

## CHAPTER 251

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**CRIMINAL LAW AND PROCEDURE**

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**HOUSE BILL 98-1088**

BY REPRESENTATIVES Kaufman, Epps, Gotlieb, Hagedorn, June, Mace, and Nichol;  
also SENATORS Mutzebaugh and Arnold.

**AN ACT**

CONCERNING PROCEDURAL CHANGES FOR THE STRENGTHENING OF THE CRIMINAL LAWS.

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

**SECTION 1.** 16-9-101 (1), Colorado Revised Statutes, is amended to read:

**16-9-101. Right to compel attendance of witnesses.** (1) In every criminal case, the prosecuting attorney and the defendant have the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness ~~upon the trial~~ AT ANY PROCEEDING BEFORE THE COURT. SERVICE OF A SUBPOENA UPON A PARENT OR LEGAL GUARDIAN WHO HAS PHYSICAL CARE OF AN UNEMANCIPATED MINOR THAT CONTAINS WORDING COMMANDING SAID PARENT OR LEGAL GUARDIAN TO PRODUCE THE UNEMANCIPATED MINOR FOR THE PURPOSE OF TESTIFYING BEFORE THE COURT SHALL BE VALID SERVICE COMPELLING THE ATTENDANCE OF BOTH SAID PARENT OR LEGAL GUARDIAN AND THE UNEMANCIPATED MINOR FOR EXAMINATION AS WITNESSES. IN ADDITION, SERVICE OF A SUBPOENA AS DESCRIBED IN THIS SUBSECTION (1) SHALL COMPEL SAID PARENT OR LEGAL GUARDIAN EITHER TO MAKE ALL NECESSARY ARRANGEMENTS TO ENSURE THAT THE UNEMANCIPATED MINOR IS AVAILABLE BEFORE THE COURT TO TESTIFY OR TO APPEAR IN COURT AND SHOW GOOD CAUSE FOR THE UNEMANCIPATED MINOR'S FAILURE TO APPEAR.

**SECTION 2. Repeal.** 16-2-105, Colorado Revised Statutes, is repealed as follows:

**16-2-105. Issuance of summons after complaint.** ~~A summons may be issued by~~

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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.*

~~the clerk of the county court, if a sworn complaint has been filed by any person with the county court requesting issuance of a summons under simplified procedure. A copy of a summons so issued shall be supplied to the district attorney or deputy district attorney for the county. If the district attorney so requests, a warrant may be issued by the county judge, upon a showing of probable cause. In such event, the person named in the warrant shall be brought before the court as provided in the Colorado rules of criminal procedure.~~

**SECTION 3.** 13-33-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**13-33-102. Fees of witnesses.** (6) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1) TO (5) OF THIS SECTION, THE WITNESS FEE SPECIFIED IN THIS SECTION SHALL NOT BE PAID TO ANY WITNESS WHO AT THE TIME OF TESTIFYING IS IN THE LEGAL CUSTODY OF ANY STATE OR FEDERAL AGENCY OR ANY LOCAL LAW ENFORCEMENT AGENCY AND WHOSE TRANSPORTATION TO COURT IS PROVIDED AT GOVERNMENT EXPENSE.

**SECTION 4.** 13-33-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**13-33-103. Mileage fees of jurors and witnesses.** (6) THE MILEAGE FEE SHALL NOT BE PAID TO ANY WITNESS WHO AT THE TIME OF TESTIFYING IS IN THE LEGAL CUSTODY OF ANY STATE OR FEDERAL AGENCY OR ANY LOCAL LAW ENFORCEMENT AGENCY AND WHOSE TRANSPORTATION TO COURT IS PROVIDED AT GOVERNMENT EXPENSE.

**SECTION 5.** 18-6-803.7 (2) (b), Colorado Revised Statutes, is amended to read:

**18-6-803.7. Central registry of restraining orders - creation.** (2) (b) Restraining orders and subsequent orders shall be entered into the registry by the clerk of the court issuing the restraining order; EXCEPT THAT ORDERS ISSUED PURSUANT TO SECTIONS 18-1-1001 AND 19-2-707, C.R.S., SHALL BE ENTERED INTO THE REGISTRY ONLY AT THE DISCRETION OF THE COURT OR UPON MOTION OF THE DISTRICT ATTORNEY. THE CLERK OF THE COURT ISSUING THE RESTRAINING ORDER SHALL BE RESPONSIBLE FOR UPDATING THE REGISTRY ELECTRONICALLY IN A TIMELY MANNER TO ENSURE THE NOTICE IS AS COMPLETE AND ACCURATE AS IS REASONABLY POSSIBLE WITH REGARD TO THE INFORMATION SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

**SECTION 6.** 24-72-302 (2), Colorado Revised Statutes, is amended to read:

**24-72-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(2) "Basic identification information" means the name, ~~birth date~~, PLACE AND DATE OF BIRTH, last-known address, SOCIAL SECURITY NUMBER, OCCUPATION AND ADDRESS OF EMPLOYMENT, physical description, PHOTOGRAPH, HANDWRITTEN SIGNATURE, sex, ~~and~~ fingerprints, AND ANY KNOWN ALIASES of any person.

