

CHAPTER 321

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 05-1014

BY REPRESENTATIVE(S) Carroll T., Berens, Crane, Garcia, Marshall, Romanoff, Borodkin, Coleman, Frangas, Madden, McGihon, Merrifield, Pommer, and Vigil;
also SENATOR(S) Grossman, Bacon, Fitz-Gerald, Groff, Hanna, Shaffer, Tapia, Tochtrop, Tupa, Veiga, Williams, and Windels.

AN ACT

CONCERNING SUBSTANTIVE CHANGES TO STRENGTHEN THE STATE CRIMINAL LAW.

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

SECTION 1. 18-1.3-602 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-1.3-602. Definitions. As used in this part 6, unless the context otherwise requires:

(3) (c) (I) "RESTITUTION" SHALL ALSO INCLUDE ALL COSTS INCURRED BY A GOVERNMENT AGENCY OR PRIVATE ENTITY TO:

(A) REMOVE, CLEAN UP, OR REMEDIATE A PLACE USED TO MANUFACTURE, OR ATTEMPT TO MANUFACTURE, A CONTROLLED SUBSTANCE, OR WHICH CONTAINS A CONTROLLED SUBSTANCE, OR WHICH CONTAINS CHEMICALS, SUPPLIES OR EQUIPMENT USED, OR INTENDED TO BE USED, IN THE MANUFACTURING OF A CONTROLLED SUBSTANCE; OR

(B) STORE, PRESERVE, OR TEST EVIDENCE OF A CONTROLLED SUBSTANCE VIOLATION.

(II) COSTS UNDER THIS PARAGRAPH (c) SHALL INCLUDE, BUT ARE NOT LIMITED TO, OVERTIME WAGES FOR PEACE OFFICERS OR OTHER GOVERNMENT EMPLOYEES, THE OPERATING EXPENSES FOR ANY EQUIPMENT UTILIZED, AND THE COSTS OF ANY PROPERTY DESIGNED FOR ONE-TIME USE, SUCH AS PROTECTIVE CLOTHING.

SECTION 2. 18-1.3-602 (4) (a), Colorado Revised Statutes, is amended BY THE

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

ADDITION OF A NEW SUBPARAGRAPH to read:

18-1.3-602. Definitions. As used in this part 6, unless the context otherwise requires:

(4) (a) "Victim" means any person aggrieved by the conduct of an offender and includes but is not limited to the following:

(VI) ANY PERSON WHO HAD TO EXPEND RESOURCES FOR THE PURPOSES DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION.

SECTION 3. 18-5-101 (3) (b), Colorado Revised Statutes, is amended to read:

18-5-101. Definitions. As used in sections 18-5-101 to 18-5-110, unless the context otherwise requires:

(3) To "falsely complete" a written instrument means:

(b) To transform an incomplete written instrument into a complete one by adding or inserting materially false information or adding or inserting a materially false statement. A materially false statement is a false assertion that affects the action, conduct, or decision of the person who receives or is intended to receive the asserted information in a manner that directly or indirectly benefits the person making the assertion. ~~Whether information or a statement is material is a question of law.~~

SECTION 4. 18-9-109 (5), Colorado Revised Statutes, is amended, and the said 18-9-109 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-9-109. Interference with staff, faculty, or students of educational institutions. (5) Any person who violates any of the provisions of this section, EXCEPT SUBSECTION (6) OF THIS SECTION, commits a class 3 misdemeanor.

(6) (a) A PERSON SHALL NOT KNOWINGLY MAKE OR CONVEY TO ANOTHER PERSON A CREDIBLE THREAT TO CAUSE DEATH OR TO CAUSE BODILY INJURY WITH A DEADLY WEAPON AGAINST:

(I) A PERSON THE ACTOR KNOWS OR BELIEVES TO BE A STUDENT, SCHOOL OFFICIAL, OR EMPLOYEE OF AN EDUCATIONAL INSTITUTION; OR

(II) AN INVITEE WHO IS ON THE PREMISES OF AN EDUCATIONAL INSTITUTION.

(b) FOR PURPOSES OF THIS SUBSECTION (6), "CREDIBLE THREAT" MEANS A THREAT OR PHYSICAL ACTION THAT WOULD CAUSE A REASONABLE PERSON TO BE IN FEAR OF BODILY INJURY WITH A DEADLY WEAPON OR DEATH.

(c) A PERSON WHO VIOLATES THIS SUBSECTION (6) COMMITS A CLASS 1 MISDEMEANOR.

SECTION 5. 18-9-121, Colorado Revised Statutes, is amended to read:

18-9-121. Bias-motivated crimes. (1) The general assembly hereby finds and declares that it is the right of every person, regardless of race, color, ancestry, religion, ~~or~~ national origin, PHYSICAL OR MENTAL DISABILITY, OR SEXUAL ORIENTATION, to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. The general assembly further finds that the advocacy of unlawful acts against persons or groups because of a person's or group's race, color, ancestry, religion, ~~or~~ national origin, PHYSICAL OR MENTAL DISABILITY, OR SEXUAL ORIENTATION, for the purpose of inciting and provoking bodily injury or damage to property, poses a threat to public order and safety and should be subject to criminal sanctions.

