

CHAPTER 280

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 96-1181

BY REPRESENTATIVES Agler, Kreuzt, Tucker, McPherson, Allen, Morrison, Adkins, Kaufman, Lamborn, Anderson, Armstrong, Berry, Dean, Epps, Kerns, Lyle, Mace, Nichol, Reeser, Reeves, Schwarz, and Snyder;
also SENATORS Wham and Hopper.

AN ACT

CONCERNING OFFENSES INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 16-10-301, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16-10-301. Evidence of similar transactions - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT SEXUAL OFFENSES ARE A MATTER OF GRAVE STATEWIDE CONCERN. THESE FREQUENTLY OCCURRING OFFENSES ARE AGGRESSIVE AND ASSAULTIVE VIOLATIONS OF THE WELL-BEING, PRIVACY, AND SECURITY OF THE VICTIMS, ARE SEVERELY CONTRARY TO COMMON NOTIONS OF PROPER BEHAVIOR BETWEEN PEOPLE, AND RESULT IN SERIOUS AND LONG-LASTING HARM TO INDIVIDUALS AND SOCIETY. THESE OFFENSES OFTEN ARE NOT REPORTED OR ARE REPORTED LONG AFTER THE OFFENSE FOR MANY REASONS, INCLUDING: THE FREQUENCY WITH WHICH THE VICTIMS ARE VULNERABLE, SUCH AS YOUNG CHILDREN WHO MAY BE RELATED TO THE PERPETRATOR; THE PERSONAL INDIGNITY, HUMILIATION, AND EMBARRASSMENT INVOLVED IN THE OFFENSES THEMSELVES; AND THE FEAR OF FURTHER PERSONAL INDIGNITY, HUMILIATION, AND EMBARRASSMENT IN CONNECTION WITH INVESTIGATION AND PROSECUTION. THESE OFFENSES USUALLY OCCUR UNDER CIRCUMSTANCES IN WHICH THERE ARE NO WITNESSES EXCEPT FOR THE ACCUSED AND THE VICTIM, AND, BECAUSE OF THIS AND THE FREQUENT DELAYS IN REPORTING, THERE IS OFTEN NO EVIDENCE EXCEPT FOR THE CONFLICTING TESTIMONY. MOREOVER, THERE IS FREQUENTLY A RELUCTANCE ON THE PART OF OTHERS TO BELIEVE THAT THE OFFENSES OCCURRED BECAUSE OF THE INEQUALITY BETWEEN THE VICTIM AND THE PERPETRATOR, SUCH AS BETWEEN THE CHILD VICTIM AND THE ADULT

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

ACCUSED, OR BECAUSE OF THE DEVIANT AND DISTASTEFUL NATURE OF THE CHARGES. IN ADDITION, IT IS RECOGNIZED THAT SOME SEX OFFENDERS CANNOT OR WILL NOT RESPOND TO TREATMENT OR OTHERWISE RESIST THE IMPULSES WHICH MOTIVATE SUCH CONDUCT AND THAT SEX OFFENDERS ARE EXTREMELY HABITUATED. AS A RESULT, SUCH OFFENDERS OFTEN COMMIT NUMEROUS OFFENSES INVOLVING SEXUAL DEVIANCE OVER MANY YEARS, WITH THE SAME OR DIFFERENT VICTIMS, AND OFTEN, BUT NOT NECESSARILY, THROUGH SIMILAR METHODS OR BY COMMON DESIGN. THE GENERAL ASSEMBLY REAFFIRMS AND REEMPHASIZES THAT, IN THE PROSECUTION OF SEXUAL OFFENSES, INCLUDING IN PROVING THE CORPUS DELICTI OF SUCH OFFENSES, THERE IS A GREATER NEED AND PROPRIETY FOR CONSIDERATION BY THE FACT FINDER OF EVIDENCE OF OTHER RELEVANT ACTS OF THE ACCUSED, INCLUDING ANY ACTIONS, CRIMES, WRONGS, OR TRANSACTIONS, WHETHER ISOLATED ACTS OR ONGOING ACTIONS AND WHETHER OCCURRING PRIOR TO OR AFTER THE CHARGED OFFENSE. THE GENERAL ASSEMBLY FINDS THAT SUCH EVIDENCE OF OTHER SEXUAL ACTS IS TYPICALLY RELEVANT AND HIGHLY PROBATIVE, AND IT IS EXPECTED THAT NORMALLY THE PROBATIVE VALUE OF SUCH EVIDENCE WILL OUTWEIGH ANY DANGER OF UNFAIR PREJUDICE, EVEN WHEN INCIDENTS ARE REMOTE FROM ONE ANOTHER IN TIME.

