

CHAPTER 155

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 96-1120

BY REPRESENTATIVES Kaufman, Agler, Dean, Friednash, Schauer, and Swenson;
also SENATORS Mutzebaugh, Perlmutter, and Rupert.

AN ACT**CONCERNING CHANGES FOR THE STRENGTHENING OF PROCEDURAL CRIMINAL LAWS.**

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

SECTION 1. 16-11.7-103 (4) (b) and (4) (d), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

16-11.7-103. Sex offender treatment board - creation - duties. (4) The board shall carry out the following duties:

(b) Prior to January 1, 1996, the board shall develop AND IMPLEMENT guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph (b) shall be as flexible as possible so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in such a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. The procedures for evaluation, identification, treatment, and continued monitoring required to be developed pursuant to this paragraph (b) and paragraph (a) of this subsection (4) shall be implemented only to the extent moneys are available in the sex offender surcharge fund created in section 18-21-103 (3), C.R.S.

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

(d) The board shall research and analyze the effectiveness of the evaluation, identification, and treatment procedures and programs developed pursuant to this article. The board shall also develop and prescribe a system for IMPLEMENTATION OF THE GUIDELINES AND STANDARDS DEVELOPED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4) AND FOR tracking offenders who have been subjected to evaluation, identification, and treatment pursuant to this article. In addition, the board shall develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. The results of such tracking and behavioral monitoring shall be a part of any analysis made pursuant to this paragraph (d).

SECTION 2. 16-11.7-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-11.7-103. Sex offender treatment board - creation - duties - repeal. (6) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2001.

(b) PRIOR TO SAID REPEAL, THE SEX OFFENDER TREATMENT BOARD APPOINTED PURSUANT TO THIS SECTION SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 3. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (31.5) THE FOLLOWING BOARD IN THE DEPARTMENT OF PUBLIC SAFETY SHALL TERMINATE ON JULY 1, 2001: THE SEX OFFENDER TREATMENT BOARD, CREATED BY SECTION 16-11.7-103, C.R.S.

SECTION 4. 16-3-110, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-3-110. Peace officers - duties. (1) For the purposes of this section, "peace officer" means:

(a) ~~any person who is certified as a peace officer pursuant to section 24-31-305, C.R.S., who is employed full time by a law enforcement agency located in the state of Colorado.~~ A PEACE OFFICER, LEVEL I, OR PEACE OFFICER, LEVEL Ia, AS DEFINED IN SECTION 18-1-901 (3) (I) AND (3) (I) (II), C.R.S., RESPECTIVELY; OR

(b) A FEDERAL LAW ENFORCEMENT OFFICER WHO, PURSUANT TO FEDERAL STATUTES AND THE POLICY OF THE AGENCY BY WHICH THE OFFICER IS EMPLOYED, IS AUTHORIZED TO USE DEADLY PHYSICAL FORCE IN THE PERFORMANCE OF HIS OR HER DUTIES.

(2) A peace officer shall have the authority to act in any situation in which a felony or misdemeanor has been or is being committed in such officer's presence, and such authority shall exist regardless of whether such officer is in the jurisdiction of the law enforcement agency ~~which~~ THAT employs such officer or in some other jurisdiction within the state of Colorado OR WHETHER SUCH OFFICER WAS ACTING WITHIN THE

SCOPE OF SUCH OFFICER'S DUTIES WHEN HE OR SHE OBSERVED THE COMMISSION OF THE CRIME, when such officer has been authorized by such agency to so act. The local law enforcement agency having jurisdiction shall be immediately notified of the arrest and any person arrested shall be released to the custody of the local law enforcement agency.

(3) THIS SECTION SHALL NOT BE CONSTRUED TO AUTHORIZE ANY FEDERAL OFFICER TO USE DEADLY PHYSICAL FORCE IN EXCESS OF THAT AUTHORIZED IN SECTION 18-1-707, C.R.S.

