

CHAPTER 122

**CRIMINAL LAW AND PROCEDURE**

HOUSE BILL 06-1102

BY REPRESENTATIVE(S) Carroll T., McGihon, Jahn, Judd, McFadyen, and Stengel;  
also SENATOR(S) Grossman.

**AN ACT**

**CONCERNING CHANGES TO STRENGTHEN THE STATE CRIMINAL PROCEDURAL LAW.**

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

**SECTION 1.** The introductory portion to 13-25-129 (1), Colorado Revised Statutes, is amended to read:

**13-25-129. Statements of child victim of unlawful sexual offense against a child or of child abuse - hearsay exception.** (1) An out-of-court statement made by a child, as child is defined under the statutes which are the subject of the action, describing any act of sexual contact, intrusion, or penetration, as defined in section 18-3-401, C.R.S., performed with, by, on, or in the presence of the child declarant, not otherwise admissible by a statute or court rule which provides an exception to the objection of hearsay, is admissible in evidence in any criminal, delinquency, or civil proceedings in which a child is a victim of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., or is a victim of incest, as defined in section 18-6-301, C.R.S., when the victim was less than fifteen years of age at the time of the commission of the offense, or in which a child is the subject of a proceeding alleging that a child is neglected or dependent under section 19-1-104 (1) (b), C.R.S., and an out-of-court statement by a child, as child is defined under the statutes which are the subject of the action, describing any act of child abuse, as defined in section 18-6-401, C.R.S., to which the child declarant was subjected or which the child declarant witnessed, not otherwise admissible by a statute or court rule which provides an exception to the objection of hearsay, is admissible in evidence in any criminal, delinquency, or civil proceedings in which a child is a victim of child abuse or the subject of a proceeding alleging that a child is neglected or dependent under section 19-1-104 (1) (b), C.R.S., AND AN OUT-OF-COURT STATEMENT MADE BY A PERSON UNDER THIRTEEN YEARS OF AGE DESCRIBING ALL OR

---

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

PART OF AN OFFENSE CONTAINED IN PART 1 OF ARTICLE 3 OF TITLE 18, C.R.S., OR DESCRIBING AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1), C.R.S., NOT OTHERWISE ADMISSIBLE BY STATUTE OR COURT RULE WHICH PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY IS ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING, if:

**SECTION 2.** 16-22-112 (2) (b) (III) and (3) (e) (III), Colorado Revised Statutes, are amended to read:

**16-22-112. Release of information - law enforcement agencies.** (2) (b) A local law enforcement agency may post on its website sex offender registration information of a person from its registration list only if the person is:

(III) A juvenile ~~adjudicated for two or more offenses~~ WITH A SECOND OR SUBSEQUENT ADJUDICATION involving unlawful sexual behavior or for a crime of violence as defined in section 18-1.3-406, C.R.S.; or

(3) (e) A local law enforcement agency may post on its website sex offender registration information of a person from its registration list only if the person is:

(III) A juvenile ~~adjudicated for two or more offenses~~ WITH A SECOND OR SUBSEQUENT ADJUDICATION involving unlawful sexual behavior or for a crime of violence as defined in section 18-1.3-406, C.R.S.; or

**SECTION 3.** 24-72-304 (4) (a) and (4) (b) (I), Colorado Revised Statutes, are amended to read:

**24-72-304. Inspection of criminal justice records.** (4) (a) The name of AND ANY OTHER INFORMATION THAT WOULD IDENTIFY any victim of sexual assault or of alleged sexual assault OR ATTEMPTED SEXUAL ASSAULT OR ALLEGED ATTEMPTED SEXUAL ASSAULT shall be deleted from any criminal justice record prior to the release of such record to any individual or agency other than a criminal justice agency when such record bears the notation "SEXUAL ASSAULT" prescribed by this subsection (4).

