

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 12-0817.01 Michael Dohr x4347

HOUSE BILL 12-1310

HOUSE SPONSORSHIP

Gardner B., Barker

SENATE SPONSORSHIP

Carroll, Guzman

House Committees

Judiciary
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CHANGES TO STATUTORY PROVISIONS RELATED TO**
102 **CRIMINAL PROCEEDINGS, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1. The bill creates standards and a procedure for the admissibility of commercial packages for evidence.

Sections 2, 3, and 8. The bill defines "earnings" for garnishment purposes to collect court fines, fees, costs, restitution, and surcharges.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 23, 2012

When a garnishment is ordered to collect court fines, fees, costs, restitution, and surcharges, it has priority over all other orders except those for child support, maintenance, or a previous garnishment related to court assessments.

Section 4. Under current law, the judicial department makes an annual report regarding the state's pretrial services programs. The bill expands the information that would be included in the report.

Section 5. Under current law, a surety must consent to the continuation of bond after the defendant pleads guilty. The bill allows a surety to indicate on the initial bond documents whether the surety consents to continuation of the bond after a guilty plea. If the surety does not indicate consent in the initial documents, it may still consent at the time of the plea or within a reasonable time thereafter.

Section 6. Under current law, a witness to a grand jury proceeding is given notice of his or her rights. The bill clarifies that the witness has a right to have a court appoint an attorney for him or her, but that the witness may not consult with the public defender.

Section 7. The bill gives a party the right to have the court impanel an alternate juror if the case involves a class 1, 2, or 3 felony or a felony listed under the victim's rights provisions.

Section 9. Under current law, a presentence report for each offense committed by a sex offender must contain a sex-offender evaluation if one has not been completed in the last 6 months. The bill extends that timeline to 2 years. A sex-offender evaluation would not have to be done if the new offense is a traffic misdemeanor or if the history of sex offending was a juvenile misdemeanor offense, unless the court requires the sex-offender evaluation.

Section 10. Under current law, when a defendant defaults on a restitution order, the collection investigator must ask the clerk of the court to issue an attachment of earnings. The bill would allow the collection investigator to issue the attachment.

Sections 11 and 18. Under current law, a deferred judgment may last up to 4 years from the date of the plea for a felony. The bill changes the calculation from the date of the plea if no presentence report is ordered or to the date when the court considers the presentence report. The deferred period maybe extended for an additional 2 years if the deferred judgment is for a sex offense and good cause is shown. The bill extends the time period for a juvenile deferral of adjudication for a sex offense from one year to 2 years with the opportunity to extend it up to 5 years with good cause shown.

Section 12. Under current law, when a person is convicted of a third felony, he or she is not eligible for probation unless the district attorney consents. The bill clarifies that a plea to a deferred judgment and sentence does not become a conviction until the deferred judgment and sentence is revoked.

Section 13. The bill clarifies that the court cannot charge a probationer for the costs of returning the probationer to Colorado. If a probationer applies to transfer his or her probation to another state, the probationer must pay a \$100 filing fee that is deposited into a fund to cover the costs associated with returning probationers to Colorado.

Section 14. Under current law, a court may convert a determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography. The bill repeals that authority.

Section 15. The bill clarifies what "under color of his or her official authority" means as it relates to a peace officer.

Section 16. The bill clarifies the record-sealing rights of a person convicted of minor in possession of alcohol.

Section 17. Under current law, the interest earned by the money in the sex offender surcharge fund is deposited into the general fund. The bill allows the interest to remain in the fund.

Section 19. Under current law, if a sentencing juvenile court deviates from the recommendation of the placement report, the court must make specific findings and record for the decision. The bill eliminates this requirement.

Section 20. Under current law there is a crime of converting trust funds and the penalties correspond to the amount of money converted. The bill clarifies that adjustments to trust funds based on simple accounting errors is not a crime. The bill changes the penalties and amounts to correspond to the penalties and amounts for theft.

Section 21. Under current law, the court must sentence a person who is convicted of a second, third, or subsequent DUI to probation in order to complete certain court-ordered programs and treatment. Under the bill, if the defendant is sentenced to the department of corrections, the court does not sentence the defendant to probation and the defendant must complete the court-ordered programs and treatment while on parole.

Sections 22 through 26. Make conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-25-136 as
3 follows:

4 **13-25-136. Admissibility of commercial packaging.** (1) LABELS
5 OR PACKAGES LISTING, INDICATING, OR DESCRIBING THE CONTENTS OR
6 INGREDIENTS OF ANY COMMERCIALY PACKAGED ITEM ARE ADMISSIBLE
7 IN EVIDENCE TO PROVE THAT THE ITEM CONTAINS THE CONTENTS OR

1 INGREDIENTS LISTED ON THE LABEL OR PACKAGE. A LABEL OR PACKAGE
2 LISTING THAT IDENTIFIES THE CONTENTS OR INGREDIENTS OF A CONTAINER
3 OR PACKAGE CONSTITUTES PRIMA FACIE EVIDENCE THAT THE ITEMS IN THE
4 CONTAINER OR PACKAGE WERE COMPOSED IN WHOLE OR IN PART OF THE
5 CONTENTS.

