, and criminal

1 justice response exists for survivors of sexual assault in Colorado.

2 (f) While such an evaluation project is underway, there are several
3 survivor rights the state of Colorado should enshrine to ensure survivors
4 are receiving the best possible care and response from the criminal justice
5 system.

6 **SECTION 2.** In Colorado Revised Statutes, **add** 24-33.5-524 as
7 follows:

8 **24-33.5-524. Tracking forensic medical evidence in sexual**
9 **assault cases - study - report - definitions - repeal.** (1) AS USED IN THIS
10 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 (a) "FORENSIC MEDICAL EVIDENCE" MEANS MEDICAL EVIDENCE
12 COLLECTED IN CONNECTION WITH AN ALLEGED SEXUAL ASSAULT.

13 (b) "TRACKING SYSTEM" MEANS A UNIFORM STATEWIDE SYSTEM
14 TO TRACK THE LOCATION, LAB SUBMISSION STATUS, COMPLETION OF
15 FORENSIC TESTING, AND STORAGE OF FORENSIC MEDICAL EVIDENCE.

16 (2) (a) THE DIVISION, IN CONJUNCTION WITH A STATEWIDE
17 COALITION THAT ADVOCATES FOR VICTIMS OF SEXUAL ASSAULT, SHALL
18 CONVENE A STATEWIDE MULTIDISCIPLINARY COMMITTEE TO STUDY HOW
19 TO IMPLEMENT A STATEWIDE TRACKING SYSTEM TO ALLOW A VICTIM OF
20 SEXUAL ASSAULT TO TRACK THE STATUS OF THE VICTIM'S FORENSIC
21 MEDICAL EVIDENCE. THE COMMITTEE MUST INCLUDE:

22 (I) LAW ENFORCEMENT, INCLUDING THE COLORADO BUREAU OF
23 INVESTIGATION;

24 (II) SYSTEM AND COMMUNITY-BASED ADVOCATES;

25 (III) MEDICAL PROFESSIONALS;

26 (IV) DISTRICT ATTORNEYS; AND

27 (V) OTHER KEY STAKEHOLDERS.

1 (b) TO ENSURE ANY TRACKING SYSTEM IMPLEMENTED IN THE
2 STATE OF COLORADO IS THE MOST HELPFUL IT CAN BE FOR VICTIMS OF
3 SEXUAL ASSAULT AND PRACTITIONERS, THE COMMITTEE CREATED
4 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION SHALL, AS SOON AS
5 PRACTICABLE, BUT NO LATER THAN DECEMBER 1, 2021:

6 (I) RESEARCH FORENSIC MEDICAL EVIDENCE COLLECTION COSTS
7 FOR LAW ENFORCEMENT AGENCIES IN RELATION TO THEIR OVERALL
8 EVIDENCE BUDGETS AND THE EFFECTS OF THIS ON THEIR ABILITY TO PAY
9 FOR MEDICAL FORENSIC EXAMS AS REQUIRED BY SECTION 18-3-407.5 (1);

10 (II) DETERMINE THE AVERAGE COSTS OF MEDICAL FORENSIC
11 EXAMS STATEWIDE AND WHETHER THE CURRENT SEXUAL ASSAULT VICTIM
12 EMERGENCY PAYMENT PROGRAM PAYMENT LIMITS PURSUANT TO SECTION
13 18-3-407.7 (2)(c) ARE SUFFICIENT TO MEET THE NEED;

14 (III) DETERMINE WHETHER VICTIMS ARE RECEIVING MEDICAL BILLS
15 THEY ARE PROHIBITED FROM RECEIVING PURSUANT TO 42 U.S.C. SEC.
16 3796gg-4 (b)(3);

17 (IV) ASSESS WHETHER LAW ENFORCEMENT AGENCIES ARE
18 SENDING FORENSIC MEDICAL EVIDENCE FOR TESTING WITHIN TWENTY-ONE
19 DAYS AS REQUIRED BY THE RULE PROMULGATED PURSUANT TO SECTION
20 24-33.5-113;

