

CHAPTER 339

CRIMINAL LAW AND PROCEDURE

SENATE BILL 06-150

BY SENATOR(S) Grossman, Bacon, Boyd, Dyer, Entz, Evans, Fitz-Gerald, Hagedorn, Keller, Kester, Lamborn, McElhany, Shaffer, Tapia, Taylor, Tochtrop, Traylor, Tupa, Veiga, Wiens, Williams, and Windels;
also REPRESENTATIVE(S) Hefley, Berens, Coleman, Hoppe, Kerr J., Stafford, Stengel, and Todd.

AN ACT**CONCERNING DNA TESTING OF ALL FELONS.**

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

SECTION 1. Repeal. 16-11-102.3, Colorado Revised Statutes, is repealed.

SECTION 2. Part 1 of article 11 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-102.4. Genetic testing of convicted offenders. (1) BEGINNING JULY 1, 2007, THE FOLLOWING CONVICTED OFFENDERS MUST SUBMIT TO AND PAY FOR A CHEMICAL TESTING OF THE PERSON'S BIOLOGICAL SUBSTANCE SAMPLE TO DETERMINE THE GENETIC MARKERS THEREOF:

(a) EVERY PERSON SENTENCED FOR A FELONY CONVICTION ON OR AFTER JULY 1, 2007. THIS PARAGRAPH (a) SHALL NOT APPLY TO PERSONS SENTENCED TO PROBATION PURSUANT TO DEFERRED SENTENCING AS AUTHORIZED IN SECTION 18-1.3-102, C.R.S., UNLESS OTHERWISE REQUIRED TO SUBMIT TO A SAMPLE IN THIS SECTION, OR UNLESS THE DEFERRED SENTENCING IS REVOKED AND A SENTENCE IS ENTERED. THE SAMPLE SHALL BE COLLECTED:

(I) FOR SENTENCES TO THE DEPARTMENT OF CORRECTIONS DURING THE INTAKE PROCESS BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED BY THE DEPARTMENT;

(II) FOR SENTENCES TO COUNTY JAIL OR COMMUNITY CORRECTIONS NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED INTO THE CUSTODY OF THE COUNTY JAIL OR THE COMMUNITY CORRECTIONS FACILITY; AND

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

(III) FOR SENTENCES TO PROBATION, NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS PLACED ON PROBATION.

(b) EVERY PERSON WHO IS SENTENCED FOR A CONVICTION OF, OR WHO RECEIVES A DEFERRED JUDGMENT AND SENTENCE FOR, AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR FOR WHICH THE UNDERLYING FACTUAL BASIS INVOLVES UNLAWFUL SEXUAL BEHAVIOR. "UNLAWFUL SEXUAL BEHAVIOR" SHALL HAVE THE SAME MEANING AS IN SECTION 16-22-102(9). THE SAMPLE SHALL BE COLLECTED:

(I) FOR SENTENCES TO THE DEPARTMENT OF CORRECTIONS DURING THE INTAKE PROCESS BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED BY THE DEPARTMENT;

(II) FOR SENTENCES TO COUNTY JAIL OR COMMUNITY CORRECTIONS NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED INTO THE CUSTODY OF THE COUNTY JAIL OR THE COMMUNITY CORRECTIONS FACILITY; AND

(III) FOR SENTENCES TO PROBATION, NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS PLACED ON PROBATION.

(2) "CONVICTED" FOR PURPOSES OF THIS SECTION MEANS HAVING RECEIVED A VERDICT OF GUILTY BY A JUDGE OR JURY OR HAVING PLED GUILTY OR NOLO CONTENDERE. EXCEPT WHERE OTHERWISE INDICATED, "CONVICTED" DOES NOT INCLUDE DEFERRED SENTENCING PURSUANT TO SECTION 18-1.3-102, C.R.S., UNLESS THE DEFERRED SENTENCE IS REVOKED AND A SENTENCE IS ENTERED.

