

CHAPTER 340

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 04-1387

BY REPRESENTATIVE(S) Hefley, Boyd, Carroll, Frangas, Marshall, Paccione, and Romanoff;
also SENATOR(S) Dyer, and Grossman.

AN ACT**CONCERNING CHANGES TO THE PROCEDURAL CRIMINAL LAWS.**

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

SECTION 1. 16-14-104 (1), Colorado Revised Statutes, is amended to read:

16-14-104. Trial or dismissal. (1) Within ~~ninety~~ ONE HUNDRED EIGHTY days after the receipt of the request by the court and the prosecuting official, or within such additional time as the court for good cause shown in open court may grant, the prisoner or the prisoner's counsel being present, the indictment, information, or criminal complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the prisoner's attorney and opportunity to be heard. If, after such a request, the indictment, information, or criminal complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, or criminal complaint be of any further force or effect, and the court shall dismiss it with prejudice.

SECTION 2. 16-3-301.1 (4) (a) (I), (6) (e), (11) (a), (11) (b), and (11) (d), Colorado Revised Statutes, are amended to read:

16-3-301.1. Court orders for the production of records. (4) (a) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that the grounds exist, the court shall issue a court order for the production of records, which shall:

(I) Identify or describe, as nearly as may be, the business entity that is in actual ~~possession~~ or constructive control of the records;

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

(6) (e) Upon receiving the records from the business entity, the criminal investigator or peace officer named in the court order shall file a return and inventory with the court indicating the records that have been received ~~the total number of pages if supplied on paper~~, and the date upon which the records were received. ~~along with~~ THE CRIMINAL INVESTIGATOR OR PEACE OFFICER NAMED IN THE COURT ORDER MAY ALSO FILE WITH THE COURT the original of the attestation of authenticity and completeness.

(11) As used in this section, unless the context otherwise requires:

(a) "Actual or constructive ~~possession~~ CONTROL" means the records are maintained or stored in any form or format on the premises of the business entity or at another location or facility under the custody or control of the business entity or a parent or subsidiary business, including pursuant to an agreement or contract with the business entity or any parent or subsidiary business and third-party service provider, in Colorado or elsewhere.

(b) "Business entity" means a corporation or other entity that is subject to the provisions of title 7, C.R.S.; A foreign ~~corporations~~ CORPORATION qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including A federally chartered or authorized financial ~~institutions~~ INSTITUTION; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

(d) "Peace officer" means a peace officer as ~~defined~~ DESCRIBED in section ~~18-1-901 (3) (1)~~, C.R.S. 16-2.5-101.

SECTION 3. 20-1-106.1 (1) (a), Colorado Revised Statutes, is amended to read:

20-1-106.1. Preparation and review of affidavits and warrants. (1) The district attorneys of the several judicial districts in the state of Colorado shall:

(a) Render, in their quasi-judicial capacity, legal advice to peace officers, upon the request of such officers or of the court, pertaining to the preparation and review of affidavits and warrants for arrests, searches, seizures, ~~and~~ nontestimonial identification items, AND COURT ORDERS FOR THE PRODUCTION OF RECORDS;

SECTION 4. 13-90-118, Colorado Revised Statutes, is amended to read:

13-90-118. Witness immunity. (1) Whenever a witness refuses, on the basis of ~~his~~ THE privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to a court or grand jury of the state of Colorado involving any laws of the state and the person presiding over the proceeding communicates to the witness an order as specified in subsection (2) of this section, the witness may not refuse to comply with the order on the basis of ~~his~~ THE privilege against self-incrimination; except that no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury or false statement or otherwise failing to comply with the order.

(2) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court or grand jury of the state of Colorado, the district court for the judicial district in which the proceeding is or may be held, OR THE COUNTY COURT IN WHICH A MISDEMEANOR PROCEEDING IS OR MAY BE HELD, may issue, upon request of any district attorney, attorney general, or special prosecutor of the state of Colorado, an order requiring such individual to give testimony or provide other information which he OR SHE refuses to give or provide on the basis of ~~his~~ THE privilege against self-incrimination, such order to become effective as provided in subsection (1) of this section.

(3) A district attorney, attorney general, or special prosecutor of the state of Colorado may request an order as specified in subsection (2) of this section when in his OR HER judgment the testimony or other information from such individual may be necessary to the public interest and such individual has refused or is likely to refuse to testify or provide other information on the basis of ~~his~~ THE privilege against self-incrimination.

SECTION 5. 42-2-121 (2) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

42-2-121. Records to be kept by the department - admission of records in court. (2) (c) (III.5) THE CERTIFICATE AND COVER PAGE AND ITS CONTENTS REQUIRED BY SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) MAY BE ELECTRONICALLY PRODUCED AND TRANSMITTED. AN ELECTRONIC REPRODUCTION OF THE CERTIFICATE AND COVER PAGE, INCLUDING AN ELECTRONIC SIGNATURE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR OF THE EXECUTIVE DIRECTOR'S APPOINTEE AND AN ELECTRONIC REPRODUCTION OF THE OFFICIAL SEAL OF THE DEPARTMENT, SHALL BE ADMISSIBLE IN COURT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c).

