

CHAPTER 265

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 97-1145

BY REPRESENTATIVES Kaufman, Chavez, Hagedorn, Kreutz, Romero, and Schwarz;
also SENATOR Mutzebaugh.

AN ACT

CONCERNING PROCEDURAL CHANGES FOR THE STRENGTHENING OF THE CRIMINAL LAWS.

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

SECTION 1. 16-11-101.5 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-101.5. Collection of restitution. (1) Any order of restitution to be paid by a person or entity sentenced for a crime OR WHO PLEADS GUILTY TO A CRIME PURSUANT TO A DEFERRED JUDGMENT AND SENTENCE shall be a final judgment in favor of the state, the victim, the victim's immediate family, a victim compensation board that has paid a victim compensation claim, or any entity or person who has suffered losses because of a contractual relationship with a victim, including, but not limited to, an insurer, or because of liability under section 14-6-110, C.R.S., and against the defendant and, notwithstanding the provisions of section 13-52-102 (2), C.R.S., shall remain in force until restitution is paid in full. Such a judgment may be enforced by any of the parties in whose favor the judgment was entered in the same manner as a judgment in a civil action. In addition, such parties may collect reasonable attorney fees and all other costs incurred in collecting on an order of restitution.

SECTION 2. 24-72-304, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-72-304. Inspection of criminal justice records. (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE DISCRETION OF THE DISTRICT ATTORNEY

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

TO AUTHORIZE A CRIME VICTIM, AS DEFINED IN SECTION 24-4.1-302 (5), OR A MEMBER OF THE VICTIM'S IMMEDIATE FAMILY, AS DEFINED IN SECTION 24-4.1-302 (6), TO VIEW ALL OR A PORTION OF THE PRESENTENCE REPORT OF THE PROBATION DEPARTMENT.

SECTION 3. 16-13-307 (10) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 16-13-307 (10) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

16-13-307. Jurisdiction - venue - parties - process. (10) (a) Continuance of the trial of a public nuisance action shall be granted upon stipulation of the parties or upon good cause shown. Good cause shall include, but shall not be limited to, the fact that there are pending criminal charges arising out of the same transaction alleged in the complaint and that there exists a privilege against self-incrimination under the constitution of the United States or the constitution of the state of Colorado associated with such charges. Any continuance granted due to pending criminal charges shall extend until resolution of such criminal charges, but shall not extend to the time period of an appeal of a conviction for such criminal charges. At the time the court grants a continuance because of pending criminal charges, the court shall set a new date for trial of the public nuisance action. Any person who is granted a continuance of a trial pursuant to this part 3 because of pending criminal charges, who delays the resolution of the pending criminal case by disobeying an order of the court to appear at a proceeding in the criminal case for which the continuance of the public nuisance action was granted, shall be denied any additional continuance if the delay caused in the criminal case was of such duration that it prevented the criminal case from being resolved prior to the trial of the public nuisance action; except that an additional continuance may be granted if the defendant establishes, and the court finds, that the delay was due to unavoidable circumstances or due to any other reason which is shown to be good cause. A continuance granted pursuant to this subsection (10) shall constitute good cause for ~~modification of the due date for disclosure certificates required by rule 16 of the Colorado rules of civil procedure, and for postponement of all civil discovery until after the conclusion of the criminal case.~~

(c) PUBLIC NUISANCE ACTIONS SHALL BE INCLUDED IN THE CATEGORY OF "EXPEDITED PROCEEDINGS" SPECIFIED IN RULES 16 AND 26 OF THE COLORADO RULES OF CIVIL PROCEDURE; EXCEPT THAT EACH PARTY MAY CONDUCT LIMITED DISCOVERY AS PROVIDED FOR IN RULE 26 (b) (2) OF THE COLORADO RULES OF CIVIL PROCEDURE. IN ADDITION, EACH PARTY MAY MOVE THE COURT TO AUTHORIZE ADDITIONAL DISCOVERY UPON GOOD CAUSE SHOWN.

SECTION 4. 13-73-101 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, 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 OR CASES IN WHICH THE ATTORNEY GENERAL HAS AUTHORITY TO PROSECUTE. The state grand jury is intended, therefore, to be a law enforcement tool with statewide jurisdiction.

