TITLE 16

CRIMINAL PROCEEDINGS

CODE OF CRIMINAL PROCEDURE

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CODE OF CRIMINAL PROCEDURE

Editor's note: Articles 1 to 13 of this title (excluding articles 2.5, 2.7, 8.5, 11.3, 11.5, 11.7, 11.8, and 11.9) were numbered as articles 1 to 13 of chapter 39, C.R.S. 1963. The provisions of those articles were repealed and reenacted in 1972, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to those articles prior to 1972, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of those articles, see the comparative tables located in the back of the index.

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16-1-101. Short title.

(1) Articles 1 to 13 of this title shall be known and may be cited as the "Colorado Code of Criminal Procedure". Within those articles, the "Colorado Code of Criminal Procedure" is sometimes referred to as "this code".

(2) The portion of any section, subsection, paragraph, or subparagraph contained in this code which precedes a list of examples, requirements, conditions, or other items may be referred to and cited as the "introductory portion" of such section, subsection, paragraph, or subparagraph.

Source: L. 72: R&RE, p. 190, § 1. **C.R.S. 1963:** § 39-1-101.

16-1-102. Scope.

The provisions of this code are intended to create, define, and protect rights, duties, and obligations as distinguished from matters wholly procedural. Except as specifically set forth in this code, the provisions of this code are not applicable to proceedings under the "Colorado Children's Code" or to violations of municipal charters or municipal ordinances.

Source: L. 72: R&RE, p. 190, § 1. **C.R.S. 1963:** § 39-1-102.

Cross references: For the "Colorado Children's Code", see title 19.

ANNOTATION

Law reviews. For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with criminal procedure, see 61 Den. L. J. 281 (1984). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with criminal procedure, see 62 Den. U. L. Rev. 159 (1985).

No sentencing of children. There is no express authority in the Colorado Children's Code for the imposition of a jail sentence on a delinquent child under the age of 18 years, either as part of a final disposition or as a condition of probation. People in Interest of A.F., 37 Colo. App. 185, 546 P.2d 972 (1975), aff'd, 192 Colo. 207, 557 P.2d 418 (1976).

The provisions of this code do not apply to the Colorado Children's Code unless expressly indicated in this code. This section does not conflict with § 19-2-802. In re People in Interest of A.A., 2013 CO 65, 312 P.3d 1170.

Applied in People v. District Court, 198 Colo. 284, 599 P.2d 260 (1979); People v. Wade, 757 P.2d 1074 (Colo. 1988).

16-1-103. Purpose.

This code is intended to provide for the just determination of every criminal proceeding. Its provisions shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unjustifiable expense and delay, the effective apprehension and trial of persons accused of crime, the just determination of every criminal proceeding by a fair and impartial trial, an adequate review, and the preservation of the public welfare and the fundamental human rights of individuals.

Source: L. 72: R&RE, p. 191, § 1. **C.R.S. 1963:** § 39-1-103.

16-1-104. Definitions.

(1) The following definitions in this section are applicable generally in this code. Other terms which need definition, but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear. Definitions set forth in any section of this code are applicable whenever the same term is used in the same sense in another section of this code, unless the definition is specifically limited or the context indicates that it is inapplicable.

(2) "Arraignment" means the formal act of calling the defendant into open court, informing him of the offense with which he is charged, and the entry of a plea to the charge.

(3) "Bail" means a security, which may include a bond with or without monetary conditions, required by a court for the release of a person in custody set to provide reasonable assurance of public safety and court appearance.

(3.5) "Bail bonding agent" or "bonding agent" means an individual who is in the business of writing appearance bonds and who is subject to regulation by the division of insurance in the department of regulatory agencies, including an insurance producer, cash-bonding agent, or professional cash-bail agent.

(4) "Bind over" means to require a defendant, following a preliminary hearing, to appear and answer in a court having jurisdiction to try the defendant for the crime with which he is charged.

(5) "Bond" means a bail bond which is an undertaking, with or without sureties or security, entered into by a person in custody by which he binds himself to comply with the conditions of the undertaking and in default of such compliance to pay the amount of bail or other sum fixed, if any, in the bond.

(6) "Charge" means a formal written statement presented to a court accusing a person of the commission of a crime. The charge may be made by complaint, information, or indictment.

(7) "Complaint" means a written statement charging the commission of a crime by an alleged offender, filed in the county court.

(7.5) "Correctional facility" means any facility under the supervision of the department of corrections in which persons are or may be lawfully held in custody as a result of conviction of a crime.

(8) "Court of record" means any court except a municipal court unless otherwise defined by a particular section.

(8.5) (a) (I) "Crime of violence" means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission or attempted commission of any crime committed against an elderly person or a person with a disability or a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, criminal extortion, human trafficking for involuntary servitude of an adult or a minor, or human trafficking for sexual servitude of an adult or a minor, or during the immediate flight therefrom, or the defendant caused serious bodily injury or death to any person, other than to the defendant or another participant, during the commission or attempted commission of the felony or during the immediate flight therefrom.

(II) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), C.R.S., and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3)(c), C.R.S.

(III) The provisions of subparagraph (II) of this paragraph (a) shall apply only to felony unlawful sexual offenses.

(b) As used in this subsection (8.5), "elderly person" means a person who is sixty years of age or older. "Person with a disability" means a person who is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness.

(9) "Custody" means the restraint of a person's freedom in any significant way.

(10) "Felony complaint" means a written statement of the essential facts constituting the offense charged, signed by the prosecutor, and filed in the court having jurisdiction over the offense charged.

(11) "Indictment" means a written statement, presented by a grand jury to the district court, which charges the commission of a crime by an alleged offender.

(12) "Information" means a written statement signed by a district attorney presented to the district court, which charges the commission of a crime by an alleged offender.

(13) "Personal recognizance" means a bond secured only by the personal obligation of the person giving the bond.

(14) "Preliminary hearing" means a hearing on a complaint filed in the county court or an information filed in the district court, to determine if there is probable cause to believe that an offense has been committed and that the person charged committed it.

(15) "Prosecuting attorney" means any attorney who is authorized to appear for and on behalf of the state of Colorado in a criminal case.

(16) A "search warrant" is a written order made by a judge of a court of record commanding a peace officer to search the person, premises, place, property, or thing described in the search warrant and to seize property described or identified therein.

(17) "Summons" means a written order or notice directing that a person appear before a designated court at a stated time and place and answer to a charge against him.

(18) A "warrant" is a written order issued by a judge of a court of record directed to any peace officer commanding the arrest of the person named or described in the order.

Source: L. 72: R&RE, p. 191, § 1. **C.R.S. 1963:** § 39-1-105. **L. 79:** (7.5) added, p. 678, § 2, effective July 1. **L. 87:** (8.5) added, p. 657, § 15, effective July 1. **L. 93:** (8.5)(a)(I) and (8.5)(b) amended, p. 1633, § 14, effective July 1. **L. 2012:** (3.5) added, (HB 12-1266), ch. 280, p. 1525, § 42, effective July 1. **L. 2013:** (3) and (5) amended, (HB 13-1236), ch. 202, p. 820, § 1, effective May 11; (10) amended, (SB 13-229), ch. 272, p. 1426, § 2, effective July 1. **L. 2024:** (8.5)(a)(I) amended, (SB 24-035), ch. 54, p. 186, § 1, effective April 11.

Cross references: For mandatory sentences for crimes of violence, see § 18-1.3-406.

ANNOTATION

Law reviews. For comment, "Bail Reform in Colorado: A Presumption of Release", see 88 U. Colo. L. Rev. 1067 (2017).

The definition of "custody" found in this section does not apply to the offense of escape under § 18-8-208. People v. Thornton, 929 P.2d 729 (Colo. 1996).

Defendant was already both in custody and under arrest when he attacked guards at his sentencing on another unrelated charge. People v. Stanley, 56 P.3d 1241 (Colo. App. 2002).

It is unnecessary at a preliminary hearing for the prosecution to show beyond a reasonable doubt that the defendant committed the crime, or even

the probability of the defendant's conviction. Instead, the trial court is obligated at the preliminary hearing to view the evidence in the light most favorable to the prosecution and the prosecution therefore is accorded latitude at the preliminary hearing to establish probable cause that the defendant committed the crime charged. People v. District Ct., 17th Jud. Dist., 926 P.2d 567 (Colo. 1996).

The prosecution at a preliminary hearing is not required to produce evidence sufficient to support a conviction of the person charged and the trial court is to view the evidence at the preliminary hearing in the light most favorable to the prosecution. People v. District Ct. of 11th Jud. Dist., 964 P.2d 498 (Colo. 1998).

A preliminary hearing may be had with regard to offenses only. Brown v. District Court, 189 Colo. 1481, 569 P.2d 1390 (1977).

Applied in People v. Abbott, 638 P.2d 781 (Colo. 1981); People v. Lucero, 654 P.2d 835 (Colo. 1982).

16-1-105. Interpretation of words and phrases.

(1) In interpreting this code, such words and phrases as are defined in this article shall have the meanings indicated by their definitions, unless a particular context clearly requires a different meaning.

(2) Words or phrases not defined in this code but which are defined in the "Colorado Criminal Code" (title 18, C.R.S.) shall have the meanings given therein except when a particular context clearly requires a different meaning.

(3) Words and phrases used in this code and not expressly defined shall be construed according to the rules governing the construction of statutes of this state.

Source: L. 72: R&RE, p. 191, § 1. **C.R.S. 1963:** § 39-1-104.

Cross references: For statutory provisions concerning the construction of statutes, see article 4 of title 2.

16-1-106. Electronic transmission of documents required for arrest and search warrants under code authorized - definitions.

(1) Whenever a written application for a warrant is required, it shall include both a written application and a sworn or affirmed affidavit. A peace officer may submit an application and affidavit for a warrant and the court may issue the warrant by an electronically or

electromagnetically transmitted facsimile or by an electronic transfer that may include an electronic signature. Whenever a sworn or affirmed affidavit is required, the court may orally administer the oath or affirmation to the affiant and the affiant may then electronically transmit back to the court a written affidavit of the oath or affirmation.

(2) Procedures governing application for and issuance of arrest or search warrants consistent with this section may be established by rule of the Colorado supreme court, which rule should require the court administrator to establish paper quality and durability standards for warrants issued pursuant to this section.

(3) (a) Any electronically or electromagnetically transmitted facsimile of a document authorized to be made by this section shall be treated as an original document.

(b) A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(4) For purposes of this section:

(a) "Digital signature" means a document hash-encrypted with a private cryptographic key that can be used to authenticate the identity of the sender of a message or the signer of a document and can ensure that the original content of the message or document that has been sent is unchanged.

(b) "Digitized signature" means an electronic representation of an actual handwritten signature in which the image of a handwritten signature is created and saved using various methods, such as using a signature pad, scanning a handwritten signature, or digital photography. A digitized signature may be captured at the time the user applies the signature, or a previously saved image may be applied.

(c) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. An electronic signature may include, but is not limited to, a digitized signature or a digital signature.

Source: L. 92: Entire section added, p. 444, § 1, effective April 16. **L. 2007:** (1) and (3) amended and (4) added, p. 22, § 1, effective March 1. **L. 2011:** (3)(b) amended, (HB 11-1018), ch. 18, p. 46, § 2, effective March 11. **L. 2012:** (3)(b) amended, (HB 12-1095), ch. 49, p. 180, § 1, effective August 8.

16-1-107. Integrated court online network - municipal court records - legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) The report on the pilot project on criminal background checks for child care providers, prepared for the state department of human services, was presented to the general assembly in August of 2000;

(b) Said report contained several recommendations for the improvement of the process of obtaining accurate and complete criminal history records for child care workers and volunteers;

(c) Some of those recommendations involved the records contained in the integrated Colorado online network (ICON) of the state judicial department and the ability to identify case dispositions;

(d) Other recommendations involved the work of the courts and the state judicial department in assisting in the completion and implementation of the integrated criminal justice information system program established by article 20.5 of this title.

(2) The general assembly further finds and declares that, in order to assure that criminal background checks for child care workers are accurate and complete, it is critical that the criminal justice agencies participating in the integrated criminal justice information system program established by article 20.5 of this title and political subdivisions continue to work with each other to complete and implement such program in a timely manner and consider the integration of municipal records, including the county court records of the city and county of Denver, into such program.

Source: L. 2001: Entire section added, p. 612, § 1, effective May 30.

16-1-108. Admission of records in court.

(1) In a trial or hearing, all official records and documents of the state of Colorado, as defined in section 42-2-121 (2)(c), C.R.S., shall:

(a) Be admissible in all county and district courts within the state of Colorado without further foundation;

(b) Be statutory exceptions to rule 802 of the Colorado rules of evidence; and

(c) Constitute prima facie proof of the information contained in the record or document if the record or document is accompanied by a certificate stating that the executive director of the department of revenue, or the executive director's appointee, has custody of the record or document and accompanied by and attached to a cover page that:

(I) Specifies the number of pages, exclusive of the cover page, that constitute the record or document being submitted; and

(II) Bears the signature of the executive director of the department of revenue, or the executive director's appointee, attesting to the authenticity of the record or document; and

(III) Bears the official seal of the department of revenue or a stamped or printed facsimile of the seal.

(2) As used in subsection (1) of this section, "official records and documents" includes any mechanically or electronically reproduced copy, photograph, or printout of a record or document or any portion of a record or document filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121 (2)(c), C.R.S. The department of revenue may also permit the electronic transmission of information for direct recording in the department of revenue's records and systems. Information transmitted by an electronic means that is approved by the department of revenue constitutes an official record for the purposes of this section, regardless of whether an original source document for the information exists or ever existed. The certificate and cover page and its contents required by subsection (1) of this section may be electronically produced and transmitted. An electronic reproduction of the certificate and cover page, including an electronic signature of the executive director of the department of revenue or of the executive director's appointee and an electronic reproduction of the official seal of the department of revenue, shall be admissible in court as set forth in subsection (1) of this section.

(3) A record or document shall not be required to include every page of a record or document filed with, maintained by, or prepared by the department of revenue pursuant to this section to be an official record or document, if the official record or document includes all of those portions of the record or document relevant to the trial or hearing for which it is prepared. There shall be a presumption that the official record or document contains all information that is relevant to the trial or hearing.

Source: L. 2004: Entire section added, p. 1379, § 6, effective July 1. **L. 2005:** IP(1) and (2) amended, p. 765, § 24, effective June 1.

16-1-109. Eyewitness identification procedures - policies and procedures - training - admissibility - report - legislative declaration - definitions.

(1) The general assembly finds and declares that:

(a) Over the past forty years, a large body of peer-reviewed scientific research and practice has demonstrated that simple systematic changes in the administration of eyewitness identification procedures by all law enforcement agencies can greatly improve the accuracy of those identifications and strengthen public safety while protecting the innocent;

(b) The integrity of Colorado's criminal justice system benefits from adherence to peer-reviewed research-based practices in the investigation of criminal activity; and

(c) Colorado will benefit from the development and use of written law enforcement policies that are derived from peer-reviewed scientific research and research-based practices, which will ultimately improve the accuracy of eyewitness identification and strengthen the criminal justice system in Colorado.

(2) As used in this section, unless the context otherwise requires:

(a) "Blind" means the administrator of a live lineup, photo array, or showup does not know the identity of the suspect.

(b) "Blinded" means the administrator of a live lineup, photo array, or showup may know who the suspect is but does not know in which position the suspect is placed in the photo array when it is viewed by the eyewitness.

(c) "Eyewitness" means a person who observed another person at or near the scene of an offense.

(d) "Filler" means either a person or a photograph of a person who is not suspected of the offense in question and is included in an identification procedure.

(e) "Live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons who are not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

(f) "Peace officers standards and training board" or "P.O.S.T. board" means the board created in section 24-31-302, C.R.S., for the certification of peace officers in Colorado.

(g) "Photo array" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons who are not suspected of the offense, is displayed to an eyewitness either in hard

copy form or via electronic means for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

(h) "Showup" means an identification procedure in which an eyewitness is presented with a single subject in person for the purpose of determining whether the eyewitness identifies the individual as the suspect.

(3) (a) On or before November 15, 2021, any Colorado law enforcement agency that employs a peace officer required to be P.O.S.T.-certified pursuant to section 16-2.5-102, that is charged with enforcing the criminal laws of Colorado, and that, as part of any criminal investigation, uses or might use any eyewitness identification procedure shall adopt written policies and procedures concerning law-enforcement-conducted eyewitness identifications. The policies and procedures adopted and implemented by a law enforcement agency must be consistent with eyewitness identification procedures of nationally recognized peer-reviewed research and must be consistent with the requirements of section 16-1-110 for admissibility of evidence of eyewitness identification. The attorney general, the Colorado district attorneys' council, representatives of law enforcement, and representatives of the state public defender office, in consultation with an organization that is familiar with the research regarding eyewitness identification and supports the exoneration of persons who have been wrongfully convicted, shall develop and recommend a set of model policies and procedures that are consistent with the requirements of this section and section 16-1-110 and update the policies and procedures as necessary. The policies and procedures must include, but need not be limited to, the following:

(I) Protocols guiding the use of a showup;

(II) Protocols guiding the recommended use of a blind administration of both photo arrays and live lineups or the recommended use of a blinded administration of the identification process when circumstances prevent the use of a blind administration;

(III) The development of a set of easily understood instructions for eyewitnesses that, at a minimum, advise the eyewitness that the alleged perpetrator may or may not be present in the photo array or live lineup and that the investigation will continue whether or not the eyewitness identifies anyone as the alleged perpetrator in the photo array or live lineup;

(IV) Instructions to the law enforcement agency regarding the appropriate choice and use of fillers in compiling a live lineup or photo array, including ensuring that fillers match the original description of the perpetrator; and

(V) Protocols regarding the documentation of the eyewitness' level of confidence as elicited at the time he or she first identifies an alleged perpetrator or other person and memorialized verbatim in writing.

(b) Repealed.

(c) Local law enforcement policies and procedures relating to eyewitness identification are public documents. All such policies and procedures must be available, without cost, to the public upon request pursuant to the provisions of this section.

(d) Subject to available resources, law enforcement shall create, conduct, or facilitate professional training programs for law enforcement officers and other relevant personnel on methods and technical aspects of eyewitness identification policies and procedures. While these training programs shall be approved by the P.O.S.T. board, any programs may be created, provided, and conducted by any law enforcement agency, the office of the attorney general, the Colorado district attorneys' council, or any other P.O.S.T-approved training entity.

(4) Policies and procedures adopted and implemented by a law enforcement agency pursuant to this section must be reviewed by the agency at least every five years to ensure the policies and procedures are updated to include best practices recognized by nationally recognized peer-reviewed research.

(5) Compliance or failure to comply with any of the requirements of this section and the requirements of section 16-1-110 is considered relevant evidence in any case involving eyewitness identification, as long as such evidence is otherwise admissible.

(6) Beginning January 1, 2022, each law enforcement agency that uses a showup shall collect the following data related to those identification techniques:

(a) The date, time, and location of the showup;

(b) The gender, age, and race of the subject and eyewitness in the showup, as determined by the law enforcement officer's perception or the subject's identification or retrieved from a database accessible by law enforcement;

(c) The alleged crime; and

(d) The outcome of the showup.

Source: L. 2015: Entire section added, (SB 15-058), ch. 110, p. 321, § 1, effective July 1. **L. 2021:** (2)(h), IP(3)(a), (4), and (5) amended, (3)(b) repealed, and (6) added, (HB 21-1142), ch. 312, p. 1902, § 2, effective September 7.

Cross references: For the legislative declaration in HB 21-1142, see section 1 of chapter 312, Session Laws of Colorado 2021.

16-1-110. Regulation of showup identification procedures - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "P.O.S.T.-certified" means certified by the peace officers standards and training board created in section 24-31-302.

(b) "Showup" means an identification procedure in which an eyewitness is presented with a single subject in person for the purpose of determining whether the eyewitness identifies the individual as the suspect.

(2) (a) A peace officer may utilize a showup only pursuant to the following conditions:

(I) (A) Following the report of a crime, a peace officer, acting on reasonable suspicion, has detained a subject in the crime within minutes of the commission of the crime and near the location of the crime;

(B) Given the circumstances, neither a live lineup nor a photo array are available as a means of identification; and

(C) The eyewitness reasonably believes he or she can identify the subject.

(II) To verify the identity of an intimate relationship, as defined in section 18-6-800.3 (2), in a domestic violence case; or

(III) To confirm the identity of a familial subject, including a parent, child, or sibling known to the eyewitness.

(3) (a) Beginning January 1, 2022, for showups conducted on or after this date, when a law enforcement agency that employs peace officers required to be P.O.S.T.-certified pursuant to section 16-2.5-102 or a P.O.S.T.-certified peace officer conducts a showup, the peace officer shall comply with the following provisions:

(I) A peace officer shall transport the eyewitnesses separately to the location of the person subject to the showup;

(II) The showup location must be as well-lit as practicable with an unobstructed view of the person subject to the showup;

(III) A peace officer shall avoid external factors that can be suggestive to the eyewitness, such as verbal comments, computer screen data, or any other information concerning the person subject to the showup;

(IV) A peace officer shall not require the person subject to the showup to put on described clothing worn by the suspect, speak specific words uttered by the suspect, or perform any specific actions mimicking those of the suspect that occurred during the commission of the reported crime;

(V) A peace officer shall not show the person subject to the showup to the eyewitness while the person was in handcuffs or in the back of a patrol vehicle, except in circumstances to prevent an imminent threat of physical harm to a peace officer or another person or the escape of the subject;

(VI) When multiple eyewitnesses exist, a peace officer shall permit only one eyewitness at a time to view the person subject to the showup;

(VII) When multiple subjects exist, a peace officer shall separate the subjects and conduct separate showups with each subject;

(VIII) A peace officer shall separate the eyewitnesses from one another;

(IX) When conducting a showup with an eyewitness who has limited English proficiency or who is hearing impaired or deaf, a peace officer, if feasible, shall obtain an interpreter before proceeding with the showup. The lack of an interpreter does not preclude use of evidence derived from the showup procedure if a court finds the identification is sufficiently or nevertheless reliable.

(X) A peace officer shall give the admonition required by subsection (3)(d) of this section prior to conducting the showup;

(XI) (A) Repealed.

(B) No later than January 1, 2023, using a body-worn camera, a peace officer shall record a video of the entirety of the showup procedure including each subject to preserve a record of the appearance of the subject at the time of the showup and the location and conditions of the showup, the admonition a peace officer is required to provide to an eyewitness as required by subsection (3)(d) of this section, and the eyewitness confidence statement required by subsection (3)(a)(XII) of this section.

(XII) If an eyewitness makes an identification during a showup, a peace officer shall ask the eyewitness whether the eyewitness is confident, somewhat confident, or not confident about the identification. If an eyewitness makes an identification, a peace officer, at the time of the identification, shall take a clear statement from the eyewitness and document the statement in the eyewitness's own words. If an eyewitness makes an identification and an arrest occurs, any further acts to obtain an additional identification by subsequent eyewitnesses must be through a live lineup or photo array.

(b) The court shall consider any failure by law enforcement to comply with the requirements of this section with respect to any challenge to a showup identification.

(c) A P.O.S.T.-certified peace officer shall document the time and location of the showup and read the showup advisement required by subsection (3)(d) of this section to each eyewitness. The

officer shall document the procedure in the officer's written statement and, beginning July 1, 2023, record the showup in its entirety with the officer's body-worn camera.

(d) (I) When conducting a showup, a P.O.S.T.-certified peace officer shall verbally communicate to the eyewitness the substance of the following statements:

(A) You should not assume the person you are about to see has committed a crime;

(B) We could be showing you a person for many reasons, including to clear the person from investigation;

(C) Eliminating a person from an investigation serves an equally important purpose as identifying a person who might have been involved in the criminal activity;

(D) The investigation of this matter will continue whether or not you identify a person;

(E) Apart from individual assistance and cooperation with law enforcement, we cannot discuss the investigation with you; and

(F) Please do not discuss what you saw, said, or did during this procedure with any other eyewitness.

(II) The P.O.S.T.-certified peace officer shall ask the eyewitness if they understand the instructions, if they agree to comply with the instructions, and if they have any questions before the identification procedure begins. The eyewitness must respond affirmatively in order for the showup to proceed.

Source: L. 2021: Entire section added, (HB 21-1142), ch. 312, p. 1904, § 3, effective September 7.

Editor's note: Subsection (3)(a)(XI)(A) provided for the repeal of subsection (3)(a)(XI)(A), effective January 1, 2023. (See L. 2021, p.1904.)

Cross references: For the legislative declaration in HB 21-1142, see section 1 of chapter 312, Session Laws of Colorado 2021.

ARTICLE 2

County Court Provisions

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PART 2
PENALTY ASSESSMENT PROCEDURE

16-2-201. Penalty assessment notice procedure.

PART 1

SIMPLIFIED PROCEDURES IN THE COUNTY COURT

16-2-101. Misdemeanor and petty offense procedures - statement of purpose.

In order to provide a simple and expeditious method for the prosecution of misdemeanors and petty offenses in county courts but one which also guarantees to the defendant his constitutional rights, the general assembly does hereby establish a simplified criminal procedure for misdemeanors and petty offenses to be used under the circumstances set forth in this code in sections 16-2-102 to 16-2-114.

Source: L. 72: R&RE, p. 193, § 1. **C.R.S. 1963:** § 39-2-101.

16-2-102. Definitions.

As used in sections 16-2-104 to 16-2-114, "summons and complaint" means a document combining the functions of both a summons and a complaint.

Source: L. 72: R&RE, p. 193, § 1. **C.R.S. 1963:** § 39-2-102.

16-2-103. Application of article.

(1) Sections 16-2-102 to 16-2-114 apply only to the prosecution of misdemeanors and petty offenses in county courts under simplified procedure and have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

(2) Any matter arising in a proceeding under simplified procedure not specifically covered by sections 16-2-102 to 16-2-114 shall be subject to the other provisions of this code and any other applicable statute or court rule or, in the absence of such statute or court rule, to the application of common law principles. In any case due regard shall be had for speed and simplicity.

Source: L. 72: R&RE, p. 193, § 1. **C.R.S. 1963:** § 39-2-103.

16-2-104. Issuance of summons and complaint.

(1) A summons and complaint may be issued by a peace officer for an offense constituting a misdemeanor or a petty offense committed in the peace officer's presence or, if not committed in the peace officer's presence, that the peace officer has probable cause to believe was committed and probable cause to believe was committed by the person charged. Except for:

(a) Penalty assessment notices, which must be handled pursuant to the procedures set forth in section 16-2-201 or 16-2.3-102, a copy of a summons and complaint so issued must be filed immediately with the county court before which appearance is required, and a second copy must be given to the district attorney or deputy district attorney for the county; and

(b) When a colorimetric field drug test was used and a person is solely suspected of a level 1 drug misdemeanor for possession of a controlled substance pursuant to section 18-18-403.5 (2)(c) or (2.5)(a)(II), or solely suspected of a municipal drug possession charge, a peace officer shall issue a summons and complaint and shall not arrest the person.

Source: L. 72: R&RE, p. 193, § 1. **C.R.S. 1963:** § 39-2-104. **L. 73:** p. 498, § 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3160, § 165, effective March 1, 2022. **L. 2022:** Entire section amended, (HB 22-1229), ch. 68, p. 341, § 9, effective March 1. **L. 2026:** Entire section amended, (HB 26-1020), ch. 12, p. 55, § 3, effective March 26.

Editor's note: (1) Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

(2) Section 6 of chapter 12 (HB 26-1020), Session Laws of Colorado 2026, provides that the act changing this section applies to offenses committed on or after March 26, 2026.

Cross references: For the description of peace officer as it applies to the "Colorado Criminal Code", see § 16-2.5-101.

ANNOTATION

Annotator's note. Since § 16-2-104 is similar to repealed § 37-17-5, C.R.S. 1963, a relevant case construing that provision has been included in the annotations to this section.

The contents of a summons and complaint used in the simplified criminal procedure are not found in this section, which enumerates only those circumstances under which the form of summons and complaint may be used, but rather in section 16-2-106. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

It is sufficient that the summons allege that the complainant "knows or believes" rather than "knows or has reason to believe" accused committed the offense charged. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

Applied in Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981); Corr v. District Court, 661 P.2d 668 (Colo. 1983).

16-2-105. Issuance of summons after complaint. (Repealed)

Source: L. 72: R&RE, p. 193, § 1. **C.R.S. 1963:** § 39-2-105. **L. 98:** Entire section repealed, p. 946, § 2, effective May 27.

16-2-106. Content of summons and complaint.

A summons and complaint issued by a peace officer shall contain the name of the defendant, shall identify the offense charged, including a citation of the statute alleged to have been violated, shall contain a brief statement or description of the offense charged, including the date

and approximate location thereof, and shall direct the defendant to appear before a specified county court at a stated date, time, and place.

Source: L. 72: R&RE, p. 193, § 1. **C.R.S. 1963:** § 39-2-106.

ANNOTATION

Annotator's note. Since § 16-2-106 is similar to repealed § 37-17-7, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

The contents of a summons and complaint are those things enumerated in this section, nothing more, nothing less. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

And the only persons designated as having the authority to sign the summons and complaint are peace officers, but there is no requirement that the complainant should be described as a peace officer on the face of the complaint. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

And it is sufficient that the summons alleges that the complainant "knows or believes" rather than stating more formally that he "knows or has reason to believe" that the accused committed the offense charged. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

Moreover, this section does not require a verification of a summons and complaint charging a misdemeanor and issued by a peace officer. Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

And the fact verification is not mentioned is significant. By carefully spelling out in detail the contents of a summons and complaint issued by a peace officer in this section, the fact that there is no mention of any requirement that the summons and complaint contain a verification is quite significant. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

16-2-107. Content of summons after complaint.

A summons issued out of the county court after a complaint is filed need contain only the date, time, and place of appearance of the defendant, but a copy of the complaint shall be attached to and served with the summons.

Source: L. 72: R&RE, p. 194, § 1. **C.R.S. 1963:** § 39-2-107.

16-2-108. Place of appearance and trial.

The place at which the summons directs the defendant to appear shall be the place at which the court having jurisdiction over the matter customarily sits. It shall be a location at which the county court of the county in which the offense was alleged to have been committed sits regularly unless otherwise provided by this section. If the summons and complaint is issued by a peace officer and served personally upon the defendant by such peace officer, it may direct appearance at a location in which the county court of an adjoining county sits regularly if such a place is agreed to be more convenient by both the peace officer and the defendant. Costs and fines, to the extent provided by law, shall be retained by the county in which the matter is heard.

Source: L. 72: R&RE, p. 194, § 1. **C.R.S. 1963:** § 39-2-108. **L. 91:** Entire section amended, p. 429, § 5, effective May 24.

16-2-109. Service of summons.

A summons issued by the county court in a prosecution for a misdemeanor or petty offense may be served by giving a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen years residing therein or by mailing a copy to the defendant's last-known address by certified mail, return receipt requested, not less than fourteen days prior to the time the defendant is required to appear. Service by mail must be complete upon the return of the receipt signed by the defendant. Personal service must be made by any disinterested party over the age of eighteen years.

Source: L. 72: R&RE, p. 194, § 1. **C.R.S. 1963:** § 39-2-109. **L. 90:** Entire section amended, p. 923, § 2, effective March 27. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 842, § 57, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3160, § 166, effective March 1, 2022. **L. 2022:** Entire section amended, (HB 22-1229), ch. 68, p. 341, § 10, effective March 1.

Editor's note: Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

16-2-110. Failure to appear.

If a person upon whom a summons or summons and complaint has been served pursuant to this part 1 fails to appear in person or by counsel at the place and time specified therein, a bench warrant may issue for his arrest.

Source: L. 72: R&RE, p. 194, § 1. **C.R.S. 1963:** § 39-2-110. **L. 87:** Entire section amended, p. 603, § 1, effective July 1.

16-2-111. Admission to bail pending appearance.

Any person charged with a misdemeanor or petty offense by complaint filed in the county court shall be admitted to bail or pretrial release as provided in article 4 of this code. When the county judge or judges are not immediately available for purposes of admission to bail or pretrial release of persons arrested and brought to the county court or jail, on charges of committing a misdemeanor or petty offense, such persons may be admitted to bail or be given a pretrial release by an appropriate officer designated by court rule. Unless otherwise provided by statute or supreme court rule, the county court shall provide by rule for the conditions and circumstances under which an admission to bail or pretrial release will be granted pending appearance before the judge, but in no event shall any such rule require conditions or impose liabilities in excess of those required by this code for cases filed in the district court.

Source: L. 72: R&RE, p. 194, § 1. **C.R.S. 1963:** § 39-2-111.

ANNOTATION

In addition to procedures under §§ 16-2-112 and 16-3-105, a county court acquires jurisdiction over a defendant when a warrantless arrest for a misdemeanor offense is made and the defendant is admitted to bail through execution of an appearance bond pursuant to this section and a misdemeanor complaint later is filed in the county court. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

The defendant's release upon admission to bail and the subsequent filing of the complaint complied with the requirements of § 16-2-112 when said section properly is read in conjunction with this section. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

By posting bail and executing an appearance bond the defendant waived service of the complaint on him until his appearance date and this procedure

complied with § 16-2-112 and related rules, which do not require that a person charged with a misdemeanor be given a copy of the complaint until at or before the time he is arraigned. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

The statutes and procedural rules do not require that a person charged with a misdemeanor be given a copy of the complaint prior to being released on bail. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

16-2-112. Arrest followed by a complaint.

If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this section are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

Source: L. 72: R&RE, p. 195, § 1. **C.R.S. 1963:** § 39-2-112.

ANNOTATION

The defendant's release upon admission to bail and the subsequent filing of the complaint complied with the requirements of this section when properly read in conjunction with § 16-2-111. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

By posting bail and executing an appearance bond the defendant waived service of the complaint on him until his appearance date and this procedure complied with this section and related rules, which do not require that a person charged with a misdemeanor be given a copy of the complaint until at or before the time he is arraigned. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

The statutes and procedural rules do not require that a person charged with a misdemeanor be given a copy of the complaint prior to being released on bail. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

16-2-113. Appearance of defendant before judge - subsequent procedure.

(1) Upon appearance of the defendant before the judge in response to a summons or following arrest for a misdemeanor or a petty offense and in all proceedings thereafter unless otherwise provided in this code, the Colorado rules of criminal procedure are applicable.

Prosecution may be conducted on the summons and complaint or the separate complaint if one has been filed. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise, the case shall be set for trial as soon as possible.

(2) Upon appearance before a judge for an offense under section 42-2-138 (1)(d) or 42-4-1301 (1) or (2)(a), C.R.S., the judge may order conditions of the summons, including but not limited to drug and alcohol evaluation and treatment. For a violation of an order entered pursuant to this subsection (2), a court may revoke the summons, issue a warrant for the defendant's arrest, and impose bail pursuant to the provisions of article 4 of this title.

Source: L. 72: R&RE, p. 195, § 1. **C.R.S. 1963:** § 39-2-113. **L. 2008:** Entire section amended, p. 785, § 2, effective July 1.

16-2-114. Appeals.

(1) The defendant may appeal a judgment of the county court in a criminal action under simplified procedure to the district court of the county. To appeal, the defendant shall, within thirty-five days after the date of entry of the judgment or the denial of posttrial motions, whichever is later, file notice of appeal in the county court, post any advance costs that are required for the preparation of the record, and serve a copy of the notice of appeal upon the appellee. The defendant shall also, within such thirty-five days, docket the appeal in the district court and pay the docket fee. No motion for new trial or in arrest of judgment shall be required as a prerequisite to an appeal, but such motions may be made pursuant to applicable rule of the Colorado supreme court.

(2) The notice of appeal shall state with particularity the alleged errors of the county court or other grounds relied upon for the appeal and shall include a stipulation or designation of the evidence and other proceedings which the appellant desires to have included in the record certified to the district court. If the appellant intends to urge upon appeal that the judgment or a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to that finding or conclusion. The appellee shall have fourteen days after service upon him or her of the notice of appeal to file with the clerk of the county court and serve upon the appellant a designation of any additional parts of the transcript or record which he or she deems necessary. The advance cost of preparing the additional record shall be posted by the appellant with the clerk of the county court within seven days after service upon him or her of the appellee's designation, or the appeal will be dismissed. If the district court finds that any part of the additional record designated by the appellee was unessential to a complete understanding of the questions raised by the appeal, it shall order the

appellee to reimburse the appellant for the cost advanced for the preparation of that part without regard to the outcome of the appeal.

(3) Upon the filing of a notice of appeal and upon the posting of any advance costs by the appellant, as are required for the preparation of a record, unless the appellant is granted leave to proceed as an indigent, the clerk of the county court shall prepare and issue as soon as possible a record of the proceedings in the county court, including the summons and complaint or warrant, the separate complaint if any has been issued, and the judgment. The record shall also include a transcription or a joint stipulation of such part of the actual evidence and other proceedings as the parties designate. If the proceedings have been recorded electronically, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the court, either by him or her or under his or her supervision, within forty-two days after the filing of the notice of appeal or within such additional time as may be granted by the county court. The clerk shall notify in writing the opposing parties of the completion of the record, and such parties shall have fourteen days within which to file objections. If none are received, the record shall be certified forthwith by the clerk. If objections are made, the parties shall be called for hearing and the objections settled by the county judge and the record then certified.

(4) When the record has been duly certified and any additional fees therefor paid, it shall be filed with the clerk of the district court by the clerk of the county court, and the opposing parties shall be notified by the clerk of the county court of the filing.

(5) A written brief setting out matters relied upon as constituting error and outlining any arguments to be made shall be filed in the district court by the appellant within twenty-one days after certification of the record. A copy of the appellant's brief shall be served upon the appellee. The appellee may file an answering brief within twenty-one days after such service. A reply brief may be filed within fourteen days after service of the answering brief. In the discretion of the district court, the time for filing briefs and answers may be extended.

(6) Pending the docketing of the appeal, a stay of execution shall be granted by the county court upon request. If a sentence of imprisonment has been imposed, the defendant may be required to post bail, and if a fine and costs have been imposed, a deposit of the amount thereof or the posting of a bond for the payment thereof may be required by the county court. Upon a request for stay of execution made anytime after the docketing of the appeal, this action may be taken by the district court. Stays of execution granted by the county court or district court and, with the written consent of the sureties if any, bonds posted with such courts shall remain in effect until after final disposition of the appeal, unless modified by the district court.

(7) If for any reason an adequate record cannot be certified to the district court, the case shall be tried de novo in that court. No action on appeal shall result in an increase in penalty.

(8) Unless there is further review by the supreme court upon writ of certiorari pursuant to the rules of that court, after final disposition of the appeal the judgment on appeal entered by the

district court shall be certified to the county court for action as directed by the district court, except in cases tried de novo by the district court or in cases in which the district court modifies the county court judgment, and, in such cases, the judgment on appeal shall be that of the district court and so enforceable.

(9) Repealed.

Source: L. 72: R&RE, p. 195, § 1. **C.R.S. 1963:** § 39-2-114. **L. 85:** (9) repealed, p. 572, § 12, effective November 14, 1986. **L. 2012:** (1), (2), (3), and (5) amended, (SB 12-175), ch. 208, p. 842, § 58, effective July 1. **L. 2013:** (3) amended, (HB 13-1086), ch. 32, p. 77, § 2, effective July 1.

ANNOTATION

Annotator's note. Since § 16-2-114 is similar to repealed § 37-17-15, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

Law reviews. For article, "Appeals of County Court, Municipal Court, and Magistrate Rulings", see 47 Colo. Law. 32 (Oct. 2018).

The function of a district court in acting as an appellate court is the same whether the case originates in a municipal court of record or a county court. People v. Anderson, 177 Colo. 84, 492 P.2d 844 (1972).

And this section requires a district court either to review a decision on the record, remand the case for a new trial with instructions, or direct that trial de novo be had before the district court. People v. Anderson, 177 Colo. 84, 492 P.2d 844 (1972).

The appeal of misdemeanor cases, when tried de novo by a district court, results in the judgment being that of the district court and so enforceable. Hylton v. City of Colo. Springs, 32 Colo. App. 9, 505 P.2d 26 (1973).

Subsection (6) of this section and Crim. P. 37(f) require a county court, upon request, to grant a stay of execution of a defendant's sentence pending appeal of a misdemeanor conviction to the district court. People v. Steen, 2014 CO 9, 318 P.3d 487.

The requirement in subsection (6) to stay the execution of a sentence pending appeal does not conflict with the appeal bond exceptions in § 16-4-201.5 (2). County courts can comply with the requirements of both statutes. Stays of execution and bail are separate processes and a court can stay the execution of a sentence while also denying bail. People v. Lewis, 2024 CO 57, 555 P.3d 576.

PART 2

PENALTY ASSESSMENT PROCEDURE

16-2-201. Penalty assessment notice procedure.

(1) When a person is arrested for a civil infraction, the arresting officer may give the person a penalty assessment notice pursuant to section 16-2.3-102 and release the person upon its terms.

(1.5) The provisions of subsection (1) of this section notwithstanding, when an officer comes upon an unattended vehicle which is parked in apparent violation of any county parking ordinance, the officer may place upon the vehicle a penalty assessment notice as specified in subsection (2) of this section; except that said notice shall contain the license plate number and state of registration of the vehicle and need not contain the identification of the alleged offender.

(2) The penalty assessment notice shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section. A duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred. The provisions of this section shall not apply to penalties assessed pursuant to authority of law outside this code unless this section is specifically referred to in such other law.

(3) If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs may be assessed against him in addition to the fine.

Source: L. 72: R&RE, p. 197, § 1. **C.R.S. 1963:** § 39-2-201. **L. 73:** p. 498, § 2. **L. 91:** Entire section amended, p. 423, § 1, effective March 11. **L. 2021:** (1) amended, (SB 21-271), ch. 462, p. 3160, § 167, effective March 1, 2022. **L. 2022:** (1) amended, (HB 22-1229), ch. 68, p. 341, § 11, effective March 1.

Editor's note: Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

ANNOTATION

Section 16-3-102 permits a police officer to arrest a person who has committed a crime in the officer's presence. This section does not limit that authority. An officer may arrest when a crime occurs in his or her presence. When that crime is a class two petty offense, the arresting officer may, pursuant to this section, either take the arrested suspect before a judge or release the suspect after issuing a penalty assessment. Police compliance with both statutes is achieved because, even though they conduct a full custodial arrest and search, police "may" still release the offender without taking him before a judge. A custodial arrest and a discretionary release are not mutually exclusive under this section. People v. Triantos, 55 P.3d 131 (Colo. 2002).

An officer can decide, before or after a custodial arrest, to arrest or release a suspect, based upon whether the suspect is likely to appear as required in a summons. The arresting officer can choose either to release the suspect or to take the suspect before a judge even after the officer has effectuated a custodial arrest and conducted a search of the suspect. People v. Triantos, 55 P.3d 131 (Colo. 2002).

ARTICLE 2.3

Civil Infractions

16-2.3-101. Civil infractions classified.

16-2.3-102. Penalty assessment notice for civil infractions.

16-2.3-103. Summons and complaint for civil infractions.

16-2.3-104. Parties to a crime.

16-2.3-105. Civil infractions - proper court for hearing - burden of proof - appeal - collateral attack.

16-2.3-106. Failure to pay penalty for civil infractions - failure of parent or guardian to sign penalty assessment notice - procedures.

16-2.3-101. Civil infractions classified.

(1) It is a civil infraction for any person to commit any offense or violate any statute of this state that is specifically classified as a civil infraction. A civil infraction is a civil matter.

(2) For the purposes of this article 2.3:

(a) "Judge" includes any county court magistrate who hears a civil infraction matter; and

(b) "Magistrate" includes any county court judge who is acting as a county court magistrate in a civil infraction matter.

(3) The penalty for commission of a civil infraction, upon conviction, is a fine of not more than one hundred dollars, unless otherwise provided in the section describing the infraction.

(4) Every person who is convicted of, who admits liability for, or against whom a judgment is entered for a violation of a civil infraction must be fined and have a surcharge levied pursuant to sections 24-4.1-119 (1)(g), 24-4.2-104 (1)(b)(III), and 24-33.5-415.6.

Source: L. 2022: Entire article R&RE, (HB 22-1229), ch. 68, p. 333, § 1, effective March 1.

16-2.3-102. Penalty assessment notice for civil infractions.

(1) (a) At any time that a peace officer, as described in section 16-2.5-101, charges a person with the commission of any civil infraction, the peace officer may, except when prohibited by the section describing the charged civil infraction, offer to give a penalty assessment notice to the person. For all civil infractions, the fine listed on the penalty assessment notice is one hundred dollars, unless the fine is otherwise provided in the section describing the civil infraction.

(b) The penalty assessment notice that a peace officer serves upon the person must be a summons and complaint containing the following:

(I) Identification of the alleged offender;

(II) Specification of the offense, including a citation to the section alleged to have been violated and a brief description of the civil infraction;

(III) The amount of the fine for the civil infraction and the amount of the surcharges pursuant to sections 24-4.1-119 (1)(g), 24-4.2-104 (1), and 24-33.5-415.6;

(IV) The date the peace officer serves the penalty assessment notice upon the person;

(V) Instructions to the person to appear in a specified county court at a specified time and place if the fine and surcharges are not paid;

(VI) The peace officer's signature;

(VII) A place where the person may execute a signed acknowledgment of liability and an agreement to pay the fine and surcharges within twenty days; and

(VIII) Other information as may be required by law to constitute the penalty assessment notice to be a summons and complaint should the fine and surcharges not be paid within the time allowed in subsection (2) of this section.

(c) A penalty assessment notice issued and served pursuant to subsection (1)(a) of this section on a minor under eighteen years of age must also contain or be accompanied by a document containing:

(I) A preprinted declaration stating that the minor's parent or legal guardian has reviewed the contents of the penalty assessment notice with the minor;

(II) Preprinted signature lines following the declaration on which the reviewing person described in subsection (1)(c)(I) of this section shall affix the person's signature and for a notary public to duly acknowledge the reviewing person's signature; and

(III) An advisement to the minor that:

(A) The minor shall, within seventy-two hours after service of the penalty assessment notice, inform the minor's parent or legal guardian that the minor has received a penalty assessment notice;

(B) The parent or legal guardian of the minor is required by law to review and sign the penalty assessment notice and to have the person's signature duly acknowledged by a notary public; and

(C) Noncompliance with the requirement set forth in subsection (1)(c)(III)(B) of this section will result in the minor and the parent or legal guardian of the minor being required to appear in court pursuant to subsection (4) of this section.

(d) The peace officer must serve one copy of the penalty assessment notice upon the person and shall send one copy to the clerk of the county court in the county in which the alleged offense occurred. The copy sent to the clerk of the county court must be sent immediately after service upon the person.

(e) The time specified in the summons portion of the penalty assessment notice must be at least thirty days but not more than ninety days after the date the penalty assessment notice is served.

(f) The place specified in the summons portion of the penalty assessment notice must be a county court within the county in which the civil infraction is alleged to have been committed.

(g) If the person refuses to accept service of the penalty assessment notice, tender of the notice by the peace officer to the person constitutes service upon the person.

(2) (a) If the person served a penalty assessment notice acknowledges guilt, the person may pay the specified fine and surcharges in person or by mail at the place and within the time specified in the notice. If the person does not acknowledge guilt, the person shall appear as required in the notice. Upon final hearing, if the person is found guilty, the court shall impose the fine and surcharges specified in the notice for the offense for which the person was found guilty and the court may impose court costs against the person in addition to the fine and surcharges.

(b) The fine specified in the penalty assessment notice for the violation charged and the surcharges must be paid to the clerk of the court of the jurisdiction in which the offense is alleged to have occurred, either in person or by postmarking such payment within twenty days after the date the penalty assessment notice is served upon the person. Except as otherwise provided in subsection (4) of this section, acceptance of a penalty assessment notice and payment of the fine and surcharges to the court are complete satisfaction for the violation. The person must be given a receipt if the person pays the fine and surcharges in currency or other form of legal tender.

(3) **[*Editor's note: This version of subsection (3) is effective until July 1, 2027.*]** If a person charged with a civil infraction fails to pay the fine and surcharges within twenty days after the date of the penalty assessment notice, or if the clerk of the court does not accept payment for the fine and surcharges as evidenced by receipt, the person is allowed to pay the fine, surcharges, and the docket fees in the amounts set forth in sections 13-1-204 (1)(b) and 16-2.3-106 (5)(a)(I) to the clerk of the court referred to in the summons portion of the penalty assessment notice during the two business days prior to the time for appearance, as specified in the notice. If the fine for a civil infraction and surcharges is not timely paid, the case is heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the manner provided for in this article 2.3 for the prosecution of civil infractions.

(3) **[*Editor's note: This version of subsection (3) is effective July 1, 2027.*]**

(a) If a person charged with a civil infraction fails to pay the fine and surcharges within twenty days after the date of the penalty assessment notice, or if the clerk of the court does not accept payment for the fine and surcharges as evidenced by receipt, the person is allowed to pay the fine, surcharges, and the docket fees in the amounts set forth in sections 13-1-505 (1)(a) and 16-2.3-106 (5)(a)(I) to the clerk of the court referred to in the summons portion of the penalty assessment notice during the two business days prior to the time for appearance, as specified in the notice. If the fine for a civil infraction and surcharges is not timely paid, the case is heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the manner provided for in this article 2.3 for the prosecution of civil infractions.

(b) The court shall collect, on behalf of the court security authority, the court security surcharge described in section 13-1-505 and required pursuant to subsection (3)(a) of this section. The court shall transmit the court security surcharge in the manner specified in section 13-1-505 (2).

(4) Notwithstanding the provisions of subsection (2) of this section, a minor under eighteen years of age shall appear at a hearing on the date and time specified in the penalty assessment notice and answer the alleged violation if the penalty assessment was timely paid but not signed and notarized in the manner required by subsection (1)(c)(III)(B) of this section.

(5) Notwithstanding the provisions of subsection (1) of this section, if the offense charged is for the commission of a civil infraction for a parks and wildlife violation contained in title 33, the penalty assessment procedures contained in section 33-6-104 or 33-15-102 apply.

Source: L. 2022: Entire article R&RE, (HB 22-1229), ch. 68, p. 334, § 1, effective September 1. **L. 2026:** (3) amended, (HB 26-1422), ch. 331, p. 1959, § 24, effective July 1, 2027.

16-2.3-103. Summons and complaint for civil infractions.

(1) A summons and complaint may be issued by any peace officer for an offense constituting a civil infraction committed in the peace officer's presence or, if not committed in the peace officer's presence, that the peace officer has probable cause to believe was committed and probable cause to believe was committed by the person charged. Except for penalty assessment notices, which must be handled pursuant to the procedures set forth in section 16-2-201 or 16-2.3-102, a copy of a summons and complaint issued must be filed immediately with the county court before which appearance is required, and a second copy must be given to the district attorney or deputy district attorney for the county.

(2) A summons issued by the county court for a civil infraction may be served by giving a copy to the person or by leaving a copy at the person's usual place of abode with a person over the age of eighteen years residing therein, or by mailing a copy to the person's last-known address by certified mail, return receipt requested, not less than fourteen days prior to the time the person is required to appear. Service by mail is complete upon the return of the receipt signed by the person. Personal service must be made by any disinterested party over eighteen years of age.

Source: L. 2022: Entire article R&RE, (HB 22-1229), ch. 68, p. 336, § 1, effective March 1.

16-2.3-104. Parties to a crime.

A person is legally accountable as principal for the behavior of another person who commits a civil infraction if, with the intent to promote or facilitate the commission of the offense, the person aids, abets, advises, or encourages the other person in planning or committing the offense.

Source: L. 2022: Entire article R&RE, (HB 22-1229), ch. 68, p. 337, § 1, effective March 1.

16-2.3-105. Civil infractions - proper court for hearing - burden of proof - appeal - collateral attack.

(1) A county court magistrate appointed pursuant to part 5 of article 6 of title 13, or a county judge acting as a magistrate, shall conduct the hearing in a county court for the adjudication of a civil infraction; except that, if the charge includes a crime and civil infraction in the same summons and complaint, all charges must be made returnable before a judge or magistrate who has jurisdiction over the crime. The Colorado rules of criminal procedure apply in a case that contains both a crime and a civil infraction.

(2) When a court of competent jurisdiction determines that a person charged with a misdemeanor or petty offense is guilty of a lesser included offense that is a civil infraction, the court may enter a judgment as to the lesser included offense.

(3) In a civil infraction case, the burden of proof is on the people, and the magistrate shall enter judgment in favor of the person unless the people prove the liability of the person beyond a reasonable doubt. The district attorney or a district attorney's deputy may, but is not required to, at the district attorney's discretion, enter a civil infraction case for the purpose of attempting to negotiate a plea to a lesser offense, reduced penalty, or a stipulation to pretrial diversion or deferred judgment and sentence. The district attorney shall not represent the state at hearings conducted by a magistrate or a county judge acting as a magistrate on civil infraction matters. The magistrate or county judge acting as a magistrate may call and question any witness and shall act as the fact finder at hearings on civil infraction matters.

(4) An appeal from final judgment on a civil infraction matter must be taken to the district court for the county where the magistrate or judge acting as magistrate is located.

(5) (a) Except as otherwise provided in subsection (5)(b) of this section, a person against whom a judgment is entered for a civil infraction may not collaterally attack the validity of that judgment unless the person commences the attack within six months after the date of entry of the judgment.

(b) In recognition of the difficulties attending the litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders, the only exceptions to the time limitation specified in subsection (5)(a) of this section are cases in which the court hearing the collateral attack finds:

(I) That the court entering judgment did not have jurisdiction over the subject matter of the alleged civil infraction;

(II) That the court entering judgment did not have jurisdiction over the person;

(III) By a preponderance of the evidence, that the failure to seek relief within the time limitation specified in subsection (5)(a) of this section was the result of an adjudication of

incompetence or by commitment or certification of the violator to an institution for treatment as a person with a behavioral health disorder; or

(IV) That the failure to seek relief within the time limitation specified in subsection (5)(a) of this section was the result of circumstances amounting to justifiable excuse or excusable neglect.

Source: L. 2022: Entire article R&RE, (HB 22-1229), ch. 68, p. 337, § 1, effective March 1.

16-2.3-106. Failure to pay penalty for civil infractions - failure of parent or guardian to sign penalty assessment notice - procedures.

(1) Unless a person who has been cited for a civil infraction pays the fine and surcharges pursuant to sections 24-4.1-119 (1)(g), 24-4.2-104 (1), and 24-33.5-415.6, the person shall appear at a hearing on the date and time specified in the summons and complaint and answer the complaint. This requirement to appear may be complied with by appearance of counsel.

(2) If a minor under eighteen years of age is required to appear at a hearing pursuant to subsection (1) of this section, the minor shall inform the minor's parent or legal guardian, and the parent or legal guardian shall also appear at the hearing.

(3) If the person answers that the person is guilty or if the person fails to appear for the hearing, the magistrate shall enter judgment against the person.

(4) If the person denies the allegations in the complaint, a final hearing on the complaint must be held subject to the provisions regarding a speedy trial in section 18-1-405. If the person is found guilty or liable at the final hearing or if the person fails to appear for a final hearing, the magistrate shall enter judgment against the person.

(5) (a) (I) If judgment is entered against a person, the magistrate shall assess the appropriate fine and surcharges, a docket fee of sixteen dollars, and other applicable costs authorized by section 13-16-122 (1).

(II) All docket fees collected pursuant to subsection (5)(a)(I) of this section must be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6).

(b) A magistrate shall not issue a bench warrant for the arrest of any person who fails to appear for a hearing pursuant to subsection (1), (2), or (3) of this section or for a final hearing pursuant to subsection (4) of this section.

Source: L. 2022: Entire article R&RE, (HB 22-1229), ch. 68, p. 338, § 1, effective March 1.

ARTICLE 2.5

Peace Officers

PART 1
PEACE OFFICERS

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16-2.5-122.5. Motor vehicle criminal investigator.

16-2.5-123. Director of the division of gaming - gaming investigator.

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16-2.5-124. Liquor enforcement investigator.

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PART 1

PEACE OFFICERS

Law reviews: For article, "Controlling the Criminal Justice System: Colorado as a Case Study", see 94 Denv. L. Rev. 497 (2017).

16-2.5-100.3. Definitions.

As used in this article 2.5, unless the context otherwise requires:

(1) "P.O.S.T. board" means the peace officers standards and training board created in section 24-31-302 (1).

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2043, § 66, effective August 6.

16-2.5-101. Peace officer - description - general authority.

(1) A person who is included within the provisions of this article and who meets all standards imposed by law on a peace officer is a peace officer, and, notwithstanding any other provision of law, no person other than a person designated in this article is a peace officer. A peace officer may be certified by the peace officers standards and training board pursuant to part 3 of article 31 of title 24, C.R.S., and, at a minimum, has the authority to enforce all laws of the state of Colorado while acting within the scope of his or her authority and in the performance of his or her duties, unless otherwise limited within this part 1.

(2) (a) A peace officer certified by the peace officers standards and training board shall have the authority to carry firearms at all times, concealed or otherwise, subject to the written firearms policy created by the agency employing the peace officer. All other peace officers shall have the authority to carry firearms, concealed or otherwise, while engaged in the performance of their duties or as otherwise authorized by the written policy of the agency employing the officer.

(b) (I) A law enforcement agency may amend its written firearms policy, or use an existing policy, authorizing the possession of a firearm by an eligible immigrant, as defined in section 24-31-320 (2). A firearms policy must comply with any federal law or regulation promulgated by the United States department of justice, bureau of alcohol, tobacco, firearms, and explosives, or any successor agency, governing possession of a firearm and any related exceptions.

(II) An eligible immigrant may enroll in a training academy, as defined in section 24-31-301 (6), if the eligible immigrant is employed by a law enforcement agency and the agency's written firearms policy authorizes the eligible immigrant to possess and use a firearm at the academy, and permits transporting, storing, cleaning, and maintaining the firearm outside of instructional hours, as appropriate.

(III) The law enforcement agency that employs the eligible immigrant shall notify the P.O.S.T. board, in a manner determined by board rule pursuant to section 24-31-320 (1), that the eligible immigrant is compliant with the agency's written firearms policy while attending a training academy.

(3) As used in every statute, unless the context otherwise requires, "law enforcement officer" means a peace officer.

Source: L. 2003: Entire article added, p. 1605, § 2, effective August 6. **L. 2006:** (1) amended, p. 27, § 1, effective July 1, 2007. **L. 2023:** (2) amended, (HB 23-1143), ch. 121, p. 451, § 2, effective August 7.

ANNOTATION

Annotator's note. Since § 16-2.5-101 is similar to repealed § 18-1-901 (3)(l), relevant cases construing that provision have been included in the annotations to this section.

Jailer included as peace officer. The jailer is a deputy sheriff and as such is a peace officer within the definition of subsection (3)(l). People v. Shockley, 41 Colo. App. 515, 591 P.2d 589 (1978).

Fellow officer doctrine applicable to parole officer. By definition in the "Colorado Criminal Code", the parole officer is a "peace officer", and there is no persuasive reason why a parole officer should not come within the fellow officer

doctrine. People v. Bergstrom, 190 Colo. 105, 544 P.2d 396 (1975).

Under the "fellow officer rule", a sheriff's deputies were entitled to rely upon and accept the information supplied by the parole officer. People v. Bergstrom, 190 Colo. 105, 544 P.2d 396 (1975).

For purposes of the reference to subsection (3)(l)(I) made in § 24-31-302 (5), the certification requirement does not constitute a part of that the referenced definition. Fraternal Order, No. 27 v. Denver, 914 P.2d 483 (Colo. App. 1995).

The phrase "has the authority to enforce all the laws of the state of Colorado while acting within the scope of his authority and in the performance of his duties", does not constitute a part of the definition of peace officer, level I. Fraternal Order, No. 27 v. Denver, 914 P.2d 483 (Colo. App. 1995).

Applied in People v. Roberts, 43 Colo. App. 100, 601 P.2d 654 (1979); People v. Herrera, 633 P.2d 1091 (Colo. App. 1981).

16-2.5-102. Certified peace officer - P.O.S.T. certification required.

The following peace officers shall meet all the standards imposed by law on a peace officer and shall be certified by the P.O.S.T. board: A chief of police, a police officer, a sheriff, an undersheriff, a deputy sheriff, a Colorado state patrol officer, a town marshal, a deputy town marshal, a reserve police officer, a reserve deputy sheriff, a reserve deputy town marshal, a police officer or reserve police officer employed by a state institution of higher education, a department of revenue auto industry division employee identified in section 16-2.5-122, a department of revenue firearms dealer division employee identified in section 16-2.5-121.5 (2), a Colorado wildlife officer, a Colorado parks and recreation officer, a Colorado police administrator or police officer employed by the Colorado mental health institute at Pueblo, an attorney general criminal investigator, a community parole officer, a public transit officer, a municipal court marshal, administrators of judicial security, the department of corrections inspector general, and a Colorado ranger.

Source: L. 2003: Entire article added, p. 1606, § 2, effective August 6. **L. 2004:** Entire section amended, p. 1162, § 2, effective May 27. **L. 2008:** Entire section amended, p. 85, § 1, effective March 18. **L. 2010:** Entire section amended, (HB 10-1422), ch. 419, p. 2069, § 26, effective August 11. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 759, § 25, effective June 6. **L. 2025:** Entire section amended, (HB 25-1181), ch. 36, p. 179, § 1, effective March 26; entire section amended, (HB 25-1314), ch. 241, p. 1225, § 1, effective May 23; entire section amended, (HB 25-1136), ch. 333, p. 1729, § 7, effective May 31; entire section amended, (SB 25-275), ch. 377, p. 2043, § 67, effective August 6.

Editor's note: Amendments to this section by HB 25-1136, HB 25-1181, HB 25-1314, and SB 25-275 were harmonized.

16-2.5-103. Sheriff - undersheriff - certified deputy sheriff - noncertified deputy sheriff.

(1) A sheriff, an undersheriff, and a deputy sheriff are peace officers whose authority shall include the enforcement of all laws of the state of Colorado. A sheriff shall be certified by the P.O.S.T. board pursuant to section 30-10-501.6, C.R.S. An undersheriff and a deputy sheriff shall be certified by the P.O.S.T. board.

(2) A noncertified deputy sheriff or detention officer is a peace officer employed by a county or city and county whose authority is limited to the duties assigned by and while working under the direction of the chief of police, sheriff, an official who has the duties of a sheriff in a city and county, or chief executive of the employing law enforcement agency.

Source: L. 2003: Entire article added, p. 1606, § 2, effective August 6.

16-2.5-104. Coroner.

A coroner is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to part 6 of article 10 of title 30, C.R.S.

Source: L. 2003: Entire article added, p. 1606, § 2, effective August 6.

16-2.5-105. Police officer.

A police officer, including a chief of police employed by a municipality, is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1606, § 2, effective August 6.

16-2.5-106. Southern Ute Indian police officer.

A Southern Ute Indian police officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1606, § 2, effective August 6.

16-2.5-107. Ute Mountain Ute Indian police officer.

A Ute Mountain Ute Indian police officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1606, § 2, effective August 6.

16-2.5-108. Town marshal - deputy.

A town marshal or deputy town marshal is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1607, § 2, effective August 6.

16-2.5-109. Fire arson investigator.

A fire arson investigator authorized by a unit of local government is a peace officer while engaged in the performance of his or her duties whose authority shall be limited to the enforcement of arson and related laws and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1607, § 2, effective August 6. **L. 2008:** Entire section amended, p. 703, § 1, effective May 1.

16-2.5-110. Reserve police officer - reserve deputy sheriff - reserve deputy town marshal - definitions.

(1) (a) A reserve police officer, a reserve deputy sheriff, and a reserve deputy town marshal are reserve officers.

(b) "Reserve officer" means a person authorized by a city, city and county, town, county, or state institution of higher education within this state to act as a reserve police officer, reserve deputy sheriff, or reserve town marshal for certain specific and limited periods of time while the person is authorized to be on duty and acting at the express direction or under the direct supervision of a fully P.O.S.T.-certified peace officer pursuant to section 16-2.5-103, 16-2.5-105, 16-2.5-108, or 16-2.5-120. A reserve officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited to the authority granted by his or her authorizing agency.

(c) A reserve officer:

(I) Shall obtain reserve certification by the P.O.S.T. board as a reserve officer; or

(II) May be a fully P.O.S.T.-certified peace officer serving as a volunteer and may be granted full peace officer status and authority at the discretion of the appointing authority.

(2) A city, city and county, town, county, or state institution of higher education assigning duties to a reserve officer beyond those duties included in the P.O.S.T. board training shall assume the responsibility for ensuring that the reserve officer is adequately trained for the duties. Any expenses associated with the additional training shall be authorized by the city, city and county, town, county, or state institution of higher education. If the jurisdiction allows or requires the reserve officer to carry or use a firearm while on duty, the reserve officer shall be certified for firearms proficiency with the same frequency and subject to the same requirements as a P.O.S.T.-certified peace officer in the jurisdiction. A reserve officer who does not comply with the training requirements set forth in this subsection (2) is not authorized to enforce the laws of the state of Colorado.

(3) (Deleted by amendment, L. 2007, p. 121, § 1, effective August 3, 2007.)

(3.5) If a police chief, sheriff, or town marshal determines that a reserve officer has been adequately trained to perform a law-enforcement function that the police chief, sheriff, or town marshal is required to perform, the police chief, sheriff, or town marshal may allow the reserve officer to perform the function either in uniform or in civilian clothes, whichever is appropriate.

(4) When performing extradition duties, the reserve officer shall be accompanied by a P.O.S.T.-certified officer.

(5) A reserve officer may be compensated for his or her time during a declared emergency or during a time of special need. In all other circumstances, a reserve officer shall serve without

compensation, but may be reimbursed at the discretion of the city, city and county, town, county, or state institution of higher education benefitting from the services of the reserve officer for any authorized out-of-pocket expenses incurred in the course of his or her duties. The city, city and county, town, county, or state institution of higher education shall pay the cost of workers' compensation benefits for injuries incurred by a reserve officer while on duty and while acting within the scope of his or her assigned duties. A reserve officer is an authorized volunteer for purposes of article 10 of title 24, C.R.S.

(6) For the purposes of this section:

(a) "Direct supervision" means an assignment given by a fully P.O.S.T.-certified peace officer to a reserve officer, which assignment is carried out in the personal presence of, or in direct radio or telephone contact with, and under the immediate control of, the fully P.O.S.T.-certified peace officer.

(b) "Express direction" means a defined, task-specific assignment given by a fully P.O.S.T.-certified peace officer to a reserve officer. The fully P.O.S.T.-certified peace officer need not be present while the reserve officer carries out the assignment.

(7) For the purposes of this section, a person serving as a citizen auxiliary is not a peace officer and the P.O.S.T. board shall not require the person to be certified.

Source: L. 2003: Entire article added, p. 1607, § 2, effective August 6. **L. 2004:** (3), (4), and (6) amended and (3.5) added, p. 678, § 1, effective August 4. **L. 2007:** (1), (3), and (6) amended, p. 121, § 1, effective August 3. **L. 2008:** (1)(b), (2), and (5) amended, p. 85, § 2, effective March 18.

16-2.5-111. Executive director of the department of public safety - deputy executive director of the department of public safety - director of the division of criminal justice in the department of public safety.

The executive director and deputy executive director of the department of public safety and the director of the division of criminal justice in the department of public safety are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1608, § 2, effective August 6. **L. 2012:** Entire section amended, (HB12-1079), ch. 21, p. 56, § 1, effective March 16.

16-2.5-112. Director of the division of homeland security and emergency management.

The director of the division of homeland security and emergency management in the department of public safety is a peace officer whose authority includes the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1608, § 2, effective August 6. **L. 2012:** Entire section amended, (HB 12-1283), ch. 240, p. 1132, § 39, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 240, Session Laws of Colorado 2012.

16-2.5-112.5. Manager of the office of prevention and security within the division of homeland security and emergency management.

The manager of the office of prevention and security within the division of homeland security and emergency management in the department of public safety is a peace officer whose authority includes the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2017: Entire section added, (HB 17-1209), ch. 247, p. 1043, § 1, effective August 9.

16-2.5-113. Colorado bureau of investigation director - agent.

A director of the Colorado bureau of investigation is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board. A Colorado bureau of investigation agent is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 24-33.5-409, C.R.S., and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1608, § 2, effective August 6. **L. 2013:** Entire section amended, (HB 13-1076), ch. 6, p. 16, § 1, effective February 27.

16-2.5-114. Colorado state patrol officer.

A Colorado state patrol officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 24-33.5-212, C.R.S., and who shall be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1609, § 2, effective August 6.

16-2.5-115. Port of entry officer.

A port of entry officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 42-8-104, C.R.S.

Source: L. 2003: Entire article added, p. 1609, § 2, effective August 6.

16-2.5-116. Colorado wildlife officer - special wildlife officer.

(1) A Colorado wildlife officer employed by the Colorado division of parks and wildlife in the department of natural resources is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 33-1-102 (4.3), C.R.S., and who shall be certified by the P.O.S.T. board. Each Colorado wildlife officer shall be required to complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

(2) A special wildlife officer is a peace officer whose authority is limited as defined by the director of the division of parks and wildlife pursuant to section 33-1-110 (5), C.R.S.

Source: L. 2003: Entire article added p. 1609, § 2, effective August 6; (2) amended, p. 1954, § 50, effective August 6.

16-2.5-117. Colorado parks and recreation officer - special parks and recreation officer.

(1) A Colorado parks and recreation officer employed by the Colorado division of parks and wildlife in the department of natural resources is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado pursuant to section 33-10-102 (17), C.R.S., and who shall be certified by the P.O.S.T. board. Each Colorado parks and recreation officer shall be

required to complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

(2) A special parks and recreation officer is a peace officer whose authority is limited as defined by the director of the division of parks and wildlife pursuant to section 33-10-109 (1)(f), C.R.S.

Source: L. 2003: Entire article added, p. 1609, § 2, effective August 6; (2) amended, p. 1954, § 51, effective August 6.

16-2.5-118. Commissioner of agriculture.

The commissioner of agriculture or his or her designee is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to sections 35-36-103 and 35-36-312 of the "Commodity Handler and Farm Products Act"; the "Animal Protection Act", section 35-42-107 (4); and the "Pet Animal Care and Facilities Act", section 35-80-109 (6).

Source: L. 2003: Entire article added, p. 1609, § 2, effective August 6. **L. 2017:** Entire section amended, (SB 17-225), ch. 262, p. 1246, § 4, effective August 9. **L. 2020:** Entire section amended, (HB 20-1213), ch. 160, p. 753, § 5, effective June 29.

16-2.5-119. State brand inspector.

A state brand inspector is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 35-53-128, C.R.S.

Source: L. 2003: Entire article added, p. 1609, § 2, effective August 6.

16-2.5-120. Colorado state higher education security officer.

A Colorado state higher education security officer employed by a state institution of higher education pursuant to sections 24-7-101 to 24-7-106, C.R.S., is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2008:** Entire section amended, p. 86, § 3, effective March 18.

16-2.5-121. Executive director of the department of revenue - senior director of enforcement for the department of revenue.

The executive director and the senior director of enforcement of the department of revenue are peace officers while engaged in the performance of their duties whose authority includes the enforcement of laws and rules regarding automobile dealers pursuant to section 44-20-105 (3), the lottery pursuant to sections 44-40-106 (3) and 44-40-107 (8), medical marijuana pursuant to article 10 of title 44, limited gaming pursuant to article 30 of title 44, liquor pursuant to section 44-3-905 (1), and racing events pursuant to section 44-32-203 (1), and the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2010:** Entire section amended, (HB 10-1284), ch. 355, p. 1685, § 4, effective July 1. **L. 2017:** Entire section amended, (SB 17-240), ch. 395, p. 2063, § 44, effective July 1. **L. 2018:** Entire section amended, (SB 18-030), ch. 7, p. 139, § 7, effective October 1; entire section amended, (SB 18-034), ch. 14, p. 238, § 9, effective October 1; entire section amended, (HB 18-1023), ch. 55, p. 586, § 10, effective October 1; entire section amended, (HB 18-1024), ch. 26, p. 322, § 10, effective October 1; entire section amended, (HB 18-1025), ch. 152, p. 1078, § 6, effective October 1; entire section amended, (HB 18-1027), ch. 31, p. 362, § 6, effective October 1; entire section amended, (HB 18-1375), ch. 274, p. 1699, § 15, effective October 1. **L. 2019:** Entire section amended, (SB 19-224), ch. 315, p. 2936, § 14, effective January 1, 2020.

Editor's note: Amendments to this section by SB 18-030, SB 18-034, HB 18-1023, HB 18-1024, HB 18-1025, and HB 18-1027 were harmonized.

16-2.5-121.5. Firearms dealer division director - deputy director - agent in charge - criminal investigator supervisor - criminal investigator.

(1) The director of the firearms dealer division or a deputy director of the firearms dealer division is a peace officer while engaged in the performance of their duties and while acting under proper orders or rules whose primary authority is the enforcement of part 4 of article 12 of title 18, and whose authority also includes the enforcement of all the laws of the state of Colorado, and who may be certified by the P.O.S.T. board.

(2) An agent in charge in the firearms dealer division, a criminal investigator supervisor in the firearms dealer division, or a criminal investigator in the firearms dealer division is a peace officer while engaged in the performance of their duties, and while acting under proper orders or rules, whose primary authority is the enforcement of part 4 of article 12 of title 18, and whose authority also includes the enforcement of all the laws of the state of Colorado, and who must be certified by the P.O.S.T. board.

Source: L. 2025: Entire section added, (HB 25-1314), ch. 241, p. 1225, § 2, effective May 23.

16-2.5-122. Auto industry director - deputy director - agent in charge - criminal investigator supervisor - criminal investigator.

The director of the auto industry division and a deputy director, agent in charge, criminal investigator supervisor, or criminal investigator in the auto industry division, are peace officers while engaged in the performance of their duties whose primary authority is the enforcement of section 44-20-105, and whose authority also includes the enforcement of all the laws of the state of Colorado, and who must be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2017:** Entire section amended, (SB 17-240), ch. 395, p. 2064, § 46, effective July 1. **L. 2018:** Entire section amended, (SB 18-030), ch. 7, p. 139, § 8, effective October 1. **L. 2025:** Entire section amended, (HB 25-1314), ch. 241, p. 1226, § 3, effective May 23.

16-2.5-122.5. Motor vehicle criminal investigator.

A motor vehicle criminal investigator employed by the department of revenue is a peace officer while engaged in the performance of the investigator's duties and whose primary authority is as stated in section 42-1-222, and whose authority also includes the enforcement of all of the laws of the state of Colorado, and who shall be certified by the P.O.S.T. board.

Source: L. 2022: Entire section added, (HB 22-1088), ch. 55, p. 258, § 2, effective August 10.

Cross references: For the legislative declaration in HB 22-1088, see section 1 of chapter 55, Session Laws of Colorado 2022.

16-2.5-123. Director of the division of gaming - gaming investigator.

The director of the division of gaming in the department of revenue, the director's designee, or a gaming investigator in the department of revenue is a peace officer while engaged in the performance of their duties whose primary authority is as stated in section 44-30-204 or 44-32-203 (1) and includes the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2018:** Entire section amended, (SB 18-034), ch. 14, p. 238, § 10, effective October 1. **L. 2026:** Entire section amended, (SB 26-163), ch. 218, p. 1288, § 6, effective August 12.

16-2.5-123.5. Criminal tax enforcement special agent.

A criminal tax enforcement special agent employed by the department of revenue is a peace officer while engaged in the performance of the investigator's duties and while acting under proper orders or rules, whose primary authority is the enforcement of section 39-21-118, and also includes the enforcement of all of the laws of the state of Colorado, and who shall be certified by the P.O.S.T. board.

Source: L. 2022: Entire section added, (HB 22-1088), ch. 55, p. 258, § 2, effective August 10.

Cross references: For the legislative declaration in HB 22-1088, see section 1 of chapter 55, Session Laws of Colorado 2022.

16-2.5-124. Liquor enforcement investigator.

A liquor enforcement investigator is a peace officer while engaged in the performance of his or her duties and while acting under proper orders or regulations whose primary authority shall be as stated in sections 44-3-905 (1) and 44-7-104 and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2018:** Entire section amended, (SB 18-036), ch. 34, p. 377, § 5, effective October 1; entire section amended, (HB 18-1025), ch. 152, p. 1078, § 7, effective October 1.

Editor's note: Amendments to this section by SB 18-036 and HB 18-1025 were harmonized.

16-2.5-124.5. Director of marijuana enforcement and marijuana enforcement investigator.

The director of the marijuana enforcement division or a marijuana enforcement investigator is a peace officer while engaged in the performance of his or her duties and while acting under proper orders or rules pursuant to article 10 of title 44, and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2010: Entire section added, (HB 10-1284), ch. 355, p. 1685, § 5, effective July 1. **L. 2013:** Entire section amended, (HB 13-1317), ch. 329, p. 1864, § 6, effective May 28. **L. 2018:** Entire section amended, (HB 18-1023), ch. 55, p. 586, § 11, effective October 1. **L. 2019:** Entire section amended, (SB 19-224), ch. 315, p. 2937, § 15, effective January 1, 2020.

16-2.5-125. State lottery investigator.

A state lottery investigator is a peace officer while engaged in the performance of his or her duties whose primary authority shall be as stated in sections 44-40-106 (3) and 44-40-107 (8) and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2018:** Entire section amended, (HB 18-1027), ch. 31, p. 363, § 7, effective October 1.

16-2.5-126. Director of racing events - racing events supervisor - racing events investigator.

The director of racing events, a racing events supervisor, and a racing events investigator are peace officers while engaged in the performance of their duties whose primary authority shall be as stated in section 44-32-203 (1) and shall also include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1610, § 2, effective August 6. **L. 2018:** Entire section amended, (HB 18-1024), ch. 26, p. 322, § 11, effective October 1.

16-2.5-127. State student loan investigator.

A state student loan investigator is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 23-3.1-104 (2)(q), C.R.S.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6.

16-2.5-128. Colorado attorney general - chief deputy attorney general - solicitor general - assistant solicitor general - deputy attorney general - assistant attorney general of criminal enforcement - assistant attorney general and employee as designated.

The attorney general, chief deputy attorney general, solicitor general, assistant solicitors general, deputy attorneys general, assistant attorneys general of criminal enforcement, and certain other assistant attorneys general and employees of the department of law who are designated by the attorney general are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6. **L. 2011:** Entire section amended, (SB 11-020), ch. 39, p. 105, § 1, effective March 21.

16-2.5-129. Attorney general criminal investigator.

An attorney general criminal investigator is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6.

16-2.5-130. P.O.S.T. director - P.O.S.T. board investigator.

The director of the P.O.S.T. board, deputy director, and a P.O.S.T. board investigator are peace officers while engaged in the performance of their duties whose primary authority shall include the enforcement of laws and rules pertaining to the training and certification of peace officers

and shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6. **L. 2025:** Entire section amended, (HB 25-1136), ch. 333, p. 1730, § 8, effective May 31.

16-2.5-131. Sergeants at arms for the general assembly.

The sergeants at arms for the general assembly are peace officers while engaged in the performance of their duties whose authority is limited pursuant to section 2-2-402.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6. **L. 2026:** Entire section amended, (HB 26-1422), ch. 331, p. 1929, § 3, effective June 2.

16-2.5-132. District attorney - assistant district attorney - chief deputy district attorney - deputy district attorney - special deputy district attorney - special prosecutor.

A district attorney, an assistant district attorney, a chief deputy district attorney, a deputy district attorney, a special deputy district attorney, and a special prosecutor are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6.

16-2.5-133. District attorney chief investigator - district attorney investigator.

A district attorney chief investigator and a district attorney investigator are peace officers whose authority shall include the enforcement of all laws of the state of Colorado and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1611, § 2, effective August 6.

16-2.5-134. Department of corrections inspector general - department of corrections investigator.

The department of corrections inspector general and a department of corrections investigator are peace officers whose authority shall be pursuant to section 17-1-103.8, C.R.S., and whose authority shall include the enforcement of all the laws of the state of Colorado. A department of corrections investigator may be certified by the P.O.S.T. board. The inspector general shall be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6.

16-2.5-135. Executive director of the department of corrections - warden - corrections officer.

The executive director of the department of corrections, a warden, a corrections officer employed by the department of corrections, or other department of corrections employee assigned by the executive director, is a peace officer while engaged in the performance of his or her duties pursuant to title 17, C.R.S., whose primary authority is the supervision of persons in the custody or confinement of the department of corrections and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6.

16-2.5-136. Community parole officer.

A community parole officer employed by the department of corrections is responsible for supervising offenders in the community and supporting the division of adult parole in providing assistance to parolees to secure employment, housing, and other services to support their successful reintegration into the community while recognizing the need for public safety. A community parole officer is a peace officer whose authority shall be pursuant to section 17-27-105.5, C.R.S., and whose authority shall include the enforcement of all laws of the state of Colorado, and who shall be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6. **L. 2010:** Entire section amended, (HB 10-1360), ch. 263, p. 1193, § 1, effective May 25.

16-2.5-137. Adult probation officer.

An adult probation officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to part 2 of article 11 of this title.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6.

16-2.5-138. Juvenile probation officer - juvenile parole officer.

A juvenile probation officer and a juvenile parole officer are peace officers while engaged in the performance of their duties. The authority of a juvenile probation officer and a juvenile parole officer is limited pursuant to sections 19-2.5-1107 and 19-2.5-1204.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 712, § 20, effective October 1.

16-2.5-139. Police administrator - police officer employed by the Colorado mental health institute at Pueblo.

A police administrator and a police officer employed by the Colorado mental health institute at Pueblo are peace officers whose authority shall include the enforcement of all laws of the state of Colorado pursuant to article 7 of title 24, C.R.S., and who shall be certified by the P.O.S.T. board. Each police administrator or police officer employed by the Colorado mental health institute at Pueblo shall complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6. **L. 2009:** Entire section amended, (SB 09-097), ch. 110, p. 456, § 1, effective August 5.

16-2.5-140. Correctional security officer employed by the Colorado mental health institute at Pueblo.

A correctional security officer employed by the Colorado mental health institute at Pueblo is a peace officer while engaged in the performance of his or her duties as provided in article 7 of title 24, C.R.S., and whose authority shall include the enforcement of all laws of the state of Colorado, and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1612, § 2, effective August 6. **L. 2009:** Entire section amended, (SB 09-097), ch. 110, p. 456, § 2, effective August 5.

16-2.5-141. Colorado state security guard.

A Colorado state security guard is a peace officer while engaged in the performance of his or her duties pursuant to article 7 of title 24, C.R.S., whose authority shall be limited to the scope and authority of his or her assigned duties and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1613, § 2, effective August 6. **L. 2009:** Entire section amended, (SB 09-097), ch. 110, p. 456, § 3, effective August 5.

16-2.5-142. Railroad peace officer.

A railroad peace officer is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to section 40-32-104.5, C.R.S., and who may be certified by the P.O.S.T. board.

Source: L. 2003: Entire article added, p. 1613, § 2, effective August 6.

16-2.5-143. Public utilities commission member.

A public utilities commission member is a peace officer while engaged in the performance of his or her duties whose authority shall be limited pursuant to articles 1 to 17 of title 40, C.R.S.

Source: L. 2003: Entire article added, p. 1613, § 2, effective August 6.

16-2.5-144. Colorado National Guardsman.

A Colorado National Guardsman is a peace officer while acting under call of the governor in cases of emergency or civil disorder. His or her authority shall be limited to the period of call-up specified by the governor and shall be exercised only if the executive order of the governor

calling the National Guard to state duty specifies that enforcement of the laws of the state of Colorado is a purpose for the call-up.

Source: L. 2003: Entire article added, p. 1613, § 2, effective August 6.

16-2.5-145. Municipal court marshal.

A municipal court marshal who is employed by a municipality and is specifically designated a peace officer by the municipality is a peace officer while engaged in the performance of his or her duties. The authority of such a municipal court marshal shall be limited to providing security for the municipal court, transporting, detaining, and maintaining control over prisoners, executing all arrest warrants within the municipal court and its grounds, executing municipal court arrest warrants within the municipal limits, and serving legal process issued by the municipal court within the municipal limits. A municipal court marshal shall be certified by the P.O.S.T. board.

Source: L. 2004: Entire section added, p. 414, § 1, effective April 12. **L. 2006:** Entire section amended, p. 27, § 2, effective July 1, 2007.

16-2.5-146. Public transit officer - definitions.

(1) A public transit officer who is employed by a public transportation entity and is specifically designated a peace officer by the public transportation entity is a peace officer while engaged in the performance of his or her duties in accordance with any policies and procedures adopted by the public transportation entity. A public transit officer's authority includes the enforcement of all laws of the state of Colorado. A public transit officer shall be certified by the P.O.S.T. board.

(2) As used in this section, "public transportation entity" means a mass transit district, a mass transit authority, or any public entity authorized under the laws of this state to provide mass transportation services to the general public.

Source: L. 2004: Entire section added, p. 1162, § 1, effective May 27. **L. 2006:** (1) amended, p. 28, § 3, effective July 1, 2007. **L. 2012:** (1) amended, (SB 12-044), ch. 274, p. 1449, § 5, effective June 8. **L. 2015:** Entire section amended, (SB 15-221), ch. 268, p. 1044, § 1, effective August 5.

16-2.5-147. Federal special agents.

(1) A special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement, in any jurisdiction within the state of Colorado, is a peace officer whose authority is limited as provided in this section. The special agent, deputy or special deputy, or officer is authorized to act in the following circumstances:

(a) The special agent, deputy or special deputy, or officer is:

(I) Responding to a nonfederal felony or misdemeanor that has been committed in the presence of the special agent, deputy or special deputy, or officer;

(II) Responding to an emergency situation in which the special agent, deputy or special deputy, or officer has probable cause to believe that a nonfederal felony or misdemeanor involving injury or threat of injury to a person or property has been, or is being, committed and immediate action is required to prevent escape, serious bodily injury, or destruction of property;

(III) Rendering assistance at the request of a Colorado peace officer; or

(IV) Effecting an arrest or providing assistance as part of a bona fide task force or joint investigation with Colorado peace officers; and

(b) The agent, deputy or special deputy, or officer acts in accordance with the rules and regulations of his or her employing agency.

(2) A special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement is a person who is employed by the United States government, assigned to the federal bureau of investigation, the United States bureau of alcohol, tobacco, firearms, and explosives, the United States marshal service, or the federal protective service of the United States department of homeland security immigration and customs enforcement, empowered to effect an arrest with or without a warrant for violations of the United States code, and authorized to carry a firearm and use deadly force in the performance of the special agent's, deputy's or special deputy's, or officer's official duties as a federal law enforcement officer.

(3) Upon effecting an arrest under the authority of this section, a special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of

the United States department of homeland security immigration and customs enforcement shall immediately surrender custody of the arrested individual to a Colorado peace officer.

(4) This section does not impose liability on or require indemnification or create a waiver of sovereign immunity by the state of Colorado for any action performed under this section by a special agent of the federal bureau of investigation or the United States bureau of alcohol, tobacco, firearms, and explosives, a deputy or special deputy United States marshal, or an officer of the federal protective service of the United States department of homeland security immigration and customs enforcement.

(5) Nothing in this section shall be construed to expand the authority of federal law enforcement officers to initiate or conduct an independent investigation into violations of Colorado law.

Source: L. 2006: Entire section added, p. 126, § 1, effective March 27. **L. 2008:** Entire section amended, p. 701, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1073), ch. 32, p. 90, § 1, effective August 10.

16-2.5-148. Colorado state higher education police officer.

A Colorado state higher education police officer employed by a state institution of higher education pursuant to article 7.5 of title 24, C.R.S., is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

Source: L. 2008: Entire section added, p. 86, § 4, effective March 18. **L. 2009:** Entire section amended, (SB 09-097), ch. 110, p. 457, § 4, effective August 5.

16-2.5-149. City attorney - town attorney - senior assistant city attorney - assistant city attorney - chief deputy city attorney - deputy city attorney - special deputy city attorney - prosecuting attorney - senior prosecuting attorney - senior prosecutor - special prosecutor.

(1) A city attorney, town attorney, senior assistant city attorney, assistant city attorney, chief deputy city attorney, deputy city attorney, special deputy city attorney, prosecuting attorney, senior prosecuting attorney, senior prosecutor, or special prosecutor employed or contracted by a municipality, city, town, statutory city or town, or city and county is a peace officer only while engaged in the performance of his or her duties as a prosecutor. Such peace officer's authority shall include the enforcement of all laws of the municipality, city, town, statutory city or town, or

city and county and the state of Colorado, and the peace officer may be certified by the P.O.S.T. board.

(2) Notwithstanding the provisions of subsection (1) of this section, the peace officer status conferred by subsection (1) of this section shall not be available to an attorney specified in subsection (1) of this section who chooses to practice as a criminal defense attorney in the state of Colorado while also working as a prosecuting attorney or an attorney who contracts with a municipality, city, town, statutory city or town, or city and county, local government to serve as a city attorney, town attorney, senior assistant city attorney, assistant city attorney, chief deputy city attorney, deputy city attorney, special deputy city attorney, prosecuting attorney, senior prosecuting attorney, senior prosecutor, or special prosecutor on a less than a full-time basis.

Source: L. 2012: Entire section added, (HB 12-1026), ch. 76, p. 256, § 1, effective April 6.

16-2.5-150. Fort Carson police officers.

A Fort Carson police officer is a peace officer while engaged in the performance of his or her duties. Fort Carson police officers are employed by the Fort Carson police, a federal civilian law enforcement agency within the state of Colorado. A Fort Carson police officer's authority includes enforcing all the laws of the constitution of the United States, the United States code, the "Uniform Code of Military Justice", 10 U.S.C. chapter 47, and the laws of the state of Colorado within the jurisdiction and properties of Fort Carson and the Piñon Canyon maneuver site, including all fixed and mobile properties of Fort Carson and the Piñon Canyon maneuver site. A Fort Carson police officer may be P.O.S.T.-certified.

Source: L. 2013: Entire section added, (SB 13-005), ch. 109, p. 377, § 1, effective August 7.

16-2.5-151. Federal secret service agents.

(1) A special agent, uniform division officer, physical security technician, physical security specialist, or special officer of the United States secret service, referred to in this section as a "secret service agent", in any jurisdiction within the state of Colorado, is a peace officer whose authority is limited as provided in this section. The secret service agent is a peace officer in the following circumstances:

(a) (I) Responding to a nonfederal felony or misdemeanor that has been committed in his or her presence;

(II) Responding to an emergency situation in which he or she has probable cause to believe that a nonfederal felony or misdemeanor involving injury or threat of injury to a person or property has been, or is being, committed and immediate action is required to prevent escape, serious bodily injury, or destruction of property;

(III) Rendering assistance at the request of a Colorado peace officer; or

(IV) Effecting an arrest or providing assistance as part of a bona fide task force or joint investigation with Colorado peace officers; and

(b) The secret service agent acts in accordance with the rules and regulations of his or her employing agency.

(2) A secret service agent is a person who is employed by the United States government, assigned to the United States secret service, empowered to effect an arrest with or without a warrant for violations of the United States code, and authorized to carry a firearm and use deadly force in the performance of his or her duties as a federal law enforcement officer.

(3) Upon effecting an arrest under the authority of this section, a secret service agent shall immediately surrender custody of the arrested individual to a Colorado peace officer.

(4) This section does not impose liability on or require indemnification or create a waiver of sovereign immunity by the state of Colorado for any action performed under this section by a secret service agent.

(5) Nothing in this section shall be construed to expand the authority of federal law enforcement officers to initiate or conduct an independent investigation into violations of Colorado law.

Source: L. 2013: Entire section added, (SB 13-013), ch. 126, p. 424, § 1, effective April 19.

16-2.5-152. Administrators of judicial security.

Administrators of judicial security employed by the judicial department are peace officers while engaged in the performance of their duties whose primary authority includes the protection and security of the judiciary, judicial department personnel, and judicial facilities and who may cooperate with local law enforcement and whose authority includes the enforcement of all laws of the state of Colorado, and the administrators of judicial security must be certified by the P.O.S.T. board. Any peace officer positions created pursuant to this section after January 1, 2025, shall be approved by the general assembly through a decision item in the judicial department's annual budget request.

Source: L. 2018: Entire section added, (HB 18-1210), ch. 69, p. 629, § 1, effective March 22. **L. 2024:** Entire section amended, (SB 24-187), ch. 304, p. 2065, § 3, effective May 31. **L. 2025:** Entire section amended, (HB 25-1136), ch. 333, p. 1729, § 6, effective May 31.

Cross references: For the legislative declaration in SB 24-187, see section 1 of chapter 304, Session Laws of Colorado 2024.

16-2.5-153. Colorado rangers.

A Colorado ranger is a peace officer defined as a reserve police officer in section 16-2.5-110 whose duties are limited pursuant to section 24-33.5-802 and who must be certified by the P.O.S.T. board.

Source: L. 2025: Entire section added, (HB 25-1181), ch. 36, p. 179, § 2, effective March 26.

16-2.5-154. Administrator of legislative safety for the general assembly.

The administrator of legislative safety for the general assembly, and any personnel appointed by the administrator of legislative safety to assist in performing the administrator of legislative safety's duties pursuant to section 2-2-329, are peace officers whose authority includes enforcing all laws of the state pursuant to section 2-2-329 (3) and who may be certified by the P.O.S.T. board.

Source: L. 2026: Entire section added, (HB 26-1422), ch. 331, p. 1930, § 4, effective June 2.

PART 2

SUNRISE REVIEW OF PEACE OFFICER STATUS

16-2.5-201. General assembly sunrise review of groups seeking statutory peace officer status.

(1) The general assembly finds that it is necessary to ensure that clear standards exist for obtaining peace officer status in the state of Colorado. The general assembly further finds it made statutory changes in 2003 to end the stratification of peace officers and ensure all peace officers receive a consistent level of statutory protection. The general assembly therefore

declares, in order to maintain clear standards and consistent statutory protections for peace officers, it is necessary for the P.O.S.T. board to review a group that seeks peace officer status either for the group or for a specific position, prior to the group seeking authorization from the general assembly for the status.

(2) No later than July 1 of any year, a group, or political subdivision of the state that seeks peace officer status either for the group or for a specific position, shall submit to the P.O.S.T. board, for its review, a proposal containing the following information:

(a) A complete description of the position or a description of the group proposed for peace officer status and an estimate of the number of persons who hold the position or are in the group;

(b) A description of the specific need for the authority and protections required for the position or group;

(c) The benefit to the public that would result from granting the status;

(d) The costs associated with granting the status; and

(e) A resolution or letter of support for proposed change in status from the chief executive officer of the unit of government or political subdivision employing the group or overseeing the proposed position.

(3) After receiving the information specified in subsection (2) of this section, the P.O.S.T. board shall prepare an analysis, evaluation, and recommendation of the proposed status. The analysis, evaluation, and recommendation shall be based upon criteria established by the P.O.S.T. board in rules adopted pursuant to section 16-2.5-203.

(4) (a) The P.O.S.T. board shall conduct a hearing with the group seeking peace officer status for the group or for a specific position.

(b) At the hearing, the determination as to whether peace officer status is needed shall be based upon the criteria contained in the P.O.S.T. board rules.

(5) After the hearing, the P.O.S.T. board shall submit a report to the group seeking peace officer status for the group or specific position and to the judiciary committees of the house of representatives and the senate no later than October 15 of the year following the year in which the proposal was submitted.

(6) The group seeking peace officer status for the group or specific position may request members of the general assembly to present appropriate legislation to the general assembly during each of the two regular sessions that immediately succeed the date of the report required pursuant to subsection (2) of this section without having to comply again with the provisions of subsections (2) and (4) of this section. Bills introduced pursuant to this subsection (6) shall count against the number of bills to which members of the general assembly are limited by joint rule of

the senate and the house of representatives. The general assembly shall not consider peace officer status of more than five positions or groups in any one session of the general assembly.

(6.5) Notwithstanding subsection (6) of this section, for the purpose of seeking peace officer status for a motor vehicle criminal investigator and a criminal tax enforcement special agent, the department of revenue is exempt from the requirement to present appropriate legislation to the general assembly during the two regular legislative sessions that immediately succeed the date of the proposal required pursuant to subsection (2) of this section without having to comply again with subsections (2) and (4) of this section.

(7) This section is exempt from the provisions of section 24-1-136 (11), C.R.S., and the periodic reporting requirement of that section shall remain in effect until changed by the general assembly acting by bill.

Source: L. 2004: Entire part added, p. 1896, § 1, effective June 4. **L. 2022:** (6.5) added, (HB 22-1088), ch. 55, p. 258, § 3, effective August 10.

Cross references: For the legislative declaration in HB 22-1088, see section 1 of chapter 55, Session Laws of Colorado 2022.

16-2.5-202. P.O.S.T. board review of peace officer status.

(1) For a position, group, or political subdivision that received peace officer status after July 1, 2003, and did not go through the process described in section 16-2.5-201, the P.O.S.T. board shall review the peace officer authority of the position, group, or political subdivision.

(2) The P.O.S.T. board shall require the group that received the peace officer status or the group or political subdivision that oversees a position that received peace officer status to submit to the P.O.S.T. board the information required in section 16-2.5-201 (2).

(3) After receiving the information, the P.O.S.T. board shall prepare an analysis, evaluation, and recommendation of the peace officer status. The analysis, evaluation, and recommendation shall be based upon the criteria established in P.O.S.T. board rule.

(4) The P.O.S.T. board shall conduct a hearing concerning peace officer status for the group or the specific position, pursuant to the provisions of section 16-2.5-201 (4).

(5) The P.O.S.T. board shall submit a report to the group or political subdivision seeking to retain peace officer status, either for the group or for a specific position, and to the judiciary committees of the house of representatives and the senate no later than October 15 of the year

following the year in which the P.O.S.T. board began the review. The report may include legislative recommendations.

Source: L. 2004: Entire part added, p. 1898, § 1, effective June 4.

16-2.5-203. Rules.

Pursuant to article 4 of title 24, C.R.S., the P.O.S.T. board shall promulgate rules establishing the criteria that shall be applied in determining whether to recommend peace officer status for a group or specific position as provided in section 16-2.5-201 (4).

Source: L. 2004: Entire part added, p. 1898, § 1, effective June 4.

PART 3

PEACE OFFICER USE OF FORCE INVESTIGATIONS AND PROCEDURES

Editor's note: This part 3 was added in 2015. It was repealed and reenacted in 2026, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 3 prior to 2026, consult the 2025 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For the legislative declaration in SB 26-190, see section 1 of chapter 337, Session Laws of Colorado 2026.

16-2.5-301. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Decedent" means a person whose death is caused by a peace officer's use of force.

(2) "Decedent's immediate family" means the spouse, any child by birth or adoption, any stepchild, the parent, the stepparent, a sibling, a legal guardian, a significant other, or a lawful representative of the decedent.

Source: L. 2026: Entire part R&RE, (SB 26-190), ch. 337, p. 2049, § 4, effective June 3.

16-2.5-302. Peace officer actions leading to injury or death investigations - protocol - notification to decedent's immediate family.

(1) (a) Each police department, sheriff's office, and district attorney within the state shall maintain protocols for participating in a multi-agency team, which must include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, or review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death, or other use of force by a peace officer that resulted in death. The law enforcement agencies participating need not be from the same judicial district.

(b) Each law enforcement agency shall post the protocol on its website or, if it does not have a website, make it publicly available upon request.

(2) The law enforcement agency that employs the peace officer or the multi-agency team investigating an incident involving the peace officer's use of force that results in death shall notify each person in the decedent's immediate family known to the employing law enforcement agency, and a person designated by the decedent's immediate family, about the investigation of the incident. The notification must occur within twenty-four hours after the scene of the incident is cleared and must include the following information:

(a) The names of all law enforcement agencies that comprise the multi-agency team described in subsection (1) of this section that is investigating the use of force; and

(b) The status of the investigation.

Source: L. 2026: Entire part R&RE, (SB 26-190), ch. 337, p. 2049, § 4, effective June 3.

Editor's note: Subsection (1) is similar to former § 16-2.5-301 as it existed prior to 2026.

16-2.5-303. Extrajudicial statement concerning use of force - requirements for videos released to the public.

(1) A peace officer who is participating or has participated in the investigation of a criminal matter involving the use of force by another peace officer that results in death shall not make an extrajudicial statement on behalf of a law enforcement agency that the peace officer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(2) The following extrajudicial statements are presumed to have a substantial likelihood of materially prejudicing an adjudicative proceeding in a criminal matter:

(a) Subjective observations, including observations about a decedent's or witness's character or credibility;

(b) Opinions that a decedent or a witness is guilty of a crime; and

(c) Information concerning the prior criminal record of a decedent or a witness.

(3) Notwithstanding any other provision of this section, for the purposes of this section, a peace officer does not make an extrajudicial statement by providing:

(a) Information contained in a public record;

(b) The identity, age, residence, occupation, and family status of an accused person;

(c) The type of call as reported; the charges included in a complaint, indictment, or information; and the approximate location of the offense;

(d) That an investigation of a criminal matter is in progress, the identity of the investigating and arresting officers or agencies, and the length of the investigation;

(e) The scheduling or result of an official action, including the amount of bond;

(f) A request for assistance in obtaining evidence and information necessary to the investigation;

(g) A warning of danger concerning the behavior of a person involved when there is reason to believe that the likelihood of substantial harm to an individual or to the public interest exists;

(h) The fact, time, and place of arrest and the circumstances immediately surrounding the arrest, including resistance, pursuit, and possession and use of weapons, and a description of physical items seized at the time of arrest;

(i) If the accused has not been apprehended, information necessary to aid in the apprehension of that person, including the issuance of any warrants; and

(j) Information that the peace officer reasonably believes is in the interest of the fair administration of justice and the law enforcement process in a particular case, with the prior written approval of the chief of police, sheriff, or chief law enforcement officer of the agency. Prior written approval is not required if the chief of police, sheriff, or chief law enforcement officer of the agency is providing the information.

(4) The production of a video for purposes of a community or critical incident briefing must provide a disclaimer indicating that the recording has been modified from its original form. Narration or text must be limited to the facts of the incident known at the time of the recording and must not include editorial commentary that is opinion or that provides a legal conclusion as

to criminality, liability, or misconduct. Augmentation or enhancement to highlight aspects of a video, as well as blurring done to protect substantial privacy interests, must be readily perceptible or indicated by an appropriate disclaimer.

Source: L. 2026: Entire part R&RE, (SB 26-190), ch. 337, p. 2050, § 4, effective June 3.

PART 4

SUPPORT FOR PEACE OFFICERS INVOLVED IN A USE OF FORCE

16-2.5-401. Legislative declaration.

(1) The general assembly hereby declares that:

(a) Peace officers involved in incidents involving a shooting or fatal use of force should have access to immediate support;

(b) The experience of police and public safety mental health professionals and scientific research show that providing training, support services, and reintegration strategies can promote positive outcomes following such incidents; and

(c) The policies required by this part 4 provide for post-incident psychological interventions that are separate and distinct from any fitness-for-duty assessment or administrative or investigative procedures that may follow.

Source: L. 2019: Entire part added, (SB 19-091), ch. 127, p. 573, § 1, effective August 2.

16-2.5-402. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Law enforcement agency" means:

(a) The Colorado state patrol created in section 24-33.5-201;

(b) The Colorado bureau of investigation created in section 24-33.5-401;

(c) The department of corrections created in section 24-1-128.5;

(d) The division of parks and wildlife within the department of natural resources created pursuant to section 24-1-124;

(e) A county sheriff's office;

(f) A municipal police department;

(g) A campus police department; or

(h) A town marshal's office.

(2) "Qualified mental health professional" means:

(a) A person certified and in good standing as a police and public safety psychologist by the American Board of Police and Public Safety Psychology, or its successor organization; or

(b) A person who:

(I) Is a licensed mental health clinician in good standing with his or her licensing board; and

(II) Has demonstrated to the law enforcement agency's satisfaction through a combination of training and experience that the person is trauma informed, experienced in responding to acute trauma events, and culturally competent in understanding law enforcement work, challenges, and stressors.

Source: L. 2019: Entire part added, (SB 19-091), ch. 127, p. 574, § 1, effective August 2.

16-2.5-403. Peace officer-involved shooting or fatal use of force policy.

(1) Each law enforcement agency shall develop and maintain a policy for supporting a peace officer who has been involved in a shooting or fatal use of force. An involved officer may include a peripheral officer present at the scene who reports an impact or requests supportive services. The policy must address, at a minimum:

(a) Pre-incident preparation, including training and education about both normal and problematic post-traumatic reactions commonly associated with officer-involved shootings and critical incidents;

(b) Protocols to ensure an involved officer's physical and psychological safety at the scene and following the incident;

(c) The provision of post-incident services to an involved officer, and the ability to extend post-incident services to an officer's family and significant others when warranted. The agency shall consider including in the policy, to the extent possible given the agency's size and resources:

(I) At least one confidential post-incident intervention with a qualified mental health professional in a timely manner following the incident, including through telehealth services;

(II) Ongoing confidential mental health services from a qualified mental health professional as needed, including through telehealth services; and

(III) Some form of peer support, including agency peer support or online or telehealth peer support;

(d) Guidelines for temporary leave or appropriate duty reassignment as agreed upon by an involved officer and the agency to allow an involved officer to receive services and manage the impact of the incident on an involved officer and an involved officer's family and significant others; and

(e) Guidelines and procedures for an officer's return to duty, including ongoing support and services available to an involved officer. The agency shall consider including in the policy, to the extent possible given the agency's size and resources:

(I) A reintegration plan that considers having an officer return to the scene of the incident if needed, fire his or her weapon at the range, and participate in a graded reentry with a partner; and

(II) Ongoing supportive mental health services, including confidential follow-up by a qualified mental health professional, either in person or through telehealth services.

(2) The policies required by this section must be completed by January 1, 2020. Each law enforcement agency shall review the policy on a biennial basis and, if necessary, update the policy to reflect current best practices and available resources.

(3) In developing, updating, and implementing the policies required by this section, law enforcement agencies are encouraged to consult with and use the resources available through the International Association of Chiefs of Police, the National Sheriffs' Association, the Fraternal Order of Police, the American Board of Police and Public Safety Psychology, the peace officers standards and training board created in section 24-31-302, and ResponderStrong, or their successor organizations, and other organizations providing similar resources and support.

Source: L. 2019: Entire part added, (SB 19-091), ch. 127, p. 574, § 1, effective August 2.

PART 5

PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS

16-2.5-501. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) "Credibility disclosure notification" means the notification described in section 16-2.5-502 (2)(c).

(2) "Law enforcement agency" means a state or local agency that employs peace officers.

(3) "Peace officer" means a peace officer as defined in section 24-31-901 (3) and includes an officer, reserve, volunteer, or employee who performs a law enforcement function.

Source: L. 2021: Entire part added, (SB 21-174), ch. 420, p. 2784, § 1, effective September 7.

16-2.5-502. Peace officer credibility disclosures - policies and procedures.

(1) On or before January 1, 2022, each law enforcement agency and district attorney's office shall adopt and implement written policies and procedures consistent with the statewide model for peace officer credibility disclosure notifications created and recommended by the peace officer credibility disclosure notification committee established in subsection (2)(a) of this section.

(2) (a) There is hereby created the peace officer credibility disclosure notification committee. The peace officer credibility disclosure notification committee must be comprised of the following members as appointed by their respective organizations:

(I) A representative of the Colorado district attorneys' council;

(II) A representative from an organization representing police officers;

(III) A representative from an organization representing the chiefs of police;

(IV) A representative from an organization representing the county sheriffs;

(V) A county attorney designated by an organization representing counties; and

(VI) A city attorney designated by an organization representing municipalities.

(b) The peace officer credibility disclosure notification committee must be co-chaired by the representative from the Colorado district attorneys' council and the representative from the organization representing peace officers. The co-chairs of the committee shall set the dates, times, and procedures for the committee meetings as deemed necessary to meet the requirements of this section. The peace officer credibility disclosure notification committee shall create a statewide model for peace officer credibility disclosure notifications by December 1, 2021.

(c) The statewide model for peace officer credibility disclosure notification policies and procedures must include, but need not be limited to:

(I) A prompt notification from a law enforcement agency to the district attorney of any sustained finding that a peace officer has:

(A) Knowingly made an untruthful statement concerning a material fact, knowingly omitted a material fact in an official criminal justice record, or knowingly omitted a material fact while testifying under oath or during an internal affairs investigation or administrative investigation and disciplinary process;

(B) Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class;

(C) Tampered with or fabricated evidence; or

(D) Been convicted of any crime involving dishonesty, been charged in a criminal proceeding with any felony or any crime involving dishonesty, or violated any policy of the law enforcement agency regarding dishonesty.

(II) A law enforcement agency's obligation to notify the district attorney's office in the law enforcement agency's jurisdiction when:

(A) A peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged;

(B) The peace officer is under a concurrent criminal or administrative investigation regarding an allegation related to the peace officer's involvement in the defendant's pending criminal case; and

(C) The result of the concurrent criminal or administrative investigation, if sustained, would require disclosure.

(III) A process for a law enforcement agency to promptly notify the district attorney of such a finding; and

(IV) A process to remove a peace officer's credibility disclosure notification from the district attorney's credibility disclosure notification record if appropriate and lawful.

(d) (I) The statewide model for peace officer credibility disclosure notifications established in subsection (2)(c) of this section must require that a law enforcement agency shall include in the credibility disclosure notification:

(A) The name of the peace officer;

(B) The name of the law enforcement agency that employs or employed the peace officer at the time of the investigation or sustained finding described in subsection (2)(c)(I) of this section or an investigation described in subsection (2)(c)(II) of this section;

(C) The following statement: "This notification is to inform you that there is information in the law enforcement agency's possession regarding [name of peace officer] that may affect the peace officer's credibility in court."

(D) The applicable statutory provision identifying the basis for the credibility disclosure notification as set forth in subsections (2)(c)(I)(A) through (2)(c)(I)(D) of this section.

(II) The statewide model for peace officer credibility disclosure notifications must provide a process to notify the involved peace officer at least seven calendar days prior to sending the credibility disclosure notification to the district attorney's office, if practicable.

(3) On or before February 1, 2022, each district attorney shall make available to the public the policies and procedures created and implemented pursuant to subsection (2) of this section. The policies and procedures must include, but need not be limited to, a process for a district attorney to:

(a) Receive credibility disclosure notifications;

(b) Maintain a current record of all credibility disclosure notifications, distinguishing between the credibility disclosure notifications in subsections (2)(c)(I) and (2)(c)(II) of this section;

(c) Describe how members of the public can access the database created by the P.O.S.T. board pursuant to section 24-31-303 (1)(r) concerning peace officers who are subject to credibility disclosure notifications. The procedures must be posted on the district attorney's or county's website; and

(d) Establish a process to timely notify a defense attorney or defendant of credibility disclosure notification records pursuant to rule 16 of the Colorado rules of criminal procedure.

(e) Repealed.

(4) Each district attorney shall review the policies and procedures adopted and implemented pursuant to subsection (3) of this section at least every four years to ensure compliance with controlling federal and state case law interpreting *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995), and its progeny; as well as the Colorado rules of criminal procedure.

Source: L. 2021: Entire part added, (SB 21-174), ch. 420, p. 2784, § 1, effective September 7. **L. 2025:** (3)(e) repealed, (HB 25-1136), ch. 333, p. 1730, § 9, effective May 31.

ARTICLE 2.7

Missing Person Reports - Unidentified Human Remains

16-2.7-101. Definitions.

16-2.7-102. Missing person reports - acceptance.

16-2.7-103. Missing person reports - response.

16-2.7-104. Unidentified human remains - reporting - DNA samples.

16-2.7-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "DNA" means deoxyribonucleic acid.

(2) "Missing person" means a person whose whereabouts are unknown and whose safety or welfare is the subject of concern.

Source: L. 2006: Entire article added, p. 394, § 1, effective April 6.

16-2.7-102. Missing person reports - acceptance.

(1) Any person with relevant, credible information suggesting that a person is missing may make a missing person report to a law enforcement agency.

(2) A law enforcement agency shall accept without delay a missing person report that is submitted in person if:

(a) The missing person resides, or was last known to reside, in Colorado; or

(b) There is credible information indicating that the missing person was last believed to be in Colorado.

(3) Each law enforcement agency shall accept a missing person report submitted by telephone or by electronic or other media if:

(a) The report meets the conditions of subsection (2)(a) or (2)(b) of this section; and

(b) Acceptance of the report by telephone or by electronic or other media is consistent with the law enforcement agency's policies or practices.

(4) A law enforcement agency shall not refuse to accept a missing person report on the basis that the missing person has not yet been missing for any length of time.

(5) Notwithstanding the requirements in subsections (2) and (3) of this section, a law enforcement agency is not required to accept a missing person report if:

(a) The person is the subject of a missing person report under investigation by another law enforcement agency within this state or another law enforcement agency has indicated that it intends to accept a missing person report for the person;

(b) The law enforcement agency knows the location of the person reported missing or the agency can confirm the safe status of the person;

(c) The individual reporting a person as missing is unable to articulate a bonafide relationship with the person or a legitimate rationale for concern;

(d) The law enforcement agency suspects, and can articulate, that the person reported as missing is being sought for reasons of harassment, stalking, retaliation, court testimony, debt collection, or any action in defiance of a protection order; or

(e) Any other articulable extenuating circumstance not inconsistent with this section exists that makes accepting the report impractical or unreasonable and the law enforcement agency documents the circumstance.

Source: L. 2006: Entire article added, p. 394, § 1, effective April 6. **L. 2022:** (2)(a), (2)(b), (3), and (5) amended, (SB 22-095), ch. 70, p. 364, § 2, effective April 7.

16-2.7-103. Missing person reports - response.

(1) Upon receiving a report of a missing person, a law enforcement agency shall assess the information received from the reporting person and other available information. The law enforcement agency shall then determine the best course of action based on the circumstances.

(2) (a) If the missing person is eighteen years of age or older, the law enforcement agency shall, within eight hours after receiving the report, enter any relevant information into the Colorado crime information center database and, as appropriate, contact other law enforcement agencies that may assist in locating the missing person.

(b) (I) If the missing person is under eighteen years of age, the law enforcement agency shall, within two hours after receiving the report, notify the Colorado bureau of investigation pursuant to section 24-33.5-415.1 (3) and enter any relevant information into the Colorado crime information center database; or

(II) If the missing person is under eighteen years of age and under the legal custody of the state department of human services or a county department of human or social services, the law enforcement agency shall, within two hours after receiving notification pursuant to section 19-1-115.3, notify the Colorado bureau of investigation and enter any relevant information into the Colorado crime information center database.

(3) If the missing person is an indigenous person, the best course of action for the law enforcement agency includes appropriate communications with other law enforcement agencies that may assist in locating the missing indigenous person. Additionally, the law enforcement agency shall, within eight hours after receiving a report of a missing adult or within two hours after receiving a report of a missing child, notify the Colorado bureau of investigation.

Source: L. 2006: Entire article added, p. 395, § 1, effective April 6. **L. 2015:** Entire section amended, (HB 15-1078), ch. 41, p. 101, § 2, effective January 1, 2016. **L. 2022:** (2) amended, (SB 22-095), ch. 70, p. 365, § 3, effective April 7; (3) added, (SB 22-150), ch. 466, p. 3317, § 5, effective June 8.

Cross references: For the legislative declaration in SB 22-150, see section 1 of chapter 466, Session Laws of Colorado 2022.

16-2.7-104. Unidentified human remains - reporting - DNA samples.

(1) Except as provided in section 24-80-1303, C.R.S., with regard to anthropological investigations, a person who has custody of unidentified human remains shall immediately notify the coroner or medical examiner of the county in which the remains are located and the sheriff, police chief, or land managing agency official in accordance with section 24-80-1302 (1), C.R.S.

(2) If a coroner or medical examiner takes legal custody of unidentified human remains pursuant to section 24-80-1302 (2), C.R.S., or section 30-10-606 (1.2), C.R.S., the coroner or medical examiner shall make reasonable attempts to identify the human remains. These attempts may include, but need not be limited to, obtaining:

(a) Photographs of the human remains prior to an autopsy;

(b) Dental or skeletal X rays of the human remains;

(c) Photographs of items found with the human remains;

(d) Fingerprints from the human remains;

(e) Samples of tissue suitable for DNA typing from the human remains;

(f) Samples of whole bone or hair from the human remains suitable for DNA typing.

(3) If a coroner or medical examiner takes legal custody of unidentified human remains pursuant to section 24-80-1302 (2), C.R.S., or section 30-10-606 (1.2), C.R.S., the coroner or medical examiner shall:

(a) Enter information concerning the physical appearance and structure of the unidentified human remains, including DNA typing information, into the national crime information center database; or

(b) Work with law enforcement officials to ensure that information concerning the physical appearance and structure of the unidentified human remains, including DNA typing information, is entered into the national crime information center database.

(4) A coroner or medical examiner shall neither dispose of nor engage in actions that will materially affect unidentified human remains before the coroner or medical examiner:

(a) Obtains from the unidentified human remains samples suitable for DNA identification and archiving, if possible;

(b) Obtains photographs of the unidentified human remains; and

(c) Exhausts all other appropriate steps for identification of the human remains.

(5) Until all available information concerning the physical appearance and structure of unidentified human remains is entered into the national crime information center database, cremation or natural reduction of unidentified human remains is prohibited.

Source: L. 2006: Entire article added, p. 395, § 1, effective April 6. **L. 2021:** (5) amended, (SB 21-006), ch. 123, p. 496, § 21, effective September 7.

ARTICLE 3

Arrest - Searches and Seizures

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PART 1

AUTHORITY OF PEACE OFFICER TO MAKE AN ARREST

16-3-101. Arrest - when and how made.

(1) An arrest may be made on any day and at any time of the day or night.

(2) All necessary and reasonable force may be used in making an arrest.

(3) All necessary and reasonable force may be used to effect an entry upon any building or property or part thereof to make an authorized arrest.

Source: L. 72: R&RE, p. 197, § 1. **C.R.S. 1963:** § 39-3-101.

ANNOTATION

Persons and evidence may be protected. Police officers can, when in hot pursuit and when confronted with exigent circumstances, act to protect themselves and to prevent the destruction of evidence or injury to another. People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971) (decided prior to enactment of § 39-3-101, C.R.S. 1963, the earliest source of § 16-3-101).

16-3-102. Arrest by peace officer.

(1) A peace officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested; or

(b) Any crime has been or is being committed by such person in his presence; or

(c) He has probable cause to believe that an offense was committed and has probable cause to believe that the offense was committed by the person to be arrested.

(2) A peace officer shall not knowingly arrest or knowingly participate in the arrest of any person who engages in a legally protected health-care activity, as defined in section 12-30-121 (1)(d), unless the acts forming the basis for the arrest constitute a criminal offense in Colorado.

Source: L. 72: R&RE, p. 198, § 1. **C.R.S. 1963:** § 39-3-102. **L. 77:** (1)(c) amended, p. 850, § 1, effective May 20. **L. 2023:** (2) added, (SB 23-188), ch. 68, p. 245, § 9, effective April 14.

Cross references: For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

ANNOTATION

I. General Consideration.

II. Arrest Pursuant to Warrant.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Criminal Law", see 32 Dicta 409 (1955). For article, "Highlights of the 1955 Legislative Session

— Criminal Law and Procedure", see 28 Rocky Mt. L. Rev. 69 (1955). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For comment, "Payton v. New York: The Supreme Court Reverses the Common Law Warrantless Arrest Requirements", see 58 Den. L.J. 197 (1980). For article, "The Demise of the Aquilar-Spinelli Rule: A Case of Faulty Reception", see 61 Den. L.J. 431 (1984). For comment, "People v. Thomas: Furtive Gestures as an Element of Reasonable Suspicion — The Ongoing Struggle to Determine a Standard", see 61 Den. L.J. 579 (1984). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with stops and arrests, see 62 Den. U.L. Rev. 165 (1985). For article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995).

Annotator's note. Since § 16-3-102 is similar to repealed § 39-2-20, C.R.S. 1963, and CSA, C. 48, § 432, relevant cases construing those provisions have been included in the annotations to this section.

Unlawful arrest is not official act. If an arrest is not a lawful one, if it is made under a void warrant or without a warrant in a case where a warrant is required, or if it is not made in such circumstances as justify the arrest without a warrant, the officer is not acting in his official capacity, either by virtue of, or under color of, office; and they are merely his private or personal acts for which his sureties are not liable. Johnson v. Enlow, 132 Colo. 101, 286 P.2d 630 (1955).

And question is for jury. Where there is a dispute in the evidence as to whether there was in fact an unlawful arrest, the question is for the jury. McDaniel v. People, 179 Colo. 153, 499 P.2d 613 (1972).

The probable cause requirement is applicable whether the arrest is made with or without a warrant. People v. Hoinville, 191 Colo. 357, 553 P.2d 777 (1976).

An arrest with or without a warrant must stand on firmer ground than mere suspicion. People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971).

Applied in People v. Apodaca, 38 Colo. App. 395, 561 P.2d 351 (1976), aff'd, 194 Colo. 1324, 571 P.2d 1109 (1977); People v. Conner, 195 Colo. 525, 579 P.2d 1160 (1978); People v. Lott, 197 Colo. 78, 589 P.2d 945 (1979); People v. Rothe, 43 Colo. App. 274, 606 P.2d 79 (1979); People v. Smith, 620 P.2d 232 (Colo. 1980); People v. Eichelberger, 620 P.2d 1067 (Colo. 1980); People v. Wolf, 635 P.2d 213 (Colo. 1981); People v. Bustam, 641 P.2d 968 (Colo. 1982); People v. Roybal, 655 P.2d 410 (Colo. 1982); People v. Hamilton, 666 P.2d 152 (Colo. 1983); People v. Florez, 680 P.2d 219 (Colo. 1984).

II. ARREST PURSUANT TO WARRANT.

Even though an arrest warrant is invalid, the arrest may be upheld if the arresting officer had probable cause to believe that an offense had been committed by the defendant apart from the complaint and the officer was confronted with exigent circumstances. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

III. WARRANTLESS ARREST.

A. In General.

B. Commission of Crime.

C. Probable Cause.

A. In General.

Law reviews. For note, "The Evolution of the Police Officer's Right to Arrest Without a Warrant in Colorado", see 43 Den. L.J. 366 (1966).

Annotator's note. For further annotations concerning warrantless arrests, see § 7 of art. II, Colo. Const.

Authority to arrest outside territorial jurisdictions. All Colorado police officers have the power to make arrests, even when outside of their territorial jurisdictions, when a crime has been committed in their presence. People v. Bloom, 195 Colo. 246, 577 P.2d 288 (1978).

A peace officer has authority to make arrests without a warrant of persons committing or attempting to commit offenses in his presence, whether the offense be a felony or a misdemeanor, of persons who have committed felonies out of his presence, of persons he has reasonable cause to believe guilty of a felony that has been committed, and of persons charged, upon reasonable cause, with having committed a felony. Johnson v. Enlow, 132 Colo. 101, 286 P.2d 630 (1955).

An officer may make an arrest for violation of a misdemeanor without a warrant if the officer has probable cause or reasonable grounds to believe that an offense has been committed and probable cause or reasonable grounds to believe that a certain individual committed that offense. Beyer v. Young, 32 Colo. App. 273, 513 P.2d 1086 (1973).

Only probable cause and exigent circumstances will excuse statutory warrant requirements. People v. Henry, 195 Colo. 309, 578 P.2d 1041 (1978).

Absent exigent circumstances, it is necessary to obtain arrest warrant in order to justify entry into private home to make an arrest. People v. Williams, 200 Colo. 187, 613 P.2d 879 (1980).

Even where probable cause exists. Although police officers have probable cause to believe a suspect committed a crime, nevertheless they may not enter a private residence to effect an arrest in the absence of exigent circumstances. McCall v. People, 623 P.2d 397 (Colo. 1981).

Exigent circumstances encompasses compelling need for immediate police action. The doctrine of exigent circumstances encompasses those situations where, due to an emergency, the compelling need for immediate police action militates against the strict adherence to the warrant requirement. McCall v. People, 623 P.2d 397 (Colo. 1981).

People's burden to rebut presumption of unconstitutional arrest without warrant. An arrest without a warrant is presumed to have been unconstitutional, and the state has the burden of rebutting that presumption by showing both that the arrest was supported by probable cause and that it fell within a recognized exception to the

warrant requirement. People v. Burns, 200 Colo. 387, 615 P.2d 686 (1980).

The lawfulness of an arrest without a warrant by state officers for a state offense must be determined by state law. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971).

Remedy for violation of arrest warrant requirement is the exclusion of evidence seized which is tainted as "fruit of the poisonous tree". People v. Henry, 195 Colo. 309, 578 P.2d 1041 (1978).

Officer not liable for false arrest and false imprisonment. Where police officer had both probable cause to believe that an offense had been committed and that the plaintiff was the person who had committed it, he was not civilly liable for false arrest and false imprisonment. Beyer v. Young, 32 Colo. App. 273, 513 P.2d 1086 (1973).

Failure of deputy to obtain arrest warrant was justified. People v. Fratus, 187 Colo. 52, 528 P.2d 392 (1974).

Voluntary consent by occupant may constitute valid waiver of warrant requirement. A voluntary consent by an occupant of premises authorizing entry by the police for the purpose of effecting an arrest inside the home may constitute, under appropriate circumstances, a valid waiver of the warrant requirement. McCall v. People, 623 P.2d 397 (Colo. 1981).

Entry into home by preconceived deception lacks consent. Where entry into the home is gained by a preconceived deception as to purpose, consent in the constitutional sense is lacking. McCall v. People, 623 P.2d 397 (Colo. 1981).

Appearance in open doorway may excuse warrant. Where defendant was arrested while standing in the open doorway of his apartment, the warrant requirement was excused. People v. Burns, 200 Colo. 387, 615 P.2d 686 (1980).

When detention by police permissible. The police may detain and require identification of a person if they have a reasonable suspicion, based on objective facts, that the person is involved in criminal conduct. People v. Archuleta, 616 P.2d 977 (Colo. 1980).

Applied in Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

B. Commission of Crime.

This section permits a police officer to arrest a person who has committed a crime in the officer's presence. Section 16-2-201 does not limit that authority. An officer may arrest when a crime occurs in his or her presence. When that crime is a class two petty offense, the arresting officer may, pursuant to § 16-2-201, either take the arrested suspect before a judge or release the suspect after issuing a penalty assessment. Police compliance with both statutes is achieved because, even though they conduct a full custodial arrest and search, police "may" still release the offender without taking him before a judge. A custodial arrest and a discretionary release are not mutually exclusive under § 16-2-201. People v. Triantos, 55 P.3d 131 (Colo. 2002).

Arrest not limited to where crime has in fact been committed. The theory that under this section a lawful arrest without a warrant cannot be made unless a crime has in fact been committed and that the person arrested committed it is without merit. Van Camp v. Gray, 440 F.2d 777 (10th Cir. 1971).

However, a court must determine whether the facts available to a reasonably cautious officer at the moment of arrest would warrant his belief that an offense has been or is being committed. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971).

Warrant is unnecessary where breach of peace witnessed. Schindelar v. Michaud, 411 F.2d 80 (10th Cir. 1969).

C. Probable Cause.

This section permits warrantless arrests by an officer when a criminal offense had in fact been committed and the officer had reasonable grounds for believing the person to be arrested had committed the offense. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); People v. Pickett, 194 Colo. 178, 571 P.2d 1078 (1977); People v. Saars, 196 Colo. 294, 584 P.2d 622 (1978).

And such is "constitutional". This section, which authorizes an officer to make an arrest without a warrant when a criminal offense has in fact been committed and he has reasonable grounds for believing that the person to be arrested has committed it, is consonant with the case law of the United States supreme court and the supreme court of Colorado. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970).

The terms "probable cause" and "reasonable grounds" are substantially equivalent in meaning. Gonzales v. People, 156 Colo. 252, 398 P.2d 236 (1965); People v. Bueno, 173 Colo. 69, 475 P.2d 702 (1970); People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); Glass v. People, 177 Colo. 267, 493 P.2d 1347 (1972).

And so this section authorizing an arrest without a warrant is satisfied if the arresting officer has probable cause or reasonable grounds to believe that a crime has been committed and that the person arrested committed it. Van Camp v. Gray, 440 F.2d 777 (10th Cir. 1971).

For a warrantless arrest, officers must have probable cause to believe not only that an offense had been committed, but that the person to be arrested had committed it. People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975); People v. Hoinville, 191 Colo. 357, 553 P.2d 777 (1976).

Probable cause is the touchstone for measuring the right to arrest without a warrant. People v. Fratus, 187 Colo. 52, 528 P.2d 392 (1974).

And valid arrest by a peace officer must be supported by probable cause. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Violation of municipal ordinance included. Since the violation of a municipal ordinance is a criminal offense, then as a matter of law, where the police have reasonable ground for believing that defendants have committed such offense, an attempted arrest is altogether lawful and the police would be derelict in the performance

of their duty if they refuse to act. Boyer v. Elkins, 154 Colo. 294, 390 P.2d 460 (1964).

Flight does not solely justify warrantless arrest. Where the arresting officer knew that a burglary had been committed, his dispatcher had told him of the burglars' purported return, and when he arrived back at the scene he observed the hasty departure of a man who had been talking with the son-in-law, flight may legitimately give rise to suspicion, and evidence of flight may be admissible at trial to show consciousness of guilt, but defendant's running was not in and of itself sufficient to justify a warrantless arrest. People v. Bates, 190 Colo. 291, 546 P.2d 491 (1976).

Exigent circumstances. A police officer may make a warrantless arrest where he has probable cause to believe that the suspect has committed a crime and where the officer is confronted by exigent circumstances. People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

Exigent circumstances obviously exist when suspects are speeding from the scene of the crime. To require a warrant would impose an impracticable burden. People v. Cox, 190 Colo. 326, 546 P.2d 956 (1976).

Exigent circumstances sufficient to justify warrantless arrest. People v. Litsey, 192 Colo. 19, 555 P.2d 974 (1976).

Exigent circumstances sufficient to justify warrantless entry into home to make arrest. People v. Williams, 200 Colo. 187, 613 P.2d 879 (1980).

Public security may outweigh warrant preference. When immediate police action is essential to protect the public safety, the warrant preference expressed by this section must, and does, give way to the public security. People v. Henry, 195 Colo. 309, 578 P.2d 1041 (1978).

Failure to obtain arrest warrant justified whenever circumstances require immediate action to protect the public safety; this includes the situation where the police are faced with the choice of arresting a suspect without a warrant or allowing him to escape. People v. Cardenas, 42 Colo. App. 61, 592 P.2d 1348 (1979).

Fact that officers may have probable cause to arrest someone else is of no consequence, for, where a defendant is arrested without a warrant, the burden of proving the existence of probable cause in defendant's case is on the prosecution. Mora v. People, 178 Colo. 279, 496 P.2d 1045 (1972).

And physical presence with others, in and of itself, does not provide probable cause to arrest, for guilt by association has never been an acceptable rationale. Mora v. People, 178 Colo. 279, 496 P.2d 1045 (1972).

The mere association with one who commits or has committed crimes, standing alone, does not amount to probable cause for arrest. People v. Crespin, 635 P.2d 918 (Colo. App. 1981).

Nor where one merely changes his direction upon seeing police. Where officers already had one suspect in their car and were questioning him when defendant

approached, and at a distance of approximately one block from unmarked police car hesitated, then turned and walked the other way, disappearing around a corner, such circumstances did not show probable cause to arrest, especially where there was nothing in the testimony of the officer to indicate that he considered defendant a suspect in the crime in question or a suspect in any other known criminal act. People v. Bueno, 173 Colo. 69, 475 P.2d 702 (1970).

Probable cause deals with the probability that a crime has been or is being committed. People v. Martinez, 173 Colo. 17, 475 P.2d 340 (1970).

The burden of proving probable cause in justification of a warrantless arrest is upon the state. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971); People v. Chacon, 177 Colo. 368, 494 P.2d 79 (1972).

But a belief beyond a reasonable doubt is not required. People v. Martinez, 173 Colo. 17, 475 P.2d 340 (1970).

Rather, probable cause deals with probabilities which are not technical, but rather the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Gonzales v. People, 156 Colo. 252, 398 P.2d 236 (1965); Lavato v. People, 159 Colo. 223, 411 P.2d 328 (1966); People v. Bueno, 173 Colo. 69, 475 P.2d 702 (1970); People v. Clark, 173 Colo. 129, 476 P.2d 564 (1970); People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971); People v. Saars, 196 Colo. 294, 584 P.2d 622 (1978).

Consequently, probable cause exists where the facts and circumstances within the officers' knowledge, and of which they had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. Gonzales v. People, 156 Colo. 252, 398 P.2d 236 (1965); Lavato v. People, 159 Colo. 223, 411 P.2d 328 (1966); People v. Bueno, 173 Colo. 69, 475 P.2d 702 (1970); People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971); People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); Glass v. People, 177 Colo. 267, 493 P.2d 1347 (1972); People v. Williams, 186 Colo. 72, 525 P.2d 463 (1974); People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

Probable cause exists where the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a person of reasonable caution to believe an offense has been or is being committed. People v. Rueda, 649 P.2d 1106 (Colo. 1982); People v. Martinez, 689 P.2d 653 (Colo. App. 1984).

Probable cause arises only where the facts and circumstances within the officer's knowledge suffice to warrant a reasonably prudent person in the belief that the person to be arrested committed or is committing a criminal offense. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Although precise point of officer's belief cannot be determined. If the circumstances at the time of an arrest are sufficient to justify a finding that probable cause existed, the court will so find even though the precise point at which the

officer's hunch became suspicion and then progressed to reasonable belief is impossible to determine with certainty. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

This level of probability must exist at the actual moment of arrest, and must be based on known facts, not on mere rumor or conjecture. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Suspicion and rumor alone would fall short of probable cause. Lucero v. People, 165 Colo. 315, 438 P.2d 693 (1968); People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

It is basic that an arrest without a warrant must stand upon firmer ground than suspicion, though the arresting officer need not have in hand evidence which would suffice to convict. People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973); People v. Gonzales, 186 Colo. 48, 525 P.2d 1139 (1974).

Mere suspicion does not constitute probable cause for a warrantless arrest. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Information relied upon to satisfy a warrantless arrest is sufficient if it warrants a reasonably cautious and prudent police officer in believing, in light of his training and experience, that an offense has been committed and that the person arrested probably committed it. However, it need not be of that quality and quantity necessary to satisfy beyond a reasonable doubt. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

All evidence within knowledge of arresting officer may be considered. In assessing probable cause to arrest without a warrant, all evidence within the knowledge of the arresting officer may be considered even though it may not be competent evidence at trial. People v. Gonzales, 186 Colo. 48, 525 P.2d 1139 (1974).

As well as officer's training and experience. Whether or not the arresting officer reasonably believed a crime had been or was being committed such as to make a warrantless arrest is to be considered in light of the officer's training and experience. People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

Same standards for determining probable cause for search or arrest. The same constitutional standards for determining probable cause apply whether a search or an arrest is being effected by police officers, and whether or not the officers have obtained a judicially authorized warrant to arrest or search. People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973).

Probable cause standards applicable with or without warrant. Probable cause standards for searches or arrests are applicable whether or not the police have obtained a warrant. People v. Burns, 200 Colo. 387, 615 P.2d 686 (1980).

Probable cause is measured by facts of particular case. The quantum of information which constitutes probable cause for a warrantless arrest must be measured by the facts of the particular case.

People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973).

The circumstances in each case of warrantless arrest must be considered to determine the reasonableness of police action and the existence of probable cause. People v. Fratus, 187 Colo. 52, 528 P.2d 392 (1974).

Even if the information received by an officer from an informer is hearsay, such information from a reliable informer corroborated by the officers' own observations is sufficient to support a reasonable belief that a crime is being committed. Gonzales v. People, 156 Colo. 252, 398 P.2d 236 (1965).

For the reasonably trustworthy information relied on may be based upon hearsay and need not be evidence sufficiently competent for admission at the guilt-finding process. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

In fact, either heavy or almost exclusive reliance on hearsay does not destroy the validity of an arrest without a warrant. Lucero v. People, 165 Colo. 315, 438 P.2d 693 (1968).

The "Aguilar" test for determining probable cause for arrest based upon information received from a police informer is as follows: First, the officer must know the underlying circumstances from which the informant concluded that a crime was being or had been committed by the accused; and second, there must be underlying circumstances from which the officer concluded that information received was reliable. (Based upon Aguilar v. Texas, 378 U.S. 108 (1964)). People v. Martinez, 173 Colo. 17, 475 P.2d 340 (1970).

The test to measure probable cause to arrest, which is based upon information provided by a confidential informant, is met by setting forth the underlying circumstances which established that the informant had a basis in fact for his information and also provided facts which supported the reliability of the informant. People v. Fratus, 187 Colo. 52, 528 P.2d 392 (1974).

First prong of "Aguilar" met. Where informer was not just relying on suspicion or rumor but stated with particularity details of stolen check, such as, amount, payee, maker, and endorsement, and also stated that defendant had talked with him, showed him the check, and told him of defendant's own attempt to cash it, these underlying circumstances were sufficient to lead a reasonable person to believe that a crime had been or was being committed, as they met the first prong of the "Aguilar test" for determining probable cause for arrest. People v. Martinez, 173 Colo. 17, 475 P.2d 340 (1970).

And the second prong of the test was met by virtue of the following evidence: (1) That the informant had previously given reliable information to police; (2) verification by the officer that the stolen check was missing by talking to the payee before defendant's arrest; (3) defendant was riding in the same car described by the informant; and (4) prior to arrest defendant was seen by the officer putting an envelope in a small paper sack. Hence, when such evidence was considered as a whole, it was

sufficient for the officer to reasonably believe that informant's information was reliable. People v. Martinez, 173 Colo. 17, 475 P.2d 340 (1970).

Totality of circumstances test. Since the Aguilar-Spinelli two-pronged test for determining probable cause has been abandoned by the United States supreme court in Illinois v. Gates, 462 U.S. 213 (1983), in favor of the totality of the circumstances test, such test was used by the court to make the probable cause determination. People v. Gallegos, 680 P.2d 1294 (Colo. App. 1983); People v. Sullivan, 680 P.2d 851 (Colo. App. 1983).

No factor alone is conclusive in establishing exigent circumstances necessary for a warrantless arrest, as the totality of the circumstances must be examined. People v. Henry, 195 Colo. 309, 578 P.2d 1041 (1978).

Informant's information must be reliable. When a tip is received from a confidential informant, there must also be information supplied which establishes the credibility of the informant or indicates that the information was reliable. People v. Hubbard, 184 Colo. 225, 519 P.2d 951 (1974).

Uncorroborated accusation by an informant whose identity and reliability remains untested cannot constitute probable cause. People v. Williams, 186 Colo. 72, 525 P.2d 463 (1974).

When the source of the information is a citizen-informant who was an eyewitness to the crime and is identified, the information is presumed to be reliable, and the prosecution is not required to establish either the credibility of the informant or the reliability of his information. People v. Hubbard, 184 Colo. 225, 519 P.2d 951 (1974); People v. Saars, 196 Colo. 294, 584 P.2d 622 (1978).

Presumption as to trustworthiness of citizen-informant. Although one who qualifies as a "citizen-informant" is presumed trustworthy, this presumption only relates to the likelihood of truthfulness, not to the weight to be accorded the information provided. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Report to authorities does not make uncorroborated speculation probable. Uncorroborated speculation and conjecture by an inexperienced citizen is not transformed into probability by a report to the authorities. Different standards govern observations by experienced peace officers. People v. Severson, 39 Colo. App. 45, 561 P.2d 373 (1977).

Where there is conflicting evidence as to several critical points regarding an informant's information, the prerogative for deciding whether or not probable cause for arrest without a warrant is established is within the domain of the trial judge and, absent a showing of abuse of this prerogative, a reviewing court will not overturn a trial court's ruling. People v. Trujillo, 179 Colo. 428, 500 P.2d 1176 (1972).

Furthermore, details of the crime given to investigating officers by the victim of the crime can be relied upon by the officers and can furnish the basis for their

conclusion that a crime had been committed and that certain described persons probably committed it. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

And where, after investigation, an officer, by his own knowledge, knows that an offense has been committed and corroboration of the suspect's name is obtained by identifying photographs, the officer has probable cause for arrest without a warrant. Lucero v. People, 165 Colo. 315, 438 P.2d 693 (1968).

But it is not necessary for the arresting officer to know of the reliability of the informer or to be himself in possession of information sufficient to constitute probable cause, if he acts upon the direction of, or as a result of, communication with a brother officer or that of another police department and provided the police as a whole are in possession of information sufficient to constitute probable cause to make the arrest. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

Thus, a police officer has the right to rely upon information relayed to him by his fellow law enforcement officers. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

As the fellow-officer rule permits a police officer to rely upon and accept information provided by another officer in determining whether there is probable cause for warrantless arrest. People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971).

So when police officers are informed by a telephone call from officers in another jurisdiction from which a package of contraband was sent, the officers have probable cause to arrest a person without a warrant when he claims the package. People v. Hankin, 179 Colo. 70, 498 P.2d 1116 (1972).

All officers at arrest need not be informed. Where the officer who made the arrest had talked to the informant and had knowledge of all of the facts comprising probable cause, whether another officer who was present at the arrest was aware of the information given by the informant is immaterial. People v. Crespin, 635 P.2d 918 (Colo. App. 1981).

Illegal arrest cannot be justified. Neither the fellow-officer rule nor the validity of an exchange of information between police officers can justify an otherwise illegal arrest. People v. Hubbard, 184 Colo. 225, 519 P.2d 951 (1974); People v. Saars, 196 Colo. 294, 584 P.2d 622 (1978).

By claiming package, defendant becomes an active participant. Where officers had probable cause to believe that a course of criminal conduct involving packaged contraband had been initiated in another state in which defendant was likely to become involved and defendant appears to claim the package, then, under the circumstances, the defendant became an active participant in the criminal conduct for which his arrest could be lawfully effected without a warrant. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

Moreover, evidence in plain view can be relied on. Where police officers are in a place where they have a right to be, they are

not required to close their eyes to evidence in plain view, and the sight of such evidence can properly form the basis for a determination of probable cause to make an arrest. People v. McGahey, 179 Colo. 401, 500 P.2d 977 (1972); Avalos v. People, 179 Colo. 88, 498 P.2d 1141 (1972).

And in a situation involving an "arrangement" by the police to purchase drugs, where an officer, by prearranged signal, flashed his brake lights to indicate to other officers hiding nearby that the deal was completed, whereupon the officers approached a vehicle which had previously pulled up to the scene and ordered its driver to come out, and where, after arresting defendant as he stepped from the vehicle, the officer noticed that a package on the front seat was in plain view, which he seized and which later proved to contain additional quantities of illegal drugs, then, under the circumstances, the officer had probable cause to arrest the driver. People v. Clark, 173 Colo. 129, 476 P.2d 564 (1970).

Also, probable cause existed where marijuana seen while validly checking registration in vehicle. Where an officer detained defendant for an admitted traffic violation and while performing his duties in this regard inquired for the auto registration, which by statute must be either in the possession of the operator or in the vehicle, then, upon the defendant's failure to produce the registration, the officer had the right to look in the vehicle for the registration to inspect it, and when at this time he observed a plastic bag containing what he suspected was, and which turned out to be, marijuana, the officer had probable cause to believe a crime was being committed in his presence and had the right and duty to make an arrest. Marquez v. People, 168 Colo. 219, 450 P.2d 349 (1969).

However, facts must be available prior to arrest. The arrest of a defendant can only be justified by the information available to the officer immediately prior to the arrest, and the discovery of contraband on the person of one who is unlawfully arrested does not validate an arrest. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970).

Hence, where the mistaken suspicion of an informant on one matter triggered a police investigation which discovered other illegal matters during a search, the officer had no knowledge of any offense being committed in his presence which would have justified the arrest and he had had no report of any crime having been committed in the area by anyone resembling the defendant, and so, since the courts have a responsibility to guard against police conduct which is overbearing or harassing in order to protect the constitutional rights of the individual, the arrest of the defendant was "unreasonable" when tested by the need to arrest under the exigencies of the situation against the invasion of privacy which the arrest entailed, and any evidence obtained was not admissible. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970).

Probable cause for arrest without warrant held to exist. Gonzales v. People, 156 Colo. 252, 398 P.2d 236 (1965) (marijuana); People v. Bengston, 174 Colo. 131, 482 P.2d 989 (1971) (marijuana); People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971); People v. Vaughns, 175 Colo.

369, 489 P.2d 591 (1971); People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971) (marijuana); Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971); Hafer v. People, 177 Colo. 52, 492 P.2d 847 (1972); People v. Duncan, 179 Colo. 253, 500 P.2d 137 (1972); People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973); People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973); People v. Duleff, 183 Colo. 213, 515 P.2d 1239 (1973) (marijuana); People v. Marquez, 183 Colo. 231, 516 P.2d 1134 (1973); People v. Hubbard, 184 Colo. 225, 519 P.2d 951 (1974); People v. Cruz, 186 Colo. 295, 526 P.2d 1315 (1974); People v. Crespin, 635 P.2d 918 (Colo. App. 1981).

If probable cause for arrest does in fact exist, the officer is entitled to make a reasonable search incident to arrest. People v. Bueno, 173 Colo. 69, 475 P.2d 702 (1970); People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971); People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); People v. Hankin, 179 Colo. 70, 498 P.2d 1116 (1972).

And may seize evidence. In a search conducted incident to warrantless arrest, the arresting officers have authority to search for instrumentalities or evidence of the specific crime for which they had probable cause to arrest. People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

If probable cause to arrest is present, evidence can be seized as incident to a lawful arrest. People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

An officer conducting a reasonable search, incident to a valid arrest, may seize contraband or articles, the possession of which gives the police officer reason to believe a crime has been committed, even though such articles do not relate to the crime for which the defendant was initially arrested. People v. Ortega, 181 Colo. 223, 508 P.2d 784 (1973).

Following Arizona v. Gant, 556 U.S. 332 (2009), the search incident to arrest exception does not apply in this case, and the search of the passenger compartment of defendant's car was unconstitutional. Because statements defendant made following the discovery of drugs were the fruit of the unlawful search, the evidentiary use of the statements must also be suppressed. Perez v. People, 231 P.3d 957 (Colo. 2010).

Probable cause for arrest for burglary without warrant not shown. People v. Trujillo, 179 Colo. 428, 500 P.2d 1176 (1972).

Where the court finds that probable cause for arrest without a warrant is not shown, the subsequent search and seizures are invalid. People v. Trujillo, 179 Colo. 428, 500 P.2d 1176 (1972).

Evidence obtained subsequent to illegal arrest need not be suppressed, if the taint of the official misconduct has been purged. People v. Henry, 195 Colo. 309, 578 P.2d 1041(1978).

When persons are arrested for minor traffic violations or minor municipal offenses, the instrumentalities or evidence of such crimes is minimal or nonexistent, and thus the scope of a search incident to such a warrantless arrest would be quite limited.

People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

16-3-103. Stopping of suspect.

(1) A peace officer may stop any person who he reasonably suspects is committing, has committed, or is about to commit a crime and may require him to give his name and address, identification if available, and an explanation of his actions. A peace officer shall not require any person who is stopped pursuant to this section to produce or divulge such person's social security number. The stopping shall not constitute an arrest.

(2) When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that his personal safety requires it, he may conduct a pat-down search of that person for weapons.

Source: L. 72: R&RE, p. 198, § 1. **C.R.S. 1963:** § 39-3-103. **L. 83:** (1) amended, p. 663, § 2, effective July 1. **L. 2001:** (1) amended, p. 941, § 9, effective July 1.

Cross references: For the stopping of persons suspected of alcohol- or drug-related traffic offenses, see § 42-4-1302.

ANNOTATION

Law reviews. For comment, "People v. Thomas: Furtive Gestures as an Element of Reasonable Suspicion — The Ongoing Struggle to Determine a Standard", see 61 Den. L.J. 579 (1984). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with stops and arrests, see 62 Den. U.L. Rev. 165 (1985). For article, "A DUI Primer", see 16 Colo. Law. 2179 (1987).

Different standards govern full-scale arrest and investigatory stops. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Limited, temporary detention permissible though no probable cause to arrest exists. A police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigation of possible criminal behavior even though there is no probable cause for arrest. People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973); People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974).

There is an area of proper police procedure in which an officer having less than probable cause to arrest may temporarily detain an individual for limited

purposes. People v. Marquez, 183 Colo. 231, 516 P.2d 1134 (1973); People v. Schreyer, 640 P.2d 1147 (Colo. 1982).

A temporary police detention in the nature of "field investigation" can be justified by less than probable cause for arrest. People v. Stevens, 183 Colo. 399, 517 P.2d 1336 (1973).

Police officers may make a limited stop on less than probable cause. People v. Montoya, 185 Colo. 299, 524 P.2d 76 (1974).

In certain circumstances a police officer having less than probable cause to arrest may stop an individual for identification purposes and not violate the fourth amendment prohibition against unreasonable search and seizure. People v. Mascarenas, 726 P.2d 644 (Colo. 1986).

Where officer has a reasonable suspicion that an automobile temporary sticker has been altered, officer has authority to make a stop under this section since such alteration would constitute a misdemeanor traffic offense. People v. Thomas, 839 P.2d 1174 (Colo. 1992).

In order to lawfully detain an individual for questioning: (1) A police officer must have a reasonable suspicion that the individual has committed, or is about to commit, a crime; (2) the purpose of the detention must be reasonable; and (3) the character of the detention must be reasonable when considered in light of the purpose. People v. Stevens, 183 Colo. 399, 517 P.2d 1336 (1973); People v. Montoya, 185 Colo. 299, 524 P.2d 76 (1974); People v. Mascarenas, 726 P.2d 644 (Colo. 1986); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Wilson, 784 P.2d 325 (Colo. 1989); People v. Sutherland, 886 P.2d 681 (Colo. 1994); People v. Rodriguez, 924 P.2d 1100 (Colo. App. 1996), aff'd, 945 P.2d 1351 (Colo. 1997).

The first of these requirements is determined by whether there were specific and articulable facts known to the officer, which taken together with rational inferences from these facts, created a reasonable suspicion of criminal activity to justify the intrusion into the defendant's personal security. People v. Mascarenas, 726 P.2d 644 (Colo. 1986); People v. Wilson, 784 P.2d 325 (Colo. 1989).

Permissible purposes for investigatory stops. Investigatory stops constitute an intermediate response by the police between nondetention and arrest. These procedures are permissible only for the purpose of questioning a suspect, who might otherwise escape, regarding his identity or observed behavior in order temporarily to maintain the status quo while seeking to procure more information regarding possible wrongdoing. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Police may detain and require identification if reasonable suspicion of criminal conduct. The police may detain and require identification of a person if they have a reasonable suspicion, based on objective facts, that the person is involved in criminal conduct. People v. Archuleta, 616 P.2d 977 (Colo. 1980).

The reasonableness of an officer's suspicion is determined from the totality of the circumstances in which the suspicion arose. People v. Bell, 698 P.2d 269 (Colo. 1985); People v. Mascarenas, 726 P.2d 644 (Colo. 1986); People v. Coca, 829 P.2d 385 (Colo. 1992).

Officer's suspicion that the defendants were connected to the reported criminal activity held reasonable given the defendants' evasive actions and their proximity to the location of the reported burglary shortly after the officer received the dispatch call. People v. Mascarenas, 726 P.2d 644 (Colo. 1986); People v. Sosbe, 789 P.2d 1113 (Colo. 1990).

Investigatory stops. A police officer, lacking probable cause to arrest, may stop a person for investigatory purposes if the officer has a reasonable suspicion that the person stopped is involved in criminal activity. People v. Sosbe, 789 P.2d 1113 (Colo. 1990).

An investigatory stop implicates a seizure that is based on less than probable cause and so it must be brief in duration, limited in scope, and narrow in purpose. People v. Tottenhoff, 691 P.2d 340 (Colo. 1984); Outlaw v. People, 17 P.3d 150 (Colo. 2001).

Construction of § 42-2-113 inconsistent with this section. A construction of § 42-2-113, which requires that drivers' licenses be displayed to peace officers upon demand, which would give to a police officer unlimited discretionary authority to stop any car at any time for any reason as long as he asked contemporaneously for display of a driver's license would be inconsistent with this section, which specifically limits an officer's authority to stop persons for investigation in the absence of probable cause to arrest. People v. McPherson, 191 Colo. 81, 550 P.2d 311 (1976).

Limited searches of a person for weapons during an investigative detention, when probable cause for arrest is lacking, is permissible, but there must be: (1) Some reason for the officer to confront the citizen in the first place; (2) something in the circumstances, including the citizen's reaction to the confrontation, must give the officer reason to suspect that the citizen may be armed and, thus, dangerous to the officer or others; and (3) the search must be limited to a frisk directed at discovery and appropriation of weapons and not at evidence in general. People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974); People v. Shackelford, 37 Colo. App. 317, 546 P.2d 964 (1976).

In determining the reasonableness of a search in the situation where the search is not full blown but is rather just a protective search for weapons, the inquiry is a dual one: (1) Was the officer's action justified at its inception; and (2) was the search reasonably related in scope to the circumstances which justified the interference in the first place. People v. Burley, 185 Colo. 224, 523 P.2d 981 (1974).

So long as the officer is entitled to make a forcible stop and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose. People v. Burley, 185 Colo. 224, 523 P.2d 981 (1974).

Protective search for weapons is justified only when circumstances of an otherwise valid stop provides the officer with a reasonable basis to suspect person stopped may be armed and dangerous. People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Sutherland, 886 P.2d 681 (Colo. 1994).

Based not on hunches and limited in scope. In order to uphold the stop and frisk as reasonable, both the initial confrontation and the subsequent search must have been prompted by the officers' reliance on particular facts, rather than on inarticulable hunches, and the scope of the frisk must be limited to that necessary for the discovery of weapons. People v. Shackelford, 37 Colo. App. 317, 546 P.2d 964 (1976).

Sufficient basis for weapons search to be excepted from warrant requirement. The reasonable apprehension of danger or injury to the police officers — judged by objective standards — provides a sufficient basis for a search to fall within the search for weapons exception to the fourth amendment's warrant requirement. People v. Burley, 185 Colo. 224, 523 P.2d 981 (1974).

Based on the totality of the circumstances, the trial court properly denied defendant's motion to suppress evidence obtained during a vehicle search. Trial court properly found that police officer had reasonable suspicion that defendant was engaged in drug trafficking sufficient to justify the investigatory stop. People v. Ramirez, 1 P.3d 233 (Colo. App. 1999).

Even if seizure of person is unconstitutional, evidence abandoned prior to that seizure is not the fruit of the seizure and should not be suppressed. People v. McClain, 149 P.3d 787 (Colo. 2007).

Even if the totality of police officers' conduct rose to the level of a show of authority to constitute a seizure, evidence abandoned prior to the seizure cannot be suppressed. People v. McClain, 149 P.3d 787 (Colo. 2007).

Reasonable grounds to fear suspect armed. Where the arresting officers stopped defendant because he matched description of a suspect who had allegedly committed an act of violence, these circumstances constituted reasonable grounds to fear that the suspect might well be armed, and thus, be potentially dangerous. The officers therefore acted properly in initiating a pat-down search for weapons. People v. Shackelford, 37 Colo. App. 317, 546 P.2d 964 (1976).

Doctrine of allowing investigative stops based upon "reasonable cause" was extended to include information supplied by informants' tips as well as the personal observations of police officers. People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973).

Stop, search, and seizure of evidence reasonable and justified under circumstances even though conduct was compatible with innocent activity. Informant told police there were three males in the area and that one was wearing a poncho and possibly carrying a rifle. When officers spotted three males, one wearing a poncho, they stopped them for questioning. People v. D.F., 933 P.2d 9 (Colo. 1997).

Officers do not have to observe criminal conduct to corroborate anonymous tip. People v. D.F., 933 P.2d 9 (Colo. 1997).

The record revealed no circumstances which could legitimate the stopping of defendant's vehicle as a temporary detention within the contemplation of this section, where the officers had never seen or heard of defendant before, did not even know if drug trafficking actually had taken place in the house under surveillance, and had no reason to believe the sack defendant carried contained drugs, and where defendant did not violate any traffic laws as he drove away. People v. McPherson, 191 Colo. 81, 550 P.2d 311 (1976).

Stopping of defendant held not arrest but proper temporary detention in nature of field investigation. People v. Cruz, 186 Colo. 295, 526 P.2d 1315 (1974).

Detention held a full-scale arrest. People v. Severson, 39 Colo. App. 95, 561 P.2d 373 (1977).

Discovery of evidence of crime while searching for weapons. Where the search was limited to a frisk directed at the discovery and appropriation of weapons, and not to uncover evidence as such, evidence of a crime having thus been lawfully uncovered, it is competent and admissible in evidence as relevant proof of the charges of which defendant is accused. People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974).

Where police officer obtained probable cause to search a vehicle and seize evidence in the process of making a lawful stop for threshold investigatory purposes, the defendant's motion to suppress this evidence was properly denied. People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973).

Police officers are entitled to conduct an investigatory stop of a motorist if they have reasonable suspicion that the motorist has committed a traffic violation. Because the defendant had committed a traffic violation and that offense alone was sufficient to justify the police encounter, the trial court did not err in denying the defendant's motion to suppress. People v. Valencia-Alvarez, 101 P.3d 1112 (Colo. App. 2004).

Trial court improperly suppressed the evidence police obtained after conducting an investigatory stop of the defendant. The police had a reasonable, articulable suspicion to conduct an investigatory stop of the defendant because of ongoing criminal activity. People v. Reyes-Valenzuela, 2017 CO 31, 392 P.3d 520.

Discovery of evidence of crime while responding to taxicab driver's plea. Where the search was the result of police responding to the plea of a taxicab driver who thought he was about to be robbed, but the search revealed that the defendant, who was the passenger, was in possession of narcotics, the defendant's motion to suppress was properly denied. People v. McNeal, 191 Colo. 490, 553 P.2d 757 (1976).

Seizure of heroin under plain-view doctrine held proper. Where police officer, who had legitimately stopped defendant, observed what he believed to be heroin in plain view on seat of automobile which

defendant had just exited, he could seize the heroin under the "plain-view doctrine". People v. Montoya, 185 Colo. 299, 524 P.2d 76 (1974).

Trial court properly suppressed evidence seized during search of defendant when fact that defendant ran in opposite direction from companions did not satisfy constitutional requirement of reasonable suspicion for investigatory stop and scope of resulting search exceeded a pat down for weapons. People v. Wilson, 784 P.2d 325 (Colo. 1989).

There was no probable cause to stop defendant's vehicle where the officer observed a crack in the windshield but could not recall the severity or position of the crack and did not issue a citation for the crack. Evidence that defendant was driving on a suspended license obtained as a result of the unwarranted stop was therefore suppressed. People v. Cerda, 819 P.2d 502 (Colo. 1991).

Trial court properly denied motion to suppress statements made by the defendant between the time he was detained and the time he was actually placed under arrest. The record supported a finding that the defendant was not in custody at the time he was detained as part of a proper investigatory stop, but that he was placed in custody after the arresting officer had probable cause for the arrest based on identification of the defendant by the victim and the finding of an outstanding warrant for the defendant's arrest. People v. Young, 923 P.2d 145 (Colo. App. 1995).

Following Arizona v. Gant, 556 U.S. 332 (2009), the search incident to arrest exception does not apply in this case, and the search of the passenger compartment of defendant's car was unconstitutional. Because statements defendant made following the discovery of drugs were the fruit of the unlawful search, the evidentiary use of the statements must also be suppressed. Perez v. People, 231 P.3d 957 (Colo. 2010).

Applied in People v. Taylor, 190 Colo. 144, 544 P.2d 392 (1975); People v. Derrera, 40 Colo. App. 86, 570 P.2d 558 (1977).

16-3-104. Arrest by peace officer from another jurisdiction - definitions.

(1) As used in this section:

(a) "State" means any state of the United States and the District of Columbia;

(b) "Peace officer" means any officer of another state having powers of arrest in that state;

(c) "Fresh pursuit" means the pursuit without unnecessary delay of a person who has committed a crime or who is reasonably believed to have committed a crime.

(2) Any peace officer of another state who enters this state in fresh pursuit and continues within this state in fresh pursuit of a person in order to arrest him on the ground that he has

committed a crime in the other state has the same authority to arrest and hold such person in custody as a peace officer of this state has to arrest and hold a person in custody.

(3) Except as otherwise provided by law, if an arrest is made in this state by a peace officer of another state in accordance with the provisions of this section, he shall without unnecessary delay take the person arrested before the nearest available judge of a court of record. Such judge shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he shall commit the person arrested to await the time provided by law for issuance of an extradition warrant by the governor of this state, or the waiver thereof, and shall set bail if the offense is bailable under the laws of the state of Colorado. If the judge determines that the arrest was unlawful, he shall order the discharge of the person arrested.

Source: L. 72: R&RE, p. 198, § 1. **C.R.S. 1963:** § 39-3-104.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary, and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950)(written under repealed CSA, C 48, § 564).

Three criteria used in determining "fresh pursuit". Three criteria are to be utilized in analyzing what police activity can be categorized as fresh pursuit. They are: (1) The police must act without unnecessary delay; (2) the pursuit must be continuous and uninterrupted, but there need not be continuous surveillance of the suspect or uninterrupted knowledge of his whereabouts; and (3) the relationship between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect — the greater the length of time, the less likely the police action constituted fresh pursuit. Charnes v. Arnold, 198 Colo. 362, 600 P.2d 64 (1979).

Characterization as "fresh pursuit" not precluded even though officer does not follow suspect's route. Where the police responded immediately to a call concerning a hit-and-run accident and promptly pursued the only lead available, the address of the owner of the vehicle, the fact that the officer did not follow the suspect's route did not preclude the characterization of his action as fresh pursuit. Charnes v. Arnold, 198 Colo. 362, 600 P.2d 64 (1979).

16-3-105. Release by arresting authority.

(1) When a person has been arrested without a warrant, he may be released by the arresting authority on its own authority if:

(a) The arresting officer or a responsible command officer of the arresting authority is satisfied that there are no adequate grounds for criminal complaint against the person arrested; or

(b) The offense for which the person was arrested and is being held is a misdemeanor or petty offense and the arresting officer or a responsible command officer of the arresting authority is satisfied that the person arrested will obey a summons commanding his appearance at a later date.

(1.3) Notwithstanding subsection (1) of this section, if a person is solely suspected of a level 1 drug misdemeanor for possession of a controlled substance pursuant to section 18-18-403.5 (2)(c) or (2.5)(a)(II), or solely suspected of drug possession in violation of municipal law, and a colorimetric field drug test was used, the peace officer shall not arrest the person and shall instead release the person and issue a summons commanding the person's appearance at a later date.

(1.5) No person arrested for any crime or offense, the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), C.R.S., shall be released at the scene of the alleged crime pursuant to subsection (1) of this section.

(2) If the person is released in accordance with subsection (1)(b) or (1.3) of this section, the person shall be given a summons and complaint as provided for in sections 16-2-104 and 16-2-106 and shall sign a written acknowledgment of its receipt and a promise to appear at the time and place specified.

Source: L. 72: R&RE, p. 199, § 1. **C.R.S. 1963:** § 39-3-105. **L. 94:** (1.5) added, p. 2034, § 12, effective July 1. **L. 2026:** (1.3) added and (2) amended, (HB 26-1020), ch. 12, p. 55, § 4, effective March 26.

Editor's note: Section 6 of chapter 12 (HB 26-1020), Session Laws of Colorado 2026, provides that the act changing this section applies to offenses committed on or after March 26, 2026.

ANNOTATION

The statutes and procedural rules do not require that person charged with a misdemeanor be given a copy of the complaint prior to being released on bail. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

Applied in People v. Rothe, 43 Colo. App. 274, 606 P.2d 79 (1979).

16-3-106. Peace officer may pursue offender.

When any peace officer is in fresh pursuit of any alleged offender, having a warrant for his arrest or having knowledge that such warrant has been issued, or, in the absence of an arrest warrant, when the offense was committed in the officer's presence or the officer has reasonable grounds to believe that the alleged offender has committed a criminal offense, and the alleged offender crosses a boundary line marking the territorial limit of his authority, such peace officer may pursue him beyond such boundary line and make the arrest, issue a summons and complaint, or issue a notice of penalty assessment.

Source: L. 72: R&RE, p. 199, § 1. **C.R.S. 1963:** § 39-3-106.

ANNOTATION

Purpose of section. The general assembly, in enacting this section, intended to limit peace officers to exercising their arrest powers and making their law enforcement efforts within the territorial limits of their authority and to require that local peace officers be advised of, and participate in, the extraterritorial law enforcement activities of other peace officers. People v. Wolf, 635 P.2d 213 (Colo. 1981); People v. Florez, 680 P.2d 219 (Colo. 1984).

This section, by negative inference, limits peace officers' authority to arrest to the territorial boundaries of their jurisdiction unless they are in fresh pursuit or are accompanied by officers of the jurisdiction in which the arrest is made. People v. Lindsey, 805 P.2d 1134 (Colo. App. 1990).

Violations of this section are not per se violations of constitutionally protected rights. People v. Thiret, 685 P.2d 193 (Colo. 1984); People v. Vigil, 729 P.2d 360 (Colo. 1986); People v. Ray, 109 P.3d 996 (Colo. App. 2004).

When this section has been violated by a peace officer, evidence obtained as a result of the violation should be suppressed if the violation also infringes a constitutional right of the defendant, such as the right to be free from unreasonable searches and seizures. People v. Vigil, 729 P.2d 360 (Colo. 1986).

An arrest in violation of the statute does not mandate suppression of evidence obtained therefrom unless the violation is willful or so egregious as to violate the defendant's constitutional rights. People v. Lindsey, 805 P.2d 1134 (Colo. App. 1990); People v. Loggins, 981 P.2d 630 (Colo. App. 1998).

This section held not to require the suppression of evidence where police officer accompanied injured person to a hospital outside his jurisdiction, emergency room personnel discovered cocaine on the injured person, and the cocaine was delivered to the

officer. People v. Loggins, 981 P.2d 630 (Colo. App. 1998).

Statutory violation not willful where undercover narcotics detective was directed by co-defendant to travel to adjacent county, detective did so in good faith, and failure to have done so could have compromised detective's cover and sting operation. People v. Ray, 109 P.3d 996 (Colo. App. 2004).

The departure by an officer from the scene of the crime to get the assistance of other officers, returning 45 minutes later, did not constitute such a break in the chain of events that at the time of the ensuing arrest he would have been required to have had a warrant, inasmuch as an arrest incidental to fresh pursuit need not be immediate, recognizing that considerable time may be needed to procure necessary assistance; the peace officers had probable cause to arrest, acted without unreasonable delay, and thus a warrant was not required. Schindelar v. Michaud, 411 F.2d 80 (10th Cir. 1969) (decided under repealed § 39-14-5, C.R.S. 1963).

Where the police officer began chasing the defendant in Denver and remained in fresh pursuit until the automobile was finally stopped in Aurora, his authority to partake in the arrest and related matters in the form of an inventory search existed beyond the boundaries of his original jurisdiction by virtue of this section. People v. Roddy, 188 Colo. 55, 532 P.2d 958 (1975).

"Fresh pursuit" defined as in section 16-3-104. Although the definition in § 16-3-104(1)(c) was promulgated by the general assembly to define "fresh pursuit" as used in that section, it is persuasive in defining the same term as used in this section. Charnes v. Arnold, 198 Colo. 362, 600 P.2d 64 (1979).

Three criteria used in determining "fresh pursuit". Three criteria are to be utilized in analyzing what police activity can be categorized as fresh pursuit. They are: (1) The police must act without unnecessary delay; (2) the pursuit must be continuous and uninterrupted, but there need not be continuous surveillance of the suspect or uninterrupted knowledge of his whereabouts; and (3) the relationship between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect — the greater the length of time, the less likely the police action constituted fresh pursuit. Charnes v. Arnold, 198 Colo. 362, 600 P.2d 64 (1979).

Characterization as "fresh pursuit" not precluded even though officer does not follow suspect's route. Where the police responded immediately to a call concerning a hit-and-run accident and promptly pursued the only lead available, the address of the owner of the vehicle, the fact that the officer did not follow the suspect's route did not preclude the characterization of his action as fresh pursuit. Charnes v. Arnold, 198 Colo. 362, 600 P.2d 64 (1979).

Execution of arrest warrant where no fresh pursuit. Where the element of "fresh pursuit" is not present, it is immaterial who executes an arrest warrant provided that individuals with lawful authority to make an arrest are actually present at the scene of the arrest and participate in the arrest process.

People v. Schultz, 200 Colo. 47, 611 P.2d 977 (1980).

Court interpreted "reasonable grounds" to mean that a police officer in fresh pursuit can only make an extra-territorial warrantless arrest if, at the time the party crosses the boundary, the officer has "probable cause" to believe a crime has been committed. People v. McKay, 10 P.3d 704 (Colo. App. 2000).

Applied in People v. Lott, 197 Colo. 78, 589 P.2d 945 (1979).

16-3-107. Custodial care of prisoner in transit.

It is lawful for any peace officer who has the custody of any alleged offender following an arrest to pass through any counties which lie on his route between the place of arrest and the county to which he is taking the alleged offender and to lodge him in any jail on his route for safe custody for one night or more, as the occasion requires.

Source: L. 72: R&RE, p. 199, § 1. **C.R.S. 1963:** § 39-3-107.

16-3-107.5. Transportation of prisoners - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Contracting entity" means any person or entity contracting with this state, another state, or a political subdivision of this or another state to transport a prisoner; except that "contracting entity" shall not include the department of corrections, any community corrections program operated pursuant to this title, or a county sheriff of a county located within the state of Colorado.

(b) "Prisoner" means any person convicted of an offense in Colorado or any other state or any person under arrest for suspicion of the commission of a crime in Colorado or any other state.

(c) "Secure facility" means a county, city and county, or municipal jail or a non-state-owned prison facility, as defined in section 17-24-125 (1)(b), C.R.S.

(d) "Supervising individual" means a person employed by a contracting entity to transport prisoners from one location to another.

(e) "Transport" means to move a prisoner within, into, out of, or through the state of Colorado.

(2) (a) A supervising individual in each vehicle in which one or more prisoners are being transported by a contracting entity shall maintain a log book that documents for each prisoner:

(I) His or her name, date of birth, social security number, and any prescribed medication;

(II) The name of the jurisdictional authority authorizing the transportation, the date and time that the prisoner was first picked up, and the date and time that the prisoner was released to the jurisdictional authority;

(III) The date, time, length, and purpose of any stop made by the vehicle transporting any prisoner; and

(IV) Information concerning any injuries suffered by the prisoner while being transported.

(b) Upon request, a supervising individual shall surrender for inspection the log book required by paragraph (a) of this subsection (2) to any federal, state, county, or municipal law enforcement officer.

(3) Whenever a prisoner is transported by a contracting entity, the prisoner:

(a) At a minimum, shall be shackled and placed in a transport belt or chains with handcuffs and shall be under the observation of at least one supervising individual who shall remain awake;

(b) (Deleted by amendment, L. 2000, p. 852, § 59, effective May 24, 2000.)

(c) Shall not be shackled to another prisoner; and

(d) Shall have available in the vehicle in which the prisoner is being transported appropriate attire for the season, including footwear.

(3.5) Any vehicle in which one or more prisoners are being transported by a contracting entity shall only contain as many individuals as the vehicle was designed to carry.

(4) (a) At least once every twenty-four hours that a prisoner is being transported by a contracting entity, the prisoner shall be housed unshackled in a cell at a secure facility for a period of not less than six hours and permitted to shower and sleep.

(b) The contracting entity or the supervising individual shall, if practicable, notify the chief law enforcement officer in charge of the secure facility in which the prisoner is to be housed, at least twenty-four hours prior to the delivery of the prisoner to the secure facility, of each prisoner's name, date of birth, criminal history, and any special medical needs.

(5) Whenever a vehicle transporting one or more prisoners for a contracting entity stops for more than two hours for any reason:

(a) The supervising individual shall promptly notify, if practicable, the law enforcement agency of the local jurisdiction in which the vehicle is stopped; and

(b) All prisoners shall be housed in a secure facility unless, according to the chief law enforcement officer of the secure facility, it would be impractical to do so.

(6) Whenever a vehicle transporting prisoners for a contracting entity enters the state, a supervising individual shall promptly notify the Colorado bureau of investigation of the number of prisoners and the location or locations within the state where the vehicle is scheduled to stop.

(7) Whenever a prisoner is housed in a secure facility, the contracting entity shall pay to the operator of the secure facility providing the housing the actual cost of housing the prisoner.

(8) Any individual or entity who violates any provision of subsections (2) to (5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars.

(9) If any prisoner being transported escapes due to the negligence of the contracting entity or a supervising individual, the contracting entity shall be held liable for all actual costs incurred by any governmental entity in recapturing the escaped prisoner and all actual damages caused by the escaped prisoner while at large.

Source: L. 98: Entire section added, p. 699, § 1, effective May 18. **L. 2000:** (3)(b) amended and (3.5) added, p. 852, § 59, effective May 24.

16-3-108. Issuance of arrest warrant without information or complaint.

A court shall issue an arrest warrant only on affidavit sworn to or affirmed before the judge or a notary public and relating facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the person without unnecessary delay before the nearest judge of a court of record. Once a person is brought before the judge, the Colorado rules of criminal procedure are applicable.

Source: L. 72: R&RE, p. 199, § 1. **C.R.S. 1963:** § 39-3-108. **L. 95:** Entire section amended, p. 463, § 3, effective July 1.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962).

Annotator's note. Since § 16-3-108 is similar to repealed § 39-2-3, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

This section does not authorize a private citizen to seek an arrest warrant. Kailey v. Chambers, 261 P.3d 792 (Colo. App. 2011).

An arrest warrant is not appropriate where there are no facts to show that the arrestee has yet committed a criminal offense. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

But federal warrants supported by affidavits provide basis for arrest. Even though the complaint filed by a district attorney, standing alone, would not support an arrest warrant because no facts were set forth to establish probable cause, where federal warrants were supported by affidavits which complied with all constitutional requirements, they provided a legitimate basis for an arrest. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

Applied in People v. Schultz, 200 Colo. 47, 611 P.2d 977 (1980).

16-3-109. Peace officer - authority to make arrest while off duty.

A peace officer, as described in section 16-2.5-101, who, while off duty, is employed in a capacity specifically permitted by policies and procedures adopted by such officer's governmental entity employer shall possess the status and authority which would otherwise be afforded an on-duty peace officer as described in section 16-2.5-101, acting within the course and scope of such officer's employment. To be within the scope of this section, a peace officer employed by a nongovernmental entity must be in uniform with the peace officer's public entity badge plainly visible, or such peace officer must have been approved for plain clothes work by the peace officer's governmental employer.

Source: L. 92: Entire section added, p. 438, § 1, effective June 3. **L. 93:** Entire section amended, p. 1776, § 36, effective June 6. **L. 2003:** Entire section amended, p. 1621, § 35, effective August 6.

16-3-110. Peace officers - duties.

(1) For the purposes of this section, "peace officer" means:

(a) A peace officer as described in section 16-2.5-101; or

(b) A federal law enforcement officer who, pursuant to federal statutes and the policy of the agency by which the officer is employed, is authorized to use deadly physical force in the performance of his or her duties.

(2) A peace officer shall have the authority to act in any situation in which a felony or misdemeanor has been or is being committed in such officer's presence, and such authority shall

exist regardless of whether such officer is in the jurisdiction of the law enforcement agency that employs such officer or in some other jurisdiction within the state of Colorado or whether such officer was acting within the scope of such officer's duties when he or she observed the commission of the crime, when such officer has been authorized by such agency to so act. The local law enforcement agency having jurisdiction shall be immediately notified of the arrest and any person arrested shall be released to the custody of the local law enforcement agency.

(3) This section shall not be construed to authorize any federal officer to use deadly physical force in excess of that authorized in section 18-1-707, C.R.S.

Source: L. 93: Entire section added, p. 703, § 1, effective July 1. **L. 96:** Entire section amended, p. 735, § 4, effective July 1. **L. 2003:** (1)(a) amended, p. 1624, § 43, effective August 6.

ANNOTATION

Law reviews. For article, "Controlling the Criminal Justice System: Colorado as a Case Study", see 94 Denv. L. Rev. 497 (2017).

When officers stopped driver for a traffic infraction outside their jurisdiction, they violated subsection (2). Turning without a signal is a traffic infraction, not a felony or misdemeanor, under Colorado law. United States v. Gonzales, 535 F.3d 1174 (10th Cir. 2008).

PART 2

AUTHORITY OF PERSON NOT A PEACE OFFICER TO MAKE AN ARREST

16-3-201. Arrest by a private person.

A person who is not a peace officer may arrest another person when any crime has been or is being committed by the arrested person in the presence of the person making the arrest.

Source: L. 72: R&RE, p. 199, § 1. **C.R.S. 1963:** § 39-3-201.

ANNOTATION

Law reviews. For comment, "Leake v. Cain: Abrogation of Public Duty Doctrine in Colorado?", see 59 U. Colo. L. Rev. 383 (1988).

Annotator's note. Since § 16-3-201 is similar to repealed § 39-2-20, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

A private citizen may arrest for any crime committed in his presence. Schiffner v. People, 173 Colo. 123, 476 P.2d 756 (1970).

Officer outside of jurisdiction arrests with authority of private citizen. A peace officer acting outside the territorial limits of his jurisdiction does not have any less authority to arrest than does a person who is a private citizen. People v. Wolf, 635 P.2d 213 (Colo. 1981).

When "in presence" requirement met. The "in presence" requirement of this section is met if the arrestor observes acts which are in themselves sufficiently indicative of a crime in the course of commission. People v. Olguin, 187 Colo. 34, 528 P.2d 234 (1974).

F.B.I. agent had authority as private citizen to arrest one escaping from police station in his presence. Schiffner v. People, 173 Colo. 123, 476 P.2d 756 (1970).

Hospital security guards, like any other citizens, have the power to make a citizen's arrest. People v. Olguin, 187 Colo. 34, 528 P.2d 234 (1974).

An arrest must be first authorized under this section before a private person can use physical force to effect the arrest. People v. Joyce, 68 P.3d 521 (Colo. App. 2002).

Applied in People v. Lott, 197 Colo. 78, 589 P.2d 945 (1979).

16-3-202. Assisting peace officer - arrest - furnishing information - immunity.

(1) A peace officer making an arrest may command the assistance of any person who is in the vicinity.

(2) A person commanded to assist a peace officer has the same authority to arrest as the officer who commands his assistance.

(3) A person commanded to assist a peace officer in making an arrest shall not be civilly or criminally liable for any reasonable conduct in aid of the officer or for any acts expressly directed by the officer.

(4) Private citizens, acting in good faith, shall be immune from any civil liability for reporting to any police officer or law enforcement authority the commission or suspected commission of any crime or for giving other information to aid in the prevention of any crime.

Source: L. 72: R&RE, p. 200, § 1. **C.R.S. 1963:** § 39-3-202. **L. 77:** (4) added, p. 851, § 1, effective July 1.

Cross references: For refusing to aid a peace officer, see § 18-8-107; for authority of sheriffs to command aid, see § 30-10-516.

ANNOTATION

Aid of citizen does not make him agent of state in state action cases. The mere existence of the common-law right of a private citizen to aid in an arrest is not such significant state involvement as to make him an agent of the state, for in state action cases it has been required that the state enforce or require adherence to some unconstitutional private act and the mere fact that the state common law or custom permits the act is not sufficient to support a finding of state action under the federal civil rights act. Warren v. Cummings, 303 F. Supp. 803 (D. Colo. 1969) (decided under repealed § 39-2-20, C.R.S. 1963).

This section grants immunity for citizens who report crimes to law enforcement in good faith. It necessarily follows that persons who report a crime in bad faith do not have immunity for their actions. Wolf v. Brenneman, 2024 COA 71, 557 P.3d 798.

Applied in People v. Lott, 197 Colo. 78, 589 P.2d 945 (1979).

16-3-203. Preventing a crime - reimbursement.

Any person who is not a peace officer as defined in section 24-31-301 (5), C.R.S., who is made the defendant in any civil action as a result of having sought to prevent a crime being committed against any other person, and who has judgment entered in his favor shall be entitled to all his court costs and to reasonable attorney fees incurred in such action.

Source: L. 77: Entire section added, p. 852, § 1, effective June 19. **L. 83:** Entire section amended, p. 962, § 6, effective July 1, 1984. **L. 92:** Entire section amended, p. 1097, § 5, effective March 6.

Cross references: (1) For awarding of attorney fees in civil actions generally, see § 13-17-102.

(2) For the legislative declaration contained in the 1992 act amending this section, see section 12 of chapter 167, Session Laws of Colorado 1992.

ANNOTATION

This section shifts payment of the defendant's court costs and reasonable attorney fees to the plaintiff when the defendant prevails and the court finds that the defendant acted in good faith to prevent what he or she thought was a current or future crime. Schwankl v. Davis, 85 P.3d 512 (Colo. 2004).

PART 3

SEARCHES AND SEIZURES

16-3-301. Search warrants - issuance - grounds - exception - definitions.

(1) A search warrant authorized by this section may be issued by any judge of a court of record.

(2) A search warrant may be issued under this section to search for and seize any property:

(a) Which is stolen or embezzled; or

(b) Which is designed or intended for use as a means of committing a criminal offense; or

(c) Which is or has been used as a means of committing a criminal offense; or

(d) The possession of which is illegal; or

(e) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or

(f) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(g) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health; or

(h) Which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

(3) A search warrant may be issued under this section to search for any person for whom a lawful arrest warrant is outstanding.

(4) Notwithstanding subsection (2) of this section, a court shall not issue a search warrant to search for and seize any property that relates to an investigation into a legally protected health-care activity, as defined in section 12-30-121 (1)(d).

Source: L. 72: R&RE, p. 200, § 1. **C.R.S. 1963:** § 39-3-301. **L. 85:** (2)(g) amended and (2)(h) and (3) added, p. 615, §§ 1, 2, effective June 2. **L. 2023:** (4) added, (SB 23-188), ch. 68, p. 246, § 10, effective April 14.

Cross references: (1) For provisions concerning search and seizure other than the provisions of this section and rule 41 of the Colorado Rules of Criminal Procedure, see § 7 of article II of the Colorado Constitution; for the issuance of search warrants under the "Colorado Children's Code", see §§ 19-1-112, 19-2-504, and 19-2-505.

(2) For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with searches, see 61 Den. L.J. 281 (1984). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with searches, see 62 Den. U.L. Rev. 159 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to warrant requirements and protection from searches, see 15 Colo. Law. 1564 and 1966 (1986). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with unreasonable searches and seizures, see 65 Den. U. L. Rev. 535 (1988). For a discussion of Tenth Circuit decisions dealing with search and seizure, see 66 Den. U. L. Rev. 813 (1989).

Annotator's note. For further annotations concerning search and seizure, see § 7 of art. II, Colo. Const., and Crim. P. 41.

This section does not require that a judge of a Colorado court of record issue a search warrant for the warrant to be valid. Rather, any judge of a court of record may issue a search warrant. People v. Marko, 2015 COA 139, 434 P.3d 618, aff'd, 2018 CO 97, 432 P.3d 607.

Nothing in the plain language of this section precludes the introduction in a Colorado criminal trial of evidence constitutionally seized under a search warrant issued by a detached and neutral magistrate from another jurisdiction. People v. Marko, 2015 COA 139, 434 P.3d 618, aff'd, 2018 CO 97, 432 P.3d 607.

Applied in People v. Stoppel, 637 P.2d 384 (Colo. 1981).

16-3-301.1. Court orders for the production of records - definitions.

(1) A judge of a court of record may order the production of records.

(2) A court may order the production of records under this section to require the production of records in the actual or constructive control of a business entity:

(a) That have been stolen or embezzled;

(b) That are designed or intended for use as a means of committing a criminal offense;

(c) That are or have been used as a means of committing a criminal offense;

(d) The possession of which is illegal;

(e) That would be material evidence in a subsequent criminal prosecution in this state, another state, or federal court;

(f) The seizure of which is expressly required, authorized, or permitted by a statute of this state or the United States; or

(g) That would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest order is outstanding.

(3) (a) A court shall order the production of records only on receipt of an affidavit sworn to or affirmed before the judge and relating facts sufficient to:

(I) Identify or describe, as nearly as may be, the business entity that is in actual or constructive control of the records;

(II) Identify or describe, as nearly as may be, the records that shall be produced;

(III) Establish the grounds for issuance of the court order for production of records or probable cause to believe the grounds exist; and

(IV) Establish probable cause that the records described are in the actual or constructive control of the business entity.

(b) The affidavit required by paragraph (a) of this subsection (3) may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before the issuance of the court order for the production of records. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a court order for the production of records shall be attached to the court order for the production of records filed with the court.

(4) (a) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that the grounds exist, the court shall issue a court order for the production of records, which shall:

(I) Identify or describe, as nearly as may be, the business entity that is in actual or constructive control of the records;

(II) Identify or describe, as nearly as may be, the records that shall be produced;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits or testimony have been taken in support of the motion.

(b) The court order for the production of records may also contain other and further orders that the court deems necessary to comply with the provisions of this statute, or to provide for the custody or delivery to the proper person of the records produced and seized under the order, or otherwise to accomplish the purpose of the order.

(c) Unless the court otherwise directs, every court order for the production of records shall authorize a Colorado criminal investigator or peace officer:

(I) To serve the order during normal business hours of the business entity or at any other convenient time for the business entity that is in actual or constructive control of the records; and

(II) To receive the records during normal business hours of the business entity that is in the actual or constructive control of the records.

(5) (a) A court order for the production of records may be granted to a Colorado criminal investigator or peace officer whose affidavit supports the issuance of the order. The Colorado criminal investigator or peace officer granted the order need not have authorization to execute a search warrant in the jurisdiction in which the business entity is located.

(b) A court order for the production of records shall be served upon the business entity to whom it is directed within fourteen days after its date.

(c) A court order for production of records may be served in the same manner as a summons in a civil action or by personal service on a manager or supervisor of the business entity that is in actual or constructive control of the records or through any electronic or other means established and utilized by the business to receive service of process.

(6) (a) A business entity that is properly served with a court order for the production of records shall deliver the records, or copies of the records, identified in the court order to the officer who is designated in the court order within thirty-five days after the date the court order is served. The business entity shall also provide a notarized attestation of accuracy that the records produced represent complete and accurate copies of all records identified in the court order that are in the actual or constructive control of the business entity. If the business entity does not produce all records identified in the court order for production of records, the records not produced shall be identified. The attestation of accuracy shall be signed by the records custodian, or an officer or director of the business entity, who shall attest to the truth of the attestation to the

best of the person's knowledge, information, and belief. The attestation may also attest to any one or all of the following: That the records were made at or near the time by, or from information transmitted by, a person with knowledge; that the records were kept in the course of a regular business activity; and that it was the regular practice of the business to record the information contained in the records. The business entity need only provide a copy of the attestation at the time of providing the records to the officer and may provide the original of the attestation to the officer within fourteen days after providing the records. The records and attestation of accuracy shall be sufficient to establish the authenticity of the records produced, without further necessity of extrinsic evidence.

(b) A business entity that is served with a court order for the production of records may file a motion in the court that issued the court order to allow for an extension of time in which to comply with the court order. The motion shall be filed within the time period required to produce the records. The motion shall state with particularity the reasons why the business entity cannot comply with the court order. The motion shall be served upon the Colorado criminal investigator or peace officer named in the court order.

(c) Upon the filing of a motion for an extension of time, the court shall hold a hearing within fourteen days, unless the business entity and the Colorado criminal investigator or peace officer named in the court order agree to a later time. The court may grant an extension for a reasonable time for the business to produce the records upon good cause shown or by agreement with the Colorado criminal investigator or peace officer named in the court order.

(d) Failure of the business entity to comply with the requirements of a court order for the production of records shall support a finding of contempt of court.

(e) Upon receiving the records from the business entity, the criminal investigator or peace officer named in the court order shall file a return and inventory with the court indicating the records that have been received and the date upon which the records were received. The criminal investigator or peace officer named in the court order may also file with the court the original of the attestation of authenticity and completeness.

(7) Records produced pursuant to a court order for the production of records may be supplied in any form or format that is convenient for the business entity and that may be accessed by the Colorado criminal investigator or peace officer named in the court order or his or her agency or department. Production of records using proprietary software or another method that is not accessible shall not constitute compliance with the requirements of the court order. The court may order the defendant pay the cost of production of records.

(8) A cause of action shall not lie against a business entity or an officer, director, or employee, for providing records pursuant to a court order for the production of records.

(9) Nothing in this section shall preclude a Colorado criminal investigator or peace officer from seeking a search warrant.

(10) The provisions of this section shall govern the procedures for court orders for the production of records. Motions to suppress evidence seized pursuant to a court order for the production of records shall be governed by the rules of criminal procedure.

(11) As used in this section, unless the context otherwise requires:

(a) "Actual or constructive control" means the records are maintained or stored in any form or format on the premises of the business entity or at another location or facility under the custody or control of the business entity or a parent or subsidiary business, including pursuant to an agreement or contract with the business entity or any parent or subsidiary business and third-party service provider, in Colorado or elsewhere.

(b) "Business entity" means a corporation or other entity that is subject to the provisions of title 7, C.R.S.; a foreign corporation qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including a federally chartered or authorized financial institution; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

(c) "Colorado criminal investigator" means an employee of the Colorado department of regulatory agencies, the Colorado department of labor and employment, or the Colorado department of revenue who has been classified as a criminal investigator by the director of the employing department.

(d) "Peace officer" means a peace officer as described in section 16-2.5-101.

(e) "Records" shall include all documents, electronic notations, journal entries, data, reports, statements, financial documentation, correspondence, electronic mail, or other information retained by a business entity in connection with business activity, but shall not include an item that is privileged pursuant to section 13-90-107, C.R.S., unless the person who possesses the privilege gives consent.

Source: L. 2003: Entire section added, p. 978, § 17, effective April 17. **L. 2004:** (4)(a)(I), (6)(e), (11)(a), (11)(b), and (11)(d) amended, p. 1377, § 2, effective July 1. **L. 2010:** (4)(c)(I), (5)(c), (6)(a), and (11)(c) amended, (HB 10-1132), ch. 122, p. 406, § 1, effective August 11. **L. 2012:** (5)(b), (6)(a), and (6)(c) amended, (SB 12-175), ch. 208, p. 843, § 59, effective July 1.

16-3-301.5. Search warrant for firearms possessed by a respondent in an extreme risk protection order.

(1) Any court may issue a search warrant to search for and take custody of any firearm in the possession of a named respondent in an extreme risk protection order or temporary extreme risk protection order filed pursuant to article 14.5 of title 13 if the application for the warrant

complies with all required provisions of section 16-3-303 and also provides facts sufficient to establish by probable cause:

(a) That the named person is a named respondent in an extreme risk protection order or temporary extreme risk protection order filed pursuant to article 14.5 of title 13; and

(b) That the named person is in possession of one or more firearms; and

(c) The location of such firearms; and

(d) Any other information relied upon by the applicant and why the applicant considers such information credible and reliable.

(2) The return or disposal of any firearm taken custody of pursuant to this section shall be accomplished pursuant to section 13-14.5-109.

Source: L. 2019: Entire section added, (HB 19-1177), ch. 108, p. 399, § 3, effective April 12. **L. 2023:** Entire section R&RE, (SB 23-170), ch. 124, p. 481, § 5, effective April 28.

16-3-302. Search warrants - municipalities - inspections - grounds.

A search warrant may be issued by a judge of any municipal court by compliance with the applicable rule of the Colorado municipal court rules.

Source: L. 72: R&RE, p. 200, § 1. **C.R.S. 1963:** § 39-3-302.

16-3-303. Search warrants - application - definition.

(1) A search warrant shall issue only on affidavit sworn to or affirmed before the judge and relating facts sufficient to:

(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(c) Establish the grounds for issuance of the warrant or probable cause to believe that such grounds exist; and

(d) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(3) Procedures governing application for and issuance of search warrants consistent with this section may be established by rule of the supreme court.

(4) A no-knock search warrant shall be issued only if the affidavit for such warrant:

(a) Complies with the provisions of subsections (1), (2), and (3) of this section;

(a.5) Establishes that a no-knock entry is necessary because of a credible threat to the life of any person, including the peace officers executing the warrant;

(b) Specifically requests the issuance of a no-knock search warrant; and

(c) Has been reviewed and approved for legal sufficiency and signed by a district attorney pursuant to section 20-1-106.1 (1)(b), C.R.S. Such review and approval may take place as allowed by statute or court rule or by means of facsimile transmission, telephonic transmission, or other electronic transfer.

(5) If the grounds for the issuance of a no-knock search warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant. The statement shall not identify the confidential informant.

(6) For the purposes of this section, unless the context otherwise requires, "no-knock search warrant" means a search warrant that does not require compliance with section 16-3-305 (7)(d).

Source: L. 72: R&RE, p. 200, § 1. **C.R.S. 1963:** § 39-3-303. **L. 2000:** (4), (5), and (6) added, p. 650, § 1, effective July 1. **L. 2001:** (4)(c) amended, p. 1270, § 19, effective June 5. **L. 2023:** (4)(a.5) added and (6) amended, (SB 23-254), ch. 395, p. 2358, § 1, effective June 6.

ANNOTATION

I. General Consideration.

II. Content and Sufficiency of Affidavit.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Veracity Challenges in Colorado: A Primer", see 14 Colo. Law. 227 (1985).

Annotator's note. (1) Since § 16-3-303 is similar to repealed § 39-2-6, C.R.S. 1963,

relevant cases construing that provision have been included in the annotations to this section.

(2) For further annotations concerning search and seizure, see § 7 of art. II of the Colo. Const., and Crim. P. 41.

Unreasonable searches and seizures forbidden. Section 7 of art. II, Colo. Const., as well as the fourth and fourteenth amendments to the United States constitution, forbids unreasonable searches and seizures and further requires that searches and seizures be made only pursuant to a warrant based upon probable cause and supported by oath or affirmation. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Search authorized only upon showing of probable cause. It is only upon a showing of probable cause that the legal doors are opened to allow the police to gain official entry into an individual's domain of privacy for the purpose of conducting a search or to make an official seizure under the constitution. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Probable cause defined. Probable cause exists where the facts and circumstances within the officers' knowledge, and of which they had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. In dealing with probable cause, one deals with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Probable cause is an elusive term and is incapable of any precise definition which would permit a mechanical application under all circumstances. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

Totality of circumstances test adopted for determining probable cause. People v. Pennebaker, 714 P.2d 904 (Colo. 1986).

Anticipatory warrants are barred by statutory language and identical language in Crim. P. 41 requiring that property to be searched for, seized, or inspected "is located at, in, or upon" premise, person, place, or thing to be searched. People v. Poirez, 904 P.2d 880 (Colo. 1995).

For evidence constituting probable cause, see People v. Lindholm, 197 Colo. 270, 591 P.2d 1032 (1979).

Mere suspicion does not by itself constitute probable cause. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Mere conclusory belief or suspicion by an affiant officer is not enough upon which to base the issuance of a search warrant. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

Determination of probable cause is a judicial function to be performed by the issuing magistrate, which in Colorado may be any judge of the supreme, district, county, superior, or justice of the peace court under Crim. P. 41, and is not a matter to be left to

the discretion of a law enforcement officer who is employed to apprehend criminals and to bring before the courts for trial those who would violate the law. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

The role of the police officer in search warrant practice is limited solely to providing the judge with facts and trustworthy information upon which he, as a neutral and detached judicial officer, may make a proper determination. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

And mere affirmance of belief or suspicion of an officer is not enough. To hold otherwise would attach controlling significance to the officer's belief rather than to the magistrate's judicial determination. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Independent determination of probable cause. The fact that the police did not request a warrant to search additional places likely to contain incriminating evidence is irrelevant to the independent determination of probable cause to search the place specified in the warrant. People v. Chase, 675 P.2d 315 (Colo. 1984).

A court may sever deficient portions of a search warrant without invalidating the entire warrant. When a warrant lists several locations to be searched, a court may suppress evidence recovered at a location for which police lacked probable cause but admit evidence recovered at locations for which probable cause was established. Under this severability doctrine, items that are illegally seized during the execution of a valid search warrant do not affect admissibility of evidence legally obtained while executing the warrant. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

Applied in People v. Conwell, 649 P.2d 1099 (Colo. 1982).

II. CONTENT AND SUFFICIENCY OF AFFIDAVIT.

Affidavit need not be attached to warrant served. There is nothing which requires that a person given a warrant must receive a copy of the underlying affidavit or that a copy thereof must be attached to the copy of the warrant which is served at the time of the search. People v. Papez, 652 P.2d 619 (Colo. App. 1982).

But documents attached to and incorporated in an affidavit by reference need not be sworn to separately and may thus fall within the four corners of the affidavit. People v. Campbell, 678 P.2d 1035 (Colo. App. 1983).

Probable cause must be affirmed in writing. The fourth amendment to the United States constitution requires probable cause supported by oath or affirmation as a condition precedent to the valid issuance of a search warrant. Section 7 of art. II, Colo. Const., is even more restrictive and provides that probable cause must be supported by oath or affirmation reduced to writing. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Under both the fourth amendment of the United States constitution and § 7 of art. II, Colo. Const., no search warrants may issue without a showing of probable cause, which,

under the Colorado constitution, must be affirmed in writing before a search warrant may issue. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

A search warrant may properly issue only upon written affidavit establishing probable cause for the belief that the items sought are or will be located on the premises to be searched at the time at which the warrant is procured, or within a reasonable time thereafter. People v. Erthal, 38 Colo. App. 245, 556 P.2d 1228 (1976), aff'd, 194 Colo. 147, 570 P.2d 534 (1977).

While an officer's "training and experience" may be considered in determining probable cause, such training and experience cannot substitute for an evidentiary nexus, prior to the search, between the place to be searched and any criminal activity. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

Probable cause exists when an affidavit for a search warrant alleges sufficient facts to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

During a controlled drug transaction, probable cause exists to search the location to which the seller went before selling the drugs to the police. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

Judge must look within the four corners of the affidavit to determine whether there are grounds for the issuance of a search warrant in determining whether the affidavit is sufficient. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Woods, 175 Colo. 34, 485 P.2d 491 (1971); People v. Lindholm, 197 Colo. 270, 591 P.2d 1032 (1979); People v. Atley, 727 P.2d 376 (Colo. 1986).

In determining whether an affidavit is sufficient to support the issuance of a search warrant, the magistrate must look only within the four corners of the affidavit, and verbal communications to the magistrate of additional supporting information cannot correct an affidavit which is basically deficient in its statement of the underlying facts and the circumstances relied upon. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

The court is restricted to the information contained within the four corners of the affidavit. Thus, it cannot bolster the insufficient affidavit with additional information not conveyed to the magistrate in the application for the warrant. People v. Miller, 75 P.3d 1108 (Colo. 2003).

Existence of information outside affidavit is immaterial. The fact that the police might have had additional information which could have provided a basis for the issuance of the warrant is of no consequence. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Verbal communication of facts, as contrasted with written communication, will not suffice to establish probable cause. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Nor will the affiant's conclusory declaration that he has probable cause add strength to the showing made. People

v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Technical requirements and elaborate specificity are not required in the drafting of affidavits for search warrants. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Affidavit interpreted with common sense. In interpreting an affidavit for a search warrant and the execution of the warrant, a common sense interpretation must be applied. People v. Del Alamo, 624 P.2d 1304 (Colo. 1981).

Task of magistrate is to make practical, common-sense decision as to whether, given all circumstances stated in affidavit, there is fair probability that contraband or evidence of a crime will be found in a particular place. People v. Pennebaker, 714 P.2d 904 (Colo. 1986); People v. Atley, 727 P.2d 376 (Colo. 1986).

Affidavit must supply underlying fact. Before the issuing magistrate can properly perform his official function he must be apprised of the underlying facts and circumstances which show that there is probable cause to believe that proper grounds for the issuance of the warrant exist. If a search warrant is to be sustained, the Colorado supreme court must find that the affidavit complied with the standards set forth in Aguilar v. Texas, 378 U.S. 108 (1966), and in Spinelli v. United States, 393 U.S. 410 (1969). People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Lindholm, 197 Colo. 270, 591 P.2d 1032 (1979); People v. Dailey, 639 P.2d 1068 (Colo. 1982).

The United States supreme court, in attempting to define the area of probable cause with certainty and to provide guidelines for proper investigation, has provided a two-prong test. First, the affidavit upon which the warrant is based must set forth the underlying circumstances necessary to enable an independent judicial determination to be made, and, second, the information upon which the conclusion is based must come from a reliable or credible source. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

The affidavit for search warrant must meet the two-pronged test requiring that the officer establish: (1) The underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and (2) some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable. People v. Glaubman, 175 Colo. 41, 485 P.2d 711 (1971).

The test for determining probable cause for issuance of a search warrant based on information provided by an unidentified informant is that the affidavit in support of the warrant must allege facts from which the issuing magistrate can independently determine whether there is probable cause to believe that illegal activity is being carried on in the place to be searched. People v. Ward, 181 Colo. 246, 508 P.2d 1257 (1973).

An affidavit based on information provided in large part by an unidentified informant must, in order to establish probable cause for issuance of a search warrant: (1) Allege facts from which the

issuing magistrate could independently determine whether there were reasonable grounds to believe that illegal activity was being carried on in the place to be searched; and (2) set forth sufficient facts to allow the magistrate to determine independently if the informer is credible or the information reliable. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973); People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973); People v. Masson, 185 Colo. 65, 521 P.2d 1246 (1974).

In order to support the issuance of a search warrant the issuing magistrate must be apprised of sufficient underlying facts and circumstances, reduced to writing, under oath, from which he may reasonably conclude that probable cause exists for the issuance of the warrant. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

In testing the sufficiency of affidavits in support of search warrants, Colorado has followed the mandate of the United States supreme court in applying the two-pronged Aguilar-Spinelli test. An affidavit which relies on information supplied by a confidential informant must allege sufficient underlying facts from which the issuing magistrate can make an independent determination that illegal activity is being carried on in the place to be searched. In addition, the affidavit must set forth sufficient information so that the magistrate can determine independently that the informant is credible or that his information is reliable. People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

The two-pronged test which emphasizes the basis upon which an informer's tip will provide a foundation for the issuance of a search warrant requires that the affidavit set forth: (1) The underlying circumstances necessary to enable the magistrate independently to judge the validity of the informant's conclusion, and (2) support of the affiant's claim that the informant was credible or his information reliable. People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974).

An issuing magistrate must be properly apprised of the underlying facts and circumstances which show that there is probable cause to believe that grounds for the issuance of a search warrant exist. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

Affidavit contained sufficient underlying facts. Where the affiant states that the informant personally observed marijuana in the premises to be searched, this statement is sufficient to permit the issuing magistrate to determine independently that there were reasonable grounds to believe that illegal activity was being carried on in the place to be searched. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Where it appears that the informant personally saw an illegal narcotic on the premises, that he was given two marijuana cigarettes by someone on the premises on September 20, 1972, and that he observed other illegal narcotics at the time he left the premises on September 20, 1972, these facts are sufficient to allow a magistrate to determine whether there was probable cause to determine presence of illegal activity. People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973).

Where informant personally observed that apartment was used solely to grow mushrooms and observations were consistent with cultivation of psilocybin mushrooms, the totality of the affidavit established probable cause and supported the issuance of a search warrant. People v. Atley, 727 P.2d 376 (Colo. 1986).

Information contained in the affidavit established probable cause to search premises, when analyzed under the totality of the circumstances test, where corroborating circumstances of the same license plate on the vehicle and the presence of a pregnant woman and small child accompanying the defendant in the car at the time of the arrest, and a high volume of short term visitors at the trailer shortly before the defendant's arrest for selling cocaine to an undercover officer established a reasonable probability that contraband or evidence of a crime would be found at the defendant's trailer. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Information regarding results of a previous search which were suppressed in a previous action must be stricken from the affidavit supporting a search warrant. But the court will not strike down the warrant if there are sufficient facts remaining in the affidavit to support the issuance of the warrant. People v. Wilson, 819 P.2d 510 (Colo. App. 1991).

Information regarding defendant's description that was omitted from an affidavit for a search warrant did not render the affidavit substantially misleading to the judge who issued the warrant. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Regardless of whether facts were omitted with a reckless disregard for the truth in the affidavit submitted in support of a search warrant, the information was not material such that its omission rendered the affidavit substantially misleading as to the existence of probable cause. People v. Kerst, 181 P.3d 1167 (Colo. 2008).

Failure to include a complete list of the indicators of marijuana cultivation in the affidavit did not render the affidavit misleading where the affidavit listed the only two indicators of marijuana cultivation which were present in the office which was to be searched. People v. Wilson, 819 P.2d 510 (Colo. App. 1991).

Identification of wrong street not dispositive of affidavit's efficacy. Fact that the affidavit identified the wrong street, which was less than one block away from the actual location of the truck to be searched, was not dispositive of an affidavit's efficacy. People v. Del Alamo, 624 P.2d 1304 (Colo. 1981).

Information in sheriff deputy's affidavit, when considered separately and as a whole, failed to establish a substantial basis for the magistrate's determination that probable cause existed to issue the warrant. People v. Hoffman, 293 P.3d 1 (Colo. App. 2010), rev'd on other grounds, 2012 CO 66, 289 P.3d 24.

Deputy who conducted the search and who was the same officer who prepared the deficient affidavit either knew or should

have known that the warrant he obtained based on his own affidavit was lacking in probable cause, and thus it was objectively unreasonable for him to rely on it. People v. Hoffman, 293 P.3d 1 (Colo. App. 2010), rev'd on other grounds, 2012 CO 66, 289 P.3d 24.

Trial court erred when it concluded that (1) probable cause existed to issue the search warrant, and, (2) even absent probable cause, the officers acted in good faith in executing the warrant. People v. Hoffman, 293 P.3d 1 (Colo. App. 2010), rev'd on other grounds, 2012 CO 66, 289 P.3d 24.

Affidavit must support finding of probable cause as to each place to be searched. While more than one search warrant may be issued on the basis of a single affidavit, the affidavit must support a finding of probable cause as to each separate warrant or each separate place to be searched. People v. Arnold, 181 Colo. 432, 509 P.2d 1248 (1973).

Fact that the places to be searched were apartments rather than single-family residences does not alter the rule that an affidavit must support a finding of probable cause as to each separate place to be searched. People v. Arnold, 181 Colo. 432, 509 P.2d 1248 (1973).

Personal observation by an informant of the objects of the search within the place to be searched satisfied the first prong of the Aguilar-Spinelli test. People v. Ward, 181 Colo. 246, 508 P.2d 1257 (1973); People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

The direct observations of the informant are sufficient to satisfy the first prong of the Aguilar-Spinelli test. People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

Requirement that the affidavit for a search warrant set forth underlying circumstances so as to enable a magistrate to independently judge the validity of the informant's conclusion that criminal activity exists can be satisfied by the assertion of personal knowledge of the informant. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

An informer need not relate to police officers the specific address of the place in which he observed the unlawful activity. It is enough if the informant describes the location and provides the officers sufficient information so that they can accurately determine such address. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Details from informant must support independent court determination. If officer seeking the warrant is relying upon a tip by another person, then the information contained in the affidavit upon which the informant based his conclusion must be of sufficient detail as to permit the making of an independent determination by the court of the credibility of the informant and his information. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

Statement that informant is reliable is insufficient. An affidavit does not establish the credibility of an informant by merely stating that the informant is known to be reliable. Nor does an affidavit establish the credibility of an informant by merely stating

that the informant is known to be reliable based on past information supplied by the informer which has proved to be accurate. Although the words "past information" might conjure up in the mind of the officer some knowledge of the underlying circumstances from which the officer might conclude that the informant was reliable, the judge has not been apprised of such facts, and consequently, he cannot make a disinterested determination based upon such facts. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

As a basis for issuing a search warrant, the mere assertion of reliability is not sufficient to establish an informant's credibility. There must be a more comprehensive statement of underlying facts upon which the magistrate can make an independent determination that the informant is credible or his information reliable. People v. Aragon, 187 Colo. 206, 529 P.2d 644 (1974).

An affidavit for a search warrant seeking to show an informant's credibility is not satisfactory by merely stating that the informant is reliable, or that he has supplied information in the past which proved to be accurate. Nor are irrelevant, albeit correct, details sufficient. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Where the only recital in the affidavit for a search warrant bearing upon the informant's credibility or the reliability of the information supplied was "That the confidential informant has related information to the affiant regarding several previous narcotics and dangerous drugs sellers and users which has been confirmed and proven reliable by the affiant", this was totally conclusory and devoid of details sufficient to support an independent finding of credibility or reliability. People v. Bowen, 189 Colo. 126, 538 P.2d 1336 (1975).

An affidavit must contain sufficient facts to allow the magistrate to determine how the informant obtained the information upon which the affiant relies. Bare assertions of knowledge are insufficient to establish the informer's knowledge. Statements as to the informer's reliability must not be conclusory, but must contain information upon which the magistrate could independently determine the informant's veracity and reliability. People v. Pacheco, 175 P.3d 91 (Colo. 2006).

There are at least three ways in which an affidavit might allow a magistrate to determine the reliability of an informant's information so as to issue a search warrant: (1) By stating that the informant had previously given reliable information; (2) by presenting the information in detail which clearly manifests its reliability; and (3) by presenting facts which corroborate the informant's information. People v. Masson, 185 Colo. 65, 521 P.2d 1246 (1974).

The reliability of the informant is established if the information resulted in arrests. The issue involved is the reliability of the informant; this reliability is satisfactorily established if the previous information led to arrests. People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

And not in convictions. To impose the more stringent requirement that the information led to convictions would impose

an undue restriction on law enforcement officers. People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

Or it is asserted informant previously furnished information of specified criminal activity. Requirement that the affiant-police officer support his request for a search warrant with information showing that the informant was credible, or his information was reliable, may be satisfied by an assertion that the informant has previously furnished solid material information of specified criminal activity. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Statement sufficient to establish informant's reliability. Where search warrant affidavit indicated that previous information supplied by the informant had led to narcotics arrests and seizures, such statement was sufficient to establish the reliability of the informant. People v. Ward, 181 Colo. 246, 508 P.2d 1257 (1973).

Where the affidavit related that the informant had, within the past 14 months, supplied information which led to the arrest and conviction of an individual for possession of a narcotic drug, and that the informant had, within the past 24 hours, supplied information which resulted in arrests and the seizure of a quantity of marijuana, this information was sufficient to permit the issuing magistrate to find that the informant was reliable. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Affidavit set forth sufficient facts to permit a determination that the informant was reliable and the information provided therewith was sufficient to justify issuance of a search warrant. People v. Treadway, 182 Colo. 239, 512 P.2d 275 (1973).

Where the affidavit alleged that the informant had furnished information which "has been the cause of approximately 20 narcotic and dangerous drug arrests in the past year", the magistrate could independently conclude that the police would not repeatedly accept information from one who has not proven by experience to be reliable, and hence, the magistrate could determine that the informant was credible. People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973).

The second prong of the Aguilar-Spinelli test is satisfied by the statement in the affidavit that the information was received from "a previously reliable confidential informant whose information has resulted in narcotics arrest and seizures on at least two past occasions". People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

Informant's means of obtaining information need not be recited in the affidavit if there is stated such detail given by the informant as would corroborate his assertions of criminal activity. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

Citizen-informer rule. Colorado will follow the citizen-informer rule and will recognize that a citizen who is identified by name and address and was a witness to criminal activity cannot be considered on the same basis as the ordinary informant. People v. Glaubman, 175 Colo. 41, 485 P.2d 711 (1971).

Affidavit need not contain statement of facts showing reliability of citizen-informant. Where the citizen-informant rule applies to information contained in an affidavit for issuance of a search warrant, it is not necessary that the affidavit contain a statement of facts showing the reliability of the citizen-informant, as is the case when the informant is confidential and unidentified. People v. Schamber, 182 Colo. 355, 513 P.2d 205 (1973).

A police officer's factual statements in an affidavit that are erroneous and false must be stricken and may not be considered in determining whether the affidavit will support the issuance of a search warrant. People v. Malone, 175 Colo. 31, 485 P.2d 499 (1971).

Deletion of inaccuracies not fatal if sufficient material facts remain. Where the affidavit still contains material facts sufficient as a matter of law to support the issuance of a warrant after deletion of erroneous statements, the supreme court will not strike down a warrant because the affidavit is not completely accurate. People v. Malone, 175 Colo. 31, 485 P.2d 499 (1971).

The fact that some portions of an affidavit must be stricken because they are erroneous, or that a portion of the evidence relied on for a finding of probable cause is not properly recorded and may not be considered, does not require the issuing magistrate to ignore the other information supplied by the affidavit. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Likewise, affidavit may be amended by sworn testimony before issuance of warrant. Should the judge to whom application has been made for the issuance of a search warrant determine that the affidavit is insufficient, he can require that sworn testimony be offered to supplement the affidavit or can demand that the affidavit be amended to disclose additional facts. The testimony taken would have to be reduced to writing and signed by the witness or witnesses that offered testimony, under oath, to supplement the affidavit. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

A search warrant may be based on hearsay, as long as a substantial basis for crediting the hearsay exists. People v. Woods, 175 Colo. 34, 485 P.2d 491 (1971); People v. Lindholm, 197 Colo. 270, 591 P.2d 1032 (1979).

Affidavit not insufficient though based on double hearsay. Affidavit in support of search warrant was not insufficient although it was predicated upon double hearsay, where the information is conveyed by one police officer to another police officer. People v. Quintana, 183 Colo. 81, 514 P.2d 1325 (1973).

Fruits of search supported by defective affidavit are inadmissible. Where the affidavits were fatally defective, the warrants issued thereon were nullities, any search conducted under them was unlawful, and the fruits of such a search are inadmissible in evidence. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Affidavit did not recite sufficient facts which could enable the court to make an independent determination that there is probable cause to believe that the defendants were keeping marijuana in their safe deposit box, where the first six paragraphs of the affidavit merely provide the information that the two college students, one of whom reportedly had engaged at some previous time in selling marijuana, had rented a safe deposit box, and paragraph seven states that the treasury department had received information that one of the defendants kept marijuana in a safe deposit box in a local bank, since there is no basis to test the credibility or reliability of the actual source of the incriminating information. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

The affidavit is not sufficient if no explanation appears as to how the county sheriff's office obtained the information, nor did the affidavit set forth who made the observation, or whether the information was obtained from an eyewitness or from a person who received the information indirectly. People v. Myers, 175 Colo. 109, 485 P.2d 877 (1971).

Statement in affidavit for issuance of search warrant that informant was present in two apartments located in the same building and observed marijuana did not have "plain meaning" to indicate that informant had seen marijuana in both apartments and would not support the issuance of search warrants for both apartments. People v. Ward, 181 Colo. 246, 508 P.2d 1257 (1973).

Although the affidavit related that the informant did observe marijuana and "speed" somewhere in the building at 2018 Ogden Street, there is nothing in the affidavit to indicate specifically where in that multiple-occupancy structure the drugs were located. This being so, the affidavit failed to relate sufficient facts from which the issuing magistrate could find probable cause to believe that the marijuana and "speed" were located within the places to be searched, i.e., within each of the defendants' apartments. People v. Arnold, 181 Colo. 432, 509 P.2d 1248 (1973).

Affidavit was not sufficient to establish probable cause for issuance of warrant authorizing search of automobile where owner of automobile was suspected of selling marijuana. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Because of the long lapse of time, the information in the affidavit pertaining to the probable location of the sought items was insufficient for the issuance of a search warrant. People v. Erthal, 38 Colo. App. 245, 556 P.2d 1228 (1976), aff'd, 194 Colo. 147, 570 P.2d 534 (1977).

Good faith basis required to challenge warrant affidavits. As conditions to a veracity hearing testing the truth of averments contained in a warrant affidavit, a motion to suppress must be supported by one or more affidavits reflecting a good faith basis for the challenge and contain a specification of the precise statements challenged. People v. Dailey, 639 P.2d 1068 (Colo. 1982).

Affidavit containing stale information. Where the only information upon which the search warrant issued had been obtained nearly two months prior to issuance of the

warrant and the staleness of the information in the affidavit was not remedied by later information, the warrant was invalid and not supported by sufficient affidavit. People v. Erthal, 194 Colo. 147, 570 P.2d 534 (1977).

The warrant was not based on probable cause, and the police could not have reasonably relied on it, because the information regarding drug manufacturing at defendant's home was stale when the police applied for the warrant. People v. Miller, 75 P.3d 1108 (Colo. 2003).

Although crimes were perpetrated eight months prior to application for search warrant, because officers proceeded with all due diligence upon discovery of information upon which to base request for a search warrant, the affidavit was sufficient to establish probable cause. People v. Cullen, 695 P.2d 750 (Colo. App. 1984).

Probable cause is typically lacking for issuance of a warrant where no relatively current information of criminal activity or contraband at the location to be searched is available. People v. Miller, 75 P.3d 1108 (Colo. 2003).

Warrant issued day after probable cause established is not invalid. A warrant issued one day after evidence establishing probable cause is obtained is not invalid as being predicated on "stale information". People v. Thrower, 670 P.2d 1251 (Colo. App. 1983).

Trial court erred in suppressing evidence because search warrant lacked probable cause. Magistrate's probable cause determination was entitled to great deference; the court failed to limit its review to information contained in the four corners of the affidavit; and the court did not give the affidavit the presumption of validity. People v. Cox, 2018 CO 88, 429 P.3d 75.

16-3-303.5. Location information - search warrant required - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Electronic communication service" means a service that provides the ability to send or receive wire or electronic communications to users of the service.

(b) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(c) "Government entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(d) "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an

electronic device on a cellular telephone network or a location information service rather than obtained from a service provider.

(e) "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.

(f) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

(2) Except as provided in subsection (3) or (4) of this section, a government entity shall not obtain the location information of an electronic device without a search warrant issued by a court pursuant to the provisions of this part 3, a subpoena, or a court order.

(3) A government entity may obtain location information of an electronic device without a warrant, subpoena, or court order under any of the following circumstances:

(a) The device is reported stolen by the owner;

(b) In order to respond to the user's call for emergency services;

(c) With the informed, affirmative consent of:

(I) The owner or user of the electronic device;

(II) The next of kin of the owner or user of the electronic device if the owner or user is believed to be deceased or is reported missing and unable to be contacted; or

(III) The child's parent or legal guardian if the owner or user is under eighteen years of age;

(d) There exist exigent circumstances such that the search would be recognized as constitutionally permissible without the warrant;

(e) A representative of the government entity has a good faith belief that his or her actions were legal and, under the information available at the time, a reasonable person would believe that his or her actions were legal;

(f) The owner or user of the electronic device has voluntarily or publicly disclosed the location information;

(g) The electronic device has been abandoned by the owner or user; or

(h) In accordance with any other judicially recognized exception to the search warrant requirement.

(4) The provisions of this section do not apply to probation departments within the judicial department or to the division of adult parole within the department of corrections.

(5) Any evidence obtained in violation of this section is not admissible in a civil, criminal, or administrative proceeding and shall not be used in an affidavit of probable cause in an effort to

obtain a search warrant, subpoena, or court order. In order to seek suppression of evidence pursuant to this subsection (5) in any proceeding, the person seeking the suppression of evidence must have an ownership, leasehold, rental, or legitimate possessory interest in or a reasonable expectation of privacy in the electronic device at issue.

(6) (a) A court shall not admit location information obtained pursuant to this section or evidence derived from that information at a trial, hearing, or other proceeding unless the party seeking to introduce the evidence provides a copy of the warrant, subpoena, or court order and any accompanying affidavit to each party pursuant to rule 16 of the Colorado rules of criminal procedure, or any successor rule.

(b) A court may waive the requirement under paragraph (a) of this subsection (6) if the court finds that it was not possible to provide a party with the warrant, subpoena, or court order and any accompanying application within the time required by rule 16 of the Colorado rules of criminal procedure, or any successor rule, and that the party will not be prejudiced by the delay in receiving the information.

(7) An electronic communication service provider and its officers, employees, or agents are not liable for providing information, facilities, or assistance in compliance with the terms of a search warrant, subpoena, or court order issued pursuant to this section or when provided without a warrant, subpoena, or court order issued pursuant to this section or if otherwise provided for by law.

(8) This section does not apply to a law enforcement agency obtaining basic subscriber information from an electronic communications service provider pursuant to a valid subpoena, court order, or search warrant.

Source: L. 2014: Entire section added, (SB 14-193), ch. 395, p. 1992, § 2, effective June 6.

Cross references: For the legislative declaration in SB 14-193, see section 1 of chapter 395, Session Laws of Colorado 2014.

16-3-303.8. Testing for communicable diseases - court order required - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Communicable disease" means a disease or infection that is spread from one person to another through the exchange of blood or other bodily fluid and the human immunodeficiency virus (HIV).

(b) "Emergency medical care provider" has the same meaning as defined in section 18-3-201 (1), C.R.S.

(c) "Emergency medical service provider" has the same meaning as defined in section 18-3-201 (1.3), C.R.S.

(d) "Firefighter" has the same meaning as defined in section 18-3-201 (1.5), C.R.S.

(e) "Peace officer" means any person described in section 16-2.5-101.

(2) **Consent.** Unless a person has admitted that he or she has a communicable disease and provides confirmation of the disease, a law enforcement agency shall ask a person to voluntarily consent to a blood test to determine if the person has a communicable disease if:

(a) The person committed an assault in the first degree in violation of section 18-3-202, C.R.S.; assault in the second degree in violation of section 18-3-203, C.R.S.; or assault in the third degree in violation of section 18-3-204, C.R.S.; and

(b) During or as a result of the assault, the person's blood or other bodily fluid came into contact with any victim of the assault, a peace officer, firefighter, or emergency medical care provider, or an emergency medical service provider, and there is reason to believe, based on information from a medical professional, the department of public health and environment, or a local health agency, that the victim of the assault, peace officer, firefighter, emergency medical care provider, or emergency medical service provider is at risk of transmission of a communicable disease.

(3) **Application.**

(a) A court shall order a person to submit blood required for a test for communicable diseases if an affidavit sworn to or affirmed before the judge establishes the following grounds for the order:

(I) There is probable cause that a person committed the crime of assault in the first degree in violation of section 18-3-202, C.R.S.; assault in the second degree in violation of section 18-3-203, C.R.S.; or assault in the third degree in violation of section 18-3-204, C.R.S.;

(II) The person has been asked to voluntarily submit to a blood test for a communicable disease and the person has refused; and

(III) There is probable cause to believe that the person's blood or other bodily fluid came into contact with any victim of the assault, a peace officer, firefighter, or emergency medical care provider, or an emergency medical service provider, and there is reason to believe, based on information from a medical professional, the department of public health and environment, or a local health agency, that the victim of the assault, peace officer, firefighter, emergency medical care provider, or emergency medical service provider is at risk of transmission of a communicable disease.

(b) The affidavit required by paragraph (a) of this subsection (3) may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before the issuance of the court order. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for the court order must be attached to a court order issued pursuant to this section.

(4) **Order.** If the court is satisfied that grounds for the application exist or that there is probable cause to believe that the grounds exist, the court shall issue the court order, which shall:

(a) Identify the name or description of the individual who is to give the blood;

(b) Identify the names of any persons making affidavits for issuance of the order;

(c) Identify the criminal offense concerning which the order has been issued;

(d) Identify the name of the victim of the assault, peace officer, firefighter, emergency medical care provider, or emergency medical service provider;

(e) Include a mandate to the officer to whom the order is directed to detain the person for only such time as is necessary to obtain the blood; and

(f) Include the typewritten or printed name of the judge issuing the order and his or her signature.

(5) **Execution and return.**

(a) The blood tests must be conducted under medical supervision. A person who appears under an order of appearance issued pursuant to this section shall not be detained longer than is reasonably necessary to obtain the blood unless he or she is arrested for an offense.

(b) The order may be executed and returned only within thirty-five days after its issuance.

(c) The officer executing the order shall give a copy of the order to the person upon whom it is served.

(6) **Disclosure of results and confidentiality.**

(a) The results of any test on the blood obtained pursuant to an order issued under this section must be reported to the court or the court's designee, who shall then disclose the results to any person named in paragraph (d) of subsection (4) of this section who requests the disclosure.

(b) Except as required by paragraph (a) of this subsection (6), the court shall keep the test results, disclosure of the test results, and any records relating to the test results or the disclosure of the test results confidential.

(7) **Voluntary submission.** If a person described in paragraph (a) of subsection (3) of this section voluntarily submits to a test for communicable diseases, the fact of the person's voluntary

submission is admissible in mitigation of sentence if the person is convicted of the charged offense.

Source: L. 2016: Entire section added, (HB 16-1393), ch. 304, p. 1223, § 1, effective July 1.

16-3-304. Search warrants - contents.

(1) If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(c) State the grounds or probable cause for its issuance; and

(d) State the names of the persons whose affidavits or testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge deems necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

(3) Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(a) To execute and serve the warrant at any time; and

(b) To use and employ such force as is reasonably necessary in the performance of the duties commanded by the warrant.

Source: L. 72: R&RE, p. 201, § 1. **C.R.S. 1963:** § 39-3-304.

ANNOTATION

I. General Consideration.

II. Description of Premises, Place, Etc.

III. Description of Property.

I. GENERAL CONSIDERATION.

Annotator's note. (1) Since § 16-3-304 is similar to repealed § 39-2-6, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

(2) For further annotations concerning search and seizure, see § 7 of art. II, Colo. Const., and Crim. P. 41.

A search warrant should not be broader than the justifying basis of facts. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

Standard for compliance with constitutional requirements is one of practical accuracy. The standard for determining whether a search warrant complies with constitutional requirements is one of practical accuracy rather than technical nicety. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974); People v. Martinez, 898 P.2d 28 (Colo. 1995); People v. Schrader, 898 P.2d 33 (Colo. 1995).

The test for determining whether the sufficiency of a description in a search warrant is adequate is if the officer executing the warrant can with reasonable effort ascertain and identify the place intended to be searched. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

Omission of affiant's name on the face of a search warrant was an immaterial variance which did not invalidate warrant where proper affidavit had been executed by an officer and reviewed by a judge prior to issuance. People v. McKinstry, 843 P.2d 18 (Colo. 1993).

II. DESCRIPTION OF PREMISES, PLACE, ETC.

Warrant describing house as within Denver when in fact the house lay one-half block outside Denver was not for that reason invalid. People v. Martinez, 898 P.2d 28 (Colo. 1995).

Technical perfection not required. Where warrant specified a street address that was adjacent to defendant's residence and owned by the same owner, and defendant's residence was not itself searched, both the warrant and the search were valid. People v. Schrader, 898 P.2d 33 (Colo. 1995).

Not every violation of this section requires suppression of evidence under the exclusionary rule. Where search warrant was executed one-half block outside officers' jurisdiction, but city boundaries were not clear and officers promptly notified the proper authorities when the error was discovered, no violation of defendant's constitutional rights occurred. People v. Martinez, 898 P.2d 28 (Colo. 1995).

This section requires that a warrant particularly describe the place to be searched. People v. Lucero, 174 Colo. 278, 483 P.2d 968 (1971).

Warrant must describe apartment unit by number or name of tenant. When authority is desired to search a particular apartment or apartments within an apartment building, or a particular room or rooms within a multiple-occupancy structure, the warrant must sufficiently describe the apartment or subunit to be searched, either by number or other designation, or by the name of the tenant or occupant. People v.

Alarid, 174 Colo. 289, 483 P.2d 1331 (1971).

And description by street address is insufficient. When the officers knew or should have known that the house was not a one-family residence, and the fact that the officers had notice of the separate dwelling facilities located in the basement is evident from the affidavit of an officer, the general rule as to multiple-occupancy structures is applicable, and a warrant describing the entire house by street address only, without reference to the particular dwelling unit or units sought to be searched, is constitutionally insufficient since no facts were presented which would show that there was probable cause to believe that criminal activity was occurring in both dwelling places. People v. Alarid, 174 Colo. 289, 483 P.2d 1331 (1971).

Exception if officers unaware house is multifamily and if search confined. The general rule of law when dealing with searches made in rooming houses or apartment houses is subject to an exception, among others, where the officers did not know, nor had reason to know, that they were dealing with a multifamily dwelling when obtaining the warrant, and providing that they confine the search to the area which was occupied by the person or persons named in the affidavit. People v. Lucero, 174 Colo. 278, 483 P.2d 968 (1971).

Search warrant failing to designate subunits of multiple-occupancy structure to be searched met the requirement that place to be searched be described with particularity where it was reasonable for the police to conclude that the structure was not divided into subunits. People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974).

III. DESCRIPTION OF PROPERTY.

The description in a search warrant of items to be seized must be specific. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

Search warrant reasonably specific under circumstances. People v. Lindholm, 197 Colo. 270, 591 P.2d 1032 (1979).

In determining whether warrant is too general, the nature of the property to be seized must be considered. People v. Lindholm, 197 Colo. 270, 591 P.2d 1032 (1979); People v. Ball, 639 P.2d 1078 (Colo. 1982); People v. Hill, 690 P.2d 856 (Colo. 1984).

Burden of connecting articles not described with crime is upon the state. When a defendant demonstrates that an article is not specifically described in the search warrant, and when it is not per se connected with criminal activity, the burden of showing that it is so connected falls upon the state. People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

Failure to show connection requires their return. Money seized belonging to the defendant must be returned, when it was not mentioned in the warrant and was not per se connected with criminal activity, when the state failed to show a nexus between the money seized and criminal activity, and when the defendant testified that the money had been lent to him by family members and friends to defray the cost of his daughter's

funeral. People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

Currency was described with reasonable certainty. Where the search warrant correctly described a $20 bill with the exception of the last character of the serial number which was illegible, the likelihood of defendant's possession of another bill with nine identical characters, all in the same sequential order, and having a different tenth character from the bill described in the search warrant was highly improbable, and hence, there was probable cause to seize the bill as there was reasonable certainty of description. People v. Piwtorak, 174 Colo. 525, 484 P.2d 1227 (1971).

Effects intermingled with drugs were validly seized. Where objection was made to the seizure of the particular personal effects which serve to identify the person or persons residing at and in control of the premises searched and the record indicates that these personal effects were intermingled with the suspected narcotics and dangerous drugs found on the premises, it was held that these personal effects, which bore the names of the defendants, were validly seized since these items might well serve to establish elements of the crimes for which defendants were charged and for which the search warrant was issued. People v. Piwtorak, 174 Colo. 525, 484 P.2d 1227 (1971).

Warrant not insufficient on its face. Command portion of search warrant which read: "you are therefore commanded to search forthwith the _____ above described property for the property described" did not render the warrant insufficient on its face where the property to be searched had been specifically described "above" two times and where the property to be seized likewise had been described above as "amphetamines, barbiturates, opium, opium derivatives, and other synthetic narcotics and implements used in the traffic and in the use of narcotic drugs". People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

16-3-305. Search warrants - direction - execution and return - legislative declaration.

(1) The general assembly finds and declares that:

(a) When law enforcement enters a dwelling, the safety and preservation of life of all occupants and law enforcement officers is paramount;

(b) A no-knock entry into a dwelling can increase danger and confusion because occupants may not recognize law enforcement is making entry and may mistake the entry as entry by an unlawful intruder;

(c) No-knock entries into dwellings have, in several instances across the country, included negative outcomes and the loss of life;

(d) Making no-knock entries to prevent the destruction of evidence, especially in drug cases, does not justify the risk to human life;

(e) No-knock entries should be made only when doing so is necessary to protect human life and not when doing so would increase the risk to human life; and

(f) The standard for warrantless no-knock entries should be substantially the same as the standard for no-knock warrants.

(1.5) Except as otherwise provided in this section, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

(2) A search warrant issued by a judge of a municipal court shall be directed to any officer authorized by law to execute it in the municipality wherein the property is located.

(3) Any judge issuing a search warrant, on the grounds stated in section 16-3-301, for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in the warrant to execute the same, and the person named in such order may execute the warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado state patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (3) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.

(4) When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported is in pursuit thereof and the person, motor vehicle, aircraft, or other object crosses or enters into another county, such officer is authorized to execute the warrant in the other county.

(5) It is the duty of all peace officers into whose hands any search warrant comes to execute the same, in their respective counties or municipalities, and make due return thereof. Procedures consistent with this section for the execution and return of search warrants may be provided by rule of the supreme court.

(6) A search warrant shall be executed within fourteen days after its date.

(7) When a peace officer, having a warrant for the search of a dwelling, executes the search warrant, the officer shall:

(a) Execute the warrant between the hours of 7 a.m. and 7 p.m. unless the judge, for good cause, expressly authorizes execution at another time;

(b) Be readily identifiable as a law enforcement officer in uniform or wearing a visible law enforcement badge and clearly identify themselves as a law enforcement officer;

(c) Wear and activate a body-worn camera as required by section 24-31-902 (1)(a)(II)(A) when entering a premises for the purpose of enforcing the law; and

(d) Knock-and-announce the officer's presence at a volume loud enough for the officer to reasonably believe the occupants inside can hear, allow a reasonable amount of time before entering given the size of the dwelling for someone to get to the door, and delay entry if the officer has reason to believe that someone is approaching the dwelling's entrance with the intent of voluntarily allowing the officer to enter the dwelling; except that this subsection (7)(d) does not apply if:

(I) A court authorizes a no-knock warrant pursuant to section 16-3-303; or

(II) The circumstances known to the officer at the time provide an objectively reasonable basis to believe that a no-knock entry or not waiting a reasonable amount of time is necessary because of an emergency threatening the life of or grave injury to a person, provided that the imminent danger is not created by law enforcement itself.

Source: L. 72: R&RE, p. 201, § 1. **C.R.S. 1963:** § 39-3-305. **L. 2012:** (6) amended, (SB 12-175), ch. 208, p. 844, § 60, effective July 1. **L. 2023:** (1) amended and (1.5) and (7) added, (SB 23-254), ch. 395, p. 2358, § 2, effective June 6.

ANNOTATION

Annotator's note. For further annotations concerning search and seizure, see § 7 of art. II of the Colo. Const., and Crim. P. 41.

Evidence seized in violation of a statutory provision may be suppressed only if the unauthorized search and seizure violated constitutional restraints on unreasonable searches and seizures. People v. Hamer, 689 P.2d 1147 (Colo. App. 1984).

Warrant describing house as within Denver when in fact the house lay one-half block outside Denver was not for that reason invalid. People v. Martinez, 898 P.2d 28 (Colo. 1995).

A warrant is not rendered stale or the resulting search unconstitutional if probable cause continued to exist when executed within the 10-day limit prescribed by subsection (6). People v. Russom, 107 P.3d 986 (Colo. App. 2004).

16-3-306. Search warrants - joinder.

The search of one or more persons, premises, places, or things, or any combination of persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with section 16-3-303 (1)(d).

Source: L. 72: R&RE, p. 202, § 1. **C.R.S. 1963:** § 39-3-306.

16-3-307. Limiting clause.

Nothing in this part 3 shall be construed to require the issuance of a search warrant in cases in which such warrant is not required by law. This statute does not modify any statute inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

Source: L. 72: R&RE, p. 202, § 1. **C.R.S. 1963:** § 39-3-307.

ANNOTATION

Annotator's note. Since § 16-3-307 is similar to repealed § 39-2-6, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

In order for a warrantless search to be excused under exigent circumstances, probable cause must exist at the moment the arrest or the search is made. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Strictness of probable cause requirements. Although the constitutional warrant requirement may be excused under exigent circumstances, the probable cause requirements are at least as strict in warrantless searches as in those pursuant to a warrant. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Because both probable cause and exigent circumstances must be present in order to justify a warrantless search into a defendant's home and trial court found only that police entered defendant's home in the absence of exigent circumstances without first making a probable cause determination, case was remanded to trial court to determine first whether defendant informed detective that drugs were in his home, giving detective probable cause, and then to determine whether exigent circumstances justified warrantless entry into the defendant's home. People v. Mendoza-Balderama, 981 P.2d 168 (Colo. 1999).

A consent search is outside the ambit of traditional fourth amendment warrant requirements. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

But officers may not coerce occupant into waiving constitutional rights. To secure a consent search, however, the officers may not use any methods which coerce the occupant into waiving fourth amendment rights. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

Whether or not the consent which is given in a particular case is voluntary is a

question to be determined by the court in light of the totality of the circumstances surrounding that consent, and the overriding inquiry is whether the consent is intelligently and freely given. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

That defendant's wife was told a warrant would be sought if her consent to search their home was not obtained does not negate the evidence which strongly supports the trial court's finding of consent. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

Where trial court evaluated conflicting testimony and evidence relevant to the issue of consent to search home without a warrant and determined that defendant did not consent to a search of his home, absent lack of evidence in the record to support the trial court's factual findings, reviewing court is bound to uphold the trial court's conclusion of lack of consent and unlawful search. People v. Mendoza-Balderama, 981 P.2d 168 (Colo. 1999).

The search of a vehicle which is made substantially contemporaneously with an arrest is permissible as an incident to such arrest. People v. Olson, 175 Colo. 140, 485 P.2d 891 (1971).

For, if there is probable cause to obtain a warrant to search a car, police officers have the right to stop and search it without a warrant. People v. Chavez, 175 Colo. 25, 485 P.2d 708 (1971).

Contraband discovered in defendant's car during inventory procedure was lawfully seized. People v. Roddy, 188 Colo. 55, 532 P.2d 958 (1975).

16-3-308. Evidence - admissibility - declaration of purpose - definitions.

(1) Evidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer, as described in section 16-2.5-101, as a result of a good faith mistake or of a technical violation.

(2) As used in subsection (1) of this section:

(a) "Good faith mistake" means a reasonable judgmental error concerning the existence of facts or law which if true would be sufficient to constitute probable cause.

(b) "Technical violation" means a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled.

(3) Evidence which is otherwise admissible in a criminal proceeding and which is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the trial court.

(4) (a) It is hereby declared to be the public policy of the state of Colorado that, when evidence is sought to be excluded from the trier of fact in a criminal proceeding because of the

conduct of a peace officer leading to its discovery, it will be open to the proponent of the evidence to urge that the conduct in question was taken in a reasonable, good faith belief that it was proper, and in such instances the evidence so discovered should not be kept from the trier of fact if otherwise admissible. This section is necessary to identify the characteristics of evidence which will be admissible in a court of law. This section does not address or attempt to prescribe court procedure.

(b) It shall be prima facie evidence that the conduct of the peace officer was performed in the reasonable good faith belief that it was proper if there is a showing that the evidence was obtained pursuant to and within the scope of a warrant, unless the warrant was obtained through intentional and material misrepresentation.

Source: L. 81: Entire section added, p. 922, § 1, effective July 1. **L. 85:** (2)(a) and (4) amended, p. 615, §§ 3, 4, effective July 1. **L. 2003:** (1) amended, p. 1614, § 7, effective August 6.

Cross references: For the admissibility of evidence in proceedings under the "Colorado Children's Code", see § 19-2-803.

ANNOTATION

Law reviews. For article, "Colorado's Good-Faith Exception to the Exclusionary Rule", see 11 Colo. Law. 410 (1982). For article, "Good-Faith Exception to the Exclusionary Rule: The Fourth Amendment is Not a Technicality", see 11 Colo. Law. 704 (1982). For article, "Attacking the Seizure — Over-coming Good Faith", see 11 Colo. Law. 2395 (1982). For note, "The Colorado Statutory Good-Faith Exception to the Exclusionary Rule : A Step Too Far?" see 53 U. Colo. L. Rev. 809 (1982). For comment, "Privacy Rights v. Law Enforcement Difficulties: The Clash of Competing Interests in New York v. Belton", see 59 U. Den. L.J. 793 (1982). For article, "Warrant Requirement — The Burger Court Approach", see 53 U. Colo. L. Rev. 691 (1982). For article, "Search Warrants, Hearsay and Probable Cause — The Supreme Court Rewrites the Rules", see 12 Colo. Law 1250 (1983). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with the exclusionary rule, see 61 Den. L.J. 291 (1984). For comment, "The Good Faith Exception: The Seventh Circuit Limits the Exclusionary Rule in the Administrative Context", see 61 Den. L.J. 597 (1984). For article, "United States v. Leon and Its Ramifications", see 56 U. Colo. L. Rev. 247 (1985). For article, "People v. Mitchell: The Good Faith Exception in Colorado", see 62 Den. L.J. 841 (1985). For article, "The 'Bare

Bones' Affidavit Under Colorado's Good Faith Exception to the Exclusionary Rule", see 40 Colo. Law. 27 (May 2011).

Annotator's note. For annotations concerning the exclusionary rule, see § 7 of art. II, Colo. Const., and Crim. P. 26 and 41.

The link between the place to be searched and the existence of criminal activity or contraband is at the heart of fourth amendment protections. Applying the exclusionary rule to suppress the evidence seized has the salutary effect of requiring the police to use in the affidavit for the search warrant current information they have available or may obtain to establish the link. People v. Miller, 75 P.3d 1108 (Colo. 2003).

However, even if affidavit is insufficient to establish link between the place to be searched and the existence of criminal activity, if the affidavit contains objectively reasonable probable cause, as enumerated by the federal circuit courts, the good faith exception to exclusionary rule applies. People v. Hagos, 250 P.3d 596 (Colo. App. 2009).

Whether an individual conducting a search or seizure is an agent of the government is determined by the totality of the circumstances. In order to establish agency, one must show that the government encouraged, initiated, and instigated a search or seizure or that the person conducting the search acted only to assist law enforcement efforts. People v. Pilkington, 156 P.3d 477 (Colo. 2007).

A private actor's independent motive to investigate creates a strong presumption that he or she is not an agent of the government, and therefore the fourth amendment does not apply to the search. People v. Pilkington, 156 P.3d 477 (Colo. 2007).

Section inapplicable to mistaken judgment of law. A mistaken judgment of law, such as the mistaken judgment by an officer that the facts known to him are sufficient to warrant a full custodial arrest of the defendant, is insufficient to cause the application of this statute. People v. Quintero, 657 P.2d 948 (Colo. 1983) (decided under subsection (2)(a) prior to 1985 amendment).

Search by police of tenant's premises based on consent by landlord is mistake of law since it is well settled that a landlord cannot give such consent. People v. Brewer, 690 P.2d 860 (Colo. 1984).

Where no warrant was ever issued and an arrest occurred as a result of incorrect information in the National Crime Information Computer (NCIC) after the period of parole had expired, an arrest was illegal, and any evidence seized as a result of such arrest cannot be covered by the good faith exception and must be suppressed. People v. Fields, 785 P.2d 611 (Colo. 1990).

Violation of fourth amendment rights found when court failed to review affidavits in support of both wiretap applications and search warrants to determine if they established probable cause after certain evidence contained in said affidavits had been struck, the court having determined that there was no statutory technical violation exception to the exclusionary rule

suppressing such evidence. People v. Vazquez, 768 P.2d 721 (Colo. App. 1988).

Telephone toll records held admissible under good faith exception to exclusionary rule where affidavit underlying search warrant was insufficient because affidavit not so lacking in indicia of probable cause as to render official belief unreasonable. People v. Taylor, 804 P.2d 196 (Colo. App. 1990).

Admission of evidence seized from a defendant's residence pursuant to a defective warrant did not constitute reversible error, even though warrant was issued based on an affidavit inadvertently failing to allege facts linking defendant to the residence to be searched. People v. Deitchman, 695 P.2d 1146 (Colo. 1985).

Section does not apply to an arrest based on a warrant void from its inception due to the absence of any cause whatever for its issuance. People v. Mitchell, 678 P.2d 990 (Colo. 1984).

No technical violation where court precedent relied on was based on different facts. Technical violation was not found for good faith reliance of prior court decision where such precedent was based on different factual situation. People v. Corr, 682 P.2d 20 (Colo. 1984).

Precedent is considered binding under the good faith reliance exception when the precedent addresses or validates the police conduct at issue in the case in which the exception is sought to be applied. People v. Restrepo, 2021 COA 139, 504 P.3d 983.

Precedent involving a dog sniff search that does not indicate anything more than the presence or absence of contraband was not binding in a case involving a dog sniff search that revealed noncontraband items that otherwise would remain hidden from public view. People v. Restrepo, 2021 COA 139, 504 P.3d 983.

Statutory good faith exception to exclusionary rule inapplicable where mistaken information, even if true, along with other information relied on by officer, did not constitute reasonable grounds to believe defendant committed or was committing a crime. People v. Foster, 788 P.2d 825 (Colo. 1990).

Statutory good faith exception to exclusionary rule does not exclude evidence that federal jurisprudence would admit. This section was intended to incorporate the federal exception to the exclusionary rule, it does not create a narrower rule. People v. Saint-Veltri, 935 P.2d 34 (Colo. App. 1996).

Statutory good faith exception to exclusionary rule inapplicable to evidence seized after search incident to arrest where arrest warrant is not supported by probable cause to arrest the defendant. People v. Woods, 885 P.2d 287 (Colo. App. 1994).

Good faith exception to exclusionary rule does not apply where a detective's reliance on a warrant is not objectively reasonable. Where an affidavit contains no facts that would allow a reasonable officer to conclude that probable cause for a search exists, the illegally obtained evidence is not admissible under the good faith exception to

the exclusionary rule. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Pacheco, 175 P.3d 91 (Colo. 2006); People v. Hoffman, 293 P.3d 1 (Colo. App. 2010), rev'd on other grounds, 2012 CO 66, 289 P.3d 24.

Information in deputy's affidavit, considered separately and as a whole, failed to establish a substantial basis for the magistrate's determination that probable cause existed to issue the warrant. People v. Hoffman, 293 P.3d 1 (Colo. App. 2010), rev'd on other grounds, 2012 CO 66, 289 P.3d 24.

Because the information regarding drug manufacturing at defendant's home was stale when the police applied for the warrant, no reasonable police officer would have relied on it. Accordingly, the exclusionary rule operates, not the good faith exception to it. People v. Miller, 75 P.3d 1108 (Colo. 2003).

Thus, good faith exception does not apply when the police submit a defective affidavit to the county judge and continue to rely on that defective affidavit. Officers involved in obtaining and executing a search warrant have a continuing duty to exercise reasonable professional judgment. Even though a reviewing magistrate has executed the warrant, the officer must still read the affidavit and warrant carefully and must be objectively persuaded that the warrant is sufficient. People v. Randolph, 4 P.3d 477 (Colo. 2000).

Neither state nor federal law purports to recognize a "good faith" exception to the exclusionary remedy for statements taken in violation of Miranda. People v. Mangum, 48 P.3d 568 (Colo. 2002).

The statute creates a presumption that an officer was acting in good faith if he or she was acting pursuant to a warrant, but the ultimate question must still be whether the officer undertook the search in the reasonable, good faith belief that it was proper. People v. Altman, 960 P.2d 1164 (Colo. 1998); People v. Hagos, 250 P.3d 596 (Colo. App. 2009).

Police must act in objective good faith when applying for a warrant; the fact that a magistrate ultimately approved the warrant is not controlling. People v. Miller, 75 P.3d 1108 (Colo. 2003).

The court is restricted to the information contained within the four corners of the affidavit. Thus, it cannot bolster the insufficient affidavit with additional information not conveyed to the magistrate in the application for the warrant. People v. Miller, 75 P.3d 1108 (Colo. 2003).

Good faith exception applies when police are acting in reasonable reliance on search warrant issued by detached and neutral magistrate or judge, and the warrant is later found to be unsupported by probable cause. Exception is applicable only when such reliance is "objectively reasonable". People v. Titus, 880 P.2d 148 (Colo. 1994).

The fact that same officer filed bare bones affidavit for warrant and executed warrant bolsters trial court's conclusion that the officer's reliance on the defective affidavit was not objectively reasonable, and, consequently, the good faith exception to the exclusionary rule did not apply to

shield the evidence obtained in the search. People v. Pacheco, 175 P.3d 91 (Colo. 2006).

But, it is not necessarily sufficient grounds to apply the exclusionary rule if same officer who filed bare bones affidavit for warrant also executed warrant so long as the officer could show his or her reliance on the warrant was objectively reasonable. People v. Hagos, 250 P.3d 596 (Colo. App. 2009).

The determination by an appellate court that a warrant is invalid does not mean a police officer's reliance upon that warrant was objectively unreasonable. People v. Altman, 960 P.2d 1164 (Colo. 1998).

The fact that the affidavit details activities that are lawful does not cause it to be a bare bones affidavit; a combination of otherwise lawful circumstances may well lead to a legitimate inference of criminal activity. People v. Altman, 960 P.2d 1164 (Colo. 1998).

Arrest of a person other than the one named on the warrant does not automatically preclude application of the good faith mistake exception to the exclusionary rule. If the police have reasonable grounds to believe the suspect is the intended arrestee and the warrant is constitutionally valid, the arrest of the suspect is generally valid. People v. Lewis, 813 P.2d 813 (Colo. App. 1991).

Applied in People v. Reed, 56 P.3d 96 (Colo. 2002).

16-3-309. Admissibility of laboratory test results.

(1) When evidence is seized in so small a quantity or unstable condition that qualitative laboratory testing will not leave a sufficient quantity of the evidence for independent analysis by the defendant's expert and when a state agent, in the regular performance of his duties, can reasonably foresee that the evidence might be favorable to the defendant, the trial court shall not suppress the prosecution's evidence if the court determines that the testing was performed in good faith and in accordance with regular procedures designed to preserve the evidence which might have been favorable to the defendant.

(2) The trial court shall consider the following factors in determining, pursuant to subsection (1) of this section, whether the state has met its obligation to preserve the evidence:

(a) Whether or not a suspect has been identified and apprehended and whether or not the suspect has retained counsel or has had counsel appointed for him at the time of testing;

(b) Whether the state should have used an available test method more likely to preserve the results of seized evidence;

(c) Whether, when the test results are susceptible to subjective interpretation, the state should have photographed or otherwise documented the test results as evidence;

(d) Whether the state should have preserved the used test samples;

(e) Whether it was necessary for the state agency to conduct quantitative analysis of the evidence;

(f) Whether there is a sufficient sample for the defendant's expert to utilize for analysis and the suspect or defendant has made a specific request to preserve such sample;

(g) If paragraph (f) of this subsection (2) cannot be complied with, in view of the small amount of evidence, or when the state's duty to preserve the evidence would otherwise be enhanced, whether it was reasonable for the state to have contacted the defendant to determine if he wished his expert to be present during the testing.

(3) With regard to testing performed on blood, urine, and breath samples which form the basis for a conclusion upon which a statutory presumption arises, it is hereby declared to be the public policy of the state of Colorado that when the prosecution's evidence of test results is sought to be excluded from the trier of fact in a criminal proceeding because the testing destroyed evidence which might have been favorable to the defense, it shall be open to the proponent of the evidence to urge that the testing in question was performed in good faith and in accordance with regular procedures designed to preserve the evidence which might have been favorable to the defense, and, in such instances, the evidence so discovered should not be kept from the trier of fact if otherwise admissible.

