

CHAPTER 139

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 98-1177

BY REPRESENTATIVES Agler, Adkins, Allen, Epps, Hagedorn, Kaufman, Kreutz, Lawrence, Mace, McPherson, Musgrave, Nichol, Salaz, Spradley, Tucker, and Young;
also SENATORS Hopper and Arnold.

AN ACT

CONCERNING SEX OFFENDERS.

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

SECTION 1. 18-3-412.5, Colorado Revised Statutes, is amended to read:

18-3-412.5. Sex offenders - duty to register - penalties. (1) (a) EFFECTIVE JULY 1, 1998, THE FOLLOWING PERSONS SHALL BE REQUIRED TO REGISTER PURSUANT TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION AND SHALL BE SUBJECT TO THE REQUIREMENTS AND OTHER PROVISIONS SPECIFIED IN THIS SECTION:

(I) ANY PERSON WHO WAS CONVICTED ON OR AFTER JULY 1, 1991, IN THE STATE OF COLORADO, OF AN UNLAWFUL SEXUAL OFFENSE, AS DEFINED IN SECTION 18-3-411 (1), OR ENTICEMENT OF A CHILD, AS DESCRIBED IN SECTION 18-3-305;

(II) ANY PERSON WHO WAS CONVICTED ON OR AFTER JULY 1, 1991, IN ANOTHER STATE OF AN OFFENSE THAT, IF COMMITTED IN COLORADO, WOULD CONSTITUTE AN UNLAWFUL SEXUAL OFFENSE, AS DEFINED IN SECTION 18-3-411 (1), OR ENTICEMENT OF A CHILD, AS DESCRIBED IN SECTION 18-3-305; AND

(III) ANY PERSON WHO WAS RELEASED ON OR AFTER JULY 1, 1991, FROM THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS HAVING SERVED A SENTENCE FOR AN UNLAWFUL SEXUAL OFFENSE, AS DEFINED IN SECTION 18-3-411 (1), OR ENTICEMENT OF A CHILD, AS DESCRIBED IN SECTION 18-3-305.

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

(b) 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 defined in this subsection (1) and any person who has been convicted on and after July 1, 1994, in any other state of an offense that, if committed in the state of Colorado, would constitute an offense involving unlawful sexual behavior 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 defined in this subsection (1) shall be required to register in the manner prescribed in ~~subsection (2)~~ SUBSECTION (3) of this section. For purposes of this section, "unlawful sexual behavior" is defined as:

- (a) (I) Sexual assault in the first degree, in violation of section 18-3-402;
- (b) (II) Sexual assault in the second degree, in violation of section 18-3-403;
- (c) (III) Sexual assault in the third degree, in violation of section 18-3-404;
- (d) (IV) Sexual assault on a child, in violation of section 18-3-405;
- (e) (V) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3;
- (f) (VI) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5;
- (g) (VII) Enticement of a child, in violation of section 18-3-305;
- (h) (VIII) Incest, in violation of section 18-6-301;
- (i) (IX) Aggravated incest, in violation of section 18-6-302;
- (j) (X) Trafficking in children, in violation of section 18-6-402;
- (k) (XI) Sexual exploitation of children, in violation of section 18-6-403;
- (l) (XII) Procurement of a child for sexual exploitation, in violation of section 18-6-404;
- (m) (XIII) Indecent exposure, in violation of section 18-7-302;
- (n) (XIV) Soliciting for child prostitution, in violation of section 18-7-402;
- (o) (XV) Pandering of a child, in violation of section 18-7-403;
- (p) (XVI) Procurement of a child, in violation of section 18-7-403.5;
- (q) (XVII) Keeping a place of child prostitution, in violation of section 18-7-404;

~~(r)~~ (XVIII) Pimping of a child, in violation of section 18-7-405;

~~(s)~~ (XIX) Inducement of child prostitution, in violation of section 18-7-405.5;

