

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 16-0262.01 Michael Dohr x4347

SENATE BILL 16-019

SENATE SPONSORSHIP

Cooke,

HOUSE SPONSORSHIP

Saine and Foote,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT COURT-ORDERED MENTAL**
102 **CONDITION EXAMINATIONS BE RECORDED, AND, IN CONNECTION**
103 **THEREWITH, 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/bills summaries>.)

The bill requires a court-ordered mental condition examination to be video and audio recorded. A copy of the recording must be included with the evaluator's report.

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.

SENATE
Amended 2nd Reading
May 2, 2016

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

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

4 **16-8-106. Examinations and report.** (1) (a) All examinations
5 ordered by the court in criminal cases shall be accomplished by the entry
6 of an order of the court specifying the place where such examination is
7 to be conducted and the period of time allocated for such examination.
8 The defendant may be committed for such examination to the Colorado
9 psychiatric hospital in Denver, the Colorado mental health institute at
10 Pueblo, the place where he or she is in custody, or such other public
11 institution designated by the court. In determining the place where such
12 examination is to be conducted, the court shall give priority to the place
13 where the defendant is in custody, unless the nature and circumstances of
14 the examination require designation of a different facility. The defendant
15 shall be observed and examined by one or more psychiatrists or forensic
16 psychologists during such period as the court directs. For good cause
17 shown, upon motion of the prosecution or defendant, or upon the court's
18 own motion, the court may order such further or other examination as is
19 advisable under the circumstances. Nothing in this section shall abridge
20 the right of the defendant to procure an examination as provided in
21 section 16-8-108.

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

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

14 (c) (I) PRIOR TO OR DURING ANY EXAMINATION REQUIRED BY THIS
15 SECTION, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ASSESS
16 WHETHER THE RECORDING OF THE EXAMINATION IS LIKELY TO CAUSE OR
17 IS CAUSING MENTAL OR PHYSICAL HARM TO THE DEFENDANT OR OTHERS
18 OR WILL MAKE THE EXAMINATION NOT USEFUL TO THE EXPERT FORENSIC
19 OPINION. IF SUCH A DETERMINATION IS MADE AND DOCUMENTED
20 CONTEMPORANEOUSLY IN WRITING, THE PSYCHIATRIST OR FORENSIC
21 PSYCHOLOGIST SHALL NOT RECORD THE EXAMINATION OR SHALL CEASE
22 RECORDING THE EXAMINATION, AND THE PSYCHIATRIST OR FORENSIC
23 PSYCHOLOGIST SHALL ADVISE THE COURT AND THE PARTIES OF THIS
24 DETERMINATION AND THE REASONS THEREFORE IN A WRITTEN REPORT TO
25 THE COURT. IF ONLY A PARTIAL RECORDING IS MADE, THE PSYCHIATRIST
26 OR FORENSIC PSYCHOLOGIST SHALL PROVIDE THE PARTIAL RECORDING TO
27 THE COURT AND THE PARTIES, AND THE PARTIAL RECORDING MAY BE USED

1 BY ANY PSYCHIATRIST OR FORENSIC PSYCHOLOGIST IN FORMING AN
2 OPINION, SUBMITTING A REPORT, OR TESTIFYING ON THE ISSUE OF THE
3 DEFENDANT'S MENTAL HEALTH.

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

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

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

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

18 **16-8-108. Examination at instance of defendant.** (1) (a) If the
19 defendant wishes to be examined by a psychiatrist, psychologist, or other
20 expert of his own choice in connection with any proceeding under this
21 article, the court, upon timely motion, shall order that the examiner
22 chosen by the defendant be given reasonable opportunity to conduct the
23 examination. AN INTERVIEW CONDUCTED PURSUANT TO A COURT ORDER
24 UNDER THIS SECTION MUST BE VIDEO AND AUDIO RECORDED AND
25 PRESERVED. THE COURT SHALL ADVISE THE DEFENDANT THAT ANY
26 EXAMINATION WITH A PSYCHIATRIST OR FORENSIC PSYCHOLOGIST MAY BE
27 AUDIO AND VIDEO RECORDED. A COPY OF THE RECORDING MUST BE

1 PROVIDED TO THE PROSECUTION WITH THE EXAMINATION REPORT. ANY
2 JAIL OR OTHER FACILITY WHERE THE COURT ORDERS THE EXAMINATION TO
3 TAKE PLACE MUST PERMIT THE RECORDING TO OCCUR AND MUST PROVIDE
4 THE SPACE AND EQUIPMENT NECESSARY FOR SUCH RECORDING, IF
5 AVAILABLE. IF SPACE AND EQUIPMENT ARE NOT AVAILABLE, THE SHERIFF
6 OR FACILITY DIRECTOR SHALL ATTEMPT TO COORDINATE A LOCATION AND
7 THE AVAILABILITY OF EQUIPMENT WITH THE COURT, WHICH MAY CONSULT
8 WITH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL FOR AN AGREED
9 UPON LOCATION. IF NO AGREEMENT IS REACHED, AND UPON THE REQUEST
10 OF EITHER THE DEFENSE COUNSEL OR DISTRICT ATTORNEY, THE COURT
11 SHALL ORDER THE LOCATION OF THE EXAMINATION WHICH MAY INCLUDE
12 THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

13 (b) PRIOR TO OR DURING ANY EXAMINATION REQUIRED BY THIS
14 SECTION, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ASSESS
15 WHETHER THE RECORDING OF THE EXAMINATION IS LIKELY TO CAUSE OR
16 IS CAUSING MENTAL OR PHYSICAL HARM TO THE DEFENDANT OR OTHERS.
17 IF SUCH A DETERMINATION IS MADE AND DOCUMENTED
18 CONTEMPORANEOUSLY IN WRITING, THE PSYCHIATRIST OR FORENSIC
19 PSYCHOLOGIST SHALL NOT RECORD THE EXAMINATION OR SHALL CEASE
20 RECORDING THE EXAMINATION, AND THE PSYCHIATRIST OR FORENSIC
21 PSYCHOLOGIST SHALL ADVISE THE COURT AND THE PARTIES OF THIS
22 DETERMINATION AND THE REASONS THEREFORE IN A WRITTEN REPORT TO
23 THE COURT. IF ONLY A PARTIAL RECORDING IS MADE, THE PSYCHIATRIST
24 OR FORENSIC PSYCHOLOGIST SHALL PROVIDE THE PARTIAL RECORDING TO
25 THE COURT AND THE PARTIES, AND THE PARTIAL RECORDING MAY BE USED
26 BY ANY PSYCHIATRIST OR FORENSIC PSYCHOLOGIST IN FORMING AN
27 OPINION, SUBMITTING A REPORT, OR TESTIFYING ON THE ISSUE OF THE

1 DEFENDANT'S MENTAL HEALTH.

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

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

9 (a) \$18,292 for use by the mental health institute at Pueblo for
10 personal services, which amount is based on an assumption that the
11 institute will require an additional 0.8 FTE;

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

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

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

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

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