

CHAPTER 152

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 95-1179

BY REPRESENTATIVES Kerns, DeGette, Allen, Chavez, Clarke, Gordon, Hagedorn, Keller, Lamm, Lyle, McPherson, Morrison, Reeser, Romero, and Saliman;
also SENATORS Feeley, Casey, Gallagher, Hopper, Johnson, Mares, Matsunaka, Pascoe, L. Powers, Rupert, Tebedo, and Weddig.

AN ACT**CONCERNING STATUTORY PROVISIONS TO REDUCE THE INCIDENCE OF DOMESTIC VIOLENCE.**

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

SECTION 1. The introductory portion to 18-6-800.3 and 18-6-800.3 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-6-800.3. Definitions. As used in this ~~part 9~~ PART 8, unless the context otherwise requires:

(1) "Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person or ~~felony crime~~ against property or any municipal ordinance violation against a person ~~but not~~ OR against property, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

SECTION 2. 18-6-801 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-6-801. Domestic violence - sentencing. (3) A person charged with the commission of a crime, the underlying factual basis of which includes an act of domestic violence as defined in section 18-6-800.3 (1), shall not be entitled to plead guilty or plead nolo contendere to an offense which does not include the domestic

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

violence designation required in section 16-21-103, C.R.S., unless the prosecuting attorney makes a good faith representation on the record that such attorney would not be able to establish A PRIMA FACIE CASE that the person and the alleged victim were currently or formerly involved in an intimate relationship if the defendant were brought to trial on the original domestic violence offense and upon such a finding by the court. The prosecuting attorney's record and the court's findings shall specify the relationship in the alleged domestic violence case which the prosecuting attorney is not able to prove beyond a reasonable doubt and the reasons therefor. ~~Under no circumstances shall the court waive or approve of a waiver of a finding of domestic violence~~ NO COURT SHALL ACCEPT A PLEA OF GUILTY OR NOLO CONTENDERE TO AN OFFENSE WHICH DOES NOT INCLUDE THE DOMESTIC VIOLENCE DESIGNATION REQUIRED IN SECTION 16-21-103, C.R.S., when the facts of the case indicate ~~such a~~ THAT THE UNDERLYING FACTUAL basis INCLUDES AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1) UNLESS THERE IS A GOOD FAITH REPRESENTATION BY THE PROSECUTING ATTORNEY THAT HE OR SHE WOULD BE UNABLE TO ESTABLISH A PRIMA FACIE CASE IF THE DEFENDANT WERE BROUGHT TO TRIAL ON THE ORIGINAL OFFENSE.

SECTION 3. 18-6-803.5 (1), (2), and (3) (d), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-6-803.5. Crime of violation of a restraining order - penalty - peace officers' duties. (1) A person commits the crime of violation of a restraining order if such person contacts, harasses, injures, intimidates, molests, threatens, or touches any protected person or enters or remains on premises or comes within a specified distance of a protected person or premises, and such conduct is prohibited by a restraining order, after such person has been personally served with any such order OR OTHERWISE HAS ACQUIRED FROM THE COURT ACTUAL KNOWLEDGE OF THE CONTENTS OF ANY SUCH ORDER.

(2) (a) Violation of a restraining order is a class 2 misdemeanor; except that, if the restrained person has previously been convicted of violating this section or a former version of this section or an analogous municipal ordinance, or if the restraining order is issued pursuant to section 18-1-1001, the violation is a class 1 misdemeanor.

(b) ~~A prior conviction need not be pled or proven at trial. The existence of a prior conviction shall be a matter for the court to determine at sentencing. The existence of a prior conviction is established by a certified copy of a judgment of conviction from the court in which the conviction occurred.~~

(c) Nothing in this section shall preclude the ability of a municipality to enact concurrent ordinances. Any sentence imposed for a violation of this section shall run consecutively and not concurrently with any sentence imposed for any crime which gave rise to the issuing of the restraining order.

(3) (d) The arrest and detention of a restrained person is governed by applicable constitutional and applicable state rules of criminal procedure. ~~The restrained person shall be taken to the nearest jail or detention facility utilized by the peace officer. This paragraph (d) shall not be construed to limit the discretion of the jail or detention facility staff concerning the management of overcrowding.~~ THE ARRESTED PERSON SHALL BE REMOVED FROM THE SCENE OF THE ARREST AND SHALL BE TAKEN TO THE PEACE OFFICER'S STATION FOR BOOKING, WHEREUPON THE ARRESTED PERSON MAY BE

HELD OR RELEASED IN ACCORDANCE WITH THE ADOPTED BONDING SCHEDULES FOR THE JURISDICTION IN WHICH THE ARREST IS MADE. ~~The prosecuting attorney~~ LAW ENFORCEMENT AGENCY OR ANY OTHER LOCALLY DESIGNATED AGENCY shall make all reasonable efforts to contact the protected party upon the arrest of the restrained person. ~~and~~ THE PROSECUTING ATTORNEY shall present the investigative reports and criminal history of the restrained person to the court at the time of the first appearance of the restrained person before the court.