~~(t)~~ (XX) Patronizing a prostituted child, in violation of section 18-7-406;

~~(u)~~ (XXI) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in ~~paragraphs (a) to (t) of this subsection (1)~~ SUBPARAGRAPHS (I) TO (XX) OF THIS PARAGRAPH (b);

~~(v)~~ (XXII) A deferred judgment and sentence OR A DEFERRED ADJUDICATION for any of the offenses specified in ~~paragraphs (a) to (u) of this subsection (1)~~ SUBPARAGRAPHS (I) TO (XXI) OF THIS PARAGRAPH (b); and

~~(w)~~ (XXIII) Any offense that has a factual basis of one of the offenses specified in ~~paragraphs (a) to (u) of this subsection (1)~~ SUBPARAGRAPHS (I) TO (XXI) OF THIS PARAGRAPH (b).

(c) FOR PURPOSES OF THIS SECTION, "CONVICTED" INCLUDES HAVING PLEADED GUILTY OR NOLO CONTENDERE.

(2) (a) ~~On and after July 1, 1994,~~ Probation and parole officers, appropriate county jail personnel, and appropriate personnel with the department of corrections AND THE DEPARTMENT OF HUMAN SERVICES 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. DEPARTMENT OF CORRECTIONS PERSONNEL AND DEPARTMENT OF HUMAN SERVICES PERSONNEL SHALL REQUIRE ANY OFFENDER DESCRIBED IN SUBSECTION (1) OF THIS SECTION TO SPECIFY, AT LEAST FIVE DAYS PRIOR TO RELEASE INTO THE COMMUNITY, THE ADDRESS AT WHICH THE OFFENDER PLANS TO RESIDE UPON RELEASE.

(b) 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.

(c) The ~~same~~ persons SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2), after obtaining a signed notice from an offender, shall notify local law enforcement agencies ~~where~~ OF THE JURISDICTION IN WHICH 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.

(3) (a) Each person who is required to register pursuant to subsection (1) of this section, within seven calendar days of becoming a temporary or permanent resident of any city, town, county, or city and county in the state of Colorado, and annually thereafter ON THE PERSON'S BIRTH DATE OR THE FIRST BUSINESS DAY AFTER THE

PERSON'S BIRTH DATE so long as the person resides in the city, town, county, or city and county, shall register with the local law enforcement agency in the place of such person's temporary or permanent residence by completing a registration form provided to such person by the local law enforcement agency. Such registration form shall contain such information regarding such person as shall be required by the local law enforcement agency pursuant to subsection (5) of this section.

(b) Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief of police of such city, town, or city and county. Persons who reside outside of the corporate limits of any city, town, or city and county shall register at the office of the county sheriff of the county where such person resides.

(c) Any person who is required to register pursuant to subsection (1) of this section shall be required to register each time such person:

(I) Changes such person's temporary or permanent address, regardless of whether such person has moved to a new address within the jurisdiction of the law enforcement agency with which such person previously registered;

(II) LEGALLY CHANGES SUCH PERSON'S NAME.

(d) UPON MOVING TO A NEW JURISDICTION, ANY PERSON WHO IS REQUIRED TO REGISTER PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION FROM WHICH THE PERSON MOVED BY COMPLETING A WRITTEN FORM OF CHANGE OF RESIDENCY, AVAILABLE FROM THE LOCAL LAW ENFORCEMENT AGENCY. AT A MINIMUM, THE CHANGE OF RESIDENCY FORM SHALL INDICATE THE PERSON'S PREVIOUS RESIDENTIAL ADDRESS AND THE PERSON'S NEW RESIDENTIAL ADDRESS. THE PERSON SHALL FILE THE CHANGE OF RESIDENCY FORM WITHIN SEVEN DAYS AFTER MOVING TO A NEW JURISDICTION.

