

September 13, 2023

## MEMORANDUM

**TO:** Criminal Rules Committee

**FROM:** Legislative Subcommittee (Judge Vigil, Ms. Berry, and Mr. Holman)

**RE:** 2023 Legislation that may call for amendments to the Colorado Rules of Criminal Procedure.

Five of the Bills passed in the 2023 Legislative Session may call for amendments to the Colorado Rules of Criminal Procedure. They are:

- SB23-254, Rule 41: (concerning warrants, no-knock warrants, and warrantless entries).
- HB23-1151, Rule 5: (concerning 48-hour bond hearings).
- HB23-1182, Rule 43: (concerning remote public access to criminal court proceedings (see also Chief Justice Directives 23-02, 23-03)).
- HB23-1187, Multiple Rules: (concerning alternatives in the criminal justice system related to pregnant and postpartum persons).
- HB23-1232: Rule 35: (concerning modification of crime of violence and habitual offender sentences)

Below is an overview of these Bills and their possible impact on the Criminal Rules.

**Senate Bill 23-254 and Rule 41.** *SB23-254, Concerning Entry into a Dwelling by a Peace Officer.*

The Bill amends §16-3-303, §16-3-305, and adds §16-3-312. and concerns warrants, no-knock warrants and warrantless entries.

§16-3-303(4)(a.5) requires that the search warrant affidavit established that a no-knock entry is necessary because of a credible threat to the life of any person, including the peace officer executing the warrant.

Section 16-3-305(7)(a) requires that a search warrant be executed between 7 a.m. and 7 p.m., unless the judge, for good cause, expressly authorizes execution at another time.

Crim. P. 41 addresses applications for and issuance of warrants, including no-knock warrants. SB23-254 may call for amendment to this Rule.

**House Bill 23-1151 and Rule 5.** *HB-23-1151, Concerning Clarifications to the Requirements that the Court Conduct a Bond Hearing within Forty-Eight Hours after an Individual is placed in Jail.*

In 2021, the general assembly passed HB21-1280 to require that Coloradans receive an individualized bond hearing within 48 hours of arrest. According to the legislative declaration for HB23-1151, judicial districts have not been consistent in follow the requirements of the 2021 Bill.

(2)(a) Therefore, the general assembly enacts House Bill 23-1151 to clarify and confirm the mandates of House Bill 21-1280; and

(b) *Further urges the Colorado Supreme Court to adopt policies to ensure statewide uniformity in implementation of the requirements of House Bill 23-1151 and House Bill 21-1280.*

(HB23-1151, Legislative declaration, subsection (2) (emphasis added).

The Bill clarifies that the 48-hour requirement for a bond hearing applies regardless of whether: (1) the individual is held in custody in a jurisdiction other than the one that issues the arrest warrant; or (2) monetary bond was previously set ex parte; or (3) the in-custody arrestee did not appear for a first appearance.

The Bill also clarifies the circumstances under which the 48-hour requirement would not apply—an individual’s refusal to attend court or inability to attend court due to substance use or medical or behavioral health emergencies. And the Bill requires sheriffs to notify the court and public defenders of those circumstances and to document them.

Crim. P. 5 addresses preliminary proceedings, including the first appearance in court and the right to bail. Whether HB23-1151 – and the urging of the general assembly to ensure statewide uniformity – calls for amendment to Rule 5 is a question worth considering.

**House Bill 23-1182 and Rule 43.** *HB23-1182, Concerning a Requirement for Remote Public Access to Observe Criminal Proceedings.*

HB23-1182 requires all courts in Colorado to provide remote access for the public to observe any criminal court proceedings conducted in open court unless:

- The court does not have the technology to do so;
- The court has ordered that members of the public be excluded from the criminal proceeding;
- Technology, staffing, or internet issues prevent remote observation; or
- The court makes findings on the record, after a request by a party, witness, or victim, that there is a reasonable likelihood remote observation “risks compromising the safety”<sup>1</sup> of any person or the defendant’s right to a fair trial, and there is no less restrictive alternative available.

The Bill also requires courts to take reasonable steps to make sure there is no audio or visual recording of the proceedings without explicit permission of the court, and that there is no audio or visual transmission of privileged, confidential communications.

The Supreme Court recently issued two Chief Justice Directives: CJD 23-02, *Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts*, and CJD 23-03, *Virtual Proceedings Policy*. These provide guidance and guidelines for live streaming court proceedings and for the virtual or in-person appearance of parties, counsel, and witnesses in such proceedings. Both complement HB23-1182.

Crim. P. 43 addresses the use of interactive audiovisual and interactive audio devices for court appearances; and Crim. P. 43(e)(5)(II) addresses the public’s ability

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<sup>1</sup> “Risks compromising the safety” includes risks to physical and emotional safety, intimidation, and harassment.

to observe those parts of court proceedings taking place through the use of such devices. HB23-1182, along with the two Chief Justice Directives, may call for a rule amendment.

**House Bill 23-1187 and multiple Rules.** Hb23-1187, *Concerning Alternatives in the Criminal Justice System for Pregnant Persons.*

This Bill touches several areas covered by the Criminal Rules.

The Bill creates a rebuttable presumption (unless otherwise required by law) against detention and incarceration of a pregnant or postpartum defendant, which applies to:

- Bond decisions
- Acceptance of diversion agreements or acceptance or continuation of a deferred judgment
- Imposition of a sentence
- Imposition of an alternative sentence
- Granting of a stay of execution

Under the Bill, a court is required to make specific findings to overcome the presumption; and the “postpartum period” is defined as one year after the end of a pregnancy. Additionally, the Bill provides that jails and prisons shall provide pregnancy tests upon request.

Given the Bill’s application to multiple stages of criminal proceedings covered by the Criminal Rules, an in-depth assessment of its impact on the current Rules would seem appropriate.

**House Bill 23-1192 and Rule 35(b).** HB23-1192, *Concerning the Adoption of the 2023 Recommendations of the Colorado Commission on Criminal and Juvenile Justice Regarding Enhanced Sentencing.*

The Bill allows a defendant to petition the court for a modification of consecutive crime of violence (COV) sentences after at least 2 calendar years but no more than five calendar years after the final judgment of conviction or sentence is entered (if it has not been previously requested). A defendant is entitled to an evidentiary hearing and to counsel on a petition for modification, and a court must consider certain statutory factors when modifying a sentence.

The Bill also provides that a defendant convicted and sentenced as a habitual offender who has been sentenced to 24 years or more and has served at least 10 years of the sentence is allowed to petition the court for a modification of that sentence and any other habitual sentence. The Bill entitles defendant to an

evidentiary hearing and counsel, and a defendant must prove various factors by a preponderance of the evidence, at which point the court may resentence for a term of at least the midpoint in the aggravated range up to a term less than the current sentence.

Finally, the Bill allows for additional circumstances where a court may sentence COVs concurrently rather than consecutively.

In summary, HB23-1292, provides procedures and time frames for seeking modification of COV and habitual offender sentences. Crim. P. 35(b) provides a mechanism for seeking a reduction in sentence, albeit in a much shorter time frame and under a different process. Whether the Bill requires an amendment to the Criminal Rules or can stand as an independent statutory process is a fair question that merits some consideration.

# An Act

SENATE BILL 23-254

BY SENATOR(S) Fields and Gonzales, Bridges, Buckner, Coleman, Cutter, Danielson, Exum, Fenberg, Jaquez Lewis, Kolker, Moreno, Rodriguez, Winter F., Hansen, Marchman, Sullivan;  
also REPRESENTATIVE(S) Epps and Weissman, Bacon, deGruy Kennedy, English, Garcia, Gonzales-Gutierrez, Jodeh, Lindsay, Mabrey, Sharbini, Velasco, Woodrow, Amabile, Boesenecker, Brown, Dickson, Herod, Lindstedt, Michaelson Jenet, Sirota, Story, Valdez, Vigil, Willford, McCluskie.

CONCERNING ENTRY INTO A DWELLING BY A PEACE OFFICER.

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

**SECTION 1.** In Colorado Revised Statutes, 16-3-303, **amend** (6); and **add** (4)(a.5) as follows:

**16-3-303. Search warrants - application - definition.** (4) A no-knock search warrant shall be issued only if the affidavit for such warrant:

(a.5) ESTABLISHES THAT A NO-KNOCK ENTRY IS NECESSARY BECAUSE OF A CREDIBLE THREAT TO THE LIFE OF ANY PERSON, INCLUDING THE PEACE

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

OFFICERS EXECUTING THE WARRANT;

(6) For the purposes of this section, unless the context otherwise requires, "no-knock search warrant" means a search warrant ~~served by entry without prior identification~~ THAT DOES NOT REQUIRE COMPLIANCE WITH SECTION 16-3-305 (7)(d).

**SECTION 2.** In Colorado Revised Statutes, 16-3-305, **amend** (1); and **add** (1.5) and (7) as follows:

**16-3-305. Search warrants - direction - execution and return - legislative declaration.** (1) ~~Except as otherwise provided in this section, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.~~ THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) WHEN LAW ENFORCEMENT ENTERS A DWELLING, THE SAFETY AND PRESERVATION OF LIFE OF ALL OCCUPANTS AND LAW ENFORCEMENT OFFICERS IS PARAMOUNT;

(b) A NO-KNOCK ENTRY INTO A DWELLING CAN INCREASE DANGER AND CONFUSION BECAUSE OCCUPANTS MAY NOT RECOGNIZE LAW ENFORCEMENT IS MAKING ENTRY AND MAY MISTAKE THE ENTRY AS ENTRY BY AN UNLAWFUL INTRUDER;

(c) NO-KNOCK ENTRIES INTO DWELLINGS HAVE, IN SEVERAL INSTANCES ACROSS THE COUNTRY, INCLUDED NEGATIVE OUTCOMES AND THE LOSS OF LIFE;

(d) MAKING NO-KNOCK ENTRIES TO PREVENT THE DESTRUCTION OF EVIDENCE, ESPECIALLY IN DRUG CASES, DOES NOT JUSTIFY THE RISK TO HUMAN LIFE;

(e) NO-KNOCK ENTRIES SHOULD BE MADE ONLY WHEN DOING SO IS NECESSARY TO PROTECT HUMAN LIFE AND NOT WHEN DOING SO WOULD INCREASE THE RISK TO HUMAN LIFE; AND

(f) THE STANDARD FOR WARRANTLESS NO-KNOCK ENTRIES SHOULD BE SUBSTANTIALLY THE SAME AS THE STANDARD FOR NO-KNOCK WARRANTS.

(1.5) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A SEARCH WARRANT SHALL BE DIRECTED TO ANY OFFICER AUTHORIZED BY LAW TO EXECUTE IT IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED.

(7) WHEN A PEACE OFFICER, HAVING A WARRANT FOR THE SEARCH OF A DWELLING, EXECUTES THE SEARCH WARRANT, THE OFFICER SHALL:

(a) EXECUTE THE WARRANT BETWEEN THE HOURS OF 7 A.M. AND 7 P.M. UNLESS THE JUDGE, FOR GOOD CAUSE, EXPRESSLY AUTHORIZES EXECUTION AT ANOTHER TIME;

(b) BE READILY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER IN UNIFORM OR WEARING A VISIBLE LAW ENFORCEMENT BADGE AND CLEARLY IDENTIFY THEMSELVES AS A LAW ENFORCEMENT OFFICER;

(c) WEAR AND ACTIVATE A BODY-WORN CAMERA AS REQUIRED BY SECTION 24-31-902 (1)(a)(II)(A) WHEN ENTERING A PREMISES FOR THE PURPOSE OF ENFORCING THE LAW; AND

(d) KNOCK-AND-ANNOUNCE THE OFFICER'S PRESENCE AT A VOLUME LOUD ENOUGH FOR THE OFFICER TO REASONABLY BELIEVE THE OCCUPANTS INSIDE CAN HEAR, ALLOW A REASONABLE AMOUNT OF TIME BEFORE ENTERING GIVEN THE SIZE OF THE DWELLING FOR SOMEONE TO GET TO THE DOOR, AND DELAY ENTRY IF THE OFFICER HAS REASON TO BELIEVE THAT SOMEONE IS APPROACHING THE DWELLING'S ENTRANCE WITH THE INTENT OF VOLUNTARILY ALLOWING THE OFFICER TO ENTER THE DWELLING; EXCEPT THAT THIS SUBSECTION (7)(d) DOES NOT APPLY IF:

(I) A COURT AUTHORIZES A NO-KNOCK WARRANT PURSUANT TO SECTION 16-3-303; OR

(II) THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO-KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF.

**SECTION 3.** In Colorado Revised Statutes, **add** 16-3-312 as follows:



**16-3-312. Warrantless entry of a dwelling.** (1) WHEN A PEACE OFFICER MAKES A WARRANTLESS ENTRY INTO A DWELLING IN WHICH OCCUPANTS ARE UNAWARE LAW ENFORCEMENT IS PRESENT AND MAKING ENTRY, THE OFFICER SHALL:

(a) WEAR AND ACTIVATE A BODY-WORN CAMERA AS REQUIRED BY SECTION 24-31-902 (1)(a)(II)(A) WHEN ENTERING A PREMISES FOR THE PURPOSE OF ENFORCING THE LAW; AND

(b) KNOCK-AND-ANNOUNCE THE OFFICER'S PRESENCE AT A VOLUME LOUD ENOUGH FOR THE OFFICER TO REASONABLY BELIEVE THE OCCUPANTS INSIDE CAN HEAR, ALLOW A REASONABLE AMOUNT OF TIME BEFORE ENTERING GIVEN THE SIZE OF THE DWELLING FOR SOMEONE TO GET TO THE DOOR, AND DELAY ENTRY IF THE OFFICER HAS REASON TO BELIEVE THAT SOMEONE IS APPROACHING THE DWELLING'S ENTRANCE WITH THE INTENT OF VOLUNTARILY ALLOWING THE OFFICER TO ENTER THE DWELLING; EXCEPT THAT THIS SUBSECTION (1)(b) DOES NOT APPLY IF THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO-KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE:


(I) OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF; OR

(II) THE OFFICER IS ENGAGED IN THE HOT PURSUIT OF A FLEEING SUSPECT.

