

CHAPTER 50

CRIMINAL LAW AND PROCEDURE

SENATE BILL 18-060

BY SENATOR(S) Coram, Aguilar, Court, Crowder, Fields, Garcia, Gardner, Guzman, Kagan, Kefalas, Lambert, Martinez Humenik, Scott, Smallwood, Tate, Todd, Williams A., Zenzinger, Grantham; also REPRESENTATIVE(S) Hamner, Arndt, Becker K., Benavidez, Bridges, Buckner, Carver, Coleman, Covarrubias, Danielson, Esgar, Exum, Hansen, Herod, Hooton, Jackson, Kennedy, Lee, Lontine, McLachlan, Melton, Michaelson Jenet, Roberts, Rosenthal, Salazar, Singer, Valdez, Weissman, Winter, Young, Duran.

AN ACT**CONCERNING PROTECTIVE ORDERS IN CRIMINAL CASES.**

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

SECTION 1. In Colorado Revised Statutes, 18-1-1001, **amend** (3) introductory portion, (3)(d), and (3)(e); and **add** (3)(f) and (10) as follows:

18-1-1001. Protection order against defendant - definitions. (3) Nothing in this section ~~shall preclude~~ PRECLUDES the defendant from applying to the court at any time for modification or dismissal of the protection order issued pursuant to this section or the district attorney from applying to the court at any time for further orders, additional provisions under the protection order, or modification or dismissal of the same. The trial court ~~shall retain~~ RETAINS jurisdiction to enforce, modify, or dismiss the protection order until final disposition of the action. Upon motion of the district attorney or on the court's own motion for the protection of the alleged victim or witness, the court may, in cases involving domestic violence as defined in section 18-6-800.3 (1) and cases involving crimes listed in section 24-4.1-302, ~~C.R.S.~~, except those listed in ~~paragraphs (cc.5) and (cc.6) of subsection (1)~~ SUBSECTIONS (1)(cc.5) AND (1)(cc.6) of that section, enter any of the following further orders against the defendant:

(d) An order prohibiting possession or consumption of alcohol or controlled substances; ~~and~~

(e) ~~Any other order the court deems appropriate to protect the safety of the alleged victim or witness.~~ AN ORDER PROHIBITING THE TAKING, TRANSFERRING,

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

CONCEALING, HARMING, DISPOSING OF, OR THREATENING TO HARM AN ANIMAL OWNED, POSSESSED, LEASED, KEPT, OR HELD BY AN ALLEGED VICTIM OR WITNESS; AND

(f) ANY OTHER ORDER THE COURT DEEMS APPROPRIATE TO PROTECT THE SAFETY OF THE ALLEGED VICTIM OR WITNESS.

(10) THE ISSUANCE OF A PROTECTION ORDER PURSUANT TO THIS SECTION DOES NOT PRECLUDE A COURT FROM ISSUING A PROTECTIVE ORDER IN A CIVIL PROCEEDING.

SECTION 2. In Colorado Revised Statutes, **add** 18-1-1001.5 as follows:

18-1-1001.5 Protection order against defendant - transfer of wireless telephone service in domestic violence cases - definitions. (1) IN ADDITION TO THE OPTIONS DESCRIBED IN SECTION 18-1-1001 (3), UPON A DISCRETIONARY MOTION OF THE DISTRICT ATTORNEY OR ON THE COURT'S OWN MOTION FOR THE PROTECTION OF AN ALLEGED VICTIM OR WITNESS IN A CASE INVOLVING DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1), AND CASES INVOLVING CRIMES LISTED IN SECTION 24-4.1-302 (1), EXCEPT THOSE LISTED IN SUBSECTIONS (1)(cc.5) AND (1)(cc.6) OF THAT SECTION, THE COURT MAY ENTER AN ORDER DIRECTING A WIRELESS TELEPHONE SERVICE PROVIDER TO TRANSFER THE FINANCIAL RESPONSIBILITY FOR AND RIGHTS TO A WIRELESS TELEPHONE NUMBER OR NUMBERS TO THE ALLEGED VICTIM OR WITNESS IF THE ALLEGED VICTIM OR WITNESS:

(a) IS NOT THE ACCOUNT HOLDER; AND

(b) PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE ALLEGED VICTIM OR WITNESS AND ANY MINOR CHILDREN IN HIS OR HER CARE ARE THE PRIMARY USERS OF EACH WIRELESS TELEPHONE NUMBER THAT WILL BE ORDERED TO BE TRANSFERRED BY A COURT PURSUANT TO THIS SECTION.

