

CHAPTER 353

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 00-136

BY SENATORS Nichol, Hernandez, Phillips, and Weddig;
also REPRESENTATIVES Mitchell, Allen, Clapp, Coleman, Decker, Fairbank, Gagliardi, Gordon, Gotlieb, Grossman, Hefley,
Kaufman, Keller, Lee, Miller, Nuñez, Plant, Scott, Spence, Taylor, Tochtrop, and Tupa.

AN ACT

CONCERNING INFORMATION FROM CRIMINAL CASES ON THE CENTRAL REGISTRY OF CHILD PROTECTION
IN THE DEPARTMENT OF HUMAN SERVICES.

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

SECTION 1. 19-3-313 (1), (2) (e), (5.5) (c), (7) (c) (I) (A), (7) (c) (I) (B), and (7) (c) (II), Colorado Revised Statutes, are amended, and the said 19-3-313 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

19-3-313. Central registry - repeal. (1) There shall be established a state central registry of child protection in the state department. **THIS SHALL BE THE ONLY CENTRAL REGISTRY FOR CHILD PROTECTION IN THIS STATE. THE CENTRAL REGISTRY OF CHILD PROTECTION IS** for the purpose of maintaining a registry of information concerning:

(a) EACH CONVICTION OF AN OFFENSE PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 18, C.R.S.;

(b) EACH CONVICTION OF AN OFFENSE PURSUANT TO SECTION 18-3-405, C.R.S.;

(c) EACH CONVICTION OF AN OFFENSE PURSUANT TO SECTION 18-3-405.3, C.R.S.;

AND

(d) Each case of confirmed child abuse reported under this part 3, except as provided in section 19-3-305. ~~This shall be the only central registry in this state.~~

(2) The central registry shall contain but shall not be limited to:

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

(e) Any other information ~~which~~ THAT might be helpful in furthering the purposes of this part 3; AND

(f) INFORMATION CONTAINED IN THE COURT FILE RELATING TO A CONVICTION PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 18, C.R.S., SECTION 18-3-405, C.R.S., OR SECTION 18-3-405.3, C.R.S.

(5.5) (c) The provisions of this section shall not apply to a subject who has been convicted of ~~child abuse~~ AN OFFENSE pursuant to PART 4 OF article 6 of title 18, C.R.S., SECTION 18-3-405, C.R.S., OR SECTION 18-3-405.3, C.R.S. The director shall place the name of a subject who has been convicted of ~~child abuse~~ AN OFFENSE pursuant to article 6 of title 18, C.R.S., SECTION 18-3-405, C.R.S., OR SECTION 18-3-405.3, C.R.S., on the registry ~~immediately upon receipt of the notice of the conviction from the court pursuant to section 18-6-405 (2), C.R.S.~~ AS SOON AS POSSIBLE AFTER RECEIVING SUCH INFORMATION AND VERIFYING THE INFORMATION WITH THE JUDICIAL DEPARTMENT OR THE COLORADO BUREAU OF INVESTIGATION.

(7) (c) (I) (A) ~~If a subject is acquitted of child abuse pursuant to article 6 of title 18, C.R.S., or~~ If a petition in dependency and neglect under section 19-3-505 on which the subject is a named respondent is not sustained, on receipt of a ~~notice from the court pursuant to section 18-6-405 (2), C.R.S., or section 19-3-505 (6)~~ SUCH INFORMATION, AND AFTER VERIFYING THE INFORMATION WITH THE JUDICIAL DEPARTMENT, the director of the central registry may expunge the record of the report.

(B) If the director of the central registry expunges the record of the report, the director shall send written notice of such expungement to the subject. If the director of the central registry does not expunge the record of the report, the director shall send written notice to the subject ~~within thirty days after receipt of notice from the court pursuant to section 19-3-505 (6) or section 18-6-405 (2), C.R.S.,~~ AS SOON AS POSSIBLE AFTER RECEIVING INFORMATION REGARDING A CASE NOT BEING SUSTAINED, AND AFTER VERIFYING SUCH INFORMATION WITH THE JUDICIAL DEPARTMENT, stating that the subject may request a hearing at which the department will be required to show, by clear and convincing evidence, why the subject's name shall not be removed from the central registry. The subject may request such hearing at any time after receipt of the written notice from the director of the central registry. The hearing shall be held as soon as possible after the director of the central registry receives the subject's request.

(II) The provisions of subparagraph (I) of this paragraph (c) shall apply if ~~the subject is acquitted of child abuse pursuant to article 6 of title 18, C.R.S., and~~ a petition in dependency and neglect naming the subject as a respondent has not been filed.

SECTION 2. 19-3-313 (7), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-3-313. Central registry - repeal. (7) (d) (I) IF A SUBJECT IS ACQUITTED OF AN OFFENSE PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 18, C.R.S., SECTION 18-3-405, C.R.S., OR SECTION 18-3-405.3, C.R.S., OR IF SUCH A CHARGE IS DISMISSED, THE DIRECTOR OF THE CENTRAL REGISTRY SHALL EXPUNGE THE SUBJECT'S

NAME PERTAINING TO THE ACT OR ACTS THAT SUPPORTED SUCH ALLEGED CRIMINAL OFFENSE UPON THE RECEIPT BY THE DIRECTOR OF NOTICE OF THE ACQUITTAL OR DISMISSAL.

