

CHAPTER 128

CRIMINAL LAW AND PROCEDURE

SENATE BILL 05-138

BY SENATOR(S) Grossman, Mitchell, Tochtrop, Veiga, and Williams;
also REPRESENTATIVE(S) Carroll T., Berens, Boyd, Coleman, Garcia, Jahn, Merrifield, Paccione, Penry, and Solano.

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

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

SECTION 1. 16-4-103 (2), Colorado Revised Statutes, is amended to read:

16-4-103. Fixing of bail and conditions of bail bond. (2) A condition of every bail bond, and the only condition for a breach of which a surety or security on the bail bond may be subjected to forfeiture, is that the released person appear to answer the charge against such person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued. Further conditions of every bail bond shall be that the released person not commit any felony while at liberty on such bail bond and that the court in which the action is pending have the power to revoke the release of the defendant, to increase the bail bond, or to change any bail bond condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a felony while released pending adjudication of a prior felony charge. A further condition of every bail bond in cases of domestic violence as defined in section 18-6-800.3 (1), C.R.S., shall be that the released person acknowledge the protection order as provided in section 18-1-1001 (5), C.R.S. A further condition of every bail bond in a case of an offense under section 42-2-138 (1) (d) (I), C.R.S., of driving while such person's driver's license or privilege to drive, either as a resident or nonresident, is restrained solely or partially because of a conviction of a driving offense pursuant to section 42-4-1301 (1) or (2) (a), C.R.S., shall be that such person not drive any motor vehicle during the period of such driving restraint. In addition, the judge may impose such additional conditions upon the conduct of the defendant as will, in the judge's opinion, render it more likely that the defendant will fulfill the other bail bond conditions. These additional conditions may include submission of the defendant to the supervision of some qualified person or organization. ~~Any defendant whose bail bond is revoked~~

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

~~or increased under an order entered pursuant to this section and who remains in custody must be tried on the charges on which the bail bond has been increased or revoked within ninety days after such order or within six months after the defendant's arraignment on such charges, whichever date is earlier.~~

SECTION 2. Part 4 of article 1 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-1-417. Ineffective assistance of counsel claims - waiver of confidentiality.

(1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHENEVER A DEFENDANT ALLEGES INEFFECTIVE ASSISTANCE OF COUNSEL, THE DEFENDANT AUTOMATICALLY WAIVES ANY CONFIDENTIALITY, INCLUDING ATTORNEY-CLIENT AND WORK-PRODUCT PRIVILEGES, BETWEEN COUNSEL AND DEFENDANT, AND BETWEEN THE DEFENDANT OR COUNSEL AND ANY EXPERT WITNESS RETAINED OR APPOINTED IN CONNECTION WITH THE REPRESENTATION, BUT ONLY WITH RESPECT TO THE INFORMATION THAT IS RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE. AFTER THE DEFENDANT ALLEGES INEFFECTIVE ASSISTANCE OF COUNSEL, THE ALLEGEDLY INEFFECTIVE COUNSEL AND AN EXPERT WITNESS MAY DISCUSS WITH, MAY DISCLOSE ANY ASPECT OF THE REPRESENTATION THAT IS RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE TO, AND MAY PRODUCE DOCUMENTS RELATED TO SUCH REPRESENTATION THAT ARE RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE TO, THE PROSECUTION WITHOUT THE NEED FOR AN ORDER BY THE COURT THAT CONFIDENTIALITY HAS BEEN WAIVED.

(2) IF THE ALLEGEDLY INEFFECTIVE COUNSEL OR AN EXPERT WITNESS HAS RELEASED HIS OR HER FILE OR A PORTION THEREOF TO DEFENDANT OR DEFENDANT'S CURRENT COUNSEL, DEFENDANT OR CURRENT COUNSEL SHALL PERMIT THE PROSECUTION TO INSPECT AND COPY ANY OR ALL PORTIONS OF THE FILE THAT ARE RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE UPON REQUEST OF THE PROSECUTION.

SECTION 3. 16-12-206 (2), Colorado Revised Statutes, is amended to read:

16-12-206. Postconviction review - motion. (2) By alleging that trial counsel rendered ineffective assistance, the defendant automatically waives ~~the attorney-client privilege~~ CONFIDENTIALITY PURSUANT TO THE PROVISIONS OF SECTION 18-1-417, C.R.S., between the defendant and trial counsel, but only with respect to the information that is related to the defendant's claim of ineffective assistance.

