

CHAPTER 110

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 99-050

BY SENATORS Arnold, Chlouber, Congrove, Musgrave, Powers, and Tebedo;
also REPRESENTATIVES Mitchell, Allen, Coleman, Hagedorn, Leyba, Miller, Spence, Spradley, Stengel, Veiga, and Young.

AN ACT

CONCERNING SENTENCING CONSIDERATIONS FOR CERTAIN SERIOUS OFFENDERS.

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

SECTION 1. 19-2-905 (1), Colorado Revised Statutes, is amended to read:

19-2-905. Presentence investigation. (1) (a) Prior to the sentencing hearing, the juvenile probation department for the judicial district in which the juvenile is adjudicated shall conduct a presentence investigation unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The presentence investigation shall take into consideration and build on the intake assessment performed by the screening team. The presentence investigation may address, but is not limited to, the following:

(a) (I) The details of the offense;

(b) (II) Statements made by the victims of the offense;

(c) (III) The amount of restitution, if any, that should be imposed on the juvenile or the juvenile's parent, guardian, or legal custodian;

(d) (IV) The juvenile's previous criminal record, if any, ~~IF THE JUVENILE HAS NOT BEEN ADJUDICATED FOR AN ACT THAT CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1) (b), C.R.S.~~

(e) (V) Any history of substance abuse by the juvenile;

(f) (VI) The juvenile's education and employment history;

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

~~(g)~~ (VII) The juvenile's family;

~~(h)~~ (VIII) The juvenile's peer relationships;

~~(i)~~ (IX) The status of juvenile programs and community placements in the juvenile's judicial district of residence;

~~(j)~~ (X) Other related material;

~~(k)~~ (XI) Review of placement and commitment criteria adopted pursuant to section 19-2-212, which shall be the criteria for any sentencing recommendations included in the presentence investigation;

~~(l)~~ (XII) Assessment of the juvenile's needs; and

~~(m)~~ (XIII) Recommendations and a proposed treatment plan for the juvenile.

(b) IF THE JUVENILE HAS BEEN ADJUDICATED FOR AN ACT THAT CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1) (b), C.R.S., THEN THE REPORT ON THE PRESENTENCE INVESTIGATION SHALL INCLUDE THE JUVENILE'S PREVIOUS CRIMINAL AND JUVENILE DELINQUENCY RECORDS, IF ANY.

SECTION 2. 19-2-906 (1), Colorado Revised Statutes, is amended to read:

19-2-906. Sentencing hearing. (1) (a) After making a finding of guilt, the court shall hear evidence on the question of the proper disposition best serving the interests of the juvenile and the public. Such evidence shall include, but not necessarily be limited to, the social study and other reports as provided in section 19-1-107.

(b) IN THOSE CASES IN WHICH THE JUVENILE IS ADJUDICATED A JUVENILE DELINQUENT FOR AN ACT THAT CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1) (b), C.R.S., THE COURT SHALL CONSIDER THE JUVENILE'S PREVIOUS CRIMINAL AND JUVENILE DELINQUENCY RECORDS, IF ANY, SET FORTH IN THE PRESENTENCE INVESTIGATION REPORT PREPARED PURSUANT TO SECTION 19-2-905 (1) (b) IN DETERMINING THE PROPER DISPOSITION FOR THE JUVENILE AND THE PUBLIC.

SECTION 3. 16-11-102 (1) (a), Colorado Revised Statutes, is amended to read:

16-11-102. Presentence or probation investigation. (1) (a) Following the return of a verdict of guilty of a felony, other than a class 1 felony, or following a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge, or upon order of the court in any misdemeanor conviction, the probation officer shall make an investigation and written report to the court before the imposition of sentence. Each presentence report shall include a substance abuse assessment or evaluation made pursuant to article 11.5 of this title and, unless waived by the court, shall include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, INCLUDING THE DEFENDANT'S PAST JUVENILE DELINQUENCY RECORD, IF ANY, IF THE DEFENDANT HAS BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1) (b), C.R.S., an

evaluation of the alternative dispositions available for the defendant; the information required by the court pursuant to section 16-11-204.5; a victim impact statement; and such other information as the court may require. A victim impact statement shall be prepared by the district attorney's office on and after September 1, 1985. The department of human services shall provide the district attorney's office with the information necessary for the preparation of a victim impact statement. In addition, the court, in cases that it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted psychiatric examination of the defendant. No less than seventy-two hours prior to the sentencing hearing, copies of the presentence report, including any recommendations as to probation, shall be furnished to the prosecuting attorney and defense counsel or to the defendant if he OR SHE is unrepresented. A copy of the presentence report shall be transmitted to the department of corrections together with the mittimus.

SECTION 4. 16-11-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-11-101. Alternatives in sentencing - repeal. (3) (a) IN DETERMINING THE APPROPRIATE SENTENCING ALTERNATIVE FOR A DEFENDANT WHO HAS BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1) (b), C.R.S., THE SENTENCING COURT SHALL CONSIDER THE DEFENDANT'S PREVIOUS CRIMINAL AND JUVENILE DELINQUENCY RECORDS, IF ANY, SET FORTH IN THE PRESENCE INVESTIGATION REPORT PREPARED PURSUANT TO SECTION 16-11-102 (1) (a).

(b) FOR PURPOSES OF THIS SUBSECTION (3), "CONVICTED" MEANS A CONVICTION BY A JURY OR BY A COURT AND SHALL ALSO INCLUDE A DEFERRED JUDGMENT AND SENTENCE, A DEFERRED ADJUDICATION, AN ADJUDICATION, AND A PLEA OF GUILTY OR NOLO CONTENDERE.

SECTION 5. 19-1-304 (1) (a) (V), Colorado Revised Statutes, is amended to read:

19-1-304. Juvenile delinquency records. (1) (a) **Court records - open.** Except as provided in paragraph (b.5) of this subsection (1), court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance shall be open to inspection to the following persons without court order:

(V) The juvenile probation department AND THE ADULT PROBATION DEPARTMENT FOR PURPOSES OF A PRESENCE INVESTIGATION AND THE PREPARATION OF A PRESENCE REPORT AS DESCRIBED IN SECTION 16-11-102 (1) (a), C.R.S.;

SECTION 6. Effective date - applicability. This act shall take effect July 1, 1999, 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: April 15, 1999