

CHAPTER 292

**CRIMINAL LAW AND PROCEDURE**

**HOUSE BILL 93-1088**

BY REPRESENTATIVES Kerns, Allen, Benavidez, Berry, Dyer, Lawrence, Shoemaker, and Snyder;  
also SENATOR Blickensderfer.

**AN ACT**

**CONCERNING CHANGES RELATED TO THE PROSECUTION OF CRIMINAL LAWS.**

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

**SECTION 1.** 12-22-319 (2), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

**12-22-319. Enforcement and cooperation.** (2) The board shall make any inspections, investigations, and reports that may be necessary to determine compliance with the provisions of this part 3 as they pertain to pharmacies, pharmacists, and manufacturers and distributors of controlled substances. ~~and~~ THE DEPARTMENT SHALL MAKE ANY INSPECTIONS, INVESTIGATIONS, AND REPORTS THAT MAY BE NECESSARY TO DETERMINE COMPLIANCE WITH THIS PART 3 PERTAINING to persons who manufacture, possess, transfer, or transport drug precursors and shall cooperate with all agencies charged with the enforcement of the laws of this state, all other states, and the United States relating to controlled substances.

**SECTION 2.** 14-4-102 (7.5), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**14-4-102. Restraining orders to prevent domestic abuse.** (7.5) (a) Any person against whom a temporary restraining order is issued pursuant to this section, which temporary restraining order excludes such person from a shared residence, shall be permitted to return to such shared residence one time to obtain sufficient undisputed personal effects as are necessary for such person to maintain a normal standard of living during any period prior to a hearing concerning such order. Such person against whom a temporary restraining order is issued shall be permitted to return to

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

such shared residence only if such person is accompanied at all times while the person is at or in such shared residence by a peace officer.

(b) When any person is served with notice of a temporary restraining order issued against such person excluding such person from a shared residence, such notice shall contain a notification in writing to such person of such person's ability to return to such shared residence pursuant to paragraph (a) of this subsection (7.5). SUCH WRITTEN NOTIFICATION SHALL BE IN BOLD PRINT AND CONSPICUOUSLY PLACED IN SUCH TEMPORARY RESTRAINING ORDER. ANY TEMPORARY RESTRAINING ORDER ISSUED ON OR AFTER JANUARY 1, 1994, WHICH DOES NOT CONTAIN SUCH WRITTEN NOTIFICATION IN THE MANNER PRESCRIBED BY THIS PARAGRAPH (b), SHALL BE NULL AND VOID.

**SECTION 3.** 16-4-202, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**16-4-202. Appeal bond hearing - factors to be considered.** (1) The court shall consider the following factors in deciding whether or not an appeal bond should be granted and determining the amount of bail and the type of bond to be required:

(a) The nature and circumstances of the offense before the court and the sentence imposed for that offense;

(b) The defendant's length of residence in the community;

(c) The defendant's employment, family ties, character, reputation, and mental condition;

(d) The defendant's past criminal record and record of appearance at court proceedings;

(e) Any showing of intimidation or harassment of witnesses or potential witnesses, or likelihood that the defendant will harm or threaten any person having a part in the trial resulting in conviction;

(f) Any other criminal charges pending against the defendant and the potential sentences should the defendant be convicted of those charges;

(g) The circumstances of, and sentences imposed in, any criminal case in which the defendant has been convicted but execution stayed pending appeal; ~~or~~

(h) The likelihood that the defendant will commit additional criminal offenses during the pendency of ~~his~~ SUCH DEFENDANT'S appeal; AND

(i) THE DEFENDANT'S LIKELIHOOD OF SUCCESS ON APPEAL.

**SECTION 4.** 16-5-401 (6) and (8), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**16-5-401. Limitation for commencing criminal proceedings.** (6) The period of time during which a person may be prosecuted shall be extended for an additional

seven years as to any offense charged under section 18-3-402 or 18-3-403, C.R.S., when the victim at the time of the commission of the act is a child under fifteen years of age, or under section 18-3-405, 18-3-405.3, 18-6-302, 18-6-402, 18-6-403, 18-6-404, 18-7-402, 18-7-403, 18-7-403.5, 18-7-404, 18-7-405, 18-7-405.5, or 18-7-406, C.R.S., or charged as criminal attempt, conspiracy, or solicitation to commit any of the acts specified in any of said sections. This subsection (6) is repealed, effective July 1, 1994.

(8) (a) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which a person may be prosecuted shall be ten years after the commission of the offense as to any offense:

(I) Charged under section 18-3-402, 18-3-403, 18-3-405, 18-3-405.3, 18-6-302, 18-6-402, 18-6-403, 18-6-404, 18-7-402, 18-7-403, 18-7-403.5, 18-7-404, 18-7-405, 18-7-405.5, or 18-7-406, C.R.S.;

(II) Charged as a felony under section 18-3-404, C.R.S.; or

(III) Charged as criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraphs (I) and (II) of this paragraph (a).

(b) This subsection (8) shall apply to offenses committed on or after July 1, 1984.

