

CHAPTER 259

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 18-1344

BY REPRESENTATIVE(S) Weissman and Sias, Becker K., Buckner, Exum, Foote, Gray, Herod, Hooton, Jackson, Kennedy, Lee, Lontine, McLachlan, Melton, Pettersen, Roberts, Salazar, Singer, Duran;
also SENATOR(S) Coram and Moreno, Kagan, Priola, Tate.

AN ACT**CONCERNING RELIEF FROM COLLATERAL CONSEQUENCES OF CRIMINAL ACTIONS.**

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

SECTION 1. In Colorado Revised Statutes, 18-1.3-107, **amend** (1), (2)(a), (3), (4)(b)(I), (5)(a), (6)(c), and (8)(c); and **add** (2)(c) as follows:

18-1.3-107. Conviction - collateral relief - definitions. (1) ~~At the time a defendant enters into an alternative to sentencing in this part 1~~ OF CONVICTION OR AT ANY TIME THEREAFTER, upon the request of the defendant or upon the court's own motion, a court may enter an order of collateral relief IN THE CRIMINAL CASE for the purpose of preserving or enhancing the defendant's employment or employment prospects and to improve the defendant's likelihood of success in the ~~alternative to sentencing program~~ COMMUNITY.

(2) **Application contents.** (a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent ~~Colorado bureau of investigation fingerprint-based criminal history records~~ RECORD check. The state court administrator may produce an application form that an applicant may submit in application.

(c) AN APPLICATION FILED AFTER A SENTENCE HAS BEEN IMPOSED MUST INCLUDE A COPY OF A RECENT COLORADO BUREAU OF INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, THE FILING FEE REQUIRED BY LAW, AND AN ADDITIONAL FILING FEE OF THIRTY DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE APPLICATION. A COURT SHALL WAIVE THE FILING FEES IF IT FINDS THAT THE DEFENDANT IS INDIGENT.

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.

(3) An order of collateral relief may relieve a defendant of any collateral consequences of the conviction, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the defendant in successfully ~~completing probation or a community corrections sentence~~ REINTEGRATING INTO THE COMMUNITY.

(4) (b) A court shall not issue an order of collateral relief if the defendant:

(I) Has been convicted of a felony that included an element that requires a victim to suffer ~~permanent disability~~ A SERIOUS BODILY INJURY AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE BODY;

(5) **Hearing.** (a) The court may conduct a hearing ON ANY MATTER RELEVANT TO THE GRANTING OR DENIAL OF AN APPLICATION or include a hearing on the matter at the defendant's sentencing hearing ~~on the application or on any matter relevant to the granting or denying of the application~~ and may take testimony under oath.

(6) **Standard for granting relief.** (c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or proof that the defendant is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications thereby relieved ~~shall~~ MAY be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the defendant noticed in his or her motion for relief.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(c) "Conviction" or "convicted" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or a conviction of a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a ~~felony or misdemeanor~~ CRIME. "Conviction" or "convicted" also includes having received a deferred judgment and sentence. ~~except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence.~~

SECTION 2. In Colorado Revised Statutes, **repeal** 18-1.3-213 and 18-1.3-303.

SECTION 3. In Colorado Revised Statutes, 16-11-102, **add** (1)(a)(II.5) and (1)(a)(II.7) as follows:

16-11-102. Presentence or probation investigation. (1) (a) (II.5) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II.7) OF THIS SECTION, IF THE DEFENDANT IS CONVICTED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(II.5), THE REPORT DESCRIBED IN SUBSECTION (1)(a)(I) OF THIS SECTION MUST INCLUDE THE FOLLOWING STATEMENT:

EACH DEFENDANT MAY, AT THE TIME OF CONVICTION OR AT ANY TIME

THEREAFTER, APPLY TO THE COURT FOR AN ORDER OF COLLATERAL RELIEF OF THE CONSEQUENCES OF THE DEFENDANT'S CONVICTION PURSUANT TO THE PROVISIONS OF SECTION 18-1.3-107, COLORADO REVISED STATUTES.

