

Colorado Statutes/TITLE 24 GOVERNMENT - STATE/ADMINISTRATION/ARTICLE 4.1 CRIME VICTIM COMPENSATION AND VICTIM AND WITNESS RIGHTS

**ARTICLE 4.1
CRIME VICTIM COMPENSATION AND VICTIM AND WITNESS RIGHTS**

Cross references: For restitution as a condition of probation, see § 16-11-204.5; for restitution to victims of crime generally, see article 28 of title 17; for the "Colorado Victim and Witness Protection Act of 1984", see part 7 of article 8 of title 18; for restitution by delinquent children under the "Colorado Children's Code", see § 19-2-918; for assistance to victims of and witnesses to crimes, see article 4.2 of this title.

PART 1 CRIME VICTIM COMPENSATION ACT

24-4.1-100.1. Short title.

This part 1 shall be known and may be cited as the "Colorado Crime Victim Compensation Act".

Source: L. 82: Entire section added, p. 364, § 1, effective March 22. L. 84: Entire section amended, p. 657, § 5, effective May 14.

24-4.1-101. Legislative declaration.

The general assembly hereby finds that an effective criminal justice system requires the protection and assistance of victims of crime and members of the immediate families of such victims in order to preserve the individual dignity of victims and to encourage greater public cooperation in the apprehension and prosecution of criminal defendants. The general assembly hereby intends to provide protection and assistance to victims and members of the immediate families of such victims by declaring and implementing the rights of such persons and by lessening the financial burden placed upon victims due to the commission of crimes. This article shall be liberally construed to accomplish such purposes.

Source: L. 81: Entire article added, p. 1135, § 5, effective July 1. L. 92: Entire section amended, p. 415, § 1, effective January 14, 1993.

Cross references: For constitutional provisions relating to the rights of crime victims, see section 16a of article II of the Colorado constitution; for statutory provisions relating to the rights of victims of and witnesses to crimes, see part 3 of this article.

C.J.S. See 81A C.J.S., States, § 195.

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Cross references: For constitutional provisions relating to the rights of crime victims, see section 16a of article II of the Colorado constitution; for statutory provisions relating to the rights of victims of and witnesses to crimes, see part 3 of this article.

C.J.S. See 81A C.J.S., States, § 195.

24-4.1-102. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Applicant" means any victim of a compensable crime who applies to the fund for compensation under this part 1. In the case of such victim's death, the term includes any person who was his dependent at the time of the death of that victim.

(2) "Board" means the crime victim compensation board in each judicial district.

(3) "Child" means an unmarried person who is under eighteen years of age. The term includes a posthumous child, a stepchild, or an adopted child.

(4) (a) "Compensable crime" means:

(I) An intentional, knowing, reckless, or criminally negligent act of a person or any act in violation of section 42-4-1301 (1) or (2), C.R.S., that results in residential property damage to or bodily injury or death of another person or results in loss of or damage to eyeglasses, dentures, hearing aids, or other prosthetic or medically necessary devices and which, if committed by a person of full legal capacity, is punishable as a crime in this state; or

(II) An act in violation of section 42-4-1402, C.R.S., that results in the death of another person or section 42-4-1601, C.R.S., where the accident results in the death of another person.

(b) "Compensable crime" includes federal offenses that are comparable to those specified in paragraph (a) of this subsection (4) and are committed in this state.

(5) "Dependent" means relatives of a deceased victim who, wholly or partially, were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

(6) "Economic loss" means economic detriment consisting only of allowable expense, net income, replacement services loss, and, if injury causes death, dependent's economic loss. The term does not include noneconomic detriment.

(7) "Fund" means the crime victim compensation fund as established in each judicial district.

(8) "Injury" means impairment of a person's physical or mental condition and includes pregnancy.

(8.5) "Property damage" means damage to windows, doors, locks, or other security devices of a residential dwelling and includes damage to a leased residential dwelling.

(9) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a victim.

(10) (a) "Victim" means any of the following persons who suffer property damage, economic loss, injury, or death as a result of a compensable crime perpetrated or attempted in whole or in part in this state:

(I) Any person against whom a compensable crime is perpetrated or attempted. Such person shall be referred to as a "primary victim".

(II) Any person who attempts to assist or assists a primary victim;

(III) Any person who is a relative of a primary victim.

(b) "Victim" also means a person who suffers injury or death, the proximate cause of which is a compensable crime perpetrated or attempted in the person's presence against a primary victim.

(c) "Victim" also means a person who is a resident of this state and who is a victim of a crime that occurred outside of this state, where the crime would be a compensable crime had it occurred in this state and where the state or country in which the crime occurred does not have a crime victim compensation program for which the person would be eligible.

(d) "Victim" also means a person who is a resident of this state who is injured or killed by an act of international terrorism, as defined in 18 U.S.C. sec. 2331, committed outside of the United States.

