

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0397.01 Michael Dohr x4347

HOUSE BILL 16-1027

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HOUSE SPONSORSHIP

Danielson,

SENATE SPONSORSHIP

(None),

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING DEPOSITIONS IN CRIMINAL CASES IN WHICH AN AT-RISK  
102 PERSON MAY NOT BE AVAILABLE FOR TRIAL.

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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>.)*

Under current law, the prosecution may request to take the deposition of an at-risk adult victim or witness if the victim or witness may be unavailable at trial. The bill allows the prosecution to make the request for both at-risk adults and at-risk elders. If the motion relates to an at-risk elder, the court shall schedule the deposition. If the motion relates to an at-risk adult, there is a rebuttable presumption that the

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.*

deposition should be taken to prevent injustice. The court may deny the motion if it finds that granting the motion will not prevent injustice.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 18-6.5-103.5  
3 as follows:

4 **18-6.5-103.5. Video tape depositions - at-risk adult victims and**  
5 **witnesses.** (1) In any case in which a defendant is charged with a crime  
6 against an at-risk adult, or in any case involving a victim or witness who  
7 is an at-risk adult, the prosecution may file a motion with the court at any  
8 time prior to commencement of the trial for an order that a deposition be  
9 taken of the testimony of the victim or witness and that the deposition be  
10 recorded and preserved ~~on video tape~~ ON A VIDEO IMAGING FORMAT.

11 (2) The prosecution shall file a motion requesting a ~~videotaped~~  
12 RECORDED deposition at least three days prior to the taking of the  
13 deposition. The defendant shall receive reasonable notice of the taking of  
14 the deposition. The defendant shall have the right to be present and to be  
15 represented by counsel at the deposition.

16 (3) (a) (I) ~~Upon timely receipt of the motion, the court shall make~~  
17 ~~a preliminary finding regarding whether, at the time of trial, the victim or~~  
18 ~~witness is likely to be medically unavailable or otherwise unavailable~~  
19 ~~within the meaning of rule 804 (a) of the Colorado rules of evidence.~~  
20 ~~Such finding, at a minimum, shall be based on recommendations from the~~  
21 ~~victim's or witness' physician or any other person having direct contact~~  
22 ~~with the victim or witness, whose recommendations are based on specific~~  
23 ~~behavioral indicators exhibited by the victim or witness~~ UPON RECEIPT OF  
24 THE MOTION, THE COURT SHALL SCHEDULE THE DEPOSITION WITHOUT  
25 FURTHER FINDINGS IF THE VICTIM OR WITNESS IS AN AT-RISK ELDER.

1           (II) EXCEPT FOR DEPOSITIONS OF AT-RISK ELDERS AS DESCRIBED  
2 IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), UPON THE FILING OF THE  
3 MOTION BY THE PROSECUTION STATING REASONS THE VICTIM OR WITNESS  
4 MAY BE UNAVAILABLE AT TRIAL, THE COURT MAY ORDER A DEPOSITION  
5 FOR AN AT-RISK ADULT VICTIM OR WITNESS. FILING THE MOTION CREATES  
6 A REBUTTABLE PRESUMPTION THAT A DEPOSITION SHOULD BE TAKEN TO  
7 PREVENT INJUSTICE. THE COURT MAY, BUT IS NOT REQUIRED TO, ACCEPT  
8 EVIDENCE IN SUPPORT OF, AND IN OPPOSITION TO, THE MOTION FOR A  
9 DEPOSITION. THE COURT MAY DENY THE MOTION FOR DEPOSITION UPON A  
10 FINDING THAT GRANTING THE MOTION WILL NOT PREVENT INJUSTICE. THE  
11 PROSECUTION MAY FILE A NEW REQUEST FOR A DEPOSITION IF  
12 CIRCUMSTANCES CHANGE PRIOR TO TRIAL.

13           (b) ~~If the court so finds, it shall order that~~ The deposition MUST be  
14 taken, preserved on a video imaging format, and conducted pursuant to  
15 rule 15 (d) of the Colorado rules of criminal procedure; except that after  
16 consultation with the chief judge of the judicial district, the trial court  
17 may appoint an active or senior district or county court judge to serve in  
18 its place and preside over all aspects of the taking of the deposition. After  
19 the deposition is taken, the prosecution shall transmit the ~~video-tape~~  
20 RECORDING to the clerk of the court in which the action is pending.

21           (4) If at the time of trial the court finds that the victim or witness  
22 is medically unavailable or otherwise unavailable within the meaning of  
23 rule 804 (a) of the Colorado rules of evidence, the court may admit the  
24 ~~video-tape~~ RECORDING of the victim's or witness' deposition as former  
25 testimony under rule 804 (b) (1) of the Colorado rules of evidence.

26           **SECTION 2. Effective date - applicability.** This act takes effect  
27 July 1, 2016, and applies to cases pending on or after said date.

1           **SECTION 3. Safety clause.** The general assembly hereby finds,  
2 determines, and declares that this act is necessary for the immediate  
3 preservation of the public peace, health, and safety.