

CHAPTER 264

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 01-1130

BY REPRESENTATIVE(S) Grossman, Boyd, Coleman, Daniel, Fairbank, Garcia, Groff, Jahn, Mace, Ragsdale, Romanoff, Sanchez, Stafford, Tapia, Tochtrop, Veiga, Vigil;
also SENATOR(S) Lamborn, Arnold, Cairns, Dyer (Arapahoe), Epps, May, McElhany, and Teck.

AN ACT

CONCERNING DNA TESTING OF FELONS SENTENCED TO THE DEPARTMENT OF CORRECTIONS, AND
MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 16-11-102.3, Colorado Revised Statutes, is amended to read:

16-11-102.3. Genetic testing of convicted offenders. (1) As used in this section, unless the context otherwise requires, "convicted offender" means a person who is not required to submit to a chemical testing of the person's blood to determine the genetic markers thereof pursuant to any other provision and who is convicted of, or pleads guilty to any of the following offenses:

- (a) An offense involving, or for which the factual basis involved, unlawful sexual behavior as defined in section 18-3-412.5 (1) (b), C.R.S.;
- (b) A crime of violence, as ~~defined~~ LISTED in section 16-11-309 (2);
- (c) Second degree murder, in violation of section 18-3-103 (1), C.R.S.;
- (d) First degree assault, in violation of section 18-3-202 (1), C.R.S.;
- (e) 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.;
- (f) Second degree kidnapping, in violation of section 18-3-302 (4), C.R.S.;
- (g) First degree arson, in violation of section 18-4-102 (3), 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.

(h) Burglary in the first degree, in violation of section 18-4-202, C.R.S.;

(i) Aggravated robbery, in violation of section 18-4-302 (4), C.R.S.; or

(j) Any felony when the person was previously convicted of, or pled guilty to one or more of the offenses listed in paragraphs (a) to (i) of this subsection (1).

(1.5) SUBJECT TO AVAILABLE APPROPRIATIONS, BEGINNING MARCH 31, 2002 EVERY FELON WHO IS SENTENCED TO THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL SUBMIT TO AND PAY FOR A CHEMICAL TESTING OF THE OFFENDER'S BLOOD TO DETERMINE THE GENETIC MARKERS THEREOF PRIOR TO THE PERSON'S DISCHARGE OR RELEASE TO PAROLE.

~~(2) (a) Every convicted offender who, as of July 1, 2000, is in the custody of the executive director of the department of corrections for an offense described in subsection (1) of this section shall submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof prior to the person's release from custody.~~

(b) Every convicted offender who, as of July 1, 2000, is in a county jail or a community corrections facility pursuant to article 27 of title 17, C.R.S., for an offense described in subsection (1) of this section shall submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof.

~~(c) Every convicted offender who, as of July 1, 2000, is on parole for an offense described in subsection (1) of this section shall submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof.~~

(d) Every convicted offender who, as of July 1, 2000, is on probation for an offense described in subsection (1) of this section shall submit to and pay for a chemical testing of the offender's blood to determine the genetic markers thereof.

(3) Collection of the blood samples required by ~~paragraphs (a) and~~ SUBSECTION (1.5) OF THIS SECTION AND PARAGRAPH (b) of subsection (2) of this section shall be collected at least thirty days prior to the person's DISCHARGE OR release from custody. Collection of the blood samples required by ~~paragraphs~~ PARAGRAPH ~~(c) and~~ (d) of subsection (2) of this section shall be collected prior to June 30, 2001.

(4) The judicial department, the department of corrections, a sheriff, or a contractor may use reasonable force to obtain blood samples in accordance with this section using medically recognized procedures. In addition, ~~an offender's~~ A PERSON'S refusal to comply with this section may be grounds for revocation or denial of parole or probation.

(5) Any moneys received from offenders pursuant to this section shall be deposited in the offender identification fund created in section 24-33.5-415.6, C.R.S.

(6) The Colorado bureau of investigation is directed to conduct the chemical testing of the blood obtained pursuant to this section. The results thereof shall be filed and maintained by the Colorado bureau of investigation and shall be furnished

to any law enforcement agency upon request.