**SECTION 5.** 16-7-403 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**16-7-403. Deferred sentencing of defendant.** (2) Prior to entry of a plea of guilty to be followed by deferred judgment and sentence, the district attorney, in the course of plea discussion as provided in sections 16-7-301 and 16-7-302, is authorized to enter into a written stipulation, to be signed by the defendant, ~~his~~ THE DEFENDANT'S attorney of record, and the district attorney, under which the defendant ~~obligates himself~~ IS OBLIGATED to adhere to such stipulation. The conditions imposed in the stipulation shall be similar in all respects to conditions permitted as part of probation. In addition, the stipulation may require the defendant to perform community or charitable work service projects or make donations thereto. Upon full compliance with such conditions by the defendant, the plea of guilty previously entered shall be withdrawn and the ~~action against the defendant~~ CHARGE UPON WHICH THE JUDGMENT AND SENTENCE OF THE COURT WAS DEFERRED SHALL BE dismissed with prejudice. Such stipulation shall specifically provide that, upon a breach by the defendant of any condition regulating the conduct of the defendant, the court shall enter judgment and impose sentence upon such guilty plea. When, as a condition of the deferred sentence, the court orders the defendant to make restitution, evidence of failure to pay the said restitution shall constitute prima facie evidence of a violation. Whether a breach of condition has occurred shall be determined by the court without a jury upon application of the district attorney and upon notice of hearing thereon of not less than five days to the defendant or ~~his~~ THE DEFENDANT'S attorney of record. Application for entry of judgment and imposition of sentence may be made by the district attorney at any time within the term of the deferred judgment or within thirty days thereafter. The burden of proof at such hearing shall be by a preponderance of the evidence, and the procedural safeguards required in a revocation of probation hearing shall apply.

**SECTION 6.** 16-10-109 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**16-10-109. Trial by jury for petty offenses.** (1) For the purposes of this section, "petty offense" means any crime or offense classified as a petty offense or, if not so classified, which is punishable by imprisonment other than in a correctional facility for not more than six months, or by a fine of not more than five hundred dollars, or by both such imprisonment and fine, and includes any violation of a municipal ordinance or offense which was not considered a crime at common law; except that violation of a municipal traffic ordinance which does not constitute a criminal offense or any other municipal charter or ordinance offense which is neither criminal nor punishable by imprisonment under any counterpart state statute shall not constitute a petty offense. NO CHILD UNDER THE AGE OF EIGHTEEN YEARS SHALL BE ENTITLED TO A TRIAL BY JURY FOR A VIOLATION OF A MUNICIPAL ORDINANCE FOR WHICH IMPRISONMENT IN JAIL IS NOT A POSSIBLE PENALTY; EXCEPT THAT SUCH A CHILD IS ENTITLED TO A TRIAL BY JURY FOR ANY OFFENSE WHICH WOULD BE A CLASS 1 MISDEMEANOR UNDER A STATE COUNTERPART STATUTE. Nothing in this subsection (1) shall prohibit a municipality from granting a right to trial by jury for ordinance violations.

**SECTION 7.** 16-11-401, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**16-11-401. Death penalty inflicted by lethal injection.** The manner of inflicting the punishment of death shall be by the administration of a lethal injection within the time prescribed in this part 4, unless for good cause the court or governor may prolong the time. For the purposes of this part 4, "lethal injection" means a continuous intravenous injection of a lethal quantity of sodium thiopental or other equally or more effective substance sufficient to cause death. THE MANNER OF INFLICTING THE PUNISHMENT OF DEATH SHALL, IN ALL CIRCUMSTANCES, BE BY THE ADMINISTRATION OF A LETHAL INJECTION REGARDLESS OF THE DATE OF THE COMMISSION OF THE OFFENSE OR OFFENSES FOR WHICH THE DEATH PENALTY IS IMPOSED.

**SECTION 8.** 16-12-102 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**16-12-102. Appeals by the prosecution.** (1) The prosecution may appeal any decision of the trial court in a criminal case upon any question of law, AND ANY ORDER OF THE TRIAL COURT GRANTING A NEW TRIAL AFTER THE ENTRY OF A VERDICT OR JUDGMENT SHALL CONSTITUTE A FINAL ORDER WHICH SHALL BE IMMEDIATELY APPEALABLE PURSUANT TO THIS SUBSECTION (1). If any act of the general assembly is adjudged inoperative or unconstitutional in any criminal case, it is the duty of the district attorney of the judicial district in which the court making such decision is situated to appeal on behalf of the people of the state of Colorado, unless the same issue of constitutionality is already pending before a reviewing court in another case. Nothing in this section shall authorize placing the defendant in jeopardy a second time for the same offense. No docket fee shall be required of the people upon an appeal under this section. The procedure to be followed in filing and prosecuting appeals under this section shall be as provided by applicable rule of the supreme court of Colorado. However, if a statute providing for the imposition of the death penalty is adjudged inoperative or inapplicable for any reason, such adjudication shall

constitute a final order which shall be immediately appealable to the supreme court of Colorado, notwithstanding any statute or court rule to the contrary.

**SECTION 9.** 16-19-117 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**16-19-117. Bail pending extradition.** (1) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state or territory or country in which it is alleged to have been committed, the judge of any district court within the state of Colorado may admit any person arrested, held, or detained for extradition or interstate rendition to another state or territory of the United States or to any foreign country, to bail by bond or undertaking, with such sufficient sureties and in such sum as ~~he~~ SUCH JUDGE deems proper, conditioned upon the appearance of such person before ~~him~~ THE COURT at a time specified in the bond or undertaking and for ~~his~~ SUCH PERSON'S surrender upon the warrant of the governor of this state for ~~his~~ SUCH PERSON'S extradition or interstate rendition to another state or territory of the United States or to any foreign country. WHEN ANY SUCH PERSON HAS BEEN SERVED WITH A GOVERNOR'S WARRANT, SUCH PERSON SHALL NO LONGER BE ELIGIBLE TO BE ADMITTED TO BAIL.

