

CHAPTER 295

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 96-1087

BY REPRESENTATIVES Adkins, Kaufman, Mace, McPherson, Reeser, Schwarz, and Young;
also SENATOR Wham.

AN ACT

CONCERNING SUBSTANTIVE CHANGES FOR THE STRENGTHENING OF THE CRIMINAL LAWS.

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

SECTION 1. 14-4-103 (5), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

14-4-103. Emergency protection orders. (5) A verbal emergency protection order may be issued only if the issuing judge finds that an imminent danger in close proximity exists to the life or health of one or more persons. Such an order shall be reduced to writing and signed by the officer and shall include a statement of the grounds for the order asserted by the officer. The officer shall NOT be subject to civil liability ~~as provided by law for any tortious act or statement~~ FOR ANY STATEMENT MADE OR ACT PERFORMED IN GOOD FAITH. The emergency protection order shall be served upon the respondent with a copy given to the protected party and filed with the county or district court as soon as practicable after issuance. If any person named in an order issued pursuant to this section has not been served personally with such order but has received actual notice of the existence and substance of such order from any person, any act in violation of such order may be deemed by the court a violation of such order and may be deemed sufficient to subject the person named in such order to any penalty for such violation.

SECTION 2. 18-8-111 (1) (c), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 18-8-111 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-8-111. False reporting to authorities. (1) A person commits false reporting to authorities, 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.

(c) He OR SHE makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he OR SHE knows that he OR SHE has no such information or knows that the information is false; OR

(d) HE OR SHE KNOWINGLY PROVIDES FALSE IDENTIFYING INFORMATION TO LAW ENFORCEMENT AUTHORITIES.

SECTION 3. 18-8-111, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-8-111. False reporting to authorities. (3) FOR PURPOSES OF THIS SECTION, "IDENTIFYING INFORMATION" MEANS A PERSON'S NAME, ADDRESS, BIRTH DATE, SOCIAL SECURITY NUMBER, AND DRIVER'S LICENSE OR COLORADO IDENTIFICATION NUMBER.

SECTION 4. 18-1-105 (1) (a) (III) (A) and (1) (b) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 18-1-105 (1) (a) (III) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

18-1-105. Felonies classified - presumptive penalties. (1) (a) (III) (A) As to any person sentenced for a felony committed on or after July 1, 1985, EXCEPT AS OTHERWISE PROVIDED IN SUB-SUBPARAGRAPH (E) OF THIS SUBPARAGRAPH (III), in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following presumptive ranges may be imposed for the specified classes of felonies:

Class	Minimum Sentence	Maximum Sentence
1	No fine	No fine
2	Five thousand dollars	One million dollars
3	Three thousand dollars	Seven hundred fifty thousand dollars
4	Two thousand dollars	Five hundred thousand dollars
5	One thousand dollars	One hundred thousand dollars
6	One thousand dollars	One hundred thousand dollars

(E) NOTWITHSTANDING THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), A PERSON WHO HAS BEEN TWICE CONVICTED OF A FELONY UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE CONVICTION FOR WHICH HE OR SHE IS BEING SENTENCED SHALL NOT BE

ELIGIBLE TO RECEIVE A FINE IN LIEU OF ANY SENTENCE TO IMPRISONMENT, COMMUNITY CORRECTIONS, OR WORK RELEASE BUT SHALL BE SENTENCED TO AT LEAST THE MINIMUM SENTENCE SPECIFIED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH (a) AND MAY RECEIVE A FINE IN ADDITION TO SAID SENTENCE.

(b) (II) As to any person sentenced for a felony committed on or after July 1, 1985, a person may be sentenced to imprisonment as described in subparagraph (I) of this paragraph (b) or to pay a fine ~~which~~ THAT is within the presumptive ranges set forth in subparagraph (III) of paragraph (a) of this subsection (1) or to both such fine and imprisonment; EXCEPT THAT ANY PERSON WHO HAS BEEN TWICE CONVICTED OF A FELONY UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE CONVICTION FOR WHICH HE OR SHE IS BEING SENTENCED SHALL NOT BE ELIGIBLE TO RECEIVE A FINE IN LIEU OF ANY SENTENCE TO IMPRISONMENT AS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) BUT SHALL BE SENTENCED TO AT LEAST THE MINIMUM SENTENCE SPECIFIED IN SUBPARAGRAPH (V) OF PARAGRAPH (a) OF THIS SUBSECTION (1) AND MAY RECEIVE A FINE IN ADDITION TO SAID SENTENCE.

