

CHAPTER 158

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 02-1019

BY REPRESENTATIVE(S) Tapia, Borodkin, Boyd, Groff, Grossman, Lawrence, Mace, Madden, Mitchell, Ragsdale, Romanoff, Snook, Spradley, Veiga, Weddig, and Williams S.;
also SENATOR(S) Gordon, Epps, Hernandez, Lamborn, and McElhany.

AN ACT

**CONCERNING REGISTRATION WITH LOCAL LAW ENFORCEMENT AGENCIES AS A CONDITION OF
RELEASE FOR CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.**

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

SECTION 1. 16-8-115, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition. (4) (a) IN ADDITION TO ANY TERMS AND CONDITIONS OF RELEASE IMPOSED PURSUANT TO SUBSECTION (3) OF THIS SECTION, A COURT MAY ORDER A DEFENDANT, AS A CONDITION OF RELEASE, TO REGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT RESIDES IF THE COURT FINDS THAT:

(I) THE DEFENDANT WAS FOUND NOT GUILTY BY REASON OF INSANITY ON A CHARGE OF AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR;

(II) THE DEFENDANT WAS FOUND NOT GUILTY BY REASON OF INSANITY ON A CHARGE OF ANY OTHER OFFENSE, THE UNDERLYING FACTUAL BASIS OF WHICH INCLUDES AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR; OR

(III) THE CHIEF OFFICER OF THE INSTITUTION IN WHICH THE DEFENDANT HAS BEEN COMMITTED RECOMMENDS REGISTRATION BASED ON INFORMATION OBTAINED FROM THE DEFENDANT DURING THE COURSE OF TREATMENT THAT INDICATES THE DEFENDANT HAS COMMITTED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR.

(b) THE COURT'S ORDER PLACING THE DEFENDANT ON CONDITIONAL RELEASE

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

SHALL INCLUDE NOTICE OF THE REQUIREMENT TO REGISTER. THE COURT'S ORDER, AT A MINIMUM, SHALL SPECIFY:

(I) THE TIME PERIOD FOLLOWING RELEASE WITHIN WHICH THE DEFENDANT SHALL REGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY;

(II) THE TIME PERIOD FOLLOWING A CHANGE OF RESIDENCE WITHIN WHICH THE DEFENDANT SHALL REREGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT RESIDES;

(III) THE FREQUENCY WITH WHICH THE DEFENDANT MUST REREGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT RESIDES TO PROVIDE A PERIODIC VERIFICATION OF THE DEFENDANT'S LOCATION;

(IV) ANY OTHER CIRCUMSTANCES UNDER WHICH THE DEFENDANT MUST REREGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT RESIDES.

(c) PRIOR TO RELEASE OF ANY DEFENDANT WHO IS REQUIRED TO REGISTER AS A CONDITION OF RELEASE PURSUANT TO THIS SUBSECTION (4), THE DEPARTMENT OF HUMAN SERVICES SHALL OBTAIN FROM THE DEFENDANT THE ADDRESS AT WHICH THE DEFENDANT PLANS TO RESIDE UPON RELEASE. AT LEAST TWO DAYS PRIOR TO RELEASE OF THE DEFENDANT, THE DEPARTMENT OF HUMAN SERVICES SHALL NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT PLANS TO RESIDE UPON RELEASE AND THE COLORADO BUREAU OF INVESTIGATION OF THE ANTICIPATED RELEASE OF THE DEFENDANT AND SHALL PROVIDE TO THE LOCAL LAW ENFORCEMENT AGENCY AND THE COLORADO BUREAU OF INVESTIGATION THE ADDRESS AT WHICH THE DEFENDANT PLANS TO RESIDE, A COPY OF THE COURT ORDER ESTABLISHING THE CONDITION TO REGISTER PURSUANT TO THIS SECTION, AND ANY OTHER PERTINENT INFORMATION CONCERNING THE DEFENDANT.

(d) IF THE DEFENDANT PLANS TO RESIDE WITHIN THE CORPORATE LIMITS OF ANY CITY, TOWN, OR CITY AND COUNTY, THE DEFENDANT SHALL REGISTER AT THE OFFICE OF THE CHIEF LAW ENFORCEMENT OFFICER OF THE CITY, TOWN, OR CITY AND COUNTY. IF THE DEFENDANT PLANS TO RESIDE OUTSIDE OF SUCH CORPORATE LIMITS, THE DEFENDANT SHALL REGISTER AT THE OFFICE OF THE COUNTY SHERIFF OF THE COUNTY IN WHICH THE DEFENDANT PLANS TO RESIDE.