**SECTION 10.** Article 19 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**16-19-126.5. Prior waiver of extradition.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A LAW ENFORCEMENT AGENCY IN THE STATE OF COLORADO HOLDING A PERSON WHO IS ALLEGED TO HAVE BROKEN THE TERMS OF SUCH PERSON'S PROBATION, PAROLE, BAIL, OR ANY OTHER CONDITIONAL RELEASE IN THE DEMANDING STATE SHALL IMMEDIATELY DELIVER THE PERSON TO THE DULY AUTHORIZED AGENT OF THE DEMANDING STATE WITHOUT THE REQUIREMENT OF A DEMAND BY THE EXECUTIVE AUTHORITY OF THE DEMANDING STATE, AND WITHOUT THE REQUIREMENT OF A GOVERNOR'S WARRANT ISSUED BY THE GOVERNOR OF THE STATE OF COLORADO, IF SUCH PERSON HAS SIGNED A PRIOR WAIVER OF EXTRADITION AS A CONDITION OF SUCH PERSON'S CURRENT PROBATION, PAROLE, BAIL, OR OTHER CONDITIONAL RELEASE IN THE DEMANDING STATE.

(2) THE LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY DELIVER ANY PERSON PURSUANT TO SUBSECTION (1) OF THIS SECTION UPON THE RECEIPT OF THE FOLLOWING DOCUMENTS, WHICH SHALL BE ACCEPTED AS CONCLUSIVE PROOF OF THE CONTENTS OF SUCH DOCUMENTS AND OF THE VALIDITY OF THE WAIVER SET FORTH THEREIN:

(a) A CERTIFIED COPY OF THE PRIOR WAIVER OF EXTRADITION SIGNED BY THE PERSON BEING HELD BY THE LAW ENFORCEMENT AGENCY, OR AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE THEREOF;

(b) A CERTIFIED COPY OF AN ORDER OR WARRANT FROM THE DEMANDING STATE DIRECTING THE RETURN OF THE PERSON FOR VIOLATING THE CONDITIONS OF SUCH PERSON'S PROBATION, PAROLE, BAIL, OR OTHER CONDITIONAL RELEASE, OR AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE THEREOF; AND

(c) A PHOTOGRAPH, FINGERPRINTS, OR OTHER EVIDENCE WHICH IDENTIFIES THE

PERSON HELD BY THE LAW ENFORCEMENT AGENCY AS THE PERSON WHO SIGNED THE WAIVER OF EXTRADITION AND WHO IS NAMED IN THE ORDER OR WARRANT, OR AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE THEREOF.

(3) NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE RIGHT, POWER, OR PRIVILEGE OF THE STATE OF COLORADO TO HOLD, TRY, AND PUNISH ANY PERSON DEMANDED BY ANOTHER STATE FOR ANY CRIME COMMITTED IN THE STATE OF COLORADO BEFORE DELIVERING SUCH PERSON TO THE DEMANDING STATE.

**SECTION 11.** 17-22.5-403 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**17-22.5-403. Parole eligibility.** (1) Any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony, OR ANY UNCLASSIFIED FELONY, shall be eligible for parole after ~~he~~ SUCH PERSON has served fifty percent of the sentence imposed upon ~~him~~ SUCH PERSON, less any time authorized for earned time granted pursuant to section 17-22.5-405. However, the date established by this subsection (1) upon which any person shall be eligible for parole may be extended by the executive director for misconduct during incarceration. The executive director shall promulgate rules and regulations concerning when and under what conditions any inmate's parole eligibility date may be extended. Such rules and regulations shall be promulgated in such a manner as to promote fairness and consistency in the treatment of all inmates.

**SECTION 12.** 18-1-105 (10), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-1-105. Felonies classified - presumptive penalties.** (10) When it shall appear to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be best served thereby, the court shall have the power to suspend the imposition or execution of sentence for such period and upon such terms and conditions as it may deem best; EXCEPT THAT IN NO INSTANCE SHALL THE COURT HAVE THE POWER TO SUSPEND A SENTENCE TO A TERM OF INCARCERATION WHEN THE DEFENDANT IS SENTENCED PURSUANT TO A MANDATORY SENTENCING PROVISION. In no instance shall any such sentence be suspended if the defendant is ineligible for probation pursuant to section 16-11-201, C.R.S., except upon an express waiver being made by the sentencing court regarding a particular defendant upon recommendation of the district attorney and approval of such recommendation by an order of the sentencing court pursuant to section 16-11-201 (4), C.R.S.

**SECTION 13.** 18-3-106 (1) (b) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of this subsection (1), one or more drugs shall mean all substances defined as a drug in section 12-22-303 (13), C.R.S., and all controlled substances defined in section 12-22-303 (7), C.R.S., and glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor or vapors AS DEFINED IN SECTION 18-18-412.

**SECTION 14.** 18-3-205 (1) (b) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this subsection (1), one or more drugs shall mean all substances defined as a drug in section 12-22-303 (13), C.R.S., and all controlled substances defined in section 12-22-303 (7), C.R.S., and glue-sniffing, aerosol inhalation, or the inhalation of any other toxic vapor or vapors AS DEFINED IN SECTION 18-18-412.

