

CHAPTER 304

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 16-1393

BY REPRESENTATIVE(S) Esgar and Foote, Becker K., Kagan, Lontine, Pettersen;
also SENATOR(S) Cooke, Baumgardner, Martinez Humenik, Newell, Roberts, Scott, Steadman, Tate, Woods.

AN ACT**CONCERNING PROCEDURES FOR ORDERED TESTING FOR COMMUNICABLE DISEASES.**

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

SECTION 1. In Colorado Revised Statutes, **add** 16-3-303.8 as follows:

16-3-303.8. Testing for communicable diseases - court order required - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMUNICABLE DISEASE" MEANS A DISEASE OR INFECTION THAT IS SPREAD FROM ONE PERSON TO ANOTHER THROUGH THE EXCHANGE OF BLOOD OR OTHER BODILY FLUID AND THE HUMAN IMMUNODEFICIENCY VIRUS (HIV).

(b) "EMERGENCY MEDICAL CARE PROVIDER" HAS THE SAME MEANING AS DEFINED IN SECTION 18-3-201 (1), C.R.S.

(c) "EMERGENCY MEDICAL SERVICE PROVIDER" HAS THE SAME MEANING AS DEFINED IN SECTION 18-3-201 (1.3), C.R.S.

(d) "FIREFIGHTER" HAS THE SAME MEANING AS DEFINED IN SECTION 18-3-201 (1.5), C.R.S.

(e) "PEACE OFFICER" MEANS ANY PERSON DESCRIBED IN SECTION 16-2.5-101.

(2) **Consent.** UNLESS A PERSON HAS ADMITTED THAT HE OR SHE HAS A COMMUNICABLE DISEASE AND PROVIDES CONFIRMATION OF THE DISEASE, A LAW ENFORCEMENT AGENCY SHALL ASK A PERSON TO VOLUNTARILY CONSENT TO A

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

BLOOD TEST TO DETERMINE IF THE PERSON HAS A COMMUNICABLE DISEASE IF:

(a) THE PERSON COMMITTED AN ASSAULT IN THE FIRST DEGREE, IN VIOLATION OF SECTION 18-3-202, C.R.S.; ASSAULT IN THE SECOND DEGREE IN VIOLATION OF SECTION 18-3-203, C.R.S.; OR ASSAULT IN THE THIRD DEGREE IN VIOLATION OF SECTION 18-3-204, C.R.S.; AND

(b) DURING OR AS A RESULT OF THE ASSAULT, THE PERSON'S BLOOD OR OTHER BODILY FLUID CAME INTO CONTACT WITH ANY VICTIM OF THE ASSAULT, A PEACE OFFICER, FIREFIGHTER, OR EMERGENCY MEDICAL CARE PROVIDER, OR AN EMERGENCY MEDICAL SERVICE PROVIDER, AND THERE IS REASON TO BELIEVE, BASED ON INFORMATION FROM A MEDICAL PROFESSIONAL, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR A LOCAL HEALTH AGENCY, THAT THE VICTIM OF THE ASSAULT, PEACE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE PROVIDER IS AT RISK OF TRANSMISSION OF A COMMUNICABLE DISEASE.

(3) **Application.** (a) A COURT SHALL ORDER A PERSON TO SUBMIT BLOOD REQUIRED FOR A TEST FOR COMMUNICABLE DISEASES IF AN AFFIDAVIT SWORN TO OR AFFIRMED BEFORE THE JUDGE ESTABLISHES THE FOLLOWING GROUNDS FOR THE ORDER:

(I) THERE IS PROBABLE CAUSE THAT A PERSON COMMITTED THE CRIME OF ASSAULT IN THE FIRST DEGREE, IN VIOLATION OF SECTION 18-3-202, C.R.S.; ASSAULT IN THE SECOND DEGREE IN VIOLATION OF SECTION 18-3-203, C.R.S.; OR ASSAULT IN THE THIRD DEGREE IN VIOLATION OF SECTION 18-3-204, C.R.S.;

(II) THE PERSON HAS BEEN ASKED TO VOLUNTARILY SUBMIT TO A BLOOD TEST FOR A COMMUNICABLE DISEASE AND THE PERSON HAS REFUSED; AND

(III) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON'S BLOOD OR OTHER BODILY FLUID CAME INTO CONTACT WITH ANY VICTIM OF THE ASSAULT, PEACE OFFICER, FIREFIGHTER, OR EMERGENCY MEDICAL CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE PROVIDER, AND THERE IS REASON TO BELIEVE, BASED ON INFORMATION FROM A MEDICAL PROFESSIONAL, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR A LOCAL HEALTH AGENCY, THAT THE VICTIM OF THE ASSAULT, PEACE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE PROVIDER IS AT RISK OF TRANSMISSION OF A COMMUNICABLE DISEASE.