(2)(a) AN ORDER TRANSFERRING THE FINANCIAL RESPONSIBILITY FOR AND RIGHTS TO A WIRELESS TELEPHONE NUMBER OR NUMBERS TO AN ALLEGED VICTIM OR WITNESS PURSUANT TO THIS SECTION MUST BE A SEPARATE WRITTEN ORDER THAT IS DIRECTED TO THE WIRELESS TELEPHONE SERVICE PROVIDER.

(b) THE ORDER MUST LIST THE NAME AND BILLING TELEPHONE NUMBER OF THE ACCOUNT HOLDER, THE NAME AND CONTACT INFORMATION OF THE ALLEGED VICTIM OR WITNESS TO WHOM THE TELEPHONE NUMBER OR NUMBERS WILL BE TRANSFERRED, AND EACH TELEPHONE NUMBER TO BE TRANSFERRED TO THE ALLEGED VICTIM OR WITNESS.

(c) THE COURT SHALL ENSURE THAT THE ALLEGED VICTIM'S OR WITNESS'S CONTACT INFORMATION IS NOT PROVIDED TO THE ACCOUNT HOLDER IN PROCEEDINGS HELD PURSUANT TO THIS SECTION.

(d) THE ORDER MUST BE SENT OR DELIVERED IN PERSON OR ELECTRONICALLY BY THE PROTECTED PARTY TO THE WIRELESS TELEPHONE SERVICE PROVIDER'S REGISTERED AGENT.

(e) A WIRELESS TELEPHONE SERVICE PROVIDER SHALL TERMINATE THE ACCOUNT HOLDER'S USE OF A TELEPHONE NUMBER THAT THE COURT HAS ORDERED TO BE TRANSFERRED TO THE ALLEGED VICTIM OR WITNESS PURSUANT TO THIS SECTION UNLESS THE WIRELESS TELEPHONE SERVICE PROVIDER NOTIFIES THE ALLEGED VICTIM OR WITNESS AND THE COURT WITHIN FIVE BUSINESS DAYS AFTER THE WIRELESS TELEPHONE SERVICE PROVIDER RECEIVES THE ORDER EITHER THAT AN ACCOUNT HOLDER NAMED IN THE ORDER HAS TERMINATED THE ACCOUNT OR THAT THE REQUESTED TRANSFER CANNOT BE EFFECTUATED DUE TO DIFFERENCES IN NETWORK TECHNOLOGY THAT PREVENT FUNCTIONALITY OF A DEVICE ON THE NETWORK OR DUE TO GEOGRAPHIC LIMITATIONS ON NETWORK OR SERVICE AVAILABILITY.

(3) A TRANSFER ORDERED PURSUANT TO THIS SECTION DOES NOT PRECLUDE A WIRELESS TELEPHONE SERVICE PROVIDER FROM APPLYING ANY ROUTINE AND CUSTOMARY REQUIREMENTS FOR ACCOUNT ESTABLISHMENT TO THE ALLEGED VICTIM OR WITNESS AS PART OF THE TRANSFER OF FINANCIAL RESPONSIBILITY FOR A WIRELESS TELEPHONE NUMBER OR NUMBERS AND ANY DEVICES ATTACHED TO THE NUMBER OR NUMBERS, INCLUDING, WITHOUT LIMITATION, IDENTIFICATION, FINANCIAL INFORMATION, AND CUSTOMER PREFERENCES.

