

NOTE: The governor signed this measure on 6/5/2013.

An Act

HOUSE BILL 13-1020

BY REPRESENTATIVE(S) McNulty, Buck, Conti, Coram, Court, Duran, Fields, Foote, Hamner, Kagan, Lebsock, McLachlan, Melton, Mitsch Bush, Moreno, Pabon, Pettersen, Primavera, Priola, Rosenthal, Salazar, Schafer, Scott, Singer, Tyler, Waller, Williams, Young, Ferrandino, Buckner, DelGrosso, Dore, Gerou, Holbert, Hullinghorst, Joshi, Labuda, Landgraf, Lawrence, Murray, Navarro, Rankin, Saine, Stephens, Swalm, Vigil, Wilson;

also SENATOR(S) Roberts, Aguilar, Baumgardner, Brophy, Cadman, Carroll, Crowder, Giron, Guzman, Harvey, Heath, Hodge, Hudak, Jahn, Johnston, Jones, Kefalas, Kerr, Lambert, Marble, Newell, Scheffel, Schwartz, Tochtrop, Todd, Ulibarri, Morse.

CONCERNING EVIDENCE COLLECTED IN CONNECTION WITH A SEXUAL ASSAULT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 24-33.5-113 as follows:

24-33.5-113. Forensic medical evidence in sexual assault cases - rules - testing - confidentiality - repeal. (1) **Rules.** (a) ON OR BEFORE

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

THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL BEGIN THE PROCESS OF PROMULGATING RULES FOR FORENSIC MEDICAL EVIDENCE COLLECTED IN CONNECTION WITH AN ALLEGED SEXUAL ASSAULT. NOT LESS THAN NINETY DAYS PRIOR TO THE PROMULGATION OF THE RULES, THE DIVISION SHALL CONVENE A REPRESENTATIVE GROUP OF PARTICIPANTS AS DEFINED IN SECTION 24-4-102 (14.5) TO SOLICIT INPUT INTO THE DEVELOPMENT OF THE RULES. THE REPRESENTATIVE GROUP MUST INCLUDE PERSONS AFFECTED BY THE RULES AND PERSONS RESPONSIBLE FOR IMPLEMENTATION OF THE RULES. THE DIVISION MAY CONVENE AS MANY MEETINGS OF THE REPRESENTATIVE GROUP AS IS NECESSARY.

(b) ON OR BEFORE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL PROMULGATE THE RULES. THE RULES MUST INCLUDE:

(I) A REQUIREMENT THAT FORENSIC EVIDENCE MUST BE COLLECTED IF A VICTIM OF AN ALLEGED SEXUAL ASSAULT REQUESTS IT TO BE COLLECTED;

(II) STANDARDS FOR WHAT EVIDENCE MUST BE SUBMITTED TO THE COLORADO BUREAU OF INVESTIGATION OR ANOTHER ACCREDITED CRIME LABORATORY;

(III) TIME FRAMES FOR WHEN THE EVIDENCE MUST BE SUBMITTED, ANALYZED, AND COMPARED TO DNA DATABASES. THE RULES ON TIME FRAMES MUST INDICATE THAT, ONCE THE BACKLOG DESCRIBED IN SUBSECTION (4) OF THIS SECTION IS RESOLVED, EVIDENCE THAT MEETS THE CRITERIA FOR MANDATORY SUBMISSION MUST BE SUBMITTED WITHIN TWENTY-ONE DAYS AFTER RECEIPT BY A LAW ENFORCEMENT AGENCY.

(IV) STANDARDS FOR CONSENT FOR THE COLLECTION, TESTING, AND RELEASE OF TEST RESULTS OF THE FORENSIC MEDICAL EVIDENCE, INCLUDING BUT NOT LIMITED TO:

(A) CONSENT FORMS THAT NOTIFY PERSONS OF THE POTENTIAL EFFECTS OF EACH STEP OF THE PROCESS, INCLUDING COLLECTION, TESTING, AND RELEASE OF TEST RESULTS AND REQUIRE ACKNOWLEDGMENT OF CONSENT FOR EACH STEP OF THE PROCESS;

(B) WHO MAY GIVE CONSENT AND WHEN IS IT REQUIRED;

(C) WHO MAY WITHDRAW CONSENT AND WHEN IT MAY BE WITHDRAWN; AND

(D) WHEN AND HOW RESULTS OF TESTS MAY BE RELEASED AND FOR WHAT PURPOSES;

(V) A PLAN FOR PRIORITIZING THE TESTING OF THE BACKLOG OF FORENSIC MEDICAL EVIDENCE TO BE FORWARDED TO THE COLORADO BUREAU OF INVESTIGATION PURSUANT TO SUBSECTION (4) OF THIS SECTION AND A PLAN FOR TESTING NEWLY COLLECTED FORENSIC MEDICAL EVIDENCE ONCE THE BACKLOG IS RESOLVED; AND

(VI) THE DATE, AS SOON AS PRACTICABLE, BY WHICH A LAW ENFORCEMENT AGENCY MUST ANALYZE ITS BACKLOG OF FORENSIC MEDICAL EVIDENCE IF IT DOES NOT FORWARD SUCH EVIDENCE TO THE COLORADO BUREAU OF INVESTIGATION FOR ANALYSIS.

(2) LAW ENFORCEMENT AND MEDICAL PERSONNEL SHALL NOT, FOR ANY REASON, DISCOURAGE A VICTIM OF AN ALLEGED SEXUAL ASSAULT FROM RECEIVING A FORENSIC MEDICAL EXAMINATION.