(3.5) (a) Within seven calendar days after becoming a temporary or permanent resident of any city, town, county, or city and county in the state of Colorado, and quarterly thereafter so long as the person resides in the city, town, county, or city and county, each person who is sentenced as a sexually violent predator pursuant to section 18-3-414.5, shall register with the local law enforcement agency in the place of such person's temporary or permanent residence by completing a registration form provided to such person by the local law enforcement agency. The registration form shall contain such information regarding the person as shall be required by the local law enforcement agency pursuant to subsection (5) of this section.

(b) Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief of police of such city, town, or city and county. Persons who reside outside of such corporate limits shall register at the office of the county sheriff of the county where the person resides.

(c) Each person who is sentenced as a sexually violent predator pursuant to section 18-3-414.5 shall be required to register each time the person:

(I) Changes his or her temporary or permanent address, regardless of whether the person has moved to a new address within the jurisdiction of the law enforcement

agency with which the person previously registered;

(II) LEGALLY CHANGES HIS OR HER NAME.

~~(d) The provisions of this subsection (3.5) shall not apply to any person adjudicated a juvenile delinquent for an offense that could qualify the person as a sexually violent predator if the offense had been committed by an adult.~~

(4) (a) Any person WHO IS REQUIRED TO REGISTER PURSUANT TO SUBSECTION (1) OF THIS SECTION AND who fails to register pursuant to this section, or any person who submits a registration form containing false information, COMMITS ANY OF THE ACTS SPECIFIED IN THIS PARAGRAPH (a) commits the offense of failure to register as a sex offender:

(I) FAILURE TO REGISTER PURSUANT TO THIS SECTION;

(II) SUBMISSION OF A REGISTRATION FORM CONTAINING FALSE INFORMATION;

(III) IF THE PERSON HAS BEEN INCARCERATED OR COMMITTED DUE TO CONVICTION OF OR ADJUDICATION FOR AN OFFENSE SPECIFIED IN SUBSECTION (1) OF THIS SECTION, FAILURE TO PROVIDE NOTICE OF THE ADDRESS WHERE THE PERSON PLANS TO RESIDE UPON RELEASE TO DEPARTMENT OF CORRECTIONS PERSONNEL OR DEPARTMENT OF HUMAN SERVICES PERSONNEL, WHICHEVER IS APPROPRIATE, AT LEAST FIVE DAYS PRIOR TO RELEASE FROM THE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF HUMAN SERVICES;

(IV) FAILURE WHEN REGISTERING TO PROVIDE THE PERSON'S CURRENT NAME AND ANY FORMER NAMES;

(V) FAILURE TO REREGISTER WITH THE LOCAL LAW ENFORCEMENT AGENCY IN THE PLACE OF THE PERSON'S TEMPORARY OR PERMANENT RESIDENCE WITHIN SEVEN DAYS AFTER THE EFFECTIVE DATE OF A NAME CHANGE.

(b) 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.

(c) 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.

(5) Each local law enforcement agency in the state of Colorado shall prepare registration forms to be utilized to comply with this section. Such forms shall be used to register persons pursuant to this section. The forms shall provide that the persons required to register pursuant to this section disclose such information as required by the local law enforcement agency. The information required by the local law

enforcement agency shall include, but need not be limited to:

(a) The name, address, and place of employment of the person required to register;

(b) ALL NAMES USED AT ANY TIME BY THE PERSON REQUIRED TO REGISTER, INCLUDING BOTH ALIASES AND LEGAL NAMES.

(6) (a) 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 shall establish a central registry of persons required to register pursuant to this section as soon as computerized resources are available.

(b) 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 agency, except as provided in subsections (6.5) and (6.7) of this section.

(c) 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 NAMES, 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. AT A MINIMUM, the system shall build in cross validation of the offender's KNOWN NAMES AND known address ADDRESSES 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 NAMES OR known address ADDRESSES 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.