(II.7) THE REPORT DESCRIBED IN SUBSECTION (1)(a)(I) OF THIS SECTION NEED NOT INCLUDE THE STATEMENT DESCRIBED IN SUBSECTION (1)(a)(II.5) OF THIS SECTION IF THE DEFENDANT:

(A) HAS BEEN CONVICTED OF A FELONY THAT INCLUDED AN ELEMENT THAT REQUIRES A VICTIM TO SUFFER A SERIOUS BODILY INJURY AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE BODY;

(B) HAS BEEN CONVICTED OF A CRIME OF VIOLENCE AS DESCRIBED IN SECTION 18-1.3-406; OR

(C) IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 16-22-103.

SECTION 4. In Colorado Revised Statutes, **add** 19-2-927 as follows:

19-2-927. Adjudication - collateral relief - definitions. (1) AT THE TIME OF THE ENTRY OF ADJUDICATION OR AT ANY TIME THEREAFTER, UPON THE REQUEST OF THE ADJUDICATED JUVENILE OR UPON THE COURT'S OWN MOTION, A COURT MAY ENTER AN ORDER OF COLLATERAL RELIEF IN THE JUVENILE'S CASE FOR THE PURPOSE OF IMPROVING THE JUVENILE'S LIKELIHOOD OF SUCCESS IN THE COMMUNITY.

(2) **Application contents.** (a) AN APPLICATION FOR AN ORDER OF COLLATERAL RELIEF MUST CITE THE GROUNDS FOR GRANTING THE RELIEF, THE TYPE OF RELIEF SOUGHT, AND THE SPECIFIC COLLATERAL CONSEQUENCE FROM WHICH THE APPLICANT IS SEEKING RELIEF AND MUST INCLUDE A COPY OF A RECENT CRIMINAL HISTORY RECORD CHECK. THE STATE COURT ADMINISTRATOR MAY PRODUCE AN APPLICATION FORM THAT AN APPLICANT MAY SUBMIT IN APPLICATION.

(b) THE APPLICANT SHALL PROVIDE A COPY OF THE APPLICATION TO THE DISTRICT ATTORNEY AND TO THE REGULATORY OR LICENSING BODY THAT HAS JURISDICTION OVER THE COLLATERAL CONSEQUENCE FROM WHICH THE APPLICANT IS SEEKING RELIEF, IF ANY, BY CERTIFIED MAIL OR PERSONAL SERVICE WITHIN TEN DAYS AFTER FILING THE APPLICATION WITH THE COURT.

(c) AN APPLICATION FILED AFTER AN ADJUDICATION ORDER HAS BEEN ENTERED MUST INCLUDE A COPY OF A RECENT COLORADO BUREAU OF INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, THE FILING FEE REQUIRED BY LAW, AND AN ADDITIONAL FILING FEE OF THIRTY DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE APPLICATION. A COURT SHALL WAIVE THE FILING FEES IF IT FINDS THAT THE JUVENILE IS INDIGENT.

(3) AN ORDER OF COLLATERAL RELIEF MAY RELIEVE AN ADJUDICATED JUVENILE OF ANY COLLATERAL CONSEQUENCES OF THE ADJUDICATION, WHETHER IN HOUSING OR EMPLOYMENT BARRIERS OR ANY OTHER SANCTION OR DISQUALIFICATION THAT THE COURT SHALL SPECIFY, INCLUDING BUT NOT LIMITED TO STATUTORY, REGULATORY, OR OTHER COLLATERAL CONSEQUENCES THAT THE COURT MAY SEE

FIT TO RELIEVE THAT WILL ASSIST THE ADJUDICATED JUVENILE IN SUCCESSFULLY REINTEGRATING INTO THE COMMUNITY.

(4) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER OF COLLATERAL RELIEF CANNOT RELIEVE ANY COLLATERAL CONSEQUENCES IMPOSED BY LAW FOR LICENSURE BY THE DEPARTMENT OF EDUCATION OR ANY COLLATERAL CONSEQUENCES IMPOSED BY LAW FOR EMPLOYMENT WITH THE JUDICIAL BRANCH, THE DEPARTMENT OF CORRECTIONS, THE DIVISION OF YOUTH SERVICES IN THE DEPARTMENT OF HUMAN SERVICES, OR ANY OTHER LAW ENFORCEMENT AGENCY IN THE STATE OF COLORADO.

