

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0225.01 Richard Sweetman x4333

HOUSE BILL 14-1220

HOUSE SPONSORSHIP

Lawrence,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PROCEDURES FOR DISCOVERY IN CRIMINAL CASES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Not later than 35 days before trial except for good cause shown, the defense in a criminal case shall make available to the prosecutor:

- ! Any books, papers, documents, photographs, images, electronically stored information, tangible objects, audio and visual tapes, films, and recordings, or copies or portions thereof, that the defense intends to introduce as evidence;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! A written list of names, addresses, and birth dates of any witnesses whom the defense intends to call at trial;
- ! Written statements made by any witnesses whom the state may call as a witness at trial;
- ! A written list of names, addresses, and qualifications of any experts the defense intends to call at trial; and
- ! Any reports or statements of experts made in connection with the case, including the results of any physical or mental examinations and any scientific tests, experiments, or comparisons that the defendant intends to introduce into evidence.

The defense shall disclose to the prosecution the nature of any defense that the defense intends to use at trial. In no case shall such disclosure be less than 35 days before trial in the case of a felony trial, or less than 7 days before trial in the case of a non-felony trial.

If the defense intends to introduce evidence that the defendant was intoxicated during the commission of the offense, the defense shall notify the prosecuting attorney as soon as practicable but not later than 35 days before trial. In this notice, the defense shall identify all substances that caused or contributed to the intoxication, indicate whether the intoxication was self-induced, and provide the names and addresses of any witnesses the defense will call to support the defense of intoxication.

If the defense intends to present evidence that the defendant was at a place other than the location of the offense, the defense shall serve upon the prosecution as soon as practicable but not later than 35 days before trial a statement in writing specifying the place where the defendant claims to have been and the names and addresses of the witnesses the defense will call to support the defense of alibi. Upon receiving this statement, the prosecution shall advise the defense of the names and addresses of any witnesses who may be called to refute the alibi. At trial, neither the prosecution nor the defense may introduce evidence inconsistent with the specification unless the court, for good cause and upon just terms, permits the specification to be amended.

Not later than 45 days before trial except for good cause shown, the prosecutor and the defense attorney shall confer and attempt to reach agreement on any discovery issues. No motion for discovery of any materials that are required to be disclosed shall be filed unless the moving party certifies that the prosecutor and defense counsel have satisfied this requirement.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 8 to article

1 9 of title 16 as follows:

2

PART 8

3

DISCOVERY

4

16-9-801. Requirements for discovery of evidence and

5

witnesses before trial. (1) AS SOON AS PRACTICABLE BUT NOT LATER

6

THAN THIRTY-FIVE DAYS BEFORE TRIAL EXCEPT FOR GOOD CAUSE SHOWN,

7

THE DEFENSE SHALL MAKE AVAILABLE TO THE PROSECUTING ATTORNEY

8

THE FOLLOWING MATERIAL AND INFORMATION CONCERNING THE PENDING

9

CASE, WHICH MATERIAL AND INFORMATION IS IN THE POSSESSION OR

10

CONTROL OF THE DEFENSE, AND SHALL PROVIDE DUPLICATES UPON

11

REQUEST:

12

(a) ANY BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, IMAGES,

13

ELECTRONICALLY STORED INFORMATION, TANGIBLE OBJECTS, AUDIO AND

14

VISUAL TAPES, FILMS, AND RECORDINGS, OR COPIES OR PORTIONS THEREOF,

15

THAT THE DEFENSE INTENDS TO INTRODUCE AS EVIDENCE AT THE TRIAL;

16

(b) A WRITTEN LIST OF NAMES, ADDRESSES, AND BIRTH DATES OF

17

ANY WITNESSES, OTHER THAN THE DEFENDANT, WHOM THE DEFENSE

18

INTENDS TO CALL AT TRIAL, INCLUDING THEIR WRITTEN STATEMENTS, IF

19

ANY, AND ANY MEMORANDA REPORTING OR SUMMARIZING THEIR ORAL

20

STATEMENTS;

21

(c) ANY WRITTEN STATEMENTS, INCLUDING ANY MEMORANDA

22

REPORTING OR SUMMARIZING THE ORAL STATEMENTS, MADE BY ANY

23

PERSON WHOM THE STATE HAS IDENTIFIED AS A PERSON WHOM IT MAY

24

CALL AS A WITNESS AT TRIAL, UNLESS SUCH WRITTEN STATEMENTS HAVE

25

OTHERWISE BEEN MADE AVAILABLE TO THE PROSECUTING ATTORNEY BY

26

THE DEFENSE;

