

CHAPTER 75

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 00-1377

BY REPRESENTATIVES Veiga, Coleman, Gagliardi, Grossman, Hagedorn, Leyba, Mace, Swenson, Tapia, Tochtrop, and S. Williams;
also SENATORS Dennis, Chlouber, Dyer, Epps, and Evans.

AN ACT

CONCERNING CRIME VICTIMS.

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

SECTION 1. 24-4.1-201 (1.5) (b) and (1.5) (d), Colorado Revised Statutes, are amended, and the said 24-4.1-201 (1.5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-4.1-201. Distribution of profits from crime - escrow account - civil suit by victim. (1.5) (b) (I) Any person who contracts with a person convicted of a crime in this state, or such person's representative or assignee, for payment of any profits from the crime of which such person is convicted shall pay to the victims assistance and law enforcement advisory board established pursuant to section 24-33.5-508, referred to in this part 2 as the "board", any money that would otherwise by terms of the contract be paid to the convicted person or such person's representatives or assignees. The board shall deposit the money in an escrow account for the benefit of any victim of the crime of which the person was convicted.

(II) ANY PERSON OR ANY PERSON'S AGENT OR OTHER LEGAL REPRESENTATIVE WHO CONTRACTS WITH A CONVICTED PERSON, OR THE CONVICTED PERSON'S REPRESENTATIVE OR ASSIGNEE, IN THE MANNER DESCRIBED IN SUBPARAGRAPH (I) OF THIS SUBSECTION (b), SHALL:

(A) SUBMIT A COPY OF THE CONTRACT OR A SUMMARY OF THE TERMS OF AN ORAL AGREEMENT TO THE BOARD;

(B) PAY OVER TO THE BOARD ANY MONEYS OR CONSIDERATION NOT SUBJECT TO AN ORDER OF RESTITUTION AND THAT BY THE TERMS OF THE CONTRACT WOULD BE

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

OTHERWISE OWING TO THE CONVICTED PERSON OR OWING TO A REPRESENTATIVE OR ASSIGNEE OF THE CONVICTED PERSON.

(1.5) (d) (I) Upon establishing an escrow account pursuant to paragraph (b) of this subsection (1.5), the board shall notify any victims of the crime of which the person was convicted AT SUCH VICTIMS' LAST KNOWN ADDRESSES of the establishment of the escrow account.

(II) THE BOARD, IN ADDITION, SHALL PUBLISH AT LEAST ONCE ANNUALLY FROM THE DATE OF THE ESTABLISHMENT OF THE ESCROW ACCOUNT, A NOTICE OF THE ESCROW ACCOUNT'S ESTABLISHMENT IN A NEWSPAPER HAVING GENERAL CIRCULATION THROUGHOUT THE COUNTY IN WHICH THE CRIME WAS COMMITTED. THE EXPENSES OF NOTIFICATION SHALL BE PAID FROM THE AMOUNT RECEIVED IN THE ESCROW ACCOUNT. THE BOARD, IN ITS DISCRETION, MAY PROVIDE FOR SUCH ADDITIONAL NOTICE AS IT DEEMS NECESSARY.

(III) ~~Such notice~~ THE NOTICE REQUIRED UNDER SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (d) shall specify the existence of the escrow account, the amount on deposit, and the victim's right to execute an order of restitution or bring a civil action to recover against the moneys in the escrow account within five years ~~of~~ AFTER the date the escrow account is established.

(e) (I) ANY PERSON WHO KNOWINGLY FAILS TO COMPLY WITH ANY REQUIREMENT OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1.5) SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN TEN THOUSAND DOLLARS NOR MORE THAN THREE TIMES THE CONTRACT AMOUNT.

(II) IF TWO OR MORE PERSONS ARE ADJUDGED LIABLE FOR THE CIVIL PENALTY IMPOSED, SUCH PERSONS SHALL BE JOINTLY AND SEVERALLY LIABLE.