SECTION 5. 24-72-308 (1) (a), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-72-308. Sealing of records. (1) (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), ARREST OR CRIMINAL RECORDS INFORMATION MAY NOT BE SEALED IF:

(A) AN OFFENSE IS NOT CHARGED DUE TO A PLEA AGREEMENT IN A SEPARATE CASE;
OR

(B) A DISMISSAL OCCURS AS PART OF A PLEA AGREEMENT IN A SEPARATE CASE.

SECTION 6. 18-6-803.5 (3) (d), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-6-803.5. Crime of violation of a restraining order - penalty - peace officers' duties. (3) (d) The arrest and detention of a restrained person is governed by applicable constitutional and applicable state rules of criminal procedure. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made. The law enforcement agency or any other locally designated agency shall make all reasonable efforts to contact the protected party upon the arrest of the restrained person. The prosecuting attorney shall present ~~the investigative reports~~ ANY AVAILABLE ARREST AFFIDAVITS and THE criminal history of the restrained person to the court at the time of the first appearance of the restrained person before the court.

SECTION 7. 18-1-105 (9) (a) (III), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-1-105. Felonies classified - presumptive penalties. (9) (a) The presence of

any one or more of the following extraordinary aggravating circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony:

(III) The defendant was on probation OR WAS ON BOND WHILE AWAITING SENTENCING FOLLOWING REVOCATION OF PROBATION for another felony at the time of the commission of the felony;

SECTION 8. 13-71-104, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-71-104. Eligibility for juror service - prohibition of discrimination. Juror service is a duty ~~which~~ THAT every qualified person shall perform when selected. All trial and grand jurors shall be selected at random from a fair cross section of the population of the area served by the court. All selected and summoned jurors shall serve, except as otherwise provided in this article. No person shall be exempted or excluded from serving as a trial or grand juror because of race, color, religion, sex, national origin, economic status, or occupation. Physically impaired persons shall serve, except where the court finds that such service is not feasible. The court shall strictly enforce the provisions of this article.

SECTION 9. 24-31-105, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-31-105. Criminal enforcement section. There is hereby established, within the department of law and under the control of the attorney general, a ~~special prosecutions unit~~ CRIMINAL ENFORCEMENT SECTION. The ~~special prosecutions unit~~ CRIMINAL ENFORCEMENT SECTION OR ANY ATTORNEY IN THE DEPARTMENT OF LAW AUTHORIZED BY THE ATTORNEY GENERAL shall ~~provide legal services and advice to the Colorado organized crime strike force~~ PROSECUTE ALL CRIMINAL CASES FOR THE ATTORNEY GENERAL and shall perform other functions as may be required by the attorney general. The attorney general is hereby authorized to appoint ~~an assistant~~ A DEPUTY attorney general as chief of the ~~special prosecutions unit~~ CRIMINAL ENFORCEMENT SECTION. The chief of said ~~unit~~ SECTION shall be a licensed attorney with a minimum of two years of CRIMINAL ~~prosecutorial~~ experience AS A TRIAL OR APPELLATE PROSECUTOR.

SECTION 10. 16-5-203, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-5-203. Furnishing witnesses' names. Whether a prosecution is commenced by indictment, information, or felony complaint, the district attorney shall ~~file with the court at the time of filing the indictment, information, or felony complaint a~~ written list of the names and addresses of the witnesses whom he or she intends to call upon at the preliminary hearing. The district attorney shall make available to the defendant not later than twenty calendar days after the defendant's first appearance at the time of or following the filing of charges a written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call upon at trial. The district attorney shall also furnish the defendant in writing

prior to trial the names and addresses of any additional witnesses who have become known to him or her prior to trial and whom he or she intends to call upon at trial, but this shall not preclude the calling of witnesses whose names or the materiality of whose testimony are first learned by the district attorney upon the trial. However, the court may, in its discretion, enter an order ~~which~~ THAT denies the disclosure to the defendant of the names and addresses of witnesses, or ~~which~~ THAT requires the defense counsel not to disclose such information to the defendant, subject to rule 16 part I (d) (2) and part III (d) of the Colorado rules of criminal procedure. The names and addresses of witnesses who are the subject of the order may be withheld pending a ruling of the court, but the prosecution shall notify the defense counsel in writing that a motion to withhold witness information has been filed and that such information will be withheld pending the court's order. Where the defendant has not had or waived a preliminary hearing, there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of the affiant that the offense was committed.