6 (2) PRIOR TO THE ADMISSION OF EVIDENCE PURSUANT TO THIS
7 SECTION, THE COURT SHALL MAKE A PRELIMINARY DETERMINATION AS TO
8 WHETHER THE ITEM CONSTITUTES A COMMERCIALY PACKAGED ITEM AS
9 DESCRIBED IN SUBSECTION (1) OF THIS SECTION. THIS DETERMINATION
10 MAY INCLUDE ANY EVIDENCE THE COURT DEEMS APPROPRIATE, INCLUDING
11 BUT NOT LIMITED TO EVIDENCE OF WHERE THE ITEM IS AVAILABLE FOR
12 PURCHASE, WHETHER THE ITEM IS SUBJECT TO STATE OR FEDERAL
13 REGULATION, OR ANY OTHER EVIDENCE OBSERVABLE ON THE PACKAGE
14 THAT INDICATES OR CONSTITUTES INDICIA OF THE LABEL'S OR PACKAGE'S
15 RELIABILITY. EXTRINSIC EVIDENCE THAT AN ITEM IS COMMERCIALY
16 PACKAGED IS NOT A PREREQUISITE TO THE COURT'S DETERMINATION.

17 **SECTION 2.** In Colorado Revised Statutes, 13-54-104, **add** (1)
18 (b) (V) as follows:

19 **13-54-104. Restrictions on garnishment and levy under**
20 **execution or attachment.** (1) As used in this section, unless the context
21 otherwise requires:

22 (b) (V) FOR THE PURPOSES OF ATTACHMENTS OF EARNINGS OR
23 WRITS OF GARNISHMENT THAT ARE THE RESULT OF A JUDGMENT TAKEN
24 FOR COURT ASSESSMENTS INCLUDING FINES, FEES, COSTS, RESTITUTION,
25 AND SURCHARGES PURSUANT TO SECTION 16-11-101.6 OR SECTION
26 16-18.5-105, C.R.S., "EARNINGS" ALSO MEANS THOSE ENUMERATED
27 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b).

1 **SECTION 3.** In Colorado Revised Statutes, 13-54.5-101, **add** (2)
2 (e) as follows:

3 **13-54.5-101. Definitions.** As used in this article, unless the
4 context otherwise requires:

5 (2) (e) FOR THE PURPOSES OF ATTACHMENTS OF EARNINGS OR
6 WRITS OF GARNISHMENT THAT ARE THE RESULT OF A JUDGMENT TAKEN
7 FOR COURT ASSESSMENTS INCLUDING FINES, FEES, COSTS, RESTITUTION,
8 AND SURCHARGES PURSUANT TO SECTION 16-11-101.6 OR SECTION
9 16-18.5-105, C.R.S., "EARNINGS" ALSO MEANS THOSE ENUMERATED
10 UNDER PARAGRAPH (a) OF THIS SUBSECTION (2).

11 ■ ■ ■

12 **SECTION 4.** In Colorado Revised Statutes, 16-4-201, **amend** (1)
13 (c) as follows:

14 **16-4-201. Bail after conviction.** (1) (c) ~~No~~ Bond shall NOT be
15 continued in effect following a plea of guilty or of nolo contendere or
16 following conviction unless the written consents of the sureties, if any,
17 are filed ~~of record.~~ ~~No~~ WITH THE COURT. IN THE INITIAL BOND
18 DOCUMENTS FILED WITH THE COURT, A SURETY SHALL INDICATE, IN
19 WRITING AND AT THE TIME OF THE POSTING OF BOND, IF THE SURETY
20 CONSENTS TO THE CONTINUANCE OF THE BOND THROUGH SENTENCING OF
21 THE DEFENDANT. IF THE SURETY DOES NOT PROVIDE WRITTEN CONSENT AT
22 THE TIME OF THE INITIAL POSTING OF BOND, THE SURETY **MAY** PROVIDE
23 WRITTEN CONSENT AT THE TIME OF THE PLEA OF GUILTY OR NOLO
24 CONTENDERE OR WITHIN A REASONABLE TIME THEREAFTER AS
25 DETERMINED BY THE COURT. A court shall NOT require the posting of any
26 form of bond that allows for the continuance of said bond after a plea of
27 guilty or of nolo contendere or following conviction without ~~the filing of~~

1 ~~record of~~ WITH THE COURT THE written consents of the sureties, if any.

2 **SECTION 5.** In Colorado Revised Statutes, 16-5-204, **amend** (4)

3 (a) as follows:

4 **16-5-204. Witnesses before a grand jury - procedure.**

5 (4) (a) At the option of the prosecuting attorney, a grand jury subpoena
6 may contain an advisement of rights. If the prosecuting attorney
7 determines that an advisement is necessary, the grand jury subpoena shall
8 contain the following advisement prominently displayed on the front of
9 the subpoena:

10 NOTICE

11 (I) You have the right to retain an attorney to
12 represent you and to advise you regarding your grand jury
13 appearance.

14 (II) Anything you say to the grand jury may be used
15 against you in a court of law.

16 (III) You have the right to refuse to answer
17 questions if you feel the answers would tend to incriminate
18 you or to implicate you in any illegal activity.

19 (IV) If you cannot afford or obtain an attorney, ~~you~~
20 ~~may consult with the public defender's office, or~~ YOU MAY
21 request the court to appoint an attorney to CONSULT WITH
22 OR represent you.