(d) UPON DEVELOPMENT OF THE INTERACTIVE DATA BASE SYSTEM SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (6), PERSONNEL IN THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF CORRECTIONS, AND THE DEPARTMENT OF HUMAN SERVICES SHALL BE RESPONSIBLE FOR ENTERING AND MAINTAINING IN THE INTERACTIVE DATA BASE SYSTEM THE INFORMATION SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (6) FOR PERSONS IN THEIR LEGAL OR PHYSICAL CUSTODY. EACH LOCAL LAW ENFORCEMENT AGENCY SHALL BE RESPONSIBLE FOR ENTERING AND MAINTAINING IN THE INTERACTIVE DATA BASE SYSTEM THE INFORMATION FOR PERSONS REGISTERED WITH THE AGENCY WHO ARE NOT IN THE PHYSICAL OR LEGAL CUSTODY OF THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF CORRECTIONS, OR THE DEPARTMENT OF HUMAN SERVICES.

(6.5) (a) The general assembly finds that persons convicted of offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety. The general assembly further finds that the public must have limited access to information concerning persons convicted of offenses involving unlawful sexual behavior that is collected pursuant to this section to allow them to adequately protect themselves and their children from these persons. The

general assembly declares, however, that, in making this information available on a limited basis to the public, it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of an offense involving unlawful sexual behavior.

(b) When necessary for public protection, a local law enforcement agency may release information regarding any person registered with the local law enforcement agency pursuant to this section to any person residing within the local law enforcement agency's jurisdiction. Any person requesting information pursuant to this paragraph (b) shall show proper identification or other proof of residence.

(c) A local law enforcement agency may release information regarding any person registered with the local law enforcement agency pursuant to this section to any person living outside the local law enforcement agency's jurisdiction when necessary for public protection and upon request and demonstration of a need to know. In determining whether the person has demonstrated a need to know, the local law enforcement agency shall, at a minimum, consider the nature and extent of the person's presence or the presence of the person's immediate family in the local law enforcement agency's jurisdiction. For purposes of this subsection (6.5), "immediate family" includes the person's spouse and the person's parent, grandparent, sibling, or child.

(d) Information released pursuant to paragraph (b) or (c) of this subsection (6.5) may include basic identification information regarding the registrant, including a photograph if readily available, and a history of the convictions resulting in the registrant being required to register pursuant to this section.

(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 or to private criminal background check companies authorized to do business in the state of Colorado to ascertain whether such person has a criminal history, including arrest and conviction records. The Colorado bureau of investigation or private criminal background check companies are 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. The criminal background check shall be conducted not more than ninety days prior to the employment of the applicant. For purposes of this section, criminal background check companies shall be approved by the state board of nursing. In approving such companies, approval shall be based upon the provision of lawfully available, accurate, and thorough information pertaining to criminal histories, including arrest and conviction records. 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.;

(d) An alternative care facility as defined in section 26-4-603 (3), C.R.S.;

(e) Any business that provides temporary nursing care services or that provides personnel who provide such services.

(7) (a) Any person required to register pursuant to subsection (1) or (3.5) of this section may petition the district court for an order ~~which~~ THAT discontinues the requirement for such registration as follows:

~~(a)~~ (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (IV) AND (V) OF THIS PARAGRAPH (a), if the offense ~~which~~ THAT required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of any offense involving unlawful sexual behavior;

~~(b)~~ (II) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (IV) AND (V) OF THIS PARAGRAPH (a), if the offense ~~which~~ THAT required such person to register constituted or would constitute a class 4, 5, or 6 felony, after a period of ten years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of any offense involving unlawful sexual behavior;

~~(c)~~ (III) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (IV) AND (V) OF THIS PARAGRAPH (a), if the offense ~~which~~ THAT required such person to register constituted or would constitute a misdemeanor, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of any offense involving unlawful sexual behavior;