SECTION 5. 16-4-103 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-4-103. Fixing of bail and conditions of bail bond. (2) A condition of every bail bond, and the only condition for a breach of which a surety or security on the bail bond may be subjected to forfeiture, is that the released person appear to answer the charge against such person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued. Further conditions of every bail bond shall be that the released person not commit any felony while at liberty on such bail bond and that the court in which the action is pending have the power to revoke the release of the defendant, to increase the bail bond, or to change any bail bond condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a ~~class 1, 2, 3, or 4~~ felony while released pending adjudication of a prior felony charge. A further condition of every bail bond in cases of domestic violence as defined in section 18-6-800.3 (1), C.R.S., shall be that the released person acknowledge the restraining order as provided in section 18-1-1001 (5), C.R.S. In addition, the judge may impose such additional conditions upon the conduct of the defendant as will, in the judge's opinion, render it more likely that the defendant will fulfill the other bail bond conditions. These additional conditions may include submission of the defendant to the supervision of some qualified person or organization. Any defendant whose bail bond is revoked or increased under an order entered pursuant to this section and who remains in custody must be tried on the charges on which the bail bond has been increased or revoked within ninety days after such order or within six months after the defendant's arraignment on such charges, whichever date is earlier.

SECTION 6. 18-3-412.5 (6.7) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 18-3-412.5 (6.7) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-3-412.5. Sex offenders - duty to register - penalties. (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:

(c) An adult day care facility as defined in section 26-4-603 (1), C.R.S.; ~~and~~

(e) ANY BUSINESS THAT PROVIDES TEMPORARY NURSING CARE SERVICES OR THAT PROVIDES PERSONNEL WHO PROVIDE SUCH SERVICES.

SECTION 7. 18-3-412.5 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-3-412.5. Sex offenders - duty to register - penalties. (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. A JUDGE OR MAGISTRATE SHALL REQUIRE ANY OFFENDER DESCRIBED IN SUBSECTION (1) OF THIS SECTION WHO IS UNDER THE JUDGE'S OR MAGISTRATE'S JURISDICTION AND WHO IS NOT SENTENCED TO THE DEPARTMENT OF CORRECTIONS, TO PROBATION, OR TO A COUNTY JAIL 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 OR OTHERWISE RELEASED INTO THE COMMUNITY 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.

SECTION 8. 16-11.7-102 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11.7-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Sex offender" means any person who is convicted in the state of Colorado, on or after January 1, 1994, of any sex offense as defined in subsection (3) of this section, or of any criminal offense, if such person has previously been convicted of a sex offense as described in subsection (3) of this section in the state of Colorado, or if such person has previously been convicted in any other jurisdiction of any offense which would constitute a sex offense as defined in subsection (3) of this section, or if such person has a history of any sex offenses as defined in subsection (3) of this section. FOR PURPOSES OF THIS SUBSECTION (2), ANY PERSON WHO RECEIVES A DEFERRED JUDGMENT OR DEFERRED SENTENCE FOR THE OFFENSES SPECIFIED IN THIS SUBSECTION (2) IS DEEMED CONVICTED.

SECTION 9. 16-8-115.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-8-115.5. Enforcement and revocation of conditional release from commitment. (1) The terms and conditions imposed upon a defendant's release pursuant to section 16-8-115 (3) may be enforced as are any other orders of court.

(2) (Deleted by amendment, L. 94, p. 1423, §2, effective July 1, 1994.)

(3) Whenever the superintendent of the Colorado mental health institute at Pueblo ~~or the director of a community mental health center in charge of treatment of a defendant granted conditional release~~ has probable cause to believe that such defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), said superintendent ~~or director of a community mental health center~~ SHALL NOTIFY THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT WHERE THE DEFENDANT WAS COMMITTED. THE SUPERINTENDENT OR THE DISTRICT ATTORNEY shall apply for a warrant to be directed to the sheriff or a peace officer in the jurisdiction in which the defendant resides or may be found commanding such sheriff

or peace officer to take custody of the defendant. The application shall include the order conditionally releasing the defendant pursuant to section 16-8-115 (3) and supporting documentation showing that defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5). The COMMITTING COURT AND THE district court for the tenth judicial district ~~is~~ ARE authorized to issue such a warrant pursuant to the provisions of section 16-1-106. THE SUPERINTENDENT SHALL MAIL A COPY OF THE APPLICATION TO THE COMMITTING COURT AND THE DISTRICT ATTORNEY IN THE COMMITTING JURISDICTION.