SECTION 4. Part 4 of article 10 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-10-402. Use of closed-circuit television - child or developmentally disabled witnesses. (1) (a) WHEN A WITNESS AT THE TIME OF A TRIAL IS A CHILD LESS THAN TWELVE YEARS OF AGE, OR IS A PERSON WHO HAS A DEVELOPMENTAL DISABILITY AS DEFINED IN SECTION 27-10.5-102 (11) (a), C.R.S., THE COURT MAY, UPON MOTION OF A PARTY OR UPON ITS OWN MOTION, ORDER THAT THE WITNESS'S TESTIMONY BE TAKEN IN A ROOM OTHER THAN THE COURTROOM AND BE TELEVISED BY CLOSED-CIRCUIT TELEVISION IN THE COURTROOM IF:

(I) THE TESTIMONY IS TAKEN DURING THE PROCEEDING;

(II) THE JUDGE DETERMINES THAT TESTIMONY BY THE WITNESS IN THE COURTROOM AND IN THE PRESENCE OF THE DEFENDANT WOULD RESULT IN THE WITNESS SUFFERING SERIOUS EMOTIONAL DISTRESS OR TRAUMA SUCH THAT THE WITNESS WOULD NOT BE ABLE TO REASONABLY COMMUNICATE; AND

(III) CLOSED-CIRCUIT TELEVISION EQUIPMENT IS AVAILABLE FOR SUCH USE.

(b) TO OBTAIN AN ORDER AUTHORIZING THE USE OF CLOSED-CIRCUIT TELEVISION FOR TESTIMONY BY A CHILD OR DEVELOPMENTALLY DISABLED WITNESS, THE PARTY SHALL FILE A WRITTEN MOTION WITH THE COURT NO LESS THAN TEN DAYS PRIOR TO THE TRIAL.

(c) ONLY THE PROSECUTING ATTORNEY, THE ATTORNEY FOR THE DEFENDANT, THE GUARDIAN AD LITEM, IF ANY, AND THE JUDGE MAY QUESTION THE WITNESS WHEN HE OR SHE TESTIFIES BY CLOSED-CIRCUIT TELEVISION.

(d) THE OPERATORS OF THE CLOSED-CIRCUIT TELEVISION EQUIPMENT SHALL MAKE EVERY EFFORT TO BE UNOBTRUSIVE WHILE THE WITNESS IS TESTIFYING.

(2) (a) ONLY THE FOLLOWING PERSONS MAY BE IN THE ROOM WITH THE WITNESS WHEN THE CHILD OR DEVELOPMENTALLY DISABLED PERSON TESTIFIES BY CLOSED-CIRCUIT TELEVISION:

(I) THE PROSECUTING ATTORNEY;

(II) THE ATTORNEY FOR THE DEFENDANT;

(III) THE GUARDIAN AD LITEM, IF ANY;

(IV) THE OPERATORS OF THE CLOSED-CIRCUIT TELEVISION EQUIPMENT;

(V) A PERSON WHOSE PRESENCE, IN THE OPINION OF THE COURT, CONTRIBUTES TO THE WELFARE AND WELL-BEING OF THE WITNESS, INCLUDING A PERSON WHO HAS DEALT WITH THE WITNESS IN A THERAPEUTIC SETTING; AND

(VI) THE JURY.

(b) DURING THE WITNESS'S TESTIMONY BY CLOSED-CIRCUIT TELEVISION, THE JUDGE AND THE DEFENDANT, IF PRESENT, SHALL REMAIN IN THE COURTROOM.

(c) THE JUDGE AND THE DEFENDANT SHALL BE ALLOWED TO COMMUNICATE WITH THE PERSONS IN THE ROOM WHERE THE WITNESS IS TESTIFYING BY AN APPROPRIATE ELECTRONIC METHOD.

(3) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF THE DEFENDANT IS APPEARING PRO SE.

(4) THIS SECTION SHALL NOT BE INTERPRETED TO PRECLUDE, FOR PURPOSES OF IDENTIFICATION OF A DEFENDANT, THE PRESENCE OF BOTH THE WITNESS AND THE DEFENDANT IN THE COURTROOM AT THE SAME TIME.

(5) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PRECLUDE THE REMOVAL OF THE DEFENDANT, RATHER THAN THE WITNESS, FROM THE COURTROOM UPON THE STIPULATION OF BOTH PARTIES AND THE APPROVAL OF THE COURT.

