

CHAPTER 155

CRIMINAL LAW AND PROCEDURE

SENATE BILL 17-051

BY SENATOR(S) Fields and Gardner, Aguilar, Baumgardner, Cooke, Court, Fenberg, Jones, Kefalas, Kerr, Marble, Martinez Humenik, Merrifield, Neville T., Smallwood, Sonnenberg, Todd, Williams A., Zenzinger, Grantham; also REPRESENTATIVE(S) Foote and Lawrence, Carver, Gray, Hooton, Lontine, Mitsch Bush, Neville P., Pettersen, Ransom, Sias, Van Winkle, Williams D., Wist.

AN ACT**CONCERNING THE RIGHTS OF CRIME VICTIMS.**

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

SECTION 1. In Colorado Revised Statutes, 24-4.1-302, **amend** (1)(cc.6), (1)(hh), (2)(j.5), (2)(m), and (3.5); and **add** (1)(mm) as follows:

24-4.1-302. Definitions. As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(1) "Crime" means any of the following offenses, acts, and violations as defined by the statutes of the state of Colorado, whether committed by an adult or a juvenile:

(cc.6) Failure to stop at the scene of an accident, in violation of section 42-4-1601, ~~C.R.S.~~, where the accident results in the death OR SERIOUS BODILY INJURY of another person;

(hh) Violation of a protection order issued under section 18-1-1001 ~~C.R.S.~~, against a person charged with committing sexual assault in violation of section 18-3-402, ~~C.R.S.~~; sexual assault on a child in violation of section 18-3-405, ~~C.R.S.~~; sexual assault on a child by one in a position of trust in violation of section 18-3-405.3, ~~C.R.S.~~; or sexual assault on a client by a psychotherapist in violation of section 18-3-405.5, ~~C.R.S.~~; OR STALKING IN VIOLATION OF SECTION 18-3-602;

(mm) POSTING A PRIVATE IMAGE FOR HARASSMENT IN VIOLATION OF SECTION 18-7-107 OR POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IN VIOLATION OF SECTION 18-7-108.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) "Critical stages" means the following stages of the criminal justice process:

(j.5) Any court-ordered modification of the terms and conditions of probation as described in section 18-1.3-204 ~~C.R.S.~~ OR 19-2-925 and as outlined in section 24-4.1-303 (13.5)(a);

(m) Any parole application hearing AND FULL PAROLE BOARD REVIEW HEARING;

(3.5) "Modification of sentence" means an action taken by the court to modify the length, terms, or conditions of an offender's sentence pursuant to rule 35 (a) or (b) of the Colorado rules of criminal procedure; A RESENTENCING FOLLOWING A PROBATION REVOCATION HEARING; OR A REQUEST FOR EARLY TERMINATION OF PROBATION. AS USED IN THIS SUBSECTION (3.5), "action taken by the court" includes an order by the court modifying an offender's sentence upon review of the written motion without a hearing but does not include an order denying a motion to modify a sentence without a hearing.

SECTION 2. In Colorado Revised Statutes, 24-4.1-302.5, **amend** (1)(j); and **add** (1)(j.2), (1)(j.5)(III), (1)(j.5)(IV), (1)(j.5)(V), (1)(q.5), and (1)(aa) as follows:

24-4.1-302.5. Rights afforded to victims - definitions. (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime has the following rights:

(j) The right to be informed, upon written request from the victim, of any proceeding at which any postconviction release from confinement in a secure state correctional facility is being considered for any person convicted of a crime against the victim and the right to be heard at any such proceeding or to provide written information thereto. For purposes of this subsection (1), "proceeding" means reconsideration of sentence, a parole hearing, A FULL PAROLE BOARD REVIEW, commutation of sentence, or consideration for placement in the specialized program developed by the department of corrections pursuant to section 17-34-102. ~~C.R.S.~~

(j.2) THE RIGHT TO BE INFORMED OF ANY REQUEST FOR PROGRESSION FROM THE STATE MENTAL HEALTH HOSPITAL ON BEHALF OF A PERSON IN ITS CUSTODY AS A RESULT OF A CRIMINAL CASE INVOLVING THE VICTIM, AND THE RIGHT TO BE HEARD AT ANY HEARING DURING WHICH A COURT CONSIDERS SUCH A REQUEST. FOR PURPOSES OF THIS SUBSECTION (1)(j.2), "REQUEST FOR PROGRESSION" INCLUDES ANY REQUEST FOR OFF-GROUNDS OR UNSUPERVISED PRIVILEGES, COMMUNITY PLACEMENT, CONDITIONAL RELEASE, UNCONDITIONAL DISCHARGE, OR A SPECIAL FURLOUGH.

