

CHAPTER 143

CRIMINAL LAW AND PROCEDURE

SENATE BILL 18-026

BY SENATOR(S) Kagan, Court, Guzman, Martinez Humenik, Merrifield, Jones, Kefalas, Tate;
also REPRESENTATIVE(S) Herod and Willett, Buckner, Hansen, Winkler.

AN ACT**CONCERNING MEASURES TO MAKE SEX OFFENDER REGISTRATION MORE EFFECTIVE.**

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

SECTION 1. In Colorado Revised Statutes, 16-22-103, **amend** (3) as follows:

16-22-103. Sex offender registration - required - applicability - exception.

(3) In addition to the persons specified in subsections (1) and (2) of this section, any person convicted of an offense in any other state or jurisdiction, including but not limited to a military or federal jurisdiction, for which the person, as a result of the conviction, is ~~was, has been, or would be~~ required to register if he or she resided in the state or jurisdiction of conviction, or for which such person would be required to register if convicted in Colorado, shall be required to register in the manner specified in section 16-22-108, so long as such person is a temporary or permanent resident of Colorado. Such person may petition the court for an order that discontinues the requirement for registration in this state at the times specified in section 16-22-113 for offense classifications that are comparable to the classification of the offense for which the person was convicted in the other state or jurisdiction. ~~SUCH PERSON MAY PETITION THE COURT FOR AN ORDER THAT DISCONTINUES THE REQUIREMENT FOR REGISTRATION IN THIS STATE FOR OFFENSE CLASSIFICATIONS THAT SUCH PERSON WOULD NOT BE REQUIRED TO REGISTER FOR IF CONVICTED IN COLORADO.~~

SECTION 2. In Colorado Revised Statutes, 16-22-108, **amend** (1)(a)(II) and (1)(d)(I) as follows:

16-22-108. Registration - procedure - frequency - place - change of address - fee. (1) (a) (II) Each person who is required to register pursuant to section

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

16-22-103 shall initially register or, if sentenced on or after January 1, 2005, confirm his or her initial registration within five business days after release from incarceration for commission of the offense requiring registration or within five business days after receiving notice of the duty to register, if the person was not incarcerated. The person shall register with the local law enforcement agency during business hours by completing a standardized registration form provided to the person by the local law enforcement agency and paying the registration fee imposed by the local law enforcement agency as provided in subsection (7) of this section.

AFTER THE INITIAL REGISTRATION, THE LOCAL LAW ENFORCEMENT AGENCY MAY WAIVE THE REQUIREMENT THAT THE PERSON REREGISTER IN PERSON IF THE REGISTRANT SUFFERS FROM A CHRONIC PHYSICAL OR INTELLECTUAL DISABILITY THAT SUBSTANTIALLY LIMITS THE PERSON'S ABILITY TO FUNCTION INDEPENDENTLY AND PARTICIPATE IN MAJOR LIFE ACTIVITIES TO THE EXTENT THAT IT IS A SEVERE HARDSHIP TO REREGISTER IN PERSON AND THERE IS A MEDICAL RECORD OF SUCH DISABILITY. IF THE LAW ENFORCEMENT AGENCY WAIVES THE REQUIREMENT TO REREGISTER IN PERSON, THE LAW ENFORCEMENT AGENCY SHALL REREGISTER THE PERSON AFTER VERIFYING THE PERSON'S CURRENT ADDRESS WITH THE PERSON AND AT LEAST ONE OTHER RELIABLE SOURCE WHICH MAY INCLUDE: HIS OR HER CAREGIVER, HIS OR HER FAMILY, THE FACILITY WHERE THE PERSON RESIDES, OR ANOTHER SOURCE OF VERIFICATION SATISFACTORY TO THE LAW ENFORCEMENT AGENCY. THE LAW ENFORCEMENT AGENCY SHALL PROVIDE VERIFICATION OF THE WAIVER, BY THE SUBMISSION OF A FORM DEVELOPED BY THE CBI, TO THE CBI AND ANY OTHER LAW ENFORCEMENT AGENCY WITH WHICH THE REGISTRANT IS REQUIRED TO REGISTER. IF THE LAW ENFORCEMENT AGENCY ISSUES SUCH A WAIVER, EVERY THREE YEARS THE AGENCY MUST DETERMINE WHETHER THE REGISTRANT STILL MEETS THE WAIVER REQUIREMENTS AND REAUTHORIZE THE WAIVER. IF THE LAW ENFORCEMENT AGENCY ISSUES A WAIVER OR REAUTHORIZES THE WAIVER, THE LAW ENFORCEMENT AGENCY SHALL ALSO NOTIFY THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER IS REQUIRED TO REGISTER, IF THE VICTIM OF THE OFFENSE HAS REQUESTED NOTICE AND PROVIDED CONTACT INFORMATION. The CBI shall provide standardized registration forms to the local law enforcement agencies pursuant to section 16-22-109.

