

CHAPTER 2

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**CRIMINAL LAW AND PROCEDURE**

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HOUSE BILL 96-1145

BY REPRESENTATIVES Adkins, Berry, George, Kaufman, Reeser, and Schwarz;  
also SENATORS Wells, Norton, and Wham.

**AN ACT**

**CONCERNING CLARIFICATION OF THE UNITARY AFFIRMATIVE DEFENSE OF NOT GUILTY BY REASON OF INSANITY AS ENACTED IN THE FIRST REGULAR SESSION OF THE SIXTIETH GENERAL ASSEMBLY.**

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

**SECTION 1.** Article 8 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**16-8-101.3. Legislative intent in enacting section 16-8-101.5 and in making conforming amendments.** THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING SECTION 16-8-101.5 AND MAKING CONFORMING AMENDMENTS TO SECTIONS 16-8-101 TO 16-8-104, 16-8-106, 16-8-110, 16-8-114, 16-8-115, AND 16-8-120 IN 1995, AND IN ENACTING CLARIFYING PROVISIONS IN THIS SECTION AND SECTIONS 16-8-104.5 AND 16-8-105.5 AND MAKING CONFORMING AMENDMENTS TO SECTIONS 16-8-105 AND 16-8-107 AND SECTIONS 18-1-802 AND 18-1-803, C.R.S., IN 1996, WAS TO COMBINE THE DEFENSE OF NOT GUILTY BY REASON OF INSANITY AND THE AFFIRMATIVE DEFENSE OF IMPAIRED MENTAL CONDITION INTO THE AFFIRMATIVE DEFENSE OF NOT GUILTY BY REASON OF INSANITY AND TO CREATE A UNITARY PROCESS FOR HEARING THE ISSUES RAISED BY SAID AFFIRMATIVE DEFENSE TO APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

**16-8-104.5. Single trial of issues.** (1) THE ISSUES RAISED BY THE PLEA OF NOT GUILTY BY REASON OF INSANITY SHALL BE TREATED AS AN AFFIRMATIVE DEFENSE AND SHALL BE TRIED AT THE SAME PROCEEDING AND BEFORE THE SAME TRIER OF FACT AS THE CHARGES TO WHICH NOT GUILTY BY REASON OF INSANITY IS OFFERED AS A

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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.*

DEFENSE.

(2) THIS SECTION SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

**16-8-105.5. Procedure after plea for offenses committed on or after July 1, 1995.** (1) WHEN A PLEA OF NOT GUILTY BY REASON OF INSANITY IS ACCEPTED, THE COURT SHALL FORTHWITH COMMIT THE DEFENDANT FOR A SANITY EXAMINATION, SPECIFYING THE PLACE AND PERIOD OF COMMITMENT.

(2) UPON RECEIVING THE REPORT OF THE SANITY EXAMINATION, THE COURT SHALL IMMEDIATELY SET THE CASE FOR TRIAL. EVERY PERSON IS PRESUMED TO BE SANE; BUT, ONCE ANY EVIDENCE OF INSANITY IS INTRODUCED, THE PEOPLE HAVE THE BURDEN OF PROVING SANITY BEYOND A REASONABLE DOUBT.

(3) WHEN THE AFFIRMATIVE DEFENSE OF NOT GUILTY BY REASON OF INSANITY HAS BEEN RAISED, THE JURY SHALL BE GIVEN SPECIAL VERDICT FORMS CONTAINING INTERROGATORIES. THE TRIER OF FACT SHALL DECIDE FIRST THE QUESTION OF GUILT AS TO FELONY CHARGES THAT ARE BEFORE THE COURT. IF THE TRIER OF FACT CONCLUDES THAT GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT AS TO ONE OR MORE OF THE FELONY CHARGES SUBMITTED FOR CONSIDERATION, THE SPECIAL INTERROGATORIES SHALL NOT BE ANSWERED. UPON COMPLETION OF ITS DELIBERATIONS ON THE FELONY CHARGES AS PREVIOUSLY SET FORTH IN THIS SUBSECTION (3), THE TRIER OF FACT SHALL CONSIDER ANY OTHER CHARGES BEFORE THE COURT IN A SIMILAR MANNER; EXCEPT THAT IT SHALL NOT ANSWER THE SPECIAL INTERROGATORIES REGARDING SUCH CHARGES IF IT HAS PREVIOUSLY FOUND GUILT BEYOND A REASONABLE DOUBT WITH RESPECT TO ONE OR MORE FELONY CHARGES. THE INTERROGATORIES SHALL PROVIDE FOR SPECIFIC FINDINGS OF THE JURY WITH RESPECT TO THE AFFIRMATIVE DEFENSE OF NOT GUILTY BY REASON OF INSANITY. WHEN THE COURT SITS AS THE TRIER OF FACT, IT SHALL ENTER APPROPRIATE SPECIFIC FINDINGS WITH RESPECT TO THE AFFIRMATIVE DEFENSE OF NOT GUILTY BY REASON OF INSANITY.

