

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0836.01 Michael Dohr

HOUSE BILL 10-1239

HOUSE SPONSORSHIP

Waller,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING REQUIRING A DEFENDANT TO PROVIDE NOTICE OF THE
102 INTENT TO RAISE CERTAIN STATUTORY DEFENSES.

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>.)

The bill requires a defendant who intends to offer evidence of a mental condition that prevented or impaired the formation of the required mental state for the crime to provide notice of that intent to the court and the prosecution. The court may order an evaluation of the defendant after receiving the notice. By putting the mental condition at issue, the

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.

defendant waives confidentiality and privilege related to his or her treatment for the mental condition.

If a defendant intends to use the defense of intoxication, the bill requires that he or she provide notice to the court and the prosecution of that intent. The notice must include all substances taken and whether the intoxication was voluntary. By raising the defense of intoxication, the defendant waives confidentiality and privilege related to the substances. Both the prosecution and the defense must exchange the names, reports, and statements of the practitioners who provided the substance.

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

2 **SECTION 1.** 16-8-107 (3) (b) and (3) (c), Colorado Revised
3 Statutes, are amended to read:

4 **16-8-107. Evidence.** (3) (b) (I) Regardless of whether a
5 defendant enters a plea of not guilty by reason of insanity pursuant to
6 section 16-8-103, the defendant shall not be permitted to introduce
7 evidence in the nature of expert opinion concerning his or her mental
8 condition without having first given notice to the court and the
9 prosecution of his or her intent to introduce such evidence and without
10 having undergone a court-ordered examination pursuant to section
11 16-8-106. ~~A defendant who places his or her mental condition at issue by~~
12 ~~giving such notice waives any claim of confidentiality or privilege as~~
13 ~~provided in section 16-8-103.6. Such notice shall be given at the time of~~
14 ~~arraignment; except that the court, for good cause shown, shall permit the~~
15 ~~defendant to inform the court and prosecution of the intent to introduce~~
16 ~~such evidence at any time prior to trial. Any period of delay caused by~~
17 ~~the examination and report provided for in section 16-8-106 shall be~~
18 ~~excluded, as provided in section 18-1-405 (6) (a), C.R.S., from the time~~
19 ~~within which the defendant must be brought to trial.~~

20 (II) REGARDLESS OF WHETHER A DEFENDANT ENTERS A PLEA OF

1 NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8-103,
2 THE COURT SHALL NOT PERMIT THE DEFENDANT TO INTRODUCE EVIDENCE
3 OF A MENTAL CONDITION OR MENTAL FUNCTIONING THAT PREVENTED OR
4 IMPAIRED THE FORMATION OF THE MENTAL STATE REQUIRED FOR THE
5 CHARGED OFFENSE, REGARDLESS OF WHETHER THE EVIDENCE MEETS THE
6 DEFINITION OF MENTAL DISEASE OR DEFECT IN SECTION 16-8-101.5 (2) (b),
7 UNLESS THE DEFENDANT HAS GIVEN NOTICE TO THE COURT AND THE
8 PROSECUTION OF HIS OR HER INTENT TO INTRODUCE THE EVIDENCE.
9 FOLLOWING THE NOTICE, EXCEPT WHEN AN EXAMINATION IS REQUIRED
10 PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE COURT
11 MAY ORDER AN EXAMINATION PURSUANT TO SECTION 16-8-106.

12 (III) THE DEFENDANT SHALL PROVIDE THE NOTICE REQUIRED IN
13 SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (b) AT THE TIME OF
14 ARRAIGNMENT; EXCEPT THAT THE COURT, BASED ON GOOD CAUSE SHOWN,
15 SHALL PERMIT THE DEFENDANT TO PROVIDE NOTICE TO THE COURT AND
16 THE PROSECUTION OF THE INTENT TO INTRODUCE THE EVIDENCE AT ANY
17 TIME THAT IS AT LEAST THIRTY DAYS PRIOR TO TRIAL. ANY PERIOD OF
18 DELAY CAUSED BY THE EXAMINATION AND REPORT PROVIDED FOR IN THIS
19 SECTION OR SECTION 16-8-106 SHALL BE EXCLUDED, AS PROVIDED IN
20 SECTION 18-1-405 (6) (a), C.R.S., FROM THE TIME WITHIN WHICH THE
21 DEFENDANT MUST BE BROUGHT TO TRIAL.

22 (IV) A DEFENDANT WHO PLACES HIS OR HER MENTAL CONDITION
23 AT ISSUE BY GIVING NOTICE PURSUANT TO THIS PARAGRAPH (b) WAIVES
24 ANY CLAIM OF CONFIDENTIALITY OR PRIVILEGE AS PROVIDED IN SECTION
25 16-8-103.6.

26 (c) The provisions of this subsection (3) shall apply to offenses
27 committed on or after July 1, 1999; EXCEPT THAT THE NOTICE

1 REQUIREMENT IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS
2 SUBSECTION (3) SHALL APPLY TO ALL TRIALS COMMENCING ON OR AFTER
3 THE EFFECTIVE DATE OF HOUSE BILL 10-____, ENACTED IN 2010.