(4) For all other types of blood analysis, breath analysis, and urine analysis and for laboratory testing, such as serial number restoration, firearms testing, and gunpowder pattern testing, it is hereby declared to be the public policy of the state of Colorado that, when the prosecution's evidence of test results is sought to be excluded from the trier of fact in a criminal proceeding because of the destruction of evidence upon which the test was performed, it shall be open to the proponent of the evidence to urge that the testing in question was performed in a reasonable, good faith belief that it was proper and, in such instances, the evidence so discovered should not be kept from the trier of fact if otherwise admissible.

(5) Any report or copy thereof or the findings of the criminalistics laboratory shall be received in evidence in any court, preliminary hearing, or grand jury proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person. Any party may request that such employee or technician testify in person at a criminal trial on behalf of the state before a jury or to the court, by notifying the witness and other party at least fourteen days before the date of such criminal trial.

(6) In no event shall evidence be suppressed which results from laboratory testing performed before identification of a suspect for the sole reason that the later identified suspect or his attorney was not present at the time of the testing.

(7) This section is necessary to identify the characteristics of evidence which will be admissible in a court of law. This section does not address or attempt to prescribe court procedure.

Source: L. 84: Entire section added, p. 483, § 1, effective July 1. **L. 2012:** (5) amended, (SB 12-175), ch. 208, p. 844, § 61, effective July 1.

Cross references: For statutory presumptions in alcohol-related traffic offenses, see §§ 18-3-106, 18-3-205, and 42-4-1301.

ANNOTATION

Law reviews. For article, "The Admission of Blood Alcohol Reports After Bullcoming", see 41 Colo. Law. 55 (Mar. 2012).

Annotator's note. For cases dealing with lost or destroyed evidence decided prior to the enactment of this section, see § 25 of art. II, Colo. Const., "Criminal trials".

Subsection (5) is constitutional on its face. Subsection (5), which requires a defendant to affirmatively request a laboratory technician's presence at trial, is an acceptable precondition to a defendant's exercise of his right to confrontation and is therefore not unconstitutional. A defendant's right to confrontation is not denied as he can preserve that right, pursuant to this section, with minimal effort. People v. Mojica-Simental, 73 P.3d 15 (Colo. 2003); People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

The procedure provided in subsection (5) for ensuring the presence of the laboratory technician at trial does not deny defendant the opportunity to cross-examine the technician but simply requires that the defendant decide prior to trial whether defendant will conduct a cross-examination. Subsection (5) provides the opportunity for confrontation; only the timing of the defendant's decision is changed. Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007); People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

Burden placed on defendant by subsection (5) to request the presence of the person who prepared the report prior to trial was minimal and did not render subsection (5) facially unconstitutional. Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007); People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

Criminal laboratory reports are testimonial statements subject to the U.S. supreme court's decision in Crawford v. Washington, 541 U.S. 36 (2004). Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007).

The laboratory report was introduced at trial to establish the elements of the offense with which defendant was charged, and, under such circumstances, the report is testimonial in nature. Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007).

An autopsy report prepared by a doctor who was not present at trial should be considered testimonial under Crawford. Because it was reasonable for the doctor to assume the statements in the autopsy report would be used in a criminal prosecution, the statements were testimonial under Crawford. People v. Merritt, 2014 COA 124, 411 P.3d 102.

The plain meaning of "accomplish" in subsection (5) is "to execute fully: perform, achieve, fulfill", thus the prosecution should provide the person, regardless of title, who was qualified and authorized to perform, and did perform, the tests; observed the results and interpreted them; and rendered expert conclusions regarding the identity of the controlled substances present in the sample or specimen. People v. Hill, 228 P.3d 171 (Colo. App. 2009).

Lab supervisor's testimony satisfied the requirement of subsection (5) that the laboratory testing technician who accomplished the analysis be made available at trial, even though the supervisor did not directly perform the screening and confirmation tests. The supervisor reviewed the tests, analyzed the instrument data, and reviewed notes of the lab analysts. The supervisor's review was necessary to fully execute the requested urinalysis because, without this review, the results would not have been certified as accurate and mailed to the police department. Therefore, the supervisor accomplished the analysis for purposes of subsection (5). Marshall v. People, 2013 CO 51, 309 P.3d 943 (2014).

Testimony of a forensic toxicologist who led the process of reviewing the test results, employed the quality control process, and certified the results by signing the laboratory report satisfied the requirement of subsection (5) even though the toxicologist did not complete the original testing. The fact that the toxicologist did not hold a formal supervisory position at the laboratory is immaterial. People v. Fuerst, 2019 COA 2, 488 P.3d 454.

Nothing in the language of this section, its history, or in its purpose limits the applicability of this section to "state-run" or "local law enforcement" laboratories as defendant suggests. The reference to "the criminalistics laboratory" in this section is only a reference to the forensic laboratory that performed the test, the results of which are submitted into evidence. People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

The limited application proposed by defendant is not a reasonable interpretation of the statutory language. Nothing in the definition limits the practice of "criminalistics" to state-run or local law enforcement laboratories. People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

Defendant's rights under subsection (5) not violated when laboratory supervisor testified at trial even though she was not the person who analyzed defendant's blood

alcohol concentration. Because the test results could not have been approved and certified without the supervisor's review, supervisor "performed the final and necessary step" in the testing process, and therefore accomplished the analysis. People v. Medrano-Bustamante, 2013 COA 139, 412 P.3d 581, aff'd in part, rev'd in part on other grounds sub nom. Reyna-Abarca v. People, 2017 CO 15, 390 P.3d 816.

By not complying with the procedural requirements of subsection (5), defense counsel waived defendant's right to confront technician who prepared laboratory report. The right to confrontation falls into the class of rights that defense counsel can waive through strategic decisions. Waiver of this right does not require a voluntary, knowing, and intentional waiver by the defendant personally. Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007); Coleman v. People, 169 P.3d 659 (Colo. 2007); People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

A defense counsel's erroneous and unreasonable interpretation of this section does not render involuntary a defendant's waiver of his confrontation rights. People v. Martinez, 254 P.3d 1198 (Colo. App. 2011).

Defendant's attorney's failure to comply with subsection (5) waived defendant's right to confront technician who prepared forensic report that was introduced without technician's testimony. Defendant's attorney's ignorance of the statute's requirements does not affect the waiver of the right to confrontation. Defendant received sufficient notice of the existence of the report and its possible introduction at trial. Cropper v. People, 251 P.3d 434 (Colo. 2011).

Before admitting a laboratory report pursuant to subsection (5), some factors the trial court might consider include: Whether an attorney or a pro se litigant actually knew that he was required to notify the opposing party of his desire to have the witness present; the reasons why notice was late or was not given at all; the difficulty of acquiring the presence of the witness; the significance to the case of the report and of the testimony that would be elicited from the technician; and any other pertinent circumstances. People v. Mojica-Simental, 73 P.3d 15 (Colo. 2003).

Forensic laboratory reports are admissible in criminal proceedings without establishing the usual foundation, absent a request that the technician be made available at trial. Testimony about the reports without admitting the reports into evidence does not deny defendant any rights to confrontation or cross-examination. People v. Moses, 64 P.3d 904 (Colo. App. 2002).

Specific requirement in subsection (5) of this section that laboratory testing technician be made available at trial upon timely request overrides general hearsay exception of CRE 803(6). When timely request had been made, trial court erred in admitting laboratory report without technician's testimony as a business record. People v. Williams, 183 P.3d 577 (Colo. App. 2007).

A criminalistics laboratory report may be admitted in evidence in a driving under the influence (DUI) trial without the laboratory technician's testimony because there is no conflict with the general DUI statute, and the constitutional right to confrontation is not violated on its face by requiring the defendant to affirmatively assert such right by requesting the technician to testify. However, a lack of actual notice of the opportunity to require the technician to testify or a mistaken failure to request the testimony may not constitute a voluntary waiver of the right to confrontation. People v. Mojica-Simental, 73 P.3d 15 (Colo. 2003).

Court abused its discretion when it committed to suppress results for tests that had not yet been conducted unless the prosecution allowed the testing to be videotaped or agreed to pay the cost of the defense expert to view the testing. The court was in no position to assess the reasonableness of future conduct. People v. Wartena, 156 P.3d 469 (Colo. 2007).

Court did not err in admitting the lab test through a police officer. The defendant did not file the statutorily required request for the technician to testify in person, so the report could be introduced through another person familiar with the report. The officer did not provide expert testimony in introducing the lab test, so the admission of the report was appropriate. People v. Santana, 240 P.3d 302 (Colo. App. 2009), rev'd on other grounds, 255 P.3d 1126 (Colo. 2011).

16-3-310. Oral advisement and consent prior to search of a vehicle or a person during a police contact.

(1) (a) Prior to conducting a consensual search of a person who is not under arrest, the person's effects, or a vehicle, a peace officer shall comply with paragraph (b) of this subsection (1).

(b) A peace officer may conduct a consensual search only after articulating the following factors to, and subsequently receiving consent from, the person subject to the search or the person with the apparent or actual authority to provide permission to search the vehicle or effects. The factors are:

(I) The person is being asked to voluntarily consent to a search; and

(II) The person has the right to refuse the request to search.

(c) After providing the advisement required in paragraph (b) of this subsection (1), a peace officer may conduct the requested search only if the person subject to the search voluntarily provides verbal or written consent. Other evidence of knowing and voluntary consent may be acceptable, if the person is unable to provide written or verbal consent.

(2) A peace officer providing the advisement required pursuant to subsection (1) of this section need not provide a specific recitation of the advisement; substantial compliance with the substance of the factors is sufficient to comply with the requirement.

(3) If a defendant moves to suppress any evidence obtained in the course of the search, the court shall consider the failure to comply with the requirements of this section as a factor in determining the voluntariness of the consent.

(4) This section shall not apply to a search conducted pursuant to section 16-3-103, a valid search incident to or subsequent to a lawful arrest, or a search for which there is a legal basis other than voluntary consent. This shall include, but not be limited to, a search in a correctional facility or on correctional facility property, a detention facility, county detention facility, custody facility, juvenile correctional facility or any mental health institute or mental health facility operated by or under a contract with the department of human services, a community corrections facility, or a jail or a search of a person subject to probation or parole by a community supervision or parole officer when the person has consented to search as a term and condition of any probation or parole.

Source: L. 2010: Entire section added, (HB 10-1201), ch. 176, p. 638, § 1, effective April 29.

ANNOTATION

The failure of a police officer to specifically instruct a defendant that consent must be voluntary and that he or she can refuse the request to search is not determinative. A complete reading of the statute demonstrates that an officer's articulation of these two factors is only part of the totality of the circumstances analysis. People v. Munoz-Gutierrez, 2015 CO 9, 342 P.3d 439.

16-3-311. Peace officer incident recordings.

(1) A person has the right to lawfully record any incident involving a peace officer and to maintain custody and control of that recording and the device used to record the recording. A peace officer shall not seize a recording or recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant requirement.

(2) (a) If a peace officer seeks to obtain from a person a device used to record an incident involving a peace officer in order to access the recording as possible evidence in an investigation, the officer shall first:

(I) Advise the person of his or her name, his or her badge number or other identifying number, and the name of the law enforcement agency;

(II) Identify the legal reason for which the information is requested; and

(III) If practicable under the circumstances, inquire whether the person will voluntarily provide the officer with a copy of the specific recording that is relevant to the investigation either by voluntarily providing the device to the officer or immediately electronically transferring the information to the officer or the law enforcement agency so that the person may retain possession of his or her device, the recording, and any personal non-evidentiary private information contained on the device.

(b) If the person consents voluntarily to the transfer of the device to law enforcement, the peace officer shall limit his or her search of the device to a search for the recording that is relevant evidence to the investigation, and the device shall be returned to the person upon request and with all convenient speed.

(c) If the person consents to an electronic transfer of the recording, the electronic transfer shall take place as soon as possible and without unnecessary delay.

(d) In circumstances when the immediate electronic transfer is not practicable or if the person does not consent to the electronic transfer of the evidentiary information or to the seizure of the device, the peace officer may arrange for the transfer or delivery of the information or device with the person to the peace officer or to the law enforcement agency by any alternative means consistent with any policies and procedures of the law enforcement agency.

(e) Notwithstanding the provisions of this section, a peace officer has the authority to temporarily seize and maintain control over a device that was used to record an incident involving a peace officer for no longer than seventy-two hours to obtain a search warrant when exigent circumstances exist such that the peace officer believes it is necessary to save a life or when the peace officer has a reasonable, articulable, good-faith belief that seizure of the device is necessary to prevent the destruction of the evidentiary recording while a warrant is obtained.

(3) The provisions of this section do not apply to devices seized incident to arrest.

(4) Nothing in this section shall be construed to allow a person to interfere with a peace officer in the lawful performance of his or her duties.

Source: L. 2015: Entire section added, (SB 15-1290), ch. 212, p. 774, § 2, effective May 20, 2016.

16-3-312. Warrantless entry of a dwelling.

(1) When a peace officer makes a warrantless entry into a dwelling in which occupants are unaware law enforcement is present and making entry, the officer shall:

(a) Wear and activate a body-worn camera as required by section 24-31-902 (1)(a)(II)(A) when entering a premises for the purpose of enforcing the law; and

(b) Knock-and-announce the officer's presence at a volume loud enough for the officer to reasonably believe the occupants inside can hear, allow a reasonable amount of time before entering given the size of the dwelling for someone to get to the door, and delay entry if the officer has reason to believe that someone is approaching the dwelling's entrance with the intent of voluntarily allowing the officer to enter the dwelling; except that this subsection (1)(b) does not apply if the circumstances known to the officer at the time provide an objectively reasonable basis to believe that a no-knock entry or not waiting a reasonable amount of time is necessary because:

(I) Of an emergency threatening the life of or grave injury to a person, provided that the imminent danger is not created by law enforcement itself; or

(II) The officer is engaged in the hot pursuit of a fleeing suspect.

(2) This section does not apply to a law enforcement officer working in an undercover capacity.

Source: L. 2023: Entire section added, (SB 23-254), ch. 395, p. 2360, § 3, effective June 6.

16-3-313. Search warrants provided to covered platforms - process required - enforcement - severability - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) (I) "Covered platform" means a public or semipublic website, online service, online application, or mobile application that:

(A) Has at least one million discrete monthly users;

(B) Allows a user to construct a public or semipublic profile for the purpose of using the website, service, or application; and

(C) Allows a user to create or post content that is viewable by other users, including on message boards, in chat rooms, or through landing pages or main feeds that present a user with content generated by other users or by artificial intelligence. A website, online service, online application, or mobile application shall not be deemed to satisfy the criterion described in this

subsection (1)(a)(I)(C) solely because the website, online service, online application, or mobile application provides the ability to post and view comments for the purpose of rating or reviewing products or services or, in the case of a website, online service, online application, or mobile application that predominantly or exclusively provides news, sports, entertainment, or e-commerce content that is preselected by the provider and not user-generated, solely because the website, online service, online application, or mobile application has chat, comment, or interactive functionality that is directly related to, or dependent upon, the provision of that content.

(II) "Covered platform" includes features or services of a covered platform.

(III) "Covered platform" does not include a service or application that:

(A) Is used to facilitate communication within a business or enterprise among employees or affiliates of the business or enterprise, so long as access to the service or application is restricted to employees or affiliates of the business or enterprise using the service or application; or

(B) Has the exclusive purposes of offering the commercial sale of goods and facilitating commercial transactions between buyers and sellers, so long as the service or application is not a feature or service of, or otherwise associated or affiliated with, a covered platform.

(b) "Operator" means a person, business, or other legal entity that operates or provides a covered platform.

(c) "Search warrant" includes a court order for the production of records, as described in section 16-3-301.1.

(d) "User" means a user of a covered platform who resides in Colorado and is not acting as an operator, or an agent or affiliate of an operator, of the platform or any portion of the platform.

(2) An operator shall ensure that each of its covered platforms provides a streamlined process to allow Colorado law enforcement agencies to contact the covered platform. The process must, at a minimum:

(a) Be available to Colorado law enforcement agencies at all times; and

(b) Make available at all times a staffed hotline for Colorado law enforcement agencies for the purposes of:

(I) Receiving and responding to questions about search warrants;

(II) Acknowledging the receipt of a search warrant within eight hours after receipt; and

(III) Providing status updates on search warrant compliance to a requesting Colorado law enforcement agency.

(3) An operator shall prominently post contact information on the home page of each of its covered platforms to allow a Colorado law enforcement agency to contact the operator and initiate the process described in subsection (2) of this section.

(4) Except as provided in subsection (5) of this section, or any other law, including section 32 of article II of the state constitution; the "Colorado Privacy Act", part 13 of article 1 of title 6; section 16-3-301 (4); and the "Reproductive Health Equity Act", part 4 of article 6 of title 25, an operator shall comply with a search warrant within seventy-two hours after receiving the search warrant if all of the following apply:

(a) The search warrant is provided to the operator or the operator's covered platform by a Colorado law enforcement agency;

(b) The subject of the search warrant is information associated with a user's account on a covered platform operated by the operator; and

(c) The information is controlled by a user or operator of the covered platform.

(5) A court may reasonably extend the time required to comply with a search warrant provided pursuant to subsection (4) of this section if the court makes a written finding that the operator or covered platform has shown good cause for the extension and that an extension would not cause an adverse result, as defined in 18 U.S.C. sec. 2705 (a)(2).

(6) The failure of an operator or covered platform to comply with the requirements of a court-ordered search warrant as described in this section supports a finding of contempt of court, as described in section 16-3-301.1 (6)(d).

(7) On or after August 12, 2026, if it appears to the attorney general or to a district attorney with jurisdiction, upon complaint or otherwise, that a person within or outside the state has violated this section, in addition to seeking any other relief available under this part 3, the attorney general or district attorney may bring an action or proceeding to:

(a) Enjoin the violation;

(b) Obtain restitution of any money or property obtained directly or indirectly as a result of the violation;

(c) Obtain disgorgement of any profits or gains obtained directly or indirectly as a result of the violation;

(d) Obtain damages caused directly or indirectly by the violation;

(e) Obtain civil penalties of up to five thousand dollars per violation; and

(f) Obtain such other relief as the court may deem proper, including preliminary relief.

(8) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Source: L. 2026: Entire section added, (SB 26-011), ch. 28, p. 127, § 1, effective August 12.

Editor's note: Section 2(2) of chapter 28 (SB 26-011), Session Laws of Colorado 2026, provides that the act adding this section applies to search warrants provided on or after August 12, 2026.

PART 4

RIGHTS OF PERSONS IN CUSTODY

16-3-400.3. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Authorized representative" means a professional person who is employed by or under contract with an attorney, the attorney's office, or with a state agency to assist in providing legal representation to a person committed, imprisoned, or arrested and who has been authorized by the attorney to consult with their clients and the authorization can be confirmed by law enforcement prior to allowing the consultation.

(2) "Place of confinement" means a jail or other fixed place of confinement operated by the county or other governmental authority to hold persons committed, imprisoned, or arrested for any cause, or a facility or other fixed place of confinement operated by the department of corrections or under contract with the department of corrections at which the in-custody person is held for more than twenty-four hours.

Source: L. 2025: Entire section added, (HB 25-1049), ch. 331, p. 1716, § 1, effective August 6.

16-3-401. Treatment while in custody.

(1) No unlawful means of any kind shall be used to obtain a statement, admission, or confession from any person in custody.

(2) Persons arrested or in custody shall be treated humanely and provided with adequate food, shelter, and, if required, medical treatment. Anyone receiving medical treatment while held in custody may be assessed a medical treatment charge as provided in section 17-26-104.5, C.R.S.

Source: L. 72: R&RE, p. 202, § 1. **C.R.S. 1963:** § 39-3-401. **L. 97:** (2) amended, p. 192, § 2, effective April 1.

ANNOTATION

Law reviews. For note, "The Admissibility of Confessions Obtained Before Arraignment — Federal Rule", see 21 Rocky Mt. L. Rev. 98 (1948). For note, "Involuntary Confessions — Fourth Stage in Colorado", see 31 Dicta 133 (1954).

Subsection (2) not void for vagueness. "Custody" is defined in § 16-1-104 for purposes of this part 4. Denver Health & Hosp. v. City of Arvada, 2016 COA 12, 405 P.3d 308, rev'd on other grounds, 2017 CO 97, 403 P.3d 609.

The duty imposed by subsection (2) on a detaining governmental entity to provide medical treatment implies an inherent obligation on the part of the entity to pay the costs of such treatment. Poudre Valley Health Care, Inc. v. City of Loveland, 85 P.3d 558 (Colo. App. 2003), overruled in City of Arvada v. Denver Health & Hosp., 2017 CO 97, 403 P.3d 609.

Section does not create a private right of action for a health care provider against an entity holding a person arrested or in custody. Statute does not identify a duty owed to health care providers nor create or impute a private right of action by a health care provider. However, a health care provider may establish a claim for unjust enrichment. City of Arvada v. Denver Health & Hosp., 2017 CO 97, 403 P.3d 609 (overruling Poudre Valley Health Care Inc. v. City of Loveland, 85 P.3d 588 (Colo. App. 2003)).

16-3-402. Right to communicate with attorney and family.

(1) A person who is arrested has the right to communicate with an attorney of the person's choice and a member of the person's family by making a reasonable number of telephone calls or by communicating in any other reasonable manner. The communication must be permitted at the earliest possible time after arrival at the police station, sheriff's office, jail, or other like confinement facility to which the person is first taken after arrest.

(2) If the accused person is transferred to a new place of custody, the accused person's right to communicate with an attorney and a member of the accused person's family is renewed.

(2.5) If the victim is able to demonstrate through the use of caller identification or other credible evidence that the incarcerated defendant has called the victim from the jail or correctional facility in violation of the protection order issued pursuant to section 18-1-1001, C.R.S., or in violation of any other valid protection order or emergency protection order in effect, the defendant shall not be entitled to further telephone calls except to such defendant's attorney, which calls shall be placed by a jail or correctional facility staff member. If the defendant was arrested for violating an order not to contact certain family members, the right to contact those family members by telephone shall be prohibited, and the jail or correctional facility staff shall place all outgoing telephone calls that the defendant wishes to make that are not identified in the protection order as prohibited.

(3) (a) Consistent with section 21-1-103, if a person in custody indicates in any manner the desire to speak with an attorney, or the court determines that an inquiry into the matter of indigency should occur, a public defender or the public defender's authorized representative is permitted to communicate with that person to determine whether the person in custody has counsel, whether the person in custody desires representation from the public defender, and to make an initial determination as to whether the person in custody is indigent. If the public defender or the public defender's authorized representative determines that the person in custody is indigent, the person in custody shall apply for representation by the public defender in accordance with section 21-1-103.

(b) The public defender, upon request and with due regard for reasonable law enforcement administrative and operational procedures, is permitted to determine whether or not a person in custody has been taken without unnecessary delay before the nearest available county or district judge.

Source: L. 72: R&RE, p. 202, § 1. **C.R.S. 1963:** § 39-3-402. **L. 81:** Entire section R&RE, p. 924, § 1, effective May 26. **L. 86:** (3)(a) amended, p. 731, § 1, effective July 1. **L. 88:** (3)(a) amended, p. 663, § 1, effective July 1. **L. 94:** (2.5) added, p. 2035, § 13, effective July 1. **L. 2003:** (2.5) amended, p. 1013, § 19, effective July 1. **L. 2008:** (2.5) amended, p. 1883, § 20, effective August 5. **L. 2025:** (1), (2), and (3) amended, (HB 25-1049), ch. 331, p. 1716, § 2, effective August 6.

ANNOTATION

Annotator's note. For further annotations concerning the right to counsel, see § 16 of art. II, of the Colo. Const.

Section codifies constitutional right to counsel. This section was enacted in 1972 as a part of the Colorado code of criminal procedure, and as such, the statute is merely a codification of the constitutional right to

counsel in criminal cases. Cooper v. Dir. of Dept. of Rev., 42 Colo. App. 109, 593 P.2d 1382 (1979).

Statement during process of booking was voluntary. The identification, during the process of booking of defendants, of a baggage locker key as part of personal property, with the added statement, "Go see for yourself", cannot be challenged as not voluntary merely because defendant's father was not called before defendant was booked; nor can the failure to take defendant before a judge before defendant was booked affect the voluntariness of the identification of his personal belongings. Hubbard v. Patterson, 374 F.2d 856 (10th Cir. 1967) (decided under repealed § 39-1-1, C.R.S. 1963).

Suppression of evidence is not the proper remedy for an alleged violation of this statute. Suppression is generally a remedy for only constitutional violations not statutory violations. People v. Clayton, 207 P.3d 831 (Colo. 2009).

16-3-403. Right to consult with attorney.

A person committed, imprisoned, or arrested for any cause, whether or not the person is charged with an offense, is allowed to consult with an attorney-at-law of this state or the attorney's authorized representative whom the person desires to see or consult, alone and in private at the place of custody, as many times and for a period each time as is reasonable. Except where extradition proceedings have been completed or are not required by law, when a person is about to be moved beyond the limits of this state, the person to be moved is entitled to a reasonable delay for the purpose of obtaining counsel and benefiting from the laws of this state for the security of personal liberty.

Source: L. 72: R&RE, p. 203, § 1. **C.R.S. 1963:** § 39-3-403. **L. 2025:** Entire section amended, (HB 25-1049), ch. 331, p. 1717, § 3, effective August 6.

ANNOTATION

Annotator's note. Since § 16-3-403 is similar to repealed laws antecedent to CSA, C 48, § 560, relevant cases construing those provisions have been included in the annotations to this section.

Language of this section and § 16-3-404 does not confer a statutory right to private attorney-client consultation which is broader than the corollary constitutional right. People v. Dehmer, 931 P.2d 460 (Colo. App. 1996).

Under this section any person restrained of his liberty for any cause whatever has the right to consult counsel. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

And the person denied rights of such paramount importance must of necessity be the person aggrieved, for this section cannot well be held to refer to any other. McPhail v. Delaney, 48 Colo. 411, 110 P. 64 (1910).

Commitment to state hospital does not deny right. The commitment of a defendant adjudged not guilty by reason of insanity to the state hospital cannot be construed to deny the right given by this section. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

Only remedy for violation of statutory provision is the fine provided for in § 16-3-404 (2). People v. Parsons, 15 P.3d 799 (Colo. App. 2000).

16-3-404. Duty of officers to admit attorney.

(1) All peace officers or persons having in custody a person committed, imprisoned, or arrested for any alleged cause shall forthwith admit an attorney-at-law in this state or the attorney's authorized representative, upon the demand of the confined person or of a friend, relative, spouse, or attorney of the confined person, to see and consult the confined person, alone and in private, at the jail or other place of custody, if the confined person expressly consents to see or to consult with the attorney or the attorney's authorized representative.

(1.5) In addition to in-person communication, a peace officer or person employed at a place of confinement shall provide an attorney-at-law in this state or the attorney's authorized representative the ability to initiate communication with the confined person through telephone calls, interactive audiovisual conferencing, or any other reasonable method of electronic communication, as determined by the jail or correctional facility administration, that allows the confined person and the attorney or authorized representative to speak to each other. The communication must be private, unrecorded, and without cost to the confined person and attorney or the attorney's representative. Peace officers or persons having custody of the confined person shall allow the communication described in this section on a forthwith basis, subject to all reasonable administrative and operational procedures and in the manner as determined by the facility administration.

(2) Any peace officer or person violating the duty imposed by this section or section 16-3-403 shall forfeit and pay not less than one hundred dollars nor more than one thousand dollars to the person imprisoned or to his attorney for the benefit of the person imprisoned, to be recovered in any court of competent jurisdiction.

Source: L. 72: R&RE, p. 203, § 1. **C.R.S. 1963:** § 39-3-404. **L. 2025:** (1) amended and (1.5) added, (HB 25-1049), ch. 331, p. 1717, § 4, effective August 6.

Cross references: For the crime of official oppression for denial of opportunity to consult an attorney, see § 18-8-403 (1)(b).

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950).

Annotator's note. Since § 16-3-404 is similar to repealed laws antecedent to CSA, C 48, § 560, relevant cases construing those provisions have been included in the annotations to this section.

Language of this section and § 16-3-403 does not confer a statutory right to private attorney-client consultation which is broader than the corollary constitutional right. People v. Dehmer, 931 P.2d 460 (Colo. App. 1996).

This section is a general statute, and in an action against a sheriff for refusing to permit counsel to consult a prisoner, it is not necessary to specifically declare upon the statute, but a complaint which states the facts is sufficient. McConathy v. Deck, 34 Colo. 232, 82 P. 702 (1905).

It is intended for benefit of prisoner. There is but one aggrieved person, either the attorney or the prisoner, and the section is plainly intended for the exclusive protection and benefit of the prisoner. The object is to give the individual restrained of his liberty the opportunity to see and consult an attorney, to determine whether he is unlawfully imprisoned, and to prepare for and properly make defense against whatever charge is preferred. McPhail v. Delaney, 48 Colo. 411, 110 P. 64 (1910).

Only remedy for violation of statutory provision is the fine provided for in subsection (2). People v. Parsons, 15 P.3d 799 (Colo. App. 2000).

Applied in Nees v. Bishop, 524 F. Supp. 1310 (D. Colo. 1981).

16-3-405. Strip searches - when authorized or prohibited.

(1) No person arrested for a traffic or a petty offense shall be strip searched, prior to arraignment, unless there is reasonable belief that the individual is concealing a weapon or a controlled substance or that the individual, upon identification, is a parolee or an offender serving a sentence in any correctional facility in the state or that the individual is arrested for driving while under the influence of drugs.

(2) As used in this section, "strip search" means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, or female breasts of such person.

(3) Any strip search that is conducted shall be performed by a person of the same sex as the arrested person and on premises where the search cannot be observed by persons not physically conducting the search.

(4) Every peace officer or employee of a police department or sheriff's department conducting a strip search shall obtain the written permission of the police commander or an agent thereof or a sheriff or an agent thereof designated for the purposes of authorizing a strip search in accordance with this section.

(5) No search of any body cavity other than the mouth shall be conducted without the written permission of the police commander or an agent thereof or a sheriff or an agent thereof authorizing a body cavity search. The search must be performed under sanitary conditions and conducted by a licensed physician or nurse.

(6) Any peace officer or employee of a police department or a sheriff's department who knowingly or intentionally fails to comply with any provision of this section commits second degree official misconduct, as defined in section 18-8-405, C.R.S. Nothing contained in this section shall preclude prosecution of a peace officer or employee of a police department or sheriff's department under any other provision of the law.

(7) Nothing in this section shall be construed as limiting the statutory or common-law rights of any person for the purposes of any civil action or injunctive relief.

(8) The provisions of subsections (1) to (6) of this section shall not apply when, following arraignment and pursuant to a court order, the person is taken into custody by or remanded to a sheriff or a correctional facility.

Source: L. 82: Entire section added, p. 305, § 1, effective April 5.

Cross references: For definition of "controlled substance", see § 12-280-402 (1); for "driving under the influence" of any drug, see § 42-4-1301.

16-3-406. Custodial interrogation - admissibility - legislative declaration - definition.

(1) The general assembly finds and declares that:

(a) The United States constitution and the state constitution declare a privilege against self-incrimination and a right to counsel to be fundamental rights;

(b) Without procedural safeguards, custodial interrogation by law enforcement can lead to inherently compelling pressures that work to undermine the will of the individual subjected to the interrogation;

(c) Prior to custodial interrogation, an individual must be clearly and unequivocally apprised of the individual's rights;

(d) The exercise of these rights prior to or during custodial interrogation must be fully honored;

(e) In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States supreme court recognized procedural safeguards and that an advisement must be given prior to any custodial interrogation in order for statements from that custodial interrogation to be admitted at trial by the prosecution;

(f) The court further stated in *Miranda* that states are free to develop their own safeguards consistent with *Miranda*;

(g) In the decades that have followed *Miranda v. Arizona*, experience has demonstrated that procedural safeguards to inform individuals of their rights and to honor exercise of their rights are beneficial and just;

(h) Colorado should join other states that have codified such procedural safeguards; and

(i) It is the intent of the general assembly that Colorado should therefore provide independent statutory protection consistent with *Miranda* in no greater or lesser degree.

(2) As used in this section, "custodial interrogation" has the same meaning as set forth in section 16-3-601.

(3) A court shall not admit a statement made by the defendant as a result of a custodial interrogation as evidence against the defendant in any criminal trial unless the defendant, prior to making the statement, was advised in a manner that reasonably conveyed the following warnings:

(a) You have the right to remain silent;

(b) Anything you say can and will be used against you in a court of law;

(c) You have the right to consult a lawyer prior to questioning and have the lawyer present during questioning;

(d) If you cannot afford to hire a lawyer, a lawyer will be appointed to represent you before any questioning if you request one; and

(e) You can stop the interview and request to remain silent or request a lawyer at any time before or during questioning.

(4) When properly raised by the defendant pursuant to rules promulgated by the Colorado supreme court, the prosecution has the burden of establishing by a preponderance of the evidence that the defendant made a knowing, intelligent, and voluntary waiver of the rights described in subsection (3) of this section.

(5) Nothing in this section precludes the admission of a voluntary statement to impeach the credibility of the defendant as a witness.

(6) Nothing in this section precludes the admission of a voluntary statement when the prosecution proves by a preponderance of the evidence that an exception recognized through the progeny of *Miranda v. Arizona*, 384 U.S. 436 (1966) applies, including the public safety exception or booking exception.

Source: L. 2023: Entire section added, (HB 23-1155), ch. 192, p. 963, § 1, effective July 1.

PART 5

WARRANTS AND BONDS FOR PERSONS ILLEGALLY IN THE COUNTRY

Cross references: For the legislative declaration contained in the 2007 act enacting this part 5, see section 1 of chapter 397, Session Laws of Colorado 2007.

16-3-501. Warrants issued for persons illegally in the country.

(1) If a person has posted a bond in a criminal case, at any stage of a criminal proceeding, and the person is released to the United States immigration and customs enforcement agency, the court shall issue a warrant commanding the arrest of the person when contacted anywhere within the United States and shall set the amount of the bond on the warrant. The warrant shall be entered in the Colorado crime information center and the national crime information center databases. The criminal case shall remain active for an indefinite period of time; except that the case may be dismissed upon a motion by the district attorney.

(2) A bond issued pursuant to this section shall include all known aliases for the person and the person's date of birth.

Source: L. 2007: Entire part added, p. 1770, § 2, effective June 1.

16-3-502. No dismissal of cases against persons illegally in the country.

(1) A court shall not dismiss criminal charges against a person because the person has been removed or is facing removal from the United States prior to a conviction or other disposition of all criminal charges against the person; except that the court may dismiss the criminal charges upon a motion of the district attorney.

(2) A court shall not dismiss criminal charges against a person who has been convicted or pled guilty to a crime because the person has been removed or is facing removal from the United States. The defendant shall serve his or her sentence and pay all restitution prior to removal.

(3) If the provisions of part 3 of article 4.1 of title 24, C.R.S., apply, the victim shall be consulted pursuant to the provisions of sections 24-4.1-302.5 and 24-4.1-303, C.R.S.

Source: L. 2007: Entire part added, p. 1771, § 2, effective June 1.

16-3-503. Bonds for persons with immigration-related issues.

On and after June 6, 2017, a law enforcement agency holding a defendant charged with a criminal offense shall not notify the defendant's bail bonding agent or a noncompensated surety before the bond is posted that his or her bond or fees may be forfeited if the defendant is removed from the country. On and after June 6, 2017, a law enforcement officer shall no longer ask a defendant or a person other than a bail bonding agent to execute a waiver prior to posting a bond for a person charged with a criminal offense that states that he or she understands that the bond or fees shall be forfeited if the defendant is removed from the country. A bail bonding agent shall not communicate to a defendant that his or her bond or fees shall be forfeited if the defendant is removed from the country.

Source: L. 2007: Entire part added, p. 1771, § 2, effective June 1. **L. 2008:** (2) amended, p. 923, § 2, effective July 1; (3)(n) amended, p. 1884, § 21, effective August 5. **L. 2012:** (1)(c) amended, (HB 12-1266), ch. 280, p. 1525, § 43, effective July 1. **L. 2017:** Entire section R&RE, (HB 17-1369), ch. 379, p. 1950, § 4, effective June 6.

Cross references: (1) For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 248, Session Laws of Colorado 2008.

(2) For the short title ("Bond Surety Protection Act") in HB 17-1369, see section 1 of chapter 379, Session Laws of Colorado 2017.

PART 6

RECORDING CUSTODIAL INTERROGATIONS

16-3-601. Recording custodial interrogations - definitions.

(1) On and after July 1, 2017, except as provided for in subsection (2) of this section, when a peace officer reasonably believes he or she is investigating a class 1 or class 2 felony or a felony sexual assault described in section 18-3-402, 18-3-404, 18-3-405, or 18-3-405.5, C.R.S., the peace officer shall electronically record a custodial interrogation occurring in a permanent detention facility of any person suspected of such an offense.

(2) Subsection (1) of this section does not apply if:

(a) The defendant requests the interrogation not be recorded, as long as this request is preserved by electronic recording or in writing;

(b) The recording equipment fails;

(c) Recording equipment is unavailable, either through damage or extraordinary circumstances;

(d) Exigent circumstances relating to public safety prevent the preservation by electronic recording; or

(e) The interrogation is conducted outside the state of Colorado.

(3) Nothing in this section prevents a court from admitting a statement made in a custodial interrogation in a permanent detention facility as rebuttal or impeachment testimony of the defendant.

(4) If a law enforcement agency does not make an electronic recording of the custodial interrogation as required by this section, the court may still admit evidence from the interrogation. If the prosecution, when offering the evidence from the interrogation, establishes by a preponderance of the evidence that one of the exceptions identified in subsection (2) of this section applies or the circumstances described in subsection (3) of this section apply, the court may admit the evidence without a cautionary instruction. If the prosecution does not meet this burden of proof, the court shall provide a cautionary instruction to the jury regarding the failure to record the interrogation after admitting the evidence. The court shall instruct the jury that the failure to record the interrogation is a violation of the law enforcement agency's policy and state law and that the violation may be considered by the jury in determining the weight that is given to any statement of the defendant in violation of this policy in the course of the jury's deliberations.

(5) By July 1, 2017, all law enforcement agencies shall have available equipment for making electronic recordings and have in place policies and procedures for the preservation of custodial interrogations consistent with this section.

(6) For the purposes of this section, the following definitions apply:

(a) "Custodial interrogation" means any interrogation of a person while such person is in custody.

(b) "Custody" means restraint on a person's freedom such that a reasonable person would believe he or she is in police custody to the degree associated with a formal arrest.

(c) "Electronic recording" means an audio-visual recording that accurately preserves the statements of all parties to a custodial interrogation.

(d) "Interrogation" means words or conduct initiated by a law enforcement officer that the officer should know are reasonably likely to elicit an incriminating response from the suspect.

(e) "Permanent detention facility" means any building, structure, or place where persons are or may lawfully be held in custody or confinement under the jurisdiction of the state of Colorado or any political subdivision of the state of Colorado, including a building housing the offices of a law enforcement agency. "Permanent detention facility" does not include a vehicle, trailer, mobile office, or temporary structure.

Source: L. 2016: Entire part added, (HB 16-1117), ch. 329, p. 1334, § 1, effective June 10.

PART 7

RECOGNITION OF TRIBAL COURT ARREST WARRANTS

16-3-701. Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "State" means the state of Colorado.

(2) "Tribal court" means any court or other federally or tribally established tribunal of a federally recognized Tribe duly established pursuant to federal law or Tribal law, including the Courts of Indian Offenses, Ute Mountain Ute agency, organized pursuant to 25 CFR 11.

(3) "Tribe" means the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, or a federally recognized tribe acknowledged by the "Federally Recognized Indian Tribe List Act of 1994", Pub.L. 103-454, 108 Stat. 4791.

Source: L. 2025: Entire part added, (SB 25-009), ch. 165, p. 667, § 1, effective May 5.

16-3-702. Recognition of Tribal court orders - arrest warrants - full faith and credit.

A state court shall give full faith and credit to an arrest warrant issued by a Tribal court of a federally recognized Tribe.

Source: L. 2025: Entire part added, (SB 25-009), ch. 165, p. 668, § 1, effective May 5.

16-3-703. Recognition of Tribal court orders - arrest warrants - process.

(1) Upon issuance of a Tribal court arrest warrant, a peace officer in the state may apprehend the person identified in the Tribal warrant if the peace officer verifies the validity of the warrant and confirms that the warrant permits extradition. The law enforcement agency in the arresting jurisdiction may surrender a person arrested pursuant to a Tribal arrest warrant to the law enforcement agency of the Tribal jurisdiction if the law enforcement agency of the Tribal jurisdiction is available to take custody of the person. If the law enforcement agency of the Tribal jurisdiction is not available to take custody of the person, the law enforcement agency in the arresting jurisdiction shall hold the person in the county detention facility of the law enforcement agency in the arresting jurisdiction. If the arrest warrant is non-extraditable or if the bond on the arrest warrant is a personal recognizance bond, the law enforcement agency in the arresting jurisdiction must immediately release the person from state custody.

(2) **Court process.**

(a) Courts shall follow the process outlined in this subsection (2) for extradition cases arising from a Tribal court order.

(b) If a person is arrested on a Tribal court arrest warrant and the law enforcement agency in the arresting jurisdiction does not surrender the person immediately to the law enforcement agency of the Tribal jurisdiction as described in subsection (1) of this section, a peace officer of the law enforcement agency with custody of the person shall bring the person before the nearest court in the time frame described in sections 13-10-111.5 (5) and 16-4-102 (2)(a)(II). The court shall appoint the office of state public defender to the person if the person is eligible and inform the person of the existence of the arrest warrant, the nature of the arrest warrant, and the person's rights, including the right to counsel, the right to remain silent, the right to contest the legality of the extradition request, and the right to waive extradition and knowingly, intelligently, and voluntarily agree to return to the Tribal jurisdiction.

(c) (I) The arrested person identified in subsection (2)(b) of this section may, in the presence of the court, sign a waiver of extradition verifying that the person consents to the return to the Tribal jurisdiction. Before the person signs the waiver of extradition, the court shall inform the person of the person's right to test the legality of the extradition request.

(II) If a person requests a hearing to test the legality of the extradition request, the court shall hold the hearing within seven days after the person facing extradition requests the hearing unless the court grants the person more time to prepare for the hearing. The court shall not place a burden on the state at the hearing. The court shall not consider the person's guilt or innocence during the hearing. At the hearing, the court shall order the person extradited unless the person challenging the extradition shows by a preponderance of the evidence that:

(A) The law enforcement agency in the arresting jurisdiction did not verify the validity of the arrest warrant and did not confirm that the warrant permitted extradition prior to the person's arrest, resulting in an unconstitutional illegal seizure pursuant to the state constitution or the United States constitution;

(B) Extradition of the person would violate the state constitution or the United States constitution; or

(C) The person appearing before the court is not the person named in the arrest warrant.

(d) (I) **Eligibility for bail.** Unless the Tribal court with jurisdiction over the arrest warrant requests the person be held without bail, the court may set bail on the extradition case. If the court releases the person on bail, the court shall also set a review hearing date and a deadline for the person to travel to the Tribal court's jurisdiction and answer the arrest warrant. In setting the amount and conditions of bail, the court shall consider the conditions necessary to ensure the person's appearance before the court and to consider the community's safety. When setting bail, the court shall consider the amount of bail on the Tribal court arrest warrant.

(II) If the court receives notice from the law enforcement agency with custody of the person or the district attorney on or before the review hearing from the Tribal court that the person has appeared before the Tribal court, the court shall dismiss the extradition case.

(III) If the person appears before the court but has not appeared before the Tribal court as ordered, upon notice from the law enforcement agency with custody of the person or the district attorney, the court shall revoke the extradition bond and order the person extradited.

(IV) If the person fails to appear before the court, the court shall issue an arrest warrant and order forfeiture of the extradition bond as set forth in section 16-4-111 (3).

(3) **Extradition process.**

(a) The court shall give the extradition orders to the person, the person's counsel, the prosecution, the law enforcement agency with custody of the person, the Tribal court, and the Tribal law enforcement agency.

(b) If the court determines that the person must be held without bail pending extradition, the court shall order the law enforcement agency with custody of the person to notify the requesting Tribal court when any other local holds are resolved and the person may be transported to the Tribal court's jurisdiction.

(c) When the law enforcement agency with custody of the person notifies the Tribal jurisdiction that a person is available for extradition, the law enforcement agency shall notify the court of the date and time of the notice.

(d) (I) Upon receiving a valid order from a court authorizing the extradition of the person and notification from the law enforcement agency with custody of the person that there are no local holds preventing transport, the Tribe shall arrange transport of the person to the Tribe's detention facility without undue delay unless otherwise agreed upon by the law enforcement agency with custody of the person and the law enforcement authority of the Tribal jurisdiction. The Tribe shall take custody of the person within seventy-two hours after receipt of the extradition order and notice that the person is available for transport.

(II) Notwithstanding subsection (3)(d)(I) of this section to the contrary, if a Tribe is not able to take custody of the person within seventy-two hours after receipt of the extradition order and notice that the person is available for transport, the court may, upon a finding of good cause, adjust the time frame as necessary for the Tribe to take custody of the person.

(e) If a court orders extradition and the court receives information that the Tribal jurisdiction has custody of the person or the person has appeared before the Tribal court, the court shall dismiss the extradition case and order the extradition bond released.

(f) Except for a court's finding of good cause to hold a person longer than seventy-two hours pursuant to subsection (3)(d)(II) of this section, the law enforcement agency with custody of the person shall release the person if the Tribe has not taken custody of the person within the time frame set forth in subsection (3)(d)(I) of this section. A person who has been held in excess of the time limit set forth in subsection (3)(d)(I) of this section may file a motion for release, and upon receipt of the motion, the court shall conduct an immediate hearing. If the court determines at the hearing that the person has been held in excess of the time limit set forth in subsection (3)(d)(I) of this section, the court shall order the person's immediate release.

Source: L. 2025: Entire part added, (SB 25-009), ch. 165, p. 668, § 1, effective May 5.

ARTICLE 4

Release from Custody Pending Final Adjudication

PART 1
RELEASE ON BAIL

16-4-101. Bailable offenses - definitions.

16-4-102. Right to bail - before conviction - definitions.

16-4-103. Setting and selection type of bond - criteria.

16-4-104. Types of bond set by the court.

16-4-105. Conditions of release on bond.

16-4-105.5. Notification of court reminder program. (Repealed)

16-4-106. Pretrial services programs.

16-4-107. Hearing after setting of monetary conditions of bond.

16-4-107.5. Hearing after excluding time for speedy trial for public health emergency - repeal. (Repealed)

16-4-108. When original bond continued.

16-4-109. Reduction or increase of monetary conditions of bond - change in type of bond or conditions of bond - definitions.

16-4-110. Exoneration from bond liability.

16-4-111. Disposition of security deposits upon forfeiture or termination of bond.

16-4-112. Enforcement when forfeiture not set aside.

16-4-113. Type of bond in certain misdemeanor cases.

16-4-114. Enforcement procedures for compensated sureties - definitions.

16-4-115. Severability.

16-4-116. Bond hearing officer.

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PART 2
BAIL AFTER CONVICTION

16-4-201. Bail after conviction.

16-4-201.5. Right to bail after a conviction - exceptions.

16-4-202. Appeal bond hearing - factors to be considered.

16-4-203. Appeal bond hearing - order.

16-4-204. Appellate review of terms and conditions of bail or appeal bond.

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PART 3
UNIFORM RENDITION OF ACCUSED PERSONS ACT

16-4-301. Short title.

16-4-302. Arrest of person illegally in state.

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PART 1

RELEASE ON BAIL

Editor's note: (1) This part 1 was numbered as article 4 of chapter 39, C.R.S. 1963. This article was repealed and reenacted in 1972, and this part 1 was subsequently repealed and reenacted in 2013, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 1 prior to 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) For historical information concerning the 1972 repeal and reenactment of this article, see the editor's note following the article 1 heading.

16-4-101. Bailable offenses - definitions.

(1) All persons shall be bailable by sufficient sureties except:

(a) For capital offenses when proof is evident or presumption is great; or

(b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that the proof is evident or the presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases:

(I) A crime of violence alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;

(II) A crime of violence alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of

violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony;

(IV) A crime of possession of a weapon by a previous offender alleged to have been committed in violation of section 18-12-108 (2)(b), (2)(c), (4)(b), (4)(c), or (5), as those provisions existed prior to their repeal on March 1, 2022;

(V) Sexual assault, as described in section 18-3-402, sexual assault in the first degree, as described in section 18-3-402, as it existed prior to July 1, 2000, sexual assault in the second degree, as described in section 18-3-403, as it existed prior to July 1, 2000, sexual assault on a child, as described in section 18-3-405, or sexual assault on a child by one in a position of trust, as described in section 18-3-405.3 in which the victim is fourteen years of age or younger and seven or more years younger than the accused.

(c) When a person has been convicted of a crime of violence or a crime of possession of a weapon by a previous offender, as described in section 18-12-108 (2)(b), (2)(c), (4)(b), (4)(c), or (5), as those provisions existed prior to their repeal on March 1, 2022, at the trial court level and the person is appealing the conviction or awaiting sentencing for the conviction and the court finds that the public would be placed in significant peril if the convicted person were released on bail; or

(d) For the offense of murder in the first degree, as described in section 18-3-102, committed on or after December 17, 2024, when proof is evident or presumption is great.

(2) For purposes of this section, "crime of violence" shall have the same meaning as set forth in section 18-1.3-406 (2), C.R.S.

(3) In any capital case or case in which the defendant is charged with murder in the first degree, the defendant may make a written motion for admission to bail upon the ground that the proof is not evident or that presumption is not great, and the court shall promptly conduct a hearing upon the motion. At the hearing, the burden is on the people to establish that the proof is evident or that the presumption is great. The court may combine in a single hearing the questions as to whether the proof is evident or the presumption great with the determination of the existence of probable cause to believe that the defendant committed the crime charged.

(4) Except in the case of a capital offense or case in which the defendant is charged with murder in the first degree, if a person is denied bail pursuant to this section, the trial of the person must be commenced not more than ninety-one days after the date on which bail is denied. If the trial is not commenced within ninety-one days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set the amount of the bail for the person.

(5) When a person is arrested for a crime of violence, as defined in section 16-1-104 (8.5), or a criminal offense alleging the use or possession of a deadly weapon or the causing of bodily injury to another person, or a criminal offense alleging the possession of a weapon by a previous offender, as described in section 18-12-108 (2)(b), (2)(c), (4)(b), (4)(c), or (5), as those provisions existed prior to their repeal in 2022, and such person is on parole, the law enforcement agency making the arrest shall notify the department of corrections within twenty-four hours. The person so arrested shall not be eligible for bail to be set until at least seventy-two hours from the time of his or her arrest has passed.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 820, § 2, effective May 11. **L. 2023:** (1)(b)(IV), (1)(c), and (5) amended, (HB 23-1301), ch. 303, p. 1819, § 18, effective August 7. **L. 2024:** (1)(c), (3), and (4) amended and (1)(d) added, (HB 24-1225), ch. 130, p. 458, § 1, effective December 17 (see editor's note).

Editor's note: Section 3 of chapter 130, Session Laws of Colorado 2024, provides that the amendments to subsections (1)(c), (3), and (4) and subsection (1)(d) are effective only if House Concurrent Resolution 24-1002 is approved by the people at the November 2024 statewide election, in which case the amendments take effect on the date of the official declaration of the vote thereon by the governor. That resolution was approved by a vote of the registered electors of Colorado on November 5, 2024, as Amendment I. Amendments to subsections (1)(c), (3), and (4) and subsection (1)(d) were effective upon the proclamation of the Governor, December 17, 2024, see L. 2025, p. 3633. The vote count for the measure was as follows:

FOR: 2,058,063

AGAINST: 953,652

ANNOTATION

Law reviews. For article, "The Use of 'No Bond' Holds in Colorado", see 32 Colo. Law. 81 (Nov. 2003).

Annotator's note. Since § 16-4-101 is similar to § 16-4-101 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under former provisions similar to that section have been included in the annotations to this section.

Purpose of bail is to insure the defendant's presence at the time of trial and not to punish a defendant before he has been convicted. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Proviso refers to proof of guilt. The requirement in the constitution that capital offenses are nonbailable when "the proof is evident or the presumption great" simply

goes to the proof of guilt, not to the kind of proof needed for the imposition of the death penalty. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Offense does not cease to be capital where death penalty may not be imposed. Although by statute the death penalty cannot be imposed on the basis of only circumstantial evidence, the petitioner does not cease to be charged with a capital offense and thus become entitled to bail as a matter of right where the prosecution probably did not have the direct evidence necessary to seek the death penalty. The offense with which he was charged was still a capital one, even if it should later develop that the type of evidence adduced did not support a verdict imposing the death penalty. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

And denial of bail unaffected by constitutionality of death penalty. The United States supreme court decision prohibiting imposition of death penalty in the circumstances then before it did not preclude denial of bail pursuant to state constitutional provision that bail may be denied where capital offense is charged when the proof is evident, or the presumption great, that defendant has committed the charged offense. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

Standard which the constitution requires before bail may be denied is greater than probable cause though less than that required for a conviction. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Guilt or innocence of the accused is not the issue in a bail hearing. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Burden on prosecution to show nonbailable case. If bail is to be denied, it is incumbent upon the prosecution to come forward and show that the proof is evident or the presumption great that the crime set forth was committed by the defendant, but if evidence is not presented by the prosecution, it is incumbent upon the court, looking to the guidelines laid down by statute, to set reasonable bail in compliance with the Colorado constitution and the eighth amendment of the constitution of the United States. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

The burden is upon the prosecution to show that the exception to the right to bail is applicable, and only with that showing can the conditional freedom secured by bail properly be denied. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Denial of bail not foreclosed by fact that defendant was minor. The fact that defendant was 16 years of age, a minor, who could not be subjected to the death penalty, would not have foreclosed the denial of bail. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Mere filing of an information or the production of evidence which would establish probable cause that the crimes charged were committed will not meet the Colorado constitutional standard for denying bail in capital cases. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Trial judge exceeded jurisdiction but did not lose right to revoke or modify bail. The trial judge exceeded his jurisdiction by equating probable cause to the Colorado constitutional standard for denying bail in capital cases and by imposing an impermissible condition on the defendant at the time bail was granted. However, the right of the court to revoke or modify bail which has been previously granted after notice is given to the defendant was not negated. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Only criminal defendants vested with legal rights in bail. Statutory provisions concerning bail do not purport to vest any persons other than criminal defendants with any legal rights in the determination of the terms, amount, or conditions of bail. Wimberly v. Ettenberg, 194 Colo. 163, 570 P.2d 535 (1977).

Child does not have absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

When juvenile detainable without bail. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

In the event a new trial is granted in a capital case, the court is required to hold the defendant without bond until defendant requests admission to bail. Once requested, the court must hold a hearing to set bail, even if the district attorney does not contend the proof is evident or presumption great. People v. Blagg, 2015 CO 2, 340 P.3d 1137.

Applied in Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981); People v. Turman, 659 P.2d 1368 (Colo. 1983); People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984).

16-4-102. Right to bail - before conviction - definitions.

(1) Any person who is in custody, and for whom the court has not set bond and conditions of release pursuant to the applicable rule of criminal procedure, and who is not subject to the provisions of section 16-4-101 (5), has the right to a hearing to determine bond and conditions of release. A person in custody may also request a hearing so that bond and conditions of release can be set. Upon receiving the request, the judge shall notify the district attorney immediately of the arrested person's request, and the district attorney has the right to attend and advise the court of matters pertinent to the type of bond and conditions of release to be set. The judge shall also order the appropriate law enforcement agency having custody of the prisoner to bring him or her before the court forthwith, and the judge shall set bond and conditions of release if the offense

for which the person was arrested is bailable. It is not a prerequisite to bail that a criminal charge of any kind has been filed.

(2) (a) (I) The arresting jurisdiction shall bring an in-custody arrestee before a court for bond setting as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. A judge, magistrate, or bond hearing officer shall hold a hearing with an in-custody arrestee at which the court shall enter an individualized bond order as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. Notwithstanding the requirement for bond setting within forty-eight hours, it is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by an emergency that requires the court to close or circumstances in which the in-custody arrestee refuses to attend court, or is unable to attend due to drug or alcohol use or a serious medical or behavioral health emergency. In such instances, the sheriff shall provide the public defender's office with a list of people subject to this section who did not timely attend court, the date of the person's arrest, and the location where the person is in custody. The sheriff shall document the length of the delay, the reason for the delay, and the efforts to abate the emergency. As soon as the emergency has sufficiently abated, the sheriff shall bring the in-custody arrestee before a judge at the next scheduled bond hearing. Use of audiovisual conferencing technology is permissible to expedite bond setting hearings, including prior to extradition of the in-custody arrestee from one county to another in the state of Colorado. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

(I.5) This subsection (2)(a) requires an individualized bond hearing at which the in-custody arrestee is present, regardless of whether:

(A) The in-custody arrestee is held in custody in a jurisdiction other than the one that issued the arrest warrant;

(B) Money bond with a monetary condition was previously set ex parte; or

(C) The in-custody arrestee did not appear for a first appearance.

(II) This subsection (2)(a) applies only to the initial bond setting at an individualized bond hearing by a judge, judicial officer, or bond hearing officer.

(III) This subsection (2)(a) applies to an arrestee who was arrested on or after April 1, 2022.

(IV) For an in-custody arrestee who is not subject to this subsection (2)(a), nothing in this section extends or justifies delays in timely advisement or bond hearings pursuant to other laws or rules.

(b) (I) A judge, judicial officer, or bond hearing officer shall not require a monetary bond to be posted in the defendant's name. Bond may be posted, at a minimum, by cash, money order, or cashier's check. Bond may be posted online, at a minimum, by credit card. If bond is posted by

money order or cashier's check, the money order or cashier's check may be payable to the holding county. Before bond is posted, the sheriff shall provide the defendant and surety or third-party payer, if any, a copy of the notice described in subsection (2)(h)(I) of this section. When the bond is posted, the sheriff shall provide the defendant and surety or third-party payer, if any, a copy of the bond paperwork and information regarding the defendant's next court date. The individual processing the bond shall certify, in writing, that the defendant and surety or third-party payer, if any, received a copy of the bond paperwork, the notice described in subsection (2)(h)(I) of this section, and information regarding the defendant's next court date and shall place a copy of the certification in the defendant's file. Notwithstanding the provisions of this section, a sheriff may allow an individual to choose to stay in jail overnight after release when extenuating circumstances exist, including inclement weather, lack of transportation, lack of shelter, or to facilitate a connection to a service provider. If a defendant remains in jail overnight, the defendant must be released by 10 a.m. the next morning.

(II) By October 1, 2025, each jail shall establish a means to post bond online without the need for the surety or third-party payer to go to the jail in person to post bond. Each sheriff shall post instructions on the sheriff's website describing how to post bond online. All bonds of any amount that are postable in person must be postable online. Defendants and sureties or third-party payers that post bond online have the same rights that are afforded to a person when posting in person, specifically:

(A) The sheriff shall provide the defendant and surety or third-party payer, if any, a copy of the notice described in subsection (2)(h)(I) of this section; and

(B) The sheriff shall provide the defendant and surety or third-party payer, if any, a copy of the bond paperwork and information regarding the defendant's next court date.

(c) The custodian of a jail shall ensure the defendant, a surety on behalf of the defendant, or another third party on behalf of the defendant is not charged more than a ten-dollar bond processing fee, including when bond is posted online.

(d) The custodian of a jail shall also ensure the defendant, a surety on behalf of the defendant, or another third party on behalf of the defendant is not charged any additional transaction fees, including kiosk fees, including when bond is posted online; except that the standard credit card processing fee that the credit card company charges may be charged when a credit card is used, or, when a third-party vendor provides defendants the option to post monetary bond with a credit card, the defendant may be required to pay not more than a three-and-one-half percent credit card payment processing fee.

(e) Unless extraordinary circumstances exist, the custodian of a jail shall release a defendant who is granted a personal recognizance bond as soon as practicable but no later than six hours after the defendant is physically present in the jail. Unless extraordinary circumstances exist, the custodian of a jail shall release a defendant who is granted a cash bond as soon as practicable but

no later than six hours after bond is set, after the defendant is physically present in the jail, and after the defendant, surety, or third-party payer notifies the jail that the defendant, surety, or third-party payer is prepared to post bond. If bond is posted online, the six-hour release timeline begins when the defendant, surety, or third-party payer submits payment for a bond online or electronically files a power of attorney pursuant to section 10-2-418. If the custodian fails to release the defendant within six hours, the custodian shall inform the defendant and any person posting bond on behalf of the defendant the reason for the delay and shall document the reason for the delay in the defendant's file. A supervisory condition of release does not serve as a legal basis to continue to detain the defendant; except that, if the defendant is ordered released upon condition of being subject to electronic monitoring, the defendant may be held up to as long as practicable but no longer than twenty-four hours after the defendant is physically present in the jail and the defendant's bond has been posted, if such delay is necessary to ensure the defendant is fitted with electronic monitoring and the court has authorized the defendant to be held until the electronic monitor is fitted. If the court orders electronic monitoring for the protection of a specific individual, and the defendant is ordered to have no contact with that specific individual, and the judge orders that the defendant not be released without electronic monitoring based on finding that the electronic monitoring is necessary for public safety, then the time limits regarding release of the defendant in this subsection (2)(e) do not apply. However, if a defendant is held more than twenty-four hours after posting bond awaiting electronic monitoring fitting, the sheriff shall bring the defendant to the court the next day the court is in session and explain the reason for the delay.

(e.5) (I) The custodian of a jail shall not delay a defendant's release from custody for the purpose of an immigration enforcement operation.

(II) For purposes of this subsection (2)(e.5):

(A) "Immigration enforcement operation" has the same meaning as set forth in section 24-76.6-101; except that "immigration enforcement operation" does not include any conduct contemplated by, or in compliance with, section 24-76.6-102 (4).

(B) "Jail" means a correctional facility, as defined in section 17-1-102; local jail, as defined in section 17-1-102; multijurisdictional jail, as described in section 17-26.5-101; or municipal jail, as described in section 31-15-401 (1)(j).

(f) A defendant whose bond has been posted, including when bond has been posted online, must be released regardless of whether the defendant has paid any outstanding fee, cost, or surcharge, including bond processing fees, booking fees, pretrial supervision fees, or electronic monitoring supervision fees.

(g) For purposes of this section, "extraordinary circumstances" includes an emergency that renders staff unable to process bonds and release defendants, but it does not include a lack of staffing resources or routine administrative practices.

(h) (I) (A) Each sheriff shall post the following notice of rights on the sheriff's website and information about how to file a complaint about violations of subsections (2)(b) to (2)(f) of this section:

Legal Rights Related to Posting Money Bond

Pursuant to Section 16-4-102, Colorado Revised Statutes

1. **Bond fees, booking fees, and other fees or debts never need to be paid to secure a person's release on money bond, including when bond is posted online.** A defendant, surety, or another third-party payer need only pay the bond amount in order to secure release.

2. While never a basis to hold a defendant in jail, the following fees are chargeable as a debt to the defendant after release if the surety or another third-party payer chooses not to pay the fees at the time of bonding: A $10 bond fee and a maximum 3.5% credit card payment fee. No other bond-related fees may be charged at any time, including any kiosk fees or fees for payment by cash, check, or money order, including when bond is posted online.

3. Bond payments are to be made out to the holding county and are never to be made out in the name of the incarcerated person.

4. **A sheriff must release a defendant within six hours after a personal recognizance bond is set and the defendant has returned to jail or within six hours after a cash bond has been set and the defendant has returned to jail and the defendant, surety, or third-party payer notified the jail that bond is prepared to be posted,** unless extraordinary circumstances exist. If bond is posted online, the six-hour release timeline begins when the defendant, surety, or third-party payer submits payment for a bond or electronically files a power of attorney. In the event of a delay of more than six hours, a surety or third-party payer and the defendant have a right to know what, if any, extraordinary circumstance is causing the delay. Supervisory conditions of release do not justify a delay in release; except that a sheriff may hold a defendant for up to 24 hours if necessary to ensure a defendant is fitted with required electronic monitoring.

5. Anyone who posts a money bond, including bond posted online, has the right to receive a copy of the bond paperwork, including documentation of the next upcoming court date.

6. **A surety or third-party payer may never be asked to use posted bond money to pay a defendant's debts.** Only when defendants have posted their own money bond

may they be asked if they would like to voluntarily relinquish bond money to pay their debts, including when bond is posted online. Relinquishment of bond money by a defendant to pay a debt is never required and is entirely a voluntary choice by the defendant.

(B) The notice described in this subsection (2)(h)(I) must include information about how to file a complaint about violations of these provisions.

(II) The sheriff shall include the notice described in subsection (2)(h)(I) of this section in the inmate handbook. The notice must also be available at the bonding counter and provided to any individual, including a defendant, inquiring about posting bond.

(i) Each sheriff shall post a notice both in the common area of the jail in a location clearly visible to the inmates and in the public portion of the jail where a person posts bond, clearly visible to a person posting bond, that contains the following information:

(I) Bond fees, booking fees, and other fees or debts never need to be paid to secure a person's release on money bond, including when bond is posted online. A defendant, surety, or other third-party payer need only pay the bond amount in order to secure release.

(II) The sheriff shall release a defendant within six hours after a personal recognizance bond is set and the defendant has returned to jail or within six hours after a cash bond has been set and the defendant has returned to jail and the defendant or surety or third-party payer notified the jail that bond is prepared to be posted, unless extraordinary circumstances exist. If bond is posted online, the six-hour release timeline begins when the defendant or surety or third-party payer submits payment for a bond or electronically files a power of attorney. However, a sheriff may hold a defendant for up to twenty-four hours if necessary to ensure a defendant is fitted with required electronic monitoring.

(III) How to file a complaint about violations of subsections (2)(i)(I) and (2)(i)(II) of this section.

(j) (I) Each sheriff shall create written policies to comply with this subsection (2) by October 1, 2025. The sheriff shall post the policies on the sheriff's website and distribute them to all staff. The sheriff shall train all staff who process bonds or interact with inmates on the policies.

(II) Each sheriff shall review and update the sheriff's website, signage, paperwork, and forms related to bonding to reflect current law by October 1, 2025, and update the sheriff's website, signage, paperwork, and forms related to bonding as necessary thereafter.

(III) Each sheriff shall file a certificate of compliance with this subsection (2), a copy of the written policies required by subsection (2)(j)(I) of this section, and the notices required by

subsections (2)(h)(I)(A) and (2)(i) of this section with the division of criminal justice in the department of public safety, by October 1, 2021, and each October 1 thereafter. Copies of the policies and notices only have to be provided when updated. The sheriff shall use the certificate of compliance form developed by the division of criminal justice in the department of public safety pursuant to section 24-33.5-503 (1)(bb).

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 822, § 2, effective May 11. **L. 2019:** Entire section amended, (SB 19-191), ch. 288, p. 2666, § 1, effective August 2. **L. 2021:** (2)(a), (2)(b), and (2)(e) amended and (2)(h), (2)(i), and (2)(j) added, (HB 21-1280), ch. 457, p. 3045, § 1, effective September 7. **L. 2023:** (2)(a)(I) and (2)(a)(II) amended and (2)(a)(I.5) and (2)(a)(IV) added, (HB 23-1151), ch. 92, p. 347, § 3, effective October 1. **L. 2025:** (2)(e.5) added, (SB 25-276), ch. 240, p. 1211, § 4, effective May 23; (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), (2)(h)(I)(A), (2)(i)(I), (2)(i)(II), (2)(j)(I), and (2)(j)(II) amended, (HB 25-1015), ch. 43, p. 200, § 1, effective August 6; (2)(b)(I) amended, (SB 25-190), ch. 286, p. 1473, § 1, effective August 6.

Editor's note: Amendments to subsection (2)(b)(I) by SB 25-190 were harmonized in part with and superseded in part by HB 25-1015.

Cross references: For the legislative declaration in HB 23-1151, see section 1 of chapter 92, Session Laws of Colorado 2023. For the legislative declaration in SB 25-276, see section 1 of chapter 240, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950).

Annotator's note. Since § 16-4-102 is similar to § 16-4-102 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

The power to grant bail derives not from the constitution, but from the common law. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

The manifest policy of this section is to encourage the giving of bail in proper cases, rather than to hold in custody at the state's expense persons accused of bailable offenses. The court should so administer cases arising under this statute as to give effect to this manifest policy. Allison v.

People, 132 Colo. 156, 286 P.2d 1102 (1955).

When a trial court grants a motion for a new trial, a defendant is restored to the bond status that existed upon the filing of charges. In a capital case, this requires that the court hold the defendant without bond until the defendant requests admission to bail. Once requested, the court must set a hearing at which the district attorney may seek to have bail denied because the proof is evident or presumption great. Even if the district attorney does not contend the proof is evident or presumption great, the court must hold a hearing to set bail. In either circumstance, because such a hearing is a "critical stage" as defined in § 24-4.1-302, the alleged victim, or the alleged victim's family if the victim is deceased, has the right to be present and heard at the hearing. People v. Blagg, 2015 CO 2, 340 P.3d 1137.

The power to fix bail cannot be delegated. In the absence of a statute providing otherwise, the court or judicial officer vested with the power to fix bail cannot delegate such power to another. But where such power has been exercised by the proper court or officer, the act of taking and approving the bail bond is a ministerial act which may be delegated without statutory authority. Bottom v. People, 63 Colo. 114, 164 P. 697 (1917).

Hearsay evidence is admissible in bail hearings. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

But denial of bail may not be predicated upon hearsay alone, but such evidence may be admitted in corroboration. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Child does not have absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

When child detainable without bail. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Probationer awaiting adjudication of a petition to revoke probation or a deferred judgment is subject to § 16-4-201 (bail after conviction) because probationer has been convicted of the underlying offenses that led to probation, despite the fact that the revocation motions are based on a new charge for which the probationer is presumed innocent. People v. Johnson, 2017 COA 97, 488 P.3d 232.

16-4-103. Setting and selection type of bond - criteria.

(1) (a) At the first appearance of a person in custody before any court or any person designated by the court to set bond, the court or person shall determine the type of bond and conditions of release unless the person is subject to section 16-4-101.

(b) At a hearing other than an advisement hearing for a person in custody before any court or any person designated by the court to modify or reduce bond, the court shall conduct or set a bond hearing if the case is subject to part 3 of article 4.1 of title 24.

(2) If an indictment, information, or complaint has been filed and the type of bond and conditions of release have been fixed upon return of the indictment or filing of the information or complaint, the court shall review the propriety of the type of bond and conditions of release upon first appearance of a person in custody.

(3) (a) The type of bond and conditions of release shall be sufficient to reasonably ensure the appearance of the person as required and to protect the safety of any person or the community, taking into consideration the individual characteristics of each person in custody, including the person's financial condition.

(b) In determining the type of bond and conditions of release, if practicable and available in the jurisdiction, the court shall use an empirically developed risk assessment instrument designed to improve pretrial release decisions by providing to the court information that classifies a person in custody based upon predicted level of risk of pretrial failure.

(4) When the type of bond and conditions of release are determined by the court, the court shall:

(a) Presume that all persons in custody are eligible for release on bond with the appropriate and least-restrictive conditions consistent with provisions in paragraph (a) of subsection (3) of this section unless a person is otherwise ineligible for release pursuant to the provisions of section 16-4-101 and section 19 of article II of the Colorado constitution. A monetary condition of release must be reasonable, and any other condition of conduct not mandated by statute must be tailored to address a specific concern.

(b) To the extent a court uses a bond schedule, the court shall incorporate into the bond schedule conditions of release and factors that consider the individualized risk and circumstances of a person in custody and all other relevant criteria and not solely the level of offense; and

(c) Consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration and levels of community-based supervision as conditions of pretrial release.

(5) The court may also consider the following criteria as appropriate and relevant in making a determination of the type of bond and conditions of release:

(a) The employment status and history of the person in custody;

(b) The nature and extent of family relationships of the person in custody;

(c) Past and present residences of the person in custody;

(d) The character and reputation of the person in custody;

(e) Identity of persons who agree to assist the person in custody in attending court at the proper time;

(f) The likely sentence, considering the nature and the offense presently charged;

(g) The prior criminal record, if any, of the person in custody and any prior failures to appear for court;

(h) Any facts indicating the possibility of violations of the law if the person in custody is released without certain conditions of release;

(i) Any facts indicating that the defendant is likely to intimidate or harass possible witnesses; and

(j) Any other facts tending to indicate that the person in custody has strong ties to the community and is not likely to flee the jurisdiction.

(6) When a person is charged with an offense punishable by fine only, any monetary condition of release shall not exceed the amount of the maximum fine penalty.

(7) At the first appearance of a pregnant or postpartum defendant who has complied with the notice requirement set forth in section 18-1.3-103.7, to set bond, the court or person designated by the court to set bond shall consider the defendant's pregnancy or postpartum status when setting bond pursuant to the restrictions set forth in section 19 of article II of the state constitution and section 16-4-101.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 822, § 2, effective May 11. **L. 2014:** (1) amended, (SB 14-212), ch. 397, p. 1998, § 1, effective July 1. **L. 2022:** (1) amended, (SB 22-049), ch. 152, p. 976, § 5, effective May 6. **L. 2023:** (7) added, (HB 23-1187), ch. 246, p. 1341, § 3, effective August 7.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For comment, "Bail Reform in Colorado: A Presumption of Release", see 88 U. Colo. L. Rev. 1067 (2017).

Annotator's note. Since § 16-4-103 is similar to § 16-4-103 as it existed prior to

the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

The sole purpose and function of a bail bond is to produce the defendant in court then and there to answer unto a certain information herein pending against him. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

Conditions not specified in this section are not binding upon the surety. The condition that the principal "abide the order of the court" is of this character. Tanquary v. People, 25 Colo. App. 531, 139 P. 1118 (1914).

Proper imposition of conditions. The imposition of conditions relating to the defendant's right to remain at liberty on bail that comply with the constitution is in keeping with the recommendations of the standards for criminal justice. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

However, the trial judge imposed an improper and unconstitutional condition where the bail order included the following condition: "If probable cause shall be shown to this court that any of the above offenses shall have been committed by either defendant, bond for that particular defendant shall be immediately terminated." However, the right of the court to revoke or modify bail which has been previously granted after notice is given to the defendant was not negated. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

The trial judge imposed an improper and unconstitutional condition where bail bond included condition that defendant arrested on domestic violence charges and alcohol-related misdemeanors and his agents could have no contact with victim. Although the condition was reasonably related to the statutory criterion that the court protect possible witnesses and victims from intimidation or harassment by the defendant, it also interfered with defendant's right to have his counsel effectively represent him at trial by investigating the facts surrounding the alleged event and preparing for trial. Defendant does not, however, have the right to personally contact the victim, her family, or witnesses. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

The trial judge erred in ordering defendant arrested on domestic violence charges and alcohol-related misdemeanors to attend counseling for abusive men as a condition of bond since such counseling may encourage or even require participants to admit their abusive behavior. Such counseling before conviction implicates defendant's fifth amendment privilege against self-incrimination and the presumption of innocence. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

Statute provides accelerated docket for defendants held in custody. The plain intent of the statute is to provide for an accelerated docket for those defendants who are being held in jail pending trial as a result of the revocation of their prior release on bond, for certain specified reasons, or as a

result of an increase in the amount of bond, which would cause them to remain in custody. People v. Olds, 656 P.2d 705 (Colo. 1983) (disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)).

By this section, the legislature meant to enhance speedy trial rights of those who are kept in jail due to revoked bail or increased bail after the issue of their guilt has been raised by a plea of not guilty. People v. Olds, 656 P.2d 705 (Colo. 1983) (disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)); People v. Fields, 697 P.2d 749 (Colo. App. 1984).

And is not to benefit one who misses preliminary hearing. The general assembly did not intend that one accused of the commission of an offense should be permitted to profit from his failure to appear at the preliminary hearing and be in a better position than those other defendants who were released on bond and who had not violated the terms of their bond, or those defendants who had been unable to post bail initially and who had remained incarcerated for the entire pretrial period after arrest. People v. Olds, 656 P.2d 705 (Colo. 1983) (disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)).

A second bail bond entered after the defendant was returned to the custody of the court was not an increase of the first bond, which was forfeited and ceased to exist after the defendant failed to appear at his preliminary hearing. Therefore, the defendant's speedy trial rights were not violated when he was not brought to trial within ninety days after entry of the second bond. People v. Armendariz, 684 P.2d 252 (Colo. App. 1983).

Defendant whose bail was revoked following finding that proof was evident and presumption great in capital offense case pursuant to Art. II, § 19, Colo. Const., had no right to trial within 90 days of revocation. People v. Avery, 736 P.2d 1233 (Colo. App. 1986).

Defendant on bond may leave jurisdiction unless ordered otherwise. Generally, unless the court orders or the surety stipulates otherwise, nothing prevents a defendant on bond from leaving the jurisdiction so long as he appears at all proceedings in his case. People v. Rincon, 43 Colo. App. 155, 603 P.2d 953 (1979).

Subsection (2) modifications permitted only after arraignment. The bail modifications which are the subject of subsection (2) relate only to those bail proceedings which occur after arraignment. People v. Olds, 656 P.2d 705 (Colo. 1983) (disapproved in People v. Mascarenas, 706 P.2d 404 (Colo. 1985)); People v. Armedariz, 684 P.2d 252 (Colo. App. 1983).

The term "supervision" used in subsection (2) does not include mandatory counseling as a condition of bond for defendant arrested on domestic violence charges and alcohol-related misdemeanors. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

Applied in Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981); People v. Moye, 635 P.2d 194 (Colo. 1981); People v. Fields, 697 P.2d 749 (Colo. App. 1984).

16-4-104. Types of bond set by the court.

(1) The court shall determine, after consideration of all relevant criteria, which of the following types of bond is appropriate for the pretrial release of a person in custody, subject to the relevant statutory conditions of release listed in section 16-4-105. The person may be released upon execution of:

(a) An unsecured personal recognizance bond in an amount specified by the court. The court may require additional obligors on the bond as a condition of the bond.

(b) An unsecured personal recognizance bond with additional nonmonetary conditions of release designed specifically to reasonably ensure the appearance of the person in court and the safety of any person or persons or the community;

(c) A bond with secured monetary conditions when reasonable and necessary to ensure the appearance of the person in court or the safety of any person or persons or the community. The financial conditions shall state an amount of money that the person must post with the court in order for the person to be released. The person may be released from custody upon execution of bond in the full amount of money to be secured by any one of the following methods, as selected by the person to be released, unless the court makes factual findings on the record with respect to the person to be released that a certain method of bond, as selected by the court, is necessary to ensure the appearance of the person in court or the safety of any person, persons, or the community:

(I) By a deposit with the clerk of the court of an amount of cash equal to the monetary condition of the bond;

(II) By real estate situated in this state with unencumbered equity not exempt from execution owned by the accused or any other person acting as surety on the bond, which unencumbered equity shall be at least one and one-half the amount of the security set in the bond;

(III) By sureties worth at least one and one-half of the security set in the bond; or

(IV) By a bail bonding agent, as defined in section 16-1-104 (3.5).

(d) A bond with secured real estate conditions when it is determined that release on an unsecured personal recognizance bond without monetary conditions will not reasonably ensure the appearance of the person in court or the safety of any person or persons or the community. For a bond secured by real estate, the bond shall not be accepted by the clerk of the court unless the record owner of such property presents to the clerk of the court the original deed of trust as set forth in subparagraph (IV) of this paragraph (d) and the applicable recording fee. Upon receipt of the deed of trust and fee, the clerk of the court shall record the deed of trust with the clerk and recorder for the county in which the property is located. For a bond secured by real

estate, the amount of the owner's unencumbered equity shall be determined by deducting the amount of all encumbrances listed in the owner and encumbrances certificate from the actual value of such real estate as shown on the current notice of valuation. The owner of the real estate shall file with the bond the following, which shall constitute a material part of the bond:

(I) The current notice of valuation for such real estate prepared by the county assessor pursuant to section 39-5-121, C.R.S.; and

(II) Evidence of title issued by a title insurance company or agent licensed pursuant to article 11 of title 10, C.R.S., within thirty-five days after the date upon which the bond is filed; and

(III) A sworn statement by the owner of the real estate that the real estate is security for the compliance by the accused with the primary condition of the bond; and

(IV) A deed of trust to the public trustee of the county in which the real estate is located that is executed and acknowledged by all record owners of the real estate. The deed of trust shall name the clerk of the court approving the bond as beneficiary. The deed of trust shall secure an amount equal to one and one-half times the amount of the bond.

(2) Unless the district attorney consents or unless the court imposes certain additional individualized conditions of release as described in section 16-4-105, a person must not be released on an unsecured personal recognizance bond pursuant to paragraph (a) of subsection (1) of this section under the following circumstances:

(a) The person is presently free on another bond of any kind in another criminal action involving a felony or a class 1 misdemeanor;

(b) The person has a record of conviction of a class 1 misdemeanor within two years or a felony within five years, prior to the bail hearing; or

(c) The person has willfully failed to appear on bond in any case involving a felony or a class 1 misdemeanor charge in the preceding five years.

(3) A person may not be released on an unsecured personal recognizance bond if, at the time of such application, the person is presently on release under a surety bond for felony or class 1 misdemeanor charges unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the court deems just under the provisions of section 16-4-108.

(4) Because of the danger posed to any person and the community, a person who is arrested for an offense under section 42-4-1301 (1) or (2)(a), C.R.S., may not attend a bail hearing until the person is no longer intoxicated or under the influence of drugs. The person shall be held in custody until the person may safely attend such hearing.

(5) At the initial hearing, the person has the right to be represented by an attorney and the court shall advise the person of the possible charges, penalties, and the person's rights as

specified in rule 5 of the Colorado rules of criminal procedure, unless waived by the person. The court shall notify the public defender of each person in custody before the initial hearing, and each person in custody has the right to be represented by a public defender at the hearing. The court shall provide the person's attorney sufficient time to prepare for and present an individualized argument regarding the type of bond and conditions of release at the initial hearing, consistent with the court's docket and scheduling priorities.

(6) The prosecuting attorney has the right to be notified of each person set for initial hearing, to appear at all initial hearings to provide his or her position regarding the type of bond and conditions of release, and shall be provided sufficient time by the court to prepare for and present any relevant argument, consistent with the court's docket and scheduling priorities.

(7) Prior to the initial hearing, any pretrial services agency operating in that county, or any other agency that reports to the court, that has conducted a pretrial release assessment or gathered information for the court's consideration at the initial hearing shall provide to the prosecution and the person's attorney all information provided to the court regarding the person in custody, which shall include, if provided, the arrest warrant, the probable cause statement, and the person's criminal history.

(8) The sheriff's office and jail personnel shall provide the public defender's office or private counsel access to the person who will be appearing at the hearing and shall allow sufficient time with the person prior to the hearing in order to prepare for the initial hearing.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 824, § 2, effective May 11. **L. 2014:** IP(1)(c) amended, (SB 14-212), ch. 397, p. 1998, § 2, effective July 1. **L. 2021:** (5), (6), (7), and (8) added, (HB 21-1280), ch. 457, p. 3049, § 2, effective September 7.

ANNOTATION

Law reviews. For comment, "Bail Reform in Colorado: A Presumption of Release", see 88 U. Colo. L. Rev. 1067 (2017).

Annotator's note. Since § 16-4-104 is similar to § 16-4-104 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

The purpose of a recognizance is not to enrich the treasury, but to serve the convenience of the party accused but not convicted, without interfering with or defeating the administration of justice. People v. Pollock, 65 Colo. 275, 176 P. 329 (1918); Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

A bail bond with but one surety is sufficient, notwithstanding the fact that § 19 of art. I, Colo. Const., provides for sureties,

this being one of the cases where the plural includes the singular. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Sureties should be persons of sufficient financial ability and of sufficient vigilance to secure the appearance and prevent the absconding of the accused. People v. Pollock, 65 Colo. 275, 176 P. 329 (1918).

For the form and content of recognizance instrument, see Waters v. People, 4 Colo. App. 97, 35 P. 56 (1893).

For the form of bond, see People v. Mellor, 2 Colo. 705 (1875).

Deposit of percentage of full amount of bail not permitted. This section does not expressly or impliedly authorize courts to permit 10 percent cash bail deposits, and the requirement in subsection (1)(b) that the "full amount of bail" be secured negates the contention that courts may permit the deposit of a percentage of the full amount of the bail before releasing a defendant from custody. People v. District Court, 196 Colo. 116, 581 P.2d 300 (1978).

This section does not govern bail for defendants awaiting extradition. Questions of bail for defendants awaiting extradition prior to service of a governor's warrant are governed exclusively by § 16-19-117. Fullerton v. County Court, 124 P.3d 866 (Colo. App. 2005).

Applied in People v. Lepik, 629 P.2d 1080 (Colo. 1981).

16-4-105. Conditions of release on bond.

(1) For each bond, the court shall require that the released person appear to answer the charge against the person at a place and upon a date certain and at any place or upon any date to which the proceeding is transferred or continued. This condition is the only condition for which a breach of surety or security on the bail bond may be subject to forfeiture.

(2) For a person who has been arrested for a felony offense, the court shall require as a condition of a bond that the person execute a waiver of extradition stating the person consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while at liberty on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.

(3) Additional conditions of every bond is that the released person shall not commit any felony while free on such a bail bond, and the court in which the action is pending has the power to revoke the release of the person, to change any bond condition, including the amount of any monetary condition if it is shown that a competent court has found probable cause to believe that the defendant has committed a felony while released, pending the resolution of a prior felony charge.

(4) An additional condition of every bond in cases involving domestic violence as defined in section 18-6-800.3 (1), C.R.S., in cases of stalking under section 18-3-602, C.R.S., or in cases involving unlawful sexual behavior as defined in section 16-22-102 (9), is that the released person acknowledge the protection order as provided in section 18-1-1001 (5), C.R.S.

(4.1) Notwithstanding any other type of bond and conditions of release set by the court, in cases involving domestic violence, as defined in section 18-6-800.3 (1), or in cases where the court subjects a defendant to a mandatory protection order that qualifies as an order described in 18 U.S.C. sec. 922 (g)(8), the court shall order the defendant to comply with the provisions of section 18-1-1001 as it relates to firearm relinquishment.

(5) An additional condition of every bond in a case of an offense under section 42-2-138 (1)(d)(I), C.R.S., of driving while such person's driver's license or privilege to drive, either as a resident or nonresident, is restrained solely or partially because of a conviction of a driving offense pursuant to section 42-4-1301 (1) or (2)(a), C.R.S., is that such person not drive any motor vehicle during the period of such driving restraint.

(6) (a) If a person is arrested for driving under the influence or driving while ability impaired, pursuant to section 42-4-1301, C.R.S., and the person has one or more previous convictions for an offense in section 42-4-1301, C.R.S., or one or more convictions in any other jurisdiction that would constitute a violation of section 42-4-1301, C.R.S., as a condition of any bond, the court shall order that the person abstain from the use of alcohol or illegal drugs, and such abstinence shall be monitored.

(b) A person seeking relief from any of the conditions imposed pursuant to subsection (6)(a) of this section shall file a motion with the court, and the court shall conduct a hearing upon the motion. The court shall consider whether the condition from which the person is seeking relief is in the interest of justice and whether public safety would be endangered if the condition were not enforced. When determining whether to grant relief pursuant to this subsection (6)(b), the court shall consider whether the person has voluntarily enrolled and is participating in an appropriate substance use disorder treatment program.

(c) Notwithstanding subsection (6)(a) or any other provision of this section, if a person possesses a valid registry identification card, as defined in section 25-1.5-106 (2)(e), that establishes that he or she is a patient who uses medical marijuana, the court shall not require as a condition of any bond that the person abstain from the use of medical marijuana.

(7) A person may be released on a bond with monetary condition of bond, when appropriate, as described in section 16-4-104 (1)(c).

(8) In addition to the conditions specified in this section, the court may impose any additional conditions on the conduct of the person released that will assist in obtaining the appearance of the person in court and the safety of any person or persons and the community. These conditions may include, but are not limited to, supervision by a qualified person or

organization or supervision by a pretrial services program established pursuant to section 16-4-106. While under the supervision of a qualified organization or pretrial services program, the conditions of release imposed by the court may include, but are not limited to:

(a) Periodic telephone contact with the program;

(b) Periodic office visits by the person to the pretrial services program or organization;

(c) Periodic visits to the person's home by the program or organization;

(d) Treatment of the person's behavioral, mental health, or substance use disorder, if applicable, including residential treatment if the defendant consents to the treatment;

(e) Periodic alcohol or drug testing of the person;

(f) Domestic violence counseling for the defendant if the defendant consents to the counseling;

(g) Electronic or global position monitoring of the person;

(h) Pretrial work release for the person; and

(i) Other supervision techniques shown by research to increase court appearance and public safety rates for persons released on bond.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 826, § 2, effective May 11. **L. 2014:** (4) amended, (SB 14-212), ch. 397, p. 1999, § 3, effective July 1. **L. 2015:** (4) amended, (HB 15-1060), ch. 45, p. 112, § 1, effective March 20. **L. 2017:** (6)(b) and (8)(d) amended, (SB 17-242), ch. 263, p. 1296, § 118, effective May 25; (6)(c) added, (SB 17-178), ch. 115, p. 413, § 1, August 9. **L. 2021:** (4.1) added, (HB 21-1255), ch. 293, p. 1753, § 5, effective June 22.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

Annotator's note. Since § 16-4-105 is similar to § 16-4-105 as it existed prior to the 2013 repeal and reenactment of this part 1, a relevant case decided under a former provision similar to that section has been included in the annotations to this section.

The primary function of bail is to assure the presence of the accused. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

And this end should be met by means which impose the least possible hardship

upon the accused. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

Subsection (3) merely empowers a court to have a defendant brought before it to modify the conditions of pretrial release; therefore, the court erred in revoking the existing bond and denying defendant the right to pretrial release. A court may only revoke a defendant's bond pursuant to subsection (3) temporarily in order to change any bond conditions. People v. Jones, 2015 CO 20, 346 P.3d 44.

16-4-105.5. Notification of court reminder program. (Repealed)

Source: L. 2019: Entire section added, (SB 19-036), ch. 293, p. 2687, § 3, effective August 2. **L. 2022:** Entire section repealed, (SB 22-018), ch. 191, p. 1273, § 3, effective July 15.

16-4-106. Pretrial services programs.

(1) The chief judge of any judicial district may order a person who is eligible for bond or other pretrial release to be evaluated by a pretrial services program established pursuant to this section, which program may advise the court if the person is bond eligible, may provide information that enables the court to make an appropriate decision on bond and conditions of release, and may recommend conditions of release consistent with this section. The chief judge may make such order in any or all of the counties of the chief judge's judicial district.

(2) The chief judge of any judicial district shall endeavor to consult, on an annual basis, with the county or counties within the judicial district in an effort to support and encourage the development by the county or counties, to the extent practicable and within available resources, of pretrial services programs that support the work of the court and evidence-based decision-making in determining the type of bond and conditions of release.

(3) To reduce barriers to the pretrial release of persons in custody whose release on bond with appropriate conditions reasonably assures court appearance and public safety, all counties and cities and counties are encouraged to develop a pretrial services program in consultation with the chief judge of the judicial district in an effort to establish a pretrial services program that may be utilized by the district court of such county or city and county. Any pretrial services program must be established pursuant to a plan formulated by a community advisory board created for such purpose and appointed by the chief judge of the judicial district. Membership on such community advisory board must include, at a minimum, a representative of a local law enforcement agency, a representative of the district attorney, a representative of the public defender, and a representative of the citizens at large. The chief judge is encouraged to appoint to the community advisory board at least one representative of the bail bond industry who conducts business in the judicial district, which may include a bail bondsman, a bail surety, or other

designated bail industry representative. The plan formulated by such community advisory board must be approved by the chief judge of the judicial district prior to the establishment and utilization of the pretrial services program. The option contained in this section that a pretrial services program be established pursuant to a plan formulated by the community advisory board does not apply to any pretrial services program that existed before May 31, 1991.

(4) Any pretrial services program approved pursuant to this section must meet the following criteria:

(a) The program must establish a procedure for the screening of persons who are detained due to an arrest for the alleged commission of a crime so that such information may be provided to the judge who is setting the bond and conditions of release. The program must provide information that provides the court with the ability to make an appropriate initial bond decision that is based upon facts relating to the person's risk of failure to appear for court and risk of danger to the community.

(b) The program must make all reasonable attempts to provide the court with such information delineated in this section as is appropriate to each individual person seeking release from custody;

(c) The program, in conjunction with the community advisory board, must make all reasonable efforts to implement an empirically developed pretrial risk assessment tool, to be used by the program, the court, and the parties to the case solely for the purpose of assessing pretrial risk, and a structured decision-making design based upon the person's charge and the risk assessment score; and

(d) The program must work with all appropriate agencies and assist with all efforts to comply with sections 24-4.1-302.5 and 24-4.1-303, C.R.S.

(5) Any pretrial services program may also include different methods and levels of community-based supervision as a condition of release, and the program must use established methods for persons who are released prior to trial in order to decrease unnecessary pretrial detention. The program may include, but is not limited to, any of the criteria as outlined in section 16-4-105 (8) as conditions for pretrial release.

(6) Commencing July 1, 2012, each pretrial services program established pursuant to this section shall provide an annual report to the judicial department no later than November 1 of each year, regardless of whether the program existed prior to May 31, 1991. Notwithstanding section 24-1-136 (11)(a)(I), the judicial department shall present an annual combined report to the house and senate judiciary committees of the house of representatives and the senate, or any successor committees, of the general assembly. The report to the judicial department must include, but is not limited to, the following information:

(a) The total number of pretrial assessments performed by the program and submitted to the court;

(b) The total number of closed cases by the program in which the person was released from custody and supervised by the program;

(c) The total number of closed cases in which the person was released from custody, was supervised by the program, and, while under supervision, appeared for all scheduled court appearances on the case;

(d) The total number of closed cases in which the person was released from custody, was supervised by the program, and was not charged with a new criminal offense that was alleged to have occurred while under supervision and that carried the possibility of a sentence to jail or imprisonment;

(e) The total number of closed cases in which the person was released from custody and was supervised by the program, and the person's bond was not revoked by the court due to a violation of any other terms and conditions of supervision; and

(f) Any additional information the judicial department may request.

(7) For the reports required in subsection (6) of this section, the pretrial services program shall include information detailing the number of persons released on a commercial surety bond in addition to pretrial supervision, the number of persons released on a cash, private surety, or property bond in addition to pretrial supervision, and the number of persons released on any form of a personal recognizance bond in addition to pretrial supervision.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 828, § 2, effective May 11. **L. 2014:** (4)(c) amended, (SB 14-212), ch. 397, p. 1999, § 4, effective July 1. **L. 2017:** IP(6) amended, (SB 17-241), ch. 171, p. 624, § 5, effective April 28.

ANNOTATION

Annotator's note. Since § 16-4-106 is similar to § 16-4-105 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

The primary function of bail is to assure the presence of the accused. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

And this end should be met by means which impose the least possible hardship upon the accused. People v. Sanders, 185 Colo. 153, 522 P.2d 735 (1974).

Pretrial services program exceeded its statutory authority when it imposed a condition barring defendant from possessing weapons. This statute does not anticipate or permit the court to delegate authority to set conditions of bond to a pretrial services program. People v. Rickman, 178 P.3d 1202 (Colo. 2008).

Pretrial services program did not exceed its statutory authority when it imposed a condition barring defendant from committing a felony while on bail. Section 16-4-103 (2)(c) requires that, as a condition of every bail bond, "the released person not commit any felony while at liberty on such bail bond". Because this prohibition is statutorily mandated, it constitutes a condition of every bail bond regardless of any action by the court or pretrial services program. People v. Rickman, 178 P.3d 1202 (Colo. 2008).

16-4-107. Hearing after setting of monetary conditions of bond.

(1) If a person is in custody and the court imposed a monetary condition of bond for release, and the person, after seven days from the setting of the monetary condition of bond, is unable to meet the monetary obligations of the bond, the person may file a written motion for reconsideration of the monetary conditions of the bond. The person may only file the written motion pursuant to this section one time during the pendency of the case and may only file the written motion if he or she believes that, upon presentation of evidence not fully considered by the court, he or she is entitled to a personal recognizance bond or an unsecured bond with conditions of release or a change in the monetary conditions of bond. The court shall promptly conduct a hearing on this motion for reconsideration, but the hearing must be held within fourteen days after the filing of the motion. However, the court may summarily deny the motion if the court finds that there is no additional evidence not fully considered by the court presented in the written motion. In considering the motion, the court shall consider the results of any empirically developed risk assessment instrument.

(2) Nothing in this section shall preclude a person from filing a motion for relief from a monetary condition of bond pursuant to section 16-4-109 at any time during the pendency of the case.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 830, § 2, effective May 11. **L. 2014:** Entire section amended, (SB 14-212), ch. 397, p. 1999, § 5, effective July 1.

ANNOTATION

Equal protection not violated. Persons detained pursuant to this section are not similarly situated to persons detained pursuant to § 16-4-103 and the difference in

treatment accorded the two classes of detainees is rationally related to a legitimate state interest. People v. Fields, 697 P.2d 749 (Colo. App. 1984).

It is not incumbent upon defendant to affirmatively show validity of bond after the bond is executed. Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

This section provides for notice where the amount or conditions of bail are to be altered. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Court not to modify executed bond sua sponte. This section makes no provision for a trial court, sua sponte, to modify a defendant's bond once that bond has been executed. Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

There is no prior notice requirement for exoneration of the surety when the principal is surrendered in open court. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Notification of sureties when bail converted to personal recognizance. The notice provision for sureties in § 16-4-105 (1)(p) applies to a person for whom bail has not yet been fixed and who is on release under a surety bond on a pending charge different from the charge from which he seeks release on personal recognizance. Since defendant is not seeking release, but rather simply seeking to modify the type of bond on which he has already been released, the provisions of this section also do not apply. People v. Anderson, 789 P.2d 1115 (Colo. App. 1990).

16-4-107.5. Hearing after excluding time for speedy trial for public health emergency - repeal. (Repealed)

Source: L. 2021: Entire section added, (HB 21-1309), ch. 277, p. 1602, § 2, effective June 21.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2023. (See L. 2021, p. 1602.)

16-4-108. When original bond continued.

Once a bond has been executed and the person released from custody thereon, whether a charge is then pending or is thereafter filed or transferred to a court of competent jurisdiction, the original bond shall continue in effect until final disposition of the case in the trial court. If a charge filed in the county court is dismissed and the district attorney states on the record that the charge will be refiled in the district court or that the dismissal by the county court will be appealed to the district court, the county court before entering the dismissal shall fix a return

date, not later than sixty-three days thereafter, upon which the defendant must appear in the district court and continue the bond. Any bond continued pursuant to this section is subject to the provisions of section 16-4-109.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 830, § 2, effective May 11.

ANNOTATION

Annotator's note. Since § 16-4-108 is similar to § 16-4-106 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

Purpose of section. The purpose of § 16-4-201 concerning bail after conviction and this section is to authorize the court to exercise discretion rather than follow a fixed policy and to permit a recognizance to remain in effect, without the necessity of a new bond, after conviction and until disposition of the case in the trial court. Trujillo v. District Court, 131 Colo. 428, 282 P.2d 703 (1955).

This section and § 16-4-201 must be read together and reconciled if possible. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Where defendant entered plea of guilty, surety's obligation under recognizance bond is terminated. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

And trial court could not continue bond without first obtaining surety's consent. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Although the trial judge may continue the original bond to final disposition, he must obtain the consent of the surety to continue it beyond conviction. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Increase of surety's risk without his consent terminates obligation. When one undertakes a surety obligation, the surety undertakes a calculated risk, and events which materially increase that risk without consent of the surety terminate the obligation of the bond. People v. Smith, 645 P.2d 864 (Colo. App. 1982).

Effect of resettings of the case. Where there were resettings of a criminal case for trial at the same term, the contention of a surety on defendant's bond that he was discharged by these continuances without his consent was overruled. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Applied in Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

16-4-109. Reduction or increase of monetary conditions of bond - change in type of bond or conditions of bond - definitions.

(1) Upon application by the district attorney or the defendant, the court before which the proceeding is pending may increase or decrease the financial conditions of bond, may require additional security for a bond, may dispense with security theretofore provided, or may alter any other condition of the bond. If the defendant applies to decrease the financial considerations of bond or modify bond conditions, the court shall set the application for hearing if the case is subject to part 3 of article 4.1 of title 24.

(2) Reasonable notice of an application for modification of a bond by the defendant shall be given to the district attorney.

(3) Reasonable notice of application for modification of a bond by the district attorney shall be given to the defendant, except as provided in subsection (4) of this section.

(4) (a) Upon verified application by the district attorney or a bonding commissioner stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bond, the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application. Upon issuance of the warrant, the bonding commissioner shall notify the bail bond agent of record by electronic mail to the agent if available within twenty-four hours or by certified mail not more than fourteen days after the warrant is issued. At the conclusion of the hearing, the court may enter an order authorized by subsection (1) of this section. If a bonding commissioner files an application for a hearing pursuant to this subsection (4), the bonding commissioner shall notify the district attorney, for the jurisdiction in which the application is made, of the application within twenty-four hours following the filing of the application.

(b) As used in this subsection (4), "bonding commissioner" means a person employed by a pretrial services program as described in section 16-4-106 (3), and so designated as a bonding commissioner by the chief or presiding judge of the judicial district.

(5) The district attorney has the right to appear at all hearings seeking modification of the terms and conditions of bond and may advise the court on all pertinent matters during the hearing.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 830, § 2, effective May 11. **L. 2022:** (1) amended, (SB 22-049), ch. 152, p. 976, § 6, effective May 6.

ANNOTATION

Annotator's note. Since § 16-4-109 is similar to § 16-4-107 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

Equal protection not violated. Persons detained pursuant to this section are not similarly situated to persons detained pursuant to § 16-4-103 and the difference in treatment accorded the two classes of detainees is rationally related to a legitimate state interest. People v. Fields, 697 P.2d 749 (Colo. App. 1984).

It is not incumbent upon defendant to affirmatively show validity of bond after the bond is executed. Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

This section provides for notice where the amount or conditions of bail are to be altered. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Court not to modify executed bond sua sponte. This section makes no provision for a trial court, sua sponte, to modify a defendant's bond once that bond has been executed. Stephenson v. District Court, 629 P.2d 1078 (Colo. 1981).

There is no prior notice requirement for exoneration of the surety when the principal is surrendered in open court. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Notification of sureties when bail converted to personal recognizance. The notice provision for sureties in § 16-4-105 (1)(p) applies to a person for whom bail has not yet been fixed and who is on release under a surety bond on a pending charge different from the charge from which he seeks release on personal recognizance. Since defendant is not seeking release, but rather simply seeking to modify the type of bond on which he has already been released, the provisions of this section also do not apply. People v. Anderson, 789 P.2d 1115 (Colo. App. 1990).

16-4-110. Exoneration from bond liability.

(1) Any person executing a bail bond as principal or as surety shall be exonerated as follows:

(a) When the condition of the bond has been satisfied; or

(b) When the amount of the forfeiture has been paid; or

(c) (I) When the surety appears and provides satisfactory evidence to the court that the defendant is unable to appear before the court due to such defendant's death or the detention or incarceration of such defendant in a foreign jurisdiction if the defendant is incarcerated for a period in excess of ninety-one days and the state of Colorado has refused to extradite such defendant; except that, if the state extradites such defendant, all costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(II) For the purposes of this paragraph (c), "costs associated with extradition" shall be calculated as and limited to the round-trip mileage between the Colorado court of jurisdiction and the location of the defendant's incarceration at the rate allowed for reimbursement pursuant to section 24-9-104, C.R.S., up to the amount of the bond.

(d) Upon surrender of the defendant into custody at any time before a judgment has been entered against the sureties for forfeiture of the bond, upon payment of all costs occasioned thereby. A surety may seize and surrender the defendant to the sheriff of the county wherein the bond is taken, and it is the duty of the sheriff, on such surrender and delivery to him or her of a certified copy of the bond by which the surety is bound, to take the person into custody and, by writing, acknowledge the surrender. If a compensated surety is exonerated by surrendering a defendant prior to the initial appearance date fixed in the bond, the court, after a hearing, may require the surety to refund part or all of the bond premium paid by the defendant if necessary to prevent unjust enrichment.

(e) After three years have elapsed from the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, upon motion by the prosecuting attorney and notice to surety of record.

(f) (I) When the surety provides satisfactory evidence to the court that the defendant has been removed from the country. The court shall exonerate the bail bond if all of the following occur:

(A) The surety files a motion requesting exoneration of the bail bond;

(B) The surety files an affidavit along with the motion stating that the surety has received information from the United States department of homeland security, the United States immigration and customs enforcement, or a foreign consulate that the defendant has been detained or removed from the United States. If the surety is unable to obtain such information from the above sources, the surety must file an affidavit that is signed under penalty of perjury by a person with personal knowledge that the defendant has been detained or removed from the United States.

(C) The district attorney does not object.

(II) If the court exonerates the liability on the bail bond pursuant to subsection (1)(f)(I) of this section and the bond premium has been paid, any collateral securing the bail bond is released.

(2) If, within fourteen days after the posting of a bond by a defendant, the terms and conditions of the bond are changed or altered either by order of court or upon the motion of the district attorney or the defendant, the court, after a hearing, may order a compensated surety to refund a portion of the premium paid by the defendant, if necessary and supported by factual

findings, to prevent unjust enrichment. If more than fourteen days have elapsed after posting of a bond by a defendant, the court shall not order the refund of any premium.

(3) Upon entry of an order for deferred prosecution as it existed before August 7, 2013, a diversion authorized by section 18-1.3-101, C.R.S., or deferred judgment as authorized in sections 18-1.3-101 and 18-1.3-102, C.R.S., sureties upon any bond given for the appearance of the defendant shall be released from liability on such bond.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 831, § 2, effective May 11; (3) amended, (HB 13-1156), ch. 336, p. 1957, § 3, effective August 7. **L. 2014:** (2) amended, (SB 14-212), ch. 397, p. 1999, § 6, effective July 1. **L. 2017:** (1)(f) added, (HB 17-1369), ch. 379, p. 1949, § 2, effective June 6.

Cross references: For the short title ("Bond Surety Protection Act") in HB 17-1369, see section 1 of chapter 379, Session Laws of Colorado 2017.

ANNOTATION

Law reviews. For note, "One Year Review of Colorado Law-1964", see 42 Den. L. Ctr. J. 140 (1965).

Annotator's note. Since § 16-4-110 is similar to § 16-4-108 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

For compensated sureties, the framework for forfeiture proceedings is provided by § 16-4-112 and not this section. People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

An accused person released on bail, is, in contemplation of law, in the custody of his sureties. People v. Loomis, 60 Colo. 202, 152 P. 143 (1915).

In the case of exoneration of a surety, the common law considers the principal to be within the custody of the surety. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

When surety can avail himself of section. The surety has the right to avail himself of the exoneration provisions of the statute for any reason sufficient to himself. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Where denial of motion for exoneration deemed error. Where a defendant fails to appear at a scheduled hearing, then, through the surety's efforts, is located, apprehended, and taken into custody in another state, but, through the failure of the states, the defendant is not extradited and returned to custody in Colorado, a trial judge abuses his

discretion in denying the surety's motion for exoneration. People v. Campbell, 633 P.2d 509 (Colo. App. 1981).

Surety not entitled to exoneration where the defendant was temporarily in the state's custody on later charges but was not surrendered into custody on the earlier charges for which the bond was posted and he was not prevented from making the appearances required on those charges. People v. Soto-Gallegos, 953 P.2d 946 (Colo. App. 1997).

No requirement of actual or threatened breach of bail conditions in requirements for exoneration. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Subsection (1)(b.5) does not apply to postjudgment motions for exoneration from bond liability. People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

There is no prior notice requirement for exoneration of the surety when the principal is surrendered in open court. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

When sureties may seize and surrender. Sureties may seize and surrender an accused person to the sheriff of the county in which the recognizance was taken, at any time before forfeiture and execution is ordered against them. If, at the same time, a certified copy of the recognizance is delivered to the sheriff, it is his duty to take the accused into custody, and, in writing, acknowledge the surrender. People v. Loomis, 60 Colo. 202, 152 P. 143 (1915).

Surety who surrenders his principal before final judgment is exonerated under this section. Scott v. People ex rel. Bd. of Comm'rs, 64 Colo. 396, 172 P. 9 (1918).

No common law bonding agent's privilege. Based on the requirement in § 18-1-103 (1) that all defenses to defined offenses must be codified, the common law bonding agent's privilege has been abrogated by the general assembly in the general provisions of the criminal code and the burglary statutes. Oram v. People, 255 P.3d 1032 (Colo. 2011); Weinstein v. People, 255 P.3d 1057 (Colo. 2011).

Surrender effective before final disposition of the case. A surety on a criminal recognizance may be released from liability thereon by the surrender of the principal, even after forfeiture and judgment against him on the bond, if he acts before final disposition of the case, extending to a review on error. Van Gilder v. City & County of Denver, 104 Colo. 76, 89 P.2d 529 (1939).

But appearance for trial is not a surrender. The appearance of the defendant in a criminal case in court for trial is not equivalent to a surrender of his person by a surety on his bond. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Nor is incarceration after appearance date. The rule that incarceration of a principal on the return date of his bond permits relief from forfeiture of the bond has no application where the principal was at large and was not imprisoned until 30 days after the date he was to appear in Colorado, and the surety, through its agent, had the

opportunity to return the principal to Colorado before judgment was entered and thus be absolved under our statutes of any liability other than costs incurred by the people by reason of the principal's failure to appear. Union Benefit Fire Ins. Co. v. People, 160 Colo. 211, 416 P.2d 368 (1966).

However, surety not liable if principal is arrested and jailed for another offense. Under this section where, after forfeiture but before judgment against the sureties, their principal was arrested and placed in the jail of the county under a different charge than that for which the bond was given, the sureties were entitled to a discharge from liability upon their formal offer to surrender and the payment of the costs, although they did nothing towards the rearresting and returning to custody of the prisoner. And they were not liable for costs incurred in arresting and returning their principal under a different charge than the one in which the bond was given. Huston v. People ex rel. Collins, 12 Colo. App. 271, 55 P. 262 (1898).

Or if a cause brought by the state is in fact abandoned by the state, by reason of which the presence of the accused in court is no longer required or desired for trial or matters incident thereto, the purpose of the bail bond has been served, its function fulfilled and performed, and it should thenceforth be regarded as functus officio and the formal discharge of defendant and of his sureties therefrom should be entered upon application. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

Surety needs not personally accomplish the seizure and surrender. Where defendant was stopped for a traffic offense and was taken into custody by sheriff's deputies on the outstanding warrant, surety was entitled to exoneration under this section. People v. Madison, 909 P.2d 551 (Colo. App. 1995).

The term "costs", as used in this section, includes whatever the law officers may legitimately pay out, or have a right to charge, in connection with the return of the criminal for trial. Ayres v. People, 3 Colo. App. 117, 32 P. 77 (1893).

Liability of surety for costs. Sureties must pay the expenses incurred by the county in procuring the return of their principal from another state upon a requisition. Ayres v. People, 3 Colo. App. 117, 32 P. 77 (1893).

To accomplish the purpose of giving bail, courts have been liberal in vacating judgments entered on bail bonds, exercising always a broad discretion and in proper cases preserving the equities of the public by deducting such costs and expenses as may have been incurred by the state. To hold otherwise would discourage the giving of bail and defeat the manifest purpose of the statute. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

When court may require return of premium. A court has the discretion to require a surety to return all or a portion of the premium paid for a bail bond where the bond is terminated by court order. People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984) (decided prior to enactment of subsection (1)(d) in 1985).

Subsection (1)(c) takes precedence over bond provisions. The language of subsection (1)(c) protecting against unjust enrichment takes precedence over, and nullifies, a provision in a bond purporting to make a bond premium nonrefundable. People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984) (decided prior to enactment of subsection (1)(d) in 1985).

Subsection (1.5) is broader than the rule in Yording in that it permits a refund under circumstances other than an error of law, subject to the time limitation. People v. Goldsmith, 955 P.2d 561 (Colo. App. 1997).

This section does not grant authority to the court to refund a bond premium to a defendant whose surrender occurred after the defendant's required initial appearance. Under subsection (1)(d), a court may order return of the premium to prevent unjust enrichment only if the surrender occurred prior to a defendant's initial appearance. People v. Fallis, 2017 COA 131M, 488 P.3d 291.

Reincarceration of the defendant on separate charges is not included among the additional grounds for exoneration of the surety. People v. Goldsmith, 955 P.2d 561 (Colo. App. 1997).

Even though both subsections (1)(c) and (1.5) were inapplicable, court had common law authority to order bond premium refund where the bond at issue did not involve a defendant, but rather a nonparty, and surety would have been unjustly enriched if allowed to retain the bond premium. People v. Gonzales, 28 P.3d 967 (Colo. App. 2001).

The 30-day limitation referred to in subsection (1.5) applies only to the interval between the posting of the bond and any changes in its terms or conditions, and not to the time within which an order for refund of bond premium must be entered. People v. Perse, 750 P.2d 923 (Colo. App. 1988).

Determination of amount of premium refund due to defendant in case of conversion of bond into release on personal recognizance. The determination of the amount of premium refund due to the defendant is a matter within the trial court's discretion, and the court may not be reversed absent an abuse of discretion. People v. Anderson, 789 P.2d 1115 (Colo. App. 1990).

"Appearance date", as used in this subsection (1)(c), includes appearance up to the date of conviction. Thus, surety was required to refund a bond premium to a defendant whom surety surrendered prior to such date. People v. Carrethers, 867 P.2d 189 (Colo. App. 1993).

Trial court correctly entered judgment of forfeiture of bond posted by surety where, even if the notice of order of forfeiture was mailed several days late, nothing in the record indicated that surety suffered any resulting prejudice or that surety asserted any grounds under this section or § 16-4-109 for setting aside the order of forfeiture or vacating the judgment. People v. King, 924 P.2d 1092 (Colo. App. 1996).

16-4-111. Disposition of security deposits upon forfeiture or termination of bond.

(1) (a) If a defendant is released upon deposit of cash in any amount or upon deposit of any stocks or bonds and the defendant is later discharged from all liability under the terms of the bond, the clerk of the court shall return the deposit to the person who made the deposit, including when bond is posted online.

(b) (I) If the depositor of the cash bond is the defendant and the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court may apply the deposit toward any amount owed by the defendant in court costs, fees, fines, restitution, or surcharges if the defendant voluntarily agrees in writing to the use of the deposit for such purpose. A defendant is not required to agree to apply the deposit toward any amount owed by the defendant as a condition of release, including when bond is posted online. If any amount of the deposit remains after paying the defendant's outstanding court costs, fees, fines, restitution, or surcharges, the court shall return the remainder of the deposit to the defendant.

(II) If the depositor of the cash bond is not the defendant but the defendant owes court costs, fees, fines, restitution, or surcharges at the time the defendant is discharged from all liability under the terms of the bond, the court shall not apply the deposit toward the amount owed by the defendant in court costs, fees, fines, restitution, or surcharges. The court shall return the deposit to the depositor, including when a bond is posted online.

(III) A depositor of a cash bond who is not the defendant may deposit bond funds directly with the jail. The depositor is not required to pay any additional fees, costs, or surcharges other than the bond amount and bond processing fee. The depositor is not required to apply bond funds to the defendant's inmate account for payment of the bond and is not required to deposit money in the defendant's name, including when a bond is posted online.

(2) (a) Upon satisfaction of the terms of the bond, the clerk of the court shall execute, within fourteen days after such satisfaction, a release of any deed of trust given to secure the bond and an affidavit that states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of such deed of trust may be recorded at the expense of the record owner of the property described in such deed of trust.

(b) If there is a forfeiture of the bond pursuant to this section, and if the forfeiture is not set aside pursuant to subsection (4) of this section, the deed of trust may be foreclosed as provided by law.

(c) If there is a forfeiture of the bond pursuant to this section, but the forfeiture is set aside pursuant to subsection (3) of this section, the clerk of the court shall execute a release of any deed of trust given to secure the bond and an affidavit that states that the obligation for which the deed of trust had been recorded has been satisfied, either fully or partially, and that the release of

such deed of trust may be recorded at the expense of the record owner of the real estate described in such deed of trust.

(3) When the defendant has been released upon deposit of cash or property, upon an unsecured personal recognizance bond with a monetary condition pursuant to section 16-4-104 (1)(a) or (1)(b), or upon a surety bond secured by property, if the defendant fails to appear in accordance with the primary condition of the bond, the court shall declare a forfeiture. Notice of the order of forfeiture shall be mailed by the court to the defendant, all sureties, and all depositors or assignees of any deposits of cash or property if such sureties, depositors, or assignees have direct contact with the court, at their last-known addresses. Such notice shall be sent within fourteen days after the entry of the order of forfeiture. If the defendant does not appear and surrender to the court having jurisdiction within thirty-five days from the date of the forfeiture or within that period satisfy the court that appearance and surrender by the defendant is impossible and without fault by such defendant, the court may enter judgment for the state against the defendant for the amount of the bond and costs of the court proceedings. Any cash deposits made with the clerk of the court shall be applied to the payment of costs. If any amount of such cash deposit remains after the payment of costs, it shall be applied to payment of the judgment.

(4) The court may order that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice so requires.

(5) If, within one year after judgment, the person who executed the forfeited bond as principal or as surety effects the apprehension or surrender of the defendant to the sheriff of the county from which the bond was taken or to the court which granted the bond, the court may vacate the judgment and order a remission less necessary and actual costs of the court.

(6) The provisions of this section shall not apply to appearance bonds written by compensated sureties, as defined in section 16-4-114 (2)(c), which bonds shall be subject to the provisions of section 16-4-114.

(7) All money collected from payment toward a judgment entered for the state pursuant to subsection (3) of this section shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6).

(8) Beginning July 1, 2025, the judicial department shall transfer seventy-five percent of the money collected pursuant to this section from a bond forfeiture judgment to the state treasurer for deposit in the judicial collection enhancement fund created in section 16-11-101.6 (2).

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 832, § 2, effective May 11. **L. 2014:** (3) amended, (SB 14-212), ch. 397, p. 2000, § 7, effective July 1. **L. 2019:** (1)(b) amended, (SB 19-191), ch. 288, p. 2668, § 2, effective August 2. **L. 2025:** (8) added, (SB 25-

241), ch. 144, p. 543, § 1, effective April 28; (1) amended, (HB 25-1015), ch. 43, p. 203, § 2, effective August 6. **L. 2026:** (7) amended, (HB 26-1379), ch. 173, p. 1013, § 1, effective May 27.

ANNOTATION

Annotator's note. Since § 16-4-111 is similar to § 16-4-109 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

There must be due process before any judgment may issue in connection with a bond forfeiture, and want of conformance to the procedure outlined by law is a violation of the surety's rights. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

"Forthwith" means promptly and without unnecessary delay. Notices of orders of forfeiture which were mailed to sureties 34 days and 43 days after the entry of such orders did not comply with the "forthwith" standard. Moreno v. People, 775 P.2d 1184 (Colo. 1989).

A trial court's failure to give surety "forthwith" notice does not result in a presumption of prejudice to the surety. Moreno v. People, 775 P.2d 1184 (Colo. 1989).

Forfeiture of a bond based on a defendant's failure to appear is not disfavored. Moreno v. People, 775 P.2d 1184 (Colo. 1989).

Judgment cannot be entered same day as forfeiture. In a bail bond forfeiture proceeding at a hearing to determine whether the principal is in default, judgment against the surety cannot be entered on the same day. Herbertson v. People, 160 Colo. 139, 415 P.2d 53 (1966).

Section does not authorize setting aside a judgment on a forfeiture; it only authorizes setting aside a forfeiture prior to judgment. People v. Caro, 753 P.2d 196 (Colo. 1988).

Judgment for penal sum or costs allowed. When it appears that the defendant was pursued, apprehended, and returned by the state, without any assistance from those answerable for his appearance, judgment should be entered for the penal sum of the bond, unless the court, in light of all of the circumstances surrounding defendant's failure to appear in the exercise of its sound discretion may see fit to enter judgment for a lesser amount. In no event should judgment be entered for an amount less than the full amount of costs occasioned by the defendant's failure to appear. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

A judgment based on forfeiture of a criminal recognizance is final. Van Gilder v. City & County of Denver, 104 Colo. 76, 89 P.2d 529 (1939).

Surety should act promptly where recognizance forfeited. A surety on a criminal recognizance which has been forfeited who wishes to obtain relief from liability should act promptly and while

evidence against the defendant is still available. Van Gilder v. City & County of Denver, 104 Colo. 76, 89 P.2d 529 (1939).

Acts of God, of the state, or of law relieve a surety from liability. A trial court has no jurisdiction to relieve the surety from liability on a bail bond except on grounds generally recognized by the law as excusing the performance of the undertaking, and such grounds exist only when the appearance of accused is made impossible by an act of God, an act of the state which is the beneficiary of the bond, or an act of law. Where the principal in a bail bond dies before the day of performance or is prevented by illness from appearing, the case is within the first category. Where the principal in a bail bond is in prison within the state, pursuant to a judgment of a court of competent jurisdiction of the state, the case comes within the second category. Where the party has been turned over to the federal court within the state by a prior bondsman and is serving a sentence by that court, or if the party has been arrested in the state where the obligation is given and sent out of the state by the governor upon requisition from another state or foreign jurisdiction, the case falls within the third category. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

Where the defendant in a criminal case is imprisoned in another state at the time his case is called for trial and cannot appear pursuant to the conditions of his bond, and the surety thereon offers to defray the costs and expenses involved in returning the defendant to Colorado upon completion of the imprisonment which prevented his attendance in the trial court, the surety is relieved from a forfeiture. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

Where the defendant is not produced at all, or turns up only after a long lapse of time, the courts will ordinarily deny remission without regard to the mitigating factors asserted in connection with his nonappearance, except in cases of death, insanity, or imprisonment. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Defendant who is transferred from the state's custody to a federal agency pursuant to a detainer has never been released into the legal custody of the surety who is consequently discharged from any liability on the bond. People v. Gonzales, 745 P.2d 263 (Colo. App. 1987).

Hospitalization is valid excuse for failure to appear. The defendant's hospitalization following an automobile accident is a valid excuse for his failure to appear at a scheduled hearing. People v. Smith, 673 P.2d 1026 (Colo. App. 1983).

The standard in subsection (3) is essentially an appeal to the conscience of the court. No clear rule can be set down which will guide the trial court in every case since the facts and circumstances of each individual case must be considered in their totality. No one factor will be determinative in all cases. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

And court has discretion to relieve forfeiture for other reasons. Following the rule that the discretion is in the court to do as it sees fit about forfeiting a bond, matters which would appeal to the sympathy of the

ordinary individual, even if not to a judge, should be put in evidence. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

The decision as to whether or not a forfeited bond should be remitted is entrusted to the trial court's discretion by subsection (3) of this section and Crim. P. 46. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

Trial court abused its discretion where the sureties made substantial efforts to locate, seize, and surrender defendant to authorities, and defendant was in custody in the adjoining county due principally to the efforts of the sureties. People v. Mendez, 708 P.2d 126 (Colo. App. 1985).

Forfeiture proceeding not to enrich public treasury. The enriching of the public treasury is not part of the object at which a forfeiture proceeding is aimed. People v. Campbell, 633 P.2d 509 (Colo. App. 1981).

Effect of material increase of risk to bondsman. When a bondsman enters into a surety agreement, he undertakes a calculated risk, so that events which materially increase that risk have the effect of terminating the obligation. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

Court not required to notify surety of defendant's permitted absence. Neither the case law nor subsection (2) imposes a duty on the court to give a surety notice of the permitted absence of a defendant from a hearing. People v. Smith, 673 P.2d 1026 (Colo. App. 1983).

By approving defendant's departure from state without notice to surety, the court terminates any control the surety might have had over the defendant and the court's action discharges the surety from any obligation under a bail bond. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

Words "without leave" in the bond do not include departure from the jurisdiction of the court. But where the defendant given permission to absent himself only from the court and not from the court's jurisdiction, the court complies with the existing conditions of the bond contract, rather than changing them, materially or otherwise. People v. Smith, 673 P.2d 1026 (Colo. App. 1983).

Considerations in determining whether to order remission of forfeited bond. In exercising its discretion as to whether to order remission of a forfeited bond, the trial court may consider whether the defendant has been produced within a reasonable time after forfeiture, whether the people have lost any rights against the defendant, whether the defendant's failure to appear was wilful, and whether a forfeiture will subject the surety to an extreme hardship. People v. Schliesser, 39 Colo. App. 54, 563 P.2d 377, rev'd on other grounds sub nom. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

Such as hardship to surety. When state incurred no expenses and lost no legal rights due to defendant's nonappearance and guarantor of bond was subjected to extreme hardship due to monthly payments on the bond, the trial court abused its discretion in denying a motion for return of the forfeited bond. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977).

The only factor which the courts of this state have considered as basis for remission where the principal disappears is whether the surety will thereby suffer extreme hardship, such hardships as will cause destitution to a family, deprive children of support and education, or creditors of their just debts. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Where defendant is produced within reasonable time after forfeiture, remission will be granted to a surety if the people have not lost any rights as a result of his nonappearance, especially if his failure to appear was other than deliberate and wilful. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Where the accused had not been returned to custody at the time of the hearing on the motion to remit the bond, and where the guarantor did not establish that he would suffer extreme hardship as a result of the forfeiture, the trial court did not abuse its discretion by denying the motion for reimbursement. People v. Gossett, 680 P.2d 1323 (Colo. App. 1984).

One of the functions of a bond is to relieve state of burden of securing appearance in court by giving bondsman a strong incentive to insure such attendance. Where person posting bond made money available to the court and did all that could be expected in attempting to secure defendant's attendance in court, purposes of bond were served and state will not be penalized by bond's remittance. People v. Saviano, 677 P.2d 414 (Colo. App. 1983).

Setting aside of bond forfeitures not warranted by this section where the defendant, released on bail after posting of bond, failed to appear at her hearing because police had told her that she would be arrested on another charge as soon as the arrest warrant for her was located. People v. Rothe, 43 Colo. App. 274, 606 P.2d 79 (1979).

Limitation on reversal of decision not to order remission. The decision not to order remission of a forfeited bond may be reversed only if it appears that the trial court has abused its discretion. People v. Schliesser, 39 Colo. App. 54, 563 P.2d 377, rev'd on other grounds sub nom. Owens v. People, 194 Colo. 389, 572 P.2d 837 (1977); People v. Rothe, 43 Colo. App. 274, 606 P.2d 79 (1979); People v. Saviano, 677 P.2d 414 (Colo. App. 1983).

Determination of "material increase of risk" to bondsman dependent upon terms of bond agreement. The court must look to the bond agreement to determine whether a trial court's action in allowing withdrawal of a guilty plea materially increases the risk of the bondsman and terminates the bondsman's surety obligation. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976); People v. Tyler, 797 P.2d 22 (Colo. 1990).

Failure of district attorney to seek international extradition of defendant does not exonerate surety from liability where the defendant, a Mexican national, is located by surety in Mexico and it is known that Mexico does not extradite its nationals. People v. Bustamante-Payan, 856 P.2d 42 (Colo. App. 1993).

Applied in People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984).

16-4-112. Enforcement when forfeiture not set aside.

By entering into a bond, each obligor, whether he or she is the principal or a surety, submits to the jurisdiction of the court. His or her liability under the bond may be enforced, without the necessity of an independent action, as follows: The court shall order the issuance of a citation directed to the obligor to show cause, if any there be, why judgment should not be entered against him or her forthwith and execution issue thereon. Said citation may be served personally or by certified mail upon the obligor directed to the address given in the bond. Hearing on the citation shall be held not less than twenty-one days after service. The defendant's attorney and the prosecuting attorney shall be given notice of the hearing. At the conclusion of the hearing, the court may enter a judgment for the state and against the obligor, and execution shall issue thereon as on other judgments. The district attorney shall have execution issued forthwith upon the judgment and deliver it to the sheriff to be executed by levy upon the stocks, bond, or real estate which has been accepted as security for the bond.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 834, § 2, effective May 11.

ANNOTATION

Annotator's note. Since § 16-4-112 is similar to § 16-4-110 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision and former provisions similar to that section have been included in the annotations to this section.

Following proper forfeiture, the court should issue a citation, or other process in the nature of scire facias, directing those against whom judgment is sought to appear and answer within a reasonable time. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Following an order declaring a bond forfeited, the court should issue a citation or other process in the nature of scire facias, as provided in this section and Crim. P. 46, ordering the surety to show cause why judgment should not be entered against him. E. & E. Bonding Co. v. People, 160 Colo. 185, 415 P.2d 860 (1966).

Bond is not debt until forfeiture. Where no order is ever entered by the trial court in a criminal case declaring a bail bond forfeited nor a citation or other process issued as provided in this section and Crim. P. 46, it follows that the defense that a civil complaint against the sureties for a debt on the bond failed to state a claim upon which

relief could be granted is good. E & E Bonding Co. v. People, 160 Colo. 185, 415 P.2d 860 (1966).

Unnecessary to grant delay while surety searches for principal. To grant delay in order that sureties have time to search for, produce, and surrender the defendant would be without warrant. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

Effect of material increase of risk to bondsman. When a bondsman enters into a surety agreement, he undertakes a calculated risk, so that events which materially increase that risk have the effect of terminating the obligation. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

By approving defendant's departure from state without notice to surety, the court terminates any control the surety might have had over the defendant and the court's action discharges the surety from any obligation under a bail bond. People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978).

16-4-113. Type of bond in certain misdemeanor cases.

(1) In exercising the discretion mentioned in section 16-4-104, the judge shall release the accused person upon personal recognizance if the charge is any offense for a violation of which the maximum penalty does not exceed six months' imprisonment, and the accused person shall not be required to supply a surety bond, or give security of any kind for their appearance for trial other than their personal recognizance, unless one or more of the following facts are found to be present:

(a) The arrested person fails to sufficiently identify himself or herself; or

(b) The arrested person refuses to sign a personal recognizance; or

(c) The continued detention or posting of a surety bond is necessary to prevent imminent bodily harm to the accused or to another; or

(d) The arrested person has no ties to the jurisdiction of the court reasonably sufficient to assure his or her appearance, and there is substantial likelihood that he or she will fail to appear for trial if released upon his or her personal recognizance; or

(e) The arrested person has previously failed to appear for trial for an offense concerning which he or she had given his written promise to appear; or

(f) There is outstanding a warrant for his or her arrest on any other charge or there are pending proceedings against him or her for suspension or revocation of parole or probation.

(2) (a) For a defendant charged with a traffic offense, a petty offense, or a comparable municipal offense, a court shall not impose a monetary condition of release. If the comparable municipal offense is a property crime and the factual basis reflects a value of property loss or

damage that would be a petty offense property crime if charged under state law, this subsection (2)(a) applies.

(b) For a defendant charged with a municipal offense for which there is no comparable state misdemeanor offense, the court shall not impose a monetary condition of release.

(c) After arrest, but prior to an individual consideration of bond by a judge, bonding commissioner, judicial officer, or judicial designee with the power to set conditions of release, this subsection (2) does not prohibit the release of a defendant pursuant to local pretrial release policies, including those that require payment of a monetary condition of release, if the defendant is first informed that the defendant is entitled to release on a personal recognizance bond.

(d) Nothing in this subsection (2) prohibits the issuance of a warrant with monetary conditions of bond for a defendant who fails to appear in court as required or who violates a condition of release. If a defendant is unable to post the monetary condition of bond prior to the next individualized consideration of bond, the judge, bonding commissioner, judicial officer, or judicial designee with the power to set conditions of release shall release the person on personal recognizance.

(e) The provisions of this subsection (2) do not apply to:

(I) A traffic offense involving death or bodily injury or a municipal offense with substantially similar elements;

(II) Eluding or attempting to elude a police officer as described in section 42-4-1413 or a municipal offense with substantially similar elements;

(III) Operating a vehicle after circumventing an interlock device as described in section 42-2-132.5 (10) or a municipal offense with substantially similar elements; and

(IV) A municipal offense that has substantially similar elements to a state misdemeanor offense.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 834, § 2, effective May 11. **L. 2019:** IP(1) amended and (2) added, (HB 19-1225), ch. 132, p. 590, § 1, effective April 25. **L. 2021:** IP(1) amended, (SB 21-271), ch. 462, p. 3162, § 169, effective March 1, 2022. **L. 2022:** IP(1) amended, (HB 22-1229), ch. 68, p. 341, § 12, effective March 1. **L. 2024:** (2)(a) amended, (HB 24-1241), ch. 66, p. 219, § 1, effective April 11.

Editor's note: Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

16-4-114. Enforcement procedures for compensated sureties - definitions.

(1) (a) The general assembly hereby finds, determines, and declares that the simplicity, effectiveness, and uniformity of bail forfeiture procedures applicable to compensated sureties who are subject to the regulatory authority of the Colorado division of insurance are matters of statewide concern.

(b) It is the intent of the general assembly in adopting this section to:

(I) Adopt a board system that will simplify and expedite bail forfeiture procedures by authorizing courts to bar compensated sureties who fail to pay forfeiture judgments from writing further bonds;

(II) Minimize the need for day-to-day involvement of the division of insurance in routine forfeiture enforcement; and

(III) Reduce court administrative workload.

(2) As used in this section, unless the context otherwise requires:

(a) "Bail insurance company" means an insurer as defined in section 10-1-102 (13), C.R.S., engaged in the business of writing appearance bonds through bonding agents, which company is subject to regulation by the division of insurance in the department of regulatory agencies.

(b) "Board system" means any reasonable method established by a court to publicly post or disseminate the name of any compensated surety who is prohibited from posting bail bonds.

(c) "Compensated surety" means any person who is in the business of writing appearance bonds and who is subject to regulation by the division of insurance in the department of regulatory agencies, including bonding agents and bail insurance companies. Nothing in this paragraph (c) authorizes bail insurance companies to write appearance bonds except through bail bonding agents.

(d) "On the board" means that the name of a compensated surety has been publicly posted or disseminated by a court as being ineligible to write bail bonds pursuant to paragraph (e) or (f) of subsection (5) of this section.

(3) Each court of record in this state shall implement a board system for the recording and dissemination of the names of those compensated sureties who are prohibited from posting bail bonds in the state due to an unpaid judgment as set forth in this section.

(4) By entering into a bond, each obligor, including the bond principal and compensated surety, submits to the jurisdiction of the court and acknowledges the applicability of the forfeiture procedures set forth in this section.

(5) Liability of bond obligors on bonds issued by compensated sureties may be enforced, without the necessity of an independent action, as follows:

(a) In the event a defendant does not appear before the court and is in violation of the primary condition of an appearance bond, the court may declare the bond forfeited.

(b) (I) If a bond is declared forfeited by the court, notice of the bail forfeiture order shall be served on the bonding agent by certified mail and on the bail insurance company by regular mail within fourteen days after the entry of said forfeiture. If the compensated surety on the bond is a cash bonding agent, only the cash bonding agent shall be notified of the forfeiture. Service of notice of the bail forfeiture on the defendant is not required.

(II) The notice described in subparagraph (I) of this paragraph (b) shall include, but need not be limited to:

(A) A statement intended to inform the compensated surety of the entry of forfeiture;

(B) An advisement that the compensated surety has the right to request a show cause hearing pursuant to subparagraph (III) of this paragraph (b) within fourteen days after receipt of notice of forfeiture, by procedures set by the court; and

(C) An advisement that if the compensated surety does not request a show cause hearing pursuant to subparagraph (III) of this paragraph (b), judgment shall be entered upon expiration of thirty-five days following the entry of forfeiture.

(III) A compensated surety, upon whom notice of a bail forfeiture order has been served, shall have fourteen days after receipt of notice of such forfeiture to request a hearing to show cause why judgment on the forfeiture should not be entered for the state against the compensated surety. Such request shall be granted by the court and a hearing shall be set within thirty-five days after entry of forfeiture or at the court's earliest convenience. At the conclusion of the hearing requested by the compensated surety, if any, the court may enter judgment for the state against the compensated surety, or the court may in its discretion order further hearings. Upon expiration of thirty-five days after the entry of forfeiture, the court shall enter judgment for the state against the compensated surety if the compensated surety did not request within fourteen days after receipt of notice of such forfeiture a hearing to show cause.

(IV) If such a show cause hearing was timely set but the hearing did not occur within thirty-five days after the entry of forfeiture, any entry of judgment at the conclusion of the hearing against the compensated surety shall not be vacated on the grounds that the matter was not timely heard. If judgment is entered against a compensated surety upon the conclusion of a requested show cause hearing, and such hearing did not occur within thirty-five days after the entry of forfeiture, execution upon said judgment shall be automatically stayed for no more than one hundred twenty-six days after entry of forfeiture.

(V) (A) If at any time prior to the entry of judgment, the defendant appears in court, either voluntarily or in custody after surrender or arrest, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated at the time the defendant first appears in court; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(B) If, at a time prior to the entry of judgment, the surety provides proof to the court that the defendant is in custody in any other jurisdiction within the state, the court shall on its own motion direct that the bail forfeiture be set aside and the bond exonerated; except that, if the court extradites the defendant, all necessary and actual costs associated with the extradition shall be borne by the surety up to the amount of the bond. If the court elects to extradite the defendant, any forfeiture will be stayed until such time the defendant appears in the court where the bond returns.

(C) A compensated surety shall be exonerated from liability upon the bond by satisfaction of the bail forfeiture judgment, surrender of the defendant, or order of the court. If the surety provides proof to the court that the defendant is in custody in any other jurisdiction within the state, within ninety-one days after the entry of judgment, the court shall on its own motion direct that the bail forfeiture judgment be vacated and the bond exonerated; except that, if the court extradites the defendant, all necessary and actual costs associated with the extradition shall be borne by the surety up to the amount of the bond. If the court elects to extradite the defendant, any judgment will be stayed until the time the defendant appears in the court where the bond returns.

(VI) A compensated surety shall be exonerated from liability upon the bond when the surety provides satisfactory evidence to the court that the defendant has been removed from the country pursuant action by a federal immigration agency while on bond. The court shall exonerate the bail bond if all of the following occur:

(A) The compensated surety files a motion requesting exoneration of the bail bond;

(B) The compensated surety files an affidavit along with the motion stating that the compensated surety has received information from the United States department of homeland security, the United States immigration and customs enforcement, or a foreign consulate that the defendant has been detained or removed from the United States. If the compensated surety is unable to obtain such information from the above sources, the compensated surety must file an affidavit that is signed under penalty of perjury by a person with personal knowledge that the defendant has been detained or removed from the United States.

(C) The district attorney does not object.

(VII) If the court exonerates the liability on the bail bond pursuant to subsection (5)(b)(VI) of this section and the bond premium has been paid, any collateral securing the bail bond is released.

(c) Execution upon said bail forfeiture judgment shall be automatically stayed for ninety-one days from the date of entry of judgment; except that, if judgment is entered against a compensated surety upon the conclusion of a requested show cause hearing, and such hearing did not occur within thirty-five days after the entry of forfeiture, the judgment shall be automatically stayed as set forth in subparagraph (IV) of paragraph (b) of this subsection (5).

(d) Upon the expiration of the stay of execution described in paragraph (c) of this subsection (5), the bail forfeiture judgment shall be paid forthwith by the compensated surety, if not previously paid, unless the defendant appears in court, either voluntarily or in custody after surrender or arrest, or the court enters an order granting an additional stay of execution or otherwise vacates the judgment.

(e) If a bail forfeiture judgment is not paid on or before the expiration date of the stay of execution described in paragraph (c) of this subsection (5), the name of the bonding agent shall be placed on the board of the court that entered the judgment. The bonding agent shall be prohibited from executing any further bail bonds in this state until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court.

(f) If a bail forfeiture judgment remains unpaid for thirty-five days after the name of the bonding agent is placed on the board, the court shall send notice by certified mail to the bail insurance company for whom the bonding agent has executed the bond that if said judgment is not paid within fourteen days after the date of mailing of said notice, the name of the bail insurance company shall be placed on the board and such company shall be prohibited from executing any further bail bonds in this state until the judgment giving rise to placement on the board is satisfied, vacated, or otherwise discharged by order of the court.

(g) A compensated surety shall be removed forthwith from the board only after every judgment for which the compensated surety was placed on the board is satisfied, vacated, or discharged or stayed by entry of an additional stay of execution. No compensated surety shall be placed on the board in the absence of the notice required by paragraph (b) or (f) of this subsection (5).

(h) The court may order that a bail forfeiture judgment be vacated and set aside or that execution thereon be stayed upon such conditions as the court may impose, if it appears that justice so requires.

(i) A compensated surety shall be exonerated from liability upon the bond by satisfaction of the bail forfeiture judgment, surrender of the defendant, or by order of the court. If the defendant appears in court, either voluntarily or in custody after surrender or arrest, within ninety-one days after the entry of judgment, the court, at the time the defendant first appears in court, shall on its own motion direct that the bail forfeiture judgment be vacated and the bond exonerated; except that, if the state extradites such defendant, all necessary and actual costs associated with such extradition shall be borne by the surety up to the amount of the bond.

(j) If, within one year after payment of the bail forfeiture judgment, the compensated surety effects the apprehension or surrender of the defendant and provides reasonable notice to the court to which the bond returns that the defendant is available for extradition, the court shall vacate the judgment and order a remission of the amount paid on the bond less any necessary and actual costs incurred by the state and the sheriff who has actually extradited the defendant.

(k) Bail bonds shall be deemed valid notwithstanding the fact that a bond may have been written by a compensated surety who has been placed on the board pursuant to paragraph (e) or (f) of this subsection (5) and is otherwise prohibited from writing bail bonds. The ineligibility of a compensated surety to write bonds because the name of the compensated surety has been placed on the board pursuant to paragraph (e) or (f) of this subsection (5) shall not be a defense to liability on any appearance bond accepted by a court.

(l) The automatic stay of execution upon a bail forfeiture judgment as described in paragraph (c) of this subsection (5) shall expire pursuant to its terms unless the defendant appears and surrenders to the court having jurisdiction or satisfies the court that appearance and surrender by the defendant was impossible and without fault by such defendant. The court may order that a forfeiture be set aside and judgment vacated as set forth in paragraph (h) of this subsection (5).

(6) A bail insurance company shall not write bail bonds unless through a licensed bail bonding agent.

(7) Beginning July 1, 2025, the judicial department shall transfer the money collected pursuant to this section from a bail forfeiture judgment involving an appearance bond described in this section to the state treasurer for deposit in the judicial collection enhancement fund created in section 16-11-101.6 (2).

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 835, § 2, effective May 11. **L. 2017:** (5)(b)(VI) and (5)(b)(VII) added, (HB 17-1369), ch. 379, p. 1950, § 3, effective June 6. **L. 2025:** (7) added, (SB 25-241), ch. 144, p. 543, § 2, effective April 28.

Cross references: For the short title ("Bond Surety Protection Act") in HB 17-1369, see section 1 of chapter 379, Session Laws of Colorado 2017.

ANNOTATION

Annotator's note. Since § 16-4-114 is similar to § 16-4-112 as it existed prior to the 2013 repeal and reenactment of this part 1, relevant cases decided under that provision have been included in the annotations to this section.

Subsection (5)(h) authorizes a trial court to order that a bail forfeiture judgment be set aside upon such conditions as the court may impose, "if it appears that justice so requires". This standard is essentially an appeal to the conscience of the court. No clear rule can be set down that will guide the trial court in every instance, because the court must consider the totality of facts and circumstances in each individual case. People v. Escalera, 121 P.3d 306 (Colo. App. 2005); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

Factors the court should consider include: (1) The willfulness of the defendant's violations of the conditions of bail; (2) the surety's participation in locating or apprehending the defendant; (3) the cost, inconvenience, and prejudice suffered by the state resulting from the violation; (4) any intangible costs; (5) the public interest in ensuring the defendant's appearance; and (6) any other mitigating factors. These factors encompass the principle that generally only acts of God, of the state, or of law will relieve a surety from liability. People v. Bustamante-Payan, 856 P.2d 42 (Colo. App. 1993) (decided under former § 16-4-109 (3)); People v. Escalera, 121 P.3d 306 (Colo. App. 2005); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

In exercising its discretion, a trial court should be mindful of the policies concerning bail, including the policy that sureties should not be penalized when it appears they are unable, through no fault of their own, to perform the condition of the bond. People v. Escalera, 121 P.3d 306 (Colo. App. 2005).

16-4-115. Severability.

If any provision of this part 1 or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this part 1 that can be given effect without the invalid provision or application, and to this end the provisions of this part 1 are declared to be severable.

Source: L. 2013: Entire part R&RE, (HB 13-1236), ch. 202, p. 839, § 2, effective May 11.

16-4-116. Bond hearing officer.

(1) (a) There is created in the state court administrator's office the position of bond hearing officer. A bond hearing officer is a magistrate appointed by the chief justice of the Colorado supreme court or his or her designee and must be a qualified attorney-at-law admitted to practice in this state and in good standing.

(b) Notwithstanding any provision of law to the contrary, a bond hearing officer has the authority to conduct bond hearings for any jurisdiction in the state. A bond hearing officer shall

conduct bond hearings on weekends and holidays using an interactive audiovisual device that provides the public with the opportunity to view the hearing and the crime victim, if any, with an opportunity to participate in the hearing if desired.

(2) (a) (I) Each judicial district that contains a county that is designated as a high priority or eligible county by the underfunded courthouse facility cash fund commission, created in section 13-1-303, has the right to have a bond hearing officer conduct weekend and holiday bond hearings. The chief judge of the judicial district shall notify the state court administrator if the judicial district wants to have a bond hearing officer conduct bond hearings on a weekend or holiday.

(II) If any other judicial district wants to have a bond hearing officer conduct bond hearings, the chief judge of the judicial district shall notify the state court administrator. The state court administrator shall determine which judicial districts not subject to subsection (2)(a)(I) of this section the bond hearing officer can serve within available resources.

(b) The state court administrator shall post a schedule for the bond hearings to be held by a bond hearing officer on its website.

(3) For each case heard by a bond hearing officer, the arresting jurisdiction shall electronically transmit the arrest report, pretrial services information, and all other relevant information to the bonding hearing officer prior to the hearing.

Source: L. 2021: Entire section added, (HB 21-1280), ch. 457, p. 3050, § 3, effective September 7.

16-4-117. District attorney assistance for bond hearings grant program - created - rules.

(1) All costs and expenses related to a district attorneys' office's ability to comply with the bond hearing requirements of section 16-4-102 (2)(a) are reasonable and necessary expenses required to fully discharge the official duties of the office.

(2) There is hereby created in the Colorado district attorneys' council the district attorney assistance for bond hearings grant program to provide grants to assist district attorneys in complying with section 16-4-102 (2)(a).

(3) Grant recipients shall use the money to pay for any reasonable cost or expense directly related to compliance with section 16-4-102 (2)(a), including but not limited to personnel, equipment, and travel.

(4) The Colorado district attorneys' council shall administer the grant program and shall award grants, subject to available appropriations.

(5) The Colorado district attorneys' council shall promulgate such rules as may be necessary to implement the grant program. At a minimum, the rules must specify the time frames for applying for grants, the form of the grant program application, and the time frames for distributing grant money.

(6) To receive a grant, a district attorney must submit an application to the Colorado district attorneys' council in accordance with rules promulgated by the Colorado district attorneys' council.

(7) The Colorado district attorneys' council executive committee shall review all applications received pursuant to this section and shall prioritize awarding at least seventy-five percent of all available grant money to district attorneys' offices located in a judicial district with a population base of two hundred thousand people or fewer to comply with section 16-4-102 (2)(a).

(8) Subject to available appropriations, on or before April 1 each year of the grant program, the Colorado district attorneys' council shall award grants.

(9) Repealed.

Source: L. 2021: Entire section added, (HB 21-1280), ch. 457, p. 3050, § 3, effective September 7. **L. 2022:** (4) and (8) amended and (9) repealed, (HB 22-1067), ch. 264, p. 1931, § 2, effective May 27.

PART 2

BAIL AFTER CONVICTION

16-4-201. Bail after conviction.

(1) (a) After conviction, either before or after sentencing, the defendant may orally, or in writing, move for release on bail pending determination of a motion for a new trial or motion in arrest of judgment or during any stay of execution or pending review by an appellate court, and, except in cases where the defendant has been convicted of a capital offense, the trial court, in its discretion, may continue the bond given for pretrial release, or may release the defendant on bond with additional conditions including monetary conditions, or require bond under one or more of the alternatives set forth in section 16-4-104.

(b) The district attorney must be present at the time the court passes on a defendant's motion for release on bail after conviction.

(c) Bond shall not be continued in effect following a plea of guilty or of nolo contendere or following conviction unless the written consents of the sureties, if any, are filed with the court. In

the initial bond documents filed with the court, a surety shall indicate, in writing and at the time of the posting of bond, if the surety consents to the continuance of the bond through sentencing of the defendant. If the surety does not provide written consent at the time of the initial posting of bond, the surety may provide written consent at the time of the plea of guilty or nolo contendere or within a reasonable time thereafter as determined by the court. A court shall not require the posting of any form of bond that allows for the continuance of said bond after a plea of guilty or of nolo contendere or following conviction without filing with the court the written consents of the sureties, if any.

(d) For a defendant who has been convicted of a felony offense, a condition of bail bond shall be that the court shall require the defendant to execute or subscribe a written prior waiver of extradition stating that the defendant consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while released on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.

(2) After conviction, a defendant who is granted probation pursuant to section 18-1.3-202, C.R.S., may orally, or in writing, move for a stay of probation pending determination of a motion for a new trial or a motion in arrest of judgment or pending review by an appellate court. The trial court, in its discretion, may grant a stay of probation and require the defendant to post an appeal bond under one or more of the alternatives set forth in section 16-4-104. The district attorney shall be present at the time the court passes on a defendant's motion for stay of probation after conviction.

Source: L. 72: R&RE, p. 209, § 1. **C.R.S. 1963:** § 39-4-201. **L. 85:** Entire section amended, p. 621, § 3, effective July 1. **L. 94:** Entire section amended, p. 97, § 2, effective July 1. **L. 2002:** (2) amended, p. 1490, § 131, effective October 1. **L. 2006:** (1) amended, p. 341, § 3, effective July 1. **L. 2012:** (1)(c) amended, (HB 12-1310), ch. 268, p. 1393, § 5, effective June 7. **L. 2013:** (1)(a) amended, (HB 13-1236), ch. 202, p. 839, § 3, effective May 11.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Staying Enforcement of a Judgment Pending Appeal", see 48 Colo. Law. 30 (May 2019).

Annotator's note. Since § 16-4-201 is similar to repealed § 39-2-19, CRS 53, and laws antecedent to CSA, C. 48, § 443, relevant cases construing those provisions

have been included in the annotations to this section.

The court had authority at common law to admit to bail after conviction. People v. Junes, 77 Colo. 38, 233 P. 1109 (1925).

The trial court retains jurisdiction to grant or deny an appeal bond even after the defendant has filed a notice of appeal. The trial court retains jurisdiction to act with respect to matters which are not relative to or do not affect the order or judgment on appeal. Since the granting or denial of an appeal bond has no impact or bearing upon the underlying conviction or related issues pending on appeal, the trial court retains jurisdiction. People v. Stewart, 26 P.3d 17 (Colo. App. 2000), rev'd on other grounds, 55 P.3d 107 (Colo. 2002).

Purpose of section. The purpose of § 16-4-106 and this section is to authorize the court to exercise discretion rather than follow a fixed policy and to permit a recognizance to remain in effect, without the necessity of a new bond, after conviction and until disposition of the case in the trial court. Trujillo v. District Court, 131 Colo. 428, 282 P.2d 703 (1955).

Section 16-4-106 and this section must be read together and reconciled if possible. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Power to admit to bail after conviction is discretionary with the trial court; it is not a matter of right. People v. Junes, 77 Colo. 38, 233 P. 1109 (1925).

Probationer awaiting adjudication of a petition to revoke probation or a deferred judgment does not have a right to bond despite the fact that the revocation motions are based on a new charge for which the probationer is presumed innocent. People v. Johnson, 2017 COA 97, 488 P.3d 232.

Entry of guilty verdict or acceptance of guilty plea completes conviction. For purposes of the bail bond statute, a "conviction" occurs and is complete either upon the entry of a guilty verdict following trial or upon the acceptance of a plea of guilty, either to the original charge or to a lesser included charge. People v. Bartsch, 37 Colo. App. 52, 543 P.2d 1273 (1975).

"Conviction" occurs upon entry of a plea of guilty. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

The word "conviction" in this section cannot include sentencing; it must refer to an occurrence before sentence. People v. Bartsch, 37 Colo. App. 52, 543 P.2d 1273 (1975).

Misdescription of crime in recognizance, after conviction, is not fatal. People v. Junes, 77 Colo. 38, 233 P. 1109 (1925).

Where defendant entered plea of guilty, surety's obligation under recognizance bond was terminated. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

And trial court could not continue bond without first obtaining surety's consent. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

Although the trial judge may continue the original bond to final disposition, he must obtain the consent of the surety to continue it beyond conviction. Rodriguez v. People, 191 Colo. 540, 554 P.2d 291 (1976).

This section does not require separate or renewed consent of sureties at various stages of the proceeding. O'Neil v. People, 198 Colo. 9, 595 P.2d 235 (1979).

Statutes relating to bail constitute part of the surety's contract. People v. Hampton, 662 P.2d 498 (Colo. App. 1983).

Applicability of pretrial bond to post-trial period. While the terms of the original pretrial bond may also cover the post-trial period, without such a provision, this section is controlling as to post-trial continuances of a bond. Where the language and terms of the original bond do not provide the court with the requisite written consent to continue liability beyond conviction, oral statements to the court, after the defendant fails to appear, do not bind the surety. People v. Hampton, 662 P.2d 498 (Colo. App. 1983).

Where contract deemed to impose postconviction liability. By executing bail bond contracts containing language binding them until the final sentence or order of the court, sureties are deemed to have given the statutorily required written consent to continue their liability on the bonds after conviction and until sentencing. O'Neil v. People, 198 Colo. 9, 595 P.2d 235 (1979).

Defendant's tender of signed petition and stipulation constituted a "plea of guilty" within the meaning of the bond statute, and a formal statement by the court accepting the guilty plea was not necessary. People v. Hernandez, 902 P.2d 846 (Colo. App. 1995).

A conviction is not necessary to exonerate the surety; a plea of guilty suffices. People v. Hernandez, 902 P.2d 846 (Colo. App. 1995).

Entry of a guilty plea constitutes an "answer" to the charges and satisfies the terms of a bond that bound the surety until the defendant "answered" the charges against him. People v. Hernandez, 902 P.2d 846 (Colo. App. 1995).

Applied in People v. Tyler, 784 P.2d 815 (Colo. App. 1989).

16-4-201.5. Right to bail after a conviction - exceptions.

(1) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by this part 2; except that no bail is allowed for persons convicted of:

(a) Murder;

(b) Any felony sexual assault involving the use of a deadly weapon;

(c) Any felony sexual assault committed against a child who is under fifteen years of age;

(d) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(e) Any felony during the commission of which the person used a firearm;

(f) A crime of possession of a weapon by a previous offender, as described in section 18-12-108 (2)(b), (2)(c), (4)(b), (4)(c), or (5), as those provisions existed prior to their repeal on March 1, 2022;

(g) Child abuse, as described in section 18-6-401 (7)(a)(I), C.R.S.;

(h) A class 5 felony act of domestic violence, as described in section 18-6-801 (7);

(i) A second or subsequent offense for stalking that occurs within seven years after the date of a prior offense for which the person was convicted, as described in section 18-3-602 (3)(b); or

(j) Stalking when there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect that protected the victim from the person, including but not limited to stalking, as described in section 18-3-602 (5).

(2) The court shall not set bail that is otherwise allowed pursuant to subsection (1) of this section unless the court finds that:

(a) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and

(b) The appeal is not frivolous or is not pursued for the purpose of delay.

(3) The provisions of this section shall apply to offenses committed on or after January 1, 1995.

Source: L. 99: Entire section added, p. 57, § 8, effective March 15. **L. 2000:** (1) amended, p. 635, § 6, effective July 1. **L. 2002:** (1)(d) amended, p. 1490, § 132, effective October 1. **L. 2007:** (1)(e) and (1)(f) amended and (1)(g) added, p. 1686, § 2, effective July 1. **L. 2017:** (1)(f) amended and (1)(h), (1)(i), and (1)(j) added, (HB 17-1150), ch. 182, p. 665, § 1, effective August 9. **L. 2023:** (1)(f) amended, (HB 23-1301), ch. 303, p. 1820, § 19, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(d), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

The appeal bond exceptions in subsection (2) do not conflict with the requirement in § 16-2-114 (6) to stay the execution of a sentence pending appeal. County courts can comply with the requirements of both statutes. Stays of

execution and bail are separate processes and a court can stay the execution of a sentence while also denying bail. People v. Lewis, 2024 CO 57, 555 P.3d 576.

Section 16-4-204 provides the exclusive method of appeal for trial court rulings on appeal bonds under this section. People v. Lewis, 2024 CO 57, 555 P.3d 576.

16-4-202. Appeal bond hearing - factors to be considered.

(1) The court shall consider the following factors in deciding whether or not an appeal bond should be granted and determining the type of bond and conditions of release required:

(a) The nature and circumstances of the offense before the court and the sentence imposed for that offense;

(b) The defendant's length of residence in the community;

(c) The defendant's employment, family ties, character, reputation, and mental condition;

(d) The defendant's past criminal record and record of appearance at court proceedings;

(e) Any showing of intimidation or harassment of witnesses or potential witnesses, or likelihood that the defendant will harm or threaten any person having a part in the trial resulting in conviction;

(f) Any other criminal charges pending against the defendant and the potential sentences should the defendant be convicted of those charges;

(g) The circumstances of, and sentences imposed in, any criminal case in which the defendant has been convicted but execution stayed pending appeal;

(h) The likelihood that the defendant will commit additional criminal offenses during the pendency of such defendant's appeal; and

(i) The defendant's likelihood of success on appeal.

Source: L. 72: R&RE, p. 209, § 1. **C.R.S. 1963:** § 39-4-202. **L. 93:** Entire section amended, p. 1726, § 3, effective July 1. **L. 2013:** IP(1) amended, (HB 13-1236), ch. 202, p. 840, § 4, effective May 11.

ANNOTATION

Trial court must hold hearing and make findings on defendant's motion for an appeal bond. People v. Yi, 741 P.2d 1264 (Colo. App. 1987).

But defendant not entitled to a hearing on a motion for an appeal bond pending appeal of a postconviction order, since defendant had already had the opportunity for and the benefit of a meaningful appellate review of his conviction. People v. Roca, 17 P.3d 835 (Colo. App. 2000).

16-4-203. Appeal bond hearing - order.

(1) After considering the factors set forth in section 16-4-202, the court may enter one of the following orders:

(a) Deny the defendant appeal bond; or

(b) Repealed.

(c) Grant the defendant appeal bond.

(2) If the court determines that an appeal bond should be granted, the court shall set the amount of bail and order either:

(a) An appeal bond in the amount of the bail to be executed and secured by depositing cash or property as provided by statute or by an approved surety or sureties; or

(b) An appeal bond in the amount of the bail to be executed on the personal recognizance of the defendant.

(2.5) If the court determines that an appeal bond should be granted, the court shall provide as an explicit condition of the appeal bond that the defendant not harass, molest, intimidate, retaliate against, or tamper with the victim of or any prosecution witnesses to the crime, unless the court makes written findings that such condition is not necessary.

(3) In addition to the above, the court may:

(a) Place the defendant in the custody of the probation department or a designated person who agrees to supervise him;

(b) Place restrictions on the travel, activities, associations, or place of abode of the defendant during the pendency of the appeal;

(c) Impose any other condition deemed necessary to assure defendant's appearance as required.

(4) Upon written motion of the state or the defendant, the sentencing court may increase or reduce the amount of appeal bond, alter the security for or conditions of the appeal bond, or revoke the appeal bond. Notice of hearing on the motion shall be given in the manner provided in section 16-4-107.

(5) If the defendant has been charged with committing another felony, level 1 drug misdemeanor, or class 1 misdemeanor while he or she is at liberty on an appeal bond, and probable cause has been found with respect to such other felony, level 1 drug misdemeanor, or class 1 misdemeanor or the defendant has waived his or her right to a probable cause determination as to the felony, level 1 drug misdemeanor, or class 1 misdemeanor, the court shall revoke his or her appeal bond on motion of the attorney general or district attorney.

Source: L. 72: R&RE, p. 210, § 1. **C.R.S. 1963:** § 39-4-203. **L. 82:** (1)(a) amended and (1)(b) repealed, p. 307, §§ 1, 2, effective March 17. **L. 94:** (2.5) added, p. 2022, § 1, effective June 3. **L. 2013:** (5) amended, (SB 13-250), ch. 333, p. 1928, § 37, effective October 1.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

Imposition of a "cash only" appeal bond is within a trial court's authority and discretion. People v. Hoover, 119 P.3d 564 (Colo. App. 2005).

16-4-204. Appellate review of terms and conditions of bail or appeal bond.

(1) After entry of an order pursuant to section 16-4-109 or 16-4-201, the defendant or the state may seek review of said order by filing a petition for review in the appellate court. If an order has been entered pursuant to section 16-4-104, 16-4-109, or 16-4-201, the petition shall be the exclusive method of appellate review.

(2) The petition shall be in writing, shall be served as provided by court rule for service of motions, and shall have appended thereto a transcript of the hearing held pursuant to section 16-4-109 or 16-4-203. The opposing party may file a response thereto within seven days or as provided by court rule.

(3) After review, the appellate court may:

(a) Remand the petition for further hearing if it determines that the record does not disclose the findings upon which the court entered the order; or

(b) Order the trial court to modify the terms and conditions of bail or appeal bond; or

(c) Order the trial court to modify the terms and conditions of bail or appeal bond and remand for further hearing on additional conditions of bail or appeal bond; or

(d) Dismiss the petition.

(4) Nothing contained in this section shall be construed to deny any party the rights secured by section 21 of article II of the Colorado constitution.

Source: L. 72: R&RE, p. 211, § 1. **C.R.S. 1963:** § 39-4-204. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 848, § 69, effective July 1. **L. 2016:** (1) and (2) amended, (SB 16-189), ch. 210, p. 759, § 26, effective June 6.

ANNOTATION

Annotator's note. Since § 16-4-204 is similar to repealed § 39-2-17, CRS 53, relevant cases construing that provision have been included in the annotations to this section.

Pursuant to this section, an appellate court may hear an appeal of an order entered pursuant to § 16-4-109. In 2013, the provisions of § 16-4-107 were moved with minor changes to § 16-4-109, but a conforming amendment was not made to this section to include the new § 16-4-109. This created a question of ambiguity as to whether this section still applies to the subject matter that was originally in § 16-4-107 but is now contained in § 16-4-109. The ambiguity does not limit an appellate court from appeals related to the subject matter of the original § 16-4-107 with respect to the reduction or increase in the amount of bail. People v. Jones, 2015 CO 20, 346 P.3d 44.

This section authorizes an appeal of a court order modifying a bail bond using the criteria in § 16-4-105 since the authority for the order is found in § 16-4-109. This section authorizes an appeal of a court order related to determination, modification, and continuation of bail bonds. Although § 16-4-105 provided the evidentiary basis for changing a defendant's bond, a court's authority to modify the bond is found in § 16-4-109, which serves as a basis for hearing the appeal. People v. Jones, 2015 CO 20, 346 P.3d 44.

This section provides the exclusive method of appeal for trial court rulings on appeal bonds under § 16-4-201.5. People v. Lewis, 2024 CO 57, 555 P.3d 576.

Appeals sought under this section are subject to C.A.R. 4(b)'s 49-day deadline. People v. Jenkins, 2025 COA 90, 583 P.3d 444.

An appealing party should file a "petition for review" as contemplated by § 16-4-204 within 49 days of the trial court's ruling on the request for an appeal bond. People v. Jenkins, 2025 COA 90, 583 P.3d 444.

In addition to satisfying the requirements of § 16-4-204, the appealing party should include in the petition the information required by C.A.R. 3(g) for a notice of appeal in a criminal case. People v. Jenkins, 2025 COA 90, 583 P.3d 444.

In the rare case in which the appealing party is unable to prepare a complete petition for review within 49 days -- for

example, when the hearing transcript required by § 16-4-204 (2) is not yet available -- the party should timely file a notice of appeal and an accompanying motion for an extension of time to file the petition for review, keeping in mind that appellate review of an appeal bond decision is expedited. People v. Jenkins, 2025 COA 90, 583 P.3d 444.

Review of excessive bail. Where the bond fixed by the trial court in a criminal case is so grossly excessive as to amount to a denial of the right of accused to be admitted to bail in a reasonable amount, the supreme court will direct that the accused be admitted to bail in reasonable amount. Altobella v. District Court, 153 Colo. 143, 385 P.2d 663 (1963).

If the bail is deemed excessive, relief may be sought by suitable proceedings, but not through appeal after conviction of the crime charged. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963).

Review of refusal to admit prisoner to bail. Where a petitioner is adjudged guilty of contempt of court for refusal to answer questions before the grand jury and is sentenced to four months in jail, refusal of the trial court to stay execution or admit the petitioner to bail pending review by the supreme court is an abuse of discretion. Smaldone v. People, 153 Colo. 208, 385 P.2d 127 (1963).

A claim of error that court refused to admit defendant to bail may be raised by appropriate proceedings, but not by appeal after conviction of the crime charged. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963).

Applied in People v. Velasquez, 641 P.2d 943 (Colo. 1982).

16-4-205. When appellate court may fix appeal bond.

If a trial court fails or refuses to grant or deny an appeal bond within forty-eight hours following application for such bond, the defendant may move the appellate court for such an order, and that court shall promptly hear and rule upon the motion.

Source: L. 72: R&RE, p. 211, § 1. **C.R.S. 1963:** § 39-4-205.

16-4-206. Notification of court reminder program. (Repealed)

Source: L. 2019: Entire section added, (SB 19-036), ch. 293, p. 2687, § 4, effective August 2. **L. 2022:** Entire section repealed, (SB 22-018), ch. 191, p. 1273, § 4, effective July 15.

PART 3

UNIFORM RENDITION OF ACCUSED PERSONS ACT

16-4-301. Short title.

This part 3 shall be known and may be cited as the "Uniform Rendition of Accused Persons Act", and shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: L. 72: R&RE, p. 213, § 1. **C.R.S. 1963:** § 39-4-304.

16-4-302. Arrest of person illegally in state.

(1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate who authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent shall file with the judge of a court of record of this state the following documents:

(a) An affidavit stating the name and whereabouts of the person whose return is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him; and

(b) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) A certified copy of an order of the demanding judge, court, or magistrate stating the manner in which the terms and conditions of the release have been violated and designating the affiant its agent for seeking the return of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding judge, court, or magistrate, and that there is probable cause for believing that the person whose return is sought has violated the terms and conditions of his release, the judge of this state shall issue a warrant to a peace officer of this state for the person's arrest.

(3) The judge of this state shall notify the district attorney of his action and shall direct him to investigate the case and to ascertain the validity of the affidavits and documents required by subsection (1) of this section and the identity and authority of the affiant.

Source: L. 72: R&RE, p. 211, § 1. **C.R.S. 1963:** § 39-4-301.

16-4-303. Hearing and right to counsel.

(1) The person whose return is sought shall be brought before the judge of this state immediately upon arrest pursuant to the warrant; whereupon the judge shall set a time and place for hearing and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(2) The person whose return is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judge shall issue an order pursuant to section 16-4-304.

(3) The judge may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose return is sought.

Source: L. 72: R&RE, p. 212, § 1. **C.R.S. 1963:** § 39-4-302.

16-4-304. Order of return to demanding court.

The district attorney shall appear at the hearing and report to the judge the results of his investigation. If the judge finds that the affiant is a designated agent of the demanding court, judge, or magistrate, and that the person whose return is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judge shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith.

Source: L. 72: R&RE, p. 212, § 1. **C.R.S. 1963:** § 39-4-303.

ARTICLE 5

Commencement of Criminal Action

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PART 5
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PART 1

GENERAL PROVISIONS

16-5-101. Commencement of prosecution.

(1) Unless otherwise provided by law, a criminal action for violation of any statute may be commenced in one of the following ways:

(a) By the return of an indictment by a grand jury;

(b) By the filing of an information in the district court;

(c) By the filing of a felony complaint in the county court;

(d) Prosecution of a misdemeanor, petty offense, or civil infraction may be commenced in the county court by:

(I) The issuance of a summons and complaint;

(II) The issuance of a summons following the filing of a complaint;

(III) The filing of a complaint following an arrest; or

(IV) The filing of a summons and complaint following arrest, or, in the event that the offense is a civil infraction, by the issuance of a notice of penalty assessment pursuant to section 16-2-201.

(2) The procedures governing felony complaints filed in the county court and warrants or summonses issued in connection therewith shall be in accordance with and as required by the applicable provisions of the rules of criminal procedure promulgated by the supreme court of Colorado.

(3) Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided in subsection (1)(d) of this section, and the issues shall then be tried in the county court. As to misdemeanors or petty offenses thus filed and tried in the county court, the simplified procedures enumerated in part 1 of article 2 of this title shall be applicable.

Source: L. 72: R&RE, p. 213, § 1. **C.R.S. 1963:** § 39-5-101. **L. 2021:** IP(1)(d) and (1)(d)(IV) amended, (SB 21-271), ch. 462, p. 3162, § 170, effective March 1, 2022.

ANNOTATION

Prosecution may seek a grand jury indictment after dismissal by a county court on a preliminary hearing for lack of probable cause as an alternative to appealing to or filing a direct information in the district court. People v. Noline, 917 P.2d 1256 (Colo. 1996).

One charged with crime must be brought into court on a complaint, information, or indictment made, or found, according to the requirements of the law. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957) (decided under repealed § 39-4-1, CRS 53).

It was not essential for all members of a grand jury who issued a true bill to specifically observe the formal charging paper and approve its formal language. People v. Campbell, 194 Colo. 451, 573 P.2d 557 (1978).

Grand jury may properly return an indictment even after the prosecution has filed a criminal complaint. Defendant is not entitled to a preliminary hearing after a grand jury returned an indictment. People v. Huynh, 98 P.3d 907 (Colo. App. 2004).

When a felony case starts in county court pursuant to subsection (1)(c) and is resolved by a plea to only misdemeanor charges, it is a county court matter and an appeal must be made to the district court. People v. Vargas-Reyes, 2018 COA 181, 434 P.3d 1198.

Applied in People v. Lopez, 41 Colo. App. 75, 587 P.2d 792 (1978); Thomas v. County Court, 198 Colo. 87, 596 P.2d 768 (1979); People v. Abbott, 638 P.2d 781 (Colo. 1981).

16-5-102. Summons to corporate defendant.

(1) When a corporation is charged with the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served by a peace officer in the manner provided for service of summons upon a corporation in a civil action.

Source: L. 72: R&RE, p. 213, § 1. **C.R.S. 1963:** § 39-5-102.

16-5-103. Identity theft victims - definitions.

(1) A person whose identifying information has been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction is a victim of identity theft for the purposes of this section. A victim of identify theft may proceed either through the judicial process in subsection (2) of this section or the Colorado bureau of investigation process in subsection (3) of this section.

(2) (a) If a criminal charge is not pending, a victim of identity theft may, with notice to the prosecutor, petition the court with jurisdiction over the arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction to judicially determine the person's factual innocence. Alternatively, the court, on its own motion, may make such a determination in the case. If a criminal charge is pending, the prosecuting attorney may request the court to make such a determination. A judicial determination of factual innocence made pursuant to this section may be determined, with or without a hearing, upon declarations, affidavits, or police reports or upon any other relevant, material, reliable information submitted by the parties and records of the court.

(b) If the court determines that there is no reasonable cause to believe that a victim of identity theft committed the offense for which the victim's identity has been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After the court has determined that a person is factually innocent, the court shall provide the Colorado bureau of investigation with the order of factual innocence. Upon receipt of the order of factual innocence, the Colorado bureau of investigation shall modify the victim of identity theft's law enforcement-only and public criminal history record accordingly.

(d) A court that issues a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or information submitted in support of the petition, contains material misrepresentation or fraud. If the court vacates a determination of factual innocence, the court shall issue an order rescinding any orders made pursuant to this subsection (2).

(2.5) (a) A person who has had his or her identity stolen or used that is not associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction may petition the district court in the county where the person lives for an order of factual innocence. A judicial determination of factual innocence made pursuant to this section may be determined, with or without a hearing, upon declarations, affidavits, or any other relevant, material, reliable information submitted by the parties and records of the court.

(b) If the court finds that the person's identity was stolen or used by another, the court shall issue an order certifying this determination.

(c) A court that issues a determination of factual innocence pursuant to this subsection (2.5) may at any time vacate that determination if the petition, or information submitted in support of the petition, contains material misrepresentation or fraud. If the court vacates a determination of factual innocence, the court shall issue an order rescinding any orders made pursuant to this subsection (2.5).

(3) (a) A victim of identity theft may contact the Colorado bureau of investigation and submit a records challenge to one or more criminal charges the victim of identity theft is alleged to have committed. The victim of identity theft shall include a copy of his or her fingerprints with the records challenge.

(b) (I) A Colorado bureau of investigation fingerprint examiner shall compare the submitted fingerprints in the records challenge to the fingerprints obtained in each criminal case that the victim of identity theft is making a records challenge.

(II) The fingerprint examiner shall determine either that the fingerprints submitted in the records challenge are not the same as the individual arrested or that they are the same as the individual arrested.

(III) If the fingerprint examiner determines the fingerprints submitted in the fingerprint challenge are not the same as the individual arrested, the Colorado bureau of investigation shall issue a letter of misidentification and shall modify the victim of identity theft's law enforcement-only and public criminal history record accordingly. The letter of misidentification shall state the holder of the letter is a victim of identity theft in each criminal case identified by the letter.

(4) A person who knows or reasonably suspects that his or her identifying information has been unlawfully used by another person may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the victim's residence or over the place where a crime was committed. Such agency shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the local law enforcement agency where the suspected crime was committed for investigation of the facts.

(5) For the purposes of this section:

(a) "Biometric data" means data, such as fingerprints, voice prints, or retina and iris prints that capture, represent, or enable the reproduction of the unique physical attributes of an individual.

(b) "Identifying information" means information that, alone or in conjunction with other information, identifies an individual, including but not limited to such individual's:

(I) Name;

(II) Address;

(III) Birth date;

(IV) Telephone, social security, taxpayer identification, driver's license, identification card, alien registration, government passport, or checking, savings, or deposit account number;

(V) Biometric data;

(VI) Unique electronic identification device; and

(VII) Telecommunication identifying device.

(c) "Telecommunication identifying device" means a number, code, or magnetic or electronic device that enables the holder to use telecommunications technology to access an account; obtain money, goods, or services; or transfer funds.

Source: L. 2004: Entire section added, p. 1736, § 2, effective July 1. **L. 2013:** Entire section amended, (HB 13-1146), ch. 43, p. 116, § 1, effective March 15.

16-5-104. Prohibition on issuing summons - reproductive health care.

A judge shall not issue a summons in a case when a prosecution is pending, or when a grand jury investigation has started or is about to start, for a criminal violation of law of another state involving a legally protected health-care activity, as defined in section 12-30-121 (1)(d), or involving an entity that provides insurance coverage for gender-affirming health-care services, as defined in section 12-30-121 (1)(c), or reproductive health care, as defined in section 25-6-402 (4), that is legal in Colorado, unless the acts forming the basis of the prosecution or investigation would also constitute a criminal offense in Colorado.

Source: L. 2023: Entire section added, (SB 23-188), ch. 68, p. 246, § 11, effective April 14.

Cross references: For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

PART 2

INDICTMENTS AND INFORMATIONS

16-5-201. Indictments - allegations - form.

Every indictment or accusation of the grand jury shall be deemed sufficient technically and correct which states the offense in the terms and language of the statute defining it, including either conjunctive or disjunctive clauses, or so plainly that the nature of the offense may be easily understood by the jury. Pleading in either the conjunctive or the disjunctive shall place a defendant on notice that the prosecution may rely on any or all of the alternatives alleged. The commencement of the indictment shall be in substance as follows:

STATE OF COLORADO)
) ss.
County of.....)

Of the ..... term of the ..... court, in the year ..... . The grand jurors chosen, selected, and sworn, in and for the county of ....., in the name and by the authority of the people of the state of Colorado, upon their oaths, present. (Here insert the offense, the name of the person charged, and the time and place of committing the same, with reasonable certainty.) Every indictment shall be signed by the foreman of the grand jury returning it and by the prosecuting attorney, his or her assistant, or his or her deputy.

Source: L. 72: R&RE, p. 214, § 1. **C.R.S. 1963:** § 39-5-201. **L. 2003:** Entire section amended, p. 972, § 1, effective April 17.

ANNOTATION

I. General Consideration.

II. Illustrative Cases.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For article, "Being Specific", see 29 Dicta 195 (1952).

Annotator's note. Since § 16-5-201 is similar to repealed § 39-3-1, C.R.S. 1963, CSA, C. 48, § 447, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

It is the province of the general assembly to provide what elements of an offense must be set forth in an indictment or information. Edwards v. People, 176 Colo. 478, 491 P.2d 566 (1971).

Purpose of section. This section and § 16-10-202, dealing with variance between allegations and proof, undoubtedly were adopted by the general assembly with a view of removing from consideration those technical rules of pleading long the bane of criminal procedure at common law and the occasion of many miscarriages of justice in antiquated times. Helser v. People, 100 Colo. 371, 68 P.2d 543 (1937).

One purpose of the requirements of this section is to provide sufficient notice to defendants to permit the preparation of defenses prior to trial. People v. Thimmes, 643 P.2d 780 (Colo. App. 1981).

Purposes of criminal indictment by grand jury are twofold: First, it must give the defendant sufficient notice of the crime that has allegedly been committed so that a defense may be prepared; second, it must define the acts which constitute the crime with sufficient definiteness so that the defendant may plead the resolution of the indictment as a bar to subsequent proceedings. People v. Tucker, 631 P.2d 162 (Colo. 1981).

This section does not encourage subtleties and hypertechnical refinements in criminal cases. Sweek v. People, 85 Colo. 479, 277 P. 1 (1929).

An information or indictment charging offense in language of the statute is sufficient. Schneider v. People, 30 Colo. 493, 71 P. 369 (1903); Knepper v. People, 63 Colo. 396, 167 P. 779 (1917); Balfe v. People, 66 Colo. 94, 179 P. 137 (1919); People v. Maestas, 199 Colo. 143, 606 P.2d 849 (1980).

An indictment or information is sufficient which describes an offense either in the language of the statute or so plainly that the nature of the crime may be readily and easily understood by a jury. Albert v. People, 90 Colo. 219, 7 P.2d 822 (1932).

A charge so worded that it is "sufficient technically and correct", sufficiently sets forth the substance of the offense. If an indictment is correct when it charges in the words of the statute, then it must contain the substance of the offense. Papas v. People, 98 Colo. 306, 55 P.2d 1330 (1936).

It need not follow the exact language of the statute. Sarno v. People, 74 Colo. 528, 223 P. 41 (1924); Albert v. People, 90 Colo. 219, 7 P.2d 822 (1932).

It must be so charged that it may be readily understood by accused and jury. Tracy v. People, 65 Colo. 226, 176 P. 280 (1918); Junes v. People, 72 Colo. 86, 209 P. 512 (1922); McConnell v. People, 73 Colo. 99, 213 P. 674 (1923); Sarno v. People, 74 Colo. 528, 223 P. 41 (1924); Cliff v. People, 84 Colo. 254, 269 P. 907 (1928); Compton v. People, 84 Colo. 106, 268 P. 577 (1928); Albert v. People, 90 Colo. 219, 7 P.2d 822 (1932); Updike v. People, 92 Colo. 125, 18 P.2d 472 (1933); Schreiner v. People, 95 Colo. 392, 36 P.2d 764 (1934).

But it need not furnish such detail as to bar further prosecution. An indictment or information need not plead an offense in such detail as to be self-sufficient as a bar to further prosecution for the same offense for the judgment constitutes the bar. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972).

The ultimate test of the sufficiency of an indictment is whether it is sufficiently definite to inform the defendant of the charges against him so as to enable him to prepare a defense and to plead the judgment in bar of any further prosecutions for the same offense. People v. Westendorf, 37 Colo. App. 111, 542 P.2d 1300 (1975); People v. Donachy, 196 Colo. 289, 586 P.2d 14 (1978).

An indictment must be definite enough to give defendant sufficient notice of the crime alleged to prepare a defense. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Right to be informed of nature of charges. It is a defendant's right to be informed with reasonable certainty of the nature of the charges against him by requiring that an indictment answer the questions of "who, what, where and how" in cases where the acts constituting the offense are not adequately described by the statute. People v. Donachy, 196 Colo. 289, 586 P.2d 14 (1978).

Exceptions to general rule. If, as is not uncommon, the court by construction restricts a statute to a narrower application than its general words would indicate, an indictment on it in the statutory words will be ill; it must follow the court's narrower

construction. Schneider v. People, 30 Colo. 493, 71 P. 369 (1903).

If the statute does not sufficiently set out the facts which constitute the offense so that the defendant may have notice of what he is charged, or if the words of the statute by their generality embrace cases which fall within the terms but not within the spirit or meaning of the statute, then a more particular statement of facts is necessary, and the specific facts to bring the defendant precisely within the inhibition of the law must be alleged. Schneider v. People, 30 Colo. 493, 71 P. 369 (1903); Knepper v. People, 63 Colo. 396, 167 P. 779 (1917); Balfe v. People, 66 Colo. 94, 179 P. 137 (1919).

Where the acts constituting the offense are not described by the statute, an indictment merely reciting the statutory words is insufficient. People v. Xericos, 186 Colo. 21, 525 P.2d 415 (1974).

Bill of particulars not part of indictment. Although the purpose of a bill of particulars is to define more specifically the offense charged, a bill of particulars is not a part of an indictment nor an amendment thereto. It cannot in any way aid an indictment fundamentally bad. People v. Westendorf, 37 Colo. App. 111, 542 P.2d 1300 (1975).

Defendant is not legally charged by ineffective indictment. Where indictment is ineffective because it charges petitioner with offense alleged to have occurred at time subsequent to filing of indictment, defendant is not legally charged or subject to jurisdiction of court as to that transaction until reindicted. Rowse v. District Court, 180 Colo. 44, 502 P.2d 422 (1972).

An insufficient indictment does not legally charge a crime or subject defendant to the jurisdiction of the court. People v. Westendorf, 37 Colo. App. 111, 542 P.2d 1300 (1975).

And omission of essential ingredient of offense may be taken advantage of at any stage. If any essential ingredient of an offense is omitted, advantage thereof may be taken, at any stage of the proceedings, even after sentence has been pronounced. Iwerks v. People, 88 Colo. 578, 298 P. 644 (1931).

Defective indictment may be asserted on appeal. Although defendant did not raise the insufficiency of the indictment at trial or in his motion for new trial, he is not thereby precluded from asserting that defect now on appeal. People v. Westendorf, 37 Colo. App. 111, 542 P.2d 1300 (1975).

But technicalities not affecting substantial rights will not be considered on review. Updike v. People, 92 Colo. 125, 18 P.2d 472 (1933); Helser v. People, 100 Colo. 371, 68 P.2d 543 (1937).

Charging an impossible date as time of occurrence of alleged offense is matter of substance, not form, and attempt to indict a person for an offense alleged to have occurred subsequent to filing of indictment is a nullity. Rowse v. District Court, 180 Colo. 44, 502 P.2d 422 (1972).

Jeopardy does not attach by indictment defective in substance. An indictment which is defective in substance merely prevents prosecution on the basis of that

particular pleading. No jeopardy attaches, and the defendant may be charged by any appropriate and sufficient pleading. People v. Thimmes, 643 P.2d 780 (Colo. App. 1981).

Date of offense is material allegation. Allegations specifying the date on which an accused allegedly committed an offense are always material when the offense charged is one which may be barred by an applicable statute of limitations. People v. Thimmes, 643 P.2d 780 (Colo. App. 1981).

Value need not be alleged if not essential. Where the value is not essential to the punishment, as in indictments for robbery, it need not be distinctly alleged or proved. Rowan v. People, 93 Colo. 473, 26 P.2d 1066 (1933).

Applied in Stoltz v. People, 59 Colo. 342, 148 P. 865 (1915); Bridge v. People, 63 Colo. 319, 165 P. 778 (1917); People v. Horkans, 109 Colo. 177, 123 P.2d 824 (1942).

II. ILLUSTRATIVE CASES.

Assault with intent to rob. An indictment for assault with intent to rob which alleges, as to the assault, that the defendant "did make an assault", without stating all of the particulars comprehended by the statutory definition of that term is sufficient. McNamara v. People, 24 Colo. 61, 48 P. 541 (1897).

Conspiracy. In an indictment for conspiracy, unless the crime which it is alleged defendants conspired to commit is named, the indictment must allege facts constituting every element necessary to establish that offense as fully as if the indictment was for its perpetration. Imboden v. People, 40 Colo. 142, 90 P. 608 (1907).

An indictment for conspiracy need not aver the means by which the conspiracy was to be carried out. Imboden v. People, 40 Colo. 142, 90 P. 608 (1907).

Because of the veil of secrecy surrounding most conspiracies, considerable latitude is allowed in drafting a conspiracy indictment. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Forgery. An indictment drawn upon the section relating to forgery is framed in the language of the act, and hence it was not essential to use the words "falsely make" or to set out the instrument. Cohen v. People, 7 Colo. 274, 3 P. 385 (1883).

Murder. In an indictment for murder it is not necessary to state more than the statute provides in order to sustain a conviction of murder in the first degree. Andrews v. People, 33 Colo. 193, 79 P. 1031 (1905).

An indictment which simply charged that the defendant murdered the victim was upheld as constitutional. Bizup v. Tinsley, 211 F. Supp. 545 (D. Colo. 1962), aff'd, 316 F.2d 284 (10th Cir. 1963).

Perjury. A perjury indictment which does not set forth the alleged false statements, either verbatim or in substance, is insufficient to charge the crime. People v. Westendorf, 37 Colo. App. 111, 542 P.2d 1300 (1975).

A perjury indictment which tracks the language of § 18-8-502(1) and included a verbatim partial transcript of the defendant's

grand jury testimony which was asserted to be materially false, together with the additional averment that the defendant did not believe the testimony to be true, is sufficient to advise the defendant of the charges against him. People v. Maestas, 199 Colo. 143, 606 P.2d 849 (1980).

For the sufficiency of indictment in prosecution for embezzlement of public property, see People v. Donachy, 196 Colo. 289, 586 P.2d 14 (1978).

16-5-202. Requisites of information - form.

(1) The information is sufficient if it can be understood therefrom:

(a) That it is presented by the person authorized by law to prosecute the offense;

(b) That the defendant is identified therein, either by name or by the defendant's patterned chemical structure of genetic information, or described as a person whose name is unknown to the informant;

(c) That the offense was committed within the jurisdiction of the court or is triable therein;

(d) That the offense charged is set forth with such degree of certainty that the court may pronounce judgment upon a conviction.

(2) The information may be in the following form:

STATE OF COLORADO)

) ss.

County of.....)

In the ..... Court ..... The People of the State of Colorado, against ..... A ..... B ..... C ..... D ....., district attorney within and for the ..... judicial district of the state of Colorado, in the county of ..... in the state aforesaid, in the name and by the authority of the people of the state of Colorado, informs the court that A ..... B ..... on the ..... day of ..... A.D. 20 ...., at the said county of ....., did (here state the offense) against the peace and dignity of the people of the state of Colorado.

C ..... D .....

District Attorney.

or C ..... D ....., District Attorney,

by H ..... M ....., Deputy.

(3) An information may be filed using the language of the statute defining the offense, including either conjunctive or disjunctive clauses. Pleading in either the conjunctive or the disjunctive shall place a defendant on notice that the prosecution may rely on any or all of the alternatives alleged.

(4) A court shall not refuse to accept a complaint or information that contains the requirements of this section.

Source: L. 72: R&RE, p. 214, § 1. **C.R.S. 1963:** § 39-5-202. **L. 2000:** (1) amended, p. 454, § 13, effective April 24. **L. 2003:** (3) and (4) added, p. 972, § 2, effective April 17.

ANNOTATION

I. General Consideration.

II. Sufficiency of Information.

III. Illustrative Cases.

I. GENERAL CONSIDERATION.

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 14 (June 1931).

Annotator's note. Since § 16-5-202 is similar to repealed § 39-4-4, C.R.S. 1963, § 39-4-4, CRS 53, CSA, C. 48, § 457, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Purpose of section. The requirement of the signature on the information is for the protection of the defendant as a guarantee that the prosecution is being conducted in good faith. Harris v. Mun. Court, 123 Colo. 539, 234 P.2d 1055 (1951).

General effect of section. This section means what it says and applies it to all informations except where in so doing it fails to give the defendant the nature and cause of the accusation as required by the constitution. Highley v. People, 65 Colo. 497, 177 P. 975 (1918).

This section is not in conflict with the bill of rights provision that in criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation. Jordan v. People, 19 Colo. 417, 36 P. 218 (1894).

Attorney general has same powers as district attorney. The attorney general may subscribe, present, and prosecute an information against a public offender with the same powers as the district attorney of the proper district. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

Signature by deputy is proper. Signature of the prosecuting officer, typewritten, but followed by the name of his deputy, written with his own hand, is a compliance with this section. Almond v. People, 55 Colo. 425, 135 P. 783 (1913).

Additions to special prosecutor's name in information are treated as surplusage. Where the district attorney is disqualified from prosecuting a case and the court appoints a special prosecutor, the prosecutor so appointed is authorized to sign an information in the case in his own name, and the fact that he placed before his name the name of the district attorney and added to his own signature the words "special deputy" neither added to, nor detracted from, the proper authentication in his own name. The additions are treated as surplusage. Williams v. People, 26 Colo. 272, 57 P. 701 (1899).

Failure to sign information is not jurisdictional, but should be pointed out so that the trial court might direct the parties to comply with the statute. Harris v. Mun. Court, 123 Colo. 539, 234 P.2d 1055 (1951).

Phrase "against the peace and dignity" of people. An information concluding "against the peace and dignity of the same people of the state of Colorado", is in substantial conformity with the requirement of the constitution that all prosecutions shall be carried on in the name and by the authority of the people of the state of Colorado, and conclude against the peace and dignity of the same. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

The omission from a criminal information of the concluding phrase "and against the peace and dignity of the same" goes to matter of form, and in no degree impairs the jurisdiction of the court. Chemgas v. Tynan, 51 Colo. 35, 116 P. 1045 (1911); People v. Hunter, 666 P.2d 570 (Colo. 1983).

Use of words "feloniously" and "unlawfully". Appellant complains that the information does not charge that the accused knowingly and wilfully committed the offense. Since the information charges the act as "unlawfully and feloniously" done, the objection does not affect the real merits. McConnell v. People, 73 Colo. 99, 213 P. 674 (1923).

The use of both the words "unlawfully" and "feloniously" in the statute does not require that the former must appear in indictment or information if the latter does. Bridge v. People, 63 Colo. 319, 165 P. 778 (1917).

Separate infractions of same law should be distinguished. In every information or indictment charging a criminal offense, good pleading required that sufficient facts be set forth to identify the crime from another infraction of the same law by the same defendant. This would seem essential in order to safeguard the accused against a second prosecution for the same offense, as well as to acquaint him with what he must meet on trial. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

No substitution for section identified as subject of prosecution. Where a count of an information in a criminal case identifies with particularity the exact section of the statute

upon which a prosecution is based, no other statute can be substituted for the one actually selected as forming the subject matter of the prosecution. Skidmore v. People, 154 Colo. 363, 390 P.2d 944 (1964).

Amendment of minor irregularities only permitted. Generally, a criminal complaint or affidavit may be amended so as to correct minor irregularities or defects but major defects such as a material misnomer of accused or an omission of essential allegations cannot be cured by amendment on the examination. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Any conviction based on an information requiring major amendment is void, for the court is without jurisdiction. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

When information fails to charge crime, court acquires no jurisdiction. People v. Moore, 200 Colo. 481, 615 P.2d 726 (1980).

Objections to form of information must be made before trial or they are waived. People v. Hunter, 666 P.2d 570 (Colo. 1983); People v. Joseph, 920 P.2d 850 (Colo. App. 1995); People v. Russell, 36 P.3d 92 (Colo. App. 2001).

Authority of district attorney is a technical matter subject to waiver. Just as a defendant may waive objections to venue, he or she may also waive any objection to the authority of the district attorney to bring a criminal charge. People v. Joseph, 920 P.2d 850 (Colo. App. 1995).

Even if defendant did not waive objection to the form of the information, defendant must demonstrate how any errors prejudiced him in order for a defect in the form to dictate reversal of a conviction. People v. Russell, 36 P.3d 92 (Colo. App. 2001).

Applied in Albert v. People, 90 Colo. 219, 7 P.2d 822 (1932); Carter v. People, 161 Colo. 10, 419 P.2d 654 (1966); People v. Bergstrom, 190 Colo. 105, 544 P.2d 396 (1975); People v. Shortt, 192 Colo. 183, 557 P.2d 388 (1976).

II. SUFFICIENCY OF INFORMATION.

This section governs the sufficiency of informations in criminal cases. Critchfield v. People, 91 Colo. 127, 13 P.2d 270 (1932).

The requisites of information form are set forth by this section. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

The sufficiency of an information is not to be determined from the evidence. Compton v. People, 84 Colo. 106, 268 P. 577 (1928).

An information must show the nature and cause of the accusation, that is, it must set out the crime charged. Jordan v. People, 19 Colo. 417, 36 P. 218 (1894); Bizup v. Tinsley, 211 F. Supp. 545 (D. Colo. 1962), aff'd, 316 F.2d 284 (10th Cir. 1963).

Indictment must clearly state essential facts and answer questions of who, what, where, and how. People v. Tucker, 631 P.2d 162 (Colo. 1981).

Time when offense committed. The general rule is that, where time is not a

material element of the offense, the precise time at which the crime is charged to have been committed is not material. Kogan v. People, 756 P.2d 945 (Colo. 1988).

If, however, information about the time is necessary to enable the defendant to prepare his defense or to guard against a subsequent prosecution for the same crime, such information must be provided. Kogan v. People, 756 P.2d 945 (Colo. 1988).

Standard of review for bill of particulars is whether the bill of particulars as produced sufficiently informs the defendant of the particular charges at issue so that he is given a fair opportunity to properly prepare his defense. Kogan v. People, 756 P.2d 945 (Colo. 1988).

Bill of particulars held insufficient. Bill of particulars which alleged that certain acts had been committed sometime during a nine-month period and the absence of any accompanying detail describing the defendant's alleged acts resulted in clear prejudice to the defendant. Kogan v. People, 756 P.2d 945 (Colo. 1988).

It must advise defendant of charge. An information is sufficient if it advises the defendant of the charge he is facing so that he can adequately defend himself and be protected from another prosecution for the same offense. Digiallonardo v. People, 175 Colo. 560, 488 P.2d 1109 (1971); Loggins v. People, 178 Colo. 439, 498 P.2d 1146 (1972); People v. Morones, 39 Colo. App. 451, 569 P.2d 336 (1977); People v. Albo, 195 Colo. 102, 575 P.2d 427 (1978); People v. Moore, 200 Colo. 481, 615 P.2d 726 (1980); People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981); People v. Rubanowitz, 688 P.2d 231 (Colo. 1984); People v. Chavez, 730 P.2d 321 (Colo. 1986); People v. Baker, 45 P.3d 753 (Colo. App. 2001).

The ultimate test is that an information is sufficient if it advises a defendant of the charge he is facing. Edwards v. People, 176 Colo. 478, 491 P.2d 566 (1971).

An information is sufficient if it informs the defendant of the charges against him so as to enable him to prepare a defense and plead the judgment in bar of any further prosecutions for the same offense. People v. Flanders, 183 Colo. 268, 516 P.2d 418 (1973); People v. Gnout, 183 Colo. 366, 517 P.2d 394 (1973); People v. Baker, 45 P.3d 753 (Colo. App. 2001).

And must set forth essential elements of crime. An information is sufficient to apprise a defendant of the charge he faces if it sets forth the essential elements charging the crime. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972).

But it need not set out the mode or manner of its perpetration, or the instrument or agency employed to accomplish the result. Jordan v. People, 19 Colo. 417, 36 P. 218 (1894); Bizup v. Tinsley, 211 F. Supp. 545 (D. Colo. 1962), aff'd, 316 F.2d 284 (10th Cir. 1963).

Information need not specify lesser included offenses which may have been committed in commission of the described act. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

An information is sufficient if it states the offense in language that can be easily understood. Whitfield v. People, 79 Colo. 108, 244 P. 470 (1926).

Or in language of statute defining offense. The allegations of an information which follow the language of the statute defining the offense are sufficient to satisfy constitutional requirements, and the offense charged is set forth with such degree of certainty that the court could lawfully pronounce judgment upon conviction. Lewis v. People, 109 Colo. 89, 123 P.2d 398 (1942).

An information is sufficient if the charge is in the language of the applicable statute. People v. Morones, 39 Colo. App. 451, 569 P.2d 336 (1977).

An information is sufficient if the charge is in the language of the statute, however, an information need not follow the exact wording of the statute. Loggins v. People, 178 Colo. 439, 498 P.2d 1146 (1972); People v. Russell, 36 P.3d 92 (Colo. App. 2001).

Or with certainty that will support judgment. Statement of offense in the information is sufficient when set forth with such degree of certainty that the court may pronounce judgment upon a conviction according to the right of the case. Compton v. People, 84 Colo. 106, 268 P. 577 (1928).

But information need not furnish such detail as to bar further prosecution. An indictment or information need not plead an offense in such detail as to be self-sufficient as a bar to further prosecution for the same offense, for the judgment constitutes the bar. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972).

Information need not include every element of the offense that must be proved at trial. Information charging possession of marijuana that failed to include "knowing" possession nevertheless provided sufficient notice to defendant for trial preparation and was adequate to bar further prosecution for the same offense. People v. Flockhart, 310 P.3d 66 (Colo. App. 2009), aff'd in part, rev'd in part, 2013 CO 42, 304 P.3d 227.

The statutory reference in an information is an immaterial part of the information. People v. Marion, 182 Colo. 435, 514 P.2d 327 (1973).

Incorrect statutory reference not fatal. The incorrect citation of a specific statutory reference in an information is not grounds for reversal, absent substantial prejudice. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

Failure of charges to identify the particular statement or assertion alleged to be false is not a fatal defect. Information was sufficient to allow defendant to prepare a defense, defendant did not object to the charges or request a bill of particulars, and defendant did not demonstrate or even allege prejudice. People v. Vigil, 251 P.3d 442 (Colo. App. 2010).

Technical defects in information do not support reversal. The supreme court, in accordance with the spirit and intent of this section, has consistently refused to reverse criminal convictions for technical defects in the information or indictment which do not

tend to prejudice the substantial rights of the defendants on the merits. Helser v. People, 100 Colo. 371, 68 P.2d 543 (1937); People v. Joseph, 920 P.2d 850 (Colo. App. 1995).

If an information is sufficient to state a charge and to assure fundamental fairness to a defendant, objections both to formal defects and to defects relating to geographical deficiencies involving improper venue or to the district attorney's authority to bring or prosecute a charge must be timely made or they will be deemed waived. People v. Joseph, 920 P.2d 850 (Colo. App. 1995).

Technical defects in an information do not require reversal unless the substantial rights of the defendant are prejudiced. People v. Albo, 195 Colo. 102, 575 P.2d 427 (1978).

Factual error regarding venue will not make an information insufficient, so long as the information gives defendant notice of factual circumstances surrounding the charges and alleges that the crimes occurred within this state. People v. Brown, 70 P.3d 489 (Colo. App. 2002).

The defendant is entitled to reversal if he was prejudiced, surprised, or hampered in his defense. People v. Albo, 195 Colo. 102, 575 P.2d 427 (1978).

Each count of information must be independent of others. Absent a clear and specific incorporation by reference, each count of an information, to be valid, must be independent of the others and, in itself, charge the defendant with a distinct and different offense. People v. Moore, 200 Colo. 481, 615 P.2d 726 (1980).

When identity of victim immaterial. While the name of the victim of an offense should be alleged in an information, failure to do so is an immaterial defect, where the identity of the victim is not an essential element of the offense. People v. Hunter, 666 P.2d 570 (Colo. 1983).

III. ILLUSTRATIVE CASES.

Omission of such words as "at" or "within" is not fatal. The information charged that the defendant "on to wit — the county of Arapahoe", etc. The omission of any preposition as "at" or "within" before the name of the county was held not to impair the effect of the allegation as to venue. Balfe v. People, 66 Colo. 94, 179 P. 137 (1919).

Charge and information were sufficient, and district court had jurisdiction over defendant's case. The information was sufficient to enable it to be understood that the offense was committed within the jurisdiction of the county district court. Therefore, the information was not required to also allege that the offense was triable in the district court. People v. Perez-Hernandez, 2013 COA 160, 348 P.3d 451.

An information charging a crime necessarily charges an attempt to commit such crime. Compton v. People, 84 Colo. 106, 268 P. 577 (1928).

Information for murder in the first degree includes all the lower degrees of criminal homicide. Harris v. People, 55 Colo. 407, 135 P. 785 (1913).

Intent to murder sufficiently charged in an information which charges defendant

with making an assault with intent "to kill and murder". Hockley v. People, 30 Colo. 119, 69 P. 512 (1902).

An indictment charging that defendant unlawfully, feloniously, wilfully, purposely, and of his malice aforethought, did kill and murder the deceased, is sufficient to warrant a verdict finding that the homicide was committed with deliberation and premeditation. Redus v. People, 10 Colo. 208, 14 P. 323 (1887).

Unnecessary to allege homicide occurred incident to felony. To sustain a conviction for murder in the first degree committed in an attempt to perpetrate robbery, it is not necessary that the information should allege that the murder was committed in an attempt to perpetrate robbery. Andrews v. People, 33 Colo. 193, 79 P. 1031 (1905).

Defendant was convicted of felony murder on an information charging that on a certain date, he "did feloniously, wilfully, and of his premeditated malice aforethought, kill and murder" a named person. Due process was not violated where the information contained every essential element demanded by the Colorado statutes and by generally approved principles of criminal pleading, apprised the defendant of the nature of the charge, the date, and the place, described the victim, and further alleged that the killing was with malice aforethought, but failed to pinpoint the allegation that the homicide occurred incident to a known felony. Bizup v. Tinsley, 211 F. Supp. 545 (D. Colo. 1962), aff'd, 316 F.2d 284 (10th Cir. 1963).

Where kidnapping was alleged more generally as an element of felony murder, a finding by the jury of a more specific alternative act of kidnapping and the resulting jury instruction did not constructively amend the felony murder charge. One count of an information is not circumscribed by another count of that information unless the latter is incorporated in the former by clear and specific reference. Esquivel-Castillo v. People, 2016 CO 7, 364 P.3d 885.

Burglary. Information in prosecution for burglary with force and larceny held sufficient as complying with this section, although the street and number of place burglarized was not given. Hoskins v. People, 119 Colo. 88, 200 P.2d 932 (1948).

An information is sufficient when it charges that on a certain day defendant unlawfully and willfully, feloniously, and maliciously attempted to break and without force enter a building which was not defendant's property, with the intent to commit theft contrary to the form of the statute in such case made and provided. Loggins v. People, 178 Colo. 439, 498 P.2d 1146 (1972).

Criminal trespass count that fails to specify the underlying crime that defendant allegedly intended to commit is defective in form, but not in substance; however, since defendant did not pursue a bill of particulars and had notice of the underlying crimes defendant was not prejudiced. People v. Williams, 984 P.2d 56 (Colo. 1999).

Information charging defendant with possession of burglary tools held sufficient. People v. Gnout, 183 Colo. 366, 517 P.2d 394 (1973).

Information charging interference with a headgate held sufficient. Lambert v. People, 78 Colo. 313, 241 P. 533 (1925).

Information charging transporting intoxicating liquors held sufficient. Highley v. People, 65 Colo. 497, 177 P. 975 (1918).

Information charging defendants with entering into a contract in restraint of trade held sufficient. Campbell v. People, 72 Colo. 213, 210 P. 841 (1922).

Information charging failure to pay income taxes held sufficient. People v. Vickers, 199 Colo. 305, 608 P.2d 808 (1980).

Information charging defendant with crime of violence held sufficient. People v. Chavez, 730 P.2d 321 (Colo. 1986).

Information that charged defendant with criminal attempt, specified the ulterior crime, and cited to both criminal attempt and first degree murder statutes was substantively sufficient, even though better practice would have been to include the culpability element directly in the charge. People v. Russell, 36 P.3d 92 (Colo. App. 2001).

Information charging violation of bail bond conditions held sufficient. People v. Baker, 45 P.3d 753 (Colo. App. 2001).

Information held sufficient. Stoltz v. People, 59 Colo. 342, 148 P. 865 (1915); Moynahan v. People, 63 Colo. 433, 167 P. 1175 (1917); Whitfield v. People, 79 Colo. 108, 244 P. 470 (1926); Cliff v. People, 84 Colo. 254, 269 P. 907 (1928).

16-5-203. Furnishing witnesses' names.

Whether a prosecution is commenced by indictment, information, or felony complaint, the district attorney shall make available to the defendant not later than twenty-one days after the defendant's first appearance at the time of or following the filing of charges a written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call upon at trial. The district attorney shall also furnish the defendant in writing prior to trial the names and addresses of any additional witnesses who have become known to him or her prior to trial and whom he or she intends to call upon at trial, but this shall not preclude the calling of witnesses whose names or the materiality of whose testimony are first learned by the district attorney upon the trial. However, the court may, in its discretion, enter an order that denies the disclosure to the defendant of the names and addresses of witnesses, or that requires the defense counsel not to disclose such information to the defendant, subject to rule 16 part I (d)(2) and part III (d) of the Colorado rules of criminal procedure. The names and addresses of witnesses who are the subject of the order may be withheld pending a ruling of the court, but the prosecution shall notify the defense counsel in writing that a motion to withhold witness information has

been filed and that such information will be withheld pending the court's order. Where the defendant has not had or waived a preliminary hearing, there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of the affiant that the offense was committed.

Source: L. 72: R&RE, p. 215, § 1. **C.R.S. 1963:** § 39-5-203. **L. 90:** Entire section amended, p. 985, § 5, effective April 24. **L. 95:** Entire section amended, p. 464, § 8, effective July 1. **L. 96:** Entire section amended, p. 737, § 10, effective July 1. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 848, § 70, effective July 1.

ANNOTATION

I. General Consideration.

II. List of Witnesses.

III. Verification and Preliminary Hearing.

I. GENERAL CONSIDERATION.

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 14 (June 1931). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963).

Annotator's note. Since § 16-5-203 is similar to repealed §§ 39-3-6 and 39-4-2, C.R.S. 1963, §§ 39-3-6 and 39-4-2, CRS 53, CSA, C. 48, §§ 452 and 455, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

II. LIST OF WITNESSES.

Purpose of witness list. The requirement of this section that the district attorney list his witnesses is to advise the defendant of the witnesses for the people and to give the defendant an opportunity to contact, examine, and question those witnesses. Kelly v. People, 121 Colo. 243, 215 P.2d 336 (1950).

The requirement of listing the names of witnesses is for the protection of the defendant as a guarantee that the prosecution is being conducted in good faith by the state, and to enable the defendant to find out what the testimony against him will be, and to investigate the character of the witness against him. Harris v. Municipal Court, 123 Colo. 539, 234 P.2d 1055 (1951).

This section is mandatory, and it is the duty of the district attorney to comply with it. Wickham v. People, 41 Colo. 345, 93 P. 478 (1907).

However, the names of rebuttal witnesses for the people are not required to be listed. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931); Schreiner v. People, 95 Colo. 392, 36 P.2d 764 (1934).

Neither Crim. P. 16, nor this section specifically require the prosecution to endorse or to disclose which of the endorsed witnesses it will call for rebuttal. People v. Hamrick, 624 P.2d 1333 (Colo. App. 1979),

aff'd, 624 P.2d 1320 (Colo. 1981); People v. Avila, 944 P.2d 673 (Colo. App. 1997).

District attorney may list additional names. It is not reversible error to allow, on the day before a case was set for trial, the district attorney to list the names of additional witnesses said to have been known to him when the information was filed, where defendant did not apply for a continuance nor make a showing of surprise or prejudice, and where no such showing is made on appeal. Wickham v. People, 41 Colo. 345, 93 P. 478 (1907).

List may be given after arraignment but before witnesses testify. It is not error to permit the examination of witnesses in chief whose names were not furnished the accused prior to his arraignment, a list of such witnesses being given before they were called to testify, and no objection being made to them upon this ground. Minich v. People, 8 Colo. 440, 9 P. 4 (1885).

Names of witnesses first learned upon the trial may be listed by order of the court. The names of witnesses, the materiality of whose testimony is first learned by the district attorney upon the trial, may be properly listed by order of court. Stone v. People, 71 Colo. 162, 204 P. 897 (1922).

Such permission being discretionary with the court. Permission for listing of the names of witnesses at the trial is discretionary with the court. Baker v. People, 72 Colo. 207, 210 P. 323 (1922).

And when granted will not constitute reversible error in the absence of a request for a continuance or showing of surprise by the defense. Baker v. People, 72 Colo. 207, 210 P. 323 (1922); Stone v. People, 71 Colo. 162, 204 P. 897 (1922).

The endorsement of a codefendant as a witness during the trial, being in no way prejudicial to the defendant, was not an abuse of discretion. Roll v. People, 132 Colo. 1, 284 P.2d 665 (1955).

Noncompliance does not require reversal where a continuance has not been requested and surprise or prejudice has not been shown. People in Interest of B.R.M., 653 P.2d 77 (Colo. App. 1982).

Failure to list witnesses is not jurisdictional. Failure in listing the names of witnesses is not jurisdictional, but should be pointed out so that the trial court might direct the parties to comply with the statute. Harris v. Municipal Court, 123 Colo. 539, 234 P.2d 1055 (1951).

Defect may be waived. By failure to timely object to noncompliance with section requiring witnesses' names the defect is waived. Harris v. Municipal Court, 123 Colo. 539, 234 P.2d 1055 (1951).

And will not constitute reversible error if nonprejudicial. Omission to furnish a defendant with a list of witnesses prior to arraignment, where no objection was made to such omission at the time of such arraignment, and there is no showing of prejudice resulting therefrom, does not constitute reversible error. Goldsberry v. People, 149 Colo. 431, 369 P.2d 787 (1962).

But testimony of unlisted witnesses in chief was erroneously admitted. Testimony of witnesses not listed as to the entire

transaction was not confined to rebuttal matters and was erroneously admitted where the district attorney did not learn of the existence of the witnesses by anything that occurred at the trial. Eckhardt v. People, 126 Colo. 18, 247 P.2d 673 (1952).

Failure to require prosecution to furnish addresses on list of witnesses not reversible error in a town of 9,000 people in which the defense should be able to locate witnesses. People v. Smith, 685 P.2d 786 (Colo. App. 1984).

Trial court properly allowed witness endorsed as a perceiving witness to testify as an expert witness after defense raised the issue related to the expertise at trial. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

III. VERIFICATION AND PRELIMINARY HEARING.

Information must be supported by oath or affirmation. A prosecution and conviction under an information, not supported by the oath or affirmation of any person, is in violation of the bill of rights, § 7 of art. II, Colo. Const. Lustig v. People, 18 Colo. 217, 32 P. 275 (1893).

Summons and complaint charging misdemeanor needs no verification. This section, which specifically requires verification, is to this extent modified by § 16-2-106, which does not require a verification of a summons and complaint charging a misdemeanor and issued by a peace officer. Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

Where a preliminary hearing has been had, verification upon information and belief by the district attorney is sufficient, since the arrest of the party charged must have been made upon warrant issued upon the requisite affidavit. Brown v. People, 20 Colo. 161, 36 P. 1040 (1894).

It is not necessary in such information to set out that a preliminary hearing had been had. It devolves upon the defendant to establish the same by showing that such preliminary hearing had not been had. Brown v. People, 20 Colo. 161, 36 P. 1040 (1894).

Information need not be verified except in cases in which no preliminary examination has been had or waived. Ratcliff v. People, 22 Colo. 75, 43 P. 553 (1896).

In such cases it must be verified by some person upon his own knowledge. Brown v. People, 20 Colo. 161, 36 P. 1040 (1894).

Where a verification is necessary, as where a preliminary hearing has not been had or waived, it must be contained in the independent affidavit of some credible person having knowledge of the commission of the offense. White v. People, 8 Colo. App. 289, 45 P. 539 (1896).

Accused cannot attack truth of affidavit made as basis of information. When an affidavit is made as the basis of an information in conformity with the requirements of this section, it is not in the power of the accused to attack, by counteraffidavit or otherwise, the truth of

any of its material statements. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

Neither can the statements in the affidavit be attacked by extraneous evidence. Whether or not an affidavit upon which an information is based complies with this section must be determined from the context of the affidavit itself, and its statements cannot be attacked by extraneous evidence. The verification cannot be attacked on the ground that the testimony disclosed that the party who verified it did not have personal knowledge of the guilt of the defendant. Bergdahl v. People, 27 Colo. 302, 61 P. 228 (1900).

It is unnecessary for the affidavit to recite that affiant is a competent witness to testify in the case. His competency will be presumed until the contrary appears. Walt v. People, 46 Colo. 136, 104 P. 89 (1909); Wilkinson v. People, 86 Colo. 406, 282 P. 257 (1929); Hubbard v. People, 153 Colo. 252, 385 P.2d 419 (1963).

Want of a verification on an information is not jurisdictional. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Error of failure to verify may be waived. The information is required to be verified as designated, but unless the objection on that ground is properly presented in the trial court it is waived and cannot be raised in the appellate court. Bergdahl v. People, 27 Colo. 302, 61 P. 228 (1900).

The absence of a sufficient affidavit to support a count in the information is, at most, an irregularity, and any objection thereto must be made before trial. Curl v. People, 53 Colo. 578, 127 P. 951 (1912); Harris v. Municipal Court, 123 Colo. 539, 234 P.2d 1055 (1951).

The affidavit bears the same relation to an information in a criminal action that it does to a complaint in a civil action. It is no substantial part of either the one or the other, and there is no reason why it may not be waived without prejudice to any substantial right of the defendant, or why he should not be held to have waived any irregularity or defect therein by not objecting before pleading to the merits. Curl v. People, 53 Colo. 578, 127 P. 951 (1912).

An affidavit is for the benefit of the defendant and want of a verification affidavit is waived unless timely objection is made thereto in the trial court. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Verification of an information is required by statute but the right to challenge the verification is waived if a timely objection is not interposed. Scott v. People, 176 Colo. 289, 490 P.2d 1295 (1971).

Verification may be provided before trial at the direction of the trial court once timely objection is made, and it is not error to deny a motion, made and ruled upon before trial, to strike a verification made to an information after service thereof. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

This section does not prescribe before whom the affidavit shall be taken, but by a fundamental principle, when the statute fails to designate the particular officer before

whom the oath shall be taken, it may be taken before any officer having general authority to administer oaths. Walker v. People, 22 Colo. 415, 45 P. 388 (1896).

And statute giving notaries the power to take oath in all cases is sufficiently broad to cover affidavits since an affidavit is an oath reduced to writing and attested by him who has authority to administer the same. Walker v. People, 22 Colo. 415, 45 P. 388 (1896).

Affidavit complied with this section where it was attached to the information and particularly recited that the facts stated in the foregoing information were true and the offense charged therein was committed as of the affiant's own personal knowledge. The affidavit was as full and complete as if each and every fact contained in the information had been fully embodied in the affidavit. Ausmus v. People, 47 Colo. 167, 107 P. 204 (1910).

An affidavit to an information which states that the facts stated in the information are true and that the offense was committed of affiant's personal knowledge, is sufficient to make the information good as against a motion to quash for insufficient verification. Wilkinson v. People, 86 Colo. 406, 282 P. 257 (1929).

Applied in Velasquez v. People, 154 Colo. 284, 389 P.2d 849 (1964).

16-5-204. Witnesses before a grand jury - procedure.

(1) (a) Whenever a witness in any proceeding before any grand jury refuses, without just cause shown, to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording, or other material, the prosecuting attorney may submit an application to the court for an order directing the witness to show why the witness should not be held in contempt. After submission of such application and a hearing at which the witness may be represented by counsel, the court may, if the court finds that such refusal was without just cause, hold the witness in contempt and order the witness to be confined. Such confinement shall continue until such time as the witness is willing to give such testimony or provide such information; however, the court may release the witness from confinement if the court determines that further confinement will not cause the witness to give such testimony or provide such information. No period of such confinement shall exceed the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, and in no event shall such confinement exceed six months.

(b) If a witness has been confined in accordance with paragraph (a) of this subsection (1), he or she may, upon petition filed with the court, request a hearing to be held within fourteen days to review the contempt order at which hearing he or she shall have the right to be represented by counsel. The court, at the hearing, may rescind, modify, or affirm the order.

(c) In any proceeding conducted under this section, counsel may be appointed for a person financially unable to obtain adequate assistance.

(1.5) (a) Upon verified application of the prosecuting attorney stating that a witness was lawfully served with a subpoena to appear and testify before the grand jury and that the witness failed to appear in accordance with such subpoena, the court shall issue a warrant commanding any peace officer to bring the witness without unnecessary delay before the court for a hearing on the matters set forth in the application and to determine whether the witness should be held in contempt pursuant to subsection (1) of this section.

(b) Upon issuance of the warrant, the court may fix an appropriate bond and direct, as a condition of the bond, that the witness appear on a date and at a time certain for the hearing.

(2) No person who has been imprisoned or fined by a court for refusal to testify or provide other information concerning any criminal incident or incidents in any proceeding before a grand jury impaneled before any district court shall again be imprisoned or fined for a subsequent refusal to testify or provide other information concerning the same criminal incident or incidents before any grand jury.

(3) Upon impanelment of each grand jury, the court shall give to such grand jury adequate and reasonable written notice of and shall assure that the grand jury reasonably understands the nature of:

(a) Its duty to inquire into offenses against the criminal laws of the state of Colorado alleged to have been committed;

(b) Its right to call and interrogate witnesses;

(c) Its right to request the production of documents or other evidence;

(d) The subject matter of the investigation and the criminal statutes or other statutes involved, if these are known at the time the grand jury is impaneled;

(e) The duty of the grand jury by an affirmative vote of nine or more members of the grand jury to determine, based on the evidence presented before it, whether or not there is probable cause for finding indictments and to determine the violations to be included in any such indictments; and

(f) The requirement that the grand jury may not find an indictment in cases of perjury unless at least two witnesses to the same fact present evidence establishing probable cause to find such an indictment.

(4) (a) At the option of the prosecuting attorney, a grand jury subpoena may contain an advisement of rights. If the prosecuting attorney determines that an advisement is necessary, the grand jury subpoena shall contain the following advisement prominently displayed on the front of the subpoena:

NOTICE

(I) You have the right to retain an attorney to represent you and to advise you regarding your grand jury appearance.

(II) Anything you say to the grand jury may be used against you in a court of law.

(III) You have the right to refuse to answer questions if you feel the answers would tend to incriminate you or to implicate you in any illegal activity.

(IV) If you cannot afford or obtain an attorney, you may request the court to appoint an attorney to consult with or represent you.

(b) Any witness who is not advised of his rights pursuant to paragraph (a) of this subsection (4) shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he testifies or any evidence he produces, nor shall any such testimony or evidence be used as evidence in any criminal proceeding, except for perjury, against him in any court.

(c) Repealed.

(d) Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of such grand jury, and counsel may be present in the grand jury room with his client during such questioning. However, counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an in camera hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising his client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the same criminal investigation, except with the permission of the grand jury.

(e) Once a grand jury has returned a no true bill based upon a transaction, set of transactions, event, or events, a grand jury inquiry into the same transaction or events shall not be initiated unless the court finds, upon a proper showing by the prosecuting attorney, that the prosecuting attorney has discovered additional evidence relevant to such inquiry.

(f) An authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's

notes and any transcripts which may be prepared shall be preserved, sealed, and filed with the court. No release or destruction of the notes or transcripts shall occur without prior court approval.

(g) Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his own grand jury testimony, or minutes, reports, or exhibits relating to them.

(h) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made to any law enforcement or prosecution official or under an oath required by law that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

(i) No person subpoenaed to testify or to produce books, papers, documents, or other objects in any proceeding before any grand jury shall be required to testify or to produce such objects, or be confined as provided in this section, for his failure to so testify or produce such objects if, upon filing a motion and upon an evidentiary hearing before the court which issued such subpoena or a court having jurisdiction under this section, the court finds that:

(I) A primary purpose or effect of requiring such person to so testify or to produce such objects before the grand jury is or will be to secure testimony for trial for which the defendant has already been charged by information, indictment, or criminal complaint;

(II) Compliance with a subpoena would be unreasonable or oppressive;

(III) A primary purpose of the issuance of the subpoena is to harass the witness;

(IV) The witness has already been confined, imprisoned, or fined under this section for his refusal to testify before any grand jury investigating the same transaction, set of transactions, event, or events; or

(V) The witness has not been advised of his rights as specified in paragraph (a) of this subsection (4).

(j) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(k) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(l) Any person may approach the prosecuting attorney or the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. The prosecuting attorney or the grand jury shall keep a record of all denials of such requests to that prosecuting attorney or grand jury, including the reasons for not allowing such person to testify or appear. If the person making such request is dissatisfied with the decision of the prosecuting attorney or the grand jury, such person may petition the court for hearing on the denial by the prosecuting attorney or the grand jury. If the court grants the hearing, then the court may permit the person to testify or appear before the grand jury, if the court finds that such testimony or appearance would serve the interests of justice.

(m) The foreman, or acting foreman when designated by the court, of the grand jury may swear or affirm all witnesses who come before the grand jury.

(n) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

Source: L. 72: R&RE, p. 215, § 1. **C.R.S. 1963:** § 39-5-204. **L. 77:** Entire section R&RE, p. 853, § 1, effective June 21. **L. 81:** (4)(c) repealed, p. 926, § 2, effective July 1. **L. 82:** (4)(f) amended, p. 623, § 15, effective April 2. **L. 2000:** (4)(h) amended, p. 428, § 1, effective April 14. **L. 2002:** (1.5) added, p. 759, § 6, effective July 1. **L. 2012:** (4)(a) amended, (HB-1310), ch. 268, p. 1393, § 6, effective June 7; (1)(b) amended, (SB 12-175), ch. 208, p. 849, § 71, effective July 1.

ANNOTATION

Law reviews. For article, "State Grand Juries in Colorado: Understanding the Process and Attacking Indictments", see 34 Colo. Law. 63 (Apr. 2005).

Annotator's note. Since § 16-5-204 is similar to repealed CSA, C. 48, § 448, relevant cases construing that provision have been included in the annotations to this section.

Compliance need not appear on face of indictment. Compliance with the provisions of this section need not appear on the face of the indictment because the presumption of regularity pertains. People v. Swanson, 109 Colo. 371, 125 P.2d 637 (1942).

This section does not prohibit grand jury from questioning persons suspected of crimes. People v. McPhail, 118 Colo. 478, 197 P.2d 315 (1948).

Even if issuance of subpoena was abuse of grand jury's powers, defendant must show that the abuse prejudiced him before he is entitled to have the fruits of the subpoena suppressed. People v. Vesely, 41 Colo. App. 325, 587 P.2d 802 (1978).

Where subpoena produces only evidence otherwise discoverable, defendant is in no way prejudiced by its issuance, even though erroneous, and any impropriety in the grand jury process is harmless. People v. Vesely, 41 Colo. App. 325, 587 P.2d 802 (1978).

Order suppressing intercepted communications is "just cause". An order suppressing intercepted communications pursuant to § 16-15-102 (10) would constitute a showing of "just cause" within the meaning of subsection (1)(a). In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981).

Attorney may not represent more than one witness. To preserve the secrecy and effectiveness of the grand jury process, no attorney who provides counsel in the grand jury room may represent more than one witness in a single investigation without grand jury permission, and this is a constitutionally permissible limitation of the right to counsel. People ex rel. Lasavio v. J.L., 195 Colo. 494, 580 P.2d 23 (1978).

Legislative intent as to right to counsel. Close scrutiny of this section reveals that the general assembly intended to abolish the established practice of permitting grand jury witnesses to consult with an attorney outside the grand jury room only, and substitute a system which expands the protections afforded grand jury witnesses while insuring continued efficacy of the grand jury process. People ex rel. Lasavio v. J.L., 195 Colo. 494, 580 P.2d 23 (1978).

Equal protection not violated. Subsection (4)(d) does not create a classification subject to challenge under the equal protection clause. People ex rel. Lasavio v. J.L., 195 Colo. 494, 580 P.2d 23 (1978).

Oral advisement of rights in presence of grand jury does not meet requirements of this section and does not afford the witness the protection intended by this section that he be permitted to exercise his privilege against self-incrimination outside the presence of the grand jury without having to appear and do so in the presence of the grand jury. People ex rel. Gallagher v. District Court, 198 Colo. 468, 601 P. 2d 1380 (1979).

Inappropriate conduct by district attorney merits court's release of grand jury transcripts to defense. Only in case where clear examples of inappropriate conduct by the district attorney may affect the validity of the defendant's indictment, or the determination of probable cause, should the trial court sacrifice the confidentiality of the grand jury proceedings and release a transcript of the grand jury colloquy to defense counsel. People v. District Court, 199 Colo. 398, 610 P.2d 490 (1980).

Indictment is culmination of probable cause screening process of grand jury and that procedure functions as a constitutionally adequate substitute for a preliminary hearing. People v. District Court, 199 Colo. 398, 610 P.2d 490 (1980).

When indictment properly dismissed. Where trial judge, with probable cause as the criteria for determining the sufficiency of the record to support the indictment, concluded that the record was insufficient to support the charges contained in the

indictment, the indictment was properly dismissed. People v. Laughlin, 621 P.2d 1388 (Colo. 1981).

Court to evaluate finding of probable cause. The duty of the trial court under subsection (4)(k) is to evaluate the sufficiency of the evidence presented to the grand jury to establish probable cause. People v. Luttrell, 636 P.2d 712 (Colo. 1981).

Standards for review of determination of probable cause. The district court function in conducting a review of the grand jury record, as authorized by subsection (4)(k), is much like the role of the court at a preliminary hearing and the same rule applies in determining the existence or absence of probable cause. The court must draw all inferences in favor of the prosecution, and when there is a conflict in the testimony a question of fact exists for determination at trial. People v. Summers, 197 Colo. 445, 593 P.2d 969 (1979); People v. Luttrell, 636 P.2d 712 (Colo. 1981).

Subsection (4)(k) unambiguously requires a district court to dismiss "any indictment" from a grand jury that lacks probable cause, including an indictment count that is a sentence enhancer. A proceeding under this section is different from a preliminary hearing in which the court's authority is limited to dismissing "an offense" that lacks probable cause. People v. Soto-Campos, 2018 COA 118, 436 P.3d 566.

In determining whether compliance with subpoena duces tecum will be "unreasonable or oppressive", the court must balance the competing interests of the individual's right to keep his personal affairs confidential with the grand jury's right to investigate criminal activity. Losavio v. Robb, 195 Colo. 533, 579 P.2d 1152 (1978).

When evidentiary phase of contempt hearing may be closed to public. The evidentiary phase of a grand jury witness's contempt hearing may be closed to the public and press only upon express findings by the court that: (1) A public hearing would create a clear and present danger to the investigation of matters presently pending before the grand jury; and (2) the prejudicial effect of such information on presently pending grand jury matters cannot be avoided by any reasonable alternative less drastic than closure. In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981).

As to procedures at indirect contempt hearing, see In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981).

Grand jury subpoenas not bona fide where obtained by unauthorized persons. Subpoenas for toll records of a telephone subscriber were not bona fide grand jury subpoenas where they were obtained by investigators of strike force who had no authority to represent the state grand jury, and therefore toll records so obtained were properly suppressed. People v. Corr, 682 P.2d 20 (Colo. 1984).

Disclosure of grand jury materials to federal prosecutors without prior court approval, in violation of this section, did not violate federal constitutional or statutory rights. United States v. Pignatiello, 628 F. Supp. 68 (D. Colo. 1986).

A writ to transport an inmate to a grand jury hearing is not the functional equivalent of a subpoena to testify at the hearing. As such, an advisement of rights under subsection (4) is not required. People v. Seader, 2012 COA 184, 292 P.3d 1193.

Written advisement requirement of subsection (4) does not apply to non-subpoenaed, voluntary witnesses. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

Term "any witness", as used in subsection (4)(b), means any subpoenaed witness who did not receive a written advisement upon the subpoena. It does not include a voluntary witness. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

The right to service of a subpoena bearing an advance written advisement is a statutory right subject to voluntary waiver. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

Violation of procedures may warrant dismissal of indictment if behavior of government agents is so outrageous as to violate fundamental fairness and shock the universal sense of justice. People v. Auld, 815 P.2d 956 (Colo. App. 1991); People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

Alleged prosecutorial misconduct held not sufficient to warrant dismissal where evidence against defendant was strong, unauthorized changes to transcript after return of indictment were minor, and review of records and affidavits supported trial court's determination that grand jury discharged its duty without malice, ill will, fear, or favoritism. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

No right to evidentiary hearing on issue of off-the-record prosecutorial misconduct where evidence presented during recorded proceedings was more than sufficient to support the indictment. Although grand jury secrecy is not absolute, breach of that security should be countenanced only upon compelling need. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

Applied in Lindsay v. People, 119 Colo. 483, 204 P.2d 878 (1949); People v. DeJesus, 184 Colo. 230, 519 P.2d 944 (1974); Thomas v. County Court, 198 Colo. 87, 596 P.2d 768 (1979); People v. North Ave. Furn. & Appliance, Inc., 645 P.2d 1291 (Colo. 1982); People v. Armstrong, 664 P.2d 713 (Colo. App. 1982); People v. Moyer, 670 P.2d 785 (Colo. 1983).

16-5-205. Informations - authority to file - indictments - warrants and summons.

(1) The prosecuting attorney may file an information in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein. The court shall enter an order fixing the amount of bail, if the offense is bailable, and the amount of bail shall be endorsed upon any warrant issued for the arrest of the alleged offender. When a summons is issued instead of a warrant, no bail shall be fixed; except that, when a person is charged with an offense pursuant to section 42-2-138 (1)(d) or 42-4-1301 (1) or (2)(a), C.R.S., the court may enter an order fixing the amount of bail even if a summons is issued.

(2) Upon the return of an indictment by a grand jury, or the filing of an information, or the filing of a felony complaint in the county court, the prosecuting attorney shall request the court to order that a warrant shall issue for the arrest of the defendant, or that a summons shall issue and be served upon the defendant. If a warrant is requested upon an information or a felony complaint, the information or felony complaint must contain, or be accompanied by, a sworn written statement of facts establishing probable cause to believe that the criminal offense was committed as alleged by the person for whom the warrant is sought. In lieu of such sworn statement, the information or felony complaint may be supplemented by sworn testimony of such facts. Such testimony must be transcribed and then signed under oath by the witness giving the testimony.

(3) Except as otherwise provided in this article, any information, indictment, felony complaint, warrant, or summons shall comply with the requirements of applicable rules of criminal procedure adopted by the supreme court of Colorado. Any procedures connected with service of summons, the arrest and detention of an alleged offender upon a warrant, and the duties of the arresting officer relating to the summons or arrest, not specifically set forth in this code, shall be as provided by the applicable rules of criminal procedure adopted by the supreme court of Colorado.

(4) Repealed.

Source: L. 72: R&RE, p. 215, § 1. **C.R.S. 1963:** § 39-5-205. **L. 77:** (4) added, p. 856, § 2, effective June 21. **L. 89:** (4) amended, p. 779, § 7, effective July 1. **L. 91:** (4) amended, p. 402, § 2, effective June 6. **L. 97:** (4) repealed, p. 315, § 2, effective October 1. **L. 2008:** (1) amended, p. 785, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 10 (May, 1931). For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963).

Annotator's note. Since § 16-5-205 is similar to repealed § 39-4-1, C.R.S. 1963, § 39-4-1, CRS 53, and CSA, C. 48, § 454, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section provides concurrent methods of proceeding against a criminal defendant. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

In each method there are provisions to protect the accused against discrimination and oppression on the part of the district

attorney. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

Constitutionality. Provision allowing prosecutions upon information was held not unconstitutional when surrounded by proper regulations and safeguards and made applicable to all persons and communities in the state without discrimination. In re Dolph, 17 Colo. 35, 28 P. 470 (1891).

Provision requiring a proper and sufficient affidavit supporting information before warrant of arrest can issue was held constitutionally valid as not opposed to § 7 of art. II, Colo. Const., the provision of the bill of rights relating to warrants. Ratcliff v. People, 22 Colo. 75, 43 P. 553 (1896).

The portion of this section which authorizes initiation of criminal proceedings by direct information is not a violation of due process or equal protection of the law. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

No constitutional provision forbids indictments and informations as concurrent remedies when surrounded by proper regulations and safeguards. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

This section is a valid exercise by the general assembly of its power pursuant to § 23, of art. II, Colo. Const. de'Sha v. Reed, 194 Colo. 367, 572 P.2d 821 (1977).

This section applies to the extent of any conflict with Crim. P. 6.7. de'Sha v. Reed, 194 Colo. 367, 572 P.2d 821 (1977).

Information provision pari materia with system of prosecution. The legislative acts providing for the prosecution of crimes, naming the parties who shall prosecute, and prescribing the means and methods to be pursued are all parts of the same system and must be construed in pari materia. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

It is general both in form and substance and of uniform operation throughout the state. In re Dolph, 17 Colo. 35, 28 P. 470 (1891).

Neither the prosecuting attorney nor any other officer is authorized to exercise an arbitrary discretion in the matter of instituting criminal prosecutions. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

Discretion is given to the prosecuting attorney to determine whether in any given case an information ought or ought not to be filed. He is the official possessed of the power and charged with the duty to accuse of crime by information in like manner as the grand jury is in cases by indictment. Stainer v. San Luis Valley Land & Mining Co., 166 F. 220 (8th Cir. 1908).

Complaining witness or victim of crime has no control over case, since he is not a party to it he can neither require prosecution of the case nor its dismissal. People v. Lucero, 623 P.2d 424 (Colo. App. 1980).

Preliminary hearing unnecessary before filing information. It is not necessary in order to vest power in the prosecuting attorney to file an information that there shall be a preliminary hearing and commitment. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

There is no procedure for dismissing a felony complaint without prejudice. Once

the filing of a felony complaint in county court is dismissed, the prosecution must either obtain a grand jury indictment or file an information directly in the district court. People v. Williams, 987 P.2d 232 (Colo. 1999).

Determination of probable cause after arrest. Where insufficient information was presented to the court at the time of the filing of the information, which was sufficiently verified by a police officer, probable cause could be determined after the arrest. People v. Mundt, 38 Colo. App. 331, 561 P.2d 1272 (1976).

Applied in People v. Read, 132 Colo. 390, 288 P.2d 347 (1955); People v. Rice, 40 Colo. App. 357, 579 P.2d 647 (1978).

16-5-205.5. Grand jury reports.

(1) In any case in which a grand jury does not return an indictment, the grand jury may prepare or ask to be prepared a report of its findings if the grand jury determines that preparation and release of a report would be in the public interest, as described in subsection (5) of this section. The determination to prepare and release a report pursuant to this section must be made by an affirmative vote of at least the number of jurors that would have been required to return an indictment. The report shall be accompanied by certification that the grand jury has determined that release of the report is in the public interest, as described in subsection (5) of this section.

(2) The provisions of this section shall not apply in any instance in which the prosecuting attorney chooses to file charges against the person or business that was the subject of the grand jury investigation.

(3) Within fourteen days after receiving a report of the grand jury prepared pursuant to subsection (1) of this section, the prosecuting attorney shall notify in writing all persons and businesses named in the grand jury report to give such persons and businesses an opportunity to review the grand jury report and prepare a response to be submitted to the court with the grand jury report. Such notice shall be by personal service or by certified mail return receipt requested. Any responses shall be submitted to the prosecuting attorney within fourteen days after notification.

(4) Upon completion of the time for submitting responses, the prosecuting attorney shall submit the grand jury report to the court, together with the certification of public interest and any responses that may have been submitted. The court shall examine the report and make an order accepting and filing the report, including the certification and any responses that the respondent, by written notice to the prosecuting attorney and the court, has agreed to release, as a public record only if the court is satisfied that:

(a) The grand jury and the prosecuting attorney were acting within the statutory jurisdiction of such persons in convening the grand jury; and

(b) The grand jury foreman and the prosecuting attorney have verified on the record that:

(I) The certification of public interest by the grand jury complies with the provisions of subsection (5) of this section; and

(II) The report is based on facts revealed in the course of the grand jury investigation and is supported by a preponderance of the evidence; and

(III) The report does not contain material the sole effect of which is to ridicule or abuse a person or business or to subject such person or business to public disgrace or embarrassment; and

(IV) The report does not contain material that is personal in nature that does not relate to any lawful inquiry; and

(V) No confidentiality agreement will be violated and the identity of no confidential informant will be disclosed in making such grand jury report public; and

(VI) The filing of such report as a public record does not prejudice the fair consideration of a criminal matter.

(5) Release of a grand jury report pursuant to this section may be deemed to be in the public interest only if the report addresses one or more of the following:

(a) Allegations of the misuse or misapplication of public funds;

(b) Allegations of abuse of authority by a public servant, as defined in section 18-1-901 (3)(o), C.R.S., or a peace officer, as described in section 16-2.5-101;

(c) Allegations of misfeasance or malfeasance with regard to a governmental function, as defined in section 18-1-901 (3)(j), C.R.S.;

(d) Allegations of commission of a class 1, class 2, or class 3 felony.

Source: L. 97: Entire section added, p. 313, § 1, effective October 1. **L. 2003:** (5)(b) amended, p. 1614, § 8, effective August 6. **L. 2012:** (3) amended, (SB 12-175), ch. 208, p. 849, § 72, effective July 1.

ANNOTATION

Grand jury had discretion to release a report under this statute even though it did not choose to issue an indictment and trial court was correct in approving the release of the grand jury report in this instance. In re 2000-2001 Dist. Grand Jury Report, 22 P.3d 922 (Colo. 2001).

Term "case" in the statute means any matter that has become the object of investigation arising out of the subject matter of inquiry. If a single, comprehensive investigation by a grand jury led to an indictment, this section prohibits the release of a grand jury report on another issue of the investigation unrelated to the indictment. In re 2003-2004 Term of the State Grand Jury, 148 P.3d 440 (Colo. App. 2006).

Trial court's role in reviewing the grand jury proceedings is limited. In re 2000-2001 Dist. Grand Jury Report, 22 P.3d 922 (Colo. 2001).

Statute's legislative history evidences intent of general assembly that the court should have limited discretion in determining whether a grand jury report should be released. In re 2000-2001 Dist. Grand Jury Report, 22 P.3d 922 (Colo. 2001).

Because the general assembly did not provide in statute for disclosure of grand jury reports and limited the court's role in reviewing grand jury reports, it intended that persons named respond only to the information contained in the report. Open-ended discovery of the grand jury proceedings is not an option. In re 2000-2001 Dist. Grand Jury, 77 P.3d 779 (Colo. App. 2003), aff'd, 97 P.3d 921 (Colo. 2004).

Party to grand jury report failed to demonstrate that this section affects a cognizable due process interest, and, thus, federal due process concerns are not implicated. In re 2000-2001 Dist. Grand Jury, 97 P.3d 921 (Colo. 2004).

Role of a trial court reviewing a grand jury report for the purpose of determining whether it should be released or not is to review the report independently to determine whether, on its face, the report satisfies the requirement that it concern matters of public interest, as defined by the statute, and to measure the certification of the grand jury foreperson and the prosecuting attorney against the facts contained in the report. Trial court had obligation to verify that the report comports with the certification and in this instance the trial court did not err in permitting the release of a report. In re 2000-2001 Dist. Grand Jury Report, 22 P.3d 922 (Colo. 2001).

Purpose of subsection (4) is to prevent the grand jury process from being used as a subterfuge to obtain information for use in other proceedings. Charnes v. Lilly, 197 Colo. 460, 593 P.2d 967 (1979) (decided under repealed § 16-5-205 (4)).

Word "report" in subsection (4) is all-inclusive and includes transcripts. Charnes v. Lilly, 197 Colo. 460, 593 P.2d 967 (1979) (decided under repealed § 16-5-205 (4)).

"Report" also includes corporate records used in grand jury proceedings. People v. Tynan, 701 P.2d 80 (Colo. App. 1984) (decided under repealed § 16-5-205 (4)).

"Misfeasance" defined as conduct that is not simply bad public policy but an illegal, wrongful, or corrupt exercise of government power. In re 2010 Denver

County Grand Jury, 2012 COA 45, 296 P.3d 168.

16-5-206. Summons instead of warrant.

(1) Except in class 1, class 2, and class 3 felonies, level 1 and level 2 drug felonies, and in unclassified felonies punishable by a maximum penalty of more than ten years, if an indictment is returned or an information, felony complaint, or complaint has been filed prior to the arrest of the person named as defendant therein, the court has power to issue a summons commanding the appearance of the defendant in lieu of a warrant for his or her arrest unless a law enforcement officer presents in writing a basis to believe there is a significant risk of flight or that the victim or public safety may be compromised.

(1.5) (a) Except in class 1, class 2, class 3, and class 4 felonies; in crimes described in section 24-4.1-302 (1), C.R.S.; and in unclassified felonies punishable by a maximum penalty of more than ten years, a law enforcement officer may issue a summons commanding the appearance of the defendant in lieu of a warrant for his or her arrest based on probable cause if:

(I) The local district attorney consents to such procedure and has developed and approved criteria for the issuance of such a summons pursuant to this subsection (1.5);

(II) There is a reasonable likelihood that the defendant will appear;

(III) The defendant has had no felony arrests during the preceding five years;

(IV) There is no allegation that the defendant used a deadly weapon as defined in section 18-1-901 (3)(e), C.R.S., in the commission of the crime; and

(V) There are no outstanding warrants for the defendant's arrest.

(a.5) Notwithstanding subsections (1) and (1.5)(a) of this section, if a person is solely suspected of a level 1 drug misdemeanor for possession of a controlled substance pursuant to section 18-18-403.5 (2)(c) or (2.5)(a)(II), or solely suspected of drug possession in violation of municipal law, and a colorimetric field drug test was used, a law enforcement officer shall issue a summons commanding the appearance of the defendant instead of a warrant for the defendant's arrest.

(b) No later than ten days after a law enforcement officer issues a summons pursuant to this subsection (1.5), he or she shall deliver a copy to the court and to the office of the district attorney where jurisdiction lies.

(c) When the procedure described in this subsection (1.5) is used, an information or complaint may be filed in open court on the date specified in the summons.

(2) If a summons is issued in lieu of a warrant under this section:

(a) It shall be in writing.

(b) It shall state the name of the person summoned and his address.

(c) It shall identify the nature of the offense.

(d) It shall state the date when issued and the county where issued.

(e) It shall be signed by the judge or clerk of the court with the title of his office or by the law enforcement officer who issued the summons.

(f) It shall command the person to appear before the court at a certain time and place.

(g) Repealed.

(3) A summons issued under this section may be served in the same manner as the summons in a civil action or by mailing it to the defendant's last-known address by certified mail with return receipt requested not less than fourteen days prior to the time the defendant is requested to appear. Service by mail is complete upon the return of the receipt signed by the defendant.

(4) If any person summoned under this section fails to appear as commanded by the summons, the court shall forthwith issue a warrant for his arrest.

Source: L. 72: R&RE, p. 216, § 1. **C.R.S. 1963:** § 39-5-206. **L. 2009:** (1) amended, (HB 09-1262), ch. 104, p. 381, § 1, effective August 5. **L. 2012:** (3) amended, (SB 12-175), ch. 208, p. 849, § 73, effective July 1. **L. 2013:** (1) amended, (SB 13-250), ch. 333, p. 1928, § 38, effective October 1. **L. 2016:** (1.5) added and IP(2) and (2)(e) amended, (HB 16-1104), ch. 118, p. 337, § 1, effective August 10. **L. 2019:** (2)(g) added, (SB 19-036), ch. 293, p. 2687, § 5, effective July 1, 2020. **L. 2022:** (2)(g) repealed, (SB 22-018), ch. 191, p. 1274, § 5, effective July 15. **L. 2026:** (1.5)(a.5) added, (HB 26-1020), ch. 12, p. 56, § 5, effective March 26.

Editor's note: Section 6 of chapter 12 (HB 26-1020), Session Laws of Colorado 2026, provides that the act changing this section applies to offenses committed on or after March 26, 2026.

16-5-207. Standards and criteria relating to issuance of summons in lieu of warrant.

(1) A summons shall be issued instead of a warrant in all petty offenses and all unclassified offenses which are punishable by a maximum penalty of six months' imprisonment or less, except in those cases where the court finds that:

(a) The defendant has previously failed to respond to a summons for an offense; or

(b) There is a substantial likelihood that the defendant will not respond to a summons; or

(c) The whereabouts of the defendant is unknown and the issuance of an arrest warrant is necessary in order to subject him to the jurisdiction of the court.

(2) Except in class 1, class 2, and class 3 felonies or level 1 or level 2 drug felonies, the general policy shall favor issuance of a summons instead of a warrant for the arrest of the defendant except where there is reasonable ground to believe that, unless taken into custody, the defendant will flee to avoid prosecution or will fail to respond to a summons. The court shall issue a summons instead of an arrest warrant when the prosecuting attorney so requests. When an application is made to a court for issuance of an arrest warrant or summons, the court may require the applicant to provide such information as reasonably is available concerning the following:

(a) The defendant's residence;

(b) The defendant's employment;

(c) The defendant's family relationships;

(d) The defendant's past history of response to legal process; and

(e) The defendant's past criminal record.

Source: L. 72: R&RE, p. 216, § 1. **C.R.S. 1963:** § 39-5-207. **L. 2013:** IP(2) amended, (SB 13-250), ch. 333, p. 1928, § 39, effective October 1. **L. 2021:** IP(1) amended, (SB 21-271), ch. 462, p. 3163, § 171, effective March 1, 2022.

16-5-208. Information not filed - reasons.

In all cases where on preliminary hearing in the county court concerning the commission of a felony the accused is bound over and is committed to jail, or recognized and held to bail, it is the duty of the district attorney to file an information in the district court. If the district attorney determines in any such case that an information ought not to be filed, he or she shall file with the clerk of the district court having jurisdiction of the supposed offense a written statement containing his or her reasons, in fact and in law, for not filing an information in the case, and such statement shall be filed within sixty-three days following the date upon which the offender was held for appearance.

Source: L. 72: R&RE, p. 217, § 1. **C.R.S. 1963:** § 39-5-208. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 849, § 74, effective July 1.

16-5-209. Judge may require prosecution.

The judge of a court having jurisdiction of the alleged offense, upon affidavit filed with the judge alleging the commission of a crime and the unjustified refusal of the prosecuting attorney to prosecute any person for the crime, may require the prosecuting attorney to appear before the judge and explain the refusal. If after that proceeding, based on the competent evidence in the affidavit, the explanation of the prosecuting attorney, and any argument of the parties, the judge finds that the refusal of the prosecuting attorney to prosecute was arbitrary or capricious and without reasonable excuse, the judge may order the prosecuting attorney to file an information and prosecute the case or may appoint a special prosecutor to do so. The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308, C.R.S.

Source: L. 72: R&RE, p. 217, § 1. **C.R.S. 1963:** § 39-5-209. **L. 77:** Entire section amended, p. 858, § 1, effective May 24. **L. 2000:** Entire section amended, p. 454, § 12, effective April 24.

ANNOTATION

Purpose of this section is to allow persons who believe that a prosecuting attorney is not pursuing a case with diligence to petition the court to review the status of the case. Dohaish v. Tooley, 670 F.2d 934 (10th Cir. 1982).

This section provides a remedy only for a district attorney's refusal to file charges, not for refusal to investigate criminal charges. Kailey v. Chambers, 261 P.3d 792 (Colo. App. 2011).

The scope of appellate court review under this section is a mixed question of law and fact. A district court's factual findings resulting from an evidentiary hearing may only be disturbed if clearly erroneous and not supported by the record. However, the district court's application of the statutory standard may be reviewed de novo. J.S. v. Chambers, 226 P.3d 1193 (Colo. App. 2009).

Evidence necessary for judge to substitute judgment. A district judge should not, in the absence of clear and convincing evidence that the terms of this section have been met, substitute his judgment or discretion for that of the prosecutor in a criminal case. Tooley v. District Court, 190 Colo. 468, 549 P.2d 772 (1976).

The district attorney's decision not to prosecute a case may not be challenged unless there is a showing that his decision was arbitrary or capricious. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980); Sandoval v. Farish, 675 P.2d 300 (Colo. 1984).

District attorney's decision not to prosecute a woman for alleged theft by deception was not proved to be arbitrary or capricious and without reasonable excuse, and therefore the judge could not substitute his judgment or discretion for that of the prosecutor. Landis v. Farish, 674 P.2d 957 (Colo. 1984).

There must be a clear and convincing showing that the prosecutor's decision not to prosecute was arbitrary and capricious and without reasonable excuse before the court will order prosecution or the appointment of a special prosecutor. The court's finding that there were credibility issues with the alleged victim's claims, the lack of specificity regarding the where and when the events occurred, and the passage of time show the court's decision was not arbitrary and capricious. Kailey v. Chambers, 261 P.3d 792 (Colo. App. 2011).

The first step for a court to consider is whether a prosecuting attorney has made a decision not to prosecute. This section requires a refusal to prosecute for the inquiry to continue. Kailey v. Chambers, 261 P.3d 792 (Colo. App. 2011).

Challenging party has the burden of proof and even a strong showing does not shift the burden of proof to the prosecutor. Moody v. Larsen, 802 P.2d 1169 (Colo. App. 1990); J.S. v. Chambers, 226 P.3d 1193 (Colo. App. 2009).

This section provides for a prosecutor's appearance at a court-ordered hearing to "explain the refusal" to prosecute. The statute does not require the prosecutor to present evidence. J.S. v. Chambers, 226 P.3d 1193 (Colo. App. 2009).

