

CHAPTER 247

CRIMINAL LAW AND PROCEDURE

SENATE BILL 93-81

BY SENATORS Bird, Traylor, Rizzuto, Norton, Bishop, R. Powers, Schroeder, and Trujillo;
also REPRESENTATIVES Grampas, Owen, Romero, Williams, Agler, Berry, Faatz, and Kerns.

AN ACT

**CONCERNING CHANGES TO STATUTORY PROVISIONS FOR THE PURPOSE OF CREATING RESTRICTIONS
ON THE STATE'S OBLIGATION TO PROVIDE COURT-APPOINTED COUNSEL IN CERTAIN CASES.**

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

SECTION 1. 19-2-705 (3) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-705. Probation - terms - release - revocation. (3) (a) The court shall review the terms and conditions of probation and the progress of each juvenile placed on probation at least once every six months. COUNSEL FOR THE JUVENILE DOES NOT HAVE TO BE PRESENT AT THE REVIEW HEARING UNLESS NOTIFIED BY THE COURT THAT A PETITION TO REVOKE PROBATION HAS BEEN FILED.

SECTION 2. 16-7-301 (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-7-301. Propriety of plea discussions and plea agreements. (4) (a) In misdemeanors, petty offenses, or offenses under title 42, C.R.S., ~~except for violations of section 42-4-1202 (4) (a) (I) to (4) (a) (III), (4) (b) (II), and (4) (b) (III), C.R.S., or section 42-2-130, C.R.S., where the defendant has requested the appointment of a public defender pursuant to section 21-1-103, C.R.S., the prosecuting attorney shall engage in plea discussions with the defendant for the purpose of determining whether an acceptable plea agreement may be reached.~~ THE PROSECUTING ATTORNEY IS OBLIGATED TO TELL THE DEFENDANT ANY OFFER THAT CAN BE MADE BASED ON THE FACTS AS KNOWN BY THE PROSECUTING ATTORNEY AT THAT TIME. THE DEFENDANT AND THE PROSECUTING ATTORNEY MAY ENGAGE IN FURTHER PLEA DISCUSSIONS

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

ABOUT THE CASE, BUT THE DEFENDANT IS UNDER NO OBLIGATION TO TALK TO THE PROSECUTING ATTORNEY. THE PROSECUTING ATTORNEY SHALL ADVISE THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO RETAIN COUNSEL OR SEEK APPOINTMENT OF COUNSEL. THE APPLICATION FOR APPOINTMENT OF COUNSEL AND THE PAYMENT OF THE APPLICATION FEE SHALL BE DEFERRED UNTIL AFTER THE PROSECUTING ATTORNEY HAS SPOKEN WITH THE DEFENDANT AS PROVIDED IN THIS SUBSECTION (4). Upon completion of the discussions, the prosecutor shall inform the court of whether a plea agreement has been reached, and:

(I) If a plea agreement has been reached, the prosecutor shall inform the court of the terms of the proposed plea agreement and the recommended penalty. If the court determines that the proposed plea agreement is acceptable, the court shall, in addition to any other advisement required by law, advise the defendant of the right to a court-appointed attorney prior to acceptance of the defendant's plea. ~~if incarceration is a part of the plea agreement, or if the court determines that incarceration will be imposed.~~ THE COURT SHALL ALSO ADVISE THE DEFENDANT PRIOR TO ACCEPTANCE OF THE DEFENDANT'S PLEA THAT THE COURT EXERCISES INDEPENDENT JUDGMENT IN DECIDING WHETHER TO GRANT CHARGE AND SENTENCE CONCESSIONS MADE IN THE PLEA AGREEMENT AND THAT THE COURT MAY THEREFORE SENTENCE THE DEFENDANT IN A MANNER THAT IS DIFFERENT THAN THAT DISCUSSED DURING THE PLEA DISCUSSIONS.

(II) If a plea agreement has not been reached and the defendant CHOOSES TO RETAIN AN ATTORNEY, OR THE DEFENDANT meets the requirements of section 21-1-103, C.R.S., the court shall appoint counsel and all discussions with the defendant outside of the presence of counsel shall cease.

(b) After completion of discussions as described in paragraph (a) of this subsection (4), IF COUNSEL IS RETAINED BY THE DEFENDANT, OR if counsel is appointed for the defendant, when it appears that the effective administration of justice will thereby be served, the prosecutor may engage in additional plea discussions with the counsel for the defense for the purpose of reaching a plea agreement.

SECTION 3. Effective date. This act shall take effect July 1, 1993.

SECTION 4. 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: June 6, 1993