(2) THIS SECTION APPLIES TO PROSECUTION FOR ANY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S., OR FIRST DEGREE MURDER, AS DEFINED IN SECTION 18-3-102 (1) (d), C.R.S., IN WHICH THE UNDERLYING FELONY ON WHICH THE FIRST DEGREE MURDER CHARGE IS BASED IS THE COMMISSION OR ATTEMPTED COMMISSION OF SEXUAL ASSAULT IN THE FIRST OR SECOND DEGREE AS DEFINED IN SECTIONS 18-3-402 AND 18-3-403, C.R.S., OR THE COMMISSION OF A CLASS 3 FELONY FOR SEXUAL ASSAULT ON A CHILD AS DEFINED IN SECTION 18-3-405 (2), C.R.S.

(3) THE PROSECUTION MAY INTRODUCE EVIDENCE OF OTHER ACTS OF THE DEFENDANT TO PROVE THE COMMISSION OF THE OFFENSE AS CHARGED FOR ANY PURPOSE OTHER THAN PROPENSITY, INCLUDING: REFUTING DEFENSES, SUCH AS CONSENT OR RECENT FABRICATION; SHOWING A COMMON PLAN, SCHEME, DESIGN, OR MODUS OPERANDI, REGARDLESS OF WHETHER IDENTITY IS AT ISSUE AND REGARDLESS OF WHETHER THE CHARGED OFFENSE HAS A CLOSE NEXUS AS PART OF A UNIFIED TRANSACTION TO THE OTHER ACT; SHOWING MOTIVE, OPPORTUNITY, INTENT, PREPARATION, INCLUDING GROOMING OF A VICTIM, KNOWLEDGE, IDENTITY, OR ABSENCE OF MISTAKE OR ACCIDENT; OR FOR ANY OTHER MATTER FOR WHICH IT IS RELEVANT. THE PROSECUTION MAY USE SUCH EVIDENCE EITHER AS PROOF IN ITS CASE IN CHIEF OR IN REBUTTAL, INCLUDING IN RESPONSE TO EVIDENCE OF THE DEFENDANT'S GOOD CHARACTER.

(4) IF THE PROSECUTION INTENDS TO INTRODUCE EVIDENCE OF OTHER ACTS OF THE DEFENDANT PURSUANT TO THIS SECTION, THE FOLLOWING PROCEDURES SHALL APPLY:

(a) THE PROSECUTION SHALL ADVISE THE TRIAL COURT AND THE DEFENDANT IN ADVANCE OF TRIAL OF THE OTHER ACT OR ACTS AND THE PURPOSE OR PURPOSES FOR WHICH THE EVIDENCE IS OFFERED.

(b) THE TRIAL COURT SHALL DETERMINE BY A PREPONDERANCE OF THE EVIDENCE WHETHER THE OTHER ACT OCCURRED AND WHETHER THE PURPOSE IS PROPER UNDER THE BROAD INCLUSIONARY EXPECTATIONS OF THIS SECTION.

(c) THE EVIDENCE OF OTHER ACTS MAY NOT BE ADMITTED UNTIL THE TRIAL COURT FINDS THAT THE PROSECUTION HAS BY EVIDENCE OR OFFER OF PROOF ESTABLISHED A PRIMA FACIE CASE FOR THE CHARGED OFFENSE.

(d) THE TRIAL COURT SHALL, AT THE TIME OF THE RECEPTION INTO EVIDENCE OF OTHER ACTS AND AGAIN IN THE GENERAL CHARGE TO THE JURY, DIRECT THE JURY AS TO THE LIMITED PURPOSE OR PURPOSES FOR WHICH THE EVIDENCE IS ADMITTED AND FOR WHICH THE JURY MAY CONSIDER IT.

(e) THE COURT IN INSTRUCTING THE JURY, AND THE PARTIES WHEN MAKING STATEMENTS IN THE PRESENCE OF THE JURY, SHALL USE THE WORDS "OTHER ACT OR TRANSACTION" AND AT NO TIME SHALL REFER TO "OTHER OFFENSE", "OTHER CRIME", OR OTHER TERMS WITH A SIMILAR CONNOTATION.