**SECTION 15.** 18-3-401 (2) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**18-3-401. Definitions.** As used in this part 4, unless the context otherwise requires:

(2) "Intimate parts" means the external genitalia or the perineum or the anus OR THE BUTTOCKS or the pubes or the breast of any person.

(4) "Sexual contact" means the ~~knowingly~~ KNOWING touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the ~~knowingly~~ KNOWING touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact ~~can reasonably be construed as being~~ IS for the purposes of sexual arousal, gratification, or abuse.

**SECTION 16.** 18-3-415, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-3-415. Acquired immune deficiency syndrome testing for persons charged with any sexual offense.** Any ~~person~~ ADULT OR JUVENILE who ~~subsequent to a preliminary hearing,~~ is bound over for trial for any sexual offense involving sexual penetration as defined in section 18-3-401 (6), SUBSEQUENT TO A PRELIMINARY HEARING OR AFTER HAVING WAIVED THE RIGHT TO A PRELIMINARY HEARING, OR ANY PERSON WHO IS INDICTED FOR OR IS CONVICTED OF ANY SUCH OFFENSE, shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome. The results of such test shall be reported to the court ~~which~~ OR THE COURT'S DESIGNEE, WHO shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If the person WHO IS bound over for trial OR WHO IS INDICTED FOR OR CONVICTED OF ANY SUCH OFFENSE voluntarily submits to a blood test for the human immunodeficiency virus (HIV), the fact of ~~his~~ SUCH PERSON'S voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

**SECTION 17.** 18-4-502, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-4-502. First degree criminal trespass.** A person commits the crime of first degree criminal trespass if such person knowingly and unlawfully enters or remains in a dwelling OF ANOTHER or if such person enters any motor vehicle with intent to steal anything of value or with intent to commit a crime therein. First degree criminal trespass is a class 5 felony.

**SECTION 18.** 18-4-503 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-4-503. Second degree criminal trespass.** (1) A person commits the crime of second degree criminal trespass if ~~he~~ SUCH PERSON unlawfully enters or remains in or upon premises OF ANOTHER which are enclosed in a manner designed to exclude intruders or are fenced or if ~~he~~ SUCH PERSON knowingly and unlawfully enters or remains in or upon the premises of a hotel, motel, condominium, or apartment building.

**SECTION 19.** 18-4-504 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-4-504. Third degree criminal trespass.** (1) A person commits the crime of third degree criminal trespass if ~~he~~ SUCH PERSON unlawfully enters or remains in or upon premises OF ANOTHER.

**SECTION 20.** 18-4-509 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-4-509. Defacing property.** (2) Any person who defaces or causes, aids in, or permits the defacing of public or private property without the consent of the owner by painting, drawing, or writing, by use of paint, spray paint, or ink, or by any other method of defacement commits ~~a class 2 misdemeanor~~ AN UNCLASSIFIED MISDEMEANOR. ANY PERSON CONVICTED OF DEFACING PROPERTY PURSUANT TO THIS SUBSECTION (2) SHALL BE ORDERED BY THE COURT TO MAKE PERSONALLY REPAIRS TO ANY PROPERTY DAMAGED, OR PROPERTIES SIMILARLY DAMAGED, IF POSSIBLE. ~~A second or subsequent conviction under this subsection (2), shall carry a one-year jail sentence.~~

**SECTION 21.** 18-4-205, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-4-205. Possession of burglary tools.** (1) A person commits possession of burglary tools if he possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking, and intends to use the thing possessed, or knows that some person intends to use the thing possessed, in the commission of such an offense.

(2) Possession of burglary tools is a ~~class 5~~ CLASS 6 felony.

**SECTION 22.** 18-6.5-101, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-6.5-101. Legislative declaration.** The general assembly recognizes that fear of mistreatment is one of the major personal concerns of at-risk adults AND AT-RISK JUVENILES and that at-risk adults AND AT-RISK JUVENILES are more vulnerable to and disproportionately damaged by crime in general but, more specifically, by abuse, exploitation, and neglect because they are less able to protect themselves against offenders, a number of whom are in positions of trust, and because they are more

likely to receive serious injury from crimes committed against them and not to fully recover from such injury. At-risk adults AND AT-RISK JUVENILES are more impacted by crime than the general population because they tend to suffer great relative deprivation, financially, physically, and psychologically, as a result of the abuses against them. A significant number of at-risk adults AND AT-RISK JUVENILES are not as physically or emotionally equipped to protect themselves or aid in their own security as non-at-risk adults AND NON-AT-RISK JUVENILES in society. They are far more susceptible than the general population to the adverse long-term effects of crimes committed against them, including abuse, exploitation, and neglect. The general assembly therefore finds that penalties for specified crimes committed against at-risk adults AND AT-RISK JUVENILES should be more severe than the penalties for the commission of said crimes against other members of society.

**SECTION 23.** 18-6.5-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**18-6.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1.5) "AT-RISK JUVENILE" MEANS ANY PERSON WHO IS UNDER THE AGE OF EIGHTEEN YEARS AND IS A PERSON WITH A DISABILITY AS SAID TERM IS DEFINED IN SUBSECTION (3) OF THIS SECTION.

**SECTION 24.** 18-6.5-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-6.5-103. Crimes against at-risk adults and at-risk juveniles - classifications.** (1) Crimes against at-risk adults AND AT-RISK JUVENILES shall be as prescribed in this section.

