

## CHAPTER 191

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**CRIMINAL LAW AND PROCEDURE**

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**HOUSE BILL 21-1143**

BY REPRESENTATIVE(S) Froelich and Soper, Amabile, Arndt, Bacon, Benavidez, Bernett, Bird, Bockenfeld, Caraveo, Carver, Cutter, Duran, Esgar, Exum, Geitner, Gonzales-Gutierrez, Herod, Jackson, Jodeh, Kennedy, Kipp, Lontine, Luck, McCluskie, McCormick, McKean, McLachlan, Michaelson Jenet, Mullica, Ortiz, Pelton, Pico, Ricks, Roberts, Sandridge, Sirota, Sullivan, Titone, Valdez A., Valdez D., Van Winkle, Weissman, Will, Williams, Woodrow, Young, Garnett; also SENATOR(S) Danielson, Bridges, Buckner, Cooke, Coram, Donovan, Fenberg, Fields, Gardner, Ginal, Gonzales, Hansen, Hisey, Holbert, Jaquez Lewis, Lee, Liston, Lundeen, Pettersen, Priola, Rankin, Rodriguez, Scott, Simpson, Story, Winter, Woodward, Zenzinger, Garcia.

**AN ACT****CONCERNING FORENSIC MEDICAL EVIDENCE OF SEXUAL ASSAULT.**

*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) Promote improved long-term outcomes for victims; and
- (III) Improve investigations and lead to stronger prosecutions.

(b) In 2005, 42 U.S.C. sec. 3796gg-4 (b)(3) of the federal "Violence Against Women Act" 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.

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*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.*

(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), C.R.S., to pay for the evidence collection portion of the medical forensic exam collected pursuant to section 12-240-139 (1)(b), C.R.S.

(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. The process is lengthy and sometimes opaque, and currently there are 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) 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, 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) OF THE CONTACT INFORMATION FOR THE NEAREST SEXUAL ASSAULT VICTIM'S ADVOCATE IF THE VICTIM MAKES A LAW ENFORCEMENT REPORT PURSUANT TO SECTION 12-240-139 (1)(b)(I)(A);

(B) OF THE CONTACT INFORMATION FOR THE NEAREST COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO SECTION 13-90-107 (1)(k)(II) 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)(C); 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 3.** 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) OF THE CONTACT INFORMATION FOR THE NEAREST SEXUAL ASSAULT VICTIM ADVOCATE IF THE VICTIM MAKES A LAW ENFORCEMENT REPORT PURSUANT TO SECTION 12-240-139 (1)(b)(I)(A);

(b) OF THE CONTACT INFORMATION FOR THE NEAREST COMMUNITY-BASED VICTIM ADVOCATE PURSUANT TO SECTION 13-90-107 (1)(k)(II) 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)(C); 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, 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, THE RIGHT TO BE NOTIFIED BY THE LAW ENFORCEMENT AGENCY WITH JURISDICTION FOR THE CASE, UPON REQUEST, OF THE STATUS AND LOCATION OF THE VICTIM'S FORENSIC MEDICAL EVIDENCE INCLUDING:

(I) THE RIGHT TO BE NOTIFIED THAT THE FORENSIC MEDICAL EVIDENCE HAS BEEN SUBMITTED TO AN ACCREDITED CRIME LAB FOR TESTING AS REQUIRED BY 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 OF WHETHER A DNA SAMPLE WAS OBTAINED FROM THE ANALYSIS AND WHETHER OR NOT THERE ARE MATCHES TO DNA PROFILES IN STATE OR FEDERAL DATABASES;

(IV) 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;

(V) 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;

(VI) THE RIGHT TO BE INFORMED OF ANY CHANGE IN STATUS OF THE CASE, INCLUDING IF THE CASE HAS BEEN CLOSED OR REOPENED; AND

(VII) THE RIGHT TO RECEIVE A PHYSICAL DOCUMENT IDENTIFYING THE RIGHTS UNDER LAW AFTER THE EXAM HAS BEEN COMPLETED.

**SECTION 5.** 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 6.** 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 THE LAW ENFORCEMENT AGENCY MUST MAINTAIN IT FOR AN ADDITIONAL TEN YEARS.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 27, 2021