(b) THE AFFIDAVIT REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (3) MAY INCLUDE SWORN TESTIMONY REDUCED TO WRITING AND SIGNED UNDER OATH BY THE WITNESS GIVING THE TESTIMONY BEFORE THE ISSUANCE OF THE COURT ORDER. A COPY OF THE AFFIDAVIT AND A COPY OF THE TRANSCRIPT OF TESTIMONY TAKEN IN SUPPORT OF THE REQUEST FOR THE COURT ORDER MUST BE ATTACHED TO A COURT ORDER ISSUED PURSUANT TO THIS SECTION.

(4) **Order.** IF THE COURT IS SATISFIED THAT GROUNDS FOR THE APPLICATION EXIST OR THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE GROUNDS EXIST, THE COURT SHALL ISSUE THE COURT ORDER, WHICH SHALL:

(a) IDENTIFY THE NAME OR DESCRIPTION OF THE INDIVIDUAL WHO IS TO GIVE THE BLOOD;

(b) IDENTIFY THE NAMES OF ANY PERSONS MAKING AFFIDAVITS FOR ISSUANCE OF THE ORDER;

(c) IDENTIFY THE CRIMINAL OFFENSE CONCERNING WHICH THE ORDER HAS BEEN ISSUED;

(d) IDENTIFY THE NAME OF THE VICTIM OF THE ASSAULT, PEACE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE PROVIDER;

(e) INCLUDE A MANDATE TO THE OFFICER TO WHOM THE ORDER IS DIRECTED TO DETAIN THE PERSON FOR ONLY SUCH TIME AS IS NECESSARY TO OBTAIN THE BLOOD; AND

(f) INCLUDE THE TYPEWRITTEN OR PRINTED NAME OF THE JUDGE ISSUING THE ORDER AND HIS OR HER SIGNATURE.

(5) Execution and return. (a) THE BLOOD TESTS MUST BE CONDUCTED UNDER MEDICAL SUPERVISION. A PERSON WHO APPEARS UNDER AN ORDER OF APPEARANCE ISSUED PURSUANT TO THIS SECTION SHALL NOT BE DETAINED LONGER THAN IS REASONABLY NECESSARY TO OBTAIN THE BLOOD UNLESS HE OR SHE IS ARRESTED FOR AN OFFENSE.

(b) THE ORDER MAY BE EXECUTED AND RETURNED ONLY WITHIN THIRTY-FIVE DAYS AFTER ITS ISSUANCE.

(c) THE OFFICER EXECUTING THE ORDER SHALL GIVE A COPY OF THE ORDER TO THE PERSON UPON WHOM IT IS SERVED.

(6) Disclosure of results and confidentiality. (a) THE RESULTS OF ANY TEST ON THE BLOOD OBTAINED PURSUANT TO AN ORDER ISSUED UNDER THIS SECTION MUST BE REPORTED TO THE COURT OR THE COURT'S DESIGNEE, WHO SHALL THEN DISCLOSE THE RESULTS TO ANY PERSON NAMED IN PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION WHO REQUESTS THE DISCLOSURE.

(b) EXCEPT AS REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6), THE COURT SHALL KEEP THE TEST RESULTS, DISCLOSURE OF THE TEST RESULTS, AND ANY RECORDS RELATING TO THE TEST RESULTS OR THE DISCLOSURE OF THE TEST RESULTS CONFIDENTIAL.

(7) Voluntary submission. IF A PERSON DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION VOLUNTARILY SUBMITS TO A TEST FOR COMMUNICABLE DISEASES, THE FACT OF THE PERSON'S VOLUNTARY SUBMISSION IS ADMISSIBLE IN MITIGATION OF SENTENCE IF THE PERSON IS CONVICTED OF THE CHARGED OFFENSE.

SECTION 2. In Colorado Revised Statutes, 18-1.3-602, **add** (3) (a.5) as follows:

18-1.3-602. Definitions. As used in this part 6, unless the context otherwise requires:

(3)(a.5) "RESTITUTION" INCLUDES, FOR A PERSON CONVICTED OF ASSAULT IN THE FIRST, SECOND, OR THIRD DEGREE, AS DESCRIBED IN SECTION 18-3-202, 18-3-203, OR 18-3-204, ALL OR ANY PORTION OF THE FINANCIAL OBLIGATIONS OF MEDICAL TESTS PERFORMED ON AND TREATMENT PRESCRIBED FOR A VICTIM, PEACE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE PROVIDER.

SECTION 3. In Colorado Revised Statutes, 18-3-202, **repeal** (3).

SECTION 4. In Colorado Revised Statutes, 18-3-203, **repeal** (3).

SECTION 5. In Colorado Revised Statutes, 18-3-204, **repeal** (2).

SECTION 6. Effective date. This act takes effect July 1, 2016.

SECTION 7. 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