

CHAPTER 266

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 01-1155

BY REPRESENTATIVE(S) Stengel, Fairbank, Lawrence, Lee, Mitchell, Stafford, White, Williams S., Young, Boyd, Coleman, Daniel, Garcia, Grossman, Jahn, Larson, Miller, Nuñez, Romanoff, Snook, Spradley, and Veiga;
also SENATOR(S) Hagedorn, Arnold, Dyer (Arapahoe), Epps, May, McElhany, Nichol, and Teck.

AN ACT

CONCERNING THE AVAILABILITY OF INFORMATION CONCERNING SEXUAL OFFENDERS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 18-3-412.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-3-412.5. Sex offenders - duty to register - penalties. (3.6) (a) THE COLORADO BUREAU OF INVESTIGATION SHALL POST A LINK ON THE STATE OF COLORADO HOMEPAGE ON THE INTERNET TO A LIST CONTAINING THE NAME, ADDRESS, AND PHYSICAL DESCRIPTION, INCLUDING BUT NOT LIMITED TO SEX, HEIGHT, WEIGHT, AND ANY IDENTIFYING CHARACTERISTICS OF, AND A DIGITIZED PHOTOGRAPH OR IMAGE OF, AND A DESCRIPTION OF THE OFFENSE OR OFFENSES COMMITTED BY, CERTAIN OFFENDERS. THE LIST SHALL SPECIFICALLY EXCLUDE ANY REFERENCE TO ANY VICTIM OR VICTIMS OF THE OFFENSE OR OFFENSES. THE LIST SHALL INCLUDE THE FOLLOWING OFFENDERS:

(I) ANY OFFENDER REQUIRED TO REGISTER PURSUANT TO SUBSECTION (3.5) OF THIS SECTION;

(II) ANY OFFENDER SENTENCED AS OR FOUND TO BE AN OFFENDER UNDER THE LAWS OF ANOTHER STATE OR JURISDICTION THAT ARE COMPARABLE TO SECTION 18-3-414.5;

(III) ANY OFFENDER WHO IS REQUIRED TO REGISTER PURSUANT TO SUBSECTION (1) OR (3.5) OF THIS SECTION AND WHO HAS BEEN CONVICTED AS AN ADULT OF TWO OR MORE OF THE FOLLOWING OFFENSES:

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

(A) A FELONY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR; OR

(B) A CRIME OF VIOLENCE AS DEFINED IN SECTION 16-11-309, C.R.S.; OR

(IV) (A) ANY OFFENDER WHO IS REQUIRED TO REGISTER PURSUANT TO SUBSECTION (1) OR (3.5) OF THIS SECTION BECAUSE THE OFFENDER WAS CONVICTED OF A FELONY AS AN ADULT AND WHO FAILS TO REGISTER AS REQUIRED BY SUBSECTIONS (1) AND (3.5) OF THIS SECTION.

(B) FOR PURPOSES OF THIS SUBPARAGRAPH (IV), AN OFFENDER'S FAILURE TO REGISTER SHALL BE DETERMINED BY THE COLORADO BUREAU OF INVESTIGATION. WHENEVER THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION SHOW THAT AN OFFENDER HAS FAILED TO REGISTER AS REQUIRED BY SUBSECTION (1) OR (3.5) OF THIS SECTION, IT SHALL FORWARD TO THE LAW ENFORCEMENT AGENCY TO WHICH THE OFFENDER WAS REGISTERED NOTICE OF THE OFFENDER'S FAILURE TO REGISTER BY THE REQUIRED DATE. THE REGISTERING LAW ENFORCEMENT AGENCY SHALL SUBMIT WRITTEN CONFIRMATION OF THE OFFENDER'S FAILURE TO REGISTER TO THE COLORADO BUREAU OF INVESTIGATION. UPON RECEIPT OF THE WRITTEN CONFIRMATION FROM THE REGISTERING LAW ENFORCEMENT AGENCY, THE COLORADO BUREAU OF INVESTIGATION SHALL POST THE INFORMATION ON THE OFFENDER PURSUANT TO THIS SUBSECTION (3.6).

(b) THE INTERNET POSTING REQUIRED BY THIS SUBSECTION (3.6) SHALL BE IN ADDITION TO ANY OTHER RELEASE OF INFORMATION AUTHORIZED PURSUANT TO THIS SECTION OR PURSUANT TO PART 9 OF ARTICLE 13 OF TITLE 16, C.R.S. OR ANY OTHER PROVISION OF LAW.

