

CHAPTER 253

**CRIMINAL LAW AND PROCEDURE**

HOUSE BILL 94-1278

BY REPRESENTATIVES Romero and Armstrong;  
also SENATOR Thiebaut.

**AN ACT**

**CONCERNING THE CONDITIONAL RELEASE FROM COMMITMENT OF CRIMINAL DEFENDANTS.**

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

**SECTION 1.** 16-8-115 (3) (a), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition.** (3) (a) If the court or jury finds the defendant eligible for release, the court may impose such terms and conditions as the court determines are in the best interests of the defendant and the community, and the jury shall be so instructed. If the court or jury finds the defendant ineligible for release, the court shall recommit the defendant. THE COURT'S ORDER PLACING THE DEFENDANT ON CONDITIONAL RELEASE SHALL INCLUDE NOTICE THAT THE DEFENDANT'S CONDITIONAL RELEASE MAY BE REVOKED PURSUANT TO THE PROVISIONS OF SECTION 16-8-115.5.

**SECTION 2.** 16-8-115.5, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**16-8-115.5. Enforcement and revocation of conditional release from commitment.** (1) The terms and conditions imposed upon a defendant's release pursuant to section 16-8-115 (3) may be enforced as are any other orders of court.

(2) ~~Any person who has reasonable cause to believe that a defendant granted conditional release has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5) may notify the executive director of the department of institutions, the director of a community mental health center in charge of the~~

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

defendant's treatment, the district attorney for the judicial district where the defendant was committed, or the district attorney for any judicial district where the defendant may be required to receive treatment.

(3) Whenever the ~~executive director of the department of institutions~~ SUPERINTENDENT OF THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO or the director of a community mental health center in charge of treatment of a defendant granted conditional release has ~~reason~~ PROBABLE CAUSE to believe that such defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), said ~~executive director~~ SUPERINTENDENT or director of a community mental health center shall ~~so notify the district attorney for the judicial district where the defendant was committed or the district attorney for any judicial district where the defendant may be required to receive treatment~~ APPLY FOR A WARRANT TO BE DIRECTED TO THE SHERIFF OR A PEACE OFFICER IN THE JURISDICTION IN WHICH THE DEFENDANT RESIDES OR MAY BE FOUND COMMANDING SUCH SHERIFF OR PEACE OFFICER TO TAKE CUSTODY OF THE DEFENDANT. THE APPLICATION SHALL INCLUDE THE ORDER CONDITIONALLY RELEASING THE DEFENDANT PURSUANT TO SECTION 16-8-115 (3) AND SUPPORTING DOCUMENTATION SHOWING THAT DEFENDANT HAS BECOME INELIGIBLE TO REMAIN ON CONDITIONAL RELEASE AS DEFINED IN SECTION 16-8-102 (4.5). THE DISTRICT COURT FOR THE TENTH JUDICIAL DISTRICT IS AUTHORIZED TO ISSUE SUCH A WARRANT PURSUANT TO THE PROVISIONS OF SECTION 16-1-106.

(4) (a) ~~Whenever the district attorney for the judicial district where the defendant was committed, or the district attorney for any judicial district where the defendant may be required to receive treatment, has probable cause to believe that a defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5); he may apply to the committing court, or to the district court of the judicial district where the defendant may be required to receive treatment, for an order or warrant directed to any peace officer and to the sheriff of any county where the defendant may be found commanding him to~~ THE SHERIFF OR PEACE OFFICER TO WHOM THE WARRANT IS DIRECTED PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL take all necessary legal action to take custody of the defendant. ~~and deliver him~~ A SHERIFF SHALL DELIVER THE DEFENDANT immediately to a county jail ~~within the judicial district of the court issuing said order or warrant.~~ Such jail THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO WHICH shall provide care and security for the defendant until the conclusion of the preliminary hearing provided for in subsection (6) of this section or until further order of the court. IF ANY OTHER PEACE OFFICER TAKES CUSTODY OF THE DEFENDANT, SUCH PEACE OFFICER SHALL DELIVER THE DEFENDANT TO THE CUSTODY OF THE SHERIFF OF THE JURISDICTION IN WHICH THE DEFENDANT WAS FOUND, AND SUCH SHERIFF SHALL COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (4).