(2) Any person whose conduct amounts to criminal negligence, as defined in section 18-1-501 (3), commits:

(a) A class 4 felony if such negligence results in the death of an at-risk adult OR AN AT-RISK JUVENILE;

(b) A class 5 felony if such negligence results in serious bodily injury to an at-risk adult OR AN AT-RISK JUVENILE; and

(c) A class 6 felony if such negligence results in bodily injury to an at-risk adult OR AN AT-RISK JUVENILE.

(3) (a) Any person who commits a crime of assault in the first degree, as such crime is described in section 18-3-202, and the victim is an at-risk adult OR AN AT-RISK JUVENILE, commits a class 2 felony. If the defendant is convicted of assault on an at-risk adult OR AN AT-RISK JUVENILE in the first degree under the circumstances described in section 18-3-202 (1) (a) or (1) (c), the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S.

(b) Any person who commits a crime of assault in the second degree, as such crime

is described in section 18-3-203, without the circumstances provided in section 18-3-203 (2) (a) being present and the victim is an at-risk adult OR AN AT-RISK JUVENILE, commits a class 3 felony. If the defendant is convicted of assault of an at-risk adult OR AN AT-RISK JUVENILE in the second degree under the circumstances described in section 18-3-203 (1) (b) or (1) (d), the court shall sentence the defendant in accordance with the provisions of section 16-11-309, C.R.S.

(c) Any person who commits a crime of assault in the third degree, as such crime is described in section 18-3-204, and the victim is an at-risk adult OR AN AT-RISK JUVENILE, commits a class 5 felony.

(4) Any person who commits robbery, as such crime is described in section 18-4-301 (1), and the victim is an at-risk adult OR AN AT-RISK JUVENILE, commits a class 3 felony. If the offender is convicted of robbery of an at-risk adult OR AN AT-RISK JUVENILE, the court shall impose at least the presumptive sentence under section 18-1-105 (1).

(5) Any person who commits theft, and commits any element or portion of the offense in the presence of the victim, as such crime is described in section 18-4-401 (1), and the victim is an at-risk adult OR AN AT-RISK JUVENILE, commits a class 5 felony if the value of the thing involved is less than ~~three~~ FOUR hundred dollars or a class 3 felony if the value of the thing involved is ~~three~~ FOUR hundred dollars or more. Theft from the person of an at-risk adult OR AN AT-RISK JUVENILE by means other than the use of force, threat, or intimidation is a class 4 felony without regard to the value of the thing taken.

(6) Any person who knowingly neglects an at-risk adult or knowingly acts in a manner likely to be injurious to the physical or mental welfare of an at-risk adult commits a class 1 misdemeanor.

**SECTION 25.** 18-6.5-104, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-6.5-104. Statutory privilege not allowed.** The statutory privileges provided in section 13-90-107 (1), C.R.S., shall not be available for excluding or refusing testimony in any prosecution for a crime committed against an at-risk adult OR AN AT-RISK JUVENILE pursuant to this article.

**SECTION 26.** 18-6.5-105, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-6.5-105. Preferential trial dates of cases involving crimes against at-risk adults and at-risk juveniles.** Consistent with the constitutional right to a speedy trial, all cases involving the commission of a crime against an at-risk adult OR AN AT-RISK JUVENILE shall take precedence before the court, and the court shall hear these cases as soon as possible after they are filed.

**SECTION 27.** 18-6.5-106, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**18-6.5-106. Payment of treatment costs for victims of crimes against at-risk**

**adults or at-risk juveniles - restitution.** (1) In addition to any other penalty provided by law, the court may order any person who is convicted of a crime against an at-risk adult OR AN AT-RISK JUVENILE, as set forth in this article, to meet all or any portion of the financial obligations of treatment prescribed for the victim or victims of his SUCH PERSON'S offense.

(2) At the time of sentencing, the court may order that an offender described in subsection (1) of this section be put on a period of probation for the purpose of paying the treatment costs of the victim or victims, which, when added to any time served, does not exceed the maximum sentence imposable for the offense.

(3) If an at-risk adult OR AN AT-RISK JUVENILE has sustained monetary damages as a result of the commission of a crime described in this article against such adult OR JUVENILE, the court may order the offender to provide restitution pursuant to section 16-11-204.5 and article 28 of title 17, C.R.S. If, after a reasonable period not to exceed one hundred eighty days, the offender has not in the opinion of the court completed adequate restitution, the offender's probation may be revoked. However, any remaining amount of restitution shall continue to have the full force and effect of a final judgment and remain enforceable pursuant to section 16-11-101.5, C.R.S.

