

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0621.01 Jerry Barry x4341

HOUSE BILL 18-1344

HOUSE SPONSORSHIP

Weissman and Sias,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING RELIEF FROM COLLATERAL CONSEQUENCES OF
102 CRIMINAL ACTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law has separate collateral relief sections for when a court orders an alternative sentence, probation, or community corrections. The bill combines collateral relief provisions into one section and authorizes a court to enter an order for collateral relief at the time of conviction of a defendant or any time thereafter. The bill requires a fingerprint-based criminal history record check only if the hearing is held after sentencing.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill adds the authority for a juvenile court to enter an order for collateral relief using the same process as criminal courts.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-107, **amend**
3 (1), (2)(a), (3), (4)(b)(I), (5)(a), (6)(c), and (8)(c); and **add** (2)(c) as
4 follows:

5 **18-1.3-107. Conviction - collateral relief - definitions.** (1) At
6 the time ~~a defendant enters into an alternative to sentencing in this part 1~~
7 OF CONVICTION OR AT ANY TIME THEREAFTER, upon the request of the
8 defendant or upon the court's own motion, a court may enter an order of
9 collateral relief IN THE CRIMINAL CASE for the purpose of preserving or
10 enhancing the defendant's employment or employment prospects and to
11 improve the defendant's likelihood of success in the ~~alternative to~~
12 ~~sentencing program~~ COMMUNITY.

13 (2) **Application contents.** (a) An application for an order of
14 collateral relief must cite the grounds for granting the relief, the type of
15 relief sought, and the specific collateral consequence from which the
16 applicant is seeking relief and must include a copy of a recent ~~Colorado~~
17 ~~bureau of investigation fingerprint-based criminal history records~~ RECORD
18 check. The state court administrator may produce an application form that
19 an applicant may submit in application.

20 (c) AN APPLICATION FILED AFTER A SENTENCE HAS BEEN IMPOSED
21 MUST INCLUDE A COPY OF A RECENT COLORADO BUREAU OF
22 INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK,
23 THE FILING FEE REQUIRED BY LAW, AND AN ADDITIONAL FILING FEE OF
24 THIRTY DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE
25 APPLICATION. A COURT SHALL WAIVE THE FILING FEES IF IT FINDS THAT

1 THE DEFENDANT IS INDIGENT.

2 (3) An order of collateral relief may relieve a defendant of any
3 collateral consequences of the conviction, whether in housing or
4 employment barriers or any other sanction or disqualification that the
5 court shall specify, including but not limited to statutory, regulatory, or
6 other collateral consequences that the court may see fit to relieve that will
7 assist the defendant in successfully ~~completing probation or a community~~
8 ~~corrections sentence~~ REINTEGRATING INTO THE COMMUNITY.

9 (4) (b) A court shall not issue an order of collateral relief if the
10 defendant:

11 (I) Has been convicted of a felony that included an element that
12 requires a victim to suffer ~~permanent disability~~ A SERIOUS BODILY INJURY
13 AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION
14 OF ANY PART OR ORGAN OF THE BODY;

15 (5) **Hearing.** (a) The court may conduct a hearing ON ANY
16 MATTER RELEVANT TO THE GRANTING OR DENIAL OF AN APPLICATION or
17 include a hearing on the matter at the defendant's sentencing hearing ~~on~~
18 ~~the application or on any matter relevant to the granting or denying of the~~
19 ~~application~~ and may take testimony under oath.

20 (6) **Standard for granting relief.** (c) Upon the motion of the
21 district attorney or probation officer or upon the court's own motion, a
22 court may revoke an order of collateral relief upon evidence of a
23 subsequent criminal conviction or proof that the defendant is no longer
24 entitled to relief. Any bars, prohibitions, sanctions, and disqualifications
25 thereby relieved ~~shall~~ MAY be reinstated as of the date of the written order
26 of revocation. The court shall provide a copy of the order of revocation
27 to the holder and to any regulatory or licensing entity that the defendant

1 noticed in his or her motion for relief.

