

CHAPTER 289

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 99-1235

BY REPRESENTATIVES Veiga and Grossman;
also SENATOR Wham.

AN ACT

CONCERNING GENETIC TESTING OF PERSONS CONVICTED OF OFFENSES, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 16-11-204.3 (1) and (3), Colorado Revised Statutes, are amended to read:

16-11-204.3. Genetic testing as a condition of probation. (1) (a) A condition of probation for any offender convicted of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior shall be that the offender submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof.

(b) THE OFFENDER SHALL SUBMIT TO AND PAY FOR A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF AS A CONDITION OF PROBATION FOR THE CONVICTION OF ANY OF THE FOLLOWING OFFENSES OCCURRING ON OR AFTER JULY 1, 1999:

- (I) A CRIME OF VIOLENCE, AS DEFINED IN 16-11-309 (2);
- (II) SECOND DEGREE MURDER, IN VIOLATION OF SECTION 18-3-103 (1), C.R.S.;
- (III) FIRST DEGREE ASSAULT, IN VIOLATION OF SECTION 18-3-202 (1), C.R.S.;
- (IV) SECOND DEGREE ASSAULT, IN VIOLATION OF SECTION 18-3-203 (1) (b), (1) (c), (1) (d), (1) (g), OR (2) (b.5), C.R.S.;
- (V) SECOND DEGREE KIDNAPPING, IN VIOLATION OF SECTION 18-3-302 (4), C.R.S.;

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

(VI) FIRST DEGREE ARSON, IN VIOLATION OF SECTION 18-4-102 (3), C.R.S.;

(VII) BURGLARY IN THE FIRST DEGREE, IN VIOLATION OF SECTION 18-4-202, C.R.S.;

(VIII) AGGRAVATED ROBBERY, IN VIOLATION OF SECTION 18-4-302 (4), C.R.S.

(c) Collection of the blood sample shall occur within ninety days after being placed on probation, and the results thereof shall be filed and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.

(3) Any moneys received from offenders pursuant to PARAGRAPH (a) OF subsection (1) of this section shall be deposited in the sex offender identification fund created in section 24-33.5-415.5, C.R.S. ANY MONEYS RECEIVED FROM OFFENDERS PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SHALL BE DEPOSITED IN THE VIOLENT OFFENDER IDENTIFICATION FUND ESTABLISHED IN SECTION 24-33.5-415.6, C.R.S.

SECTION 2. 17-2-201 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

17-2-201. State board of parole. (5) (h) (I) AS A CONDITION OF PAROLE, THE BOARD MAY REQUIRE ANY PERSON FOUND GUILTY OF A SEXUAL OFFENSE UNDER THE DEPARTMENT'S CODE OF PENAL DISCIPLINE TO SUBMIT TO A TESTING OF THE PERSON'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF AND TO CHEMICAL TESTING OF HIS OR HER SALIVA TO DETERMINE THE SECRETOR STATUS THEREOF.

(II) IF SUCH TESTING IS REQUIRED, IT SHALL OCCUR PRIOR TO THE OFFENDER'S RELEASE FROM INCARCERATION, AND THE RESULTS THEREOF SHALL BE FILED WITH AND MAINTAINED BY THE COLORADO BUREAU OF INVESTIGATION. THE RESULTS OF SUCH TEST SHALL BE FURNISHED TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST.

(III) THE PROVISIONS OF THIS PARAGRAPH (h) SHALL APPLY TO ANY PERSON WHO IS SO ADJUDICATED FOR AN ACT COMMITTED ON OR AFTER JULY 1, 1999.

(I) (I) THE OFFENDER SHALL SUBMIT TO CHEMICAL TESTING OF HIS OR HER BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF AND TO CHEMICAL TESTING OF HIS OR HER SALIVA TO DETERMINE THE SECRETOR STATUS THEREOF AS A CONDITION OF PAROLE FOR CONVICTION OF ANY OF THE FOLLOWING OFFENSES:

(A) A CRIME OF VIOLENCE, AS DEFINED IN 16-11-309 (2), C.R.S.;

(B) SECOND DEGREE MURDER, IN VIOLATION OF SECTION 18-3-103 (1), C.R.S.;

(C) FIRST DEGREE ASSAULT, IN VIOLATION OF SECTION 18-3-202 (1), C.R.S.;

(D) SECOND DEGREE ASSAULT, IN VIOLATION OF SECTION 18-3-203 (1) (b), (1) (c), (1) (d), (1) (g), OR (2) (b.5), C.R.S.;

- (E) SECOND DEGREE KIDNAPPING, IN VIOLATION OF SECTION 18-3-302 (4), C.R.S.;
- (F) FIRST DEGREE ARSON, IN VIOLATION OF SECTION 18-4-102 (3), C.R.S.;
- (G) BURGLARY IN THE FIRST DEGREE, IN VIOLATION OF SECTION 18-4-202, C.R.S.;
- (H) AGGRAVATED ROBBERY, IN VIOLATION OF SECTION 18-4-302 (4), C.R.S.

(II) SUCH TESTING SHALL OCCUR PRIOR TO THE OFFENDER'S RELEASE FROM INCARCERATION, AND THE RESULTS THEREOF SHALL BE FILED WITH AND MAINTAINED BY THE COLORADO BUREAU OF INVESTIGATION. THE RESULTS OF SUCH TESTS SHALL BE FURNISHED TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST.

(III) THE PROVISIONS OF THIS PARAGRAPH (i) SHALL APPLY TO ANY PERSON WHO IS CONVICTED OF AN OFFENSE COMMITTED ON OR AFTER JULY 1, 1999.

SECTION 3. Part 4 of article 33.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33.5-415.6. Violent offender identification - fund. THERE IS HEREBY CREATED IN THE STATE TREASURY THE VIOLENT 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 (1) (b), C.R.S. 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 (1) (b), 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 4. 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~~ 16-11-204.3 (1) (a), C.R.S. 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~~ 16-11-204.3 (1) (a), 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 5. 24-72-302 (4), Colorado Revised Statutes, is amended to read:

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, which are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule, INCLUDING BUT NOT LIMITED TO THE RESULTS OF CHEMICAL TESTING TO DETERMINE THE GENETIC MARKERS CONDUCTED PURSUANT TO SECTIONS 16-11-204.3 AND 17-2-201 (5) (h) AND (5) (i), C.R.S.

SECTION 6. 24-72-305, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal.

(1.5) ON THE GROUND THAT DISCLOSURE WOULD BE CONTRARY TO THE PUBLIC INTEREST, THE CUSTODIAN OF CRIMINAL JUSTICE RECORDS SHALL DENY ACCESS TO THE RESULTS OF CHEMICAL TESTING TO DETERMINE THE GENETIC MARKERS CONDUCTED PURSUANT TO SECTIONS 16-11-204.3 AND 17-2-201 (5) (h) AND (5) (i), C.R.S.

SECTION 7. Appropriation - adjustment in 1999 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 1999, the sum of three hundred thirty-five thousand nine hundred ten dollars (\$335,910) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department for allocation to probation and related services, for the fiscal year beginning July 1, 1999, the sum of two thousand nine hundred fifty dollars (\$2,950), or so much thereof as may be necessary, for the implementation of this act.

(3) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 1999, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by three hundred thirty-eight thousand eight hundred sixty dollars (\$338,860).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by three hundred thirty-eight thousand eight hundred sixty dollars (\$338,860).

SECTION 8. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to offenses committed on or after said date.

SECTION 9.

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 2, 1999