

CHAPTER 279

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 12-1226

BY REPRESENTATIVE(S) Barker, Fields, Gardner B., Labuda, Ryden, Hamner, Peniston, Schafer S., Todd, Vigil;
also SENATOR(S) Aguilar, Bacon, Boyd, Foster, Heath, Hodge, Hudak, Johnston, Morse, Newell, Tochtrop, Williams S.

AN ACT

**CONCERNING A SURCHARGE ON PERSONS CONVICTED OF CRIMES AGAINST AT-RISK PERSONS, AND,
IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

SECTION 1. In Colorado Revised Statutes, 18-6.5-102, **add** (1.7) and (1.8) as follows:

18-6.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1.7) "CONVICTED" AND "CONVICTION" MEAN A PLEA OF GUILTY ACCEPTED BY THE COURT, INCLUDING A PLEA OF GUILTY ENTERED PURSUANT TO A DEFERRED SENTENCE UNDER SECTION 18-1.3-102, A VERDICT OF GUILTY BY A JUDGE OR JURY, OR A PLEA OF NO CONTEST ACCEPTED BY THE COURT.

(1.8) "CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE" MEANS ANY OFFENSE LISTED IN SECTION 18-6.5-103, OR CRIMINAL ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THOSE OFFENSES.

SECTION 2. In Colorado Revised Statutes, **add** 18-6.5-107 as follows:

18-6.5-107. Surcharge - collection and distribution of funds - crimes against at-risk persons surcharge fund - creation - report. (1) EACH PERSON WHO IS CONVICTED OF A CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE OR WHO IS CONVICTED OF IDENTITY THEFT PURSUANT TO SECTION 18-5-902, WHEN THE VICTIM IS AN AT-RISK ADULT OR AT-RISK JUVENILE, SHALL BE REQUIRED TO PAY A SURCHARGE TO THE CLERK OF THE COURT FOR THE JUDICIAL DISTRICT IN WHICH THE CONVICTION OCCURS.

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) SURCHARGES PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE IN THE FOLLOWING AMOUNTS:

(a) FOR EACH CLASS 2 FELONY OF WHICH A PERSON IS CONVICTED, ONE THOUSAND FIVE HUNDRED DOLLARS;

(b) FOR EACH CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED, ONE THOUSAND DOLLARS;

(c) FOR EACH CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED, FIVE HUNDRED DOLLARS;

(d) FOR EACH CLASS 5 FELONY OF WHICH A PERSON IS CONVICTED, THREE HUNDRED SEVENTY-FIVE DOLLARS;

(e) FOR EACH CLASS 6 FELONY OF WHICH A PERSON IS CONVICTED, TWO HUNDRED FIFTY DOLLARS;

(f) FOR EACH CLASS 1 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, TWO HUNDRED DOLLARS;

(g) FOR EACH CLASS 2 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, ONE HUNDRED FIFTY DOLLARS; AND

(h) FOR EACH CLASS 3 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, SEVENTY-FIVE DOLLARS.

(3) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE REQUIRED PURSUANT TO THIS SECTION AS FOLLOWS:

(a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK OF THE COURT FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SUBSECTION (3). SUCH AMOUNT RETAINED SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH FUND CREATED IN SECTION 13-32-101 (6), C.R.S.

(b) NINETY-FIVE PERCENT SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE CRIMES AGAINST AT-RISK PERSONS SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (4) OF THIS SECTION.

(4) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE CRIMES AGAINST AT-RISK PERSONS SURCHARGE FUND, REFERRED TO IN THIS SECTION AS THE "FUND", THAT CONSISTS OF MONEYS RECEIVED BY THE STATE TREASURER PURSUANT TO THIS SECTION. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE STATE OFFICE ON AGING IN THE DEPARTMENT OF HUMAN SERVICES, CREATED PURSUANT TO SECTION 26-11-202, C.R.S., FOR DISTRIBUTION TO A FISCAL AGENT THAT IS AN AFFILIATE OF A NATIONAL ORGANIZATION THAT SERVES INDIVIDUALS AFFECTED BY A DISABILITY AND CHRONIC CONDITION ACROSS THE LIFE SPAN AND IS WORKING WITH THE STATE OF COLORADO TO IMPLEMENT THE LIFESPAN RESPITE CARE PROGRAM, REFERRED TO IN THIS SECTION

AS THE "FISCAL AGENT". PROVIDED THAT PROGRAMS SELECTED TO RECEIVE MONEYS FROM THE FUND MEET THE GUIDELINES FOR DISTRIBUTION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), THE FISCAL AGENT SHALL AWARD MONEYS TO PROGRAMS SELECTED BY A STATEWIDE COALITION OF NONPROFIT OR NOT-FOR-PROFIT ORGANIZATIONS THAT FOCUS ON THE NEEDS OF CAREGIVERS OF AT-RISK ADULTS OR AT-RISK JUVENILES.