2 (8) **Definitions.** As used in this section, unless the context
3 otherwise requires:

4 (c) "Conviction" or "convicted" means a verdict of guilty by a
5 judge or jury or a plea of guilty or nolo contendere that is accepted by the
6 court or a conviction of a crime under the laws of any other state, the
7 United States, or any territory subject to the jurisdiction of the United
8 States, which, if committed within this state, would be a ~~felony or~~
9 ~~misdemeanor~~ CRIME. "Conviction" or "convicted" also includes having
10 received a deferred judgment and sentence. ~~except that a person shall not~~
11 ~~be deemed to have been convicted if the person has successfully~~
12 ~~completed a deferred sentence.~~

13 **SECTION 2.** In Colorado Revised Statutes, **repeal** 18-1.3-213
14 and 18-1.3-303.

15 **SECTION 3.** In Colorado Revised Statutes, 16-11-102, **add**
16 (1)(a)(II.5) and (1)(a)(II.7) as follows:

17 **16-11-102. Presentence or probation investigation.**

18 (1) (a) (II.5) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II.7) OF THIS
19 SECTION, IF THE DEFENDANT IS CONVICTED ON OR AFTER THE EFFECTIVE
20 DATE OF THIS SUBSECTION (1)(a)(II.5), THE REPORT DESCRIBED IN
21 SUBSECTION (1)(a)(I) OF THIS SECTION MUST INCLUDE THE FOLLOWING
22 STATEMENT:

23 EACH DEFENDANT MAY, AT THE TIME OF CONVICTION OR AT
24 ANY TIME THEREAFTER, APPLY TO THE COURT FOR AN
25 ORDER OF COLLATERAL RELIEF OF THE CONSEQUENCES OF
26 THE DEFENDANT'S CONVICTION PURSUANT TO THE
27 PROVISIONS OF SECTION 18-1.3-107, COLORADO REVISED

1 STATUTES.

2 (II.7) THE REPORT DESCRIBED IN SUBSECTION (1)(a)(I) OF THIS
3 SECTION NEED NOT INCLUDE THE STATEMENT DESCRIBED IN SUBSECTION
4 (1)(a)(II.5) OF THIS SECTION IF THE DEFENDANT:

5 (A) HAS BEEN CONVICTED OF A FELONY THAT INCLUDED AN
6 ELEMENT THAT REQUIRES A VICTIM TO SUFFER A SERIOUS BODILY INJURY
7 AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION
8 OF ANY PART OR ORGAN OF THE BODY;

9 (B) HAS BEEN CONVICTED OF A CRIME OF VIOLENCE AS DESCRIBED
10 IN SECTION 18-1.3-406; OR

11 (C) IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO
12 SECTION 16-22-103.

13 **SECTION 4.** In Colorado Revised Statutes, **add** 19-2-927 as
14 follows:

15 **19-2-927. Adjudication - collateral relief - definitions.** (1) AT
16 THE TIME OF THE ENTRY OF ADJUDICATION OR AT ANY TIME THEREAFTER,
17 UPON THE REQUEST OF THE ADJUDICATED JUVENILE OR UPON THE COURT'S
18 OWN MOTION, A COURT MAY ENTER AN ORDER OF COLLATERAL RELIEF IN
19 THE JUVENILE'S CASE FOR THE PURPOSE OF IMPROVING THE JUVENILE'S
20 LIKELIHOOD OF SUCCESS IN THE COMMUNITY.

21 (2) **Application contents.** (a) AN APPLICATION FOR AN ORDER OF
22 COLLATERAL RELIEF MUST CITE THE GROUNDS FOR GRANTING THE RELIEF,
23 THE TYPE OF RELIEF SOUGHT, AND THE SPECIFIC COLLATERAL
24 CONSEQUENCE FROM WHICH THE APPLICANT IS SEEKING RELIEF AND MUST
25 INCLUDE A COPY OF A RECENT CRIMINAL HISTORY RECORD CHECK. THE
26 STATE COURT ADMINISTRATOR MAY PRODUCE AN APPLICATION FORM THAT
27 AN APPLICANT MAY SUBMIT IN APPLICATION.