This section calls for the usual type of hearing in which both parties are given the opportunity to present evidence and argument. Moody v. Larsen, 802 P.2d 1169 (Colo. App. 1990).

Each party has the right to present rebuttal evidence to the testimony of a witness concerning a material issue, including the right to call witnesses for such purpose. Moody v. Larsen, 802 P.2d 1169 (Colo. App. 1990).

Actions brought under this section are special statutory proceedings not exempted from application of the rules of civil procedure because this section lacks an adequate, exclusive, full, and complete procedure. To hold otherwise is to render the legislature's mechanism for prevention of prosecutorial abuses a hollow shell and is not consonant with sound judicial administration. Trial court thus erred in denying challenging party's requests for discovery and a continuance to permit discovery and in failing to exercise its discretion concerning whether to allow discovery. Moody v. Larsen, 802 P.2d 1169 (Colo. App. 1990).

The amendment to this section in 2000 effectively eliminated the right to formal discovery and the right to a full

evidentiary hearing. Consequently, the trial court may, at its discretion, provide for an evidentiary hearing after it has considered the petitioner's affidavit, the explanation of the district attorney, if required by the court, and any argument of the parties. Schupper v. Smith, 128 P.3d 323 (Colo. App. 2005).

The 2000 amendment also established that this section creates a special statutory proceeding that is exempted from application of the rules of civil procedure. Schupper v. Smith, 128 P.3d 323 (Colo. App. 2005).

This section does not require the court to require the prosecuting attorney to appear before the court and explain the refusal to prosecute. Kailey v. Chambers, 261 P.3d 792 (Colo. App. 2011).

This section contemplates that the prosecuting attorney may appear in person before the court and explain the refusal to prosecute. Schupper v. Smith, 128 P.3d 323 (Colo. App. 2005).

Under this section, the "prosecuting attorney" is the only individual who may be ordered to prosecute a case; therefore, dismissal of assistant attorneys from proceeding brought under this section is proper. Schupper v. Smith, 128 P.3d 323 (Colo. App. 2005).

District attorney's explanation for declining to prosecute identified reasons that were supported by some competent evidence and were proper factors under Sandoval v. Farish, 675 P.2d 300 (Colo. 1984). The district attorney's analysis of factors in support of declining prosecution were not so overwhelmed by factors that favor prosecution as to compel the conclusion that the district attorney's exercise of broad discretion was arbitrary and capricious. J.S. v. Chambers, 226 P.3d 1193 (Colo. App. 2009).

PART 3

PRELIMINARY HEARING

16-5-301. Preliminary hearing or waiver - dispositional hearing.

(1) (a) Every person accused of a class 1, 2, or 3 felony or level 1 or level 2 drug felony by direct information or felony complaint has the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information or felony complaint was committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony by direct information or felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 18-1.3-406, C.R.S., or is a sexual offense under part 4 of article 3 of title 18, C.R.S., shall have the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information or felony complaint was committed by the defendant. The procedure to be followed in asserting the right to a preliminary hearing and the time within which demand therefor must be made, as well as the

time within which the hearing, if demanded, shall be had, shall be as provided by applicable rule of the supreme court of Colorado. A failure to observe and substantially comply with such rule shall be deemed a waiver of this right to a preliminary hearing.

(b) (I) No person accused of a class 4, 5, or 6 felony or level 3 or level 4 drug felony by direct information or felony complaint, except those which require mandatory sentencing or which are crimes of violence as defined in section 18-1.3-406, C.R.S., or which are sexual offenses under part 4 of article 3 of title 18, C.R.S., shall have the right to demand or receive a preliminary hearing; except that such person shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution.

(II) Any defendant accused of a class 4, 5, or 6 felony or level 3 or level 4 drug felony who is not otherwise entitled to a preliminary hearing pursuant to subparagraph (I) of this paragraph (b), may demand and shall receive a preliminary hearing within a reasonable time pursuant to paragraph (a) of this subsection (1), if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing.

(III) The chief justice of the Colorado supreme court is encouraged to promulgate rules defining the term "dispositional hearing" for purposes of this subsection (1)(b), section 18-1-404 (2), and section 19-2.5-609 (2).

(2) If a person is accused of an unlawful sexual offense classified as a felony, upon the request of any party to the proceeding, the court may exclude from the preliminary hearing any member of the general public. In making a ruling for exclusion, the court shall:

(a) Set forth sufficient findings of fact and conclusions of law to support the order; and

(b) Make its order sufficiently narrow to protect the requesting party's compelling interest considering any reasonable alternative to exclusion for the entire hearing of all members of the general public.

(3) The court may exempt a victim's advocate from any order entered pursuant to subsection (2) of this section. For the purposes of this section, "victim's advocate" means any person whose regular or volunteer duties include the support of an alleged victim of physical or sexual abuse or assault.

Source: L. 72: R&RE, p. 217, § 1. **C.R.S. 1963:** § 39-5-301. **L. 73:** p. 499, § 3. **L. 87:** Entire section amended, p. 603, § 2, effective July 1. **L. 92:** Entire section amended, p. 321, § 1, effective July 1. **L. 98:** (1) amended, p. 1272, § 1, effective July 1. **L. 2000:** (1)(b)(II) amended, p. 454, § 11, effective April 24. **L. 2002:** (1)(a) and (1)(b)(I) amended, p. 1490, § 133, effective October 1. **L. 2013:** (1)(a) and (1)(b)(II) amended, (SB 13-250), ch. 333, p. 1929, § 40, effective

October 1. **L. 2014:** (1)(b)(I) amended, (SB 14-163), ch. 391, p. 1979, § 23, effective June 6. **L. 2021:** (1)(b)(III) amended, (SB 21-059), ch. 136, p. 712, § 21, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a) and (1)(b)(I), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 10 (June 1931). For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For note, "Preliminary Hearings — The Case for Revival", see U. Colo. L. Rev. 580 (1967). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to right of access to criminal proceedings, see 15 Colo. Law. 1563 (1986). For article, "Felony Preliminary Hearings in Colorado", see 17 Colo. Law. 1085 (1988).

Annotator's note. Since § 16-5-301 is similar to repealed § 39-5-1, C.R.S. 1963, CSA, C. 48, § 461, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Right to preliminary hearing has constitutional foundation. Defendant in requesting and obtaining a preliminary hearing is exercising a right that is not only guaranteed him by statute and rule of court, but also one that has a constitutional foundation. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

There is no constitutional requirement making a preliminary hearing a prerequisite to a prosecution by information. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

There is no federal constitutional requirement of a preliminary hearing before proceeding by information. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969); People v. Moody, 630 P.2d 74 (Colo. 1981).

The primary purpose of the preliminary hearing is to determine whether probable cause exists to support the prosecution's charge that the accused committed a specific crime. People v. Quinn, 183 Colo. 245, 516 P.2d 420 (1973); People v. Lancaster, 683 P.2d 1202 (Colo. 1984); People v. District Court, 779 P.2d 385 (Colo. 1989); People v. Sutherland, 886 P.2d 681 (Colo. 1994).

The preliminary hearing is held for the limited purpose of determining if probable cause exists to believe that the crime or crimes charged were committed by the defendant. People ex rel. Farina v. District Court, 184 Colo. 406, 521 P.2d 778 (1974).

The sole issue at the preliminary hearing is probable cause. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

The preliminary hearing is a screening device to determine whether probable cause exists. People v. Weaver, 182 Colo. 221, 511 P.2d 908 (1973).

A preliminary hearing is a screening device and does not require that the prosecution lay out for inspection and for full examination all witnesses and evidence. People v. Quinn, 183 Colo. 245, 516 P.2d 420 (1973).

Evidence to support a conviction is not required at a preliminary hearing. People v. Brisbin, 727 P.2d 374 (Colo. 1986); People v. District Court, 779 P.2d 385 (Colo. 1989).

The preliminary hearing was created as a screening device to afford the defendant an opportunity to challenge the sufficiency of the prosecution's evidence to establish probable cause before an impartial judge. People ex rel. Farina v. District Court, 184 Colo. 406, 521 P.2d 778 (1974).

Because the preliminary hearing is a screening device, much latitude is accorded the prosecution at this stage, and the trial court is obligated to view the evidence presented in the light most favorable to the prosecution. People v. District Court, 803 P.2d 193 (Colo. 1990).

Trial court did not have the authority to dismiss defendant's felony charge on the basis that defendant had not received a timely preliminary hearing. Because defendant was not in the custody of the county charging him with the felony, he was not legally entitled to a preliminary hearing. People v. Pena, 250 P.3d 592 (Colo. App. 2009), overruled in People v. Subjack, 2021 CO 10, 480 P.3d 114.

Preliminary hearing does not alter proposition that accused entitled to one trial on merits. Although a preliminary hearing provides the defendant with an early opportunity to question the government's case, it is not designed to alter the basic proposition that an accused is entitled to one trial on the merits of the charge. People v. Quinn, 183 Colo. 245, 516 P.2d 420 (1973).

Standards for determining probable cause at preliminary hearing are: (1) Probable cause is established when the evidence is sufficient to induce a person of ordinary prudence and caution to a reasonable belief that the defendant committed the crimes charged; (2) the evidence presented must be viewed in the light most favorable to the prosecution; (3) if testimony conflicts, the trial court must draw an inference for the prosecution; and (4) the preliminary hearing is a screening device and not a trial. People v. Williams, 628 P.2d 1011 (Colo. 1981); Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Judge without jurisdiction to adjudge ultimate guilt. In a preliminary hearing of one charged with the commission of a crime, the judge is without jurisdiction to adjudge the ultimate guilt or innocence of the accused. Ex parte Snyder, 110 Colo. 35, 129 P.2d 672 (1942).

Judging the merits of a case is for the trier of facts at trial and not for the trial judge at a preliminary hearing. People v. District Court, 779 P.2d 385 (Colo. 1989).

Hearsay and other evidence may be bulk of evidence at hearing. Hearsay and

other evidence, which would be incompetent if offered at the time of trial, may be the bulk of evidence at a preliminary hearing. People v. Quinn, 183 Colo. 245, 516 P.2d 420 (1973).

Hearsay evidence considered to establish probable cause. Hearsay evidence, which would otherwise be inadmissible at the trial, may be considered for purposes of establishing probable cause. People v. Williams, 628 P.2d 1011 (Colo. 1981).

Prosecution satisfies minimum requirements for use of hearsay at preliminary hearing if it: (1) Presents some competent nonhearsay evidence that addresses an essential element of the offense; and (2) presents the hearsay evidence through a witness who is connected to the offense or its investigation rather than someone merely reading from a report. In this case, the prosecution satisfied the status elements of the offense through nonhearsay testimony and produced the victim's testimony (hearsay) through the investigating officer who was familiar with the case. People v. Huggins, 220 P.3d 977 (Colo. App. 2009).

Court's failure to apply correct standard for use of hearsay at preliminary hearing was abuse of discretion. Applying the correct standard, the evidence presented at the preliminary hearing established probable cause to believe the defendant committed the charged offenses. People v. Huggins, 220 P.3d 977 (Colo. App. 2009).

Resolving admissibility of such evidence. The admissibility at a preliminary hearing of a confession which is alleged to be involuntary or the admissibility of evidence that may have been seized in violation of the fourth amendment to the United States Constitution need not be resolved on the same basis that would be required when such motion is properly before the trial court or at the time of the trial. People v. Quinn, 183 Colo. 245, 516 P.2d 420 (1973).

Failure to establish an articulable suspicion for stopping defendant or probable cause for arrest at preliminary hearing is not grounds for dismissal of charges. People v. Brisbin, 727 P.2d 374 (Colo. 1986).

Probable cause finding may be based largely on hearsay testimony. Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

However reliance on hearsay evidence must not be abused. Maestas v. District Ct., 541 P.2d 889 (Colo. 1975); Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Preliminary hearing deemed waived if not demanded. The statutory right to receive a preliminary hearing is not absolute and requires that either the defendant or his attorney, or the prosecuting attorney, file a written motion demanding the preliminary hearing; if the defendant fails to file a written motion for a preliminary hearing, he is deemed to have waived his right to demand one. People v. Moody, 630 P.2d 74 (Colo. 1981).

This section requires a preliminary hearing whenever a defendant who is out of custody is charged with a class 4, 5, or 6 felony that always requires mandatory sentencing, but not if the class 4, 5, or 6 felony charged may require mandatory sentencing. People v. Hacke, 2023 CO 6, 524 P.3d 8.

A defendant charged with a class 4 felony is entitled to a preliminary hearing on an offense so long as the defendant is in custody for that offense. A defendant who is in custody for an unrelated conviction is still in custody for the offense for which the preliminary hearing is requested if the defendant has not posted bond on those charges. People v. Subjack, 2021 CO 10, 480 P.3d 114 (overruling People v. Taylor, 104 P.3d 269 (Colo. App. 2004), and People v. Pena, 250 P.3d 592 (Colo. App. 2009)).

A defendant charged with a class 5 felony is conferred the right to a preliminary hearing only if that defendant is in custody for the offense for which the preliminary hearing is requested. The defendant's right to a preliminary hearing is lost under the circumstance that he or she is in custody for an offense other than that for which the preliminary hearing is requested. People v. Taylor, 104 P.3d 269 (Colo. App. 2004), overruled in People v. Subjack, 2021 CO 10, 480 P.3d 114.

A defendant who was originally out on bond and then rearrested and placed in custody for failing to appear at a hearing is entitled to a preliminary hearing while in custody for a class 4, 5, or 6 felony. People v. Brothers, 2021 COA 109M, 498 P.3d 1134.

Refusal to appear constitutes waiver. In addition to an express written waiver, refusal by a defendant to appear at a scheduled preliminary hearing where the county judge had advised the defendant's attorney that the defendant's presence was required constitutes an implied waiver and extinguishes the defendant's right to a preliminary hearing in county court. People v. Abbott, 638 P.2d 781 (Colo. 1981).

As does failure to appear. Where it is clear that a defendant was apprised of his right to a hearing and of the date on which he was required to appear, the failure of both the defendant and his attorney to appear constitutes an implied waiver of the preliminary hearing. People v. Abbott, 638 P.2d 781 (Colo. 1981).

Application for deferred sentencing does not constitute waiver of right to preliminary hearing. Celestine v. District Court, 199 Colo. 514, 610 P.2d 1342 (1980).

Effect of waiver of preliminary hearing. If the defendant elects to waive the preliminary hearing and to proceed to trial, the waiver operates as an admission by the defendant that sufficient evidence does exist to establish probable cause that the defendant committed the crimes charged. People ex rel. Farina v. District Court, 184 Colo. 406, 521 P.2d 778 (1974).

An express written waiver by a defendant of his right to a preliminary hearing operates identically to a failure to file within the time limit prescribed by Crim. P. 5(a)(5), both requiring the defendant's case to be bound

over for trial. People v. Abbot, 638 P.2d 781 (Colo. 1981).

Once a county court has bound a defendant over to the district court for trial, the district court is without authority or power to grant the defendant a preliminary hearing. People v. Taylor, 104 P.3d 269 (Colo. App. 2004), overruled in People v. Subjack, 2021 CO 10, 480 P.3d 114.

District court cannot restore waived right. Under the Colorado rules of criminal procedure and the statutes of this state, a district court is not vested with the power to restore a defendant's statutory right to a preliminary hearing once the defendant had waived that right in county court bind-over proceedings. People ex rel. Farina v. District Court, 184 Colo. 406, 521 P.2d 778 (1974); People v. Abbott, 638 P.2d 781 (Colo. 1981); People v. Taylor, 104 P.3d 269 (Colo. App. 2004), overruled in People v. Subjack, 2021 CO 10, 480 P.3d 114.

Where district court finds that defendant's waiver of right to preliminary hearing is ineffective, the district court has the authority to restore defendant's right to a preliminary hearing. People v. Nichelson, 219 P.3d 1064 (Colo. 2009).

Defendant entitled to a preliminary hearing on all class 1, 2, or 3 felonies even when the felony classification results from a sentence enhancer. People v. Simpson, 2012 COA 156, 292 P.3d 1153.

Defendant entitled to a preliminary hearing pursuant to criteria of subsection (1)(b)(II) for a class 4 felony driving under the influence (DUI). Defendant was charged with a class 4 felony DUI, not a misdemeanor DUI and a separate sentence enhancer. People v. Tafoya, 2019 CO 13, 434 P.3d 1193.

Defendant who is not in custody entitled to a preliminary hearing pursuant to subsection (1)(a) whenever charged with a class 4, 5, or 6 felony when felony charge requires the imposition of a mandatory period of incarceration. People v. Huckabay, 2020 CO 42, 463 P.3d 283.

Court erred in denying preliminary hearing for defendant charged with felony DUI, which requires mandatory sentencing to a period incarceration which could include incarceration either in the department of corrections or in county jail. People v. Huckabay, 2020 CO 42, 463 P.3d 283.

Defendant entitled to a preliminary hearing when special offender allegation affects the level of offense defendant is accused of and charged with, regardless of whether the special offender allegation is deemed an element or a sentence enhancer. But sentence enhancer counts that seek solely to punish a defendant more severely for committing a crime charged in another count do not qualify for a preliminary hearing. People v. Vanness, 2020 CO 18, 458 P.3d 901 (overruling People v. Garcia, 176 P.3d 872 (Colo. App. 2007)).

Defendant who has an active warrant for his arrest on a class 5 felony offense but has not yet been arrested on that offense is not in custody for that offense

and therefore not entitled to a preliminary hearing, even though defendant is incarcerated in another state for an unrelated crime. People v. Allen, 2024 COA 43M, 553 P.3d 236.

Defendant not entitled to preliminary hearing because the substantive offense with which defendant was charged was a misdemeanor. People v. Garcia, 176 P.3d 872 (Colo. App. 2007), overruled in People v. Vanness, 2020 CO 18, 458 P.3d 901.

The charge of habitual domestic violence offender is a sentence enhancer which, if proven, would enhance the level of the misdemeanor offense to a class 5 felony and would require mandatory sentencing. People v. Garcia, 176 P.3d 872 (Colo. App. 2007), overruled in People v. Vanness, 2020 CO 18, 458 P.3d 901.

Habitual criminal counts. Inasmuch as habitual criminal counts do not constitute "offenses", probable cause need not be established in the preliminary hearing to bind these charges over to the district court. Maestas v. District Court, 189 Colo. 443, 541 P.2d 889 (1975).

Habitual criminal charges are not substantive offense and such a count could be added to a complaint without another preliminary hearing. People v. Hodge, 694 P.2d 1277 (Colo. App. 1984).

Juvenile who was transferred to the district court from the juvenile court, after a transfer hearing where probable cause as to the offenses charged was determined, was not entitled in the district court to another determination of probable cause in the form of a preliminary hearing. People v. Flanigan, 189 Colo. 43, 536 P.2d 41 (1975).

All evidence presented in a preliminary hearing must be viewed in the light most favorable to the prosecution, and all inferences must be resolved in favor of the prosecution. Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Where technical difficulties prevented defendant from obtaining a transcript of the preliminary hearing, the judge abused his discretion in denying defendant's motion for a second preliminary hearing. Such motion should have been granted because the testimony presented at the first preliminary hearing was directly relevant and significant to defendant's trial preparation, the prosecution was expected to rely on testimony presented at the preliminary hearing, and there was no alternative method of reconstructing the testimony from the preliminary hearing. Harris v. District Court, 843 P.2d 1316 (Colo. 1993).

District court does not have jurisdiction to review a county court's finding of probable cause pursuant to C.R.C.P. 106. Defendant may seek extraordinary relief under C.A.R. 21. Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Applied in People v. Boyette, 635 P.2d 552 (Colo. 1981); Chavez v. District Court, 648 P.2d 658 (Colo. 1982); People v. Elmore, 652 P.2d 571 (Colo. 1982).

PART 4

STATUTE OF LIMITATIONS

16-5-401. Limitation for commencing criminal proceedings, civil infraction proceedings, and juvenile delinquency proceedings - definitions.

(1) (a) Except as otherwise provided by statute applicable to specific offenses, delinquent acts, or circumstances, no adult person or juvenile shall be prosecuted, tried, or punished for any offense or delinquent act unless the indictment, information, complaint, or petition in delinquency is filed in a court of competent jurisdiction or a summons and complaint or penalty assessment notice is served upon the defendant or juvenile within the period of time after the commission of the offense or delinquent act as specified below:

Murder, kidnapping, treason, any sex offense against a child, and any forgery regardless of the penalty provided:	No limit
Attempt, conspiracy, or solicitation to commit murder; attempt, conspiracy, or solicitation to commit kidnapping; attempt, conspiracy, or solicitation to commit treason; attempt, conspiracy, or solicitation to commit any sex offense against a child; and attempt, conspiracy, or solicitation to commit any forgery regardless of the penalty provided:	No limit
Vehicular homicide, except as described in subsection (1)(a.5) of this section; leaving the scene of a crash that resulted in the	Five years

death of a person:	
Other felonies:	Three years
Misdemeanors:	Eighteen months
Class 1 and 2 misdemeanor traffic offenses:	One year
Petty offenses:	Six months

(a.5) The period of time during which an adult person or juvenile may be prosecuted for the offense of vehicular homicide, as described in section 18-3-106, and leaving the scene of a crash that resulted in the death of a person, as described in section 42-4-1601 (2)(c), when both offenses are alleged to have occurred as part of the same criminal episode in the same indictment, information, complaint, or petition in delinquency filed in a court of competent jurisdiction is ten years.

(b) Repealed.

(c) For purposes of this section:

(I) "Delinquent act" has the same meaning as defined in section 19-2.5-102.

(II) "Juvenile" has the same meaning as set forth in section 19-1-103.

(III) "Petition in delinquency" means any petition filed by a district attorney pursuant to section 19-2.5-502.

(IV) "Sex offense against a child" means any "unlawful sexual offense", as defined in section 18-3-411 (1), C.R.S., that is a felony.

(1.5) (a) Except as otherwise provided in paragraph (b) of this subsection (1.5), the provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children shall apply to offenses and delinquent acts committed on or after July 1, 1996.

(b) The provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children shall apply to an offense or delinquent act committed before July 1, 1996, if the applicable statute of limitations, as it existed prior to July 1, 2006, has not yet run on July 1, 2006.

(c) It is the intent of the general assembly in enacting the provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children to apply an unlimited

statute of limitations to sex offenses against children committed on or after July 1, 1996, and to sex offenses against children committed before July 1, 1996, for which the applicable statute of limitations in effect prior to July 1, 2006, has not yet run on July 1, 2006.

(2) The time limitations imposed by this section shall be tolled if the adult offender or juvenile is absent from the state of Colorado, and the duration of such absence, not to exceed five years, shall be excluded from the computation of the time within which any complaint, information, indictment, or petition in delinquency must otherwise be filed or returned.

(2.5) (a) (I) The time limitations imposed by this section are tolled while the offender is in a competency-related diversion or deflection program.

(II) As used in this subsection (2.5)(a), "competency-related diversion or deflection program" means a program that offers a potentially incompetent offender the opportunity to avoid the filing or refiling of charges in exchange for the offender's participation and successful completion of a program designed for potentially incompetent persons.

(b) The time limitations imposed by this section are tolled beginning when a defendant's case is dismissed without prejudice for the purpose of facilitating certification for short-term treatment pursuant to section 16-8.5-109 until either the defendant's criminal case is refiled or six months has passed since the case was dismissed, whichever is earlier.

(3) (a) The period within which a prosecution must be commenced does not include any period in which a prosecution is pending against the adult defendant or juvenile for the same conduct, even if the indictment, information, complaint, or petition in delinquency which commences the prosecution is quashed or the proceedings thereon are set aside or are reversed on appeal.

(b) The period within which a prosecution must be commenced does not include any period in which a prosecution is pending against the adult defendant or juvenile for the same conduct, even if filed in a court without jurisdiction, when based on a reasonable belief the court possesses jurisdiction.

(4) When an offense or delinquent act is based on a series of acts performed at different times, the period of limitation prescribed by this code or by the "Colorado Securities Act", article 51 of title 11, C.R.S., starts at the time when the last act in the series of acts is committed.

(4.5) The period within which a prosecution must be commenced begins to run upon discovery of the criminal act or the delinquent act for:

(a) Offenses relating to the "Uniform Commercial Code", pursuant to part 5 of article 5 of title 18, C.R.S.;

(b) Cybercrime, pursuant to article 5.5 of title 18;

(c) Theft, pursuant to section 18-4-401, C.R.S.;

(d) Theft of trade secrets, pursuant to section 18-4-408, C.R.S.;

(e) Defacing or destruction of written instruments, pursuant to section 18-4-507, C.R.S.;

(f) Criminal simulation, pursuant to section 18-5-110, C.R.S.;

(g) Obtaining signature by deception, pursuant to section 18-5-112, C.R.S.;

(h) Criminal impersonation, pursuant to section 18-5-113, C.R.S.;

(i) Offering a false instrument for recording, pursuant to section 18-5-114, C.R.S.;

(j) Dual contracts to induce loan, pursuant to section 18-5-208, C.R.S.;

(k) Issuing a false financial statement or obtaining a financial transaction device by false statements, pursuant to section 18-5-209, C.R.S.;

(l) Unlawful activity concerning the selling of land, pursuant to section 18-5-302, C.R.S.;

(m) Offenses relating to equity skimming, pursuant to part 8 of article 5 of title 18, C.R.S.;

(m.5) Offenses relating to identity theft, pursuant to part 9 of article 5 of title 18, C.R.S.;

(n) Offenses relating to bribery and corrupt influences, pursuant to part 3 of article 8 of title 18, C.R.S.;

(o) Offenses relating to abuse of public office, pursuant to part 4 of article 8 of title 18, C.R.S.;

(p) Offenses relating to perjury, pursuant to part 5 of article 8 of title 18, C.R.S.;

(q) Offenses relating to the "Colorado Organized Crime Control Act", pursuant to article 17 of title 18, C.R.S.;

(r) Unlawful concealment of transactions, pursuant to section 11-107-105, C.R.S.;

(s) Embezzlement or misapplication of funds, pursuant to section 11-107-107, C.R.S.;

(t) Unlawful acts or omissions relating to financial institutions, pursuant to section 11-107-108, C.R.S.;

(u) Repealed.

(v) Criminal offenses relating to savings and loan associations, pursuant to section 11-41-127;

(w) Criminal offenses relating to securities fraud, pursuant to part 5 of article 51 of title 11;

(x) Insurance fraud, pursuant to section 18-5-211;

(y) Tampering with a deceased human body, pursuant to section 18-8-610.5;

(z) Abuse of a corpse, pursuant to section 18-13-101; and

(aa) Criminal offenses relating to misuse of gametes, pursuant to section 18-13-131.

(5) The period of time during which an adult person or juvenile may be prosecuted shall be extended for an additional three years as to any offense or delinquent act charged under sections 18-8-302, 18-8-303, 18-8-306, 18-8-307, 18-8-402, 18-8-406, 18-8-407, 39-21-118, and 39-22-621 (3), C.R.S.

(6) Except as otherwise provided in subsection (1)(a) of this section pertaining to sex offenses against children, felony sexual assault in violation of section 18-3-402, human trafficking for involuntary servitude of an adult or a minor in violation of section 18-3-503, or human trafficking for sexual servitude of an adult in violation of section 18-3-504 (1), the period of time during which an adult person or juvenile may be prosecuted is extended for an additional seven years as to any offense or delinquent act charged under section 18-6-403 or charged as criminal attempt, conspiracy, or solicitation to commit any of the acts specified in said sections.

(7) When the victim at the time of the commission of the offense or delinquent act is a child under fifteen years of age, the period of time during which an adult person or juvenile may be prosecuted shall be extended for an additional three years and six months as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor.

(8) (a) Except as otherwise provided in subsection (1)(a) of this section pertaining to sex offenses against children, felony sexual assault in violation of section 18-3-402, human trafficking for involuntary servitude of an adult or a minor in violation of section 18-3-503, or human trafficking for sexual servitude of an adult in violation of section 18-3-504 (1), and except as otherwise provided in subsections (8)(a.3) and (8)(a.5) of this section, the period of time during which an adult person or juvenile may be prosecuted is ten years after the commission of the offense or delinquent act as to any offense or delinquent act:

(I) Charged under section 18-3-403, C.R.S., as said section existed prior to July 1, 2000, or section 18-6-403, C.R.S.;

(II) Charged as a felony under section 18-3-404, C.R.S.; or

(III) Charged as criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraphs (I) and (II) of this paragraph (a).

(a.3) Except as otherwise provided in subsection (1)(a) of this section concerning sex offenses against children, felony sexual assault in violation of section 18-3-402, human trafficking for involuntary servitude of an adult or a minor in violation of section 18-3-503, or human trafficking for sexual servitude of an adult in violation of 18-3-504 (1), if the victim at the time of the commission of an offense or delinquent act is a child under eighteen years of age, the

period of time during which an adult person or juvenile may be prosecuted is ten years after the victim reaches the age of eighteen years as to any offense or delinquent act:

(I) Charged as a felony under section 18-3-403, C.R.S., as said section existed prior to July 1, 2000, or section 18-3-404, C.R.S.; or

(II) Charged as criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraph (I) of this paragraph (a.3).

(a.5) Except as otherwise provided in subsection (1)(a) of this section concerning sex offenses against children, felony sexual assault in violation of section 18-3-402, human trafficking for involuntary servitude of an adult or a minor in violation of section 18-3-503, or human trafficking for sexual servitude of an adult in violation of section 18-3-504 (1), in any case in which the identity of the defendant or juvenile is determined, in whole or in part, by patterned chemical structure of genetic information, and in which the offense has been reported to a law enforcement agency, as defined in section 26-1-114 (3)(a)(III)(B), within ten years after the commission of the offense, there is no limit on the period of time during which a person may be prosecuted after the commission of the offense as to any offense or delinquent act charged:

(I) (Deleted by amendment, L. 2016.)

(II) Under section 18-3-403, C.R.S., as said section existed prior to July 1, 2000; or

(III) (Deleted by amendment, L. 2016.)

(IV) As criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in subparagraph (II) of this paragraph (a.5).

(a.7) (I) Except as otherwise provided in subsection (1)(a) of this section pertaining to sex offenses against children and except as otherwise provided in subsections (8)(a.3) and (8)(a.5) of this section, the period of time during which an adult person or juvenile may be prosecuted is twenty years after the commission of the offense or delinquent act as to any offense or delinquent act charged as a felony under section 18-3-402, 18-3-503, or 18-3-504 (1), or as criminal attempt, conspiracy, or solicitation to commit a felony under section 18-3-402, 18-3-503, or 18-3-504 (1).

(II) Except as otherwise provided in subsection (1)(a) of this section concerning sex offenses against children, if the victim at the time of the commission of an offense or delinquent act is a child under eighteen years of age, the period of time during which an adult person or juvenile may be prosecuted is twenty years after the victim reaches eighteen years of age as to any offense or delinquent act charged as a felony under section 18-3-402, 18-3-503, or 18-3-504 (1), or as criminal attempt, conspiracy, or solicitation to commit a felony under section 18-3-402, 18-3-503, or 18-3-504 (1).

(III) Except as otherwise provided in paragraph (a) of subsection (1) of this section concerning sex offenses against children, in any case in which the identity of the defendant or

juvenile is determined, in whole or in part, by patterned chemical structure of genetic information, and in which the offense has been reported to a law enforcement agency, as defined in section 26-1-114 (3)(a)(III)(B), C.R.S., within twenty years after the commission of the offense, there shall be no limit on the period of time during which a person may be prosecuted after the commission of the offense:

(A) As to any offense or delinquent act charged as a felony under section 18-3-402, C.R.S.;

(B) Under any other criminal statute if the offense is a felony or would be a felony if committed by an adult and is based on the same act or series of acts arising from the same criminal episode as the offense or delinquent act charged as a felony under section 18-3-402, C.R.S.; except that this sub-subparagraph (B) does not apply if the court finds that there is no probable cause for the felony under section 18-3-402, C.R.S.; or

(C) As to criminal attempt, conspiracy, or solicitation to commit any of the offenses in this subparagraph (III).

(b) This subsection (8) shall apply to offenses and delinquent acts committed on or after July 1, 1984; except that subparagraph (III) of paragraph (a.5) of this subsection (8) applies to offenses and delinquent acts committed on or after July 1, 2011.

(9) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which an adult person or juvenile may be prosecuted shall be five years after the commission of the offense or delinquent act as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor. This subsection (9) shall apply to offenses and delinquent acts committed on or after January 1, 1986.

(10) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which an adult person or juvenile may be prosecuted shall be three years after the date of the affected election as to a charge of any violation of any provision of the "Fair Campaign Practices Act", article 45 of title 1, C.R.S., or any criminal attempt, conspiracy, or solicitation to violate any provision of the "Fair Campaign Practices Act". This subsection (10) shall apply to offenses and delinquent acts committed on or after July 1, 1991.

(11) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the period of time during which an adult person or juvenile may be prosecuted shall be three years after the discovery of the offense or delinquent act as to any offense or delinquent act charged under section 18-4-408, C.R.S. This subsection (11) shall apply to offenses and delinquent acts committed on or after July 1, 1998.

(12) The applicable period of limitations specified in subsection (1) of this section shall not apply to charges of offenses or delinquent acts brought to facilitate the disposition of a case, or to

lesser included or non-included charges of offenses or delinquent acts given to the court or a jury at a trial on the merits, by the accused.

Source: L. 72: R&RE, p. 218, § 1. **C.R.S. 1963:** § 39-5-401. **L. 75:** (5) added, p. 608, § 1, effective May 15. **L. 81:** (1) amended, p. 890, § 2, effective July 1; (5) amended, p. 1879, § 1, effective July 1. **L. 82:** (6) and (7) added, p. 314, § 2, effective July 1; (1)(b) amended, p. 655, § 4, effective January 1, 1983. **L. 85:** (1)(b) repealed, p. 1359, § 8, effective June 28; (6) amended, p. 616, § 5, effective July 1. **L. 87:** (1)(a) amended, p. 1495, § 4, effective July 1; (6) and (7) amended and (8) and (9) added, p. 618, § 1, effective July 1. **L. 89:** (1)(a) amended, p. 827, § 34, effective July 1. **L. 90:** (1)(a) amended, p. 985, § 6, effective April 24. **L. 91:** (10) added, p. 646, § 3, effective May 29; (1)(a) amended and (4.5) added, p. 403, § 3, effective June 6. **L. 92:** (4.5) amended, p. 400, § 7, effective June 3. **L. 93:** (6) and (8) amended, p. 1726, § 4, effective July 1. **L. 94:** (6) and (7) amended, p. 1049, § 3, effective July 1. **L. 95:** (2) amended, p. 462, § 1, effective July 1. **L. 98:** (4.5) amended and (11) added, p. 156, § 2, effective July 1; (10) amended, p. 819, § 17, effective August 5. **L. 2000:** (12) added, p. 454, § 10, effective April 24; (6) and (8)(a)(I) amended, p. 710, § 47, effective July 1. **L. 2001:** Entire section amended, p. 730, § 2, effective July 1; (8)(a) amended and (8)(a.5) added, p. 1057, § 1, effective July 1. **L. 2002:** (8)(a) amended and (8)(a.3) added, p. 1127, § 1, effective June 3. **L. 2003:** (3) amended, p. 973, § 4, effective April 17; (4) amended, p. 1325, § 1, effective July 1; (4.5)(r) to (4.5)(u) amended, p. 1209, § 19, effective July 1. **L. 2006:** (1)(a), (1)(c), (6), (7), (8)(a), (8)(a.3), and (8)(a.5) amended and (1.5) added, p. 410, § 1, effective July 1. **L. 2009:** (1)(a) amended, (HB 09-1081), ch. 302, p. 1609, § 1, effective July 1; (4.5)(m.5) added, (SB 09-093), ch. 326, p. 1738, § 3, effective July 1. **L. 2013:** IP(4.5) and (4.5)(t) amended and (4.5)(u) repealed, (SB 13-154), ch. 282, p. 1486, § 64, effective July 1; (4.5)(u) and (4.5)(v) amended and (4.5)(w) added, (SB 13-229), ch. 272, p. 1427, § 3, effective July 1. **L. 2014:** (1)(a) amended and (1)(a.5) added, (SB 14-213), ch. 344, p. 1535, § 2, effective July 1; (8)(a.5) and (8)(b) amended, (SB 14-059), ch. 58, p. 260, § 1, effective July 1. **L. 2016:** (6), (8)(a), (8)(a.3), and (8)(a.5) amended and (8)(a.7) added, (HB 16-1260), ch. 363, p. 1514, § 1, effective July 1. **L. 2017:** (4.5)(v) and (4.5)(w) amended and (4.5)(x) added, (HB 17-1048), ch. 68, p. 215, § 2, effective August 9. **L. 2018:** (4.5)(b) amended, (HB 18-1200), ch. 379, p. 2292, § 3, effective August 8. **L. 2020:** (4.5)(w) and (4.5)(x) amended and (4.5)(aa) added, (HB 20-1014), ch. 238, p. 1156, § 6, effective September 14; (4.5)(w) and (4.5)(x) amended and (4.5)(y) and (4.5)(z) added, (HB 20-1148), ch. 100, p. 388, § 3, effective September 14. **L. 2021:** (1)(c)(I), (1)(c)(II), and (1)(c)(III) amended, (SB 21-059), ch. 136, p. 712, § 22, effective October 1; (1)(a) amended, (SB 21-271), ch. 462, p. 3163, § 172, effective March 1, 2022. **L. 2022:** (1)(a) amended, (HB 22-1229), ch. 68, p. 341, § 13, effective March 1. **L. 2024:** (6), IP(8)(a), IP(8)(a.3), IP(8)(a.5), (8)(a.7)(I), and (8)(a.7)(II) amended, (SB 24-035), ch. 54, p. 187, § 5, effective April 11. **L. 2025:** (2.5) added, (SB 25-041), ch. 357, p. 1928, § 11, effective August 6. **L. 2026:** (2.5)(b) amended, (SB 26-149), ch. 142, p. 793, § 39,

effective May 21; (1)(a) and (1)(a.5) amended, (HB 26-1237), ch. 117, p. 463, § 7, effective August 12.

Editor's note: (1) Amendments to this section by HB 01-1187 and HB 01-1344 were harmonized. Amendments to subsection (4.5)(u) by Senate Bill 13-154 and Senate Bill 13-229 were harmonized.

(2) Section 4(2) of chapter 100 (HB 20-1148), Session Laws of Colorado 2020, provides that the act changing subsection (4.5) applies to offenses committed on or after September 14, 2020, and all offenses committed prior to September 14, 2020, for which the statute of limitations has not expired.

(3) Section 47 of chapter 68 (HB22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

Cross references: For the "Uniform Commercial Code", see title 4.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For article, "Colorado Criminal Procedure — Does It Meet the Minimum Standards?", see 28 Dicta 14 (1951). For comment on Bustamante v. District Court, see 31 Rocky Mt. L. Rev. 235 (1959). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

Annotator's note. Since § 16-5-401 is similar to repealed § 39-1-3, CRS 53, CSA, C. 48, § 446, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

There is no ex post facto violation where the legislature extends the statute of limitations period for prosecutions not yet time-barred as of the date of the extension. When the general assembly enacted subsection (8)(a.5) in July 2001 and extended the statute of limitations indefinitely for sexual assaults committed after July 1, 1991, that meet the identity and reporting criteria of subsection (8)(a.5), prosecution of the charges against defendant was not yet time-barred. People v. Hicks, 262 P.3d 916 (Colo. App. 2011).

Civil and criminal statutes of limitation distinguished. Statutes of limitation in criminal cases create a bar to the

prosecution, while in civil cases they are merely statutes of repose. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Section limits power of courts to proceed. In criminal cases the state has declared it will not prosecute crimes after the period has run, hence has limited the power of the courts to proceed in the matter as an indictment or information which shows on its face that the prosecution of the offense charged is barred by limitations. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

The phrase "discovery of the criminal act" means the point at which the victim or the state knew or through the exercise of reasonable diligence should have known of the facts establishing the elements of the crime at issue. People v. Cito, 2012 COA 221, 310 P.3d 256.

The time within which an offense is committed is a jurisdictional fact in all cases subject to limitation. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Thus, indictment must allege offense within limitation or exceptions. The act averred in an indictment must appear to have been committed within the period prescribed by the statute of limitations or it is necessary to allege the exception that relieves it from the bar of the statute of limitations, such as that a defendant was a fugitive from justice during all or a part of the period of limitation. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Exceptions in the statute must be negatived by the people in an indictment. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Otherwise the application of this section is automatic whether the crime be a felony or a misdemeanor. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

And denies jurisdiction to prosecute offense not within period limited. The statute of limitations in a criminal case is not merely a defense that may be asserted at a trial as in civil matters, but denies jurisdiction to proceed to prosecute an offense not committed within the period limited. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958) (overruling Packer v. People, 26 Colo. 306, 57 P. 1087 (1899); Wentzel v. People, 55 Colo. 33, 133 P. 415 (1913); and Thorp v. People, 110 Colo. 7, 129 P.2d 296 (1942)).

Where a misdemeanor indictment contains no allegation of a specific offense committed within 18 months of the day the indictment was filed, a trial court has no jurisdiction to try a defendant on the charge set forth therein. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958) (overruling Packer v. People, 26 Colo. 306, 57 P. 1087 (1899); Wentzel v. People, 55 Colo. 33, 133 P. 415 (1913); and Thorp v. People, 110 Colo. 7, 129 P.2d 296 (1942)).

Indictment which fails to allege any date upon which the alleged offense was committed does not confer jurisdiction upon the trial court to consider the case. People v. Thimmes, 643 P.2d 780 (Colo. App. 1981).

When a crime is a continuing offense that is perpetrated over time, the crime continues, and the statute of limitations does not begin to run, as long as the illegal conduct continues. People v. Zuniga, 80 P.3d 965 (Colo. App. 2003).

A crime will not be considered a continuing offense unless the language of the substantive criminal statute compels such a conclusion or the nature of the crime involved is such that the legislature must surely have intended that it be treated as a continuing one. People v. Zuniga, 80 P.3d 965 (Colo. App. 2003).

The theft of money was not complete until defendant cashed the unemployment check, therefore the statute of limitations did not begin to run until said date. Issuance of the unemployment check at an earlier date did not initiate the running of the statute of limitations because the "last act" constituting theft was negotiation of the check. People v. Chavez, 952 P.2d 828 (Colo. App. 1997).

The statute of limitations is a matter of defense. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

The bar of this section may be raised at any time, before or after judgment. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

This section is clear, and if a defendant can bring himself under its protective cloak, he may assert his right at any time and in any manner. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

It may be raised by plea of not guilty or by motion to dismiss for lack of jurisdiction. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Defendant may plead this section specially or meet the question by evidence under the general issue. Dill v. People, 94 Colo. 230, 29 P.2d 1035 (1934).

And defendant is not required to go to trial. Where prosecution of a criminal case appears upon the face of an indictment to be barred by the statute of limitations, a defendant is not required to proceed to trial and urge the statute as a defense. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

A case barred from prosecution by a statute of limitation cannot be revived by subsequent legislation that acts to extend the limitation period. People v. Sheed, 702 P.2d 267 (Colo. 1985).

Because felony charges against juvenile were not filed in a court of competent jurisdiction until after statute of limitations had run, the tolling provision of subsection (3) does not affect the charges, and district court properly determined that it lacked jurisdiction based upon the statute of limitations. People v. Ware, 39 P.3d 1277 (Colo. App. 2001).

Applicability of subsections (6) and (7). Based upon the specific and explicit indication of legislative intent in § 16-5-401.1, subsections (6) and (7) apply to the prosecution of offenses not already time-barred as of July 1, 1982. People v. Holland, 708 P.2d 119 (Colo. 1985).

This 1982 amendment is clear on its face and its clear intent was that it apply to prosecutions not already time barred. Holland v. District Court, 831 F.2d 940 (10th Cir. 1987).

The 1982 amendment extending the statute of limitations from a three-year period to a seven-year period for the offense of sexual assault on a child applies to all offenses which are not time-barred as of the effective date of the amendatory legislation. People v. Whitesell, 729 P.2d 985 (Colo. 1986).

Statute of limitations as amended in 2002 did not bar defendant's prosecution for charge of sexual assault on a child by one in a position of trust since the effective date clause of the 2002 bill amending the statute did not conflict with the bill's substantive amendments. People v. Boston, 214 P.3d 507 (Colo. App. 2009), overruled in People v. Summers, 208 P.3d 251 (Colo. 2009).

Flat 10-year statute of limitations applies to felony sex offenses allegedly committed against children pursuant to § 18-3-411 before June 3, 2002, due to an ambiguity created in the act enacting the 2002 amendments to § 18-3-411. The general statutory construction rule of lenity requires that ambiguity in the meaning of a criminal statute must be interpreted in favor of the defendant. Thus, effective date section of the 2002 legislation amending § 18-3-411 and stating that the act applies to offenses committed on or after passage of the act (June 3, 2002) is controlling despite July 1, 1992 date set forth in the substantive provisions of the statute. People v. Summers, 208 P.3d 251 (Colo. 2009) (decided based upon § 18-3-411 as it existed at the time the alleged crimes were committed prior to 2006 amendments) (overruling People v. Boston, 214 P.3d 507 (Colo. App. 2009)).

A defendant is absent from the state for statute of limitations purposes when he or she has been transferred by the department of corrections (DOC) to an out-of-state facility to serve out the remainder of a state sentence. People v. Butler, 2017 COA 117, 431 P.3d 643.

Applicable limitations period tolled while defendant was incarcerated by DOC in another state. Even though defendant was sent out of state by the DOC and the DOC maintained jurisdiction over him while he was in another state, he was, nonetheless, "absent" from the state. The general assembly did not include in subsection (2) language contemplating a defendant's reason for being out of the state, nor whether the defendant was out of the state voluntarily. People v. Butler, 2017 COA 117, 431 P.3d 643.

Subsection (8)(a.5) eliminates the statute of limitations for prosecution of sexual assaults committed after July 1, 1991, where the defendant's identity is determined in whole or in part by his or her DNA and the offense was reported to a law enforcement agency within 10 years after the commission of the offense. The 10-year statute of limitations in subsection (8)(a) remains in effect for any sexual assault committed between July 1, 1984, and July 1, 1991, and for sexual assaults committed after July 1, 1991, that do not satisfy the

statutory criteria in subsection (8)(a.5). People v. Hicks, 262 P.3d 916 (Colo. App. 2011).

Subsection (8)(a.5) does not require that the victim be the person who reported the offense to a law enforcement agency. People v. Shores, 2016 COA 129, 412 P.3d 894.

Subsection (8)(a.5) applies when DNA evidence plays some role in establishing a defendant's participation in a sexual assault. It is not limited to just when DNA evidence "determines" the defendant's identity. The fact that defendant was considered a suspect before the DNA results does limit the application of subsection (8)(a.5). People v. Sims, 2019 COA 66, 457 P.3d 719.

Manner of proof. When the bar of the statute of limitations is raised by a plea of not guilty, proof must be made by the state showing that its right to prosecute and punish for the offense alleged is not barred. Where the state's own indictment makes the time element material there is no need of further proof. It then is merely the duty of a trial court to apply the statute and quash the indictment. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Prohibition is proper remedy. Where a trial court is without jurisdiction to try defendant under an indictment showing on its face that prosecution is barred by the statute of limitations, prohibition is the proper remedy for relief. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Section applies to offenses relating to banks. Offenses denounced by § 11-11-102, relating to receipt of deposits during insolvency by banks, are felonies within the three-year limitation of this section. People v. Godding, 55 Colo. 579, 136 P. 1011 (1913).

Section also applies where felony is charged and lesser offense is proved. Where a criminal information charges grand larceny, that will not prevent the operation of this section where the offense upon conviction proves to be of a lesser grade, prosecution for which is barred by the statute. Drott v. People, 71 Colo. 383, 206 P. 797 (1922).

Defendant's request for a lesser offense instruction constituted a waiver of the statute of limitations. Subsection (12) creates an exception to the applicable statute of limitations where the defendant has requested a lesser included or nonincluded offense. People v. Lowry, 160 P.3d 396 (Colo. App. 2007).

Under subsection (12), a plea of guilty to facilitate the disposition of a case constitutes a waiver of the statute of limitations. Defendant waived her right to raise the statute of limitations as a defense to the amount of restitution ordered. People v. Wilson, 251 P.3d 507 (Colo. App. 2010); People ex rel. K.W., 2012 COA 151, 317 P.3d 1237.

Subsection (12) applies when the prosecution agreed to allow a juvenile defendant to participate in a diversion program as an alternative to prosecuting a petition for delinquency, because the

diversion program was offered as an alternative to "facilitate the disposition of the case". People ex rel. K.W., 2012 COA 151, 317 P.3d 1237.

Section also applies to complaints. The statute of limitations governing criminal offenses classed as misdemeanors makes specific use of the words "indictment", "information", and "complaint". People v. Read, 132 Colo. 390, 288 P.2d 347 (1955).

"Complaint" for purposes of this section includes a felony complaint that has been filed in a county court to commence felony criminal proceedings. Higgins v. People, 868 P.2d 371 (Colo. 1994).

Indictment charging embezzlement of public money defective. Where an indictment makes a blanket charge of embezzlement of public money averring two dates, one of which is so remote as to be barred by the statute, it is defective. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

In rape cases the complaint must state a specific date or time when it is alleged the transaction occurred. The district attorney may select any act upon which he will rely for a conviction, within the period prescribed in this section for felonies. Laycock v. People, 66 Colo. 441, 182 P. 880 (1919).

In a prosecution for rape where all the acts proved were within the statute of limitation, the prosecution had the right to select from among them that upon which it would rely for conviction; and in the absence of any express election from the record it will be presumed that the prosecution elected to stand by the offense it first introduced evidence to establish; and that evidence of other acts was not introduced to prove substantive offenses, but in corroboration and explanation of the evidence of the act charged. Mitchell v. People, 24 Colo. 532, 52 P. 67 (1898); Abbott v. People, 89 Colo. 121, 299 P. 1053 (1931).

Evidence of acts barred by the statute is inadmissible. In a prosecution for rape it was error to admit evidence of other acts of sexual intercourse that were barred by the statute of limitation. Bigcraft v. People, 30 Colo. 298, 70 P. 417 (1902).

It is error to permit the defendant to be cross-examined, over objection, as to alleged illicit relations with the prosecuting witness occurring more than three years prior to the filing of the information. Curtis v. People, 72 Colo. 350, 211 P. 381 (1922).

In a prosecution for rape evidence of other acts of sexual intercourse with the prosecuting witness, committed within the period of the statute of limitations, is clearly admissible. Schuette v. People, 33 Colo. 325, 80 P. 890 (1905).

And its admission is reversible error. Abbott v. People, 89 Colo. 121, 299 P. 1053 (1931).

Special verdict unnecessary. Special verdict on a plea in bar, based upon the running of the statute of limitations, is not necessary where the issue is presented to the jury under the general issue without objection. Dill v. People, 94 Colo. 230, 29 P.2d 1035 (1934).

When jury instruction on limitation period proper. Instructing the jury that they can find the defendant guilty of sexual assault on a child if they find that the evidence shows that the crime has occurred at any time within three years prior to the filing of the information is proper if evidence of only one transaction is admitted and there is some question as to the date of the incident. People v. Estorga, 200 Colo. 78, 612 P.2d 520 (1980).

Amendment of information at close of evidence was permissible where amendment related to acts occurring within the statutory limitation period, date of offense was neither a material element nor an issue at trial, and the amendment did not involve an altered accusation or require a different defense strategy from the one defendant had chosen under the initial information. People v. Metcalf, 926 P.2d 133 (Colo. App. 1996).

The statute of limitations set forth in § 13-80-102, and not that in this section, applies to a theft claim brought under § 18-4-405. Michaelson v. Michaelson, 923 P.2d 237 (Colo. App. 1995).

General assembly intended the discovery tolling provision of the statute of limitations to be applicable to theft committed against at-risk adults. Theft against an at-risk adult enhances a general theft crime. Accordingly, it is immaterial that the discovery tolling provision does not expressly include or exclude thefts committed against at-risk adults. People v. McKinney, 99 P.3d 1038 (Colo. 2004).

Because the discovery tolling provision of the statute of limitations, subsection (4.5)(c), applies to general theft, it also includes theft from an at-risk adult, which is an enhanced form of general theft. Accordingly, the period within which a prosecution for theft against an at-risk adult must be commenced does not begin to run until the time the victim discovers the criminal act. People v. McKinney, 99 P.3d 1038 (Colo. 2004).

Applied in People v. Bowen, 658 P.2d 269 (Colo. App. 1982); People v. Green, 658 P.2d 281 (Colo. 1983).

16-5-401.1. Legislative intent in enacting section 16-5-401 (6) and (7).

(1) The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses and delinquent acts specified in said subsections committed on or after July 1, 1979.

(2) (Deleted by amendment, L. 94, p. 1050, § 4, effective July 1, 1994.)

Source: L. 85: Entire section added, p. 616, § 6, effective June 2. **L. 87:** Entire section amended, p. 619, § 2, effective July 1. **L. 94:** Entire section amended, p. 1050, § 4, effective July 1. **L. 2001:** (1) amended, p. 734, § 3, effective July 1.

ANNOTATION

Effect of section. While subsequent legislative declarations concerning the intent of an earlier statute are not controlling, they are entitled to significant weight. People v. Holland, 708 P.2d 119 (Colo. 1985); People v. Midgley, 714 P.2d 902 (Colo. 1986).

This section was unnecessary to clarify intent since the 1982 amendment to § 16-5-401 was clear on its face. Holland v. District Court, 831 F.2d 940 (10th Cir. 1987).

16-5-402. Limitation for collateral attack upon trial judgment - definitions.

(1) Except as otherwise provided in subsection (2) of this section, no person who has been convicted as an adult or who has been adjudicated as a juvenile under a criminal statute of this or any other state of the United States shall collaterally attack the validity of that conviction or adjudication unless such attack is commenced within the applicable time period, as provided in this subsection (1), following the date of said conviction, or for purposes of juvenile adjudication the applicable time period will begin at the time of the juvenile's eighteenth birthday:

All class 1 felonies:	No limit
All other felonies:	Three years
Misdemeanors:	Eighteen months
Petty offenses:	Six months

(1.5) If an appellate court can determine on the face of the motion, files, and record in a case that a collateral attack is outside the time limits specified in subsection (1) of this section, the appellate court may deny relief on that basis, regardless of whether the issue of timeliness was raised in the trial court.

(2) In recognition of the difficulties attending the litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders, the only exceptions to the time limitations specified in subsection (1) of this section are:

(a) A case in which the court entering judgment of conviction or entering adjudication did not have jurisdiction over the subject matter of the alleged offense;

(b) A case in which the court entering judgment of conviction or entering adjudication did not have jurisdiction over the person of the defendant or juvenile;

(c) Where the court hearing the collateral attack finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the defendant or juvenile to an institution for treatment as a person with a mental health disorder; or

(d) Where the court hearing the collateral attack finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.

(3) Repealed.

(4) For purposes of this section:

(a) "Adjudication", except as used in subsection (2)(c) of this section, includes "adjudicated" and has the same meaning as defined in section 19-2.5-102.

(b) "Juvenile" has the same meaning as set forth in section 19-1-103.

Source: L. 81: Entire section added, p. 926, § 3, effective July 1. **L. 84:** (2)(b) and (2)(c) amended and (2)(d) added, p. 486, § 1, effective February 6. **L. 98:** (1.5) added, p. 948, § 10, effective May 27. **L. 2001:** Entire section amended, p. 734, § 4, effective July 1. **L. 2002:** (4)(b) amended, p. 1016, § 17, effective June 1; (3) repealed, p. 761, § 11, effective July 1. **L. 2006:** (2)(c) amended, p. 1397, § 41, effective August 7. **L. 2018:** IP(2) and (2)(c) amended, (SB 18-091), ch. 35, p. 384, § 14, effective August 8. **L. 2021:** (4) amended, (SB 21-059), ch. 136, p. 713, § 23, effective October 1.

Cross references: (1) For collateral attacks upon convictions of traffic infractions, see § 42-4-1708 (5); for collateral attacks upon convictions of alcohol- or drug-related traffic offenses, see § 42-4-1702.

(2) For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Attacking Prior Convictions in Habitual Criminal Cases: Avoiding the Third Strike", see 11 Colo. Law. 1225 (1982). For article, "Colorado's Revived Collateral Attack Statute", see 19 Colo. Law. 843 (1990).

Convictions which occurred prior to 1972 are included within the statutory limitations. People v. Padilla, 878 P.2d 4 (Colo. App. 1993), rev'd on other grounds, 907 P.2d 601 (Colo. 1995).

Expiration of time period in subsection (1) was not intended to divest the trial court of subject matter jurisdiction to consider defendant's contentions. People v. Shackelford, 851 P.2d 218 (Colo. App. 1992).

The purpose of the limitations period in this section is to alleviate the difficulties attending litigation of stale claims and the potential for frustrating various statutory provisions directed at repeat offenders, former offenders, and habitual offenders. People v. Merchant, 983 P.2d 108 (Colo. App. 1999); Robbins v. People, 107 P.3d 384 (Colo. 2005).

Prosecution must assert the time bar in trial court. Section does not automatically divest trial court of jurisdiction to hear defendant's contentions. People v. Shackelford, 851 P.2d 218 (Colo. App. 1992).

State waived time bar to Crim. P. 35(b) motion by not raising it in trial court. People v. St. John, 934 P.2d 865 (Colo. App. 1996).

The time limits in subsection (1) are specifically categorized by level of offense, so, in a case in which defendant is convicted of a class 1 felony and other felonies, the time limit for the class 1 felony does not control the time limit for all of the convictions that are not class 1 felonies. Defendant's challenges to the non-class 1 felonies in a Crim. P. 35(c) motion were subject to the three-year statute of limitations. People v. Stovall, 2012 COA 7M, 284 P.3d 151.

The subsection (1) limitation period is not tolled during the litigation of a postconviction relief motion. People v. Clouse, 74 P.3d 336 (Colo. App. 2002).

Neither the timely commencement of a collateral attack, nor the pendency of an appeal from the denial of Crim. P. 35(c) relief, tolls the limitation period with respect to later asserted postconviction claims. People v. Clouse, 74 P.3d 336 (Colo. App. 2002); People v. Silva, 131 P.3d 1082 (Colo. App. 2005), aff'd in part, rev'd in part on other grounds, 156 P.3d 1164 (Colo. 2007).

A hand-written letter that does not assert any claims for defendant's Crim. P. 35(c) motion does not toll the time limit in this section. People v. Stovall, 2012 COA 7M, 284 P.3d 151.

Section 13-81-103 (1)(a) does not toll the statute of limitations set forth in subsection (1) of this section for collateral attacks on convictions based on competency because subsection (2) of this section identifies the only exceptions to the time limitations in subsection (1); subsection (2) includes a competency-related exception that does not mirror § 13-81-103; this section was enacted after § 13-81-103; and this section applies specifically to collateral attacks on convictions while § 13-81-103 applies generally. People v. Worosello, 2019 COA 166, 463 P.3d 308.

A late Crim. P. 35(c) motion may still be considered if a defendant can establish

justifiable excuse or excusable neglect. Silva v. People, 156 P.3d 1164 (Colo. 2007).

When an illegal sentence is corrected pursuant to Crim. P. 35(a), it renews the three-year deadline for collaterally attacking the original judgment of conviction pursuant to Crim. P. 35(c). Leyva v. People, 184 P.3d 48 (Colo. 2008).

However, the corrected sentence only allows defendants to raise arguments addressing how the illegality in their sentence affected the original conviction. Leyva v. People, 184 P.3d 48 (Colo. 2008); Hunsaker v. People, 2021 CO 83, 500 P.3d 1110.

When original judgment of conviction contains an illegal sentence on one count, the entire sentence is illegal. Leyva v. People, 184 P.3d 48 (Colo. 2008).

The sentence is therefore subject to correction and the judgment of conviction is subject to amendment, making the judgment of conviction not final or fully valid. Leyva v. People, 184 P.3d 48 (Colo. 2008) (suggestion that a "conviction" does not occur until a sentence is correct disavowed in Hunsaker v. People, 2021 CO 83, 500 P.3d 1110).

Defendant bears the burden of establishing the existence of justifiable excuse or excusable neglect and must allege facts which, if proven, would carry that burden. Absent such allegations, he is not entitled to a hearing on the applicability of the time bar. People v. Abad, 962 P.2d 290 (Colo. App. 1997); People v. White, 981 P.2d 624 (Colo. App. 1998).

There is no authority for the proposition that a habeas corpus action in federal court affects either the finality of a judgment entered at the conclusion of a criminal appeal in the state courts or the jurisdiction of the state courts to entertain a collateral challenge to the conviction. People v. Abad, 962 P.2d 290 (Colo. App. 1997).

When a trial court fails to consider the factors that could establish excusable neglect, remand for further proceedings is appropriate. People v. Kadell, 2017 COA 124, 411 P.3d 281.

Ignorance of time bar itself does not constitute justifiable excuse or excusable neglect. People v. White, 981 P.2d 624 (Colo. App. 1998).

The lack of legal assistance does not constitute justifiable excuse or excusable neglect. Nor does the defendant's limited statutory right to post-conviction counsel include the right to have counsel appointed for the purpose of establishing justifiable excuse or excusable neglect unless some factually sufficient grounds to support that assertion are appropriately alleged. People v. White, 981 P.2d 624 (Colo. App. 1998).

An exception to the time limit in subsection (1), for bringing post-conviction motions under Crim. P. 35(c), exists if a defendant demonstrates that the failure to seek timely relief was the result of justifiable excuse or excusable neglect. People v. Green, 36 P.3d 125 (Colo. App. 2001).

Counsel's affirmative and erroneous advice about the immigration consequences of a defendant's plea may

constitute justifiable excuse or excusable neglect for failure to pursue timely collateral relief, and therefore merits a hearing. If a trial court finds that justifiable excuse or excusable neglect exists for a late filing, then the trial court should determine the merits of the defendant's section (c) motion. People v. Martinez-Huerta, 2015 COA 69, 363 P.3d 754.

Standard for holding a hearing is whether the facts alleged, if true, would constitute justifiable excuse or justifiable neglect. People v. Chavez-Torres, 2019 CO 59, 442 P.3d 843. But see People v. Alvarado Hinojos, 2019 CO 60, 444 P.3d 755.

Allegation that counsel failed to advise defendant of immigration consequences of plea, in conjunction with the plea agreement and plea hearing transcript that failed to mention immigration consequences, would constitute justifiable excuse or justifiable neglect entitling defendant to a hearing. People v. Chavez-Torres, 2016 COA 169M, 410 P.3d 690, aff'd, 2019 CO 59, 442 P.3d 843.

There is no express implication that the equitable doctrine of laches was abrogated by the enactment of this section. Robbins v. People, 107 P.3d 384 (Colo. 2005).

The doctrine of laches is applicable to persons convicted of class one felonies. The absence of a limitations period for class one felonies in subsection (1) is because the general assembly determined that it would be inappropriate to establish a fixed period for post-conviction motions for the most serious offenses. Such a legislative determination does not manifest a clear intent to deprive courts of their preexisting ability to apply the doctrine of laches to class one felony cases. Trial courts may continue to assess individually whether equitable considerations should preclude post-conviction relief when a defendant has been convicted of a class one felony. People v. Robbins, 87 P.3d 120 (Colo. App. 2003), aff'd, 107 P.3d 384 (Colo. 2005).

The doctrine of laches should apply in the analysis when a Crim. P. 35(c) claim is timely filed within statutory limits but not subsequently timely pursued. Crim. P. 35(c) provides a postconviction remedy grounded in equitable principles, and under certain circumstances, laches may work to bar defendant's claim for relief where this section would not. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

Trial court was correct to consider whether postconviction counsel's conduct constituted justifiable excuse or excusable neglect and may therefore provide an exception to the operation of the doctrine of laches. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

Detrimental reliance, unlike prejudice, is not an element of laches. Prosecution was prejudiced by defendant's delay in filing postconviction motion and was not required to show that it detrimentally relied on defendant's failure to file a postconviction motion within a reasonable time. People v. Lanari, 2014 COA 73, 410 P.3d 516.

This section violates due process of law under the federal and state constitutions because it precludes collateral challenges to

the constitutional admissibility of prior convictions in pending prosecutions solely on the basis of a time bar, without providing the defendant an opportunity to show that the failure to assert a timely constitutional challenge was the result of circumstances amounting to justifiable excuse or excusable neglect. People v. Leonard, 673 P.2d 37 (Colo. 1983); People v. Dugger, 673 P.2d 351 (Colo. 1983); People v. Germany, 674 P.2d 345 (Colo. 1983) (all decisions decided prior to enactment of subsection (2)(d) in 1984).

Constitutionality. The construction that this section applies to postconviction challenges to criminal convictions under Crim. P. 35(c) does not violate the constitutional protections of habeas corpus, separation of powers, due process, or equal protection of the laws. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993); People v. Boehmer, 872 P.2d 1320 (Colo. App. 1993).

The application of this section to bar a motion to challenge a prior conviction in an unrelated proceeding does not violate the constitution. The justifiable excuse or excusable neglect exception in subsection (2)(d) provides a defendant with a meaningful opportunity to challenge allegedly unconstitutional convictions. People v. Deskins, 904 P.2d 1358 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 927 P.2d 368 (Colo. 1996).

Defendant lacks standing to challenge constitutionality of § 16-5-402 based on the argument that subsection (3) violates due process because subsection (3) is severable from the other provisions of this section that are directly implicated, subsection (3) has no application to the present proceeding, and the defendant failed to show he is effected by the alleged unconstitutionality of subsection (3). It is best to defer validity of subsection (3) until the issue is presented by one whose rights are affected and who has an interest in challenging the statute. People v. Heitzman, 852 P.2d 443 (Colo. 1993).

Subsection (3) is unconstitutional. People v. Thomas, 867 P.2d 880 (Colo. 1994).

Holding in Thomas case could have been anticipated by any reasonable person from holding in People v. Germany, 674 P.2d 345 (Colo. 1983), and thus Crim. P. 35(c) motion was time-barred. People v. Collins, 8 P.3d 520 (Colo. App. 2000).

Five-year grace period from the effective date of this section on July 1, 1984, was implied for person seeking to challenge a constitutionally flawed conviction under § 18-1-410, where conviction predated the length of time specified as a limitation period under this section. People v. Fagerholm, 768 P.2d 689 (Colo. 1989); People v. Stephens, 837 P.2d 231 (Colo. App. 1992).

However, for the five-year grace period to apply, a conviction must antedate July 1, 1984, the effective date of this section, by an interval of time in excess of the limitations set forth in this section. People v. Brack, 796 P.2d 49 (Colo. App. 1990).

Only convictions occurring after July 1, 1984, the effective date of this section, are unaffected by the five-year grace period.

People v. Janke, 895 P.2d 1102 (Colo. App. 1994).

Judicially created five-year grace period under this section does not give notice that same five-year grace period applies to collateral attacks brought under § 42-4-1501.5. People v. Trimble, 839 P.2d 1168 (Colo. 1992).

The U.S. supreme court decision in Custis v. U.S., 511 U.S. 485 (1994), does not require a state court to consider a collateral attack on a state court conviction used to enhance a sentence in federal court when the state court conviction was outside of the five-year grace period. People v. Vigil, 955 P.2d 589 (Colo. App. 1997).

Present need standard for postconviction relief not established under collateral attack statute for 30-year-old conviction for violations of municipal ordinances. City & County of Denver v. Rhinehart, 742 P.2d 948 (Colo. App. 1987).

Present need challenge not available. People v. Robinson, 833 P.2d 832 (Colo. App. 1992).

Statute of limitations set forth in this section does not bar the filing of a Crim. P. 35(c) motion by a defendant convicted of first degree murder, a class 1 felony. Duran v. Price, 868 P.2d 375 (Colo. 1994).

Term "collateral attack" includes challenge to a conviction in a suppression hearing in another criminal proceeding. People v. Fultz, 761 P.2d 242 (Colo. App. 1988).

"Collateral attack" as used in this section includes relief sought pursuant to Crim. P. 35. People v. Robinson, 833 P.2d 832 (Colo. App. 1992); People v. Hampton, 857 P.2d 441 (Colo. App. 1992); People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993).

Term "collateral attack" includes relief sought pursuant to Crim. P. 35. Although a distinction exists between collateral attacks and other types of postconviction relief, a successful attack under Crim. P. 35 results in vacation of the conviction at issue and therefore comes within the commonly accepted meaning of "collateral" in the criminal-law context. People v. Robinson, 833 P.2d 832 (Colo. App. 1992); People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993).

Motions under Crim. P. 35(c) are subject to the time bar of this section. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Vigil, 983 P.2d 805 (Colo. App. 1999).

To give effect to the legislative intent expressed clearly in subsection (2), a more expansive definition of "collateral attack" is necessary. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Reference to collateral attacks in this section was intended to include Crim. P. 35(c) motions that seek directly to set aside a judgment in the same court in which it was obtained as well as motions to suppress convictions in a proceeding where the convictions serve a purpose such as

establishing a predicate offense for some other charge. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Time bar in this section applies to requests for post-conviction relief under both § 18-1-410 (1)(b) and Crim. P. 35 (c)(2)(II) where defendant's motion is a collateral attack. People v. Vigil, 983 P.2d 805 (Colo. App. 1999).

The limitation period cannot commence until there is a right to pursue a collateral attack. People v. Manzanares, 85 P.3d 604 (Colo. App. 2003).

Time bar in this section does not apply to a defendant's Crim. P. 32(d) motion. This section imposes time limitations for commencing collateral attacks on judgments of conviction, but a motion to withdraw a guilty plea under Crim. P. 32(d) is not a collateral attack on a judgment of conviction because no judgment of conviction was ever entered. People v. Corrales-Castro, 2015 COA 34M, 412 P.3d 701, rev'd on other grounds, 2017 CO 60, 395 P.3d 778.

Defendant's motion alleging a violation of § 16-14-102(3) was time-barred under this section because it did not allege a jurisdictional defect. While violation of § 16-14-102 (3) would have entitled the defendant to dismissal of the charges, regardless of whether he suffered any prejudice, it did not deprive the court of jurisdiction. Therefore, the trial court properly dismissed defendant's motion as untimely under this section. People v. Slusher, 43 P.3d 647 (Colo. App. 2001).

Collateral attacks on infirmities related to the adjudication of habitual criminality correctly considered under this section. People v. Hampton, 876 P.2d 1236 (Colo. 1994); Hunsaker v. People, 2021 CO 83, 500 P.3d 1110.

Timely collateral attack, not completely adjudicated, upon a previous conviction does not toll the limitations period of this section and allow future attacks upon that same conviction regardless of when such later attacks are filed. People v. Merchant, 983 P.2d 108 (Colo. App. 1999).

Rule of lenity does not apply as the intention of the legislature is expressed with sufficient clarity. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Time limitations in this section are supplementary to and not in conflict with § 18-1-410 and are intended to apply to all forms of post conviction attacks on judgments. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Irreconcilable conflict exists between this section and § 18-1-410, and this section prevails as it is the later enacted statute. People v. Heitzman, 852 P.2d 443 (Colo. 1993).

Statutory limitations in this section do not usurp the supreme court's rule-making authority. While the statute has an incidental effect on judicial procedure, it is primarily an expression of public policy, and therefore it prevails over terms of Crim. P. 35(c)(3) stating that motion may be filed "at any time". People v. Robinson, 833 P.2d 832 (Colo. App. 1992).

Evaluate the applicability of the justifiable excuse or excusable neglect

exception by balancing the interests under the facts of a particular case to give effect to the overriding concern that a defendant have the meaningful opportunity required by due process to challenge his conviction. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993); People v. Shepherd, 43 P.3d 693 (Colo. App. 2001).

In determining if the justifiable excuse or excusable neglect exception applies, consider the following: (1) Circumstances existing throughout the entire period from the inception of the conviction in question; (2) Relative strengths of various interests at stake; (3) Existence of circumstances or outside influences preventing a challenge to a prior conviction; (4) Extent to which a defendant having reason to question the constitutionality of a conviction investigates its validity and takes advantage of avenues of relief available to him; (5) Whether the defendant had any previous need to challenge a conviction; (6) Whether the defendant either knew that it was constitutionally infirm or had reason to question its validity; (7) Whether the defendant had other means of preventing the government's use of the conviction so that a postconviction challenge was previously unnecessary; and (8) Extent of time between the date of conviction and the defendant's challenge and the effect that the passage of time has on the state's ability to defend against the challenge. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993); People v. Shepherd, 43 P.3d 693 (Colo. App. 2001).

The length of time defendant waited to file a Crim. P. 35(c) motion after learning of new information that may support a justifiable excuse or excusable neglect exception is relevant to determining whether such an exception applies. People v. Alvorada Hinojos, 2019 CO 60, 444 P.3d 755.

Whether the defendant qualifies for the exception under subsection (2)(d) is a question of fact to ordinarily be resolved by the trial court. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Heitzman, 852 P.2d 443 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993); People v. Clouse, 74 P.3d 336 (Colo. App. 2002).

The trial court may rely on the plea agreement or the plea hearing transcript in denying a Crim. P. 35(c) motion without a hearing on timeliness grounds even though a defendant is not required to provide evidentiary support for his allegations regarding justifiable excuse or excusable neglect. People v. Alvorada Hinojos, 2019 CO 60, 444 P.3d 755. But see People v. Chavez-Torres, 2019 CO 59, 442 P.3d 843.

Whether a defendant has demonstrated justifiable excuse or excusable neglect is a question of fact to be resolved by the trial court, whose ruling is not to be overturned if the record supports its findings. People v. Ambos, 51 P.3d 1070 (Colo. App. 2002).

Justifiable excuse and excusable neglect exception was adopted for the specific purpose of preventing an unconstitutional result of the statute being applied in a manner that would violate due process of

law. People v. Heitzman, 852 P.2d 443 (Colo. 1993).

Implicit in any finding that the statutory exception is not satisfied in a particular case is the conclusion that, acting as a bar to a defendant's claims, the statute is not unconstitutional as applied. People v. Heitzman, 852 P.2d 443 (Colo. 1993).

This section is applicable to postconviction remedies filed pursuant to Crim. P. 35; accordingly, a defendant must be given an opportunity to present evidence of justifiable excuse or excusable neglect when a court raises the time limitation of this section sua sponte. People v. Lanford, 867 P.2d 50 (Colo. App. 1993).

The limitations of this section are applicable to a proportionality review of a sentence imposed pursuant to the habitual criminal statutes. People v. Talley, 934 P.2d 859 (Colo. App. 1996).

Request for proportionality review alleging that sentence violates the eighth amendment to the U.S. constitution is subject to the limitation period set forth in this section. People v. Moore-El, 160 P.3d 393 (Colo. App. 2007).

For the purpose of this section, the word "conviction" includes the recital of the plea, the verdict or findings, the sentence, the finding of the amount of presentence confinement, and costs. People v. Lanford, 867 P.2d 50 (Colo. App. 1993).

Justifiable excuse or excusable neglect. The "excusable neglect" exception to this section cannot be read so broadly that the statutory limitation becomes meaningless. In this instance, the failure to attack the prior conviction within the time period allowed by this section and the grace period was not justified just because the defendant had no present need to attack the conviction until the habitual offender charges were filed. People v. Stephens, 837 P.2d 231 (Colo. App. 1992); People v. Boehmer, 872 P.2d 1320 (Colo. App. 1993).

"Excusable neglect" not found. No excusable neglect existed where defendant claimed he was unable to appeal because he was under the influence of a drug during appeal period, but made no reasonable effort to appeal once free from that influence. People v. Fultz, 761 P.2d 242 (Colo. App. 1988).

Defendant's claim that he had not challenged previous convictions until habitual criminal charges were filed because he had no present need not excusable neglect. People v. Mershon, 844 P.2d 1240 (Colo. App. 1992), aff'd, 874 P.2d 1025 (Colo. 1994); People v. Boehmer, 872 P.2d 1320 (Colo. App. 1993); People v. Penrod, 892 P.2d 383 (Colo. App. 1994).

Defendant's recent discovery of a legal basis for a collateral attack on his conviction based on the provisions of § 16-14-102 did not constitute excusable neglect where he had not otherwise demonstrated some unavoidable hindrance that would have caused a reasonably prudent person to neglect to pursue timely collateral relief. The alleged ineffective assistance of counsel also did not excuse his delay. People v. Slusher, 43 P.3d 647 (Colo. App. 2001).

Lack of funds while incarcerated does not qualify as justifiable excuse or excusable neglect. People v. Merchant, 983 P.2d 108 (Colo. App. 1999).

Defendant's indigence, ignorance of the law, and lack of legal counsel do not amount to justifiable excuse or excusable neglect. Further, the trial court gave no credence to defendant's claim that his counsel failed to advise him of his postconviction rights, since defendant immediately filed a motion to withdraw his plea when a sentence to the department of corrections was imminent. People v. McPherson, 53 P.3d 679 (Colo. App. 2001).

No justifiable excuse or excusable neglect where defendant did not raise a direct appeal or collateral attack of his Virginia conviction until almost 14 years after his conviction had entered. People v. Landis, 9 P.3d 1165 (Colo. App. 2000).

No justifiable excuse or excusable neglect where defendant waited nine years from the date conviction became final to file collateral attack challenging its validity. People v. Jackson, 98 P.3d 940 (Colo. App. 2004).

No justifiable excuse or excusable neglect where defendant asserted he or she could not file a second motion until the first postconviction proceedings were concluded. People v. Silva, 131 P.3d 1082 (Colo. App. 2005), aff'd in part, rev'd in part on other grounds, 156 P.3d 1164 (Colo. 2007).

No justifiable excuse or excusable neglect where defendant waited to file his Crim. P. 35(c) motion until he could accumulate an "unassailable mass" of research studies. The studies cited by defendant, unapplied academic theories, did not constitute evidence, let alone new evidence, for purposes of his motion. People v. Bonan, 2014 COA 156, 357 P.3d 231.

No justifiable excuse or excusable neglect when defendant based his claims on ongoing incompetency, disability, and lack of sufficient mental faculties that resulted in a complete inability to process the unconstitutionality of his conviction, leading him not to investigate or timely pursue post-conviction relief, but defendant had multiple competency evaluations and was found competent to proceed both before he entered his plea and before he was sentenced. People v. Worosello, 2019 COA 166, 463 P.3d 308.

Defendant's motion was untimely filed with no justifiable excuse, because, even though she commenced her collateral attack with a motion filed within the three-year period, that motion was denied and defendant did not appeal the denial. A subsequent motion, filed after the three-year period, could not be considered as relating back to the original motion. People v. Cummins, 37 P.3d 507 (Colo. App. 2001).

Defendant cannot rely on Wells-Yates v. People, 2019 CO 90M, 454 P.3d 191, to justify an untimely collateral attack because that opinion does not apply retroactively. Defendant had not established justifiable excuse or excusable neglect for failing to collaterally attack his prior convictions within three years of being convicted, and defendant's motion for a proportionality review of his sentence was untimely. Ward v. People, 2024 CO 76, 560 P.3d 410.

Ineffective assistance of counsel in Crim. P. 35(c) proceedings is colorable grounds for appointment of conflict-free counsel and a trial court hearing on justifiable excuse and excusable neglect. The allegation that postconviction counsel failed to inform the court of the constitutional limitations of defendant's sentence, which in turn resulted in a sentence twice the constitutionally permissible level, is within the standard for measuring ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984). Close v. People, 180 P.3d 1015 (Colo. 2008).

Justifiable excuse or excusable neglect would be established if the public defender's conflict of interest was the reason for not filing a motion for post-conviction relief on behalf of defendant. People v. Chang, 179 P.3d 240 (Colo. App. 2007).

Justifiable excuse or excusable neglect would be established if the public defender's failure to file a motion for post-conviction relief on behalf of defendant was the result of ineffective counsel. People v. Chang, 179 P.3d 240 (Colo. App. 2007).

Because there is no requirement that appellate counsel advise a defendant of time limitations for seeking postconviction relief, the absence of such advice is not a justifiable excuse for defendant's neglect. People v. Alexander, 129 P.3d 1051 (Colo. App. 2005).

Defendant's misplaced reliance on parole board's interpretation of law concerning parole decisions for sex offenders did not constitute justifiable excuse or excusable neglect to attack conviction outside of three-year period. People v. Perez, 895 P.2d 1090 (Colo. App. 1994).

A defendant's intentional abandonment of claims raised at an earlier proceeding does not amount to justifiable excuse or excusable neglect that would permit a late filing of a postconviction motion. People v. Abeyta, 923 P.2d 318 (Colo. App. 1996).

Ineffective assistance of counsel can constitute justifiable excuse or excusable neglect. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

Mere failure to challenge a conviction does not establish ineffective assistance of counsel nor constitute excusable neglect or justifiable excuse. People v. Boehmer, 872 P.2d 1320 (Colo. App. 1993); People v. Penrod, 892 P.2d 383 (Colo. App. 1994); People v. Rhorer, 946 P.2d 503 (Colo. App. 1997), rev'd on other grounds, 967 P.2d 147 (Colo. 1998).

Defendant's collateral attacks against prior DWAI convictions untimely because convicting court retains subject matter jurisdiction despite alleged violation of defendant's constitutional right to counsel. People v. Burdette, 2024 COA 38, 552 P.3d 1108.

As a matter of law, postconviction counsel's seven-year delay in filing a supplemental motion in a challenge that was filed within the time limits prescribed by this section was, in light of all the circumstances, outside the wide range of professionally competent assistance.

People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

It is appropriate for a trial court to raise the issue sua sponte of whether a defendant's motion for post-conviction relief is untimely under this section. People v. Xiong, 940 P.2d 1119 (Colo. App. 1997).

If a defendant's motion for post-conviction relief is untimely, the trial court may deny the motion without conducting a hearing if the defendant has failed to allege facts which, if true, would establish justifiable excuse or excusable neglect. People v. Xiong, 940 P.2d 1119 (Colo. App. 1997).

The timely commencement of a collateral attack fails to toll the limitations period with respect to additional postconviction claims not contained in the timely filed motion. People v. Ambos, 51 P.3d 1070 (Colo. App. 2002).

For purposes of this section and postconviction review, a "conviction" occurs when the trial court enters judgment and sentence is imposed, if there is no appeal; if an appeal is pursued, then the conviction is not final until the appellate process is exhausted. People v. Hampton, 857 P.2d 441 (Colo. App. 1992), aff'd, 876 P.2d 1236 (Colo. 1994); People v. Clouse, 74 P.3d 336 (Colo. App. 2002); Hunsaker v. People, 2021 CO 83, 500 P.3d 1110.

Where a defendant initiates a direct appeal from a conviction, this section's three-year limitations period does not begin to run until the appeal is exhausted; tolling of the period is not warranted during the pendency of an appeal from the denial of a Crim. P. 35(c) motion. People v. Ambos, 51 P.3d 1070 (Colo. App. 2002).

Direct appeal not reinstated extending the time periods of this section. When, under a Crim. P. 35 motion, post-conviction court appoints counsel to pursue any error in the original appeal, it is not reinstating defendant's direct appeal. People v. Shepard, 151 P.3d 580 (Colo. App. 2006).

Resentencing, upon revocation of probation or rejection from community corrections, does not create a new "conviction". The statutory sentencing scheme, under which a defendant who receives probation may subsequently have his or her probation revoked and receive a sentence to community corrections or to the department of corrections, contemplates a system of escalating sentencing alternatives available to the court. Hence, resentencing after a revocation of probation or a rejection from community corrections does not result in the entry of a new judgment of conviction for purposes of this section. People v. McPherson, 53 P.3d 679 (Colo. App. 2001).

The date of conviction for purposes of this section is the date the appeal is exhausted, not the date of the amended mittimus reflecting the reduction of sentence, where a Crim. P. 35(b) motion has been filed and granted after the conclusion of a direct appeal. People v. Metcalf, 979 P.2d 581 (Colo. App. 1999).

The date of resentencing, after defendant violated the conditions of her probation, does not trigger the commencement of a new three-year period for collateral attack. Even though a

Crim. P. 35(b) motion was filed within three years after the defendant was sentenced to the department of corrections for violation of her conditions of probation, the motion was untimely because it was filed more than three years after the date the judgment of conviction was entered. People v. Cummins, 37 P.3d 507 (Colo. App. 2001); People v. Collier, 151 P.3d 668 (Colo. App. 2006).

Probation revocation was improper because defendant asserted his fifth amendment privilege. Defendant's probation was revoked, in part, because defendant refused to sign a contract with a sex offender treatment provider due to a contract provision requiring admission amounting to self-incrimination. Defendant refused to sign prior to the expiration of the period for seeking timely postconviction relief. People v. Vigil, 2023 COA 12, 529 P.3d 635.

Subsection (1.5) is discretionary and a court may elect to address a defendant's claims on the merits. People v. Kilgore, 992 P.2d 661 (Colo. App. 1999).

Applied in People v. Smith, 856 P.2d 26 (Colo. App. 1992); People v. Vigil, 983 P.2d 805 (Colo. App. 1999); People v. Russell, 36 P.3d 92 (Colo. App. 2001).

PART 5

INCARCERATION

16-5-501. Prosecuting attorney - incarceration - legal representation and supporting services at state expense. (Repealed)

Source: L. 81: Entire part added, p. 928, § 1, September 1. **L. 86:** Entire section amended, p. 732, § 1, effective July 1. **L. 87:** Entire section amended, p. 1496, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1491, § 134, effective October 1. **L. 2013:** Entire section amended, (SB 13-250), ch. 333, p. 1929, § 41, effective October 1; entire section repealed, (HB 13-1210), ch. 306, p. 1624, § 3, effective January 1, 2014.

ARTICLE 6

Change of Venue and Disqualification of Judge

PART 1
CHANGE OF VENUE

16-6-101. Grounds for change of venue.

16-6-102. Motion for change of venue.

16-6-103. Change of venue where offense committed in two or more counties.

16-6-103.5. Plea of guilty to offenses committed in two or more counties.

16-6-104. Application of rules of criminal procedure.

PART 2
DISQUALIFICATION OF JUDGE

16-6-201. Disqualification of judge.

PART 1

CHANGE OF VENUE

16-6-101. Grounds for change of venue.

(1) The place of trial may be changed:

(a) When a fair trial cannot take place in the county or district in which the trial is pending; or

(b) When a more expeditious trial may be had by a change in the place of trial from one county to another; or

(c) When the parties stipulate to a change in the place of trial to another county in the same judicial district or to a county in an adjoining judicial district.

Source: L. 72: R&RE, p. 218, § 1. **C.R.S. 1963:** § 39-6-101.

Cross references: For the place of trials, see § 18-1-202 and Crim. P. 18.

ANNOTATION

Annotator's note. Since § 16-6-101 is similar to repealed laws antecedent to CSA, C. 170, § 3, relevant cases construing those provisions have been included in the annotations to this section.

The object of this section is to secure to a party charged with crime a fair and impartial trial by a jury in a county uninfluenced by local bias or prejudice. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

To support a request for a change of venue, a defendant must establish one of two circumstances. First the defendant can show that the pretrial publicity is so massive, pervasive, and prejudicial as to create a presumption that the defendant will be denied a fair trial. Alternatively, the

defendant can demonstrate that any pretrial publicity will create actual prejudice and hostility in the jury panel. The defendant must show actual prejudice — a nexus between pretrial publicity and a panel of partial jurors. People v. Hankins, 2014 COA 71, 361 P.3d 1033.

Pretrial publicity was extensive, but not so massive, pervasive, and prejudicial as to create a presumption that defendant was denied a fair trial. People v. Hankins, 2014 COA 71, 361 P.3d 1033.

Record did not show actual prejudice. Only one impaneled juror said he had formed an opinion, and he adamantly declared that he could set it aside. People v. Hankins, 2014 COA 71, 361 P.3d 1033.

The denial of a fair trial may be presumed when pretrial publicity is massive, pervasive, and prejudicial. People v. Simmons, 183 Colo. 253, 516 P.2d 117 (1973).

Prejudice must exist in all of several attached counties. Where several counties are attached for judicial purposes, a petition for change of venue, founded upon prejudice of the inhabitants must show that such prejudice exists in all of the counties so attached. Fitzgerald v. People, 1 Colo. 56 (1867).

Motion for change of venue properly denied. Motion for change of venue on ground that pretrial publicity made fair trial impossible was properly denied where the voir dire amply demonstrated the absence of prejudice and the ability of the jurors to set aside any opinions that they may have received from the news media. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

Trial court did not abuse its discretion in denying the change of venue where the trial court noted that media coverage of the crime was balanced and was not sensational and that some newspaper articles expressed sympathy for the defendant. Further as a result of the court's voir dire examination of the prospective jurors concerning the effect of publicity, jurors who expressed knowledge of the case were either excused for cause or expressed an ability to put aside any opinions they had formed about the case. People v. Dore, 997 P.2d 1214 (Colo. App. 1999).

When juror's assurances of impartiality not conclusive. Where a defendant demonstrates the existence of a pattern of deep and bitter prejudice throughout the community where he is to be tried, a juror's assurance that he will be fair and impartial is not conclusive. People v. Botham, 629 P.2d 589 (Colo. 1981).

16-6-102. Motion for change of venue.

(1) A motion for change of venue must be accompanied by one or more affidavits setting forth the facts upon which the defendant relies or by a stipulation of the parties.

(2) Whether circumstances exist requiring, in the interest of justice, a change in the place of trial is a question to be determined by the court in its sound discretion.

Source: L. 72: R&RE, p. 219, § 1. **C.R.S. 1963:** § 39-6-102.

ANNOTATION

Annotator's note. Since § 16-6-102 is similar to repealed § 39-9-5, C.R.S. 1963, § 39-9-5, CRS 53, CSA, C. 170, § 4, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section is mandatory upon the court only when the party applying for change has brought himself within its provisions. Roberts v. People, 9 Colo. 458, 13 P. 630 (1886).

Decision on motion is discretionary. The question of prejudice of inhabitants rests in the discretion of the court. The decision will not be disturbed unless an abuse of discretion appears. Erbaugh v. People, 57 Colo. 48, 140 P. 188 (1914); People v. Coit, 961 P.2d 524 (Colo. App. 1997).

A second application in the same cause, for change of venue, is addressed to the discretion of the court, and error cannot be assigned upon refusal to grant it. Fitzgerald v. People, 1 Colo. 56 (1867).

The granting or refusal of a motion for change of venue is a matter lodged in the discretion of the trial court and, in the absence of an abuse of such discretion, will not be disturbed. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963).

A motion for a change of venue due to local prejudice is a matter of judicial discretion. People v. Simmons, 183 Colo. 253, 516 P.2d 117 (1973).

And decision will not be reversed except where discretion is abused. In passing upon an application for a change of venue on the ground of prejudice of the inhabitants, the trial court should exercise a sound discretion; it is only in case of manifest abuse of such discretion that its decision will be reversed by the supreme court. Power v. People, 17 Colo. 178, 28 P. 1121 (1892).

The finding of the court on a controversy under this section is conclusive on all if he had the right conception of the law, and his conclusions are supported by the evidence or fair deductions therefrom. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

Trial court acted within its discretion by only partially granting a motion to change venue by moving the trial to a different county rather than a different judicial district. People v. Coit, 961 P.2d 524 (Colo. App. 1997).

The motion must set forth the ground upon which the venue may be changed, and also the facts which lead to the belief that such ground exists. Solander v. People, 2 Colo. 48 (1873).

Affiant may state grounds of belief that prejudice exists. On motion for change of

venue, affiant in a supporting affidavit is entitled to state the grounds of his belief that defendant would not receive a fair trial by reason of prejudice of the inhabitants. Glasson v. Bowen, 84 Colo. 57, 267 P. 1066 (1928).

And facts should be sufficient to inform judge of causes relied on. The law contemplates that upon application for change of venue, facts shall be stated sufficient to inform the judge of the nature of the causes for the change, and their alleged foundation. Hughes v. People, 5 Colo. 436 (1880).

To support a request for a change of venue, a defendant must establish one of two circumstances. First the defendant can show that the pretrial publicity is so massive, pervasive, and prejudicial as to create a presumption that the defendant will be denied a fair trial. Alternatively, the defendant can demonstrate that any pretrial publicity will create actual prejudice and hostility in the jury panel. The defendant must show actual prejudice — a nexus between pretrial publicity and a panel of partial jurors. People v. Hankins, 2014 COA 71, 361 P.3d 1033.

Prejudice of the inhabitants presents a question of fact triable by the court. Erbaugh v. People, 57 Colo. 48, 140 P. 188 (1914).

The trial judge necessarily passes upon the question in controversy as a matter of fact. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

Attack of denial of motion is by appeal. If appellant desires to attack the validity of the ruling on his motion for change of venue because he could not receive a fair and impartial jury, he should proceed to a jury trial and then appeal if the result returned is unfavorable to him. Brisbin v. Schauer, 176 Colo. 550, 492 P.2d 835 (1971).

Means to insure fair trial not appellate concern. Regardless of the means imposed by the trial judge to insure the accused's constitutional right to a fair trial by a panel of impartial jurors, the critical inquiry on appellate review is whether the chosen means did in fact preserve the accused's right to a fair trial. People v. Botham, 629 P.2d 589 (Colo. 1981).

Reviewing court may look to voir dire. In determining whether a trial court abuse its discretion in denying a motion for a change of venue because of alleged local prejudice, the reviewing court may quite properly look at what occurred upon voir dire examination of the prospective jurors. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963).

Insufficient ground for change. The fact that the deceased was a banker and citizen of high standing in the community is not in itself a ground for change of venue in a murder case. Corbett v. People, 153 Colo. 457, 387 P.2d 409 (1963).

Prejudice of jury moot if defendant elects trial to the court. By electing to try the case to the court, appellant was foreclosed from asserting error in the denial of a change of venue. His contention in presenting his motion for a change of venue was that he could not obtain trial by a fair and impartial jury in the district in which he was proceeding. Nowhere did he complain

that he could not obtain a fair trial before the trial judge. Under such circumstances, the issue of whether the change of venue should have been granted became moot. Brisbin v. Schauer, 176 Colo. 550, 492 P.2d 835 (1971).

No error in failure to grant change of venue. People v. Trujillo, 181 Colo. 350, 509 P.2d 794 (1973); People v. Simmons, 183 Colo. 253, 516 P.2d 117 (1973).

Sua sponte change of venue was not error. People v. Wafai, 713 P.2d 1354 (Colo. App. 1985), aff'd, 750 P.2d 37 (Colo. 1988).

Applied in People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915); People v. Norwood, 37 Colo. App. 157, 547 P.2d 273 (1975).

16-6-103. Change of venue where offense committed in two or more counties.

Where a prosecution has been commenced in one county, the court, for good cause shown, may transfer the proceeding to another county within the same judicial district if it is shown that the offense was committed in more than one county within the same judicial district and if the court is satisfied that the interests of justice would be served by transferring the action to the other county.

Source: L. 72: R&RE, p. 219, § 1. **C.R.S. 1963:** § 39-6-103.

16-6-103.5. Plea of guilty to offenses committed in two or more counties.

(1) Any person charged with crimes in more than one county of this state may apply to the district attorney of one of said counties to be charged with all crimes so that he may enter into a disposition and be sentenced for them in that single county. The application shall contain a description of all charged crimes and the name of the county in which each was committed.

(2) Upon receipt of the application, the district attorney shall prepare an information charging all the charged crimes and naming in each count the county where each was committed. He shall send a copy of the information to the district attorney of each other county in which the defendant stands charged, together with a statement that the defendant has applied to enter into a disposition in the county of application. Upon receipt of the information and statement, the district attorney of the other county may execute a consent in writing allowing the defendant to enter a plea of guilty in the county to which application has been made to the crime charged in the information and committed in the other county and send it to the district attorney who prepared the information.

(3) If necessary, the district attorney shall amend the information so that it includes only the offenses for which he has received written consent from the district attorney of other counties, and he shall file the information in any court of his county having jurisdiction to try or accept a plea of guilty to the most serious crime alleged therein. The defendant then may enter a plea of guilty to all offenses alleged to have been committed in the county where the court is located and to all offenses alleged to have been committed in other counties as to which consents have been executed pursuant to subsection (2) of this section. Before entering his plea of guilty, the defendant shall waive in writing any right to be tried in the county where the crime was committed. The district attorney of the county where the crime was committed need not be present when the plea is made, but his written consent shall be filed with the court.

(4) Thereupon the court shall enter such judgment, the same as if all the crimes charged were alleged to have been committed in the county where the court is located, whether or not the court has jurisdiction to try all those crimes to which the defendant has pleaded guilty under this section.

(5) The clerk of the court in the county where the plea is made shall file a copy of the judgment of conviction with the clerk in each county where a crime covered by the plea was committed. The district attorney in each of said counties shall then move to dismiss any charges covered by the plea of guilty which are pending against the defendant in his county, and the same shall thereupon be dismissed.

Source: L. 87: Entire section added, p. 603, § 3, effective July 1.

16-6-104. Application of rules of criminal procedure.

Except as otherwise provided by sections 16-6-101 to 16-6-103, the filing of an application for change of venue and all proceedings relating thereto are governed by the provisions of applicable rules of criminal procedure adopted by the supreme court of Colorado.

Source: L. 72: R&RE, p. 219, § 1. **C.R.S. 1963:** § 39-6-104.

PART 2

DISQUALIFICATION OF JUDGE

16-6-201. Disqualification of judge.

(1) A judge of a court of record shall be disqualified to hear or try a case if:

(a) He is related to the defendant or to any attorney of record or attorney otherwise engaged in the case; or

(b) The offense charged is alleged to have been committed against the person or property of the judge or of some person related to him; or

(c) He has been of counsel in the case; or

(d) He is in any way interested or prejudiced with respect to the case, the parties, or counsel.

(2) Any judge who knows of circumstances which disqualify him in a case shall, on his own motion, disqualify himself.

(3) A motion for change of judge on any ground must be verified and supported by the affidavits of at least two credible persons not related to the defendant, stating facts showing the existence of grounds for disqualification. If the verified motion and supporting affidavits state facts showing grounds for disqualification, the judge must enter an order disqualifying himself. After disqualifying himself, the judge may require a full hearing upon the issues raised by the affidavits and shall request that another judge conduct the hearing. The other judge shall make findings of fact with regard thereto, and such findings shall be included as a part of the trial court record.

(4) The disqualified judge shall certify the need for a judge to the chief justice of the Colorado supreme court, who shall assign a judge to the case.

(5) The term "related", when used in this section, means related within the third degree by blood, adoption, or marriage.

Source: L. 72: R&RE, p. 219, § 1. **C.R.S. 1963:** § 39-6-201.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to the personal interest of judge in case, see 15 Colo. Law. 1609 (1986).

Annotator's note. Since § 16-6-201 is similar to repealed § 39-9-2, C.R.S. 1963, CSA, C. 170, § 1, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The object of this section is to secure to an accused a fair and impartial trial by a judge uninfluenced by bias or prejudice against the party charged. People ex rel.

Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

The purpose of this section and Crim. P. 21(b), is to guarantee that no person is forced to stand trial before a judge with a bent of mind. People v. Botham, 629 P.2d 589 (Colo. 1981).

It is the duty of a judge to sit in a case in the absence of a showing that he is disqualified. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

Unless a reasonable person could infer that the judge would in all probability be prejudiced against the petitioner, the judge's duty is to sit on the case. Smith v. District Court, 629 P.2d 1055 (Colo. 1981).

Defendant does not lose right to change upon reindictment. The right of the accused to an impartial judge is not waived or lost by a previous application for a change in an indictment for the same offense, which previous indictment was dismissed at the request of the state. Lawson v. People, 63 Colo. 270, 165 P. 771 (1917).

Applied in People in Interest of A.L.C., 660 P.2d 917 (Colo. App. 1982).

II. GROUNDS FOR CHANGE OF JUDGE.

A. In General.

B. Interest.

C. Prejudice.

A. In General.

Grounds identical to those in Crim. P. 21(b). The grounds for disqualification set out in this section are identical to those set out in Crim. P. 21(b). People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977); Smith v. District Court, 629 P.2d 1055 (Colo. 1981); Comiskey v. District Ct., 926 P.2d 539 (Colo. 1996).

Test of judge's qualifications is same as that for jurors. Where the issues involved require the judge to pass upon the facts, and it is solely a question of fact which is presented for his consideration and determination, the same test of his qualifications to determine the matter should be applied as would be in determining the qualifications of jurors in the premises. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

General rule. This section by express terms makes the judge incompetent to try a case if he is in any way interested, or in any way prejudiced, or if he shall have been of counsel in the cause. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

The fact that the presiding trial judge was statutorily disqualified from presiding because of her prior involvement in the case as counsel for defendant, even though the judge's representation was minimal, amounts to structural error requiring reversal. People v. Garcia, 2022 COA 83, 519 P.3d 1064, rev'd on other grounds, 2024 CO 41M, 550 P.3d 637.

After reviewing the totality of the circumstances, the supreme court determined that defendant intentionally relinquished his known right to object to the statutorily disqualified judge who presided

over his case. People v. Garcia, 2024 CO 41M, 550 P.3d 637.

And, because the record established that defendant waived his claim under this section, the court did not need to decide whether it was structural error for the statutorily disqualified judge to preside over defendant's case under the circumstances presented. People v. Garcia, 2024 CO 41M, 550 P.3d 637.

Subjective conclusion of rudeness not ground for disqualification. It does not comport with sound judicial policy or the intent of either Crim. P. 21(b) or this section to require disqualification of a judge solely on the basis of subjective conclusions that he was discourteous or rude. Carr v. Barnes, 196 Colo. 70, 580 P.2d 803 (1978).

B. Interest.

A disqualifying interest of a judge must necessarily relate to the subject matter of the litigation, and not to a determination of the facts and legal questions presented. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The interest must be direct, apparent, substantial, certain, or immediate, and not one which is only indirect, contingent, incidental, remote, speculative, unreal, uncertain, inconsequential, or merely theoretical. Kostal v. People, 160 Colo. 64, 414 P.2d 123 (1966).

Sham action will not disqualify judge. The filing of sham or frivolous actions in which a judge is made a party for the sole purpose of disqualifying him in the trial of another case should not be allowed. Kostal v. People, 160 Colo. 64, 414 P.2d 123 (1966).

Facts showing interest are conclusive. To be in any way interested or to have been of counsel in the cause constitutes conclusive incompetency, and from the existence of those facts, or either of them, no other deduction can be made. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

C. Prejudice.

Due process principles, subsection (1)(d), and Crim. P. 21(b) require a judge's recusal only when the facts alleged in the motion to disqualify and supporting affidavits establish a reasonable inference that the judge has a bias or prejudice that in all probability will prevent the judge from dealing fairly with a party. This requires the moving party to show that the judge's interest is a direct, certain, and immediate interest, and not one that is indirect, contingent, incidental, or remote. Sanders v. People, 2024 CO 33, 549 P.3d 947.

The appearance of possible prejudice can dictate disqualification. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

Because appearances can be as damaging to public confidence in the courts as actual bias or prejudice, a trial judge must scrupulously avoid any appearance of bias or prejudice. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

But mere expression of belief that judge would not give fair trial does not show prejudice. The mere expression of a belief

that the judge would not give the defendant a fair and impartial trial, without the statement of a single fact upon which such belief is based, is in no sense a compliance with the requirements of this section that the prejudice of the judge must be shown. Young v. People, 54 Colo. 293, 130 P. 1011 (1913).

A guilty plea does not waive review of an actual bias claim even if the claim arose prior to the plea. People v. Jennings, 2021 COA 112, 498 P.3d 1164.

A leaning or bias interfering with fairness will constitute prejudice. If the application discloses facts reasonably tending to the conclusion that the judge has a leaning towards one side of any question involved in the prosecution, or a bias in relation to it, which may interfere with fairness in judgment, he is prejudiced and incompetent within the meaning of this section. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915); Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); Smith v. District Court, 629 P.2d 1055 (Colo. 1981).

The facts will vary in accordance with the peculiar situation pertaining, but, as a general rule, sufficient factual matters must be stated to show bias and prejudice on the part of the trial judge to the extent that it may reasonably and substantially appear that his actions during the course of trial will be so influenced against defendant that a fair and impartial trial may not result. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

And it exists if case is decided on considerations not connected with facts. In any law suit where the issues involved are not determined alone from considerations that belong to them, there is prejudice within the meaning of the law, and such prejudice is necessarily against the party injured. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

It is not based upon judge's view of law. The right to disqualify the presiding judge is based upon an assumed prejudice or bias on his part, and not upon his views regarding the law of the case. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); Altobella v. People, 161 Colo. 177, 420 P.2d 832 (1966).

Thus, personal opinions as to issues generally not regarded as disqualifying judge. Personal opinions of a trial judge concerning issues in the cause before the court, or even as to the guilt or innocence of a defendant in a criminal case, are generally not regarded as disqualifying the judge unless his opinions be so pronounced that it can reasonably be said that he will be biased and prejudiced thereby during the trial. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

Speculation by trial judge concerning possible appellate response to a hypothetical review of the state's capital punishment statute does not provide the basis for an inference of any prejudice by the judge with respect to the defendant or his case. Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986).

Where no basis for disqualification. In the context of a confidential plea-bargaining conference, conducted off-the-record and in chambers, and where the challenged

statement by the court implies nothing more than the judge's belief that the proposed plea and sentence concessions would not do justice, there is no basis for disqualification. Sober v. District Court, 197 Colo. 250, 592 P.2d 400 (1979).

Previous rulings of judge insufficient. Previous rulings of a presiding judge, although erroneous, numerous, and continuous, especially when they are subject to review, are not sufficient to show such bias or prejudice as would disqualify him. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); Altobella v. People, 161 Colo. 177, 420 P.2d 832 (1966).

Judges are not disqualified solely on the basis that they were formerly employed by the prosecutor's office. Instead, when employed by that office, the judge to be disqualified must have performed some role in the case or have obtained actual knowledge of disputed evidentiary facts of the case. People v. Julien, 47 P.3d 1194 (Colo. 2002).

A judge is not required to sua sponte disqualify him- or herself when the judge is related to a juror. Richardson v. People, 2020 CO 46, 481 P.3d 1.

Nor does a judge have a duty to excuse a juror who is related to the judge in the absence of any contemporaneous objection. Richardson v. People, 2020 CO 46, 481 P.3d 1.

Judge not disqualified due to prior prosecution of defendant while employed by prosecutor's office. Judge's prosecution of defendant seven years earlier involved similar but unrelated charges and resulted in a dismissal following defendant's successful motion to suppress. Judge not required to recuse himself where judge had no knowledge of evidentiary facts concerning the current case and no connection to the investigation, preparation, and presentation of the case. People v. Flockhart, 310 P.3d 66 (Colo. App. 2009), aff'd in part, rev'd in part, 2013 CO 42, 304 P.3d 227.

But trial judge, a former prosecutor, should have recused herself because she had served in a supervisory capacity over the attorneys who investigated or prosecuted case at the time they filed the charges against defendant. People v. Mentzer, 2020 COA 91, 487 P.3d 1236.

Prejudice must be directed to defendant individually or as a member of group or organization. The prejudice of a trial judge must be shown to be directed toward the defendant, individually, either as a result of personal dislike or feeling against the defendant, or that such prejudice may have resulted by reason of animosity toward some group or organization with which the defendant may have been associated or closely affiliated. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

Bond orders did not establish bias. The facts alleged concerning revocation of defendant's bond, resetting the bond at $100,000, and refusal to reduce the bond, when considered in the procedural setting out of which the orders arose, are not such as to establish to the satisfaction of a reasonable mind that the presiding judge had a bias or a prejudice that would in all probability prevent him from dealing fairly

with the defendant. Altobella v. People, 161 Colo. 177, 420 P.2d 832 (1966).

There can be no presumption that a judge is intimidated by the outrage of the community in which the judge serves. Thus, motion for disqualification properly denied where there was no allegation that the judge was in fact intimidated by the community's animosity toward the defendant. People v. Vecchio, 819 P.2d 533 (Colo. App. 1991).

The trial court's statement that defendant's motion for a competency hearing was a "ploy" to delay the trial was adequately supported by what the judge learned in his judicial capacity during argument on pretrial motions concerning the defendant's competency, and such a statement does not constitute the kind of prejudice required for recusal. People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

Judge who had experienced criminal conduct similar to that at issue in a road rage shooting case was not disqualified where it was unclear whether the incident involving the trial judge, who was not injured, stemmed from road rage or whether the judge was the intended target, and the judge had, seemingly without issue, tried numerous cases involving weapons and weapons in cars in the intervening three years. Sanders v. People, 2024 CO 33, 549 P.3d 947.

Judge's concern for welfare of alleged victim does not establish the reality or appearance of partiality. Wilkerson v. District Ct., 925 P.2d 1373 (Colo. 1996).

An appearance of impropriety cannot be inferred simply because the judge was a member of the general public that witnessed the fire started by defendant or because the judge assisted in general relief efforts. People v. Barton, 121 P.3d 224 (Colo. App. 2004).

However, numerous other allegations of the judge's personal involvement and comments made by the judge during the sentencing hearing about his or her personal experience presented legally sufficient basis to create the appearance of prejudice that could have prevented the judge from dealing fairly with the defendant. People v. Barton, 121 P.3d 224 (Colo. App. 2004).

Defendant did not establish actual bias requiring disqualification of sentencing judge. While judge's statements that he would be "haunt[ed]" by his decision to grant probation during defendant's prior criminal sentencing showed the judge was affected by his prior decision to be lenient with defendant, they were not enough to establish that the judge was unable to sentence defendant fairly. People v. Dobler, 2015 COA 25, 369 P.3d 686.

Mere filing of complaint with the judicial performance commission, without more, does not establish sufficient grounds for recusal. Further, county court judge's decision to recuse herself in seven prior cases does not lead to the conclusion that she should permanently recuse herself in all cases involving the attorneys. Kane v. County Court Jefferson County, 192 P.3d 443 (Colo. App. 2008).

III. MOTION FOR CHANGE.

A. In General.

B. Sufficiency of Motion.

A. In General.

The credibility of the persons making the affidavits required by the statute will be presumed, unless the contrary appears from the affidavits. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

The facts set forth in affidavits supporting a motion to disqualify a judge are not subject to a trial court's inquiry, but are presumed to be true. Smith v. District Court, 629 P.2d 1055 (Colo. 1981).

Facts establishing incompetency must be stated. The mere assertion that the judge is prejudiced or incompetent is not sufficient. The facts from which prejudice or incompetency is to be inferred must be set forth. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

In all cases necessary material or pertinent facts should be set out; in case of the prejudice of the judge, his attention would thus be called to some circumstance which he may have forgotten, or of which he was entirely ignorant, but which the petitioner might conceive to be a cause of prejudice. Hughes v. People, 5 Colo. 436 (1880).

A motion and accompanying affidavits requesting disqualification of a trial judge from participating in a case properly assigned to that judge must state facts from which it may be reasonably inferred that the judge has a bias or prejudice with respect to the case, a party, or counsel. Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986).

The requirement in this section that prejudice of the judge must be shown is of the same effect as an earlier statute by which the facts were expressly required to be stated. Young v. People, 54 Colo. 293, 130 P. 1011 (1913).

The mere statement of opinion or conclusion of the bias on the part of the trial judge is not sufficient in a motion seeking disqualification of a judge, and the facts from which the incompetency or prejudice is inferred must be stated. There has always been required, as essential to a proper recusation, a statement of facts in the affidavits sufficient to disclose the incompetency of the judge. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

Suspicion, surmise, speculation, rationalization, conjecture, innuendo, and statements of mere conclusions of the pleader may not be substituted for a statement of facts. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); People v. Cook, 22 P.3d 947 (Colo. App. 2000).

Affidavits need not state all essential facts. The affidavits in support of a motion for disqualification do not have to contain every essential fact which establishes the judge's prejudice; it is sufficient if the affidavits verify the facts set forth in the motion. People v. Botham, 629 P.2d 589 (Colo. 1981).

Affidavit may refer to another instrument for particulars. An affidavit may be made full and complete by reference to an attached instrument, or by having the particular matters so referred to embodied in the affidavit itself. Either is sufficient.

Ausmus v. People, 47 Colo. 167, 107 P. 204 (1910); People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

Both actuality and appearance of fairness must be considered in reviewing a motion for disqualification and accompanying affidavits. People v. Botham, 629 P.2d 589 (Colo. 1981); Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986).

A motion for recusal must be verified and supported by affidavits of at least 2 credible witnesses not related to defendant. People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Whether recusal is required will depend on whether defendant's motion and supporting affidavits set forth legally sufficient facts upon which bias or prejudice may be implied. James v. People, 727 P.2d 850 (Colo. 1986); People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

If verified motion for change of judge and supporting affidavits state facts showing grounds for disqualification, the judge must enter an order disqualifying himself or herself. People v. Lanari, 926 P.2d 116 (Colo. App. 1996).

This section does not preclude the referral of a motion for disqualification to the chief judge for a hearing to determine the sufficiency of the allegations of a motion for substitute judge. People v. Lanari, 926 P.2d 116 (Colo. App. 1996).

This section nowhere provides for the filing of counteraffidavits. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

A previously executed affidavit can lend no verity to a subsequent pleading containing new matter. The second motion is not entitled to consideration as it does not comply with this section, being insufficient in form. Altobella v. People, 161 Colo. 177, 420 P.2d 832 (1966).

Motions for disqualification of a judge must be filed at the very earliest opportunity. Ordinarily this requires the filing of such a motion promptly upon the service of the information or at least by time of arraignment of the defendant in a criminal case. Usually the bias or animosity of the judge will be known to the defendant, or his counsel, at that time; hence the rule requiring prompt action. It is conceivable that in certain circumstances the fact of bias or prejudice on the part of a judge might not be ascertainable for some time after the filing of the information, but in such a situation a statement should be forthcoming showing the reason why the petition was not sooner filed. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The requirements of Crim. P. 21(b) with respect to timely filing, apply whether the movant expressly invokes that rule or purports to proceed only under this section. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

Motion presented in apt time. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

Motion filed too late. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

Referring a motion for substitution to another judge for decision is not

reversible error even if it is not the procedure contemplated by C.R.C.P. 21. Comiskey v. District Ct., 926 P.2d 539 (Colo. 1996).

B. Sufficiency of Motion.

Test of sufficiency. The facts stated must establish to the satisfaction of a reasonable mind that the judge has a bias or prejudice that will in all probability prevent him from dealing fairly with the defendant. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); People v. Baca, 633 P.2d 528 (Colo. App. 1981).

To be sufficient, the affidavits must state facts from which the respondent judge's prejudice may reasonably be inferred. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

The test of the legal sufficiency of a motion to disqualify a judge is whether the motion and affidavits state facts from which it may reasonably be inferred that the questioned judge has a bias or prejudice that will in all probability prevent him or her from dealing fairly with the defendant. Smith v. District Court, 629 P.2d 1055 (Colo. 1981); People v. Botham, 629 P.2d 589 (Colo. 1981); People v. Hrapski, 718 P.2d 1050 (Colo. 1986); People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

Judicial recusal is required pursuant to motion once facts have been established from which it can be reasonably inferred that the judge has such bent of mind that he would be unable to deal fairly with the party seeking recusal. People v. Vecchio, 819 P.2d 533 (Colo. App. 1991); People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Evidence of either actual prejudice or the appearance of prejudice may suffice to require recusal. Estep v. Hardeman, 705 P.2d 523 (Colo. 1985); People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Where defendant failed to submit affidavits in accordance with requirements of this section and Crim. P. 21(b), and supplied allegations himself that record did not verify, there were insufficient grounds for disqualification. People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Where nothing in motion or affidavits suggests that the judge or any employee was present when the defendant's crime pending before the judge was committed; that the judge or any employee was in any way personally victimized by the crime; or that the work of the judge or any employee was disrupted by the crime, it cannot be said that judge would necessarily be prejudiced against the party charged as to be unable to be fair in a future trial of that party on an unrelated charge. People v. Anderson, 991 P.2d 319 (Colo. App. 1999).

When a motion for disqualification is filed, the court must accept the facts alleged in the motion and supporting affidavits as true and must determine, as a matter of law, its adequacy. People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

What a judge learns in his judicial capacity is a proper basis for judicial observations, and the use of such information is not the kind of matter that results in disqualification. Therefore, court's statement that the motion for a competency hearing was a "ploy" to delay the trial was

adequately supported by what the judge learned in his judicial capacity during argument on pretrial motions concerning defendant's competency and did not constitute the kind of prejudice required for recusal. People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

Motion and affidavits do not establish a particular bias or prejudice on the part of the trial judge even though ex parte communications did occur. Wilkerson v. District Ct., 925 P.2d 1373 (Colo. 1996).

Sufficiency is a matter of law. The finding of sufficiency in a motion for change of judge is a finding of law, and not fact, and this is true whether it be the finding of the trial court or of an appellate tribunal. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915); People ex rel. Bennet v. District Court, 84 Colo. 367, 270 P. 663 (1928).

The judge has the right, and it is his duty, to pass upon the adequacy of the motion seeking disqualification of a judge as a matter of law. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

Whether the motion is timely and whether it sufficiently states grounds for disqualification are questions of law subject to plenary review. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

Judge may determine sufficiency of motion but not question of prejudice. Where, in a criminal prosecution, motion is made for change of judge on the ground of prejudice in the mind of the presiding judge, such judge may hear and determine questions as to the sufficiency of the motion and the affidavits in support of it, but not the question whether in fact such prejudice exists. Erbaugh v. People, 57 Colo. 48, 140 P. 188 (1914).

The courts, in considering the sufficiency of the motion for a change of judge, can neither reject the pleading, nor disregard the facts alleged therein. They can only apply the law and test thereby the sufficiency of the facts alleged. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

Although the trial judge must, of necessity, initially determine the timeliness and legal sufficiency of a motion to disqualify him for prejudice, he cannot pass upon the truth or falsity of statements of fact in the motion and supporting affidavits. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

Thus, facts are accepted as true. The change of judge is conditioned, not upon the actual fact of his prejudice, but upon the imputation of it. The facts set forth in the recusation must, for the purposes of the motion, be accepted as true, notwithstanding they may be known to the judge and all mankind to be false. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

While the alleged prejudicial judge may pass upon the question of law involving the sufficiency of the petition and affidavit, the question of the truth of the allegation is never tried. Erbaugh v. People, 57 Colo. 48, 140 P. 188 (1914).

As a matter of judicial policy, courts must take as true, for purposes of a motion to

disqualify, facts stated in the affidavits and motion. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977); People v. Botham, 629 P.2d 589 (Colo. 1981); Comiskey v. District Ct., 926 P.2d 539 (Colo. 1996); People v. Cook, 22 P.3d 947 (Colo. App. 2000); Kane v. County Court Jefferson County, 192 P.3d 443 (Colo. App. 2008).

Judge loses jurisdiction except to grant change. The motion and affidavits are conditions imposed by this section. Upon legally sufficient compliance, the defendant is entitled to a change as of right and the judge loses jurisdiction except to grant the change, without any inquiry into the facts. Erbaugh v. People, 57 Colo. 48, 140 P. 188 (1914).

When it is sought to remove the judge because of his prejudice, the law-making power of our state has not deemed it proper to vest in such judge any discretion in the premises, and the judge whose competency is so questioned can only pronounce the judgment of the law. He cannot sit in judgment upon that which directly concerns himself. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915); People ex rel. Bennet v. District Court, 84 Colo. 367, 270 P. 663 (1928).

If the motion for disqualification be sufficient in form, and whether the allegations therein contained be in fact true or false, if they be set forth as facts they must be so accepted, and the judge may perform no further duty than that of entering an order of disqualification. He may not pass upon the facts. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The trial judge has no discretion in the matter of recusing himself upon finding the affidavits sufficient under the rule to allege prejudice. He immediately loses all jurisdiction in the matter except to grant the change. People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

Review of decision on motion. Should the trial court conclude that the motion and affidavits in support of change of judge are insufficient to require the change, and a reviewing or superior tribunal find the contrary, the question upon which the two tribunals have differed is of law, not of fact. Therefore, the finding of the trial court in such case can have no bearing upon the issue when presented to a higher tribunal. People ex rel. Burke v. District Court, 60 Colo. 1, 152 P. 149 (1915).

Motion held sufficient. Motion for disqualification of respondent judge with request that a substitute judge be named was sufficient where petitioner had entered a plea of guilty before the respondent judge who then imposed sentence on the petitioner and on appeal petitioner's guilty plea was vacated but on remand the case was again assigned to the respondent judge. Golden v. District Court, 186 Colo. 300, 527 P.2d 60 (1974).

ARTICLE 7

Separate Trial - Arraignment - Plea Agreements - Deferred Prosecution and Deferred Sentencing

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SEPARATE TRIAL - ALIBI NOTICE

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PART 1

SEPARATE TRIAL - ALIBI NOTICE

16-7-101. Separate trial of joint defendants.

When two or more defendants are jointly indicted or informed against for any offense and there is material evidence, not relating to reputation, which is admissible against one or some of them but which is not admissible against all of them if they are tried separately and which is prejudicial to those against whom it is not admissible, those against whom such evidence is admissible shall be tried separately upon motion of any of those against whom the evidence is not admissible. In all other cases, defendants jointly prosecuted shall be tried separately or jointly in the discretion of the court.

Source: L. 72: R&RE, p. 220, § 1. **C.R.S. 1963:** § 39-7-101.

ANNOTATION

I. General Consideration.

II. Motion for Severance.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to misjoinder of defendants, see 15 Colo. Law. 1615 (1986). For article, "Felony Plea Bargaining in Six Colorado Judicial Districts: A Limited Inquiry into the Nature of the Process", see 66 Den. U. L. Rev. 243 (1989).

Annotator's note. Since § 16-7-101 is similar to repealed § 39-7-11, C.R.S. 1963, CSA, C. 48, § 484, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section changes the common-law rule that existed prior to its enactment, which left the granting of separate trials to defendants jointly indicted to the discretion of the court. Davis v. People, 22 Colo. 1, 43 P. 122 (1895).

Goal of section. The goal underlying this section is to promote a fair determination of the issue of guilt or innocence of the defendant. People v. Gonzales, 198 Colo. 450, 601 P.2d 1366 (1979); People v. Horne, 619 P.2d 53 (Colo. 1980).

The language of this section is positive and unequivocal. Davis v. People, 22 Colo. 1, 43 P. 122 (1895).

This section is mandatory when it appears that a defendant would be prejudiced on a joint trial by the admission of evidence which would not be admissible as against him, but which would be competent as against his codefendant. Russell v. People, 125 Colo. 290, 242 P.2d 610 (1952).

A defendant is entitled to severance of trial as a matter of right if there is evidence that is admissible against one but not all of the parties and if the evidence is prejudicial to the defendant against whom the evidence is not admissible. People v. Montoya, 942 P.2d 1287 (Colo. App. 1996).

The supreme court has interpreted this section to mean, in the mandatory severance setting, that the trial court must determine whether the admitted evidence was so inherently prejudicial that the jury could not have limited its use to its proper purpose. People v. Montoya, 942 P.2d 1287 (Colo. App. 1996).

The trial court's decision will be affirmed absent a showing of an abuse of discretion and actual prejudice to the moving party. People v. Montoya, 942 P.2d 1287 (Colo. App. 1996).

Basis for severance. Severance is to be based upon a finding of prejudice rather than simply the differences which are incidental to any trial of more than one defendant. People v. Johnson, 192 Colo. 483, 560 P.2d 465 (1977).

Severance is a matter of right under proper circumstances. When a case as contemplated by this section is presented, it is the duty of the court to grant a severance as a matter of right. Davis v. People, 22 Colo. 1, 43 P. 122 (1895).

Where two are indicted jointly, and there is evidence not relating to reputation, admissible as against one of them, but inadmissible as against the other, the one against whom such evidence is inadmissible is entitled to a separate trial as of right under this section. Cook v. People, 56 Colo. 477, 138 P. 756 (1914).

Where the evidence is admissible against all defendants, severance need not be allowed. Moore v. People, 31 Colo. 336, 73 P. 30 (1903); Cook v. People, 56 Colo. 477, 138 P. 756 (1914).

Evidence of reputation of another defendant is expressly excluded as a ground for severance by this section. Mukuri v. People, 92 Colo. 306, 19 P.2d 1040 (1933).

A party under criminal indictment is not entitled to a severance on the ground that his codefendants were known in the community as men of bad reputation. Mukuri v. People, 92 Colo. 306, 19 P.2d 1040 (1933).

Matter of severance left to discretion of trial court. Where there was no claim that the joint trial involved evidence admissible against only one of the defendants, the matter of severance was left to the discretion of the trial court. People v. Johnson, 192 Colo. 483, 560 P.2d 465 (1977).

The granting or denial of a motion for severance and continuance is a matter within the sound discretion of the trial court. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

A motion for severance of defendants is addressed to the sound discretion of the trial court. People v. Horne, 619 P.2d 53 (Colo. 1980); People v. Vigil, 678 P.2d 554 (Colo. App. 1983); People v. Adams, 678 P.2d 572 (Colo. App. 1984); People v. Durre, 713 P.2d 1344 (Colo. App. 1985); People v. Manners, 713 P.2d 1348 (Colo. App. 1985).

Although court properly denied motion for severance on evidentiary grounds, it was an abuse of discretion to deny motion for severance on speedy trial grounds under § 18-1-405 where court made no finding of good cause why severance should not be granted. Finding of good cause is specifically required by § 18-1-405 (6)(c). People v. Hernandez, 829 P.2d 392 (Colo. App. 1991).

And denial not reversed unless defendant prejudiced. Where there is no showing that the denial of a motion for severance prejudiced the defendant, the trial court's ruling will not be disturbed on appeal. People v. Horne, 619 P.2d 53 (Colo. 1980); People v. Magoon, 645 P.2d 286 (Colo. App. 1982); People v. Vigil, 678 P.2d 554 (Colo. App. 1983).

Severance not mandatory. People v. Gallegos, 680 P.2d 1294 (Colo. App. 1983).

Severance is not constitutionally mandated because of conflicting peremptory challenges exercised by defendant's counsel. People v. Durre, 713 P.2d 1344 (Colo. App. 1985).

To determine whether separate trials are required, a trial court must determine whether admitted evidence is so inherently prejudicial that the jury would not be able to limit its use to its proper purpose. Otherwise, a motion for joinder is addressed to the discretion of the trial court, and will be affirmed absent a showing of an abuse of discretion and actual prejudice to the moving party. People v. Escano, 843 P.2d 111 (Colo. App. 1992).

When an out-of-court statement of a co-defendant does not make reference to the co-defendant, severance should be granted only when it is necessary to promote a fair determination of the guilt or innocence of one or more defendants. The court should make this determination by considering, among other factors, whether, in view of the number of offenses and defendants charged and the complexity of the evidence offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense and as to each defendant. People v. Escano, 843 P.2d 111 (Colo. App. 1992).

Since a co-defendant's statements to the police, made in defendant's presence, are admissible against defendant, defendant is not entitled to severance as a matter of right under this section. People v. Gardenhire, 903 P.2d 1159 (Colo. App. 1995).

Trial court did not abuse its discretion by failing to sever defendant's case where defendant's reason for requesting a severance was to be able to exercise additional peremptory challenges. People v. Lesney, 855 P.2d 1364 (Colo. 1993).

Two-part test for determining severance issues. This section contemplates a two-part test for determining severance issues: (1) Whether there is material evidence admissible against one but not all of the parties; and (2) whether admission of that evidence would be prejudicial against whom the evidence is not admissible. People v. Gonzales, 198 Colo. 450, 601 P.2d 1366 (1979); People v. Hernandez, 829 P.2d 392 (Colo. App. 1991); People v. Escano, 843 P.2d 111 (Colo. App. 1992).

Test applied in People v. Barela, 689 P.2d 689 (Colo. App. 1984); People v. Gregory, 691 P.2d 357 (Colo. App. 1984); People v. Peltz, 697 P.2d 766 (Colo. App. 1984), aff'd, 728 P.2d 1271 (Colo. 1986); People v. Heller, 698 P.2d 1357 (Colo. App. 1984); People v. Pappadiakis, 705 P.2d 983 (Colo. App. 1985), aff'd sub nom. Peltz v. People, 728 P.2d 1271 (Colo. 1986).

Showing required to establish abuse of discretion. To establish abuse of the trial court's discretion, more is required than a showing that separate trials might afford a better chance of acquittal. People v. Armstrong, 664 P.2d 716 (Colo. App. 1982), rev'd on other grounds, 701 P.2d 17 (Colo. 1985).

Mutual participation of defendants in an offense is considered a logical basis for refusing to sever. People v. Adams, 678 P.2d 572 (Colo. App. 1984); People v. Carrillo, 946 P.2d 544 (Colo. App. 1997), aff'd on other grounds, 974 P.2d 478 (Colo. 1999).

Factors to be considered in determining whether denial of severance constitutes an abuse of discretion include: (1) whether the number of defendants or the complexity of the evidence is such that the jury will probably confuse the law and evidence applicable to each defendant; (2) whether, despite admonitory instructions, evidence admissible against one defendant will improperly be considered against another; and (3) whether the defenses presented are antagonistic. People v. Escano, 843 P.2d 111 (Colo. App. 1992); People v. Carrillo, 946 P.2d 544 (Colo. App. 1997), aff'd on other grounds, 974 P.2d 478 (Colo. 1999).

Joint trial resulted in reversible prejudice when defendant had to defend himself against both the prosecution and his codefendant; the joint trial prevented defendant from fully confronting the witnesses against him and thus from presenting a complete defense; defendant received one fewer peremptory challenge than his codefendant and was denied an additional challenge when confronted with a potential juror who expressed concern over retaliation; and the number of limiting instructions given in the case defeated any curative effect they may have had on the prejudice resulting from a joint trial. People v. Gutierrez, 2021 COA 110, 499 P.3d 367.

Admission of testimony of codefendant not reversible error. It was not reversible error to admit evidence concerning a description of defendants just because it was testimony of a codefendant as to whom the severance had been granted. In view of the inconclusive nature of the identification, it cannot be said that there was any prejudice to the defendants from the admission of this evidence, although it would clearly be a better procedure to conceal the source of the

extrajudicial identifications. Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

This section is applicable to cases of conspiracy. Davis v. People, 22 Colo. 1, 43 P. 122 (1895); Seebass v. People, 116 Colo. 555, 182 P.2d 901 (1947).

II. MOTION FOR SEVERANCE.

Considerations in deciding motion for severance. When deciding whether to grant a motion for severance, the trial court should consider whether evidence inadmissible against one defendant will be considered against the other defendant, despite the issuance by the trial court of the proper admonitory instructions. An additional consideration is whether the defendants plan to offer antagonistic defenses. People v. Gonzales, 198 Colo. 450, 601 P.2d 1366 (1979).

Additional criteria for consideration in determining whether the possibility of prejudice and unfair trial will result if severance is denied is whether the number of defendants or the complexity of evidence, together with the applicable law, will be confused by the jury, as it applies the law to each defendant. People v. Warren, 196 Colo. 75, 582 P.2d 663 (1978).

Criteria applied in People v. Vigil, 678 P.2d 554 (Colo. App. 1983); People v. Backus, 952 P.2d 846 (Colo. App. 1998).

Motion should set out the alleged incompetent evidence. That a defendant will be prejudiced on a joint trial by the admission of evidence which is not admissible as against him but which is competent as against his codefendant must be made to appear in support of a motion for a severance, not by merely stating that evidence will be admitted which is not competent as against the moving defendant, but the evidence which it is claimed is incompetent must be set out so that the court will be given the opportunity to determine whether or not the defendant moving for a severance may be prejudiced. Such has been the recognized practice in this jurisdiction. Davis v. People, 22 Colo. 1, 43 P. 122 (1895); Moore v. People, 31 Colo. 336, 73 P. 30 (1903); Robinson v. People, 76 Colo. 416, 232 P. 672 (1925).

Under the provisions of this section it is held that the showing in support of a motion for a severance was not sufficient to make the denial of the motion prejudicial error. The alleged incompetent evidence should be set out in the motion. Robinson v. People, 76 Colo. 416, 232 P. 672 (1925).

The trial court is to be guided by the contents of the motion and the affidavit and must be advised thereby as to the nature of the evidence before it can determine whether the severance should be granted. Where neither the motion, nor the required affidavit, shows sufficient cause, the trial court commits no error in denying the motion for severance. Russell v. People, 125 Colo. 290, 242 P.2d 610 (1952).

Unless it is impossible to set forth the evidence required. While a motion for severance should set forth the evidence which it is claimed will prejudice the rights of the moving defendant, if it is impossible for him to set out such evidence, the motion will not be held insufficient because of his

failure to do the impossible. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

The application for severance must be supported by an affidavit which definitely shows a good cause therefor. Robinson v. People, 76 Colo. 416, 232 P. 672 (1925).

Otherwise the motion is denied. A motion for a separate trial which contained no statement of facts from which the court could determine whether there was evidence against a codefendant which was immaterial and inadmissible as to the moving defendant and which would be prejudicial if admitted, and the motion being unverified, not supported by affidavit, and not referring to any source from which the facts might be obtained, held properly denied. Garcia v. People, 88 Colo. 267, 295 P. 491 (1931).

Defendant against whom evidence is inadmissible is proper party to make the application. Garcia v. People, 88 Colo. 267, 295 P. 491 (1931).

The separation must be requested by the party against whom the material evidence is inadmissible. Cook v. People, 56 Colo. 477, 138 P. 756 (1914), disapproving Moore v. People, 31 Colo. 336, 73 P. 30 (1903).

Other defendant cannot complain of denial of severance. Where only one of two defendants moved for a severance, which was denied, the other defendant will not be heard to complain of the ruling. McClary v. People, 79 Colo. 205, 245 P. 491 (1926).

If the defendant fails to move for severance, he cannot raise the question of severance on appeal. Reed v. People, 174 Colo. 43, 482 P.2d 110 (1971).

Motion denied where evidence was not within prohibition. Where evidence of which defendants' counsel complained was not within the prohibitions of this section, overruling of motion for separate trials did not constitute prejudicial error. Lewis v. People, 109 Colo. 89, 123 P.2d 398 (1942).

Motion for severance inadequate. Brown v. People, 124 Colo. 412, 238 P.2d 847 (1951).

Denial of motion upheld where no objection is made to evidence during trial. Where a motion for severance under this section was denied, and on the trial no objection was made on behalf of either defendant to any evidence which could by any possibility be considered as admissible against one and inadmissible against the other, the ruling of the court in denying the motion is upheld. Stone v. People, 71 Colo. 162, 204 P. 897 (1922).

Or where evidence is not prejudicial. Unless the appeal discloses the admission of prejudicial evidence, no error is committed in denying a motion for a severance. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

Severance was not mandatory and was at the discretion of the trial court because there was no material evidence admissible against one defendant but not against the other. People v. Wandel, 713 P.2d 398 (Colo. App. 1985).

Refusal to grant severance on proper motion is error. A motion for a separate trial, when supported by a transcript of the evidence of a former trial in which it clearly appeared that there had been prejudicial

evidence offered and received, should have been granted, and the refusal to do so was error. Garcia v. People, 88 Colo. 267, 295 P. 491 (1931).

16-7-102. Required notice of defense of alibi.

If the defendant intends to introduce evidence that the defendant was at a place other than the location of the offense, the defendant shall serve upon the prosecuting attorney as soon as practicable, but not later than thirty-five days before trial, a statement in writing specifying the place where the defendant claims to have been and the names and addresses of the witnesses the defendant will call to support the defense of alibi. Upon receiving the defendant's statement, the prosecuting attorney shall advise the defendant of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after the names of such witnesses become known. Neither the prosecuting attorney nor the defendant shall be permitted at the trial to introduce evidence inconsistent with the specification statement unless the court for good cause and upon just terms permits the specification statement to be amended. If the defendant fails to make the specification required by this section, the court shall exclude evidence offered in support of the defense of alibi unless the court finds upon good cause shown that such evidence should be admitted in the interest of justice.

Source: L. 72: R&RE, p. 220, § 1. **C.R.S. 1963:** § 39-7-102. **L. 74:** Entire section amended, p. 238, § 1, effective March 19. **L. 93:** Entire section amended, p. 517, § 7, effective July 1. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 850, § 75, effective July 1.

ANNOTATION

Where the defendant fails to provide notice of the alibi defense and where he fails to request an instruction on alibi, the trial court's failure to instruct on alibi was not plain error. People v. Montgomery, 743 P.2d 439 (Colo. App. 1987).

Applied in People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

PART 2

ARRAIGNMENT

16-7-201. Place of arraignment.

The defendant shall be arraigned in the court having trial jurisdiction in which the indictment, information, or complaint is filed, unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

Source: L. 72: R&RE, p. 221, § 1. **C.R.S. 1963:** § 39-7-201.

ANNOTATION

Annotator's note. Since § 16-7-201 is similar to repealed laws antecedent to CSA, C. 48, § 479, relevant cases construing those provisions have been included in the annotations to this section.

Arraignment and plea are essential prerequisites to a judgment of conviction. People v. Lawton, 61 Colo. 566, 158 P. 1099 (1916).

Former provisions concerning arraignment and pleading in cases of felonies were held to be imperative. Ray v. People, 6 Colo. 231 (1882).

An arraignment and plea are indispensable to a valid conviction. Wright v. People, 22 Colo. 143, 43 P. 1021 (1896).

Wherever the duty to arraign is imperative, failure in the performance of this duty is fatal, when the record shows the failure in an appellate court. Ray v. People, 6 Colo. 231 (1882).

16-7-202. Presence of defendant.

(1) If the offense charged is a felony, a level 1 drug misdemeanor, or a class 1 misdemeanor or if the maximum penalty for the offense charged is more than one year's imprisonment, the defendant must be personally present for arraignment; except that the court, for good cause shown, may accept a plea of not guilty made by an attorney representing the defendant without requiring the defendant to be personally present. In all prosecutions for lesser offenses, the defendant may appear by his or her attorney who may enter a plea on his or her behalf. If the defendant appears personally for a charge that is not in title 42, the court may advise the defendant of the possibility that restorative justice practices may be part of a sentence, if available in the jurisdiction.

(2) If a plea of guilty or nolo contendere (no contest) is entered by counsel in the absence of the defendant, the court may command the appearance of the defendant in person for the imposition of sentence.

Source: L. 72: R&RE, p. 221, § 1. **C.R.S. 1963:** § 39-7-202. **L. 2011:** (1) amended, (HB 11-1032), ch. 296, p. 1400, § 1, effective August 10. **L. 2013:** (1) amended, (SB 13-250), ch. 333, p. 1930, § 42, effective October 1. **L. 2017:** (1) amended, (HB 17-1039), ch. 58, p. 182, § 1, effective August 9.

ANNOTATION

Applied in People v. Lesh, 668 P.2d 1362 (Colo. 1983).

16-7-203. Irregularity of arraignment.

No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to the irregularity.

Source: L. 72: R&RE, p. 221, § 1. **C.R.S. 1963:** § 39-7-203.

ANNOTATION

Arraignment procedures are designed primarily to protect the defendant. Harrington v. District Court, 192 Colo. 351, 559 P.2d 225 (1977).

Representation by nonresident counsel does not nullify arraignment. Where an attorney from a sister state is admitted to the bar of Colorado for the purpose of representing a defendant in a trial for murder in the first degree, the fact that such counsel does not have an associate resident counsel with him in the case does not nullify the arraignment of defendant or his plea of not guilty. Martinez v. People, 134 Colo. 82, 299 P.2d 510 (1956) (decided under repealed § 39-7-9, CRS 53).

Elements of arraignment not ritual from which court cannot deviate. While the statutes and rules prescribe the necessary elements of an arraignment, this section makes it clear that they have not created a ritual from which a court cannot deviate. People v. Adargo, 622 P.2d 593 (Colo. App. 1980).

16-7-204. Procedures on arraignment.

The procedure to be followed upon arraignment shall be in compliance with the provisions of applicable rules of criminal procedure adopted by the supreme court of Colorado.

Source: L. 72: R&RE, p. 221, § 1. **C.R.S. 1963:** § 39-7-204.

16-7-205. Pleas authorized on arraignment.

(1) A defendant personally, or, where permissible, by counsel may orally enter:

(a) A plea of guilty; or

(b) A plea of not guilty; or

(c) A plea of nolo contendere (no contest) with the consent of the court; or

(d) A plea of not guilty by reason of insanity, in which event a not guilty plea may also be entered.

Source: L. 72: R&RE, p. 221, § 1. **C.R.S. 1963:** § 39-7-205.

ANNOTATION

Annotator's note. Since § 16-7-205 is similar to repealed § 39-7-5, CRS 53, CSA, C. 48, § 479, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Entry of plea by counsel for defendant is sufficient. Davis v. People, 77 Colo. 546, 238 P. 25 (1925).

When the essential presence of an accused in a court having jurisdiction is a fulfilled condition, there is no express requirement in the federal law that in pleading to an indictment he must actually speak for himself or remain mute in order that a valid plea may be entered. Marler v. People, 139 Colo. 23, 336 P.2d 101 (1959).

Declaration of plea may be made orally, by defendant or counsel. Minich v. People, 8 Colo. 440, 9 P. 4 (1885); Boyd v. People, 108 Colo. 289, 116 P.2d 193 (1941); Marler v. People, 139 Colo. 23, 336 P.2d 101 (1959).

But plea must be entered in open court. A message from counsel for defendant to the prosecuting attorney, authorizing the entry

of a plea, does not authorize the acceptance of such a plea. Whether by defendant or his counsel, the plea must be entered orally and in open court. Boyd v. People, 108 Colo. 289, 116 P.2d 193 (1941).

Withdrawal of plea is not a matter of right. In the absence of statute or of peculiar circumstances, a defendant in a criminal case is not entitled as a matter of right to withdraw a plea duly made to an indictment or information, in order that he may file another plea or interpose objections to the proceedings which should have been presented before the plea; hence the action of a trial court in refusing a change of plea will not be reversed if there is no abuse of discretion. Abshier v. People, 87 Colo. 507, 289 P. 1081 (1930).

Where a defendant in a criminal case is arraigned and enters pleas of not guilty and not guilty by reason of insanity, he does not thereafter have an absolute right to withdraw those pleas and enter a plea of guilty in order to avoid prosecution upon another information which includes habitual criminal counts. Matz v. People, 133 Colo. 45, 291 P.2d 1059 (1956).

Defendants cannot withdraw consent which was freely given simply because the sentence which the court imposes is not to their liking. Williams v. People, 134 Colo. 580, 307 P.2d 466 (1957).

Application to change a plea is addressed to the sound discretion of the court, and its ruling will be reversed only for an abuse of that discretion, resulting in direct prejudice to the defendant whose application is denied. Matz v. People, 133 Colo. 45, 291 P.2d 1059 (1956).

No abuse of discretion in refusing defendant permission to change plea. A trial court did not abuse its discretion in refusing to grant the defendant permission to withdraw his plea of nolo contendere and to reinstate a plea of not guilty. People v. Canino, 181 Colo. 207, 508 P.2d 1273 (1973).

Nolo contendere plea should be upheld. Nolo contendere plea that is voluntarily and understandingly made, with a factual basis that appears in the record, should be upheld. People v. Canino, 181 Colo. 207, 508 P.2d 1273 (1973).

16-7-206. Guilty pleas - procedure and effect.

(1) Every person charged with an offense shall be permitted to tender a plea of guilty to that offense if the following conditions have been satisfied:

(a) The court shall have advised the defendant that if the plea is accepted the defendant shall be determined to have waived his right to trial by jury on all issues including the determination of the penalty to be assessed, and the court shall also have advised the defendant as to the maximum and minimum penalties that the court may impose.

(b) In class 1 felonies or where the plea of guilty is to a lesser included offense, a written consent has been filed with the court by the district attorney.

(c) In all felony, level 1 drug misdemeanor, and class 1 misdemeanor cases, the defendant shall be represented by counsel or waive his right thereto in open court, and the guilty plea shall be tendered in open court by the defendant in the presence of counsel, if any.

(2) The refusal or consent of the district attorney or the court to accept a plea of guilty to the charge shall not be a basis for assignment of error, and such refusal or acceptance by the district attorney or court is final.

(3) The acceptance by the court of a plea of guilty acts as a waiver by the defendant of the right to trial by jury on all issues including the determination of the penalty to be assessed, and the acceptance of such plea also acts as a conviction for the offense.

Source: L. 72: R&RE, p. 221, § 1. **C.R.S. 1963:** § 39-7-206. **L. 2013:** (1)(c) amended, (SB 13-250), ch. 333, p. 1930, § 43, effective October 1.

ANNOTATION

Law reviews. For article, "Recent Judicial Modification of Habitual Criminal Act", see 23 Dicta 84 (1946). For article, "Procedure on Plea of Guilty", see 27 Dicta 364 (1950). For article, "Plea of Guilty as an Admission", see 33 Dicta 188 (1956). For article, "One Year Review of Criminal Law", see 34 Dicta 98 (1957). For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For note, "One Year Review of Colorado Law — 1964", see 42 Den. L. Ctr. J. 140 (1965).

Annotator's note. Since § 16-7-206 is similar to repealed § 40-1-302, C.R.S. 1963, § 39-7-8, C.R.S. 1963, § 39-7-8, CRS 53, and CSA, C. 48, § 482, relevant cases construing those provisions have been included in the annotations to this section.

This section is mandatory. The provisions of this section dealing with arraignment, advice of counsel, and warning as to consequences of the guilty plea are mandatory and a prerequisite under due process. Vanderhoof v. People, 152 Colo. 147, 380 P.2d 903 (1963).

This section deals with certain procedures that are to be followed by trial courts where the accused enters a plea of guilty. Burbach v. Tinsley, 143 Colo. 449, 354 P.2d 170 (1960).

It satisfies requirements of due process. Compliance with this section, provisions for the appointment of counsel for indigent defendants, and §§ 16 and 25 of art. II, Colo. Const., satisfies the due process requirement of the fourteenth amendment to the United States Constitution. Santo v. Santo, 120 Colo. 13, 206 P.2d 341 (1949).

And failure to comply would render sentence void. If a prisoner pleading guilty is entitled to preliminary safeguards, including warning as to the consequences of the plea, and is not told that he may be

imprisoned for life, the life sentence would be void. Vanderhoof v. People, 152 Colo. 147, 380 P.2d 903 (1963).

Court may refuse to accept guilty plea. In some circumstances a trial court, in the protection of an accused, might well refuse to accept a tendered plea of guilty, while in other circumstances protection of the interests of the people might demand similar action. Matz v. People, 133 Colo. 45, 291 P.2d 1059 (1956).

Defendants are in jeopardy upon acceptance of guilty plea. Where defendants plead guilty to a charge of robbery, which pleas are accepted, and evidence produced for the purpose of enlightening a court prior to sentence is found to be insufficient to sustain the charge, whereupon the court orders the information dismissed and the defendants discharged, whether such orders are right or wrong, the defendants are in jeopardy. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

Constitutional requirements for valid plea of guilty. The constitution requires that the defendant be aware of the elements of the offense and that he voluntarily and understandingly acknowledge his guilt when pleading guilty. People v. Canino, 181 Colo. 207, 508 P.2d 1273 (1973).

Rather than ritualistic compliance, the constitution requires only that a defendant pleading guilty be aware of the elements of the offense and that he voluntarily and understandingly acknowledge his guilt. People v. Duran, 183 Colo. 180, 515 P.2d 1117 (1973).

A plea of guilty should not be set aside if a factual basis exists for the plea and if the defendant has knowledge of the elements of the crime and enters the plea voluntarily. People v. Hutton, 183 Colo. 388, 517 P.2d 392 (1973).

A defendant must be made aware of the elements of the crime with which he is charged before a guilty plea may be accepted. People v. Musser, 187 Colo. 198, 529 P.2d 626 (1974).

A plea of guilty, to be valid, must be intelligently made. If there is any question, the trial court has the duty to determine the defendant's mental capacity to understand the nature and effect of such a plea before accepting it. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

For a waiver of a fundamental right to be valid, the defendant must voluntarily, knowingly, and intentionally relinquish that right. People v. Harrington, 179 Colo. 312, 500 P.2d 360 (1972).

A guilty plea cannot stand if it lacks a factual basis and is not voluntary and accurate. People v. Alvarez, 181 Colo. 213, 508 P.2d 1267 (1973).

Plea of guilty is clearly involuntary if it is induced by threats or by a promise of lenient sentence. People v. McClellan, 183 Colo. 176, 515 P.2d 1127 (1973).

If a plea of guilty results from plea bargaining and the bargain is not honored, the judgment must be vacated. People v. McClellan, 183 Colo. 176, 515 P.2d 1127 (1973).

A plea of guilty by one who is insane is a nullity. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

Prior to Boykin v. Alabama, 395 U.S. 238 (1969), there was no prescribed ritual to be performed to satisfy the court that the defendant understood the nature of the charge when pleading guilty. People v. Moore, 185 Colo. 54, 521 P.2d 768 (1974).

Since Boykin v. Alabama, courts must put finding of voluntariness on record. People v. Gutierrez, 182 Colo. 55, 511 P.2d 20 (1973).

A valid plea of guilty waives substantially all the fundamental procedural rights afforded the accused in a criminal proceeding such as his rights to the assistance of counsel, confrontation of witnesses, and trial by jury. People v. Harrington, 179 Colo. 312, 500 P.2d 360 (1972).

A guilty plea does not waive a valid double jeopardy claim of being punished twice for the same offense. People v. Gardner, 250 P.3d 1262 (Colo. App. 2010).

A guilty plea waives an as-applied equal protection claim to the constitutionality of a statute. People v. Gardner, 250 P.3d 1262 (Colo. App. 2010).

Waiver must affirmatively appear. Every reasonable presumption against waiver must be indulged, and the record must affirmatively show that the accused understandingly and voluntarily waived the constitutional right which is in issue by a plea of guilty. People v. Harrington, 179 Colo. 312, 500 P.2d 360 (1972).

And burden on accused to attack such waiver. If there is some showing of an affirmative waiver, the burden of proof rests with the defendant to show by a preponderance of the evidence that his apparent waiver was not effective. People v. Harrington, 179 Colo. 312, 500 P.2d 360 (1972).

Plea of guilty entered by counsel valid. If an indicted person is actually present in open court with his attorney who is competent to represent him and does so under circumstances which fairly show that the attorney speaks for his client who understands what is being done and its import and who acquiesces when the attorney enters a plea of guilty for him, should have exactly the same force and effect as though he had spoken himself in the words of the attorney. Marler v. People, 139 Colo. 23, 336 P.2d 101 (1959).

Uncertainty as to whether evidence was sufficiently direct to warrant death penalty does not mean guilty plea was unintelligently made and invalid and attorneys had a reasonable foundation for advising that the death penalty was a real possibility prompting petitioner's guilty plea. Scheer v. Patterson, 429 F.2d 907 (10th Cir. 1970).

Evidentiary hearing on failure to advise possible penalties not required. Where trial court in providency hearing advises petitioner of possible sentence term, and sentences imposed were within that range, and trial court did not treat either offense as

a second offense, evidentiary hearing on petitioner's contention that sentencing court failed to properly inform him of the possible penalties for crimes to which he entered guilty plea is not required. Hyde v. Hinton, 180 Colo. 324, 505 P.2d 376 (1973).

Formalistic recitation by the trial judge at a providency hearing is not a constitutional requisite. People v. Canino, 181 Colo. 207, 508 P.2d 1273 (1973).

Right of defendant held sufficiently protected. The right of defendant to be advised concerning the consequences of his pleas of guilty which pleas resulted in a life sentence under the habitual criminal statute, held sufficiently protected. Glass v. People, 127 Colo. 210, 255 P.2d 738 (1953).

Failure to determine plea was made intelligently denied due process. In a criminal case where a defendant was unable at the time of his guilty plea to remember the details of the offense and where since its commission he has been subconsciously unable to remember these details until a relatively recent date, the failure of the judge at the trial to consider whether accused was insane at the time and could thus enter a plea of guilty intelligently constituted a violation of procedural, if not substantive, due process. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

A guilty plea under subsection (3) constitutes a conviction, even if subsequently dismissed under a deferred judgment, for purposes of determining whether the case can be sealed pursuant to § 24-72-308. M.T. v. People, 275 P.3d 661 (Colo. App. 2010), aff'd, 2012 CO 11, 269 P.3d 1219.

Conviction by guilty plea may be used for impeachment purposes. Acceptance by a court of a guilty plea, pursuant to subsection (3), may be equated to a jury verdict which has been sustained following a motion for a new trial, and, even if the defendant is never sentenced following that guilty plea, that conviction may be used for impeachment purposes should the defendant testify at a later trial. People v. Baca, 44 Colo. App. 167, 610 P.2d 1083 (1980).

Plea to misdemeanor or traffic offense. Before accepting a plea of guilty or nolo contendere to a misdemeanor or traffic offense, the trial court must be satisfied that the defendant's decision to acknowledge guilt has been made knowingly and understandingly. People v. Lesh, 668 P.2d 1362 (Colo. 1983).

Guilty plea entered voluntarily. People v. Musser, 187 Colo. 198, 529 P.2d 626 (1974).

Although a guilty plea under subsection (3) acts as a conviction, the conviction process is incomplete until the entry of a judgment of conviction under Crim. P. 32(c). People v. Wiedemer, 899 P.2d 283 (Colo. App. 1994).

Conditional guilty pleas are not authorized in Colorado by statute or court rule. People v. Neuhaus, 240 P.3d 391 (Colo. App. 2009), aff'd, 2012 CO 65, 289 P.3d 19; People v. Hoffman, 2012 CO 66, 289 P.3d 24; Escobedo v. People, 2012 CO 67, 289 P.3d 25.

Defendant who pleads guilty may not bring an as-applied equal protection postconviction challenge. People v. Ford, 232 P.3d 260 (Colo. App. 2009).

Penalty advisement required by subsection (1)(a) does not apply to deferred judgment revocations. The deferred judgment revocation statute incorporates this section only insofar as those matters that are applicable. Since the revocation complaint alleges a violation of the deferred judgment agreement and not a new crime, the penalty advisement for a new criminal offense does not apply. Finney v. People, 2014 CO 38, 325 P.3d 1044.

Applied in People v. Bartsch, 37 Colo. App. 52, 543 P.2d 1273 (1975); People v. Palmer, 42 Colo. App. 460, 595 P.2d 1060 (1979); Hafelfinger v. District Court, 674 P.2d 375 (Colo. 1984).

16-7-207. Court's duty to inform on first appearance in court and on pleas of guilty.

(1) At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:

(a) The defendant need make no statement, and any statement made can and may be used against him or her.

(b) The defendant has a right to counsel.

(c) If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.

(d) Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.

(e) The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.

(f) The defendant has a right to a jury trial.

(g) The nature of the charges against the defendant.

(2) The court shall not accept a plea of guilty or nolo contendere (no contest) without first determining that the defendant is advised of all the matters set forth in subsection (1) of this section and also determining:

(a) That the defendant understands the nature of the charge and the elements of the offense to which he is pleading and the effect of his plea;

(b) That the plea is voluntary on defendant's part and is not the result of undue influence or coercion on the part of anyone;

(c) That he understands the right to trial by jury;

(d) That he understands the possible penalty or penalties and the possible places of incarceration;

(e) That the defendant understands that the court will not be bound by any representations made to the defendant by anyone concerning the penalty to be imposed or the granting or the denial of probation, unless the representations are included in a formal plea agreement approved by the court and supported by the findings of the presentence report, if any; and

(f) That there is a factual basis for the plea. If the plea is entered as a result of a plea agreement, the court shall explain to the defendant and satisfy itself that the defendant understands the basis for the plea agreement, and the defendant may then waive the establishment of a factual basis for the particular charge to which he pleads guilty.

(3) This section applies to prosecutions for violations of municipal charters and prosecutions for violations of municipal ordinances, except for traffic infractions for which the penalty is only a fine and arrest is prohibited and for which a court shall not issue a bench warrant, including a warrant for failure to appear.

Source: L. 72: R&RE, p. 222, § 1. **C.R.S. 1963:** § 39-7-207. **L. 90:** (1)(c) amended, p. 1039, § 2, effective July 1. **L. 92:** (1)(c) amended, p. 465, § 1, effective July 1. **L. 2013:** (1) amended, (HB 13-1210), ch. 306, p. 1623, § 2, effective January 1, 2014. **L. 2016:** (3) added, (HB 16-1309), ch. 366, p. 1541, § 3, effective (see editor's note). **L. 2017:** (3) amended, (HB 17-1083), ch. 128, p. 438, § 1, effective July 1, 2018 (see editor's note).

Editor's note: The effective date of subsection (3) was changed from May 1, 2017, to July 1, 2018, by H.B. 17-1316. (See L. 2017, p. 607.)

Cross references: For the legislative declaration in HB 16-1309, see section 1 of chapter 366, Session Laws of Colorado 2016.

ANNOTATION

This section and Crim. P. 11(b) require that a trial court must make certain determinations before it accepts a plea of guilty or a plea of nolo contendere. People v.

Lambert, 189 Colo. 264, 539 P.2d 1238 (1975).

In pleading guilty, defendant must be adequately advised of nature and critical elements of offense charged and reading of information may suffice. Wilson v. People, 708 P.2d 792 (Colo. 1985).

If the trial judge doubted the credibility of the charge, even though a factual basis for the guilty plea existed, his duty was to vacate the guilty plea, enter a plea of not guilty, and set the case for trial. People v. Worsley, 191 Colo. 351, 553 P.2d 73 (1976).

No set ritual. The overriding consideration in analyzing a record pertaining to a guilty plea or a plea of nolo contendere is that a set ritual is not required. People v. Lambert, 189 Colo. 264, 539 P.2d 1238 (1975).

Detailed discussion of possible locales of imprisonment not required. Wilson v. People, 708 P.2d 792 (Colo. 1985).

Or precise language in record. If the record reflects that the trial court had assured itself that defendant's plea was voluntary and intelligently entered with full knowledge of the nature and elements of the offense and of the waiver of his rights as an accused person, then lack of precise language in the record expressing these things is not of itself a valid reason to reverse acceptance of a plea of nolo contendere. People v. Lambert, 189 Colo. 264, 539 P.2d 1238 (1975).

Record must reflect factual basis for guilty plea and factual basis may be established by record as a whole. Wilson v. People, 708 P.2d 792 (Colo. 1985).

Full compliance would reduce challenges. The failure of a trial judge to make certain that the record expressly reflects full compliance with this section and Crim. P. 11 before he accepts a plea of guilty or a plea of nolo contendere frequently generates a challenge. Full compliance would certainly diminish challenges and appeals. People v. Lambert, 189 Colo. 264, 539 P.2d 1238 (1975).

The court is not bound by a recommendation; in its discretion it may refuse to grant the district attorney's sentence concession. People v. Wright, 38 Colo. App. 271, 559 P.2d 249 (1976), aff'd, 194 Colo. 448, 573 P.2d 551 (1978).

Duty to comply with Crim. P. 32(e). The provision in Crim. P. 11(b)(5) and subsection (2)(e), that the court will not be bound by representations made to the defendant "unless the representations are included in a formal plea agreement approved by the court and supported by the findings of the presentence report ...", does not free the court from complying with Crim. P. 32(e), which requires that if the court decides that the final disposition should not include the charge or sentence concessions contemplated by a plea agreement, as provided in Crim. P. 11(f), it shall so advise the defendant and then call on the defendant to either affirm or withdraw his plea of guilty or nolo contendere. People v. Wright, 38 Colo. App. 271, 559 P.2d 249 (1976), aff'd, 194 Colo. 448, 573 P.2d 551 (1978).

Merely informing the defendant that the court will not be bound by any recommendation or representation by anyone concerning sentencing or probation does not obviate the necessity of its complying with Crim. P. 32(e). People v. Wright, 38 Colo. App. 271, 559 P.2d 249 (1976), aff'd, 194 Colo. 448, 573 P.2d 551 (1978).

Authority to vacate guilty plea. Although a trial judge's authority to dismiss a criminal charge on his own motion prior to trial, except as expressly authorized by statute or rule, is narrowly limited, a trial court does have the authority to vacate a guilty plea and enter a not guilty plea if the charges were not supported by facts appearing in the record of all court appearances and in the presentencing report. People v. Carino, 193 Colo. 412, 566 P.2d 1061 (1977).

A trial court is not generally required to inform a defendant of the collateral consequences of his guilty plea. People v. Moore, 841 P.2d 320 (Colo. App. 1992); People v. Jones, 957 P.2d 1046 (Colo. App. 1997).

To satisfy due process, a defendant must be informed only of the direct consequences of his guilty plea, which include those which have a definite, immediate, and largely automatic effect on the range of possible punishment. People v. Moore, 841 P.2d 320 (Colo. App. 1992); People v. Jones, 957 P.2d 1046 (Colo. App. 1997).

Accordingly, a guilty plea is not invalid for failure of a trial court to warn a defendant of its possible effect on future criminal liability. People v. Heinz, 589 P.2d 931 (Colo. 1979); People v. Moore, 841 P.2d 320 (Colo. App. 1992); People v. Jones, 957 P.2d 1046 (Colo. App. 1997).

Conditional guilty pleas are not authorized in Colorado by statute or court rule. People v. Neuhaus, 240 P.3d 391 (Colo. App. 2009), aff'd, 2012 CO 65, 289 P.3d 19; People v. Hoffman, 2012 CO 66, 289 P.3d 24; Escobedo v. People, 2012 CO 67, 289 P.3d 25.

16-7-207.5. Court's duty to inform defendants with current or prior military service on first appearance in court and on pleas of guilty.

(1) At the first appearance of a defendant in court or upon arraignment, whichever is first in time, the court shall ascertain whether the defendant is serving in the United States armed forces or is a veteran of such forces. The court shall inform any such defendant that the defendant may be entitled to receive mental health treatment, substance use disorder treatment, or other services as a veteran. If the jurisdiction does not have a veterans treatment court, the court shall inform the defendant of the possibility of petitioning to transfer probation supervision after a plea or sentence in a case to a jurisdiction with a veterans treatment court pursuant to section 18-1.3-202.5.

(2) The court shall not accept a plea of guilty or nolo contendere without first determining whether the defendant is serving in the United States armed forces or is a veteran of such forces and, if so, informing the defendant as described in subsection (1) of this section.

(3) This section applies to, but is not limited to, prosecutions for violations of municipal charters and prosecutions for violations of municipal ordinances, except for traffic infractions for which the penalty is only a fine and arrest is prohibited.

Source: L. 2018: Entire section added, (HB 18-1078), ch. 135, p. 889, § 1, effective August 8. **L. 2021:** (1) amended, (HB 21-1016), ch. 214, p. 1135, § 1, effective September 7.

16-7-208. Failure or refusal to plead.

If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or a plea of nolo contendere (no contest), or if a corporation fails to appear, the court shall enter a plea of not guilty. If for any reason a plea has not been entered, the case shall for all purposes be considered as one in which a plea of not guilty has been entered.

Source: L. 72: R&RE, p. 223, § 1. **C.R.S. 1963:** § 39-7-208.

ANNOTATION

Annotator's note. Since § 16-7-208 is similar to repealed § 39-7-9, C.R.S. 1963, § 39-7-9, CRS 53, and CSA, C. 48, § 483, relevant cases construing those provisions have been included in the annotations to this section.

This section refers to an accused who refuses to respond and obstinately stands mute. Marler v. People, 139 Colo. 23, 336 P.2d 101 (1959).

It has no application to a plea entered by counsel authorized to speak for an accused. Marler v. People, 139 Colo. 23, 336 P.2d 101 (1959).

Court authorized to enter plea of not guilty only. Where defendant, on being arraigned, stood mute, the court was without authority to enter a plea of "not guilty by reason of insanity at the time of the commission of the crime and since". The only plea that the court, under the circumstances, could properly enter for defendant was a plea of "not guilty". Boyd v. People, 108 Colo. 289, 116 P.2d 193 (1941).

Proceedings valid where defendant did not object to omission of plea. Where defendant proceeded to trial without objection and contested the action as though a not guilty plea had been entered, and the

fact that no such plea had been entered was not mentioned or called to the trial court's attention in the motion for a new trial, such omission did not render proceedings void and defendant is entitled to no relief by reason thereof. Landford v. People, 148 Colo. 300, 365 P.2d 893 (1961).

Where defendant proceeded to trial without objection and in all respects contested the case as though the "not guilty" plea had been entered, the defendant was not prejudiced by this procedural omission. The error or omission is called to the attention of the trial court by the appeal, and the entry of a plea of not guilty will suffice. Romero v. People, 170 Colo. 234, 460 P.2d 784 (1969).

PART 3

PLEA DISCUSSIONS AND PLEA AGREEMENTS

Law reviews: For article, "Felony Plea Bargaining in Six Colorado Judicial Districts: A Limited Inquiry into the Nature of the Process", see 66 Den. U.L. Rev. 243 (1989).

16-7-301. Propriety of plea discussions and plea agreements.

(1) Where it appears that the effective administration of criminal justice will thereby be served, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement. The district attorney should engage in plea discussions or reach plea agreements with the defendant only through or in the presence of defense counsel except where the defendant is not eligible for appointment of counsel because the defendant is not indigent or the charged offense does not include a possible sentence of incarceration or because the defendant refuses appointment of counsel and has not retained counsel.

(2) The district attorney may agree to one or more of the following, depending upon the circumstances of the individual case:

(a) To make or not to oppose favorable recommendations concerning the sentence to be imposed if the defendant enters a plea of guilty or nolo contendere (no contest);

(b) To seek or not to oppose the dismissal of an offense charged if the defendant enters a plea of guilty or nolo contendere (no contest) to another offense reasonably related to the defendant's conduct;

(c) To seek or not to oppose the dismissal of other charges or not to prosecute other potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere (no contest);

(d) To consent to diversion, as provided in section 18-1.3-101, C.R.S.;

(e) To consent to deferred sentencing, as provided in section 18-1.3-102, C.R.S.;

(f) To consent to an assessment for suitability for participation in restorative justice practices, including victim-offender conferences.

(3) Defendants whose situations are similar should be afforded similar opportunities for plea agreement.

(4) Repealed.

(5) Any plea agreement in a case involving a plea to a violation of article 18 of title 18, C.R.S., may not require a waiver by the defendant of the right to petition to have the defendant's criminal conviction records sealed pursuant to part 3 of article 72 of title 24, C.R.S.

Source: L. 72: R&RE, p. 223, § 1. **C.R.S. 1963:** § 39-7-301. **L. 75:** IP(2) amended and (2)(d) and (2)(e) added, p. 609, § 1, effective March 12. **L. 92:** (1) amended and (4) added, p. 465, § 2, effective July 1. **L. 93:** (4) amended, p. 1285, § 2, effective July 1. **L. 2002:** (2)(d) and (2)(e) amended, p. 1491, § 135, effective October 1. **L. 2013:** (2)(d) amended, (HB 13-1156), ch. 336, p. 1957, § 4, effective August 7; (5) added, (SB 13-250), ch. 333, p. 1925, § 32, effective October 1; (1) amended and (4) repealed, (HB 13-1210), ch. 306, p. 1622, § 1, effective January 1, 2014. **L. 2017:** (2)(f) added, (HB 17-1039), ch. 58, p. 183, § 3, effective August 9.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (2)(d) and (2)(e), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "The Colorado Counsel Conundrum: Plea Bargaining, Misdemeanors, and the Right to Counsel", see 89 Denv. U.L. Rev. 327 (2012).

This section does not have to be read in conjunction with the due process clause of the United States constitution so as to guarantee that each confederate in crime would be given a comparable or similar sentence. People v. Bruebaker, 189 Colo. 219, 539 P.2d 1277 (1975).

Due process requires that if defendant relies to his detriment on government's promise in plea agreement, specific performance of agreement is appropriate. People v. Macrander, 756 P.2d 356 (Colo. 1988).

Subsection (2) relates to authority granted to district attorney in plea agreements, not to defendants who are able to waive inalienable constitutional rights without any statutory authorization. This includes a waiver of

due process rights. People v. Gurule, 748 P.2d 1329 (Colo. App. 1987).

Generally, a guilty plea must be voluntarily, knowingly and intelligently made in order to be valid. To be voluntary, a guilty plea cannot be induced by misrepresentation, including unfulfilled or unfulfillable promises. Chae v. People, 780 P.2d 481 (Colo. 1989).

A plea induced by a promised sentence that is statutorily unavailable is invalid. Chae v. People, 780 P.2d 481 (Colo. 1989).

When a defendant enters into a plea agreement that includes as a material element a recommendation for an illegal sentence and the illegal sentence is in fact imposed on the defendant, the guilty plea is invalid and must be vacated because the basis on which the defendant entered the plea included the impermissible inducement of an illegal sentence. Chae v. People, 780 P.2d 481 (Colo. 1989).

Where the sentence recommendation provided for an illegal suspended sentence, the basis for the guilty plea amounted to an invalid, unfulfillable promise. Therefore, the guilty plea must be vacated because the illegal sentence recommendation in the plea agreement invalidated the guilty plea. Chae v. People, 780 P.2d 481 (Colo. 1989).

Withdrawal of guilty plea proper where plea results in illegal suspension of mandatory sentence. People v. Hummel, 131 P.3d 1204 (Colo. App. 2006).

However, where there is a valid plea agreement but an illegal sentence imposed to enforce the valid and legal plea, the proper remedy is to modify the sentence to effect the intent of the plea agreement. People v. Antonio-Antimo, 29 P.3d 298 (Colo. 2000).

The trial court was correct in reinstating defendant's plea of guilty because the plea bargain at issue itself was legal, only one provision of the sentence was illegal, and because that illegality had been rectified. People v. Fennell, 32 P.3d 1092 (Colo. App. 2000).

Since an illegal sentencing provision prevented the defendant from being bound by his original plea agreement, the district attorney also is not bound by the agreement. Chae v. People, 780 P.2d 481 (Colo. 1989).

Defendant received no promise constituting an inappropriate inducement to plead guilty from either the prosecutor or trial court in that nothing in the plea agreement could be interpreted to eliminate or alter the application of the mandatory parole provisions of § 18-1-105. Benavidez v. People, 986 P.2d 943 (Colo. 1999).

Defendant was sufficiently well advised of the mandatory parole requirement so as to enter a plea with sufficient knowledge of the consequences. Benavidez v. People, 986 P.2d 943 (Colo. 1999); People v. Jones, 997 P.2d 1286 (Colo. App. 1999).

The record as a whole, including the advisement given at the time a defendant pleaded guilty to the charge, must be considered in determining whether the defendant was adequately advised concerning mandatory parole at the time

he pleaded guilty to a complaint alleging a probation violation. People v. Wright, 53 P.3d 730 (Colo. App. 2002).

Identical concessions not required for similarly situated defendants. This section and Crim. P. 11(f)(3) do not require that similarly situated defendants be offered identical concessions. People v. Lewis, 671 P.2d 985 (Colo. App. 1983).

This section relates to plea agreements, rather than to sentencing procedures. People v. Bruebaker, 189 Colo. 219, 539 P.2d 1277 (1975).

Agreements to dismiss pending prosecutions, distinguished from plea bargains by the absence of any element of admission of guilt, often have been deemed contrary to public policy and unenforceable. People v. Marquez, 644 P.2d 59 (Colo. App. 1981).

If a plea of guilty results from plea bargaining and the bargain is not honored, the judgment must be vacated. People v. McClellan, 183 Colo. 176, 515 P.2d 1127 (1973).

Defendant not entitled to reduction in sentence. Defendant entered into a plea agreement for a reduced sentence if a district attorney's polygraphist determined that the defendant was telling the truth. Defendant then refused to disclose the results of earlier polygraph tests administered by a defense polygraphist. DA's polygraphist testified that it was necessary for him to review the results of those tests before offering an opinion as to the truthfulness of the defendant's story. The court could not order the defendant to turnover the results of the earlier polygraph tests, but, if he did not do so, the court was not obligated to reduce the sentence. People v. Johnson, 999 P.2d 825 (Colo. 2000).

Conditional guilty pleas are not authorized in Colorado by statute or court rule. People v. Neuhaus, 240 P.3d 391 (Colo. App. 2009), aff'd, 2012 CO 65, 289 P.3d 19; People v. Hoffman, 2012 CO 66, 289 P.3d 24; Escobedo v. People, 2012 CO 67, 289 P.3d 25.

A trial court lacks the authority to order mediation in a criminal case. Both parties may consent to mediation, but mediation may not be made mandatory by the court. People v. Justice, 2023 CO 9, 524 P.3d 1178.

Applied in People v. Ray, 192 Colo. 139, 560 P.2d 74 (1977); People v. Dawson, 89 P.3d 447 (Colo. App. 2003).

16-7-302. Responsibilities of the trial judge with respect to plea discussions and agreements.

(1) The trial judge shall not participate in plea discussions.

(2) If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or nolo contendere (no contest) in the expectation that other charges before that court will be dismissed or that sentence concessions will be granted, the trial judge may, upon request of

the parties, permit the disclosure to him of the tentative agreement and the reasons therefor in advance of the time for tender of the plea. He may then indicate to the district attorney and defense counsel or defendant whether he will concur in the proposed disposition if the information in the presentence report is consistent with the representations made to him. If the trial judge concurs but later decides that the final disposition should not include the charge or sentence concessions contemplated by the plea agreement, he shall so advise the defendant and then call upon the defendant to either affirm or withdraw his plea of guilty or nolo contendere (no contest).

(3) Notwithstanding the reaching of a plea agreement between the district attorney and defense counsel or defendant, the judge in every case should exercise an independent judgment in deciding whether to grant charge and sentence concessions.

Source: L. 72: R&RE, p. 223, § 1. **C.R.S. 1963:** § 39-7-302.

ANNOTATION

Annotator's note. Since § 16-7-302 is similar to repealed § 40-1-303, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

Participation by trial judge in the plea bargaining process must be condemned. People v. Clark, 183 Colo. 201, 515 P.2d 1242 (1973).

Court may involve itself in plea discussions if such involvement merely involves observations regarding the evolving legal posture of the case or inquiries as to whether the parties still wish to consummate the agreement. People v. Venzor, 121 P.3d 260 (Colo. App. 2005).

When rejecting a plea agreement, a trial court must demonstrate on the record that it has actually exercised its discretion. A court's failure to make such showing is an abuse of discretion. People v. Jasper, 984 P.2d 1185 (Colo. App. 1999), rev'd on other grounds, 17 P.3d 807 (Colo. 2001); People v. Copenhaver, 21 P.3d 413 (Colo. App. 2000).

Court has discretion to reject a plea agreement, separately from the merits, on the basis that the parties tendered it in an untimely fashion. The trial court must provide adequate notice to the parties of the plea bargain cutoff date and must permit an exception to the rule for good cause. If a court rejects a plea for failure to conform to plea deadline, court need not necessarily consider the terms of the plea agreement proffered by the parties. People v. Jasper, 17 P.3d 802 (Colo. 2001).

Court must indicate position in plea-bargaining conference. During a plea-bargaining conference, the judge must indicate to the district attorney and defense counsel whether or not he will concur in the

proposed disposition. Sober v. District Court, 197 Colo. 250, 592 P.2d 400 (1979).

When the trial judge couples his intervention into plea negotiations with threats of a longer sentence if the defendant goes to trial and is found guilty, he has attempted to use his office to force the defendant to waive his right to a jury trial or be penalized for exercising this constitutionally guaranteed right. People v. Clark, 183 Colo. 201, 515 P.2d 1242 (1973).

Defendant's motion to withdraw guilty plea must be granted where trial judge participated in plea negotiations. Because trial judge stepped out of his role as a neutral and impartial arbiter of justice by advising defendant and making other inappropriate remarks to influence defendant to agree to plea bargain, defendant has a fair and just reason to withdraw his plea. Crumb v. People, 230 P.3d 726 (Colo. 2010).

Where no basis for disqualification of judge. In the context of a confidential plea-bargaining conference, conducted off-the-record and in chambers, and where the challenged statement by the court implies nothing more than the judge's belief that the proposed plea and sentence concessions would not do justice, there is no basis for disqualification. Sober v. District Court, 197 Colo. 250, 592 P.2d 400 (1979); People v. McGhee, 677 P.2d 419 (Colo. App. 1983).

Crim. P. 32(e) implements subsection (2). People v. Wright, 38 Colo. App. 271, 559 P.2d 249 (1976), aff'd, 194 Colo. 448, 573 P.2d 551 (1978).

Subsection (2) applies to "charge or sentence concessions" and not to cost concessions. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

In the context of plea agreements, "sentence stipulations", "sentence agreements", "sentence concessions", and other similar terms are nothing more than sentence recommendations that the trial court is free to accept or reject, including after the defendant's guilty plea. This section requires the trial court to exercise its independent judgment in deciding whether to accept or reject sentence concessions in a plea agreement, and allow the defendant, but not the people, to withdraw from a plea agreement when the trial court rejects a sentence concession after the defendant has pleaded guilty. People v. Mazzarelli, 2019 CO 71, 444 P.3d 301.

A sentence recommendation is a sentence concession whether or not the court approves or concurs. People v. Wright, 38 Colo. App. 271, 559 P.2d 249 (1976), aff'd, 194 Colo. 448, 573 P.2d 551 (1978).

When a defendant enters a plea agreement that includes a recommendation for a particular sentence, the fact that the sentence is rejected by the court removes the basis upon which the defendant entered his guilty plea and draws into question the voluntariness of the plea. Chae v. People, 780 P.2d 481 (Colo. 1989).

A court is not bound to accept a prosecutor's sentence recommendations, and in fact, is statutorily mandated to exercise an independent judgment in deciding whether to grant sentencing concessions in plea bargain situations.

People v. Smith, 827 P.2d 577 (Colo. App. 1991).

Trial court did not have to follow the plea agreement even if it is assumed that the imposition of a concurrent sentence in Denver was part of the agreement between defendant and the Moffat county prosecutor, and even if that agreement was binding on the prosecution in Denver. People v. Smith, 827 P.2d 577 (Colo. App. 1991).

Decision of judge should be independently reached. When a plea of guilty or nolo contendere is tendered or received as a result of a prior plea agreement, the trial judge should give the agreement due consideration; but notwithstanding its existence, he should reach an independent decision on whether to grant charge or sentence concessions. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

But he should disclose basis for decision not to grant concessions. If the trial judge concurs in the proposed statement but the final disposition does not include the charge or sentence concessions contemplated in the plea agreement, he shall state for the record what information in the presentence report contributed to his decision not to grant these concessions. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Court retains jurisdiction over conditional plea agreements in criminal cases so approved at least until such time as the express condition has been satisfied. White v. District Court, 695 P.2d 1133 (Colo. 1984).

Plea may not be withdrawn because of a condition of probation. Defendant charged with attempted first degree sexual assault who pleads guilty to the lesser offense of third degree misdemeanor assault may be required to undergo a psychosexual evaluation as a condition of probation. People v. Fleming, 3 P.3d 449 (Colo. App. 1999).

Applied in Vigil v. People, 196 Colo. 522, 587 P.2d 1196 (1978); People v. Cunningham, 200 Colo. 303 614 P.2d 886 (1980); People v. Adams, 678 P.2d 572 (Colo. App. 1984); People v. Carpenter, 709 P.2d 72 (Colo. App. 1985); People v. Lucero, 714 P.2d 498 (Colo. App. 1985).

16-7-303. Fact of discussion and agreement not admissible.

Except as to proceedings resulting from a plea of guilty or nolo contendere (no contest) which is not withdrawn, the fact that the defendant or his defense counsel and the district attorney engaged in plea discussions or made a plea agreement shall not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceeding.

Source: L. 72: R&RE, p. 224, § 1. **C.R.S. 1963:** § 39-7-303.

ANNOTATION

Hearing necessary prerequisite to admit statements made in conjunction with withdrawn plea. A defendant who challenges the voluntariness or reliability of statements made in the course of tendering a guilty plea which is subsequently withdrawn or rejected and is later sought to be used against him at trial for impeachment purposes is entitled to a hearing which provides the safeguards set forth in Jackson v. Denno, 378 U.S. 368 (1964), before those statements may be used against him. People v. Cole, 195 Colo. 483, 584 P.2d 71 (1978).

Where defendant's statements inadmissible. Where the defendant's statements were made in the course of plea negotiations, for the narrowly limited purpose of assisting the district attorney and the court in determining whether he was an appropriate candidate for deferred sentencing, and where, when the statements were elicited, it was contemplated by both sides that they would have no probative effect on the issue of guilt or innocence, for both parties then assumed that a guilty plea would be entered, when the defendant did withdraw from the plea negotiations, thus aborting the only purpose for which his inculpatory statements had been given, it was palpably unfair to allow the prosecution to use those statements against him for an entirely unintended purpose to prove his guilt. Gelfand v. People, 196 Colo. 487, 586 P.2d 1331 (1978).

Where a trial court has accepted a defendant's plea agreement in which the prosecution and defendant have stipulated to imposition of concurrent sentences, the court is obligated under the plea agreement either to impose only concurrent periods of incarceration or to grant only concurrent periods of probation. People v. Flenniken, 720 P.2d 617 (Colo. App. 1986), rev'd on other grounds, 749 P.2d 395 (Colo. 1988).

Application of CRE 410, when read in light of Crim. P. 11 (e)(6) and this section, requires the exclusion of evidence of statements made by defendant during plea bargaining process only in regard to plea discussions with the attorney for the government. People v. Rollins, 759 P.2d 816 (Colo. App. 1988).

16-7-304. Charges for bad checks.

The department or agency supervising the collection of restitution agreed to as a condition of a plea agreement, including dismissal of a charge, may assess a charge of fifteen dollars to a defendant for collection of each bad check or each bad check received as a restitution payment. For the purposes of this section, "bad check" means a check or similar sight order for the payment of money which is dishonored by the bank or other drawee because the issuer does not have sufficient funds upon deposit with the bank or other drawee to pay the check or order upon presentation within thirty days after issue.

Source: L. 84: Entire section added, p. 488, § 1, effective July 1. **L. 87:** Entire section amended, p. 620, § 1, effective July 1.

Cross references: For charges for bad checks received as a restitution payment ordered as a condition of a deferred prosecution or deferred sentence, see § 16-7-404; for assessment of a penalty for a dishonored check presented as a payment for restitution, see § 16-18.5-108.

PART 4

DEFERRED PROSECUTION AND DEFERRED SENTENCING

16-7-401. Deferred prosecution. (Repealed)

Source: L. 72: R&RE, p. 224, § 1. **C.R.S. 1963:** § 39-7-401. **L. 75:** (2) amended, p. 610, § 1, effective June 26. **L. 77:** (1) amended, p. 860, § 1, effective May 24. **L. 81:** (1) amended, p. 930, § 1, effective May 13. **L. 83:** (2) amended, p. 664, § 3, effective July 1. **L. 85:** (1) amended, p. 616, § 7, effective July 1. **L. 94:** (1) amended, p. 2036, § 15, effective July 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-101.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-7-402. Counseling or treatment for alcohol or drug abuse. (Repealed)

Source: L. 72: R&RE, p. 224, § 1. **C.R.S. 1963:** § 39-7-402. **L. 81:** Entire section amended, p. 930, § 2, effective May 13. **L. 82:** (1) repealed, p. 309, § 2, effective March 11. **L. 2000:** (2) amended, p. 235, § 4, effective July 1. **L. 2001:** (3) added, p. 658, § 6, effective May 30. **L. 2002:** (2) amended, p. 665, § 8, effective May 28; (3) amended, p. 1182, § 6, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: House Bill 02-1229 amended subsection (2). Senate Bill 02-010 amended subsection (3). This section as amended by House Bill 02-1229 and Senate Bill 02-010 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-210.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-7-403. Deferred sentencing of defendant. (Repealed)

Source: L. 75: Entire section added, p. 611, § 1, effective February 9. **L. 83:** (2) amended, p. 664, § 4, effective July 1. **L. 85:** (1) amended, p. 617, § 8, effective July 1; (1) amended, p. 1371, § 50, effective July 1. **L. 87:** (1) and (2) amended, p. 614, § 2, effective July 1. **L. 93:** (2) amended, p. 1727, § 5, effective July 1. **L. 97:** (2) amended, p. 1541, § 7, effective July 1. **L. 98:** (4) added, p. 948, § 8, effective May 27. **L. 2002:** (2) amended, p. 760, § 9, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: House Bill 02-1225 amended subsection (2). This section as amended by House Bill 02-1225 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-102.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-7-403.5. Deferred sentencing - mentally ill defendants charged with certain misdemeanors - demonstration program - repeal. (Repealed)

Source: L. 96: Entire section added, p. 1279, § 1, effective June 1.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2001. (See L. 96, p. 1279.)

16-7-403.7. Deferred sentencing - drug offenders - legislative declaration - demonstration program - repeal. (Repealed)

Source: L. 2000: Entire section added, p. 489, § 1, effective May 4. **L. 2002:** (5) amended, p. 979, § 1, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: Senate Bill 02-018 amended subsection (5). This section as amended by Senate Bill 02-018 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-103. Section 18-1.3-103 was subsequently repealed, effective July 1, 2006.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-7-404. Charges for bad checks.

The department or agency supervising the collection of restitution ordered as a condition of a deferred prosecution or deferred sentence pursuant to this part 4 may assess a charge of fifteen dollars to a defendant for collection of each bad check or each bad check received as a restitution payment. For the purposes of this section, "bad check" means a check or similar sight order for the payment of money which is dishonored by the bank or other drawee because the issuer does not have sufficient funds upon deposit with the bank or other drawee to pay the check or order upon presentation within thirty days after issue.

Source: L. 84: Entire section added, p. 488, § 2, effective July 1. **L. 87:** Entire section amended, p. 620, § 2, effective July 1.

Cross references: For charges for bad checks received as a restitution payment ordered as a condition of a plea agreement, see § 16-7-304; for assessment of a penalty for a dishonored check presented as a payment for restitution, see § 16-18.5-108.

ARTICLE 8

Insanity - Release

PART 1
GENERAL PROVISIONS

16-8-101. Insanity defined - offenses committed before July 1, 1995.

16-8-101.3. Legislative intent in enacting section 16-8-101.5 and in making conforming amendments.

16-8-101.5. Insanity defined - offenses committed on and after July 1, 1995.

16-8-102. Definitions.

16-8-103. Pleading insanity as a defense.

16-8-103.5. Impaired mental condition - when raised - procedure - legislative intent.

16-8-103.6. Waiver of privilege.

16-8-103.7. Examination after entry of defenses of insanity and impaired mental condition.

16-8-104. Separate trial of issues.

16-8-104.5. Single trial of issues.

16-8-105. Procedure after plea for offenses committed before July 1, 1995.

16-8-105.5. Procedure after plea for offenses committed on or after July 1, 1995.

16-8-106. Examinations and report.

16-8-106.5. Competency evaluation advisory board - creation - membership - duties - rules - repeal. (Repealed)

16-8-107. Evidence.

16-8-108. Examination at instance of defendant.

16-8-109. Testimony of lay witnesses.

16-8-110. Mental incompetency to proceed - effect - how and when raised. (Repealed)

16-8-111. Determination of incompetency to proceed. (Repealed)

16-8-112. Procedure after determination of competency or incompetency. (Repealed)

16-8-113. Restoration to competency. (Repealed)

16-8-114. Evidence concerning competency - inadmissibility.

16-8-114.5. Commitment - termination of proceedings. (Repealed)

16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition - definitions.

16-8-115.5. Enforcement and revocation of conditional release from commitment.

16-8-116. Release by department of human services authority.

16-8-117. Advisement on matters to be determined.

16-8-118. Temporary removal and community placement for treatment and rehabilitation.

16-8-119. Counsel and physicians for indigent defendants.

16-8-120. Applicable tests for release.

16-8-121. Escape - return to institution.

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PART 2
INTENSIVE TREATMENT MANAGEMENT FOR PERSONS WITH MENTAL ILLNESS

16-8-201 to 16-8-206. (Repealed)

PART 3
COMPETENCY OF PERSONS TO BE EXECUTED

16-8-301 to 16-8-307. (Repealed)

PART 1

GENERAL PROVISIONS

16-8-101. Insanity defined - offenses committed before July 1, 1995.

(1) The applicable test of insanity shall be, and the jury shall be so instructed: "A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable. But care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives, and kindred evil conditions, for when the act is induced by any of these causes the person is accountable to the law.".

(2) Repealed.

(3) This section applies to offenses committed before July 1, 1995.

Source: L. 72: R&RE, p. 225, § 1. **C.R.S. 1963:** § 39-8-101. **L. 83:** Entire section amended, p. 672, § 1, effective July 1. **L. 84:** (1) amended, p. 490, § 1, effective February 6. **L. 95:** (3) added, p. 71, § 1, effective July 1. **L. 2025:** (2) repealed and (3) amended, (HB 25-1058), ch. 15, p. 38, § 1, effective August 6.

ANNOTATION

Law reviews. For article, "Insanity Defense Reform", see 11 Colo. Law. 3006 (1982). For article, "Legislative Update", see 12 Colo. Law. 1251 (1983). For a discussion of the 1984 amendment to subsection (1), see article, "Legislative Update", 13 Colo. 1419 (1984). For article, "Not Guilty by Reason of Insanity: A Research Note", see 14 Colo. Law. 569 (1985).

Annotator's note. Since § 16-8-101 is similar to repealed § 39-8-1, C.R.S. 1963, and § 39-8-1, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

Test of criminal responsibility is policy of general assembly. The kind and character of test and the extent of the category of recognized criminal irresponsibility are questions of policy which are properly within the province of the general assembly. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Constitutionality. The right and wrong and irresistible impulse tests described by this section are valid. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

The test of insanity prescribed by this section is not so uncertain, ambiguous, and unintelligible as to constitute a deprivation of due process of law. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

This section has adopted the M'Naghten right and wrong test and the irresistible impulse test. Thus a person is held to be insane as far as the criminal laws are concerned when he is so diseased in mind as to be incapable of distinguishing right from wrong or where he suffers such an impairment of mind as to render him incapable of choosing the right and refraining from doing the wrong. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Rationale for excusing from criminal responsibility. A person who is criminally insane is excused from criminal responsibility for his actions because, due to a mental disease or defect, he lacks the capacity to distinguish right from wrong with respect to the act or to adhere to the right or refrain from the wrong. Hendershott v. People, 653 P.2d 385 (Colo. 1982).

Section does not address defendant's ability to form particular mental state. This section's definition addresses the issue of whether the defendant has sufficient mental capacity to be held accountable for any crimes he may have committed. It does not answer the question of whether the defendant was capable of forming a particular mental state required for a conviction of the substantive charge. People v. Morgan, 637 P.2d 338 (Colo. 1981).

An insane defendant can be found guilty of a crime, provided he was not insane at the time of the offenses charged. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Trial court did not err in precluding expert witness from offering an opinion as to whether defendant was legally insane in 1981 where the single issue to be determined by the jury was defendant's legal

sanity or insanity at the time of the killing in 1983. People v. Galimanis, 944 P.2d 626 (Colo. App. 1997).

Trial court did not improperly exclude evidence of specific instances of defendant's conduct that occurred during defendant's confinement at state hospital in the months subsequent to the killing for which the defendant was on trial. People v. Galimanis, 944 P.2d 626 (Colo. App. 1997).

Different standard for competence to stand trial. A criminal defendant who raises the sanity issue is constitutionally entitled to a separate hearing to determine his competence to stand trial because a different standard determines competence to stand trial from that which determines the validity of a defense of not guilty by reason of insanity. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Insanity tests under this section and § 16-8-120 different. The general assembly has chosen by enactment of this section and § 16-8-120 to distinguish between the test in a criminal case for a verdict of not guilty by reason of insanity and the test for release from a mental institution once it is suggested that commitment might safely be terminated. People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

And defendant was not denied due process by failure to apply as the standard for release the same test applied to determine whether he was insane several years earlier when the alleged crime was committed. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

Where defendant was insane at the time of his escape, he should not be held accountable for his escape so as to forfeit good time earned prior thereto, or be held subject to the sanctions of § 17-1-207 (2) (as that section existed prior to the repeal and reenactment of title 17 in 1977), by which he was ordered by the administrative adjustment committee to serve at least two calendar years from and after his administrative transfer to the prison, without the opportunity to earn good time during this two-year period. It would be an anomaly that the defendant, by reason of his legal insanity and unaccountability, could not have been convicted of a felonious escape under § 18-8-208, whereas he could be held accountable for his escape and be subject to the statutory sanctions resulting therefrom, in spite of his insanity and unaccountability. Lange v. Schauer, 184 Colo. 373, 520 P.2d 753 (1974).

A court cannot find one sane who had previously been found insane unless he is first "released from commitment" pursuant to law. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

A person found insane as to one time cannot be held to be sane at a subsequent time unless and until there is compliance with the statutory mandates relating to release from commitment. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Insanity adjudication results in a presumptive continuation of a state of mental incapacity until it is shown that sanity has been restored. People v. Giles, 662 P.2d 1073 (Colo. 1983).

But committed person not incapable of committing crimes. An insanity adjudication represents a judicial determination that an accused is not legally responsible for a past criminal act by reason of a mental disease or defect which existed at the time the act was committed. It is simply not true, however, that an insanity adjudication renders a committed person legally incapable of committing future crimes during the period of commitment. People v. Giles, 662 P.2d 1073 (Colo. 1983).

While a finding of insanity as to one time is binding on the courts, such a finding does not mandate a finding of insanity as to an earlier time period. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Finding of sanity as to one act does not preclude different finding as to another act. Where acts are separated by time and location, a finding of sanity as to one act would not preclude a different finding as to the later ones. People v. Beasley, 43 Colo. App. 488, 608 P.2d 835 (1979).

The distinction between insanity and incompetency must be sharply drawn. Incompetency merely abates the action and is procedural in effect, while insanity is substantive and renders the defendant not guilty. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Insane persons are, under the law, not necessarily incompetent to stand trial because of the fact of their insanity, while, in contrast, an incompetent defendant may not be tried. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Although a person may be both insane and incompetent, likewise, one may be insane and yet competent to stand trial. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

A person adjudicated not guilty by reason of insanity as defined in this section and § 16-8-101.5 is not a handicapped individual under § 504 of the Rehabilitation Act of 1973. Neiberger v. Hawkins, 239 F. Supp. 2d 1140 (D. Colo. 2002).

The "deific-decree" delusion is recognized in Colorado; a defendant may be judged legally insane if the defendant's cognitive ability to distinguish right from wrong with respect to the act has been destroyed as a result of a psychotic delusion that God has decreed the act. People v. Serravo, 823 P.2d 128 (Colo. 1992).

But the trial court did not err in refusing to submit an instruction specifying that a "deific-decree" delusion could constitute legal insanity where the court instead submitted an instruction explaining that the term "incapable of distinguishing right from wrong" refers to cognitive inability, due to mental disease or defect, to distinguish right from wrong as measured by a societal standard of morality, even though the person may be aware that the conduct in question is criminal. People v. Tally, 7 P.3d 172 (Colo. App. 1999).

Trial court did not err in refusing to include as a jury instruction that a "deific-decree" delusion could constitute legal insanity where there was no evidence that defendant felt he was under any

compulsion by God to murder the victim. People v. Galimanis, 944 P.2d 626 (Colo. App. 1997).

The concepts of "right" and "wrong" are essentially ethical in character and have their primary source in the existing societal standards of morality as distinguished from the written law. But a personal and subjective standard of morality should not be permitted to exonerate a defendant. People v. Serravo, 823 P.2d 128 (Colo. 1992).

Trial court was not required to submit the clarifying instruction on the definition of legal insanity specifying that right from wrong is measured by a societal standard where defendant did not contend that his actions were justified under his own moral beliefs or moral code, nor that he was conscious that what he was doing was right or wrong, either legally or morally. People v. Galimanis, 944 P.2d 626 (Colo. App. 1997).

The appropriate construction of the term "incapable of distinguishing right from wrong" should be measured by existing societal standards of morality rather than a defendant's personal and subjective understanding of the legality or illegality of the act in question. People v. Serravo, 823 P.2d 128 (Colo. 1992).

Res judicata or collateral estoppel do not operate to make a prior adjudication of insanity into a conclusive presumption of insanity or incompetence to stand trial for criminal acts which are committed after an insanity adjudication but before a formal restoration of the defendant to sanity. Blehm v. People, 817 P.2d 988 (Colo. 1991).

When a mental infirmity is directly caused by voluntary intoxication, even though effects have dissipated, the defendant is not diseased within legal insanity statute, and, therefore, court was correct in refusing to issue jury instruction on settled insanity doctrine. People v. Bieber, 835 P.2d 542 (Colo. App. 1992), aff'd, 856 P.2d 811 (Colo. 1993).

Instruction in language of section is proper. No error is committed when a trial court submits to the jury an instruction which is drafted substantially in the language of this section, and which has been approved by the Colorado supreme court. The words "depravity" and "obliquity", while not used in every day conversation, are well within the comprehension of a jury. Simms v. People, 174 Colo. 85, 482 P.2d 974 (1971).

Jury instruction which set forth the test of insanity in the exact language of the statute was held to be proper. Salas v. People, 181 Colo. 321, 509 P.2d 586 (1973).

Trial court is not required to provide an instruction on the phrase "moral obliquity", as such term is well within the comprehension of a jury. People v. Galimanis, 944 P.2d 626 (Colo. App. 1997).

Applied in Johnson v. People, 174 Colo. 413, 484 P.2d 110 (1971); People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v. Mack, 638 P.2d 257 (Colo. 1981); People v. Roark, 643 P.2d 756 (Colo. 1982); People v. Wright, 648 P.2d 665 (Colo. 1982); People v. Martin, 851 P.2d 186 (Colo. App. 1992).

16-8-101.3. Legislative intent in enacting section 16-8-101.5 and in making conforming amendments.

The intent of the general assembly in enacting section 16-8-101.5 and making conforming amendments to sections 16-8-101 to 16-8-104, 16-8-106, 16-8-110, 16-8-114, 16-8-115, and 16-8-120 in 1995, and in enacting clarifying provisions in this section and sections 16-8-104.5 and 16-8-105.5 and making conforming amendments to sections 16-8-105 and 16-8-107 and sections 18-1-802 and 18-1-803, C.R.S., in 1996, was to combine the defense of not guilty by reason of insanity and the affirmative defense of impaired mental condition into the affirmative defense of not guilty by reason of insanity and to create a unitary process for hearing the issues raised by said affirmative defense to apply to offenses committed on or after July 1, 1995.

Source: L. 96: Entire section added, p. 3, § 1, effective January 31.

16-8-101.5. Insanity defined - offenses committed on and after July 1, 1995.

(1) The applicable test of insanity shall be:

(a) A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable; except that care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions, for, when the act is induced by any of these causes, the person is accountable to the law; or

(b) A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged, but care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when the act is induced by any of these causes, the person is accountable to the law.

(2) Repealed.

(3) This section applies to offenses committed on or after July 1, 1995.

Source: L. 95: Entire section added, p. 71, § 2, effective July 1. **L. 2020:** (2) amended, (SB 20-221), ch. 279, p. 1365, § 2, effective July 13. **L. 2021:** IP(2) amended, (SB 21-266), ch. 423,

p. 2800, § 14, effective July 2. **L. 2025:** (2) repealed and (3) amended, (HB 25-1058), ch. 15, p. 38, § 2, effective August 6.

Cross references: For the legislative declaration in SB 20-221, see section 1 of chapter 279, Session Laws of Colorado 2020.

ANNOTATION

A person adjudicated not guilty by reason of insanity as defined in this section and § 16-8-101 is not a handicapped individual under § 504 of the Rehabilitation Act of 1973. Neiberger v. Hawkins, 239 F. Supp. 2d 1140 (D. Colo. 2002).

Exclusion for voluntary ingestion of intoxicating substances applies to both prongs of the insanity test. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

Defendant offered insufficient evidence showing that he was insane or incompetent to stand trial. Since defendant failed to introduce sufficient evidence on those issues, the court need not determine whether defendant could offer evidence of "settled insanity" along with other evidence of his mental condition on the issue of sanity. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

Trial court properly instructed the jury that "any mental illness suffered by defendant is not a defense in this case". Defendant's mental illness does not support the defense of involuntary intoxication since the defense of involuntary intoxication involves a temporary condition, and bipolar is not a temporary condition. Defendant's bipolar condition would have provided evidence for an insanity defense, but defendant did not plead insanity, which requires a special pleading. Therefore, the court properly instructed the jury that mental illness was not a defense in this case. People v. Sommers, 200 P.3d 1089 (Colo. App. 2008).

Trial court did not err by finding defendant sane at the time of his offense. Prosecution presented sufficient evidence from two psychologist expert witnesses that defendant's behavior was not driven by insanity but by drugs and antisocial behavior. People v. Porter, 2013 COA 130, 353 P.3d 852 , rev'd on other grounds, 2015 CO 34, 348 P.3d 922.

The affirmative defense of insanity under this section is available to a defendant who experiences a temporary or long-term bout of insanity so long as he or she was legally insane at the time of the alleged crime. People v. Voth, 2013 CO 61, 312 P.3d 144.

Evidence of defendant's sanity as to one of eleven counts against him was substantial and sufficient to permit a reasonable juror to find that defendant was sane. The issue is whether defendant

was capable, at the time he committed the acts, of distinguishing right from wrong with respect to the criminal acts. People v. Eastwood, 2015 COA 150, 363 P.3d 799.

16-8-102. Definitions.

As used in this article 8, unless the context otherwise requires:

(1) "Diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Evidence of knowledge or awareness of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation does not constitute an inability to distinguish right from wrong.

(2) "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.

(3) "Gender identity" and "gender expression" have the same meaning as set forth in section 18-1-901.

(4) (a) "Impaired mental condition" means a condition of mind, caused by mental disease or defect that prevents the person from forming the culpable mental state that is an essential element of any crime charged.

(b) This subsection (4) applies to offenses committed before July 1, 1995.

(5) "Ineligible for release" means the defendant is suffering from a mental disease or defect that is likely to cause the defendant to be dangerous to the defendant's self, to others, or to the community, in the reasonably foreseeable future, if the defendant is permitted to remain at liberty.

(6) "Ineligible to remain on conditional release" means the defendant has violated one or more conditions in the defendant's release, or the defendant is suffering from a mental disease or defect that is likely to cause the defendant to be dangerous to the defendant's self, to others, or to the community in the reasonably foreseeable future, if the defendant is permitted to remain on conditional release.

(7) "Mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(8) "Release examination" means a court-ordered examination of a defendant directed to developing evidence relevant to determining whether the defendant is eligible for release.

(9) "Release hearing" means a hearing for the purpose of determining whether a defendant previously committed to the department of human services, following a verdict of not guilty by reason of insanity, has become eligible for release.

(10) "Sanity examination" means a court-ordered examination of a defendant who has entered a plea of not guilty by reason of insanity, directed to developing information relevant to determining the sanity or insanity of the defendant at the time of the commission of the act with which the defendant is charged and the defendant's competency to proceed.

(11) "Sexual orientation" has the same meaning as set forth in section 18-9-121.

Source: L. 72: R&RE, p. 225, § 1. **C.R.S. 1963:** § 39-8-102. **L. 81:** (4.5) added, p. 932, § 1, effective July 1. **L. 83:** (2.7) added, p. 672, § 2, effective July 1. **L. 94:** (6) amended, p. 2647, § 116, effective July 1. **L. 95:** (2.7) amended and (4.7) added, p. 72, § 3, effective July 1. **L. 2008:** (1), (2), (3), and (7) repealed, p. 1850, § 3, effective July 1. **L. 2013:** (2.5) added, (SB 13-116), ch. 115, p. 393, § 1, effective August 7. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 39, § 3, effective August 6.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (6), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2008 act repealing subsections (1), (2), (3), and (7), see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "Incompetency and the Problem of Ganser's Syndrome", see 22 Colo. Law 1897 (1993).

The primary purpose of the competency hearing is to ascertain whether he has sufficient mental capacity to know the nature of the charge and to cooperate with his counsel in his defense. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

It is a separate hearing tried by different standard. A criminal defendant who raises the sanity issue is constitutionally entitled to a separate hearing to determine his competence to stand trial because a different standard determines competence to stand trial from that which determines the validity of a defense of not guilty by reason of insanity. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Where the expert witness testified that the defendant had done "quite well" on a competency assessment that addressed whether the defendant had a realistic appreciation of the charges against him and the consequences of those charges and whether the defendant could work effectively with his counsel, the trial court's finding of competency was adequately supported and could not be set aside. People v. Tally, 7 P.3d 172 (Colo. App. 1999).

"Culpable mental state" as used in the definition of "impaired mental condition" speaks to mental condition not state of mind. People v. Fincham, 799 P.2d 419 (Colo. App. 1990).

No finding of dangerousness is necessary to hold defendant ineligible to remain on conditional release if defendant has violated one or more conditions of release. Conditions of release are presumably imposed to eliminate or reduce the risk of future dangerous conduct by the defendant. People v. McCoy, 821 P.2d 873 (Colo. App. 1991).

The condition violated must bear a substantial relationship to the prevention of recurring mental illness or the management of an insanity acquittee's existing mental illness, and to the prevention of future dangerous behavior arising from the mental illness. If defendant has violated such a condition, the court may revoke the conditional release without infringing upon due process. People v. Garlotte, 958 P.2d 469 (Colo. App. 1997).

The distinction between insanity and incompetency must be sharply drawn. Incompetency merely abates the action and is procedural in effect, while insanity is substantive and renders the defendant not guilty. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Insane persons are, under the law, not necessarily incompetent to stand trial because of the fact of their insanity, while, in contrast, an incompetent defendant may not be tried. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Although a person may be both insane and incompetent, likewise, one may be insane and yet competent to stand trial. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

Involuntary intoxication and insanity are legally separate and distinct defenses with significantly distinct consequences. People v. Garcia, 113 P.3d 775 (Colo. 2005).

Defendant's failure to plead the affirmative defense of impaired mental condition did not bar expert testimony that defendant focused on only one thing at a time. The defendant did not suffer from mental disease or defect. The condition was not "severely abnormal". And the condition did not grossly and demonstrably impair the defendant's perception of reality, where defendant did not claim he was unable to recognize or understand the reality of the situation he was in, but instead, as he did not process information quickly, did not notice it. People v. Requejo, 919 P.2d 874 (Colo. App. 1996).

Applied in Jones v. District Court, 617 P.2d 803 (Colo. 1980); People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v.

Mack, 638 P.2d 257 (Colo. 1981); People v. Hall, 697 P.2d 746 (Colo. App. 1984); People v. Karpierz, 165 P.3d 753 (Colo. App. 2006).

16-8-103. Pleading insanity as a defense.

(1) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea is: "Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by the defendant's counsel. A defendant who does not raise the defense as provided in this section is not permitted to rely upon insanity as a defense to the crime charged but, when charged with a crime requiring a specific intent as an element thereof, may introduce evidence of the defendant's mental condition as bearing upon the defendant's capacity to form the required specific intent. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) This subsection (1) applies to offenses committed before July 1, 1995.

(1.5) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea is: "Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by the defendant's counsel. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) This subsection (1.5) applies to offenses committed on or after July 1, 1995.

(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 inform the court. The court shall then conduct an investigation as it deems proper, which may include the appointment of psychiatrists or forensic psychologists to assist in examining the defendant and 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, the court shall enter the plea on behalf of the defendant, and the plea entered has the same effect as though it had been voluntarily entered by the defendant.

(3) If a grand jury indictment or preliminary hearing has not been held prior to the entry of the plea of not guilty by reason of insanity, the court shall hold a preliminary hearing prior to the trial of the insanity issue. If probable cause is not established, the case must be dismissed, but the court may order the district attorney to institute civil proceedings pursuant to article 65 of title 27 if it appears that the protection of the public or the accused requires a civil proceeding.

(4) Before accepting a plea of not guilty by reason of insanity, the court shall advise the defendant of the effect and consequences of the plea.

Source: L. 72: R&RE, p. 226, § 1. **C.R.S. 1963:** § 39-8-103. **L. 75:** (3) amended, p. 926, § 26, effective July 1. **L. 95:** (1) amended and (1.5) added, p. 73, § 4, effective July 1. **L. 2010:** (3) amended, (SB 10-175), ch. 188, p. 783, § 21, effective April 29. **L. 2013:** (2) amended, (SB 13-116), ch. 115, p. 393, § 2, effective August 7. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 40, § 4, effective August 6.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Mental State of Defendants in Criminal Trials — A Comparison of Some Colorado and Massachusetts Procedures", see 14 Rocky Mt. L. Rev. 21 (1941). For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For note, "Trial Procedure in Colorado Under the 1951 Amendment Relating to Insanity in Criminal Cases", see 24 Rocky Mt. L. Rev. 223 (1952). For article, "Highlights of the 1955 Legislative Session — Criminal Law and Procedure", see 28 Rocky Mt. L. Rev. 69 (1955). For note, "Procedural Aspects of the Colorado Criminal Insanity Statutes", see 31 Rocky Mt. L. Rev. 90 (1958). For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960). For article, "One Year Review of Criminal Law and Procedure", see 38 Dicta 65 (1961). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For article, "Medical-Legal Liaison: A Need for Dialogue in the Criminal Law", see 37 U. Colo. L. Rev. 169 (1965). For article, "Self Incrimination and the Insanity Plea: Out of the Mouths of Babes", see 66 Den. U. L. Rev. 81 (1988).

Annotator's note. Since § 16-8-103 is similar to repealed § 39-8-1, C.R.S. 1963, § 39-8-1, CRS 53, CSA, C. 48, § 507, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The affirmative defense of impaired mental condition is separate and distinct from the defense of insanity; its sole effect is to negate the existence of an element of the crime charged. However, if a defendant intends to raise the defense of impaired mental condition at trial, he must also specially plead the defense at arraignment. People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

The purpose of this section is to require the defense of insanity to be tried only under a special plea, to require this plea to be interposed at the time of arraignment, and to require a special verdict on this issue. This defense cannot now be introduced under the plea of "not guilty", as it formerly could be. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933); Mundy v. People, 105 Colo. 547, 100 P.2d 584 (1940).

Notwithstanding this section, based upon a criminal defendant's constitutional right to due process, the defendant's "mental slowness" may be considered as factual evidence to support the argument that he or she lacked the required culpable mental state. People v. Vanrees, 125 P.3d 403 (Colo. 2005).

Constitutionality. The constitutional provision concerning the inviolability of jury trials does not prohibit the general assembly from changing the method of raising the question of insanity. Nor does the requirement that in order to raise the question of insanity, the defendant must plead it in the specified manner, offend against the due process clause of the constitution. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

A statute which requires a special plea to be entered in cases where insanity is relied on as a defense does not deny due process of law. Leick v. People, 131 Colo. 353, 281 P.2d 806 (1955).

The requirement that a special plea as to insanity be entered to be followed by a period of observation does not deny to a defendant any constitutional right. Robbins v. People, 142 Colo. 254, 350 P.2d 818 (1960).

Subsection (2) not unconstitutional. Subsection (2), which provides for the determination of the issue of defendant's sanity in advance of trial, is not facially unconstitutional. Les v. Meredith, 193 Colo. 3, 561 P.2d 1256 (1977).

Subsection (2) does not offend traditional notions of fair play and substantial justice. Public safety and welfare considerations override the reasons assigned by the trial court for its declaration of unconstitutionality, i.e., that in violation of §§ 16 and 25 of art. II, Colo. Const., defendant had lost his right to confront witnesses against him, the right to appear and defend against the charges made, the right to assert all available defenses, and the right to a public trial upon the merits of the charges. Les v. Meredith, 193 Colo. 3, 561 P.2d 1256 (1977).

The administration of justice is improved if, upon having reason to do so and after holding a hearing, a trial judge can enter a plea of not guilty by reason of insanity on behalf of the defendant, irrespective of the defendant's wishes. Les v. Meredith, 193 Colo. 3, 561 P.2d 1256 (1977).

Section only changes the procedure. The substance of the defendant's right to a jury trial on the question of insanity has been preserved; the procedure only has been changed. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933); Mundy v. People, 105 Colo. 547, 100 P.2d 584 (1940).

And it is to be liberally construed in favor of defendants. Martinez v. People, 179 Colo. 197, 499 P.2d 611 (1972).

"Just determination" inquiry or determination regarding imposition of a mental status defense over the objection of the defendant requires a balancing of the public's interest in not holding criminally liable a defendant lacking criminal responsibility and the defendant's interest in autonomously controlling the nature of person's defense. Under subsection (2) and §

16-8-103.5 (2) the court must consider not only the defendant's stated reasons for objecting to the mental status defenses at the time of arraignment—but also the defendant's state of mind at the time of the commission of the offense. Against this, the court must consider the defendant's reasons for attempting to forego assertion of the mental status defense by examining whether those reasons satisfy a "basic rationality" inquiry. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

Trial court must first consider the viability of the mental status defense that defense counsel requests the court to assert on behalf of the defendant. This requires the court to assess the mental state of the defendant at the time of the commission of the offense to determine whether there is substantial evidence that the defendant may not be guilty because of the defendant's mental status. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

Defendant's choice should be accorded substantial weight in evaluating whether imposition of a mental status defense results in a "just determination of the charge against the defendant". At the same time it is inappropriate to give weight to a defendant's choice if the choice is founded in the defendant's delusions or is otherwise devoid of a rational basis. To satisfy this inquiry the trial court must assess whether the defendant's reason for the decision has a plausible grounding in reality. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

A finding of competency to stand trial does not substitute for a finding of basic rationality. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

An individual's interest in autonomously controlling the nature of his or her defense, provided that interest is premised on a choice that satisfies the basic rationality test, will predominate over the broader interest of society unless pressing concerns mandate a contrary result. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

It is mandatory to the extent that it requires a defendant who intends to defend on the ground of insanity to interpose an appropriate plea. But this does not mean that this section operates to exclude every other possible mental examination of an accused. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

A defendant desiring to rely upon insanity as a defense in a criminal action is bound to comply with the provisions of this section concerning the entry of such plea. Robbins v. People, 142 Colo. 254, 350 P.2d 818 (1960).

But it does not compel self-incrimination. Since a defendant under a plea of not guilty can offer evidence of his insanity bearing upon his ability to form criminal intent, it cannot be said that he is compelled to enter a plea of not guilty by reason of insanity under this section and his election to do so cannot be held compulsory incrimination. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Where the defendant does not enter a special plea raising the defense of insanity, any evidence introduced at his trial which would support such a plea is

irrelevant and inadmissible. People v. Low, 732 P.2d 622 (Colo. 1987).

Rationale for excusing from criminal responsibility. A person who is criminally insane is excused from criminal responsibility for his actions because, due to a mental disease or defect, he lacks the capacity to distinguish right from wrong with respect to the act or to adhere to the right or refrain from the wrong. Hendershott v. People, 653 P.2d 385 (Colo. 1982).

Insane persons are not necessarily incompetent to stand trial because of the fact of their insanity. People v. Benns, 641 P.2d 298 (Colo. App. 1981).

Putting accused on trial while he is incompetent violates due process of law. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

And prohibition attaches at commencement of formal criminal proceedings and continues throughout the execution and satisfaction of the sentence. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Defense counsel to bring belief of accused's incompetence to court's attention. When defense counsel has reason to believe the accused is incompetent, he is obliged to bring this matter to the court's attention even though it might be to the disadvantage of the accused. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

And court to inquire where issue of competency raised. Where defense attorney's representation to the court raised a substantial issue as to the petitioner's competency to stand trial, trial court's refusal to make any inquiry into that issue or to receive any evidence in that regard constituted an abuse of discretion. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Or due process is violated when a trial court refuses to accord an accused an adequate hearing on his claimed incompetency to stand trial. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Choice of entering plea left to defendant. The tactical choice of whether to enter a plea of not guilty by reason of insanity by a defendant found "mentally competent" is left to the defendant and his counsel. People v. Lopez, 640 P.2d 275 (Colo. App. 1982).

When a defendant is competent to proceed, the tactical choice whether to utilize the affirmative defense of insanity should be left up to the defendant and his counsel. People v. Benns, 641 P.2d 298 (Colo. App. 1981).

No authority for court to raise defense unless requested by defendant. Neither Crim. P. 11(e) nor this section gives a trial court the authority to enter a plea of not guilty by reason of insanity when it has not been requested by the defendant or his counsel. Labor v. Gibson, 195 Colo. 416, 578 P.2d 1059 (1978); People v. Lopez, 640 P.2d 275 (Colo. App. 1982).

Claim of incompetence to stand trial on issue of guilt cannot be waived. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Entitled to instruction on commitment procedures. A defendant who is relying on

an insanity defense is entitled, upon request, to an instruction on commitment procedures. People v. Thomson, 197 Colo. 232, 591 P.2d 1031 (1979); People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979); People v. Beasley, 43 Colo. App. 488, 608 P.2d 835 (1979).

The court should give a jury instruction which clearly and simply explains the consequences to the defendant of an insanity verdict. Such an instruction should clearly indicate that it is only informational and is to have no persuasive bearing on the jury's determination of a proper verdict. People v. Roark, 643 P.2d 756 (Colo. 1982).

People v. Thomson should be applied retroactively in those cases in which an instruction on commitment procedures has been requested and judgment of conviction is not final. People v. Hardin, 199 Colo. 229, 607 P.2d 1291 (1980).

This section does not seek to regulate arrest and investigation. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

The statutory procedure does not exclude other examinations. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960); People v. Beasley, 687 P.2d 1323 (Colo. App. 1984).

There is nothing in this section and § 16-8-105 which precludes the employment, by either the accused or the state, of physicians or psychiatrists with a view to their testifying at the trial. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

One entering insanity plea cannot be denied bail. One who enters a plea of not guilty by reason of insanity at the time of the commission of the alleged crime cannot be denied bail pending trial. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Statute as basis for jurisdiction. See Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Applied in People v. Garza, 44 Colo. App. 393, 612 P.2d 1139 (1979); People v. Moody, 630 P.2d 74 (Colo. 1981).

II. RAISING INSANITY ISSUES.

A. Under Plea of Not Guilty by Reason of Insanity.

B. Under Plea of Not Guilty.

A. Under Plea of Not Guilty by Reason of Insanity.

Previously the question of insanity could be raised under a general plea of not guilty. In order to avoid or lessen certain abuses that were believed to exist under that practice, the general assembly changed the method of raising the question of insanity, but left to the defendant all the substantial rights he formerly enjoyed. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

Defense of insanity can only be raised by special plea. Boyd v. People, 108 Colo. 289, 116 P.2d 193 (1941).

The plea of not guilty by reason of insanity is in the nature of confession and avoidance. Boyd v. People, 108 Colo. 289, 116 P.2d 193 (1941); Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958); People v. Chavez, 629 P.2d 1040 (Colo. 1981).

It is a plea on the merits because it attacks the mental element of the offense alleged which is an essential element of guilt. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

By asserting insanity a defendant admits the acts charged, but denies criminal culpability. However, such admission extends only and solely to the consideration of such plea; beyond that it has no efficacy in a criminal case. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958); People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Permitting change of plea is within discretion of court. Where good cause is shown, it is incumbent on the trial court to allow changes of plea or additional pleas to accomplish the fair and just determination of criminal charges. Whether good cause is shown rests within the sound discretion of the trial court, and in the absence of a showing of an abuse of discretion by the trial court, the supreme court will not disturb its ruling. Gallegos v. People, 166 Colo. 409, 444 P.2d 267 (1968).

Trial court's determination of lack of good cause shown for permitting insanity defense will be affirmed unless there has been an abuse of discretion. Martinez v. People, 179 Colo. 197, 499 P.2d 611 (1972).

Whether good cause is shown to permit a plea of insanity rests within the sound discretion of the trial court, and in the absence of a showing of an abuse of discretion by the trial court, an appellate court will not disturb its ruling. Taylor v. District Court, 182 Colo. 406, 514 P.2d 309 (1973).

Question of good cause is addressed to sound discretion of trial judge and, absent a clear abuse of discretion, the trial judge's ruling will not be disturbed on appeal. Garza v. People, 200 Colo. 62, 612 P.2d 85 (1980).

Good cause shown. Good cause is shown when the defendant establishes that the plea was not entered at arraignment because of mistake, ignorance, or inadvertence, and that fairness and justice will best be served by permitting the additional plea. Ellis v. District Court, 189 Colo. 123, 538 P.2d 107 (1975); People v. Reed, 692 P.2d 1150 (Colo. App. 1984).

Where good cause not found. Where defense counsel forcefully argues that he has demonstrated good cause through his showing that defendant lied to him about his real identity and his past criminal record and said that he had some mental problems, this did not establish good cause. Garza v. People, 200 Colo. 62, 612 P.2d 85 (1980).

Denial, for lack of good cause, of request to add insanity plea held not abuse of discretion. Martinez v. People, 179 Colo. 197, 499 P.2d 611 (1972).

Where four and one half months after a plea of not guilty to a charge of murder has been entered, a jury selected and sworn, counsel for the defendant is advised that defendant may be subject to epilepsy, and thereupon requests the court to order a mistrial and to permit defendant to enter a plea of "not guilty by reason of insanity", the refusal of the trial court to grant such requests is not an abuse of discretion where

the record discloses that the trial court carefully investigated the matter in the course of which competent medical advice was sought and received following an examination of the defendant. Robbins v. People, 142 Colo. 254, 350 P.2d 818 (1960).

Court acted arbitrarily in denying leave to plead defense. Prior to arraignment, counsel for defendant had discussed the insanity defense with him, but defendant did not want to plead not guilty by reason of insanity and counsel agreed. However, when defendant was severed from his codefendants for trial, he disclosed new evidence to his counsel, which led counsel to the discovery of other evidence indicative of a foundation for insanity pleas, and, on the basis of this new knowledge, counsel again discussed the possibility of the insanity defense with him, and he then stated that he wanted to so plead. On the basis of this showing, the trial court acted arbitrarily in denying leave to plead the defense of insanity. Taylor v. District Court, 182 Colo. 406, 514 P.2d 309 (1973).

B. Under Plea of Not Guilty.

Under plea of not guilty defendant cannot demand acquittal by reason of insanity. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

Defendant withdrew his plea of not guilty by reason of insanity and having done so, he may not thereafter seek an acquittal on the ground that he was incapable of forming the general intent to commit a crime. Russell v. People, 155 Colo. 422, 395 P.2d 16 (1964).

On a trial of the issue of guilt after defendant was adjudged sane, evidence of mental condition could not form the basis for an outright acquittal on the ground that the accused was unable to form even a general intent to commit a crime. Rupert v. People, 163 Colo. 219, 429 P.2d 276 (1967).

Evidence of mental condition admissible as bearing on specific intent. Upon trial of issues framed by a plea of not guilty, any evidence bearing on the mental condition of the accused, including evidence of legal insanity, is admissible as bearing on the ability to deliberate and form the intent essential to murder in the first degree. Leick v. People, 131 Colo. 353, 281 P.2d 806 (1955).

This section provides that evidence of mental condition may be offered regardless of whether a plea of not guilty by reason of insanity has been interposed. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Evidence of insanity or mental deficiency is relevant in a criminal trial, notwithstanding the fact that defendant has merely entered a plea of not guilty, as bearing upon the capacity of the accused to form a specific intent essential to the crime. Early v. People, 42 Colo. 462, 352 P.2d 112 (1960).

A defendant is entitled under the proviso of this section to adduce evidence bearing upon his capacity to form the particular intent essential to constitute the crime of felonious escape. Gallegos v. People, 159 Colo. 379, 411 P.2d 956 (1966).

A line of testimony regarding mental condition is proper on a trial on the issue of guilt after defendant was adjudged sane, but

only for the very limited purpose of whether testimony bears upon the capacity of the accused to form a specific intent essential to constitute a crime. Rupert v. People, 163 Colo. 219, 429 P.2d 276 (1967).

Or to reduce the grade of the crime. A defendant pleading not guilty may introduce evidence of mental condition for the purpose not of securing an acquittal, but of reducing the grade of the crime. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

Or in mitigation of sentence. A defendant may introduce evidence of mental derangement at the time of the commission of the homicide for the purpose of enabling the jury to determine, in the exercise of its discretion, whether to fix the penalty at death or imprisonment for life, should it find him guilty of first degree murder. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

And court may limit jury determination to issue of specific intent. After defendant withdrew his plea of not guilty due to insanity, the trial court was correct in limiting medical testimony on defendant's emotional age to the determination by the jury as to whether defendant could form a specific intent. Russell v. People, 155 Colo. 422, 395 P.2d 16 (1964).

But refusal to admit such evidence would deny due process. A refusal on the part of a trial court to admit evidence of mental condition, including evidence of legal insanity, would be a denial of due process of law. Leick v. People, 131 Colo. 353, 281 P.2d 806 (1955).

Defendant who withdrew his plea of not guilty by reason of insanity could not complain regarding a jury instruction which failed to indicate that insanity resulting from involuntary intoxication could mitigate first degree murder. People v. Manier, 184 Colo. 44, 518 P.2d 811 (1974).

16-8-103.5. Impaired mental condition - when raised - procedure - legislative intent.

(1) If the defendant intends to assert the affirmative defense of impaired mental condition, the defendant shall indicate that intention to the court and to the prosecution at the time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and the prosecution of the defendant's intention to assert the affirmative defense of impaired mental condition at any time prior to trial.

(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 inform the court. The court shall then conduct an investigation as it deems proper, which may include the appointment of psychiatrists or forensic psychologists to assist in examining the defendant and 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 the defense of impaired mental condition is necessary for a just determination of the charge against the defendant, the court shall

inform the prosecution that the defense must 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.

(3) At the time when the defendant announces the defendant's intention to assert the affirmative defense of impaired mental condition, the court shall advise the defendant of the effect and consequences of asserting the defense.

(4) When the defendant indicates the defendant's intention to assert the defense of impaired mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of persons, other than medical experts subject to the provisions of section 16-8-103.6, whom the parties intend to call as witnesses with regard to the affirmative defense of impaired mental condition.

(5) If the trier of fact finds the defendant not guilty by reason of impaired mental condition pursuant to section 18-1-803 (3), the court shall commit the defendant to the custody of the department of human services until such time as the defendant is found eligible for release pursuant to the standards set forth in sections 16-8-115 and 16-8-120. The executive director of the department of human services shall designate the state facility where the defendant is held for care and psychiatric treatment and may transfer the defendant from one institution to another if, in the opinion of the executive director, transferring the defendant is desirable to do so in the interest of the defendant's proper care, custody, and treatment or the protection of the public or the personnel of the facilities in question.

(6) It is the intent of the general assembly that the assertion of the affirmative defense of impaired mental condition not be made in a manner that it is used to circumvent the requirements of disclosure specified in rule 16 of the Colorado rules of criminal procedure.

(7) A defendant may raise impaired mental condition only through an assertion of affirmative defense.

(8) This section applies to offenses committed before July 1, 1995.

Source: L. 83: Entire section added, p. 673, § 3, effective July 1. **L. 85:** (6) and (7) added, p. 625, § 1, effective June 6. **L. 87:** (4) amended, p. 622, § 2, effective July 1. **L. 94:** (5) amended, p. 2648, § 117, effective July 1. **L. 95:** (8) added, p. 73, § 5, effective July 1. **L. 2013:** (2) amended, (SB 13-116), ch. 115, p. 394, § 3, effective August 7. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 41, § 5, effective August 6.

Cross references: (1) For affirmative defenses generally, see § 18-1-407.

(2) For the legislative declaration contained in the 1994 act amending subsection (5), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "Legislative Update", see 12 Colo. Law. 1251 (1983).

The plea of impaired mental condition must be raised at the arraignment of the defendant or such plea is waived. People v. Low, 732 P.2d 622 (Colo. 1987); People v. Fincham, 799 P.2d 419 (Colo. App. 1990).

The affirmative defense of impaired mental condition is separate and distinct from the defense of insanity; its sole effect is to negate the existence of an element of the crime charged. However, if a defendant intends to raise the defense of impaired mental condition at trial, he must also specially plead the defense at arraignment. People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

Exclusion of impaired mental condition defense for noncompliance with discovery order by reason of prejudice to prosecution was not an abuse of discretion where defendant was examined six months prior to trial and at a time when he was represented by counsel, yet only declared his intention to use a defense of impaired mental condition just before trial, and no events occurred after non-compliance which mitigated prejudice to prosecution. People v. Reger, 731 P.2d 752 (Colo. App. 1986).

Testimony relating to an impaired mental condition defense may be excluded if the procedural requirements of this section and § 16-8-103.6 are not met. People v. Sandoval, 805 P.2d 1126 (Colo. App. 1990).

Admissible medical testimony relating to an impaired mental condition need not arise out an examination concerning precisely the issue of impaired mental condition. No such limitation is found in this section or § 16-8-103.6. People v. Sandoval, 805 P.2d 1126 (Colo. App. 1990).

"Just determination" inquiry or determination regarding imposition of a mental status defense over the objection of the defendant requires a balancing of the public's interest in not holding criminally liable a defendant lacking criminal responsibility and the defendant's interest in autonomously controlling the nature of person's defense. Under subsection (2) and § 16-8-103 (2) the court must consider not only the defendant's stated reasons for objecting to the mental status defenses at the time of arraignment—but also the defendant's state of mind at the time of the commission of the offense. Against this, the court must consider the defendant's reasons for attempting to forego assertion of the mental status defense by examining whether those reasons satisfy a "basic rationality" inquiry. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

Trial court must first consider the viability of the mental status defense that defense counsel requests the court to assert on behalf

of the defendant. This requires the court to assess the mental state of the defendant at the time of the commission of the offense to determine whether there is substantial evidence that the defendant may not be guilty because of the defendant's mental status. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

Defendant's choice should be accorded substantial weight in evaluating whether imposition of a mental status defense results in a "just determination of the charge against the defendant". At the same time it is inappropriate to give weight to a defendant's choice if the choice is founded in the defendant's delusions or is otherwise devoid of a rational basis. To satisfy this inquiry the trial court must assess whether the defendant's reason for the decision has a plausible grounding in reality. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

A finding of competency to stand trial does not substitute for a finding of basic rationality. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

An individual's interest in autonomously controlling the nature of his or her defense, provided that interest is premised on a choice that satisfies the basic rationality test, will predominate over the broader interest of society unless pressing concerns mandate a contrary result. Hendricks v. People, 10 P.3d 1231 (Colo. 2000).

16-8-103.6. Waiver of privilege.

(1) (a) A defendant who places the defendant's mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, or asserting the affirmative defense of impaired mental condition pursuant to section 16-8-103.5, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged prior to July 1, 2020, waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition, or sentencing hearing conducted pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged prior to July 1, 2020. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for the mental condition.

(b) This subsection (1) applies to offenses committed before July 1, 1995.

(2) (a) A defendant who places the defendant's mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103 or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to

section 18-1.4-102; or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning the defendant's mental condition pursuant to section 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition, or sentencing hearing conducted pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for the mental condition.

(b) This subsection (2) applies to offenses committed on or after July 1, 1995.

Source: L. 87: Entire section added, p. 622, § 1, effective July 1. **L. 95:** Entire section amended, p. 73, § 6, effective July 1. **L. 98:** Entire section amended, p. 381, § 2, effective April 21. **L. 99:** (2)(a) amended, p. 403, § 5, effective July 1. **L. 2002:** (1)(a) and (2)(a) amended, p. 1491, § 136, effective October 1. **L. 2002, 3rd Ex. Sess.:** (2)(a) amended, p. 29, §§ 17, 18, effective July 12. **L. 2008:** (1)(a) and (2)(a) amended, p. 1850, § 4, effective July 1. **L. 2020:** (1)(a) and (2)(a) amended, (SB 20-100), ch. 61, p. 205, § 3, effective March 23. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 42, § 6, effective August 6.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a) and (2)(a), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsection (2)(a), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session. For the legislative declaration contained in the 2008 act amending subsections (1)(a) and (2)(a), see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989).

By requiring disclosure of defendant's medical examinations by defense-retained non-testifying psychiatric experts, statutory provision did not violate defendant's constitutional rights to effective assistance of counsel. People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

This section is not void for vagueness. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section does not violate a defendant's constitutional privilege against self-incrimination. The information

obtained in compulsory mental examinations is admissible only on the issue of mental condition. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section does not violate a defendant's fundamental right to present a defense or the right to effective assistance of counsel. A defendant can present a defense if he or she complies with the statute. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

No standing to attack the constitutionality of this section where defendant did not raise the defense of impaired mental condition subsequent to the denial of his pretrial challenge to such section. People v. Fuller, 791 P.2d 702 (Colo. 1990).

Testimony relating to an impaired mental condition defense may be excluded if the procedural requirements of this section and § 16-8-103.5 are not met. People v. Sandoval, 805 P.2d 1126 (Colo. App. 1990).

Admissible medical testimony relating to an impaired mental condition need not arise out an examination concerning precisely the issue of impaired mental condition. No such limitation is found in this section or § 16-8-103.5. People v. Sandoval, 805 P.2d 1126 (Colo. App. 1990).

A plain reading of this section and § 13-90-107 is that the attorney-client and the physician-patient privileges do not apply to communications made to a physicians or psychologists who are eligible to testify concerning a defendant's mental condition once the defendant enters a mental condition plea or defense. Gray v. District Ct., 884 P.2d 286 (Colo. 1994).

A defendant who places his or her mental condition at issue waives the attorney-client and the physician-patient privileges. The prosecution may use the testimony of a physician retained by the defense even though the defense does not intend to use the physician at trial. In addition, the prosecution may use pre-offense or post-offense information concerning the defendant's mental condition. Gray v. District Ct., 884 P.2d 286 (Colo. 1994).

This section's waiver of confidentiality applies to persons identified in § 13-90-107 (1)(g) in addition to the physicians and psychologists identified in this section. People v. Liggett, 2021 COA 51, 492 P.3d 356; aff'd, 2023 CO 22, 529 P.3d 113.

"Communications made by the defendant to a physician or psychologist" also includes communications made to a physician's or psychologist's agent. Liggett v. People, 2023 CO 22, 529 P.3d 113.

Discovery under this section includes all medical and mental health records concerning a mental condition that the defendant places at issue in a criminal case and the attorney work product doctrine does not preclude discovery of an expert's file on the ground that the expert is an agent of defense counsel. However, if the defendant invokes the attorney work product doctrine, any work product actually generated by defense counsel that is in an expert's file must be reviewed by the trial court and excised from the file before the file is disclosed to the prosecution. People v.

Ullery, 964 P.2d 539 (Colo. App. 1997), aff'd, 984 P.2d 586 (Colo. 1999).

The waiver contained in this section does not encompass attorney work product. Waiver of privileged communications under this section includes the disclosure of medical records but does not apply to the thoughts and conclusions of defense counsel. Therefore, on a defendant's motion claiming attorney work product, the trial court should conduct an in camera review to determine whether portions of the file contain defense counsel's work product. People v. Ullery, 984 P.2d 506 (Colo. 1999).

16-8-103.7. Examination after entry of defenses of insanity and impaired mental condition.

(1) (a) When, at the time of arraignment, the defense of insanity is raised pursuant to section 16-8-103, and the defendant asserts the defendant's intention to raise the affirmative defense of impaired mental condition pursuant to section 16-8-103.5, the court shall order one examination of the defendant with regard to both defenses pursuant to section 16-8-106.

(b) This subsection (1) applies to offenses committed before July 1, 1995.

(2) (a) When, at the time of arraignment, the defense of insanity is raised pursuant to section 16-8-103, the court shall order an examination of the defendant with regard to the insanity defense pursuant to section 16-8-106.

(b) This subsection (2) applies to offenses committed on or after July 1, 1995.

(3) (a) When the defendant gives notice pursuant to section 16-8-107 (3) that the defendant intends to introduce evidence in the nature of expert opinion concerning the defendant's mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106.

(b) This subsection (3) applies to offenses committed on or after July 1, 1999.

Source: L. 83: Entire section added, p. 673, § 3, effective July 1. **L. 95:** Entire section amended, p. 74, § 7, effective July 1. **L. 99:** (3) added, p. 404, § 6, effective July 1. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 43, § 7, effective August 6.

16-8-104. Separate trial of issues.

The issues raised by the plea of not guilty by reason of insanity must be tried separately to different juries, and the sanity of the defendant must be tried first. This section applies to offenses committed before July 1, 1995.

Source: L. 72: R&RE, p. 226, § 1. **C.R.S. 1963:** § 39-8-104. **L. 95:** Entire section amended, p. 74, § 8, effective July 1. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 44, § 8, effective August 6.

ANNOTATION

Law reviews. For article, "The Mental State of Defendants in Criminal Trials — A Comparison of some Colorado and Massachusetts Procedures", see 14 Rocky Mt. L. Rev. 21 (1941). For note, "Trial Procedure in Colorado Under the 1951 Amendment Relating to Insanity in Criminal Cases", see 24 Rocky Mt. L. Rev. 223 (1952). For comment on People ex rel. Juhan v. District Court, see 40 U. Colo. L. Rev. 626 (1968).

Annotator's note. Since § 16-8-104 is similar to repealed § 39-8-3, C.R.S. 1963, § 39-8-3, CRS 53, and CSA, C. 48, § 509, relevant cases construing those provisions have been included in the annotations to this section.

Legislative intent. By enactment of this section, the general assembly intended that the issues of guilt and legal accountability be completely separated for trial purposes. People v. King, 181 Colo. 439, 510 P.2d 333 (1973); People v. Morgan, 637 P.2d 338 (Colo. 1981).

This section relates to the order of trial of issues raised by the separate and distinct pleas which may be entered by an accused. Martin v. District Court, 129 Colo. 27, 272 P.2d 648 (1954).

This section provides for the order of trial of an offense where an insanity plea is joined with other pleas. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

A separation of the issues for trial does not deny due process of law. Leick v. People, 131 Colo. 353, 281 P.2d 806 (1955).

Or other constitutional rights. The right to a trial by a jury of 12, the right to a speedy public trial by an impartial jury, due process, and other constitutional rights are not violated because the trial of the issues separately results in one trial. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

Purpose of separate trials. Separate trials of the issues of guilt and of mental condition are provided to safeguard, as far as possible, against the prejudice likely to arise in the minds of a jury trying both the issue of guilt and of mental condition by reason of the wide variety of evidence which might be competent on the issue of insanity and which would not be admissible upon trial of the not guilty plea. Trujillo v. People, 150 Colo. 235, 372 P.2d 86 (1962).

The bifurcated trial was designed to eliminate many constitutional challenges where the issues of insanity and guilt were resolved in the unitary trial. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Purpose of sanity trial limited. A sanity trial is designed to determine whether the

defendant was sane or insane at the time of the alleged offense, and the issue of guilt or innocence plays no part in the resolution of this issue. People v. Morgan, 637 P.2d 338 (Colo. 1981).

Separate trials utilize separate juries. In Colorado there are two separate and distinct trials, utilizing two separate and distinct juries, whenever the plea of not guilty by reason of insanity is raised. Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

In a proceeding under this section, if the cause is set for trial to the jury on the issue of insanity only, and the defendant is found sane, then the defendant shall be tried on the issue of guilt at a later time to a different jury. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

Which constitute but one trial. This section provides for disposition of a plea of insanity in a criminal case before trial of the issue of not guilty; although such issues are tried separately, they constitute but one trial. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

Under the procedure permitting a disposition of the insanity issue before the issue of not guilty, the trial is conducted in sections which together constitute one trial. The action is single. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

And a single judgment to the charge results. Where there is but a single charge to which a defendant pleads not guilty by reason of insanity at the time of the commission of the offense and the further plea of not guilty, and the issues so raised are tried separately, a single judgment only could be entered. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

Procedure does not make trial a civil case. The fact that the issue of insanity defense has been separated from other questions for the purpose of trial does not make a civil case out of that which is tendered as a defense to an accusation of crime. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959); People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

However, in the sanity trial, defendant's testimony is not considered within the same constitutional guarantees as it is in the guilt trial. It is not error for the judge to not give a Curtis advisement concerning the right to testify and previous convictions. People v. Chou, 981 P.2d 668 (Colo. App. 1999).

And proof beyond a reasonable doubt is required of issues in separate trial. By procedurally requiring a separate trial on the issue of mental capacity to commit any crime — which admittedly is a necessary ingredient of any offense — the material ingredient set apart for separate trial shall be governed by all the firmly established doctrine that as to every necessary ingredient of the total crime there must be proof beyond a reasonable doubt. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

In Colorado, the sanity trial stands on the same footing with the trial on the other elements of the crime. Parks v. Denver

District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

In considering a motion for a directed verdict in a sanity trial under this section, the trial court must consider the evidence, together with reasonable inferences therefrom, in the light most favorable to the people, and, if there is substantial competent evidence to support a verdict in favor of the people, the motion must be denied and the matter submitted to the jury for determination. People v. King, 181 Colo. 439, 510 P.2d 333 (1973).

Defendant was not placed in double jeopardy on insanity issue. Where defendant, charged with homicide, moved for a separate trial on the sanity issue as provided by this section, he was not placed in double jeopardy where the trial court's direction of verdict of insanity was held erroneous and the defendant was retried on the sanity issue. People v. King, 181 Colo. 439, 510 P.2d 333 (1973).

Grant of new trial on sanity does not require new trial on merits. When a separate sanity trial has been held which results in an erroneous verdict requiring a new sanity trial, it is not necessary to also grant a new trial on the merits where there is no prejudicial error in the trial of the substantive charge. Young v. People, 175 Colo. 461, 488 P.2d 567 (1971); Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

Admission of psychiatric report on sanity but not guilt issues. The general assembly, in providing for the admission in evidence of defendant's statements to the psychiatrist where sanity is the issue, but barring them on the guilt issue, does not violate the defendant's rights against self-incrimination. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

The use of the confessions or admissions of the defendant in the decisional process by the psychiatrist in forming an opinion as to the sanity or insanity of the defendant does not aid in the proof of guilt, but is limited to the issue of sanity. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

No self-incrimination. When the sanity issue is a separate proceeding, as it is in Colorado, before a jury that cannot consider the issue of guilt in the event the defendant is found sane and where the admissions cannot be used to establish guilt, there is no self-incrimination within the contemplation of the constitutional provisions. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Joinder of a charge of forcible rape with an unrelated deviate sexual intercourse charge committed on a different female on a different date for purposes of trial on the sanity issue was not error. People v. Renfrow, 193 Colo. 131, 564 P.2d 411 (1977).

Sanity trial jury not instructed on substantive elements. A trial court is correct to refuse to instruct the jury at a sanity trial on the elements and culpable mental states of the substantive offenses with which the defendant is charged. People v. Morgan, 637 P.2d 338 (Colo. 1981).

Motion for new trial after trial on merits preserves for appeal errors alleged in sanity trial because the judgment

declaring the defendant sane is not final for appeal purposes until defendant is found guilty of the crime charged. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

Applied in People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976); Labor v. Gibson, 195 Colo. 416, 578 P.2d 1059 (1978); People v. Roark, 643 P.2d 756 (Colo. 1982); People v. Serravo, 823 P.2d 128 (Colo. 1992).

16-8-104.5. Single trial of issues.

(1) The issues raised by the plea of not guilty by reason of insanity must be treated as an affirmative defense and must be tried at the same proceeding and before the same trier of fact as the charges to which not guilty by reason of insanity is offered as a defense.

(2) This section applies to offenses committed on or after July 1, 1995.

Source: L. 96: Entire section added, p. 3, § 1, effective January 31. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 44, § 9, effective August 6.

ANNOTATION

Unitary trial provisions did not violate defendant's right against self-incrimination and his rights to due process and a fair trial. Jury was instructed that evidence concerning defendant's statements during his sanity examination was to be considered only to determine whether defendant had the capacity to form or did form the requisite culpable mental state and for no other purpose. Where there is nothing in the record to suggest the contrary, the jury is presumed to have followed the instruction. People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

Jury instructions based on § 16-8-107 are sufficient to protect a defendant's privilege against self-incrimination. Absent evidence to the contrary, courts presume jurors understand and heed jury instructions. People v. Marko, 2015 COA 139, 434 P.3d 618, aff'd, 2018 CO 97, 432 P.3d 607.

Unitary trial procedures did not violate defendant's rights to due process and a fair trial on the grounds he was deprived of the presumption of innocence. Jury was properly instructed on the presumption of innocence, and there is nothing in the record to indicate that it disregarded those instructions. People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

Under unitary trial provision, defendant does not possess a statutory right to a jury trial on the merits and the affirmative defense of insanity if a plea of not guilty by reason of insanity was entered

and stipulated to by the prosecution. People v. Laeke, 2012 CO 13M, 271 P.3d 1111.

16-8-105. Procedure after plea for offenses committed before July 1, 1995.

(1) When a plea of not guilty by reason of insanity is accepted, the court shall forthwith order the defendant to undergo a sanity examination, specifying the place where the examination must be conducted.

(2) Upon receiving the report of the sanity examination, the court shall immediately set the case for trial to a jury on the issue raised by the plea of not guilty by reason of insanity. In all cases except class 1, class 2, and class 3 felonies, the defendant may waive jury trial by an express written instrument or announcement in open court appearing of record. If the court and the district attorney consent, jury trial may be waived in a class 1, class 2, or class 3 felony case. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the people have the burden of proving sanity beyond a reasonable doubt.

(3) If the trier of fact finds the defendant was sane at the time of commission of the offense, the court, unless it has reason to believe that the defendant is incompetent to proceed or the question is otherwise raised as provided in section 16-8.5-102, shall immediately set the case for trial on the issues raised by the plea of not guilty. If the question of whether the defendant is incompetent to proceed is raised, the court shall follow the procedure set forth in section 16-8.5-103.

(4) If the trier of fact finds the defendant not guilty by reason of insanity, the court shall commit the defendant to the custody of the department of human services until such time as the defendant is found eligible for release. The executive director of the department of human services shall designate the state facility at which the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one institution to another if, in the opinion of the executive director, it is desirable to do so in the interest of the defendant's proper care, custody, and treatment or the protection of the public or the personnel of the facilities in question.

(5) This section applies to offenses committed before July 1, 1995.

Source: L. 72: R&RE, p. 226, § 1. **C.R.S. 1963:** § 39-8-105. **L. 75:** (2) amended, p. 613, § 1, effective July 1. **L. 94:** (4) amended, p. 2648, § 118, effective July 1. **L. 96:** (5) added, p. 5, § 2, effective January 31. **L. 2008:** (3) amended, p. 1851, § 5, effective July 1. **L. 2025:** (1), (4), and (5) amended, (HB 25-1058), ch. 15, p. 44, § 10, effective August 6.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2008 act amending subsection (3), see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

I. General Consideration.

III. Procedure After Trial.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Mental State of Defendants in Criminal Trials — A Comparison of Some Colorado and Massachusetts Procedures", see 14 Rocky Mt. L. Rev. 21 (1941). For note, "Trial Procedure in Colorado Under the 1951 Amendment Relating to Insanity in Criminal Cases", see 24 Rocky Mt. L. Rev. 223 (1952). For article, "Insanity and the Law", see 39 Dicta 325 (1962). For comment on French v. District Court, see 36 U. Colo. L. Rev. 280 (1964). For comment on People ex rel. Juhan v. District Court, see 40 U. Colo. L. Rev. 626 (1968). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to post-arrest silence as evidence of sanity, see 15 Colo. Law. 1606 (1986).

Annotator's note. Since § 16-8-105 is similar to repealed § 39-8-3, C.R.S. 1963, § 39-8-3, CRS 53, CSA, C. 48, § 509, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section is constitutional. This section is valid and does not deprive an accused of due process of law. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

This section is constitutional and its adoption was a valid exercise of legislative power. Bell v. People, 158 Colo. 146, 406 P.2d 681 (1965).

Colorado's automatic commitment statute does not violate the due process rights of one found not guilty by reason of insanity, nor is equal protection violated by the fact that a defendant is denied the same precommitment hearing or release standards provided those civilly committed. People v. Fetty, 650 P.2d 541 (Colo. 1982); Glatz v. Kort, 650 F. Supp. 191 (D. Colo. 1984), aff'd, 807 F.2d 1514 (10th Cir. 1986).

Insanity procedure does not compel self-incrimination. No change in the matter of incarceration and observation is provided by insanity procedure from jail to hospital, and this is no violation of a defendant's constitutional exemption from testifying against himself. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

The general assembly, in providing for the admission in evidence of defendant's statements to the psychiatrist where sanity is the issue, but barring them on the guilt issue, does not violate the defendant's rights against self-incrimination. Lewis v.

Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

When the sanity issue is a separate proceeding, as it is in Colorado, before a jury that cannot consider the issue of guilt in the event the defendant is found sane and where the admissions cannot be used to establish guilt, there is no self-incrimination within the contemplation of the constitutional provisions. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Refusal to cooperate in examination does not forfeit defense. A person accused of a crime who enters a plea of not guilty by reason of insanity cannot be compelled to carry on conversations against his will under the penalty of forfeiture of the defense for failure to respond to questions, or for a refusal to "cooperate" with persons appointed to examine him. Section 16-8-106 and this section, which prescribe the procedures to be followed upon the entry of a plea of not guilty by reason of insanity, cannot operate to destroy the constitutional safeguards against self-incrimination. French v. District Court, 153 Colo. 10, 384 P.2d 268 (1963).

This section can have but one meaning; the commitment must follow immediately after the entry of the plea. It fixes a period of time intervening between the date on which a defendant enters his plea and the date on which the issues thus raised shall be tried. Within this intervening period, and "forthwith" upon the entry of the plea, the commitment for observation and examination must be made. Martin v. District Court, 129 Colo. 27, 272 P.2d 648 (1954).

Trial may not precede commitment. Where one accused of a felony enters pleas of "not guilty" and "not guilty by reason of insanity", it is not permissible to try defendant on the issues raised by his not guilty plea prior to any commitment for observation and examination as required by § 16-8-106. Martin v. District Court, 129 Colo. 27, 272 P.2d 648 (1954).

Primary purpose of immediate commitment is to furnish the state with an opportunity to assess the defendant's mental status and to determine whether he likely will pose a danger to himself or others upon his release. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Judicially determined doubt as to accused's sanity provides sufficient warrant for immediate commitment and further examination as to his present mental condition. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Commitment proceedings require due process consideration. Commitment to a mental institution constitutes a severe infringement on the basic interest of an individual to be free from governmental restraint and, thus, requires due process protection. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Insanity plea not allowed in probation revocation proceeding. A court, in permitting a plea of "not guilty by reason of insanity" in a probation revocation hearing, exceeds its jurisdiction, as a plea of not guilty by reason of insanity is not a proper

means of testing competency at such a hearing. People ex rel. Gallagher v. District Court, 196 Colo. 499, 591 P.2d 1015 (1978).

Statute as basis for jurisdiction. See Schauer v. Smeltzer, 175 Colo. 364, 488 P.2d 899 (1971).

Applied in People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976); Labor v. Gibson, 195 Colo. 416, 578 P.2d 1059 (1978); People v. Rosenthal, 617 P.2d 551 (Colo. 1980); People v. Lichtenstein, 630 P.2d 70 (Colo. 1981); People v. Jones, 631 P.2d 1132 (Colo. 1981); People v. Mack, 638 P.2d 257 (Colo. 1981); People v. Roark, 643 P.2d 756 (Colo. 1982); People v. Ferguson, 653 P.2d 725 (Colo. 1982).