(b) ~~In lieu of the order or warrant provided for in paragraph (a) of this subsection (4), the court may issue a summons to be served upon the defendant requiring him to appear before the court on a specified date for the preliminary hearing provided for in subsection (6) of this section.~~

(5) (a) (I) ~~The district attorney for the judicial district where the defendant was committed may cause to be filed in the committing court, or the district attorney for any judicial district where the defendant may be required to receive treatment may~~

~~cause to be filed in the district court of such judicial district, a petition for the revocation of the defendant's conditional release, which shall set forth the name of the defendant, an allegation that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), and the substance of the evidence sustaining the allegation.~~ THE SUPERINTENDENT SHALL NOTIFY THE DISTRICT ATTORNEY FOR THE TENTH JUDICIAL DISTRICT IMMEDIATELY UPON THE DEFENDANT'S RETURN TO THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO PURSUANT TO SUBSECTION (4) OF THIS SECTION. SUCH NOTICE SHALL INCLUDE ALL SUPPORTING DOCUMENTATION FROM EITHER THE SUPERINTENDENT OR THE DIRECTOR OF A COMMUNITY MENTAL HEALTH CENTER IN CHARGE OF THE DEFENDANT'S TREATMENT SHOWING THAT THE DEFENDANT HAS BECOME INELIGIBLE TO REMAIN ON CONDITIONAL RELEASE. WITHIN SEVENTY-TWO HOURS AFTER SUCH NOTIFICATION FROM THE SUPERINTENDENT, EXCLUDING SATURDAYS, SUNDAYS, AND COURT HOLIDAYS, THE DISTRICT ATTORNEY FOR THE TENTH JUDICIAL DISTRICT ON BEHALF OF THE SUPERINTENDENT SHALL FILE A VERIFIED PETITION WITH THE PUEBLO DISTRICT COURT FOR THE REVOCATION OF THE DEFENDANT'S CONDITIONAL RELEASE. THE PETITION SHALL SET FORTH THE NAME OF THE DEFENDANT, AN ALLEGATION THAT THE DEFENDANT HAS BECOME INELIGIBLE TO REMAIN ON CONDITIONAL RELEASE AS DEFINED IN SECTION 16-8-102 (4.5), AND THE SUBSTANCE OF THE EVIDENCE SUSTAINING THE ALLEGATION. COPIES OF THIS PETITION SHALL BE PROVIDED TO THE DEFENDANT, THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT WHERE THE DEFENDANT WAS COMMITTED, AND THE COMMITTING COURT.

(II) THE DISTRICT COURT FOR THE TENTH JUDICIAL DISTRICT SHALL HAVE JURISDICTION AND VENUE TO ACCEPT A PETITION FILED BY THE DISTRICT ATTORNEY IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AND TO ENTER AN ORDER FOR THE TEMPORARY REVOCATION OF THE DEFENDANT'S CONDITIONAL RELEASE AFTER THE HEARING SET FORTH IN SUBSECTION (6) OF THIS SECTION.

(b) If a petition for revocation is not filed as provided in this subsection (5) within seventy-two hours after a defendant is taken into custody pursuant to ~~paragraph (a)~~ of subsection (4) of this section, excluding Saturdays, Sundays, and court holidays, such defendant shall be immediately released from custody unless the court grants a reasonable extension of time to file such petition upon a showing of good cause by the district attorney.

(c) At any time after the filing of a petition, the party filing such petition may cause the revocation proceedings to be dismissed by giving written notification of ~~his~~ SUCH PARTY'S decision for such dismissal to the court.

(d) Prior to any appearance of the defendant before the court, ~~he~~ THE DEFENDANT shall be given a copy of the petition.

(6) Within seventy-two hours after the defendant is taken into custody as provided in ~~paragraph (a)~~ of subsection (4) of this section, excluding Saturdays, Sundays, and court holidays, ~~or on the date he has been summoned to appear as provided in paragraph (b) of subsection (4) of this section,~~ the defendant shall appear before the court for a preliminary hearing to determine if probable cause exists to believe that ~~he~~ THE DEFENDANT has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5). The hearing may be continued by the court for not more than five days upon good cause shown. If the court finds that probable cause does not

exist, it shall dismiss the petition and reinstate or modify the original order of conditional release. If the court finds that probable cause exists, it shall temporarily revoke the defendant's conditional release and recommit the defendant.

(7) Prior to any final hearing on the petition for revocation, the COMMITTING court may order the defendant to submit to and cooperate with examinations as provided in section 16-8-106. If the defendant refuses to submit to and cooperate with such examinations, the COMMITTING court shall recommit the defendant. The defendant may request an examination as provided in section 16-8-108.

(8) Within thirty days after a preliminary hearing resulting in the temporary revocation of the defendant's conditional release, the COMMITTING court shall hold a final hearing on the petition for revocation of conditional release. At such hearing, any evidence having probative value shall be admissible, but the defendant shall be permitted to offer testimony and to call, confront, and cross-examine witnesses. If the court finds by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall enter a final order revoking the defendant's conditional release and recommitting the defendant. At any time thereafter, the defendant may be afforded a release hearing as provided in section 16-8-115. If the court does not find by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall dismiss the petition and reinstate or modify the original order of conditional release.

**SECTION 3. Effective date.** This act shall take effect July 1, 1994.

**SECTION 4. 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.

Approved: May 25, 1994