

CHAPTER 231

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 00-1166

BY REPRESENTATIVES Grossman, Hagedorn, Bacon, Chavez, Coleman, Fairbank, Gagliardi, Gordon, Kaufman, Lawrence, Mace, Miller, Mitchell, Stengel, Tupa, Veiga, Vigil, S. Williams, and Windels; also SENATORS Wham, Hernandez, Lamborn, and Weddig.

AN ACT

CONCERNING A REQUIREMENT FOR GENETIC TESTING OF CERTAIN OFFENDERS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 16-11-204.3 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-11-204.3. Genetic testing as a condition of probation. (1) (b.5) ANY OFFENDER CONVICTED OF SECOND OR THIRD DEGREE BURGLARY, AS DESCRIBED IN SECTIONS 18-4-203 AND 18-4-204, C.R.S., FOR AN OFFENSE COMMITTED ON OR AFTER JULY 1, 2000, SHALL SUBMIT TO AND PAY FOR, AS A CONDITION OF PROBATION, A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF.

SECTION 2. 16-11-204.3 (3), Colorado Revised Statutes, is amended to read:

16-11-204.3. Genetic testing as a condition of probation. (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~~ PARAGRAPHS (b) OR (b.5) of subsection (1) of this section shall be deposited in the offender identification fund established in section 24-33.5-415.6, C.R.S.

SECTION 3. 16-11-104 (1) and (3), Colorado Revised Statutes, are amended to read:

16-11-104. Genetic testing. (1) (a) (I) In the case of any offender who is

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

convicted of an offense involving unlawful sexual behavior or for which the underlying factual basis involves unlawful sexual behavior, if the court sentences the offender directly to incarceration in a county jail or to a community corrections facility pursuant to article 27 of title 17, C.R.S., the court shall also order that the offender submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof.

(II) AN OFFENDER SHALL SUBMIT TO AND PAY FOR A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF IF THE OFFENDER IS SENTENCED DIRECTLY TO INCARCERATION IN A COUNTY JAIL OR TO A COMMUNITY CORRECTIONS FACILITY PURSUANT TO ARTICLE 27 OF TITLE 17, C.R.S., FOR THE CONVICTION OF ANY OF THE FOLLOWING OFFENSES OCCURRING ON OR AFTER JULY 1, 2000:

(A) A CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309 (2);

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

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

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

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

(I) SECOND DEGREE BURGLARY, IN VIOLATION OF SECTION 18-4-203, C.R.S.; AND

(J) THIRD DEGREE BURGLARY, IN VIOLATION OF SECTION 18-4-204, C.R.S.

(b) The court shall direct the sheriff of the jurisdiction in which the jail or community corrections facility to which the offender is sentenced is located to collect the blood sample for testing pursuant to this section. The results of the testing shall be filed and maintained by the Colorado bureau of investigation. The results of such test shall be furnished to any law enforcement agency upon request.

(3) Any moneys received from offenders pursuant to SUBPARAGRAPH (I) OF 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 SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL BE DEPOSITED IN THE OFFENDER IDENTIFICATION FUND CREATED IN SECTION 24-33.5-415.6, C.R.S.

SECTION 4. 24-33.5-415.6, Colorado Revised Statutes, is amended to read:

24-33.5-415.6. 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~~ SECTIONS 16-11-104 (1) (a) (II) AND 16-11-204.3 (1) (b) AND (1) (b.5), 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~~ SECTIONS 16-11-104 (1) (a) (II) AND 16-11-204.3 (1) (b) AND (1) (b.5), 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. 16-11-308, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-11-308. Custody of department of corrections - procedure. (4.5) (a) WHILE CONFINED IN THE DIAGNOSTIC CENTER, THE FOLLOWING OFFENDERS SHALL SUBMIT TO A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS:

(I) ANY OFFENDER SENTENCED ON OR AFTER JULY 1, 2000, AS A HABITUAL OFFENDER PURSUANT TO THE PROVISIONS OF SECTION 16-11-101; AND

(II) ANY OFFENDER CONVICTED OF ONE OR MORE OF THE FOLLOWING OFFENSES COMMITTED ON OR AFTER JULY 1, 2000:

(A) SECOND DEGREE BURGLARY AS DESCRIBED IN SECTION 18-4-203, C.R.S.; OR

(B) THIRD DEGREE BURGLARY AS DESCRIBED IN SECTION 18-4-204, C.R.S.

(b) THE RESULTS OF THE TESTING CONDUCTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4.5) SHALL BE FILED AND MAINTAINED BY THE COLORADO BUREAU OF INVESTIGATION. THE RESULTS OF SUCH TEST SHALL BE FURNISHED TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST.

SECTION 6. 17-22.5-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

17-22.5-202. Ticket to leave - discharge - clothes, money, transportation. (3.5) ANY OFFENDER DISCHARGED FROM A CORRECTIONAL FACILITY ON OR AFTER JULY 1, 2000, WHO IS NOT SUBJECT TO PAROLE OR SUPERVISION SHALL SUBMIT TO A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF. SUCH TESTING SHALL OCCUR AT LEAST NINETY DAYS 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.

SECTION 7. 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~~ THAT 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 BLOOD testing to determine ~~the~~ genetic markers conducted pursuant to sections 16-11-104, 16-11-204.3, AND 16-11-308 (4.5), C.R.S., and SECTIONS 17-2-201 (5) (h) and (5) (i) AND 17-22.5-202 (3) (b.5) (II) AND (3.5), C.R.S.

SECTION 8. 24-72-305 (1.5), Colorado Revised Statutes, is amended 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 BLOOD testing to determine the genetic markers conducted pursuant to sections 16-11-104, 16-11-204.3, AND 16-11-308 (4.5), C.R.S., and SECTIONS 17-2-201 (5) (h) and (5) (i) AND 17-22.5-202 (3) (b.5) (II) AND (3.5), C.R.S.

SECTION 9. Appropriation - adjustment in 2000 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 judicial department, for the fiscal year beginning July 1, 2000, the sum of eleven thousand nine hundred seventy-nine dollars (\$11,979), 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 department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 2000, the sum of two hundred eighty-eight thousand five hundred ninety-five dollars (\$288,595) and 1.0 FTE, 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, 2001, 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 thousand five hundred seventy-four dollars (\$300,574).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by three hundred thousand five hundred seventy-four dollars (\$300,574).

SECTION 10. Effective date - applicability. This act shall take effect July 1, 2000, and shall apply to offenses committed and sentences imposed on or after said date.

SECTION 11. 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: May 26, 2000