SECTION 5. The introductory portion to 18-3-407 (1) and 18-3-407 (2) (c) and (2) (e), Colorado Revised Statutes, are amended, and the said 18-3-407 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

18-3-407. Victim's and witness's prior history - evidentiary hearing - victim's identity - protective order. (1) Evidence of specific instances of the victim's or a witness's prior or subsequent sexual conduct, opinion evidence of the victim's or a witness's sexual conduct, and reputation evidence of the victim's or a witness's sexual conduct ~~shall~~ MAY BE ADMISSIBLE ONLY AT TRIAL, AND SHALL NOT BE ADMITTED IN ANY OTHER PROCEEDING EXCEPT AT A PROCEEDING PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION. AT TRIAL, SUCH EVIDENCE SHALL be presumed to be irrelevant except:

(2) In any criminal prosecution under sections 18-3-402 to 18-3-405.5, 18-6-301, 18-6-302, 18-6-403, and 18-6-404, or for attempt or conspiracy to commit any crime under sections 18-3-402 to 18-3-405.5, 18-6-301, 18-6-302, 18-6-403, and 18-6-404, if evidence, that is not excepted under subsection (1) of this section, of specific instances of the victim's or a witness's prior or subsequent sexual conduct, or opinion evidence of the victim's or a witness's sexual conduct, or reputation evidence of the victim's or a witness's sexual conduct, or evidence that the victim or a witness has a history of false reporting of sexual assaults is to be offered at trial, the following procedure shall be followed:

(c) If the court finds that the offer of proof is sufficient, the court shall notify the other party of such. ~~and~~ IF THE PROSECUTION STIPULATES TO THE FACTS CONTAINED IN THE OFFER OF PROOF, THE COURT SHALL RULE ON THE MOTION BASED UPON THE OFFER OF PROOF WITHOUT AN EVIDENTIARY HEARING. OTHERWISE, THE COURT SHALL set a hearing to be held in camera prior to trial. In such hearing, TO THE EXTENT THE FACTS ARE IN DISPUTE, the court ~~shall~~ MAY allow the questioning of the victim or witness regarding the offer of proof made by the moving party ~~and shall~~ OR otherwise allow a ~~full~~ presentation of the offer of proof, including but not limited to the presentation of witnesses.

(e) At the conclusion of the hearing, OR BY WRITTEN ORDER IF NO HEARING IS HELD, if the court finds that the evidence proposed to be offered regarding the sexual conduct of the victim or witness is relevant to a material issue to the case, the court shall order that evidence may be introduced and prescribe the nature of the evidence or questions to be permitted. The moving party may then offer evidence pursuant to the order of the court.

(f) ALL MOTIONS AND SUPPORTING DOCUMENTS FILED PURSUANT TO THIS SECTION SHALL BE FILED UNDER SEAL AND MAY BE UNSEALED ONLY IF THE COURT RULES THE EVIDENCE IS ADMISSIBLE AND THE CASE PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE EVIDENCE CONTAINED IN THE MOTION IS ADMISSIBLE, ONLY THAT PORTION OF THE MOTION AND SUPPORTING DOCUMENTS PERTAINING TO THE ADMISSIBLE PORTION MAY BE UNSEALED.

(g) THE COURT SHALL SEAL ALL COURT TRANSCRIPTS, TAPE RECORDINGS, AND RECORDS OF PROCEEDINGS, OTHER THAN MINUTE ORDERS, OF A HEARING HELD PURSUANT TO THIS SECTION. THE COURT MAY UNSEAL THE TRANSCRIPTS, TAPE RECORDINGS, AND RECORDS ONLY IF THE COURT RULES THE EVIDENCE IS ADMISSIBLE AND THE CASE PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE EVIDENCE IS ADMISSIBLE, ONLY THE PORTION OF THE HEARING PERTAINING TO THE ADMISSIBLE EVIDENCE MAY BE UNSEALED.

SECTION 6. 18-6-803.5 (3) (d), Colorado Revised Statutes, is amended, and the said 18-6-803.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-6-803.5. Crime of violation of a protection order - penalty - peace officers' duties. (3) (d) The arrest and detention of a restrained person is governed by applicable constitutional and applicable state rules of criminal procedure. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station, for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made OR THE ARRESTED PERSON MAY BE TAKEN TO THE JAIL IN THE COUNTY WHERE THE PROTECTION ORDER WAS ISSUED. The law enforcement agency or any other locally designated agency shall make all reasonable efforts to contact the protected party upon the arrest of the restrained person. The prosecuting attorney shall present any available arrest affidavits and the criminal history of the restrained person to the court at the time of the first appearance of the restrained person before the court.

