

CHAPTER 181

CRIMINAL LAW AND PROCEDURE

SENATE BILL 94-065

BY SENATOR Mutzebaugh;
also REPRESENTATIVES Tucker, Armstrong, Faatz, Friednash, Kerns, and Lawrence.

AN ACT

CONCERNING AMENDMENTS TO STATUTES THAT AFFECT PROCEEDINGS RELATED TO CRIMINAL LAW.

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

SECTION 1. Part 3 of article 72 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-72-305.4. Governmental access to criminal history records of applicants in regulated professions or occupations. (1) FOR THE PURPOSE OF COMPLYING WITH FEDERAL REQUIREMENTS, ANY DIVISION, BOARD, COMMISSION, OR PERSON RESPONSIBLE FOR THE LICENSING, CERTIFICATION, OR REGISTRATION FUNCTIONS FOR ANY GOVERNMENTAL ENTITY, IN ADDITION TO ANY OTHER AUTHORITY CONFERRED BY LAW, MAY USE FINGERPRINTS TO ACCESS, FOR COMPARISON PURPOSES, ARREST HISTORY RECORDS OF:

(a) ANY APPLICANT FOR LICENSURE, REGISTRATION, OR CERTIFICATION TO PRACTICE A PROFESSION OR OCCUPATION;

(b) ANY LICENSEE, REGISTRANT, OR PERSON CERTIFIED TO PRACTICE A PROFESSION OR OCCUPATION;

(c) ANY PROSPECTIVE EMPLOYEE OR ANY EMPLOYEE OF A LICENSEE, REGISTRANT, OR PERSON CERTIFIED TO PRACTICE AN OCCUPATION OR PROFESSION.

(2) THE PERSONS OR ENTITIES AUTHORIZED TO ACCESS ARREST HISTORY RECORDS PURSUANT TO SUBSECTION (1) OF THIS SECTION MAY ACCESS RECORDS THAT ARE MAINTAINED BY OR WITHIN THIS STATE AND ANY OTHER STATE OR TERRITORY OF THE

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

UNITED STATES, ANY OTHER NATION, OR ANY FEDERAL AGENCY, OR SUBDIVISION THEREOF, OF THE UNITED STATES INCLUDING, BUT NOT LIMITED TO, THE FEDERAL BUREAU OF INVESTIGATION IN THE UNITED STATES DEPARTMENT OF JUSTICE.

(3) FOR THE PURPOSES OF THIS SECTION, "GOVERNMENTAL ENTITY" MEANS THE STATE AND ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING ENTITIES GOVERNED BY HOME RULE CHARTERS, AND ANY AGENCY OR INSTITUTION OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

SECTION 2. 18-1-408 (2), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-1-408. Prosecution of multiple counts for same act. (2) If the several offenses are ACTUALLY known to the district attorney at the time of commencing the prosecution and were committed within ~~his~~ THE DISTRICT ATTORNEY'S judicial district, all such offenses upon which the district attorney elects to proceed must be prosecuted by separate counts in a single prosecution if they are based on the same act or series of acts arising from the same criminal episode. Any offense not thus joined by separate count cannot thereafter be the basis of a subsequent prosecution; EXCEPT THAT, IF AT THE TIME JEOPARDY ATTACHES WITH RESPECT TO THE FIRST PROSECUTION AGAINST THE DEFENDANT THE DEFENDANT OR COUNSEL FOR THE DEFENDANT ACTUALLY KNOWS OF ADDITIONAL PENDING PROSECUTIONS THAT THIS SUBSECTION (2) REQUIRES THE DISTRICT ATTORNEY TO CHARGE AND THE DEFENDANT OR COUNSEL FOR THE DEFENDANT FAILS TO OBJECT TO THE PROSECUTION'S FAILURE TO JOIN THE CHARGES, THE DEFENDANT WAIVES ANY CLAIM PURSUANT TO THIS SUBSECTION (2) THAT A SUBSEQUENT PROSECUTION IS PROHIBITED.

SECTION 3. 16-5-401 (6) and (7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

16-5-401. Limitation for commencing criminal proceedings. (6) The period of time during which a person may be prosecuted shall be extended for an additional seven years as to any offense charged under section 18-3-402 or 18-3-403, C.R.S., when the victim at the time of the commission of the act is a child under fifteen years of age, or under section 18-3-405, 18-3-405.3, 18-6-302, 18-6-402, 18-6-403, 18-6-404, 18-7-402, 18-7-403, 18-7-403.5, 18-7-404, 18-7-405, 18-7-405.5, or 18-7-406, C.R.S., or charged as criminal attempt, conspiracy, or solicitation to commit any of the acts specified in any of said sections. ~~This subsection (6) is repealed, effective July 1, 1994.~~

(7) When the victim at the time of the commission of the offense is a child under fifteen years of age, the period of time during which a person may be prosecuted shall be extended for an additional seven years as to a felony charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a felony, and such period shall be extended for an additional three years and six months as to a misdemeanor charged under section 18-3-404, C.R.S., or criminal attempt, conspiracy, or solicitation to commit such a misdemeanor. ~~This subsection (7) is repealed, effective July 1, 1994.~~

SECTION 4. 16-5-401.1, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-5-401.1. Legislative intent in enacting section 16-5-401 (6) and (7). (1) The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses specified in said subsections committed on or after July 1, 1979.