(II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), THE DIRECTOR MAY REQUEST A HEARING TO REINSTATE ON THE CENTRAL REGISTRY A SUBJECT'S NAME PERTAINING TO AN ACT OR ACTS THAT SUPPORTED A DISMISSED OR ACQUITTED CRIMINAL CHARGE. SUCH HEARING REQUEST SHALL BE FILED WITH THE DIVISION OF ADMINISTRATIVE HEARINGS IN THE DEPARTMENT OF PERSONNEL WITHIN THIRTY DAYS AFTER THE DATE THE DIRECTOR RECEIVES NOTICE OF THE ACQUITTAL OR DISMISSAL. THE DIVISION SHALL SEND WRITTEN NOTICE OF THE HEARING TO THE SUBJECT BY CERTIFIED MAIL. A HEARING SHALL NOT BE HELD IF THE DEPARTMENT FAILS TO REQUEST THE HEARING WITHIN THIRTY DAYS AFTER THE DATE THE DIRECTOR RECEIVED NOTICE OF THE ACQUITTAL OR DISMISSAL. THE HEARING SHALL BE HELD AS SOON AS POSSIBLE AFTER THE HEARING IS REQUESTED.

(B) AT A HEARING REQUESTED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II), THE DEPARTMENT SHALL BE REQUIRED TO SHOW THAT THERE IS CLEAR AND CONVINCING EVIDENCE TO SUPPORT A FINDING OF CHILD ABUSE OR NEGLECT SO THAT THE SUBJECT'S NAME SHOULD BE REINSTATED ON THE REGISTRY AS A PERPETRATOR. AN ADMINISTRATIVE LAW JUDGE SHALL PRESIDE OVER THE HEARING AND SUCH JUDGE SHALL NOT BE THE SAME JUDGE WHO PRESIDED AT ANY OTHER HEARING CONCERNING THE SAME SUBJECT. THE HEARING AND ANY JUDICIAL REVIEW SHALL BE IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT".

SECTION 3. 19-3-313 (5), Colorado Revised Statutes, is amended to read:

19-3-313. Central registry - repeal. (5) (a) Except as otherwise provided in paragraph (b) AND (c) of this subsection (5) or subparagraphs (I) and (II) of paragraph (b) of subsection (7) of this section, the record of the reports to the central registry shall be sealed no later than ten years after the child's eighteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the state board and upon notice to the subject of the report, gives his or her personal approval for an appropriate reason. In any case and at any time, except as otherwise provided in paragraph (b) of this subsection (5) and paragraph (b) of subsection (7) of this section, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

(b) No record of a report of sexual abuse shall be sealed pursuant to paragraph (a) of this subsection (5). Such record, however, may be sealed, expunged, or amended pursuant to paragraph (a) of subsection (7) of this section.

(c) NO RECORD OF A CRIMINAL CONVICTION SHALL BE SEALED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5); EXCEPT THAT A RECORD OF A CRIMINAL CONVICTION MAY BE SEALED, EXPUNGED, OR AMENDED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (7) OF THIS SECTION IF THE CONVICTION IS OVERTURNED IN THE CRIMINAL COURT.

SECTION 4. Repeal. 18-6-405 (2), Colorado Revised Statutes, is repealed as

follows:

18-6-405. Reports of convictions to department of education. (2) Upon acquittal of a charge brought pursuant to the provisions of this part 4, the court shall inform the defendant that pursuant to section 19-3-313 (7) (c), C.R.S., the department may hold a hearing, as soon as possible, to show cause why the defendant's name should not be removed from the central registry. The court shall report all acquittals and convictions for violations of the provisions of this part 4 to the director of the central registry created in section 19-3-313, C.R.S.

SECTION 5. 19-3-505 (6), Colorado Revised Statutes, is amended to read:

19-3-505. Adjudicatory hearing - findings - adjudication. (6) When the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His or her parents, guardian, or legal custodian shall also be discharged from any restriction or other previous temporary order. The court shall inform the respondent that, pursuant to section 19-3-313 (7) (c), the department may hold a hearing, as soon as possible, to show cause why the respondent's name should not be removed from the central registry. ~~The court shall also send written notice that the petition was not sustained to the director of the central registry created in section 19-3-313.~~

SECTION 6. 19-1-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(29.5) "CONVICTION", AS USED IN SECTION 19-3-313, MEANS A VERDICT OF GUILTY BY A JUDGE OR JURY OR A PLEA OF GUILTY OR NOLO CONTENDERE THAT IS ACCEPTED BY THE COURT. "CONVICTION" ALSO INCLUDES A DEFERRED JUDGMENT AND SENTENCE.

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: June 1, 2000