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CHAPTER 57

CRIMINAL PROCEEDINGSSENTENCING OF SEX OFFENDERS

(House Bill No. 1028. By Representatives Bastien, Burns, Calabrese, McCormick, Morris, and Quinlan; also Senators Hahn and Williams.)

A N A C T

AMENDING ARTICLE 19 OF CHAPTER 39, COLORADO REVISED STATUTES 1963, CONCERNING THE SENTENCING OF SEX OFFENDERS.

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

Section 1. Article 19 of chapter 39, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

39-19-1. **Short title.**—This act may be cited as the "Colorado Sex Offenders Act of 1968".

39-19-2. **Definitions.**—(1) As used in this article, unless the context otherwise requires:

(2) "Sex offense" means felonious assault, pursuant to section 40-2-32, C.R.S. 1963, as amended; incest; unnatural carnal copulation; assault with intent to commit unnatural carnal copulation; assault with intent to commit rape; and rape, pursuant to Section 40-2-25 (1) (a), (b), (c), (d), (e), (f), and (g) C.R.S. 1963, as amended. However rape as defined in section 40-2-25 (1) (b) shall not be considered a sex offense within the meaning of this subsection 39-19-2 (2) where the female person has reached her fifteenth birthday.

(3) "Sex offender" means a person convicted of a sex offense.

(4) "Conviction" means conviction after trial by court or jury, or acceptance of a plea of guilty.

(5) "Board" means the state board of parole.

(6) "Department" means the department of institutions.

39-19-3. **Indeterminate commitment.**—The district court having jurisdiction may, subject to the requirements of this article, in lieu of the sentence otherwise provided by law, commit a sex offender to the custody of the department for an indeterminate term having a minimum of one day and a maximum of his natural life.

39-19-4. **Requirements before acceptance of a plea of guilty.**—Before

the district court may accept a plea of guilty from any person charged with a sex offense, the court shall, in addition to any other requirement of law, advise the defendant that he may be committed to the custody of the department, including any penal institution under the jurisdiction of the department, as provided in section 39-19-3.

39-19-5. Commencement of proceedings.—Within twenty days after the conviction of a sex offense, upon the motion of the district attorney, the defendant, or the court, the court shall commence proceedings under this article by ordering the district attorney to prepare a notice of the commencement of proceedings and to serve such notice upon the defendant personally.

39-19-6. Defendant to be advised of rights.—(1) (a) Upon the commencement of proceedings, the court shall advise the defendant, orally and in writing, that:

(b) The defendant is to be examined in accordance with the provisions of section 39-19-7;

(c) The defendant has a right to counsel, and, if the defendant is indigent, counsel will be appointed to represent him;

(d) The defendant has a right to remain silent;

(e) An evidentiary hearing will be held pursuant to section 39-19-10, and the defendant and his counsel will be furnished with copies of all reports prepared for the court pursuant to sections 39-19-7 and 39-19-8 at least ten days prior to the evidentiary hearing.

(2) The written advisement of rights may be incorporated into the notice of commencement of proceedings.

39-19-7. Psychiatric examination and report.—(1) (a) After advising the defendant of his rights, the court shall forthwith commit the defendant to the Colorado state hospital, the university of Colorado psychiatric hospital, or the county jail.

(b) If committed to the Colorado state hospital or the university of Colorado psychiatric hospital, the defendant shall be examined by two psychiatrists of the receiving institution.

(c) If committed to the county jail, the defendant shall be examined by two psychiatrists appointed by the court.

(2) (a) The examining psychiatrists shall make independent written reports to the court which shall contain the opinion of the psychiatrist as to whether the defendant, if at large, constitutes a threat of bodily harm to members of the public.

(b) (i) The written reports shall also contain opinions concerning:

(ii) Whether the defendant is mentally deficient;

(iii) Whether the defendant could benefit from psychiatric treatment; and

(iv) Whether the defendant could be adequately supervised on probation.

(3) The examinations shall be made and the reports filed with the court and the probation department within sixty days after the commencement of proceedings, and this time may not be enlarged by the court.

39-19-8. Report of probation department.—(1) Upon the commencement of proceedings under this article, the court shall order an investigation made by the probation department as provided in section 39-16-2.

(2) The report shall be filed with the court within seventy-five days after the commencement of proceedings, and this time may not be enlarged by the court.

39-19-9. Termination of proceedings.—After reviewing the reports of the psychiatrists and the probation officer, the court may terminate proceedings under this article, and proceed with sentencing as otherwise provided by law.