(j.5) (III) FOR PURPOSES OF THIS SUBSECTION (1)(j.5), IF A VICTIM OR A VICTIM'S DESIGNEE IS UNAVAILABLE TO BE PRESENT FOR A PROCEEDING TO CONSIDER AN OFFENDER FOR A DIRECT SENTENCE OR TRANSITIONAL REFERRAL TO COMMUNITY CORRECTIONS AS DESCRIBED IN SUBSECTION (1)(j.5)(I) OF THIS SECTION, AND THE VICTIM OR THE VICTIM'S DESIGNEE WISHES TO ADDRESS THE COMMUNITY CORRECTIONS BOARD, THE VICTIM OR THE VICTIM'S DESIGNEE SHALL NOTIFY THE COMMUNITY CORRECTIONS BOARD WITHIN A REASONABLE TIME THAT THE VICTIM IS UNAVAILABLE TO ATTEND THE PROCEEDING BUT WOULD LIKE TO MAKE A

STATEMENT. WITHIN ITS RESOURCES, THE COMMUNITY CORRECTIONS BOARD SHALL ARRANGE FOR AND PROVIDE THE MEANS FOR THE VICTIM TO ADDRESS THE BOARD, WHICH MEANS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, APPEARING BY PHONE OR VIA SIMILAR TECHNOLOGY.

(IV) FOR PURPOSES OF THIS SUBSECTION (1)(j.5), "UNAVAILABLE" MEANS THE VICTIM OR THE VICTIM'S DESIGNEE IS PHYSICALLY UNABLE TO ATTEND THE PROCEEDING, MAY SUSTAIN A FINANCIAL HARDSHIP TO ATTEND THE PROCEEDING, IS CONCERNED FOR HIS OR HER SAFETY IF HE OR SHE ATTENDS THE PROCEEDING, MAY SUFFER SIGNIFICANT EMOTIONAL IMPACT BY ATTENDING THE PROCEEDING, OR IS UNAVAILABLE FOR OTHER GOOD CAUSE.

(V) THIS SUBSECTION (1)(j.5) APPLIES TO A VICTIM WHO IS INCARCERATED OR OTHERWISE BEING HELD IN A LOCAL COUNTY JAIL, THE DEPARTMENT OF CORRECTIONS, OR THE DIVISION OF YOUTH CORRECTIONS IN THE DEPARTMENT OF HUMAN SERVICES BUT IS LIMITED TO PARTICIPATION BY PHONE OR SIMILAR TECHNOLOGY.

(q.5) THE RIGHT TO BE INFORMED OF THE RESULTS OF A PROBATION OR PAROLE REVOCATION HEARING;

(aa) THE RIGHT TO BE INFORMED OF THE GOVERNOR'S DECISION TO COMMUTE OR PARDON A PERSON CONVICTED OF A CRIME AGAINST THE VICTIM BEFORE SUCH INFORMATION IS PUBLICLY DISCLOSED.

SECTION 3. In Colorado Revised Statutes, 24-4.1-303, **amend** (9)(g), (10)(b)(III), (12)(f)(I), (12)(g), (12)(h), (13.5)(a)(III), (13.5)(a)(IV), (13.5)(a)(V), (13.5)(a)(VIII), (13.5)(a)(IX), (14)(c), (14)(d), (14)(h), (14.2) introductory portion, (14.2)(e), (14.2)(f), (14.2)(g), (14.2)(h), (14.2)(i), (14.3) introductory portion, and (14.3)(a); **repeal** (14)(f) and (14.2)(d); and **add** (3.5), (12)(g.5), (12)(j), (14)(j), (14)(k), (14.1), (14.2)(j), and (14.5)(c) as follows:

24-4.1-303. Procedures for ensuring rights of victims of crimes. (3.5) THE DISTRICT ATTORNEY'S OFFICE, IF PRACTICABLE, SHALL INFORM THE VICTIM OF ANY PENDING MOTION OR DECISION BY THE DISTRICT ATTORNEY TO SEQUESTER THE VICTIM FROM A CRITICAL STAGE IN THE CASE. THE DISTRICT ATTORNEY SHALL INFORM THE COURT OF THE VICTIM'S POSITION ON THE MOTION OR THE DISTRICT ATTORNEY'S DECISION, IF ANY. IF THE VICTIM HAS OBJECTED, THEN THE COURT, BEFORE GRANTING THE SEQUESTRATION ORDER, SHALL STATE IN WRITING OR ON THE RECORD THAT THE VICTIM'S OBJECTION WAS CONSIDERED AND STATE THE BASIS FOR THE COURT'S DECISION.

(9) The district attorney and any law enforcement agency shall inform each victim as to the availability of the following services:

(g) Child care services to enable a victim or the victim's immediate family to give testimony or otherwise ~~cooperate~~ PARTICIPATE in the prosecution of a criminal proceeding; and

(10) (b) As soon as available, the law enforcement agency shall give to each victim, as appropriate, the following information:

(III) Unless such information would be inconsistent with the requirements of the investigation, information as to whether a suspect has been taken into custody and, if known, whether the suspect has been released, ~~and~~ any conditions imposed upon such release, AND INFORMATION AS TO HOW THE VICTIM MAY REQUEST FURTHER NOTIFICATION PURSUANT TO SECTION 24-4.1-302.5 (1)(c);

(12) Unless a victim requests otherwise, the district attorney shall inform each victim of the following:

(f) (I) The date, time, and location of any hearing for modification of a sentence pursuant to rule 35 (a) or rule 35 (b) of the Colorado rules of criminal procedure or any provision of state or federal law; EXCEPT THAT A DISTRICT ATTORNEY IS NOT REQUIRED TO INFORM EACH VICTIM OF A RESENTENCING FOLLOWING A PROBATION REVOCATION HEARING OR A REQUEST FOR EARLY TERMINATION OF PROBATION. FOR BOTH PROBATION REVOCATION HEARINGS AND REQUESTS FOR EARLY TERMINATION, IT IS THE RESPONSIBILITY OF THE PROBATION DEPARTMENT TO NOTIFY THE VICTIM IF THE VICTIM HAS REQUESTED POST-SENTENCING NOTIFICATION.

(g) The right to receive information from correctional officials concerning the imprisonment and release of a person convicted of a crime against the victim pursuant to subsection (14) of this section, INCLUDING HOW THE VICTIM MAY REQUEST NOTIFICATION FROM CORRECTIONAL FACILITIES.

(g.5) THE RIGHT TO RECEIVE INFORMATION FROM THE STATE MENTAL HEALTH HOSPITAL CONCERNING THE CUSTODY AND RELEASE OF AN OFFENDER WHO WAS ORDERED BY A COURT INTO THE HOSPITAL'S CUSTODY PURSUANT TO SUBSECTION (14.2) OF THIS SECTION, INCLUDING HOW THE VICTIM MAY REQUEST NOTIFICATION FROM THE HOSPITAL.

(h) The right to receive information from the probation department concerning information outlined in subsection (13.5) of this section regarding a person convicted of a crime against the victim; ~~and~~

(j) THE RIGHT TO BE INFORMED OF A REQUEST FOR PROGRESSION FROM THE STATE MENTAL HEALTH HOSPITAL ON BEHALF OF A PERSON IN ITS CUSTODY AS A RESULT OF A CRIMINAL CASE INVOLVING THE VICTIM.