4 **SECTION 2.** 18-1-804 (5), Colorado Revised Statutes, is
5 amended, and the said 18-1-804 is further amended BY THE ADDITION
6 OF THE FOLLOWING NEW SUBSECTIONS, to read:

7 **18-1-804. Intoxication.** (5) "~~Self-induced intoxication" means~~
8 ~~intoxication caused by substances which the defendant knows or ought to~~
9 ~~know have the tendency to cause intoxication and which he knowingly~~
10 ~~introduced or allowed to be introduced into his body, unless they were~~
11 ~~introduced pursuant to medical advice or under circumstances that would~~
12 ~~afford a defense to a charge of crime~~ MEANS INTOXICATION CAUSED BY
13 ONE OR MORE SUBSTANCES THAT THE DEFENDANT KNOWINGLY
14 INTRODUCED OR ALLOWED TO BE INTRODUCED INTO THE DEFENDANT'S
15 BODY AND THAT, AT THE TIME OF INTRODUCTION, THE DEFENDANT KNEW
16 OR OUGHT TO HAVE KNOWN HAD THE TENDENCY TO CAUSE INTOXICATION
17 UNLESS:

18 (a) EACH SUBSTANCE WAS INTRODUCED PURSUANT TO MEDICAL
19 ADVICE OR A MEDICAL PRESCRIPTION;

20 (b) THE DEFENDANT INTRODUCED THE SUBSTANCE IN
21 ACCORDANCE WITH ALL INSTRUCTIONS GIVEN BY A PRACTITIONER WHO
22 GAVE THE ADVICE OR INSTRUCTIONS REGARDING THE SUBSTANCE OR WHO
23 PRESCRIBED OR DISPENSED THE SUBSTANCE AND WITH ALL INSTRUCTIONS
24 PROVIDED WITH THE SUBSTANCE; AND

25 (c) THE DEFENDANT'S CONDUCT AFTER INTRODUCING THE
26 SUBSTANCE DID NOT CONFLICT WITH ANY INSTRUCTION GIVEN BY THE
27 PRACTITIONER WHO GAVE THE ADVICE OR INSTRUCTIONS REGARDING THE

1 SUBSTANCE OR WHO PRESCRIBED OR DISPENSED THE SUBSTANCE OR THE
2 INSTRUCTIONS PROVIDED WITH THE SUBSTANCE.

3 (6) (a) THE COURT SHALL NOT PERMIT THE DEFENDANT TO
4 INTRODUCE EVIDENCE OF INTOXICATION, UNLESS THE DEFENDANT FIRST
5 GIVES NOTICE TO THE COURT AND THE PROSECUTION OF HIS OR HER INTENT
6 TO INTRODUCE THE EVIDENCE. THE DEFENDANT SHALL PROVIDE THE
7 NOTICE AT THE TIME OF ARRAIGNMENT, EXCEPT THAT THE COURT, BASED
8 ON GOOD CAUSE SHOWN, SHALL PERMIT THE DEFENDANT TO PROVIDE
9 NOTICE TO THE COURT AND THE PROSECUTION OF THE INTENT TO OFFER
10 EVIDENCE OF INTOXICATION AT ANY TIME THAT IS AT LEAST THIRTY DAYS
11 PRIOR TO TRIAL. IN THE NOTICE, THE DEFENDANT SHALL IDENTIFY ALL
12 SUBSTANCES THAT CAUSED OR CONTRIBUTED TO THE INTOXICATION AND
13 WHETHER THE INTOXICATION WAS SELF-INDUCED INTOXICATION.

14 (b) THE DEFENDANT SHALL PROVIDE NOTICE, AT LEAST THIRTY
15 DAYS PRIOR TO TRIAL, OF THE NAMES OF WITNESSES WHO WILL TESTIFY TO
16 THE ISSUES RAISED BY THE DEFENSE OF INTOXICATION.

17 (7) THE FILING OF THE NOTICE OF INTENT TO OFFER EVIDENCE OF
18 INTOXICATION CONSTITUTES A WAIVER OF ANY CLAIM OF
19 CONFIDENTIALITY OR PRIVILEGE AS TO COMMUNICATIONS BETWEEN THE
20 DEFENDANT AND A PRACTITIONER WHO GAVE THE ADVICE OR
21 INSTRUCTIONS REGARDING THE SUBSTANCE OR PRESCRIBED OR DISPENSED
22 THE SUBSTANCE THAT IS THE SUBJECT OF THE ISSUES RAISED. THE
23 PROSECUTION AND THE DEFENDANT SHALL EXCHANGE NAMES,
24 ADDRESSES, REPORTS, AND STATEMENTS OF ANY PRACTITIONER WHO GAVE
25 THE ADVICE OR INSTRUCTIONS REGARDING THE SUBSTANCE OR WHO
26 PRESCRIBED OR DISPENSED THE SUBSTANCE, INCLUDING INFORMATION
27 GIVEN TO THE DEFENDANT AT THE TIME THE ADVICE OR INSTRUCTIONS

1 WERE GIVEN FOR THE SUBSTANCE THAT WAS PRESCRIBED OR DISPENSED.

2 **SECTION 3. Act subject to petition - effective date.** This act
3 shall take effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part shall not take effect
9 unless approved by the people at the general election to be held in
10 November 2010 and shall take effect on the date of the official
11 declaration of the vote thereon by the governor.