27

(d) A WRITTEN LIST OF NAMES AND ADDRESSES OF ANY EXPERTS

1 THE DEFENSE INTENDS TO CALL AT TRIAL, INCLUDING EACH EXPERT'S
2 QUALIFICATIONS AND THE SUBJECT MATTER UPON WHICH THE EXPERT IS
3 EXPECTED TO TESTIFY; AND

4 (e) (I) ANY REPORTS OR STATEMENTS OF EXPERTS MADE IN
5 CONNECTION WITH THE PARTICULAR CASE, INCLUDING RESULTS OF
6 PHYSICAL OR MENTAL EXAMINATIONS AND OF ANY SCIENTIFIC TESTS,
7 EXPERIMENTS, OR COMPARISONS IF THE DEFENSE INTENDS TO INTRODUCE
8 INTO EVIDENCE AT TRIAL THE RESULTS OF, OR ANY TESTIMONY RELATED
9 TO, THE PHYSICAL OR MENTAL EXAMINATIONS OR THE SCIENTIFIC TESTS,
10 EXPERIMENTS, OR COMPARISONS.

11 (II) WHERE THE INTERESTS OF JUSTICE WOULD BE SERVED, THE
12 COURT MAY ORDER THE DEFENSE TO DISCLOSE THE UNDERLYING FACTS OR
13 DATA SUPPORTING THE OPINION IN THAT PARTICULAR CASE OF AN EXPERT
14 ENDORSED AS A WITNESS. IF A REPORT HAS NOT BEEN PREPARED BY THAT
15 EXPERT TO AID IN COMPLIANCE WITH OTHER DISCOVERY OBLIGATIONS
16 PURSUANT TO THIS SECTION OR RULE 16 OF THE COLORADO RULES OF
17 CRIMINAL PROCEDURE, THE COURT MAY ORDER THE PARTY CALLING THAT
18 EXPERT TO PROVIDE A WRITTEN SUMMARY OF THE TESTIMONY DESCRIBING
19 THE WITNESS' OPINIONS AND THE BASES AND REASONS THEREFOR.

20 (III) NOTHING IN THIS SECTION MAY BE CONSTRUED TO REQUIRE
21 THE DISCLOSURE OF ANY MATERIAL, NOTE, OR MEMORANDUM RELATING
22 TO THE PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT OR THERAPY OF ANY
23 DEFENDANT OR WITNESS, OTHER THAN THE ITEMS DESCRIBED IN THIS
24 PARAGRAPH (e).

25 (2) THE DEFENSE SHALL DISCLOSE TO THE PROSECUTION THE
26 NATURE OF ANY DEFENSE THAT THE DEFENSE INTENDS TO USE AT TRIAL.
27 IN NO CASE SHALL SUCH DISCLOSURE BE LESS THAN THIRTY-FIVE DAYS

1 BEFORE TRIAL IN THE CASE OF A FELONY TRIAL, OR LESS THAN SEVEN DAYS
2 BEFORE TRIAL IN THE CASE OF A NONFELONY TRIAL.

3 (3) IF THE DEFENSE INTENDS TO INTRODUCE EVIDENCE THAT THE
4 DEFENDANT WAS INTOXICATED DURING THE COMMISSION OF THE OFFENSE,
5 THE DEFENSE SHALL SERVE UPON THE PROSECUTING ATTORNEY AS SOON
6 AS PRACTICABLE BUT NOT LATER THAN THIRTY-FIVE DAYS BEFORE TRIAL
7 A STATEMENT IN WRITING OF THE DEFENSE'S INTENT TO INTRODUCE THE
8 EVIDENCE. IN THIS NOTICE, THE DEFENSE SHALL IDENTIFY ALL
9 SUBSTANCES THAT CAUSED OR CONTRIBUTED TO THE INTOXICATION;
10 INDICATE WHETHER THE INTOXICATION WAS SELF-INDUCED INTOXICATION,
11 AS DEFINED IN SECTION 18-1-804 (5), C.R.S.; AND PROVIDE THE NAMES
12 AND ADDRESSES OF ANY WITNESSES THAT THE DEFENSE WILL CALL TO
13 SUPPORT THE DEFENSE OF INTOXICATION. THE COURT SHALL NOT PERMIT
14 THE DEFENDANT TO INTRODUCE EVIDENCE OF INTOXICATION UNLESS:

15 (a) THE DEFENSE COMPLIES WITH THE REQUIREMENTS OF THIS
16 SUBSECTION (3); OR

17 (b) THE COURT IS SATISFIED UPON GOOD CAUSE SHOWN THAT SUCH
18 EVIDENCE SHOULD BE ADMITTED.

