

**DEPARTMENT OF PUBLIC SAFETY
Colorado Bureau of Investigation**

Evidence Collection in Connection with Sexual Assaults

8 CCR 1507-29

**STATEMENT OF BASIS, STATUTORY AUTHORITY,
AND PURPOSE**

Pursuant to Section 24-33.5-113, C.R.S., the Colorado Department of Public Safety Executive Director is mandated to promulgate rules and regulations concerning forensic medical evidence collection in connection with sexual assaults. Upon delegation from the Executive Director, the CBI Director led the hearing that took place on Aug. 8, 2022.

The rules have been amended to reflect two changes pertaining to the rules: (1) the lab accrediting authority referenced in the original rules no longer exists, so the rules must be updated to remove reference to that agency; (2) to clarify the age range of sexual assault victims who may withdraw their consent for evidence collection and forensic evidence, based on existing statutes pertaining to mandatory reporting.



Stan Hilkey
Executive Director, Department of Public Safety

August 17, 2022

Date of Adoption

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

AUTHORITY

The Colorado Department of Public Safety Executive Director is mandated to promulgate rules and regulations concerning forensic medical evidence collection in connection with sexual assaults pursuant to CRS § 24-33.5-113.

DEFINITIONS

The following definitions apply to these rules and regulations:

"Accredited Crime Laboratory" means a law enforcement crime laboratory which has received forensic accreditation through ISO/IEC (International Organization of Standardization/International Electrotechnical Commission) 17025 2017 by a recognized accrediting body.

"Backlog" as referenced in C.R.S § 24-33.5-113 means all unanalyzed collected forensic medical evidence stored in any law enforcement facility in the State of Colorado. All forensic medical evidence received by law enforcement entities as part of an active investigation shall be considered "backlog" until

the date these rules become effective.

"CODIS" (COmbined DNA Index System) means a database system controlled by the Federal Bureau of Investigation (FBI) authorizing individuals within an accredited crime laboratory to utilize the system upon successful completion of a FBI QAS (Quality Assurance Standards) audit.

"Forensic Evidence" as referenced in section 113 (b) (I) of CRS § 24-33.5-113 means forensic medical evidence.

"Forensic Medical Evidence" means evidence collected by medical or law enforcement personnel using a sexual assault evidence collection kit (or components thereof) consistent with state/national collection standards. This excludes any toxicological evidence.

"Forensic evidence analysis/release of results" for the purposes of this law means that any results from the forensic analysis conducted will be released to the submitting agency.

APPLICABILITY

These rules and regulations apply to all personnel who participate in any or all parts of the collection, transportation, storage, forensic analysis, investigation, and the judicial process of forensic medical evidence in connection to alleged sexual assaults occurring in the State of Colorado. These rules must be

complied with by March 1, 2014.

CONSENT

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Forensic medical evidence must be collected if a victim of an alleged sexual assault requests the collection. Law enforcement and medical personnel shall not, for any reason, discourage a victim of an alleged sexual assault from receiving a forensic medical examination.

Any person who receives forensic medical evidence or the results of those tests conducted on the forensic medical evidence shall not disclose that information except for the authorized purpose for which that forensic medical evidence was obtained.

The COLORADO SEXUAL ASSAULT CONSENT AND INFORMATION FORM must be utilized to obtain consent from and provide information to sexual assault victims regarding:

- 1) Evidence collection through a medical forensic exam;
- 2) Forensic evidence analysis/release of results;
- 3) Reporting options; and
- 4) Victims' ability to withdraw consent.

This form must be used beginning March 1, 2014. This form should be utilized prior to the collection of forensic medical evidence whether collected by medical or law enforcement personnel.

Consent or non-consent must be confirmed through the victim's initials and signature on the form.

Sexual assault victims, ages 18 to 69 at the time of the reported offense/alleged incident, may withdraw their consent for evidence collection and forensic evidence analysis/release of results. However, consent for analysis/release of results cannot be withdrawn once forensic analysis has been initiated by a qualified employee of an accredited crime laboratory.

Withdrawal of consent becomes effective when the investigating law enforcement agency verifies that the person seeking to withdraw consent is the victim who is acting of her/his own free will. If possible, law enforcement should obtain written confirmation of the withdrawal from the victim.

If the evidence collection kit is in the custody of the accredited crime lab when the withdrawal of consent becomes effective, law enforcement must notify the accredited crime lab about the withdrawal as soon as possible, but no later than the second business day after consent has been withdrawn and victim identification has been verified.

Law enforcement must make a reasonable attempt to verify the identity of the person seeking to withdraw consent. If law enforcement cannot verify the identity of the person seeking to withdraw consent, or does not believe the victim is acting of her/his own free will, consent cannot be withdrawn.

FORENSIC ANALYSIS

Beginning on March 1, 2014, all forensic medical evidence received by a law enforcement entity must be submitted to the Colorado Bureau of Investigation or an accredited crime laboratory for analysis within 21 days of receipt of such evidence except under the following circumstances:

- 1) The victim has not consented or has withdrawn consent to have the forensic analysis conducted;
- 2) A law enforcement investigation has corroborating evidence that the alleged sexual assault never occurred; or

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- 3) The law enforcement entity is not the investigating agency and must forward the forensic medical evidence to the appropriate agency of jurisdiction for submission as soon as possible.

Upon submission to an accredited crime laboratory, that laboratory must strive to analyze and, when appropriate, upload the information into CODIS within six (6) months of receipt of the forensic medical evidence being submitted, assuming the laboratory has sufficient resources.

The appropriate accredited crime laboratory must report the results of the forensic analysis upon completion of the analysis to the submitting agency.

LAW ENFORCEMENT

Law enforcement agencies must submit their backlog of untested forensic medical evidence for analysis to the Colorado Bureau of Investigation or another accredited crime laboratory no later than March 1, 2014.

These rules apply whether the forensic medical evidence is submitted to the Colorado Bureau of Investigation or to another accredited crime laboratory.

Editor's Notes

History

Entire rule eff. 12/05/2013.