(III) AFTER NOTICE AND OPPORTUNITY TO BE HEARD IS PROVIDED, THE COURT, BY ORDER OF JUDGMENT, MAY ASSESS THE PENALTY DESCRIBED IN THIS PARAGRAPH (e). ALL MONEYS RECEIVED FROM THE PAYMENT OF SUCH PENALTIES SHALL BE PAID OVER TO THE VICTIMS ASSISTANCE AND LAW ENFORCEMENT ADVISORY BOARD CREATED PURSUANT TO SECTION 24-33.5-508.

(IV) IN ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE THE CONTRACT PROVISIONS OF THIS SUBSECTION (1.5), THE COURT SHALL HAVE JURISDICTION TO GRANT THE ATTORNEY GENERAL, WITHOUT BOND OR OTHER UNDERTAKING, ANY INJUNCTIVE RELIEF NECESSARY TO PREVENT ANY PAYMENT UNDER A CONTRACT THAT IS PROHIBITED UNDER THIS SUBSECTION (1.5).

SECTION 2. 24-4.1-201 (2) and (3), Colorado Revised Statutes, are amended, and the said 24-4.1-201 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-4.1-201. Distribution of profits from crime - escrow account - civil suit by victim. (1.3) FOR PURPOSES OF THIS PART 2, "VICTIM" MEANS ANY NATURAL PERSON AGAINST WHOM ANY CRIME HAS BEEN PERPETRATED OR ATTEMPTED, UNLESS THE PERSON IS ACCOUNTABLE FOR THE CRIME OR A CRIME ARISING FROM THE SAME CONDUCT, CRIMINAL EPISODE OR PLAN OR IF SUCH PERSON IS DECEASED OR

INCAPACITATED, THE PERSON'S SPOUSE, PARENT, CHILD, SIBLING, GRANDPARENT, SIGNIFICANT OTHER, OR OTHER LAWFUL REPRESENTATIVE. FOR PURPOSES OF THIS PART 2, ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS IS CONSIDERED INCAPACITATED, UNLESS THAT PERSON IS EMANCIPATED.

(1.7) FOR PURPOSES OF THIS SECTION, "PERSON" MEANS ANY NATURAL PERSON, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, OR OTHER LEGAL ENTITY.

(2) If funds remain in the escrow account after payment of a money judgment pursuant to subsection (1) of this section and if no civil actions are pending under this section after five years from the establishment of an escrow account, the board shall notify the department of corrections of the existence of such escrow account. The department of corrections shall certify to the board a statement of the costs of maintenance of the person in the state correctional institution or institutions at which the person was incarcerated. A statement of the cost of maintenance shall be submitted annually for payment to the department of corrections by the board until such time as the person is released from custody of the state. No such payment shall be made ~~if there is disposition of the charges favorable to the defendant~~ UPON THE DISMISSAL OF THE CHARGES AGAINST ANY INDIVIDUAL WHOSE PROCEEDS ARE PLACED IN THE ESCROW ACCOUNT.

(3) ~~Upon the disposition of charges favorable to the accused~~ UPON THE DISMISSAL OF THE CHARGES AGAINST ANY INDIVIDUAL WHOSE PROCEEDS ARE PLACED IN THE ESCROW ACCOUNT or upon a showing by the defendant that five years have elapsed from the establishment of an escrow account and that no civil actions are pending against him OR HER under this section, the board shall immediately pay any money in the escrow account to the defendant except for funds paid to the department of corrections and anticipated as necessary for future payment to the department of corrections as set forth in subsection (2) of this section.

(4.5) THE ESCROW ACCOUNT SHALL BE ESTABLISHED FOR A PERIOD OF FIVE YEARS. IF AN ACTION IS FILED BY A VICTIM TO RECOVER THE VICTIM'S INTEREST IN THE ESCROW ACCOUNT WITHIN SUCH FIVE-YEAR PERIOD, THE ESCROW ACCOUNT SHALL CONTINUE UNTIL THE CONCLUSION OF SUCH ACTION.