23 **SECTION 6.** In Colorado Revised Statutes, **amend** 16-10-105 as
24 follows:

25 **16-10-105. Alternate jurors.** The court may direct that a
26 sufficient number of jurors in addition to the regular jury be called and
27 impaneled to sit as alternate jurors. Alternate jurors in the order in which

1 they are called shall replace jurors who, prior to the time the jury retires
2 to consider its verdict, become unable or disqualified to perform their
3 duties. Alternate jurors shall be drawn in the same manner, shall have the
4 same qualifications, shall be subject to the same examination and
5 challenges, shall take the same oath, and shall have the same functions,
6 powers, facilities, and privileges as the regular jurors. An alternate juror
7 shall be discharged when the jury retires to consider its verdict or at such
8 time as determined by the court. When alternate jurors are impaneled,
9 each side is entitled to one peremptory challenge in addition to those
10 otherwise allowed by law. IN A CASE IN WHICH A CLASS 1, 2, OR 3 FELONY,
11 AS DESCRIBED IN SECTION 18-1.3-401 (1) (a) (IV) AND (1) (a) (V), C.R.S.,
12 IS CHARGED AND IN ANY CASE IN WHICH A FELONY LISTED IN SECTION
13 24-4.1-302 (1), C.R.S., IS CHARGED, THE COURT SHALL IMPANEL AT LEAST
14 ONE JUROR TO SIT AS AN ALTERNATE IF REQUESTED BY ANY PARTY.

15 **SECTION 7.** In Colorado Revised Statutes, 16-11-101.6, **amend**
16 (4) as follows:

17 **16-11-101.6. Collection of fines and fees - methods - charges**
18 **- judicial collection enhancement fund.** (4) (a) On past due orders, the
19 court may, ON ITS OWN MOTION OR THROUGH THE USE OF A COLLECTIONS
20 INVESTIGATOR, direct that a certain portion of a defendant's earnings, not
21 to exceed fifty percent, be withheld and applied to any unpaid fines or
22 fees, if such an order does not adversely impact the defendant's ability to
23 comply with other orders of the court. An attachment of earnings under
24 this section may be modified to a lesser or greater amount based upon
25 changes in a defendant's circumstances as long as the amount withheld
26 does not exceed fifty percent and may be suspended or cancelled at the
27 court's discretion. For purposes of this section, "earnings" shall have the

1 same meaning as set forth in section 13-54.5-101 (2), C.R.S., and shall
2 include profits.

3 (b) AN ATTACHMENT OF EARNINGS OR A WRIT OF GARNISHMENT TO
4 COLLECT JUDGMENTS FROM A GARNISHEE'S EARNINGS FOR COURT
5 ASSESSMENTS, INCLUDING FINES, FEES, COSTS, RESTITUTION, AND
6 SURCHARGES PURSUANT TO THIS SECTION OR SECTION 16-18.5-105:

7 (I) HAS PRIORITY OVER ANY OTHER GARNISHMENT, LIEN, OR
8 INCOME ASSIGNMENT EXCEPT FOR A WRIT FOR ARREARAGES FOR CHILD
9 SUPPORT, FOR MAINTENANCE WHEN COMBINED WITH CHILD SUPPORT, FOR
10 CHILD SUPPORT DEBTS, OR FOR MAINTENANCE OR A WRIT PREVIOUSLY
11 SERVED ON THE SAME GARNISHEE PURSUANT TO THIS SECTION; AND

12 (II) SHALL REQUIRE THE GARNISHEE TO WITHHOLD, PURSUANT TO
13 SECTION 13-54-104 (3), C.R.S., THE PORTION OF EARNINGS SUBJECT TO
14 GARNISHMENT AT EACH SUCCEEDING EARNINGS DISBURSEMENT INTERVAL
15 UNTIL THE JUDGMENT IS SATISFIED OR THE GARNISHMENT IS RELEASED BY
16 THE COURT OR IN WRITING BY THE JUDGMENT CREDITOR.

17 **SECTION 8.** In Colorado Revised Statutes, 16-11-102, **amend**
18 (1) (b) as follows:

19 **16-11-102. Presentence or probation investigation.**

20 (1) (b) Each presentence report prepared regarding a sex offender, as
21 defined in section 16-11.7-102 (2), with respect to any offense committed
22 on or after January 1, 1996, shall contain the results of an evaluation and
23 identification conducted pursuant to article 11.7 of this title; EXCEPT
24 THAT, IF THE OFFENSE IS A MISDEMEANOR PURSUANT TO TITLE 42, C.R.S.,
25 OR THE HISTORY OF SEX-OFFENDING BEHAVIOR WAS A MISDEMEANOR SEX
26 OFFENSE COMMITTED WHEN THE DEFENDANT WAS A JUVENILE, AN
27 EVALUATION AND IDENTIFICATION CONDUCTED PURSUANT TO ARTICLE

1 11.7 OF THIS TITLE IS NOT REQUIRED BUT MAY BE ORDERED BY THE COURT.
2 In addition, the presentence report shall include, when appropriate as
3 provided in section 18-3-414.5, C.R.S., the results of the risk assessment
4 screening instrument developed pursuant to section 16-11.7-103 (4) (d).
5 Notwithstanding the provisions of subsection (4) of this section, a
6 presentence report shall be prepared for each person convicted as a sex
7 offender, and the court may not dispense with the presentence evaluation,
8 risk assessment, and report unless ~~such a report~~ AN EVALUATION AND RISK
9 ASSESSMENT has been completed within the last ~~six months~~ TWO YEARS
10 and there has been no material change that would affect the ~~report~~
11 EVALUATION AND RISK ASSESSMENT in the past ~~six months~~ TWO YEARS.

