

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0448.01 Jacob Baus x2173

HOUSE BILL 24-1072

HOUSE SPONSORSHIP

Bird and Frizell,

SENATE SPONSORSHIP

Kirkmeyer and Fields,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING INCREASED EVIDENTIARY REQUIREMENTS IN CRIMINAL
102 PROCEEDINGS FOR PROTECTION OF VICTIMS OF SEXUAL
103 ASSAULTS.

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>.)

Under current law, certain evidence of a victim's or witness's prior or subsequent sexual conduct is presumed irrelevant, but there is an exception for evidence of the victim's or witness's prior or subsequent sexual conduct with the defendant. The bill eliminates this exception.

The bill expands the criminal rape shield law to prohibit the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

admission of evidence of:

- The victim's manner of dress or hairstyle as evidence of the victim's consent; or
- A victim's behavioral or mental health that is offered by a defendant who is a psychotherapist who is accused of unlawful sexual behavior, unless the court finds that the evidence is relevant to a material issue to the case.

The bill amends what a moving party must show to the court and to opposing parties and what the court must find in order to introduce evidence that is presumed to be irrelevant under the criminal rape shield law.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-3-407, **amend** (1),
3 (2) introductory portion, (2)(a), and (2)(e); and **add** (1.3) and (1.7) as
4 follows:

5 **18-3-407. Victim's and witness's prior history - evidentiary**
6 **hearing - victim's identity - protective order.** (1) Evidence of specific
7 instances of the victim's or a witness's prior or subsequent sexual conduct,
8 opinion evidence of the victim's or a witness's sexual conduct, and
9 reputation evidence of the victim's or a witness's sexual conduct may be
10 admissible only at trial and shall not be admitted in any other proceeding
11 except at a proceeding pursuant to ~~paragraph (c) of subsection (2)~~
12 SUBSECTION (2)(c) of this section. At trial, such evidence ~~shall be~~ IS
13 presumed to be irrelevant except EVIDENCE OF SPECIFIC INSTANCES OF
14 SEXUAL ACTIVITY SHOWING THE SOURCE OR ORIGIN OF SEMEN,
15 PREGNANCY, DISEASE, OR ANY SIMILAR EVIDENCE OF SEXUAL
16 INTERCOURSE OFFERED FOR THE PURPOSE OF SHOWING THAT THE ACT OR
17 ACTS CHARGED WERE OR WERE NOT COMMITTED BY THE DEFENDANT.

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

1 (b) ~~Evidence of specific instances of sexual activity showing the~~
2 ~~source or origin of semen, pregnancy, disease, or any similar evidence of~~
3 ~~sexual intercourse offered for the purpose of showing that the act or acts~~
4 ~~charged were or were not committed by the defendant.~~

5 (1.3) (a) EVIDENCE OF THE VICTIM'S MANNER OF DRESS OR
6 HAIRSTYLE AT THE TIME OF, PRIOR TO, OR SUBSEQUENT TO THE ALLEGED
7 OFFENSE IS NOT ADMISSIBLE AS EVIDENCE OF THE VICTIM'S CONSENT TO
8 SEXUAL CONTACT, SEXUAL PENETRATION, OR SEXUAL INTRUSION BY THE
9 DEFENDANT IN A CASE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS
10 DEFINED BY SECTION 16-22-102 (9); AN OFFENSE DESCRIBED IN PART 4 OF
11 ARTICLE 7 OF THIS TITLE 18; OR AN ATTEMPT OR CONSPIRACY TO COMMIT
12 ANY OF THOSE OFFENSES.

13 (b) FOR PURPOSES OF THIS SECTION, "MANNER OF DRESS" DOES
14 NOT MEAN TESTIMONY OR PHYSICAL EVIDENCE OF THE VICTIM'S CLOTHING
15 OR ITS PHYSICAL CONDITION AT THE TIME OF, PRIOR TO, OR SUBSEQUENT
16 TO THE ALLEGED OFFENSE, OFFERED AS EVIDENCE FOR A PURPOSE OTHER
17 THAN THE VICTIM'S CONSENT.

18 (1.7) (a) EVIDENCE OF A VICTIM'S BEHAVIORAL OR MENTAL
19 HEALTH THAT IS OFFERED BY THE DEFENDANT WHO IS A
20 PSYCHOTHERAPIST, AS DEFINED IN SECTION 18-3-405.5 (4)(b), WHO IS
21 ACCUSED OF UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION
22 16-22-102 (9), OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THOSE
23 OFFENSES WHILE THE VICTIM WAS A CLIENT OF THE PSYCHOTHERAPIST, IS
24 NOT ADMISSIBLE UNLESS THE COURT FINDS THAT THE PROPOSED EVIDENCE
25 IS RELEVANT TO A MATERIAL ISSUE TO THE CASE AND THAT ITS
26 INFLAMMATORY OR PREJUDICIAL NATURE DOES NOT OUTWEIGH ITS
27 PROBATIVE VALUE, AND THE EVIDENCE OFFERED IS LIMITED TO THE

1 EXTENT NECESSARY FOR RELEVANCE.

2 (b) IF THE COURT ADMITS EVIDENCE PURSUANT TO SUBSECTION
3 (1.7)(a) OF THIS SECTION, THE EVIDENCE ADMISSION IS NOT A VICTIM'S
4 WAIVER OF PRIVILEGE PURSUANT TO SECTION 13-90-107, OR ANY OTHER
5 STATE OR FEDERAL LAW REQUIRING CONFIDENTIALITY OF PATIENT
6 INFORMATION.

