

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 18-0492.01 Michael Dohr x4347

**HOUSE BILL 18-1243**

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**HOUSE SPONSORSHIP**

**Foote and Wist,**

**SENATE SPONSORSHIP**

**Coram and Fields, Cooke**

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

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**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.*

SENATE  
3rd Reading Unamended  
April 5, 2018

SENATE  
2nd Reading Unamended  
April 4, 2018

HOUSE  
3rd Reading Unamended  
March 26, 2018

HOUSE  
Amended 2nd Reading  
March 23, 2018

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.

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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.