12 **SECTION 9.** In Colorado Revised Statutes, 16-18.5-105, **amend**
13 (3) (b) as follows:

14 **16-18.5-105. Monitoring - default - penalties.** (3) Whenever a
15 defendant fails to make a payment of restitution within five days after the
16 date that the payment is due pursuant to a payment schedule established
17 pursuant to this article, in addition to any other remedy, the collections
18 investigator may:

19 (b) ~~Request that the clerk of the court~~ Issue an attachment of
20 earnings requiring that a certain portion of a defendant's earnings, not to
21 exceed fifty percent, be withheld and applied to any unpaid restitution, if
22 such an attachment does not adversely impact the defendant's ability to
23 comply with other orders of the court. An attachment of earnings under
24 this paragraph (b) may be modified to a lesser or greater amount based
25 upon changes in a defendant's circumstances as long as the amount
26 withheld does not exceed fifty percent and may be suspended or cancelled
27 at the court's discretion. An attachment of earnings issued pursuant to this

1 paragraph (b) shall be enforceable in the same manner as a garnishment
2 in a civil action. For purposes of this section, "earnings" shall have the
3 same meaning as set forth for any type of garnishment in section
4 13-54.5-101, C.R.S., and shall include profits.

5 **SECTION 10.** In Colorado Revised Statutes, 18-1.3-102, **amend**
6 (1) as follows:

7 **18-1.3-102. Deferred sentencing of defendant.** (1) (a) In any
8 case in which the defendant has entered a plea of guilty, the court
9 accepting the plea has the power, with the written consent of the
10 defendant and his or her attorney of record and the district attorney, to
11 continue the case FOR THE PURPOSE OF ENTERING JUDGMENT AND
12 SENTENCE UPON THE PLEA OF GUILTY for a period not to exceed four years
13 FOR A FELONY OR TWO YEARS FOR A MISDEMEANOR OR PETTY OFFENSE OR
14 TRAFFIC OFFENSE. THE PERIOD SHALL BEGIN TO RUN from the date of entry
15 of a plea to a felony or two years from the date of entry of a plea to a
16 misdemeanor, or petty offense, or traffic offense. for the purpose of
17 entering judgment and sentence upon such plea of guilty; THAT THE
18 COURT CONTINUES THE CASE.

19 (b) ~~except that such~~ THE period may be extended for an additional
20 time:

21 (I) Up to one hundred eighty days if the failure to pay restitution
22 is the sole condition of supervision which has not been fulfilled, because
23 of inability to pay, and the defendant has shown a future ability to pay.
24 During such time, the court may place the defendant under the
25 supervision of the probation department; OR

26 (II) UP TO TWO YEARS IF THE DEFERRED JUDGMENT IS FOR AN
27 OFFENSE LISTED IN SECTION 16-11.7-102 (3), C.R.S., GOOD CAUSE IS

1 SHOWN, AND THE DISTRICT ATTORNEY AND DEFENDANT CONSENT TO THE
2 EXTENSION.

3 **SECTION 11.** In Colorado Revised Statutes, 18-1.3-201, **add** (5)
4 as follows:

5 **18-1.3-201. Application for probation.** (5) FOR PURPOSES OF
6 PARAGRAPH (a.5) OF SUBSECTION (2) OF THIS SECTION AND PARAGRAPH (a)
7 OF SUBSECTION (2.5) OF THIS SECTION, "CONVICTION" MEANS A VERDICT
8 OF GUILTY OR THE ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE.
9 "CONVICTION" DOES NOT INCLUDE A PLEA TO A DEFERRED JUDGMENT AND
10 SENTENCE PURSUANT TO SECTION 18-1.3-102 UNTIL THE DEFERRED
11 JUDGMENT AND SENTENCE IS REVOKED.

12 **SECTION 12.** In Colorado Revised Statutes, 18-1.3-204, **amend**
13 (1.5) and (4) as follows:

14 **18-1.3-204. Conditions of probation - interstate compact**
15 **probation transfer cash fund - creation.** (1.5) If the defendant is being
16 sentenced to probation as a result of a conviction of a felony offense OR
17 A QUALIFYING MISDEMEANOR OFFENSE PURSUANT TO THE "INTERSTATE
18 COMPACT FOR ADULT OFFENDER SUPERVISION", PART 28 OF ARTICLE 60
19 OF TITLE 24, C.R.S., a condition of probation shall be that the court shall
20 require the defendant to execute or subscribe a written prior waiver of
21 extradition stating that the defendant consents to extradition to this state
22 and waives all formal proceedings in the event that he or she is arrested
23 in another state while at liberty on such bail bond and acknowledging that
24 he or she shall not be admitted to bail in any other state pending
25 extradition to this state. IF THE OFFENDER IS RETURNED TO THE STATE
26 PURSUANT TO THE "INTERSTATE COMPACT FOR ADULT OFFENDER
27 SUPERVISION", PART 28 OF ARTICLE 60 OF TITLE 24, C.R.S., A COURT MAY

1 NOT IMPOSE THE COST OF THE OFFENDER'S RETURN ON THE OFFENDER.

2 (4) (a) For good cause shown and after notice to the defendant, the
3 district attorney, and the probation officer, and after a hearing if the
4 defendant or the district attorney requests it, the judge may reduce or
5 increase the term of probation or alter the conditions or impose new
6 conditions.

7 (b) (I) IF AN OFFENDER APPLIES TO TRANSFER HIS OR HER
8 PROBATION TO ANOTHER STATE, THE OFFENDER SHALL PAY A FILING FEE
9 OF ONE HUNDRED DOLLARS, UNLESS THE OFFENDER IS INDIGENT.