(13.5) (a) Following a sentence to probation and upon the written request of a victim, the probation department shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(III) Any request for release of the person in advance of the person's imposed sentence or period of probation, INCLUDING NOTIFICATION OF THE VICTIM'S RIGHT TO BE PRESENT AND HEARD AT THE HEARING AND NOTIFICATION OF THE RESULTS OF SUCH A HEARING PURSUANT TO SECTION 24-4.1-302.5 (1)(d). IF A HEARING IS NOT SCHEDULED AND THE COURT HAS REVIEWED A WRITTEN MOTION FOR EARLY TERMINATION OF PROBATION AND IS CONSIDERING GRANTING THE MOTION WITHOUT A HEARING, THE COURT SHALL INFORM THE PROBATION DEPARTMENT AND THE DISTRICT ATTORNEY'S OFFICE, AND THE PROBATION DEPARTMENT SHALL NOTIFY AND RECEIVE INPUT FROM THE VICTIM TO GIVE TO THE COURT BEFORE THE COURT RULES

ON THE MOTION. IF THE COURT HAS REVIEWED AND DENIED SUCH A REQUEST WITHOUT A HEARING, THE PROBATION DEPARTMENT IS NOT REQUIRED TO NOTIFY THE VICTIM REGARDING THE FILING OF OR RULING ON THE REQUEST.

(IV) Any probation revocation or modification hearing ~~regarding the person~~ AT WHICH THE PERSON'S SENTENCE MAY BE RECONSIDERED OR MODIFIED ~~and any changes in the scheduling of the hearings~~, INCLUDING NOTIFICATION OF THE VICTIM'S RIGHT TO BE PRESENT AND HEARD AT THE HEARING AND NOTIFICATION OF THE RESULTS OF SUCH A HEARING PURSUANT TO SECTION ~~24-4.1-302.5 (1)(d)~~. IF A HEARING IS NOT SCHEDULED AND THE COURT HAS REVIEWED A WRITTEN MOTION FOR MODIFICATION OF SENTENCE AND IS CONSIDERING GRANTING ANY PART OF THE MOTION WITHOUT A HEARING, THE COURT SHALL INFORM THE PROBATION DEPARTMENT AND THE DISTRICT ATTORNEY'S OFFICE, AND THE PROBATION DEPARTMENT SHALL NOTIFY AND RECEIVE INPUT FROM THE VICTIM TO GIVE TO THE COURT BEFORE THE COURT RULES ON THE MOTION. IF THE COURT HAS REVIEWED AND DENIED THE WRITTEN MOTION WITHOUT A HEARING, THE PROBATION DEPARTMENT IS NOT REQUIRED TO NOTIFY THE VICTIM REGARDING THE FILING OF OR RULING ON THE MOTION.

(V) Any motion filed by the probation department requesting permission from the court to modify the terms and conditions of probation as described in section 18-1.3-204 ~~E.R.S.~~, OR 19-2-925 if the motion has not been denied by the court without a hearing;

(VIII) Concerning domestic violence cases, any conduct by the ~~defendant~~ PROBATIONER that results in an increase in the supervision level by the probation department; and

(IX) Any court-ordered modification of the terms and conditions of probation as described in section 18-1.3-204 ~~E.R.S.~~ OR 19-2-925.

(14) Upon receipt of a written victim impact statement as provided in section 24-4.1-302.5 (1)(j.5), the department of corrections shall include the statement with any referral made by the department of corrections or a district court to place an offender in a public or private community corrections facility or program. Upon written request of a victim, the department of corrections or the public or private local corrections authorities shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(c) Any release of such person on furlough or work release or to a community correctional facility or other program, OR STATUTORY DISCHARGE in advance of such release;

(d) Any scheduled parole hearings OR FULL PAROLE BOARD REVIEWS regarding ~~such~~ THE person and any changes in the scheduling of such hearings, INCLUDING NOTIFICATION OF THE VICTIM'S RIGHT TO BE PRESENT AND HEARD AT SUCH HEARINGS;

(f) ~~Any decision by the parole board to release such person or any decision by the governor to commute the sentence of such person or pardon such person;~~

(h) The death of the person while in custody or while under the jurisdiction of the state of Colorado concerning the crime; ~~and~~

(j) ANY DECISION BY THE PAROLE BOARD AND ANY DECISION BY THE GOVERNOR TO COMMUTE THE SENTENCE OF THE PERSON OR PARDON THE PERSON; AND

(k) THE DATE, TIME, AND LOCATION OF A SCHEDULED EXECUTION.

