

CHAPTER 239

CORRECTIONS

SENATE BILL 94-143

BY SENATORS Schaffer, Blickensderfer, Hopper, R. Powers, Roberts, and Schroeder;
also REPRESENTATIVES Acquafresca, Agler, Allen, Entz, Epps, Lawrence, Morrison, and Pankey.

AN ACT**CONCERNING PAYMENT OF COSTS OF CARE BY OFFENDERS.**

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

SECTION 1. 16-11-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-11-102. Presentence or probation investigation. (1.7) EACH PRESENTENCE REPORT SHALL ALSO INCLUDE INFORMATION FROM THE OFFENDER AND ANY OTHER SOURCE AVAILABLE TO THE PROBATION OFFICER REGARDING THE OFFENDER'S ESTATE, AS DEFINED IN SECTION 16-11-501 (5) (b), AND OTHER PERTINENT FINANCIAL INFORMATION, FOR THE PURPOSE OF DETERMINING WHETHER SUCH OFFENDER OR JUVENILE HAS SUFFICIENT ASSETS TO PAY ALL OR PART OF SUCH OFFENDER'S OR JUVENILE'S COST OF CARE, AS DEFINED IN SECTION 16-11-501 (5) (a). THE FINANCIAL INFORMATION OBTAINED FROM THE OFFENDER SHALL BE SUBMITTED IN WRITING AND UNDER OATH.

SECTION 2. 16-11-501 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 16-11-501 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

16-11-501. Judgment for costs and fines. (1) Where any person, association, or corporation is convicted of an offense, or any juvenile is adjudicated a juvenile delinquent for the commission of an act which would have been a criminal offense if committed by an adult, the court shall give judgment in favor of the state of Colorado, the appropriate prosecuting attorney, or the appropriate law enforcement agency, and against the offender or juvenile for the amount of the costs of prosecution, THE AMOUNT OF THE COST OF CARE, and any fine imposed. No fine shall be imposed for

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

conviction of a felony except as provided in section 18-1-105, C.R.S. Such judgments shall be enforceable in the same manner as are civil judgments, and, in addition, the provisions of section 16-11-502 shall be applicable. Any judgments collected pursuant to this section for fees for interpreters appointed pursuant to section 13-90-204, C.R.S., and reimbursed pursuant to section 13-90-210, C.R.S., shall be remitted to the division of rehabilitation in the department of social services.

(3) WHERE ANY PERSON, ASSOCIATION, OR CORPORATION IS GRANTED PROBATION, THE COURT SHALL ORDER THE OFFENDER TO MAKE SUCH PAYMENTS TOWARD THE COST OF CARE AS ARE APPROPRIATE UNDER THE CIRCUMSTANCES. IN SETTING THE AMOUNT OF SUCH PAYMENTS, THE COURT SHALL TAKE INTO CONSIDERATION AND MAKE ALLOWANCES FOR ANY RESTITUTION ORDERED TO THE VICTIM OR VICTIMS OF A CRIME, WHICH SHALL TAKE PRIORITY OVER ANY PAYMENTS ORDERED PURSUANT TO THIS ARTICLE, AND FOR THE MAINTENANCE AND SUPPORT OF THE OFFENDER'S SPOUSE, DEPENDENT CHILDREN, OR OTHER PERSONS HAVING A LEGAL RIGHT TO SUPPORT AND MAINTENANCE FROM THE ESTATE OF THE OFFENDER. IF THE COURT DETERMINES THAT THE OFFENDER HAS A SUFFICIENT ESTATE TO PAY ALL OR PART OF THE COST OF CARE, THE COURT SHALL DETERMINE THE AMOUNT WHICH SHALL BE PAID BY THE OFFENDER FOR THE COST OF CARE, WHICH AMOUNT SHALL IN NO EVENT BE IN EXCESS OF THE PER CAPITA COST OF SUPERVISING AN OFFENDER ON PROBATION.