(4) IF THE TRIER OF FACT FINDS THE DEFENDANT NOT GUILTY BY REASON OF INSANITY, THE COURT SHALL COMMIT THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES UNTIL SUCH TIME AS THE DEFENDANT IS FOUND ELIGIBLE FOR RELEASE. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL DESIGNATE THE STATE FACILITY AT WHICH THE DEFENDANT SHALL BE HELD FOR CARE AND PSYCHIATRIC TREATMENT AND MAY TRANSFER THE DEFENDANT FROM ONE FACILITY TO ANOTHER IF IN THE OPINION OF THE DIRECTOR IT IS DESIRABLE TO DO SO IN THE INTEREST OF THE PROPER CARE, CUSTODY, AND TREATMENT OF THE DEFENDANT OR THE PROTECTION OF THE PUBLIC OR THE PERSONNEL OF THE FACILITIES IN QUESTION.

(5) THIS SECTION SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

**SECTION 2.** 16-8-105, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**16-8-105. Procedure after plea for offenses committed before July 1, 1995.**

(5) THIS SECTION SHALL APPLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

**SECTION 3.** 16-8-107, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**16-8-107. Evidence.** (1.5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1.5), EVIDENCE ACQUIRED DIRECTLY OR INDIRECTLY FOR THE FIRST TIME FROM A COMMUNICATION DERIVED FROM THE DEFENDANT'S MENTAL PROCESSES DURING THE COURSE OF A COURT-ORDERED EXAMINATION PURSUANT TO SECTION 16-8-106 OR ACQUIRED PURSUANT TO SECTION 16-8-103.6 IS ADMISSIBLE ONLY AS TO THE ISSUES RAISED BY THE DEFENDANT'S PLEA OF NOT GUILTY BY REASON OF INSANITY, AND THE JURY, AT THE REQUEST OF EITHER PARTY, SHALL BE SO INSTRUCTED. IF THE DEFENDANT TESTIFIES IN HIS OR HER OWN BEHALF, THE PROVISIONS OF THIS SECTION SHALL NOT BAR ANY EVIDENCE USED TO IMPEACH OR REBUT THE DEFENDANT'S TESTIMONY. THIS SUBSECTION (1.5) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

**SECTION 4.** 18-1-802, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**18-1-802. Insanity.** (1) (a) A person who is insane, as defined in section 16-8-101, C.R.S., is not responsible for his OR HER conduct defined as criminal. Insanity as a defense shall not be an issue in any prosecution unless it is raised by a plea of not guilty by reason of insanity as provided in section 16-8-103, C.R.S.

(b) THIS SUBSECTION (1) APPLIES TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(2) (a) A PERSON WHO IS INSANE, AS DEFINED IN SECTION 16-8-101.5, C.R.S., IS NOT RESPONSIBLE FOR HIS OR HER CONDUCT DEFINED AS CRIMINAL. INSANITY AS A DEFENSE SHALL NOT BE AN ISSUE IN ANY PROSECUTION UNLESS IT IS RAISED BY A PLEA OF NOT GUILTY BY REASON OF INSANITY AS PROVIDED IN SECTION 16-8-103, C.R.S.

(b) THIS SUBSECTION (2) SHALL APPLY TO OFFENSES OCCURRING ON OR AFTER JULY 1, 1995.

**SECTION 5.** 18-1-803, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**18-1-803. Impaired mental condition.** (4) THIS SECTION SHALL APPLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

**SECTION 6. 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: January 31, 1996