SECTION 6. Article 1 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-1-108. Admission of records in court. (1) IN A TRIAL OR HEARING, ALL OFFICIAL RECORDS AND DOCUMENTS OF THE STATE OF COLORADO, AS DEFINED IN SECTION 42-2-121 (1) (c), C.R.S., SHALL:

(a) BE ADMISSIBLE IN ALL COUNTY AND DISTRICT COURTS WITHIN THE STATE OF COLORADO WITHOUT FURTHER FOUNDATION;

(b) BE STATUTORY EXCEPTIONS TO RULE 802 OF THE COLORADO RULES OF EVIDENCE; AND

(c) CONSTITUTE PRIMA FACIE PROOF OF THE INFORMATION CONTAINED IN THE RECORD OR DOCUMENT IF THE RECORD OR DOCUMENT IS ACCOMPANIED BY A CERTIFICATE STATING THAT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, OR THE EXECUTIVE DIRECTOR'S APPOINTEE, HAS CUSTODY OF THE RECORD OR DOCUMENT AND ACCOMPANIED BY AND ATTACHED TO A COVER PAGE THAT:

(I) SPECIFIES THE NUMBER OF PAGES, EXCLUSIVE OF THE COVER PAGE, THAT CONSTITUTE THE RECORD OR DOCUMENT BEING SUBMITTED; AND

(II) BEARS THE SIGNATURE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, OR THE EXECUTIVE DIRECTOR'S APPOINTEE, ATTESTING TO THE AUTHENTICITY OF THE RECORD OR DOCUMENT; AND

(III) BEARS THE OFFICIAL SEAL OF THE DEPARTMENT OF REVENUE OR A STAMPED OR PRINTED FACSIMILE OF THE SEAL.

(2) AS USED IN SUBSECTION (1) OF THIS SECTION, "OFFICIAL RECORDS AND DOCUMENTS" INCLUDES ANY MECHANICALLY OR ELECTRONICALLY REPRODUCED COPY, PHOTOGRAPH, OR PRINTOUT OF A RECORD OR DOCUMENT OR ANY PORTION OF A RECORD OR DOCUMENT FILED WITH, MAINTAINED BY, OR PREPARED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-2-121 (1) (c), C.R.S. THE DEPARTMENT OF REVENUE MAY ALSO PERMIT THE ELECTRONIC TRANSMISSION OF INFORMATION FOR DIRECT RECORDING IN THE DEPARTMENT OF REVENUE'S RECORDS AND SYSTEMS. INFORMATION TRANSMITTED BY AN ELECTRONIC MEANS THAT IS APPROVED BY THE DEPARTMENT OF REVENUE CONSTITUTES AN OFFICIAL RECORD FOR THE PURPOSES OF THIS SECTION, REGARDLESS OF WHETHER AN ORIGINAL SOURCE DOCUMENT FOR THE INFORMATION EXISTS OR EVER EXISTED. THE CERTIFICATE AND COVER PAGE AND ITS CONTENTS REQUIRED BY SUBSECTION (1) OF THIS SECTION MAY BE ELECTRONICALLY PRODUCED AND TRANSMITTED. AN ELECTRONIC REPRODUCTION OF THE CERTIFICATE AND COVER PAGE, INCLUDING AN ELECTRONIC SIGNATURE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR OF THE EXECUTIVE DIRECTOR'S APPOINTEE AND AN ELECTRONIC REPRODUCTION OF THE OFFICIAL SEAL OF THE DEPARTMENT OF REVENUE, SHALL BE ADMISSIBLE IN COURT AS SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(3) A RECORD OR DOCUMENT SHALL NOT BE REQUIRED TO INCLUDE EVERY PAGE OF A RECORD OR DOCUMENT FILED WITH, MAINTAINED BY, OR PREPARED BY THE DEPARTMENT OF REVENUE PURSUANT TO THIS SECTION TO BE AN OFFICIAL RECORD OR DOCUMENT, IF THE OFFICIAL RECORD OR DOCUMENT INCLUDES ALL OF THOSE PORTIONS OF THE RECORD OR DOCUMENT RELEVANT TO THE TRIAL OR HEARING FOR WHICH IT IS PREPARED. THERE SHALL BE A PRESUMPTION THAT THE OFFICIAL RECORD OR DOCUMENT CONTAINS ALL INFORMATION THAT IS RELEVANT TO THE TRIAL OR HEARING.

SECTION 7. 18-3-413.5 (2) (a) (V), Colorado Revised Statutes, is amended to read:

18-3-413.5. Use of closed circuit television - child victims of sexual offenses.

(2) (a) Only the following persons may be in the room with the child victim when the child testifies by closed circuit television:

(V) ~~Unless the defendant objects,~~ Any person whose presence, in the opinion of the court, contributes to the welfare and well-being of the child victim, including a person who has dealt with the child in a therapeutic setting concerning the abuse; and

SECTION 8. Effective date - applicability. This act shall take effect July 1, 2004. Section 1 of this act shall apply to requests received by the court on or after said date.

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: May 28, 2004