

Law Offices of  
**JOHN KENNETH PINEAU, P.C.**

Grill Mansion, 2305 Broadway, Boulder, Colorado 80304-4106

Telephone: 303-440-4444 Fax: 303-449-2198 Email: johnpineau@yahoo.com Web: www.johnpineau.com

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RE: HB24-1072 Amendments

Dear Honorable Senators,

My name is John Kenneth Pineau. I have been working in the courts for 42 years, a lawyer for 30 years, the President of the Gilpin County Bar Association for 24 years, and a finalist to the Governor for a judgeship.

HB 24-1072 must be amended in two ways. The proposed changes in regard to hair and clothing are reasonable amendments to the rape shield law, C.R.S. 18-3-407. However, the hidden suppression of sexual history between the accuser and the accused will result in innocents being sent to prison for life.

1. Prior and Subsequent Sexual Conduct: Our current rules of evidence are well tested, reliable, and rigorously enforced by the Bench. The same rules of evidence apply to all cases, from bike theft to murder. The Colorado Rules of Evidence are not permissive, as they are part of a judicial system that imprisons more citizens than any other country on earth. In the prosecution of sex assault allegations, Colorado has gone even further with a raft of special evidence rules that make it even easier to convict those accused of a sex offense. C.R.S. 16-10-301 allows similar conduct to be admitted against the accused. C.R.S. 13-25-129 allows hearsay to be admitted against the accused. C.R.S. 18-3-407, the rape shield statute, suppresses evidence that might be admitted against the alleged victim. And the Lifetime Supervision Act (November 1998) imposes a life-sentence on most felony sex offenses as well as life-time registration. As a consequence, sex offenders are the largest category of prison inmates, twenty-five percent in Colorado.

We are now faced with the choice of making it even easier to convict and impose a life sentence on those accused of these crimes by denying the accused the right to present to the jury, and confront the accuser with, the prior and subsequent sexual contact between the parties.

One true example from hundreds begins to illustrate a thorny problem: A woman was living with her boyfriend, but she began a sexual relationship with a young college student named Bob. After several months, the woman called Bob and said her boyfriend had become suspicious. She told Bob to delete all of their text messages in which they had talked romantically and arranged their various sexual trysts. Bob deleted their texts. The woman then told her boyfriend that Bob had raped her. The boyfriend had her report the rape to police. Bob was arrested and charged with forcible rape and faced a life-sentence to prison. All the evidence of their actual real consensual sex was deleted and only the false allegations of non-consensual sex that had never

occurred remained. Fortunately, in our representation of Bob, an expert witness was able to recover the deleted texts. Ultimately, the Court dismissed all charges. However, HB24-1072 presumes the evidence of the real consensual sex (the text messages) is irrelevant and inadmissible and the false allegations of a rape that never occurred are the sole focus of the trial. Under HB24-1072, Bob, an innocent college student, would now be about fifteen years into a life-sentence for rape. And to bring it home, how would the honorable Representative Herod, or any legislator, defend themselves against false allegations, if Colorado law suppresses the prior and subsequent conduct of an accuser?

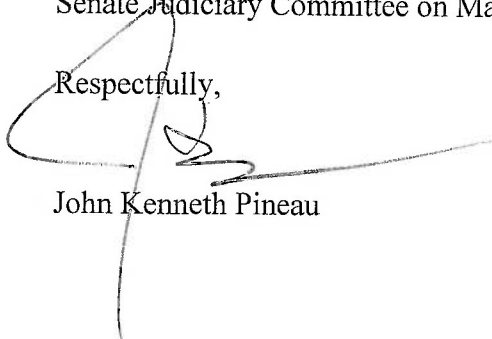
In nearly every allegation of sex assault, the prior and subsequent history between the parties is relevant to determine, in cases like Bob's, the credibility of the allegation, the actual true nature of the relationship, and the range of the parties' consensual conduct. You and every Colorado jury struggling to find the truth in a life-sentence case wants to know, and needs to know, the true romantic and sexual conduct of the parties before rendering a just verdict. Without it, juries will be left with the misleading impression that the only sexual contact between the parties is the alleged incident.

To avoid adding the innocent to those convicted of these charges, I propose the following small amendment to HB24-1072 at Section 2 (1) to state, "Subject to constitutional limitations *and not including sexual conduct between the victim and the defendant*, evidence of specific instances of the victim's or a witness's prior or subsequent sexual conduct, opinion evidence of the victim's or a witness's sexual conduct may be admissible only at trial and shall not be admitted in any other proceeding pursuant to Subsection (2)(c) of this section."

2. Ex Post Facto: There is a long line of Constitutionally based cases that have found changing the rules to alter the admissibility of exculpatory evidence then applying the new rule to old cases violates the Ex Post Facto provision of the United States Constitution, see for example Carmel v. Texas, 120 U.S. 1620 (2000). A small edit will avoid legions of meritorious appeals to an already crowded docket: HB24-1072, Section 3. Effective Date - applicability. "This act takes effect July 1, 2024, and applies to *conduct* proceedings occurring on or after said date."

Thank you very much for your time and consideration. If you have any questions or concerns, please do not hesitate to contact me. It is our intent to testify further at the hearing before the Senate Judiciary Committee on March 20, 2024, 1:30 P.M. Hope to see you then.

Respectfully,



John Kenneth Pineau