(b) A COURT SHALL NOT ISSUE AN ORDER OF COLLATERAL RELIEF IF THE ADJUDICATED JUVENILE:

(I) HAS BEEN ADJUDICATED FOR A FELONY THAT INCLUDED AN ELEMENT THAT REQUIRES A VICTIM TO SUFFER A SERIOUS BODILY INJURY AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE BODY;

(II) HAS BEEN ADJUDICATED FOR A CRIME OF VIOLENCE AS DESCRIBED IN SECTION 18-1.3-406; OR

(III) IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 16-22-103.

(5) **Hearing.** (a) THE COURT MAY CONDUCT A HEARING ON ANY MATTER RELEVANT TO THE GRANTING OR DENYING OF AN APPLICATION OR INCLUDE A HEARING ON THE MATTER AT THE ADJUDICATED JUVENILE'S SENTENCING HEARING AND MAY TAKE TESTIMONY UNDER OATH.

(b) THE COURT MAY HEAR TESTIMONY FROM VICTIMS OR ANY PROPONENT OR OPPONENT OF THE APPLICATION AND MAY HEAR ARGUMENTS FROM THE APPLICANT AND THE DISTRICT ATTORNEY.

(6) **Standard for granting relief.** (a) A COURT MAY ISSUE AN ORDER OF COLLATERAL RELIEF IF THE COURT FINDS THAT:

(I) THE ORDER OF COLLATERAL RELIEF IS CONSISTENT WITH THE APPLICANT'S REHABILITATION; AND

(II) GRANTING THE APPLICATION WOULD IMPROVE THE APPLICANT'S LIKELIHOOD OF SUCCESS IN REINTEGRATING INTO SOCIETY AND IS IN THE PUBLIC'S INTEREST.

(b) THE COURT THAT PREVIOUSLY ISSUED AN ORDER OF COLLATERAL RELIEF, ON ITS OWN MOTION OR EITHER BY CAUSE SHOWN BY THE DISTRICT ATTORNEY OR ON GROUNDS OFFERED BY THE APPLICANT, MAY AT ANY TIME ISSUE A SUBSEQUENT JUDGMENT TO ENLARGE, LIMIT, OR CIRCUMSCRIBE THE RELIEF PREVIOUSLY GRANTED.

(c) UPON THE MOTION OF THE DISTRICT ATTORNEY OR PROBATION OFFICER OR UPON THE COURT'S OWN MOTION, A COURT MAY REVOKE AN ORDER OF COLLATERAL RELIEF UPON EVIDENCE OF A SUBSEQUENT CRIMINAL CONVICTION OR ADJUDICATION

OR PROOF THAT THE ADJUDICATED JUVENILE IS NO LONGER ENTITLED TO RELIEF. ANY BARS, PROHIBITIONS, SANCTIONS, AND DISQUALIFICATIONS THEREBY RELIEVED MAY BE REINSTATED AS OF THE DATE OF THE WRITTEN ORDER OF REVOCATION. THE COURT SHALL PROVIDE A COPY OF THE ORDER OF REVOCATION TO THE HOLDER AND TO ANY REGULATORY OR LICENSING ENTITY THAT THE ADJUDICATED JUVENILE NOTICED IN HIS OR HER MOTION FOR RELIEF.

(7) IF THE COURT ISSUES AN ORDER OF COLLATERAL RELIEF, IT SHALL SEND A COPY OF THE ORDER OF COLLATERAL RELIEF THROUGH THE COLORADO INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM TO THE COLORADO BUREAU OF INVESTIGATION, AND THE COLORADO BUREAU OF INVESTIGATION SHALL NOTE IN THE APPLICANT'S RECORD IN THE COLORADO CRIME INFORMATION CENTER THAT THE ORDER OF COLLATERAL RELIEF WAS ISSUED.