(3) THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF CORRECTIONS, A SHERIFF, OR A CONTRACTOR MAY USE REASONABLE FORCE TO OBTAIN BIOLOGICAL SUBSTANCE SAMPLES IN ACCORDANCE WITH THIS SECTION USING MEDICALLY RECOGNIZED PROCEDURES. IN ADDITION, A PERSON'S REFUSAL TO COMPLY WITH THIS SECTION MAY BE GROUNDS FOR REVOCATION OR DENIAL OF PAROLE, PROBATION, OR DEFERRED JUDGMENT AND SENTENCE. FAILURE TO PAY FOR A CHEMICAL TESTING OF A BIOLOGICAL SUBSTANCE SAMPLE SHALL BE CONSIDERED A REFUSAL TO COMPLY IF THE OFFENDER HAS THE PRESENT ABILITY TO PAY.

(4) ANY MONEYS RECEIVED FROM OFFENDERS PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE OFFENDER IDENTIFICATION FUND CREATED IN SECTION 24-33.5-415.6, C.R.S.

(5) THE COLORADO BUREAU OF INVESTIGATION IS DIRECTED TO CONDUCT THE CHEMICAL TESTING OF THE BIOLOGICAL SUBSTANCE SAMPLES OBTAINED PURSUANT TO THIS SECTION. THE RESULTS THEREOF SHALL BE FILED AND MAINTAINED BY THE COLORADO BUREAU OF INVESTIGATION AND SHALL BE FURNISHED TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST. THE COLORADO BUREAU OF INVESTIGATION SHALL STORE AND PRESERVE ALL BIOLOGICAL SUBSTANCE SAMPLES.

(6) THIS SECTION SHALL NOT APPLY TO JUVENILE ADJUDICATIONS UNDER TITLE 19.

SECTION 3. Repeal. 16-11-104, Colorado Revised Statutes, is repealed.

SECTION 4. Repeal. 16-11-204.3, Colorado Revised Statutes, is repealed.

SECTION 5. Repeal. 16-11-308 (4.5), Colorado Revised Statutes, is repealed as follows:

16-11-308. Custody of department of corrections - procedure. (4.5) (a) ~~White confined in the diagnostic center, each of the following offenders shall submit to a chemical testing of a biological substance sample from the offender to determine the genetic markers:~~

~~(I) Any offender sentenced on or after July 1, 2000, as a habitual offender pursuant to the provisions of section 18-1.3-801, C.R.S., and~~

~~(II) Any offender convicted of one or more of the following offenses committed on or after July 1, 2000:~~

~~(A) Second degree burglary as described in section 18-4-203, C.R.S., or~~

~~(B) Third degree burglary as described in section 18-4-204, C.R.S.~~

~~(b) The results of the testing conducted pursuant to paragraph (a) of this subsection (4.5) shall be filed and maintained by the Colorado bureau of investigation. The results of such test shall be furnished to any law enforcement agency upon request.~~

SECTION 6. Repeal. 17-2-201 (5) (h), Colorado Revised Statutes, is repealed as follows:

17-2-201. State board of parole. (5) (h) (I) ~~As a condition of parole, the board may require any person found guilty of or who pleads guilty or nolo contendere to a sexual offense under the department's code of penal discipline to submit to a testing of a biological substance sample from the person to determine the genetic markers thereof.~~

~~(II) If such testing is required, it shall occur prior to the offender's release from incarceration, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such test shall be furnished to any law enforcement agency upon request.~~

~~(III) The provisions of this paragraph (h) shall apply to any person who is so adjudicated for an act committed on or after July 1, 1999.~~

SECTION 7. Repeal. 17-22.5-202 (3) (b.5) (II) and (3.5), Colorado Revised Statutes, are repealed as follows:

17-22.5-202. Ticket to leave - discharge - clothes, money, transportation. (3) Prior to the release from a correctional facility by discharge or parole of any person imprisoned for the commission of a child abuse offense which occurred within the state of Colorado, the executive director shall:

~~(b.5) (II) In addition, the department shall require any offender convicted of or~~

~~who pleads guilty or nolo contendere to an offense involving unlawful sexual behavior or for which the factual basis involved unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., to submit to chemical testing of a biological substance sample from the offender to determine the genetic markers thereof. Such testing shall occur prior to the offender's release from incarceration, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.~~

~~(3.5) Any offender discharged from a correctional facility on or after July 1, 2000, who is not subject to parole or supervision shall submit to a chemical testing of a biological substance sample from the offender to determine the genetic markers thereof. Such testing shall occur at least ninety days prior to the offender's release from incarceration, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.~~

SECTION 8. Repeal. 17-22.5-407, Colorado Revised Statutes, is repealed.

