

CHAPTER 272

CRIMINAL LAW AND PROCEDURE

SENATE BILL 13-229

BY SENATOR(S) Guzman, Aguilar, Giron, Heath, King, Newell, Nicholson, Ulibarri;
also REPRESENTATIVE(S) Kagan, Fields, Labuda, Lee, Pabon, Court, Hullinghorst, Levy, Rosenthal, Ryden, Schafer.

AN ACT

CONCERNING CHANGES TO STATUTORY PROVISIONS RELATED TO CRIMINAL PROCEEDINGS.

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

SECTION 1. In Colorado Revised Statutes, 2-2-322, **amend** (2.5) (c) and (2.5) (d); and **add** (2.5) (e) as follows:

2-2-322. Fiscal notes. (2.5) If a legislative measure creates a new criminal offense, increases or decreases the crime classification of an existing criminal offense, or changes an element of an existing offense that creates a new factual basis for the offense, the fiscal note shall include the following:

(c) A comparison of the proposed crime classification to similar types of offenses; ~~and~~

(d) An analysis of the current and anticipated future prevalence of the behavior that the proposed new crime, or changes to an existing crime, intends to address; AND

(e) A DESCRIPTION OF GENDER AND MINORITY DATA AS IT RELATES TO THE GENERAL COLORADO POPULATION AND AVAILABLE DATA ON GENDER AND MINORITY OFFENDER AND CRIME VICTIMS POPULATIONS POTENTIALLY AFFECTED BY THE PROPOSED MEASURE.

SECTION 2. In Colorado Revised Statutes, 16-1-104, **amend** (10) as follows:

16-1-104. Definitions. (10) "Felony complaint" means a written statement of the essential facts constituting the offense charged, ~~and shall be made upon oath before~~

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

~~any person authorized to administer oaths within the state of Colorado~~ SIGNED BY THE PROSECUTOR, AND FILED IN THE COURT HAVING JURISDICTION OVER THE OFFENSE CHARGED.

SECTION 3. In Colorado Revised Statutes, 16-5-401, **amend** (4.5) (u) and (4.5) (v); and **add** (4.5) (w) as follows:

16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings. (4.5) The period within which a prosecution must be commenced shall begin to run upon discovery of the criminal act or the delinquent act for:

(u) Criminal offenses relating to industrial banks, pursuant to section 11-108-801 (3), C.R.S.; ~~and~~

(v) Criminal offenses relating to savings and loan associations, pursuant to section 11-41-127, C.R.S.; AND

(w) CRIMINAL OFFENSES RELATING TO SECURITIES FRAUD, PURSUANT TO PART 5 OF ARTICLE 51 OF TITLE 11, C.R.S.

SECTION 4. In Colorado Revised Statutes, 16-11-102, **amend** (1) (a) and (1) (b) as follows:

16-11-102. Presentence or probation investigation. (1) (a) Following the return of a verdict of guilty of a felony, other than a class 1 felony, or following a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge, or upon order of the court in any misdemeanor conviction, the probation officer shall make an investigation and written report to the court before the imposition of sentence. Each presentence report shall include a substance abuse assessment or evaluation made pursuant to article 11.5 of this title and, unless waived by the court, shall include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, including the defendant's past juvenile delinquency record, if any, if the defendant has been convicted of unlawful sexual behavior as defined in section 16-22-102 (9), an evaluation of the alternative dispositions available for the defendant; the information required by the court pursuant to article 18.5 of this title; a victim impact statement; and such other information as the court may require. A victim impact statement shall be prepared by the district attorney's office on and after September 1, 1985. The department of human services shall provide the district attorney's office with the information necessary for the preparation of a victim impact statement. In addition, the court, in cases that it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted psychiatric examination of the defendant. No less than seventy-two hours prior to the sentencing hearing, copies of the presentence report, including any recommendations as to probation, shall be furnished to the prosecuting attorney and defense counsel or to the defendant if he or she is unrepresented. UPON REQUEST OF EITHER THE DEFENSE OR THE DISTRICT ATTORNEY, THE PROBATION DEPARTMENT SHALL PROVIDE THE PRESENTENCE REPORT AT LEAST SEVEN DAYS PRIOR TO THE SENTENCING HEARING. IF THE PROBATION DEPARTMENT INFORMS THE COURT IT CANNOT PROVIDE THE REPORT AT

LEAST SEVEN DAYS PRIOR TO THE SENTENCING HEARING, THE COURT SHALL GRANT THE PROBATION DEPARTMENT ADDITIONAL TIME TO COMPLETE THE REPORT AND SHALL RESET THE SENTENCING HEARING SO THAT THE HEARING IS HELD AT LEAST SEVEN DAYS AFTER THE PROBATION DEPARTMENT PROVIDES THE REPORT. A copy of the presentence report shall be transmitted to the department of corrections together with the mittimus.