(4) The sheriff or peace officer to whom the warrant is directed pursuant to subsection (3) of this section shall take all necessary legal action to take custody of the defendant. A sheriff shall deliver the defendant immediately to the Colorado mental health institute at Pueblo which shall provide care and security for the defendant. ~~until the conclusion of the preliminary hearing provided for in subsection (6) of this section or until further order of the court.~~ If any other peace officer takes custody of the defendant, such peace officer shall deliver the defendant to the custody of the sheriff of the jurisdiction in which the defendant was found, and such sheriff shall comply with the provisions of this subsection (4).

(5) (a) (I) ~~The superintendent shall notify the district attorney for the tenth judicial district immediately upon the defendant's return to the Colorado mental health institute at Pueblo pursuant to subsection (4) of this section. Such notice shall include all supporting documentation from either the superintendent or the director of a community mental health center in charge of the defendant's treatment showing that the defendant has become ineligible to remain on conditional release. Within seventy-two hours after such notification from the superintendent, excluding Saturdays, Sundays, and court holidays, the district attorney for the tenth judicial district on behalf of the superintendent shall file a verified petition with the Pueblo district court for the revocation of the defendant's conditional release. The petition shall set forth the name of the defendant, an allegation that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), and the substance of the evidence sustaining the allegation. Copies of this petition shall be provided to the defendant, the district attorney for the judicial district where the defendant was committed, and the committing court.~~

(II) ~~The district court for the tenth judicial district shall have jurisdiction and venue to accept a petition filed by the district attorney in accordance with subparagraph (I) of this paragraph (a) and to enter an order for the temporary revocation of the defendant's conditional release after the hearing set forth in subsection (6) of this section.~~

(b) ~~If a petition for revocation is not filed as provided in this subsection (5) within seventy-two hours after a defendant is taken into custody pursuant to subsection (4) of this section, excluding Saturdays, Sundays, and court holidays, such defendant shall be immediately released from custody unless the court grants a reasonable extension of time to file such petition upon a showing of good cause by the district attorney.~~

(c) ~~At any time after the filing of a petition, the party filing such petition may cause the revocation proceedings to be dismissed by giving written notification of such party's decision for such dismissal to the court.~~

~~(d) Prior to any appearance of the defendant before the court, the defendant shall be given a copy of the petition. THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO SHALL EXAMINE THE DEFENDANT TO EVALUATE THE DEFENDANT'S ABILITY TO REMAIN ON CONDITIONAL RELEASE. THE EXAMINATION SHALL BE CONSISTENT WITH THE PROCEDURE PROVIDED IN SECTION 16-8-106. IF THE DEFENDANT REFUSES TO SUBMIT TO AND COOPERATE WITH THE EXAMINATION, THE COMMITTING COURT SHALL REVOKE THE CONDITIONAL RELEASE. THE EXAMINATION SHALL BE COMPLETED WITHIN TWENTY DAYS AFTER THE DEFENDANT HAS BEEN DELIVERED TO THE INSTITUTE AS A RESULT OF THE DEFENDANT'S ARREST. THE INSTITUTE SHALL MAIL OR DELIVER A WRITTEN REPORT OF THE EXAMINATION TO THE COMMITTING COURT AND THE DISTRICT ATTORNEY IN THE COMMITTING JURISDICTION PROMPTLY AFTER THE EXAMINATION IS COMPLETED. THE DEFENDANT MAY REQUEST AN EXAMINATION AS PROVIDED IN SECTION 16-8-108.~~

