

CHAPTER 297

CRIMINAL LAW AND PROCEDURE

SENATE BILL 16-019

BY SENATOR(S) Cooke, Baumgardner, Marble, Martinez Humenik, Neville T., Roberts, Tate, Todd, Woods;
also REPRESENTATIVE(S) Saine and Foote, Conti, Fields, Kraft-Tharp, Moreno, Ryden.

AN ACT

CONCERNING A REQUIREMENT THAT COURT-ORDERED MENTAL CONDITION EXAMINATIONS BE RECORDED, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 16-8-106, **amend** (1) as follows:

16-8-106. Examinations and report. (1) (a) All examinations ordered by the court in criminal cases shall be accomplished by the entry of an order of the court specifying the place where such examination is to be conducted and the period of time allocated for such examination. The defendant may be committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo, the place where he or she is in custody, or such other public institution designated by the court. In determining the place where such examination is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. The defendant shall be observed and examined by one or more psychiatrists or forensic psychologists during such period as the court directs. For good cause shown, upon motion of the prosecution or defendant, or upon the court's own motion, the court may order such further or other examination as is advisable under the circumstances. Nothing in this section shall abridge the right of the defendant to procure an examination as provided in section 16-8-108.

(b) AN INTERVIEW CONDUCTED IN ANY CASE THAT INCLUDES A CLASS 1 OR CLASS 2 FELONY CHARGE OR A FELONY SEX OFFENSE CHARGE DESCRIBED IN SECTION 18-3-402, 18-3-404, 18-3-405, OR 18-3-405.5, C.R.S., PURSUANT TO THIS SECTION MUST BE VIDEO AND AUDIO RECORDED AND PRESERVED. THE COURT SHALL ADVISE THE DEFENDANT THAT ANY EXAMINATION WITH A PSYCHIATRIST OR FORENSIC

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

PSYCHOLOGIST MAY BE VIDEO AND AUDIO RECORDED. A COPY OF THE RECORDING MUST BE PROVIDED TO ALL PARTIES AND THE COURT WITH THE EXAMINATION REPORT. ANY JAIL OR OTHER FACILITY WHERE THE COURT ORDERS THE EXAMINATION TO TAKE PLACE MUST PERMIT THE RECORDING TO OCCUR AND MUST PROVIDE THE SPACE AND EQUIPMENT NECESSARY FOR SUCH RECORDING. IF SPACE AND EQUIPMENT ARE NOT AVAILABLE, THE SHERIFF OR FACILITY DIRECTOR SHALL ATTEMPT TO COORDINATE A LOCATION AND THE AVAILABILITY OF EQUIPMENT WITH THE COURT, WHICH MAY CONSULT WITH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL FOR AN AGREED UPON LOCATION. IF NO AGREEMENT IS REACHED, AND UPON THE REQUEST OF EITHER THE DEFENSE COUNSEL OR DISTRICT ATTORNEY, THE COURT SHALL ORDER THE LOCATION OF THE EXAMINATION WHICH MAY INCLUDE THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

(c) (I) PRIOR TO OR DURING ANY EXAMINATION REQUIRED BY THIS SECTION, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ASSESS WHETHER THE RECORDING OF THE EXAMINATION IS LIKELY TO CAUSE OR IS CAUSING MENTAL OR PHYSICAL HARM TO THE DEFENDANT OR OTHERS OR WILL MAKE THE EXAMINATION NOT USEFUL TO THE EXPERT FORENSIC OPINION. IF SUCH A DETERMINATION IS MADE AND DOCUMENTED CONTEMPORANEOUSLY IN WRITING, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL NOT RECORD THE EXAMINATION OR SHALL CEASE RECORDING THE EXAMINATION, AND THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ADVISE THE COURT AND THE PARTIES OF THIS DETERMINATION AND THE REASONS THEREFORE IN A WRITTEN REPORT TO THE COURT. IF ONLY A PARTIAL RECORDING IS MADE, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL PROVIDE THE PARTIAL RECORDING TO THE COURT AND THE PARTIES, AND THE PARTIAL RECORDING MAY BE USED BY ANY PSYCHIATRIST OR FORENSIC PSYCHOLOGIST IN FORMING AN OPINION, SUBMITTING A REPORT, OR TESTIFYING ON THE ISSUE OF THE DEFENDANT'S MENTAL HEALTH.

(II) IF THE EXAMINATION IS NOT RECORDED IN WHOLE OR IN PART, THE WRITTEN REPORT EXPLAINING THE DECISION NOT TO RECORD THE EXAMINATION IS ADMISSIBLE AS EVIDENCE, AND, AT THE REQUEST OF EITHER PARTY, THE COURT SHALL INSTRUCT THE JURY THAT FAILURE TO RECORD THE EXAMINATION MAY BE CONSIDERED BY THE JURY IN DETERMINING THE WEIGHT TO AFFORD THE EXPERT WITNESS TESTIMONY.