II. TRIAL OF INSANITY ISSUE.

A. In General.

B. Burden of Proof.

A. In General.

Insanity procedure is criminal in nature. Procedure under this section is not violative of the state or federal constitutions as intermingling criminal and civil proceedings in one trial. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

The fact that the issue of insanity is separated from other questions for the purpose of trial does not make a civil case out of that which is tendered as a defense to an accusation of crime. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959); People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Insanity at the time of the commission of the offense is not a mitigating factor that relieves the accused of punishment, but is a complete defense to the criminal charge. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

The separate sanity trial determines finally guilt of defendant as to an essential ingredient of the crime; mental capacity to commit a crime is a material part of total guilt for there can be no crime without the mens rea. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

And the question of sanity or insanity is solely one for the jury. Sherrill v. People, 75 Colo. 401, 225 P. 840 (1924); Wymer v. People, 114 Colo. 43, 160 P.2d 987 (1945); Palmer v. People, 162 Colo. 92, 424 P.2d 766 (1967).

The determination of the issue of insanity, when raised, is solely within the province of the jury. Henderson v. People, 156 Colo. 229, 397 P.2d 872 (1965).

The question of sanity in a criminal case is an issue of fact to be determined by the trier of fact. People v. Wright, 648 P.2d 665 (Colo. 1982).

Jury trial may be waived. This section requiring that if defense waives jury trial on the issue of insanity in a first-degree murder prosecution, it must secure consent of district attorney, is constitutional and not violative of defense right to waive trial by jury. People v. Brisbin, 175 Colo. 428, 488 P.2d 63 (1971); People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972); People v. District Court, 731 P.2d 720 (Colo. 1987).

The order of proof before the jury is discretionary with the court for there is no

requirement that the prosecution initially produce its experts in its case in chief. Elliott v. People, 176 Colo. 373, 490 P.2d 687 (1971).

Statutory requirement that prosecution consent to waiver of jury in sanity trial applied to trial of defendant prosecuted for second-degree murder rather than subsequently enacted general statute, § 18-1-406 (2), which did not refer to prosecutor's consent to waiver of jury trial. People v. District Court, 731 P.2d 720 (Colo. 1987).

Distinction between classes of felonies where consent of court and prosecution must be obtained and those classes for which consent is not required before waiver of jury trial will be permitted in a sanity trial has rational foundation. People v. District Court, 731 P.2d 720 (Colo. 1987).

And the prosecution may fortify the presumption of sanity by the presentation of evidence tending to establish the fact of sanity. Henderson v. People, 156 Colo. 229, 397 P.2d 872 (1965).

And introduce evidence of sanity as case in chief. Where a defendant by cross-examination of the people's witnesses produces evidence rebutting the presumption of sanity, it is incumbent on the prosecution to prove the sanity of defendant as part of its case in chief, and it is not error to receive such evidence. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Evidence of normal or abnormal conduct is relevant on sanity issue. A much wider area of conduct on the part of a defendant can be made the subject of inquiry in a trial relating to his sanity than would be permissible in a trial upon a plea of not guilty. Any abnormal conduct, whether related to the act forming the basis of the accusation or not, may be relevant and important on the issue of his mental condition. Conversely, evidence of normal conduct, and actions reflecting the usual and ordinary under the circumstances, may be shown to prove sanity. Trujillo v. People, 150 Colo. 235, 372 P.2d 86 (1962).

And jury has discretion to infer lack of mental capacity from appearance or conduct of the accused while in their presence, or from the factual circumstances disclosed by the evidence, thus evidence of sanity should not be excluded whether offered as part of the case in chief or upon rebuttal. Henderson v. People, 156 Colo. 229, 397 P.2d 872 (1965); Palmer v. People, 162 Colo. 92, 424 P.2d 766 (1967).

Thus, expert testimony is not conclusive on the jury and must be weighed along with all other testimony. Palmer v. People, 162 Colo. 92, 424 P.2d 766 (1967).

A jury is not bound by the testimony of experts and is free to believe lay testimony over any other. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

Neither is defendant's acknowledged status as a ward of the state conclusive evidence of insanity. It does not follow from a commitment to such an institution that one necessarily is incapable of forming an intent to commit a crime. McConnell v. People, 157 Colo. 235, 402 P.2d 75 (1965).

Trial court has discretion to determine order in which evidence will be presented

at the sanity trial. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

The order of proof before the jury is discretionary with the court for there is no requirement that the prosecution initially produce its experts in its case in chief. Elliot v. People, 176 Colo. 373, 490 P.2d 687 (1971).

Scope of evidence admissible on the issue of insanity is broad. People v. Wright, 648 P.2d 665 (Colo. 1982).

Evidence offered must touch issue. While evidence going only to the commission of the act and to the surrounding circumstances is relevant, the evidence offered in some way must touch on the issue of whether the defendant could distinguish between right and wrong and adhere to the right and refrain from the wrong. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

Defense attorney entitled to physician's information. Where the confessions and admissions of the defendant have been weighed by the examining physician in evaluating the defendant's sanity, fairness requires that the prosecutor have the same information as the defense attorney. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Limited to issue of insanity. The use of the confessions or admissions of the defendant in the decisional process by the psychiatrist in forming an opinion as to the sanity or insanity of the defendant does not aid in the proof of guilt, but it is perforce limited to the issue of sanity. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

District attorney's statement improper. Where the district attorney in his closing argument stated that if they found the defendant to be insane, he would never be tried for the criminal act charged, this statement was improper. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

Defendant pleading insanity entitled to have such form of verdict submitted. Defendant pled insanity, along with his general plea of not guilty, which plea was never formally withdrawn, though in practical effect it was abandoned as no evidence was offered on the issue raised by the plea of insanity. Defendant, had he so desired, was entitled to have appropriate forms of verdict on this issue submitted to the jury. Cruz v. People, 147 Colo. 528, 364 P.2d 561 (1961).

Upon trial neither the people nor the defendant offered any evidence related to the issue raised by the plea of insanity. Nevertheless, it was error to direct the jury to find the defendant sane and defendant, had he so desired, was entitled to have appropriate instructions on the questions of insanity and to have forms of verdict on this issue submitted to the jury. Henderson v. People, 156 Colo. 229, 397 P.2d 872 (1965).

And verdict as to guilt does not dispose of insanity issue. When a defendant pleads not guilty and not guilty by reason of insanity and at trial the defense attorney states that the trial will go forward on the not guilty plea, a verdict of guilty does not dispose of the insanity issue which must be

tried to a jury unless the insanity plea is withdrawn. People v. Duran, 179 Colo. 129, 498 P.2d 937 (1972).

Error in failing to so submit verdict may be waived. Counsel for defendant, after examining the proposed forms of verdict, had no objections nor did he tender any additional forms of verdicts. Thus, defendant cannot successfully predicate error on the failure of the trial court to submit a form of verdict on the issue raised by the insanity plea. Cruz v. People, 147 Colo. 528, 364 P.2d 561 (1961).

Instruction on status of defendant after verdict properly refused. In a criminal case where the defense is insanity, the jury has no duty to perform with reference to subsequent orders of court after a verdict of not guilty by reason of insanity is returned, and a requested instruction concerning the status of defendant after such a verdict is properly refused. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931).

Determination of insanity does not bar subsequent prosecution for separate crime committed hours later. The determination by one district court that defendant was insane at the time of a crime committed within that district does not bar a subsequent prosecution in another district court for a separate crime committed a few hours later within that district. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

But issue of sanity at time of earlier crime is final. The doctrine of collateral estoppel affords the defendant the right in a subsequent sanity trial to claim finality with respect to the fact that he had become insane at the time of the commission of a crime several hours earlier in another county and, given this fact, the prosecution will not be able to prove the defendant's sanity unless it can show that the defendant's mental state changed abruptly sometime after the earlier offense was committed. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

As is finding of sanity at hearing prior to trial on guilt issue. The argument that the defendant was incapable of forming the requisite mens rea and, therefore, he could not be criminally responsible for his acts, is unpersuasive where the defendant was found sane in a separate sanity hearing prior to trial on the issue of guilt, and no objection was raised as to the propriety of the proceedings. Johnson v. People, 174 Colo. 413, 484 P.2d 110 (1971).

Jury verdict of not guilty by reason of insanity is an adjudication on the merits which absolves the defendant of criminal responsibility. People v. Serravo, 823 P.2d 128 (Colo. 1992).

Colorado's statutory procedure does not permit the issue of sanity to be submitted to the jury where no evidence of insanity has been presented. Under this procedure, if a trial court properly determines that no evidence of insanity has been introduced, it should not submit the issue to the jury because the presumption of sanity has not been rebutted. People v. Hill, 934 P.2d 821 (Colo. 1997); People v. Anderson, 70 P.3d 485 (Colo. App. 2002).

Because defendant's proffered evidence and theory did not support an insanity plea or defense, court concluded that he

was not entitled to pursue or have counsel pursue them at trial; consequently, trial court did not err in vacating defendant's plea of not guilty by reason of insanity over defendant's objection, since defendant simply had no such evidence to present. People v. Anderson, 70 P.3d 485 (Colo. App. 2002).

B. Burden of Proof.

It is not necessary for the prosecution to prove in the first instance that defendant was sane. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931); Henderson v. People, 156 Colo. 229, 397 P.2d 872 (1965).

In a homicide case the defense being not guilty by reason of insanity, the people are not required in the first instance to offer proof of sanity which is presumed in the absence of evidence tending to show the contrary. Graham v. People, 95 Colo. 544, 38 P.2d 87 (1934).

Ordinarily the issue of insanity is not present at the outset of a trial and is not properly a part of the prosecution's case. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

As every person is presumed to be sane until the contrary appears. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931); Henderson v. People, 156 Colo. 229, 397 P.2d 872 (1965).

Notwithstanding a plea of insanity, the presumption of sanity exists at the outset of a hearing, and it is incumbent upon a defendant to generate a reasonable doubt of its existence. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

A defendant is presumed to be sane and this presumption continues until evidence of his insanity is offered. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

The presumption of sanity will operate until some evidence to the contrary is presented. Elliott v. People, 176 Colo. 373, 490 P.2d 687 (1971); People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972); People v. Johnson, 180 Colo. 177, 503 P.2d 1019 (1972).

Prosecution's failure to introduce evidence of sanity, despite opening statement concerning such evidence, not error. It is not error for the prosecution to make an opening statement outlining the evidence he intends to present to the jury on the issue of insanity and then rest on the presumption of sanity without presenting any evidence. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

Presumption, if not rebutted, supports verdict of sanity. When no evidence is presented to rebut the presumption of sanity, and defendant refuses to talk with the court appointed psychiatrist, it is proper for the jury to return a verdict finding the defendant to be sane. People v. Johnson, 180 Colo. 177, 503 P.2d 1019 (1972).

But defendant is required to present only some evidence of insanity to rebut presumption of sanity, since a presumption is not evidence, and the primary purpose of the presumption of sanity is merely procedural convenience in those trials in which sanity is not really an issue. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972); People v. Hill, 934 P.2d 821 (Colo. 1997).

The presumption of sanity will stand if no evidence of insanity is offered by the defense. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

And the burden is on the people to prove defendant's sanity beyond a reasonable doubt. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

When evidence of insanity is introduced, the people have the burden of proving beyond a reasonable doubt the sanity of the defendant. Graham v. People, 95 Colo. 544, 38 P.2d 87 (1934); People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Once defendant produces evidence tending to beget a reasonable doubt, he casts upon the state the obligation of presenting evidence which will satisfy the jury that he was sane beyond a reasonable doubt at the time of the act charged. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

Mental capacity to commit crime is a necessary ingredient of any offense, and as to every necessary ingredient of the total crime there must be proof beyond a reasonable doubt. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

The burden is on the people to prove defendant sane beyond any reasonable doubt, not by mere preponderance of the evidence. Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

The burden in criminal cases required proof of sanity beyond a reasonable doubt. Young v. People, 175 Colo. 461, 488 P.2d 567 (1971).

For the prosecution to prevail after the presumption of sanity has been rebutted, it must prove that the defendant was sane beyond a reasonable doubt. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

Every person is presumed sane, but once any evidence of insanity is introduced, due process requires that the people prove sanity beyond a reasonable doubt. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974); People v. Wright, 648 P.2d 665 (Colo. 1982).

This section recognizes that where the sanity of the defendant is placed in issue, the burden of proof is on the people to prove his sanity beyond a reasonable doubt. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975); People v. Serravo, 823 P.2d 128 (Colo. 1992).

Prosecution not required to prove defendant's sanity beyond a reasonable doubt if, prior to the presentation of defendant's case, no evidence had been presented that defendant's mental condition was unconnected to drug use. To dispel the presumption of sanity, the evidence must tend to establish each of the elements of the insanity defense. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

And defendant is not required to prove issues to satisfaction of jury. It is not incumbent upon the defendant in a criminal case, either by his own evidence or that of the people, or both combined, to prove anything to the satisfaction of the jury. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Adjudication of insanity represents failure to prove defendant's sanity. An

adjudication of insanity represents a judicial determination that the prosecution has failed to prove the defendant's sanity beyond a reasonable doubt. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Some competent lay evidence of sanity may suffice when the defendant has introduced only token evidence of insanity. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

But this same evidence of sanity may be totally inadequate when defendant's evidence of insanity is substantial. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

The court determines in the first instance whether evidence presented is sufficient to dissipate the presumption of sanity. People v. Johnson, 180 Colo. 177, 503 P.2d 1019 (1972).

But jury having reasonable doubt as to sanity must return verdict of not guilty. If, upon consideration of all the evidence in a homicide case, the jury has a reasonable doubt as to whether the defendant was sane or insane at the time of committing the act charged, the defense being insanity, they must return a verdict of not guilty. Graham v. People, 95 Colo. 544, 38 P.2d 87 (1934); People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

If the evidence raises in the minds of the jury a reasonable doubt of the defendant's sanity at the time of the act, they must find the defendant not guilty of the crime charged. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

If, after considering all the evidence, a jury has a reasonable doubt whether the defendant was sane or insane at the time of committing the act, the verdict must be that the defendant is insane. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

Directed verdict of not guilty by reason of insanity was proper. People v. Anderson, 159 Colo. 124, 410 P.2d 164 (1966).

In a criminal case a defendant can assert as many defenses as can be supported by evidence. If affirmative defenses such as self-defense or alibi are presented, the issues thereon are tried as part of the criminal case, and if any such defense raises in the mind of the jury a reasonable doubt as to a defendant's guilt he should be acquitted. The defense of insanity stands upon the same footing. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959); People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Once the presumption of sanity has been rebutted, a directed verdict should be granted to the defendant if the prosecution fails to put on any evidence of the defendant's sanity. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

Former requirement of proof by preponderance held to violate due process. Former provision permitting the people to establish an accused's sanity by a preponderance of the evidence was held to be a denial of due process of law and thereby unconstitutional. Washington v. People, 169 Colo. 323, 455 P.2d 656 (1969); Simms v. People, 175 Colo. 191, 486 P.2d

22 (1971); Moneyhun v. People, 175 Colo. 220, 486 P.2d 434 (1971).

Former provision which provided that the burden shall be on the defendant to prove by a preponderance of the evidence that he was insane at the time of the alleged commission of the crime violated the due process clause of the constitution of Colorado. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Erroneous instruction on burden of proof requires new trial on sanity only. Where the jury was erroneously instructed that the people have the burden of proving the defendant sane by a preponderance of the evidence, it is necessary to have a new trial on the issue of defendant's sanity, but the entire decision need not be reversed nor a new trial held on the merits as well. Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

The instruction to the jury that the defendant has the burden of proving by a preponderance of the evidence that he was insane at the time of the alleged commission of the crime is prejudicially erroneous and requires remand for new trial on sanity issue. Simms v. People, 166 Colo. 278, 443 P.2d 371 (1968).

The trial court's instruction that the burden of proof is on the prosecution to prove by a preponderance of the evidence that the defendant was sane at the time of the alleged commission of the crime, in harmony with the statute then in effect, was declared unconstitutional by the supreme court and the conviction is reversed and remanded for new trial on the issue of sanity. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970).

When a trial judge under former provisions erroneously instructed the jury that the burden of proof is upon the defendant to establish by a preponderance of the evidence that he was insane at the time of the commission of the offense, this error clearly requires that the defendant be granted a new trial on the sanity issue. Moneyhun v. People, 175 Colo. 220, 486 P.2d 434 (1971).

Statement of law contained in jury instruction was a correct statement of the presumption of sanity and the burden of proof. Salas v. People, 181 Colo. 321, 509 P.2d 586 (1973).

III. PROCEDURE AFTER TRIAL.

Law reviews. For article, "Insanity and the Law", see 39 Dicta 325 (1962).

Committing court has subject matter jurisdiction to hear and determine issues relating to care and treatment of defendant committed to department of institutions as result of an insanity adjudication and such jurisdiction continues until the defendant is unconditionally released from the order of commitment. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

Insane defendant is confined in state institution. Under this section no matter how brutal a homicide may be, a person who is insane at the time of committing it cannot lawfully be convicted of murder, but if found guilty of committing the act, under former procedures for trying the issue of

guilt first, must be confined in a state institution under the laws governing institutions. Graham v. People, 95 Colo. 544, 38 P.2d 87 (1934).

Because he is not accountable to the law. A defendant found not guilty by reason of insanity is sent to a state institution, not because he is accountable to the law, but because he is not. In requiring him to be committed, the law is not in any sense holding him accountable for the homicide. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931).

Where petitioner was found not guilty of the crime charged by reason of insanity, it means that he was not legally responsible for the acts committed. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

He is not, therefore, a convicted criminal. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

And commitment is not punishment. A judgment of limited responsibility allows one to be committed to a hospital for treatment and custody until he regains his sanity. This is not, however, punishment and indeed the state may not constitutionally impose criminal sanctions against persons who have committed no crime. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

Purpose of commitment following adjudication of not guilty by reason of insanity. Where a defendant has been adjudicated not guilty by reason of insanity for acts which, but for his insanity, would be punishable as crimes, that adjudication furnishes a legitimate basis for the immediate commitment of the defendant to an institution for observation and examination, as well as any needed treatment, so that a reliable determination might be made of his mental condition and what danger, if any, he poses to himself and others. People v. Chavez, 629 P.2d 1040 (Colo. 1981); Glatz v. Kort, 650 F. Supp. 191 (D. Colo. 1984), aff'd, 807 F.2d 1514 (10th Cir. 1986); People v. Gilliland, 769 P.2d 477 (Colo. 1989).

This section confers on persons criminally committed a right to treatment. Romero v. Schauer, 386 F. Supp. 851 (D. Colo. 1974); People v. Gilliland, 769 P.2d 477 (Colo. 1989).

But, in the absence of findings that the state hospital staff failed to consider relevant facts and exercise competent professional judgment in devising a treatment plan, the district court exceeded its jurisdiction in ordering defendant's treatment by private psychiatrist and payment of therapist from the hospital's budget. Kort v. Carlson, 723 P.2d 143 (Colo. 1986).

Person committed to department of institutions for care and treatment as result of an insanity adjudication is entitled to the same general quality of treatment available to a civilly committed patient. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

Probation, recommitment, and transfer are discretionary acts clothed with governmental immunity. A request for transfer of a mental patient from a state hospital to the penitentiary, provided for by Colorado law, is not only an act of discretion on the part of the director of state

institutions but is an act expressly provided for and authorized by Colorado law. The allegation of the existence of a conspiracy between the staff psychiatrist and officials not to release the appellant in violation of the civil rights act does not affect the application of the doctrine of governmental immunity. Franklin v. Meredith, 386 F.2d 958 (10th Cir. 1967).

Judicial department cannot interfere with statutorily granted discretion of director of state institutions regarding the transfer of a patient committed to the custody of the department between institutions or between treatment units within an institution. Kort v. Hufnagel, 729 P.2d 370 (Colo. 1986).

District attorney's legal interest in an insanity adjudication does not end with the order of commitment but continues until such time as defendant is unconditionally released from the order of commitment. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

When nonconsensual treatment of criminal defendant may be ordered. In accordance with People v. Medina (705 P.2d 961), treatment with antipsychotic medication should not be ordered unless: (1) The patient is incompetent to effectively participate in the treatment decision; (2) such treatment is necessary to prevent long-term deterioration in the patient's mental condition; (3) a less intrusive treatment is not available; and (4) the patient's need for such treatment overrides any legitimate interest of the patient in refusing treatment. Any order for involuntary medication cannot exceed six months without further extension. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

16-8-105.5. Procedure after plea for offenses committed on or after July 1, 1995.

(1) (a) When a plea of not guilty by reason of insanity is accepted, the court shall forthwith order the defendant to undergo a sanity examination, specifying where the examination must be conducted. The court, in consultation with the department of human services and the parties, shall determine whether the examination requires the defendant to stay overnight for an extended examination and the number of days of the extended examination.

(b) (I) If the defendant is in custody, the examination may be conducted at the jail or place of confinement or at a facility operated by or under contract with the department of human services. If the defendant is in custody and the court determines the examination must be conducted at a facility operated by or under contract with the department of human services, the court shall order the department of human services to take custody of the defendant to conduct the examination and return the defendant to the original place of custody after the examination is complete.

(II) If the defendant is at liberty on summons or on bond, the examination may be conducted at a facility operated by or contracted with the department of human services or at an out-of-custody location that the court and department of human services determine is appropriate.

(2) Upon receiving the report of the sanity examination, the court shall immediately set the case for trial. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the prosecution has the burden of proving sanity beyond a reasonable doubt.

(3) When the affirmative defense of not guilty by reason of insanity has been raised, the jury must be given special verdict forms containing interrogatories. The trier of fact shall decide first the question of guilt as to felony charges that are before the court. If the trier of fact concludes that guilt has been proven beyond a reasonable doubt as to one or more of the felony charges submitted for consideration, the special interrogatories must not be answered. Upon completion of its deliberations on the felony charges as previously set forth in this subsection (3), the trier of fact shall consider any other charges before the court in a similar manner; except that the trier of fact shall not answer the special interrogatories regarding the charges if the trier of fact has previously found guilt beyond a reasonable doubt with respect to one or more felony charges. The interrogatories must provide for specific findings of the jury with respect to the affirmative defense of not guilty by reason of insanity. When the court sits as the trier of fact, the court shall enter appropriate specific findings with respect to the affirmative defense of not guilty by reason of insanity.

(4) (a) (I) If the trier of fact finds the defendant not guilty by reason of insanity, at the request of the defendant, the court may continue the bond pursuant to section 16-4-108 to allow the defendant to remain at liberty or set a hearing to modify the bond pursuant to section 16-4-109 and delay final disposition, delay formal entry of the finding of not guilty by reason of insanity, and stay the commitment of the defendant to the custody of the department of human services pursuant to subsection (4)(b) of this section until the conclusion of the initial release hearing required pursuant to section 16-8-115 (1)(a). If the defendant is on bond, the court shall order the department of human services to conduct a release examination on an outpatient basis, as well as any other appropriate conditions of release, including participation in outpatient treatment.

(II) In determining whether to continue or modify the bond, the court shall consider the criteria described in section 16-4-103, as well as that the defendant was found not guilty by reason of insanity rather than convicted, the defendant's treatment needs, the availability of treatment in the community, the ability of the department of human services to conduct a release evaluation in the community, whether the department of human services can timely admit the defendant, and the usefulness of an observation period as part of the release evaluation.

(III) (A) The court shall not delay the final disposition and entry of finding of not guilty by reason of insanity unless the defendant is at liberty and requests a delay, in which case the court may delay the final disposition to allow the defendant to post bond for an outpatient release examination.

(B) If the defendant is on bond, the district attorney or a bonding commissioner may file with the court a verified motion to revoke the defendant's bond pursuant to section 16-4-109; except that, if the court finds the defendant violated a bond condition, the court may revoke the

bond and enter the final disposition of not guilty by reason of insanity and order the defendant committed to the department of human services.

(IV) This subsection (4)(a) does not apply if the court finds that the crime for which the defendant is found not guilty by reason of insanity:

(A) Is a class 1 or class 2 felony;

(B) Resulted in another person suffering serious bodily injury or death;

(C) Involved the defendant using a deadly weapon; or

(D) Involved felony unlawful sexual behavior pursuant to section 16-22-102 (9).

(b) If the trier of fact finds the defendant not guilty by reason of insanity, unless delayed pursuant to subsection (4)(a) of this section, the court shall commit the defendant to the custody of the department of human services until such time as the defendant is found eligible for release. The executive director of the department of human services shall designate the state facility at which the defendant is held for care and psychiatric treatment and may transfer the defendant from one facility to another if in the opinion of the director it is desirable to do so in the interest of the proper care, custody, and treatment of the defendant or the protection of the public or the personnel of the facilities in question.

(5) This section applies to offenses committed on or after July 1, 1995; except that subsection (4)(a) of this section applies to individuals found not guilty by reason of insanity on or after September 1, 2022.

Source: L. 96: Entire section added, p. 4, § 1, effective January 31. **L. 2022:** (4) and (5) amended, (HB 22-1061), ch. 438, p. 3080, § 1, effective August 10. **L. 2025:** (1), (2), and (3) amended, (HB 25-1058), ch. 15, p. 44, § 11, effective August 6.

ANNOTATION

Unitary trial procedures did not violate defendant's rights to due process and a fair trial on the grounds he was deprived of the presumption of innocence. Jury was properly instructed on the presumption of innocence, and there is nothing in the record to indicate that it disregarded those instructions. People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

Under unitary trial provision, defendant does not possess a statutory right to a jury trial on the merits and the affirmative defense of insanity if a plea of not guilty by reason of insanity was entered and stipulated to by the prosecution. People v. Laeke, 2012 CO 13M, 271 P.3d 1111.

Error to instruct jury that if defendant was found guilty on any offense he could

not be found not guilty by reason of insanity on any other offense. However, under the circumstances, defendant is not entitled to relief on that basis. People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

Court may determine good cause has been shown adequate to order additional examination on the issue of sanity if prior experts' opinions were incomplete and a potentially new and significant diagnosis had been proposed that could dramatically affect the outcome of the assessment of defendant's behavior. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

Prosecution not required to prove defendant's sanity beyond a reasonable doubt if, prior to the presentation of defendant's case, no evidence had been presented that the defendant's mental condition was unconnected to drug use. To dispel the presumption of sanity, the evidence must tend to establish each of the elements of the insanity defense. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

16-8-106. Examinations and report.

(1) (a) All examinations ordered by the court in criminal cases must be accomplished by the entry of an order of the court specifying the place where the examination is to be conducted and the period of time allocated for the examination. The defendant may be committed for the examination to a state-run mental health hospital, the place where the defendant is in custody, or any other public institution designated by the court. In determining the place where the 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. One or more psychiatrists or forensic psychologists shall observe the defendant during a 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 any further or other examination as is advisable under the circumstances. This section does not abridge the right of the defendant to procure an examination as provided in section 16-8-108.

(b) (I) An interview conducted pursuant to this section in any case that includes a class 1 or class 2 felony charge or a felony sex offense charge described in section 18-3-402, 18-3-404, 18-3-405, or 18-3-405.5 must be video and audio recorded and preserved, except as provided in subsection (1)(c) of this section. The court shall advise the defendant that any examination with a psychiatrist or forensic psychologist may be video and audio recorded. A copy of the recording must be provided to all parties and the court with the examination report. Any jail or other facility where the court orders the examination to take place shall permit the recording to occur and shall provide the space and equipment necessary for the recording. If space and equipment are not available, the sheriff or facility director shall attempt to coordinate a location and the availability of equipment with the court, and the court may consult with the district attorney and defense counsel for an agreed-upon location. If an agreement is not reached, and upon the

request of either the defense counsel or district attorney, the court shall order the location of the examination, which may include a state-run mental health hospital.

(II) In order to protect the presumption of innocence, if the examination is recorded, the defendant must not be dressed in prison or jail clothing. This subsection (1)(b)(II) does not require or prohibit the use of restraints, and the examination may be stopped or paused in order to apply restraints on the defendant to ensure the safety of the evaluator, the defendant, or others, as long as the restraints are not visible on the recording.

(c) (I) Prior to or during any examination required by this section, the psychiatrist or forensic psychologist shall assess whether the recording of the examination is likely to cause or is causing mental or physical harm to the defendant or others or will make the examination not useful to the expert forensic opinion. If such a determination is made and documented contemporaneously in writing, the psychiatrist or forensic psychologist shall not record the examination or shall cease recording the examination, and the psychiatrist or forensic psychologist shall advise the court and the parties of this determination and the reasons therefore in a written report to the court. If only a partial recording is made, the psychiatrist or forensic psychologist shall provide the partial recording to the court and the parties, and the partial recording may be used by any psychiatrist or forensic psychologist in forming an opinion, submitting a report, or testifying on the issue of the defendant's mental health.

(II) If the examination is not recorded in whole or in part, the written report explaining the decision not to record the examination is admissible as evidence, and, at the request of either party, the court shall instruct the jury that failure to record the examination may be considered by the jury in determining the weight to afford the expert witness testimony.

(III) The psychiatrist or forensic psychologist does not need to record the administration of psychometric testing that involves the use of copyrighted material.

(d) The court shall determine the admissibility of any recording or partial recording, in whole or in part, subject to all available constitutional and evidentiary objections.

(2) (a) The defendant has a privilege against self-incrimination during the course of an examination conducted pursuant to 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. This subsection (2)(a) applies to offenses committed before July 1, 1995.

(b) The defendant has a privilege against self-incrimination during the course of an examination conducted pursuant to 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. This subsection (2)(b) applies 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 the 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 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. 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 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. This subsection (2)(c) applies to offenses committed on or after July 1, 1999.

(3) (a) To aid in forming an opinion regarding the defendant's mental condition, it is permissible in the course of an examination conducted pursuant to this section to use the defendant's confessions and admissions and any other evidence of the circumstances surrounding the commission of the offense, as well as the defendant's medical and social history, in questioning the defendant. When the defendant is noncooperative with psychiatrists, forensic psychologists, and other personnel conducting the examination, an opinion of the defendant's mental condition may be rendered by the psychiatrists, forensic psychologists, or other personnel based upon the defendant's confessions and admissions and any other evidence of the circumstances surrounding the commission of the offense, as well as the defendant's known medical and social history, and the 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. This subsection (3)(a) applies to offenses committed before July 1, 1995.

(b) To aid in forming an opinion regarding the defendant's mental condition, it is permissible in the course of an examination conducted pursuant to this section to use the defendant's confessions and admissions and any other evidence of the circumstances surrounding the commission of the offense, as well as the defendant's medical and social history, in questioning the defendant. When the defendant is noncooperative with psychiatrists, forensic psychologists, and other personnel conducting the examination, an opinion of the defendant's mental condition may be rendered by the psychiatrists, forensic psychologists, or other personnel based upon the defendant's confessions and admissions and any other evidence of the circumstances surrounding the commission of the offense, as well as the defendant's known medical and social history, and the opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant

to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. This subsection (3)(b) applies 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 subsection (3)(b) of this section because the defendant has given notice pursuant to section 16-8-107 (3) that the defendant intends to introduce expert opinion evidence concerning the defendant's mental condition, the physicians, forensic psychologists, and other personnel conducting the examination may testify to the results of any procedures and the defendant's statements and reactions if the statements and reactions entered into the formation of the experts' opinions regarding the defendant's mental condition.

(4) A written report of the examination shall be prepared in triplicate and delivered to the clerk of the court which ordered it. The clerk shall furnish a copy of the report both to the prosecuting attorney and the counsel for 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

(b) A description of the nature, content, extent, and results of the examination and any tests conducted; and

(c) A diagnosis and prognosis of the defendant's physical and mental condition; and

(d) (I) An opinion as to whether the defendant suffers from a mental disease or defect; and, if so,

(II) Separate opinions as to whether the defendant was insane or had an impaired mental condition at the time of the commission of the act or is ineligible for release, as those terms are defined in this article, and, in any class 1 felony case, an opinion as to how the mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court.

(6) With respect to offenses committed on or after July 1, 1995, the report of examination shall include, but is not limited to, the items described in subsections (5)(a), (5)(b), and (5)(c) of this section, and:

(a) An opinion as to whether the defendant suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect that prevented the person from forming the culpable mental state that is an essential element of any crime charged; and, if so,

(b) Separate opinions as to whether the defendant was insane or is ineligible for release, as those terms are defined in this article 8, and, in any class 1 felony case for an offense charged prior to July 1, 2020, an opinion as to how the mental disease or defect or the condition of mind

caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court.

(7) With respect to offenses committed on or after July 1, 1999, when a defendant has undergone an examination pursuant to this section because the defendant has given notice pursuant to section 16-8-107 (3) that the defendant intends to introduce expert opinion evidence concerning the defendant's mental condition, the examination report must include, but is not limited to, the items described in subsections (5)(a), (5)(b), and (5)(c) of this section, and:

(a) An opinion as to whether the defendant suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect that affected the defendant's mental condition; and, if so,

(b) Separate opinions as to the defendant's mental condition including, but not limited to, whether the defendant was insane or is ineligible for release, as those terms are defined in this article 8, and, in any class 1 felony case for an offense charged prior to July 1, 2020, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court.

Source: L. 72: R&RE, p. 227, § 1. **C.R.S. 1963:** § 39-8-106. **L. 73:** p. 500, § 1. **L. 83:** (1), (2), (3), and (5)(e) amended, p. 674, § 4, effective July 1. **L. 91:** (1) amended, p. 1142, § 3, effective May 18. **L. 95:** (2), (3), and IP(5) amended and (6) added, p. 75, § 9, effective July 1. **L. 98:** (2), (3), (5)(d), and (6) amended, p. 382, § 3, effective April 21. **L. 99:** (2)(b) amended and (2)(c), (3)(c), and (7) added, pp. 401, 402, §§ 1, 2, 3, effective July 1. **L. 2002:** (2), (3)(a), and (3)(b) amended, p. 1492, § 137, effective October 1. **L. 2002, 3rd Ex. Sess.:** (2)(b), (2)(c), and (3)(b) amended, pp. 29, 30, §§ 19, 20, effective July 12. **L. 2006:** (1) amended, p. 177, § 1, effective March 31. **L. 2008:** (1), (2), (3), (5)(d)(II), (6)(b), and (7)(b) amended, p. 1851, § 6, effective July 1. **L. 2013:** (1), (2), (3), and (5)(a) amended, (SB 13-116), ch. 115, p. 394, § 4, effective August 7. **L. 2016:** (1) amended, (SB 16-019), ch. 297, p. 1206, § 1, effective January 1, 2017. **L. 2020:** (2)(c), (3)(b), IP(6), (6)(b), IP(7), and (7)(b) amended, (SB 20-100), ch. 61, p. 205, § 4, effective March 23. **L. 2025:** (1)(a), (1)(b), (2)(a), (2)(b), (3), and IP(7) amended, (HB 25-1058), ch. 15, p. 45, § 12, effective August 6.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (2), (3)(a), and (3)(b), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsections (2)(b), (2)(c), and (3)(b), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session. For the legislative declaration contained in the 2008 act amending

subsections (1), (2), (3), (5)(d)(II), (6)(b), and (7)(b), see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "The Mental State of Defendants in Criminal Trials — A Comparison of Some Colorado and Massachusetts Procedures", see 14 Rocky Mt. L. Rev. 21 (1941). For note, "Trial Procedure in Colorado Under the 1951 Amendment Relating to Insanity in Criminal Cases", see 24 Rocky Mt. L. Rev. 223 (1952). For article, "Criminal Law", see 32 Dicta 409 (1955). For article, "One Year Review of Criminal Law and Procedure", see 38 Dicta 65 (1961). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For article, "Insanity and the Law", see 39 Dicta 325 (1962). For comment on French v. District Court, see 36 U. Colo. L. Rev. 280 (1964).

Annotator's note. Since § 16-8-106 is similar to repealed § 39-8-2, C.R.S. 1963, § 39-8-2, CRS 53, CSA, C. 48, § 508, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Subsection (2)(b) held constitutional. People v. Anderson, 70 P.3d 485 (Colo. App. 2002).

This section is not void for vagueness. The term "cooperate" in subsection (2)(c) is capable of a common meaning. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section does not violate a defendant's constitutional privilege against self-incrimination. The information obtained in compulsory mental examinations is admissible only on the issue of mental condition. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

Subsection (2)(c)'s preclusion of expert testimony concerning a defendant's mental condition by noncooperative defendants does not penalize defendants who invoke their privilege against self-incrimination because a court is not allowed to strike a noncooperative defendant's not guilty by reason of insanity plea or a defense of impaired mental condition or another mental condition. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section does not violate a defendant's fundamental right to present a defense or the right to effective assistance of counsel. A defendant can present a defense if he or she complies with the statute. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

Defendant has no constitutional right to counsel during a psychiatric examination. People v. Galimanis, 765 P.2d 644 (Colo. App. 1988).

Court ordered competency examination is a critical stage of aggregate adversary proceedings. A criminal defendant must be given the opportunity to consult with counsel prior to submitting to a court-ordered competency

examination under this section. People v. Branch, 786 P.2d 441 (Colo. App. 1989).

This section does not deprive defendant of due process of law. One charged with a criminal offense, who claims he was insane at the time he committed the act with which he is charged, may be temporarily confined in a hospital for observation and examination without depriving him of due process of law. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

Psychiatric examinations do not work a denial of due process or amount to self-incrimination; psychiatric interrogations cannot be likened to surreptitious extractions of evidence. Early v. Tinsley, 286 F.2d 1 (10th Cir. 1960).

Or compel him to testify against himself. Confinement of a defendant, who urges the defense of insanity, in a hospital for observation and examination does not offend against § 18 of art. II, Colo. Const., providing that no person shall be compelled to testify against himself in a criminal case. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933); Wymer v. People, 114 Colo. 43, 160 P.2d 987 (1945).

An accused who submits to the procedures prescribed by statute in connection with criminal insanity cannot at the same time claim that he is being compelled to testify against himself. Such incarceration and examination does not offend against § 18 of art. II, Colo. Const. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

The general assembly, in providing for the admission in evidence of defendant's statements to the psychiatrist where sanity is the issue, but barring them on the guilt issue, does not violate the defendant's rights against self-incrimination. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

When the sanity issue is a separate proceeding, as it is in Colorado, before a jury that cannot consider the issue of guilt in the event the defendant is found sane and where the admissions cannot be used to establish guilt, there is no self-incrimination within the contemplation of the constitutional provisions. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

In a sanity trial, the admission of statements made by the defendant does not violate his right against self-incrimination because the issue of defendant's guilt is not decided. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

Use of defendant's statements to hospital employee while confined for sanity examination to rebut defendant's self-defense theory did not constitute reversible error as defendant failed to properly object to hospital employee's testimony at trial and fact that testimony was given in prosecution's case-in-chief rather than as rebuttal testimony did not constitute plain error which would require consideration of issue not raised at trial. People v. Kruse, 839 P.2d 1 (Colo. 1992).

Nor does prearraignment examination. Prearraignment examinations do not operate per se to deny defendant due process of law

or compel self-incrimination. Early v. Tinsley, 286 F.2d 1 (10th Cir. 1960).

Defendant's statutory privilege against self-incrimination during course of court-ordered psychiatric examinations and protection from being confronted with evidence acquired from examinations did not extend to proceedings conducted for sentencing purposes. And, even if the constitutional privilege against self-incrimination is assumed to apply to the use of information for sentencing purposes after guilt has been established, the defendant waived his right against self-incrimination where he consented to use of reports from court-ordered psychiatric examination at sentencing hearing and had been apprised of his constitutional rights by his attorney. People v. Hernandez, 768 P.2d 755 (Colo. App. 1988).

Requiring a defendant to cooperate during a sanity examination does not subject him or her to an unconstitutional risk of self-incrimination, nor is cooperation a prerequisite to asserting a mental condition defense. Hence, a defendant is not forced to choose between constitutional rights. People v. Herrera, 87 P.3d 240 (Colo. App. 2003); People v. Marko, 2015 COA 139, 434 P.3d 618, aff'd, 2018 CO 97, 432 P.3d 607.

A psychiatrist does not violate a defendant's constitutional privilege against self-incrimination by continuing to pursue questions germane in reaching an opinion regarding sanity after such defendant has expressed reluctance in discussing certain topics. People v. Galimanis, 765 P.2d 644 (Colo. App. 1988).

Trial may not precede commitment. Where one accused of a felony enters pleas of "not guilty" and "not guilty by reason of insanity", it is not permissible to try defendant on the issues raised by his not guilty plea prior to any commitment for observation and examination as required by this section. Martin v. District Court, 129 Colo. 27, 272 P.2d 648 (1954).

The procedure outlined in this section is not exclusive where an accused enters a plea of not guilty by reason of insanity. Jones v. People, 146 Colo. 40, 360 P.2d 686 (1961).

This section does not establish exclusive procedures governing the mental examination of the accused. Though mandatory to some extent, this section does not govern all aspects of the criminal insanity question. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

As exclusive procedures interfere with right to adduce evidence. A statute which creates exclusive procedures for examining the accused and for the giving of expert testimony interferes with the constitutional right of the parties to adduce such evidence as they think useful. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

Thus, this section does not exclude other examinations or testimony based upon nonstatutory examinations. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

This section, while intended to insure examination of accused persons by psychiatrists and specialists in mental diseases, does not operate to exclude employment of psychiatrists by either the

state or the accused, or the admission of their testimony on the trial of the issue of insanity. Early v. Tinsley, 286 F.2d 1 (10th Cir. 1960).

The testimony of psychiatrists based on prearraignment examinations was correctly admitted in evidence along with the testimony of several other psychologists and psychiatrists testifying for the state and the defense. Early v. Tinsley, 286 F.2d 1 (10th Cir. 1960).

Or private employment of psychiatrists. This section and § 16-8-103 do not operate to exclude private employment of psychiatrists. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

Substitution of court-appointed psychiatrist by ex parte order. Defendant suffered no prejudice where hearing on substitution allowed him ample opportunity to present evidence refuting the "good cause" shown for the substitution of experts. People v. Galimanis, 765 P.2d 644 (Colo. App. 1988).

Although a defendant is entitled to an examination by an expert of his or her choosing, the state is not obligated to pay for such expert. People v. Palmer, 31 P.3d 863 (Colo. 2001).

Indigent defendants are entitled to expert examinations at the state's expense, but that does not mean the state must pay for the expert of defendant's choosing. People v. Palmer, 31 P.3d 863 (Colo. 2001).

Defendant not entitled to examination conducted by doctor of his choice. A defendant is not entitled, as a matter of due process, to a second psychiatric examination conducted by the doctor of his own choosing. People v. Mascarenas, 643 P.2d 786 (Colo. App. 1981); People v. Palmer, 31 P.3d 863 (Colo. 2001); Bloom v. People, 185 P.3d 797 (Colo. 2008).

Moreover, a paying defendant wishing to exercise his right to a second competency evaluation by an expert of his own choosing must nonetheless make a showing of good cause under this section. People v. Palmer, 31 P.3d 863 (Colo. 2001); Bloom v. People, 185 P.3d 797 (Colo. 2008).

Court may require good cause to be shown before ordering further psychiatric examination once defendant has been examined by specialists in field of nervous and mental diseases. Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973).

Court may determine good cause has been shown adequate to order additional examination on the issue of sanity if prior experts' opinions were incomplete and a potentially new and significant diagnosis had been proposed that could dramatically affect the outcome of the assessment of defendant's behavior. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

The presumption is that the professional conclusions of the mental health experts are fair and impartial. The federal circuit court cannot impute to the psychiatrists a predetermined diagnosis of the accused where the examinations were conducted without any coercive influence whatsoever, and, according to the defendant, the statements made to the psychiatrists were no more than repetition of voluntary

statements made the night before. Early v. Tinsley, 286 F.2d 1 (10th Cir. 1960).

There is no statutory or regulatory requirement that a court-appointed expert in a competency evaluation be "neutral and detached". People v. Karpierz, 165 P.3d 753 (Colo. App. 2006).

Subsection (3) contains a specific exception to the hearsay rule. People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

And is limited to sanity hearings or trials. The general assembly in subsection (3) limited the use of "confessions and admissions" and "statements and reactions" to trials or hearings where the issue of defendant's sanity is the issue. This prohibits its use as evidence by the people in a trial on the issue of guilt. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

The use of the confessions or admissions of the defendant in the decisional process by the psychiatrist in forming an opinion as to the sanity or insanity of the defendant does not aid in the proof of guilt, but it is perforce limited to the issue of sanity. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

This section does not direct or authorize a defendant's treatment at the psychopathic hospital, nor does it contemplate a trial of the defendant by the hospital staff; it provides merely for the observation and examination of the defendant while at the hospital. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931).

It contemplates observation as well as examination. The legislative scheme for determining a defendant's mental condition at the time of the alleged offense contemplates observation as well as examination. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970); People v. Vialpando, 954 P.2d 617 (Colo. App. 1997).

And results of both processes are admissible. What the psychiatrist learns from either observation or examination or from both processes, to the extent that such learning contributes to his opinion, is relevant and admissible in evidence. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970); People v. Vialpando, 954 P.2d 617 (Colo. App. 1997).

Admissions to privately retained psychiatrist privileged. The prosecution may not call, as a witness in its case-in-chief, a psychiatrist privately retained by the defendant in connection with an insanity plea and elicit from the psychiatrist incriminating admissions made by the defendant during a sanity examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

But copy of report to prosecution if defense to offer testimony of exam. The only limitation placed on a defendant seeking a sanity examination by a private psychiatrist is that a copy of the psychiatrist's report be furnished to the prosecution reasonably in advance of the sanity trial if the defense intends to offer testimony about the examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

Nowhere is it indicated that "examination" as used in this section is restricted merely to "tests", but, on the

contrary, it is broadened to include conversations and other vital evidence from the defendant, as well as "procedures" and "observation". People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

An assessment that ignores or cannot be tested against a defendant's prior mental health history has marginal utility. People v. Herrera, 87 P.3d 240 (Colo. App. 2003).

Refusal to cooperate with examiners does not forfeit defense. A person accused of a crime, who enters a plea of not guilty by reason of insanity, cannot be compelled to carry on conversations against his will under the penalty of forfeiture of the defense for failure to respond to questions, or for refusal to "cooperate" with persons appointed to examine him. Section 16-8-105 and this section, which prescribe the procedures to be followed upon the entry of a plea of not guilty by reason of insanity, cannot operate to destroy the constitutional safeguards against self-incrimination. French v. District Court, 153 Colo. 10, 384 P.2d 268 (1963).

But defendant's noncooperation may be shown. If the defendant chooses to remain silent when the state's psychiatrist attempts his examination, the fact of his noncooperation may be shown to the jury. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970).

It is permissible to use defendant's silence at a sanity examination as evidence of his or her sanity, especially where the defendant was specifically informed that, if he refused to cooperate with the examining physician, such noncooperation could be referred to at his trial and where the jurors were instructed that they could consider defendant's refusal to speak with the examining psychiatrist only in considering defendant's mental state and for no other purpose. People v. Tally, 7 P.3d 172 (Colo. App. 1999).

And the expert witness may testify to any conclusions as to mental condition he is able to draw from the conduct or actions of the defendant or from what he says during such an interview. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970).

The defendant has a constitutional right not to talk to the psychiatrist, but he cannot complain, if the doctor is able to draw inferences from his conduct upon which to found an opinion as to his sanity or lack of it. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970); People v. Vialpando, 954 P.2d 617 (Colo. App. 1997).

A psychologist may testify in court to defendant's statements and reactions, if they help him form his professional opinion. People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

Such testimony does not violate the defendant's privilege against self-incrimination, either at the sanity trial or the guilt trial. People v. Vialpando, 954 P.2d 617 (Colo. App. 1997).

The jury may return verdict finding defendant sane when no evidence is presented to rebut the presumption of sanity, and defendant refuses to talk with the court-appointed psychiatrist. People v. Johnson, 180 Colo. 177, 503 P.2d 1019 (1972).

Section does not entitle defendant's psychiatrist to copy of confession. This section is inapplicable to demand of defendant that a copy of his confession in the possession of the district attorney be turned over to defendant's psychiatrist witness. Wooley v. People, 148 Colo. 392, 367 P.2d 903 (1961).

But prosecutor entitled to examining physician's information. Where the confessions and admissions of the defendant have been weighed by the examining physician in evaluating the defendant's sanity, fairness requires that the prosecutor have the same information as the defense attorney. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Reversal is justified only when substantive right has been prejudiced. In order to justify a reversal on the ground that the hospital staff acted beyond the powers conferred by this section, it must appear that in this case some substantial right of the defendant has been prejudiced, and that depends upon the use made of the information so obtained. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931).

Trial court erred in ordering a second evaluation. A court may order a second evaluation only for good cause shown. There must be some basis, other than counsel's opinion, for showing that the first examination was inadequate or unfair. People v. Garcia, 87 P.3d 159 (Colo. App. 2003), aff'd in part, rev'd in part on other grounds, 113 P.3d 775 (Colo. 2005).

Learning disability such as a disorder of written expression is outside of the statutory definition of "insanity". Therefore, evidence of defendant's learning disability to prove a mistake of fact is admissible without an insanity plea as long as defendant provides notice and permits a court-ordered examination. The place and time period for the examination is at the trial court's discretion. People v. Wilburn, 2012 CO 21, 272 P.3d 1078.

Court is not required to order a mental examination to allow a defendant more time to investigate a mental condition defense. People v. Pratarelli, 2020 COA 33, 471 P.3d 1177.

Applied in People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976); People v. Schultheis, 638 P.2d 8 (Colo. 1981); People v. Roark, 643 P.2d 756 (Colo. 1982).

16-8-106.5. Competency evaluation advisory board - creation - membership - duties - rules - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 40, § 1, effective March 8. **L. 2008:** Entire section repealed, p. 1854 § 7, effective July 1.

Editor's note: In 2008, this section was relocated to § 16-8.5-119.

Cross references: For the legislative declaration contained in the 2008 act repealing this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

16-8-107. Evidence.

(1) (a) Except as provided in this subsection (1), evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination pursuant to section 16-8-106 or acquired pursuant to section 16-8-103.6 is not admissible against the defendant on the issues raised by a plea of not guilty, if the defendant is put to trial on those issues, except to rebut evidence of the defendant's mental condition introduced by the defendant to show incapacity to form a culpable mental state; and, in such case, that evidence may be considered by the trier of fact only as bearing upon the question of capacity to form a culpable mental state, and the jury, at the request of either party, must be so instructed.

(b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-108 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102 only to prove the existence or absence of any mitigating factor.

(c) If the defendant testifies on the defendant's own behalf upon the trial of the issues raised by the plea of not guilty, or at a sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102, this section does not bar any evidence used to impeach or rebut the defendant's testimony.

(1.5) (a) Except as otherwise provided in this subsection (1.5), evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination pursuant to section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible only as to the issues raised by the defendant's plea of not guilty by reason of insanity, and the jury, at the request of either party, must be so instructed; except that, for offenses committed on or after July 1, 1999, the evidence is also admissible as to the defendant's mental condition if the defendant undergoes the examination because the defendant has given notice pursuant to subsection (3) of this section that the defendant intends to introduce expert opinion evidence concerning the defendant's mental condition.

(b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible at any sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102 only to prove the existence or absence of any mitigating factor.

(c) If the defendant testifies on the defendant's own behalf, this section does not bar any evidence used to impeach or rebut the defendant's testimony. This subsection (1.5) applies to offenses committed on or after July 1, 1995.

(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.

(3) (a) In no event shall a court permit a defendant to introduce evidence relevant to the issue of insanity, as described in section 16-8-101.5, unless the defendant enters a plea of not guilty by reason of insanity, pursuant to section 16-8-103.

(b) Regardless of whether a defendant enters a plea of not guilty by reason of insanity pursuant to section 16-8-103, the defendant is not permitted to introduce evidence in the nature of expert opinion concerning the defendant's mental condition without having first given notice to the court and the prosecution of the defendant's intent to introduce the evidence and without having undergone a court-ordered examination pursuant to section 16-8-106. A defendant who places the defendant's mental condition at issue by giving such notice waives any claim of confidentiality or privilege as provided in section 16-8-103.6. The notice must be given at the time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and prosecution of the intent to introduce such evidence at any time prior to trial. Any period of delay caused by the examination and report provided for in section 16-8-106 must be excluded, as provided in section 18-1-405 (6)(a), from the time within which the defendant must be brought to trial.

(c) This subsection (3) applies to offenses committed on or after July 1, 1999.

Source: L. 72: R&RE, p. 228, § 1. **C.R.S. 1963:** § 39-8-107. **L. 83:** (1) amended, p. 675, § 5, effective July 1. **L. 87:** (1) amended, p. 623, § 3, effective July 1. **L. 96:** (1.5) added, p. 5, § 3, effective January 31. **L. 98:** (1) and (1.5) amended, p. 384, § 4, effective April 21. **L. 99:** (1.5)(a) amended and (3) added, p. 402, § 4, effective July 1. **L. 2002:** (1)(b), (1)(c), and (1.5)(b) amended, p. 1493, § 138, effective October 1. **L. 2002, 3rd Ex. Sess.:** (1)(b), (1)(c), and (1.5)(b) amended, pp. 31, 32, §§ 21, 22, effective July 12. **L. 2013:** (2) amended, (SB 13-116), ch. 115, p. 396, § 5, effective August 7. **L. 2020:** (1)(b), (1)(c), and (1.5)(b) amended, (SB 20-100), ch. 61,

p. 207, § 5, effective March 23. **L. 2025:** (1)(a), (1)(c), (1.5)(a), (1.5)(c), (3)(b), and (3)(c) amended, (HB 25-1058), ch. 15, p. 48, § 13, effective August 6.

Cross references: (1) For the introduction of evidence of a physician or surgeon or certified psychologist without first obtaining the consent of the patient, see § 13-90-107 (1)(d) and (1)(g).

(2) For the legislative declaration contained in the 2002 act amending subsections (1)(b), (1)(c), and (1.5)(b), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsections (1)(b), (1)(c), and (1.5)(b), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

ANNOTATION

Law reviews. For comment on French v. District Court, see 36 U. Colo. L. Rev. 280 (1964). For article, "Hearsay in Criminal Cases Under the Colorado Rules of Evidence: An Overview", see 50 U. Colo. L. Rev. 277 (1979).

Annotator's note. Since § 16-8-107 is similar to § 39-8-2, C.R.S. 1963, § 39-8-2, CRS 53, and laws antecedent to CSA, C. 48, § 508, relevant cases construing those provisions have been included in the annotations to this section.

Subsection (3)(b) does not violate the separation of powers doctrine. The statute is a mix between substantive law and procedural rules. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

Although affecting the procedure of the courts, subsection (3)(b) also concerns the public policy of full disclosure in criminal cases involving a defense based on a defendant's mental condition. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

Subsection (3)(b) does not conflict with Crim. P. 11(e) or 16, part II, in violation of the separation of powers doctrine. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section is not void for vagueness. The term "mental condition" in subsection (3)(b) includes mental illness within its ordinary meaning and impaired mental condition, so the statute is not incomprehensible in all applications. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

The term "cooperate" is capable of a common meaning. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section does not violate a defendant's constitutional privilege against self-incrimination. The information obtained in compulsory mental examinations is admissible only on the issue of mental condition and insanity raised by defendants themselves. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

This section does not violate a defendant's fundamental right to present a defense or the right to effective assistance of counsel. A defendant can present a defense if he or she complies with the statute. People v. Bondurant, 2012 COA 50, 296 P.3d 200.

The evidentiary prerequisites of this section do not apply to the Colorado Children's Code and specifically to delinquency proceedings. Because the Colorado code of criminal procedure expressly provides that it does not apply to proceedings under the Children's Code except as specifically set forth in the criminal procedure code itself, and because no such provision exists in the criminal procedure code, this section does not apply to proceedings under the Children's Code. In re People in Interest of A.A., 2013 CO 65, 312 P.3d 1170.

Separate trials designed as safeguard against prejudice. On a separate trial of a plea of not guilty by reason of insanity in a murder prosecution, a much wider area of defendant's conduct may be the subject of inquiry than would be permissible in trial of a plea of not guilty; separate trials of such issues are provided to safeguard against prejudice likely to arise by reason of wide variety of evidence competent on issue of insanity but which would not be admissible on trial of a not guilty plea. Trujillo v. People, 150 Colo. 235, 372 P.2d 86 (1962).

Recognition of the constitutional rights of the defendant relative to self-incrimination appears in subsection (1). Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

The general assembly, in providing for the admission in evidence of defendant's statements to the psychiatrist where sanity is the issue, but barring them on the guilt issue, does not violate the defendant's rights against self-incrimination. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

When the sanity issue is a separate proceeding, as it is in Colorado, before a jury that cannot consider the issue of guilt in the event the defendant is found sane and where the admissions cannot be used to establish guilt, there is no self-incrimination within the contemplation of the constitutional provisions. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

In a sanity trial the admission of statements made by the defendant does not violate his right against self-incrimination because the issue of defendant's guilt is not decided. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

Subsection (1.5)(a) does not violate the privilege against self-incrimination. The only permissible use of statements made during a sanity examination is to determine whether a defendant was capable of forming a culpable mental state. People v. Herrera, 87 P.3d 240 (Colo. App. 2003).

The court's limiting instruction and surrounding instructions regarding the expert's testimony on the issue of defendant's sanity adequately protected defendant's privilege against self-incrimination. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

This section does not force a defendant to choose between the privilege against self-incrimination and the due process right to a competency determination. A defendant may remain silent during the court-ordered evaluation under this section and then be examined by a psychiatrist of his own choice under §16-8-108. Therefore, under the statutory scheme, the defendant could obtain a competency evaluation and protect his privilege against self-incrimination unless and until he relied upon the lack of mental capacity to commit the charged crimes. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

This section does not force a defendant to choose between his privilege against self-incrimination and his fundamental right to present a defense. People v. Roadcap, 78 P.3d 1108 (Colo. App. 2003).

Defendant could comply with subsection (3)(b) without waiving his privilege against self-incrimination by invoking the privilege during the court-ordered examination. People v. Roadcap, 78 P.3d 1108 (Colo. App. 2003).

Use in impeaching defendant constitutional. Neither the United States constitution nor the Colorado constitution should be construed to allow a defendant to take the stand without the possibility of his credibility being impeached by his prior inconsistent statements. Where the defendant makes statements to a psychiatrist upon the advice of his counsel and without physical coercion and intimidation, he cannot take the stand with his credibility immune from attack on the basis of his prior inconsistent statements. People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976).

When cross-examination for impeachment purposes not narrowly limited. When a defendant elects to fabricate testimony to effectively commit perjury, cross-examination for the purpose of impeachment is not narrowly limited. People v. Allen, 193 Colo. 526, 568 P.2d 56 (1977).

Miranda warnings not required. Even assuming that warnings are required, or that the examination under this section was a type of custodial interrogation requiring that defendant be given the equivalent of Miranda v. Arizona, 384 U.S. 436 (1966), warnings prior to his examination, such warnings are not required before the admission of statements for impeachment purposes. People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976).

Voluntary non-Miranda compliant statements can be used as psychiatric evidence rebutting an insanity defense. Liggett v. People, 2023 CO 22, 529 P.3d 113.

The last sentence of subsection (1) cannot be interpreted as only permitting the admission of statements concerning defendant's lack of capacity to form a specific intent and as not allowing the admission of statements concerning other issues of his guilt. People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976).

The reference in subsection (1.5)(a) to issues raised by the insanity plea relates to the defendant's "mental condition" and is equivalent to the references in

subsection (1)(a) to a defendant's "capacity to form a culpable mental state". People v. Herrera, 87 P.3d 240 (Colo. App. 2003).

Subsection (2) allows for prosecution to call "other experts" to testify as to their observations, conversations, and opinions regarding a defendant's mental condition. Prosecution presented sufficient evidence that defendant's behavior was not driven by insanity but by drugs and antisocial behavior. People v. Porter, 2013 COA 130, 353 P.3d 852, rev'd on other grounds, 2015 CO 34, 348 P.3d 922.

Evidence from examination limited to rebuttal in trial of guilt. This section provides that any statements made by the defendant to examining psychiatrists cannot be used as evidence against him in a trial on the issue of guilt of the crime charged. However, it is also provided that such evidence may be received on the trial of the issued guilt of a murder charge to rebut evidence of insanity offered by the defendant to reduce the degree of murder. French v. District Court, 153 Colo. 10, 384 P.2d 268 (1963).

This section definitely prohibits the presentation of the evidence obtained by experts during the period of observation, until evidence has been brought forward by defendant placing in issue, by testimony, the question of mental capacity. The entry of a plea of not guilty by reason of insanity does not destroy the presumption of sanity with which all persons are clothed. Under this section the evidence obtained during the period of observation should not have been received upon the direct case of the people on the trial of the issue of guilt and the cause is remanded for a new trial upon all issues raised by the plea. Leick v. People, 131 Colo. 353, 281 P.2d 806 (1955).

The limitation in this section on the admission of evidence applies only to the guilt phase of a trial and does not speak to the penalty phase or a postconviction proceeding. Dunlap v. People, 173 P.3d 1054 (Colo. 2007).

Nothing in this section prohibits the prosecution from calling the examining psychiatrist to give an opinion based on information derived from other sources, provided that such evidence was not acquired directly or indirectly for the first time from a communication made during the course of a court-ordered examination. People v. Saiz, 923 P.2d 197 (Colo. App. 1995).

The meaning of "relevant" under subsection (3)(a) is plain. Evidence that is "relevant to the issue of insanity" is evidence that tends to prove or disprove the issue of insanity — that is, evidence that is probative of what is defined as insanity. The probative effect of the mental condition evidence is what governs, not the purpose for which it is offered. People v. Moore, 2021 CO 26, 485 P.3d 1088.

Prosecution's antisocial personality disorder evidence properly admitted as relevant evidence. Prosecution's rebuttal of a defendant's insanity defense is not limited solely to presenting evidence that directly disproves the disorder claimed by defendant. Rather, the prosecution may present alternative explanations of a defendant's

behavior. People v. Gonzales-Quevedo, 203 P.3d 609 (Colo. App. 2008).

Use of defendant's statements to hospital employee while confined for sanity examination to rebut defendant's self-defense theory did not constitute reversible error as defendant failed to properly object to hospital employee's testimony at trial and fact that testimony was given in prosecution's case-in-chief rather than as rebuttal testimony did not constitute plain error which would require consideration of issue not raised at trial. People v. Kruse, 839 P.2d 1 (Colo. 1992).

Expert testimony concerning the nature of the condition of minimal brain dysfunction, and its relation to poor impulse control and lack of willpower, is admissible in evidence and relevant to the issue of the defendant's sanity. People v. Wright, 648 P.2d 665 (Colo. 1982).

Trial court not required to give limiting instruction sua sponte. Court is required to give jury limiting instruction on use of expert testimony only at the request of either party. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

Trial court has discretion to determine order in which evidence will be presented at the sanity trial. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

Opinion based on information of third persons not testifying inadmissible. A physician cannot express an opinion based in whole or in part upon information obtained from third persons who have not testified to the facts, and the admission of such evidence was reversible error. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931).

An expert witness is not permitted to give an opinion of sanity based upon information obtained from third persons who have not testified. Garrison v. People, 158 Colo. 348, 408 P.2d 60 (1965).

Exception if opinion not based on such information. A doctor is not disqualified to express his opinion concerning the sanity of a defendant merely because he had some information from a source outside his own examination if his opinion was not in any manner based on that information. Garrison v. People, 158 Colo. 348, 408 P.2d 60 (1965).

Doctor-patient privilege was not violated by court-appointed psychiatrist's testimony where the prosecution called him as a witness to rebut evidence introduced by defendant which tended to show that he was incapable of forming a specific intent. People v. Scheidt, 182 Colo. 374, 513 P.2d 446 (1973).

Admissions to privately retained psychiatrist privileged. The prosecution may not call, as a witness in its case-in-chief, a psychiatrist privately retained by the defendant in connection with an insanity plea and elicit from the psychiatrist incriminating admissions made by the defendant during a sanity examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

Prosecutor entitled to physician's information. Where the confessions and admissions of the defendant have been weighed by the examining physician in

evaluating the defendant's sanity, fairness requires that the prosecutor have the same information as the defense attorney. Lewis v. Thulemeyer, 189 Colo. 139, 538 P.2d 441 (1975).

Section only requires a limiting instruction "at the request of either party". People v. Freeman, 47 P.3d 700 (Colo. App. 2001).

Subsection (3)(b) is not limited to evidence of a defendant's condition during the offense and it contains no exception for evidence of a post-incident condition. Trial court properly ruled that expert testimony related to defendant's mental condition and that defendant would have to comply with the provisions of subsection (3)(b) if he wished to have the experts testify. People v. Roadcap, 78 P.3d 1108 (Colo. App. 2003).

This section does not preclude a defendant from calling expert witnesses, it merely requires defendant to comply with subsection (3)(b) if he chooses to pursue this line of defense. People v. Roadcap, 78 P.3d 1108 (Colo. App. 2003).

A defendant who has not pleaded insanity but seeks to plead a mental condition defense demonstrates "good cause" for delay under subsection (3)(b) when justice is best served by permitting the introduction of evidence regarding a defendant's mental condition and notice was not given at the time of arraignment due to mistake, ignorance, or inadvertence. When considering whether good cause has been shown, courts should construe subsection (3)(b) liberally in the defendant's favor. People v. Gilbert, 2020 COA 137, 490 P.3d 899, vacated, 2022 CO 23, 510 P.3d 538.

"Mental condition" includes expert testimony offered to show how defendant's intellectual or developmental disability affects the reliability or credibility of statements made to police. People v. Flippo, 159 P.3d 100 (Colo. 2007).

Learning disability such as a disorder of written expression is outside of the statutory definition of "insanity". Therefore, evidence of defendant's learning disability to prove a mistake of fact is admissible without an insanity plea as long as defendant provides notice and permits a court-ordered examination. People v. Wilburn, 2012 CO 21, 272 P.3d 1078.

A defendant charged with a specific intent crime cannot introduce evidence that shows, as a result of a mental disease or defect, the defendant was incapable of forming the requisite culpable mental state unless the defendant enters a plea of not guilty by reason of insanity. Evidence that a defendant is incapable of forming the requisite culpable mental state as a result of a mental disease or defect is relevant to the issue of insanity. People v. Rosas, 2020 CO 22, 459 P.3d 540.

Trial court did not err in denying defendant's motion to present evidence of his mental state without pleading not guilty by reason of insanity. Defendant proffered evidence that tended to show he was incapable of accurately comprehending the surrounding circumstances and of making a reasoned decision about an appropriate course of action and that

otherwise fell within the statutory definition of insanity. People v. Gonzales-Quevedo, 203 P.3d 609 (Colo. App. 2008).

A defendant may not call an expert witness to generally testify about a mental condition without having undergone a court-ordered examination pursuant to § 16-8-106. People v. Lane, 2014 COA 48, 343 P.3d 1019.

Psychiatrist's testimony that defendant knew his actions were wrong violates subsections (1)(a) and (1.5)(a) and defendant's right against self-incrimination. The testimony was not confined to a court-ordered sanity examination of whether defendant had the capacity to distinguish right from wrong or form the culpable mental state at the time of the offense. People v. Marko, 2015 COA 139, 434 P.3d 618, aff'd, 2018 CO 97, 432 P.3d 607.

The error does not require reversal because: the statements were few and relatively inconspicuous in the context of the psychiatrist's testimony; the prosecution only used the psychiatrist's testimony in closing arguments in relation to the plea of not guilty by reason of insanity, not the defendant's guilt; and the prosecution presented substantial evidence that the defendant knew his actions were wrong. People v. Marko, 2015 COA 139, 434 P.3d 618, aff'd, 2018 CO 97, 432 P.3d 607.

Prosecution can introduce evidence obtained in court-ordered evaluation of defendant pursuant to defendant's withdrawn insanity plea as evidence of defendant's "mental condition" relating to his subsequent involuntary intoxication defense. Defendant's mental health examination was triggered by his initial claims of insanity. Court did not err in allowing prosecution to call the experts to testify in accordance with their previously produced reports to rebut testimony identified in the defendant's expert disclosures. The experts were not required to conduct additional examinations of the sole purpose of reissuing their original reports. People v. Herdman, 2012 COA 89, 310 P.3d 170.

When the defendant raised the issue of his or her mental condition without pleading insanity, the privilege against self-incrimination is not implicated by a court-ordered mental examination when the information obtained therefrom is admitted only on the issue of mental condition and rebuts defendant's testimony at trial. People v. Herdman, 2012 COA 89, 310 P.3d 170.

For the admissibility of prearraignment examination, see Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

Applied in Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962); People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980); People v. Roark, 643 P.2d 756 (Colo. 1982); Hendershott v. People, 653 P.2d 385 (Colo. 1982).

16-8-108. Examination at instance of defendant.

(1) (a) If the defendant wishes to be examined by a psychiatrist, psychologist, or other expert of the defendant's own choice in connection with any proceeding under this article 8, the court, upon timely motion, shall order that the examiner chosen by the defendant be given reasonable opportunity to conduct the examination. An interview conducted pursuant to a court order under this section must be video and audio recorded and preserved, except as provided in subsection (1)(b) of this section. The court shall advise the defendant that any examination with a psychiatrist or forensic psychologist may be audio and video recorded. A copy of the recording must be provided to the prosecution with the examination report. Any jail or other facility where the court orders the examination to take place shall permit the recording to occur and shall provide the space and equipment necessary for the recording, if available. If space and equipment are not available, the sheriff or facility director shall attempt to coordinate a location and the availability of equipment with the court, and the court may consult with the district attorney and defense counsel for an agreed-upon location. If an agreement is not reached, and upon the request of either the defense counsel or district attorney, the court shall order the location of the examination, which may include a state-run mental health hospital.

(b) Prior to or during any examination required by this section, the psychiatrist or forensic psychologist shall assess whether the recording of the examination is likely to cause or is causing mental or physical harm to the defendant or others. If such a determination is made and documented contemporaneously in writing, the psychiatrist or forensic psychologist shall not record the examination or shall cease recording the examination, and the psychiatrist or forensic psychologist shall advise the court and the parties of this determination and the reasons therefore in a written report to the court. If only a partial recording is made, the psychiatrist or forensic psychologist shall provide the partial recording to the court and the parties, and the partial recording may be used by any psychiatrist or forensic psychologist in forming an opinion, submitting a report, or testifying on the issue of the defendant's mental health.

(c) The court shall determine the admissibility of any recording or partial recording, in whole or in part, subject to all available constitutional and evidentiary objections.

(2) A copy of any report of examination of the defendant made at the instance of the defense must be furnished to the court and the prosecution in a reasonable time in advance of trial. Upon receipt of the report of examination, the court shall provide a copy of the report to the department of human services.

Source: L. 72: R&RE, p. 229, § 1. **C.R.S. 1963:** § 39-8-108. **L. 87:** (2) amended, p. 623, § 4, effective July 1. **L. 2016:** (1) amended, (SB 16-019), ch. 297, p. 1207, § 2, effective January 1, 2017. **L. 2025:** (1)(a) amended, (HB 25-1058), ch. 15, p. 49, § 14, effective August 6. **L. 2026:** (2) amended, (SB 26-014), ch. 54, p. 229, § 1, effective April 20.

ANNOTATION

Annotator's note. Since § 16-8-108 is similar to repealed § 39-8-2, C.R.S. 1963, and CSA, C. 48, § 508, relevant cases construing those provisions have been included in the annotations to this section.

The court's authority to appoint a psychiatrist upon application of defendant is found in this section. Martinez v. People, 124 Colo. 170, 235 P.2d 810 (1951).

It does not give defendant absolute right to have psychiatrist of his own choosing appointed. Nor does it guarantee that expert selected by indigent defendant will in all cases be provided without cost to him. Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973).

Right of incarcerated defendant to private examination. An incarcerated defendant can obtain a court order granting a privately retained psychiatrist a reasonable opportunity to conduct an examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

Court may require good cause to be shown before ordering further psychiatric examination once defendant has been examined by specialists in field of nervous and mental diseases. Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973).

Defendant's waiver of right to a third competency evaluation was not a waiver of the right to be competent. Where defendant has had an adequate hearing on the issue of competence, opposes a continuance and waives further competence examinations, due process does not require the court to make a second competency determination. People v. White, 870 P.2d 424 (Colo. 1994).

Sections 16-8-103 and 16-8-105 do not operate to exclude private employment of psychiatrists. Early v. People, 142 Colo. 462, 352 P.2d 112 (1960).

Admissions to court-appointed psychiatrist privileged. During the guilt trial, the prosecution may not call, as a witness in its case-in-chief, an indigent defendant's court-appointed psychiatrist and elicit incriminating admissions made by the defendant during a sanity examination. People v. Roark, 643 P.2d 756 (Colo. 1982).

Admissions to privately retained psychiatrist privileged. The prosecution may not call, as a witness in its case-in-chief, a psychiatrist privately retained by the defendant in connection with an insanity plea and elicit from the psychiatrist incriminating admissions made by the defendant during a sanity examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

But copy of report to prosecution if defense to offer testimony of examination. The only limitation placed on a defendant seeking a sanity examination by a private psychiatrist is that a copy of the psychiatrist's report be furnished to the prosecution reasonably in advance of the sanity trial if the defense intends to offer

testimony about the examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

Applied in People v. Pearson, 190 Colo. 313, 546 P.2d 1259 (1976).

16-8-109. Testimony of lay witnesses.

In any trial or hearing in which the defendant's mental condition is an issue, a witness not specially trained in psychiatry or psychology may testify as to the witness's observation of the defendant's actions and conduct, and as to conversations that the witness has had with the defendant bearing upon the defendant's mental condition, and the witness must be permitted to give opinions or conclusions concerning the defendant's mental condition.

Source: L. 72: R&RE, p. 229, § 1. **C.R.S. 1963:** § 39-8-109. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 50, § 15, effective August 6.

ANNOTATION

Annotator's note. Since § 16-8-109 is similar to repealed § 39-8-1, C.R.S. 1963, and § 39-8-1, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

Nonexpert may not give hypothetical opinion of sanity. A nonexpert witness may never, in response to a purely hypothetical question stating the facts, be permitted to give an opinion on the question of sanity. Rupert v. People, 163 Colo. 219, 429 P.2d 276 (1967).

But a lay witness may, when a proper foundation is laid, express an opinion as to the sanity of another. People v. Median, 185 Colo. 101, 521 P.2d 1257 (1974).

Subject to the proper foundation, a psychiatric social worker may give opinion testimony on a defendant's mental condition. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

The foundation to be laid under this section must indicate that the conclusions of the witness bear directly upon the issue of sanity and not merely conclusions of fact as to conduct. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

Requirements which must be met before a lay witness can express his opinion as to the sanity of another are: (1) It must be shown that the lay witness had an adequate means of becoming acquainted with the person whose sanity is in issue; and (2) the contacts must be proximate in time to the alleged offense. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

Before opinion evidence from a nonexpert regarding the sanity of another can be admissible, the specific facts upon which the opinion is based must be first stated by the witness, and his testimony must also show a close or intimate relationship with the party

alleged to be insane. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

Before a lay witness is permitted to state an opinion regarding the sanity or insanity or mental competence or incompetence of a person whose mental condition is at issue, the witness must have had ample opportunity to observe the speech, manner, habits, or conduct of the person. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

One who in the opinion of a trial court shows adequate means of becoming acquainted with a person whose mental condition is in issue, after detailing the facts and circumstances concerning his acquaintance and the acts and conversations upon which his conclusion is based, may give his opinion on the question of sanity. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958); Rupert v. People, 163 Colo. 219, 429 P.2d 276 (1967).

The opinion of a nonexpert is admissible only when it is made to appear that his acquaintance with a defendant, whose sanity is in issue, had the requisite nearness in time after the act charged, to persuade the court, in the exercise of a sound discretion, to receive it. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

The necessary predicate for lay opinion evidence is a showing of adequate means to have become acquainted with the person whose mental condition is at issue. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

A lay witness may give an opinion relative to the defendant's sanity if the witness details the facts which demonstrate his acquaintance with the defendant, and if those facts demonstrate that the acquaintance is close and that contacts were maintained at a point proximate in time to the alleged offense. People v. Osborn, 42 Colo. App. 376, 599 P.2d 937 (1979).

Discretion of trial judge. Trial judges have very broad discretion in determining whether or not any proffered witness is qualified to give opinion testimony. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

The testimony of a corrections officer who observed defendant during defendant's pre-trial incarceration had proper foundation. The record indicates that the witness testified concerning the witness's observations of defendant's behavior, not concerning the witness's opinion of defendant's mental condition. This testimony is specifically permitted by this section. People v. Henderson, 794 P.2d 1050 (Colo. App. 1990), rev'd on other grounds, 810 P.2d 1058 (Colo. 1991).

When discretion abused. Where foundation testimony fails to conform and where the proper guidelines are not adhered to in judging these requirements, it must be held that the trial court abused its discretion in permitting the admission of nonexpert opinion testimony. People v. Medina, 185 Colo. 101, 521 P.2d 1257 (1974).

Court abused its discretion in admitting some lay opinions from mental health providers who had not been properly noticed as experts by the prosecution. Some of the opinions were expert opinions improperly admitted under

the guise of lay opinion testimony. The improper testimony related to symptoms of specific mental illness and opinions about whether defendant suffered from mental illness. The evidence relied upon the witness's specialized knowledge and training and, therefore, went beyond the bounds of lay opinion. The error in this case was harmless since there was ample evidence in addition to the improperly admitted opinions. Dunlap v. People, 173 P.3d 1054 (Colo. 2007).

The weight of a nonexpert's opinion is for the jury. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958); Rupert v. People, 163 Colo. 219, 429 P.2d 276 (1967).

Applied in People v. Johnson, 44 Colo. App. 118, 613 P.2d 902 (1980); People v. Wright, 648 P.2d 665 (Colo. 1982).

16-8-110. Mental incompetency to proceed - effect - how and when raised. (Repealed)

Source: L. 72: R&RE, p. 229, § 1. **C.R.S. 1963:** § 39-8-110. **L. 76:** (2)(c) amended, p. 530, § 1, effective April 9. **L. 83:** (1) amended, p. 675, § 6, effective July 1. **L. 87:** (2)(c) amended, p. 1170, § 7, effective March 13. **L. 95:** (1) amended, p. 76, § 10, effective July 1. **L. 2001:** (3) added, p. 407, § 3, effective April 19. **L. 2008:** Entire section repealed, p. 1855, § 8, effective July 1.

Editor's note: In 2008, this section was relocated to § 16-8.5-102.

Cross references: For the legislative declaration contained in the 2008 act repealing this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

16-8-111. Determination of incompetency to proceed. (Repealed)

Source: L. 72: R&RE, p. 229, § 1. **C.R.S. 1963:** § 39-8-111. **L. 2001:** (1) amended and (4) added, p. 407, § 4, effective April 19. **L. 2006:** (1) amended and (3.5) added, p. 178, § 2, effective March 31. **L. 2008:** Entire section repealed, p. 1856, § 9, effective July 1.

Editor's note: In 2008, this section was relocated to § 16-8.5-103.

Cross references: For the legislative declaration contained in the 2008 act repealing this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

16-8-112. Procedure after determination of competency or incompetency. (Repealed)

Source: L. 72: R&RE, p. 230, § 1. **C.R.S. 1963:** § 39-8-112. **L. 81:** (2) R&RE and (3) and (4) added, p. 936, §§ 1, 2, effective January 1, 1982. **L. 94:** (2) amended, p. 2648, § 119, effective July 1. **L. 2008:** Entire section repealed, p. 1856, § 10, effective July 1.

Editor's note: In 2008, this section was relocated to § 16-8.5-111.

Cross references: For the legislative declaration contained in the 2008 act repealing this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

16-8-113. Restoration to competency. (Repealed)

Source: L. 72: R&RE, p. 230, § 1. **C.R.S. 1963:** § 39-8-113. **L. 2009:** Entire section repealed, (HB 09-1253), ch. 128, p. 552, § 4, effective August 5.

16-8-114. Evidence concerning competency - inadmissibility.

(1) and (2) (Deleted by amendment, L. 2008, p. 1857, § 11, effective July 1, 2008.)

(3) (a) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity or the affirmative defense of impaired mental condition. This subsection (3)(a) applies to offenses committed before July 1, 1995.

(b) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity. This subsection (3)(b) applies to offenses committed on or after July 1, 1995.

Source: L. 72: R&RE, p. 230, § 1. **C.R.S. 1963:** § 39-8-114. **L. 79:** (1) amended, p. 670, § 19, effective July 1. **L. 83:** (3) amended, p. 675, § 7, effective July 1. **L. 95:** (3) amended, p. 77, § 11, effective July 1. **L. 2008:** Entire section amended, p. 1857, § 11, effective July 1. **L. 2025:** (3) amended, (HB 25-1058), ch. 15, p. 50, § 16, effective August 6.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

Annotator's note. Since § 16-8-114 is similar to repealed § 39-8-6, C.R.S. 1963, and § 39-8-6, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

Recovery removes the statutory impediment, and the regular course of the law takes up at the point where the incompetency arose. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

If a defendant who is incompetent to stand trial later regains his sanity, he must face trial on the merits. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Return to sanity requires new preliminary hearing. When the preliminary hearing is held first and the competency hearing second, if the outcome of the competency hearing is that the defendant is presently insane, then upon his return to competency another preliminary hearing must be held. Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970).

Section limits admissibility of results of examination in trial on guilt. The statutory limitation on the use at the trial of the issue of guilt or innocence of any substantive evidence or information acquired directly or indirectly for the first time as the result of examination of accused applies to an examination in connection with a plea of insanity at the time or an allegation of incompetency after the alleged commission of the crime. Nowels v. People, 166 Colo. 140, 442 P.2d 410 (1968).

Applied in People v. Chavez, 629 P.2d 1040 (Colo. 1981).

16-8-114.5. Commitment - termination of proceedings. (Repealed)

Source: L. 81: Entire section added, p. 937, § 3, effective January 1, 1982. **L. 89:** (2) amended, p. 867, § 1, effective April 27. **L. 90:** (1) amended, p. 954, § 20, effective June 7. **L. 94:** (1) amended, p. 2649, § 120, effective July 1. **L. 2007:** (2) amended, p. 1756, § 1, effective June 1. **L. 2008:** Entire section repealed, p. 1858, § 12, effective July 1.

Editor's note: In 2008, this section was relocated to § 16-8.5-116.

Cross references: For the legislative declaration contained in the 2008 act repealing this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition - definitions.

(1) (a) (I) Upon an initial commitment following a finding of not guilty by reason of insanity pursuant to section 16-8-105.5 (4)(b), or upon delaying final entry of the finding of not guilty by reason of insanity pursuant to section 16-8-105.5 (4)(a), the court shall schedule an initial release hearing no later than one hundred twenty days after the initial commitment. The court shall order the department of human services to complete a release examination no later than thirty days prior to the initial release hearing. The defendant may request an additional release examination by a medical expert in mental health disorders of the defendant's choosing pursuant to section 16-8-108. The court may continue the hearing beyond one hundred and twenty days upon a finding of good cause or if necessary to conduct a second evaluation of the defendant.

(II) The court shall conduct the initial release hearing. At the initial release hearing, if any evidence is introduced that shows the defendant is ineligible for conditional release, the defendant has the burden of proving by a preponderance of the evidence that the defendant meets the applicable test for conditional release pursuant to section 16-8-120. If the court finds the defendant eligible for conditional release, the court may impose such terms and conditions as the court determines are in the best interest of the defendant and the community. If the court finds the defendant ineligible for conditional release, the court shall commit or continue the previous commitment of the defendant to the physical custody of the department of human services.

(III) This subsection (1)(a) applies to individuals found not guilty by reason of insanity on or after September 1, 2022.

(b) Following the initial release hearing pursuant to subsection (1)(a) of this section, the court may order a release hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant. The court shall order a release hearing upon receipt of the report of the chief officer of the hospital where the defendant is committed, or the chief officer's designee, that the defendant no longer requires hospitalization, as provided in section 16-8-116. Except for the initial release hearing, unless the court for good cause shown permits, the defendant is not entitled to a hearing within one year subsequent to a previous hearing.

(b.5) At any unconditional release hearing for a defendant who is on any conditional release, if any evidence is introduced that shows the defendant is ineligible for unconditional release, the defendant has the burden of proving by a preponderance of the evidence that the defendant meets the applicable test for unconditional release pursuant to section 16-8-120. If the court finds the defendant eligible for unconditional release, the court shall order the unconditional release of the defendant. If the court finds the defendant ineligible for unconditional release, the court shall order continued conditional release and may impose or modify such terms and conditions as the court determines are in the best interest of the defendant and the community and shall notify the district attorney of the order.

(c) Beginning September 1, 2022, the chief officer of the hospital where the defendant is committed, or the chief officer's designee, shall annually submit a release examination report to the court certifying whether the defendant continues to meet the criteria for ongoing inpatient hospitalization or meets the applicable test for release pursuant to section 16-8-120. The report must be submitted each year by the date on which the defendant was initially committed for inpatient hospitalization unless another release examination is ordered within the twelve months preceding the date. The release examination report must include the information required for a release examination pursuant to subsection (2.5) of this section. The hospital shall provide a copy of the report to the defendant, the prosecuting attorney, and any other attorney of record. Upon receipt and after review of the report, the court may order a release hearing on its own motion, on motion of the prosecuting attorney, or on motion of the defendant.

(1.5) (a) Any victim of any crime or any member of the victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity or not guilty by reason of impaired mental condition, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if the victim or family member can reasonably be located. This subsection (1.5)(a) applies to offenses committed before July 1, 1995.

(b) Any victim of any crime or any member of the victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if the victim or family member can reasonably be located. This subsection (1.5)(b) applies to offenses committed on or after July 1, 1995.

(2) (a) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different hospital or by different experts. The court may order any additional or supplemental examination, investigation, or study that the court deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after the court has received all of the reports that the court has

ordered pursuant to this section. When none of the reports indicates that the defendant is eligible for release, the defendant's request for a release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed pursuant to article 240 of title 12, a psychologist licensed pursuant to article 245 of title 12, a psychiatric technician licensed pursuant to article 295 of title 12, a registered professional nurse, as defined in section 12-255-104 (11), who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed pursuant to part 4 of article 245 of title 12. The release hearing shall be to the court or, on demand by the defendant, to a jury composed of not more than six persons. At the release hearing, if any evidence of insanity is introduced, the defendant has the burden of proving restoration of sanity by a preponderance of the evidence; if any evidence of ineligibility for release by reason of impaired mental condition is introduced, the defendant has the burden of proving, by a preponderance of the evidence, that the defendant is eligible for release by no longer having an impaired mental condition. This subsection (2)(a) applies to offenses committed before July 1, 1995.

(b) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different hospital or by different experts. The court may order any additional or supplemental examination, investigation, or study that the court deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after the court has received all of the reports that the court ordered pursuant to this section. When none of the reports indicates that the defendant is eligible for release, the court shall deny the defendant's request for a release hearing if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed pursuant to article 240 of title 12, a psychologist licensed pursuant to article 245 of title 12, a psychiatric technician licensed pursuant to article 295 of title 12, a registered professional nurse as, defined in section 12-255-104 (11), who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed pursuant to part 4 of article 245 of title 12. The release hearing shall be to the court or, on demand by the defendant, to a jury composed of not more than six persons. At the release hearing, if any evidence that the defendant does not meet the release criteria is introduced, the defendant has the burden of proving by a preponderance of the evidence that the defendant does not have an abnormal mental condition that would be likely to cause the defendant to be dangerous either to the defendant's self or to others or to the community in the reasonably foreseeable future. This subsection (2)(b) applies to offenses committed on or after July 1, 1995.

(2.5) In addition to any other requirement pursuant to this section, the release examination report must include:

(a) A summary of the materials reviewed, assessments conducted, and other bases of opinion rendered;

(b) The defendant's current diagnosis and whether the defendant's symptoms of mental disease or defect are in remission;

(c) Information about medications currently prescribed to the defendant and whether the defendant is compliant with taking the prescribed medications;

(d) A summary of the treatment provided to the defendant since the last release examination, if applicable;

(e) An initial assessment of the defendant's risk of reoffending, including a summary of the defendant's treatment needs by utilizing evidence-based standards of individualized treatment and management of people acquitted by reason of insanity;

(f) A summary of the specific treatment options available to the defendant in the community and the specific treatment the defendant may receive at a facility designated by the executive director of the department of human services;

(g) A summary of whether and how ongoing risks could be managed if placement in the community were granted; and

(h) An opinion as to whether the defendant currently meets the applicable test for release, as described in section 16-8-120, citing specific facts and evidence supporting the opinion.

(3) (a) If the court or jury finds the defendant eligible for release, the court may impose such terms and conditions as the court determines are in the best interests of the defendant and the community, and the jury shall be so instructed. If the court or jury finds the defendant ineligible for release, the court shall recommit the defendant. The court's order placing the defendant on conditional release shall include notice that the defendant's conditional release may be revoked pursuant to the provisions of section 16-8-115.5.

(b) When a defendant is conditionally released, the chief officer of the hospital where the defendant is committed, or the chief officer's designee, shall forthwith give written notice of the terms and conditions of the release to the executive director of the department of human services and to the director of any behavioral health safety net provider that may be charged with the defendant's continued treatment. The director of the behavioral health safety net provider shall make written reports every three months to the executive director of the department of human services and to the district attorney for the judicial district where the defendant was committed and to the district attorney for any judicial district where the defendant may be required to receive treatment concerning the defendant's treatment and status. The reports must include all

known violations of the terms and conditions of the defendant's release and any changes in the defendant's mental status that would indicate that the defendant has become ineligible to remain on conditional release.

(c) A defendant who has been conditionally released remains under the supervision of the department of human services until the committing court enters a final order of unconditional release. When a defendant fails to comply with any conditions of the defendant's release requiring the defendant to establish, maintain, and reside at a specific residence and the defendant's whereabouts have become unknown to the authorities charged with the defendant's supervision or when the defendant leaves the state of Colorado without the consent of the committing court, the defendant's absence from supervision constitutes unauthorized absence, as defined in section 18-8-208.2. Such offense occurs in the county in which the defendant is authorized to reside.

(d) Any terms and conditions imposed by the court on the defendant's release and the defendant's mental status shall be reviewed at least every twelve months unless the court sooner holds a release hearing as provided in this section.

(e) As long as the defendant is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all information, including clinical information regarding the defendant, among the department of human services, the appropriate behavioral health safety net providers, and appropriate district attorneys, law enforcement, and court personnel.

(4) (a) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court shall order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that:

(I) The defendant was found not guilty by reason of insanity on a charge of an offense involving unlawful sexual behavior; or

(II) The defendant was found not guilty by reason of insanity on a charge of any other offense, the underlying factual basis of which includes an offense involving unlawful sexual behavior.

(a.5) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court may order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that the chief officer of the hospital where the defendant has been committed, or the chief officer's designee, recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(b) The court's order placing the defendant on conditional release shall include notice of the requirement to register. The court's order, at a minimum, shall specify:

(I) The time period following release within which the defendant shall register with the local law enforcement agency;

(II) The time period following a change of residence within which the defendant shall reregister with the local law enforcement agency of the jurisdiction in which the defendant resides;

(III) The frequency with which the defendant must reregister with the local law enforcement agency of the jurisdiction in which the defendant resides to provide a periodic verification of the defendant's location;

(IV) Any other circumstances under which the defendant must reregister with the local law enforcement agency of the jurisdiction in which the defendant resides.

(c) Prior to release of any defendant who is required to register as a condition of release pursuant to this subsection (4), the department of human services shall obtain from the defendant the address at which the defendant plans to reside upon release. At least two days prior to release of the defendant, the department of human services shall notify the local law enforcement agency of the jurisdiction in which the defendant plans to reside upon release and the Colorado bureau of investigation of the anticipated release of the defendant and shall provide to the local law enforcement agency and the Colorado bureau of investigation the address at which the defendant plans to reside, a copy of the court order establishing the condition to register pursuant to this section, and any other pertinent information concerning the defendant.

(d) If the defendant plans to reside within the corporate limits of any city, town, or city and county, the defendant shall register at the office of the chief law enforcement officer of the city, town, or city and county. If the defendant plans to reside outside of such corporate limits, the defendant shall register at the office of the county sheriff of the county in which the defendant plans to reside.

(e) A defendant who registers with a local law enforcement agency as a condition of release pursuant to this subsection (4) shall register using forms provided by the local law enforcement agency and shall provide the information requested by the local law enforcement agency, including at a minimum a photograph and a complete set of fingerprints.

(f) The local law enforcement agency shall transmit any registrations received pursuant to subsection (4)(e) of this section to the Colorado bureau of investigation within three business days following receipt of the registration. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110 and shall specify that the information applies to a defendant required to register as a condition of release pursuant to this section. The forms completed by a

defendant required to register as a condition of release pursuant to this subsection (4) are confidential and must not be open to inspection except as provided in subsection (3)(e) of this section and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(g) As used in this subsection (4), "an offense involving unlawful sexual behavior" means any of the following offenses:

(I) (A) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(B) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(II) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(III) (A) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(B) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(IV) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(V) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(VI) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(VII) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(VIII) Incest, in violation of section 18-6-301, C.R.S.;

(IX) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(X) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(XI) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(XII) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(XIII) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(XIV) Soliciting for commercial sexual activity with a child, in violation of section 18-7-402;

(XV) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(XVI) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(XVII) Keeping a place of commercial sexual activity with a child, in violation of section 18-7-404;

(XVIII) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(XIX) Inducement of commercial sexual activity with a child, in violation of section 18-7-405.5;

(XX) Engaging in commercial sexual activity with a child, in violation of section 18-7-406;

(XX.5) As each of the following offenses existed prior to July 1, 2026: Soliciting for child prostitution, in violation of section 18-7-402; keeping a place of child prostitution, in violation of section 18-7-404; inducement of child prostitution, in violation of section 18-7-405.5; or patronizing a prostituted child, in violation of section 18-7-406; or

(XXI) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection (4)(g).

(h) Any condition imposed pursuant to this subsection (4) shall be in addition to any conditions that may be imposed pursuant to subsection (3) of this section and shall be subject to monitoring, review, and enforcement in the same manner as any condition imposed pursuant to subsection (3) of this section.

(i) (I) Any defendant required to register as a condition of release pursuant to this subsection (4), upon completion of a period of not less than twenty years from the date the defendant is placed on conditional release, may petition the district court for an order that discontinues the requirement for registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue an order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to the defendant's conditional release and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

(II) Upon the filing of a petition pursuant to this subsection (4)(i), the court shall set a date for a hearing on the petition. The defendant shall notify the local law enforcement agency with which the defendant is required to register and the prosecuting attorney for the jurisdiction in which the local law enforcement agency is located of the filing of the petition and the hearing date. The court shall notify the victim of the filing of the petition and the hearing date. At the hearing, the court shall give opportunity to the victim to provide written or oral testimony. If the court enters an order discontinuing the defendant's duty to register, the defendant shall send a copy of the order to the local law enforcement agency and the Colorado bureau of investigation.

Source: L. 72: R&RE, p. 231, § 1. **C.R.S. 1963:** § 39-8-115. **L. 81:** (3) amended, p. 934, § 3, effective July 1; (1) amended, p. 938, § 1, effective September 1; (2) amended, p. 939, § 1, effective September 1. **L. 83:** (1) and (2) amended, p. 679, § 1, effective July 1; (2) amended, p. 676, § 8, effective July 1. **L. 86:** (2) amended, p. 736, § 1, effective March 13. **L. 90:** (1.5) added, p. 924, § 4, effective March 27. **L. 94:** (3)(a) amended, p. 1423, § 1, effective July 1; (3)(b), (3)(c), and (3)(e) amended, p. 2649, § 121, effective July 1. **L. 95:** (1.5) and (2) amended, p. 77, § 12, effective July 1. **L. 2002:** (4) added, p. 495, § 1, effective July 1; (4)(f) amended, p.1191, § 37, effective July 1. **L. 2003:** (4)(i)(I) amended, p. 1990, § 28, effective May 22. **L. 2005:** (4)(a) amended and (4)(a.5) added, p. 995, § 1, effective June 2. **L. 2010:** (4)(g)(X) amended, (SB 10-140), ch. 156, p. 537, § 4, effective April 21. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 850, § 76, effective July 1. **L. 2014:** (4)(g)(X) amended, (HB 14-1273), ch. 282, p. 1152, § 10, effective July 1. **L. 2019:** (4)(i)(II) amended, (HB 19-1064), ch. 296, p. 2749, § 1, effective May 28; (2) amended, (HB 19-1172), ch. 136, p. 1670, § 84, effective October 1. **L. 2022:** (1) amended and (2.5) added, (HB 22-1061), ch. 438, p. 3081, § 2, effective August 10; (3)(b) and (3)(e) amended, (HB 22-1278), ch. 222, p. 1589, § 220, effective July 1, 2024. **L. 2023:** (3)(c) amended, (HB 23-1293), ch. 298, p. 1783, § 3, effective October 1. **L. 2025:** (1)(b), (1)(c), (1.5), (2), (3)(b), (3)(c), (4)(a.5), (4)(f), (4)(g)(XXI), and (4)(i)(I) amended, (HB 25-1058), ch. 15, p. 50, § 17, effective August 6. **L. 2026:** (1)(a)(I) amended and (1)(b.5) added, (SB 26-014), ch. 54, p. 229, § 2, effective April 20; (4)(g)(XIV), (4)(g)(XVII), (4)(g)(XIX), and (4)(g)(XX) amended and (4)(g)(XX.5) added, (SB 26-015), ch. 335, p. 2036, § 13, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (3)(b), (3)(c), and (3)(e), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 26-015, see section 1 of chapter 335, Session Laws of Colorado 2026.

ANNOTATION

Annotator's note. Since § 16-8-115 is similar to repealed § 39-8-4, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

This section does not state that the release hearing shall be considered a civil proceeding. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Where a proceeding is an inquiry into the mental condition of a defendant who has been committed under a plea of not guilty by reason of insanity, the proceeding is not an adversary proceeding in the usual sense of a case which is controlled by the rules of civil procedure. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Rather, it is a special statutory proceeding. In view of the detailed procedure prescribed by this section, the release proceedings are special statutory proceedings governed by C.R.C.P. 81(a), People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Historically, the supreme court has considered mental health proceedings to be special statutory proceedings. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

The provisions of paragraphs (a), (b), and (c) of subsection (3) indicate legislative intent to vest the committing court with continuing subject matter jurisdiction to determine questions relating to the treatment needs of a committed defendant. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

Committing court has subject matter jurisdiction to hear and determine issues relating to the care and treatment of a committed defendant. Court that did not commit defendant was without habeas corpus jurisdiction to hear treatment issues. Garcia v. Carmel, 873 P.2d 1317 (Colo. 1994).

But no other circumstances are set forth in the statutes relating to the committing court's jurisdiction after the order of commitment is entered, and thus there is no jurisdiction over issues involving the return of seized property. People v. Galves, 955 P.2d 582 (Colo. App. 1997).

Probation, recommitment, and transfer are discretionary acts clothed with governmental immunity. Where the trial judge had continuing jurisdiction under Colorado law both over appellant upon his commitment to a state hospital following acquittal on grounds of insanity and his transfer to the state penitentiary and over the subject matter involved, the doctrine of judicial immunity is applicable to the judge against allegations of violations of the civil rights act. The supervision of the state hospital and the staff psychiatrist were also clothed with governmental immunity because the revocation of probation, recommitment, and transfer were discretionary in nature. Franklin v. Meredith, 386 F.2d 958 (10th Cir. 1967).

Implied authority to order recommitment. The statutory authority to issue a conditional release order necessarily and implicitly includes the authority to enforce that order by recommitment. Campbell v. District Court, 195 Colo. 304, 577 P.2d 1096 (1978).

Automatic commitment not denial of due process. A defendant acquitted by reason of insanity is not denied due process of law by an immediate and automatic commitment to a psychiatric facility, so long as there are available to him procedures similar to those in this section. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Nor is six-month initial commitment period. Given the uncertainties and variables of psychiatric diagnosis and prognosis, the legislative choice of a six-month period of initial commitment does not violate due process, for in the absence of a showing that the time fixed is unreasonable in length and unrelated to purpose a court must defer to the general assembly's

decision. People v. Chavez, 629 P.2d 1040 (Colo. 1981); Glatz v. Kort, 650 F. Supp. 191 (D. Colo. 1984), aff'd, 807 F.2d 1514 (10th Cir. 1986).

Defendant's liberty interest not violated by requirement in subsection (4)(a) that he register as a sex offender as a condition of his conditional release since the requirement was in place prior to his conditional release. People v. Durapau, 12 COA 67, 280 P.3d 42.

Since sex offender registration is not punitive, requiring an offender who pled not guilty by reason of insanity to register as a sex offender upon his or her conditional release does not violate the principles of ex post facto. People v. Durapau, 12 COA 67, 280 P.3d 42.

Release conditioned by criminal probation denies due process. A judgment which places one adjudged not guilty by reason of insanity on criminal probation or, on his refusal to accept such terms, remands him to indefinite custody violates his fourteenth amendment rights under the United States constitution. Such a commitment is an invalid deprivation of liberty without due process. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

As such conditions may not be imposed on one not convicted of crime. Criminal probation is designed for the guilty and not for those who are not guilty. An essential requirement is an adjudication of guilt, and punitive aspects are clearly involved. The conditions imposed upon a person who has been granted probationary release under this section are, as a matter of practice, the same conditions imposed upon a convicted criminal who has been placed on probation. The imposition of such conditions on one who has not been convicted of a crime is unconstitutional. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

Unrelated criminal probationary conditions unconstitutional. The imposition of criminal probationary conditions which are not related to the individual seeking release are unconstitutional. Campbell v. District Court, 195 Colo. 304, 577 P.2d 1096 (1978).

Conditional release of one restored to sanity may not be conditioned on terms having no relation to his status and which were nonresponsive or irrelevant to the judgment of not guilty by reason of insanity. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

Court may impose nonpunitive terms such as out-patient care. The interests of the community and the individual are relevant to the granting of a conditional release. It would be clearly proper to require that petitioner accept psychiatric out-patient care or supervision, but, terms which were designed to regulate the activities of convicted criminals, and which are punitive in nature, cannot be imposed. Scheidt v. Meredith, 307 F. Supp. 63 (D. Colo. 1970).

However, there is no per se prohibition against admission of evidence concerning specific conditions of release. Rather, admissibility of evidence is to be determined within framework of rules of relevance in rules of evidence. Vialpando v. People, 727 P.2d 1090 (Colo. 1986).

Under subsection (3), a defendant who is conditionally released remains under the supervision of the department of institutions until the committing court enters a final order of unconditional release. People v. McCoy, 821 P.2d 873 (Colo. App. 1991).

Writ of habeas corpus is a proper remedy for persons committed to a state hospital after a plea of not guilty by reason of insanity to challenge a lack of treatment and to obtain a remedy addressing appropriate treatment short of immediate release. Marshall v. Kort, 690 P.2d 219 (Colo. 1984).

Court may terminate release to order examination. Inasmuch as defendant had been away from the hospital on a probationary release, the hospital authorities would almost have to reexamine him in order to determine his present mental condition and the trial court could terminate probationary release and return him to the hospital for the period of time necessary for reexamination. Bartosik v. People, 163 Colo. 267, 430 P.2d 83 (1967).

No broad right of discovery. Based on this section and §§ 16-8-116 and 16-8-117 and on the special nonadversary nature of a release inquiry, the participants in release proceedings do not have the broad right of discovery as provided in the rules of civil procedure. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Under C.R.C.P. 81(a), the procedure in release hearings under this section is so inconsistent and in conflict with the rules of civil procedure as to make civil discovery rules inapplicable to release hearings. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Discretion of trial court as to procedures. The procedures set out in this section and § 16-8-117 are addressed to the discretion of the trial court and permit all participants to prepare adequately for the hearing. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Upon a proper showing, the trial court may use or authorize the use of suitable discovery procedures reasonably fashioned to elicit facts necessary to help the court dispose of the matter as law and justice may require. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

The jury's function ends with its determination whether or not the defendant is eligible for release. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976); People v. Vialpando, 695 P.2d 1192 (Colo. App. 1984), rev'd on other grounds, 727 P.2d 1090 (Colo. 1986).

The decision whether to impose conditions on release is solely for the court. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976); People v. Vialpando, 695 P.2d 1192 (Colo. App. 1984), rev'd on other grounds, 727 P.2d 1090 (Colo. 1986).

Where conditional release is appropriate, the terms and conditions must be tailor-made by the court to fit the individual case. It is the court, not the jury, which has the necessary experience and knowledge of available alternatives to perform this function. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

Burden of proof shifts to the defendant in a release hearing once any evidence is introduced that the defendant is not eligible for release. People v. Hilton, 902 P.2d 883 (Colo. App. 1995).

Trial court acted properly in shifting burden of proving eligibility for release to the defendant where state introduced evidence that defendant was not eligible for release because he had an abnormal mental condition. People v. Hilton, 902 P.2d 883 (Colo. App. 1995).

Burden of proof. Where the superintendent of the state hospital recommended the defendant's release from commitment and a release hearing was held, but a jury denied the defendant his release, and he appealed, the appellate court reversed and remanded to the trial court with directions to hold another hearing. The trial court asked the superintendent for an updated report and this time the superintendent recommended that the defendant remain committed. It was perfectly proper for the trial court to order a reexamination of the defendant in order to bring the evidence up to date. As a result the superintendent rendered a contrary opinion, which the defendant contested. Under the plain language of subsection (2) the contestant defendant then had the burden of proof. People v. District Court, 189 Colo. 151, 538 P.2d 469 (1975).

Burden of proof on one seeking release. One who is contesting the recommendation of the custodial institution has the burden of proving by a preponderance of the evidence that he is not likely to be dangerous. People v. Howell, 196 Colo. 408, 586 P.2d 27 (1978).

It is not unconstitutional to require defendant to bear burden of proof that he will not be dangerous in the reasonably foreseeable future in a proceeding under this section. People v. Logan, 196 Colo. 573, 588 P.2d 870 (1979).

Allocation of burden of proof to defendant permissible. In a case of contested eligibility for release the statutory allocation of the burden of proof is permissible because: (1) There will have been a judicial determination of probable cause to believe that the defendant committed the acts charged against him as a crime; (2) there will have been an adjudication that at the time of the commission of the offense the defendant was legally insane; and (3) the chief officer of the institution to which the defendant has been committed will have found him ineligible for release by reason of a mental disease or defect likely to cause him to be dangerous to himself, to others, or to the community, in the reasonably foreseeable future. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

Jury's entitlement to hear all competent evidence relevant to the ultimate issue in the case may include evidence that bears on the likelihood of whether the defendant's release would pose a danger to himself, to others, or to the community in the reasonably foreseeable future. Vialpando v. People, 727 P.2d 1090 (Colo. 1986).

Phrase "any other evidence" in subsection (2) does not mean expert testimony only and may include lay testimony that would indicate that defendant was eligible for release. People v. Howell, 701 P.2d 131 (Colo. App. 1985).

A person found insane as to one time cannot be held to be sane at a subsequent time unless and until there is compliance with the statutory mandates relating to release from commitment. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

A court cannot find one sane who had previously been found insane unless he is first "released from commitment" pursuant to law. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

While a finding of insanity as to one time is binding on the courts, such a finding does not mandate a finding of insanity as to an earlier time period. People v. Gillings, 39 Colo. App. 387, 568 P.2d 92 (1977).

A defendant who is found not guilty by reason of insanity and committed to the department of institutions is not entitled to a release hearing a short time later under this section until there is a showing that some evidence exists tending to demonstrate that the defendant is medically eligible for release. People v. Armstrong, 919 P.2d 826 (Colo. App. 1995).

Although the court must consider a defendant's motion filed more than 180 days from his commitment, and may order the parties to prepare for an evidentiary hearing on defendant's request for release, the hearing need not be held unless the medical documentation is favorable to the defendant or unless the defendant demonstrates in an offer of proof that there is favorable medical evidence to support his release. People v. Armstrong, 919 P.2d 826 (Colo. App. 1995).

Medical report prepared at the time of defendant's plea was not supportive of his contention he was ready to be released because the issue then was whether or not he should be committed not whether or not he should be released. People v. Armstrong, 919 P.2d 826 (Colo. App. 1995).

This section does not apply to a factual situation in which the defendant seeks to remain in the hospital. It merely provides a procedural framework for §§ 16-8-116 and 16-8-117, which are applicable to such a factual situation. People v. Lowe, 967 P.2d 177 (Colo. App. 1998).

When a defendant pleads not guilty by reason of insanity to an offense involving unlawful sexual behavior and is granted conditional release, the court must impose a sex offender registration requirement on the offender. The word "shall" in subsection (4)(a) makes the condition mandatory. The registration requirement is not predicated on a conviction, but rather on the defendant's conditional release and the requirement that registration be mandatory was enacted prior to the offender's conditional release. People v. Durapau, 12 COA 67, 280 P.3d 42.

Applied in Labor v. Gibson, 195 Colo. 416, 578 P.2d 1059 (1978); People v. Benns, 641 P.2d 298 (Colo. App. 1981).

16-8-115.5. Enforcement and revocation of conditional release from commitment.

(1) The terms and conditions imposed upon a defendant's release pursuant to section 16-8-115 (3) or (4) may be enforced as are any other orders of court.

(2) (Deleted by amendment, L. 94, p. 1423, §2, effective July 1, 1994.)

(3) Whenever the director of forensic services in the department of human services, or the director's designee, has probable cause to believe that the defendant has become ineligible to remain on conditional release, the director, or the director's designee, shall notify the district attorney for the judicial district where the defendant was committed. The director, or the director's designee, or the district attorney shall apply for a warrant to be directed to the sheriff or a peace officer in the jurisdiction where the defendant resides or may be found, commanding the sheriff or peace officer to take custody of the defendant. The application must include the order conditionally releasing the defendant pursuant to section 16-8-115 (3) and supporting documentation showing that the defendant has become ineligible to remain on conditional release. The committing court and the district court for the tenth judicial district are authorized to issue a warrant pursuant to section 16-1-106. The director, or the director's designee, shall mail a copy of the application to the committing court and the district attorney in the committing jurisdiction.

(4) The sheriff or peace officer to whom the warrant is directed pursuant to subsection (3) of this section shall take all necessary legal action to take custody of the defendant. A sheriff shall deliver the defendant immediately to the hospital where the defendant was committed, and the hospital shall provide care and security for the defendant. If any other peace officer takes custody of the defendant, the peace officer shall deliver the defendant to the custody of the sheriff of the jurisdiction where the defendant was found, and the sheriff shall comply with this subsection (4).

(5) The hospital where the defendant was committed shall examine the defendant to evaluate the defendant's ability to remain on conditional release. The examination must be consistent with the procedure provided in section 16-8-106. If the defendant refuses to submit to and cooperate with the examination, the committing court shall revoke the conditional release. The examination must be completed within twenty-one days after the defendant has been delivered to the hospital as a result of the defendant's arrest. The hospital shall mail or deliver a written report of the examination to the committing court and the district attorney in the committing jurisdiction promptly after the examination is completed. The defendant may request an examination as provided in section 16-8-108.

(6) (a) The district attorney for the judicial district where the defendant was committed may file in the committing court a petition for the revocation of the defendant's conditional release. The petition must set forth the name of the defendant, an allegation that the defendant has

become ineligible to remain on conditional release, and the substance of the evidence sustaining the allegation.

(b) If the district attorney for the committing judicial district does not file a petition for revocation, as provided in subsection (6)(a) of this section, within ten days after the defendant is delivered to the hospital where the defendant was committed, the defendant must be immediately released from custody; except that, upon a showing of good cause by the district attorney, the court may grant a reasonable extension of time to file the petition for revocation.

(c) The court may dismiss revocation proceedings at any time upon receipt of a written request for dismissal from the district attorney who filed the petition for revocation.

(d) The district attorney for the committing judicial district shall ensure that the defendant receives a copy of the petition for revocation prior to any appearance by the defendant before the court.

(7) (Deleted by amendment, L. 97, p. 1554, § 9, effective July 1, 1997.)

(8) Within thirty-five days after the defendant is delivered to the hospital where the defendant was committed pursuant to subsection (4) of this section, and if the defendant is not released from custody pursuant to subsection (6)(b) of this section, the committing court shall hold a hearing on the petition for revocation of conditional release. At the hearing, any evidence having probative value is admissible, but the defendant is permitted to offer testimony and to call, confront, and cross-examine witnesses. If the court finds by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release, the court must enter an order revoking the defendant's conditional release and recommitting the defendant. At any time thereafter, the defendant may be afforded a release hearing as provided in section 16-8-115. If the court does not find by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release, the court shall dismiss the petition and reinstate or modify the original order of conditional release.

Source: L. 81: Entire section added, p. 932, § 2, effective July 1. **L. 94:** Entire section amended, p. 1423, § 2, effective July 1. **L. 97:** Entire section amended, p. 1554, § 9, effective July 1. **L. 2002:** (1) amended, p. 500, § 3, effective July 1. **L. 2012:** (5) and (8) amended, (SB 12-175), ch. 208, p. 850, § 77, effective July 1. **L. 2025:** (3), (4), (5), (6)(a), (6)(b), and (8) amended, (HB 25-1058), ch. 15, p. 54, § 18, effective August 6.

ANNOTATION

No finding of dangerousness is necessary to hold defendant ineligible to remain on conditional release if defendant has violated one or more conditions of

release. The condition violated must bear a substantial relationship to the prevention of recurring mental illness or the management of an insanity acquittee's existing mental illness, and to the prevention of future dangerous behavior arising from the mental illness. If defendant has violated such a condition, the court may revoke the conditional release without infringing upon due process. People v. Garlotte, 958 P.2d 469 (Colo. App. 1997).

16-8-116. Release by department of human services authority.

(1) After a finding of not guilty by reason of insanity, when the chief officer of the hospital where a defendant has been committed, or the chief officer's designee, or the director of forensic services in the department of human services, or the director's designee, who has been supervising the defendant's conditional release determines that the defendant no longer requires hospitalization or supervision because the defendant no longer suffers from a mental disease or defect that is likely to cause the defendant to be a danger to the defendant's self, to others, or to the community in the reasonably foreseeable future, the chief officer or the chief officer's designee, or the director or the director's designee, shall report the determination to the court that committed the defendant and the prosecuting attorney, including in the report a report of examination equivalent to a release examination. The clerk of the court shall forthwith furnish a copy of the report to counsel for the defendant.

(2) Within thirty-five days after receiving the report of the chief officer or the chief officer's designee, or the director or the director's designee, the court shall set a hearing on the discharge of the defendant in accordance with section 16-8-115, whether or not the report is contested.

(3) Repealed.

Source: L. 72: R&RE, p. 231, § 1. **C.R.S. 1963:** § 39-8-116. **L. 83:** (1) and (2) amended and (3) repealed, pp. 680, 681, §§ 2, 5, effective July 1. **L. 86:** (1) amended, p. 733, § 1, effective July 1. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 851, § 78, effective July 1. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 55, § 19, effective August 6.

ANNOTATION

This section, read in conjunction with §§ 16-8-115 and 16-8-117, entitles a defendant to a release hearing to be held by the court, or, on demand by the defendant, to a jury not to exceed six persons. This hearing is mandated for a defendant committed after a finding of not guilty by reason of insanity, whether or not eligibility for release is contested. People v. Lowe, 967 P.2d 177 (Colo. App. 1998).

No broad right of discovery in release proceedings. Based on this section and §§ 16-8-115 and 16-8-117 and on the special nonadversary nature of a release inquiry, the participants in release proceedings do not have the broad right of discovery as provided in the rules of civil procedure. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Subsections (1) and (2) indicate legislative intent to vest the committing court with continuing subject matter jurisdiction to determine questions relating to the treatment needs of a committed defendant. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

The weight and credence given to testimony of expert clinical psychologist at hearing concerning release under this section is for the jury. People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

For purposes of determining eligibility for release, the terms "mental disease or defect", as used in this section, and "abnormal mental condition", as used in § 16-8-120, are equivalent. People v. Parrish, 879 P.2d 453 (Colo. App. 1994); Parrish v. State of Colo., 78 F.3d 1473 (10th Cir. 1996).

Applied in People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v. Benns, 641 P.2d 298 (Colo. App. 1981); People v. Lopez, 640 P.2d 275 (Colo. App. 1982).

16-8-117. Advisement on matters to be determined.

When a determination is made as to a defendant's eligibility for conditional or unconditional release, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant pursuant to this section, including the defendant's right to a jury trial upon the question of eligibility for conditional or unconditional release. The defendant may request a hearing that must be granted as a matter of right. At the hearing, the defendant and the prosecuting attorney are entitled to be present in person, to examine any reports of examination or other matter to be considered by the court as bearing upon the determination, to introduce evidence, summon witnesses, cross-examine witnesses for the other side or the court, and to make opening and closing statements and argument. The court may examine or cross-examine any witness called by the defendant or prosecuting attorney and may summon and examine witnesses on its own motion.

Source: L. 72: R&RE, p. 232, § 1. **C.R.S. 1963:** § 39-8-117. **L. 2008:** Entire section amended, p. 1858, § 13, effective July 1. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 56, § 20, effective August 6. **L. 2026:** Entire section amended, (SB 26-014), ch. 54, p. 230, § 3, effective April 20.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

This section, read in conjunction with §§ 16-8-115 and 16-8-116, entitles a defendant to a release hearing to be held by the court, or, on demand by the defendant, to a jury not to exceed six persons. This hearing is mandated for a defendant committed after a finding of not guilty by reason of insanity, whether or not eligibility for release is contested. People v. Lowe, 967 P.2d 177 (Colo. App. 1998).

No broad right of discovery in release proceedings. Based on this section and §§ 16-8-115 and 16-8-116 and on the special nonadversary nature of a release inquiry, the participants in release proceedings do not have the broad right of discovery as provided in the rules of civil procedure. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Discretion of trial court as to procedures. The procedures set out in this section and § 16-8-115 are addressed to the discretion of the trial court and permit all participants to prepare adequately for the hearing. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Upon a proper showing, the trial court may use or authorize the use of suitable discovery procedures reasonably fashioned to elicit facts necessary to help the court dispose of the matter as law and justice may require. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

Defendant need not be advised on right to remain silent in competency evaluation for a Crim. P. 35(c) postconviction motion if the evaluation is not being used to establish guilt. No self-incrimination issue exists, and procedural safeguards of this section do not apply because defendant already confessed, pleaded guilty, and was sentenced. People v. Karpierz, 165 P.3d 753 (Colo. App. 2006).

16-8-118. Temporary removal and community placement for treatment and rehabilitation.

(1) The chief officer of the institution where a defendant has been committed pursuant to this article 8 or article 8.5 of this title 16, or the chief officer's designee, may authorize treatment and rehabilitation activities involving community placement of the defendant or temporary physical removal of the defendant from the institution where the defendant has been placed, if prior to the authorization the following procedures are carried out:

(a) The chief officer, or the chief officer's designee, shall give written notice by certified mail, with return receipt requested, to the committing court and the district attorney that on or

after thirty-five days from the date of mailing the notice, the chief officer, or the chief officer's designee, will authorize treatment and rehabilitation activities involving community placement of the defendant or temporary physical removal of the defendant from the institution, unless the chief officer, or the chief officer's designee, receives written objections to the authorization within thirty-five days after the date of mailing the notice.

(b) The clerk of the committing court shall deliver a copy of the notice described in subsection (1)(a) of this section to the attorney of record for the defendant. The district attorney or the attorney of record for the defendant may file objections with the clerk of the committing court to the proposed action of the chief officer of the institution where the defendant is held, or the chief officer's designee. The party making the objections shall deliver a copy of the objections, either by mail or by personal service, to the chief officer, or the chief officer's designee, prior to the expiration of thirty-five days from the mailing of the notice by the chief officer of the institution, or the chief officer's designee.

(c) In the event that objections are filed and served as provided in subsections (1)(a) and (1)(b) of this section, the committing court shall fix a time for a hearing upon the objections, and no removal of the defendant from the institution where the defendant is held is authorized unless and until approval is given by the committing court following the hearing.

(1.5) The chief officer of the institution, or the chief officer's designee, is authorized to allow a defendant, without court authorization as described in subsection (1) of this section, to leave the physical premises of the treatment or habilitation facility for needed medical treatment at a hospital, clinic, or other health-care facility, so long as the defendant is accompanied by staff from the facility.

(2) (a) A court shall order a defendant who receives treatment and rehabilitation activities involving community placement of the defendant or temporary physical removal of the defendant from the institution to register with the local law enforcement agency of the jurisdiction where the defendant resides if the court finds that:

(I) The defendant was found not guilty by reason of insanity on a charge of an offense involving unlawful sexual behavior; or

(II) The defendant was found not guilty by reason of insanity on a charge of any other offense, the underlying factual basis of which includes an offense involving unlawful sexual behavior.

(a.5) A court may order a defendant who receives treatment and rehabilitation activities involving community placement of the defendant or temporary physical removal of the defendant from the institution to register with the local law enforcement agency of the jurisdiction where the defendant resides if the court finds that the chief officer of the institution where the defendant has been committed, or the chief officer's designee, recommends

registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(b) Prior to community placement or temporary physical removal from the institution of a defendant who is required to register pursuant to this subsection (2), the department of human services shall obtain from the defendant the address where the defendant plans to reside and the department shall notify the local law enforcement agency of the jurisdiction where the defendant plans to reside and the Colorado bureau of investigation as provided in section 16-8-115 (4)(c).

(c) A defendant required to register pursuant to this subsection (2) shall register as provided in section 16-8-115 (4). The local law enforcement agency shall transmit any registrations received pursuant to this subsection (2) to the Colorado bureau of investigation within three business days after receipt. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110 and shall specify that the information applies to a defendant required to register as a condition of community placement or temporary physical removal from an institution. The forms completed by a defendant required to register pursuant to this subsection (2) are confidential and are not open to inspection except as otherwise provided in section 16-8-115 (3)(e) for information pertaining to persons granted conditional release and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(d) (I) A defendant required to register pursuant to this subsection (2), upon completion of a period of not less than twenty years after the date the defendant begins receiving treatment and rehabilitation activities involving community placement of the defendant or temporary physical removal of the defendant from the institution, may petition the district court for an order that discontinues the requirement for registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue an order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to the community placement or temporary removal and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

(II) Upon the filing of a petition pursuant to this subsection (2)(d), the court shall set a date for a hearing on the petition. The defendant shall notify the local law enforcement agency with which the defendant is required to register and the prosecuting attorney for the jurisdiction in which the local law enforcement agency is located of the filing of the petition and the hearing date. The court shall notify the victim of the filing of the petition and the hearing date. At the hearing, the court shall give opportunity to the victim to provide written or oral testimony. If the court enters an order discontinuing the defendant's duty to register, the defendant shall send a copy of the order to the local law enforcement agency and the Colorado bureau of investigation.

Source: L. 72: R&RE, p. 232, § 1. **C.R.S. 1963:** § 39-8-118. **L. 73:** p. 501, § 1. **L. 86:** (1)(a), (1)(b), and (1)(c) amended, p. 738, § 1, effective July 1. **L. 2002:** (2) added, p. 498, § 2, effective July 1; (2)(c) amended, p. 1191, § 38, effective July 1. **L. 2003:** (2)(d)(I) amended, p. 1990, § 29, effective May 22. **L. 2005:** (2)(a) amended and (2)(a.5) added, p. 996, § 2, effective June 2. **L. 2008:** IP(1) amended and (1.5) added, p. 1859, § 14, effective July 1. **L. 2012:** (1)(a) and (1)(b) amended, (SB 12-175), ch. 208, p. 851, § 79, effective July 1. **L. 2019:** (2)(d)(II) amended, (HB 19-1064), ch. 296, p. 2749, § 2, effective May 28. **L. 2025:** (1), (1.5), (2)(a.5), and (2)(b) amended, (HB 25-1058), ch. 15, p. 56, § 21, effective August 6. **L. 2026:** IP(1), (1)(a), IP(2)(a), (2)(a.5), (2)(b), (2)(c), and (2)(d)(I) amended, (SB 26-014), ch. 54, p. 230, § 4, effective April 20.

Cross references: For the legislative declaration contained in the 2008 act amending the introductory portion to subsection (1) and enacting subsection (1.5), see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

This statutory provision indicates legislative intent to vest the committing court with continuing subject matter jurisdiction to determine questions relating to the treatment needs of a committed defendant. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

Court did not abuse its discretion in emphasizing the uncertainties involved in predicting the insanity acquittee's future behavior and the seriousness of his misconduct in the past, rather than sharing the confidence of his doctors in his lack of dangerousness. People v. Riggs, 87 P.3d 109 (Colo. 2004).

Where there is no indication the hospital offered to modify the treatment plan to alleviate the court's concerns, the court merely exercised its discretion to deny the plan because it allowed for the removal of an unrestored insanity acquittee who admitted committing the most serious of crimes. People v. Riggs, 87 P.3d 109 (Colo. 2004).

16-8-119. Counsel and physicians for indigent defendants.

In all proceedings brought pursuant to this article 8, upon motion of the defendant and proof that the defendant is indigent and without funds to employ physicians, psychologists, or attorneys to which the defendant is entitled under this article 8, the court shall appoint the physicians, psychologists, or attorneys for the defendant at state expense.

Source: L. 72: R&RE, p. 232, § 1. **C.R.S. 1963:** § 39-8-119. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 57, § 22, effective August 6.

Cross references: For representation of indigent persons generally, see § 21-1-103.

ANNOTATION

This section gives indigent defendant right to have state pay for experts to which he is entitled under law, but not to have state pay for particular expert which he might select or desire. Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973).

But court may require good cause to be shown before ordering further psychiatric examination once defendant has been examined by specialists in field of nervous and mental diseases. Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973).

16-8-120. Applicable tests for release.

(1) As to any person charged with any crime allegedly committed on or after June 2, 1965, the test for determination of a defendant's sanity for release from commitment, or the defendant's eligibility for conditional release, is: "That the defendant has no abnormal mental condition that would be likely to cause the defendant to be dangerous either to the defendant's self or to others or to the community in the reasonably foreseeable future".

(2) As to any person charged with any crime allegedly committed prior to June 2, 1965, the test for determination of a defendant's sanity for release from commitment, or the defendant's eligibility for conditional release, is the test provided by law at the time of the alleged crime to determine the sanity or insanity of the defendant.

(3) As to any person charged with any crime allegedly committed on or after July 1, 1983, the test for determination of a defendant's sanity for release from commitment, or the defendant's eligibility for conditional release, is: "That the defendant has no abnormal mental condition that would be likely to cause the defendant to be dangerous either to the defendant's self or others or to the community in the reasonably foreseeable future, and is capable of distinguishing right from wrong and has substantial capacity to conform the defendant's conduct to requirements of law".

(4) As to any person charged with any crime allegedly committed on or after July 1, 1983, but before July 1, 1995, resulting in commitment by reason of impaired mental condition, the test for determination of a defendant's mental condition for release from commitment, or a defendant's eligibility for conditional release, is: "That the defendant has no abnormal mental

condition that would be likely to cause the defendant to be dangerous either to the defendant's self or to others or to the community in the reasonably foreseeable future".

(5) As to a person charged with a crime allegedly committed on or after July 1, 2026:

(a) The standard for unconditional release from commitment is: The defendant has no abnormal mental condition that would be likely to cause the defendant to be dangerous to the defendant's self or others or to the community in the reasonably foreseeable future, and the defendant is capable of distinguishing right from wrong and has substantial capacity to conform the defendant's conduct to requirements of law.

(b) The standard for conditional release from commitment is: Without the imposition of and compliance with conditions, the defendant is ineligible for release, but with the imposition of and compliance with conditions, the defendant has no abnormal mental condition that would be likely to cause the defendant to be dangerous to the defendant's self or others or to the community in the reasonably foreseeable future, and the defendant is capable of distinguishing right from wrong and has substantial capacity to conform the defendant's conduct to the requirements of law.

Source: L. 72: R&RE, p. 232, § 1. **C.R.S. 1963:** § 39-8-120. **L. 83:** (3) added, p. 680, § 3, effective July 1; (4) added, p. 676, § 9, effective July 1. **L. 95:** (4) amended, p. 78, § 13, effective July 1. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 57, § 23, effective August 6. **L. 2026:** (5) added, (SB 26-014), ch. 54, p. 232, § 5, effective April 20.

ANNOTATION

Law reviews. For article, "Legislative Update", see 12 Colo. Law. 1251 (1983). For article, "Not Guilty by Reason of Insanity: A Research Note", see 14 Colo. Law. 569 (1985).

Standard for determining eligibility for conditional release constitutional on its face. People v. Howell, 196 Colo. 408, 586 P.2d 27 (1978).

Section is not unconstitutionally vague. Glatz v. Kort, 650 F. Supp. 191 (D. Colo. 1984), aff'd, 807 F.2d 1514 (10th Cir. 1986).

The term "dangerousness" does not violate due process due to lack of specificity. People v. Hilton, 902 P.2d 883 (Colo. App. 1995).

Historically, the supreme court has considered mental health proceedings to be special statutory proceedings. People v. District Court, 192 Colo. 225, 557 P.2d 414 (1976).

The test for release under this section is a fair and rational standard. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

And need not be same test applied to determine insanity at time of offense. A state is not required to apply the same standard to govern release of one previously found not guilty by reason of insanity as it applied in determining that he was insane at the time of offense. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

Defendant was not denied due process by failure to apply as the standard for release the same test applied to determine whether he was insane several years earlier when the alleged crime was committed. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

This section meets the due process requirements set by the United States supreme court, because it bases continued commitment on a finding of both mental disorder and dangerousness. People v. Parrish, 879 P.2d 453 (Colo. App. 1994).

The term "abnormal mental condition" according to its plain meaning includes a severe antisocial personality disorder, however such a disorder is manifested. People v. Hilton, 902 P.2d 883 (Colo. App. 1995).

Insanity test under this section and § 16-8-101 different. The general assembly has chosen by enactment of § 16-8-101 and this section to distinguish between the test in a criminal case for a verdict of not guilty by reason of insanity and the test for release from a mental institution once it is suggested that commitment might safely be terminated. People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

The purpose of the test for release under this section is to determine whether a person who previously claimed he was criminally insane, and therefore not accountable for actions which otherwise would be crimes, should now be set free. People v. Giles, 192 Colo. 240, 557 P.2d 408 (1976).

Stringent standards for release related to public safety. The more stringent standards for release applicable to the criminally committed defendant reflect the increased risk to the public associated with the release decision and, as in the case of automatic commitment, they are reasonably related to the state's interest in public safety. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

For purposes of determining eligibility for release, the terms "mental disease or defect", as used in § 16-8-116, and "abnormal mental condition", as used in this section, are equivalent. People v. Parrish, 879 P.2d 453 (Colo. App. 1994); Parrish v. State of Colo., 78 F.3d 1473 (10th Cir. 1996).

Potential dangerousness of a defendant is an essential element in determining his eligibility for release. Evidence regarding conditions of release recommended to reduce that dangerousness is, therefore, directly related to a fact of consequence to the determination of the action. Vialpando v. People, 727 P.2d 1090 (Colo. 1986).

Determination of dangerousness function of jury. Although a court should take full advantage of the expert psychiatric and psychological testimony offered by parties as to the element of danger, the ultimate determination of whether one has an abnormal mental condition likely to cause

him to be dangerous in the reasonably foreseeable future is for the jury. People v. Howell, 196 Colo. 408, 586 P.2d 27 (1978).

Probable future conduct may be considered in determination of dangerousness. The fact that the determination of dangerousness involves a prediction of the appellant's future conduct rather than mere characterization of his past conduct does not violate due process, since the required finding is the likelihood of dangerous conduct in terms of probability, not mere possibility. People v. Howell, 196 Colo. 408, 586 P.2d 27 (1978).

Application of statutory test within expertise of qualified expert clinical psychologist. Where witness was qualified by the court as an expert clinical psychologist, the application of the statutory test for release specified in this section is within his expertise, and, with the proper foundation and questions, he may give his professional opinion as to whether a patient suffers from "an abnormal mental condition". People v. Lyles, 186 Colo. 302, 526 P.2d 1332 (1974).

A defendant is not required to submit the matter of his eligibility for release to a second jury trial before he may be released. People ex rel. Farina v. District Court, 191 Colo. 225, 553 P.2d 394 (1976).

Where defendant was determined eligible for release from the hospital in a hearing in one county, the doctrine of collateral estoppel applied, and a hearing on the same issue scheduled in another county was precluded. People ex rel. Farina v. District Court, 191 Colo. 225, 553 P.2d 394 (1976).

A person confined pursuant to a not guilty by reason of insanity plea may not be released under this section so long as that person remains under the effects of a treatable abnormal mental condition rendering such person dangerous and such person continues to receive appropriate treatment for that abnormality. People v. Jones, 935 P.2d 28 (Colo. App. 1996).

Applied in Campbell v. District Court, 195 Colo. 304, 577 P.2d 1096 (1978).

16-8-121. Escape - return to institution.

(1) If any defendant, confined in an institution for the care and treatment of persons with behavioral or mental health disorders or intellectual and developmental disabilities under the supervision of the executive director of the department of human services, escapes from the institution, it is the duty of the chief officer to apply forthwith to the district court for the county in which the institution is located for a warrant of arrest directed to the sheriff of the county, commanding the sheriff forthwith to take all necessary legal action to effect the arrest of the defendant and to return the defendant promptly to the institution. The fact of an escape becomes a part of the official record of a defendant and must be certified to the committing court as part of the record in any proceeding to determine whether the defendant is eligible for release from commitment or eligible for conditional release.

(2) If any defendant committed to the custody of the executive director of the department of human services and placed in an institution under the executive director's supervision has escaped from an institution for the care and treatment of persons with behavioral, mental health, or substance use disorders in another state, the chief officer is authorized to return the defendant to the institution from which the defendant escaped. The chief officer is further authorized to effect the return at the expense of the state of Colorado and under such terms and conditions as the chief officer deems suitable.

Source: L. 72: R&RE, p. 232, § 1. **C.R.S. 1963:** § 39-8-121. **L. 83:** (1) amended, p. 676, § 10, effective July 1. **L. 87:** Entire section amended, p. 1170, § 8, effective April 22. **L. 94:** (1) and (2) amended, p. 2650, § 122, effective July 1. **L. 2006:** (1) amended, p. 1397, § 42, effective August 7. **L. 2017:** Entire section amended, (SB 17-242), ch. 263, p. 1297, § 119, effective May 25. **L. 2025:** Entire section amended, (HB 25-1058), ch. 15, p. 58, § 24, effective August 6.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (2), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

16-8-122. Commitment and observation.

Upon the termination of the period of observation of a defendant committed under section 16-8-106, the authorities shall present to the court their account, evidenced by a statement thereof based upon the established per diem rate of the place of confinement. If approved by the court, the account shall be paid by the state pursuant to section 13-3-104, C.R.S.

Source: L. 72: R&RE, p. 233, § 1. **C.R.S. 1963:** § 39-8-122. **L. 75:** Entire section amended, p. 210, § 27, effective July 16.

PART 2

INTENSIVE TREATMENT MANAGEMENT FOR PERSONS WITH MENTAL ILLNESS

16-8-201 to 16-8-206. (Repealed)

Editor's note: (1) This part 2 was added in 2000 and was not amended prior to its repeal in 2007; except that section 1 of House Bill 07-1336 provided for the repeal of section 16-8-205 (2) and (3), effective May 10, 2007. (See L. 2007, p. 755.) For the text of this part 2 prior to 2007, consult the 2006 Colorado Revised Statutes.

(2) Section 16-8-206 provided for the repeal of this part 2, effective July 1, 2007. (See L. 2000, p. 1559.)

PART 3

COMPETENCY OF PERSONS TO BE EXECUTED

16-8-301 to 16-8-307. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: This part 3 was added in 2001 and was not amended prior to its repeal in 2002. For the text of this part 3 prior to 2002, consult the 2001 Colorado Revised Statutes. The provisions of this part 3 were relocated to part 14 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 14 and the comparative tables located in the back of the index.

Cross references: For the legislative declaration contained in the 2002 act repealing this part 3, see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 8.5

Competency to Proceed

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16-8.5-106. Petition for involuntary administration of

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16-8.5-111. Second evaluation.

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16-8.5-114. Restoration hearing - burdens of proof - determination.

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16-8.5-116. Dismissal of charges after reaching maximum time permitted to restore defendant - exceptions - rules.

16-8.5-116.5. Restoration - time limits - dismissal of charges - exceptions - rules. (Deleted by amendment, L. 2026.)

16-8.5-117. Initiation of civil proceeding - appointment of bridges court liaison or guardian - extension - dismissal.

16-8.5-118. Civil commitment and enhanced protective placement for incompetent and unrestorable defendants - report - repeal.

16-8.5-119. Dismissal procedures.

16-8.5-120. Escape - return to institution.

16-8.5-121. Temporary removal for treatment and rehabilitation.

16-8.5-122. Competency evaluation monitoring system - users - rules.

16-8.5-123. Forensic evaluator training.

16-8.5-124. Transparency requirements.

16-8.5-125. Rules.

16-8.5-101. Definitions.

As used in this article 8.5, unless the context otherwise requires:

(1) "Behavioral health administration" or "BHA" means the behavioral health administration established in section 27-60-203.

(2) "Civil proceeding" means:

(a) A civil proceeding regarding certification for short-term treatment pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5;

(b) A civil proceeding to impose a legal disability or removal of a legal right pursuant to article 10 of title 25.5; or

(c) A civil proceeding for a protective placement pursuant to part 5 of article 10 of title 25.5.

(3) "Collateral materials" means the relevant police incident reports and the charging documents, either the criminal information or indictment.

(4) "Competency evaluation" includes both court-ordered competency evaluations and second evaluations.

(5) "Competency evaluator" means a licensed physician who is a psychiatrist or a licensed psychologist, each of whom is trained in forensic competency assessments, or a psychiatrist who is in forensic training and practicing under the supervision of a psychiatrist with expertise in forensic psychiatry, or a psychologist who is in forensic training and is practicing under the supervision of a licensed psychologist with expertise in forensic psychology.

(6) "Competency hearing" means a hearing to determine whether a defendant is competent to proceed.

(7) "Competent to proceed" means that the defendant does not have a mental disability or developmental disability that prevents the defendant from having sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense or that prevents the defendant from having a rational and factual understanding of the criminal proceedings.

(8) "County attorney" means a county attorney or a qualified attorney acting for a county attorney appointed by the district court or, in any county or city and county with a population equal to or less than fifty thousand people, the district attorney or qualified attorney acting for the district attorney appointed by the district court.

(9) "Court-ordered competency evaluation" means a court-ordered examination of a defendant either before, during, or after trial, directed to developing information relevant to a determination of the defendant's competency to proceed at a particular stage of the criminal proceeding, that is performed by a competency evaluator and includes evaluations concerning restoration to competency.

(10) "Court-ordered report" means a report of an evaluation, conducted by or under the direction of CDHS, that is the statutory obligation of CDHS to prepare when requested to do so by the court.

(11) "Criminal proceedings" means trial, sentencing, satisfaction of the sentence, execution, and any pretrial matter that is not susceptible of fair determination without the personal participation of the defendant.

(12) "Department" or "CDHS" means the department of human services.

(13) "Developmental disability" means a disability that has manifested before the person reaches twenty-two years old, constitutes a substantial disability to the affected person, and is attributable to an intellectual disability or other neurological conditions when the conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability. Unless otherwise specifically stated, the federal definition of "developmental disability", 42 U.S.C. sec. 15002 (8), does not apply.

(14) "Executive director" means the executive director of the department of human services.

(15) "Guardian" means a guardian appointed for the defendant pursuant to article 14 of title 15 or an emergency guardian appointed pursuant to this article 8.5, article 65 of title 27, or article 10 of title 25.5.

(16) "Department of health care policy and financing" or "HCPF" means the department of health care policy and financing created in section 24-1-119.5.

(17) "Incompetent to proceed" means that, as a result of a mental disability or developmental disability, the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense, or that, as a result of a mental disability or developmental disability, the defendant does not have a rational and factual understanding of the criminal proceedings.

(18) "In-custody" means in prison, in a jail, or in any other locked detention facility that does not meet the definition of "inpatient".

(19) "Inpatient" means in the custody of CDHS, either in a hospital or in a full-time, jail-based restoration program developed by CDHS.

(20) "Inpatient care at the discretion of CDHS" means placement at a facility:

(a) Where the person is required to reside and is not permitted to leave unless accompanied and supervised by staff;

(b) That agrees to supervise the person, that agrees to take appropriate measures to ensure the person complies with any court orders, and that has procedures in place that would result in a timely report to the court, licensing authorities, and law enforcement if the person absconded without permission;

(c) Where a professional person, as defined in section 27-65-102, who is employed by or contracted with CDHS, BHA, or HCPF, attests that the facility is medically appropriate and

sufficiently protects victims and the community from the substantial risk of harm posed by the person; and

(d) That is operated by, or has contracted with, CDHS, BHA, or HCPF to provide services for CDHS, BHA, or HCPF.

(21) "Mental disability" means a substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior. "Mental disability" does not include acute intoxication from alcohol or other substances, or any condition manifested only by antisocial behavior, or any substance abuse impairment resulting from recent use or withdrawal. However, substance abuse that results in a long-term, substantial disorder of thought, mood, or cognitive ability may constitute a mental disability.

(22) "Outpatient" means a location outside of the custody of CDHS. "Outpatient" does not include a jail, prison, or other detention facility where the defendant is in-custody.

(23) "Restorable" means there is a substantial probability that a defendant, with restoration services, will attain competency in the reasonably foreseeable future.

(24) "Restorability" means the legal question of whether a defendant is restorable or unrestorable.

(25) "Restorability hearing" means a hearing to determine whether a defendant who is incompetent to proceed is restorable or unrestorable.

(26) "Restoration hearing" means a hearing to determine whether a defendant who has previously been determined to be incompetent to proceed has become competent to proceed.

(27) "Second evaluation" means a competency evaluation requested by the court, the district attorney, or the defendant that is performed by a competency evaluator and that is not performed by or under the direction of, or paid for by, CDHS.

(28) "Tier 1" means a defendant:

(a) Who has been ordered to receive inpatient restoration services;

(b) For whom a competency evaluator has determined either that the defendant:

(I) Appears to have a mental health disorder and, as a result of the mental health disorder, appears to be a danger to the defendant's self, a danger to others, or gravely disabled; or

(II) Has a mental health disorder; and

(c) For whom, as a result of the determination made pursuant to subsection (28)(b) of this section, delaying inpatient hospitalization beyond seven days would cause harm to the defendant or others.

(29) "Tier 2" means a defendant who has been ordered to receive inpatient restoration services and who does not meet the criteria to be a tier 1 defendant.

(30) "Unrestorable" means there is not a substantial probability that a defendant, with restoration services, will attain competency in the reasonably foreseeable future.

(31) "Volitional lack of cooperation or unwillingness to participate" means the defendant has not attended restoration services or the defendant refuses to take prescribed medications, especially when the defendant intends to avoid or delay the court case from proceeding. "Volitional lack of cooperation or unwillingness to participate" does not include acts that primarily result from the bona fide medical or mental health disorder for which the defendant is incompetent or a defendant's attempt to raise a bona fide good faith concern about medication side effects and risks.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 677, § 1, effective May 21.

16-8.5-102. Competency to proceed - how and when raised.

(1) While a defendant is incompetent to proceed, the defendant must not be tried or sentenced, nor shall the court consider or decide pretrial matters that are not susceptible of fair determination without the personal participation of the defendant. However, a determination that a defendant is incompetent to proceed does not preclude additional proceedings by the court to consider and decide matters, including a preliminary hearing and motions, that are susceptible of fair determination prior to trial and without the personal participation of the defendant. Those proceedings may be later reopened if, in the discretion of the court, substantial new evidence is discovered after and as a result of the defendant's restoration to competency.

(2) The question of a defendant's competency to proceed must be raised in only one of the following manners:

(a) If the judge has reason to believe that the defendant is incompetent to proceed, the judge shall suspend the proceeding and determine the competency or incompetency of the defendant pursuant to section 16-8.5-103;

(b) If either the defense or the prosecution has reason to believe that the defendant is incompetent to proceed, either party may file a motion in advance of the commencement of the particular proceeding. A motion to determine competency must be in writing and contain a certificate of counsel stating that the motion is based on a good faith doubt that the defendant is competent to proceed. The motion must set forth the specific facts that have formed the basis for the motion. The court shall seal the motion. If the motion is made by the prosecution, the

prosecution shall provide the defense a copy of the motion. If the motion is made by the defense, the defense shall provide the prosecution notice of the filing of the motion at the time of filing, and if the defense requests a hearing, the defense shall provide the motion to the prosecution at the time the hearing is requested. The motion may be filed after the commencement of the proceeding if, for good cause shown, the defendant's mental disability or developmental disability was not known or apparent before the commencement of the proceeding.

(c) By the public defender liaison, as described in section 21-1-104 (6), or an attorney representing the offender in a parole proceeding.

(3) When the issue of whether a defendant is incompetent to proceed is raised, the court shall explain to the defendant the nature and consequences of the proceeding and the defendant's rights pursuant to section 16-8.5-108 (2) and (3). If the defendant wishes to contest the question, the defendant may request a competency hearing that the court shall grant as a matter of right.

(4) Notwithstanding this article 8.5, the question of whether a convicted person is mentally incompetent to be executed must be raised and determined pursuant to part 14 of article 1.3 of title 18.

(5) If a defendant is eligible for referral to the bridges wraparound care program pursuant article 8.6 of this title 16, the court may ask the parties whether the defendant should be referred for participation in the program. With the agreement of the parties, the court may delay making determinations regarding the defendant's competency to allow a bridges wraparound care coordinator to conduct an initial intake of the defendant pursuant to section 16-8.6-108 to determine whether the bridges wraparound care program is appropriate for the defendant.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 681, § 1, effective May 21.

Editor's note: (1) Prior to its amendment with relocations in 2026, this section was similar to former § 16-8-110 as it existed prior to 2008.

(2) Subsection (3) is similar to former § 16-8.5-109 (1) as it existed prior to 2026.

ANNOTATION

Law reviews. For note, "Trial Procedure in Colorado Under the 1951 Amendment Relating to Insanity in Criminal Cases", see 24 Rocky Mt. L. Rev. 223 (1952). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "Insanity and the Law", see 39 Dicta 325 (1962). For article, "One Year Review

of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963).

Annotator's note. Since § 16-8.5-102 is similar to former § 16-8.5-102 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

Common-law rule. It has long been the rule of the common law that a person cannot be required to plead to an indictment or be tried for a crime while he is so mentally disordered as to be incapable of making a rational defense, and he cannot be adjudged to punishment or executed while so disordered as to be incapable of stating any reasons that may exist why judgment should not be pronounced or executed. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

The heart of the common-law doctrine has been that a suggestion of incompetency after sentence is an appeal to the conscience and sound wisdom of the particular tribunal which is asked to postpone sentence. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

This section is constitutional. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

This section is not unconstitutional as depriving a convicted person of due process of law, proceedings to determine competency after conviction being purely a matter of legislative regulation and subject to such restrictions as the general assembly may impose. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

This section meets due process requirements of the fourteenth amendment. The section involves weighty governmental interest, and because of the significant consequences to due process that an error in making the determination of mental competency would have, the lower "reason to believe" standard is an appropriate threshold for commencing the determination of mental competency. Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

No fourteenth amendment equal protection clause violation merely because of the lower "reason to believe" threshold for criminal commitment statute versus a probable cause standard of civil commitment statutes. Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

This section does not implicate the fourth amendment. Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

Purpose of this section is to ensure against a violation of due process that would arise if a defendant who is not mentally competent were required to stand trial or participate in other critical criminal procedures. Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970); Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

Subsection (1) of former § 16-8-110 declared unconstitutional as violation of due process to the extent that it allowed an accused to be tried on the issue of insanity notwithstanding a judicial finding that the accused is incompetent to proceed. Coolbroth v. District Court, 766 P.2d 670 (Colo. 1988).

Subsection (2)(b) requires a trial court to consider defense counsel's motion raising competency without disclosing that motion to the prosecution. People v. Roina, 2019 CO 20, 437 P.3d 919.

The plain language of the statute provides that the trial court may consider the defense's ex parte competency motion when the defense raises competency and seeks a preliminary finding as to competency. People v. Roina, 2019 CO 20, 437 P.3d 919.

Defense counsel's sealed motion raising defendant's competency was a request for the court to order an initial competency evaluation of the defendant. Subsection (2)(b) requires trial courts to consider these motions even though they may be characterized as ex parte communications. The trial court erred in determining that it could review the defense's motion only if it provided a copy to the prosecution. People v. Roina, 2019 CO 20, 437 P.3d 919.

The general assembly made clear in § 16-8.5-103 that there is a distinction between the preliminary finding as to competency and the competency hearing. People v. Roina, 2019 CO 20, 437 P.3d 919.

Subsection (2)(b) requires the defense to provide the prosecution a copy of a sealed motion raising competency only when defense counsel requests a competency hearing, not a preliminary finding as to competency. People v. Roina, 2019 CO 20, 437 P.3d 919.

Trial court fulfilled its duty to inquire about defendant's mental health and did not abuse its discretion in allowing defendant to waive his right to counsel and proceed with trial without a mental health evaluation to determine his competency to do so. The fact that defendant has had mental health counseling or treatment in the past, without more, is not sufficient to trigger an inquiry into a defendant's competency to stand trial. People v. Woods, 931 P.2d 530 (Colo. App. 1996).

Court needs not await a specific request from defense. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

Trial court acted properly in ordering competency evaluation based on a pretrial motion that raised doubts as to defendant's competency, then allowing testimony by evaluating doctor to rebut defendant's claim of lack of mental capacity. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

Court met the low "reason to believe" standard in ordering competency evaluation. Court did not order the evaluation solely because the defendant exercised his right to represent himself. The court's interactions with defendant supported the court's doubts about defendant's competency. Because the court did not abuse its discretion in ordering the competency evaluation, the period during which the defendant was under observation is excluded from the speedy trial calculation. People v. Nagi, 2014 COA 12, 396 P.3d 60, aff'd, 2017 CO 12, 389 P.3d 875.

An accused may not plead guilty, be tried, or sentenced while he is incompetent. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

A proceeding against an insane person in a criminal matter is a violation of his rights under the due process clause of the fourteenth amendment. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

An incompetent person may not be tried for a crime, nor may he be sentenced where his incompetency occurs and continues after the return of a verdict, nor may he be executed where incompetency occurs and continues after the sentence of death has been imposed. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

This section provides that a person sentenced to death who becomes and remains incompetent after judgment but, of necessity, before the sentence is carried out, shall not be executed until his recovery. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

This statute requires that the person charged shall not be tried while his incompetency continues. Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970).

Because of the nature of a preliminary hearing, the right to counsel at a preliminary hearing reaches constitutional proportions, but the right to counsel is a meaningless right unless the accused has the capacity to confer with counsel regarding the accusation, the nature of the proceedings, and the testimony of the witnesses. Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970).

The prohibition against prosecuting an incompetent defendant attaches at the commencement of formal criminal proceedings and continues throughout the execution and satisfaction of the sentence. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Although court is permitted to use the same competency standard to determine whether defendant is competent to stand trial and competent to proceed pro se, it is not required to do so under Indiana v. Edwards, 554 U.S. 164 (2008); People v. Wilson, 397 P.3d 1090 (Colo. App. 2011), aff'd, 2015 CO 37, 349 P.3d 257.

Trial of incompetent violates due process. Subjecting an accused to trial when he or she is incompetent violates due process of law. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

Insane persons are not necessarily incompetent to stand trial because of the fact of their insanity. People v. Lopez, 640 P.2d 275 (Colo. App. 1982).

Amnesia, in and of itself, does not constitute incompetency. The trial court should engage in a fact-specific inquiry that encompasses a review of the totality of the circumstances of a particular case. Although the review may include considerations as to a defendant's memory loss, no particular set of factors is determinative. If a defendant's amnesia renders him or her unable to understand the proceedings against him or her or to assist in his or her own defense, then the defendant must be found incompetent. People v. Palmer, 31 P.3d 863 (Colo. 2001).

An incompetent cannot waive his constitutional rights and a trial judge must carefully safeguard such rights should the judge have a reasonable doubt as to a criminal defendant's competency. People v. Lopez, 640 P.2d 275 (Colo. App. 1982).

Standards for assessing competency. An accused's competency must be assessed with specific reference to the nature of the proceeding with which he is confronted and the appropriate level of understanding necessary for meaningful cooperation with his attorney. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

The determination of competency of accused to stand trial must be made before issues raised by insanity plea are tried. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Insanity at the time of the commission of the offense is not a mitigating factor that relieves the accused of punishment, but is a complete defense to the criminal charge, and therefore the determination of sanity at the time of the offense requires a full hearing, and the accused must be able to understand and assist his counsel in his defense. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Determination prior to preliminary hearing. The right to counsel is a meaningless right unless the defendant has the capacity to confer with his attorney regarding the pending charges and the testimony presented at the preliminary hearing, thus, a defendant is entitled to have a determination made as to his competency prior to a preliminary hearing. People v. Fletcher, 37 Colo. App. 173, 546 P.2d 980 (1975), rev'd on other grounds, 193 Colo. 314, 566 P.2d 345 (1977).

But denial may not require reversal. Unless a defendant demonstrates that he was prejudiced by his inability to obtain a competency hearing prior to the preliminary hearing, the denial of such a hearing does not require reversal of a subsequent conviction. People v. Fletcher, 37 Colo. App. 173, 546 P.2d 980 (1975), rev'd on other grounds, 193 Colo. 314, 566 P.2d 345 (1977).

Trial court's failure to make preliminary finding of competency on the record is not necessarily reversible error. People v. Green, 658 P.2d 281 (Colo. App. 1982).

Defendant must comply with section. An attempt to aver incompetency subsequent to an alleged offense is ineffectual when not in compliance with this section. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

This section spells out the procedures to be followed in a proceeding to determine if a defendant is incompetent after the alleged offense. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

Showing necessary to "raise the issue" of a defendant's competency after trial has commenced. Where trial court had an opportunity to observe defendant during first day of trial and noted that defendant understood her competency was being addressed and, without prompting, stated she wanted to continue the trial, defense counsel's assertion of defendant's condition

of methadone withdrawal did not create a reason to presume mental incompetency. People v. Morino, 743 P.2d 49 (Colo. App. 1987).

Mere statement at time of sentencing that defendant's behavior at the time of the offense was "bizarre" was insufficient to trigger the requirement that the court suspend the proceedings and make a competency hearing. People v. Kilgore, 992 P.2d 661 (Colo. App. 1999).

Court correctly ruled that the issue of competency had not been properly raised where defense counsel refused to give specific reasons to support his opinion that the defendant was incompetent and refused the court's offer of an in camera hearing on the issue, the court had ample opportunity to observe the defendant, and the defendant ably assisted in his case. People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

And alleged condition arose after trial where issue was found against him. Where, after conviction, defendant asserts that he is incompetent and asks that sentence be postponed, his application should show that such incompetency arose subsequent to conviction, especially where the question as to defendant's insanity was at issue and found against him in the main trial. People v. Eldred, 103 Colo. 334, 86 P.2d 248 (1938).

But court may initiate determination on its own motion. A trial court may on its own motion, where it entertains a reasonable doubt of a defendant's competence, initiate a determination thereof, notwithstanding a failure to plead such incompetency in accordance with this section. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

If the court, at any stage of the proceedings, has a reasonable doubt whether the defendant is so mentally disordered, it should suspend the criminal proceedings and hold an inquiry on the matter. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

And it is duty bound to do so when competency doubtful. When the trial court has a doubt as to the mental competence of a defendant, then the court is duty bound upon its own motion to hold a competency hearing on the matter. Bresnahan v. People, 175 Colo. 286, 487 P.2d 551 (1971).

It is not only the duty of defense counsel and the prosecution, but also the obligation of the court, to raise the issue of the competency of an accused to stand trial when facts dictate that such a hearing should be held. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

A trial court has an independent obligation to raise the issue of a defendant's competency at any stage of a criminal proceeding if the court has reason to believe that he or she is incompetent. People v. Hendricks, 972 P.2d 1041 (Colo. App. 1998), rev'd on other grounds, 10 P.3d 1231 (Colo. 2000).

Court and counsel to raise issue whenever competency in doubt. When a doubt is entertained about the mental competence of an accused, both the court and counsel are duty bound to raise the issue and seek a reliable determination of it before

further proceedings are held. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

And court's refusal to inquire possible abuse of discretion. Where defense attorney's representation to the court raised a substantial issue on the defendant's competency to stand trial, the trial court's refusal to make any inquiry into that issue or to receive any evidence in that regard constituted an abuse of discretion. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Trial court should have made a preliminary competency finding. Defense counsel's motion met the requirements of subsection (2)(b) and should have triggered the procedures of § 16-8.5-103. People v. Zimmer, 2021 COA 40, 491 P.3d 554.

Because defense counsel raised a "sufficient doubt" about defendant's competency and the trial court failed to make the required competency determination, the court's error was of constitutional dimension. People v. Zimmer, 2021 COA 40, 491 P.3d 554.

Failure to hold hearing on claimed incompetence violates due process. Due process is violated when a trial court does not afford an accused an adequate hearing on his claimed incompetency to stand trial. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

But, when a court can conduct a meaningful hearing retrospectively to evaluate the competency of a defendant, such competency hearings do not violate due process principles. In determining whether a meaningful hearing can be held, a court should consider: (1) the passage of time; (2) the availability of contemporaneous medical evidence, including medical records and prior competency determinations; (3) defendant's statements in the trial record; and (4) the availability of individuals and witnesses who interacted with the defendant before and during trial, including the trial judge, both counsel, and jail officials. People v. Corichi, 18 P.3d 807 (Colo. App. 2000).

Even where competence issue raised by court. That the issue of defendant's competency is raised by the trial court, and not by the defendant's counsel, or by his advisory counsel, does not result in a weakening of the imperative that he be afforded an adequate hearing on his competency. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

And retrospective determination of competency does not cure the failure. The trial court's noncompliance with those statutory procedures set forth in this section and § 16-8-111, which provide those safeguards necessary to insure against the prosecution of an incompetent defendant, constitutes error so prejudicial as to be characterized as one of constitutional deprivation. Retrospective determination of the defendant's mental competency during his trial will not cure the error. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

Motions to determine competency must include threshold requirements, and trial courts retain sufficient discretion to reject the rare competency motion that rests on counsel's inadequate proffer. People v. Lindsey, 2020 CO 21, 459 P.3d 530.

Under the totality of the circumstances, including the competency motion filed by defendant's counsel that was bereft of specific facts supporting a good-faith doubt regarding defendant's competency, the trial court did not abuse its discretion in rejecting the motion as inadequate. People v. Lindsey, 2020 CO 21, 459 P.3d 530.

When duty to suspend proceeding arises. The duty in subsection (2)(a) to suspend the proceedings arises even if no more than a "doubt" is entertained as to a defendant's competency. People v. Scherrer, 670 P.2d 18 (Colo. App. 1983).

Determination may be initiated at any time. Where no proper allegation of incompetency relating to a time subsequent to the alleged offense is entered, and nothing in the record prompts the court to move in the matter, no prejudice results to a defendant, since such proceedings may be initiated at any time. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958).

Question of competency may be raised at any time, but, if possible, it should be brought to the court's attention prior to the commencement of a particular proceeding. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Prohibition proper to prevent criminal proceedings in violation of section. When a trial court and county court, before preliminary hearing, plea or arraignment, lose authority under this section to proceed further with criminal proceedings due to incompetency of defendant, for a district court to certify the cause back to the county court for further criminal proceedings is to act in excess of its jurisdiction, and the remedy of prohibition is appropriate to prevent further proceedings. Gomez v. District Court, 179 Colo. 299, 500 P.2d 134 (1972).

Prohibition against prosecuting incompetent defendant is not restricted to trial and post-trial stages of the case. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Competency hearing was unnecessary. Where the results of commitment indicated that defendant was sane, though quite emotionally disturbed, that his intelligence level was above average, and that his thinking processes were clear and logical, and defendant's testimony at the Crim. P. 35(b) hearing and his letters to his attorney and to his relatives pending disposition of the case in the trial court show that defendant's thoughts and expression of the same were above average in quality and content for a person of his years, there is no reason for the trial court to have had any doubt as to defendant's competency and to have held a competency hearing on its own motion. Bresnahan v. People, 175 Colo. 286, 487 P.2d 551 (1971).

The court did not abuse its discretion in denying a third competency hearing where the third motion did not raise new indicia of incompetency nor a different medical or psychological explanation regarding the defendant who was previously examined twice and determined to be competent. People v. Rodriguez, 2022 COA 98, 521 P.3d 678.

A defendant's suicide attempt during trial alone is not necessarily sufficient to establish a "bona fide doubt" as to defendant's competency. People v. Price, 240 P.3d 557 (Colo. App. 2010).

A person need not be adjudged incompetent to proceed where the person has made numerous statements that, although they may appear somewhat delusional on their face, are reflective of a larger, yet atypical, anti-government system of beliefs shared by others in the country, such as "sovereign citizenship" beliefs. People v. Anderson, 2020 COA 56, 465 P.3d 98.

Applied in Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973); People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v. Mack, 638 P.2d 257 (Colo. 1981).

16-8.5-103. Determination of competency to proceed.

(1) (a) Whenever the question of a defendant's competency to proceed is raised, by either party or on the court's own motion, the court may make a preliminary finding of competency or incompetency to proceed, which is a final determination unless a party to the case objects within seven days after the court's preliminary finding.

(b) On or before the date when a court orders that a defendant be evaluated for competency, a bridges court liaison for the district hired or contracted pursuant to article 95 of title 13 may be assigned to the defendant.

(2) If either party objects to the court's preliminary finding, or if the court determines that it has insufficient information to make a preliminary finding, the court shall order that the defendant be evaluated for competency by CDHS and that CDHS prepare a court-ordered report.

(3) If neither party requests a hearing pursuant to section 16-8.5-108 or a second evaluation pursuant to section 16-8.5-111, within the applicable time frame, the court shall enter a final determination, based on the information then available to the court, whether the defendant is or is not competent to proceed.

(4) If the question of the defendant's incompetency to proceed is raised after a jury is impaneled to try the issues raised by a plea of not guilty and the court determines that the defendant is incompetent to proceed or orders a court-ordered competency evaluation, the court may declare a mistrial. Declaration of a mistrial under these circumstances does not constitute jeopardy, nor does it prohibit the trial or sentencing of the defendant for the same offense after the defendant has been found restored to competency.

(5) In all proceedings brought pursuant to this article 8.5, when competency has been raised by the parole board pursuant to section 17-22.5-403.5 (4)(f), the court shall pay for any evaluation to determine competency pursuant to this section, and the competency evaluation must be conducted at the place where the defendant is in custody.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 682, § 1, effective May 21.

Editor's note: (1) Prior to its amendment with relocations in 2026, this section was similar to former § 16-8-111 as it existed prior to 2008.

(2) Subsection (4) was relocated to § 16-8.5-111 (4) in 2026.

(3) Subsection (7) was relocated to § 16-8.5-109 (1)(b) in 2026.

Cross references: For the constitutional provision on double jeopardy, see § 18 of article II of the state constitution.

ANNOTATION

Annotator's note. Since § 16-8.5-103 is similar to former § 16-8.5-103 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

This section meets due process requirements of the fourteenth amendment. The section involves weighty governmental interest, and because of the significant consequences to due process that an error in making the determination of mental competency would have, the lower "reason to believe" standard is an appropriate threshold for commencing the determination of mental competency. Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

No fourteenth amendment equal protection clause violation merely because of the lower "reason to believe" threshold for criminal commitment statute versus a probable cause standard of civil commitment statutes. Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

This section does not implicate the fourth amendment. Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

Where a defendant's mental disease or defect renders him incompetent to decide whether or not to exercise his right to testify in his own defense, he is incompetent to stand trial. People v. Mondragon, 217 P.3d 936 (Colo. App. 2009).

Purpose of this section is to ensure against a violation of due process that would arise if a defendant who is not mentally competent were required to stand trial or participate in other critical criminal procedures. Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970); Cappelli v. Demlow, 935 P.2d 57 (Colo. App. 1996).

Section 16-8.5-102 (2)(b) requires a trial court to consider defense counsel's motion raising competency without disclosing that motion to the prosecution. People v. Roina, 2019 CO 20, 437 P.3d 919.

The plain language of that section provides that the trial court may consider the defense's ex parte competency motion when the defense raises competency and seeks a preliminary finding as to competency. People v. Roina, 2019 CO 20, 437 P.3d 919.

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The general assembly made clear in this section that there is a distinction between the preliminary finding as to competency and the competency hearing. People v. Roina, 2019 CO 20, 437 P.3d 919.

Section 16-8.5-102 (2)(b) requires the defense to provide the prosecution a copy of a sealed motion raising competency only when defense counsel requests a competency hearing, not a preliminary finding as to competency. People v. Roina, 2019 CO 20, 437 P.3d 919.

Court needs not await a specific request from defense. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

Trial court acted properly in ordering competency evaluation based on a pretrial motion that raised doubts as to defendant's competency, then allowing testimony by evaluating doctor to rebut defendant's claim of lack of mental capacity. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

Showing necessary to "raise the issue" of a defendant's competency after trial has commenced. Where trial court had an opportunity to observe defendant during first day of trial and noted that defendant understood her competency was being addressed and, without prompting, stated she wanted to continue the trial, defense counsel's assertion of defendant's condition of methadone withdrawal did not create a reason to presume mental incompetency. People v. Morino, 743 P.2d 49 (Colo. App. 1987).

The trial court's statement that defendant's motion for a competency hearing was a "ploy" to delay the trial was adequately supported by what the judge learned in his judicial capacity during argument on pretrial motions concerning the defendant's competency, and such a statement does not constitute the kind of prejudice required for recusal. People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

Court correctly ruled that the issue of competency had not been properly raised where defense counsel refused to give specific reasons to support his opinion that the defendant was incompetent and refused the court's offer of an in camera hearing on the issue, the court had ample opportunity to observe the defendant, and the defendant

ably assisted in his case. People v. Seigler, 832 P.2d 980 (Colo. App. 1991).

Determination of issue of insanity after sentence does not require safeguards of a judicial proceeding, since it relates to the consequences of the offense and not to the guilt of a defendant. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

Trial of incompetent violates due process. Subjecting an accused to trial when he or she is incompetent violates due process of law. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

Trial of an incompetent defendant constitutes structural error and requires reversal. People v. Mondragon, 217 P.3d 936 (Colo. App. 2009).

Failure to hold hearing on claimed incompetence violates due process. Due process is violated when a trial court does not afford an accused an adequate hearing on his or her claimed incompetency to stand trial. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

But, when a court can conduct a meaningful hearing retrospectively to evaluate the competency of a defendant, such competency hearings do not violate due process principles. In determining whether a meaningful hearing can be held, a court should consider: (1) the passage of time; (2) the availability of contemporaneous medical evidence, including medical records and prior competency determinations; (3) defendant's statements in the trial record; and (4) the availability of individuals and witnesses who interacted with the defendant before and during trial, including the trial judge, both counsel, and jail officials. People v. Corichi, 18 P.3d 807 (Colo. App. 2000).

Even where competence issue raised by court. That the issue of defendant's competency is raised by the trial court, and not by the defendant's counsel, or by his advisory counsel, does not result in a weakening of the imperative that he be afforded an adequate hearing on his competency. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

Prohibition against prosecuting incompetent defendant is not restricted to trial and post-trial stages of the case. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Court to make inquiry where substantial issue as to competency. Where defense attorney's representation to the court raised a substantial issue as to the defendant's competency to stand trial, trial court's refusal to make any inquiry into that issue or to receive any evidence in that regard constituted an abuse of discretion. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

Trial court should have made a preliminary competency finding. Defense counsel's motion met the requirements of § 16-8.5-102 (2)(b) and should have triggered the procedures of this section. People v. Zimmer, 2021 COA 40, 491 P.3d 554.

Because defense counsel raised a "sufficient doubt" about defendant's competency and the trial court failed to make the required competency determination, the court's error was of

constitutional dimension. People v. Zimmer, 2021 COA 40, 491 P.3d 554.

It relates to a reprieve. Postponement of execution because of incompetency bears a close affinity not to trial for a crime, but rather to reprieves of sentences in general. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

The ultimate issue is the competency, or lack of it, of a particular individual as of a date certain. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

The burden is upon a defendant to establish his incompetency. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

The burden is upon the petitioner alleging incompetency to produce sufficient evidence to overcome the presumption of validity and regularity surrounding entry of his plea of guilty. Hampton v. Tinsley, 240 F. Supp. 213 (D. Colo. 1965), rev'd on other grounds, 355 F.2d 470 (10th Cir. 1966).

The burden is on defendant to prove incompetency by a preponderance of the evidence under pretrial statutory procedure, when a defendant raises the issue of incompetency after the alleged commission of the crime. Gomez v. District Court, 179 Colo. 299, 500 P.2d 134 (1972).

Standards for assessing accused's incompetency. An accused's competency must be assessed with specific reference to the nature of the proceeding with which he is confronted and the appropriate level of understanding necessary for meaningful cooperation with his attorney. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

And must allow defendant time to request hearing. Trial court exceeded its jurisdiction when it made a preliminary finding of competency and simultaneously ordered the petitioner's attorney to present his motions on capital punishment issues without affording the petitioner the opportunity, within a time designated by the court, to request a statutory hearing on a final determination of competency in accordance with this section. Jones v. District Court, 617 P.2d 803 (Colo. 1980).

A final determination of competency cannot be made by a trial court without first affording a defendant the opportunity to challenge its preliminary finding. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983).

By failing to immediately notify the defendant of preliminary finding of competency, and failing to set a time within which the defendant can request a hearing to challenge its preliminary finding, the trial court exceeded its jurisdiction and abused its discretion. People v. Matthews, 662 P.2d 1108 (Colo. App. 1983); People v. Arkadie, 692 P.2d 1145 (Colo. App. 1984).

Evidence of defendant rebuts presumption of sanity. When evidence of insanity after commission of a crime is produced by defendant, the presumption that he was sane disappears, so that, if the people are to prevail, they must produce evidence of sanity to rebut that of insanity produced by the defendant. Gomez v. District Court, 179 Colo. 299, 500 P.2d 134 (1972).

And it was error not to find incompetency. Where no evidence had been introduced by prosecution to dispute that offered by petitioner that he was incompetent and incapable of conducting his defense in a rational and reasonable manner, trial court erred in not directing determination of incompetency. Gomez v. District Court, 179 Colo. 299, 500 P.2d 134 (1972).

Defendant's competence is an issue of fact and the trial court's findings will not be disturbed if adequately supported by evidence in the record. There was sufficient evidence to support the trial court's finding of competence where, although defendant had probably experienced a brief delusional episode during the trial, defendant had failed to prove by a preponderance of the evidence that she suffered from a mental disease or defect that rendered her incapable of understanding the nature and course of the proceedings or made her incapable of participating or assisting in her defense. People v. Corichi, 18 P.3d 807 (Colo. App. 2000).

Considerable latitude is allowed by the courts in admitting evidence which has a tendency to throw light on the mental condition of the defendant after the imposition of sentence provided the proof tends to prove or disprove the issue involved. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

If evidence of a general type is otherwise competent, relevant and material, it is not inadmissible solely because it occurred prior to the time judgment and sentence entered in the criminal proceeding, or because it relates to his mental condition prior to such time. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

Every act of the defendant's life relevant to the issue is admissible in evidence when the defense of insanity, general or partial, is set up. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

Evidence of prior mental illness relevant. In a sanity trial evidence of a prior mental illness or abnormal conduct is relevant to the ultimate issue in the case, as such evidence renders the claimed inference of insanity more probable than it would be without the evidence. People v. Mack, 638 P.2d 257 (Colo. 1981).

Second competency determination not required. Although placing an accused on trial while he is incompetent violates due process of law, neither due process nor the defendant's right to effective assistance of counsel requires the court to grant a request for a second competency determination after the accused already has been granted an adequate hearing on his claimed incompetency. People v. Mack, 638 P.2d 257 (Colo. 1981).

If a trial court orders a defendant to undergo a competency evaluation, the defendant is entitled to a second competency evaluation so long as the request for the second evaluation is made within 14 days after receipt of the court-ordered competency evaluation report. The trial court does not have the discretion to deny the defendant's request for a second evaluation regardless of whether the trial

court believes the initial court-ordered evaluation should not have been ordered. People v. McGee, 2026 CO 4, 581 P.3d 1213.

Defendant failed to establish a due process violation or an abuse of discretion by the trial court in not ordering a second competency examination. People v. Stephenson, 165 P.3d 860 (Colo. App. 2007).

Upon receiving an incomplete second evaluation, a court should order that (1) the evaluator render an opinion based on the available information, if possible, despite the defendant's noncooperation or (2) the defendant be returned to the appropriate facility for further observation so that a competency opinion can be rendered. People v. Presson, 2013 COA 120M, 315 P.3d 198.

Court erred in proceeding to determine defendant's competency to stand trial when the second competency evaluation did not contain the statutorily required diagnosis, prognosis, and opinion, and the court declined to return defendant to the facility to complete the evaluation. People v. Presson, 2013 COA 120M, 315 P.3d 198.

The error was not harmless because defendant was unfairly deprived of a second contemporaneous evaluation, to which defendant was statutorily entitled; the court explicitly relied on defendant's refusal to cooperate with the second evaluator in finding defendant competent; evidence of defendant's competency was not overwhelming; and a retrospective competency determination would not cure the error. People v. Presson, 2013 COA 120M, 315 P.3d 198.

A trial court has the discretion to order a competency examination, and the statute does not restrict this discretion to formal examinations. The trial court did not abuse its discretion by relying on a medical examination in lieu of a formal competency examination. Bloom v. People, 185 P.3d 797 (Colo. 2008) (decided under repealed § 16-8-111).

Error to exclude cross-examination of medical witness. In a post-conviction proceeding to determine the present mental condition of a defendant, refusal to permit cross-examination of a medical witness, who had testified that defendant was presently insane, as to his previous service on the commission which had determined defendant to be a mental incompetent, is erroneous. Garrison v. People, 151 Colo. 388, 378 P.2d 401 (1963).

Judicial review. Certain trial procedure safeguards are not applicable to the process of sentencing. This principle applies more forcefully to an effort to transplant every trial safeguard to a determination of incompetency after conviction. To require judicial review every time a convicted defendant suggests incompetency would make the possibility of carrying out a sentence depend upon fecundity in making suggestion after suggestion of incompetency. Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959).

Trial court applied the incorrect legal standards in finding defendant competent to stand trial and, thus, abused its

discretion. Trial court improperly based competency determination solely on defendant's factual understanding of proceedings and cognitive ability with no consideration to whether defendant's perceptions and understandings were grounded in reality. People v. Mondragon, 217 P.3d 936 (Colo. App. 2009).

Motions to determine competency made under § 16-8.5-102 must include threshold requirements, and trial courts retain sufficient discretion to reject the rare competency motion that rests on counsel's inadequate proffer. People v. Lindsey, 2020 CO 21, 459 P.3d 530.

Under the totality of the circumstances, including the competency motion filed by defendant's counsel that was bereft of specific facts supporting a good-faith doubt regarding defendant's competency, the trial court did not abuse its discretion in rejecting the motion as inadequate. People v. Lindsey, 2020 CO 21, 459 P.3d 530.

The court did not abuse its discretion in denying a third competency hearing where the third motion did not raise new indicia of incompetency nor a different medical or psychological explanation regarding the defendant who was previously examined twice and determined to be competent. People v. Rodriguez, 2022 COA 98, 521 P.3d 678.

Applied in Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973); People v. Scherrer, 670 P.2d 18 (Colo. App. 1983).

16-8.5-104. Defendant's waiver of privilege.

(1) When a defendant raises the issue of competency to proceed, or when the court determines that the defendant is incompetent to proceed, any claim by the defendant to confidentiality or privilege is deemed waived in the case in which competency is raised and for records or information from any prior criminal case in which the defendant raised the issue of competency or in which the court determined that the defendant was incompetent to proceed. The district attorney, the defense attorney, the bridges court liaison, and the court are granted access, without written consent of the defendant or further order of the court, to:

(a) Reports of competency evaluations, including second evaluations;

(b) Information and documents relating to the competency evaluation that are created by, obtained by, reviewed by, or relied on by a competency evaluator; and

(c) The competency evaluator, for the purpose of discussing the competency evaluation.

(2) Upon a request by either party or the court for the information described in subsection (1) of this section, the competency evaluator or treatment provider shall provide the information for use in preparing for a competency hearing, restorability hearing, or restoration hearing and for use during the hearing.

(3) CDHS, a competency evaluator, or a restoration service provider that is performing work pursuant to a court order issued pursuant to this article 8.5 shall provide information to the court, bridges court liaison, district attorney, or defense counsel concerning the defendant's location, the defendant's hospital or facility admission status, the status of any competency evaluation procedures, and the status of any restoration services.

(4) This section does not limit the court's ability to order that information, in addition to the information described in subsections (1) and (3) of this section, be provided to the competency evaluator, or to either party to the case, nor does it limit the information that is available after the written consent of the defendant.

(5) The court may, upon the request of either party, issue an order to assist a party in accessing, receiving copies of, or discussing with a competency evaluator or treatment provider information or records that the party has the right to access pursuant to the defendant's waiver of privilege. If a party requests an order, the court shall allow the opposing party to make any legal objection, including whether the requested information is within the scope of the defendant's waiver of privilege, and shall consider any requests for protective orders prior to issuing the court order. This section does not limit the court's ability to order information be provided to a party with the written consent of the defendant.

(6) The court shall order both the prosecutor and the defendant or the defendant's counsel to exchange the names, addresses, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency.

(7) Statements made by the defendant in the course of any competency evaluation must be protected in accordance with section 16-8.5-107.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 683, § 1, effective May 21.

ANNOTATION

Annotator's note. Since § 16-8.5-104 is similar to former § 16-8.5-104, a relevant case construing that provision has been included in the annotations to this section.

The confrontation clause does not require a court to conduct an in camera review of a co-defendant's competency report on behalf of a defendant in defendant's case. The confrontation right is a trial right, not a discovery right. Zapata v. People, 2018 CO 82, 428 P.3d 517.

The due process clause requires an in camera review of privileged information for a defendant if the defendant establishes that it contains material evidence. The defendant must make more

than a vague assertion that the information may contain exculpatory material. Zapata v. People, 2018 CO 82, 428 P.3d 517.

Defendant made only a vague assertion that co-defendant's competency evaluation could contain impeachable material. Zapata v. People, 2018 CO 82, 428 P.3d 517.

Competency reports are protected by the physician-patient or psychologist-client privilege. Zapata v. People, 2018 CO 82, 428 P.3d 517.

The statutory waiver in subsection (1) applies only to the court, defendant, and prosecution in that defendant's case. It does not apply to a co-defendant. This section does not give a defendant access to a co-defendant's competency report. Zapata v. People, 2018 CO 82, 428 P.3d 517.

16-8.5-105. Competency evaluations, locations, time frames, and report.

(1) (a) (I) The court shall order that the competency evaluation be conducted on an outpatient basis or, if the defendant is unable to post the monetary condition of bond or is ineligible to be released on bond, at the place where the defendant is in-custody, except as provided in subsection (1)(b) of this section. When the court orders a competency evaluation, the court shall also order the appropriate party to transmit the collateral materials to CDHS within two business days after the order for a competency evaluation, with a certificate of service of the collateral materials provided to the court and other necessary parties. If the parties are communicating with the court by electronic means and the order for a competency evaluation is issued by electronic means, CDHS shall accept the order by the same electronic means.

(II) If CDHS conducts the competency evaluation on an in-custody basis, CDHS shall begin the competency evaluation as soon as practicable, but shall complete the competency evaluation no later than twenty-one days after receiving the collateral materials and court order directing the competency evaluation be completed.

(III) If CDHS conducts the competency evaluation on an out-of-custody basis, CDHS shall complete the competency evaluation within forty-two days after receipt of the order and the collateral materials, unless the court extends the time upon a showing of good cause. The court shall determine the type of bond and the conditions of release after consideration of the presumptions and factors enumerated in article 4 of this title 16, which include consideration of the information received from any pretrial services program pursuant to section 16-4-106 and any information provided by the bridges court liaison hired or contracted pursuant to article 95 of title 13. As a condition of any bond, the court shall require the defendant's cooperation with the competency evaluation on an outpatient basis. In setting the bond, the court shall not consider the need for the defendant to receive an evaluation pursuant to this article 8.5 as a factor in determining any monetary condition of bond.

(IV) This subsection (1)(a) does not limit a person's ability to seek a court-ordered evaluation for a person with a mental health disorder or to initiate the procedure for an emergency mental health hold pursuant to section 27-65-106.

(b) (I) Notwithstanding subsection (1)(a) of this section, the court may order the defendant placed in CDHS's custody for the time necessary to conduct an inpatient competency evaluation if:

(A) CDHS provides a recommendation to the court, after consulting with the defendant and reviewing any clinical or collateral materials, that conducting the competency evaluation on an inpatient basis is clinically appropriate;

(B) The court finds that the competency evaluation and report provided by CDHS is insufficient because it does not meet statutory requirements pursuant to subsection (5) of this section or that two or more conflicting competency evaluations and reports have been completed; or

(C) Extraordinary circumstances relating to the case or the defendant make conducting the competency evaluation on an inpatient basis necessary and appropriate.

(II) Upon entry of a court order pursuant to subsection (1)(b)(I) of this section, CDHS has the same authority with respect to custody as provided for in section 16-8-105.5 (4).

(III) When the court orders an inpatient competency evaluation, the court shall advise the defendant that restoration services may commence immediately if the competency evaluation opines that the defendant is incompetent to proceed, unless either party objects at the time of the advisement, or within seventy-two hours after receipt of the written report of the competency evaluation submitted to the court. The court shall record any objection to the order of commitment to CDHS.

(IV) When the court orders an inpatient competency evaluation, the defendant must be offered admission to the hospital or other inpatient program within fourteen days after receipt of the court order and collateral materials. The court shall review the case in twenty-one days to determine if transportation to the hospital or program has been completed or if further orders are necessary.

(c) If the competency evaluator opines that the defendant is incompetent to proceed and that inpatient restoration services are not clinically appropriate, CDHS shall detail the outpatient restoration services available to the defendant.

(d) (I) If a defendant is in CDHS's custody for purposes of the competency evaluation ordered pursuant to this article 8.5 and the defendant has completed the competency evaluation and the competency evaluator has opined that:

(A) The defendant is competent to proceed, CDHS may return the defendant to a county jail or to the community, as determined by the defendant's bond status;

(B) The defendant is incompetent to proceed and that inpatient restoration services are not clinically appropriate, and outpatient restoration services are available to the defendant in the community, CDHS shall notify the court and the bridges court liaison by electronic means, and CDHS shall develop a discharge plan and a plan for community-based restoration services in coordination with the community restoration services provider.

(II) The court shall hold a hearing within seven days after receiving the notice pursuant to subsection (1)(d)(I)(B) of this section, at which CDHS shall provide to the court the plan for community-based restoration services, and the court may enter any appropriate orders regarding the custody of the defendant and the defendant's bond status. CDHS shall advise the defendant of the date and time of the court hearing. If CDHS is returning the defendant to a county jail, the county sheriff in the jurisdiction where the defendant must return shall take custody of the defendant within seventy-two hours after receiving notification from CDHS that the defendant's competency evaluation is completed. At the time CDHS notifies the sheriff, CDHS shall also notify the court and the bridges court liaison that CDHS is returning the defendant to the custody of the jail.

(e) This section does not restrict the right of the defendant to procure a competency evaluation at the defendant's request pursuant to section 16-8.5-111 (1).

(2) The defendant must cooperate with the competency evaluator and with other personnel providing ancillary services such as testing and radiological services. Statements made by the defendant in the course of the competency evaluation are protected as provided in section 16-8.5-107. If the defendant does not cooperate with the competency evaluator and other personnel providing ancillary services and the lack of cooperation is not the result of a developmental disability or a mental disability, the fact of the defendant's noncooperation with the competency evaluator and other personnel providing ancillary services may be admissible in the defendant's competency hearing, restorability hearing, or restoration hearing to rebut any evidence introduced by the defendant with regard to the defendant's competency.

(3) To aid in forming an opinion of the defendant's competency, it is permissible in the course of a competency evaluation pursuant to this section to use the defendant's confessions and admissions and any other evidence of the circumstances surrounding the commission of the offense, as well as the defendant's medical and social history, in questioning the defendant. When the defendant is noncooperative with the competency evaluator or personnel providing ancillary services, the competency evaluator may render an opinion of the defendant's competency based upon confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the defendant's known medical and social history, and the opinion may be admissible into evidence at the defendant's competency or restoration hearing.

(4) The competency evaluator shall prepare a written report of the competency evaluation, and CDHS shall electronically deliver the report to the court as ordered using an e-filing system record in the matter. Without reducing any other timelines set forth in this article 8.5, the competency evaluator shall provide the written report to the court within fourteen days after finishing meeting, or attempting to meet, with the defendant to evaluate the defendant's competency.

(5) The competency evaluation and report must include, but are not limited to:

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

(b) A description of the nature, content, extent, and results of the competency evaluation and any tests conducted, which must include, but is not limited to, the information reviewed and relied upon in conducting the competency evaluation and specific tests conducted by the competency evaluator;

(c) The competency evaluator's opinion as to whether the defendant currently suffers from a mental disability or developmental disability, or both. If the opinion is that the defendant suffers from a mental disability or developmental disability, then the report must include an opinion as to the diagnosis and the prognosis of the defendant's mental disability or developmental disability.

(d) The competency evaluator's opinion as to whether the defendant is competent to proceed or incompetent to proceed. If the opinion is that the defendant is incompetent to proceed, then the report must include:

(I) (A) The competency evaluator's opinion as to whether the defendant is restorable or unrestorable. As part of forming the opinion, the competency evaluator shall use due diligence in reviewing and summarizing any prior competency opinions regarding the defendant. If the opinion regarding restorability differs from opinions in past evaluations of the defendant, the competency evaluator shall explain the basis for the competency evaluator's differing opinions.

(B) The competency evaluator's opinion as to whether the defendant poses a substantial risk of serious harm to others, as defined in section 27-65-102, if the opinion is that the defendant is unrestorable and the defendant is either charged with homicide pursuant to part 1 of article 3 of title 18; a crime of violence, as defined in section 18-1.3-406 (2); or a felony that constitutes unlawful sexual behavior, as defined in section 16-22-102; or the district attorney provided notice that the district attorney is aware of an act described in section 16-8.5-118 (6)(b)(I) that is not charged in the current case the defendant is alleged to have committed and is or was charged in a criminal case in Colorado in which competency was raised.

(C) If possible, when the defendant is diagnosed with a moderate to severe developmental disability or a neurocognitive disorder, as defined in section 25.5-10-501, which either alone or together with a co-occurring mental disability affects the defendant's ability to gain or maintain

competency, and the opinion is that the defendant is restorable, the competency evaluator shall specifically state whether the competency evaluator believes there are unique or different services outside the standard competency restoration curriculum developed by CDHS that the defendant may need in order to be restored to competency within the reasonably foreseeable future.

(II) If the competency evaluator's opinion pursuant to subsection (5)(d)(I)(A) of this section is that the defendant is restorable, an opinion as to whether inpatient restoration services are clinically appropriate to restore the defendant to competency.

(e) The competency evaluator's opinion as to whether the defendant meets the criteria for a tier 1 or tier 2 designation; and

(f) The competency evaluator's opinion and the information and factors considered in making determinations as to whether the defendant:

(I) Meets the criteria for an emergency mental health hold pursuant to section 27-65-106;

(II) Meets the criteria for a certification for short-term treatment pursuant to section 27-65-108.5 or 27-65-109 and, if the defendant meets the criteria, whether the competency evaluator believes the defendant could be treated on an outpatient basis pursuant to section 27-65-111. If the defendant is incarcerated or is an inpatient in a medical facility and has a pending criminal charge, in assessing whether the defendant is a danger to the defendant's self, a danger to others, or gravely disabled, as those terms are defined in section 27-65-102, the court, competency evaluator, or professional person, as defined in section 27-65-102, shall not rely on the fact that the defendant is incarcerated or is an inpatient in a medical facility to establish that the defendant is not a danger or gravely disabled. If it is the competency evaluator's opinion that the defendant meets criteria for certification for short-term treatment pursuant to section 27-65-108.5 or 27-65-109, the competency evaluator is not required to request a petition for certification for short-term treatment of the defendant.

(III) Has an intellectual and developmental disability, as defined in section 25.5-10-202, and if the defendant does have an intellectual and developmental disability:

(A) Whether the defendant also has a mental health disorder, as defined in section 27-65-102, and, if the defendant does have a co-occurring intellectual and developmental disability and a mental health disorder, the primary diagnosis, if determinable; and

(B) Whether the defendant may be eligible for any additional services pursuant to article 10 of title 25.5 or article 10.5 of title 27, or may meet the criteria for a civil proceeding; or

(IV) Has a neurocognitive disorder, as defined in section 25.5-10-501, and if the defendant does have a neurocognitive disorder, whether the defendant also has a mental health disorder, and whether the defendant may meet the criteria for protective placement pursuant to section 25.5-10-502. If the competency evaluator's opinion is that the defendant may meet the criteria for

protective placement, the competency evaluator is not required to petition the court for protective placement.

(g) When the competency evaluator has reason to believe the defendant has a neurocognitive disorder, as defined in section 25.5-10-501, or a developmental disability:

(I) The competency evaluator's opinion as to whether diagnostic testing exists beyond what the competency evaluator can perform that is necessary to provide an opinion as to whether the defendant is incompetent to proceed or restorable; and

(II) The competency evaluator's opinion as to the defendant's primary diagnosis and prognosis.

(6) Whenever a competency evaluation is ordered upon the request of either party, the court shall notify the county attorney required to conduct proceedings pursuant to section 27-65-113.5 for the county in which the charges are pending, and the bridges court liaison hired or contracted pursuant to article 95 of title 13, of all court dates for return of the competency evaluation report.

(7) Each court shall allow for any competency evaluation conducted pursuant to this article 8.5 to be submitted to the court through electronic means, including through an e-filing system if the order for the competency evaluation is issued to CDHS through an e-filing system.

(8) A competency evaluator is not liable for damages in any civil action for failure to warn or protect a specific person or persons, including those identifiable by their association with a specific location or entity, against the violent behavior of a defendant being evaluated by the competency evaluator, and the competency evaluator must not be held civilly liable for failure to predict violent behavior, except when the defendant has communicated to the competency evaluator a serious threat of imminent physical violence against a specific person or persons, including those identifiable by their association with a specific location or entity.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 684, § 1, effective May 21.

Editor's note: Subsection (1)(b.6) was relocated to § 16-8.5-105 (1)(c) in 2026. Subsection (1)(c) is similar to former § 16-8.5-105 (1)(b.6) as it existed prior to 2026.

ANNOTATION

Annotator's note. Since § 16-8.5-105 is similar to former § 16-8.5-105, a relevant case construing that provision has been included in the annotations to this section.

Upon receiving an incomplete second evaluation, a court should order that (1) the evaluator render an opinion based on the available information, if possible, despite the defendant's noncooperation or (2) the defendant be returned to the appropriate facility for further observation so that a competency opinion can be rendered. People v. Presson, 2013 COA 120M, 315 P.3d 198.

Court erred in proceeding to determine defendant's competency to stand trial when the second competency evaluation did not contain the statutorily required diagnosis, prognosis, and opinion, and the court declined to return defendant to the facility to complete the evaluation. People v. Presson, 2013 COA 120M, 315 P.3d 198.

The error was not harmless because defendant was unfairly deprived of a second contemporaneous evaluation, to which defendant was statutorily entitled; the court explicitly relied on defendant's refusal to cooperate with the second evaluator in finding defendant competent; evidence of defendant's competency was not overwhelming; and a retrospective competency determination would not cure the error. People v. Presson, 2013 COA 120M, 315 P.3d 198.

16-8.5-106. Petition for involuntary administration of medication - venue for collateral hearing.

(1) If a defendant committed to the custody of CDHS for a competency evaluation, or for restoration services, meets the constitutional requirements for the administration of involuntary medication, the defendant's treating physician may petition the court for an order requiring that the defendant accept the medication or, alternatively, that the medication be forcibly administered to the defendant. CDHS shall, prior to the hearing on the petition, deliver a copy of the petition to the court that committed the defendant to the custody of CDHS, the prosecuting attorney, and the defendant's legal representation in the criminal case, if legal representation exists, and to the defendant directly if the defendant does not have legal representation. A physician shall assess and document the defendant's mental status prior to the administration of medication.

(2) The court of the jurisdiction where the defendant is located shall hear a petition for involuntary medication. CDHS shall promptly deliver a copy of the order granting or denying the petition to the court that committed the defendant to the custody of CDHS, the prosecuting attorney, and the defendant's legal representation in the criminal case, if legal representation exists, and to the defendant directly if the defendant does not have legal representation.

(3) If a hearing for administration of involuntary medication is heard in a different county than the county where the committing court is located, the committing county shall reimburse the county where the proceeding is heard for the reasonable costs incurred in conducting the proceeding. Alternatively, the district attorney or county attorney for the committing county may prosecute the proceeding as the proponent of the physician's petition.

(4) If a defendant committed to the custody of CDHS for evaluation or for restoration services is ordered by a court to accept medication as set forth in subsection (1) of this section and is subsequently returned to jail for pending court proceedings, the county jail may require the defendant to continue to receive the same court-ordered medication that was administered by CDHS before the defendant was discharged from inpatient care, or, alternatively, appropriate medical personnel provided by the jail may forcibly administer the court-ordered medication to the defendant.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 691, § 1, effective May 21; (2) repealed, (SB 26-149), ch. 142, p. 803, § 65, effective May 21.

Editor's note: (1) This section is similar to former § 16-8.5-112 as it existed prior to 2026.

(2) Subsection (1) was relocated to § 16-8.5-111 (1) in 2026.

(3) Subsection (2) was repealed by section 65 of SB 26-149, effective May 21, 2026. However, that repeal was superseded by the amendment of this entire article 8.5 by section 1 of SB 26-149, effective May 21, 2026.

ANNOTATION

Annotator's note. Since § 16-8.5-106 is similar to former § 16-8.5-112, relevant cases construing that provision have been included in the annotations to this section.

There is a statutory right to effective assistance of counsel in expedited proceedings governed by this section. People in Interest of Uwayezuk, 2023 COA 69, 537 P.3d 377.

The ineffective assistance of counsel analysis in People in Interest of A.R., 2020 CO 10, 456 P.3d 1266, applies to expedited proceedings conducted under this section. When a defendant sufficiently pleads a prima facie claim of ineffective assistance of counsel, an appellate court does not need to remand for factual findings in two circumstances: (1) when the record is sufficiently developed to decide the question of counsel's ineffective assistance, such as when the facts are not disputed so the matter may be decided as a matter of law; and (2) the court can presume prejudice if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing. People in Interest of Uwayezuk, 2023 COA 69, 537 P.3d 377.

Based on application of standards related to the involuntary administration of medication for restoration of competency established by the supreme court in Sell v. United States, 539 U.S. 166 (2003), medication may be administered to defendant to restore competency for trial.

People in Interest of Hardesty, 2014 COA 138, 410 P.3d 553 (adopting a variation of the Sell test consisting of eight factors); People in Interest of R.F., 2019 COA 110, 451 P.3d 1238 (adopting a four-part Sell test and disagreeing with the Hardesty court's framing of the Sell test as having eight parts).

In accordance with People v. Medina, 705 P.2d 961 (Colo. 1985), involuntary administration of antipsychotic medication on an emergency basis due to the welfare or safety of the defendant or those around the defendant should not be ordered unless: (1) the patient is incompetent to effectively participate in the treatment decision; (2) such treatment is necessary to prevent long-term deterioration in the patient's mental condition; (3) a less intrusive treatment is not available; and (4) the patient's need for such treatment overrides any legitimate interest of the patient in refusing treatment. People in Interest of Uwayezuk, 2023 COA 69, 537 P.3d 377.

The court can authorize a treating physician to prescribe the involuntary administration of more than one medication to treat the same condition if the physician does not have any documented history of whether the defendant has taken any of the prescribed medications in the past and therefore does not know whether a particular medication would be effective, and the physician provides an explanation of the physician's plan for administering the alternative medications. People in Interest of Ferguson, 2025 COA 82, 580 P.3d 1183.

Clear and convincing evidence that the defendant's personal preference to refuse medication because of potential side effects had to yield to the state's legitimate interest in protecting his health, as well as protecting the staff and others in custody at the jail where the defendant's mental health disorder was "severe", and his prognosis without treatment was "poor" and unlikely to improve without the involuntary administration of medication. The defendant's doctor testified that studies have shown that the quicker medication could be administered, the more effective it was, especially during a patient's "first break", and the defendant was on a two-person handcuff alert given his erratic behavior. People in Interest of Uwayezuk, 2023 COA 69, 537 P.3d 377.

The use of "may" in subsection (4) simply authorizes the sheriff to permit jail personnel or other qualified medical professionals to involuntarily medicate a defendant subject to an involuntary medication order once the defendant is returned to the county jail. In other words, "may" in this context is a grant of authority to the county jail to continue to enforce an involuntary medication order, but not a grant of discretion to unilaterally decline to enforce such an order. People in Interest of Joergensen, 2022 COA 126, 524 P.3d 293.

The use of "may" in subsection (4) does not require or even permit a mental health court to consider whether a particular county jail is able or willing to effectuate a Sell order when deciding whether the Sell factors are satisfied,

including whether a defendant is likely to maintain their competency until being brought to trial. People in Interest of Joergensen, 2022 COA 126, 524 P.3d 293.

A Sell order may subject a defendant to involuntary medication to maintain their competency until such time as the trial is completed. It does not require proof that a prescribed medication would render a defendant competent to stand trial and that the defendant's competency would be maintained until the trial actually occurs. People in Interest of Joergensen, 2022 COA 126, 524 P.3d 293.

16-8.5-107. Use of defendant's statements.

(1) Except as otherwise provided in this section, evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a competency evaluation or involuntary medication proceeding is not admissible against the defendant on the issues raised by a plea of not guilty, or, if the offense occurred before July 1, 1995, a plea of not guilty by reason of impaired mental condition. The evidence may be admissible at trial to rebut evidence introduced by the defendant of the defendant's mental condition to show the defendant's incapacity to form a culpable mental state; and, in that case, the evidence may only be considered by the trier of fact as bearing upon the question of capacity to form a culpable mental state, and the jury shall be so instructed at the request of either party.

(2) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a competency evaluation or involuntary medication proceeding is admissible at any sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102 only to prove the existence or absence of any mitigating factor.

(3) If the defendant testifies on the defendant's own behalf upon the trial of the issues raised by the plea of not guilty or, for offenses that occurred before July 1, 1995, a plea of not guilty by reason of impaired mental condition, or at a sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102, this section does not bar any evidence used to impeach or rebut the defendant's testimony.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 692, § 1, effective May 21.

Editor's note: (1) This section was relocated to § 16-8.5-111 (5) in 2026.

(2) This section is similar to former § 16-8.5-108 (1) as it existed prior to 2026.

16-8.5-108. General hearing procedures and evidence.

(1) (a) A party must request a competency hearing, restorability hearing, or restoration hearing within fourteen days after receiving the initial or updated court-ordered competency evaluation report; except that, if a party requests a second evaluation pursuant to section 16-8.5-111, a party must request the competency hearing, restorability hearing, or restoration hearing within fourteen days after receiving the second evaluation report.

(b) (I) A request for a competency hearing is governed by section 16-8.5-109.

(II) A request for a restorability hearing is governed by section 16-8.5-113.

(III) A request for a restoration hearing is governed by section 16-8.5-114.

(IV) A request for a combined restorability and restoration hearing is governed by sections 16-8.5-113 and 16-8.5-114.

(c) The court shall give the nonmoving party an opportunity to object and shall grant or deny the request for a competency hearing, restorability hearing, or restoration hearing in accordance with the applicable governing statutes within fourteen days after the request.

(d) The competency hearing, restorability hearing, or restoration hearing must be held within thirty-five days after the court's order granting the request, unless the time is extended by the court after a finding of good cause.

(2) (a) At a competency hearing, restorability hearing, or restoration hearing, witnesses not specially trained in psychiatry or psychology and not testifying as expert witnesses may testify as to their observation of the defendant's actions and conduct and as to conversations that they had with the defendant bearing upon the defendant's mental condition. Any witnesses, as part of their testimony, must be permitted to give opinions or conclusions concerning the competency of the defendant.

(b) The court may examine or cross-examine witnesses called by the defendant or prosecuting attorney and may summon and examine witnesses on the court's own motion.

(3) At a competency hearing, restorability hearing, or restoration hearing, the defendant and the prosecuting attorney are entitled:

(a) To be present in person;

(b) To examine any reports of the competency evaluation or other matter to be considered by the court as bearing upon the determination;

(c) To introduce evidence, summon witnesses, cross-examine opposing witnesses or witnesses called by the court; and

(d) To make opening and closing statements and arguments.

(4) At a competency hearing, restorability hearing, or restoration hearing, competency evaluators and other experts may testify as to the conclusions reached from their examination of hospital records, laboratory reports, X rays, electroencephalograms, and psychological test results if the material that the competency evaluators or experts examined in reaching their conclusions is produced at the time of the hearing. This section does not prevent the parties from obtaining the information authorized pursuant to section 16-8.5-104 prior to the hearing.

(5) Evidence of any determination as to the defendant's competency, restorability, or restoration is not admissible on the issues raised by a plea of not guilty, not guilty by reason of insanity, or, for offenses that occurred before July 1, 1995, the affirmative defense of impaired mental condition.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 693, § 1, effective May 21.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 2026. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (1) was relocated to § 16-8.5-107 in 2026.

(3) Subsection (2) was relocated to § 16-8.5-108 (4) in 2026.

16-8.5-109. Competency hearing - procedure after determination of competency or incompetency - mandatory dismissal - refile of charges.

(1) **Competency hearing.**

(a) If a party makes a timely request for a competency hearing pursuant to section 16-8.5-108, the court shall grant the request for a competency hearing.

(b) At a competency hearing, the party asserting the incompetency of the defendant has the burden of submitting evidence and the burden of proof by a preponderance of the evidence.

(2) **Competent to proceed.** If the final determination made pursuant to section 16-8.5-103 is that the defendant is competent to proceed, the court shall order that the suspended proceeding continue or, if a mistrial was declared, shall reset the case for trial at the earliest possible date.

(3) **Referral to wraparound care program or restoration services.** If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed and the defendant is eligible for referral to the bridges wraparound care program pursuant to article 8.6 of this title 16, the court may ask the parties whether the defendant should be referred for participation in the program. With the agreement of the parties, the court may delay ordering restoration services for the defendant to allow a bridges wraparound care coordinator to conduct an initial intake of the defendant pursuant to section 16-8.6-108 to determine whether the bridges wraparound care program is appropriate for the defendant, or, except as provided in subsection (4) of this section, the court may order restoration services pursuant to section 16-8.5-110.

(4) **Mandatory dismissal of certain charges after finding of incompetency.** The court shall dismiss the charges against the defendant if the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed and if a defendant's highest charged offense is a class 2 misdemeanor; a petty offense; a drug misdemeanor; a traffic infraction; a misdemeanor traffic offense; an offense that constitutes an unclassified misdemeanor without specification pursuant to section 18-1.3-504; or an offense that constitutes a denominated misdemeanor and no penalty is fixed in statute pursuant to section 18-1.3-505, but not a misdemeanor pursuant to part 13 of article 4 of title 42 or any offense charged pursuant to section 42-4-1402 (2)(c).

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 694, § 1, effective May 21.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 2026. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (1) was relocated to § 16-8.5-102 (3) in 2026.

(3) Subsection (2) was relocated to § 16-8.5-108 (3) in 2026.

(4) Subsection (3) was relocated to § 16-8.5-108 (2)(b) in 2026.

ANNOTATION

Annotator's note. Since § 16-8.5-109 is similar to § 16-8.5-111 as it existed prior to its 2024 repeal and reenactment and to repealed § 16-8-112, relevant cases construing those provisions have been included in the annotations to this section.

Purpose of section. This section considers the interests of both society and the individual accused and strikes a fair balance. A person who is found to be incompetent is treated and confined only to the extent necessary for the protection of society. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Commitment does not deny defendant due process. The fact that the defendant may be committed to an institution for an indefinite period of time, before trial and pending the regaining of competency, affords and does not deny the defendant due process. Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970).

A finding of incompetence to stand trial only results in an abatement of the criminal proceedings. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Court retains jurisdiction during confinement. During confinement the court which commits the accused retains jurisdiction to oversee his commitment and to protect his constitutional rights and should do so. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

And it is the trial judge's duty to make periodic checks to determine the status and condition of an incompetent who has criminal charges pending against him under any valid statute and who has been committed after a finding of incompetence to stand trial. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

During commitment, there can be no final judgment subject to appeal. Where defendant was committed following a determination that he became incompetent subsequent to alleged offense, and the issue raised by a plea of not guilty remains unresolved until defendant is determined to be able to stand trial, there can be no final judgment from which an appeal can be taken, as the litigation has not yet been terminated on its merits. Rupert v. People, 156 Colo. 277, 398 P.2d 434 (1965).

Section does not preclude the release on bail of a person who is determined to be incompetent and charged with a violent crime. People v. White, 819 P.2d 1096 (Colo. App. 1991).

The statute does not mandate that a restored defendant be returned to the county jail. People in Interest of Joergensen, 2022 COA 126, 524 P.3d 293.

The court of appeals can order a limited remand to the district court for restoration proceedings pursuant to this section for future determination of motions to dismiss counsel and dismiss the appeal. People v. Liggett, 2018 COA 94M, 490 P.3d 405.

Applied in People v. Chavez, 629 P.2d 1040 (Colo. 1981).

16-8.5-110. Restoration services - inpatient and outpatient.

(1) **Order for restoration services.** If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed, unless the court finds after a restorability hearing held pursuant to section 16-8.5-113 that the defendant is unrestorable, the court has the following requirements and options:

(a) If the defendant is out of custody or will be released soon, the court shall order restoration services take place on an outpatient basis, unless the recommendation from CDHS is that inpatient restoration services are clinically appropriate, and:

(I) The court shall order that the defendant participate in restoration services as a condition of any bond;

(II) The court may appoint a bridges court liaison hired or contracted pursuant to article 95 of title 13 or may order that the defendant cooperate with pretrial services, if available, and the court may order pretrial services or a bridges court liaison, or both, to work with the defendant, CDHS, and the restoration services provider under contract with CDHS to assist in securing appropriate support and care management services for the defendant, which may include housing resources; and

(III) The court shall conduct a nonappearance review fourteen days after the defendant's release from custody to ensure the defendant has been released. If the defendant is not released by the date of the nonappearance review, the court shall set a hearing to determine whether the defendant will be released or to enter an order pursuant to subsection (1)(c) of this section.

(b) If the defendant is in-custody on a class 1 misdemeanor, a misdemeanor described in part 13 of article 4 of title 42, or an offense charged pursuant to section 42-4-1402 (2)(c), the court shall set a hearing on bond within seven days after the court's final determination that the defendant is incompetent to proceed. At the bond hearing, there is a presumption that the court order a personal recognizance bond and enter an order for restoration services pursuant to subsection (1)(a) of this section. In order to deny the defendant a personal recognizance bond and enter an order to commit the defendant for inpatient restoration services pursuant to subsection (1)(c) of this section, the court must make findings of fact that extraordinary circumstances exist to overcome the presumption of release by clear and convincing evidence. If the court denies a personal recognizance bond, the court shall notify CDHS of the specific findings the court made to deny the personal recognizance bond. The judicial department shall develop a form for a court to use to notify CDHS of the court's findings that are required by this subsection (1)(b).

(c) If the court finds that the defendant is not eligible for release from custody or not able to post the monetary condition of bond, or the court approves a recommendation from CDHS that inpatient restoration services are clinically appropriate, the court shall commit the defendant to the custody of CDHS and order inpatient restoration services.

(2) **Outpatient restoration services.**

(a) If the defendant is out of custody and the court has ordered outpatient restoration services pursuant to subsection (1)(a) of this section:

(I) Pursuant to section 27-60-105, CDHS is the entity responsible for the coordination of all competency restoration services, including the oversight of restoration education; and

(II) The restoration services provider under contract with CDHS shall notify the court, CDHS, the bridges court liaison, and any other designated agency within twenty-one days after the court's order if restoration services have not started and include a description of the efforts that have been made to engage the defendant in services.

(b) If, in the process of coordinating outpatient restoration services for a defendant, CDHS determines that the defendant meets the criteria for the initiation of a civil proceeding, CDHS may request, in writing, that the court order the initiation of a civil proceeding pursuant to section 16-8.5-117.

(c) If CDHS determines that it is unable, within a reasonable time, to provide restoration services on an outpatient basis, CDHS shall notify the court within fourteen days after its determination, at which point the court shall review the case and determine what interim mental health services CDHS or a community provider can provide to the defendant. If a bridges court liaison is appointed, CDHS shall report to the bridges court liaison every twenty-eight days concerning the availability of restoration services on an outpatient basis to the defendant.

(3) **Inpatient restoration services.**

(a) If the court commits the defendant to the custody of CDHS and orders inpatient restoration services:

(I) The executive director shall designate a state facility or facilities where the defendant is held for care and psychiatric treatment and receives restoration services, and the executive director may effectuate the defendant's transfer from one facility to another if, in the opinion of the executive director, doing so is in the best interest of proper care, custody, and treatment of the defendant or the protection of the public or the personnel of the facilities in question. CDHS shall provide restoration services at an appropriate inpatient program. CDHS shall notify the court, the bridges court liaison, the prosecuting attorney, and the defense attorney when the defendant is placed or moved to a different program.

(II) CDHS shall admit tier 1 defendants for inpatient restoration services within seven days after receipt of the court order and collateral materials;

(III) CDHS shall admit tier 2 defendants for inpatient restoration services within twenty-eight days after receipt of the court order and collateral materials and shall advise the court and the bridges court liaison, if applicable, every twenty-eight days after the initial twenty-eight-day

period regarding the availability of an inpatient bed and when admission will be offered to the defendant.

(b) If a defendant is receiving inpatient restoration services and the executive director concludes that:

(I) A less-restrictive facility would be more clinically appropriate, the executive director, with proper notice to the court and consistent with the provisions of part 3 of article 4.1 of title 24, may move the defendant to a less-restrictive facility if, in the executive director's opinion, the defendant is not yet restored to competency but could be properly restored to competency in a less-restrictive facility. If the defendant is not released from custody, the court shall order CDHS to provide inpatient restoration services at a location determined by CDHS.

(II) Outpatient restoration services would be more clinically appropriate, CDHS shall notify the court; request that the defendant be considered for release on a nonmonetary bond if the defendant is not currently released on bond; and provide information to the court regarding the appropriate outpatient restoration services, developed in conjunction with the bridges court liaison, when assigned, and the reasons why the defendant could be properly restored to competency on an outpatient basis.

(c) If the defendant posts bond or the court orders outpatient restoration services in lieu of continued inpatient restoration services, or if CDHS believes that the defendant is restored to competency and the defendant is to be released to the community rather than jail upon discharge, CDHS shall:

(I) Assist the defendant with any necessary transportation;

(II) Provide the necessary case and medication information for the defendant to the bridges court liaison and the community agency that will provide continued restoration, if applicable, or services;

(III) Notify the court and the bridges court liaison that the defendant was released and the defendant's community bond status; and

(IV) Coordinate with the court; pretrial services, if applicable; and the bridges court liaison to ensure the defendant receives written notice of the defendant's next court appearance and bond conditions.

(d) If the defendant is discharged from CDHS's custody after receiving inpatient restoration services and the defendant is to be returned to the custody of the county jail, CDHS shall:

(I) Notify the sheriff of the jurisdiction where the defendant is to be returned;

(II) Notify the court and the bridges court liaison that CDHS is returning the defendant to the custody of the county jail; and

(III) Work with the sheriff, the bridges court liaison, and any behavioral health providers in the county jail to ensure that the county jail has the necessary information to prevent any decompensation by the defendant while the defendant is in the county jail, which must include medication information when clinically appropriate.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 695, § 1, effective May 21.

Editor's note: (1) This section was relocated to § 16-8.5-108 (2)(a) in 2026.

(2) The provisions of this section are similar to several former provisions of § 16-8.5-111 as they existed prior to 2026. For a detailed comparison, see the comparative tables located in the back of the index.

16-8.5-111. Second evaluation.

(1) If a defendant wishes to be examined by a competency evaluator of the defendant's own choice in connection with any proceeding under this article 8.5, the court, upon timely motion, shall enter any orders necessary for the competency evaluator chosen by the defendant to be given reasonable opportunity to conduct a second evaluation.

(2) Either party has the right to request a second evaluation within fourteen days after receiving the initial or updated court-ordered competency evaluation report, and the court shall grant the request. The second evaluation report must include the competency evaluator's opinion, if applicable, regarding:

(a) Whether the defendant is competent to proceed or incompetent to proceed;

(b) Whether the defendant is restorable; and

(c) If the defendant is receiving restoration services, whether the defendant has been restored to competency.

(3) If a restoration hearing is combined with a restorability hearing, either party may request a second evaluation that addresses both restoration and restorability rather than a second evaluation for each issue.

(4) If a party requests a second evaluation, the court shall continue any pending requests for a hearing until the receipt of the second evaluation report. The competency evaluator shall complete and file the report with the court within thirty-five days after the court order allowing the second evaluation, unless the time period is extended by the court for good cause. The court

shall provide the second evaluation to CDHS and the parties. CDHS shall use the second evaluation to ensure that CDHS complies with its responsibilities, including reviewing and summarizing prior competency opinions made pursuant to section 16-8.5-105 (5)(d)(I)(A). If the court requests the second evaluation, it must be paid for by the court.

(5) The court shall pay for a second evaluation if a second evaluation is requested by an indigent defendant.

(6) Once the court receives the second evaluation report, either party has the right to request a competency hearing, restorability hearing, or restoration hearing, as applicable, pursuant to section 16-8.5-108 (1).

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 699, § 1, effective May 21; (3), (4), (5), and (6)(b) repealed, (SB 26-149), ch. 142, p. 803, § 65, effective May 21.

Editor's note: (1) Prior to its amendment with relocations in 2026, this section was similar to former § 16-8-112 as it existed prior to 2008.

(2) Subsections (1), (1.5), and (1.6) were relocated to § 16-8.5-109 (2), (3), and (4), respectively, in 2026.

(3) Subsections (2), (7), and (8) were relocated to § 16-8.5-110 (1), (2), and (3), respectively, in 2026.

(4) Subsections (3), (4), (5), and (6)(b) were repealed by section 65 of SB 26-149, effective May 21, 2026. However, those repeals were superseded by the amendment of this entire article 8.5 by section 1 of SB 26-149, effective May 21, 2026.

(5) Subsection (6)(a) was relocated to § 16-8.5-113 (5) in 2026.

(6) The provisions of this section are similar to provisions of several former sections as they existed prior to 2026. For a detailed comparison, see the comparative tables located in the back of the index.

(7) Subsection (9) was relocated to § 16-8.5-114 (5) in 2026.

ANNOTATION

A juvenile is not entitled to a second competency evaluation at state expense. The provisions of the adult competency statutes do not apply to juvenile delinquency proceedings. People in Interest of W.P., 2013

CO 11, 295 P.3d 514. (decided under former § 16-8.5-106).

16-8.5-112. Review hearing to determine competency - report.

(1) (a) Within ninety-one days after the entry of the court's order of commitment or order to receive outpatient restoration services, the court shall set a hearing to review the case of a defendant who has been determined to be incompetent to proceed with regard to whether the defendant is restorable or unrestorable and with regard to the justification for certification, confinement, or continued restoration services. The review hearing may be held in conjunction with a restorability hearing held pursuant to section 16-8.5-113 or a restoration hearing held pursuant to section 16-8.5-114. However, if at the review hearing there is a request by the defendant for a restoration hearing pursuant to section 16-8.5-114, the court shall set the restoration hearing within thirty-five days after the request pursuant to the provisions of section 16-8.5-114.

(b) At least ten days before each review hearing, the competency evaluator shall provide the court with a report that includes:

(I) The competency evaluator's opinion regarding the defendant's competency;

(II) If the competency evaluator opines that the defendant remains incompetent, whether the defendant is restorable or unrestorable;

(III) If the competency evaluator opines that the defendant is restorable, whether there is a substantial probability that the defendant will be restored to competency within the time periods established in section 16-8.5-116;

(IV) Whether the defendant meets the criteria for an emergency mental health hold pursuant to section 27-65-106;

(V) Whether the defendant meets the criteria for certification for short-term treatment pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5 and, if the defendant meets the criteria, whether the competency evaluator believes the defendant could be treated on an outpatient basis pursuant to section 27-65-111. If the defendant is incarcerated or is an inpatient in a medical facility and has a pending criminal charge, in assessing whether the defendant is a danger to the defendant's self, a danger to others, or gravely disabled, as those terms are defined in section 27-65-102, the court, competency evaluator, or professional person, as defined in section 27-65-102, shall not rely on the fact that the defendant is incarcerated or is an inpatient in a medical facility to establish that the defendant is not a danger to the defendant's self, a danger to others, or gravely disabled. If it is the competency evaluator's opinion that the defendant meets criteria for certification for short-term treatment pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5, the competency evaluator is not required to request a petition for certification for short-term treatment of the defendant.

(VI) Whether the defendant has a developmental disability, and if the defendant does have a developmental disability, whether the defendant also has a mental health disorder, as defined in section 27-65-102, and whether the defendant may be eligible for any additional services pursuant to article 10 of title 25.5 or article 10.5 of title 27, or may meet the criteria for a civil proceeding for imposition of a legal disability or removal of a legal right pursuant to section 25.5-10-216. If the competency evaluator's opinion is that the defendant may meet the criteria, the competency evaluator is not required to petition the court for imposition of a legal disability or removal of a legal right.

(VII) Whether the defendant has a neurocognitive disorder, as defined in section 25.5-10-501, and, if the defendant does have a neurocognitive disorder, whether the defendant may meet the criteria for protective placement pursuant to section 25.5-10-502. If the opinion is that the defendant may meet the criteria for protective placement, the competency evaluator is not required to petition the court for protective placement.

(VIII) A description of any and all efforts made for restoration through medication, therapy, education, or other services and the outcome of those efforts in relation to restoring the defendant to competency;

(IX) If the defendant has failed to cooperate with restoration services, whether the incompetency and mental disability or developmental disability is the primary reason for the defendant's refusal or inability to cooperate with restoration services; and

(X) A summary of the observations of the defendant by the treatment staff at the facility or other location where inpatient restoration services were delivered.

(c) At least ten days before each review hearing, the CDHS treatment team shall provide to the court an additional report that summarizes:

(I) What restorative education services have been provided to the defendant and the frequency of the education services;

(II) What medication has been administered to the defendant, including voluntary or involuntary medications;

(III) What release plans have been made for the defendant after release, including a discussion of the support from the defendant's family members;

(IV) Whether or not the defendant would agree to voluntary admission to the hospital for certification pursuant to article 65 of title 27;

(V) The opinion of the treatment team on the defendant's mental health functioning and ability to function on an outpatient basis for restoration services;

(VI) If the defendant is continuing to receive inpatient restoration services, whether the defendant, based on observations of the defendant's behavior in the facility, presents a substantial

risk to the physical safety of the defendant's self, of another person, or of the community if released for community restoration services; and

(VII) Whether the defendant poses a substantial risk of serious harm to others, as defined in section 27-65-102, if:

(A) The defendant is charged with homicide pursuant to part 1 of article 3 of title 18; a crime of violence, as defined in section 18-1.3-406 (2); or a felony that constitutes unlawful sexual behavior, as defined in section 16-22-102; or

(B) The prosecution requested an opinion regarding whether the defendant poses a substantial risk of serious harm to others because the prosecution is aware of an act described in section 16-8.5-118 (6)(b)(I) that is not charged in the current case the defendant is alleged to have committed and is or was charged in a criminal case in Colorado in which competency was raised. If the prosecution requests an opinion pursuant to this subsection (1)(c)(VII)(B), the prosecution shall disclose the uncharged acts to the defendant.

(2) After the initial review hearing conducted pursuant to subsection (1)(a) of this section, the court shall review the case of the defendant every ninety-one days. At least ten days before each review, the competency evaluator shall provide the court with an updated competency evaluation report as described in subsection (1)(b) of this section and the treatment staff shall provide an updated summary of observations as described in subsection (1)(c) of this section.

(3) The court shall forward a copy of each report and summary received pursuant to subsections (1) and (2) of this section to the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113.5 for the county in which the case is pending and, when a bridges court liaison is appointed, to the bridges court liaison.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 700, § 1, effective May 21.

Editor's note: (1) This section was relocated to § 16-8.5-106 in 2026.

(2) This section is similar to former § 16-8.5-116 as it existed prior to 2026.

ANNOTATION

Annotator's note. Since § 16-8.5-112 is similar to repealed § 16-8-114.5, as it existed in 1986, a relevant case construing that provision has been included in the annotations to this section.

This section as amended in 1989 gives the district attorney the authority to initiate the termination of criminal proceedings against an incompetent defendant. The statute does not, however, give the district attorney the power to dictate whether the defendant will be released or civilly committed once the trial court determines that there is not a substantial probability that the defendant will be restored to competency in the foreseeable future. People v. Zapotocky, 869 P.2d 1234 (Colo. 1994).

Trial court incorrectly declared this statute to be an unconstitutional violation of due process where it erroneously believed that the defendant has a right to dismissal of criminal charges if it does not appear reasonably likely that he will be competent to stand trial in the future. People v. Zapotocky, 869 P.2d 1234 (Colo. 1994).

The decision to request dismissal of pending criminal charges is within the district attorney's discretion and the decision may not be controlled or limited by judicial intervention. Therefore, transferring the decision to dismiss pending criminal proceedings against incompetent defendants from the trial court to the district attorney is consistent with the traditional powers of the trial court and the prosecutor. People v. Zapotocky, 869 P.2d 1234 (Colo. 1994).

Since under the pre-1989 and post-1989 versions of subsection (2), a court cannot terminate criminal proceedings against an incompetent defendant until a finding of indefinite incompetency is made, and the trial court did not make such a finding until after the statute was amended, application of the amended statute did not violate the ex post facto clauses of the United States constitution or Colorado constitution. People v. Zapotocky, 869 P.2d 1234 (Colo. 1994).

16-8.5-113. Restorability hearing - burdens of proof - determination - dismissal.

(1) (a) The court may, upon motion of a party and upon a showing of good cause, set a restorability hearing within the time frame set forth in section 16-8.5-108 (1)(d).

(b) If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed and a competency evaluator opines that the defendant is unrestorable, and either a restorability hearing has not been held or one hundred eighty-two days have passed since the defendant began receiving restoration services after a finding of restorability, the court shall, upon motion of a party, set a restorability hearing within the time frame set forth in section 16-8.5-108 (1)(d). A restorability hearing may be combined with a restoration hearing, if appropriate.

(c) If the court receives the competency evaluator's opinion that the defendant is unrestorable prior to entering an initial order for restoration services, the court shall set a restorability hearing within thirty-five days after receiving the opinion unless the time is extended by the court after a finding of good cause.

(2) At any restorability hearing conducted pursuant to this section:

(a) The defendant has the burden of proving by a preponderance of the evidence that the defendant is unrestorable if any charge in any of the defendant's pending criminal cases in the state of Colorado include a crime subject to the "Victim Rights Act", section 24-4.1-302 (1); unlawful sexual contact, as described in section 18-3-404; or indecent exposure, as described in section 18-7-302; and

(b) The prosecution has the burden of proving by a preponderance of the evidence that the defendant is restorable if the defendant does not have a pending criminal case in the state of Colorado that includes a charge of a crime subject to the "Victim Rights Act", section 24-4.1-302 (1); unlawful sexual contact, as described in section 18-3-404; or indecent exposure, as described in section 18-7-302.

(3) When determining whether the defendant is restorable or unrestorable, the court shall consider all relevant information, including, but not limited to:

(a) Any diagnosed mental disorder or developmental disability giving rise to the defendant's incompetency, including an intellectual and developmental disability, as defined in section 25.5-10-202, or neurocognitive disorder, as defined in section 25.5-10-501, and whether the diagnosed mental disorder or developmental disability can be treated, mitigated, or managed in a way that would allow the defendant to progress toward becoming competent to proceed;

(b) The nature and severity of the defendant's incompetency and whether the defendant's level of competency can be improved through any services the court may lawfully order, including services that are in addition to restoration services;

(c) The experiences, observations, and opinions of qualified experts, including medical professionals, treatment providers, and restoration specialists;

(d) The experiences, observations, and opinions of lay persons who are familiar with the defendant, including family members, friends, associates, and any other individual with whom the defendant has had significant interactions;

(e) The defendant's medical history, criminal history, competency and restoration history, and civil commitment history;

(f) The facts and context of current and past charges against the defendant as evidenced by police reports, video or audio recordings, physical evidence, witness or victim statements, and any other reliable sources;

(g) Any relevant statements made by the defendant during the restoration process; or

(h) The defendant's level of effort and engagement, including any volitional lack of cooperation or unwillingness to participate.

(4) (a) At the conclusion of a restorability hearing set pursuant to this section:

(I) If the court finds that the defendant has not met the burden of proving the defendant is unrestorable pursuant to subsection (2)(a) of this section, the court shall find the defendant restorable and order appropriate restoration services and set a review hearing pursuant to section 16-8.5-112.

(II) If the court finds that the defendant has met the burden of proving they are unrestorable pursuant to subsection (2)(a) of this section, the court shall find the defendant unrestorable.

(III) If the court finds that the prosecution has not met the burden of proving the defendant is restorable pursuant to subsection (2)(b) of this section, the court shall find the defendant unrestorable.

(IV) If the court finds that the prosecution has met the burden of proving the defendant is restorable pursuant to subsection (2)(b) of this section, the court shall find the defendant restorable and order appropriate restoration services and set a review hearing pursuant to section 16-8.5-112.

(b) If the court finds the defendant is unrestorable pursuant to subsection (4)(a)(II) or (4)(a)(III) of this section, the court shall order the dismissal of the criminal proceedings against the defendant and stay the order and proceed in accordance with section 16-8.5-117, unless the prosecution requests a civil commitment or enhanced protective placement, in which case the court shall proceed in accordance with section 16-8.5-118.

(5) This article 8.5 does not prohibit the court from finding that the defendant is restorable based on the defendant's volitional lack of cooperation or unwillingness to participate in restoration services if the court finds that the defendant could be restorable if the defendant cooperated and participated in the restoration services.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 703, § 1, effective May 21; (3) and (5) repealed, (SB 26-149), ch. 142, p. 803, § 65, effective May 21.

Editor's note: (1) Subsections (1), (2), (4), and (6) were relocated to § 16-8.5-114 (1)(a), (2), (3), and (4), respectively, in 2026.

(2) Subsections (3) and (5) were repealed by section 65 of SB 26-149, effective May 21, 2026. However, those repeals were superseded by the amendment of this entire article 8.5 by section 1 of SB 26-149, effective May 21, 2026.

(3) Subsection (5) is similar to former § 16-8.5-111 (6)(a) as it existed prior to 2026.

16-8.5-114. Restoration hearing - burdens of proof - determination.

(1) (a) The court may, upon a motion of a party and upon a showing of good cause, set a restoration hearing within the time frame set forth in section 16-8.5-108 (1)(d). For the purposes of this subsection (1)(a), good cause includes if a defendant is approaching the maximum time permitted to restore the defendant pursuant to section 16-8.5-116. A restoration hearing may be combined with a restorability hearing, if appropriate.

(b) The court shall set a restoration hearing within the time frame set forth in section 16-8.5-108 (1)(d) upon motion of a party if:

(I) The court has ordered CDHS to provide an incompetent defendant restoration services pursuant to section 16-8.5-110 and the defendant is receiving restoration services;

(II) The court receives a competency evaluator's opinion that the defendant is competent to proceed; and

(III) A restoration hearing has not been held or one hundred eighty-two days have passed after a finding at a restoration hearing that the defendant remains incompetent to proceed and the defendant has continued to receive restoration services.

(2) Either party may request a restoration hearing or a second evaluation pursuant to section 16-8.5-111.

(3) If neither party requests a restoration hearing within the time frame set forth in section 16-8.5-108 (1)(a), the court shall enter a final determination, based on the information then available to the court, whether the defendant is competent or incompetent to proceed.

(4) At the restoration hearing, the party asserting that the defendant is competent has the burden of proof by a preponderance of the evidence and the burden of submitting evidence. At the restoration hearing, the court shall determine whether the defendant is restored to competency.

(5) When CDHS submits a report to the court that CDHS's position is that the defendant is restored to competency, the defendant may be returned to the custody of the county jail. The sheriff shall return the defendant to the custody of the county jail within seventy-two hours after receipt of CDHS's report.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 705, § 1, effective May 21.

Editor's note: (1) Subsections (1) and (2) were relocated to § 16-8.5-115 (1) and (2), respectively, in 2026.

(2) Subsection (3) was relocated to § 16-8.5-108 (5) in 2026.

(3) The provisions of this section are similar to provisions of several former sections as they existed prior to 2026. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Based on application of standards related to the involuntary administration of medication for restoration of competency established by supreme court in Sell v. United States, 539 U.S. 166 (2003), medication may be administered to defendant to restore competency for trial. People in Interest of Hardesty, 2014 COA 138, 410 P.3d 553. (decided under former law).

16-8.5-115. Procedure after restoration hearing.

(1) If a defendant is found to be restored to competency after the restoration hearing held pursuant to section 16-8.5-114, the court shall resume the criminal proceedings or order the sentence carried out. The court shall credit any time the defendant spent in confinement while committed pursuant to section 16-8.5-110 against any term of imprisonment imposed after restoration to competency.

(2) If, after the restoration hearing held pursuant to section 16-8.5-114, the court determines that the defendant remains incompetent to proceed, the court may continue or modify any orders entered at the time of the original determination of incompetency and may commit or recommit the defendant to CDHS's custody or enter any new order necessary to facilitate the defendant's restoration to competency, consistent with the requirements of section 16-8.5-110.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 706, § 1, effective May 21.

Editor's note: Subsection (1) is similar to former § 16-8.5-114 (1), and subsection (2) is similar to former § 16-8.5-114 (2), as they existed prior to 2026.

16-8.5-116. Dismissal of charges after reaching maximum time permitted to restore defendant - exceptions - rules.

(1) At a review hearing held pursuant to section 16-8.5-112 concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement if:

(a) The defendant's highest charged offense is a class 1 misdemeanor; any misdemeanor that constitutes a first offense pursuant to part 13 of article 4 of title 42; or a level 4 drug felony, and the defendant has been in CDHS's custody for restoration services or has been confined in a jail or other detention facility awaiting transport to CDHS for court-ordered restoration for an aggregate time of six months; and

(b) The court determines, based on available evidence, that the defendant remains incompetent to proceed.

(2) At a review hearing held pursuant to section 16-8.5-112 concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement if:

(a) The defendant's highest charged offense is a class 5 or class 6 felony; any misdemeanor that constitutes a second or subsequent offense pursuant to part 13 of article 4 of title 42; any offense charged pursuant to section 42-4-1402 (2)(c); or a level 3 drug felony and the defendant has been in CDHS's custody for restoration services or has been confined in a jail or other detention facility awaiting transport to CDHS for court-ordered restoration for an aggregate period of one year; and

(b) The court determines, based on available evidence, that the defendant remains incompetent to proceed.

(3) At a review hearing held pursuant to section 16-8.5-112 concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement if:

(a) The defendant's highest charged offense is a class 4 felony and the defendant has been in CDHS's custody for restoration services or has been confined in a jail or other detention facility awaiting transport to CDHS for court-ordered restoration for an aggregate period of two years; and

(b) The court determines, based on available evidence, that the defendant remains incompetent to proceed.

(4) Subsections (1), (2), and (3) of this section do not apply if the defendant is charged with a class 1, 2, or 3 felony offense; a sex offense, as defined in section 18-1.3-1003 (5); a crime of violence, as defined in section 18-1.3-406 (2); or a level 1 or level 2 drug felony.

(5) The court shall dismiss the defendant's case if:

(a) The defendant is found incompetent to proceed;

(b) The charges against the defendant have not been dismissed pursuant to this section; and

(c) The defendant's presentence confinement credit, including any time period the defendant was committed for inpatient restoration services, or confined in jail or another detention facility awaiting inpatient restoration services, exceeds the maximum sentence for the defendant's highest charged offense.

(6) If the conditions allowing the court to stay a dismissal apply, the court shall stay a dismissal ordered pursuant to this section in accordance with section 16-8.5-117 or 16-8.5-118.

(7) When the defendant is charged with an offense in municipal court and the defendant is found incompetent to proceed, or when civil proceedings are initiated pursuant to article 65 of title 27, the municipal court shall dismiss the case.

(8) If a defendant is in custody and CDHS does not comply with the time limits set forth in section 16-8.5-110, and, based upon the best available evidence, the defendant will not be admitted to an inpatient facility to begin restoration services within the time limits described in subsection (1), (2), or (3) of this section, the court may release the defendant or dismiss the case in lieu of the defendant remaining in custody on a wait list for restoration services.

(9) When a defendant is in custody and is found incompetent to proceed, at every subsequent review hearing of the defendant's case, the court shall make a finding on the record regarding the expiration of applicable time limits set forth in this section.

(10) If a defendant files a motion alleging the court is required to dismiss the case because a time limit in this section has expired, the defendant is entitled to a timely hearing and ruling on the motion.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 707, § 1, effective May 21.

Editor's note: (1) Prior to its amendment with relocations in 2026, this section was similar to former § 16-8-114.5 as it existed prior to 2008.

(2) Subsections IP(6), (6)(a), (6)(b), (6)(c), (6)(d), (7), (8), (9), (10), (11), (12), (13), (14), and (15) were relocated to § 16-8.5-116.5 in 2024.

(3) Subsection (7) was amended in HB 24-1355, effective August 7, 2024. However, those amendments were superseded by the repeal of subsection (7) by HB 24-1034, effective June 4,

2024. The amendments to subsection (7) by HB 24-1355 were similar to the amendments to § 16-8.5-116.5 (2) by HB 24-1034 where subsection (7) was relocated in 2024.

(4) Amendments to subsection (14) by HB 24-1355 were identical to the amendments to and relocated to § 16-8.5-116.5 (12) as it was amended by HB 24-1034 in 2024.

(5) This section was relocated to § 16-8.5-112 in 2026.

(6) The provisions of this section are similar to several former provisions of § 16-8.5-116.5 as they existed prior to 2026. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. Since § 16-8.5-116 is similar to § 16-8.5-116 (10) as it existed prior to its 2024 relocation with amendments, a relevant case construing that provision has been included in the annotations to this section.

A court order dismissing the charges against the defendant based on a finding that the defendant was incompetent to proceed with no probability of restoration is a final, appealable order. People v. Ong, 2021 COA 113, 499 P.3d 375.

A stay issued under subsection (10) of a dismissal order issued under subsection (4) does not extend the finality of the order for purposes of timely filing an appeal. There was nothing more for the court to do in the competency proceedings, and the stay was issued to facilitate the transfer of the case from the criminal court to civil mental health proceedings. People v. Ong, 2021 COA 113, 499 P.3d 375.

16-8.5-116.5. Restoration - time limits - dismissal of charges - exceptions - rules. (Deleted by amendment, L. 2026.)

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, § 1, effective May 21; (1), (7), (8), (9), (10), and (12) repealed, (SB 26-149), ch. 142, p. 803, § 65, effective May 21.

Editor's note: (1) Prior to their deletion by amendment in 2026, the provisions of this section were similar to several former provisions of § 16-8.5-116 as they existed prior to 2024. For a detailed comparison of this section, see HB 24-1034, L. 2024, p. 2516.

(2) Subsections (1), (7), (8), (9), (10), and (12) were repealed by section 65 of SB 26-149, effective May 21, 2026. However, those repeals were superseded by the amendment of this entire article 8.5 by section 1 of SB 26-149, effective May 21, 2026.

(3) Subsections (2), (3), (4), (5), (6), (13), (14), (15), and (16) were relocated to § 16-8.5-116 (1), (2), (3), (4), (5), (7), (8), (9), and (10), respectively, in 2026.

(4) Subsection (11) was relocated to § 16-8.5-125 in 2026.

16-8.5-117. Initiation of civil proceeding - appointment of bridges court liaison or guardian - extension - dismissal.

(1) If the court determines there is a substantial probability that the defendant will be found unrestorable pursuant to section 16-8.5-113, the defendant will reach the maximum time permitted to restore the defendant pursuant to section 16-8.5-116, or the court will order the initiation of a civil proceeding pursuant to this section, the court shall, unless the court finds there is an acceptable care coordination alternative already in place, appoint a bridges court liaison to provide services authorized in article 95 of title 13, which may include:

(a) Assisting with case planning and coordinating services for the defendant, including coordinating with governmental entities or community-based organizations that are capable of providing resources to the defendant;

(b) If the defendant does not object, facilitating psychological assessments of the defendant to help determine appropriate levels of care;

(c) Identifying and informing the court and parties of appropriate long-term level of care recommendations and placement availability;

(d) Providing the court with an individualized release plan developed in conjunction with any necessary community providers and assisting with the reintegration of the defendant into the community with appropriate services; and

(e) Coordinating, as needed, with the office of public guardianship, an appointed emergency guardian, CDHS, HCPF, or the BHA for the purpose of providing long-term continuum of care for the defendant.

(2) (a) Except when the city and county of Denver has exclusive original jurisdiction over the appointment of a guardian pursuant to section 9 (3) of article VI of the state constitution, any interested person, including the defendant's attorney, may petition the criminal court for the appointment of an emergency guardian pursuant to section 15-14-312 by filing a petition into the criminal case that satisfies the requirements of section 15-14-312.

(b) If the city and county of Denver does not have exclusive original jurisdiction over the appointment of a guardian pursuant to section 9 (3) of article VI of the state constitution, the court shall have jurisdiction over the petition and shall appoint an emergency guardian to the defendant upon satisfaction of the requirements of section 15-14-312 and this subsection (2).

(c) At the next scheduled hearing in the presence of the defendant following the filing of a petition pursuant to section 15-14-312, the court shall notify the defendant that a petition for emergency guardianship has been filed into the case pursuant to section 15-14-312 and advise the defendant of the following:

(I) The authority that would be granted to the emergency guardian if the petition is granted;

(II) The defendant's right to contest the appointment of an emergency guardian at a hearing; and

(III) The defendant's right to a free attorney if the defendant chooses to contest the appointment of an emergency guardian.

(d) Notwithstanding section 15-14-312, the court:

(I) Shall not appoint an attorney to represent the defendant for the purpose of contesting the appointment of an emergency guardian unless the defendant wishes to contest the appointment and has not retained an attorney for that purpose; and

(II) Is not required to provide the defendant further notice of the petition beyond what is required in this subsection (2).

(e) The court shall not appoint the office of state public defender or the office of alternate defense counsel to represent a criminal defendant related to the appointment of an emergency guardian or a matter related to guardianship.

(3) The court may enter lawful orders requested by the defendant, the appointed bridges court liaison, or the appointed emergency guardian to assist or facilitate the work of the bridges court liaison or the appointed emergency guardian.

(4) (a) If the court has made a final determination that the defendant is incompetent to proceed, the court may order the county attorney to initiate a civil proceeding against the defendant while the criminal proceedings against the defendant are ongoing if:

(I) A competency evaluator or a professional person, as defined in section 27-65-102, or an intervening professional, as defined in section 27-65-102, who is acting within the scope of their authority and who has an established treatment relationship with the defendant, opines that the defendant meets the criteria for certification for short-term treatment or long-term care and treatment pursuant to section 27-65-108.3, for protective placement pursuant to section 25.5-10-502, or for imposition of a legal disability or removal of a legal right pursuant to section 25.5-10-216; and

(II) One of the following individuals requests the court to order the initiation of a civil proceeding:

(A) The district attorney;

(B) The county attorney;

(C) A guardian, if one is appointed;

(D) The professional person or intervening professional who opined the defendant meets the criteria for a civil proceeding if the professional person's or intervening professional's opinion is not the result of work performed as part of employment or a contract with the BHA or with CDHS; or

(E) A representative designated by the BHA or with CDHS to make a request.

(b) Notwithstanding subsection (4)(a)(II) of this section, if any of the defendant's charges include a felony, the court may order the county attorney to initiate a civil proceeding only if the district attorney consents to the initiation of a civil proceeding.

(5) (a) (I) During the pendency of the criminal case, the defendant, the defendant's attorney in the criminal case, and the prosecuting attorney in the criminal case may access the following information and records that relate to a civil proceeding initiated against the defendant:

(A) Whether a civil proceeding is pending against the defendant and, if so, the date and time of the civil proceeding and the final disposition of the civil proceeding, regardless of whether the civil proceeding is confidential or closed to the prosecuting attorney or the defendant's attorney in the criminal case; and

(B) Whether the court previously ordered certification for short-term treatment pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5, certification for long-term care and treatment pursuant to section 27-65-110, protective placement pursuant to section 25.5-10-502, or imposition of a legal disability or removal of a legal right pursuant to section 25.5-10-216.

(II) Any information accessed pursuant to subsection (5)(a)(I) of this section is confidential unless the disclosure is otherwise authorized by law.

(b) If a petition for a civil proceeding is filed against the defendant as a result of the court's order pursuant to subsection (4)(a) of this section, the petitioner shall file a notice in the defendant's criminal case.

(6) The court shall order the county attorney to initiate a civil proceeding against the defendant and stay the order dismissing the defendant's criminal case for thirty-five days if:

(a) The court orders dismissal of the case pursuant to section 16-8.5-109 (4), 16-8.5-113 (4)(b), or 16-8.5-116, or, if the defendant is incompetent, the district attorney voluntarily moves

to dismiss the case and requests the county attorney or the appointed emergency guardian to initiate a civil proceeding;

(b) A competency evaluator or a professional person, as defined in section 27-65-102, or an intervening professional, as defined in section 27-65-102, who is acting within the scope of their authority and who has an established treatment relationship with the defendant opines that the defendant meets the criteria for certification for short-term treatment or long-term care and treatment pursuant to section 27-65-108.3, for protective placement pursuant to section 25.5-10-502, or imposition of a legal disability or removal of a legal right pursuant to section 25.5-10-216; and

(c) One of the following individuals requests the court to order the initiation of a civil proceeding:

(I) The district attorney;

(II) The county attorney;

(III) The appointed emergency guardian;

(IV) The professional person or intervening professional who opined pursuant to subsection (4)(a)(I) of this section that the defendant meets the criteria for a civil proceeding if the professional person's or intervening professional's opinion is not the result of work performed as part of employment or a contract with the BHA or with CDHS; or

(V) A representative designated by the BHA or with CDHS to make a request.

(7) Notwithstanding subsections (4) and (6) of this section, if an appointed emergency guardian believes in their professional judgment that a civil proceeding should be initiated, the court shall allow the emergency guardian to initiate the civil proceeding in lieu of ordering the county attorney to initiate the civil proceeding.

(8) (a) The court shall grant an unlimited number of thirty-five-day extensions to stay the order dismissing the defendant's case if the defendant consents to the extension.

(b) If the defendant does not consent to an extension to stay the order, the court shall grant no more than four additional extensions, so long as the total extensions do not exceed one hundred seventy-five days, if:

(I) The prosecuting attorney requests an extension, regardless of whether the defendant consents to the extension;

(II) The court finds good cause; and

(III) The defendant is charged with an act that constitutes homicide pursuant to part 1 of article 3 of title 18; a crime of violence, as defined in section 18-1.3-406 (2); or a felony that constitutes unlawful sexual behavior, as defined in section 16-22-102.

(c) If the defendant does not consent to an extension to stay the order, the court shall grant no more than one additional extension, so long as the extension does not exceed seventy days, if:

(I) The prosecuting attorney requests an extension, regardless of whether the defendant consents to the extension;

(II) The court finds good cause; and

(III) The defendant is not charged with a crime of violence, as defined in section 18-1.3-406 (2), or a felony that constitutes unlawful sexual behavior, as defined in section 16-22-102.

(d) For the purpose of this subsection (8), good cause does not include refusal or failure to timely file a petition for a civil proceeding pursuant to subsection (4) of this section.

(e) An extension granted pursuant to subsection (8)(b) or (8)(c) of this section is in addition to the initial stay authorized pursuant to subsection (6)(a) of this section.

(f) After a stay of dismissal ends pursuant to this subsection (8), the court shall dismiss the defendant's criminal case unless the stay remains in effect pursuant to section 16-8.5-118. After the defendant's case is dismissed, the court shall notify CDHS of the dismissal, in writing, and the reason for the dismissal.

(9) Prior to ordering the county attorney to initiate a civil proceeding pursuant to subsection (4) or (6) of this section, the court shall consider any objections from the defendant.

(10) If the court orders the county attorney to initiate a civil proceeding pursuant to subsection (4) or (6) of this section, the court shall serve the county attorney with a written order that:

(a) States the factual and legal basis for the order;

(b) Sets a deadline for the county attorney to initiate a civil proceeding no later than twenty-one days after the court's order;

(c) Identifies the specific civil proceedings the court intends the county attorney to initiate; and

(d) Includes any orders the court issued pursuant to this section.

(11) The county attorney or the appointed emergency guardian may object to the order to initiate a civil proceeding within seven days after receiving the court order served pursuant to subsection (10) of this section and may request a hearing. If the county attorney or the appointed emergency guardian files an objection, the court shall set a hearing forthwith and rule on the county attorney's objection by either vacating, modifying, or affirming the court's order to initiate a civil proceeding.

(12) If the court orders the county attorney to initiate a civil proceeding against the defendant:

(a) The court may, upon the court's own motion, forgo an order for restoration services and dismiss the charges against the defendant without prejudice if the defendant's highest charged offense is a misdemeanor that is not subject to dismissal pursuant to section 16-8.5-109 (4).

(b) The district attorney and CDHS shall transmit all necessary information to the county attorney or the appointed emergency guardian, including the defendant's medical records, competency evaluations, materials used during the competency process, and restoration records.

(13) If the court orders dismissal of the case pursuant to section 16-8.5-109 (4), 16-8.5-113 (4)(b), or 16-8.5-116; the court does not order the county attorney to initiate a civil proceeding; and the case is not stayed pursuant to section 16-8.5-118, the court shall dismiss the case.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 709, § 1, effective May 21.

Editor's note: This section was relocated to § 16-8.5-120 in 2026.

16-8.5-118. Civil commitment and enhanced protective placement for incompetent and unrestorable defendants - report - repeal.

(1) (a) If the defendant is unrestorable pursuant to section 16-8.5-113 or the defendant has reached the maximum time permitted to restore the defendant pursuant to section 16-8.5-116, the prosecution may notify the court that the prosecution seeks civil commitment or enhanced protective placement of the defendant pursuant to this section.

(b) If the prosecution verbally notifies the court pursuant to subsection (1)(a) of this section, the court shall order the prosecution to file written notice within seven days after the verbal notification and provide the notice to the parties, CDHS, and the county attorney. The notice must include the acts upon which the prosecution intends to rely upon at trial that the prosecution alleges satisfy subsection (6)(b) of this section. The prosecution shall not allege acts for which the defendant has been acquitted or convicted.

(c) Upon the prosecution providing written notice to the court pursuant to subsection (1)(b) of this section, the court shall:

(I) Stay the order dismissing the defendant's criminal case;

(II) Set a trial within ninety-one days after the date the written notice was filed or, with both parties' consent, any date agreeable to the parties; and

(III) Order CDHS to identify an appropriate provider and placement for the defendant in the event a civil commitment or an enhanced protective placement is granted and to keep the court informed in writing of available placement options.

(2) At any time following the prosecution's written notice provided pursuant to subsection (1)(b) of this section and upon request of the defendant, the bridges court liaison, or CDHS, the court may appoint an emergency guardian pursuant to section 16-8.5-117 (2).

(3) The court may continue the trial for good cause shown; except that the court shall commence the trial within one hundred eighty-two days after the date the prosecution gives notice pursuant to subsection (1) of this section and conclude the trial within a reasonable time. Delays attributable to the defendant, including a request for a continuance of the trial, must be excluded from the time limits set forth in this subsection (3). If the trial is not commenced within the time limits set forth in this subsection (3), the court shall end the stay and dismiss the case against the defendant if the defendant filed a motion to dismiss prior to the commencement of the trial. If the defendant failed to file a motion to dismiss prior to commencement of the trial, the failure to file a motion to dismiss is a waiver of the defendant's rights pursuant to this subsection (3).

(4) (a) The trial must be civil in nature but conducted in accordance with the Colorado rules of evidence. A district court judge or, with the consent of both parties, a county court judge or a magistrate assigned by the chief judge of the judicial district shall serve as the finder of fact.

(b) (I) Upon setting the trial, the court shall order, in writing, the exchange of relevant discovery for the purpose of ensuring a fair and expeditious trial for both parties, including, at a minimum, the timely disclosure of the witnesses and evidence the parties intend to rely upon at trial.

(II) The court may order the parties to comply with relevant provisions of rule 16 of the Colorado rules of criminal procedure, but only to the extent reasonable for the civil trial and in furtherance of the limited purpose of this section.

(c) The parties may issue subpoenas pursuant to rule 17 of the Colorado rules of criminal procedure to compel the attendance of witnesses at trial.

(5) (a) The defendant may request to stipulate that the court order civil commitment or enhanced protective placement rather than contesting the matter at a trial. The court shall allow the defendant to stipulate to the court ordering a civil commitment or enhanced protective placement only if:

(I) The court confirms the defendant has been fully advised of the consequences and the rights the defendant is waiving, including the right to a court trial;

(II) The stipulation is in writing and stated on the record at a hearing at which the defendant appears, with the consent of any guardian that has been appointed;

(III) The court finds the defendant understands the stipulation and that the stipulation is voluntary despite the defendant being incompetent to proceed; and

(IV) The parties establish a factual basis.

(b) Any stipulation or admission made as part of the stipulation to impose a civil commitment or enhanced protective placement is not admissible in any future criminal prosecution to prove any act alleged in the written notice seeking the civil commitment or enhanced protective placement.

(6) At trial, the prosecution shall prove by clear and convincing evidence that:

(a) The defendant has a mental disability or developmental disability;

(b) (I) The defendant committed an act that, in the absence of any mental disability or developmental disability, would constitute:

(A) Homicide pursuant to part 1 of article 3 of title 18;

(B) A crime of violence, as defined in section 18-1.3-406 (2); or

(C) A felony that constitutes unlawful sexual behavior, as defined in section 16-22-102; and

(II) The act described in subsection (6)(b)(I) of this section that the defendant is alleged to have committed is or was charged in a criminal case in Colorado in which competency was raised; and

(c) The defendant poses a substantial risk of serious harm to others.