(5) THE PROCEDURAL REQUIREMENTS OF THIS SECTION SHALL NOT APPLY WHEN THE OTHER ACTS ARE PRESENTED TO PROVE THAT THE OFFENSE WAS COMMITTED AS PART OF A PATTERN OF SEXUAL ABUSE UNDER SECTION 18-3-405 (2) (d), C.R.S.

SECTION 2. Part 2 of article 11 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-204.3. Genetic testing as a condition of probation. (1) A CONDITION OF PROBATION FOR ANY OFFENDER CONVICTED OF AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR FOR WHICH THE FACTUAL BASIS INVOLVED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR SHALL BE THAT THE OFFENDER SUBMIT TO AND PAY FOR A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF. COLLECTION OF THE BLOOD SAMPLE SHALL OCCUR WITHIN NINETY DAYS AFTER BEING PLACED ON PROBATION, AND THE RESULTS THEREOF SHALL BE FILED AND MAINTAINED BY THE COLORADO BUREAU OF INVESTIGATION. THE RESULTS OF SUCH TESTS SHALL BE FURNISHED TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST.

(2) THE JUDICIAL DEPARTMENT OR ITS DESIGNEE OR CONTRACTOR MAY USE REASONABLE FORCE TO OBTAIN BLOOD SAMPLES IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION. IN ADDITION, THE REFUSAL TO COMPLY WITH SAID SUBSECTION (1) MAY BE GROUNDS FOR REVOCATION OF PROBATION.

(3) ANY MONEYS RECEIVED FROM OFFENDERS PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE DEPOSITED IN THE SEX OFFENDER IDENTIFICATION FUND CREATED IN SECTION 24-33.5-415.5, C.R.S.

(4) THE COLORADO BUREAU OF INVESTIGATION IS DIRECTED TO CONDUCT THE CHEMICAL TESTING OF THE BLOOD OBTAINED PURSUANT TO THIS SECTION.

(5) AS USED IN THIS SECTION, "UNLAWFUL SEXUAL BEHAVIOR" SHALL HAVE THE SAME MEANING AS IN SECTION 18-3-412.5 (1), C.R.S.

SECTION 3. Part 4 of article 33.5 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33.5-415.5. Sex offender identification - fund. THERE IS HEREBY CREATED IN THE STATE TREASURY THE SEX OFFENDER IDENTIFICATION FUND, REFERRED TO IN THIS SECTION AS THE "FUND". MONEYS IN THE FUND SHALL CONSIST OF PAYMENTS FOR GENETIC TESTING RECEIVED FROM OFFENDERS PURSUANT TO SECTION 16-11-204.3, C.R.S., AND GENERAL FUND APPROPRIATIONS. SUBJECT TO ANNUAL APPROPRIATIONS BY THE GENERAL ASSEMBLY, THE EXECUTIVE DIRECTOR AND THE STATE COURT ADMINISTRATOR ARE AUTHORIZED TO EXPEND MONEYS IN THE FUND TO PAY FOR GENETIC TESTING OF OFFENDERS PURSUANT TO SECTION 16-11-204.3, C.R.S. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

SECTION 4. 18-3-404 (1.7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-3-404. Sexual assault in the third degree. (1.7) Any person who knowingly observes OR TAKES A PHOTOGRAPH OF another person's intimate parts without that person's consent, in a situation where the person observed has a reasonable expectation of privacy, for the purpose of the observer's own sexual gratification, commits sexual assault in the third degree. FOR PURPOSES OF THIS SUBSECTION (1.7), "PHOTOGRAPH" INCLUDES ANY PHOTOGRAPH, MOTION PICTURE, VIDEOTAPE, PRINT, NEGATIVE, SLIDE, OR OTHER MECHANICALLY, ELECTRONICALLY, OR CHEMICALLY REPRODUCED VISUAL MATERIAL.

SECTION 5. 18-3-412.5 (1), (2), (4), and (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 18-3-412.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-3-412.5. Sex offenders - duty to register - penalties. (1) On and after July 1, 1994, any person who is convicted in the state of Colorado of an offense involving unlawful sexual behavior OR FOR WHICH THE FACTUAL BASIS INVOLVED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR as ~~described~~ DEFINED in this SUBSECTION (1) ~~part 4 or the offense described in section 18-3-305~~; and any person who has been convicted, on and after July 1, 1994, in any other state of an offense ~~which~~ THAT, if committed in the state of Colorado, would constitute an offense involving unlawful sexual behavior as ~~described in this part 4 or would constitute the offense described in section 18-3-305~~; AS DEFINED IN THIS SUBSECTION (1) or any person who is released from the custody of the department of corrections having completed serving a sentence for an offense involving unlawful sexual behavior OR FOR WHICH THE FACTUAL BASIS INVOLVED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR as ~~described~~ DEFINED IN THIS SUBSECTION (1) ~~in this part 4 or for the offense described in section 18-3-305~~, shall be required to register in the manner prescribed in subsection (2) of this section. FOR PURPOSES OF THIS SECTION, "UNLAWFUL SEXUAL BEHAVIOR" IS DEFINED AS:

- (a) SEXUAL ASSAULT IN THE FIRST DEGREE, IN VIOLATION OF SECTION 18-3-402;
- (b) SEXUAL ASSAULT IN THE SECOND DEGREE, IN VIOLATION OF SECTION 18-3-403;
- (c) SEXUAL ASSAULT IN THE THIRD DEGREE, IN VIOLATION OF SECTION 18-3-404;

- (d) SEXUAL ASSAULT ON A CHILD, IN VIOLATION OF SECTION 18-3-405;
- (e) SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST, IN VIOLATION OF SECTION 18-3-405.3;
- (f) SEXUAL ASSAULT ON A CHILD BY A PSYCHOTHERAPIST, IN VIOLATION OF SECTION 18-3-405.5;
- (g) ENTICEMENT OF A CHILD, IN VIOLATION OF SECTION 18-3-305;
- (h) INCEST, IN VIOLATION OF SECTION 18-6-301;
- (i) AGGRAVATED INCEST, IN VIOLATION OF SECTION 18-6-302;
- (j) TRAFFICKING IN CHILDREN, IN VIOLATION OF SECTION 18-6-402;
- (k) SEXUAL EXPLOITATION OF CHILDREN, IN VIOLATION OF SECTION 18-6-403;
- (l) PROCUREMENT OF A CHILD FOR SEXUAL EXPLOITATION, IN VIOLATION OF SECTION 18-6-404;
- (m) INDECENT EXPOSURE, IN VIOLATION OF SECTION 18-7-302;
- (n) SOLICITING FOR CHILD PROSTITUTION, IN VIOLATION OF SECTION 18-7-402;
- (o) PANDERING OF A CHILD, IN VIOLATION OF SECTION 18-7-403;
- (p) PROCUREMENT OF A CHILD, IN VIOLATION OF SECTION 18-7-403.5;
- (q) KEEPING A PLACE OF CHILD PROSTITUTION, IN VIOLATION OF SECTION 18-7-404;
- (r) PIMPING OF A CHILD, IN VIOLATION OF SECTION 18-7-405;
- (s) INDUCEMENT OF CHILD PROSTITUTION, IN VIOLATION OF SECTION 18-7-405.5;
- (t) PATRONIZING A PROSTITUTED CHILD, IN VIOLATION OF SECTION 18-7-406;
- (u) CRIMINAL ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THE OFFENSES SPECIFIED IN PARAGRAPHS (a) TO (t) OF THIS SUBSECTION (1);
- (v) A DEFERRED JUDGMENT AND SENTENCE FOR ANY OF THE OFFENSES SPECIFIED IN PARAGRAPHS (a) TO (u) OF THIS SUBSECTION (1); AND
- (w) ANY OFFENSE THAT HAS A FACTUAL BASIS OF ONE OF THE OFFENSES SPECIFIED IN PARAGRAPHS (a) TO (u) OF THIS SUBSECTION (1).

(2) On and after July 1, 1994, probation and parole officers, APPROPRIATE COUNTY JAIL PERSONNEL, and appropriate personnel with the department of corrections shall require any offender described in subsection (1) of this section who is under their jurisdiction to sign a notice that informs the offender of the duty to register with local law enforcement agencies in accordance with this section. The same persons, after

obtaining a signed notice from an offender, shall notify local law enforcement agencies where the offender plans to reside of the offender's address within forty-eight hours after an offender has been placed on parole or probation when such an address is provided in the signed notice. Department of corrections personnel shall provide such notice no later than two days before the offender is to be released from the department of corrections.