(2) THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WORKING IN AN UNDERCOVER CAPACITY.

**SECTION 4. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



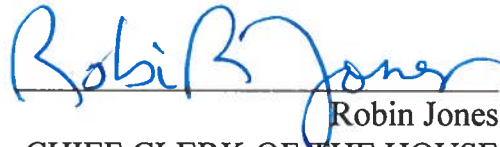
Steve Fenberg  
PRESIDENT OF  
THE SENATE



Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

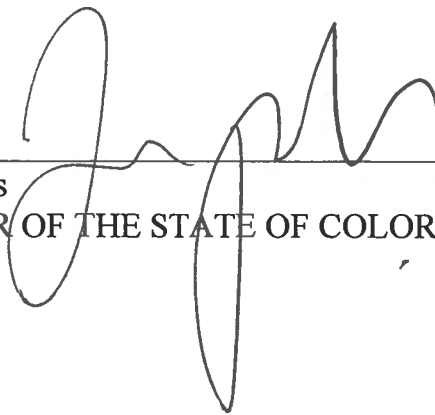


Cindi L. Markwell  
SECRETARY OF  
THE SENATE



Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED June 4, 2023 at 3:32 pm  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO

# An Act

HOUSE BILL 23-1151

BY REPRESENTATIVE(S) Woodrow and Bockenfeld, Epps, Bacon, Boesenecker, deGruy Kennedy, Dickson, English, Garcia, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Mabrey, Marshall, Michaelson Jenet, Ricks, Sirota, Soper, Story, Titone, Valdez, Velasco, Vigil, Weissman, Bird, Brown, Duran, Froelich, Herod, Lieder, Martinez, Sharbini, Snyder, Young;  
also SENATOR(S) Rodriguez and Gardner, Bridges, Priola.

CONCERNING CLARIFICATIONS TO THE REQUIREMENTS THAT THE COURT CONDUCT A BOND HEARING WITHIN FORTY-EIGHT HOURS AFTER AN INDIVIDUAL IS PLACED IN JAIL.

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) It is the public policy of the state of Colorado to ensure consistent statewide access to basic due process in criminal proceedings, including bond setting;

(b) The general assembly passed House Bill 21-1280 to require that

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

Coloradans receive an individualized bond hearing in front of a judge within forty-eight hours of arrest, and to end wide variations in prompt bond hearings across the state;

(c) Some judicial districts consistently follow the requirements of House Bill 21-1280, while others apply the provisions of House Bill 21-1280 in only limited cases;

(d) This jurisdictional split causes continued inconsistencies in access to basic due process across the state and thwarts the legislative intent of House Bill 21-1280; and

(e) Inconsistency by Colorado courts in provision of basic due process is unfair and erodes public confidence in the court system.

(2) (a) Therefore, the general assembly enacts House Bill 23-1151 to clarify and confirm the mandates of House Bill 21-1280; and

(b) Further urges the Colorado supreme court to adopt policies to ensure statewide uniformity in implementation of the requirements of House Bill 23-1151 and House Bill 21-1280.

**SECTION 2.** In Colorado Revised Statutes, 13-10-111.5, **amend** (2) as follows:

**13-10-111.5. Notice to municipal courts of municipal holds.**

(2) Once a municipal court receives notice that the defendant is being held solely on the basis of a municipal hold, the municipal court shall hold a hearing within forty-eight hours after the receipt of such a notice. The county sheriff shall make the in-custody defendant available to appear in a timely manner before a municipal judge for a hearing required by this subsection (2) at the date and time mutually agreed to by the county sheriff and municipal court. This subsection (2) must not be construed to require the county sheriff to transport the in-custody defendant to the municipal court. It is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by circumstances in which the defendant refuses to attend court, is unable to attend court due to a ~~debilitating physical ailment, or is unable to proceed due to drug or alcohol use or mental illness~~ DRUG OR ALCOHOL USE, A SERIOUS MEDICAL OR BEHAVIORAL HEALTH EMERGENCY, or when the delay is caused by an

emergency that requires the court to close. WHEN THE DEFENDANT IS UNABLE TO ATTEND COURT, THE SHERIFF SHALL PROVIDE THE COURT WITH A LIST OF PEOPLE SUBJECT TO THIS SECTION WHO DID NOT TIMELY ATTEND COURT, THE DATE OF THE PERSON'S ARREST, AND THE LOCATION WHERE THE PERSON IS IN CUSTODY. THE SHERIFF SHALL DOCUMENT THE LENGTH OF THE DELAY, THE REASON FOR THE DELAY, AND THE EFFORTS TO ABATE THE EMERGENCY. AS SOON AS THE EMERGENCY HAS SUFFICIENTLY ABATED, THE SHERIFF SHALL MAKE THE IN-CUSTODY DEFENDANT AVAILABLE TO APPEAR BEFORE THE MUNICIPAL COURT AT THE NEXT SCHEDULED BOND HEARING. Use of audiovisual conferencing technology is permissible to expedite the hearing. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

**SECTION 3.** In Colorado Revised Statutes, 16-4-102, **amend** (2)(a)(I) and (2)(a)(II); and **add** (2)(a)(I.5) and (2)(a)(IV) as follows:

**16-4-102. Right to bail - before conviction.** (2) (a) (I) The arresting jurisdiction shall bring an in-custody arrestee before a court for bond setting as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. A judge, magistrate, or bond hearing officer shall hold a hearing with an in-custody arrestee at which the court shall enter an individualized bond order as soon as practicable, but no later than forty-eight hours after an arrestee arrives at a jail or holding facility. Notwithstanding the requirement for bond setting within forty-eight hours, it is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by an emergency that requires the court to close or circumstances in which the ~~defendant~~ IN-CUSTODY ARRESTEE refuses to attend court, OR is unable to attend ~~court~~ due to a ~~debilitating physical ailment, or is unable to proceed due to drug or alcohol use or mental illness~~ DRUG OR ALCOHOL USE OR A SERIOUS MEDICAL OR BEHAVIORAL HEALTH EMERGENCY. IN SUCH INSTANCES, THE SHERIFF SHALL PROVIDE THE PUBLIC DEFENDER'S OFFICE WITH A LIST OF PEOPLE SUBJECT TO THIS SECTION WHO DID NOT TIMELY ATTEND COURT, THE DATE OF THE PERSON'S ARREST, AND THE LOCATION WHERE THE PERSON IS IN CUSTODY. THE SHERIFF SHALL DOCUMENT THE LENGTH OF THE DELAY, THE REASON FOR THE DELAY, AND THE EFFORTS TO ABATE THE EMERGENCY. AS SOON AS THE EMERGENCY HAS SUFFICIENTLY ABATED, THE SHERIFF SHALL BRING THE IN-CUSTODY ARRESTEE BEFORE A JUDGE AT THE NEXT SCHEDULED BOND HEARING. Use of audiovisual conferencing technology is permissible to

expedite bond setting hearings, including prior to extradition of the ~~defendant~~ IN-CUSTODY ARRESTEE from one county to another in the state of Colorado. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

(I.5) THIS SUBSECTION (2)(a) REQUIRES AN INDIVIDUALIZED BOND HEARING AT WHICH THE IN-CUSTODY ARRESTEE IS PRESENT, REGARDLESS OF WHETHER:

(A) AN IN-CUSTODY ARRESTEE IS HELD IN CUSTODY IN A JURISDICTION OTHER THAN THE ONE THAT ISSUED THE ARREST WARRANT;

(B) MONEY BOND WITH A MONETARY CONDITION WAS PREVIOUSLY SET EX PARTE; OR

(C) THE IN-CUSTODY ARRESTEE DID NOT APPEAR FOR A FIRST APPEARANCE.

(II) This subsection (2)(a) applies only to the initial bond setting AT AN INDIVIDUALIZED BOND HEARING by a judge, JUDICIAL OFFICER, OR BOND HEARING OFFICER.

(IV) FOR AN IN-CUSTODY ARRESTEE WHO IS NOT SUBJECT TO THIS SUBSECTION (2)(a), NOTHING IN THIS SECTION EXTENDS OR JUSTIFIES DELAYS IN TIMELY ADVISEMENT OR BOND HEARINGS PURSUANT TO OTHER LAWS OR RULES.

**SECTION 4. Effective date.** This act takes effect October 1, 2023.

**SECTION 5. Safety clause.** The general assembly hereby finds,

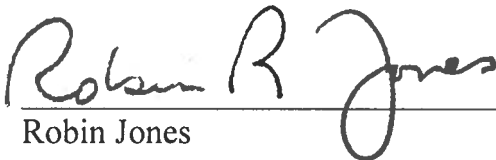
determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Steve Fenberg  
PRESIDENT OF  
THE SENATE

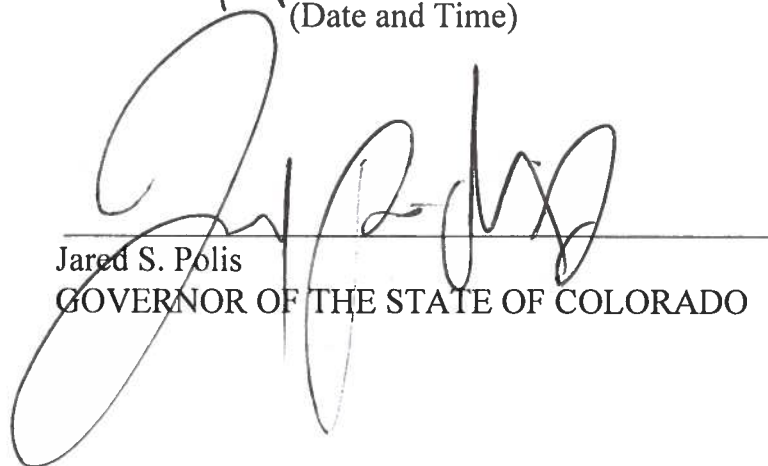


Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED Thursday April 20<sup>th</sup> 2023 at 1:30 PM  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO

# An Act

HOUSE BILL 23-1182

BY REPRESENTATIVE(S) Epps and Mabrey, Bacon, Garcia, Marshall, Sharbini, Woodrow, Boesenecker, Brown, Dickson, English, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Michaelson Jenet, Ortiz, Parenti, Ricks, Sirota, Soper, Titone, Velasco, Vigil, Weissman, Willford, Young, McCluskie, Amabile, Froelich, Herod, Martinez, Valdez;  
also SENATOR(S) Fields and Gardner, Buckner, Cutter, Exum, Jaquez Lewis, Liston, Marchman, Moreno, Priola, Roberts, Smallwood, Sullivan, Van Winkle, Winter F.

CONCERNING A REQUIREMENT FOR REMOTE PUBLIC ACCESS TO OBSERVE  
CRIMINAL COURT PROCEEDINGS.

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) It is the public policy of the state of Colorado to maximize transparency and accessibility of criminal court proceedings;

(b) The Colorado judicial branch increased transparency in 2020

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when it facilitated expanded access to remote observation of criminal court proceedings in every judicial district;

(c) Continued access to remote court observation remains inconsistent and unpredictable, both within and between jurisdictions; and

(d) All Coloradans benefit from consistent, predictable access to observe criminal court proceedings remotely.

(2) Therefore, it is the intent of the general assembly to increase transparency and ensure consistent, predictable statewide access for the public to remotely observe criminal proceedings held in open court.

**SECTION 2.** In Colorado Revised Statutes, 13-1-132, **add** (3.5) as follows:

**13-1-132. Use of interactive audiovisual devices and communication technology in court proceedings.** (3.5) (a) ALL COLORADO COURTS, INCLUDING MUNICIPAL COURTS, SHALL MAKE ANY CRIMINAL COURT PROCEEDING CONDUCTED IN OPEN COURT AVAILABLE FOR REMOTE PUBLIC VIEWING AND LISTENING IN REAL TIME, AT NO COST TO THE PUBLIC, THROUGH AN ONLINE PLATFORM, WHICH MAY INCLUDE A PARTICIPATORY WEB CONFERENCING PLATFORM, AND POST PROMINENTLY ON THE COURT'S WEBSITE THE LINKS FOR REMOTE OBSERVATION, UNLESS:

(I) THE COURTROOM DOES NOT HAVE SUFFICIENT TECHNOLOGICAL CAPABILITY, SUCH AS A PARTICIPATORY WEB CONFERENCING PLATFORM, TO MAKE SUCH PROCEEDINGS AVAILABLE TO THE PUBLIC FOR REMOTE OBSERVATION;

(II) MEMBERS OF THE PUBLIC HAVE BEEN EXCLUDED FROM THE CRIMINAL PROCEEDING BY ORDER OF THE COURT;

(III) TECHNOLOGY, STAFFING, OR INTERNET ISSUES LIMIT OR PREVENT REMOTE OBSERVATION; OR

(IV) AFTER A REQUEST BY A PARTY, WITNESS, OR VICTIM, OR ON THE COURT'S OWN MOTION, THE COURT MAKES FINDINGS ON THE RECORD BASED ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE THAT:

(A) THERE IS A REASONABLE LIKELIHOOD REMOTE OBSERVATION OF LIVE PROCEEDINGS RISKS COMPROMISING THE SAFETY OF ANY PERSON; THE DEFENDANT'S RIGHT TO A FAIR TRIAL, INCLUDING VIOLATIONS OF SEQUESTRATION ORDERS; OR THE VICTIM'S RIGHTS PURSUANT TO SECTION 24-4.1-302.5 (1)(a); AND

(B) THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT PRESERVES THE PUBLIC INTEREST IN REMOTE OBSERVATION WHILE MITIGATING THE IDENTIFIED RISK. AS USED IN THIS SUBSECTION (3.5)(a)(IV)(B), "LESS RESTRICTIVE ALTERNATIVE" INCLUDES ALLOWING REMOTE AUDIO-ONLY OBSERVATION WHILE DISABLING VIDEO OBSERVATION OR TURNING OFF REMOTE OBSERVATION FOR PARTICULAR WITNESSES OR DISCRETE PORTIONS OF THE PROCEEDING.