SECTION 2. The introductory portion to 18-3-412.5 (7) (a), 18-3-412.5 (7) (a) (I), (7) (a) (II), and (7) (a) (III), Colorado Revised Statutes, are amended, and the said 18-3-412.5 (7) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

18-3-412.5. Sex offenders - duty to register - penalties. (7) (a) Except as otherwise provided in paragraph (c) of this subsection (7), any person required to register pursuant to subsection (1) of this section OR WHOSE INFORMATION IS REQUIRED TO BE POSTED ON THE INTERNET PURSUANT TO SUBSECTION (3.6) OF THIS SECTION may petition the district court for an order that discontinues the requirement for such registration OR INTERNET POSTING, OR BOTH, as follows:

(I) Except as otherwise provided in subparagraphs (IV), ~~and~~ (V), AND (VI) of this paragraph (a), if the offense that required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of any offense involving unlawful sexual behavior;

(II) Except as otherwise provided in subparagraphs (IV), ~~and~~ (V), AND (VI) of this paragraph (a), if the offense that required such person to register constituted or would constitute a class 4, 5, or 6 felony or the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404 or sexual assault in the third degree as

described in section 18-3-404, as it existed prior to July 1, 2000, after a period of ten years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of any offense involving unlawful sexual behavior;

(III) Except as otherwise provided in subparagraphs (IV), ~~and (V)~~, AND (VI) of this paragraph (a), if the offense that required such person to register constituted or would constitute a misdemeanor other than the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404 or sexual assault in the third degree as described in section 18-3-404, as it existed prior to July 1, 2000, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of any offense involving unlawful sexual behavior;

(VI) IF THE INFORMATION ABOUT THE PERSON WAS REQUIRED TO BE POSTED ON THE INTERNET ONLY PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF SUBSECTION (3.6) OF THIS SECTION FOR FAILURE TO REGISTER IF THE PERSON HAS FULLY COMPLIED WITH ALL REGISTRATION REQUIREMENTS FOR A PERIOD OF NOT LESS THAN ONE YEAR AND IF THE PERSON, PRIOR TO SUCH TIME, HAS NOT BEEN SUBSEQUENTLY CONVICTED OF ANY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR.

SECTION 3. 18-3-412.5 (2) (a) (I), (2) (a) (II), (3) (e), (3.5) (e), (3.5) (f), (6) (b), (6.5) (c), and (6.5) (d), Colorado Revised Statutes, are amended to read:

18-3-412.5. Sex offenders - duty to register - penalties. (2) (a) (I) Probation and parole officers, appropriate county jail personnel, and appropriate personnel with the department of corrections and the department of human services shall require any offender described in subsection (1) of this section who is under their jurisdiction to sign a notice that informs the offender of the duty to register with local law enforcement agencies in accordance with this section. In addition, the notice shall inform the offender that he or she has a duty to register with local law enforcement agencies in any state or other jurisdiction to which the offender may move and that the local law enforcement agency of the jurisdiction in which the offender resides in this state shall notify the agency responsible for registration in the new state as provided in paragraph (d) of subsection (3) of this section. For any offender ~~described in paragraph (e) of subsection (3.5)~~ SUBJECT TO THE PROVISIONS OF SUBSECTION (3.6) of this section, the notice shall also inform the offender that, at the time the offender registers, he or she must sit for a current photograph or image.

(II) Department of corrections personnel and department of human services personnel shall require any offender described in subsection (1) of this section to specify, at least five days prior to release into the community, the address at which the offender plans to reside upon release. PRIOR TO THE RELEASE OF SAID OFFENDER, DEPARTMENT OF CORRECTIONS PERSONNEL MAY ALSO OBTAIN A RECENT PHOTOGRAPH OR IMAGE OF SAID OFFENDER. Prior to release of said offender, department of corrections personnel or department of human services personnel, whichever is appropriate, in cooperation with local law enforcement officers, shall verify that the address is a residence, that the occupants or owners know of the offender's history of unlawful sexual behavior, and that the occupants or owners have agreed to allow the offender to reside at the address. If the offender is being released

on parole, department personnel shall also verify that the address complies with any conditions imposed by the parole board.

(3) (e) Any person ~~described in paragraph (e) of subsection (3.5)~~ WHOSE INFORMATION IS REQUIRED TO BE POSTED ON THE INTERNET PURSUANT TO SUBSECTION (3.6) of this section shall be required, at the time that the person registers pursuant to subsection (3.5) of this section or this subsection (3), to sit for a current photograph or image of himself or herself. At the time that the person sits for the photograph or image, the person shall also supply a set of fingerprints to verify the person's identity. The person shall bear the cost of the photograph or image and fingerprints.