(4) WHERE ANY PERSON IS SENTENCED TO A TERM OF IMPRISONMENT, WHETHER TO A COUNTY JAIL OR THE DEPARTMENT OF CORRECTIONS, THE COURT SHALL ORDER SUCH PERSON TO MAKE SUCH PAYMENTS TOWARD THE COST OF CARE AS ARE APPROPRIATE UNDER THE CIRCUMSTANCES. IN SETTING THE AMOUNT OF SUCH PAYMENTS, THE COURT SHALL TAKE INTO CONSIDERATION AND MAKE ALLOWANCES FOR ANY RESTITUTION ORDERED TO THE VICTIM OR VICTIMS OF A CRIME, WHICH SHALL TAKE PRIORITY OVER ANY PAYMENTS ORDERED PURSUANT TO THIS ARTICLE, AND FOR THE MAINTENANCE AND SUPPORT OF THE INMATE'S SPOUSE, DEPENDENT CHILDREN, OR ANY OTHER PERSONS HAVING A LEGAL RIGHT TO SUPPORT AND MAINTENANCE OUT OF THE OFFENDER'S ESTATE. THE COURT SHALL ALSO CONSIDER THE FINANCIAL NEEDS OF THE OFFENDER FOR THE SIX-MONTH PERIOD IMMEDIATELY FOLLOWING THE OFFENDER'S RELEASE, FOR THE PURPOSE OF ALLOWING SAID OFFENDER TO SEEK EMPLOYMENT. IF THE COURT DETERMINES THAT THE PERSON HAS A SUFFICIENT ESTATE TO PAY ALL OR PART OF THE COST OF CARE, THE COURT SHALL DETERMINE THE AMOUNT WHICH SHALL BE PAID BY THE OFFENDER, WHICH AMOUNT IN NO EVENT SHALL BE IN EXCESS OF THE PER CAPITA COST OF MAINTAINING PRISONERS IN THE INSTITUTION OR FACILITY IN WHICH THE OFFENDER HAS BEEN RESIDING PRIOR TO SENTENCING FOR THE PURPOSE OF REIMBURSING THE APPROPRIATE LAW ENFORCEMENT AGENCY AND THE PER CAPITA COST OF MAINTAINING PRISONERS IN THE DEPARTMENT OF CORRECTIONS FOR THE PURPOSE OF PAYING THE COST OF CARE AFTER SENTENCING.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COST OF CARE" MEANS THE COST TO THE DEPARTMENT OR THE LOCAL GOVERNMENT CHARGED WITH THE CUSTODY OF AN OFFENDER FOR PROVIDING ROOM, BOARD, CLOTHING, MEDICAL CARE, AND OTHER NORMAL LIVING EXPENSES FOR AN OFFENDER CONFINED TO A JAIL OR CORRECTIONAL FACILITY, OR ANY COSTS ASSOCIATED WITH MAINTAINING AN OFFENDER IN A HOME DETENTION PROGRAM CONTRACTED FOR BY THE DEPARTMENT OF PUBLIC SAFETY, AS DETERMINED BY THE

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY, WHICHEVER IS APPROPRIATE, OR THE COST OF SUPERVISION OF PROBATION WHEN THE OFFENDER IS GRANTED PROBATION, OR THE COST OF SUPERVISION OF PAROLE WHEN THE OFFENDER IS PLACED ON PAROLE BY THE STATE BOARD OF PAROLE, AS DETERMINED BY THE COURT.