(4) Any person who fails to register pursuant to this section, or any person who submits a registration form containing false information, commits the offense of failure to register as a sex offender. Failure to register as a sex offender is a class 2 misdemeanor; except that, in addition to any other penalty provided by section 18-1-106, a person shall be sentenced to a ninety-day mandatory minimum jail sentence. Any second or subsequent offense is a class 6 felony; except that, in addition to any other penalty provided by section 18-1-105, a person shall be sentenced to a one-year mandatory minimum sentence to the department of corrections. ANY JUVENILE ADJUDICATED FOR THE DELINQUENT ACT OF FAILURE TO REGISTER AS A SEX OFFENDER SHALL BE SENTENCED TO A FORTY-FIVE-DAY MANDATORY MINIMUM DETENTION SENTENCE. ANY JUVENILE ADJUDICATED FOR THE CLASS 6 FELONY OFFENSE OF FAILURE TO REGISTER AS A SEX OFFENDER SHALL BE PLACED OR COMMITTED OUT OF THE HOME FOR NOT LESS THAN ONE YEAR.

(6) Upon receipt of any registration form pursuant to this section, the local law enforcement agency shall retain a copy of such form AND SHALL REPORT THAT REGISTRATION TO THE COLORADO BUREAU OF INVESTIGATION IN THE MANNER AND ON A FORM PRESCRIBED BY THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION. The director of the Colorado bureau of investigation ~~may~~ SHALL establish a central registry of persons required to register pursuant to this section as soon as computerized resources are available. The forms completed by persons required to register pursuant to this section shall be confidential and shall not be open to inspection by the public or any person other than a law enforcement ~~officer~~ AGENCY, except as provided in ~~subsection~~ SUBSECTIONS (6.5) AND (6.7) of this section.

THE COLORADO CRIMINAL JUSTICE INFORMATION SYSTEM, ESTABLISHED IN ARTICLE 20.5 OF TITLE 16, C.R.S., SHALL DEVELOP AN INTERACTIVE DATA BASE SYSTEM FOR THE PURPOSE OF QUERYING AND ENTERING SEX OFFENDER'S REGISTRATION STATUS, KNOWN ADDRESSES, AND MODUS OPERANDI. THE SYSTEM SHALL BE ACCESSIBLE THROUGH THE COLORADO CRIME INFORMATION CENTER TO LAW ENFORCEMENT AGENCIES, THE DEPARTMENT OF CORRECTIONS, THE JUDICIAL DEPARTMENT, AND EACH DISTRICT ATTORNEY'S OFFICE. THE SYSTEM SHALL BUILD IN CROSS VALIDATION OF THE OFFENDER'S KNOWN ADDRESS WITH INFORMATION MAINTAINED BY THE DEPARTMENT OF REVENUE CONCERNING DRIVER'S LICENSES AND IDENTIFICATION CARDS ISSUED UNDER ARTICLE 2 OF TITLE 42, C.R.S. DISCREPANCIES BETWEEN THE KNOWN ADDRESS LISTED IN THE SYSTEM AND THE DEPARTMENT OF REVENUE SHALL BE REPORTED THROUGH THE COLORADO CRIME INFORMATION CENTER TO THE LOCAL LAW ENFORCEMENT AGENCY THAT HAS JURISDICTION OVER THE LOCATION OF THE OFFENDER'S LAST-KNOWN ADDRESS.

(6.7) ON AND AFTER SEPTEMBER 1, 1996, PRIOR TO EMPLOYING ANY PERSON, A NURSING CARE FACILITY OR THE PERSON SEEKING EMPLOYMENT AT A NURSING CARE FACILITY SHALL MAKE AN INQUIRY TO THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION TO ASCERTAIN WHETHER SUCH PERSON HAS A CRIMINAL HISTORY

RECORD. THE COLORADO BUREAU OF INVESTIGATION IS AUTHORIZED TO UTILIZE FINGERPRINTS TO ASCERTAIN FROM THE FEDERAL BUREAU OF INVESTIGATION WHETHER SUCH PERSON HAS A CRIMINAL HISTORY RECORD. THE NURSING CARE FACILITY OR THE PERSON SEEKING EMPLOYMENT IN A NURSING CARE FACILITY SHALL PAY THE COSTS OF SUCH INQUIRY. AS USED IN THIS SUBSECTION (6.7), "NURSING CARE FACILITY" INCLUDES, BUT IS NOT LIMITED TO:

- (a) A NURSING FACILITY AS DEFINED IN SECTION 26-4-103 (11), C.R.S.;
- (b) AN INTERMEDIATE NURSING FACILITY FOR THE MENTALLY RETARDED AS DEFINED IN SECTION 26-4-103 (8), C.R.S.;
- (c) AN ADULT DAY CARE FACILITY AS DEFINED IN SECTION 26-4-603 (1), C.R.S.;
AND
- (d) AN ALTERNATIVE CARE FACILITY AS DEFINED IN SECTION 26-4-603 (3), C.R.S.

