

CHAPTER 157

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 02-1009

BY REPRESENTATIVE(S) Stafford, Boyd, Lawrence, and Williams S.;
also SENATOR(S) Gordon.

AN ACT

CONCERNING CIVIL RESTRAINING ORDERS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 13-14-102 (9) (b), Colorado Revised Statutes, is amended, and the said 13-14-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

13-14-102. Civil restraining orders. (9) (b) Notwithstanding the provisions of paragraph (a) of this subsection (9), the judge or magistrate, after examining the record and the evidence, for good cause shown may continue the temporary restraining order AND THE SHOW CAUSE HEARING to a date certain not to exceed one hundred twenty days after the date of the hearing if he or she determines such continuance would be in the best interests of the parties and if both parties are present at the hearing and agree to the continuance. IN ADDITION, EACH PARTY MAY REQUEST ONE CONTINUANCE FOR A PERIOD NOT TO EXCEED FOURTEEN DAYS WHICH THE JUDGE OR MAGISTRATE, AFTER EXAMINING THE RECORD AND THE EVIDENCE, MAY GRANT UPON A FINDING OF GOOD CAUSE. The judge or magistrate shall inform the defendant that a violation of the temporary civil restraining order shall constitute a criminal offense pursuant to section 18-6-803.5, C.R.S., or shall constitute contempt of court and subject the defendant to such punishment as may be provided by law.

(17.5) (a) NOTHING IN THIS SECTION SHALL PRECLUDE THE PROTECTED PARTY FROM APPLYING TO THE COURT AT ANY TIME FOR MODIFICATION, INCLUDING BUT NOT LIMITED TO A MODIFICATION OF THE DURATION OF THE RESTRAINING ORDER, OR DISMISSAL OF A TEMPORARY OR PERMANENT RESTRAINING ORDER ISSUED PURSUANT TO THIS SECTION. THE RESTRAINED PARTY MAY APPLY TO THE COURT FOR MODIFICATION, INCLUDING BUT NOT LIMITED TO A MODIFICATION OF THE DURATION

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

OF THE RESTRAINING ORDER, OR DISMISSAL OF A PERMANENT RESTRAINING ORDER PURSUANT TO THIS SECTION. HOWEVER, IF A PERMANENT RESTRAINING ORDER HAS BEEN ISSUED OR IF A MOTION FOR MODIFICATION OR DISMISSAL OF A PERMANENT RESTRAINING ORDER HAS BEEN FILED BY THE RESTRAINED PARTY, WHETHER OR NOT IT WAS GRANTED, NO MOTION TO MODIFY OR DISMISS MAY BE FILED BY THE RESTRAINED PARTY WITHIN FOUR YEARS AFTER ISSUANCE OF THE PERMANENT ORDER OR AFTER DISPOSITION OF THE PRIOR MOTION.

(b) (I) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (a) OF THIS SUBSECTION (17.5) TO THE CONTRARY, AFTER ISSUANCE OF THE PERMANENT RESTRAINING ORDER, IF THE RESTRAINED PARTY IS CONVICTED OF ANY MISDEMEANOR OTHER THAN THE ORIGINAL MISDEMEANOR THAT FORMED THE BASIS FOR THE ISSUANCE OF THE RESTRAINING ORDER, THE UNDERLYING FACTUAL BASIS OF WHICH HAS BEEN FOUND BY A COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE, AS THAT TERM IS DEFINED IN SECTION 18-6-800.3 (1), C.R.S., OR OF ANY FELONY, THEN THE RESTRAINING ORDER SHALL REMAIN PERMANENT AND SHALL NOT BE DISMISSED BY THE COURT.

(II) ANY MOTION TO MODIFY A RESTRAINING ORDER FILED BY A RESTRAINED PARTY PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (17.5) SHALL BE ACCOMPANIED BY THE RESULTS FROM THE COLORADO BUREAU OF INVESTIGATION OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK SHALL INCLUDE ARRESTS, CONVICTION RECORDS, ANY CRIMINAL DISPOSITIONS REFLECTED IN THE COLORADO BUREAU OF INVESTIGATION AND FEDERAL BUREAU OF INVESTIGATION RECORDS CONCERNING ANY FELONY RECORD OR ANY MISDEMEANOR RECORD, THE UNDERLYING FACTUAL BASIS OF WHICH HAS BEEN FOUND BY A COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE, FINGERPRINT PROCESSING BY THE FEDERAL BUREAU OF INVESTIGATION AND THE COLORADO BUREAU OF INVESTIGATION, AND A QUERY OF THE RESTRAINING ORDER REGISTRY. THE MOVING PARTY SHALL BE RESPONSIBLE FOR PROVIDING CERTIFIED COPIES OF ANY CRIMINAL DISPOSITIONS THAT ARE NOT REFLECTED IN THE COLORADO BUREAU OF INVESTIGATION OR FEDERAL BUREAU OF INVESTIGATION RECORDS AND ANY OTHER DISPOSITIONS THAT ARE UNKNOWN. THE MOVING PARTY SHALL BE RESPONSIBLE FOR SUPPLYING FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION AND FOR OBTAINING THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. THE MOVING PARTY SHALL ALSO BE RESPONSIBLE FOR THE COST OF THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK.

(c) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE ISSUING COURT SHALL RETAIN JURISDICTION TO ENFORCE, MODIFY, OR DISMISS A TEMPORARY OR PERMANENT RESTRAINING ORDER.

