

CHAPTER 321

CRIMINAL LAW AND PROCEDURE

SENATE BILL 04-253

BY SENATOR(S) Reeves, Groff, Grossman, Keller, Tupa, and Windels;
 also REPRESENTATIVE(S) Judd, Boyd, Carroll, Crane, Frangas, Garcia, Hefley, Johnson R., Madden, Marshall, McGihon,
 Merrifield, Miller, Paccione, Romanoff, Salazar, Schultheis, and Vigil.

AN ACT

**CONCERNING THE INTERCEPTION OF CERTAIN MONEYS PAYABLE TO A DEFENDANT TO SATISFY THE
 DEFENDANT'S OBLIGATIONS IMPOSED PURSUANT TO A JUDICIAL PROCEEDING.**

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

SECTION 1. Part 1 of article 11 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-101.8. State income tax refund offsets - fines, fees, costs, or surcharges.

(1) IN ANY CASE IN WHICH A DEFENDANT HAS AN UNSATISFIED FINE, FEE, COST, OR SURCHARGE OBLIGATION IMPOSED PURSUANT TO LAW OR A COURT ORDER, THE JUDICIAL DEPARTMENT IS AUTHORIZED TO TRANSMIT DATA CONCERNING THE OBLIGATION TO THE DEPARTMENT OF REVENUE FOR THE PURPOSE OF CONDUCTING A DATA MATCH AND OFFSETTING THE OBLIGATION AGAINST A STATE INCOME TAX REFUND PURSUANT TO SECTION 39-21-108 (3), C.R.S. FOR ANY OBLIGATION IDENTIFIED BY THE JUDICIAL DEPARTMENT FOR OFFSET, THE STATE COURT ADMINISTRATOR SHALL:

(a) ON AT LEAST AN ANNUAL BASIS, CERTIFY TO THE DEPARTMENT OF REVENUE THE SOCIAL SECURITY NUMBER OF THE DEFENDANT WHO IS OBLIGATED TO PAY THE OBLIGATION AND THE AMOUNT OF THE OUTSTANDING OBLIGATION. THE DEPARTMENT OF REVENUE MAY REQUEST ADDITIONAL IDENTIFYING INFORMATION FROM THE JUDICIAL DEPARTMENT THAT IS NECESSARY TO OBTAIN AN ACCURATE DATA MATCH.

(b) UPON NOTIFICATION BY THE DEPARTMENT OF REVENUE OF A DATA MATCH, NOTIFY THE APPROPRIATE COURT THAT A MATCH HAS OCCURRED AND THAT AN OFFSET IS PENDING AND PROVIDE TO THE COURT THE IDENTIFYING INFORMATION RECEIVED FROM THE DEPARTMENT CONCERNING THE DEFENDANT WHOSE STATE INCOME TAX

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

REFUND IS SUBJECT TO THE OFFSET;

(c) PROVIDE OR REQUIRE THE APPROPRIATE COURT TO PROVIDE WRITTEN NOTICE TO THE DEFENDANT THAT THE STATE INTENDS TO OFFSET THE DEFENDANT'S OBLIGATION AGAINST HIS OR HER STATE INCOME TAX REFUND AND THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO THE OFFSET AND REQUEST AN ADMINISTRATIVE REVIEW; AND

(d) UPON RECEIPT OF FUNDS FOR OFFSET FROM THE DEPARTMENT OF REVENUE, TRANSMIT THE FUNDS TO THE APPROPRIATE COURT.

(2) THE CLERK OF COURT SHALL APPLY FUNDS RECEIVED PURSUANT TO THIS SECTION TO THE DEFENDANT'S OUTSTANDING FINES, FEES, COSTS, OR SURCHARGES. IF THE MONEYS RECEIVED EXCEED THE DEFENDANT'S CURRENT OBLIGATION, THE EXCESS MAY BE APPLIED TO OTHER FINANCIAL OBLIGATIONS THE DEFENDANT OWES THE COURT OR THE JUDICIAL DEPARTMENT. IF NO OTHER FINANCIAL OBLIGATIONS ARE OWED, THE CLERK OF COURT SHALL REFUND ANY EXCESS MONEYS TO THE DEFENDANT.

(3) THE STATE COURT ADMINISTRATOR MAY ADOPT RULES ESTABLISHING THE PROCESS BY WHICH A DEFENDANT MAY OBJECT TO AN OFFSET AND REQUEST AN ADMINISTRATIVE REVIEW. THE SOLE ISSUES TO BE DETERMINED AT THE ADMINISTRATIVE REVIEW SHALL BE WHETHER THE PERSON IS REQUIRED TO PAY THE FINES, FEES, COSTS, OR SURCHARGES PURSUANT TO LAW OR AN ORDER ENTERED BY A COURT OF THIS STATE AND THE AMOUNT OF THE OUTSTANDING FINES, FEES, COSTS, OR SURCHARGES.

(4) THE DEPARTMENT OF REVENUE IS AUTHORIZED TO RECEIVE DATA FROM THE JUDICIAL DEPARTMENT AND EXECUTE OFFSETS OF STATE INCOME TAX REFUNDS IN ACCORDANCE WITH THIS SECTION AND SECTION 39-21-108 (3), C.R.S.

