

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

Judiciary

Finance

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
3rd Reading Unamended
April 24, 2012

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, 16-4-105, **amend** (3)
13 (e) and (3) (f) as follows:

14 **16-4-105. Selection by judge of the amount of bail and type of**
15 **bond - criteria.** (3) (e) ~~Commencing November 1, 2000~~ JULY 1, 2012,
16 each pretrial services program established pursuant to this subsection (3)
17 shall provide an annual report to the state judicial department no later
18 than November 1 of each year, regardless of whether the program existed
19 prior to May 31, 1991. The judicial department shall present an annual
20 combined report to the house and senate judiciary committees, OR ANY
21 SUCCESSOR COMMITTEES, of the general assembly. The report TO THE
22 JUDICIAL DEPARTMENT shall include, but is not limited to, the following
23 information:

24 (I) ~~The number of interviews conducted with defendants, THE~~
25 TOTAL NUMBER OF PRETRIAL ASSESSMENTS PERFORMED BY THE PROGRAM
26 AND SUBMITTED TO THE COURT;

27 (II) ~~The number and nature of BOND recommendations made THE~~

1 TOTAL NUMBER OF CLOSED CASES BY THE PROGRAM IN WHICH THE
2 DEFENDANT WAS RELEASED FROM CUSTODY AND SUPERVISED BY THE
3 PROGRAM;

4 (III) The number of defendants under pretrial release supervision
5 who failed to appear; and THE TOTAL NUMBER OF CLOSED CASES IN WHICH
6 THE DEFENDANT WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE
7 PROGRAM, AND, WHILE UNDER SUPERVISION, APPEARED FOR ALL
8 SCHEDULED COURT APPEARANCES ON THE CASE;

9 (IV) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE
10 DEFENDANT WAS RELEASED FROM CUSTODY, WAS SUPERVISED BY THE
11 PROGRAM, AND WAS NOT CHARGED WITH A NEW CRIMINAL OFFENSE THAT
12 WAS ALLEGED TO HAVE OCCURRED WHILE UNDER SUPERVISION AND THAT
13 CARRIED THE POSSIBILITY OF A SENTENCE TO JAIL OR IMPRISONMENT;

14 (V) THE TOTAL NUMBER OF CLOSED CASES IN WHICH THE
15 DEFENDANT WAS RELEASED FROM CUSTODY AND WAS SUPERVISED BY THE
16 PROGRAM, AND THE DEFENDANT'S BOND WAS NOT REVOKED BY THE COURT
17 DUE TO A VIOLATION OF ANY OTHER TERMS AND CONDITIONS OF
18 SUPERVISION; AND

19 (~~IV~~) (VI) Any additional information the state judicial department
20 may request.

21 (f) Any pretrial services program established pursuant to this
22 subsection (3) shall not be eligible for further program funding if the
23 program has failed to provide the reports required in paragraph (e) of this
24 subsection (3). FOR THE REPORTS REQUIRED IN PARAGRAPH (e) OF THIS
25 SUBSECTION (3), THE PRETRIAL SERVICES PROGRAM SHALL INCLUDE
26 INFORMATION DETAILING THE NUMBER OF PERSONS RELEASED ON A
27 COMMERCIAL SURETY BOND IN ADDITION TO PRETRIAL SUPERVISION, THE

1 NUMBER OF PERSONS RELEASED ON A CASH, PRIVATE SURETY, OR
2 PROPERTY BOND IN ADDITION TO PRETRIAL SUPERVISION, AND THE
3 NUMBER OF PERSONS RELEASED ON ANY FORM OF A PERSONAL
4 RECOGNIZANCE BOND IN ADDITION TO PRETRIAL SUPERVISION.