21 (V) RESEARCH WHETHER VICTIMS ARE BEING ENCOURAGED TO
22 DECLINE A MEDICAL FORENSIC EVIDENCE EXAM, INCLUDING INTIMATE
23 PARTNER VIOLENCE CASES OF ASSAULT BY STRANGULATION AS DESCRIBED
24 IN SECTION 18-3-202 (1)(g), BECAUSE LAW ENFORCEMENT CANNOT
25 AFFORD TO PAY THE COST OF EVIDENCE COLLECTION PURSUANT TO
26 SECTION 18-3-407.5 (1);

27 (VI) RESEARCH EXISTING TRACKING SYSTEMS WITH SECURE

1 ELECTRONIC ACCESS THAT:

2 (A) ALLOW A VICTIM, OR THE VICTIM'S DESIGNEE, TO ACCESS OR

3 RECEIVE INFORMATION ABOUT THE LOCATION, LAB SUBMISSION STATUS,

4 COMPLETION OF FORENSIC TESTING, AND STORAGE OF FORENSIC MEDICAL

5 EVIDENCE THAT WAS GATHERED FROM THE VICTIM, PROVIDED THAT THE

6 DISCLOSURE DOES NOT IMPEDE OR COMPROMISE AN ONGOING

7 INVESTIGATION AND REVEAL THE VICTIM'S CURRENT LOCATION; AND

8 (B) SAFEGUARD CONFIDENTIALITY AND LIMITED DISCLOSURE OF

9 THE INFORMATION CONTAINED IN THE TRACKING SYSTEM;

10 (VII) DEVELOP GUIDELINES AND A PLAN TO IMPLEMENT A

11 TRACKING SYSTEM;

12 (VIII) ESTIMATE THE MONEY, RESOURCES, AND TRAINING NEEDED

13 TO CREATE, MANAGE, AND MAINTAIN THE TRACKING SYSTEM;

14 (IX) RECOMMEND SOURCES OF PUBLIC AND PRIVATE FUNDING TO

15 IMPLEMENT THE PLANS DEVELOPED PURSUANT TO THIS SUBSECTION (2)

16 AND REDUCING ADMINISTRATIVE REQUIREMENTS;

17 (X) RECOMMEND CHANGES TO LAW OR POLICY REQUIRED TO

18 SUPPORT THE IMPLEMENTATION OF THE PLANS DEVELOPED PURSUANT TO

19 THIS SUBSECTION (2); AND

20 (XI) REPORT THE DIVISION'S FINDINGS, RECOMMENDATIONS, AND

21 ANY PROPOSED LEGISLATION TO THE JUDICIARY COMMITTEES OF THE

22 HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR

23 COMMITTEES.

24 (3) IN CONDUCTING THE WORK REQUIRED BY SUBSECTION (2) OF

25 THIS SECTION, THE DIVISION SHALL CONSULT WITH REPRESENTATIVES OF

26 LAW ENFORCEMENT, DISTRICT ATTORNEYS, CRIMINAL DEFENSE

27 ATTORNEYS, AND STATEWIDE ORGANIZATIONS REPRESENTING VICTIMS OF

1 SEXUAL ASSAULT.

2 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2021.

3 **SECTION 3.** In Colorado Revised Statutes, 12-240-139, **add**
4 (1)(b)(V) as follows:

5 **12-240-139. Injuries to be reported - penalty for failure to**
6 **report - immunity from liability - definitions.** (1) (b) (V) A LICENSEE
7 OR NURSE WHO PERFORMS A MEDICAL FORENSIC EXAMINATION AS
8 DESCRIBED IN SUBSECTION (1)(b)(I) OF THIS SECTION SHALL INFORM THE
9 VICTIM:

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

13 (B) IF THE VICTIM MAKES A MEDICAL REPORT PURSUANT TO
14 SECTION 12-240-139 (1)(b)(I)(B) OR AN ANONYMOUS REPORT PURSUANT
15 TO SECTION 12-240-139 (1)(b)(I)(A), OF THE CONTACT INFORMATION FOR
16 THE NEAREST COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO
17 13-90-107 (1)(k)(I); AND

18 (C) THAT ANY FORENSIC MEDICAL EVIDENCE COLLECTED MUST BE
19 MAINTAINED UNTIL AFTER THE ASSAILANT MAY NO LONGER BE
20 PROSECUTED FOR THE CRIME AND THAT THE VICTIM MUST BE NOTIFIED
21 PRIOR TO THE DESTRUCTION OF SUCH EVIDENCE.