**SECTION 28.** 18-13-122 (15), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

**18-13-122. Illegal possession or consumption of ethyl alcohol by an underage person.** (15) (a) ~~This section is repealed, effective July 1, 1993.~~

~~(b) Prior to such repeal, the judicial department shall evaluate the enforcement, cost, and effectiveness of this section and report its findings to the judiciary committees of the house of representatives and the senate no later than January 1, 1993.~~

**SECTION 29.** 19-3-304 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-304. Persons required to report child abuse or neglect.** (2) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

- (a) Physician or surgeon, including a physician in training;
- (b) Child health associate;
- (c) Medical examiner or coroner;
- (d) Dentist;
- (e) Osteopath;
- (f) Optometrist;
- (g) Chiropractor;

- (h) Chiropracist or podiatrist;
- (i) Registered nurse or licensed practical nurse;
- (j) Hospital personnel engaged in the admission, care, or treatment of patients;
- (k) Christian science practitioner;
- (l) Public or private school official or employee;
- (m) Social worker or worker in a family care home, employer-sponsored on-site child care center, or child care center as defined in section 26-6-102, C.R.S.;
- (n) Mental health professional;
- (o) Dental hygienist;
- (p) Psychologist;
- (q) Physical therapist;
- (r) Veterinarian;
- (s) Peace officer as defined in section 18-1-901 (3) (l), C.R.S.;
- (t) Pharmacist;
- (u) Commercial film and photographic print processor as provided in subsection (2.5) of this section;
- (v) FIREMAN AS DEFINED IN SECTION 18-3-201 (1), C.R.S.

**SECTION 30.** 19-4-111 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-4-111. Pretrial proceedings.** (2) Upon the refusal of any witness, including a party, to testify under oath or produce evidence, the court may order ~~him~~ SUCH WITNESS to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that ~~his~~ SUCH WITNESS' testimony or evidence might tend to incriminate ~~him~~ SUCH WITNESS, the court may grant ~~him~~ SUCH WITNESS immunity from ~~all criminal liability on account~~ THE USE of the testimony or evidence ~~he~~ THE WITNESS is required to produce TO PROVE THE COMMISSION OF A CRIMINAL OFFENSE BY THE WITNESS. ~~An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by the testimony or evidence he is required to produce, except for perjury committed in his testimony.~~ The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

**SECTION 31.** 26-2-306 (2) and (3), Colorado Revised Statutes, 1989 Repl. Vol., are amended to read:

**26-2-306. Trafficking in food stamps.** (2) Trafficking in food stamps is:

(a) A class 3 misdemeanor under section 18-1-106, C.R.S., if the value of the food stamps is less than ~~fifty~~ ONE HUNDRED dollars;

(b) A class 2 misdemeanor under section 18-1-106, C.R.S., if the value of the food stamps is ~~fifty~~ ONE HUNDRED dollars or more but less than ~~three~~ FOUR hundred dollars;

(c) A class 4 felony under section 18-1-105, C.R.S., if the value of the food stamps is ~~three~~ FOUR hundred dollars or more but less than ~~ten~~ FIFTEEN thousand dollars;

(d) A class 3 felony under section 18-1-105, C.R.S., if the value of the food stamps is ~~ten~~ FIFTEEN thousand dollars or more.

(3) When a person commits the offense of trafficking in food stamps twice or more within a period of six months without having been placed in jeopardy for the prior offense or offenses and the aggregate value of the food stamps involved is ~~three~~ FOUR hundred dollars or more but less than ~~ten~~ FIFTEEN thousand dollars, it is a class 4 felony; however, if the aggregate value of the food stamps involved is ~~ten~~ FIFTEEN thousand dollars or more, it is a class 3 felony.

**SECTION 32.** 26-4-504 (4) and (8), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**26-4-504. Personal needs benefits - amount - patient personal needs trust fund required - funeral and burial expenses - penalties for illegal retention and use.**

(4) The state department shall establish rules and regulations concerning the establishment of a patient personal needs trust fund and procedures for the maintenance of a system of accounting for expenditures of each patient's personal needs funds. These rules and regulations shall provide that the nursing facility or intermediate care facility for the mentally retarded shall maintain complete records of all receipts and expenditures involving the patient personal needs trust fund, that all expenditures shall be approved by the patient, legal custodian, guardian, or conservator prior to an expenditure, and that each patient or ~~his~~ SUCH PATIENT'S legal custodian, guardian, or conservator shall be given at least a quarterly accounting of the receipts and expenditures of such funds. IN ADDITION, THE RULES SHALL REQUIRE THAT THE PERSON WHO MAINTAINS THE PATIENT PERSONAL NEEDS TRUST FUND FOR THE FACILITY AND WHO IS RESPONSIBLE FOR THE DEPOSIT OF MONEYS INTO SUCH TRUST FUND SHALL DEPOSIT ANY PERSONAL NEEDS FUNDS RECEIVED FROM A PATIENT OR FROM THE STATE DEPARTMENT NO LATER THAN SIXTY DAYS AFTER THE RECEIPT OF SUCH MONEYS.

(8) (a) It is unlawful for any person to ~~willfully or~~ KNOWINGLY FAIL TO DEPOSIT PERSONAL NEEDS FUNDS RECEIVED FROM A PATIENT OR FROM THE STATE DEPARTMENT FOR A PATIENT'S PERSONAL NEEDS INTO THE PATIENTS' PERSONAL NEEDS TRUST FUND WITHIN SIXTY DAYS AFTER THE RECEIPT OF SUCH MONEYS OR TO knowingly apply, spend, commit, pledge, or otherwise use a patient personal needs trust fund, OR ANY OTHER MONEYS PAID BY A PATIENT OR THE STATE DEPARTMENT FOR PATIENT PERSONAL NEEDS, for any purpose other than the personal needs of the patient to purchase necessary clothing, incidentals, or other items of personal needs

which are not reimbursed by any federal or state program. DEPOSIT OR USE OF PERSONAL NEEDS FUNDS, INCLUDING THE USE OF A PETTY CASH FUND FOR PERSONAL NEEDS PURPOSES, IS NOT A VIOLATION OF THIS SECTION IF SUCH DEPOSIT OR USE IS IN SUBSTANTIAL COMPLIANCE WITH APPLICABLE REGULATIONS OF THE STATE DEPARTMENT, NOR SHALL SUMS LATER ORDERED REPAYED TO THE PATIENTS' PERSONAL NEEDS TRUST FUND AS A RESULT OF AN AUDIT ADJUSTMENT OR A DISPUTE RELATED TO A PRORATION OF PATIENT PAYMENT BE DETERMINED TO CONSTITUTE A VIOLATION OF THIS SECTION.