5 **SECTION 5.** In Colorado Revised Statutes, 16-4-201, **amend** (1)
6 (c) as follows:

7 **16-4-201. Bail after conviction.** (1) (c) ~~No~~ Bond shall NOT be
8 continued in effect following a plea of guilty or of nolo contendere or
9 following conviction unless the written consents of the sureties, if any,
10 are filed ~~of record.~~ ~~No~~ WITH THE COURT. IN THE INITIAL BOND
11 DOCUMENTS FILED WITH THE COURT, A SURETY SHALL INDICATE, IN
12 WRITING AND AT THE TIME OF THE POSTING OF BOND, IF THE SURETY
13 CONSENTS TO THE CONTINUANCE OF THE BOND THROUGH SENTENCING OF
14 THE DEFENDANT. IF THE SURETY DOES NOT PROVIDE WRITTEN CONSENT AT
15 THE TIME OF THE INITIAL POSTING OF BOND, THE SURETY **MAY** PROVIDE
16 WRITTEN CONSENT AT THE TIME OF THE PLEA OF GUILTY OR NOLO
17 CONTENDERE OR WITHIN A REASONABLE TIME THEREAFTER AS
18 DETERMINED BY THE COURT. A court shall NOT require the posting of any
19 form of bond that allows for the continuance of said bond after a plea of
20 guilty or of nolo contendere or following conviction without ~~the filing of~~
21 ~~record of~~ WITH THE COURT THE written consents of the sureties, if any.

22 **SECTION 6.** In Colorado Revised Statutes, 16-5-204, **amend** (4)
23 (a) as follows:

24 **16-5-204. Witnesses before a grand jury - procedure.**
25 (4) (a) At the option of the prosecuting attorney, a grand jury subpoena
26 may contain an advisement of rights. If the prosecuting attorney
27 determines that an advisement is necessary, the grand jury subpoena shall

1 contain the following advisement prominently displayed on the front of
2 the subpoena:

3 NOTICE

4 (I) You have the right to retain an attorney to
5 represent you and to advise you regarding your grand jury
6 appearance.

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

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

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

16 **SECTION 7.** In Colorado Revised Statutes, **amend** 16-10-105 as
17 follows:

18 **16-10-105. Alternate jurors.** The court may direct that a
19 sufficient number of jurors in addition to the regular jury be called and
20 impaneled to sit as alternate jurors. Alternate jurors in the order in which
21 they are called shall replace jurors who, prior to the time the jury retires
22 to consider its verdict, become unable or disqualified to perform their
23 duties. Alternate jurors shall be drawn in the same manner, shall have the
24 same qualifications, shall be subject to the same examination and
25 challenges, shall take the same oath, and shall have the same functions,
26 powers, facilities, and privileges as the regular jurors. An alternate juror
27 shall be discharged when the jury retires to consider its verdict or at such

1 time as determined by the court. When alternate jurors are impaneled,
2 each side is entitled to one peremptory challenge in addition to those
3 otherwise allowed by law. IN A CASE IN WHICH A CLASS 1, 2, OR 3 FELONY,
4 AS DESCRIBED IN SECTION 18-1.3-401 (1) (a) (IV) AND (1) (a) (V), C.R.S.,
5 IS CHARGED AND IN ANY CASE IN WHICH A FELONY LISTED IN SECTION
6 24-4.1-302 (1), C.R.S., IS CHARGED, THE COURT SHALL IMPANEL AT LEAST
7 ONE JUROR TO SIT AS AN ALTERNATE IF REQUESTED BY ANY PARTY.

8 **SECTION 8.** In Colorado Revised Statutes, 16-11-101.6, **amend**
9 (4) as follows:

10 **16-11-101.6. Collection of fines and fees - methods - charges**
11 **- judicial collection enhancement fund.** (4) (a) On past due orders, the
12 court may, ON ITS OWN MOTION OR THROUGH THE USE OF A COLLECTIONS
13 INVESTIGATOR, direct that a certain portion of a defendant's earnings, not
14 to exceed fifty percent, be withheld and applied to any unpaid fines or
15 fees, if such an order does not adversely impact the defendant's ability to
16 comply with other orders of the court. An attachment of earnings under
17 this section may be modified to a lesser or greater amount based upon
18 changes in a defendant's circumstances as long as the amount withheld
19 does not exceed fifty percent and may be suspended or cancelled at the
20 court's discretion. For purposes of this section, "earnings" shall have the
21 same meaning as set forth in section 13-54.5-101 (2), C.R.S., and shall
22 include profits.