10 (II) (A) THE CLERK OF THE COURT SHALL TRANSMIT ALL MONEYS
11 COLLECTED PURSUANT TO THIS PARAGRAPH (b) TO THE STATE TREASURER,
12 WHO SHALL CREDIT THE SAME TO THE INTERSTATE COMPACT PROBATION
13 TRANSFER CASH FUND, WHICH FUND IS HEREBY CREATED AND REFERRED
14 TO IN THIS PARAGRAPH (b) AS THE "FUND". BEGINNING JANUARY 1, 2013,
15 THE MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY
16 THE GENERAL ASSEMBLY TO THE JUDICIAL DEPARTMENT FOR THE DIRECT
17 AND INDIRECT COSTS ASSOCIATED WITH RETURNING PROBATIONERS TO
18 COLORADO. THE STATE TREASURER MAY INVEST ANY MONEYS IN THE
19 FUND NOT EXPENDED FOR THE PURPOSE OF THIS PARAGRAPH (b) AS
20 PROVIDED BY LAW. THE STATE TREASURER SHALL CREDIT ALL INTEREST
21 AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS
22 IN THE FUND TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED
23 MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAIN
24 IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE
25 GENERAL FUND OR ANOTHER FUND.

26 (B) ON OR AFTER JANUARY 1, 2013, A LAW ENFORCEMENT AGENCY
27 MAY SUBMIT TO THE STATE COURT ADMINISTRATOR A REQUEST TO BE

1 REIMBURSED FOR THE COSTS OF RETURNING A PROBATIONER PURSUANT TO
2 THE "INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION", PART
3 28 OF ARTICLE 60 OF TITLE 24, C.R.S., INCURRED ON OR AFTER JANUARY
4 1, 2013. THE STATE COURT ADMINISTRATOR SHALL, TO THE EXTENT THAT
5 FUNDS ARE AVAILABLE, REIMBURSE REASONABLE COSTS INCURRED BY A
6 LAW ENFORCEMENT AGENCY FOR THE RETURN OF THE PROBATIONER.

7 **SECTION 13.** In Colorado Revised Statutes, 18-1.3-1004, **repeal**
8 (4) as follows:

9 **18-1.3-1004. Indeterminate sentence.** (4) (a) ~~The court may~~
10 ~~sentence any person pursuant to the provisions of this section if:~~

11 ~~(I) The person is convicted of or pleads guilty or nolo contendere~~
12 ~~to a crime specified in paragraph (b) of this subsection (4); and~~

13 ~~(II) An assessment of the person pursuant to section 16-11.7-104,~~
14 ~~C.R.S., determines that the person is likely to commit one or more of the~~
15 ~~offenses specified in section 18-3-414.5 (1) (a) (II), under the~~
16 ~~circumstances described in section 18-3-414.5 (1) (a) (III).~~

17 ~~(b) The provisions of this subsection (4) shall apply to any person~~
18 ~~who is convicted of or pleads guilty or nolo contendere to any of the~~
19 ~~following offenses or criminal attempt, conspiracy, or solicitation to~~
20 ~~commit any of the following offenses:~~

21 ~~(I) Trafficking in children, as described in section 18-3-502;~~

22 ~~(II) Sexual exploitation of children, as described in section~~
23 ~~18-6-403;~~

24 ~~(III) Procurement of a child for sexual exploitation, as described~~
25 ~~in section 18-6-404;~~

26 ~~(IV) Soliciting for child prostitution, as described in section~~
27 ~~18-7-402;~~

- 1 ~~(V) Pandering of a child, as described in section 18-7-403;~~
2 ~~(VI) Procurement of a child, as described in section 18-7-403.5;~~
3 ~~(VII) Keeping a place of child prostitution, as described in section~~
4 ~~18-7-404;~~
5 ~~(VIII) Pimping of a child, as described in section 18-7-405;~~
6 ~~(IX) Inducement of child prostitution, as described in section~~
7 ~~18-7-405.5.~~
8 ~~(c) Any person sentenced as a sex offender pursuant to this~~
9 ~~subsection (4) shall be subject to the provisions of this part 10.~~

10 **SECTION 14.** In Colorado Revised Statutes, 18-8-104, **amend**
11 (2) as follows:

12 **18-8-104. Obstructing a peace officer, firefighter, emergency**
13 **medical services provider, rescue specialist, or volunteer.** (2) It is ~~no~~
14 NOT A defense to a prosecution under this section that the peace officer
15 was acting in an illegal manner, if he OR SHE was acting under color of his
16 OR HER official authority. ~~as defined in section 18-8-103 (2) A PEACE~~
17 OFFICER ACTS "UNDER COLOR OF HIS OR HER OFFICIAL AUTHORITY" IF, IN
18 THE REGULAR COURSE OF ASSIGNED DUTIES, HE OR SHE MAKES A
19 JUDGMENT IN GOOD FAITH BASED ON SURROUNDING FACTS AND
20 CIRCUMSTANCES THAT HE OR SHE MUST ACT TO ENFORCE THE LAW OR
21 PRESERVE THE PEACE.