(b) Any person who KNOWINGLY violates any of the provisions of this subsection (8) ~~is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment~~ BY FAILING TO DEPOSIT PERSONAL NEEDS FUNDS WITHIN SIXTY DAYS OF THE RECEIPT OF SUCH MONEYS COMMITS THE CRIME OF UNLAWFUL RETENTION OF PATIENT PERSONAL NEEDS FUNDS. ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF THIS SUBSECTION (8) BY APPLYING, SPENDING, COMMITTING, PLEDGING, OR OTHERWISE USING A PATIENT PERSONAL NEEDS TRUST FUND FOR ANY PURPOSE OTHER THAN THE PURPOSES PERMITTED BY THIS SUBSECTION (8) COMMITS THE CRIME OF UNLAWFUL USE OF A PATIENT PERSONAL NEEDS TRUST FUND.

(c) UNLAWFUL RETENTION OF PATIENT PERSONAL NEEDS FUNDS IS A CLASS 3 MISDEMEANOR. WHEN A PERSON COMMITS UNLAWFUL RETENTION OF PATIENT PERSONAL NEEDS FUNDS TWICE OR MORE WITHIN A PERIOD OF SIX MONTHS WITHOUT HAVING BEEN PLACED IN JEOPARDY FOR THE PRIOR OFFENSE OR OFFENSES, UNLAWFUL RETENTION OF PATIENT PERSONAL NEEDS FUNDS IS A CLASS 1 MISDEMEANOR.

(d) UNLAWFUL USE OF A PATIENT PERSONAL NEEDS TRUST FUND IS:

(I) A CLASS 3 MISDEMEANOR, IF THE AMOUNT INVOLVED IS LESS THAN ONE HUNDRED DOLLARS;

(II) A CLASS 2 MISDEMEANOR, IF THE AMOUNT INVOLVED IS ONE HUNDRED DOLLARS OR MORE BUT LESS THAN FOUR HUNDRED DOLLARS;

(III) A CLASS 4 FELONY, IF THE AMOUNT INVOLVED IS FOUR HUNDRED DOLLARS OR MORE BUT LESS THAN FIFTEEN THOUSAND DOLLARS;

(IV) A CLASS 3 FELONY, IF THE AMOUNT INVOLVED IS FIFTEEN THOUSAND DOLLARS OR MORE.

(e) ANY PERSON WHO IS CONVICTED OF VIOLATING THIS SUBSECTION (8) MAY NOT OWN OR OPERATE A NURSING FACILITY THAT RECEIVES MEDICAL ASSISTANCE PURSUANT TO THIS ARTICLE. FOR THE PURPOSES OF THIS PARAGRAPH (e), "CONVICTED" MEANS THE ENTRY OF A PLEA OF GUILTY, INCLUDING A PLEA OF GUILTY ENTERED PURSUANT TO A DEFERRED SENTENCE UNDER SECTION 16-7-403, C.R.S., THE ENTRY OF A PLEA OF NO CONTEST ACCEPTED BY THE COURT, OR THE ENTRY OF A VERDICT OF GUILTY BY A JUDGE OR JURY.

**SECTION 33.** 29-22-101 (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**29-22-101. Definitions.** As used in this article, unless the context otherwise requires:

(2) (a) "Hazardous substance incident" means any emergency circumstance involving the sudden discharge of a hazardous substance which ~~in the judgment of an emergency response authority,~~ threatens immediate and irreparable harm to the environment or the health and safety of any individual other than individuals exposed to the risks associated with hazardous substances in the normal course of their employment. "Hazardous substance incident" includes those incidents of spilling, dumping, or abandonment of a hazardous substance, whether or not such spilling, dumping, or abandonment is found to threaten immediate and irreparable harm, but such term does not include any discharge of a hazardous substance authorized pursuant to any federal, state, or local law or regulation. "Hazardous substance incident" includes those incidents which occur during transportation of a hazardous substance, in which a spill does not occur during the incident but is threatened prior to or during the cleanup period.

**SECTION 34.** 39-28.7-107, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**39-28.7-107. Prohibited acts - penalties.** Any person in possession of a package of controlled substances or marihuana without a stamp affixed thereto shall be assessed, in addition to the tax imposed by this article, a penalty equal to ~~ten~~ THREE times the amount of tax owed. ASSESSMENT OF THE CIVIL PENALTY PURSUANT TO THIS SECTION AGAINST ANY PERSON SHALL NOT FORECLOSE CRIMINAL PROSECUTION OF SUCH PERSON.