(7) (a) When determining whether the prosecution has met its burden pursuant to subsection (6)(b) of this section:

(I) The defendant is not permitted to raise, and the court shall not consider, a defense based on a mental disability or developmental disability, including a mental disease or defect, as defined in section 16-8-102, including, but not limited to, a defense raised pursuant to article 8 of title 16 or any defense that is an element-negating traverse based on a mental disease or defect;

(II) The defendant is not permitted to raise, and the court shall not consider, a defense of intoxication, as defined in section 18-1-804, except for intoxication that is not self-induced pursuant to section 18-1-804 (3); and

(III) The defendant is permitted to raise other defenses that are not based on a mental disability or developmental disability, including affirmative defenses, except as provided in this subsection (7).

(b) When determining whether to permit a defendant to raise a defense pursuant to this subsection (7), the court shall consider the need to ensure fairness and due process to both parties without frustrating the intended functioning and limited purpose of the civil proceeding.

(c) The prosecution shall not allege, and the court shall not consider, an act or series of acts for which the defendant was acquitted or convicted as the qualifying acts satisfying the criteria listed in subsection (6)(b) of this section, but the court may admit evidence of an act or a series of acts for which the defendant was acquitted or convicted if otherwise admissible pursuant to the Colorado rules of evidence and relevant to the criteria listed in subsection (6)(a) or (6)(c) of this section.

(d) (I) Prior to trial, the court shall find that the prosecution has met the requirements in subsection (6)(b)(II) of this section if an act alleged to satisfy the requirement of subsection (6)(b)(I) of this section is:

(A) Charged in the current case; or

(B) Charged in another pending case in the same jurisdiction and competency was raised in the case.

(II) Prior to trial, the court may find that the prosecution has met the requirements in subsection (6)(b)(II) of this section if:

(A) Without admitting to committing any acts, the defendant stipulates the defendant was charged with an act that meets the requirements of subsection (6)(b)(II) of this section; or

(B) The prosecution files with the court certified court records from another criminal case, current or dismissed, that demonstrate by clear and convincing evidence that the requirements of subsection (6)(b)(II) of this section are satisfied.

(8) (a) Prior to trial, the court shall require the defendant to state whether the defendant contests that the defendant has a mental disability or developmental disability.

(b) If the defendant does not contest that the defendant has a mental disability or developmental disability, the court shall treat this fact as proven and shall not require the prosecution to produce any evidence to prove the fact at trial.

(c) (I) If the defendant contests that the defendant has a mental disability or developmental disability, the court shall review the record and determine if the defendant or defense counsel raised the issue of the defendant being incompetent or failed to object to a finding that the defendant is incompetent.

(II) If the court finds the defendant or defense counsel raised the issue of the defendant being incompetent or failed to object to a finding that the defendant is incompetent, the court shall find the defendant has previously stipulated that the defendant has a mental disability or developmental disability. If the court makes a finding, the court shall find the defendant has

stipulated that the defendant has a mental disability or developmental disability and find in favor of the prosecution at trial with regard to subsection (6)(a) of this section.

(III) If the court finds that the prosecution or court raised the issue of competency over the defendant's objection and the defendant consistently maintained an objection by arguing the defendant is competent to proceed, the prosecution has the burden to prove by clear and convincing evidence that the defendant has a mental disability or developmental disability pursuant to subsection (6)(a) of this section.

(d) At trial, the court:

(I) Shall admit any competency reports and any transcripts of prior competency or restorability hearings so long as the competency evaluator who completed the report is available for cross-examination;

(II) May take judicial notice of any prior finding that the defendant is incompetent to proceed and the standard of proof to which the prior finding was made; and

(III) Subject to constitutional limitations and the Colorado rules of evidence, shall allow admission of any evidence from prior court proceedings that bear on the question of whether the defendant has a mental disability or developmental disability.

(9) At trial, when determining whether the defendant poses a substantial risk of serious harm to others, if the defendant is in custody or at the state hospital, the court shall assess the defendant as if the defendant were in the community. The court shall not find the defendant does not pose a substantial risk of serious harm to others merely because the defendant is in custody or at the state hospital.

(10) If the court finds that the prosecution did not meet one or more of the requirements described in subsection (6) of this section, the court shall deny the prosecution's request to civilly commit or order the enhanced protective placement of the defendant and shall dismiss the defendant's case; except that the court may consider whether to order other civil proceedings pursuant to section 16-8.5-117.

(11) (a) If the court finds that the prosecution met the requirements described in subsection (6) of this section, the court shall:

(I) Order the civil commitment or enhanced protective placement of the defendant in accordance with subsection (12) of this section;

(II) Place the defendant and issue any related orders pursuant to subsection (13) of this section; and

(III) Transfer jurisdiction of the civil commitment or enhanced protective placement to an appropriate civil court with jurisdiction and dismiss the case in accordance with subsection (14) of this section.

(b) The court has seventy days to place the defendant and transfer jurisdiction to the appropriate civil court; except that the court may extend the time limit with the consent of the defendant. The court shall order the placement and transfer jurisdiction as soon as practicable.

(12) (a) If the court finds that the prosecution met the requirements described in subsection (6) of this section or if the court accepts the defendant's stipulation to civil commitment or enhanced protective placement, the court shall make a finding of the defendant's primary diagnosis that constitutes the mental disability or developmental disability. The court shall order the defendant civilly committed to the legal custody of CDHS and supervised pursuant to section 27-65-201, unless the defendant's primary diagnosis is an intellectual and developmental disability or a neurocognitive disorder, as those terms are defined in section 25.5-10-501, in which case, the court shall order an enhanced protective placement and legal custody of the defendant to the department of health care policy and financing and supervised pursuant to section 25.5-10-507. At any time prior to transferring jurisdiction to a civil court, the court may, upon a recommendation from CDHS, change the designation of the primary diagnosis and convert the order to civil commitment or enhanced protective placement, as appropriate, based on the determination of CDHS.

(b) The court shall issue its findings and orders pursuant to this section in writing. When the court transfers jurisdiction to a civil court pursuant to section 27-65-113 or 25.5-10-509, the court shall send the civil court receiving jurisdiction all the written findings and orders entered pursuant to this section.

(13) (a) When the court orders a civil commitment or enhanced protective placement, if CDHS proposes placing the defendant into inpatient care, the court shall order, without further court review, the defendant placed into inpatient care at the discretion of CDHS. If CDHS has identified an appropriate provider that does not meet the definition of inpatient care but is willing and able to accept placement of the defendant, the court shall set a review hearing as soon as practicable while ensuring the parties, any appointed emergency guardian, and victims are given sufficient notice and opportunity to prepare and appear.

(b) When the court orders a civil commitment or enhanced protective placement, if CDHS has not identified an appropriate provider that is willing to accept placement of the defendant, the court shall:

(I) Set a review hearing within thirty-five days after the order for civil commitment or enhanced protective placement; and

(II) Prior to the review hearing, order CDHS, in consultation with the BHA, to identify at least one appropriate provider that is willing to immediately accept placement of the defendant.

(c) At the review hearing, if CDHS proposes placing the defendant into inpatient care, the court shall order, without further court review, the defendant placed into inpatient care at the discretion of CDHS. If CDHS does not propose placing the defendant into inpatient care, the

court shall review any placement identified by CDHS to ensure it is appropriate and sufficiently protects victims and the community from the substantial risk of serious harm to others posed by the defendant. The court may continue the review hearing or order an additional review hearing within the time frame set forth in subsection (11)(b) of this section.

(d) When considering the appropriateness of the placement for the defendant, victims, and the community, the court shall:

(I) Allow CDHS, the parties, and any appointed emergency guardian to be heard regarding the defendant's placement;

(II) Give deference to CDHS's recommendation on any issue related to the defendant's primary diagnosis;

(III) Give deference to CDHS and the opinion of a medical professional on the appropriateness of the provider and placement for the defendant;

(IV) Not give deference to CDHS or a medical professional as to whether the placement sufficiently protects victims and the community from the substantial risk of serious harm to others posed by the defendant; and

(V) Consider the totality of the circumstances, including:

(A) The defendant's statements and whether the defendant lacks insight into the defendant's mental disability or developmental disability;

(B) The defendant's clinical diagnosis and prognosis, including any opinions that the defendant and the defendant's current mental state and behaviors pose risks to others;

(C) The defendant's refusal to voluntarily seek and comply with a treatment plan in the recent past, including in the defendant's most recent period of being in the community;

(D) Recent overt acts by the defendant to threaten, cause, or attempt to cause harm to the defendant's self or others;

(E) Any previous patterns of decompensation or deterioration that resulted in the defendant's hospitalization, arrest, or certification for short-term treatment and that demonstrate a risk of likely future decompensation;

(F) When the defendant was last out of custody and whether the defendant was found in a condition in which the defendant was not able to care for the defendant's own basic needs in order to avoid the risk of serious physical harm;

(G) The frequency, recency, and severity of the considerations described in subsections (13)(d)(V)(B) to (13)(d)(V)(F) of this section, such that the circumstances are present in a manner that requires inpatient treatment or that the circumstances are absent in a manner that allows for community-based placement;

(H) Whether the defendant opposes the placement;

(I) Whether community-based placement can be reasonably accommodated;

(J) The limited resources of the state and the needs of others; and

(K) The placement recommendations of any treating professionals.

(e) The court shall not permit or order a defendant to be placed into a community-based setting outside of inpatient care unless:

(I) Any victims have been notified of a critical stage, as defined in section 24-4.1-302 (2)(q.3), and given the opportunity to be heard; and

(II) The district attorney in the case that sought civil commitment or enhanced protective placement has been notified and given an opportunity to object and be heard.

(f) After reviewing the providers, if the court finds that multiple providers are appropriate for the defendant, victims, and the community, the court shall order the defendant be placed in the least-restrictive setting that is adequate to protect the victims and the community and to provide, to the greatest extent possible, the appropriate level of care for, treatment for, and supervision of the defendant. If more than one equally restrictive placement is available and appropriate, the court shall order the defendant be placed into a setting that is best suited for the defendant's treatment needs and supervision, as determined by CDHS.

(g) If CDHS does not propose placing the defendant into inpatient care and CDHS has not identified any other appropriate placement with sufficient time to review and place the defendant within the time frame set forth in subsection (11)(b) of this section, the court shall order the defendant placed into inpatient care at the discretion of CDHS.

(h) In addition to any orders issued pursuant to this section, the court shall issue any orders necessary to mitigate the defendant's risk to victims and the community, including ordering a provider that has accepted placement of the defendant to take reasonable and practicable protective measures to prevent the defendant from contacting any victims; except that the court shall not order the defendant to comply with any conditions that are not necessary to mitigate the defendant's risk or with which the defendant cannot comply.

(i) After the court orders placement of the defendant:

(I) The court, the district attorney, and CDHS shall transmit all necessary information, including the defendant's medical records, competency evaluations, materials used during the competency process, and restoration records, to the county attorney within three business days after the order for placement. The district attorney and CDHS shall provide additional necessary information upon request of the county attorney.

(II) The court shall, unless other appropriate transportation has been approved by the court, order the sheriff to securely transport the defendant to the ordered placement as soon as practicable. The court shall set any review hearings necessary to ensure the defendant is transported to the initial placement. The court may delay transportation if a bed at a placement is not available but will be available within the next thirty days.

(14) After the defendant has been transported to the placement ordered by the court, the court shall:

(a) Transfer jurisdiction of the civil commitment to a civil court with jurisdiction pursuant to section 27-65-113 or transfer jurisdiction of the enhanced protective placement to a civil court with jurisdiction pursuant to section 25.5-10-507;

(b) Notify CDHS and the county attorney; and

(c) Dismiss the criminal case against the defendant. The court shall note in the court's final order dismissing the case that the charges may be refiled, but the prosecution is not precluded from refiling merely because the court did not state so in the order.

(15) Subject to the applicable statute of limitations, including any applicable tolling provisions, the district attorney may refile the charges dismissed pursuant to this section at a later time if the district attorney has reason to believe the defendant has since attained competency.

(16) If, at the time the district attorney seeks civil commitment or enhanced protective placement pursuant to this section, the defendant is already civilly committed or ordered to an enhanced protective placement in another case, the court shall:

(a) Take judicial notice of the prior civil commitment or enhanced protective placement in lieu of conducting an additional trial;

(b) Order a civil commitment or enhanced protective placement of the defendant in this case, commit the defendant to the legal custody of CDHS, order the defendant into the defendant's current placement, and transfer jurisdiction to civil court with jurisdiction over the existing civil commitment or enhanced protective placement;

(c) Notify the civil court with jurisdiction over the existing civil commitment or enhanced protective placement and appropriate county attorney of the additional commitment order;

(d) Order the district attorney and CDHS to transmit all necessary information to the county attorney, including the defendant's medical records, competency evaluations, materials used during the competency process, and restoration records. The district attorney and CDHS shall provide additional necessary information upon request of the county attorney.

(e) Dismiss the criminal case against the defendant.

(17) (a) No later than January 2031, CDHS shall include, as part of its presentation during its "SMART Act" hearing required by section 2-7-203, information concerning protective placements, enhanced protective placements, and civil commitments sought pursuant to this section. At a minimum, the presentation must include the following information from July 1, 2026, through July 1, 2030:

(I) The number of petitions filed for protective placements, enhanced protective placements, and civil commitments;

(II) The number of petitions that were granted for protective placements, enhanced protective placements, and civil commitments;

(III) The average length of time and longest length of time a person was certified or placed under a protective placement, enhanced protective placement, and civil commitment;

(IV) The number of people who had a placement other than inpatient care and the number of people who defaulted to placement in inpatient care; and

(V) The average length of time and longest length of time a person was certified or placed under a protective placement, enhanced protective placement, and civil commitment and remained in jail.

(b) HCPF and the judicial department shall provide any necessary information to assist CDHS in its presentation.

(18) CDHS shall publicly post on CDHS's website the following information on a quarterly basis:

(a) The actual and projected number of persons who are incompetent and unrestorable and who are or may be placed in CDHS's custody for a civil commitment or enhanced protective placement; and

(b) The actual and projected costs that CDHS will or may incur for services related to CDHS's obligations pursuant to sections 27-65-201 and 25.5-10-507.

(19) This section is repealed, effective July 1, 2031.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 714, § 1, effective May 21.

Editor's note: This section was relocated to § 16-8.5-121 in 2026.

16-8.5-119. Dismissal procedures.

(1) If, after all applicable stays are lifted, the court dismisses a defendant's criminal case in which the defendant is incompetent to proceed at the time of dismissal:

(a) The court shall enter a written order with the court's legal and factual basis for the dismissal and provide the written order to the parties and CDHS;

(b) The court may order the bridges court liaison to assist with the defendant's case management planning and coordination of services, including coordinating with governmental entities or community-based organizations that are capable of providing resources to the defendant upon dismissal of charges;

(c) The charges are not eligible for sealing pursuant to section 24-72-705; and

(d) The court shall require CDHS to ensure that case management services and supports are made available to a defendant released from CDHS's custody pursuant to this article 8.5 after the defendant's criminal case is dismissed.

(2) Subject to the applicable statute of limitations, including any applicable tolling provisions, the district attorney may refile the charges dismissed pursuant to this section at a later time if the district attorney has reason to believe the defendant has since attained competency. The court shall note in the court's final order dismissing the case that the charges may be refiled, but the prosecution is not precluded from refiling merely because the court did not state so in the order.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 724, § 1, effective May 21.

Editor's note: (1) Prior to its recreation in 2026, this section was similar to former § 16-8-106.5 as it existed prior to 2008.

(2) Prior to its recreation in 2026, subsection (5) provided for the repeal of this section, effective July 1, 2010. (See L. 2008, p. 1848.)

16-8.5-120. Escape - return to institution.

If a defendant committed to the custody of the executive director for a competency evaluation or for restoration to competency escapes from the institution or hospital, the chief officer of the institution or hospital shall apply to the district court for the county in which the institution or hospital is located for a warrant of arrest directed to the sheriff of the county, commanding the

sheriff to take all necessary legal action to effect the arrest of the defendant and to return the defendant promptly to the institution or hospital. The fact of an escape becomes a part of the official record of the defendant and must be certified to the committing court as part of the record in any proceeding to determine whether the defendant is eligible for release on bond or from custody.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 725, § 1, effective May 21.

Editor's note: (1) This section is similar to former § 16-8.5-117 as it existed prior to 2026.

(2) This section was relocated to § 16-8.5-122 in 2026.

16-8.5-121. Temporary removal for treatment and rehabilitation.

The chief officer of an institution where a defendant has been committed pursuant to this article 8.5 may authorize treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution where the defendant has been placed in accordance with the procedures and requirements of section 16-8-118.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 725, § 1, effective May 21.

Editor's note: (1) Prior to its recreation in 2026, subsection (4) provided for the repeal of this section, effective July 1, 2021. (See L. 2019, p. 2289.)

(2) This section is similar to former § 16-8.5-118 as it existed prior to 2026.

16-8.5-122. Competency evaluation monitoring system - users - rules.

(1) CDHS, with assistance from the judicial department, shall develop an electronic system to track the status of defendants in the criminal justice system for whom a competency evaluation or competency restoration has been ordered. The system must contain information on the following:

(a) The date the court ordered the competency evaluation;

(b) The dates of and locations where the competency evaluation was started and completed;

(c) The date of and location where the defendant entered restoration services;

(d) The dates and results of court reviews of competency;

(e) Inpatient bed space;

(f) Community restoration capacity; and

(g) Financial estimates of costs of each inpatient and outpatient program to identify inefficiencies.

(2) CDHS shall establish who has access to enter information into the electronic system and who may have read-only access to the electronic system.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 725, § 1, effective May 21.

Editor's note: (1) This section is similar to former § 16-8.5-120 as it existed prior to 2026.

(2) This section was relocated to § 16-8.5-123 in 2026.

16-8.5-123. Forensic evaluator training.

CDHS shall create a partnership with an accredited institution of higher education in the state to develop and provide rigorous training in forensic evaluation. Newly hired competency evaluators shall complete a training that addresses competency, sanity, report writing, expert testimony, and other skills crucial for forensic evaluators; except that competency evaluators who are forensic psychiatrists certified or certification-eligible by the American board of psychiatry and neurology and forensic psychologists who are certified or certification-eligible by the American board of forensic psychology may be exempt from any training requirements as outlined in this section through an exemption process to be developed by CDHS. The state shall manage an oversight program to provide support and ensure quality of forensic evaluators.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 726, § 1, effective May 21.

Editor's note: (1) Prior to its recreation in 2026, subsection (3) provided for the repeal of this section, effective December 31, 2024. (See L. 2022, p. 2258.)

(2) This section is similar to former § 16-8.5-122 as it existed prior to 2026.

16-8.5-124. Transparency requirements.

(1) CDHS shall publicly post on CDHS's website:

(a) All policies and procedures related to competency evaluations, restoration services, management of the competency wait list, and admission policies regarding inpatient restoration services, including services for jail-based restoration and private hospital beds;

(b) The number of beds currently available and occupied for jail-based restoration services;

(c) The number of beds currently available and occupied in private hospitals for inpatient restoration services;

(d) The number of beds currently available in each state-run hospital and occupied by adult civil patients, adult restoration patients, and adult not guilty by reason of insanity commitments;

(e) The number of beds currently available in each state-run hospital and occupied by juvenile patients;

(f) The number of individuals on the competency restoration wait list;

(g) The length of competency wait list times and an explanation of the methodology used to calculate the wait times; and

(h) Any projected dates for the opening of new beds and a description of what type of beds will become available.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 726, § 1, effective May 21.

16-8.5-125. Rules.

CDHS shall adopt rules as necessary to effectively and consistently enforce the provisions of this article 8.5.

Source: L. 2026: Entire article amended with relocations, (SB 26-149), ch. 142, p. 727, § 1, effective May 21.

Editor's note: This section is similar to former § 16-8.5-116.5 (11) as it existed prior to 2026.

ARTICLE 8.6

Bridges Wraparound Care Program

16-8.6-101. Legislative declaration.

16-8.6-102. Definitions.

16-8.6-103. Bridges wraparound care program - established.

16-8.6-104. Memorandum of understanding.

16-8.6-105. Office of the state court administrator - court coordinator - data gathering.

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16-8.6-107. Judicial district referral process - deadlines.

16-8.6-108. Eligibility - initial intake - acceptance - release from custody.

16-8.6-109. Participation - individualized wraparound care plan.

16-8.6-110. Review hearing - notice of termination.

16-8.6-111. Statements made by defendant.

16-8.6-112. Exclusion from speedy trial.

16-8.6-113. Effect of acceptance.

16-8.6-101. Legislative declaration.

(1) The general assembly finds and declares that:

(a) For more than a decade, Colorado has experienced a crisis in responding to individuals in the criminal justice system who are suffering from a mental illness or mental disability and who are determined by a mental health professional to be incompetent to be prosecuted;

(b) Individuals found incompetent to proceed by the court are ordered to be restored to competency through services designed to achieve restoration, which services are provided in an inpatient hospital setting or other community-based setting;

(c) The number of individuals ordered to receive inpatient restoration services has substantially increased over the years. Additionally, the number of beds available for inpatient restoration has been unstable and the lack of adequate staffing has caused many inpatient units to close. This combination has resulted in a long wait list and significantly longer waiting periods in county jails.

(d) Colorado has an obligation to ensure that individuals who are found incompetent to proceed do not languish in jail on a wait list for competency services and to honor the individuals' constitutional right to timely access to restoration services;

(e) Despite the protracted litigation and legislative efforts, Colorado has been unable to eliminate the multitude of problems in the adult competency system, including the wait list, which has increased over one hundred percent in recent years; and

(f) Colorado cannot eliminate the wait list by only increasing the number of inpatient beds; instead, Colorado must seek to reduce the number of individuals placed on the wait list for competency services through:

(I) Community support;

(II) Connecting individuals to a range of community services that provide social stability for individuals who cycle in and out of the competency system; and

(III) Eliminating competency services and prosecution of very low-level offenses, which will reduce the use of expensive inpatient beds.

(2) The general assembly further finds and declares that:

(a) Rather than focusing on competency services to allow for prosecution, Colorado should focus on an individual's mental wellness and social stability, which will enhance public safety, system fairness, and produce better outcomes, along with reducing the inpatient competency restoration wait list; and

(b) Significant research and national best practices support the concept of eliminating restoration services for very low-level offenses and diverting individuals from the criminal justice system who are charged with very low-level offenses and who do not present a public safety risk. The research and national best practices demonstrate that well-designed community programs that focus on mental wellness and social stability can reduce recidivism and move individuals suffering from mental illness or other mental disabilities into a more stable and productive lifestyle.

(3) Therefore, the general assembly declares that it is critical for the state, in conjunction with bridges of Colorado, to require each judicial district to develop a process to identify and refer individuals to a wraparound care program as a community-based alternative to competency proceedings in order to limit the number of individuals on the competency wait list and to improve outcomes and community safety through clinical care and social stability services.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3295, § 1, effective August 7.

16-8.6-102. Definitions.

As used in this article 8.6, unless the context otherwise requires:

(1) "Bridges of Colorado" or "bridges" means the office of bridges of Colorado established pursuant to section 13-95-103.

(2) "Bridges wraparound care program" means the bridges wraparound care program created in section 16-8.6-103.

(3) "Eligible individual" or "eligible defendant" means an individual who the judicial district identifies as eligible for referral to the bridges wraparound care program pursuant to section 16-8.6-108.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3297, § 1, effective August 7.

16-8.6-103. Bridges wraparound care program - established.

(1) There is created in the office of bridges of Colorado, created in section 13-95-103, the bridges wraparound care program to increase the success of eligible individuals referred from the criminal justice system by connecting the eligible individuals to necessary wraparound care coordination services, resulting in case dismissal, continuity of care, and increased social stability.

(2) The purpose of the bridges wraparound care program is to:

(a) Serve eligible individuals who are identified and referred by judicial districts in lieu of criminal prosecution, who are able to remain in the community and who are found incompetent to proceed or who are likely to be found incompetent to proceed;

(b) Serve eligible individuals whose cases have been dismissed pursuant to section 16-8.5-109 (4) but who are voluntarily willing to participate in the bridges wraparound care program;

(c) Increase the mental wellness and social stability of individuals participating in the bridges wraparound care program;

(d) Decrease the number of individuals on the wait list for competency restoration services;

(e) Decrease the number of individuals undergoing competency evaluations; and

(f) Decrease the rate of reoffense for eligible individuals charged with low-level offenses who are accepted to participate in the bridges wraparound care program.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3297, § 1, effective August 7. **L. 2026:** (2)(b) amended, (SB 26-149), ch. 142, p. 793, § 40, effective May 21.

16-8.6-104. Memorandum of understanding.

(1) (a) The chief judge of each judicial district shall enter into a memorandum of understanding with the district attorney's office, the public defender's office, bridges of Colorado, the department of human services, the behavioral health administration in the department of human services, community-based treatment providers, and local behavioral health case management programs within the judicial district to develop and implement a referral process to deflect individuals who are likely to be found incompetent to proceed from competency proceedings and the criminal justice system. The memorandum of understanding must ensure the parties develop an operational vision for the referral process and how the referral process will best operate within the judicial district. Additional individuals or entities may be included in the development and implementation of the memorandum of understanding with the agreement of the parties to the memorandum of understanding described in this subsection (1)(a).

(b) The office of the state court administrator shall coordinate the creation of the memorandum of understanding for each judicial district and any revisions, as needed.

(c) The parties to the memorandum of understanding shall collaborate with community groups advocating for individuals with mental health disorders in the development and operation of the referral process, whenever possible.

(2) At a minimum, the memorandum of understanding must:

(a) Describe the operational vision of the referral process;

(b) Ensure the dedication of resources for individuals referred to the bridges wraparound care program;

(c) Define the process of referral to the bridges wraparound care program;

(d) Define procedures that best ensure the efficiency and fairness of the referral process in the judicial district;

(e) Require service providers who are a party to the memorandum of understanding and who provide the services described in section 16-8.6-109 (4) to participate in the bridges wraparound care process, regularly meet and communicate with the bridges wraparound care coordinator, and provide services, as necessary, to support each individual participating in the bridges wraparound care program;

(f) Define the process and timeline for bridges of Colorado to report to the district attorney and the court regarding an individual's noncompliance with the bridges wraparound care program; and

(g) Address compliance with the data-gathering requirements pursuant to section 16-8.6-105 (2).

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3297, § 1, effective August 7.

16-8.6-105. Office of the state court administrator - court coordinator - data gathering.

(1) The office of the state court administrator shall ensure a court coordinator:

(a) Assists with identifying eligible individuals;

(b) Collaborates with the entities described in section 16-8.6-104 (1)(a) to develop the memorandum of understanding;

(c) Manages and collects data and manages reporting requirements pursuant to subsection (2) of this section in coordination with bridges of Colorado and the entities described in section 16-8.6-104 (1)(a); and

(d) Provides ongoing support to each judicial district in developing and implementing the referral process described in section 16-8.6-107.

(2) The state court administrator shall collaborate with the entities described in section 16-8.6-104 (1)(a), including bridges of Colorado, to collect the following information for each eligible individual who is identified and referred to the bridges wraparound care program:

(a) The individual's name; age; race; identified gender; charges, as identified by the charge code; and case number;

(b) The legal basis for the referral;

(c) Whether the individual has previously been held for an emergency commitment pursuant to article 65 of title 27;

(d) Whether the individual successfully completed the bridges wraparound care program and any identified resources and connections provided to the individual;

(e) Whether the individual was unable to successfully complete the bridges wraparound care program and the reasons for the lack of successful completion;

(f) Whether resources were available to meet the individual's mental wellness and social stability needs, identifying what resources were not available and the reason for the lack of resources;

(g) The amount of money dedicated to serving the individual during the individual's participation in the bridges wraparound care program and whether any services were reimbursed by medicaid or other state or federally funded programs;

(h) The number of individuals who participated in the bridges wraparound care program who otherwise would have been ordered to competency services and the number of individuals who likely would have been on the inpatient competency wait list or occupied an inpatient restoration bed;

(i) The number of individuals who participated in the bridges wraparound care program who were charged with a crime, not including a civil offense or traffic offense, that occurred while participating in the program or within one year after successfully completing the program; and

(j) The number of individuals who were identified and referred to the bridges wraparound care program but were not accepted for participation and the reasons for the non-acceptance.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3299, § 1, effective August 7.

16-8.6-106. Bridges wraparound care coordinator - duties and responsibilities.

(1) The bridges wraparound care coordinator appointed pursuant to section 16-8.6-108 (4) has the following duties and responsibilities:

(a) Follow the policies, procedures, best practices, and guidance of the bridges wraparound care program, as established by the office of bridges of Colorado, created in section 13-95-103, and the bridges of Colorado commission, created in section 13-95-104;

(b) Conduct an initial intake of an eligible individual pursuant to section 16-8.6-108;

(c) Screen and assess, or arrange for the screening and assessment of, a program participant and develop an individualized wraparound care plan pursuant to section 16-8.6-109;

(d) Determine with the program participant the appropriate wraparound care referral and service options to support the individualized wraparound care plan created pursuant to section 16-8.6-109 (4);

(e) Coordinate services with service providers, including service providers who are a party to the memorandum of understanding, and agencies identified in the individualized wraparound

care plan, including facilitating collaborative efforts to identify and address systemic and provider-related barriers to care;

(f) Proactively seek to maintain frequent and regular contact with program participants; directly assist in connecting program participants to necessary services and resources, court appearances, and other appointments; and make thorough efforts to know where program participants are residing, where program participants can be regularly found, and all known contact information for program participants;

(g) Monitor program participant engagement with the individualized wraparound care plan and provide support to enable the program participant to engage fully, and allow for variances in the individualized wraparound care plan to continue to best meet the behavioral health and social determinants of health needs of the program participant;

(h) Provide a written report to the court and parties when a program participant is not meaningfully engaged with the individualized wraparound care plan, including notifying the court when a provider, environmental, or systemic barrier exists that keeps the program participant from successfully engaging with the individualized wraparound care plan;

(i) Provide information to criminal justice personnel regarding behavioral health and community treatment options and bridges wraparound care program best practices; and

(j) Provide a written report to the court regarding the program participant's progress with the individualized wraparound care plan as necessary and for the purpose of providing information to the court for any hearings related to the program participant's case dismissal or program termination.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3300, § 1, effective August 7.

16-8.6-107. Judicial district referral process - deadlines.

(1) Each judicial district shall develop a process to identify and refer eligible individuals to the bridges wraparound care program as a community-based alternative to competency proceedings pursuant to the following schedule:

(a) No later than April 1, 2025, for the second, seventeenth, eighteenth, and twentieth judicial districts;

(b) No later than October 1, 2025, for the first, fourth, fifth, sixth, eighth, fifteenth, sixteenth, twenty-first, and twenty-second judicial districts; and

(c) No later than July 1, 2026, for the third, seventh, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, nineteenth, and twenty-third judicial districts.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3301, § 1, effective August 7.

16-8.6-108. Eligibility - initial intake - acceptance - release from custody.

(1) A defendant may be referred to the bridges wraparound care program with the consent of the district attorney.

(2) A defendant who is referred to the bridges wraparound care program is eligible to participate in the program if:

(a) The district attorney and defense counsel agree that there is reasonable cause to believe that the defendant will be found incompetent to proceed if the issue of competency is raised;

(b) The defendant consents to participate in the bridges wraparound care program; and

(c) The defendant is not charged with a class 1 felony; a class 2 felony; a class 3 felony; a level 1 drug felony; a level 2 drug felony; a sex offense, as defined in section 18-1.3-1003; a crime of violence, as defined in section 18-1.3-406 (2); or any offense described in section 24-4.1-302 (1), unless the district attorney waives this requirement in the interest of justice.

(3) Prior to referring a defendant to the bridges wraparound care program, when the defendant is charged with an offense described in section 24-4.1-302 (1), the district attorney shall comply with all relevant provisions of part 3 of article 4.1 of title 24.

(4) The district attorney must be provided access to the reports and information described in section 16-8.5-104 (1) and (4) and any reports and information related to the defendant's compliance with the bridges wraparound care program. A defendant who consents to participate in the bridges wraparound care program waives any claim to confidentiality and privilege for the purposes of the reports and information provided pursuant to this subsection (4).

(5) If an eligible defendant is referred to the bridges wraparound care program and the defendant consents to participate in the program, the court shall issue an order appointing a bridges wraparound care coordinator. The bridges wraparound care program must accept an eligible defendant who is referred by the court to the program, unless the bridges wraparound care coordinator determines that the bridges wraparound care program is not appropriate for the defendant. If the bridges wraparound care program is not appropriate for the defendant, bridges of Colorado shall immediately notify the court and provide the court with other appropriate interventions that may include, but are not limited to, civil commitment or other placement options.

(6) If a defendant is accepted to participate in the bridges wraparound care program and the defendant is in custody, the court shall release the defendant on a personal recognizance bond.

Upon motion of the district attorney or a request to terminate the defendant from the bridges wraparound care program, the court may revoke the personal recognizance bond for any violation of bond conditions, including the defendant's noncompliance with program requirements. If the court continues the defendant's participation in the bridges wraparound care program, the court shall reinstate the personal recognizance bond.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3301, § 1, effective August 7. **L. 2025:** (3) amended, (SB 25-300), ch. 428, p. 2443, § 16, effective August 6.

16-8.6-109. Participation - individualized wraparound care plan.

(1) An individual who is accepted to participate in the bridges wraparound care program pursuant to section 16-8.6-108 shall:

(a) Enter into a written agreement with bridges of Colorado detailing the individual's participation in the bridges wraparound care program and the program expectations;

(b) Cooperate with the bridges wraparound care coordinator in developing the components of the participant's individualized wraparound care plan; and

(c) Engage with the bridges wraparound care coordinator and the services outlined in the individualized wraparound care plan.

(2) As a condition of acceptance in the bridges wraparound care program, the participant may be required to authorize a release of information to allow for coordination of wraparound care services with other service providers and review of the participant's compliance with the individualized wraparound care plan and engagement with services.

(3) The bridges wraparound care coordinator shall conduct a screening and assessment of the participant, which may be conducted in collaboration with external service providers or assessment centers. The bridges wraparound care coordinator may consider the information, services, and community mental health resources provided by the behavioral health administration in the department of human services and the behavioral health administrative services organizations established pursuant to part 4 of article 50 of title 27.

(4) (a) As part of the screening and assessment conducted pursuant to subsection (3) of this section, the bridges wraparound care coordinator shall create an individualized wraparound care plan for the participant that is designed to reduce barriers and facilitate access to wraparound care resources, especially behavioral health and other social determinants of health services. The individualized wraparound care plan must be designed to support continuity of care, social stabilization, and increased recovery rates. The individualized wraparound care plan must take

into consideration the participant's behavioral health and social determinants of health needs, including:

(I) Mental health treatment and care;

(II) Treatment and care for mental disabilities;

(III) Substance use disorder intervention and recovery services;

(IV) Housing, including supportive housing;

(V) Transportation;

(VI) Basic needs assistance;

(VII) Employment assistance, if applicable; and

(VIII) Health insurance coverage, including medicare or medicaid eligibility and enrollment.

(b) The bridges wraparound care coordinator shall provide the defendant, the defense counsel, the district attorney, and the court with a copy of the individualized wraparound care plan in writing.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3302, § 1, effective August 7.

16-8.6-110. Review hearing - notice of termination.

(1) The court shall set a review hearing within one hundred eighty-two days after the court issues an order appointing a bridges wraparound care coordinator pursuant to section 16-8.6-108 (4). At the review hearing, the court must dismiss the charges against the defendant unless the court finds that the defendant has not satisfactorily complied with the individualized wraparound care plan, at which point the district attorney may file a notice of termination with the court pursuant to subsection (2) of this section. If the defendant has not satisfactorily complied with the individualized wraparound care plan but remains engaged, the court may continue the defendant's case for up to an additional ninety-one days and shall dismiss the charges if the defendant has satisfactorily complied with the individualized wraparound care plan within the additional ninety-one days.

(2) The district attorney may file a notice of termination with the court if, at any time prior to the dismissal of charges, the prosecution believes that the defendant has failed to satisfactorily comply with the individualized wraparound care plan. Upon filing the notice of termination, the court shall set a hearing date for the defendant's appearance or issue a warrant if requested by the district attorney. If the court determines based on a preponderance of the evidence that the

defendant did not successfully comply with the individualized wraparound care plan, the district attorney may prosecute the defendant for the original offense or offenses.

(3) If the charges against a defendant are dismissed pursuant to this section and the charges are eligible for sealing pursuant to section 24-72-704, the district attorney may object, in the interests of justice, to sealing the case. If the district attorney files a written objection to the sealing within seven days of the dismissal, the charges against the defendant are not eligible for sealing and the court shall not enter an order sealing the charges; except that, the district attorney may, at a later date, withdraw the objection and agree to sealing the case that is dismissed pursuant to this section.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3304, § 1, effective August 7.

16-8.6-111. Statements made by defendant.

Any statement made by the defendant during the intake, screening and assessment, or while participating in the bridges wraparound care program pursuant to this article 8.6 that pertains to charges already filed against the defendant at the time of the initial referral to the wraparound care program must not be used against the defendant in the prosecution of those charges, except to impeach or rebut the defendant's testimony.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3304, § 1, effective August 7.

16-8.6-112. Exclusion from speedy trial.

Any period of time when the defendant is participating in the initial intake pursuant to section 16-8.6-108, is screened and assessed pursuant to section 16-8.6-109, is participating in the program, or following a notice of termination prior to the defendant appearing before the court is excluded from speedy trial requirements pursuant to section 18-1-405 (6), regardless of whether the defendant completed a written waiver.

Source: L. 2024: Entire article added, (HB 24-1355), ch. 471, p. 3304, § 1, effective August 7.

16-8.6-113. Effect of acceptance.

A court shall vacate any existing order and shall not enter a new order directing the department to conduct a competency evaluation or provide restoration services to a defendant if the defendant was accepted to participate in the bridges wraparound care program.

Source: L. 2025: Entire section added, (SB 25-041), ch. 357, p. 1928, § 10, effective August 6.

ARTICLE 9

Preparation for Trial

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PART 1

SUBPOENAS

16-9-101. Right to compel attendance of witnesses.

(1) In every criminal case, the prosecuting attorney and the defendant have the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness at any proceeding before the court. Service of a subpoena upon a parent or legal guardian who has physical care of an unemancipated minor that contains wording commanding said parent or legal guardian to produce the unemancipated minor for the purpose of testifying before the court shall be valid service compelling the attendance of both said parent or legal guardian and the unemancipated minor for examination as witnesses. In addition, service of a subpoena as described in this subsection (1) shall compel said parent or legal guardian either to make all necessary arrangements to ensure that the unemancipated minor is available before the court to testify or to appear in court and show good cause for the unemancipated minor's failure to appear.

(2) The issuance and service of subpoenas and all procedures related thereto shall be in conformity with and as required by applicable rule of criminal procedure adopted by the Colorado supreme court.

Source: L. 72: R&RE, p. 233, § 1. **C.R.S. 1963:** § 39-9-101. **L. 98:** (1) amended, p. 946, § 1, effective May 27.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950).

PART 2

WITNESSES FROM OUTSIDE THE STATE

Editor's note: Prior to 1972, this part 2 was cited as "The Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings". (See § 39-6-6, C.R.S. 1963.)

16-9-201. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "State" includes any territory of the United States and the District of Columbia.

(2) "Summons" includes a subpoena, order, or other notice requiring the appearance of a witness.

(3) "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

Source: L. 72: R&RE, p. 235, § 1. **C.R.S. 1963:** § 39-9-204.

ANNOTATION

Method for compelling attendance of out-of-state witnesses. This uniform act provides a method whereby, among states that have adopted the act, a court of one state may certify the need for the appearance and testimony of a material witness residing in another state and thereby invoke the authority of the court in the resident state to compel the witness's attendance in the certifying court. Hence, at least under the circumstances specified in the statute, a Colorado court may now compel the attendance of out-of-state witnesses. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Payment for witnesses is the obligation of the state. In concluding that the courts lack the ability to compel the attendance of out-of-state witnesses for an indigent defendant, a court's reliance upon the silence of the uniform act as to the source of any

money to be paid to the witness was misplaced in Colorado. The failure of the uniform act to address this issue does not support this conclusion since the statutes and rules of criminal procedure both create the obligation and provide for payment. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

The provisions of this part 2 do not extend to authorizing a court to subpoena a witness who is residing outside the United States. The district court erred in granting a motion under the provisions of rule 15 of the Colorado rules of criminal procedure to depose a witness residing in Mexico. The rule requires that the deposition be conducted in the presence of the court and requires the court to subpoena the witness. The court does not have jurisdiction to subpoena a witness who resides in another country because the provisions of this part 2 extend only to other states that have adopted a similar law, not to foreign countries. Without another statute authorizing such a subpoena, the court was proceeding without jurisdiction. People v. Arellano-Avila, 20 P.3d 1191 (Colo. 2001).

16-9-202. Summoning witness to testify in another state.

(1) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of the court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record in the county in which such person is, the judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process in connection with matters which arose before his entering into that state under the summons, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing, the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the

judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before him for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, in lieu of issuing subpoena or summons, shall order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(4) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and twenty dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Source: L. 72: R&RE, p. 233, § 1. **C.R.S. 1963:** § 39-9-201.

16-9-203. Witness from another state.

(1) If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the witness is summoned to attend and testify in this state, or if the witness appears voluntarily at the request of the prosecution or the defense and the court would have otherwise approved a certificate for such witness pursuant to subsection (1) of this section, he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending or, in the alternative and at the discretion of the court, an airplane ticket and twenty dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If a witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Source: L. 72: R&RE, p. 234, § 1. **C.R.S. 1963:** § 39-9-202. **L. 87:** (2) amended, p. 604, § 4, effective July 1.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950).

Annotator's note. Since § 16-9-203 is similar to repealed § 39-6-3, C.R.S. 1963, and CSA, C. 48, § 467(3), relevant cases construing those provisions have been included in the annotations to this section.

This section is for the purpose of securing and assuring the presence of the witness at the trial or his testimony. Kelly v. People, 121 Colo. 243, 215 P.2d 336 (1950).

Post-conviction hearing is a criminal proceeding under this section. A post-conviction hearing held pursuant to Crim. P. 35(b) is not a civil proceeding. It is but one phase of a criminal proceeding, governed by the rules of criminal procedure and this uniform act. Bresnahan v. District Court, 164 Colo. 263, 434 P.2d 419 (1967).

Expenses of obtaining testimony of witnesses for indigent defendant must be paid by state. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Liable for advancements to such witnesses. Since the state will ultimately pay the costs of securing out-of-state witnesses for the defendant, there is no legal justification for holding that it is not liable for advancement of such costs as mileage and witness fees. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Abuse of discretion in denying continuance. Since testimony of missing out-of-state witnesses might well have led to defendant's acquittal, it follows that it was an abuse of discretion to deny defendant a continuance for the purpose of determining whether the provisions of this section and Crim. P. 17(b) would be applicable or whether some other method of obtaining the witnesses' testimony might be available. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Applied in Claxton v. People, 164 Colo. 283, 434 P.2d 407 (1967).

16-9-204. Exemption from arrest.

(1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, while so passing through this state, he shall not be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

Source: L. 72: R&RE, p. 235, § 1. **C.R.S. 1963:** § 39-9-203.

16-9-205. Production of tangible evidence.

The procedures set forth in this part 2 shall apply to both the compulsory attendance of witnesses and the production of tangible evidence by witnesses located in this state whose presence is required in an action in another state and to witnesses from another state whose presence is required in an action in this state.

Source: L. 81: Entire section added, p. 927, § 4, effective July 1.

PART 3

COMPELLING ATTENDANCE OF MATERIAL WITNESSES WITHIN THE STATE

16-9-301. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Summons" includes a subpoena, order, or other notice requiring the appearance of a witness.

(2) "Witness" includes a person whose testimony is desired or who is desired to produce tangible evidence in any proceeding or investigation by a grand jury or a criminal action or proceeding in this state.

Source: L. 85: Entire part added, p. 626, § 1, effective April 24.

16-9-302. Summoning witness to testify or produce tangible evidence in another county.

(1) In order to secure the attendance of a material witness who either the prosecution or the defense has reasonable grounds to believe will absent himself from the jurisdiction of the requesting court, a judge of a court of record in any county in this state upon such showing may certify that there is a criminal action pending in such court or that a grand jury investigation has commenced or is about to commence, that a person located within any county or city and county in this state is a material witness in such action or grand jury investigation, and that his presence will be required for a specified number of days. When a court of record in the county in which such person is located receives the certificate, it shall fix a time and place for a hearing and shall make an order directing the witness to appear at the hearing at the time and place specified in the order.

(2) If at the hearing held pursuant to subsection (1) of this section the court determines that the witness is material and necessary and that it will not cause undue hardship to the witness to be compelled to attend and testify in the criminal action or grand jury investigation in the requesting county, the court shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the requesting court at the time and place specified in the summons. In any such hearing, the certificate shall be prima facie evidence of all the facts stated therein.

(3) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting county to assure his attendance in the requesting county, the receiving court may, in lieu of notification of the hearing, direct that the witness be brought before the court for the hearing. If the court is satisfied at the hearing that the requested custody and delivery is desirable, the court shall order that the witness be taken into custody and delivered to an officer of the requesting county for said hearing, if said hearing is to commence within forty-eight hours of the issuance of the certificate, or for the purpose of the taking of a criminal deposition pursuant to rule 15, Colorado rules of criminal procedure. The certificate shall be prima facie evidence that the requested custody and delivery is desirable. If said witness can post reasonable security, he shall be discharged.

(4) If the witness who is summoned pursuant to subsection (2) of this section, after being paid or tendered the appropriate witness fees, fails without good cause to attend and testify or produce evidence as directed in the summons, he shall be subject to any sanctions available to the requesting court.

Source: L. 85: Entire part added, p. 626, § 1, effective April 24.

Cross references: For witness fees, see § 13-33-102.

16-9-303. Protection from arrest or service of process.

When a person enters into or passes through any county in this state in obedience to a summons issued pursuant to section 16-9-302 (2) or when returning from testifying under the summons, he shall not be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into said county in response to the summons.

Source: L. 85: Entire part added, p. 627, § 1, effective April 24.

PART 4

PRETRIAL MOTIONS IN CLASS 1 FELONY CASES ALLEGING THAT A DEFENDANT IS A MENTALLY RETARDED DEFENDANT

16-9-401 to 16-9-405. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: This part 4 was added in 1993. For amendments to this part 4 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 4 were relocated to part 11 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 11 and the comparative table located in the back of the index.

Cross references: For the legislative declaration contained in the 2002 act repealing this part 4, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 5

MOTIONS ALLEGING AN UNCONSTITUTIONAL LAW

16-9-501. Notice to the attorney general when a defendant alleges a law is unconstitutional.

If a defendant in a criminal proceeding files a motion or other pleading that includes a claim alleging a state statute or municipal ordinance is unconstitutional, the defendant shall serve the attorney general with a copy of the motion or pleading. The attorney general shall be entitled to be heard on the matter. Failure to comply with this section shall not constitute a waiver of a defendant's constitutional rights or a defendant's right to raise a constitutional challenge.

Source: L. 2006: Entire part added, p. 35, § 1, effective March 13.

PART 6

PROHIBITION ON REPRODUCTION OF SEXUALLY EXPLOITATIVE MATERIAL

16-9-601. Prohibition on reproduction of sexually exploitative material.

(1) For purposes of this part 6, "sexually exploitative material" shall have the same meaning as provided in section 18-6-403 (2)(j), C.R.S.

(2) For the reasons stated in section 18-6-403 (1) and (1.5), C.R.S., regarding the harm and victimization related to sexually exploitative material, in a criminal proceeding, all sexually exploitative material shall remain in the care, custody, and control of either the prosecution, a law enforcement agency, or the court.

(3) (a) Notwithstanding any provision of the Colorado rules of criminal procedure, a court shall deny a request by the defendant in a criminal proceeding to copy, photograph, duplicate, or otherwise reproduce sexually exploitative material, so long as the prosecuting attorney makes the material reasonably available to the defendant; except that if, after a hearing, the defendant shows that for reasons specific to the case, the access provided by the prosecuting attorney does not provide ample opportunity for inspection, viewing, and examination by a defense expert, the court may order reproduction of the material with an appropriate protective order.

(b) For purposes of paragraph (a) of this subsection (3), sexually exploitative material shall be deemed to be reasonably available to the defendant if the prosecuting attorney provides ample opportunity for inspection, viewing, and examination, at the prosecutor's office or a law

enforcement facility, of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

Source: L. 2008: Entire part added, p. 1719, § 1, effective June 2.

PART 7

DISCOVERY PROJECT STEERING COMMITTEE

16-9-701. Discovery project steering committee.

(1) (a) There is created the discovery project steering committee convened to assist in developing a request for proposal application and selection process to choose a vendor to develop a statewide discovery sharing system. The steering committee consists of:

(I) The attorney general or the attorney general's designee, who shall serve as the chair of the steering committee;

(II) The state court administrator or the state court administrator's designee, who shall serve as the vice-chair of the steering committee;

(III) The state public defender or the state public defender's designee;

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

(V) A district court judge appointed by the chief justice;

(VI) 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;

(VII) A county sheriff appointed by the governor;

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

(IX) The alternate defense counsel or the alternate defense counsel's designee.

(b) The 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 steering committee.

(2) and (3) Repealed.

(4) (a) The discovery project steering committee shall develop benchmarks and contractual requirements for the statewide discovery sharing system.

(b) The Colorado district attorneys' council shall enter into a contract with the selected vendor to complete the system by June 30, 2017. 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) 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.

Source: L. 2013: Entire part added, (SB 13-246), ch. 269, p. 1414, § 1, effective May 24. **L. 2014:** Entire section amended, (SB 14-190), ch. 275, p. 1104, § 2, effective May 29. **L. 2016:** (2) and (3) repealed and (4)(b) amended, (SB 16-091), ch. 52, p. 121, § 1, effective August 10. **L. 2022:** (1)(a) amended, (SB 22-013), ch. 2, p. 22, § 25, effective February 25.

Cross references: For the legislative declaration in SB 14-190, see section 1 of chapter 275, Session Laws of Colorado 2014.

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 July 1, 2017. 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.

Source: L. 2014: Entire section added, (SB 14-190), ch. 275, p. 1107, § 3, effective May 29. **L. 2016:** (1) amended, (SB 16-091), ch. 52, p. 122, § 2, effective August 10.

Cross references: For the legislative declaration in SB 14-190, see section 1 of chapter 275, Session Laws of Colorado 2014.

PART 8

DEFENSE ACCESS TO PHYSICAL EVIDENCE

16-9-801. Viewing and inspecting objects held in evidence.

(1) (a) The defense has the right to view and inspect any tangible object held by law enforcement in connection with a case at any location designated and operated by or under contract with the law enforcement agency as soon as practicable, but no later than thirty-five days before trial. After the defense makes a request to the law enforcement agency that possesses a tangible item held in connection with a case, the agency shall allow the defense to view and inspect the item. A law enforcement representative shall be present to document the chain of custody and ensure the integrity of the evidence.

(b) When inspecting the tangible item, the defense must have the opportunity to have confidential conversations and create confidential work product.

(c) If law enforcement records evidence viewing or handling by the prosecution or the defense, the recording must be for the purpose of ensuring the chain of custody, integrity, or safety of the evidence held by the law enforcement agency. If law enforcement records, by audio or visual means, any evidence viewing or handling at any location operated by or under contract with the law enforcement agency, law enforcement shall provide notice that a recording was made to the prosecuting authority, who shall provide a copy of the notice in discovery to the defense. The recording shall not be placed in discovery or reviewed by law enforcement, except as provided in subsection (1)(d) of this section; the prosecution; or the defense unless ordered by the court when a good faith issue that the evidence viewing affected the integrity of the evidence is raised by any party. If the court allows access to the recording, the court may enter protective orders as necessary to protect any parties' conversations or work product.

(d) Law enforcement may view a recording of an evidence viewing by the prosecution or defense as necessary to properly organize, catalogue, maintain, or otherwise properly store the recording if the review is not for the purpose of reviewing the prosecution's or defense's preparation or strategy for trial. Law enforcement may also view a recording of an evidence viewing as authorized by a court order.

(2) Upon the request by either the defense or the prosecuting authority, and subject to constitutional limitations, the court may issue orders relating to the evidence viewing by the prosecution or defense based on the individual circumstances of the evidence or the case at issue consistent with this section, the Colorado rules of criminal procedure, and other applicable law.

(3) This section does not limit the ability of the defense to request defense testing or the court's ability to conduct a hearing related to the request.

(4) This section does not apply to the inspection, viewing, and examination of sexually exploitative material pursuant to section 16-9-601.

Source: L. 2025: Entire part added, (HB 25-1114), ch. 34, p. 174, § 1, effective July 1.

ARTICLE 10

Jury Trials

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PART 1

COMPOSITION AND SELECTION OF THE JURY

Law reviews: For article, "Judicial Restrictions on Voir Dire: Have We Gone Too Far?", see 97 Denv. L. Rev. 327 (2020).

16-10-101. Jury trials - statement of policy.

The right of a person who is accused of an offense other than a noncriminal traffic infraction or offense, civil infraction, or offense other than a municipal charter, municipal ordinance, or county ordinance violation as provided in section 16-10-109 (1), to have a trial by jury is inviolate and a matter of substantive due process of law as distinguished from one of "practice and procedure". The people also have the right to refuse to consent to a waiver of a trial or sentencing determination by jury in all cases in which the accused has the right to request a trial or sentencing determination by jury.

Source: L. 72: R&RE, p. 235, § 1. **C.R.S. 1963:** § 39-10-101. **L. 82:** Entire section amended, p. 655, § 5, effective January 1, 1983. **L. 88:** Entire section amended, p. 667, § 1, effective July 1. **L. 89:** Entire section amended, p. 828, § 35, effective July 1. **L. 2001:** Entire section amended, p. 859, § 7, effective July 1. **L. 2002, 3rd Ex. Sess.:** Entire section amended, p. 16, § 11, effective July 12. **L. 2022:** Entire section amended, (HB 22-1229), ch. 68, p. 342, § 14, effective March 1.

Editor's note: Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

ANNOTATION

Fundamental right to trial by jury in criminal cases is paramount constitutional right guaranteed by the sixth amendment to the United States constitution and § 23 of art. II, Colo. Const. People v. Evans, 44 Colo. App. 288, 612 P.2d 1153 (1980).

A person does not have a right to a jury trial upon being found in contempt of court if the person is not subject to more than six months incarceration upon issuance of such citation. People v. Barron, 677 P.2d 1370 (Colo. 1984); Kourlis v. Port, 18 P.3d 770 (Colo. App. 2000).

This section extends a statutory right to a jury trial only to violations of state statutes not contempt charges. People v. Shell, 148 P.3d 162 (Colo. 2006).

Death qualified juries are not more prone to convict than to acquit and do not deny a defendant his right to an impartial jury. People v. Manier, 184 Colo. 44, 518 P.2d 811 (1974).

Defendant may waive his right to jury trial; however, that waiver must be understandingly, voluntarily, and deliberately made, and a determination of waiver must be a matter of certainty and not implication. People v. Evans, 44 Colo. App. 288, 612 P.2d 1153 (1980).

But defendant must personally express waiver. Where, the prosecution conceded that prior to the time defendant requested a jury trial he had not personally expressed a waiver of his right to trial by a jury, trial court, which, in reviewing the question of whether to grant a jury trial, questioned defendant concerning his understanding relative to counsel's waiver of his rights the previous day and which concluded that because defendant had concurred in counsel's request the waiver was valid, did not comport with the requirement of Crim. P. 23(a)(5) because the waiver must be expressed by defendant personally at the time that the waiver is attempted. People v. Evans, 44 Colo. App. 288, 612 P.2d 1153 (1980).

Under unitary trial provision, defendant does not possess a statutory right to a jury trial on the merits and the affirmative defense of insanity if a plea of not guilty by reason of insanity was entered and stipulated to by the prosecution. People v. Laeke, 2012 CO 13M, 271 P.3d 1111.

Valid waiver of jury trial does not require extensive, on-the-record advisements of the kind set out in United States v. Robertson, 45 F. 3d 1423 (10th Cir. 1995). People v. Thompson, 121 P.3d 273 (Colo. App. 2005).

Defendant voluntarily waived jury. Where, when the jury was assembled in the courtroom ready for trial, defendants' counsel orally announced that defendants had decided to waive their right to a jury trial, and the court inquired of each defendant if that was his desire and both indicated in the affirmative, and, as a further precaution, the court then insisted that a written waiver of jury trial be prepared and be signed by each defendant and counsel, which was done, it will be presumed that defendants understandingly, voluntarily, and deliberately decided to waive the jury. People v. Fowler, 183 Colo. 300, 516 P.2d 428 (1973).

Where the record of the trial court discloses that the trial judge orally advised the defendant of his right to a jury, that the defendant read and signed a written waiver, and that he failed to give any indication to the trial court that his waiver was not voluntary, the record was substantial evidence to support the findings that the waiver was voluntary. People v. Simms, 185 Colo. 214, 523 P.2d 463 (1974).

Waiver precludes defendant's complaint that judge rules on evidence and renders verdict. Where the defendant

voluntarily and with advice of counsel waived a jury trial, defendant in such circumstances cannot be heard to complain when he creates a situation which necessarily makes the trial judge both the one who decides the admissibility of evidence and the one who renders the verdict. People v. Thompson, 182 Colo. 198, 511 P.2d 909 (1973).

Colorado constitution does not afford criminal defendants the right to waive jury and be tried by the court. People v. District Court, 843 P.2d 6 (Colo. 1992); People v. District Court, 953 P.2d 184 (Colo. 1998).

A court exceeds its jurisdiction if it allows a defendant to waive his or her right to a jury trial over the objection of the district attorney based on defendant's claim that his due process rights would be violated by testifying and that he would be subject to impeachment about his past criminal convictions and his ties to drug use. It is not a due process violation to be subject to impeachment about prior criminal convictions; the choice to testify or not is part of adversarial trial process and does not create an unfair trial for the defendant. People v. McKeel, 246 P.3d 638 (Colo. 2010).

In construing the provisions of this section with § 18-1-406 (2), granting the defendant the right to waive a jury trial, due process compels conclusion that prosecution alone cannot compel trial by jury where defendant may not receive a fair trial. People v. District Court, 843 P.2d 6 (Colo. 1992).

Provisions of this section which require the people's consent as a prerequisite to defendant's waiver of trial by jury held facially constitutional; however as applied may violate an accused's right to due process. People v. District Court, 843 P.2d 6 (Colo. 1992).

Unqualified prosecution consent requirement to defendant's waiver of trial by jury may violate defendant's constitutional right to due process where defendant contends that such trial would constitute an unfair proceeding before a biased jury. People v. District Court, 843 P.2d 6 (Colo. 1992).

It is incumbent upon a criminal defendant, in seeking waiver of jury trial, to raise due process concerns with the trial court; trial court may evaluate whether a defendant's due process rights are violated only after the defendant makes a showing that an inability to waive trial by jury infringes on defendant's due process rights. People v. District Court, 843 P.2d 6 (Colo. 1992).

In determining whether defendant's right to a fair trial would be violated by denying defendant's waiver of jury trial, trial court may consider the extent to which a change in venue may cure bias or prejudice against the defendant. People v. District Court, 843 P.2d 6 (Colo. 1992).

Due process does not require the prosecution to consent to a waiver of a jury trial in a trial for possession of a weapon by a prior offender merely because the jury will hear evidence of a prior offense even if one of the prior offenses was for a

similar weapons offense. People v. District Court, 953 P.2d 184 (Colo. 1998).

Applied in People ex rel. Hunter v. District Court, 634 P.2d 44 (Colo. 1981).

16-10-102. When jury panel exhausted.

In all criminal cases where the panel of jurors is exhausted by challenge or otherwise, and whether any juror has been selected and sworn or not, the court may order the issuance of a venire for any number of jurors not exceeding twenty-four, returnable forthwith, out of which persons so ordered to be summoned it is lawful to impanel a jury for the trial of any criminal case. Should the jurors thus summoned be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may make further orders for additional jurors, returnable forthwith, until a full jury is obtained.

Source: L. 72: R&RE, p. 235, § 1. **C.R.S. 1963:** § 39-10-102.

16-10-103. Challenge of jurors for cause.

(1) The court shall sustain a challenge for cause on one or more of the following grounds:

(a) Absence of any qualification prescribed by statute to render a person competent as a juror;

(b) Relationship within the third degree, by blood, adoption, or marriage, to a defendant or to any attorney of record or attorney engaged in the trial of the case;

(c) Standing in the relation of guardian and ward, employer and employee, landlord and tenant, debtor and creditor, or principal and agent to, or being a member of the household of, or a partner in business with, or surety on any bond or obligation for any defendant;

(d) The juror is or has been a party adverse to the defendant in a civil action or has complained against or been accused by him in a criminal prosecution;

(e) The juror has served on the grand jury which returned the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information, or on any other investigatory body which inquired into the facts of the crime charged;

(f) The juror was a juror at a former trial arising out of the same factual situation or involving the same defendant;

(g) The juror was a juror in a civil action against the defendant arising out of the act charged as a crime;

(h) The juror was a witness to any matter related to the crime or its prosecution;

(i) The juror occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted;

(j) The existence of a state of mind in the juror evincing enmity or bias toward the defendant or the state; however, no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial;

(k) The juror is a compensated employee of a public law enforcement agency or a public defender's office.

(2) If any juror knows of anything which would disqualify him as a juror or be a ground for challenge to him for cause, it is his duty to inform the court concerning it whether or not he is specifically asked about it. The jury panel shall be advised of this duty and of the grounds for challenge for cause before any prospective jurors are called to the jury box.

(3) If either party desires to introduce evidence of the incompetency, disqualification, or prejudice of any prospective juror who upon the voir dire examination appears to be qualified, competent, and unprejudiced, such evidence shall be heard, and the competency of the juror shall be determined, by the court, out of the presence of the other jurors, but this action cannot be taken after the jury has been sworn to try the case except upon a motion for mistrial.

Source: L. 72: R&RE, p. 236, § 1. **C.R.S. 1963:** § 39-10-103. **L. 98:** (1)(k) amended, p. 466, § 6, effective January 1, 1999.

ANNOTATION

Law reviews. For article, "Challenges for Cause in Criminal Trials", see 12 Colo. Law. 1799 (1983). For article, "Criminal Jury Selection After People v. Novotny", see 44 Colo. Law. 41 (Feb. 2015).

Right to impartial jury. It is fundamental to the right to a fair trial that a defendant be provided with an impartial jury. Nailor v. People, 200 Colo. 30, 612 P.2d 79 (1980).

This section implements that right. People v. Russo, 713 P.2d 356 (Colo. 1986).

A defendant has a fundamental right to a fair trial by a panel of impartial jurors, and, to protect that right, the trial court must exclude prejudiced or biased persons from the jury. People v. Ferrero, 874 P.2d 468 (Colo. App. 1993).

However, the trial court may consider a potential juror's assurances that the juror can fairly and impartially serve on the case in determining whether that juror will be able to set aside a preconceived notion and render an impartial verdict according to the law and the evidence admitted at trial. People v. Ferrero, 874 P.2d 468 (Colo. App. 1993); People v. Loggins, 981 P.2d 630 (Colo. App. 1998); People v. Young, 16 P.3d 821 (Colo. 2001); People v. Arko, 159 P.3d 713 (Colo. App. 2006), rev'd on other grounds, 183 P.3d 555 (Colo. 2008); People v. Vigil, 2015 COA 88M, 459 P.3d 553, aff'd, 2019 CO 105, 455 P.3d 332; People v. Lopez, 2018 COA 119, 488 P.3d 373.

Neither the prosecution nor the defendant is granted any right in this jurisdiction, by constitution, statute, or rule, to shape the composition of the jury through the use of peremptory challenges. The defendant could not have been harmed by the deprivation of any such right. Vigil v. People, 2019 CO 105, 455 P.3d 332.

Trial court did not abuse its discretion in denying challenge for cause. It was the trial court's role to assess and decide whether the juror could assess the victim's testimony like any other witness's testimony even though the juror had a prior relationship with the victim's family. Vigil v. People, 2019 CO 105, 455 P.3d 332.

A trial court should do one of three things if a prospective juror indicates an unwillingness to apply the law: (1) Dismiss the juror for cause; (2) conduct rehabilitative questioning following up on the juror's concerning statements before denying the challenge for cause; or (3) make findings on the record explaining why the juror's statements indicating an unwillingness or inability to follow the law should be disregarded in light of other seemingly inconsistent statements. People v. Marciano, 2014 COA 92M, 411 P.3d 831.

Standard of review is "abuse of discretion". Phrases used in prior case law such as "clear abuse of discretion" and "gross abuse of discretion" are deemed to express this standard and have the same meaning. Carrillo v. People, 974 P.2d 478 (Colo. 1999); People v. Vecchiarelli-McLaughlin, 984 P.2d 72 (Colo. 1999); People v. Martinez, 18 P.3d 831 (Colo. App. 2000); People v. Dashner, 77 P.3d 787 (Colo. App. 2003).

The trial court did not abuse its discretion for denying a challenge for cause when there was reasonable evidence that the juror would be impartial. Therefore, the appellate court erred when it overturned a conviction on the basis that the juror thought that being charged was evidence of guilt because subsequent questioning demonstrated to the trial court that the juror would base his decision on "the facts". People v. Young, 16 P.3d 821 (Colo. 2001).

The trial court did not abuse its discretion in denying a challenge for cause where, in a case involving a homosexual defendant charged with sexual assault, the prospective juror initially stated she had a religious objection to homosexuality. It was within the court's discretion to rely on the prospective juror's later statements that, based on the evidence presented, she would decide whether the defendant committed an illegal act rather than judge him on his

sexual preference. People v. Hoskay, 87 P.3d 194 (Colo. App. 2003); People v. Simon, 100 P.3d 487 (Colo. App. 2004).

It is within the trial court's prerogative to give considerable weight to a potential juror's statement that he or she can fairly and impartially serve on the case. People v. Montoya, 942 P.2d 1287 (Colo. App. 1996); People v. Young, 16 P.3d 821 (Colo. 2001).

When the trial court grants the prosecution's for-cause challenge of a prospective juror, reversal is not required when the claim is that the court abused its discretion. Because the prospective juror did not sit in judgment of the case, that ruling could not have deprived the defendant of his constitutional right to a fair and impartial jury; and because neither the prosecution nor the defendant is granted any right in this jurisdiction, by constitution, statute, or rule, to shape the composition of the jury through the use of peremptory challenges, the defendant could not have been harmed by the deprivation of any such right. Vigil v. People, 2019 CO 105, 455 P.3d 332.

Absence of qualification is basis for challenge, not absolute prohibition. The failure of a prospective juror to meet a qualification for jury service operates as a basis of a challenge for cause, rather than as an absolute prohibition to service; accordingly, that challenge is waived if counsel does not use reasonable diligence on voir dire to determine if a challenge for cause exists. People v. Crespin, 635 P.2d 918 (Colo. App. 1981).

Failure of prospective juror to meet a qualification for jury service operates as a basis of a challenge for cause rather than as an absolute prohibition to service. People v. Orozco, 49 P.3d 1212 (Colo. App. 2002).

Reversal of a criminal conviction for other than structural error is not required absent an express legislative mandate or an appropriate case-specific outcome-determinative analysis. Allowing a defendant fewer peremptory challenges than authorized or than exercised by the prosecution is not structural error requiring reversal. People v. Novotny, 2014 CO 18, 320 P.3d 1194 (overruling People v. Macrander, 828 P.2d 234 (Colo. 1992), People v. Lefebre, 5 P.3d 295 (Colo. 2000), and other holdings to the contrary); People v. Alfaro, 2014 CO 19, 320 P.3d 1191; People v. Roldan, 2014 CO 22, 322 P.3d 922; People v. Montero-Romero, 2014 CO 23, 322 P.3d 923; People v. Wise, 2014 COA 83, 348 P.3d 482.

Trial court's failure to excuse juror for cause was harmless. Defendant used a peremptory challenge to correct the court's failure to remove the juror. But the record did not reflect that a biased or incompetent juror served on the jury, and therefore defendant could not establish he was harmed by the trial court's erroneous failure to excuse the juror for cause. People v. Oliver, 2020 COA 97, 474 P.3d 207.

Trial court abused its discretion for failure to grant a challenge for cause when a prospective juror expressed racial bias. Because the defendant exercised the statutorily allotted peremptory strikes to remove the prospective juror, the erroneous

ruling was harmless error. People v. Clark, 2022 COA 33, 512 P.3d 1074; aff'd, 2024 CO 55, 553 P.3d 215.

Trial court's ruling affects a substantial right of the defendant and cannot be deemed harmless error where the court erroneously denies a challenge for cause to a prospective juror, the defendant uses a peremptory challenge to remove that juror, and the defendant exhausts all peremptory challenges. Carrillo v. People, 974 P.2d 478 (Colo. 1999); People v. Orozco, 49 P.3d 1212 (Colo. App. 2002).

The entire voir dire of the prospective juror must be reviewed by the appellate court in order to determine whether the trial court abused its discretion in ruling on a challenge for cause. Carrillo v. People, 974 P.2d 478 (Colo. 1999); People v. Orozco, 49 P.3d 1212 (Colo. App. 2002).

Trial court to excuse prejudicial or biased persons. To insure that the right to a fair trial is protected, the trial court must excuse prejudiced or biased persons from the jury. Nailor v. People, 200 Colo. 30, 612 P.2d 79 (1980); People v. Arevalo, 725 P.2d 41 (Colo. App. 1986); People v. Gulyas, 2022 COA 34, 512 P.3d 1049.

Trial court must grant challenge for cause where prospective juror is unwilling or unable to accept the basic principles of law applicable and render a fair and impartial verdict based upon the trial. People v. Russo, 713 P.2d 356 (Colo. 1986); People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

No juror should be dismissed for cause if the court is satisfied that the juror will render an impartial verdict. People v. Romero, 593 P.2d 365 (Colo. App. 1978); People v. Veloz, 946 P.2d 525 (Colo. App. 1997).

If the trial court had genuine doubt about the juror's ability to be impartial, under the circumstances, it should resolve the doubt by sustaining the challenge. People v. Russo, 713 P.2d 356 (Colo. 1986).

When potential juror's statements compel inference that he or she cannot decide crucial issues fairly, a challenge for cause must be granted in the absence of rehabilitative questioning or other counterbalancing information. People v. Merrow, 181 P.3d 319 (Colo. App. 2007).

Appellate review of a challenge for cause requires consideration of the entire voir dire examination of a juror. People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

Appellate review not precluded by invited error where a defendant does not use a peremptory challenge to excuse a juror for whom the defendant's challenge for cause was denied. People v. Garcia, 2018 COA 180, 446 P.3d 922.

Number of challenges for cause not limited. There has been no limit set by statute or rule on the number of challenges for cause. People v. Fink, 41 Colo. App. 47, 579 P.2d 659 (1978).

Trial court did not abuse its discretion in denying challenge of potential juror for cause. Juror admitted that she had read about the case involving felony child abuse that resulted in death and may have formed an opinion about the defendant's affirmative defense; however, the court sufficiently

questioned the juror, who said she would listen to the evidence presented and would apply the court's instruction on the law in reaching a verdict. People v. Lybarger, 790 P.2d 855 (Colo. App. 1989), rev'd on other grounds, 807 P.2d 570 (Colo. 1991).

Trial court did not abuse its discretion in denying challenge of potential juror for cause in sexual assault case where potential juror had been a victim of sexual assault forty years earlier, displayed the emotional impact of her experience, and expressed her wish that she had killed her attacker, but also indicated that her experience would allow her to be more fair, that she could put her own experience out of her mind, and base her decision on what she heard in the courtroom, and would follow the court's instructions. People v. Schmidt, 885 P.2d 312 (Colo. App. 1994).

Trial court did not abuse its discretion in denying a challenge for cause with regard to four jurors where, even though all four had some knowledge of the business at which the crime occurred and other reasons for being potentially biased against the defendant, each one assured the court that he or she could be fair and impartial and follow the law and instructions. People v. Dore, 997 P.2d 1214 (Colo. App. 1999).

Trial court did not abuse its discretion in denying a challenge for cause with regard to a juror who attended the same church as that attended by the victim's family, the juror stated that he would be able to consider the possibility that the testimony of his pastor, a witness, might not be entirely truthful or accurate, and the juror stated that he had not formed an opinion about defendant's guilt or innocence. People v. Medina, 72 P.3d 405 (Colo. App. 2003).

Trial court did not abuse its discretion in denying defendant's challenge for cause where defense counsel asked during voir dire whether anyone believed it would be impossible to be fair if defendant did not testify and juror stated that it would and that it might upset her, but not so much as to affect her decision-making. The trial court found that the juror indicated she would do what the court instructed her to do even though she might not like it. People v. Frantz, 114 P.3d 34 (Colo. App. 2004).

The court did not abuse its discretion in denying defendant's challenge for cause. The juror's responses, as a whole, reflect that, while serving as a juror may have been difficult, he or she would base his or her decision on the evidence and the law and would follow the court's instructions. People v. Montoya, 141 P.3d 916 (Colo. App. 2006).

Under the totality of the circumstances, trial court's denial of challenge for cause was not arbitrary, unreasonable, or unfair. Although the juror initially expressed concerns over the use of the insanity defense, the trial court sufficiently rehabilitated the juror through questioning. Marko v. People, 2018 CO 97, 432 P.3d 607.

Similarly, trial court did not abuse its discretion in excusing a potential juror for cause when the potential juror expressed a particular aversion to serving as a juror in a sexual assault trial, and asserted her religious beliefs as a reason. People v. Schmidt, 885 P.2d 312 (Colo. App. 1994).

Trial court did not abuse its discretion in granting challenge for cause when the potential juror expressed an opinion that he thought the law was unfair because court reasoned that based on juror's opinion of the law, there was a question as to whether the juror would follow the instructions of the law. People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

Trial court did not abuse discretion in denying defendant's challenge for cause against a juror who was "concerned of maybe a judge of character kind of thing" when such statement did not establish that she would fail to be fair and impartial. Morrison v. People, 19 P.3d 668 (Colo. 2000).

The trial court did not abuse its discretion in denying defendant's challenge for cause to a juror that had multiple associations with law enforcement. The juror understood that the defense had no burden of proof, that the prosecution had the burden of proving every element, and that both sides would get a fair trial from said juror. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

The trial court did not abuse its discretion in denying defendant's challenge for cause to a juror based on said juror's views regarding the death penalty and previous traumatic experiences. The juror did not express any partiality for or bias in favor of or against either side. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

No abuse of discretion for denying challenge for cause. Although the potential juror indicated his relationship with law enforcement officers might bias him in favor of believing police testimony, he also explained he would be fair and impartial and fair to the defendant. People v. Garrison, 2012 COA 132M, 303 P.3d 117.

Court did not err in not dismissing for cause two jurors who specifically committed to putting aside what they had read, not telling the other jurors about what they read, and rendering a fair and impartial verdict based only on the evidence presented at trial. People v. Shreck, 107 P.3d 1048 (Colo. App. 2004).

Trial court abused its discretion by denying a challenge for cause to a juror who acknowledged a bias in favor of child witnesses and was not rehabilitated by the prosecution or the court. People v. Gulyas, 2022 COA 34, 512 P.3d 1049.

It is incumbent upon challenging party to clearly state on the record the particular ground on which challenge for cause is made, since this statute operates as the legal basis for challenging a juror for cause. Only in this way can the court and opposing counsel direct appropriate questions to the juror to determine whether the challenge is well taken. People v. Russo, 713 P.2d 356 (Colo. 1986); People v. West, 724 P.2d 623 (Colo. 1986).

Court's questioning and "rehabilitation" of prospective jurors was not improper where the questions were directed to eliciting information on the subject of the prospective jurors' possible bias and were no more leading than

necessary. People v. James, 981 P.2d 637 (Colo. App. 1998).

Missing portion of transcript of voir dire proceedings does not automatically require reversal. Where trial court held a hearing to reconstruct, to the extent possible, the relevant portion of voir dire, the court's denial of the challenge for cause was upheld. People v. Loggins, 981 P.2d 630 (Colo. App. 1998); People v. Carmichael, 179 P.3d 47 (Colo. App. 2007), rev'd on other grounds, 206 P.3d 800 (Colo. 2009).

Although the record was incomplete, there was sufficient information in the record to support court's denial of challenge for cause. People v. Carmichael, 179 P.3d 47 (Colo. App. 2007), rev'd on other grounds, 206 P.3d 800 (Colo. 2009).

Propriety of questions within discretion of court. The propriety of questions during voir dire is within the discretion of the trial court, and its ruling will not be disturbed absent an abuse of that discretion. People v. Shipman, 747 P.2d 1 (Colo. App. 1987).

Trial court did not abuse its discretion in disallowing one of defense counsel's questions which went to the defendant's theory of the case. The court permitted other questions that allowed the defendant to determine whether potential jurors held certain attitudes toward the defendant's affirmative defense. People v. Lybarger, 790 P.2d 855 (Colo. App. 1989), rev'd on other grounds, 807 P.2d 570 (Colo. 1991).

Grant of challenge for cause within discretion of trial court. The ultimate decision of whether or not to grant a challenge for cause is one for the trial court's sound discretion, since the factors of credibility and appearance which are determinative of bias are best observed at the trial court level. Nailor v. People, 200 Colo. 30, 612 P.2d 79 (1980); People v. Reddick, 44 Colo. App. 278, 610 P.2d 1359 (1980); People v. Wilson, 678 P.2d 1024 (Colo. App. 1983); People v. Russo, 713 P.2d 356 (Colo. 1986); People v. Schmidt, 885 P.2d 312 (Colo. App. 1994); People v. Veloz, 946 P.2d 525 (Colo. App. 1997); People v. Sherman, 45 P.3d 774 (Colo. App. 2001).

Defendant must exercise reasonable diligence to determine whether a prospective juror should have been excused. If defendant fails to do so, he or she is considered to have waived his or her opportunity to raise any matters pertaining to the qualifications and competency of the excluded juror on appeal. People v. Asberry, 172 P.3d 927 (Colo. App. 2007).

Defendant did not waive his or her right to challenge for cause during the first discussion related to the challenge for cause, since the court did not make it clear that first discussion for cause would be the defendant's only opportunity to challenge for cause. Ma v. People, 121 P.3d 205 (Colo. 2005).

As trial court is in position to assess potential jurors. The need for a careful evaluation of the competence of potential jurors to assess the defendant's guilt or innocence solely on the evidence admitted at trial, and the serious practical problems involved with these assessments, are sound reasons for placing great discretion in the trial court in the jury selection procedures.

Morgan v. People, 624 P.2d 1331 (Colo. 1981).

Since the factors of credibility and appearance which are determinative of bias are best observed at the trial court level, the ultimate decision whether to grant a challenge for cause is left to the trial court's sound discretion. People v. Arevalo, 725 P.2d 41 (Colo. App. 1986).

A decision denying a challenge for cause will be set aside only if the record discloses a clear abuse of discretion by the trial court. People v. Moya, 899 P.2d 212 (Colo. App. 1994).

Trial courts have considerable discretion in ruling on challenges for cause, because the trial judge is in the best position to assess the credibility, demeanor, and sincerity of the potential juror's responses, including statements that linguistically may appear to be inconsistent. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

If a court erroneously denies a challenge for cause and the defendant uses all of the defendant's peremptory challenges, including one to remove the disqualified juror, the effect is to deprive the defendant of the guaranteed number of peremptory challenges. This circumstance has always been looked upon as prejudicial. People v. Macrander, 817 P.2d 579 (Colo. App. 1991), aff'd, 828 P.2d 234 (Colo. 1992), overruled in People v. Novotny, 2014 CO 18, 320 P.3d 1194; People v. Merrow, 181 P.3d 319 (Colo. App. 2007).

Reversal of conviction is required where trial court erroneously denies a challenge for cause and defendant exhausts his or her peremptory challenges. The jurors' statements of bias were unequivocal, occurred at the close of lengthy voir dire, and were not mitigated by any rehabilitative questioning and responses. People v. Chavez, 313 P.3d 594 (Colo. App. 2011).

While subsection (1)(k) of this section and Crim. P. 24(b)(1)(XII) require a trial court to grant a party's challenge for cause to a juror who is employed by a public law enforcement agency, neither expressly requires the court to excuse a juror sua sponte. People v. Hinojos-Mendoza, 140 P.3d 30 (Colo. App. 2005), aff'd in part, rev'd in part on other grounds, 169 P.3d 662 (Colo. 2007).

A violation of subsection (1)(k) does not require reversal under an express legislative mandate when a trial court erroneously denies a challenge for cause and the impliedly biased juror ultimately serves on the jury. People v. Abu-Nantambu-El, 2019 CO 106, 454 P.3d 1044.

Jurors who are presumed by law to be biased under subsection (1)(k) are not legally distinguishable from jurors who are actually biased under subsection (1)(j). People v. Abu-Nantambu-El, 2019 CO 106, 454 P.3d 1044.

If a trial court error results in the seating of a juror who is actually biased against the defendant, the defendant's right to an impartial jury is violated, the error is structural, and reversal is required. People v. Abu-Nantambu-El, 2019 CO 106, 454 P.3d 1044.

Because the trial court erroneously denied a for-cause challenge to a juror who was presumed by law to be biased under subsection (1)(k), the defendant exhausted his peremptory challenges, and the impliedly biased juror served on the defendant's jury, the error is structural, and defendant's convictions must be reversed. People v. Abu-Nantambu-El, 2019 CO 106, 454 P.3d 1044.

A party waives their claim that the trial court erred by denying a challenge for cause when the party fails to use a peremptory challenge to excuse the juror. People v. Vergari, 2022 COA 95, 521 P.3d 391.

For purposes of subsection (1)(k), department of social services is properly characterized as a public assistance and welfare organization and not as a public law enforcement agency. People v. Zurenko, 833 P.2d 794 (Colo. App. 1991).

Subsection (1)(k) describes a person who provides labor and services to, is paid by, and receives direction from a public law enforcement agency. The potential juror in question was not paid by the county jail, nor did the record indicate that she was subject to the jail personnel's direction and control. Therefore, she was not a compensated employee under this section. Mulberger v. People, 2016 CO 10, 366 P.3d 143.

Administrator for a victim advocacy organization was not a "compensated employee of a public law enforcement agency". People v. Whitman, 205 P.3d 371 (Colo. App. 2007).

Prospective jurors employed with the transportation security administration (TSA) are not compensated employees of public law enforcement agency, the department of homeland security, for purposes of subsection (1)(k) and, therefore, do not need to be excused for cause since such employees lack the authority to arrest, to prosecute, or to detain suspected criminals. People v. Speer, 216 P.3d 18 (Colo. App. 2007).

Prospective juror who was employed as a security officer with the Pueblo depot activity is not a compensated employee of a public law enforcement agency pursuant to subsection (1)(k). That the functions of the department of defense require it to maintain security measures at its facilities, and to hire civil security guards who conduct investigations and searches, does not transform the Army and its various installations into a law enforcement arm of the government. People v. Urrutia, 893 P.2d 1338 (Colo. App. 1994).

A law enforcement agency for the purposes of subsection (1)(k) is a police-like division of government that has the authority to investigate crimes and to arrest, to prosecute, or to detain suspected criminals. The army military police corps is a law enforcement agency for the purposes of subsection (1)(k). Ma v. People, 121 P.3d 205 (Colo. 2005); People v. Speer, 255 P.3d 1115 (Colo. 2011).

Statutory classification of employees of an agency as "peace officers" while engaged in their duties is not determinative of whether the agency is a

law enforcement agency. People v. Carter, 2015 COA 24M-2, 402 P.3d 480.

An employee of a community corrections facility is an employee of a public law enforcement agency within the meaning of subsection (1)(k) of this section and Crim. P. 24(b)(1)(XII). People v. Romero, 197 P.3d 302 (Colo. App. 2008).

The office of the state attorney general is a law enforcement agency for purposes of subsection (1)(k). People v. Novotny, 356 P.3d 829 (Colo. App. 2010), rev'd on other grounds, 2014 CO 18, 320 P.3d 1194.

Private prison operator is not a public law enforcement agency under subsection (1)(k) because it is not a division or subdivision of state or federal government that has the authority to investigate crimes and to arrest, prosecute, or detain suspected individuals. People v. Bonvicini, 2016 CO 11, 366 P.3d 151.

The office of prevention and security within the Colorado department of homeland security and emergency management operates the state's fusion center, which is not a public law enforcement agency under subsection (1)(k) of this section or Crim. P. 24(b)(1)(XII). People v. Avila, 2019 COA 145, 457 P.3d 771.

For purposes of subsection (1)(k) or Crim. P. 24(b)(1)(XII), the environmental protection agency is properly characterized as an investigatory and rulemaking body and not a law enforcement agency. People v. Simon, 100 P.3d 487 (Colo. App. 2004).

For purposes of subsection (1)(k) or Crim. P. 24(b)(1)(XII), the public utilities commission is not a public law enforcement agency because it is charged primarily with the regulation of civil matters and only has incidental penal enforcement authority. People v. Carter, 2015 COA 24M-2, 402 P.3d 480.

Where a juror's final responses to questions on voir dire indicate a clear expression of bias in favor of a significant prosecution witness, it may not be assumed that the juror would render an impartial verdict and challenge for cause should be granted. People v. Zurenko, 833 P.2d 794 (Colo. App. 1991).

Prejudice is shown if defendant exhausts all of his peremptory challenges and one of those challenges is expended on a juror who should have been removed for cause. A defendant is not required to request an additional peremptory challenge to preserve this issue on appeal. People v. Prator, 833 P.2d 819 (Colo. App. 1992).

No abuse of discretion. Where trial court conducted rehabilitative questioning of jurors and was satisfied of their impartiality, trial court did not abuse discretion in denying defendant's challenge for cause. People v. Manners, 713 P.2d 1348 (Colo. App. 1985).

Where trial court conducted requisite inquiry of juror who was related to sheriff's posse members and was satisfied with juror's specific assurances that she could render a fair and impartial verdict, it was not an abuse of discretion to deny challenge for

cause. People v. Goodpaster, 742 P.2d 965 (Colo. App. 1987).

The test for determining whether a prospective juror should be disqualified for bias is whether that person will render a fair and impartial verdict according to the law and the evidence presented at trial, and the trial court is in the best position to observe the credibility and appearance of the veniremen when deciding the question of bias. People v. Fuller, 791 P.2d 702 (Colo. 1990).

The test to be applied is whether the person would be able to set aside any bias or preconceived notion and render an impartial verdict according to the law and the evidence presented at trial. People v. Moya, 899 P.2d 212 (Colo. App. 1994).

But appellate courts to insure requirements of fairness fulfilled. The placing of discretion in the trial judge in jury selection procedures does not permit appellate courts to abdicate their responsibility to ensure that the requirements of fairness are fulfilled. Morgan v. People, 624 P.2d 1331 (Colo. 1981).

Absent a gross abuse of discretion, the trial court's decision to deny a challenge for cause should not be disturbed on appeal. No abuse of discretion where the record did not show that the jurors' prior knowledge of the case was so extensive that it would preclude them from determining defendant's guilt or innocence solely from the evidence presented at trial. People v. Arevalo, 725 P.2d 41 (Colo. App. 1986).

A trial court must sustain a challenge for cause if a prospective juror is unable or unwilling to accept the basic principles of criminal law. People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

A challenge for cause should not be sustained if subsequent examination of the prospective juror clearly demonstrates the juror's original statement that would subject the juror to a cause challenge was the product of mistake, confusion, or some other factor unrelated to the juror's ability to render a fair verdict. People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

A challenge for cause should not be sustained when the juror's statement reflects a bias in the abstract, but the juror indicates he or she will decide the case on the law and the evidence. People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

One cannot assume juror's ability to exclude unconscious influence of preconceptions. One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may exclude even the unconscious influence of his preconceptions. Beeman v. People, 193 Colo. 337, 565 P.2d 1340 (1977).

In a prosecution for rape and deviate sexual intercourse, where the juror was sufficiently upset by defendant's earlier contact with her pregnant daughter that she called his employer to have him reprimanded, and further, the juror had raised the possibility in her mind that it was

her daughter's knife which had been used in the alleged rape, a personal and emotional situation concerning the juror and the accused existed rather than an opinion or abstract belief in the defendant's guilt or innocence. Beeman v. People, 193 Colo. 337, 565 P.2d 1340 (1977).

Test as to whether prospective juror has been unduly affected by pretrial publicity is whether the nature and strength of the opinion formed or of the information learned from that publicity are such as necessarily raise the presumption of partiality or of the inability of the potential juror to block out the information from his consideration. People v. Romero, 42 Colo. App. 20, 593 P.2d 365 (1978); People v. Bashara, 677 P.2d 1376 (Colo. App. 1983).

Mere familiarity with a case due to pretrial publicity does not, in itself, create a constitutionally defective jury. People v. Loscutoff, 661 P.2d 274 (Colo. 1983).

On trial of a criminal case where the issue of insanity is tried separately, questions of both counsel to prospective jurors eliciting answers disclosing that such jurors have no opinions and express none concerning a defendant's sanity, and that they entertain no bias or prejudice against him on the issue of insanity, and that they could try him fairly and impartially on such issue, presents no grounds of challenge for cause. Leick v. People, 136 Colo. 535, 322 P.2d 674 (1958) (decided under repealed § 78-5-3, C.R.S. 1963).

A prospective juror who was a first cousin of a local attorney who had done some preliminary work in this case for defense counsel but who had never been an attorney of record and had at no time appeared in court in connection with the case did not fall within the mandate of this section requiring the court to sustain the challenge for cause. People v. Langford, 191 Colo. 87, 550 P.2d 329 (1976).

Removal of potential juror who will not follow court's instructions. A fair trial for the accused when a juror has given indications that he would not follow the court's instructions is an improbability; thus, such a juror should be removed from the panel by the trial court. Morgan v. People, 624 P.2d 1331 (Colo. 1981).

Impartial juror cannot be dismissed for cause. No juror can be dismissed for cause if the trial court is satisfied the juror will render an impartial verdict. People v. Romero, 42 Colo. App. 20, 593 P.2d 365 (1978).

So long as the court is satisfied, from an examination of the prospective juror or from other evidence, that the juror will render an impartial verdict according to the evidence admitted at trial and the court's instructions of law, the court may permit the juror to serve. People v. Gurule, 628 P.2d 99 (Colo. 1981); People v. Sandoval, 733 P.2d 319 (Colo. 1987).

However, a prospective juror with a previously formed or expressed opinion need not be disqualified if the court is satisfied from the examination of the juror, or from other evidence, that the juror will render an impartial verdict according to the law and the evidence submitted at trial.

People v. Arevalo, 725 P.2d 41 (Colo. App. 1986).

Even if a potential juror expresses some prejudice or predisposition other than a bias against the accused, a disqualification for cause is not necessary if the trial court is reasonably satisfied that he or she is willing to be fair and follow the instructions given by the court. People v. Schmidt, 885 P.2d 312 (Colo. App. 1994).

Although the prospective juror may have displayed a preconceived opinion that defendants in general should testify in their own defense, he later confirmed that he would not use the defendant's decision not to testify as evidence of his guilt and therefore the trial court did not abuse its discretion in denying the defendant's challenge for cause. The record of this prospective juror's answers, taken as a whole, demonstrates that he did not have a state of mind evincing enmity or bias against the defendant. People v. Vecchiarelli-McLaughlin, 984 P.2d 72 (Colo. 1999).

Challenged jurors did not patently demonstrate any fixed prejudgment. People v. Arevalo, 725 P.2d 41 (Colo. App. 1986).

Where juror demonstrates fixed prejudgment about merits, court errs in refusing to excuse. Where the prospective juror patently demonstrates a fixed prejudgment about the merits of the case and an unwillingness to accept and apply those principles that form the bedrock of a fair trial, the trial court errs in refusing to excuse that juror when causally challenged. People v. Gurule, 628 P.2d 99 (Colo. 1981).

Denying challenge to juror with bias against handguns not abuse of discretion. In a prosecution for armed robbery, the court does not abuse its discretion in denying a challenge for cause to a potential juror who admits his long-standing bias against handguns, where the juror is questioned extensively by the court and defendant's counsel on his opinions concerning handguns and the probable effect of his opinions and experiences on his evaluation of the evidence, where the juror reveals no enmity or bias toward the defendant or the state, and where he expresses an understanding of the principles upon which a fair trial is based. People v. Ward, 673 P.2d 47 (Colo. App. 1983).

Automatic challenge for cause of law enforcement employee. Under subsection (1)(k) the actual bias of a law enforcement employee need not be shown to sustain a challenge for cause. People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); People v. Maes, 43 Colo. App. 426, 609 P.2d 1105 (1979).

Employee of the state department of administration was improperly challenged for cause under this section. People v. Topping, 764 P.2d 369 (Colo. App. 1988).

Neither the department of social services nor the equal employment opportunity commission constitute a "law enforcement agency", and therefore trial court did not err by refusing defendant's challenge for cause of jurors employed by such entities. People v. Zurenko, 833 P.2d 794 (Colo. App. 1991).

A prospective juror whose son is a deputy district attorney in the same judicial district where the defendant is being tried may be challenged for cause even though her son is not involved in the prosecution of the case against the defendant. The prospective juror's son is an attorney of record under the provisions of subsection (1)(b). People v. Macrander, 817 P.2d 579 (Colo. App. 1991), aff'd, 828 P.2d 234 (Colo. 1992).

A county official whose office, by statutory mandate, is represented by the prosecutor need not be automatically excluded from serving on a jury on the grounds that the county official is implicitly biased. The relationship between the offices of the clerk and county recorder and of the district attorney, standing alone, does not provide sufficient grounds to justify a challenge for cause. People v. Rhodus, 870 P.2d 470 (Colo. 1994).

Under subsection (1)(j), prospective jurors should be excused if "it appears doubtful" that they will be governed by the instructions of the court as to the law of the case. Morgan v. People, 624 P.2d 1331 (Colo. 1981); People v. Blackmer, 888 P.2d 343 (Colo. App. 1994).

Failure of trial court to excuse juror in response to challenge for cause did not constitute reversible error when juror indicated that she would need to hear both sides to make a decision; rather, such statement suggested juror's commitment to base her decision on the evidence as presented at trial. Morrison v. People, 19 P.3d 668 (Colo. 2000); People v. Honeysette, 53 P.3d 714 (Colo. App. 2002).

Failure of trial court to excuse juror in response to the challenge for cause constituted reversible error where the juror indicated she would have difficulty applying the principles of law unless she heard the defendant testify at trial. People v. Blackmer, 888 P.2d 343 (Colo. App. 1994).

Challenge for cause valid. Juror's close association with the law enforcement establishment, the crime scene, and the co-employee who attended the murder victim required dismissal for cause. People v. Rogers, 690 P.2d 886 (Colo. App. 1984).

Applicable in juvenile proceedings. The rule allowing one charged in an adult criminal prosecution to challenge for cause a prospective juror who is employed by a law enforcement agency must also be applied in juvenile delinquency proceedings. People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978).

Actual function of such employee irrelevant as to challenge. This section does not discriminate on the basis of the particular function served by a challenged employee working in the penitentiary, but mandates that all present employees of law enforcement agencies be excused from jury service. People v. Scott, 41 Colo. App. 66, 583 P.2d 939 (1978).

State penitentiary deemed law enforcement agency. The state penitentiary, as a state "institution" within the department of institutions, is a law enforcement agency as to the eligibility of employees thereof to serve as jurors. People v. Scott, 41 Colo. App. 66, 583 P.2d 939 (1978).

Division of youth corrections (DYC) within the department of human services is a public law enforcement agency within the meaning of subsection (1)(k). The court erroneously denied defendant's challenge for cause to a prospective juror employed by the DYC. People v. Sommerfeld, 214 P.3d 570 (Colo. App. 2009).

Neither the federal department of homeland security nor the federal transportation safety administration is a public law enforcement agency within the contemplation of the statute. Neither agency has as its predominant purpose the enforcement of penal laws. People v. Speer, 255 P.3d 1115 (Colo. 2011).

Even tenuous relationships with law enforcement agency grounds for challenge. To insure that a jury is impartial in both fact and appearance, a prospective juror who has even a tenuous relationship with any prosecutorial or law enforcement arm of the state should be excused from jury duty in a criminal case. People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); People v. Maes, 43 Colo. App. 426, 609 P.2d 1105 (1979).

Where juror stated that she was acquainted with a police officer who would be a witness for the prosecution, that her husband was a police officer, and that the name of a police officer who was to testify as a defense witness sounded familiar to her and where the juror stated that these factors would not have a bearing upon her ability to be a fair and impartial juror, while no one of these factors alone would have required that this juror be excused for cause, the combination of factors reflecting her close association with the law enforcement establishment required her dismissal for cause, despite her somewhat ambivalent statements that these factors would not affect her ability to be a fair and impartial juror. People v. Reddick, 44 Colo. App. 278, 610 P.2d 1359 (1980).

But where the juror has only a passing acquaintance with police officers and states that her impartiality will not be affected, the court may permit the juror to serve. People v. Fields, 697 P.2d 749 (Colo. App. 1984).

Similarly, where the juror has a casual friendship with a police cadet, and the juror states that he would be fair to the defendant, the court may permit the juror to serve. People v. Vigil, 718 P.2d 496 (Colo. 1986).

But former employees not subject to challenge. Since this section does not purport to disqualify former employees of a public law enforcement agency challenged for cause, a defendant's challenge of a retired guard member of the jury panel was properly denied. People v. Scott, 41 Colo. App. 66, 583 P.2d 939 (1978).

But volunteer reserve police officer not ineligible for jury service. The plain language of the statute makes compensated employees of public law enforcement agencies ineligible for jury service. Compensation by private employers for off-duty work does not bring panel member within reach of statute. Employment at the time of the defendant's trial, and not future employment, is determinative. People v. Veloz, 946 P.2d 525 (Colo. App. 1997).

Prospective juror clearly was not an "employee" under this section or under Crim. P. 24(b)(1)(XII), where she volunteered to serve on an on-call basis to work with victims, at the time of trial had been an advocate for a brief period, had been called only approximately six times, and had only a casual limited time commitment. People v. Gilbert, 12 P.3d 331 (Colo. App. 2000).

Statute is not "eliminated" by § 13-71-104. This statute was enacted prior to the passage of § 13-71-104 and general assembly is assumed to have been aware of this statute at that time, both statutes should be read together so as to give effect to each, particular statutes prevail over general and statutory repeal by implication is not favored, and this statute applies only in criminal trials while § 13-71-104 applies generally to all jury trials. People v. Veloz, 946 P.2d 525 (Colo. App. 1997).

Being a spouse does not subject a person to a challenge for cause as a compensated employee of a public law enforcement agency under subsection (1)(k). To be an employee of a public law enforcement agency an individual must agree to perform certain services or tasks and to accept direction and control from an authorized representative of the employer for compensation and being a spouse of such an employee even though the recipient of certain benefits by reason of being the spouse does not subject a person to a challenge for cause as a compensated employee under subsection (1)(k). People v. Coleman, 844 P.2d 1215 (Colo. App. 1992).

Word "lawyer" includes only those persons licensed to practice law. For challenge for cause to be successful as to a prospective juror who is learned in the law but not licensed to practice, there must be a showing that prospective juror's education has produced state of mind resulting in enmity or bias toward defendant or the state. People v. Binkley, 687 P.2d 480 (Colo. App. 1984), aff'd, 716 P.2d 1111 (Colo. 1986) (case decided prior to 1998 amendment to subsection (1)(k) that deleted applicability to lawyers).

A prospective juror who retained a license to practice law is a "lawyer" under subsection (1)(k), even if the juror is no longer eligible to practice law because of a transfer to inactive status. People v. Pope, 944 P.2d 689 (Colo. App. 1997); People v. Daniels, 973 P.2d 641 (Colo. App. 1998) (cases decided prior to 1998 amendment to subsection (1)(k) that deleted applicability to lawyers).

As used in subsection (1)(b), the term "third degree" means a relationship between one person and another based on consanguinity, or blood relationship, and affinity, or relationship by marriage. Each generation is called a degree in determining the particular degree of the relationship. People v. Macrander, 828 P.2d 234 (Colo. 1992).

A prospective juror would be related to an attorney of record within the third degree "by blood" if the attorney was the juror's child or parent; brother, sister, grandchild, or grandparent; or niece, nephew, great-grandparent, or great-grandchild. People v. Macrander, 828 P.2d 234 (Colo. 1992).

A prospective juror would be related to an attorney of record within the third degree "by marriage" if the attorney was the spouse of the prospective juror, or if the attorney was the child, sibling, grandchild, grandparent, uncle, aunt, niece, nephew, great-grandchild, or great grandparent of the spouse of the prospective juror. People v. Macrander, 828 P.2d 234 (Colo. 1992).

As used in subsection (1)(b), "attorney of record" includes the elected district attorney of a judicial district who initiates a criminal prosecution and also includes any deputy district attorney serving in the office of such elected district attorney at the time of voir dire examination, even though the deputy district attorney may not have formally appeared or participated in the case. People v. Macrander, 828 P.2d 234 (Colo. 1992).

As used in subsection (1)(b), the phrase "any attorney of record or attorney engaged in the trial of the case" includes not only all prosecuting attorneys on the district attorney's staff, but also includes any defense attorney who previously entered an appearance on behalf of the defendant but who may not be participating in the trial of the case, as well as any attorney who will act on behalf of any party during the trial regardless of the level of the attorney's participation. People v. Macrander, 828 P.2d 234 (Colo. 1992).

For purposes of a challenge for cause under subsection (1)(b) a prospective juror who is related within the third degree by blood, adoption, or marriage to a deputy district attorney presently serving on the staff of the elected district attorney responsible for the criminal prosecution is related to an "attorney of record." People v. Macrander, 828 P.2d 234 (Colo. 1992).

As used in subsection (1)(b), "attorney of record" or "attorney engaged in the trial of the case" does not include a paralegal employed by the district attorney's office. Because juror's daughter was a paralegal and not an attorney, the trial court did not err in denying defendant's challenge for cause under subsection (1)(b). People v. Fleischacker, 2013 COA 2, 411 P.3d 20.

A marital relationship between a presiding judge and a juror is not included in the specific circumstances under which a court must sustain a challenge to a juror for cause. Considering the statute as a whole and giving the word "attorney" its plain and ordinary meaning in context, it is apparent that it refers to attorneys who represent or have represented the parties and advocated on their behalf. Moreover, an attorney is defined as someone who practices law, and a judge is prohibited from engaging in the practice of law. People v. Richardson, 2018 COA 120, 486 P.3d 282, aff'd on other grounds, 2020 CO 46, 481 P.3d 1.

Presence of presiding judge's spouse on the jury did not rise to the level of structural error without any evidence of prejudice resulting from the judge's spouse serving on the jury. Although it would have been prudent for the judge to excuse his wife, or to recuse himself as presiding judge, the judge's misjudgment was not so egregious that it requires reversal under the plain error standard. People v.

Richardson, 2018 COA 120, 486 P.3d 282, aff'd on other grounds, 2020 CO 46, 481 P.3d 1.

Trial court lacks discretion and shall sustain a challenge to remove a prospective juror from further service on the case where a statutory relationship is established and a party challenges the prospective juror for cause on that ground. People v. Macrander, 828 P.2d 234 (Colo. 1992).

Exclusion under subsection (1)(b) not automatic. Both prosecution and defense have the right to either challenge for cause or to forgo such challenge. People v. Macrander, 828 P.2d 234 (Colo. 1992).

A challenge for cause may be for bias that is either actual or implied. An implied bias is a bias attributable in law to a prospective juror regardless of actual partiality. People v. Moya, 899 P.2d 212 (Colo. App. 1994).

Trial court's denial of defendant's challenge for cause under subsection (1)(b) constituted prejudicial error where it failed to remove prospective juror whose son was a deputy district attorney in the same district where defendant was being tried and defendant was required to exercise a peremptory challenge to remove suspect juror and where defendant exhausted all available peremptory challenges on other jurors. People v. Macrander, 828 P.2d 234 (Colo. 1992).

When court's failure to advise panel rendered harmless. Where the trial court failed to advise the jury panel pursuant to subsection (2) until after 13 prospective jurors had been seated in the jury box and the prosecutor had completed his voir dire, but the defendant failed to show that he was prejudiced by this error or that his substantial rights were in any way affected, the trial court's error was rendered harmless by the trial court's subsequent statements to the jury panel in accordance with subsection (2). People v. Reddick, 44 Colo. App. 278, 610 P.2d 1359 (1980).

Prosecution not required to move for mistrial before court could consider sua sponte whether to dismiss juror for alleged inability to follow court's instruction. Where neither party brought juror's misconduct to court's attention, the double jeopardy concerns reflected in subsection (3) are not implicated, and the statute is not applicable. People v. Garcia, 964 P.2d 619 (Colo. App. 1998), rev'd on other grounds, 997 P.2d 1 (Colo. 2000).

Investigation into jury deliberations limited. Once the evidence shows any possibility that the juror is attempting to apply the law, further investigation into juror misconduct based upon the deliberations must stop. People v. Kriho, 996 P.2d 158 (Colo. App. 1999).

Failure of juror during voir dire to reveal information about juror's beliefs insufficient to establish a charge of contempt. Alleged failure to reveal opposition to enforcement of drug laws through the courts, alleged failure to reveal intent not to follow the judge's instruction on the law, and failure to disclose membership in an association supporting the legalization of marijuana were insufficient to establish contempt of court charge. People v. Kriho, 996 P.2d 158 (Colo. App. 1999).

Applied in People v. Manners, 708 P.2d 1391 (Colo. App. 1985); People v. Pernell, 2014 COA 157, 414 P.3d 1, aff'd on other grounds, 2018 CO 13, 411 P.3d 669.

16-10-104. Peremptory challenges.

(1) (a) In capital cases and in cases in which the defendant is charged with murder in the first degree, the state and the defendant, when there is one defendant, are each entitled to ten peremptory challenges. In all other cases where there is one defendant and the punishment may be by imprisonment in the correctional facilities operated by the department of corrections, the state and the defendant are each entitled to five peremptory challenges, and in all other cases to three peremptory challenges.

(b) (I) If there is more than one defendant in a case:

(A) In capital cases and in cases in which a defendant is charged with murder in the first degree, each side is entitled to an additional three peremptory challenges for every defendant after the first, but not exceeding twenty peremptory challenges to each side;

(B) In all other cases where the punishment may be by imprisonment in the correctional facilities operated by the department of corrections, each side is entitled to two additional peremptory challenges for every defendant after the first, not exceeding fifteen peremptory challenges to each side; and

(C) In all other cases, each side is entitled to one additional peremptory challenge for every defendant after the first, not exceeding ten peremptory challenges to each side.

(II) In any case where there are multiple defendants, every peremptory challenge shall be made and considered as the joint peremptory challenge of all defendants.

(c) In case of the consolidation of any indictments, informations, complaints, or summonses and complaints for trial, the consolidated cases shall be considered, for all purposes concerning peremptory challenges, as though the defendants had been joined in the same indictment, information, complaint, or summons and complaint.

(d) When trial is held on a plea of not guilty by reason of insanity, the number of peremptory challenges is the same as if trial were on the issue of substantive guilt.

(2) Peremptory challenges shall be exercised as provided by applicable rule of criminal procedure.

Source: L. 72: R&RE, p. 237, § 1. **C.R.S. 1963:** § 39-10-104. **L. 79:** (1) amended, p. 678, § 3, effective July 1. **L. 81:** (1) amended, p. 890, § 3, effective July 1. **L. 85:** (1) amended, p. 617, §

9, effective July 1. **L. 2024:** (1) amended, (HB 24-1225), ch. 130, p. 459, § 2, effective December 17 (see editor's note).

Editor's note: Section 3 of chapter 130, Session Laws of Colorado 2024, provides that amendments to subsection (1) are effective only if House Concurrent Resolution 24-1002 is approved by the people at the November 2024 statewide election, in which case the amendments take effect on the date of the official declaration of the vote thereon by the governor. That resolution was approved by a vote of the registered electors of Colorado on November 5, 2024, as Amendment I. Amendments to subsections (1) were effective upon the proclamation of the Governor, December 17, 2024, see L. 2025, p. 3633. The vote count for the measure was as follows:

FOR: 2,058,063

AGAINST: 953,652

ANNOTATION

Law reviews. For article, "Curbing the Prosecutor's Abuse of the Peremptory Challenge", see 14 Colo. Law 1629 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to peremptory challenges on the basis of race, see 15 Colo. Law. 1609 (1986). For article, "Criminal Jury Selection After People v. Novotny", see 44 Colo. Law. 41 (Feb. 2015).

This section controls over court rule. Peremptory challenges, while not constitutionally required, are deemed to be an effective means of securing a more impartial and better qualified jury and, as such, are an important right of an accused. While also having an incidental effect on trial procedure, this section is primarily an expression of policy concerning this right of the accused, a substantive matter, and, thus, controls over Crim. P. 24(d). People v. Hollis, 670 P.2d 441 (Colo. App. 1983).

Although the statute refers to the number of challenges in capital cases, it does not define "capital case". By contrast, Crim. P. 24(d)(1) does define the term. The rule and the statute, therefore, do not "conflict" in the sense of being irreconcilable or necessarily incompatible with each other, and the rule can be given effect without producing a result irreconcilable with the plain language of the statute. People v. Reynolds, 159 P.3d 684 (Colo. App. 2006).

There is no conflict between the number of peremptory challenges provided by this section and Crim. P. 24(d)(4) regarding nonreduction of peremptory challenges where there has been a waiver. Where counsel waives a peremptory challenge, counsel does not lose

that challenge and can still take advantage of all available peremptory challenges to which the party is entitled, so long as, after waiver, at least one new juror is called into the jury box. People v. Terhorst, 2015 COA 110, 360 P.3d 239.

Denial of right to use all challenges is reversible error. The denial of the right of a party to use all of his peremptory challenges creates a jury which is not a statutory tribunal and therefore constitutes reversible error. People v. Haines, 37 Colo. App. 302, 549 P.2d 786 (1976).

Although right to peremptory challenges is not constitutional, failure to allow defendant peremptory challenges as provided in this section violates defendant's due process rights. People v. Vieyra, 169 P.3d 205 (Colo. App. 2007).

Trial court need not remind defendant of remaining peremptory challenges because it is counsel's duty, and not a responsibility of the court, to track such challenges. People v. Vieyra, 169 P.3d 205 (Colo. App. 2007).

Defendant failed to prove beyond a reasonable doubt that statute is unconstitutional as applied to defendants jointly tried, as peremptory challenges are not constitutionally required and statute is rationally related to a legitimate state interest. People v. Gardenhire, 903 P.2d 1159 (Colo. App. 1995).

Statute does not unconstitutionally discriminate against a person facing life imprisonment as a result of a habitual criminal conviction. Because class 1 felonies are the most serious offenses, the general assembly could rationally perceive that additional procedural protections are warranted. People v. Turley, 18 P.3d 802 (Colo. App. 2000).

Time for determining the number of peremptory challenges is the time voir dire is commenced. People v. Hollis, 670 P.2d 441 (Colo. App. 1983).

The number of peremptory challenges allowed is governed by the statute and rule in effect at the time voir dire is conducted. People v. Priest, 672 P.2d 539 (Colo. App. 1983); People v. Marquiz, 685 P.2d 242 (Colo. App. 1984), aff'd, 726 P.2d 1105 (Colo. 1986).

Number of peremptory challenges allowed is governed by statute and is not subject to judicial discretion. People v. Macrander, 828 P.2d 234 (Colo. 1992).

Reversal of a criminal conviction for other than structural error is not required absent an express legislative mandate or an appropriate case-specific outcome-determinative analysis. Allowing a defendant fewer peremptory challenges than authorized or than exercised by the prosecution is not structural error requiring reversal. People v. Novotny, 2014 CO 18, 320 P.3d 1194 (overruling People v. Macrander, 828 P.2d 234 (Colo. 1992), People v. Lefebre, 5 P.3d 295 (Colo. 2000), and other holdings to the contrary); People v. Alfaro, 2014 CO 19, 320 P.3d 1191; People v. Roldan, 2014 CO 22, 322 P.3d 922; People v. Montero-Romero, 2014 CO 23, 322 P.3d 923; People v. Wise, 2014 COA 83, 348 P.3d 482.

Trial court's failure to excuse juror for cause was harmless. Defendant used a peremptory challenge to correct the court's failure to remove the juror. But the record did not reflect that a biased or incompetent juror served on the jury, and therefore defendant could not establish he was harmed by the trial court's erroneous failure to excuse the juror for cause. People v. Oliver, 2020 COA 97, 474 P.3d 207.

Prejudicial error occurred when a defendant was required to exercise a peremptory challenge under this section to remove a suspect juror following trial court's improper denial of defendant's challenge for cause where defendant exhausted all available peremptory challenges on the other jurors. People v. Macrander, 828 P.2d 234 (Colo. 1992), overruled in People v. Novotny, 2014 CO 18, 320 P.3d 1194.

Prejudice is shown, if defendant exhausts all peremptory challenges and one of those challenges is expended on a juror who should have been removed for cause. People v. Zurenko, 833 P.2d 794 (Colo. App. 1991).

Prejudice is shown if defendant exhausts all of his peremptory challenges and one of those challenges is expended on a juror who should have been removed for cause. A defendant is not required to request an additional peremptory challenge to preserve this issue on appeal. People v. Prator, 833 P.2d 819 (Colo. App. 1992), aff'd, 856 P.2d 837 (Colo. 1993).

No error occurred when trial court properly denied defendant's motion for cause challenge to a juror who would base her decision on the evidence presented at trial and who would follow the court's instructions concerning the presumption of innocence; defendant cannot claim prejudice for his choice not to excuse the juror by use of a peremptory challenge. Morrison v. People, 19 P.3d 668 (Colo. 2000); People v. Honeysette, 53 P.3d 714 (Colo. App. 2002).

Where the trial court improperly removed jurors for cause and the prosecution subsequently used all of its peremptory challenges, the prosecution enjoyed an unfair tactical advantage in determining the makeup of the jury, detrimentally affecting the rights of the defendant and requiring a new trial. Improperly dismissing some jurors for cause has the effect of granting additional peremptory challenges to the prosecution. It is irrelevant that the defendant has full ability to use his peremptory challenges. The prosecution's relatively greater ability to remove jurors it views as objectionable is independently prejudicial to the defendant's rights, and the court will presume prejudice to the defendant. People v. Lefebre, 5 P.3d 295 (Colo. 2000), overruled in People v. Novotny, 2014 CO 18, 320 P.3d 1194.

Where defendant was charged with first-degree murder, defendant, as well as the state, was entitled to 15 peremptory challenges. People v. Haines, 37 Colo. App. 302, 549 P.2d 786 (1976).

Despite Furman v. Georgia, 408 U.S. 238 (1972), which abolished the death penalty in capital cases, the procedural aspects of a capital case, as established by the Colorado constitution or Colorado statutes, remain in effect for crimes which have previously

been classified as capital. People v. Haines, 37 Colo. App. 302, 549 P.2d 786 (1976).

Where the death penalty was not even a possibility, the trial court correctly limited the appellant to 10 peremptory challenges. People v. Hines, 194 Colo. 284, 572 P.2d 467 (1977).

Applied in People v. Fink, 41 Colo. App. 47, 579 P.2d 659 (1978); People v. Warren, 196 Colo. 75, 582 P.2d 663 (1978); People v. Gonzales, 631 P.2d 1170 (Colo. App. 1981); People v. Fields, 697 P.2d 749 (Colo. App. 1984); People v. Gardenhire, 903 P.2d 1165 (Colo. App. 1995).

16-10-105. Alternate jurors.

The court may direct that a sufficient number of jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror shall be discharged when the jury retires to consider its verdict or at such time as determined by the court. When alternate jurors are impaneled, each side is entitled to one peremptory challenge in addition to those otherwise allowed by law. In a case in which a class 1, 2, or 3 felony, as described in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), C.R.S., is charged, and in a case in which a level 1 or level 2 drug felony as described in section 18-1.3-401.5, C.R.S., is charged, and in any case in which a felony listed in section 24-4.1-302 (1), C.R.S., is charged, the court shall impanel at least one juror to sit as an alternate if requested by any party.

Source: L. 72: R&RE, p. 237, § 1. **C.R.S. 1963:** § 39-10-105. **L. 90:** Entire section amended, p. 924, § 5, effective March 27. **L. 91:** Entire section amended, p. 429, § 6, effective May 24. **L. 2012:** Entire section amended, (HB 12-1310), ch. 268, p. 1394, § 7, effective June 7. **L. 2013:** Entire section amended, (SB 13-250), ch. 333, p. 1930, § 44, effective October 1. **L. 2014:** Entire section amended, (SB 14-163), ch. 391, p. 1969, § 3, effective June 6.

ANNOTATION

The purpose of seating an alternate juror is to have available another juror when, through unforeseen circumstances, a juror is unable to continue to serve. People v. Meis, 837 P.2d 258 (Colo. App. 1992).

Crim. P. 24(e) is mandatory in its requirement that alternate jurors be discharged at the time the jury retires to deliberate; any replacement of a regular juror by an alternate must occur prior to

such time. People v. Burnette, 753 P.2d 773 (Colo. App. 1987), aff'd, 775 P.2d 583 (Colo. 1989).

A ruling by the trial court which calls an alternative juror to replace a juror who becomes "disqualified" to perform his duties is a matter within the discretion of the trial court and will not be disturbed on review unless an abuse of discretion is shown. People v. Johnson, 757 P.2d 1098 (Colo. App. 1988) (decided prior to 1990 and 1991 amendments).

The trial court has authority to dismiss an unbiased juror if there are valid reasons for the dismissal of the juror and the decision was not arbitrary, unreasonable, or unfair, nor was the defendant prejudiced by the juror's dismissal because an alternate was available. People v. Lee, 30 P.3d 686 (Colo. App. 2000).

But trial court has the authority under both Crim. P. 24(e) and this section to replace a juror with an alternate after jury deliberations have commenced where discharge is allowed "at such time as determined by the court". People v. Carrillo, 946 P.2d 544 (Colo. App. 1997), aff'd, 974 P.2d 478 (Colo. 1999).

If a trial court interrupts deliberations of a jury and suspends the jury's fact finding functions to investigate allegations of juror misconduct, the court's inquiry must not intrude into the deliberative process. In the exercise of judicial discretion, before a juror is dismissed from a deliberating jury due to an allegation of juror misconduct, the court must make findings supporting a conclusion that the allegedly offending juror will not follow the court's instructions. Garcia v. People, 997 P.2d 1 (Colo. 2000).

In deciding whether to replace a juror with an alternate, the following should be considered: The juror's assurance of impartiality; the nature of the information not disclosed; whether the nondisclosure was deliberate; and any prejudicial effect the non-disclosed information would have had on either party. People v. Meis, 837 P.2d 258 (Colo. App. 1992).

Prejudice is presumed when discharged alternate juror replaces regular juror during deliberations. Presumption may be rebutted only by a showing that trial court took extraordinary precautions to ensure that defendant would not be prejudiced and that, under the circumstances of the case, such precautions were adequate to achieve that result. People v. Burnette, 775 P.2d 583 (Colo. 1989); Carrillo v. People, 974 P.2d 478 (Colo. 1999); Castro v. People, 2024 CO 56, 550 P.3d 1124.

Presumption of prejudice held sufficiently rebutted where juror was replaced for an obvious and bona fide hearing impairment, court carefully instructed remaining jurors and the alternate juror to start their deliberations anew, the jury physically tore up and discarded their notes from the earlier deliberations, and the second set of deliberations took two hours longer than the first. Carrillo v. People, 974 P.2d 478 (Colo. 1999).

Presumption of prejudice was rebutted by the trial court's precautions to protect the right to a fair trial, including a jury note

attesting to the jury's ability to restart deliberations with an alternate juror after a regular juror had a heart attack and the alternate juror assuring the court she could effectively participate as a juror. Castro v. People, 2024 CO 56, 550 P.3d 1124.

Mid-deliberation substitution of a juror is permissible. While this section is ambiguous, the plain language of the fourth sentence offers courts latitude in when they may substitute alternate jurors. Castro v. People, 2024 CO 56, 550 P.3d 1124.

Reversible error. Where trial court replaced regular juror with alternate juror during jury deliberations but did not ask regular jurors if they were capable of disregarding their previous deliberations or if they would be receptive to an alternate juror's attempt to assert a non-conforming view and did not ask alternate juror about his activities after being discharged or his present ability to serve on the jury, trial court did not take extraordinary measures to ensure that defendant would not be prejudiced by such mid-deliberation replacement and, as a result thereof, defendant's conviction required reversal. People v. Burnette, 753 P.2d 773 (Colo. App. 1987), aff'd, 775 P.2d 583 (Colo. 1989).

This section is not in agreement with Crim. P. 24(e) because this section requires that jurors may be replaced with alternate jurors before deliberations begin and not after. Since the court rules govern practice and procedure in civil and criminal cases while the statute affects the substantive right to a fair trial, this section is the operative provision in deciding that the trial court erred by applying Crim. P. 24(e) and allowing the replacement of a regular juror with at alternate juror after the jury had begun its deliberations. People v. Montoya, 942 P.2d 1287 (Colo. App. 1996).

This section controls over Crim. P. 24(e) because it provides substantive, in addition to procedural, direction to the trial court. Carrillo v. People, 974 P.2d 478 (Colo. 1999); Castro v. People, 2024 CO 56, 550 P.3d 1124.

Court's decision to replace a sleeping juror was not an abuse of discretion. Although a defendant is entitled to a trial by fair and impartial jurors, he or she is not entitled to any particular juror. Trial court was well within its discretion to dismiss the sleeping juror and to replace him with an alternate juror. People v. Tunis, 2013 COA 161, 318 P.3d 524.

Applied in People v. Fink, 41 Colo. App. 47, 579 P.2d 659 (1978); People v. Evans, 674 P.2d 975 (Colo. App. 1983); People v. Tippett, 733 P.2d 1183 (Colo. 1987).

16-10-106. Incapacity of juror.

Where a jury of twelve has been sworn to try the case, and any juror by reason of illness or other cause becomes unable to continue until a verdict is reached, the court may excuse such juror. If no alternate juror is available to replace the juror, the parties at any time before verdict may stipulate in writing with court approval that the jury shall consist of any number less than

twelve, and the jurors thus remaining shall proceed to try the case and determine the issues unless discharged by the court for inability to reach a verdict.

Source: L. 72: R&RE, p. 237, § 1. **C.R.S. 1963:** § 39-10-106.

ANNOTATION

Number of challenges for cause not limited. There has been no limit set by statute or rule on the number of challenges for cause. People v. Fink, 41 Colo. App. 47, 579 P.2d 659 (1978).

Defense counsel stipulation to a jury of less than 12 in open court and on the record satisfies the statutory requirement that the stipulation must be in writing. People v. Baird, 66 P.3d 183 (Colo. App. 2002).

Juror properly dismissed and replaced. A juror, after being sequestered for eight days, was properly dismissed and replaced with an alternate when the juror was shown to be quite nervous and upset, and no evidence of prejudice against the defendant was shown by the dismissal and replacement of the juror. People v. Evans, 674 P.2d 975 (Colo. App. 1983).

Applied in People v. Waters, 641 P.2d 292 (Colo. App. 1981).

16-10-107. Challenge to entire jury panel.

A challenge to the panel is an objection to the entire panel of prospective trial jurors made by the defendant or by the prosecuting attorney. No challenge to the panel shall be made, except as provided by section 13-71-139, C.R.S.

Source: L. 72: R&RE, p. 238, § 1. **C.R.S. 1963:** § 39-10-107. **L. 89:** Entire section amended, p. 776, § 8, effective January 1, 1990.

16-10-108. Verdict.

The verdict of the jury shall be unanimous. The jury shall return its verdict in open court, but a sealed verdict may be received as provided by rule of the supreme court of Colorado.

Source: L. 72: R&RE, p. 238, § 1. **C.R.S. 1963:** § 39-10-108.

ANNOTATION

Although there is a statutory right to a unanimous verdict in criminal cases in Colorado, the state constitution does not explicitly guarantee the right to a unanimous verdict. Nevertheless, there are some cases in which the jury may return a general verdict of guilty when instructed on alternative theories of principal and complicitor liability and in which the state constitution has provided a criminal defendant the right to a unanimous jury verdict. People v. Hall, 60 P.3d 728 (Colo. App. 2002).

The use of a sealed verdict in prosecution for aggravated robbery was not improper. People v. Herrera, 182 Colo. 302, 512 P.2d 1160 (1973).

Retrial of defendant on kidnapping charge, after the first trial was declared a mistrial without objection from either party, did not violate statute requiring the verdict of the jury to be unanimous or the defendant's right to due process because the federal constitution does not guarantee a defendant a unanimous verdict of either guilty or not guilty. People v. Barton, 58 P.3d 1075 (Colo. App. 2002).

Unanimity is required only with respect to ultimate issue of defendant's guilt or innocence of the crime charged and not with respect to alternative means by which the crime was committed. People v. Taggart, 621 P.2d 1375 (Colo. 1981); People v. Vigil, 678 P.2d 554 (Colo. App. 1983); People v. Marquez, 692 P.2d 1089 (Colo. 1984); People v. Davis, 2017 COA 40M, 488 P.3d 186.

If the court has not required the prosecution to elect the transaction on which it relies for conviction, to ensure jury unanimity, the jury must be instructed that to convict the defendant it must unanimously agree that the defendant committed the same act or committed all the acts within the period charged. People v. Rivera, 56 P.3d 1155 (Colo. App. 2002); People v. Gookins, 111 P.3d 525 (Colo. App. 2004).

Failure of trial court to give unanimity instruction constitutes plain error if that failure results in confusion whether jurors' conviction was based upon a true unanimity or whether different incidents formed the basis for the conclusion of individual jurors. In cases involving multiple acts, unanimity instruction assures that the jury does not base its conviction upon some jurors finding that one act was committed while others rely on a different act. People v. Devine, 74 P.3d 440 (Colo. App. 2003).

When evidence of several acts is presented at trial, any one of which could form the basis of the offense, the court must either: (1) Require the prosecution to elect the act that it's relying upon for the conviction, or (2) instruct the jury that they must unanimously agree on a specific act defendant committed that serves as the basis for the conviction. Quintano v. People, 105 P.3d 585 (Colo. 2005); People v. Childress, 2012 COA 116, 409 P.3d 365, rev'd on other grounds, 2015 CO 65M, 363 P.3d 155.

The prosecution presented several acts that could have constituted child abuse, so an election or a modified unanimity

instruction was required. People v. Childress, 2012 COA 116, 409 P.3d 365, rev'd on other grounds, 2015 CO 65M, 363 P.3d 155.

The defendant did not waive her unanimity argument but forfeited it. It was not plain error by the trial court for not requiring an election or giving a modified unanimity instruction. People v. Wester-Gravelle, 2020 CO 64, 465 P.3d 570.

Consideration of lesser charge permitted without acquittal of greater charge. Acquittal of a greater charge by a unanimous vote of the jury is not necessary before the jury can consider a lesser included offense. People v. McGregor, 635 P.2d 912 (Colo. App. 1981).

The jury instruction for felony menacing which did not specify a particular victim, coupled with the comments of the prosecutor, invited the jury to convict without regard to the identity of the victim, making it impossible to determine whether the jury unanimously convicted defendant on the basis of menacing the same victim. People v. Simmons, 973 P.2d 627 (Colo. App. 1998).

The court did not commit plain error when it failed to instruct the jury that it must unanimously agree on the underlying felony for the first degree burglary conviction. Because the jury unanimously found defendant guilty of attempted aggravated robbery, the finding satisfied the intent requirement of first degree burglary as well as any requirement that the jury agree unanimously to the underlying offense. Therefore, the court's failure to give a unanimity instruction was not plain error because there was no reasonable possibility that any error contributed to defendant's conviction. People v. Linares-Guzman, 195 P.3d 1130 (Colo. App. 2008).

The jury does not need to unanimously agree on how self-defense is disproved by the prosecution. The jury only needs to unanimously agree that self-defense was disproved beyond a reasonable doubt. People v. Mosely, 2021 CO 41, 488 P.3d 1074.

Jurors do not need to unanimously agree on a particular exception to self-defense. People v. Roberts-Bicking, 2021 COA 12, 490 P.3d 1128.

It was not plain error for the unanimity instruction to refer only to sexual assault when the jury was also instructed on the lesser included offense of unlawful sexual contact. The better practice would be to have the instruction refer to both, but based on the rest of the instructions and the closing arguments, the jury could infer that unanimity applied to both offenses. People v. Abdulla, 2020 COA 109M, 486 P.3d 380.

Applied in People v. Ledman, 622 P.2d 534 (Colo. 1981).

16-10-109. Trial by jury for petty offenses.

(1) For the purposes of this section, "petty offense" means any crime or offense classified as a petty offense or, if not so classified, which is punishable by imprisonment other than in a correctional facility for not more than six months, or by a fine of not more than five hundred dollars, or by both such imprisonment and fine, and includes any violation of a municipal ordinance or offense which was not considered a crime at common law; except that violation of a municipal traffic ordinance which does not constitute a criminal offense or any other municipal charter, municipal ordinance, or county ordinance offense which is neither criminal nor punishable by imprisonment under any counterpart state statute shall not constitute a petty offense. No child under the age of eighteen years shall be entitled to a trial by jury for a violation of a municipal ordinance or a county ordinance for which imprisonment in jail is not a possible penalty. Nothing in this subsection (1) shall prohibit a municipality or county from granting a right to trial by jury for ordinance violations.

(2) A defendant charged with a petty offense shall be entitled to a jury trial if, within twenty-one days after entry of a plea, the defendant makes a request to the court for a jury trial, in writing, and tenders to the court a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant. The jury shall consist of three jurors unless a greater number, not to exceed six, is requested by the defendant in said jury demand. If the charge is dismissed or the defendant is acquitted of the charge or if the defendant, having paid the jury fee, files with the court at least seven days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded.

(3) At the time of arraignment for any petty offense in this state, the judge shall advise any defendant not represented by counsel of the defendant's right to trial by jury, of the requirement that the defendant, if he or she desires to invoke his or her right to trial by jury, request such trial by jury within twenty-one days after entry of a plea, in writing, of the number of jurors allowed by law, and of the requirement that the defendant, if he or she desires to invoke his or her right to trial by jury, tender to the court within twenty-one days after entry of a plea a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant.

Source: L. 72: R&RE, p. 238, § 1. **C.R.S. 1963:** § 39-10-109. **L. 79:** (1) amended, p. 679, § 4, effective July 1. **L. 82:** (1) amended, p. 655, § 6, effective January 1, 1983. **L. 88:** (1) amended, p. 667, § 2, effective July 1. **L. 93:** (1) amended, p. 1728, § 6, effective July 1. **L. 96:** (1) amended, p. 1680, § 3, effective January 1, 1997. **L. 2001:** (1) amended, p. 859, § 8, effective July 1. **L. 2005:** (2) and (3) amended, p. 427, § 9, effective July 28. **L. 2012:** (2) and (3) amended, (SB 12-175), ch. 208, p. 853, § 82, effective July 1.

ANNOTATION

Law reviews. For article, "Colorado's Municipal System", see 30 Colo. Law. 33 (Dec. 2001). For article, "The Right to a Jury Trial in Petty Offense Cases", see 45 Colo. Law. 27 (Dec. 2016).

Defendant's right to trial by jury has been expanded to include petty offenses. Garcia v. People, 200 Colo. 413, 615 P.2d 698 (1980).

Where plaintiff was charged with violations of the Denver municipal code pertaining to overtime parking and the maximum possible punishment for each violation was a $5 fine, plaintiff was entitled to jury trials on these matters. Trinen v. Diamond, 44 Colo. App. 325, 616 P.2d 986 (1980).

Where defendant was a juvenile charged with theft under the Longmont municipal code, which charge is punishable by a maximum $300 fine and the counterpart state statute to which provides for punishment by imprisonment, the charge qualified as a petty offense and defendant was entitled to a jury trial. Bradford v. Longmont Municipal Court, 830 P.2d 1135 (Colo. App. 1992).

Defendants charged with municipal violation that constitutes petty offense are entitled to a jury trial. Bradford v. Longmont Mun. Court, 830 P.2d 1135 (Colo. App. 1992).

The fact that a violation is punishable by fine alone does not dictate the character of the violation as criminal or noncriminal, but merely reflects the severity of the violation. Thus, the fact that the ordinance imposes only a fine does not mean that it is not criminal in nature. Roalstad v. City of Lafayette, 2015 COA 146, 363 P.3d 790.

A municipality cannot simply avoid providing a jury trial under this section by purporting to decriminalize an ordinance that has a counterpart in the state criminal statutes and would otherwise be criminal. Roalstad v. City of Lafayette, 2015 COA 146, 363 P.3d 790.

Right to jury trial not abridged by trial forum. The statutory right to a jury trial cannot be abridged on account of the forum in which the petty offense is tried. City of Aurora ex rel. People v. Erwin, 706 F.2d 295 (10th Cir. 1983).

Written jury demand need not specify number of jurors. Subsection (2) does not require a defendant charged with a petty offense in municipal court to state a particular number of jurors in his written jury demand. Lininger v. City of Sheridan, 648 P.2d 1097 (Colo. App. 1982).

City's vicious animal ordinance is a "petty offense" for purposes of subsection (1) of this section. Section 18-9-204.5 is a "counterpart state statute" to the ordinance, as described in subsection (1) of this section. Roalstad v. City of Lafayette, 2015 COA 146, 363 P.3d 790.

Dog owner charged under a municipal ordinance with owning vicious animals is entitled to a jury trial in municipal court. Roalstad v. City of Lafayette, 2015 COA 146, 363 P.3d 790.

A first-time charge of driving while ability impaired is not a petty offense. The

general assembly's placement of numerous alcohol and drug-related offenses in a single statute demonstrates an intention not to treat first-time driving while ability impaired offenses as petty offenses. The penalties are dependent upon circumstances that may not be known by the court at the time of arraignment. The penalties for a first-time offense may easily exceed those of a petty offense under this section. Therefore, defendants are not required to file with a court under this section to obtain a trial by jury. Byrd v. Stavely, 113 P.3d 1273 (Colo. App. 2005).

Section governs over municipal court rules. Inasmuch as the right to a jury trial in petty offenses is a substantive right granted to all citizens of this state, subsection (2) governs over rule 223(a), C.M.C.R. Lininger v. City of Sheridan, 648 P.2d 1097 (Colo. App. 1982).

And over § 13-10-114. This section controls over § 13-10-114 (4). Lininger v. City of Sheridan, 648 P.2d 1097 (Colo. App. 1982) (decided prior to 1983 amendment of § 13-10-114).

This section and § 13-10-114 cannot be harmonized on the question of a defendant's duty to designate the jury size in his written jury demand. Lininger v. City of Sheridan, 648 P.2d 1097 (Colo. App. 1982) (decided prior to 1983 amendment to § 13-10-114).

16-10-110. Jury instructions - cases involving the possibility of the death penalty.

At the trial of any felony in which the prosecution is not seeking the death penalty, upon the request of the prosecution or the defendant, the court shall instruct the jury during voir dire that the prosecution is not seeking the death penalty.

Source: L. 89: Entire section added, p. 828, § 36, effective July 1.

ANNOTATION

Defendant's fundamental right to a fair trial for murder not impaired by court informing jury that the death penalty would not be an option without also explaining the applicable sentencing scheme where the death penalty is the only sentencing decision within the purview of the jury. People v. Smith, 848 P.2d 365 (Colo. 1993).

Jury instruction providing supplemental definition of "knowing" for the purposes of second degree murder was unnecessary, but was not reversible error. The trial court's instruction did not pose a barrier to the jury in considering fully the defendant's affirmative defense. People v. Baca, 852 P.2d 1302 (Colo. App. 1992).

Although this section does not address whether the court, on its own motion, may inform the jury that the death penalty is not involved in a case, the trial

court did not abuse its discretion in denying the defendant's motion for a mistrial trial on the basis that the court made such statement. People v. Baca, 852 P.2d 1302 (Colo. App. 1992).

It was not error for the trial court to advise the prospective jurors at the outset of voir dire that, if defendant was convicted, death was a possible penalty. People v. Martinez, 24 P.3d 629 (Colo. App. 2000).

PART 2

EVIDENCE OF INCONSISTENT STATEMENTS - VARIANCE

16-10-201. Inconsistent statement of witness - competency of evidence.

(1) Where a witness in a criminal trial has made a previous statement inconsistent with his testimony at the trial, the previous inconsistent statement may be shown by any otherwise competent evidence and is admissible not only for the purpose of impeaching the testimony of the witness, but also for the purpose of establishing a fact to which his testimony and the inconsistent statement relate, if:

(a) The witness, while testifying, was given an opportunity to explain or deny the statement or the witness is still available to give further testimony in the trial; and

(b) The previous inconsistent statement purports to relate to a matter within the witness's own knowledge.

Source: L. 72: R&RE, p. 238, § 1. **C.R.S. 1963:** § 39-10-201.

ANNOTATION

Law reviews. For article, "Hearsay in Criminal Cases Under the Colorado Rules of Evidence: An Overview", see 50 U. Colo. L. Rev. 277 (1979). For article, "Prior Inconsistent Statements", see 17 Colo. Law. 1977 (1988).

This section is constitutional. People v. Mulligan, 193 Colo. 509, 568 P.2d 449 (1977).

This section is not unconstitutional as ex post facto legislation. People v. Bastardo, 646 P.2d 382 (Colo. 1982).

This section changes the common-law rule that one could not impeach his own witness absent surprise or hostility and, in a criminal trial, if a witness has made a prior inconsistent statement purporting to relate to a matter within his knowledge, that fact may be shown where the safeguards of

subsection (1)(a) are met. People v. Stewart, 39 Colo. App. 142, 568 P.2d 65 (1977).

This section, rather than CRE 613, controls the admissibility of prior inconsistent statements for substantive purposes in a criminal case. Montoya v. People, 740 P.2d 992 (Colo. 1987).

Comparing this section to CRE 613, it is clear that the rule is directed to situations in which a prior inconsistent statement is used for impeachment purposes only, but this section eliminates the hearsay impediment to using prior inconsistent statements for proving the truth of matters asserted so long as statutory foundation requirements for admissibility of the evidence have been satisfied. People v. Madril, 746 P.2d 1329 (Colo. 1987); People v. Fisher, 904 P.2d 1326 (Colo. App. 1994); People v. Candelaria, 107 P.3d 1080 (Colo. App. 2004), aff'd in part, rev'd in part on other grounds, 148 P.3d 178 (Colo. 2006).

The general rule, prior to the adoption of CRE 806, was that inconsistent statements used to impeach a witness were not admissible unless the witness had been asked about the time and place and to whom the statement was made. People v. Madonna, 651 P.2d 378 (Colo. 1982).

Under this section neither surprise nor hostility is required to impeach one's own witness. People v. Mulligan, 193 Colo. 509, 568 P.2d 449 (1977).

Once the statutory foundation has been laid, a witness's prior inconsistent statements become admissible without a showing of surprise or hostility. People v. Pepper, 193 Colo. 505, 568 P.2d 446 (1977).

If prior statements of a witness appear inconsistent and the two statutory conditions are adequately established, this section mandates admission of prior inconsistent statements even as against a party's own witness, whether that party be the prosecution or the defense. People v. Grant, 40 Colo. App. 46, 571 P.2d 1111 (1977).

When defendant takes stand in own defense, he becomes a "witness" within the meaning of this section. People v. Evans, 630 P.2d 94 (Colo. App. 1981).

Requirements of section held met. Where defendant's counsel declined to cross-examine the witness, and at the close of his testimony the court specifically instructed the witness to remain available for recall, the requirements of this section were satisfied. People v. Grant, 40 Colo. App. 46, 571 P.2d 1111 (1977).

Requirements for admission of evidence of prior inconsistent statement. Evidence that a witness made a prior inconsistent statement is admissible if the statement is inconsistent, the witness is given an opportunity to explain or deny the statement or is available for recall, the statement purports to relate to a matter within the witness's personal knowledge, and the evidence offered to prove that the prior inconsistent statement was made is "otherwise competent". People v. Card, 42 Colo. App. 259, 596 P.2d 402 (1979); People v. Candelaria, 107 P.3d 1080 (Colo. App. 2004), aff'd in part, rev'd in part on other grounds, 148 P.3d 178 (Colo. 2006).

Prior inconsistent statement properly admissible under this section for both

substantive and impeachment purposes where witness was still testifying when the court ruled on admissibility of statement and so had opportunity to explain prior statement, and where witness was testifying regarding matters within his own knowledge. People v. Jenkins, 768 P.2d 727 (Colo. App. 1988); People v. Fisher, 904 P.2d 1326 (Colo. App. 1994).

Statements obtained in violation of Miranda admissible for impeachment only. Prior inconsistent statements obtained in violation of Miranda are competent only to the extent that they are introduced for purposes of impeachment; they are not admissible as substantive evidence of guilt. People v. Evans, 630 P.2d 94 (Colo. App. 1981).

Where statement admitted for impeachment only, instruction to that effect required. If the court concludes that a prior inconsistent statement may not be offered for the truth of the fact to which it relates, but still may be used for the limited purpose of impeachment, then an instruction to that effect should be given contemporaneously, thus limiting the jury's consideration of the specific evidence to impeachment of the witness. People v. District Court, 195 Colo. 570, 580 P.2d 388 (1978).

Witness's memory loss regarding prior inconsistent statements. Where a witness takes the stand and is available for cross-examination, the witness's actual or feigned memory loss even if memory loss is total regarding prior inconsistent statements does not violate a defendant's confrontation right. People v. Pepper, 193 Colo. 505, 568 P.2d 446 (1977).

Where witness denied or could not recall any participation by defendant in the alleged drug transaction, the trial court properly allowed the prosecution to bring witness's earlier contradictory statements to her attention after laying a proper foundation under this section. People v. Aguirre, 839 P.2d 483 (Colo. App. 1992).

Inability to remember statement deemed denial thereof. For the purpose of introducing the prior testimony of a witness, the witness's inability to remember a statement is tantamount to a denial that he made the statement. People v. Baca, 633 P.2d 528 (Colo. App. 1981); People v. Leverton, 2017 COA 34, 405 P.3d 402.

Evidence of prior consistent statements may be used only to rebut prior inconsistent statements. People v. Fletcher, 37 Colo. App. 173, 546 P.2d 980 (1975), rev'd on other grounds, 193 Colo. 314, 566 P.2d 345 (1977).

In contrast to the common-law rule, this section does not require the predicate of hostility or surprise. People v. Hawthorne, 190 Colo. 437, 548 P.2d 124 (1976).

This section prefaces admission of statement admitted at prior trial of witness upon a sequence of events. First, the witness must have made a previous statement, and second, the previous statement must be inconsistent with the testimony of the witness at trial. People v. Smith, 192 Colo. 271, 559 P.2d 221 (1976).

Where the codefendant made no statement at trial, the requirements of the statute were not met. Consequently, this section is inapposite. People v. Smith, 192 Colo. 271, 559 P.2d 221 (1976).

When a defendant does not testify, the defendant's voluntary, unwarned custodial statements may not be used either to rebut the defendant's theory of defense or to impeach a witness other than the defendant. People v. Trujillo, 49 P.3d 316 (Colo. 2002) (following James v. Illinois, 493 U.S. 307 (1990)).

When mandate of section fulfilled. The mandate of this section is adequately fulfilled if from all the circumstances it appears that the prior statement was inconsistent and the statutory conditions were adequately established. People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

Court is not required to make certain findings. The court is not required to make findings that proffered statements are in fact inconsistent, that they are based on the direct observations of the witness, and that they are not the result of police coercion or threats of prosecution. People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

Court erred in denying defendant's request to admit testimony regarding prior inconsistent statements made by the victim. The foundational requirements of this section were met because the victim remained available to testify and the inconsistent statements related to matters within her knowledge. The error was harmless since other admitted evidence questioned the victim's credibility. People v. Komar, 2015 COA 171M, 411 P.3d 978.

Trial court did not err in not holding a hearing, sua sponte, on issue of whether informant's consent to electronic monitoring was obtained by coercion where the trial court held it was not satisfied that the government or law enforcement authorities coerced the informant in any way and that finding was made with ample support. People v. Moltrer, 893 P.2d 1331 (Colo. App. 1994).

Trial court did not err in applying the provisions of this section to summaries of electronically monitored conversations where informant was explicitly advised that she could be recalled to testify and yet she persisted in her testimony that she remembered nothing of the transaction, the statement purported to be a matter within the informant's own knowledge, and she was available for cross-examination. People v. Moltrer, 893 P.2d 1331 (Colo. App. 1994).

Application of this section in allowing prosecution to impeach its own witness with prior inconsistent statements was not a violation of right to confront accuser, to assistance of counsel, to appear when depositions against one were taken, or to due process of law. People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

Court did not abuse discretion in excluding videotape of grandmother's testimony where grandmother was confronted with inconsistent statements and she either explained the statements or conceded to the prior inconsistent statements

on cross-examination. People v. Salas, 2017 COA 63, 405 P.3d 416.

Applied in People v. Norwood, 37 Colo. App. 157, 547 P.2d 273 (1975); People v. Lambert, 40 Colo. App. 84, 572 P.2d 847 (1977); Union Supply Co. v. Pust, 196 Colo. 162, 583 P.2d 276 (1978); People v. Esquibel, 43 Colo. App. 191, 599 P.2d 981 (1979); People v. Lopez, 43 Colo. App. 493, 605 P.2d 69 (1979); People v. Small, 631 P.2d 148 (Colo. 1981); People v. Christian, 632 P.2d 1031 (Colo. 1981); People v. Montoya, 703 P.2d 606 (Colo. App. 1985); People v. Banks, 2012 COA 157, 412 P.3d 417, aff'd in part, rev'd in part on other grounds sub nom. People v. Tate, 2015 CO 42, 352 P.3d 959.

16-10-202. Variance - allegations and proof.

When on the trial of any indictment, information, felony complaint, or complaint for any offense there appears to be any variance between the statements in the indictment, complaint, or information and the evidence offered in proof thereof, of any given name or surname, or both given name and surname, or other description whatever of any person who is therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance is not grounds for the acquittal of the defendant, unless the court before which such trial be had finds such variance is material to the merits of the case or may be prejudicial to the defendant. No indictment, information, felony complaint, or complaint shall be deemed insufficient nor shall the trial, judgment, or other proceedings thereon be reversed or affected by any defect which does not tend to prejudice the substantial rights of the defendant on the merits.

Source: L. 72: R&RE, p. 239, § 1. **C.R.S. 1963:** § 39-10-202. **L. 73:** p. 499, § 4.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 16-10-202 is similar to repealed § 39-7-17, C.R.S. 1963, § 39-7-17, CRS 53, CSA, C. 48, § 490, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Purpose of section. This section was intended to prevent the escape of guilty persons upon purely technical grounds not affecting their substantial rights and to render successful a prosecution which might otherwise fail because of harmless error. Wright v. People, 116 Colo. 306, 181 P.2d 447 (1947).

This section does not apply to rulings of court during trial. In this section the defect

for which a reversal should not be had seems to refer to a defect in the indictment or information and not to errors committed by the court in its rulings during the trial. People v. Heath, 51 Colo. 182, 117 P. 138 (1911).

Or arraignment and plea of accused. This section does not affect the doctrine that when defendant was not arraigned and did not plead, a reversal must be had. People v. Heath, 51 Colo. 182, 117 P. 138 (1911).

Applied in Straub v. People, 145 Colo. 275, 358 P.2d 615 (1961); Duran v. People, 156 Colo. 385, 399 P.2d 412 (1965); Stoudt v. People, 156 Colo. 568, 400 P.2d 670 (1965).

II. PREJUDICE OF SUBSTANTIVE RIGHTS.

A. In General.

B. Defects in Charging Instrument.

C. Variances Between Allegations and Proof.

A. In General.

Technical errors which do not tend to prejudice the substantial rights of a defendant, do not afford grounds for reversal of a judgment of conviction. Sweek v. People, 85 Colo. 479, 277 P. 1 (1929).

Technical errors are not grounds for reversal where verdict and judgment are correct. Koontz v. People, 82 Colo. 589, 263 P. 19 (1927).

The general assembly repeatedly has endeavored to make it plain that, in both civil and criminal procedure, substance, not form, is the controlling consideration. Waite v. People, 83 Colo. 162, 262 P. 1009 (1928).

Where error, if any committed, was harmless and did not tend to prejudice the substantial rights of the defendants on the merits, it will not warrant a reversal. Messer v. People, 65 Colo. 435, 176 P. 828 (1918).

Misnomer of juror, manifest at the reception of the verdict and not then suggested or objected to by the accused, will not, when no prejudice to the accused appears, suffice to reverse judgment of conviction. Tollifson v. People, 49 Colo. 219, 112 P. 794 (1910).

Admission of dying declaration in evidence. Reppin v. People, 95 Colo. 192, 34 P.2d 71 (1934).

Or other erroneous ruling upon the admission of evidence cannot be made the basis for the reversal of an adverse judgment where it is without prejudice to the rights of the complaining party. Schreiner v. People, 95 Colo. 392, 36 P.2d 764 (1934).

And error in giving instructions may not be fatal. It is not every error in instructions that requires a reversal. Where defendant's guilt is proven by conclusive evidence and his substantial rights are not prejudiced by the giving of an instruction which is in part erroneous, the judgment will not be reversed on that ground. Stewart v. People, 83 Colo. 289, 264 P. 720 (1928).

Objections to technical defects are not encouraged. Objections to technical defects that do not tend to prejudice the substantial rights of the defendant on the merits, are not encouraged. Cliff v. People, 84 Colo. 254,

269 P. 907 (1928); Albert v. People, 90 Colo. 219, 7 P.2d 822 (1932).

B. Defects in Charging Instrument.

Defects not prejudicing substantial rights are not grounds for reversal. Judgment in a criminal case will not be reversed for a defect appearing in the information which does not tend to prejudice the substantial rights of the defendant on the merits. McClary v. People, 79 Colo. 205, 245 P. 491 (1926); Woolsey v. People, 98 Colo. 62, 53 P.2d 596 (1935).

No appeal shall be sustained for any matter in an information not affecting the real merits of the offense charged. Gray v. People, 139 Colo. 583, 342 P.2d 627 (1959).

As erroneous statements in the charging parts of a criminal information which do not prejudice the substantial rights of defendant, and which may properly be rejected as surplusage, afford no ground for the reversal of a judgment of conviction. Cole v. People, 92 Colo. 145, 18 P.2d 470 (1933).

Or where an indictment carries an erroneous allegation which could not mislead the defendant, its insertion does not tend to prejudice the substantial rights of the defendant on the merits and therefore is no ground for reversal. Cole v. Van Horn, 67 F.2d 735 (10th Cir. 1933); Cole v. People, 92 Colo. 145, 18 P.2d 470 (1933).

Or minor objections to form of indictment or information are without force, since the form complained of in no way prejudices the rights of plaintiff in error. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

Or discrepancy in dates of verification and filing of information. Although there is an apparent discrepancy in the dates of verification and filing of an information, no prejudice resulting to the rights of defendant, the error is harmless and without effect under this section. Grandbouche v. People, 104 Colo. 175, 89 P.2d 577 (1939).

Or the failure of an information to state the name of the person from whom stolen goods were received does not affect the substantial rights of the accused, and under this section no exception to the omission having been taken before trial, it is without avail after conviction. Curl v. People, 53 Colo. 578, 127 P. 951 (1912).

Or mistaken use of singular "offense". Even though the affidavit used the word "offense" rather than "offenses", it nonetheless constitutes compliance where there is no dispute that the facts were legally sufficient to charge both robbery and conspiracy. Martinez v. People, 156 Colo. 380, 399 P.2d 415 (1965).

Specific authority to justify a refusal of relief by reason thereof is furnished by this section. Shaw v. People, 72 Colo. 142, 209 P. 812 (1922).

Thus, court may refuse to strike matter where no prejudice results. There is no error in the refusal of the trial court to strike from the indictment portions of the pleaded libelous matter where no prejudice resulted to the rights of the defendant. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

But major defects render charging instrument void. Unless a correction or amendment to a charging instrument is of a

minor irregularity or minor defect, an information is not merely defective, it is void and of course is not subject to curative action. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

And any conviction based on an information requiring major amendment is void, for the court is without jurisdiction. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Applied in Critchfield v. People, 91 Colo. 127, 13 P.2d 270 (1932).

C. Variances Between Allegations and Proof.

A variance which does not tend to prejudice the substantial rights of a defendant is not fatal. Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931); Mukuri v. People, 92 Colo. 306, 19 P.2d 1040 (1933).

Any variance between the allegations and proof not material to the merits of the case, or that does not tend to prejudice the substantial rights of the defendant on the merits, does not constitute reversible error. Compton v. People, 84 Colo. 106, 268 P. 577 (1928).

A variance between the copy of an instrument set out in an indictment and the original cannot be successfully invoked by the accused in a criminal prosecution unless such variance is in some way material; that is, a mere variance is of no consequence unless it prejudices the accused. Johnson v. People, 36 Colo. 445, 84 P. 819 (1906).

Variance in the description of any matter shall not be deemed grounds for the acquittal of a defendant, unless such variance is material to the merits of the case or is prejudicial to such defendant. John Doe v. People, 160 Colo. 215, 416 P.2d 376 (1966).

Such as misnomer of deceased's name in murder charge. In a prosecution for murder, where the information gave the name of the deceased as Lolly Lila Downey, it was held that it was not prejudicial to the defendant nor material to the merits of the case whether the deceased's true name was as set forth in the information or was Lila Lolly Downey and under the provisions of this section it was not error to refuse to give an instruction relating to the variance. Downey v. People, 121 Colo. 307, 215 P.2d 892 (1950).

Or variance in sum of forged check. In a prosecution for forgery, where the only variance between the check offered in evidence and the description of the check as contained in the information is the monetary difference of one dollar, and the purported drawer, the named payee, the date, and the drawee bank as such appeared in the proffered check are all accurately described in the information, the slight variance obviously resulting from a typographical error cannot possibly prejudice defendant in any manner. John Doe v. People, 160 Colo. 215, 416 P.2d 376 (1966).

Or failure to prove corporate status of owner of goods stolen. Whether company was a de jure or de facto corporation was not an issue in the case and the corporate existence was not a factor in the description either of the owner of the stolen property or of the person by whom it was stolen. The defendant could not have been misled by the

allegation of corporate entity, nor prejudiced by failure of the prosecution to prove it; he is fully protected against prosecution for the same offense, and his substantial rights were in no manner adversely affected. Under such circumstances the failure to prove the corporate status of the victim was an immaterial variance and not prejudicial to the accused. Kelley v. People, 166 Colo. 322, 443 P.2d 734 (1968).

Or the fact that a mortgage was not disclosed. In a prosecution for conspiracy to burn a dwelling, the evidence disclosed that the house was mortgaged, a fact not mentioned in the information. Under this section, such a discrepancy is not a variance. Mukuri v. People, 92 Colo. 306, 19 P.2d 1040 (1933).

But variance was fatal where offense proved was not the offense charged. There was a fatal variance between the allegations of the count of the information on embezzlement and the proof offered where the defendant was charged with converting with an intent to steal a certain check duly signed by corporation officers and the people's evidence clearly established that the check was not duly signed by an officer of the corporation, but was in fact a forgery, which offense defendant was not charged with. Hence the motion for a directed verdict of not guilty at the conclusion of the people's case should have been sustained. Burns v. People, 145 Colo. 559, 360 P.2d 106 (1961).

Or where material variance concerns instrument which is basis of offense charged. In criminal prosecutions for libel, forgery and other cases where the instrument incorporated in the indictment is the basis of the offense charged, a material variance between the instrument pleaded and the original introduced in evidence to support it, will be fatal. Johnson v. People, 36 Colo. 445, 84 P. 819 (1906).

Major defects may not be corrected by amendment. Generally, a criminal complaint or affidavit may be amended so as to correct minor irregularities or defects but major defects such as a material misnomer of accused or an omission of essential allegations cannot be cured by amendment on the examination. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

PART 3

EVIDENCE OF SIMILAR TRANSACTIONS

16-10-301. Evidence of similar transactions - legislative declaration.

(1) The general assembly hereby finds and declares that sexual offenses are a matter of grave statewide concern. These frequently occurring offenses are aggressive and assaultive violations of the well-being, privacy, and security of the victims, are severely contrary to common notions of proper behavior between people, and result in serious and long-lasting harm to individuals and society. These offenses often are not reported or are reported long after the offense for many reasons, including: The frequency with which the victims are vulnerable, such as young children

who may be related to the perpetrator; the personal indignity, humiliation, and embarrassment involved in the offenses themselves; and the fear of further personal indignity, humiliation, and embarrassment in connection with investigation and prosecution. These offenses usually occur under circumstances in which there are no witnesses except for the accused and the victim, and, because of this and the frequent delays in reporting, there is often no evidence except for the conflicting testimony. Moreover, there is frequently a reluctance on the part of others to believe that the offenses occurred because of the inequality between the victim and the perpetrator, such as between the child victim and the adult accused, or because of the deviant and distasteful nature of the charges. In addition, it is recognized that some sex offenders cannot or will not respond to treatment or otherwise resist the impulses which motivate such conduct and that sex offenders are extremely habituated. As a result, such offenders often commit numerous offenses involving sexual deviance over many years, with the same or different victims, and often, but not necessarily, through similar methods or by common design. The general assembly reaffirms and reemphasizes that, in the prosecution of sexual offenses, including in proving the corpus delicti of such offenses, there is a greater need and propriety for consideration by the fact finder of evidence of other relevant acts of the accused, including any actions, crimes, wrongs, or transactions, whether isolated acts or ongoing actions and whether occurring prior to or after the charged offense. The general assembly finds that such evidence of other sexual acts is typically relevant and highly probative, and it is expected that normally the probative value of such evidence will outweigh any danger of unfair prejudice, even when incidents are remote from one another in time.

(2) This section applies to prosecution for any offense involving unlawful sexual behavior as defined in section 16-22-102 (9), or first degree murder, as defined in section 18-3-102 (1)(d), C.R.S., in which the underlying felony on which the first degree murder charge is based is the commission or attempted commission of sexual assault, as described in section 18-3-402, C.R.S., sexual assault in the first or second degree as those offenses were described in sections 18-3-402 and 18-3-403, C.R.S., as they existed prior to July 1, 2000, or the commission of a class 3 felony for sexual assault on a child as defined in section 18-3-405 (2), C.R.S.

(3) The prosecution may introduce evidence of other acts of the defendant to prove the commission of the offense as charged for any purpose other than propensity, including: Refuting defenses, such as consent or recent fabrication; showing a common plan, scheme, design, or modus operandi, regardless of whether identity is at issue and regardless of whether the charged offense has a close nexus as part of a unified transaction to the other act; showing motive, opportunity, intent, preparation, including grooming of a victim, knowledge, identity, or absence of mistake or accident; or for any other matter for which it is relevant. The prosecution may use such evidence either as proof in its case in chief or in rebuttal, including in response to evidence of the defendant's good character.

(4) If the prosecution intends to introduce evidence of other acts of the defendant pursuant to this section, the following procedures shall apply:

(a) The prosecution shall advise the trial court and the defendant in advance of trial of the other act or acts and the purpose or purposes for which the evidence is offered.

(b) The trial court shall determine by a preponderance of the evidence whether the other act occurred and whether the purpose is proper under the broad inclusionary expectations of this section.

(c) The trial court may determine the admissibility of other acts by an offer of proof.

(d) The trial court shall, at the time of the reception into evidence of other acts and again in the general charge to the jury, direct the jury as to the limited purpose or purposes for which the evidence is admitted and for which the jury may consider it.

(e) The court in instructing the jury, and the parties when making statements in the presence of the jury, shall use the words "other act or transaction" and at no time shall refer to "other offense", "other crime", or other terms with a similar connotation.

(5) The procedural requirements of this section shall not apply when the other acts are presented to prove that the offense was committed as part of a pattern of sexual abuse under section 18-3-405 (2)(d), C.R.S.

Source: L. 75: Entire part added, p. 614, § 1, effective April 3. **L. 85:** (1) amended, p. 622, § 4, effective July 1. **L. 87:** (1) amended, p. 605, § 5, effective July 1. **L. 96:** Entire section R&RE, p. 1578, § 1, effective July 1. **L. 2000:** (2) amended, p. 701, § 22, effective July 1. **L. 2002:** (2) amended, p. 1182, § 7, effective July 1; (4)(c) amended, p. 761, § 10, effective July 1.

Cross references: For the admissibility of evidence of other crimes, wrongs, or acts, see C.R.E. 404(b).

ANNOTATION

Section not circumscribed by statute of limitation. This section establishes the criteria for admission of testimony relating to similar acts and should not be circumscribed by a statute of limitation on sexual offenses. Adrian v. People, 770 P.2d 1243 (Colo. 1989) (overruling Bigcraft v. People, 70 P. 417 (Colo. 1902); Curtis v. People, 211 P. 381 (Colo. 1922); Abbott v. People, 299 P. 1053 (Colo. 1931); People v. Denious, 196 P.2d 257 (Colo. 1948)).

Guilt of one offense may not be proven by guilt of another. It is a fundamental concept of criminal law that an accused is not to be convicted of one offense by proof that he is guilty of another. People v. Martin, 43 Colo. App. 44, 602 P.2d 873 (1979).

"Acts or transactions" need not be criminal in nature. Subsection (1) refers to "acts or transactions", not to offenses or crimes, and thus permits admission of evidence of events, not necessarily criminal in nature, for the limited purposes specified. People v. Opson, 632 P.2d 602 (Colo. App. 1980); People v. Girtman, 695 P.2d 759 (Colo. App. 1984).

Admissibility of prior criminal transactions discretionary. The trial court has substantial discretion in deciding the admissibility of evidence of a prior criminal transaction, and only where there is an abuse of discretion will the ruling of the trial court be disturbed. Pigford v. People, 197 Colo. 358, 593 P.2d 354 (1979); People v. Delgado, 890 P.2d 141 (Colo. App. 1994).

Evidence of prior criminal transactions not admissible where defendant was acquitted of similar act. The doctrine of collateral estoppel prevents the introduction of evidence of similar transactions for which a defendant has been acquitted. People v. Arrington, 682 P.2d 490 (Colo. App. 1983).

Collateral estoppel does not bar the introduction of prior act evidence relating to charges of which defendant was previously acquitted when it is presented in a subsequent action where the admission of the evidence is governed by a lower standard of proof than the acquittal. People v. Wallen, 996 P.2d 182 (Colo. App. 1999) (disagreeing with People v. Arrington, 682 P.2d 490 (Colo. App. 1983)).

Evidence admissible that defendant did not commit other similar act. If all the similar acts and circumstances, taken together, may support a finding that the same person was probably involved in both transactions, then evidence that the defendant did not commit the second transaction is relevant and admissible. People v. Flowers, 644 P.2d 916 (Colo. 1982).

Admissibility decided on case-by-case basis. Admissibility of defensive similar offense evidence must be decided on a case-by-case basis, according to general relevancy considerations. People v. Flowers, 644 P.2d 916 (Colo. 1982); People v. Montoya, 703 P.2d 606 (Colo. App. 1985).

Exclusionary rule inapplicable when defendant offers similar offense evidence. When a defendant offers similar offense evidence for defensive reasons, the concerns which gave rise initially to the exclusionary rule are no longer relevant. People v. Flowers, 644 P.2d 916 (Colo. 1982); People v. Rollins, 892 P.2d 866 (Colo. 1995).

Evidence of prior similar episodes is proper in sexual assault cases, regardless of whether the evidence of similar episodes relates to acts with persons other than the complaining witness and even if a prima facie case of the defendant's intent is first established. People v. Pigford, 40 Colo. App. 523, 580 P.2d 820 (1978), aff'd, 197 Colo. 358, 593 P.2d 354 (1979); People v. Allen, 42 Colo. App. 345, 599 P.2d 264 (1979).

Evidence of prior similar transactions is admissible to prove, among other things, plan, scheme, design, and motive, and this is particularly so in sexual assault cases. People v. Vollentine, 643 P.2d 800 (Colo. App. 1982); People v. Montoya, 703 P.2d

606 (Colo. App. 1985); People v. Mosley, 167 P.3d 157 (Colo. App. 2007); People v. Bondsteel, 2015 COA 165, 442 P.3d 880, aff'd, 2019 CO 26, 439 P.3d 847.

Length of time between two acts. In addition to the degree of similarity between the earlier act and the act in question and the relevance of the similar act, the trial court should consider the length of time between the two acts when deciding whether to admit evidence of a similar sexual offense. An offense committed six years earlier is somewhat remote in time and, considered in light of all the other evidence, would be unduly prejudicial if admitted. People v. Wells, 754 P.2d 420 (Colo. App. 1987), rev'd on other grounds, 776 P.2d 386 (Colo. 1989).

Considering the circumstances, prior incidents of sexual abuse were not too remote when there was interval of ten to twelve years between the childhood abuse and the charges for which the defendant was being charged. The defendant and the victim's mother were divorced during that period and the defendant had had no contact with the victim for four years and only limited contact with her thereafter. People v. Fell, 832 P.2d 1015 (Colo. App. 1991).

There are few absolute rules on the number of years that can separate two instances of conduct without destroying the evidentiary value of one. People v. Adrian, 744 P.2d 768 (Colo. App. 1987), aff'd, 770 P.2d 1243 (Colo. 1989); People v. Fell, 832 P.2d 1015 (Colo. App. 1991).

Offenses committed approximately ten to twelve years earlier are not too remote in time where the defendant and victim's mother were divorced and the defendant had had no contact with the victim for four years and only limited contact with her thereafter. Therefore, the prior incidents of sexual abuse were not too remote in time, and, consequently, no undue prejudice to defendant resulted from their admission. People v. Fell, 832 P.2d 1015 (Colo. App. 1991).

The general assembly has expressed a policy of favoring the admission of other acts evidence even when the incidents are remote from one another in time. People v. Shores, 2016 COA 129, 412 P.3d 894.

Evidence of prior similar transactions is admissible in cases of sexual assault on a child if such evidence is offered to show a common plan, scheme, design, identity, modus operandi, motive, guilty knowledge, or intent. People v. Adrian, 744 P.2d 768 (Colo. App. 1987), aff'd, 770 P.2d 1243 (Colo. 1989); People v. Snyder, 874 P.2d 1076 (Colo. 1994); People v. Nara, 964 P.2d 578 (Colo. App. 1998) (decided under law in effect prior to the 1996 repeal and reenactment).

The testimony regarding prior similar acts by four witnesses was logically relevant to defendant's identity and intent, apart from any inference of propensity, thus trial court did not abuse its discretion in admitting it. People v. Larson, 97 P.3d 246 (Colo. App. 2004).

Trial court did not abuse discretion in admitting evidence of prior incident of sexual assault on a child where incident had occurred eight years earlier, the evidence

was introduced only to prove identity, and the jury was instructed that identity was the only purpose for which the evidence could be considered. People v. Apodaca, 58 P.3d 1126 (Colo. App. 2002).

To refute the defense of recent fabrication, evidence of prior similar transactions is admissible in cases of sexual assault on a child. People v. Duncan, 33 P.3d 1180 (Colo. App. 2001).

To be admissible, the prior act evidence must relate to a material fact, be logically relevant, and be independent of the intermediate inference of bad character and its probative value must outweigh the danger of unfair prejudice. People v. Wallen, 996 P.2d 182 (Colo. App. 1999).

This section, as reenacted in 1996, contains no language that erodes those requirements or the requirement that the defendant engaged in the prior act. Even when evidence of prior similar transactions is introduced in prosecutions specifically mentioned in this section, an analysis under CRE 404(b) is still necessary. People v. Martinez, 36 P.3d 154 (Colo. App. 2001).

While it is error for the trial court to rule that this section supercedes previous authority regarding the admissibility of prior similar transactions evidence, reversal is not required if the record supports the court's admission of such evidence under the appropriate standard. People v. Martinez, 36 P.3d 154 (Colo. App. 2001).

Prerequisites and factors to be considered by the trial court in determining whether to admit evidence of similar transactions are listed in State v. Janes, 942 P.2d 1331 (Colo. App. 1997).

Evidence of prior similar transactions is admissible in cases of sexual assault regardless of the age of the victim. People v. Fell, 832 P.2d 1015 (Colo. App. 1991); People v. Leonard, 872 P.2d 1325 (Colo. App. 1993).

In order to introduce evidence of other sexual acts committed by the defendant, the prosecution must satisfy, in addition to the requirements of this section, CRE 404(b) and the four-part test established in People v. Spoto. People v. Underwood, 53 P.3d 765 (Colo. App. 2002); People v. Baker, 178 P.3d 1225 (Colo. App. 2007).

Before admitting evidence of other crimes, wrongs, or acts, the other act evidence must satisfy CRE 404(b) and the test in People v. Spoto, 795 P.2d 1314 (Colo. 1990). People v. Villa, 240 P.3d 343 (Colo. App. 2009); People v. Glasser, 293 P.3d 68 (Colo. App. 2011).

Evidence of prior similar transactions is admissible when used to prove identity and motive and to rebut a defense of fabrication by a victim. Evidence introduced under the requirements of this section and CRE 404(b) that fails to satisfy these requirements may be disregarded as harmless error if the error is not one of constitutional dimension and the defendant fails to show a reasonable probability that the inadmissible detail contributed to his or her conviction. People v. Whitlock, 2014 COA 162, 412 P.3d 667.

Trial courts have no obligation to determine that evidence of other acts

offered under CRE 404(b) and this section satisfies the doctrine of chances to also satisfy the second and third prongs of the four-part admissibility test articulated in People v. Spoto. Although the doctrine of chances provides one theory pursuant to which other acts evidence may satisfy these two components of that four-part analysis, trial courts have discretion to assess the relevance of other acts evidence under People v. Spoto apart from the doctrine of chances. People v. Jones, 2013 CO 59, 311 P.3d 274.

Defendant does not necessarily have the right to cross-examine a witness in an evidentiary hearing pursuant to this section. People v. Baker, 178 P.3d 1225 (Colo. App. 2007).

Prosecutor's comment that evidence of prior similar transactions between the sexual assault victim and the defendant, her father, explained the victim's response to two assaults and her failure to report them earlier is not improper considering the testimony of the victim and the limiting instructions given by the trial court regarding the proper use of the similar transaction evidence. People v. Fell, 832 P.2d 1015 (Colo. App. 1991).

Evidence of similar transactions in an incest case is admissible where there is sufficient and substantial similarity between the transactions and offense charged even though there were differences in the type of sexual activity. The evidence is also admissible on the issue of motive, and the trial court was not required to define motive for the jury. People v. Leonard, 872 P.2d 1325 (Colo. App. 1993).

Where the similar transaction to be admitted is complex, requiring several steps to completion, a single prior act may be sufficient to demonstrate a common plan. In such a case, the risks of abuse may be reduced by requiring that the methods used in the commission of the acts being compared must be both similar to each other and dissimilar from the methods generally used in such an offense. People v. Delgado, 890 P.2d 141 (Colo. App. 1994).

A contemporaneous limiting instruction is not required to permit evidence of similar transactions to be considered by the jury where the trial court instructed in the general charge to the jury that they consider the evidence only to show common plan, scheme, or design and where the prosecution was allowed to wait until the close of the case to elect which specific transactions it was prosecuting. People v. Cordova, 854 P.2d 1337 (Colo. App. 1992), aff'd, 880 P.2d 1216 (Colo. 1994).

Failure to give limiting instruction does not always constitute plain error. The court must examine all of the particular facts to determine if plain error was committed. People v. Underwood, 53 P.3d 765 (Colo. App. 2002).

Trial court's failure to issue a limiting instruction in its final instruction to the jury was not plain error. The error was not substantial, did not affect defendant's substantial rights, and the error did not undermine the fairness of the trial to a significant degree. The court issued a limiting instruction at the time of the introduction of the evidence and the court's final instructions reminded the jury about

that instruction even though it was not specific to the particular evidence. People v. Everett, 250 P.3d 649 (Colo. App. 2010).

To prove common plan, scheme, or design. Evidence of prior sexual episodes with the victim which goes to prove a common plan, scheme, or design, is admissible under subsection (1). People v. Whitesel, 200 Colo. 362, 615 P.2d 678 (1980).

Evidence of prior sexual episode with a different victim that goes to prove a common plan and a pattern of using a particular technique to accomplish a particular end is admissible under subsection (1). People v. Shores, 2016 COA 129, 412 P.3d 894.

Statute mandates that, at time of reception into evidence and again in general charge to the jury, the trial court shall direct the jury as to the limited purpose for which such evidence is admitted. People v. Roberts, 738 P.2d 380 (Colo. App. 1986).

Language of subsection (3) is mandatory and the trial judge may not omit the instructions, even though the defendant objects to them as prejudicial rather than prophylactic. People v. Opson, 632 P.2d 602 (Colo. App. 1980).

Defendant denied fair trial by introduction of prejudicial testimony. Where testimony given in answer to a prosecutor's question revealed an unsavory situation of a highly prejudicial character and was without probative value relevant to the offenses charged, and where no limiting instructions were given, defendant was denied a fair trial. People v. Martin, 43 Colo. App. 44, 602 P.2d 873 (1979).

Trial court did not abuse its discretion in admitting similar transaction evidence. People v. Youngs, 665 P.2d 143 (Colo. App. 1983), aff'd, 707 P.2d 360 (Colo. 1985); People v. Adrian, 744 P.2d 768 (Colo. App. 1987), aff'd, 770 P.2d 1243 (Colo. 1989); People v. Martinez, 36 P.3d 154 (Colo. App. 2001); People v. Jones, 2013 CO 59, 311 P.3d 274.

Trial court did not abuse its discretion when it admitted similar transaction evidence and gave appropriate limiting instructions. People v. McKibben, 862 P.2d 991 (Colo. App. 1993); People v. Delgado, 890 P.2d 141 (Colo. App. 1994).

Trial court did not abuse its discretion when it joined two sexual assault cases against defendant involving two victims, his daughters. The evidence from each case would have been admissible in the other case, the evidence was material to defendant's intent and common plan, and the evidence made it more likely defendant committed the crimes. Defendant's claim that he would have testified in one case, but not the other, making joinder improper did not rise to the level of prejudice. Defendant was still able to show the jury a police interview in which he claimed the same intoxication defense he claimed he would have testified to had the charges involving the other victim been tried separately. People v. Curtis, 2014 COA 100, 350 P.3d 949.

Trial court did not abuse its discretion in admitting evidence regarding prior

similar acts. The testimony was logically relevant to defendant's identity and intent, apart from any inference of propensity; the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice; and the court gave detailed instructions to the jury multiple times that articulated the proper use of the evidence. People v. Larson, 97 P.3d 246 (Colo. App. 2004).

Court properly admitted previous incident evidence based on imprecise offer of proof by the prosecution because the court explicitly acknowledged the inaccuracy in the second statement of the offer and still found the offer sufficient. People v. Raehal, 2017 COA 18, 401 P.3d 117.

A prior act does not need to be similar in every respect to be admissible. People v. Masters, 33 P.3d 1191 (Colo. App. 2001), aff'd on other grounds, 59 P.3d 979 (Colo. 2002).

Trial court abused its discretion in admitting similar transaction evidence in case of sexual assault on a child. People v. Guilbeaux, 761 P.2d 255 (Colo. App. 1988).

For discussion of evidence sufficient to meet prima facie case requirement, see People v. Mulligan, 714 P.2d 493 (Colo. App. 1986).

The election of a transaction upon which the prosecution relies need not be made before the conclusion of the prosecution's case. People v. Aldrich, 849 P.2d 821 (Colo. App. 1992).

Trial court could not admit evidence of alleged sexual assault under this section then in effect before prosecution presented prima facie case to jury. Yet child's out-of-court statements could not establish a prima facie case warranting submission to the jury because, under § 13-25-129(1)(b), the statements were not admissible without the corroborative evidence. People v. Nara, 964 P.2d 578 (Colo. App. 1998) (decided under law in effect prior to the 1996 repeal and reenactment).

As a result of the interplay of § 13-25-129 and this section then in effect, alleged victim's out-of-court statements could not be corroborated by similar acts, and those statements could not provide the prima facie case necessary for admission of evidence of the similar act. The trial court therefore could not properly admit evidence of either. People v. Nara, 964 P.2d 578 (Colo. App. 1998)(decided under law in effect prior to the 1996 repeal and reenactment).

Because the prosecution did not first establish a prima facie case of the corpus delicti element pursuant to subsection (4)(c), evidence of the juvenile's prior sexual assault was improperly admitted. People ex rel. T.A.O., 36 P.3d 180 (Colo. App. 2001).

Applied in People v. McKnight, 39 Colo. App. 280, 567 P.2d 811 (1977); People v. Crespin, 631 P.2d 1144 (Colo. App. 1981); People v. Martinez, 652 P.2d 174 (Colo. App. 1981); People v. Holder, 687 P.2d 462 (Colo. App. 1984).

PART 4

TRIAL PROCEEDINGS

16-10-401. Trials - authority to exclude victim's advocate from sequestration orders.

Notwithstanding any sequestration order entered by the court that excludes members of the general public from a jury trial or a trial before the court, the court may allow a victim's advocate to remain in the courtroom during such trial. For the purposes of this section, "victim's advocate" means any person whose regular or volunteer duties include the support of an alleged victim of physical or sexual abuse or assault.

Source: L. 92: Entire part added, p. 322, § 2, effective July 1.

16-10-402. Use of closed-circuit television - child or witness with intellectual and developmental disabilities - definition.

(1) (a) When a witness at the time of a trial is a child under eighteen years old or is a person who has an intellectual and developmental disability as defined in section 25.5-10-202, the court may, upon motion of a party or upon its own motion, order that the witness's testimony be taken in a room other than the courtroom and be televised by closed-circuit television in the courtroom if:

(I) The testimony is taken during the proceeding;

(II) The judge determines that testimony by the witness in the courtroom and in the presence of the defendant would result in the witness suffering serious emotional distress or trauma. The trial court shall make findings on the record regarding the witness's ability to testify in the courtroom and in the presence of the defendant; and

(III) Closed-circuit television equipment is available for such use.

(b) To obtain an order authorizing the use of closed-circuit television for testimony by a child or developmentally disabled witness, the party shall file a written motion with the court no less than fourteen days prior to the trial.

(c) Only the prosecuting attorney, the attorney for the defendant, the guardian ad litem, if any, and the judge may question the witness when he or she testifies by closed-circuit television.

(d) The operators of the closed-circuit television equipment shall make every effort to be unobtrusive while the witness is testifying.

(2) (a) Only the following persons may be in the room with the witness when the child or developmentally disabled person testifies by closed-circuit television:

(I) The prosecuting attorney;

(II) The attorney for the defendant;

(III) The guardian ad litem, if any;

(IV) The operators of the closed-circuit television equipment;

(V) A person whose presence, in the opinion of the court, contributes to the welfare and well-being of the witness, including a person who has dealt with the witness in a therapeutic setting; and

(VI) The jury.

(b) During the witness's testimony by closed-circuit television, the judge and the defendant, if present, shall remain in the courtroom.

(c) The judge and the defendant shall be allowed to communicate with the persons in the room where the witness is testifying by an appropriate electronic method.

(3) The provisions of this section shall not apply if the defendant is appearing pro se.

(4) This section shall not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the witness and the defendant in the courtroom at the same time.

(5) Nothing in this section shall be interpreted to preclude the removal of the defendant, rather than the witness, from the courtroom upon the stipulation of both parties and the approval of the court.

(6) As used in this section, unless the context otherwise requires, "closed-circuit television" means a direct, closed-loop audio and video transmission system that allows private viewing and is not publicly broadcast, and may include the use of other digital or wireless technologies.

Source: L. 2005: Entire section added, p. 424, § 4, effective April 29. **L. 2012:** (1)(b) amended, (SB 12-175), ch. 208, p. 853, § 83, effective July 1. **L. 2013:** IP(1)(a) amended, (HB 13-1314), ch. 323, p. 1804, § 28, effective March 1, 2014. **L. 2026:** IP(1)(a) and (1)(a)(II) amended and (6) added, (HB 26-1103), ch. 91, p. 369, § 3, effective May 4.

Cross references: For the legislative declaration in HB 26-1103, see section 1 of chapter 91, Session Laws of Colorado 2026.

ANNOTATION

Removing the defendant from the courtroom, rather than the child witness, violates the defendant's due process right where there is noncompliance with the statutory procedure this section requires. People v. Rodriguez, 209 P.3d 1151 (Colo. App. 2008), aff'd by an equally divided court, 238 P.3d 1283 (Colo. 2010); People v. Aldridge, 2018 COA 131, 446 P.3d 897.

Because there was no reasonable possibility that the errors in the closed-circuit television procedure the court adopted contributed to defendant's conviction, the errors were harmless beyond a reasonable doubt. People v. Rodriguez, 209 P.3d 1151 (Colo. App. 2008), aff'd by an equally divided court, 238 P.3d 1283 (Colo. 2010).

Erroneous exclusion of defendant from the courtroom, however, was not harmless beyond a reasonable doubt, requiring the court to reverse the judgment. People v. Aldridge, 2018 COA 131, 446 P.3d 897.

To justify testimony by closed-circuit television, a court must find that the child witness would be traumatized by the presence of the defendant, not the courtroom generally. The court erred by allowing the child witness to testify by closed-circuit television for fear of the defendant's family. People in Interest of A.T.S., 2025 COA 53M, 573 P.3d 603.

Actual evidence of psychological trauma not required before permitting a child to testify via one-way closed circuit television. People v. Ujaama, 2012 COA 36, 302 P.3d 296.

16-10-402.5. Use of closed-circuit television - victims of certain offenses involving domestic violence, unlawful sexual behavior, stalking, or human trafficking - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Closed-circuit television" means a direct, closed-loop audio and video transmission system that allows private viewing and is not publicly broadcast, and may include the use of other digital or wireless technologies.

(b) "Domestic violence" has the meaning set forth in section 18-6-800.3.

(c) "Human trafficking for involuntary servitude" has the meaning set forth in section 18-3-503.

(d) "Human trafficking for sexual servitude" has the meaning set forth in section 18-3-504.

(e) "Stalking" has the meaning set forth in section 18-3-602.

(f) "Unlawful sexual behavior" means unlawful sexual behavior described in part 4 of article 3 of title 18.

(g) "Victim-survivor" means an individual who is alleged to be a victim of a crime charged in the present case which involves domestic violence, unlawful sexual behavior, stalking, human trafficking for involuntary servitude, or human trafficking for sexual servitude.

(2) (a) Except as provided in subsection (4) of this section, in any prosecution for a crime involving domestic violence, unlawful sexual behavior, stalking, human trafficking for involuntary servitude, or human trafficking for sexual servitude, the court may, upon motion of a party or upon its own motion, order that the victim-survivor's testimony be taken in a room other than the courtroom and be televised by closed-circuit television in the courtroom if:

(I) The testimony is taken during the proceeding;

(II) The judge determines pursuant to subsection (2)(b)(II) of this section that testimony by the victim-survivor in the presence of the defendant in the courtroom would result in the victim-survivor suffering serious emotional distress or trauma, such that the victim-survivor would not be able to reasonably communicate; and

(III) Closed-circuit television equipment is available for testimony.

(b) (I) To obtain an order authorizing the use of closed-circuit television for testimony by a victim-survivor, a party shall file a written motion with the court no less than thirty-five days prior to the trial. The court may extend the time to file a written motion for good cause.

(II) The court shall hold a hearing to determine whether testimony by the victim-survivor in the presence of the defendant in the courtroom would result in the victim-survivor suffering serious emotional distress or trauma, such that the victim-survivor would not be able to reasonably communicate.

(c) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the victim-survivor when the victim-survivor testifies by closed-circuit television.

(d) The operators of the closed-circuit television equipment shall make every effort to be unobtrusive while the victim-survivor is testifying.

(3) (a) Only the following individuals may be in the room with the victim-survivor when the victim-survivor testifies by closed-circuit television:

(I) The prosecuting attorney;

(II) The attorney for the defendant;

(III) The operators of the closed-circuit television equipment;

(IV) A person whose presence, in the opinion of the court, contributes to the welfare and well-being of the victim-survivor, including an individual who has dealt with the victim-survivor in a therapeutic setting; and

(V) The jury.

(b) During the victim-survivor's testimony by closed-circuit television, the judge and the defendant, if present, shall remain in the courtroom.

(c) The judge and the defendant must be allowed to communicate with the individuals in the room where the victim-survivor is testifying by an appropriate electronic method.

(4) This section does not apply if the defendant is appearing pro se.

(5) This section does not apply if the victim-survivor testifying is, at the time of a trial, a child less than eighteen years old or is a person who has an intellectual and developmental disability, as defined in section 25.5-10-202. Closed-circuit television testimony by a victim-survivor at the time of trial who is a child less than eighteen years old or who has an intellectual or developmental disability is governed by section 16-10-402.

(6) (a) This section does not preclude, for purposes of identifying a defendant, the presence of both the victim-survivor and the defendant in the courtroom at the same time.

(b) This section does not preclude the removal of the defendant, rather than the victim-survivor, from the courtroom upon the stipulation of both parties and the approval of the court.

(c) This section does not preclude a court from taking other, constitutionally permissible measures to accommodate the needs of a testifying victim-survivor.

Source: L. 2026: Entire section added, (SB 26-095), ch. 133, p. 593, § 6, effective May 19.

16-10-403. Option to close court.

The court may, if it determines that the best interest of a child in a closed proceeding overrides the public interest in an open criminal proceeding and the defendant's right to a public trial, close the court to the public when images of sexually exploitative materials or forensic interviews directly related to said child are being presented as evidence in court and the child or the forensic interviewer is on the witness stand.

Source: L. 2013: Entire section added, (SB 13-198), ch. 279, p. 1452, § 1, effective May 24.

16-10-404. Use of a court facility dog - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Court facility dog" means a dog that is a graduate of an assistance dog organization that is accredited by an internationally recognized organization whose main purpose is to grant accreditation to assistance dog organizations based on standards of excellence in all areas of assistance dog acquisition, training, and placement. A "court facility dog" must be specially trained to provide support to witnesses testifying in proceedings without causing a distraction.

(b) "Criminal proceeding" or "criminal proceedings" has the same meaning set forth in section 16-8.5-101.

(c) "Qualified individual with a disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.

(d) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.

(2) (a) The court may, upon motion of a party or upon its own motion, order that a witness's testimony be offered while a court facility dog is in the courtroom during the testimony of the witness if:

(I) The testimony is taken during a criminal proceeding; and

(II) The judge determines by a preponderance of the evidence that:

(A) The presence of a court facility dog with the witness during the witness's testimony would reduce the witness's anxiety and enhance the ability of the court to receive full and accurate testimony;

(B) The arrangements for an available court facility dog during the witness's testimony would not interfere with efficient criminal proceedings; and

(C) No prejudice would result to any party due to the presence of a court facility dog with the witness.

(b) To obtain an order authorizing the use of a court facility dog during the witness's testimony, the party must file a written motion with the court no less than fourteen days prior to the criminal proceeding.

(3) Notwithstanding a judge's order granting that the witness's testimony may be offered while a court facility dog is present pursuant to subsection (2)(a) of this section, the judge has the authority to terminate the presence of a court facility dog at any time prior to, or during, the witness's testimony.

(4) To ensure that the presence of a court facility dog does not influence the jury or is not a reflection on the truthfulness of any testimony that is offered by a witness, the court may instruct

the jury, if a jury instruction is requested by a party who objected to the presence of the court facility dog or upon agreement of the parties, on the role of the court facility dog and that the court facility dog is a trained animal.

(5) Nothing in this section precludes or interferes with the rights of a qualified individual with a disability who is accompanied by a service animal pursuant to state or federal law.

Source: L. 2019: Entire section added, (HB 19-1220), ch. 138, p. 1739, § 1, effective July 1. **L. 2020:** (1)(b) amended, (HB 20-1402), ch. 216, p. 1046, § 27, effective June 30. **L. 2026:** (1)(b) amended, (SB 26-149), ch. 142, p. 793, § 41, effective May 21.

ARTICLE 11

Imposition of Sentence

PART 1
ALTERNATIVES - INVESTIGATION

16-11-101. Alternatives in sentencing - repeal. (Repealed)

16-11-101.5. Collection of restitution - repeal. (Repealed)

16-11-101.6. Collection of fines and fees - methods - charges - judicial collection enhancement fund - creation - definition.

16-11-101.7. Repayment of crime stopper reward - crime stopper reward reimbursement fund - created.

16-11-101.8. State income tax refund and lottery winnings offsets - fines, fees, costs, or surcharges - definitions.

16-11-102. Presentence or probation investigation.

16-11-102.3. Genetic testing of convicted offenders - repeal. (Repealed)

16-11-102.4. Genetic testing of convicted offenders.

16-11-102.5. Drug testing of offenders by judicial department - pilot program. (Repealed)

16-11-103. Imposition of sentence in class 1 felonies - appellate review. (Repealed)

16-11-104. Genetic testing - repeal. (Repealed)

16-11-105. Local initiative committee pilot program for the management of community-based programs for adults with mental illness who come into contact with the criminal justice system -

legislative declaration - creation - duties - report - repeal. (Repealed)

PART 2
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16-11-202. Probationary power of court. (Repealed)

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16-11-204. Conditions of probation - repeal. (Repealed)

16-11-204.3. Genetic testing as a condition of probation - repeal. (Repealed)

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PART 3
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16-11-302. Duration of sentences for felonies. (Repealed)

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16-11-303. Definite sentence not void. (Repealed)

16-11-304. Determinate sentence of imprisonment imposed by court. (Repealed)

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16-11-306. Credit for presentence confinement. (Repealed)

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16-11-308.5. Authority to contract with a county or a city and county for placement of prisoners in custody of executive director.

16-11-309. Mandatory sentences for violent crimes. (Repealed)

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16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (Repealed)

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16-11-901. Death penalty repeal - applicability - current sentences.

PART 1

ALTERNATIVES - INVESTIGATION

16-11-101. Alternatives in sentencing - repeal. (Repealed)

Source: L. 72: R&RE, p. 239, § 1. **C.R.S. 1963:** § 39-11-101. **L. 73:** p. 503, § 1. **L. 76:** IP(1), (1)(a), (1)(b), (1)(c), (1)(d), and (1)(e) amended, p. 545, § 1, effective July 1. **L. 77:** (1)(b) amended, p. 993, § 2, effective July 1; (1)(b), (1)(d), (1)(e), and (1)(h) amended, p. 861, § 2, effective July 1, 1979. **L. 79:** (1)(d) repealed and (1)(h) amended, pp. 672, 664, §§ 24, 1, effective July 1; (1)(h) amended, p. 679, § 5, effective July 1. **L. 85:** (1)(e) amended, p. 1253, § 2, effective January 1, 1986. **L. 88:** (1)(e) amended, p. 1049, § 4, effective July 1. **L. 92:** (1)(b.5) added, p. 262, § 1, effective July 1. **L. 93, 1st Ex. Sess.:** (1)(i) added, p. 13, § 4, effective September 13. **L. 95:** (1)(i)(I) amended, p. 1095, § 11, effective May 31; (1)(b.5) amended and (2) added, p. 1279, § 17, effective June 5. **L. 96:** (1)(e) amended, p. 1842, § 5, effective July 1; (1)(i)(I) amended, p. 1688, § 18, effective January 1, 1997. **L. 98:** (1)(j) added, p. 1290, § 8, effective November 1. **L. 99:** (1)(i)(II) amended, p. 43, § 3, effective March 15; (3) added, p. 316, § 4, effective July 1. **L. 2002:** (3)(a) amended, p. 1182, § 8, effective July 1; entire section repealed, p. 1463, § 3, effective October 1. **L. 2002, 3rd Ex. Sess.:** (1)(c) amended, p. 32, § 23, effective July 12.

Editor's note: (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

(2) Senate Bill 02-010 amended subsection (3)(a). This section as amended by Senate Bill 02-010 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-104.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsection (1)(c), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

16-11-101.5. Collection of restitution - repeal. (Repealed)

Source: L. 88: Entire section added, p. 669, § 1, effective July 1. **L. 89:** (4) added, p. 862, § 2, effective February 26. **L. 96:** (1) amended and (5) added, p. 1776, § 1, effective June 3. **L. 97:** (1) amended, p. 1551, § 1, effective July 1. **L. 99:** (1.5) added, p. 56, § 7, effective March 15; (6) added, p. 899, § 1, effective May 24. **L. 2000:** Entire section repealed, p. 1044, § 5, effective September 1.

16-11-101.6. Collection of fines and fees - methods - charges - judicial collection enhancement fund - creation - definition.

(1) If the defendant is assessed any fines, fees, costs, surcharges, or other monetary assessments with regard to the sentencing or other disposition of a felony, misdemeanor, petty offense, civil infraction, traffic offense, or traffic infraction and does not pay all amounts assessed in full on the date of the assessment, the defendant shall pay to the clerk of the court an additional time payment fee of twenty-five dollars. The time payment fee may be assessed once per case; except that, if amounts owed in the case have still not been paid in full one year after the date of the assessment, the fee may be assessed annually until the defendant has fully satisfied his or her financial obligation in the case. In addition, there may be assessed against a defendant a late penalty fee of ten dollars each time a payment toward the fines, fees, costs, surcharges, or other amounts owed is not received on or before the date due. If the court determines that the defendant does not have the financial resources to pay a time payment fee or a late penalty fee, the court may waive or suspend a time payment fee or a late penalty fee. Amounts collected are credited first against the time payment and any late penalty fees assessed under this subsection (1), then against any fines, and finally against any costs. The time payment fee and late penalty fee described in this subsection (1) do not apply to a person under the jurisdiction of the juvenile court or the person's parent, guardian, or legal custodian.

(2) The judicial collection enhancement fund is created in the state treasury. All time payment fees and late penalty fees collected shall be credited to the judicial collection enhancement fund. In addition, reasonable costs incurred and collected by the state shall be credited to the fund. The fund also consists of the money credited to the fund pursuant to sections 16-4-111 and 16-4-114. The general assembly shall make annual appropriations from the fund to the judicial department for administrative and personnel costs incurred in collecting restitution, fines, costs, fees, and other monetary assessments. At the end of any fiscal year, all unexpended and unencumbered money and any interest remains in the fund for appropriation to the judicial department for ongoing enforcement and collection of restitution, fines, fees, costs, surcharges, and other monetary assessments.

(3) To collect on past due orders of fines or fees, the state may employ any method available to collect state receivables, including assigning such accounts to private counsel or private collection agencies under section 24-30-202.4 (2), C.R.S. Any fees or costs of the private counsel

or collection agency shall also be added to the amount due, but such fees and costs shall not exceed twenty-five percent of the amount collected.

(4) (a) On past due orders, the court may, on its own motion or through the use of a collections investigator, direct that a certain portion of a defendant's earnings, not to exceed fifty percent, be withheld and applied to any unpaid fines or fees, if such an order does not adversely impact the defendant's ability to comply with other orders of the court. An attachment of earnings under this section may be modified to a lesser or greater amount based upon changes in a defendant's circumstances as long as the amount withheld does not exceed fifty percent and may be suspended or canceled at the court's discretion. For purposes of this section, "earnings" shall have the same meaning as set forth in section 13-54.5-101 (2), C.R.S., and shall include profits.

(b) An attachment of earnings or a writ of garnishment to collect judgments from a garnishee's earnings for court assessments, including fines, fees, costs, restitution, and surcharges pursuant to this section or section 16-18.5-105:

(I) Has priority over any other garnishment, lien, or income assignment except for a writ for arrearages for child support, for maintenance when combined with child support, for child support debts, or for maintenance or a writ previously served on the same garnishee pursuant to this section; and

(II) Shall require the garnishee to withhold, pursuant to section 13-54-104 (3), C.R.S., the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment is released by the court or in writing by the judgment creditor.

(5) During any period of time that a defendant is a state inmate as defined in section 17-1-102 (8), C.R.S., the superintendent of the correctional facility to which such defendant is assigned, or his or her designee, may fix the manner and time of payment of fines and fees and may direct that a portion of the wages of such defendant under section 17-24-122 (3), C.R.S., or compensation under section 17-24-114, C.R.S., be applied to any unpaid fines or fees.

(6) (a) The judicial department may enter into a memorandum of understanding with the state treasurer, acting as the administrator of unclaimed property under the "Revised Uniform Unclaimed Property Act", article 13 of title 38, for the purpose of offsetting against a claim for unclaimed property the amount of outstanding fines, fees, costs, or surcharges owed pursuant to law or an order entered by a court of this state by the person claiming unclaimed property. When an offset is to be made, the judicial department or the court to which the fines, fees, costs, or surcharges are owed shall notify the defendant in writing that the state intends to offset the defendant's outstanding fines, fees, costs, or surcharges against his or her claim for unclaimed property.

(b) The state court administrator may adopt rules establishing the process by which an unclaimed property claimant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay the fines, fees, costs, or surcharges pursuant to law or an order entered by a court of this state and the amount of the outstanding fines, fees, costs, or surcharges.

(c) For purposes of this subsection (6), "claim for unclaimed property" means a cash claim filed in accordance with section 38-13-903.

(7) Repealed.

(8) (a) A court shall not assess a time payment fee against a juvenile or against the juvenile's parent, guardian, or legal custodian. A court or the state shall not enforce or collect court-ordered costs assessed by the court on or after July 6, 2021, that are outstanding against a juvenile or the juvenile's parent, guardian, or legal custodian.

(b) As used in this subsection (8), "juvenile" means a person who is under eighteen years old when the crime is committed.

Source: L. 96: Entire section added, p. 1777, § 2, effective June 3. **L. 2000:** (1), (3), (4), and (5) amended, p. 1044, § 6, effective September 1. **L. 2002:** (5) amended, p. 1016, § 18, effective June 1; (1) amended, p. 1494, § 139, effective October 1. **L. 2005:** (6) added, p. 697, § 1, effective August 8. **L. 2011:** (1) and (2) amended, (HB 11-1076), ch. 178, p. 678, § 1, effective July 1. **L. 2012:** (4) amended, (HB 12-1310), ch. 268, p. 1394, § 8, effective June 7. **L. 2019:** (6)(a) and (6)(c) amended, (SB 19-088), ch. 110, p. 466, § 5, effective July 1, 2020. **L. 2021:** (1) amended, (HB 21-1315), ch. 461, p. 3110, § 11, effective July 6; (1) amended, (SB 21-271), ch. 462, p. 3164, § 174, effective March 1, 2022. **L. 2024:** (7) added, (HB 24-1213), ch. 9, p. 22, § 1, effective February 27. **L. 2025:** (2) amended, (SB 25-241), ch. 144, p. 543, § 3, effective April 28. **L. 2026:** (8) added, (HB 26-1232), ch. 98, p. 388, § 2, effective May 4.

Editor's note: (1) Amendments to subsection (1) by SB 21-271 and HB 21-1315 were harmonized, effective March 1, 2022.

(2) For subsection (7) in HB 24-1213 in effect from February 27, 2024, to July 1, 2024, see chapter 9, Session Laws of Colorado 2024. (L. 2024, p. 22.)

(3) Subsection (7)(b) provided for the repeal of subsection (7), effective July 1, 2024. (See L. 2024, p. 22.)

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021. For the legislative declaration in HB 26-1232, see section 1 of chapter 98, Session Laws of Colorado 2026.

ANNOTATION

There are no "double collection" efforts inasmuch as only one judgment for restitution is entered and the judgment creditor is not entitled to have the judgment satisfied more than once. People v. Apodaca, 998 P.2d 25 (Colo. App. 1999).

Withholding of court costs from an inmate account is authorized under this section where an inmate's wage or compensation can be applied to "any unpaid fines or fees". People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

A district court has no authority to collect the fee imposed pursuant to subsection (1) or any other court-imposed fees or costs after the completion of a deferred sentence and dismissal of the underlying charges. Pineda-Liberato v. People, 2017 CO 95, 403 P.3d 160.

Applied in People v. Apodaca, 998 P.2d 25 (Colo. App. 1999).

16-11-101.7. Repayment of crime stopper reward - crime stopper reward reimbursement fund - created.

(1) In addition to any other penalty authorized by law, after a defendant has been convicted of or entered a plea of guilty or nolo contendere to a felony offense, or enters into a plea bargain agreement concerning a felony offense which is reduced to a misdemeanor pursuant to such agreement, the court may order such defendant to repay all or part of any reward paid by a crime stopper organization that led to the defendant's arrest and conviction. The amount of such repayment may not exceed the actual reward paid by any crime stopper organization and shall be used solely for paying rewards.

(2) (a) Upon an order to repay all or part of a crime stopper reward, the court shall assess such repayment against the defendant in the same manner as other costs of prosecution are assessed against a defendant. The court shall order the defendant to:

(I) Pay the entire amount when sentence is pronounced; or

(II) Pay the entire amount on such later date as may be specified by the court.

(b) Any order for the repayment of all or part of a crime stopper reward shall be prioritized in accordance with the provisions of section 18-1.3-204 (2.5), C.R.S.

(3) All moneys collected by the court pursuant to this section, together with transmittal information which includes the court's docket number, the defendant's name, and the crime stopper organization which is designated to receive the repayment of reward, shall be promptly forwarded to the division of criminal justice created by section 24-33.5-502, C.R.S. Upon receipt, the division of criminal justice shall promptly transmit the moneys to the state treasurer who shall deposit them in the crime stopper reward reimbursement fund which is hereby created. Moneys in the fund shall be continuously appropriated to the division of criminal justice for the purposes of this section. The disbursement of any such moneys to the designated crime stopper organization shall be made by the division of criminal justice within thirty-five days after the date of deposit in the crime stopper reward reimbursement fund.

(4) As used in this section, "crime stopper organization" has the same meaning as provided in section 16-15.7-102 (1).

Source: L. 94: Entire section added, p. 1810, § 2, effective June 1. **L. 2002:** (2)(b) amended, p. 1494, § 140, effective October 1. **L. 2012:** (3) amended, (SB 12-175), ch. 208, p. 853, § 84, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-101.8. State income tax refund and lottery winnings offsets - fines, fees, costs, or surcharges - definitions.

(1) In any case in which a defendant has an unsatisfied fine, fee, cost, or surcharge obligation imposed pursuant to law or a court order, the judicial department is authorized to transmit data concerning the obligation to the department of revenue for the purpose of conducting a data match and offsetting the obligation against a state income tax refund pursuant to section 39-21-108 (3) or lottery winnings pursuant to section 44-40-114. For any obligation identified by the judicial department for offset, the state court administrator shall:

(a) On at least an annual basis, certify to the department of revenue the social security number of the defendant who is obligated to pay the obligation and the amount of the outstanding obligation. The department of revenue may request additional identifying information from the judicial department that is necessary to obtain an accurate data match.

(b) Upon notification by the department of revenue of a data match, notify the appropriate court that a match has occurred and that an offset is pending and provide to the court the identifying information received from the department concerning the defendant whose state income tax refund is subject to the offset;

(c) Provide or require the appropriate court to provide written notice to the defendant that the state intends to offset the defendant's obligation against his or her state income tax refund or lottery winnings and that the defendant has the right to object to the offset and request an administrative review; and

(d) Upon receipt of funds for offset from the department of revenue, transmit the funds to the appropriate court.

(2) The clerk of court shall apply funds received pursuant to this section to the defendant's outstanding fines, fees, costs, or surcharges. If the moneys received exceed the defendant's current obligation, the excess may be applied to other financial obligations the defendant owes the court or the judicial department. If no other financial obligations are owed, the clerk of court shall refund any excess moneys to the defendant.

(3) The state court administrator may adopt rules establishing the process by which a defendant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay the fines, fees, costs, or surcharges pursuant to law or an order entered by a court of this state and the amount of the outstanding fines, fees, costs, or surcharges.

(4) The department of revenue is authorized to receive data from the judicial department and execute offsets of state income tax refunds and lottery winnings in accordance with this section and sections 39-21-108 (3) and 44-40-114.

(5) As used in this section, "defendant" means any person who has been assessed a fine, fee, cost, or surcharge as an adult or juvenile pursuant to law or a court order.

Source: L. 2004: Entire section added, p. 1256, § 1, effective August 4. **L. 2019:** IP(1), (1)(c), and (4) amended, (HB 19-1128), ch. 238, p. 2358, § 1, effective August 2.

16-11-102. Presentence or probation investigation.

(1) (a) (I) 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 must include a substance abuse

assessment or evaluation made pursuant to article 11.5 of this title and, unless waived by the court, must 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; information indicating whether 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.

(II) Except as described in subparagraph (VI) of this paragraph (a), if the defendant is convicted of a felony that occurred after July 1, 2004, and he or she is eligible to receive a sentence to the department of corrections, the report described in subparagraph (I) of this paragraph (a) must include the following statement:

If the defendant is sentenced to the Department of Corrections, he or she may not serve his or her entire sentence in prison but may be released to community corrections or parole. The defendant's Parole Eligibility Date (PED) occurs after he or she has served fifty or seventy-five percent of his or her sentence, as provided in section 17-22.5-403, Colorado Revised Statutes, less any authorized earned time.

If the defendant is sentenced to the Department of Corrections, he or she may be eligible for a reduction in the length of his or her sentence by earned time. Regular earned time is up to ten or twelve days per month, not to exceed thirty percent of the defendant's sentence; however, the defendant may be eligible for further limited reductions through the application of various types of earned time provided in statute and administered pursuant to the policy of the Department of Corrections.

If the defendant is sentenced to the Department of Corrections, he or she may be eligible for release, to await parole in a community corrections facility, if such release is approved by the local community corrections board. If the defendant was not convicted of a crime of violence, as defined in section 18-1.3-406 (2), Colorado Revised Statutes, he or she may be moved to a community corrections placement as early as sixteen months prior to his or her PED. If the defendant was convicted of a crime of violence, he or she cannot be moved to a community corrections placement earlier than one hundred eighty days prior to his or her PED.

A defendant's eligibility for community corrections or parole does not necessarily mean that community corrections or parole will be granted. The inmate locator on the internet website of the Department of Corrections can provide additional information regarding the sentence of an individual defendant.

The provisions of this statement do not apply to a defendant who has been sentenced to the youthful offender system within the Department of Corrections.

(II.5) Except as provided in subsection (1)(a)(II.7) of this section, if the defendant is convicted on or after July 1, 2018, the report described in subsection (1)(a)(I) of this section must include the following statement:

Each defendant may, at the time of conviction or at any time thereafter, apply to the court for an order of collateral relief of the consequences of the defendant's conviction pursuant to the provisions of section 18-1.3-107, Colorado Revised Statutes.

(II.7) The report described in subsection (1)(a)(I) of this section need not include the statement described in subsection (1)(a)(II.5) of this section if the defendant:

(A) Has been convicted of a felony that included an element that requires a victim to suffer a serious bodily injury and the victim suffered a permanent impairment of the function of any part or organ of the body;

(B) Has been convicted of a crime of violence as described in section 18-1.3-406; or

(C) Is required to register as a sex offender pursuant to section 16-22-103.

(III) The district attorney's office shall prepare a victim impact statement. 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.

(IV) No less than seventy-two hours prior to the sentencing hearing, the probation department shall provide copies of the presentence report, including any recommendations as to probation, 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.

(V) The probation department shall transmit a copy of the presentence report, and the court shall transmit the mittimus to the department of corrections.

(VI) The report described in subparagraph (I) of this paragraph (a) need not include the statement described in subparagraph (II) of this paragraph (a) if:

(A) The defendant is a sex offender for whom the sex offender management board has established separate and distinct release guidelines pursuant to section 18-1.3-1009, C.R.S.;

(B) The defendant has at least one previous conviction for a crime of violence and must be referred by the department to the state board of parole pursuant to section 17-22.5-403 (3.5), C.R.S.;

(C) The defendant is convicted of a class 1 felony or is a juvenile convicted as an adult of a class 1 felony; or

(D) The probation department has reasonable grounds to believe that the language of the statement is inapplicable to the defendant. If the probation department elects to omit the statement pursuant to this sub-subparagraph (D), the probation department shall document in the report its grounds for doing so.

(b) (I) Each presentence report prepared regarding a sex offender, as defined in section 16-11.7-102 (2)(a)(I) to (2)(a)(III), or if requested by the prosecuting attorney or court for a person who may be determined to be a sex offender based upon a prior offense pursuant to section 16-11.7-102 (2)(a)(IV), with respect to any offense committed on or after January 1, 1996, must contain the results of an evaluation and identification conducted pursuant to article 11.7 of this title 16; 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;

(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.

(c) (I) The state court administrator may implement a behavioral or mental health disorder screening program to screen defendants for which the court has ordered an investigation pursuant to this section. If the state court administrator chooses to implement a behavioral or mental health disorder screening program, the state court administrator shall use the standardized behavioral or mental health disorder screening instrument developed pursuant to section 16-11.9-102 and conduct the screening in accordance with the procedures established pursuant to said section. The findings and results of any standardized behavioral or mental health disorder screening conducted pursuant to this subsection (1)(c) must be included in the written report to the court prepared and submitted pursuant to this subsection (1).

(II) Prior to implementation of a behavioral or mental health disorder screening program pursuant to this subsection (1)(c), if implementation of the program would require an increase in appropriations, the state court administrator shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health disorder screening program. If implementation of the program would require an increase in appropriations, implementation of the behavioral or mental health disorder screening program is conditional upon approval of the funding request.

(1.1) Repealed.

(1.2) Each presentence report must include information indicating whether the person is a respondent in an open dependency and neglect proceeding pursuant to article 3 of title 19.

(1.5) A victim impact statement may include the following:

(a) An identification of the victim of the offense;

(b) An itemization of any economic loss suffered by the victim as a result of the offense, including any loss incurred after the offense and after criminal charges were filed formally against the defendant. The victim impact statement shall be prepared by the district attorney's office at the time the offense is filed and shall be updated to include any loss incurred by the victim after criminal charges were filed.

(c) An identification of any physical injury suffered by the victim as a result of the offense, including information on its seriousness and permanence;

(d) A description of any change in the victim's personal welfare or familial relationships as a result of the offense;

(e) An identification of any request for psychological services initiated by the victim or the victim's family as a result of the offense;

(e.5) An evaluation of the victim's and the victim's children's safety if probation is granted;

(f) Any other information related to the impact of the offense upon the victim that the court requires.

(1.7) Each presentence report shall also include information from the offender and any other source available to the probation officer regarding the offender's estate, as defined in section 18-1.3-701 (5)(b), C.R.S., and other pertinent financial information, for the purpose of determining whether such offender or juvenile has sufficient assets to pay all or part of such offender's or juvenile's cost of care, as defined in section 18-1.3-701 (5)(a), C.R.S. The financial information obtained from the offender shall be submitted in writing and under oath.

(1.8) At the request of either the prosecution or the defense, each presentence report prepared regarding a juvenile or young adult, as defined in section 18-1.3-407 (1.3), who is eligible for sentencing to the youthful offender system pursuant to section 18-1.3-407.5, 19-2.5-801 (5), or 19-2.5-802 (1)(d)(I)(B) must include a determination by the warden of the youthful offender system whether the juvenile or young adult is acceptable for sentencing to the youthful offender system. When making a determination, the warden shall consider the nature and circumstances of the crime, the circumstances and criminal history of the juvenile or young adult, the available bed space in the youthful offender system, and any other appropriate considerations.

(1.9) Each presentence report must also:

(a) Include the results of an actuarial assessment of the offender's criminological risks and needs;

(b) Provide sufficient information to allow the court to consider:

(I) Whether the offender is a suitable candidate for a sentencing option that does not involve incarceration or a combination of sentencing options that does not involve incarceration; and

(II) The appropriate conditions to impose if a defendant is sentenced to probation;

(b.5) Indicate whether the offender meets the minimum eligibility requirements as provided in sections 18-1.3-104 (1)(b.5) and 18-1.3-204 (2)(a)(III.5) for participation in restorative justice practices;

(c) Describe the projected costs, if known, that are associated with each sentencing option that is available to the court; and

(d) Set forth the purposes of title 18, C.R.S., with respect to sentencing, as such purposes are described in section 18-1-102.5, C.R.S.

(2) The report of the probation officer and the procedures to be followed at the time sentence is imposed and final judgment is entered shall be as required by the Colorado rules of criminal procedure. In addition to the requirements of such rules, the report shall include a statement showing the amount of time during which the defendant was imprisoned awaiting trial upon the charge resulting in conviction.

(3) The court, upon its own motion or upon the petition of the probation officer, may order any defendant who is subject to presentence investigation or who has made application for probation to submit to a mental and physical examination.

(4) The court, with the concurrence of the defendant and the prosecuting attorney, may dispense with the presentence examination and report; except that the information required by section 18-1.3-603 (2) and subsection (1.2) of this section and a victim impact statement must be made in every case. The amount of restitution must be ordered pursuant to section 18-1.3-603 and article 18.5 of this title 16 and endorsed upon the mittimus. The information required pursuant to subsection (1.2) of this section must be included on the mittimus.

(5) After receiving the presentence report and before imposing sentence, the court shall afford the defendant an opportunity to make a statement in his or her own behalf and to present any information in mitigation of punishment. The prosecution also shall be given an opportunity to be heard on any matter material to the imposition of sentence. The court shall then sentence the defendant pursuant to the provisions of this article and section 18-1.3-401, C.R.S.

(6) Following the return of a verdict of guilty of a felony, or 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, the district attorney may file with the court identification photographs and fingerprints of the defendant or defendants, and such identification photographs and fingerprints shall become part of the court record. Such identification photographs and fingerprints of the defendant or defendants shall constitute prima facie evidence of identity under section 18-1.3-802, C.R.S.

Source: L. 72: R&RE, p. 240, § 1. **C.R.S. 1963:** § 39-11-102. **L. 77:** (1) and (5) amended, p. 862, § 3, effective July 1, 1979. **L. 81:** (6) added, p. 950, § 2, effective May 27; (1) and (4) amended, p. 941, § 1, effective July 1. **L. 84:** (1) and (4) amended and (1.5) added, p. 651, § 1, effective January 1, 1985. **L. 86:** (1) amended, p. 733, § 2, effective July 1. **L. 88:** (1) amended, p. 680, § 2, effective July 1. **L. 89:** (1) amended, p. 862, § 3, effective February 26. **L. 89, 1st Ex. Sess.:** (1.1) added, p. 76, § 2, effective July 1. **L. 91:** (1) amended, p. 436, § 1, effective May 29. **L. 92:** (1) amended, p. 454, § 1, effective June 2. **L. 94:** (1)(a) amended, p. 2650, § 123, effective July 1; (1.1) repealed and (1.7) added, pp. 1362, 1356, §§ 5, 1, effective July 1; (1.5)(b) amended, p. 1050, § 5, effective July 1; (1.5)(e.5) added, p. 2036, § 16, effective July 1. **L. 95:** (1)(b) amended, p. 465, § 11, effective July 1. **L. 96:** (4) amended, p. 1778, § 3, effective June 3. **L. 98:** (4) amended, p. 519, § 6, effective April 30. **L. 99:** (1)(a) amended, p. 315, § 3, effective

July 1. **L. 2000:** (1)(a) and (4) amended, p. 1045, § 7, effective September 1. **L. 2001:** (4) amended, p. 1271, § 20, effective June 5. **L. 2002:** (1)(c) added, p. 573, § 1, effective May 24; (1)(a) amended, p. 1182, § 9, effective July 1; (1.7), (4), (5), and (6) amended, p. 1494, § 141, effective October 1. **L. 2007:** (1)(b) amended, p. 253, § 1, effective March 26. **L. 2009:** (1.8) added, (HB 09-1122), ch. 77, p. 279, § 2, effective October 1. **L. 2010:** (1.8) amended, (HB 10-1413), ch. 264, p. 1204, § 3, effective August 11. **L. 2011:** (1)(b) amended, (HB 11-1138), ch. 236, p. 1027, § 8, effective May 27; (1.9) added, (HB 11-1180), ch. 96, p. 282, § 2, effective August 10. **L. 2012:** (1)(b) amended, (HB 12-1310), ch. 268, p. 1395, § 9, effective June 7; (1)(b) amended, (HB 12-1346), ch. 220, p. 946, § 7, effective July 1. **L. 2013:** (1)(a) and (1)(b) amended, (SB 13-229), ch. 272, p. 1427, § 4, effective July 1. **L. 2015:** (1)(a) amended, (HB 15-1042), ch. 119, p. 361, § 1, effective August 5. **L. 2017:** (1)(c) amended, (SB 17-242), ch. 263, p. 1297, § 120, effective May 25; IP(1.9) amended and (1.9)(b.5) added, (HB 17-1039), ch. 58, p. 182, § 2, effective August 9. **L. 2018:** (1)(a)(II.5) and (1)(a)(II.7) amended, (HB 18-1344), ch. 259, p. 1590, § 3, effective July 1. **L. 2021:** (1.8) amended, (HB 21-1091), ch. 175, p. 955, § 2, effective May 24; (1.8) amended, (SB 21-059), ch. 136, p. 713, § 24, effective October 1; (1.8) amended, (HB 21-1091), ch. 175, p. 957, § 5, effective October 1. **L. 2023:** IP(1)(b)(I) amended, (SB 23-164), ch. 349, p. 2085, § 1, effective June 5; (1.2) added and (4) amended, (SB 23-039), ch. 191, p. 958, § 9, effective January 1, 2024. **L. 2026:** (1.8) amended, (HB 26-1064), ch. 15, p. 61, § 1, effective August 12.

Editor's note: (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

(2) Amendments to subsection (1)(b) by House Bill 12-1310 and House Bill 12-1346 were harmonized.

(3) Subsection (1.8) was amended in section 2 of HB 21-1091. Those amendments were superseded by the amendment of subsection (1.8) in SB 21-059, effective October 1, 2021. For the amendments to subsection (1.8) in HB 21-1091 in effect from May 24, 2021, to October 1, 2021, see section 2 of chapter 175, Session Laws of Colorado 2021. (L. 2021, p. 955.)

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1)(a), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsections (1.7), (4), (5), and (6), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Colorado Felony Sentencing", see 11 Colo. Law. 1478 (1982).

Annotator's note. Since § 16-11-102 is similar to repealed § 39-16-2, C.R.S. 1963, and § 39-16-2, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

No right to evidentiary hearing. During a discretionary sentencing proceeding, statutes do not require an evidentiary hearing on the validity of any prior conviction contained in a presentence report. People v. Padilla, 907 P.2d 601 (Colo. 1995).

Duration of period of probation is limited to maximum term of imprisonment specified for the offense in question, and the provision of § 16-11-202 permitting the court to grant probation "for such a period and upon such terms and conditions as it deems best", does not give the court the authority to extend the terms of probation beyond the maximum term of imprisonment. People v. Knaub, 624 P.2d 922 (Colo. App. 1980).

The right to a presentence report has not been recognized as a constitutional right. Bell v. Patterson, 279 F. Supp. 760 (D. Colo.), aff'd, 402 F.2d 394 (10th Cir. 1968).

This section designates in what cases and circumstances an officer must make a presentence investigation and report. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958).

Written report required. This section requires that, after conviction of crime, an investigation is to be made by a probation officer who shall make a written report to the court containing his findings on matters bearing upon the sentence to be imposed. Williams v. People, 134 Colo. 580, 307 P.2d 466 (1957).

Trial court erred by proceeding to sentencing without a presentence investigation report ("PSIR"). The plain language of this section requires the preparation of a PSIR before sentencing, unless both the defendant and the prosecution agree to proceed to sentencing without the benefit of such a report. Here, the prosecution specifically requested that a PSIR be prepared, and objected to the court's proceeding to sentencing without one. The prosecution thus did not waive the statutory requirement that the PSIR be prepared before the imposition of sentence. People v. Gretz, 973 P.2d 110 (Colo. App. 1998).

When an application for probation is made by an eligible person, a district court is required to cause a probation officer to make an investigation of the applicant. The probation officer within such time as the court may prescribe shall make a written report to the court of said investigation, together with his recommendation as to whether or not probation should be granted. Logan v. People ex rel. Alamosa, 138 Colo. 304, 332 P.2d 897 (1958).

Which may contain any information helpful to courts. The trial court, before granting or denying an application for probation and before imposing sentence, is to be advised by a written report from the probation officer of any prior criminal record of the defendant and of such information about his characteristics, his financial condition, and circumstances affecting his behavior, and any other information as may be required by the court, as may be helpful in determining the advisability of granting probation, or as may be helpful in imposing sentence in the event probation is denied. Wolford v. People, 178 Colo. 203, 496 P.2d 1011 (1972).

Evidence is not limited by strict rules or due process. This section does not contemplate that the probation officer is required to establish the matters reported in the probation report by evidence presented in accordance with the due process procedures required of a guilt trial, nor are strict rules of evidence adhered to. Wolford v. People, 178 Colo. 203, 496 P.2d 1011 (1972).

Defendant entitled to sentencing hearing continuance when defendant did not receive the presentence report within the time specified in subsection (1)(a)(IV). A continuance was necessary because a late presentence report abridges a defendant's rights to present evidence in rebuttal to the information and recommendations contained in the presentence report. People v. Cross, 2023 COA 24, 531 P.3d 444.

The defendant has the right to be heard concerning matters in the report which he believes to be inaccurate or untrue. Wolford v. People, 178 Colo. 203, 496 P.2d 1011 (1972).

Unless shown to be untrue, court may rely on report. When represented by competent counsel and supplied with a copy of the probation report, defendant does not show that the information supplied to the court in the probation report was inaccurate or untrue, a court is entitled to rely upon the report as submitted. Wolford v. People, 178 Colo. 203, 496 P.2d 1011 (1972).

If defendant fails to show inaccuracy of information in presentence report or victim impact statement, including restitution amount, at sentencing hearing, he waives the right to contest the information. People v. Powell, 748 P.2d 1355 (Colo. App. 1987).

Remand for presentation of evidence in rebuttal to report. Where the presentence report is issued to counsel immediately prior to sentencing, and the trial court's refusal to continue the sentencing hearing to another day unduly abridges the defendant's rights to present evidence in rebuttal to the information and recommendations contained in the report, his sentence must be vacated and the case remanded for resentencing after a full sentencing hearing. People v. Wright, 672 P.2d 518 (Colo. 1983).

Court erred in relying for sentencing purposes upon information and evidence not included within the presentence report or disclosed to defendant by some other means prior to the sentencing hearing. People v. Pourat, 100 P.3d 503 (Colo. App. 2004).

Error by the court to proceed to sentencing defendant without report was

harmless where defendant refused to be interviewed by probation officer, neither defense counsel nor prosecutor objected to proceeding without report, defense counsel submitted memorandum that was functional equivalent of presentence report, and defendant failed to allege on appeal how he was prejudiced by absence of report. People v. Martinez, 32 P.3d 520 (Colo. App. 2001).

Recommendations as to sentences are made by probation officers only upon request by the court. Smith v. People, 162 Colo. 558, 428 P.2d 69 (1967).

The totality of discretion rests with the trial court in the imposition of sentence. A recommendation by the probation officer is nothing more nor less than a recommendation. Smith v. People, 162 Colo. 558, 428 P.2d 69 (1967).

Provision is made for a mental and physical examination of an applicant for probation. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958).

Trial court could impose restitution under this section and § 17-2-201 as a condition of parole, even though the restitution provisions of § 16-11-204.5 did not apply since the defendant pleaded guilty to theft by receiving and was not sentenced to probation. People v. Schmidt, 700 P.2d 925 (Colo. App. 1985).

Sentence of incarceration precludes order of restitution, but at time of sentencing, court may set amount of restitution for later consideration by parole board when board sets conditions for parole under § 17-2-201. People v. Powell, 748 P.2d 1355 (Colo. App. 1987).

This section does not authorize the court to impose restitution unless authorized pursuant to another statutory provision. People v. Young, 710 P.2d 1140 (Colo. App. 1985) (decided prior to 1996 amendment to subsection (4)).

Subsection (4), as amended in 1996, requires courts to impose restitution at the time of sentencing, even where a defendant is sentenced to incarceration. People v. Tipton, 973 P.2d 713 (Colo. App. 1998); People v. Apodaca, 998 P.2d 25 (Colo. App. 1999).

When an offense requires proof of the identity of a particular victim, the court may not order restitution to another. Defendant who pled guilty to a single count of theft in return for a dismissal of other counts may not be ordered to pay restitution to the victims in the counts that were dismissed. People v. Armijo, 989 P.2d 224 (Colo. App. 1999).

A codefendant is jointly responsible for restitution when he is also a complicitor in the crime. People v. Fichtner, 869 P.2d 539 (Colo. 1994).

Codefendants were participants and complicitors in the same criminal acts, therefore, each is responsible for the damage he caused and also for the damage caused by the other. People v. Fichtner, 869 P.2d 539 (Colo. 1994).

The sentencing court is required to fix the defendant's criminal liability for restitution by considering the victim's actual monetary losses and, where appropriate, to temper the defendant's restitution obligation by considering his

financial ability to pay and his duty of support owed to his dependents and any other outstanding family responsibilities. The statutory scheme, in other words, does not require the sentencing court to determine a defendant's criminal liability for restitution in accordance with the strict rules of damages applicable to a civil case. People v. Johnson, 780 P.2d 504 (Colo. 1989); People v. Duran, 991 P.2d 313 (Colo. App. 1999).

An order of restitution becomes part of the sentence which, in accordance with Crim. P. 32(c), is part of the judgment of conviction. When a court orders a defendant, over his objection, to pay restitution to the victim or the victim's family as part of the judgment of conviction for a felony, the order of restitution is appealable pursuant to the statutory procedures applicable to the appellate review of a felony sentence. People v. Johnson, 780 P.2d 504 (Colo. 1989).

An order increasing the amount of restitution has the effect of increasing the punishment originally imposed. Therefore, because restitution is a part of the criminal sentence, once a legal sentence is imposed and a defendant has begun serving it, an increase in the amount of restitution ordered also violates the constitutional prohibition against double jeopardy. People v. Shepard, 989 P.2d 183 (Colo. App. 1999).

Statute provides no right to offender to present evidence of ability to pay restitution during revocation hearing when hearing is based on other grounds. People v. McCarty, 851 P.2d 181 (Colo. App. 1992).

Order requiring defendant to pay restitution for one-half of the value of property missing from the truck involved in defendant's conviction for theft by receiving was improper. There was no evidence linking the defendant's conduct of theft by receiving the stolen truck and the missing personal property from the truck. The trial court's order, based on speculation, was improper. People v. Randolph, 852 P.2d 1282 (Colo. App. 1992).

Although a trial court may establish restitution pursuant to this section, it may not establish the method of payment for restitution. People v. Randolph, 852 P.2d 1282 (Colo. App. 1992); People v. Strock, 931 P.2d 538 (Colo. App. 1996).

The manner and time of payment of restitution is exclusively within the jurisdiction of the parole board. People v. Strock, 931 P.2d 538 (Colo. App. 1996).

The general assembly did not intend to give absolute discretion to a court to comply or not to comply with what appear to be mandatory requirements of a presentence report. People v. Valencia, 888 P.2d 319 (Colo. App. 1994), aff'd, 906 P.2d 115 (Colo. 1995).

The record of the sentencing hearing must include at least a summary of the information relied upon by the sentencing court but not contained in the presentence report. Absent such a record, no meaningful appellate review of the sentence is possible. People v. Pourat, 100 P.3d 503 (Colo. App. 2004).

Because the trial court did not set forth any reasons for its waiver of statutory

requirements, the defendant's presentence report did not comport with the requirements of this section. People v. Valencia, 888 P.2d 319 (Colo. App. 1994).

Prior to sentencing, the court must grant the defendant an opportunity to make a statement on his or her own behalf. The proper remedy for failing to allow the defendant to make a statement is resentencing. People v. Marquantte, 923 P.2d 180 (Colo. App. 1995); People v. Perea, 74 P.3d 326 (Colo. App. 2002); People v. Quillen, 2023 COA 22M, 530 P.3d 1253.

Failure to afford defendant an opportunity to speak amounts to plain error where the court did not directly address the defendant or personally invite him to speak. The court's inquiry whether "other people in the court" wanted to speak was clearly directed to the nonparties in attendance, not to the defendant. People v. Smalley, 2015 COA 140, 369 P.3d 737.

However, the right of allocution is a statutory right, not a constitutional one, and reversal is not required if the failure to provide the defendant an opportunity to make a statement prior to sentencing is harmless. If a trial court imposes the minimum sentence permitted and does not have discretion to impose a lesser sentence, the lack of a statement in allocution does not affect the sentence and is harmless. People v. Martinez, 83 P.3d 1174 (Colo. App. 2003).

Defendant's right of allocution was not improperly withheld where court asked defense counsel if defendant wished to make a statement to the court, but counsel proceeded to argument. People v. Loyd, 902 P.2d 889 (Colo. App. 1995).

When the court dispenses with the presentence report, the probation department, within seventy-two hours prior to the sentencing hearing, should provide the prosecuting attorney and defense counsel, or the defendant if unrepresented, with a copy of the victim impact statement setting forth the amount of the victim's claimed monetary damages and the amount of restitution for which the defendant may be responsible. At the sentencing hearing the defendant must be given the opportunity to controvert the victim's claimed monetary damages. People v. Johnson, 780 P.2d 504 (Colo. 1989).

"Victim" construed. The transfer of stolen property to a bona fide purchaser necessarily victimizes the purchaser since his interests must yield to the title of the rightful owner. Therefore, the bona fide purchaser of stolen property was a victim for purposes of ordering restitution and the trial court properly included in the amount of restitution an amount to reimburse the purchaser, an antique dealer, for expenses for restoration of the property. People v. Schmidt, 700 P.2d 925 (Colo. App. 1985).

Applied in Little v. People, 138 Colo. 572, 335 P.2d 863 (1959); Rader v. People, 153 Colo. 134, 384 P.2d 926 (1963); People v. Palmer, 42 Colo. App. 460, 595 P.2d 1060 (1979); People v. Gonzales, 44 Colo. App. 411, 613 P.2d 905 (1980); People v. Hunt, 632 P.2d 572 (Colo. App. 1981); People v. Lowery, 642 P.2d 515 (Colo. 1982).

16-11-102.3. Genetic testing of convicted offenders - repeal. (Repealed)

Source: L. 2000: Entire section added, p. 1264, § 1, effective May 26. **L. 2001:** Entire section amended, p. 953, § 1, effective March 31, 2002. **L. 2002:** Entire section amended, p. 1147, § 1, effective July 1; (1)(a) amended, p. 1183, § 10, effective July 1; (1)(b) amended, p. 1495, § 142, effective October 1. **L. 2006:** (7) added by revision, pp. 1687, 1693, §§ 1, 17. **L. 2007:** (1)(i) amended and (1)(i.5) added, p. 727, § 9, effective July 1.

Editor's note: (1) House Bill 07-1235 amended subsection (1)(i) and added subsection (1)(i.5), effective July 1, 2007, but those amendments did not take effect due to the repeal of this section, effective July 1, 2007.

(2) Subsection (7) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, pp. 1687, 1693.)

16-11-102.4. Genetic testing of convicted offenders.

(1) Each of the following convicted offenders must submit to and pay for collection and a chemical testing of the offender's biological substance sample to determine the genetic markers thereof, unless the offender has already provided a biological substance sample for the testing pursuant to a statute of this state:

(a) Every offender who, on or after July 1, 2007, is in the custody of the department of corrections based on a sentence imposed before that date, including an offender on parole. The department shall collect the sample at least thirty-five days prior to the offender's discharge or release from custody, release on parole, or transfer to community corrections placement.

(b) (I) Every offender who, on or after July 1, 2007, is on probation under a sentence imposed before that date for a conviction of:

(A) An offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, committed on or after July 1, 1996;

(B) An offense involving unlawful sexual behavior, or for which the factual basis involved an offense involving unlawful sexual behavior, committed before July 1, 1996, if the offender was on probation for the offense as of July 1, 2000;

(C) An offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., committed on or after July 1, 1999;

(D) An offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., committed before July 1, 1999, if the offender was on probation for the offense as of July 1, 2000;

(E) Second degree murder in violation of section 18-3-103 (1), C.R.S., committed on or after July 1, 1999;

(F) Second degree murder in violation of section 18-3-103 (1), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(G) First degree assault in violation of section 18-3-202 (1), C.R.S., committed on or after July 1, 1999;

(H) First degree assault in violation of section 18-3-202 (1), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(I) Second degree assault in violation of section 18-3-203 (1)(b), (1)(c), (1)(d), (1)(g), or (2)(b.5), C.R.S., committed on or after July 1, 1999;

(J) Second degree assault in violation of section 18-3-203 (1)(b), (1)(c), (1)(d), (1)(g), or (2)(b.5), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(K) Second degree kidnapping in violation of section 18-3-302 (4), C.R.S., committed on or after July 1, 1999;

(L) Second degree kidnapping in violation of section 18-3-302 (4), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(M) First degree arson in violation of section 18-4-102 (3), C.R.S., committed on or after July 1, 1999;

(N) First degree arson in violation of section 18-4-102 (3), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(O) First degree burglary in violation of section 18-4-202, C.R.S., committed on or after July 1, 1999;

(P) First degree burglary in violation of section 18-4-202, C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;

(Q) Second degree burglary in violation of section 18-4-203, C.R.S., committed on or after July 1, 2000;

(R) Third degree burglary in violation of section 18-4-204, C.R.S., committed on or after July 1, 2000;

(S) Aggravated robbery in violation of section 18-4-302 (4), C.R.S., committed on or after July 1, 1999;

(T) Aggravated robbery in violation of section 18-4-302 (4), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000; or

(U) Any other felony, if the offender was on probation for the conviction as of July 1, 2000, and had been previously convicted of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, an offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., second degree murder in violation of section 18-3-103 (1), C.R.S., first degree assault in violation of section 18-3-202 (1), C.R.S., second degree assault in violation of section 18-3-203 (1)(b), (1)(c), (1)(d), (1)(g), or (2)(b.5), C.R.S., second degree kidnapping in violation of section 18-3-302 (4), C.R.S., first degree arson in violation of section 18-4-102 (3), C.R.S., first degree burglary in violation of section 18-4-202, C.R.S., or aggravated robbery in violation of section 18-4-302 (4), C.R.S.

(II) The judicial department or a probation department shall collect the sample required by this subsection (1) at least thirty days prior to the offender's scheduled termination of probation, but, in any event, by December 31, 2007.

(c) Every offender who, on or after July 1, 2007, is on a deferred judgment and sentence as authorized in section 18-1.3-102, C.R.S., that was granted on or after July 1, 1999, but before July 1, 2007, for an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The judicial department or a probation department shall collect the sample required by this subsection (1) at least thirty days prior to the offender's scheduled termination of the deferred judgment, but, in any event, by October 1, 2007.

(d) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility pursuant to article 27 of title 17, C.R.S., based on a sentence imposed before that date for a felony conviction. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(e) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility based on a sentence imposed before that date for conviction of a misdemeanor offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(f) Repealed.

(g) Every offender sentenced on or after July 1, 2007, for a felony conviction; except that this subsection (1)(g) does not apply to an offender granted a deferred judgment and sentencing

authorized in section 18-1.3-102, unless otherwise required to submit to a sample pursuant to this section, or unless the deferred judgment and sentencing is revoked and a sentence is imposed. The sample must be collected:

(I) From an offender sentenced to the department of corrections, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation;

(IV) From a juvenile or young adult sentenced to the youthful offender system, by the department of corrections within thirty-five days after the juvenile or young adult is received at the youthful offender system; and

(V) From an offender who receives any other sentence or who receives a suspended sentence, by the judicial department within thirty-five days after the offender is sentenced or the sentence is suspended.

(h) Every offender who, on or after July 1, 2007, 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. The sample shall be collected:

(I) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(II) From an offender sentenced to probation, by the judicial department or a probation department within thirty-five days after the offender is placed on probation;

(III) From an offender who receives a deferred judgment and sentence, by the judicial department or a probation department within thirty-five days after the offender receives the deferred judgment and sentence; and

(IV) From an offender who receives any other sentence or who receives a suspended sentence, by the judicial department or a probation department within thirty-five days after the offender is sentenced or the sentence is suspended.

(2) For purposes of this section:

(a) "Convicted" 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 judgment and sentencing pursuant to section 18-1.3-102, C.R.S., unless the deferred judgment and sentence is revoked and a sentence is imposed.

(b) "Unlawful sexual behavior" shall have the same meaning as provided in section 16-22-102 (9).

(3) The judicial department, the department of corrections, a probation department, a sheriff, or a contractor may:

(a) Use reasonable force to obtain biological substance samples in accordance with this section using medically recognized procedures. In addition, an offender's refusal to comply with this section may be grounds for revocation or denial of parole, probation, suspension of sentence, or deferred judgment and sentence. Failure to pay for collection and a chemical testing of a biological substance sample shall be considered a refusal to comply if the offender has the present ability to pay.

(b) Collect biological substance samples notwithstanding that collection was not accomplished within an applicable deadline set forth in this section.

(4) Any moneys received from an offender 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 shall conduct the chemical testing of the biological substance samples obtained pursuant to this section. The Colorado bureau of investigation shall file and maintain the results thereof and shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this section.

(6) This section shall not apply to juvenile adjudications under title 19, C.R.S.

Source: L. 2006: Entire section added, p. 1687, § 2, effective July 1, 2007. **L. 2007:** Entire section R&RE, p. 1611, § 1, effective July 1. **L. 2012:** (1)(a), (1)(d), (1)(e), (1)(f), (1)(g), and (1)(h) amended, (SB 12-175), ch. 208, p. 853, § 85, effective July 1. **L. 2026:** IP(1), IP(1)(g), and (1)(g)(IV) amended and (1)(f) repealed, (HB 26-1064), ch. 15, p. 61, § 2, effective August 12.

16-11-102.5. Drug testing of offenders by judicial department - pilot program. (Repealed)

Source: L. 90: Entire section added, p. 945, § 16, effective June 7. **L. 96:** (2) repealed, p. 1262, § 168, effective August 7. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-212.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-103. Imposition of sentence in class 1 felonies - appellate review. (Repealed)

Source: L. 72: R&RE, p. 240, § 1. **C.R.S. 1963:** § 39-11-103. **L. 74:** Entire section R&RE, p. 252, § 4, effective January 1, 1975. **L. 79:** (2), (3), (4), IP(6), and (6)(e) amended and (5.1) and (7) added, p. 673, § 1, effective August 1. **L. 84:** (1), IP(5), (5)(a), and (5)(e) amended, (2), (3), and (6) R&RE, (4) and (5.1) repealed, and (5)(f) to (5)(l) and (8) added, pp. 491, 493, 492, 494, 495, §§ 1, 3, 2, 4, 6, 5, effective July 1. **L. 85:** (1)(b) amended, p. 653, § 8, effective July 1; (1)(b) amended, p. 657, § 3, effective July 1. **L. 87:** (6)(g) amended, p. 625, § 1, effective April 30. **L. 88:** (1)(b), IP(2)(a), (2)(a)(I), (2)(a)(II), (2)(b)(I), IP(5), IP(6), (6)(a), (6)(b), IP(6)(c), IP(6)(f), and (7)(a) amended, (2)(a)(III) repealed, (2)(b)(II) R&RE, and (2)(b)(III) added, pp. 673, 675, §§ 1, 3, 2, effective July 1. **L. 89:** (6)(f.5) added, p. 869, § 1, effective June 1; (6)(j) amended and (6.5) added, p. 828, § 37, effective July 1. **L. 90:** (1)(b) amended and (6)(j.5) and (6)(j.8) added, pp. 927, 928, §§ 1, 2, effective July 1. **L. 91:** (6)(c)(III) amended, p. 359, § 22, effective April 9. **L. 91, 2nd Ex. Sess.:** Entire section R&RE, p. 8, § 1, effective September 20. **L. 93:** (1)(a) amended, p. 544, § 2, effective April 29. **L. 94:** (5)(l) added, p. 51, § 1, effective March 15; (5)(m) added, p. 1057, § 1, effective May 4. **L. 95:** (1)(a), (1)(b), (1)(c), (2), (3), and (7)(b) amended and (1)(a.5) and (1)(a.7) added, p. 1290, § 1, effective July 1. **L. 97:** (1) (b) amended, p. 47, § 2, effective March 21; (6)(a) amended, p. 1582, § 2, effective June 4. **L. 98:** (3.5) added, p. 379, § 1, effective April 21; (5)(m) amended and (5)(n) added, p. 1444, § 34, effective July 1. **L. 2000:** (5)(n) amended and (5)(o) added, p. 395, § 1, effective August 2. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1. **L. 2002, 3rd Ex. Sess.:** (1), (2), (3.5), and (7) amended and (3.2) and (8) added, p. 1, § 1, effective July 12.

Editor's note: In 2002, this section was relocated to section 18-1.3-1201.

Cross references: (1) For current provisions relating to the applicability of procedures in class 1 felony cases for crimes committed on or after July 1, 1988, and prior to September 20, 1991, see part 13 of article 1.3 of title 18.

(2) For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsections (1), (2), (3.5), and (7) and enacting subsections (3.2) and (8), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

16-11-104. Genetic testing - repeal. (Repealed)

Source: L. 99: Entire section added, p. 1145, § 3, effective July 1. **L. 2000:** (1) and (3) amended, p. 1025, § 3, effective July 1. **L. 2001:** (1)(a) amended, p. 955, § 2, effective July 1. **L. 2002:** Entire section amended, p. 1148, § 2, effective July 1; (5) amended, p. 1183, § 11, effective July 1; (1)(a)(II)(A) amended, p. 1495, § 143, effective October 1. **L. 2006:** (6) added by revision, pp. 1688, 1693, §§ 3, 17. **L. 2007:** (1)(a)(II)(I) and (1)(a)(II)(J) amended and (1)(a)(II)(K) added, p. 727, § 10, effective July 1.

Editor's note: (1) House Bill 07-1235 amended subsections (1)(a)(II)(I) and (1)(a)(II)(J) and added subsection (1)(a)(II)(K), effective July 1, 2007, but those amendments did not take effect due to the repeal of this section, effective July 1, 2007.

(2) Subsection (6) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, pp. 1688, 1693.)

16-11-105. Local initiative committee pilot program for the management of community-based programs for adults with mental illness who come into contact with the criminal justice system - legislative declaration - creation - duties - report - repeal. (Repealed)

Source: L. 2003: Entire section added, p. 2082, § 1, effective May 22.

Editor's note: Subsection (6)(a) provided for the repeal of this section, effective July 1, 2008. (See L. 2003, p. 2082.)

PART 2

PROBATION

16-11-201. Application for probation. (Repealed)

Source: L. 72: R&RE, p. 241, § 1. **C.R.S. 1963:** § 39-11-201. **L. 82:** (2) amended, p. 308, § 1, effective April 27. **L. 90:** (4) added, p. 941, § 7, effective June 7. **L. 95:** (1) and (4) amended, p. 1281, § 18, effective June 5. **L. 98:** (4)(a)(II) amended, p. 1437, § 11, effective July 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-201.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-201.5. Purposes of probation.

(1) The purposes of this article 11 with respect to probation are:

(a) To serve as a sentencing option and a response to crime in order to moderate and deter future criminal behavior and victimization;

(b) To support persons in behavior change through the coordination and provision of effective and individualized services that may include, but are not limited to, educational, therapeutic, restorative, and skill-building services;

(c) To hold persons accountable for their behavior through supervision and interventions that promote reparation of harm to the community and victims, which reparation includes, but is not limited to, restitution to victims;

(d) To serve as a cost-effective option for persons appropriate for community supervision; and

(e) To honor the statutory and constitutional rights of victims of crime.

Source: L. 2022: Entire section added, (HB 22-1257), ch. 69, p. 352, § 2, effective April 7.

16-11-202. Probationary power of court. (Repealed)

Source: L. 72: R&RE, p. 242, § 1. **C.R.S. 1963:** § 39-11-202. **L. 94:** Entire section amended, p. 97, § 1, effective July 1. **L. 96:** Entire section amended, p. 739, § 14, effective July 1. **L. 99:** (1) amended, p. 57, § 9, effective March 15. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-202.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-203. Criteria for granting probation. (Repealed)

Source: L. 72: R&RE, p. 242, § 1. **C.R.S. 1963:** § 39-11-203. **L. 76:** IP(1) amended, p. 546, § 2, effective July 1. **L. 77:** (1)(e) added and (2)(o) repealed, pp. 863, 888, §§ 4, 78, effective July 1, 1979. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

(2) In 2002, this section was relocated to section 18-1.3-203.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-204. Conditions of probation - repeal. (Repealed)

Source: L. 72: R&RE, p. 243, § 1. **C.R.S. 1963:** § 39-11-204. **L. 73:** p. 505, § 1. **L. 77:** (1) and (2)(e) amended, p. 863, § 5, effective July 1, 1979. **L. 79:** (2)(e.5) and (2.5) added, p. 601, § 26, effective July 1. **L. 82:** (2)(b) amended, p. 309, § 1, effective March 11; (2)(g) amended, p. 253, § 9, effective May 3. **L. 87:** (2)(e) amended, p. 563, § 9, effective July 1. **L. 88:** (2)(k.5) added, p. 708, § 4, effective July 1. **L. 91:** (1) amended, p. 437, § 2, effective May 29. **L. 92:** (1) amended, p. 455, § 2, effective June 2; (2)(d) and (2.5) amended, p. 211, § 13, effective August 1. **L. 94:** (2)(a)(VI.5) added and (2.5) amended, pp. 1811, 1812, §§ 3, 4, effective June 1; (1) amended, p. 2022, § 2, effective June 3; (2) amended, p. 2036, § 17, effective July 1. **L. 95:** (2)(a)(V) amended, p. 160, § 1, effective July 1; (2)(a)(V) amended, p. 742, § 7, effective July 1. **L. 98:** (2)(b)(II) amended, p. 1403, § 55, effective February 1, 1999. **L. 99:** (2.3) added, p. 61, § 4, effective July 1. **L. 2000:** (2)(a)(V) amended, p. 997, § 1, effective May 26; (2)(c) added, p. 234, § 3, effective July 1; (1) and (2.5) amended, p. 1045, § 8, effective September 1. **L. 2001:** (2)(d) added, p. 658, § 5, effective May 30; (4) amended, p. 32, § 1, effective August 8. **L. 2002:** (2)(c)(I) amended, p. 665, § 9, effective May 28; (2)(a)(V) amended, p. 979, § 2, effective July 1; (2)(d) amended, p. 1183, § 12, effective July 1; (2)(e) added, p. 1150, § 3, effective July 1; (2.5)(i.2), (2.5)(i.4), (2.5)(i.6), and (2.5)(i.8) added, p. 1156, § 17, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: (1) Senate Bill 02-018 amended subsection (2)(a)(V). House Bill 02-1229 amended subsection (2)(c)(I). Senate Bill 02-010 amended subsection (2)(d). Senate Bill 02-019 enacted subsections (2)(e), (2.5)(i.2), (2.5)(i.4), (2.5)(i.6), and (2.5)(i.8). This section as amended by Senate Bill 02-010, Senate Bill 02-018, Senate Bill 02-019, and House Bill 02-1229, was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-204.

(2) Subsection (2)(a)(V) was amended in Senate Bill 03-186, effective March 18, 2003. However, those amendments did not take effect due to the repeal of this section by House Bill 02-1046, effective October 1, 2002.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-204.3. Genetic testing as a condition of probation - repeal. (Repealed)

Source: L. 96: Entire section added, p. 1580, § 2, effective July 1. **L. 99:** (1) and (3) amended, p. 1167, § 1, effective July 1; (1) amended, p. 1146, § 5, effective July 1. **L. 2000:** (3) amended, p. 1266, § 4, effective May 26; (1) (b.5) added and (3) amended, p. 1025, §§ 1, 2, effective July 1. **L. 2002:** Entire section amended, p. 1150, § 4, effective July 1; (5) amended, p. 1183, § 13,

effective July 1; (1)(b)(I) amended, p. 1495, § 144, effective October 1. **L. 2006:** (6) added by revision, pp. 1689, 1693, §§ 4, 17.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, pp. 1689, 1693.)

16-11-204.5. Restitution as a condition of probation. (Repealed)

Source: L. 77: Entire section added, p. 863, § 6, effective July 1, 1979. **L. 79:** (1) amended, p. 664, § 2, effective July 1. **L. 84:** (3) added, p. 489, § 3, effective July 1. **L. 85:** (4) added, p. 630, § 1, effective April 23; (1) amended, p. 628, § 1, effective July 1. **L. 87:** (3) amended, p. 621, § 3, effective July 1. **L. 96:** (1), (2), and (4) amended and (2.5) added, p. 1778, § 4, effective June 3. **L. 2000:** Entire section amended, p. 1046, § 9, effective September 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-205.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-204.6. Repayment of crime stopper reward as a condition of probation. (Repealed)

Source: L. 94: Entire section added, p. 1812, § 5, effective June 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-206.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-205. Arrest of probationer - revocation.

(1) A probation officer may arrest any probationer when:

(a) The officer has a warrant commanding that the probationer be arrested; or

(b) The officer has probable cause to believe that a warrant for the probationer's arrest has been issued in this state or another state for any criminal offense or for violation of the conditions of probation; or

(c) Any offense pursuant to the laws of this state that is statutorily eligible for arrest has been or is being committed by the probationer in his presence; or

(d) (Deleted by amendment, L. 2022.)

(e) The officer has probable cause to believe that the conditions of probation have been violated and probable cause to believe that the probationer is leaving or about to leave the state, or that the probationer will fail or refuse to appear before the court to answer charges of violation of the conditions of probation, or that the arrest of the probationer is necessary to protect the safety of the community or another person or prevent the commission of a crime.

(f) (Deleted by amendment, L. 2022.)

(2) Unless any circumstances as provided in subsection (1) or (6.5) of this section exist, when a probation officer has reason to believe that the probationer violated conditions of probation and that a petition for revocation is necessary and appropriate subject to section 16-11-215, the probation officer shall issue a summons requiring the probationer to appear before the court at a specified time and place to answer charges of violation of the conditions of probation. The summons, unless accompanied by a copy of a complaint, shall contain a brief statement of the violation and the date and place thereof. Failure of the probationer to appear before the court as required by the summons shall be deemed a violation of the conditions of probation.

(3) If, rather than issuing a summons, a probation officer makes an arrest, without warrant, of a probationer, the probationer shall be taken without unnecessary delay before the nearest available judge of a court of record. Any probationer so arrested shall have all of the rights afforded by the provisions of this code to persons incarcerated before trial of criminal charges and may be admitted to bail pending probation revocation hearing.

