

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 25-0378.02 Jacob Baus x2173

HOUSE BILL 25-1138

HOUSE SPONSORSHIP

Lukens and Pugliese, Bird

SENATE SPONSORSHIP

Kirkmeyer and Daugherty, Frizell

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING EVIDENTIARY REQUIREMENTS TO PROTECT VICTIMS OF**
102 **SEXUAL MISCONDUCT IN CIVIL SUITS.**

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 prior or subsequent sexual conduct is presumed irrelevant and inadmissible in a civil proceeding, but there is an exception for evidence of the victim's prior or subsequent sexual conduct with the defendant. The bill eliminates this exception.

The bill prohibits the admission of evidence of the victim's manner

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.

HOUSE
Amended 2nd Reading
February 6, 2025

of dress, hairstyle, speech, or lifestyle as evidence of the victim's consent, credibility, or the existence or extent of damages or harm.

The bill requires that the party moving to admit evidence presumed irrelevant must raise the issue at a pretrial conference and make a prima facie showing that the evidence is relevant for an admissible reason and that discovery is likely to rebut the presumption of inadmissibility. The court is required to allow the nonmoving party to object. If the court allows discovery, the court must issue a protective order that limits the scope of discovery to relevant issues and protect against unwarranted, irrelevant, or overly broad discovery into the alleged victim's sexual conduct or history.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-25-138, **amend**
3 (1), (2) introductory portion, (3)(a), and (3)(b); and **add** (1.5) and (3)(a.5)
4 as follows:

5 **13-25-138. Victim's prior sexual conduct history - evidentiary**
6 **hearing - victim's identity - protective order.** (1) Evidence of specific
7 instances of the victim's prior or subsequent sexual conduct, opinion
8 evidence of the victim's sexual conduct, and reputation evidence of the
9 victim's sexual conduct is presumed irrelevant and is not admissible in a
10 civil proceeding involving alleged sexual misconduct except FOR
11 EVIDENCE OF SPECIFIC INSTANCES OF SEXUAL ACTIVITY SHOWING THE
12 SOURCE OR ORIGIN OF **SEMEN** OR ANY SIMILAR EVIDENCE OF SEXUAL
13 INTERCOURSE OFFERED FOR THE PURPOSE OF SHOWING THAT THE ALLEGED
14 ACT WAS NOT COMMITTED BY THE DEFENDANT.

15 ~~(a) Evidence of the victim's prior or subsequent sexual conduct~~
16 ~~with the defendant;~~

17 ~~(b) Evidence of specific instances of sexual activity showing the~~
18 ~~source or origin of semen, pregnancy, disease, or any similar evidence of~~
19 ~~sexual intercourse offered for the purpose of showing that the act or acts~~

1 ~~alleged were or were not committed by the defendant.~~

2 (1.5) EVIDENCE OF THE VICTIM'S MANNER OF DRESS, HAIRSTYLE,
3 MODE OR MANNER OF SPEECH, OR LIFESTYLE AT THE TIME OF, PRIOR TO, OR
4 SUBSEQUENT TO THE ALLEGED OFFENSE IS NOT ADMISSIBLE AS EVIDENCE
5 OF THE VICTIM'S CONSENT, CREDIBILITY, OR THE EXISTENCE OR EXTENT OF
6 DAMAGES OR HARM.

7 (2) If a party intends to offer evidence ~~under subsection (1)(a) or~~
8 ~~(1)(b)~~ PURSUANT TO SUBSECTION (1) OR (1.5) of this section, OR
9 INTRODUCE A WITNESS FROM WHOM THE EVIDENCE IS INTENDED TO BE
10 ELICITED, the party shall:

11 (3) (a) (I) ~~Before admitting evidence under this section, the court~~
12 ~~shall conduct an in camera hearing and provide the alleged victim and~~
13 ~~parties a right to attend and be heard. Unless the court orders otherwise,~~
14 ~~the motion, related materials, and the hearing record are confidential. A~~
15 ~~party making a motion under this section shall state in the caption that the~~
16 ~~motion is confidential.~~ BEFORE ADMITTING EVIDENCE PURSUANT TO THIS
17 SECTION, THE PARTY MAKING A MOTION TO ADMIT THE EVIDENCE SHALL
18 RAISE THE ISSUE AT A CONFERENCE PURSUANT TO RULE 16 OR 16.1 OF THE
19 COLORADO RULES OF CIVIL PROCEDURE. AT THE CONFERENCE, THE
20 MOVING PARTY MUST MAKE A PRIMA FACIE SHOWING THAT THE EVIDENCE
21 IS RELEVANT FOR AN ADMISSIBLE REASON AND THAT DISCOVERY IS LIKELY
22 TO REBUT THE PRESUMPTION AGAINST INADMISSIBILITY. THE COURT SHALL
23 PROVIDE THE OBJECTING PARTY, IF ANY, THE OPPORTUNITY BE HEARD.

24 (II) THE COURT MAY PERMIT DISCOVERY ONLY IF THE MOVING
25 PARTY MAKES A PRIMA FACIE SHOWING THAT THE EVIDENCE IS RELEVANT
26 FOR AN ADMISSIBLE REASON AND THAT DISCOVERY IS LIKELY TO REBUT
27 THE PRESUMPTION AGAINST INADMISSIBILITY. IF THE COURT PERMITS

1 DISCOVERY, THE COURT SHALL ISSUE A COMPREHENSIVE PROTECTIVE
2 ORDER THAT LIMITS THE SCOPE OF DISCOVERY TO RELEVANT ISSUES AND
3 PROTECTS AGAINST UNWARRANTED, IRRELEVANT, OR OVERLY BROAD
4 DISCOVERY INTO THE ALLEGED VICTIM'S SEXUAL CONDUCT OR HISTORY.

5 (III) THE COURT MUST ISSUE AN ORDER PROHIBITING DISCOVERY
6 INTO EVIDENCE PRESUMED INADMISSIBLE PURSUANT TO THIS SECTION IF
7 NEITHER PARTY RAISES THE ISSUE AT A CONFERENCE PURSUANT TO RULE
8 16 OR 16.1 OF THE COLORADO RULES OF CIVIL PROCEDURE OR IF THE
9 MOVING PARTY FAILS TO MAKE A PRIMA FACIE SHOWING THAT THE
10 EVIDENCE IS RELEVANT FOR AN ADMISSIBLE REASON AND THAT
11 DISCOVERY IS LIKELY TO REBUT THE PRESUMPTION AGAINST
12 INADMISSIBILITY.

13 (a.5) BEFORE ADMITTING EVIDENCE PURSUANT TO THIS SECTION,
14 THE COURT SHALL CONDUCT AN IN CAMERA HEARING AND PROVIDE THE
15 ALLEGED VICTIM THE RIGHT TO ATTEND AND BE HEARD. THE MOTION,
16 RELATED MATERIALS, AND THE HEARING RECORD ARE CONFIDENTIAL. A
17 PARTY MAKING A MOTION PURSUANT TO THIS SECTION SHALL STATE IN THE
18 CAPTION THAT THE MOTION IS CONFIDENTIAL. AFTER THE CONCLUSION OF
19 THE IN CAMERA HEARING, IF A PARTY MAKES A MOTION TO MAKE THE
20 RELATED MATERIALS OR HEARING RECORD PUBLIC, THE PARTY'S MOTION
21 MUST NOT DISCLOSE ANY CONFIDENTIAL INFORMATION.

22 (b) At the conclusion of the hearing, if the court finds that the
23 evidence proposed to be offered regarding the sexual conduct of the
24 victim is relevant to a material issue to the case AND THAT ITS PROBATIVE
25 VALUE SUBSTANTIALLY OUTWEIGHS THE PROBABILITY THAT ITS
26 ADMISSION WILL CREATE AN UNFAIR PREJUDICE OR INVASION OF PRIVACY,
27 the court shall order that evidence may be introduced and prescribe the

1 nature of the evidence or questions to be permitted. The moving party
2 may then offer evidence pursuant to the order of the court.

3 **SECTION 2. Effective date - applicability.** This act takes effect
4 July 1, 2025, and applies to proceedings occurring on or after said date.

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