

CHAPTER 270

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 97-1186

BY REPRESENTATIVES Schwarz, Dean, Kreutz, Agler, K. Alexander, Allen, Anderson, Arrington, Bacon, C. Berry, Chavez, Entz, Epps, Hagedorn, Kaufman, Lawrence, Leyba, Mace, McElhany, McPherson, Miller, Morrison, Musgrave, Nichol, Pankey, Snyder, Sullivant, Taylor, Tucker, and Young;
also SENATORS Chlouber, B. Alexander, Arnold, Bishop, Coffman, Congrove, Dennis, J. Johnson, Powers, Schroeder, Tebedo, Wattenberg, Weddig, and Wham.

AN ACT

CONCERNING INMATE ASSAULTS ON EMPLOYEES OF DETENTION FACILITIES THROUGH CONTACT WITH SUBSTANCES THAT MAY CAUSE INJURY OR DISEASE, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 18-3-203 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-3-203. Assault in the second degree. (1) A person commits the crime of assault in the second degree if:

(f.5) (I) WHILE LAWFULLY CONFINED IN A DETENTION FACILITY WITHIN THIS STATE, A PERSON WITH INTENT TO INFECT, INJURE, HARM, HARASS, ANNOY, THREATEN, OR ALARM A PERSON IN A DETENTION FACILITY WHOM THE ACTOR KNOWS OR REASONABLY SHOULD KNOW TO BE AN EMPLOYEE OF A DETENTION FACILITY, CAUSES SUCH EMPLOYEE TO COME INTO CONTACT WITH BLOOD, SEMINAL FLUID, URINE, FECES, SALIVA, MUCUS, VOMIT, OR ANY TOXIC, CAUSTIC, OR HAZARDOUS MATERIAL BY ANY MEANS, INCLUDING BUT NOT LIMITED TO THROWING, TOSSING, OR EXPELLING SUCH FLUID OR MATERIAL.

(II) (A) ANY ADULT OR JUVENILE WHO IS BOUND OVER FOR TRIAL FOR THE OFFENSE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (f.5) SUBSEQUENT TO A PRELIMINARY HEARING OR AFTER HAVING WAIVED THE RIGHT TO A PRELIMINARY

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

HEARING, ANY PERSON WHO IS INDICTED FOR OR IS CONVICTED OF ANY SUCH OFFENSE, OR ANY PERSON WHO IS DETERMINED TO HAVE PROVIDED BLOOD, SEMINAL FLUID, URINE, FECES, SALIVA, MUCUS, OR VOMIT TO A PERSON BOUND OVER FOR TRIAL FOR, INDICTED FOR, OR CONVICTED OF SUCH AN OFFENSE SHALL BE ORDERED BY THE COURT TO SUBMIT TO A MEDICAL TEST FOR COMMUNICABLE DISEASES AND TO SUPPLY BLOOD, FECES, URINE, SALIVA, OR OTHER BODILY FLUID REQUIRED FOR THE TEST. THE RESULTS OF SUCH TEST SHALL BE REPORTED TO THE COURT OR THE COURT'S DESIGNEE, WHO SHALL THEN DISCLOSE THE RESULTS TO ANY VICTIM OF THE OFFENSE WHO REQUESTS SUCH DISCLOSURE. REVIEW AND DISCLOSURE OF MEDICAL TEST RESULTS BY THE COURT SHALL BE CLOSED AND CONFIDENTIAL, AND ANY TRANSACTION RECORDS RELATING THERETO SHALL ALSO BE CLOSED AND CONFIDENTIAL. IF A PERSON SUBJECT TO A MEDICAL TEST FOR COMMUNICABLE DISEASES PURSUANT THIS SUB-SUBPARAGRAPH (A) VOLUNTARILY SUBMITS TO A MEDICAL TEST FOR COMMUNICABLE DISEASES, THE FACT OF SUCH PERSON'S VOLUNTARY SUBMISSION SHALL BE ADMISSIBLE IN MITIGATION OF SENTENCE IF THE PERSON IS CONVICTED OF THE CHARGED OFFENSE.

