

CHAPTER 301

CRIMINAL LAW AND PROCEDURE

SENATE BILL 98-008

BY SENATORS Wells and Arnold;
also REPRESENTATIVES Adkins, Epps, Hefley, and Tool.**AN ACT**

CONCERNING THE ELIMINATION OF PRELIMINARY HEARINGS IN CERTAIN CLASSES OF FELONIES.

*Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 16-5-301 (1), Colorado Revised Statutes, is amended to read:**16-5-301. Preliminary hearing or waiver - dispositional hearing.**

(1) (a) Every person accused of a CLASS 1, 2, OR 3 felony by direct information or felony complaint has the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information or felony complaint was committed by the defendant. IN ADDITION, ONLY THOSE PERSONS ACCUSED OF A CLASS 4, 5, OR 6 FELONY BY DIRECT INFORMATION OR FELONY COMPLAINT WHICH FELONY REQUIRES MANDATORY SENTENCING OR IS A CRIME OF VIOLENCE AS DEFINED IN SECTION 16-11-309 OR IS A SEXUAL OFFENSE UNDER PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., SHALL HAVE THE RIGHT TO DEMAND AND RECEIVE A PRELIMINARY HEARING WITHIN A REASONABLE TIME TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT THE OFFENSE CHARGED IN THE INFORMATION OR FELONY COMPLAINT WAS COMMITTED BY THE DEFENDANT. The procedure to be followed in asserting the right to a preliminary hearing and the time within which demand therefor must be made, as well as the time within which the hearing, if demanded, shall be had, shall be as provided by applicable rule of the supreme court of Colorado. A failure to observe and substantially comply with such rule shall be deemed a waiver of this right to a preliminary hearing.

(b) (I) NO PERSON ACCUSED OF A CLASS 4, 5, OR 6 FELONY BY DIRECT

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

INFORMATION OR FELONY COMPLAINT, EXCEPT THOSE WHICH REQUIRE MANDATORY SENTENCING OR WHICH ARE CRIMES OF VIOLENCE AS DEFINED IN SECTION 16-11-309 OR WHICH ARE SEXUAL OFFENSES UNDER PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., SHALL HAVE THE RIGHT TO DEMAND OR RECEIVE A PRELIMINARY HEARING; EXCEPT THAT SUCH PERSON SHALL PARTICIPATE IN A DISPOSITIONAL HEARING FOR THE PURPOSES OF CASE EVALUATION AND POTENTIAL RESOLUTION.

(II) ANY DEFENDANT ACCUSED OF A CLASS 4, 5, OR 6 FELONY WHO IS NOT OTHERWISE ENTITLED TO A PRELIMINARY HEARING PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), MAY DEMAND AND SHALL RECEIVE A PRELIMINARY HEARING WITHIN A REASONABLE TIME PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), IF THE DEFENDANT IS IN CUSTODY; EXCEPT THAT, UPON MOTION OF EITHER PARTY, THE COURT SHALL VACATE THE PRELIMINARY HEARING IF THERE IS A REASONABLE SHOWING THAT THE DEFENDANT HAS BEEN RELEASED FROM CUSTODY PRIOR TO THE PRELIMINARY HEARING.

(III) THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT IS ENCOURAGED TO PROMULGATE RULES DEFINING THE TERM "DISPOSITIONAL HEARING" FOR PURPOSES OF THIS PARAGRAPH (b), SECTION 18-1-404 (2), C.R.S., AND SECTION 19-2-705 (1.5), C.R.S.

SECTION 2. 18-1-404, Colorado Revised Statutes, is amended to read:

18-1-404. Preliminary hearing or waiver - dispositional hearing. (1) Every person accused of a CLASS 1, 2, OR 3 felony by direct information or felony complaint has the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. IN ADDITION, ONLY THOSE PERSONS ACCUSED OF A CLASS 4, 5, OR 6 FELONY BY DIRECT INFORMATION OR FELONY COMPLAINT WHICH FELONY REQUIRES MANDATORY SENTENCING OR IS A CRIME OF VIOLENCE AS DEFINED IN SECTION 16-11-309, C.R.S., OR IS A SEXUAL OFFENSE UNDER PART 4 OF ARTICLE 3 OF THIS TITLE, SHALL HAVE THE RIGHT TO DEMAND AND RECEIVE A PRELIMINARY HEARING WITHIN A REASONABLE TIME TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT THE OFFENSE CHARGED IN THE INFORMATION OR FELONY COMPLAINT WAS COMMITTED BY THE DEFENDANT. The procedure to be followed in asserting the right to a preliminary hearing, and the time within which demand therefor must be made, as well as the time within which the hearing, if demanded, shall be had, shall be as provided by rule of the supreme court of the state of Colorado. A failure to observe and substantially comply with such rule is a waiver of the right to a preliminary hearing.