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

27 (I) HAS PRIORITY OVER ANY OTHER GARNISHMENT, LIEN, OR

1 INCOME ASSIGNMENT EXCEPT FOR A WRIT FOR ARREARAGES FOR CHILD
2 SUPPORT, FOR MAINTENANCE WHEN COMBINED WITH CHILD SUPPORT, FOR
3 CHILD SUPPORT DEBTS, OR FOR MAINTENANCE OR A WRIT PREVIOUSLY
4 SERVED ON THE SAME GARNISHEE PURSUANT TO THIS SECTION; AND

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

10 **SECTION 9.** In Colorado Revised Statutes, 16-11-102, **amend**
11 (1) (b) as follows:

12 **16-11-102. Presentence or probation investigation.**

13 (1) (b) Each presentence report prepared regarding a sex offender, as
14 defined in section 16-11.7-102 (2), with respect to any offense committed
15 on or after January 1, 1996, shall contain the results of an evaluation and
16 identification conducted pursuant to article 11.7 of this title; EXCEPT
17 THAT, IF THE OFFENSE IS A MISDEMEANOR PURSUANT TO TITLE 42, C.R.S.,
18 OR THE HISTORY OF SEX-OFFENDING BEHAVIOR WAS A MISDEMEANOR SEX
19 OFFENSE COMMITTED WHEN THE DEFENDANT WAS A JUVENILE, AN
20 EVALUATION AND IDENTIFICATION CONDUCTED PURSUANT TO ARTICLE
21 11.7 OF THIS TITLE IS NOT REQUIRED BUT MAY BE ORDERED BY THE COURT.

22 In addition, the presentence report shall include, when appropriate as
23 provided in section 18-3-414.5, C.R.S., the results of the risk assessment
24 screening instrument developed pursuant to section 16-11.7-103 (4) (d).
25 Notwithstanding the provisions of subsection (4) of this section, a
26 presentence report shall be prepared for each person convicted as a sex
27 offender, and the court may not dispense with the presentence evaluation,

1 risk assessment, and report unless ~~such a report~~ AN EVALUATION AND RISK
2 ASSESSMENT has been completed within the last ~~six months~~ TWO YEARS
3 and there has been no material change that would affect the ~~report~~
4 EVALUATION AND RISK ASSESSMENT in the past ~~six months~~ TWO YEARS.

5 **SECTION 10.** In Colorado Revised Statutes, 16-18.5-105,
6 **amend** (3) (b) as follows:

7 **16-18.5-105. Monitoring - default - penalties.** (3) Whenever a
8 defendant fails to make a payment of restitution within five days after the
9 date that the payment is due pursuant to a payment schedule established
10 pursuant to this article, in addition to any other remedy, the collections
11 investigator may:

12 (b) ~~Request that the clerk of the court~~ Issue an attachment of
13 earnings requiring that a certain portion of a defendant's earnings, not to
14 exceed fifty percent, be withheld and applied to any unpaid restitution, if
15 such an attachment does not adversely impact the defendant's ability to
16 comply with other orders of the court. An attachment of earnings under
17 this paragraph (b) may be modified to a lesser or greater amount based
18 upon changes in a defendant's circumstances as long as the amount
19 withheld does not exceed fifty percent and may be suspended or cancelled
20 at the court's discretion. An attachment of earnings issued pursuant to this
21 paragraph (b) shall be enforceable in the same manner as a garnishment
22 in a civil action. For purposes of this section, "earnings" shall have the
23 same meaning as set forth for any type of garnishment in section
24 13-54.5-101, C.R.S., and shall include profits.