Source: L. 81: Entire article added, p. 1135, § 5, effective July 1. L. 83: (4) and (10) amended and (8.5) added, pp. 669, 854, 1648, § § 16, 1, 19, effective July 1. L. 84: IP(1) and (1) amended, p. 657, § 6, effective May 14. L. 85: (1) and (6) amended, p. 792, § 1, effective April 11. L. 90: (10) amended, p. 1179, § 1, effective July 1. L. 94: (4) amended, p. 2555, § 50, effective January 1, 1995. L. 95: (8) to (10) amended, p. 1400, § 1, effective July 1. L. 97: (4) and (10)(c) amended and (10)(d) added, p. 1560, § 3, effective July 1. L. 98: (10)(d) amended, p. 517, § 1, effective April 30. L. 99: (10)(d) amended, p. 58, § 10, effective March 15.

24-4.1-103. Crime victim compensation board - creation.

(1) There is hereby created in each judicial district a crime victim compensation board. Each board shall be composed of three members to be appointed by the district attorney. The district attorney shall designate one of the members as chairman. To the extent possible, members shall fairly reflect the population of the judicial district.

(2) The term of office of each member of the board shall be three years; except that, of those members first appointed, one shall be appointed for a three-year term, one for a two-year term, and one for a one-year term. All vacancies, except through the expiration of term, shall be filled for the unexpired term only. Each member may be reappointed once and serve two consecutive terms. A person may be reappointed to the board thereafter if it has been at least one year since such person served on the board.

(3) Members of the board shall receive no compensation but are entitled to be reimbursed for travel expenses at the rate authorized for state employees.

Source: L. 81: Entire article added, p. 1136, § 5, effective July 1. L. 90: (2) amended, p. 1179, § 2, effective July 1.

24-4.1-104. District attorney to assist board.

The district attorney and his legal and administrative staff shall assist the board in the performance of its duties pursuant to this part 1.

Source: L. 81: Entire article added, p. 1137, § 5, effective July 1. **L. 84:** Entire section amended, p. 657, § 7, effective May 14.

24-4.1-105. Application for compensation.

(1) A person who may be eligible for compensation under this part 1 may apply to the board in the judicial district in which the crime was committed. In a case in which the person entitled to apply is a minor, the application may be made on his behalf by his parent or guardian. In a case in which the person entitled to apply is mentally incompetent, the application may be made on his behalf by his parent, conservator, or guardian or by any other individual authorized to administer his estate.

(2) (a) In order to be eligible for compensation under this part 1, the applicant shall submit reports, if reasonably available, from any physician who has treated or examined the victim at the time of or subsequent to the victim's injury or death. The report shall be in relation to the injury for which compensation is claimed. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or the report on the cause of death of the victim by a medical expert would be of material aid to its determination, the board may order the reports.

(b) In order to be eligible for compensation for property damage under this part 1, the applicant shall submit a report or case number, if reasonably available, from a law enforcement agency which shall set forth the nature of the property damage which is the result of a compensable crime.

(3) If the applicant makes any false statement as to a material fact, he shall be ineligible for an award pursuant to this part 1.

Source: L. 81: Entire article added, p. 1137, § 5, effective July 1. **L. 83:** (2) amended, p. 669, § 17, effective July 1. **L. 84:** Entire section amended, p. 657, § 8, effective May 14.

24-4.1-106. Hearings.

(1) The board, in its discretion, may conduct a hearing upon any application submitted to it. All hearings conducted by the board and appeals therefrom shall be held pursuant to sections 24-4-105 and 24-4-106.

(2) The burden of proof is upon the applicant to show that the claim is reasonable and is compensable under the terms of this part 1. The standard of proof is by a preponderance of the evidence.

(3) If a person has been convicted of an offense with respect to an act on which a claim is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or a proceeding with regard to it is pending. The fact that the identity of the assailant is unknown or that the assailant has not been prosecuted or convicted shall not raise a presumption that the claim is invalid.

(4) Orders and decisions of the board are final.

(5) Review of an order or decision of the board may be made in accordance with the Colorado rules of civil procedure.

Source: L. 81: Entire article added, p. 1137, § 5, effective July 1. **L. 84:** Entire section amended, p. 658, § 9, effective May 14.

24-4.1-107. Regulations.

In the performance of its functions, the board, pursuant to article 4 of this title, is authorized to make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this part 1.

Source: L. 81: Entire article added, p. 1137, § 5, effective July 1. **L. 84:** Entire section amended, p. 658, § 10, effective May 14.

Am. Jur.2d. See 2 Am. Jur.2d, Administrative Law, § § 152-154.

24-4.1-107.5. Confidentiality of materials.

(1) For purposes of this section, unless the context otherwise requires:

(a) "In camera review" means a hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the contents of the oral and other evidence and statements of the judge and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed, until and unless the contents are ordered to be disclosed by a court having jurisdiction over the matter.

