

CHAPTER 198

CRIMINAL LAW AND PROCEDURE

SENATE BILL 95-153

BY SENATORS Wham, R. Powers, Alexander, Ament, Bishop, Hopper, Matsunaka, Meiklejohn, Norton, and Rizzuto;
also REPRESENTATIVES Agler, Adkins, Armstrong, Chavez, Chlouber, Dean, Entz, Friednash, Hernandez, Knox, Lyle, Nichol,
Reeser, Saliman, and Tucker.

AN ACT**CONCERNING METHODS TO FACILITATE THE PROSECUTION OF SEXUAL OFFENDERS BY AFFECTING
STATUTES IN A MANNER DESIGNED TO ASSIST SEXUAL ASSAULT VICTIMS.**

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

SECTION 1. Legislative declaration. (1) The general assembly recognizes that sexual assaults pose unique problems of great magnitude facing many Colorado citizens and that victims of sexual assault suffer physical, psychological, emotional, and financial injury as a result of their victimization. Because of the fear and stigma that often result from these crimes, many victims hesitate to seek help even when it is available at no cost to them. As a result, victims not only fail to receive necessary medical care and emergency counseling but they lack the psychological motivation and support necessary to report the crime and aid in any criminal investigation. The general assembly, therefore, recognizes the need for a more sensitive and unbiased approach in dealing with sexual assault victims and in investigating and prosecuting such crimes.

(2) The general assembly, therefore, declares that, in order to ensure the prevention and reduction of crime and to ensure the safety, health, and welfare of all Coloradans, it is necessary to revise statutes governing the provision of medical treatment for sexual assault victims and the methods applied by law enforcement in investigating and prosecuting sexual offenses.

SECTION 2. 16-21-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is **REPEALED AND REENACTED, WITH AMENDMENTS**, to read:

16-21-103. Information on offenders required - duties of law enforcement agencies - court. (1) (a) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT

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

OTHERWISE REQUIRES:

(I) "ACT OF DOMESTIC VIOLENCE" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-6-800.3 (1), C.R.S.

(II) "ARREST NUMBER" MEANS A NUMBER THAT SHALL BE ASSIGNED BY THE ARRESTING AGENCY TO AN ARREST OF THE ARRESTEE.

(III) "BUREAU" MEANS THE COLORADO BUREAU OF INVESTIGATION.

(IV) "SEXUAL OFFENSE" MEANS CRIMES DESCRIBED IN ARTICLE 3 OF TITLE 18, C.R.S., AND CRIMES DESCRIBED IN ARTICLES 6 AND 7 OF TITLE 18, C.R.S.

(V) "STATE IDENTIFICATION NUMBER" MEANS THE NUMBER ASSIGNED TO AN OFFENDER BY THE BUREAU BASED ON FINGERPRINT IDENTIFICATION.

(b) THE REQUIREMENTS OF THIS SECTION ARE INTENDED TO COMPLEMENT THE RULES OF CRIMINAL PROCEDURE AND SHALL NOT BE INTERPRETED TO CONFLICT WITH OR SUPERSEDE ANY SUCH RULES.

(2) (a) A LAW ENFORCEMENT AGENCY THAT REQUESTS THE FILING OF ANY CRIMINAL CASE SHALL SUBMIT TO THE DISTRICT ATTORNEY THE ARRESTING AGENCY'S NAME, THE OFFENDER'S FULL NAME AND DATE OF BIRTH, THE CHARGE OR CHARGES BEING REQUESTED, THE INVESTIGATING AGENCY'S CASE NUMBER, AND THE DATE OF ARREST AND THE ARREST NUMBER. IN ADDITION, THE LAW ENFORCEMENT AGENCY SHALL SUBMIT TO THE DISTRICT ATTORNEY ANY RELEVANT INFORMATION ABOUT THE OFFENDER'S AFFILIATION OR ASSOCIATION WITH GANGS OR GANG ACTIVITIES.

(b) IN ADDITION TO THE INFORMATION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2), A LAW ENFORCEMENT AGENCY SHALL COMPLY WITH THE FOLLOWING PROCEDURES:

(I) WHEN REQUESTING THE FILING OF ANY FELONY, MISDEMEANOR, OR PETTY OFFENSE, CRIMINAL CHARGE, OR A VIOLATION OF A MUNICIPAL ORDINANCE, THE FACTUAL BASIS OF WHICH INCLUDES AN ACT OF DOMESTIC VIOLENCE OR A SEXUAL OFFENSE, THE LAW ENFORCEMENT AGENCY SHALL SUBMIT TO THE PROSECUTING ATTORNEY THE INFORMATION SET FORTH IN THIS SUBSECTION (2).

(II) IF A LAW ENFORCEMENT AGENCY DIRECTLY ISSUES A COMPLAINT, SUMMONS, OR SUMMONS AND COMPLAINT FOR THE CHARGES DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE AGENCY SHALL IDENTIFY ON THE FACE OF SUCH DOCUMENT WHETHER THE FACTUAL BASIS FOR THE CHARGE OR CHARGES INCLUDES AN ACT OF DOMESTIC VIOLENCE OR A SEXUAL OFFENSE.