(b) AS USED IN THIS SECTION, "RISKS COMPROMISING THE SAFETY" INCLUDE RISKS TO PHYSICAL AND EMOTIONAL SAFETY, INTIMIDATION, AND HARASSMENT.

(c) WHEN ALLOWING REMOTE OBSERVATION, COURTS SHALL TAKE REASONABLE STEPS TO ENSURE THERE IS NO AUDIO OR VISUAL RECORDING, INCLUDING PHOTOGRAPHY OR SCREENSHOTS OF THE PROCEEDINGS, WITHOUT EXPLICIT PERMISSION OF THE COURT. AS USED IN THIS SUBSECTION (3.5)(c), "REASONABLE STEPS" MUST INCLUDE AN ON-SCREEN WARNING THAT ANY RECORDING OF THE PROCEEDINGS WITHOUT A COURT ORDER, INCLUDING ANY SCREEN CAPTURE, PHOTOGRAPH, OR AUDIOVISUAL RECORDING, IS PROHIBITED. "REASONABLE STEPS" MAY ALSO INCLUDE THE COURT ISSUING AN ADDITIONAL VERBAL OR ON-SCREEN WARNING AND PROHIBITING REMOTE OBSERVATION BY SPECIFIC INDIVIDUALS WHOM THE COURT HAS REASON TO BELIEVE MAY VIOLATE THIS RULE.

(d) WHEN ALLOWING REMOTE OBSERVATION, COURTS SHALL TAKE REASONABLE STEPS TO ENSURE NO AUDIO OR VISUAL TRANSMISSION OF PRIVILEGED, CONFIDENTIAL COMMUNICATIONS OCCURS. TO HELP FACILITATE PRIVILEGED, CONFIDENTIAL COMMUNICATIONS IN THE COURTROOM, COURTS SHALL NOTIFY PARTIES AND ATTORNEYS OF THE LOCATION OF MICROPHONES AND ANY ABILITY TO MUTE MICROPHONES. IF THE COURT BECOMES AWARE THAT SUCH TRANSMISSIONS OCCURRED, THE COURT SHALL WORK WITH THE PARTIES AND ATTORNEYS TO PREVENT REOCCURRENCE.

(e) IF A PROCEEDING SUBJECT TO A SEQUESTRATION ORDER IS MADE

AVAILABLE FOR PUBLIC REMOTE OBSERVATION, THE COURT SHALL TAKE REASONABLE STEPS TO ENSURE COMPLIANCE WITH THE SEQUESTRATION ORDER AND ENSURE THE RIGHT TO A FAIR TRIAL, WHICH MAY INCLUDE:

(I) ANNOUNCING THE SEQUESTRATION ORDER AS FREQUENTLY AS NECESSARY IN OPEN COURT;

(II) REQUIRING OBSERVERS TO IDENTIFY THEMSELVES TO ENSURE NONE ARE POTENTIAL WITNESSES AND THAT ANY OBSERVERS WHO ARE FORBIDDEN FROM DISCUSSING THE CASE WITH WITNESSES KNOW OF THAT OBLIGATION;

(III) AT THE REQUEST OF A PARTY, ALLOWING THE COURT OR PARTY TO INQUIRE OF ANY WITNESS, WHILE UNDER OATH AND OUTSIDE THE PRESENCE OF THE JURY, IF THE WITNESS WATCHED ANY PORTION OF THE PROCEEDING OR DISCUSSED ANY PORTION OF THE PROCEEDING WITH ANYONE PRIOR TO TESTIFYING; AND

(IV) TERMINATING REMOTE OBSERVATION TO PROTECT THE PARTIES' RIGHT TO A FAIR TRIAL OR TO ENSURE COMPLIANCE WITH THE SEQUESTRATION ORDER.

(f) FOR CRIMINAL COURTS THAT DO NOT HAVE SUFFICIENT EXISTING STAFF OR TECHNOLOGICAL CAPABILITIES TO MAKE PROCEEDINGS AVAILABLE FOR REMOTE OBSERVATION AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (3.5), IF THE COURT SUBSEQUENTLY OBTAINS SUCH STAFF AND CAPABILITIES, THE COURT MUST COMPLY WITH THE PROVISIONS OF THIS SECTION WITHIN NINETY DAYS AFTER OBTAINING SUCH STAFF AND CAPABILITIES.

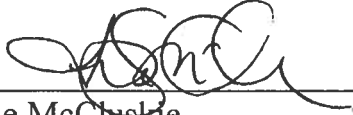
(g) THIS SUBSECTION (3.5) DOES NOT APPLY TO JUVENILE DELINQUENCY CASES PURSUANT TO TITLE 19 OR TO CASES IN WHICH A JUVENILE HAS BEEN CHARGED BY DIRECT FILING OF INFORMATION OR AN INDICTMENT IN DISTRICT COURT PURSUANT TO SECTION 19-2.5-801 UNTIL THE COMPLETION OF A PRELIMINARY HEARING AND COMPLETION OF ANY HEARING REQUESTING TO TRANSFER THE CASE TO JUVENILE COURT PURSUANT TO SECTION 19-2.5-801 (4).

**SECTION 3.** In Colorado Revised Statutes, **amend** 13-10-103 as follows:

**13-10-103. Applicability.** This article 10 applies to and governs the operation of municipal courts in the cities and towns of this state. Except for the provisions relating to the method of salary payment for municipal judges, the incarceration of children pursuant to sections 19-2.5-305 and 19-2.5-1511, the appearance of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense as required by section 13-10-111, the right to a trial by jury for petty offenses pursuant to section 16-10-109, relief from improperly entered guilty pleas pursuant to section 18-1-410.6, MAKING CRIMINAL COURT PROCEEDING CONDUCTED IN OPEN COURT AVAILABLE FOR REMOTE PUBLIC VIEWING AND LISTENING IN REAL TIME, rules of procedure promulgated by the supreme court, and appellate procedure, this article 10 may be superseded by charter or ordinance enacted by a home rule city.

**SECTION 4. Act subject to petition - effective date.** This act takes effect September 1, 2023; 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

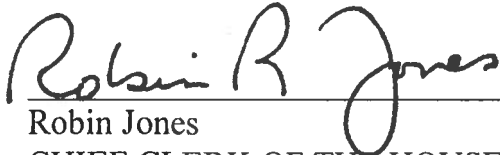
held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Steve Fenberg  
PRESIDENT OF  
THE SENATE



Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED June 7, 2023 at 3:09 pm  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO

# An Act

HOUSE BILL 23-1187

BY REPRESENTATIVE(S) Bacon and Amabile, Boesenecker, Brown, deGruy Kennedy, Dickson, Duran, English, Epps, Froelich, Garcia, Herod, Jodeh, Joseph, Lindsay, Lindstedt, Mabrey, Michaelson Jenet, Ricks, Sharbini, Sirota, Story, Titone, Vigil, Weissman, Willford, Woodrow, Bird, Gonzales-Gutierrez, Hamrick, Kipp, Lieder, Martinez, Parenti, Snyder, Velasco, Young, McCluskie;  
also SENATOR(S) Gonzales and Fields, Buckner, Coleman, Cutter, Danielson, Exum, Jaquez Lewis, Kolker, Marchman, Moreno, Priola, Rodriguez, Winter F.

CONCERNING ALTERNATIVES IN THE CRIMINAL JUSTICE SYSTEM FOR PREGNANT PERSONS.

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

**SECTION 1.** In Colorado Revised Statutes, **add** 18-1.3-103.7 as follows:

**18-1.3-103.7. Alternative options for pregnant and postpartum people - legislative declaration - definitions.** (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

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

(I) THERE IS AN INCREASING FEMALE POPULATION IN PRISONS AND JAILS;

(II) WHILE NO SYSTEM IS PERFECT IN RESPONDING TO THE MEDICAL CONDITIONS OF PREGNANCY, CORRECTIONAL FACILITIES AND COUNTY JAILS ARE PARTICULARLY ILL-EQUIPPED TO DO SO;

(III) DURING CRIMINAL CASES INVOLVING A PREGNANT OR POSTPARTUM DEFENDANT, THE PHYSICAL AND MENTAL HEALTH NEEDS OF THE PREGNANT DEFENDANT OR THE POSTPARTUM DEFENDANT AND NEWBORN MUST BE CONSIDERED AT ALL STAGES OF THE PROCEEDING AS A MATTER OF COMMUNITY HEALTH AND SAFETY;

(IV) TIMELY ATTENTION TO MEDICAL CONDITIONS AND MENTAL HEALTH DURING THE PERINATAL PERIOD CAN IMPROVE HEALTH AND WELFARE FOR MULTIPLE GENERATIONS OF A FAMILY UNIT;

(V) PREGNANCY IS A TIME-SENSITIVE PROCESS THAT HAS MANY POTENTIAL OUTCOMES AND VARIATIONS. A PREGNANT PERSON MAY FEEL HEALTHY AND EXPERIENCE NO COMPLICATIONS. A PREGNANT PERSON MAY ALSO EXPERIENCE SUDDEN, HARMFUL MEDICAL CONDITIONS, SUCH AS PREECLAMPSIA OR PLACENTAL ABRUPTION, OR DEVELOP COMPLEX MEDICAL CONDITIONS THAT RESULT IN THE EARLY TERMINATION OF A PREGNANCY OR THREATEN THE LIFE OF THE PREGNANT PERSON, SUCH AS AN ECTOPIC PREGNANCY. AT ANY STAGE OF THE PERINATAL PERIOD, SITUATIONS CAN OCCUR THAT CAUSE LONG-TERM PHYSICAL AND MENTAL HEALTH TRAUMA FOR THE PREGNANT PERSON.

(VI) CRIMINAL PROCEEDINGS ARE NOT RESPONSIVE TO THE TIMELINE OR COMPLEXITY OF THE PERINATAL PERIOD;

(VII) WHEN A SUBSTANCE USE DISORDER INTERSECTS WITH A PREGNANCY, IT IS BEST HANDLED AS A HEALTH CONDITION. INCREASING THE TIME A PREGNANT PERSON WITH A SUBSTANCE USE DISORDER IS IN A CORRECTIONAL FACILITY OR COUNTY JAIL IS COUNTER TO PUBLIC HEALTH AND MAY DRIVE THE PREGNANT PERSON AWAY FROM MEDICAL CARE AND SUPPORT SERVICES.

(VIII) THE END OF THE PREGNANCY DOES NOT IMMEDIATELY TERMINATE THE EFFECTS OF THE PREGNANCY ON THE PERSON WHO WAS

PREGNANT;

(IX) THE POSTPARTUM PERIOD IS AN ESSENTIAL TIME FRAME FOR BOTH THE PERSON WHO GAVE BIRTH AND THE NEWBORN. IT IS AN OPPORTUNITY FOR THE NEWBORN:

(A) TO DEVELOP HEALTHY PHYSIOLOGIC RESPONSES; AND

(B) TO BENEFIT FROM THE ATTACHMENT AND BONDING THAT OCCURS DURING THIS PERIOD;

(X) BONDING BETWEEN A NEWBORN AND PARENT DURING THE POSTPARTUM PERIOD CAN IMPROVE CONDITIONS FOR OTHER CHILDREN AND CARE PROVIDERS IN THE SAME FAMILY UNIT AND PREVENT CHILD ABUSE AND NEGLECT; AND

(XI) BONDING BETWEEN A NEWBORN AND A PARENT CAN IMPROVE THE OVERALL HEALTH OF THE NEWBORN AND THE PARENT AND MAY PREVENT OR REDUCE LONG-TERM HEALTH RISKS THAT MAY BE INCREASED BY SEPARATING THE NEWBORN FROM THE PARENT. FOR EXAMPLE:

(A) A POSTPARTUM PERSON WHO DOES NOT BREASTFEED OR CHESTFEED A NEWBORN MAY HAVE AN INCREASED LIKELIHOOD OF PREMENOPAUSAL BREAST CANCER, OVARIAN CANCER, OR TYPE 2 DIABETES;

(B) A NEWBORN WHO IS NOT BREASTFED OR CHESTFED MAY HAVE AN INCREASED LIKELIHOOD OF CHILDHOOD OBESITY, ASTHMA, TYPE 1 OR TYPE 2 DIABETES, LEUKEMIA, OR SUDDEN INFANT DEATH SYNDROME; AND

(C) A CHILD WHO IS SEPARATED FROM ANY PARENT MAY EXPERIENCE STRESS HORMONES, WHICH MAY LEAD TO DIFFICULTY SLEEPING, DEVELOPMENTAL REGRESSION, HEART DISEASE, HYPERTENSION, OBESITY, DIABETES, OR DECREASED LIFE SPAN. A NEWBORN WHO IS SEPARATED FROM A PARENT MAY ALSO EXPERIENCE PERMANENT ARCHITECTURAL CHANGES IN THE BRAIN, INCLUDING A LOWER INTELLIGENCE QUOTIENT OR AN INCREASED LIKELIHOOD OF DEPRESSION, SUICIDAL IDEATION, OR ADDICTION TO ALCOHOL OR GAMBLING.

