

CHAPTER 349

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 25-1183

BY REPRESENTATIVE(S) Gilchrist and Bacon, Carter, Espenozo, Mabrey, Zokaie, Velasco, Ricks;
also SENATOR(S) Ball and Daugherty, Amabile, Cutter, Jodeh, Weissman.

AN ACT

**CONCERNING THE CREATION OF A WORKING GROUP TO STUDY THE USE OF COLORIMETRIC FIELD
DRUG TESTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Each year, over 750,000 people in the United States are arrested for drug possession based upon colorimetric field drug test results;

(b) A colorimetric field drug test is a small plastic pouch that contains a chemical reagent that reacts with aspects of certain compounds that are often found in drugs. The test is administered by placing a suspected controlled substance in the chemicals in the pouch to see if the chemical reagent changes to a specific color.

(c) Colorimetric field drug test results are presumptive tests that should be confirmed by further laboratory testing as these presumptive tests identify only aspects of a chemical compound, many of which are shared by both controlled substances and common household items including sugar, sugar substitutes, items containing sugar or sugar substitutes, soap, coffee, nutritional supplements, and over-the-counter medications.

(d) A recent study published by the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School states:

(I) Presumptive field drug tests, like the colorimetric field drug test, "[are] one of the largest, if not the largest, known contributing factor to wrongful arrests and convictions in the United States";

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.

(II) Approximately "[thirty thousand] arrests each year involve people who do not possess illegal substances but who are nonetheless falsely implicated by color-based presumptive tests"; and

(III) "On a per capita basis, Black Americans experience these erroneous drug arrests at a rate [three times] higher than White Americans";

(e) Vendors of colorimetric field drug tests caution that the tests are recommended only for presumptive purposes absent confirmation from a crime lab that uses more advanced testing methods;

(f) People regularly plead guilty to drug possession offenses absent confirmation from a crime lab that uses more advanced testing methods. A plea may be made to avoid prolonged detention while awaiting advanced testing results from a crime lab. Consequently, the plea and its collateral consequences burden the person indefinitely, based on the error-prone colorimetric field drug test.

(g) Colorimetric field drug tests are also used in a variety of other settings in Colorado, including correctional systems, possibly resulting in unfair disciplinary sanctions. The extent of use in these settings is unknown.

(2) Therefore, the general assembly declares that convening a working group to make findings and recommendations concerning the use of colorimetric field drug tests is necessary to improve judicial system outcomes, including preventing wrongful convictions, coercive plea agreements, and negative correctional outcomes.

SECTION 2. In Colorado Revised Statutes, **add** part 24 to article 2 of title 2 as follows:

PART 24
COLORIMETRIC FIELD DRUG TEST
WORKING GROUP

2-2-2401. Colorimetric field drug test working group - creation - members - duties - report - repeal. (1) (a) NOTWITHSTANDING SECTION 2-3-303.3, THERE IS CREATED THE WORKING GROUP TO MAKE FINDINGS AND RECOMMENDATIONS CONCERNING THE USE OF COLORIMETRIC FIELD DRUG TESTS IN THE VARIOUS STAGES OF CRIMINAL PROCEEDINGS AND IN CARCERAL SETTINGS.

(b) (I) (A) ON OR BEFORE JUNE 13, 2025, THE DIRECTOR OF THE LEGISLATIVE COUNCIL SHALL USE A REQUEST FOR PROPOSAL PROCESS TO CONTRACT WITH AND DESIGNATE A NONPROFIT ORGANIZATION TO PROVIDE STAFFING AND FACILITATE THE PERFORMANCE OF THE WORKING GROUP'S DUTIES PURSUANT TO THIS PART 24, SUBJECT TO THE APPROVAL OF THE CHAIR OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL.

(B) THE DUTIES REQUIRED IN THIS PART 24 ARE CONTINGENT ON AWARDED A CONTRACT AND DESIGNATING A NONPROFIT ORGANIZATION PURSUANT TO THIS SUBSECTION (1)(b). IF A CONTRACT IS NOT AWARDED AND A NONPROFIT ORGANIZATION IS NOT DESIGNATED TO PROVIDE STAFFING AND FACILITATE THE

PERFORMANCE OF THE WORKING GROUP'S DUTIES REQUIRED PURSUANT TO THIS PART 24, THEN NONE OF THE PROVISIONS OF THIS PART 24 ARE REQUIRED TO OCCUR.