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in ~~subparagraph (H) of this paragraph (d)~~ SUBSECTION (1)(d)(II) OF THIS SECTION has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in ~~subparagraph (H) of this paragraph (d)~~, the person may petition the court for discontinuation of the duty to register SUBSECTION (1)(d)(II) OF THIS SECTION, THE PERSON'S DUTY TO REGISTER MAY DISCONTINUE as provided in section 16-22-113 (1)(d). In addition to registering as required in ~~paragraph (a) of this subsection (I)~~ SUBSECTION (1)(a) OF THIS SECTION, the person shall reregister within five business days before or after the date that is three months after the date on which the person was released from incarceration for commission of the offense requiring registration or, if the person was not incarcerated, after the date on which he or she received notice of the duty to register. The person shall register within five business days before or after that date every three months thereafter until the person's birthday. The person shall reregister within five business days before or after his or her next birthday and shall reregister within five business days before or after that date every three months thereafter. The person shall reregister pursuant to this ~~paragraph (d)~~ SUBSECTION

(1)(d) with the local law enforcement agency of each jurisdiction in which the person resides or in any jurisdiction if the person lacks a fixed residence on the reregistration date, in the manner provided in ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, 16-22-113, **amend** (3) introductory portion and (3)(b)(1); **repeal and reenact, with amendments**, (2); and **add** (2.5) as follows:

16-22-113. Petition for removal from registry. (2) (a) A REGISTRANT WHO IS ELIGIBLE TO PETITION TO DISCONTINUE REGISTRATION PURSUANT TO THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION MUST FILE A PETITION WITH THE COURT OF PROPER JURISDICTION AND SHALL PROVIDE A COPY OF THE PETITION BY CERTIFIED MAIL TO EACH OF THE FOLLOWING PARTIES:

(I) EACH LAW ENFORCEMENT AGENCY WITH WHICH THE REGISTRANT IS REQUIRED TO REGISTER;

(II) THE DISTRICT ATTORNEY FOR THE JURISDICTION IN WHICH THE PETITION TO DISCONTINUE REGISTRATION HAS BEEN FILED; AND

(III) THE PROSECUTING ATTORNEY WHO OBTAINED THE CONVICTION OF THE REGISTRANT.

(b) WITHIN TWENTY-ONE DAYS AFTER FILING THE PETITION, THE PETITIONER SHALL FILE WITH THE COURT COPIES OF THE RETURN RECEIPTS RECEIVED FROM EACH PARTY NOTIFIED AND ANY DOCUMENTS SUPPORTING HIS OR HER ELIGIBILITY TO PETITION TO DISCONTINUE REGISTRATION. THE SUPPORTING DOCUMENTS MUST INCLUDE RECORDS DOCUMENTING THE COMPLETION OF TREATMENT IF ORDERED BY THE COURT, WHEN SUCH RECORDS ARE AVAILABLE.

(c) UPON RECEIPT OF THE PETITION, THE COURT SHALL SET A DATE FOR A HEARING AND SHALL NOTIFY THE PETITIONER AND THE DISTRICT ATTORNEY FOR THAT JURISDICTION OF THE HEARING DATE. THE COURT SHALL ALSO NOTIFY THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER WAS REQUIRED TO REGISTER, IF THE VICTIM OF THE OFFENSE HAS REQUESTED NOTICE AND PROVIDED CONTACT INFORMATION.

