

CHAPTER 43

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 13-1146

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 also SENATOR(S) Ulibarri, Aguilar, Baumgardner, Cadman, Grantham, Guzman, Heath, Jahn, Jones, Kefalas, Kerr, King, Lambert, Lundberg, Newell, Nicholson, Renfroe, Roberts, Scheffel, Schwartz, Steadman, Tochtrop, Todd, Morse.

AN ACT**CONCERNING RIGHTS OF VICTIMS OF IDENTITY THEFT.**

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

SECTION 1. In Colorado Revised Statutes, **amend** 16-5-103 as follows:

16-5-103. Identity theft victims - definitions. (1) ~~(a)~~ A person whose identifying information has been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction is a victim of identity theft for the purposes of this section. A VICTIM OF IDENTITY THEFT MAY PROCEED EITHER THROUGH THE JUDICIAL PROCESS IN SUBSECTION (2) OF THIS SECTION OR THE COLORADO BUREAU OF INVESTIGATION PROCESS IN SUBSECTION (3) OF THIS SECTION.

~~(b)~~ (2) (a) If a criminal charge is not pending, a victim of identity theft may, with notice to the prosecutor, petition the court with jurisdiction over the arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction to judicially determine the person's factual innocence. Alternatively, the court, on its own motion, may make such a determination in the case. If a criminal charge is pending, the prosecuting attorney may request the court to make such a determination. A judicial determination of factual innocence made pursuant to this section may be determined, with or without a hearing, upon declarations, affidavits, or police reports or upon any other relevant, material, reliable information submitted by the parties and records of the court.

~~(c)~~ (b) If the court determines that there is no reasonable cause to believe that a victim of identity theft committed the offense for which the victim's identity has

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

been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

~~(2)(c) After the court has determined that a person is factually innocent, the court may order the name and associated identifying information contained in court records, files, or a criminal justice record to be labeled to show that the information is not accurate and does not reflect the perpetrator's identity because the victim of identity theft was impersonated~~ SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION WITH THE ORDER OF FACTUAL INNOCENCE. UPON RECEIPT OF THE ORDER OF FACTUAL INNOCENCE, THE COLORADO BUREAU OF INVESTIGATION SHALL MODIFY THE VICTIM OF IDENTITY THEFT'S LAW ENFORCEMENT-ONLY AND PUBLIC CRIMINAL HISTORY RECORD ACCORDINGLY.

(d) A COURT THAT ISSUES A DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO THIS SECTION MAY AT ANY TIME VACATE THAT DETERMINATION IF THE PETITION, OR INFORMATION SUBMITTED IN SUPPORT OF THE PETITION, CONTAINS MATERIAL MISREPRESENTATION OR FRAUD. IF THE COURT VACATES A DETERMINATION OF FACTUAL INNOCENCE, THE COURT SHALL ISSUE AN ORDER RESCINDING ANY ORDERS MADE PURSUANT TO THIS SUBSECTION (2).

(2.5) (a) A PERSON WHO HAS HAD HIS OR HER IDENTITY STOLEN OR USED THAT IS NOT ASSOCIATED WITH AN ARREST, SUMMONS, SUMMONS AND COMPLAINT, FELONY COMPLAINT, INFORMATION, INDICTMENT, OR CONVICTION MAY PETITION THE DISTRICT COURT IN THE COUNTY WHERE THE PERSON LIVES FOR AN ORDER OF FACTUAL INNOCENCE. A JUDICIAL DETERMINATION OF FACTUAL INNOCENCE MADE PURSUANT TO THIS SECTION MAY BE DETERMINED, WITH OR WITHOUT A HEARING, UPON DECLARATIONS, AFFIDAVITS, OR ANY OTHER RELEVANT, MATERIAL, RELIABLE INFORMATION SUBMITTED BY THE PARTIES AND RECORDS OF THE COURT.

(b) IF THE COURT FINDS THAT THE PERSON'S IDENTITY WAS STOLEN OR USED BY ANOTHER, THE COURT SHALL ISSUE AN ORDER CERTIFYING THIS DETERMINATION.