(8) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADJUDICATION" OR "ADJUDICATED" MEANS A VERDICT OF GUILTY BY A JUDGE OR JURY OR A PLEA OF GUILTY OR NOLO CONTENDERE THAT IS ACCEPTED BY THE COURT OR AN ADJUDICATION FOR A CRIME UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES, WHICH, IF COMMITTED WITHIN THIS STATE, WOULD BE A CRIME. "ADJUDICATION" OR "ADJUDICATED" ALSO INCLUDES HAVING RECEIVED A DEFERRED ADJUDICATION.

(b) "COLLATERAL CONSEQUENCE" MEANS A COLLATERAL SANCTION OR A DISQUALIFICATION.

(c) "COLLATERAL SANCTION" MEANS A PENALTY, PROHIBITION, BAR, OR DISADVANTAGE, HOWEVER DENOMINATED, IMPOSED ON AN INDIVIDUAL AS A RESULT OF THE INDIVIDUAL'S ADJUDICATION FOR AN OFFENSE, WHICH PENALTY, PROHIBITION, BAR, OR DISADVANTAGE APPLIES BY OPERATION OF LAW REGARDLESS OF WHETHER THE PENALTY, PROHIBITION, BAR, OR DISADVANTAGE IS INCLUDED IN THE JUDGMENT OR SENTENCE. "COLLATERAL SANCTION" DOES NOT INCLUDE IMPRISONMENT, PROBATION, PAROLE, SUPERVISED RELEASE, FORFEITURE, RESTITUTION, FINE, ASSESSMENT, COSTS OF PROSECUTION, OR A RESTRAINT OR SANCTION ON AN INDIVIDUAL'S DRIVING PRIVILEGE.

(d) "DISQUALIFICATION" MEANS A PENALTY, PROHIBITION, BAR, OR DISADVANTAGE, HOWEVER DENOMINATED, THAT AN ADMINISTRATIVE AGENCY, GOVERNMENTAL OFFICIAL, OR COURT IN A CIVIL PROCEEDING IS AUTHORIZED, BUT NOT REQUIRED, TO IMPOSE ON AN INDIVIDUAL ON GROUNDS RELATING TO THE INDIVIDUAL'S ADJUDICATION FOR AN OFFENSE.

SECTION 5. In Colorado Revised Statutes, 19-2-905, **amend** (2) as follows:

19-2-905. Presentence investigation. (2) (a) The probation department shall conduct a presentence investigation in each case unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The level of detail included in the presentence investigation may vary, as appropriate, with the services being considered for the juvenile.

(b) (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(b)(II) OF THIS SECTION, IF THE JUVENILE IS ADJUDICATED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2)(b), THE REPORT DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION MUST INCLUDE THE FOLLOWING STATEMENT:

EACH ADJUDICATED JUVENILE MAY, AT THE TIME OF ADJUDICATION OR AT ANY TIME THEREAFTER, APPLY TO THE COURT FOR AN ORDER OF COLLATERAL RELIEF OF THE CONSEQUENCES OF THE JUVENILE'S ADJUDICATION PURSUANT TO THE PROVISIONS OF SECTION 19-2-927, COLORADO REVISED STATUTES.

(II) THE REPORT DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION NEED NOT INCLUDE THE STATEMENT DESCRIBED IN SUBSECTION (2)(b)(I) OF THIS SECTION IF THE JUVENILE:

(A) HAS BEEN ADJUDICATED FOR A FELONY THAT INCLUDED AN ELEMENT THAT REQUIRES A VICTIM TO SUFFER A SERIOUS BODILY INJURY AND THE VICTIM SUFFERED A PERMANENT IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE BODY;

(B) HAS BEEN ADJUDICATED FOR A CRIME OF VIOLENCE AS DESCRIBED IN SECTION 18-1.3-406; OR

(C) IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 16-22-103.

SECTION 6. Effective date - applicability. This act takes effect July 1, 2018, and applies to presentencing investigation reports conducted and convictions or adjudications entered on or after said date.

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: May 29, 2018