

CHAPTER 115

CRIMINAL LAW AND PROCEDURE

SENATE BILL 13-116

BY SENATOR(S) Ulibarri, Newell, Giron, Guzman, Aguilar, Roberts, Cadman, Jahn, Kefalas, Lundberg, Nicholson, Todd;
also REPRESENTATIVE(S) Lee, Exum, Hullinghorst, Labuda, Pabon, Schafer, Singer, Young.

AN ACT

CONCERNING THE AUTHORITY OF FORENSIC PSYCHOLOGISTS TO CONDUCT MENTAL HEALTH EVALUATIONS UNDER ARTICLE 8 OF TITLE 16, COLORADO REVISED STATUTES.

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

SECTION 1. In Colorado Revised Statutes, 16-8-102, **add** (2.5) as follows:

16-8-102. Other definitions. As used in this article, unless the context otherwise requires:

(2.5) "FORENSIC PSYCHOLOGIST" MEANS A LICENSED PSYCHOLOGIST WHO IS BOARD CERTIFIED IN FORENSIC PSYCHOLOGY BY THE AMERICAN BOARD OF PROFESSIONAL PSYCHOLOGY OR WHO HAS COMPLETED A FELLOWSHIP IN FORENSIC PSYCHOLOGY MEETING CRITERIA ESTABLISHED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY.

SECTION 2. In Colorado Revised Statutes, 16-8-103, **amend** (2) as follows:

16-8-103. Pleading insanity as a defense. (2) If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant but the defendant refuses to permit the entry of the plea, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or FORENSIC psychologists to assist ~~a psychiatrist to examine~~ IN EXAMINING the defendant and ~~advise~~ ADVISING the court. After its investigation the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, it shall enter the plea on behalf of the defendant, and the plea so entered shall have the same effect as though it had been voluntarily

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

entered by the defendant himself OR HERSELF.

SECTION 3. In Colorado Revised Statutes, 16-8-103.5, **amend** (2) as follows:

16-8-103.5. Impaired mental condition - when raised - procedure - legislative intent. (2) If counsel for the defendant believes that an assertion of the affirmative defense of impaired mental condition should be entered on behalf of the defendant but the defendant refuses to permit counsel to offer such evidence, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or FORENSIC psychologists to assist a ~~psychiatrist to examine~~ IN EXAMINING the defendant and ~~advise~~ ADVISING the court. After its investigation, the court shall conduct a hearing to determine whether evidence of impaired mental condition should be offered at trial. If the court finds that such a defense is necessary for a just determination of the charge against the defendant, it shall inform the prosecution that such defense shall be asserted at trial by the defendant and shall order the defendant's counsel to present evidence at trial on the defense of impaired mental condition.

SECTION 4. In Colorado Revised Statutes, 16-8-106, **amend** (1), (2), (3), and (5) (a) as follows:

16-8-106. Examinations and report. (1) All examinations ordered by the court in criminal cases shall be accomplished by the entry of an order of the court specifying the place where such examination is to be conducted and the period of time allocated for such examination. The defendant may be committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo, the place where he or she is in custody, or such other public institution designated by the court. In determining the place where such examination is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. The defendant shall be observed and examined by one or more psychiatrists OR FORENSIC PSYCHOLOGISTS during such period as the court directs. For good cause shown, upon motion of the prosecution or defendant, or upon the court's own motion, the court may order such further or other examination ~~including services of psychologists~~, as is advisable under the circumstances. Nothing in this section shall abridge the right of the defendant to procure a ~~psychiatric~~ AN examination as provided in section 16-8-108.

(2) (a) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination may be admissible in the defendant's trial on the issue of insanity or impaired mental condition and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination may be admissible in the defendant's trial on the issue of insanity and in any sentencing hearing held pursuant to section 18-1.3-1201 or

18-1.4-102, C.R.S. This paragraph (b) shall apply to offenses committed on or after July 1, 1995, but prior to July 1, 1999.

(c) The defendant shall cooperate with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting any examination ordered by the court pursuant to this section. Statements made by the defendant in the course of such examination shall be protected as provided in section 16-8-107. If the defendant does not cooperate with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination, the court shall not allow the defendant to call any psychiatrist, FORENSIC PSYCHOLOGIST, or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition including, but not limited to, providing evidence on the issue of insanity or at any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. In addition, the fact of the defendant's noncooperation with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination may be admissible in the defendant's trial to rebut any evidence introduced by the defendant with regard to the defendant's mental condition including, but not limited to, the issue of insanity and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. This paragraph (c) shall apply to offenses committed on or after July 1, 1999.

(3) (a) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists, FORENSIC PSYCHOLOGISTS, or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, or impaired mental condition, and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination, an opinion of the mental condition of the defendant

may be rendered by such psychiatrists, FORENSIC PSYCHOLOGISTS, or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity or eligibility for release and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(c) For offenses committed on or after July 1, 1999, when a defendant undergoes an examination pursuant to the provisions of paragraph (b) of this subsection (3) because the defendant has given notice pursuant to section 16-8-107 (3) that he or she intends to introduce expert opinion evidence concerning his or her mental condition, the physicians, FORENSIC PSYCHOLOGISTS, and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as such statements and reactions entered into the formation of their opinions as to the mental condition of the defendant.

(5) With respect to offenses committed before July 1, 1995, the report of examination shall include, but is not limited to:

(a) The name of each physician, FORENSIC PSYCHOLOGIST, or other expert who examined the defendant; and

SECTION 5. In Colorado Revised Statutes, 16-8-107, **amend** (2) as follows:

16-8-107. Evidence. (2) In any trial or hearing concerning the defendant's mental condition, physicians, FORENSIC PSYCHOLOGISTS, and other experts may testify as to their conclusions reached from their examination of hospital records, laboratory reports, X rays, electroencephalograms, and psychological test results if the material which they examined in reaching their conclusions is produced at the time of the trial or hearing.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect

unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 8, 2013