

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 16-0397.01 Michael Dohr x4347

HOUSE BILL 16-1027

HOUSE SPONSORSHIP

Danielson,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

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

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.

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 AT-RISK ELDER~~, or in any case involving a
7 victim or witness who is an at-risk ~~adult OR AT-RISK ELDER~~, the
8 prosecution may file a motion with the court at any time prior to
9 commencement of the trial for an order that a deposition be taken of the
10 testimony of the victim or witness and that the deposition be recorded and
11 preserved ~~on video tape~~ ON A VIDEO IMAGING FORMAT.

12 (2) The prosecution shall file a motion requesting a ~~videotaped~~
13 RECORDED deposition at least ~~three~~ FOURTEEN days prior to the taking of
14 the deposition. The defendant shall receive reasonable notice of the taking
15 of the deposition. The defendant shall have the right to be present and to
16 be represented by counsel at the ~~deposition~~; EXCEPT THAT FOR GOOD
17 CAUSE SHOWN, THE COURT MAY PERMIT THE FILING OF A MOTION
18 REQUESTING A RECORDED DEPOSITION LESS THAN FOURTEEN DAYS PRIOR
19 TO TAKING THE DEPOSITION.

20 (3) (a) (I) ~~Upon timely receipt of the motion, the court shall make~~
21 ~~a preliminary finding regarding whether, at the time of trial, the victim or~~
22 ~~witness is likely to be medically unavailable or otherwise unavailable~~
23 ~~within the meaning of rule 804 (a) of the Colorado rules of evidence.~~
24 ~~Such finding, at a minimum, shall be based on recommendations from the~~
25 ~~victim's or witness' physician or any other person having direct contact~~

1 with the victim or witness, whose recommendations are based on specific
2 behavioral indicators exhibited by the victim or witness UPON RECEIPT OF
3 THE MOTION, THE COURT SHALL SCHEDULE THE DEPOSITION TO TAKE
4 PLACE WITHIN FOURTEEN DAYS WITHOUT FURTHER FINDINGS, EXCEPT FOR
5 GOOD CAUSE SHOWN BY THE PROSECUTION IF THE MOTION ASKS FOR THE
6 DEPOSITION TO BE TAKEN IN LESS THAN FOURTEEN DAYS, IF THE VICTIM
7 IS AN AT-RISK ELDER.

8 (II) EXCEPT FOR DEPOSITIONS OF AT-RISK ELDER VICTIMS AS
9 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), UPON THE
10 FILING OF THE MOTION BY THE PROSECUTION STATING REASONS THE
11 VICTIM OR WITNESS MAY BE UNAVAILABLE AT TRIAL, THE COURT MAY
12 ORDER A DEPOSITION FOR AN AT-RISK ADULT VICTIM OR WITNESS OR
13 AT-RISK ELDER WITNESS. FILING THE MOTION CREATES A REBUTTABLE
14 PRESUMPTION THAT A DEPOSITION SHOULD BE TAKEN TO PREVENT
15 INJUSTICE. THE COURT MAY DENY THE MOTION FOR DEPOSITION UPON
16 A FINDING THAT GRANTING THE MOTION WILL NOT PREVENT INJUSTICE.
17 THE PROSECUTION MAY FILE A NEW REQUEST FOR A DEPOSITION IF
18 CIRCUMSTANCES CHANGE PRIOR TO TRIAL.

19 (III) BOTH THE PROSECUTION AND THE DEFENDANT SHALL
20 PROVIDE ALL AVAILABLE DISCOVERY NO LATER THAN FIVE DAYS BEFORE
21 THE SCHEDULED DEPOSITION. IF THE DISCOVERY HAS NOT BEEN PROVIDED
22 AS SET FORTH IN THIS SUBPARAGRAPH (III), EITHER PARTY MAY FILE A
23 MOTION WITH THE COURT TO RESCHEDULE THE DEPOSITION IN ORDER TO
24 OBTAIN THE NECESSARY DISCOVERY TO ADEQUATELY PREPARE FOR THE
25 DEPOSITION.

26 (b) ~~If the court so finds, it shall order that~~ The deposition MUST be
27 taken, preserved on a video imaging format, and conducted pursuant to

1 rule 15 (d) of the Colorado rules of criminal procedure; except that after
2 consultation with the chief judge of the judicial district, the trial court
3 may appoint an active or senior district or county court judge to serve in
4 its place and preside over all aspects of the taking of the deposition. After
5 the deposition is taken, the prosecution shall transmit the ~~video-tape~~
6 RECORDING to the clerk of the court in which the action is pending.

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

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

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