SECTION 5. 16-11-101 (1) (e), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-101. Alternatives in sentencing - repeal. (1) Within the limitations of the penalties provided by the classification of the offense of which a person is found guilty, and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(e) The defendant may be sentenced to the payment of a fine or to a term of imprisonment or to both a term of imprisonment and the payment of a fine; EXCEPT THAT A PERSON WHO HAS BEEN TWICE CONVICTED OF A FELONY UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE CONVICTION FOR WHICH HE OR SHE IS BEING SENTENCED IS NOT ELIGIBLE TO RECEIVE A FINE IN LIEU OF IMPRISONMENT. No fine shall be imposed for conviction of a felony except as provided in sections 18-1-105 and 25-15-310, articles 22 to 29 of title 39, or article 3 of title 42, C.R.S.

SECTION 6. 13-90-107 (1) (a) (II), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-90-107. Who may not testify without consent. (1) (a) (II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section 18-1-105 (1) (a) (IV) AND (1) (a) (V), C.R.S. In this instance, during the marriage or afterward, a husband shall not be examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband as to any communications intended to be made in confidence and made by one to the other without her consent.

SECTION 7. 18-6-601 (2) (c), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-6-601. Aiding or harboring a runaway child. (2) For the purposes of this

section:

(c) "Runaway child" means an unmarried ~~minor~~ PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AND who has run away from home or is otherwise beyond the control of ~~his~~ THE PERSON'S parent, legal guardian, or other legal custodian, but the term does not include a ~~child~~ PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AND who is under the legal custody of the department of ~~institutions~~ HUMAN SERVICES.

SECTION 8. 18-18-203 (2) (e) (I), (2) (e) (III), and (2) (e) (V), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-18-203. Schedule I. (2) Unless specifically excepted by Colorado or federal law or Colorado or federal regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(e) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(I) ~~Cathonine~~ CATHINONE;

(III) ~~Methcathonine~~ METHCATHINONE;

(V) (+) ~~Cis-4-methylaminore~~ CIS-4-METHYLAMINOREX;

SECTION 9. 18-18-204 (2) (f) (I), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-18-204. Schedule II. (2) Unless specifically excepted by Colorado or federal law or Colorado or federal regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(f) Any material, compound, mixture, or preparation containing any quantity of the following substances:

(I) Immediate precursor to amphetamine and methamphetamine: phenylacetone (Some trade or other names: ~~phenyl-w-propanone~~ PHENYL-2-PROPANONE; P2P; benzyl methyl ketone; methyl benzyl ketone.), ephedrine, ~~phenylacetoacetonitrile~~ ALPHA-PHENYLACETOACETONITRILE, ~~phenyl-acetic~~ PHENYLACETIC acid, and ~~phenyl-2-nitropene~~ 1-PHENYL-2-NITROPROPENE;

SECTION 10. 18-8-208 (9), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-8-208. Escapes. (9) The minimum sentences provided by sections 18-1-105, 18-1-106, and 18-1-107, respectively, for violation of the provisions of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; EXCEPT THAT THE COURT MAY GRANT A SUSPENDED SENTENCE IF THE COURT IS SENTENCING A PERSON TO THE YOUTHFUL OFFENDER SYSTEM PURSUANT TO SECTION 16-11-311, C.R.S.

SECTION 11. 18-8-208.1 (5), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-8-208.1. Attempt to escape. (5) The sentences imposed by subsections (1) and (2) of this section and the minimum sentences imposed by subsections (3) and (4) of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; EXCEPT THAT THE COURT MAY GRANT A SUSPENDED SENTENCE IF THE COURT IS SENTENCING A PERSON TO THE YOUTHFUL OFFENDER SYSTEM PURSUANT TO SECTION 16-11-311, C.R.S.

SECTION 12. 18-3-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended 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 THE PERSON KNOWINGLY CAUSES THE DEATH OF A PERSON.

~~(a) He causes the death of a person knowingly, but not after deliberation:~~

~~(b) Repealed.~~

(2) Diminished responsibility due to ~~lack of mental capacity~~ or self-induced intoxication is not a defense to murder in the second degree.