(2) (a) NO PERSON ACCUSED OF A CLASS 4, 5, OR 6 FELONY BY DIRECT INFORMATION OR FELONY COMPLAINT, EXCEPT THOSE WHICH REQUIRE MANDATORY SENTENCING OR WHICH ARE CRIMES OF VIOLENCE AS DEFINED IN SECTION 16-11-309, C.R.S., OR WHICH ARE SEXUAL OFFENSES UNDER PART 4 OF ARTICLE 3 OF THIS TITLE, SHALL HAVE THE RIGHT TO DEMAND OR RECEIVE A PRELIMINARY HEARING; EXCEPT THAT SUCH PERSON SHALL PARTICIPATE IN A DISPOSITIONAL HEARING FOR THE PURPOSES OF CASE EVALUATION AND POTENTIAL RESOLUTION.

(b) ANY DEFENDANT ACCUSED OF A CLASS 4, 5, OR 6 FELONY WHO IS NOT OTHERWISE ENTITLED TO A PRELIMINARY HEARING PURSUANT TO PARAGRAPH (a) OF

THIS SUBSECTION (2), MAY DEMAND AND SHALL RECEIVE A PRELIMINARY HEARING WITHIN A REASONABLE TIME PURSUANT TO SUBSECTION (1) OF THIS SECTION, IF THE DEFENDANT IS IN CUSTODY; EXCEPT THAT, UPON MOTION OF EITHER PARTY, THE COURT SHALL VACATE THE PRELIMINARY HEARING IF THERE IS A REASONABLE SHOWING THAT THE DEFENDANT HAS BEEN RELEASED FROM CUSTODY PRIOR TO THE PRELIMINARY HEARING.

SECTION 3. The introductory portion to 19-2-705 (1), Colorado Revised Statutes, is amended, and the said 19-2-705 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19-2-705. Preliminary hearing - dispositional hearing. (1) The district attorney or a juvenile who is accused in a petition of a delinquent act that constitutes a CLASS 1, 2, OR 3 felony may demand and receive a preliminary hearing to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. IN ADDITION, THE DISTRICT ATTORNEY OR A JUVENILE WHO IS ACCUSED IN A PETITION OF ONLY THOSE DELINQUENT ACTS THAT CONSTITUTE CLASS 4, 5, OR 6 FELONIES WHICH FELONIES REQUIRE MANDATORY SENTENCING OR WHICH CONSTITUTE CRIMES OF VIOLENCE AS DEFINED IN SECTION 16-11-309, C.R.S., OR WHICH CONSTITUTE SEXUAL OFFENSES UNDER PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., MAY DEMAND AND RECEIVE A PRELIMINARY HEARING TO DETERMINE IF THERE IS PROBABLE CAUSE TO BELIEVE THAT THE DELINQUENT ACT ALLEGED IN THE PETITION WAS COMMITTED BY THE JUVENILE. A preliminary hearing may be heard by a judge of the juvenile court or by a magistrate and shall be conducted as follows:

(1.5) (a) THE DISTRICT ATTORNEY AND THE JUVENILE WHO IS ACCUSED IN A PETITION OF A DELINQUENT ACT THAT CONSTITUTES A CLASS 4, 5, OR 6 FELONY, EXCEPT THOSE THAT REQUIRE MANDATORY SENTENCING OR WHICH CONSTITUTE CRIMES OF VIOLENCE AS DEFINED IN SECTION 16-11-309, C.R.S., OR WHICH CONSTITUTE SEXUAL OFFENSES UNDER PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., SHALL NOT HAVE THE RIGHT TO DEMAND OR RECEIVE A PRELIMINARY HEARING BUT SHALL PARTICIPATE IN A DISPOSITIONAL HEARING FOR THE PURPOSES OF CASE EVALUATION AND POTENTIAL RESOLUTION. SUCH DISPOSITIONAL HEARING MAY BE HEARD BY A JUDGE OF THE JUVENILE COURT OR BY A MAGISTRATE.

(b) ANY JUVENILE ACCUSED OF A CLASS 4, 5, OR 6 FELONY WHO IS NOT OTHERWISE ENTITLED TO A PRELIMINARY HEARING PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5), MAY DEMAND AND SHALL RECEIVE A PRELIMINARY HEARING WITHIN A REASONABLE TIME PURSUANT TO SUBSECTION (1) OF THIS SECTION, IF THE JUVENILE IS IN CUSTODY; EXCEPT THAT, UPON MOTION OF EITHER PARTY, THE COURT SHALL VACATE THE PRELIMINARY HEARING IF THERE IS A REASONABLE SHOWING THAT THE JUVENILE HAS BEEN RELEASED FROM CUSTODY PRIOR TO THE PRELIMINARY HEARING.

SECTION 4. 13-6-106 (1) (b), Colorado Revised Statutes, is amended to read:

13-6-106. Original criminal jurisdiction. (1) The county court shall have concurrent original jurisdiction with the district court in the following criminal matters:

(b) The issuance of warrants, the conduct of preliminary examinations, THE

CONDUCT OF DISPOSITIONAL HEARINGS PURSUANT TO SECTION 16-5-301 (1), C.R.S., AND SECTION 18-1-404 (1), C.R.S., the issuance of bindover orders, and the admission to bail in felonies and misdemeanors.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 1998, 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 1, 1998