

CHAPTER 240

**CRIMINAL LAW AND PROCEDURE**

**HOUSE BILL 95-1070**

BY REPRESENTATIVES Adkins, Hagedorn, Lyle, Nichol, Reeser, Schwarz, and Swenson;  
also SENATORS Wham, Mares, Mutzebaugh, Norton, Pascoe, and R. Powers.

**AN ACT**

**CONCERNING PROVISIONS FOR THE PURPOSE OF ENHANCING THE SUBSTANTIVE CRIMINAL LAWS.**

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

**SECTION 1.** 12-36-135, Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability.** (3) ANY PHYSICIAN WHO MAKES A REPORT PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOT BE SUBJECT TO THE PHYSICIAN-PATIENT RELATIONSHIP DESCRIBED IN SECTION 13-90-107 (1) (d), C.R.S., AS TO THE MEDICAL EXAMINATION AND DIAGNOSIS. SUCH PHYSICIAN MAY BE EXAMINED AS A WITNESS, BUT NOT AS TO ANY STATEMENTS MADE BY THE PATIENT THAT ARE THE SUBJECT MATTER OF SECTION 13-90-107 (1) (d), C.R.S.

**SECTION 2.** 13-90-107 (3), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**13-90-107. Who may not testify without consent.** (3) THE PROVISIONS OF PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO PHYSICIANS REQUIRED TO MAKE REPORTS IN ACCORDANCE WITH SECTION 12-36-135, C.R.S. IN ADDITION, the provisions of paragraphs (d) and (g) of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S., do not fall under the attorney-client privilege in paragraph (b) of subsection (1) of this section.

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

**SECTION 3.** 16-11-309 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

**16-11-309. Mandatory sentences for violent crimes.** (1) (b) ~~Any person convicted of a crime against an at-risk adult or at-risk juvenile in which the convicted person used, or possessed and threatened the use of, a deadly weapon shall be sentenced to a term of incarceration of at least the midpoint in the presumptive range provided for such offense in section 18-1-105 (1) (a), C.R.S., without suspension. Thereafter, the provisions of paragraph (a) of this subsection (1) shall apply.~~

**SECTION 4.** 18-2-101, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**18-2-101. Criminal attempt.** (3.5) CRIMINAL ATTEMPT TO COMMIT ANY CRIME FOR WHICH A COURT IS REQUIRED TO SENTENCE A DEFENDANT FOR A CRIME OF VIOLENCE IN ACCORDANCE WITH SECTION 16-11-309, C.R.S., IS ITSELF A CRIME OF VIOLENCE FOR THE PURPOSES OF THAT SECTION.

**SECTION 5.** 18-2-201, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF NEW SUBSECTION to read:

**18-2-201. Conspiracy.** (4.5) CONSPIRACY TO COMMIT ANY CRIME FOR WHICH A COURT IS REQUIRED TO SENTENCE A DEFENDANT FOR A CRIME OF VIOLENCE IN ACCORDANCE WITH SECTION 16-11-309, C.R.S., IS ITSELF A CRIME OF VIOLENCE FOR THE PURPOSES OF THAT SECTION.

**SECTION 6.** 18-3-202 (1) (d) and (2) (d), Colorado Revised Statutes, 1986 Repl. Vol., are repealed as follows:

**18-3-202. Assault in the first degree.** (1) A person commits the crime of assault in the first degree if:

(d) ~~Acting either alone or with one or more persons, he commits or attempts to commit murder, robbery, arson, burglary, escape in the first degree, kidnapping in the first degree, sexual assault in the first or second degree, or class 3 felony sexual assault on a child and in the course of or in furtherance of the crime that he is committing or attempting to commit, or of immediate flight therefrom, the serious bodily injury of a person, other than a participant in the commission or attempted commission of the crime, is caused by anyone; or~~

(2) (d) ~~If a defendant is convicted of assault in the first degree pursuant to paragraph (d) of subsection (1) of this section, for an assault involving serious bodily injury which he himself caused while committing or attempting to commit murder, robbery, first degree arson, first or second degree burglary, first degree escape, first degree kidnapping, second degree sexual assault, class 3 felony sexual assault on a child, or attempted first degree sexual assault, or during the immediate flight therefrom, the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S.~~

**SECTION 7.** 18-3-203 (1) (b) and (2) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 18-3-203 (2) is further amended BY

THE ADDITION OF A NEW PARAGRAPH, to read:

**18-3-203. Assault in the second degree.** (1) A person commits the crime of assault in the second degree if:

(b) With intent to cause bodily injury to another person, he OR SHE causes ~~or attempts to cause~~ such injury to any person by means of a deadly weapon; or

(2) (b.5) ASSAULT IN THE SECOND DEGREE BY ANY PERSON UNDER SUBSECTION (1) OF THIS SECTION WITHOUT THE CIRCUMSTANCES PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (2) IS A CLASS 3 FELONY IF THE PERSON WHO IS ASSAULTED, OTHER THAN A PARTICIPANT IN THE CRIME, SUFFERED SERIOUS BODILY INJURY DURING THE COMMISSION OR ATTEMPTED COMMISSION OF OR FLIGHT FROM THE COMMISSION OR ATTEMPTED COMMISSION OF MURDER, ROBBERY, ARSON, BURGLARY, ESCAPE IN THE FIRST DEGREE, KIDNAPPING IN THE FIRST DEGREE, SEXUAL ASSAULT IN THE FIRST OR SECOND DEGREE, OR CLASS 3 FELONY SEXUAL ASSAULT ON A CHILD.

(c) If a defendant is convicted of assault in the second degree pursuant to paragraph (a), (b), (c), (d), or (g) of subsection (1) of this section OR PARAGRAPH (b.5) OF THIS SUBSECTION (2) EXCEPT WITH RESPECT TO SEXUAL ASSAULT IN THE FIRST DEGREE, the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S. A DEFENDANT CONVICTED OF ASSAULT IN THE SECOND DEGREE PURSUANT TO PARAGRAPH (b.5) OF THIS SUBSECTION (2) SHALL BE SENTENCED IN ACCORDANCE WITH SECTION 18-1-105 (9) (e).

**SECTION 8.** 18-3-209, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

**18-3-209. Assault on the elderly or persons with disabilities - legislative declaration.** ~~(1) A person who commits second or third degree assault and the victim is a person who is sixty years of age or older or disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness commits assault on the elderly or on persons with disabilities.~~

~~(2) If the assault on the elderly or on persons with disabilities is second degree assault and is committed without the circumstances provided in section 18-3-203 (2) (a) being present, it is a class 3 felony. If the assault on the elderly or on persons with disabilities is second degree assault as defined in section 18-3-203 (1) (b) or (1) (d), the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S.~~

~~(3) If the assault on the elderly or on persons with disabilities is third degree assault, it is a class 5 felony.~~

~~(4) If the elderly assault victim or assault victim with a disability has sustained monetary damages, the court may order the offender to provide restitution pursuant to section 16-11-204.5 and article 28 of title 17, C.R.S. If, after a reasonable period not to exceed one hundred eighty days, the offender has not initiated restitution, the offender's probation may be revoked.~~

~~(5) The general assembly recognizes that fear of crime is one of the major personal concerns of elderly persons and persons with disabilities and that elderly persons and persons with disabilities are more vulnerable to and disproportionately damaged by crime because they are less able to escape offenders and are more likely to receive serious injury. The elderly and persons with disabilities are particularly impacted by crimes of assault because they tend to suffer the greatest relative deprivation – financially, physically, and psychologically – as a result of the crimes against them. Elderly persons and persons with disabilities are seldom as physically or emotionally equipped to protect themselves or aid in their own security as are their younger or more physically able counterparts in society. At the same time, they are far more susceptible than other groups to the adverse long-term effects of assault. The general assembly therefore finds that the penalty for the crime of assault on an elderly person or a person with a disability should be more severe than the penalty for assault on other members of society.~~

**SECTION 9.** 18-3-402 (4), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-3-402. Sexual assault in the first degree.** (4) If a defendant is convicted of sexual assault in the first degree pursuant to subsection (3) of this section, the court shall sentence the defendant in accordance with section 18-1-105 (9) (e). A person convicted of sexual assault in the first degree pursuant to subsection (3) of this section shall not be sentenced under the crime of violence provisions of section 16-11-309 (2), C.R.S. ANY SENTENCE FOR A CONVICTION UNDER SUBSECTION (3) OF THIS SECTION SHALL BE CONSECUTIVE TO ANY SENTENCE FOR A CONVICTION FOR A CRIME OF VIOLENCE UNDER SECTION 16-11-309, C.R.S.

**SECTION 10.** 18-3-404 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-3-404. Sexual assault in the third degree.** (3) If a defendant is convicted of the class 4 felony of sexual assault in the third degree pursuant to subsection (1.5) or (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S.; EXCEPT THAT THIS SUBSECTION (3) SHALL NOT APPLY TO PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION AS IT APPLIES TO SUBSECTION (2) OF THIS SECTION.

**SECTION 11.** 18-3-405 (2) and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**18-3-405. Sexual assault on a child.** (2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if:

(a) ~~The actor commits the offense on a victim by use of such force, intimidation, or threat as specified in section 18-3-402 (1) (a), (1) (b), or (1) (c); or~~ THE ACTOR APPLIES FORCE AGAINST THE VICTIM IN ORDER TO ACCOMPLISH OR FACILITATE SEXUAL CONTACT; OR

(b) ~~Repeated.~~ THE ACTOR, IN ORDER TO ACCOMPLISH OR FACILITATE SEXUAL CONTACT, THREATENS IMMINENT DEATH, SERIOUS BODILY INJURY, EXTREME PAIN, OR KIDNAPPING AGAINST THE VICTIM OR ANOTHER PERSON, AND THE VICTIM BELIEVES

THAT THE ACTOR HAS THE PRESENT ABILITY TO EXECUTE THE THREAT; OR

(c) THE ACTOR, IN ORDER TO ACCOMPLISH OR FACILITATE SEXUAL CONTACT, THREATENS RETALIATION BY CAUSING IN THE FUTURE THE DEATH OR SERIOUS BODILY INJURY, EXTREME PAIN, OR KIDNAPPING AGAINST THE VICTIM OR ANOTHER PERSON, AND THE VICTIM BELIEVES THAT THE ACTOR WILL EXECUTE THE THREAT; OR

(d) The actor commits the offense as a part of a pattern of sexual abuse AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse must have been committed within ten years ~~of~~ PRIOR TO the offense charged in the information or indictment. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

(3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to ~~paragraph~~ PARAGRAPHS (a) ~~or (c)~~ TO (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S.

**SECTION 12.** 18-4-409 (3) (b) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**18-4-409. Aggravated motor vehicle theft.** (3) Aggravated motor vehicle theft in the first degree is a:

(b) Class 3 felony if the value of the motor vehicle or motor vehicles involved is more than fifteen thousand dollars or if the defendant has twice previously been convicted OR ADJUDICATED of charges separately brought and tried either in this state or elsewhere of an offense involving theft of a motor vehicle under the laws of this state, any other state, the United States, or any territory subject to the jurisdiction of the United States.

(4) A person commits aggravated motor vehicle theft in the second degree if he OR SHE knowingly obtains or exercises control over the motor vehicle of another without authorization or by threat or deception and if none of the aggravating factors in subsection (2) of this section are present. Aggravated motor vehicle theft in the second degree is a class 2 misdemeanor but is a class 5 felony if committed by a person who has been twice previously convicted OR ADJUDICATED of charges separately brought and tried either in this state or elsewhere of an offense involving theft of a motor vehicle under the laws of this state, any other state, the United States, or any territory subject to the jurisdiction of the United States, even though none of the aggravating factors set forth in subsection (2) of this section are present.

**SECTION 13.** 18-6-804, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

**18-6-804. Repeal of part.** ~~This part 8 is repealed, effective July 1, 1995.~~

**SECTION 14.** 18-6.5-103 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-6.5-103. Crimes against at-risk adults and at-risk juveniles - classifications.** (3) (a) Any person who commits a crime of assault in the first degree, as such crime is described in section 18-3-202, and the victim is an at-risk adult or an at-risk juvenile commits a class 2 felony. ~~If the defendant is convicted of assault on an at-risk adult or an at-risk juvenile in the first degree under the circumstances described in section 18-3-202 (1) (a) or (1) (c), the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S. CLASS 4 FELONY IF THE CIRCUMSTANCES DESCRIBED IN SECTION 18-3-202 (2) (a) ARE PRESENT AND A CLASS 2 FELONY IF SUCH CIRCUMSTANCES ARE NOT PRESENT.~~

(b) Any person who commits a crime of assault in the second degree, as such crime is described in section 18-3-203, ~~without the circumstances provided in section 18-3-203 (2) (a) being present~~ and the victim is an at-risk adult or an at-risk juvenile commits a class 3 felony. ~~If the defendant is convicted of assault of an at-risk adult or an at-risk juvenile in the second degree under the circumstances described in section 18-3-203 (1) (b) or (1) (d), the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S. CLASS 5 FELONY IF THE CIRCUMSTANCES DESCRIBED IN SECTION 18-3-203 (2) (a) ARE PRESENT AND A CLASS 3 FELONY IF SUCH CIRCUMSTANCES ARE NOT PRESENT.~~

(c) Any person who commits a crime of assault in the third degree, as such crime is described in section 18-3-204, and the victim is an at-risk adult or an at-risk juvenile commits a ~~class 5~~ CLASS 6 felony.

**SECTION 15.** 18-7-302 (2), (3), and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**18-7-302. Indecent exposure.** (2) (a) INDECENT EXPOSURE TO A PERSON FIFTEEN YEARS OF AGE OR OLDER IS A CLASS 3 MISDEMEANOR.

(b) Indecent exposure to a child UNDER THE AGE OF FIFTEEN YEARS is a class 2 misdemeanor.

(3) A second offense of the offense described in PARAGRAPH (b) OF subsection (2) of this section following the conviction for any such offense is a class 1 misdemeanor.

(4) Any subsequent offense of the offense described in PARAGRAPH (b) OF subsection (2) of this section following a second conviction for any such offense is a class 6 felony.

**SECTION 16.** 18-8-208, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**18-8-208. Escapes.** (9) THE MINIMUM SENTENCES PROVIDED BY SECTIONS 18-1-105, 18-1-106, AND 18-1-107, RESPECTIVELY, FOR VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE MANDATORY, AND THE COURT SHALL NOT GRANT PROBATION OR A SUSPENDED SENTENCE, IN WHOLE OR IN PART.

**SECTION 17.** Part 7 of article 8 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**18-8-706.5. Retaliation against a juror.** (1) AN INDIVIDUAL COMMITS RETALIATION AGAINST A JUROR IF SUCH INDIVIDUAL USES A THREAT, ACT OF HARASSMENT, OR ACT OF HARM OR INJURY UPON ANY PERSON OR PROPERTY, WHICH ACTION IS DIRECTED TO OR COMMITTED UPON A JUROR WHO HAS SERVED FOR A CRIMINAL OR CIVIL TRIAL INVOLVING THE INDIVIDUAL OR A PERSON OR PERSONS ON WHOSE BEHALF THE INDIVIDUAL IS ACTING, A MEMBER OF THE JUROR'S FAMILY, AN INDIVIDUAL IN CLOSE RELATIONSHIP TO THE JUROR, OR AN INDIVIDUAL RESIDING IN THE SAME HOUSEHOLD WITH THE JUROR, AS RETALIATION OR RETRIBUTION AGAINST SUCH JUROR.

(2) RETALIATION AGAINST A JUROR IS A CLASS 3 FELONY.

**SECTION 18.** 18-9-101 (2), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-9-101. Definitions.** As used in this part 1, unless the context otherwise requires:

(2) "Riot" means a public disturbance involving an assemblage of ~~five~~ THREE or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the performance of any governmental function.

**SECTION 19.** 18-9-120 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-9-120. Terrorist training activities - penalties - exemptions.** (1) As used in this section, unless the context otherwise requires:

(a) "Civil disorder" means any planned public disturbance involving acts of violence by an assemblage of two or more persons ~~which~~ THAT causes an immediate danger of, or results in, damage or injury to ~~the~~ property or TO ANOTHER person. ~~of any other individual.~~

**SECTION 20.** 18-19-102 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-19-102. Definitions.** As used in this article, unless the context otherwise requires:

(2) "Drug offender" means any person convicted of any offense under article 18 of this title OR AN ATTEMPT TO COMMIT SUCH OFFENSE AS PROVIDED BY ARTICLE 2 OF THIS TITLE.

**SECTION 21.** 18-17-103 (5) (b) (IV), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-17-103. Definitions.** As used in this article, unless the context otherwise requires:

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to

commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(IV) Offenses involving fraud, as defined in sections 18-5-102 (~~first degree forgery~~), ~~18-5-103~~ 18-5-104 (second degree forgery), 18-5-105 (criminal possession of ~~first degree~~ forged instrument), 18-5-109 (criminal possession of forgery devices), 6-16-111, C.R.S., (felony charitable fraud), 18-5-206 (defrauding a secured creditor or debtor), and 18-5-403 (bribery in sports);

**SECTION 22.** 24-4.1-302 (1) (k) and (1) (bb), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended to read:

**24-4.1-302. Definitions.** As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(1) "Crime" means any of the following acts or omissions in violation of the statutes of the state of Colorado:

(k) ~~Assault on the elderly or on persons with disabilities, in violation of section 18-3-209, C.R.S.;~~

(bb) Crimes against at-risk adults OR AT-RISK JUVENILES, in violation of section 18-6.5-103, C.R.S.; or

**SECTION 23.** Part 4 of article 9 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**16-9-404. Evaluation and report.** (1) WHEN THE DEFENDANT FILES A MOTION ALLEGING THAT THE DEFENDANT IS A MENTALLY RETARDED DEFENDANT, THE COURT SHALL ORDER ONE OR MORE EVALUATIONS OF THE DEFENDANT WITH REGARD TO SUCH MOTION.

(2) IN ORDERING AN EVALUATION OF THE DEFENDANT PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE COURT SHALL SPECIFY THE PLACE WHERE THE EVALUATION IS TO BE CONDUCTED AND THE PERIOD OF TIME ALLOCATED FOR THE EVALUATION. IN DETERMINING THE PLACE WHERE THE EVALUATION IS TO BE CONDUCTED, THE COURT SHALL GIVE PRIORITY TO THE PLACE WHERE THE DEFENDANT IS IN CUSTODY, UNLESS THE NATURE AND CIRCUMSTANCES OF THE EVALUATION REQUIRES DESIGNATION OF A DIFFERENT LOCATION. THE COURT SHALL DIRECT ONE OR MORE PSYCHOLOGISTS WHO ARE RECOMMENDED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO SECTION 27-10.5-139, C.R.S., OR HIS OR HER DESIGNEE, TO EVALUATE THE DEFENDANT. FOR GOOD CAUSE SHOWN, UPON MOTION OF THE PROSECUTION OR THE DEFENDANT OR UPON THE COURT'S OWN MOTION, THE COURT MAY ORDER SUCH FURTHER OR OTHER EVALUATION AS IT DEEMS NECESSARY. NOTHING IN THIS SECTION SHALL ABRIDGE THE RIGHT OF THE DEFENDANT TO PROCURE AN EVALUATION AS PROVIDED IN SECTION 16-9-405.



(3) THE DEFENDANT SHALL HAVE A PRIVILEGE AGAINST SELF-INCRIMINATION THAT MAY BE INVOKED PRIOR TO OR DURING THE COURSE OF AN EVALUATION UNDER THIS SECTION. A DEFENDANT'S FAILURE TO COOPERATE WITH THE EVALUATORS OR OTHER PERSONNEL CONDUCTING THE EVALUATION MAY BE ADMISSIBLE IN THE DEFENDANT'S MENTAL RETARDATION HEARING.

(4) TO AID IN THE FORMATION OF AN OPINION AS TO MENTAL RETARDATION, IT IS PERMISSIBLE IN THE COURSE OF AN EVALUATION UNDER THIS SECTION TO USE STATEMENTS OF THE DEFENDANT AND ANY OTHER EVIDENCE, INCLUDING BUT NOT LIMITED TO THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENSE AS WELL AS THE MEDICAL AND SOCIAL HISTORY OF THE DEFENDANT, IN EVALUATING THE DEFENDANT.

(5) A WRITTEN REPORT OF THE EVALUATION SHALL BE PREPARED IN TRIPLICATE AND DELIVERED TO THE APPROPRIATE CLERK OF THE COURT. THE CLERK SHALL FURNISH A COPY OF THE REPORT TO BOTH THE PROSECUTING ATTORNEY AND THE COUNSEL FOR THE DEFENDANT.

(6) THE REPORT OF EVALUATION SHALL INCLUDE, BUT IS NOT LIMITED TO:

(a) THE NAME OF EACH EXPERT WHO EVALUATED THE DEFENDANT;

(b) A DESCRIPTION OF THE NATURE, CONTENT, EXTENT, AND RESULTS OF THE EVALUATION AND ANY TESTS CONDUCTED; AND

(c) DIAGNOSIS AND AN OPINION AS TO WHETHER THE DEFENDANT IS MENTALLY RETARDED.

(7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE THE APPLICATION OF SECTION 16-8-109.

**16-9-405. Evaluation at insistence of defendant.** (1) IF THE DEFENDANT WISHES TO BE EVALUATED BY AN EXPERT IN MENTAL RETARDATION OF THE DEFENDANT'S CHOICE IN CONNECTION WITH THE MENTAL RETARDATION HEARING UNDER THIS PART 4, THE COURT, UPON TIMELY MOTION, SHALL ORDER THAT THE EVALUATOR CHOSEN BY THE DEFENDANT BE GIVEN REASONABLE OPPORTUNITY TO CONDUCT THE EVALUATION.

(2) WHENEVER AN EXPERT IS ENDORSED AS A WITNESS BY THE DEFENDANT, A COPY OF ANY REPORT OF AN EVALUATION OF THE DEFENDANT SHALL BE FURNISHED TO THE PROSECUTION WITHIN A REASONABLE TIME BUT NOT LESS THAN THIRTY DAYS PRIOR TO THE MENTAL RETARDATION HEARING.

**SECTION 24.** Part 1 of article 10.5 of title 27, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**27-10.5-139. Evaluations to determine whether a defendant is mentally retarded for purposes of class 1 felony trials.** UPON REQUEST OF THE COURT, THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL RECOMMEND SPECIFIC PROFESSIONALS WHO ARE QUALIFIED TO PERFORM AN EVALUATION TO DETERMINE

WHETHER A DEFENDANT IS MENTALLY RETARDED, AS DEFINED IN SECTION 16-9-401, C.R.S. ANY PROFESSIONAL WHO IS RECOMMENDED SHALL BE LICENSED AS A PSYCHOLOGIST IN THE STATE OF COLORADO AND SHALL HAVE EXPERIENCE IN AND SHALL HAVE DEMONSTRATED COMPETENCE IN DETERMINATION AND EVALUATION OF PERSONS WITH MENTAL RETARDATION. THE EXECUTIVE DIRECTOR SHALL CONVENE A PANEL OF NOT FEWER THAN THREE INDIVIDUALS WITH EXPERTISE IN MENTAL RETARDATION WHO SHALL ASSESS THE QUALIFICATIONS OF LICENSED PSYCHOLOGISTS AND MAKE RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR.

**SECTION 25.** Part 1 of article 9 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**18-9-115.5. Violation of a restraining order related to public conveyances.** ANY VIOLATION OF AN ORDER OF COURT OBTAINED PURSUANT TO RULE 65 OF THE COLORADO RULES OF CIVIL PROCEDURES, WHICH ORDER HAS SPECIFICALLY RESTRAINED A PERSON FROM TRAVELLING IN OR ON A PARTICULAR PUBLIC CONVEYANCE, SHALL BE A CLASS 3 MISDEMEANOR.

**SECTION 26.** 18-9-111 (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-9-111. Harassment - stalking.** (5) Where a person commits harassment by stalking under paragraph (a) of subsection (4) of this section, the following shall apply:

(a) A person commits a ~~class 1 misdemeanor~~ CLASS 6 FELONY for a first offense.

(a.5) For a second or subsequent offense, if such offense occurs within seven years of the date of a prior offense for which such person was convicted, the offender commits a ~~class 1 misdemeanor and, in addition to any other penalty imposed pursuant to section 18-1-106, shall be sentenced to a mandatory minimum sentence of thirty days imprisonment~~ CLASS 5 FELONY.

(b) If, at the time of the offense, there was a temporary restraining order, injunction, or any other court order in effect against such person prohibiting the behavior described in subparagraph (I) or (II) of paragraph (a) of subsection (4) of this section, such person commits a ~~class 1 misdemeanor and, in addition to any other penalty imposed pursuant to section 18-1-106, shall be sentenced to a mandatory minimum sentence of sixty days imprisonment in the county jail~~ CLASS 6 FELONY. In addition, when a violation under subsection (4) of this section is committed in connection with a violation of a court order, including but not limited to any restraining order or any order that sets forth the conditions of a bond, any sentence imposed for such violation pursuant to this subsection (5) shall run consecutively and not concurrently with any sentence imposed pursuant to section 18-6-803.5 and with any sentence imposed in a contempt proceeding for violation of the court order. Nothing in this paragraph (b) shall be construed to alter or diminish the inherent authority of the court to enforce its orders through civil or criminal contempt proceedings; however, before a criminal contempt proceeding is heard before the court, notice of the proceedings shall be provided to the district attorney for the district of the court where the proceedings are to be heard and the district attorney for

the district of the court where the alleged act of criminal contempt occurred. The district attorney for either district shall be allowed to appear and argue for the imposition of contempt sanctions.

**SECTION 27. No appropriation.** The general assembly finds that additional prison space is available as a result of general fund moneys made available by the amendment to section 17-22.5-405 (5), Colorado Revised Statutes, as amended by House Bill 95-1087, enacted at the First Regular Session of the Sixtieth General Assembly. 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 28. Effective date - applicability.** This section, section 15, and section 29 shall take effect upon passage, and section 15 shall apply to offenses committed on and after said date. The remaining sections of this act shall take effect July 1, 1995, and shall apply to offenses committed on and after said date.

**SECTION 29. 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: June 3, 1995