(III) THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST DOES NOT NEED TO RECORD THE ADMINISTRATION OF PSYCHOMETRIC TESTING THAT INVOLVES THE USE OF COPYRIGHTED MATERIAL.

(d) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF ANY RECORDING OR PARTIAL RECORDING, IN WHOLE OR IN PART, SUBJECT TO ALL AVAILABLE CONSTITUTIONAL AND EVIDENTIARY OBJECTIONS.

SECTION 2. In Colorado Revised Statutes, 16-8-108, **amend** (1) as follows:

16-8-108. Examination at instance of defendant. (1) (a) If the defendant wishes to be examined by a psychiatrist, psychologist, or other expert of his own choice in connection with any proceeding under this article, the court, upon timely motion, shall order that the examiner chosen by the defendant be given reasonable opportunity to conduct the examination. AN INTERVIEW CONDUCTED PURSUANT TO A COURT ORDER UNDER THIS SECTION MUST BE VIDEO AND AUDIO RECORDED AND

PRESERVED. THE COURT SHALL ADVISE THE DEFENDANT THAT ANY EXAMINATION WITH A PSYCHIATRIST OR FORENSIC PSYCHOLOGIST MAY BE AUDIO AND VIDEO RECORDED. A COPY OF THE RECORDING MUST BE PROVIDED TO THE PROSECUTION WITH THE EXAMINATION REPORT. ANY JAIL OR OTHER FACILITY WHERE THE COURT ORDERS THE EXAMINATION TO TAKE PLACE MUST PERMIT THE RECORDING TO OCCUR AND MUST PROVIDE THE SPACE AND EQUIPMENT NECESSARY FOR SUCH RECORDING, IF AVAILABLE. IF SPACE AND EQUIPMENT ARE NOT AVAILABLE, THE SHERIFF OR FACILITY DIRECTOR SHALL ATTEMPT TO COORDINATE A LOCATION AND THE AVAILABILITY OF EQUIPMENT WITH THE COURT, WHICH MAY CONSULT WITH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL FOR AN AGREED UPON LOCATION. IF NO AGREEMENT IS REACHED, AND UPON THE REQUEST OF EITHER THE DEFENSE COUNSEL OR DISTRICT ATTORNEY, THE COURT SHALL ORDER THE LOCATION OF THE EXAMINATION WHICH MAY INCLUDE THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

(b) PRIOR TO OR DURING ANY EXAMINATION REQUIRED BY THIS SECTION, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ASSESS WHETHER THE RECORDING OF THE EXAMINATION IS LIKELY TO CAUSE OR IS CAUSING MENTAL OR PHYSICAL HARM TO THE DEFENDANT OR OTHERS. IF SUCH A DETERMINATION IS MADE AND DOCUMENTED CONTEMPORANEOUSLY IN WRITING, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL NOT RECORD THE EXAMINATION OR SHALL CEASE RECORDING THE EXAMINATION, AND THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ADVISE THE COURT AND THE PARTIES OF THIS DETERMINATION AND THE REASONS THEREFORE IN A WRITTEN REPORT TO THE COURT. IF ONLY A PARTIAL RECORDING IS MADE, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL PROVIDE THE PARTIAL RECORDING TO THE COURT AND THE PARTIES, AND THE PARTIAL RECORDING MAY BE USED BY ANY PSYCHIATRIST OR FORENSIC PSYCHOLOGIST IN FORMING AN OPINION, SUBMITTING A REPORT, OR TESTIFYING ON THE ISSUE OF THE DEFENDANT'S MENTAL HEALTH.

(c) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF ANY RECORDING OR PARTIAL RECORDING, IN WHOLE OR IN PART, SUBJECT TO ALL AVAILABLE CONSTITUTIONAL AND EVIDENTIARY OBJECTIONS.

SECTION 3. Appropriation. (1) For the 2016-17 state fiscal year, \$62,831 is appropriated to the department of human services. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$18,292 for use by the mental health institute at Pueblo for personal services, which amount is based on an assumption that the institute will require an additional 0.4 FTE;

(b) \$2,630 for use by the mental health institute at Pueblo for operating expenses;

(c) \$4,703 for use by the mental health institute at Pueblo for capital outlay; and

(d) \$37,206 for use by the office of operations for operating expenses.

SECTION 4. Effective date - applicability. This act takes effect January 1, 2017, and applies to court-ordered mental condition examinations conducted on or

after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 10, 2016