25 **SECTION 11.** In Colorado Revised Statutes, 18-1.3-102, **amend**
26 (1) as follows:

27 **18-1.3-102. Deferred sentencing of defendant.** (1) (a) In any

1 case in which the defendant has entered a plea of guilty, the court
2 accepting the plea has the power, with the written consent of the
3 defendant and his or her attorney of record and the district attorney, to
4 continue the case FOR THE PURPOSE OF ENTERING JUDGMENT AND
5 SENTENCE UPON THE PLEA OF GUILTY for a period not to exceed four years
6 FOR A FELONY OR TWO YEARS FOR A MISDEMEANOR OR PETTY OFFENSE OR
7 TRAFFIC OFFENSE. THE PERIOD SHALL BEGIN TO RUN from the date of entry
8 of a plea to a felony or two years from the date of entry of a plea to a
9 misdemeanor, or petty offense, or traffic offense. for the purpose of
10 entering judgment and sentence upon such plea of guilty; THAT THE
11 COURT CONTINUES THE CASE.

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

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

19 (II) UP TO TWO YEARS IF THE DEFERRED JUDGMENT IS FOR AN
20 OFFENSE LISTED IN SECTION 16-11.7-102 (3), C.R.S., GOOD CAUSE IS
21 SHOWN, AND THE DISTRICT ATTORNEY AND DEFENDANT CONSENT TO THE
22 EXTENSION.

23 **SECTION 12.** In Colorado Revised Statutes, 18-1.3-201, **add** (5)
24 as follows:

25 **18-1.3-201. Application for probation.** (5) FOR PURPOSES OF
26 PARAGRAPH (a.5) OF SUBSECTION (2) OF THIS SECTION AND PARAGRAPH (a)
27 OF SUBSECTION (2.5) OF THIS SECTION, "CONVICTION" MEANS A VERDICT

1 OF GUILTY OR THE ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE.
2 "CONVICTION" DOES NOT INCLUDE A PLEA TO A DEFERRED JUDGMENT AND
3 SENTENCE PURSUANT TO SECTION 18-1.3-102 UNTIL THE DEFERRED
4 JUDGMENT AND SENTENCE IS REVOKED.

5 **SECTION 13.** In Colorado Revised Statutes, 18-1.3-204, **amend**
6 (1.5) and (4) as follows:

7 **18-1.3-204. Conditions of probation - interstate compact**
8 **probation transfer cash fund - creation.** (1.5) If the defendant is being
9 sentenced to probation as a result of a conviction of a felony offense OR
10 A QUALIFYING MISDEMEANOR OFFENSE PURSUANT TO THE "INTERSTATE
11 COMPACT FOR ADULT OFFENDER SUPERVISION", PART 28 OF ARTICLE 60
12 OF TITLE 24, C.R.S., a condition of probation shall be that the court shall
13 require the defendant to execute or subscribe a written prior waiver of
14 extradition stating that the defendant consents to extradition to this state
15 and waives all formal proceedings in the event that he or she is arrested
16 in another state while at liberty on such bail bond and acknowledging that
17 he or she shall not be admitted to bail in any other state pending
18 extradition to this state. IF THE OFFENDER IS RETURNED TO THE STATE
19 PURSUANT TO THE "INTERSTATE COMPACT FOR ADULT OFFENDER
20 SUPERVISION", PART 28 OF ARTICLE 60 OF TITLE 24, C.R.S., A COURT MAY
21 NOT IMPOSE THE COST OF THE OFFENDER'S RETURN ON THE OFFENDER.

22 (4) (a) For good cause shown and after notice to the defendant, the
23 district attorney, and the probation officer, and after a hearing if the
24 defendant or the district attorney requests it, the judge may reduce or
25 increase the term of probation or alter the conditions or impose new
26 conditions.

27 (b) (I) IF AN OFFENDER APPLIES TO TRANSFER HIS OR HER

1 PROBATION TO ANOTHER STATE, THE OFFENDER SHALL PAY A FILING FEE
2 OF ONE HUNDRED DOLLARS, UNLESS THE OFFENDER IS INDIGENT.