(b) THE GENERAL ASSEMBLY FINDS, THEREFORE, THAT ALL ALTERNATIVES TO PROSECUTION, COMMITMENT, AND INCARCERATION OF A



PREGNANT OR POSTPARTUM PERSON MUST BE CONSIDERED, INCLUDING A STAY OF CRIMINAL PROCEEDINGS OR SENTENCING TO REDUCE THE LIKELIHOOD OF NEGATIVE HEALTH AND SOCIAL OUTCOMES FOR THE PARENT, NEWBORN CHILD, AND COMMUNITY.

(c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A PERSON WHO COERCES OR EXTORTS A PREGNANT OR POSTPARTUM PERSON IN THE COMMISSION OF CRIMES SHOULD BE SUBJECT TO BEING INVESTIGATED AND, AS APPROPRIATE, PROSECUTED FOR A CRIMINAL ACT PURSUANT TO THIS TITLE 18.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "NEWBORN" MEANS A PERSON WHO HAS BEEN BORN AND WHO IS LESS THAN ONE YEAR OLD.

(b) "POSTPARTUM PERIOD" MEANS A PERIOD OF ONE YEAR AFTER THE END OF A PREGNANCY, REGARDLESS OF WHETHER THE PREGNANCY ENDS WITH A LIVE BIRTH.

(c) "PREGNANT OR POSTPARTUM DEFENDANT" MEANS A PERSON WHO IS PREGNANT OR IN A POSTPARTUM PERIOD WHO HAS BEEN ACCUSED OR CONVICTED OF A CRIME.

(d) "STAY OF EXECUTION" MEANS DELAYING THE IMPOSITION OF A SENTENCE OR THE INCARCERATION PORTION OF THE SENTENCE FOR A PREGNANT OR POSTPARTUM DEFENDANT AFTER THE SENTENCE IS ANNOUNCED BY A COURT.

(3)(a) THERE IS A REBUTTABLE PRESUMPTION AGAINST DETENTION AND INCARCERATION OF A PREGNANT OR POSTPARTUM DEFENDANT IF THE DEFENDANT PROVIDES THE COURT AND DISTRICT ATTORNEY WITH NOTICE OF THE DEFENDANT'S STATUS AS A PREGNANT OR POSTPARTUM DEFENDANT AT EACH APPLICABLE STAGE OF THE PROCEEDINGS. SUBJECT TO SUBSECTION (5) OF THIS SECTION AND IF THE COURT DECIDES TO DETAIN OR INCARCERATE THE PREGNANT OR POSTPARTUM DEFENDANT AFTER WEIGHING THE APPLICABLE LEGAL STANDARDS AND CONSIDERATIONS SET FORTH IN SUBSECTIONS (3)(a)(I) TO (3)(a)(VI) OF THIS SECTION, THE COURT SHALL MAKE SPECIFIC FINDINGS ON THE RECORD THAT THE RISK TO PUBLIC SAFETY

OR ANY OTHER FACTOR THE COURT IS REQUIRED TO CONSIDER IS SUBSTANTIAL ENOUGH TO OUTWEIGH THE RISK OF INCARCERATION. THE COURT SHALL APPLY THE REBUTTABLE PRESUMPTION DESCRIBED IN THIS SUBSECTION (3)(a) TO A PREGNANT OR POSTPARTUM DEFENDANT IN DETERMINING WHETHER TO:

(I) ISSUE BOND PURSUANT TO ARTICLE 4 OF TITLE 16;

(II) ACCEPT A DIVERSION AGREEMENT PURSUANT TO SECTION 18-1.3-101;

(III) ACCEPT OR CONTINUE A DEFERRED JUDGMENT PURSUANT TO SECTION 18-1.3-102;

(IV) IMPOSE A SENTENCE PURSUANT TO SECTION 18-1-102.5, INCLUDING WHETHER TO GRANT PROBATION PURSUANT TO PART 2 OF THIS ARTICLE 1.3;

(V) IMPOSE AN ALTERNATIVE SENTENCE PURSUANT TO SECTION 18-1.3-104 OR 18-1.3-106; OR

(VI) GRANT A STAY OF EXECUTION PURSUANT TO THIS SECTION.

(b) A COURT SHALL NOT USE A PREGNANT OR POSTPARTUM DEFENDANT'S PREGNANCY OR POSTPARTUM PERIOD AS A BASIS FOR IMPOSING A GREATER RESTRICTION ON THE DEFENDANT'S LIBERTY THAN A SIMILARLY SITUATED DEFENDANT WHO IS NOT PREGNANT OR POSTPARTUM, INCLUDING WHEN A PREGNANT OR POSTPARTUM DEFENDANT HAS A SUBSTANCE USE DISORDER.

(4) (a) A PERSON WHO MAY BE PREGNANT OR POSTPARTUM WHO IS ARRESTED OR IN CUSTODY IN A COUNTY JAIL OR CORRECTIONAL FACILITY MAY REQUEST A PREGNANCY TEST UPON OR FOLLOWING ADMISSION TO THE COUNTY JAIL OR CORRECTIONAL FACILITY. STAFF AT THE COUNTY JAIL OR CORRECTIONAL FACILITY SHALL PROVIDE A PREGNANCY TEST UPON REQUEST AND ALLOW THE PERSON TO TAKE THE PREGNANCY TEST WITHIN TWENTY-FOUR HOURS AFTER THE REQUEST.

(b) REQUESTING A PREGNANCY TEST, TAKING A PREGNANCY TEST, AND THE RESULTS OF A PREGNANCY TEST ARE CONFIDENTIAL MEDICAL

INFORMATION. THIS CONFIDENTIAL MEDICAL INFORMATION MUST NOT BE DISCLOSED TO OUTSIDE PARTIES UNLESS THE INFORMATION IS REQUIRED FOR THE PERSON TO RECEIVE MEDICAL CARE OR TO ALLOW STAFF AT THE COUNTY JAIL OR CORRECTIONAL FACILITY TO PROVIDE NECESSARY CARE.

(c) IF A PERSON IS REPRESENTED BY AN ATTORNEY IN A CRIMINAL PROCEEDING AND THE COUNTY JAIL OR CORRECTIONAL FACILITY HAS A SIGNED MEDICAL RELEASE FROM THE PERSON, THE COUNTY JAIL OR CORRECTIONAL FACILITY SHALL GIVE NOTICE TO THE PERSON'S ATTORNEY WITHIN FORTY-EIGHT HOURS, EXCLUDING STATE HOLIDAYS AND WEEKENDS, CONCERNING THE PERSON'S REQUEST FOR A PREGNANCY TEST PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION.

(5) (a) A PREGNANT OR POSTPARTUM DEFENDANT MAY RAISE THE ISSUE OF THE DEFENDANT'S PREGNANCY OR POSTPARTUM PERIOD AT ANY TIME DURING CRIMINAL PROCEEDINGS OR WHILE SERVING A SENTENCE. IF THE PREGNANCY OR POSTPARTUM PERIOD IS RAISED, THE PREGNANT OR POSTPARTUM DEFENDANT SHALL PROVIDE NOTICE TO THE DISTRICT ATTORNEY BY PROVIDING EVIDENCE OF THE PREGNANCY OR THE START OF THE POSTPARTUM PERIOD WITH A LIMITED WAIVER OF PRIVILEGE. A POSITIVE PREGNANCY TEST OR MEDICAL RECORD CONFIRMING PREGNANCY OR THE END OF PREGNANCY, OR A BIRTH CERTIFICATE OF A NEWBORN, IS PRIMA FACIE EVIDENCE OF PREGNANCY OR THE START OF THE POSTPARTUM PERIOD.

(b) IF THE PROSECUTION CONTESTS THAT THE DEFENDANT IS PREGNANT OR IN A POSTPARTUM STATE, THE COURT SHALL HOLD A HEARING TO MAKE A DETERMINATION AS SOON AS PRACTICABLE, BUT NO LATER THAN FOURTEEN DAYS AFTER THE ISSUE IS RAISED, UNLESS THE DEFENDANT REQUESTS THE HEARING BE HELD LATER THAN FOURTEEN DAYS AFTER THE ISSUE IS RAISED. IF THE DEFENDANT REQUESTS A LATER HEARING, THE COURT SHALL MAKE THE DETERMINATION WITHIN THE TIMELINE REQUESTED. THE COURT SHALL HOLD THE HEARING IMMEDIATELY IF THE CIRCUMSTANCES OF THE DEFENDANT OR THE DEFENDANT'S NEWBORN REQUIRE IT. THE DEFENDANT SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE DEFENDANT IS A PREGNANT OR POSTPARTUM DEFENDANT.

(c) THE COURT SHALL PROTECT MEDICAL INFORMATION PROVIDED TO THE COURT AS CONFIDENTIAL MEDICAL INFORMATION. A DEFENDANT'S WAIVER OF MEDICAL PRIVILEGE TO PRESENT MEDICAL EVIDENCE OF PREGNANCY OR THE END OF A PREGNANCY IN COURT IS LIMITED TO

INFORMATION RELEVANT TO DETERMINE WHETHER THE DEFENDANT IS OR WAS PREGNANT AND WHETHER THE PREGNANCY HAS ENDED.

(6) (a) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A COURT SHALL NOT:

(I) SET OR RELEASE THE PREGNANT OR POSTPARTUM DEFENDANT ON BOND IF THE PREGNANT OR POSTPARTUM DEFENDANT IS INELIGIBLE FOR BOND;

(II) ACCEPT AN AGREEMENT OR IMPOSE AN ALTERNATIVE SENTENCE IF THE PREGNANT OR POSTPARTUM DEFENDANT IS INELIGIBLE FOR A DIVERSION PROGRAM, DEFERRED JUDGMENT, PROBATIONARY SENTENCE, OR ANOTHER FORM OF ALTERNATIVE SENTENCE; OR

(III) APPLY THE REBUTTABLE PRESUMPTION PURSUANT TO THIS SECTION IF A PREGNANT OR POSTPARTUM DEFENDANT WAS CONVICTED OF A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2).

(b) THE COURT SHALL IMPOSE ANY MANDATORY SENTENCE REQUIRED BY LAW ON A PREGNANT OR POSTPARTUM DEFENDANT, BUT THE COURT MAY GRANT A STAY OF EXECUTION AS SET FORTH IN SUBSECTION (7) OF THIS SECTION.

(7) (a) ANY PREGNANT OR POSTPARTUM DEFENDANT MAY REQUEST A STAY OF EXECUTION BY FILING A WRITTEN REQUEST TO THE COURT IF THE PREGNANT OR POSTPARTUM DEFENDANT IS DETAINED OR INCARCERATED IN A COUNTY JAIL OR CORRECTIONAL FACILITY FOR ANY PERIOD OF TIME THROUGH THE END OF THE PREGNANCY OR THE POSTPARTUM PERIOD.

(b) THE COURT SHALL HOLD A HEARING TO DETERMINE THE MATTER AS SOON AS PRACTICABLE, BUT NO LATER THAN FOURTEEN DAYS AFTER THE PREGNANT OR POSTPARTUM DEFENDANT REQUESTS A STAY OF EXECUTION, UNLESS THE PREGNANT OR POSTPARTUM DEFENDANT REQUESTS A LATER HEARING. IF THE PREGNANT OR POSTPARTUM DEFENDANT REQUESTS A LATER HEARING, THE COURT SHALL MAKE THE DETERMINATION WITHIN THE TIMELINE REQUESTED. THE COURT SHALL HOLD THE HEARING IMMEDIATELY IF THE CIRCUMSTANCES OF THE PREGNANT OR POSTPARTUM DEFENDANT OR NEWBORN REQUIRE IT. THE DEFENDANT SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE DEFENDANT IS A PREGNANT

OR POSTPARTUM DEFENDANT.

(c) IN RULING UPON THE PREGNANT OR POSTPARTUM DEFENDANT'S REQUEST PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE COURT SHALL APPLY THE REBUTTABLE PRESUMPTION SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION.

(d) THE DISTRICT ATTORNEY AND THE COURT SHALL COMPLY WITH THE REQUIREMENTS OF THE "VICTIM RIGHTS ACT" PURSUANT TO PART 3 OF ARTICLE 4.1 OF TITLE 24 IN ANY PROCEEDING CONDUCTED PURSUANT TO THIS SECTION.

(e) FOLLOWING THE HEARING CONDUCTED PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE COURT MAY ORDER A STAY OF EXECUTION OF THE SENTENCE FOR ANY PERIOD OF TIME THROUGH THE END OF THE PREGNANCY OR THE POSTPARTUM PERIOD. THE COURT SHALL ORDER A DATE, TIME, AND PLACE FOR THE DEFENDANT TO APPEAR TO SERVE THE SENTENCE UPON COMPLETION OF THE STAY OF EXECUTION.

(f) IF THE COURT GRANTS A STAY OF EXECUTION PURSUANT TO SUBSECTION (7)(e) OF THIS SECTION, THE COURT SHALL ORDER THE BOND AND THE CONDITIONS OF THE BOND TO REMAIN IN EFFECT UNTIL THE DATE THE PREGNANT OR POSTPARTUM DEFENDANT IS ORDERED TO START SERVING THE DEFENDANT'S SENTENCE.

(g) NOTWITHSTANDING THIS SECTION, A PREGNANT OR POSTPARTUM DEFENDANT WHO IS INELIGIBLE FOR BAIL PURSUANT TO SECTION 16-4-101 OR 16-4-201.5 IS NOT ELIGIBLE FOR A STAY OF EXECUTION.

(h) IF THE PREGNANT OR POSTPARTUM DEFENDANT IS CHARGED WITH A NEW VIOLATION OR THE COURT RECEIVES A VERIFIED MOTION FROM THE DISTRICT ATTORNEY OR AN AGENCY RESPONSIBLE FOR SUPERVISING THE PREGNANT OR POSTPARTUM DEFENDANT THAT ESTABLISHES A PRIMA FACIE CASE THAT THE PREGNANT OR POSTPARTUM DEFENDANT HAS VIOLATED THE CONDITIONS OF THE STAY OF EXECUTION AND PRESENTS A SUBSTANTIAL RISK TO PUBLIC SAFETY, THE COURT SHALL SET A HEARING AND REQUIRE THE PREGNANT OR POSTPARTUM DEFENDANT TO APPEAR. AFTER THE HEARING, THE COURT MAY END THE STAY OF EXECUTION, ADD NEW CONDITIONS, ISSUE A WARRANT, OR CONTINUE THE STAY OF EXECUTION.

(8) IF A DEFENDANT, WHO IS SENTENCED TO INCARCERATION, LEARNS THAT THE DEFENDANT IS PREGNANT FOLLOWING THE SENTENCING HEARING, OR A POSTPARTUM DEFENDANT EXPERIENCES CHANGES TO THE DEFENDANT'S POSTPARTUM CONDITION FOLLOWING THE SENTENCING HEARING, THIS SECTION DOES NOT PRECLUDE THE PREGNANT OR POSTPARTUM DEFENDANT FROM REQUESTING RECONSIDERATION OF THE SENTENCE PURSUANT TO RULE 35 (b) OF THE RULES OF CRIMINAL PROCEDURE. DURING THE RECONSIDERATION HEARING, THIS SECTION APPLIES.

**SECTION 2.** In Colorado Revised Statutes, **amend** 13-25-136 as follows:

**13-25-136. Criminal actions - prenatal drug and alcohol screening - admissibility of evidence.** A court shall not admit in a criminal proceeding information relating to substance use ~~not otherwise required to be reported pursuant to section 19-3-304~~, obtained as part of a screening or test performed to determine pregnancy or to provide prenatal or postpartum care, up to one year postpartum, or if a pregnant or parenting ~~woman~~ PERSON discloses substance use during pregnancy while seeking or participating in behavioral health treatment. This section does not prohibit prosecution of any claim or action related to such substance use based on evidence obtained through methods other than those described in this section.

**SECTION 3.** In Colorado Revised Statutes, 16-4-103, **add** (7) as follows:

**16-4-103. Setting and selection type of bond - criteria.** (7) AT THE FIRST APPEARANCE OF A PREGNANT OR POSTPARTUM DEFENDANT WHO HAS COMPLIED WITH THE NOTICE REQUIREMENT SET FORTH IN SECTION 18-1.3-103.7, TO SET BOND, THE COURT OR PERSON DESIGNATED BY THE COURT TO SET BOND SHALL CONSIDER THE DEFENDANT'S PREGNANCY OR POSTPARTUM STATUS WHEN SETTING BOND PURSUANT TO THE RESTRICTIONS SET FORTH IN SECTION 19 OF ARTICLE II OF THE STATE CONSTITUTION AND SECTION 16-4-101.

**SECTION 4.** In Colorado Revised Statutes, 17-27-103, **add** (5)(d) as follows:

**17-27-103. Community corrections boards - establishment -**

**duties.** (5) (d) A COMMUNITY CORRECTIONS BOARD SHALL EXPEDITE A DECISION TO ACCEPT AN OFFENDER WHO IS A PREGNANT OR POSTPARTUM DEFENDANT, AS DEFINED IN SECTION 18-1.3-103.7, IF THE PREGNANT OR POSTPARTUM DEFENDANT DID NOT RAISE THE ISSUE OF THE PREGNANCY OR POSTPARTUM PERIOD PRIOR TO A REQUEST FOR COMMUNITY CORRECTIONS PLACEMENT.

**SECTION 5.** In Colorado Revised Statutes, 18-1.3-101, **amend** (3)(b) as follows:

**18-1.3-101. Pretrial diversion - appropriation - repeal.**  
(3) **Guidelines for eligibility.** Each district attorney that uses state money for a diversion program pursuant to this section shall adopt policies and guidelines delineating eligibility criteria for pretrial diversion, including types and levels of offenses so long as those offenses are consistent with subsections (5) to (7) of this section, and may agree to diversion in any case in which there exists sufficient admissible evidence to support a conviction. In determining whether an individual is appropriate for diversion, the district attorney shall consider:

(b) Any special characteristics or circumstances of the defendant, which may include whether the defendant has a mental health or other behavioral health disorder OR WHETHER THE DEFENDANT IS A PREGNANT OR POSTPARTUM DEFENDANT, AS DEFINED IN SECTION 18-1.3-103.7;

**SECTION 6.** In Colorado Revised Statutes, 18-1.3-203, **amend** (2) introductory portion; and **add** (2)(o) as follows:

**18-1.3-203. Criteria for granting probation.** (2) The following factors, or the converse ~~thereof~~ ~~where~~ WHEN appropriate, while not controlling the discretion of the court, ~~shall~~ **MUST** be accorded weight in making determinations called for by subsection (1) of this section:

(o) THE DEFENDANT IS A PREGNANT OR POSTPARTUM DEFENDANT, IF THE DEFENDANT COMPLIED WITH THE NOTICE REQUIREMENT SET FORTH IN SECTION 18-1.3-103.7.

**SECTION 7.** In Colorado Revised Statutes, **add** 19-2.5-1118.5 as follows:

**19-2.5-1118.5. Sentencing - alternative options for pregnant and postpartum juveniles - legislative declaration - definitions. (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:**

(I) WHILE NO SYSTEM IS PERFECT IN RESPONDING TO THE MEDICAL CONDITIONS OF PREGNANCY, JUVENILE FACILITIES ARE PARTICULARLY ILL-EQUIPPED TO DO SO;

(II) DURING JUVENILE DELINQUENCY CASES INVOLVING A PREGNANT OR POSTPARTUM JUVENILE, THE PHYSICAL AND MENTAL HEALTH NEEDS OF THE PREGNANT JUVENILE OR POSTPARTUM JUVENILE AND NEWBORN MUST BE CONSIDERED AT ALL STAGES OF THE PROCEEDING AS A MATTER OF COMMUNITY HEALTH AND SAFETY;

(III) TIMELY ATTENTION TO MEDICAL CONDITIONS AND MENTAL HEALTH DURING THE PERINATAL PERIOD CAN IMPROVE HEALTH AND WELFARE FOR MULTIPLE GENERATIONS OF A FAMILY UNIT;

(IV) PREGNANCY IS A TIME-SENSITIVE PROCESS THAT HAS MANY POTENTIAL OUTCOMES AND VARIATIONS. A PREGNANT PERSON MAY FEEL HEALTHY AND EXPERIENCE NO COMPLICATIONS. A PREGNANT PERSON MAY ALSO EXPERIENCE SUDDEN, HARMFUL MEDICAL CONDITIONS, SUCH AS PREECLAMPSIA OR PLACENTAL ABRUPTION, OR DEVELOP COMPLEX MEDICAL CONDITIONS THAT RESULT IN THE EARLY TERMINATION OF A PREGNANCY OR THREATEN THE LIFE OF THE PREGNANT PERSON, SUCH AS AN ECTOPIC PREGNANCY. AT ANY STAGE OF THE PERINATAL PERIOD, SITUATIONS CAN OCCUR THAT CAUSE LONG-TERM PHYSICAL AND MENTAL HEALTH TRAUMA FOR THE PREGNANT PERSON.

(V) ADJUDICATORY PROCEEDINGS ARE NOT RESPONSIVE TO THE TIMELINE OR COMPLEXITY OF THE PERINATAL PERIOD;

(VI) WHEN A SUBSTANCE USE DISORDER INTERSECTS WITH A PREGNANCY, IT IS BEST HANDLED AS A HEALTH CONDITION. INCREASING THE TIME A PREGNANT PERSON WITH A SUBSTANCE USE DISORDER IS IN A JUVENILE FACILITY IS COUNTER TO PUBLIC HEALTH AND MAY DRIVE THE PREGNANT PERSON AWAY FROM MEDICAL CARE AND SUPPORT SERVICES.

(VII) THE END OF PREGNANCY DOES NOT IMMEDIATELY TERMINATE THE EFFECTS OF THE PREGNANCY ON THE PERSON WHO WAS PREGNANT;



(VIII) THE POSTPARTUM PERIOD IS AN ESSENTIAL TIME FRAME FOR BOTH THE PERSON WHO GAVE BIRTH AND THE NEWBORN. IT IS AN OPPORTUNITY FOR THE NEWBORN:

(A) TO DEVELOP HEALTHY PHYSIOLOGIC RESPONSES; AND

(B) TO BENEFIT FROM THE ATTACHMENT AND BONDING THAT OCCURS DURING THIS PERIOD;

(IX) BONDING BETWEEN A NEWBORN AND PARENT DURING THE POSTPARTUM PERIOD CAN IMPROVE CONDITIONS FOR OTHER CHILDREN AND CARE PROVIDERS IN THE SAME FAMILY UNIT AND PREVENT CHILD ABUSE AND NEGLECT; AND

(X) BONDING BETWEEN A NEWBORN AND A PARENT CAN IMPROVE THE OVERALL HEALTH OF THE NEWBORN AND THE PARENT AND MAY PREVENT OR REDUCE LONG-TERM HEALTH RISKS THAT MAY BE INCREASED BY SEPARATING THE NEWBORN FROM THE PARENT. FOR EXAMPLE:

(A) A POSTPARTUM PERSON WHO DOES NOT BREASTFEED OR CHESTFEED A NEWBORN MAY HAVE AN INCREASED LIKELIHOOD OF PREMENOPAUSAL BREAST CANCER, OVARIAN CANCER, OR TYPE 2 DIABETES;

(B) A NEWBORN WHO IS NOT BREASTFED OR CHESTFED MAY HAVE AN INCREASED LIKELIHOOD OF CHILDHOOD OBESITY, ASTHMA, TYPE 1 OR TYPE 2 DIABETES, LEUKEMIA, OR SUDDEN INFANT DEATH SYNDROME; AND

(C) A CHILD WHO IS SEPARATED FROM ANY PARENT MAY EXPERIENCE STRESS HORMONES, WHICH MAY LEAD TO DIFFICULTY SLEEPING, DEVELOPMENTAL REGRESSION, HEART DISEASE, HYPERTENSION, OBESITY, DIABETES, OR DECREASED LIFE SPAN. A NEWBORN WHO IS SEPARATED FROM A PARENT MAY ALSO EXPERIENCE PERMANENT ARCHITECTURAL CHANGES IN THE BRAIN, INCLUDING A LOWER INTELLIGENCE QUOTIENT OR AN INCREASED LIKELIHOOD OF DEPRESSION, SUICIDAL IDEATION, OR ADDICTION TO ALCOHOL OR GAMBLING.

(b) THE GENERAL ASSEMBLY FINDS, THEREFORE, THAT ALL ALTERNATIVES TO JUVENILE PROCEEDINGS, ADJUDICATION, AND COMMITMENT OF A PREGNANT OR POSTPARTUM JUVENILE MUST BE CONSIDERED, INCLUDING A STAY OF CRIMINAL PROCEEDINGS OR SENTENCING

TO REDUCE THE LIKELIHOOD OF NEGATIVE HEALTH AND SOCIAL OUTCOMES FOR THE PARENT, NEWBORN CHILD, AND COMMUNITY.

(c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A PERSON WHO COERCES OR EXTORTS A PREGNANT OR POSTPARTUM PERSON IN THE COMMISSION OF CRIMES SHOULD BE SUBJECT TO BEING INVESTIGATED AND, AS APPROPRIATE, PROSECUTED FOR A CRIMINAL ACT PURSUANT TO TITLE 18.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "JUVENILE" MEANS A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE WHEN THE DELINQUENT ACT IS COMMITTED AND UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF SENTENCING.

(b) "NEWBORN" MEANS A PERSON WHO HAS BEEN BORN AND WHO IS LESS THAN ONE YEAR OLD.

(c) "POSTPARTUM PERIOD" MEANS A PERIOD OF ONE YEAR AFTER THE END OF A PREGNANCY, REGARDLESS OF WHETHER THE PREGNANCY ENDS WITH A LIVE BIRTH.

(d) "PREGNANT OR POSTPARTUM JUVENILE" MEANS A JUVENILE WHO IS PREGNANT OR IN A POSTPARTUM PERIOD WHO HAS BEEN ACCUSED OF A DELINQUENT ACT.

(e) "STAY OF EXECUTION" MEANS DELAYING THE IMPOSITION OF A SENTENCE OR THE COMMITMENT PORTION OF THE SENTENCE FOR A PREGNANT OR POSTPARTUM JUVENILE AFTER IT IS ANNOUNCED BY A COURT.

