

CHAPTER 118

CRIMINAL LAW AND PROCEDURE

SENATE BILL 00-014

BY SENATORS Epps, Chlouber, Evans, Powers, and Wham;
also REPRESENTATIVES Hefley, Decker, George, Kaufman, Lawrence, Mace, and Morrison.

AN ACT

CONCERNING THE ADMISSIBILITY INTO EVIDENCE OF VIDEOTAPED, OUT-OF-COURT STATEMENTS BY VICTIMS OF CRIMES AGAINST AT-RISK PERSONS.

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

SECTION 1. Article 6.5 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-6.5-103.5. Video tape depositions - at-risk adult victims and witnesses.

(1) IN ANY CASE IN WHICH A DEFENDANT IS CHARGED WITH A CRIME AGAINST AN AT-RISK ADULT, AS DESCRIBED IN SECTION 18-6.5-103, OR IN ANY CASE INVOLVING A VICTIM OR WITNESS WHO IS AN AT-RISK ADULT, AS DEFINED IN SECTION 18-6.5-102 (1), THE PROSECUTION MAY FILE A MOTION WITH THE COURT AT ANY TIME PRIOR TO COMMENCEMENT OF THE TRIAL, FOR AN ORDER THAT A DEPOSITION BE TAKEN OF THE TESTIMONY OF THE VICTIM OR WITNESS AND THAT THE DEPOSITION BE RECORDED AND PRESERVED ON VIDEO TAPE.

(2) THE PROSECUTION SHALL FILE A MOTION REQUESTING A VIDEOTAPED DEPOSITION AT LEAST THREE DAYS PRIOR TO THE TAKING OF THE DEPOSITION. THE DEFENDANT SHALL RECEIVE REASONABLE NOTICE OF THE TAKING OF THE DEPOSITION. THE DEFENDANT SHALL HAVE THE RIGHT TO BE PRESENT AND TO BE REPRESENTED BY COUNSEL AT THE DEPOSITION.

(3) UPON TIMELY RECEIPT OF THE MOTION, THE COURT SHALL MAKE A PRELIMINARY FINDING REGARDING WHETHER, AT THE TIME OF TRIAL, THE VICTIM OR WITNESS IS LIKELY TO BE MEDICALLY UNAVAILABLE OR OTHERWISE UNAVAILABLE WITHIN THE MEANING OF RULE 804 (a) OF THE COLORADO RULES OF EVIDENCE. SUCH FINDING, AT A MINIMUM, SHALL BE BASED ON RECOMMENDATIONS FROM THE VICTIM'S OR WITNESS' PHYSICIAN OR ANY OTHER PERSON HAVING DIRECT CONTACT WITH THE

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

VICTIM OR WITNESS, WHOSE RECOMMENDATIONS ARE BASED ON SPECIFIC BEHAVIORAL INDICATORS EXHIBITED BY THE VICTIM OR WITNESS. IF THE COURT SO FINDS, IT SHALL ORDER THAT THE DEPOSITION BE TAKEN, PURSUANT TO RULE 15 (d) OF THE COLORADO RULES OF CRIMINAL PROCEDURE, AND PRESERVED ON VIDEOTAPE. AFTER THE DEPOSITION IS TAKEN, THE PROSECUTION SHALL TRANSMIT THE VIDEO TAPE TO THE CLERK OF THE COURT IN WHICH THE ACTION IS PENDING.

(4) IF AT THE TIME OF TRIAL THE COURT FINDS THAT THE VICTIM OR WITNESS IS MEDICALLY UNAVAILABLE OR OTHERWISE UNAVAILABLE WITHIN THE MEANING OF RULE 804 (a) OF THE COLORADO RULES OF EVIDENCE, THE COURT MAY ADMIT THE VIDEO TAPE OF THE VICTIM'S OR WITNESS' DEPOSITION AS FORMER TESTIMONY UNDER RULE 804 (b) (1) OF THE COLORADO RULES OF EVIDENCE.

SECTION 2. 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 13, 2000