19 (4) THE DEFENSE, IF IT INTENDS TO PRESENT EVIDENCE THAT THE
20 DEFENDANT WAS AT A PLACE OTHER THAN THE LOCATION OF THE OFFENSE,
21 SHALL SERVE UPON THE PROSECUTING ATTORNEY AS SOON AS
22 PRACTICABLE BUT NOT LATER THAN THIRTY-FIVE DAYS BEFORE TRIAL A
23 STATEMENT IN WRITING SPECIFYING THE PLACE WHERE THE DEFENDANT
24 CLAIMS TO HAVE BEEN AND THE NAMES AND ADDRESSES OF THE
25 WITNESSES THE DEFENSE WILL CALL TO SUPPORT THE DEFENSE OF ALIBI.
26 UPON RECEIVING THIS STATEMENT, THE PROSECUTING ATTORNEY SHALL
27 ADVISE THE DEFENSE OF THE NAMES AND ADDRESSES OF ANY ADDITIONAL

1 WITNESSES WHO MAY BE CALLED TO REFUTE SUCH ALIBI AS SOON AS
2 PRACTICABLE AFTER THEIR NAMES BECOME KNOWN. NEITHER THE
3 PROSECUTING ATTORNEY NOR THE DEFENSE SHALL BE PERMITTED AT THE
4 TRIAL TO INTRODUCE EVIDENCE INCONSISTENT WITH THE SPECIFICATION
5 UNLESS THE COURT, FOR GOOD CAUSE AND UPON JUST TERMS, PERMITS THE
6 SPECIFICATION TO BE AMENDED. IF THE DEFENSE FAILS TO MAKE THE
7 SPECIFICATION REQUIRED BY THIS SUBSECTION (4), THE COURT SHALL
8 EXCLUDE EVIDENCE OFFERED ON THE DEFENDANT'S BEHALF THAT HE OR
9 SHE WAS AT A PLACE OTHER THAN THAT SPECIFIED BY THE PROSECUTING
10 ATTORNEY UNLESS THE COURT IS SATISFIED UPON GOOD CAUSE SHOWN
11 THAT SUCH EVIDENCE SHOULD BE ADMITTED.

12 (5) AS SOON AS PRACTICABLE, BUT NOT LATER THAN FORTY-FIVE
13 DAYS BEFORE TRIAL EXCEPT FOR GOOD CAUSE SHOWN, THE PROSECUTOR
14 AND THE DEFENSE ATTORNEY SHALL CONFER AND ATTEMPT TO REACH
15 AGREEMENT ON ANY DISCOVERY ISSUES. NO PARTY SHALL FILE A MOTION
16 CONCERNING DISCOVERY OF ANY MATERIALS THAT ARE REQUIRED TO BE
17 DISCLOSED PURSUANT TO THIS SECTION OR PURSUANT TO RULE 16 OF THE
18 COLORADO RULES OF CRIMINAL PROCEDURE UNLESS THE MOVING PARTY
19 CERTIFIES THAT THE PROSECUTOR AND DEFENSE COUNSEL HAVE SATISFIED
20 THE DISCOVERY MEET-AND-CONFER REQUIREMENTS OF THIS SUBSECTION
21 (5).

22 **SECTION 2.** In Colorado Revised Statutes, **repeal** 16-7-102 as
23 follows:

24 **16-7-102. Required notice of defense of alibi.** ~~If the defendant~~
25 ~~intends to introduce evidence that the defendant was at a place other than~~
26 ~~the location of the offense, the defendant shall serve upon the prosecuting~~
27 ~~attorney as soon as practicable, but not later than thirty-five days before~~

1 ~~trial, a statement in writing specifying the place where the defendant~~
2 ~~claims to have been and the names and addresses of the witnesses the~~
3 ~~defendant will call to support the defense of alibi. Upon receiving the~~
4 ~~defendant's statement, the prosecuting attorney shall advise the defendant~~
5 ~~of the names and addresses of any additional witnesses who may be called~~
6 ~~to refute such alibi as soon as practicable after the names of such~~
7 ~~witnesses become known. Neither the prosecuting attorney nor the~~
8 ~~defendant shall be permitted at the trial to introduce evidence inconsistent~~
9 ~~with the specification statement unless the court for good cause and upon~~
10 ~~just terms permits the specification statement to be amended. If the~~
11 ~~defendant fails to make the specification required by this section, the~~
12 ~~court shall exclude evidence offered in support of the defense of alibi~~
13 ~~unless the court finds upon good cause shown that such evidence should~~
14 ~~be admitted in the interest of justice.~~

15 **SECTION 3. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2014 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.