

Appendix

> **Colorado Evidence Collections/Testing Law, DNA Laws, and CODIS information**

This appendix is included to provide additional Information regarding the Sexual Assault Evidence Collection and Testing Law, Colorado's DNA Testing and Storage Laws, and general information regarding Sexual Assault Kits, DNA, and CODIS.

SEXUAL ASSAULT EVIDENCE COLLECTION AND TESTING LAW (HB13-1020; C.R.S. § 24-33.5-113)

The law went into effect on March 1, 2014. It has two parts: Backlog Testing and Sexual Assault Kit Testing for Kits Collected After March 1, 2014. The law also mandated that a rule be developed by the Colorado Department of Public Safety to provide structure and ensure the intent of the law would be met. That rule, which has the force of law, can be found at: <http://www.sos.state.co.us/CCR/>. Click the "Browse CCR by Agency Name" link. Then look down the list for CCR number 1507, which will be associated with "Bureau of Investigation, Colorado" in the Agency Name column.

Testing the Backlog of Sexual Assault Evidence Kits

- Requires all law enforcement agencies to submit an inventory of "active" sexual assault kits (SA kits) to CBI
- CBI prioritized the kits for testing with up to 4,000 kits able to be tested
- All qualifying kits will be sent to certified private labs out of state
- SA kits were shipped to labs for testing beginning in late February
- Initial testing results will be sent to local law enforcement agencies beginning in early May
- Individual agencies determine what to do with any new information developed as a result of the testing

Testing of Sexual Assault Kits collected after March 1, 2014

- All SA kits will be tested, except for two categories:
 - > A victim chooses not to have their kit tested; or
 - > A sexual assault allegation is proven false via an investigation (*not proving it true does not mean it's false*).
- Law enforcement agencies must submit qualifying kits to CBI within 21 days of receiving the kit

- Victim consent was expanded:
 - > Victim consent required for exam (*this was not new*)
 - > Victim chooses whether or not to participate in an investigation (*not new*)
 - > Victim chooses whether to have SA kit sent for testing (*new*)
 - > Victim can withdraw consent prior to testing beginning (*new*)
- The choice to have a medical forensic exam rests solely with the victim; law enforcement officers, advocates and prosecutors have no role in this decision regardless of the circumstances of the case; C.R.S. § 24-33.5-113(1)(b)(I)
- Law enforcement and medical professionals cannot, for any reason, discourage a victim from obtaining a medical forensic exam; C.R.S. § 24-33.5-113(2)

> DNA LAWS

DNA Collection Laws

- Persons arrested and charged with a felony are required to submit a DNA sample which is entered into CODIS (previously only convicted felons had to submit DNA; in 2009 felony arrestees were also required to submit DNA); C.R.S. § 16-23-103 (arrestees) and C.R.S. § 16-11-1-2.4 (convicted offenders)
- Persons convicted of some misdemeanor unlawful sexual contact crimes must submit a DNA sample which is entered into CODIS; C.R.S. § 16-11-1-2.4

DNA Storage Laws

- Generally speaking, DNA evidence for crimes that do not result in filed charges must be stored for the related crime's statute of limitations (SOL); C.R.S. § 18-1-1103(1)
 - > SOL for adult felony sexual assault is generally 10 years with some exceptions; C.R.S. § 16-5-401(8)
 - > SOL for adult misdemeanor sexual assault is generally 5 years; C.R.S. § 16-5-401(9)
 - > There is no SOL for sexual assault on a child; C.R.S. § 16-5-401(1)(a)
- DNA evidence associated with crimes resulting in a conviction must be stored for the life of the convicted offender; C.R.S. § 18-1-1103(2)
- Exception: sexual assault kits for medical reporting victims (those who receive a medical forensic exam but choose at that time to not participate in a law enforcement investigation) must be stored for a minimum of two years. They can be stored longer, but may not be stored for less than two years; C.R.S. § 18-3-407.5

GENERAL INFORMATION – SEXUAL ASSAULT KITS, DNA, AND CODIS

- Sexual assault kits may contain forensic evidence, such as foreign biological samples, that are collected from the victim by a medical professional after a sexual assault
- In Colorado, sexual assault kits are tested at laboratories managed by the Colorado Bureau of Investigation (Denver, Pueblo and Grand Junction), the Denver Police Department, and the Colorado Springs Police Department.
- When sexual assault kits are tested, sometimes a unique DNA profile can be identified and submitted to the FBI's Combined DNA Index System (CODIS)
 - > DNA Profiles
 - + A person's DNA profile is a unique identifier
 - + DNA is found in every cell with a nucleus and is a chain of 4 chemical compounds that uniquely combine and form approximately 3 billion base pairs in each individual
 - + Some DNA is called "junk" DNA because it is inactive in the sense that it has no role in determining a person's physical characteristics; this DNA is used for criminal justice DNA profiling
 - + In the criminal justice context, a DNA profile is a numerical representation of 13 specific points (loci) on a person's inactive DNA
 - + A criminal justice DNA profile is essentially a string of 26 numbers and shows less than one-millionth of all the information contained in a person's DNA
 - + DNA profiles used for criminal justice purposes can only be used to compare a profile to other profiles to see if they match; they cannot determine a person's physical traits
 - > CODIS
 - + CODIS is comprised of several databases that include nationwide DNA samples from crime scenes, convicted offenders and arrestees
 - + Profiles developed from sexual assault kits are run against all profiles in the CODIS databases to look for "hits" – a "hit" means that person has been linked to another crime through their DNA profile
 - + Hits can link criminal cases with unknown suspects, known suspects, convicted offenders and arrestees
 - + Hits can also affirm a survivor's story and help catch serial rapists