

CHAPTER 194

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 97-1060

BY REPRESENTATIVES Adkins, Chavez, Hagedorn, Schwarz, Smith, and Tupa;
also SENATORS Blickensderfer, Chlouber, Congrove, Schroeder, and Tebedo.

AN ACT

CONCERNING TELECOMMUNICATIONS CRIME, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 18-9-309 (1) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 18-9-309 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

18-9-309. Telecommunications crime. (1) As used in this section and section 18-9-309.5:

(a.5) "CELLULAR PHONE" MEANS A RADIO TELECOMMUNICATIONS DEVICE THAT MAY BE USED TO OBTAIN TELECOMMUNICATIONS SERVICES AND THAT IS PROGRAMMED WITH AN ELECTRONIC SERIAL NUMBER BY OR WITH THE CONSENT OF THE CELLULAR PHONE MANUFACTURER.

(a.7) "CLONED CELLULAR PHONE" MEANS A CELLULAR PHONE, THE ELECTRONIC SERIAL NUMBER OF WHICH HAS BEEN ALTERED WITHOUT THE CONSENT OF THE CELLULAR PHONE'S MANUFACTURER.

(a.8) "CLONING EQUIPMENT" MEANS ANY INSTRUMENT, APPARATUS, EQUIPMENT, COMPUTER HARDWARE, COMPUTER SOFTWARE, OPERATING PROCEDURE OR CODE, OR DEVICE, WHETHER USED SEPARATELY OR IN COMBINATION, THAT IS DESIGNED OR ADAPTED AND IS USED, IS INTENDED TO BE USED, OR IS CAPABLE OF BEING USED:

(I) TO INTERCEPT SIGNALS, INCLUDING SIGNALS TRANSMITTED TO OR FROM

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

CELLULAR PHONES, BETWEEN A TELECOMMUNICATIONS PROVIDER AND PERSONS USING TELECOMMUNICATIONS SERVICES OR BETWEEN PERSONS USING TELECOMMUNICATIONS SERVICES; OR

(II) TO CREATE CLONED CELLULAR PHONES.

(b.7) "ELECTRONIC SERIAL NUMBER" MEANS AN ELECTRONIC NUMBER THAT IS PROGRAMMED INTO A CELLULAR PHONE BY OR WITH THE CONSENT OF THE MANUFACTURER, TRANSMITTED BY THE CELLULAR PHONE, AND USED BY CELLULAR PHONE TELECOMMUNICATIONS PROVIDERS TO VALIDATE RADIO TRANSMISSIONS AS HAVING BEEN MADE BY CELLULAR PHONES AUTHORIZED OR APPROVED BY TELECOMMUNICATIONS PROVIDERS.

(c) "Illegal telecommunications equipment" means any instrument, apparatus, equipment, COMPUTER HARDWARE, COMPUTER SOFTWARE, mechanism, operating procedure or code, or device, WHETHER USED SEPARATELY OR IN COMBINATION, ~~which~~ THAT is designed or adapted and ~~which~~ is used or is intended to be used to evade the lawful charges for any telecommunications service or for concealing from any telecommunications provider or lawful authority the existence, place of origin, or destination of any telecommunication. ILLEGAL TELECOMMUNICATIONS EQUIPMENT INCLUDES CLONED CELLULAR PHONES.

(c.5) TO "INTERCEPT SIGNALS" MEANS TO ELECTRONICALLY CAPTURE, RECORD, REVEAL, OR OTHERWISE ACCESS SIGNALS, INCLUDING DATA, ELECTRONIC SERIAL NUMBERS, AND MOBILE IDENTIFICATION NUMBERS, THAT ARE EMITTED, TRANSMITTED, OR RECEIVED BY A TELECOMMUNICATIONS PROVIDER WITHOUT CONSENT OF THE TELECOMMUNICATIONS PROVIDER OR THE PERSON RECEIVING OR INITIATING THE SIGNAL.

(c.7) "MOBILE IDENTIFICATION NUMBER" MEANS THE CELLULAR PHONE NUMBER ASSIGNED TO A CELLULAR PHONE BY THE CELLULAR PHONE TELECOMMUNICATIONS PROVIDER.