(d) IF THE DISTRICT ATTORNEY OR THE VICTIM OBJECTS TO THE REGISTRANT'S PETITION, THE DISTRICT ATTORNEY SHALL FILE THE OBJECTION WITH THE COURT WITHIN SIXTY-THREE DAYS AFTER RECEIVING THE NOTICE OF THE PETITION.

(e) IF NO OBJECTION IS FILED BY THE DISTRICT ATTORNEY OR MADE BY THE VICTIM, THE COURT MAY CONSIDER THE PETITION WITHOUT A HEARING AND SHALL GRANT THE PETITION IF THE COURT FINDS THAT THE PETITIONER HAS COMPLETED THE SENTENCE FOR WHICH HE OR SHE WAS REQUIRED TO REGISTER, THE PETITIONER HAS NOT SUBSEQUENTLY BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR OR OF ANY OTHER OFFENSE, THE UNDERLYING BASIS OF WHICH INVOLVED UNLAWFUL SEXUAL BEHAVIOR, THE WAITING TIME PERIOD DESCRIBED IN SUBSECTION (1) OF THIS SECTION HAS EXPIRED, AND THE PETITIONER IS NOT LIKELY TO COMMIT A SUBSEQUENT OFFENSE OF OR INVOLVING UNLAWFUL SEXUAL BEHAVIOR. IN

DETERMINING WHETHER TO GRANT THE PETITION, THE COURT SHALL CONSIDER ANY TREATMENT RECORDS PROVIDED PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION, ANY WRITTEN OR ORAL STATEMENT OF THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER WAS REQUIRED TO REGISTER, AND ANY OTHER RELEVANT INFORMATION PRESENTED BY THE PETITIONER OR DISTRICT ATTORNEY.

(f) IF THERE IS OBJECTION TO THE PETITION BY THE DISTRICT ATTORNEY OR VICTIM, THE COURT SHALL CONDUCT A HEARING ON THE PETITION. THE COURT MAY GRANT THE PETITION IF THE COURT FINDS THE PETITIONER HAS COMPLETED THE SENTENCE FOR WHICH HE OR SHE WAS REQUIRED TO REGISTER, THE PETITIONER HAS NOT SUBSEQUENTLY BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR OR OF ANY OTHER OFFENSE, THE UNDERLYING BASIS OF WHICH INVOLVED UNLAWFUL SEXUAL BEHAVIOR, THE WAITING TIME PERIOD DESCRIBED IN SUBSECTION (1) OF THIS SECTION HAS EXPIRED, AND THE PETITIONER IS NOT LIKELY TO COMMIT A SUBSEQUENT OFFENSE OF OR INVOLVING UNLAWFUL SEXUAL BEHAVIOR. IN DETERMINING WHETHER TO GRANT THE PETITION, THE COURT SHALL CONSIDER ANY TREATMENT RECORDS PROVIDED PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION, ANY WRITTEN OR ORAL STATEMENT OF THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER WAS REQUIRED TO REGISTER, AND ANY OTHER RELEVANT INFORMATION PRESENTED BY THE PETITIONER OR DISTRICT ATTORNEY.

(g) IF THE COURT ENTERS AN ORDER DISCONTINUING REGISTRATION, THE PETITIONER SHALL PROVIDE A COPY OF THE ORDER TO EACH LOCAL LAW ENFORCEMENT AGENCY WITH WHICH THE PETITIONER IS REGISTERED AND THE CBI. THE COURT SHALL ALSO NOTIFY THE VICTIM, IF THE VICTIM OF THE OFFENSE HAS REQUESTED NOTICE AND PROVIDED CURRENT CONTACT INFORMATION.

(h) ON RECEIPT OF A COPY OF AN ORDER DISCONTINUING A PETITIONER'S DUTY TO REGISTER:

(I) THE CBI SHALL REMOVE THE PETITIONER'S SEX OFFENDER REGISTRATION INFORMATION FROM THE STATE SEX OFFENDER REGISTRY; AND

(II) THE LOCAL LAW ENFORCEMENT AGENCY SHALL REMOVE THE PETITIONER'S SEX OFFENDER REGISTRATION INFORMATION FROM THE LOCAL SEX OFFENDER REGISTRY.