1 (b) THE APPLICANT SHALL PROVIDE A COPY OF THE APPLICATION
2 TO THE DISTRICT ATTORNEY AND TO THE REGULATORY OR LICENSING
3 BODY THAT HAS JURISDICTION OVER THE COLLATERAL CONSEQUENCE
4 FROM WHICH THE APPLICANT IS SEEKING RELIEF, IF ANY, BY CERTIFIED
5 MAIL OR PERSONAL SERVICE WITHIN TEN DAYS AFTER FILING THE
6 APPLICATION WITH THE COURT.

7 (c) AN APPLICATION FILED AFTER AN ADJUDICATION ORDER HAS
8 BEEN ENTERED MUST INCLUDE A COPY OF A RECENT COLORADO BUREAU
9 OF INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY RECORD
10 CHECK, THE FILING FEE REQUIRED BY LAW, AND AN ADDITIONAL FILING FEE
11 OF THIRTY DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE
12 APPLICATION. A COURT SHALL WAIVE THE FILING FEES IF IT FINDS THAT
13 THE JUVENILE IS INDIGENT.

14 (3) AN ORDER OF COLLATERAL RELIEF MAY RELIEVE AN
15 ADJUDICATED JUVENILE OF ANY COLLATERAL CONSEQUENCES OF THE
16 ADJUDICATION, WHETHER IN HOUSING OR EMPLOYMENT BARRIERS OR ANY
17 OTHER SANCTION OR DISQUALIFICATION THAT THE COURT SHALL SPECIFY,
18 INCLUDING BUT NOT LIMITED TO STATUTORY, REGULATORY, OR OTHER
19 COLLATERAL CONSEQUENCES THAT THE COURT MAY SEE FIT TO RELIEVE
20 THAT WILL ASSIST THE ADJUDICATED JUVENILE IN SUCCESSFULLY
21 REINTEGRATING INTO THE COMMUNITY.

22 (4) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN
23 ORDER OF COLLATERAL RELIEF CANNOT RELIEVE ANY COLLATERAL
24 CONSEQUENCES IMPOSED BY LAW FOR LICENSURE BY THE DEPARTMENT OF
25 EDUCATION OR ANY COLLATERAL CONSEQUENCES IMPOSED BY LAW FOR
26 EMPLOYMENT WITH THE JUDICIAL BRANCH, THE DEPARTMENT OF
27 CORRECTIONS, THE DIVISION OF YOUTH SERVICES IN THE DEPARTMENT OF

1 HUMAN SERVICES, OR ANY OTHER LAW ENFORCEMENT AGENCY IN THE
2 STATE OF COLORADO.

3 (b) A COURT SHALL NOT ISSUE AN ORDER OF COLLATERAL RELIEF
4 IF THE ADJUDICATED JUVENILE:

5 (I) HAS BEEN ADJUDICATED FOR A FELONY THAT INCLUDED AN
6 ELEMENT THAT REQUIRES A VICTIM TO SUFFER A SERIOUS BODILY INJURY
7 AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION
8 OF ANY PART OR ORGAN OF THE BODY;

9 (II) HAS BEEN ADJUDICATED FOR A CRIME OF VIOLENCE AS
10 DESCRIBED IN SECTION 18-1.3-406; OR

11 (III) IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO
12 SECTION 16-22-103.

13 (5) **Hearing.** (a) THE COURT MAY CONDUCT A HEARING ON ANY
14 MATTER RELEVANT TO THE GRANTING OR DENYING OF AN APPLICATION OR
15 INCLUDE A HEARING ON THE MATTER AT THE ADJUDICATED JUVENILE'S
16 SENTENCING HEARING AND MAY TAKE TESTIMONY UNDER OATH.

