

CHAPTER 119

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 15-1042

BY REPRESENTATIVE(S) Foote, Fields, McCann, Primavera, Ryden, Singer, Williams;
also SENATOR(S) Cooke, Jahn, Johnston, Lambert, Lundberg, Marble, Martinez Humenik, Roberts, Scheffel, Woods.

AN ACT

**CONCERNING REQUIRING PRESENTENCE REPORTS TO INCLUDE A STATEMENT CONCERNING A
DEFENDANT'S ELIGIBILITY FOR RELEASE FROM INCARCERATION.**

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

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

16-11-102. Presentence or probation investigation. (1) (a) (I) Following the return of a verdict of guilty of a felony, other than a class 1 felony, or following a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge, or upon order of the court in any misdemeanor conviction, the probation officer shall make an investigation and written report to the court before the imposition of sentence. Each presentence report ~~shall~~ **MUST** include a substance abuse assessment or evaluation made pursuant to article 11.5 of this title and, unless waived by the court, ~~shall~~ **MUST** include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, including the defendant's past juvenile delinquency record, if any; ~~if~~ **INFORMATION INDICATING WHETHER** the defendant has been convicted of unlawful sexual behavior as defined in section 16-22-102 (9); an evaluation of the alternative dispositions available for the defendant; the information required by the court pursuant to article 18.5 of this title; a victim impact statement; and such other information as the court may require.

(II) **EXCEPT AS DESCRIBED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH (a), IF THE DEFENDANT IS CONVICTED OF A FELONY THAT OCCURRED AFTER JULY 1, 2004, AND HE OR SHE IS ELIGIBLE TO RECEIVE A SENTENCE TO THE DEPARTMENT OF CORRECTIONS, THE REPORT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) MUST INCLUDE THE FOLLOWING STATEMENT:**

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

"IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS, HE OR SHE MAY NOT SERVE HIS OR HER ENTIRE SENTENCE IN PRISON BUT MAY BE RELEASED TO COMMUNITY CORRECTIONS OR PAROLE. THE DEFENDANT'S PAROLE ELIGIBILITY DATE (PED) OCCURS AFTER HE OR SHE HAS SERVED FIFTY OR SEVENTY-FIVE PERCENT OF HIS OR HER SENTENCE, AS PROVIDED IN SECTION 17-22.5-403, COLORADO REVISED STATUTES, LESS ANY AUTHORIZED EARNED TIME.

IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS, HE OR SHE MAY BE ELIGIBLE FOR A REDUCTION IN THE LENGTH OF HIS OR HER SENTENCE BY EARNED TIME. REGULAR EARNED TIME IS UP TO TEN OR TWELVE DAYS PER MONTH, NOT TO EXCEED THIRTY PERCENT OF THE DEFENDANT'S SENTENCE; HOWEVER, THE DEFENDANT MAY BE ELIGIBLE FOR FURTHER LIMITED REDUCTIONS THROUGH THE APPLICATION OF VARIOUS TYPES OF EARNED TIME PROVIDED IN STATUTE AND ADMINISTERED PURSUANT TO THE POLICY OF THE DEPARTMENT OF CORRECTIONS.

IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS, HE OR SHE MAY BE ELIGIBLE FOR RELEASE, TO AWAIT PAROLE IN A COMMUNITY CORRECTIONS FACILITY, IF SUCH RELEASE IS APPROVED BY THE LOCAL COMMUNITY CORRECTIONS BOARD. IF THE DEFENDANT WAS NOT CONVICTED OF A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2), COLORADO REVISED STATUTES, HE OR SHE MAY BE MOVED TO A COMMUNITY CORRECTIONS PLACEMENT AS EARLY AS SIXTEEN MONTHS PRIOR TO HIS OR HER PED. IF THE DEFENDANT WAS CONVICTED OF A CRIME OF VIOLENCE, HE OR SHE CANNOT BE MOVED TO A COMMUNITY CORRECTIONS PLACEMENT EARLIER THAN ONE HUNDRED EIGHTY DAYS PRIOR TO HIS OR HER PED.

A DEFENDANT'S ELIGIBILITY FOR COMMUNITY CORRECTIONS OR PAROLE DOES NOT NECESSARILY MEAN THAT COMMUNITY CORRECTIONS OR PAROLE WILL BE GRANTED. THE INMATE LOCATOR ON THE INTERNET WEB SITE OF THE DEPARTMENT OF CORRECTIONS CAN PROVIDE ADDITIONAL INFORMATION REGARDING THE SENTENCE OF AN INDIVIDUAL DEFENDANT.

THE PROVISIONS OF THIS STATEMENT DO NOT APPLY TO A DEFENDANT WHO HAS BEEN SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM WITHIN THE DEPARTMENT OF CORRECTIONS."

(III) THE DISTRICT ATTORNEY'S OFFICE SHALL PREPARE a victim impact statement. ~~shall be prepared by the district attorney's office on and after September 1, 1985.~~ The department of human services shall provide the district attorney's office with the information necessary for the preparation of a victim impact statement. In addition, the court, in cases that it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted psychiatric examination of the defendant.

(IV) No less than seventy-two hours prior to the sentencing hearing, THE PROBATION DEPARTMENT SHALL PROVIDE COPIES OF THE PRESENTENCE REPORT, INCLUDING ANY RECOMMENDATIONS AS TO PROBATION, ~~shall be furnished~~ to the prosecuting attorney and defense counsel or to the defendant if he or she is unrepresented. Upon request of either the defense or the district attorney, the probation department shall provide the presentence report at least seven days prior to the sentencing hearing. If the

probation department informs the court it cannot provide the report at least seven days prior to the sentencing hearing, the court shall grant the probation department additional time to complete the report and shall reset the sentencing hearing so that the hearing is held at least seven days after the probation department provides the report.

(V) THE PROBATION DEPARTMENT SHALL TRANSMIT a copy of the presentence report, ~~shall be transmitted~~ AND THE COURT SHALL TRANSMIT THE MITTIMUS to the department of corrections. ~~together with the mittimus.~~

(VI) THE REPORT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) NEED NOT INCLUDE THE STATEMENT DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IF:

(A) THE DEFENDANT IS A SEX OFFENDER FOR WHOM THE SEX OFFENDER MANAGEMENT BOARD HAS ESTABLISHED SEPARATE AND DISTINCT RELEASE GUIDELINES PURSUANT TO SECTION 18-1.3-1009, C.R.S.;

(B) THE DEFENDANT HAS AT LEAST ONE PREVIOUS CONVICTION FOR A CRIME OF VIOLENCE AND MUST BE REFERRED BY THE DEPARTMENT TO THE STATE BOARD OF PAROLE PURSUANT TO SECTION 17-22.5-403 (3.5), C.R.S.;

(C) THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY OR IS A JUVENILE CONVICTED AS AN ADULT OF A CLASS 1 FELONY; OR

(D) THE PROBATION DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT THE LANGUAGE OF THE STATEMENT IS INAPPLICABLE TO THE DEFENDANT. IF THE PROBATION DEPARTMENT ELECTS TO OMIT THE STATEMENT PURSUANT TO THIS SUB-SUBPARAGRAPH (D), THE PROBATION DEPARTMENT SHALL DOCUMENT IN THE REPORT ITS GROUNDS FOR DOING SO.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 24, 2015