SECTION 6. 17-2-201 (5) (a), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 17-2-201 (5), as amended, is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

17-2-201. State board of parole. (5) (a) As to any person sentenced for conviction of a felony committed prior to July 1, 1979, or of a misdemeanor and as to any person sentenced for conviction of ~~a sex~~ AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR FOR WHICH THE FACTUAL BASIS INVOLVED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, as defined in section 18-3-412.5 (1), C.R.S., COMMITTED PRIOR TO JULY 1, 1996, or a class 1 felony and as to any person sentenced as a habitual criminal pursuant to section 16-13-101, C.R.S., the board has the sole power to grant or refuse to grant parole and to fix the condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court or five years, whichever is less.

(a.5) AS TO ANY PERSON SENTENCED FOR CONVICTION OF AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR FOR WHICH THE FACTUAL BASIS INVOLVED AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S., COMMITTED ON OR AFTER JULY 1, 1996, THE BOARD HAS THE SOLE POWER TO GRANT OR REFUSE TO GRANT PAROLE AND TO FIX THE CONDITION THEREOF AND HAS FULL DISCRETION TO SET THE DURATION OF THE TERM OF PAROLE GRANTED, BUT IN NO EVENT SHALL THE TERM OF PAROLE EXCEED THE MAXIMUM SENTENCE IMPOSED UPON THE INMATE BY THE COURT.

SECTION 7. 17-22.5-202 (3) (b.5) (I) and (3) (b.5) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

17-22.5-202. Ticket to leave - discharge - clothes, money, transportation. (3) Prior to the release from a correctional facility by discharge or parole of any person imprisoned for the commission of a child abuse offense which occurred within the state of Colorado, the executive director shall:

- (b.5) (I) On and after July 1, 1994, direct appropriate personnel with the

department of corrections to require any offender who is released from the custody of the department of corrections having completed serving a sentence for an offense involving unlawful sexual behavior OR FOR WHICH THE FACTUAL BASIS INVOLVED UNLAWFUL SEXUAL BEHAVIOR as ~~described in part 4 of article 3 of title 18, C.R.S., or for the offense described in section 18-3-305, C.R.S.~~ DEFINED IN SECTION 18-3-412.5 (1), C.R.S., who is under their jurisdiction to sign a notice that informs the offender of the duty to register with local law enforcement agencies in accordance with section 18-3-412.5, C.R.S. The same persons, after obtaining a signed notice from an offender, shall notify local law enforcement agencies where the offender plans to reside of the offender's address within forty-eight hours after an offender has been placed on parole or probation when such an address is provided in the signed notice. Department of corrections personnel shall provide such notice no later than two days before the offender is to be released from the department of corrections.

(II) In addition, the department shall require any offender convicted of an offense ~~for which the factual basis involved a sexual assault~~ INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR FOR WHICH THE FACTUAL BASIS INVOLVED UNLAWFUL SEXUAL BEHAVIOR as defined in ~~part 4 of article 3 of title 18, C.R.S., or any sexual offense committed against a child as enumerated in section 18-3-411, C.R.S.~~ SECTION 18-3-412.5 (1), C.R.S., to submit to chemical testing of the offender's blood to determine the genetic markers thereof and to chemical testing of the offender's saliva to determine the secretor status thereof. Such testing shall occur prior to the offender's release from incarceration, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.

SECTION 8. 19-1-119 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

19-1-119. Confidentiality of juvenile records - delinquency. (1) (a) Except as provided in paragraph (b.5) of this subsection (1), court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance shall be open to inspection to the following persons without court order:

(XIV) THE DEPARTMENT OF CORRECTIONS FOR AID IN DETERMINATIONS OF RECOMMENDED TREATMENT, VISITATION APPROVAL, AND SUPERVISED CONDITIONS.