(b) "ESTATE" MEANS ANY TANGIBLE OR INTANGIBLE PROPERTIES, REAL OR PERSONAL, BELONGING TO OR DUE TO AN OFFENDER, INCLUDING INCOME OR PAYMENTS TO SUCH PERSON FROM PREVIOUSLY EARNED SALARY OR WAGES, BONUSES, ANNUITIES, PENSIONS, OR RETIREMENT BENEFITS, OR ANY SOURCE WHATSOEVER EXCEPT FEDERAL BENEFITS OF ANY KIND. REAL PROPERTY THAT IS HELD IN JOINT OWNERSHIP OR OWNERSHIP IN COMMON WITH AN OFFENDER'S SPOUSE, WHILE BEING USED AND OCCUPIED BY THE SPOUSE AS A PLACE OF RESIDENCE, SHALL NOT BE CONSIDERED A PART OF THE ESTATE OF THE OFFENDER FOR THE PURPOSES OF THIS SECTION.

SECTION 3. Part 7 of article 2 of title 19, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

19-2-705.5. Judgment for cost of care. (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 19-1-115 (4) (d), WHERE A JUVENILE IS SENTENCED TO A PLACEMENT OUT OF THE HOME OR IS GRANTED PROBATION AS A RESULT OF AN ADJUDICATION, DEFERRAL OF ADJUDICATION, OR DIRECT FILING IN DISTRICT COURT, THE COURT MAY ORDER THE JUVENILE OR THE JUVENILE'S PARENT TO MAKE SUCH PAYMENTS TOWARD THE COST OF CARE AS ARE APPROPRIATE UNDER THE CIRCUMSTANCES. IN SETTING THE AMOUNT OF SUCH PAYMENTS, THE COURT SHALL TAKE INTO CONSIDERATION AND MAKE ALLOWANCES FOR ANY RESTITUTION ORDERED TO THE VICTIM OR VICTIMS OF A CRIME, WHICH SHALL TAKE PRIORITY OVER ANY PAYMENTS ORDERED PURSUANT TO THIS SECTION, AND FOR THE MAINTENANCE AND SUPPORT OF THE JUVENILE'S SPOUSE, DEPENDENT CHILDREN, ANY OTHER PERSONS HAVING A LEGAL RIGHT TO SUPPORT AND MAINTENANCE OUT OF THE ESTATE OF THE JUVENILE, OR ANY PERSONS HAVING A LEGAL RIGHT TO SUPPORT AND MAINTENANCE OUT OF THE ESTATE OF THE JUVENILE'S PARENT. THE COURT SHALL ALSO CONSIDER THE FINANCIAL NEEDS OF THE JUVENILE FOR THE SIX-MONTH PERIOD IMMEDIATELY FOLLOWING THE JUVENILE'S RELEASE, FOR THE PURPOSE OF ALLOWING SAID JUVENILE TO SEEK EMPLOYMENT.

(2) ANY ORDER FOR PAYMENT TOWARD THE COST OF CARE ENTERED BY THE COURT PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL CONSTITUTE A JUDGMENT WHICH SHALL BE ENFORCEABLE BY THE STATE OR THE GOVERNMENTAL AGENCY WHICH WOULD OTHERWISE INCUR THE COST OF CARE FOR THE JUVENILE IN THE SAME MANNER AS ARE CIVIL JUDGMENTS.

(3) IN ORDER TO EFFECTUATE THE PROVISIONS OF THIS SECTION, A JUVENILE AND SUCH JUVENILE'S PARENT SHALL BE REQUIRED TO PROVIDE INFORMATION TO THE COURT REGARDING THE JUVENILE'S ESTATE AND THE ESTATE OF SUCH JUVENILE'S PARENT. SUCH FINANCIAL INFORMATION SHALL BE SUBMITTED IN WRITING AND UNDER OATH.

(4) IF THE COURT FINDS, AFTER A HEARING, THAT THE JUVENILE'S PARENT HAS MADE DILIGENT, GOOD FAITH EFFORTS TO PREVENT OR DISCOURAGE THE JUVENILE FROM ENGAGING IN DELINQUENT ACTIVITY, THE COURT MAY ABSOLVE SUCH PARENT

OF ACCOUNTABILITY FOR COST OF CARE UNDER SUBSECTION (1) OF THIS SECTION.