~~(3.5) (e) The Colorado bureau of investigation shall post a link on the state of Colorado homepage on the internet to a list containing the name, address, place of employment, and physical description, including but not limited to sex, height, weight, and any identifying characteristics of, and a digitized photograph or image of, and a description of the offense or offenses committed by, each of the following persons:~~

~~(I) Any person required to register pursuant to this subsection (3.5); and~~

~~(II) Any person sentenced as or found to be an offender under the laws of another state or jurisdiction that are comparable to section 18-3-414.5.~~

~~(f) The disclosure required by paragraph (e) of this subsection (3.5) shall be in addition to any other release of information authorized pursuant to this section or pursuant to part 9 of article 13 of title 16, C.R.S.~~

(6) (b) The forms completed by persons required to register pursuant to this section shall be confidential and shall not be open to inspection by the public or any person other than a law enforcement agency, except as provided in paragraph (b.5) of this subsection (6) and subsections ~~(3.5)~~ (3.6), (6.5), and (6.7) of this section.

(6.5) (c) (I) A local law enforcement agency shall ~~release information regarding any person registered with the local law enforcement agency pursuant to this section~~ to SUBMIT TO THE COLORADO BUREAU OF INVESTIGATION A REQUEST FROM any person ~~living outside~~ RESIDING WITHIN the local law enforcement agency's jurisdiction FOR THE RELEASE OF INFORMATION CONCERNING PERSONS REQUIRED TO REGISTER PURSUANT TO THIS SECTION WHO RESIDE WITHIN ANY LAW ENFORCEMENT JURISDICTION CONTIGUOUS TO THE JURISDICTIONAL BOUNDARIES OF THE LOCAL LAW ENFORCEMENT AGENCY.

(II) When necessary for public protection ~~and upon request~~ and demonstration of a need to know, A LOCAL LAW ENFORCEMENT AGENCY SHALL SUBMIT TO THE COLORADO BUREAU OF INVESTIGATION A REQUEST FROM ANY PERSON RESIDING WITHIN THE LOCAL LAW ENFORCEMENT AGENCY'S JURISDICTION FOR THE RELEASE OF INFORMATION CONCERNING PERSONS REQUIRED TO REGISTER PURSUANT TO THIS SECTION WHO RESIDE OUTSIDE OF THE GEOGRAPHIC AREAS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (6.5) OR SUBPARAGRAPH (I) OF THIS PARAGRAPH (c). In determining whether the person has demonstrated a need to know, the local law enforcement agency shall, at a minimum, consider the nature and extent of the person's presence or the presence of the person's immediate family in the local law

enforcement agency's jurisdiction. For purposes of this subsection (6.5), "immediate family" includes the person's spouse and the person's parent, grandparent, sibling, or child.

(III) ANY PERSON REQUESTING INFORMATION PURSUANT TO THIS PARAGRAPH (c) SHALL SHOW PROPER IDENTIFICATION OR OTHER PROOF OF RESIDENCE.

(IV) UPON RECEIPT OF A REQUEST FOR INFORMATION FROM A LAW ENFORCEMENT AGENCY PURSUANT TO THIS PARAGRAPH (c), THE COLORADO BUREAU OF INVESTIGATION SHALL MAIL THE REQUESTED INFORMATION TO THE PERSON MAKING THE REQUEST, OR, AT THE OPTION OF THE LAW ENFORCEMENT AGENCY, FORWARD THE INFORMATION BACK TO THE LAW ENFORCEMENT AGENCY THAT MAY RELEASE SUCH INFORMATION TO THE PERSON MAKING THE REQUEST.

(d) Information released pursuant to paragraph (b) or (c) of this subsection (6.5), at a minimum, shall include ~~basic identification information regarding~~ THE NAME, ADDRESS, AND ALIASES OF the registrant, ~~including~~ a photograph, if readily available, ~~and~~ a history of the convictions resulting in the registrant being required to register pursuant to this section, and any other convictions the registrant may have. INFORMATION CONCERNING VICTIMS SHALL NOT BE RELEASED PURSUANT TO THIS SUBSECTION (6.5).

SECTION 4. 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 public safety, Colorado bureau of investigation, for the fiscal year beginning July 1, 2001, the sum of one hundred thirty-eight thousand two hundred dollars (\$138,200) and 2.6 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) It is the intent of the general assembly that the general fund appropriation in subsection (1) of this section for the implementation of this act shall be derived from savings generated from the implementation of the provisions of S.B. 01-77, as enacted during the first regular session of the sixty-third general assembly.

SECTION 5. Effective date. (1) This act shall take effect upon the passage.

(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. 01-77, as reflected in the appropriations 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 4 of this act; and

(b) S.B. 01-77 is enacted at the first regular session of the sixty-third general assembly and becomes law.

SECTION 6. 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