

CHAPTER 238

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 95-1109

BY REPRESENTATIVES Tool, Friednash, Schauer, Adkins, Agler, Allen, Tucker, Armstrong, Chavez, Chlouber, Clarke, Dean, Epps, Hagedorn, Hernandez, Jerke, Kerns, Lamborn, Lamm, Lawrence, Martin, Nichol, Piffner, Prinster, Reeser, Romero, Schwarz, Snyder, Sullivan, Sullivant, and Swenson;
also SENATORS Lacy, Coffman, Bishop, Blickensderfer, Dennis, Hopper, Norton, R. Powers, and Tebedo.

AN ACT

CONCERNING THE CRIMINAL PROSECUTION OF PERSONS IN A POSITION OF TRUST WHO KNOWINGLY CAUSE THE DEATH OF A CHILD, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 18-3-101, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-3-101. Homicide - definition of terms. As used in this part 1, unless the context otherwise requires:

(2.5) ONE IN A "POSITION OF TRUST" INCLUDES, BUT IS NOT LIMITED TO, ANY PERSON WHO IS A PARENT OR ACTING IN THE PLACE OF A PARENT AND CHARGED WITH ANY OF A PARENT'S RIGHTS, DUTIES, OR RESPONSIBILITIES CONCERNING A CHILD, INCLUDING A GUARDIAN OR SOMEONE OTHERWISE RESPONSIBLE FOR THE GENERAL SUPERVISION OF A CHILD'S WELFARE, OR A PERSON WHO IS CHARGED WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, EDUCATION, WELFARE, OR SUPERVISION OF A CHILD, INCLUDING FOSTER CARE, CHILD CARE, FAMILY CARE, OR INSTITUTIONAL CARE, EITHER INDEPENDENTLY OR THROUGH ANOTHER, NO MATTER HOW BRIEF, AT THE TIME OF AN UNLAWFUL ACT.

SECTION 2. 18-3-102 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-3-102. Murder in the first degree. (1) A person commits the crime of murder in the first degree if:

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

(f) THE PERSON KNOWINGLY CAUSES THE DEATH OF A CHILD WHO HAS NOT YET ATTAINED TWELVE YEARS OF AGE AND THE PERSON COMMITTING THE OFFENSE IS ONE IN A POSITION OF TRUST WITH RESPECT TO THE VICTIM.

SECTION 3. 18-3-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-3-102. Murder in the first degree. (4) THE STATUTORY PRIVILEGE BETWEEN PATIENT AND PHYSICIAN AND BETWEEN HUSBAND AND WIFE SHALL NOT BE AVAILABLE FOR EXCLUDING OR REFUSING TESTIMONY IN ANY PROSECUTION FOR THE CRIME OF MURDER IN THE FIRST DEGREE AS DESCRIBED IN PARAGRAPH (f) OF SUBSECTION (1) OF THIS SECTION.

SECTION 4. 18-6-401 (7) (a) (I), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 18-6-401 (7) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-6-401. Child abuse. (7) (a) Where death or injury results, the following shall apply:

(I) When a person acts knowingly or recklessly and the child abuse results in death to the child, it is a class 2 felony EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (7).

(c) WHEN A PERSON KNOWINGLY CAUSES THE DEATH OF A CHILD WHO HAS NOT YET ATTAINED TWELVE YEARS OF AGE AND THE PERSON COMMITTING THE OFFENSE IS ONE IN A POSITION OF TRUST WITH RESPECT TO THE CHILD, SUCH PERSON COMMITS THE CRIME OF MURDER IN THE FIRST DEGREE AS DESCRIBED IN SECTION 18-3-102 (1) (f).

SECTION 5. The introductory portion to 18-3-103 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 18-3-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-3-103. Murder in the second degree. (1) EXCEPT AS PROVIDED IN SUBSECTION (2.5) OF THIS SECTION, a person commits the crime of murder in the second degree if:

(2.5) WHEN A PERSON KNOWINGLY CAUSES THE DEATH OF A CHILD WHO HAS NOT YET ATTAINED TWELVE YEARS OF AGE AND THE PERSON COMMITTING THE OFFENSE IS ONE IN A POSITION OF TRUST WITH RESPECT TO THE CHILD, SUCH PERSON COMMITS THE CRIME OF MURDER IN THE FIRST DEGREE AS DESCRIBED IN SECTION 18-3-102 (1) (f).

SECTION 6. Appropriations. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department for allocation to the state public defender, for the fiscal year beginning July 1, 1995, the sum of thirty-one thousand nine hundred thirty-five dollars (\$31,935) and 0.6 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 1995, the sum of twenty thousand four hundred forty-six dollars (\$20,446) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 7. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to offenses committed on or after that date.

SECTION 8. 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 31, 1995