17 (b) THE COURT MAY HEAR TESTIMONY FROM VICTIMS OR ANY
18 PROPONENT OR OPPONENT OF THE APPLICATION AND MAY HEAR
19 ARGUMENTS FROM THE APPLICANT AND THE DISTRICT ATTORNEY.

20 (6) **Standard for granting relief.** (a) A COURT MAY ISSUE AN
21 ORDER OF COLLATERAL RELIEF IF THE COURT FINDS THAT:

22 (I) THE ORDER OF COLLATERAL RELIEF IS CONSISTENT WITH THE
23 APPLICANT'S REHABILITATION; AND

24 (II) GRANTING THE APPLICATION WOULD IMPROVE THE
25 APPLICANT'S LIKELIHOOD OF SUCCESS IN REINTEGRATING INTO SOCIETY
26 AND IS IN THE PUBLIC'S INTEREST.

27 (b) THE COURT THAT PREVIOUSLY ISSUED AN ORDER OF

1 COLLATERAL RELIEF, ON ITS OWN MOTION OR EITHER BY CAUSE SHOWN BY
2 THE DISTRICT ATTORNEY OR ON GROUNDS OFFERED BY THE APPLICANT,
3 MAY AT ANY TIME ISSUE A SUBSEQUENT JUDGMENT TO ENLARGE, LIMIT, OR
4 CIRCUMSCRIBE THE RELIEF PREVIOUSLY GRANTED.

5 (c) UPON THE MOTION OF THE DISTRICT ATTORNEY OR PROBATION
6 OFFICER OR UPON THE COURT'S OWN MOTION, A COURT MAY REVOKE AN
7 ORDER OF COLLATERAL RELIEF UPON EVIDENCE OF A SUBSEQUENT
8 CRIMINAL CONVICTION OR ADJUDICATION OR PROOF THAT THE
9 ADJUDICATED JUVENILE IS NO LONGER ENTITLED TO RELIEF. ANY BARS,
10 PROHIBITIONS, SANCTIONS, AND DISQUALIFICATIONS THEREBY RELIEVED
11 MAY BE REINSTATED AS OF THE DATE OF THE WRITTEN ORDER OF
12 REVOCATION. THE COURT SHALL PROVIDE A COPY OF THE ORDER OF
13 REVOCATION TO THE HOLDER AND TO ANY REGULATORY OR LICENSING
14 ENTITY THAT THE ADJUDICATED JUVENILE NOTICED IN HIS OR HER MOTION
15 FOR RELIEF.

16 (7) IF THE COURT ISSUES AN ORDER OF COLLATERAL RELIEF, IT
17 SHALL SEND A COPY OF THE ORDER OF COLLATERAL RELIEF THROUGH THE
18 COLORADO INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM TO THE
19 COLORADO BUREAU OF INVESTIGATION, AND THE COLORADO BUREAU OF
20 INVESTIGATION SHALL NOTE IN THE APPLICANT'S RECORD IN THE
21 COLORADO CRIME INFORMATION CENTER THAT THE ORDER OF
22 COLLATERAL RELIEF WAS ISSUED.

23 (8) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
24 OTHERWISE REQUIRES:

25 (a) "ADJUDICATION" OR "ADJUDICATED" MEANS A VERDICT OF
26 GUILTY BY A JUDGE OR JURY OR A PLEA OF GUILTY OR NOLO CONTENDERE
27 THAT IS ACCEPTED BY THE COURT OR AN ADJUDICATION FOR A CRIME

1 UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES, OR ANY
2 TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES, WHICH,
3 IF COMMITTED WITHIN THIS STATE, WOULD BE A CRIME. "ADJUDICATION"
4 OR "ADJUDICATED" ALSO INCLUDES HAVING RECEIVED A DEFERRED
5 ADJUDICATION.

6 (b) "COLLATERAL CONSEQUENCE" MEANS A COLLATERAL
7 SANCTION OR A DISQUALIFICATION.

