

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 08-0565.01 Michael Dohr

HOUSE BILL 08-1217

HOUSE SPONSORSHIP

Roberts,

SENATE SPONSORSHIP

Shaffer,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits a law enforcement agency, prosecuting officer, or other government official from asking a sexual assault victim to take a lie detector test as a condition of proceeding with the criminal investigation or prosecution. Prohibits a law enforcement agency from asking or requiring a sexual assault victim to participate in the criminal justice process in order to receive a forensic medical exam that includes the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
February 18, 2008

collection of evidence ("exam"). Requires the division of criminal justice in the department of public safety, and not the victim, to pay for the exam. Requires a medical facility that performs an exam on a victim that is not at the request of a law enforcement agency to contact law enforcement regarding the storage of the evidence.

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

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

5 **18-3-407.5. Victim evidence - forensic evidence - electronic lie**
6 **detector exam without victim's consent prohibited.** (2) ~~No~~ A law
7 enforcement agency, PROSECUTING OFFICER, OR OTHER GOVERNMENT
8 OFFICIAL may NOT ASK OR require a victim of a sexual offense to submit
9 to a polygraph examination or any form of a mechanical or electrical lie
10 detector examination as ~~the sole~~ A condition for proceeding with any
11 criminal investigation or prosecution OF AN OFFENSE. A law enforcement
12 agency shall conduct ~~any such~~ THE examination only with the victim's
13 written informed consent. Consent shall not be considered informed
14 unless the law enforcement agency informs the victim in writing of the
15 victim's right to refuse to submit to the examination. In addition, the law
16 enforcement agency shall orally provide to the victim information about
17 the potential uses of the results of ~~such tests~~ THE EXAMINATION.

18 (3) (a) A LAW ENFORCEMENT AGENCY, PROSECUTING OFFICER, OR
19 OTHER GOVERNMENT OFFICIAL MAY NOT ASK OR REQUIRE A VICTIM OF A
20 SEXUAL OFFENSE TO PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM
21 PROCESS OR COOPERATE WITH THE LAW ENFORCEMENT AGENCY,
22 PROSECUTING OFFICER, OR OTHER GOVERNMENT OFFICIAL AS A CONDITION
23 OF RECEIVING A FORENSIC MEDICAL EXAMINATION THAT INCLUDES THE

1 COLLECTION OF EVIDENCE.

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

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

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

27 **12-36-135. Injuries to be reported - penalty for failure to**

1 **report - immunity from liability.** (1) (a) It shall be the duty of every
2 licensee who attends or treats a bullet wound, a gunshot wound, a powder
3 burn, or any other injury arising from the discharge of a firearm, or an
4 injury caused by a knife, an ice pick, or any other sharp or pointed
5 instrument that the licensee believes to have been intentionally inflicted
6 upon a person, or an injury arising from a dog bite that the licensee
7 believes was inflicted upon a person by a dangerous dog, as defined in
8 section 18-9-204.5 (2) (b), C.R.S., or any other injury that the licensee has
9 reason to believe involves a criminal act, including injuries resulting from
10 domestic violence, to report ~~such~~ THE injury at once to the police of the
11 city, town, or city and county or the sheriff of the county in which the
12 licensee is located. Any licensee who fails to make a report as required
13 by this section commits a class 2 petty offense, as defined by section
14 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a
15 fine of not more than three hundred dollars, or by imprisonment in the
16 county jail for not more than ninety days, or by both such fine and
17 imprisonment.

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

1 EVIDENCE.

2 **SECTION 3. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.