(3) A DISTRICT ATTORNEY WHO FILES ANY CRIMINAL CASE WITH THE COURT OR WHO REPORTS TO THE BUREAU A FINAL DISPOSITION OCCURRING IN THE DISTRICT ATTORNEY'S OFFICE SHALL SUBMIT THE ARRESTING AGENCY'S NAME, THE OFFENDER'S FULL NAME AND DATE OF BIRTH, THE INVESTIGATING AGENCY'S CASE NUMBER, THE DATE OF ARREST AND THE ARREST NUMBER, AND ANY OTHER INFORMATION THAT A LAW ENFORCEMENT AGENCY IS REQUIRED TO SUBMIT IN ACCORDANCE WITH

SUBSECTION (2) OF THIS SECTION.

(4) (a) UPON THE ISSUANCE OF A WARRANT OF ARREST, THE COURT SHALL NOTIFY THE SHERIFF OF THE COUNTY IN WHICH THE COURT IS LOCATED OF THE ISSUANCE OF SUCH WARRANT. WHEN THE COURT WITHDRAWS, CANCELS, QUASHES, OR OTHERWISE RENDERS A WARRANT OF ARREST INVALID, THE COURT SHALL IMMEDIATELY NOTIFY THE BUREAU OF SUCH ACTION IN A MANNER THAT IS CONSISTENT WITH PROCEDURES ESTABLISHED JOINTLY BY THE STATE COURT ADMINISTRATOR AND THE DIRECTOR OF THE BUREAU.

(b) WHEN THE COURT CREATES A NEW CRIMINAL CASE IN THE JUDICIAL MANAGEMENT INFORMATION SYSTEM, THE COURT SHALL ELECTRONICALLY NOTIFY THE BUREAU OF SUCH ACTION AND SHALL PROVIDE THE BUREAU WITH THE ARRESTING AGENCY'S NAME, THE ARREST DATE, AND THE ARREST NUMBER PROVIDED TO THE COURT IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. THEREAFTER, THE BUREAU SHALL ELECTRONICALLY NOTIFY THE COURT OF THE STATE IDENTIFICATION NUMBER, IF ANY, ASSIGNED TO THE OFFENDER.

(c) THE COURT SHALL REPORT THE FINAL DISPOSITION CONCERNING AN OFFENDER TO THE BUREAU IN A FORM THAT IS ELECTRONICALLY CONSISTENT WITH APPLICABLE LAW. THE REPORT SHALL BE MADE WITHIN SEVENTY-TWO HOURS AFTER THE FINAL DISPOSITION; EXCEPT THAT THE TIME PERIOD SHALL NOT INCLUDE SATURDAYS, SUNDAYS, OR LEGAL HOLIDAYS. THE REPORT SHALL INCLUDE THE INFORMATION PROVIDED TO THE COURT IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, THE DISPOSITION OF EACH CHARGE, AND THE COURT CASE NUMBER, AND, WITH RESPECT TO ANY CHARGE, THE FACTUAL BASIS OF WHICH INCLUDES AN ACT OF DOMESTIC VIOLENCE OR A SEXUAL OFFENSE, THE COURT AND THE BUREAU SHALL COMPLY WITH THE FOLLOWING PROCEDURES:

(I) THE COURT SHALL ADVISE THE BUREAU TO REFLECT THE CHANGE OF THE STATUS OF DOMESTIC VIOLENCE OR SEXUAL OFFENSE IF THE DEFENDANT IS FOUND NOT GUILTY OF THE ALLEGED CRIME OR IF THE CASE IS DISMISSED.

(II) THE COURT SHALL SPECIFY THAT THERE IS A CHANGE IN THE STATUS OF THE CHARGE ORIGINALLY SUBMITTED TO THE BUREAU IN ACCORDANCE WITH PARAGRAPH (b) OF THIS SUBSECTION (4), BASED UPON THE COURT'S FINDINGS.

(III) THE BUREAU SHALL REFLECT THE CHANGE OF STATUS BUT SHALL NOT DELETE OR ELIMINATE INFORMATION CONCERNING THE ORIGINAL CHARGE.

(5) (a) THE BUREAU SHALL MAINTAIN THE INFORMATION IT RECEIVES PURSUANT TO THIS ARTICLE AND SHALL MAKE SUCH INFORMATION IMMEDIATELY AVAILABLE THROUGH ELECTRONIC MEANS TO THE DEPARTMENT OF CORRECTIONS AND TO ANY OTHER CRIMINAL JUSTICE AGENCY UPON REQUEST.