(b) (I) A criminal justice agency or custodian of criminal justice records shall make the notation "SEXUAL ASSAULT" on any record of official action and on the file containing such record when the official action is related to the commission or the alleged commission of any of the following offenses:

(A) Sexual assault under section 18-3-402, C.R.S., or sexual assault in the first degree under section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(B) Sexual assault in the second degree under section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(C) Unlawful sexual contact under section 18-3-404, C.R.S., or sexual assault in the third degree under section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(D) Sexual assault on a child under section 18-3-405, C.R.S.;

(E) Sexual assault on a child by one in a position of trust under section 18-3-405.3, C.R.S.; ~~or~~

(F) Sexual assault on a client by a psychotherapist under section 18-3-405.5, C.R.S.;

(G) INCEST UNDER SECTION 18-6-301, C.R.S.;

(H) AGGRAVATED INCEST UNDER SECTION 18-6-302, C.R.S.; OR

(I) AN ATTEMPT TO COMMIT ANY OF THE OFFENSES LISTED IN SUB-SUBPARAGRAPHS (A) TO (H) OF THIS SUBPARAGRAPH (I).

**SECTION 4.** 24-72-308 (1) (a) (II), Colorado Revised Statutes, is amended to read:

**24-72-308. Sealing of records.** (1) (a) (II) Except as provided in subparagraph (III) of this paragraph (a), arrest or criminal records information may not be sealed if:

(A) An offense is not charged due to a plea agreement in a separate case; ~~or~~

(B) A dismissal occurs as part of a plea agreement in a separate case; OR

(C) THE DEFENDANT STILL OWES RESTITUTION, FINES, COURT COSTS, LATE FEES, OR OTHER FEES ORDERED BY THE COURT IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL CRIMINAL RECORDS, UNLESS THE COURT THAT ENTERED THE ORDER FOR RESTITUTION, FINES, COURT COSTS, LATE FEES, OR OTHER FEES HAS VACATED SUCH ORDER.

**SECTION 5.** 24-4.1-110 (2), Colorado Revised Statutes, is amended to read:

**24-4.1-110. Recovery from collateral source.** (2) If compensation is awarded under this part 1 and the person receiving it also receives a collateral sum under subsection (1) of this section which has not been deducted from it, he shall refund to the board the lesser of the sums or the amount of compensation paid to him under this part 1 unless the aggregate of both sums does not exceed his losses. THE FUND SHALL BE THE PAYOR OF LAST RESORT.

**SECTION 6.** 19-2-517 (1) (a), Colorado Revised Statutes, is amended to read:

**19-2-517. Direct filing.** (1) (a) A juvenile may be charged by the direct filing of an information in the district court or by indictment only when:

(I) The juvenile is fourteen years of age or older AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE and is alleged to have committed a class 1 or class 2 felony; or

(II) The juvenile is fourteen years of age or older AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE and:

(A) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S.; or

(B) Is alleged to have committed a felony offense described in part 1 of article 12 of title 18, C.R.S., except for the possession of a handgun by a juvenile, as set forth in section 18-12-108.5, C.R.S.; or

(C) Is alleged to have used, or possessed and threatened the use of, a deadly weapon during the commission of felony offenses against the person, which are set forth in article 3 of title 18, C.R.S.; or

(D) Is alleged to have committed vehicular homicide, as described in section 18-3-106, C.R.S., vehicular assault, as described in section 18-3-205, C.R.S., or felonious arson, as described in part 1 of article 4 of title 18, C.R.S.; or

(III) The juvenile has, within the two previous years, been adjudicated a juvenile delinquent for a delinquent act that constitutes a felony, is sixteen years of age or older AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE, and allegedly has committed a crime defined by section 18-1.3-401, C.R.S., as a class 3 felony, except felonies defined by section 18-3-402 (1) (d), C.R.S., or section 18-3-403 (1) (e), C.R.S., as it existed prior to July 1, 2000; or

(IV) The juvenile is fourteen years of age or older AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE, has allegedly committed a delinquent act that constitutes a felony, and has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2-518; except that, if a juvenile is found not guilty in the district court of the prior felony or any lesser included offense, the subsequent charge shall be remanded back to the juvenile court; or

(V) The juvenile is fourteen years of age or older AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE, has allegedly committed a delinquent act that constitutes a felony, and is determined to be an "habitual juvenile offender". For the purposes of this section, "habitual juvenile offender" is defined in section 19-1-103 (61).

**SECTION 7.** 19-2-518 (1) (a) (I), Colorado Revised Statutes, is amended to read:

**19-2-518. Transfers.** (1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section 18-1.3-406, C.R.S.; or

(B) Fourteen years of age or older AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE and is a juvenile delinquent by virtue of having committed a

delinquent act that constitutes a felony; and

**SECTION 8. 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 13, 2006