(4) A WIRELESS TELEPHONE SERVICE PROVIDER IS IMMUNE FROM CIVIL LIABILITY FOR COMPLYING WITH AN ORDER TO TRANSFER A TELEPHONE NUMBER PURSUANT TO THIS SECTION.

(5) THE ISSUANCE OF A PROTECTION ORDER PURSUANT TO THIS SECTION DOES NOT PRECLUDE A COURT FROM ISSUING A PROTECTIVE ORDER IN A CIVIL PROCEEDING.

(6) FOR PURPOSES OF THIS SECTION:

(a) "ACCOUNT HOLDER" MEANS A DEFENDANT WHO:

(I) IS CHARGED WITH AN OFFENSE, THE UNDERLYING BASIS OF WHICH INCLUDES AN ACT OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1), OR A CRIME LISTED IN SECTION 24-4.1-302 (1), EXCEPT FOR THOSE CRIMES LISTED IN SUBSECTIONS (1)(cc.5) AND (1)(cc.6) OF THAT SECTION; AND

(II) MAINTAINS AN ACCOUNT WITH A WIRELESS TELEPHONE SERVICE PROVIDER.

(b) "FINANCIAL RESPONSIBILITY" MEANS AN OBLIGATION TO PAY SERVICE FEES AND OTHER COSTS AND CHARGES ASSOCIATED WITH ANY TELEPHONE NUMBER.

(c) "WIRELESS TELEPHONE SERVICE PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES OR RESELLS COMMERCIAL MOBILE SERVICE, AS DEFINED IN SECTION 47 U.S.C. SEC. 332 (d)(1).

SECTION 3. In Colorado Revised Statutes, 13-14-104.5, **amend** (7)(a) as follows:

13-14-104.5. Procedure for temporary civil protection order. (7) (a) A temporary civil protection order may be issued if the issuing judge or magistrate finds that an imminent danger exists to the person or persons seeking protection under the civil protection order. In determining whether an imminent danger exists

to the life or health of one or more persons, the court shall consider all relevant evidence concerning the safety and protection of the persons seeking the protection order. The court shall not deny a petitioner the relief requested because of the length of time between an act of abuse or threat of harm and the filing of the petition for a protection order. THE COURT SHALL NOT DENY A PETITIONER THE RELIEF REQUESTED BECAUSE A PROTECTION ORDER HAS BEEN ISSUED PURSUANT TO SECTION 18-1-1001 OR 18-1-1001.5.

SECTION 4. In Colorado Revised Statutes, 13-14-106, **amend** (1)(a) as follows:

13-14-106. Procedure for permanent civil protection orders. (1) (a) On the return date of the citation, or on the day to which the hearing has been continued, the judge or magistrate shall examine the record and the evidence. If upon such examination the judge or magistrate finds by a preponderance of the evidence that the respondent has committed acts constituting grounds for issuance of a civil protection order and that unless restrained will continue to commit such acts or acts designed to intimidate or retaliate against the protected person, the judge or magistrate shall order the temporary civil protection order to be made permanent or enter a permanent civil protection order with provisions different from the temporary civil protection order. A finding of imminent danger to the protected person is not a necessary prerequisite to the issuance of a permanent civil protection order. THE COURT SHALL NOT DENY A PETITIONER THE RELIEF REQUESTED BECAUSE A PROTECTION ORDER HAS BEEN ISSUED PURSUANT TO SECTION 18-1-1001 OR 18-1-1001.5. The judge or magistrate shall inform the respondent that a violation of the civil protection order constitutes a criminal offense pursuant to section 18-6-803.5 ~~C.R.S.~~; or constitutes contempt of court and subjects the respondent to such punishment as may be provided by law. If the respondent fails to appear before the court for the show cause hearing at the time and on the date identified in the citation issued by the court and the court finds that the respondent was properly served with the temporary protection order and such citation, it is not necessary to re-serve the respondent to make the protection order permanent. However, if the court modifies the protection order on the motion of the protected party, the modified protection order must be served upon the respondent.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect November 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to protective orders entered on or after the applicable effective date of this act.

Approved: March 22, 2018