(5) LIABILITY FOR COST OF CARE OF A JUVENILE BY SUCH JUVENILE'S PARENT UNDER SUBSECTION (1) OF THIS SECTION SHALL BE LIMITED TO A MAXIMUM OF TEN THOUSAND DOLLARS.

(6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COST OF CARE" MEANS THE COST TO THE DEPARTMENT OR THE COUNTY CHARGED WITH THE CUSTODY OF THE JUVENILE FOR PROVIDING ROOM, BOARD, CLOTHING, EDUCATION, MEDICAL CARE, AND OTHER NORMAL LIVING EXPENSES TO A JUVENILE WHO IS SENTENCED TO A PLACEMENT OUT OF THE HOME, AS DETERMINED BY THE COURT.

(b) (I) "ESTATE" MEANS ANY TANGIBLE OR INTANGIBLE PROPERTIES, REAL OR PERSONAL, BELONGING TO OR DUE TO A PERSON, INCLUDING INCOME OR PAYMENTS TO SUCH PERSON FROM PREVIOUSLY EARNED SALARY OR WAGES, BONUSES, ANNUITIES, PENSIONS, OR RETIREMENT BENEFITS, OR ANY SOURCE WHATSOEVER EXCEPT FEDERAL BENEFITS OF ANY KIND.

(II) (A) REAL PROPERTY THAT IS HELD IN JOINT OWNERSHIP OR OWNERSHIP IN COMMON WITH THE JUVENILE'S SPOUSE, WHILE BEING USED AND OCCUPIED BY THE SPOUSE AS A PLACE OF RESIDENCE, SHALL NOT BE CONSIDERED A PART OF THE ESTATE OF THE JUVENILE FOR THE PURPOSES OF THIS SECTION.

(B) REAL PROPERTY THAT IS HELD BY THE JUVENILE'S PARENT, WHILE BEING USED AND OCCUPIED BY SUCH PARENT AS A PLACE OF RESIDENCE, SHALL NOT BE CONSIDERED A PART OF THE ESTATE OF THE PARENT FOR THE PURPOSES OF THIS SECTION.

SECTION 4. Article 10 of title 17, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 10 **Cost of Care Reimbursement**

17-10-101. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS THAT PERSONS WHO ARE CONVICTED OF OFFENSES IN THE STATE WHICH RESULT IN SUCH PERSONS BEING CONFINED TO A LOCAL JAIL OR A CORRECTIONAL FACILITY, BEING SENTENCED TO HOME DETENTION, BEING PLACED ON PROBATION BY THE SENTENCING COURT, OR BEING PLACED ON PAROLE BY THE STATE BOARD OF PAROLE, SHOULD BE REQUIRED, WHERE APPROPRIATE, TO REIMBURSE THE STATE OR A COUNTY OR A CITY AND COUNTY FOR THE COST OF CARE INCURRED AS A RESULT OF SUCH SENTENCE. THE GENERAL ASSEMBLY FURTHER FINDS THAT A CONVICTED PERSON'S FINANCIAL CIRCUMSTANCES MAY BE FRAUDULENTLY MISREPRESENTED TO THE SENTENCING COURT.

17-10-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COST OF CARE" MEANS THE COST TO THE DEPARTMENT OR A COUNTY OR A

CITY AND COUNTY CHARGED WITH THE CUSTODY OF AN OFFENDER FOR PROVIDING ROOM, BOARD, CLOTHING, MEDICAL CARE, AND OTHER NORMAL LIVING EXPENSES FOR AN OFFENDER CONFINED TO A LOCAL JAIL OR A CORRECTIONAL FACILITY, OR ANY COSTS ASSOCIATED WITH MAINTAINING AN OFFENDER IN A HOME DETENTION PROGRAM CONTRACTED FOR BY THE DEPARTMENT OF PUBLIC SAFETY, AS DETERMINED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY, WHICHEVER IS APPROPRIATE, OR THE COST OF SUPERVISION OF PROBATION WHEN THE OFFENDER IS GRANTED PROBATION, OR THE COST OF SUPERVISION OF PAROLE WHEN THE OFFENDER IS PLACED ON PAROLE BY THE STATE BOARD OF PAROLE, AS DETERMINED BY THE COURT.