(II) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT NO GENERAL FUND MONEY BE APPROPRIATED FOR A CONTRACT WITH THE NONPROFIT ORGANIZATION FOR THE NONPROFIT ORGANIZATION TO PROVIDE STAFFING AND FACILITATE THE PERFORMANCE OF THE WORKING GROUP'S DUTIES PURSUANT TO THIS PART 24. THE NONPROFIT ORGANIZATION IS SOLELY RESPONSIBLE FOR THE COSTS OF PROVIDING THE CONTRACTED SERVICES, PROVIDING STAFFING, AND FACILITATING THE PERFORMANCE OF THE WORKING GROUP'S DUTIES PURSUANT TO THIS PART 24. THE NONPROFIT ORGANIZATION MAY ACCEPT MONETARY OR IN-KIND GIFTS, GRANTS, AND DONATIONS TO DEFRAY THE COSTS OF PROVIDING THE CONTRACTED SERVICES, PROVIDING STAFFING, AND FACILITATING THE PERFORMANCE OF THE WORKING GROUP'S DUTIES PURSUANT TO THIS PART 24.

(2) (a) THE WORKING GROUP CONSISTS OF:

(I) ONE MEMBER OF THE MAJORITY PARTY OF THE HOUSE OF REPRESENTATIVES, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, WHO SHALL SERVE AS CHAIR;

(II) ONE MEMBER OF THE MINORITY PARTY OF THE SENATE, APPOINTED BY THE PRESIDENT OF THE SENATE, WHO SHALL SERVE AS VICE-CHAIR;

(III) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(IV) THE ATTORNEY GENERAL OR THEIR DESIGNEE;

(V) THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION OR THEIR DESIGNEE;

(VI) ONE MEMBER WHO REPRESENTS AN ORGANIZATION THAT WORKS TO EXONERATE PEOPLE WHO WERE WRONGFULLY CONVICTED, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(VII) THE STATE PUBLIC DEFENDER OR THEIR DESIGNEE;

(VIII) ONE MEMBER WHO REPRESENTS THE COLORADO CRIMINAL DEFENSE BAR, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(IX) ONE MEMBER WHO REPRESENTS THE ALTERNATE DEFENSE COUNSEL, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(X) THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL OR THEIR DESIGNEE;

(XI) THE PRESIDENT OF THE COUNTY SHERIFFS OF COLORADO OR THEIR DESIGNEE;

(XII) THE PRESIDENT OF THE COLORADO ASSOCIATION OF CHIEFS OF POLICE OR THEIR DESIGNEE;

(XIII) THE PRESIDENT OF THE COLORADO FRATERNAL ORDER OF POLICE OR THEIR DESIGNEE;

(XIV) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS OR THEIR DESIGNEE;

(XV) ONE MEMBER WHO IS AN INSTRUCTOR AT AN INSTITUTION OF HIGHER EDUCATION IN COLORADO AND HAS EXPERT KNOWLEDGE OF, AND RESEARCH EXPERIENCE WITH, FORENSIC SCIENCE, APPOINTED BY THE PRESIDENT OF THE SENATE;

(XVI) ONE MEMBER WHO IS A PERSON WHO WAS IMPACTED BY A FALSE POSITIVE TEST RESULT FROM THE USE OF A COLORIMETRIC FIELD DRUG TEST, OR THEIR DESIGNEE, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES; AND

(XVII) ONE MEMBER WHO IS A NATIONAL EXPERT ON WRONGFUL CONVICTIONS CAUSED BY THE USE OF COLORIMETRIC FIELD DRUG TESTS, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

(b) THE APPOINTING AUTHORITY SHALL MAKE APPOINTMENTS TO THE WORKING GROUP NO LATER THAN JULY 1, 2025.

(c) BEGINNING IN JULY OF 2025, THE WORKING GROUP SHALL MEET THREE TIMES USING AUDIO-VISUAL COMMUNICATION TECHNOLOGY AND SHALL COMPLETE ITS DUTIES NO LATER THAN DECEMBER 1, 2025.