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

19 (B) ON OR AFTER JANUARY 1, 2013, A LAW ENFORCEMENT AGENCY
20 MAY SUBMIT TO THE STATE COURT ADMINISTRATOR A REQUEST TO BE
21 REIMBURSED FOR THE COSTS OF RETURNING A PROBATIONER PURSUANT TO
22 THE "INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION", PART
23 28 OF ARTICLE 60 OF TITLE 24, C.R.S., INCURRED ON OR AFTER JANUARY
24 1, 2013. THE STATE COURT ADMINISTRATOR SHALL, TO THE EXTENT THAT
25 FUNDS ARE AVAILABLE, REIMBURSE REASONABLE COSTS INCURRED BY A
26 LAW ENFORCEMENT AGENCY FOR THE RETURN OF THE PROBATIONER.

27 **SECTION 14.** In Colorado Revised Statutes, 18-1.3-1004, **repeal**

1 (4) as follows:

2 **18-1.3-1004. Indeterminate sentence.** ~~(4) (a) The court may~~
3 ~~sentence any person pursuant to the provisions of this section if:~~

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

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

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

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

15 ~~(II) Sexual exploitation of children, as described in section~~
16 ~~18-6-403;~~

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

19 ~~(IV) Soliciting for child prostitution, as described in section~~
20 ~~18-7-402;~~

21 ~~(V) Pandering of a child, as described in section 18-7-403;~~

22 ~~(VI) Procurement of a child, as described in section 18-7-403.5;~~

23 ~~(VII) Keeping a place of child prostitution, as described in section~~
24 ~~18-7-404;~~

25 ~~(VIII) Pimping of a child, as described in section 18-7-405;~~

26 ~~(IX) Inducement of child prostitution, as described in section~~
27 ~~18-7-405.5.~~

1 ~~(c) Any person sentenced as a sex offender pursuant to this~~
2 ~~subsection (4) shall be subject to the provisions of this part 10.~~

3 **SECTION 15.** In Colorado Revised Statutes, 18-8-104, **amend**
4 (2) as follows:

5 **18-8-104. Obstructing a peace officer, firefighter, emergency**
6 **medical services provider, rescue specialist, or volunteer.** (2) It is ~~no~~
7 NOT A defense to a prosecution under this section that the peace officer
8 was acting in an illegal manner, if he OR SHE was acting under color of his
9 OR HER official authority. ~~as defined in section 18-8-103 (2)~~ A PEACE
10 OFFICER ACTS "UNDER COLOR OF HIS OR HER OFFICIAL AUTHORITY" IF, IN
11 THE REGULAR COURSE OF ASSIGNED DUTIES, HE OR SHE MAKES A
12 JUDGMENT IN GOOD FAITH BASED ON SURROUNDING FACTS AND
13 CIRCUMSTANCES THAT HE OR SHE MUST ACT TO ENFORCE THE LAW OR
14 PRESERVE THE PEACE.

15 **SECTION 16.** In Colorado Revised Statutes, 18-13-122, **amend**
16 (10) as follows:

17 **18-13-122. Illegal possession or consumption of ethyl alcohol**
18 **by an underage person - definitions - adolescent substance abuse**
19 **prevention and treatment fund - legislative declaration.** (10) Upon the
20 expiration of one year from the date of a conviction, DISMISSAL,
21 COMPLETION OF DEFERRED JUDGMENT, OR CONCLUSION OF DEFERRED
22 PROSECUTION for a violation of subsection (2) of this section, ~~any~~ THE
23 person convicted of such violation may petition the court in which the
24 conviction was ~~entered~~ ASSIGNED for an order sealing the record of such
25 conviction. The court shall grant such petition if the petitioner has not
26 been arrested for, charged with, or convicted of any felony, misdemeanor,
27 or petty offense during the period of one year following the date of such

1 petitioner's conviction for a violation of subsection (2) of this section.