(4) Within seven days after the arrest of any probationer as provided in this section, or within a reasonable time after the issuance of a summons under this section, the probation officer shall complete his or her investigation and either:

(a) File a complaint in the court having jurisdiction of the violation of probation; or

(b) Order the release of the probationer, if imprisoned, and notify the probationer that he is relieved of obligation to appear before the court. In such event, the probation officer shall give written notification to the court of his action.

(5) A complaint alleging the violation of a condition of probation may be filed either by the probation officer pursuant to subsection (4) of this section or by the district attorney. Such complaint must contain the name of the probationer, must identify the violation charged and the condition of probation alleged to have been violated, including the date and approximate location thereof, must include a summary of the violation behavior history and any behavioral responses applied consistent with the structured and individualized behavioral responses developed pursuant to section 16-11-215 and must be signed by the probation officer or the district attorney. A copy thereof must be given to the probationer a reasonable length of time before the probationer appears before the court.

(6) A warrant for the arrest of any probationer for violation of the conditions of probation may be issued by any judge of a court of record upon the report of a probation officer or upon the verified complaint of any person, establishing to the satisfaction of the judge probable cause to believe that a condition of probation has been violated and that the arrest of the probationer is reasonably necessary. The warrant may be executed by any probation officer or by a peace officer authorized to execute warrants in the county in which the probationer is found.

(6.5) Unless there is reason to believe that a probationer would not appear, would interfere with the criminal justice process, or poses substantial risk of serious harm to others, a probation officer shall issue a summons rather than request a warrant when filing a petition for revocation.

(7) A person or entity that provides supervision pursuant to section 18-1.3-202 (2), C.R.S., may issue a summons and file a complaint with the court for a defendant under his or her supervision in accordance with the provisions of this section.

Source: L. 72: R&RE, p. 244, § 1. **C.R.S. 1963:** § 39-11-205. **L. 87:** (5) amended, p. 605, § 6, effective April 6. **L. 89:** (1)(f) added, p. 876, § 11, effective June 5. **L. 2012:** IP(4) amended, (SB 12-175), ch. 208, p. 855, § 86, effective July 1. **L. 2016:** (7) added, (SB 16-164), ch. 284, p. 1160, § 1, effective August 10. **L. 2022:** (1), (2), and (5) amended and (6.5) added, (HB 22-1257), ch. 69, p. 352, § 3, effective July 1, 2023.

ANNOTATION

Clear purpose of § 16-11-204 (3) is to provide criminal defendant with notice of terms of his probation. People v. Zimmerman, 616 P.2d 997 (Colo. App. 1980).

But failure to comply with § 16-11-204 (3) did not require reversal of revocation. People v. Zimmerman, 616 P.2d 997 (Colo. App. 1980).

Defendant presumed to know that violation may result in revocation. Probation is a privilege, and a criminal defendant is presumed to know that the violation of any term of his probation may result in revocation. People v. Zimmerman, 616 P.2d 997 (Colo. App. 1980).

Subsection (4) limitation inapplicable to deferred sentence revocation proceeding. Since the five-day limitation specified in subsection (4) is not a procedural safeguard required in a probation revocation hearing pursuant to § 16-11-206, but rather is a prehearing requirement imposed on the probation officer, it is not within the contemplation of § 16-7-403 (2). People v. Schoonover, 654 P.2d 1340 (Colo. App. 1982).

Application for entry of deferred judgment and imposition of sentence was sufficient to notify defendant of the violations he was alleged to have committed. People v. Allen, 952 P.2d 764 (Colo. App. 1997), rev'd on other grounds, 973 P.2d 620 (Colo. 1999).

Subsection (3) did not apply to actions of district attorney. People v. McPherson, 897 P.2d 923 (Colo. App. 1995).

It would be exalting form over substance for the court to hold that a probation term was not tolled by the filing of a complaint in support of issuance of an arrest warrant to initiate revocation of probation proceedings. People v. Galvin, 961 P.2d 1137 (Colo. App. 1997).

To toll the probation period until probation revocation proceedings are completed, it is sufficient that: (1) A probation officer issue a summons requiring the probationer to appear in court; (2) a probation officer arrest the probationer; (3) a complaint be filed for the revocation of probation; or (4) a report be filed by a probation officer or a verified complaint by any person, together with a request for an arrest warrant. People v. Galvin, 961 P.2d 1137 (Colo. App. 1997).

Probation is a privilege, not a right. Whether a probationer has violated a probation condition presents a question of fact. Once the court finds that a violation has occurred, whether probation should be revoked lies within the discretion of the court. People v. Ickler, 877 P.2d 863 (Colo. 1994); People v. Colabello, 948 P.2d 77 (Colo. App. 1997); People v. Howell, 64 P.3d 894 (Colo. App. 2002).

Parole revocation order must be reversed because defendant did not receive written notice of the condition of probation that he was alleged to have violated. People v. Calderon, 2014 COA 144, 356 P.3d 993.

Subsection (5) does not specify particular format for complaint alleging violation of probation. The constitutional sufficiency of notice to a probationer that is written, but provided in an irregular format, should be measured by whether the notice sufficiently fulfilled the central function of informing the probationer of the alleged

basis for revocation. The original revocation complaint served on the probationer did not specify that the revocation was based upon conviction for a murder the probationer committed while on probation, but instead included the original charges filed. The probationer received constitutionally sufficient written notice, however, in a motion to continue the revocation hearing that explicitly identified the murder conviction as a ground for revocation. People v. Robles, 209 P.3d 1173 (Colo. App. 2009).

The district court lacks the authority to order the probation department to file a complaint to initiate probation revocation. People v. Karwacki, 2023 COA 3M, 528 P.3d 198.

Applied in Adair v. People, 651 P.2d 389 (Colo. 1982); People v. Clark, 654 P.2d 847 (Colo. 1982).

16-11-206. Revocation hearing.

(1) At the first appearance of the probationer in court or at the commencement of the hearing, whichever is first in time, the court shall advise the probationer as provided in section 16-7-207 insofar as such matters are applicable; except that there is no right to a trial by jury in proceedings for revocation of probation.

(2) At or prior to the commencement of the hearing, the court shall advise the probationer of the charges against him and the possible penalties therefor and shall require the probationer to plead guilty or not guilty.

(3) At the hearing, the prosecution has the burden of establishing by a preponderance of the evidence the violation of a condition of probation; except that the commission of a criminal offense must be established beyond a reasonable doubt unless the probationer has been convicted thereof in a criminal proceeding. When, in a revocation hearing, the alleged violation of a condition is the probationer's failure to pay court-ordered compensation to appointed counsel, probation fees, court costs, restitution, or reparations, evidence of the failure to pay shall constitute prima facie evidence of a violation. The court may, when it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, continue the probation revocation hearing until the termination of the criminal proceeding. Any evidence having probative value shall be received regardless of its admissibility under the exclusionary rules of evidence if the defendant is accorded a fair opportunity to rebut hearsay evidence.

(4) If the probationer is in custody, the hearing shall be held within fourteen days after the filing of the complaint, unless delay or continuance is granted by the court at the instance or request of the probationer or for other good cause found by the court justifying further delay.

(5) If the court determines that a violation of a condition of probation has been committed, it shall, within seven days after the said hearing, either revoke or continue the probation. If

probation is revoked, the court may then impose any sentence or grant any probation pursuant to the provisions of this part 2 which might originally have been imposed or granted.

Source: L. 72: R&RE, p. 245, § 1. **C.R.S. 1963:** § 39-11-206. **L. 83:** (3) amended, p. 664, § 5, effective July 1. **L. 2012:** (4) and (5) amended, (SB 12-175), ch. 208, p. 855, § 87, effective July 1. **L. 2017:** (1) amended, (SB 17-294), ch. 264, p. 1392, § 34, effective May 25.

ANNOTATION

Annotator's note. Since § 16-11-206 is similar to repealed § 39-16-9, C.R.S. 1963, and § 39-16-9, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

Scope of probationer's constitutional rights. Upon a probation revocation hearing the probationer is not entitled to claim the full range of constitutional guarantees available to one not yet convicted of a crime. Holdren v. People, 168 Colo. 474, 452 P.2d 28 (1969); People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974).

While the defendant is entitled to certain procedural due process rights at a probation revocation hearing, he is not entitled to the full panoply of constitutional guarantees available to one who has not been convicted of a crime, and thus cannot complain of the admission of illegally seized evidence. People v. Wilkerson, 189 Colo. 448, 541 P.2d 896 (1975).

The following "minimum requirements of due process" at parole or probation revocation hearings are required: (1) Written notice of the claimed violations of probation; (2) disclosure to the probationer of evidence against him; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (5) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (6) a written statement by the fact finders as to the evidence relied on and reasons for revoking probation. People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974); People v. Thomas, 42 Colo. App. 441, 599 P.2d 957 (1979).

Prior to a probation revocation hearing, the probationer has a right to be informed of the specific probation violations with which he is charged. People v. Carr, 185 Colo. 293, 524 P.2d 301 (1974).

Right to counsel applies to revocation hearings, including effective assistance of counsel as tested by the standard set forth in Strickland v. Washington, 466 U.S. 668 (1984). People v. Timoshchuk, 2018 COA 153, 457 P.3d 684.

Nothing in this section or the state or federal constitutions requires the trial court to advise the defendant of his or her

right to testify at a deferred judgment revocation proceeding. People v. Allen, 973 P.2d 620 (Colo. 1999).

Oral findings made by the fact finder on the record satisfy constitutional requirements of procedural due process, including a written statement by the fact finder as to the evidence relied on and the reasons for revoking probation. People v. Elder, 36 P.3d 172 (Colo. App. 2001).

Defendant's privilege against self-incrimination precluded the court from revoking defendant's probation based on a refusal to answer the polygraph examiner's question regarding viewing or using child pornography while on probation. People v. Roberson, 2016 CO 36, 377 P.3d 1039.

There is no fifth amendment violation when a trial court revokes a defendant's probation based on a total refusal to attend sex offender treatment. Defendant prematurely invoked his fifth amendment right before actually being required to incriminate himself. People v. Ruch, 2016 CO 35, 379 P.3d 309.

He has rights granted by general assembly. Where there are no constitutional rights involved, the supreme court of the United States has stated that a probationer has only those rights granted to him by the general assembly. Gehl v. People, 161 Colo. 535, 423 P.2d 332 (1967).

Clear purpose of § 16-11-204 (3) is to provide criminal defendant with notice of terms of his probation. People v. Zimmerman, 616 P.2d 997 (Colo. App. 1980).

But failure to comply with § 16-11-204 (3) did not require reversal of revocation in and of itself. People v. Zimmerman, 616 P.2d 997 (Colo. App. 1980).

Defendant presumed to know that violation may result in revocation. Probation is a privilege, and a criminal defendant is presumed to know that the violation of any term of his probation may result in revocation. People v. Zimmerman, 616 P.2d 997 (Colo. App. 1980).

Probation revocation proceedings involving deferred sentencing are quite distinct from parole revocation proceedings. The statutes on probation do not provide probationers more in substance than what is accorded parolees. Martinez v. Patterson, 429 F.2d 844 (10th Cir. 1970).

For purposes of determining whether an order is final and appealable, there is no appreciable difference between an order dismissing a petition to revoke probation and an order declining to revoke probation. Lewis v. People, 214 P.3d 1059 (Colo. 2009).

The question of whether the probation shall be revoked is within the sound discretion of the judge. Holdren v. People, 168 Colo. 474, 452 P.2d 28 (1969); People v. Ickler, 877 P.2d 863 (Colo. 1994); People v. Colabello, 948 P.2d 77 (Colo. App. 1997); People v. Elder, 36 P.3d 172 (Colo. App. 2001).

Probation is a privilege, not a right. Whether a probationer has violated a probation condition presents a question of fact. Once the court finds that a violation has occurred, whether probation should be

revoked lies within the discretion of the court. People v. Ickler, 877 P.2d 863 (Colo. 1994); People v. Colabello, 948 P.2d 77 (Colo. App. 1997); People v. Howell, 64 P.3d 894 (Colo. App. 2002).

It is better practice to continue a probation revocation hearing until after a trial on new charges, but it lies within the discretion of the trial court. People v. Ray, 192 Colo. 391, 560 P.2d 74 (1977).

Issue preclusion does not apply to bar the right of a defendant to a trial where defendant had been charged with the crime of driving with a revoked license, which constituted both a violation of his probation and a new criminal act. Defendant did not have a full and fair opportunity to litigate the issue in the probation revocation hearing. A determination of guilt or innocence in a probation revocation hearing would undermine the function of the criminal trial process. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Probation revocation hearings are held for different purposes, governed by different procedures, and do not protect a defendant's rights as does a criminal trial. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Continuance of hearing not reversed absent abuse of discretion. A finding of good cause for a continuance is within the discretion of the trial court and will not be reversed appeal absent an abuse of discretion. People v. Marrow, 638 P.2d 842 (Colo. App. 1981).

Abuse not found. Where a court ordered a continuance in view of the late filing of an amended complaint against defendant and the defendant's need for additional time to respond to the allegations in the amended complaint, there was no abuse of discretion. People v. Marrow, 638 P.2d 842 (Colo. App. 1981).

What constitutes prejudice in denial of continuance at hearing. When a continuance of a sentencing hearing for revocation of probation is denied, the trial court will not be held to have abused its discretion unless the defendant demonstrates prejudice resulting from the failure to continue. Where the defendant subsequently pleads guilty to the charge for which probation was revoked, he fails to establish prejudice. People v. Abila, 670 P.2d 432 (Colo. App. 1983).

This section ordains the procedure where a probationer violates the conditions of probation. Logan v. People, 138 Colo. 304, 332 P.2d 897 (1958).

It requires a hearing on a revocation of probation. Holdren v. People, 168 Colo. 474, 452 P.2d 28 (1969).

To read this section harmoniously with § 16-11-204, the proper standard of proof is a preponderance of the evidence when it is alleged that a condition of probation has been breached, even though the breaching conduct also may have constituted a criminal offense. People v. Moses, 64 P.3d 904 (Colo. App. 2002).

Burden of establishing violation. Where an alleged violation of a condition of probation is a criminal offense, the prosecution has the burden of establishing the violation beyond a reasonable doubt.

People v. Carr, 185 Colo. 293, 524 P.2d 301 (1974).

Subsection (3) is based on a defendant's being subsequently convicted of a crime, not receiving a judgment of conviction. People v. Blackwell, 2016 COA 136, 409 P.3d 558.

Under subsection (3), once the prosecution shows that a defendant has not paid restitution, the burden shifts to the defendant to show that he or she was unable to pay. People v. Roletto, 2015 COA 41, 370 P.3d 190.

Beyond reasonable doubt standard of proof. An adult charged with a probation violation which constitutes a criminal offense has the right to demand that the people's charge that he committed the crime relied upon as a probation violation be proved "beyond a reasonable doubt". People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978); People v. Van Deusen, 677 P.2d 402 (Colo. App. 1983).

Defendant's plea constitutes a conviction within the meaning of subsection (3). Court does not have to find reasonable doubt that defendant violated the law because the court's acceptance of defendant's guilty plea amounted to a conviction and a violation of the terms of defendant's deferred judgment. People v. Blackwell, 2016 COA 136, 409 P.3d 558.

Presumption that court applied proper standard of proof. Although the court did not articulate the standard of proof it applied in revoking probation, the court is entitled to a presumption that it applied the proper standard. People v. Carr, 185 Colo. 293, 524 P.2d 301 (1974).

Plea of not guilty by reason of insanity not allowed in probation revocation hearing. A court, in permitting a plea of "not guilty by reason of insanity" in a probation revocation hearing, exceeds its jurisdiction, as a plea of not guilty by reason of insanity is not a proper means of testing competency at a probation revocation hearing. People ex rel. Gallagher v. District Court, 196 Colo. 499, 591 P.2d 1015 (1978).

Formal procedures and rules of evidence not employed. One of the critical differences between criminal trials and probation revocation hearings is that formal procedures and rules of evidence are not employed. People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974).

Hearing may be informally conducted. Where a hearing to revoke probation is called for by statute, it may be informally conducted. Gehl v. People, 161 Colo. 535, 423 P.2d 332 (1967).

A hearing must be held on a petition to revoke probation. But the hearing may be informally conducted, and the court may take into consideration all factors normally taken into account during sentencing. Holdren v. People, 168 Colo. 474, 452 P.2d 28 (1969).

Two-month delay in scheduling of hearing for probation revocation under subsection (4) did not violate defendant's due process rights. Much of the delay was caused by defendant's failure to inform his defense counsel or the court of his whereabouts, and final two months of delay

do not constitute a sufficient time interval to warrant a conclusion that the delay was excessive. Defendant has failed to demonstrate that he has suffered any other prejudice. People v. Newman, 867 P.2d 94 (Colo. App. 1993).

Proper sanction for violation of subsection (4) is release of the probationer from custody, and not dismissal of the petition. People v. Clark, 654 P.2d 847 (Colo. 1982); People v. Newman, 867 P.2d 94 (Colo. App. 1993).

If an alleged probation violator has been held in custody up to the statutory time limit and has not had a hearing, he must be immediately released from custody, but the complaint may remain pending or be refiled. Only custody is forfeited if a hearing is not held in time. People v. Clark, 654 P.2d 847 (Colo. 1982).

Speedy disposition of revocation petition applies to juveniles. The speedy disposition of a revocation petition, guaranteed to adults under subsection (4), must be extended to juveniles. People in Interest of D.M., 650 P.2d 1350 (Colo. App. 1982).

Delay attributable to court calendar congestion may be a permissible cause for delay under subsection (4). People in Interest of D.M., 650 P.2d 1350 (Colo. App. 1982).

Prosecution has burden of proving that docket congestion is sufficiently egregious as to be good cause for the delay. People in Interest of D.M., 650 P.2d 1350 (Colo. App. 1982).

Fifteen-day limitation applies to deferred sentence revocation hearing. Since the 15-day limitation imposed by subsection (4) is a procedural safeguard required for probation revocation hearings, it applies to a deferred sentence revocation pursuant to § 16-7-403. People v. Schoonover, 654 P.2d 1340 (Colo. App. 1982).

It is not bound by strict rules of evidence. In a proceeding to determine whether probation should be revoked, the court will not be bound by the strict rules of evidence. The probation officer was subject to cross-examination regarding the hearsay evidence which he offered, and such was not an abuse of discretion by the trial court. Holdren v. People, 168 Colo. 474, 452 P.2d 28 (1969).

Hearsay evidence is only admissible at a revocation hearing if the probationer has a fair opportunity to rebut such evidence. People in Interest of T.M.H., 821 P.2d 895 (Colo. App. 1991).

A probation violation may be established by hearsay testimony if the offering witness is subject to cross-examination. People v. Moses, 64 P.3d 904 (Colo. App. 2002).

Triple hearsay may be sufficient to prove a violation of a condition of probation as long as defendant has an opportunity to rebut the hearsay evidence. People v. Ruch, 2013 COA 96, 374 P.3d 485, rev'd on other grounds, 2016 CO 35, 379 P.3d 309.

Permitting probation officer to testify about hearsay was harmless beyond a reasonable doubt, because trial court relied upon other evidence to find a probation

violation. People v. Howell, 64 P.3d 894 (Colo. App. 2002).

A trial court is not bound by the strict rules of evidence during a probation revocation hearing. People in Interest of C.J.W., 727 P.2d 870 (Colo. App. 1986); People v. Kelly, 919 P.2d 866 (Colo. App. 1996).

Since defendant knew that failure to meet conditions of probation might constitute extraordinary aggravating circumstances which would justify sentencing beyond the presumptive range, the court was justified in doubling of presumptive range of sentence when defendant met neither the community service nor the restitution condition of probation. Montoya v. People, 864 P.2d 1093 (Colo. 1993).

Where the only witness lacks personal knowledge of the essential incriminating facts supporting the revocation of probation, the probationer cannot be provided the fair opportunity to rebut as required by the statute. People in Interest of T.M.H., 821 P.2d 895 (Colo. App. 1991).

Defendant had a fair opportunity to rebut hearsay evidence offered at parole revocation hearing. Although the probation officer did not know the identity of the sheriff deputy that said that defendant's roommate had said defendant did not live at their residence any longer, defendant did know the identity of his roommate. Defendant, thus, had an opportunity to rebut the statement of his roommate. People v. Ruch, 2013 COA 96, 374 P.3d 485, rev'd on other grounds, 2016 CO 35, 379 P.3d 309.

After acceptance of an Alford plea, court can revoke probation for failure to complete counseling that requires defendant to admit guilt. Prior to accepting plea, court must advise defendant of direct consequences of the conviction to satisfy due process concerns. Possibility that required counseling could not be completed and that probation would be revoked if the defendant did not admit guilt, is a collateral consequence of the guilty plea. People v. Birdsong, 958 P.2d 1124 (Colo. 1998).

The trial court's finding that the defendant did not participate or cooperate in a sex offender treatment program was supported by evidence demonstrating that the defendant's test results, interviews, and behavior in the program entrance process convinced the treatment program's personnel that the defendant was not motivated for treatment, was not giving straightforward answers to questions, was not prepared to accept responsibility for his crime, and was not amenable to outpatient treatment. People v. Ickler, 877 P.2d 863 (Colo. 1994).

Exclusionary rule not applied in probation revocation hearing. The overwhelming majority of cases from state and federal jurisdictions have refused to apply the exclusionary rule to improperly seized evidence in probation revocation hearings. People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974).

In the absence of egregious police misconduct, the exclusionary rule is inapplicable to probation revocation proceedings. People v. Ressin, 620 P.2d 717 (Colo. 1980).

And the general assembly clearly expressed its intent to have all probative evidence considered at the hearing on probation revocation, even if that evidence would be excluded in a criminal trial. People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974).

Subsection (3) is merely a codification of the general policy that the exclusionary rule does not apply to improperly seized evidence in probation revocation hearings. People v. Wilkerson, 189 Colo. 448, 541 P.2d 896 (1975).

The U.S. supreme court's decision in Crawford v. Washington, 541 U.S. 36 (2004), does not change the rule that a probation violation can be established by hearsay evidence, so long as the offering witness is subject to cross-examination. The right to confrontation in a probation revocation hearing flows from the due process clause, not the confrontation clause upon which the Crawford court relied. People v. Turley, 109 P.3d 1025 (Colo. App. 2004).

Defendant deprived of due process right of confrontation during revocation hearing. There was no good cause to deny confrontation or find that the prosecution's hearsay evidence was substantially reliable. The hearsay evidence was unreliable, consisting of double or triple hearsay, and did not fall within any recognized exception to the hearsay rule. People v. Loveall, 203 P.3d 540 (Colo. App. 2008), aff'd, 231 P.3d 408 (Colo. 2010).

Defendant not deprived of due process right of confrontation during revocation hearing. Because defendant conceded that he had not made the necessary restitution payments, the court's belief that jobs were generally available was peripheral to the contested issue; therefore, the newspaper was not used to prove that defendant had violated his probation. People v. Roletto, 2015 COA 41, 370 P.3d 190.

"Convicted" defined. For the purposes of probation revocation under subsection (3) of this section, the term convicted means convicted upon trial, not when all appellate remedies are exhausted. People v. Salazar, 39 Colo. App. 409, 568 P.2d 101 (1977).

Probation can be revoked prior to conviction. People v. Salazar, 39 Colo. App. 409, 568 P.2d 101 (1977).

Standard of proof in juvenile proceedings. The same standard of proof that obtains in adult probation revocation hearings, i.e., beyond a reasonable doubt, should also apply in juvenile proceedings. People in Interest of C.B., 40 Colo. App. 43, 572 P.2d 843 (1977); People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978).

After the 1983 amendment to subsection (3), a court is not required to assess a defendant's ability to pay restitution based exclusively on the factors identified in People v. Romero, 192 Colo. 106, 559 P.2d 1101 (1976). People v. Roletto, 2015 COA 41, 370 P.3d 190.

The power to alter a sentence at the time of revocation of probation is explicitly recognized in subsection (5) and Crim. P. 32(f) and 35(c). People v. Jenkins, 40 Colo. App. 140, 575 P.2d 13 (1977).

But gross official misconduct in gathering evidence not sanctioned. Although the exclusionary rule per se does not apply to probation revocation hearings, gross official misconduct in gathering evidence for a probation revocation will not be sanctioned where an unreasonable search or seizure is such as to shock the conscience of the court. The court will not permit such conduct to be the basis of a state-imposed sanction. People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974).

While the exclusionary rule per se is inapplicable to probation revocation hearings, gross official misconduct by law enforcement officers is not condoned. People v. Wilkerson, 189 Colo. 448, 541 P.2d 896 (1975).

Court not bound to apply original sentence upon revocation of probation. Because suspension of a sentence is in conjunction with, rather than contradistinction to, the imposition of a statutorily prescribed alternative to imprisonment, the sentencing court's resentencing options upon revocation were dictated by statutory provisions governing revocation of probation. Fierro v. People, 206 P.3d 460 (Colo. 2009).

Revocation without notice improper. A trial judge has no power to impose sentence upon the basis of a violation of the conditions of probation in the absence of any notice to the probationer that his probation had been extended beyond the original period. Such a sentence violates concepts of fundamental fairness and due process. Jesseph v. People, 164 Colo. 312, 435 P.2d 224 (1967).

Where probation conditioned upon child support, finding of ability to pay required before revocation, and such finding should be made by the trial court. People v. Silcott, 177 Colo. 451, 494 P.2d 835 (1972).

Requiring the court to either revoke or continue probation within five days of the hearing on revocation is a directory provision, not jurisdictional. There is no basis for reversing the court's revocation of probation when the defendant consented to a hearing outside the statutory time period and the timing did not affect the fairness of the proceeding or cast doubt on the reliability of the outcome. People v. Heimann, 186 P.3d 77 (Colo. App. 2007).

Failure to follow statutory procedure voids revocation. The statutory procedure for hearing and revocation was not followed and no evidence was presented to show that defendant had violated any of the terms of his probation. Defendant's application for counsel to initiate appeal proceedings was not inconsistent with probation. Snook v. People, 169 Colo. 95, 453 P.2d 806 (1969).

District court did not advise defendant of the charges against him and the possible penalties pursuant to subsection (2) or comply with § 18-1.3-1010 (2). The court's lack of advisement and failure to follow the statutes constitutes plain error and requires reversal of the probation revocation. People v. Helms, 2016 COA 90, 396 P.3d 1133.

Revocation held fundamentally unfair. It was fundamentally unfair to accept child support payments for a period of six months

and then use as a ground for revocation of probation defendant's failure to make payments prior to that period. People v. Silcott, 177 Colo. 451, 494 P.2d 835 (1972).

Authority of court to impose sentence upon revocation. Upon revocation, the trial court has full authority to impose a sentence within the minimum and maximum term provided by statute for the crime. Gehl v. People, 161 Colo. 535, 423 P.2d 332 (1967).

Consecutive sentencing is an appropriate mechanism for imposing a distinct punishment for each of two criminal acts. People v. Lorenzo, 644 P.2d 50 (Colo. App. 1981).

The words "which might have originally been imposed or granted" in subsection (5) mean that the later imposition of sentence shall be done in accordance with the law applicable at the time defendant was originally placed on probation, and they do not mandate concurrent rather than consecutive sentencing. People v. Lorenzo, 644 P.2d 50 (Colo. App. 1981).

Time on probation need not be credited against sentence. The granting of probation is not the imposition of sentence or its equivalent, and time served on probation need not be credited against a sentence imposed upon revocation. Gehl v. People, 161 Colo. 535, 423 P.2d 332 (1967).

Probation revocation orders are reviewable by direct appeal. People v. Atencio, 186 Colo. 76, 525 P.2d 461 (1974).

But the finding that probation has been violated will not be disturbed merely because there is a conflict in evidence. People v. Trujillo, 189 Colo. 206, 539 P.2d 1234 (1975).

Statute as basis for jurisdiction. See People v. Sandoval, 36 Colo. App. 403, 541 P.2d 105 (1975).

Subsection (5) does not limit sentence to that originally agreed upon as part of a plea bargain but to that which might originally have been imposed pursuant to statute. People v. McDaniels, 844 P.2d 1257 (Colo. App. 1992); People v. Smith, 183 P.3d 726 (Colo. App. 2008); People v. Propst, 2021 COA 13, 486 P.3d 456.

Subsection (5) applies to the resentencing of an offender terminated from community corrections. A resentencing on a termination from community corrections is analogous to resentencing on a probation revocation. People v. Reyes, 2016 COA 98, 409 P.3d 501.

Unambiguous language of subsection (5) authorizes court, upon revoking probation, to impose any sentence that it could have imposed based on the underlying crime. People v. Santana, 961 P.2d 498 (Colo. App. 1997); People v. Castellano, 209 P.3d 1208 (Colo. App. 2009).

The fact that defendant had previously received a two and one-half year sentence did not limit the court's authority to consider the full range of sentences authorized under statute. People v. Santana, 961 P.2d 498 (Colo. App. 1997).

Subsection (5) is inapplicable where probation was imposed, not as a sentence,

but merely as a condition of a suspended prison sentence. People v. Frye, 997 P.2d 1223 (Colo. App. 1999).

Subsection (5) applies where probation is imposed as a condition of a suspended sentence. People v. Propst, 2021 COA 13, 486 P.3d 456 (holding contrary to People v. Frye, 997 P.2d 1223 (Colo. App. 1999), annotated above).

Once probation is revoked, a different factual predicate exists upon which the sentence is to be imposed. People v. McDaniels, 844 P.2d 1257 (Colo. App. 1992); People v. Santana, 961 P.2d 498 (Colo. App. 1997).

If a defendant is sentenced to jail as part of a deferred judgment probation sentence, the court may resentence the defendant to probation that includes a jail commitment after revoking the deferred judgment. People v. Gravina, 2013 COA 22, 300 P.3d 990.

Court was authorized by statute to consider a wide range of penalties in sentencing since statute provides no time limitations with respect to the length of a probationary term or the length of the conditions attached to that term. People v. McCarty, 851 P.2d 181 (Colo. App. 1992), aff'd, 874 P.2d 394 (Colo. 1994).

Despite six-year delay, state had no duty to set defendant's probation revocation hearing until after termination of defendant's incarceration in another jurisdiction. People v. Smith, 183 P.3d 726 (Colo. App. 2008).

An order declining to revoke probation is not a final judgment within meaning of C.A.R. 1, thus the court of appeals lacked jurisdiction to entertain the appeal. People v. Guatney, 214 P.3d 1049 (Colo. 2009).

Probation revocation decision valid because defendant failed to make restitution payments and failed to show he was unable to pay his restitution obligation. People v. Roletto, 2015 COA 41, 370 P.3d 190.

Applied in People v. Varner, 181 Colo. 146, 508 P.2d 390 (1973); People v. Houpe, 41 Colo. App. 253, 586 P.2d 241 (1978); People v. Boykin, 631 P.2d 1149 (Colo. App. 1981); People v. Dennis, 649 P.2d 321 (Colo. 1982); People v. Elder, 36 P.3d 172 (Colo. App. 2001).

16-11-207. Absent violator - arrest and return.

When there is reason to believe that a condition of probation has been violated and the alleged violator is not in the state or cannot be apprehended in the state, the probation officer shall report these facts to the court which granted probation, and the court may forthwith order the issuance of a warrant for the arrest and return of the probationer.

Source: L. 72: R&RE, p. 246, § 1. **C.R.S. 1963:** § 39-11-207.

16-11-208. Officer's appointment - salary - oath.

(1) Probation officers shall be appointed pursuant to the provisions of section 13-3-105, C.R.S., and shall not be removed except for cause.

(2) Before entering upon the duties of his office, each probation officer shall take an oath of office as an officer of the court, as prescribed by law.

Source: L. 72: R&RE, p. 246, § 1. **C.R.S. 1963:** § 39-11-208.

ANNOTATION

Law reviews. For article, "Proposed Probation and Parole Legislation", see 25 Dicta 290 (1948). For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964).

Annotator's note. Since § 16-11-208 is similar to repealed § 39-16-1, CRS 1963, relevant cases construing that provision have been included in the annotations to this section.

A probation officer is an aide of the court. Smith v. People, 162 Colo. 558, 428 P.2d 69 (1967).

For the authority of a judge to determine salary of probation officer, see Kanaly v. Wadlow, 31 Colo. App. 193, 502 P.2d 83 (1972), modified, 182 Colo. 115, 511 P.2d 484 (1973).

16-11-209. Duties of probation officers.

(1) It is the duty of a probation officer to investigate and report upon any case referred to him or her by the court for investigation. The probation officer shall furnish to each person released on probation under his or her supervision a written statement of the conditions of probation and shall instruct the person regarding the same. The officer shall keep informed concerning the conduct and condition of each person on probation under his or her supervision and shall report thereon to the court at such times as it directs. Such officers shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid persons on probation and to bring about improvement in their conduct and condition. Each officer shall keep records of his or her work; shall make such reports to the court as are required; and shall perform such other duties as the court may direct.

(1.3) Unless inconsistent with other conditions imposed by the court, in directing that a person on probation meet with a probation officer, the probation officer shall:

(a) Schedule, in good faith, meetings with the person on probation at mutually agreeable times that do not conflict with the person's essential obligations, including work, education, job training, dependent care, medical appointments, and other probation requirements; and

(b) Allow a person on probation to meet with the probation officer through a telephone call or audio-visual communication technology.

(2) to (3.1) Repealed.

(4) (a) Prior to an offender being released from probation, the probation officer releasing the individual shall provide the notice described in paragraph (b) of this subsection (4) at the last meeting the officer has with the person.

(b) The notice shall contain the following information:

(I) That a person convicted of certain crimes has the right to seek to have his or her criminal record sealed;

(II) That there are collateral consequences associated with a criminal conviction that a sealing order can alleviate;

(III) The list of crimes that are eligible for sealing and the associated time period that a person must wait prior to seeking sealing;

(IV) That the state public defender has compiled a list of laws that impose collateral consequences related to a criminal conviction and that the list is available on the state public defender's website; and

(V) That the person should seek legal counsel if he or she has any questions regarding record sealing.

(5) A probation officer assigned to an individual on probation shall provide information to that individual regarding:

(a) The individual's voting rights;

(b) How the individual may register to vote or update or confirm his or her voter registration record;

(c) How to obtain and cast a ballot; and

(d) How to obtain voter information materials.

Source: L. 72: R&RE, p. 246, § 1. **C.R.S. 1963:** § 39-11-209. **L. 89:** Entire section amended, p. 876, § 12, effective June 5. **L. 2013:** (4) added, (SB 13-123), ch. 289, p. 1539, § 1, effective May 24; (1), IP(2), (2)(b), and (3)(c) amended, (SB 13-250), ch. 333, p. 1931, § 45, effective

October 1. **L. 2017:** (2)(d) and (3)(e) amended, (SB 17-242), ch. 263, p. 1298, § 121, effective May 25. **L. 2018:** (5) added, (SB 18-150), ch. 261, p. 1601, § 4, effective August 8. **L. 2022:** (3.1) added by revision, (HB 22-1257), ch. 69, pp. 354, 362, §§ 4, 14. **L. 2024:** (1.3) added, (HB 24-1445), ch. 353, p. 2405, § 2, effective September 1.

Editor's note: Subsection (3.1) provided for the repeal of subsections (2), (3), and (3.1), effective July 1, 2023. (See L. 2022, pp. 354, 362.)

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

Law reviews. For article, "The Problem of Compelling Fathers to Support Their Dependent Children", see 27 Dicta 442 (1950).

It is the duty of a probation officer, as outlined in this section, to maintain surveillance and supervision of a probationer, to aid the probationer and to bring about improvement in his conduct and condition, and to otherwise act in a manner beneficial to the probationer. Logan v. People, 138 Colo. 304, 332 P.2d 897 (1958) (decided under repealed § 39-16-8, CRS 53).

The absence of an authorizing law or condition of probation does not necessarily render unconstitutional a warrantless search of a probationer's residence if based on a reasonable suspicion. The totality of all other relevant circumstances may render such a search reasonable. The defendant's status as a probationer on intensive supervised probation greatly reduced his reasonable expectation of privacy in his residence, and, combined with the other circumstances of the situation, justified the search by his probation officer. People v. Samuels, 228 P.3d 229 (Colo. App. 2009).

16-11-210. County and juvenile courts.

Any county court or juvenile court in this state may exercise the powers provided for and granted to district courts in this part 2, and the probation officers provided for in this part 2 shall also serve such courts in the same capacity as required by this part 2 for district courts.

Source: L. 72: R&RE, p. 247, § 1. **C.R.S. 1963:** § 39-11-210.

ANNOTATION

The plain intent of the Colorado Children's Code militates against the application of § 16-11-202 via this section to a delinquent child under the age of 18 years. People in Interest of A.F., 37 Colo. App. 185, 546 P.2d 972 (1975), aff'd, 192 Colo. 207, 557 P.2d 418 (1976).

A juvenile court does not have the statutory authority to impose a limited or partial confinement in county jail as a condition of probation for a juvenile under 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

16-11-211. Interdistrict probation department - personnel.

(1) Any two or more contiguous judicial districts may, by the election of the district judges or a majority of the judges of each district, combine in the formation of an interdistrict probation department; except that such formation shall be approved by the chief justice of the supreme court.

(2) This department, if created, shall have an administrative head who shall be appointed by the judges or the majority of the judges of the districts which comprise the interdistrict probation department, subject to section 13-3-105, C.R.S., and such administrative head shall be the chief probation officer of the department. The department shall consist of such other probation officers as may be appointed, together with such administrative and clerical employees as may be required, as provided pursuant to section 13-3-105, C.R.S.

(3) The chief probation officer shall be charged with the duty of administering the affairs of the department and supervising the probation officers and personnel of the department and conducting the department in accordance with the laws pertaining to probation and the rules of the district courts of the said districts.

(4) Any district which participates in an interdistrict probation department may withdraw from such department by the election of the judges or a majority of the judges of the district and the approval of the chief justice of the supreme court, by giving written notice to the presiding judges of all other judicial districts affected. However, the withdrawal shall not be effective until January 1 of the year following the written notification.

Source: L. 72: R&RE, p. 247, § 1. **C.R.S. 1963:** § 39-11-211.

16-11-212. Work and education release programs. (Repealed)

Source: L. 72: R&RE, p. 247, § 1. **C.R.S. 1963:** § 39-11-212. **L. 77:** (1) amended, p. 864, § 7, effective July 1, 1979. **L. 79:** (2) amended, p. 601, § 27, effective July 1. **L. 84:** (1.1) added, p. 497, § 1, effective April 5. **L. 2000:** (2) amended, p. 1047, § 10, effective September 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

(2) In 2002, this section was relocated to section 18-1.3-207.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-213. Intensive supervision probation programs - legislative declaration. (Repealed)

Source: L. 86: Entire section added, p. 740, § 1, effective May 16. **L. 93:** (4) amended, p. 718, § 2, effective July 1. **L. 95:** (7) added, p. 1276, § 12, effective June 5. **L. 98:** (6) repealed, p. 724, § 2, effective May 18. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-208.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-214. Fund created - probation services.

(1) (a) There is created in the state treasury the offender services fund to which must be credited one hundred percent of any cost of care payments or probation supervision fees paid to

the state pursuant to section 18-1.3-204 (2)(a)(V) or 19-2.5-1120 and from which the general assembly shall make annual appropriations for administrative and personnel costs for adult and juvenile probation services, as well as for adjunct adult and juvenile probation services in the judicial department, including treatment services; contract services; drug and alcohol treatment services, including continuous alcohol monitoring; and program development, and for associated administrative and personnel costs. Any money remaining in the fund at the end of any fiscal year does not revert to the general fund.

(b) Repealed.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on April 20, 2009, the state treasurer shall deduct two hundred fifty thousand dollars from the offender services fund and transfer such sum to the general fund.

(d) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on July 1, 2009, the state treasurer shall deduct two million four hundred ninety-eight thousand four hundred thirty-nine dollars from the offender services fund and transfer such sum to the general fund.

(2) (Deleted by amendment, L. 2000, p. 997, § 2, effective May 26, 2000.)

Source: L. 87: Entire section added, p. 563, § 10, effective July 1. **L. 95:** (1) amended, p. 1096, § 12, effective May 31; entire section amended, p. 160, § 2, effective July 1. **L. 2000:** Entire section amended, p. 997, § 2, effective May 26. **L. 2001:** (1) amended, p. 506, § 1, effective May 18. **L. 2002:** (1) amended, p. 980, § 3, effective July 1; (1) amended, p. 1190, § 36, effective July 1; (1) amended, pp. 1496, 1567, §§ 145, 392, effective October 1. **L. 2009:** (1)(c) added, (SB 09-208), ch. 149, p. 621, § 12, effective April 20; (1)(d) added, (SB 09-279), ch. 367, p. 1926, § 4, effective June 1. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2069, § 27, effective August 11. **L. 2021:** (1)(a) amended, (SB 21-059), ch. 136, p. 713, § 25, effective October 1. **L. 2022:** (1)(a) amended, (SB 22-055), ch. 467, p. 3321, § 3, effective August 10.

Editor's note: (1) Amendments to this section in House Bill 95-1212 and House Bill 95-1291 were harmonized.

(2) Amendments to subsection (1) by Senate Bill 02-010, Senate Bill 02-018, and House Bill 02-1046 were harmonized.

(3) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2006. (See L. 2002, p. 1190.)

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-215. Structured and individualized behavioral responses.

(1) Before July 1, 2023, the state court administrator shall develop a system of structured and individualized behavioral responses, including incentives and sanctions, to guide probation officers in determining how best to motivate positive behavior change and the appropriate response to a violation of terms and conditions of probation.

(2) A system of structured and individualized responses must include an accountability-based series of behavioral responses, intermediate sanctions, incentives, and services designed to respond to a probationer's violation of probation quickly, fairly, consistently, and proportionally. The system of structured and individualized responses must also be designed to motivate positive behavior change, successful completion of probation, and a probationer's individual behavioral or treatment goals.

(3) Probation departments shall use the system of structured and individualized behavioral responses developed pursuant to this subsection (3) or develop and use an equivalent and locally developed system that is aligned to best practices.

(4) Repealed.

Source: L. 2022: Entire section added, (HB 22-1257), ch. 69, p. 354, § 5, effective April 7.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2024. (See L. 2022, p. 354.)

PART 3

SENTENCES TO IMPRISONMENT

16-11-301. Sentences - commitments - correctional facilities - county jail - age limit.

(1) As a general rule, imprisonment for the conviction of a felony by an adult offender shall be served by confinement in an appropriate facility as determined by the executive director of the department of corrections. In such cases, the court will sentence the offender to the custody of the executive director of the department of corrections.

(2) Unless otherwise provided in the "Colorado Children's Code", title 19, C.R.S., a defendant convicted of a crime which may be punished by imprisonment in a county jail may be sentenced to a correctional facility other than state correctional facilities if at the time of sentencing the defendant is sixteen years of age or older but under the age of twenty-one years, and if, in the opinion of the court, rehabilitation of the person convicted can best be obtained by such a sentence, and if it also appears to the court that the best interests of the person and of the public and the ends of justice would thereby be served.

(3) Repealed.

(4) With regard to any juvenile sentenced to the department of corrections, the executive director shall consider the juvenile's safety and well-being in determining the facility in which to house the juvenile, the persons with whom the juvenile has contact, and the activities in which the juvenile engages.

Source: L. 72: R&RE, p. 248, § 1. **C.R.S. 1963:** § 39-11-301. **L. 79:** (1) and (2) amended and (3) repealed, pp. 679, 705, §§ 6, 88, effective July 1. **L. 93:** (2) amended, p. 53, § 14, effective July 1. **L. 96:** (4) added, p. 1680, § 4, effective January 1, 1997.

ANNOTATION

Law reviews. For article, "Criminal Procedure in Colorado — A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For article, "One Year Review of Constitutional and Administrative Law", see 34 Dicta 79 (1957). For article, "One Year Review of Criminal Law", see 34 Dicta 98 (1957). For article, "One Year Review of Criminal Law and Procedure", see 35 Dicta 26 (1958). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "Indeterminate Sentencing of Criminals", see 33 Rocky Mt. L. Rev. 536 (1961). For article, "Comment on Indeterminate Sentencing of Criminals", see 33 Rocky Mt. L. Rev. 544 (1961). For article, "One Year Review of Criminal Law and Procedure", see 38 Dicta 65 (1961).

Annotator's note. Since § 16-11-301 is similar to repealed § 39-10-1, C.R.S. 1963, § 39-10-1, CRS 53, and CSA, C. 48, § 512, relevant cases construing those provisions have been included in the annotations to this section. Most of the cases annotated were decided prior to the 1979 amendments to this section deleting references to the Colorado state reformatory.

The power to confine persons is delegated by legislative enactment; courts have no such inherent power. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

A penitentiary sentence is more severe than a reformatory sentence under

Colorado law because it carries the stigma of a felony. Petsche v. Clingan, 273 F.2d 688 (10th Cir. 1960).

Sentence to reformatory within discretion of judge. Where a defendant is less than 21 years of age at the time of sentence, a trial judge is vested with a discretion to sentence him to the reformatory or the state penitentiary. McKinney v. People, 138 Colo. 294, 332 P.2d 895 (1958).

Under this section persons convicted of a crime punishable by imprisonment in the penitentiary who are under the age of 21 years may, in the discretion of the court, be sentenced to the state reformatory or to the penitentiary, as the best interest of the person and of the public may require. Roy v. Tinsley, 142 Colo. 241, 350 P.2d 564 (1960).

The question of sentence, once there is a conviction, is left to the discretion of the court; this was clearly the intent of the general assembly. Bitner v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963).

The choice of place of confinement is within the sound discretion of the court, just as is the length of term of imprisonment. People v. Weihs, 187 Colo. 124, 529 P.2d 317 (1974).

Court not bound by probation reports. A probation officer's finding or recommendation that a defendant would benefit from probation does not require the trial court to grant probation, or to sentence defendant to an indeterminate term in the state reformatory. Bitner v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963).

And sentence stands unless discretion is abused. It is the trial court, having the opportunity to examine a petitioner and the probation reports, who is best equipped to determine where he should be required to serve his sentence, and in the absence of a showing of abuse of judicial discretion the sentence must stand. Bitner v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963).

This section read with statute fixing penalty for crime. In considering whether a sentence is within the provisions of the statute fixing the penalty for the commission of a crime, this section which provides for commitment to the reformatory in certain cases is fully applicable and applies when the pertinent facts are present. Rivera v. People, 128 Colo. 549, 265 P.2d 226 (1953); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

It refers to age of defendant at time of sentence and not to the time of the commission of an offense. McKinney v. People, 138 Colo. 294, 332 P.2d 895 (1958).

Application of this section is limited to those persons who are of the full age of 18 (now 21) years at the time of sentence. Gallegos v. Tinsley, 139 Colo. 157, 337 P.2d 386 (1959).

The age of a defendant on the date of the commission of the crime is not determinative of the punishment to be imposed, but rather his age at the time of sentence is controlling. Maes v. Tinsley, 143 Colo. 405, 353 P.2d 586 (1960).

It does not apply to class one felonies. This section has at all times contained the exception pertaining to persons convicted of

crimes involving the penalty of imprisonment for life (now class one felonies). Thompson v. People, 136 Colo. 336, 316 P.2d 1043 (1957); Maes v. Tinsley, 143 Colo. 405, 353 P.2d 586 (1960).

Where court is bound by jury sentencing. Where jury found defendant guilty of first-degree murder and fixed penalty at imprisonment for life, court had no discretion but to give sentence accordingly. People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P.2d 420 (1972).

Absent statute, minor punishable as adult. Unless there is a statute which makes mandatory a sentence, in the case of a minor, other than that applicable to adults, an offense committed by a minor is punishable in the same manner as though committed by an adult. Gallegos v. Tinsley, 139 Colo. 157, 337 P.2d 386 (1959).

Court may sentence juvenile as an adult. The district court has the authority to sentence a juvenile charged as an adult to the department of corrections for the term of imprisonment authorized for adults. Rocha v. People, 713 P.2d 350 (Colo. 1986).

The court's statutory authority to sentence a defendant to the department of corrections does not expressly include the authority to dictate the conditions of confinement. The management, supervision, and control of department facilities are exclusively vested in its director. People v. Harris, 934 P.2d 882 (Colo. App. 1997).

Trial court lacks jurisdiction to order that a juvenile, sentenced as an adult, be placed in a therapeutic program within the department of institutions (now human services). The executive director of the department of corrections has the sole authority to determine where an offender serves his or her sentence. White v. Adamek, 907 P.2d 735 (Colo. App. 1995).

The legislative intent of this section is to give the executive director of the department of corrections ultimate responsibility for placing of inmates in particular facilities. Thus, the court could recommend sentencing to an out-of-state facility, but it could not order such placement. People v. Brack, 821 P.2d 928 (Colo. App. 1991).

A county court is bound by this section in the sentencing of minors. Latham v. People, 136 Colo. 252, 317 P.2d 894, 334 P.2d 437 (1957).

Court may not disregard legislative sentencing mandates. A court is not free to disregard the legislative mandate of §§ 16-11-201 and 16-11-308 and this section, even when it appears to dictate a sentence which the court considers inappropriate to a particular case. People ex rel. Gallagher v. District Court, 632 P.2d 1009 (Colo. 1981).

A sentence providing for incarceration in an institution other than that provided by law is void as beyond the jurisdiction of the sentencing court. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Habeas corpus is a proper remedy to afford relief from a void sentence, but not from an erroneous sentence. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

A judgment and sentence to the penitentiary for any term, when the law requires a reformatory confinement, is a void judgment and habeas corpus is a proper remedy to afford relief. Rivera v. People, 128 Colo. 549, 265 P.2d 226 (1953); Barrett v. People, 136 Colo. 144, 315 P.2d 192 (1957); Petsche v. Clingan, 273 F.2d 688 (10th Cir. 1960); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Sentence valid. Where it is within the discretion of a trial court to sentence a defendant to the reformatory or to the penitentiary and the sentence is to the penitentiary, and within the minimum and maximum term of years authorized, the sentence is valid. Bartell v. People, 137 Colo. 300, 324 P.2d 378 (1958).

Penitentiary sentence was not abuse of discretion. Where the sentence of one convicted of a crime to the state reformatory or to the penitentiary rests in the discretion of the trial court, a petition for a writ of habeas corpus is properly denied where the record discloses that the petitioners, who were 18 years of age, had four previous convictions for various offenses and the probation officer recommended sentences to the penitentiary rather than to the state reformatory, and petitioners were so sentenced. Roy v. Tinsley, 142 Colo. 241, 350 P.2d 564 (1960).

Reformatory sentence in county different from court is proper. Jurisdiction is conferred upon the court to impose the sentence in a reformatory and although the reformatory may be in another county from that in which the particular justice conducts proceedings, whatever authority is essential to commitment therein is necessarily implied. Aranda v. Patterson, 146 Colo. 424, 361 P.2d 782 (1961).

Applied in People v. Baca, 179 Colo. 156, 499 P.2d 317 (1972); People v. Ybarra, 652 P.2d 182 (Colo. App. 1982); Castro v. District Court, 656 P.2d 1283 (Colo. 1982); People v. Lockhart, 699 P.2d 1332 (Colo. 1985).

16-11-302. Duration of sentences for felonies. (Repealed)

Source: L. 72: R&RE, p. 248, § 1. **C.R.S. 1963:** § 39-11-302. **L. 76:** Entire section amended, p. 546, § 3, effective July 1. **L. 77:** Entire section amended, p. 864, § 8, effective July 1, 1979. **L. 79:** Entire section amended, p. 664, § 3, effective July 1; entire section amended, p. 680, § 7, effective July 1. **L. 2002:** Entire section amended, p. 1137, § 1, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-404.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-302.5. Duration of sentences for misdemeanors. (Repealed)

Source: L. 79: Entire section added, p. 665, § 4, effective August 1; entire section amended, p. 680, § 8, effective July 1. **L. 85:** Entire section amended, p. 1359, § 9, effective June 28. **L. 87:** Entire section amended, p. 816, § 18, effective October 1. **L. 96:** Entire section amended, p. 1689, § 19, effective January 1, 1997. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-502.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-303. Definite sentence not void. (Repealed)

Source: L. 72: R&RE, p. 249, § 1. **C.R.S. 1963:** § 39-11-303. **L. 77:** Entire section repealed, p. 888, § 78, effective July 1, 1979. **L. 79:** Entire section RC&RE, p. 665, § 5, effective August 1; entire section amended, p. 681, § 9, effective July 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-508.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-304. Determinate sentence of imprisonment imposed by court. (Repealed)

Source: L. 72: R&RE, p. 249, § 1. **C.R.S. 1963:** § 39-11-304. **L. 73:** p. 503, § 2. **L. 76:** (2)(b) amended, p. 530, § 2, effective April 9; (2)(a) amended, p. 547, § 4, effective July 1. **L. 77:** Entire section R&RE, p. 864, § 9, effective July 1, 1979. **L. 79:** Entire section amended, p. 665, § 6, effective July 1. **L. 99:** Entire section amended, p. 1151, § 15, effective July 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-408.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-305. Sentence not void if for definite period. (Repealed)

Source: L. 72: R&RE, p. 249, § 1. **C.R.S. 1963:** § 39-11-305. **L. 73:** p. 504, § 3. **L. 77:** Entire section repealed, p. 888, § 78, effective July 1, 1979.

16-11-306. Credit for presentence confinement. (Repealed)

Source: L. 72: R&RE, p. 249, § 1. **C.R.S. 1963:** § 39-11-306. **L. 73:** p. 506, § 1. **L. 74:** (4) amended, p. 408, § 25, effective April 11. **L. 77:** (3) amended, p. 865, § 10, effective July 1, 1979. **L. 79:** Entire section R&RE, p. 665, § 7, effective July 1. **L. 86:** Entire section amended, p. 734, § 3, effective July 1. **L. 88:** Entire section amended, p. 663, § 2, effective July 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-405.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-307. Credit for confinement pending appeal.

(1) (a) A defendant whose sentence was stayed pending appeal prior to July 1, 1972, but who was confined pending disposition of the appeal, is entitled to credit against the maximum and minimum terms of his sentence for the entire period of confinement served while the stay of execution was in effect.

(b) A defendant whose sentence is stayed pending appeal after July 1, 1972, but who is confined pending disposition of the appeal, is entitled to credit against the term of his sentence for the entire period of such confinement, and this is so even though the defendant could have elected to commence serving his sentence before disposition of his appeal.

(2) The sheriff or other officer having charge of the defendant during such confinement shall endorse the length of such confinement on the mittimus and deliver it to the prison authorities when the defendant is delivered for commitment.

(3) The credit shall be computed by the prison authorities to the date of commitment. The computation shall be made as soon as practicable and the credit automatically awarded. The defendant shall be advised of the credit as soon as it is computed.

Source: L. 72: R&RE, p. 249, § 1. **C.R.S. 1963:** § 39-11-307. **L. 73:** p. 507, § 1. **L. 79:** (1)(b) amended, p. 666, § 8, effective July 1.

ANNOTATION

Defendant who is released on an appeal bond under conditions that do not so limit the defendant's liberty as to constitute "confinement" is not entitled to credit against a sentence for the period spent pending disposition of an appeal. "Confinement" in this section is subject to the same interpretation as used in § 16-11-306. Thus, where the defendant was released on an appeal bond and, like an offender in community corrections on non-residential status, she was able to carry on a wide range of activities open to persons who have never been convicted of any crime, such as obtaining employment, going to school, and being with her family and friends, the defendant was not entitled to credit against her sentence for the time spent released on appeal bond. People v. Sloan, 3 P.3d 497 (Colo. App. 2000).

16-11-308. Custody of department of corrections - procedure.

(1) When any person is sentenced to any correctional facility, that person shall be deemed to be in the custody of the executive director of the department of corrections or his designee.

(2) Any person sentenced pursuant to subsection (1) of this section shall initially be confined in the diagnostic center, as defined in section 17-40-101 (1.5), C.R.S., unless otherwise authorized by the executive director or the executive director's designee, to undergo evaluation and diagnosis to determine whether such person should be confined in a correctional facility or any other state institution, or whether such person should participate in a rehabilitation program as provided by law; except that no person subject to the provisions of section 16-11-301 (2) shall serve such person's sentence in any state correctional facility.

(3) When such evaluation and diagnosis is completed, a recommendation shall be made to the executive director of the department of corrections or his designee as to the place of confinement or rehabilitation program as provided by law which may result in the maximum rehabilitation of the offender.

(4) Copies of the evaluation and diagnosis and the recommendation shall be shown and explained to the offender upon request; except that the executive director of the department of corrections or his designee may withhold any information he deems to be detrimental to the rehabilitation of the offender.

(4.5) Repealed.

(5) The executive director of the department of corrections or his designee is further authorized to transfer said person to any state institution or treatment facility under the jurisdiction of or approved by the department of corrections if he deems it to be in the best interests of said person and the public. Insofar as is practicable, said transfer shall be consistent with the evaluation and diagnosis and recommendation.

Source: L. 74: Entire section added, p. 240, § 1, effective May 7. **L. 77:** (1), (3), (4), and (5) amended, p. 901, § 3, effective August 1. **L. 78:** (2) amended, p. 356, § 1, effective April 27. **L. 79:** Entire section amended, p. 681, § 10, effective July 1. **L. 93:** (2) amended, p. 53, § 15, effective July 1. **L. 97:** (2) amended, p. 27, § 3, effective March 20. **L. 2000:** (4.5) added, p. 1027, § 5, effective July 1. **L. 2001:** (4.5)(a)(I) amended, p. 957, § 5, effective July 1. **L. 2002:** IP(4.5)(a) amended, p. 1151, § 5, effective July 1; (4.5)(a)(I) amended, p. 1496, § 146, October 1. **L. 2006:** (4.5)(c) added by revision, pp. 1689, 1693, §§ 5, 17.

Editor's note: Subsection (4.5)(c) provided for the repeal of subsection (4.5), effective July 1, 2007. (See L. 2006, pp. 1689, 1693.)

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4.5)(a)(I), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Court may not disregard legislative sentencing mandates. A court is not free to disregard the legislative mandate of §§ 16-11-201 and 16-11-301 and this section, even when it appears to dictate a sentence which the court considers inappropriate to a particular case. People ex rel. Gallagher v. District Court, 632 P.2d 1009 (Colo. 1981).

Under this section and § 17-22.5-103, a defendant is entitled to credit against a sentence for time spent in the county jail after sentencing. People v. Mack, 681 P.2d 949 (Colo. 1984).

The court's statutory authority to sentence a defendant to the department of corrections does not expressly include the authority to dictate the conditions of confinement. The management, supervision, and control of department facilities are exclusively vested in its director. People v. Harris, 934 P.2d 882 (Colo. App. 1997).

Subsection (1) does not require a Colorado sentence that is imposed to run consecutively to an out-of-state sentence to begin to run on the date the Colorado sentence is imposed. It simply clarifies a defendant's custodial status after sentencing when the defendant remains in the county jail awaiting transfer to a correctional facility. People v. Mackey, 101 P.3d 1143 (Colo. App. 2004).

Applied in Ramos v. Lamm, 485 F. Supp. 122 (D. Colo. 1979); People v. Baker, 694 P.2d 377 (Colo. App. 1984).

16-11-308.5. Authority to contract with a county or a city and county for placement of prisoners in custody of executive director.

(1) The general assembly hereby finds and declares that the department of corrections needs to reduce the backlog of state prisoners in local jails and that such reduction may occur by means of contracting with local jails for jail space in an amount equal to the number of inmates backlogged in local jails. The general assembly also finds and declares that it is the general assembly's intent that the department of corrections cooperate with each contracting county or city and county to select inmates for placement who will eventually be released in that county, city and county, or geographic area, or who have special protective needs, or who have occupational skills or plans that are compatible with the county's or city and county's needs.

(1.5) For the purposes of this section, "local jail" means a jail or an adult detention center of a county or city and county.

(2) (a) The executive director of the department of corrections may enter into a contract with any county or city and county for the placement in a local jail of any person who is in the custody of the executive director. Subject to appropriations, the executive director may provide an incentive to any county or city and county to encourage such county or city and county to so

contract. The incentive shall not exceed ten percent of the daily rate as determined pursuant to section 17-1-112, C.R.S., multiplied by the number of days of confinement of any such person in such local jail.

(b) In any such placement in a local jail, the executive director shall be governed by the provisions of section 16-11-308 and shall retain jurisdiction over any person so placed for the purpose of any transfer to a state institution or treatment facility pursuant to section 16-11-308 (5).

(3) Except for contracts executed in the fiscal year beginning July 1, 1988, the board of county commissioners in each county or city council of each city and county desiring to contract with the department of corrections shall notify said department, on or before September 1 of each year, of the jail space available for contract on July 1 of the following year.

(4) Commencing with the fiscal year beginning July 1, 1988, the department of corrections shall execute contracts with counties or city and counties indicating a willingness to contract for available jail space as soon as is practicable after July 1, 1988.

(5) Beginning with budget requests required to be submitted by November 1, 1988, the executive director of the department of corrections shall include the costs of contracting for jail space in the department's annual budget request to be submitted to the joint budget committee.

Source: L. 88: Entire section added, p. 676, § 1, effective July 1; entire section added, p. 709, § 7, effective July 1. **L. 91:** (1) to (4) amended and (1.5) added, p. 339, § 4, effective May 24. **L. 93:** (1.5) and (2)(a) amended, p. 406, § 4, effective April 19.

Cross references: For the authority of counties to enter into contracts with the executive director of the department of corrections, see § 30-11-101 (1)(h).

ANNOTATION

C.R.C.P. 106(a)(4) provides a method to review actions taken by county employee based upon the department of corrections code of penal discipline. Murphy v. Pakenham, 923 P.2d 375 (Colo. App. 1996).

16-11-309. Mandatory sentences for violent crimes. (Repealed)

Source: L. 76: Entire section added, p. 547, § 5, effective July 1. **L. 77:** (1) amended, p. 902, § 4, effective July 13; (1) amended and (3) repealed, pp. 865, 888, §§ 11, 78, effective July 1, 1979. **L. 79:** (1) amended, p. 666, § 9, effective August 1. **L. 81:** (1) and (2) amended, p. 944, § 1, effective July 1; (1) amended, p. 971, § 2, effective July 1. **L. 82:** (2)(a), (4), and (5) amended and (6) and (7) added, pp. 314, 315, §§ 3, 4, effective July 1. **L. 83:** (2)(a)(I) amended, p. 682, § 1, effective July 1. **L. 85:** (1)(a) amended, p. 647, § 1, effective July 1. **L. 88:** (1) amended, p. 679, § 1, effective July 1. **L. 89:** (8) added, p. 875, § 9, effective June 5. **L. 91:** (1)(b), (2)(a)(I), and (2)(b) amended, p. 1781, § 3, effective July 1. **L. 93:** (1)(b), (2)(a)(I), and (2)(b) amended, p. 1633, § 15, effective July 1. **L. 94:** (1)(b) amended and (2) R&RE, pp. 1714, 1715, §§ 2, 3, effective July 1. **L. 95:** (2)(c) amended, p. 1096, § 13, effective May 31; (1)(b) repealed, p. 1250, §3, effective July 1. **L. 98:** (1)(c) added, p. 1291, § 9, effective November 1, 1998. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to section 18-1.3-406.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-310. Release from incarceration. (Repealed)

Source: L. 77: Entire section added, p. 865, § 12, effective July 1, 1979. **L. 79:** Entire section R&RE, p. 666, § 10, effective July 1. **L. 88:** Entire section repealed, p. 715, § 25, effective July 1.

16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (Repealed)

Source: L. 93, 1st Ex. Sess.: Entire section added, p. 13, § 5, effective September 13. **L. 94:** (2)(a) amended, p. 909, § 4, effective April 28; (2)(a), (2)(b), (4), (5)(a), (5)(c), (6), and (10)(a) amended and (2.1), (3.3), and (3.4) added, p. 2089, § 1, effective June 3; (2)(a) amended and (10)(d) added, pp. 2584, 2585, §§ 2, 3, effective July 1. **L. 95:** (4.5) added and (5)(a) amended, p. 871, § 3, effective May 24; (2)(a)(I) and IP(2.1)(a) amended, p. 1096, § 14, effective May 31. **L. 96:** (2)(a)(I), (3.3)(c), and (3.4)(b) amended, p. 1145, § 1, effective July 1; (1)(b), (2)(a)(I),

IP(2.1)(a), and (10)(d) amended, p. 1689, § 20, effective January 1, 1997. **L. 98:** (10)(a), (10)(b), and (10)(d) amended, p. 725, § 3, effective May 18. **L. 99:** (10)(a) and (13) amended, p. 43, § 1, effective March 15; (1)(b) and (2)(a)(I) amended, p. 1371, § 3, effective July 1. **L. 2000:** (1)(c), (1)(d), (3.4)(d), and (4.3) added and (2)(a)(I), (2)(a)(II), (2)(a.5), (3)(e), (3.3)(b)(II), (3.4)(b), (3.4)(c), (5), (8), and (10)(c) amended, p. 1003, §§ 1, 2, 3, effective May 26; (11.5) added, p. 925, § 18, effective July 1. **L. 2001:** (3.4)(d) amended, p. 1490, § 11, effective June 8; (2)(a)(IV) added and (3.3)(d) amended, p. 231, §§ 1, 2, effective July 1. **L. 2002:** (11.5) amended, p. 1151, § 6, effective July 1; (11.5)(a)(I) amended, p. 1183, § 14, effective July 1; (10)(a) and (10)(c) amended, p. 881, § 19, effective August 7; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: Amendments to subsections (10)(a) and (10)(c) in House Bill 02-1352 and amendments to subsection (11.5)(a)(I) in Senate Bill 02-019 and Senate Bill 02-010 were harmonized with House Bill 02-1046 and relocated to section 18-1.3-407.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11-312. Intensive family preservation program - juveniles sentenced to the youthful offender system - legislative declaration - development of a plan for a pilot program - duty of department - report. (Repealed)

Source: L. 94: Entire section added, p. 2067, § 1, effective July 1.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1995. (See L. 94, p. 2067.)

PART 4

DEATH PENALTY - EXECUTION

16-11-401 to 16-11-405. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: (1) This part 4 was numbered as article 11 of chapter 39, C.R.S. 1963. This article was repealed and reenacted in 1972, and this part 4 was subsequently repealed in 2002. For amendments to this part 4 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 4 were relocated to part 12 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 12 and the comparative tables located in the back of the index.

(2) For historical information concerning the 1972 repeal and reenactment of this article, see the editor's note before the article 1 heading.

Cross references: For the legislative declaration contained in the 2002 act repealing this part 4, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 5

SENTENCES TO PAYMENT OF FINES - COSTS

16-11-501 to 16-11-502. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: (1) This part 5 was numbered as article 11 of chapter 39, C.R.S. 1963. This article was repealed and reenacted in 1972, and this part 5 was subsequently repealed in 2002. For amendments to this part 5 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 5 were relocated to part 7 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 7 and the comparative tables located in the back of the index.

(2) For historical information concerning the 1972 repeal and reenactment of this article, see the editor's note before the article 1 heading.

PART 6

RIGHT TO ATTEND SENTENCING

16-11-601. Right to attend sentencing.

The victim of any crime or a relative of the victim, if the victim has died, has the right to attend all sentencing proceedings resulting from a conviction of said crime under any laws of this state. Said person has the right to appear, personally or with counsel, at the sentencing proceeding and to adequately and reasonably express his or her views concerning the crime, the defendant, the need for restitution, and the type of sentence which should be imposed by the court. The court, in imposing sentence, shall consider the statements of such person and shall make a finding, on the record, as to whether or not the defendant would pose a threat to public safety if granted probation.

Source: L. 84: Entire part added, p. 499, § 1, effective July 1.

Cross references: For the right to attend parole hearings, see § 17-2-214; for the right to attend dispositional, review, and restitution proceedings under the "Colorado Children's Code", see § 19-2-112.

PART 7

COMMUNITY OR USEFUL PUBLIC SERVICE

16-11-701. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: This part 7 was added in 1987. For amendments to this part 7 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 7 were relocated to § 18-1.3-507.

Cross references: For the legislative declaration contained in the 2002 act repealing this part 7, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 8

APPLICABILITY OF PROCEDURE IN CLASS 1 FELONY CASES FOR CRIMES COMMITTED ON OR AFTER JULY 1, 1988, AND PRIOR TO SEPTEMBER 20, 1991

Cross references: For provisions relating to the imposition of sentences in class 1 felonies, see § 18-1.3-1201.

16-11-801 to 16-11-802. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: This part 8 was added in 1991. For amendments to this part 8 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 8 were relocated to part 13 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 13 and the comparative table located in the back of the index.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 9

REPEAL OF THE DEATH PENALTY

16-11-901. Death penalty repeal - applicability - current sentences.

For offenses charged on or after July 1, 2020, the death penalty is not a sentencing option for a defendant convicted of a class 1 felony in the state of Colorado. Nothing in this section commutes or alters the sentence of a defendant convicted of an offense charged prior to July 1, 2020. This section does not apply to a person currently serving a death sentence. Any death sentence in effect on July 1, 2020, is valid.

Source: L. 2020: Entire part added, (SB 20-100), ch. 61, p. 204, § 1, effective March 23.

ARTICLE 11.3

Colorado Commission on Criminal and Juvenile Justice

16-11.3-101 to 16-11.3-105. (Repealed)

ARTICLE 11.5

Substance Abuse in the Criminal Justice System

16-11.5-101. Legislative declaration.

16-11.5-102. Substance abuse assessment - standardized procedure.

16-11.5-103. Substance abuse assessment required - convicted felons - controlled substance offenders. (Repealed)

16-11.5-104. Sentencing of felons - parole of felons - treatment and testing based upon assessment required. (Repealed)

16-11.5-105. Departments shall develop testing programs and behavioral response systems.

16-11.5-106. Samples for testing of offenders - collected by probation or community parole officers or contract providers of testing services.

16-11.5-107. Report to the general assembly. (Repealed)

16-11.5-101. Legislative declaration.

The general assembly declares that substance abuse, specifically the abuse of alcohol and controlled substances, is a major problem in the criminal justice system of the state of Colorado and in the entire nation. Substance abuse is a significant factor in the commission of crimes, and it is a significant factor in impeding the rehabilitation of persons convicted of crimes, which results in an increased rate of recidivism. Therefore, the general assembly resolves to curtail the disastrous effects of substance abuse in the criminal justice system by providing for consistency in the response to substance abuse throughout the criminal justice system and to improve and standardize substance abuse treatment for people at each stage of the criminal justice system and to provide a range of individualized behavioral responses for people who do not respond

successfully to substance abuse treatment while the people are involved with the criminal justice system.

Source: L. 91: Entire article added, p. 437, § 3, effective May 29. **L. 2022:** Entire section amended, (HB 22-1257), ch. 69, p. 355, § 6, effective April 7.

16-11.5-102. Substance abuse assessment - standardized procedure.

(1) The judicial department, the department of corrections, the state board of parole, the division of criminal justice of the department of public safety, and the department of public health and environment shall cooperate to develop and implement the following:

(a) A standardized procedure for the assessment of the use of controlled substances by offenders, which procedure shall include the administration of a chemical test of such offender for the presence of controlled substances or alcohol, or such other test of the offender for the presence of controlled substances or alcohol as deemed appropriate by the supervising agency. The assessment procedure developed pursuant to this paragraph (a) shall provide an evaluation of the extent of an offender's abuse of substances, if any, and recommend treatment which is appropriate to the needs of the particular offender.

(b) A system of programs for education and treatment of abuse of substances which can be utilized by offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph (b) shall be as flexible as possible so that such programs may be utilized by each particular offender to the extent appropriate to that offender. The programs developed pursuant to this paragraph (b) shall be structured in such a manner that the programs provide a continuum of education and treatment programs for each offender as he proceeds through the criminal justice system and may include, but shall not be limited to, attendance at self-help groups, group counseling, individual counseling, outpatient treatment, inpatient treatment, day care, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. Any programs developed pursuant to this paragraph (b) shall include a system of periodic or random chemical testing for the presence of controlled substances or alcohol, or such other testing as provided in paragraph (a) of this subsection (1). The frequency of such testing shall be that which is appropriate to the particular offender in accordance with the offender's assessment performed pursuant to paragraph (a) of this subsection (1).

(c) A system of punitive sanctions for offenders who test positive for the use of substances subsequent to the initial test and after being placed in an education or treatment program. The

sanctions developed pursuant to this paragraph (c) should allow for appropriate responses by the criminal justice system to each occurrence of a positive test by an offender, each of which shall become a permanent part of the offender's record.

(2) to (9) Repealed.

Source: L. 91: Entire article added, p. 437, § 3, effective May 29. **L. 94:** IP(1) and (3) amended, pp. 2731, 2604, §§ 351, 3, effective July 1. **L. 2000:** (3) amended, p. 491, § 2, effective May 4. **L. 2002:** (3)(b)(I) amended, p. 1496, § 147, effective October 1. **L. 2003:** (3)(a) amended and (4) to (9) added, p. 2686, § 5, effective July 1. **L. 2009:** (9) repealed, (SB 09-292), ch. 369, p. 1947, § 27, effective August 5. **L. 2010:** (3)(c) added, (HB 10-1352), ch. 259, p. 1171, § 10, effective August 11. **L. 2011:** (3)(a) amended, (HB 11-1303), ch. 264, p. 1154, § 24, effective August 10. **L. 2012:** (2), (3), (4), (5), (6), (7), and (8) repealed, (HB 12-1310), ch. 268, p. 1411, § 37, June 7.

Editor's note: Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2006. (See L. 2000, p. 491.)

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1) and subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsection (3)(b)(I), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2003 act amending subsection (3)(a) and enacting subsections (4) to (9), see section 1 of chapter 424, Session Laws of Colorado 2003.

16-11.5-103. Substance abuse assessment required - convicted felons - controlled substance offenders. (Repealed)

Source: L. 91: Entire article added, p. 439, § 3, effective May 29. **L. 94:** (2) amended, p. 2550, § 37, effective January 1, 1995. **L. 2002:** (2) amended, p. 1919, § 9, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: Senate Bill 02-057 amended subsection (2). This section as amended by Senate Bill 02-057 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-209.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11.5-104. Sentencing of felons - parole of felons - treatment and testing based upon assessment required. (Repealed)

Source: L. 91: Entire article added, p. 439, § 3, effective May 29. **L. 2000:** Entire section amended, p. 235, § 5, effective July 1. **L. 2002:** Entire section amended, p. 665, § 10, effective May 28; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: House Bill 02-1229 amended this section. This section as amended by House Bill 02-1229 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-211.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-11.5-105. Departments shall develop testing programs and behavioral response systems.

(1) The judicial department, the department of public health and environment, the department of corrections, the state board of parole, and the division of criminal justice of the department of public safety shall cooperate to develop programs for the periodic testing of offenders under the jurisdiction of each agency and programs for the periodic reassessment of appropriate offenders under the jurisdiction of each agency. Any such periodic testing or treatment of an offender shall be based upon recommendations of appropriate treatment and testing made in the initial substance abuse assessment required by section 18-1.3-209, C.R.S., or any subsequent reassessment.

(2) Any offender who tests positive for the use of alcohol or controlled substances subsequent to the initial test required by section 18-1.3-209 shall be subjected to a system of structured and individualized behavioral responses. The judicial department, the department of corrections, the state board of parole, and the division of criminal justice of the department of public safety shall cooperate to develop and make public a range of structured and individualized behavioral responses for those people under the jurisdiction of each agency that are appropriate

to the people supervised by each particular agency. A system of structured and individualized behavioral responses must include an accountability-based series of behavioral responses, sanctions, incentives, and services designed to respond to an offender's violation behavior quickly, fairly, consistently, and proportionally. The system must also be designed to motivate positive behavior change, successful completion of supervision, and an offender's individualized treatment or behavior change goals using research-informed strategies designed to reduce the likelihood of continued involvement with the criminal justice system. It is the intent of the general assembly that any offender's test that is positive for the use of controlled substances or alcohol is addressed with a range of behavioral responses prior to consideration for revocation or resentencing by the court or prior to consideration of revocation by the state board of parole.

(3) The judicial department, the department of corrections, the state board of parole, and the division of criminal justice of the department of public safety shall cooperate to develop and implement a range of incentives for offenders under the jurisdiction of each particular agency to motivate recovery from a substance use disorder and abstinence from harmful use of alcohol or controlled substances.

(4) On or before July 1, 1992, the state board of parole shall develop and make public guidelines for the revocation of parole due to the abuse of alcohol or controlled substances in violation of this article.

Source: L. 91: Entire article added, p. 440, § 3, effective May 29. **L. 94:** (1) amended, p. 2732, § 352, effective July 1. **L. 2002:** (1) and (2) amended, p. 1496, § 148, effective October 1. **L. 2022:** (2) and (3) amended, (HB 22-1257), ch. 69, p. 355, § 7, effective April 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

When read together, the substance abuse in the criminal justice system statutes and § 17-2-103 authorize, but do not require, the board of parole to revoke parole and return a parolee to the department of corrections based upon a single positive drug test. Whidden v. People, 78 P.3d 1092 (Colo. 2003).

16-11.5-106. Samples for testing of offenders - collected by probation or community parole officers or contract providers of testing services.

Any type of sample for the chemical testing of any offender for the presence of controlled substances or alcohol pursuant to this article may be collected from the offender by his or her probation officer, community parole officer, case manager within the department of corrections, or any contract provider of testing services.

Source: L. 91: Entire article added, p. 441, § 3, effective May 29. **L. 2008:** Entire section amended, p. 654, § 1, effective April 25.

16-11.5-107. Report to the general assembly. (Repealed)

Source: L. 91: Entire article added, p. 441, § 3, effective May 29. **L. 94:** Entire section amended, p. 2732, § 353, effective July 1. **L. 96:** Entire section repealed, p. 1268, § 189, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 189, Session Laws of Colorado 1996.

ARTICLE 11.7

Standardized Treatment Program for Sex Offenders

16-11.7-101. Legislative declaration.

16-11.7-102. Definitions.

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

16-11.7-104. Sex offenders - evaluation and identification required.

16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation and identification required - subcommittee created.

16-11.7-106. Sex offender evaluation, treatment, and polygraph services - contracts with providers - placement on provider list - grievances - fund created - repeal.

16-11.7-107. Report to the general assembly. (Repealed)

16-11.7-108. Operation and construction of juvenile sex offender treatment facilities and new treatment modalities - repeal. (Repealed)

16-11.7-109. Reporting requirements - legislative declaration.

16-11.7-101. Legislative declaration.

(1) The general assembly finds that, to protect the public and to work toward the elimination of sexual offenses, it is necessary to comprehensively evaluate, identify, treat, manage, and monitor adult sex offenders who are subject to the supervision of the criminal justice system and juveniles who have committed sexual offenses who are subject to the supervision of the juvenile justice system.

(2) Therefore, the general assembly declares that it is necessary to create a program that establishes evidence-based standards for the evaluation, identification, treatment, management, and monitoring of adult sex offenders and juveniles who have committed sexual offenses at each stage of the criminal or juvenile justice system to prevent offenders from reoffending and enhance the protection of victims and potential victims. The general assembly does not intend to imply that all offenders can or will positively respond to treatment.

Source: L. 92: Entire article added, p. 455, § 3, effective June 2. **L. 2011:** Entire section R&RE, (HB 11-1138), ch. 236, p. 1015, § 1, effective May 27.

ANNOTATION

The purpose of this article as stated in the legislative declaration is to standardize procedures for all sex offenders. People v. Lenzini, 986 P.2d 980 (Colo. App. 1999) (decided prior to 2011 repeal and reenactment).

16-11.7-102. Definitions.

As used in this article 11.7, unless the context otherwise requires:

(1) "Adult sex offender" means a person who has been convicted, as described in subsection (2)(a)(I), (2)(a)(II), or (2)(a)(IV) of this section, of a sex offense, but does not include a person who meets the definition of a "juvenile who has committed a sexual offense", as defined in subsection (1.5) of this section, unless the person has also been convicted of a sex offense

committed on or after the day the person attained eighteen years of age or who is sentenced for a sex offense on or after the day the person attained twenty-one years of age.

(1.3) "Board" means the sex offender management board created in section 16-11.7-103.

(1.5) "Juvenile who has committed a sexual offense" means a juvenile who was less than eighteen years of age at the time of the sex offense and who has been adjudicated as a juvenile or who receives a deferred adjudication or who is sentenced prior to attaining twenty-one years of age after being criminally convicted in the district court pursuant to section 19-2-517 or 19-2-518 on or after July 1, 2002, or section 19-2.5-801 or 19-2.5-802 on or after October 1, 2021, for an offense that would constitute a sex offense, as defined in subsection (3) of this section, if committed as an adult, or a juvenile who has committed any offense, the underlying factual basis of which involves a sex offense.

(2) (a) "Sex offender" means any person who is:

(I) Convicted in the state of Colorado on or after January 1, 1994, of any sex offense as defined in subsection (3) of this section;

(II) Convicted in the state of Colorado on or after July 1, 2000, of any criminal offense, the underlying factual basis of which involves a sex offense;

(III) A juvenile who has committed a sexual offense; or

(IV) A person who:

(A) Was evaluated because of a discretionary request by a prosecuting attorney or court pursuant to section 16-11-102; and

(B) A court determines should undergo sex offender treatment based upon the recommendations of the evaluation and identification pursuant to section 16-11.7-104; and

(C) Is convicted in the state of Colorado on or after January 1, 1994, of any criminal offense and, if the person has previously been convicted of a sex offense as defined in subsection (3) of this section, in the state of Colorado; or if the person has previously been convicted in any other jurisdiction of any offense that would constitute a sex offense as defined in subsection (3) of this section; or if the person has a history of any sex offenses as defined in subsection (3) of this section.

(b) For purposes of this subsection (2), any person who receives a deferred judgment or deferred sentence for the offenses specified in this subsection (2) is deemed convicted.

(3) "Sex offense" means any of the following felony or misdemeanor offenses:

(a) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(c) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(g) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(h) Incest, in violation of section 18-6-301, C.R.S.;

(i) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(j) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(m) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(n) Soliciting for commercial sexual activity with a child, in violation of section 18-7-402;

(o) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(q) Keeping a place of commercial sexual activity with a child, in violation of section 18-7-404;

(r) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(s) Inducement of commercial sexual activity with a child, in violation of section 18-7-405.5;

(t) Engaging in commercial sexual activity with a child, in violation of section 18-7-406;

(t.5) As each of the following offenses existed prior to July 1, 2026: Soliciting for child prostitution, in violation of section 18-7-402; keeping a place of child prostitution, in violation of

section 18-7-404; inducement of child prostitution, in violation of section 18-7-405.5; or patronizing a prostituted child, in violation of section 18-7-406;

(u) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection (3);

(v) Class 3 and class 4 felony internet luring of a child, in violation of section 18-3-306 (3);

(w) Internet sexual exploitation of a child in violation of section 18-3-405.4, C.R.S.;

(x) Public indecency, committed in violation of section 18-7-301 (2)(b), if a second offense is committed within five years of the previous offense or a third or subsequent offense is committed;

(y) Invasion of privacy for sexual gratification, as described in section 18-3-405.6;

(z) Unlawful electronic sexual communication, in violation of section 18-3-418; or

(aa) Unlawful sexual conduct by a peace officer, in violation of section 18-3-405.7.

(4) "Treatment" means therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the board pursuant to section 16-11.7-103.

Source: L. 92: Entire article added, p. 455, § 3, effective June 2. **L. 95:** (4) amended, p. 465, § 10, effective July 1. **L. 97:** (2) amended, p. 1554, § 8, effective July 1. **L. 98:** (1) amended, p. 402, § 11, effective April 21. **L. 2000:** (2) amended, p. 920, § 9, effective July 1; (3)(a), (3)(b), and (3)(c) amended, p. 702, § 23, effective July 1. **L. 2006:** (3)(t) amended and (3)(v) and (3)(w) added, p. 2054, § 1, effective July 1. **L. 2010:** (3)(j) amended, (SB 10-140), ch. 156, p. 537, § 5, effective April 21; (3)(v) and (3)(w) amended and (3)(y) added, (SB 10-128), ch. 415, p. 2048, § 9, effective July 1; (3)(v) and (3)(w) amended and (3)(x) added, (HB 10-1334), ch. 359, p. 1709, § 4, effective August 11. **L. 2011:** (1) and (2)(a)(IV) amended and (1.3) and (1.5) added, (HB 11-1138), ch. 236, p. 1015, § 2, effective May 27. **L. 2014:** (3)(j) amended, (HB 14-1273), ch. 282, p. 1153, § 11, effective July 1. **L. 2019:** IP, (3)(x), and (3)(y) amended and (3)(z) added (HB 19-1030), ch. 145, p. 1759, § 2, effective July 1; IP, (3)(x), and (3)(y) amended and (3)(aa) added (HB 19-1250), ch. 287, p. 2663, § 2, effective July 1. **L. 2023:** (1), (1.5), and (2)(a) amended, (SB 23-164), ch. 349, p. 2085, § 2, effective June 5. **L. 2024:** (1) amended, (HB 24-1450), ch. 490, p. 3408, § 23, effective August 7. **L. 2026:** IP(3), (3)(n), (3)(q), (3)(s), (3)(t), and (3)(v) amended and (3)(t.5) added, (SB 26-015), ch. 335, p. 2036, § 14, effective July 1.

Cross references: For the legislative declaration in SB 26-015, see section 1 of chapter 335, Session Laws of Colorado 2026.

ANNOTATION

Even assuming that the department of corrections has authority to classify as a sex offender an inmate not found guilty of either a listed sex offense or an offense of which the underlying factual basis was a listed sex offense, due process requires that an inmate be afforded a hearing when the basis for such classification is not a listed sex offense of which the inmate stands convicted. Fisher v. Colo. Dept. of Corr., 56 P.3d 1210 (Colo. App. 2002).

The word "history" in the definition of "sex offender" can include the underlying circumstances of the offense. Thus, although the defendant pled guilty to contributing to the delinquency of a minor, she met the definition of a "sex offender" because she had engaged in soliciting for child prostitution, pandering of a child, procurement of a child for sexual exploitation, and inducement of child prostitution. The trial court therefore appropriately sentenced the defendant to treatment under the provisions of this article and required the defendant to register as a sex offender pursuant to § 18-3-412.5. People v. Meidinger, 987 P.2d 937 (Colo. App. 1999).

Although the defendant met the definition of a "sex offender" based on the underlying facts of the offense, the court could not impose the sex offender surcharge pursuant to § 18-21-103, where defendant pled guilty to contributing to the delinquency of a minor, an offense that is not a "sex offense" as defined in subsection (3). People v. Meidinger, 987 P.2d 937 (Colo. App. 1999).

Defendant who, in 1989, received a deferred sentence as a juvenile for a sexual offense had a "history" of a sex offense for purposes of subsection (2)(a)(II) and was properly evaluated as a sex offender and ordered to undergo sex offender treatment and supervision as a condition of probation for felony theft and menacing convictions. The juvenile adjudication provision in the statute is not the only way that a juvenile can meet the definition of "sex offender". People v. Boling, 261 P.3d 503 (Colo. App. 2011).

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

(1) There is hereby created in the department of public safety a sex offender management board that consists of twenty-five members. The membership of the board must reflect, to the extent possible, representation of urban and rural areas of the state and a balance of expertise in adult and juvenile issues relating to persons who commit sex offenses. The membership of the board consists of the following persons who are appointed as follows:

(a) The chief justice of the supreme court shall appoint three members as follows:

(I) One member who represents the judicial department;

(II) One member who is a district court judge; and

(III) One member who is a juvenile court judge or juvenile court magistrate;

(b) The executive director of the department of corrections shall appoint one member who represents the department of corrections;

(c) The executive director of the department of human services shall appoint three members as follows:

(I) One member who represents the department of human services and who has recognizable expertise in child welfare and case management;

(II) One member who represents the division of youth services in the department of human services; and

(III) One member who is a provider of out-of-home placement services with recognizable expertise in providing services to juveniles who have committed sexual offenses;

(d) The executive director of the department of public safety shall appoint sixteen members as follows:

(I) One member who represents the division of criminal justice in the department of public safety;

(II) Two members who are licensed mental health professionals with recognizable expertise in the treatment of adult sex offenders;

(III) Two members who are licensed mental health professionals with recognizable expertise in the treatment of juveniles who have committed sexual offenses;

(IV) One member who is a member of a community corrections board;

(V) One member who is a public defender with recognizable expertise related to sexual offenses;

(VI) One member who represents law enforcement with recognizable expertise in addressing sexual offenses and victimization;

(VII) Three members who are recognized experts in the field of sexual abuse and who can represent sexual abuse victims and victims' rights organizations;

(VIII) One member who is a clinical polygraph examiner;

(IX) One member who is a private criminal defense attorney with recognizable expertise related to sexual offenses;

(X) One member who is a county director of human or social services, appointed after consultation with a statewide group representing counties; and

(XI) Two members who are county commissioners or members of the governing council for a jurisdiction that is a contiguous city and county, one of whom shall represent an urban or suburban county and one of whom shall represent a rural county, appointed after consultation with a statewide group representing counties;

(e) The executive director of the Colorado district attorneys' council shall appoint one member who represents the interests of prosecuting attorneys and who has recognizable expertise in prosecuting sexual offenses; and

(f) The commissioner of education shall appoint one member who has experience with juveniles who have committed sexual offenses and who are in the public school system.

(2) The members of the board shall elect presiding officers for the board, including a chair and vice-chair, from among the board members appointed pursuant to subsection (1) of this section, which presiding officers shall serve terms of two years. Board members may re-elect a presiding officer.

(3) Members of the board shall serve at the pleasure of the appointing authority for terms of four years; except that the member appointed pursuant to subparagraph (IX) of paragraph (d) of subsection (1) of this section prior to July 1, 2011, shall serve the term of years in effect at the time of his or her appointment. The appointing authority may reappoint a member for an additional term or terms. Members of the board shall serve without compensation.

(4) **Duties of the board.** The board shall carry out the following duties:

(a) **Standards for identification and evaluation of adult sex offenders.**

(I) The board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify adult sex offenders, including adult sex offenders with developmental disabilities. The procedures shall provide for an evaluation and identification of the adult sex offender and recommend management, monitoring, and treatment based upon existing research and shall incorporate the concepts of the risk-need-responsivity or another evidence-based correctional model. There is currently no way to ensure that adult sex offenders with the propensity to commit sexual offenses will not reoffend. Because there are adult sex offenders who can learn to manage unhealthy patterns and learn behaviors that can lessen their risk to society in the course of ongoing treatment, management, and monitoring, the board shall develop a procedure for evaluating and identifying, on a case-by-case basis, reliably lower-risk sex offenders whose risk to sexually reoffend may not be further reduced by participation in treatment as described in paragraph (b) of this subsection (4). The board shall develop and implement methods of intervention for adult sex offenders, which methods have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the assessed needs of the particular offender, so long as there is no reduction in the safety of victims and potential victims.

(II) Repealed.

(b) **Guidelines and standards for treatment of adult offenders.**

(I) The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat adult sex offenders, including adult sex offenders with intellectual and developmental disabilities, incorporating in the guidelines and standards the concepts of the risk-need-responsivity or another evidence-based correctional model, which guidelines and standards can be used in the treatment of offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(b) must be as flexible as possible so that the programs may be accessed by each adult sex offender to prevent the offender from harming victims and potential victims. Programs must include a continuing monitoring process and a continuum of treatment options available to an adult sex offender as the offender proceeds through the criminal justice system. Treatment options must be determined by a current risk assessment and evaluation and may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, or treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(b) must, to the extent possible, be accessible to all adult sex offenders in the criminal justice system, including those offenders with behavioral, mental health, and co-occurring disorders and must ensure, to the extent possible, that treatment is responsive to the age and developmental status of the offender at the time of treatment, as well as the linguistic, cultural, religious, and racial characteristics; sexual orientation, as defined in section 24-34-301; gender identity, as defined in section 24-34-301; and gender expression, as defined in section 24-34-301, of the offenders served. The procedures for evaluation, identification, treatment, and monitoring developed pursuant to this subsection (4) must be implemented only to the extent that money is available in the sex offender surcharge fund created in section 18-21-103 (3).

(II) To revise the guidelines and standards developed pursuant to this paragraph (b), the board shall establish a committee to make recommendations to the board. At least eighty percent of the members of the committee must be approved treatment providers.

(III) Repealed.

(c) **Allocation of money in sex offender surcharge fund.** The board shall develop an annual plan for the allocation of moneys deposited in the sex offender surcharge fund created pursuant to section 18-21-103 (3), C.R.S., among the judicial department, the department of corrections, the division of criminal justice in the department of public safety, and the department of human services. In addition, the board shall coordinate the expenditure of moneys from the sex offender surcharge fund with any moneys expended by any of the departments described in this paragraph (c) to identify, evaluate, and treat adult sex offenders and juveniles who have

committed sexual offenses. The general assembly may appropriate moneys from the sex offender surcharge fund in accordance with the plan.

(d) **Risk assessment screening instrument.** The board shall consult on, 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 adult sex offender will 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. In carrying out this duty, the board shall consider research on adult sex offender risk assessment and shall consider as one element the risk posed by an adult sex offender who suffers from psychopathy or a personality disorder that makes the person more likely to engage in sexually violent predatory offenses. 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.

(e) **Evaluation of policies and procedures - report.**

(I) The board shall research, either through direct evaluation or through a review of relevant research articles and sex offender treatment empirical data, and analyze, through a comprehensive review of evidence-based practices, the effectiveness of the evaluation, identification, and treatment policies and procedures for adult sex offenders developed pursuant to this article. This research shall specifically include, but need not be limited to, reviewing and researching reoffense and factors that contribute to reoffense for sex offenders as defined in this article, the effective use of cognitive behavioral therapy to prevent reoffense, the use of polygraphs in treatment, and the containment model for adult sex offender management and treatment and its effective application. The board shall revise the guidelines and standards for evaluation, identification, and treatment, as appropriate, based upon the results of the board's research and analysis. The board shall also develop and prescribe a system to implement the guidelines and standards developed pursuant to paragraph (b) of this subsection (4).

(II) Repealed.

(f) **Criteria for measuring progress in treatment.**

(I) Pursuant to section 18-1.3-1009, C.R.S., concerning the criteria for release from incarceration, reduction in supervision, and discharge for certain adult sex offenders, the board, in collaboration with the department of corrections, the judicial department, and the state board of parole, shall develop and revise, as appropriate, criteria for measuring an adult sex offender's progress in treatment. The criteria shall assist the court and the state board of parole in determining whether an adult sex offender may appropriately be released from incarceration pursuant to section 18-1.3-1006 (1), C.R.S., or whether the adult sex offender's level of supervision may be reduced pursuant to section 18-1.3-1006 (2)(a) or 18-1.3-1008, C.R.S., or whether the adult sex offender may appropriately be discharged from probation or parole

pursuant to section 18-1.3-1006 or 18-1.3-1008, C.R.S. At a minimum, the criteria shall be designed to assist the court and the state board of parole in determining whether the adult sex offender could be appropriately supervised in the community if he or she were released from incarceration, released to a reduced level of supervision, or discharged from probation or parole. The criteria shall not limit the decision-making authority of the court or the state board of parole.

(II) The board, in collaboration with the department of corrections, the judicial department, and the state board of parole, shall establish standards for community entities that provide supervision and treatment specifically designed for adult sex offenders who have developmental disabilities. At a minimum, the standards shall determine whether an entity would provide adequate support and supervision to minimize any threat that the adult sex offender may pose to the community.

(g) **Living arrangements for adult sex offenders - recommendations.** The board shall research, analyze, and make recommendations that reflect best practices for living arrangements for and the location of adult sex offenders within the community, including but not limited to shared living arrangements. At a minimum, the board shall consider the safety issues raised by the location of sex offender residences, especially in proximity to public or private schools and child care facilities, and public notification of the location of sex offender residences. The board shall adopt and revise as appropriate such guidelines as it may deem appropriate regarding the living arrangements and location of adult sex offenders and adult sex offender housing. The board shall accomplish the requirements specified in this paragraph (g) within existing appropriations.

(h) **Data collection from treatment providers.**

(I) If the department of public safety acquires sufficient funding, the board may request that individuals or entities providing sex-offender-specific evaluation, treatment, or polygraph services that conform with standards developed by the board pursuant to paragraph (b) of this subsection (4) submit to the board data and information as determined by the board at the time that funding becomes available. This data and information may be used by the board to evaluate the effectiveness of the guidelines and standards developed pursuant to this article; to evaluate the effectiveness of individuals or entities providing sex-offender-specific evaluation, treatment, or polygraph services; or for any other purposes consistent with the provisions of this article.

(II) The board shall develop a data collection plan, including associated costs, in consultation with the research and evaluation professionals on the board and within the department of public safety. The board shall report on the data collection plan to the judiciary committees of the general assembly, or any successor committees, as part of its annual report presented pursuant to section 16-11.7-109 (2) in January 2017. By July 1, 2017, the board shall revise the guidelines and standards for approved providers developed pursuant to paragraphs (b) and (j) of this subsection (4) to require evaluators, treatment providers, and polygraph examiners to collect data pursuant to the data collection plan. If the board determines that it will be unable to complete the

revision of the guidelines and standards by July 1, 2017, the board shall report to the judiciary committees of the general assembly, or any successor committees, a projected completion date as part of its annual report presented pursuant to section 16-11.7-109 (2) in January 2017.

(h.5) **Compliance reviews of treatment providers.** Beginning September 1, 2024, and every two years thereafter, the board shall perform a compliance review of at least ten percent of treatment providers.

(i) **Standards for identification and evaluation of juvenile offenders.** The board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify juveniles who have committed sexual offenses, including juveniles with developmental disabilities. The procedure shall provide for an evaluation and identification of the juvenile offender and recommend behavior management, monitoring, treatment, and compliance and shall incorporate the concepts of the risk-need-responsivity or another evidence-based correctional model based upon the knowledge that all unlawful sexual behavior poses a risk to the community and that certain juveniles may have the capacity to change their behavior with appropriate intervention and treatment. The board shall develop and implement methods of intervention for juveniles who have committed sexual offenses, which methods have as a priority the physical and psychological safety of victims and potential victims and that are appropriate to the needs of the particular juvenile offender, so long as there is no reduction in the safety of victims and potential victims.

(j) (I) **Guidelines and standards for treatment of juveniles who have committed a sexual offense.** The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat juveniles who have committed a sexual offense, including juveniles with intellectual and developmental disabilities, incorporating in the guidelines and standards the concepts of the risk-need-responsivity or another evidence-based correctional model, which guidelines and standards may be used for juveniles who are placed on probation, committed to the department of human services, sentenced to community corrections, sentenced to the department of corrections, placed on parole, or placed in out-of-home placement. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(j) must be as flexible as possible so that the programs may be accessed by each juvenile to prevent the juvenile from harming victims and potential victims. Programs must provide a continuing monitoring process and a continuum of treatment options available as a juvenile proceeds through the juvenile or criminal justice system. Treatment options may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, and treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(j) must be, to the extent possible, accessible to all juveniles who have committed sexual offenses and who are in the juvenile or criminal justice system, including juveniles with behavioral, mental health, or co-occurring disorders and must ensure, to the extent possible, that treatment is responsive to the age and developmental status of the juvenile at the

time of treatment, as well as the linguistic, cultural, religious, and racial characteristics; sexual orientation, as defined in section 24-34-301; gender identity, as defined in section 24-34-301; and gender expression, as defined in section 24-34-301, of the juveniles served.

(II) To revise the guidelines and standards developed pursuant to this paragraph (j), the board shall establish a committee to make recommendations to the board. At least eighty percent of the members of the committee must be approved treatment providers.

(k) **Evaluation of policies and procedures for juvenile offenders.** The board shall research and analyze the effectiveness of the evaluation, identification, and treatment procedures developed pursuant to this article for juveniles who have committed sexual offenses. The board shall revise the guidelines and standards for evaluation, identification, and treatment, as appropriate, based upon the results of the board's research and analysis. The board shall also develop and prescribe a system to implement the guidelines and standards developed pursuant to paragraph (j) of this subsection (4).

(l) **Educational materials.** The board, in collaboration with law enforcement agencies, victim advocacy organizations, the department of education, and the department of public safety, shall develop and revise, as appropriate, for use by schools, the statement identified in section 22-1-124, C.R.S., and educational materials regarding general information about adult sex offenders and juveniles who have committed sexual offenses, safety concerns related to such offenders, and other relevant materials. The board shall provide the statement and materials to the department of education, and the department of education shall make the statement and materials available to schools in the state.

(m) **Release guideline instrument for sex offenders with determinate sentences.**

(I) On or before December 1, 2023, and as indicated thereafter, the board, in collaboration with the state board of parole, shall revise the specific sex offender release guideline instrument, as required by section 17-22.5-404 (4)(c)(II), for use by the state board of parole for those inmates classified as sex offenders with determinate sentences. The revised release guideline instrument must incorporate the concepts of risk-need-responsivity or another evidence-based correctional model and must be as flexible as possible to ensure that the programs necessary can be timely accessed by the adult sex offender to prevent the offender from harming victims or potential victims. The revised release guideline instrument must consider the intersection of the guideline instrument with the factors outlined in section 17-22.5-404 (4)(a); however, the release guideline instrument must not include the offender's inability to access treatment during incarceration, when determined to be eligible for treatment within the department of corrections, as a basis for denial of parole.

(II) In developing the revised release guideline instrument, the boards shall consider current research, information, and data regarding:

(A) Factors consistent with the offender's individual static and dynamic risk and whether participation in treatment while incarcerated will significantly reduce the risk prior to release;

(B) The most effective use of limited treatment resources within the department of corrections;

(C) The availability or lack of availability of treatment during incarceration for offenders with determinate sentences who might otherwise be eligible for release pursuant to section 17-22.5-404 (4)(a); and

(D) The efficacy of treatment as a condition of community supervision on parole.

(5) **Immunity.** The board and the individual board members shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board.

(6) **Repeal.** This section is repealed, effective September 1, 2028. Before the repeal, this section is scheduled for review in accordance with section 24-34-104.

Source: L. 92: Entire article added, p. 457, § 3, effective June 2. **L. 94:** IP(1), (1)(c), (1)(e), and (4)(c) amended, p. 2651, § 125, effective July 1. **L. 95:** (4)(a) and (4)(b) amended, p. 466, § 12, effective July 1. **L. 96:** (4)(b) and (4)(d) amended and (6) added, pp. 734, 735, §§ 1, 2, effective July 1. **L. 97:** IP(1), (1)(f), (1)(j), and (1)(k) amended and (1)(l) and (4)(c.5) added, p. 1565, §§ 11, 12, effective July 1. **L. 98:** IP(1), (4)(c.5), and (6)(b) amended and (1)(d.5) added, pp. 401, 402, §§ 9, 12, effective April 21; (4)(e) added, p. 1288, § 3, effective November 1. **L. 99:** (4)(c.5) amended, p. 1149, § 10, effective July 1. **L. 2000:** (1.5), (3)(c), (4)(f), (4)(g), (4)(h), and (4)(i) added, pp. 921, 922, §§ 10, 11, 12, effective July 1. **L. 2001:** IP(1), (4)(d), and (6)(a) amended, p. 238, § 1, effective March 28. **L. 2002:** (4)(j) added, p. 143, § 2, effective March 27; (4)(c.5) amended, p. 1184, § 15, July 1; (4)(e) amended, p. 1497, § 149, effective October 1. **L. 2003:** (4)(k) added, p. 632, § 2, effective March 18. **L. 2006:** (4)(c.5) amended, p. 1315, § 9, effective May 30. **L. 2007:** (1.8) and (3)(d) added, p. 111, §§ 1, 2, effective March 16; (1.7) added, p. 556, § 1, effective April 16. **L. 2008:** (4)(d)(II) and (4)(j) amended, p. 1884, § 22, effective August 5. **L. 2010:** (4)(l) added, (HB 10-1374), ch. 261, p. 1180, § 1, effective May 25. **L. 2011:** Entire section RC&RE, (HB 11-1138), ch. 236, p. 1016, § 3, effective May 27. **L. 2016:** (4)(a), (4)(b), (4)(h), (4)(i), (4)(j), and (6)(a) amended, (HB 16-1345), ch. 347, p. 1412, § 1, effective August 10. **L. 2017:** (4)(b)(I) and (4)(j)(I) amended, (SB 17-242), ch. 263, p. 1299, § 124, effective May 25; IP(1) and (1)(c)(II) amended, (HB 17-1329), ch. 381, p. 1968, § 14, effective June 6. **L. 2018:** (1)(d)(X) amended, (SB 18-092), ch. 38, p. 404, § 21, effective August 8. **L. 2020:** (6)(a) amended and (6)(c) added, (HB 20-1404), ch. 231, p. 1121, § 2, effective July 2. **L. 2021:** (6)(a) amended, (HB 21-1320), ch. 425, p. 2820, § 1, effective July 2. **L. 2022:** (6) amended, (SB 22-212), ch. 421, p. 2968, § 26, effective August 10. **L. 2023:** (4)(b)(I), (4)(j)(I), and (6) amended and (4)(h.5) and (4)(m) added, (SB 23-164), ch. 349, p. 2087, § 3, effective June 5.

Editor's note: (1) Subsection (6)(a) provided for the repeal of this section, effective July 1, 2010. (See L. 2001, p. 238.) However, this section was recreated in 2011.

(2) Subsection (4)(e)(II)(B) provided for the repeal of subsection (4)(e)(II), effective July 1, 2012. (See L. 2011, p. 1016.)

(3) Subsection (4)(a)(II)(B) provided for the repeal of subsection (4)(a)(II) and subsection (4)(b)(III)(B) provided for the repeal of subsection (4)(b)(III), effective July 1, 2018. (See L. 2016, p. 1412.)

(4) Subsection (6)(c)(II) provided for the repeal of subsection (6)(c), effective September 1, 2021. (See L. 2020, p. 1121.)

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 20-1404, see section 1 of chapter 231, Session Laws of Colorado 2020.

ANNOTATION

Law reviews. For article, "Colorado Preemption Law: The Evolving Meaning of 'Conflict'", see 48 Colo. Law. 38 (Apr. 2019).

Residency of sex offenders. A municipal ordinance that effectively bans all felony and many misdemeanor sex offenders from living within its boundaries, but draws no distinctions based upon the nature of the offense, the treatment the offender has received, the risk that he or she will reoffend against children, and the evaluation and recommendations of qualified state officials, is preempted by state law. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

City ordinance that effectively bars certain sex offenders from residing within the city is not preempted by state law. Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

The regulation of sex offender residency is, under the present pattern of state laws, a matter of mixed state and local concern. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013); Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

The operational effect of the municipal ordinance impermissibly conflicts with the application and effectuation of the state interest in the uniform treatment, management, rehabilitation, and reintegration of sex offenders during and after state supervision. The ordinance not

only undermines the underlying policy interests that envelop the existing state regulations, but it also operationally forbids what the state scheme allows. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900, annotated above.

The sex offender risk scale meets the statutory requirements for a "risk assessment screening instrument". The sex offender management board satisfied the objectives and criteria set forth in subsection (4)(c.5) for developing the screening instrument. People v. Brosh, 251 P.3d 456 (Colo. App. 2010) (decided prior to 2011 recreation and reenactment); People v. Mendoza, 313 P.3d 637 (Colo. App. 2011).

Sex offender evaluation and treatment is inconsistent with the purposes of the Colorado Children's Code. A juvenile court overseeing a dependency and neglect case may not require a parent to complete sex offender evaluation and treatment if the parent objects and has not been convicted of a sex offense. People in Interest of M.W., 2022 COA 72, 518 P.3d 1132.

Defendant not entitled to a new sexually violent predator evaluation each time sex offender management board changes the evaluation instrument. The statute requires the board to revise the instrument from time to time, but does not require re-evaluation of offenders. People v. Mendoza, 313 P.3d 637 (Colo. App. 2011).

16-11.7-104. Sex offenders - evaluation and identification required.

(1) When required as part of the presentence or probation investigation pursuant to sections 16-11-102 (1)(b)(I) and 16-11.7-102 (2)(a)(I) to (2)(a)(IV), on and after January 1, 1994, each convicted adult sex offender and juvenile who has committed a sexual offense who is to be considered for probation is required to submit to an evaluation for treatment, an evaluation for risk, procedures required for monitoring of behavior to protect victims and potential victims, and an identification developed pursuant to section 16-11.7-103 (4).

(2) The evaluation and identification required by subsection (1) of this section shall be at the expense of the person evaluated, based upon such person's ability to pay for such treatment.

Source: L. 92: Entire article added, p. 460, § 3, effective June 2. **L. 2011:** (1) amended, (HB 11-1138), ch. 236, p. 1022, § 4, effective May 27. **L. 2023:** (1) amended, (SB 23-164), ch. 349, p. 2089, § 4, effective June 5.

ANNOTATION

Provision that requires a sex offender specific evaluation be conducted prior to

sentencing applies in case of a deferred judgment. People v. Manzanares, 85 P.3d 604 (Colo. App. 2003).

Court may not impose sex offender conditions as a part of a deferred judgment without first ordering a sex offender specific evaluation. People v. Manzanares, 85 P.3d 604 (Colo. App. 2003).

Trial court could not impose sex offender conditions as part of probation without ordering sex offender evaluation as required in this section. Where defendant meets the definition of a "sex offender", an evaluation pursuant to this section is mandatory. People v. Meidinger, 987 P.2d 937 (Colo. App. 1999).

Trial court is required under § 16-11.7-105 (1) to order treatment as part of probationary sentence imposed on sex offender as recommended in the evaluation and identification required pursuant to this section. People v. Hernandez, 160 P.3d 263 (Colo. App. 2007), aff'd, 176 P.3d 746 (Colo. 2008).

A plea agreement cannot dispense with the statutory requirement that the sex offender defendant submit to an evaluation for treatment pursuant to this section. The general assembly created standardized assessment procedures for evaluating and identifying sex offenders, and the procedures require that all sex offenders undergo an evaluation. Hernandez v. People, 176 P.3d 746 (Colo. 2008).

16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation and identification required - subcommittee created.

(1) Each adult sex offender and juvenile who has committed a sexual offense sentenced by the court for an offense committed on or after January 1, 1994, shall be required, as a part of any sentence to probation, commitment to the department of human services, sentence to community corrections, incarceration with the department of corrections, placement on parole, or out-of-home placement to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification made pursuant to section 16-11.7-104 or based upon any subsequent recommendations by the department of corrections, the judicial department, the department of human services, or the division of criminal justice in the department of public safety, whichever is appropriate. The treatment and monitoring shall be provided by an approved provider pursuant to section 16-11.7-106, and the offender shall pay for the treatment to the extent the offender is financially able to do so.

(1.5) (a) The department of corrections shall identify all inmates who are classified to undergo treatment, are eligible to receive treatment pursuant to the department of corrections' policy, and have not been provided with the opportunity to undergo treatment while incarcerated. For each inmate, the department of corrections shall provide the following data to the board on or before July 31, 2023:

(I) The inmate's department of corrections identification number;

(II) The date of the inmate's sentence, the crime of conviction, and length of the sentence, including length of parole;

(III) Whether the sentence to the department of corrections was a result of a parole revocation;

(IV) The date the inmate was placed on the global referral list as established by the department of corrections;

(V) The actual or projected parole eligibility date and mandatory release date, as of July 31, 2023, as well as, if applicable, whether the inmate is enrolled in or has participated in track I or track II treatment, or whether the inmate has been placed in the maintenance phase; and

(VI) The department of corrections S5 qualifier code for the inmate, if any.

(b) The department of corrections shall further identify, in writing:

(I) In the aggregate, validated static risk assessment scores of the inmates described in this section, if available, separately identifying those serving indeterminate and determinate sentences;

(II) The total treatment capacity in the department of corrections and, for each facility providing sex offender treatment and monitoring program treatment services, the treatment program capacity and the phases or tracks of treatment offered;

(III) The names of all board-approved providers employed by or contracting with the department of corrections, the amount of time each provider or contractor has been working with the department of corrections, and at which location each provider or contractor is providing services each month;

(IV) The frequency of sex offender treatment and monitoring program treatment groups and the frequency of cancellation of such groups in all facilities;

(V) The number of open positions for any sex offender treatment and monitoring program providers, including group therapy positions, polygraph providers, or any other positions necessary to operate the program; and

(VI) Any and all efforts made by the department of corrections in the past five years to increase the capacity of the sex offender treatment and monitoring program, fill and maintain the allocated full-time or contract positions, and any data available to address any hiring challenges identified by the department.

(c) The department of corrections shall provide this data to the board prior to July 31, 2023. The board shall form a subcommittee with representatives from the board, community sex offender treatment providers, the department of corrections, the division of adult parole in the

department of corrections, and the state parole board created pursuant to section 17-2-201. The purpose of the subcommittee is to develop solutions to address treatment resources for sex offenders who are incarcerated or in the custody of the department of corrections, including a legal and evidence-based analysis of inmates who are required to progress in treatment in the department of corrections prior to any release pursuant to section 18-1.3-1006 and those who are classified by the department of corrections as an inmate who is required to participate in treatment. The subcommittee shall:

(I) Analyze the data provided by the department of corrections and prepare a comprehensive report on the current prison population to identify inmates who are eligible to receive treatment, with special priority toward inmates who are past parole eligibility date, have not been provided a treatment opportunity, and require treatment to meet community corrections or parole eligibility requirements pursuant to section 18-1.3-301 (1)(f), 18-1.3-1006, and 17-22.5-404 (4)(c)(II);

(II) Identify all barriers the department of corrections faces in providing timely access to treatment to inmates who require treatment to meet parole eligibility requirements pursuant to sections 18-1.3-1006 and 17-22.5-404 (4)(c)(II) and make recommendations for workable solutions to increase treatment access in the department of corrections, including evidence-based, validated projections developed in conjunction with the division of criminal justice experts in prison population projections, for the decrease in backlog that would occur with the implementation of any solutions;

(III) Determine which, if any, standards are barriers to providing timely access to treatment and make recommendations concerning changes or exceptions to the standards for sex offenders incarcerated in the department of corrections;

(IV) Review and consider revisions to the department of corrections policies and administrative regulations to prevent unnecessary backlog in making treatment accessible to inmates who require treatment to meet parole eligibility requirements;

(V) Review the criteria established pursuant to section 18-1.3-1009 and make revisions to policies of the department of corrections and administrative regulations to prevent unnecessary backlog in making treatment accessible to inmates who require treatment to meet parole eligibility requirements pursuant to section 18-1.3-1006;

(VI) Review parole guidelines for those inmates classified as sex offenders with determinate sentences established pursuant to section 17-22.5-404 and make revisions as necessary to prevent unnecessary backlog in making treatment accessible to inmates who require treatment to meet parole eligibility requirements;

(VII) Determine whether additional treatment providers will contract with the department of corrections to provide evaluation or treatment services to incarcerated individuals and make

workable recommendations concerning how to immediately increase inmate access to those approved providers;

(VIII) Determine whether increased funding or any other resources could make access to telehealth treatment viable for inmates and the amount of increased funding or resources necessary to accomplish this goal; and

(IX) In consideration of any existing treatment backlog and of finite treatment resources, make recommendations for procuring or making available sufficient treatment resources without negatively impacting public safety and protection of victims.

(d) The subcommittee created in subsection (1.5)(c) of this section shall present its written findings in a report and proposal to the judiciary committees of the house of representatives and the senate, or any successor committees, on or before February 1, 2024. The department of corrections and the parole board shall comment on the report's findings and recommendations on or before March 1, 2024.

(2) For offenders who begin community supervision on or after June 5, 2023, the supervising agency of each adult sex offender and juvenile who has committed a sexual offense shall provide the offender with access to a complete list of treatment providers who are approved pursuant to section 16-11.7-106 and who have the expertise to work with the specific risks and needs of that particular offender. The supervising agency shall also make specific recommendations to the offender. When making a list of referrals, the supervising agency shall consider the individual risks and treatment needs of the particular offender, ability of the treatment provider to accept new clients, geographic proximity of the provider, and the nature of the programs, and tailor referrals to those considerations and any other factor relevant to the treatment needs of the offender, capability of the provider, and safety of the community. For an offender who is a person with an intellectual and developmental disability, as described in section 25.5-10-202, the supervising agency shall refer that offender to a provider approved by the sex offender management board to work with that population. For offenders who prefer to do treatment in a language other than English, referrals must be offered, when possible, to providers who are fluent in the target language. Once selected, the treatment provider or agency may not be changed by the offender without the approval of the community supervision team, the multidisciplinary team, or the court, except the offender may change the treatment provider or agency once within ninety days of the court imposing sentence or the offender's release on parole.

(3) The requirements of subsection (2) of this section do not apply to the division of youth services based on the nature of the program, the complex needs of the juveniles served, and the placements and approved treatment providers available to work with juveniles from the division of youth services. The division of youth services shall assign juveniles who have committed a sexual offense to a treatment provider based on the individual risks and needs of the juvenile and have procedures in place to allow for a juvenile or family to request a change in treatment

providers based on responsivity factors. The multidisciplinary team for the juvenile shall review all requests for changes in treatment providers and approve requests if the multidisciplinary team determines the juvenile's risks, needs, and responsivity factors can be better served by an alternate treatment provider.

Source: L. 92: Entire article added, p. 460, § 3, effective June 2. **L. 94:** (1) amended, p. 2651, § 126, effective July 1. **L. 2000:** Entire section amended, p. 236, § 6, effective July 1. **L. 2011:** Entire section amended, (HB 11-1138), ch. 236, p. 1023, § 5, effective May 27. **L. 2016:** Entire section amended, (HB 16-1345), ch. 347, p. 1415, § 2, effective August 10. **L. 2023:** (1.5) and (3) added and (2) amended, (SB 23-164), ch. 349, p. 2089, § 5, effective June 5.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Because application of the sex offender treatment program did not affect the legal consequences of defendant's crime or increase his punishment, there is no ex post facto violation. The department of corrections reduced the monthly ten days of earned time credit defendant received to seven days when defendant did not participate in the program because he denied the alleged sexually assaultive behavior. Application of the program to defendant did not increase his punishment, however, because he possessed no vested right in a particular parole date or parole hearing date. Chambers v. Colo. Dept. of Corr., 205 F.3d 1237 (10th Cir. 2000).

The stigmatizing consequences of being labeled a sex offender coupled with the mandatory treatment program as preconditions for parole eligibility create the kind of deprivations of liberty that require procedural due process protections. Chambers v. Colo. Dept. of Corr., 205 F.3d 1237 (10th Cir. 2000); Fisher v. Colo. Dept. of Corr., 56 P.3d 1210 (Colo. App. 2002).

Prisoner has a liberty interest in participation in a statutorily mandated sex offender treatment program. Beebe v. Heil, 333 F. Supp. 2d 1011 (D. Colo. 2004).

In evaluating prisoner's substantive due process claim, the court must consider whether prison officials were deliberately indifferent to a liberty interest and deprived prisoner of that interest in such a way that the behavior of the governmental officers was so egregious, so outrageous that it may fairly be said to shock the contemporary conscience. The deliberate indifference standard is sensibly employed when actual deliberation is practical. Beebe v. Heil, 333 F. Supp. 2d 1011 (D. Colo. 2004).

Due process must be provided to a convicted sex offender before he can be excluded from such a program. Beebe v. Heil, 333 F. Supp. 2d 1011 (D. Colo. 2004).

The court must consider first, whether prisoner's exclusion from the treatment program itself constitutes an atypical and significant hardship and, second, whether the failure of the prison officials to provide prisoner with due process before terminating him from sex offender treatment constitutes an atypical and significant hardship. To evaluate whether a prisoner's freedom has been restrained in a manner that imposes atypical and significant hardship, the court must carefully examine the conditions of the prisoner's confinement, including the duration and degree of prisoner's restrictions as compared with other inmates. Beebe v. Heil, 333 F. Supp. 2d 1011 (D. Colo. 2004).

This section requires the court to order a sex offender specific evaluation to be conducted as part of the presentence report for every sex offender sentenced for an offense committed on or after January 1, 1994, whether or not the sex offender is to be considered for probation, and for the court to consider that evaluation in sentencing. People v. Lenzini, 986 P.2d 980 (Colo. App. 1999).

Provision that requires a sex offender specific evaluation be conducted prior to sentencing applies in case of a deferred judgment. People v. Manzanares, 85 P.3d 604 (Colo. App. 2003).

Court may not impose sex offender conditions as a part of a deferred judgment without first ordering a sex offender specific evaluation. People v. Manzanares, 85 P.3d 604 (Colo. App. 2003).

Subsection (1) does not always require a sentencing court to impose sex offender treatment as a condition of probation when a sex offender commits a subsequent offense of any kind. When the recommendations of the sex offender evaluation and the facts of the case do not support the need for sex offender treatment, a sentencing court is not required to order treatment. Hernandez v. People, 176 P.3d 746 (Colo. 2008).

When the sex offender evaluation and recommendations and the facts of the case support the need for sex offender treatment, the sentencing court's discretion is tightly constrained by the statutory language. Hernandez v. People, 176 P.3d 746 (Colo. 2008).

16-11.7-106. Sex offender evaluation, treatment, and polygraph services - contracts with providers - placement on provider list - grievances - fund created - repeal.

(1) The department of corrections, the judicial department, the division of criminal justice in the department of public safety, or the department of human services shall not employ or contract with, and shall not allow an adult sex offender or a juvenile who has committed a sexual offense to employ or contract with, an individual or entity to provide sex-offender-specific evaluation, treatment, or polygraph services pursuant to this article unless the sex-offender-specific

evaluation, treatment, or polygraph services to be provided by the individual or entity conform with the guidelines and standards developed pursuant to section 16-11.7-103, and the name of the individual providing services is on the list created pursuant to paragraph (b) of subsection (2) of this section of persons who may provide sex-offender-specific services.

(1.5) (a) Notwithstanding the provisions of subsection (1) of this section, the department of corrections may employ or contract with an individual or entity to provide sex-offender-specific evaluation, treatment, or polygraph services pursuant to this article 11.7 if the director of the program is an approved provider and the department operates a sex offender treatment and monitoring program that conforms with the guidelines and standards developed pursuant to section 16-11.7-103 and the employees and contractors are trained to comply with the standards of the conforming program.

(b) Any individual providing sex-offender-specific evaluation or treatment must have a baccalaureate degree or above in a behavioral science with training or professional experience in counseling or therapy; must hold a professional mental health license or be approved by the department of regulatory agencies as an unlicensed psychotherapist, certified addiction counselor, licensed professional counselor candidate, licensed marriage and family therapist candidate, or psychologist candidate; or clinical social worker.

(c) Any polygraph examiner must have graduated from an accredited American polygraph association school and have a baccalaureate degree from a four-year institution of higher education. The department of corrections shall complete compliance monitoring of contracted providers and polygraph examiners who are not approved by the board pursuant to subsection (1) of this section on an annual basis.

(d) In the event that a provider who contracted with the department of corrections is found to have violated the guidelines and standards developed pursuant to section 16-11.7-103, the department of corrections shall terminate the contract with the provider.

(e) This subsection (1.5) is repealed, effective September 1, 2028. Prior to repeal, this subsection (1.5) is scheduled for review in accordance with section 16-11.7-103 (6).

(2) (a) The board shall develop an application and review process for treatment providers, evaluators, and polygraph examiners who provide services pursuant to this article 11.7 to adult sex offenders and to juveniles who have committed sexual offenses. The application and review process must allow providers to demonstrate that they are in compliance with the standards adopted pursuant to this article 11.7. The application and review process consists of the following three parts:

(I) The board shall develop separate application and review processes for standards that apply to the criminal justice component, such as criminal history record checks, for evaluators, individual treatment providers, and polygraph examiners. Applications for the criminal justice components, excluding fingerprints, must be submitted to the board. The division of criminal

justice in the department of public safety shall work with a third-party vendor to take and forward fingerprints to the Colorado bureau of investigation for use in conducting a state criminal history record check and for transmittal to the federal bureau of investigation for a national criminal history record check. The board may use information obtained from the state and national criminal history record checks to determine an applicant's eligibility for placement on the approved provider list. The board is responsible for the implementation of this subsection (2)(a)(I).

(II) The board shall develop an application and review process for the verification of the qualifications and credentials of evaluators, treatment providers, and polygraph examiners.

(III) The board shall require a person who applies for placement, including a person who applies for continued placement, on the list of persons who may provide sex-offender-specific evaluation, treatment, and polygraph services pursuant to this article to submit to a current background investigation that goes beyond the scope of the criminal history record check described in subparagraph (I) of this paragraph (a). In conducting the current background investigation required by this subparagraph (III), the board shall obtain reference and criminal history information and recommendations that may be relevant to the applicant's fitness to provide sex-offender-specific evaluation, treatment, and polygraph services pursuant to this article.

(b) After the process developed pursuant to subsection (2)(a) of this section is established and providers have met all the criteria of the application and review process, the board may approve the provider. The board shall publish, at least annually, a list of approved providers. The board shall forward the list to the office of the state court administrator, the department of public safety, the department of human services, and the department of corrections. The board shall update and forward the list of approved providers as necessary.

(3) The board shall use the information obtained from the state and national criminal history record checks and the current background investigation in determining whether to place or continue the placement of a person on the approved provider list.

(4) The board may determine the requirements for an evaluator's, treatment provider's, or polygraph examiner's name to be placed on the approved provider list after his or her name has been removed from the list for any reason.

(5) The board shall develop a renewal process for the continued placement of a person on the approved provider list published pursuant to paragraph (b) of subsection (2) of this section.

(6) The board may assess a fee to an applicant for placement on the approved provider list. The fee shall not exceed one hundred twenty-five dollars per application to cover the costs of conducting a current background investigation required by subsection (2) of this section. All moneys collected pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the sex offender treatment provider fund, which fund is hereby created

and referred to in this subsection (6) as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the division of criminal justice in the department of public safety for the direct and indirect costs associated with the current background investigation required by subsection (2) of this section. Any moneys in the fund not expended for the purpose of subsection (2) of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(7) (a) The board shall notify the department of regulatory agencies of the receipt of any complaints or grievances against an individual who provides sex-offender-specific treatment or evaluation services pursuant to this article 11.7 and advise the department of any disciplinary action taken pursuant to subsection (7)(b) of this section. The department of regulatory agencies or the appropriate board, pursuant to article 245 of title 12 and referred to in this subsection (7) as the "DORA board", shall notify the board of the receipt of any complaint or grievance against a provider who provides sex-offender-specific treatment or evaluation services pursuant to this article 11.7, if the complaint or grievance was not referred by the board, and advise the board of any disciplinary action taken against the individual pursuant to any professional licensing act.

(b) The board shall review and investigate all complaints and grievances concerning compliance with its standards against individuals who provide sex-offender-specific treatment, evaluation, or polygraph services pursuant to this article. Notwithstanding any action taken by the department of regulatory agencies or the DORA board, the board may take appropriate disciplinary action, as permitted by law, against an individual who provides sex-offender-specific treatment, evaluation, or polygraph services pursuant to this article. The disciplinary action may include, but need not be limited to, the removal of the individual's name from the list of persons who may provide sex offender evaluation, treatment, or polygraph services pursuant to this article.

(c) (I) Nothing in this subsection (7) limits the rights or responsibilities of the department of regulatory agencies or the DORA board with respect to the investigation and resolution of complaints pursuant to article 245 of title 12.

(II) Nothing in this subsection (7) limits the rights or responsibilities of the board with respect to the addition or removal of an individual's name from the list of persons who may provide sex offender evaluation, treatment, or polygraph services pursuant to this article.

(8) Supervising officers shall follow the guidelines and standards developed pursuant to this section when working with sex offenders. Agencies employing supervising officers shall collaborate with the board to develop procedures to hold accountable a supervising officer who fails to follow the guidelines and standards.

Source: L. 92: Entire article added, p. 461, § 3, effective June 2. **L. 94:** Entire section amended, p. 2652, § 127, effective July 1. **L. 95:** Entire section amended, p. 468, § 15, effective July 1. **L. 99:** Entire section amended, p. 1151, § 16, effective July 1. **L. 2000:** Entire section amended, p. 926, § 21, effective July 1. **L. 2004:** (2) amended, p. 813, § 1, effective July 1. **L. 2011:** Entire section R&RE, (HB 11-1138), ch. 236, p. 1023, § 6, effective May 27. **L. 2016:** (7) R&RE, (HB 16-1345), ch. 347, p. 1416, § 3, effective August 10. **L. 2019:** (7)(a) and (7)(c)(I) amended, (HB 19-1172), ch. 136, p. 1672, § 85, effective October 1. **L. 2023:** (1.5) and (8) added and IP(2)(a), (2)(a)(I), and (2)(b) amended, (SB 23-164), ch. 349, p. 2093, § 6, effective June 5.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Requiring a sex offender as a condition of his supervised release to successfully complete a sex offender treatment program, including a sexual history polygraph requiring him to answer questions regarding whether he had committed sexual crimes for which he was never charged violated his fifth amendment privilege against self-incrimination. United States v. Von Behren, 822 F.3d 1139 (10th Cir. 2016).

Because the answers to the mandatory questions could focus an investigation on the offender and also because his confession to the past crimes could potentially be used against him at trial, the offender faces at least some authentic danger of self-incrimination by answering some of the questions in the polygraph. United States v. Von Behren, 822 F.3d 1139 (10th Cir. 2016).

The government's threat to revoke an offender's supervised release for his failure to answer potentially incriminating questions rises to the level of unconstitutional compulsion. A threat to revoke one's probation for properly invoking one's fifth amendment privilege is the type of compulsion the state may not constitutionally impose. United States v. Von Behren, 822 F.3d 1139 (10th Cir. 2016).

16-11.7-107. Report to the general assembly. (Repealed)

Source: L. 92: Entire article added, p. 461, § 3, effective June 2. **L. 95:** Entire section amended, p. 466, § 13, effective July 1. **L. 98:** Entire section repealed, p. 726, § 4, effective May 18.

16-11.7-108. Operation and construction of juvenile sex offender treatment facilities and new treatment modalities - repeal. (Repealed)

Source: L. 2001: Entire section added, p. 51, § 1, effective March 11.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2002. (See L. 2001, p. 51.)

16-11.7-109. Reporting requirements - legislative declaration.

(1) (a) The general assembly finds and declares that:

(I) As a body, the board is one of Colorado's most important resources on the treatment and management of adult sex offenders and juveniles who have committed sexual offenses;

(II) The board's research and analysis of treatment standards and programs, as well as empirical evidence collected and compiled by the board with respect to the treatment outcomes of adult sex offenders and juveniles who have committed sexual offenses, is vital to inform the decisions of policymakers.

(b) The general assembly therefore finds that it is appropriate for the board to report to the general assembly on an annual basis concerning the status of the treatment and management of adult sex offenders and juveniles who have committed sexual offenses in Colorado.

(2) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 31, 2012, and on or before January 31 each year thereafter, the board shall prepare and present to the judiciary committees of the senate and the house of representatives, or any successor committees, a written report concerning best practices for the treatment and management of adult sex offenders and juveniles who have committed sexual offenses, including any evidence-based analysis of treatment standards and programs as well as information concerning any new federal legislation relating to the treatment and management of adult sex offenders and juveniles who have committed sexual offenses. The report may include the board's recommendations for legislation to carry out the purpose and duties of the board to protect the community.

Source: L. 2011: Entire section added, (HB 11-1138), ch. 236, p. 1026, § 7, effective May 27. **L. 2017:** (2) amended, (HB 17-1059), ch. 91, p. 277, § 1, effective August 9.

ARTICLE 11.8

Management of Domestic Violence Offenders

16-11.8-101. Legislative declaration.

16-11.8-102. Definitions.

16-11.8-103. Domestic violence offender management board - creation - duties - repeal.

16-11.8-104. Domestic violence offender treatment - contracts with providers - fund created.

16-11.8-101. Legislative declaration.

The general assembly hereby declares that the consistent and comprehensive evaluation, treatment, and continued monitoring of domestic violence offenders who have been convicted of, pled guilty to, or received a deferred judgment or prosecution for any crime the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), C.R.S., and who are subject to the supervision of the criminal justice system is necessary in order to work toward the elimination of recidivism by such offenders. Therefore, the general assembly hereby creates a program that standardizes the evaluation, treatment, and continued monitoring of domestic violence offenders at each stage of the criminal justice system so that such offenders will be less likely to offend again and the protection of victims and potential victims will be enhanced.

Source: L. 2000: Entire article added, p. 907, § 1, effective July 1.

16-11.8-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Board" means the domestic violence offender management board created in section 16-11.8-103.

(2) "Domestic violence offender" means any person who on or after January 1, 2001, has been convicted of, pled guilty to, or received a deferred judgment and sentence for any domestic violence offense as defined in subsection (3) of this section.

(3) "Domestic violence offense" means any crime the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), C.R.S.

(4) "Treatment" means counseling, monitoring, and supervision of any domestic violence offender that conforms to the standards created by the board pursuant to section 16-11.8-103.

(5) "Treatment evaluation" means a determination of treatment amenability as recommended by a domestic violence evaluator approved by the domestic violence offender management board.

Source: L. 2000: Entire article added, p. 907, § 1, effective July 1. **L. 2002:** (2) amended, p. 1016, § 19, effective June 1. **L. 2008:** (2) amended, p. 1723, § 1, effective June 2.

16-11.8-103. Domestic violence offender management board - creation - duties - repeal.

(1) There is created, in the department of public safety, the domestic violence offender management board consisting of nineteen members with recognizable expertise in the field of domestic violence offenders. The membership of the board consists of the following persons:

(a) One member representing the judicial department appointed by the chief justice of the supreme court;

(b) One member representing the department of corrections appointed by the executive director of such department;

(c) One member representing the department of human services appointed by the executive director of such department;

(d) One member representing the department of public safety, division of criminal justice, appointed by the executive director of such department;

(e) One member representing the department of regulatory agencies who is appointed by the executive director of such department;

(f) One member appointed by the chief justice of the supreme court who is a judge;

(g) (I) Five members appointed by the executive director of the department of public safety who are regulated pursuant to article 245 of title 12 and have experience in the field of domestic violence.

(II) Of the five members appointed pursuant to this subsection (1)(g), at least three members must be mental health professionals licensed pursuant to article 245 of title 12.

(III) Of the five members appointed pursuant to this subsection (1)(g), at least three must be providers on the approved list pursuant to subsection (4)(a)(III)(C) of this section.

(IV) Interested parties shall submit nominations for persons to serve as members appointed pursuant to this paragraph (g). The executive director shall appoint members under this paragraph (g) from the nominees submitted by the interested parties.

(h) One member appointed by the executive director of the Colorado district attorney's council who represents the interests of prosecuting attorneys;

(i) One member appointed by the Colorado state public defender who is a public defender;

(j) One member appointed by the executive director of the department of public safety who is a representative of law enforcement;

(k) Two members appointed by the executive director of the department of public safety who can represent domestic violence victims and victim organizations;

(l) One member appointed by the executive director of the department of public safety who is from a rural area and is active in the local coordination of criminal justice and victim services advocacy for domestic violence;

(m) One member appointed by the executive director of the department of public safety who is from an urban area and is active in the local coordination of criminal justice and victim services advocacy for domestic violence; and

(n) One member appointed by the executive director of the department of public safety, after consultation with a statewide organization of criminal defense attorneys, who is a private criminal defense attorney.

(2) The board shall elect a presiding officer for the board from among its members who serves at the pleasure of the board.

(3) (a) Any member of the board appointed pursuant to subsections (1)(a) to (1)(f) of this section serves a term of four years at the pleasure of the official who appointed the member.

(b) Any member of the board appointed pursuant to subsections (1)(g) to (1)(m) of this section serves a term of four years.

(c) No member shall serve more than eight consecutive years.

(d) All members serve without compensation.

(4) (a) The board has the following duties:

(I) Adopt and implement a standardized procedure for the treatment evaluation of domestic violence offenders. Such procedure shall provide for the evaluation and recommend behavior management, monitoring, and treatment and include a procedure for when a treatment provider

recommends that an offender does not need treatment. The board shall develop and implement methods of intervention for domestic violence offenders that have as a priority the physical and psychological safety of victims and potential victims and that are appropriate to the needs of the particular offender, so long as there is no reduction in the level of safety of victims and potential victims.

(II) Adopt and implement guidelines and standards for a system of programs for the treatment of domestic violence offenders that shall be utilized by offenders who have committed a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, and who are placed on probation, placed on parole, or placed in community corrections or who receive a deferred judgment and sentence. The programs developed pursuant to this subparagraph (II) shall be as flexible as possible so that the programs may be utilized by each offender to prevent the offender from harming victims and potential victims. The programs shall be structured in such a manner that they provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, or treatment in a therapeutic community. Also, the programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system.

(III) Develop an application and review process for treatment providers who provide services to domestic violence offenders pursuant to subsection (4)(a)(I) or (4)(a)(II) of this section. The standards must allow providers to demonstrate that they are in compliance with the standards adopted pursuant to subsections (4)(a)(I) and (4)(a)(II) of this section. The application and review process consists of the following parts:

(A) The board shall develop separate application and review processes for standards that apply to the criminal justice component, such as criminal history record checks, for individual treatment providers and treatment programs. A local law enforcement agency or a third party approved by the Colorado bureau of investigation, for the purpose of obtaining a fingerprint-based criminal history record check, shall take the fingerprints of each applicant. If an approved third party takes the applicant's fingerprints, the fingerprints may be electronically captured using Colorado bureau of investigation-approved livescan equipment. The applicant shall submit payment for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the board.

(B) The board shall develop an application and review process for the verification of the qualifications and credentials of the treatment providers. The applications must be submitted to

the board. The board is responsible for the implementation of this subsection (4)(a)(III)(B) of the application and review process. The board shall require that treatment providers complete mandatory continuing education courses in areas related to domestic violence.

(C) After providers have met the criteria of both parts of the application and review process, the board shall publish at least annually a list of approved providers. The board shall forward the list to the office of the state court administrator, the department of public safety, the department of human services, and the department of corrections. The board shall update the list of approved providers and forward as changes are made.

(D) The board shall perform compliance reviews on at least ten percent of the treatment providers every two years beginning no later than July 1, 2023.

(III.3) Notwithstanding any action taken by the department of regulatory agencies against a treatment provider, the board may take independent action against a treatment provider including, but not limited to, removing a treatment provider from the approved provider list. The board may determine the requirements for a treatment provider's name to be placed on the list after the name has been removed from the list pursuant to this subsection (4)(a)(III.3).

(III.5) Develop a treatment provider renewal process for the continued placement of a person on the approved provider list published pursuant to sub-subparagraph (C) of subparagraph (III) of this paragraph (a);

(IV) Research and analyze the effectiveness of the treatment evaluation and treatment procedures and programs developed pursuant to this article 11.8. The board shall develop a data collection plan and require approved providers to begin data collection pursuant to the plan adopted by the board no later than January 1, 2023. The board shall also develop and prescribe a system for implementation of the guidelines and standards developed pursuant to subsections (4)(a)(I) and (4)(a)(II) of this section and for tracking offenders who have been evaluated and treated pursuant to this article 11.8. In addition, the board shall develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. The results of such tracking and behavioral monitoring shall be a part of any analysis made pursuant to this subsection (4)(a)(IV).

(b) After the guidelines and standards required pursuant to subsections (4)(a)(I) and (4)(a)(II) of this section are adopted, the board shall refer any complaints or grievances against domestic violence offender treatment providers to the department of regulatory agencies for resolution. Notwithstanding any other law or administrative rule, the resolution of any complaint or grievance referred by the board pursuant to this subsection (4)(b) shall be based on such standards. All complaints and grievances shall be reviewed by the appropriate board pursuant to part 2 of article 245 of title 12, whose decision shall be based on accepted community standards as described in subsections (4)(a)(I) and (4)(a)(II) of this section and the prohibited activities as

defined in section 12-245-224 (1). The department of regulatory agencies shall provide notice of the disciplinary action to the board.

(5) The board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board as specified in this section.

(5.5) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 31, 2023, and on or before each January 31 thereafter, the board shall prepare and present a written report to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees. The report must include:

(a) The number of people who received domestic violence offender treatment in the preceding year, the number of those who successfully completed the treatment, the number of those who did not complete the treatment, and the number of those who reoffended and were removed from treatment;

(b) The number of treatment providers who provided domestic violence offender treatment in the preceding year;

(c) The number of treatment providers who applied to be placed on the list of approved treatment providers pursuant to subsection (4)(a)(III)(C) of this section and the number of treatment providers placed on the list;

(d) The best practices for the treatment and management of domestic violence; and

(e) Any other relevant information, including any board recommendations for legislation to carry out the purpose and duties of the board to protect the community.

(6) Repealed.

(7) (a) This section is repealed, effective September 1, 2027.

(b) Prior to said repeal, the domestic violence offender management board appointed pursuant to this section shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2000: Entire article added, p. 908, § 1, effective July 1. **L. 2003:** (1)(g)(III) amended, p. 1990, § 30, effective May 22. **L. 2004:** (4)(b)(III)(A) amended, p. 815, § 3, effective July 1. **L. 2007:** IP(1), (1)(l), and (1)(m) amended and (1)(n) added, p. 556, § 2, effective April 16. **L. 2008:** (4)(a), (4)(b), and (7) amended, p. 1723, § 2, effective June 2; (6) repealed, p. 1884, § 23, effective August 5. **L. 2009:** (7)(a) amended, (SB 09-292), ch. 369, p. 1948, § 28, effective August 5. **L. 2010:** (1)(g)(III) and (4) amended, (HB 10-1422), ch. 419, p. 2070, § 28, effective August 11. **L. 2017:** IP(1), (1)(g)(I), (1)(g)(II), (1)(g)(III), (1)(n), (2), (3), (4)(a)(I), (4)(a)(III), and (7)(a) amended, (SB 17-201), ch. 308, p. 1667, § 1, effective August 9. **L. 2019:** (1)(g)(I),

(1)(g)(II), and (4)(b) amended, (HB 19-1172), ch. 136, p. 1672, § 86, effective October 1. **L. 2022:** IP(4)(a), IP(4)(a)(III), (4)(a)(III)(A), (4)(a)(III)(D), (4)(a)(IV), and (7)(a) amended and (4)(a)(III.3) and (5.5) added, (HB 22-1210), ch. 318, p. 2260, § 1, effective August 10.

16-11.8-104. Domestic violence offender treatment - contracts with providers - fund created.

(1) On and after January 1, 2001, the department of corrections, the judicial department, the division of criminal justice within the department of public safety, or the department of human services shall not employ or contract with and shall not allow a domestic violence offender to employ or contract with any individual or entity to provide domestic violence offender treatment evaluation or treatment services pursuant to this article unless the individual or entity appears on the approved list developed pursuant to section 16-11.8-103 (4).

(2) (a) The board shall require any person who applies for placement, including any person who applies for continued placement, on the approved provider list developed pursuant to section 16-11.8-103 (4) to submit to a current background investigation that goes beyond the scope of the criminal history record check described in section 16-11.8-103 (4)(a)(III)(A). In conducting the current background investigation, the board shall obtain reference and criminal history information and recommendations that may be relevant to the applicant's fitness to provide domestic violence offender treatment evaluation or treatment services pursuant to this article.

(b) The board may assess a fee to a person who applies for initial placement or renewed placement on the approved provider list not to exceed three hundred dollars per application to cover the costs of conducting the current background investigation required by this subsection (2) and the costs associated with the initial application review and the renewal process pursuant to section 16-11.8-103 (4)(a)(III) and other costs associated with administering the program. All moneys collected pursuant to this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the domestic violence offender treatment provider fund, which fund is hereby created and referred to in this paragraph (b) as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the current background investigation required by this subsection (2) and the application review and renewal process and other costs associated with administering the program. Any moneys in the fund not expended for the purpose of this subsection (2) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2000: Entire article added, p. 912, § 1, effective July 1. **L. 2004:** Entire section amended, p. 814, § 2, effective July 1. **L. 2008:** (2) amended, p. 1725, § 3, effective June 2. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2072, § 29, effective August 11.

ANNOTATION

Law reviews. For article, "Domestic Violence Intervention: 2010 Update", see 39 Colo. Law. 83 (Sept. 2010).

ARTICLE 11.9

Persons with Behavioral or Mental Health Disorders in the Criminal Justice System

PART 1
STANDARDIZED SCREENING PROCESS FOR PERSONS WITH BEHAVIORAL OR MENTAL HEALTH DISORDERS

16-11.9-101. Legislative declaration.

16-11.9-102. Screening for behavioral or mental health disorders - standardized process - development.

16-11.9-103. Report to the general assembly.

16-11.9-104. Repeal of article. (Repealed)

16-11.9-105. Periodic review.

PART 2
STATEWIDE BEHAVIORAL HEALTH COURT LIAISON PROGRAM

16-11.9-201 to

16-11.9-205. (Repealed)

PART 1

STANDARDIZED SCREENING PROCESS FOR PERSONS WITH BEHAVIORAL OR MENTAL HEALTH DISORDERS

16-11.9-101. Legislative declaration.

The general assembly finds and declares that, based upon the findings and recommendations of the 1999 interim committee to study the treatment of persons with mental illness in the Colorado criminal justice system, detecting behavioral or mental health disorders in persons in the criminal justice system is a difficult process with no current statewide standards or requirements. The lack of a standardized screening process to detect persons with behavioral or mental health disorders

in the criminal justice system is a significant impediment to consistent identification, diagnosis, treatment, and rehabilitation of all offenders with behavioral or mental health disorders, ultimately resulting in an increased rate of recidivism. Therefore, the general assembly resolves to create a standardized screening process to be utilized at each stage of the criminal justice system to identify persons with behavioral or mental health disorders.

Source: L. 2000: Entire article added, p. 201, § 1, effective March 29. **L. 2017:** Entire section amended, (SB 17-242), ch. 263, p. 1300, § 125, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

16-11.9-102. Screening for behavioral or mental health disorders - standardized process - development.

(1) The director of the division of criminal justice in the department of public safety is responsible for ensuring that the head of the department of psychiatry at the university of Colorado health sciences center, the judicial department, the department of corrections, the state board of parole, the division of criminal justice in the department of public safety, the behavioral health administration in the department of human services, and the units responsible for the mental health institutes and forensic services in the department of human services meet and cooperate to develop a standardized screening procedure for the assessment of behavioral or mental health disorders in persons who are involved in the adult criminal justice system. The standardized screening procedure must include, but is not limited to:

(a) Development or identification of one or more standardized instruments for screening persons who are involved in the adult criminal justice system;

(b) Development of criteria for potential use of such standardized instruments, including consideration of methods of addressing confidential communications by those persons who will be screened for behavioral or mental health disorders;

(c) Identification of those persons who will be utilizing the standardized screening instruments, and consideration of training requirements for such persons;

(d) Identification of those persons who will be screened for behavioral or mental health disorders;

(e) The stages within the adult criminal justice system at which a person shall be screened for a behavioral or mental health disorder, including consideration of methods of addressing confidential communications by a person screened for a behavioral or mental health disorder;

(f) Consideration of a standard definition of a behavioral or mental health disorder, including a serious behavioral or mental health disorder; and

(g) Development of procedures for referral for further assessment based on the results of the screening.

(2) In conjunction with the development of a standardized behavioral or mental health disorder screening procedure for the adult criminal justice system as specified in subsection (1) of this section, the judicial department, the division of youth services in the department of human services, the unit responsible for child welfare services in the department of human services, the behavioral health administration in the department of human services, the units responsible for the mental health institutes and forensic services in the department of human services, the division of criminal justice in the department of public safety, and the department of corrections shall cooperate to develop a standardized screening procedure for the assessment of behavioral or mental health disorders in juveniles who are involved in the juvenile justice system. The standardized screening procedure must include, but is not limited to:

(a) Development or identification of one or more standardized instruments for screening persons who are involved in the juvenile justice system;

(b) Development of criteria for potential use of such standardized instruments, including consideration of methods of addressing confidential communications by those persons who will be screened for behavioral or mental health disorders;

(c) Identification of those persons who will be utilizing the standardized screening instruments, and consideration of training requirements for such persons;

(d) Identification of those persons who will be screened for behavioral or mental health disorders;

(e) The stages within the juvenile justice system at which a person shall be screened for a behavioral or mental health disorder, including consideration of methods of addressing confidential communications by a person screened for a behavioral or mental health disorder;

(f) Consideration of a standard definition of a behavioral or mental health disorder, including a serious behavioral or mental health disorder; and

(g) Development of procedures for referral for further assessment based on the results of the screening.

Source: L. 2000: Entire article added, p. 201, § 1, effective March 29. **L. 2002:** (1)(e), (1)(f), (2)(e), and (2)(f) amended and (1)(g) and (2)(g) added, p. 580, §§ 16, 17, effective May 24. **L. 2011:** IP(1) and IP(2) amended, (HB 11-1303), ch. 264, p. 1154, § 25, effective August 10. **L. 2017:** IP(1), (1)(b), (1)(d), (1)(e), (1)(f), IP(2), (2)(b), (2)(d), (2)(e), and (2)(f) amended, (SB 17-242), ch. 263, p. 1300, § 126, effective May 25; IP(2) amended, (HB 17-1329), ch. 381, p. 1969, § 15, effective June 6. **L. 2022:** IP(1) and IP(2) amended, (HB 22-1278), ch. 222, p. 1493, § 15, effective July 1.

Editor's note: Amendments to the introductory portion to subsection (2) by SB 17-242 and HB 17-1329 were harmonized.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

16-11.9-103. Report to the general assembly.

On or before March 1, 2002, the judicial department, the department of corrections, the state board of parole, the division of criminal justice within the department of public safety, and the department of human services shall jointly make a report to a joint meeting of the judiciary committees of the senate and the house of representatives regarding the standardized screening procedures developed pursuant to this article and the need for and utility of further legislation to implement the standardized screening procedures developed pursuant to this article.

Source: L. 2000: Entire article added, p. 203, § 1, effective March 29.

16-11.9-104. Repeal of article. (Repealed)

Source: L. 2000: Entire article added, p. 203, § 1, effective March 29. **L. 2002:** Entire section repealed, p. 581, § 18, effective May 24.

16-11.9-105. Periodic review.

On or before October 1, 2004, and on or before October 1 every two years thereafter, the judicial department, the department of corrections, the state board of parole, the division of

criminal justice within the department of public safety, and the department of human services shall jointly review the implementation of the standardized procedures and the use of the standardized screening instruments developed pursuant to this article.

Source: L. 2002: Entire section added, p. 581, § 19, effective May 24. **L. 2007:** Entire section amended, p. 756, § 2, effective May 10.

PART 2

STATEWIDE BEHAVIORAL HEALTH COURT LIAISON PROGRAM

16-11.9-201 to 16-11.9-205. (Repealed)

Source: L. 2023: Entire part repealed, (SB 23-229), ch. 119, p. 441, § 2, effective April 26.

Editor's note: This part 2 was added in 2018. For amendments to this part 2 prior to its repeal in 2023, consult the 2022 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This part 2 was relocated to article 95 of title 13. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 2, see the comparative tables located in the back of the index.

ARTICLE 12

Review of Judgments in Criminal Cases

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PART 1

REVIEW

16-12-101. Review of proceedings resulting in conviction.

Every person convicted of an offense under the statutes of this state has the right of appeal to review the proceedings resulting in conviction. The procedures to be followed in any such appeal shall be as provided by applicable rule of the supreme court of Colorado.

Source: L. 72: R&RE, p. 253, § 1. **C.R.S. 1963:** § 39-12-101.

ANNOTATION

Law reviews. For note, "Former Jeopardy — Effect of State's Appeal in Colorado", see 24 Rocky Mt. L. Rev. 94 (1951). For article, "Colorado Criminal Procedure — Does It Meet Minimum Standards?", see 28 Dicta 14 (1951). For article, "Criminal Law", see 32 Dicta 409 (1955). For article, "Post-Conviction Remedies in Colorado Criminal Cases", see 31 Rocky Mt. L. Rev. 249 (1961). For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to the right of appeal, see 15 Colo. Law. 1613 (1986).

Annotator's note. Since § 16-12-101 is similar to repealed § 39-7-27, CRS 53, and laws antecedent to CSA, C. 48, § 500, relevant cases construing those provisions have been included in the annotations to this section.

Common-law right to review recognized by statute. In Colorado the common-law right of the defendant to obtain appellate review of criminal proceedings was given statutory recognition and standing as far back as 1861 by the territorial legislature. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

A trial de novo conducted by the district court is not a review of the county court judgment; it is an entirely new proceeding. Bovard v. People, 99 P.3d 585 (Colo. 2004).

Only in cases tried de novo by the district court will the district court judgment be subject to direct appeal. Justifiably, then, the defendant may seek direct appeal when the district court enters its judgment from a de novo trial. Bovard v. People, 99 P.3d 585 (Colo. 2004).

Certiorari review does not suffice as an appellate review from a final judgment of the district court. Bovard v. People, 99 P.3d 585 (Colo. 2004).

Section gives one appeal as a matter of right. Under this section, one convicted of crime is entitled as a matter of right to one appeal, but where such appeal is dismissed for want of prosecution, he is not entitled as a matter of right to a second. Caviness v. People, 27 Colo. 283, 60 P. 565 (1900).

Nothing in this section prohibits a direct appeal of a probation revocation order under C.A.R. 1. People v. Carr, 185 Colo. 293, 524 P.2d 301 (1974).

Appellate review may not discriminate on account of poverty. A state is not required by the federal constitution to provide appellate courts or a right to appellate review at all. But a state that does grant appellate review cannot do so in a way that discriminates against some convicted defendants on account of their poverty. In re

Patterson, 136 Colo. 401, 317 P.2d 1041 (1957).

Appeals in criminal cases are a matter of right. In re Patterson, 136 Colo. 410, 317 P.2d 1041 (1957); In re Griffin, 152 Colo. 347, 382 P.2d 202 (1963).

Because this section creates a statutory right of appeal of a conviction, the common law doctrine of abatement ab initio applies if defendant dies after filing the appeal but before the appeal can be decided. However, the order of restitution entered against defendant at the time of conviction created a civil judgment and was not subject to abatement but could be appealed by defendant's estate. People v. Daly, 313 P.3d 571 (Colo. App. 2011), overruled in People v. Johnson, 2021 CO 79, 499 P.3d 1045.

When a defendant dies while his criminal conviction is pending on direct appeal, the doctrine of abatement ab initio extinguishes a restitution order entered as part of his sentence. People v. Johnson, 2020 COA 124, 487 P.3d 1262, aff'd, 2021 CO 79, 499 P.3d 1045 (overruling People v. Daly, 313 P.3d 571 (Colo. App. 2011)).

An indigent defendant is entitled to obtain a free transcript when necessary to exercise the right of appeal. People v. Shearer, 181 Colo. 237, 508 P.2d 1249 (1973).

Appeal without benefit of counsel is unconstitutional. Where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, an unconstitutional line has been drawn between rich and poor. In re Griffin, 152 Colo. 347, 382 P.2d 202 (1963).

The supreme court is authorized as a matter of procedure to fix the time within which an appeal could issue. Johnson v. People, 140 Colo. 256, 344 P.2d 181 (1959).

Statute as basis for jurisdiction. See People v. Young, 139 Colo. 357, 339 P.2d 672 (1959).

Waiver of right to appeal. A defendant cannot waive the right to challenge an illegal sentence because there cannot be a valid agreement to an illegal sentence. Such a sentence cannot validly be imposed and renders the plea agreement with its resulting guilty plea invalid. People v. Bottenfield, 159 P.3d 643 (Colo. App. 2006).

16-12-101.5. Review of proceedings regarding class 1 felony convictions - legislative intent.

(1) The general assembly urges the Colorado supreme court to adopt an expedited process to review class 1 felony convictions where the death penalty has been imposed and any order by the district court granting or denying postconviction relief in such cases. It is the general assembly's intent that the Colorado supreme court give priority to cases in which a sentence of death has been imposed over other cases before the court, except to the extent of any conflict with the

requirement that the court give the highest priority to enforcement actions brought in accordance with section 20 (1) of article X of the state constitution.

(2) In any direct appeal of any class 1 felony case in which a conviction is entered and in which a sentence of death is imposed prior to the date upon which the Colorado supreme court adopts rules implementing the unitary system of review established by part 2 of this article, all challenges to any such conviction or sentence, with the exception of any newly discovered evidence or any claim of ineffective assistance of counsel, shall be included in the brief of the person challenging such conviction or sentence, as such brief is defined by rule 28 of the Colorado appellate rules, at the time such brief is filed with the supreme court of the state of Colorado. Any issue which is not raised in the manner prescribed in this section shall be deemed to be irrevocably waived by the person challenging such conviction or sentence. The failure of such person to file a brief within any time limits ordered by the supreme court of the state of Colorado shall constitute an irrevocable waiver of all issues which could have been raised in such brief.

Source: L. 91: Entire section added, p. 430, § 7, effective May 24. **L. 94:** Entire section amended, p. 1473, § 1, effective July 1. **L. 97:** (2) amended, p. 1582, § 4, effective June 4.

16-12-102. Appeals by the prosecution.

(1) The prosecution may appeal any decision of a court in a criminal case upon any question of law. Any order of a court that either dismisses one or more counts of a charging document prior to trial or grants a new trial after the entry of a verdict or judgment shall constitute a final order that shall be immediately appealable pursuant to this subsection (1). If any act of the general assembly is adjudged inoperative or unconstitutional in any criminal case, it is the duty of the district attorney of the judicial district in which the court making such decision is situated to appeal on behalf of the people of the state of Colorado, unless the same issue of constitutionality is already pending before a reviewing court in another case. Nothing in this section shall authorize placing the defendant in jeopardy a second time for the same offense. No docket fee shall be required of the people upon an appeal under this section. The procedure to be followed in filing and prosecuting appeals under this section shall be as provided by applicable rule of the supreme court of Colorado. However, if a statute providing for the imposition of the death penalty is adjudged inoperative or inapplicable for any reason, such adjudication shall constitute a final order that shall be immediately appealable to the supreme court of Colorado, notwithstanding any statute or court rule to the contrary.

(2) The prosecution may file an interlocutory appeal in the supreme court from a ruling of the trial court granting a motion made in advance of trial by the defendant for the return of property and to suppress evidence or granting a motion to suppress an extrajudicial confession or

admission if the prosecution certifies to the judge who granted such motion and to the supreme court that the appeal is not taken for the purposes of delay and the evidence is a substantial part of the proof of the charge pending against the defendant. The prosecution may also file an interlocutory appeal in the supreme court from a ruling of the trial court granting a motion in limine pertaining to the matters described in this subsection (2), or from a ruling on a motion made pursuant to section 18-1-202 (11), C.R.S., challenging the place of trial or from a ruling on a motion to disqualify a district attorney pursuant to section 20-1-107, C.R.S.

Source: L. 72: R&RE, p. 253, § 1. **C.R.S. 1963:** § 39-12-102. **L. 86:** Entire section amended, p. 734, § 4, effective July 1. **L. 89:** (2) amended, p. 863, § 4, effective April 12. **L. 91, 2nd Ex. Sess.:** (1) amended, p. 15, § 1, effective October 7. **L. 92:** (2) amended, p. 400, § 8, effective June 3. **L. 93:** (1) amended, p. 1728, § 8, effective July 1. **L. 98:** (1) amended, p. 948, § 9, effective May 27. **L. 2000:** (1) amended, p. 453, § 9, effective April 24. **L. 2002:** (2) amended, p. 759, § 5, effective July 1.

ANNOTATION

Annotator's note. Since § 16-12-102 is similar to repealed § 39-7-26, CRS 1963, § 39-7-27, CRS 53, CSA, C 48, § 500, relevant cases construing those provisions have been included in the annotations to this section.

Appeal by people to review judgment of acquittal did not exist at common law or when the state constitution was adopted in 1876. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

Purpose of appeal. Appeals are not allowed for the mere purpose of delay, or to present purely abstract legal questions, however, important or interesting, but to correct errors injuriously affecting the right of some party to the litigation. Miller v. Reeder, 157 Colo. 134, 401 P.2d 604 (1965).

The purpose of appellate review is essentially twofold: to settle the controversy, and to provide explanation of and to give clarity to questions of law by means of published opinions. People v. Kirkland, 174 Colo. 362, 483 P.2d 1349 (1971); People v. May, 182 Colo. 29, 511 P.2d 22 (1973).

An appeal does not lie at the instance of the state unless clearly authorized by this section. People v. Zobel, 54 Colo. 284, 130 P. 837 (1913).

Prosecution may file direct appeal as to a question of law following the dismissal of all charges without prejudice at the prosecution's request following trial court's evidentiary ruling that rendered the prosecution unable to proceed to trial. The finality of judgment requirement of C.A.R. 1 was satisfied when all charges were dismissed and the case was ended. People v. Gabriesheski, 262 P.3d 653 (Colo. 2011).

The plain text of the statute allows the prosecution to appeal dismissal of a count when other counts remain against the defendant. People v. Collins, 32 P.3d 636 (Colo. App. 2001); People v. Beck, 187 P.3d 1125 (Colo. App. 2008).

The prosecution may appeal a dismissal of a count prior to trial even when the appeal is not based on a question of law. People v. Collins, 32 P.3d 636 (Colo. App. 2001).

As where there is a question to decide for future guidance of trial courts. Where, on appeal in behalf of the state, there is no proper question to decide for guidance of trial courts in the future, the appeal will be dismissed. People v. Denver Athletic Club, 63 Colo. 189, 164 P. 1158 (1917).

Or where a legislative act has been held invalid. An appeal may be issued on behalf of the people to review court judgments holding legislative acts inoperative or unconstitutional. People v. Bristol, 92 Colo. 325, 20 P.2d 309 (1933).

Or question of law. This section permits appeals on behalf of the people to review decisions of the trial court upon questions of law arising in any criminal case. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962).

The people are limited on appeal to questions of law. People v. Ware, 187 Colo. 28, 528 P.2d 224 (1974).

Because subsection (1) authorizes the people to appeal any decision of the trial court in a criminal case upon any question of law, C.A.R. 4(b)(2) requires an appellate court to issue a written decision. People v. Wilburn, 2013 COA 135, 343 P.3d 998.

Prosecution's appeal, which raises no questions of law, is improper under this section. People v. Chmielewski, 187 Colo. 268, 529 P.2d 1337 (1975).

Or where complaint dismissed for lack of indictment. Under this section an appeal will lie on behalf of the people to review a judgment of a justice dismissing a complaint charging defendants with commission of a misdemeanor on the ground that the prosecution was not instituted by indictment or information. People v. Read, 132 Colo. 390, 288 P.2d 347 (1955).

An order granting a new trial is a final order pursuant to this section, therefore, prosecution must file its appeal within 45 days of the order. People v. Curren, 228 P.3d 253 (Colo. App. 2009).

Appropriateness of exclusion of witnesses a question of law. Whether the sanction imposed by the trial court — exclusion of the witnesses — for failure to comply with Crim. P. 16 (pt.II)(c), was appropriate under the facts and circumstances of this case matter within the sound discretion of the trial court, and an appropriate question of law under this section. People v. Lyle, 200 Colo. 236, 613 P.2d 896 (1980).

Trial court's interpretation of phrase in statute under which defendant was charged is a question of law reviewable under this section. People v. Miller, 97 P.3d 171 (Colo. App. 2003).

Appropriateness and validity of technically defective notice of appeal is a question of law. People v. Bost, 770 P.2d 1209 (Colo. 1989).

The prosecution can appeal a court's ruling on a defendant's Crim. P. 35 motion challenging a sentence. People v. Hunsaker, 2013 COA 5, 411 P.3d 36, aff'd, 2015 CO 46, 351 P.3d 388.

The prosecution can appeal the court's imposed sentence when the basis for the challenge is that the court applied the wrong sentencing range. The prosecution can appeal questions of law, and the statutory interpretation of the correct sentencing range is a question of law. Hunsaker v. People, 2015 CO 46, 351 P.3d 388.

Suppression of evidence is a question of law; therefore the prosecution may pursue an interlocutory appeal when a motion to suppress evidence is granted. People v. Lewis, 813 P.2d 813 (Colo. App. 1991).

Suppression of a confession given in the absence of a Miranda advisement was warranted where a defendant was vigorously chased, threatened at gunpoint, sprayed with mace, and ultimately subdued and handcuffed, because, despite the arresting officers' belief that they did not have probable cause to arrest the defendant, it would appear to a reasonable person that the defendant's freedom of action or movement had been curtailed to a degree associated with a formal arrest in terms of both severity and duration. People v. Mangum, 48 P.3d 568 (Colo. 2002).

Suppression of incriminating statements warranted when defendant was subject to interrogation by police officers before being advised of Miranda rights. A routine encounter turned into a custodial situation, as defendant was physically surrounded by officers, was not free to go during questioning, and had "objective reasons to believe that he was under arrest"; such circumstances constituted custody. People v. Null, 233 P.3d 670 (Colo. 2010).

Suppression of defendant's statements improper when the defendant is determined not to have been in custody at the time the statements were given. The officers' behavior and language with the defendant did not indicate to the defendant or any reasonable person that the defendant was under arrest. People v. Bohler, 2024 CO 18, 545 P.3d 509.

Suppression of involuntary blood alcohol test results in a vehicular homicide prosecution was erroneous because probable cause to administer the test existed when eyewitnesses saw the defendant's car veer into oncoming traffic, no other cause for the accident was apparent, and police officers found beer bottles and smelled alcohol in the defendant's car. People v. Schall, 59 P.3d 848 (Colo. 2002).

Only three circumstances for interlocutory appeal of a suppression order. Review is proper where evidence was suppressed due to: (1) An unlawful search and seizure; (2) an involuntary confession or admission; or (3) an improperly ordered or insufficiently supported, nontestimonial

identification. People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Review pursuant to subsection (1) not appropriate where argument in essence challenges trial court's assessment of the evidence and does not properly pose a question of law. People v. Fagerholm, 768 P.2d 689 (Colo. 1989).

No proper jurisdiction to hear an appeal when appeal involves an evidentiary issue that implicates factual as well as legal issues. People v. Martinez, 22 P.3d 915 (Colo. 2001).

The prosecution could not appeal the validity of an initial search because it was not challenging the ruling based on a question of law. The prosecution's arguments included factual issues related to the question of good faith. People v. George, 2017 COA 75, 488 P.3d 1159.

Court of appeals has jurisdiction to decide if trial court erred in granting new trial under a postconviction relief motion when issues in motion were brought pursuant to the "other remedies" portion of Crim. P. 35. People v. Naranjo, 821 P.2d 836 (Colo. App. 1991).

Court of appeals had appellate jurisdiction because trial court ultimately dismissed the charges against defendant, which resulted in a final judgment. Regardless of whether the order declining to revoke defendant's deferred judgment was immediately appealable, the finality requirement was met when the trial court dismissed all of the charges. People v. Wilburn, 2013 COA 135, 343 P.3d 998.

Trial court's finding in the preliminary hearing that a killing was completely independent of a burglary was not binding on the appellate court. People v. Lewis, 791 P.2d 1152 (Colo. App. 1989).

Dismissal of prosecution based solely on reviewing content of document was matter of law and therefore reviewable. People v. Marston, 772 P.2d 615 (Colo. 1989).

A denial of the prosecution's request for a presentence investigation report, when such a report is mandated by statute, clearly presents a question of law appealable under this section. People v. Gretz, 973 P.2d 110 (Colo. App. 1998).

Legal significance of delays in defendant's trial appealable matter. Where the trial court ruled that the delays in defendant's trial were at the request and for the benefit of the defendant, the facts are undisputed, and the only question is their legal significance, which is an appealable matter. People v. Reliford, 186 Colo. 6, 525 P.2d 467 (1974).

But questions of fact cannot be the subject of appeal proceedings by which the people seek disapproval of an action of the trial court. People v. Ledesma, 171 Colo. 407, 468 P.2d 27 (1970).

Where determination that delays in bringing defendant to trial involved resolutions of fact questions, the district attorney could not appeal such determinations. People v. Murphy, 183 Colo. 106, 515 P.2d 107 (1973).

C.A.R. 4(b) and this section give the district attorney the right to appeal a judgment of a trial court in a criminal case upon any question of law. However, such an appeal, involving sufficiency of the evidence, is seldom productive of any precedential value. The district attorney's time and efforts can be better utilized than prosecuting appeals such as this. Appeals by district attorneys should be avoided in cases which do not involve egregious error by the trial court. People v. Samora, 188 Colo. 74, 532 P.2d 946 (1975).

Subsection (1) does not permit interlocutory appeals in all cases where a trial court declares a statute unconstitutional. Where ruling that statute was unconstitutional was not analogous to a final judgment but instead represented one step toward the resolution of the defendant's Crim. P. 35 (c) motion, and where immediate appellate review was not necessary, appeal was dismissed for lack of appellate jurisdiction. People v. Romero, 801 P.2d 1192 (Colo. 1990).

Nor will sufficiency of evidence be reviewed. The accused being acquitted, the court will not entertain an appeal on behalf of the people merely to determine the sufficiency of the evidence to warrant a conviction, where it is improbable that a similar state of facts will again be presented, or where a consideration of the testimony, and any declarations upon it, will neither establish any principle of law nor be a guide in subsequent prosecutions. People v. Kippy, 64 Colo. 597, 173 P. 395 (1918), overruled insofar as inconsistent, People v. Kirkland, 174 Colo. 362, 483 P.2d 1349 (1971).

If the question of the sufficiency of the evidence as a whole is not reviewable on an appeal prosecuted by the people, certainly the question of the sufficiency of that evidence as to any particular element of a crime such as the venue, the identity of the defendant, or the corpus delicti, where there is nothing in the testimony to make it specially applicable to other cases which may follow, is not so reviewable. People v. Archer, 173 Colo. 299, 477 P.2d 791 (1970), overruled insofar as inconsistent, People v. Kirkland, 174 Colo. 362, 483 P.2d 1349 (1971).

Appeals by prosecution where the sole issue is the sufficiency of the evidence to sustain a conviction are not favored. People v. Thompson, 748 P.2d 793 (Colo. 1988).

The state may appeal a grant of a new trial. People v. Smith, 921 P.2d 80 (Colo. App. 1996).

Appellate review precluded by the failure of the people to object at the sentencing hearing to the imposition of a sentence within the presumptive range when the defendant was convicted of possession of contraband while in a correctional institution, or to request the trial court, pursuant to Crim. P. 35(a), to correct the sentence. People v. Gallegos, 764 P.2d 76 (Colo. 1988).

Acquittal on motion involving sufficiency is question of law. The issue of sufficiency of the evidence as postured where the trial court has granted the defendant's motion for judgment of acquittal involves a question of law, and as such, the district attorney is given authority to appeal.

People v. Kirkland, 174 Colo. 362, 483 P.2d 1349 (1971).

The final judgment for purposes of appeal was entered when trial court reversed its previous order imposing costs on the defendant, and therefore state's appeal taken more than 30 days after sentencing was proper. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

For purposes of appeal, a final judgment must include the sentence. Therefore, after the sentence was vacated on appeal, an order withdrawing plea of guilty was not a final judgment. Ellsworth v. People, 987 P.2d 264 (Colo. 1999).

Prosecutor's appeal pursuant to this section is subject to the final judgment requirement of C.A.R. 1. People v. Guatney, 214 P.3d 1049 (Colo. 2009).

Court order granting defendant's motion seeking the return of marijuana and marijuana plants pursuant to art. XVIII, § 14 (2)(e), of the state constitution is a final judgment subject to appeal under this section. People v. Crouse, 2013 COA 174, 412 P.3d 599, rev'd on other grounds, 2017 CO 5, 388 P.3d 39.

An order declining to revoke probation is not a final judgment within meaning of C.A.R. 1, thus the court of appeals lacked jurisdiction to entertain the appeal. People v. Guatney, 214 P.3d 1049 (Colo. 2009).

A court order dismissing the charges against the defendant based on a finding that the defendant was incompetent to proceed with no probability of restoration is a final, appealable order. People v. Ong, 2021 COA 113, 499 P.3d 375.

A stay issued under § 16-8.5-116 (10) of the dismissal order issued under § 16-8.5-116 (4) does not extend the finality of the order for purposes of timely filing an appeal. There was nothing more for the court to do in the competency proceedings, and the stay was issued to facilitate the transfer of the case from the criminal court to civil mental health proceedings. People v. Ong, 2021 COA 113, 499 P.3d 375.

Interlocutory appeals permitted. This section contains no language which would limit the people's right to appeal solely to final judgments of the trial court and, therefore, it permits interlocutory appeals. People v. Traubert, 199 Colo. 322, 608 P.2d 342 (1980).

Generally, interlocutory appeals authorized by statute are permissive rather than mandatory, and failure to pursue an immediate appeal does not preclude appeal of the issue when it merges into the final judgment. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

People's appeal filed within 45 days after defendant's sentencing was timely. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

An appeal that is classified as challenging a final order under subsection (1) for purposes of appellate jurisdiction is not necessarily precluded from being interlocutory in nature so as to toll the speedy trial period under § 18-1-405 (6)(b).

People v. Curren, 2014 COA 59M, 348 P.3d 467.

Prosecution's appeal from a new trial order must be characterized as interlocutory in nature, so as to toll the speedy trial period under § 18-1-405 (6)(b), so long as the appeal is taken in good faith, is filed before the defendant is convicted, and is necessarily disruptive of the course of proceeding to a final resolution. People v. Gallegos, 946 P.2d 946 (Colo. 1997); People v. Curren, 2014 COA 59M, 348 P.3d 467.

In order to toll the time for filing an interlocutory appeal, a motion to reconsider a trial court order of suppression must be filed within ten days of the date of the order of suppression. People v. Powers, 47 P.3d 686 (Colo. 2002).

Only mechanism for review of district court's determination on appeal from county court is by certiorari to the supreme court as specified in § 13-6-310 (4). People v. Gonzales, 198 Colo. 546, 603 P.2d 139 (1979); People v. Luna, 648 P.2d 624 (Colo. 1982).

Only parties aggrieved may appeal. The word aggrieved refers to a substantial grievance, the denial to the party of some claim of right, either of property or of person, or the imposition upon him of some burden or obligation. Miller v. Reeder, 157 Colo. 134, 401 P.2d 604 (1965).

Only a party to the original proceeding may sue out an appeal. Where the district attorney was not a party to the proceedings below, the parties being the people of the state of Colorado versus Reeder, and is not a party aggrieved, he cannot be an appellant in the supreme court. Miller v. Reeder, 157 Colo. 134, 401 P.2d 604 (1965).

A trial court ruling may be appealed when the prosecution believes the court misinterpreted statute. People v. Spencer, 2024 COA 75, 557 P.3d 1218.

Error asserted by state must be prejudicial. Under this section the district attorney is authorized to raise by appeal certain questions, but that right must be predicated upon the theory that the errors committed were prejudicial to the people. People v. Wolff, 111 Colo. 46, 137 P.2d 693 (1943).

Although the district attorney is entitled to the judgment of the supreme court on questions important to the prosecution of similar cases in the future, it is essential that material errors, prejudicial to the state in the particular case and covered by the statement of errors, be disclosed by the record. People v. Hill, 116 Colo. 436, 181 P.2d 360 (1947).

Erroneous rulings should be enumerated in opening brief. When the people appeal under this section upon a question of law following an acquittal, they should enumerate in their opening brief the erroneous rulings of which complaint is made. The supreme court will direct its attention only to such issues so mentioned, unless manifest error appears. People v. Martin, 192 Colo. 491, 561 P.2d 776 (1977).

Trial court's findings of fact are entitled to deference by a reviewing court, but when the absence of factual findings regarding key contested issues hinders appellate review, or when unresolved evidentiary conflicts exist with regard to

material facts, case must be remanded to the trial court for further fact-finding. People v. Brazzel, 18 P.3d 1285 (Colo. 2001).

Review by state not available in delinquency proceeding. Appellate courts traditionally limit their jurisdiction to consideration of actual controversies and refuse to give opinions on moot questions or abstract propositions. An exception to this rule is created by this section which provides for appeal on behalf of the people to review decisions of trial courts on questions of law arising in criminal cases, but such statutory review is not available in a proceeding in delinquency, which is not a criminal case. People in Interest of GDK v. GDK, 30 Colo. App. 54, 491 P.2d 81 (1971).

Constitutional jeopardy saving clause not applicable to review by state. Section 18 of art. II, Colo. Const., providing that if a judgment in a criminal case is reversed for errors of law the accused shall not be deemed to have been in jeopardy, must be reviewed as of the time of its adoption and construed in the sense in which the framers understood it, and it cannot be deemed to apply in a situation where the people on review by appeal obtain disapproval of a judgment of acquittal in a criminal proceeding, since at the time of its adoption the people did not have the right to sue out an appeal in a criminal case. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

The exception permitting a district attorney not to appeal a finding of unconstitutionality when the same issue of constitutionality is already before another court applies only if it is the same issue of constitutionality, it does not apply if the question of constitutionality is before a reviewing court on a different issue. People v. Gilmore, 97 P.3d 123 (Colo. App. 2003).

This section expressly provides that accused shall not be placed in jeopardy a second time. An accused person is not to be twice put in jeopardy by the judgment of the supreme court in an appeal prosecuted by the people under this section. People v. Fitzgerald, 51 Colo. 175, 117 P. 135 (1911).

When an accused person is arraigned, tried and acquitted, he is, by the express words of this section, allowing an appeal by the people, not to be again put in jeopardy. People v. Denver Athletic Club, 63 Colo. 189, 164 P. 1158 (1917).

Where habitual criminal counts have been dismissed by the trial court after jeopardy has already attached on substantive charges, the Colorado double jeopardy clause, § 18 of Art. II, Colo. Const., prohibits a retrial of the defendant on habitual criminality. Appellate review under these circumstances is limited to approval or disapproval of the judgment. People v. Deason, 670 P.2d 792 (Colo. 1983); People v. Leonard, 673 P.2d 37 (Colo. 1983); People v. Germany, 674 P.2d 345 (Colo. 1983); People v. Moody, 674 P.2d 366 (Colo. 1984); People v. Trujillo, 731 P.2d 649 (Colo. 1986).

The prosecution may not cure a failure to timely file an interlocutory appeal of a suppression order by dismissing without prejudice the case against the defendant and then appealing the issues raised in the suppression order. People v. Donahue, 750 P.2d 921 (Colo. 1988).

Lower court's declaration of unconstitutionality and dismissal of some charges in a multi-count information is basis for appellate court jurisdiction under this statute. People v. Jefferson, 748 P.2d 1223 (Colo. 1988).

Lower court's interlocutory ruling granting a motion to suppress is reviewable under subsection (2) of this section and C.A.R. 4.1(a) because the lower court relied on alleged violations of physician-patient privilege and the production of records statutes; expressly looked to Crim. P. 41(e); analyzed the questions presented in accordance with the law governing search warrants; and relied on fourth amendment principles. People v. Soron, 2026 CO 3, 581 P.3d 778.

Lower court's interlocutory ruling that statute creating procedure for determining whether imposition of death penalty is unconstitutional is not reviewable under subsection (1). People v. Young, 814 P.2d 834 (Colo. 1991).

By definition, it could not be used to appeal the ruling on a jeopardy issue. People v. Voss, 191 Colo. 338, 552 P.2d 1012 (1976).

Where jeopardy has attached and the trial cannot be resumed, there is no justification for reviewing a ruling suppressing the evidence as an appeal under this section. People v. Voss, 191 Colo. 338, 552 P.2d 1012 (1976).

It precludes a second trial if acquittal is disapproved. The provision that nothing in this section shall be construed so as to place a defendant in jeopardy for a second time for the same offense precludes a second trial for the same offense, even though judgment of acquittal is disapproved by the supreme court. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

Double jeopardy held no bar to prosecution of burglary and assault charges. People v. Mendoza, 190 Colo. 519, 549 P.2d 766 (1976).

The supreme court merely approves or disapproves the ruling complained of by the state on an appeal. People v. Fitzgerald, 51 Colo. 175, 117 P. 135 (1911).

This section permits a state to appeal from a verdict of acquittal in felony cases for the purpose of obtaining a decision on the correctness of a ruling made by the trial court, but not for the purpose of affecting the verdict in any way. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

Trial court applied an improper collateral estoppel standard when it determined that the intent issue was precluded because it was "more likely than not" that the jury found a lack of intent. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

This section must be interpreted consistently with applicable rules of procedure and judicial precedent indicative of the legislative intent underlying the statute. People v. Hinchman, 40 Colo. App. 9, 574 P.2d 866 (1977), aff'd in part, rev'd in part, 196 Colo. 526, 589 P.2d 917 (1978).

A party's erroneous filing in the supreme court does not require dismissal

of the appeal. Rather, the case must be transferred to the court of appeals under § 13-4-110 (2) and (3). People v. Hernandez, 2025 CO 13, 566 P.3d 995.

Applied in People v. Rael, 198 Colo. 225, 597 P.2d 584 (1979); People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979); People v. Jenkins, 198 Colo. 347, 599 P.2d 912 (1979); People v. Waggoner, 199 Colo. 450, 610 P.2d 106 (1980); People v. District Court, 623 P.2d 55 (Colo. 1981); People v. Torres, 625 P.2d 368 (Colo. 1981); People v. Boyd, 642 P.2d 1 (Colo. 1982); People v. Ray, 678 P.2d 1019 (Colo. 1984); People v. Washington, 865 P.2d 145 (Colo. 1994); People v. Holmes, 981 P.2d 168 (Colo. 1999); People v. Smith, 40 P.3d 1287 (Colo. 2002); People v. Reed, 56 P.3d 96 (Colo. 2002); People v. Crippen, 223 P.3d 114 (Colo. 2010).

16-12-103. Stays of execution.

When a person has been convicted of an offense and a notice of appeal is filed, he shall be entitled to a stay of execution by compliance with the provisions and requirements of the applicable rules of the supreme court of Colorado.

Source: L. 72: R&RE, p. 253, § 1. **C.R.S. 1963:** § 39-12-103.

Cross references: For stay of execution in criminal appeals from county courts, see Crim. P. 37(f); for stay of execution in criminal appeals from district courts, see C.A.R. 8.1.

ANNOTATION

Law reviews. For article, "Colorado Criminal Procedure — Does It Meet Minimum Standards?", see 28 Dicta 14 (1951).

Annotator's note. Since § 16-12-103 is similar to repealed § 39-7-28, CRS 53, and laws antecedent to CSA, C. 48, § 501, relevant cases construing those provisions have been included in the annotations to this section.

A stay of execution supersedes the judgment of the court below, and provides that no steps should be taken towards execution. Ritchey v. People, 22 Colo. 251, 43 P. 1026 (1896).

It is not dependent upon the question of bail; but if, in the opinion of the court, the party ought to be let to bail pending the proceedings, an order for that purpose may also be made. Ritchey v. People, 22 Colo. 251, 43 P. 1026 (1896).

Refusal to stay execution was abuse of discretion. Where a petitioner is adjudged guilty of contempt of court for refusal to

answer questions before the grand jury and is sentenced to four months in jail, refusal of the trial court to stay execution or admit the petitioner to bail pending review by the supreme court is an abuse of discretion. Smaldone v. People, 153 Colo. 208, 385 P.2d 127 (1963).

PART 2

UNITARY REVIEW IN DEATH PENALTY CASES

16-12-201. Legislative declaration.

(1) The general assembly hereby declares that the purpose of this part 2 is to establish an expedited system of unitary review of class 1 felony cases in which a death sentence is imposed.

(2) The general assembly finds that enactment of this part 2 will accomplish the following goals:

(a) Ensuring compliance with the requirements of the federal "Antiterrorism and Effective Death Penalty Act of 1996", 28 U.S.C. sec. 2261 et seq.;

(b) Improving the accuracy, completeness, and justice of review proceedings by requiring that postconviction review commence immediately after the imposition of a sentence of death;

(c) Allowing for the full and fair examination of all legally cognizable postconviction and appellate issues by the trial court and the Colorado supreme court; and

(d) Eliminating, to the fullest extent possible, unreasonable and unjust delays in the resolution of postconviction issues by combining and reducing the number of proceedings in class 1 felony cases.

Source: L. 97: Entire part added, p. 1573, § 1, effective June 4.

16-12-202. Unitary procedure for appeals - scope and applicability.

(1) Notwithstanding any state statute or rule of the Colorado supreme court to the contrary, this part 2 and the supreme court rules adopted pursuant to this part 2 establish the only procedure for challenging a sentence of death or the conviction that resulted in the sentence of death.

(2) This part 2 does not apply to class 1 felony cases in which a sentence of death is not sought or to class 1 felony convictions for which the death penalty is not imposed.

(3) This part 2 shall apply to any class 1 felony conviction for which the death penalty is imposed as punishment, regardless of whether the sentence is imposed pursuant to section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, C.R.S., which death sentence is imposed on or after the date upon which the supreme court adopts rules implementing the unitary system of review established by this part 2.

(4) For cases in which a death sentence is imposed prior to the date upon which the Colorado supreme court adopts rules implementing the unitary system of review established by this part 2, appellate review and postconviction review shall be as otherwise provided by law.

Source: L. 97: Entire part added, p. 1574, § 1, effective June 4. **L. 2002:** (3) amended, p. 1497, § 150, effective October 1. **L. 2002, 3rd Ex. Sess.:** (3) amended, p. 33, §§ 25, 26, effective July 12.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsection (3), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

ANNOTATION

The use of the phrase "class 1 felony conviction" in this part 2 does not eliminate issues concerning lesser felonies from its statutory scope. The context of this reference establishes a threshold requirement for the statute's application, rather than limiting the issues or convictions that can be reviewed in a case in which a death sentence has been imposed. People v. Owens, 219 P.3d 379 (Colo. App. 2009).

16-12-203. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Direct appeal" means the appeal to the Colorado supreme court of any issues raised at the entry of a guilty plea, before trial, at trial, at the penalty phase hearing, or in a motion for new trial.

(2) "Direct appeal counsel" means the attorney retained by the defendant, or appointed by the trial court to represent an indigent defendant, as the successor to trial counsel for purposes of representing the defendant in direct appeal proceedings.

(3) "New postconviction counsel" means the attorney retained by the defendant, or appointed by the trial court to represent an indigent defendant, for the purposes of representing the defendant in postconviction review and postconviction review appeal proceedings. New postconviction counsel cannot have previously represented the defendant with regard to the class 1 felony charge.

(4) "Postconviction review" means review as provided in this part 2 by the trial court that occurs after conviction in a class 1 felony case in which the death penalty is imposed as punishment.

(5) "Postconviction review appeal" means the appeal to the Colorado supreme court of any issues raised in postconviction review proceedings.

(6) "Trial counsel" means the attorney who represents the defendant with regard to the class 1 felony charge: For the purposes of any guilty plea; before trial; at trial; at the penalty phase hearing; for the purposes of a motion for new trial; for the purposes of postconviction review if the defendant chooses to continue with trial counsel for purposes of postconviction review; and for the purposes of direct appeal if the defendant chooses to continue with trial counsel for purposes of direct appeal. "Trial counsel" does not include new postconviction counsel appointed pursuant to section 16-12-205 or direct appeal counsel.

Source: L. 97: Entire part added, p. 1574, § 1, effective June 4.

16-12-204. Stay of execution - postconviction review.

(1) The trial court, upon the imposition of a death sentence, shall set the time of execution pursuant to section 18-1.3-1205, C.R.S., and enter an order staying execution of the judgment and sentence until receipt of an order from the Colorado supreme court. The trial court shall direct the clerk of the trial court to mail to the Colorado supreme court immediately a copy of the judgment, sentence, and mittimus.

(2) The trial court shall order the defendant, trial counsel, and the prosecution to attend a hearing to be held after the date upon which the sentence of death is imposed. At the hearing, the trial court shall:

(a) Advise the defendant of the nature of review as provided in this part 2;

(b) Advise the defendant of the right to direct appeal counsel;

(c) Advise the defendant that the issue of ineffective assistance of trial counsel before trial, at trial, or during the penalty phase hearing may only be raised on postconviction review and on postconviction review appeal;

(d) Advise the defendant that the issue of ineffective assistance of counsel during direct appeal by trial counsel or direct appeal counsel may only be raised by way of a petition for rehearing filed in the Colorado supreme court by new postconviction counsel or the defendant pursuant to the rules adopted by the Colorado supreme court to implement this part 2;

(e) Determine whether the defendant intends to pursue postconviction review; and

(f) If the defendant intends to pursue postconviction review, determine whether the defendant intends to proceed with or without counsel.

(3) After a full discussion on the record, if the defendant knowingly, voluntarily, and intelligently waives the right to pursue postconviction review, trial counsel or direct appeal counsel, if appointed or retained, or the defendant, if proceeding without counsel, may file any notice of appeal with the Colorado supreme court, as provided by Colorado supreme court rule.

Source: L. 97: Entire part added, p. 1575, § 1, effective June 4. **L. 2002:** (1) amended, p. 1497, § 151, effective October 1. **L. 2002, 3rd Ex. Sess.:** (1) amended, p. 14, §§ 5, 6, effective July 12. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 856, § 88, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2002 act amending subsection (1), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session.

16-12-205. Postconviction review - appointment of new postconviction counsel - qualifications - compensation.

(1) At the hearing held pursuant to section 16-12-204 (2), if the defendant chooses to pursue postconviction review, the trial court shall enter an order appointing new postconviction counsel for the defendant if the trial court finds that the defendant is indigent and either the defendant requests and accepts such appointment or the trial court finds that the defendant is unable to competently decide whether to accept or reject the appointment. However, the trial court shall not appoint new postconviction counsel if:

(a) The defendant has retained new postconviction counsel; or

(b) The defendant has elected to proceed without counsel and the trial court finds, after a full discussion on the record, that the defendant's election to proceed without counsel is knowing, intelligent, and voluntary; or

(c) The defendant elects to have trial counsel continue representing the defendant for purposes of postconviction review and the trial court finds, after a full discussion on the record, that:

(I) The defendant understands that new postconviction counsel can be retained by the defendant for purposes of postconviction review or appointed by the trial court for the defendant if the defendant is indigent;

(II) The defendant understands that, by electing to have trial counsel continue to represent the defendant for purposes of postconviction review, the defendant waives the right to challenge the effectiveness of trial counsel's representation at any stage of the proceedings;

(III) The defendant's election to have trial counsel continue to represent the defendant for purposes of postconviction review is knowing, intelligent, and voluntary; and

(IV) Trial counsel agrees to continue representing the defendant for purposes of postconviction review.

(2) In appointing new postconviction counsel to represent an indigent defendant, the trial court shall appoint one or more attorneys who, alone or in combination, meet all of the following minimum qualifications:

(a) Each appointed attorney shall be licensed to practice law in Colorado or be admitted to practice in Colorado solely for the purpose of representing the defendant;

(b) At least one of the appointed attorneys shall have a minimum of five years' experience in criminal law litigation, including work on trials and postconviction proceedings;

(c) At least one of the appointed attorneys shall have a minimum of three years' experience in trying felony cases, including having tried at least five felony cases to verdict in the preceding five years or having tried a minimum total of twenty-five felony cases; and

(d) At least one of the appointed attorneys shall have a minimum of three years' experience in handling appeals of felony cases, having served as counsel in at least five appeals in felony cases.

(3) In appointing new postconviction counsel, the trial court may also consider the following factors:

(a) Whether the attorney under consideration has previously appeared as counsel in a class 1 felony case in which the death penalty was sought;

(b) Whether the attorney under consideration has tried at least one first degree murder case to verdict;

(c) Whether, within the preceding five years, the attorney under consideration has taught or attended a continuing legal education course that dealt in substantial part with the trial, appeal, and postconviction review of class 1 felony cases in which the death penalty is sought;

(d) The workload of the attorney under consideration and how that workload would affect the attorney's representation of the defendant;

(e) The diligence and ability of the attorney under consideration; and

(f) Any other factor that may be relevant to a determination of whether the attorney under consideration will fairly, efficiently, and effectively represent the defendant for purposes of postconviction review.

(4) In any case in which the trial court appoints new postconviction counsel or new postconviction counsel is retained, said new postconviction counsel shall not be retained or appointed to act as co-counsel with trial counsel and shall not be associated or affiliated with trial counsel. New postconviction counsel shall exercise independent judgment and act independently from trial counsel.

(5) The ineffectiveness of counsel during postconviction review shall not be a basis for relief.

(6) The office of the public defender or the office of alternate defense counsel, created in section 21-2-101, C.R.S., whichever is appropriate, shall pay the compensation and reasonable litigation expenses of defendant's counsel incurred during the unitary review proceeding.

Source: L. 97: Entire part added, p. 1576, § 1, effective June 4. **L. 2009:** (6) amended, (SB 09-292), ch. 369, p. 1948, § 29, effective August 5.

16-12-206. Postconviction review - motion.

(1) (a) In any case in which a defendant has been convicted of a class 1 felony and been sentenced to death, all motions for postconviction review and all postconviction review proceedings are governed by this part 2 and by the supreme court rules adopted to implement this part 2.

(b) Any motion for postconviction review shall state with particularity the grounds upon which the defendant intends to rely, including a statement of the facts and citations of law. A motion for postconviction review may include only those issues specified in paragraph (c) of this subsection (1) and shall not include any issues that were raised at the entry of any guilty plea, before trial, at trial, at the penalty phase hearing, or in the motion for new trial.

(c) A motion for postconviction review may raise only the following issues:

(I) Whether there exists evidence of material facts, not previously presented and heard, which by the exercise of reasonable diligence could not have been known or learned by the defendant or trial counsel prior to the imposition of the sentence and which require that the conviction or the death sentence be vacated in the interests of justice; or

(II) Whether the conviction was obtained or the sentence was imposed in violation of the constitution or laws of the United States or Colorado; or

(III) Whether the defendant was convicted under a statute that violates the constitution of the United States or Colorado or whether the conduct for which the defendant was prosecuted was constitutionally protected; or

(IV) Whether the judgment was rendered without jurisdiction over the defendant or the subject matter; or

(V) Any other grounds that are properly the basis for collateral attack upon a criminal judgment; or

(VI) Whether trial counsel rendered ineffective assistance.

(2) By alleging that trial counsel rendered ineffective assistance, the defendant automatically waives confidentiality pursuant to the provisions of section 18-1-417, C.R.S., between the defendant and trial counsel but only with respect to the information that is related to the defendant's claim of ineffective assistance.

(3) Neither the defendant nor the prosecution may file a motion for reconsideration or rehearing of the trial court's ruling on the motion for postconviction review. The granting or denying of a motion for postconviction review under this section is a final order reviewable on appeal by the Colorado supreme court.

Source: L. 97: Entire part added, p. 1578, § 1, effective June 4. **L. 2005:** (2) amended, p. 424, § 3, effective April 29.

16-12-207. Supreme court - appeal - filing of notice.

(1) (a) If the defendant waives his or her right to postconviction review as provided in section 16-12-204, but intends to proceed with direct appeal, trial counsel, direct appeal counsel, if appointed or retained, or the defendant, if proceeding on direct appeal without counsel, shall file any notice of appeal for purposes of direct appeal in the Colorado supreme court.

(b) If the trial court conducts postconviction review and the defendant intends to seek direct appeal or postconviction review appeal, the notices of appeal, including both direct appeal and postconviction review appeal issues, shall be filed in the Colorado supreme court.

(2) Any appeal to the Colorado supreme court filed by the defendant pursuant to this part 2 shall consolidate and resolve, in one proceeding, all direct appeal and postconviction review appeal issues.

(3) The prosecution may appeal any final ruling by the trial court in the course of proceedings pursuant to this part 2, including but not limited to:

(a) A ruling granting a motion for new trial or other relief; and

(b) A ruling by the trial court granting postconviction relief; and

(c) A ruling by the trial court that any statute, including but not limited to a statute providing for the imposition of the death penalty, is adjudged inoperative or unconstitutional for any reason.

(4) Any appeal filed by the defendant or by the prosecution pursuant to this part 2 shall be taken directly to the Colorado supreme court.

Source: L. 97: Entire part added, p. 1579, § 1, effective June 4.

16-12-208. Supreme court - rules.

(1) No later than January 1, 1998, the Colorado supreme court shall adopt rules to establish procedures, including time limits, for the postconviction review and unitary appeal process created by this part 2.

(2) The rules adopted by the Colorado supreme court pursuant to subsection (1) of this section shall address, but are not limited to:

(a) Filing and resolution of motions for new trial;

(b) The timing of the advisement hearing described in section 16-12-204 (2);

(c) The preparation of transcripts for postconviction review and unitary appeal;

(d) Filing and resolution of motions for postconviction review, including but not limited to provisions for determining whether evidentiary hearings are necessary to resolve such motions;

(e) Reciprocal discovery for the defendant and the prosecution during the postconviction review process;

(f) Prompt access by new postconviction counsel to trial counsel's files and materials;

(g) Waiver of a defendant's right to postconviction review and appeal of a conviction and sentence of death;

(h) Resolution of claims of ineffective assistance of counsel on direct appeal by way of a petition for rehearing;

(i) Filing of notices of appeal in the supreme court;

(j) Certification of the appellate record to the supreme court;

(k) Filing of briefs in the supreme court;

(l) Establishment of expedited procedures for resolving second or subsequent requests for relief filed by a defendant after conclusion of the process established by this part 2, including but not limited to motions filed under section 16-12-209;

(m) Creation of meaningful sanctions for violations of the rules promulgated by the supreme court; and

(n) Issuance and dissolution of stays of execution.

(3) The supreme court rules adopted pursuant to subsection (1) of this section shall ensure that all proceedings for postconviction review, the certification of the record, and all appellate briefing shall be completed within two years after the date upon which the sentence of death is imposed. There shall be no extensions of time of any kind beyond the two-year period.

(4) Unless otherwise provided in this part 2, the Colorado appellate rules govern the procedures to be followed in appeals to the Colorado supreme court of trial court rulings under this part 2.

(5) The general assembly urges the Colorado supreme court to render its decisions expeditiously in review of class 1 felony convictions where the death penalty has been imposed and any order by the trial court granting or denying postconviction relief in such cases. It is the general assembly's intent that the Colorado supreme court give priority to cases in which a sentence of death has been imposed over all other cases before the court, except to the extent of any conflict with the requirement that the court give the highest priority to enforcement actions brought in accordance with section 20 (1) of article X of the state constitution.

Source: L. 97: Entire part added, p. 1580, § 1, effective June 4.

ANNOTATION

Subsection (3) does not impose an absolute two-year time limit on presenting a unitary appeal to the supreme court. Rather the statute directs the supreme court to create the limit in court rules. An absolute two-year time extension prohibition does not exist either in statute or rule. Crim. P. 32.2 implements the legislature's direction by

imposing a series of highly specific time limits designed to meet the two-year goal when it can be accomplished without violating the defendant's constitutional rights or the legislature's expressly articulated goals. People v. Owens, 228 P.3d 969 (Colo. 2010).

16-12-209. Limitation on postconviction review.

(1) No further postconviction review is available to the defendant after the time specified by supreme court rule for filing a petition for postconviction review has expired. Any claim or petition filed thereafter shall be deemed waived and shall be dismissed summarily unless the defendant establishes that:

(a) The failure to raise the claim within the time limit was the direct result of interference by government officials with the presentation of the claim in a manner which violated the constitution or laws of the United States or Colorado; or

(b) The facts upon which the claim are based were unknown to the defendant and could not have been ascertained by the exercise of due diligence; or

(c) The right asserted by the defendant is a constitutional right that was recognized by the supreme court of either the United States or Colorado after the time limits specified by supreme court rule for the filing of the petition for postconviction review had expired and the constitutional right applies retroactively.

(2) If the defendant files a motion for postconviction review raising any of the grounds specified in subsection (1) of this section, the motion shall be filed with the trial court within thirty-five days after the date upon which the grounds are discovered.

Source: L. 97: Entire part added, p. 1581, § 1, effective June 4. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 856, § 89, effective July 1.

16-12-210. Severability.

If any provision of this part 2 or the application of this part 2 to any person or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this part 2 that can be given effect without the invalid or unconstitutional provision or application. Therefore, to this end, the provisions of this part 2 are declared to be severable.

Source: L. 97: Entire part added, p. 1581, § 1, effective June 4.

PART 3

COLORADO FORENSIC SCIENCE INTEGRITY ACT

Editor's note: Section 5 of chapter 352 (HB 25-1275), Session Laws of Colorado 2025, provides that the act adding this part 3 applies to claims for relief filed on or after June 2, 2025, that are based on knowing misconduct or a significant event, as defined in this act, that occurred before, on, or after June 2, 2025.

16-12-301. Short title.

The short title of this part 3 is the "Colorado Forensic Science Integrity Act".

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1891, § 1, effective June 2.

16-12-302. Legislative declaration.

(1) The general assembly finds and declares that:

(a) An effective criminal justice system requires that crime laboratory employees act with integrity and that crime laboratories have controls to prevent and detect knowing misconduct and violations of procedures and properly investigate and report misconduct when it occurs;

(b) Prosecutors, defendants, and victims deserve transparency and to be notified of misconduct by crime laboratory employees who handle evidence used in criminal cases;

(c) The criminal justice system must provide an opportunity to timely and fairly litigate cases in which there was misconduct by a crime laboratory employee that could affect, or did affect, the outcome of a case; and

(d) Defendants must be afforded the right to counsel, the right to full disclosure of the misconduct, and the right to an evidentiary hearing in order to adequately address the impact of misconduct by crime laboratory employees.

(2) The general assembly intends that this part 3 be interpreted to accomplish the policies declared in this section.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1891, § 1, effective June 2.

16-12-303. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Crime laboratory" means a forensic services provider in Colorado that assists law enforcement agencies or prosecutors by performing scientific laboratory testing or examination of physical evidence. "Crime laboratory" does not include a laboratory operated by a county coroner's office.

(2) "Crime laboratory director" or "director" means the senior position of a crime laboratory as defined in the crime laboratory's policy.

(3) "Crime laboratory employee" or "employee" means a person who works or has worked in a crime laboratory, including crime laboratory contract workers.

(4) "Final report" means the final report prepared by a crime laboratory director following an investigation of alleged wrongful action, described in section 16-12-305 (4)(c).

(5) "Forensic services provider" means a unit or section of a law enforcement agency that holds an ISO/IEC 17025 forensic laboratory accreditation or that performs work equivalent to that of an accredited forensic services provider without being accredited.

(6) "Knowing misconduct" means a voluntary act or omission or series of acts or omissions consciously performed by a crime laboratory employee as a result of effort or determination in which the employee is aware that the employee's conduct is improper or deceptive, and which act or omission or series of acts or omissions involve:

(a) The mishandling of physical evidence or data elements or results;

(b) Incorrectly performing forensic testing;

(c) Presenting misleading or false results;

(d) Concealing material information; or

(e) Presenting false sworn testimony about the evidence.

(7) "Significant event" means an act or omission by a crime laboratory employee that is a gross deviation from the laboratory standard operation procedures or accreditation requirements of the crime laboratory, or requirements in law that were applicable at the time of the act or omission of the crime laboratory employee, that could substantially negatively affect the integrity of the crime laboratory activities.

(8) "Wrongful action" means knowing misconduct or a significant event.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1892, § 1, effective June 2.

16-12-304. Duty of a crime laboratory employee to report misconduct.

(1) A crime laboratory employee who, in pursuance of their work or in the course of an investigation, witnesses or discovers wrongful action must report that wrongful action to their immediate supervisor at the crime laboratory or to the crime laboratory director within seven days after witnessing or discovering the wrongful action. A crime laboratory supervisor who receives a report shall notify the crime laboratory director within seventy-two hours after receiving the report.

(2) A report required by this section must be made in writing and include a description of the wrongful action; the date, time, and location that the wrongful action was seen or discovered; the people present at the time; and, if known, any identifying numbers or case numbers that relate to the wrongful action.

(3) Each crime laboratory shall develop and implement policies and procedures for reporting wrongful actions in accordance with this section. The policies and procedures must identify the crime laboratory director who receives reports of wrongful actions.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1893, § 1, effective June 2.

16-12-305. Duty of crime laboratory to investigate wrongful action - report to prosecuting attorney - record retention.

(1) A crime laboratory director who, on or after July 1, 2025, receives a report of wrongful action pursuant to section 16-12-304 or receives other information about an act or omission by a crime laboratory employee that may constitute wrongful action shall forthwith investigate the crime laboratory employee's actions.

(2) A crime laboratory director's investigation of wrongful action conducted pursuant to this section must include, but is not limited to:

(a) A review and analysis of all data, reports, and documents relevant to the alleged or actual wrongful action;

(b) Taking statements from all relevant witnesses;

(c) An assessment of the employee's compliance with all standards and policies of the crime laboratory relevant to the actions described in the report of wrongful action;

(d) An assessment of the laboratory's compliance with any laboratory accreditation, certification, or licensure requirements relevant to the actions described in the report of wrongful action;

(e) A determination of whether wrongful action occurred; and

(f) Identifying and compiling a list of all cases that the crime laboratory employee worked on in an official capacity at the crime laboratory. The investigation need not include a review of the case work on any case included on the list unless the crime laboratory director determines that a review is warranted.

(3) (a) When an investigation is of alleged wrongful action in a pending case, the crime laboratory director shall, within seven days of beginning the investigation, notify the district attorney with jurisdiction over each pending criminal case that is subject to the investigation about the investigation.

(b) The notice to the district attorney must include:

(I) The name of the crime laboratory employee;

(II) The nature of the allegation; and

(III) A list of the cases identified in the initial investigation pursuant to subsection (1) of this section in which there is an alleged wrongful action or that are being reviewed as part of an investigation into the alleged wrongful action.

(4) (a) Within ninety-one days of the report of wrongful action to the crime laboratory director, the director shall complete the investigation of a wrongful action and determine whether wrongful action occurred in a case identified in the initial investigation notice to the district attorney made pursuant to subsection (3)(a) of this section.

(b) (I) If the investigation cannot be completed within ninety-one days, the crime laboratory director shall provide notice of the investigation to each district attorney who has jurisdiction over any case the crime laboratory employee worked on in an official capacity, including cases subject to the notice required pursuant to subsection (3)(a) of this section.

(II) The notice to the district attorney about an ongoing investigation made pursuant to subsection (4)(b)(I) of this section must include:

(A) The name of the crime laboratory employee;

(B) The nature of the allegation;

(C) A written update that addresses the state of the investigation, the reason for the delay, and the anticipated timeline for completing the investigation; and

(D) The list of cases described in subsection (2)(f) of this section.

(III) After notifying a district attorney about an ongoing investigation pursuant to subsection (4)(b)(I) of this section, the crime laboratory director shall provide written updates about the status of the investigation to the district attorney at least every thirty-five days thereafter until the investigation is complete.

(c) At the conclusion of the investigation, the crime laboratory director shall prepare a written final report describing the investigation and determinations on the cases in which there is an alleged wrongful action by a crime laboratory employee. If the investigation determines that the crime laboratory employee engaged in wrongful action, the final report must include the list of cases described in subsection (2)(f) of this section, and the release of the final report is governed by section 24-72-303 (4)(a.5).

(5) (a) If the investigation determines that the crime laboratory employee did not engage in wrongful action, no further action is required by the crime laboratory director; except that:

(I) The director shall deliver forthwith the final report of the investigation to each district attorney who received a notice of the investigation pursuant to subsections (3) and (4) of this section; and

(II) The director shall deliver forthwith the final report of the investigation to each district attorney with jurisdiction over any case that was subject to investigation pursuant to subsection (1) of this section.

(b) If the investigation determines that the crime laboratory employee engaged in wrongful action, the crime laboratory director shall:

(I) Deliver forthwith the final report of the investigation, which includes the list of cases described in subsection (2)(f) of this section, to each district attorney who has jurisdiction over any case that the crime laboratory employee worked on in an official capacity; and

(II) Provide the district attorney all materials discoverable by the defendant pursuant to section 16-12-309 on a timely and ongoing basis through the conclusion of post-conviction proceedings. The director shall respond to any requests for discoverable material from the district attorney by providing the requested materials or by responding in writing within twenty-four days after receiving the request that the requested materials do not exist.

(6) A crime laboratory must adopt policies and procedures governing:

(a) Procedures needed to comply with the mandates of this article 12; and

(b) The preservation of records related to wrongful action reports received by the crime laboratory director and the director's investigation and investigatory reports. The policies must require that all records are preserved at least through the final resolution of litigation or potential litigation in all affected cases and any related civil cases.

(7) If an investigation concerning wrongful action by a crime laboratory occurred after July 1, 2014, and before July 1, 2025, and the investigation resulted in criminal allegations filed against the crime laboratory employee or a sustained internal affairs action by the department supervising the crime laboratory employee, the crime laboratory director shall, as soon as practicable but no later than September 1, 2025, prepare a final report, as described in subsection (4)(c) of this section, and provide the report to all district attorneys with jurisdiction over any criminal case that is identified in the final report that is pending or has resulted in a conviction in that jurisdiction. The report must include the list of cases required in subsection (2)(f) of this section.

(8) All records related to an investigation, including notices and reports, are criminal justice records as defined in section 24-72-302. Except as provided in this section, release of the records is governed by part 3 of article 72 of title 24.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1893, § 1, effective June 2.

16-12-306. Prosecution duty to notify defendants and defendant's counsel - content of notice.

(1) A district attorney who receives a notice from a crime laboratory director pursuant to section 16-12-305 (3)(a) that an investigation of wrongful action was initiated shall notify the defendant in the case that is subject to the investigation as soon as practicable but no later than ninety-one days after receiving the notice of the initiation of the investigation, unless court rules, court order, or law requires an earlier deadline for disclosure.

(2) (a) A district attorney who receives a final report of an investigation pursuant to section 16-12-305 (5)(b) or (7) that determines that a crime laboratory employee engaged in wrongful action in a case shall notify the defendant in that case, and each defendant whose case was reviewed as part of the investigation, of the determination of wrongful action in the case that is subject to the investigation as soon as practicable but no later than ninety-one days after the receipt of the final report.

(b) The district attorney shall also notify each defendant in a case identified by the crime laboratory director in the list of cases described in section 16-12-305 (2)(f) that was provided to the district attorney but only if the defendant's criminal case is pending or resulted in a conviction in that jurisdiction. The district attorney shall notify the defendant as soon as practicable but no later than ninety-one days after receipt of the final report.

(3) If a crime laboratory director's investigation initiated pursuant to section 16-12-305 (1) is not completed within one hundred twenty-six days, the district attorney shall notify the defendants identified by the crime laboratory in the list of cases described in section 16-12-305

(2)(f) that was provided to the district attorney of the investigation of the wrongful action but only when the criminal case is pending or resulted in a criminal conviction. The district attorney shall notify the defendants pursuant to this subsection (3) as soon as practicable. The notice of an incomplete investigation described in this subsection (3) is in addition to the notice of a final report required in subsection (2) of this section.

(4) In addition to the information required in a notice pursuant to this subsection (4), the notice to the defendant made pursuant to subsection (2) of this section must state that there is a final report of wrongful action by a crime laboratory employee involved in the defendant's case. The notice made to a defendant pursuant to this section must include:

(a) The name of the crime laboratory employee and the name of the crime laboratory or agency that operates the crime laboratory;

(b) The defendant's case number and court that has jurisdiction over the case;

(c) A statement that the defendant has:

(I) A time-limited right to make a post-conviction claim pursuant to the "Colorado Forensic Science Integrity Act" and an appropriate citation to the "Colorado Forensic Science Integrity Act";

(II) A right to counsel to investigate, file, and litigate post-conviction claims pursuant to the "Colorado Forensic Science Integrity Act";

(III) A right to hire their own counsel and, if the defendant cannot afford counsel, the right to court-appointed counsel;

(d) Information about how to contact the office of state public defender or the court to request that counsel be appointed; and

(e) Information about how to contact the district attorney's office to determine the status of the investigation, if the defendant is proceeding without counsel.

(5) (a) If the defendant's criminal case is a pending case for which no conviction has been entered, is on appeal status, or has had post-conviction motions filed that are pending, the district attorney shall immediately notify the defendant and the defendant's counsel through discovery in the case.

(b) If the defendant was convicted in the case and there is not a pending appeal and there are no pending post-conviction motions in the case and:

(I) The defendant is in custody in jail or a correctional facility, the district attorney shall notify the defendant via regular mail at the defendant's place of incarceration and notify the office of the public defender by email at the email address described in subsection (5)(c) of this section; or

(II) The defendant is not in custody in jail or a correctional facility, the district attorney shall notify the defendant, by personal service or registered mail, at the defendant's last-known address and the address of the defendant's last-known counsel or if the defendant's last-known counsel was the public defender, notify the office of public defender by email at the email address described in subsection (5)(c) of this section.

(c) The state public defender shall designate an email address to receive notices pursuant to this section and shall provide the email address to each district attorney and the Colorado district attorneys' council.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1896, § 1, effective June 2.

16-12-307. Duty to notify victims.

(1) When a district attorney receives a notice that a crime laboratory employee engaged in wrongful action and a criminal case identified in the notice involves a crime listed in section 24-4.1-302 (1), the district attorney shall notify each victim of the crime pursuant to section 24-4.1-302.5 (1)(b). The district attorney shall notify, pursuant to section 24-4.1-302.5 (1)(b), the victim of a crime listed in section 24-4.1-302 (1) if an evidentiary hearing on post-conviction petition for relief is held pursuant to section 16-12-312.

(2) (Deleted by amendment, L. 2026.)

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1898, § 1, effective June 2. **L. 2026:** Entire section amended, (HB 26-1052), ch. 346, p. 2105, § 4, effective August 12.

16-12-308. Defendant's right to counsel.

(1) A defendant has the right to counsel to investigate, file, and litigate a post-conviction claim arising from wrongful action and appeals arising from the claim. The right to counsel for assistance with post-conviction claims pursuant to this part 3, including the right for an indigent person to have the assistance of court-appointed counsel, attaches when a defendant receives a notice pursuant to section 16-12-306 or makes a showing that a crime laboratory employee worked on their case and is the subject of an investigation of wrongful action. A defendant is not required to file a petition for post-conviction relief to receive court-appointed counsel.

(2) (a) A defendant may request counsel by filing a written request for counsel with the court and attaching a copy of the notice received pursuant to section 16-12-306 or a pleading that

names a crime laboratory employee and provides sufficient information for the court to find that the crime laboratory is the subject of an investigation of wrongful action.

(b) If a defendant files a pleading in court without counsel, the court shall determine if the defendant is requesting the appointment of counsel or if the defendant is knowingly and voluntarily waiving their right to counsel.

(3) A public defender who has received a request for assistance from a defendant who received a notice pursuant to section 16-12-306, or from a defendant who can make a showing that a crime laboratory employee who worked on their case is the subject of an investigation of wrongful action, may request appointment by the court if the defendant qualifies for representation by court-appointed counsel.

(4) Upon receiving a request to appoint counsel for a defendant made pursuant to this section, the court shall, in accordance with section 21-1-103, appoint the public defender to represent the defendant in a post-conviction matter related to the wrongful action. If the public defender notifies the court of a conflict of interest, the court shall appoint the office of alternate defense counsel to represent the defendant.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1898, § 1, effective June 2.

16-12-309. Discovery and expert witness disclosure - procedures - construction consistent with court rules.

(1) (a) A defendant has a right to discovery, including post-conviction discovery, related to the wrongful action:

(I) Upon receipt of a notice of reported wrongful action described in section 16-12-306; or

(II) If a court orders discovery after the defendant files a pleading that names a crime laboratory employee who worked on the defendant's case who is the subject of an investigation of wrongful action.

(b) A defendant may request discovery by making a written request to the district attorney or filing a motion with the court.

(c) Upon receiving a valid discovery request or a court order to provide discovery, the district attorney shall provide discovery to the defendant pursuant to this section as soon as practicable and on an ongoing basis through the conclusion of post-conviction proceedings. The district attorney shall request, pursuant to section 16-12-305 (5)(b)(II), discoverable material from a crime laboratory that may be in the possession of the crime laboratory but has not been provided to the district attorney.

(2) When discovery is required pursuant to subsection (1) of this section, and upon receiving a discovery request from a defendant, the district attorney shall provide the defendant copies of the following:

(a) All material that was previously discovered in the case that is not already in the defendant's present counsel's possession;

(b) All statements, transcripts, and reports about the wrongful action or investigation of the wrongful action, including, but not limited to, statements, transcripts, and reports from the crime laboratory, including an unredacted copy of the final report, law enforcement agencies or officers, and third parties contracted to investigate the wrongful action;

(c) All statements, transcripts, reports, or litigation packets about the handling, testing, retesting, examination, or results related to the physical evidence in the defendant's case;

(d) All communications, reports, or information that relates to accreditation, certification, or licensure related to, or that may be affected by, the wrongful action, which includes accreditation, certification, or licensure of the crime laboratory or the crime laboratory employee alleged to have committed the wrongful action;

(e) Crime laboratory policies and procedures that were applicable during the time of the alleged wrongful action that governed the handling, testing, or examination of the evidence handled, tested, or examined by the crime laboratory for which the crime laboratory employee alleged to have committed the wrongful action worked;

(f) Any information that tends to impeach the credibility or reliability of the handling, testing, or examination of the physical evidence in the case;

(g) All materials or information related to the case that tends to negate the guilt of the accused or would reduce the punishment of the accused; and

(h) Any other material regarding the wrongful action that is requested by the defendant that may be relevant to demonstrating the wrongful action or materiality of the wrongful action in the defendant's case.

(3) Any party may file a motion for a court order to assist in obtaining discovery pursuant to this section. When material is reasonably believed to exist and is required to be provided pursuant to this section, but has not been provided in response to proper requests, a subpoena may be issued for such material.

(4) Nothing in this section prevents or limits a court from ordering additional discovery pursuant to a law or court rule that authorizes a court to order discovery.

(5) (a) Unless it is in conflict with a specific provision of this section, rule 16 of the Colorado rules of criminal procedure applies to any post-conviction proceedings under this section.

(b) In post-conviction proceedings under this section, a prosecuting attorney shall perform their obligations:

(I) Pursuant to subsections (2)(a), (2)(b), (2)(c), and (2)(d) of this section as soon as practicable, but not later than forty-five days after the prosecuting attorney receives a valid discovery request or court order pursuant to subsection (1)(c) of this section; and

(II) Pursuant to subsections (2)(e), (2)(f), (2)(g), and (2)(h) of this section as soon as practicable, but not later than thirty-five days before the evidentiary hearing regarding the post-conviction proceeding.

(6) (a) With regard to all matters of discovery under this section, the court may issue a protective order upon a showing of cause by a party or a third party who has standing, including the crime laboratory analyst accused of wrongful action, so long as all material to which a party is entitled must be disclosed in time for the party to make beneficial use thereof.

(b) Pursuant to subsection (6)(a) of this section, the court may enter a protective order at any time that:

(I) Requires specific disclosures to be restricted or deferred;

(II) Assists in ensuring materials furnished in discovery are only provided to a person to prepare a claim for post-conviction relief or to prepare for trial of a case;

(III) Protects the privacy rights of any person; or

(IV) The court deems necessary.

(c) When determining whether to issue a protective order involving information disclosed pursuant to this section about allegations of wrongful action by a crime laboratory employee that are still under investigation or that were not sustained by the crime laboratory, the court shall give weight to protecting the crime laboratory employee's privacy.

(7) (a) If a defendant alleges a claim of ineffective assistance of counsel as part of a claim brought pursuant to this section, the provisions of section 18-1-417 regarding waiver of confidentiality apply.

(b) The counsel of record shall disclose any materials from a prior counsel file that must be disclosed pursuant to section 18-1-417 as soon as practicable upon a request from the prosecution and no later than thirty-five days from the request of the prosecution. The custodian may file a motion with the court and the court may grant an extension to make the disclosure upon a showing of good cause.

(c) After making a request pursuant to section 18-1-417 upon a showing of a good faith belief that material exists within the scope of a claim of ineffective assistance of counsel that has not been produced, the prosecution may file a motion with the court seeking in camera review of

material subject to a good faith dispute. The prosecution shall serve any such request upon the custodian of the records.

(8) Subject to constitutional limitations, the court shall set a deadline at least thirty-five days prior to the evidentiary hearing for the parties to:

(a) Exchange the name and address of each witness a party may call at the hearing and to designate witnesses who are likely to be called; and

(b) Designate a witness as an expert and designate the area in which the party will seek to qualify the expert. Subject to constitutional limitations, the court shall order the parties to provide a report from the designated expert or summary of the expert's testimony that allows the opposing party to prepare to respond to the expert's testimony.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1899, § 1, effective June 2.

16-12-310. Petition for post-conviction relief - petition requirements.

(1) Notwithstanding any other claim for post-conviction relief available pursuant to federal or state law, including relief available pursuant to the Colorado rules of criminal procedure, a defendant who was convicted of a criminal offense who receives a notice of reported wrongful action pursuant to section 16-12-306 or who files a pleading naming a crime laboratory employee who worked on the defendant's case who is subject to an investigation of wrongful action has a right to petition for relief pursuant to this part 3.

(2) To initiate a claim for post-conviction relief, the defendant shall file a petition that includes:

(a) If not already filed with the court, a copy of the notice received pursuant to section 16-12-306 or a statement that names a crime laboratory employee who worked on the defendant's case who is subject to an investigation of wrongful action;

(b) A statement of the relevant procedural history of the defendant's case, including the crimes for which the defendant was convicted;

(c) The facts and legal basis for relief, which must include sufficient allegations that, if true, entitle the defendant to relief; and

(d) A description of the time limit for filing the petition.

(3) A court shall permit a defendant to supplement a petition with relevant factual assertions and legal authorities so long as the district attorney has a fair notice and ability to respond.

(4) The court may dismiss a petition for failing to substantially comply with the requirements of this section but only after making a finding of a substantial defect in the petition and affording the defendant an opportunity to amend or supplement the petition to cure the defect.

(5) After receiving a petition and any supplements or amendments, the court shall order the district attorney to respond to the petition within thirty-five days and afford the defendant an opportunity to reply to the response within twenty-one days after the district attorney's response is filed. The district attorney does not have a duty to respond until ordered to do so. A court may grant an extension of time for the district attorney to file a response or a defendant to file a reply. The district attorney's response and any reply by the defendant must state factual assertions and legal authorities that afford the opposing party fair notice and ability to respond.

(6) After receiving the petition, a response, and any reply, the court may dismiss a petition without a hearing if the petition fails to state sufficient allegations that, if true, entitle the defendant to relief.

(7) The court shall not deny a claim brought pursuant to this section on the grounds that the wrongful action could or should have been discovered through the exercise of due diligence before the defendant received a notice of reported wrongful action as described in section 16-12-306 (1). It is presumed that prior to receiving a notice pursuant to section 16-12-306 (1) that the defendant and their counsel do not know about the wrongful action by a crime laboratory, and that presumption constitutes an objective factor, external to the defense, which made raising any claim related to the wrongful action impracticable prior to receipt of the notice.

(8) A claim made pursuant to this section must raise all grounds for relief related to the wrongful action. After a court has denied a claim made pursuant to this section, a court shall deny successive additional claims relying on the wrongful action unless new evidence relating to the claim is discovered that could not have been discovered through the exercise of due diligence before the denial of the prior claim.

(9) Notwithstanding any other law to the contrary, a court shall not deny a post-conviction claim that is unrelated to wrongful action because it was not brought with a claim pursuant to this section.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1902, § 1, effective June 2.

16-12-311. Time limitation on post-conviction petition for relief.

(1) (a) Notwithstanding the limitation in section 16-5-402, a claim for post-conviction relief relying in whole or in part on facts related to wrongful action must be commenced within the applicable time period set forth in subsection (1)(b) of this section, which begins to run upon

actual receipt by the defendant of the notice of reported wrongful action made pursuant to section 16-12-306.

(b) The time period to bring a claim for relief pursuant to this part 3 is as follows:

All class 1 felonies:	No limit
All other felonies:	Three years
Misdemeanors:	Eighteen months
Petty offenses:	Six months

(2) A court may permit a defendant to file a claim after the time period described in subsection (1)(b) of this section has expired only upon a showing of justifiable excuse or excusable neglect.

(3) The time period described in subsection (1) of this section is tolled:

(a) If a defendant is adjudicated to be incompetent, until the court finds that the defendant is restored to competency;

(b) For any time period during which the trial court lacks jurisdiction, including, but not limited to, any time period jurisdiction is in an appellate court due a pending appeal; and

(c) For any time period during which a defendant's written request for counsel made pursuant to section 16-12-308 is pending until counsel is appointed or the court denies the motion.

(4) If, prior to an evidentiary hearing held pursuant to section 16-12-312, the prosecution raises that the petition initiating a claim for post-conviction relief was not timely filed, the court shall, prior to the evidentiary hearing, determine whether the petition was timely filed. If the time period has expired, the court shall dismiss the petition. An order dismissing the petition because the time to bring the petition expired is a final appealable order.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1904, § 1, effective June 2.

16-12-312. Evidentiary hearing on post-conviction petition for relief - procedures - standards - material to the case described.

(1) If the defendant's petition for post-conviction relief asserts facts that, if true, demonstrate that wrongful action was material to the defendant's case, the court shall decide the claim upon the merits after an evidentiary hearing.

(2) Upon the request of a party, the court may grant additional discretionary disclosures to effectuate fair preparation and presentation of evidence by the opposing party. In case of late or incomplete disclosure, the court has the discretion to enter orders to cure or remedy a violation of any deadlines or other discovery requirements.

(3) At the evidentiary hearing, the defendant has the burden to show, by a preponderance of the evidence, that:

(a) A crime laboratory employee engaged in a wrongful action; and

(b) The crime laboratory employee's conduct described in subsection (3)(a) of this section is material to the case.

(4) (a) If the defendant fails to meet their burden pursuant to subsection (3) of this section, the court shall dismiss the claim.

(b) If the defendant meets their burden pursuant to subsection (3) of this section, the court shall vacate the conviction and grant a new trial.

(5) (a) For the purposes of this section, wrongful action is material to the case if, when considered in the totality of the case:

(I) The evidence tested by the crime laboratory employee or the results of testing or testimony of the crime laboratory employee is significant and important evidence in the case;

(II) (A) A fact or inference in favor of guilt that resulted from testing or testimony about evidence tested by the crime laboratory employee was not also established by independent, reliable evidence; or

(B) A fact or inference in favor of innocence based upon any testing or testimony about evidence tested by the crime laboratory employee was not known or presented prior to the conviction and could be presented at a new trial; and

(III) There is a reasonable probability that, but for the wrongful action, the results of the proceeding would have been different, which is satisfied when there is evidence sufficient to undermine confidence in the verdict or guilty plea.

(b) As long as the requirements of subsection (5)(a) of this section are satisfied, wrongful action may be material to the case if the wrongful action significantly impeaches or casts doubt

upon the accuracy of physical evidence testing, the presentation of test results, testimony about the testing or physical evidence by a crime laboratory employee or other witness.

(6) A ruling granting or denying a new trial after an evidentiary hearing is a final appealable order.

Source: L. 2025: Entire part added, (HB 25-1275), ch. 352, p. 1904, § 1, effective June 2.

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PART 1

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16-13-101 to 16-13-103. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: (1) This part 1 was numbered as article 13 of chapter 39, C.R.S. 1963. This article was repealed and reenacted in 1972, and this part 1 was subsequently repealed in 2002. For amendments to this part 1 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 1 were relocated to part 8 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 8 and the comparative tables located in the back of the index.

(2) For historical information concerning the 1972 repeal and reenactment of this article, see the editor's note before the article 1 heading.

Cross references: For the legislative declaration contained in the 2002 act repealing this part 1, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 2

PAROLE BOARD DUTIES REGARDING SEX OFFENDERS

16-13-201. Short title. (Repealed)

Source: L. 72: R&RE, p. 255, § 1. **C.R.S. 1963:** § 39-13-201. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-901.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-201.5. Applicability of part. (Repealed)

Source: L. 98: Entire section added, p. 1288, § 2, effective November 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-902.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-202. Definitions. (Repealed)

Source: L. 72: R&RE, p. 255, § 1. **C.R.S. 1963:** § 39-13-202. **L. 75:** (5) R&RE, p. 631, § 2, effective July 1. **L. 77:** (3) amended, p. 902, § 5, effective August 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-903.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-203. Indeterminate commitment. (Repealed)

Source: L. 72: R&RE, p. 256, § 1. **C.R.S. 1963:** § 39-13-203. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-904.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-204. Requirements before acceptance of a plea of guilty. (Repealed)

Source: L. 72: R&RE, p. 256, § 1. **C.R.S. 1963:** § 39-13-204. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-905.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-205. Commencement of proceedings. (Repealed)

Source: L. 72: R&RE, p. 256, § 1. **C.R.S. 1963:** § 39-13-205. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-906.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-206. Defendant to be advised of rights. (Repealed)

Source: L. 72: R&RE, p. 256, § 1. **C.R.S. 1963:** § 39-13-206. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-907.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-207. Psychiatric examination and report. (Repealed)

Source: L. 72: R&RE, p. 256, § 1. **C.R.S. 1963:** § 39-13-207. **L. 91:** (1)(a) and (1)(b) amended, p. 1142, § 4, effective May 18. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-908.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-208. Report of probation department. (Repealed)

Source: L. 72: R&RE, p. 257, § 1. **C.R.S. 1963:** § 39-13-208. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-909.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-209. Termination of proceedings. (Repealed)

Source: L. 72: R&RE, p. 257, § 1. **C.R.S. 1963:** § 39-13-209. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-910.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-210. Evidentiary hearing. (Repealed)

Source: L. 72: R&RE, p. 257, § 1. **C.R.S. 1963:** § 39-13-210. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-911.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-211. Findings of fact and conclusions of law. (Repealed)

Source: L. 72: R&RE, p. 258, § 1. **C.R.S. 1963:** § 39-13-211. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-912.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-212. Appeal. (Repealed)

Source: L. 72: R&RE, p. 258, § 1. **C.R.S. 1963:** § 39-13-212. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-913.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-213. Time allowed on sentence. (Repealed)

Source: L. 72: R&RE, p. 258, § 1. **C.R.S. 1963:** § 39-13-213. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-914.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-214. Costs. (Repealed)

Source: L. 72: R&RE, p. 258, § 1. **C.R.S. 1963:** § 39-13-214. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-915.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-215. Diagnostic center as receiving center. (Repealed)

Source: L. 72: R&RE, p. 258, § 1. **C.R.S. 1963:** § 39-13-215. **L. 79:** Entire section amended, p. 684, § 17, effective July 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-916.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-13-216. Powers and duties of the board.

(1) (a) Within six months after a person is committed pursuant to section 18-1.3-904, C.R.S., and at least once during each twelve months thereafter, the board shall review all reports, records, and information concerning said person, for the purpose of determining whether said person shall be paroled.

(b) The board shall, in each instance, make a written ruling and shall serve a copy of the ruling upon the said person.

(2) The board is authorized and it is its duty to order the transfer of any person committed pursuant to section 18-1.3-904, C.R.S., if the board deems it to be in the best interests of said person and the public, to any facility under the jurisdiction of the department or to the department of human services subject to the availability of staff and housing.

(3) The board is granted exclusive control over the parole and reparole of all persons committed pursuant to section 18-1.3-904, C.R.S., regardless of the facility in which those persons are confined.

(4) The board is authorized to parole and reparole, and to commit and recommit for violation of parole, any person committed pursuant to section 18-1.3-904, C.R.S.

(5) The board is authorized to issue an absolute release to any person committed pursuant to section 18-1.3-904, C.R.S., if the board deems it in the best interests of that person and the public and that the person, if at large, would not constitute a threat of bodily harm to members of the public.

(6) Except as otherwise provided in this part 2, the board has all the powers conferred and duties imposed upon it with respect to the parole of prisoners generally, in the parole and supervision of persons committed pursuant to section 18-1.3-904, C.R.S.

Source: L. 72: R&RE, p. 259, § 1. **C.R.S. 1963:** § 39-13-216. **L. 80:** (2) amended, p. 524, § 1, effective March 25. **L. 94:** (2) amended, p. 2652, § 128, effective July 1. **L. 2002:** Entire section amended, p. 1498, § 152, effective October 1.

Cross references: (1) For liability for the costs of the care and treatment of persons transferred to a facility under the jurisdiction of the department of human services pursuant to this section, see § 27-92-101.

(2) For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. Since § 16-13-216 is similar to repealed § 39-19-6, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

This section does not confer judicial or sentencing powers on board. Section 16-13-203 providing for commitment to a state institution of not less than one day nor more than life, and subsection (2) of this section authorizing the parole board to transfer such persons after sentence to other institutions to effectuate purposes of act, do not confer judicial powers on the parole board or involve the sentencing authority of the court. Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961).

Purpose of section. The sex offenders act is concerned with the more efficient control, treatment, and rehabilitation of persons convicted of sex offenses. Control of the person must be assured before treatment and rehabilitation is undertaken; this may require incarceration in the penitentiary. Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961).

It empowers the parole board to transfer persons sentenced under this act among institutions when deemed appropriate to effectuate purposes of act. Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961).

Habeas corpus is not the remedy to rectify failure of the parole board to perform its duty to transfer prisoners under this section. Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961).

Parole is a mere matter of privilege, grace, or favor and a prisoner is not entitled thereto as a matter of right. Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961).

If a parole board determines an inmate is in need of further treatment, it can condition parole upon participation in a sex offender treatment program. Christensen v. People, 869 P.2d 1256 (Colo. 1994).

Once a sex offender is sentenced to an indeterminate term under the sex offenders act, the authority to make parole or release decisions rests with the parole board. Because sex offender's habeas corpus petition did not set forth facts which, if proven, would entitle him to immediate release and he alleged no facts showing that the parole board's denial of parole or release was unconstitutional,

defendant's petition must be dismissed. Christensen v. People, 869 P.2d 1256 (Colo. 1994).

The provisions of subsection (1) granting yearly parole consideration for persons sentenced to an indeterminate term pursuant to § 16-13-203 conflict with the provisions of § 17-2-201 (4)(a), which allow the parole board to consider parole for sex offenders every three years. Since § 17-2-201 (4)(a) is the later enacted statute, the provisions of that section prevail. A person sentenced to an indeterminate sentence pursuant to § 16-13-203 is entitled to parole consideration only every three years. White v. Van Pelt, 55 P.3d 823 (Colo. App. 2002).

Review satisfies procedural due process. The mandated review by the board of parole within six months after the individual is committed and every year thereafter satisfies continuing procedural due process requirements. People v. White, 656 P.2d 690 (Colo. 1983); People v. Kibel, 701 P.2d 37 (Colo. 1985).

An order of mandamus to require the parole board to place the defendant in a facility where he had access to sex offender treatment was properly denied. This section gives the parole board discretion as to whether to order a transfer based upon the best interests of the inmate and public. Since an order of mandamus may only issue where the plaintiff establishes both a clear right to the relief sought and a clear duty on the part of the defendant to act, the court will not issue an order for relief that lies within the statutory discretion of the parole board. White v. Van Pelt, 55 P.3d 823 (Colo. App. 2002).

PART 3

ABATEMENT OF PUBLIC NUISANCE

Law reviews: For article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995).

16-13-301. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Action to abate a public nuisance" means any action authorized by this part 3 to restrain, remove, terminate, prevent, abate, or perpetually enjoin a public nuisance.

(2) "Building" means a structure which has the capacity to contain, and is designed for the shelter of, man, animals, or property, including any house, office building, store, warehouse, or structure of any kind, whether or not such building is permanently affixed to the ground upon which it is situate, and any trailer, semitrailer, trailer coach, mobile home, or other vehicle designed or used for occupancy by persons for any purpose.

(2.1) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult.

(2.2) "Drive-by crime" means a first degree assault as defined in section 18-3-202, C.R.S., second degree assault as defined in section 18-3-203, C.R.S., attempted first degree or second degree assault, felony menacing as defined in section 18-3-206, C.R.S., or illegal discharge of a firearm as defined in section 18-12-107.5, C.R.S., any of which is committed while utilizing a vehicle for means of concealment or transportation.

(2.3) "Instrumental" means a substantial connection exists between the property and the public nuisance act.

(2.4) "Proceeds traceable" or "traceable proceeds" means all property, real and personal, corporeal and incorporeal, which is proceeds attributable to, derived from, or realized through, directly or indirectly, a public nuisance act, whether proved by direct, circumstantial, or documentary evidence. There shall be no requirement of showing a trail of documentary evidence to trace proceeds provided that the standard of proof by clear and convincing evidence is met.

(2.5) "Public nuisance act" means any of the crimes, offenses, or violations set forth in section 16-13-303 (1)(a) to (1)(n), regardless of the location where the act occurred.

(2.6) "Real property" means all lands and franchises and interests in land located within this state, including water rights, mineral rights, oil and gas rights, space rights, condominium rights, and air rights, and any and all other things usually included within said term. "Real property" includes any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable.

(2.7) "Seizing agency" means any agency that is charged with the enforcement of the laws of this state, of any other state, or of the United States and that has participated in a seizure or has been substantially involved in effecting a forfeiture through the development of evidence underlying the claim for forfeiture or through legal representation pursuant to this part 3. The department of corrections, the division of parks and wildlife in the department of natural resources, and a multijurisdictional law enforcement task force shall be deemed to be included under this definition.

(3) "Vehicle" means any device of conveyance capable of moving itself or of being moved from place to place upon wheels or track or by water or air, whether or not intended for the transport of persons or property, and includes any place therein adapted for overnight accommodation of persons or animals or for the carrying on of business.

Source: L. 72: R&RE, p. 259, § 1. **C.R.S. 1963:** § 39-13-301. **L. 73:** p. 236, § 12. **L. 75:** (2) amended, p. 1466, § 7, effective July 18. **L. 81:** (2) amended and (3) added, p. 954, § 1, effective July 1. **L. 83:** (2.5) added, p. 683, § 1, effective July 1. **L. 87:** (2.3) and (2.7) added, p. 630, § 1, effective July 1. **L. 89:** (2.2) added, p. 875, § 7, effective June 5. **L. 92:** (2.3) amended, p. 2171, § 19, effective June 2. **L. 93:** (2.2) amended, p. 969, § 4, effective July 1. **L. 95:** (2.7) amended, p. 872, § 4, effective May 24. **L. 96:** (2.7) amended, p. 375, § 1, effective April 17. **L. 2000:** (2.3) amended, p. 1108, § 5, effective August 2. **L. 2002:** (2.1) and (2.4) added and (2.3) and (2.7) amended, p. 916, § 1, effective July 1. **L. 2003:** (2.4) and (2.5) amended and (2.6) added, p. 903, § 14, effective July 1.

Editor's note: Subsection (2.3) was amended by section 1 of chapter 244, Session Laws of Colorado 2002, resulting in a new definition being added as subsection (2.3). The former subsection (2.3) was relocated by the same act to subsection (2.4).

ANNOTATION

To the extent § 42-6-108 and this article are inconsistent in the context of civil forfeiture proceedings, the specific provisions contained in the forfeiture statute prevail and the timing of the delivery of the certificate of title was not dispositive. People v. One 1968 Chevrolet 2-Door, 895 P.2d 1177 (Colo. App. 1995).

Applied in Barker v. District Court, 199 Colo. 416, 609 P.2d 628 (1980); People v. Taube, 843 P.2d 79 (Colo. App. 1992).

16-13-302. Public nuisances - policy.

(1) It is the policy of the general assembly that every public nuisance shall be restrained, prevented, abated, and perpetually enjoined. It is the duty of the district attorney in each judicial district of this state to bring and maintain an action, pursuant to the provisions of this part 3, to restrain, prevent, abate, and perpetually enjoin any such public nuisance and to seek the forfeiture of property as provided in this part 3. The general assembly intends that proceedings under this part 3 be remedial and equitable in nature. Nothing contained in this part 3 shall be construed as an amendment or repeal of any of the criminal laws of this state, but the provisions of this part 3, insofar as they relate to those laws, shall be considered a cumulative right of the people in the enforcement of such laws. The provisions of this part 3 shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.

(2) It is also the policy of the general assembly that asset forfeiture pursuant to this part 3 shall be carried out pursuant to the following:

(a) Generation of revenue shall not be the primary purpose of asset forfeiture.

(b) No prosecutor's or law enforcement officer's employment or level of salary shall depend upon the frequency of seizures or forfeitures which such person achieves.

(c) All seizures of real property pursuant to this part 3 shall be made pursuant to a temporary restraining order or injunction based upon a judicial finding of probable cause.

(d) Each seizing agency shall have policies and procedures for the expeditious release of seized property which is not subject to forfeiture pursuant to this part 3, when such release is appropriate.

(e) Each seizing agency retaining forfeited property for official law enforcement use shall ensure that the property is subject to controls consistent with controls which are applicable to property acquired through the normal appropriations process.

(f) Each seizing agency which receives forfeiture proceeds shall conform with reporting, audit, and disposition procedures enumerated in this article.

(g) Each seizing agency shall prohibit its employees from purchasing forfeited property.

Source: L. 72: R&RE, p. 259, § 1. **C.R.S. 1963:** § 39-13-302. **L. 87:** Entire section amended, p. 630, § 2, effective July 1. **L. 92:** Entire section amended, p. 446, § 1, effective July 1.

Cross references: For the authority of counties and municipalities to control public nuisances, see § 31-15-401.

ANNOTATION

Law reviews. For article, "Civil Remedies for Criminal Wrongs: The Colorado Public Nuisance Act", see 20 Colo. Law. 2061 (1991).

The purpose of the Colorado public nuisance statute is to restrain, prevent, abate, and perpetually enjoin every public nuisance. People v. Garner, 732 P.2d 1194 (Colo. 1987).

The general assembly has declared that forfeiture proceedings of public nuisances are remedial and equitable in nature and the trial court properly determined that intervenor acquired an equitable interest in the vehicle based upon his payment of $500. People v. One 1968 Chevrolet 2-Door, 895 P.2d 1177 (Colo. App. 1995).

Purpose is the suppression of the unlawful nuisance. Since the purpose of this part is not the infliction of punishment against the offender, that being left to the criminal law, but the suppression of the unlawful keeping, the claim that keeping a bawdy house is a criminal offense under the statute makes no difference and there can be

no successful assault upon this part because it provides an action to enjoin the violation of a criminal statute. Gregg v. People, 65 Colo. 390, 176 P. 483 (1918) (decided under repealed laws antecedent to CSA, C 1, § 3).

The principle upon which forfeiture statutes are based is that the property itself is the offender and may therefore be subject to forfeiture even though the owners of the property might be innocent of any wrongdoing. People v. Garner, 732 P.2d 1194 (Colo. 1987).

Legislative intent was to divest owner of all legal title as of the date of seizure, since otherwise the owner could alter the ownership rights prior to a final order under § 16-13-309. United States v. Wilkinson, 686 P.2d 790 (Colo. 1984), aff'd, 628 F. Supp. 29 (D. Colo. 1985).

But only if there is a subsequent judgment of forfeiture. Eggleston v. Colo., 636 F. Supp. 1312 (D. Colo. 1986).

The principle of laches contravenes this section. People v. Perez, 192 Colo. 562, 561 P.2d 7 (1977).

16-13-303. Class 1 public nuisance.

(1) Every building or part of a building, including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property is deemed a class 1 public nuisance when:

(a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S.; pandering, as defined in section 18-7-203, C.R.S.; keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; or human trafficking, as described in section 18-3-503 or 18-3-504, C.R.S., occurs;

(b) (I) Used, or designed and intended to be used, as gambling premises, as defined in section 18-10-102 (5), C.R.S., or as a place where any gambling device or gambling record, as such terms are defined in section 18-10-102 (3) and (7), C.R.S., is kept;

(II) Used for transporting gambling proceeds, records, or devices as defined in section 18-10-102 (3), (6), and (7), C.R.S.;

(c) (I) Used for unlawful manufacture, cultivation, growth, production, processing, sale, or distribution or for storage or possession for any unlawful manufacture, sale, or distribution of any controlled substance, as defined in section 18-18-102 (5), C.R.S., or any other drug the possession of which is an offense under the laws of this state, or any imitation controlled substance, as defined in section 18-18-420 (3), C.R.S.;

(II) Used for unlawful possession of any controlled substance, as defined in section 18-18-102 (5), C.R.S., except for possession of less than sixteen ounces of marijuana;

(d) Used for a purpose declared by a statute of this state to be a class 1 public nuisance;

(e) (I) Used as a place where the commission of theft, as specified in section 18-4-401, C.R.S., occurs;

(II) Used for transporting property which is the subject of theft, as specified in section 18-4-401, C.R.S.;

(f) Used for the unlawful manufacture, sale, or distribution of drug paraphernalia, as defined in section 18-18-426, C.R.S.;

(g) Used for prostitution of a child, as defined in section 18-7-401, as it existed prior to July 1, 2026, or used as a place where the commission of any of the following, as they existed prior to July 1, 2026, occurred: Soliciting for child prostitution, as defined in section 18-7-402; keeping a place of child prostitution, as defined in section 18-7-404; or inducement of child prostitution, as defined in section 18-7-405.5;

(g.1) Used as a place where the commission of any of the following occurs: Soliciting for commercial sexual activity with a child, as defined in section 18-7-402; pandering of a child, as defined in section 18-7-403; keeping a place of commercial sexual activity with a child, as defined in section 18-7-404; pimping of a child, as defined in section 18-7-405; or inducement of commercial sexual activity with a child, as defined in section 18-7-405.5;

(h) Used for the sexual exploitation of children pursuant to part 4 of article 6 of title 18, C.R.S.;

(h.5) Repealed.

(h.6) Used in violation of section 43-10-114, C.R.S.;

(i) Used in the commission of any felony not otherwise included in this section;

(j) Used in the commission of felony vehicular eluding pursuant to section 18-9-116.5, C.R.S.;

(k) Used in the commission of hit and run with serious bodily injury or death pursuant to section 42-4-1601 (1), (2)(b), and (2)(c), C.R.S.;

(l) Used in committing a drive-by crime, as defined in section 16-13-301 (2.2);

(m) (I) Used, or designed and intended to be used, as gaming premises, or as a place where any gaming device, as the term is defined in section 44-30-103 (13), or gaming record is kept, in violation of article 30 of title 44, or in violation of article 20 of title 18;

(II) Used for transporting adjusted gross proceeds or gaming devices as the terms are defined in section 44-30-103 (1) and (13), or records in violation of the provisions of article 30 of title 44, or in violation of article 20 of title 18;

(III) Used for the unlawful manufacture, production, sale, distribution, or for storage or possession for any unlawful manufacture, sale, or distribution of any gaming device, as defined in section 44-30-103 (13), or any other gaming device, equipment, key, electronic or mechanical device, slot machine, bogus chips, counterfeit chips, cards, coins, gaming billets, cheating device, thieving device, tools, drills, or wires used in violation of article 30 of title 44, or in violation of article 20 of title 18; or

(n) Used in committing, attempting to commit, or conspiring to commit against an elderly person any felony set forth in part 4 of article 4 of title 18, C.R.S., in part 1, 2, 3, or 5 of article 5 of title 18, C.R.S., article 5.5 of title 18, C.R.S., or section 11-51-603, C.R.S. For purposes of this paragraph (n), an "elderly person" means a person sixty years of age or older.

(1.5) All equipment, mechanical systems, or machinery, or parts thereof, shall be deemed to be a class 1 public nuisance at the location of the automatic dialing system when used for soliciting with an automatic dialing system containing a prerecorded message in violation of section 18-9-311 (1), C.R.S.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, all fixtures and contents of any building, structure, vehicle, or real property that is a class 1 public nuisance under subsection (1) of this section and all property that is a class 1 public nuisance under subsection (1.5) of this section are subject to seizure, confiscation, and forfeiture as provided in this part 3. In addition, the personal property of every kind and description, including currency and other negotiable instruments and vehicles, used in conducting, maintaining, aiding, or abetting any class 1 public nuisance is subject to seizure, confiscation, and forfeiture, as provided in this part 3.

(b) Subsection (2)(a) of this section does not apply to an owner, operator, employee, or customer of a simulated gambling device, or of a business offering simulated gambling devices, who:

(I) Ceased participating in such activity on or before July 1, 2018; and

(II) Provides clear documentation to the district attorney that:

(A) A lawful contract has been entered into for the sale or transfer of all simulated gambling devices connected with the activity to a person by whom, or into a jurisdiction where, the activity is lawful; and

(B) Consummates the contract by actually selling or transferring the simulated gambling devices within one hundred eighty days after the contract was entered into or after any simulated gambling devices that were seized, confiscated, or forfeited by law enforcement authorities have been returned, whichever occurs later.

(3) The following shall be deemed class 1 public nuisances and be subject to forfeiture and distributed as provided in section 16-13-311 (3), and no property rights shall exist in them:

(a) All currency, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any public nuisance act; or

(b) All proceeds traceable to any public nuisance act; or

(c) All currency, negotiable instruments, and securities used or intended to be used to facilitate any public nuisance act; or

(d) All equipment of any kind, including but not limited to computers and any type of computer hardware, software, or other equipment, used in committing sexual exploitation of a child, as described in section 18-6-403, or cybercrime, as described in section 18-5.5-102.

(4) Whenever it is established, in an action brought pursuant to this part 3, that a person has received proceeds derived from any public nuisance act, the court shall award to the plaintiff a money judgment of forfeiture for the amount of said proceeds shown to have been derived from any public nuisance act or for an amount shown to have been derived from a series of similar acts which fall within a pattern of public nuisance acts. The person subjected to such a money judgment may claim a setoff equal to the fair market value of the property forfeited if he shows that said property is traceable to the public nuisance act upon which the money judgment is predicated.

(5) (a) In any action seeking forfeiture of property pursuant to this part 3, any person contesting the forfeiture shall establish by a preponderance of the evidence such person's standing as a true owner of the property or a true owner with an interest in the property.

(b) To establish standing, the person shall first prove that the person had a recorded or registered interest in the property, or a bona fide marital interest in the property, prior to title-vesting in the state, if the property is of the type for which interests can be, and customarily are, recorded or registered in a public office.

(c) The person shall also prove that he or she is a true owner of the property or a true owner of an interest in the property. The factors to be considered by the court in determining whether a person is a true owner shall include, but need not be limited to:

(I) Whether the person had the primary use, benefit, possession, or control of the property;

(II) How much of the consideration for the purchase or ownership of the property was furnished by the person, and whether the person furnished reasonably equivalent value in exchange for the property or interest;

(III) Whether the transaction by which the person acquired the property or interest was secret, concealed, undisclosed, hurried, or not in the usual mode of doing business;

(IV) Whether the transaction by which the person acquired the property or interest was conducted through the use of a shell, alter ego, nominee, or fictitious party;

(V) Whether the person is a relative, a co-conspirator, complicitor, or an accessory in the public nuisance act or acts or other criminal activity, a business associate in a legal or illegal business, one who maintains a special or close relationship with, or an insider with respect to the perpetrator of the alleged public nuisance act or acts;

(VI) Whether the person is silent or fails to call parties to testify or to produce available evidence explaining the acquisition of the property or factors which may be badges of fraud or deceit, or show lack of true ownership;

(VII) Whether the timing of the transaction by which the person acquired the property was during the pendency or threat of litigation, or during any time when the person knew, should have known, or had notice of the public nuisance act or acts or the threat of a forfeiture action;

(VIII) Whether the placing of the title in the name of, or the putative ownership in, or transfer to, the person was done with intent to delay, hinder, or avoid a forfeiture, or for some purpose other than ownership of the property;

(IX) Whether the perpetrator of the alleged public nuisance act or acts has absconded or is a fugitive from justice and the conveyance occurred after the flight, or before the flight, in any of the circumstances set forth in subparagraph (III) of this paragraph (c);

(X) Whether the subject matter property is of a kind in which property or ownership rights can legally exist;

(XI) Any other badge or indicia of fraud under article 8 of title 38, C.R.S., or the general law of fraudulent transfers or conveyances.

