

CHAPTER 275

CRIMINAL LAW AND PROCEDURE

SENATE BILL 14-190

BY SENATOR(S) Lambert, Hodge, Steadman, Aguilar, Heath, King, Nicholson, Rivera, Todd, Ulibarri, Carroll;
also REPRESENTATIVE(S) Gerou, Duran, May, Kagan, Rosenthal, Schafer, Williams.

AN ACT

CONCERNING CRIMINAL DISCOVERY, AND, IN CONNECTION THEREWITH, CREATING A STATEWIDE DISCOVERY SHARING SYSTEM, A CRIMINAL DISCOVERY SURCHARGE, CIVIL IMMUNITY FOR DISTRICT ATTORNEYS THAT MAKE A GOOD-FAITH EFFORT TO REDACT INFORMATION FROM DISCOVERY DOCUMENTS, AND MAKING AN APPROPRIATION.

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

SECTION 1. Legislative intent. (1) The general assembly finds it necessary to provide funding for the development, continuing enhancement, and maintenance of a statewide discovery sharing system in order to create more predictable state costs associated with criminal discovery. It is the intent of the general assembly that once the statewide discovery sharing system is operational the existing general fund appropriations to the judicial department that are used to reimburse district attorneys for the cost of duplicating discoverable materials shall be used to fund the ongoing maintenance of a statewide discovery sharing system and the associated ACTION system operated by the Colorado district attorneys' council in addition to the moneys generated by the surcharge created by this act.

(2) It is the intent of the general assembly that once the statewide discovery sharing system is operational the district attorneys shall not seek or receive reimbursement for copying discovery from anyone.

SECTION 2. In Colorado Revised Statutes, **amend** 16-9-701 as follows:

16-9-701. Discovery project steering committee. (1) (a) There shall be a discovery ~~task force~~ PROJECT STEERING COMMITTEE convened to ~~study and make recommendations regarding criminal discovery~~ ASSIST IN DEVELOPING A REQUEST FOR PROPOSAL APPLICATION AND SELECTION PROCESS TO CHOOSE A VENDOR TO DEVELOP A STATEWIDE DISCOVERY SHARING SYSTEM. The ~~task force~~ STEERING

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

COMMITTEE consists of:

(I) The attorney general or his or her designee, who shall serve as the chair of the ~~task force~~ STEERING COMMITTEE;

(II) The state court administrator or his or her designee, who shall serve as the vice-chair of the ~~task force~~ STEERING COMMITTEE;

(III) The state public defender or his or her designee;

(IV) A representative of the criminal defense bar appointed by the chief justice;

(V) Three district attorneys appointed by the governor, one representing an urban judicial district, one representing a mid-sized district, and one representing a rural district;

(VI) A county sheriff appointed by the governor;

(VII) The alternate defense counsel or his or her designee;

(VIII) A chief of police appointed by the governor; and

(IX) A district court judge appointed by the chief justice.

(b) The ~~task force~~ PROJECT STEERING COMMITTEE must also have a nonvoting member appointed by the governor from the office of information technology who serves ONLY as a technology advisor to assist the ~~task force~~ STEERING COMMITTEE.

(2) The chair of the discovery ~~task force~~ PROJECT STEERING COMMITTEE shall convene the first meeting of the ~~task force~~ STEERING COMMITTEE by June 30, 2013, and must meet at least twice a month thereafter until it completes its duties as listed in subsection (3) of this section, or until November 15, 2013, whichever is earlier 2014.

