

CHAPTER 137

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 99-1172

BY REPRESENTATIVES Tool, Lee, McPherson, and Mitchell;
also SENATORS Wham, Andrews, Evans, Lamborn, and Powers.

AN ACT

CONCERNING CRIMINAL CASES IN WHICH THE DEFENDANT RAISES HIS OR HER MENTAL STATE AS A DEFENSE.

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

SECTION 1. 16-8-106 (2) (b), Colorado Revised Statutes, is amended, and the said 16-8-106 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

16-8-106. Examinations and report. (2) (b) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial on the issues of insanity or competency and in any sentencing hearing held pursuant to section 16-11-103. This paragraph (b) shall apply to offenses committed on or after July 1, 1995, BUT PRIOR TO JULY 1, 1999.

(c) THE DEFENDANT SHALL COOPERATE WITH PSYCHIATRISTS AND OTHER PERSONNEL CONDUCTING ANY EXAMINATION ORDERED BY THE COURT PURSUANT TO THIS SECTION. STATEMENTS MADE BY THE DEFENDANT IN THE COURSE OF SUCH EXAMINATION SHALL BE PROTECTED AS PROVIDED IN SECTION 16-8-107. IF THE DEFENDANT DOES NOT COOPERATE WITH PSYCHIATRISTS AND OTHER PERSONNEL CONDUCTING THE EXAMINATION, THE COURT SHALL NOT ALLOW THE DEFENDANT TO CALL ANY PSYCHIATRIST OR OTHER EXPERT WITNESS TO PROVIDE EVIDENCE AT THE DEFENDANT'S TRIAL CONCERNING THE DEFENDANT'S MENTAL CONDITION INCLUDING, BUT NOT LIMITED TO, PROVIDING EVIDENCE ON THE ISSUES OF INSANITY OR COMPETENCY, OR AT ANY SENTENCING HEARING HELD PURSUANT TO SECTION 16-11-103. IN ADDITION, THE FACT OF THE DEFENDANT'S NONCOOPERATION WITH PSYCHIATRISTS AND OTHER PERSONNEL CONDUCTING THE EXAMINATION MAY BE

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

ADMISSIBLE IN THE DEFENDANT'S TRIAL TO REBUT ANY EVIDENCE INTRODUCED BY THE DEFENDANT WITH REGARD TO THE DEFENDANT'S MENTAL CONDITION INCLUDING, BUT NOT LIMITED TO, THE ISSUES OF INSANITY AND COMPETENCY, AND IN ANY SENTENCING HEARING HELD PURSUANT TO SECTION 16-11-103. THIS PARAGRAPH (c) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1999.

SECTION 2. 16-8-106 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-8-106. Examinations and report. (3) (c) FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 1999, WHEN A DEFENDANT UNDERGOES AN EXAMINATION PURSUANT TO THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (3) BECAUSE THE DEFENDANT HAS GIVEN NOTICE PURSUANT TO SECTION 16-8-107 (3) THAT HE OR SHE INTENDS TO INTRODUCE EXPERT OPINION EVIDENCE CONCERNING HIS OR HER MENTAL CONDITION, THE PHYSICIANS AND OTHER PERSONNEL CONDUCTING THE EXAMINATION MAY TESTIFY TO THE RESULTS OF ANY SUCH PROCEDURES AND THE STATEMENTS AND REACTIONS OF THE DEFENDANT INSOFAR AS SUCH STATEMENTS AND REACTIONS ENTERED INTO THE FORMATION OF THEIR OPINIONS AS TO THE MENTAL CONDITION OF THE DEFENDANT BOTH AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE AND AT THE PRESENT TIME.

SECTION 3. 16-8-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-106. Examinations and report. (7) WITH RESPECT TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1999, WHEN A DEFENDANT HAS UNDERGONE AN EXAMINATION PURSUANT TO THE PROVISIONS OF THIS SECTION BECAUSE THE DEFENDANT HAS GIVEN NOTICE PURSUANT TO SECTION 16-8-107 (3) THAT HE OR SHE INTENDS TO INTRODUCE EXPERT OPINION EVIDENCE CONCERNING HIS OR HER MENTAL CONDITION, THE REPORT OF EXAMINATION SHALL INCLUDE, BUT IS NOT LIMITED TO, THE ITEMS DESCRIBED IN PARAGRAPHS (a) TO (c) OF SUBSECTION (5) OF THIS SECTION AND:

(a) AN OPINION AS TO WHETHER THE DEFENDANT SUFFERED FROM A MENTAL DISEASE OR DEFECT OR FROM A CONDITION OF MIND CAUSED BY MENTAL DISEASE OR DEFECT THAT AFFECTED THE DEFENDANT'S MENTAL CONDITION; AND, IF SO,

(b) SEPARATE OPINIONS AS TO THE DEFENDANT'S MENTAL CONDITION INCLUDING, BUT NOT LIMITED TO, WHETHER THE DEFENDANT WAS INSANE, IS INCOMPETENT TO PROCEED, OR IS INELIGIBLE FOR RELEASE, AS THOSE TERMS ARE DEFINED IN THIS ARTICLE, AND, IN ANY CLASS 1 FELONY CASE, AN OPINION AS TO HOW THE MENTAL DISEASE OR DEFECT OR THE CONDITION OF MIND CAUSED BY MENTAL DISEASE OR DEFECT AFFECTS ANY MITIGATING FACTOR. THE NATURE OF THE OPINIONS REQUIRED DEPENDS UPON THE TYPE OF EXAMINATION ORDERED BY THE COURT.