(b) "Materials" means any records, claims, writings, documents, or information.

(2) Any materials received, made, or kept by a crime victim compensation board or a district attorney concerning an application for victim's compensation made under this article are confidential. Any such materials shall not be discoverable unless the court conducts an in camera review of the materials sought to be discovered and determines that the materials sought are necessary for the resolution of an issue then pending before the court. The district attorney shall have standing in any action to oppose the disclosure of any such materials.

Source: L. 2000: Entire section added, p. 242, § 7, effective March 29.

24-4.1-108. Awarding compensation.

(1) A person is entitled to an award of compensation under this part 1 if:

(a) The person is a victim or a dependent of a victim or a successor in interest under the "Colorado Probate Code" of a victim of a compensable crime which was perpetrated on or after July 1, 1982, and which resulted in a loss;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death of or injury to the victim within seventy-two hours after its perpetration, unless the board finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the board has found good cause exists for the failure to cooperate;

(d) Repealed.

(e) The death of or injury to the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant; and

(f) The application for an award of compensation under this part 1 is filed with the board within one year of the date of injury to the victim or within such further extension of time as the board, for good cause shown, allows.

(1.5) A person is entitled to an award of compensation for property damage under this part 1 if:

(a) The person is a victim of a compensable crime which was perpetrated on or after July 1, 1983, and which resulted in property damage;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime causing property damage within seventy-two hours after its perpetration, unless the board finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the board has found good cause exists for the failure to cooperate; and

(d) The application for an award of compensation for property damage under this part 1 is filed with the board within six months of the date of property damage or within such further extension of time as the board, for good cause shown, allows.

(2) The board may waive any of the requirements set forth in this section, or the limitations set forth in section 24-4.1-109(1), or order a denial or reduction of an award if, in the interest of justice, it is so required.

(3) Upon a finding by the board that compensation should be awarded, the board shall submit a statement of award to the court administrator who shall remit payment in accordance with the statement of award.

(4) Consistent with approved standards for the administration of crime victim compensation funds created pursuant to section 24-4.1-117.5, the board may develop policies to ensure that primary victims are compensated and to ensure that available moneys in the compensation fund are not exceeded.

Source: L. 81: Entire article added, p. 1138, § 5, effective July 1. L. 83: (2)(a) and (1)(f) amended and (1.5) added, pp. 668, 669, 854, § § 14, 18, 2, effective July 1. L. 84: IP(1), (1)(f), IP(1.5), and (1.5)(d) amended, pp. 658, 1120, § § 11, 20, effective May 14. L. 85: (2) amended, p. 792, § 2, effective April 11. L. 89: (1)(d) repealed, p. 1016, § 3, effective April 23. L. 95: (4) added, p. 1401, § 2, effective July 1.

24-4.1-109. Losses compensable.

(1) Losses compensable under this part 1 resulting from death of or injury to a victim include:

(a) Reasonable medical and hospital expenses and expenses incurred for dentures, eyeglasses, hearing aids, or other prosthetic or medically necessary devices;

(b) Loss of earnings;

- (c) Outpatient care;
- (d) Homemaker and home health services;
- (e) Burial expenses;
- (f) Loss of support to dependents;
- (g) Mental health counseling.

(1.5) (a) Losses compensable under this part 1 resulting from property damage include:

- (I) (A) Repair or replacement of property damaged as a result of a compensable crime; or
- (B) Payment of the deductible amount on a residential insurance policy; and
- (II) Any modification to the victim's residence that is necessary to ensure victim safety.

(b) (Deleted by amendment, L. 98, p. 517, §2, effective April 30, 1998.)

(2) Compensable losses do not include:

- (a) Pain and suffering or property damage other than residential property damage; or
- (b) Aggregate damages to the victim or to the dependents of a victim exceeding twenty thousand dollars; or
- (c) Aggregate damages of less than twenty-five dollars.

Source: L. 81: Entire article added, p. 1138, § 5, effective July 1. L. 83: (2)(a) and (2)(b) amended and (1.5) added, pp. 670, 854, § § 19, 3, effective July 1. L. 84: Entire section amended, p. 659, § 12, effective May 14. L. 85: (1)(g) added, p. 792, § 3, effective June 6. L. 89: (1.5)(a)(II) amended, p. 1016, § 1, effective April 23. L. 93: (2) amended, p. 2051, § 1, effective June 9. L. 98: (1.5) and (2)(b) amended, p. 517, § 2, effective April 30.

24-4.1-110. Recovery from collateral source.

(1) The board shall deduct from compensation it awards under this part 1 any payments received by the applicant from the offender or from a person on behalf of the offender, from the United States or any state, or any subdivision or agency thereof, from a private source, or from an emergency award under this part 1 for injury or death compensable under this part 1, excluding death or pension benefits.

