

CHAPTER 131

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 00-1216

BY REPRESENTATIVES Lawrence, Decker, Hagedorn, Kaufman, Spence, and Swenson;
also SENATORS Arnold, Chlouber, Epps, Evans, and Powers.

AN ACT

CONCERNING PROCEDURAL CHANGES FOR THE STRENGTHENING OF THE CRIMINAL LAWS.

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

SECTION 1. 18-3-415, Colorado Revised Statutes, is amended to read:

18-3-415. Acquired immune deficiency syndrome testing for persons charged with any sexual offense. Any adult or juvenile who is bound over for trial for any sexual offense involving sexual penetration as defined in section 18-3-401 (6), subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, or any person who is indicted for or is convicted of any such offense, shall be ordered by the court to submit to a ~~blood~~ DIAGNOSTIC test for the human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome, said DIAGNOSTIC test to be ordered in conjunction with the ~~blood~~ DIAGNOSTIC test ordered pursuant to section 18-3-415.5. The results of such DIAGNOSTIC test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of ~~blood~~ DIAGNOSTIC test results by the courts shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If the person who is bound over for trial or who is indicted for or convicted of any such offense voluntarily submits to a ~~blood~~ DIAGNOSTIC test for the human immunodeficiency virus (HIV), the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

SECTION 2. 18-3-415.5 (2), Colorado Revised Statutes, is amended to read:

18-3-415.5. Acquired immune deficiency syndrome testing for persons charged with certain sexual offenses - mandatory sentencing. (2) Any adult or

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

juvenile who is bound over for trial subsequent to a preliminary hearing or after having waived the right to a preliminary hearing on a charge of committing a sexual offense shall be ordered by the court to submit to a ~~blood~~ DIAGNOSTIC test for the human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome, said DIAGNOSTIC test to be ordered in conjunction with the ~~blood~~ DIAGNOSTIC test ordered pursuant to section 18-3-415. The results of said DIAGNOSTIC test shall be reported to the district attorney. The district attorney shall keep the results of such DIAGNOSTIC test strictly confidential, except for purposes of pleading and proving the mandatory sentencing provisions specified in subsection (5) of this section.

SECTION 3. 18-7-201.5 (1), Colorado Revised Statutes, is amended to read:

18-7-201.5. Acquired immune deficiency syndrome testing for persons convicted of prostitution. (1) (a) Any person who is convicted of prostitution pursuant to section 18-7-201 or a comparable municipal ordinance shall be ordered by the court to submit to a ~~blood~~ DIAGNOSTIC test for the human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome. The court shall order that such person shall pay the cost of such DIAGNOSTIC test as a part of the costs of the action.

(b) AS USED IN THIS SUBSECTION (1), "DIAGNOSTIC TEST" MEANS A HUMAN IMMUNODEFICIENCY VIRUS (HIV) SCREENING TEST FOLLOWED BY A SUPPLEMENTAL HIV TEST FOR CONFIRMATION IN THOSE INSTANCES WHEN THE HIV SCREENING TEST IS REPEATEDLY REACTIVE.

SECTION 4. 18-7-205.5 (1), Colorado Revised Statutes, is amended to read:

18-7-205.5. Acquired immune deficiency syndrome testing for persons convicted of patronizing a prostitute. (1) (a) Any person who is convicted of patronizing a prostitute pursuant to section 18-7-205 or a comparable municipal ordinance shall be ordered by the court to submit to a ~~blood~~ DIAGNOSTIC test for the human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome. The court shall order that such person shall pay the cost of such DIAGNOSTIC test as a part of the costs of the action.

(b) AS USED IN THIS SUBSECTION (1), "DIAGNOSTIC TEST" MEANS A HUMAN IMMUNODEFICIENCY VIRUS (HIV) SCREENING TEST FOLLOWED BY A SUPPLEMENTAL HIV TEST FOR CONFIRMATION IN THOSE INSTANCES WHEN THE HIV SCREENING TEST IS REPEATEDLY REACTIVE.

SECTION 5. 18-3-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-3-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1.7) "DIAGNOSTIC TEST" MEANS A HUMAN IMMUNODEFICIENCY VIRUS (HIV) SCREENING TEST FOLLOWED BY A SUPPLEMENTAL HIV TEST FOR CONFIRMATION IN THOSE INSTANCES WHEN THE HIV SCREENING TEST IS REPEATEDLY REACTIVE.

SECTION 6. Part 4 of article 1 of title 18, Colorado Revised Statutes, is amended

BY THE ADDITION OF A NEW SUBSECTION to read:

18-1-408. Prosecution of multiple counts for same act. (8) WITHOUT THE CONSENT OF THE PROSECUTION, NO JURY SHALL BE INSTRUCTED TO RETURN A GUILTY VERDICT ON A LESSER OFFENSE IF ANY JUROR REMAINS CONVINCED BY THE FACTS AND LAW THAT THE DEFENDANT IS GUILTY OF A GREATER OFFENSE SUBMITTED FOR THE JURY'S CONSIDERATION, THE RETRIAL OF WHICH WOULD BE BARRED BY CONVICTION OF THE LESSER OFFENSE.