(b) UPON RECEIPT OF THE FINGERPRINTS REQUIRED TO BE OBTAINED PURSUANT TO THIS ARTICLE, THE BUREAU SHALL PERFORM A COMPLETE SEARCH OF THE BUREAU'S FILES TO IDENTIFY ANY PRIOR CRIMINAL RECORD THAT THE OFFENDER MAY HAVE. UPON THE ASSOCIATION OF A UNIQUE STATE IDENTIFICATION NUMBER WITH ANY SUCH OFFENDER, THE BUREAU SHALL REPORT SUCH NUMBER ELECTRONICALLY TO THE SUBMITTING AGENCY AND TO THE DISTRICT ATTORNEY WITH JURISDICTION OVER THE

OFFENSE.

(6) THE INFORMATION RECEIVED BY THE BUREAU PURSUANT TO THIS ARTICLE SHALL BE MADE AVAILABLE TO ANY SENTENCING COURT, PROBATION OFFICE, OR OTHER PRETRIAL SERVICES AGENCY PREPARING A REPORT ON DOMESTIC VIOLENCE OR SEXUAL OFFENSE CASES AS SOON AS SUCH COURT, PROBATION OFFICE, OR AGENCY HAS THE NECESSARY COMPUTER SYSTEM IN PLACE TO RECEIVE SUCH INFORMATION.

SECTION 3. Part 4 of article 3 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

18-3-407.5. Victim evidence - forensic evidence - electronic lie detector exam without victim's consent prohibited. (1) ANY DIRECT COST ASSOCIATED WITH THE COLLECTION OF FORENSIC EVIDENCE FROM THE VICTIM SHALL BE PAID BY THE REFERRING OR REQUESTING LAW ENFORCEMENT AGENCY.

(2) NO LAW ENFORCEMENT AGENCY MAY REQUIRE A VICTIM OF A SEXUAL OFFENSE TO SUBMIT TO A POLYGRAPH EXAMINATION OR ANY FORM OF A MECHANICAL OR ELECTRICAL LIE DETECTOR EXAMINATION AS THE SOLE CONDITION FOR PROCEEDING WITH ANY CRIMINAL INVESTIGATION OR PROSECUTION. A LAW ENFORCEMENT AGENCY SHALL CONDUCT ANY SUCH EXAMINATION ONLY WITH THE VICTIM'S WRITTEN INFORMED CONSENT. CONSENT SHALL NOT BE CONSIDERED INFORMED UNLESS THE LAW ENFORCEMENT AGENCY INFORMS THE VICTIM IN WRITING OF THE VICTIM'S RIGHT TO REFUSE TO SUBMIT TO THE EXAMINATION. IN ADDITION, THE LAW ENFORCEMENT AGENCY SHALL ORALLY PROVIDE TO THE VICTIM INFORMATION ABOUT THE POTENTIAL USES OF THE RESULTS OF SUCH TESTS.

SECTION 4. 13-90-107 (1) (k), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-90-107. Who may not testify without consent. (1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(k) (I) A ~~private~~ victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., OR A VICTIM OF SEXUAL ASSAULT, AS DESCRIBED IN SECTIONS 18-3-401 TO 18-3-405.5, 18-6-301, AND 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "~~private~~ victim's advocate" means a person at a battered women's shelter OR RAPE CRISIS ORGANIZATION OR A comparable community-based advocacy program for victims of domestic violence OR SEXUAL ASSAULT AND DOES NOT INCLUDE AN ADVOCATE EMPLOYED BY ANY LAW ENFORCEMENT AGENCY:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence OR SEXUAL ASSAULT; and

(B) Who has undergone not less than fifteen hours of training as a victim's

advocate OR, WITH RESPECT TO AN ADVOCATE WHO ASSISTS VICTIMS OF SEXUAL ASSAULT, NOT LESS THAN THIRTY HOURS OF TRAINING AS A SEXUAL ASSAULT VICTIM'S ADVOCATE; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

SECTION 5. 19-3-304 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-3-304. Persons required to report child abuse or neglect. (2) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

(w) VICTIM'S ADVOCATE, AS DEFINED IN SECTION 13-90-107 (1) (k) (II), C.R.S.

SECTION 6. 24-33.5-412 (1) (n), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-33.5-412. Functions of bureau - legislative review. (1) The bureau has the following authority:

(n) To carry out the duties of maintaining information related to crimes involving acts of domestic violence ~~in the criminal justice information system network as described in~~ OR SEXUAL ASSAULT AS REQUIRED BY article 21 of title 16, C.R.S.

SECTION 7. The introductory portion to 24-33.5-415.3 (3), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-33.5-415.3. Information on gangs - legislative declaration. (3) To aid in the identification and location of gangs and gang members and to prevent recruitment of new gang members from both the population in general and persons in the custody of the department of corrections and the department of human services, the Colorado bureau of investigation shall develop and maintain a computerized data base system which tracks the whereabouts of identified gang members. Such data base shall be compiled from reports submitted to the bureau pursuant to section ~~16-21-103 (3);~~ 16-21-103, C.R.S. Such information shall include the following:

SECTION 8. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to offenses committed on or after said date.

SECTION 10. 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: May 25, 1995