(3) **Compliance.** (a) (I) ON AND AFTER NINETY DAYS AFTER THE PROMULGATION OF THE RULES AUTHORIZED BY PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, ALL LAW ENFORCEMENT AGENCIES IN THE STATE SHALL COMPLY WITH THE PROMULGATED RULES.

(II) THE FAILURE OF A LAW ENFORCEMENT AGENCY TO COMPLY WITH THE RULES PROMULGATED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION DOES NOT AFFECT:

(A) THE AUTHORITY OF THE AGENCY TO SUBMIT THE EVIDENCE TO THE COLORADO BUREAU OF INVESTIGATION OR OTHER ACCREDITED CRIME LABORATORY;

(B) THE AUTHORITY OF THE COLORADO BUREAU OF INVESTIGATION OR OTHER ACCREDITED CRIME LABORATORY TO ANALYZE THE EVIDENCE OR PROVIDE RESULTS OF THE ANALYSIS TO APPROPRIATE PERSONS; OR

(C) THE ADMISSIBILITY OF THE EVIDENCE IN ANY COURT.

(b) ON AND AFTER NINETY DAYS AFTER THE PROMULGATION OF THE RULES DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, ALL PERSONNEL AT A MEDICAL FACILITY PERFORMING A FORENSIC MEDICAL EXAMINATION AND ALL OTHER PERSONS HAVING CUSTODY OF FORENSIC MEDICAL EVIDENCE COLLECTED IN CONNECTION WITH AN ALLEGED SEXUAL ASSAULT OR THE RESULTS OF TESTS CONDUCTED ON THE EVIDENCE SHALL COMPLY WITH THE PROMULGATED RULES.

(c) A PERSON WHO RECEIVES EVIDENCE OR RESULTS OF TESTS UNDER THIS SECTION SHALL NOT DISCLOSE THE EVIDENCE OR TEST RESULTS EXCEPT TO THE EXTENT THAT DISCLOSURE IS CONSISTENT WITH THE AUTHORIZED PURPOSE FOR WHICH THE PERSON OBTAINED THE EVIDENCE.

(4) **Backlog.** (a) ON OR BEFORE NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH LAW ENFORCEMENT AGENCY SHALL SUBMIT TO THE COLORADO BUREAU OF INVESTIGATION AN INVENTORY OF ALL FORENSIC MEDICAL EVIDENCE OF ANY ALLEGED SEXUAL ASSAULTS THAT HAS NOT BEEN ANALYZED BY THE COLORADO BUREAU OF INVESTIGATION OR OTHER ACCREDITED CRIME LABORATORY AND THAT IS FOR AN ACTIVE CRIMINAL INVESTIGATION.

(b) SUBJECT TO AVAILABLE LABORATORY SPACE, ON OR BEFORE ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH LAW ENFORCEMENT AGENCY SHALL FORWARD TO THE COLORADO BUREAU OF INVESTIGATION OR OTHER ACCREDITED CRIME LABORATORY THE FORENSIC MEDICAL EVIDENCE IDENTIFIED ON THE INVENTORY SUBMITTED TO THE COLORADO BUREAU OF INVESTIGATION.

(c) ON OR BEFORE ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COLORADO BUREAU OF INVESTIGATION SHALL SUBMIT TO THE GOVERNOR AND TO THE JUDICIARY COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, A PROPOSED PLAN FOR ANALYZING AS SOON AS PRACTICABLE ALL OF THE FORENSIC MEDICAL EVIDENCE OF ALLEGED SEXUAL ASSAULTS INVENTORIED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) AND FOR ANALYZING NEWLY COLLECTED FORENSIC MEDICAL EVIDENCE AS SOON AS PRACTICABLE.

(d) A LAW ENFORCEMENT AGENCY MAY DEVELOP ITS OWN PLAN TO ANALYZE FORENSIC MEDICAL EVIDENCE OF ALLEGED SEXUAL ASSAULTS IF ALL EVIDENCE IS ANALYZED BY THE DATE SPECIFIED BY RULE PURSUANT TO SUBSECTION (1) OF THIS SECTION. IF A LAW ENFORCEMENT AGENCY DEVELOPS ITS OWN PLAN, IT SHALL NOT FORWARD AN INVENTORY OF THE FORENSIC MEDICAL EVIDENCE TO THE COLORADO BUREAU OF INVESTIGATION AS REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (4).

(e) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JULY 1, 2015.

(5) THE DEPARTMENT OF PUBLIC SAFETY SHALL INCLUDE WITHIN ITS BUDGET REQUESTS AND SUPPLEMENTAL BUDGET REQUESTS SUBMITTED TO THE JOINT BUDGET COMMITTEE FUNDING REQUESTS TO ANALYZE AS SOON AS PRACTICABLE THE BACKLOG OF FORENSIC MEDICAL EVIDENCE OF ANY ALLEGED SEXUAL ASSAULTS FORWARDED TO THE COLORADO BUREAU OF INVESTIGATION PURSUANT TO SUBSECTION (4) OF THIS SECTION AND TO ANALYZE NEWLY COLLECTED FORENSIC MEDICAL EVIDENCE AS SOON AS PRACTICABLE.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for the fiscal year beginning July 1, 2013, the sum of \$6,351,002, or so much thereof as may be necessary, for allocation to the Colorado bureau of investigation, laboratory and investigative services, operating expenses, for contract services for testing of backlog evidence related to the implementation of this act.

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.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO