

Document: C.R.S. 16-11-102.4

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CO - Colorado Revised Statutes Annotated TITLE 16. CRIMINAL PROCEEDINGS CODE OF CRIMINAL PROCEDURE ARTICLE 11. IMPOSITION OF SENTENCE PART 1. ALTERNATIVES - INVESTIGATION

16-11-102.4. Genetic testing of convicted offenders

(1) Beginning July 1, 2007, each of the following convicted offenders shall submit to and pay for collection and a chemical testing of the offender's biological substance sample to determine the genetic markers thereof, unless the offender has already provided a biological substance sample for such testing pursuant to a statute of this state:

(a) Every offender who, on or after July 1, 2007, is in the custody of the department of corrections based on a sentence imposed before that date, including an offender on parole. The department shall collect the sample at least thirty-five days prior to the offender's discharge or release from custody, release on parole, or transfer to community corrections placement.

(b) (I) Every offender who, on or after July 1, 2007, is on probation under a sentence imposed before that date for a conviction of:

(A) An offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, committed on or after July 1, 1996;

(B) An offense involving unlawful sexual behavior, or for which the factual basis involved an offense involving unlawful sexual behavior, committed before July 1, 1996, if the offender was on probation for the offense as of July 1, 2000;

(C) An offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., committed on or after July 1, 1999;

(D) An offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., committed before July 1, 1999, if the offender was on probation for the offense as of July 1, 2000;

- (E)** Second degree murder in violation of section 18-3-103 (1), C.R.S., committed on or after July 1, 1999;
- (F)** Second degree murder in violation of section 18-3-103 (1), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;
- (G)** First degree assault in violation of section 18-3-202 (1), C.R.S., committed on or after July 1, 1999;
- (H)** First degree assault in violation of section 18-3-202 (1), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;
- (I)** Second degree assault in violation of section 18-3-203 (1)(b), (1)(c), (1)(d), (1)(g), or (2)(b.5), C.R.S., committed on or after July 1, 1999;
- (J)** Second degree assault in violation of section 18-3-203 (1)(b), (1)(c), (1)(d), (1)(g), or (2)(b.5), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;
- (K)** Second degree kidnapping in violation of section 18-3-302 (4), C.R.S., committed on or after July 1, 1999;
- (L)** Second degree kidnapping in violation of section 18-3-302 (4), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;
- (M)** First degree arson in violation of section 18-4-102 (3), C.R.S., committed on or after July 1, 1999;
- (N)** First degree arson in violation of section 18-4-102 (3), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;
- (O)** First degree burglary in violation of section 18-4-202, C.R.S., committed on or after July 1, 1999;
- (P)** First degree burglary in violation of section 18-4-202, C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000;
- (Q)** Second degree burglary in violation of section 18-4-203, C.R.S., committed on or after July 1, 2000;
- (R)** Third degree burglary in violation of section 18-4-204, C.R.S., committed on or after July 1, 2000;
- (S)** Aggravated robbery in violation of section 18-4-302 (4), C.R.S., committed on or after July 1, 1999;
- (T)** Aggravated robbery in violation of section 18-4-302 (4), C.R.S., committed before July 1, 1999, if the offender was on probation for the conviction as of July 1, 2000; or
- (U)** Any other felony, if the offender was on probation for the conviction as of July 1, 2000, and had been previously convicted of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, an offense that is a crime of violence as listed in section 18-1.3-406 (2), C.R.S., second degree murder in violation of section 18-3-103 (1), C.R.S., first degree assault in violation of section 18-3-202 (1), C.R.S., second degree assault in violation of section 18-3-203 (1)(b), (1)(c), (1)(d), (1)(g), or (2)(b.5), C.R.S., second degree kidnapping in violation of section 18-3-302 (4), C.R.S., first degree arson in violation of section 18-4-102 (3), C.R.S., first degree burglary in violation of section 18-4-202, C.R.S., or aggravated robbery in violation of section 18-4-302 (4), C.R.S.

(II) The judicial department or a probation department shall collect the sample required by this subsection (1) at least thirty days prior to the offender's scheduled termination of probation, but, in any event, by December 31, 2007.

(c) Every offender who, on or after July 1, 2007, is on a deferred judgment and sentence as authorized in section 18-1.3-102, C.R.S., that was granted on or after July 1, 1999, but before July 1, 2007, for an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The judicial department or a probation department shall collect the sample required by this subsection (1) at least thirty days prior to the offender's scheduled termination of the deferred judgment, but, in any event, by October 1, 2007.

(d) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility pursuant to article 27 of title 17, C.R.S., based on a sentence imposed before that date for a felony conviction. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(e) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility based on a sentence imposed before that date for conviction of a misdemeanor offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(f) Every offender who, on or after July 1, 2007, is in the custody of the youthful offender system based on a sentence imposed before that date, including an offender on community supervision. The department of corrections shall collect the sample at least thirty-five days prior to the offender's discharge or release from custody or release to community supervision.

(g) Every offender sentenced on or after July 1, 2007, for a felony conviction; except that this paragraph (g) shall not apply to an offender granted a deferred judgment and sentencing as authorized in section 18-1.3-102, C.R.S., unless otherwise required to submit to a sample pursuant to this section, or unless the deferred judgment and sentencing is revoked and a sentence is imposed. The sample shall be collected:

(I) From an offender sentenced to the department of corrections, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation;

(IV) From an offender sentenced to the youthful offender system, by the department of corrections within thirty-five days after the offender is received at the youthful offender system; and

(V) From an offender who receives any other sentence or who receives a suspended sentence, by the judicial department within thirty-five days after the offender is sentenced or the sentence is suspended.

(h) Every offender who, on or after July 1, 2007, is sentenced for a conviction of, or who receives a deferred judgment and sentence for, an offense involving unlawful sexual behavior or for which the underlying factual basis involves unlawful sexual behavior. The sample shall be collected:

(I) From an offender sentenced to county jail or community corrections, by the sheriff or by the

community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(II) From an offender sentenced to probation, by the judicial department or a probation department within thirty-five days after the offender is placed on probation;

(III) From an offender who receives a deferred judgment and sentence, by the judicial department or a probation department within thirty-five days after the offender receives the deferred judgment and sentence; and

(IV) From an offender who receives any other sentence or who receives a suspended sentence, by the judicial department or a probation department within thirty-five days after the offender is sentenced or the sentence is suspended.

(2) For purposes of this section:

(a) "Convicted" means having received a verdict of guilty by a judge or jury or having pled guilty or nolo contendere. Except where otherwise indicated, "convicted" does not include deferred judgment and sentencing pursuant to section 18-1.3-102, C.R.S., unless the deferred judgment and sentence is revoked and a sentence is imposed.

(b) "Unlawful sexual behavior" shall have the same meaning as provided in section 16-22-102 (9).

(3) The judicial department, the department of corrections, a probation department, a sheriff, or a contractor may:

(a) Use reasonable force to obtain biological substance samples in accordance with this section using medically recognized procedures. In addition, an offender's refusal to comply with this section may be grounds for revocation or denial of parole, probation, suspension of sentence, or deferred judgment and sentence. Failure to pay for collection and a chemical testing of a biological substance sample shall be considered a refusal to comply if the offender has the present ability to pay.

(b) Collect biological substance samples notwithstanding that collection was not accomplished within an applicable deadline set forth in this section.

(4) Any moneys received from an offender pursuant to this section shall be deposited in the offender identification fund created in section 24-33.5-415.6, C.R.S.

(5) The Colorado bureau of investigation shall conduct the chemical testing of the biological substance samples obtained pursuant to this section. The Colorado bureau of investigation shall file and maintain the results thereof and shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this section.

(6) This section shall not apply to juvenile adjudications under title 19, C.R.S.

History

1/28/2021 <https://advance.lexis.com/documentprint/documentprintclick/?pdmfid=1000516&crd=796c0415-79ed-4195-ac96-b89ba2d53fe4&ecomp=...>
Source: L. 2000. Entire section added, p. 1007, § 2, effective July 1, 2007. L. 2007. Entire section
R&RE, p. 1611, § 1, effective July 1. L. 2012: (1)(a), (1)(d), (1)(e), (1)(f), (1)(g), and (1)(h) amended,
(SB 12-175), ch. 208, p. 853, § 85, effective July 1.

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