SECTION 2. The introductory portion to 18-9-309 (2) and 18-9-309 (2) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 18-9-309 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-9-309. Telecommunications crime. (2) A person commits a class 3 misdemeanor ~~or a class 6 felony for a second or subsequent violation of this subsection (2) within five years after a previous conviction~~ if he OR SHE knowingly:

(b) Makes, possesses, or uses illegal telecommunications equipment; EXCEPT THAT A PERSON WHO KNOWINGLY USES CLONING EQUIPMENT TO CREATE A CLONED CELLULAR PHONE COMMITS A CLASS 4 FELONY AS PROVIDED IN SUBSECTION (4) OF THIS SECTION;

(2.5) A PERSON COMMITS A CLASS 6 FELONY IF, WITHIN FIVE YEARS AFTER A PREVIOUS VIOLATION OF SUBSECTION (2) OF THIS SECTION, THE PERSON COMMITS A SECOND OR SUBSEQUENT VIOLATION OF SUBSECTION (2) OF THIS SECTION; EXCEPT THAT A SECOND OR SUBSEQUENT VIOLATION OF SUBSECTION (2) OF THIS SECTION

INVOLVING KNOWINGLY USING CLONING EQUIPMENT TO CREATE A CLONED CELLULAR PHONE, AS DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, IS A CLASS 4 FELONY.

(4) (a) A PERSON COMMITS A CLASS 4 FELONY IF HE OR SHE KNOWINGLY USES CLONING EQUIPMENT TO:

(I) INTERCEPT SIGNALS, INCLUDING SIGNALS TRANSMITTED TO OR FROM CELLULAR PHONES, BETWEEN A TELECOMMUNICATIONS PROVIDER AND PERSONS USING TELECOMMUNICATIONS SERVICES OR BETWEEN PERSONS USING TELECOMMUNICATIONS SERVICES; OR

(II) CREATE A CLONED CELLULAR PHONE.

(b) A PERSON COMMITS A CLASS 4 FELONY IF HE OR SHE AIDS, ABETS, ADVISES, OR ENCOURAGES ONE OR MORE PERSONS WHO ENGAGE IN THE ACTIVITIES DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (4).

(c) EACH VIOLATION OF THIS SUBSECTION (4), INCLUDING EACH INSTANCE OF INTERCEPTING SIGNALS OR OF CREATING A CLONED CELLULAR PHONE, SHALL BE A SEPARATE OFFENSE.

(5) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

(a) OFFICERS, EMPLOYEES, OR AGENTS OF TELECOMMUNICATIONS PROVIDERS WHO ENGAGE IN CONDUCT PROHIBITED BY THIS SECTION FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, OR CONDUCTING TELECOMMUNICATIONS SERVICES OR FOR LAW ENFORCEMENT PURPOSES;

(b) LAW ENFORCEMENT OFFICERS AND PUBLIC OFFICIALS IN CHARGE OF JAILS, POLICE PREMISES, SHERIFFS' OFFICES, DEPARTMENT OF CORRECTIONS' INSTITUTIONS, OR OTHER PENAL OR CORRECTIONAL INSTITUTIONS OR ANY OTHER PERSON UNDER THE COLOR OF LAW WHO ENGAGES IN CONDUCT PROHIBITED BY THIS SECTION FOR THE PURPOSE OF LAW ENFORCEMENT OR IN THE NORMAL COURSE OF THE OFFICER'S OR OFFICIAL'S EMPLOYMENT ACTIVITIES OR DUTIES; OR

(c) OFFICERS, EMPLOYEES, OR AGENTS OF FEDERAL OR STATE AGENCIES WHO ARE AUTHORIZED TO MONITOR OR INTERCEPT CELLULAR TELEPHONE SERVICE IN THE NORMAL COURSE OF THE OFFICER'S, EMPLOYEE'S, OR AGENT'S EMPLOYMENT.

(6) PROSECUTION UNDER THIS SECTION DOES NOT PRECLUDE CIVIL LIABILITY UNDER ANY APPLICABLE PROVISION OF LAW.

SECTION 3. 18-17-103 (5) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

18-17-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to

commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(XVII) OFFENSES RELATING TO TELECOMMUNICATIONS CRIME AS SET FORTH IN SECTION 18-9-309.

SECTION 4. 24-75-302 (2) (j), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation.

(2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 1998, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(j) On July 1, 1997, fifty million dollars PLUS SEVENTY-THREE THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS PURSUANT TO H.B. 97-1060, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY; and

SECTION 5. Part 1 of article 1 of title 17, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-120. Appropriation to comply with section 2-2-703. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT HB 97-1060, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 1997, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF SEVENTY-THREE THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS (\$73,636).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 1998, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS, THE SUM OF TWENTY-TWO THOUSAND FOUR HUNDRED FIFTY-EIGHT DOLLARS (\$22,458).

(c) FOR THE FISCAL YEAR BEGINNING JULY 1, 1999, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS, THE SUM OF TWENTY-TWO THOUSAND FOUR HUNDRED FIFTY-EIGHT DOLLARS (\$22,458).

(d) FOR THE FISCAL YEAR BEGINNING JULY 1, 2000, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS, THE SUM OF ELEVEN THOUSAND TWO HUNDRED TWENTY-NINE DOLLARS (\$11,229).

SECTION 6. Effective date - applicability. This act shall take effect July 1, 1997, and shall apply to offenses committed on or after said date.

SECTION 7. 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 27, 1997