(c) A COURT THAT ISSUES A DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO THIS SUBSECTION (2.5) MAY AT ANY TIME VACATE THAT DETERMINATION IF THE PETITION, OR INFORMATION SUBMITTED IN SUPPORT OF THE PETITION, CONTAINS MATERIAL MISREPRESENTATION OR FRAUD. IF THE COURT VACATES A DETERMINATION OF FACTUAL INNOCENCE, THE COURT SHALL ISSUE AN ORDER RESCINDING ANY ORDERS MADE PURSUANT TO THIS SUBSECTION (2.5).

(3) (a) A VICTIM OF IDENTITY THEFT MAY CONTACT THE COLORADO BUREAU OF INVESTIGATION AND SUBMIT A RECORDS CHALLENGE TO ONE OR MORE CRIMINAL CHARGES THE VICTIM OF IDENTITY THEFT IS ALLEGED TO HAVE COMMITTED. THE VICTIM OF IDENTITY THEFT SHALL INCLUDE A COPY OF HIS OR HER FINGERPRINTS WITH THE RECORDS CHALLENGE.

(b) (I) A COLORADO BUREAU OF INVESTIGATION FINGERPRINT EXAMINER SHALL COMPARE THE SUBMITTED FINGERPRINTS IN THE RECORDS CHALLENGE TO THE FINGERPRINTS OBTAINED IN EACH CRIMINAL CASE THAT THE VICTIM OF IDENTITY THEFT IS MAKING A RECORDS CHALLENGE.

(II) THE FINGERPRINT EXAMINER SHALL EITHER DETERMINE THAT THE FINGERPRINTS SUBMITTED IN THE RECORDS CHALLENGE ARE NOT THE SAME AS THE INDIVIDUAL ARRESTED OR THAT THEY ARE THE SAME AS INDIVIDUAL ARRESTED.

(III) IF THE FINGERPRINT EXAMINER DETERMINES THE FINGERPRINTS SUBMITTED IN THE FINGERPRINT CHALLENGE ARE NOT THE SAME AS THE INDIVIDUAL ARRESTED, THE COLORADO BUREAU OF INVESTIGATION SHALL ISSUE A LETTER OF MISIDENTIFICATION AND SHALL MODIFY THE VICTIM OF IDENTITY THEFT'S LAW ENFORCEMENT-ONLY AND PUBLIC CRIMINAL HISTORY RECORD ACCORDINGLY. THE LETTER OF MISIDENTIFICATION SHALL STATE THE HOLDER OF THE LETTER IS A VICTIM OF IDENTITY THEFT IN EACH CRIMINAL CASE IDENTIFIED BY THE LETTER.

(3) (4) A person who knows or reasonably suspects that his or her identifying information has been unlawfully used by another person may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the victim's residence or over the place where a crime was committed. Such agency shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the local law enforcement agency where the suspected crime was committed for investigation of the facts.

~~(4) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or information submitted in support of the petition, contains a material misrepresentation or fraud. If the court vacates a determination of factual innocence, the court shall issue an order rescinding any orders made pursuant to subsection (2) of this section.~~

(5) For the purposes of this section:

(a) "Biometric data" means data, such as fingerprints, voice prints, or retina and iris prints that capture, represent, or enable the reproduction of the unique physical attributes of an individual.

(b) "Identifying information" means information that, alone or in conjunction with other information, identifies an individual, including but not limited to such individual's:

(I) Name;

(II) Address;

(III) Birth date;

(IV) Telephone, social security, taxpayer identification, driver's license, identification card, alien registration, government passport, or checking, savings, or deposit account number;

(V) Biometric data;

(VI) Unique electronic identification device; AND

(VII) Telecommunication identifying device.

(c) "Telecommunication identifying device" means a number, code, or magnetic or electronic device that enables the holder to use telecommunications technology to access an account; obtain money, goods, or services; or transfer funds.

SECTION 2. In Colorado Revised Statutes, 18-1.3-603, **amend** (7) as follows:

18-1.3-603. Assessment of restitution - corrective orders. (7) When a person's means of identification or financial information was used without that person's authorization in connection with a conviction for any crime in violation of part 2, 3, or 4 of article 4, part 1, 2, 3, or 7 of article 5, or article 5.5 of this title, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from any violation of such laws. IN ADDITION, THE RESTITUTION ORDER SHALL INCLUDE ANY COSTS INCURRED BY THE VICTIM RELATED TO SECTION 16-5-103, C.R.S.

SECTION 3. 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: March 15, 2013