(e) A DEFENDANT WHO REGISTERS WITH A LOCAL LAW ENFORCEMENT AGENCY AS A CONDITION OF RELEASE PURSUANT TO THIS SUBSECTION (4) SHALL REGISTER USING FORMS PROVIDED BY THE LOCAL LAW ENFORCEMENT AGENCY AND SHALL PROVIDE THE INFORMATION REQUESTED BY THE LOCAL LAW ENFORCEMENT AGENCY, INCLUDING AT A MINIMUM A PHOTOGRAPH AND A COMPLETE SET OF FINGERPRINTS.

(f) THE LOCAL LAW ENFORCEMENT AGENCY SHALL TRANSMIT ANY REGISTRATIONS RECEIVED PURSUANT TO PARAGRAPH (e) OF THIS SUBSECTION (4) TO THE COLORADO BUREAU OF INVESTIGATION WITHIN THREE BUSINESS DAYS FOLLOWING RECEIPT. THE COLORADO BUREAU OF INVESTIGATION SHALL INCLUDE ANY REGISTRATION INFORMATION RECEIVED PURSUANT TO THIS SECTION IN THE CENTRAL REGISTRY ESTABLISHED PURSUANT TO SECTION 18-3-412.5, C.R.S., AND SHALL SPECIFY THAT THE INFORMATION APPLIES TO A DEFENDANT REQUIRED TO REGISTER AS A CONDITION

OF RELEASE PURSUANT TO THIS SECTION. THE FORMS COMPLETED BY DEFENDANTS REQUIRED TO REGISTER AS A CONDITION OF RELEASE PURSUANT TO THIS SUBSECTION (4) SHALL BE CONFIDENTIAL AND SHALL NOT BE OPEN TO INSPECTION EXCEPT AS PROVIDED IN PARAGRAPH (e) OF SUBSECTION (3) OF THIS SECTION AND EXCEPT AS PROVIDED FOR RELEASE OF INFORMATION TO THE PUBLIC PURSUANT TO SECTION 18-3-412.5 (6.5), C.R.S.

(g) AS USED IN THIS SUBSECTION (4), "AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR" MEANS ANY OF THE FOLLOWING OFFENSES:

(I) (A) SEXUAL ASSAULT, IN VIOLATION OF SECTION 18-3-402, C.R.S.; OR

(B) SEXUAL ASSAULT IN THE FIRST DEGREE, IN VIOLATION OF SECTION 18-3-402, C.R.S., AS IT EXISTED PRIOR TO JULY 1, 2000;

(II) SEXUAL ASSAULT IN THE SECOND DEGREE, IN VIOLATION OF SECTION 18-3-403, C.R.S., AS IT EXISTED PRIOR TO JULY 1, 2000;

(III) (A) UNLAWFUL SEXUAL CONTACT, IN VIOLATION OF SECTION 18-3-404, C.R.S.; OR

(B) SEXUAL ASSAULT IN THE THIRD DEGREE, IN VIOLATION OF SECTION 18-3-404, C.R.S., AS IT EXISTED PRIOR TO JULY 1, 2000;

(IV) SEXUAL ASSAULT ON A CHILD, IN VIOLATION OF SECTION 18-3-405, C.R.S.;

(V) SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST, IN VIOLATION OF SECTION 18-3-405.3, C.R.S.;

(VI) SEXUAL ASSAULT ON A CLIENT BY A PSYCHOTHERAPIST, IN VIOLATION OF SECTION 18-3-405.5, C.R.S.;

(VII) ENTICEMENT OF A CHILD, IN VIOLATION OF SECTION 18-3-305, C.R.S.;

(VIII) INCEST, IN VIOLATION OF SECTION 18-6-301, C.R.S.;

(IX) AGGRAVATED INCEST, IN VIOLATION OF SECTION 18-6-302, C.R.S.;

(X) TRAFFICKING IN CHILDREN, IN VIOLATION OF SECTION 18-6-402, C.R.S.;