39-19-10. Evidentiary hearing.—(1) (a) The court shall set a hearing date at least ten days and no more than twenty days after service upon the defendant and his counsel of the reports required by sections 39-19-7 and 39-19-8.

(b) The court may, in its discretion, upon the motion of the defendant, continue the hearing an additional twenty days.

(2) (a) The court shall, upon motion of the district attorney or the defendant, subpoena all witnesses required by the moving party in accordance with the Colorado rules of criminal procedure.

(b) The district attorney shall serve upon the defendant and his counsel a list of all witnesses to be called by the district attorney at least ten days before the evidentiary hearing.

(3) In the evidentiary hearing, the court shall receive evidence bearing on the issue of whether the defendant, if at large, constitutes a threat of bodily harm to members of the public.

(4) (a) In the evidentiary hearing, the following procedure shall govern:

(b) The district attorney may call and examine witnesses and the defendant shall be allowed to cross-examine such witnesses.

(c) The defendant may call and examine witnesses and the district attorney shall be allowed to cross-examine such witnesses.

(d) The defendant may call and cross-examine as adverse witnesses, the psychiatrists and probation officers who have filed reports pursuant to sections 39-19-7 and 39-19-8.

(5) The reports of the psychiatrists and probation officers filed with the court pursuant to sections 39-19-7 and 39-19-8 may be received into evidence.

(6) Except as otherwise provided in this section, the laws of this state concerning evidence in criminal trials shall govern in the evidentiary hearing.

39-19-11. Findings of fact and conclusions of law.—(1) After the evidentiary hearing, the court shall, within five days, make oral or written findings of fact and conclusions of law.

(2) If the court finds, beyond a reasonable doubt, that the defendant, if at large, constitutes a threat of bodily harm to members of the public, the court shall commit the defendant pursuant to section 39-19-3.

(3) If the court does not find as provided in subsection (2) of this

section, it shall terminate proceedings under this article, and proceed with sentencing as otherwise provided by law.

(4) If the findings and conclusions are oral, they shall be reduced to writing and filed within ten days, and the defendant shall not be committed to the custody of the department pursuant to section 39-19-3 until the findings and conclusions are filed.

39-19-12. Appeal.—The defendant may appeal an adverse finding made pursuant to section 39-19-11 in the same manner as is provided by law for other criminal appeals.

39-19-13. Time allowed on sentence.—If the proceedings under this article are terminated by the court, as provided in section 39-19-9 or section 39-19-11 (3), the court shall deduct the time from the commencement of proceedings to the termination of proceedings from the minimum sentence of the defendant.

39-19-14. Costs.—The costs of the maintenance of the prisoner during the pendency of proceedings under this article and the costs of the psychiatric examinations and reports shall be paid by the state of Colorado.

39-19-15. Penitentiary as receiving center.—The Colorado state penitentiary shall be the receiving center for all persons committed pursuant to section 39-19-3.

39-19-16. Powers and duties of the board.—(1) (a) Within six months after a person is committed pursuant to section 39-19-3, and at least once during each twelve months thereafter, the board shall review all reports, records, and information concerning said person, for the purpose of determining whether said person shall be paroled.

(b) The board shall, in each instance, make a written ruling and shall serve a copy of the ruling upon the said person.

(2) The board is empowered and it shall be its duty to order the transfer of any person committed pursuant to section 39-19-3 to any facility under the jurisdiction of the department, if the board deems it to be in the best interests of the said person and the public.

(3) The board is granted exclusive control over the parole and reparole of all persons committed pursuant to section 39-19-3, regardless of the facility in which such persons are confined.

(4) The board is authorized and empowered to parole and reparole, and to commit and recommit for violation of parole, any person committed pursuant to section 39-19-3.

(5) The board is authorized and empowered to issue an absolute release to any person committed pursuant to section 39-19-3, if the board deems it to be in the best interests of such person and the public, and that the person, if at large, would not constitute a threat of bodily harm to members of the public.

(6) Except as otherwise provided in this article, the board shall have all the powers conferred and duties imposed upon it with respect to the parole of prisoners generally, in the parole and supervision of persons committed pursuant to section 39-19-3.

Section 2. Severability clause.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which

can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 3. Effective date—applicability.—This act shall take effect on July 1, 1968, and shall apply to all persons alleged to have committed a sex offense, as defined in section 39-19-2 (2), C.R.S. 1963, as amended, on or after said date.

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, and safety.

Approved: April 2, 1968