(IV) IF THE PERSON WAS REQUIRED TO REGISTER DUE TO BEING PLACED ON A DEFERRED JUDGMENT AND SENTENCE OR A DEFERRED ADJUDICATION FOR ANY OF THE OFFENSES SPECIFIED IN SUBSECTION (1) OF THIS SECTION, AFTER THE SUCCESSFUL COMPLETION OF THE DEFERRED JUDGMENT AND SENTENCE OR DEFERRED ADJUDICATION AND DISMISSAL OF THE CASE, IF THE PERSON PRIOR TO SUCH TIME HAS NOT BEEN SUBSEQUENTLY CONVICTED OF ANY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR;

(V) IF THE PERSON WAS LESS THAN SIXTEEN YEARS OF AGE AT THE TIME OF ADJUDICATION, AFTER THE SUCCESSFUL COMPLETION OF AND DISCHARGE FROM THE SENTENCE, IF THE PERSON PRIOR TO SUCH TIME HAS NOT BEEN SUBSEQUENTLY CONVICTED OF ANY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR. ANY PERSON PETITIONING PURSUANT TO THIS SUBPARAGRAPH (V) MAY ALSO PETITION FOR AN ORDER REMOVING HIS OR HER NAME FROM THE REGISTRY MAINTAINED PURSUANT TO SUBSECTION (6) OF THIS SECTION. IN DETERMINING WHETHER TO GRANT THE ORDER, THE COURT SHALL CONSIDER WHETHER THE PERSON IS LIKELY TO COMMIT A SUBSEQUENT SEXUAL OFFENSE. THE COURT SHALL BASE ITS DETERMINATION ON RECOMMENDATIONS FROM THE PERSON'S PROBATION OR PAROLE OFFICER, THE PERSON'S TREATMENT PROVIDER, AND THE PROSECUTING ATTORNEY FOR THE JURISDICTION IN WHICH THE PERSON WAS ADJUDICATED AND ON THE RECOMMENDATIONS INCLUDED IN THE PERSON'S PRESENTENCE INVESTIGATION.

(b) IN FILING A PETITION PURSUANT TO THIS SUBSECTION (7), THE PETITIONER SHALL IDENTIFY THE LOCAL LAW ENFORCEMENT AGENCY WITH WHICH THE PETITIONER IS REQUIRED TO REGISTER. UPON THE FILING OF THE PETITION, THE COURT SHALL SET A DATE FOR A HEARING AND SHALL NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY IDENTIFIED BY THE PETITIONER AND THE PROSECUTING ATTORNEY FOR THE JURISDICTION IN WHICH THE LOCAL LAW ENFORCEMENT AGENCY IS LOCATED. IF THE COURT ENTERS AN ORDER DISCONTINUING THE PETITIONER'S DUTY TO REGISTER, THE PETITIONER SHALL SEND A COPY OF THE ORDER TO THE LOCAL LAW ENFORCEMENT AGENCY AND THE COLORADO BUREAU OF INVESTIGATION.

(8) ~~Except as otherwise specified in subsection (3.5) of this section,~~ The provisions of this section shall apply to any person adjudicated as a juvenile based on the commission of any act described in subsection (1) of this section OR WHO RECEIVES A DEFERRED ADJUDICATION BASED ON COMMISSION OF ANY OF SAID ACTS; except that, with respect to ~~paragraphs (a) to (e) of subsection (7) of this section~~ SUBPARAGRAPHS (I) TO (V) OF PARAGRAPH (a) OF SUBSECTION (7) OF THIS SECTION, a person may petition the court for an order to discontinue the duty to register as provided in those ~~paragraphs~~ SUBPARAGRAPHS but only if the person has not subsequently been adjudicated as a juvenile or convicted of any offense involving unlawful sexual behavior. In addition, the duty to provide notice to an offender of the duty to register, as set forth in subsection (2) of this section, shall apply to juvenile parole and probation officers and appropriate personnel of the division of youth corrections in the department of human services.

(9) State agencies and their employees and local law enforcement agencies and their employees are immune from civil or criminal liability for the good faith implementation of this section.