(d) The court shall consider the totality of the circumstances in determining whether a person is a true owner. A person contesting the forfeiture does not necessarily have to show that all of the factors enumerated in paragraph (c) of this subsection (5) support the claim of true ownership, nor does the person necessarily establish true ownership by showing the absence of fraudulent intent or badges of fraud.

(e) No private sale or conveyance of a used motor vehicle shall be deemed to make a party eligible to assert standing to contest the forfeiture thereof, unless the title to the motor vehicle, with transfer duly executed to the party, has been filed with the division of motor vehicles in the department of revenue prior to the physical seizure of the vehicle and the recording of a notice of seizure, or the party attempting to assert standing has exclusive possession of the vehicle at the time of seizure. A party eligible to assert standing under this paragraph (e) must nevertheless establish that the party is a true owner of the vehicle or has an interest therein pursuant to paragraph (c) of this subsection (5).

(f) Unless the standing of a particular party is conceded in the complaint initiating the public nuisance action, a party must assert standing in the answer and fully describe the party's interest

in the property which is the subject matter of the action, and submit a verified statement, supported by any available documentation, of the party's ownership of or interest in the property.

(5.1) (a) In any action to forfeit property pursuant to this part 3, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by clear and convincing evidence that possession of the property is unlawful or that the owner of the property was a party to the creation of the public nuisance. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of a crime creating a public nuisance or the property constitutes traceable proceeds of the crime or related criminal activity.

(a.5) (I) The defendant in an action brought pursuant to this part 3 may petition the court to determine whether a forfeiture was constitutionally excessive. Upon the conclusion of a trial resulting in a judgment of forfeiture in an action brought pursuant to this part 3, if the evidence presented raises an issue of proportionality under this paragraph (a.5), the defendant may petition the court to set a hearing, or the court may on its own motion set a hearing, to determine whether a forfeiture was constitutionally excessive. This determination shall be made prior to any sale or distribution of forfeited property.

(II) In making this determination, the court shall compare the forfeiture to the gravity of the public nuisance act giving rise to the forfeiture and related criminal activity.

(III) The defendant shall have the burden of establishing by a preponderance of the evidence that the forfeiture is grossly disproportional.

(IV) If the court finds that the forfeiture is grossly disproportional to the public nuisance act and related criminal activity, it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the excessive fines clause of the eighth amendment of the United States constitution or article II, section 20, of the Colorado constitution.

(V) and (VI) (Deleted by amendment, L. 2003, p. 889, § 1, effective July 1, 2003.)

(b) As used in paragraph (a) of this subsection (5.1), an owner was a "party to the creation of the public nuisance" if it is established that:

(I) The owner was involved in the public nuisance act; or

(II) (A) The owner knew of the public nuisance act or had notice of the acts creating the public nuisance or prior similar conduct.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the plaintiff proves by clear and convincing evidence the owner knew or had notice of the public nuisance, the owner must prove by a preponderance of the evidence that the owner took reasonable steps to prohibit or abate the unlawful use of the property for the court to find the owner was not a party to the creation of the public nuisance.

(5.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct constituting a public nuisance took place, "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct constituting a public nuisance, or notice of an act or circumstance creating the public nuisance or prior similar conduct, notice being satisfied by, but not limited to, sending notice of an act or circumstance creating the public nuisance by certified mail; or

(II) Upon learning of the conduct constituting a public nuisance, took reasonable action to prohibit such use of the property. An owner may demonstrate that he or she took reasonable action to prohibit the conduct constituting a public nuisance if the owner:

(A) Timely revoked or attempted to revoke permission for the persons engaging in such conduct to use the property; or

(B) Took reasonable action to discourage or prevent the use of the property in conduct constituting a public nuisance.

(b) With respect to a partial or whole ownership interest acquired after the conduct constituting a public nuisance has occurred, "innocent owner" means a person who, at the time he or she acquired the interest in the property, had no knowledge or notice that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(I) Acquired an interest in the property in a bona fide transaction for value; or

(II) Acquired an interest in the property through probate or inheritance; or

(III) Acquired an interest in the property through dissolution of marriage or by operation of law.

(c) An innocent owner's interest in property shall not be forfeited under any provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. Otherwise, the burden of proof under this subsection (5.2) shall be as provided in subsection (5.1) of this section.

(d) A person who is convicted of a criminal offense arising from the same activity giving rise to the forfeiture proceedings in accordance with section 16-13-307 (1.5) shall not be eligible to assert an innocent owner defense.

(6) Whenever clear and convincing evidence adduced in an action pursuant to this part 3 shows a substantial connection between currency and the acts specified in subparagraph (I) of paragraph (c) of subsection (1) of this section, a rebuttable presumption shall arise that said currency is property subject to forfeiture. A substantial connection exists if:

(a) Currency in the aggregate amount of one thousand dollars or more was seized at or close to the time that evidence of the acts specified in subparagraph (I) of paragraph (c) of subsection (1) of this section was developed or recovered; and

(b) (I) Said amount of currency was seized on the same premises or in the same vehicle where evidence of said acts was developed or recovered; or

(II) Said amount of currency was seized from the possession or control of a person engaged in said acts; or

(III) Traces of a controlled substance were discovered on the currency or an animal trained in the olfactory detection of controlled substances indicated the presence of the odor of a controlled substance on the currency as testified to by an expert witness.

(6.5) Notwithstanding any other provision of this part 3 to the contrary, the plaintiff shall have the burden of proving, by clear and convincing evidence, only the facts that give rise to the presumption that currency is property subject to forfeiture pursuant to subsection (6) of this section. However, when a preponderance of credible evidence is adduced to rebut a presumption that has arisen pursuant to subsection (6) of this section, the burden of proof shall revert to the plaintiff to prove, by clear and convincing evidence, the elements of the plaintiff's case with respect to the currency.

(7) Currency seized pursuant to this part 3 may be placed in an interest-bearing account during the proceedings pursuant to this part 3 if so ordered by the court upon the motion of any party. Photocopies of portions of the bills shall serve as evidence at all hearings. The account and all interest accrued shall be forfeited or returned to the prevailing party in lieu of the currency.

(8) The provisions of subsection (6) of this section shall not be construed so as to limit the introduction of any other competent evidence offered to prove that seized currency is a public nuisance.

(9) It is not a violation of this section if a person is acting in compliance with section 18-18-434, article 170 of title 12, or article 50 of title 44.

Source: L. 72: R&RE, p. 260, § 1. **C.R.S. 1963:** § 39-13-303. **L. 77:** (1)(b), (1)(c), (1)(d), and (2) amended and (1)(e) added, p. 889, § 1, effective July 1. **L. 80:** (1)(f) added, p. 472, § 2, effective July 1. **L. 81:** IP(1), (1)(a), (1)(b), (1)(d), (1)(e), (1)(f), and (2) amended and (1)(g) to (1)(i) and (3) added, pp. 954, 956, §§ 2, 3, effective July 1; (1)(c) amended, p. 737, § 17, effective July 1. **L. 83:** IP(3) amended, p. 686, § 1, effective April 21; IP(1), (1)(c), and (2) amended, p. 683, § 2, effective July 1; (1)(c) amended, p. 704, § 2, effective July 1. **L. 87:** (1)(b), (1)(c), (1)(e), (1)(h), (2), and (3)(a) to (3)(c) amended and (1)(j), (1)(k), and (4) to (8) added, p. 631, §§ 3, 4, effective July 1. **L. 88:** (1)(h.5) added, p. 1354, § 1, effective July 1; (1.5) added and (2) amended, p. 346, § 11, effective July 1; (1)(h.6) added, p. 1090, § 2, effective January 1,

1989. **L. 89:** (1)(h.5) repealed, p. 1645, § 18, effective June 5; (1)(l) added, p. 875, § 8, effective June 5. **L. 91:** (1)(m) added, p. 1581, § 5, effective June 4; (1)(h.6) amended, p. 1057, § 12, effective July 1. **L. 92:** (1)(m) amended, p. 2171, § 20, effective June 2; (1)(c)(I) and (1)(f) amended, p. 391, § 16, effective July 1; (5) amended and (5.1) and (5.2) added, p. 447, § 2, effective July 1. **L. 94:** (1)(k) amended, p. 2551, § 38, effective January 1, 1995. **L. 95:** (1)(m)(I) and (1)(m)(II) amended, p. 1110, § 62, effective May 31; (1)(c)(II) amended, p. 463, § 5, effective July 1. **L. 99:** (3)(d) added, p. 799, § 18, effective July 1. **L. 2000:** (1)(n) added, p. 1108, § 6, effective August 2. **L. 2002:** (5.1) and (5.2) amended, p. 917, § 2, effective July 1. **L. 2003:** (5), (5.1)(a), (5.1)(a.5), (5.1)(b)(II), (5.2)(a)(I), IP(5.2)(b), (5.2)(c), and IP(6) amended and (5.2)(d) and (6.5) added, pp. 898, 889, 902, 896, §§ 10, 1, 12, 6, effective July 1. **L. 2010:** (1)(c)(II) amended, (HB 10-1352), ch. 259, p. 1172, § 14, effective August 11. **L. 2012:** (1)(a) amended, (HB 12-1151), ch. 174, p. 621, § 3, effective August 8. **L. 2013:** (1)(e)(I) and (1)(e)(II) amended, (HB 13-1160), ch. 373, p. 2200, § 8, effective June 5. **L. 2014:** (1)(a) amended, (HB 14-1273), ch. 282, p. 1153, § 12, effective July 1. **L. 2018:** (2) amended, (HB 18-1234), ch. 381, p. 2298, § 2, effective June 6; (3)(d) amended, (HB 18-1200), ch. 379, p. 2292, § 4, effective August 8; (1)(m) amended, (SB 18-034), ch. 14, p. 238, § 11, October 1. **Initiated 2022:** (9) added, Proposition 122, L. 2023, p. 3591, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** (9) amended, (SB 23-290), ch. 249, p. 1411, § 22, effective July 1. **L. 2026:** IP(1) and (1)(g) amended and (1)(g.1) added, (SB 26-015), ch. 335, p. 2037, § 15, effective July 1.

Editor's note: (1) Subsections (5.1)(b)(II)(A) and (5.1)(b)(II)(B) were numbered as (5.1)(b)(II) and (5.1)(b)(III), respectively, in HB 02-1404 but were renumbered on revision in 2010 to conform to statutory format.

(2) Subsection (9) was added by Proposition 122, effective upon proclamation of the governor, December 27, 2022. The vote count for the measure at the general election held November 8, 2022, was as follows:

FOR: 1,296,992

AGAINST: 1,121,124

Cross references: For the legislative declaration in SB 26-015, see section 1 of chapter 335, Session Laws of Colorado 2026.

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

Two-pronged test to determine whether a statutory forfeiture proceeding is essentially criminal in character for purposes of double jeopardy clause: (1) Whether general assembly expressly or impliedly indicated a preference for criminal or civil categorization; and (2) in the event the general assembly did indicate an intent to treat a forfeiture proceeding as civil, whether the statutory scheme is so punitive either in purpose or effect as to negate the legislative intention. People v. Milton, 732 P.2d 1199 (Colo. 1987); People v. Ferrel, 929 P.2d 65 (Colo. App. 1996); People v. Coolidge, 953 P.2d 949 (Colo. App. 1997).

Forfeiture action pursuant to Colorado public nuisance statute is essentially civil in nature, does not violate double jeopardy provisions of the constitution, and is not subject to constitutional or statutory speedy trial provisions applicable to criminal prosecutions. People v. Milton, 732 P.2d 1199 (Colo. 1987).

Based upon the civil nature of civil forfeiture proceeding, defendant did not have a constitutional right to counsel and ineffective assistance of counsel is not a basis for overturning the judgment of forfeiture. People v. Cobb, 944 P.2d 574 (Colo. App. 1996).

Forfeiture action not dependent upon conviction in underlying criminal case. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

Function of forfeiture action is separate from the punitive function of a criminal conviction. People ex rel. Sandstrom v. District Ct., 884 P.2d 707 (Colo. 1994).

The fact that statute defines a public nuisance to include every vehicle used in the commission of any felony not otherwise included in the section did not transform forfeiture action into a criminal proceeding subject to double jeopardy provisions. People v. Milton, 732 P.2d 1199 (Colo. 1987).

Forfeiture action initiated under this section did not violate the forfeiture of estate provision of section 9 of article II of the Colorado constitution. People v. Milton, 732 P.2d 1199 (Colo. 1987).

Action for abatement of class 1 public nuisance is equitable in nature, and while the court in the exercise of its equity powers may not act contrary to the statutory mandate, it does retain a considerable degree of discretion and flexibility in fashioning a decree which achieves a fair result, so that in forfeiture situation, the court retains the authority to protect the interest of an innocent party to the extent practicable and within the statutory dispositional alternatives. People v. Garner, 732 P.2d 1194 (Colo. 1987).

The general assembly has declared that forfeiture proceedings of public nuisances are remedial and equitable in nature and the trial court properly determined that intervenor acquired an equitable interest in the vehicle based upon his payment of $500. People v. One 1968 Chevrolet 2-Door, 895 P.2d 1177 (Colo. App. 1995).

Trial court's determination that party contesting the forfeiture was true owner of automobile was supported by evidence because in its analysis of the totality of the circumstances, court considered intervenor's equitable interest, his good faith purchase for value without notice of the forfeiture, and the undue hardship laced on intervenor if the vehicle were forfeited. People v. One 1968 Chevrolet 2-Door, 895 P.2d 1177 (Colo. App. 1995).

Reasonable notice of conduct within section's scope. This section makes reasonably clear to those intended to be affected what conduct is within its scope. People v. Perez, 192 Colo. 562, 561 P.2d 7 (1977).

Property seized pursuant to this section is forfeited at the time of seizure, not upon entry of a final order. United States v. Wilkinson, 686 P.2d 790 (Colo. 1984), aff'd, 628 F. Supp. 29 (D. Colo. 1985).

But only if there is a subsequent judgment of forfeiture. Eggleston v. Colo., 636 F. Supp. 1312 (D. Colo. 1986).

Subsection (1)(c) is not unconstitutionally vague. The language is specific, persons of common intelligence have no difficulty understanding the term "used" and in comprehending the definition of "controlled substance", and the language is sufficiently plain to give defendant and others reasonable notice of the kind of conduct prohibited by its terms. People v. One 1967 Pontiac (GTO), 678 P.2d 1016 (Colo. 1984).

This section does not require any number of incidents of prostitution before a public nuisance may be found. People v. Perez, 192 Colo. 562, 561 P.2d 7 (1977).

Subsection (3) permits classification of a vehicle as a class one public nuisance on the basis of a single sale of a controlled substance which transpires within a vehicle. People v. One 1967 Pontiac (GTO), 678 P.2d 1016 (Colo. 1984).

No requirement of "close proximity" standard for forfeiture of contents of building declared a public nuisance. Since forfeiture statute is a civil statute, once the people make a prima facie case that contents of a house were used in criminal activity, burden shifts to the owner of the property to show why it should not be seized. People v. Lot 23, 735 P.2d 184 (Colo. 1987).

The use of the term "traceable" in subsection (3)(b) reveals legislative intent to require that a direct connection be established between the alleged proceeds and the unlawful activity. People v. Cerrone, 780 P.2d 562 (Colo. App. 1989).

The word "control" in subsection (6)(b)(II) encompasses any currency that is legally the property of the defendant, as well as any currency that the defendant has the authority or the power to manage or direct, even if such currency is not in the defendant's actual physical possession when it is seized. Thus, it is the general assembly's intention that any currency seized from the control of a defendant who engaged in a drug-related public nuisance is presumptively forfeitable. People v. Thirty-Three Thousand Two Hundred and Twelve Dollars ($33,212.00) in U.S. Currency, 83 P.3d 1206 (Colo. App. 2003).

The inclusion of subsection (1)(i) is a clear indication that the general assembly did not intend for the enumeration of specific felonies in the statute to be exhaustive. Legislative history indicates that the general assembly did not intend to override the residual effect of subsection (1)(i) and omit felony theft from the statute's coverage. People v. One 1988 Mazda 323, 857 P.2d 569 (Colo. App. 1993).

Storage for purposes of statute denotes that an item is left at a location for some period of time. It is not synonymous with possession. Generally the term indicates duration and not a transient situation. People v. One 1967 Ford Mustang, 781 P.2d 186 (Colo. App. 1989).

Vehicle used in the commission of a robbery is a class 1 public nuisance and the entire vehicle is subject to forfeiture, not just the contents of the vehicle. People v. Milton, 732 P.2d 1199 (Colo. 1987).

Motor vehicle used to transport stolen items home was not subject to forfeiture. The stipulated facts and evidence presented were inadequate to prove that the motor vehicle was sufficiently connected to the thefts to allow forfeiture. People v. One 1988 Mazda 323, 857 P.2d 569 (Colo. App. 1993).

This section requires the forfeiture of a vehicle which has been determined to be a class 1 public nuisance when there is at least one owner of the vehicle who participated or acquiesced in the prohibited use which led to the vehicle being declared a public nuisance, notwithstanding the fact that a co-owner had no knowledge of or a role in the creation of the nuisance. People v. Garner, 732 P.2d 1194 (Colo. 1987).

Evidence showed only that defendant drove a vehicle to a location where marijuana was cultivated, which would not compel every reasonable person to draw the inference that the vehicle was used in the manufacture, cultivation, growth, production, or processing of marijuana. People v. Wilson, 826 P.2d 404 (Colo. App. 1992).

Forfeiture is proper even though the vehicle was not used as a place where illegal activities were conducted. This section requires only that the vehicle was used to aid the illegal activity. People v. 1979 Volkswagen, 773 P.2d 619 (Colo. App. 1989).

Summary judgment ordering forfeiture of real property, its contents, and currency was proper where motion was supported by affidavits describing a history of sales and use of crack cocaine on the property by the defendant and her tenants, where the defendant admitted to making sales of crack cocaine on one of the parcels of property, and where repeated illegal drug use and sales took place on the property. People v. Cobb, 944 P.2d 574 (Colo. App. 1996).

This section mitigates some of the harshness inherent in the principle of forfeiture by exempting property from forfeiture if the court finds that the possession of the property is not unlawful and the owner was not a party to the creation of a nuisance and would suffer undue hardship by the sale, confiscation, or

destruction of the property. People v. Garner, 732 P.2d 1194 (Colo. 1987).

There was no undue hardship by the confiscation and sale of the fixtures and contents of the premises, which were being used for prostitution, where appellant knew of and profited from his deliberate illegal activity. People v. Perez, 192 Colo. 562, 561 P.2d 7 (1977).

Burden of proof in forfeiture action under Colorado public nuisance statute rests on the state and must be proven by a preponderance of the evidence. People v. Milton, 732 P.2d 1199 (Colo. 1987).

The defendant need not be charged under the precise section defining solicitation of prostitution in order for the provisions of the forfeiture section to apply. People v. 1979 Volkswagen, 773 P.2d 619 (Colo. App. 1989).

Ample evidence in record to support finding that business "was continuously being used as a place of prostitution". People v. Perez, 192 Colo. 562, 561 P.2d 7 (1977).

Former statute providing for abatement of houses of prostitution held valid. Mongone v. People, 84 Colo. 516, 271 P. 617 (1928) (decided under repealed laws antecedent to CSA, C 1, § 1).

Statute as basis for jurisdiction. See People v. Wheatridge Poker Club, 194 Colo. 15, 569 P.2d 324 (1977).

State claim to acquire currency used in a drug transaction may be pursued under either the Contraband Forfeiture Act or the Public Nuisance Act, each intended to create different procedures with different remedies. People v. $4338.00 in US Currency, 819 P.2d 1105 (Colo. App. 1991).

Any person contesting an action for forfeiture must establish his or her standing as a true owner of the property subject to forfeiture. The trial court is to consider the totality of the circumstances in determining whether a person asserting the contest is a true owner. People v. Grell, 950 P.2d 660 (Colo. App. 1997).

Applied in Rueda v. District Court, 194 Colo. 327, 575 P.2d 370 (1977); Barker v. District Court, 199 Colo. 416, 609 P.2d 628 (1980); Wakabayashi v. Tooley, 648 P.2d 655 (Colo. 1982).

16-13-304. Class 2 public nuisance.

(1) The following are deemed to be a class 2 public nuisance:

(a) Any place where people congregate, which encourages a disturbance of the peace, or where the conduct of persons in or about that place is such as to annoy or disturb the peace of the occupants of or persons attending such place, or the residents in the vicinity, or the passersby on the public street or highway; or

(b) Any public or private place or premises which encourages professional gambling, unlawful use, sale, or distribution of imitation controlled substances, as defined in section 18-18-

420 (3), C.R.S., drugs, controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs the possession of which is an offense under the laws of this state, furnishing or selling intoxicating liquor to minors, furnishing or selling fermented malt beverages to persons under the age of twenty-one, solicitation for prostitution, or traffic in stolen property; or

(b.5) Any public or private place or premises used for soliciting by means of a prerecorded message in violation of section 18-9-311 (1), C.R.S.; or

(c) Any public or private place used for a purpose declared to be a class 2 public nuisance by any other statute of this state.

(2) It is not a violation of this section if a person is acting in compliance with section 18-18-434, article 170 of title 12, or article 50 of title 44.

Source: L. 72: R&RE, p. 260, § 1. **C.R.S. 1963:** § 39-13-304. **L. 81:** (1)(b) amended, p. 737, § 18, effective July 1. **L. 83:** (1)(b) amended, p. 704, § 3, effective July 1. **L. 88:** (1)(b.5) added and (1)(c) amended, p. 346, § 12, effective July 1. **L. 92:** (1)(b) amended, p. 391, § 17, effective July 1. **L. 95:** (1)(b) amended, p. 463, § 6, effective July 1. **Initiated 2022:** (2) added, Proposition 122, L. 2023, p. 3591, effective upon proclamation of the Governor, December 27, 2022. **L. 2023:** (2) amended, (SB 23-290), ch. 249, p. 1411, § 23, effective July 1.

Editor's note: Subsection (2) was added by Proposition 122, effective upon proclamation of the governor, December 27, 2022. The vote count for the measure at the general election held November 8, 2022, was as follows:

FOR: 1,296,992

AGAINST: 1,121,124

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

Annotator's note. Since § 16-3-304 is similar to repealed § 39-15-2, CRS 1963, and laws antecedent to CSA, C 1, § 2, relevant cases construing those provisions have been included in the annotations to this section.

Information alleging encouragement of illegal acts sufficient. In an information charging that defendant kept a disorderly house to the encouragement of drinking, gambling, or lewdness, it is not essential that particular acts should be set out in the information, because the charge is that the

house was kept to the encouragement of those acts, and not that the defendant was guilty of the acts themselves. Howard v. People, 27 Colo. 396, 61 P. 595 (1900).

Evidence sufficient to establish conduct of patrons was nuisance requiring abatement. Steinberg v. People ex rel. Keating, 154 Colo. 264, 390 P.2d 811 (1964).

Evidence sufficient to support finding of knowledge of solicitation for prostitution on premises. Edelweiss, Inc. v. People ex rel. Keating, 154 Colo. 154, 389 P.2d 189 (1964).

16-13-305. Class 3 public nuisance.

(1) The following are a class 3 public nuisance:

(a) The conducting or maintaining of any business, occupation, operation, or activity prohibited by a statute of this state; or

(b) The continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land, or premises in violation of a statute of this state; or

(c) Any building, structure, or land open to or used by the general public, the condition of which presents a substantial danger or hazard to public health or safety; or

(d) Any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard, or subjects adjoining property to danger of damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter; or

(e) Any unlawful pollution or contamination of any surface or subsurface waters in this state, or of the air, or any water, substance, or material intended for human consumption, but no action shall be brought under this paragraph (e) if the state department of public health and environment or any other agencies of state or local government charged by and acting pursuant to statute or duly adopted regulation have assumed jurisdiction by the institution of proceedings on that pollution or contamination. Nothing in this paragraph (e) shall abridge the right of any person to institute a private nuisance action or of any district attorney to institute a public nuisance action under the common law or other statutory law of this state.

(f) Any activity, operation, or condition which, after being ordered abated, corrected, or discontinued by a lawful order of an agency or officer of the state of Colorado, continues to be conducted or continues to exist in violation of:

(I) Any statute of this state;

(II) Any regulation enacted pursuant to the authority of a statute of this state; or

(g) Any condition declared by a statute of this state to be a class 3 public nuisance.

Source: L. 72: R&RE, p. 261, § 1. **C.R.S. 1963:** § 39-13-305. **L. 94:** (1)(e) amended, p. 2732, § 354, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1)(e), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

16-13-306. Class 4 public nuisance.

If any person carries on or practices any profession or calling or operates any business required to be licensed by the laws of the state of Colorado without first procuring a license therefor, or carries on or practices such profession or calling or operates such business after the license therefor required by the laws of the state of Colorado has been lawfully canceled or revoked, the carrying on or practicing of such profession or calling, or the operation of such business without a license is a class 4 public nuisance and may be restrained and abated.

Source: L. 72: R&RE, p. 261, § 1. **C.R.S. 1963:** § 39-13-306.

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

Annotator's note. Since § 16-13-306 is similar to repealed § 39-15-2, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

The fact that no property or pecuniary interest of the plaintiff is involved is no answer to a suit to enjoin practice of a profession without a license, where the action is in behalf of the public. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

As public need not prove irreparable injury. In general, a court will grant an injunction only where there is imminent danger, irreparable injury, or damage to the

plaintiff; however, in order to restrain an unlicensed person from practicing a profession it is not necessary to prove irreparable injury or the threat thereof, where the suit is in behalf of the public. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

16-13-306.5. Limitations on receipt of forfeiture payments from federal agencies.

(1) A seizing agency or participant in any joint task force or other multijurisdictional collaboration shall accept payment or distribution from a federal agency of all or a portion of any forfeiture proceeds resulting from adoption or a joint task force or other multijurisdictional collaboration only if the aggregate net equity value of the property and currency seized in a case is in excess of fifty thousand dollars and a forfeiture proceeding is commenced by the federal government and relates to a filed criminal case.

(2) Subsection (1) of this section shall not be construed to restrict seizing agencies from collaborating with a federal agency to seize property that the seizing agency has probable cause to believe is the proceeds or instruments of a crime through an intergovernmental joint task force.

Source: L. 2017: Entire section added, (HB 17-1313), ch. 403, p. 2106, § 2, effective August 9.

16-13-307. Jurisdiction - venue - parties - process.

(1) The several district courts of this state shall have original jurisdiction of proceedings under this part 3.

(1.5) A court shall not enter judgment of forfeiture of property in any forfeiture proceeding unless and until an owner of the property is convicted of an offense listed in section 16-13-301 or 16-13-303, or a lesser included offense of an eligible offense if the conviction is the result of a negotiated guilty plea. Nothing in this section requires the conviction to be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought. One or more criminal charges must be filed arising from the activity giving rise to the forfeiture, and the court shall stay the forfeiture proceeding until the disposition of the criminal charges. A stay shall not be maintained during an appeal or post-conviction proceeding challenging a criminal conviction. Nothing in this section prohibits or prevents the parties from contemporaneously resolving criminal charges and a forfeiture proceeding arising from the same activity.

(1.6) Upon acquittal or dismissal of a criminal action against a person named in a forfeiture action related to the criminal action; except that, if a provision of subsection (1.7) of this section

applies, the forfeiture claim shall be dismissed and the seized property shall be returned as respects the subject matter property or interest of that person, if the case has been adjudicated as to all other claims, interests, and owners, unless possession of the property is illegal. If the forfeiture action is dismissed or judgment is entered in favor of the claimant, the claimant is not subject to any monetary charges by the state for storage of the property or expenses incurred in the preservation of the property, unless at the time of dismissal the plaintiff shows that those expenses would have been incurred to prevent waste of the property even if it had not been seized.

(1.7) Notwithstanding subsection (1.5) of this section:

(a) (I) A person shall lack standing for and shall be disallowed from pursuit of a claim or defense in a civil forfeiture action upon a finding that a warrant or other process has been issued for the apprehension of the person, and, in order to avoid criminal prosecution, the person:

(A) Purposely leaves the state; or

(B) Declines to enter or reenter the state to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person or from which a warrant has been issued, by failing to appear in court or surrender on a warrant; and

(D) Is not known to be confined or held in custody in any other jurisdiction within the United States for commission of criminal conduct in that jurisdiction.

(II) If a person lacks standing pursuant to this subsection (1.7)(a), the forfeiture action may proceed against the person's interest in the property, and a judgment of forfeiture may be entered without the person's criminal conviction, upon motion and notice as provided in the rules of civil procedure.

(b) If, following the disposition of the criminal case and notice to all persons known to have an interest, or who have asserted an interest in the property subject to forfeiture, no owner files an answer or other appropriate pleading with the court claiming an interest in the subject matter property, or no person establishes standing to contest the forfeiture action pursuant to section 16-13-303 (5), a forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of an owner.

(c) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-303 (1) or that the property is traceable proceeds of the offense or related criminal activity by a nonowner and the plaintiff proves by clear and convincing evidence that an owner is not an innocent owner pursuant to section 16-13-303 (5.2)(a), a judgment of forfeiture may be entered only after a criminal conviction of the nonowner in the underlying criminal offense related to the property subject to the forfeiture proceeding.

(d) If an owner of the property who was involved in the public nuisance act or conduct giving rise to the claim of forfeiture subsequently dies, the forfeiture action may proceed against the owner's interest in the property, and if the plaintiff proves that the deceased owner was not an innocent owner pursuant to section 16-13-303 (5.2)(a), a judgment of forfeiture may be entered without the owner's criminal conviction.

(e) If an owner received a deferred judgment, deferred sentence, or participated in a diversion program, or in the case of a juvenile a deferred adjudication or deferred sentence or participated in a diversion program for the offense, the forfeiture action may proceed against the owner's interest in the property, and a judgment of forfeiture may be entered without a criminal conviction.

(f) A defendant or claimant is permitted to waive the requirement of a criminal conviction in order to settle a forfeiture action as to the defendant's or claimant's interest in the property.

(1.8) Nothing in this section shall be construed to limit the temporary seizure of property for evidentiary, investigatory, or protective purposes.

(2) An action to abate a public nuisance shall be brought in the county in which the subject matter of the action, or some part thereof, is located or found or in the county where the public nuisance act, or any portion thereof, was committed.

(2.5) All forfeiture actions shall proceed in state district court if the property was seized by a local or state law enforcement agency as a result of an ongoing state criminal investigation and the owner is being prosecuted in state court. Unless directed by an authorized agent of the federal government, no state or local law enforcement agency may transfer any property seized by the state or local agency to a federal agency for forfeiture under federal law unless an owner of the property is being prosecuted in federal court.

(3) Except as otherwise provided in this part 3, the practice and procedure in an action to abate a public nuisance shall be governed by the Colorado rules of civil procedure.

(3.5) An action brought pursuant to this part 3 regarding a class 1 public nuisance shall be filed within sixty-three days following the seizure of the property pursuant to section 16-13-315. The plaintiff may file the complaint after the expiration of sixty-three days from the date of seizure only if the complaint is accompanied by a written petition for late filing. Such petition for late filing shall demonstrate good cause for the late filing of the complaint. The sixty-three-day time limitation established by this subsection (3.5) shall not apply where the seizure of the property occurred pursuant to a warrant authorizing such seizure or otherwise under any statute or rule of criminal procedure, if the property is held as evidence in a pending criminal investigation or in a pending criminal case.

(4) An action to abate a public nuisance may be brought by the district attorney, or the attorney general with the consent of the district attorney, in the name of the people of the state of

Colorado or in the name of any officer, agency, county, or municipality of this state whose duties or functions include or relate to the subject matter of the action. Any action to abate a class 3 public nuisance as defined by section 16-13-305 (1)(f) may be brought only upon the request of the agency or officer issuing the order or under whose authority the order was issued when such order relates to unlawful pollution or contamination.

(5) An action to abate a public nuisance, other than a class 4 public nuisance, and any action in which a temporary restraining order, temporary writ of injunction, or preliminary injunction is requested, must be commenced by the filing of a complaint, which must be verified or supported by affidavit. A summons must be issued and served as in civil cases; except that a copy of the complaint, copies of any orders issued by the court at the time of filing, and notice of the ability to access legal representation pursuant to section 16-13-318 must be served with the summons.

(6) During all discovery procedures in actions brought pursuant to this part 3, a witness or party may refuse to answer any question if said witness or party makes a good faith assertion that the disclosure would tend to identify, directly or indirectly, a confidential informant for a law enforcement agency, unless the district attorney intends to call said informant as a witness at any adversarial hearing. On a motion to compel discovery, no witness or party shall be sanctioned in any manner for withholding information pursuant to this subsection (6).

(7) Actions to abate a public nuisance shall be heard by the court, without a jury, at all stages of the proceedings.

(8) Repealed.

(9) Part 2 of article 41 of title 38, C.R.S., shall not apply to any action under this part 3.

(10) (a) Continuance of the trial of a public nuisance action shall be granted upon stipulation of the parties or upon good cause shown.

(b) (Deleted by amendment, L. 2003, p. 897, § 8, effective July 1, 2003.)

(c) Public nuisance actions shall be included in the category of "expedited proceedings" specified in rules 16 and 26 of the Colorado rules of civil procedure; except that each party may conduct limited discovery as provided for in rule 26 (b)(2) of the Colorado rules of civil procedure. In addition, each party may move the court to authorize additional discovery upon good cause shown.

(11) No claim for relief shall be asserted by any party other than the plaintiff in a public nuisance action; except that the defendant may make a request for the return of property seized pursuant to this part 3.

(12) If a public nuisance trial pursuant to this part 3 results in an order to return subject personal property and the prosecution states an intent to appeal and proceeds to appeal that judgment or order, the court shall stay the judgment or order pending appeal, unless the court

finds that the appeal was taken in bad faith or for the purpose of delay. No appeal bond shall be required, but the court may make appropriate orders to preserve the value of the property pending appeal.

(13) Unknown persons who may claim an interest in the property, persons whose whereabouts are unknown despite a diligent good faith search, and persons upon whom the plaintiff has been unable to effect service as otherwise provided in the Colorado rules of civil procedure despite diligent good faith efforts may be served pursuant to a court order by publishing a copy of a summons twice in a newspaper of general circulation. The summons shall describe the property and state where the complaint and attendant documents may be obtained, and a party shall have thirty-five days after the last publication date to respond.

Source: L. 72: R&RE, p. 262, § 1. **C.R.S. 1963:** § 39-13-307. **L. 87:** (2) and (4) amended and (6) to (13) added, p. 633, § 5, effective July 1. **L. 90:** (8) repealed, p. 988, § 14, effective April 24. **L. 92:** (3.5) added and (10) and (13) amended, p. 449, § 3, effective July 1. **L. 97:** (10)(a) amended and (10)(c) added, p. 1552, § 3, effective July 1. **L. 2002:** (1.5), (1.6), (1.7), (1.8), and (2.5) added, p. 919, § 3, effective July 1. **L. 2003:** (1.5), (1.6), (1.7), (10)(a), and (10)(b) amended, pp. 892, 897, §§ 4, 8, effective July 1. **L. 2012:** (3.5) and (13) amended, (SB 12-175), ch. 208, p. 856, § 90, effective July 1. **L. 2026:** (1.5), (1.6), IP(1.7), (1.7)(a)(II), (1.7)(b), (1.7)(c), (1.7)(d), (1.7)(e), (1.7)(f), and (5) amended, (HB 26-1250), ch. 381, p. 2365, § 1, effective July 1.

Editor's note: Section 8 of chapter 381 (HB 26-1250), Session Laws of Colorado 2026, provides that the act changing this section applies to forfeiture actions on or after July 1, 2026.

Cross references: For the issuance of summons, see C.R.C.P. 4.

ANNOTATION

Annotator's note. Since § 16-13-307 is similar to repealed laws antecedent to CSA, C 1, § 3, relevant cases construing those provisions have been included in the annotations to this section.

Public nuisance suits may be either criminal or civil in nature. People v. Cory, 183 Colo. 1, 514 P.2d 310 (1973).

The statute authorizing forfeiture for a public nuisance is penal in nature. In an action premised on a penal statute as opposed to a civil claim, the statute of limitations is jurisdictional in nature, in that it specifies the time period during which a cause of action exists. Since the statute of limitations is jurisdictional, it may be raised at any stage of the proceeding, including a

motion to dismiss. People v. Steinberg, 672 P.2d 543 (Colo. App. 1983).

Where a civil action is brought to abate a public nuisance, the only remedy is injunctive relief. People v. Cory, 183 Colo. 1, 514 P.2d 310 (1973).

And rules of civil procedure followed. Where a civil action for injunctive relief is brought to abate a public nuisance, the rules of civil procedure must be followed. People v. Cory, 183 Colo. 1, 514 P.2d 310 (1973); Barker v. District Court, 199 Colo. 416, 609 P.2d 628 (1980).

An action to enjoin the operation of premises as a nuisance is aimed at the unlawful use, irrespective of ownership. Gaskins v. People, 84 Colo. 582, 272 P. 662 (1928).

Personal judgment against owner not served with process is invalid. In an action to enjoin maintenance of a nuisance, personal judgment against the owner of the property who was not served with process and did not appear, held invalid, although her property was bound by the decree. Gaskins v. People, 84 Colo. 582, 272 P. 662 (1928).

Owner of leased premises may be enjoined. Even though there is no evidence that defendant owner kept a place constituting a nuisance, or that he leased the premises for such use; nevertheless under this section the owner may be enjoined from permitting their use for such purposes. Gregg v. People, 65 Colo. 390, 176 P. 483 (1918).

A forfeiture action is commenced and jurisdiction of the trial court is invoked by the filing of a complaint in district court. People v. Grell, 950 P.2d 660 (Colo. App. 1997).

The 60-day time frame for filing a complaint and the exceptions under this section are procedural requirements, therefore, failure to file a complaint within such time frame is not a jurisdictional defect that would divest court of subject matter jurisdiction. People v. Grell, 950 P.2d 660 (Colo. App. 1997).

The phrase "dismissal of a criminal action" refers only to the dismissal of a criminal case before or during a trial proceeding in which a forfeiture claim is pending. It does not refer to a dismissal of a criminal case occurring on remand as the result of the reversal of a related criminal conviction on appeal after a forfeiture judgment has been entered and no appeal or stay has been taken from the judgment of forfeiture. People v. $11,200.00 U.S. Currency, 2013 CO 64, 313 P.3d 554.

16-13-308. Temporary restraining order - preliminary injunction - when to issue.

(1) (a) If probable cause for the existence of a class 1 public nuisance is shown to the court by means of a complaint supported by an affidavit, the court shall issue a temporary restraining order to abate and prevent the continuance or recurrence of the nuisance or to secure property subject to forfeiture pursuant to this part 3. Such temporary restraining order shall:

(I) Direct the sheriff or a peace officer to seize and, where applicable, close the public nuisance and keep the same effectually closed against its use for any purpose until further order of the court;

(II) Direct the seizure or holding, if previously seized, of all personal property subject to the provisions of this part 3; and

(III) Restrain and enjoin persons from selling, transferring, encumbering, damaging, destroying, or using as security for a bond any property subject to this part 3.

(b) The temporary restraining order may make such provisions as the court finds reasonable for the maintenance, utilities, insurance, and security with respect to real property subject to a public nuisance temporary restraining order, including imposing those responsibilities on the owner or defendant, if said owner or defendant is allowed reasonable access to the property consistent with those limited purposes.

(c) The court may order that all fixtures and contents of a public nuisance be stored on the premises of such public nuisance while an action under this part 3 is pending.

(d) The court may require that documents evidencing title or registration or that keys to property subject to this part 3 be deposited with a sheriff or peace officer, to be kept in the constructive custody of the court, while an action under this part 3 is pending.

(e) The court may require the sheriff or peace officer executing the order to post a copy of the order on property subject to the order.

(f) Any person with an ownership interest adversely affected by a temporary restraining order issued pursuant to this subsection (1) may file a motion to vacate the temporary restraining order. Such motion shall be filed within fourteen days of the time said person is served with or otherwise has notice of the temporary restraining order. The motion shall be set for hearing within fourteen days after its filing. At said hearing, the court shall determine whether the various provisions of the temporary restraining order should remain in effect pending final determination of the action. No part of the temporary restraining order shall be vacated unless the proponent of the motion demonstrates that there is no probable cause to believe that a public nuisance exists or that the public nuisance acts underlying the action occurred, or that the proponent has a reasonable likelihood of prevailing on the merits of the case with respect to the temporary seizure or closure of the property. No issue regarding the forfeiture of the property shall be raised at the hearing on the motion, except the court may consider an innocent owner defense pursuant to section 16-13-303 (5.2) by a proponent who has not been charged in a parallel criminal action arising from the same activity giving rise to the forfeiture proceedings. When the innocent owner defense is raised as grounds for vacating the order, the issues at the hearing shall be limited to modifying the order to provide for the use of the property during the pendency of the action by an innocent owner, but only if such use is consistent with preserving it for forfeiture as to any other interest. Such a modifying order may include, without limitation,

reasonable provisions for the continued occupancy of a residence, or the operation of a business and the sale or disposition of business inventory. However, no such modifying order shall include the release of currency. The determination of the facts by the court at the hearing is independent of and shall not be considered in the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrences. Any motion to vacate a temporary restraining order shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing. Until vacated, the temporary restraining order shall remain in full force and effect.

(2) In an action to abate a class 2 public nuisance, the court may, as a part of a preliminary injunction, direct the sheriff to seize and close such public nuisance and to keep the same effectually closed against its use for any purpose, until further order of the court. While the preliminary injunction remains in effect, the building or place seized and closed, and all personal property seized thereunder, shall be subject to the orders of the court.

(3) Temporary restraining orders and preliminary injunctions for public nuisances other than class 1 public nuisances may be issued as provided by the Colorado rules of civil procedure. No bond or security shall be required of the district attorney or the people of the state in any action to abate a public nuisance.

Source: L. 72: R&RE, p. 262, § 1. **C.R.S. 1963:** § 39-13-308. **L. 81:** (1) amended, p. 956, § 4, effective July 1. **L. 83:** (1) amended, p. 684, § 3, effective July 1. **L. 87:** (1) and (3) R&RE, p. 635, § 6, effective July 1. **L. 95:** (1)(f) amended, p. 1097, § 15, effective May 31. **L. 2002:** (1)(f) amended, p. 920, § 4, effective July 1. **L. 2003:** (1)(f) amended, p. 891, § 3, effective July 1. **L. 2012:** (1)(f) amended, (SB 12-175), ch. 208, p. 856, § 91, effective July 1.

Cross references: For preliminary injunctions, see C.R.C.P. 65(a).

ANNOTATION

Annotator's note. Since § 16-13-308 is similar to repealed laws antecedent to CSA, C 1, § 3, relevant cases construing those provisions have been included in the annotations to this section.

The injunctive features of this section are broad with no designation of the parties who shall be made defendants. It may, therefore, be assumed that it was intended that the owner of the premises, as well as the keeper of the place operating as a nuisance, might be made parties. Gregg v. People, 65 Colo. 390, 176 P. 483 (1918).

Restraining order under this section analogous to order involving execution of a writ of attachment and levy upon a

debtor's property; thus sheriff had the duty of care of a bailee and the jury should have been so instructed. Kessman v. City and County of Denver, 709 P.2d 975 (Colo. App. 1985).

Temporary restraining order may be issued to abate a nuisance and to secure property subject to forfeiture only upon a showing of probable cause to believe that such property is a public nuisance; People must establish probable cause to believe that there is a substantial connection between property to be forfeited and nuisance activity. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Error in preliminary injunction immaterial. In an action brought under this part 3, whether or not error was committed in the granting of a temporary injunction was held to be of no consequence where a final decree of abatement was properly entered. Mongone v. People, 84 Colo. 516, 271 P. 617 (1928).

Property seized pursuant to this section is forfeited at the time of seizure, not upon entry of a final order. United States v. Wilkinson, 686 P.2d 790 (Colo. 1984).

A sheriff or officer who takes custody of the property of another pursuant to a temporary restraining order may be a constructive bailee and may be sued for negligence for property lost or injured during bailment. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Order under this section does not amount to an order authorizing warrantless entry and search of premises. People v. Taube, 864 P.2d 123 (Colo. 1993).

Court's finding of probable cause to believe that a house constituted a public nuisance was not equivalent to a finding that probable cause existed to enter and search the contents of the house. People v. Taube, 864 P.2d 123 (Colo. 1993).

Applied in Barker v. District Court, 199 Colo. 416, 609 P.2d 628 (1980).

16-13-309. Judgment - relief.

(1) The judgment in an action to abate a public nuisance may include a permanent injunction to restrain, abate, and prevent the continuance or recurrence of the nuisance and an order directing the confiscation and forfeiture of property. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction or order and enforce the same, and the court may retain jurisdiction of the case for the purpose of enforcing its orders.

(2) If the existence of a class 1 public nuisance is established in an action authorized by this part 3, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building, place, vehicle, or real property and the forfeiture of all fixtures and contents thereof and the confiscation and forfeiture of all personal property, including vehicles, seized or subject to seizure as provided in section 16-13-303 and shall direct

the sale of the personal property, including vehicles, as provided in this part 3. If the building, place, or real property is not forfeited pursuant to this part 3, the order shall direct the effectual closing of such property against its use for any purpose for a period of one year, unless sooner released by the court pursuant to the provisions of this part 3. While the order remains in effect as to closing, such building, place, or real property shall remain in the custody of the court. The court shall cause a copy of the order of abatement to be recorded in the office of the county clerk and recorder of the county in which the property is located.

(3) The judgment in an action to abate a class 2 public nuisance may include an order directing the sheriff to seize and close the public nuisance, and to keep the same effectually closed until further order of the court, not to exceed one year.

(4) The judgment in an action to abate a class 3 public nuisance may include, in addition to or in the alternative to other injunctive relief, an order requiring the removal, correction, or other abatement of a public nuisance, in whole or in part, by the sheriff, at the expense of the owner or operator of the public nuisance.

(5) The judgment in an action to abate a public nuisance may include, in addition to or in the alternative to any other relief authorized by the provisions of this part 3, the imposition of a fine, within the limits provided in section 16-13-312, conditioned upon failure or refusal of compliance with the orders of the court within any time limits therein fixed.

Source: L. 72: R&RE, p. 263, § 1. **C.R.S. 1963:** § 39-13-309. **L. 81:** (2) amended, p. 956, § 5, effective July 1. **L. 83:** (2) amended, p. 684, § 4, effective July 1. **L. 87:** (1) and (2) amended, p. 636, § 7, effective July 1.

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

Annotator's note. Since § 16-13-309 is similar to repealed laws antecedent to CSA, C. 1, §§ 3 and 7, relevant cases construing those provisions have been included in the annotations to this section.

The purpose of this section is to abate the nuisance by stripping the house of its furniture and fixtures and selling them at sheriff's sale to pay the costs, closing the house against all purposes for one year, and permanently enjoining the owner from permitting such future use of his premises. Gregg v. People, 65 Colo. 390, 176 P. 483 (1918).

Injunction may order the closing of the property. In an action brought against an occupying tenant of property to abate a nuisance, an injunctive order and decree closing the property would be valid,

although the owner was not made a party to the action. Gaskins v. People, 84 Colo. 582, 272 P. 662 (1928).

Forfeiture of property dates from the time of seizure, not from entry of the order under this section. United States v. Wilkinson, 686 P.2d 790 (Colo. 1984).

No one-year closing of property determined to be a public nuisance is required prior to forfeiture or sale of the property. People v. 21020 Colo. Highway 74, 791 P.2d 1189 (Colo. App. 1989).

16-13-310. Redelivery of seized premises.

(1) If the owner of a building, a place, or any real property seized and closed as a class 1 public nuisance has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees, and allowances which are declared by this section to be a lien on the building, place, or real property, and files a bond in the amount fixed by the court not to exceed the full value of said property, with sureties to be approved by the court, conditioned that he will immediately abate any such nuisance that exists at the building, place, or real property and prevent the same from being established or kept thereat within a period of one year thereafter, the court, if satisfied of his good faith and satisfied that such owner had not conducted, used, maintained, or knowingly permitted the conducting, using, or maintaining of such public nuisance, may order the building, place, or real property to be delivered to said owner and the order of abatement canceled so far as the same relates to said property. If any property is found not to be a public nuisance pursuant to this part 3 or if said property fits the description of property specified in section 16-13-303 (2) and (3) and the property is not subject to forfeiture or an affirmative defense has been proven, said property shall be released to the owner without conditions. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it is subject by law.

(2) If the owner or operator of a building or place seized and closed as a class 2 public nuisance has not been guilty of any contempt of court in the proceedings, and demonstrates by evidence satisfactory to the court that the public nuisance has been abated and will not recur, the court may order the premises delivered to the owner or operator. As a condition of such order, the court may require the posting of bond, in an amount fixed by the court, for the faithful performance of the obligation of the owner or operator thereunder to prevent recurrence or continuance of the public nuisance.

(3) If the tenant or occupant, other than the owner, of a building, a place, or any real property is involved in conducting or maintaining a public nuisance, the owner need not be made a party to the action until the tenant or occupant is evicted or the district attorney seeks to enforce the remedies of this part 3 against the owner. However, the owner may intervene in the action at any time.

Source: L. 72: R&RE, p. 263, § 1. **C.R.S. 1963:** § 39-13-310. **L. 81:** (1) amended, p. 957, § 6, effective July 1. **L. 83:** (1) amended, p. 684, § 5, effective July 1. **L. 87:** (1) amended and (3) added, p. 636, § 8, effective July 1; (1) amended, p. 1586, § 57, effective July 1.

ANNOTATION

This section affords an ample remedy to the owner, although he is not made a party to the abatement suit. Gaskins v. People, 84 Colo. 582, 272 P. 662 (1928) (decided under repealed laws, antecedent to CSA, C. 1, § 9).

16-13-311. Disposition of seized personal property.

(1) Any personal property subject to seizure, confiscation, forfeiture, or destruction under the provisions of this part 3, and which is seized as a part of or incident to proceedings under this part 3 for which disposition is not provided by another statute of this state, shall be disposed of as provided in this section.

(2) Any such property which is required by law to be destroyed, or the possession of which is illegal, or which in the opinion of the court is not properly the subject of a sale may be destroyed pursuant to a warrant for the destruction of personal property issued by the court and directed to the sheriff of the proper county or any peace officer and returned by the sheriff or peace officer after execution thereof. The court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

(3) (a) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited. The court's order perfects the state's right and interest in and title to the property and relates back to the date when title to the property vested in the state pursuant to section 16-13-316. Except as otherwise provided in subsection (3)(c) of this section, the court shall also order the property to be sold at a public sale by the law enforcement agency in possession of the property in the manner provided for sales on execution, or in another commercially reasonable manner. Property forfeited pursuant to this section or proceeds therefrom must be distributed or applied in the following order:

(I) To payment of the balances due on any liens perfected on or before the date of seizure preserved by the court in the forfeiture proceedings, in the order of their priority;

(II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;

(III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;

(IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;

(V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;

(VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;

(VI.5) The remaining portion of the balance, up to fifty-five thousand dollars per fiscal year, to the department of local affairs created in section 24-1-125 for grant and portal administration related to civil asset forfeiture proceeds required pursuant to section 16-13-701;

(VII) The balance must be delivered, upon order of the court, as follows:

(A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement;

(B) Twenty-five percent to the behavioral health administrative services organization contracting with the behavioral health administration in the department of human services serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance use disorder treatment. Money appropriated to the behavioral health administrative services organization must be in addition to, and not be used to supplant, other funding appropriated to the behavioral health administration; and

(C) Twenty-five percent to the forfeiture defense counsel fund, created in section 16-13-318 (3).

(b) (Deleted by amendment, L. 2002, p. 921, § 5, effective July 1, 2002.)

(c) If, in a forfeiture proceeding, a partial owner is determined to be an innocent owner under law, at the option of the innocent partial owner, in lieu of a public sale, the innocent partial owner may purchase the forfeited items from the state at a private sale for fair market value. Proceeds received by the state shall be disposed of pursuant to this section.

(d) After a judgment of forfeiture has been entered, any seizing agency in possession of any money forfeited shall deposit the money in the registry of the court where the forfeiture order

was entered. Upon the sale of forfeited real or personal property, the seizing agency responsible for overseeing the sale shall ensure that any lienholders are compensated from the proceeds of the sale pursuant to the priorities specified in paragraph (a) of this subsection (3) for their interests in the forfeited property. The seizing agency shall deposit all remaining proceeds from the sale in the registry of the court immediately upon completion of the sale. The seizing agency shall notify the court and the district attorney when all property subject to the forfeiture order has been sold and all proceeds and money have been deposited in the registry of the court where the forfeiture order was entered.

(e) Within thirty-five days after the date the order of forfeiture is entered, the district attorney may submit a motion, an affidavit, and any supporting documentation to the court to request compensation consistent with this section. Within thirty-five days after the date the order of forfeiture is entered, any victim of the criminal act giving rise to the forfeiture may submit a request for compensation, an affidavit, and supporting documentation to the district attorney to request compensation from the forfeiture proceeds.

(f) Within fourteen days after the date a seizing agency notifies the court that all property forfeited has been sold and all proceeds and money have been deposited in the registry of the court where the forfeiture order was entered, the seizing agency may submit a motion, an affidavit, and supporting documentation to the court for reimbursement of expenses consistent with this section. In its motion, the seizing agency shall identify any other seizing agencies that participated in the seizure and specify the details of any intergovernmental agreement regarding sharing of proceeds. The seizing agency shall send a copy of this motion to the district attorney.

(g) The district attorney shall prepare a motion and proposed order for distribution based upon the motions and requests submitted by the parties. The order shall include allocation of one percent of the value of the property to the clerk of the court for the direct and indirect costs incurred by the clerk in implementing the provisions of this subsection (3). The district attorney shall send copies to all remaining interested parties.

(h) Any party shall have fourteen days after filing of the proposed order to file any objections to the proposed order filed by the district attorney.

(3.5) Instead of liens and encumbrances on real property being satisfied from the proceeds of sale, real property may be sold subject to all liens or encumbrances on record. The purchase of the property by the successful bidder under this subsection (3.5) shall be conditioned on the bidder satisfying and obtaining the release of the first and second priority liens within sixty-three days after the sale, or obtaining written authorization from those lien holders for the bidder to receive the sheriff's deed which shall be issued after such satisfaction or authorization. The purchaser of the property shall take title free of any lien, encumbrance, or cloud on the title recorded after title vests in the state pursuant to section 16-13-316.

(4) It is the intent of the general assembly that moneys allocated to a seizing agency pursuant to subsection (3) of this section shall not be considered a source of revenue to meet normal operating needs.

(5) If more than one seizing agency was substantially involved in effecting the forfeiture, the agencies shall enter into a stipulation with regard to costs incurred by the agencies and the percentage of any remaining proceeds to be deposited for the benefit of the agencies or any property to be directly forfeited for use of such agencies. Upon the filing by such agencies of such stipulation with the court, the court shall order the proceeds or property so distributed. If the agencies are unable to reach an agreement, the court shall take testimony and equitably distribute the proceeds.

(6) The state shall issue a certificate of title for a vehicle to the purchaser or seizing agency if the vehicle is acquired pursuant to this part 3.

Source: L. 72: R&RE, p. 264, § 1. **C.R.S. 1963:** § 39-13-311. **L. 81:** (3) amended, p. 957, § 7, effective July 1. **L. 87:** (2) and (3)(b) amended and (4) to (6) added, p. 637, § 9, effective July 1. **L. 2002:** (3) amended, p. 921, § 5, effective July 1. **L. 2003:** IP(3)(a) amended and (3.5) added, p. 904, § 16, effective July 1. **L. 2011:** (3)(a)(VII)(B) amended, (HB 11-1303), ch. 264, p. 1155, § 26, effective August 10. **L. 2012:** (3)(e), (3)(f), (3)(h), and (3.5) amended, (SB 12-175), ch. 208, p. 857, § 92, effective July 1. **L. 2017:** IP(3)(a) and (3)(a)(VII)(B) amended, (SB 17-242), ch. 263, p. 1252, § 9, effective May 25. **L. 2018:** IP(3)(a) and (3)(a)(VII) amended, (HB 18-1020), ch. 307, p. 1860, § 4, effective September 1. **L. 2022:** (3)(a)(VII)(B) amended, (HB 22-1278), ch. 222, p. 1596, § 241, effective August 10. **L. 2023:** (3)(a)(VII)(B) amended, (HB 23-1236), ch. 206, p. 1050, § 2, effective May 16. **L. 2026:** IP(3)(a), (3)(a)(VII)(C), and (6) amended and (3)(a)(VI.5) added, (HB 26-1250), ch. 381, p. 2367, § 2, effective July 1.

Editor's note: Section 8 of chapter 381 (HB 26-1250), Session Laws of Colorado 2026, provides that the act changing this section applies to forfeiture actions on or after July 1, 2026.

Cross references: (1) For provisions on reporting and disposition of forfeited property, see part 7 of this article 13.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

A court is not free to ignore the provisions of this section and dispose of the vehicle in a manner other than as set forth in this section, although the court does retain the authority to protect the interest of an innocent party to the extent practicable and within the statutory dispositional alternatives. People v. Garner, 732 P.2d 1194 (Colo. 1987).

Although the trial court had no authority to order entire interest of vehicle determined to be a class 1 public nuisance be vested in innocent co-owner of vehicle, the court did retain the authority to order a sheriff's sale of the vehicle on the condition that one-half of the proceeds of the sale, after deduction of fees and costs, be paid to innocent co-owner or that the innocent co-owner be given the opportunity to bid at the sheriff's sale, or that, upon delivery of the vehicle to the seizing agency, the agency pay the innocent co-owner one-half of the fair market value of the vehicle. People v. Garner, 732 P.2d 1194 (Colo. 1987).

This section does not provide for distribution of forfeiture proceeds to lien creditors or to pay tax liability. United States v. Wilkinson, 628 F. Supp. 29 (D. Colo. 1985).

16-13-312. Violation of injunction.

Any violation or disobedience of any injunction or order issued by the court in an action to abate a public nuisance shall be punished as a contempt of court by a fine of not less than two hundred dollars nor more than two thousand dollars; but the court may treat each day on which the violation or disobedience of an injunction or order continues or recurs as a separate contempt and may impose a fine, in addition to the fine provided in this section, in an amount not to exceed five hundred dollars per day.

Source: L. 72: R&RE, p. 264, § 1. **C.R.S. 1963:** § 39-13-312.

ANNOTATION

Unlicensed party punished for contempt for holding himself out as an attorney at law. People ex rel. Attorney Gen. v. Brown, 126 Colo. 222, 247 P.2d 682 (1952) (decided under repealed CSA, C 1, § 1).

16-13-313. Fees - costs and fines - lien and collection.

(1) For removing and selling personal property as provided in this part 3, the sheriff shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution.

(2) For seizing and closing any building, premises, or vehicle as provided in this part 3, or for performing other duties pursuant to the direction of the court pursuant to the provisions of this part 3, the sheriff shall be entitled to a reasonable sum fixed by the court, in addition to the actual costs incurred or expended.

(3) All fees and costs allowed by the provisions of this section, the costs of court action to abate any public nuisance, and all fines levied by the court in contempt proceedings incident to an action to abate a public nuisance shall be a first and prior lien upon any real or personal property seized under the provisions of this part 3, and the same shall be enforceable and collectible by execution issued by order of the court, from the property of any person liable therefor.

Source: L. 72: R&RE, p. 265, § 1. **C.R.S. 1963:** § 39-13-313. **L. 81:** (2) amended, p. 958, § 8, effective July 1.

16-13-314. Disposition of forfeited real property.

(1) In an action to abate a class 1 public nuisance, if the court finds that such class 1 public nuisance exists and that the same has been conducted, used, or maintained by the owner of a building, place, or any real property seized and closed as a class 1 public nuisance, or that the nuisance has been conducted, used, or maintained by any person with the actual knowledge and consent of the owner, a permanent order of abatement shall be entered as a part of the judgment in the case. The order of abatement shall direct the sheriff to sell such building or place and the ground upon which such building or place is situate or any other real property, to the extent of the interest of such owner therein, at public sale in the manner provided for sales of property upon execution. In no event shall real property that is neither proceeds of nor part of the same lot or tract of land used for the public nuisance act that was the underlying subject matter of the public nuisance action, be subject to seizure and forfeiture, excepting access and egress routes.

(2) The proceeds of such sale shall be applied in the same manner and priority as enumerated in section 16-13-311 (3).

(3) It is the intent of the general assembly that moneys allocated to a seizing agency pursuant to subsection (2) of this section shall not be considered a source of revenue to meet normal operating needs.

(4) If more than one seizing agency was substantially involved in effecting the forfeiture, the agencies shall enter into a stipulation with regard to costs incurred by the agencies and the percentage of any remaining proceeds to be deposited for the benefit of the agencies. Upon the filing by such agencies of such stipulation with the court, the court shall order the proceeds so

distributed. If the agencies are unable to reach an agreement, the court shall take testimony and equitably distribute the proceeds.

Source: L. 72: R&RE, p. 265, § 1. **C.R.S. 1963:** § 39-13-314. **L. 81:** Entire section amended, p. 958, § 9, effective July 1. **L. 83:** (1) amended, p. 685, § 6, effective July 1. **L. 87:** (3) and (4) added, p. 638, § 10, effective July 1. **L. 99:** (1) amended, p. 798, § 15, effective July 1. **L. 2002:** (2) amended, p. 923, § 6, effective July 1.

Cross references: For provisions on reporting and disposition of forfeited property, see part 7 of this article 13.

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

Proceeding to abate public nuisance is civil and equitable in nature, and thus protections of criminal proceedings, including right to jury trial, are not available. People v. Allen, 767 P.2d 798 (Colo. App. 1988).

Preponderance of evidence is standard of proof in abatement proceedings. People must establish by a preponderance that property was a nuisance maintained as such by owner or with her consent. People v. Allen, 767 P.2d 798 (Colo. App. 1988).

No one-year closing of property determined to be a public nuisance is required prior to forfeiture or sale of the property. People v. 21020 Colo. Highway 74, 791 P.2d 1189 (Colo. App. 1989).

16-13-315. Seizure of personal property.

(1) Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:

(a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or

(b) Under the authority of a search warrant; or

(c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

(2) The provisions of this section shall not be construed to limit or forbid the seizure of any such personal property in any manner now or hereafter required, authorized, or permitted by law.

(3) If a rental motor vehicle is seized pursuant to this part 3, the seizing agency shall notify the motor vehicle rental company of the seizure if the motor vehicle is identified as a rental motor vehicle. The motor vehicle rental company may appear at the seizing agency and request the return of the rental motor vehicle. The rental motor vehicle shall be returned to the motor vehicle rental company unless the motor vehicle must be maintained in the custody of the seizing agency for evidentiary purposes or if the seizing agency has probable cause to believe the motor vehicle rental company, at the time of rental, had knowledge or notice of the criminal activity for which the rental car was used.

Source: L. 72: R&RE, p. 265, § 1. **C.R.S. 1963:** § 39-13-315. **L. 87:** (1)(b) amended and (1)(c) added, p. 638, § 11, effective July 1. **L. 2002:** (3) added, p. 924, § 7, effective July 1.

ANNOTATION

In civil suit for abatement of defendant's home and its contents as a public nuisance probable cause must be established showing that there is a substantial connection between property to be seized and nuisance activity. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Warrantless entry and search of defendant's home were invalid, and evidence would be suppressed, where conditions of subsection (1) were not met and search was not otherwise justified. People v. Taube, 864 P.2d 123 (Colo. 1993).

Court's finding of probable cause to believe that a house constituted a public nuisance was not equivalent to a finding that probable cause existed to enter and search the contents of the house. People v. Taube, 864 P.2d 123 (Colo. 1993).

16-13-316. Prior liens not subject to forfeiture - vesting of title.

(1) Nothing in this part 3 shall be construed in such manner as to destroy the validity of a bona fide lien upon real or personal property appearing of record prior to the seizure of personal property, prior to the filing of a notice of seizure, as provided in subsection (3) of this section, prior to the filing of a notice of lis pendens on real property, or prior to actual or constructive notice to the lienholder of the state's potential claim of public nuisance.

(2) Title to real or personal property subject to forfeiture pursuant to the provisions of this section shall vest in the state and the seizing agency at the earliest of: For currency, the time of the commission of the public nuisance act; the time of the physical seizure of said property,

except for real property; the time of filing of a notice of seizure, as provided in subsection (3) of this section; the time of the filing of a notice of lis pendens on real property; or the time of the issuance of court process for seizure of property, as against anyone with prior actual notice thereof.

(3) Before or after the commencement of litigation regarding a vehicle or real property for which seizure or forfeiture is sought, the prosecuting attorney or seizing agency shall file a notice of seizure with the office of the clerk and recorder in the county where the property is located. A notice of seizure for real property shall expire within seventy days after filing unless an action is filed in court for abatement or forfeiture, under this part 3 or other applicable law. A notice of seizure shall contain: A description of the property for which seizure or forfeiture is being sought, including the street address and legal description for real property and the make, model, year, license number, and vehicle identification number for a vehicle; the date and location of the seizure if the property has already been seized; the identity of the seizing agency and prosecuting attorney; and the name of any person who is an owner of record or registered owner of the property or who is known to have, or who has asserted an interest in, the property. The notice of seizure shall also contain a statement giving notice that seizure or forfeiture of the property may be sought pursuant to this part 3, or other applicable law, and that any interest acquired in the property after the filing of the notice of the seizure will be subject to the forfeiture action in the event the property is forfeited.

Source: L. 73: p. 508, § 1. **C.R.S. 1963:** § 39-13-316. **L. 87:** Entire section amended, p. 638, § 12, effective July 1. **L. 2003:** Entire section amended, p. 905, § 17, effective July 1.

ANNOTATION

Conclusion that forfeiture dates from the time of seizure is supported by this section. United States v. Wilkinson, 686 P.2d 790 (Colo. 1984); People v. Elvin L. Gentry, P.C., 107 P.3d 1094 (Colo. App. 2004).

Although a lis pendens was evidence of the state's seizure of property, the expiration of the lis pendens in no way interfered with the state's title to the property. The state's interest in the property dates back to the seizure. Therefore, deeds of trust recorded on property after the state's seizure did not become superior to the state's interest once the lis pendens expired. People v. Elvin L. Gentry, P.C., 107 P.3d 1094 (Colo. App. 2004).

16-13-317. Reporting of proceeds. (Repealed)

Source: L. 87: Entire section added, p. 638, § 13, effective July 1. **L. 92:** Entire section repealed, p. 450, § 4, effective July 1.

16-13-318. Forfeiture defense counsel - fund - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Administrator" means the state court administrator appointed pursuant to section 13-3-101.

(b) "Forfeiture defendant" means a person who claims an interest in property subject to a forfeiture proceeding.

(c) "Forfeiture proceeding" means an action to abate a public nuisance pursuant to this part 3 or an action for forfeiture described in part 5 of this article 13.

(d) "Fund" means the forfeiture defense counsel fund established in subsection (3) of this section.

(e) "Private contractor" means the private contractor selected by the administrator pursuant to subsection (3)(c) of this section.

(2) (a) An indigent forfeiture defendant has the ability to access to legal representation utilizing the fund.

(b) Upon a forfeiture defendant's request, the court shall continue the forfeiture proceeding for twenty-one days or more after the forfeiture defense counsel begins representation unless the forfeiture defense counsel waives the continuance. At any time before the continuance ends, the forfeiture defendant is allowed to file an initial or amended answer or other appropriate pleading to the complaint or petition.

(c) A forfeiture defendant may choose to appoint private counsel for a forfeiture proceeding, or may choose to represent themself.

(d) The private contractor shall, pursuant to the service agreement entered into pursuant to subsection (3)(c) of this section, pay the forfeiture defense counsel an amount not to exceed three thousand five hundred dollars for representing the forfeiture defendant in a forfeiture proceeding unless the court finds good cause for a higher payment. If the court finds good cause for a higher payment, the private contractor shall pay the forfeiture defense counsel the amount ordered.

(e) Nothing in this section prevents forfeiture defense counsel from withdrawing representation of an indigent forfeiture defendant in accordance with the Colorado rules of professional conduct. If a forfeiture defense counsel withdraws representation of an indigent forfeiture defendant, the court may require the private contractor to appoint another forfeiture

defense counsel for the defendant if the court finds the interest of justice requires another appointment.

(3) (a) The forfeiture defense counsel fund is created in the state treasury.

(b) (I) The fund consists of money transferred to the fund pursuant to sections 16-13-311 and 24-32-124 (8) and any other money that the general assembly may appropriate or transfer to the fund. The administrator may seek, accept, and expend gifts, grants, or donations from public or private sources for the purposes of this section. The administrator shall transmit all money received from gifts, grants, or donations to the state treasurer, who shall credit the money to the fund. Subject to annual appropriation by the general assembly, the administrator may expend any state money from the fund to make payments to the private contractor and for direct and indirect costs associated with administering this section. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(II) Notwithstanding this subsection (3)(b), the fund's maximum balance is five hundred thousand dollars. If the fund's balance exceeds the maximum, the administrator shall transmit the difference of the balance of the fund minus five hundred thousand dollars to the state treasurer, who shall credit the money to the law enforcement community services grant program fund created pursuant to section 24-32-124 (5).

(III) Notwithstanding this subsection (3)(b), beginning in the 2027-28 state fiscal year, the fund must only be funded through gifts, grants, donations, and money transmitted pursuant to section 16-13-311 (3)(a)(VII)(C). The general assembly shall not appropriate money from the general fund to the fund.

(IV) The service agreement between the administrator and the private contractor must be contingent on money being in the fund. If the fund does not have money, the general assembly is not required to appropriate or transfer money to the fund. The private contractor is not required to provide legal defense for indigent civil asset forfeiture defendants if there is no balance remaining from the money the private contractor receives from the fund.

(c) (I) On or before December 1, 2026, the administrator shall enter into a service agreement with a private contractor who regularly provides legal services for indigent clients or litigants to provide a legal defense to a civil asset forfeiture proceeding or to contract with an attorney to provide a legal defense to a civil asset forfeiture proceeding.

(II) Upon entering into an agreement with a private contractor, and on July 1 of each year thereafter, the administrator shall distribute the unencumbered money in the fund to the private contractor.

(III) The private contractor shall maintain a list of qualified attorneys that the private contractor may provide or contract with to represent indigent forfeiture defendants. The private

contractor shall update and provide the list for the administrator of contracted attorneys on an annual basis.

(d) Upon request of a forfeiture defendant, the private contractor shall appoint a forfeiture defense counsel for the forfeiture defendant. The private contractor shall rotate the attorneys, as much as is practicable, to distribute forfeiture defense counsel cases evenly among qualifying attorneys selected by the private contractor.

(e) The private contractor may retain unspent money at the end of a budget year for the purposes of providing a legal defense to a civil asset forfeiture proceeding pursuant to this section.

(f) If there is any unspent money at the end of the service agreement, the private contractor shall return the unspent money to the administrator. The administrator shall transmit all money received from the private contractor to the state treasurer, who shall credit the money to the fund.

(4) The private contractor shall report quarterly to the administrator the following:

(a) The number of attorneys appointed pursuant to this section;

(b) The costs associated with each case;

(c) Any challenges or difficulties in retaining attorneys to serve as appointed forfeiture defense counsel; and

(d) The amount of unspent money the private contractor retains at the end of the budget year.

Source: L. 2026: Entire section added, (HB 26-1250), ch. 381, p. 2367, § 3, effective July 1.

Editor's note: Section 8 of chapter 381 (HB 26-1250), Session Laws of Colorado 2026, provides that the act adding this section applies to forfeiture actions on or after July 1, 2026.

PART 4

PRESERVATION OF THE PEACE

16-13-401. (Repealed)

Source: L. 94: Entire part repealed, p. 2038, § 18, effective July 1.

Editor's note: (1) This part 4 was numbered as article 13 of chapter 39, C.R.S. 1963. This article was repealed and reenacted in 1972, and this part 4 was not amended prior to its repeal in 1994. For the text of this part 4 prior to 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) For historical information concerning the 1972 repeal and reenactment of this article, see the editor's note before the article 1 heading.

PART 5

COLORADO CONTRABAND FORFEITURE ACT

16-13-501. Short title.

This part 5 shall be known and may be cited as the "Colorado Contraband Forfeiture Act".

Source: L. 84: Entire part added, p. 505, § 1, effective July 1.

16-13-501.5. Legislative declaration.

(1) It is the intent of the general assembly that proceedings under this part 5 be remedial in nature and designed to benefit the public good by appropriating contraband property for use by law enforcement.

(2) It is also the policy of the general assembly that asset forfeiture pursuant to this part 5 shall be carried out pursuant to the following:

(a) Generation of revenue shall not be the primary purpose of asset forfeiture.

(b) No prosecutor's or law enforcement officer's employment or level of salary shall depend upon the frequency of seizures or forfeitures which such person achieves.

(c) Each seizing agency shall have policies and procedures for the expeditious release of seized property which is not subject to forfeiture pursuant to this part 5, when such release is appropriate.

(d) Each seizing agency retaining forfeited property for official law enforcement use shall ensure that the property is subject to controls consistent with controls which are applicable to property acquired through the normal appropriations process.

(e) Each seizing agency which receives forfeiture proceeds shall conform with reporting, audit, and disposition procedures enumerated in this article.

(f) Each seizing agency shall prohibit its employees from purchasing forfeited property.

Source: L. 87: Entire section added, p. 639, § 14, effective July 1. **L. 93:** Entire section amended, p. 626, § 1, effective July 1.

16-13-502. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) "Contraband article" means any controlled substance, as defined in section 18-18-102 (5), C.R.S., any other drug the possession of which is an offense under the laws of this state, any imitation controlled substance, as defined in section 18-18-420 (3), C.R.S., or any drug paraphernalia, as defined in section 18-18-426, C.R.S.

(1.5) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult.

(1.7) "Instrumental" means a substantial connection exists between the property and the unlawful use of the property.

(1.8) "Proceeds traceable" or "traceable proceeds" means all property, real and personal, corporeal and incorporeal, which is proceeds attributable to, derived from, or realized through, directly or indirectly, a subject act described in section 16-13-503, whether proved by direct, circumstantial, or documentary evidence. There shall be no requirement of showing of a trail of documentary evidence to trace proceeds if the standard of proof by clear and convincing evidence is met.

(2) "Seizing agency" means any agency that is charged with the enforcement of the laws of this state, of any other state, or of the United States relating to controlled substances and that has participated in a seizure or has been substantially involved in effecting a forfeiture through legal representation pursuant to this part 5; except that the filing of any lien against property forfeited under this part 5 by the governing body or agency thereof of any seizing agency after the date of seizure shall preclude such agency from participating pursuant to this part 5 as a seizing agency and shall deny any such agency from receiving any proceeds under this part 5. The department of corrections and a multijurisdictional task force shall be deemed to be included under this definition.

(3) "Vehicle" means any device of conveyance capable of moving itself or of being moved from place to place upon wheels, tracks, or water or through the air, whether or not intended for the transport of persons or property, and includes any place therein adapted for overnight accommodation of persons or animals or for the carrying on of business.

Source: L. 84: Entire part added, p. 505, § 1, effective July 1. **L. 87:** (2) amended, p. 639, § 15, effective July 1. **L. 92:** (1) amended, p. 391, § 18, effective July 1. **L. 95:** (2) amended, p. 872, § 5, effective May 24. **L. 2002:** (1.5) and (1.7) added and (2) amended, p. 924, § 8, effective July 1. **L. 2003:** (1.8) added, p. 904, § 15, effective July 1.

16-13-503. Subject acts.

(1) The following acts are subject to this part 5:

(a) Engaging in the unlawful manufacture, cultivation, growth, production, processing, or distribution for sale of, or sale of, or storing or possessing for any unlawful manufacture or distribution for sale of, or for sale of, any controlled substance, as defined in section 18-18-102 (5), C.R.S., any other drug the possession of which is an offense under the laws of this state, or any imitation controlled substance, as defined in section 18-18-420 (3), C.R.S.;

(b) Engaging in the unlawful manufacture, sale, or distribution of drug paraphernalia, as defined in section 18-18-426, C.R.S.;

(c) Transporting, carrying, or conveying any contraband article in, upon, or by means of any vehicle for the purpose of sale, storage, or possession of such contraband article;

(d) Concealing or possessing any contraband article in or upon any vehicle for the purpose of sale of such contraband article;

(e) Using any vehicle to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, or purchase for sale of any contraband article, or the sale, barter, exchange, or giving away of any contraband article; and

(f) Concealing or possessing any contraband article for the purpose of sale.

(2) Mere possession of less than sixteen ounces of marijuana shall not be an act subject to the provisions of this part 5.

Source: L. 84: Entire part added, p. 506, § 1, effective July 1. **L. 85:** (1)(a) amended, p. 1360, § 10, effective June 28. **L. 87:** (2) added, p. 639, § 16, effective July 1. **L. 92:** (1)(a) and (1)(b)

amended, p. 392, § 19, effective July 1. **L. 2010:** (2) amended, (HB 10-1352), ch. 259, p. 1173, § 15, effective August 11.

16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions.

(1) Any vehicle or personal property, including fixtures and contents of a structure or building, as defined in section 16-13-301 (2), currency, securities, or negotiable instruments, which has been or is being used in any of the acts specified in section 16-13-503 or in, upon, or by means of which any act under said section has taken or is taking place; or any currency, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any of the acts listed in section 16-13-503; or any proceeds traceable to the acts listed in section 16-13-503; or any currency, negotiable instruments, or securities used or intended to be used to facilitate any of the acts listed in section 16-13-503 are contraband property and shall be seized, as well as any contraband article. Any peace officer or agent of a seizing agency may seize and hold such property or articles if there is probable cause to believe that such property or articles are contraband and the seizure is incident to a lawful search. All rights and interest in and title to contraband property shall immediately vest in the state upon seizure by a seizing agency, subject only to perfection of title, rights, and interests in accordance with this part 5. Neither replevin nor any other action to recover any interest in such property shall be maintained in any court except as provided in this part 5.

(1.5) If a rental motor vehicle is seized pursuant to this part 5, the seizing agency shall notify the motor vehicle rental company of the seizure if the motor vehicle is identified as a rental motor vehicle. The motor vehicle rental company may appear at the seizing agency and request the return of the rental motor vehicle. The rental motor vehicle shall be returned to the motor vehicle rental company unless the motor vehicle must be maintained in the custody of the seizing agency for evidentiary purposes or if the seizing agency has probable cause to believe the motor vehicle rental company, at the time of rental, had knowledge or notice of the criminal activity for which the rental car was used.

(2) (a) In any action seeking forfeiture of property pursuant to this part 5, any person, including a lienholder, who seeks to contest the forfeiture shall establish by a preponderance of the evidence such person's standing as a true owner of the property or a true owner with an interest in the property.

(b) To establish standing, the person shall first prove that the person has a recorded or registered interest in the property, or a bona fide marital interest in the property, if the property is of a type for which interests can be, and customarily are, recorded or registered in a public office.

(c) The person shall also prove that the person is a true owner of the property or a true owner of an interest in the property. The factors to be considered by the court in determining whether a person is a true owner shall include, but need not be limited to:

(I) Whether the person had the primary use, benefit, possession, or control of the property;

(II) How much of the consideration for the purchase or ownership of the property was furnished by the person, and whether the person furnished reasonably equivalent value in exchange for the property or interest;

(III) Whether the transaction by which the person acquired the property or interest was secret, concealed, undisclosed, hurried, or not in the usual mode of doing business;

(IV) Whether the transaction by which the person acquired the property or interest was conducted through the use of a shell, alter ego, nominee, or fictitious party;

(V) Whether the person is a relative, a co-conspirator, complicitor, or an accessory in the public nuisance act or acts or other criminal activity, a business associate in a legal or illegal business, one who maintains a special or close relationship with, or an insider with respect to the perpetrator of the alleged public nuisance act or acts;

(VI) Whether the person is silent or fails to call parties to testify or to produce available evidence explaining the acquisition of the property or factors which may be badges of fraud or deceit, or show lack of true ownership;

(VII) Whether the timing of the transaction by which the person acquired the property was during the pendency or threat of litigation, or during any time when the person knew, should have known, or had notice of the public nuisance act or acts or the threat of a forfeiture action;

(VIII) Whether the placing of the title in the name of, or the putative ownership in, or transfer to, the person was done with intent to delay, hinder, or avoid a forfeiture, or for some purpose other than ownership of the property;

(IX) Whether the perpetrator of the alleged public nuisance act or acts has absconded or is a fugitive from justice and the conveyance occurred after the flight, or before the flight, in any of the circumstances set forth in subparagraph (III) of this paragraph (c);

(X) Whether the subject matter property is of a kind in which property or ownership rights can legally exist;

(XI) Any other badge or indicia of fraud under article 8 of title 38, C.R.S., or the general law of fraudulent transfers or conveyances.

(d) The court shall consider the totality of the circumstances in determining whether a person is a true owner. A person contesting the forfeiture does not necessarily have to show that all of the factors enumerated in paragraph (c) of this subsection (2) support the claim of true

ownership, nor does the person necessarily establish true ownership by showing the absence of fraudulent intent or badges of fraud.

(e) No private sale or conveyance of a used motor vehicle shall be deemed to make a party eligible to assert standing to contest the forfeiture thereof, unless the title to the motor vehicle, with transfer duly executed to the party, has been filed with the division of motor vehicles in the department of revenue prior to the physical seizure of the vehicle and the recording of a notice of seizure, or the party attempting to assert standing has exclusive possession of the vehicle at the time of seizure. A party eligible to assert standing under this paragraph (e) must nevertheless establish that the party is a true owner of the vehicle or has an interest therein pursuant to paragraph (c) of this subsection (2).

(f) Unless the standing of a particular party is conceded in the complaint initiating the public nuisance action, a party must assert standing in the answer and fully describe the party's interest in the property which is the subject matter of the action, and submit a verified statement, supported by any available documentation, of the party's ownership of or interest in the property.

(2.1) (a) In any action to forfeit property pursuant to this part 5, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by clear and convincing evidence that possession of the property is unlawful, or that the owner of the property or interest therein was involved in or knew of the subject act. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of the crime or the property constitutes traceable proceeds of the crime or related criminal activity.

(a.5) (I) The claimant in an action brought pursuant to this part 5 may petition the court to determine whether a forfeiture was constitutionally excessive. Upon the conclusion of a trial resulting in a judgment of forfeiture in an action brought pursuant to this part 5, if the evidence presented raises an issue of proportionality under this paragraph (a.5), the defendant may petition the court to set a hearing, or the court may on its own motion set a hearing to determine whether a forfeiture was constitutionally excessive. This determination shall be made prior to any sale or distribution of forfeited property.

(II) In making this determination, the court shall compare the forfeiture to the gravity of the public nuisance act giving rise to the forfeiture and related criminal activity.

(III) The defendant shall have the burden of establishing by a preponderance of the evidence that the forfeiture is grossly disproportional.

(IV) If the court finds that the forfeiture is grossly disproportional to the public nuisance act and related criminal activity, it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the excessive fines clause of the eighth amendment of the United States constitution or article II, section 20, of the Colorado constitution.

(V) and (VI) (Deleted by amendment, L. 2003, p. 890, § 2, effective July 1, 2003.)

(b) As used in paragraph (a) of this subsection (2.1), an owner was "involved in or knew of the subject act" if it is established that:

(I) The owner was involved in the subject act; or

(II) (A) The owner knew of the subject act or had notice of the acts facilitating the criminal activity or prior similar conduct and failed to take reasonable steps to prohibit or abate the illegal use of the property;

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the plaintiff proves by clear and convincing evidence that the owner knew or had notice of the unlawful use of the property, the owner must prove by a preponderance of the evidence that the owner took reasonable steps to prohibit or abate the unlawful use of the property for the court to find the owner was not a party to the offense or related criminal activity.

(2.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct subjecting the property to seizure or notice of an act or circumstance facilitating the criminal activity or prior similar conduct, notice being satisfied by, but not limited to, sending notice of an act or circumstance facilitating the criminal activity by certified mail; or

(II) Upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit the conduct. An owner may demonstrate that he or she took reasonable action to prohibit such conduct if the owner:

(A) Timely revoked or attempted to revoke permission for those engaging in such conduct to use the property; or

(B) Took reasonable actions to discourage or prevent the use of the property in conduct subjecting the property to seizure.

(b) With respect to a partial or whole ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he or she acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(I) Acquired an interest in the property in a bona fide transaction for value;

(II) Acquired an interest in the property through probate or inheritance; or

(III) Acquired an interest in the property through dissolution of marriage or by operation of law.

(c) An innocent owner's interest in property shall not be forfeited under any provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. Otherwise, the burden of proof under this subsection (2.2) shall be as provided in subsection (2.1) of this section.

(d) A person who is convicted of a criminal offense arising from the same activity giving rise to the forfeiture proceedings in accordance with section 16-13-505 (1.5) shall not be eligible to assert an innocent owner defense.

(2.3) The prosecuting attorney shall set forth in the petition initiating the forfeiture action pursuant to this part 5 the existence of any liens and whether forfeiture of any liens will be sought. If forfeiture of a lien is not sought, the lienholder does not need to appear to preserve any interest in the property which is the subject of the forfeiture action which such lienholder may possess.

(3) (Deleted by amendment, L. 93, p. 627, § 2, effective July 1, 1993.)

Source: L. 84: Entire part added, p. 506, § 1, effective July 1. **L. 87:** (1) and (3) amended and (2) R&RE, pp. 639, 640, §§ 17, 18, effective July 1. **L. 93:** (2) and (3) amended and (2.1), (2.2), and (2.3) added, p. 627, § 2, effective July 1. **L. 2002:** (1.5) added and (2.1) and (2.2) amended, p. 924, § 9, effective July 1. **L. 2003:** (2), (2.1)(a), (2.1)(a.5), (2.1)(b)(I), (2.1)(b)(II), (2.2)(a)(I), and (2.2)(c) amended and (2.2)(d) added, pp. 900, 890, 903, §§ 11, 2, 13, effective July 1. **L. 2004:** (2.1)(b) amended, p. 1197, § 48, effective August 4.

ANNOTATION

Procedures set forth in the Colorado Contraband Forfeiture Act are exclusive, precluding other remedies for persons claiming interest in forfeited property. People v. Merrill, 816 P.2d 958 (Colo. App. 1991).

State claim to acquire currency used in a drug transaction may be pursued under either the Contraband Forfeiture Act or the Public Nuisance Act, each intended to create different procedures with different remedies. People v. $4338.00 in US Currency, 819 P.2d 1105 (Colo. App. 1991).

16-13-504.5. Limitations on receipt of forfeiture payments from federal agencies.

(1) A seizing agency or participant in any joint task force or other multijurisdictional collaboration shall accept payment or distribution from a federal agency of all or a portion of any

forfeiture proceeds resulting from adoption or a joint task force or other multijurisdictional collaboration only if the aggregate net equity value of the property and currency seized in a case is in excess of fifty thousand dollars and a forfeiture proceeding is commenced by the federal government and relates to a filed criminal case.

(2) Subsection (1) of this section shall not be construed to restrict seizing agencies from collaborating with a federal agency to seize property that the seizing agency has probable cause to believe is the proceeds or instruments of a crime through an intergovernmental joint task force.

Source: L. 2017: Entire section added, (HB 17-1313), ch. 403, p. 2106, § 3, effective August 9.

16-13-505. Forfeiture proceedings.

(1) The several district courts of this state shall have original jurisdiction in proceedings under this part 5.

(1.5) A court shall not enter judgment of forfeiture of property in any forfeiture proceeding unless and until an owner of the property is convicted of an offense involving the conduct listed in section 16-13-503, or a lesser included offense of an eligible offense if the conviction is the result of a negotiated guilty plea. Nothing in this section requires the conviction to be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought. One or more criminal charges must be filed arising from the activity giving rise to the forfeiture, and the court shall stay the forfeiture proceeding until the disposition of the criminal charges. A stay shall not be maintained during an appeal or post-conviction proceeding challenging a criminal conviction. Nothing in this section prohibits or prevents the parties from contemporaneously resolving criminal charges and a forfeiture proceeding arising from the same activity.

(1.6) Upon acquittal or dismissal of a criminal action against a person named in a forfeiture action related to the criminal action; except that, if a provision of subsection (1.7) of this section applies, the forfeiture claim shall be dismissed and the seized property shall be returned as respects the subject matter property or interest of that person, if the case has been adjudicated as to all other claims, interests, and owners, unless possession of the property is illegal. If the forfeiture action is dismissed or judgment is entered in favor of the claimant, the claimant is not subject to any monetary charges by the state for storage of the property or expenses incurred in the preservation of the property, unless at the time of dismissal the plaintiff shows that those expenses would have been incurred to prevent waste of the property even if it had not been seized.

(1.7) Notwithstanding subsection (1.5) of this section:

(a) (I) A person shall lack standing for and shall be disallowed from pursuit of a claim or defense in a civil forfeiture action upon a finding that a warrant or other process has been issued for the apprehension of the person, and, in order to avoid criminal prosecution, the person:

(A) Purposely leaves the state; or

(B) Declines to enter or reenter the state to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person or from which a warrant has been issued, by failing to appear in court or surrender on the warrant; and

(D) Is not known to be confined or held in custody in any other jurisdiction within the United States for commission of criminal conduct in that jurisdiction.

(II) If a person lacks standing pursuant to this subsection (1.7)(a), the forfeiture action may proceed against the person's interest in the property and a judgment of forfeiture may be entered without the person's criminal conviction, upon motion and notice as provided in the rules of civil procedure.

(b) If, following the disposition of the criminal case and notice to all persons known to have an interest or who have asserted an interest in the property subject to forfeiture, no owner files an answer or other appropriate response with the court claiming an interest in the subject matter property, or no person establishes standing to contest the forfeiture action pursuant to section 16-13-504 (2), a forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of an owner.

(c) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-503 (1) or that the property is traceable proceeds of the offense or related criminal activity by a nonowner and the plaintiff proves by clear and convincing evidence that an owner is not an innocent owner pursuant to section 16-13-504 (2.2), a judgment of forfeiture may be entered only after a criminal conviction of the nonowner in the underlying criminal offense related to the property subject to the forfeiture proceeding.

(d) If an owner of the property who was involved in the public nuisance act or conduct giving rise to the claim of forfeiture subsequently dies, the forfeiture action may proceed against the owner's interest in the property, and if the plaintiff proves that the deceased owner was not an innocent owner pursuant to section 16-13-504 (2.2), a judgment of forfeiture may be entered without the owner's criminal conviction.

(e) If an owner received a deferred judgment, deferred sentence, or participated in a diversion program, or in the case of a juvenile a deferred adjudication or deferred sentence or participated in a diversion program for the offense, the forfeiture action may proceed against the

owner's interest in the property, and a judgment of forfeiture may be entered without a criminal conviction.

(f) A defendant or claimant is permitted to waive the requirement of a criminal conviction in order to settle a forfeiture action as to the defendant's or claimant's interest in the property.

(2) (a) The prosecuting attorney shall file a petition in forfeiture to perfect title in seized contraband property no later than sixty-three days after the seizure. The prosecuting attorney may file the petition after the expiration of sixty-three days from the date of seizure only if the petition is accompanied by a written statement of good cause for the late filing. The sixty-three-day time limitation established by this paragraph (a) shall not apply where the seizure of the property occurred pursuant to a warrant authorizing such seizure or otherwise under any statute or rule of criminal procedure if the property is held as evidence in a pending criminal investigation or in a pending criminal case. The petition shall be accompanied by a supporting affidavit, and both shall describe the property seized with reasonable particularity and shall include a list of witnesses to be called in support of the claim for forfeiture, including the addresses and telephone numbers thereof.

(b) If the court finds from the petition and supporting affidavit that probable cause exists to believe that the seized property is contraband property as defined in this part 5, it shall, without delay, issue a citation directed to interested parties to show cause why the property should not be forfeited. The citation shall fix the date and time for a first appearance on the petition. The date fixed shall be no less than thirty-five days and no more than sixty-three days from the date of the issuance of the citation.

(c) At the first appearance on the petition, the court shall set a date and time for a hearing on the merits of the petition within forty-nine days after the first appearance.

(d) The only responsive pleading shall be designated a response to petition and citation to show cause and shall be filed with the court at or before the first appearance on the petition and shall include:

(I) A statement admitting or denying the averments of the petition;

(II) A statement setting forth with particularity why the seized property should not be forfeited. The statement shall include specific factual and legal grounds supporting it and any affirmative defense to forfeiture as provided in this part 5.

(III) A list of witnesses whom the respondent intends to call at the hearing on the merits, including the addresses and telephone numbers thereof; and

(IV) A verified statement, supported by documentation, that the claimant is the true owner of the property or an interest therein.

(e) No claim for relief against the plaintiff shall be set forth in the response, except a request for return of the seized property.

(2.5) All forfeiture actions shall proceed in state district court if the property was seized by a local or state law enforcement agency as a result of an ongoing state criminal investigation and the owner is being prosecuted in state court. Unless, directed by an authorized agent of the federal government, no state or local law enforcement agency may transfer any property seized by the state or local agency to a federal agency for forfeiture under federal law unless an owner of the property is being prosecuted in federal court.

(3) The citation specified in subsection (2)(b) of this section must:

(a) Describe the property;

(b) State the county, place, and date of seizure;

(c) State the name of the agency holding the seized property;

(d) State the date and time of the first appearance and the court in which it will be held;

(e) State that judgment in favor of the plaintiff shall enter forthwith against any party who fails to file a response pursuant to paragraph (d) of subsection (2) of this section or who fails to appear personally or by counsel at the first appearance before the court;

(f) Advise the defendant of the right to continue the action under the circumstances stated in subsection (5) of this section; and

(g) Advise the defendant of the ability to access forfeiture defense counsel pursuant to section 16-13-318.

(4) Except as otherwise provided in this part 5, the practice and procedure in an action to perfect title to contraband property shall be governed by the Colorado rules of civil procedure. Actions to perfect title to contraband property shall be included in the category of "expedited proceedings" specified in rules 16 and 26 of the Colorado rules of civil procedure; except that each party may conduct limited discovery as provided for in rule 26 (b)(2) of the Colorado rules of civil procedure. In addition, each party may move the court to authorize additional discovery upon good cause shown.

(5) Continuance of the hearing on the merits shall be granted upon stipulation of the parties or upon good cause shown.

(6) The hearing on the merits shall be heard by the court without a jury.

(7) If the seized property is of a type for which title or registration is required by law, or if the owner of the property and his or her address are known in fact, or if the seized property is subject to a perfected security interest, the prosecuting attorney shall give notice of the forfeiture action to the claimant, either by personal service of the petition, supporting affidavit, and citation

upon him or her or by sending copies of such documents by certified mail, return receipt requested, to the last-known address of such claimant. If the documents are properly mailed to an address which the prosecutor has reasonable grounds to believe is the last-known address of the potential claimant, said documents shall be deemed served whether or not the claimant responds to the notice to claim them at the post office. Unknown persons who may claim any interest in the property, persons whose addresses are unknown, and persons upon whom the prosecutor has been unable to effect service as otherwise provided in this subsection (7) despite diligent good faith efforts may be served pursuant to a court order by publishing a copy of the citation twice in a newspaper of general circulation in the county in which the proceeding is instituted. The fact of such publication shall be conclusively established by the publisher's affidavit of publication. The first publication shall be more than fourteen days and the last publication not less than seven days before the first appearance date on the citation.

(8) If any claimant to the property subject to a forfeiture action, including a claimant unknown to the plaintiff, is properly served with the citation according to the procedures specified in subsection (7) of this section and fails to appear personally or by counsel on the first appearance date or fails to file a response as required by this section, the court shall forthwith find said person in default and enter an order forfeiting said person's interest in the property and distributing the proceeds of forfeiture as provided in this part 5. A default order of forfeiture entered pursuant to this section shall only be set aside upon an express finding by the court that a claimant was improperly served through no fault of such claimant and had no notice of the first appearance on the citation or was prevented from appearing and responding due to an emergency situation caused by events beyond such claimant's control when such claimant had made diligent, good faith, and reasonable efforts to prepare a response and appear.

(9) If a forfeiture hearing held pursuant to this part 5 results in an order to return the subject property to a claimant and the prosecution states an intent to appeal and proceeds to initiate an appeal of the order, the court shall stay execution of the order pending appeal, unless the court finds that the appeal is taken in bad faith or for the purpose of delay. No appeal bond shall be required, but the court may make appropriate orders to preserve the value of the property pending appeal.

(10) The evidentiary burdens at a forfeiture hearing brought pursuant to this part 5 shall be as follows:

(a) The claimant shall first prove by a preponderance of the evidence that such claimant is the true owner of the property.

(b) If the claimant establishes that such claimant is the true owner of the property sought to be forfeited, the prosecuting attorney shall have the burden of going forward with the evidence and proving the allegations of the petition by clear and convincing evidence.

(c) (Deleted by amendment, L. 93, p. 629, § 3, effective July 1, 1993.)

(11) Actions pursuant to this part 5 shall be brought in the name of the people of the state of Colorado by the district attorney in the county in which the property was seized or in the county in which any subject act occurred. With the consent of the district attorney, the attorney general may also bring such an action.

Source: L. 84: Entire part added, p. 507, § 1, effective July 1. **L. 86:** (2) amended, p. 735, § 5, effective July 1. **L. 87:** Entire section R&RE, p. 640, § 19, effective July 1. **L. 93:** (2), (3), (5), (7), (8), and (10) amended, p. 629, § 3, effective July 1. **L. 2002:** (1.5), (1.6), (1.7), and (2.5) added and (10)(b) amended, p. 927, § 10, effective July 1. **L. 2003:** (1.5), (1.6), (1.7), (4), and (5) amended, pp. 894, 907, 897, §§ 5, 20, 9, effective July 1. **L. 2012:** (2)(a), (2)(b), (2)(c), and (7) amended, (SB 12-175), ch. 208, p. 858, § 93, effective July 1. **L. 2026:** (1.5), (1.6), IP(1.7), (1.7)(a)(II), (1.7)(b), (1.7)(c), (1.7)(d), (1.7)(e), (1.7)(f), and IP(3) amended and (3)(g) added, (HB 26-1250), ch. 381, p. 2370, § 4, effective July 1.

Editor's note: Section 8 of chapter 381 (HB 26-1250), Session Laws of Colorado 2026, provides that the act changing this section applies to forfeiture actions on or after July 1, 2026.

ANNOTATION

Entry of default order of foreclosure did not violate defendant's due process rights. In a civil forfeiture case, due process requires that a prompt post-seizure retention hearing before a neutral magistrate be afforded, with adequate notice, to all claimants. Under the Colorado Contraband Forfeiture Act, defendant was entitled to receive, and did receive, sufficient notice of the civil forfeiture proceeding. People v. Vogel, 2020 COA 55, 463 P.3d 352.

Defendant not entitled to appointed counsel in a civil forfeiture proceeding, so district court's order of default did not violate pro se defendant's sixth amendment right to counsel. People v. Vogel, 2020 COA 55, 463 P.3d 352.

Procedures set forth in the act are exclusive, precluding other remedies for persons claiming interest in forfeited property. People v. Merrill, 816 P.2d 958 (Colo. App. 1991).

Failure of defendant to tender filing fee with the response, without any other aggravating factor, does not constitute an extreme circumstance justifying striking the pleading. Since the pleading was improperly stricken, it was error to enter a default judgment at the first hearing. People v. Davenport, 998 P.2d 473 (Colo. App. 2000).

Respondent's written statement asserting privilege against self-incrimination and requesting leave to submit documentation of ownership of

confiscated money at a later date did not comply with subsection (2)(d)(IV) requirements for a "verified statement, supported by documentation". Therefore, respondent was in default and court properly determined that she had not demonstrated standing entitling her to contest $10,000 forfeiture. People v. Merrill, 816 P.2d 958 (Colo. App. 1991).

Under this section, trial court had no authority to stay forfeiture proceedings on basis of privilege against self-incrimination or to allow resolution of related criminal proceedings. People v. Merrill, 816 P.2d 958 (Colo. App. 1991).

Nor could court grant use immunity to respondent for statements made in response to forfeiture petition. Courts possess no inherent power to grant immunity in these circumstances, nor is such power conferred by this section. Controlling provisions are in § 13-90-118, which allows grant of immunity only upon request of the prosecuting attorney. People v. Merrill, 816 P.2d 958 (Colo. App. 1991).

District court did not err by entering the default order forfeiting defendant's claimed interest in property when defendant did not file a proper response. Defendant's response was not proper because it did not comply with each of the requirements of subsection (2)(d). People v. Vogel, 2020 COA 55, 463 P.3d 352.

16-13-506. Final order - disposition of property.

(1) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited and perfect the state's right and interest in and title to such property. The court shall also order such property to be sold at public sale by the law enforcement agency in possession of the property in the manner provided for sales on execution or in another commercially reasonable manner. The proceeds of sale shall be applied in the manner and priority enumerated in section 16-13-311. The order for sale shall perfect the state's right and interest in and title to the property and shall relate back to the date when title to the property vested in the state pursuant to section 16-13-316.

(2) In the event that the seizing agency is a state agency, proceeds allocated to such agency pursuant to subsection (1) of this section shall be distributed directly to said state agency.

(3) It is the intent of the general assembly that moneys allocated to a seizing agency pursuant to subsection (1) of this section shall not be considered a source of revenue to meet normal operating needs.

(4) If more than one seizing agency was substantially involved in effecting the forfeiture, the agencies shall enter into a stipulation with regard to costs incurred by the agencies and the percentage of any remaining proceeds which shall be deposited for the benefit of the agencies, and, upon filing such stipulation with the court, the court shall order the proceeds so distributed.

If the agencies are unable to reach an agreement, the court shall take testimony and equitably distribute the proceeds according to the formula set out in subsection (1) of this section.

(4.5) If the court finds that a vehicle or personal property forfeited pursuant to this part 5 can be used for law enforcement purposes by a seizing agency, the court shall order that the vehicle or personal property be delivered to the agency instead of sold. If more than one seizing agency was substantially involved in effecting the forfeiture, the priority for receiving such vehicle or personal property shall be established by stipulation pursuant to subsection (4) of this section.

(5) Any forfeited money or currency shall be in addition to the proceeds obtained from sale of forfeited personalty and shall be equitably distributed pursuant to subsection (1) of this section.

(6) Upon the sale of any vehicle, the state shall issue a certificate of title to the purchaser thereof.

(7) In any order issued by the court pursuant to subsections (1) and (4) of this section, the court shall only order the amounts to be distributed and to whom, and the courts shall not have the power to dictate the use for which the moneys are to be appropriated, employed, received, or expended by the seizing agency or injured person.

(8) (a) (Deleted by amendment, L. 92, p. 450, § 5, effective July 1, 1992.)

(b) Repealed.

Source: L. 84: Entire part added, p. 507, § 1, effective July 1. **L. 87:** IP(1) amended, (1)(c)(I) R&RE, and (1)(c)(I.5) and (4.5) added, p. 643, §§ 20, 21, 22, effective July 1. **L. 92:** (8) amended, p. 450, § 5, effective July 1. **L. 95:** (1)(c) amended, p. 872, § 6, effective May 24. **L. 98:** (8)(b) repealed, p. 726, § 5, effective May 18. **L. 2002:** (1) amended, p. 928, § 11, effective July 1. **L. 2003:** (1) amended, p. 906, § 18, effective July 1.

Cross references: For provisions on reporting and disposition of forfeited property, see part 7 of this article 13.

16-13-507. Disposition of contraband article or property.

Any property seized pursuant to section 16-13-504 which is required by law to be destroyed, or the possession of which is illegal, or which in the opinion of the court is not properly the subject of a sale may be destroyed pursuant to a warrant for the destruction of personal property issued by the court and directed to the sheriff of the proper county or any peace officer and returned by the sheriff or peace officer after execution thereof. The court shall stay the execution

of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

Source: L. 84: Entire part added, p. 509, § 1, effective July 1. **L. 87:** Entire section amended, p. 643, § 23, effective July 1.

Cross references: For provisions on reporting and disposition of forfeited property, see part 7 of this article 13.

16-13-508. Forfeitures.

Notwithstanding anything contained in this part 5, this part 5 shall not be construed as an amendment or repeal of any of the criminal laws of this state, but the provisions of this part 5, insofar as they relate to those laws, shall be considered a cumulative right of the people in the enforcement of such laws. Nothing in this part 5 shall be construed to limit or preempt the powers of any court or political subdivision to abate or control public nuisances, and this part 5 shall be an additional remedy in those situations where an action could be brought under part 3 of this article.

Source: L. 84: Entire part added, p. 509, § 1, effective July 1.

16-13-509. Evidentiary presumption.

(1) Whenever clear and convincing evidence adduced in an action pursuant to this part 5 shows a substantial connection between currency and the acts specified in section 16-13-503, a rebuttable presumption shall arise that said currency is contraband property. A substantial connection exists if:

(a) Currency in the aggregate amount of one thousand dollars or more was seized at or close to the time of the occurrence of the subject act or of the recovery of evidence of the subject act; and

(b) (I) Said amount of currency was seized on the same premises or in the same vehicle where the subject acts occurred or where evidence of said acts was developed or recovered; or

(II) Said amount of currency was seized from the possession or control of a person engaged in said acts; or

(III) Traces of a controlled substance were discovered on the currency or an animal trained in the olfactory detection of controlled substances indicated the presence of the odor of a controlled substance on the currency as testified to by an expert witness.

(1.5) Notwithstanding any other provision of this part 5 to the contrary, the plaintiff shall have the burden of proving, by clear and convincing evidence, only the facts that give rise to the presumption that currency is contraband property pursuant to subsection (1) of this section. However, when a preponderance of credible evidence is adduced to rebut a presumption that has arisen pursuant to subsection (1) of this section, the burden of proof shall revert to the plaintiff to prove, by clear and convincing evidence, the elements of the plaintiff's case with respect to the currency.

(2) The provisions of subsection (1) of this section shall not be construed so as to limit the introduction of any other competent evidence offered to prove that seized currency is contraband property.

Source: L. 87: Entire section added, p. 644, § 24, effective July 1. **L. 2003:** IP(1) amended and (1.5) added, p. 896, § 7, effective July 1.

16-13-510. Money placed in account.

Currency seized pursuant to this part 5 may be placed in an interest-bearing account during the proceedings pursuant to this part 5 if so ordered by the court upon the motion of any party. Photocopies of portions of the bills shall serve as evidence at all hearings. The account and all interest accrued shall be forfeited or returned to the prevailing party in lieu of the currency.

Source: L. 87: Entire section added, p. 644, § 24, effective July 1.

16-13-511. Severability.

If any provision of this part 5 is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this part 5 are valid, unless it appears to the court that the valid provisions of this part 5 are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the general assembly would have enacted the valid provisions without the void provision or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent of this part 5.

Source: L. 87: Entire section added, p. 644, § 24, effective July 1.

PART 6

RECEIPT OF FEDERALLY FORFEITED PROPERTY

16-13-601. Receipt of federally forfeited property.

Any agency charged with the enforcement of the laws of this state, including the Colorado National Guard when participating in operations pursuant to the drug interdiction and enforcement plan required by part 13 of article 3 of title 28, C.R.S., is authorized to accept, receive, dispose of, and expend the property or proceeds from any property forfeited to the federal government and allocated to such agency by the United States attorney general pursuant to 21 U.S.C. sec. 881 (e). Such revenues shall be in addition to the moneys appropriated to such law enforcement agency by the general assembly or any unit of local government. Said property or proceeds may be credited to any lawfully created fund designated to receive proceeds of forfeitures. Any proceeds received pursuant to this section are exempt from the distribution requirements of section 16-13-311 (3)(a).

Source: L. 86: Entire part added, p. 750, § 1, effective April 3. **L. 2002:** Entire section amended, p. 929, § 12, effective July 1. **L. 2007:** Entire section amended, p. 444, § 2, effective August 3.

Cross references: For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 117, Session Laws of Colorado 2007.

PART 7

REPORTING AND DISPOSITION OF FORFEITED PROPERTY

Cross references: For provisions on disposition of seized personal property, see § 16-13-311; for provisions on disposition of forfeited real property, see § 16-13-314; for provisions on forfeited property relating to controlled substances, see part 5 of this article.

16-13-701. Reports related to seizures and forfeitures - legislative declaration - definitions.

(1) The general assembly finds that:

(a) Under state and federal forfeiture laws and subject to the due process provisions provided in both state and federal law as applicable, state and local law enforcement agencies are authorized to seize money and other property and to use forfeiture proceeds as permitted and expressly limited by both operation of state and federal law and applicable asset forfeiture policies and guidelines;

(b) It is the responsibility of state legislators to monitor seizures by law enforcement agencies, forfeiture litigation by prosecutors, and their expenditures of forfeited proceeds when such money is received by a law enforcement agency or prosecutor's office; and

(c) This section provides legislators and the public with the information necessary for basic oversight of law enforcement agencies and prosecutors' offices that seize property, obtain the proceeds of such seizures through the asset forfeiture process, and expend the proceeds of such forfeitures under both state and federal laws.

(2) As used in this section, unless the context otherwise requires:

(a) "Department" means the department of local affairs created pursuant to section 24-1-125.

(b) "Executive director" means the executive director of the department of local affairs.

(c) "Reporting agency" means:

(I) Any state or local governmental entity that employs a person, other than a judge or magistrate, who is authorized to effectuate a forfeiture of real or personal property, pursuant to:

(A) Part 3 of this article 13, abatement of public nuisance;

(B) Part 5 of this article 13, "Colorado Contraband Forfeiture Act";

(C) Part 6 of this article 13, receipt of federally forfeited property; or

(D) Sections 18-17-105 and 18-17-106 of the "Colorado Organized Crime Control Act"; or

(II) The office of a district attorney; or

(III) Any local governmental entity charged with enforcement of local laws or ordinances governing public nuisances within its local jurisdiction that obtains proceeds as a result of a seizure and forfeiture pursuant to such laws or ordinances.

(3) This section applies to property seized under the following:

(a) Part 3 of this article 13, abatement of public nuisance;

(b) Part 5 of this article 13, "Colorado Contraband Forfeiture Act";

(c) Part 6 of this article 13, receipt of federally forfeited property;

(d) Sections 18-17-105 and 18-17-106 of the "Colorado Organized Crime Control Act"; and

(e) Any local public nuisance law or ordinance.

(4) (a) The executive director shall establish, maintain, and amend as necessary and post on the department's website a biannual reporting form for use by reporting agencies to report the information required by subsection (5) of this section. Each reporting agency that received any forfeiture proceeds through a state, federal, or local forfeiture process within the reporting period shall complete a form on the department's website for that reporting period. In creating the form, the executive director shall consider the input from the following:

(I) The Colorado district attorneys' council;

(II) A statewide association of chiefs of police;

(III) A statewide association of county sheriffs;

(IV) The department of public safety; and

(V) The attorney general.

(b) If a reporting agency has not received any forfeiture proceeds during a reporting period, it shall submit a report indicating that no forfeiture proceeds were received.

(c) On or before December 31, 2017, the executive director shall provide access to the uniform report form developed pursuant to subsection (4)(a) of this section for reporting agencies to file or update information as required by this section.

(5) Based upon the information received on the forms submitted pursuant to subsection (4) of this section, the department shall establish and maintain a searchable, public access database that includes the following, if known at the time of reporting:

(a) Information from each case in which a reporting agency received any forfeiture proceeds specifying:

(I) The name of the reporting agency and, if seized by a multijurisdictional task force, the name of the lead agency;

(II) The date of the seizure;

(III) The place of the seizure, whether a home, business, or traffic stop, and, if a traffic stop on an interstate or state highway, the direction of the traffic flow, whether eastbound, westbound, southbound, or northbound;

(IV) The basis for the law enforcement contact;

(V) The type of property seized:

(A) If currency, the amount of the currency; and

(B) If property other than currency, any make or model related to the property and the estimated value and net equity of the property;

(VI) Whether a state or federal criminal case was filed in relation to the seizure and, if so, the court in which the case was filed, the case number and charges filed, and any disposition of the criminal case;

(VII) If forfeiture is sought under federal law, the reason for the federal transfer, whether adoption, joint task force, or other; and

(VIII) Information relating to any forfeiture proceeding including:

(A) The court in which the forfeiture case was filed;

(B) The forfeiture case number;

(C) If any owner or interest owner filed a counterclaim;

(D) The outcome of the forfeiture proceeding, including whether the property owner defaulted in the forfeiture litigation; the court determined the property owner was an innocent owner; or the property was forfeited by court order, settlement, or part of a plea agreement;

(E) The date of the forfeiture order;

(F) If any asset was returned in whole to an owner or interest holder, a description of the asset and the date of the return;

(G) If any property was sold, the proceeds received from the sale;

(H) If any property was retained by a state or local agency, the purpose for which it was used;

(I) The date of any disposition of the property;

(J) If the property was destroyed by a state or local agency, the date of destruction;

(K) If an order for destruction was issued by the federal government; and

(L) The amount of any proceeds received by the reporting agency; and

(b) Information from each reporting agency on the use of forfeiture proceeds reported pursuant to this section including:

(I) The total amount of money expended in each of the following categories during the reporting period:

(A) Drug abuse, crime, and gang prevention programs;

(B) Victim services programs;

(C) Informant fees and controlled buys on closed cases;

(D) Salaries, overtime, and employment benefits, as permitted by law;

(E) Professional outside services, including auditing, court reporting, expert witness and outside counsel fees, and membership fees paid to trade associations;

(F) Travel, meals, entertainment, training conferences, and continuing education seminars;

(G) Operating expenses, including office supplies, postage, and advertising;

(H) Capital expenditures, including vehicles, firearms, equipment, computers, and furniture; and

(I) Other expenditures of forfeiture proceeds; and

(II) The total value of seized and forfeited property held by the reporting agency at the end of the reporting period.

(6) The department shall also post on the website a summary of information received pursuant to subsection (4) of this section that, to the extent available for the reporting period, describes:

(a) The total number of forfeiture actions initiated or administered by each reporting agency;

(b) The total number of federal judicial or administrative forfeiture actions initiated by a multijurisdictional task force including a federal agency or referred by a reporting agency and accepted by the federal government for forfeiture under federal law;

(c) The type of assets seized and the total value of the net proceeds received in all reported forfeitures; and

(d) The recipients of any forfeiture proceeds including the amount received by each and the date of receipt.

(7) (a) Each reporting agency, including any district attorney or other prosecutor, that receives or expends forfeiture-related money or property shall submit a report with all the information required pursuant to subsection (5) of this section that is known to the agency at the time of the report on the form developed pursuant to subsection (4)(a) of this section. Commencing July 1, 2017, for the reporting period between July 1 and December 31 of each year, the reporting agency shall file the report by June 1 of the following calendar year. For the reporting period between January 1 and June 30, the reporting agency shall file the report by December 1 of that calendar year. If a reporting agency has previously filed a report, but for the

reporting period it has not received or expended any forfeiture proceeds, it shall submit a report indicating that fact.

(b) Notwithstanding the provisions of this section, if the reporting of any information required by subsection (5) of this section is likely to disclose the identity of a confidential source; disclose confidential investigative or prosecution material that could endanger the life or physical safety of any person; disclose the existence of a confidential surveillance or investigation; or disclose techniques or procedures for law enforcement procedures, investigation, or prosecutions, the reporting agency is not required to include such information in the report developed pursuant to subsection (4)(a) of this section. The executive director shall include in the form developed pursuant to subsection (4)(a) of this section a box for a reporting agency to check if it is not disclosing information pursuant to this subsection (7)(b).

(c) If a reporting agency fails to file a report required by subsection (7)(a) of this section within thirty days after the date the report is due, the executive director shall send notice of the failure to the reporting agency. If the report:

(I) Is filed within forty-five days after the notice of failure is sent, the reporting agency shall pay a civil fine of five hundred dollars; or

(II) Is not filed within forty-five days after the notice of failure is sent, the reporting agency shall pay a civil fine of the greater of five hundred dollars or an amount equal to fifty percent of the forfeiture proceeds received by the reporting agency during the reporting period.

(d) If the department pursues legal action to enforce the civil fines established pursuant to subsection (7)(c) of this section and the department prevails in the action, the department is entitled to its reasonable attorney fees and costs related to the action.

(8) (a) Not later than December 31, 2019, and each December 31 thereafter, the executive director shall submit a report summarizing seizure and forfeiture activity in the state for the prior fiscal year to the governor; the attorney general; and the judiciary committees of the senate and the house of representatives, or any successor committees. The report must also be posted on the division's website. The report must include:

(I) The type, approximate value, and disposition of all property seized;

(II) The amount of any forfeiture proceeds received by the state and any subdivision of the state; and

(III) A categorized accounting of all forfeiture proceeds expended by the state and any subdivision of the state.

(b) The executive director may include in the report prepared pursuant to subsection (8)(a) of this section recommendations to improve statutes, rules, or policies to better ensure that seizures, forfeitures, and expenditures are done and reported in a manner that is fair to crime victims,

innocent property owners, secured interest holders, citizens, law enforcement personnel, and taxpayers.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the report required in this subsection (8) continues indefinitely.

(9) Repealed.

(10) The executive director may adopt policies and procedures to implement the provisions of this section.

(11) Notwithstanding any provision in article 72 of title 24, information, except for information described in subsection (7)(b) of this section, and reports prepared pursuant to this section are public records and subject to inspection pursuant to part 2 or 3 of article 72 of title 24.

Source: L. 92: Entire part added, p. 451, § 6, effective July 1. **L. 2002:** Entire section amended, p. 930, § 13, effective July 1. **L. 2003:** (1) and (4) amended, p. 906, § 19, effective July 1. **L. 2009:** (2) and (3) amended, (SB 09-292), ch. 369, p. 1948, § 30, effective August 5. **L. 2010:** (4) amended, (SB 10-175), ch. 188, p. 783, § 23, effective April 29. **L. 2017:** (4) amended, (SB 17-242), ch. 263, p. 1253, § 10, effective May 25; (4) amended, (SB 17-234), ch. 154, p. 525, § 19, effective August 9; entire section R&RE, (HB 17-1313), ch. 403, p. 2100, § 1, effective August 9. **L. 2018:** (2)(c), (3)(c), (3)(d), IP(4)(a), (4)(b), (4)(c), IP(5)(a), (5)(a)(I), IP(5)(b), (5)(b)(II), (6)(a), (6)(b), (7)(a), (7)(b), and (7)(c) amended and (3)(e) added, (HB 18-1020), ch. 307, p. 1854, § 1, effective September 1. **L. 2022:** (9) repealed, (HB 22-1278), ch. 222, p. 1494, § 19, effective July 1. **L. 2023:** (5)(a)(V)(B) and (5)(a)(VIII)(D) amended, (HB 23-1086), ch. 419, p. 2471, § 2, effective September 1.

Editor's note: Subsection (4) was amended in SB 17-242 and SB 17-234. Those amendments were superseded by the repeal and reenactment of this section in HB 17-1313.

Cross references: For the short title ("Due Process Asset Forfeiture Act") in HB 23-1086, see section 1 of chapter 419, Session Laws of Colorado 2023.

16-13-702. Disposition of forfeited property.

(1) No forfeited property shall be used nor shall any forfeited proceeds be expended by any seizing agency to whom section 16-13-701 applies unless such use or expenditure has been approved by a committee on disposition of forfeited property which is created in subsection (2) of this section.

(2) There is hereby created, for each seizing agency, a committee on disposition of forfeited property. The committee on disposition of forfeited property shall meet as necessary to approve the use of forfeited property or the expenditure of forfeited proceeds by the seizing agency.

(3) The composition of the committee for a seizing agency shall, at a minimum, include the district attorney of the judicial district having jurisdiction over the forfeited property, or a designee of such district attorney; the head of the seizing agency, or the designee of such person; and a representative of the governmental body having budgetary authority over the seizing agency appointed by the governmental body. The required members of the committee may select other members to serve on the committee by unanimous agreement.

(4) The composition of the committee, where the seizing agency is a district attorney's office, shall, at a minimum, include the district attorney or the designee of such district attorney; the head of a law enforcement agency from among the law enforcement agencies in the district attorney's judicial district, who is appointed by the district attorney; and one representative of one of the governmental bodies having budgetary authority over the district attorney's budget, to be selected by the unanimous agreement of all of the governmental bodies in the judicial district which have budgetary authority over the district attorney's budget. The required members of the committee may select other members to serve on the committee by unanimous agreement.

(5) The composition of the committee for any group of law enforcement agencies which have associated and are authorized to perform special law enforcement functions shall include the district attorney of the judicial district having jurisdiction over the property forfeited under this article, or the designee of such district attorney; the head of the seizing agency having jurisdiction over the property forfeited under this article, or such person's designee; and a representative from the governing body having budgetary authority over the seizing agency. The required members of the committee may select other members to serve on the committee by unanimous agreement.

(6) Nothing in this article shall be construed to prevent multiple seizing agencies from combining to form a single committee on disposition of forfeited property which has a membership different from the committees described in subsection (3), (4), or (5) of this section so long as the membership of such committee is approved by all governing bodies which have approval over the budgets of each of the seizing agencies which have combined to form the committee.

Source: L. 92: Entire part added, p. 451, § 6, effective July 1. **L. 2017:** (1) amended, (HB 17-1313), ch. 403, p. 2106, § 4, effective August 9.

PART 8

LIFETIME SUPERVISION OF SEX OFFENDERS

16-13-801 to 16-13-812. (Repealed)

Source: L. 2002: Entire part repealed, p. 1463, § 3, effective October 1.

Editor's note: This part 8 was added in 1998. For amendments to this part 8 prior to its repeal in 2002, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. The provisions of this part 8 were relocated to part 10 of article 1.3 of title 18. For the location of specific provisions, see the editor's notes following each section in said part 10 and the comparative tables located in the back of the index.

Cross references: For the legislative declaration contained in the 2002 act repealing this part 8, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 9

COMMUNITY NOTIFICATION CONCERNING SEXUALLY VIOLENT PREDATORS

16-13-901. Legislative declaration.

The general assembly hereby finds that persons who are convicted of offenses involving unlawful sexual behavior and who are identified as sexually violent predators 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.

Source: L. 99: Entire part added, p. 1151, § 17, effective July 1. **L. 2006:** Entire section amended, p. 1311, § 1, effective May 30.

16-13-902. Definitions.

As used in this part 9, unless the context otherwise requires:

(1) "Department" means the department of corrections created in section 24-1-128.5, C.R.S.

(2) "Management board" means the sex offender management board created in section 16-11.7-103.

(3) "Parole board" means the state board of parole created in section 17-2-201, C.R.S.

(4) "Sex offender" means a person sentenced pursuant to part 10 of article 1.3 of title 18, C.R.S.

(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 equivalent in any other state or jurisdiction, including but not limited to a military or federal jurisdiction. For purposes of this subsection (5), "equivalent", with respect to an offender found to be a sexually violent predator or its equivalent, means a sex offender convicted in another state or jurisdiction, including but not limited to a military, tribal, territorial, or federal jurisdiction, who has been assessed or labeled at the highest registration and notification levels in the jurisdiction where the conviction was entered and who satisfies the age, date of offense, and conviction requirements for sexually violent predator status pursuant to Colorado law.

(6) "Technical assistance team" means the group of persons established by the division of criminal justice pursuant to section 16-13-906 to assist local law enforcement in carrying out community notification and to provide general community education concerning sex offenders.

Source: L. 99: Entire part added, p. 1152, § 17, effective July 1. **L. 2006:** (5) amended, p. 1311, § 2, effective May 30. **L. 2011:** (5) amended, (HB 11-1278), ch. 224, p. 959, § 1, effective May 27.

16-13-903. Sexually violent predator subject to community notification - determination - implementation.

(1) 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) (Deleted by amendment, L. 2006, p. 1312, § 3, effective May 30, 2006.)

(3) (a) 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) 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.

(5) A sex offender convicted in another jurisdiction who is designated as a sexually violent predator by the department of public safety for purposes of Colorado law shall be notified of his or her designation and shall have the right to appeal the designation in district court.

Source: L. 99: Entire part added, p. 1152, § 17, effective July 1. **L. 2002:** (3) amended, p. 1185, § 18, effective July 1. **L. 2006:** Entire section amended, p. 1312, § 3, effective May 30. **L. 2011:** (5) added, (HB 11-1278), ch. 224, p. 959, § 2, effective May 27.

ANNOTATION

Trial court's adjudication of defendant as a sexually violent predator subjecting him to community notification did not violate defendant's right to trial under Apprendi v. New Jersey. Community notification is not additional punishment giving rise to right to trial by jury. People v. Rowland, 207 P.3d 890 (Colo. App. 2009).

16-13-904. Sex offender management board - duties.

(1) The management board, in collaboration with the department of corrections, the judicial department, and the parole board, shall establish and revise when necessary:

(a) (Deleted by amendment, L. 2006, p. 1312, § 4, effective May 30, 2006.)

(b) Criteria to be applied by a local law enforcement agency in determining when to carry out a community notification;

(c) Protocols and procedures for carrying out community notification.

(2) The management board shall collaborate with the technical assistance team in establishing the protocols and procedures for carrying out community notification. Such protocols and procedures shall be designed to ensure that notice is provided in a manner that is as specific as possible to the population within the community that is at risk. Such protocols and procedures shall also include provision to the community of general information and education concerning sex offenders, including treatment and supervision of sex offenders, and procedures to attempt to minimize the risk of vigilantism.

(3) (Deleted by amendment, L. 2006, p. 1312, § 4, effective May 30, 2006.)

Source: L. 99: Entire part added, p. 1153, § 17, effective July 1. **L. 2000:** (1)(b) amended, p. 924, § 15, effective July 1. **L. 2006:** IP(1), (1)(a), and (3) amended, p. 1312, § 4, effective May 30.

16-13-905. Local law enforcement - duties - immunity.

(1) The local law enforcement agency for the jurisdiction in which a sexually violent predator who is subject to community notification resides shall be responsible for carrying out any community notification regarding said sexually violent predator. Such community notification shall only occur under the circumstances and in the manner specified by the management board pursuant to section 16-13-904. The local law enforcement agency may apply to the division of criminal justice for assistance from the technical assistance team in carrying out any community notification.

(2) 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.

Source: L. 99: Entire part added, p. 1154, § 17, effective July 1. **L. 2006:** (2) amended, p. 1313, § 5, effective May 30.

16-13-906. Division of criminal justice - technical assistance team.

(1) The division of criminal justice of the department of public safety shall establish a technical assistance team to provide assistance to local law enforcement agencies in carrying out community notification. The technical assistance team shall include persons with expertise in sex offender management, sex offender supervision, and law enforcement.

(2) The technical assistance team shall also be available upon request to assist communities in providing general information concerning sex offenders, including treatment, management, and supervision of sex offenders within society. Such education may be provided in situations that are not related to the provision of notice concerning a specific sexually violent predator.

(3) 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.

Source: L. 99: Entire part added, p. 1154, § 17, effective July 1. **L. 2000:** (3) added, p. 924, § 16, effective July 1. **L. 2006:** (3) amended, p. 1313, § 6, effective May 30.

PART 10

RESENTENCING HEARING FOR JUVENILE OFFENDERS SERVING LIFE SENTENCES

Cross references: For Miller v. Alabama, see 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). For Montgomery v. Louisiana, see 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

16-13-1001. Legislative declaration.

(1) The general assembly finds that:

(a) (I) In the 2012 case of *Miller v. Alabama*, the United States supreme court held that imposing a mandatory life sentence without the possibility of parole on a juvenile is a cruel and unusual punishment prohibited by the eighth amendment to the United States constitution; and

(II) The court further held that children are constitutionally different than adults for purposes of sentencing; and

(b) (I) In the 2016 case of *Montgomery v. Louisiana*, the court held that *Miller v. Alabama* announced a substantive rule of constitutional law that applies retroactively; and

(II) In light of the court's holding that children are constitutionally different than adults in their level of culpability, the court further held that prisoners serving life sentences for crimes that they committed as juveniles must be given the opportunity to show that their crimes did not reflect irreparable corruption, and, if they did not, then their hope for some years of life outside prison walls must be restored; and

(III) The court made it clear that a sentence to a lifetime in prison is an unconstitutional sentence for all but the rarest of children.

(2) The general assembly further finds that:

(a) A juvenile sentenced in Colorado for a conviction of a class 1 felony as a result of a direct file or transfer of an offense committed on or after July 1, 1990, and before July 1, 2006, was sentenced to a mandatory life sentence without the possibility of parole; and

(b) Approximately fifty persons in Colorado received such an unconstitutional sentence.

(3) Now, therefore, the general assembly hereby declares that this part 10 is necessary to provide persons serving such unconstitutional sentences the opportunity for resentencing.

Source: L. 2016: Entire part added, (SB 16-181), ch. 353, p. 1450, § 5, effective June 10.

16-13-1002. Resentencing hearing for persons serving life sentences without the possibility of parole as the result of a direct file or transfer.

(1) A person may petition the sentencing court for a resentencing hearing if the person was:

(a) A juvenile at the time of his or her offense;

(b) Convicted as an adult of a class 1 felony following direct filing of an information or indictment in the district court pursuant to section 19-2.5-801 or transfer of proceedings to the district court pursuant to section 19-2.5-802 or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by House Bill 96-1005; and

(c) Sentenced to life imprisonment without the possibility of parole for an offense committed on or after July 1, 1990, and before July 1, 2006.

(2) If a petition is filed pursuant to subsection (1) of this section, the sentencing court shall conduct a resentencing hearing and resentence the offender as described in section 18-1.3-401 (4)(c), C.R.S.

(3) The provisions of sections 17-22.5-403 (2)(c) and 17-22.5-405 (1.2), C.R.S., take effect upon resentencing.

(4) A petition filed under this section is not a motion under rule 35 (c) of the Colorado rules of criminal procedure.

Source: L. 2016: Entire part added, (SB 16-181), ch. 353, p. 1451, § 5, effective June 10. **L. 2021:** IP(1) and (1)(b) amended, (SB 21-059), ch. 136, p. 714, § 27, effective October 1.

UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT

ARTICLE 14

Uniform Mandatory Disposition of Detainers Act

16-14-101. Short title.
16-14-102. Request for disposition of untried complaint or information.
16-14-103. Duties of superintendent upon delivery of request.
16-14-104. Trial or dismissal.
16-14-105. Escape voids request.
16-14-106. Article does not apply.
16-14-107. Prisoners to be informed of provisions of article.
16-14-108. Construction of article.

16-14-101. Short title.

This article shall be known and may be cited as the "Uniform Mandatory Disposition of Detainers Act".

Source: L. 69: p. 292, § 8. **C.R.S. 1963:** § 39-23-8.

ANNOTATION

Prospective challenge. Prospectively, and not retroactively, a prisoner subject to a detainer under the interstate agreement on detainers will have the right to challenge the procedures to determine whether the interstate compact and the uniform act have been complied with. Moen v. Wilson, 189 Colo. 85, 536 P.2d 1129 (1975).

Act implements speedy trial right. The uniform act is one of several Colorado statutes implementing a defendant's right to a speedy trial as provided in § 16 of art. II, Colo. Const. People v. Bean, 650 P.2d 565

(Colo. 1982); People v. Lewis, 680 P.2d 226 (Colo. 1984).

Rights under the act. All rights under the act are statutorily and not constitutionally based; thus, waiver of them must be voluntary but need not be knowing and intelligent. People v. Martin, 707 P.2d 1005 (Colo. App. 1985), aff'd, 738 P.2d 789 (Colo. 1987).

The purpose of the Uniform Mandatory Disposition of Detainers Act (UMDDA) is to provide a mechanism for the disposition of detainers; without a detainer, the act has no applicability. People v. Bolin, 712 P.2d 1002 (Colo. 1986).

The primary purpose of the UMDDA and the Interstate Agreement on Detainers (IAD) is to provide a mechanism for prisoners to insist upon speedy and final disposition of untried charges that are the subjects of detainers so that a prisoner's speedy trial rights and any prison rehabilitation programs initiated for the prisoners' benefit will not be disrupted or precluded by the existence of these untried charges. People v. Higinbotham, 712 P.2d 993 (Colo. 1986); People v. Naulls, 937 P.2d 778 (Colo. App. 1996).

Policies of IAD and this article are similar. People v. Bean, 44 Colo. App. 373, 619 P.2d 72 (1980), rev'd on other grounds, 650 P.2d 565 (Colo. 1982).

The IAD and the UMDDA embody like policies, and, generally, the principles of one may be applied to the other. People v. Morgan, 712 P.2d 1004 (Colo. 1986); Sweaney v. District Court, 713 P.2d 914 (Colo. 1986).

Policy same as § 18-1-405 and Crim. P. 48. The policies underlying § 18-1-405 and Crim. P. 48 are the same as those relative to the uniform act. People v. Lopez, 41 Colo. App. 206, 587 P.2d 792 (1978); People v. Boos, 199 Colo. 15, 604 P.2d 272 (1979).

In determining whether to dismiss charges for lack of prompt notification, a court must consider more than the general factors underlying the constitutional right to a speedy trial because the UMDDA effectuates other policies besides the speedy trial rights. People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

A defendant is entitled to the dismissal of charges against him that underlie a detainer as a sanction for violation of the prompt notification requirement of § 16-14-102 (2) of the uniform act unless the prosecution can demonstrate a lack of prejudice to the defendant resulting from that violation. People v. Higinbotham, 712 P.2d 993 (Colo. 1986); People v. Glasser, 293 P.3d 68 (Colo. App. 2011).

In the absence of an express statutory sanction for violation of the prompt notification requirement, automatic dismissal is not required as a remedy for such a violation. People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

Failure to hold trial within prescribed time period requires dismissal of charges. This article by its express terms is jurisdictional, hence dismissal is required regardless of whether defendant was prejudiced by the delay. People v. Naulls, 937 P.2d 778 (Colo. App. 1996).

16-14-102. Request for disposition of untried complaint or information.

(1) Any person who is in the custody of the department of corrections pursuant to section 16-11-301 or parts 8 and 9 of article 1.3 of title 18, C.R.S., may request final disposition of any untried indictment, information, or criminal complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information, or criminal complaint is pending and to the prosecuting official charged with the duty of prosecuting it and shall set forth the place of confinement.

(2) It is the duty of the superintendent of the institution where the prisoner is confined to promptly inform each prisoner, in writing, of the source and nature of any untried indictment, information, or criminal complaint against him of which the superintendent has knowledge, and of the prisoner's right to make a request for final disposition thereof.

(3) Failure of the superintendent of the institution where the prisoner is confined to inform a prisoner, as required by subsection (2) of this section, within one year after a detainer from this state has been filed with the institution where the prisoner is confined shall entitle the prisoner to a dismissal with prejudice of the indictment, information, or criminal complaint.

Source: L. 69: p. 291, § 8. **C.R.S. 1963:** § 39-23-1. **L. 76:** (2) and (3) amended, p. 532, § 7, effective April 9. **L. 77:** (1) amended, p. 902, § 6, effective August 1.

ANNOTATION

Provisions similar to interstate agreement on detainers (IAD). Provisions in this article mandating that prison authorities "forthwith" furnish the certified statement and request, and directing that failure to comply with the specified time requirements for commencing trial will result in dismissal, are almost identical to the analogous provision in the IAD. People v. Bean, 44 Colo. App. 373, 619 P.2d 72 (1980), rev'd on other grounds, 650 P.2d 565 (Colo. 1982).

The Uniform Mandatory Disposition of Detainers Act (UMDDA) and the IAD embody like policies and, generally, the principles of one may be applied to the other. People v. Morgan, 712 P.2d 1004 (Colo. 1986); Sweaney v. District Court, 713 P.2d 914 (Colo. 1986).

Failure to hold trial within prescribed time period requires dismissal of charges. This article by its express terms is jurisdictional, hence dismissal is required regardless of whether defendant was prejudiced by the delay. People v. Naulls, 937 P.2d 778 (Colo. App. 1996).

The general speedy trial statute, § 18-1-405, and not this act, applies to the retrial

of charges on convictions overturned on appeal. The UMDDA applies only to untried charges, and the charges against this defendant, while still pending, were not untried. People v. Campbell, 885 P.2d 327 (Colo. App. 1994).

Filing of detainer not required. The right of a person in the custody of the department of corrections to request final disposition of criminal charges and thereby to obtain a right to trial within 90 days on those charges is not dependent upon the filing of a detainer. People v. Campbell, 742 P.2d 302 (Colo. 1987); People v. Trancoso, 776 P.2d 374 (Colo. 1989).

Sufficiency of request. Addressing the request for disposition to the chief judge of the appropriate court constitutes substantial compliance within the requirement that the defendant give the court notice that he wishes to invoke the provisions of the act. People v. Campbell, 742 P.2d 302 (Colo. 1987).

A prisoner's written request for disposition under this act, when sent to the superintendent, is sufficient to satisfy the requirements of this section. A prisoner's rights under this act cannot be defeated by the superintendent's failure to comply with his statutory duties under § 16-14-103. People v. Trancoso, 776 P.2d 374 (Colo. 1989).

Court did not err in denying consideration of defendant's request for final disposition when defendant improperly mailed the request directly to the court and no evidence existed that the superintendent or prosecutor ever received the request. People v. Adolf, 2012 COA 60, 296 P.3d 251.

Court properly nullified a motion requested by defendant's wife. A criminal defendant is not entitled to hybrid representation -- self-representation and representation by counsel -- and a court is entitled to ignore pro se filings submitted by a defendant represented by counsel. Moreover, defendant's wife, a nonattorney, filed the request, which she was not authorized to do. People v. Fields, 2025 COA 84, 581 P.3d 789.

Prison authorities must have "actual knowledge" of charges against a prisoner before a duty arises to promptly inform the prisoner of such charges. People v. Lewis, 680 P.2d 226 (Colo. 1984).

Mere awareness that charges are pending against an inmate in another jurisdiction does not trigger the superintendent's duty to inform the defendant of his rights under this article. People v. Yellen, 704 P.2d 306 (Colo. 1985).

A superintendent only has "knowledge" of an untried charge when a detainer has been filed. People v. Yellen, 704 P.2d 306 (Colo. 1985).

A person on parole is in custody of department of corrections for purposes of this section. People v. Gess, 250 P.3d 734 (Colo. App. 2010).

Revocation of parole not required for custody. A person placed on parole remains in the legal custody of the department of corrections and, therefore, revocation of parole is not required to invoke the

protection of the uniform act. People v. Campbell, 742 P.2d 302 (Colo. 1987).

Where defendant was in jail for a parole violation, defendant, for purposes of this section, was considered to be in the custody of the department of corrections while in county jail. People v. Slusher, 43 P.3d 647 (Colo. App. 2001).

An outstanding arrest warrant for a prisoner is not an indictment, information, or criminal complaint and, therefore, does not trigger application of notice and speedy trial provisions of the uniform act. People v. Gonzales, 679 P.2d 1085 (Colo. 1984).

The existence of an untried indictment, information, or criminal complaint is necessary before a criminal may invoke the UMDDA procedural protection. A petition for a speedy disposition that predates the filing of an indictment, information, or complaint is a nullity with no legal effect on subsequently filed felony charges. People v. Calhoon, 897 P.2d 855 (Colo. App. 1994).

The UMDDA applies to all of a prisoner's untried charges, not just charges that occurred before incarceration. People v. Gess, 250 P.3d 734 (Colo. App. 2010).

A writing that makes a claim under the UMDDA must not be misleadingly labeled as a motion for habeas corpus relief and must be sent to both the court and prosecution. People v. Gess, 250 P.3d 734 (Colo. App. 2010).

Defendant's request for a UMDDA trial was insufficient because it was one sentence in a four-page document filed pro se by defendant who was represented by counsel, the document was misleadingly labeled, and it was improperly delivered. People v. Roberts, 2013 COA 50, 321 P.3d 581.

Prisoner cured defects in original UMDDA claim by filing a written motion with the court and asking the court to dismiss the charges at a subsequent hearing at which the prosecution was present. People v. Gess, 250 P.3d 734 (Colo. App. 2010).

Notice of detainer. The prosecution has the burden of proving that a defendant is not prejudiced, as measured against the purposes of the uniform act, by the failure on the part of the superintendent of the institution in which the prisoner is confined to inform the defendant promptly of the existence of the detainer and of the defendant's rights, as required by subsection (2). People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

The appropriate measure for determining the imposition of a sanction for violations of subsection (2) properly begins with an examination of purposes furthered by the UMDDA. People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

A violation of the prompt notification requirement in subsection (2) does not mandate an automatic dismissal of the charges against a defendant. People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

There is no reason in the language or purpose of the statute to require that a prisoner request final disposition of a charge as a condition precedent to filing a motion to dismiss the charge because of an alleged violation of the prompt notification

requirement of subsection (2). People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

A superintendent's obligation to inform a prisoner pursuant to subsection (2) does not arise until a detainer has in fact been filed; "knowledge" of untried charges for the purposes of subsection (2) does not occur until a detainer has been filed. People v. Bolin, 712 P.2d 1002 (Colo. 1986).

If a detainer is never filed, then a superintendent's duty required by § 16-14-102 (2) does not arise. People v. Morgan, 712 P.2d 1004 (Colo. 1986).

Violation of the provisions of subsection (3) does not automatically deprive the court of jurisdiction. It does entitle the prisoner to dismissal of the charges, regardless of whether he or she suffered any prejudice from the delay in notification. But defendant could not overcome the time bar imposed by § 16-5-402 on the basis that his motion alleged a jurisdictional defect. People v. Slusher, 43 P.3d 647 (Colo. App. 2001).

Statute as basis for jurisdiction. See Buffalo v. Tanksley, 189 Colo. 45, 536 P.2d 827 (1975).

The procedural requirements of the UMDDA and the IAD do not apply to a detainer placing a hold on a prisoner based on an unresolved sentencing determination in another jurisdiction where the defendant has already been convicted on the charges. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993).

Time constraints of this section were not applicable to prosecution's motion to revoke deferred judgment and sentence where defendant's guilty plea had previously been accepted by the court. The phrase "untried indictment, information, or complaint" as used in this section does not apply to those situations in which a defendant has entered a guilty plea and the sentence is deferred. People v. Hastings, 903 P.2d 23 (Colo. App. 1994).

The provisions of this article govern intrastate detainers, which involve prisoners in the custody of the department of corrections in Colorado who have Colorado charges pending against them and the provisions of § 24-60-501, govern interstate detainers, filed by a compact state that has charges pending against a person imprisoned in another compact state. Johnson v. People, 939 P.2d 817 (Colo. 1997).

Applied in People v. Buggs, 186 Colo. 13, 525 P.2d 421 (1974); People v. Lopez, 41 Colo. App. 206, 587 P.2d 792 (1978); People v. Gonzales, 42 Colo. App. 517, 601 P.2d 644 (1979); People v. Swazo, 199 Colo. 486, 610 P.2d 1072 (1980); People v. Mascarenas, 666 P.2d 101 (Colo. 1983); People v. Sa'ra, 117 P.3d 51 (Colo. App. 2004).

16-14-103. Duties of superintendent upon delivery of request.

(1) Any request made pursuant to section 16-14-102 shall be delivered to the superintendent where the prisoner is confined who shall forthwith:

(a) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the earned time earned, the time of parole eligibility of the prisoner, and any decisions of the state board of parole relating to the prisoner; and

(b) Send, by registered mail, a copy of the request made by the prisoner and a copy of the information certified under paragraph (a) of this subsection (1) to both the court having jurisdiction of the untried offense and to the prosecuting official charged with the duty of prosecuting the offense.

Source: L. 69: p. 291, § 8. **C.R.S. 1963:** § 39-23-2. **L. 76:** IP(1) amended, p. 532, § 8, effective April 9. **L. 90:** (1)(a) amended, p. 954, § 21, effective June 7.

Cross references: For provisions concerning good time and parole, see article 22.5 of title 17.

ANNOTATION

Provisions similar to interstate agreement on detainers (IAD). Provisions in this article mandating that prison authorities "forthwith" furnish the certified statement and request, and directing that failure to comply with the specified time requirements for commencing trial will result in dismissal, are almost identical to the analogous provision in the IAD. People v. Bean, 44 Colo. App. 373, 619 P.2d 72 (1980), rev'd on other grounds, 650 P.2d 565 (Colo. 1982).

There is no requirement in this section that defendant demonstrate prejudice as a result of prison officials' violation of the requirement to act "forthwith" on his behalf. People v. Bean, 44 Colo. App. 373, 619 P.2d 72 (1980), rev'd on other grounds, 650 P.2d 565 (Colo. 1982).

Burden of establishing that request was "forthwith" transmitted to the court rests on the state. People v. Bean, 650 P.2d 565 (Colo. 1982).

Notice of detainer. The prosecution has the burden of proving that a defendant is not prejudiced, as measured against the purposes of the uniform act, by the failure on the part of the superintendent of the institution in which the prisoner is confined to inform the defendant promptly of the existence of a detainer and of the defendant's rights, as required by § 16-14-102 (2). People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

Neither classification reviews or transportation orders constitute a "detainer" sufficient to trigger a superintendent's duty to promptly notify a prisoner of source and nature of untried indictment, information, or criminal complaint against such prisoner.

People v. Morgan, 712 P.2d 1004 (Colo. 1986).

A superintendent's obligation to inform a prisoner pursuant to § 16-14-102 (2) does not arise until a detainer has in fact been filed; "knowledge" of untried charges for the purposes of § 16-14-102 (2) does not occur until a detainer has been filed. People v. Bolin, 712 P.2d 1002 (Colo. 1986).

Where defendant suffered no prejudice from superintendent's delay in sending copy of request to trial court and prosecutor, dismissal of charges is not warranted. Martin v. People, 738 P.2d 789 (Colo. 1987).

Superintendent's duties are invoked by prisoner's request. The superintendent's duties under this section are invoked whenever a prisoner's request under § 16-14-102 (1) is delivered to the superintendent, notwithstanding the absence of a detainer lodged against the prisoner. People v. Trancoso, 776 P.2d 374 (Colo. 1989).

Prisoner who mails a UMDDA motion directly to the court has delivered it incorrectly. People v. Gess, 250 P.3d 734 (Colo. App. 2010).

Defendant's request for a UMDDA trial was insufficient because it was one sentence in a four-page document filed pro se by defendant who was represented by counsel, the document was misleadingly labeled, and it was improperly delivered. People v. Roberts, 2013 COA 50, 321 P.3d 581.

Court did not err in denying consideration of defendant's request for final disposition when defendant improperly mailed the request directly to the court and no evidence existed that the superintendent or prosecutor ever received the request. People v. Adolf, 2012 COA 60, 296 P.3d 251.

16-14-104. Trial or dismissal.

(1) Within one hundred eighty-two days after the receipt of the request by the court and the prosecuting official, or within such additional time as the court for good cause shown in open court may grant, the prisoner or the prisoner's counsel being present, the indictment, information, or criminal complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the prisoner's attorney and opportunity to be heard. If, after such a request, the indictment, information, or criminal complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, or criminal complaint be of any further force or effect, and the court shall dismiss it with prejudice.

(2) Any prisoner who requests disposition pursuant to section 16-14-102 may waive the right to disposition within the time specified in subsection (1) of this section by express waiver on the record after full advisement by the court. If a prisoner makes said waiver, the time for trial of the

indictment, information, or criminal complaint shall be extended as provided in section 18-1-405 (4), C.R.S., concerning waiver of the right to speedy trial.

Source: L. 69: p. 291, § 8. **C.R.S. 1963:** § 39-23-3. **L. 95:** Entire section amended, p. 463, § 7, effective July 1. **L. 2004:** (1) amended, p. 1377, § 1, effective July 1. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 859, § 94, effective July 1.

ANNOTATION

Purpose of act. The uniform act is intended to render constitutional guarantees of speedy trial more effective. People v. Anderson, 649 P.2d 720 (Colo. App. 1982).

The general speedy trial statute, § 18-1-405, and not this act, applies to the retrial of charges on convictions overturned on appeal. The Uniform Mandatory Disposition of Detainers Act (UMDDA) applies only to untried charges, and the charges against this defendant, while still pending, were not untried. People v. Campbell, 885 P.2d 327 (Colo. App. 1994).

This section applies only when the defendant is in the custody of the department of corrections. Where, at time of request for speedy trial, defendant was incarcerated in a county jail in Mississippi, and his deferred sentence was not yet revoked, 90-day time limit did not apply. People v. McPherson, 897 P.2d 923 (Colo. App. 1995).

The issue of physical custody is irrelevant when determining the applicability of the UMDDA. People v. Carr, 205 P.3d 471 (Colo. App. 2008).

Prisoner's right to invoke procedural protection of UMDDA depends on the existence of formal charges at the time UMDDA request is filed. Consequently, petition for a speedy disposition that predates the filing of an indictment, information, or complaint is a nullity with no legal effect on subsequently filed felony charges. People v. Dehmer, 931 P.2d 460 (Colo. App. 1996).

Prisoner may challenge his or her conviction on UMDDA grounds even if he or she pled guilty. A trial court loses jurisdiction if it fails to comply with this section, and that defect is not waived by a subsequent guilty plea. People v. Gess, 250 P.3d 734 (Colo. App. 2010); People v. Yakas, 2019 COA 117, 461 P.3d 568.

Provisions similar to interstate agreement on detainers. Provisions in this article mandating that prison authorities "forthwith" furnish the certified statement and request, and directing that failure to comply with the specified time requirements for commencing trial will result in dismissal, are almost identical to the analogous provision in the interstate agreement on detainers. People v. Bean, 44 Colo. App. 373, 619 P.2d 72 (1980), rev'd on other grounds, 650 P.2d 565 (Colo. 1982).

Article controls over general speedy trial provisions. This article is a special statute designed to foster more effective prisoner treatment and rehabilitation; thus, when there is a conflict with the general speedy trial provisions, §§ 16-14-101 et seq., 18-1-405, and 24-60-501 et seq., and Crim. P. 48, the provisions of this article control. People v. Swazo, 199 Colo. 486, 610 P.2d 1072 (1980).

Defendant's request for a UMDDA trial was insufficient because it was one sentence in a four-page document filed pro se by defendant who was represented by counsel, the document was misleadingly labeled, and it was improperly delivered. People v. Roberts, 2013 COA 50, 321 P.3d 581.

Continuance and its length determined by circumstances of case. The peculiar circumstances of each case are significant factors in providing guidance for the trial court in determining what must be shown to obtain a continuance or determine its length under the provisions of this article. People v. Swazo, 199 Colo. 486, 610 P.2d 1072 (1980); People v. Fleming, 867 P.2d 119 (Colo. App. 1993), rev'd on other grounds, 900 P.2d 19 (Colo. 1995).

The trial court's judgment regarding whether a continuance should be granted may be reversed on appeal only if there has been an abuse of discretion. People v. Fleming, 867 P.2d 119 (Colo. App. 1993), rev'd on other grounds, 900 P.2d 19 (Colo. 1995).

When dismissal of charges proper. Where a prisoner has substantially complied with the provisions of this article and the prosecution has actual notice of the prisoner's request, it is not an abuse of discretion for the trial court to dismiss pending charges under the article. The court shall dismiss the charges with the prejudice if the prisoner complies with the act and the cause is not brought to trial within 90 days. People v. Mascarenas, 666 P.2d 101 (Colo. 1983).

For purposes of the UMDDA, "actual notice" means "actual knowledge". Merely sending a substantially compliant UMDDA request to the prosecution does not suffice to provide "actual notice". People v. McKimmy, 2014 CO 76, 338 P.3d 348.

Failure to hold trial within prescribed time period requires dismissal of charges. This article by its express terms is jurisdictional, hence dismissal is required regardless of whether defendant was prejudiced by the delay. People v. Naulls, 937 P.2d 778 (Colo. App. 1996).

Statutory period commences to run upon receipt of request, not upon subsequent hearing. The 90-day statutory period commences to run upon receipt by county judge and district attorney's office of request for speedy trial under provisions of the uniform act, and not on date subsequent preliminary hearing. People v. Boos, 199 Colo. 15, 604 P.2d 272 (1979).

Proper sanction for failure to comply with this article is dismissal of the claims with prejudice. People v. Bean, 650 P.2d 565 (Colo. 1982).

Imposition of sanction. The prosecutor should have the burden of establishing lack

of prejudice in order to avoid a sanction of dismissal for violation of any provision of the uniform act for which dismissal has not been mandated by the legislature. People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

The appropriate measure for determining the imposition of a sanction for violations of § 16-14-102 (2) properly begins with an examination of purposes furthered by the UMDDA. People v. Higinbotham, 712 P.2d 993 (Colo. 1986).

Filing of detainer not required. The right of a person in the custody of the department of corrections to request final disposition of criminal charges and thereby to obtain a right to trial within 90 days on those charges is not dependent upon the filing of a detainer. People v. Campbell, 742 P.2d 302 (Colo. 1987).

Where there was no action on part of defendant when trial was rescheduled to a time outside the applicable statutory time limit, there was no waiver of his rights under the uniform act. People v. Lopez, 41 Colo. App. 206, 587 P.2d 792 (1978).

Where criminal proceeding initiated by filing criminal complaint in county court, a request for disposition of detainer filed in the county court commences the running of the 90-day statutory period provided for in this section. People v. Lopez, 41 Colo. App. 206, 587 P.2d 792 (1978).

Disposition within 90 days waived. Failure of defendant's counsel to object to the trial date announced and to request an earlier date along with his statement as to availability on the date announced by the court and his affirmative request for a pretrial date to accommodate his convenience all amounted to consent to the date and waiver of the specified 90 days subsequent to the request for detainer disposition. Chambers v. District Court, 180 Colo. 241, 504 P.2d 340 (1972); People v. Kimble, 692 P.2d 1142 (Colo. App. 1984).

Defendant voluntarily waived his objection that his request for final disposition of detainer was not transferred "forthwith" to the trial court when he and his attorney acquiesced freely in a trial date beyond the speedy trial period. People v. Martin, 707 P.2d 1005 (Colo. App. 1985).

Defendant's speedy trial right was violated, and there was no waiver of rights under this section by accepting a trial date outside the 180-day speedy trial period. Defendant's acquiescence in the trial date proposed by the court did not meet the express waiver requirements of subsection (2). The court did not advise defendant that his assent to the trial date would constitute a waiver of his speedy trial right, and defendant did not expressly waive his speedy trial right on the record. Further, the UMDDA advisement form attached to defendant's pro se request for speedy disposition did not advise him that agreement to a trial date set beyond the 180-day limitations period would constitute an implied waiver of his rights under the UMDDA. People v. Carr, 205 P.3d 471 (Colo. App. 2008).

Waiver of rights by participation in trial setting delays. A defendant effectively waives his rights to final disposition within the 90-day statutory limitation period by his active participation in trial setting delays and

in his agreement to the appropriate dates. People v. Mascarenas, 666 P.2d 101 (Colo. 1983); People v. Martin, 707 P.2d 1005 (Colo. App. 1985).

A defendant may waive his right to a final disposition within the 90-day statutory period by express waiver, or affirmative conduct evidencing such a waiver, such as active participation in trial setting delays, together with agreement to the appropriate dates. People v. Martinez, 712 P.2d 1070 (Colo. App. 1985).

Extension of the 90-day time limit does not require the defendant's personal consent. The limit was effectively tolled where the judge granted a continuation for the defendant's benefit because the prosecution was ready to proceed, but the defense counsel was not present. People v. Fleming, 900 P.2d 19 (Colo. 1995).

A defendant's UMDDA rights can be waived by either the defendant or counsel. The rights under the UMDDA are not fundamental rights requiring personal waiver by the defendant. Rather, the rights are statutory and the statute does not require waiver by the defendant. People v. Yakas, 2019 COA 117, 461 P.3d 568.

Counsel's waiver, in defendant's presence, of the required advisement was a valid waiver of defendant's UMDDA rights. People v. Yakas, 2019 COA 117, 461 P.3d 568.

When defendant wanted to be represented by counsel and counsel could not be prepared by the end of the speedy trial deadline, the court did not err in giving defendant the choice between waiving his right to a speedy trial or the right to be represented by effective counsel. People v. Bryant, 2013 COA 28, 316 P.3d 18.

Defendant not entitled to relief because defendant's actions of hiring new counsel and then subsequently firing that counsel and representing himself, both of which required a continuance, tolled the 180-day deadline. People v. Gess, 250 P.3d 734 (Colo. App. 2010).

Defendant's speedy trial claim was invalidated by tolling the speedy requirement within 90 days even though trial was not originally set within 90 days. Defendant's motion for a court-appointed expert tolled his speedy trial rights and defendant then expressly waived his speedy trial right at the hearing granting a court-appointed expert. People v. Garcia, 17 P.3d 820 (Colo. App. 2000).

Defendant's request for a continuance of the trial date to allow defense counsel more time to prepare tolled the 90-day time period for trial. People v. Shreck, 107 P.3d 1048 (Colo. App. 2004).

The 90-day time period was tolled where defendant contributed to the delay by not telling his counsel that he had requested final disposition and the date for completion of the 90-day period. People v. Fleming, 900 P.2d 19 (Colo. 1995).

Where a defendant permits a jury trial to proceed to a guilty verdict, there is a waiver of the act's benefits as a matter of law. People v. Kimble, 692 P.2d 1142 (Colo. App. 1984).

Waiver may be of limited scope and duration. Trial court erred in construing such a waiver as broad and perpetual. People v. Naulls, 937 P.2d 778 (Colo. App. 1996).

Time extended by motions for defendant's benefit. Where additional time is necessitated by motions made for defendant's benefit, and reasonable continuances are ordered by the trial court to accommodate defendant's motions, the time for bringing defendant to trial under the uniform act may be extended. People v. Anderson, 649 P.2d 720 (Colo. App. 1982).

Attorney may request continuance without client's approval. An attorney may stipulate to or request a continuance without obtaining his client's personal approval. People v. Anderson, 649 P.2d 720 (Colo. App. 1982).

No abuse of court's discretion in determining that good cause existed for granting continuance upon defense counsel's assertion that he would be unable to provide defendant with effective assistance if required to go to trial on the scheduled date. People v. Roberts, 2013 COA 50, 321 P.3d 581.

Second continuance was necessary to protect defendant's constitutional right to effective assistance of counsel, and the length of the continuance was proper because of recent disclosure by prosecution, because a potential conflict of interest existed, and because good cause existed for substitution of counsel. People v. Roberts, 2013 COA 50, 321 P.3d 581.

Continuance held to be for good cause. Defense counsel's unanticipated military obligations made adequate trial preparation impossible. People v. Anderson, 649 P.2d 720 (Colo. App. 1982).

No abuse of discretion in finding good cause for the continuance, even if good cause required a showing of due diligence, when prosecution failed to subpoena a cooperating witness and defendant did not object to continuing the trial date beyond the UMDDA deadline. People v. Hines, 2021 COA 45, 491 P.3d 578.

Delay to get preliminary hearing not "good cause". Delay which results from a period of time required by the state in order to get a preliminary hearing is not "good cause" for the granting of a continuance. People v. Lopez, 41 Colo. App. 206, 587 P.2d 792 (1978).

Delay not for good cause. Fact that co-defendant who was not subject to UMDDA had trial set for date after 90-day period is not good cause for delaying defendant's trial. People v. Mueller, 851 P.2d 211 (Colo. App. 1992).

Defendant did not expressly waive on the record his right to a speedy disposition under the UMDDA. Defendant was at all times adamant about being tried within the 180-day period. Consequently, the court erred in determining that defendant had waived any UMDDA rights. People v. Roberts, 2013 COA 50, 321 P.3d 581.

There is no untried "indictment, information, or complaint" where the defendant has been convicted but not sentenced. Thus, the provisions of the UMDDA and the Interstate Agreement on Detainers will not apply to sentencing

detainers. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993).

An outstanding arrest warrant is not an "indictment, information, or criminal complaint" which triggers the application of this section. People v. McPherson, 897 P.2d 923 (Colo. App. 1995).

Where trial court's ruling is based on a question of law, the standard of review is de novo, rather than an abuse of discretion standard. Trial court applied this section to undisputed facts and concluded that dismissal was mandatory under the plain language of the statute. People v. Carr, 205 P.3d 471 (Colo. App. 2008).

16-14-105. Escape voids request.

Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information, or criminal complaint shall void the request.

Source: L. 69: p. 292, § 8. **C.R.S. 1963:** § 39-23-4.

16-14-106. Article does not apply.

The provisions of this article do not apply to any person determined to be mentally incompetent by a court of competent jurisdiction.

Source: L. 69: p. 292, § 8. **C.R.S. 1963:** § 39-23-5. **L. 75:** Entire section amended, p. 926, § 27, effective July 1.

16-14-107. Prisoners to be informed of provisions of article.

The superintendent shall arrange for all prisoners under his care and control to be informed in writing of the provisions of this article and for a record thereof to be placed in each prisoner's file.

Source: L. 69: p. 292, § 8. **C.R.S. 1963:** § 39-23-6. **L. 76:** Entire section amended, p. 532, § 9, effective April 9.

16-14-108. Construction of article.

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: L. 69: p. 292, § 8. **C.R.S. 1963:** § 39-23-7.

WIRETAPPING AND EAVESDROPPING

ARTICLE 15

Wiretapping and Eavesdropping

16-15-101. Definitions.
16-15-102. Ex parte order authorizing the interception of wire, oral, or electronic communications.
16-15-103. Order may direct others to furnish assistance.
16-15-104. Reports to state court administrator and attorney general.

16-15-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(1.5) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(2) "Common carrier" means any person engaged as a common carrier for hire, in intrastate, interstate, or foreign communication by wire or radio, or in intrastate, interstate, or foreign radio transmission of energy.

(3) "Contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

(3.3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:

(a) (Deleted by amendment, L. 97, p. 601, § 1, effective August 6, 1997.)

(b) Any wire or oral communication;

(c) Any communication made through a tone-only paging device; or

(d) Any communication from a tracking device.

(3.5) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(3.7) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications.

(4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication, other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business, or furnished by such subscriber or user for connection to the facilities of such service and being used in the ordinary course of its business, or being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

(4.5) "Electronic storage" means:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

(5) "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(6) "Investigative or law enforcement officer" means any officer of the United States or of the state of Colorado or a political subdivision thereof, who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in title 18, C.R.S., and any attorney authorized by law to prosecute or participate in the prosecution of those offenses.

(7) "Judge of competent jurisdiction" means any justice of the supreme court of Colorado and a judge of any district court of the state of Colorado.

(8) "Oral communication" means any oral communication uttered by any person believing that such communication is not subject to interception, under circumstances justifying that belief, but does not include any electronic communication.

(8.5) "Readily accessible to the general public" means, with respect to a radio communication, that such communication is not:

(a) Scrambled or encrypted;

(b) Transmitted using modulation techniques having essential parameters withheld from the public with the intention of preserving the privacy of such communication;

(c) Carried on a subcarrier or other signal subsidiary to a radio transmission;

(d) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the rules of the federal communications commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

(8.6) "Tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

(8.7) "User" means any person or entity which uses an electronic communication service and is duly authorized by the provider of such service to engage in such use.

(9) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, between the point of origin and the point of reception, furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications and includes any electronic storage of such communication.

Source: L. 71: p. 484, § 2. **C.R.S. 1963:** § 39-24-1. **L. 88:** (1), (3), IP(4), (4)(a), (5), (8), and (9) amended and (1.5), (3.3), (3.5), (3.7), (4.5), and (8.5) to (8.7) added, p. 684, § 1, effective May 29. **L. 97:** (3.3) and (9) amended, p. 601, § 1, effective August 6.

ANNOTATION

This section is merely definitional and proscribes nothing. People v. Morton, 189 Colo. 198, 539 P.2d 1255 (1975).

The use of pen registers is not governed by the wiretapping statute. People v. Wahl, 716 P.2d 123 (Colo. 1986).

Statements made by juvenile not protected oral communications under this act and fail the test established in Katz v. United States, 389 U.S. 347 (1967), where one who is speaking in the actual presence of a police officer has neither a subjectively nor an objectively reasonable expectation of privacy. People in Interest of A.W., 982 P.2d 842 (Colo. 1999).

However, later statements made by juvenile to parent were protected oral communications under this act where juvenile had a subjectively and objectively reasonable expectation of privacy after receiving assurances from the police officer that "nothing" was behind a two-way mirror and that the officer would not be listening in. People in Interest of A.W., 982 P.2d 842 (Colo. 1999).

Applied in In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981); People v. Velasquez, 641 P.2d 943 (Colo. 1982).

16-15-102. Ex parte order authorizing the interception of wire, oral, or electronic communications.

(1) (a) An ex parte order authorizing or approving the interception of any wire, oral, or electronic communication may be issued by any judge of competent jurisdiction of the state of Colorado upon application of the attorney general or a district attorney, or his or her designee if the attorney general or district attorney is absent from his or her jurisdiction, showing by affidavit that there is probable cause to believe that evidence will be obtained of the commission of any one of the crimes enumerated in this subsection (1) or that one of said enumerated crimes will be committed:

(I) Murder in the first or second degree as defined in sections 18-3-102 and 18-3-103, C.R.S.;

(II) Kidnapping in the first or second degree as defined in sections 18-3-301 and 18-3-302, C.R.S.;

(III) Gambling, meaning professional gambling, as defined in section 18-10-102 (8), C.R.S., and subject to prosecution under section 18-10-103 (2), C.R.S.;

(IV) Robbery as defined in section 18-4-301, C.R.S., aggravated robbery as defined in section 18-4-302, C.R.S., or burglary in the first or second degree as defined in sections 18-4-202 and 18-4-203, C.R.S.;

(V) Bribery as defined in section 18-8-302, C.R.S., compensation for past official behavior as defined in section 18-8-303, C.R.S., attempt to influence a public servant as defined in section 18-8-306, C.R.S., designation of supplier as defined in section 18-8-307, C.R.S., or misuse of official information as defined in section 18-8-402, C.R.S.;

(VI) Dealing in controlled substances as covered by part 1 of article 280 of title 12 or part 2 of article 80 of title 27, as such offenses are subject to prosecution as felonies;

(VII) Crimes dangerous to life, limb, or property, meaning extortion, as defined as menacing by use of a deadly weapon in section 18-3-206, C.R.S., theft by means other than the use of force, threat, or intimidation as defined in section 18-4-401 (5), C.R.S., arson as defined in sections 18-4-102 to 18-4-105, C.R.S., as these offenses are subject to prosecution as felonies, assault in the first or second degree as defined in sections 18-3-202 and 18-3-203, C.R.S.;

(VII.5) Escape, as defined in section 18-8-208, C.R.S., or introducing contraband in the first or second degree, as defined in sections 18-8-203 and 18-8-204, C.R.S.;

(VIII) A criminal conspiracy as defined in section 18-2-201, C.R.S., to commit any of the aforementioned enumerated crimes;

(IX) Limited gaming as defined in article 30 of title 44 or in violation of article 20 of title 18; or

(X) Human trafficking as described in section 18-3-503 or 18-3-504.

(b) Anything to the contrary notwithstanding, an ex parte order for wiretapping or eavesdropping may be issued only for a crime specified in this subsection (1) for which a felony penalty is authorized upon conviction.

(c) For the purposes of paragraph (a) of this subsection (1):

(I) The district attorney shall designate the assistant district attorney or the chief deputy district attorney; and

(II) The attorney general shall designate either the chief deputy attorney general or the deputy attorney general of the criminal section of the office of the attorney general.

(d) A court shall not issue an ex parte order for wiretapping or eavesdropping to obtain any wire, oral, or electronic communication that relates to an investigation into a legally protected health-care activity, as defined in section 12-30-121 (1)(d).

(2) Each application for an order authorizing or approving the interception of any wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) A complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including: Details as to the particular offense that has been, is being, or is about to be committed, except as provided in subsection (17) of this section, a particular description of the nature and location of the facilities from which, or the place where, the communication is to be intercepted; a particular description of the type of communication sought to be intercepted; and the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, there shall be required a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) A complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain those results.

(3) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(4) Upon an application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of any wire, oral, or electronic communication within the territorial jurisdiction of the court in which the judge is sitting and outside that jurisdiction but within the United States in the case of a mobile interception device, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that a person is committing, has committed, or is about to commit a particular offense enumerated in this section;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous;

(d) Except as provided in subsection (17) of this section, there is probable cause for belief that the facilities from which or the place where the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of an offense or are leased to, listed in the name of, or commonly used by the person alleged to be involved in the commission of the offense.

(5) Each order authorizing or approving wiretapping or eavesdropping shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) Except as otherwise provided in subsection (17) of this section, the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) The period of time during which an interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication is first obtained.

(6) An order entered under this section may not authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization nor in any event longer than thirty days. Such thirty-day period begins the first day on which the investigative or law enforcement officer begins to conduct an interception under the order or ten days after the order is entered, whichever occurs earlier. An extension of an order may be granted but only upon application for an extension made in accordance with subsection (2) of this section and the court making the findings required by subsection (4) of this section. The period of an extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and each extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception under this section, and must terminate upon attainment of the authorized objective, or in any event in thirty days. No more than three extensions may be granted for any order entered under this section. In the event that the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception made pursuant to this section may be conducted in whole or in part by government personnel or by an individual operating pursuant to

a contract with the government and acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(7) If an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such report shall be made at such times as the judge may require.

(8) (a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this section shall, if possible, be recorded on tape, wire, or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection (8) shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon expiration of the period of the order, or extension thereof, the recording shall be made available to the judge issuing the order and sealed under his directions. Custody of the recording shall be wherever the judge orders. A recording shall not be destroyed except upon an order of the judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of this section. The presence of the seal provided for by this subsection (8), or a satisfactory explanation for the absence thereof, is a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived under this section.

(b) Applications made and orders granted under this section shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and shall not be destroyed except on order of the judge to whom presented, and in any event shall be kept for ten years. Information obtained pursuant to a court order authorizing interception of wire, oral, or electronic communications shall not be used, published, or divulged except in accordance with the provisions of this article.

(c) Any violation of the provisions of this subsection (8) may be punished as contempt of court.

(d) Within a reasonable time, but not later than ninety days after the filing of an application for an order of approval under this section, which application is denied, or after the termination of the period of an order or extensions thereof, the judge to whom the application was presented shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion is in the interest of justice, notice of the following:

(I) The fact of the entry of the order or application;

(II) The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(III) The fact that during the period wire, oral, or electronic communications were or were not intercepted. The judge, upon the filing of a motion, may, in his discretion, make available to any such person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the matter required by this paragraph (d) may be postponed.

(9) The contents of any intercepted wire, oral, or electronic communication or the evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a state court, unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving this information.

(10) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state of Colorado, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, oral, or electronic communication or the evidence derived therefrom on the grounds that: The communication was unlawfully intercepted; the order of authorization or approval under which it was intercepted is insufficient on its face; or the interception was not made in conformity with the order of authorization or approval. This motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication or the evidence derived therefrom shall not be received as evidence. The remedies and sanctions provided for in this section with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this section involving such communications.

(11) In addition to any other right to appeal, the state of Colorado has the right to appeal from an order granting a motion to suppress made under subsection (10) of this section, or the denial of an application for an order of approval, if the person making or authorizing the application certifies to the judge granting the motion or denying an application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(12) Any investigative or law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of any wire, oral, or electronic communication or the evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that this disclosure is appropriate in the proper performance of the official duties of the officer making or receiving the disclosure.

(13) Any investigative or law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of any wire, oral, or electronic communication or the evidence derived therefrom may use those contents to the extent the use is appropriate in the official performance of his official duties.

(14) Any person who has received, by any means authorized by this section, any information concerning a wire, oral, or electronic communication or any evidence derived therefrom, intercepted in accordance with the provisions of this section, may disclose the contents of that communication or derivative evidence while giving testimony in any criminal proceeding in any court of this state or in a grand jury proceeding.

(15) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this section shall lose its privileged character.

(16) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized in this section, intercepts wire, oral, or electronic communications relating to an offense other than one specified in the order of authorization or approval, the contents thereof and the evidence derived therefrom may be disclosed or used as provided in subsections (12) and (13) of this section only if an offense other than one specified in the order is an offense which constitutes a felony under Colorado statutes. The contents thereof and the evidence derived therefrom, as authorized by this section, may be used under subsection (14) of this section only when authorized or approved by a judge of competent jurisdiction when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this section. This application shall be made as soon as practicable.

(17) (a) The requirements of paragraph (b) of subsection (2), paragraph (d) of subsection (4), and paragraph (b) of subsection (5) of this section relating to the specification of the facilities from which, or the place where, the communications are to be intercepted do not apply if:

(I) In the case of an application with respect to the interception of an oral communication:

(A) The application is made by an investigative or law enforcement officer and is approved by the attorney general or the district attorney of the district in which the application is sought;

(B) The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(C) The judge finds that such specification is not practical; and

(II) In the case of an application with respect to the interception of a wire or electronic communication:

(A) The application is made by an investigative or law enforcement officer and is approved by the attorney general or the district attorney of the district in which the application is sought;

(B) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(C) The judge finds that such purpose has been adequately shown.

(b) An interception of a communication under an order with respect to which the requirements of paragraph (b) of subsection (2), paragraph (d) of subsection (4), and paragraph (b) of subsection (5) of this section do not apply pursuant to the provisions of paragraph (a) of this subsection (17) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order pursuant to subparagraph (II) of paragraph (a) of this subsection (17) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

(18) (a) Any other provision of this article notwithstanding, any investigative or law enforcement officer specifically designated by the attorney general or a district attorney may intercept wire, oral, or electronic communications for a period not to exceed twenty-four hours under the following circumstances:

(I) When an emergency situation exists that involves the holding of hostages or kidnapping by the use of physical force, a deadly weapon, or an explosive device, and there is imminent danger of serious bodily injury or death to any person, or where one or more suspects in a felony crime have barricaded themselves in a building and there is a reasonable belief that one or more of the suspects is armed with a deadly weapon or explosive device; and

(II) There are reasonable and sufficient grounds present upon which an order could be entered to authorize such interception.

(b) Any emergency interception shall terminate upon attainment of the authorized objective as set forth in subparagraph (I) of paragraph (a) of this subsection (18) or at the end of the twenty-four-hour period, whichever comes first.

(c) The investigative or law enforcement officer designated pursuant to paragraph (a) of this subsection (18) and the official making such designation shall submit an application for the interception of wire, oral, or electronic communications to a judge of competent jurisdiction within the twenty-four-hour period described in paragraph (a) of this subsection (18). Such application shall be submitted regardless of whether or not the interception was terminated

within the twenty-four-hour period. Such application shall comply in all respects with the requirements of this section and sections 16-15-101, 16-15-103, and 16-15-104.

(d) If, after the application described in paragraph (c) of this subsection (18) is made, the application is denied, any interception shall immediately cease. In such case, all recordings shall be sealed by the court as soon as practicable, and any communication intercepted shall be treated as a communication which has been obtained in violation of section 18-9-305, C.R.S., and an inventory shall be served in accordance with this article. Any such communication shall not be admissible in any legal action against any person whose communication was intercepted.

(e) All provisions of this article shall be applicable with respect to the execution of any interception under emergency circumstances.

(f) Repealed.

Source: L. 71: p. 486, § 2. **C.R.S. 1963:** § 39-24-2. **L. 72:** pp. 269, 270, §§ 1, 2. **L. 75:** (1)(a)(VII) amended, p. 631, § 3, effective July 1. **L. 81:** (1)(a)(VI) amended, p. 737, § 19, effective July 1. **L. 85:** (1)(a)(III) amended, p. 1360, § 11, effective June 28. **L. 87:** (1)(a)(VII) amended and (1)(a)(VII.5) added, p. 615, § 3, effective May 8. **L. 88:** (2)(b), (2)(e), IP(4), (4)(d), (5)(b), (6), (8)(a), (8)(b), (8)(d)(III), (9), (10), and (12) to (16) amended and (17) added, p. 686, § 2, effective May 29. **L. 91:** IP(1)(a), IP(2), and IP(4) amended and (18) added, p. 433, § 1, effective May 18; (1)(a)(IX) added, p. 1581, § 6, effective June 4. **L. 92:** (1)(a)(IX) amended, p. 2172, § 21, effective June 2. **L. 95:** (18)(f) repealed, p. 463, § 4, effective July 1. **L. 2007:** (18)(a)(I) amended, p. 327, § 1, effective April 2. **L. 2008:** IP(1)(a) and (6) amended and (1)(c) added, p. 47, § 1, effective August 5. **L. 2012:** (1)(a)(VI) amended, (HB 12-1311), ch. 281, p. 1617, § 35, effective July 1. **L. 2017:** (1)(a)(IX) amended and (1)(a)(X) added, (HB 17-1040), ch. 69, p. 217, § 1, effective September 1. **L. 2018:** (1)(a)(IX) amended, (SB 18-034), ch. 14, p. 239, § 12, effective October 1. **L. 2019:** (1)(a)(VI) amended, (HB 19-1172), ch. 136, p. 1673, § 87, effective October 1. **L. 2023:** (1)(d) added, (SB 23-188), ch. 68, p. 246, § 12, effective April 14.

Cross references: For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

ANNOTATION

I. General Consideration.

II. Application.

III. Order.

V. Suppression of Contents and Evidence.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Right of Privacy and Emotional Distress in Colorado", see 43 U. Colo. L. Rev. 147 (1971). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with electronic beepers and state wiretap statutes, see 62 Den. U. L. Rev. 159, 186 (1985). For article, "Discovery and Admissibility of a Sound Recordings and Their Transcripts", see 14 Colo. Law. 999 (1985).

Annotator's note. Since § 16-15-102 is similar to repealed § 40-4-30, C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

Section held constitutional. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Section is not an unconstitutional invasion of privacy. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Because the benefits to society from crimes solved or frustrated by the use of wiretapping outweigh the limited invasion. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Federal authorities given great weight in interpreting subsection (8)(a). Because subsection (8)(a) is closely patterned after and designed to implement a federal wiretapping statute, federal authorities explaining the federal statute should be accorded great weight in interpreting subsection (8)(a). People v. Baez-Lopez, 2014 CO 26, 322 P.3d 924.

Problem of electronic surveillance. The reason for the seriousness of the problem arises not from the fact that particular conversations are not specifically described and specifically authorized, but rather from the unmanageability generally of electronic surveillance, for the area is peculiarly sensitive due to its effort to probe the thoughts of man who is the object of the search. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

This section allows law enforcement officers to intercept telephone communications after having obtained judicial authorization upon a showing of probable cause. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Court order to be scrutinized under stringent standards. A court order authorizing the wiretapping of telephonic communications must be scrutinized under the same stringent standards as other fourth amendment searches and seizures. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

Crime within scope of section. Where the crimes for which the defendant is charged (possession, conspiracy to possess, possession for sale, conspiracy to possess narcotic drugs for sale) have a minimum penalty of from 2 to 10 years in the state penitentiary, he falls within the scope of this section. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Monitoring conversations between husband and wife in visiting room of jail is not wiretapping or eavesdropping because such conversations are not within the statutory definitions of "wire communication" and "oral communication".

People v. Blehm, 44 Colo. App. 472, 623 P.2d 411 (1980).

Consensually overheard conversation not "eavesdropping". By the terms of § 18-9-304 (1)(a), a consensually overheard conversation is not eavesdropping. People v. Palmer, 652 P.2d 1092 (Colo. App. 1982).

Wiretap need not be used as last resort. Subsection (2)(c) does not require that wiretapping be used only as a last resort. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Agents to minimize interception of nonrelevant conversations. This section does not forbid the interception of all nonrelevant conversations, but rather instructs the agents to conduct surveillance in such a manner as to "minimize" the interception of such conversations. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Factors considered in determining whether such interceptions minimized. Factors to consider in determining whether the agents have acted reasonably to minimize the interception of nonrelevant conversations include: The nature and scope of the alleged criminal enterprise; the government's reasonable expectations as to the contents of, and parties to, the conversations; the degree of judicial supervision of the wiretap; the length of the conversations; the phase of the investigation; whether the parties used coded language; and the percentage of calls intercepted which are incriminating. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Whether warrantless police eavesdropping violates the fourth amendment depends on whether the defendant had a justified expectation of privacy at the time and place of the communication. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

II. APPLICATION.

Requirements for an ex parte order for a wiretap are to be interpreted in a practical and common sense fashion to effectuate their purpose. People v. Vazquez, 768 P.2d 721 (Colo. App. 1988).

Wiretapping need not be used only as a last resort. The requirements of subsection (4)(c) may be satisfied if the application informs the judge of the difficulties encountered and the lack of success or danger in using conventional investigatory methods. People v. Vazquez, 768 P.2d 721 (Colo. App. 1988).

Application showing probable cause required. An ex parte order for wiretapping or eavesdropping may be issued only upon application stating that there is probable cause to believe that evidence may be obtained. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Affidavits in support of a request for an ex parte wiretap order must establish that there is probable cause to believe that evidence of specific enumerated crimes will be obtained through the substantial intrusion upon the individual's privacy. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

An interception order may be issued only after a judge of competent jurisdiction has determined that specific grounds exist which justify the use of the intercepting devices.

People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Supporting affidavit for wiretap order serves same function as affidavit used to establish probable cause for search warrant. People v. Wahl, 716 P.2d 123 (Colo. 1986).

Aguilar-Spinelli test applicable under section. The standards of probable cause for issuance of a search warrant based on information given to an affiant police officer by an unidentified informant as set forth in the Aguilar-Spinelli test are applicable under this section. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Under the Aguilar-Spinelli test, the affidavit must provide sufficient underlying circumstances to enable the magistrate to determine independently whether there is probable cause to believe that illegal activity is being carried on in the place to be searched and must set forth sufficient facts to allow the magistrate to determine independently that the informant is credible or his information reliable. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

Probable cause ceases to exist when it is no longer reasonable to presume that the criminal activities are still being carried on in the place to be searched. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

Element of time is crucial to determination of existence of probable cause; if information provided the issuing magistrate does not reasonably demonstrate that the suspect is continuously engaged in criminal activity, a warrant based on dated, or "stale", evidence is invalid. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

Fact that magistrate was not in his regular office when he authorized search, and made himself readily available to law enforcement officers, did not alter his character as a neutral and detached magistrate. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

Authorization sustained where affidavit established probable cause despite its errors. Even though a substantial amount of information in the affidavit is either extraneous or innocuous, and thus could not serve alone as the basis for a determination of probable cause, and included in the affidavit is some information which is allegedly erroneous, if after striking this information probable cause still exists, the wiretap authorization must be sustained. People v. Montoya, 44 Colo. App. 234, 616 P.2d 156 (1980).

The constitutional requirement that probable cause be reduced to writing is met regardless of any provision within the wiretap statute allowing the judge to take additional testimony. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Identity of person allegedly committing offense must be included in application or affidavit. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

District attorney need not personally make application for supplemental use. There is no doubt that the district attorney must personally initiate the wiretap, and that

he must apply personally for any extension of the duration of the wiretap; however, the provision for supplemental use contains no such requirement. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Subsection (1)(a) requires the attorney general or an elected district attorney to personally authorize an application to initiate or extend a wiretap but does not require the elected official to personally prepare or submit the application. People v. O'Hara, 240 P.3d 283 (Colo. App. 2010), aff'd, 2012 CO 18, 271 P.3d 503.

Application to inform judge of difficulties of other methods. The requirements of this section are satisfied if the application informs the authorizing judge of the difficulties encountered, and the lack of success in using conventional investigatory methods. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

III. ORDER.

The officer is required to obtain a court order before the interception begins. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

This section calls for specific findings and restrictions after careful scrutiny of the application by the judge to whom the application is presented. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

The wiretap statute authorizes the judge to issue an order for interception of communications if he determines from the facts submitted that normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

An authorization order will impose strict limitations on the officer who is to execute the authorization. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

It is not a general warrant or roving commission to seize any and all conversations coming into the area covered by the device. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Order authorizing wiretapping must specify the period of time in which an interception is authorized, including a statement as to whether the interception automatically terminates when the described communication is first obtained; however, there is no requirement that specific findings be set forth detailing why the order does not so automatically terminate. Such an order may not, however, continue longer than necessary to achieve the objective of the authorization and is limited to 30 days, unless extended. People v. Vazquez, 768 P.2d 721 (Colo. App. 1988).

The wiretapping must cease when the objective is attained, and there is an overall 30 day limitation which may be extended for an additional 30 days should the judge make new findings sufficient to uphold an original authorization. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

More latitude given where target is conspiracy. Where the target of the wiretap is a large scale conspiracy, courts must be given more latitude to formulate a

sufficiently broad wiretap order. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Such as longer duration. Where there is continuing conduct and one of the objectives of the wiretap is to identify the scope and participants of the conspiracy, the permissible duration of the wiretap is necessarily longer than where the investigation concerns only a single criminal episode. People v. Gable, 647 P.2d 246 (Colo. App. 1982).

Order for wiretapping in connection with alleged gambling violation permissible only when the person involved has been previously convicted of professional gambling under § 18-10-103 twice within five years so that a felony is authorized upon conviction as required by subsection (1)(b). United States v. McNulty, 729 F.2d 1243 (10th Cir. 1983).

The crime of "dealing in controlled substances" may be defined by its relation to part 3 of article 22 of title 12 and it is sufficient to serve as a basis for a wiretapping order under this section. People v. Sprowl, 718 P.2d 524 (Colo. 1986).

Interceptions by personnel of agencies not specifically identified by a wiretap order did not violate the wiretap order so long as such personnel are under the supervision and control of the authorized agency. People v. Ingram, 684 P.2d 243 (Colo. 1984).

Wiretap order failing to specify that a pen register would be used is valid nonetheless. People v. Wahl, 716 P.2d 123 (Colo. 1986).

Definition of "sealed" or "seal" under subsection (8)(a). Subsection (8)(a) requires immediate sealing under the authorizing judge's direction to prevent tampering but does not require the judge's physical involvement or any specific manner of sealing. Subsection (8)(a) does not require an official seal on recordings. Further, subsection (8)(a) does not require the sealing directions to be delivered in written form. Prosecution may present alternate forms of proof as to judge's sealing directions when the directions are not set out in written directions or orders. People v. Baez-Lopez, 2014 CO 26, 322 P.3d 924.

IV. USE OF CONTENTS AND EVIDENCE.

A. In General.

B. Of Other Offenses.

A. In General.

Information usable in proper performance of officer's duties. Information obtained as a result of authorized surveillance may be used or disclosed by the officer to the extent appropriate to the proper performance of his duties. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Subsection (9) applies to a hearing that is ancillary to, and distinct from, a grand jury proceeding. The prosecution must comply with subsection (9) when adjudicating the applicability of crime-fraud exception to the attorney-client privilege when it intends to present the attorney-client records and conversations to the grand jury.

In re 2015-2016 Jefferson County Grand Jury, 2018 CO 9, 410 P.3d 53.

Recording played on telephone handset before every telephone call placed by a prisoner using that telephone stating that the call would be recorded, and the short jail orientation at which prisoners agreed to read and abide by rules contained in a handbook, which stated that outgoing telephone calls would be recorded, provided notice to the defendant that his calls would be recorded. When a prison inmate is required to permit monitoring of telephone calls as a condition of using prison telephones, the prisoner impliedly consents if he or she has notice of monitoring and still places calls on prison telephones. People v. Mares, 263 P.3d 699 (Colo. App. 2011).

B. Of Other Offenses.

This section extends to offenses different from those named within the authorization order; it does not extend to persons other than those named. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Use of information of other offenses permitted. It would be the height of unreasonableness to distinguish between information specifically authorized and that which is unanticipated and which develops in the course of an authorized search, and thus irrational to hold that officers authorized to listen to conversations about one offense, upon learning of another offense, must at once close down the project and not use the information to prevent the other offense since the information is tainted. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

It would be unreasonable and unrealistic to suppress evidence of other crimes, which was obtained through valid interception by wiretap, simply because they are not designated originally in the statute. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

But courts should not hesitate to suppress evidence obtained where the investigation of designated offenses is used as a subterfuge to obtain evidence not otherwise available. Good faith requirements, as well as the statutory requirements of probable cause, are sufficient safeguards of the defendants' rights in this regard. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Evidence of a nondesignated offense obtained in the course of a lawful wiretap may be later used, if the offense constitutes a felony, and if such use is authorized and approved by a judge of competent jurisdiction. People v. Milnes, 186 Colo. 409, 527 P.2d 1163 (1974).

Sexual assault is not included in the list of crimes for which an eavesdropping authorization order is available and no implied exception can be read into the statute. People in Interest of A.W., 982 P.2d 842 (Colo. 1999).

Provisions of this article should not be so narrowly interpreted as to enable offenders against the laws of a state to find permanent asylum in another state. Glenn v. Baker, 184 Colo. 211, 519 P.2d 349 (1974).

Time for filing application, as to other offenses. This section requires that application be made to the court as soon as

practicable after information as to offenses other than those specified in the authorization are intercepted. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

V. SUPPRESSION OF CONTENTS AND EVIDENCE.

Prerequisites to application of subsection (10). For the exclusionary application of subsection (10) to be operative, it must not only be at the behest of an aggrieved party, but, critically, it must be shown that the communication was unlawfully intercepted. Moreover, in order to make that determination, one must look to the prohibitory statutes on wiretapping and eavesdropping. People v. Morton, 189 Colo. 198, 539 P.2d 1255 (1975); People v. Richardson, 2014 COA 50, 350 P.3d 905.

Subsection (10) does not require the suppression of an aggrieved person's statements simply because they were derived from the illegally intercepted communications, but instead because the party who had illegally intercepted has been the one to "derive" other evidence therefrom. People in Interest of A.W., 982 P.2d 842 (Colo. 1999).

Consensual eavesdropping not an "unlawful interception". Since §§ 18-9-303 and 18-9-304 do not prohibit or make unlawful consensual recorded eavesdropping, where one party to the conversation agrees to the recording, there is no "unlawful interception" within the meaning of subsection (10). Said subsection (10) is, therefore, not applicable, and the evidence should not be suppressed. People v. Morton, 189 Colo. 198, 539 P.2d 1255 (1975).

1991 amendment to subsection (1) did not change holding in People v. Morton that consensual eavesdropping is not an unlawful interception that must be suppressed under subsection (10). People v. Watson, 53 P.3d 707 (Colo. App. 2001).

Because defendant was an aggrieved person within the meaning of subsection (1), defendant had standing to move for suppression of a communication with a minor on the basis that the communication was unlawfully intercepted because it lacked valid third-party consent. People v. Richardson, 2014 COA 50, 350 P.3d 905.

Eavesdropping becomes an "unlawful interception" when consent is secured by fraudulent inducement. People v. Rivera, 765 P.2d 624 (Colo. App. 1988).

Unlawfully intercepted communications may not be received into evidence for any reason, including for impeachment purposes. People in Interest of A.W., 982 P.2d 842 (Colo. 1999).

Eavesdropping statutes require use of subjective and objective tests to determine whether a person's conversation qualifies as protected oral communications. People v. Hart, 787 P.2d 186 (Colo. App. 1989).

Tape recording of defendant's conversation with accomplice made without his knowledge in the back of police car could properly be considered since, irrespective of defendant's subjective belief that his conversation while in the police vehicle was private, such belief was

unreasonable and unjustified. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Wiretap of crimes excluded from section may be suppressed. A finding that lesser crimes are not intended by congress to be included in the class of crimes for which a wiretap can be authorized does not render the entire state statute invalid, but is merely grounds for suppression with a recognition to restrict application of the statute to crimes such as those with which a defendant is charged. People v. Martin, 176 Colo. 322, 490 P.2d 924 (1971).

Right to suppress not impaired by grant of immunity. A grand jury witness has a statutory right to seek the suppression of intercepted communications as well as evidence derived therefrom, and this right is not impaired by the court's grant of transactional immunity since, while such immunity adequately safeguards the witness's privilege against self-incrimination, it does not protect the witness's privacy interest in the contents of the intercepted communications. In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981).

Discovery of documents supporting wiretap order cannot be withheld after contempt proceedings are instituted against grand jury witnesses who refuse to testify, claiming questions are based upon information obtained by means of illegal wiretap. Prior to time grand jury witnesses are cited for contempt, adequate protection is afforded witnesses by the requirement that the court examine all facts before imposing contempt sanction. Westerberg v. District Court, 181 Colo. 10, 506 P.2d 746 (1973).

Suppression hearing prematurely granted. Where no showing has been made that the court order which permitted electronic surveillance was invalid or was not properly followed, and what witnesses assert is a right to a hearing on a wiretap that might be illegal, and to suppress intercepted contents that might be used in the future in some manner, an order granting the witnesses a suppression hearing is premature and subject to prohibition. People ex rel. Dunbar v. District Court, 179 Colo. 321, 500 P.2d 819 (1972).

Supreme court has jurisdiction under subsection (11) over appeal from district court order which granted motion to suppress. People v. Wahl, 716 P.2d 123 (Colo. 1986).

Clerical errors do not invalidate a wiretap application, wiretap order, or a letter of inventory notice. People v. Gallegos, 251 P.3d 1056 (Colo. 2011).

Describing the results obtained by the wiretap in an affidavit for extension is sufficient; the results do not need to be included in the application for the extension. People v. Gallegos, 251 P.3d 1056 (Colo. 2011).

Since progress reports are permissive under this section, the sufficiency of any reports required by the court is left to the discretion of the judge. People v. Gallegos, 251 P.3d 1056 (Colo. 2011).

Although the district attorney did not timely provide defense counsel with copies of the application, affidavits, and orders for wiretap, there was no prejudice to defendant since defendant was able to

timely file a motion to suppress. People v. Gallegos, 251 P.3d 1056 (Colo. 2011).

Sufficient evidence that recordings were sealed and preserved in a manner consistent with subsection (8)(a). Detective removed wiretap recordings from secure server room, initialed discs, and placed discs in a drug enforcement administration (DEA) self-sealing plastic evidence bag in the DEA evidence vault. This section does not require a written sealing order, and there was uncontroverted evidence that detective followed judge's oral directions relating to sealing evidence. People v. Baez-Lopez, 2014 CO 26, 322 P.3d 924.

16-15-103. Order may direct others to furnish assistance.

An order authorizing the interception of a wire, oral, or electronic communication shall, upon request of the applicant, direct that a provider of wire or electronic communication service shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service furnishing these facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

Source: L. 72: p. 271, § 3. **C.R.S. 1963:** § 39-24-3. **L. 88:** Entire section amended, p. 690, § 3, effective May 29.

16-15-104. Reports to state court administrator and attorney general.

(1) All courts having jurisdiction to issue orders under section 16-15-102 shall submit to the state court administrator reports, as prescribed by the chief justice of the supreme court of Colorado, on the number of applications for orders permitting wiretapping or eavesdropping, whether the applications were granted or denied, the period for which an interception was authorized, and whether any extensions were granted on the original order.

(2) (Deleted by amendment, L. 98, p. 726, § 6, effective May 18, 1998.)

(3) District attorneys shall report annually to the attorney general information as to the number of applications made for orders permitting the interception of wire, oral, or electronic communications; the offense specified in the order or application; the nature of the facilities from which, or the place where, communications were to be intercepted; a general description of the interceptions made under any order or extension, including the nature and frequency of incriminating communications intercepted, the nature and frequency of other communications intercepted, the number of persons whose communications were intercepted, and the nature,

amount, and cost of the manpower and other resources used in the interceptions; the number of arrests resulting from interceptions made under such order or extension and the offenses for which arrests were made; the number of motions to suppress made with respect to such interceptions and the number granted or denied; the number of convictions resulting from the interceptions and the offenses for which the convictions were obtained; and a general assessment of the importance of the interceptions. These reports shall be submitted to the attorney general by February 1 of each year and shall include all orders and applications made during the preceding year.

(4) Repealed.

Source: L. 72: p. 271, § 3. **C.R.S. 1963:** § 39-24-4. **L. 88:** (3) amended, p. 690, § 4, effective May 29. **L. 98:** (2) and (4) amended, p. 726, § 6, effective May 18. **L. 2001:** (4) repealed, p. 1175, § 2, effective August 8.

CRIMINAL ACTIVITY INFORMATION

ARTICLE 15.5

Formal Requests for Criminal Activity Information from Public Utilities

16-15.5-101. Definitions.

16-15.5-102. Formal written request for information relating to specific criminal activity.

16-15.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Life-threatening situation" means a circumstance in which a person is causing or has caused or is threatening to cause serious bodily injury to another person or persons, including a situation in which a person has taken another person or persons hostage.

Source: L. 90: Entire article added, p. 937, § 1, effective April 3.

16-15.5-102. Formal written request for information relating to specific criminal activity.

(1) Except as otherwise provided in subsection (2) of this section, upon a receipt of a formal written request for information about a particular individual in connection with a life-threatening situation made pursuant to this section by a chief of police, an elected district attorney, the state attorney general, a sheriff, or the director of the Colorado bureau of investigation, an authorized representative of a fixed public utility shall, as soon as possible, provide to the person making such request the following information about the individual named in the formal written request, including and limited to the name or names used, the address or addresses used, and the nonpublished number. Such requests shall be made during regular business hours, whenever practicable.

(2) Notwithstanding the provisions of subsection (1) of this section, if the need for information about a particular individual in connection with a life-threatening situation arises at a time other than regular business hours, a law enforcement officer listed in subsection (1) of this section or, if such officer is unavailable, the next officer in command, may orally request and obtain such information; except that a formal written request shall be submitted in accordance with subsection (1) of this section by the end of the next working day for the law enforcement agency.

(3) A formal written request for information made pursuant to this section shall be returned to the district court for review in the judicial district within which the formal written request was made. Such return shall be made within seventy-two hours after the issuance of the formal written request for information.

(4) The public utilities and local law enforcement agencies shall establish a procedure for obtaining information based on oral requests. A fixed public utility or authorized representative thereof which responds to a formal written or oral request made pursuant to this section shall not be liable to any person or entity for providing the information requested absent a showing of willful, wanton, or malicious intent.

Source: L. 90: Entire article added, p. 937, § 1, effective April 3.

ARTICLE 15.7

Crime Stopper Organizations

16-15.7-101. Legislative declaration.

16-15.7-102. Definitions.

16-15.7-103. Requirements for articles of incorporation of crime stopper organizations.

16-15.7-104. In camera review - confidentiality - records and information - criminal penalty.

16-15.7-101. Legislative declaration.

The general assembly finds that a significant number of criminal offenders remain at large in this state because law enforcement agencies often lack information concerning criminal activity. In many instances private citizens have information that, if known to law enforcement agencies, would lead to the detection and apprehension of such offenders. Private, nonprofit crime stopper organizations that offer rewards for such information have been successful at encouraging some citizens to come forward; however, even with the offer of a reward, many citizens do not come forward because they fear involvement and shun publicity. In order to remedy this situation and to increase the effectiveness of crime stopper organizations, the general assembly finds and declares that it is appropriate to provide for the anonymity of any person who provides information concerning criminal activity to a crime stopper organization and to provide for the confidentiality of crime stopper organization records.

Source: L. 94: Entire article added, p. 1808, § 1, effective June 1.

16-15.7-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Crime stopper organization" means a private, nonprofit organization:

(a) Whose primary purposes are to accept donations for the payment of rewards to persons who provide information concerning criminal activity and to forward such information to appropriate law enforcement agencies;

(b) Is subject to the provisions of articles 121 to 137 of title 7, C.R.S.;

(c) Is held to be tax exempt by the United States internal revenue service; and

(d) Has complied with the requirements of section 16-15.7-103.

Source: L. 94: Entire article added, p. 1808, § 1, effective June 1. **L. 97:** (1)(b) amended, p. 763, § 32, effective July 1, 1998.

16-15.7-103. Requirements for articles of incorporation of crime stopper organizations.

(1) In addition to any other requirements for articles of incorporation imposed by articles 121 to 137 of title 7, C.R.S., the articles of incorporation for any crime stopper organization that elects to avail itself of the confidentiality provisions of this article shall provide that the organization shall:

(a) Establish a method to ensure that the identity of any person who provides information concerning criminal activity to the organization remains unknown to all persons and entities, including officers and employees of the organization;

(b) Establish a method to ensure that if the identity of any person who provides information becomes known to the crime stopper organization, whether through voluntary disclosure or by any other means, such identity is not further disclosed;

(c) Assist law enforcement agencies in the detection of crime and apprehension of criminal offenders by promptly forwarding information received concerning criminal acts to such agencies;

(d) Foster the detection of crime and encourage citizens to report information about criminal activity; and

(e) Encourage news and other media to promote local crime stopper organizations by informing the public of the functions and benefits of the organization.

Source: L. 94: Entire article added, p. 1809, § 1, effective June 1. **L. 97:** IP(1) amended, p. 763, § 33, effective July 1, 1998.

16-15.7-104. In camera review - confidentiality - records and information - criminal penalty.

(1) (a) A crime stopper organization may not be compelled to produce records concerning a report of criminal activity before a court or other tribunal except on the motion of a criminal defendant to the court in which the offense is being tried that the records or report contain impeachment evidence or evidence that is exculpatory to the defendant in the trial of that offense.

(b) On motion of a defendant pursuant to paragraph (a) of this subsection (1), the court may subpoena the records or report. The court shall conduct an ex parte in camera inspection of materials produced under subpoena to determine whether the materials contain impeachment evidence or evidence that is exculpatory to the defendant.

(c) If the court determines that the materials produced contain impeachment evidence or evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant. In the event the materials contain information which would identify the person who was the source of the evidence, the court shall ensure that such identity is not disclosed, unless the state or federal constitution requires the disclosure of that person's identity. The court shall execute an affidavit accompanying the disclosed materials swearing that, in the opinion of the court, the materials disclosed represent the impeachment or exculpatory evidence the defendant is entitled to receive under this section.

(d) The court shall return to the crime stoppers organization all materials produced under this subsection (1) which are not disclosed to the defendant. The crime stoppers organization shall retain such materials until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case.

(2) (a) Records and information of a crime stopper organization concerning criminal acts are confidential, and no person shall disclose such records or information. A crime stopper organization shall only be compelled to produce such records or information before a court or other tribunal pursuant to court order for an in camera review. Any such review shall be limited to an inspection of records and information which are relevant to the specific case pending before the court.

(b) Any person who knowingly or intentionally discloses confidential records or information in violation of the provisions of this subsection (2) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any criminal prosecution brought pursuant to the provisions of this subsection (2) shall be brought within five years after the date the violation occurred.

Source: L. 94: Entire article added, p. 1809, § 1, effective June 1. **L. 2002:** (2)(b) amended, p. 1498, § 153, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 15.8

Safe2tell Program

16-15.8-101 to 16-15.8-104. (Repealed)

Source: L. 2014: Entire article repealed, (SB 14-002), ch. 241, p. 889, § 1, effective August 6.

Editor's note: (1) This article was added in 2007. For amendments to this article prior to its repeal in 2014, consult the 2013 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) For current provisions concerning the safe2tell program, see part 6 of article 31 of title 24.

SENTENCING AND IMPRISONMENT

ARTICLE 16

Criminal Sentencing Act of 1967

16-16-101. Short title.
16-16-102. Definitions.
16-16-103. Place of confinement - extension of limits.

16-16-101. Short title.

This article shall be known and may be cited as the "Criminal Sentencing Act of 1967".

Source: L. 67: p. 882, § 1. **C.R.S. 1963:** § 39-22-1.

16-16-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Executive director" means the executive director of the department of corrections.

(2) "Facility" means any residential community treatment center, honor farm, preparole release center, or other correctional facility.

(3) "Immediate family" means a spouse, child (including stepchild, adopted child, or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(4) and (5) Repealed.

(6) "Warden" means the chief correctional officer at a correctional facility.

Source: L. 67: p. 882, § 2. **C.R.S. 1963:** § 39-22-2. **L. 76:** (6) amended, p. 532, § 10, effective April 9. **L. 77:** (1) amended, p. 903, § 7, effective August 1. **L. 79:** (1), (2), and (6) amended and (4) and (5) repealed, pp. 684, 705, §§ 18, 88, effective July 1. **L. 2010:** (1) and (6) amended, (SB 10-130), ch. 106, p. 356, § 2, effective April 15.

16-16-103. Place of confinement - extension of limits.

(1) The wardens, with the approval of the executive director, shall designate one or more facilities that may be physically separated from the correctional facilities and that may be used for the following purposes:

(a) Honor farm or camp;

(b) Agricultural, industrial, or vocational training or rehabilitation;

(c) Preparole center;

(d) Medical treatment or research center;

(e) Work-release residential center;

(f) Any other use or function properly connected with or in aid of the uses and purposes of correctional facilities.

(2) The executive director, in the exercise of his or her discretion, may extend the limits of confinement of any inmate in the following instances:

(a) Repealed.

(b) To work at paid employment or participate in a program of job training, only if:

(I) Representatives of labor organizations in the community in which the inmate will work or obtain employment are advised of such actions;

(II) Such paid employment will not result in the significant displacement of employed workers, or such inmates will not be utilized in skills, crafts, or trades in which there is a surplus of available labor in the community, or such inmates will not impair existing contracts for services;

(III) The rates of pay, hours, and other conditions of employment will be substantially comparable to those afforded others in the community for the performance of work of a similar nature.

(3) (a) Any inmate who is allowed to participate in such paid employment or in such job training for which a subsistence allowance is paid in connection with the job training shall pay

over to the executive director all moneys received from the paid employment or job training; except that the inmate may retain that part of the moneys so received that the executive director deems necessary for expenses connected with the employment or job training. These expenses shall include, but not be limited to, travel expenses, food expenses, clothing, tools, and safety equipment.

(b) The remainder of the moneys shall be disbursed by the executive director for the following purposes, in the order stated:

(I) To the state treasurer for the reasonable cost of the inmate's confinement as determined by the executive director;

(II) The support of the inmate's dependents, if any;

(III) The payment, either in full or ratably, of the inmate's obligations acknowledged by him in writing or which have been reduced to judgment;

(IV) The balance, if any, to the inmate upon his parole or discharge.

(c) The state of Colorado shall have a lien upon the wages or subsistence allowance of any such inmate who fails to comply with the provisions of this subsection (3).

(4) The extension of the limits of confinement by the executive director shall not for any purpose be considered to be parole as provided in part 2 of article 2 or article 22.5 of title 17, C.R.S.

Source: L. 67: p. 882, § 3. **C.R.S. 1963:** § 39-22-3. **L. 76:** IP(1), IP(2), (2)(a)(I), (2)(a)(II), (2)(a)(III), (3)(a), IP(3)(b), (3)(b)(I), and (4) amended, p. 532, § 11, effective April 9. **L. 77:** IP(2) and (3)(a) amended, p. 903, § 8, effective August 1. **L. 79:** IP(1) and (1)(f) amended, p. 684, § 19, effective July 1; (4) amended, p. 1635, § 25, effective July 19. **L. 84:** (4) amended, p. 524, § 3, effective July 1. **L. 96:** (2)(a) repealed, p. 1145, § 2, effective July 1. **L. 2000:** IP(2) and (3)(a) amended, p. 852, § 60, effective May 24. **L. 2010:** IP(1), IP(2), (3)(a), IP(3)(b), (3)(b)(I), and (4) amended, (SB 10-130), ch. 106, p. 356, § 3, effective April 15.

ANNOTATION

Applied in People v. Lucero, 654 P.2d 835 (Colo. 1982).

ARTICLE 17

Commutation of Sentence

16-17-101. Governor may commute sentence.

16-17-102. Application - character certificate - pardons.

16-17-103. Effect of pardon and commutation of sentence - definitions.

16-17-101. Governor may commute sentence.

The governor is hereby fully authorized, when he deems it proper and advisable and consistent with the public interests and the rights and interests of the condemned, to commute the sentence in any case by reducing the penalty in a capital case to imprisonment for life or for a term of not less than twenty years at hard labor.

Source: L. 1872: p. 123, § 1. **G.L.** § 875. **G.S.** § 999. **R.S. 08:** § 2043. **C.L.** § 809. **CSA:** C. 131, § 117. **CRS 53:** § 105-6-1. **C.R.S. 1963:** § 105-6-1. **L. 77:** Entire section amended, p. 891, § 1, effective July 1.

16-17-102. Application - character certificate - pardons.

(1) After a conviction, all applications for commutation of sentence or pardon for crimes committed must be accompanied by a certificate of the respective superintendent of the correctional facility, showing the conduct of an applicant during the applicant's confinement in the correctional facility, together with such evidences of former good character as the applicant is able to produce. Before the governor approves such application, it must be first submitted to the present district attorney of the district in which the applicant was convicted and to the judge who sentenced and the attorney who prosecuted at the trial of the applicant, if available, for such comment as they may deem proper concerning the merits of the application, so as to provide the governor with information upon which to base the governor's action. The governor shall make reasonable efforts to locate the judge who sentenced and the attorney who prosecuted at the trial of the applicant and shall afford them a reasonable time, not less than fourteen days, to comment on such applications. The requirements of this section are deemed to have been met if the persons to whom the application is submitted for comment do not comment within fourteen days after their receipt of the application or within such other reasonable time in excess of fourteen days as specified by the governor, or if the sentencing judge or prosecuting attorney cannot be located, are incapacitated, or are otherwise unavailable for comment despite the good-faith efforts of the governor to obtain their comments. Good character previous to conviction, good conduct during confinement in the correctional facility, the statements of the sentencing judge and the district attorneys, if any, and any other material concerning the merits of the application must be given such weight as seems just and proper to the governor, in view of the circumstances

of each particular case, with due regard for the reformation of the accused. The governor has sole discretion in evaluating said comments and in soliciting other comments the governor deems appropriate.

(2) The governor may grant pardons to a class of defendants who were convicted of the possession of up to two ounces of marijuana or possession of natural medicine as defined in section 44-50-103 (13). The requirements of subsection (1) of this section do not apply to defendants who were convicted of the possession of up to two ounces of marijuana or possession of natural medicine as defined in section 44-50-103 (13), but the governor may make any inquiry as deemed appropriate to seek any relevant information necessary from any person or agency to reach an informed decision.

Source: L. 1879: p. 63, § 1. **G.S.** § 1000. **R.S. 08:** § 2044. **C.L.** § 810. **CSA:** C. 131, § 118. **CRS 53:** § 105-6-2. **C.R.S. 1963:** § 105-6-2. **L. 76:** Entire section amended, p. 533, § 12, effective April 9. **L. 77:** Entire section amended, p. 892, § 1, effective June 3. **L. 79:** Entire section amended, p. 676, § 1, effective July 1; entire section amended, p. 684, § 20, effective July 1. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 859, § 95, effective July 1. **L. 2020:** Entire section amended, (HB 20-1424), ch. 184, p. 848, § 13, effective September 14. **L. 2025:** (2) amended, (SB 25-297), ch. 381, p. 2123, § 7, effective June 3.

ANNOTATION

Purported pardon not issued in compliance with procedures required by this section is invalid. People ex rel. Garrison v. Lamm, 622 P.2d 87 (Colo. App. 1980).

Colorado law does not recognize the existence of "implied pardons". People v. Wood, 999 P.2d 227 (Colo. App. 2000).

16-17-103. Effect of pardon and commutation of sentence - definitions.

(1) A pardon issued by the governor shall waive all collateral consequences associated with each conviction for which the person received a pardon unless the pardon limits the scope of the pardon regarding collateral consequences.

(2) If the governor grants a pardon or a request for commutation of sentence, the governor shall provide a copy of the pardon or commutation of sentence to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the individual's record in the Colorado crime information center that a pardon was issued or commutation of sentence was granted.

(3) For purposes of this section, "collateral consequences" means a penalty, prohibition, bar, disadvantage, or disqualification, however denominated, imposed on an individual as a result of the individual's conviction of an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral consequences" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

Source: L. 2013: Entire section added, (SB 13-123), ch. 289, p. 1540, § 3, effective May 24.

COSTS - CRIMINAL ACTIONS

ARTICLE 18

Costs in Criminal Actions

16-18-101. Costs in criminal cases.

16-18-102. Costs taxed against complainant.

16-18-103. When taxed against informant before grand jury.

16-18-104. Prosecuting witness before grand jury liable - when.

16-18-105. Enforcing judgment.

16-18-106. Electronic discovery in criminal cases task force - creation - purpose - membership - report - repeal.

16-18-101. Costs in criminal cases.

(1) The state shall pay the costs of criminal cases pursuant to section 13-3-104 if the defendant is acquitted or if the defendant is convicted and the court determines the defendant is unable to pay the costs.

(2) The costs of preliminary hearings, including any reporters' transcripts ordered by a defendant, must be paid pursuant to subsection (1) of this section. Unless otherwise ordered by the court, the prosecution shall pay for reporters' transcripts of preliminary hearings that are ordered by the prosecution.

(3) The department of corrections, from annual appropriations made by the general assembly, shall reimburse the county or counties in a judicial district for the costs of prosecuting any crime

alleged to have been committed by a person in the custody of the department. The county or counties shall certify the costs to the department, and upon approval of the executive director of the department, the department shall pay the costs. This subsection (3) applies to costs that are not otherwise paid by the state.

(4) The state shall pay the costs of a civil commitment trial and enhanced protective placement trial conducted pursuant to section 16-8.5-118, the costs of initiating a short-term certification pursuant to article 65 of title 27, and the costs of an independent examination and termination hearing conducted pursuant to section 27-65-202 or 25.5-10-508, including any reporters' transcripts ordered by a defendant. Unless otherwise ordered by the court, the prosecution shall pay for reporters' transcripts of preliminary hearings that are ordered by the prosecution.

Source: L. 1876: p. 53, § 1. **G.L.** § 349. **G.S.** § 422. **L. 1889:** p. 99, § 1. **R.S. 08:** § 1077. **C.L.** § 6593. **CSA:** C. 43, § 23. **CRS 53:** § 33-2-1. **L. 59:** p. 342, § 1. **C.R.S. 1963:** § 33-2-1. **L. 71:** p. 319, § 1. **L. 77:** (3) amended, p. 903, § 9, effective August 1. **L. 79:** (2) amended, p. 601, § 28, effective July 1. **L. 2026:** Entire section amended, (SB 26-149), ch. 142, p. 794, § 42, effective May 21.

ANNOTATION

Constitutionality. Statutes imposing liability for costs on a convicted defendant have been uniformly held to be constitutional. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

Costs are a creature of statute unknown to the common law. At common law there were no costs. Bd. of County Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893); Saunders v. People, 63 Colo. 241, 165 P. 781 (1917).

Section protects defendant. The provisions of this section are wise and beneficent. They extend ample protection to an indigent defendant. They afford him every facility for making a legitimate defense. Bd. of County Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893).

It refers to costs incurred by the prosecution and not those of the defendant. It is only in case of the conviction of the defendant and his inability to pay the costs, or of his acquittal, that costs are made a charge against the state; so that there is no difficulty in supposing that the costs referred to are the costs incurred by the prosecution, and not those incurred by the defendant. Bd. of County Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893); Saunders v. People, 63 Colo. 241, 165 P. 781 (1917).

Costs in criminal cases must be taxed according to law and not as per

agreement between court and convict, or between the prosecuting officer and the convict. Murphy v. People, 3 Colo. 147 (1876).

The costs in a criminal case must be taxed according to statutes and not according to any plea agreement. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

There is no limit to the amount of costs which may be incurred by the prosecution in a criminal case. This is left to the discretion of the prosecutor and the court. Parker v. People, 7 Colo. App. 56, 42 P. 172 (1895).

The general rule as to payment of costs may be avoided if the trial judge, in his discretion, determines that the defendant is unable to pay the costs. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

Differs from determination of indigency. Whether a presumably innocent defendant is declared indigent for the purposes of appointing counsel before he is brought to trial involves different considerations than the question of whether a convicted defendant may be charged with the costs expended by the state to secure his conviction. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

The sixth amendment of the constitution compels appointing counsel for indigent defendants but does not speak to whether convicted defendants of limited resources may be charged with the costs of their trial. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

The expenses of obtaining the testimony of witnesses for an indigent defendant must be paid by the state. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Arrest part of preliminary hearing. The arrest of one charged with crime under a capias issued by a justice, is part of the preliminary hearing before the magistrate. Bd. of County Comm'rs v. Camp, 48 Colo. 61, 108 P. 972 (1910).

Applied in People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

16-18-102. Costs taxed against complainant.

If any informer or complainant under a penal statute of this state, to whom the penalty or any part thereof, if recovered, is given, dismisses his suit or prosecution, or fails in the same, or willfully absents himself from trial or examination, he shall be adjudged to pay all costs accruing on such suit or prosecution, unless he is an officer whose duty it is to make and file the information or complaint; but in all cases of examination into any criminal charge before a county judge, where the party accused is discharged, and it appears to the judge before whom such examination was made that there was no reasonable ground for the complaint, or that it was maliciously entered, and in all cases where the complaining witness willfully absents himself from or fails to appear at such examination or trial, the county judge shall give judgment against the complainant for all costs of the examination or trial and shall issue execution thereon. Appeal

may be had in all such cases, as provided by law for the taking of appeals from judgments rendered in county courts.

Source: G.L. § 347. **G.S.** § 421. **L. 1893:** p. 93, § 1. **R.S. 08:** § 1078. **C.L.** § 6594. **CSA:** C. 43, § 24. **CRS 53:** § 33-2-2. **C.R.S. 1963:** § 33-2-2. **L. 64:** p. 220, § 45.

16-18-103. When taxed against informant before grand jury.

If any person complains to any grand jury of injury done to his person, or to any person of his household, or to his property, done by another, and upon hearing evidence of the charge it appears to the grand jury that the same is untrue, and that it was maliciously entered, it is the duty of the grand jury to return the facts into court, and the court shall thereupon tax the costs incurred in the investigation of the charge and enter judgment against the person who made the complaint for the amount thereof. In proceedings under this section, the action of the grand jury shall be determined by twelve members thereof.

Source: L. 1872: p. 96, § 1. **G.L.** § 344. **G.S.** § 418. **R.S. 08:** § 1079. **C.L.** § 6595. **CSA:** C. 43, § 25. **CRS 53:** § 33-2-3. **C.R.S. 1963:** § 33-2-3.

16-18-104. Prosecuting witness before grand jury liable - when.

If any person complains to any grand jury of injury done to his person, or to any person of his household, or to his property, and after indictment found does not appear in the court in which the indictment is pending to give evidence in that behalf against the party charged in the indictment, and the party charged is acquitted, or if proceedings under said indictment are discontinued for want of testimony, the court in which the indictment is pending shall give judgment against the person who preferred the complaint for the costs arising in that case. Upon the trial of the party charged in any such indictment, if he is acquitted and the jury finds that the proceeding was maliciously commenced, the court shall give judgment against the prosecuting witness for the costs arising in the case. Whenever any person complains, the grand jury shall cause the name of the person so complaining to be endorsed upon the indictment, with the words "prosecuting witness" added, and this shall be evidence that the complaint was made by the person whose name is thus endorsed.

Source: L. 1872: p. 96, § 2. **G.L.** § 345. **G.S.** § 419. **R.S. 08:** § 1080. **C.L.** § 6596. **CSA:** C. 43, § 26. **CRS 53:** § 33-2-4. **C.R.S. 1963:** § 33-2-4.

ANNOTATION

Prosecuting witness under jurisdiction of court for judgment for costs. Where an indictment was filed with the name of a witness listed as the prosecuting witness, and the jury returned a verdict of not guilty as to defendant, and by their verdict declared that the prosecution was maliciously begun, it was the duty of the court to enter a judgment against the prosecuting witness for costs, and such witness was so far a party to the prosecution as to give the court jurisdiction to render such judgment against her for costs. Leppel v. District Court, 33 Colo. 24, 78 P. 682 (1904).

16-18-105. Enforcing judgment.

Judgment rendered under the provisions of sections 16-18-103 and 16-18-104 may be enforced in the same manner as in other criminal cases.

Source: L. 1872: p. 97, § 3. **G.L.** § 346. **G.S.** § 420. **R.S. 08:** § 1081. **C.L.** § 6597. **CSA:** C. 43, § 27. **CRS 53:** § 33-2-5. **C.R.S. 1963:** § 33-2-5.

16-18-106. Electronic discovery in criminal cases task force - creation - purpose - membership - report - repeal.

(1) There is created the electronic discovery in criminal cases task force, referred to in this section as the "task force".

(2) The purpose of the task force is to study the costs and management of electronic discovery in criminal cases.

(3) The task force consists of the following members:

(a) The executive director of the Colorado district attorneys' council, or the director's designee, who is the chair of the task force;

(b) An attorney employed by the office of state public defender, who is the vice-chair of the task force and is appointed by the state public defender;

(c) An attorney employed by, or under contract with, the office of alternate defense counsel, appointed by the office of alternate defense counsel;

(d) An attorney within the antitrust unit of the attorney general's office, appointed by the attorney general;

(e) One information technology professional employed by the Colorado district attorneys' council, and one district attorney who has knowledge of electronic discovery, appointed by the executive director of the Colorado district attorneys' council;

(f) An information technology professional employed by the office of state public defender, appointed by the state public defender;

(g) One employee of a sheriff's office who has knowledge of electronic discovery, appointed by the executive director of the county sheriffs of Colorado;

(h) An employee of a police department who has knowledge of electronic discovery, appointed by the Colorado association of the chiefs of police;

(i) An employee of the Colorado state patrol who has knowledge of electronic discovery, appointed by the chief of the Colorado state patrol; and

(j) A county commissioner who has knowledge of local electronic discovery costs and local contracts related to electronic discovery, appointed by Colorado Counties, Incorporated.

(4) (a) The appointing authorities shall appoint members to the task force within thirty days after April 28, 2025, and promptly notify the executive director of the Colorado district attorneys' council of the appointment.

(b) The members appointed to the task force serve for the duration of the task force.

(c) Any vacancy occurring in the membership of the task force must be filled in the same manner as the original appointment.

(d) The members of the task force serve on the task force without compensation.

(5) The task force shall:

(a) Hold its first meeting on or before July 1, 2025, at a time and place determined by the chair of the task force;

(b) Meet at least once every month or more often, as directed by the chair of the task force;

(c) Communicate with and obtain input from law enforcement agencies, prosecutors, and defense attorneys throughout the state affected by the issues identified in subsection (6) of this section; and

(d) Create subcommittees, as needed, to carry out the duties of the task force. The subcommittees may consist, in part, of persons who are not members of the task force and who may vote on issues before the subcommittee but who are not entitled to a vote at task force meetings.

(6) The task force shall examine and gather information regarding the following:

(a) The current contracts in place between a law enforcement agency, a district attorney's office, the office of the attorney general, the office of state public defender, the office of alternate defense counsel, or, if available, private criminal defense attorneys and a vendor for electronic discovery services and information technology services, and include the following information regarding each contract:

(I) The length and expiration date of the contract;

(II) The cost of the contract;

(III) The terms, contracted services, licensing requirements, and any other key component of the contract; and

(IV) The expected future costs of the contract, if known;

(b) The amount and type of information placed into electronic discovery, including:

(I) The number, size, and type of files placed into the statewide electronic discovery portal that can be fully downloaded, accessed, or utilized through the electronic discovery portal;

(II) The number, size, and type of files that require prosecution and defense to use an outside vendor or website to fully download, access, or utilize the electronic discovery documents; and

(III) The number, size, and type of files that are placed on physical information technology devices such as flash drives, external hard drives, or physical copies in order for prosecution and defense to access and utilize the electronic discovery documents;

(c) The extent to which prosecutors, public defenders, alternate defense counsel attorneys, private defense attorneys, and pro se defendants have equitable access and the ability to review and utilize electronic discovery documents compared to other prosecutors, public defenders, alternate defense counsel attorneys, private defense attorneys, and pro se defendants, including:

(I) The time it takes to download information to view;

(II) The ability to search discovery documents electronically;

(III) The ability to see automated transcriptions, use artificial intelligence to generate transcriptions, or use any other tools to expedite review of discovery documents; and

(IV) The ability to identify which officer the body camera footage is from or the ability to identify where another source of video footage was taken from;

(d) How the amount and type of information placed into electronic discovery has changed since the creation of the statewide electronic discovery portal and, to the extent known, how electronic discovery is projected to change over the next ten years;

(e) The feasibility of creating a system that would make the electronic discovery process more efficient and equitable, avoid or minimize the need for outside vendors, and better control costs;

(f) The possible coordination of law enforcement agencies, prosecuting agencies, the office of state public defender, the office of alternate defense counsel, and private defense attorney contracts to make the electronic discovery process more efficient and equitable, avoid or minimize the need for outside vendors, and better control costs;

(g) The expected costs to the state, county, and local governments if changes are not made to the electronic discovery process over the next ten years; and

(h) Recommendations, including possible legislation, that would assist in:

(I) Controlling the cost of electronic discovery, including what contract or statutory changes are needed to allow for coordinated contract negotiation and payment to vendors by the state and local governments;

(II) Ensuring the flow of electronic discovery from one entity to another;

(III) Work efficiency, including saving time for employees who create or use electronic discovery;

(IV) Providing equitable access to and use of electronic discovery while protecting the work product and mental processes of prosecution and defense; and

(V) Considering procedural changes to existing statutes; Colorado rules of criminal procedure; or practices related to the discovery obligations of prosecution, defense, and law enforcement agencies to improve discovery compliance and processes.

(7) (a) Law enforcement agencies, district attorneys' offices, the office of the attorney general, the office of state public defender, and the office of alternate defense counsel shall share information requested by the task force regarding contracts, vendors, the electronic discovery process, and costs but shall not share information that would violate state or federal laws, regulations, or rules or that would violate the rights of a person involved in a criminal case.

(b) The entities specified in subsection (7)(a) of this section shall respond to requests from the task force for information pursuant to subsection (7)(a) of this section in good faith and provide information within a reasonable time.

(8) On or before November 1, 2025, the task force shall submit a report to the joint budget committee and the joint technology committee that, at a minimum, describes the following:

(a) The work and study of the task force;

(b) The findings and recommendations regarding the issues and topics considered by the task force as described in subsection (6) of this section; and

(c) Legislative proposals and expected related costs based on the task force's findings and recommendations.

(9) This section is repealed, effective January 1, 2027.

Source: L. 2025: Entire section added, (SB 25-240), ch. 143, p. 538, § 1, effective April 28.

ARTICLE 18.5

Restitution in Criminal Actions

16-18.5-101. Legislative declaration. (Repealed)

16-18.5-102. Definitions. (Repealed)

16-18.5-103. Assessment of restitution - corrective orders. (Repealed)

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16-18.5-113. Office of restitution services - created.

16-18.5-101. Legislative declaration. (Repealed)

Source: L. 2000: Entire article added, p. 1030, § 1, effective September 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-601.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-18.5-102. Definitions. (Repealed)

Source: L. 2000: Entire article added, p. 1031, § 1, effective September 1. **L. 2002:** Entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: In 2002, this section was relocated to § 18-1.3-602.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-18.5-103. Assessment of restitution - corrective orders. (Repealed)

Source: L. 2000: Entire article added, p. 1032, § 1, effective September 1. **L. 2002:** (7) added, p. 422, § 4, effective July 1; entire section repealed, p. 1463, § 3, effective October 1.

Editor's note: House Bill 02-1258 enacted subsection (7). This section as amended by House Bill 02-1258 was subsequently harmonized with House Bill 02-1046 and relocated to section 18-1.3-603.

Cross references: For the legislative declaration contained in the 2002 act repealing this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

16-18.5-104. Initial collections investigation - payment schedule.

(1) Orders for restitution shall be due and payable at the time that the order of conviction is entered. Unless the defendant is sentenced to the custody of the executive director of the department of corrections, if at the time that the court enters an order for restitution pursuant to section 18-1.3-603, C.R.S., the defendant alleges that he or she cannot pay the full amount of restitution, the court shall direct that the defendant report immediately to the collections investigator.

(2) The time payment fee established in section 16-11-101.6 shall be assessed, and the associated provisions of section 16-11-101.6 shall apply to cases in which restitution is not paid in full on the date that it is imposed. The fee shall be collected from the defendant after the defendant has satisfied all orders for restitution. All payments for the time payment fee shall be credited to the judicial collection enhancement fund created in section 16-11-101.6 (2). In addition, reasonable costs incurred and collected by the state for restitution shall be credited to the fund.

(3) (a) Upon referral of a defendant pursuant to subsection (2) of this section, the collections investigator shall conduct an investigation into the financial ability of the defendant to pay the restitution ordered by the court. Such investigation may consist of but is not limited to:

(I) Submission of written financial affidavits or disclosures of the defendant's personal, household, and business income, assets, and liabilities;

(II) Submission to an oral examination of the defendant's financial circumstances;

(III) Submission of books, papers, documents, or other tangible things related to the defendant's financial circumstances including but not limited to:

(A) Payroll stubs;

(B) Financial institution account statements;

(C) Stock certificates;

(D) Deeds, titles, or other evidence of ownership;

(E) State and federal tax records; and

(F) Insurance policies and statements;

(IV) Research and verification of all oral and written statements made by the defendant.

(b) In the case of a juvenile defendant, the collections investigator may conduct the investigation into the juvenile's parents' or legal guardian's financial circumstances as well as the juvenile's.

(c) For purposes of conducting the investigation required by this subsection (3), the collections investigator shall have access to data maintained by other state agencies including but not limited to wage data, employment data, and income tax data. The judicial department and any other departments are authorized to enter into agreements for the sharing of such data.

(d) Notwithstanding the provisions of article 72 of title 24, C.R.S., documents and information obtained by the collections investigators pursuant to this subsection (3) shall not be public records, but shall be open to public inspection only upon an order of the court based on a finding of good cause. Documents and information obtained by the collection investigators may be made available to the victim and to any private collection agency or third party with whom the judicial department may contract for the collection of past due restitution. In addition, if any warrant is issued for the arrest of any defendant due to nonpayment of restitution, information concerning the defendant's address and place of employment may be shared with a criminal justice agency.

(4) (a) (I) Following the investigation described in subsection (3) of this section, the collections investigator shall establish a payment schedule and direct that the defendant:

(A) Pay the full amount ordered immediately;

(B) Pay the full amount ordered as a single payment on a specified date; or

(C) Pay the full amount ordered in specified partial amounts on specified dates.

(II) The collections investigator may ask the court to enter the payment schedule as an order of court.

(b) In addition to the payments required by paragraph (a) of this subsection (4), the collections investigator may direct that:

(I) If the defendant is unemployed, the defendant seek gainful employment and report to the investigator on such efforts by a specified date;

(II) The defendant shall not incur additional debt or financial obligation without the approval of the collections investigator, which approval shall not be unreasonably withheld; or

(III) The defendant promptly report to the collections investigator any changes in income, assets, or other financial circumstances.

(5) Following the investigation required by subsection (3) of this section, the collections investigator may also:

(a) (I) Record a transcript of the order for restitution in the real estate records in the office of the clerk and recorder of any county in which the defendant holds an interest in real property. From the time of the recording of the transcript, there shall be a lien that is an encumbrance in

favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in real property in such county.

(II) (A) The lien created by this paragraph (a) shall remain in effect until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid or for a period of twenty years after the recording of the transcript. So long as there is an amount still owing, the collections investigator or the victim or the assignee of the state or the victim may record a new transcript of the order of restitution. Any transcript of the order for restitution recorded pursuant to this subparagraph (II) prior to the expiration of the twenty-year period shall relate back to the date of the recording of the original transcript of the order for restitution and shall be valid for a period of twenty years after the recording of the subsequent transcript. More than one subsequent transcript shall be permitted.

(B) Within twenty-one days after the payment of all such amounts of restitution, the collections investigator or the victim, or the assignee of the state or the victim, shall record a certificate of satisfaction of judgment issued by the clerk of the court with each clerk and recorder where a transcript was recorded. The satisfaction of judgment shall be conclusive evidence that the lien was extinguished.

(III) The collections investigator and the victim shall be exempt from the payment of recording fees charged by the clerk and recorder for the recording of the transcripts and satisfactions of judgment.

(b) (I) File a transcript of the order for restitution with the secretary of state. From the time of the filing of the transcript, there shall be a lien that is an encumbrance in favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in any personal property.

(II) The lien created by this paragraph (b), shall remain in effect without the necessity of renewal for twelve years or until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid. Within twenty-one days after the payment of all such amounts of restitution, the collections investigator or the victim, or the assignee of the state or the victim, shall file a satisfaction of judgment with the secretary of state. The satisfaction of judgment shall be conclusive evidence that the lien was extinguished.

(III) The collections investigator and the victim shall be exempt from the payment of filing fees charged by the secretary of state.

(c) (I) File a transcript of the order for restitution with the authorized agent as defined in section 42-6-102 (1.5). From the time of the filing of the transcript, there shall be a lien that is an encumbrance in favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in a motor vehicle. In order for such lien to be effective as a valid lien against a motor vehicle, the state or the victim, or the assignee of the state or the

victim, shall have such lien filed for public record and noted on the owner's certificate of title in the manner provided in sections 42-6-121 and 42-6-129.

(II) The lien created by this paragraph (c), shall remain in effect for the same period of time as any other lien on motor vehicles as specified in section 42-6-127, C.R.S., or until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid, whichever occurs first. A lien created pursuant to this paragraph (c) may be renewed pursuant to section 42-6-127, C.R.S. Within twenty-one days after the payment of all such amounts of restitution, the collections investigator or the victim or the assignee of the state or the victim shall release the lien pursuant to the procedures specified in section 42-6-125, C.R.S. When a lien created by this paragraph (c) is released, the authorized agent and the executive director of the department of revenue shall proceed as provided in section 42-6-126, C.R.S.

(III) The collections investigator and the victim shall not be exempt from the payment of filing fees charged by the authorized agent for the filing of either the transcript of order or the release of lien. However, the state or the victim, or the assignee of the state or the victim, may add the amount of the filing fees to the lien amount and collect the amount from the defendant.

Source: L. 2000: Entire article added, p. 1034, § 1, effective September 1. **L. 2002:** (1) amended, p. 1499, § 154, effective October 1. **L. 2003:** (5)(b) amended, p. 1673, § 9, effective July 1. **L. 2011:** (2) amended, (HB 11-1076), ch. 178, p. 679, § 2, effective July 1. **L. 2012:** (5)(a)(II)(B), (5)(b)(II), and (5)(c)(II) amended, (SB 12-175), ch. 208, p. 860, § 96, effective July 1. **L. 2017:** (5)(c)(I) amended, (SB 17-294), ch. 264, p. 1392, § 35, effective May 25.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

16-18.5-105. Monitoring - default - penalties.

(1) The collections investigator shall be responsible for monitoring the payments of restitution by any defendant referred to the investigator pursuant to section 16-18.5-104. Based upon changes in the defendant's financial circumstances, the collections investigator may modify the payment schedule established pursuant to section 16-18.5-104 (4). If a payment schedule has been made an order of the court pursuant to section 16-18.5-104 (4)(a)(II), prior to enforcing a new schedule, the collections investigator shall request and obtain a modification of the order.

(2) In addition to any other costs that may accrue, for each payment of restitution that a defendant fails to make within seven days after the date that the payment is due pursuant to any payment schedule established pursuant to this article, the late penalty fee established in section

16-11-101.6 shall be assessed, and the associated provisions of section 16-11-101.6 may apply. The late fees shall be collected from the defendant after the defendant has satisfied all orders for restitution. All payments for late fees shall be credited to the judicial collection enhancement fund created in section 16-11-101.6 (2).

(3) Whenever a defendant fails to make a payment of restitution within seven days after the date that the payment is due pursuant to a payment schedule established pursuant to this article, in addition to any other remedy, the collections investigator may:

(a) Conduct an additional financial investigation of the defendant as described in section 16-18.5-104 (3);

(b) Issue an attachment of earnings requiring that a certain portion of a defendant's earnings, not to exceed fifty percent, be withheld and applied to any unpaid restitution, if such an attachment does not adversely impact the defendant's ability to comply with other orders of the court. An attachment of earnings under this paragraph (b) may be modified to a lesser or greater amount based upon changes in a defendant's circumstances as long as the amount withheld does not exceed fifty percent and may be suspended or canceled at the court's discretion. An attachment of earnings issued pursuant to this paragraph (b) shall be enforceable in the same manner as a garnishment in a civil action. For purposes of this section, "earnings" shall have the same meaning as set forth for any type of garnishment in section 13-54.5-101, C.R.S., and shall include profits.

(c) Request that the clerk of the court issue a writ of execution, writ of attachment, or other civil process to collect upon a judgment pursuant to article 52 of title 13, C.R.S.;

(d) Request that the court issue a notice to show cause requiring the defendant to appear before the court and show cause why the required payment or payments were not made. Upon a finding of the defendant's failure to pay, unless the defendant establishes that he or she was unable to make the payments, the court may:

(I) Revoke probation and impose any other sentence permitted by law;

(II) Order that the defendant be confined to jail with a recommendation that the defendant participate in a work release program;

(III) Extend the period of probation; or

(IV) Find the defendant in contempt of court and impose any authorized penalties for such action.

(e) (I) Employ any method available to collect state receivables, including the assignment of the defendant's accounts to a third party that has an agreement with the judicial department under this paragraph (e).

(II) The judicial department may enter into agreements with third parties for collection-related services. Any fees or costs of the third parties shall be added to the amount of restitution owed by the defendant, but such fees and costs shall not exceed twenty-five percent of the amount collected.

Source: L. 2000: Entire article added, p. 1037, § 1, effective September 1. **L. 2011:** (2) amended, (HB 11-1076), ch. 178, p. 679, § 3, effective July 1. **L. 2012:** (3)(b) amended, (HB 12-1310), ch. 268, p. 1395, § 10, effective June 7; (2) and IP(3) amended, (SB 12-175), ch. 208, p. 860, § 97, effective July 1.

ANNOTATION

Subsection (3)(d) requires findings of fact concerning defendant's ability to pay restitution. Where a collections investigator asked the court to issue a notice to show cause, and the court did not make findings regarding whether the defendant had missed or had been late making one or more payments and, if so, whether the defendant was able to make the payment or payments, the extension of defendant's probation violated subsection (3)(d)(III). People v. Reyes, 207 P.3d 872 (Colo. App. 2008).

If a defendant makes restitution payments regularly but fails to pay the full amount of restitution, a trial court lacks authority to extend probation under subsection (3)(d)(III). People v. Martinez, 2022 COA 142, 526 P.3d 231.

16-18.5-106. Restitution for persons sentenced to the department of corrections.

(1) Whenever a person is sentenced to the department of corrections, the department of corrections is authorized to conduct an investigation into the financial circumstances of the defendant, as described in section 16-18.5-104 (3), for purposes of determining the defendant's ability to pay court ordered costs, surcharges, restitution, time payment fees, late fees, and other fines, fees, or surcharges pursuant to section 16-18.5-110.

(2) During any period of time that a defendant is a state inmate, as defined in section 17-1-102 (8), C.R.S., the executive director of the department of corrections, or his or her designee, may fix the time and manner of payment for court ordered costs, surcharges, restitution, time payment fees, late fees, and any other fines, fees, or surcharges pursuant to section 16-18.5-110 resulting from a criminal case or for child support, and may direct that a portion of the deposits into such inmate's bank account be applied to any outstanding balance existing before, on, or after September 1, 2000. At a minimum, the executive director shall order that twenty percent of all deposits into an inmate's bank account, including deposits for inmate pay shall be deducted

and paid toward any outstanding order from a criminal case or for child support. If an inmate owes money on more than one order from a criminal case or for child support, the executive director may equitably apportion payments among the outstanding obligations.

(2.5) (a) The department of corrections shall intercept government windfall payments before the government windfall payments are made available in an inmate's bank account. The department of corrections shall send funds from intercepted government windfall payments to the judicial department in an amount equal to any amount owed by the inmate pursuant to section 16-18.5-110. The judicial department shall then disperse the funds in accordance with section 16-18.5-110. The department of corrections shall disperse any remaining funds in accordance with section 16-18.5-106. If any funds remain after all of the inmate's outstanding obligations are fulfilled, the excess funds must be placed in the inmate's bank account.

(b) As used in this subsection (2.5), "government windfall payment" means an unusual payment from a governmental entity to an inmate in the department of corrections and includes economic stimulus payments and any other unusual government payments. "Government windfall payment" does not include payments to inmates for wages, pensions, disability payments, child support, tuition, restitution, and victim compensation.

(3) Whenever a defendant is released from a correctional facility, the defendant shall be obligated to make payments for restitution as required by section 17-2-201 (5)(c)(I), C.R.S.

(4) The department of corrections may enter into a memorandum of understanding with the judicial department or contract with a private collection agency for the collection of court ordered costs, surcharges, restitution, time payment fees, late fees, and any other fines, fees, or surcharges pursuant to section 16-18.5-110 from defendants sentenced to the department of corrections or released on parole.

Source: L. 2000: Entire article added, p. 1039, § 1, effective September 1. **L. 2002:** (1), (2), and (4) amended, p. 67, § 1, effective March 22; (2) amended, p. 1016, § 20, effective June 1. **L. 2022:** (2.5) added, (SB 22-043), ch. 263, p. 1927, § 4, effective August 10.

Editor's note: Amendments to subsection (2) by Senate Bill 02-159 and Senate Bill 02-140 were harmonized.

Cross references: For the legislative declaration in SB 22-043, see section 1 of chapter 263, Session Laws of Colorado 2022.

ANNOTATION

The effective date and applicability clause of the original bill states that the restitution act applies to all convictions entered on or after September 1, 2000, but applies to convictions entered before that date only if sums assessed at the time of sentencing remain unpaid. People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

16-18.5-106.5. Lottery winnings offset - restitution.

(1) (a) The judicial department shall, on no less than a monthly basis, certify to the department of revenue information regarding any defendant who has been ordered to pay restitution pursuant to section 18-1.3-603 or 19-2.5-1104.

(b) The information described in paragraph (a) of this subsection (1) shall include the social security number of the person who is obligated to pay restitution and the amount of restitution due and owing. The department of revenue may request additional identifying information, as needed, from the judicial department in order to obtain an accurate data match pursuant to subsection (2) of this section.

(2) (a) Prior to the payment of lottery winnings required by rule and regulation of the Colorado lottery commission to be paid only at the lottery offices, the department of revenue shall check the social security number of each winner with those certified by the judicial department pursuant to subsection (1) of this section. If the name and associated social security number of a lottery winner appear among those certified, the department of revenue shall obtain the current address of the winner, shall suspend the payment of the winnings, and shall notify the judicial department. The notification shall include the name, home address, and social security number of the winner. The judicial department shall forward the notification to the court in which the lottery winner's restitution obligation is pending.

(b) (I) After receipt of the notification, the court shall notify the person that is obligated to pay restitution, in writing, that the state intends to offset the person's restitution obligation against his or her winnings from the state lottery. Such notification shall include information concerning the obligated person's right to object to the offset and to request an administrative review pursuant to the rules and regulations of the state court administrator.

(II) The sole issues to be determined at the administrative review described in subparagraph (I) of this paragraph (b) shall be:

(A) Whether the person is required to pay restitution pursuant to an order entered by a court of this state; and

(B) The amount of restitution outstanding.

(3) (a) Except as otherwise provided in subsection (5) of this section, upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 44-40-114, and upon the transfer of the amounts by the state treasurer to the court in which the restitution obligation is pending, the court shall disburse the amounts in accordance with this subsection (3).

(b) The clerk of the court shall apply the amounts toward the outstanding restitution balance owed in the criminal or juvenile case. The clerk shall distribute the remainder, if any, to the person against whom the restitution order was entered. The court shall notify the crime victim or victims of actions taken under this paragraph (b).

(4) The state court administrator shall promulgate rules and regulations, subject to the approval of the supreme court, establishing procedures to implement this section including but not limited to the process by which a lottery winner may object to an offset against restitution in accordance with paragraph (b) of subsection (2) of this section.

(5) If a lottery winner owes restitution in a criminal or juvenile case and also owes a child support debt or arrearages as described in section 26-13-118 (1), the lottery winnings offset described in sections 26-13-118 and 44-40-113 (6) shall take priority and be applied first. Any remaining lottery winnings shall be disbursed and distributed in accordance with this section, section 44-40-113, and section 44-40-114.

(6) The home addresses and social security numbers of persons subject to the state lottery winnings offset described in this section that are provided to the judicial department by the department of revenue shall be sent to the respective court.

Source: L. 2003: Entire section added, p. 656, § 1, effective August 6; (3)(a) and (5) amended, p. 1275, § 71, effective August 6. **L. 2004:** (1)(a), (3)(b), and (5) amended, p. 1257, § 2, effective August 4. **L. 2018:** (3)(a) and (5) amended, (HB 18-1027), ch. 31, p. 363, § 8, effective October 1; (3)(a) amended, (HB 18-1375), ch. 274, p. 1699, § 16, effective October 1. **L. 2019:** (5) amended, (HB 19-1128), ch. 238, p. 2358, § 2, effective August 2. **L. 2021:** (1)(a) amended, (SB 21-059), ch. 136, p. 714, § 28, effective October 1.

16-18.5-106.7. Unclaimed property offset - definition.

(1) The judicial department may enter into a memorandum of understanding with the state treasurer, acting as the administrator of unclaimed property under the "Revised Uniform Unclaimed Property Act", article 13 of title 38, for the purpose of offsetting against a claim for unclaimed property the unpaid amount of restitution the person making the claim has been ordered to pay pursuant to section 18-1.3-603 or 19-2.5-1104. When an offset is to be made, the judicial department or the court in which the person's restitution obligation is pending shall

notify the person in writing that the state intends to offset the amount of the person's unpaid restitution obligation against the person's claim for unclaimed property.

(2) The state court administrator may adopt rules establishing the process by which an unclaimed property claimant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay restitution pursuant to an order entered by a court of this state and the amount of the outstanding restitution.

(3) For purposes of this section, "claim for unclaimed property" means a cash claim filed in accordance with section 38-13-903.

Source: L. 2005: Entire section added, p. 698, § 2, effective August 8. **L. 2019:** (1) and (3) amended, (SB 19-088), ch. 110, p. 466, § 6, effective July 1, 2020. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 714, § 29, effective October 1.

16-18.5-106.8. State income tax refund offsets - restitution - definitions.

(1) In any case in which a defendant has an unsatisfied restitution obligation ordered pursuant to section 18-1.3-603 or 19-2.5-1104, the judicial department is authorized to transmit data concerning the obligation to the department of revenue for the purpose of conducting a data match and offsetting the restitution obligation against a state income tax refund pursuant to section 39-21-108 (3). For any restitution obligation identified by the judicial department for offset, the state court administrator shall:

(a) On at least an annual basis, certify to the department of revenue the social security number of the defendant who is obligated to pay the restitution obligation and the amount of the outstanding restitution obligation. The department of revenue may request additional identifying information from the judicial department that is necessary to obtain an accurate data match.

(b) Upon notification by the department of revenue of a data match, notify the appropriate court that a match has occurred and that an offset is pending and provide to the court the identifying information received from the department concerning the defendant whose state income tax refund is subject to the offset;

(c) Provide or require the appropriate court to provide written notice to the defendant that the state intends to offset the defendant's restitution obligation against his or her state income tax refund and that the defendant has the right to object to the offset and request an administrative review; and

(d) Upon receipt of funds for offset from the department of revenue, transmit the funds to the appropriate court.

(2) The clerk of court shall apply funds received pursuant to this section to the defendant's outstanding restitution obligation. If the moneys received exceed the defendant's current restitution obligation, the excess may be applied to other financial obligations the defendant owes the court or the judicial department. If no other financial obligations are owed, the clerk of court shall refund any excess to the defendant.

(3) The state court administrator may adopt rules establishing the process by which a defendant may object to an offset and request an administrative review. The sole issues to be determined at the administrative review shall be whether the person is required to pay the restitution and the amount of the outstanding restitution.

(4) The department of revenue is authorized to receive data from the judicial department and execute offsets of state income tax refunds in accordance with this section and section 39-21-108 (3), C.R.S.

(5) As used in this section, "defendant" means any person, including an adult or juvenile, who has been ordered to pay restitution pursuant to section 18-1.3-603 or 19-2.5-1104.

Source: L. 2004: Entire section added, p. 1258, § 3, effective August 4. **L. 2021:** IP(1) and (5) amended, (SB 21-059), ch. 136, p. 715, § 30, effective October 1.

16-18.5-107. Collection of restitution by the victim.

(1) Any victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person's own name. Any victim who wishes to collect restitution pursuant to the provisions of this section shall first deliver to the clerk of the court or, if the defendant was sentenced to the department of corrections, to the executive director of the department of corrections a notice of intent to pursue collection. Upon receipt of notice of intent to pursue collection, the court, the collections investigator, and the department of corrections shall cease all attempts to collect the restitution due to the person or persons named in the notice, except that the collections investigator may still assist the victim in the victim's effort. The filing of a victim's intent to pursue collection and a victim's subsequent collection efforts do not alter a court's order that restitution is a condition of the defendant's probation, and such probation may still be revoked by the court upon a finding of failure to pay restitution.

(2) Any victim who has filed a notice of intent to pursue collection may apply to the sentencing court for issuance of any of the following that, if provided, shall be provided without cost:

(a) One or more certified copies of the transcript of the order for restitution;

(b) An order that a portion of the defendant's earnings be withheld pursuant to section 16-18.5-105 (3)(b);

(c) A writ of execution, writ of attachment, or other civil process to collect upon a judgment pursuant to article 52 of title 13, C.R.S.

(3) If the victim chooses to record a copy of the transcript with a clerk and recorder or with the secretary of state, the victim may do so without charge.

(4) A victim may withdraw his or her intent to pursue collection by filing a notice of such withdrawal with the person to whom the notice of intent was served pursuant to subsection (1) of this section. Such notice shall state the amount, if any, of restitution collected by the victim. Upon receipt of a notice of withdrawal, the collections investigator or the department of corrections shall pursue collection of the restitution pursuant to this article.

(5) The judicial department shall develop informational brochures for victims explaining the process of restitution and the victim's rights and remedies.

Source: L. 2000: Entire article added, p. 1039, § 1, effective September 1. **L. 2003:** (3) amended, p. 1674, § 10, effective July 1.

16-18.5-108. Dishonored check fee.

Whenever a payment of restitution that was presented in the form of a check or similar sight draft for the payment of money is subsequently dishonored by the financial institution for any reason upon presentment within thirty days after issue, the agency supervising the collection of such payment may assess a twenty dollar penalty against the defendant. The penalty provided in this section shall be assessed in addition to any other penalties or interest authorized by law.

Source: L. 2000: Entire article added, p. 1040, § 1, effective September 1.

16-18.5-109. Declined or unclaimed restitution.

