

CHAPTER 34

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 25-1114

BY REPRESENTATIVE(S) Carter and Espenosa, Bacon, Duran, Lindsay, Ricks;
also SENATOR(S) Gonzales J. and Weissman, Amabile, Exum, Hinrichsen, Michaelson Jenet, Sullivan, Winter F.

AN ACT

CONCERNING ALLOWING THE DEFENSE TO REVIEW A TANGIBLE OBJECT IN PREPARATION FOR A CRIMINAL TRIAL.

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

SECTION 1. In Colorado Revised Statutes, **add** part 8 to article 9 of title 16 as follows:

**PART 8
DEFENSE ACCESS TO PHYSICAL EVIDENCE**

16-9-801. Viewing and inspecting objects held in evidence. (1) (a) THE DEFENSE HAS THE RIGHT TO VIEW AND INSPECT ANY TANGIBLE OBJECT HELD BY LAW ENFORCEMENT IN CONNECTION WITH A CASE AT ANY LOCATION DESIGNATED AND OPERATED BY OR UNDER CONTRACT WITH THE LAW ENFORCEMENT AGENCY AS SOON AS PRACTICABLE, BUT NO LATER THAN THIRTY-FIVE DAYS BEFORE TRIAL. AFTER THE DEFENSE MAKES A REQUEST TO THE LAW ENFORCEMENT AGENCY THAT POSSESSES A TANGIBLE ITEM HELD IN CONNECTION WITH A CASE, THE AGENCY SHALL ALLOW THE DEFENSE TO VIEW AND INSPECT THE ITEM. A LAW ENFORCEMENT REPRESENTATIVE SHALL BE PRESENT TO DOCUMENT THE CHAIN OF CUSTODY AND ENSURE THE INTEGRITY OF THE EVIDENCE.

(b) WHEN INSPECTING THE TANGIBLE ITEM, THE DEFENSE MUST HAVE THE OPPORTUNITY TO HAVE CONFIDENTIAL CONVERSATIONS AND CREATE CONFIDENTIAL WORK PRODUCT.

(c) IF LAW ENFORCEMENT RECORDS EVIDENCE VIEWING OR HANDLING BY THE PROSECUTION OR THE DEFENSE, THE RECORDING MUST BE FOR THE PURPOSE OF ENSURING THE CHAIN OF CUSTODY, INTEGRITY, OR SAFETY OF THE EVIDENCE HELD

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.

BY THE LAW ENFORCEMENT AGENCY. IF LAW ENFORCEMENT RECORDS, BY AUDIO OR VISUAL MEANS, ANY EVIDENCE VIEWING OR HANDLING AT ANY LOCATION OPERATED BY OR UNDER CONTRACT WITH THE LAW ENFORCEMENT AGENCY, LAW ENFORCEMENT SHALL PROVIDE NOTICE THAT A RECORDING WAS MADE TO THE PROSECUTING AUTHORITY, WHO SHALL PROVIDE A COPY OF THE NOTICE IN DISCOVERY TO THE DEFENSE. THE RECORDING SHALL NOT BE PLACED IN DISCOVERY OR REVIEWED BY LAW ENFORCEMENT, EXCEPT AS PROVIDED IN SUBSECTION (1)(d) OF THIS SECTION; THE PROSECUTION; OR THE DEFENSE UNLESS ORDERED BY THE COURT WHEN A GOOD FAITH ISSUE THAT THE EVIDENCE VIEWING AFFECTED THE INTEGRITY OF THE EVIDENCE IS RAISED BY ANY PARTY. IF THE COURT ALLOWS ACCESS TO THE RECORDING, THE COURT MAY ENTER PROTECTIVE ORDERS AS NECESSARY TO PROTECT ANY PARTIES' CONVERSATIONS OR WORK PRODUCT.

(d) LAW ENFORCEMENT MAY VIEW A RECORDING OF AN EVIDENCE VIEWING BY THE PROSECUTION OR DEFENSE AS NECESSARY TO PROPERLY ORGANIZE, CATALOGUE, MAINTAIN, OR OTHERWISE PROPERLY STORE THE RECORDING IF THE REVIEW IS NOT FOR THE PURPOSE OF REVIEWING THE PROSECUTION'S OR DEFENSE'S PREPARATION OR STRATEGY FOR TRIAL. LAW ENFORCEMENT MAY ALSO VIEW A RECORDING OF AN EVIDENCE VIEWING AS AUTHORIZED BY A COURT ORDER.

(2) UPON THE REQUEST BY EITHER THE DEFENSE OR THE PROSECUTING AUTHORITY, AND SUBJECT TO CONSTITUTIONAL LIMITATIONS, THE COURT MAY ISSUE ORDERS RELATING TO THE EVIDENCE VIEWING BY THE PROSECUTION OR DEFENSE BASED ON THE INDIVIDUAL CIRCUMSTANCES OF THE EVIDENCE OR THE CASE AT ISSUE CONSISTENT WITH THIS SECTION, THE COLORADO RULES OF CRIMINAL PROCEDURE, AND OTHER APPLICABLE LAW.

(3) THIS SECTION DOES NOT LIMIT THE ABILITY OF THE DEFENSE TO REQUEST DEFENSE TESTING OR THE COURT'S ABILITY TO CONDUCT A HEARING RELATED TO THE REQUEST.

(4) THIS SECTION DOES NOT APPLY TO THE INSPECTION, VIEWING, AND EXAMINATION OF SEXUALLY EXPLOITATIVE MATERIAL PURSUANT TO SECTION 16-9-601.

SECTION 2. In Colorado Revised Statutes, 24-31-902, add (1)(a)(II)(E) as follows:

24-31-902. Incident recordings - release - tampering - fine.
(1)(a)(II)(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PEACE OFFICER SHALL NOT ACTIVATE A BODY-WORN CAMERA OR DASH CAMERA AND CAPTURE, VIEW, OR OTHERWISE RECORD THE DEFENSE VIEWING, INSPECTING, OR DISCUSSING THE VIEWING OR INSPECTION OF A TANGIBLE OBJECT HELD IN CONNECTION WITH A CRIMINAL CASE. WHEN THE DEFENSE VIEWS OR INSPECTS EVIDENCE PURSUANT TO SECTION 16-9-801, IT IS NOT AN INTERACTION WITH THE PUBLIC INITIATED BY THE PEACE OFFICER, AND THE DEFENSE, INCLUDING MEMBERS OF THE DEFENSE TEAM, ARE NOT MEMBERS OF THE PUBLIC. IT IS ALSO NOT FOR THE PURPOSE OF ENFORCING THE LAW OR INVESTIGATING POSSIBLE VIOLATIONS OF THE LAW.

SECTION 3. Effective date. This act takes effect July 1, 2025.

SECTION 4. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: March 26, 2025