

CHAPTER 220

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 12-1346

BY REPRESENTATIVE(S) Gardner B., Barker, Brown, Court, Fischer, Gerou, Hamner, Hullinghorst, Jones, Kefalas, Priola, Ryden, Schafer S., Todd;
also SENATOR(S) King S., Guzman, Nicholson, Steadman.

AN ACT**CONCERNING SEX OFFENDER REGISTRATION.**

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

SECTION 1. In Colorado Revised Statutes, 16-22-102, **amend** (5.7); and **add** (4.3) and (5.8) as follows:

16-22-102. Definitions. As used in this article, unless the context otherwise requires:

(4.3) (a) "LACKS A FIXED RESIDENCE" MEANS THAT A PERSON DOES NOT HAVE A LIVING SITUATION THAT MEETS THE DEFINITION OF "RESIDENCE" PURSUANT TO SUBSECTION (5.7) OF THIS SECTION. "LACKS A FIXED RESIDENCE" MAY INCLUDE, BUT NEED NOT BE LIMITED TO, OUTDOOR SLEEPING LOCATIONS OR ANY PUBLIC OR PRIVATE LOCATIONS NOT DESIGNED AS TRADITIONAL LIVING ACCOMMODATIONS. "LACKS A FIXED RESIDENCE" MAY ALSO INCLUDE TEMPORARY PUBLIC OR PRIVATE HOUSING OR TEMPORARY SHELTER FACILITIES, RESIDENTIAL TREATMENT FACILITIES, OR ANY OTHER RESIDENTIAL PROGRAM OR FACILITY IF THE PERSON REMAINS AT THE LOCATION FOR LESS THAN FOURTEEN DAYS.

(b) "LACKS A FIXED RESIDENCE" ALSO INCLUDES A PERSON WHO IS REGISTERED IN ANY JURISDICTION IF THE PERSON:

(I) CEASES TO RESIDE AT AN ADDRESS IN THAT JURISDICTION; AND

(II) FAILS TO REGISTER:

(A) A CHANGE OF ADDRESS IN THE SAME JURISDICTION; 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.

(B) IN A NEW JURISDICTION PURSUANT TO SECTION 16-22-108 (4); OR

(C) PURSUANT TO SECTION 16-22-108 (3).

(5.7) "Residence" means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register pursuant to section 16-22-103. "Residence" may include, but ~~is~~ NEED not BE limited to, a temporary shelter or institution, IF THE PERSON RESIDES AT THE TEMPORARY SHELTER OR INSTITUTION FOR FOURTEEN CONSECUTIVE DAYS OR LONGER, if the owner of the shelter or institution consents to the person utilizing the shelter or institution as his or her registered address as required by section 16-22-106 (4) or 16-22-107 (4) (a), and if the residence of the person at the shelter or institution ~~is capable of verification~~ CAN BE VERIFIED as required by section 16-22-109 (3.5). A person may establish multiple residences by residing in more than one place or dwelling.

(5.8) "RESIDES" INCLUDES RESIDENCE AND LACKS A FIXED RESIDENCE.

SECTION 2. In Colorado Revised Statutes, 16-22-106, **amend** (1) (a) and (4) as follows:

16-22-106. Duties - probation department - community corrections administrator - court personnel - jail personnel - notice. (1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to probation, the probation department, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of ~~the~~ HIS OR HER duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, AND THE NOTICE SHALL INCLUDE THE REQUIREMENTS FOR A PERSON WHO REGISTERS AS "LACKS A FIXED RESIDENCE". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides OR A STATEMENT THAT THE PERSON LACKS A FIXED RESIDENCE. Beginning on May 27, 2004, the court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if sentenced on or after January 1, 2005, and to reregister.

(4) For any person who is required to register pursuant to section 16-22-103, who is not committed to the department of human services, and who is not sentenced to probation, community corrections, county jail, or the department of corrections, the judge or magistrate who has jurisdiction over the person shall, at sentencing, provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, AND THE NOTICE SHALL INCLUDE THE REQUIREMENTS FOR A PERSON WHO REGISTERS AS "LACKS A FIXED RESIDENCE". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides OR A STATEMENT THAT THE PERSON LACKS A FIXED RESIDENCE.