(9) A CRIMINAL ACTION CHARGED PURSUANT TO THIS SECTION MAY BE TRIED EITHER IN THE COUNTY WHERE THE OFFENSE IS COMMITTED OR IN THE COUNTY IN WHICH THE COURT THAT ISSUED THE PROTECTION ORDER IS LOCATED, IF SUCH COURT IS WITHIN THIS STATE.

SECTION 7. 18-8-212, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-8-212. Violation of bail bond conditions. (4) A CRIMINAL ACTION CHARGED PURSUANT TO THIS SECTION MAY BE TRIED EITHER IN THE COUNTY WHERE THE OFFENSE IS COMMITTED OR IN THE COUNTY IN WHICH THE COURT THAT ISSUED THE BOND IS LOCATED, IF SUCH COURT IS WITHIN THIS STATE.

SECTION 8. Repeal. 18-3-413.5, Colorado Revised Statutes, is repealed.

SECTION 9. 16-10-109 (2) and (3), Colorado Revised Statutes, are amended to read:

16-10-109. Trial by jury for petty offenses. (2) A defendant charged with a petty offense shall be entitled to a jury trial if, ~~within ten days after arraignment or entry of a plea, he files with the court in which he is ordered to appear to defend against said charge a written jury demand and at the same time tenders to that court a jury fee of twenty-five dollars, unless the fee is waived by the judge because of the indigence of the defendant~~ WITHIN TWENTY DAYS AFTER ENTRY OF A PLEA, THE DEFENDANT MAKES A REQUEST TO THE COURT FOR A JURY TRIAL, IN WRITING, AND

TENDERS TO THE COURT A JURY FEE OF TWENTY-FIVE DOLLARS UNLESS THE FEE IS WAIVED BY THE JUDGE BECAUSE OF THE INDIGENCE OF THE DEFENDANT. The jury shall consist of three jurors unless a greater number, not to exceed six, is requested by the defendant in said jury demand. If the charge is dismissed or the defendant is acquitted of the charge or if the defendant, having paid the jury fee, files with the court at least ten days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded.

(3) At the time of arraignment for any petty offense in this state, the judge shall advise any defendant not represented by counsel of the defendant's right to trial by jury, of the requirement that the defendant, if he desires to invoke his right to trial by jury, ~~demand~~ REQUEST such trial by jury ~~in writing within ten days after arraignment or entry of a plea~~; WITHIN TWENTY DAYS AFTER ENTRY OF A PLEA, IN WRITING, of the number of jurors allowed by law, and of the requirement that the defendant, if he desires to invoke his right to trial by jury, tender to the court within ~~ten~~ TWENTY days after ~~arraignment or entry of a plea~~ a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant.

SECTION 10. 13-10-114 (4) and (5), Colorado Revised Statutes, are amended to read:

13-10-114. Trial by jury. (4) For the purposes of this section, a defendant waives his right to a jury trial under subsection (1) of this section unless, within ~~ten~~ TWENTY days after ~~arraignment or entry of a plea~~, ~~he files with the court a written jury demand and at the same time tenders to the court a jury fee of twenty-five dollars~~ THE DEFENDANT MAKES A REQUEST TO THE COURT FOR A JURY TRIAL, IN WRITING, AND TENDERS TO THE COURT A FEE OF TWENTY-FIVE DOLLARS, unless the fee is waived by the judge because of the indigence of the defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant having paid the jury fee files with the court at least ten days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded.

(5) At the time of arraignment for any petty offense in this state, the judge shall advise any defendant not represented by counsel of the defendant's right to trial by jury; of the requirement that the defendant, if he desires to invoke his right to trial by jury, ~~demand~~ REQUEST such trial by jury ~~in writing within ten days after arraignment or entry of a plea~~ WITHIN TWENTY DAYS AFTER ENTRY OF A PLEA, IN WRITING; of the number of jurors allowed by law; and of the requirement that the defendant, if he desires to invoke his right to trial by jury, tender to the court within ~~ten~~ TWENTY days after ~~arraignment or entry of a plea~~ a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant.

SECTION 11. Effective date - applicability. This act shall take effect on passage; except that sections 9 and 10 of this act shall take effect ninety days after the passage of this act, and sections 9 and 10 of this act shall apply to offenses committed on or after said date.

SECTION 12. 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: April 29, 2005