SECTION 9. 19-1-120 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-1-120. Confidentiality of records - dependency and neglect. (2) Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(q) THE STATE CENTRAL REGISTRY OF CHILD PROTECTION, WHEN REQUESTED IN WRITING BY THE DEPARTMENT OF CORRECTIONS, FOR AIDING IN DETERMINATIONS OF RECOMMENDED TREATMENT, VISITATION APPROVAL, AND SUPERVISED CONDITIONS. WITHIN TEN DAYS AFTER THE DEPARTMENT'S REQUEST, THE CENTRAL REGISTRY SHALL PROVIDE THE INCIDENT DATE, THE LOCATION OF INVESTIGATION, THE TYPE OF ABUSE AND NEGLECT, AND THE COUNTY THAT INVESTIGATED THE INCIDENT

CONTAINED IN THE CONFIRMED REPORTS OF CHILD ABUSE AND NEGLECT. THE DEPARTMENT OF CORRECTIONS SHALL BE SUBJECT TO THE FEE ASSESSMENT ESTABLISHED IN SUBSECTION (2.5) OF THIS SECTION.

SECTION 10. 19-1-120 (2.5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-1-120. Confidentiality of records - dependency and neglect. (2.5) Any person or agency provided information from the state central registry pursuant to paragraphs (d), (e), (i), ~~and~~ (k) to (o), AND (q) of subsection (2) of this section shall be assessed a fee which shall be established and collected pursuant to section 19-3-313 (14).

SECTION 11. 19-2-902, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-2-902. Expungement of juvenile records. (8) THIS SECTION SHALL NOT APPLY TO RECORDS PERTAINING TO AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S.

SECTION 12. 19-3-313 (14), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-3-313. Central registry. (14) Any person or agency provided central registry information in accordance with this section or section 19-1-120 (2) (d), (2) (e), (2) (i), ~~and~~ (2) (k) to (2) (o), AND (2) (q) shall be assessed a fee ~~which~~ THAT shall not exceed the direct and indirect costs of administering such sections. All fees collected in accordance with this subsection (14) shall be transmitted to the state treasurer, who shall credit the same to the central registry fund which is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of administering the statutory provisions cited in this subsection (14).

SECTION 13. 24-72-308 (3) (c), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-72-308 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-72-308. Sealing of records. (3) Exceptions. (c) This section shall not apply to records pertaining to ~~any sexual assault offense as defined in part 4 of article 3 of title 18, C.R.S., where a plea of guilty or nolo contendere has been entered, a plea agreement has been made, or arrangements have been made for deferred judgment, deferred prosecution, or deferred sentencing or where the defendant has been convicted of the offense~~ A CONVICTION OF AN OFFENSE FOR WHICH THE FACTUAL BASIS INVOLVED UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S.

(d) THIS SECTION SHALL NOT APPLY TO ARREST AND CRIMINAL JUSTICE INFORMATION OR CRIMINAL JUSTICE RECORDS IN THE POSSESSION AND CUSTODY OF A CRIMINAL JUSTICE AGENCY WHEN INQUIRY CONCERNING THE ARREST AND CRIMINAL JUSTICE INFORMATION OR CRIMINAL JUSTICE RECORDS IS MADE BY ANOTHER CRIMINAL JUSTICE AGENCY.

SECTION 14. 24-72-304 (4) (a), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-72-304. Inspection of criminal justice records. (4) (a) The name of any victim of sexual assault or of alleged sexual assault shall be deleted from any criminal justice record prior to the release of such record TO ANY INDIVIDUAL OR AGENCY OTHER THAN A CRIMINAL JUSTICE AGENCY when such record bears the notation "SEXUAL ASSAULT" prescribed by this subsection (4).

SECTION 15. 19-1-304 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended by House Bill 96-1017, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

19-1-304. Juvenile delinquency records. (1) (a) **Court records - open.** Except as provided in paragraph (b.5) of this subsection (1), court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance shall be open to inspection to the following persons without court order:

(XV) THE DEPARTMENT OF CORRECTIONS FOR AID IN DETERMINATIONS OF RECOMMENDED TREATMENT, VISITATION APPROVAL, AND SUPERVISED CONDITIONS.

SECTION 16. 19-1-307 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended by House Bill 96-1017, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-1-307. Confidentiality of records - dependency and neglect. (2) **Records and reports - access to certain persons - agencies.** Except as otherwise provided in section 19-1-203, only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(q) THE STATE CENTRAL REGISTRY OF CHILD PROTECTION, WHEN REQUESTED IN WRITING BY THE DEPARTMENT OF CORRECTIONS, FOR AIDING IN DETERMINATIONS OF RECOMMENDED TREATMENT, VISITATION APPROVAL, AND SUPERVISED CONDITIONS. WITHIN TEN DAYS AFTER THE DEPARTMENT'S REQUEST, THE CENTRAL REGISTRY SHALL PROVIDE THE INCIDENT DATE, THE LOCATION OF INVESTIGATION, THE TYPE OF ABUSE AND NEGLECT, AND THE COUNTY THAT INVESTIGATED THE INCIDENT CONTAINED IN THE CONFIRMED REPORTS OF CHILD ABUSE AND NEGLECT. THE DEPARTMENT OF CORRECTIONS SHALL BE SUBJECT TO THE FEE ASSESSMENT ESTABLISHED IN SUBSECTION (2.5) OF THIS SECTION.