SECTION 3. In Colorado Revised Statutes, 16-22-107, **amend** (2) as follows:

16-22-107. Duties - department of corrections - department of human services - confirmation of registration - notice - address verification. (2) At least ten business days prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department of corrections shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, AND THE NOTICE SHALL INCLUDE THE REQUIREMENTS FOR A PERSON WHO REGISTERS AS "LACKS A FIXED RESIDENCE". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon release or discharge OR A STATEMENT THAT THE PERSON LACKS A FIXED RESIDENCE.

SECTION 4. In Colorado Revised Statutes, 16-22-108, **amend** (1) (a), (1) (d) (I), (3) introductory portion, and (3) (f); and **add** (3) (h) and (3) (i) as follows:

16-22-108. Registration - procedure - frequency - place - change of address - fee. (1) (a) (I) Each person who is required to register pursuant to section 16-22-103 shall register with the local law enforcement agency in each jurisdiction in which the person resides. A LOCAL LAW ENFORCEMENT AGENCY SHALL ACCEPT THE REGISTRATION OF A PERSON WHO LACKS A FIXED RESIDENCE; EXCEPT THAT THE LAW ENFORCEMENT AGENCY IS NOT REQUIRED TO ACCEPT THE PERSON'S REGISTRATION IF IT INCLUDES A RESIDENCE OR LOCATION THAT WOULD VIOLATE STATE LAW OR LOCAL ORDINANCE. IF THE RESIDENCE OR LOCATION WITH WHICH THE PERSON ATTEMPTS TO REGISTER CONSTITUTES SUCH A VIOLATION, THE LAW ENFORCEMENT AGENCY SHALL SO ADVISE THE PERSON AND GIVE THE PERSON AN OPPORTUNITY TO SECURE AN ALTERNATE LOCATION WITHIN FIVE DAYS.

(II) Each ~~such~~ person WHO IS REQUIRED TO REGISTER PURSUANT TO SECTION 16-22-103 shall initially register or, if sentenced on or after January 1, 2005, confirm his or her initial registration within five business days after release from incarceration for commission of the offense requiring registration or within five business days after receiving notice of the duty to register, if the person was not incarcerated. ~~Such~~ THE person shall register with the local law enforcement agency during business hours by completing a standardized registration form provided to ~~such~~ THE person by the local law enforcement agency and paying the registration fee imposed by the local law enforcement agency as provided in subsection (7) of this section. The CBI shall provide standardized registration forms to the local law enforcement agencies pursuant to section 16-22-109.

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subparagraph (II) of this paragraph (d) has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subparagraph (II) of this paragraph (d), the person may petition the court for discontinuation of the duty to register as provided in section 16-22-113 (1) (d). In addition to registering as required in paragraph (a) of this subsection (1), ~~such~~ THE person shall reregister ninety days after the date he or she was released from incarceration for commission of the offense requiring registration, or ninety

~~days after the date he or she received notice of the duty to register, if the person was not incarcerated, and every ninety days thereafter until such person's birthday. Such person shall reregister on his or her birthday and shall reregister every ninety days thereafter. If a person's birthday or other reregistration day falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday or other reregistration day.~~ SUCH WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THE DATE THAT IS THREE MONTHS AFTER THE DATE ON WHICH THE PERSON WAS RELEASED FROM INCARCERATION FOR COMMISSION OF THE OFFENSE REQUIRING REGISTRATION OR, IF THE PERSON WAS NOT INCARCERATED, AFTER THE DATE ON WHICH HE OR SHE RECEIVED NOTICE OF THE DUTY TO REGISTER. THE PERSON SHALL REGISTER WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THAT DATE EVERY THREE MONTHS THEREAFTER UNTIL THE PERSON'S BIRTHDAY. THE PERSON SHALL REREGISTER WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER HIS OR HER NEXT BIRTHDAY AND SHALL REREGISTER WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THAT DATE EVERY THREE MONTHS THEREAFTER. THE person shall reregister pursuant to this paragraph (d) with the local law enforcement agency of each jurisdiction in which the person resides OR IN ANY JURISDICTION IF THE PERSON LACKS A FIXED RESIDENCE on the reregistration date, in the manner provided in paragraph (a) of this subsection (1).