(3) The discovery ~~task force~~ must PROJECT STEERING COMMITTEE SHALL DEVELOP A REQUEST FOR PROPOSAL APPLICATION AND RECOMMEND A SELECTION PROCESS TO CHOOSE A VENDOR TO DEVELOP A STATEWIDE DISCOVERY SHARING SYSTEM. THE APPLICATION PROCESS MUST BE DEVELOPED IN A TIMELY MANNER SO THE SELECTION CAN BE MADE BY NOVEMBER 1, 2014, AT THE LATEST. THE STEERING COMMITTEE SHALL MAKE A VENDOR RECOMMENDATION TO THE COLORADO DISTRICT ATTORNEYS' COUNCIL AFTER THE APPLICATION PROCESS IS COMPLETED. THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL SELECT A VENDOR AFTER THE APPLICATION AND SELECTION PROCESS IS COMPLETE AND AFTER CONSIDERING THE RECOMMENDATION OF THE STEERING COMMITTEE.

(a) ~~Determine which district attorney's offices obtain all law enforcement discoverable evidence in an electronic format, which district attorney's offices will soon be able to obtain all law enforcement discoverable evidence in an electronic format, and which district attorney's offices will not have that ability at any point in the future without assistance;~~

~~(b) Determine the barriers for those district attorney's offices that will never be able to obtain law enforcement discoverable evidence in an electronic format without assistance;~~

~~(c) Study the feasibility of a single statewide criminal case management system or other technology inserts to facilitate electronic discovery or electronic redaction;~~

~~(d) Study the appropriateness of a statewide standardized law enforcement reporting form that is easily redactable;~~

~~(e) Recommend or address short-term needs for law enforcement and district attorneys to facilitate greater use of electronic discovery;~~

~~(f) Suggest a definition for the term "actual costs" for purposes of reimbursement that adequately and fairly reimburses the state's district attorneys for the expenses for which the district attorney's offices are responsible related to the discovery process;~~

~~(g) Suggest an alternative funding process to reimburse the district attorneys for appropriate discovery costs without requiring the public defender, alternate defense counsel, or any indigent pro se defendant to pay for discovery;~~

~~(h) Determine which executive or judicial branch agency is best situated to serve as the conduit for state reimbursement to the district attorneys and the attorney general for the actual costs of discovery; and~~

~~(i) Study whether there should be a separate rate that is charged to nonindigent defendants compared to indigent defendants.~~

~~(4) (a) The discovery task force shall provide a preliminary report to the joint budget committee by November 1, 2013, if the final report is not completed by then. THE DISCOVERY PROJECT STEERING COMMITTEE SHALL DEVELOP BENCHMARKS AND CONTRACTUAL REQUIREMENTS FOR THE STATEWIDE DISCOVERY SHARING SYSTEM.~~

~~(b) The discovery task force shall report to the joint budget committee and the judiciary committees of the house of representatives and the senate, or their successor committees, by January 31, 2014. The report shall include recommendations for legislation, technology inserts, and nonlegislative processes that would improve the criminal discovery process. THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL ENTER INTO A CONTRACT WITH THE SELECTED VENDOR TO COMPLETE THE SYSTEM BY OCTOBER 31, 2016. THE CONTRACT MUST INCLUDE THE BENCHMARKS AND REQUIREMENTS DEVELOPED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4). THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL PROVIDE PERIODIC REPORTS TO THE STEERING COMMITTEE AND THE JOINT BUDGET COMMITTEE REGARDING BENCHMARKS AND REQUIREMENTS AND THE PROGRESS OF THE DEVELOPMENT OF THE SYSTEM. IT IS NOT NECESSARY FOR THE STEERING COMMITTEE TO MEET TO RECEIVE THE PERIODIC REPORTS.~~

~~(5) This part 7 is repealed, effective July 1, 2014. THE DISCOVERY PROJECT STEERING COMMITTEE MAY MEET AS NECESSARY TO PROVIDE PRACTICAL AND~~

TECHNICAL SUPPORT FOR THE MAINTENANCE AND ENHANCEMENT OF THE SYSTEM AND TO ENSURE THAT THE SYSTEM IS MEETING THE NEEDS OF THE CRIMINAL JUSTICE SYSTEM.