SECTION 9. 18-1.3-204 (2) (e), Colorado Revised Statutes, is amended to read:

18-1.3-204. Conditions of probation. (2) (e) If the defendant is convicted of an offense that subjects the defendant to genetic testing pursuant to ~~section 16-11-204.3~~, SECTION 16-11-102.4, C.R.S., the court shall assess to the defendant the cost of collecting and testing a biological substance sample from the defendant as required in ~~section 16-11-204.3~~; SECTION 16-11-102.4, C.R.S.

SECTION 10. 18-1.3-407 (11.5) (a) (I), Colorado Revised Statutes, is amended to read:

18-1.3-407. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections. (11.5) (a) (I) Any juvenile who is sentenced to the youthful offender system ~~following conviction of an offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), or for which the underlying factual basis involved an offense involving unlawful sexual behavior~~, shall submit to and pay for collection and a chemical testing of a biological substance sample from the juvenile to determine the genetic markers thereof.

SECTION 11. Repeal. 19-2-924.5, Colorado Revised Statutes, is repealed.

SECTION 12. Repeal. 19-2-925.5, Colorado Revised Statutes, is repealed.

SECTION 13. Part 9 of article 2 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

19-2-925.6. Genetic testing of adjudicated offenders. (1) BEGINNING JULY 1, 2007, THE FOLLOWING ADJUDICATED DELINQUENTS MUST SUBMIT TO AND PAY FOR A CHEMICAL TESTING OF THE PERSON'S BIOLOGICAL SUBSTANCE SAMPLE TO DETERMINE THE GENETIC MARKERS THEREOF:

(a) EVERY PERSON SENTENCED ON OR AFTER JULY 1, 2007, FOR AN OFFENSE THAT WOULD CONSTITUTE A FELONY IF COMMITTED BY AN ADULT. THIS PARAGRAPH (a) SHALL NOT APPLY TO PERSONS SENTENCED TO PROBATION PURSUANT TO A DEFERRED ADJUDICATION, UNLESS OTHERWISE REQUIRED TO SUBMIT TO A SAMPLE IN THIS SECTION, OR UNLESS THE DEFERRED SENTENCING IS REVOKED AND A SENTENCE IS ENTERED. THE SAMPLE SHALL BE COLLECTED:

(I) FOR SENTENCES TO THE DEPARTMENT OF HUMAN SERVICES DURING THE INTAKE PROCESS BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED BY THE DEPARTMENT;

(II) FOR SENTENCES TO COUNTY JAIL NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED INTO CUSTODY; AND

(III) FOR SENTENCES TO PROBATION, NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS PLACED ON PROBATION.

(b) EVERY PERSON WHO IS SENTENCED FOR AN ADJUDICATION OF, OR WHO RECEIVES A DEFERRED ADJUDICATION FOR, AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR FOR WHICH THE UNDERLYING FACTUAL BASIS INVOLVES UNLAWFUL SEXUAL BEHAVIOR. "UNLAWFUL SEXUAL BEHAVIOR" SHALL HAVE THE SAME MEANING AS IN SECTION 16-22-102 (9), C.R.S. THE SAMPLE SHALL BE COLLECTED:

(I) FOR SENTENCES TO THE DEPARTMENT OF HUMAN SERVICES DURING THE INTAKE PROCESS BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED BY THE DEPARTMENT;

(II) FOR SENTENCES TO COUNTY JAIL NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS RECEIVED INTO CUSTODY; AND

(III) FOR SENTENCES TO PROBATION, NO LATER THAN THIRTY DAYS AFTER THE OFFENDER IS PLACED ON PROBATION.