(XI) SEXUAL EXPLOITATION OF CHILDREN, IN VIOLATION OF SECTION 18-6-403, C.R.S.;

(XII) PROCUREMENT OF A CHILD FOR SEXUAL EXPLOITATION, IN VIOLATION OF SECTION 18-6-404, C.R.S.;

(XIII) INDECENT EXPOSURE, IN VIOLATION OF SECTION 18-7-302, C.R.S.;

(XIV) SOLICITING FOR CHILD PROSTITUTION, IN VIOLATION OF SECTION 18-7-402, C.R.S.;

(XV) PANDERING OF A CHILD, IN VIOLATION OF SECTION 18-7-403, C.R.S.;

(XVI) PROCUREMENT OF A CHILD, IN VIOLATION OF SECTION 18-7-403.5, C.R.S.;

(XVII) KEEPING A PLACE OF CHILD PROSTITUTION, IN VIOLATION OF SECTION 18-7-404, C.R.S.;

(XVIII) PIMPING OF A CHILD, IN VIOLATION OF SECTION 18-7-405, C.R.S.;

(XIX) INDUCEMENT OF CHILD PROSTITUTION, IN VIOLATION OF SECTION 18-7-405.5, C.R.S.;

(XX) PATRONIZING A PROSTITUTED CHILD, IN VIOLATION OF SECTION 18-7-406, C.R.S.; OR

(XXI) CRIMINAL ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THE OFFENSES SPECIFIED IN THIS PARAGRAPH (g).

(h) ANY CONDITION IMPOSED PURSUANT TO THIS SUBSECTION (4) SHALL BE IN ADDITION TO ANY CONDITIONS THAT MAY BE IMPOSED PURSUANT TO SUBSECTION (3) OF THIS SECTION AND SHALL BE SUBJECT TO MONITORING, REVIEW, AND ENFORCEMENT IN THE SAME MANNER AS ANY CONDITION IMPOSED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(i) (I) ANY DEFENDANT REQUIRED TO REGISTER AS A CONDITION OF RELEASE PURSUANT TO THIS SUBSECTION (4), UPON COMPLETION OF A PERIOD OF NOT LESS THAN TWENTY YEARS FROM THE DATE THE DEFENDANT IS PLACED ON CONDITIONAL RELEASE, MAY PETITION THE DISTRICT COURT FOR AN ORDER THAT DISCONTINUES THE REQUIREMENT FOR SUCH REGISTRATION AND REMOVES THE DEFENDANT'S NAME FROM THE CENTRAL REGISTRY ESTABLISHED PURSUANT TO SECTION 18-3-412.5, C.R.S. THE COURT MAY ISSUE SUCH ORDER ONLY IF THE COURT MAKES WRITTEN FINDINGS OF FACT THAT THE DEFENDANT HAS NEITHER BEEN CONVICTED NOR FOUND NOT GUILTY BY REASON OF INSANITY OF AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR SUBSEQUENT TO HIS OR HER CONDITIONAL RELEASE AND THAT THE DEFENDANT WOULD NOT POSE AN UNDUE THREAT TO THE COMMUNITY IF ALLOWED TO LIVE IN THE COMMUNITY WITHOUT REGISTRATION.

(II) UPON THE FILING OF A PETITION PURSUANT TO THIS PARAGRAPH (i), THE COURT SHALL SET A DATE FOR A HEARING ON THE PETITION. THE DEFENDANT SHALL NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY WITH WHICH THE DEFENDANT IS REQUIRED TO REGISTER AND THE PROSECUTING ATTORNEY FOR THE JURISDICTION IN WHICH THE LOCAL LAW ENFORCEMENT AGENCY IS LOCATED OF THE FILING OF THE PETITION AND THE HEARING DATE. UPON THE VICTIM'S REQUEST, THE COURT SHALL NOTIFY THE VICTIM OF THE FILING OF THE PETITION AND THE HEARING DATE. AT THE HEARING, THE COURT SHALL GIVE OPPORTUNITY TO THE VICTIM TO PROVIDE WRITTEN OR ORAL TESTIMONY. IF THE COURT ENTERS AN ORDER DISCONTINUING THE DEFENDANT'S DUTY TO REGISTER, THE DEFENDANT SHALL SEND A COPY OF THE ORDER TO THE LOCAL LAW ENFORCEMENT AGENCY AND THE COLORADO BUREAU OF INVESTIGATION.