(6) THE ATTORNEY GENERAL, AT THE REQUEST OF THE BOARD, SHALL BRING AN ACTION TO CAUSE PROFITS FROM THE CRIME TO BE PAID OVER AND HELD IN AN ESCROW ACCOUNT ESTABLISHED BY THE BOARD.

SECTION 3. 24-4.1-302, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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:

(1.3) "CORRECTIONAL FACILITY" MEANS ANY PRIVATE OR PUBLIC ENTITY PROVIDING CORRECTIONAL SERVICES TO OFFENDERS PURSUANT TO A COURT ORDER INCLUDING, BUT NOT LIMITED TO A COUNTY JAIL, A COMMUNITY CORRECTIONS PROVIDER, THE DIVISION OF YOUTH CORRECTIONS, AND THE DEPARTMENT OF CORRECTIONS.

(1.5) "CORRECTIONAL OFFICIAL" MEANS ANY EMPLOYEE OF A CORRECTIONAL FACILITY.

SECTION 4. 24-4.1-302 (1) (cc.6), Colorado Revised Statutes, is amended, and the said 24-4.1-302 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

(1) "Crime" means any of the following offenses 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 of another person; ~~or~~

(ee) RETALIATION AGAINST A WITNESS OR VICTIM, IN VIOLATION OF SECTION 18-8-706, C.R.S.; OR

(ff) TAMPERING WITH A WITNESS OR VICTIM, IN VIOLATION OF SECTION 18-8-707, C.R.S.

SECTION 5. 24-4.1-302.5 (1) (d), (1) (q), and (1) (r), Colorado Revised Statutes, are amended, and the said 24-4.1-302.5 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(d) The right to be heard at any court proceeding ~~which~~ THAT involves a bond reduction or modification, the acceptance of a negotiated plea agreement, or the sentencing OR ANY MODIFICATION OF SENTENCE of any person accused or convicted of a crime against such victim;

(j.7) THE RIGHT, AT THE DISCRETION OF THE DISTRICT ATTORNEY, TO VIEW ALL OR A PORTION OF THE PRESENTENCE REPORT OF THE PROBATION DEPARTMENT;

(q) The right to be informed, upon written request by the victim, when a person convicted of a crime against the victim is placed in or transferred to a less secure PUBLIC OR PRIVATE correctional facility or program;

(r) The right to be informed, upon written request by the victim, when a person who is or was charged with or convicted of a crime against the victim escapes or is permanently or conditionally transferred or released from any PUBLIC HOSPITAL, PRIVATE HOSPITAL, OR state hospital;

(u) THE RIGHT TO BE INFORMED OF THE RESULTS OF ANY HIV TESTING THAT IS ORDERED AND PERFORMED PURSUANT TO SECTION 18-3-415, C.R.S.

SECTION 6. 24-4.1-303 (2) and (6) and the introductory portion to 24-4.1-303 (14), Colorado Revised Statutes, are amended, and the said 24-4.1-303 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-4.1-303. Procedures for assuring rights of victims of crimes. (2) Upon request of a victim, ALL correctional officials shall keep confidential the address, telephone number, place of employment, or other personal information of such victim or members of such victim's immediate family.

(6) (a) A victim or an individual designated by the victim may be present at all critical stages of a criminal proceeding regarding any crime against such victim unless the court or the district attorney determines that exclusion of the victim is necessary to protect the defendant's right to a fair trial or the confidentiality of juvenile proceedings. If the victim is present, the court, at the victim's request, may permit the presence of an individual to provide support to the victim.

(b) A victim may be present at the phase of the trial at which ~~guilt or innocence~~ THE DEFENDANT IS DETERMINED TO BE GUILTY OR NOT GUILTY and may be heard at such phase of the trial if called to testify by the district attorney, defense, or court if any such statement would be relevant.

