

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**PREAMENDED**

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

LLS NO. 16-0262.01 Michael Dohr x4347

**SENATE BILL 16-019**

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**SENATE SPONSORSHIP**

**Cooke,**

**HOUSE SPONSORSHIP**

**Saine and Foote,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING A REQUIREMENT THAT COURT-ORDERED MENTAL**  
102 **CONDITION EXAMINATIONS BE RECORDED.**

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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>.)*

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.

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

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.*

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

3           **16-8-106. Examinations and report.** (1) (a) All examinations  
4 ordered by the court in criminal cases shall be accomplished by the entry  
5 of an order of the court specifying the place where such examination is  
6 to be conducted and the period of time allocated for such examination.  
7 The defendant may be committed for such examination to the Colorado  
8 psychiatric hospital in Denver, the Colorado mental health institute at  
9 Pueblo, the place where he or she is in custody, or such other public  
10 institution designated by the court. In determining the place where such  
11 examination is to be conducted, the court shall give priority to the place  
12 where the defendant is in custody, unless the nature and circumstances of  
13 the examination require designation of a different facility. The defendant  
14 shall be observed and examined by one or more psychiatrists or forensic  
15 psychologists during such period as the court directs. For good cause  
16 shown, upon motion of the prosecution or defendant, or upon the court's  
17 own motion, the court may order such further or other examination as is  
18 advisable under the circumstances. Nothing in this section shall abridge  
19 the right of the defendant to procure an examination as provided in  
20 section 16-8-108.

21           (b) AN INTERVIEW CONDUCTED PURSUANT TO THIS SECTION MUST  
22 BE VIDEO AND AUDIO RECORDED AND PRESERVED. THE COURT SHALL  
23 ADVISE THE DEFENDANT THAT ANY EXAMINATION WITH A PSYCHIATRIST  
24 OR FORENSIC PSYCHOLOGIST MAY BE VIDEO AND AUDIO RECORDED. A  
25 COPY OF THE RECORDING MUST BE PROVIDED TO ALL PARTIES AND THE  
26 COURT WITH THE EXAMINATION REPORT. ANY JAIL OR OTHER FACILITY  
27 WHERE THE COURT ORDERS THE EXAMINATION TO TAKE PLACE MUST

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

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

27 (d) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF ANY

1 RECORDING OR PARTIAL RECORDING, IN WHOLE OR IN PART, SUBJECT TO  
2 ALL AVAILABLE CONSTITUTIONAL AND EVIDENTIARY OBJECTIONS.

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

5 **16-8-108. Examination at instance of defendant.** (1) (a) If the  
6 defendant wishes to be examined by a psychiatrist, psychologist, or other  
7 expert of his own choice in connection with any proceeding under this  
8 article, the court, upon timely motion, shall order that the examiner  
9 chosen by the defendant be given reasonable opportunity to conduct the  
10 examination. AN INTERVIEW CONDUCTED PURSUANT TO A COURT ORDER  
11 UNDER THIS SECTION MUST BE VIDEO AND AUDIO RECORDED AND  
12 PRESERVED. THE COURT SHALL ADVISE THE DEFENDANT THAT ANY  
13 EXAMINATION WITH A PSYCHIATRIST OR FORENSIC PSYCHOLOGIST MAY BE  
14 AUDIO AND VIDEO RECORDED. A COPY OF THE RECORDING MUST BE  
15 PROVIDED TO THE PROSECUTION WITH THE EXAMINATION REPORT. ANY  
16 JAIL OR OTHER FACILITY WHERE THE COURT ORDERS THE EXAMINATION TO  
17 TAKE PLACE MUST PERMIT THE RECORDING TO OCCUR AND MUST PROVIDE  
18 THE SPACE AND EQUIPMENT NECESSARY FOR SUCH RECORDING, IF  
19 AVAILABLE. IF SPACE AND EQUIPMENT ARE NOT AVAILABLE, THE SHERIFF  
20 OR FACILITY DIRECTOR SHALL ATTEMPT TO COORDINATE A LOCATION AND  
21 THE AVAILABILITY OF EQUIPMENT WITH THE COURT, WHICH MAY CONSULT  
22 WITH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL FOR AN AGREED  
23 UPON LOCATION. IF NO AGREEMENT IS REACHED, AND UPON THE REQUEST  
24 OF EITHER THE DEFENSE COUNSEL OR DISTRICT ATTORNEY, THE COURT  
25 SHALL ORDER THE LOCATION OF THE EXAMINATION WHICH MAY INCLUDE  
26 THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

27 (b) PRIOR TO OR DURING ANY EXAMINATION REQUIRED BY THIS

1 SECTION, THE PSYCHIATRIST OR FORENSIC PSYCHOLOGIST SHALL ASSESS  
2 WHETHER THE RECORDING OF THE EXAMINATION IS LIKELY TO CAUSE OR  
3 IS CAUSING MENTAL OR PHYSICAL HARM TO THE DEFENDANT OR OTHERS.  
4 IF SUCH A DETERMINATION IS MADE AND DOCUMENTED  
5 CONTEMPORANEOUSLY IN WRITING, THE PSYCHIATRIST OR FORENSIC  
6 PSYCHOLOGIST SHALL NOT RECORD THE EXAMINATION OR SHALL CEASE  
7 RECORDING THE EXAMINATION, AND THE PSYCHIATRIST OR FORENSIC  
8 PSYCHOLOGIST SHALL ADVISE THE COURT AND THE PARTIES OF THIS  
9 DETERMINATION AND THE REASONS THEREFORE IN A WRITTEN REPORT TO  
10 THE COURT. IF ONLY A PARTIAL RECORDING IS MADE, THE PSYCHIATRIST  
11 OR FORENSIC PSYCHOLOGIST SHALL PROVIDE THE PARTIAL RECORDING TO  
12 THE COURT AND THE PARTIES, AND THE PARTIAL RECORDING MAY BE USED  
13 BY ANY PSYCHIATRIST OR FORENSIC PSYCHOLOGIST IN FORMING AN  
14 OPINION, SUBMITTING A REPORT, OR TESTIFYING ON THE ISSUE OF THE  
15 DEFENDANT'S MENTAL HEALTH.

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

19 **SECTION 3. Effective date - applicability.** This act takes effect  
20 July 1, 2016, and applies to court-ordered mental condition examinations  
21 conducted on or after said date.

22 **SECTION 4. Safety clause.** The general assembly hereby finds,  
23 determines, and declares that this act is necessary for the immediate  
24 preservation of the public peace, health, and safety.