(d) MEMBERS SERVE AT THE PLEASURE OF THEIR RESPECTIVE APPOINTING AUTHORITIES. IF A VACANCY OCCURS, THE APPROPRIATE APPOINTING AUTHORITY SHALL PROMPTLY APPOINT A NEW MEMBER WHO SATISFIES THE MEMBERSHIP REQUIREMENT OF THE VACATED SEAT.

(e) MEMBERS SERVE WITHOUT COMPENSATION BUT MAY BE REIMBURSED FOR EXPENSES DIRECTLY RELATING TO THEIR SERVICE TO THE WORKING GROUP.

(3) THE WORKING GROUP SHALL MAKE:

(a) FINDINGS CONCERNING THE PREVALENCE AND CIRCUMSTANCES WHEN COLORIMETRIC FIELD DRUG TESTS ARE USED IN THE VARIOUS STAGES OF CRIMINAL PROCEEDINGS AND IN CARCERAL SETTINGS;

(b) FINDINGS CONCERNING THE POTENTIAL HARMS THAT RESULT FROM USING COLORIMETRIC FIELD DRUG TESTS IN THE VARIOUS STAGES OF CRIMINAL PROCEEDINGS AND IN CARCERAL SETTINGS, INCLUDING THE POTENTIAL FOR UNJUST PRETRIAL DETENTION, COERCIVE GUILTY PLEAS, AND WRONGFUL CONVICTIONS;

(c) FINDINGS AND RECOMMENDATIONS FOR LEGISLATION OR POLICY SOLUTIONS TO ELIMINATE HARMS FROM THE USE OF COLORIMETRIC FIELD DRUG TESTS IN THE VARIOUS STAGES OF CRIMINAL PROCEEDINGS AND IN CARCERAL SETTINGS; AND

(d) FINDINGS AND RECOMMENDATIONS FOR LEGISLATION OR ALTERNATIVE POLICY SOLUTIONS CONCERNING USING COLORIMETRIC FIELD DRUG TESTS FOR PRESUMPTIVE

PURPOSES ONLY IN THE VARIOUS STAGES OF CRIMINAL PROCEEDINGS AND IN CARCERAL SETTINGS, INCLUDING COLLATERAL CONSEQUENCES, IN ORDER TO PREVENT FUTURE HARMS.

(4) THE WORKING GROUP SHALL NOT RECOMMEND BILL DRAFTS AS PART OF ITS RECOMMENDATIONS.

(5) THE WORKING GROUP MAY COLLABORATE WITH ANY PERSON OR ENTITY THAT THE WORKING GROUP DEEMS APPROPRIATE TO ASSIST THE WORKING GROUP IN PERFORMING ITS DUTIES PURSUANT TO THIS SECTION. A STATE ENTITY THAT IS REQUESTED TO PROVIDE ASSISTANCE TO THE WORKING GROUP IN PERFORMING ITS DUTIES SHALL ASSIST THE WORKING GROUP, TO THE EXTENT THE ASSISTANCE PROVIDED BY THE STATE ENTITY IS CONSISTENT WITH THE STATE ENTITY'S DUTIES AND LAW. AT A MINIMUM, THE STATE ENTITY MUST PROVIDE TO THE WORKING GROUP, UPON REQUEST, ANY EXISTING INFORMATION REGARDING THE PREVALENCE AND CIRCUMSTANCES WHEN COLORIMETRIC FIELD DRUG TESTS ARE USED AND ANY EXISTING POLICIES CONCERNING THE USE OF COLORIMETRIC FIELD DRUG TESTS.

(6) ON OR BEFORE DECEMBER 1, 2025, THE WORKING GROUP SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES. AT A MINIMUM, THE REPORT MUST INCLUDE THE WORKING GROUP'S FINDINGS AND RECOMMENDATIONS REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2026.

SECTION 3. Appropriation. (1) For the 2025-26 state fiscal year, \$1,008 is appropriated to the legislative department. This appropriation is from the general fund. To implement this act, the department may use this appropriation for the general assembly.

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: June 2, 2025