(b) (I) Each presentence report prepared regarding a sex offender, as defined in section 16-11.7-102 (2), with respect to any offense committed on or after January 1, 1996, shall contain the results of an evaluation and identification conducted pursuant to article 11.7 of this title; except that:

(A) If the offense is a misdemeanor pursuant to the provisions of section 18-3-412.6, C.R.S., an evaluation and identification conducted pursuant to article 11.7 of this title shall not be ordered by the court; ~~and except that,~~

(B) If the offense is a misdemeanor pursuant to title 42, C.R.S., or the history of sex-offending behavior was a misdemeanor sex offense committed when the defendant was a juvenile, an evaluation and identification conducted pursuant to article 11.7 of this title is not required but may be ordered by the court; AND

(C) IF THE COURT ACCEPTS A STIPULATION THAT THE DEFENDANT WILL NOT BE SENTENCED TO PROBATION OR IF THE DEFENDANT IS ALREADY SERVING A SENTENCE IN THE DEPARTMENT OF CORRECTIONS, AN EVALUATION AND IDENTIFICATION CONDUCTED PURSUANT TO ARTICLE 11.7 OF THIS TITLE IS NOT REQUIRED BUT MAY BE ORDERED BY THE COURT.

(II) In addition, the presentence report shall include, when appropriate as provided in section 18-3-414.5, C.R.S., the results of the risk assessment screening instrument developed pursuant to section 16-11.7-103 (4) (d). Notwithstanding the provisions of subsection (4) of this section, a presentence report shall be prepared for each person convicted as a sex offender, and the court may not dispense with the presentence evaluation, risk assessment, and report unless an evaluation and risk assessment has been completed within the last two years and there has been no material change that would affect the evaluation and risk assessment in the past two years.

SECTION 5. In Colorado Revised Statutes, 16-22-113, **amend** (1) (e) as follows:

16-22-113. Petition for removal from registry. (1) Except as otherwise provided in subsection (3) of this section, any person required to register pursuant to section 16-22-103 or whose information is required to be posted on the internet pursuant to section 16-22-111 may file a petition with the court that issued the order of judgment for the conviction that requires the person to register for an order to discontinue the requirement for such registration or internet posting, or both, as follows:

(e) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (1.3) OF THIS SECTION, if the person was younger than eighteen years of age at the time of ~~disposition or adjudication~~ COMMISSION OF THE OFFENSE, after

the successful completion of and discharge from ~~the~~ A JUVENILE sentence OR DISPOSITION, AND if the person prior to such time has not been subsequently convicted ~~of~~ OR HAS A PENDING PROSECUTION FOR unlawful sexual behavior or ~~of~~ FOR any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (b) of subsection (1.3) of this section. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or community parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. Notwithstanding the provisions of this subsection (1), a juvenile who files a petition pursuant to this section may file the petition with the court to which venue is transferred pursuant to section 19-2-105, C.R.S., if any.

SECTION 6. In Colorado Revised Statutes, 17-22.5-403.5, **amend** (1) introductory portion as follows:

17-22.5-403.5. Special needs parole. (1) Notwithstanding any provision of law to the contrary, a special needs offender, as defined in section ~~17-2-102 (7.5) (a)~~ 17-1-102 (7.5) (a), may be eligible for parole prior to or after the offender's parole eligibility date pursuant to this section if:

SECTION 7. In Colorado Revised Statutes, 18-1.3-602, **amend** (4) (a) (VI); and **add** (3) (d) as follows:

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

(3) (d) "RESTITUTION" SHALL ALSO INCLUDE COSTS INCURRED BY A GOVERNMENTAL AGENCY OR INSURER THAT PROVIDES MEDICAL BENEFITS, HEALTH BENEFITS, OR NONMEDICAL SUPPORT SERVICES DIRECTLY RELATED TO A MEDICAL OR HEALTH CONDITION TO A VICTIM FOR LOSSES OR INJURIES PROXIMATELY CAUSED BY AN OFFENDER'S CONDUCT, INCLUDING BUT NOT LIMITED TO COSTS INCURRED BY MEDICAID AND OTHER CARE PROGRAMS FOR INDIGENT PERSONS.

(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 (f) of paragraph (c)~~ PARAGRAPHS (b), (c), AND (d) of subsection (3) of this section.

