

CHAPTER 83

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 08-1217

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also SENATOR(S) Shaffer, Bacon, Boyd, Gibbs, Isgar, Keller, Morse, Penry, Sandoval, Schwartz, Spence, Tochtrop, Tupa, Veiga, Ward, Wiens, Williams, and Windels.

AN ACT

CONCERNING AMENDING STATUTES RELATED TO EVIDENCE IN SEXUAL ASSAULT CASES TO CONFORM WITH THE FEDERAL "VIOLENCE AGAINST WOMEN ACT".

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

SECTION 1. 18-3-407.5 (2), Colorado Revised Statutes, is amended, and the said 18-3-407.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-3-407.5. Victim evidence - forensic evidence - electronic lie detector exam without victim's consent prohibited. (2) ~~Not~~ A law enforcement agency, PROSECUTING OFFICER, OR OTHER GOVERNMENT OFFICIAL may NOT ASK OR 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~~ A condition for proceeding with any criminal investigation or prosecution OF AN OFFENSE. A law enforcement agency shall conduct ~~any such~~ THE 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~~ THE EXAMINATION.

(3) (a) A LAW ENFORCEMENT AGENCY, PROSECUTING OFFICER, OR OTHER GOVERNMENT OFFICIAL MAY NOT ASK OR REQUIRE A VICTIM OF A SEXUAL OFFENSE TO PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM PROCESS OR COOPERATE WITH

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

THE LAW ENFORCEMENT AGENCY, PROSECUTING OFFICER, OR OTHER GOVERNMENT OFFICIAL AS A CONDITION OF RECEIVING A FORENSIC MEDICAL EXAMINATION THAT INCLUDES THE COLLECTION OF EVIDENCE.

(b) A VICTIM OF A SEXUAL OFFENSE SHALL NOT BEAR THE COST OF A FORENSIC MEDICAL EXAMINATION THAT INCLUDES THE COLLECTION OF EVIDENCE THAT IS USED FOR THE PURPOSE OF EVIDENCE COLLECTION EVEN IF THE VICTIM DOES NOT WANT TO PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM OR OTHERWISE COOPERATE WITH THE LAW ENFORCEMENT AGENCY, PROSECUTING OFFICER, OR OTHER GOVERNMENTAL OFFICIAL. THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL PAY THE COST OF THE EXAMINATION.

(c) WHEN PERSONNEL AT A MEDICAL FACILITY PERFORM A FORENSIC MEDICAL EXAMINATION THAT INCLUDES THE COLLECTION OF EVIDENCE BASED ON THE REQUEST OF A VICTIM OF A SEXUAL OFFENSE, NOT IN CONNECTION WITH A REFERRING OR REQUESTING LAW ENFORCEMENT AGENCY, AND THE MEDICAL FACILITY PERFORMING THE EXAMINATION KNOWS WHERE THE CRIME OCCURRED, THE FACILITY SHALL CONTACT THE LAW ENFORCEMENT AGENCY IN WHOSE JURISDICTION THE CRIME OCCURRED REGARDING PRESERVATION OF THE EVIDENCE. IF THE MEDICAL FACILITY DOES NOT KNOW WHERE THE CRIME OCCURRED, THE FACILITY SHALL CONTACT ITS LOCAL LAW ENFORCEMENT AGENCY REGARDING PRESERVATION OF THE EVIDENCE. NOTWITHSTANDING ANY OTHER STATUTORY REQUIREMENTS REGARDING STORAGE OF BIOLOGICAL EVIDENCE, THE LAW ENFORCEMENT AGENCY CONTACTED BY THE MEDICAL FACILITY SHALL RETRIEVE THE EVIDENCE FROM THE FACILITY AND STORE IT FOR AT LEAST TWO YEARS.

SECTION 2. 12-36-135 (1), Colorado Revised Statutes, is amended to read:

12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability. (1) (a) It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or an injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, as defined in section 18-9-204.5 (2) (b), C.R.S., or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report ~~such~~ THE injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(b) WHEN A LICENSEE PERFORMS A FORENSIC MEDICAL EXAMINATION THAT INCLUDES THE COLLECTION OF EVIDENCE AT THE REQUEST OF A VICTIM OF SEXUAL ASSAULT, NOT IN CONNECTION WITH A REFERRING OR REQUESTING LAW ENFORCEMENT AGENCY, AND THE LICENSEE'S EMPLOYING MEDICAL FACILITY KNOWS WHERE THE CRIME OCCURRED, THE FACILITY SHALL CONTACT THE LAW ENFORCEMENT AGENCY IN WHOSE JURISDICTION THE CRIME OCCURRED REGARDING PRESERVATION OF THE EVIDENCE. IF THE MEDICAL FACILITY DOES NOT KNOW WHERE

THE CRIME OCCURRED, THE FACILITY SHALL CONTACT ITS LOCAL LAW ENFORCEMENT AGENCY REGARDING PRESERVATION OF THE EVIDENCE.

SECTION 3. 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: March 31, 2008