(3) Any person who is required to register pursuant to section 16-22-103 shall be required to register within five business days before or after each time ~~such~~ THE person:

(f) Becomes a volunteer or changes the volunteer work location, if volunteering at an institution of postsecondary education; ~~or~~

(h) CEASES TO LACK A FIXED RESIDENCE AND ESTABLISHES A RESIDENCE; OR

(i) CEASES TO RESIDE AT AN ADDRESS AND LACKS A FIXED RESIDENCE.

SECTION 5. In Colorado Revised Statutes, 16-22-109, **amend** (3.5); and **add** (1) (a.9) as follows:

16-22-109. Registration forms - local law enforcement agencies - duties.

(1) The director of the CBI shall prescribe standardized forms to be used to comply with this article, and the CBI shall provide copies of the standardized forms to the courts, probation departments, community corrections programs, the department of corrections, the department of human services, and local law enforcement agencies. The standardized forms may be provided in electronic form. The standardized forms shall be used to register persons pursuant to this article and to enable persons to cancel registration, as necessary. The standardized forms shall provide that the persons required to register pursuant to section 16-22-103 disclose such information as is required on the standardized forms. The information required on the standardized forms shall include, but need not be limited to:

(a.9) IF A PERSON LACKS A FIXED RESIDENCE, ANY PUBLIC OR PRIVATE LOCATIONS WHERE THE PERSON MAY BE FOUND OR HABITUALLY SLEEPS, WHICH INFORMATION MAY INCLUDE, BUT NEED NOT BE LIMITED TO, CROSS-STREETS, INTERSECTIONS, DIRECTIONS TO OR IDENTIFIABLE LANDMARKS OF THE LOCATIONS, OR ANY OTHER INFORMATION NECESSARY TO ACCURATELY IDENTIFY THE LOCATIONS.

(3.5) (a) The local law enforcement agency with which a person registers pursuant to this article shall, as soon as possible following the registrant's first registration with the local law enforcement agency and at least annually thereafter, verify the residential address reported by the registrant on the standardized form; except that, if the registrant is a sexually violent predator, the local law enforcement agency shall verify the registrant's residential address quarterly.

(b) IF A PERSON REGISTERS AS "LACKS A FIXED RESIDENCE", VERIFICATION OF THE LOCATION OR LOCATIONS REPORTED BY THE PERSON SHALL BE ACCOMPLISHED BY THE SELF-VERIFICATION ENHANCED REPORTING PROCESS AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (3.5). A LOCAL LAW ENFORCEMENT AGENCY SHALL NOT BE REQUIRED TO VERIFY THE PHYSICAL LOCATION OF A PERSON WHO IS REQUIRED TO COMPLY WITH THE SELF-VERIFICATION ENHANCED REPORTING PROCESS.

(c) (I) IN ADDITION TO ANY OTHER REQUIREMENTS PURSUANT TO THIS ARTICLE, A PERSON WHO IS SUBJECT TO ANNUAL REGISTRATION AND WHO LACKS A FIXED RESIDENCE SHALL, AT LEAST EVERY THREE MONTHS, REPORT TO THE LOCAL LAW ENFORCEMENT AGENCY IN WHOSE JURISDICTION OR JURISDICTIONS THE PERSON IS REGISTERED FOR THE SELF-VERIFICATION ENHANCEMENT REPORTING OF THE LOCATION OR LOCATIONS WHERE THE PERSON REMAINS WITHOUT A FIXED RESIDENCE. THE SELF-VERIFICATION PROCESS SHALL BE ACCOMPLISHED CONSISTENT WITH ANY TIME SCHEDULE ESTABLISHED BY THE LOCAL JURISDICTION, WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THE PERSON'S BIRTHDAY. THE PERSON SHALL BE REQUIRED TO VERIFY HIS OR HER LOCATION OR LOCATIONS AND VERIFY ANY AND ALL INFORMATION REQUIRED TO BE REPORTED PURSUANT TO THIS SECTION.

