

CHAPTER 129

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 95-1044

BY REPRESENTATIVES Tucker, Morrison, and Schwarz;
also SENATOR Mutzebaugh.

AN ACT

CONCERNING PROCEDURAL CRIMINAL LAWS.

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

SECTION 1. 16-5-401 (2), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-5-401. Limitation for commencing criminal proceedings. (2) The time limitations imposed by ~~subsection (1)~~ of this section shall be tolled if the offender is absent from the state of Colorado, and the duration of such absence, not to exceed five years, shall be excluded from the computation of the time within which any complaint, information, or indictment must otherwise be filed or returned.

SECTION 2. 16-11-501 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

16-11-501. Judgment for costs and fines. (2) The costs assessed pursuant to subsection (1) of this section or section 16-18-101 may include:

(k) ANY COSTS INCURRED IN OBTAINING A GOVERNOR'S WARRANT PURSUANT TO SECTION 16-19-108;

(l) ANY COSTS INCURRED BY THE LAW ENFORCEMENT AGENCY IN PHOTOCOPYING REPORTS, DEVELOPING FILM, AND PURCHASING VIDEOTAPE AS NECESSARY FOR USE IN THE CASE;

(m) ANY AMOUNT SPENT IN MAKING UNDERCOVER PURCHASES OF CONTROLLED

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

SUBSTANCES TO OBTAIN EVIDENCE USED AGAINST THE DEFENDANT.

SECTION 3. 16-3-108, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-3-108. Issuance of arrest warrant without information or complaint. A COURT SHALL ISSUE an arrest warrant ~~shall issue~~ only on affidavit sworn to or affirmed before the judge OR A NOTARY PUBLIC and relating facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take ~~him~~ THE PERSON without unnecessary delay before the nearest judge of a court of record. Once a person is brought before the judge, the Colorado rules of criminal procedure are applicable.

SECTION 4. 16-15-102 (18) (f), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

16-15-102. Ex parte order authorizing the interception of wire, oral, or electronic communications. (18) (f) ~~This subsection (18) is repealed, effective July 1, 1995.~~

SECTION 5. 16-13-303 (1) (c) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-13-303. Class 1 public nuisance. (1) Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

(c) (II) Used for unlawful possession of any controlled substance, as defined in section ~~12-22-303(7)~~ 18-18-102 (5), C.R.S., except for possession of less than eight ounces of marihuana;

SECTION 6. 16-13-304 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-13-304. Class 2 public nuisance. (1) The following are deemed to be a class 2 public nuisance:

(b) Any public or private place or premises which encourages professional gambling, unlawful use, sale, or distribution of imitation controlled substances, as defined in section 18-18-420 (3), C.R.S., drugs, controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs the possession of which is an offense under the laws of this state, furnishing or selling intoxicating liquor to minors, furnishing or selling fermented malt beverages to persons under the age of ~~eighteen~~ TWENTY-ONE, solicitation for prostitution, or traffic in stolen property; or

SECTION 7. 16-14-104, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-14-104. Trial or dismissal. (1) Within ninety days after the receipt of the

request by the court and the prosecuting official, or within such additional time as the court for good cause shown in open court may grant, the prisoner or ~~his~~ THE PRISONER'S counsel being present, the indictment, information, or criminal complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the prisoner's attorney and opportunity to be heard. If, after such a request, the indictment, information, or criminal complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, or criminal complaint be of any further force or effect, and the court shall dismiss it with prejudice.

(2) ANY PRISONER WHO REQUESTS DISPOSITION PURSUANT TO SECTION 16-14-102 MAY WAIVE THE RIGHT TO DISPOSITION WITHIN THE TIME SPECIFIED IN SUBSECTION (1) OF THIS SECTION BY EXPRESS WAIVER ON THE RECORD AFTER FULL ADVISEMENT BY THE COURT. IF A PRISONER MAKES SAID WAIVER, THE TIME FOR TRIAL OF THE INDICTMENT, INFORMATION, OR CRIMINAL COMPLAINT SHALL BE EXTENDED AS PROVIDED IN SECTION 18-1-405 (4), C.R.S., CONCERNING WAIVER OF THE RIGHT TO SPEEDY TRIAL.