(5) AS USED IN THIS SECTION, "DEFENDANT" MEANS ANY PERSON WHO HAS BEEN ASSESSED A FINE, FEE, COST, OR SURCHARGE AS AN ADULT OR JUVENILE PURSUANT TO LAW OR A COURT ORDER.

SECTION 2. 16-18.5-106.5 (1) (a), (3) (b), and (5), Colorado Revised Statutes, are amended to read:

16-18.5-106.5. Lottery winnings offset - restitution. (1) (a) The judicial department shall, on no less than a monthly basis, certify to the department of revenue information regarding any defendant who has been ordered to pay restitution pursuant to section 18-1.3-603 OR 19-2-918, C.R.S.

(3) (b) The clerk of the court shall apply the amounts toward the outstanding restitution balance owed in the criminal OR JUVENILE case. The clerk shall distribute the remainder, if any, to the person against whom the restitution order was entered. The court shall notify the crime victim or victims of actions taken under this paragraph (b).

(5) If a lottery winner owes restitution in a criminal OR JUVENILE case and also owes a child support debt or arrearages as described in section 26-13-118 (1),

C.R.S., the lottery winnings offset described in sections 24-35-212 (5) and 26-13-118, C.R.S., shall take priority and be applied first. Any remaining lottery winnings shall be disbursed and distributed in accordance with this section.

SECTION 3. Article 18.5 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-18.5-106.8. State income tax refund offsets - restitution. (1) IN ANY CASE IN WHICH A DEFENDANT HAS AN UNSATISFIED RESTITUTION OBLIGATION ORDERED PURSUANT TO SECTION 18-1.3-603 OR 19-2-918, C.R.S., THE JUDICIAL DEPARTMENT IS AUTHORIZED TO TRANSMIT DATA CONCERNING THE OBLIGATION TO THE DEPARTMENT OF REVENUE FOR THE PURPOSE OF CONDUCTING A DATA MATCH AND OFFSETTING THE RESTITUTION OBLIGATION AGAINST A STATE INCOME TAX REFUND PURSUANT TO SECTION 39-21-108 (3), C.R.S. FOR ANY RESTITUTION OBLIGATION IDENTIFIED BY THE JUDICIAL DEPARTMENT FOR OFFSET, THE STATE COURT ADMINISTRATOR SHALL:

(a) ON AT LEAST AN ANNUAL BASIS, CERTIFY TO THE DEPARTMENT OF REVENUE THE SOCIAL SECURITY NUMBER OF THE DEFENDANT WHO IS OBLIGATED TO PAY THE RESTITUTION OBLIGATION AND THE AMOUNT OF THE OUTSTANDING RESTITUTION OBLIGATION. THE DEPARTMENT OF REVENUE MAY REQUEST ADDITIONAL IDENTIFYING INFORMATION FROM THE JUDICIAL DEPARTMENT THAT IS NECESSARY TO OBTAIN AN ACCURATE DATA MATCH.

(b) UPON NOTIFICATION BY THE DEPARTMENT OF REVENUE OF A DATA MATCH, NOTIFY THE APPROPRIATE COURT THAT A MATCH HAS OCCURRED AND THAT AN OFFSET IS PENDING AND PROVIDE TO THE COURT THE IDENTIFYING INFORMATION RECEIVED FROM THE DEPARTMENT CONCERNING THE DEFENDANT WHOSE STATE INCOME TAX REFUND IS SUBJECT TO THE OFFSET;

(c) PROVIDE OR REQUIRE THE APPROPRIATE COURT TO PROVIDE WRITTEN NOTICE TO THE DEFENDANT THAT THE STATE INTENDS TO OFFSET THE DEFENDANT'S RESTITUTION OBLIGATION AGAINST HIS OR HER STATE INCOME TAX REFUND AND THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO THE OFFSET AND REQUEST AN ADMINISTRATIVE REVIEW; AND

(d) UPON RECEIPT OF FUNDS FOR OFFSET FROM THE DEPARTMENT OF REVENUE, TRANSMIT THE FUNDS TO THE APPROPRIATE COURT.

(2) THE CLERK OF COURT SHALL APPLY FUNDS RECEIVED PURSUANT TO THIS SECTION TO THE DEFENDANT'S OUTSTANDING RESTITUTION OBLIGATION. IF THE MONEYS RECEIVED EXCEED THE DEFENDANT'S CURRENT RESTITUTION OBLIGATION, THE EXCESS MAY BE APPLIED TO OTHER FINANCIAL OBLIGATIONS THE DEFENDANT OWES THE COURT OR THE JUDICIAL DEPARTMENT. IF NO OTHER FINANCIAL OBLIGATIONS ARE OWED, THE CLERK OF COURT SHALL REFUND ANY EXCESS TO THE DEFENDANT.