7 (2) In any criminal prosecution for class 4 felony internet luring
8 of a child, as described in section 18-3-306 (3) or under sections 18-3-402
9 to 18-3-405.5, 18-3-504, 18-6-301, 18-6-302, 18-6-403, 18-6-404, and
10 any offense described in part 4 of article 7 of this ~~title~~ TITLE 18, or for
11 attempt or conspiracy to commit any of ~~said~~ THESE crimes, if evidence,
12 that is not excepted under subsection (1) of this section, of specific
13 instances of the victim's or a witness's prior or subsequent sexual conduct;
14 ~~or~~ opinion evidence of the victim's or a witness's sexual conduct; ~~or~~
15 reputation evidence of the victim's or a witness's sexual conduct; or
16 evidence that the victim or a witness has a history of false reporting of
17 sexual assaults is to be offered at trial, the following procedure shall be
18 followed:

19 (a) (I) A written motion ~~shall~~ MUST be made at least thirty-five
20 days prior to trial, unless later for good cause shown, to the court and to
21 the opposing parties stating that the moving party has an offer of proof ~~of~~
22 ~~the relevancy and materiality of evidence of specific instances of the~~
23 ~~victim's or witness' prior or subsequent sexual conduct, or opinion~~
24 ~~evidence of the victim's or witness' sexual conduct, or reputation evidence~~
25 ~~of the victim's or witness' sexual conduct, or evidence that the victim or~~
26 ~~witness has a history of false reporting of sexual assaults that is proposed~~
27 ~~to be presented~~ ARTICULATING FACTS THAT WOULD SUPPORT A JUDICIAL

1 FINDING THAT THE EVIDENCE OVERCOMES THE PRESUMPTION OF
2 IRRELEVANCE AND THAT THE PROBATIVE VALUE OF EVIDENCE OF SPECIFIC
3 INSTANCES OF THE VICTIM'S OR WITNESS'S PRIOR OR SUBSEQUENT SEXUAL
4 CONDUCT, OPINION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL
5 CONDUCT, REPUTATION EVIDENCE OF THE VICTIM'S OR WITNESS'S SEXUAL
6 CONDUCT, OR EVIDENCE THAT THE VICTIM OR WITNESS HAS A HISTORY OF
7 FALSE REPORTING OF UNLAWFUL SEXUAL BEHAVIOR OUTWEIGHS THE
8 PRESUMPTIVE PREJUDICE, CONFUSION OF ISSUES, AND THE PRIVACY OF THE
9 VICTIM OR WITNESS.

10 (II) IF THE MOVING PARTY INTENDS TO OFFER EVIDENCE
11 CONCERNING A HISTORY OF FALSE REPORTING OF SEXUAL ASSAULTS
12 PURSUANT TO SUBSECTION (2)(a)(I) OF THIS SECTION, THE PARTY MUST
13 ALSO ARTICULATE FACTS THAT WOULD, BY CLEAR AND CONVINCING
14 EVIDENCE, DEMONSTRATE THAT THE VICTIM OR WITNESS MADE MULTIPLE
15 REPORTS OF SEXUAL ASSAULT PRIOR OR SUBSEQUENT TO THE ALLEGED
16 OFFENSE THAT WERE:

17 (A) KNOWINGLY MADE OR KNOWINGLY CAUSED TO BE MADE TO
18 LAW ENFORCEMENT OR DEPARTMENT OF HUMAN SERVICES PERSONNEL;

19 (B) INTENTIONALLY MADE IN BAD FAITH; AND

20 (C) PROVEN IN FACT TO HAVE BEEN DEMONSTRABLY FALSE
21 ALLEGATIONS OF SEXUAL ASSAULTS.

22 (e) At the conclusion of the hearing, or by written order if no
23 hearing is held, if the court finds that the evidence proposed to be offered
24 regarding the sexual conduct of the victim or witness ~~is relevant to a~~
25 ~~material issue to the case~~ OVERCOMES THE PRESUMPTION OF
26 IRRELEVANCE, IS RELEVANT TO A MATERIAL ISSUE TO THE CASE, AND THAT
27 THE PROBATIVE VALUE OF THE EVIDENCE OUTWEIGHS THE PROBABILITY

1 THAT ITS ADMISSION WILL CREATE UNDUE PREJUDICE OR CONFUSION OF
2 ISSUES OR COMPROMISE THE PRIVACY OF THE VICTIM OR WITNESS, the
3 court shall order that evidence may be introduced and prescribe the nature
4 of the evidence or questions to be permitted. The moving party may then
5 offer evidence pursuant to the order of the court.

6 **SECTION 2. Effective date - applicability.** This act takes effect
7 July 1, 2024, and applies to proceedings occurring on or after said date.

8 **SECTION 3. Safety clause.** The general assembly finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, or safety or for appropriations for
11 the support and maintenance of the departments of the state and state
12 institutions.