(B) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE COURT MAY ORDER ANY PERSON WHO IS CONVICTED OF THE OFFENSE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (f.5) TO MEET ALL OR ANY PORTION OF THE FINANCIAL OBLIGATIONS OF MEDICAL TESTS PERFORMED ON AND TREATMENT PRESCRIBED FOR THE VICTIM OR VICTIMS OF THE OFFENSE.

(C) AT THE TIME OF SENTENCING, THE COURT MAY ORDER THAT AN OFFENDER DESCRIBED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II) BE PUT ON A PERIOD OF PROBATION FOR THE PURPOSE OF PAYING THE TESTING AND TREATMENT COSTS OF THE VICTIM OR VICTIMS; EXCEPT THAT THE PERIOD OF PROBATION, WHEN ADDED TO ANY TIME SERVED, SHALL NOT EXCEED THE MAXIMUM SENTENCE THAT CAN BE IMPOSED FOR THE OFFENSE.

(III) (A) AS USED IN THIS PARAGRAPH (f.5), "DETENTION FACILITY" MEANS ANY BUILDING, STRUCTURE, ENCLOSURE, VEHICLE, INSTITUTION, OR PLACE, WHETHER PERMANENT OR TEMPORARY, FIXED OR MOBILE, WHERE PERSONS ARE OR MAY BE LAWFULLY HELD IN CUSTODY OR CONFINEMENT UNDER THE AUTHORITY OF THE STATE OF COLORADO OR ANY POLITICAL SUBDIVISION OF THE STATE OF COLORADO.

(B) AS USED IN THIS PARAGRAPH (f.5), "EMPLOYEE OF A DETENTION FACILITY" INCLUDES EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS, EMPLOYEES OF ANY AGENCY OR PERSON OPERATING A DETENTION FACILITY, LAW ENFORCEMENT PERSONNEL, AND ANY OTHER PERSONS WHO ARE PRESENT IN OR IN THE VICINITY OF A DETENTION FACILITY AND ARE PERFORMING SERVICES FOR A DETENTION FACILITY. "EMPLOYEE OF A DETENTION FACILITY" DOES NOT INCLUDE A PERSON LAWFULLY CONFINED IN A DETENTION FACILITY.

SECTION 2. 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:

17-1-121. 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 97-1186, 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 TWO HUNDRED TWENTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-TWO DOLLARS (\$228,272).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 1998, 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 THREE HUNDRED SIXTEEN THOUSAND SIX HUNDRED THIRTY-FIVE DOLLARS (\$316,635).

(c) FOR THE FISCAL YEAR BEGINNING JULY 1, 1999, 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 THREE HUNDRED TWENTY-THREE THOUSAND NINE HUNDRED NINETY-EIGHT DOLLARS (\$323,998).

(d) FOR THE FISCAL YEAR BEGINNING JULY 1, 2000, 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 ONE HUNDRED EIGHTY-FOUR THOUSAND NINETY DOLLARS (\$184,090).

(e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2001, 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 ONE HUNDRED FIFTY-FOUR THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS (\$154,636).

SECTION 3. The introductory portion to 24-75-302 (2) and 24-75-302 (2) (j) and (2) (k), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended, and the said 24-75-302 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, 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~~ JULY 1, 2001, 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 TWO HUNDRED TWENTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-TWO DOLLARS PURSUANT TO H.B. 97-1186, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY;
and

(k) On July 1, 1998, fifty million dollars PLUS THREE HUNDRED SIXTEEN

THOUSAND SIX HUNDRED THIRTY-FIVE DOLLARS PURSUANT TO H.B. 97-1186, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY;

(l) ON JULY 1, 1999, THREE HUNDRED TWENTY-THREE THOUSAND NINE HUNDRED NINETY-EIGHT DOLLARS PURSUANT TO H.B. 97-1186, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY;

(m) ON JULY 1, 2000, ONE HUNDRED EIGHTY-FOUR THOUSAND NINETY DOLLARS PURSUANT TO H.B. 97-1186, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY; AND

(n) ON JULY 1, 2001, ONE HUNDRED FIFTY-FOUR THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS PURSUANT TO H.B. 97-1186, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY.

SECTION 4. No appropriation. The general assembly has determined that, with regard to the operational costs of the department of corrections, this act can be implemented within existing appropriations, and therefore no additional appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 1997, and shall apply to offenses committed on or after said date.

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: June 4, 1997