(II) IN ADDITION TO ANY OTHER REQUIREMENTS PURSUANT TO THIS ARTICLE, A PERSON WHO IS SUBJECT TO QUARTERLY REGISTRATION OR REGISTRATION EVERY THREE MONTHS AND WHO LACKS A FIXED RESIDENCE SHALL, AT LEAST EVERY MONTH, REPORT TO EACH LOCAL LAW ENFORCEMENT AGENCY IN WHOSE JURISDICTION THE PERSON IS REGISTERED FOR THE SELF-VERIFICATION ENHANCED REPORTING OF THE LOCATION OR LOCATIONS WHERE THE PERSON REMAINS WITHOUT A FIXED RESIDENCE. THE SELF-VERIFICATION PROCESS SHALL BE ACCOMPLISHED CONSISTENT WITH ANY TIME SCHEDULE ESTABLISHED BY THE LOCAL JURISDICTION, WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THE PERSON'S BIRTHDAY. THE PERSON SHALL BE REQUIRED TO VERIFY HIS OR HER LOCATION OR LOCATIONS AND VERIFY ANY AND ALL INFORMATION REQUIRED TO BE REPORTED PURSUANT TO SECTION 16-22-109.

(III) A PERSON REQUIRED TO REGISTER PURSUANT TO THIS ARTICLE WHO LACKS A FIXED RESIDENCE AND WHO FAILS TO COMPLY WITH THE PROVISIONS OF SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (c) IS SUBJECT TO PROSECUTION FOR THE CRIME OF FAILURE TO VERIFY LOCATION AS DEFINED IN SECTION 18-3-412.6, C.R.S.

(d) BEGINNING ON JULY 1, 2012, AND ENDING JANUARY 1, 2015, THE COLORADO BUREAU OF INVESTIGATION AND EACH LOCAL LAW ENFORCEMENT AGENCY, SUBJECT TO AVAILABLE RESOURCES, SHALL REPORT EVERY SIX MONTHS TO THE DEPARTMENT OF PUBLIC SAFETY THE NUMBER OF PERSONS WHO REGISTERED WITHOUT A FIXED

RESIDENCE. THE DEPARTMENT MAY REQUIRE ADDITIONAL INFORMATION TO BE REPORTED. BY MARCH 31, 2015, THE DEPARTMENT SHALL ASSESS THE EFFECTIVENESS OF THE REGISTRATION FOR OFFENDERS WHO LACK A FIXED RESIDENCE.

SECTION 6. In Colorado Revised Statutes, **add** 18-3-412.6 as follows:

18-3-412.6. Failure to verify location as a sex offender. (1) A PERSON WHO IS REQUIRED TO REGISTER PURSUANT TO ARTICLE 22 OF TITLE 16, C.R.S., AND WHO LACKS A FIXED RESIDENCE, AS DEFINED IN THAT ARTICLE, AND WHO FAILS TO COMPLY WITH THE PROVISIONS OF SECTION 16-22-109(3.5)(c)(I) OR 16-22-109(3.5)(c)(II), C.R.S., COMMITS THE OFFENSE OF FAILURE TO VERIFY LOCATION AS A SEX OFFENDER.

(2) (a) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT:

(I) UNCONTROLLABLE CIRCUMSTANCES PREVENTED THE PERSON FROM COMPLYING; AND

(II) THE PERSON DID NOT CONTRIBUTE TO THE CREATION OF THE CIRCUMSTANCES IN RECKLESS DISREGARD OF THE REQUIREMENT TO COMPLY; AND

(III) THE PERSON COMPLIED AS SOON AS THE CIRCUMSTANCES CEASED TO EXIST.