(6) ONCE THE STATEWIDE DISCOVERY SHARING SYSTEM IS OPERATIONAL, A DISTRICT ATTORNEY OR THE COLORADO DISTRICT ATTORNEYS' COUNCIL, WHO AFTER MAKING A GOOD-FAITH EFFORT TO REDACT ALL INFORMATION FROM A DISCOVERY DOCUMENT PROVIDED TO A DEFENDANT OR DEFENSE COUNSEL, PROVIDES A DOCUMENT THAT CONTAINS INFORMATION THAT IS LEGALLY REQUIRED TO BE REDACTED IS NOT LIABLE FOR CIVIL DAMAGES AS A RESULT OF ACTS OR OMISSIONS RELATED TO PROVIDING DISCOVERY DOCUMENTS THAT CONTAIN INFORMATION REQUIRED TO BE REDACTED THAT IS NOT REDACTED.

SECTION 3. In Colorado Revised Statutes, **add 16-9-702** as follows:

16-9-702. Statewide discovery sharing system. (1) THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL DEVELOP AND MAINTAIN A STATEWIDE DISCOVERY SHARING SYSTEM INTEGRATED WITH ITS ACTION SYSTEM. THE STATEWIDE DISCOVERY SHARING SYSTEM MUST BE OPERATIONAL BY NOVEMBER 1, 2016. THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL MAINTAIN AND OPERATE THE SYSTEM WITH THE ASSISTANCE OF THE DISCOVERY PROJECT STEERING COMMITTEE CREATED IN SECTION 16-9-701.

(2) THE GENERAL ASSEMBLY SHALL APPROPRIATE THE NECESSARY MONEYS FROM THE GENERAL FUND AND THE STATEWIDE DISCOVERY SHARING SYSTEM SURCHARGE FUND CREATED IN SECTION 18-26-102 (2), C.R.S., TO FUND THE DEVELOPMENT, CONTINUING ENHANCEMENT, AND MAINTENANCE OF THE STATEWIDE DISCOVERY SHARING SYSTEM AND MAINTENANCE AND CONTINUING ENHANCEMENT OF THE EXISTING ACTION SYSTEM OPERATED BY THE COLORADO DISTRICT ATTORNEYS' COUNCIL. THE JUDICIAL DEPARTMENT SHALL ALLOCATE THE APPROPRIATED MONEYS TO THE COLORADO DISTRICT ATTORNEYS' COUNCIL FOR THE DEVELOPMENT, CONTINUING ENHANCEMENT, AND MAINTENANCE OF THE STATEWIDE DISCOVERY SHARING SYSTEM AND THE EXISTING ACTION SYSTEM.

(3) THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL PROVIDE THE JUDICIAL DEPARTMENT FINANCIAL REPORTS REGARDING THE STATEWIDE DISCOVERY SHARING SYSTEM. THE JUDICIAL DEPARTMENT SHALL USE THE REPORTS IN PREPARING ITS ANNUAL BUDGET REQUEST. THE REPORTS MUST INCLUDE THE FOLLOWING:

(a) ACTUAL EXPENDITURES OF THE MONEYS APPROPRIATED FOR THE MAINTENANCE OF THE ACTION SYSTEM AND FOR THE DEVELOPMENT, ENHANCEMENT, IMPLEMENTATION, AND MAINTENANCE OF THE DISCOVERY SHARING SYSTEM SO THAT THE JUDICIAL DEPARTMENT CAN INCLUDE THE EXPENDITURE DATA IN ITS ANNUAL BUDGET REQUEST. THE JUDICIAL DEPARTMENT SHALL REQUIRE THE COLORADO DISTRICT ATTORNEYS' COUNCIL TO PROVIDE THE INFORMATION IN A FORMAT THAT IS CONSISTENT WITH ACTUAL EXPENDITURES REPORTED FOR OTHER LINE ITEM APPROPRIATIONS.

(b) THE AMOUNT OF STATE FUNDING REQUESTED FOR THE NEXT FISCAL YEAR FOR SUCH PURPOSE, INCLUDING A BREAKDOWN AND JUSTIFICATION FOR THE AMOUNT REQUESTED.