**SECTION 35.** 42-2-202 (2) (a) (V), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

**42-2-202. Habitual offenders - frequency and type of violations.** (2) (a) (V) Vehicular assault or vehicular homicide, or manslaughter or criminally negligent homicide which results from the operation of a motor vehicle, or ~~joyriding~~ AGGRAVATED MOTOR VEHICLE THEFT, as such offenses are described in title 18, C.R.S.;

**SECTION 36.** 42-3-114.5 (2) (a), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

**42-3-114.5. Access to records of license plate holders.** (2) (a) A peace officer as defined in section ~~24-32-603(4)~~; 18-1-901 (3) (1), C.R.S., when the peace officer is seeking to ascertain the identity of the owner of a motor vehicle; and

**SECTION 37.** 42-4-1213 (4) (a) and (4) (b), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

**42-4-1213. Compulsory insurance - penalty.** (4) (a) Any person who violates the provisions of subsection (1), (2), or (3) of this section ~~is guilty of~~ COMMITS a CLASS 1 misdemeanor traffic offense. ~~and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and, in addition, the court may impose imprisonment in the county jail for not less~~

~~than ten days nor more than one year.~~ The MINIMUM fine imposed by ~~this paragraph~~ (a) SECTION 42-4-1501 (2) (a) (II) (A) shall be mandatory, and the court shall not suspend ~~said~~ SUCH MINIMUM fine, in whole or in part, unless it is established that appropriate insurance as required under section 10-4-705 and 10-4-716, C.R.S., has been obtained. NOTHING IN THIS PARAGRAPH (a) SHALL BE CONSTRUED TO PREVENT THE COURT FROM IMPOSING A FINE GREATER THAN THE MINIMUM MANDATORY FINE.

(b) Upon a second or subsequent conviction under this section within a period of two years following a prior conviction under this section, IN ADDITION TO ANY IMPRISONMENT IMPOSED PURSUANT TO SECTION 42-4-1501 (2) (a) (II) (A), the defendant shall be punished by a MINIMUM MANDATORY fine of not less than two hundred dollars, ~~nor more than one thousand dollars, and, in addition, the court may impose imprisonment in the county jail for not less than ten days nor more than one year.~~ The fine imposed by this paragraph (b) shall be mandatory, and the court shall not suspend ~~said~~ SUCH MINIMUM fine, in whole or in part, unless it is established that appropriate insurance as required under section 10-4-705 and 10-4-716, C.R.S., has been obtained. NOTHING IN THIS PARAGRAPH (b) SHALL BE CONSTRUED TO PREVENT THE COURT FROM IMPOSING A FINE GREATER THAN THE MINIMUM MANDATORY FINE.

**SECTION 38.** The introductory portion to 42-4-1501 (2) (a) (II) (A), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**42-4-1501. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule.** (2) (a) (II) (A) Except as provided in subsections (3) and (4) of this section and in ~~sections~~ SECTION 42-4-1202 (4), ~~and 42-4-1213 (4)~~, misdemeanor traffic offenses are divided into two classes which are distinguished from one another by the following penalties which are authorized upon conviction:

**SECTION 39.** 42-5-103 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**42-5-103. Tampering with a motor vehicle.** (2) Tampering with a motor vehicle is:

(a) A class 2 misdemeanor if the damage is less than ~~three~~ FOUR hundred dollars;

(b) A class 5 felony if the damage is ~~three~~ FOUR hundred dollars or more but less than ~~ten~~ FIFTEEN thousand dollars;

(c) A class 3 felony if the damage is ~~ten~~ FIFTEEN thousand dollars or more or causes bodily injury to any person.

**SECTION 40.** 42-5-104 (2) and (3), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

**42-5-104. Theft of motor vehicle parts.** (2) Theft of motor vehicle parts is:

(a) A class 2 misdemeanor if the value of the thing involved is less than ~~three~~ FOUR hundred dollars;

(b) A class 5 felony if the value of the thing involved is ~~three~~ FOUR hundred dollars

or more but less than ~~ten~~ FIFTEEN thousand dollars;

(c) A class 3 felony if the value of the thing involved is ~~ten~~ FIFTEEN thousand dollars or more.

(3) When a person commits theft of motor vehicle parts two times or more within a period of six months without having been placed in jeopardy for the prior offense or offenses and the aggregate value of the things involved is ~~three~~ FOUR hundred dollars or more but less than ~~ten~~ FIFTEEN thousand dollars, it is a class 5 felony; however, if the aggregate value of the things involved is ~~ten~~ FIFTEEN thousand dollars or more, it is a class 4 felony.

**SECTION 41. Legislative intent.** The general assembly hereby intends that the criminal penalty reduction contained in section 21 of this act is intended to offset the increased costs to the state general fund resulting from the enactment of new or increased criminal penalties in House Bill 93-1045 and House Bill 93-1115, if such bills are enacted at the First Regular Session of the Fifty-ninth General Assembly and become law.

**SECTION 42. Repeal.** 18-4-304 and 18-4-401 (7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are repealed.

**SECTION 43. Effective date - applicability.** This act shall take effect July 1, 1993, and shall apply to offenses committed on or after said date; except that sections 37, 38, 43, and 44 shall take effect upon passage, and shall apply to offenses committed on or after said date. Section 21 of this act shall take effect July 1, 1993, and shall apply to offenses committed on or after said date, only if House Bill 93-1045 and House Bill 93-1115 are enacted at the First Regular Session of the Fifty-ninth General Assembly and become law.

**SECTION 44. 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

**Editor's note:** Section 21 of this act will not become law since House Bill 93-1115 was not enacted. See section 43 of this act.