SECTION 11. 18-8-501 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-8-501. Definitions. The definitions in sections 18-8-101 and 18-8-301 are applicable to this part 5, and, in addition to those definitions:

(1) "Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of an official proceeding, or the action or decision of a public servant, or the performance of a governmental function. ~~Whether a falsification is material in a given factual situation is a question of law.~~

SECTION 12. 13-73-101, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-73-101. Petition for impaneling - determination by chief judge. (1) THE GENERAL ASSEMBLY FINDS THAT THE STATE GRAND JURY EXISTS BECAUSE OF THE NEED TO INVESTIGATE AND PROSECUTE CRIME WITHOUT REGARD TO COUNTY OR JUDICIAL DISTRICT BOUNDARIES IN CASES INVOLVING ORGANIZED CRIME, CRIMINAL ACTIVITY IN MORE THAN ONE JUDICIAL DISTRICT, OR UNUSUAL DIFFICULTIES IN THE INVESTIGATION OR ADJUDICATION OF A MATTER. THE STATE GRAND JURY IS INTENDED, THEREFORE, TO BE A LAW ENFORCEMENT TOOL WITH STATEWIDE JURISDICTION.

(2) When the attorney general deems it to be in the public interest to convene a grand jury ~~which~~ THAT has jurisdiction extending beyond the boundaries of any single county, ~~he~~ THE ATTORNEY GENERAL may petition the chief judge of any district court for an order in accordance with the provisions of this article. Said chief judge may, for good cause shown, order the impaneling of a state grand jury ~~which~~ THAT shall have statewide jurisdiction. In making ~~his~~ A determination as to the need for impaneling a state grand jury, the judge shall require a showing that the matter cannot be effectively handled by a grand jury impaneled pursuant to article 72 OR 74 of this title, such ~~a~~ grand jury JURIES being referred to in this article as a "county grand jury" OR A "JUDICIAL DISTRICT GRAND JURY", RESPECTIVELY.

SECTION 13. 13-73-107 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-73-107. Return of indictment or presentment - designation of venue - consolidation of indictments - sealing of indictment. (1) Any indictment by a state grand jury shall be returned to the chief judge WHO IS SUPERVISING THE STATEWIDE GRAND JURY without any designation of venue. Thereupon, the CHIEF judge shall, by order, designate ANY COUNTY IN THE STATE AS the county of venue for the purpose of trial. ONCE VENUE IS DESIGNATED BY THE CHIEF JUDGE, A CHANGE OF VENUE MAY BE GRANTED ONLY AS PROVIDED BY ARTICLE 6 OF TITLE 16, C.R.S. The CHIEF judge may, by order, direct the consolidation of an indictment returned by a county grand jury with an indictment returned by a state grand jury and fix venue for trial.

SECTION 14. 16-11-202, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-202. Probationary power of court. (1) When it appears 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 served thereby, the court may grant the defendant probation for such period and upon such terms and conditions as it deems best. If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation pursuant to section 16-4-201. In addition to imposing other conditions, the court has the power to commit the defendant to any jail operated by the county or city and county in which the offense was committed during such time or for such intervals within the period of probation as the court determines. The aggregate length of any such commitment whether continuous or at designated intervals shall not exceed ninety days for a felony, sixty days for a misdemeanor, or ten days for a petty offense unless it is a part of a work release program pursuant to section 16-11-212. That the defendant submit to commitment imposed under this section shall be deemed a condition of probation.

(2) THE PROBATION DEPARTMENT IN EACH JUDICIAL DISTRICT MAY ENTER INTO AGREEMENTS WITH ANY STATE AGENCY OR OTHER PUBLIC AGENCY, ANY CORPORATION, AND ANY PRIVATE AGENCY OR PERSON TO PROVIDE SUPERVISION OR OTHER SERVICES FOR DEFENDANTS PLACED ON PROBATION BY THE COURT.

SECTION 15. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to offenses committed on or after said date.

SECTION 16. 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 22, 1996