(3)(a) THERE IS A REBUTTABLE PRESUMPTION AGAINST DETENTION AND COMMITMENT OF A PREGNANT OR POSTPARTUM JUVENILE IF THE JUVENILE PROVIDES THE COURT AND DISTRICT ATTORNEY WITH NOTICE OF THE JUVENILE'S STATUS AS A PREGNANT OR POSTPARTUM JUVENILE AT EACH APPLICABLE STAGE OF THE PROCEEDINGS. SUBJECT TO SUBSECTION (5) OF THIS SECTION AND IF THE COURT DECIDES TO DETAIN OR COMMIT THE PREGNANT OR POSTPARTUM JUVENILE AFTER WEIGHING THE APPLICABLE LEGAL STANDARDS AND CONSIDERATIONS SET FORTH IN SUBSECTIONS (3)(a)(I) TO (3)(a)(VI) OF THIS SECTION, THE COURT SHALL MAKE SPECIFIC FINDINGS ON THE RECORD THAT THE RISK TO PUBLIC SAFETY OR ANY OTHER

FACTOR THE COURT IS REQUIRED TO CONSIDER IS SUBSTANTIAL ENOUGH TO OUTWEIGH THE RISK OF DETENTION OR COMMITMENT. THE COURT SHALL APPLY THE REBUTTABLE PRESUMPTION DESCRIBED IN THIS SUBSECTION (3)(a) TO A PREGNANT OR POSTPARTUM JUVENILE IN DETERMINING WHETHER TO:

(I) ISSUE BOND PURSUANT TO SECTION 19-2.5-306;

(II) ACCEPT ENTRY INTO THE JUVENILE DIVERSION PROGRAM PURSUANT TO SECTION 19-2.5-402;

(III) ACCEPT OR CONTINUE DEFERRED JUDGMENTS PURSUANT TO SECTION 18-1.3-102;

(IV) IMPOSE A SENTENCE PURSUANT TO SECTION 19-2.5-1103, INCLUDING WHETHER TO GRANT JUVENILE PROBATION PURSUANT TO SECTION 19-2.5-1106;

(V) IMPOSE AN ALTERNATIVE SENTENCE PURSUANT TO SECTION 19-2.5-1113; OR

(VI) GRANT A STAY OF EXECUTION PURSUANT TO THIS SECTION.

(b) A COURT SHALL NOT USE A PREGNANT OR POSTPARTUM JUVENILE'S PREGNANCY OR POSTPARTUM PERIOD AS A BASIS FOR IMPOSING A GREATER RESTRICTION ON THE JUVENILE'S LIBERTY THAN A SIMILARLY SITUATED JUVENILE WHO IS NOT PREGNANT OR POSTPARTUM, INCLUDING CIRCUMSTANCES IN WHICH A PREGNANT OR POSTPARTUM JUVENILE HAS A SUBSTANCE USE DISORDER.

(4)(a) A JUVENILE WHO MAY BE PREGNANT WHO IS ARRESTED OR IN CUSTODY IN A JUVENILE FACILITY MAY REQUEST A PREGNANCY TEST UPON OR FOLLOWING ADMISSION TO THE JUVENILE FACILITY. STAFF AT THE JUVENILE FACILITY SHALL PROVIDE A PREGNANCY TEST UPON REQUEST AND ALLOW THE JUVENILE TO TAKE THE PREGNANCY TEST WITHIN TWENTY-FOUR HOURS AFTER THE REQUEST.

(b) REQUESTING A PREGNANCY TEST, TAKING A PREGNANCY TEST, AND THE RESULTS OF A PREGNANCY TEST ARE CONFIDENTIAL MEDICAL INFORMATION. THIS CONFIDENTIAL MEDICAL INFORMATION MUST NOT BE

DISCLOSED TO OUTSIDE PARTIES UNLESS THE INFORMATION IS REQUIRED FOR THE JUVENILE TO RECEIVE MEDICAL CARE OR TO ALLOW STAFF AT THE JUVENILE FACILITY TO PROVIDE NECESSARY CARE.

(c) IF A JUVENILE IS REPRESENTED BY AN ATTORNEY IN A CRIMINAL PROCEEDING AND THE JUVENILE FACILITY HAS A SIGNED MEDICAL RELEASE FROM THE JUVENILE, THE JUVENILE FACILITY SHALL NOTIFY THE JUVENILE'S ATTORNEY WITHIN FORTY-EIGHT HOURS, EXCLUDING STATE HOLIDAYS AND WEEKENDS, CONCERNING THE JUVENILE'S REQUEST FOR A PREGNANCY TEST PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION.

(5)(a) A PREGNANT OR POSTPARTUM JUVENILE MAY RAISE THAT THE JUVENILE IS PREGNANT OR POSTPARTUM AT ANY TIME DURING ADJUDICATORY PROCEEDINGS OR WHILE SERVING A SENTENCE. IF THE PREGNANCY OR POSTPARTUM PERIOD IS RAISED, THE PREGNANT OR POSTPARTUM JUVENILE SHALL PROVIDE NOTICE TO THE DISTRICT ATTORNEY BY PROVIDING EVIDENCE OF THE PREGNANCY OR THE START OF THE POSTPARTUM PERIOD WITH A LIMITED WAIVER OF PRIVILEGE. A POSITIVE PREGNANCY TEST OR MEDICAL RECORD CONFIRMING PREGNANCY OR THE END OF PREGNANCY, OR A BIRTH CERTIFICATE OF A NEWBORN, IS PRIMA FACIE EVIDENCE OF PREGNANCY OR THE START OF THE POSTPARTUM PERIOD.

(b) IF THE PROSECUTION CONTESTS THAT THE JUVENILE IS PREGNANT OR POSTPARTUM, THE COURT SHALL HOLD A HEARING TO MAKE A DETERMINATION AS SOON AS PRACTICABLE, BUT NO LATER THAN FOURTEEN DAYS AFTER THE ISSUE IS RAISED, UNLESS THE JUVENILE REQUESTS THE HEARING BE HELD LATER THAN FOURTEEN DAYS AFTER THE ISSUE IS RAISED. IF THE JUVENILE REQUESTS A LATER HEARING, THE COURT SHALL MAKE THE DETERMINATION WITHIN THE TIMELINE AS REQUESTED. THE COURT SHALL HOLD THE HEARING IMMEDIATELY IF THE CIRCUMSTANCES OF THE JUVENILE OR THE JUVENILE'S NEWBORN REQUIRE IT. THE JUVENILE SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE JUVENILE IS A PREGNANT OR POSTPARTUM JUVENILE.

(c) THE COURT SHALL PROTECT MEDICAL INFORMATION PROVIDED TO THE COURT AS CONFIDENTIAL MEDICAL INFORMATION. A JUVENILE'S WAIVER OF MEDICAL PRIVILEGE TO PRESENT MEDICAL EVIDENCE OF PREGNANCY OR THE END OF A PREGNANCY IN COURT IS LIMITED TO INFORMATION RELEVANT TO DETERMINE WHETHER THE JUVENILE IS OR WAS PREGNANT AND WHETHER THE PREGNANCY HAS ENDED.

(6) (a) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A COURT SHALL NOT:

(I) SET OR RELEASE THE PREGNANT OR POSTPARTUM JUVENILE ON BOND IF THE PREGNANT OR POSTPARTUM JUVENILE IS INELIGIBLE FOR BOND;

(II) ACCEPT OR IMPOSE AN ALTERNATIVE SENTENCE IF THE PREGNANT OR POSTPARTUM JUVENILE IS INELIGIBLE FOR A DIVERSION PROGRAM, DEFERRED JUDGMENT, PROBATIONARY SENTENCE, OR ANOTHER FORM OF ALTERNATIVE SENTENCE; OR

(III) APPLY THE REBUTTABLE PRESUMPTION PURSUANT TO THIS SECTION IF A PREGNANT OR POSTPARTUM JUVENILE WAS ADJUDICATED OF A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2).

(b) THE COURT SHALL IMPOSE ANY MANDATORY SENTENCE REQUIRED BY LAW ON A PREGNANT OR POSTPARTUM JUVENILE, BUT THE COURT MAY GRANT A STAY OF EXECUTION AS SET FORTH IN SUBSECTION (7) OF THIS SECTION.

(7) (a) ANY PREGNANT OR POSTPARTUM JUVENILE MAY REQUEST A STAY OF EXECUTION BY FILING A WRITTEN REQUEST TO THE COURT IF THE PREGNANT OR POSTPARTUM JUVENILE IS DETAINED OR COMMITTED IN A JUVENILE FACILITY FOR ANY PERIOD OF TIME THROUGH THE END OF THE PREGNANCY OR THE POSTPARTUM PERIOD.

(b) THE COURT SHALL HOLD A HEARING TO DETERMINE THE MATTER AS SOON AS PRACTICABLE, BUT NO LATER THAN FOURTEEN DAYS AFTER THE PREGNANT OR POSTPARTUM JUVENILE REQUESTS A STAY OF EXECUTION, UNLESS THE PREGNANT OR POSTPARTUM JUVENILE REQUESTS A LATER HEARING. IF THE PREGNANT OR POSTPARTUM JUVENILE REQUESTS A LATER HEARING, THE COURT SHALL MAKE THE DETERMINATION WITHIN THE TIMELINE REQUESTED. THE COURT SHALL HOLD THE HEARING IMMEDIATELY IF THE CIRCUMSTANCES OF THE PREGNANT OR POSTPARTUM JUVENILE OR NEWBORN REQUIRE IT. THE JUVENILE SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE JUVENILE IS A PREGNANT OR POSTPARTUM JUVENILE.

(c) IN RULING UPON THE PREGNANT OR POSTPARTUM JUVENILE'S REQUEST PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE COURT

SHALL APPLY THE REBUTTABLE PRESUMPTION SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION.

(d) THE DISTRICT ATTORNEY AND THE COURT SHALL COMPLY WITH THE REQUIREMENTS OF THE "VICTIM RIGHTS ACT" PURSUANT TO PART 3 OF ARTICLE 4.1 OF TITLE 24 IN ANY PROCEEDING CONDUCTED PURSUANT TO THIS SECTION.

(e) FOLLOWING THE HEARING CONDUCTED PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE COURT MAY ORDER A STAY OF EXECUTION OF THE SENTENCE FOR ANY PERIOD OF TIME THROUGH THE END OF THE PREGNANCY OR THE POSTPARTUM PERIOD. THE COURT SHALL ORDER A DATE, TIME, AND PLACE FOR THE JUVENILE TO APPEAR TO SERVE THE SENTENCE UPON COMPLETION OF THE STAY OF EXECUTION.

(f) IF THE COURT GRANTS A STAY OF EXECUTION PURSUANT TO SUBSECTION (7)(e) OF THIS SECTION, THE COURT SHALL ORDER THE BOND AND THE CONDITIONS OF THE BOND TO REMAIN IN EFFECT UNTIL THE DATE THE PREGNANT OR POSTPARTUM JUVENILE IS ORDERED TO START SERVING THE JUVENILE'S SENTENCE.

(g) NOTWITHSTANDING THIS SECTION, A PREGNANT OR POSTPARTUM JUVENILE WHO IS INELIGIBLE FOR BAIL PURSUANT TO SECTION 19-2.5-306 IS NOT ELIGIBLE FOR A STAY OF EXECUTION.

(h) IF THE PREGNANT OR POSTPARTUM JUVENILE IS CHARGED WITH A NEW VIOLATION OR THE COURT RECEIVES A VERIFIED MOTION FROM THE DISTRICT ATTORNEY OR ANY AGENCY RESPONSIBLE FOR SUPERVISING THE PREGNANT OR POSTPARTUM JUVENILE THAT ESTABLISHES A PRIMA FACIE CASE THAT THE PREGNANT OR POSTPARTUM JUVENILE HAS VIOLATED THE CONDITIONS OF THE STAY OF EXECUTION AND PRESENTS A SUBSTANTIAL RISK TO PUBLIC SAFETY, THE COURT SHALL SET A HEARING AND REQUIRE THE PREGNANT OR POSTPARTUM JUVENILE TO APPEAR. AFTER THE HEARING, THE COURT MAY END THE STAY OF EXECUTION, ADD NEW CONDITIONS, ISSUE A WARRANT, OR CONTINUE THE STAY OF EXECUTION.

(8) IF A JUVENILE, WHO IS SENTENCED TO DETENTION OR COMMITMENT, LEARNS THAT THE JUVENILE IS PREGNANT FOLLOWING THE SENTENCING HEARING, OR A POSTPARTUM JUVENILE EXPERIENCES CHANGES TO THE JUVENILE'S POSTPARTUM CONDITION FOLLOWING THE SENTENCING

HEARING, THIS SECTION DOES NOT PRECLUDE THE PREGNANT OR POSTPARTUM JUVENILE FROM REQUESTING RECONSIDERATION OF THE SENTENCE PURSUANT TO RULE 35 (b) OF THE RULES OF CRIMINAL PROCEDURE. DURING THE RECONSIDERATION HEARING, THIS SECTION APPLIES.

**SECTION 8.** In Colorado Revised Statutes, 19-2.5-306, **amend** (4)(a) as follows:

**19-2.5-306. Conditions of release - personal recognizance bond.** (4) (a) In determining the conditions of release for the juvenile, the judge or magistrate fixing the same shall consider the criteria set forth in section 16-4-103. IF THE JUVENILE IS A PREGNANT OR POSTPARTUM JUVENILE WHO HAS COMPLIED WITH THE NOTICE REQUIREMENT SET FORTH IN SECTION 19-2.5-1118.5, THE JUDGE OR MAGISTRATE SHALL CONSIDER THE JUVENILE'S PREGNANCY OR POSTPARTUM STATUS IN DETERMINING THE CONDITIONS OF RELEASE.

**SECTION 9.** In Colorado Revised Statutes, 24-4.1-302, **add** (2)(x) as follows:

**24-4.1-302. Definitions.** As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(2) "Critical stages" means the following stages of the criminal justice process:

(x) A HEARING HELD PURSUANT TO SECTION 18-1.3-103.7 OR 19-2.5-1118.5.

**SECTION 10.** In Colorado Revised Statutes, 24-4.1-302.5, **amend** (1)(d)(IX) and (1)(d)(X); and **add** (1)(d)(XI) as follows:

**24-4.1-302.5. Rights afforded to victims - definitions.** (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime has the following rights:

(d) The right to be heard at any court proceeding:

(IX) Involving a hearing as described in section 24-31-902 (2)(c);

or

(X) Involving a hearing held pursuant to section 24-72-706, 24-72-709, or 24-72-710; OR

(XI) INVOLVING A HEARING HELD PURSUANT TO SECTION 18-1.3-103.7 OR 19-2.5-1118.5.

