

CHAPTER 179

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 16-1027

BY REPRESENTATIVE(S) Danielson, Becker K., Court, Fields, Foote, Ginal, Hamner, Kraft-Tharp, Lee, Lontine, Pabon, Primavera, Priola, Rosenthal, Ryden, Salazar, Singer, Young, Hullinghorst;
also SENATOR(S) Todd and Sonnenberg, Baumgardner, Cooke, Heath, Jahn, Jones, Kefalas, Kerr, Lambert, Lundberg, Marble, Martinez Humenik, Merrifield, Newell, Scheffel, Scott, Tate, Woods, Cadman.

AN ACT

CONCERNING DEPOSITIONS IN CRIMINAL CASES IN WHICH AN AT-RISK PERSON MAY NOT BE AVAILABLE FOR TRIAL.

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

SECTION 1. In Colorado Revised Statutes, **amend** 18-6.5-103.5 as follows:

18-6.5-103.5. Video tape depositions - at-risk adult victims and witnesses.

(1) In any case in which a defendant is charged with a crime against an at-risk adult OR AT-RISK ELDER, or in any case involving a victim or witness who is an at-risk adult OR AT-RISK ELDER, the prosecution may file a motion with the court at any time prior to commencement of the trial for an order that a deposition be taken of the testimony of the victim or witness and that the deposition be recorded and preserved ~~on video tape~~ ON A VIDEO IMAGING FORMAT.

(2) The prosecution shall file a motion requesting a ~~videotaped~~ RECORDED deposition at least ~~three~~ FOURTEEN days prior to the taking of the deposition. The defendant shall receive reasonable notice of the taking of the deposition. The defendant shall have the right to be present and to be represented by counsel at the deposition; EXCEPT THAT FOR GOOD CAUSE SHOWN, THE COURT MAY PERMIT THE FILING OF A MOTION REQUESTING A RECORDED DEPOSITION LESS THAN FOURTEEN DAYS PRIOR TO TAKING THE DEPOSITION.

(3) (a) (I) ~~Upon timely receipt of the motion, the court shall make a preliminary finding regarding whether, at the time of trial, the victim or witness is likely to be medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence. Such finding, at a minimum, shall be based on~~

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

~~recommendations from the victim's or witness' physician or any other person having direct contact with the victim or witness, whose recommendations are based on specific behavioral indicators exhibited by the victim or witness~~ UPON RECEIPT OF THE MOTION, THE COURT SHALL SCHEDULE THE DEPOSITION TO TAKE PLACE WITHIN FOURTEEN DAYS WITHOUT FURTHER FINDINGS, EXCEPT FOR GOOD CAUSE SHOWN BY THE PROSECUTION IF THE MOTION ASKS FOR THE DEPOSITION TO BE TAKEN IN LESS THAN FOURTEEN DAYS, IF THE VICTIM IS AN AT-RISK ELDER.

(II) EXCEPT FOR DEPOSITIONS OF AT-RISK ELDER VICTIMS AS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), UPON THE FILING OF THE MOTION BY THE PROSECUTION STATING REASONS THE VICTIM OR WITNESS MAY BE UNAVAILABLE AT TRIAL, THE COURT MAY ORDER A DEPOSITION FOR AN AT-RISK ADULT VICTIM OR WITNESS OR AT-RISK ELDER WITNESS. FILING THE MOTION CREATES A REBUTTABLE PRESUMPTION THAT A DEPOSITION SHOULD BE TAKEN TO PREVENT INJUSTICE. THE COURT MAY DENY THE MOTION FOR DEPOSITION UPON A FINDING THAT GRANTING THE MOTION WILL NOT PREVENT INJUSTICE. THE PROSECUTION MAY FILE A NEW REQUEST FOR A DEPOSITION IF CIRCUMSTANCES CHANGE PRIOR TO TRIAL.

(III) BOTH THE PROSECUTION AND THE DEFENDANT SHALL PROVIDE ALL AVAILABLE DISCOVERY NO LATER THAN FIVE DAYS BEFORE THE SCHEDULED DEPOSITION. IF THE DISCOVERY HAS NOT BEEN PROVIDED AS SET FORTH IN THIS SUBPARAGRAPH (III), EITHER PARTY MAY FILE A MOTION WITH THE COURT TO RESCHEDULE THE DEPOSITION IN ORDER TO OBTAIN THE NECESSARY DISCOVERY TO ADEQUATELY PREPARE FOR THE DEPOSITION.

~~(b) If the court so finds, it shall order that~~ The deposition MUST be taken, preserved on a video imaging format, and conducted pursuant to rule 15 (d) of the Colorado rules of criminal procedure; except that after consultation with the chief judge of the judicial district, the trial court may appoint an active or senior district or county court judge to serve in its place and preside over all aspects of the taking of the deposition. After the deposition is taken, the prosecution shall transmit the ~~video tape~~ RECORDING to the clerk of the court in which the action is pending.

(4) If at the time of trial the court finds that the victim or witness is medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence, the court may admit the ~~video tape~~ RECORDING of the victim's or witness' deposition as former testimony under rule 804 (b) (1) of the Colorado rules of evidence.

SECTION 2. Effective date - applicability. This act takes effect July 1, 2016, and applies to cases pending on or after said date.

SECTION 3. 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 19, 2016