(2) ~~This section is repealed, effective July 1, 1994.~~

SECTION 5. 16-11-102 (1.5) (b), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-11-102. Presentence or probation investigation. (1.5) A victim impact statement may include the following:

(b) An itemization of any economic loss suffered by the victim as a result of the offense, ~~as INCLUDING ANY LOSS INCURRED AFTER THE OFFENSE AND AFTER CRIMINAL CHARGES WERE FILED FORMALLY AGAINST THE DEFENDANT. THE VICTIM IMPACT STATEMENT SHALL BE PREPARED BY THE DISTRICT ATTORNEY'S OFFICE AT THE TIME THE OFFENSE IS FILED AND SHALL BE UPDATED TO INCLUDE ANY LOSS INCURRED BY THE VICTIM AFTER CRIMINAL CHARGES WERE FILED;~~

SECTION 6. 17-26-128 (12), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-26-128. Employment of county prisoners. (12) Persons sentenced to the county jail as a direct sentence or sentenced to the county jail as a condition of probation who are permitted to participate in work, educational, medical release, home detention, or day reporting programs pursuant to subsection (1) of this section shall receive ~~day~~ for ONE day credit against their sentences for ~~the period of time~~ EACH DAY spent in such programs. As used in this section, "day reporting program" means an alternative correctional sentence wherein a defendant is allowed to serve his or her sentence by reporting daily to a central location wherein the defendant is supervised in court-ordered activities.

SECTION 7. 24-4.1-201 (1), Colorado Revised Statutes, 1988 Repl. Vol., is amended, and the said 24-4.1-201 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-4.1-201. Distribution of profits from crime - escrow account - civil suit by victim. (1) ~~Every person contracting with a person, or the representative or assignee of a person, accused or convicted of a crime in this state, with respect to the reenactment of that crime or with respect to the expressions of the accused's or convicted person's thoughts, feelings, or emotions regarding the crime, by way of a movie, book, magazine article, radio or television presentation, or live entertainment of any kind shall pay to the victims assistance and law enforcement advisory board any money which would otherwise, by terms of the contract, be owing to the accused or convicted person or his representatives. For the purposes of this part 2, "board" means the victims assistance and law enforcement advisory board established pursuant to section 24-33.5-508. The board shall deposit the money in an escrow account for the benefit of any victim of a crime committed by the person accused or convicted and payable to a victim if the accused or convicted person is convicted of the crime committed against said victim and the victim, within five years of the date~~

~~the escrow account is established, brings a civil action in a court of competent jurisdiction and recovers a money judgment against the accused or convicted person or his representatives.~~ THE GENERAL ASSEMBLY HEREBY FINDS THAT THE STATE HAS A COMPELLING INTEREST IN PREVENTING ANY PERSON WHO IS CONVICTED OF A CRIME FROM PROFITING FROM THE CRIME AND IN RECOMPENSING VICTIMS OF THE CRIME. IT IS THEREFORE THE INTENT OF THE GENERAL ASSEMBLY TO PROVIDE A MECHANISM WHEREBY ANY PROFITS FROM A CRIME THAT ARE RECEIVED BY THE PERSON CONVICTED OF THE CRIME ARE AVAILABLE AS RESTITUTION TO THE VICTIMS OF THE CRIME.

(1.5) (a) FOR PURPOSES OF THIS PART 2, "PROFITS FROM THE CRIME" MEANS:

(I) ANY PROPERTY OBTAINED THROUGH OR INCOME GENERATED FROM THE COMMISSION OF THE CRIME OF WHICH THE DEFENDANT WAS CONVICTED;

(II) ANY PROPERTY OBTAINED BY OR INCOME GENERATED FROM THE SALE, CONVERSION, OR EXCHANGE OF PROCEEDS OF THE CRIME OF WHICH THE DEFENDANT WAS CONVICTED, INCLUDING ANY GAIN REALIZED BY SUCH SALE, CONVERSION, OR EXCHANGE; AND

(III) ANY PROPERTY THAT THE DEFENDANT OBTAINED OR INCOME GENERATED AS A RESULT OF HAVING COMMITTED THE CRIME OF WHICH THE DEFENDANT WAS CONVICTED, INCLUDING ANY ASSETS OBTAINED THROUGH THE USE OF UNIQUE KNOWLEDGE OBTAINED DURING THE COMMISSION OF, OR IN PREPARATION FOR THE COMMISSION OF, THE CRIME, AS WELL AS ANY PROPERTY OBTAINED BY OR INCOME GENERATED FROM THE SALE, CONVERSION, OR EXCHANGE OF SUCH PROPERTY AND ANY GAIN REALIZED BY SUCH SALE, CONVERSION, OR EXCHANGE.

(b) 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.

(c) ANY PERSON WHO IS A VICTIM OF THE CRIME FROM WHICH A CONVICTED PERSON RECEIVES PROFITS UNDER PARAGRAPH (b) OF THIS SUBSECTION (1) MAY, WITHIN FIVE YEARS OF ESTABLISHMENT OF THE ESCROW ACCOUNT, ENFORCE ANY ORDER OF RESTITUTION ENTERED AGAINST THE CONVICTED PERSON AGAINST THE MONEYS ON DEPOSIT IN THE ESCROW ACCOUNT. IF NO ORDER OF RESTITUTION HAS BEEN ENTERED, THE VICTIM MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER A JUDGMENT AGAINST THE CONVICTED PERSON OR SUCH PERSON'S REPRESENTATIVES OR DESIGNEES.

(d) UPON ESTABLISHING AN ESCROW ACCOUNT PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), THE BOARD SHALL NOTIFY ANY VICTIMS OF THE CRIME OF WHICH THE PERSON WAS CONVICTED OF THE ESTABLISHMENT OF THE ESCROW ACCOUNT. SUCH NOTICE 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 THE DATE THE ESCROW ACCOUNT IS ESTABLISHED.

SECTION 8. Repeal. 30-10-719, 30-10-720, 30-10-721, 30-10-722, 30-10-723, 30-10-724, and 30-10-725, Colorado Revised Statutes, 1986 Repl. Vol., are repealed.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1994, and shall apply to actions filed on or after said date.

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: May 4, 1994