SECTION 4. 18-6-803.6 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-6-803.6. Duties of peace officers and prosecuting agencies - preservation of evidence. (1) When a peace officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in section 18-6-800.3 (1), has been committed, the officer shall, without undue delay, arrest the person suspected of its commission and charge the person with the appropriate crime or offense. THE ARRESTED PERSON SHALL BE REMOVED FROM THE SCENE OF THE ARREST AND SHALL BE TAKEN TO THE PEACE OFFICER'S STATION FOR BOOKING, WHEREUPON THE ARRESTED PERSON MAY BE HELD OR RELEASED IN ACCORDANCE WITH THE ADOPTED BONDING SCHEDULES FOR THE JURISDICTION IN WHICH THE ARREST IS MADE.

SECTION 5. 14-4-102 (14), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

14-4-102. Restraining orders to prevent domestic abuse. (14) This section shall not apply to any claim of domestic abuse against ~~an unemancipated minor~~ A JUVENILE. Such claims shall be addressed by the juvenile court pursuant to ~~the "Colorado Children's Code", title 19;~~ SECTION 19-2-403, C.R.S.

SECTION 6. 19-2-403 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-403. Restraining order against juvenile. (1) (a) There is hereby created a mandatory restraining order against any juvenile charged with the commission of a delinquent act, which order shall remain in effect from the time that the juvenile is advised of such juvenile's rights and informed of such order at such juvenile's first appearance before the court until final disposition of the action or, in the case of an appeal, until disposition of the appeal. Such order shall restrain the juvenile from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the delinquent act charged.

(b) A RESTRAINING ORDER TO PREVENT DOMESTIC ABUSE, AS DEFINED IN SECTION 14-4-101 (2), C.R.S., MAY BE ISSUED PURSUANT TO THIS SECTION AGAINST ANY JUVENILE BASED UPON THE STANDARDS SET FORTH IN SECTION 14-4-102 (4), C.R.S.

(c) The restraining order issued pursuant to this section shall be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected parties.

SECTION 7. Article 4 of title 14, Colorado Revised Statutes, 1987 Repl. Vol.,

as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

14-4-106. Venue. VENUE FOR FILING A COMPLAINT PURSUANT TO THIS ARTICLE IS PROPER IN ANY COUNTY WHERE THE ACTS CONSTITUTING DOMESTIC ABUSE THAT ARE THE SUBJECT OF THE COMPLAINT OCCUR, IN ANY COUNTY WHERE ONE OF THE PARTIES RESIDES, OR IN ANY COUNTY WHERE ONE OF THE PARTIES IS EMPLOYED. THIS REQUIREMENT FOR VENUE DOES NOT PROHIBIT THE CHANGE OF VENUE TO ANY OTHER COUNTY APPROPRIATE UNDER APPLICABLE LAW.

SECTION 8. 17-27.8-102 (1) (d), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-27.8-102. Authority of sentencing courts to utilize home detention programs. (1) (d) An offender who has been convicted of a crime, the underlying factual basis of which was found by the court to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., shall not be eligible for home detention IN THE HOME OF THE VICTIM pursuant to this article.

SECTION 9. 18-6-804, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

18-6-804. Repeal of part. ~~This part 8 is repealed, effective July 1, 1995.~~

SECTION 10. Part 8 of article 6 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

18-6-805. Repeal of sections. SECTIONS 18-6-802 AND 18-6-803 ARE REPEALED, EFFECTIVE JULY 1, 1998. PRIOR TO SUCH REPEAL, THE FUNCTIONS OF CERTIFYING AND SETTING STANDARDS FOR DOMESTIC VIOLENCE INTERVENTION PROGRAM PROVIDERS BY LOCAL BOARDS AND THE COMMISSION ON DOMESTIC VIOLENCE SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S. SUCH REVIEW SHALL BE MADE BY THE COMMITTEE WHICH CONDUCTS SUCH REVIEW PURSUANT TO SECTION 12-43-712, C.R.S.

SECTION 11. 24-34-104 (27), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (27) (e) THE FOLLOWING FUNCTION OF THE COMMISSION ON DOMESTIC VIOLENCE IN THE JUDICIAL DEPARTMENT SHALL TERMINATE ON JULY 1, 1998: THE FUNCTION OF CERTIFYING AND SETTING STANDARDS FOR DOMESTIC VIOLENCE INTERVENTION PROGRAM PROVIDERS IN ACCORDANCE WITH SECTIONS 18-6-802 AND 18-6-803, C.R.S.

SECTION 12. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to orders entered on or after said date.

SECTION 13. 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 22, 1995