

CHAPTER 288

CRIMINAL LAW AND PROCEDURE

SENATE BILL 06-022

BY SENATOR(S) Kester, Boyd, Evans, Fitz-Gerald, Groff, Grossman, Isgar, Johnson, Keller, Owen, Shaffer, Tapia, Taylor, Tochtrop, Tupa, Veiga, and Windels;
also REPRESENTATIVE(S) Penry, Berens, Butcher, Carroll T., Coleman, Crane, Frangas, Garcia, Gardner, Green, Harvey, Hoppe, Kerr A., Kerr J., Knoedler, Larson, Massey, May M., McCluskey, McFadyen, Merrifield, Paccione, Romanoff, Rose, Stafford, Sullivan, White, and Witwer.

AN ACT

CONCERNING SEXUALLY VIOLENT PREDATORS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 16-13-901, Colorado Revised Statutes, is amended to read:

16-13-901. Legislative declaration. The general assembly hereby finds that ~~a small percentage of~~ persons who are convicted of offenses involving unlawful sexual behavior and who are identified as sexually violent predators ~~may~~ pose a high enough level of risk to the community that persons in the community should receive notification concerning the identity of these sexually violent predators. The general assembly also recognizes the high potential for vigilantism that often results from community notification and the dangerous potential that the fear of such vigilantism will drive a sex offender to disappear and attempt to live without supervision. The general assembly therefore finds that sex offender notification should only occur in cases involving a high degree of risk to the community and should only occur under carefully controlled circumstances that include providing additional information and education to the community concerning supervision and treatment of sex offenders.

SECTION 2. 16-13-902 (5), Colorado Revised Statutes, is amended to read:

16-13-902. Definitions. (5) "Sexually violent predator" means a sex offender who is identified as a sexually violent predator pursuant to section 18-3-414.5, C.R.S., OR WHO IS FOUND TO BE A SEXUALLY VIOLENT PREDATOR OR ITS

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

EQUIVALENT IN ANY OTHER STATE OR JURISDICTION, INCLUDING BUT NOT LIMITED TO A MILITARY OR FEDERAL JURISDICTION.

SECTION 3. 16-13-903, Colorado Revised Statutes, is amended to read:

16-13-903. Sexually violent predator subject to community notification - determination - implementation. (1) ~~On and after December 31, 1999, a sexually violent predator may be subject to community notification as provided in this part 9, pursuant to criteria established by the management board pursuant to section 16-13-904.~~ A SEXUALLY VIOLENT PREDATOR SHALL BE SUBJECT TO COMMUNITY NOTIFICATION AS PROVIDED IN THIS PART 9, PURSUANT TO CRITERIA, PROTOCOLS, AND PROCEDURES ESTABLISHED BY THE MANAGEMENT BOARD PURSUANT TO SECTION 16-13-904.

(2) ~~The department of corrections or a sexually violent predator's supervising probation or parole officer shall apply the criteria developed by the management board pursuant to section 16-13-904 to determine whether grounds exist for making the sexually violent predator subject to community notification. If the department of corrections or the supervising officer determines that such grounds exist, the department or the supervising officer shall petition the parole board or the court, whichever has jurisdiction over the sexually violent predator, for a determination that the sexually violent predator is subject to community notification.~~

(3) (a) ~~If the parole board or the court determines that the sexually violent predator is subject to community notification, the department or~~ WHEN A SEXUALLY VIOLENT PREDATOR IS SENTENCED TO PROBATION OR COMMUNITY CORRECTIONS OR IS RELEASED INTO THE COMMUNITY FOLLOWING INCARCERATION, the sexually violent predator's supervising officer, OR THE OFFICIAL IN CHARGE OF THE RELEASING FACILITY OR HIS OR HER DESIGNEE IF THERE IS NO SUPERVISING OFFICER, shall notify the local law enforcement agency for the jurisdiction in which the sexually violent predator resides or plans to reside upon release from incarceration. The local law enforcement agency shall notify the Colorado bureau of investigation, and the sexually violent predator's status as being subject to community notification shall be entered in the central registry of persons required to register as sex offenders created pursuant to section 16-22-110.

(b) WHEN A SEXUALLY VIOLENT PREDATOR LIVING IN A COMMUNITY CHANGES RESIDENCE, UPON REGISTRATION IN THE NEW COMMUNITY OR NOTIFICATION TO THE NEW COMMUNITY'S LAW ENFORCEMENT AGENCY, THAT AGENCY SHALL NOTIFY THE COLORADO BUREAU OF INVESTIGATION AND IMPLEMENT COMMUNITY NOTIFICATION PROTOCOLS.