SECTION 2. 16-8-118, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-118. Temporary removal for treatment and rehabilitation. (2) (a) A COURT MAY ORDER ANY DEFENDANT WHO RECEIVES TREATMENT AND REHABILITATION ACTIVITIES INVOLVING TEMPORARY PHYSICAL REMOVAL OF THE DEFENDANT FROM THE INSTITUTION TO REGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT RESIDES IF THE COURT FINDS THAT:

(I) THE DEFENDANT WAS FOUND NOT GUILTY BY REASON OF INSANITY ON A CHARGE OF AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR;

(II) THE DEFENDANT WAS FOUND NOT GUILTY BY REASON OF INSANITY ON A CHARGE OF ANY OTHER OFFENSE, THE UNDERLYING FACTUAL BASIS OF WHICH INCLUDES AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR; OR

(III) THE CHIEF OFFICER OF THE INSTITUTION IN WHICH THE DEFENDANT HAS BEEN COMMITTED RECOMMENDS REGISTRATION BASED ON INFORMATION OBTAINED FROM THE DEFENDANT DURING THE COURSE OF TREATMENT THAT INDICATES THE DEFENDANT HAS COMMITTED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR.

(b) PRIOR TO TEMPORARY PHYSICAL REMOVAL FROM THE INSTITUTION OF ANY DEFENDANT WHO IS REQUIRED TO REGISTER PURSUANT TO THIS SUBSECTION (2), THE DEPARTMENT OF HUMAN SERVICES SHALL OBTAIN FROM THE DEFENDANT THE ADDRESS AT WHICH THE DEFENDANT PLANS TO RESIDE AND SHALL NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION IN WHICH THE DEFENDANT PLANS TO RESIDE AND THE COLORADO BUREAU OF INVESTIGATION AS PROVIDED IN SECTION 16-8-115 (4) (c).

(c) ANY DEFENDANT REQUIRED TO REGISTER PURSUANT TO THIS SUBSECTION (2) SHALL REGISTER AS PROVIDED IN SECTION 16-8-115 (4). THE LOCAL LAW ENFORCEMENT AGENCY SHALL TRANSMIT ANY REGISTRATIONS RECEIVED PURSUANT TO THIS SUBSECTION (2) TO THE COLORADO BUREAU OF INVESTIGATION WITHIN THREE BUSINESS DAYS FOLLOWING RECEIPT. THE COLORADO BUREAU OF INVESTIGATION SHALL INCLUDE ANY REGISTRATION INFORMATION RECEIVED PURSUANT TO THIS SECTION IN THE CENTRAL REGISTRY ESTABLISHED PURSUANT TO SECTION 18-3-412.5, C.R.S., AND SHALL SPECIFY THAT THE INFORMATION APPLIES TO A DEFENDANT REQUIRED TO REGISTER AS A CONDITION OF TEMPORARY PHYSICAL REMOVAL FROM AN INSTITUTION. THE FORMS COMPLETED BY DEFENDANTS REQUIRED TO REGISTER PURSUANT TO THIS SUBSECTION (2) SHALL BE CONFIDENTIAL AND SHALL NOT BE OPEN TO INSPECTION EXCEPT AS OTHERWISE PROVIDED IN SECTION 16-8-115 (3) (e) FOR INFORMATION PERTAINING TO PERSONS GRANTED CONDITIONAL RELEASE AND EXCEPT AS PROVIDED FOR RELEASE OF INFORMATION TO THE PUBLIC PURSUANT TO SECTION 18-3-412.5 (6.5), C.R.S.

(d) (I) ANY DEFENDANT REQUIRED TO REGISTER PURSUANT TO THIS SUBSECTION (2), UPON COMPLETION OF A PERIOD OF NOT LESS THAN TWENTY YEARS FROM THE DATE THE DEFENDANT BEGINS RECEIVING TREATMENT AND REHABILITATION ACTIVITIES INVOLVING TEMPORARY PHYSICAL REMOVAL OF THE DEFENDANT FROM THE INSTITUTION, MAY PETITION THE DISTRICT COURT FOR AN ORDER THAT DISCONTINUES THE REQUIREMENT FOR SUCH REGISTRATION AND REMOVES THE DEFENDANT'S NAME FROM THE CENTRAL REGISTRY ESTABLISHED PURSUANT TO SECTION 18-3-412.5, C.R.S. THE COURT MAY ISSUE SUCH ORDER ONLY IF THE COURT