**SECTION 11. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; 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 such period, 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Steve Fenberg  
PRESIDENT OF  
THE SENATE

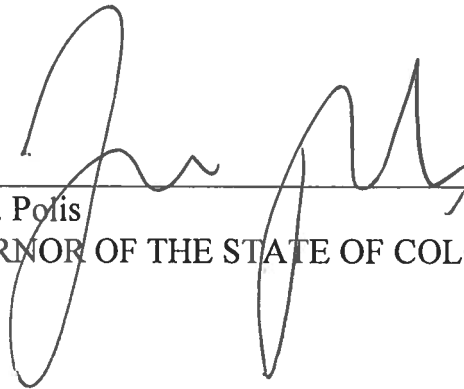


Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED Tuesday May 23<sup>rd</sup> 2023 at 3:30 PM  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO

# An Act

HOUSE BILL 23-1292

BY REPRESENTATIVE(S) Weissman and Soper, Story, Amabile;  
also SENATOR(S) Gonzales and Gardner, Moreno, Priola.

CONCERNING THE ADOPTION OF THE 2023 RECOMMENDATIONS OF THE  
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
REGARDING ENHANCED SENTENCING.

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

**SECTION 1.** In Colorado Revised Statutes, 18-1.3-406, **amend** (1)  
as follows:

**18-1.3-406. Mandatory sentences for violent crimes - definitions.**

(1) (a) Any person convicted of a crime of violence shall be sentenced pursuant to ~~the provisions of~~ section 18-1.3-401 (8) to the department of corrections for a term of incarceration of at least the midpoint in, but not more than twice the maximum of, the presumptive range provided for such offense in section 18-1.3-401 (1)(a), as modified for an extraordinary risk crime pursuant to section 18-1.3-401 (10), without suspension; except that, within ninety-one days after ~~he or she~~ **THE PERSON** has been placed in the custody of the department of corrections, **UPON THE REQUEST OF THE DEFENDANT, PROSECUTION, OR THE COURT,** the department shall transmit to

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

the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case ~~which~~ THAT it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred nineteen days after ~~his or her~~ THE PERSON'S placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of ~~his or her~~ THE JUDGE'S decision and shall advise ~~said~~ THE administrator of the unusual and extenuating circumstances that justified ~~such~~ THE modification. The state court administrator shall maintain a record, which ~~shall be~~ IS open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state. ~~Except as described in paragraph (c) of this subsection (1), a court shall sentence a person convicted of two or more separate crimes of violence arising out of the same incident so that his or her sentences are served consecutively rather than concurrently.~~

(b) EXCEPT AS DESCRIBED IN SUBSECTION (1)(e) OF THIS SECTION, FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 2023, A COURT SHALL SENTENCE A PERSON CONVICTED OF TWO OR MORE SEPARATE CRIMES OF VIOLENCE ARISING OUT OF THE SAME INCIDENT SO THAT THE PERSON'S SENTENCES ARE SERVED CONSECUTIVELY RATHER THAN CONCURRENTLY; EXCEPT THAT IF THE PERSON HAS NOT PREVIOUSLY REQUESTED A REVIEW OF THE TERM OF YEARS OF THE MANDATORY SENTENCES PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE PERSON MAY PETITION THE COURT FOR A MODIFICATION OF THE SENTENCES IMPOSED IF AFTER AT LEAST TWO CALENDAR YEARS BUT NO MORE THAN FIVE CALENDAR YEARS AFTER THE ENTRY OF FINAL JUDGMENT OF CONVICTION OR SENTENCE HAS PASSED. THE PERSON IS ENTITLED TO AN EVIDENTIARY HEARING ON THE PETITION FOR MODIFICATION OF SENTENCE, AND THE COURT SHALL APPOINT COUNSEL FOR THE DEFENDANT FOR THE HEARING. THE COURT SHALL SERVE AN ORDER OF APPOINTMENT ON THE OFFICE OF STATE PUBLIC DEFENDER, WHICH SHALL REPRESENT THE DEFENDANT OR NOTIFY THE COURT OF A CONFLICT. THE COURT SHALL ALLOW COUNSEL TO SUPPLEMENT THE PETITION.

(c) FOLLOWING THE EVIDENTIARY HEARING AUTHORIZED IN SUBSECTION (1)(b) OF THIS SECTION, THE COURT MAY MODIFY THE TERMS OF THE SENTENCE IF THE COURT FINDS SUBSTANTIAL MITIGATING FACTORS SURROUNDING THE CASE AND IF THE PERSON HAS DEMONSTRATED

SUBSTANTIAL ACTIONS TOWARD REHABILITATION AS EVIDENCED BY ENGAGEMENT IN POSITIVE PROGRAMMING; ASSIGNED WORK; TREATMENT, WHEN AVAILABLE; AND BEHAVIOR THAT IS COMPLIANT WITH THE RULES OF THE FACILITY OR FACILITIES WHERE THE PERSON IS OR WAS PLACED. A MODIFICATION ORDERED BY THE COURT MAY INCLUDE THE IMPOSITION OF CONCURRENT SENTENCES OR MODIFICATION OF THE LENGTH OF THE SENTENCES TO INCARCERATION.

~~(b)~~ (d) Notwithstanding the provisions of subsection (1)(a) of this section, any person convicted of a sex offense, as defined in section 18-1.3-1003 (5), committed on or after November 1, 1998, that constitutes a crime of violence shall be sentenced to the department of corrections for an indeterminate term of incarceration of at least the midpoint in the presumptive range specified in section 18-1.3-401 (1)(a)(V)(A) or ~~18-1.3-401~~ (1)(a)(V)(A.1) up to a maximum of the person's natural life, as provided in section 18-1.3-1004 (1).

~~(c)~~ (e) The court may require a defendant to serve ~~his or her~~ THE DEFENDANT'S sentences concurrently rather than consecutively if the defendant is convicted of two or more separate crimes of violence arising out of the same incident and:

(I) One of ~~such~~ THE crimes is:

~~(F)~~ (A) Aggravated robbery, as described in section 18-4-302;

~~(H)~~ (B) Assault in the second degree, as described in section 18-3-203; or

~~(HH)~~ (C) Escape, as described in section 18-8-208; OR

(II) THE PARTIES AGREED TO WAIVE INELIGIBILITY FOR CONCURRENT SENTENCES; OR

(III) THE FOLLOWING FACTORS ARE PROVEN BY A PREPONDERANCE OF THE EVIDENCE BY THE DEFENDANT OR STIPULATED BY THE PARTIES AT THE SENTENCING HEARING:

(A) THE DEFENDANT HAS NO PRIOR FELONY CONVICTIONS FOR A VICTIM RIGHTS OFFENSE PURSUANT TO SECTION 24-4.1-302; AND

(B) THE DEFENDANT DID NOT USE OR POSSESS A FIREARM OR EXPLOSIVE IN THE COMMISSION OF THE OFFENSE OR THREATEN THE USE OF A FIREARM OR EXPLOSIVE DURING THE COMMISSION OF THE OFFENSE; AND

(C) THE DEFENDANT'S ACTION DID NOT RESULT IN SERIOUS BODILY INJURY OR DEATH.

**SECTION 2.** In Colorado Revised Statutes, 18-1.3-801, **add** (6) as follows:

**18-1.3-801. Punishment for habitual criminals.** (6) (a) FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 2023, A DEFENDANT CONVICTED AND SENTENCED AS AN HABITUAL OFFENDER PURSUANT TO THIS SECTION WHO HAS BEEN SENTENCED TO TWENTY-FOUR YEARS OR MORE IN THE DEPARTMENT OF CORRECTIONS AND HAS SERVED AT LEAST TEN CALENDAR YEARS OF A SENTENCE FOR A FELONY OFFENSE FOR WHICH THE PERSON WAS SENTENCED AS AN HABITUAL CRIMINAL MAY PETITION THE COURT FOR A MODIFICATION OF THAT SENTENCE OR FOR COUNSEL TO ASSIST IN FILING THE PETITION AND ANY OTHER HABITUAL SENTENCE FOR WHICH THE DEFENDANT IS IMPRISONED IN THE DEPARTMENT OF CORRECTIONS. THE COURT SHALL APPOINT COUNSEL FOR THE DEFENDANT FROM THE OFFICE OF STATE PUBLIC DEFENDER AND SHALL SERVE AN ORDER OF APPOINTMENT ON THE OFFICE, WHICH SHALL REPRESENT THE DEFENDANT OR NOTIFY THE COURT OF A CONFLICT. THE COURT SHALL ALLOW COUNSEL TO SUPPLEMENT THE PETITION.

(b) THE COURT SHALL SET THE MATTER FOR EVIDENTIARY HEARING. AT THE HEARING, THE DEFENDANT HAS THE BURDEN OF DEMONSTRATING, BY A PREPONDERANCE OF THE EVIDENCE, THAT:

(I) THE STATUTORY ELIGIBILITY CRITERIA ARE MET;

(II) THERE ARE MITIGATING FACTORS REGARDING THE DEFENDANT'S CIRCUMSTANCES AT THE TIME OF CONVICTION OR SUBSTANTIAL MITIGATING FACTORS REGARDING THE CIRCUMSTANCES OF THE OFFENSE OR OFFENSES;

(III) THE DEFENDANT HAS DEMONSTRATED POSITIVE, ENGAGED, AND PRODUCTIVE BEHAVIOR IN THE DEPARTMENT OF CORRECTIONS; AND

(IV) THE DEFENDANT DOES NOT CURRENTLY PRESENT A RISK TO THE

COMMUNITY AT LARGE.

(c) IF THE DEFENDANT SATISFIES THE BURDEN DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION AND THE COURT DETERMINES, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, THAT A MODIFICATION OF SENTENCE IS JUSTIFIED, THE COURT MAY RESENTENCE THE DEFENDANT TO A TERM OF AT LEAST THE MIDPOINT IN THE AGGRAVATED RANGE FOR THE CLASS OF FELONY FOR WHICH THE DEFENDANT WAS CONVICTED, UP TO A TERM LESS THAN THE CURRENT SENTENCE.

**SECTION 3.** In Colorado Revised Statutes, 24-4.1-302, **add** (2)(y) and (2)(z) as follows:

**24-4.1-302. Definitions.** As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(2) "Critical stages" means the following stages of the criminal justice process:

(y) A PETITION FOR MODIFICATION OF SENTENCE FILED PURSUANT TO SECTION 18-1.3-406 (1)(b) AND ANY ASSOCIATED HEARING;

(z) A PETITION FOR MODIFICATION OF SENTENCE FILED PURSUANT TO SECTION 18-1.3-801 (6) AND ANY ASSOCIATED HEARING.

**SECTION 4. Effective date - applicability.** This act takes effect July 1, 2023, and applies to offenses committed on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds,

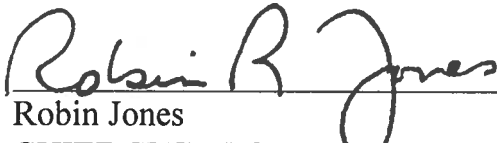
determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Steve Fenberg  
PRESIDENT OF  
THE SENATE

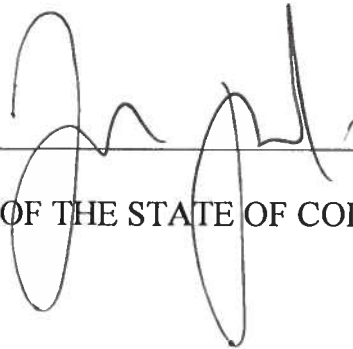


Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED Thursday Jun 1<sup>st</sup> 2023 at 4:30pm  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO

**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE**

**LIVE STREAMING COVERAGE OF CRIMINAL COURT  
PROCEEDINGS IN THE TRIAL COURTS**

**I. POLICY STATEMENT**

In response to the Covid-19 pandemic, Colorado courts have utilized virtual proceedings since the spring of 2020. Part and parcel with virtual proceedings has been the live streaming of some criminal proceedings to the public, allowing increased transparency between the public and the courts. This Directive is created to provide a more uniform process for the live streaming of criminal court proceedings in Colorado.

Colorado courts have not historically live streamed court proceedings for several reasons. First, a core requirement of criminal trials and contested evidentiary hearings is the sequestration of witnesses, whereby a witness cannot listen to the testimony of other witnesses in a proceeding. This sequestration preserves the integrity of the proceeding by reducing the risk that witnesses will tailor their testimony to mirror one another. The live streaming of trials and contested evidentiary hearings can potentially jeopardize the effectiveness of such sequestration, as courts cannot monitor who is observing the transmission.

In addition, crime victims are often reluctant to recount their victimization in a public courtroom, especially those who have been sexually assaulted or those subject to domestic violence. The live streaming of such testimony risks making crime victims even more reluctant to testify and could lead to further trauma or a higher likelihood of retaliation against a victim. The risk of retaliation can also increase for independent witnesses whose testimony is live streamed. This Directive also recognizes a victim's right to be present in person, by phone, virtually by audio or video, or similar technology for all critical stages of the criminal justice process.

Courts are also responsible for protecting the rights of the accused. An individual accused of a crime can be at risk of retaliation because of the mere nature of the charges. An accused individual may also face retaliation for cooperating with the prosecution by testifying against a co-defendant. The live streaming of certain court proceedings could amplify the risk of harm to those individuals. Live streaming could also jeopardize a defendant's right to a fair trial, particularly when identification of the defendant is at issue.

Finally, Problem-Solving Courts throughout the state require participants to expose deeply personal struggles in open court and to discuss their medical diagnoses, treatment, and medication management. The live streaming of these proceedings could inhibit



rehabilitation in those courts.