SECTION 2. 18-3-414.5, Colorado Revised Statutes, is amended to read:

18-3-414.5. Sexually violent predator. (†) As used in this section, unless the context otherwise requires:

(1) "Sexually violent predator" means an offender:

(a) WHO IS EIGHTEEN YEARS OF AGE OR OLDER AS OF THE DATE THE OFFENSE IS COMMITTED OR WHO IS LESS THAN EIGHTEEN YEARS OF AGE AS OF THE DATE THE OFFENSE IS COMMITTED BUT IS TRIED AS AN ADULT PURSUANT TO SECTION 19-2-517 OR 19-2-518, C.R.S.;

~~(a)~~ (b) Who has been convicted on or after January 1, 1999, of one of the following offenses:

(I) Sexual assault in the first degree, in violation of section 18-3-402;

(II) Sexual assault in the second degree, in violation of section 18-3-403;

(III) Sexual assault in the third degree, in violation of section 18-3-404 (1.5) or (2);

(IV) Sexual assault on a child, in violation of section 18-3-405; or

(V) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3;

~~(b)~~ (c) Whose victim was a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and

~~(e)~~ (d) Who, based upon the results of a risk assessment screening instrument developed by the division of criminal justice in consultation with and approved by the sex offender treatment MANAGEMENT board established pursuant to section 16-11.7-103 (1), C.R.S., is likely to subsequently commit one or more of the offenses specified in ~~paragraph (a)~~ PARAGRAPH (b) of this subsection (1) under the circumstances described in ~~paragraph (b)~~ PARAGRAPH (c) of this subsection (1).

(2) "CONVICTED" INCLUDES HAVING PLEADED GUILTY OR NOLO CONTENDERE.

SECTION 3. 18-6-403 (2) (j), the introductory portion to 18-6-403 (3), and 18-6-403 (3) (b) and (3) (c), Colorado Revised Statutes, are amended to read:

18-6-403. Sexual exploitation of children. (2) As used in this section, unless the context otherwise requires:

(j) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, ~~or~~ chemically, OR DIGITALLY reproduced visual material ~~which~~ THAT depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(3) A person commits sexual exploitation of a child if, for any purpose, he OR SHE knowingly:

(b) Prepares, arranges for, publishes, INCLUDING BUT NOT LIMITED TO PUBLISHING THROUGH DIGITAL OR ELECTRONIC MEANS, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, INCLUDING BUT NOT LIMITED TO DISTRIBUTING THROUGH DIGITAL OR ELECTRONIC MEANS, any sexually exploitative material; or

(c) Possesses with the intent to deal in, sell, or distribute, INCLUDING BUT NOT LIMITED TO DISTRIBUTING THROUGH DIGITAL OR ELECTRONIC MEANS, any sexually exploitative material for any commercial purpose; or

SECTION 4. 19-1-306 (7), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-1-306. Expungement of juvenile delinquent records. (7) The following persons are not eligible to petition for the expungement of any juvenile record:

(d) ANY PERSON WHO HAS BEEN ADJUDICATED FOR AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S.

SECTION 5. Repeal. 19-1-306 (9), Colorado Revised Statutes, is repealed as follows:

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 6. 18-1-105 (1) (a) (V) (C), Colorado Revised Statutes, is amended to read:

18-1-105. Felonies classified - presumptive penalties.
(1) (a) (V) (C) Notwithstanding sub-subparagraph (A) of this subparagraph (V), the mandatory period of parole for a person convicted of a felony offense COMMITTED PRIOR TO JULY 1, 1996, pursuant to part 4 of article 3 of this title, or part 3 of article 6 of this title, shall be five years. NOTWITHSTANDING SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (V), THE PERIOD OF PAROLE FOR A PERSON CONVICTED OF A FELONY OFFENSE COMMITTED ON OR AFTER JULY 1, 1996, PURSUANT TO PART 4 OF ARTICLE 3 OF THIS TITLE, OR PART 3 OF ARTICLE 6 OF THIS TITLE, SHALL BE SET BY THE STATE BOARD OF PAROLE PURSUANT TO SECTION 17-2-201 (5) (a.5), C.R.S., BUT IN NO EVENT SHALL THE TERM OF PAROLE EXCEED THE MAXIMUM SENTENCE IMPOSED UPON THE INMATE BY THE COURT.