SECTION 8. 16-5-203, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-5-203. Furnishing witnesses' names. Whether a prosecution is commenced by indictment, information, or felony complaint, the district attorney shall file with the court at the time of filing the indictment, information, or felony complaint A WRITTEN LIST OF THE NAMES AND ADDRESSES OF THE WITNESSES WHOM HE OR SHE INTENDS TO CALL UPON AT THE PRELIMINARY HEARING. THE DISTRICT ATTORNEY SHALL MAKE AVAILABLE TO THE DEFENDANT NOT LATER THAN TWENTY CALENDAR DAYS AFTER THE DEFENDANT'S FIRST APPEARANCE AT THE TIME OF OR FOLLOWING THE FILING OF CHARGES a written list of the names and addresses of the witnesses THEN KNOWN TO THE DISTRICT ATTORNEY whom he OR SHE intends to call upon ~~the~~ AT trial. ~~and who are then known to him. He~~ THE DISTRICT ATTORNEY shall also furnish the defendant in writing prior to trial the names and addresses of any additional witnesses who have become known to him OR HER prior to trial and whom he OR SHE intends to call upon ~~the~~ AT trial, but this shall not preclude the calling of witnesses whose names or the materiality of whose testimony are first learned by the district attorney upon the trial. However, the court may, in its discretion, enter an order which denies the disclosure to the defendant of the names and addresses of witnesses, or which requires the defense counsel not to disclose such information to the defendant, subject to rule 16 part I (d) (2) and part III (d) of the Colorado rules of criminal procedure. THE NAMES AND ADDRESSES OF WITNESSES WHO ARE THE SUBJECT OF THE ORDER MAY BE WITHHELD PENDING A RULING OF THE COURT, BUT THE PROSECUTION SHALL NOTIFY THE DEFENSE COUNSEL IN WRITING THAT A MOTION TO WITHHOLD WITNESS INFORMATION HAS BEEN FILED AND THAT SUCH INFORMATION WILL BE WITHHELD PENDING THE COURT'S ORDER. Where the defendant has not had or waived a preliminary hearing, there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of the affiant that the offense was committed.

SECTION 9. 17-2-201 (5.5) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-2-201. State board of parole. (5.5) (c) (I) The parole officer shall be responsible for acquiring at random, but within the time requirements of paragraph (a) of this subsection (5.5), a urine specimen from a parolee. The department of public health and environment shall designate the container to be used for the collection of such specimen. A labeling system shall be established by the department to ensure compliance with evidentiary rules and requirements.

(II) The department of public health and environment shall establish by rule and regulation the fee to be charged to the parolee pursuant to paragraph (a) of this subsection (5.5) for chemical testing of ~~his~~ THE PAROLEE'S urine. The parole officer shall collect such fee from the parolee at the same time ~~he~~ THE PAROLE OFFICER acquires a urine specimen pursuant to subparagraph (I) of this paragraph (c).

(III) The parole officer shall submit the urine specimen to the department of public health and environment OR TO A PRIVATE LABORATORY UNDER CONTRACT WITH THE BOARD PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (c) for testing. The department of public health and environment OR THE CONTRACTING LABORATORY shall return the results of such tests to the parole officer within five working days of receipt of the specimen. The results of the test shall be made available by the parole officer to the parolee or ~~his~~ THE PAROLEE'S attorney on request.

(IV) THE BOARD MAY ENTER INTO ONE OR MORE CONTRACTS WITH PRIVATE LABORATORIES FOR CHEMICAL TESTING UNDER THIS SUBSECTION (5.5). ANY PRIVATE LABORATORY THAT CONTRACTS WITH THE BOARD SHALL MEET STANDARDS ESTABLISHED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENT AND SHALL COMPLY WITH THE LABELING SYSTEM ESTABLISHED BY THE DEPARTMENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) TO ENSURE COMPLIANCE WITH EVIDENTIARY RULES AND REQUIREMENTS. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SUBPARAGRAPH (IV) SHALL SPECIFY THE FEE TO BE CHARGED THE PAROLEE FOR CHEMICAL URINE TESTING.

SECTION 10. 16-11.7-102 (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11.7-102. Definitions. As used in this article, unless the context otherwise requires:

(4) "Treatment" means therapy, MONITORING, and supervision of any sex offender which conforms to the standards created by the board pursuant to section 16-11.7-103.