(d) ANY MOTION FILED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (17.5) SHALL BE HEARD BY THE COURT. THE PARTY MOVING FOR A MODIFICATION OR DISMISSAL OF A TEMPORARY OR PERMANENT RESTRAINING ORDER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (17.5) SHALL AFFECT PERSONAL SERVICE ON THE OTHER PARTY WITH A COPY OF THE MOTION AND NOTICE OF THE HEARING ON THE MOTION, AS PROVIDED BY RULE 4 (e) OF THE COLORADO RULES OF CIVIL PROCEDURE. THE MOVING PARTY SHALL BEAR THE BURDEN OF PROOF TO SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE MODIFICATION IS APPROPRIATE OR THAT A DISMISSAL IS APPROPRIATE BECAUSE THE RESTRAINING ORDER IS NO LONGER

NECESSARY. IF THE PROTECTED PARTY HAS REQUESTED THAT HIS OR HER ADDRESS BE KEPT CONFIDENTIAL, THE COURT SHALL NOT DISCLOSE SUCH INFORMATION TO THE RESTRAINED PARTY OR ANY OTHER PERSON, EXCEPT AS OTHERWISE AUTHORIZED BY LAW.

(e) IN CONSIDERING WHETHER TO MODIFY OR DISMISS A RESTRAINING ORDER ISSUED PURSUANT TO THIS SECTION, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO:

(I) WHETHER THE RESTRAINED PARTY HAS COMPLIED WITH THE TERMS OF THE RESTRAINING ORDER;

(II) WHETHER THE RESTRAINED PARTY HAS MET THE CONDITIONS ASSOCIATED WITH THE RESTRAINING ORDER, IF ANY;

(III) WHETHER THE RESTRAINED PARTY HAS BEEN ORDERED TO PARTICIPATE IN AND COMPLETE A DOMESTIC VIOLENCE TREATMENT PROGRAM PROVIDED BY AN ENTITY APPROVED PURSUANT TO SECTION 16-11.8-103 (4) (b) (III) (C), C.R.S., AND WHETHER THE RESTRAINED PARTY HAS COMPLETED THE PROGRAM;

(IV) WHETHER THE RESTRAINED PARTY HAS VOLUNTARILY PARTICIPATED IN ANY DOMESTIC VIOLENCE TREATMENT PROGRAM OR OTHER COUNSELING ADDRESSING DOMESTIC VIOLENCE OR ANGER MANAGEMENT ISSUES;

(V) THE TIME THAT HAS LAPSED SINCE THE RESTRAINING ORDER WAS ISSUED;

(VI) WHEN THE LAST INCIDENT OF ABUSE OR THREAT OF HARM OCCURRED OR OTHER RELEVANT INFORMATION CONCERNING THE SAFETY AND PROTECTION OF THE PROTECTED PERSON;

(VII) WHETHER, SINCE THE ISSUANCE OF THE RESTRAINING ORDER, THE RESTRAINED PERSON HAS BEEN CONVICTED OF OR PLEAD GUILTY TO A CRIME, THE UNDERLYING FACTUAL BASIS OF WHICH HAS BEEN FOUND BY A COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE, AS THAT TERM IS DEFINED IN SECTION 18-6-800.3 (1), C.R.S., OTHER THAN THE ORIGINAL OFFENSE, IF ANY, THAT FORMED THE BASIS FOR THE ISSUANCE OF THE RESTRAINING ORDER;

(VIII) WHETHER ANY OTHER RESTRAINING ORDERS OR PROTECTIVE ORDERS OR PROTECTION ORDERS HAVE BEEN SUBSEQUENTLY ISSUED AGAINST THE RESTRAINED PERSON PURSUANT TO THIS SECTION OR ANY OTHER LAW OF THIS STATE OR ANY OTHER STATE; AND

(IX) THE CIRCUMSTANCES OF THE PARTIES, INCLUDING THE RELATIVE PROXIMITY OF THE PARTIES' RESIDENCES AND WORK PLACES AND WHETHER THE PARTIES HAVE MINOR CHILDREN TOGETHER.

SECTION 2. 13-1-136, Colorado Revised Statutes, is amended to read:

13-1-136. Civil restraining orders - single set of forms. (1) The general assembly hereby finds that the statutes provide for the issuance of several types of civil restraining orders to protect the public, but that many of these restraining orders

have many elements in common. The general assembly also finds that consolidating the various forms for issuing AND VERIFYING SERVICE OF civil restraining orders and creating, to the extent possible, a standardized set of forms that will be applicable to the issuance AND SERVICE of civil restraining orders will simplify the procedures for issuing these restraining orders and enhance the efficient use of the courts' and citizens' time and resources.

(2) On or before July 1, 1999, the state court administrator, pursuant to the rule-making authority of the Colorado supreme court, shall design and make available to the courts copies of a standardized set of forms that shall be used in the issuance AND VERIFICATION OF SERVICE of civil restraining orders issued pursuant to article 14 of this title or section 14-10-108, C.R.S., or rule 365 of the Colorado rules of county court civil procedure. The state court administrator shall design the standardized set of forms in such a manner as to make the forms easy to understand and use and in such a manner as will facilitate and improve the procedure for requesting, issuing, and enforcing civil restraining orders.

(3) In developing the standardized set of forms for the issuance AND VERIFICATION OF SERVICE of civil restraining orders pursuant to this section, the state court administrator shall work with representatives of municipal, county, and district court judges, law enforcement, a member of the Colorado bar association, and representatives of other interested groups.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated to the department of public safety, Colorado bureau of investigation, for the fiscal year beginning July 1, 2002, the sum of ninety-two thousand four hundred twenty-seven dollars (\$92,427) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said sum, thirty-four thousand three hundred forty-seven dollars (\$34,347) shall be from cash funds, and fifty-eight thousand eighty dollars (\$58,080) shall be from cash funds exempt.

SECTION 4. Effective date - applicability. This act shall take effect July 1, 2002, and section 13-14-102 (17.5) (b), Colorado Revised Statutes, shall apply to offenses committed on or after said date.

SECTION 5. 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 24, 2002