(2.5)(a) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A REGISTRANT OR HIS OR HER LEGAL REPRESENTATIVE MAY FILE A PETITION TO DISCONTINUE REGISTRATION IF THE REGISTRANT SUFFERS FROM A SEVERE PHYSICAL OR INTELLECTUAL DISABILITY TO THE EXTENT THAT HE OR SHE IS PERMANENTLY INCAPACITATED AND DOES NOT PRESENT AN UNREASONABLE RISK TO PUBLIC SAFETY.

(b) THE REGISTRANT OR HIS OR HER LEGAL REPRESENTATIVE MUST FILE A PETITION WITH THE COURT OF PROPER JURISDICTION AND SHALL PROVIDE A COPY OF THE PETITION BY CERTIFIED MAIL TO EACH OF THE FOLLOWING PARTIES:

(I) EACH LAW ENFORCEMENT AGENCY WITH WHICH THE REGISTRANT IS REQUIRED TO REGISTER;

(II) THE DISTRICT ATTORNEY FOR THE JURISDICTION IN WHICH THE PETITION TO DISCONTINUE REGISTRATION HAS BEEN FILED; AND

(III) THE PROSECUTING ATTORNEY WHO OBTAINED THE CONVICTION OF THE REGISTRANT.

(c) WITHIN TWENTY-ONE DAYS AFTER FILING THE PETITION, THE PETITIONER SHALL FILE WITH THE COURT COPIES OF THE RETURN RECEIPTS RECEIVED FROM EACH PARTY NOTIFIED AND ANY DOCUMENTS SUPPORTING HIS OR HER ELIGIBILITY TO PETITION TO DISCONTINUE REGISTRATION. THE SUPPORTING DOCUMENTS MUST INCLUDE RECORDS DOCUMENTING THE COMPLETION OF TREATMENT IF ORDERED BY THE COURT, WHEN SUCH RECORDS ARE AVAILABLE.

(d) UPON RECEIPT OF THE PETITION, THE COURT SHALL SET A DATE FOR A HEARING AND SHALL NOTIFY THE PETITIONER AND THE DISTRICT ATTORNEY FOR THAT JURISDICTION OF THE HEARING DATE. THE COURT SHALL ALSO NOTIFY THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER WAS REQUIRED TO REGISTER, IF THE VICTIM OF THE OFFENSE HAS REQUESTED NOTICE AND PROVIDED CONTACT INFORMATION.

(e) IF THE DISTRICT ATTORNEY OR THE VICTIM OBJECTS TO THE REGISTRANT'S PETITION, THE DISTRICT ATTORNEY SHALL FILE THE OBJECTION WITH THE COURT WITHIN SIXTY-THREE DAYS OF RECEIVING THE NOTICE OF THE PETITION.

(f) IF NO OBJECTION IS FILED BY THE DISTRICT ATTORNEY OR MADE BY THE VICTIM, THE COURT MAY CONSIDER THE PETITION WITHOUT A HEARING AND SHALL GRANT THE PETITION IF THE COURT FINDS THE PETITIONER SUFFERS FROM A SEVERE PHYSICAL OR INTELLECTUAL DISABILITY TO THE EXTENT THAT THE PETITIONER IS PERMANENTLY INCAPACITATED, DOES NOT PRESENT AN UNREASONABLE RISK TO PUBLIC SAFETY, AND IS NOT LIKELY TO COMMIT A SUBSEQUENT OFFENSE OF OR INVOLVING UNLAWFUL SEXUAL BEHAVIOR. IN DETERMINING WHETHER TO GRANT THE PETITION, THE COURT SHALL CONSIDER ANY TREATMENT RECORDS PROVIDED PURSUANT TO SUBSECTION (2.5)(c) OF THIS SECTION, ANY WRITTEN OR ORAL STATEMENT OF THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER WAS REQUIRED TO REGISTER, AND ANY OTHER RELEVANT INFORMATION PRESENTED BY THE PETITIONER OR DISTRICT ATTORNEY.