(2) A person commits ~~ethnic intimidation~~ A BIAS-MOTIVATED CRIME if, with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, ~~or~~ national origin, PHYSICAL OR MENTAL DISABILITY, OR SEXUAL ORIENTATION, he or she:

(a) Knowingly causes bodily injury to another person; or

(b) By words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person's property and such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or

(c) Knowingly causes damage to or destruction of the property of another person.

(3) ~~Ethnic intimidation~~ COMMISSION OF A BIAS-MOTIVATED CRIME as described in paragraph (b) or (c) of subsection (2) of this section is a class 1 misdemeanor. ~~Ethnic intimidation~~ COMMISSION OF A BIAS-MOTIVATED CRIME as described in paragraph (a) of subsection (2) of this section is a class 5 felony; except that ~~ethnic intimidation~~ COMMISSION OF A BIAS-MOTIVATED CRIME as described in said paragraph (a) is a class 4 felony if the offender is physically aided or abetted by one or more other persons during the commission of the offense.

(3.5) (a) IN DETERMINING THE SENTENCE FOR A FIRST-TIME OFFENDER CONVICTED OF A BIAS-MOTIVATED CRIME, THE COURT SHALL CONSIDER THE FOLLOWING ALTERNATIVES, WHICH SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER SENTENCE RECEIVED BY THE OFFENDER:

(I) SENTENCING THE OFFENDER TO PAY FOR AND COMPLETE A PERIOD OF USEFUL COMMUNITY SERVICE INTENDED TO BENEFIT THE PUBLIC AND ENHANCE THE OFFENDER'S UNDERSTANDING OF THE IMPACT OF THE OFFENSE UPON THE VICTIM;

(II) AT THE REQUEST OF THE VICTIM, REFERRING THE CASE TO A RESTORATIVE JUSTICE OR OTHER SUITABLE ALTERNATIVE DISPUTE RESOLUTION PROGRAM ESTABLISHED IN THE JUDICIAL DISTRICT PURSUANT TO SECTION 13-22-313, C.R.S.

(b) IN CONSIDERING WHETHER TO IMPOSE THE ALTERNATIVES DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3.5), THE COURT SHALL CONSIDER THE CRIMINAL HISTORY OF THE OFFENDER, THE IMPACT OF THE OFFENSE ON THE VICTIM, THE AVAILABILITY OF THE ALTERNATIVES, AND THE NATURE OF THE OFFENSE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE COURT TO IMPOSE

THE ALTERNATIVES SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3.5).

(4) The criminal penalty provided in this section for ~~ethnic intimidation~~ COMMISSION OF A BIAS-MOTIVATED CRIME does not preclude the victim of such action from seeking any other remedies otherwise available under law.

(5) FOR PURPOSES OF THIS SECTION:

(a) "PHYSICAL OR MENTAL DISABILITY" REFERS TO A DISABILITY AS USED IN THE DEFINITION OF THE TERM "PERSON WITH A DISABILITY" IN SECTION 18-6.5-102 (3).

(b) "SEXUAL ORIENTATION" MEANS A PERSON'S ACTUAL OR PERCEIVED ORIENTATION TOWARD HETEROSEXUALITY, HOMOSEXUALITY, BISEXUALITY, OR TRANSGENDER STATUS.

SECTION 6. 24-4.1-302 (1) (cc.3), Colorado Revised Statutes, is amended to read:

24-4.1-302. Definitions. As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(1) "Crime" means any of the following offenses as defined by the statutes of the state of Colorado, whether committed by an adult or a juvenile:

(cc.3) ~~Ethnic intimidation~~ A BIAS-MOTIVATED CRIME, in violation of section 18-9-121, C.R.S.;

SECTION 7. 18-18-203 (2) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

18-18-203. Schedule I. (2) Unless specifically excepted by Colorado or federal law or Colorado or federal regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(c) Any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

(IV.5) 5-METHOXY-N, N-DIISOPROPYLTRYPTAMINE (5-MEO-DIPT);

(VIII.5) ALPHA-METHYLTRYPTAMINE (AMT);

SECTION 8. Exception to the requirements of section 2-2-703, Colorado Revised Statutes. The general assembly hereby finds that the amendments to section 18-9-121, Colorado Revised Statutes, enacted in this act will result in the minor fiscal impact of one additional offender being convicted and sentenced to the department of corrections during the five years following passage of this act. Because of the relative insignificance of this degree of fiscal impact, these amendments are an exception to the five-year appropriation requirements specified in section 2-2-703, Colorado Revised Statutes.

SECTION 9. Exception to the requirements of section 2-2-703, Colorado Revised Statutes. The general assembly hereby finds that the amendments to section 18-18-203, Colorado Revised Statutes, enacted in this act will result in the minor fiscal impact of one additional offender being convicted and sentenced to the department of corrections during the five years following passage of this act. Because of the relative insignificance of this degree of fiscal impact, these amendments are an exception to the five-year appropriation requirements specified in section 2-2-703, Colorado Revised Statutes.

SECTION 10. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 11. Effective date - applicability. This act shall take effect July 1, 2005, and shall apply to offenses committed on or after said date; except that section 7 of this act shall take effect on July 1, 2006.

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.

Became Law: June 9, 2005