(2) "ESTATE" MEANS ANY TANGIBLE OR INTANGIBLE PROPERTIES, REAL OR PERSONAL, BELONGING TO OR DUE TO AN OFFENDER, INCLUDING INCOME OR PAYMENTS TO SUCH PERSON FROM PREVIOUSLY EARNED SALARY OR WAGES, BONUSES, ANNUITIES, PENSIONS, OR RETIREMENT BENEFITS, OR ANY SOURCE WHATSOEVER EXCEPT FEDERAL BENEFITS OF ANY KIND. REAL PROPERTY THAT IS HELD IN JOINT OWNERSHIP OR OWNERSHIP IN COMMON WITH AN OFFENDER'S SPOUSE, WHILE BEING USED AND OCCUPIED BY THE SPOUSE AS A PLACE OF RESIDENCE, SHALL NOT BE CONSIDERED A PART OF THE ESTATE OF THE OFFENDER FOR THE PURPOSES OF THIS ARTICLE.

(3) "OFFENDER" MEANS A PERSON CONFINED TO A CORRECTIONAL FACILITY OR A LOCAL JAIL AS THE RESULT OF A CONVICTION OF A CRIME, OR TO HOME DETENTION, OR A PERSON PLACED ON PROBATION BY THE SENTENCING COURT, OR A PERSON PLACED ON PAROLE BY THE STATE BOARD OF PAROLE.

17-10-103. Action for reimbursement of cost of care. (1) WHEN ANY PERSON HAS BEEN SENTENCED TO CONFINEMENT IN A LOCAL JAIL OR A CORRECTIONAL FACILITY OR TO HOME DETENTION OR HAS BEEN GRANTED PROBATION OR HAS BEEN PLACED ON PAROLE BY THE STATE BOARD OF PAROLE, AND THE SENTENCING COURT HAS NOT ENTERED AN ORDER PURSUANT TO SECTION 16-11-501, C.R.S., REQUIRING SUCH PERSON TO PAY THE FULL COST OF CARE INCURRED DURING SUCH PERSON'S SENTENCE, THE STATE, THE APPROPRIATE PROSECUTING ATTORNEY, THE DEPARTMENT OF CORRECTIONS, THE JUDICIAL DEPARTMENT, OR ANY GOVERNMENT AGENCY WHICH HAS INCURRED COST OF CARE OF SUCH PERSON MAY FILE AN ACTION FOR REIMBURSEMENT FOR COST OF CARE.

(2) IN AN ACTION FILED PURSUANT TO THIS ARTICLE, THE PLAINTIFF SEEKING REIMBURSEMENT FOR COST OF CARE SHALL DEMONSTRATE THAT THE OFFENDER SUBSTANTIALLY MISREPRESENTED SUCH OFFENDER'S FINANCIAL STATUS TO THE SENTENCING COURT.

(3) IF, AFTER A HEARING, THE COURT DETERMINES THAT THE OFFENDER HAS SUFFICIENT ASSETS TO PAY ALL OR PART OF THE COST OF CARE, THE COURT SHALL ORDER THE OFFENDER TO MAKE SUCH PAYMENTS TOWARD THE COST OF CARE AS ARE APPROPRIATE UNDER THE CIRCUMSTANCES. IN SETTING THE AMOUNT OF SUCH PAYMENTS, THE COURT SHALL TAKE INTO CONSIDERATION AND MAKE ALLOWANCES FOR ANY RESTITUTION ORDERED TO THE VICTIM OR VICTIMS OF A CRIME, WHICH SHALL TAKE PRIORITY OVER ANY PAYMENTS ORDERED PURSUANT TO THIS ARTICLE, AND FOR THE MAINTENANCE AND SUPPORT OF THE OFFENDER'S SPOUSE, DEPENDENT CHILDREN,