SECTION 7. The introductory portion to 12-60-507 (1), Colorado Revised Statutes, is amended to read:

12-60-507. Investigation - denial, suspension, and revocation actions against licensees - unlawful acts. (1) The commission upon its own motion may, and upon complaint in writing of any person shall, investigate the activities of any licensee or applicant within the state or any person upon the premises of ~~a track~~ ANY FACILITY LICENSED PURSUANT TO THIS ARTICLE. In addition to its authority under any other provision of this article, the commission may issue a letter of admonition to a licensee, fine a licensee, suspend a license, deny an application for a license, or revoke a license, if such person has committed any of the following violations:

SECTION 8. 18-6-401.3, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-6-401.3. Video tape depositions - children - victims of child abuse. (5) NOTHING IN THIS SECTION SHALL PREVENT THE ADMISSION INTO EVIDENCE OF ANY VIDEOTAPED STATEMENTS OF CHILDREN THAT WOULD QUALIFY FOR ADMISSION PURSUANT TO SECTION 13-25-129, C.R.S., OR ANY OTHER STATUTE OR RULE OF EVIDENCE.

SECTION 9. 16-12-102 (1), Colorado Revised Statutes, is amended to read:

16-12-102. Appeals by the prosecution. (1) The prosecution may appeal any decision of ~~the trial~~ A court in a criminal case upon any question of law. Any order of ~~the trial~~ A court that either dismisses one or more counts of a charging document prior to trial or grants a new trial after the entry of a verdict or judgment shall constitute a final order that shall be immediately appealable pursuant to this subsection (1). If any act of the general assembly is adjudged inoperative or unconstitutional in any criminal case, it is the duty of the district attorney of the judicial district in which the court making such decision is situated to appeal on behalf of the people of the state of Colorado, unless the same issue of constitutionality is already pending before a reviewing court in another case. Nothing in this section shall authorize placing the defendant in jeopardy a second time for the same offense. No docket fee shall be required of the people upon an appeal under this section. The procedure to be followed in filing and prosecuting appeals under this section shall be as provided by applicable rule of the supreme court of Colorado. However, if a statute providing for the imposition of the death penalty is adjudged inoperative or inapplicable for any reason, such adjudication shall constitute a final order that shall be immediately appealable to the supreme court of Colorado, notwithstanding any statute or court rule to the contrary.

SECTION 10. 16-5-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-5-401. Limitation for commencing criminal proceedings. (12) THE APPLICABLE PERIOD OF LIMITATIONS SPECIFIED IN SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO CHARGES BROUGHT TO FACILITATE THE DISPOSITION OF A CASE, OR TO LESSER INCLUDED OR NON-INCLUDED CHARGES GIVEN TO THE COURT OR A JURY AT A TRIAL ON THE MERITS, BY THE ACCUSED.

SECTION 11. 16-5-301 (1) (b) (II), Colorado Revised Statutes, is amended to read:

16-5-301. Preliminary hearing or waiver - dispositional hearing. (1) (b) (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 FOR THE OFFENSE FOR WHICH THE PRELIMINARY HEARING IS REQUESTED; 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 12. 16-5-209, Colorado Revised Statutes, is amended to read:

16-5-209. Judge may require prosecution. The judge of a court having jurisdiction of the alleged offense, upon affidavit filed with ~~him~~ THE JUDGE alleging the commission of a crime and the unjustified refusal of the prosecuting attorney to prosecute any person for the crime, may require the prosecuting attorney to appear before ~~him~~ THE JUDGE and explain ~~his~~ THE refusal. If after ~~a hearing~~ THAT PROCEEDING, BASED ON THE COMPETENT EVIDENCE IN THE AFFIDAVIT, THE EXPLANATION OF THE PROSECUTING ATTORNEY, AND ANY ARGUMENT OF THE PARTIES, the judge finds that the refusal of the prosecuting attorney to prosecute was arbitrary or capricious and without reasonable excuse, ~~he~~ THE JUDGE may order the prosecuting attorney to file an information and prosecute the case or may appoint a special prosecutor to do so. The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308, C.R.S.

SECTION 13. 16-5-202 (1), Colorado Revised Statutes, is amended to read:

16-5-202. Requisites of information - form. (1) The information is sufficient if it can be understood therefrom:

(a) That it is presented by the person authorized by law to prosecute the offense;

(b) That the defendant is ~~named~~ IDENTIFIED therein, EITHER BY NAME OR BY THE DEFENDANT'S PATTERNED CHEMICAL STRUCTURE OF GENETIC INFORMATION, or

described as a person whose name is unknown to the informant;

(c) That the offense was committed within the jurisdiction of the court or is triable therein;

(d) That the offense charged is set forth with such degree of certainty that the court may pronounce judgment upon a conviction.

SECTION 14. 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 24, 2000