2 **SECTION 17.** In Colorado Revised Statutes, 18-21-103, **amend**
3 (3) as follows:

4 **18-21-103. Source of revenues - allocation of moneys - sex**
5 **offender surcharge fund - creation.** (3) There is hereby created in the
6 state treasury a sex offender surcharge fund which shall consist of moneys
7 received by the state treasurer pursuant to paragraph (b) of subsection (2)
8 of this section. ~~In accordance with section 24-36-114, C.R.S., all interest~~
9 ~~derived from the deposit and investment of this fund shall be credited to~~
10 ~~the general fund.~~ THE STATE TREASURER MAY INVEST ANY MONEYS IN THE
11 FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION AS PROVIDED BY
12 LAW. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME
13 DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND TO
14 THE FUND. Any moneys not appropriated by the general assembly shall
15 remain in the sex offender surcharge fund and shall not be transferred or
16 revert to the general fund of the state at the end of any fiscal year. All
17 moneys in the fund shall be subject to annual appropriation by the general
18 assembly to the judicial department, the department of corrections, the
19 division of criminal justice of the department of public safety, and the
20 department of human services, after consideration of the plan developed
21 pursuant to section 16-11.7-103 (4) (c), C.R.S., to cover the direct and
22 indirect costs associated with the evaluation, identification, and treatment
23 and the continued monitoring of sex offenders.

24 **SECTION 18.** In Colorado Revised Statutes, 19-2-709, **amend**
25 (1); and **add** (1.5) as follows:

26 **19-2-709. Deferral of adjudication.** (1) EXCEPT AS OTHERWISE
27 PROVIDED IN SUBSECTION (1.5) OF THIS SECTION, in any case in which the

1 juvenile has agreed with the district attorney to enter a plea of guilty, the
2 court, with the consent of the juvenile and the district attorney, upon
3 accepting the guilty plea AND ENTERING AN ORDER DEFERRING
4 ADJUDICATION, may continue the case for a period not to exceed one year
5 from the date of entry of the ~~plea~~ ORDER DEFERRING ADJUDICATION. The
6 court may continue the case for an additional one-year period for good
7 cause.

8 (1.5) IN A CASE IN WHICH THE JUVENILE HAS AGREED WITH THE
9 DISTRICT ATTORNEY TO ENTER A PLEA OF GUILTY, RESULTING IN A
10 CONVICTION AS DEFINED IN SECTION 16-22-102 (3), C.R.S., FOR
11 UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9),
12 C.R.S., THE COURT, WITH THE CONSENT OF THE JUVENILE AND DISTRICT
13 ATTORNEY, UPON ACCEPTING THE GUILTY PLEA AND ENTERING AN ORDER
14 DEFERRING ADJUDICATION, MAY CONTINUE THE CASE FOR A PERIOD OF
15 TIME NOT TO EXCEED TWO YEARS FROM THE DATE OF THE ORDER
16 DEFERRING ADJUDICATION. UPON A SHOWING OF GOOD CAUSE, THE COURT
17 MAY CONTINUE THE CASE FOR ADDITIONAL TIME, NOT TO EXCEED FIVE
18 YEARS FROM THE DATE OF THE ORDER DEFERRING ADJUDICATION.

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

21 **19-2-907. Sentencing schedule - options.** (5) (a) Except as
22 otherwise provided in section 19-2-601 for an aggravated juvenile
23 offender, if the court finds that placement out of the home is necessary
24 and is in the best interests of the juvenile and the community, the court
25 shall place the juvenile, following the criteria established pursuant to
26 section 19-2-212, in the facility or setting that most appropriately meets
27 the needs of the juvenile, the juvenile's family, and the community. In

1 making its decision as to proper placement, the court shall utilize the
2 evaluation for placement prepared pursuant to section 19-1-107 or the
3 evaluation for placement required by section 19-1-115 (8) (e). Any
4 placement recommendation in the evaluation prepared by the county
5 department of social services shall be accorded great weight as the
6 placement that most appropriately meets the needs of the juvenile, the
7 juvenile's family, and the community. ~~Any deviation from such~~
8 ~~recommendation shall be supported by specific findings on the record of~~
9 ~~the case detailing the specific extraordinary circumstances that constitute~~
10 ~~the reasons for deviations from the placement recommendation of the~~
11 ~~county department of social services.~~ Such recommendation prepared by
12 the county department of social services shall set forth specific facts and
13 reasons for the placement recommendation. If the evaluation for
14 placement recommends placement in a facility located in Colorado that
15 can provide appropriate treatment and that will accept the juvenile, then
16 the court shall not place the juvenile in a facility outside this state. If the
17 court places the juvenile in a facility located in Colorado other than one
18 recommended by the evaluation for placement, in a facility located
19 outside this state in accordance with the evaluation for placement, or in
20 a facility in which the average monthly cost exceeds the amount
21 established by the general assembly in the general appropriation bill, it
22 shall make specific findings of fact, including the monthly cost of the
23 facility in which such juvenile is placed, relating to its placement
24 decision. A copy of such findings shall be sent to the chief justice of the
25 supreme court, who shall report monthly to the joint budget committee
26 and annually to the house and senate committees on health and human
27 services, or any successor committees, on such placements. If the court