~~(6) (a) Within seventy-two hours after the defendant is taken into custody as provided in subsection (4) of this section, excluding Saturdays, Sundays, and court holidays, the defendant shall appear before the court for a preliminary hearing to determine if probable cause exists to believe that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5). The hearing may be continued by the court for not more than five days upon good cause shown. If the court finds that probable cause does not exist, it shall dismiss the petition and reinstate or modify the original order of conditional release. If the court finds that probable cause exists, it shall temporarily revoke the defendant's conditional release and recommit the defendant. THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT WHERE THE DEFENDANT WAS COMMITTED MAY FILE IN THE COMMITTING COURT A PETITION FOR THE REVOCATION OF THE DEFENDANT'S CONDITIONAL RELEASE. THE PETITION SHALL SET FORTH THE NAME OF THE DEFENDANT, AN ALLEGATION THAT THE DEFENDANT HAS BECOME INELIGIBLE TO REMAIN ON CONDITIONAL RELEASE AS DEFINED IN SECTION 16-8-102 (4.5), AND THE SUBSTANCE OF THE EVIDENCE SUSTAINING THE ALLEGATION.~~

~~(b) IF THE DISTRICT ATTORNEY FOR THE COMMITTING JUDICIAL DISTRICT DOES NOT FILE A PETITION FOR REVOCATION, AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (6), WITHIN TEN DAYS AFTER THE DEFENDANT IS DELIVERED TO THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO, THE DEFENDANT SHALL BE IMMEDIATELY RELEASED FROM CUSTODY; EXCEPT THAT, UPON A SHOWING OF GOOD CAUSE BY THE DISTRICT ATTORNEY, THE COURT MAY GRANT A REASONABLE EXTENSION OF TIME TO FILE THE PETITION FOR REVOCATION.~~

~~(c) THE COURT MAY DISMISS REVOCATION PROCEEDINGS AT ANY TIME UPON RECEIPT OF A WRITTEN REQUEST FOR DISMISSAL FROM THE DISTRICT ATTORNEY WHO FILED THE PETITION FOR REVOCATION.~~

~~(d) THE DISTRICT ATTORNEY FOR THE COMMITTING JUDICIAL DISTRICT SHALL ENSURE THAT THE DEFENDANT RECEIVES A COPY OF THE PETITION FOR REVOCATION PRIOR TO ANY APPEARANCE BY THE DEFENDANT BEFORE THE COURT.~~

~~(7) Prior to any final hearing on the petition for revocation, the committing court may order the defendant to submit to and cooperate with examinations as provided in section 16-8-106. If the defendant refuses to submit to and cooperate with such examinations, the committing court shall recommit the defendant. The defendant may~~

~~request an examination as provided in section 16-8-108.~~

(8) Within thirty days after a preliminary hearing resulting in the temporary revocation of the defendant's conditional release, THE DEFENDANT IS DELIVERED TO THE COLORADO MENTAL HEALTH INSTITUTE IN PUEBLO PURSUANT TO SUBSECTION (4) OF THIS SECTION, AND IF THE DEFENDANT IS NOT RELEASED FROM CUSTODY PURSUANT TO PARAGRAPH (b) OF SUBSECTION (6) OF THIS SECTION, the committing court shall hold a ~~final~~ hearing on the petition for revocation of conditional release. At such hearing, any evidence having probative value shall be admissible, but the defendant shall be permitted to offer testimony and to call, confront, and cross-examine witnesses. If the court finds by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall enter a ~~final~~ AN order revoking the defendant's conditional release and recommitting the defendant. At any time thereafter, the defendant may be afforded a release hearing as provided in section 16-8-115. If the court does not find by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall dismiss the petition and reinstate or modify the original order of conditional release.

SECTION 10. 2-2-315, Colorado Revised Statutes, 1980 Repl. Vol., is amended to read:

2-2-315. Member may administer oath. The chairman ~~or any member~~ of any committee appointed by either ~~branch~~ HOUSE of the general assembly of this state, or any ~~member~~ CHAIRMAN of any joint committee appointed by the two houses of the general assembly is authorized to administer oaths and affirmations to witnesses, touching any matter or thing which may be under the consideration or investigation of the committee.

SECTION 11. Effective date - applicability. This act shall take effect July 1, 1997, and shall apply to offenses committed on or after said date; except that section 9 of this act shall apply to revocations of conditional release commenced on or after July 1, 1997.

SECTION 12. 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 4, 1997