SECTION 8. In Colorado Revised Statutes, 18-4-202, **amend** (1) as follows:

18-4-202. First degree burglary. (1) A person commits first degree burglary if

the person knowingly enters unlawfully, or remains unlawfully after a lawful or unlawful entry, in a building or occupied structure with intent to commit therein a crime, other than trespass as defined in this article, against another person or property, and if in effecting entry or while in the building or occupied structure or in immediate flight therefrom, the person or another participant in the crime assaults or menaces any person, ~~or~~ the person or another participant is armed with explosives, ~~OR THE PERSON OR ANOTHER PARTICIPANT USES A DEADLY WEAPON OR POSSESSES AND THREATENS THE USE OF~~ a deadly weapon.

SECTION 9. In Colorado Revised Statutes, 18-8-208, **amend** (9); **add** (4.5); and **repeal** (10) as follows:

18-8-208. Escapes. (4.5) A PERSON COMMITS A CLASS 3 MISDEMEANOR IF HE OR SHE HAS BEEN COMMITTED TO THE DIVISION OF YOUTH CORRECTIONS IN THE DEPARTMENT OF HUMAN SERVICES FOR A DELINQUENT ACT, IS OVER 18 YEARS OF AGE, AND ESCAPES FROM A STAFF SECURE FACILITY AS DEFINED IN SECTION 19-1-103 (101.5), C.R.S., OTHER THAN A STATE-OPERATED LOCKED FACILITY.

(9) The minimum sentences provided by sections 18-1.3-401, 18-1.3-501, and 18-1.3-503, respectively, for violation of the provisions of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; except that the court may grant a suspended sentence if the court is sentencing a person to the youthful offender system pursuant to section 18-1.3-407. ~~THE PROVISIONS OF THIS SUBSECTION (9) DO NOT APPLY TO SUBSECTION (4.5) OF THIS SECTION.~~

~~(10) Any person held in a staff secure facility, as defined in section 19-1-103 (101.5), C.R.S., shall be deemed to be in custody or confinement for purposes of this section.~~

SECTION 10. In Colorado Revised Statutes, **amend** 18-8-210.1 as follows:

18-8-210.1. Persons in custody or confinement - juvenile offenders. For the purposes of this part 2, any reference to custody, confinement, charged with, held for, convicted of, a felony, misdemeanor, or petty offense shall be deemed to include a juvenile who is detained ~~OR COMMITTED~~ for the commission of an act which would constitute such a felony, misdemeanor, or petty offense if committed by an adult or who is the subject of a petition filed pursuant to article 2 of title 19, C.R.S., alleging the commission of such a delinquent act or a juvenile who has been adjudicated a juvenile delinquent as provided for in article 2 of title 19, C.R.S., for an act which would constitute a felony, misdemeanor, or petty offense if committed by an adult.

SECTION 11. In Colorado Revised Statutes, 19-2-508, **amend** (4) (f) as follows:

19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions. (4) (f) Any person who is eighteen years of age or older who is being detained for a delinquent act or criminal charge over which the juvenile court has jurisdiction, ~~OR FOR WHICH CHARGES ARE PENDING IN DISTRICT COURT PURSUANT TO A DIRECT FILING OR TRANSFER IF THE PERSON HAS NOT ALREADY BEEN TRANSFERRED TO THE COUNTY JAIL PURSUANT TO~~

THE PROVISIONS OF SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION, shall be detained in the county jail in the same manner as if such person is charged as an adult.

SECTION 12. In Colorado Revised Statutes, 19-2-601, **amend** (5) (a) (I) (D) and (6) (b) as follows:

19-2-601. Aggravated juvenile offender. (5) (a) (I) Upon adjudication as an aggravated juvenile offender:

(D) When the petition alleges the offense of murder in the first degree or murder in the second degree, OR SEXUAL ASSAULT UNDER SECTION 18-3-402 (3.5) OR 18-3-402 (4), C.R.S., and the juvenile is adjudicated a delinquent for either murder in the first degree or murder in the second degree, then the court may sentence the juvenile consecutively or concurrently for any crime of violence as described in section 18-1.3-406, C.R.S., ~~or aggravated juvenile offender petition arising from that petition~~ OR FOR A DELINQUENT ACT CONTAINED IN THE PETITION FOR WHICH THE JUVENILE IS AN AGGRAVATED JUVENILE OFFENDER.

(6) (b) Parole supervision of a juvenile who has been transferred to the department of corrections is governed by the provisions for adult felony offenders in titles 16, 17, and 18, C.R.S., as if the juvenile had been sentenced as an adult felony offender; except that, if the juvenile was adjudicated and sentenced for ~~murder in the first degree~~ A CLASS 1 FELONY, then the juvenile shall serve a ten-year period of mandatory parole after completion of his or her sentence.