1 commits the juvenile to the department of human services, it shall not
2 make a specific placement, nor shall the provisions of this subsection (5)
3 relating to specific findings of fact be applicable.

4 **SECTION 20.** In Colorado Revised Statutes, 25.5-6-206, **amend**
5 (8) (a) and (8) (d) as follows:

6 **25.5-6-206. Personal needs benefits - amount - patient**
7 **personal needs trust fund required - funeral and burial expenses -**
8 **penalty for illegal retention and use.** (8) (a) It is unlawful for any
9 person to knowingly fail to deposit personal needs funds received from
10 a patient or from the state department for a patient's personal needs into
11 the patients' personal needs trust fund within sixty days after the receipt
12 of such moneys or to knowingly apply, spend, commit, pledge, or
13 otherwise use a patient personal needs trust fund, or any other moneys
14 paid by a patient or the state department for patient personal needs, for
15 any purpose other than the personal needs of the patient to purchase
16 necessary clothing, incidentals, or other items of personal needs that are
17 not reimbursed by any federal or state program. Deposit or use of
18 personal needs funds, including the use of a petty cash fund for personal
19 needs purposes, is not a violation of this section if such deposit or use is
20 in substantial compliance with applicable rules of the state department.
21 ~~nor shall~~ Sums later ordered repaid to the patients' personal needs trust
22 fund as a result of an audit adjustment RELATED TO SIMPLE ACCOUNTING
23 ERRORS SUCH AS DATA ENTRY ERRORS, MATHEMATICAL ERRORS, OR
24 POSTING ERRORS or a dispute related to a proration of patient payment ~~be~~
25 ~~determined to constitute~~ IS NOT a violation of this section.

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

27 (I) A ~~class 3~~ CLASS 2 misdemeanor, if the amount involved is less

1 than ~~one~~ FIVE hundred dollars;

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

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

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

9 **SECTION 21.** In Colorado Revised Statutes, 42-4-1307, **amend**
10 (5) (a) (IV) and (6) (a) (IV) as follows:

11 **42-4-1307. Penalties for traffic offenses involving alcohol and**
12 **drugs - repeal.** (5) **Second offenses.** (a) Except as otherwise provided
13 in subsection (6) of this section, a person who is convicted of DUI, DUI
14 per se, DWAI, or habitual user who, at the time of sentencing, has a prior
15 conviction of DUI, DUI per se, DWAI, habitual user, vehicular homicide
16 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to
17 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked
18 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or
19 driving while the person's driver's license was under restraint pursuant to
20 section 42-2-138 (1) (d), shall be punished by:

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

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

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

15 (IV) A period of probation of at least two years, which period
16 shall begin immediately upon the commencement of any part of the
17 sentence that is imposed upon the person pursuant to this section, and a
18 suspended sentence of imprisonment in the county jail for one year, as
19 described in subsection (7) of this section; EXCEPT THAT THE COURT
20 SHALL NOT SENTENCE THE DEFENDANT TO PROBATION IF THE DEFENDANT
21 IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS, BUT SHALL STILL
22 SENTENCE THE DEFENDANT TO THE PROVISIONS OF PARAGRAPH (b) OF
23 SUBSECTION (7) OF THIS SECTION. THE DEFENDANT SHALL COMPLETE ALL
24 COURT-ORDERED PROGRAMS PURSUANT TO PARAGRAPH (b) OF
25 SUBSECTION (7) OF THIS SECTION BEFORE THE COMPLETION OF HIS OR HER
26 PERIOD OF PAROLE.