22 **SECTION 15.** In Colorado Revised Statutes, 18-13-122, **amend**
23 (10) as follows:

24 **18-13-122. Illegal possession or consumption of ethyl alcohol**
25 **by an underage person - definitions - adolescent substance abuse**
26 **prevention and treatment fund - legislative declaration.** (10) Upon the
27 expiration of one year from the date of a conviction, DISMISSAL,

1 COMPLETION OF DEFERRED JUDGMENT, OR CONCLUSION OF DEFERRED
2 PROSECUTION for a violation of subsection (2) of this section, ~~any~~ THE
3 person convicted of such violation may petition the court in which the
4 conviction was ~~entered~~ ASSIGNED for an order sealing the record of such
5 conviction. The court shall grant such petition if the petitioner has not
6 been arrested for, charged with, or convicted of any felony, misdemeanor,
7 or petty offense during the period of one year following the date of such
8 petitioner's conviction for a violation of subsection (2) of this section.

9 **SECTION 16.** In Colorado Revised Statutes, 18-21-103, **amend**
10 (3) as follows:

11 **18-21-103. Source of revenues - allocation of moneys - sex**
12 **offender surcharge fund - creation.** (3) There is hereby created in the
13 state treasury a sex offender surcharge fund which shall consist of moneys
14 received by the state treasurer pursuant to paragraph (b) of subsection (2)
15 of this section. ~~In accordance with section 24-36-114, C.R.S., all interest~~
16 ~~derived from the deposit and investment of this fund shall be credited to~~
17 ~~the general fund.~~ THE STATE TREASURER MAY INVEST ANY MONEYS IN THE
18 FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION AS PROVIDED BY
19 LAW. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME
20 DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND TO
21 THE FUND. Any moneys not appropriated by the general assembly shall
22 remain in the sex offender surcharge fund and shall not be transferred or
23 revert to the general fund of the state at the end of any fiscal year. All
24 moneys in the fund shall be subject to annual appropriation by the general
25 assembly to the judicial department, the department of corrections, the
26 division of criminal justice of the department of public safety, and the
27 department of human services, after consideration of the plan developed

1 pursuant to section 16-11.7-103 (4) (c), C.R.S., to cover the direct and
2 indirect costs associated with the evaluation, identification, and treatment
3 and the continued monitoring of sex offenders.

4 **SECTION 17.** In Colorado Revised Statutes, 19-2-709, **amend**
5 (1); and **add** (1.5) as follows:

6 **19-2-709. Deferral of adjudication.** (1) EXCEPT AS OTHERWISE
7 PROVIDED IN SUBSECTION (1.5) OF THIS SECTION, in any case in which the
8 juvenile has agreed with the district attorney to enter a plea of guilty, the
9 court, with the consent of the juvenile and the district attorney, upon
10 accepting the guilty plea AND ENTERING AN ORDER DEFERRING
11 ADJUDICATION, may continue the case for a period not to exceed one year
12 from the date of entry of the ~~plea~~ ORDER DEFERRING ADJUDICATION. The
13 court may continue the case for an additional one-year period for good
14 cause.

15 (1.5) IN A CASE IN WHICH THE JUVENILE HAS AGREED WITH THE
16 DISTRICT ATTORNEY TO ENTER A PLEA OF GUILTY, RESULTING IN A
17 CONVICTION AS DEFINED IN SECTION 16-22-102 (3), C.R.S., FOR
18 UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9),
19 C.R.S., THE COURT, WITH THE CONSENT OF THE JUVENILE AND DISTRICT
20 ATTORNEY, UPON ACCEPTING THE GUILTY PLEA AND ENTERING AN ORDER
21 DEFERRING ADJUDICATION, MAY CONTINUE THE CASE FOR A PERIOD OF
22 TIME NOT TO EXCEED TWO YEARS FROM THE DATE OF THE ORDER
23 DEFERRING ADJUDICATION. UPON A SHOWING OF GOOD CAUSE, THE COURT
24 MAY CONTINUE THE CASE FOR ADDITIONAL TIME, NOT TO EXCEED FIVE
25 YEARS FROM THE DATE OF THE ORDER DEFERRING ADJUDICATION.

26 **SECTION 18.** In Colorado Revised Statutes, 19-2-907, **amend**
27 (5) (a) as follows:

1 **19-2-907. Sentencing schedule - options.** (5) (a) Except as
2 otherwise provided in section 19-2-601 for an aggravated juvenile
3 offender, if the court finds that placement out of the home is necessary
4 and is in the best interests of the juvenile and the community, the court
5 shall place the juvenile, following the criteria established pursuant to
6 section 19-2-212, in the facility or setting that most appropriately meets
7 the needs of the juvenile, the juvenile's family, and the community. In
8 making its decision as to proper placement, the court shall utilize the
9 evaluation for placement prepared pursuant to section 19-1-107 or the
10 evaluation for placement required by section 19-1-115 (8) (e). Any
11 placement recommendation in the evaluation prepared by the county
12 department of social services shall be accorded great weight as the
13 placement that most appropriately meets the needs of the juvenile, the
14 juvenile's family, and the community. ~~Any deviation from such~~
15 ~~recommendation shall be supported by specific findings on the record of~~
16 ~~the case detailing the specific extraordinary circumstances that constitute~~
17 ~~the reasons for deviations from the placement recommendation of the~~
18 ~~county department of social services.~~ Such recommendation prepared by
19 the county department of social services shall set forth specific facts and
20 reasons for the placement recommendation. If the evaluation for
21 placement recommends placement in a facility located in Colorado that
22 can provide appropriate treatment and that will accept the juvenile, then
23 the court shall not place the juvenile in a facility outside this state. If the
24 court places the juvenile in a facility located in Colorado other than one
25 recommended by the evaluation for placement, in a facility located
26 outside this state in accordance with the evaluation for placement, or in
27 a facility in which the average monthly cost exceeds the amount

1 established by the general assembly in the general appropriation bill, it
2 shall make specific findings of fact, including the monthly cost of the
3 facility in which such juvenile is placed, relating to its placement
4 decision. A copy of such findings shall be sent to the chief justice of the
5 supreme court, who shall report monthly to the joint budget committee
6 and annually to the house and senate committees on health and human
7 services, or any successor committees, on such placements. If the court
8 commits the juvenile to the department of human services, it shall not
9 make a specific placement, nor shall the provisions of this subsection (5)
10 relating to specific findings of fact be applicable.