SECTION 11. 16-11-102 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-102. Presentence or probation investigation. (1) (b) Any presentence report prepared regarding any sex offender, as defined in section 16-11.7-102 (2), with respect to any offense committed on or after January 1, ~~1994~~ 1996, shall contain the results of an evaluation and identification conducted pursuant to article 11.7 of this title.

SECTION 12. 16-11.7-103 (4) (a) and (4) (b), Colorado Revised Statutes, 1986

Repl. Vol., as amended, are amended to read:

16-11.7-103. Sex offender treatment board - creation - duties. (4) The board shall carry out the following duties:

(a) Prior to January 1, ~~1994~~ 1996, the board shall develop and prescribe a standardized procedure for the evaluation and identification of sex offenders. Such procedure shall provide for an evaluation and identification of the offender and recommend behavior management, monitoring, and treatment based upon the knowledge that sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse. The board shall develop and implement measures of success based upon a no-cure policy for intervention. The board shall develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the needs of the particular offender, ~~provided that~~ SO LONG AS there is no reduction of the safety of victims and potential victims.

(b) Prior to January 1, ~~1994~~ 1996, the board shall develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph (b) shall be as flexible as possible so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in such a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. The procedures for evaluation, identification, treatment, and continued monitoring required to be developed pursuant to this paragraph (b) and paragraph (a) of this subsection (4) shall be implemented only to the extent moneys are available in the sex offender surcharge fund created in section 18-21-103 (3), C.R.S.

SECTION 13. 16-11.7-107, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11.7-107. Report to the general assembly. On or before March 1, ~~1995~~ 1997, the board shall make a report to a joint meeting of the judiciary committees of the senate and the house of representatives regarding the implementation of this article, the standardized procedures developed pursuant to this article, and the results of the programs created by this article.

SECTION 14. 16-13-103 (1), (4), (5) (b), and (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

16-13-103. Verdict of jury. (1) If the allegation of previous convictions of other felony offenses is included in an indictment or information and if a verdict of guilty of the substantive offense with which the defendant is charged is returned, the court

shall conduct a separate sentencing hearing to determine whether or not the defendant has suffered such previous felony convictions. As soon as practicable, the hearing shall be conducted by the ~~trial court before the jury impaneled to try the substantive offense charged; except that, if trial by jury was waived or if the defendant pleaded guilty, the hearing shall be conducted before the trial court.~~ JUDGE WHO PRESIDED AT TRIAL OR BEFORE WHOM THE GUILTY PLEA WAS ENTERED OR A REPLACEMENT FOR SAID JUDGE IN THE EVENT HE OR SHE DIES, RESIGNS, IS INCAPACITATED, OR IS OTHERWISE DISQUALIFIED AS PROVIDED IN SECTION 16-6-201.

(4) If the defendant denies that he OR SHE has been previously convicted as alleged in any count of an information or indictment, the ~~jury impaneled to try the substantive offense charged~~ TRIAL JUDGE, OR A REPLACEMENT JUDGE AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, shall determine by separate hearing and verdict whether the defendant has been convicted as alleged. ~~If the jury is unable to reach a verdict after such separate hearing, the judge shall discharge the jury and impanel a new jury solely for the purpose of deciding whether the defendant has been convicted as alleged.~~ The procedure in any case in which the defendant does not become a witness in his OR HER own behalf upon the trial of the substantive offense shall be as follows:

(a) The jury shall render a verdict upon the issue of the defendant's guilt or innocence of the substantive offense charged;

(b) If the verdict is that the defendant is guilty of the substantive offense charged, the ~~same jury~~ TRIAL JUDGE, OR A REPLACEMENT JUDGE AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, shall proceed to try the issues of whether the defendant has been previously convicted as alleged. The prosecuting attorney has the burden of proving beyond a reasonable doubt that the defendant has been previously convicted as alleged.

