



# **SB 128: Concerning Reports to Law Enforcement by Medical Facilities with the Consent of a Victim of a Sexual Assault**

Sponsored by Senator Morgan Carroll & Representative Lois Landgraf

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## **What is the purpose of the bill?**

Because sexual assault is the most underreported crime in the United States,<sup>1</sup> the purpose of this bill is to give adult sexual assault victims (who are seeking medical care) more choices and options regarding involvement with the criminal justice system. If a victim wants to have evidence collected, s/he will be able to choose one of the three reporting options:

- 1) **Law Enforcement Report:** Victim chooses to work with law enforcement at the time of medical care and evidence collection. Evidence is tested (upon victim consent) and stored by local law enforcement, under the victim's name. *This option already exists under current Colorado law.*
- 2) **Medical Report:** Victim chooses not to participate with a law enforcement investigation at the time of medical care and evidence collection. However, the evidence can be tested (upon victim consent) and is stored by local law enforcement, using the victim's name. *This option already exists under current Colorado law.*
- 3) **Anonymous Report:** Victim chooses not to participate with a law enforcement investigation at the time of medical care and evidence collection. While the victim can choose to have an "anonymous" conversation with law enforcement, law enforcement receives no identifying information for the victim, unless and until the victim chooses to share that information. The collected evidence will be stored by law enforcement using a unique identifying number, and law enforcement will not receive any victim identifying information. Anonymously reporting victims will not be able to have their evidence tested, unless and until the victim converts to a medical or law enforcement report. *This option will be created by this statutory revision.*

For cases in which a patient receives sexual assault medical care, but no evidence is collected, a sexual assault report is not required to be made to law enforcement. This clarification is consistent with a September 2003 Office of the Attorney General Formal Opinion regarding interpretation of this statute.

## **Why is this legislation necessary?**

- The current statute (C.R.S. 12-36-135) does not explicitly address sexual assault law enforcement reporting options, defined by victim choice.
- Only nine states (including CO) have mandatory reporting requirements for adult patients seeking sexual assault medical care.<sup>2</sup> Nationally, best practice is to provide victim choice regarding law enforcement interactions.
- Sexual assault is an intensely personal crime. It is the most underreported crime in the United States<sup>3</sup> for reasons including but not limited to: fear of the perpetrator, concern about confidentiality, uncertainty about being believed or blamed, and/or fear of negative consequences (arrest of the victim if the sexual assault was facilitated by illegal drugs or underage drinking, deportation if undocumented, etc.).

*(Turn Over)*

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<sup>1</sup> United States Department of Justice. (2007) National crime victimization survey: <http://www.bjs.gov/content/pub/pdf/cv07.pdf>.

<sup>2</sup> Rape and Sexual Assault Reporting Requirements for Competent Adult Victims: <http://www.ncdsv.org/images/RapeandSAReportingRequirement-Scalzo6.15.06.pdf>.

<sup>3</sup> United States Department of Justice. (2007) National crime victimization survey: <http://www.bjs.gov/content/pub/pdf/cv07.pdf>.

- There is varying interpretation as to how this statute applies to nurses, who are often the caregivers to sexual assault patients. This revision will clarify that victim choice should dictate what nurses report to law enforcement.

### **How will this help victims, assist medical professionals, and increase public safety?**

- Sexual assault perpetrators often target victims who are vulnerable, accessible, and/or lacking in credibility.<sup>4</sup> These victims are the most likely to fear law enforcement interaction, but still need and deserve medical attention and support services following a sexual assault. With this revision, victims who are afraid of law enforcement will be able to access critical medical attention and support services without fear impeding this care.
- Law enforcement will have the ability to gain rapport with victims who, with the protection of anonymity, will feel safe enough to come forward to learn about their reporting options and access time sensitive care. Providing victims with more options may encourage increased reporting of sexual assault. This trauma-informed approach gives the victim sufficient time to process decision-making.
- Statutory clarification will result in a more consistent application amongst medical professionals.

### **Is this legislation needed?**

**YES.** In addition to the reasons noted, in 2011, the Colorado Coalition Against Sexual Assault and the Division of Criminal Justice, Office for Victim Programs collaboratively reviewed 151 adult medical mandated reporting cases and surveyed 239 sexual assault response professionals (law enforcement, advocates, prosecutors, and medical personnel) in order to determine how this statute was interpreted and applied in our state.<sup>5</sup> Over half of the survey respondents encountered at least one victim who wanted to report the sexual assault, but also wanted to remain anonymous. *This finding is significant because anonymity is not currently presented as an option to the majority of victims in Colorado.* This revision is also consistent with national best practices in sexual assault response and the purpose and spirit of the federal Violence Against Women Act.<sup>6</sup>

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<sup>4</sup> For an overview of their more comprehensive research, see N. Groth & H.J. Birnbaum, *Men Who Rape: The Psychology of the Offender* (Da Capo Press, 2001).

<sup>5</sup> Forensic Compliance in Colorado: An Examination of System Response to Sexual Assault: <http://www.ccasa.org/wp-content/uploads/2013/12/FCEP-Rpt-v04-Web.pdf>.

<sup>6</sup> 42 USC § 3796gg-4(b)(3)(D)(d)