**SECTION 7.** 16-11-501 (2), Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW PARAGRAPH 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:

(n) ANY COSTS OF PARTICIPATION IN A DIVERSION PROGRAM IF THE OFFENDER OR JUVENILE UNSUCCESSFULLY PARTICIPATED IN A DIVERSION PROGRAM PRIOR TO THE CONVICTION OR ADJUDICATION.

**SECTION 8.** 16-7-403, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**16-7-403. Deferred sentencing of defendant.** (4) A WARRANT FOR THE ARREST OF ANY DEFENDANT FOR BREACH OF A CONDITION OF A DEFERRED SENTENCE MAY BE ISSUED BY ANY JUDGE OF A COURT OF RECORD UPON THE REPORT OF A PROBATION OFFICER, OR UPON THE VERIFIED COMPLAINT OF ANY PERSON, ESTABLISHING TO THE SATISFACTION OF THE JUDGE PROBABLE CAUSE TO BELIEVE THAT A CONDITION OF THE DEFERRED SENTENCE HAS BEEN VIOLATED AND THAT THE ARREST OF THE DEFENDANT IS REASONABLY NECESSARY. THE WARRANT MAY BE EXECUTED BY ANY PROBATION OFFICER OR BY A PEACE OFFICER AUTHORIZED TO EXECUTE WARRANTS IN THE COUNTY IN WHICH THE DEFENDANT IS FOUND.

**SECTION 9.** 16-12-102 (1), Colorado Revised Statutes, is amended to read:

**16-12-102. Appeals by the prosecution.** (1) The prosecution may appeal any decision of the trial court in a criminal case upon any question of law. ~~and~~ Any order of the trial court ~~granting~~ THAT EITHER DISMISSES ONE OR MORE COUNTS OF A CHARGING DOCUMENT PRIOR TO TRIAL OR GRANTS a new trial after the entry of a verdict or judgment shall constitute a final order ~~which~~ THAT shall be immediately appealable pursuant to this subsection (1). If any act of the general assembly is adjudged inoperative or unconstitutional in any criminal case, it is the duty of the district attorney of the judicial district in which the court making such decision is situated to appeal on behalf of the people of the state of Colorado, unless the same issue of constitutionality is already pending before a reviewing court in another case. Nothing in this section shall authorize placing the defendant in jeopardy a second time for the same offense. No docket fee shall be required of the people upon an appeal under this section. The procedure to be followed in filing and prosecuting appeals under this section shall be as provided by applicable rule of the supreme court of Colorado. However, if a statute providing for the imposition of the death penalty is adjudged inoperative or inapplicable for any reason, such adjudication shall constitute a final order ~~which~~ THAT shall be immediately appealable to the supreme court of Colorado, notwithstanding any statute or court rule to the contrary.

**SECTION 10.** 16-5-402, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**16-5-402. Limitation for collateral attack upon trial judgment.** (1.5) IF AN APPELLATE COURT CAN DETERMINE ON THE FACE OF THE MOTION, FILES, AND RECORD IN A CASE THAT A COLLATERAL ATTACK IS OUTSIDE THE TIME LIMITS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE APPELLATE COURT MAY DENY RELIEF ON THAT BASIS, REGARDLESS OF WHETHER THE ISSUE OF TIMELINESS WAS RAISED IN THE TRIAL

COURT.

**SECTION 11.** 13-4-108, Colorado Revised Statutes, is amended to read:

**13-4-108. Supreme court review.** (1) Before application may be made for writ of certiorari, as provided in this section, application shall be made to the court of appeals for a rehearing ~~as provided~~ ~~IF REQUIRED~~ by supreme court rule.

(2) Within thirty days after a rehearing has been refused by the court of appeals, any party in interest who is aggrieved by the judgment of the court of appeals may appeal by application to the supreme court for a writ of certiorari.

(3) Procedures on writs of certiorari, INCLUDING PROCEDURES FOR REHEARINGS, shall be as prescribed by rule of the supreme court.

**SECTION 12.** 18-12-105.1 (2), Colorado Revised Statutes, is amended to read:

**18-12-105.1. Permits for concealed weapons - liability.** (2) A sheriff or chief of police shall make an inquiry, including a fingerprint check, into the background of an applicant for a permit to carry a concealed weapon to determine if the applicant would present a danger to others or to himself or herself if the applicant is granted a permit. The sheriff or chief of police shall not be liable for any damages that may result from granting a permit, if the sheriff or chief of police, prior to granting a permit, requests a criminal history check of the applicant from the Colorado bureau of investigation, including a request to process the applicant's fingerprints. The Colorado bureau of investigation, upon request by a chief of police or sheriff, shall conduct a criminal history check of an applicant PURSUANT TO THIS SUBSECTION (2), including but not limited to processing of fingerprints FOR STATE CRIMINAL HISTORY INFORMATION AND USING FINGERPRINTS TO ACCESS ARREST HISTORY RECORDS THAT ARE MAINTAINED BY THE FEDERAL BUREAU OF INVESTIGATION IN THE UNITED STATES DEPARTMENT OF JUSTICE, ~~pursuant to this subsection (2)~~. The cost of such check shall be borne by the applicant.

**SECTION 13. Effective date - applicability.** This act shall take effect upon passage, and sections 7 and 8 of this act shall apply to offenses committed on or after said date.

**SECTION 14. 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 27, 1998