Over 100 public comments were reviewed and considered in drafting this Directive. It is evident from the comments how many perspectives must be considered when making determinations regarding live streaming. There is no other mechanism to tailor the needs of everyone impacted by live streaming court proceedings than to allow judicial discretion in determining when to expand or limit live streaming on a case-by-case basis. This live streaming Directive seeks to create consistency and transparency and further open most of the day-to-day business of Colorado's criminal courts to the public, while allowing each trial court the discretion not to live stream proceedings where the public's interest is outweighed by the interests of the parties and witnesses.

Subject to the technological capability of a courtroom and staffing levels, a judicial officer shall live stream certain court proceedings pursuant to the guidelines set forth in this Directive.

## **II. APPLICABILITY**

This policy is applicable to all state trial courts.

## **III. DEFINITIONS**

- A. Proceeding – any matter held in open court that the public is entitled to attend in person.
- B. Live Streaming – all live one-way transmission of video and audio coverage of a proceeding over the internet for the purpose of public viewing.
- C. Judicial Officer – the judge or magistrate presiding over the proceeding.
- D. Viewer – any person who is attending the proceedings virtually, either by audio-only or audio-video means.

## **IV. ACCESS AND LIMITATIONS**

### **A. Access to Live streaming**

A judicial officer shall provide live streaming during initial bond setting proceedings and any other criminal proceedings, except those limited by this Directive pursuant to sections IV(B) and IV(C). Judicial officers shall have the discretion to expand or limit the live streaming of proceedings after consideration of the standards set forth in section IV(B).

## **B. Standards for Expanding and Limiting Live Streaming**

A judicial officer may expand or limit live streaming at any time before or during a proceeding. The judicial officer may consider any request to expand or limit live streaming made by parties, alleged victims in the case, or interested third parties. In determining whether live streaming should be expanded or limited, a judicial officer shall consider the following factors:

- i. Whether there is a reasonable likelihood that live streaming would interfere with the rights of the parties to a fair trial;
- ii. Whether there is a reasonable likelihood that live streaming would create any adverse consequence to a party, attorney, victim, or witness;
- iii. Whether there is a reasonable likelihood that live streaming would unduly detract from the solemnity, decorum, and dignity of the court;
- iv. Whether any prior violations of this directive or other rules of the court have occurred in the same matter;
- v. The level of public interest in the case;
- vi. Consideration of the Victim Rights Act, whereby a victim has the right to be present in person, by phone, virtually by audio or video, or similar technology for all critical stages of the criminal justice process; and
- vii. Consideration of the Americans with Disabilities Act, whereby deaf, hard of hearing, and deafblind individuals may request communication access services by completing the standard judicial ADA request form.

## **C. Express Limitations on Live Streaming**

There shall be no presumptive live streaming of the following criminal proceedings. A judicial officer may live stream these criminal proceedings as permitted under sections IV(A) and IV(B) of this Directive:

- i. Evidentiary hearings
- ii. Trials, including jury selection
- iii. Bench conferences
- iv. Communications between counsel and client

- v. In camera hearings
- vi. Problem-solving dockets
- vii. Juvenile delinquency and juvenile direct filings

#### **D. Conditions for coverage**

Live streaming coverage shall be conducted only under the following conditions:

- i. The courtroom is equipped with suitable technology to live stream a proceeding and there is sufficient staff to initiate and monitor the live stream. In the event the courtroom is unable to live stream due to connectivity issues, including power outages, network outages, or internet availability, the judicial officer should put the reason for the inability to live stream on the official court record and proceed with the docket.
- ii. Conduct of Viewers. Viewers shall conduct themselves in a manner consistent with the solemnity, decorum, and dignity of the courtroom. If a viewer is disruptive during proceedings, the viewer may be expelled from the live stream or muted by the court without warning and be subject to contempt proceedings.
- iii. Other than the formal record of the proceeding, there shall be no audio or video recording, screenshots, or photos of any live streamed court proceeding without express authorization of the court. Unless a court expressly grants permission, there shall be no unauthorized publishing of any court proceeding. Those who violate this Directive may be subject to contempt proceedings.
- iv. Nothing in this CJD is intended to modify the process for Expanded Media Coverage pursuant to P.A.I.R.R. Rule 3.

#### **V. IMPLEMENTATION AUTHORITY**

Implementation of this policy is the responsibility of each judicial officer, with the support of each Chief Judge of the judicial district and the State Court Administrator's Office.

#### **VI. VIRTUAL PROCEEDINGS COMMITTEE CHARGE**

The Virtual Proceedings Committee shall continue to meet regularly and, with input from



**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE**

**VIRTUAL PROCEEDINGS POLICY**

**I. POLICY STATEMENT**

For hundreds of years, it has been a bedrock of the American court system that parties, counsel, and participants attend all court proceedings in person. Even with the advent of telephones, computers, and the internet, exceptions to this foundational principle have been rare.

The COVID-19 pandemic changed that. In the first two years of the pandemic, Colorado courts relied heavily on virtual proceedings. Now that COVID-19 has waned, this Court must address the continuing role of virtual proceedings in the trial courts.

The use of virtual proceedings has afforded great benefits for parties, attorneys, and other court participants. Virtual proceedings have decreased the substantial cost to litigants of coming to court for parties, such as taking time off from work, traveling to the courthouse, waiting for a case to be called, and the extra attorney fees for counsel traveling to and waiting in court. The availability of attorneys to attend courts across the state without travel has also afforded significant opportunities for legal representation, especially in rural areas that do not have enough local attorneys. In addition, crime victims often experience far less stress when they can attend court hearings remotely rather than face the accused in person in court.

There is, however, also some detriment to the use of virtual proceedings. Parties routinely settle their cases after meeting in person outside the courtroom immediately prior to a trial or hearing. There is a loss of courtroom decorum and solemnity when parties or other participants appear virtually. Deaf, hard of hearing, and deafblind parties may face additional communication barriers due to bandwidth issues and the loss of contextual and speech-reading cues that limit an interpreter's ability to view each speaking party. Finally, the operation of the virtual appearance platform when one or more participants appear in person requires ongoing attention from both the judge and staff throughout each proceeding.

The policy set forth in this Chief Justice Directive further recognizes that each Colorado District Court and County Court Judge is an independently constituted judicial officer, appointed by the Governor and periodically subject to retention elections by the people. As such, this Court must also acknowledge the inherent authority and broad discretion that judges have in administering each of their own courtrooms.

This policy also acknowledges that since the pandemic began, each of Colorado's twenty-two judicial districts has adapted differently adopting virtual proceedings. This Directive recognizes that a variety of factors—including the location of the judicial district, the volume of cases on the docket, and the technological capacity of the judicial district—have resulted in each judicial

district's adoption of virtual proceedings to fit its needs.

Nevertheless, although Colorado judges and magistrates are in the best position to determine the ideal way to adjudicate each individual case, the unpredictable nature of allowing each courtroom to operate independently can lead to confusion for those who must appear in court.

More than 100 people submitted comments in response to the initial draft of this Directive. Most responses embraced the idea that Colorado courts should continue to expand their use of virtual proceedings, describing in different ways the benefits of not having to appear in person. Some objected to the continued use of virtual proceedings for a number of reasons, to include the loss of solemnity of the proceedings and technological challenges the courts face.

This Chief Justice Directive aims both to strike the proper balance between these competing interests and to create transparency for the courts' continuing use of virtual proceedings. At a minimum, it is the policy of the Colorado Judicial Branch to provide increased access to the courts through the use of virtual proceedings. This Chief Justice Directive also aims to increase statewide consistency for parties and courts regarding the use of virtual proceedings.

This Directive creates a baseline from which each judicial officer may determine on a case-by-case basis when good cause exists to depart from this baseline. Moreover, as the benefits of virtual proceedings vary for each jurisdiction, Chief Judges may also adopt local policies to further delineate the continued use of virtual proceedings in their jurisdictions.

Finally, nothing in this Chief Justice Directive alters any obligation of the courts to adhere to the requirements of the Americans with Disabilities Act, including ensuring access to effective communication for deaf, hard of hearing, and deafblind individuals.

## **II. APPLICABILITY**

This policy is applicable to all state trial courts.

## **III. DEFINITIONS**

- A.** In-Person Appearance – An appearance at which all parties and counsel are physically present in the courtroom.
- B.** Flexible Appearance – An appearance where parties and counsel may elect to participate by in-person appearance or virtual appearance, without seeking prior authorization from the presiding judge.
- C.** Virtual Appearance – An appearance made by a party using a device capable of real-time simultaneous audio and video capabilities. “Virtual appearance” may include

appearing with audio transmission only if authorized by the court ahead of the proceeding.

#### **IV. PROCESS**

##### **A. Presumptively In-Person Appearances**

1. The following proceedings require an In-Person appearance unless the court finds good cause pursuant to Section VI of this Directive and adheres to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43:
  - a. Jury trial for any case type;
  - b. Court trial for any case type;
  - c. Criminal preliminary hearing;
  - d. Criminal arraignment;
  - e. Criminal suppression hearing;
  - f. Criminal pre-trial readiness conference;
  - g. Habitual criminal trial;
  - h. Criminal probation revocation evidentiary hearing;
  - i. Show cause hearing for any case type;
  - j. Sentencing;
  - k. Guilty plea to a Victim's Rights Act offense;
  - l. Criminal Rule of Procedure 35(c) hearing;
  - m. Criminal transfer and reverse transfer hearing;
  - n. Extreme Risk Protection Order hearing;
  - o. Temporary Extreme Risk Protection Order hearing;
  - p. Termination of Parental Rights hearing;
  - q. Civil Rule of Procedure 69 hearing;
  - r. Civil show cause hearing; and
  - s. Contempt hearing.

##### **B. Presumptively Flexible Appearances**

1. Subject to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43, the following proceedings shall allow for a Flexible Appearance unless the court finds good cause to require a party to appear in person:
  - a. Case management conference for any case type;
  - b. Status conference for any case type;
  - c. Domestic relations pre-trial conference;
  - d. Domestic relations status conference;
  - e. Domestic relations uncontested proceeding;
  - g. Garnishment hearing;
  - h. Criminal petitions to seal;

- i. Criminal entry of appearance proceeding;
  - j. Criminal pre-trial conference or disposition hearing where no VRA case plea will be taken;
  - k. Court settings (when no other hearing purpose is scheduled);
  - l. Temporary protection order hearing;
  - m. Non-evidentiary proceeding in a Dependency and Neglect, Juvenile Delinquency, or Truancy case;
  - n. Uncontested relinquishment of parental rights proceeding;
  - o. Emergency guardianship or conservator proceeding;
  - p. Uncontested permanent orders for a guardianship or conservatorship; and
  - q. Uncontested informal probate proceeding.
- C. Unless a court grants express permission or unless otherwise governed by Chief Justice Directive 23-02, no proceeding may be published, live-streamed, or recorded other than for the official court record. Any recording in violation of this Chief Justice Directive may result in contempt proceedings.
- D. Subject to the technological capability and staffing for each courtroom, the presiding judicial officer, including any magistrate, may deviate from any presumptive hearing type set forth in this Section IV if notice is provided to the parties and the court has considered the factors for good cause listed in Section VI of this Directive.
- E. For proceedings not delineated in Sections IV.A or IV.B, each judicial officer, including any magistrate, shall have the discretion to determine whether appearances will be in-person or virtual, subject to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43. In exercising such discretion, the court shall consider the factors set forth in Section VI of this Directive.

## V. PROCEDURE FOR EXCEPTIONS

Any party seeking to appear by means other than those set forth in this Directive shall file a motion with the court in advance of the proceeding. In the motion, the party should outline the circumstances to be considered for good cause to deviate, pursuant to section VI of this Directive.

## VI. NON-EXCLUSIVE LIST OF FACTORS FOR GOOD CAUSE

Judicial officers, either on their own motion or on the motion of any party, should consider, but need not make express findings on, the following non-exhaustive list of factors when determining whether good cause exists **to allow one or more parties, victims, witnesses, or other courtroom participants to appear virtually for an in-person hearing:**



- A. All parties agree the hearing should be held virtually;
- B. Requiring the party to appear in person would cause a party to reasonably fear for their safety;
- C. The cost and time savings to any party;
- D. Transportation limitations of any party;
- E. The position of the victim in a Victim Rights Act case;
- F. Weather and safe travel;
- G. The impact a virtual appearance would have on the Office of Language Access or the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind's ability to provide an interpreter or captioner (Communication Access Realtime Translation or "CART");
- H. Ability for parties to efficiently conduct the hearing virtually (e.g. introduce evidence, make objections, and examine witnesses virtually);
- I. Judicial economy;
- J. Availability of counsel in the jurisdiction;
- K. Impact on employment of a party;
- L. Technological barriers for the parties and the court (e.g., speed and quality of internet, including bandwidth limitations that may impact signed languages such as American Sign Language, and access to technology to allow for effective communication);
- M. Unavoidable scheduling conflicts of the parties preventing the matter from moving forward in a timelier way;
- N. The importance and complexity of the proceeding and whether the proceeding is contested;
- O. The likelihood of settlement if the proceeding remains in-person;
- P. Whether the party has had good contact with their attorney;
- Q. Whether there is a warrant for the party;
- R. Anticipated length of proceeding;
- S. Whether appearing virtually would allow for effective examination of witnesses and maintain the solemnity and integrity of the proceedings and thereby impress upon the witness the duty to testify truthfully;
- T. Any undue surprise or prejudice that might result;
- U. Whether there are contested issues that will be addressed at the proceeding;
- V. In a case with expert witness testimony, how far away the expert works and the resources of the parties;
- W. Whether simultaneous interpretation is an option;
- X. Resources of the parties, including access to child care; and
- Y. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

## **VII. IMPLEMENTATION AUTHORITY**

Implementation of this policy is the responsibility of each judicial officer, including