(1) If at the time that an order for restitution is entered no victim can be reasonably located or the victim declines to accept restitution, the defendant shall still pay restitution but such restitution shall be made to the state and distributed as provided for in subsection (3) of this section.

(2) Notwithstanding the provisions of sections 13-32-108 and 13-32-112, C.R.S., all restitution paid to the clerk of any court or into the registry of any court that has been unclaimed

for a period of two years or more after the final determination of any case in which said restitution was collected or money deposited shall be distributed as provided for in subsection (3) of this section.

(3) The amounts of restitution remaining undistributed pursuant to subsections (1) and (2) of this section shall be paid to the victims and witnesses assistance and law enforcement fund created pursuant to section 24-4.2-103, C.R.S., and to the crime victim compensation fund created pursuant to section 24-4.1-117, C.R.S., in the judicial district in which the crime occurred. The chair of the victims and witnesses assistance and law enforcement board, in consultation with the board, and the chair of the crime victim compensation board, in consultation with the board, in each judicial district shall designate on or before each December 1, starting December 1, 2000, how moneys received pursuant to this section shall be divided between the two funds during the next calendar year for that judicial district. If the chairs are unable to agree on a distribution, the crime victim services advisory board created in section 24-4.1-117.3 (1), C.R.S., shall designate how the moneys shall be divided between the funds for that judicial district. If no designation is made, the payments shall be made to the victims and witnesses assistance and law enforcement fund.

Source: L. 2000: Entire article added, p. 1041, § 1, effective September 1. **L. 2009:** (3) amended, (SB 09-047), ch. 129, p. 555, § 2, effective July 1.

16-18.5-110. Order of crediting payments.

(1) Payments received shall be credited in the following order:

(a) Costs for crime victim compensation fund, pursuant to section 24-4.1-119, C.R.S.;

(b) Surcharges for victims and witnesses assistance and law enforcement fund, pursuant to section 24-4.2-104, C.R.S.;

(c) Restitution to victims in the following order:

(I) A victim, as defined in section 18-1.3-602 (4)(a)(I), C.R.S.;

(II) A victim, as defined in section 18-1.3-602 (4)(a)(II), C.R.S.;

(III) A victim, as defined in section 18-1.3-602 (4)(a)(III), C.R.S.;

(c.5) Surcharges related to the address confidentiality program pursuant to section 24-30-2114, C.R.S.;

(d) Time payment fee;

(e) Late fees; and

(f) Any other fines, fees, or surcharges.

Source: L. 2000: Entire article added, p. 1041, § 1, effective September 1. **L. 2003:** (1)(c) amended, p. 1050, § 3, effective September 1. **L. 2007:** (1)(c.5) added, p. 1699, § 2, effective July 1. **L. 2008:** (1)(a) amended, p. 1884, § 24, effective August 5. **L. 2011:** (1)(c.5) amended, (HB 11-1080), ch. 256, p. 1123, § 5, effective June 2.

ANNOTATION

Applied in People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

16-18.5-111. Effect of termination of deferred judgment and sentence or deferred adjudication, expungement, or sealing.

The provisions of this article apply notwithstanding the termination of a deferred judgment and sentence or a deferred adjudication, the entry of an order of expungement pursuant to section 19-1-306, C.R.S., or an order to seal entered pursuant to part 7 of article 72 of title 24, C.R.S.

Source: L. 2014: Entire section added, (HB 14-1035), ch. 21, p. 152, § 1, effective March 7. **L. 2016:** Entire section amended, (SB 16-065), ch. 277, p. 1143, § 4, effective July 1.

16-18.5-112. Effect of expungement.

Notwithstanding the entry of an order of expungement pursuant to section 19-1-306, the provisions of this article 18.5 apply.

Source: L. 2017: Entire section added, (HB 17-1204), ch. 206, p. 784, § 3, effective November 1.

16-18.5-113. Office of restitution services - created.

(1) There is created in the judicial department the office of restitution services, referred to in this section as the "office". The purpose of the office is to assist victims who are owed court-ordered restitution.

(2) The office shall:

(a) Receive requests from victims requesting semiannual statements as set forth in subsection (3) of this section;

(b) Answer general questions and assist victims with case-specific questions related to court-ordered restitution;

(c) Create and maintain a web page on the judicial department website with resources and information on court-ordered restitution;

(d) Assist with training related to the administration of the restitution system;

(e) Enhance communications for postsentence restitution; and

(f) Collaborate with victim advocacy programs.

(3) (a) A victim who is owed court-ordered restitution may submit a request to the office to provide semiannual statements detailing the restitution payments the defendant has made to the victim and the disbursements the court has made to the victim. The statement must include the outstanding amount of court-ordered restitution owed to the victim.

(b) The office shall verify the identity of the victim making the request described in subsection (3)(a) of this section to ensure the victim is owed court-ordered restitution for the case.

(c) The office shall not provide information related to court-ordered restitution to other victims in the same case or in other cases in which the victim requests a semiannual statement pursuant to subsection (3)(a) of this section.

Source: L. 2022: Entire section added, (SB 22-043), ch. 263, p. 1928, § 5, effective August 10.

Cross references: For the legislative declaration in SB 22-043, see section 1 of chapter 263, Session Laws of Colorado 2022.

FUGITIVES AND EXTRADITION

ARTICLE 19

Fugitives and Extradition

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16-19-101. Short title.

This article shall be known and may be cited as the "Uniform Criminal Extradition Act".

Source: L. 53: p. 323, § 29. **CSA:** C. 72, § 74. **CRS 53:** § 60-1-29. **C.R.S. 1963:** § 60-1-32.

ANNOTATION

Purpose. The interstate agreement on detainers and the extradition act are both intended to serve the purpose of forcing a recalcitrant defendant who is no longer within the state where charges are pending to stand trial. Moen v. Wilson, 189 Colo. 85, 536 P.2d 1129 (1975).

Transfer of custody not a waiver of jurisdiction. This article contemplates that the mere transfer of custody to another jurisdiction will not be deemed a presumptive or implied waiver of jurisdiction by the demanding state. Schoengarth v. Bray, 200 Colo. 288, 615 P.2d 655 (1980).

Interstate agreement on detainers is inapplicable to a defendant whose custody is sought by traditional extradition procedures. People v. Quackenbush, 687 P.2d 448 (Colo. 1984).

Parolee was not entitled to insist upon utilization of Extradition Act rather than the Parole Supervision Act to effectuate his return to paroling state merely because he was initially advised of his rights under the Extradition Act. People v. Velarde, 739 P.2d 845 (Colo. 1987).

Applied in Guy v. Nelson, 630 P.2d 610 (Colo. 1981).

16-19-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Executive authority" includes the governor and any person performing the function of governor in a state other than this state.

(2) "Governor" includes any person performing the functions of governor by authority of the law of this state.

(3) "State", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States.

Source: L. 53: p. 314, § 1. **CSA:** C. 72, § 46. **CRS 53:** § 60-1-1. **C.R.S. 1963:** § 60-1-1.

ANNOTATION

Delegation of governor's authority. Because this section defines "governor" to include persons authorized to perform the functions of governor, the governor may delegate his authority to review and sign

extradition documents. Macurdy v. Leach, 662 P.2d 166 (Colo. 1983).

Delegation of governor's executive authority not forbidden. Neither the state nor federal law (18 U.S.C. § 3182 (1976)) forbids delegation of the governor's executive authority to employees in his office and assistant attorneys general. Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980).

And exercise of powers delegated by governor is "executive authority". The governor of Colorado is the chief executive officer of Colorado, and, when he properly delegates power, the exercise of that power is action of the "executive authority". Whittington v. Bray, 623 F.2d 681 (10th Cir. 1980).

It is not proper for judiciary to tell governor how to delegate his authority in extradition matters. Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980).

Authentication of executive authority required. The only authentication required by § 16-19-104 is an authentication by the executive authority of the demanding state. Clark v. Leach, 200 Colo. 151, 612 P.2d 1130 (1980).

Applied in Jaques v. Bray, 645 P.2d 22 (Colo. 1982); Hershberger v. Black, 645 P.2d 279 (1982).

16-19-103. Fugitives from justice.

Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any act of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

Source: L. 53: p. 314, § 2. **CSA:** C. 72, § 47. **CRS 53:** § 60-1-2. **C.R.S. 1963:** § 60-1-2.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 35 Dicta 26 (1958).

Purpose of extradition. The United States constitutional provision regarding extradition from one state to another was adopted to promote justice, to aid the states in enforcing their laws, and not to shield malefactors. Tinsley v. Woods, 135 Colo. 590, 313 P.2d 1006 (1957); Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957).

The public purpose to be effected by extradition is to prevent the successful escape of all persons accused of crime, whether convicted or unconvicted, and to secure their return to the state from which

they fled for the purpose of punishment. It is invoked to aid the administration of criminal justice and to more certainly insure the punishment of the guilty. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957); Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

The several states adopted the provisions of this uniform act so that one who commits a crime in one state cannot go to a sister state to avoid prosecution, or cannot send agents or accomplices from one state into another with impunity while he remains out of the state where the crime is perpetrated. Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

Extradition serves the interest of comity between states. Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975).

And, therefore, extradition proceeding should not be utilized as a vehicle to challenge acts undertaken by a sister state to enforce their criminal laws. Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975).

Transfer of custody not a waiver of jurisdiction. This article contemplates that the mere transfer of custody to another jurisdiction will not be deemed a presumptive or implied waiver of jurisdiction by the demanding state. Schoengarth v. Bray, 200 Colo. 288, 615 P.2d 655 (1980).

Waiver of state's right to extradite. A finding of a waiver of a state's right to extradite requires affirmative evidence of a state's intent to waive jurisdiction over the fugitive and will not be presumed from a silent record. Schoengarth v. Bray, 200 Colo. 288, 615 P.2d 655 (1980).

Construction of section. Statutes providing for the arrest and extradition of fugitives are in derogation of constitutional guarantees of immunity from arrest and must be strictly construed. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

The extradition statutes should not be so narrowly construed as to enable offenders against the laws of a state to find permanent asylum in another state. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

The clause "any person charged with a crime" includes a person whose judgment of conviction remains unsatisfied. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

No probable cause necessary where person convicted and sentenced. No showing of probable cause is necessary for the extradition of a person who has been convicted and sentenced. Morgan v. Miller, 197 Colo. 341, 593 P.2d 357 (1979).

The phrase "fled from justice" has generally been interpreted to cover individuals who are merely absent from the state when they are sought to answer for a crime, irrespective of their manner of leaving the state. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

Reason for leaving jurisdiction of demanding state immaterial. For extradition purposes, it is immaterial why the person demanded left the jurisdiction of the demanding state: he is a fugitive within the meaning of this section if he was present

in the demanding state at the time of the commission of the offense charged and thereafter departed for whatever reason. Danielson v. Miller, 196 Colo. 537, 587 P.2d 788 (1978).

Where demanding state voluntarily released fugitive to another state. Under this section, a person can be classified as a fugitive from justice where the demanding state voluntarily released him to another state to serve out his unexpired sentence there. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

The United States constitution guarantees no right of asylum to a person who has committed a crime in one state or territory of the United States and fled to another jurisdiction. Cutting v. Geer, 135 Colo. 503, 313 P.2d 314 (1957).

Extradition to or from territories has been upheld under the federal statute, even though the United States constitution is silent as to extradition to or from territories. Cutting v. Geer, 135 Colo. 503, 313 P.2d 314 (1957).

The governor of Colorado has no inherent powers of arrest and surrender and cannot proceed as a volunteer but is limited to acting pursuant to a demand or a request from the executive of a sister state, and then only in strict conformity with law. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957); Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

This section makes it the duty of the governor to cause the arrest and surrender of any person who is charged with a felony in the demanding state and who has fled therefrom and taken asylum in Colorado. Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958).

It is the duty of the governor to issue his warrant for the arrest and delivery to the executive of another state any person charged with a crime in that state who has fled from justice and is found in this state. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

Demanding state has right to extradition of fugitive. When demanding the return of a fugitive, the demanding state does not seek a favor, but appears as a sovereign state demanding rights granted to it by the constitution and laws of the United States. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957); Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958).

Constitutional rights to limitations on the use of evidence on the issue of guilt or innocence are not at issue in the rendition proceeding. What is in issue is the constitutional right of the demanding state to have a defendant promptly returned to that state on a showing of probable cause. North v. Koch, 169 Colo. 508, 457 P.2d 915 (1969).

Demanding state is entitled to obtain custody of the petitioner through extradition proceedings after extradition statute was complied with and proof established that the appellant is a fugitive from justice. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

A sister state may proceed in extradition in either of two ways: (1) Make a demand upon any state for return of a fugitive under the constitution and laws of

the United States and this section; or (2) make demand upon the governor of Colorado for surrender under § 16-19-107 for any person in this state charged in another state with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957); Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958); Layher v. Van Cleave, 171 Colo. 465, 468 P.2d 32 (1970).

Habeas corpus proceeding is not filed as part of an extradition proceeding but is filed as an independent civil action. People v. Gomez, 192 Colo. 313, 558 P.2d 439 (1976).

Form complied with § 16-19-104. Demand for extradition complied with § 16-19-104 although the requisition documents contained both a demand for extradition, pursuant to this section, and a request for extradition predicated on § 16-19-106, which controls executive agreements, since the executive agreement, which accompanied the requisition documents, served only to ensure that the demanding state would return and surrender defendant to the Colorado authorities upon the completion of the trial in the demanding state. Buffalo v. Tanksley, 189 Colo. 45, 536 P.2d 827 (1975).

Prima facie showing of identity is made when the name of the person is identical to that appearing in the requisition documents. Light v. Cronin, 621 P.2d 309 (Colo. 1980).

Where there is a discrepancy in the name in the extradition documents and the name claimed by the prisoner, a prima facie showing of identity is made where testimony, photographs, and fingerprints identify the fugitive being sought. Secrest v. Simonet, 708 P.2d 803 (Colo. 1985).

Governor's grant of extradition prima facie evidence that constitutional and statutory requirements have been met. Howe v. Cronin, 197 Colo. 17, 589 P.2d 930 (1979).

Presumption of defendant's presence in demanding state at time of crime. The issuance of a governor's warrant by the governor of the asylum state creates a presumption that the person sought to be extradited was in the demanding state at the time the crime was committed. The person whose extradition is sought must show by clear and convincing evidence that he was not in the demanding state at the time the crime was committed. Light v. Cronin, 621 P.2d 309 (Colo. 1980); Briddle v. Caldwell, 628 P.2d 613 (Colo. 1981).

Where any statutory ground exists to substantiate extradition documents on their face, the courts of the asylum state may not block the extradition process. Howe v. Cronin, 197 Colo. 17, 589 P.2d 930 (1979).

Applied in Wilkerson v. Vogt, 167 Colo. 109, 445 P.2d 715 (1968); People v. Calloway, 40 Colo. App. 543, 577 P.2d 1109 (1978); Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981); People v. Campbell, 633 P.2d 509 (Colo. App. 1981); Parker v. Glazner, 645 P.2d 1319 (Colo. 1982); Morris v. Nelson, 659 P.2d 1386 (Colo. 1983).

16-19-104. Form of demand.

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 16-19-107, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, or judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Source: L. 53: p. 315, § 3. **CSA:** C. 72, § 48. **CRS 53:** § 60-1-3. **L. 57:** p. 379, § 1. **C.R.S. 1963:** § 60-1-3.

ANNOTATION

Purpose of extradition law. The extradition law is designed to prevent the successful escape of all persons accused of crime, whether convicted or not, and to secure their return to the state from which they fled for their due punishment. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

The purpose of extradition proceedings is to prevent an accused person from being wrongfully rendered to the demanding state for trial. Lovato v. Johnson, 617 P.2d 1203 (Colo. 1980).

Construction. The extradition statutes should not be so narrowly construed as to enable offenders against the laws of a state to find permanent asylum in another state. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

Demanding state may terminate proceedings. Nothing in the law of extradition prevents a demanding state from making a unilateral decision to terminate extradition proceedings. Massey v. Wilson, 199 Colo. 121, 605 P.2d 469 (1980).

Demanding state has no duty to ensure that a pre-extradition hearing is held in the asylum state. Smith v. Lamm, 629 F. Supp. 1184 (D. Colo. 1986).

It is for the general assembly to say under what circumstances this state will

grant asylum. Petition of Harwell, 180 Colo. 144, 503 P.2d 618 (1972).

It is within the province of the general assembly to require that the demanding state must meet standards which are akin to probable cause. Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975).

The procedural safeguards in this article are adequate. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

The form of demand and the requisites for extradition are defined by this section. Woolsey v. Nelson, 178 Colo. 144, 496 P.2d 306 (1972).

All documents read together. In determining whether extradition documents sufficiently charge an accused with a crime in the demanding state, or that he was convicted of a crime and sentenced therefor, from which he escaped, or that the accused has broken the terms of his bail, probation, or parole, all of the requisition documents must be read and considered together. Martello v. Baker, 189 Colo. 195, 539 P.2d 1280 (1975).

In evaluating the sufficiency of requisition papers, all of the documents must be read and considered together. Patrick v. Watson, 195 Colo. 156, 576 P.2d 1014 (1978).

Extradition requisition may refer to, annex, and authenticate accompanying papers and, if together they meet statutory requirements, that is sufficient compliance with the requirements of this section. Hall v. Cronin, 196 Colo. 333, 585 P.2d 286 (1978).

Statutory grounds required in demand for execution stated in alternative. It is fundamental that the statutory grounds in this section, which are required to be set forth in the form of demand for execution, are stated in the alternative. If any one ground is adequately set forth as required by this section, then the demand is sufficient in form to authorize the execution of the personal demand. Norrod v. Bower, 187 Colo. 421, 532 P.2d 330 (1975).

Demand for extradition complied with this section although the requisition documents contained both a demand for extradition, pursuant to § 16-19-103, and a request for extradition predicated on § 16-19-106, which controls executive agreements, since the executive agreement, which accompanied the requisition documents, served only to ensure that the demanding state would return and surrender defendant to the Colorado authorities upon the completion of the trial in the demanding state. Buffalo v. Tanksley, 189 Colo. 45, 536 P.2d 827 (1975).

The statutory requirement for supporting documents in a foreign state's form of demand is stated in the alternative. Johnson v. Kiefer, 624 P.2d 894 (Colo. 1981).

Any one basis for extradition sufficient to meet statutory test. If any one basis for extradition is adequately set forth as required by this statute, the form of the demand meets the statutory test. Johnson v. Kiefer, 624 P.2d 894 (Colo. 1981); Butcher v. Caldwell, 677 P.2d 342 (Colo. 1984).

Allegation of presence in demanding state in governor's warrant creates

presumption. The requirement that the person sought to be extradited be shown to be in the state when the crime was committed is satisfied by an allegation to that effect in a governor's warrant, which creates a presumption that the accused was in the demanding state at the time the offense was committed. Graham v. Vanderhoof, 185 Colo. 334, 524 P.2d 611 (1974); Johnson v. Cronin, 690 P.2d 1277 (Colo. 1984).

Court's habeas corpus review limited. Once the governor has granted extradition, a court considering habeas corpus relief is limited to deciding whether: (1) The extradition documents on their face are in order; (2) the petitioner has been charged with a crime in the demanding state; (3) the petitioner is the person named in the request for extradition; and (4) the petitioner is a fugitive. Gerard v. Ossola, 649 P.2d 1110 (Colo. 1982); Rodriquez v. Sandoval, 680 P.2d 1278 (Colo. 1984).

Lawful demand required prior to extradition. The governor of Colorado must have a lawful demand or request before surrendering one who has committed a crime in another state. Massey v. Wilson, 199 Colo. 121, 605 P.2d 469 (1980).

Requisition for extradition presents questions of law and fact. Upon receipt of a requisition for interstate rendition, the governor of the asylum state has two questions to pass upon: (1) Is the person demanded substantially charged with a crime against the laws of the demanding state by indictment or affidavit before a magistrate?; and (2) is the person a fugitive from the justice of the demanding state? The first of these questions is one of law, while the second is one of fact. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963); Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965).

The question as to whether a defendant is a fugitive from justice is one of fact. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967).

It must allege presence in demanding state. The requirement of alleging presence in the demanding state is clearly imposed upon the requisition of the governor of the demanding state rather than upon the warrant of the governor of the asylum state. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967); Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

And the accused must be substantially charged with a crime in the demanding state to be subject to extradition. This means that the charge standing against him must legally constitute a crime. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963).

This section of the uniform act requires that the indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965).

The requirement that the indictment, information, or affidavit made before the magistrate substantially charges the person demanded with having committed a crime under the law of that state is met where the crime is charged under the law of the demanding state, not under law of the

asylum state. People v. Jackson, 180 Colo. 135, 502 P.2d 1106 (1972).

The law of extradition in Colorado requires that the defendant be charged with a crime under the laws of the demanding state. White v. Leach, 188 Colo. 62, 532 P.2d 740 (1975).

This is determined by asylum state. It is not only the right, but the duty of the proper authorities of the asylum state, executive and judicial, to determine whether the accused is charged with a crime in the demanding state. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963).

The sufficiency of the method of charging the crime in an extradition proceeding may be a matter for determination by the demanding state. Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

A criminal complaint or indictment from a state requesting extradition is presumed to charge a crime. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

But one wholly failing to state offense does not support extradition. If the indictment or other charge of crime on which the requisition is founded wholly fails to state an offense created by the statute of the demanding state, it describes no crime thereunder and extradition should be refused. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963).

Charging document must be framed substantially in statutory language. To comply with the statutory requirement that an accused be substantially charged with an offense if he is to be extradited, the charging document must be framed substantially in the statutory language. White v. Leach, 188 Colo. 62, 532 P.2d 740 (1975); Cates v. Sullivan, 696 P.2d 322 (Colo. 1985).

Burden not on asylum state to determine if defendant correctly charged. The law of extradition does not impose the burden on the courts of the asylum state to determine whether the defendant has been correctly charged with committing a particular offense. White v. Leach, 188 Colo. 62, 532 P.2d 740 (1975); Pickinpaugh v. Lamm, 189 Colo. 143, 538 P.2d 113 (1975); Cates v. Sullivan, 696 P.2d 322 (Colo. 1985).

Any question relating to the sufficiency of the information or the technical accuracy of the charge is left to the courts of the demanding state to resolve. White v. Leach, 188 Colo. 62, 532 P.2d 740 (1975).

In an extradition proceeding and in its habeas corpus review, questions relating to the sufficiency of an information or the technical accuracy of a charge are left to the courts of the demanding state to resolve. Lovato v. Johnson, 617 P.2d 1203 (Colo. 1980).

Credibility of affiant may be attacked only in demanding state. At a hearing on a writ of habeas corpus, the state need not prove the credibility of the person who made the affidavit upon which extradition is based; an attack on the credibility of the affiant is possible only in the courts of the demanding state. People v. Schneckloth, 660 P.2d 1293 (Colo. 1983).

The asylum state need only determine whether accused is charged with an

extraditable offense. White v. Leach, 188 Colo. 62, 532 P.2d 740 (1975).

A person who seeks to invalidate an extradition has a burden of overcoming the presumption, by clear and convincing evidence, that the documents submitted by the demanding state substantially charge him with a crime. Nevard v. Conn, 187 Colo. 168, 529 P.2d 305 (1974).

Extradition ordered if minimal requirements met. If in the course of a hearing which challenges extradition proceedings, Colorado courts are satisfied that certain minimal requirements are met, extradition should be ordered. Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975).

As long as the extradition demand and accompanying documents exhibit substantial compliance with the statutory requirements, extradition should be ordered. Griffith v. Nelson, 647 P.2d 228 (Colo. 1982); Cates v. Sullivan, 696 P.2d 322 (Colo. 1985).

The general rule is that the offense must be so described that the accused may know how to answer the charge, the court what judgment to pronounce, and conviction or acquittal thereon may be pleaded in bar to any subsequent prosecution. Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965).

If it may be fairly determined what the charges are for which the extradition of the accused is being sought, then the requisition documents satisfy the statutory requirements. Martello v. Baker, 189 Colo. 195, 539 P.2d 1280 (1975).

Adequate statement as to parole violation. Demand reciting that the petitioner "is charged with the crime of parole violation having been convicted of the crime of possession of narcotics", and certifying that the petitioner has fled from Michigan and may have taken refuge in Colorado, was held adequate statement. Wynsma v. Leach, 189 Colo. 59, 536 P.2d 817 (1975).

The words "jumped bail" in a demand for extradition are substantially equivalent to a statement that a person has "broken the terms of his bail". Protz v. Watson, 194 Colo. 223, 571 P.2d 719 (1977).

The demanding state is not required to enumerate the grounds for probation revocation, only that the fugitive has violated the terms of his probation. Bernardo v. Cronin, 191 Colo. 36, 550 P.2d 349 (1976).

Indictment need not allege elements of crime. Upon the trial of the issue of guilt, it would doubtless be necessary for the prosecution to prove an essential element of the crime. It is not necessary that the indictment should contain any such allegation. The indictment did "substantially charge" the petitioner with the crime of sodomy; being a crime known to the common law, further statutory definition of the word sodomy was unnecessary. Beliajus v. Phillips, 170 Colo. 212, 460 P.2d 233 (1969).

Or prove criminal intent. The question of criminal intent is relevant only to the sufficiency of the demand for extradition. It is not an element to be proved in the

responding state. Instead, it is a jurisdictional fact which must appear from the face of the supporting documents. Where the basis for extradition is that defendant has been charged in California in the manner provided in this section with committing an act in this state, or in a third state, intentionally resulting in a crime in California, the trial court was under no duty to admit the evidence offered to prove that defendant was financially unable to make the support payments to negate the intent to commit a crime. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

The asylum state has no authority to pass on the technical sufficiency of an indictment in an interstate rendition proceeding. If the subject of extradition desires to attack the technical insufficiency of an indictment, he must do so in the demanding state. Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965); Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

Courts of the asylum state are without authority to pass upon the technical sufficiency of the indictment, which is left to the courts of the demanding state. Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1969).

A court of an asylum state is without power to review the determination of probable cause by the demanding state. Gerard v. Ossola, 649 P.2d 1110 (Colo. 1982).

The sufficiency of the evidence to support the charge is an issue to be resolved by the demanding state. Crosby v. Griswould, 650 P.2d 568 (Colo. 1982).

Matters of technical pleading will not be considered in an extradition hearing. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

It is fundamental that the technical sufficiency of the indictment is for the court of the demanding state to determine and not for the court of the asylum state. Samples v. Cronin, 189 Colo. 40, 536 P.2d 306 (1975).

Likewise, asylum state not concerned with criminal procedure. Whether demanding state required preliminary examination before felony charge could be filed is a concern of the demanding state, not the asylum state. Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

Nor on constitutional claims. However meritorious a defendant's constitutional claims may be, when the issue centers on extradition in a habeas corpus proceeding, the question must be resolved by the courts of the demanding state and not by the courts of Colorado. Buffalo v. Tanksley, 189 Colo. 45, 536 P.2d 827 (1975).

Nor as to parole violation. Whether a person convicted of a crime has in fact violated his parole is of no concern in the courts of the asylum state. Tinsley v. Woods, 135 Colo. 590, 313 P.2d 1006 (1957).

The relinquishing state will not look beyond the statement of the governor of the demanding state that the person sought has violated the terms of his parole. An inquiry into that subject is reserved for the demanding state upon the individual's return. Wynsma v. Leach, 189 Colo. 59, 536 P.2d 817 (1975).

Or whether terms of probation violated. Whether the petitioner has, in fact, violated the terms of his probation is a matter for determination in the demanding, not the asylum, state. Bernardo v. Cronin, 191 Colo. 36, 550 P.2d 349 (1976).

The issue of whether the demanding state properly revoked a fugitive's probation is a matter for determination in the demanding, not the asylum, state. Patrick v. Watson, 195 Colo. 156, 576 P.2d 1014 (1978).

Hearing not required to show probable cause exists that defendant violated probation. Due process does not require that all extradition proceedings include a hearing to determine that probable cause exists to show that a defendant has violated the terms of his probation. Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975).

Due process of law does not require the courts of this state to extend an extradition proceeding beyond an examination of the sufficiency of the extradition documents into an exploration of whether there was probable cause to believe that the appellant had violated the terms of his probation. Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975).

Demanding state has no duty to ensure that a pre-extradition hearing is held in the asylum state. Smith v. Lamm, 629 F. Supp. 1184 (D. Colo. 1986).

The requirement for ordering extradition is satisfied if the trial court finds either that probable cause exists or that the demanding state has made a finding of probable cause. Lopez v. Cronin, 193 Colo. 486, 568 P.2d 43 (1977).

If the finding of probable cause was supported by evidence in the record, the constitutional and statutory requirements would be met. The requirement is also met if probable cause is in fact established by the extradition papers. Lopez v. Cronin, 193 Colo. 486, 568 P.2d 43 (1977).

Effect of waiver of right to showing of probable cause in demanding state. Wyoming may extradite a defendant without an independent showing in Colorado of probable cause to hold him for trial in Wyoming, when he has already validly waived his right to such a showing in Wyoming. Smith v. Miller, 194 Colo. 218, 571 P.2d 1084 (1977).

Extradition documents were sufficient to establish probable cause to believe that the appellant had committed a crime in Minnesota. Simon v. Miller, 194 Colo. 27, 568 P.2d 1167 (1977).

Where extradition is based on an information, there must be an accompanying affidavit which sets forth facts and circumstances which establish "something approaching probable cause". Graham v. Vanderhoof, 185 Colo. 334, 524 P.2d 611 (1974); Smith v. Miller, 194 Colo. 218, 571 P.2d 1084 (1977).

Affidavit, accompanying extradition request, which incorporated police reports setting out facts of the investigation established sufficient cause. Graham v. Vanderhoof, 185 Colo. 334, 524 P.2d 611 (1974).

Right to hearing does not turn on who demands transfer. A prisoner's right to a hearing should not turn on whether custody and transfer are sought by the demanding state under the extradition act or by the receiving state under the interstate compact. Moen v. Wilson, 189 Colo. 85, 536 P.2d 1129 (1975).

Who may be extradited. Where the requisition papers show that the person has been charged and convicted in the demanding state, and that he has not completed his sentence, that person can be extradited to the demanding state under this article. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

In light of § 16-19-103 and the act's purposes, this section does not limit the extradition of an individual convicted of a crime to instances where he has "escaped from confinement or has broken the terms of his bail, probation, or parole". Such language was only meant to be illustrative, but not exhaustive, of the occasions when a convicted person can be considered to have fled from the justice of another state. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

A person remains charged with crime while the judgment of conviction remains unsatisfied; hence, where a charge of crime has resulted in a conviction, the record of such conviction is sufficient evidence in extradition proceedings. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957); Tinsley v. Woods, 135 Colo. 590, 313 P.2d 1006 (1957).

A typewritten demand such as the judgment of conviction satisfies the language of the law. It alone is sufficient; hence, whose signature was on the order of commitment showing the sentence is unimportant, as long as all papers were authenticated by the governor who is the only one required by law to do so. Burnette v. McClearn, 162 Colo. 503, 427 P.2d 331 (1967).

When extradition is for an offense that has resulted in conviction, all that is required is record of conviction and a statement by the governor that the accused has violated his parole. Wynsma v. Leach, 189 Colo. 59, 536 P.2d 817 (1975).

Parolee subject to extradition. A crime that has resulted in conviction remains a charge under § 2, cl. (2) of art. IV, U.S. Const., which mandates the relinquishment of any person "charged" with a crime who has fled from justice and is in another state, so long as the sentence resulting from conviction is unsatisfied. Consequently, a parolee is subject to extradition as a fugitive because, as a convict with an unexpired sentence, he remains criminally "charged". His extradition is for his original offense. Wynsma v. Leach, 189 Colo. 59, 536 P.2d 817 (1975).

Parolee properly in asylum state extraditable for another offense. The fact that defendant was legally in the asylum state under probation does not prevent him from being a fugitive from the demanding state with respect to another offense. Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

Or for parole violation. A convicted individual may be extradited as a fugitive when he, prior to the revocation of parole, seeks asylum in the state from which he is sought to be extradited. The paroled prisoner is declared to be a fugitive from justice on the ground that he is a convict whose time has not expired and who, therefore, is charged with crime. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957).

Probable cause finding by a neutral judicial officer in demanding state forecloses court in asylum state from reconsidering issue and when governor of asylum state grants extradition, prima facie evidence exists that all constitutional and statutory requirements have been met and the burden shifts to the petitioner to prove the extradition request is improper. Johnson v. Cronin, 690 P.2d 1277 (Colo. 1984).

A determination of probable cause by a neutral magistrate of the demanding state is binding upon the courts of any asylum state, which are without power to review that determination. Allen v. Leach, 626 P.2d 1141 (Colo. 1981); Richardson v. Sullivan, 700 P.2d 534 (Colo. 1985).

Affidavits failing to set forth facts establishing probable cause not insufficient. Affidavits supporting an extradition demand are not insufficient because they fail to set forth sufficient facts to establish probable cause, because a determination of probable cause by a neutral judicial officer of the demanding state is binding upon the courts of the asylum state. Moore v. Miller, 198 Colo. 24, 596 P.2d 64 (1979).

Presence of warrant in requisition documents establishes probable cause. When a state's law requires a judge to find probable cause before issuing a warrant, the presence of the warrant in the requisition documents establishes probable cause for the purposes of this section. Keefer v. Leach, 198 Colo. 101, 597 P.2d 203 (1979); Parker v. Glazner, 645 P.2d 1319 (Colo. 1982); Vigil v. Martinez, 661 P.2d 1164 (Colo. 1983).

Minutes of earlier proceeding during which defendant was found guilty qualifies as copy of judgment of conviction or of a sentence. Miller v. Cronin, 197 Colo. 391, 593 P.2d 706 (1979).

Certified copies of minute orders qualify as a copy of a judgment of conviction or sentence. Blackwell v. Johnson, 647 P.2d 237 (Colo. 1982); Butcher v. Caldwell, 677 P.2d 342 (Colo. 1984).

Record of conviction and probation violation sufficient to support extradition. Where the defendant violated the terms of his probation, all that is required is a record of the conviction and a statement by the governor of the requisition state that the person sought has violated the terms of his probation. Blackburn v. Johnson, 647 P.2d 238 (Colo. 1982).

And for parole violators record of conviction and parole violation is sufficient. Rodriquez v. Sandoval, 680 P.2d 1278 (Colo. 1984).

Where extradition based on substantive offense rather than probation violation. Where extradition is based not upon violation of the terms of probation, but upon

the substantive criminal offense for which the defendant has not yet completed his sentence, all that is required is a record of the conviction and a statement by the governor of the requisition state that the person sought has violated the terms of his probation. Morgan v. Miller, 197 Colo. 341, 593 P.2d 357 (1979).

Where indictment states two possible grounds for extradition but only one is basis for extradition. Where the indictment states two possible grounds for extradition, a charge of aggravated robbery and a burglary conviction, but the governor's requisition indicates that the charge of aggravated robbery is the actual basis for extradition, the statute requires only an accompanying indictment together with any warrants issued pursuant thereto and the allegation that petitioner was in the demanding state when the crime occurred and afterwards fled, and failure to include an authenticated copy of the prior conviction does not render the indictment ineffective. Anderson v. Cronin, 198 Colo. 103, 596 P.2d 760 (1979).

No distinction between properly verified complaint and unverified information with affidavit. There is no meaningful distinction between a properly verified complaint which incorporates attached factual matter by reference and an unverified information with supporting affidavit. Coca v. Sheriff of City & County of Denver, 184 Colo. 11, 517 P.2d 843 (1974).

Thus, the sufficiency of affidavits preliminary to the original criminal complaint or indictment is immaterial. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957).

Where person sought to be extradited is charged with crime by grand jury indictment, an authenticated copy of which accompanies extradition papers, affidavit showing probable cause is not required. People v. Jackson, 180 Colo. 135, 502 P.2d 1106 (1972).

A grand jury indictment is a finding of probable cause by the grand jury so extradition papers based upon an indictment need not have an additional showing of probable cause. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

When extradition is founded upon a criminal indictment, supporting affidavits are unnecessary and may be regarded as immaterial surplusage when considering the sufficiency of the form of demand required. McCoy v. Cronin, 187 Colo. 364, 531 P.2d 379 (1975).

But affidavit alone must show probable cause for arrest. An affidavit used to charge a crime for the purpose of obtaining an arrest warrant must set forth facts sufficient to justify a finding of the existence of probable cause. It should report or summarize enough evidence to justify the issuance of an arrest warrant in the accusing state. People v. McFall, 175 Colo. 151, 486 P.2d 6 (1971).

The affidavit in support of the extradition documents must also contain sufficient information to justify a fourth amendment finding of probable cause that the accused committed the crime with which he is charged. Allen v. Cronin, 189 Colo. 540, 543

P.2d 707 (1975); Renton v. Cronin, 196 Colo. 109, 582 P.2d 677 (1978).

The affidavit which accompanies the arrest warrant and the criminal complaint from the demanding state must set forth some of the underlying circumstances surrounding the crime charged, as well as an adequate identification of the source, or sources, of the information set forth in the affidavit. Allen v. Cronin, 189 Colo. 540, 543 P.2d 707 (1975).

Probable cause established that defendant committed crime of escape. Where the complaint and affidavit was based upon the personal information and knowledge of the chief records officer of the Kentucky state reformatory, stating under oath that appellant had been confined in the Kentucky state reformatory under a sentence of 10 years for armed robbery, pursuant to a judgment of conviction from the Jefferson circuit court of Louisville, Kentucky; that affiant had been the chief records officer of the reformatory for 16 years and was in charge of the official custody and control records of the appellant at the reformatory; and that he knew, from these records and his own personal knowledge, that appellant did escape from the reformatory, leaving while on a hospital trip to Louisville, Kentucky, the complaint and affidavit is sufficient to establish probable cause that appellant had committed the substantive crime of escape under the Kentucky statute. Norrod v. Bower, 187 Colo. 421, 532 P.2d 330 (1975).

Whether the affidavits establishing probable cause were executed before or after the charging document is immaterial, provided that the extradition documents, viewed in their entirety, establish probable cause that the person to be extradited committed the offense. Wood v. Leach, 189 Colo. 361, 540 P.2d 1084 (1975); See Hill v. Miller, 195 Colo. 370, 578 P.2d 655 (1978); Moore v. Miller, 198 Colo. 24, 596 P.2d 64 (1979); Dietz v. Leach, 199 Colo. 293, 607 P.2d 993 (1980).

Prima facie showing of identity. Where the name of the person in custody is identical to that appearing in the extradition documents, there is a prima facie showing of identity and the burden is on the petitioner to disprove the presumed identity. Samples v. Cronin, 189 Colo. 40, 536 P.2d 306 (1975); Guy v. Nelson, 630 P.2d 610 (Colo. 1981).

Identity of name with the extradition documents is sufficient to establish a prima facie showing of identity; and, unless overcome by the appellant's evidence showing lack of identity, the prima facie showing is sufficient to establish identity. Cates v. Cronin, 194 Colo. 89, 570 P.2d 524 (1977).

Once the prosecution has established a prima facie showing of identity, the person charged as a fugitive must show that he is not the person sought by the demanding state. Beam v. McKinster, 652 P.2d 618 (Colo. 1982).

Once a prima facie case for extradition has been established, the burden devolves upon the accused to prove by clear and convincing evidence either that he is not a fugitive from the demanding state or that he is not substantially charged with a crime in that state. Lucero v. Martin, 660 P.2d 902 (Colo. 1983); Richardson v. Sullivan, 700

P.2d 534 (Colo. 1985); Council v. MacFarlane, 709 P.2d 947 (Colo. 1985).

However, the use of a "a/k/a" as a means of identifying a fugitive in a complaint, standing alone, is not sufficient to establish a prima facie showing of identity. Cates v. Sullivan, 696 P.2d 322 (Colo. 1985).

But the use of "a/k/a" documentation coupled with a description and photograph of the fugitive is sufficient to establish a prima facie showing of identity. Cates v. Sullivan, 696 P.2d 322 (Colo. 1985).

Clear and convincing evidence must be shown by accused that he is not the person sought in order to rebut the prima facie showing of identity. Guy v. Nelson, 630 P.2d 610 (Colo. 1981).

Where petitioner failed to introduce evidence that he was not the person described in the requisition documents and the cross-examination of the respondents' witnesses did not create such evidence, the petitioner failed to establish that he was not the person described in the documents. Council v. MacFarlane, 709 P.2d 947 (Colo. 1985).

Statutory citation not required to be included within indictment. Samples v. Cronin, 189 Colo. 40, 536 P.2d 306 (1975).

An information not required with indictment. The trial court was in error to discharge a fugitive for lack of an information for no such information is required. It is sufficient that a certified copy of the indictment, charging the passing of a worthless check, and other papers relating thereto, including a requisition, were forwarded from the governor of Tennessee and that the governor of Colorado issued a warrant for petitioner's arrest on the basis of such papers. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

The statement required by the extradition statute may be contained in the documents appended to the form of demand since the requisitioning governor certifies the accuracy of these documents. Wynsma v. Leach, 189 Colo. 59, 536 P.2d 817 (1975).

Statements as to escape and copy of judgment are sufficient. In cases where persons are sought as escapees from state prison, all that is required for extradition is either a copy of the judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement. Burnette v. McClearn, 162 Colo. 503, 427 P.2d 331 (1967); Holmes v. People, 169 Colo. 371, 456 P.2d 731 (1969).

Where a demand is for a person whose judgment of conviction remains unsatisfied, the demand shall be accompanied by a copy of the judgment of conviction or of the sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or broken the terms of his bail, probation, or parole. Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975).

Affidavit of sheriff in extraditing jurisdiction held sufficient. Weathers v. Sullivan, 184 Colo. 39, 518 P.2d 842 (1974).

Fact that signature of South Carolina solicitor on indictment was made by his deputy did not preclude extradition of fugitive to South Carolina where procedure of having deputy sign solicitor's name to an indictment was proper and routine in South Carolina. Nevard v. Conn, 187 Colo. 168, 529 P.2d 305 (1974).

Authentication of demanding governor is sufficient. In the absence of a showing that any of the documents authenticated by a governor are spurious the certificate of the governor is sufficient. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957); Tinsley v. Woods, 135 Colo. 590, 313 P.2d 1006 (1957).

The question of authenticity is one for the determination of the governor of the demanding state alone, and his certification of that fact is all that is required. Burnette v. McClearn, 162 Colo. 503, 427 P.2d 331 (1967); Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975).

Where governor of demanding state personally certifies to authenticity of extradition papers according to laws of demanding state, requirements of section in regard to authentication are met. People v. Jackson, 180 Colo. 135, 502 P.2d 1106 (1972).

Where the requisition signed by the governor of Arizona clearly reflected that the indictment was authenticated, and in the absence of any showing by the accused that the authenticated documents are spurious, the requisition must be considered to be adequate and sufficient to support an extradition order. Rush v. Baker, 188 Colo. 136, 533 P.2d 36 (1975).

Certification of extradition documents is not defective because there is no authorization included to show that the chief deputy clerk could sign for the clerk of the court when the demanding state's governor's authentication covers all the documents including the affidavits of probable cause and the arrest warrant. Absent some showing that the documents are spurious, the governor's general authentication establishes their validity. Keefer v. Leach, 198 Colo. 101, 597 P.2d 203 (1979).

The only authentication required by § 16-19-104 is an authentication by the executive authority of the demanding state. Clark v. Leach, 200 Colo. 151, 612 P.2d 1130 (1980); Butcher v. Caldwell, 677 P.2d 342 (Colo. 1984).

Governor's authentication covers all documents. A governor's general authentication, included in the requisition documents, covers all documents included in the requisition request. Blackwell v. Johnson, 647 P.2d 237 (Colo. 1982).

Requisition document signed by one other than governor. A requisition document, signed by one other than the governor of the demanding state, is valid so long as the capacity of the signator to act on behalf of the governor is duly authenticated. Hershberger v. Black, 645 P.2d 278 (Colo. 1982).

Petitioner's burden to overcome presumption that extradition papers properly signed. The burden of proof is on the petitioner to overcome the presumption

that the person signing the extradition papers had the authority to do so. Hershberger v. Black, 645 P.2d 278 (Colo. 1982).

The copies necessary to accompany the demand need not be verified, certified, nor photocopied. Burnette v. McClearn, 162 Colo. 503, 427 P.2d 331 (1967); Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975).

Indictments need not specifically attest that their certification was authorized. The copy of the indictments accompanying the request for extradition need not specifically attest that the officer of the court who certified the copies of the indictments was authorized to do so. Furman v. Miller, 198 Colo. 282, 598 P.2d 1042 (1979).

Charging documents accompanying demand for extradition must be verified by executive authority. The requirements of this statute are clear as to which of the documents accompanying the demand for extradition must be authenticated by the executive authority making the demand. They are, "the copy of indictment, information, affidavit, judgment of conviction or sentence". In other words, it is the charging document. People v. Lent, 187 Colo. 248, 529 P.2d 1317 (1975).

Minor discrepancies or inconsistencies in the requisition documents do not render them invalid or prevent extradition. Martello v. Baker, 189 Colo. 195, 539 P.2d 1280 (1975); Griffith v. Nelson, 647 P.2d 228 (Colo. 1982).

A minor discrepancy in the charge set forth in the requisition documents does not prevent extradition. Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975); Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983).

As long as the requisition documents substantially comply with these statutory requirements, extradition should be ordered notwithstanding minor discrepancies or inconsistencies in the documents. Lucero v. Martin, 660 P.2d 902 (Colo. 1983); Cates v. Sullivan, 696 P.2d 322 (Colo. 1985).

Immaterial clerical inconsistencies do not affect the validity of the governor's warrant. Morris v. Nelson, 659 P.2d 1386 (Colo. 1983).

Although a charging document must be phrased substantially in accordance with the statutory language, minor discrepancies will not prevent extradition if the substantive statutory standards are met. Furman v. Miller, 198 Colo. 282, 598 P.2d 1042 (1979).

Where the documents substantially charge the defendant with having committed a crime under the laws of another state, clerical errors do not render the extradition documents invalid or prevent extradition. Wilson v. Johnson, 645 P.2d 21 (Colo. 1982).

Where the only difference between an authenticated copy and the original indictment relates to the manner in which those signatures are described on the copy, such difference does not impair the genuineness of the signatures on the original indictment nor the authenticity of the copy, and this authenticated copy satisfied the requirements of this section. Griffith v. Nelson, 647 P.2d 228 (Colo. 1982).

Demanding state is not required to allege every element of crime for which extradition is sought and charging documents are sufficient if framed substantially in the language contained in the statute. Johnson v. Cronin, 690 P.2d 1277 (Colo. 1984).

Technical discrepancy in middle name insufficient to defeat extradition. Under summary proceedings, sole reliance on a technical discrepancy in a middle name, when appellant does not allege or represent that he is not the fugitive, will not suffice to defeat extradition. Beverly v. Davis, 648 P.2d 621 (Colo. 1982); Beam v. McKinster, 652 P.2d 618 (Colo. 1982).

Where there is a discrepancy between the middle initial contained in the extradition documents and the governor's warrant and the initial claimed by the accused as being correct, a prima facie case of identity may be established by an appropriate affidavit and photograph. Miller v. Debekker, 668 P.2d 927 (Colo. 1983).

Discrepancy as to height insufficient to defeat extradition. A discrepancy between an extradition document from a demanding state and a governor's warrant issued pursuant thereto in this state, as to the height of the person in custody, is not clear and convincing evidence that the detainee is not the person named in the extradition document. Tackett v. Leach, 661 P.2d 1160 (Colo. 1983).

Evidence of fugitive's own admissions relating to alleged offenses sufficient to overcome technical discrepancy in extradition documents and to establish identity for persons of extradition. Edmonds v. Andrews, 696 P.2d 325 (Colo. 1985).

Clerical defects did not require reversal. Clerical defects in extradition papers, such as the failure of the governor of North Dakota to insert in one the day and month on which he signed it, and in another, the day cannot be the basis for a reversal. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

Extradition complaint was not defective because it incorporated by reference "6 pages", and there were attached two duplicate sets of investigative reports, each set containing six pages. Coca v. Sheriff of City & County of Denver, 184 Colo. 11, 517 P.2d 843 (1974).

Once a valid governor's warrant has been issued and served, questions relating to the illegality or irregularity of the arrest or initial detention become moot. Reese v. Warden & Keeper of County Jail, 193 Colo. 7, 561 P.2d 339 (1977); Renton v. Cronin, 196 Colo. 109, 582 P.2d 677 (1978); Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980); Gerard v. Ossola, 649 P.2d 1110 (Colo. 1982).

Once the governor's warrant is served, issues concerning the petitioner's previous detention are moot. Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983).

Defects in the original Colorado arrest documents become moot once the petitioner is served with the governor's warrant. Morris v. Nelson, 659 P.2d 1386 (Colo. 1983).

Subsequent extradition not barred by defective prior proceeding. Prior grant of

writ of habeas corpus in extradition proceedings on ground that rendition papers allege that petitioner is fugitive when it is admitted that he is not a fugitive does not bar, under doctrine of res judicata, a subsequent attempt at extradition where facts and issues are different from those raised by the first petition. Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

First hearing not res judicata. Where the only issue determined by a trial court on a first habeas corpus proceeding was that the petitioner was then unlawfully detained because the requesting state had not provided all the necessary documents required for extradition, the underlying basis or validity of the extradition demand was not adjudicated in the first habeas corpus proceeding and is not res judicata to second. Tucker v. Shoemaker, 190 Colo. 267, 546 P.2d 951 (1976).

Judicial review under extradition act but not under detainer act. The extradition act and the uniform detainer compact, when applied to prisoners who are similarly situated, grant limited judicial review to contest transfer when the extradition act is used, but not under the provisions of the agreement on detainers. Moen v. Wilson, 189 Colo. 85, 536 P.2d 1129 (1975).

Compliance with section established. Woolsey v. Nelson, 178 Colo. 144, 496 P.2d 306 (1972); Reese v. Warden & Keeper of County Jail, 193 Colo. 7, 561 P.2d 339 (1977).

Statute as basis for jurisdiction. See Lomax v. Cronin, 194 Colo. 523, 575 P.2d 1285 (1978); Sollinger v. McNeel, 656 P.2d 701 (Colo. 1983).

Applied in Threadgill v. Capra, 161 Colo. 453, 423 P.2d 318 (1967); Bartz v. Capra, 161 Colo. 503, 423 P.2d 25 (1967); Davis v. People, 172 Colo. 486, 474 P.2d 206 (1970); Buckmon v. Cronin, 183 Colo. 205, 515 P.2d 1245 (1973); Teters v. Watson, 190 Colo. 355, 547 P.2d 1277 (1976); People v. Pitcher, 192 Colo. 195, 557 P.2d 395 (1976); Dulac v. Miller, 195 Colo. 275, 577 P.2d 761 (1978); Jackson v. Cronin, 199 Colo. 428, 610 P.2d 103 (1980); Schoengarth v. Bray, 200 Colo. 288, 615 P.2d 655 (1980); Briddle v. Caldwell, 628 P.2d 613 (Colo. 1981); Martin v. Johnson, 708 P.2d 121 (Colo. 1985); Johnson v. Sullivan, 708 P.2d 123 (Colo. 1985).

16-19-105. Governor may investigate case.

When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Source: L. 53: p. 315, § 4. **CSA:** C. 72, § 49. **CRS 53:** § 60-1-4. **C.R.S. 1963:** § 60-1-4.

ANNOTATION

Courts of asylum state may not consider certain allegations. The courts of the asylum state in a habeas corpus proceeding under this article may not properly consider allegations that the fugitive's life would be endangered by return to the demanding state. The accused, in respect to this matter, must pursue his remedies in the demanding state or with the executive of the asylum state. Lomax v. Cronin, 194 Colo. 523, 575 P.2d 1285 (1978).

It is improper for judiciary to tell governor how to delegate his authority in extradition matters. It is no less improper for the judiciary to tell the governor, once he has delegated his authority, how the delegated authority should be exercised. Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981).

16-19-106. Extradition of persons imprisoned or awaiting trial.

(1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of the other state for the extradition of that person before the conclusion of such proceedings or his term of sentence in the other state, upon condition that such person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 16-19-124 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Source: L. 53: p. 315, § 5. **CSA:** C. 72, § 50. **CRS 53:** § 60-1-5. **C.R.S. 1963:** § 60-1-5.

ANNOTATION

Section deals with problem of extraditing prisoners already in custody. This section was specifically designed to deal with the problem of extraditing and returning those prisoners who are already in the custody of the authorities of another state by reason of imprisonment or awaiting trial. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

This section is both a grant and limitation of executive authority. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

And sets forth the course of conduct which the Colorado governor must follow. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

Subsection (1) affirmative duty on executive and provides standard to state of origin. The clause in subsection (1) requiring that return be made "as soon as the prosecution in this state is terminated" is an affirmative duty that the general assembly has imposed in the executive, is clearly intended to provide a standard to the state of origin, informing that state as to the proper time for demand, and gives the governor of Colorado a standard for determining when a demand for return is both timely and proper. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

This grant of authority is addressed to governor's discretion. But once having exercised that discretion, the powers and duties of the governor are controlled by the terms of this section. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

Executive authority limited to make surrender at later date. Where an executive agreement based on this statute has been made, the failure to return a person according to the terms of the statute limits the authority of Colorado executive to make surrender at a later date. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

Governor was without authority to make return. Where extradition request was filed more than eight years after petitioner's appellate proceedings in Colorado had terminated, Colorado governor, who had entered into an executive agreement with requesting state, was without authority under this section to make the requested return. Watson v. Enslow, 183 Colo. 435, 517 P.2d 1346 (1974).

Demand in alternative adequate. Demand for extradition complied with § 16-19-104 although the requisition documents contained both a demand for extradition, pursuant to § 16-19-103, and a request for extradition predicated on this section, which controls executive agreements, since the executive agreement, which accompanied the requisition documents, served only to ensure that the demanding state would return and surrender defendant to the Colorado authorities upon the completion of the trial in the demanding state. Buffalo v. Tanksley, 189 Colo. 45, 536 P.2d 827 (1975).

"Flagging device" on file permitted. Another state may request that Colorado authorities notify it 60 days prior to the petitioner's release so that his consecutive sentence could be served there. The request for notification is no more than a "flagging device", which allows the requesting state to take whatever action it deems appropriate. Moore v. Ricketts, 654 P.2d 837 (Colo. 1982).

16-19-107. Extradition of persons not present where crime committed.

(1) The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 16-19-104 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article 19 that are not otherwise inconsistent apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom, provided the acts for which extradition is sought would be punishable by the laws of this state if the acts occurred in this state.

(2) Except as required by federal law, the governor shall not surrender a person charged in another state as a result of the person engaging in a legally protected health-care activity, as defined in section 12-30-121 (1)(d), unless the executive authority of the demanding state alleges in writing that the accused was physically present in the demanding state at the time of the commission of the alleged offense and that thereafter the accused fled from the demanding state.

Source: L. 53: p. 316, § 6. **CSA:** C. 72, § 51. **CRS 53:** § 60-1-6. **C.R.S. 1963:** § 60-1-6. **L. 2023:** Entire section amended, (SB 23-188), ch. 68, p. 246, § 13, effective April 14.

Cross references: For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

ANNOTATION

Constitutionality. Some 44 states have adopted the procedure of this section as part of the uniform act and in no state has it been held unconstitutional for denial of equal protection or due process. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

This section providing for extradition of nonfugitives must be strictly construed and strictly complied with in proceedings thereunder. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

It confers discretion upon governor. Upon receipt of a request under this section for the surrender of a person charged with an act resulting in a crime in the demanding state, the governor of Colorado in the exercise of his discretion may cause his arrest and surrender and finds his authority and protection under this section, and not under the constitution or laws of the United States or § 16-19-103 relating to fugitives. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957); Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958); Layher v. Van Cleave, 171 Colo. 465, 468 P.2d 32 (1970).

The rendition of a nonfugitive is permissible as a matter of executive discretion. Allen v. Leach, 626 P.2d 1141 (Colo. 1981).

State not constitutionally required to deliver nonfugitive. Where it was stipulated that appellant was a "fugitive" and that his extradition was sought under this section, the state of Colorado was not constitutionally required to deliver him to the state requesting him. Allen v. Leach, 626 P.2d 1141 (Colo. 1981).

Which is exercisable pursuant to demand. The governor of Colorado has no inherent powers of arrest and surrender and cannot proceed as a volunteer but is limited to acting pursuant to a demand or a request from the executive of a sister state, and then only in strict conformity with law. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

The governor's discretion is not a completely arbitrary one, but can be exercised only upon a lawful demand or request from the executive authority of another state to surrender only those persons in this state who have been charged by the demanding state with committing an act in this state or a third state which intentionally results in a crime in the demanding state. The governor cannot proceed as a volunteer, but must act in strict conformity with the law. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

And warrant for fugitive ineffective where request concerns nonfugitive. A warrant issued for the arrest of defendant as a fugitive from the justice of a sister state, where the facts disclosed that he was charged with violation of the reciprocal nonsupport act and had never been in that sister state except to pass through, was unlawful and void and he cannot be extradited as a fugitive. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

Where demand is made for the arrest and delivery pursuant to the constitution and laws of the United States under § 16-19-103 pertaining to fugitives, and arrest and surrender are made pursuant to the laws of the state of Colorado under this section, the warrant issued is not in accordance with the requisition; consequently, it is wholly ineffectual for any purpose. Layher v. Van Cleave, 171 Colo. 465, 468 P.2d 32 (1970).

But subsequent extradition not barred by defective prior proceeding. Prior grant of writ of habeas corpus in extradition proceedings on ground that rendition papers allege that petitioner is fugitive when it is admitted that he is not a fugitive does not bar, under doctrine of res judicata, a subsequent attempt at extradition where facts and issues are different from those raised by the first petition. Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

Extradition available to enforce support obligations. Since the enactment of the "Uniform Reciprocal Enforcement of Support Act" in Colorado there are now two distinct courses of action which a demanding state may take with respect to one who does not carry out his obligations of support to his family: (1) Extradition on a criminal charge of nonsupport; and (2) the initiation of civil proceedings under the

uniform act. Either or both courses of action may be pursued, and the election lies wholly with the demanding state and the obligee. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

Affidavits accompanying request for extradition sufficient to show probable cause. Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

Applied in Howe v. Cronin, 197 Colo. 17, 589 P.2d 930 (1979); Morris v. Nelson, 659 P.2d 1386 (Colo. 1983); Lucero v. Martin, 660 P.2d 902 (Colo. 1983).

16-19-108. Issue of governor's warrant.

If the governor decides that the demand should be complied with, the governor shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom the governor may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. Any electronically or electromagnetically transmitted facsimile of a governor's warrant shall be treated as an original document.

Source: L. 53: p. 316, § 7. **CSA:** C. 72, § 52. **CRS 53:** § 60-1-7. **C.R.S. 1963:** § 60-1-7. **L. 93:** Entire section amended, p. 518, § 8, effective July 1.

ANNOTATION

Law reviews. For article, "Report of the Denver Bar Association's Committee on the Administration of Criminal Justice in Colorado", see 2 Den. B. Ass'n Rec. 2 (Feb. 1925).

Governor may direct execution of arrest warrant. This section provides that if the governor determines that the demand be complied with he shall sign a warrant of arrest, which shall be sealed with the state seal, and direct some person selected by the chief executive to execute the same. Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958).

But he cannot proceed without demand. The governor of Colorado has no inherent powers of arrest and surrender. His rights and duties are clearly defined; he cannot proceed as a volunteer but is limited to acting pursuant to a demand or a request from a sister state and then only in strict conformity with law. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957); Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

Governor may delegate his authority to review and sign extradition documents. Macurdy v. Leach, 662 P.2d 166 (Colo. 1983).

It is improper for judiciary to tell governor how to delegate his authority in extradition matters. It is no less improper for the judiciary to tell the governor, once he has delegated his authority, how the delegated authority should be exercised. Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981).

Presumption that lieutenant governor properly signed warrant. It is defendant's burden of proof to overcome the presumption that the lieutenant governor was acting pursuant to her authority and was properly exercising the incidents of her office when she signed the governor's warrant. Jaques v. Bray, 645 P.2d 22 (Colo. 1982).

The warrant of the governor of the asylum state merely implements the proceedings which are based on the requisition from the demanding state. Self v. People, 133 Colo. 524, 297 P.2d 887 (1956).

It must substantially recite the facts necessary to the validity of its issuance. Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958).

It need not include a statement that the defendant was present in the demanding state at the time of commission of the alleged crime. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967).

Or set out statutory authority for action. The arrest warrant in extradition proceedings of a fugitive from justice need not clearly define and set out the enabling statutes of the asylum state under which the executive authority of the state purports to act. Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958).

And defective warrant may be cured by accompanying papers. If the rendition warrant is defective but is accompanied by allied papers, either on the return to the writ of habeas corpus or introduced on the trial, which when taken together with the warrant show that the executive of the asylum state did in fact have before him the necessary jurisdictional matters, namely the documents required for the issuance of the warrant, then the prisoner is not illegally restrained. Self v. People, 133 Colo. 524, 297 P.2d 887 (1956).

Governor's warrant is prima facie evidence of jurisdiction. The findings of the governor as to the status of a prisoner as a fugitive from justice establishes prima facie that the accused is a fugitive from justice and subject to prosecution in the demanding state. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

A governor's extradition warrant is prima facie evidence that all legal requirements have been complied with. Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965); Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

In Colorado, as in most jurisdictions, a warrant issued by a governor is prima facie evidence both that a petitioner is substantially charged with a crime and that he is a fugitive from justice. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966); Ede v. Bray, 178 Colo. 99, 495 P.2d 1139 (1972).

Execution of a governor's warrant establishes prima facie evidence that the person who is sought to be extradited is

substantially charged with a crime. Nevard v. Conn, 187 Colo. 168, 529 P.2d 305 (1974).

The issuance of the governor's warrant establishes prima facie that the accused is substantially charged with the commission of a crime in the demanding state, and the burden is upon him to show otherwise. McCoy v. Cronin, 187 Colo. 364, 531 P.2d 379 (1975).

The warrant of the governor of the asylum state is prima facie evidence of three things only: (1) That the defendant is substantially charged with a crime in the demanding state; (2) that he is a fugitive from the justice of that state; and (3) that a demand has been made for his delivery to the state wherein he is charged with a crime. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967).

It is sufficient that the governor's warrant of the asylum state recite that defendant is a fugitive from justice in the demanding state to create a presumption that the accused was present in the demanding state at the time of the crime. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967); Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971); Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

The warrant of arrest is prima facie evidence of the recitals therein. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

The governor's warrant of the asylum state is prima facie evidence that the accused was substantially charged with a crime under the laws of the demanding state, and that accused fled from justice after committing a felony in the demanding state. Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

And of authority to arrest and deliver defendant. Where the Colorado warrant recites that defendant is a fugitive from justice and that he stands charged with a crime, and it is accompanied by a certified copy of the indictment, it is prima facie sufficient authority for the arrest of the defendant and delivery of him to the agents duly appointed to return him to the demanding state. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

Thus, process of arrest in first instance becomes moot and academic, when replaced by governor's warrant. McClearn v. Jones, 162 Colo. 354, 426 P.2d 192 (1967); Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

The governor's warrant for defendant's arrest for extradition having issued and having been filed, the issue as to whether he was lawfully arrested by an unverified information in the first instance is not just academic but moot. Velazquez v. People, 154 Colo. 284, 389 P.2d 849 (1964).

Once the governor's warrant is filed in the district court, irregularity in connection with prior proceedings becomes moot. Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1969).

Alleged illegality of the process of arrest involved in an initial arrest in the asylum state becomes moot upon the issuance of a governor's warrant. Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973).

Once the governor's warrant has been issued, the question of the validity of the

initial arrest becomes moot and may not be raised in habeas corpus proceedings which test the validity of the detention under the governor's warrant. McCoy v. Cronin, 187 Colo. 364, 531 P.2d 379 (1975).

After a valid governor's warrant is issued and served, illegalities and irregularities which relate to the initial arrest of the fugitive become moot. White v. Leach, 188 Colo. 62, 532 P.2d 740 (1975).

It is unnecessary to execute the governor's warrant by rearresting when accused has already been arrested and is free on bond. McClearn v. Jones, 162 Colo. 354, 426 P.2d 192 (1967); Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

But warrant for fugitive ineffective where request concerns nonfugitive. A warrant charging petitioner as a fugitive from the justice of a sister state for failure to support his minor children is not supported by a showing that petitioner's wife left him and removed to the sister state with their children, and that petitioner has never been in that state except to pass through, and hence he cannot be extradited as a fugitive. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

Where demand is made for arrest and delivery pursuant to the constitution and laws of the United States under this section and arrest and surrender are made pursuant to the laws of the state of Colorado, under § 16-19-107 pertaining to extradition of persons not present where crime committed, the warrant issued is not in accordance with the requisition; consequently, it is wholly ineffectual for any purpose. Layher v. Van Cleave, 171 Colo. 465, 468 P.2d 32 (1970).

Where person claims he is not the fugitive sought, prima facie identity may be established through testimony, photographs, and fingerprints identifying the person is the fugitive being sought. Secrest v. Simonet, 708 P.2d 803 (Colo. 1985).

Misspelling petitioner's name in document supporting governor's warrant immaterial. Where two names are spelled differently but sound alike in their pronunciation, they are regarded as the same under the doctrine of idem sonans, and misspelling of petitioner's name in documents supporting governor's warrant was immaterial. Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973).

Identity between name in extradition documents and name in governor's warrant establishes a prima facie case that the person charged as a fugitive is indeed the fugitive sought by the demanding state. Richardson v. Cronin, 621 P.2d 949 (Colo. 1980); Council v. MacFarlane, 709 P.2d 947 (Colo. 1985).

Presumption of named person's presence in demanding state at time of offense. The issuance of a governor's warrant for a person whose name is identical to that of the person charged in the fugitive information establishes a presumption that he was in the demanding state at the time of the offense. Richardson v. Cronin, 621 P.2d 949 (Colo. 1980).

Inclusion of two surnames in Texas governor's warrant served dual function of adequately identifying the person sought

and of authorizing peace officers in Colorado to arrest that person as a fugitive, and was consistent with the governor's statutory extradition authority. Richardson v. Cronin, 621 P.2d 949 (Colo. 1980).

Governor's warrant need not be technically correct in every respect, so that the misspelling of the county in which the crime occurred is irrelevant to the sufficiency of the warrant. Rodriquez v. Sandoval, 680 P.2d 1278 (Colo. 1984).

Seal. No statutory requirement that state seal be affixed on each extradition document. Secrest v. Simonet, 708 P.2d 803 (Colo. 1985).

Issuance of governor's warrant held sufficient. Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975).

Applied in Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972); People v. Wimer, 43 Colo. App. 237, 604 P.2d 1183 (1979); Massey v. People, 656 P.2d 658 (Colo. 1982).

16-19-109. Manner and place of execution.

The warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this article, to the duly authorized agent of the demanding state.

Source: L. 53: p. 316, § 8. **CSA:** C. 72, § 53. **CRS 53:** § 60-1-8. **C.R.S. 1963:** § 60-1-8.

ANNOTATION

Documents authorizing transport and delivery cure defective warrant. The warrant of the governor of Colorado accompanied by a document authorizing the agent to transport defendant, and another document ordering his delivery into the custody of agent, amply compensate for the clerical error in failing to fill in the two blank spaces in the initial warrant. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967).

Identity between name in extradition documents and name in governor's warrant establishes a prima facie case that the person charged as a fugitive is indeed the fugitive sought by the demanding state. Richardson v. Cronin, 621 P.2d 949 (Colo. 1980); Council v. MacFarlane, 709 P.2d 947 (Colo. 1985).

Applied in People v. Wimer, 43 Colo. App. 237, 604 P.2d 1183 (1979).

16-19-110. Authority of arresting officer.

Every peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Source: L. 53: p. 316, § 9. **CSA:** C. 72, § 54. **CRS 53:** § 60-1-9. **C.R.S. 1963:** § 60-1-9.

Cross references: For general authority of peace officer in making arrests, see part 1 of article 3 of this title 16.

16-19-111. Rights of accused - habeas corpus.

No person arrested upon such a warrant shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel. If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the agent of the demanding state. Review beyond the court of record shall be only in the supreme court by petition for certiorari, pursuant to such rules as that court may promulgate.

Source: L. 53: p. 316, § 10. **CSA:** C. 72, § 55. **CRS 53:** § 60-1-10. **C.R.S. 1963:** § 60-1-10. **L. 86:** Entire section amended, p. 735, § 6, effective July 1.

Cross references: For procedural requirements in habeas corpus, see C.R.C.P. 106; for jurisdiction of the supreme court on writs of certiorari, see C.A.R. 49 to 56.

ANNOTATION

The duty to extradite must be viewed in light of this section. Buffalo v. Tanksley, 189 Colo. 45, 536 P.2d 827 (1975).

Applicable to all prisoners. Under the extradition act, each prisoner is entitled to petition the district court for a writ of habeas corpus and to obtain a hearing in which extradition can be contested. Moen v. Wilson, 189 Colo. 85, 536 P.2d 1129 (1975).

Extradition proceedings are summary in nature and the accused is not entitled to all of the procedural safeguards of a criminal trial. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

An extradition hearing is not designed or intended to accomplish a determination of guilt or innocence, and is only summary in nature. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Habeas corpus proceedings are civil rather than criminal in nature, concerned only with the prisoner's right to liberty, notwithstanding the particular act for which he is detained, and is separate from the legal proceedings under which the detention is sought to be justified. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

Habeas corpus is an independent civil proceeding separate and apart from the case in which the criminal charge which initiates the extradition proceedings is filed. People v. Lent, 187 Colo. 248, 529 P.2d 1317 (1975).

But criminal safeguards attach regardless of formal designation of a proceeding if the proceeding substantively involves incarceration or other criminal sanctions. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Despite a common-law and constitutional tradition which treat habeas corpus as a civil matter and as a matter to which criminal due process safeguards do not attach, the supreme court is of the opinion that this tradition does not comport with recent developments in the constitutional law. The administration of criminal procedural safeguards must look beyond form to substance. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Section provides right to counsel. The language of this section establishes a right to the presence of legal counsel, and due process requirements prohibit the denial of this right to indigents when it has been made available to those able to afford counsel. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Indigent's right to counsel on appeal. Where a person is indigent, the right to appointed counsel and a free transcript for appellate review extends to an appeal of the denial of a writ of habeas corpus in extradition proceedings. Denbow v. District Court, 652 P.2d 1065 (Colo. 1982).

It requires advising by judge and counsel. The statute expressly requires that a person arrested on a governor's warrant shall be brought before a judge to be advised of the demand made for his surrender and of the crime of which he is charged, and that he has a right to procure legal counsel to test the legality of his arrest. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

It is clear and its requirements are not merely directory but mandatory. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

The only proper respondent in a habeas corpus proceeding is the person who allegedly is detaining the petitioner unlawfully, and neither the governor nor the people of the state of Colorado is such a person. People v. Lent, 187 Colo. 248, 529 P.2d 1317 (1975).

Habeas corpus is the only judicial review available to an accused in extradition proceedings. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

Under this section a party held in custody under a warrant of extradition may test the validity thereof by a writ of habeas corpus. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962); Gagan v. Gately, 673 F. Supp. 1029 (D. Colo. 1987).

In the absence of such writ a trial court has no jurisdiction and no issue before it to resolve. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

This section contemplates a hearing on the legality of the prisoner's detention, if he requests one, and such a hearing can be had only when a writ of habeas corpus has been duly applied for by the prisoner and issued by the court. Osborne v. Van Cleave, 166 Colo. 398, 443 P.2d 988 (1968).

Inquiry in habeas corpus proceeding severely restricted. In the interests of comity and speedy resolution of extradition matters, the inquiry by the courts of Colorado, the asylum state, in a habeas corpus proceeding, is severely restricted, and the accused is left to pursue his remedies in the courts of the demanding state. Rush v. Baker, 188 Colo. 136, 533 P.2d 36 (1975).

Scope of inquiry limited. The scope of inquiry in a habeas corpus proceeding in the context of a request for extradition under this article is narrowly limited to the issues of: (1) The technical sufficiency of the extradition papers; (2) identification of the accused; (3) whether the accused is charged with a crime; and (4) whether the accused is a fugitive from justice. Lomax v. Cronin, 194 Colo. 523, 575 P.2d 1285 (1978); Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981); Gagan v. Gately, 673 F. Supp. 1029 (D. Colo. 1987).

At habeas corpus proceedings to consider the validity of an extradition warrant, the only questions which may be presented to the court by the habeas corpus petition are whether the prisoner is lawfully detained and whether the requirements of extradition have been met. Massey v. Wilson, 199 Colo. 121, 605 P.2d 469 (1980); Simmons v. Leach, 626 P.2d 164 (Colo. 1981).

When asylum state's court to make determination of probable cause. The fourth amendment interests of a person against whom extradition is sought are protected upon a habeas corpus review where the courts of the asylum state examine the extradition documents to determine whether probable cause has been found by a neutral court in the demanding state. If no determination of probable cause by the courts of the demanding state appears in the extradition documents, the courts in the asylum state are required to make an

independent determination from the extradition documents as to whether probable cause exists. Lutrell v. Williams, 660 P.2d 499 (Colo. 1983).

Courts in asylum state have no duty to inquire into substantive law and pleading practices of the demanding state. Simmons v. Leach, 626 P.2d 164 (Colo. 1981).

Court may not nullify extradition on own motion. A trial court may not disregard the provisions of this section and of its own motion nullify an extradition warrant without the filing of a petition for a writ of habeas corpus by the accused showing substantial grounds why the extradition should not be enforced. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

The accused has the right to proffer evidence in aid of his discharge. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

But not to try questions of guilt or innocence. The guilt or innocence of the alleged fugitive may not be considered by the court of the asylum state in habeas corpus proceedings. Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1969).

Since an extradition proceeding is designed only to convey the petitioner to the proper jurisdiction for trial, his guilt or innocence and any issue as to his sanity as it relates to his guilt or innocence or ability to stand trial are not issues at the extradition hearing, but rather at the trial in the demanding state. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

Although questions concerning the petitioner's sanity as it affects his ability to stand trial are properly addressed to courts in the demanding state, the petitioner's competency may also be the subject of inquiry by the asylum state if it affects the petitioner's ability to understand and assist counsel in handling the issues involved in the habeas corpus proceeding itself. Gagan v. Gately, 673 F. Supp. 1029 (D. Colo. 1987).

Such as date of crime. In an extradition hearing, the time of the commission of the crime is material; however, the precise date alleged does not necessarily have to be proved and where, for the purpose of extradition, trial court ruled that any date in a certain month was sufficient to advise accused of the charge against him, it was held that under the evidence and special circumstances of the case, trial court's ruling was correct. Osborne v. Van Cleave, 173 Colo. 26, 475 P.2d 625 (1970).

Or alibi. Habeas corpus is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused. Osborne v. Van Cleave, 173 Colo. 26, 475 P.2d 625 (1970); Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Or validity of arrest or detention. The fugitive cannot, in opposition to proper extradition proceedings, urge the fact that his original arrest or detention was illegal, once proceedings have been instituted, it is too late to claim that the preliminary detention in the asylum state was illegal. Travis v. People, 135 Colo. 141, 308 P.2d 996 (1957).

The fact that the defendant was originally arrested in Colorado on a charge different

than the one upheld by requisition is immaterial and moot. Extradition proceedings on the charge of passing a worthless check were properly instituted and the validity of his initial arrest is not in issue in the proceeding to determine whether the discharge of the person was valid. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

The illegality of an initial arrest cannot be challenged in an extradition proceeding growing out of that arrest. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

Where accused petitioned for writ of habeas corpus after issuance of governor's warrant for accused's extradition to another state, any issue arising out of any alleged wrongful detention preceding the service of the governor's warrant was moot. Crumrine v. Erickson, 186 Colo. 139, 526 P.2d 148 (1974).

Once the governor's warrant has been issued, the question of the validity of the initial arrest becomes moot and may not be raised in habeas corpus proceedings which test the validity of the detention under the governor's warrant. McCoy v. Cronin, 187 Colo. 364, 531 P.2d 379 (1975).

After a valid governor's warrant has been issued and served, any illegalities and irregularities which relate to the initial arrest of the fugitive become moot. Simmons v. Leach, 626 P.2d 164 (Colo. 1981).

Or violations of parole. In habeas corpus proceedings involving extradition the courts cannot consider the question of whether or not the petitioner has violated his parole. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957).

Or the constitutionality of statute charging crime in demanding state. Accused could not avoid extradition to another state on argument that statute charging him with crime in other state was unconstitutional. Rather, the principle of comity required the accused to test the statute's constitutionality in the courts of that state. Denton v. Cronin, 187 Colo. 247, 529 P.2d 644 (1974).

Or death penalty. Where accused proposes that Colorado ought not give aid and assistance to Oklahoma in enforcing its death penalty which he alleges is unconstitutional, this position presents no issue justiciable in the Colorado courts in an extradition proceeding. Pickinpaugh v. Lamm, 189 Colo. 143, 538 P.2d 113 (1975).

Defendant's claim that his federal constitutional rights were violated in the asylum state does not require habeas corpus relief, nor does it deprive the Colorado courts of jurisdiction over the defendant. Yellen v. Nelson, 680 P.2d 234 (Colo. 1984).

Alleged denial of speedy trial and due process by demanding state. Issues of whether petitioner has been denied his constitutional rights to a speedy trial and due process by demanding state's delay in proceeding with extradition are not justiciable in a habeas corpus action brought in Colorado grounded upon a demand for extradition. Simmons v. Leach, 626 P.2d 164 (Colo. 1981).

When prisoner released for state's failure to comply with constitutional requirements, he remains subject to extradition proceedings. When the prisoner

is released because the demanding state or the asylum state has failed to comply with statutory or constitutional requirements, the prisoner remains a fugitive from the demanding state and subject to that state's constitutional right to demand his return. Massey v. Wilson, 199 Colo. 121, 605 P.2d 469 (1980).

Effect of writ on prosecution of underlying charge. Where New Mexico properly granted a writ of habeas corpus on the grounds of technical insufficiency of the extradition documents, Colorado is not estopped from prosecuting the defendant on the merits of the underlying charges. People v. Coyle, 654 P.2d 815 (Colo. 1982).

Courts of asylum state may not consider certain allegations. The courts of the asylum state in a habeas corpus proceeding under this article may not properly consider allegations that the fugitive's life would be endangered by return to the demanding state. The accused, in respect to this matter, must pursue his remedies in the demanding state or with the executive of the asylum state. Lomax v. Cronin, 194 Colo. 523, 575 P.2d 1285 (1978).

Identification testimony at extradition hearing is not tested by same standards applied at trial on the merits. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Sanity a question only if accused unable to assist counsel. The only conceivable situation in which a court in the asylum state might be required to consider sanity would be one in which the petitioner is so incompetent as to be totally unable to assist his counsel in a habeas corpus proceeding in connection with a pending extradition. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

"Total inability to assist counsel" test disavowed in favor of "sufficient present ability to consult with attorney" test. Pruett v. Barry, 696 P.2d 789 (Colo. 1985).

Issue is right of demanding state to defendant's return. Constitutional rights to limitations on the use of evidence on the issue of guilt or innocence are not at issue in the rendition proceeding. What is in issue is the constitutional right of the demanding state to have the defendant promptly returned to that state on a showing of probable cause. North v. Koch, 169 Colo. 508, 457 P.2d 915 (1969).

This involves narrow determination of compliance with statute. Habeas corpus, in the instance of interstate extradition, involves a narrow determination of whether there has been compliance with the statutory elements of whether the petitioner: (1) Was present in the demanding state at the time charged in the governor's warrant and the extradition proceedings; (2) was substantially charged with a crime; and (3) is a fugitive from justice. Petition of Harwell, 180 Colo. 144, 503 P.2d 618 (1972).

The scope of inquiry in habeas corpus proceedings is narrowly limited to the technical sufficiency of the papers and: (1) The identification of the accused; (2) whether the accused has been charged with a crime; and (3) whether the accused is a

fugitive from justice. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

A habeas corpus proceeding has limited scope and is intended to resolve the issue of whether the person in custody is lawfully detained. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Evidence required to overcome presumption of validity. An accused who seeks to invalidate an extradition must overcome the presumption of validity afforded by the governor's warrant by clear and convincing evidence. Lomax v. Cronin, 194 Colo. 523, 575 P.2d 1285 (1978).

The warrant of arrest is prima facie evidence of the recitals therein in a habeas corpus proceeding. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

The warrant of the governor as to the status of the accused as a fugitive from justice of the demanding state is prima facie proof of such status which must be overcome to justify a discharge from custody. Krutka v. Bryer, 150 Colo. 293, 372 P.2d 83 (1962).

It places the burden upon the accused to show either that he is not a fugitive from justice or that he was not substantially charged with a crime in the demanding state. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

A petitioner who believes that the demanding state's requisition papers do not support the warrant of the governor of the asylum state has the responsibility of going forward with the matter and controvert the warrant by introducing the requisition papers into evidence. Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

The burden is to show by clear and convincing evidence that defendant was absent at the time of the crime charged from Texas. Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1969).

The courts will not discharge a defendant arrested under a governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the state. Osborne v. Van Cleave, 173 Colo. 26, 475 P.2d 625 (1970); Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

The burden is upon the accused to come forward with clear and convincing proof that he was not in the demanding state at the time of the crime charged or that he was not the fugitive from justice named in the extradition papers, in order to overcome the presumption which attaches to the governor's warrant that the accused was in the demanding state at the time of the crime. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

Absence from the demanding state is a defense which may be raised and proven by a petitioner in order to defeat extradition. Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

A habeas corpus petitioner charged as an out-of-state fugitive, not the sheriff-respondent, has the burden of going forward with clear and convincing evidence to prove that he was not in the demanding state at the time of the crime or that he is not the individual named in the extradition papers.

Ede v. Bray, 178 Colo. 99, 495 P.2d 1139 (1972).

The burden is on the accused to show by clear and satisfactory evidence that he was not present if he is to overcome the presumption created by the warrant which governor of Colorado issues that the accused is in the demanding state at the time the offense was committed. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Or that he had not left the state. To demonstrate that he was not a fugitive from justice, the defendant would have to show either that he was not present in the state demanding extradition at the time that the crime allegedly was committed, or that he had not left the state. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

The presumption raised by a governor's warrant in an asylum state in a habeas corpus proceeding may be overcome either by a petitioner showing that he was not within the demanding state at the time the crime was committed or that he has not since left the state. Harding v. People, 161 Colo. 571, 423 P.2d 847 (1967); Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

Burden shifted to petitioner to disprove identity. Where the petitioner's name in the requisition of governor of New Mexico was identical to the name appearing in the Colorado governor's warrant, this created a prima facie showing of identity and shifted the burden to petitioner to disprove the identity. Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973).

The introduction of the governor's warrant and the supporting requisition documents created a prima facie showing of identity and shifted the burden to appellant to show that the state did not properly identify him as the person sought by the requisitioning state. Dominguez v. Bray, 188 Colo. 72, 532 P.2d 950 (1975).

Photo competent evidence of identity. Where an authenticated prison photo of the petitioner accompanied the extradition documents from New Mexico, the photo was competent evidence of identity. Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973).

State allowed time to cure defective affidavit. In a habeas corpus proceeding a state should be permitted a reasonable time to cure a defective extradition affidavit, but if the affidavit is not cured within 15 days the writ of habeas corpus becomes absolute, and the accused is entitled to release from custody. People v. McFall, 175 Colo. 151, 486 P.2d 6 (1971).

It is within the trial court's discretion to allow a reasonable time for correction of defective extradition documents instead of causing the entire process to be repeated. Williams v. Leach, 194 Colo. 374, 572 P.2d 481 (1977).

Failure of sheriff to make formal return to writ not prejudicial. While the better and approved practice is for a sheriff to make a formal return to a writ of habeas corpus in an extradition matter, where all extradition documents were before the trial court and the validity of the detention was determined without objection that such formal return had not been filed, and the substantial rights of the petitioner were not

adversely affected thereby, he cannot be heard to complain for the first time in the supreme court that no formal return was made. Bright v. Foster, 150 Colo. 559, 374 P.2d 865 (1962).

Nor was failure of district attorney to answer interrogatories. Where a district attorney failed to answer all interrogatories served upon him by a habeas corpus petitioner questioning extradition proceedings, which interrogatories involved matters entirely foreign to the rather limited issues involved in an extradition proceeding, any error arising out of such failure on the part of the district attorney could not have been prejudicial. Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

Denial of petition for writ of habeas corpus held correct. People v. Jackson, 180 Colo. 134, 502 P.2d 1106 (1972); Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

Denial of petition for habeas corpus held error. Moog v. Williams, 195 Colo. 237, 577 P.2d 6 (1978).

Appellate review procedures for habeas corpus petitions contesting transfers of temporary custody under article IV of the Interstate Agreement on Detainers, § 24-60-501, shall be by petition for certiorari and not an appeal of right. Semendinger v. Brittain, 770 P.2d 1270 (Colo. 1989).

Applied in Dorador v. Cronin, 199 Colo. 85, 605 P.2d 53 (1980); Beals v. Wilson, 631 P.2d 1181 (Colo. App. 1981).

16-19-112. Penalty for noncompliance.

Any person who delivers to the agent for extradition of the demanding state a person in his or her custody under the governor's warrant, in willful disobedience to section 16-19-111, commits a class 2 misdemeanor.

Source: L. 53: p. 317, § 11. **CSA:** C. 72, § 56. **CRS 53:** § 60-1-11. **C.R.S. 1963:** § 60-1-11. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3164, § 175, effective March 1, 2022.

16-19-113. Confinement in jail.

The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner has been delivered, when necessary, may confine the prisoner in the jail in any county or city through which he may pass. The keeper of the jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping. The officer or agent of a demanding state to whom a prisoner has been delivered following extradition proceedings in another state, or to whom a prisoner has been delivered after waiving extradition in such other

state, and who is passing through this state with the prisoner for the purpose of immediately returning the prisoner to the demanding state, when necessary, may confine the prisoner in the jail of any county or city through which he may pass. The keeper of the jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; but the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner shall not be entitled to demand a new requisition while in this state.

Source: L. 53: p. 317, § 12. **CSA:** C. 72, § 57. **CRS 53:** § 60-1-12. **C.R.S. 1963:** § 60-1-12.

16-19-114. Arrest prior to requisition.

When any person within this state is charged on the oath of any credible person before any judge of this state with the commission of any crime in any other state and, except in cases arising under section 16-19-107, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint has been made before any judge in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 16-19-107, has fled from justice or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, and is believed to be in this state, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge or court which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Source: L. 53: p. 317, § 13. **CSA:** C. 72, § 58. **CRS 53:** § 60-1-13. **L. 57:** p. 379, § 2. **C.R.S. 1963:** § 60-1-13.

ANNOTATION

Extradition proceedings need not be instituted by formal requisition from the executive authority of the demanding state and warrant from the executive authority of the asylum state, but such a requisition and warrant must issue at some point in the proceedings. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

And issuance of governor's warrant renders question of prior arrest moot. The governor's warrant for defendant's arrest for extradition having issued and having been filed, the issue as to whether he was lawfully arrested by an unverified information in the first instance is not just academic but moot. Velasquez v. People, 154 Colo. 284, 389 P.2d 849 (1964); McClearn v. Jones, 162 Colo. 354, 426 P.2d 192 (1967); Dilworth v. Leach, 183 Colo. 206, 515 P.2d 1130 (1973).

The indictment or criminal complaint is controlling when determining whether a crime has been charged. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

It is sufficient if the language used fully states an offense denounced by the statutes; even a mistake in stating the number of a statute is immaterial. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

Charge of desertion and nonsupport sufficient to support extradition. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

Complaint and affidavit established probable cause crime of escape committed. Where the complaint and affidavit was based upon the personal information and knowledge of the chief records officer of the Kentucky state reformatory, stating under oath that appellant had been confined in the Kentucky state reformatory under a sentence of 10 years for armed robbery, pursuant to a judgment of conviction from the Jefferson circuit court of Louisville, Kentucky; that affiant had been the chief records officer of the reformatory for 16 years and was in charge of the official custody and control records of the appellant at the reformatory; and that he knew, from these records and his own personal knowledge, that appellant did escape from the reformatory, leaving while on a hospital trip to Louisville, Kentucky, the complaint and affidavit is sufficient to establish probable cause that appellant had committed the substantive crime of escape under the Kentucky statute. Norrod v. Bower, 187 Colo. 421, 532 P.2d 330 (1975).

Right to certified copy of complaint waived. Although a photostatic copy of the complaint and affidavit upon which the warrant issued was served, rather than a certified copy as required by this section, the defendant made no objection to this during the proceedings in the trial court when it could have been corrected. He cannot now raise that issue on appeal and must be deemed to have waived his right to receive a certified copy when he proceeded to trial on the merits. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966).

Testimony of prosecution witness was admissible. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Applied in Lucero v. Martin, 660 P.2d 902 (Colo. 1983); People v. Schneckloth, 660 P.2d 1293 (Colo. 1983); Roy v. Simonet, 696 P.2d 822 (Colo. 1985); Moore v. Simonet, 696 P.2d 823 (Colo. 1985);

Evans v. Simonet, 699 P.2d 1337 (Colo. 1985).

16-19-115. Arrest without warrant.

Except in cases arising pursuant to section 16-19-107 (2), the arrest of a person may be lawfully made by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year. The accused must be taken before a judge with all practicable speed, and a complaint must be made against the person under oath setting forth the grounds for arrest as in section 16-19-114; and thereafter the accused's answer must be heard as if the accused had been arrested on a warrant.

Source: L. 53: p. 318, § 14. **CSA:** C. 72, § 59. **CRS 53:** § 60-1-14. **C.R.S. 1963:** § 60-1-14. **L. 2025:** Entire section amended, (SB 25-129), ch. 96, p. 438, § 5, effective April 24.

ANNOTATION

Statute as basis for jurisdiction. See Crumrine v. Erickson, 186 Colo. 139, 526 P.2d 148 (1974).

Outstanding arrest warrant from another jurisdiction constituted sufficient probable cause for warrantless arrest even though arrest warrant contained "no extradition" provision. People v. Thompson, 793 P.2d 1173 (Colo. 1990).

Applied in Evans v. Simonet, 699 P.2d 1337 (Colo. 1985).

16-19-116. Commitment to await requisition - bail.

If from the examination before the judge it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 16-19-107, that he or she has fled from justice, the judge shall, by a warrant reciting the accusation, commit him or her to the county jail for such a time not exceeding thirty-five days and as specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in section 16-19-117, or until he or she is legally discharged.

Source: L. 53: p. 318, § 15. **CSA:** C. 72, § 60. **CRS 53:** § 60-1-15. **C.R.S. 1963:** § 60-1-15. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 861, § 98, effective July 1.

ANNOTATION

Requisition and warrant must issue. Although extradition proceedings need not necessarily be instituted by formal requisition from the executive authority of the demanding state and warrant from the executive authority of the asylum state, such a requisition and warrant must issue at some point in the proceedings. Capra v. Miller, 161 Colo. 448, 422 P.2d 636 (1967).

Once valid governor's warrant is issued, illegalities and irregularities relating to detention of fugitive are moot. Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980); Casler v. Nelson, 661 P.2d 1166 (Colo. 1983).

This section, together with § 16-19-118, imposes an outside limit of ninety days during which a person may be committed to the county jail while awaiting the execution of the governor's warrant issued in accordance with the requisition of the executive authority of the demanding state. Garcia v. Cooper, 711 P.2d 1255 (Colo. 1986).

Second extradition proceeding not precluded by expiration of ninety days. Garcia v. Cooper, 711 P.2d 1255 (Colo. 1986).

Extension of time was within court's discretion. Where the governor's warrant was issued on the same day the district attorney applied for and was granted the extension of time, and the defendant had shown no prejudice, the extension of time was clearly within the court's discretion. Norrod v. Bower, 187 Colo. 421, 532 P.2d 330 (1975).

Although appellant was held in jail thirty-nine days before continuance was requested, the court did have the authority to grant a continuance under § 16-19-118 and the extension granted was within the court's discretion, where the appellant was not prejudiced by the detention. Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980); Alliey v. Lamm, 711 P.2d 1258 (Colo. 1986).

Res judicata may not be invoked to bar a second extradition proceeding. An initial discharge and dismissal of an extradition proceeding does not constitute an adjudication on the merits that the defendant was not wanted by the state of Florida for violating the terms of his probation. Garcia v. Cooper, 711 P.2d 1255 (Colo. 1986); Morris v. McGoff, 728 P.2d 720 (Colo. 1986).

Applied in Gerard v. Ossola, 649 P.2d 1110 (Colo. 1982); Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983); Dawson v. Nelson, 661 P.2d 683 (Colo. 1983).

16-19-117. Bail pending extradition.

(1) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state or territory or country in

which it is alleged to have been committed, or having been convicted of a crime in the demanding state, the fugitive is alleged to have escaped from custody or confinement in the demanding state or to have violated the terms of his or her bail, probation, parole, or sentence, or the fugitive has executed a written waiver of extradition pursuant to section 16-19-126, the judge of any district court within the state of Colorado may admit any person arrested, held, or detained for extradition or interstate rendition to another state or territory of the United States or to any foreign country, to bail by bond or undertaking, with such sufficient sureties and in such sum as such judge deems proper, conditioned upon the appearance of such person before the court at a time specified in the bond or undertaking and for such person's surrender upon the warrant of the governor of this state for such person's extradition or interstate rendition to another state or territory of the United States or to any foreign country. When any such person has been served with a governor's warrant, such person shall no longer be eligible to be admitted to bail.

(2) Before granting the bond provided for in subsection (1) of this section, the judge of the district court within the state of Colorado to whom such application for bail is made shall cause reasonable notice to be served upon the district attorney of the judicial district within which an application is made and also upon the person or authority holding or detaining the person.

Source: L. 53: p. 319, § 16. **CSA:** C. 72, § 61. **CRS 53:** § 60-1-16. **C.R.S. 1963:** § 60-1-16. **L. 93:** (1) amended, p. 1729, § 9, effective July 1. **L. 2005:** (1) amended, p. 620, § 1, effective May 27.

ANNOTATION

This section exclusively governs questions of bail for defendants awaiting extradition prior to service of a governor's warrant. Fullerton v. County Court, 124 P.3d 866 (Colo. App. 2005).

Bond conditioned upon surrender under governor's warrant. When a person has been arrested prior to requisition for a crime in another state and thereafter is admitted to bail, such bond shall be conditioned upon his appearance at the time specified for his surrender upon the warrant of the governor of this state for his extradition or interstate rendition to another state. McClearn v. Jones, 162 Colo. 354, 426 P.2d 192 (1967).

Prior to service of a governor's warrant, a trial court is authorized to require bond for a defendant pending extradition in any type necessary, including a "cash only" bond, to secure the defendant's appearance. Fullerton v. County Court, 124 P.3d 866 (Colo. App. 2005).

Unnecessary to rearrest upon filing of governor's warrant. The clear meaning and purport of this section is that when a person has been arrested prior to requisition in

accordance with § 16-19-114 and is thereafter admitted to bail, the bond being returnable on a specified date, it is unnecessary to rearrest such person upon the issuance and filing in court of the governor's warrant. Appearance on the day specified constitutes surrender upon the governor's warrant. McClearn v. Jones, 162 Colo. 354, 426 P.2d 192 (1967).

No right to bail exists after governor's warrant has been served and pending decision on a habeas corpus petition in the trial court because, where the fugitive is being held for another state, he should be readily available to be turned over to those who arrive to return him. A special obligation to deliver a fugitive is owed to a sister state — an obligation which makes bail inappropriate after the stage when issuance of the governor's warrant is reached. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

Legislative intent to deny bail after service of warrant. The lack of an absolute right to bail after service of the governor's warrant does not mean that the court has lost its inherent power to grant bail after that time, but simply reflects a determination that the legislative intent to deny bail after service of the governor's warrant is a reasonable and appropriate limitation on that power absent the most extraordinary circumstances. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

Facts insufficient to permit bail after service of warrant. That, at the time of his arrest, the defendant was employed as a welder, and could return to that work if bail were granted, that the defendant was a union and church member, and that his petition for bail was supported by many members of his church are facts which fall far short of establishing the extraordinary circumstances which must be shown to permit bail to be granted after service of a governor's warrant. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

The process involved in the arrest in the first instance becomes moot and academic, when replaced and supplanted by the governor's warrant. McClearn v. Jones, 162 Colo. 354, 426 P.2d 192 (1967).

Extension of time was within court's discretion. Where the governor's warrant was issued on the same day the district attorney applied for and was granted the extension of time, and the defendant had shown no prejudice, the extension of time was clearly within the court's discretion. Norrod v. Bower, 187 Colo. 421, 532 P.2d 330 (1975).

16-19-118. Extension of time.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge of a district court shall either recommit him or her for a further period not to exceed sixty days or again take bail for his or her appearance and surrender, as provided in section 16-19-117, but within a period not to exceed sixty days after the date of the new bond.

Source: L. 53: p. 319, § 17. **CSA:** C. 72, § 62. **CRS 53:** § 60-1-17. **C.R.S. 1963:** § 60-1-17. **L. 2004:** Entire section amended, p. 353, § 1, effective July 1.

ANNOTATION

The only requirement for the continuance authorized by this section is that more time is needed for the issuance and execution of the governor's warrant. Alliey v. Lamm, 711 P.2d 1258 (Colo. 1986).

90-day statutory limit begins to run on the date the person first appears in court and is advised of the extradition proceedings. Alliey v. Lamm, 711 P.2d 1258 (Colo. 1986).

This section, together with § 16-19-116, imposes an outside limit of 90 days during which a person may be committed to the county jail while awaiting the execution of the governor's warrant issued in accordance with the requisition of the executive authority of the demanding state. Garcia v. Cooper, 711 P.2d 1255 (Colo. 1986).

Although appellant was held in jail thirty-nine days before continuance was requested, the court did have the authority to grant a continuance under § 16-19-118 and the extension granted was within the court's discretion, where the appellant was not prejudiced by the detention. Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980); Alliey v. Lamm, 711 P.2d 1258 (Colo. 1986).

Second extradition proceeding not precluded by expiration of ninety days. Garcia v. Cooper, 711 P.2d 1255 (Colo. 1986).

Res judicata may not be invoked to bar a second extradition proceeding. An initial discharge and dismissal of an extradition proceeding does not constitute an adjudication on the merits that the defendant was not wanted by the state of Florida for violating the terms of his probation. Garcia v. Cooper, 711 P.2d 1255 (Colo. 1986).

Procedure of continuing bond without recommitment satisfied section. When defendant was already on bond, it would be a useless thing to recommit the defendant, then require a new bond, and then release him under the new bond for the extended or continued period of time. Defendant has shown no prejudice by the procedure followed in extending the time for hearing of the extradition proceeding, and continuing bond and permitting him to remain at large, which substantially complied with this section. Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1969).

Applied in Gerard v. Ossola, 649 P.2d 1110 (Colo. 1982); Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983).

16-19-119. Forfeiture of bail.

If the person so held is admitted to bail as provided for in section 16-19-117 and fails to appear and surrender himself according to the conditions of his bond, the judge of the district court, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within this state. Recovery may be had on such bond in the name of the people of the state of Colorado as in the case of other bonds or undertakings given by a defendant in criminal proceedings.

Source: L. 53: p. 319, § 18. **CSA:** C. 72, § 63. **CRS 53:** § 60-1-18. **C.R.S. 1963:** § 60-1-18.

16-19-119.5. Custody pending arrival of agent of the demanding state.

Upon ordering the delivery of a fugitive forthwith to the agent of a demanding state, a judge shall allow the agent of the demanding state a period of not less than fifteen days and not more than thirty days from the date of the order within which to complete transportation arrangements, travel to this state, and appear to take custody of the fugitive. During this period, pending the arrival of the agent of the demanding state, the fugitive shall remain in custody in this state without bail and shall not be discharged.

Source: L. 2006: Entire section added, p. 340, § 1, effective July 1.

16-19-120. Persons under prosecution when demanded.

If a criminal prosecution has been instituted against a person under the laws of this state and is still pending, the governor, in his discretion, subject to such criminal prosecution, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

Source: L. 53: p. 319, § 19. **CSA:** C. 72, § 64. **CRS 53:** § 60-1-19. **C.R.S. 1963:** § 60-1-19.

ANNOTATION

Applied in People v. Wimer, 43 Colo. App. 237, 604 P.2d 1183 (1979).

16-19-121. When guilt inquired into.

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceedings after the demand for extradition accompanied by a charge of crime in legal form has been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

Source: L. 53: p. 320, § 20. **CSA:** C. 72, § 65. **CRS 53:** § 60-1-20. **C.R.S. 1963:** § 60-1-20.

ANNOTATION

The guilt or innocence of the alleged fugitive may not be considered in extradition matters. Self v. People, 133 Colo. 524, 297 P.2d 887 (1956).

Guilt or innocence of the crime charged has no bearing on the issue of extradition but will be determined on the trial of the case once he is returned to the demanding state. Fox v. People, 161 Colo. 163, 420 P.2d 412 (1966); Osborne v. Van Cleave, 173 Colo. 26, 475 P.2d 625 (1970).

When the court in Kansas forfeited the petitioner's bond, he became a fugitive within the meaning of the extradition laws. Whether it was wrongfully revoked is an issue between the petitioner and the state of Kansas, over which the courts of Colorado have no jurisdiction. Davis v. People, 172 Colo. 486, 474 P.2d 206 (1970).

Extradition is but one step in securing the presence of the defendant in the court in which he may be tried, and in no manner determines the question of guilt or innocence. Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973).

Colorado courts cannot determine the accused's guilt or innocence under the laws of the demanding state in resolving the extradition issue. Rush v. Baker, 188 Colo. 136, 533 P.2d 36 (1975).

Neither are constitutional rights justiciable. Petitioner's allegations concerning a violation of his constitutional rights present no issue justiciable in the Colorado courts. His remedy for violation of such rights in Mississippi lies in the post conviction procedures provided by Mississippi in its state courts, and in the appropriate federal courts. Holmes v. People, 169 Colo. 371, 456 P.2d 731 (1969).

And criminal procedure is not applicable. Being a summary proceeding of a civil nature, not involving the guilt or innocence of the accused, there is no compelling reason to apply the strict rules of criminal procedure in determining factual issues that may arise at extradition hearings on a petition of habeas corpus. North v. Koch, 169 Colo. 508, 457 P.2d 915 (1969).

Statute as basis for jurisdiction. See Crumrine v. Erickson, 186 Colo. 139, 526 P.2d 148 (1974).

Applied in Wilkerson v. Vogt, 167 Colo. 109, 445 P.2d 715 (1968).

16-19-122. Governor may recall warrant.

The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

Source: L. 53: p. 320, § 21. **CSA:** C. 72, § 66. **CRS 53:** § 60-1-21. **C.R.S. 1963:** § 60-1-21.

ANNOTATION

Courts of asylum state may not consider certain allegations. The courts of the asylum state in a habeas corpus proceeding under this article may not properly consider allegations that the fugitive's life would be endangered by return to the demanding state. The accused, in respect to this matter, must pursue his remedies in the demanding state or with the executive of the asylum state. Lomax v. Cronin, 194 Colo. 523, 575 P.2d 1285 (1978).

Demanding state may reinstate extradition demand after having withdrawn it. Massey v. Wilson, 199 Colo. 121, 605 P.2d 469 (1980).

Jurisdiction retained where warrant recalled because complaint amended. Where the governor of the asylum state recalled his warrant of arrest and issued another warrant because the complaints against the defendants was amended, Colorado court clearly retained jurisdiction over the defendants during this procedure. Allen v. Leach, 626 P.2d 1141 (Colo. 1981).

Governor may reactivate warrant. When considered in conjunction with § 16-19-120, the authority granted to the governor by this section, includes the authority to temporarily withhold and conditionally reactivate a previously issued warrant. Jacobson v. Sullivan, 703 P.2d 1293 (Colo. 1985).

16-19-123. Fugitives from this state.

When the governor of this state demands a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the executive authority of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

Source: L. 53: p. 320, § 22. **CSA:** C. 72, § 67. **CRS 53:** § 60-1-22. **L. 57:** p. 380, § 3. **C.R.S. 1963:** § 60-1-22.

ANNOTATION

Duty as agent distinguished from official status. Although the agent selected by the governor to receive an alleged fugitive from justice from another state may be a sheriff or his deputy, his duties, as such agent, are wholly apart from, and have nothing to do with, his official status. Fidelity & Deposit Co. v. Hershey, 93 Colo. 215, 25 P.2d 178 (1933).

Interstate agreement on detainers is inapplicable to a defendant whose custody is sought by traditional extradition procedures. People v. Quackenbush, 687 P.2d 448 (Colo. 1984).

16-19-124. Application for requisition.

(1) When the return to this state of a person charged with crime in this state is required, the district attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said district attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the state board of parole, or the superintendent of the institution or sheriff of the county from which escape was made shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, state board

of parole, superintendent, or sheriff may also attach such further affidavits and other documents in duplicate as he deems proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

Source: L. 53: p. 320, § 23. **CSA:** C. 72, § 68. **CRS 53:** § 60-1-23. **L. 57:** p. 380, § 4. **C.R.S. 1963:** § 60-1-23. **L. 76:** (2) and (3) amended, p. 533, § 13, effective April 9.

16-19-125. Immunity from civil process.

A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Source: L. 53: p. 321, § 24. **CSA:** C. 72, § 69. **CRS 53:** § 60-1-24. **C.R.S. 1963:** § 60-1-24.

ANNOTATION

Applied in Poss v. District Court, 158 Colo. 474, 408 P.2d 69 (1965).

16-19-126. Written waiver of extradition.

(1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 16-19-108 and 16-19-109 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he or she consents to return to the demanding state and acknowledging that he or she shall not be admitted to bail; but, before the waiver is executed or subscribed by such person, it is the duty of the judge to inform such person of his or her rights to the issuance

and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 16-19-111.

(2) If and when a consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having the person in custody to deliver such person forthwith to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to that agent or those agents a copy of the consent. Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(3) A fugitive shall not be permitted to withdraw a waiver of extradition unless the fugitive makes a showing of good cause for the withdrawal of the waiver of extradition. The fugitive shall provide the court, governor, and district attorney with the request to withdraw the waiver of extradition stating the reasons for withdrawing the waiver. If the court grants the withdrawal, it shall provide the governor with an order permitting the withdrawal of the waiver of extradition. A judge shall commit a fugitive who is permitted to withdraw his or her waiver of extradition to the county jail without bond for a specified period of time, of not less than thirty days and not more than ninety days, as will enable the arrest of the accused to be made under warrant of the governor or on a requisition of the executive authority of the state having jurisdiction of the offense.

Source: L. 53: p. 321, § 24-A. **CSA:** C. 72, § 70. **CRS 53:** § 60-1-25. **L. 57:** p. 381, § 5. **C.R.S. 1963:** § 60-1-25. **L. 2005:** (1) amended and (3) added, p. 620, § 2, effective May 27.

ANNOTATION

State waives right to extradition only upon clear manifestation of intent. A state waives its right to extradition of an accused only when there has been a clear manifestation of an intent to do so. When the charge is first-degree murder, the requirement for a clear manifestation means that the intent to waive the right must be expressly stated. Massey v. Wilson, 199 Colo. 121, 605 P.2d 469 (1980).

A prisoner must personally execute a waiver of extradition before a formal request for final disposition to Interstate Agreement on Detainer Act can be triggered. Gardner v. Gambatz, 719 P.2d 329 (Colo. App. 1985).

Applied in People v. Wimer, 43 Colo. App. 237, 604 P.2d 1183 (1979).

16-19-126.5. Prior waiver of extradition.

(1) Notwithstanding any other provision of law, a law enforcement agency in the state of Colorado holding a person who is alleged to have broken the terms of such person's probation, parole, bail, or any other conditional release in the demanding state shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a demand by the executive authority of the demanding state, and without the requirement of a governor's warrant issued by the governor of the state of Colorado, if such person has signed a prior waiver of extradition as a condition of such person's current probation, parole, bail, or other conditional release in the demanding state.

(2) The law enforcement agency shall immediately deliver any person pursuant to subsection (1) of this section upon the receipt of the following documents, which shall be accepted as conclusive proof of the contents of such documents and of the validity of the waiver set forth therein:

(a) A certified copy of the prior waiver of extradition signed by the person being held by the law enforcement agency, or an electronically or electromagnetically transmitted facsimile thereof;

(b) A certified copy of an order or warrant from the demanding state directing the return of the person for violating the conditions of such person's probation, parole, bail, or other conditional release, or an electronically or electromagnetically transmitted facsimile thereof; and

(c) A photograph, fingerprints, or other evidence which identifies the person held by the law enforcement agency as the person who signed the waiver of extradition and who is named in the order or warrant, or an electronically or electromagnetically transmitted facsimile thereof.

(3) Nothing in this section shall be deemed to limit the right, power, or privilege of the state of Colorado to hold, try, and punish any person demanded by another state for any crime committed in the state of Colorado before delivering such person to the demanding state.

Source: L. 93: Entire section added, p. 1729, § 10, effective July 1.

16-19-127. Nonwaiver by this state.

Nothing contained in this article shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for any crime committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this article which result in, or fail to result in,

extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

Source: L. 53: p. 322, § 24-B. **CSA:** C. 72, § 71. **CRS 53:** § 60-1-26. **C.R.S. 1963:** § 60-1-26.

ANNOTATION

A waiver of jurisdiction should be found only in circumstances where the waiver is manifestly intended. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

No transfer of prisoners between states pursuant to statute shall be regarded as waiver of its jurisdiction. Gottfried v. Cronin, 192 Colo. 25, 555 P.2d 969 (1976).

Applied in People v. Wimer, 43 Colo. App. 237, 604 P.2d 1183 (1979).

16-19-128. Prosecution of other charges.

After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he may be charged with committing here as well as that specified in the requisition for his extradition.

Source: L. 53: p. 322, § 25. **CSA:** C. 72, § 72. **CRS 53:** § 60-1-27. **C.R.S. 1963:** § 60-1-27.

16-19-129. Security for costs - default - fees.

(1) In all cases where complaint is made against any fugitive from justice, the judge or justice in his discretion may require from complainant good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, which bond, together with a statement of the costs which have accrued on the examination, shall be returned to the office of the clerk of the district court. Upon the determination of the proceedings against the fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the persons named in the bond, or any of them, which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees are not paid on or before the first day of the next district court to be held in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee bill has been served and when the fees are collected shall pay over the same to the persons respectively entitled

thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing contained in this section shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he deems it proper. The costs which may accrue from the arrest and detention of such fugitive, as described in this section, shall include any reasonable and necessary costs incurred by the district attorney which are directly the result of the prosecution of such fugitive from justice. When such costs are recovered by the clerk, such costs shall be remitted to the office of the district attorney which incurred such costs.

(2) For purposes of this section, reasonable costs incurred by the district attorney include but are not limited to those in section 18-1.3-701, C.R.S., as well as attorney fees and support staff costs.

Source: L. 53: p. 323, § 30. **CSA:** C. 72, § 75. **CRS 53:** § 60-2-1. **C.R.S. 1963:** § 60-1-28. **L. 91:** Entire section amended, p. 430, § 8, effective May 24. **L. 2002:** (2) amended, p. 1499, § 155, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

16-19-130. Rewards - how audited - paid.

When the governor is satisfied that the crime of murder or arson or kidnapping has been committed within the state, and that the person charged therewith has not been arrested or has escaped therefrom, he may in his discretion offer a reward not exceeding one thousand dollars for the arrest and delivery to the proper authorities of the person so charged, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state out of any funds appropriated for that purpose.

Source: L. 53: p. 323, § 31. **CSA:** C. 72, § 76. **CRS 53:** § 60-2-2. **C.R.S. 1963:** § 60-1-29.

16-19-131. Escape - reward.

If any person charged with or convicted of a felony breaks prison or escapes or flees from justice or absconds and secretes himself, it shall be lawful for the governor, if he judges it necessary, to offer any reward not exceeding two hundred dollars for apprehending and delivering such person into custody of the sheriff or other officer as he may direct. Upon the

person or persons so apprehending and delivering any such person and producing the sheriff's or justice's receipt for the body to the governor, it shall be lawful for the governor to certify the amount of the claim to the controller, who shall issue his warrant on the treasury for the same.

Source: L. 53: p. 323, § 32. **CSA:** C. 72, § 77. **C.R.S. 1963:** § 60-1-30. **L. 72:** p. 560, § 23.

Cross references: For definitions of "escape", see § 18-8-208.

16-19-132. Interpretation.

The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the laws of those states which enact it.

Source: L. 53: p. 322, § 26. **CSA:** C. 72, § 73. **CRS 53:** § 60-1-28. **C.R.S. 1963:** § 60-1-31.

ANNOTATION

Statutes strictly construed. Statutes providing for the arrest and extradition of fugitives, being in derogation of constitutional guaranties of immunity from arrest, must be strictly construed. Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

Under Colorado law the extradition statutes must be strictly construed as they are in derogation of the common law. Davis v. People, 172 Colo. 486, 474 P.2d 206 (1970).

But not interpreted to allow asylum to offenders. Extradition provisions should not be so narrowly interpreted as to enable offenders against the laws of a state to find a permanent asylum in the territory of another state. Travis v. People, 135 Colo. 141, 308 P.2d 997 (1957); Tinsley v. Woods, 135 Colo. 590, 313 P.2d 1006 (1957); Capra v. Ballarby, 158 Colo. 91, 405 P.2d 205 (1965); Dressel v. Bianco, 168 Colo. 517, 452 P.2d 756 (1969); Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973).

16-19-133. Concealment of fugitives - penalty. (Repealed)

Source: L. 63: p. 497, § 1. **C.R.S. 1963:** § 60-1-34. **L. 77:** (2) amended, p. 878, § 44, effective July 1, 1979. **L. 85:** (2) amended, p. 709, § 1, effective March 30. **L. 86:** Entire section repealed, p. 772, § 15, effective July 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

16-19-134. Securing the attendance of a defendant who is outside the United States.

(1) When a criminal action for an offense committed in this state is pending in a criminal court of this state against a defendant who is in a foreign country with which the United States has an extradition treaty, and when the accusatory instrument charges an offense that is declared in the treaty to be an extraditable offense, and when the district attorney of the judicial district in which the offense was allegedly committed desires the international extradition of the defendant, the district attorney shall apply to the governor, requesting the governor to apply to the president of the United States, to institute extradition proceedings for the return of the defendant to this country and state for the purpose of prosecution of the action. The district attorney's application shall comply with the rules, regulations, and guidelines established by the governor for such applications and shall be accompanied by all of the accusatory instruments, affidavits, and other documents required by the governor's rules, regulations, and guidelines.

(2) Upon receipt of the district attorney's application, the governor, if satisfied that the defendant is in the foreign country in question, that the offense charged is an extraditable offense pursuant to the treaty in question, and that there are no factors or impediments which in law may preclude such an extradition, may in his or her discretion submit an application, addressed to the secretary of state of the United States, requesting that the president of the United States institute extradition proceedings for the return of the defendant from the foreign country. The governor's application shall comply with the rules, regulations, and guidelines established by the secretary of state of the United States for such applications and shall be accompanied by all of the accusatory instruments, affidavits, and other documents required by such rules, regulations, and guidelines.

(3) Nothing in this section shall preclude prosecution in another country of a fugitive from justice charged with committing a crime in Colorado, if the other country offers domestic prosecution of such fugitives as an alternative to extradition. This includes, but is not limited to, prosecution in Mexico pursuant to the Mexican federal penal code.

(4) The provisions of this section also apply equally to extradition or attempted extradition of a person who is a fugitive following the entry of a judgment of conviction against him or her in a criminal court of this state.

Source: L. 2004: Entire section added, p. 353, § 3, effective July 1. **L. 2006:** (1) amended, p. 342, § 7, effective July 1.

ARTICLE 20

Extradition of Persons of Unsound Mind

16-20-101. Short title.
16-20-102. Definitions.
16-20-103. Persons subject to extradition.
16-20-104. Executive authority - procedure.
16-20-105. Limitation. (Repealed)

16-20-101. Short title.

This article shall be known and may be cited as the "Colorado Extradition of Persons of Unsound Mind Act".

Source: L. 75: Entire article added, p. 639, § 2, effective June 29.

16-20-102. Definitions.

As used in this article 20, unless the context otherwise requires:

(1) "Executive authority" means the executive authority of any state; and, when used in connection with a request to return any person, pursuant to the provisions of this article, to or from the District of Columbia, "executive authority" includes a justice of the supreme court of the District of Columbia and any other authority.

(2) "Flight" or "fled" means any voluntary or involuntary departure from the jurisdiction of the court where proceedings for determination as a person of unsound mind have been instituted and are still pending with the effect of avoiding, impeding, or delaying the action of the court in which such proceedings have been instituted or are pending or any such departure from the state

where the person demanded then was, if he was then under detention by law as a person of unsound mind and subject to detention.

(3) "Person of unsound mind" includes the terms "insane person", "mentally ill person", "person with a mental illness", "person with a mental health disorder", and "mentally incompetent person".

Source: L. 75: Entire article added, p. 639, § 2, effective June 29. **L. 2006:** (3) amended, p. 1397, § 43, effective August 7. **L. 2017:** IP and (3) amended, (SB 17-242), ch. 263, p. 1301, § 127, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

16-20-103. Persons subject to extradition.

(1) A person alleged to be of unsound mind found in this state who has fled from another state shall be extradited from this state on demand of the executive authority of the state from which he fled if, at the time of his flight:

(a) He was under detention by law in a hospital, asylum, or other institution for the insane as a person of unsound mind;

(b) He had been determined by a legal proceeding to be of unsound mind prior to his flight, the finding being unreversed and in full force and effect and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or

(c) He was subject to detention in such state, being then his legal domicile (personal process having been made), based on legal proceedings to have him declared of unsound mind.

Source: L. 75: Entire article added, p. 639, § 2, effective June 29.

16-20-104. Executive authority - procedure.

(1) When the executive authority of any state demands of the executive authority of this state any fugitive pursuant to this article and produces a copy of commitment, decree, or other process and proceedings certified as authentic by the executive authority of the state from which the person so charged has fled, with an affidavit made before a proper officer showing the person to

be such fugitive, it is the duty of the executive authority of this state to cause immediate notice of the apprehension to be given to the executive authority making such demand or to the agent of such executive authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he appears. If no such agent appears within thirty days from the time of the apprehension, the fugitive may be discharged. Any agent so appointed who receives the fugitive into his custody shall transmit him to the state from which he has fled.

(2) All costs and expenses incurred in apprehending, securing, maintaining, and transmitting such fugitive to the state making such demand shall be paid by such state.

(3) The executive authority of this state has the power, on the application of any person interested, to demand the return of any fugitive from this state in accordance with this article.

Source: L. 75: Entire article added, p. 639, § 2, effective June 29.

16-20-105. Limitation. (Repealed)

Source: L. 75: Entire article added, p. 640, § 2, effective June 29. **L. 2004:** Entire section repealed, p. 353, § 2, effective July 1.

OFFENDERS - REGISTRATION

ARTICLE 20.5

Integrated Criminal Justice Information System

16-20.5-101. Short title.

16-20.5-101.5. Legislative declaration.

16-20.5-102. Definitions.

16-20.5-103. Colorado integrated criminal justice information system program - executive board.

16-20.5-104. Repeal of article. (Repealed)

16-20.5-105. Task force plan for implementation - integrated criminal justice information system. (Repealed)

16-20.5-106. Approval - funding. (Repealed)

16-20.5-107. Future modifications and purchases.

16-20.5-108. Local criminal justice agencies pilot program. (Repealed)

16-20.5-101. Short title.

This article and article 21 of this title shall be known and may be cited as the "Criminal Justice Information System Act".

Source: L. 95: Entire article added, p. 598, § 1, effective May 22.

16-20.5-101.5. Legislative declaration.

(1) The general assembly hereby finds and determines that, since 1974, there have been proposals for an automated criminal justice information system that shares and tracks data concerning offenders among the various criminal justice agencies. Because each of the criminal justice agencies in the state has developed independent information systems to address each agency's own management and planning needs, the status of criminal justice information in the state has been fragmented.

(2) The general assembly hereby declares that this article is enacted for the purpose of developing, operating, supporting, maintaining, and enhancing, in a cost-effective manner, a seamless, integrated criminal justice information system that maximizes standardization of data and communications technology among law enforcement agencies, district attorneys, the courts, and state-funded corrections for adult and youth offenders and other agencies as approved by the general assembly or by the executive board pursuant to this article. Such a system will improve:

(a) Public safety by making more timely, accurate, and complete information concerning offenders available statewide to all criminal justice agencies and to individual decision-makers in the criminal justice system, including but not limited to police officers, prosecutors, judges, probation officers, and corrections officers;

(b) Decision-making by increasing the availability of statistical measures for evaluating public policy;

(c) Productivity of existing staff by continually working toward eliminating redundant data collection and input efforts among the agencies and by reducing or eliminating paper-based processing;

(d) Access to timely, accurate, and complete information by both staff from all criminal justice agencies and the public when permitted by article 72 of title 24, C.R.S.

(3) Because information about offenders collected by local law enforcement agencies may be the most current, the general assembly directs criminal justice agencies, where practical, to

cooperate with and to encourage local law enforcement agencies to participate in the Colorado integrated criminal justice information system program developed under this article.

(4) The general assembly hereby finds that the Colorado integrated criminal justice information system program has been successfully implemented and that the sharing of criminal justice information is being enhanced as a result. The general assembly further finds that there is a need to provide ongoing maintenance, support, and leadership for the continued operation and enhancement of the Colorado integrated criminal justice information system program.

(5) The general assembly hereby finds and declares that the operation of the integrated criminal justice information system established by this article is critical to the accurate, complete, and timely performance of criminal background checks and to the effective communications between and among law enforcement, the state judicial department, and executive agencies and political subdivisions of the state. The general assembly further finds and declares that it is in the best interests of the citizens of the state and for the enhancement of public safety that the collaborative effort surrounding the integrated criminal justice information system be maintained, supported, and enhanced.

Source: L. 96: Entire section added, p. 1030, § 1, effective May 23. **L. 98:** Entire section amended, p. 941, § 1, effective May 27. **L. 2001:** (5) added, p. 613, § 2, effective May 30. **L. 2005:** IP(2), (2)(a), (2)(c), (4), and (5) amended, p. 84, § 1, effective March 25.

16-20.5-102. Definitions.

As used in this article 20.5, unless the context otherwise requires:

(1) "Action" means the district attorneys' case management system.

(2) "CCIC" means the Colorado crime information center.

(3) "Chief information officer" means the chief information officer who reports to the executive board and who is selected pursuant to section 16-20.5-103 and who is responsible for coordinating the implementation of a strategic plan for and operating, supporting, maintaining, and enhancing the integrated criminal justice information system.

(4) "CICJIS" means the automated system of the Colorado integrated criminal justice information system program that integrates agency systems.

(5) Repealed.

(6) "Criminal justice agency" means any of the following: The department of public safety, department of corrections, department of human services, judicial department, Colorado district attorneys council, and other approved agencies.

(7) "DCIS" means the department of corrections information system.

(7.3) "Executive board" means the criminal justice information program executive board created in section 16-20.5-103 (1).

(8) "ICON" or "eclipse" means the integrated Colorado online network that is the judicial department's case management system.

(9) "Integrated criminal justice information system" or "system" means an automated information system capable of tracking the complete life cycle of a criminal case throughout its various stages involving different criminal justice agencies through potentially separate and individual systems and without unnecessary duplication of data collection, data storage, or data entry.

(9.6) "Program" means the Colorado integrated criminal justice information system program created in section 16-20.5-103 (1).

(10) "TRAILS" means the case management system of the division of youth services of the department of human services.

Source: L. 95: Entire article added, p. 598, § 1, effective May 22. **L. 96:** (2) amended and (2.3) and (2.5) added, p. 1031, § 2, effective May 23. **L. 98:** (2) amended, p. 942, § 2, effective May 27. **L. 99:** (2.3) amended, p. 872, § 3, effective July 1. **L. 2005:** Entire section amended, p. 85, § 2, effective March 25. **L. 2007:** (5) repealed, p. 918, § 22, effective May 17. **L. 2017:** IP and (10) amended, (HB 17-1329), ch. 381, p. 1969, § 16, effective June 6. **L. 2025:** (7.3) and (9.6) added, (SB 25-275), ch. 377, p. 2044, § 68, effective August 6.

16-20.5-103. Colorado integrated criminal justice information system program - executive board.

(1) There is hereby established the Colorado integrated criminal justice information system program. The program is a joint effort of the criminal justice agencies and other approved agencies. The program is implemented, maintained, supported, and enhanced by the criminal justice information program executive board, which is hereby created. Membership of the executive board is comprised initially of the executive directors of the department of public safety, department of corrections, department of human services, and Colorado district attorneys council and the state court administrator. The executive board shall unanimously designate a chief information officer. Upon unanimous agreement, the executive board may approve the addition of either voting or nonvoting members.

(2) The executive board shall be responsible and accountable for the program. The program shall include mechanisms to enable the criminal justice agencies to share data stored in each

agency's information system. Initially, the program shall maximize the use of existing databases and platforms through the use of a virtual database created by a network linking existing databases and platforms among the various departments. The program shall also develop plans for new interoperable system platforms when the existing platforms become obsolete.

Source: L. 95: Entire article added, p. 599, § 1, effective May 22. **L. 96:** Entire section R&RE, p. 1031, § 3, effective May 23. **L. 2005:** Entire section amended, p. 86, § 3, effective March 25. **L. 2025:** (1) amended, (SB 25-275), ch. 377, p. 2044, § 69, effective August 6.

16-20.5-104. Repeal of article. (Repealed)

Source: L. 95: Entire article added, p. 600, § 1, effective May 22. **L. 96:** Entire section repealed, p. 1032, § 4, effective May 23.

16-20.5-105. Task force plan for implementation - integrated criminal justice information system. (Repealed)

Source: L. 96: Entire section added, p. 1032, § 5, effective May 23. **L. 98:** Entire section repealed, p. 942, § 3, effective May 27.

16-20.5-106. Approval - funding. (Repealed)

Source: L. 96: Entire section added, p. 1033, § 5, effective May 23. **L. 98:** Entire section repealed, p. 943, § 4, effective May 27.

16-20.5-107. Future modifications and purchases.

(1) The executive board shall develop and maintain a process to determine if and how changes to existing criminal justice applications impact the integrated network. Changes to criminal justice applications, databases, platforms, or business processes that have an impact on the integrated network must be coordinated through and approved by the executive board.

(2) Any state-funded expenditures by a criminal justice agency for computer platforms, databases, or applications in support of criminal justice applications shall be reviewed and approved by the executive board. The executive board shall make recommendations concerning such purchases to all appropriate budgetary approval agencies.

Source: L. 96: Entire section added, p. 1033, § 5, effective May 23. **L. 2005:** Entire section amended, p. 86, § 4, effective March 25.

16-20.5-108. Local criminal justice agencies pilot program. (Repealed)

Source: L. 96: Entire section added, p. 1034, § 5, effective May 23. **L. 98:** Entire section repealed, p. 944, § 5, effective May 27.

ARTICLE 21

Offender-based Tracking System

16-21-101. Legislative declaration.
16-21-102. "Offender" defined.
16-21-103. Information on offenders required - duties of law enforcement agencies - court.
16-21-104. Fingerprinting - ordered by court.
16-21-104.5. Electronic signatures - validity.
16-21-105. Applicability of article to municipal courts - local law enforcement.

16-21-101. Legislative declaration.

The general assembly hereby finds and declares that the creation of an offender-based tracking system is necessary in order to improve the consistency of data shared by the different elements of the criminal justice system and to allow for the tracking of offenders through the criminal justice system. The general assembly further finds and declares that the offender-based tracking system should be operated through the Colorado integrated criminal justice information system program.

Source: L. 87: Entire article added, p. 647, § 1, effective July 1. **L. 2005:** Entire section amended, p. 87, § 5, effective March 25.

16-21-102. "Offender" defined.

Except as otherwise provided in section 16-21-103, for the purposes of this article, "offender" means any person charged as an adult with a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301, C.R.S., or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S.

Source: L. 87: Entire article added, p. 647, § 1, effective July 1. **L. 94:** Entire section amended, p. 2039, § 19, effective July 1; entire section amended, p. 2551, § 39, effective January 1, 1995.

Editor's note: Amendments to this section in House Bill 94-1253 and Senate Bill 94-1 were harmonized.

16-21-103. Information on offenders required - duties of law enforcement agencies - court.

(1) (a) For purposes of this section, unless the context otherwise requires:

(I) "Act of domestic violence" has the same meaning as set forth in section 18-6-800.3 (1), C.R.S.

(II) "Arrest number" means a number that shall be assigned by the arresting agency to an arrest of the arrestee.

(III) "Bureau" means the Colorado bureau of investigation.

(III.3) "CICJIS" means the Colorado integrated criminal justice information system program, as defined in section 16-20.5-102.

(III.5) "Electronic signature" means information transferred from one agency to another through CICJIS, including but not limited to warrants, mittimuses, judgments, and plea agreements.

(III.7) "ICON" means the integrated Colorado online network, as defined in section 16-20.5-102.

(IV) "Sexual offense" means crimes described in article 3 of title 18, C.R.S., and crimes described in articles 6 and 7 of title 18, C.R.S.

(V) "State identification number" means the number assigned to an offender by the bureau based on fingerprint identification.

(b) The requirements of this section are intended to complement the rules of criminal procedure and shall not be interpreted to conflict with or supersede any such rules.

(2) (a) A law enforcement agency that requests the filing of any criminal case shall submit to the district attorney the arresting agency's name, the offender's full name and date of birth, the charge or charges being requested, the investigating agency's case number, and the date of arrest and the arrest number. In addition, the law enforcement agency shall submit to the district attorney any relevant information about the offender's affiliation or association with gangs or gang activities.

(b) In addition to the information described in paragraph (a) of this subsection (2), a law enforcement agency shall comply with the following procedures:

(I) When requesting the filing of any felony, misdemeanor, or petty offense, criminal charge, or a violation of a municipal ordinance, the factual basis of which includes an act of domestic violence or a sexual offense, the law enforcement agency shall submit to the prosecuting attorney the information set forth in this subsection (2).

(II) If a law enforcement agency directly issues a complaint, summons, or summons and complaint for the charges described in subparagraph (I) of this paragraph (b), the agency shall identify on the face of such document whether the factual basis for the charge or charges includes an act of domestic violence or a sexual offense.

(3) A district attorney who files any criminal case with the court or who reports to the bureau a final disposition occurring in the district attorney's office shall submit the arresting agency's name, the offender's full name and date of birth, the investigating agency's case number, the date of arrest and the arrest number, and any other information that a law enforcement agency is required to submit in accordance with subsection (2) of this section.

(4) (a) Upon the issuance of a warrant of arrest, the court shall notify the sheriff of the county in which the court is located of the issuance of such warrant. When the court withdraws, cancels, quashes, or otherwise renders a warrant of arrest invalid, the court shall immediately notify the bureau of such action in a manner that is consistent with procedures established jointly by the state court administrator and the director of the bureau.

(b) When the court creates a new criminal case in ICON, the court shall electronically notify the bureau of such action and shall provide the bureau with the arresting agency's name, the arrest date, and the arrest number provided to the court in accordance with subsection (3) of this

section. Thereafter, the bureau shall electronically notify the court of the state identification number, if any, assigned to the offender.

(c) The court shall report the final disposition concerning an offender to the bureau in a form that is electronically consistent with applicable law. The report shall be made within seventy-two hours after the final disposition; except that the time period shall not include Saturdays, Sundays, or legal holidays. The report shall include the information provided to the court in accordance with subsection (3) of this section, the disposition of each charge, and the court case number, and, with respect to any charge, the factual basis of which includes an act of domestic violence or a sexual offense, the court and the bureau shall comply with the following procedures:

(I) The court shall advise the bureau to reflect the change of the status of domestic violence or sexual offense if the defendant is found not guilty of the alleged crime or if the case is dismissed.

(II) The court shall specify that there is a change in the status of the charge originally submitted to the bureau in accordance with paragraph (b) of this subsection (4), based upon the court's findings.

(III) The bureau shall reflect the change of status but shall not delete or eliminate information concerning the original charge.

(5) (a) The bureau shall maintain the information it receives pursuant to this article and shall make such information immediately available electronically to the department of corrections and to any other criminal justice agency upon request.

(b) Upon receipt of the fingerprints required pursuant to this article, the bureau shall perform a complete search of the bureau's files to identify any prior criminal record that the offender may have. Upon the association of a unique state identification number with any such offender, the bureau shall report such number electronically to CICJIS, the submitting agency, and the district attorney with jurisdiction over the offense. Upon nonassociation, the bureau shall create a new state identification number and electronically report the number to CICJIS and the submitting agency. Upon receipt of the number, CICJIS shall electronically report the number to the court and the district attorney with jurisdiction over the offense.

(6) The information received by the bureau pursuant to this article shall be made available to any sentencing court, probation office, or other pretrial services agency preparing a report on domestic violence or sexual offense cases.

Source: L. 87: Entire article added, p. 647, § 1, effective July 1. **L. 89:** (1) and (2) amended, p. 874, § 6, effective June 5. **L. 92:** Entire section amended, p. 256, § 2, effective June 3. **L. 94:** (1) and (3) amended and (6) added, p. 2039, § 20, effective July 1. **L. 95:** (3) and (6) amended, p. 600, § 2, effective May 22; entire section R&RE, p. 945, § 2, effective July 1. **L. 2005:**

(1)(a)(III.3), (1)(a)(III.5), and (1)(a)(III.7) added and (4)(b), (5)(a), (5)(b), and (6) amended, p. 87, §§ 6, 7, effective March 25.

Editor's note: Subsections (3) and (6) were amended in House Bill 95-1101. Those amendments were superseded by the repeal and reenactment of the section in Senate Bill 95-153.

Cross references: For the legislative declaration contained in the 1995 act amending this section, see section 1 of chapter 198, Session Laws of Colorado 1995.

16-21-104. Fingerprinting - ordered by court.

(1) If the offender has not been fingerprinted and photographed for the charges pending before the court, the court at the first appearance of the offender after the filing of charges shall order the offender to report to the investigating agency within fourteen days for fingerprinting and photographing. The investigating agency shall endorse upon a copy of the order the completion of the fingerprinting and photographing and return the same to the court. At least one set of fingerprints and one set of photographs ordered pursuant to this section shall be forwarded by the investigating agency to the Colorado bureau of investigation in a form and manner prescribed by such bureau.

(2) Any fingerprints required by this section to be forwarded shall be forwarded within twenty-four hours after completion; except that such time period shall not include Saturdays, Sundays, and legal holidays.

Source: L. 87: Entire article added, p. 648, § 1, effective July 1. **L. 91:** (1) amended, p. 442, § 10, effective May 29. **L. 92:** Entire section amended, p. 257, § 3, effective June 3. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 861, § 99, effective July 1.

16-21-104.5. Electronic signatures - validity.

The information contained in an electronic signature, as defined in section 16-21-103 (1)(a)(III.5), sent between agencies using CICJIS, as defined in section 16-20.5-102, shall be presumed to be valid on its face without signed hard copy.

Source: L. 2005: Entire section added p. 88, § 8, effective March 25.

16-21-105. Applicability of article to municipal courts - local law enforcement.

(1) The provisions of this article concerning the duty of a law enforcement agency to identify on the face of a complaint, summons, or summons and complaint whether the factual basis of the charge or charges being filed include an act of domestic violence shall apply to local law enforcement agencies.

(2) The provisions of this article concerning the duty of a court to notify the bureau concerning actions involving crimes in which the charge or charges include an act of domestic violence shall apply to municipal courts.

Source: L. 94: Entire section added, p. 2040, § 21, effective July 1. **L. 95:** (2) amended, p. 600, § 3, effective May 22.

ARTICLE 22

Colorado Sex Offender Registration Act

16-22-101. Short title.

16-22-102. Definitions.

16-22-103. Sex offender registration - required - applicability - exception.

16-22-104. Initial registration - effective date.

16-22-105. Notice - requirements - residence - presumption.

16-22-106. Duties - probation department - community corrections administrator - court personnel - jail personnel - notice.

16-22-107. Duties - department of corrections - department of human services - confirmation of registration - notice - address verification.

16-22-108. Registration - procedure - frequency - place - change of address - fee.

16-22-109. Registration forms - local law enforcement agencies - duties - report.

16-22-110. Colorado sex offender registry - creation - maintenance - release of information - data collection.

16-22-111. Internet posting of sex offenders - procedure.

16-22-112. Release of information - law enforcement agencies.

16-22-113. Petition for removal from sex offender registry - mandatory hearing for discontinuation and removal.

16-22-114. Immunity.

16-22-115. CBI assistance in apprehending sex offenders who fail to register.

16-22-101. Short title.

This article shall be known and may be cited as the "Colorado Sex Offender Registration Act".

Source: L. 2002: Entire article added, p. 1157, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Constitutional Challenges to Sex Offender Registration and Community Notification Laws", see 30 Colo. Law. 51 (Feb. 2001).

16-22-102. Definitions.

As used in this article 22, unless the context otherwise requires:

(1) "Adjudicated" or "adjudication" means a determination by the court that it has been proven beyond a reasonable doubt to the trier of fact that a juvenile has committed a delinquent act or that a juvenile has pled guilty to committing a delinquent act. In addition, when a previous conviction must be pled and proven as an element of an offense or for purposes of sentence enhancement, "adjudication" means conviction.

(1.5) "Birthday" means a person's birthday as reflected on the notice provided to the person pursuant to section 16-22-106 or 16-22-107 or the person's actual date of birth if the notice does not reflect the person's birthday.

(2) "CBI" means the Colorado bureau of investigation established pursuant to part 4 of article 33.5 of title 24, C.R.S.

(3) "Convicted" or "conviction" means having received a verdict of guilty by a judge or jury, having pleaded guilty or nolo contendere, having received a disposition as a juvenile, having been adjudicated a juvenile delinquent, or having received a deferred judgment and sentence or a deferred adjudication.

(3.5) "Employed at an institution of postsecondary education" means a person:

(a) Is employed by or is an independent contractor with an institution of postsecondary education or is employed by or is an independent contractor with an entity that contracts with an institution of postsecondary education; and

(b) Spends any period of time in furtherance of the employment or independent contractor relationship on the campus of the postsecondary institution or at a site that is owned or leased by the postsecondary institution.

(4) "Immediate family" means a person's spouse, parent, grandparent, sibling, or child.

(4.2) "Juvenile" means a person who is under eighteen years of age at the time of the offense and who has not been criminally convicted in the district court of unlawful sexual behavior pursuant to section 19-2.5-801 or 19-2.5-802.

(4.3) (a) "Lacks a fixed residence" means that a person does not have a living situation that meets the definition of "residence" pursuant to subsection (5.7) of this section. "Lacks a fixed residence" may include, but need not be limited to, outdoor sleeping locations or any public or private locations not designed as traditional living accommodations. "Lacks a fixed residence" may also include temporary public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the person remains at the location for less than fourteen days.

(b) "Lacks a fixed residence" also includes a person who is registered in any jurisdiction if the person:

(I) Ceases to reside at an address in that jurisdiction; and

(II) Fails to register:

(A) A change of address in the same jurisdiction; or

(B) In a new jurisdiction pursuant to section 16-22-108 (4); or

(C) Pursuant to section 16-22-108 (3).

(4.5) "Local law enforcement agency" means the law enforcement agency, including but not limited to a campus police agency, that has jurisdiction over a certain geographic area.

(5) "Register" and "registration" include initial registration pursuant to section 16-22-104, and registration, confirmation of registration, and reregistration, as required in section 16-22-108.

(5.5) "Registrant" means a person who is required to register in accordance with this article.

(5.7) "Residence" means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register pursuant to section 16-22-103. "Residence" may include, but need not be limited to, a temporary shelter or institution, if the person resides at

the temporary shelter or institution for fourteen consecutive days or longer, if the owner of the shelter or institution consents to the person utilizing the shelter or institution as his or her registered address as required by section 16-22-106 (4) or 16-22-107 (4)(a), and if the residence of the person at the shelter or institution can be verified as required by section 16-22-109 (3.5). A person may establish multiple residences by residing in more than one place or dwelling.

(5.8) "Resides" includes residence and lacks a fixed residence.

(6) "Sex offender registry" means the Colorado sex offender registry created and maintained by the CBI pursuant to section 16-22-110.

(7) "Sexually violent predator" means a person who is found to be a sexually violent predator pursuant to section 18-3-414.5, C.R.S.

(8) "Temporary resident" means a person who is a resident of another state but in Colorado temporarily because the person is:

(a) Employed in this state on a full-time or part-time basis, with or without compensation, for more than fourteen consecutive business days or for an aggregate period of more than thirty days in any calendar year; or

(b) Enrolled in any type of educational institution in this state on a full-time or part-time basis; or

(c) Present in Colorado for more than fourteen consecutive business days or for an aggregate period of more than thirty days in a calendar year for any purpose, including but not limited to vacation, travel, or retirement.

(9) "Unlawful sexual behavior" means any of the following offenses or criminal attempt, conspiracy, or solicitation to commit any of the following offenses:

(a) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(c) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(g) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(h) Incest, in violation of section 18-6-301, C.R.S.;

(i) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(j) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(j.5) Human trafficking for sexual servitude, as described in section 18-3-504 (1);

(k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(m) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(n) Soliciting for commercial sexual activity with a child, in violation of section 18-7-402;

(o) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(q) Keeping a place of commercial sexual activity with a child, in violation of section 18-7-404;

(r) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(s) Inducement of commercial sexual activity with a child, in violation of section 18-7-405.5;

(t) Engaging in commercial sexual activity with a child, in violation of section 18-7-406;

(t.5) As each of the following offenses existed prior to July 1, 2026: Soliciting for child prostitution, in violation of section 18-7-402; keeping a place of child prostitution, in violation of section 18-7-404; inducement of child prostitution, in violation of section 18-7-405.5; or patronizing a prostituted child, in violation of section 18-7-406;

(u) Engaging in sexual conduct in a correctional institution, in violation of section 18-7-701, C.R.S.;

(v) Wholesale promotion of obscenity to a minor, in violation of section 18-7-102 (1.5), C.R.S.;

(w) Promotion of obscenity to a minor, in violation of section 18-7-102 (2.5), C.R.S.;

(x) Class 3 and class 4 felony internet luring of a child, in violation of section 18-3-306 (3);

(y) Internet sexual exploitation of a child, in violation of section 18-3-405.4, C.R.S.;

(z) Public indecency, committed in violation of section 18-7-301 (2)(b), C.R.S., if a second offense is committed within five years of the previous offense or a third or subsequent offense is committed;

(aa) Invasion of privacy for sexual gratification, in violation of section 18-3-405.6;

(bb) Second degree kidnapping, if committed in violation of section 18-3-302 (3)(a);

(cc) Unlawful electronic sexual communication, in violation of section 18-3-418; or

(dd) Unlawful sexual conduct by a peace officer, in violation of section 18-3-405.7.

Source: L. 2002: Entire article added, p. 1157, § 1, effective July 1. **L. 2004:** (9)(v) and (9)(w) added, p. 800, § 1, effective May 21; (3.5), (4.5), (5.5), and (5.7) added and (8) amended, p. 1107, § 1, effective May 27. **L. 2006:** (5.7) amended, p. 1006, § 3, effective July 1; (9)(x) and (9)(y) added, p. 2054, § 2, effective July 1. **L. 2010:** (9)(j) amended, (SB 10-140), ch. 156, p. 537, § 6, effective April 21; (9)(u) amended, (HB 10-1277), ch. 262, p. 1190, § 2, effective July 1; (9)(x) and (9)(y) amended and (9)(z) added, (HB 10-1334), ch. 359, p. 1708, § 3, effective August 11; (9)(x) and (9)(y) amended and (9)(aa) added, (SB 10-128), ch. 415, p. 2047, § 8, effective July 1, 2012. **L. 2011:** (9)(bb) added, (HB 11-1278), ch. 224, p. 960, § 3, effective May 27. **L. 2012:** (4.3) and (5.8) added and (5.7) amended, (HB 12-1346), ch. 220, p. 940, § 1, effective July 1. **L. 2014:** (9)(j) amended, (HB 14-1273), ch. 282, p. 1153, § 13, effective July 1. **L. 2017:** IP amended and (9)(j.5) added, (HB 17-1072), ch. 250, p. 1050, § 3, effective September 1. **L. 2019:** (9)(aa) and (9)(bb) amended and (9)(cc) added, (HB 19-1030), ch. 145, p. 1760, § 3, effective July 1; (9)(aa) and (9)(bb) amended and (9)(dd) added, (HB 19-1250), ch. 287, p. 2663, § 3, effective July 1. **L. 2021:** (1) amended and (1.5) and (4.2) added, (HB 21-1064), ch. 320, p. 1961, § 1, effective September 1. **L. 2022:** (4.2) amended, (SB 22-212), ch. 421, p. 2969, § 27, effective August 10. **L. 2026:** (9)(n), (9)(q), (9)(s), (9)(t), and (9)(x) amended and (9)(t.5) added, (SB 26-015), ch. 335, p. 2038, § 16, effective July 1.

Cross references: For the legislative declaration in SB 26-015, see section 1 of chapter 335, Session Laws of Colorado 2026.

ANNOTATION

Annotator's note. Since § 16-22-102 is similar to § 18-3-412.5 as it existed prior to its 2002 repeal and reenactment, a relevant case construing that provision has been included in the annotations to this section.

The sex offender registration act taken as a whole gives fair notice that "residence" applies to more than a traditional house or apartment, so it is not unconstitutionally vague as applied to

defendant. Defendant had fair notice that staying in his car may have triggered his registration duties. People v. Allman, 2012 COA 212, 321 P.3d 557.

In reference to the term "convicted" in subsection (3), the phrase "having received a deferred judgment and sentence" does not mean the same as "completing the terms of a deferred sentencing agreement". Defendant must register as a sex offender pursuant to § 16-22-103 (1)(a) despite completion of a deferred sentencing agreement. Dubois v. Abrahamson, 214 P.3d 586 (Colo. App. 2009).

A motor vehicle if used, intended to be used, or usually used for habitation may be a "residence", even if it is not parked in a fixed location. People v. Allman, 2012 COA 212, 321 P.3d 557.

The term "residence" does not require an address. People v. Allman, 2012 COA 212, 321 P.3d 557.

The trial court properly ordered the defendant to register as a sex offender pursuant to this section even though defendant plead guilty to an offense not specifically listed in the definition of "unlawful sexual behavior" in subsection (1)(b). Although defendant plead guilty to contributing to the delinquency of a minor, she had engaged in soliciting for child prostitution, pandering of a child, procurement of a child for sexual exploitation, and inducement of child prostitution. Thus, the factual basis for the plea involved unlawful sexual behavior, and defendant was appropriately required to register as a sex offender. People v. Meidinger, 987 P.2d 937 (Colo. App. 1999).

To establish a residence under subsection (5.7) requires a physical presence or occupancy at a location. An offender under the Colorado Sex Offender Registration Act is required to give notice of where he or she intends to reside upon release from custody, but is not required to register at an address solely based upon that intent. People v. Griffin, 397 P.3d 1086 (Colo. App. 2011).

16-22-103. Sex offender registration - required - applicability - exception.

(1) Effective July 1, 1998, the following persons are required to register pursuant to section 16-22-108 and are subject to the requirements and other provisions specified in this article 22:

(a) Any person who was convicted on or after July 1, 1991, in the state of Colorado of an unlawful sexual offense, as defined in section 18-3-411 (1), enticement of a child, as described in section 18-3-305, or internet luring of a child, as described in section 18-3-306 (3);

(b) Any person who was convicted on or after July 1, 1991, in another state or jurisdiction, including but not limited to a military, tribal, territorial, or federal jurisdiction, of an offense that, if committed in Colorado, would constitute an unlawful sexual offense, as defined in section 18-

3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.; and

(c) Any person who was released on or after July 1, 1991, from the custody of the department of corrections of this state or any other state, having served a sentence for an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.

(2) (a) On and after July 1, 1994, any person who is convicted in the state of Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior, or any person who is released from the custody of the department of corrections having completed serving a sentence for unlawful sexual behavior or for another offense, the underlying factual basis of which involved unlawful sexual behavior, shall be required to register in the manner prescribed in section 16-22-104, section 16-22-106 or 16-22-107, whichever is applicable, and section 16-22-108.

(b) A person shall be deemed to have been convicted of unlawful sexual behavior if he or she is convicted of one or more of the offenses specified in section 16-22-102 (9), or of attempt, solicitation, or conspiracy to commit one or more of the offenses specified in said section.

(c) (I) For convictions entered on or after July 1, 2002, a person shall be deemed to be convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, if:

(A) The person is convicted of an offense that requires proof of unlawful sexual behavior as an element of the offense; or

(B) The person is convicted of an offense and is eligible for and receives an enhanced sentence based on a circumstance that requires proof of unlawful sexual behavior; or

(C) The person was originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of this subparagraph (I), the person pleads guilty to an offense that does not constitute unlawful sexual behavior, and, as part of the plea agreement, the person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior; or

(D) The person was charged with and convicted of an offense that does not constitute unlawful sexual behavior and the person admits on the record, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense involved unlawful sexual behavior.

(II) If a person is originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of subparagraph (I) of this paragraph (c),

the court may accept a plea agreement to an offense that does not constitute unlawful sexual behavior only if:

(A) The district attorney stipulates that the underlying factual basis of the offense to which the person is pleading guilty does not involve unlawful sexual behavior; or

(B) The person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior.

(III) The advisement provided for purposes of this paragraph (c), in addition to meeting the requirements of the Colorado rules of criminal procedure, shall advise the person that admitting that the underlying factual basis of the offense to which the person is pleading or of which the person is convicted involves unlawful sexual behavior will have the collateral result of making the person subject to the requirements of this article. Notwithstanding any provision of this paragraph (c) to the contrary, failure to advise a person pursuant to the provisions of this subparagraph (III) shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

(IV) In any case in which a person is deemed to have been convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, as provided in this paragraph (c), the judgment of conviction shall specify that the person is convicted of such an offense and specify the particular crime of unlawful sexual behavior involved.

(V) The provisions of this paragraph (c) shall apply to juveniles for purposes of determining whether a juvenile is convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior.

(d) (I) Notwithstanding any other provision of this section, any stipulation by a district attorney and any finding by the court with regard to whether the offense of which the person is convicted includes an underlying factual basis involving unlawful sexual behavior, as defined in section 16-22-102, shall be binding on the department of corrections for purposes of classification. On or after July 1, 2008, if the department of corrections receives a mittimus that does not indicate the necessary findings as required by subsection (2)(c)(II) of this section, the department shall notify the court and request that the court enter the necessary findings pursuant to subsection (2)(c)(II) of this section.

(II) The department of corrections shall have the authority to make a determination that a person is a sex offender, as defined in section 16-11.7-102 (2)(a), for the purposes of classification and treatment if:

(A) The person has one or more prior convictions for a sex offense as defined in section 16-11.7-102 (3);

(B) The person has a prior offense for which a determination has been made by the court that the underlying factual basis involved a sex offense as defined in section 16-11.7-102 (3); or

(C) The person has been classified as a sex offender in accordance with procedures established by the department of corrections.

(III) The procedures established by the department of corrections to classify a person as a sex offender shall require that:

(A) The classification proceeding be conducted by a licensed attorney who shall serve as an administrative hearing officer;

(B) The offender's attorney be permitted to attend, represent, and assist the offender at the classification proceeding; and

(C) The offender be entitled to written notice of the reason for the proceeding, disclosure of the evidence to be presented against him or her, an opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses, unless the administrative hearing officer finds good cause for not allowing confrontation, and written findings and conclusions indicating the evidence and reasons relied upon for the classification as a sex offender.

(IV) Notwithstanding any statutory provisions to the contrary, the department of corrections shall ensure that all procedures and policies comply with the federal "Prison Rape Elimination Act of 2003", Pub.L. 108-79, as amended.

(3) (a) In addition to the persons specified in subsections (1) and (2) of this section, and except as set forth in subsection (3)(b) of this section, any person convicted of an offense in any other state or jurisdiction, including but not limited to a military or federal jurisdiction, for which the person, as a result of the conviction, is required to register if the person resided in the state or jurisdiction of conviction, or for which the person would be required to register if convicted in Colorado, is required to register in the manner specified in section 16-22-108, so long as the person is a temporary or permanent resident of Colorado. The person may petition the court for an order to discontinue the requirement for registration in this state at the times specified in section 16-22-113 for offense classifications that are comparable to the classification of the offense for which the person was convicted in the other state or jurisdiction. The person may petition the court for an order to discontinue the requirement for registration in this state for offense classifications that the person would not be required to register for if convicted in Colorado.

(b) If a juvenile is required to register only pursuant to subsection (3)(a) of this section and the juvenile's duty to register in another state or jurisdiction has been terminated by a court order, or if a trial court has determined that the juvenile is not required to register in that state or jurisdiction, then the juvenile is not required to fulfill the requirements for registration in

Colorado, as set forth in section 16-22-108, and is therefore not required to petition the court for removal from the Colorado sex offender registry pursuant to section 16-22-113.

(4) This article 22 applies to any person who receives a disposition or is adjudicated a juvenile delinquent based on the commission of any act that may constitute unlawful sexual behavior or who receives a deferred adjudication based on commission of any act that may constitute unlawful sexual behavior; except that, with respect to section 16-22-113 (1)(a) to (1)(e), a person who is adjudicated or receives a disposition as a juvenile may petition the court for an order to discontinue the duty to register as provided in those subsections, but only if the person has not subsequently been convicted as an adult of any offense involving unlawful sexual behavior or convicted as an adult of another offense, the underlying factual basis of which involves unlawful sexual behavior. In addition, the duty to provide notice to a person of the duty to register, as set forth in sections 16-22-105 to 16-22-107, applies to juvenile parole and probation officers and appropriate personnel of the division of youth services in the department of human services. If a person is required to register pursuant to this article 22 due to an adjudication or disposition as a juvenile, the duty to register automatically terminates either when the person reaches twenty-five years of age or seven years from the date the juvenile was required to register, whichever occurs later.

(5) (a) Notwithstanding any provision of this article 22 to the contrary, if, pursuant to a motion filed by a person described in this subsection (5) or on its own motion, a court determines that exempting the person from the registration requirement would not pose a significant risk to the community, the court, upon consideration of the totality of the circumstances, may exempt the person from the registration requirements imposed pursuant to this section if:

(I) The person was younger than eighteen years of age at the time of the commission of the offense; and

(II) The person has not been previously adjudicated or received a disposition for a separate offense involving unlawful sexual behavior; and

(III) The person was adjudicated or received a disposition for any offense of unlawful sexual behavior or another offense, the underlying factual basis of which involved unlawful sexual behavior; and

(IV) The person has received an evaluation that conforms with the standards developed pursuant to section 16-11.7-103 (4)(i) from an evaluator who meets the standards established by the sex offender management board, and the evaluator recommends exempting the person from the registration requirements based upon the best interests of that person and the community; and

(IV.5) The court has considered a written or oral statement by the victim of the offense for which the juvenile would otherwise be required to register, if provided by the victim, on the question of whether the juvenile should be exempted from the statutory duty to register as a sex offender; and

(V) The court makes written findings of fact specifying the grounds for granting such exemption.

(b) Any defendant who files a motion pursuant to this subsection (5) or the court, if considering its own motion, shall provide notice of the motion to the prosecuting district attorney. In addition, the court shall provide notice of the motion to the victim of the offense. Prior to deciding the motion, the court shall conduct a hearing on the motion at which both the district attorney and the victim shall have opportunity to be heard.

(6) Any person who is required to register pursuant to this section and fails to do so or otherwise fails to comply with the provisions of this article may be subject to prosecution for the offense of failure to register as a sex offender, as described in section 18-3-412.5, C.R.S. Failure of any governmental entity or any employee of any governmental entity to comply with any requirement of this article shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

Source: L. 2002: Entire article added, p. 1159, § 1, effective July 1. **L. 2004:** (1)(b), (1)(c), (3), and (5)(a) amended, p. 1108, § 2, effective May 27. **L. 2007:** (1) amended, p. 1687, § 3, effective July 1. **L. 2008:** (3) amended, p. 849, § 1, effective May 14; (2)(d) amended, p. 1754, § 1, effective July 1. **L. 2011:** (1)(b) amended, (HB 11-1278), ch. 224, p. 960, § 4, effective May 27; (5)(a)(IV) amended, (HB 11-1138), ch. 236, p. 1027, § 9, effective May 27. **L. 2017:** (4) amended, (HB 17-1329), ch. 381, p. 1969, § 17, effective June 6; IP(5)(a) and (5)(a)(III) amended, (HB 17-1302), ch. 390, p. 2013, § 2, effective January 1, 2018. **L. 2018:** (3) amended, (SB 18-026), ch. 143, p. 921, § 1, effective August 8. **L. 2021:** IP(1), (1)(a), (3), (4), and (5)(a) amended, (HB 21-1064), ch. 320, p. 1962, § 2, effective September 1.

Editor's note: In People in Interest of T.B., 2021 CO 59, 489 P.3d 752, the Colorado Supreme Court held that mandatory lifetime sex offender registration under this act for offenders with multiple juvenile adjudications without a mechanism for individualized assessment or an opportunity to deregister upon a showing of rehabilitation is excessive and violates the prohibition on cruel and unusual punishments under the eighth amendment of the United States Constitution.

Cross references: For the legislative declaration in HB 17-1302, see section 1 of chapter 390, Session Laws of Colorado 2017.

ANNOTATION

Annotator's note. Since § 16-22-103 is similar to § 18-3-412.5 as it existed prior to its 2002 repeal and reenactment, relevant cases construing that provision have been included in the annotations to this section.

Prior to the 2004 amendment, subsection (1)(c) referred to the department of corrections in Colorado not that of any other state. Fendley v. People, 107 P.3d 1122 (Colo. App. 2004).

Use of present tense in subsection (3) refers to any person currently required to register in the state of conviction of the sexual offense and not to a person who "was" or "has been" required to register. Fendley v. People, 107 P.3d 1122 (Colo. App. 2004).

Although application of subsection (1) relates back to convicted sexual offenders released on or after July 1, 1991, it does not violate the prohibition against ex post facto laws, because the statute does not disadvantage the offender. The registration requirement is intended to assist law enforcement officials in investigating future sex crimes and to protect the public safety. As such, it is remedial, not punitive, and does not unconstitutionally enhance the offender's punishment. Jamison v. People, 988 P.2d 177 (Colo. App. 1999); People v. Sowell, 327 P.3d 273 (Colo. App. 2011).

The 2008 amendments to subsection (2)(d)(I) were substantive and cannot be applied retroactively. A retroactive application would modify vested rights and liabilities. Vondra v. Colo. Dept. of Corr., 226 P.3d 1165 (Colo. App. 2009).

Procedural due process does not entitle a sex offender to a hearing on the sex offender's dangerousness before requiring the sex offender to register. Due process does not guarantee the right to a hearing to establish a fact that is not material under the statute. Dangerousness is not material under the registration statute, the duty to register is triggered by a conviction of a sex offense. The statute even states the crime for which the registrant was convicted may not reflect the current level of dangerousness. People ex rel. C.B.B., 75 P.3d 1148 (Colo. App. 2003).

Procedural due process does not entitle a juvenile sex offender to present evidence or to be heard regarding his or her potential for rehabilitation. Defendant's potential for rehabilitation is irrelevant to the sex offender registration requirement; defendant was required to register as a sex offender based on his adjudication for the current offense coupled with having a prior adjudication for a sex offense. People in Interest of C.M.D., 2018 COA 172, 452 P.3d 133, overruled on other grounds in People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

The sex offender registration act does not deprive juveniles of their liberty or privacy interests. Defendant's substantive due process claim that registration deprives juveniles of their liberty interests in living, associating with families and friends, and circulating in society does not implicate a fundamental right and the act's stated purpose of protecting the public is rational. Juvenile defendant's privacy rights are not violated because juveniles do not necessarily have greater privacy rights than adults and

internet posting required by the act is limited to certain adults. People in Interest of C.M.D., 2018 COA 172, 452 P.3d 133, overruled on other grounds in People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

This section does not violate the offender's right to equal protection even though this section does not apply to persons who may have been convicted the same date as the offender, but were eligible for release prior to 1991. The offender is not similarly situated to persons released prior to 1991 because the offender was not eligible for release as of said date. Jamison v. People, 988 P.2d 177 (Colo. App. 1999).

Because sex offender registration is not punishment, requiring a juvenile to register does not violate cruel and unusual punishment even though juveniles are constitutionally different from adults when it comes to sentencing. People in Interest of J.O., 2015 COA 119, 383 P.3d 69, overruled in People in Interest of T.B., 2021 CO 59, 489 P.3d 752, annotated below; People in Interest of C.M.D., 2018 COA 172, 452 P.3d 133, overruled in People in Interest of T.B., 2021 CO 59, 489 P.3d 752, annotated below.

Mandatory lifetime sex offender registration for juveniles, without an opportunity for individual assessment or the ability to deregister upon demonstrating rehabilitation, violates the eighth amendment's prohibition on cruel and unusual punishment. Juveniles are constitutionally different from adults for purposes of sentencing. People in Interest of T.B., 2021 CO 59, 489 P.3d 752 (overruling People in Interest of J.O., 2015 COA 119, 383 P.3d 69, and People in Interest of C.M.D., 2018 COA 172, 452 P.3d 133).

The requirement for mandatory lifetime registration on the sex offender registry for twice-adjudicated juveniles, without the opportunity for individual assessment or the ability to deregister upon demonstrating rehabilitation, constitutes cruel and unusual punishment in violation of the eighth amendment. People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

For an offender with a juvenile adjudication in addition to an adult conviction, mandatory lifetime sex offender registration is not considered a punishment for purposes of the eighth amendment. An offender with a juvenile adjudication and an adult conviction does not implicate the heightened concerns associated with lifetime registration for juvenile offenders. People v. Chronis, 2025 COA 72, 578 P.3d 76.

Analyzing any statute under the eighth amendment involves a two-part inquiry: (1) Is the registration requirement a "punishment", and, if so, (2) is it "cruel and unusual"? People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

With regard to the first inquiry, requiring a juvenile, even one who has been twice adjudicated for offenses involving unlawful sexual behavior, to register as a sex offender for life without regard for whether he or she poses a risk to public safety is an overly

inclusive — and therefore excessive — means of protecting public safety. Because the lifetime registration requirement is not adequately tethered to the statute's stated nonpunitive purpose, the automatic lifetime registration requirement for juvenile offenders is excessive. And because the lifetime registration requirement is excessive in relation to its nonpunitive purpose when applied to juveniles, it operates more like a punishment. People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

The sex offender registration act taken as a whole gives fair notice that "residence" applies to more than a traditional house or apartment, so it is not unconstitutionally vague as applied to defendant. Defendant had fair notice that staying in his car may have triggered his registration duties. People v. Allman, 2012 COA 212, 321 P.3d 557.

The duty to register as a sex offender is not a direct consequence of the entry of a guilty plea and therefore need not be included in the advisement. The statutory duty to register as a sex offender in Colorado is only a collateral consequence of a defendant's guilty plea. Failure to advise defendant of the duty to register as a sex offender does not invalidate his guilty plea. People v. Montaine, 7 P.3d 1065 (Colo. App. 1999).

The requirement that a juvenile register as a sex offender pursuant to this section does not give rise to a constitutional right to a jury trial in a juvenile adjudication because the statutory duty to register as a sex offender is not a criminal punishment. People ex rel. J.T., 13 P.3d 321 (Colo. App. 2000), overruled on other grounds in People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

A person convicted of violating 18 U.S.C. § 2252 (a)(2) has engaged in conduct that, if committed in Colorado, would constitute sexual exploitation of a child in violation of § 18-6-403 (3)(b.5) and is, therefore, subject to the registration requirement of subsection (1)(b) of this section. Fabiano v. Armstrong, 141 P.3d 907 (Colo. App. 2006).

Based upon defendant's civil commitment in another state for a sex offense, defendant is required to register as a sex offender in this state. Defendant is a person "required to register in the state of conviction" and a person who would be "required to register if convicted in this state". The civil commitment proceedings in the other state were equivalent to a deferred judgment and sentencing in this state, thus satisfying the "convicted" requirement of the statute. The other state's commitment procedures included sufficient due process protections. The crime that was the subject of the civil commitment would essentially have been sexual assault on a child in this state. Mayo v. People, 181 P.3d 1207 (Colo. App. 2008).

A person with an out-of-state conviction for an offense comparable to sexual assault on a child in this state is not eligible to discontinue registration with this state's sex offender registry because a person who is convicted in this state of the same offense is not eligible to discontinue

registration. Curtiss v. People, 2014 COA 107, 410 P.3d 539.

Defendant must register as a sex offender pursuant to subsection (1)(a) despite completion of a deferred sentencing agreement based on the plain language of the definition of "convicted", as defined in § 16-22-102 (3) and as used in subsection (1)(a) of this section. Dubois v. Abrahamson, 214 P.3d 586 (Colo. App. 2009).

The timeframe in subsection (2)(a) refers to the offenses triggering the obligation to register as a sex offender. It does not mean that all convictions or adjudications referenced in § 16-22-113 (3)(c) must have occurred on or after the cutoff of July 1, 1994. People v. Chronis, 2025 COA 72, 578 P.3d 76.

The phrase "as charged in the first petition filed with the court" in subsection (5)(a)(III) means the original petition as it appeared when it was filed and not any amendments or subsequent petitions. People in Interest of I.S., 2017 COA 155, 415 P.3d 869.

The first offense criterion in subsection (5)(a)(III) for exemption from sex offender registration does not apply when a juvenile is simultaneously adjudicated for unlawful sexual contact and indecent exposure. People in Interest of J.O., 2015 COA 119, 383 P.3d 69 , overruled on other grounds in People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

Defendant not required to register as a sex offender for offense committed in another state if all of the Colorado elements of the crime are not met. Because statute included one element that the other state's statute did not, the prosecution did not satisfy all of the elements of the crime of indecent exposure, thus defendant was not required to register as a sex offender for a conviction of indecent exposure in another state. People v. Brooks, 2012 COA 52, 296 P.3d 216.

Sufficient competent evidence for department of corrections' hearing panel to determine defendant to be a sex offender. The panel relied on police reports and the victim's statements to determine that defendant had subjected a victim to unwanted sexual contact through threats, intimidation, and physical force. Vondra v. Colo. Dept. of Corr., 226 P.3d 1165 (Colo. App. 2009).

Evidence sufficient to establish jury's finding that defendant knowingly failed to register. Defendant admitted that he knew he had to register when he established a new address, and the evidence showed that defendant had established that residence. People v. Allman, 2012 COA 212, 327 P.3d 273 (Colo. App. 2011).

Ongoing registration obligations under this act do not satisfy the custody requirement for a habeas corpus petition filed under 28 U.S.C. § 2254. The requirement to register under a state sex offender registration statute does not satisfy § 2254's condition that a petitioner be "in custody" at the time petitioner files a habeas petition. Registration requirements are collateral consequences of conviction that do not impose a severe restriction on an individual's freedom. Calhoun v. Colo.

Attorney Gen., 745 F.3d 1070 (10th Cir. 2014).

16-22-104. Initial registration - effective date.

(1) (a) (I) Beginning January 1, 2005, for any person required to register pursuant to section 16-22-103, the court, within the later of twenty-four hours or the next business day after sentencing the person, shall electronically file with the CBI the initial registration of the person, providing the information required by the CBI.

(II) Beginning May 27, 2004, the court shall specify on the judgment of conviction the person's duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if the person is sentenced on or after January 1, 2005, and the person's duty to reregister.

(b) Any person who is sentenced prior to January 1, 2005, and who is required to register pursuant to section 16-22-103 shall initially register in the manner provided and within the times specified in section 16-22-108 (1)(a) for registration.

(c) The state court administrator is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to offset the costs incurred in implementing the provisions of this subsection (1).

(2) Repealed.

Source: L. 2002: Entire article added, p. 1163, § 1, effective July 1. **L. 2003:** (1)(a) amended, p. 759, § 1, effective March 25. **L. 2004:** Entire section amended, p. 1109, § 3, effective May 27.

Editor's note: Subsection (2)(c) provided for the repeal of subsection (2), effective July 1, 2005. (See L. 2004, p. 1109.)

16-22-105. Notice - requirements - residence - presumption.

(1) Any person who is required to register pursuant to section 16-22-103 shall receive notice of the duty to register as provided in section 16-22-106 or 16-22-107, whichever is applicable. Such notice shall inform the person of the duty to register, in the manner provided in section 16-22-108, with the local law enforcement agency of each jurisdiction in which the person resides. The notice shall inform the person that he or she has a duty to register with local law enforcement agencies in any state or other jurisdiction to which the person may move and that the CBI shall notify the agency responsible for registration in the new state as provided in section

16-22-108 (4). The notice shall also inform the person that, at the time the person registers, he or she must provide his or her date of birth, a current photograph, and a complete set of fingerprints.

(2) Failure of any person to sign the notice of duty to register, as required in sections 16-22-106 and 16-22-107, shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the person had actual notice of the duty to register.

(3) For purposes of this article, any person who is required to register pursuant to section 16-22-103 shall register in all jurisdictions in which he or she establishes a residence. A person establishes a residence through an intent to make any place or dwelling his or her residence. The prosecution may prove intent to establish residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof the person accepted responsibility for utility bills, proof the person established a mailing address, or any other action demonstrating such intent. Notwithstanding the existence of any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.

Source: L. 2002: Entire article added, p. 1163, § 1, effective July 1. **L. 2004:** (3) amended, p. 1110, § 4, effective May 27.

ANNOTATION

Annotator's note. Since § 16-22-105 is similar to § 18-3-412.5 as it existed prior to its 2002 repeal and reenactment, a relevant case construing that provision has been included in the annotations to this section.

The duty to register as a sex offender is not a direct consequence of the entry of a guilty plea and therefore need not be included in the advisement. The statutory duty to register as a sex offender in Colorado is only a collateral consequence of a defendant's guilty plea. Failure to advise defendant of the duty to register as a sex offender does not invalidate his guilty plea. People v. Montaine, 7 P.3d 1065 (Colo. App. 1999).

To establish a residence under subsection (3) requires a physical presence or occupancy at a location. An offender under the Colorado Sex Offender Registration Act is required to give notice of where he or she intends to reside upon release from custody, but is not required to register at an address solely based upon that intent. People v. Griffin, 397 P.3d 1086 (Colo. App. 2011).

There was sufficient evidence to support a finding that defendant intended to establish a new residence and was present at the residence. Defendant told his parole officer his new address was his new residence, and the parole officer observed defendant's belongings at the residence.

People v. Foster, 2013 COA 85, 364 P.3d 1149.

16-22-106. Duties - probation department - community corrections administrator - court personnel - jail personnel - notice.

(1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to probation, the probation department, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of his or her duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides or a statement that the person lacks a fixed residence. Beginning on May 27, 2004, the court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if sentenced on or after January 1, 2005, and to reregister.

(b) The probation department shall electronically notify the CBI of the date on which the person's probation is terminated, and the probation department shall notify the CBI if the person absconds or dies prior to the probation termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

(2) (a) If a person who is required to register pursuant to section 16-22-103 receives a direct sentence to community corrections, the administrator for the community corrections program, or his or her designee, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides. The court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration, if sentenced on or after January 1, 2005, and to reregister.

(b) The administrator of the community corrections program, or his or her designee, shall electronically notify the CBI of the date on which the sentence to community corrections is terminated, and the administrator of the community corrections program shall notify the CBI if the person escapes or dies prior to the sentence termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

(3) (a) (I) If a person who is required to register pursuant to section 16-22-103 is held for more than five business days in a county jail pending court disposition for any offense, the sheriff of the county in which the county jail is located, or his or her designee, shall transmit to the local law enforcement agency of the jurisdiction in which the person was last registered and to the CBI confirmation of the person's registration. The confirmation shall be transmitted on a standardized form provided by the CBI and shall include the address or addresses at which the person will reside while in custody of the county jail, the person's date of birth, a current photograph of the person, and the person's fingerprints.

(II) If a person who is required to register pursuant to section 16-22-103 is sentenced to a county jail for any offense, the sheriff of the county in which the county jail is located, or his or her designee, as soon as possible following sentencing, shall transmit to the local law enforcement agency of the jurisdiction in which the person was last registered and to the CBI confirmation of the person's registration. The confirmation shall be transmitted on a standardized form provided by the CBI and shall include the address or addresses at which the person will reside while in custody of the county jail, the person's date of birth, a current photograph of the person, and the person's fingerprints.

(III) The provisions of this paragraph (a) shall apply to persons sentenced on or after January 1, 2005.

(b) At least five days prior to the discharge of the person from custody, the sheriff, or his or her designee, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon discharge.

(c) Within five days, but not fewer than two days, prior to the discharge of the person from custody, the sheriff, or his or her designee, shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's discharge. Such notice, at a minimum, shall include the address at which the person plans to reside upon discharge, provided by the person pursuant to paragraph (b) of this subsection (3), and the person's date of birth, fingerprints, and current photograph.

(3.5) With regard to a person who is required to register within a state, military, or federal jurisdiction other than Colorado, the chief local law enforcement officer, or his or her designee, of the Colorado jurisdiction in which the person resides shall provide notice, as described in section 16-22-105, to the person as soon as possible after discovering the person's presence in the jurisdiction, of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each Colorado jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides.

(4) For any person who is required to register pursuant to section 16-22-103, who is not committed to the department of human services, and who is not sentenced to probation, community corrections, county jail, or the department of corrections, the judge or magistrate who has jurisdiction over the person shall, at sentencing, provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides or a statement that the person lacks a fixed residence.

Source: L. 2002: Entire article added, p. 1164, § 1, effective July 1. **L. 2003:** (3)(a)(II) amended, p. 759, § 2, effective March 25. **L. 2004:** (1), (2), and (3)(a)(II) amended and (3.5) added, pp. 1110, 1111, §§ 5, 6, effective May 27. **L. 2008:** (3)(c) amended, p. 1885, § 25, effective August 5. **L. 2011:** (3)(a) amended, (HB 11-1278), ch. 224, p. 960, § 5, effective May 27. **L. 2012:** (1)(a) and (4) amended, (HB 12-1346), ch. 220, p. 941, § 2, effective July 1.

16-22-107. Duties - department of corrections - department of human services - confirmation of registration - notice - address verification.

(1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to the department of corrections, the department of corrections shall transmit to the CBI confirmation of the person's registration on a standardized form provided by the CBI, including the person's date of birth and the person's fingerprints. The department of corrections shall also transmit a photograph of the person if requested by the CBI.

(b) The provisions of this subsection (1) shall apply to persons sentenced on or after January 1, 2005.

(2) At least ten business days prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department of corrections shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon release or discharge or a statement that the person lacks a fixed residence.

(3) Within five days, but not fewer than two days, prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's release or discharge. Such notice shall include the address at which the person intends to reside upon release or discharge, provided by the person pursuant to subsection (2) of this section, and the person's date of birth and the person's current photograph if requested by the CBI. In addition, such notice may include additional information concerning the person, including but not limited to any information obtained in conducting the assessment to determine whether the person may be subject to community notification pursuant to section 16-13-903.

(4) (a) Prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, department of corrections personnel, if the person is being released on parole, or the local law enforcement agency of the jurisdiction in which the person intends to reside, if the person is being discharged, shall verify that:

(I) The address provided by the person pursuant to subsection (2) of this section is a residence;

(II) The occupants or owners of the residence know of the person's history of unlawful sexual behavior;

(III) The occupants or owners of the residence have agreed to allow the person to reside at the address; and

(IV) If the person is being released on parole, the address complies with any conditions imposed by the parole board.

(b) If, in attempting to verify the address provided by the person, department of corrections personnel or local law enforcement officers determine that any of the information specified in paragraph (a) of this subsection (4) is not true, the person shall be deemed to have provided false information to department personnel concerning the address at which the person intends to reside upon release.

(4.5) With regard to a person who has been sentenced to the department of corrections, is released on parole, and is required to register pursuant to section 16-22-103, the department shall electronically notify the CBI of the date on which the person's parole is terminated, and the department shall notify the CBI if the person absconds or dies prior to the parole termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this subsection (4.5).

(5) In the case of a juvenile who is required to register pursuant to section 16-22-103 and is committed to the department of human services, said department shall have and carry out the duties specified in this section for the department of corrections with regard to said juvenile.

Source: L. 2002: Entire article added, p. 1165, § 1, effective July 1. **L. 2003:** (1)(b) amended, p. 759, § 3, effective March 25. **L. 2004:** (1), (2), and (3) amended and (4.5) added, p. 1111, § 7, effective May 27. **L. 2012:** (2) amended, (HB 12-1346), ch. 220, p. 942, § 3, effective July 1.

16-22-108. Registration - procedure - frequency - place - change of address - fee.

(1) (a) (I) Each person who is required to register pursuant to section 16-22-103 shall register with the local law enforcement agency in each jurisdiction in which the person resides. A local law enforcement agency shall accept the registration of a person who lacks a fixed residence; except that the law enforcement agency is not required to accept the person's registration if it includes a residence or location that would violate state law or local ordinance. If the residence or location with which the person attempts to register constitutes such a violation, the law enforcement agency shall so advise the person and give the person an opportunity to secure an alternate location within five days.

(II) Each person who is required to register pursuant to section 16-22-103 shall initially register or, if sentenced on or after January 1, 2005, confirm his or her initial registration within five business days after release from incarceration for commission of the offense requiring registration or within five business days after receiving notice of the duty to register, if the person was not incarcerated. The person shall register with the local law enforcement agency during business hours by completing a standardized registration form provided to the person by the local law enforcement agency and paying the registration fee imposed by the local law enforcement agency as provided in subsection (7) of this section. After the initial registration, the local law enforcement agency may waive the requirement that the person reregister in person if the registrant suffers from a chronic physical or intellectual disability that substantially limits the person's ability to function independently and participate in major life activities to the extent that it is a severe hardship to reregister in person and there is a medical record of such disability. If the law enforcement agency waives the requirement to reregister in person, the law enforcement agency shall reregister the person after verifying the person's current address with the person and at least one other reliable source which may include: His or her caregiver, his or her family, the facility where the person resides, or another source of verification satisfactory to the law enforcement agency. The law enforcement agency shall provide verification of the waiver, by the submission of a form developed by the CBI, to the CBI and any other law enforcement agency with which the registrant is required to register. If the law enforcement agency issues such a waiver, every three years the agency must determine whether the registrant still meets the waiver

requirements and reauthorize the waiver. If the law enforcement agency issues a waiver or reauthorizes the waiver, the law enforcement agency shall also notify the victim of the offense for which the petitioner is required to register, if the victim of the offense has requested notice and provided contact information. The CBI shall provide standardized registration forms to the local law enforcement agencies pursuant to section 16-22-109.

(b) Except as otherwise provided in paragraph (d) of this subsection (1), each person who is required to register pursuant to section 16-22-103 shall reregister within five business days before or after the person's first birthday following initial registration and annually within five business days before or after the person's birthday thereafter. Such person shall reregister pursuant to this paragraph (b) with the local law enforcement agency of each jurisdiction in which the person resides within five business days before or after his or her birthday, in the manner provided in paragraph (a) of this subsection (1).

(c) Each person who is required to register pursuant to section 16-22-103 and who establishes an additional residence shall, within five business days after establishing an additional residence in any city, town, county, or city and county within Colorado, register with the local law enforcement agency of the jurisdiction in which he or she establishes the additional residence. The person shall register in said jurisdiction in the manner provided in paragraph (a) of this subsection (1) and shall reregister as provided in paragraph (b) of this subsection (1) or paragraph (d) of this subsection (1), whichever is applicable, in said jurisdiction so long as the person resides in said jurisdiction. For purposes of this paragraph (c), "additional residence" shall include, when the person's residence is a trailer or motor home, an address at which the person's trailer or motor home is lawfully located.

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subsection (1)(d)(II) of this section has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subsection (1)(d)(II) of this section, the person's duty to register may discontinue as provided in section 16-22-113 (1)(d). In addition to registering as required in subsection (1)(a) of this section, the person shall reregister within five business days before or after the date that is three months after the date on which the person was released from incarceration for commission of the offense requiring registration or, if the person was not incarcerated, after the date on which he or she received notice of the duty to register. The person shall register within five business days before or after that date every three months thereafter until the person's birthday. The person shall reregister within five business days before or after his or her next birthday and shall reregister within five business days before or after that date every three months thereafter. The person shall reregister pursuant to this subsection (1)(d) with the local law enforcement agency of each jurisdiction in which the person resides or in any jurisdiction if the person lacks a fixed residence on the reregistration date, in the manner provided in subsection (1)(a) of this section.

(I.5) (A) A person convicted as an adult of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, who, as a result of the conviction, is required to register quarterly as a sex offender in the state or jurisdiction of conviction is required to register as provided in subsection (1)(d)(I) of this section, so long as the person is a temporary or permanent resident of Colorado.

(B) A person convicted as an adult of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, which conviction would require the person to register as provided in subsection (1)(d)(I) of this section if the conviction occurred in Colorado, is required to register as provided in subsection (1)(d)(I) of this section, so long as the person is a temporary or permanent resident of Colorado.

(II) The provisions of this paragraph (d) shall apply to persons convicted of one or more of the following offenses:

(A) Felony sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or felony sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or

(B) Sexual assault on a child in violation of section 18-3-405, C.R.S.; or

(C) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or

(D) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(E) Incest, in violation of section 18-6-301, C.R.S.; or

(F) Aggravated incest, in violation of section 18-6-302, C.R.S.

(e) Notwithstanding the time period for registration specified in paragraph (a) of this subsection (1), any person who is discharged from the department of corrections of this state or another state without supervision shall register in the manner provided in paragraph (a) of this subsection (1) no later than the next business day following discharge.

(2) Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief law enforcement officer of such city, town, or city and county; except that, if there is no chief law enforcement officer of the city, town, or city and county in which a person resides, the person shall register at the office of the county sheriff of the county in which the person resides. Persons who reside outside of the corporate limits of any city, town, or city and county shall register at the office of the county sheriff of the county where such person resides.

(2.5) (a) Any person who is required to register pursuant to section 16-22-103 and who has been convicted of a child sex crime shall be required to register all email addresses, instant-messaging identities, or chat room identities prior to using the address or identity. The entity that accepts the registration of a person required to register all email addresses shall make a reasonable effort to verify all email addresses provided by the person.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2.5), a person shall not be required to register an employment email address if:

(I) The person's employer provided the email address for use primarily in the course of the person's employment;

(II) The email address identifies the employer by name, initials, or other commonly recognized identifier; and

(III) The person required to register is not an owner or operator of the employing entity that provided the email address.

(c) For purposes of this section, "child sex crime" means:

(I) Sexual assault on a child, as described in section 18-3-405; sexual assault on a child by one in a position of trust, as described in section 18-3-405.3; unlawful sexual contact, as described in section 18-3-404 (1.5); enticement of a child, as described in section 18-3-305; aggravated incest, as described in section 18-6-302 (1)(b); human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2); sexual exploitation of children, as described in section 18-6-403; procurement of a child for sexual exploitation, as described in section 18-6-404; soliciting for commercial sexual activity with a child, as described in section 18-7-402; pandering of a child, as described in section 18-7-403; procurement of a child, as described in section 18-7-403.5; keeping a place of commercial sexual activity with a child, as described in section 18-7-404; pimping of a child, as described in section 18-7-405; inducement of commercial sexual activity with a child, as described in section 18-7-405.5; engaging in commercial sexual activity with a child, as described in section 18-7-406; internet luring of a child, as described in section 18-3-306; internet sexual exploitation of a child, as described in section 18-3-405.4; wholesale promotion of obscenity to a minor, as described in section 18-7-102 (1.5); promotion of obscenity to a minor, as described in section 18-7-102 (2.5); sexual assault, as described in section 18-3-402 (1)(d) and (1)(e); sexual assault in the second degree as it existed prior to July 1, 2000, as described in section 18-3-403 (1)(e) and (1)(e.5);

(II) Each of the following offenses, as they existed prior to July 1, 2026: Soliciting for child prostitution, in violation of section 18-7-402; keeping a place of child prostitution, in violation of section 18-7-404; inducement of child prostitution, in violation of section 18-7-405.5; or patronizing a prostituted child, in violation of section 18-7-406; or

(III) Criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this subsection (2.5)(c).

(d) The entity that accepts the registration of a person required to register all email addresses, instant-messaging identities, or chat room identities pursuant to paragraph (a) of this subsection (2.5) shall require the person to sign a statement that the email addresses, instant-messaging identities, or chat room identities provided on the registration form are email addresses, instant-messaging identities, or chat room identities that the person has the authority to use. The statement shall also state that providing false information related to the person's email addresses, instant-messaging identities, or chat room identities may constitute a misdemeanor or felony criminal offense. This signed statement constitutes a reasonable effort to verify all email addresses provided by the person as required by paragraph (a) of this subsection (2.5), but does not preclude additional verification efforts.

(3) Any person who is required to register pursuant to section 16-22-103 shall be required to register within five business days before or after each time the person:

(a) Changes such person's address, regardless of whether such person has moved to a new address within the jurisdiction of the law enforcement agency with which such person previously registered;

(a.5) Changes the address at which a vehicle, trailer, or motor home is located, if the vehicle, trailer, or motor home is the person's place of residence, regardless of whether the new address is within the jurisdiction of the law enforcement agency with which such person previously registered;

(b) Legally changes such person's name;

(c) Establishes an additional residence in another jurisdiction or an additional residence in the same jurisdiction;

(d) Becomes employed or changes employment or employment location, if employed at an institution of postsecondary education;

(e) Becomes enrolled or changes enrollment in an institution of postsecondary education, or changes the location of enrollment;

(f) Becomes a volunteer or changes the volunteer work location, if volunteering at an institution of postsecondary education;

(g) Changes his or her email address, instant-messaging identity, or chat room identity, if the person is required to register that information pursuant to subsection (2.5) of this section. The person shall register the email address, instant-messaging identity, or chat room identity prior to using it.

(h) Ceases to lack a fixed residence and establishes a residence; or

(i) Ceases to reside at an address and lacks a fixed residence.

(4) (a) (I) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address, the person shall register with the local law enforcement agency for his or her new address and include the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the new registration form within five business days after ceasing to reside at an address. The local law enforcement agency that receives the new registration form shall inform the previous jurisdiction of the cancellation of that registration and shall electronically notify the CBI of the registration cancellation.

(II) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address and moves to another state, the person shall notify the local law enforcement agency of the jurisdiction in which said address is located by completing a written registration cancellation form, available from the local law enforcement agency. At a minimum, the registration cancellation form shall indicate the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the registration cancellation form within five business days after ceasing to reside at an address. A local law enforcement agency that receives a registration cancellation form shall electronically notify the CBI of the registration cancellation. If the person moves to another state, the CBI shall promptly notify the agency responsible for registration in the other state.

(b) If a person fails to submit the new registration form or registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is a group facility, officials at such facility may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. If the person is a juvenile or developmentally disabled and fails to submit the registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is the residence of his or her parent or legal guardian, the person's parent or legal guardian may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. Any law enforcement agency that receives such information shall reflect in its records that the person no longer resides at said group facility or the parent's or legal guardian's residence and shall transmit such information to the CBI. Provision of information by a group facility or a person's parent or legal guardian pursuant to this paragraph (b) shall not constitute a defense to a charge of failure to register as a sex offender.

(5) During the initial registration process for a temporary resident, the local law enforcement agency with which the temporary resident is registering shall provide the temporary resident with the registration information specified in section 16-22-105. A temporary resident who is required to register pursuant to the provisions of section 16-22-103 shall, within five business days after arrival in Colorado, register with the local law enforcement agency of each jurisdiction in which the temporary resident resides.

(6) Any person required to register pursuant to section 16-22-103, at the time the person registers with any local law enforcement agency in this state, and thereafter when annually reregistering on the person's birthday or the first business day following the birthday as required in paragraph (b) of subsection (1) of this section, shall sit for a current photograph or image of himself or herself and shall supply a set of fingerprints to verify the person's identity. The person shall bear the cost of the photograph or image and fingerprints.

(7) (a) A local law enforcement agency may establish a registration fee to be paid by persons registering and reregistering annually or quarterly with the local law enforcement agency pursuant to the provisions of this section. The amount of the fee shall reflect the actual direct costs incurred by the local law enforcement agency in implementing the provisions of this article but shall not exceed seventy-five dollars for the initial registration with the local law enforcement agency and twenty-five dollars for any subsequent annual or quarterly registration.

(b) The local law enforcement agency may waive the fee for an indigent person. For all other persons, the local law enforcement agency may pursue payment of the fee through a civil collection process or any other lawful means if the person is unable to pay at the time of registration. A local law enforcement agency shall accept a timely registration in all circumstances even if the person is unable to pay the fee at the time of registration.

(c) A local law enforcement agency may not charge a fee to a person who provides an update to his or her information pursuant to subsection (3) of this section.

(8) (a) If a person whose duty to register has automatically terminated pursuant to section 16-22-103 (4) either attempts to register or inquires with local law enforcement as to whether the duty to register has automatically terminated, local law enforcement shall advise the person that the person's duty to register terminated, remove the person from any local law enforcement registry, and notify the CBI that the person's duty to register has terminated.

(b) A local law enforcement agency or the CBI may establish a fee to determine whether a person's duty to register has terminated pursuant to section 16-22-103 (4). The amount of the fee must reflect the actual direct costs incurred but must not exceed fifteen dollars. The fee may be waived for an indigent person.

Source: L. 2002: Entire article added, p. 1167, § 1, effective July 1; (3) amended, p. 1201, § 3, effective July 1. **L. 2004:** (1)(a), (1)(b), (1)(d)(I), (1)(d)(II)(A), (1)(e), (3)(d), (5), and (6) amended and (1)(d)(I.5) and (7) added, pp. 1112, 1114, §§ 8, 9, effective May 27. **L. 2007:** (1)(c) amended and (3)(a.5) added, p. 211, §§ 2, 3, effective March 26; (2.5) and (3)(g) added and (3)(e) and (3)(f) amended, pp. 1680, 1681, §§ 1, 2, effective July 1. **L. 2010:** (2.5)(c) amended, (SB 10-140), ch. 156, p. 537, § 7, effective April 21. **L. 2011:** (1)(b), IP(3), (3)(a.5), (4), and (7) amended, (HB 11-1278), ch. 224, p. 961, § 6, effective May 27. **L. 2012:** (1)(a), (1)(d)(I), IP(3), and (3)(f) amended and (3)(h) and (3)(i) added, (HB12-1346), ch. 220, p. 942, § 4, effective July

1. **L. 2014:** (2.5)(c) amended, (HB 14-1273), ch. 282, p. 1153, § 14, effective July 1. **L. 2018:** (1)(a)(II) and (1)(d)(I) amended, (SB 18-026), ch. 143, p. 921, § 2, effective August 8. **L. 2021:** (1)(d)(I.5) amended and (8) added, (HB 21-1064), ch. 320, p. 1964, § 3, effective September 1. **L. 2026:** (2.5)(c) amended, (SB 26-015), ch. 335, p. 2038, § 17, effective July 1.

Editor's note: In People in Interest of T.B., 2021 CO 59, 489 P.3d 752, the Colorado Supreme Court held that mandatory lifetime sex offender registration under this act for offenders with multiple juvenile adjudications without a mechanism for individualized assessment or an opportunity to deregister upon a showing of rehabilitation is excessive and violates the prohibition on cruel and unusual punishments under the eighth amendment of the United States Constitution.

Cross references: For the legislative declaration in SB 26-015, see section 1 of chapter 335, Session Laws of Colorado 2026.

ANNOTATION

Given the important governmental interest in protecting public safety, any incidental limitations on an offender's first amendment rights are justified. The fact that offender may have been terminated from social-media-related websites because he is on the sex offender registry does not indicate that subsection (2.5)(a) is vague, but arises from the dissemination of accurate information about a criminal record, most of which is already public. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

Requiring an offender to disclose online identities is not a fourth amendment violation because an offender has no reasonable expectation of privacy in those identities, as they are known by the third-party internet providers to whom the offender transmits the information. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

Any searches or seizures required by SORA serve special needs — such as the protection of potential future victims and the solving of crimes in the future — and purport neither to facilitate the investigation of any specific crime nor primarily to serve a general interest in crime control. Moreover, the degree of intrusion on convicted sex offenders is reasonable in relation to the interests advanced by SORA. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

A parolee does not enjoy the absolute liberty to which every citizen is entitled, but only conditional liberty properly dependent on observance of special parole restrictions. The purpose of these restrictions is to assist with offenders' rehabilitation while

protecting the safety of the community. These goals justify certain limitations on a parolee's fourth amendment rights and expectations of privacy. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

Residency of sex offenders. A municipal ordinance that effectively bans all felony and many misdemeanor sex offenders from living within its boundaries, but draws no distinctions based upon the nature of the offense, the treatment the offender has received, the risk that he or she will reoffend against children, and the evaluation and recommendations of qualified state officials, is preempted by state law. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

City ordinance that effectively bars certain sex offenders from residing within the city is not preempted by state law. Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

The regulation of sex offender residency is, under the present pattern of state laws, a matter of mixed state and local concern. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013); Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

The operational effect of the municipal ordinance impermissibly conflicts with the application and effectuation of the state interest in the uniform treatment, management, rehabilitation, and reintegration of sex offenders during and after state supervision. The ordinance not only undermines the underlying policy interests that envelop the existing state regulations, but it also operationally forbids what the state scheme allows. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900, annotated above.

Eviction, homelessness, or lack of a fixed residence do not negate requirement to register within five days of release into community. The requirement for initial registration as a sex offender is based on number of days following release into the community and is not tied to where an individual is living or whether that location changed during the five-day period. People v. Wilson, 2017 COA 89, 488 P.3d 1.

Defendant charged under former version of registration statute is properly registered if he or she registers either on his or her birthday or the first business day thereafter. Court may not infer the intent of the general assembly by review of a subsequent amendment to the statute, and plain meaning of prior statute allowed for registration on either day. People v. Duncan, 109 P.3d 1044 (Colo. App. 2004) (decided under former § 18-3-412.5 (3)(a)(I)).

Subsection (2.5)(a) requires only child sex offenders to disclose online identities. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

A violation of subsection (3)(i) of this section must be charged under the catchall provision of § 18-3-412.5 (1), and not under § 18-3-412.5 (1)(g). If, in 2012, the general assembly had intended to broaden the meaning of § 18-3-412.5 (1)(g), it could have amended that provision to

explicitly include the situation of a sex offender who lacks a fixed residence. People v. Jones, 2017 COA 116, 405 P.3d 504.

16-22-109. Registration forms - local law enforcement agencies - duties - report.

(1) The director of the CBI shall prescribe standardized forms to be used to comply with this article, and the CBI shall provide copies of the standardized forms to the courts, probation departments, community corrections programs, the department of corrections, the department of human services, and local law enforcement agencies. The standardized forms may be provided in electronic form. The standardized forms shall be used to register persons pursuant to this article and to enable persons to cancel registration, as necessary. The standardized forms shall provide that the persons required to register pursuant to section 16-22-103 disclose such information as is required on the standardized forms. The information required on the standardized forms shall include, but need not be limited to:

(a) The name, date of birth, address, and place of employment of the person required to register, and, if the place of employment is at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;

(a.3) If the person's place of residence is a trailer or motor home, the address at which the trailer or motor home is lawfully located and the vehicle identification number, license tag number, registration number, and description, including color scheme, of the trailer or motor home;

(a.5) If the person is volunteering at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;

(a.7) If the person enrolls or is enrolled in an institution of a postsecondary education, all addresses and locations of the institution of postsecondary education at which the person attends classes or otherwise participates in required activities;

(a.9) If a person lacks a fixed residence, any public or private locations where the person may be found or habitually sleeps, which information may include, but need not be limited to, cross-streets, intersections, directions to or identifiable landmarks of the locations, or any other information necessary to accurately identify the locations;

(b) All names used at any time by the person required to register, including both aliases and legal names;

(c) For any person who is a temporary resident of the state, the person's address in his or her state of permanent residence and the person's place of employment in this state or the educational institution in which he or she is enrolled in this state and, if the temporary resident of the state is

enrolled in, employed by, or volunteers at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the temporary resident attends classes or otherwise participates in required activities or works or performs volunteer activities;

(d) The name, address, and location of any institution of postsecondary education where the person required to register is enrolled;

(e) The name, address, and location of any institution of postsecondary education where the person required to register volunteers;

(f) The vehicle identification number, license tag number, registration number, and description, including color scheme, of any motor vehicle owned or leased by the person;

(g) All email addresses, instant-messaging identities, and chat room identities to be used by the person if the person is required to register that information pursuant to section 16-22-108 (2.5).

(2) The standardized forms prepared by the CBI pursuant to this section, including electronic versions of said forms, shall be admissible in court without exclusion on hearsay or other evidentiary grounds and shall be self-authenticating as a public record pursuant to the Colorado rules of evidence.

(3) Upon receipt of any completed registration form pursuant to this article, the local law enforcement agency shall retain a copy of such form and shall report the registration to the CBI in the manner and on the standardized form prescribed by the director of the CBI. The local law enforcement agency shall, within three business days after the date on which a person is required to register, report to the CBI such registration and, if it is the registrant's first registration with the local law enforcement agency, transmit the registrant's fingerprints to the CBI. The local law enforcement agency shall transfer additional sets of fingerprints only when requesting CBI to conduct a comparison. The local law enforcement agency shall transmit a photograph of a registrant only upon request of the CBI.

(3.5) (a) The local law enforcement agency with which a person registers pursuant to this article shall, as soon as possible following the registrant's first registration with the local law enforcement agency and at least annually thereafter, verify the residential address reported by the registrant on the standardized form; except that, if the registrant is a sexually violent predator, the local law enforcement agency shall verify the registrant's residential address quarterly.

(b) If a person registers as "lacks a fixed residence", verification of the location or locations reported by the person shall be accomplished by the self-verification enhanced reporting process as described in paragraph (c) of this subsection (3.5). A local law enforcement agency shall not be required to verify the physical location of a person who is required to comply with the self-verification enhanced reporting process.

(c) (I) In addition to any other requirements pursuant to this article, a person who is subject to annual registration and who lacks a fixed residence shall, at least every three months, report to the local law enforcement agency in whose jurisdiction or jurisdictions the person is registered for the self-verification enhancement reporting of the location or locations where the person remains without a fixed residence. The self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within five business days before or after the person's birthday. The person shall be required to verify his or her location or locations and verify any and all information required to be reported pursuant to this section.

(II) In addition to any other requirements pursuant to this article, a person who is subject to quarterly registration or registration every three months and who lacks a fixed residence shall, at least every month, report to each local law enforcement agency in whose jurisdiction the person is registered for the self-verification enhanced reporting of the location or locations where the person remains without a fixed residence. The self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within five business days before or after the person's birthday. The person shall be required to verify his or her location or locations and verify any and all information required to be reported pursuant to this section.

(III) A person required to register pursuant to this article who lacks a fixed residence and who fails to comply with the provisions of subparagraphs (I) and (II) of this paragraph (c) is subject to prosecution for the crime of failure to verify location as defined in section 18-3-412.6, C.R.S.

(d) Beginning on July 1, 2012, and ending January 1, 2015, the Colorado bureau of investigation and each local law enforcement agency, subject to available resources, shall report every six months to the department of public safety the number of persons who registered without a fixed residence. The department may require additional information to be reported. By March 31, 2015, the department shall assess the effectiveness of the registration for offenders who lack a fixed residence.

(4) The forms completed by persons required to register pursuant to this article 22 are confidential and are not open to inspection by the public or any person other than law enforcement personnel, except as provided in sections 16-22-110 (6), 16-22-111, 16-22-112, and 25-1-124.5.

(5) Notwithstanding any provision of this article to the contrary, a requirement for electronic notification or electronic transmission of information specified in this article shall be effective on and after January 1, 2005. Prior to said date, or if an agency does not have access to electronic means of transmitting information, the notification and information requirements shall be met by providing the required notification or information by a standard means of transmittal.

Source: L. 2002: Entire article added, p. 1170, § 1, effective July 1; (1) amended, p. 1201, § 4, effective July 1. **L. 2003:** (5) RC&RE, p. 760, § 4, effective March 25. **L. 2004:** (1)(a), (1)(a.5), and (3) amended, (3.5) added, and (5) RC&RE, p. 1115, §§ 10, 11, effective May 27. **L. 2006:** (1)(a.3) added, p. 1005, § 2, effective July 1. **L. 2007:** IP(1) and (1)(a.3) amended and (1)(f) added, p. 210, § 1, effective March 26; IP(1) amended and (1)(g) added, p. 1682, § 3, effective July 1. **L. 2012:** (1)(a.9) added and (3.5) amended, (HB 12-1346), ch. 220, p. 943, § 5, effective July 1. **L. 2021:** (4) amended, (HB 21-1064), ch. 320, p. 1964, § 4, effective September 1.

Editor's note: Subsection (5)(b) provided for the repeal of subsection (5), effective January 1, 2003. (See L. 2002, p. 1170.) However, subsection (5) was recreated March 25, 2003. Subsection (5)(b) provided for the repeal of subsection (5) once again, effective January 1, 2004. (See L. 2003, p. 760.) However, subsection (5) was recreated May 27, 2004.

16-22-110. Colorado sex offender registry - creation - maintenance - release of information - data collection.

(1) The director of the Colorado bureau of investigation shall establish a statewide central registry of persons required to register pursuant to section 16-8-115 or 16-8-118 or as a condition of parole or pursuant to this article, to be known as the Colorado sex offender registry. The CBI shall create and maintain the sex offender registry as provided in this section. In addition, the CBI shall be the official custodian of all registration forms completed pursuant to this article and other documents associated with sex offender registration created pursuant to this article.

(2) The sex offender registry shall provide, at a minimum, the following information to all criminal justice agencies with regard to registered persons:

(a) Identification of a person's registration status;

(b) A person's date of birth;

(c) Descriptions of the offenses of unlawful sexual behavior of which a person has been convicted;

(d) Identification of persons who are identified as sexually violent predators;

(e) Notification to local law enforcement agencies when a person who is required to register pursuant to section 16-22-103 fails to register, when a person is required to reregister as provided in section 16-22-108, or when a person reregisters with another jurisdiction in accordance with the provisions of section 16-22-108;

(f) Specification of modus operandi information concerning any person who is required to register pursuant to section 16-22-103.

(3) (a) In addition to the sex offender registry, the CBI shall maintain one or more interactive database systems to provide, at a minimum, cross validation of a registrant's known names and known addresses with information maintained by the department of revenue concerning driver's licenses and identification cards issued under article 2 of title 42, C.R.S. Discrepancies between the known names or known addresses listed in the sex offender registry and information maintained by the department of revenue shall be reported through the Colorado crime information center to each local law enforcement agency that has jurisdiction over the location of the person's last-known residences.

(b) The Colorado integrated criminal justice information system established pursuant to article 20.5 of this title shall be used to facilitate the exchange of information among agencies as required in this subsection (3) whenever practicable.

(3.5) The Colorado bureau of investigation shall develop an interactive database within the sex offender registry to provide, at a minimum, the following information to all criminal justice agencies in whose jurisdictions an institution of postsecondary education is located:

(a) Identification of all persons required to register pursuant to section 16-22-103 who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled;

(b) Identification of all persons who are sexually violent predators who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled.

(4) Upon development of the interactive databases pursuant to subsection (3) of this section, personnel in the judicial department, the department of corrections, and the department of human services shall be responsible for entering and maintaining in the databases the information specified in subsection (2) of this section for persons in those departments' legal or physical custody. Each local law enforcement agency shall be responsible for entering and maintaining in the databases the information for persons registered with the agency who are not in the physical or legal custody of the judicial department, the department of corrections, or the department of human services.

(5) The CBI, upon receipt of fingerprints and conviction data concerning a person convicted of unlawful sexual behavior, shall transmit promptly such fingerprints and conviction data to the federal bureau of investigation.

(6) (a) The general assembly recognizes the need to balance the expectations of persons convicted of offenses involving unlawful sexual behavior and the public's need to adequately protect themselves and their children from these persons, as expressed in section 16-22-112 (1).

The general assembly declares, however, that, in making information concerning persons convicted of offenses involving unlawful sexual behavior available to the public, it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

(b) Pursuant to a request for a criminal history record check pursuant to part 3 of article 72 of title 24, unless the person who is the subject of the criminal history record check was required to register solely because the person was adjudicated or received a disposition as a juvenile, the CBI may inform the requesting party as to whether the person who is the subject of the criminal history check is on the sex offender registry. If such person is on the sex offender registry solely as a result of being adjudicated or receiving a disposition as a juvenile, the CBI shall not release such information to a person other than law enforcement, probation and parole personnel, the division of child welfare, the division of youth services, or the victim, as defined in section 24-4.1-302 (5).

(c) A person may request from the CBI a list of persons on the sex offender registry. The list must not include persons who are on the sex offender registry solely for having been adjudicated or received dispositions as juveniles.

(d) (Deleted by amendment, L. 2005, p. 611, § 1, effective May 27, 2005.)

(e) Any person requesting information pursuant to subsection (6)(c) of this section shall show proper identification.

(f) If information is released pursuant to this subsection (6), it must, at a minimum, include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; the offense that led to the registration requirement; and the date of the offense resulting in the registrant being required to register pursuant to this article 22. Information concerning victims must not be released pursuant to this section.

(g) Notwithstanding this subsection (6) to the contrary, the CBI may release information, as described in subsection (6)(i) of this section, about the person registered as a result of being adjudicated or receiving a disposition as a juvenile if a person, other than the victim, submits a request to the CBI for the sex offender registry record of a named person who was adjudicated or received a disposition as a juvenile, and the requesting person affirms in writing that the requested record shall not be:

(I) Placed in publication or posted to a website;

(II) Used for the purpose of obtaining a pecuniary gain or financial benefit for any person or entity; or

(III) Used or disseminated in any manner with the intent to harass, intimidate, coerce, or cause serious emotional distress to any person, including the named person.

(h) In addition to the written affirmation required by subsection (6)(g) of this section, the person requesting information shall affirm in writing that he or she has a need for the sex offender information concerning the person who was adjudicated or received a disposition as a juvenile and describe that need in writing.

(i) Upon receipt of the written affirmations required by subsections (6)(g) and (6)(h) of this section, the CBI shall release to the requesting person the sex offender registry record that is limited to include only the person's registration status, full name, aliases, date of birth, and current address or addresses; a photograph of the registrant, if requested and readily available; the offense that led to the registration; and the date of the offense as such information concerns the person who was adjudicated or received a disposition as a juvenile. Information concerning victims must not be released pursuant to this section.

(j) Nothing in this subsection (6) limits the victim's access to information pursuant to section 24-4.1-302.5.

(7) The CBI may assess reasonable fees for the search, retrieval, and copying of information requested pursuant to subsection (6) of this section. The amount of such fees shall reflect the actual costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. Any such fees received shall be credited to the sex offender registry fund, which fund is hereby created in the state treasury. The moneys in the sex offender registry fund shall be subject to annual appropriation by the general assembly for the costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. The sex offender registry fund shall consist of the moneys credited thereto pursuant to this subsection (7) and subsection (9) of this section and any additional moneys that may be appropriated thereto by the general assembly. All interest derived from the deposit and investment of moneys in the sex offender registry fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the sex offender registry fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(8) Any information released pursuant to this section shall include in writing the following statement:

> The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

(9) The CBI shall seek and is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to implement the provisions of this article pertaining to establishment and maintenance of the sex offender registry, including but not limited to provisions pertaining to the initial registration of persons pursuant to section 16-22-104 and the transmittal of information between and among local law enforcement agencies, community corrections programs, the judicial department, the department of corrections, the department of human services, and the CBI. Any moneys received pursuant to this subsection (9), except federal moneys that are custodial funds, shall be transmitted to the state treasurer for deposit in the sex offender registry fund created in subsection (7) of this section.

(10) On or before July 1, 2022, and every July 1 thereafter, the CBI shall prepare a report that details the number of requests for sex offender registration information for juveniles received annually pursuant to subsection (6) of this section as well as the number of times such information was released. The CBI shall include the report as a part of its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

Source: L. 2002: Entire article added, p. 1171, § 1, effective July 1; (1) amended, p. 500, § 5, effective July 1; (3.5) added, p. 1202, § 5, effective July 1. **L. 2004:** (2)(c), (3)(a), (6)(d), (6)(f), (7), and (9) amended, p. 1116, § 12, effective May 27. **L. 2005:** (6) amended, p. 611, § 1, effective May 27. **L. 2021:** (6) amended and (10) added, (HB 21-1064), ch. 320, p. 1964, § 5, effective September 1.

Editor's note: In People in Interest of T.B., 2021 CO 59, 489 P.3d 752, the Colorado Supreme Court held that mandatory lifetime sex offender registration under this act for offenders with multiple juvenile adjudications without a mechanism for individualized assessment or an opportunity to deregister upon a showing of rehabilitation is excessive and violates the prohibition on cruel and unusual punishments under the eighth amendment of the United States Constitution.

ANNOTATION

The intent of the Colorado Sex Offender Registration Act (SORA) registration requirements is nonpunitive. Millard v. Rankin, 265 F. Supp. 3d 1211 (D. Colo. 2017), aff'd sub nom. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020); Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

The effects of SORA as applied to registered sex offenders do not constitute punishment under the eighth amendment. First, SORA does not resemble public shaming. Second, SORA does not resemble banishment. Finally, the application of SORA to the offenders does not amount to probation. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020); Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

SORA does not promote the traditional aims of punishment. Deterrent purpose alone is not enough to render a regulatory scheme criminal in nature. Tying the length of the reporting requirement to the nature of the offense, rather than individual risk, does not render the registration obligation retributive. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

SORA is rationally connected to the state's avowed regulatory purpose of public safety. Its requirements are keyed to the seriousness of the underlying sex-offense conviction, and are thus consistent with the regulatory objective of protecting public safety. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

SORA is not excessive in relation to its nonpunitive purpose. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

SORA does not violate substantive due process. There is a rational connection between it and the government's interest in public safety. The touchstone of due process is protection of the individual against arbitrary action of government, not the public. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

Unless registered sex offenders challenging its constitutionality connect SORA's alleged irrebuttable presumption of re-offense to a recognized fundamental constitutional right or explain why the presumption would be unconstitutional, the presumption does not offend substantive due process. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

The procedural protections attendant to a conviction for a criminal sex offense are sufficient to protect an offender's right to due process before being placed on a sex offender registry. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

The requirement for mandatory lifetime registration on the sex offender registry for twice-adjudicated juveniles, without the opportunity for individual assessment or the ability to deregister upon demonstrating rehabilitation, constitutes cruel and unusual punishment in violation of the eighth amendment. People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

Analyzing any statute under the eighth amendment involves a two-part inquiry: (1) Is the registration requirement a "punishment", and, if so, (2) is it "cruel and unusual"? People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

With regard to the first inquiry, requiring a juvenile, even one who has been twice adjudicated for offenses involving unlawful sexual behavior, to register as a sex offender for life without regard for whether he or she

poses a risk to public safety is an overly inclusive — and therefore excessive — means of protecting public safety. Because the lifetime registration requirement is not adequately tethered to the statute's stated nonpunitive purpose, the automatic lifetime registration requirement for juvenile offenders is excessive. And because the lifetime registration requirement is excessive in relation to its nonpunitive purpose when applied to juveniles, it operates more like a punishment. People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

SORA's forced signed statement requirement and being compelled to provide information under threat of a crime do not violate the fifth amendment. The required information does not implicate a substantial risk of self-incrimination. The registration requirement does not subject the offender to any additional criminal exposure or liability. Rather, it requires only an acknowledgment that the offender has been previously adjudicated or convicted of a crime. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

SORA does not violate the ex post facto clause. The general assembly did not intend SORA to be punitive or anything other than a civil proceeding. SORA's effects are not punitive enough to negate the legislature's civil intent. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

Residency of sex offenders. A municipal ordinance that effectively bans all felony and many misdemeanor sex offenders from living within its boundaries, but draws no distinctions based upon the nature of the offense, the treatment the offender has received, the risk that he or she will reoffend against children, and the evaluation and recommendations of qualified state officials, is preempted by state law. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

City ordinance that effectively bars certain sex offenders from residing within the city is not preempted by state law. Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

The regulation of sex offender residency is, under the present pattern of state laws, a matter of mixed state and local concern. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013); Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900.

The operational effect of the municipal ordinance impermissibly conflicts with the application and effectuation of the state interest in the uniform treatment, management, rehabilitation, and reintegration of sex offenders during and after state supervision. The ordinance not only undermines the underlying policy interests that envelop the existing state regulations, but it also operationally forbids what the state scheme allows. Ryals v. City of Englewood, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see Ryals v. City of Englewood, 2016 CO 8, 364 P.3d 900, annotated above.

16-22-111. Internet posting of sex offenders - procedure.

(1) The CBI shall post a link on the state of Colorado home page on the internet to a list containing the names, addresses, and physical descriptions of certain persons and descriptions of the offenses committed by said persons. A person's physical description must include, but need not be limited to, the person's sex, height, and weight, any identifying characteristics of the person, and a digitized photograph or image of the person. The list must specifically exclude any reference to any victims of the offenses. The list must specifically exclude persons who are required to register solely because they were adjudicated or received dispositions as juveniles but must include the following persons:

(a) Any person who is a sexually violent predator;

(b) Any person sentenced as or found to be a sexually violent predator under the laws of another state or jurisdiction;

(c) Any person who is required to register pursuant to section 16-22-103 and who has been convicted as an adult of two or more of the following offenses:

(I) A felony offense involving unlawful sexual behavior; or

(II) A crime of violence as defined in section 18-1.3-406, C.R.S.; and

(d) Any person who is required to register pursuant to section 16-22-103 because the person was convicted of a felony as an adult and who fails to register as required by section 16-22-108.

(1.5) In addition to the posting required by subsection (1) of this section, the CBI may post a link on the state of Colorado home page on the internet to a list, including but not limited to the names, addresses, and physical descriptions of any person required to register pursuant to section 16-22-103, as a result of a conviction for a felony. A person's physical description shall include, but need not be limited to, the person's sex, height, weight, and any other identifying characteristics of the person. The list shall specifically exclude any reference to any victims of the offenses.

(2) (a) For purposes of paragraph (d) of subsection (1) of this section, a person's failure to register shall be determined by the CBI. Whenever the CBI's records show that a person has failed to register as required by this article, the CBI shall forward to each law enforcement agency with which the person is required to register notice of the person's failure to register by the required date. Each law enforcement agency, within three business days after receiving the notice, shall submit to the CBI written confirmation of the person's failure to register. Upon receipt of the written confirmation from the law enforcement agency, the CBI shall post the information concerning the person on the internet as required in this section.

(b) If a local law enforcement agency files criminal charges against a person for failure to register as a sex offender, as described in section 18-3-412.5, C.R.S., the local law enforcement

agency shall notify the CBI. On receipt of the notification, the CBI shall post the information concerning the person on the internet, as specified in subsection (1) of this section.

(3) The internet posting required by this section shall be in addition to any other release of information authorized pursuant to this article or pursuant to part 9 of article 13 of this title, or any other provision of law.

Source: L. 2002: Entire article added, p. 1174, § 1, effective July 1; (1)(c)(II) amended, p. 1567, § 394, effective October 1. **L. 2004:** (1)(b) and (2) amended, p. 1117, § 13, effective May 27. **L. 2005:** (1.5) added, p. 615, § 3, effective May 27. **L. 2021:** IP(1) amended, (HB 21-1064), ch. 320, p. 1966, § 6, effective September 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(c)(II), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Posting of defendant's personal information on the internet does not constitute additional punishment. People v. Stead, 66 P.3d 117 (Colo. App. 2002) (decided under § 18-3-412.5).

16-22-112. Release of information - law enforcement agencies.

(1) The general assembly finds that persons convicted of offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety. The general assembly further finds that the public must have access to information concerning persons convicted of offenses involving unlawful sexual behavior that is collected pursuant to this article to allow them to adequately protect themselves and their children from these persons. The general assembly declares, however, that, in making this information available to the public, as provided in this section and section 16-22-110 (6), it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

(2) (a) A local law enforcement agency shall release information regarding any person, except for a person who is required to register solely because the person was adjudicated or received a disposition as a juvenile, registered with the local law enforcement agency pursuant to this article 22 to any person residing within the local law enforcement agency's jurisdiction. In

addition, the local law enforcement agency may post the information specified in subsection (2)(b) of this section on the law enforcement agency's website.

(b) A local law enforcement agency may post on its website sex offender registration information of a person from its registration list only if the person is:

(I) An adult convicted of a felony requiring the adult to register pursuant to section 16-22-103; or

(II) An adult convicted of a second or subsequent offense of any of the following misdemeanors:

(A) Sexual assault as described in section 18-3-402 (1)(e), C.R.S.;

(B) Unlawful sexual contact as described in section 18-3-404, C.R.S.;

(C) Sexual assault on a client as described in section 18-3-405.5 (2), C.R.S.;

(D) Sexual exploitation of a child by possession of sexually exploitive material as described in section 18-6-403, C.R.S.;

(E) Indecent exposure as described in section 18-7-302, C.R.S.; or

(F) Sexual conduct in a correctional institution as described in section 18-7-701, C.R.S.

(III) and (IV) Repealed.

(3) (a) (Deleted by amendment, L. 2005, p. 612, § 2, effective May 27, 2005.)

(b) At its discretion, a local law enforcement agency may release information regarding any person, except for a person who is required to register solely because the person was adjudicated or received a disposition as a juvenile, registered with the local law enforcement agency pursuant to this article 22 to any person who does not reside within the local law enforcement agency's jurisdiction or may post the information specified in subsection (2)(b) of this section on the law enforcement agency's website. If a local law enforcement agency does not elect to release information regarding any person registered with the local law enforcement agency to a person not residing within the local law enforcement agency's jurisdiction, the local law enforcement agency may submit a request from the person to the CBI.

(c) (Deleted by amendment, L. 2005, p. 612, § 2, effective May 27, 2005.)

(d) Upon receipt of a request for information from a law enforcement agency pursuant to this subsection (3), the CBI shall mail the requested information to the person making the request.

(e) (Deleted by amendment, L. 2007, p. 648, § 1, effective April 26, 2007.)

(3.5) To assist members of the public in protecting themselves from persons who commit offenses involving unlawful sexual behavior, a local law enforcement agency that chooses to post

sex offender registration information on its website shall either post educational information concerning protection from sex offenders on its website or provide a link to the educational information included on the CBI website maintained pursuant to section 16-22-111. A local law enforcement agency that posts the educational information shall work with the sex offender management board created pursuant to section 16-11.7-103 and sexual assault victims' advocacy groups in preparing the educational information.

(4) Information released pursuant to this section, at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and a history of the convictions of unlawful sexual behavior resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.

(5) Any information released pursuant to this section shall include in writing the following statement:

> The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

Source: L. 2002: Entire article added, p. 1174, § 1, effective July 1. **L. 2004:** (4) amended, p. 1118, § 14, effective May 27. **L. 2005:** Entire section amended, p. 612, § 2, effective May 27. **L. 2006:** (2)(b)(III) and (3)(e)(III) amended, p. 421, § 2, effective April 13; (2)(b)(II)(D) amended, p. 2043, § 2, effective July 1. **L. 2007:** (3)(b) and (3)(e) amended and (3.5) added, p. 648, § 1, effective April 26. **L. 2010:** (2)(b)(II)(F) amended, (HB 10-1277), ch. 262, p. 1190, § 3, effective July 1. **L. 2021:** (2)(a), (2)(b)(I), and (3)(b) amended and (2)(b)(III) and (2)(b)(IV) repealed, (HB 21-1064), ch. 320, p. 1966, § 7, effective September 1.

Editor's note: In People in Interest of T.B., 2021 CO 59, 489 P.3d 752, the Colorado Supreme Court held that mandatory lifetime sex offender registration under this act for offenders with multiple juvenile adjudications without a mechanism for individualized assessment or an opportunity to deregister upon a showing of rehabilitation is excessive and violates the prohibition on cruel and unusual punishments under the eighth amendment of the United States Constitution.

ANNOTATION

The intent of the Colorado Sex Offender Registration Act (SORA) registration requirements is nonpunitive. Millard v. Rankin, 265 F. Supp. 3d 1211 (D. Colo. 2017), aff'd sub nom. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020); Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

The effects of SORA as applied to registered sex offenders do not constitute punishment under the eighth amendment. First, SORA does not resemble public shaming. Second, SORA does not resemble banishment. Finally, the application of SORA to the offenders does not amount to probation. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020); Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

SORA does not promote the traditional aims of punishment. Deterrent purpose alone is not enough to render a regulatory scheme criminal in nature. Tying the length of the reporting requirement to the nature of the offense, rather than individual risk, does not render the registration obligation retributive. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

SORA is rationally connected to the state's avowed regulatory purpose of public safety. Its requirements are keyed to the seriousness of the underlying sex-offense conviction, and are thus consistent with the regulatory objective of protecting public safety. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

SORA is not excessive in relation to its nonpunitive purpose. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

SORA does not violate substantive due process. There is a rational connection between it and the government's interest in public safety. The touchstone of due process is protection of the individual against arbitrary action of government, not the public. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020); Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

Unless registered sex offenders challenging its constitutionality connect SORA's alleged irrebuttable presumption of re-offense to a recognized fundamental constitutional right or explain why the presumption would be unconstitutional, the presumption does not offend substantive due process. Millard v. Camper, 971 F.3d 1174 (10th Cir. 2020).

The requirement for mandatory lifetime registration on the sex offender registry for twice-adjudicated juveniles, without the opportunity for individual assessment or the ability to deregister upon demonstrating rehabilitation, constitutes cruel and unusual punishment in violation of the eighth amendment. People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

Analyzing any statute under the eighth amendment involves a two-part inquiry: (1) Is the registration requirement a "punishment", and, if so, (2) is it "cruel and unusual"? People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in

part on other grounds, 2021 CO 59, 489 P.3d 752.

With regard to the first inquiry, requiring a juvenile, even one who has been twice adjudicated for offenses involving unlawful sexual behavior, to register as a sex offender for life without regard for whether he or she poses a risk to public safety is an overly inclusive — and therefore excessive — means of protecting public safety. Because the lifetime registration requirement is not adequately tethered to the statute's stated nonpunitive purpose, the automatic lifetime registration requirement for juvenile offenders is excessive. And because the lifetime registration requirement is excessive in relation to its nonpunitive purpose when applied to juveniles, it operates more like a punishment. People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

SORA does not impact registered sex offender's free speech under the first amendment because it does not prohibit him from visiting social-media-related websites or communicating with his family. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

Nor does SORA impact the offender's free speech when social media related websites terminated him from the sites. SORA does not prohibit an offender from visiting social-media-related websites. And to the extent the offender asserts limitations on internet use because of the requirement that e-mail addresses, instant-messaging identities, or chatroom identities be registered, that requirement does not apply to him because he was not convicted of a child sex crime. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

To the extent that social-media-related websites terminated registered sex offender's ability to access their sites, such decisions by private actors are not covered by the first amendment. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

SORA does not violate offender's right to familial association. The fact that he alleges that he cannot use social-media-related websites does not prevent him from communicating with his family in other ways, including the traditional methods of telephone calls, mail, e-mail, or visits. Melnick v. Camper, 487 F. Supp. 3d 1039 (D. Colo. 2020).

16-22-113. Petition for removal from sex offender registry - mandatory hearing for discontinuation and removal.

(1) Except as required 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:

(a) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(a.5) Except as otherwise provided in subsections (1)(d), (1)(e), and (1)(f) of this section, if the offense that required the person to register constituted human trafficking for sexual servitude pursuant to section 18-3-504 (1)(a), upon completion of the person's sentence and his or her discharge from the department of corrections, if he or she was sentenced to incarceration, or discharge from the department of human services, if he or she was committed to such department, or final release from the jurisdiction of the court for the offense, if the person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior, the person may file a petition with the court pursuant to subsection (2) of this section. Notwithstanding any other information obtained by the court during the hearing of the petition, a court shall not issue an order discontinuing the petitioner's duty to register unless the petitioner has at least established by a preponderance of the evidence that at the time he or she committed the offense of human trafficking for sexual servitude, he or she had been trafficked by another person, as described in section 18-3-503 or 18-3-504, for the purpose of committing the offense. Failure to make the required showing pursuant to this subsection (1)(a.5) requires the person to comply with the provisions of subsection (1)(a) of this section for any subsequent petition to discontinue the person's duty to register.

(b) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 4, 5, or 6 felony or the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of ten years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(c) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a misdemeanor other than the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed

prior to July 1, 2000, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(d) If the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication for an offense involving unlawful sexual behavior, after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of 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 (a) of subsection (1.3) of this section;

(e) Except as otherwise required by subsection (1.3)(b)(II) of this section, if the person was younger than eighteen years of age at the time of commission of the offense, after the successful completion of and discharge from a juvenile sentence or disposition, and if the person prior to such time has not been subsequently convicted as an adult of unlawful sexual behavior, or for any other offense, the underlying factual basis of which involved unlawful sexual behavior, or does not have a pending prosecution for unlawful sexual behavior as an adult or for any other offense, the underlying factual basis of which involved unlawful sexual behavior, and the court did not issue an order to either continue or discontinue the duty to register pursuant to subsection (1.3)(b) of this section. A person petitioning pursuant to this subsection (1)(e) may also petition for an order to remove the person's 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 the following, if available: Recommendations from the person's probation or community parole officer; the person's treatment provider; 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 any other requirements 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 19-2.5-104, if any.

(f) If the information about the person was required to be posted on the internet pursuant to section 16-22-111 (1)(d) only for failure to register, if the person has fully complied with all registration requirements for a period of not less than one year and if the person, prior to such time, has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior; except that the provisions of this paragraph (f) shall apply only to a petition to discontinue the requirement for internet posting.

(g) If a person's duty to register pursuant to this article 22 due to an adjudication or disposition as a juvenile has automatically terminated pursuant to section 16-22-103 (4), and the person's name has not already been removed from the sex offender registry by local law enforcement or the CBI, the person may petition for an order to remove the person's name from the sex offender registry. If the person has reached twenty-five years of age or seven years have passed from the date the person was required to register, whichever occurs later, and the person has not subsequently been convicted as an adult of unlawful sexual behavior, or for any other offense, the underlying factual basis of which involved unlawful sexual behavior, or does not have a pending prosecution for unlawful sexual behavior as an adult or for any other offense, the underlying factual basis of which involved unlawful sexual behavior, the court shall issue an order to remove the person's name from the sex offender registry.

(1.3) (a) If a person is eligible to petition to discontinue his or her duty to register pursuant to paragraph (d) of subsection (1) of this section, the court, at least sixty-three days before dismissing the case, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the person, and the victim of the offense for which the person was required to register, if the victim has requested notice and has provided current contact information, that the court will consider whether to order that the person may discontinue his or her duty to register when the court dismisses the case as a result of the person's successful completion of the deferred judgment and sentence or deferred adjudication. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects or if the person requests a hearing. If the court enters an order discontinuing the person's duty to register, the person shall send a copy of the order to each local law enforcement agency with which the person is registered and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the person's duty to register.

(b) (I) If a person adjudicated or who received a disposition as a juvenile is required to register pursuant to section 16-22-103, the court, within fourteen days of the end of the juvenile's sentence, shall notify each of the parties described in subsection (2)(a) of this section, the juvenile, and the victim of the offense for which the juvenile was required to register, if the victim has requested notice and has provided current contact information, that the court shall consider whether to order that the juvenile may discontinue the juvenile's duty to register when the court discharges the juvenile's sentence. The court shall set the matter for hearing if any district attorney or a victim of the offense objects, or if the juvenile requests a hearing. If an objection is not filed within sixty-three days after receipt of the notice, the court shall, on the sixty-fourth day or the next day the court is in session if the sixty-fourth day falls on a Saturday, Sunday, or court holiday, either issue an order, after determination that the juvenile is eligible to discontinue registration pursuant to subsection (1)(e) of this section and a review of the relevant criteria that discontinues the juvenile's duty to register, or set the matter for a hearing to determine if the juvenile's duty to register continues. At any hearing, the court shall determine

whether the juvenile is eligible to discontinue registration pursuant to subsection (1)(e) of this section and, if eligible, consider the criteria in subsection (1)(e) of this section in determining whether to continue or discontinue the duty to register. If the court enters an order to discontinue the juvenile's duty to register, the court shall send a copy of the order to each local law enforcement agency with which the juvenile is registered, the juvenile parole board, and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the juvenile's duty to register.

(II) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of human services may petition the court to set a hearing pursuant to paragraph (e) of subsection (1) of this section at least sixty-three days before the juvenile is scheduled to appear before the juvenile parole board.

(III) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of human services, prior to setting the matter for hearing, shall modify the juvenile's parole plan or parole hearing to acknowledge the court order or petition unless it is already incorporated in the parole plan.

(1.5) If the conviction that requires a person to register pursuant to the provisions of section 16-22-103 was not obtained from a Colorado court, the person seeking to discontinue registration or internet posting or both may file a civil case with the district court of the judicial district in which the person resides and seek a civil order to discontinue the requirement to register or internet posting or both under the circumstances specified in subsection (1) of this section.

(2) (a) A registrant who is eligible to petition to discontinue registration pursuant to the provisions of subsection (1) of this section must file a petition with the court of proper jurisdiction and shall provide a copy of the petition by certified mail to each of the following parties:

(I) Each law enforcement agency with which the registrant is required to register;

(II) The district attorney for the jurisdiction in which the petition to discontinue registration has been filed; and

(III) The prosecuting attorney who obtained the conviction of the registrant.

(b) Within twenty-one days after filing the petition, the petitioner shall file with the court copies of the return receipts received from each party notified and any documents supporting his or her eligibility to petition to discontinue registration. The supporting documents must include

records documenting the completion of treatment if ordered by the court, when such records are available.

(c) Upon receipt of the petition, the court shall set a date for a hearing and shall notify the petitioner and the district attorney for that jurisdiction of the hearing date. The court shall also notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and provided contact information.

(d) If the district attorney or the victim objects to the registrant's petition, the district attorney shall file the objection with the court within sixty-three days after receiving the notice of the petition.

(e) If no objection is filed by the district attorney or made by the victim, the court may consider the petition without a hearing and shall grant the petition if the court finds that the petitioner has completed the sentence for which he or she was required to register; the petitioner has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying basis of which involved unlawful sexual behavior; the waiting time period described in subsection (1) of this section has expired; and the petitioner is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2)(b) of this section, any written or oral statement of the victim of the offense for which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.

(f) If there is objection to the petition by the district attorney or victim, the court shall conduct a hearing on the petition. The court may grant the petition if the court finds the petitioner has completed the sentence for which he or she was required to register; the petitioner has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying basis of which involved unlawful sexual behavior; the waiting time period described in subsection (1) of this section has expired; and the petitioner is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2)(b) of this section, any written or oral statement of the victim of the offense for which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.

(g) If the court enters an order discontinuing registration, the petitioner shall provide a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. The court shall also notify the victim, if the victim of the offense has requested notice and provided current contact information.

(h) On receipt of a copy of an order discontinuing a petitioner's duty to register:

(I) The CBI shall remove the petitioner's sex offender registration information from the state sex offender registry; and

(II) The local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.

(2.5) (a) Notwithstanding any provision of this section to the contrary, a registrant or his or her legal representative may file a petition to discontinue registration if the registrant suffers from a severe physical or intellectual disability to the extent that he or she is permanently incapacitated and does not present an unreasonable risk to public safety.

(b) The registrant or his or her legal representative must file a petition with the court of proper jurisdiction and shall provide a copy of the petition by certified mail to each of the following parties:

(I) Each law enforcement agency with which the registrant is required to register;

(II) The district attorney for the jurisdiction in which the petition to discontinue registration has been filed; and

(III) The prosecuting attorney who obtained the conviction of the registrant.

(c) Within twenty-one days after filing the petition, the petitioner shall file with the court copies of the return receipts received from each party notified and any documents supporting his or her eligibility to petition to discontinue registration. The supporting documents must include records documenting the completion of treatment if ordered by the court, when such records are available.

(d) Upon receipt of the petition, the court shall set a date for a hearing and shall notify the petitioner and the district attorney for that jurisdiction of the hearing date. The court shall also notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and provided contact information.

(e) If the district attorney or the victim objects to the registrant's petition, the district attorney shall file the objection with the court within sixty-three days of receiving the notice of the petition.

(f) If no objection is filed by the district attorney or made by the victim, the court may consider the petition without a hearing and shall grant the petition if the court finds the petitioner suffers from a severe physical or intellectual disability to the extent that the petitioner is permanently incapacitated, does not present an unreasonable risk to public safety, and is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2.5)(c) of this section, any written or oral statement of the victim of the offense for

which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.

(g) If there is objection to the petition by the district attorney or victim, the court shall conduct a hearing on the petition. The court may grant the petition if the court finds the petitioner suffers from a severe physical or intellectual disability to the extent that the petitioner is permanently incapacitated, does not present an unreasonable risk to public safety, and is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2.5)(c) of this section, any written or oral statement of the victim of the offense for which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.

(h) If the court enters an order discontinuing registration, the petitioner shall provide a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. The court shall also notify the victim, if the victim of the offense has requested notice and provided contact information.

(i) On receipt of a copy of an order discontinuing a petitioner's duty to register:

(I) The CBI shall remove the petitioner's sex offender registration information from the state sex offender registry; and

(II) The local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.

(3) The following persons are not eligible for relief pursuant to this section, but are subject for the remainder of their natural lives to the registration requirements specified in this article 22 or to the comparable requirements of any other jurisdictions in which they may reside:

(a) Any person who is a sexually violent predator;

(b) Any person who is convicted as an adult of:

(I) Sexual assault, in violation of section 18-3-402; or sexual assault in the first degree, in violation of section 18-3-402, as it existed prior to July 1, 2000; or sexual assault in the second degree, in violation of section 18-3-403, as it existed prior to July 1, 2000; or

(II) Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or

(III) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or

(IV) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(V) Incest, in violation of section 18-6-301, C.R.S.; or

(VI) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(c) Any adult who has more than one conviction as an adult for unlawful sexual behavior or any other offense, the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103 (2), in this state or any other jurisdiction, except as provided in section 18-6-403 (5.7), or has a conviction as an adult and one or more adjudications as a juvenile for unlawful sexual behavior or for any other offense, the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103 (2), in this state or any other jurisdiction.

Source: L. 2002: Entire article added, p. 1176, § 1, effective July 1. **L. 2004:** IP(1) and (2)(c) amended and (1.5) and (2)(d) added, p. 1118, §§ 15, 16, effective May 27. **L. 2008:** (1)(e) amended, p. 654, § 2, effective April 25; (1)(e) amended, p. 1755, § 2, effective July 1. **L. 2011:** IP(1), (1)(d), (1)(e), and IP(2)(d) amended and (1.3) added, (HB 11-1278), ch. 224, p. 962, § 7, effective May 27. **L. 2012:** (1.3)(a), (1.3)(b)(I), and (1.3)(b)(II) amended, (SB 12-175), ch. 208, p. 861, § 100, effective July 1. **L. 2013:** (1)(e) amended, (SB 13-229), ch. 272, p. 1428, § 5, effective July 1. **L. 2017:** (1)(a.5) added, (HB 17-1072), ch. 250, p. 1050, § 4, effective September 1. **L. 2018:** (2) R&RE, (2.5) added, and IP(3) and (3)(b)(I) amended, (SB 18-026), ch. 143, p. 923, § 3, effective August 8. **L. 2021:** (1)(e), (1.3)(b)(I), IP(3), and (3)(c) amended and (1)(g) added, (HB 21-1064), ch. 320, p. 1967, § 8, effective September 1; (3)(c) amended, (HB 21-1069), ch. 446, p. 2942, § 3, effective September 7; IP(1) and (1)(e) amended, (SB 21-059), ch. 136, p. 715, § 31, effective October 1.

Editor's note: (1) Amendments to subsection (1)(e) by Senate Bill 08-172 and House Bill 08-1382 were harmonized. Amendments to subsection (1)(e) by SB 21-059 and HB 21-1064 were harmonized. Amendments to subsection (3)(c) by HB 21-1064 and HB 21-1069 were harmonized.

(2) In People in Interest of T.B., 2021 CO 59, 489 P.3d 752, the Colorado Supreme Court held that mandatory lifetime sex offender registration under this act for offenders with multiple juvenile adjudications without a mechanism for individualized assessment or an opportunity to deregister upon a showing of rehabilitation is excessive and violates the prohibition on cruel and unusual punishments under the eighth amendment of the United States Constitution.

Cross references: For the legislative declaration in HB 21-1069 stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2024, see sections 1 and 7 of chapter 446, Session Laws of Colorado 2021. To obtain a copy of the review, once completed, go to "Legislative Resources and Requirements" on the Colorado General Assembly's website.

ANNOTATION

The requirement for mandatory lifetime registration on the sex offender registry for twice-adjudicated juveniles, without the opportunity for individual assessment or the ability to deregister upon demonstrating rehabilitation, constitutes cruel and unusual punishment in violation of the eighth amendment. People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

Analyzing any statute under the eighth amendment involves a two-part inquiry: (1) Is the registration requirement a "punishment", and, if so, (2) is it "cruel and unusual"? People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

With regard to the first inquiry, requiring a juvenile, even one who has been twice adjudicated for offenses involving unlawful sexual behavior, to register as a sex offender for life without regard for whether he or she poses a risk to public safety is an overly inclusive — and therefore excessive — means of protecting public safety. Because the lifetime registration requirement is not adequately tethered to the statute's stated nonpunitive purpose, the automatic lifetime registration requirement for juvenile offenders is excessive. And because the lifetime registration requirement is excessive in relation to its nonpunitive purpose when applied to juveniles, it operates more like a punishment. People in Interest of T.B., 2019 COA 89, 490 P.3d 455, aff'd in part, rev'd in part on other grounds, 2021 CO 59, 489 P.3d 752.

For an offender with a juvenile adjudication in addition to an adult conviction, mandatory lifetime sex offender registration is not considered a punishment for purposes of the eighth amendment. An offender with a juvenile adjudication and an adult conviction does not implicate the heightened concerns associated with lifetime registration for juvenile offenders. People v. Chronis, 2025 COA 72, 578 P.3d 76.

The reference to "successful completion of and discharge from a juvenile sentence or disposition" does not mean that the person must have successfully completed the person's original sentence or disposition. People in Interest of J.M.M., 2021 COA 88, 496 P.3d 833.

Individual who successfully completes a deferred judgment and sentence for sexual assault on a child is eligible to petition the court for removal from the sex offender registry. People v. Perry, 252 P.3d 45 (Colo. App. 2010).

A person is eligible to petition for removal from the sex offender registry under subsection (1)(d) only after successful completion of the deferred judgment and sentence (or deferred adjudication) and dismissal of the case. People v. Dulac, 2024 COA 14, 548 P.3d 1159.

The exception in subsection (1)(d) does not apply to a person who successfully completes a deferred judgment and sentence for a sex offense but has other outstanding convictions in the same case. People v. Dulac, 2024 COA 14, 548 P.3d 1159.

The "notwithstanding any provision" language in subsection (2.5)(a) applies to all of this section, not just to subsection (1). Therefore, a person subject to lifetime registration under subsection (3) may petition for removal pursuant to subsection (2.5)(a) and be granted a hearing. People v. Warren, 2024 COA 60, 555 P.3d 656.

A "conviction" for purposes of the bar in subsection (3)(c) does not include a successfully completed deferred judgment. McCulley v. People, 2020 CO 40, 463 P.3d 254.

The timeframe in § 16-22-103 (2)(a) refers to the offenses triggering the obligation to register as a sex offender. It does not mean that all convictions or adjudications referenced in subsection (3)(c) must have occurred on or after the cutoff of July 1, 1994. People v. Chronis, 2025 COA 72, 578 P.3d 76.

Conviction on more than one charge of unlawful sexual behavior, whether adjudicated in the same case or in separate cases, renders defendant ineligible for relief from status as a sex offender and for removal from sex offender registry. Statute contains no explicit limiting language that would require "multiple convictions" to be the result of more than one proceeding. People v. Atencio, 219 P.3d 1080 (Colo. App. 2009).

An expunged adjudication may be considered when deciding a petition for deregistration from the sex offender registry when the applicable expungement statute allows consideration of the expunged adjudication. People v. Chronis, 2025 COA 72, 578 P.3d 76.

A person with an out-of-state conviction for an offense comparable to sexual assault on a child in this state is not eligible to discontinue registration with this state's sex offender registry because a person who is convicted in this state of the same offense is not eligible to discontinue registration. Curtiss v. People, 2014 COA 107, 410 P.3d 539.

A person convicted of an offense outside this state that is comparable to the offenses listed in subsection (3) is not eligible to petition for discontinuation of sex offender registration. Because defendant was convicted in another state of an offense comparable to § 18-3-402 (1)(e), he is not eligible to discontinue his registration requirement. Stanley v. Dist. Attorney, 2017 COA 33, 395 P.3d 1198.

The language "or to the comparable requirements of any other jurisdictions in which they may reside" in subsection (3) does not allow a person required to register here as a sex offender because of an out-of-state conviction to discontinue registration if the person is no longer required to register in the state of the conviction. Stanley v. Dist. Attorney, 2017 COA 33, 395 P.3d 1198.

Subsection (3)(c) does not impose a time limitation on convictions for unlawful sexual behavior entered on and

after July 1, 1994. The reference to § 16-22-103 (2) applies only to the phrase "any other offense", not to "unlawful sexual behavior". Moore v. 4th Judicial Dist. Atty., 2024 COA 48, 553 P.3d 900.

No exception to 10-year waiting period in subsection (1)(b). The fact that the court made sex offender registration part of defendant's probation sentence does not change the fact that defendant was also statutorily required to register as a sex offender and thus is subject to the statutory waiting period before seeking to discontinue his registration duties. People v. Sheth, 2013 COA 33, 318 P.3d 533.

16-22-114. Immunity.

State agencies and their employees and local law enforcement agencies and their employees are immune from civil or criminal liability for the good faith implementation of this article.

Source: L. 2002: Entire article added, p. 1178, § 1, effective July 1.

16-22-115. CBI assistance in apprehending sex offenders who fail to register.

In an effort to ensure that a sexual offender who fails to respond to address-verification attempts or who otherwise absconds from registration is located in a timely manner, the Colorado bureau of investigation shall share information with local law enforcement agencies. The Colorado bureau of investigation shall use analytical resources to assist local law enforcement agencies to determine the potential whereabouts of sex offenders who fail to respond to address-verification attempts or who otherwise abscond from registration. The Colorado bureau of investigation shall review and analyze all available information concerning a sex offender who fails to respond to address-verification attempts or otherwise absconds from registration and provide the information to local law enforcement agencies in order to assist in locating and apprehending the sex offender.

Source: L. 2006: Entire section added, p. 1005, § 1, effective July 1.

ARTICLE 23

DNA Crime Prevention and Exoneration of the Innocent Act

16-23-101. Short title.

16-23-102. Legislative declaration.

16-23-103. Collection of biological samples from persons

arrested for or charged with felonies.

16-23-104. Collection and testing.

16-23-105. Expungement.

16-23-101. Short title.

This article shall be known and may be cited as "Katie's Law".

Source: L. 2009: Entire article added, (SB 09-241), ch. 295, p. 1573 § 1, effective September 30, 2010.

16-23-102. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) The collection and use of DNA by law enforcement agencies is a valuable tool in preventing crime;

(b) The analysis of DNA has been used numerous times in the exoneration of innocent individuals charged with or convicted of crimes; and

(c) The implementation of this article will result in preventing a significant number of violent crimes in Colorado and in solving a number of unsolved crimes in Colorado.

Source: L. 2009: Entire article added, (SB 09-241), ch. 295, p. 1573, § 1, effective September 30, 2010.

16-23-103. Collection of biological samples from persons arrested for or charged with felonies.

(1) The following persons shall submit to collection of a biological substance sample for testing to determine the genetic markers thereof, unless the person has previously provided a biological substance sample for such testing pursuant to a statute of this state and the Colorado bureau of investigation has that sample:

(a) Every adult arrested on or after September 30, 2010, for a felony offense or for the investigation of a felony offense. The arresting law enforcement agency shall collect the biological substance sample from the arrested person as part of the booking process.

(b) (I) Every adult who is charged with a felony by an indictment, information, or felony complaint filed on or after September 30, 2010, and who is not arrested in connection with the felony charge on or after September 30, 2010, whether because the person's arrest occurred before that date, because the person's appearance is procured by summons rather than arrest, or for other reasons.

(II) In cases where a booking process occurs on or after September 30, 2010, the law enforcement agency conducting the booking process shall collect the biological substance sample from the charged adult as part of the booking process.

(III) In all other cases, upon the adult's first appearance in court following the filing of charges, the court shall require the adult to submit to collection of a biological substance sample by the investigating agency responsible for fingerprinting pursuant to section 16-21-104, and that agency shall collect the sample.

(2) (a) At the person's first appearance in court following the filing of charges, the court shall advise the person that the biological substance sample collected pursuant to this section shall be destroyed and the results of the testing of the sample shall be expunged from the federal combined DNA index system and any state index system pursuant to the circumstances described in section 16-23-105.

(b) When an action occurs that qualifies an adult for expungement pursuant to section 16-23-105 (1), the court or district attorney shall advise the adult that the adult may make a request to the Colorado bureau of investigation to have the biological substance sample collected pursuant to this section destroyed and results of the testing of the sample expunged from the federal combined DNA index system and any state index system pursuant to the process described in section 16-23-105.

(3) If collection of a biological substance sample is impractical at the time specified in subsection (1) of this section, an appropriate agency may collect a sample at any other time during the adult's detention or during the pendency of charges.

(4) An agency collecting a biological substance sample pursuant to this section shall make reasonable efforts to determine if the Colorado bureau of investigation already holds a biological substance sample from the adult. If, but only if, the agency determines that the Colorado bureau of investigation already holds a sample from the adult, then the agency need not collect a sample.

(5) A law enforcement agency may use reasonable force to collect biological substance samples in accordance with this article using medically recognized procedures.

(6) Each law enforcement agency that collects a biological substance sample shall submit the sample to the Colorado bureau of investigation for testing.

Source: L. 2009: Entire article added, (SB 09-241), ch. 295, p. 1574, § 1, effective September 30, 2010.

Editor's note: In Maryland v. King, 569 U.S. 435 (2013), the United States Supreme Court held that DNA identification of arrestees is a reasonable search under the Fourth Amendment of the United States Constitution that can be considered part of the routine booking procedure.

ANNOTATION

Although the collection of defendant's DNA sample was not authorized by this section, the seizure did not violate the constitutional prohibition on unreasonable searches and seizures. The seizure was not willful and recurrent; the government interest in the DNA sample outweighed defendant's privacy interest since the sample was taken while defendant was in custody and on probation; and the intrusion was minimal. The seizure meets the special needs exception because DNA databases serve a number of special needs beyond securing evidence of wrongdoing. People v. Lancaster, 2015 COA 93, 373 P.3d 655.

Applied in People v. Valdez, 2017 COA 41, 405 P.3d 413.

16-23-104. Collection and testing.

(1) The Colorado bureau of investigation shall provide all specimen vials, mailing tubes, labels, and other materials and instructions necessary for the collection of biological substance samples required pursuant to this article.

(2) The Colorado bureau of investigation shall chemically test the biological substance samples collected pursuant to this article. The Colorado bureau of investigation shall file and maintain the testing results in the state index system after receiving confirmation from the arresting or charging agency that the adult was charged with a felony. If the Colorado bureau of investigation does not receive confirmation of a felony charge within a year after receiving the sample for testing, the Colorado bureau of investigation shall destroy the biological sample and any results from the testing of the sample. The Colorado bureau of investigation shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this article.

Source: L. 2009: Entire article added, (SB 09-241), ch. 295, p. 1575, § 1, effective September 30, 2010.

16-23-105. Expungement.

(1) Except as provided in subsection (7) of this section, a person whose biological substance sample is collected pursuant to section 16-23-103 qualifies for expungement if:

(a) In the case of a sample collected based upon the filing of a charge or based upon a final court order, each felony charge stemming from the charges has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense;

(b) In the case of a sample collected based upon an arrest:

(I) A felony charge was not filed within ninety days after the arrest; or

(II) Each felony charge stemming from the arrest has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense.

(2) A person who qualifies for expungement under subsection (1) of this section may submit a written request for expungement to the Colorado bureau of investigation. The request shall include the items listed in this subsection (2) and may include any additional information that may assist the bureau in locating the records of arrest or charges or the biological substance sample or testing results. The following information shall be included in the submitted request:

(a) The person's name, date of birth, and mailing address;

(b) The name of the agency that collected the biological substance sample;

(c) The date of arrest or other date when the sample was taken;

(d) Whether any charges were filed stemming from the arrest for which a biological substance sample was collected, the identity of the court, and the case number of each case in which charges were filed; and

(e) A declaration that, to the best of the person's knowledge, he or she qualifies for expungement.

(3) Upon receipt of a request satisfying the requirements of subsection (2) of this section, the Colorado bureau of investigation shall promptly submit a written inquiry to the district attorney in the jurisdiction in which the person's biological substance sample was collected concerning the outcome of the arrest or charges.

(4) Within ninety days after receiving the request submitted pursuant to subsection (2) of this section, the Colorado bureau of investigation shall destroy the biological substance sample collected pursuant to section 16-23-103 and expunge the results of the testing of the sample from the federal combined DNA index system and any state index system, unless the bureau receives

written notification from the applicable district attorney that the person does not qualify for expungement and the reasons that the person does not qualify.

(5) Within thirty days after receiving a notice from a district attorney pursuant to subsection (4) of this section, or at the end of the ninety-day period identified in subsection (4) of this section, whichever is earlier, the Colorado bureau of investigation shall send notification by first-class mail to the person arrested or charged, either stating that the bureau has destroyed the biological substance sample and expunged the results of the testing of the sample or stating why the bureau has not destroyed the sample and expunged the test results.

(6) A data bank or database match shall not be admitted as evidence against a person in a criminal prosecution and shall not be used as a basis to identify a person if the match is:

(a) Derived from a biological substance sample that is required to be destroyed or expunged pursuant to this section; and

(b) Obtained after the required date of destruction or expungement.

(7) This section shall not apply if the person has been arrested for, charged with, or convicted of some other offense on the basis of which a biological substance sample was or could have been collected under state statute.

(8) For purposes of this section, a court order shall not be deemed final if time remains for an appeal or application for discretionary review with respect to the order.

Source: L. 2009: Entire article added, (SB 09-241), ch. 295, p. 1575 § 1, effective September 30, 2010. **L. 2011:** (1)(a) amended, (HB 11-1051), ch. 17, p. 45, § 1, effective March 11.