OR ANY OTHER PERSONS HAVING A LEGAL RIGHT TO SUPPORT AND MAINTENANCE OUT OF THE OFFENDER'S ESTATE. IF THE OFFENDER IS CONFINED TO A LOCAL JAIL OR A CORRECTIONAL FACILITY OR IS UNDER HOME DETENTION, THE COURT SHALL ALSO CONSIDER THE FINANCIAL NEEDS OF THE OFFENDER FOR THE SIX-MONTH PERIOD IMMEDIATELY FOLLOWING THE OFFENDER'S RELEASE, FOR THE PURPOSE OF ALLOWING THE OFFENDER TO SEEK EMPLOYMENT. THE COURT SHALL DETERMINE THE AMOUNT WHICH SHALL BE PAID BY THE OFFENDER FOR COST OF CARE, WHICH AMOUNT SHALL IN NO EVENT BE IN EXCESS OF THE PER CAPITA COST OF MAINTAINING PRISONERS IN THE LOCAL JAIL OR A CORRECTIONAL FACILITY, THE PER CAPITA COST OF MAINTAINING AN OFFENDER UNDER HOME DETENTION, THE PER CAPITA COST OF SUPERVISING AN OFFENDER ON PROBATION, OR THE PER CAPITA COST OF SUPERVISING AN OFFENDER PLACED ON PAROLE, AS THE CASE MAY BE.

17-10-104. Action for reimbursement of cost of care - when commenced.

(1) (a) AN ACTION MAY BE COMMENCED PURSUANT TO SECTION 17-10-103 AGAINST ANY OFFENDER:

(I) AT ANY TIME DURING THE IMPRISONMENT OF SUCH OFFENDER;

(II) DURING THE PERIOD OF PROBATION SUPERVISION OF SUCH OFFENDER; OR

(III) WITHIN TWO YEARS AFTER THE OFFENDER'S RELEASE FROM IMPRISONMENT OR RELEASE FROM PROBATION SUPERVISION.

(b) A PLAINTIFF MAY RECOVER THE EXPENSES INCURRED ON BEHALF OF AN OFFENDER DURING THE ENTIRE PERIOD THE OFFENDER HAS BEEN CONFINED IN A CORRECTIONAL FACILITY OR A LOCAL JAIL, UNDER HOME DETENTION, UNDER PROBATION SUPERVISION, OR PLACED ON PAROLE.

17-10-105. Jurisdiction - process. (1) AN ACTION TO RECOVER COST OF CARE BROUGHT PURSUANT TO THIS ARTICLE SHALL BE BROUGHT IN THE DISTRICT COURT OF ANY COUNTY IN WHICH THE OFFENDER HAS BEEN CONFINED, SUPERVISED ON PROBATION, OR PLACED ON PAROLE.

(2) THE PRACTICE AND PROCEDURE IN AN ACTION TO RECOVER COST OF CARE SHALL BE GOVERNED BY THE COLORADO RULES OF CIVIL PROCEDURE.

17-10-106. Costs of the action - payment by offender. IF THE COURT DETERMINES THAT THE OFFENDER HAS A SUFFICIENT ESTATE TO PAY THE COST OF CARE, THE COURT MAY ALSO ORDER THAT SUCH OFFENDER PAY THE COSTS OF ANY ACTION FILED PURSUANT TO THIS ARTICLE.

SECTION 5. Repeal. 16-11-102 (1.1) and 17-1-103 (1) (i), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are repealed.

SECTION 6. Repeal. Part 2 of article 26 of title 17, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed.

SECTION 7. Effective date. This act shall take effect July 1, 1994.

SECTION 8. 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 25, 1994