(5) (b) If, upon the trial of the issues upon the substantive offense charged, the defendant testifies in his OR HER own defense and, after having denied the previous conviction under subsection (3) of this section, admits that he OR SHE has been previously convicted as alleged, the ~~court~~ TRIAL JUDGE, OR A REPLACEMENT JUDGE AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, shall, ~~instruct the jury~~ in any sentencing hearing, ~~to~~ consider any admissions of prior convictions elicited from the defendant in connection with his OR HER testimony on the substantive offense only as they affect ~~his~~ THE DEFENDANT'S credibility. ~~The court shall also instruct the jury in any sentencing hearing that~~ IN ANY SENTENCING HEARING, the prosecution ~~must~~ SHALL BE REQUIRED TO meet its burden of proving beyond a reasonable doubt the defendant's prior convictions by evidence independent of the defendant's testimony.

(6) If the prosecuting attorney does not have any information indicating that the defendant has been previously convicted of a felony prior to the time a verdict of guilty is rendered on a felony charge and if thereafter ~~he~~ THE PROSECUTING ATTORNEY learns of the felony conviction prior to the time that sentence is pronounced by the court, he OR SHE may file a new information in which it shall be alleged in separate counts that the defendant has been convicted of the particular offense upon which judgment has not been entered and that prior thereto at a specified date and place the defendant has been convicted of a felony warranting application of increased penalties authorized in this part 1. The defendant shall be arraigned upon the new information, and, if ~~he~~ THE DEFENDANT denies the previous conviction,

~~a jury shall be impaneled to~~ THE TRIAL JUDGE, OR A REPLACEMENT JUDGE AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, SHALL try the issue prior to imposition of sentence.

SECTION 15. 16-11.7-106, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11.7-106. Sex offender treatment - contracts with providers. The department of corrections, the judicial department, the division of criminal justice of the department of public safety, or the department of human services shall not employ or contract with AND SHALL NOT ALLOW A SEX OFFENDER TO EMPLOY OR CONTRACT WITH any individual or entity to provide SEX OFFENDER treatment services pursuant to this article unless the SEX OFFENDER treatment services to be provided by such individual or entity conforms with the standards developed pursuant to section 16-11.7-103 (4) (b).

SECTION 16. 18-3-412.5 (3) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-3-412.5. Sex offenders - duty to register - penalties. (3) Each person who is required to register pursuant to subsection (1) of this section, ~~shall~~, within seven calendar days of becoming a temporary or permanent resident of any city, town, county, or city and county in the state of Colorado, AND ANNUALLY THEREAFTER SO LONG AS THE PERSON RESIDES IN THE CITY, TOWN, COUNTY, OR CITY AND COUNTY, SHALL register with the local law enforcement agency in the place of such person's temporary or permanent residence by completing a registration form provided to such person by the local law enforcement agency. Such registration form shall contain such information regarding such person as shall be required by the local law enforcement agency pursuant to subsection (5) of this section. Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief of police of such city, town, or city and county. Persons who reside outside of the corporate limits of any city, town, or city and county shall register at the office of the county sheriff of the county where such person resides. Any person who is required to register pursuant to subsection (1) of this section shall be required to register each time such person changes such person's temporary or permanent address, regardless of whether such person has moved to a new address within the jurisdiction of the law enforcement agency with which such person previously registered.

(4) Any person who fails to register pursuant to ~~subsections (1) and (2)~~ of this section, or any person who submits a registration form containing false information, commits the offense of failure to register as a sex offender. Failure to register as a sex offender is a class 2 misdemeanor; except that, in addition to any other penalty provided by section 18-1-106, a person shall be sentenced to a ninety-day mandatory minimum jail sentence. Any second or subsequent offense is a class 6 felony; except that, in addition to any other penalty provided by section 18-1-105, a person shall be sentenced to a one-year mandatory minimum sentence to the department of corrections.

SECTION 17. 18-1-202, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-1-202. Place of trial. (12) IF A PERSON COMMITS THE OFFENSE OF FAILURE TO REGISTER AS A SEX OFFENDER AS PROVIDED IN SECTION 18-3-412.5, THE OFFENSE IS COMMITTED AND THE OFFENDER MAY BE TRIED EITHER IN THE COUNTY IN WHICH THE OFFENDER RESIDES OR IN THE COUNTY IN WHICH THE OFFENDER IS APPREHENDED.

SECTION 18. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 19. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to indictments, information, or complaints filed on or after said date.

SECTION 20. 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 16, 1995