

CHAPTER 151

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 03-1212

BY REPRESENTATIVE(S) Veiga, Frangas, Jahn, and Williams S.;
also SENATOR(S) Evans.

AN ACT**CONCERNING RESTITUTION ORDERS ENTERED IN CRIMINAL CASES.**

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

SECTION 1. 18-1.3-603, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-1.3-603. Assessment of restitution - corrective orders.

(8) (a) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, FOR A NON-FELONY CONVICTION UNDER TITLE 42, C.R.S., THE COURT SHALL ORDER RESTITUTION CONCERNING ONLY THE PORTION OF THE VICTIM'S PECUNIARY LOSS FOR WHICH THE VICTIM CANNOT BE COMPENSATED UNDER A POLICY OF INSURANCE, SELF-INSURANCE, AN INDEMNITY AGREEMENT, OR A RISK MANAGEMENT FUND.

(b) THE COURT, IN DETERMINING THE RESTITUTION AMOUNT, SHALL CONSIDER WHETHER THE DEFENDANT OR THE VEHICLE DRIVEN BY THE DEFENDANT AT THE TIME OF THE OFFENSE WAS COVERED BY:

(I) A COMPLYING POLICY OF INSURANCE OR CERTIFICATE OF SELF-INSURANCE AS REQUIRED BY THE LAWS OF THIS STATE;

(II) SELF-INSURANCE INCLUDING BUT NOT LIMITED TO INSURANCE COVERAGE PURSUANT TO THE PROVISIONS OF PART 15 OF ARTICLE 30 OF TITLE 24, C.R.S.; OR

(III) ANY OTHER INSURANCE OR INDEMNITY AGREEMENT THAT WOULD INDEMNIFY THE DEFENDANT FOR ANY DAMAGES SUSTAINED BY THE VICTIM.

(c) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (c), A COURT MAY NOT AWARD RESTITUTION TO A VICTIM CONCERNING A PECUNIARY LOSS FOR WHICH

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

THE VICTIM HAS RECEIVED OR IS ENTITLED TO RECEIVE BENEFITS OR REIMBURSEMENT UNDER A POLICY OF INSURANCE OR OTHER INDEMNITY AGREEMENT, INCLUDING BUT NOT LIMITED TO PIP BENEFITS.

(II) (A) A COURT MAY AWARD A VICTIM RESTITUTION FOR A DEDUCTIBLE AMOUNT UNDER HIS OR HER POLICY OF INSURANCE.

(B) A VICTIM, AS DEFINED IN SECTION 18-1.3-602 (4) (a) (III), MAY BE AWARDED RESTITUTION FOR PIP BENEFITS OR EQUIVALENT BENEFITS PAID TO ANOTHER ONLY IF THE COURT FINDS THAT THE DEFENDANT ON THE DATE OF THE OFFENSE DID NOT MEET STATE COMPULSORY INSURANCE REQUIREMENTS.

(d) (I) IF, AT THE TIME OF AN OFFENSE FOR WHICH A VICTIM SEEKS RESTITUTION, THE VICTIM OWNED AND OPERATED A VEHICLE INVOLVED IN THE OFFENSE, OR KNOWINGLY PERMITTED THE OPERATION OF A VEHICLE INVOLVED IN THE OFFENSE THAT WAS NOT COVERED BY A COMPLYING INSURANCE POLICY, THE COURT'S RESTITUTION ORDER SHALL NOT INCLUDE DAMAGES THAT WOULD HAVE BEEN COVERED UNDER A COMPLYING POLICY CONTAINING PIP OR PIP-EQUIVALENT BENEFITS EXCEPT UPON THE SPECIFIC REQUEST OF THE PROSECUTING ATTORNEY AND WITH THE APPROVAL OF THE COURT.

(II) NOTHING IN THIS PARAGRAPH (d) SHALL PROHIBIT A NON-OWNER DRIVER OR PASSENGER IN THE VEHICLE FROM BEING AWARDED RESTITUTION IF THE DRIVER OR PASSENGER WAS NOT COVERED BY HIS OR HER OWN COMPLYING PIP POLICY.

(e) (I) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AN INSURANCE COMPANY, RISK MANAGEMENT FUND, OR PUBLIC ENTITY SHALL NOT BE OBLIGATED TO DEFEND A DEFENDANT IN A HEARING CONCERNING RESTITUTION. NO COURT SHALL INTERPRET AN INDEMNITY OR INSURANCE CONTRACT SO AS TO OBLIGATE AN INSURANCE COMPANY, RISK MANAGEMENT FUND, OR PUBLIC ENTITY TO DEFEND A DEFENDANT AT A RESTITUTION HEARING ABSENT A SPECIFIC AGREEMENT.

(II) NOTWITHSTANDING ANY PROVISION OF LAW, INDEMNITY CONTRACT, OR INSURANCE CONTRACT TO THE CONTRARY, AN INSURANCE COMPANY, RISK MANAGEMENT FUND, OR PUBLIC ENTITY SHALL NOT BE OBLIGATED TO PAY OR OTHERWISE SATISFY A CIVIL JUDGMENT ENTERED PURSUANT TO THIS PART 6, OR TO INDEMNIFY A DEFENDANT FOR AN AMOUNT AWARDED IN A RESTITUTION ORDER.

(f) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT OR ABROGATE THE RIGHTS AND IMMUNITIES SET FORTH IN THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

(g) THE PROVISIONS OF THIS SUBSECTION (8) SHALL NOT PRECLUDE THE COURT, PURSUANT TO ARTICLE 4.1 OF TITLE 24, C.R.S., FROM ORDERING RESTITUTION TO REIMBURSE AN EXPENDITURE MADE BY A VICTIM COMPENSATION FUND.

SECTION 2. 18-1.3-602 (2) and (3) (a), Colorado Revised Statutes, are amended, and the said 18-1.3-602 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-1.3-602. Definitions. As used in this part 6, unless the context otherwise

requires:

(2) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court FOR A FELONY, MISDEMEANOR, PETTY OFFENSE, OR TRAFFIC MISDEMEANOR OFFENSE, or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(2.5) "PIP" MEANS PERSONAL INJURY PROTECTION, AS DEFINED IN SECTION 10-4-703 (11), C.R.S.

(3) (a) "Restitution" means any pecuniary loss suffered by a victim, and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money. "RESTITUTION" DOES NOT INCLUDE DAMAGES FOR PHYSICAL OR MENTAL PAIN AND SUFFERING, LOSS OF CONSORTIUM, LOSS OF ENJOYMENT OF LIFE, LOSS OF FUTURE EARNINGS, OR PUNITIVE DAMAGES.

SECTION 3. 16-18.5-110(1)(c), Colorado Revised Statutes, is amended to read:

16-18.5-110. Order of crediting payments. (1) Payments received shall be credited in the following order:

(c) Restitution TO VICTIMS IN THE FOLLOWING ORDER:

(I) A VICTIM, AS DEFINED IN SECTION 18-1.3-602 (4) (a) (I), C.R.S.;

(II) A VICTIM, AS DEFINED IN SECTION 18-1.3-602 (4) (a) (II), C.R.S.;

(III) A VICTIM, AS DEFINED IN SECTION 18-1.3-602 (4) (a) (III), C.R.S.;

SECTION 4. Effective date - applicability. This act shall take effect September 1, 2003, and shall apply to offenses committed on or after said date.

SECTION 5. 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: April 17, 2003