SECTION 17. 19-1-307 (2.5), Colorado Revised Statutes, 1986 Repl. Vol., as amended by House Bill 96-1017, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended to read:

19-1-307. Confidentiality of records - dependency and neglect. (2.5) Any person or agency provided information from the state central registry pursuant to paragraphs (i), ~~and~~ (k) to (o), AND (q) of subsection (2) of this section and any child placement agency shall be assessed a fee which shall be established and collected

pursuant to section 19-3-313 (14).

SECTION 18. 19-1-306, Colorado Revised Statutes, 1986 Repl. Vol., as amended by House Bill 96-1017, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-1-306. Expungement of juvenile delinquent records. (9) THIS SECTION SHALL NOT APPLY TO RECORDS PERTAINING TO AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S.

SECTION 19. 19-3-316 (14), Colorado Revised Statutes, 1986 Repl. Vol., as amended by House Bill 96-1037, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended to read:

19-3-316. Central registry. (14) Any person or agency provided central registry information in accordance with this section or section 19-1-124 (2) (i), ~~and~~ (2) (k) to (2) (o), AND (2) (q) and any child placement agency shall be assessed a fee that shall not exceed the direct and indirect costs of administering such sections. All fees collected in accordance with this subsection (14) shall be transmitted to the state treasurer, who shall credit the same to the central registry fund which is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of administering the statutory provisions cited in this subsection (14).

SECTION 20. Appropriations - adjustment to 1996 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the sex offender identification fund created in section 24-33.5-415.5, Colorado Revised Statutes, for the fiscal year beginning July 1, 1996, the sum of two hundred thirty-seven thousand eight hundred fifty-three dollars (\$237,853), 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 sex offender identification fund created in section 24-33.5-415.5, Colorado Revised Statutes, not otherwise appropriated, to the department of public safety for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 1996, the sum of two hundred fifty-two thousand nine hundred eighty-one dollars (\$252,981) and 1.0 FTE, or so much thereof as may be necessary, to contract for the genetic testing of blood and saliva samples and storing and maintaining the results thereof as required by section 16-11-204.3, Colorado Revised Statutes.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the sex offender identification fund created in section 24-33.5-415.5, Colorado Revised Statutes, not otherwise appropriated, to the judicial department for allocation to the probation department, for the fiscal year beginning July 1, 1996, the sum of eleven thousand two hundred eighty-two dollars (\$11,282), or so much thereof as may be necessary, to collect blood and saliva samples as required by section 16-11-204.3, Colorado Revised Statutes.

(4) In addition to any other appropriation, there is hereby appropriated, out of any moneys to come from nursing care facilities or persons applying for employment at nursing care facilities pursuant to section 18-3-412.5 (6.7), Colorado Revised Statutes, not otherwise appropriated, to the department of public safety for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 1996, the sum of twenty-six thousand one hundred eight dollars (\$26,108) and 0.6 FTE, or so much thereof as may be necessary, for the implementation of this act.

(5) For the implementation of this act, capital construction appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1996, shall be adjusted as follows: The general fund appropriation outlined in Section 3 (1) (c) and (1) (e) is reduced by two hundred thirty-seven thousand eight hundred fifty-three dollars (\$237,853).

(6) For the implementation of this act, capital construction appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1996, shall be adjusted as follows: The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by two hundred thirty-seven thousand eight hundred fifty-three dollars (\$237,853).

SECTION 21. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to offenses committed on or after said date; except that the provisions of section 19 shall take effect January 1, 1997, and only if House Bill 96-1037 becomes law and except that the provisions of sections 15, 16, 17, and 18 shall take effect January 1, 1997, and only if House Bill 96-1017 becomes law.

SECTION 22. 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 3, 1996

Editor's note: As set out in section 21 of this act, section 19 will not take effect, because House Bill 96-1037 did not become law, and sections 15, 16, 17, and 18 shall take effect, because House Bill 96-1017 did become law. See chapter 230 of these Session Laws for House Bill 96-1017.