11 **SECTION 19.** In Colorado Revised Statutes, 25.5-6-206, **amend**
12 (8) (a) and (8) (d) as follows:

13 **25.5-6-206. Personal needs benefits - amount - patient**
14 **personal needs trust fund required - funeral and burial expenses -**
15 **penalty for illegal retention and use.** (8) (a) It is unlawful for any
16 person to knowingly fail to deposit personal needs funds received from
17 a patient or from the state department for a patient's personal needs into
18 the patients' personal needs trust fund within sixty days after the receipt
19 of such moneys or to knowingly apply, spend, commit, pledge, or
20 otherwise use a patient personal needs trust fund, or any other moneys
21 paid by a patient or the state department for patient personal needs, for
22 any purpose other than the personal needs of the patient to purchase
23 necessary clothing, incidentals, or other items of personal needs that are
24 not reimbursed by any federal or state program. Deposit or use of
25 personal needs funds, including the use of a petty cash fund for personal
26 needs purposes, is not a violation of this section if such deposit or use is
27 in substantial compliance with applicable rules of the state department.

1 ~~nor shall~~ Sums later ordered repaid to the patients' personal needs trust
2 fund as a result of an audit adjustment RELATED TO SIMPLE ACCOUNTING
3 ERRORS SUCH AS DATA ENTRY ERRORS, MATHEMATICAL ERRORS, OR
4 POSTING ERRORS or a dispute related to a proration of patient payment ~~be~~
5 ~~determined to constitute~~ IS NOT a violation of this section.

6 (d) Unlawful use of a patient personal needs trust fund is:

7 (I) A ~~class 3~~ CLASS 2 misdemeanor, if the amount involved is less
8 than ~~one~~ FIVE hundred dollars;

9 (II) A ~~class 2~~ CLASS 1 misdemeanor, if the amount involved is ~~one~~
10 FIVE hundred dollars or more but less than ~~five hundred~~ ONE THOUSAND
11 dollars;

12 (III) A class 4 felony, if the amount involved is ~~five hundred~~ ONE
13 THOUSAND dollars or more but less than ~~fifteen~~ TWENTY thousand dollars;

14 (IV) A class 3 felony, if the amount involved is ~~fifteen~~ TWENTY
15 thousand dollars or more.

16 **SECTION 20.** In Colorado Revised Statutes, 42-4-1307, **amend**
17 (5) (a) (IV) and (6) (a) (IV) as follows:

18 **42-4-1307. Penalties for traffic offenses involving alcohol and**
19 **drugs - repeal.** (5) **Second offenses.** (a) Except as otherwise provided
20 in subsection (6) of this section, a person who is convicted of DUI, DUI
21 per se, DWAI, or habitual user who, at the time of sentencing, has a prior
22 conviction of DUI, DUI per se, DWAI, habitual user, vehicular homicide
23 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to
24 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked
25 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or
26 driving while the person's driver's license was under restraint pursuant to
27 section 42-2-138 (1) (d), shall be punished by:

1 (IV) A period of probation of at least two years, which period
2 shall begin immediately upon the commencement of any part of the
3 sentence that is imposed upon the person pursuant to this section, and a
4 suspended sentence of imprisonment in the county jail for one year, as
5 described in subsection (7) of this section; EXCEPT THAT THE COURT
6 SHALL NOT SENTENCE THE DEFENDANT TO PROBATION IF THE DEFENDANT
7 IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS BUT SHALL STILL
8 SENTENCE THE DEFENDANT TO THE PROVISIONS OF PARAGRAPH (b) OF
9 SUBSECTION (7) OF THIS SECTION. THE DEFENDANT SHALL COMPLETE ALL
10 COURT-ORDERED PROGRAMS PURSUANT TO PARAGRAPH (b) OF
11 SUBSECTION (7) BEFORE THE COMPLETION OF HIS OR HER PERIOD OF
12 PAROLE.

13 (6) **Third and subsequent offenses.** (a) A person who is
14 convicted of DUI, DUI per se, DWAI, or habitual user who, at the time
15 of sentencing, has two or more prior convictions of DUI, DUI per se,
16 DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1)
17 (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.,
18 aggravated driving with a revoked license pursuant to section 42-2-206
19 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's
20 license was under restraint pursuant to section 42-2-138 (1) (d) shall be
21 punished by:

22 (IV) A period of probation of at least two years, which period
23 shall begin immediately upon the commencement of any part of the
24 sentence that is imposed upon the person pursuant to this section, and a
25 suspended sentence of imprisonment in the county jail for one year, as
26 described in subsection (7) of this section; EXCEPT THAT THE COURT
27 SHALL NOT SENTENCE THE DEFENDANT TO PROBATION IF THE DEFENDANT

1 IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS, BUT SHALL STILL
2 SENTENCE THE DEFENDANT TO THE PROVISIONS OF PARAGRAPH (b) OF
3 SUBSECTION (7) OF THIS SECTION. THE DEFENDANT SHALL COMPLETE ALL
4 COURT-ORDERED PROGRAMS PURSUANT TO PARAGRAPH (b) OF
5 SUBSECTION (7) OF THIS SECTION BEFORE THE COMPLETION OF HIS OR HER
6 PERIOD OF PAROLE.