(b) THE STATE OFFICE ON AGING IN THE DEPARTMENT OF HUMAN SERVICES SHALL ESTABLISH GUIDELINES FOR THE DISTRIBUTION OF THE MONEYS FROM THE FUND, INCLUDING BUT NOT LIMITED TO:

(I) PROCEDURES FOR PROGRAMS TO USE IN APPLYING FOR AN AWARD OF MONEYS FROM THE FUND;

(II) PROCEDURES FOR THE FISCAL AGENT TO USE IN REPORTING TO THE STATE OFFICE ON AGING PURSUANT TO PARAGRAPH (e) OF THIS SUBSECTION (4); AND

(III) ACCOUNTABILITY AND PERFORMANCE STANDARDS FOR PROGRAMS THAT RECEIVE MONEYS FROM THE FUND.

(c) NOTWITHSTANDING ANY PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4) TO THE CONTRARY, THE FISCAL AGENT MAY USE A PORTION OF THE MONEYS THAT IT RECEIVES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) FOR TRAINING AND TO FACILITATE THE COORDINATION OF PROGRAMS THAT PROVIDE RESPITE SERVICES FOR CAREGIVERS OF AT-RISK ADULTS OR AT-RISK JUVENILES. THE FISCAL AGENT SHALL DISTRIBUTE THE REMAINDER OF THE MONEYS DIRECTLY TO THE PROGRAMS.

(d) EACH PROGRAM THAT RECEIVES MONEYS FROM THE FUND SHALL:

(I) PROVIDE RESPITE SERVICES THAT ALLOW A CAREGIVER TO HAVE A BREAK FROM CAREGIVING;

(II) HAVE A SIGNED AGREEMENT AND PROTOCOL WITH THE FISCAL AGENT;

(III) CONDUCT A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK OF STAFF AND PROVIDERS; AND

(IV) SATISFY THE ACCOUNTABILITY AND PERFORMANCE STANDARDS ESTABLISHED BY THE STATE OFFICE ON AGING PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (4).

(e) THE FISCAL AGENT SHALL REPORT TO THE STATE OFFICE ON AGING IN THE DEPARTMENT OF HUMAN SERVICES ON A REGULAR BASIS TO BE SPECIFIED BY THE STATE OFFICE ON AGING. THE REPORT SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

(I) A LIST OF ALL PROGRAMS THAT RECEIVED MONEYS FROM THE FUND IN THE PRECEDING FISCAL YEAR;

(II) A DESCRIPTION OF HOW EACH PROGRAM THAT RECEIVED MONEYS FROM THE FUND IN THE PRECEDING FISCAL YEAR USED THOSE MONEYS; AND

(III) DOCUMENTATION DEMONSTRATING THAT EACH PROGRAM THAT RECEIVED MONEYS FROM THE FUND IN THE PRECEDING FISCAL YEAR SATISFIED ALL OF THE CRITERIA SPECIFIED IN PARAGRAPH (d) OF THIS SUBSECTION (4).

(f) THE STATE OFFICE ON AGING SHALL NOT EXPEND ANY MONEYS UNTIL THE FUND HAS ENOUGH MONEY TO PAY THE EXPENSES NECESSARY TO ADMINISTER THE FUND.

(g) ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

(5) THE COURT MAY WAIVE ALL OR ANY PORTION OF THE SURCHARGE REQUIRED BY SUBSECTION (1) OF THIS SECTION IF THE COURT FINDS THAT A PERSON CONVICTED OF A CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE IS INDIGENT OR FINANCIALLY UNABLE TO PAY ALL OR ANY PORTION OF THE SURCHARGE. THE COURT MAY WAIVE ONLY THAT PORTION OF THE SURCHARGE THAT THE COURT FINDS THAT THE PERSON CONVICTED OF A CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE IS FINANCIALLY UNABLE TO PAY.

SECTION 3. In Colorado Revised Statutes, 18-1.3-204, **add** (2.5) (i.7) as follows:

18-1.3-204. Conditions of probation. (2.5) The order of priority for any payments required of a defendant pursuant to subparagraph (IV), (V), (VI), or (VI.5) of paragraph (a) of subsection (2) of this section shall be as follows:

(i.7) PAYMENT OF A SURCHARGE FOR A CRIME AGAINST AN AT-RISK PERSON PURSUANT TO SECTION 18-6.5-107.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the crimes against at-risk persons cash fund created in section 18-6.5-107 (4), Colorado Revised Statutes, not otherwise appropriated, to the department of human services, for the fiscal year beginning July 1, 2012, the sum of \$5,650, or so much thereof as may be necessary, for allocation to adult assistance programs, community services for the elderly, for distributions to a fiscal agent related to the implementation of this act.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect August 15, 2012; 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 the ninety-day period after final adjournment of the general assembly, 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 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act apply to convictions on or after the applicable effective date of this act.

Approved: June 8, 2012