SECTION 2. 16-11-104 (1) (a), Colorado Revised Statutes, is amended to read:

16-11-104. Genetic testing. (1) (a) (I) In the case of any offender who is convicted of OR PLEADS GUILTY OR NOLO CONTENDRE TO 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 OR ENTRY OF A GUILTY OR NOLO CONTENDRE PLEA TO any of the following offenses occurring on or after July 1, 2000:

- (A) A crime of violence, as ~~defined~~ LISTED 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.

SECTION 3. 17-2-201 (5) (g), (5) (h), and (5) (i), Colorado Revised Statutes, are amended to read:

17-2-201. State board of parole. (5) (g) (I) As a condition of parole, the board shall require any offender convicted of OR WHO PLEAD GUILTY OR NOLO CONTENDRE TO an offense for which the factual basis involved a sexual assault as defined in part 4 of article 3 of title 18, C.R.S., to 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. 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.

(II) The provisions of this paragraph (g) shall apply to any person who is paroled on or after May 29, 1988, and to any person whose parole conditions are modified by the board on or after said date.

(III) Any costs of implementing this paragraph (g) shall be derived solely from appropriations made from moneys in the victims assistance and law enforcement fund created pursuant to section 24-33.5-506, C.R.S.

(h) (I) As a condition of parole, the board may require any person found guilty of OR WHO PLEADS GUILTY OR NOLO CONTENDRE TO 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 4. 17-22.5-202 (3) (b.5) (II), Colorado Revised Statutes, is amended to read:

17-22.5-202. Ticket to leave - discharge - clothes, money, transportation.
(3) Prior to the release from a correctional facility by discharge or parole of any person imprisoned for the commission of a child abuse offense which occurred within the state of Colorado, the executive director shall:

(b.5) (II) In addition, the department shall require any offender convicted of OR WHO PLEADS GUILTY OR NOLO CONTENDRE TO an offense involving unlawful sexual behavior or for which the factual basis involved unlawful sexual behavior as defined in section 18-3-412.5 (1), C.R.S., to submit to chemical testing of the offender's blood to determine the genetic markers thereof and to chemical testing of the offender's saliva to determine the secretor status thereof. 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.

SECTION 5. 16-11-308 (4.5) (a) (I), Colorado Revised Statutes, is amended 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~~ 16-13-101; and

SECTION 6. Part 4 of article 22.5 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-22.5-407. Genetic testing as condition of parole. ANY OFFENDER DISCHARGED FROM A CORRECTIONAL FACILITY ON OR AFTER JULY 1, 2000, NOT SUBJECT TO PAROLE 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. Appropriation. (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 corrections, for allocation to the medical services subprogram, for the fiscal year beginning July 1, 2001, the sum of fifteen thousand nine hundred twenty-one dollars (\$15,921) and 0.3 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 department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 2001, the sum of ninety-four thousand eight dollars (\$94,008) and

1.0 FTE, or so much thereof as may be necessary, for the implementation of this act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2001, the department of public safety will receive the sum of one hundred ninety-two thousand six hundred twenty-five dollars (\$192,625) in federal funds for the implementation of this act. Although the federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions relative to these funds.

(3) It is the intent of the general assembly that the general fund appropriation for the implementation of this act shall be derived from savings generated from the implementation of the provisions of SB 01-077, as enacted during the first regular session of the sixty-third general assembly.

SECTION 8. Effective date. (1) Section 1 of this act shall take effect March 31, 2002, and the remainder of this act shall take effect July 1, 2001.

(2) Notwithstanding the provisions of subsection (1) of this section, this act shall only take effect if:

(a) The final fiscal estimate for S.B. 01-077, as reflected in the appropriation clause for said act, shows a net General Fund savings that is equal to or greater than the final General Fund fiscal estimate for this act, as reflected in section 7 of this act;

(b) S.B. 01-077 is enacted at the first regular session of the sixty-third general assembly and becomes law; and

(c) The Colorado bureau of investigation in the department of public safety receives federal funds in an amount sufficient to purchase the equipment necessary to implement this act.

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 5, 2001