8 (c) "COLLATERAL SANCTION" MEANS A PENALTY, PROHIBITION,
9 BAR, OR DISADVANTAGE, HOWEVER DENOMINATED, IMPOSED ON AN
10 INDIVIDUAL AS A RESULT OF THE INDIVIDUAL'S ADJUDICATION FOR AN
11 OFFENSE, WHICH PENALTY, PROHIBITION, BAR, OR DISADVANTAGE APPLIES
12 BY OPERATION OF LAW REGARDLESS OF WHETHER THE PENALTY,
13 PROHIBITION, BAR, OR DISADVANTAGE IS INCLUDED IN THE JUDGMENT OR
14 SENTENCE. "COLLATERAL SANCTION" DOES NOT INCLUDE IMPRISONMENT,
15 PROBATION, PAROLE, SUPERVISED RELEASE, FORFEITURE, RESTITUTION,
16 FINE, ASSESSMENT, COSTS OF PROSECUTION, OR A RESTRAINT OR SANCTION
17 ON AN INDIVIDUAL'S DRIVING PRIVILEGE.

18 (d) "DISQUALIFICATION" MEANS A PENALTY, PROHIBITION, BAR, OR
19 DISADVANTAGE, HOWEVER DENOMINATED, THAT AN ADMINISTRATIVE
20 AGENCY, GOVERNMENTAL OFFICIAL, OR COURT IN A CIVIL PROCEEDING IS
21 AUTHORIZED, BUT NOT REQUIRED, TO IMPOSE ON AN INDIVIDUAL ON
22 GROUNDS RELATING TO THE INDIVIDUAL'S ADJUDICATION FOR AN OFFENSE.

23 **SECTION 5.** In Colorado Revised Statutes, 19-2-905, **amend** (2)
24 as follows:

25 **19-2-905. Presentence investigation.** (2) (a) The probation
26 department shall conduct a presentence investigation in each case unless
27 waived by the court on its own determination or on recommendation of

1 the prosecution or the juvenile. The level of detail included in the
2 presentence investigation may vary, as appropriate, with the services
3 being considered for the juvenile.

4 (b) (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(b)(II) OF THIS
5 SECTION, IF THE JUVENILE IS ADJUDICATED ON OR AFTER THE EFFECTIVE
6 DATE OF THIS SUBSECTION (2)(b), THE REPORT DESCRIBED IN SUBSECTION
7 (1)(a) OF THIS SECTION MUST INCLUDE THE FOLLOWING STATEMENT:

8 EACH ADJUDICATED JUVENILE MAY, AT THE TIME OF
9 ADJUDICATION OR AT ANY TIME THEREAFTER, APPLY TO THE
10 COURT FOR AN ORDER OF COLLATERAL RELIEF OF THE
11 CONSEQUENCES OF THE JUVENILE'S ADJUDICATION
12 PURSUANT TO THE PROVISIONS OF SECTION 19-2-927,
13 COLORADO REVISED STATUTES.

14 (II) THE REPORT DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION
15 NEED NOT INCLUDE THE STATEMENT DESCRIBED IN SUBSECTION (2)(b)(I)
16 OF THIS SECTION IF THE JUVENILE:

17 (A) HAS BEEN ADJUDICATED FOR A FELONY THAT INCLUDED AN
18 ELEMENT THAT REQUIRES A VICTIM TO SUFFER A SERIOUS BODILY INJURY
19 AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION
20 OF ANY PART OR ORGAN OF THE BODY;

21 (B) HAS BEEN ADJUDICATED FOR A CRIME OF VIOLENCE AS
22 DESCRIBED IN SECTION 18-1.3-406; OR

23 (C) IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO
24 SECTION 16-22-103.

25 **SECTION 6. Effective date - applicability.** This act takes effect
26 July 1, 2018, and applies to presentencing investigation reports conducted
27 and convictions or adjudications entered on or after said date.

1 **SECTION 7. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.