

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0492.01 Michael Dohr x4347

HOUSE BILL 18-1243

HOUSE SPONSORSHIP

Foote and Wist,

SENATE SPONSORSHIP

Coram and Fields, Cooke

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ENACTMENT OF A CIVIL RAPE SHIELD LAW.

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 Colorado criminal law there is a rape shield law that presumes that evidence of a victim's sexual conduct is irrelevant and not admissible except for:

- ! Evidence of the victim's prior or subsequent sexual conduct with the defendant; or
- ! Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered for the

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.

purpose of showing that the act or acts were or were not committed by the defendant.

The bill creates a similar presumption in a civil proceeding involving alleged sexual misconduct. If a party wants to introduce sexual conduct evidence, it must file a confidential motion with the court at least 63 days prior to trial. Prior to ruling on the motion, the court shall conduct an in camera hearing and allow the parties and alleged victim to attend and be heard. All motions and all related records are kept under seal unless the court orders that the evidence is admissible.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-25-138 as
3 follows:

4 **13-25-138. Victim's and witness's prior sexual conduct history**
5 **- evidentiary hearing - victim's identity - protective order.**

6 (1) EVIDENCE OF SPECIFIC INSTANCES OF THE VICTIM'S PRIOR OR
7 SUBSEQUENT SEXUAL CONDUCT, OPINION EVIDENCE OF THE VICTIM'S
8 SEXUAL CONDUCT, AND REPUTATION EVIDENCE OF THE VICTIM'S SEXUAL
9 CONDUCT IS PRESUMED IRRELEVANT AND IS NOT ADMISSIBLE IN A CIVIL
10 PROCEEDING INVOLVING ALLEGED SEXUAL MISCONDUCT EXCEPT:

11 (a) EVIDENCE OF THE VICTIM'S PRIOR OR SUBSEQUENT SEXUAL
12 CONDUCT WITH THE DEFENDANT;

13 (b) EVIDENCE OF SPECIFIC INSTANCES OF SEXUAL ACTIVITY
14 SHOWING THE SOURCE OR ORIGIN OF SEMEN, PREGNANCY, DISEASE, OR
15 ANY SIMILAR EVIDENCE OF SEXUAL INTERCOURSE OFFERED FOR THE
16 PURPOSE OF SHOWING THAT THE ACT OR ACTS ALLEGED WERE OR WERE
17 NOT COMMITTED BY THE DEFENDANT.

18 (2) IF A PARTY INTENDS TO OFFER EVIDENCE UNDER SUBSECTION
19 (1)(a) OR (1)(b) OF THIS SECTION, THE PARTY SHALL:

20 (a) FILE A WRITTEN MOTION AT LEAST SIXTY-THREE DAYS PRIOR TO

1 TRIAL, UNLESS LATER FOR GOOD CAUSE SHOWN, TO THE COURT AND TO
2 THE OPPOSING PARTIES STATING THAT THE MOVING PARTY HAS AN OFFER
3 OF PROOF OF THE RELEVANCY AND MATERIALITY OF EVIDENCE OF SPECIFIC
4 INSTANCES OF THE VICTIM'S PRIOR OR SUBSEQUENT SEXUAL CONDUCT, OR
5 OPINION EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT, OR REPUTATION
6 EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT THAT IS PROPOSED TO BE
7 PRESENTED. THE WRITTEN MOTION MUST BE ACCOMPANIED BY AN
8 AFFIDAVIT IN WHICH THE OFFER OF PROOF IS STATED.

9 (b) NOTIFY THE ALLEGED VICTIM OR ALLEGED VICTIM'S
10 REPRESENTATIVE.

11 (3) (a) BEFORE ADMITTING EVIDENCE UNDER THIS SECTION, THE
12 COURT SHALL CONDUCT AN IN CAMERA HEARING AND PROVIDE THE
13 ALLEGED VICTIM AND PARTIES A RIGHT TO ATTEND AND BE HEARD.
14 UNLESS THE COURT ORDERS OTHERWISE, THE MOTION, RELATED
15 MATERIALS, AND THE HEARING RECORD ARE CONFIDENTIAL. A PARTY
16 MAKING A MOTION UNDER THIS SECTION SHALL STATE IN THE CAPTION
17 THAT THE MOTION IS CONFIDENTIAL.

18 (b) AT THE CONCLUSION OF THE HEARING, IF THE COURT FINDS
19 THAT THE EVIDENCE PROPOSED TO BE OFFERED REGARDING THE SEXUAL
20 CONDUCT OF THE VICTIM IS RELEVANT TO A MATERIAL ISSUE TO THE CASE,
21 THE COURT SHALL ORDER THAT EVIDENCE MAY BE INTRODUCED AND
22 PRESCRIBE THE NATURE OF THE EVIDENCE OR QUESTIONS TO BE
23 PERMITTED. THE MOVING PARTY MAY THEN OFFER EVIDENCE PURSUANT
24 TO THE ORDER OF THE COURT.

25 (c) ALL MOTIONS AND SUPPORTING DOCUMENTS FILED PURSUANT
26 TO THIS SECTION MUST BE FILED UNDER SEAL AND MAY BE UNSEALED
27 ONLY IF THE COURT RULES THAT THE EVIDENCE IS ADMISSIBLE AND THE

1 CASE PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF
2 THE EVIDENCE CONTAINED IN THE MOTION IS ADMISSIBLE, ONLY THAT
3 PORTION OF THE MOTION AND SUPPORTING DOCUMENTS PERTAINING TO
4 THE ADMISSIBLE PORTION MAY BE UNSEALED.

5 (d) THE COURT SHALL SEAL ALL COURT TRANSCRIPTS, TAPE
6 RECORDINGS, AND RECORDS OF PROCEEDINGS, OTHER THAN MINUTE
7 ORDERS OF A HEARING HELD PURSUANT TO THIS SECTION. THE COURT MAY
8 UNSEAL THE TRANSCRIPTS, TAPE RECORDINGS, AND RECORDS ONLY IF THE
9 COURT RULES THAT THE EVIDENCE IS ADMISSIBLE AND THE CASE
10 PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE
11 EVIDENCE IS ADMISSIBLE, ONLY THE PORTION OF THE HEARING PERTAINING
12 TO THE ADMISSIBLE EVIDENCE MAY BE UNSEALED.

13 (4) IN A CIVIL PROCEEDING, AT ANY TIME UPON MOTION OF THE
14 PLAINTIFF OR ON THE COURT'S OWN MOTION, THE COURT MAY ISSUE A
15 PROTECTIVE ORDER PURSUANT TO THE COLORADO RULES OF CIVIL
16 PROCEDURE CONCERNING DISCLOSURE OF INFORMATION RELATING TO THE
17 VICTIM. THE COURT MAY PUNISH A VIOLATION OF A PROTECTIVE ORDER BY
18 CONTEMPT OF COURT.

19 **SECTION 2. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.