SECTION 4. 16-8-107 (1.5) (a), Colorado Revised Statutes, is amended, and the said 16-8-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-8-107. Evidence. (1.5) (a) Except as otherwise provided in this subsection (1.5), evidence acquired directly or indirectly for the first time from a communication

derived from the defendant's mental processes during the course of a court-ordered examination pursuant to section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible only as to the issues raised by the defendant's plea of not guilty by reason of insanity, and the jury, at the request of either party, shall be so instructed; EXCEPT THAT, FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 1999, SUCH EVIDENCE SHALL ALSO BE ADMISSIBLE AS TO THE DEFENDANT'S MENTAL CONDITION IF THE DEFENDANT UNDERGOES THE EXAMINATION BECAUSE THE DEFENDANT HAS GIVEN NOTICE PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT HE OR SHE INTENDS TO INTRODUCE EXPERT OPINION EVIDENCE CONCERNING HIS OR HER MENTAL CONDITION.

(3) (a) IN NO EVENT SHALL A COURT PERMIT A DEFENDANT TO INTRODUCE EVIDENCE RELEVANT TO THE ISSUE OF INSANITY, AS DESCRIBED IN SECTION 16-8-101.5, UNLESS THE DEFENDANT ENTERS A PLEA OF NOT GUILTY BY REASON OF INSANITY, PURSUANT TO SECTION 16-8-103.

(b) REGARDLESS OF WHETHER A DEFENDANT ENTERS A PLEA OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8-103, THE DEFENDANT SHALL NOT BE PERMITTED TO INTRODUCE EVIDENCE IN THE NATURE OF EXPERT OPINION CONCERNING HIS OR HER MENTAL CONDITION WITHOUT HAVING FIRST GIVEN NOTICE TO THE COURT AND THE PROSECUTION OF HIS OR HER INTENT TO INTRODUCE SUCH EVIDENCE AND WITHOUT HAVING UNDERGONE A COURT-ORDERED EXAMINATION PURSUANT TO SECTION 16-8-106. A DEFENDANT WHO PLACES HIS OR HER MENTAL CONDITION AT ISSUE BY GIVING SUCH NOTICE WAIVES ANY CLAIM OF CONFIDENTIALITY OR PRIVILEGE AS PROVIDED IN SECTION 16-8-103.6. SUCH NOTICE SHALL BE GIVEN AT THE TIME OF ARRAIGNMENT; EXCEPT THAT THE COURT, FOR GOOD CAUSE SHOWN, SHALL PERMIT THE DEFENDANT TO INFORM THE COURT AND PROSECUTION OF THE INTENT TO INTRODUCE SUCH EVIDENCE AT ANY TIME PRIOR TO TRIAL. ANY PERIOD OF DELAY CAUSED BY THE EXAMINATION AND REPORT PROVIDED FOR IN SECTION 16-8-106 SHALL BE EXCLUDED, AS PROVIDED IN SECTION 18-1-405 (6) (a), C.R.S., FROM THE TIME WITHIN WHICH THE DEFENDANT MUST BE BROUGHT TO TRIAL.

(c) THE PROVISIONS OF THIS SUBSECTION (3) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1999.

SECTION 5. 16-8-103.6 (2) (a), Colorado Revised Statutes, is amended to read:

16-8-103.6. Waiver of privilege. (2) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, raising the question of incompetency to proceed pursuant to section 16-8-110, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 16-11-103 OR, FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 1999, BY SEEKING TO INTRODUCE EVIDENCE CONCERNING HIS OR HER MENTAL CONDITION PURSUANT TO SECTION 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section 16-11-103. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

SECTION 6. 16-8-103.7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-103.7. Examination after entry of defenses of insanity and impaired mental condition for offenses committed before July 1, 1995. (3) (a) WHEN THE DEFENDANT GIVES NOTICE PURSUANT TO SECTION 16-8-107 (3) THAT HE OR SHE INTENDS TO INTRODUCE EVIDENCE IN THE NATURE OF EXPERT OPINION CONCERNING HIS OR HER MENTAL CONDITION, THE COURT SHALL ORDER AN EXAMINATION OF THE DEFENDANT PURSUANT TO SECTION 16-8-106.

(b) THE PROVISIONS OF THIS SUBSECTION (3) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1999.

SECTION 7. 18-1-405 (6) (a), Colorado Revised Statutes, is amended to read:

18-1-405. Speedy trial. (6) In computing the time within which a defendant shall be brought to trial as provided in subsection (1) of this section, the following periods of time shall be excluded:

(a) Any period during which the defendant is incompetent to stand trial, or is unable to appear by reason of illness or physical disability, or is under observation or examination at any time after the issue of THE DEFENDANT'S MENTAL CONDITION, insanity, incompetency, or impaired mental condition is raised;

SECTION 8. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to offenses committed on or after said date.

SECTION 9. 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: April 22, 1999