A BILL FOR AN ACT

CONCERNING FORENSIC MEDICAL EVIDENCE OF SEXUAL ASSAULT, AND,

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.
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.

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

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

(a) There has been a philosophical shift and accompanying statutory changes at the state and federal level regarding response to sexual assault victims. That shift acknowledges that providing victim-centered reporting options can:

(I) Begin to restore the power and control victims lose during an assault;

(II) Promotes improved long-term outcomes for victims; and

(III) Improves investigations and stronger prosecutions.

(b) In 2005, the federal "Violence Against Women Act", 42 U.S.C. sec. 3796gg-4 (b)(3), made clear victims of sexual assault cannot be charged, directly or indirectly, for a medical forensic exam and the associated testing of any evidence. The "Violence Against Women Act" also stated victims do not have to work with law enforcement to receive a medical forensic exam. Collectively, these provisions are known as forensic compliance.
(c) Through bills in 2008, 2013, and 2015, the state of Colorado came into compliance with the federal "Violence Against Women Act" forensic compliance provisions and created Colorado's current statutory structure that enables victims to determine a course of action with multidisciplinary responders acting from the victims' decisions. This included establishing the sexual assault victim emergency payment program, section 18-3-407.5 (3)(b), to pay for the evidence collection portion of the medical forensic exam collected pursuant to section 12-240-139 (1)(b).

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

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

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

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

24-33.5-524. Tracking forensic medical evidence in sexual
assault cases - study - report - definitions - repeal. (1) As used in this
section, unless the context otherwise requires:

(a) "Forensic medical evidence" means medical evidence
collected in connection with an alleged sexual assault.

(b) "Tracking system" means a uniform statewide system
to track the location, lab submission status, completion of
forensic testing, and storage of forensic medical evidence.

(2) (a) The division, in conjunction with a statewide
coalition that advocates for victims of sexual assault, shall
convene a statewide multidisciplinary committee to study how
to implement a statewide tracking system to allow a victim of
sexual assault to track the status of the victim's forensic
medical evidence. The committee must include:

(I) Law enforcement, including the Colorado bureau of
investigation;

(II) System and community-based advocates;

(III) Medical professionals;

(IV) District attorneys; and

(V) Other key stakeholders.
(b) To ensure any tracking system implemented in the state of Colorado is the most helpful it can be for victims of sexual assault and practitioners, the committee created pursuant to subsection (2)(a) of this section shall, as soon as practicable, but no later than December 1, 2021:

(I) Research forensic medical evidence collection costs for law enforcement agencies in relation to their overall evidence budgets and the effects of this on their ability to pay for medical forensic exams as required by section 18-3-407.5 (1);

(II) Determine the average costs of medical forensic exams statewide and whether the current sexual assault victim emergency payment program payment limits pursuant to section 18-3-407.7 (2)(c) are sufficient to meet the need;

(III) Determine whether victims are receiving medical bills they are prohibited from receiving pursuant to 42 U.S.C. sec. 3796gg-4 (b)(3);

(IV) Assess whether law enforcement agencies are sending forensic medical evidence for testing within twenty-one days as required by the rule promulgated pursuant to section 24-33.5-113;

(V) Research whether victims are being encouraged to decline a medical forensic evidence exam, including intimate partner violence cases of assault by strangulation as described in section 18-3-202 (1)(g), because law enforcement cannot afford to pay the cost of evidence collection pursuant to section 18-3-407.5 (1);

(VI) Research existing tracking systems with secure
ELECTRONIC ACCESS THAT:

(A) ALLOW A VICTIM, OR THE VICTIM’S DESIGNEE, TO ACCESS OR RECEIVE INFORMATION ABOUT THE LOCATION, LAB SUBMISSION STATUS, COMPLETION OF FORENSIC TESTING, AND STORAGE OF FORENSIC MEDICAL EVIDENCE THAT WAS GATHERED FROM THE VICTIM, PROVIDED THAT THE DISCLOSURE DOES NOT IMPEDOR COMPROMISE AN ONGOING INVESTIGATION AND REVEAL THE VICTIM’S CURRENT LOCATION; AND