7 **SECTION 21.** In Colorado Revised Statutes, 17-22.5-403.5,
8 **amend** (3) (c) (II) as follows:

9 **17-22.5-403.5. Special needs parole.** (3) (c) (II) At the same
10 time that the department completes the notification required by
11 subparagraph (I) of this paragraph (c), the department shall notify the
12 district attorney that prosecuted the offender if the offender is serving a
13 sentence for a conviction of a crime of violence as described in section
14 18-1.3-406, C.R.S., or a sex offense as listed in section ~~18-1.3-1004 (4)~~
15 16-22-102 (9) (j), (9) (k), (9) (l), (9) (n), (9) (o), (9) (p), (9) (q), (9) (r), or
16 (9) (s), C.R.S. A district attorney shall have thirty days after receiving
17 notification to submit a response to the department. The department shall
18 include any district attorney response in the referral to the state board of
19 parole.

20 **SECTION 22.** In Colorado Revised Statutes, 18-1.3-1003,
21 **amend** (4) as follows:

22 **18-1.3-1003. Definitions.** As used in this part 10, unless the
23 context otherwise requires:

24 (4) "Sex offender" means a person who is convicted of or pleads
25 guilty or nolo contendere to a sex offense. ~~"Sex offender" also means any~~
26 ~~person sentenced as a sex offender pursuant to section 18-1.3-1004 (4).~~

27 **SECTION 23.** In Colorado Revised Statutes, 18-1.3-1004,

1 **amend** (5) (a) as follows:

2 **18-1.3-1004. Indeterminate sentence.** (5) (a) Any sex offender
3 sentenced pursuant to subsection (1) ~~or (4)~~ of this section and convicted
4 of one or more additional crimes arising out of the same incident as the
5 sex offense shall be sentenced for the sex offense and such other crimes
6 so that the sentences are served consecutively rather than concurrently.

7 **SECTION 24.** In Colorado Revised Statutes, 18-1.3-1005,
8 **amend** (1) (c) as follows:

9 **18-1.3-1005. Parole - intensive supervision program.** (1) The
10 department shall establish an intensive supervision parole program for sex
11 offenders sentenced to incarceration and subsequently released on parole
12 pursuant to this part 10. In addition, the parole board may require a
13 person, as a condition of parole, to participate in the intensive supervision
14 parole program established pursuant to this section if the person is
15 convicted of:

16 (c) Any of the offenses specified in section ~~18-1.3-1004 (4) (b)~~
17 16-22-102 (9) (j), (9) (k), (9) (l), (9) (n), (9) (o), (9) (p), (9) (q), (9) (r), or
18 (9) (s), C.R.S.

19 **SECTION 25.** In Colorado Revised Statutes, 18-1.3-1007,
20 **amend** (1) (a) (III) as follows:

21 **18-1.3-1007. Probation - intensive supervision program.**
22 (1) (a) The judicial department shall establish an intensive supervision
23 probation program for sex offenders sentenced to probation pursuant to
24 this part 10. In addition, the court shall require a person, as a condition of
25 probation, to participate in the intensive supervision probation program
26 established pursuant to this section if the person is convicted of one of the
27 following offenses and sentenced to probation:

1 (III) Any of the offenses specified in section ~~18-1.3-1004 (4) (b)~~
2 16-22-102 (9) (j), (9) (k), (9) (l), (9) (n), (9) (o), (9) (p), (9) (q), (9) (r), or
3 (9) (s), C.R.S.;

4 **SECTION 26.** In Colorado Revised Statutes, 17-2-201, **amend**
5 (3) (h.1) (I) as follows:

6 **17-2-201. State board of parole.** (3) The chairperson, in addition
7 to other provisions of law, has the following powers and duties:

8 (h.1) To contract with qualified individuals to serve as release
9 hearing officers:

10 (I) To conduct parole application hearings for inmates convicted
11 of ~~nonviolent~~ CLASS 4, CLASS 5, OR CLASS 6 felonies who have been
12 assessed to be ~~low or very low risk~~ LESS THAN HIGH RISK by the Colorado
13 risk assessment scale developed pursuant to section 17-22.5-404 (2) (a),
14 C.R.S., pursuant to rules adopted by the parole board; and

15 **SECTION 27. Appropriation.** In addition to any other
16 appropriation, there is hereby appropriated, out of any moneys in the
17 interstate compact probation transfer cash fund created in section
18 18-1.3-204 (4) (b) (II) (A), Colorado Revised Statutes, not otherwise
19 appropriated, to the judicial department, for the fiscal year beginning July
20 1, 2012, the sum of \$93,750, or so much thereof as may be necessary, for
21 allocation to probation and related services for reimbursing law
22 enforcement agencies for the costs of returning a probationer pursuant to
23 section 18-1.3-204 (4) (b) (II) (B), Colorado Revised Statutes.

24 **SECTION 28. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.