(3) THE STATE COURT ADMINISTRATOR MAY ADOPT RULES ESTABLISHING THE PROCESS BY WHICH A DEFENDANT MAY OBJECT TO AN OFFSET AND REQUEST AN ADMINISTRATIVE REVIEW. THE SOLE ISSUES TO BE DETERMINED AT THE ADMINISTRATIVE REVIEW SHALL BE WHETHER THE PERSON IS REQUIRED TO PAY THE

RESTITUTION AND THE AMOUNT OF THE OUTSTANDING RESTITUTION.

(4) THE DEPARTMENT OF REVENUE IS AUTHORIZED TO RECEIVE DATA FROM THE JUDICIAL DEPARTMENT AND EXECUTE OFFSETS OF STATE INCOME TAX REFUNDS IN ACCORDANCE WITH THIS SECTION AND SECTION 39-21-108 (3), C.R.S.

(5) AS USED IN THIS SECTION, "DEFENDANT" MEANS ANY PERSON, INCLUDING AN ADULT OR JUVENILE, WHO HAS BEEN ORDERED TO PAY RESTITUTION PURSUANT TO SECTION 18-1.3-603 OR 19-2-918, C.R.S.

SECTION 4. 39-21-108 (3) (a) (I) (A) and (3) (b), Colorado Revised Statutes, are amended, and the said 39-21-108 (3) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

39-21-108. Refunds. (3) (a) (I) (A) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34, C.R.S., and article 3 of title 42, or part 4 of article 37.5 of title 11, C.R.S., and that there is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period or that there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment by the division of employment and training in the department of labor and employment, or that there is any unpaid child support debt as set forth in section 14-14-104, C.R.S., or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services, or that there are any unpaid obligations owing to the state as set forth in section 26-2-133, C.R.S., for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or which has been reduced to judgment, as certified by the department of human services, or that there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment, as certified by the appropriate institution, or that there is any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment, as certified by the division, or there is any unpaid loan due to the Colorado student obligation bond authority division of the department of higher education as set forth in section 23-3.1-206, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment, OR THAT THERE IS ANY OUTSTANDING JUDICIAL FINE, FEE, COST, OR SURCHARGE AS SET FORTH IN SECTION 16-11-101.8, C.R.S., OR JUDICIAL RESTITUTION AS SET FORTH IN SECTION 16-18.5-106.8, C.R.S., THE AMOUNT OF WHICH HAS BEEN DETERMINED TO BE OWING AS A RESULT OF A FINAL JUDICIAL DEPARTMENT DETERMINATION OR CERTIFIED BY THE JUDICIAL DEPARTMENT AS A JUDGMENT OWED THE STATE OR A VICTIM, or that there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and which is found to be owing as a result of a final agency determination or the amount

of which has been reduced to judgment and as certified by the controller, or that the taxpayer is a qualified individual identified pursuant to section 39-22-120 (10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt shall be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment shall be refunded. If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited shall be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the taxpayer's spouse that the portion of the overpayment that is generated by the spouse's income shall be refunded upon receipt of a request detailing said amount. As used in this section, unless the context otherwise requires, "agency" includes state-supported institutions of higher education.

(VIII) ANY MONEYS WITHHELD FOR PAYMENT OF AN OBLIGATION CERTIFIED BY THE JUDICIAL DEPARTMENT PURSUANT TO SECTION 16-11-101.8 OR 16-18.5-106.8, C.R.S., SHALL BE TRANSFERRED TO THE JUDICIAL DEPARTMENT. AT THE TIME OF THE OFFSET, THE EXECUTIVE DIRECTOR SHALL NOTIFY THE TAXPAYER OF THE OFFSET AND SHALL PROVIDE TO THE JUDICIAL DEPARTMENT THE NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OR FEDERAL EMPLOYER IDENTIFICATION NUMBER, WHICHEVER IS APPLICABLE, OF THE TAXPAYER WHOSE REFUND IS BEING OFFSET, THE AMOUNT OF THE OFFSET, AND ANY OTHER IDENTIFYING INFORMATION AS REQUIRED BY THE JUDICIAL DEPARTMENT.

(b) In the event there are debts for overpayments of unemployment insurance pursuant to section 8-81-101 (4), C.R.S., debts for unpaid child support, as set forth in section 26-13-111, C.R.S., debts for overpayment of public assistance or medical assistance benefits, as set forth in section 26-2-133, C.R.S., debts for any unpaid loan or other obligation due to a state-supported institution of higher education, as set forth in section 23-5-115, C.R.S., debts for any unpaid loan due to the student loan division of the department of higher education, as set forth in section 23-3.1-104 (1) (p), C.R.S., ANY AMOUNTS OWED FOR JUDICIAL FINES, FEES, COSTS, OR SURCHARGES, AS SET FORTH IN SECTION 16-11-101.8, C.R.S., ANY AMOUNTS OWED FOR JUDICIAL RESTITUTION, AS SET FORTH IN SECTION 16-18.5-106.8, C.R.S., and other unpaid debts owing to the state or any agency thereof, as set forth in this subsection (3), then credit to the unpaid debts shall be prorated on the basis of the ratio of the amount of each such unpaid debt as compared to the total amount of unpaid debts.

SECTION 5. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 27, 2004