(14.1) UPON THE WRITTEN REQUEST OF A VICTIM, THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO, OR THE COLORADO MENTAL HEALTH INSTITUTE AT FORT LOGAN, AS MAY BE APPLICABLE, SHALL NOTIFY THE VICTIM OF THE FOLLOWING INFORMATION REGARDING ANY PERSON WHO WAS CHARGED WITH OR CONVICTED OF A CRIME AGAINST THE VICTIM:

(a) THE INSTITUTION IN WHICH THE PERSON RESIDES;

(b) ANY RELEASE OF THE PERSON ON FURLOUGH OR OTHER PROGRAM, IN ADVANCE OF SUCH RELEASE;

(c) ANY OTHER TRANSFER OR RELEASE FROM THE STATE HOSPITAL;

(d) ANY ESCAPE BY THE PERSON AND ANY SUBSEQUENT RECAPTURE OF THE PERSON; AND

(e) THE DEATH OF THE PERSON WHILE IN CUSTODY OR WHILE UNDER THE JURISDICTION OF THE STATE.

(14.2) Upon receipt of a written statement as provided in section 24-4.1-302.5 (1)(j.5), the department of human services, DIVISION OF YOUTH CORRECTIONS, shall include the statement with any referral made by the department of human services or a district court to place an offender in a public or private community corrections facility or program. Upon written request of the victim, the department of human services and any state hospital shall notify the victim of the following information regarding any person who was charged with or ~~convicted~~ ADJUDICATED of a crime against the victim:

(d) ~~Any scheduled parole hearings regarding such person and any changes in the scheduling of such hearings;~~

(e) Any escape by ~~such~~ THE person or transfer or release from any state hospital, a detention facility, a correctional facility, a community correctional facility, PAROLE SUPERVISION, or other program, and any subsequent recapture of ~~such~~ THE person;

(f) Any decision by the ~~parole board to release such person or any decision by the~~ governor to commute the sentence of ~~such~~ THE person or pardon ~~such~~ THE person;

(g) The transfer to or placement in a nonsecured facility of a person ~~convicted~~ ADJUDICATED of a crime, any release or discharge from ~~confinement~~ THE SENTENCE of the person, and any conditions attached to the release;

(h) The death of ~~such~~ THE person while in custody or while under the jurisdiction of the state; ~~of Colorado; concerning the crime; and~~

(i) Any request by the department of human services to the juvenile court to modify the sentence to commitment and any decision by the juvenile court to modify the sentence to commitment; AND

(j) ANY PLACEMENT CHANGE THAT OCCURS DURING THE PERSON'S PAROLE THAT MAY AFFECT THE VICTIM'S SAFETY, AS DETERMINED BY THE DIVISION OF YOUTH CORRECTIONS.

(14.3) Upon receipt of a written statement from the victim, the juvenile parole board shall notify the victim of the following information regarding any person who was charged with or ~~convicted~~ ADJUDICATED of an offense against the victim:

(a) Any scheduled juvenile parole hearings pursuant to sections 19-2-1002 and 19-2-1004 ~~C.R.S.~~, regarding the person, ~~and any changes~~ CHANGE in the scheduling of ~~the hearings~~ SUCH A HEARING in advance of the hearing, THE VICTIM'S RIGHT TO BE PRESENT AND HEARD AT SUCH HEARINGS, THE RESULTS OF ANY SUCH HEARING, ANY PAROLE DECISION TO RELEASE THE PERSON, AND THE TERMS AND CONDITIONS OF ANY SUCH RELEASE;

(14.5) (c) THE COURT SHALL INFORM THE PROBATION DEPARTMENT AND THE DISTRICT ATTORNEY'S OFFICE BEFORE ANY HEARING REGARDING ANY REQUEST BY THE PROBATIONER FOR EARLY TERMINATION OF PROBATION OR ANY CHANGE IN THE TERMS AND CONDITIONS OF PROBATION.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 28, 2017