SECTION 7. 18-3-407, Colorado Revised Statutes, is amended to read:

18-3-407. Victim's and witness' prior history - evidentiary hearing.
(1) Evidence of specific instances of the victim's OR A WITNESS' prior or subsequent sexual conduct, opinion evidence of the victim's OR A WITNESS' sexual conduct, and reputation evidence of the victim's OR A WITNESS' sexual conduct shall be presumed to be irrelevant except:

(a) Evidence of the victim's OR WITNESS' prior or subsequent sexual conduct with the actor;

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered for the purpose of showing that the act or acts charged were or were not committed by the defendant.

(2) In any criminal prosecution under ~~sections 18-3-402 to 18-3-405~~ SECTIONS 18-3-402 TO 18-3-405.5, 18-6-301, 18-6-302, 18-6-403, and 18-6-404, or for attempt or conspiracy to commit any crime under ~~sections 18-3-402 to 18-3-405~~ SECTIONS 18-3-402 TO 18-3-405.5, 18-6-301, 18-6-302, 18-6-403, and 18-6-404, if evidence, ~~which~~ THAT is not excepted under subsection (1) of this section, of specific instances of the victim's OR A WITNESS' prior or subsequent sexual conduct, or opinion evidence of the victim's OR A WITNESS' sexual conduct, or reputation evidence of the victim's OR A WITNESS' sexual conduct, or evidence that the victim OR A WITNESS has a history of false reporting of sexual assaults is to be offered at trial, the following procedure shall be followed:

(a) A written motion shall be made at least thirty days prior to trial, unless later for good cause shown, to the court and to the opposing parties stating that the moving party has an offer of proof of the relevancy and materiality of evidence of specific instances of the victim's OR WITNESS' prior or subsequent sexual conduct, or opinion evidence of the victim's OR WITNESS' sexual conduct, or reputation evidence of the

victim's OR WITNESS' sexual conduct, or evidence that the victim OR WITNESS has a history of false reporting of sexual assaults ~~which~~ THAT is proposed to be presented.

(b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall notify the other party of such and set a hearing to be held in camera prior to trial. In such hearing, the court shall allow the questioning of the victim OR WITNESS regarding the offer of proof made by the moving party and shall otherwise allow a full presentation of the offer of proof including, but not limited to, the presentation of witnesses.

(d) An in camera hearing may be held during trial if evidence first becomes available at the time of the trial or for good cause shown.

(e) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered regarding the sexual conduct of the victim OR WITNESS is relevant to a material issue to the case, the court shall order that evidence may be introduced and prescribe the nature of the evidence or questions to be permitted. The moving party may then offer evidence pursuant to the order of the court.

SECTION 8. The introductory portion to 18-3-407 (2), Colorado Revised Statutes, is amended to read:

18-3-407. Victim's prior history - evidentiary hearing. (2) In any criminal prosecution under ~~sections 18-3-402 to 18-3-405~~, SECTIONS 18-3-402 TO 18-3-405.5, 18-6-301, 18-6-302, 18-6-403, and 18-6-404, or for attempt or conspiracy to commit any crime under ~~sections 18-3-402 to 18-3-405~~, SECTIONS 18-3-402 TO 18-3-405.5, 18-6-301, 18-6-302, 18-6-403, and 18-6-404, if evidence, which is not excepted under subsection (1) of this section, of specific instances of the victim's prior or subsequent sexual conduct, or opinion evidence of the victim's sexual conduct, or reputation evidence of the victim's sexual conduct, or evidence that the victim has a history of false reporting of sexual assaults is to be offered at trial, the following procedure shall be followed:

SECTION 9. The introductory portion to 16-11.7-103 (1) and 16-11.7-103 (4) (c.5), Colorado Revised Statutes, are amended, and the said 16-11.7-103 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

16-11.7-103. Sex offender management board - creation - duties - repeal. (1) There is hereby created, in the department of public safety, a sex offender treatment board which shall consist of ~~fourteen~~ FIFTEEN members. The membership of the board shall consist of the following persons:

(d.5) ONE MEMBER APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT WHO IS A JUDGE;

(4) The board shall carry out the following duties:

(c.5) On or before January 1, 1999, the board shall consult on and approve the risk assessment screening instrument developed by the division of criminal justice to assist

the sentencing court in determining the likelihood that an offender would commit one or more of the offenses specified in ~~section 18-3-414.5 (1) (a)~~ SECTION 18-3-414.5 (1) (b), C.R.S., under the circumstances described in ~~section 18-3-414.5 (1) (b)~~ SECTION 18-3-414.5 (1) (c), C.R.S. No state general fund moneys shall be used to develop the risk assessment screening instrument. In carrying out this duty, the board shall consider sex offender risk assessment research and shall consider as one element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses. For purposes of this subsection (4) only, "mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a significant risk to the health and safety of other persons. If a defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to section 18-3-412.5 (3.5), C.R.S.

SECTION 10. 24-33.5-503 (1) (o), Colorado Revised Statutes, is amended to read:

24-33.5-503. Duties of division. (1) The division has the following duties:

(o) To develop, in consultation with the sex offender ~~treatment~~ MANAGEMENT board and the judicial branch by January 1, 1999, the risk assessment screening instrument which will be provided to the sentencing courts to determine the likelihood that a sex offender would commit one or more of the offenses specified in ~~section 18-3-414.5 (1) (a)~~ SECTION 18-3-414.5 (1) (b), C.R.S., under the circumstances described in ~~section 18-3-414.5 (1) (b)~~ SECTION 18-3-414.5 (1) (c), C.R.S.;

SECTION 11. 16-11.7-102 (1), Colorado Revised Statutes, is amended to read:

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

(1) "Board" means the sex offender ~~treatment~~ MANAGEMENT board created in section 16-11.7-103.

SECTION 12. The introductory portion to 16-11.7-103 (1) and 16-11.7-103 (6) (b), Colorado Revised Statutes, are amended to read:

16-11.7-103. Sex offender management board - creation - duties - repeal.

(1) There is hereby created, in the department of public safety, a sex offender ~~treatment~~ MANAGEMENT board ~~which~~ THAT shall consist of fourteen members. The membership of the board shall consist of the following persons:

(6) (b) Prior to said repeal, the sex offender ~~treatment~~ MANAGEMENT board appointed pursuant to this section shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 13. 24-34-104 (30) (d), Colorado Revised Statutes, is amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (30) (d) The following board in the department of public safety shall terminate on July 1, 2001: The sex offender ~~treatment~~ MANAGEMENT board, created by section 16-11.7-103, C.R.S.

SECTION 14. 24-33.5-415.5, Colorado Revised Statutes, is amended 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.~~ THE FUND SHALL ALSO INCLUDE ANY ADDITIONAL MONEYS THAT MAY BE APPROPRIATED THERETO BY THE GENERAL ASSEMBLY TO FUND THE COSTS INCURRED IN GENETIC TESTING OF SEX OFFENDERS. 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 15. 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 16. Effective date - applicability. This act shall take effect upon passage, and section 18-3-412.5 (4), Colorado Revised Statutes, as amended in section 1 of this act and section 3 of this act shall apply to offenses committed on or after said date.

SECTION 17. 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: April 21, 1998