MAKES WRITTEN FINDINGS OF FACT THAT THE DEFENDANT HAS NEITHER BEEN CONVICTED NOR FOUND NOT GUILTY BY REASON OF INSANITY OF AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR SUBSEQUENT TO SUCH TEMPORARY REMOVAL AND THAT THE DEFENDANT WOULD NOT POSE AN UNDUE THREAT TO THE COMMUNITY IF ALLOWED TO LIVE IN THE COMMUNITY WITHOUT REGISTRATION.

(II) UPON THE FILING OF A PETITION PURSUANT TO THIS PARAGRAPH (d), THE COURT SHALL SET A DATE FOR A HEARING ON THE PETITION. THE DEFENDANT SHALL NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY WITH WHICH THE DEFENDANT IS REQUIRED TO REGISTER AND THE PROSECUTING ATTORNEY FOR THE JURISDICTION IN WHICH THE LOCAL LAW ENFORCEMENT AGENCY IS LOCATED OF THE FILING OF THE PETITION AND THE HEARING DATE. UPON THE VICTIM'S REQUEST, THE COURT SHALL NOTIFY THE VICTIM OF THE FILING OF THE PETITION AND THE HEARING DATE. AT THE HEARING, THE COURT SHALL GIVE OPPORTUNITY TO THE VICTIM TO PROVIDE WRITTEN OR ORAL TESTIMONY. IF THE COURT ENTERS AN ORDER DISCONTINUING THE DEFENDANT'S DUTY TO REGISTER, THE DEFENDANT SHALL SEND A COPY OF THE ORDER TO THE LOCAL LAW ENFORCEMENT AGENCY AND THE COLORADO BUREAU OF INVESTIGATION.

SECTION 3. 16-8-115.5 (1), Colorado Revised Statutes, is amended to read:

16-8-115.5. Enforcement and revocation of conditional release from commitment. (1) The terms and conditions imposed upon a defendant's release pursuant to section 16-8-115 (3) OR (4) may be enforced as are any other orders of court.

SECTION 4. 18-3-412.5 (6) (a), Colorado Revised Statutes, is amended to read:

18-3-412.5. Sex offenders - duty to register - penalties. (6) (a) Upon receipt of any registration form pursuant to this section, the local law enforcement agency shall retain a copy of such form and shall report that registration to the Colorado bureau of investigation in the manner and on a form prescribed by the director of the Colorado bureau of investigation. The director of the Colorado bureau of investigation shall establish a central registry of persons required to register pursuant to this section as soon as computerized resources are available. THE CENTRAL REGISTRY ESTABLISHED PURSUANT TO THIS PARAGRAPH (a) SHALL ALSO INCLUDE ANY PERSONS REQUIRED TO REGISTER AS A CONDITION OF RELEASE PURSUANT TO SECTION 16-8-115 (4), C.R.S., OR AS A CONDITION OF TEMPORARY PHYSICAL REMOVAL FROM AN INSTITUTION PURSUANT TO SECTION 16-8-118 (2), C.R.S.

SECTION 5. 16-22-110 (1), Colorado Revised Statutes, as enacted by Senate Bill 02-010, enacted at the Second Regular Session of the Sixty-third General Assembly, is amended to read:

16-22-110. Colorado sex offender registry - creation - maintenance - release of information. (1) The director of the Colorado bureau of investigation shall establish a statewide central registry of persons required to register PURSUANT TO SECTION 16-8-115 OR 16-8-118 OR as a condition of parole or pursuant to this article, to be known as the Colorado sex offender registry. The CBI shall create and maintain the sex offender registry as provided in this section. In addition, the CBI shall be the official custodian of all registration forms completed pursuant to this article and other documents associated with sex offender registration created pursuant

to this article.

SECTION 6. Effective date - applicability. This act shall take effect July 1, 2002; except that section 4 of this act shall take effect only if Senate Bill 02-010 does not pass and does not become law and section 5 of this act shall take effect only if Senate Bill 02-010 passes and becomes law. The provisions of this act shall apply to persons released or temporarily physically removed from an institution on or after said date.

SECTION 7. 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