(2) "CONVICTED" FOR PURPOSES OF THIS SECTION MEANS HAVING RECEIVED A VERDICT OF GUILTY BY A JUDGE OR JURY OR HAVING PLED GUILTY OR NOLO CONTENDERE. EXCEPT WHERE OTHERWISE INDICATED, "CONVICTED" DOES NOT INCLUDE DEFERRED ADJUDICATION UNLESS THE DEFERRED ADJUDICATION IS REVOKED AND A SENTENCE IS ENTERED.

(3) THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF HUMAN SERVICES, A SHERIFF, OR A CONTRACTOR MAY USE REASONABLE FORCE TO OBTAIN BIOLOGICAL SUBSTANCE SAMPLES IN ACCORDANCE WITH THIS SECTION USING MEDICALLY RECOGNIZED PROCEDURES. IN ADDITION, A PERSON'S REFUSAL TO COMPLY WITH THIS SECTION MAY BE GROUNDS FOR REVOCATION OR DENIAL OF PAROLE, PROBATION, OR DEFERRED ADJUDICATION. FAILURE TO PAY FOR A CHEMICAL TESTING OF A BIOLOGICAL SUBSTANCE SAMPLE SHALL BE CONSIDERED A REFUSAL TO COMPLY IF THE OFFENDER HAS THE PRESENT ABILITY TO PAY.

(4) ANY MONEYS RECEIVED FROM OFFENDERS PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE OFFENDER IDENTIFICATION FUND CREATED IN SECTION

24-33.5-415.6, C.R.S.

(5) THE COLORADO BUREAU OF INVESTIGATION IS DIRECTED TO CONDUCT THE CHEMICAL TESTING OF THE BIOLOGICAL SUBSTANCE SAMPLES OBTAINED PURSUANT TO THIS SECTION. THE RESULTS THEREOF SHALL BE FILED AND MAINTAINED BY THE COLORADO BUREAU OF INVESTIGATION AND SHALL BE FURNISHED TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST. THE COLORADO BUREAU OF INVESTIGATION SHALL STORE AND PRESERVE ALL BIOLOGICAL SUBSTANCE SAMPLES.

SECTION 14. 24-33.5-415.6, Colorado Revised Statutes, is amended to read:

24-33.5-415.6. Offender identification - fund. (1) There is hereby created in the state treasury the offender identification fund, referred to in this section as the "fund". Moneys in the fund shall consist of payments for genetic testing received from offenders pursuant to sections ~~16-11-102.3, 16-11-104, 16-11-204.3,~~ 16-11-102.4, 18-1.3-407, ~~19-2-924.5, and 19-2-925.5,~~ C.R.S. AND 19-2-925.6, C.R.S. Subject to annual appropriations by the general assembly, the executive director and the state court administrator are authorized to expend moneys in the fund to pay for genetic testing of offenders pursuant to sections ~~16-11-102.3,~~ ~~16-11-104,~~ ~~16-11-204.3,~~ 16-11-102.4, 18-1.3-407, 19-2-924.5, and 19-2-925.5, C.R.S. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(2) ~~Upon the effective date of the repeal of section 24-33.5-415.5, any moneys remaining in the sex offender identification fund shall be credited to the offender identification fund.~~

SECTION 15. 24-72-302 (4), Colorado Revised Statutes, is amended to read:

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule, including but not limited to the results of chemical biological substance testing to determine genetic markers conducted pursuant to sections ~~16-11-102.3,~~ 16-11-102.4, 16-11-104, 16-11-204.3, 16-11-308 (4.5), 17-2-201 (5) (h), and 17-22.5-202 (3) (b.5) (II) and (3.5), C.R.S.

SECTION 16. 24-72-305 (1.5), Colorado Revised Statutes, is amended to read:

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1.5) On the ground that disclosure would be contrary to the public interest, the custodian of criminal justice records shall deny access to the results of chemical biological substance testing to determine the genetic markers conducted pursuant to sections ~~16-11-102.3,~~ 16-11-102.4, 16-11-104, 16-11-204.3, 16-11-308 (4.5), 17-2-201 (5) (h), and 17-22.5-202 (3) (b.5) (II) and (3.5), C.R.S.

SECTION 17. Effective date. This act shall take effect July 1, 2007.

SECTION 18. 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 6, 2006