(4) ~~The department, the parole board, and any person employed by the department or the parole board, shall not be liable for any act or omission committed in implementing the provisions of this part 9 so long as the act or omission is not grossly negligent or committed willfully and wantonly.~~ NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE OR LIMIT THE SOVEREIGN IMMUNITY GRANTED TO PUBLIC ENTITIES PURSUANT TO THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

SECTION 4. The introductory portion to 16-13-904 (1) and 16-13-904 (1) (a)

and (3), Colorado Revised Statutes, are amended to read:

16-13-904. Sex offender management board - duties. (1) ~~On or before November 1, 1999,~~ The management board, in collaboration with the department of corrections, the judicial department, and the parole board, shall establish AND REVISE WHEN NECESSARY:

~~(a) Criteria to be applied by the department or a supervising probation or parole officer in determining whether to petition the parole board or the court for a determination that a sexually violent predator is subject to community notification;~~

~~(3) The management board shall hold at least three public meetings prior to adopting the criteria, protocols, and procedures required in subsection (1) of this section, at which meetings, the management board shall provide notice to and receive input from the public regarding the proposed criteria, protocols, and procedures.~~

SECTION 5. 16-13-905 (2), Colorado Revised Statutes, is amended to read:

16-13-905. Local law enforcement - duties - immunity. (2) ~~Any local law enforcement agency, and any employee of the law enforcement agency, shall not be liable for any act or omission committed in carrying out community notification so long as the act or omission is not grossly negligent or committed willfully and wantonly.~~ NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE OR LIMIT THE SOVEREIGN IMMUNITY GRANTED TO PUBLIC ENTITIES PURSUANT TO THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

SECTION 6. 16-13-906 (3), Colorado Revised Statutes, is amended to read:

16-13-906. Division of criminal justice - technical assistance team. (3) ~~The members of the sex offender management board community notification technical assistance team and the members of any local community notification team shall not be liable for any act or omission committed in carrying out community notification so long as the act or omission is not grossly negligent or committed willfully and wantonly.~~ NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE OR LIMIT THE SOVEREIGN IMMUNITY GRANTED TO PUBLIC ENTITIES PURSUANT TO THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

SECTION 7. 18-3-412.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-3-412.5. Failure to register as a sex offender. (6) (a) WHEN A PEACE OFFICER DETERMINES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A CRIME OF FAILURE TO REGISTER AS A SEX OFFENDER HAS BEEN COMMITTED BY A PERSON REQUIRED TO REGISTER AS A SEXUALLY VIOLENT PREDATOR IN THIS STATE PURSUANT TO ARTICLE 22 OF TITLE 16, C.R.S., OR IN ANY OTHER STATE, THE OFFICER SHALL ARREST THE PERSON SUSPECTED OF THE CRIME. IT SHALL BE A CONDITION OF ANY BOND POSTED BY SUCH PERSON THAT THE PERSON SHALL REGISTER PURSUANT TO THE PROVISIONS OF SECTION 16-22-108, C.R.S., WITHIN FIVE BUSINESS DAYS AFTER RELEASE FROM INCARCERATION.

(b) WHEN A PEACE OFFICER MAKES A WARRANTLESS ARREST PURSUANT TO THIS SUBSECTION (6), THE PEACE OFFICER SHALL IMMEDIATELY NOTIFY THE COLORADO BUREAU OF INVESTIGATION OF THE ARREST. UPON RECEIVING THE NOTIFICATION, THE COLORADO BUREAU OF INVESTIGATION SHALL NOTIFY THE JURISDICTION WHERE THE SEXUALLY VIOLENT PREDATOR LAST REGISTERED. THE JURISDICTION WHERE THE SEXUALLY VIOLENT PREDATOR LAST REGISTERED, IF IT IS NOT THE JURISDICTION WHERE THE PROBABLE CAUSE ARREST IS MADE, SHALL COORDINATE WITH THE ARRESTING JURISDICTION IMMEDIATELY TO DETERMINE THE APPROPRIATE JURISDICTION THAT WILL FILE THE CHARGE. IF THE SEXUALLY VIOLENT PREDATOR IS BEING HELD IN CUSTODY AFTER THE ARREST, THE APPROPRIATE JURISDICTION SHALL HAVE NO LESS THAN FIVE BUSINESS DAYS AFTER THE DATE OF THE ARREST TO CHARGE THE SEXUALLY VIOLENT PREDATOR.