(b) IN ORDER TO ASSERT THE AFFIRMATIVE DEFENSE PURSUANT TO THIS SUBSECTION (2), THE DEFENDANT SHALL PROVIDE NOTICE TO THE PROSECUTING ATTORNEY AS SOON AS PRACTICABLE, BUT NOT LATER THAN THIRTY DAYS PRIOR TO TRIAL, OF HIS OR HER NOTICE OF INTENT TO RELY UPON THE AFFIRMATIVE DEFENSE. THE NOTICE SHALL INCLUDE A DESCRIPTION OF THE UNCONTROLLABLE CIRCUMSTANCE OR CIRCUMSTANCES AND THE DATES THAT THE UNCONTROLLABLE CIRCUMSTANCES BEGAN AND CEASED TO EXIST IN ADDITION TO THE NAMES AND ADDRESSES OF ANY WITNESSES THE DEFENDANT PLANS TO CALL TO SUPPORT THE AFFIRMATIVE DEFENSE. THE PROSECUTING ATTORNEY SHALL ADVISE THE DEFENDANT OF THE NAMES AND ADDRESSES OF ANY ADDITIONAL WITNESSES WHO MAY BE CALLED TO REFUTE THE AFFIRMATIVE DEFENSE AS SOON AS PRACTICABLE AFTER THEIR NAMES BECOME KNOWN. UPON THE REQUEST OF THE PROSECUTION, THE COURT SHALL FIRST RULE AS A MATTER OF LAW WHETHER THE CLAIMED FACTS AND CIRCUMSTANCES WOULD, IF ESTABLISHED, CONSTITUTE SUFFICIENT EVIDENCE TO SUPPORT SUBMISSION TO THE JURY.

(3) FAILURE TO VERIFY LOCATION AS A SEX OFFENDER IS AN UNCLASSIFIED MISDEMEANOR PUNISHABLE BY A SENTENCE OF UP TO THIRTY DAYS IN THE COUNTY JAIL; EXCEPT THAT A THIRD OR SUBSEQUENT VIOLATION OF THIS SECTION IS AN UNCLASSIFIED MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN THE COUNTY JAIL.

(4) FAILURE TO VERIFY LOCATION AS A SEX OFFENDER IS NOT A SEXUAL OFFENSE SUBJECT TO THE PROVISIONS OF SECTIONS 16-11.7-104 AND 16-11.7-105, C.R.S., AND, NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, OFFENDERS CONVICTED OF A VIOLATION OF THIS SECTION ARE NOT ELIGIBLE FOR PROBATION PURSUANT TO PART 2 OF ARTICLE 1.3 OF THIS TITLE.

SECTION 7. In Colorado Revised Statutes, 16-11-102, **amend** (1) (b) as follows:

16-11-102. Presentence or probation investigation. (1) (b) Each presentence report prepared regarding a sex offender, as defined in section 16-11.7-102 (2), with respect to any offense committed on or after January 1, 1996, shall contain the results of an evaluation and identification conducted pursuant to article 11.7 of this title; EXCEPT THAT, IF THE OFFENSE IS A MISDEMEANOR PURSUANT TO THE PROVISIONS OF SECTION 18-3-412.6, C.R.S., AN EVALUATION AND IDENTIFICATION CONDUCTED PURSUANT TO ARTICLE 11.7 OF THIS TITLE SHALL NOT BE ORDERED BY THE COURT. In addition, the presentence report shall include, when appropriate as provided in section 18-3-414.5, C.R.S., the results of the risk assessment screening instrument developed pursuant to section 16-11.7-103 (4) (d). Notwithstanding the provisions of subsection (4) of this section, a presentence report shall be prepared for each person convicted as a sex offender, and the court may not dispense with the presentence evaluation, risk assessment, and report unless such a report has been completed within the last six months and there has been no material change that would affect the report in the past six months.

SECTION 8. Effective date - applicability. This act takes effect July 1, 2012, and applies 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: May 24, 2012