SECTION 13. In Colorado Revised Statutes, 19-2-709, **add** (3.5) as follows:

19-2-709. Deferral of adjudication. (3.5) APPLICATION FOR ENTRY OF ADJUDICATION AND IMPOSITION OF SENTENCE MAY BE MADE BY THE DISTRICT ATTORNEY OR A PROBATION OFFICER AT ANY TIME WITHIN THE TERM OF THE DEFERRED ADJUDICATION OR WITHIN THIRTY-FIVE DAYS THEREAFTER.

SECTION 14. In Colorado Revised Statutes, 20-1-201, **amend** (1) (b) and (1) (c) as follows:

20-1-201. Deputies - chief deputies - staff. (1) (b) The district attorney in every judicial district ~~that is composed in part of a county or counties of less than twenty-five thousand population may~~ IS AUTHORIZED TO appoint with the approval of the board of county commissioners of such county or counties one or more part-time deputies to fulfill the duties of the district attorney. ~~which may arise in such county or counties. Such~~ THE part-time deputies shall be entitled to receive as compensation for services rendered a sum as provided in section 20-1-203. ~~Such~~ THE part-time ~~deputies~~ DEPUTY may engage in the private practice of law; EXCEPT THAT HE OR SHE MAY NOT ENGAGE IN THE PRACTICE OF CRIMINAL DEFENSE IN THE SAME JUDICIAL DISTRICT AS THE DISTRICT ATTORNEY'S OFFICE WHERE HE OR SHE IS EMPLOYED.

(c) The district attorney in every judicial district is authorized to appoint such special deputy district attorneys as he deems necessary to properly discharge the duties of his office, and such special deputies shall hold their offices during the

pleasure of such district attorney. Such special deputies shall receive no compensation for their services from the county or counties of the judicial district; except that such special deputies may be reimbursed their ordinary and necessary expenses, including travel. Such special deputies shall only be appointed from among those persons holding office as attorney general, deputy attorney general, assistant attorney general, or special assistant attorney general of the state of Colorado, or as district attorney, assistant district attorney, chief deputy district attorney, or deputy district attorney of another judicial district, or as United States attorney or assistant United States attorney for the district of Colorado, or as city attorney or assistant city attorney of a city and county in this state, OR AN ATTORNEY EMPLOYED BY THE COLORADO DISTRICT ATTORNEYS' COUNCIL AND ACTIVELY LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO.

SECTION 15. In Colorado Revised Statutes, **amend** 20-1-203 as follows:

20-1-203. Compensation of deputy, chief deputy, and assistant district attorneys. Compensation for all deputy, chief deputy, part-time deputy, assistant, and part-time assistant district attorneys shall be fixed by the district attorney with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and each county comprising such judicial district shall pay such deputies, chief deputies, assistants, and part-time assistants salaries in the proportion which the population of such county bears to the whole population of such judicial district. ~~except that part-time deputies shall be paid by the county or counties they serve.~~

SECTION 16. In Colorado Revised Statutes, 24-72-308, **amend** (1) (b) (II); and **add** (4) as follows:

24-72-308. Sealing of arrest and criminal records other than convictions.
(1) (b) (II) (A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the petitioner is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the petitioner. The court's order shall specify the reasons for the denial of the petition. IF THE PETITION PERTAINS TO A DISMISSAL THAT IS NOT THE RESULT OF A COMPLETION OF A DEFERRED DISPOSITION OR A MULTI-CASE DISPOSITION, THE COURT SHALL ORDER A RECORD SEALED IF THE PETITION IS SUFFICIENT ON ITS FACE.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing and the petitioner shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner. IF THE PETITION PERTAINS TO A DISMISSAL THAT IS NOT THE RESULT OF A COMPLETION OF A DEFERRED DISPOSITION OR A MULTI-CASE DISPOSITION, THE COURT SHALL ORDER A RECORD SEALED IF THE PETITION IS SUFFICIENT ON ITS FACE.

(4) A PERSON MAY FILE A PETITION WITH THE COURT FOR SEALING OF EACH CASE ONCE EVERY TWELVE-MONTH PERIOD.

SECTION 17. In Colorado Revised Statutes, 24-72-308.5, **add** (6) as follows:

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2008, and prior to July 1, 2011. (6) A PERSON MAY FILE A PETITION WITH THE COURT FOR SEALING OF EACH CASE ONCE EVERY TWELVE-MONTH PERIOD.

SECTION 18. In Colorado Revised Statutes, 24-72-308.6, **add** (6) as follows:

24-72-308.6. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011. (6) A PERSON MAY FILE A PETITION WITH THE COURT FOR SEALING OF EACH CASE ONCE EVERY TWELVE-MONTH PERIOD.

SECTION 19. Effective date - applicability. This act takes effect July 1, 2013, and applies to offenses committed on or after said date; except that section 5 of this act applies to offenses committed prior to July 1, 2013.

SECTION 20. 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 24, 2013