SECTION 8. The introductory portion to 18-3-414.5 (1) (a) (II) and 18-3-414.5 (1) (b), (2), and (3), Colorado Revised Statutes, are amended to read:

18-3-414.5. Sexually violent predator. (1) As used in this section, unless the context otherwise requires:

(a) "Sexually violent predator" means an offender:

(II) Who has been convicted on or after July 1, 1999, of one of the following offenses, OR OF AN ATTEMPT, SOLICITATION, OR CONSPIRACY TO COMMIT ONE OF THE FOLLOWING OFFENSES, committed on or after July 1, 1997:

(b) "Convicted" includes having RECEIVED A VERDICT OF GUILTY BY A JUDGE OR JURY, HAVING pleaded guilty or nolo contendere, OR HAVING RECEIVED A DEFERRED JUDGMENT AND SENTENCE.

(2) ~~At the time a presentence investigation report is conducted for~~ WHEN a defendant ~~who~~ is convicted of one of the offenses specified in subparagraph (II) of paragraph (a) of subsection (1) of this section, the probation department shall, in coordination with the evaluator completing the mental health sex offense specific evaluation, complete the sexually violent predator risk assessment, UNLESS SUCH AN EVALUATION AND ASSESSMENT HAS BEEN COMPLETED WITHIN THE SIX MONTHS PRIOR TO THE CONVICTION OR THE DEFENDANT HAS BEEN PREVIOUSLY DESIGNATED A SEXUALLY VIOLENT PREDATOR. Based on the results of such assessment, the court shall make specific findings of fact and enter an order concerning whether the defendant is a sexually violent predator. If the defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to the provisions of section 16-22-108, C.R.S., AND SHALL BE SUBJECT TO COMMUNITY NOTIFICATION PURSUANT TO PART 9 OF ARTICLE 13 OF TITLE 16, C.R.S.

(3) When considering release on parole OR DISCHARGE for an offender who was convicted of one of the offenses specified in subparagraph (II) of paragraph (a) of subsection (1) of this section, IF THERE HAS BEEN NO PREVIOUS COURT ORDER, the parole board shall make specific findings concerning whether the offender is a sexually violent predator, based on the results of a sexually violent predator assessment. ~~conducted by the department of corrections.~~ IF NO PREVIOUS ASSESSMENT HAS BEEN COMPLETED, THE PAROLE BOARD SHALL ORDER THE DEPARTMENT OF CORRECTIONS TO COMPLETE A SEXUALLY VIOLENT PREDATOR

ASSESSMENT. If the parole board finds that the offender is a sexually violent predator, the offender shall be required to register pursuant to the provisions of section 16-22-108, C.R.S., AND SHALL BE SUBJECT TO COMMUNITY NOTIFICATION PURSUANT TO PART 9 OF ARTICLE 13 OF TITLE 16, C.R.S.

SECTION 9. 16-11.7-103 (4) (c.5), Colorado Revised Statutes, is amended to read:

16-11.7-103. Sex offender management board - creation - duties - repeal.

(4) The board shall carry out the following duties:

(c.5) ~~On or before January 1, 1999,~~ The board shall consult on, ~~and~~ approve, AND REVISE AS NECESSARY the risk assessment screening instrument developed by the division of criminal justice to assist the sentencing court in determining the likelihood that an offender would commit one or more of the offenses specified in section 18-3-414.5 (1) (a) (II), C.R.S., under the circumstances described in section 18-3-414.5 (1) (a) (III), C.R.S. No state general fund moneys shall be used to develop the risk assessment screening instrument. In carrying out this duty, the board shall consider sex offender risk assessment research and shall consider as one element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses. For purposes of this subsection (4) only, "mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a significant risk to the health and safety of other persons. If a defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to article 22 of this title AND SHALL BE SUBJECT TO COMMUNITY NOTIFICATION PURSUANT TO PART 9 OF ARTICLE 13 OF THIS TITLE.

SECTION 10. 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 the fiscal year beginning July 1, 2006, the sum of seventy-one thousand eight hundred six dollars (\$71,806) and 0.7 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 sex offender surcharge cash fund created in section 18-21-103 (3), Colorado Revised Statutes, not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 2006, the sum of twenty-seven thousand dollars (\$27,000), or so much thereof as may be necessary, for the implementation of this act.

(3) 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 division of criminal justice, for the fiscal year beginning July 1, 2006, the sum of twenty-nine thousand dollars (\$29,000), or so much thereof as may be necessary, for the implementation of this act.

SECTION 11. 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 30, 2006