(B) SAFEGUARD CONFIDENTIALITY AND LIMITED DISCLOSURE OF THE INFORMATION CONTAINED IN THE TRACKING SYSTEM;

(VII) DEVELOP GUIDELINES AND A PLAN TO IMPLEMENT A TRACKING SYSTEM;

(VIII) ESTIMATE THE MONEY, RESOURCES, AND TRAINING NEEDED TO CREATE, MANAGE, AND MAINTAIN THE TRACKING SYSTEM;

(IX) RECOMMEND SOURCES OF PUBLIC AND PRIVATE FUNDING TO IMPLEMENT THE PLANS DEVELOPED PURSUANT TO THIS SUBSECTION (2) AND REDUCING ADMINISTRATIVE REQUIREMENTS;

(X) RECOMMEND CHANGES TO LAW OR POLICY REQUIRED TO SUPPORT THE IMPLEMENTATION OF THE PLANS DEVELOPED PURSUANT TO THIS SUBSECTION (2); AND

(XI) REPORT THE DIVISION’S FINDINGS, RECOMMENDATIONS, AND ANY PROPOSED LEGISLATION TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES.

(3) IN CONDUCTING THE WORK REQUIRED BY SUBSECTION (2) OF THIS SECTION, THE DIVISION SHALL CONSULT WITH REPRESENTATIVES OF LAW ENFORCEMENT, DISTRICT ATTORNEYS, CRIMINAL DEFENSE ATTORNEYS, AND STATEWIDE ORGANIZATIONS REPRESENTING VICTIMS OF
SEXUAL ASSAULT.

(4) This section is repealed, effective July 1, 2021.

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

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

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

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

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

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

12-255-133.5. Licensee duties related to medical forensic evidence. (1) A LICENSEE WHO PERFORMS A MEDICAL FORENSIC EXAMINATION AS DESCRIBED IN SECTION 12-240-139 (1)(b)(I) SHALL INFORM THE VICTIM:
(a) If the victim makes a law enforcement report pursuant to Section 12-240-139 (1)(b)(I)(A), of the contact information for the nearest sexual assault victim advocate;

(b) If the victim makes a medical report pursuant to Section 12-240-139 (1)(b)(I)(B) or an anonymous report pursuant to Section 12-240-139 (1)(b)(I)(A), of the contact information for the nearest community-based victim advocate pursuant to 13-90-107 (1)(k)(I); and

(c) That any forensic medical evidence collected must be maintained until after the assailant may no longer be prosecuted for the crime and that the victim must be notified prior to the destruction of such evidence.

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

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

(b.8) For a victim who has had forensic medical evidence collected pursuant to Section 12-240-139 (1)(b) that has not resulted in a conviction or plea of guilty:

(I) The right to be notified that the forensic medical evidence has been submitted to an accredited crime lab for testing as required by to the rules promulgated pursuant to Section 24-33.5-113;

(II) The right to be notified when the law enforcement agency has received the results of the medical forensic evidence DNA analysis from the accredited crime laboratory;
(III) The right to be informed at least sixty days prior to the destruction of forensic medical evidence collected in connection with the alleged sex offense; and

(IV) The right to file, prior to the expiration of the sixty-day period, an objection with the law enforcement agency, the Colorado Bureau of Investigation, or the accredited crime laboratory that is proposing to destroy the forensic medical evidence.

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

24-4.1-303. Procedures for ensuring rights of victims of crimes. (14.9) (a) If, in a case of an alleged sex offense that has not resulted in a conviction or plea of guilty or when a law enforcement report or a medical report is filed pursuant to section 12-240-139 (1)(b)(I), the law enforcement agency, the Colorado Bureau of Investigation, or the accredited crime laboratory with custody of forensic medical evidence wants to destroy the evidence, it shall notify the victim at least sixty days prior to the destruction of the forensic medical evidence.

(b) When a victim objects to the destruction of forensic medical evidence after receiving notice pursuant to subsection (14.9)(a) of this section, the law enforcement agency, the Colorado Bureau of Investigation, or the accredited crime laboratory shall retain the forensic medical evidence for an additional ten years.

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

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

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.