27 **SECTION 22.** In Colorado Revised Statutes, 17-22.5-403.5,

1 **amend** (3) (c) (II) as follows:

2 **17-22.5-403.5. Special needs parole.** (3) (c) (II) At the same
3 time that the department completes the notification required by
4 subparagraph (I) of this paragraph (c), the department shall notify the
5 district attorney that prosecuted the offender if the offender is serving a
6 sentence for a conviction of a crime of violence as described in section
7 18-1.3-406, C.R.S., or a sex offense as listed in section ~~18-1.3-1004 (4)~~
8 16-22-102 (9) (j), (9) (k), (9) (l), (9) (n), (9) (o), (9) (p), (9) (q), (9) (r), or
9 (9) (s), C.R.S. A district attorney shall have thirty days after receiving
10 notification to submit a response to the department. The department shall
11 include any district attorney response in the referral to the state board of
12 parole.

13 **SECTION 23.** In Colorado Revised Statutes, 18-1.3-1003,
14 **amend** (4) as follows:

15 **18-1.3-1003. Definitions.** As used in this part 10, unless the
16 context otherwise requires:

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

20 **SECTION 24.** In Colorado Revised Statutes, 18-1.3-1004,
21 **amend** (5) (a) as follows:

22 **18-1.3-1004. Indeterminate sentence.** (5) (a) Any sex offender
23 sentenced pursuant to subsection (1) ~~or (4)~~ of this section and convicted
24 of one or more additional crimes arising out of the same incident as the
25 sex offense shall be sentenced for the sex offense and such other crimes
26 so that the sentences are served consecutively rather than concurrently.

27 **SECTION 25.** In Colorado Revised Statutes, 18-1.3-1005,

1 **amend** (1) (c) as follows:

2 **18-1.3-1005. Parole - intensive supervision program.** (1) The
3 department shall establish an intensive supervision parole program for sex
4 offenders sentenced to incarceration and subsequently released on parole
5 pursuant to this part 10. In addition, the parole board may require a
6 person, as a condition of parole, to participate in the intensive supervision
7 parole program established pursuant to this section if the person is
8 convicted of:

9 (c) Any of the offenses specified in section ~~18-1.3-1004 (4) (b)~~
10 16-22-102 (9) (j), (9) (k), (9) (l), (9) (n), (9) (o), (9) (p), (9) (q), (9) (r), or
11 (9) (s), C.R.S.

12 **SECTION 26.** In Colorado Revised Statutes, 18-1.3-1007,
13 **amend** (1) (a) (III) as follows:

14 **18-1.3-1007. Probation - intensive supervision program.**
15 (1) (a) The judicial department shall establish an intensive supervision
16 probation program for sex offenders sentenced to probation pursuant to
17 this part 10. In addition, the court shall require a person, as a condition of
18 probation, to participate in the intensive supervision probation program
19 established pursuant to this section if the person is convicted of one of the
20 following offenses and sentenced to probation:

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

24 **SECTION 27.** In Colorado Revised Statutes, 17-2-201, **amend**
25 (3) (h.1) (I) as follows:

26 **17-2-201. State board of parole.** (3) The chairperson, in addition
27 to other provisions of law, has the following powers and duties:

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

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

8 **SECTION 28. Appropriation.** In addition to any other
9 appropriation, there is hereby appropriated, out of any moneys in the
10 interstate compact probation transfer cash fund created in section
11 18-1.3-204 (4) (b) (II) (A), Colorado Revised Statutes, not otherwise
12 appropriated, to the judicial department, for the fiscal year beginning July
13 1, 2012, the sum of \$93,750, or so much thereof as may be necessary, for
14 allocation to probation and related services for reimbursing law
15 enforcement agencies for the costs of returning a probationer pursuant to
16 section 18-1.3-204 (4) (b) (II) (B), Colorado Revised Statutes.

17 **SECTION 29. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.