22 **SECTION 4.** In Colorado Revised Statutes, **add 12-255-133.5 as**
23 **follows:**

24 **12-255-133.5. Licensee duties related to medical forensic**
25 **evidence.** (1) A LICENSEE WHO PERFORMS A MEDICAL FORENSIC
26 EXAMINATION AS DESCRIBED IN SECTION 12-240-139 (1)(b)(I) SHALL
27 INFORM THE VICTIM:

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

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

9 (c) THAT ANY FORENSIC MEDICAL EVIDENCE COLLECTED MUST BE
10 MAINTAINED UNTIL AFTER THE ASSAILANT MAY NO LONGER BE
11 PROSECUTED FOR THE CRIME AND THAT THE VICTIM MUST BE NOTIFIED
12 PRIOR TO THE DESTRUCTION OF SUCH EVIDENCE.

13 **SECTION 5.** In Colorado Revised Statutes, 24-4.1-302.5, **add**
14 (1)(b.8) as follows:

15 **24-4.1-302.5. Rights afforded to victims - definitions.** (1) In
16 order to preserve and protect a victim's rights to justice and due process,
17 each victim of a crime has the following rights:

18 (b.8) FOR A VICTIM WHO HAS HAD FORENSIC MEDICAL EVIDENCE
19 COLLECTED PURSUANT TO SECTION 12-240-139 (1)(b) THAT HAS NOT
20 RESULTED IN A CONVICTION OR PLEA OF GUILTY:

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

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

1 (III) THE RIGHT TO BE INFORMED AT LEAST SIXTY DAYS PRIOR TO
2 THE DESTRUCTION OF FORENSIC MEDICAL EVIDENCE COLLECTED IN
3 CONNECTION WITH THE ALLEGED SEX OFFENSE; AND

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

9 SECTION 6. In Colorado Revised Statutes, 24-4.1-303, **add**
10 (14.9) as follows:

11 **24-4.1-303. Procedures for ensuring rights of victims of**
12 **crimes.** (14.9) (a) IF, IN A CASE OF AN ALLEGED SEX OFFENSE THAT HAS
13 NOT RESULTED IN A CONVICTION OR PLEA OF GUILTY OR WHEN A LAW
14 ENFORCEMENT REPORT OR A MEDICAL REPORT IS FILED PURSUANT TO
15 SECTION 12-240-139 (1)(b)(I), THE LAW ENFORCEMENT AGENCY, THE
16 COLORADO BUREAU OF INVESTIGATION, OR THE ACCREDITED CRIME
17 LABORATORY WITH CUSTODY OF FORENSIC MEDICAL EVIDENCE WANTS TO
18 DESTROY THE EVIDENCE, IT SHALL NOTIFY THE VICTIM AT LEAST SIXTY
19 DAYS PRIOR TO THE DESTRUCTION OF THE FORENSIC MEDICAL EVIDENCE.

20 (b) WHEN A VICTIM OBJECTS TO THE DESTRUCTION OF FORENSIC
21 MEDICAL EVIDENCE AFTER RECEIVING NOTICE PURSUANT TO SUBSECTION
22 (14.9)(a) OF THIS SECTION, THE LAW ENFORCEMENT AGENCY, THE
23 COLORADO BUREAU OF INVESTIGATION, OR THE ACCREDITED CRIME
24 LABORATORY SHALL RETAIN THE FORENSIC MEDICAL EVIDENCE FOR AN
25 ADDITIONAL TEN YEARS.

26 SECTION 7. In Colorado Revised Statutes, 18-3-407.5, **amend**
27 (3)(c) as follows:

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

17 **SECTION 8. Appropriation.** For the 2020-21 state fiscal year,
18 \$44,200 is appropriated to the department of public safety for use by the
19 division of criminal justice. This appropriation is from the general fund.
20 To implement this act, the division may use this appropriation for DCJ
21 administrative services.

22 **SECTION 9. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2020 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.