~~(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).~~

(3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (3), murder in the second degree is a class 2 felony.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3), MURDER IN THE SECOND DEGREE IS A CLASS 3 FELONY WHERE THE ACT CAUSING THE DEATH WAS PERFORMED UPON A SUDDEN HEAT OF PASSION, CAUSED BY A SERIOUS AND HIGHLY PROVOKING ACT OF THE INTENDED VICTIM, AFFECTING THE DEFENDANT SUFFICIENTLY TO EXCITE AN IRRESISTIBLE PASSION IN A REASONABLE PERSON; BUT, IF BETWEEN THE PROVOCATION AND THE KILLING THERE IS AN INTERVAL SUFFICIENT FOR THE VOICE OF REASON AND HUMANITY TO BE HEARD, THE KILLING IS A CLASS 2 FELONY.

(4) A defendant convicted pursuant to SUBSECTION (1) OF this section shall be sentenced by the court in accordance with the provisions of section 16-11-309, C.R.S.

SECTION 13. 18-3-104 (1) (b), (1) (c), and (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-3-104. Manslaughter. (1) A person commits the crime of manslaughter if:

(b) Such person intentionally causes or aids another person to commit suicide. ~~or~~

~~(c) Such person knowingly causes the death of another person under circumstances where the act causing the death was performed upon a sudden heat of passion, caused by a serious and highly provoking act of the intended victim, affecting the person who performs the killing sufficiently to excite an irresistible passion in a reasonable person; but, if between the provocation and the killing there is an interval sufficient for the voice of reason and humanity to be heard, the killing is murder.~~

~~(2) (a) Manslaughter, in violation of paragraph (c) of subsection (1) of this section, is a class 3 felony.~~

~~(b) Manslaughter in violation of either paragraph (a) or paragraph (b) of subsection (1) of this section, is a class 4 felony.~~

SECTION 14. 33-1-102 (40), Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

33-1-102. Definitions. As used in this title, unless the context otherwise requires:

(40) "Sell" includes ~~offering or possessing for sale, bartering, exchanging, or trading~~ BARTERING, EXCHANGING, TRADING, OR GIVING OR OFFERING A GIFT AND EACH SUCH TRANSACTION MADE BY ANY PERSON WHETHER AS PRINCIPAL PROPRIETOR, AGENT, SERVANT, OR EMPLOYEE WITH OR WITHOUT REMUNERATION.

SECTION 15. 16-11-501 (5) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-501. Judgment for costs and fines. (5) As used in this section, unless the context otherwise requires:

(b) "Estate" means any tangible or intangible properties, real or personal, belonging to or due to an offender, including income or payments to such person RECEIVED OR EARNED PRIOR TO OR DURING INCARCERATION from ~~previously earned~~ salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever except federal benefits of any kind. Real property that is held in joint ownership or ownership in common with an offender's spouse, while being used and occupied by the spouse as a place of residence, shall not be considered a part of the estate of the offender for the purposes of this section.

SECTION 16. 17-10-102 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-10-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Estate" means any tangible or intangible properties, real or personal, belonging to or due to an offender, including income or payments to such person RECEIVED OR EARNED PRIOR TO OR DURING INCARCERATION from ~~previously earned~~ salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever except federal benefits of any kind. Real property that is held in joint ownership or ownership in common with an offender's spouse, while being used and occupied by the spouse as a place of residence, shall not be considered a part of the

estate of the offender for the purposes of this article.

SECTION 17. 18-13-119.5 (2) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-13-119.5. Abuse of property insurance. (2) (b) The general assembly further declares that ~~nothing contained in this section shall be construed to otherwise prohibit advertising or to create a private right of action in courts of the state of Colorado, INCLUDING AN ACTION FOR INJUNCTIVE RELIEF.~~

SECTION 18. 18-3-412 (5), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-3-412. Habitual sex offenders against children - indictment or information - verdict of the jury. (5) The procedures specified in section 16-13-103, C.R.S., shall govern ~~the verdict of the jury~~ in a trial to which the provisions of this section are alleged to apply based on a previous conviction or convictions for an unlawful sexual offense as set out in the complaint, indictment, or information.

SECTION 19. 18-6-401.2 (5), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-6-401.2. Habitual child abusers - indictment or information - verdict of the jury. (5) The procedures specified in section 16-13-103, C.R.S., shall govern ~~the verdict of the jury~~ in a trial to which the provisions of this section are alleged to apply based on a previous conviction or convictions for an act of child abuse as set out in the complaint, indictment, or information.

SECTION 20. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 21. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to offenses committed on or after said date.

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 5, 1996