(g) IF THERE IS OBJECTION TO THE PETITION BY THE DISTRICT ATTORNEY OR VICTIM, THE COURT SHALL CONDUCT A HEARING ON THE PETITION. THE COURT MAY GRANT THE PETITION IF THE COURT FINDS THE PETITIONER SUFFERS FROM A SEVERE PHYSICAL OR INTELLECTUAL DISABILITY TO THE EXTENT THAT THE PETITIONER IS PERMANENTLY INCAPACITATED, DOES NOT PRESENT AN UNREASONABLE RISK TO PUBLIC SAFETY, AND IS NOT LIKELY TO COMMIT A SUBSEQUENT OFFENSE OF OR INVOLVING UNLAWFUL SEXUAL BEHAVIOR. IN DETERMINING WHETHER TO GRANT THE PETITION, THE COURT SHALL CONSIDER ANY TREATMENT RECORDS PROVIDED PURSUANT TO SUBSECTION (2.5)(c) OF THIS SECTION, ANY WRITTEN OR ORAL STATEMENT OF THE VICTIM OF THE OFFENSE FOR WHICH THE PETITIONER WAS REQUIRED TO REGISTER, AND ANY OTHER RELEVANT INFORMATION PRESENTED BY THE PETITIONER OR DISTRICT ATTORNEY.

(h) IF THE COURT ENTERS AN ORDER DISCONTINUING REGISTRATION, THE

PETITIONER SHALL PROVIDE A COPY OF THE ORDER TO EACH LOCAL LAW ENFORCEMENT AGENCY WITH WHICH THE PETITIONER IS REGISTERED AND THE CBI. THE COURT SHALL ALSO NOTIFY THE VICTIM, IF THE VICTIM OF THE OFFENSE HAS REQUESTED NOTICE AND PROVIDED CONTACT INFORMATION.

(i) ON RECEIPT OF A COPY OF AN ORDER DISCONTINUING A PETITIONER'S DUTY TO REGISTER:

(I) THE CBI SHALL REMOVE THE PETITIONER'S SEX OFFENDER REGISTRATION INFORMATION FROM THE STATE SEX OFFENDER REGISTRY; AND

(II) THE LOCAL LAW ENFORCEMENT AGENCY SHALL REMOVE THE PETITIONER'S SEX OFFENDER REGISTRATION INFORMATION FROM THE LOCAL SEX OFFENDER REGISTRY.

(3) The following persons ~~shall not be~~ ARE NOT eligible for relief pursuant to this section, but shall be subject for the remainder of their natural lives to the registration requirements specified in this ~~article~~ ARTICLE 22 or to the comparable requirements of any other jurisdictions in which they may reside:

(b) Any person who is convicted as an adult of:

(I) Sexual assault, in violation of section 18-3-402; ~~C.R.S.~~; or sexual assault in the first degree, in violation of section 18-3-402, ~~C.R.S.~~; as it existed prior to July 1, 2000; or sexual assault in the second degree, in violation of section 18-3-403, ~~C.R.S.~~; as it existed prior to July 1, 2000; or

SECTION 4. In Colorado Revised Statutes, 24-4.1-302.5, **amend** (1)(b.7) as follows:

24-4.1-302.5. Rights afforded to victims - definitions. (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime has the following rights:

(b.7) For a victim of a sex offense, the right to be informed of the filing of a petition by the perpetrator of the offense to terminate sex offender registration pursuant to section 16-22-113 ~~(2)(c)~~, ~~C.R.S.~~ (2) AND (2.5);

SECTION 5. In Colorado Revised Statutes, 24-4.1-303, **amend** (14.7)(b) as follows:

24-4.1-303. Procedures for ensuring rights of victims of crimes. (14.7) (b) The court shall notify the victim of petitions filed by sex offenders to cease sex offender registration pursuant to section 16-22-113 ~~(2)(c)~~, ~~C.R.S.~~ (2) AND (2.5).

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3)

of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 23, 2018