(c) THE COURT SHALL MAKE ALL REASONABLE EFFORTS TO ACCOMMODATE THE VICTIM UPON THE RETURN OF A VERDICT BY THE JURY. IF THE COURT IS INFORMED BY THE DISTRICT ATTORNEY THAT THE VICTIM IS EN ROUTE TO THE COURTROOM FOR THE READING OF THE VERDICT, THE COURT SHALL STATE ON THE RECORD THAT IT HAS CONSIDERED THE INFORMATION PROVIDED BY THE DISTRICT ATTORNEY PRIOR TO THE RETURN OF THE VERDICT BY THE JURY.

(14) Upon receipt of a written 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, the department of human services, any state hospital, 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:

(14.3) THE COURT OR ITS DESIGNEE, PURSUANT TO SECTION 18-3-415, C.R.S., SHALL DISCLOSE THE RESULTS OF ANY HIV TESTING THAT IS ORDERED AND PERFORMED PURSUANT TO SECTION 18-3-415, C.R.S., TO ANY VICTIM OF A SEXUAL OFFENSE IN THE CASE WHERE SUCH TESTING WAS ORDERED.

(14.7) THE COURT OR ITS DESIGNEE SHALL ENSURE THAT VICTIM INFORMATION BE PROVIDED TO ANY ENTITY RESPONSIBLE FOR VICTIM NOTIFICATION AFTER THE DEFENDANT IS SENTENCED.

SECTION 7. Part 1 of article 4.1 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF NEW SECTION to read:

24-4.1-107.5. Confidentiality of materials. (1) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "IN CAMERA REVIEW" MEANS A HEARING OR REVIEW IN A COURTROOM, HEARING ROOM, OR CHAMBERS TO WHICH THE GENERAL PUBLIC IS NOT ADMITTED. AFTER SUCH HEARING OR REVIEW, THE CONTENTS OF THE ORAL AND OTHER EVIDENCE

AND STATEMENTS OF THE JUDGE AND COUNSEL SHALL BE HELD IN CONFIDENCE BY THOSE PARTICIPATING IN OR PRESENT AT THE HEARING OR REVIEW, AND ANY TRANSCRIPT OF THE HEARING OR REVIEW SHALL BE SEALED, UNTIL AND UNLESS THE CONTENTS ARE ORDERED TO BE DISCLOSED BY A COURT HAVING JURISDICTION OVER THE MATTER.

(b) "MATERIALS" MEANS ANY RECORDS, CLAIMS, WRITINGS, DOCUMENTS, OR INFORMATION.

(2) ANY MATERIALS RECEIVED, MADE, OR KEPT BY A CRIME VICTIM COMPENSATION BOARD OR A DISTRICT ATTORNEY CONCERNING AN APPLICATION FOR VICTIM'S COMPENSATION MADE UNDER THIS ARTICLE ARE CONFIDENTIAL. ANY SUCH MATERIALS SHALL NOT BE DISCOVERABLE UNLESS THE COURT CONDUCTS AN IN CAMERA REVIEW OF THE MATERIALS SOUGHT TO BE DISCOVERED AND DETERMINES THAT THE MATERIALS SOUGHT ARE NECESSARY FOR THE RESOLUTION OF AN ISSUE THEN PENDING BEFORE THE COURT. THE DISTRICT ATTORNEY SHALL HAVE STANDING IN ANY ACTION TO OPPOSE THE DISCLOSURE OF ANY SUCH MATERIALS.

SECTION 8. 24-72-202 (6) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(6) (b) "Public records" does not include:

(IV) MATERIALS RECEIVED, MADE, OR KEPT BY A CRIME VICTIM COMPENSATION BOARD OR A DISTRICT ATTORNEY THAT ARE CONFIDENTIAL PURSUANT TO THE PROVISIONS OF SECTION 24-4.1-107.5.

SECTION 9. 24-72-204 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.

(2) (c) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2), THE CUSTODIAN SHALL DENY THE RIGHT OF INSPECTION OF ANY MATERIALS RECEIVED, MADE, OR KEPT BY A CRIME VICTIM COMPENSATION BOARD OR A DISTRICT ATTORNEY THAT ARE CONFIDENTIAL PURSUANT TO THE PROVISIONS OF SECTION 24-4.1-107.5.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 29, 2000