SECTION 4. In Colorado Revised Statutes, **add** article 26 to title 18 as follows:

ARTICLE 26
Statewide Discovery Sharing System Surcharge

18-26-101. Statewide discovery sharing system surcharge. (1) EACH PERSON WHO IS REPRESENTED BY PRIVATE COUNSEL OR APPEARS PRO SE AND IS CONVICTED OF A FELONY, MISDEMEANOR, DRUG FELONY, OR DRUG MISDEMEANOR SHALL BE REQUIRED TO PAY A SURCHARGE TO THE CLERK OF THE COURT FOR THE JUDICIAL DISTRICT IN WHICH THE CONVICTION OCCURS.

(2) SURCHARGES PURSUANT TO SUBSECTION (1) OF THIS SECTION ARE IN THE FOLLOWING AMOUNTS:

(a) FOR EACH FELONY OR DRUG FELONY OF WHICH A PERSON IS CONVICTED, TEN DOLLARS; AND

(b) FOR EACH MISDEMEANOR OR DRUG MISDEMEANOR OF WHICH A PERSON IS CONVICTED, FIVE DOLLARS.

(3) THE COURT MAY WAIVE ALL OR ANY PORTION OF THE SURCHARGE REQUIRED BY SECTION 18-26-101 IF THE COURT FINDS THAT A PERSON CONVICTED OF A CRIME IS INDIGENT OR FINANCIALLY UNABLE TO PAY ALL OR ANY PORTION OF THE SURCHARGE. THE COURT MAY WAIVE ONLY THAT PORTION OF THE SURCHARGE THAT THE COURT FINDS THAT THE PERSON CONVICTED OF A CRIME IS FINANCIALLY UNABLE TO PAY.

(4) BY JANUARY 15, 2016, THE JUDICIAL DEPARTMENT SHALL REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, AND THE JOINT BUDGET COMMITTEE REGARDING THE COLLECTIONS MADE UNDER THIS ARTICLE.

18-26-102. Collection and distribution of funds - statewide discovery sharing system surcharge fund - creation. (1) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE REQUIRED BY SECTION 18-26-101 AS FOLLOWS:

(a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK OF THE COURT FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SUBSECTION (1). THE AMOUNT RETAINED SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH FUND CREATED IN SECTION 13-32-101 (6), C.R.S.

(b) NINETY-FIVE PERCENT SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE STATEWIDE DISCOVERY SHARING SYSTEM SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) (a) THERE IS CREATED IN THE STATE TREASURY THE STATEWIDE DISCOVERY SHARING SURCHARGE FUND THAT CONSISTS OF MONEYS RECEIVED BY THE STATE TREASURER PURSUANT TO THIS SECTION. THE MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO THE COLORADO DISTRICT ATTORNEYS' COUNCIL FOR DEVELOPMENT, CONTINUING ENHANCEMENT, AND MAINTENANCE OF THE STATEWIDE

DISCOVERY SHARING SYSTEM UNDER SECTION 16-9-702, C.R.S. THESE MONEYS ARE IN ADDITION TO GENERAL FUND MONEYS APPROPRIATED TO THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO THE COLORADO DISTRICT ATTORNEYS' COUNCIL FOR DEVELOPMENT, CONTINUING ENHANCEMENT, AND MAINTENANCE OF THE STATEWIDE DISCOVERY SHARING SYSTEM UNDER SECTION 16-9-702, C.R.S.

(b) THE STATE TREASURER SHALL CREDIT ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND TO THE FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY MUST REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

SECTION 5. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 2014, the sum of \$5,300,000, or so much thereof as may be necessary, for allocation to the trial courts section for the implementation of this act. Any moneys appropriated in this section not expended prior to July 1, 2015, are further appropriated to the department for the fiscal year beginning July 1, 2015, for the same purposes.

SECTION 6. Applicability. Section 4 of this act applies to offenses committed on or after September 1, 2014.

SECTION 7. 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 29, 2014