(2) If compensation is awarded under this part 1 and the person receiving it also receives a collateral sum under subsection (1) of this section which has not been deducted from it, he shall refund to the board the lesser of the sums or the amount of compensation paid to him under this part 1 unless the aggregate of both sums does not exceed his losses.

(3) If a defendant is ordered to pay restitution under article 18.5 of title 16, C.R.S., to a person who has received compensation awarded under this part 1, an amount equal to the compensation awarded shall be transmitted from such restitution to the board for allocation to the fund.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1. **L. 83:** Entire section amended, p. 670, § 20, effective July 1. **L. 84:** (1)(b) amended, p. 659, § 13, effective May 14. **L. 98:** (3) amended, p. 823, § 33, effective August 5. **L. 2000:** (3) amended, p. 1051, § 20, effective September 1.

24-4.1-111. Compensation to relatives.

(1) A relative of a victim, even though he was not a dependent of the victim, is eligible for compensation for reasonable medical or burial expenses for the victim, if:

(a) Such expenses were paid by him; and

(b) He files a claim in the manner provided in this part 1.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1. **L. 84:** (1)(b) amended, p. 659, § 14, effective May 14.

24-4.1-112. Emergency awards.

(1) The board may order an emergency award to the applicant pending a final decision in the claim if it appears to the board, prior to taking action upon the claim, that undue hardship will result to the applicant if immediate payment is not made. Awards pursuant to this section are intended to cover expenses incurred by crime victims in meeting their immediate short-term needs. The amount of such award shall not exceed one thousand dollars and shall be deducted from any final award made as a result of the claim.

(2) If the amount of such emergency award exceeds the sum the board would have awarded pursuant to this part 1, such excess shall be repaid by the recipient.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1. **L. 84:** (2) amended, p. 659, § 15, effective May 14. **L. 98:** (1) amended, p. 518, § 3, effective April 30.

24-4.1-113. Fees.

No fee may be charged to the applicant by the board in any proceeding under this article.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1.

24-4.1-114. Assignment, attachment, or garnishment of award.

No compensation payable under this article, prior to actual receipt thereof by the person or beneficiary entitled thereto or his legal representative, shall be assignable or subject to execution, garnishment, attachment, or any other process, including process to satisfy an order or judgment for support or alimony.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1.

24-4.1-114.5. Limitations on characterization of award as income.

No compensation payable to an applicant under this part 1 shall be included in the applicant's income for purposes of the Colorado income tax imposed in article 22 of title 39, C.R.S.; nor shall it be considered as income, property, or support for the purposes of determining the eligibility of the applicant for public assistance or the amount of assistance payments pursuant to section 26-2-108, C.R.S.

Source: L. 83: Entire section added, p. 856, § 1, effective July 1. **L. 84:** Entire section amended, p. 659, § 16, effective May 14. **L. 87:** Entire section amended, p. 1452, § 28, effective June 22.

24-4.1-115. Survival of rights.

The rights to compensation created by this part 1 are personal and shall not survive the death of the person or beneficiary entitled to them; except that, if death occurs after an application for compensation has been filed with the board, the proceeding shall not abate but may be continued by the legal representative of the decedent's estate.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1. **L. 84:** Entire section amended, p. 660, § 17, effective May 14.

24-4.1-116. Subrogation.

The acceptance of an award made pursuant to this part 1 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1. **L. 84:** Entire section amended, p. 660, § 18, effective May 14.

24-4.1-117. Fund created - control of fund.

(1) The crime victim compensation fund is hereby established in the office of the court administrator of each judicial district for the benefit of eligible applicants under this part 1.

(1.5) In any judicial district where a separate juvenile court exists, all moneys collected by such juvenile court shall be deposited in the fund and administered by the district court administrator.

(2) The fund shall consist of all moneys paid as a cost levied on criminal actions, as provided in section 24-4.1-409; any federal moneys available to state or local governments for victim compensation; all moneys received from any action or suit to recover damages from an assailant for a compensable crime which was the basis for an award of, and limited to, compensation received under this part 1; and any restitution paid by an assailant to a victim for damages for a compensable crime which was the basis for an award received under this part 1 and for damages for which the victim has received an award of, and limited to, compensation received under this part 1.

(3) All moneys deposited in the fund shall be deposited in an interest-bearing account, which shall be no less secure than those used by the state treasurer, and which shall yield the highest interest possible. All interest earned by moneys in the fund shall be credited to the fund.

(4) At the conclusion of each fiscal year, all moneys remaining in the fund shall remain in the fund for use the succeeding year.

(5) All moneys deposited in the fund shall be used solely for the compensation of victims pursuant to this part 1; except that the district attorney and the court administrator may use an aggregate of no more than twelve and one-half percent of the total amount of moneys in the crime victim compensation fund for administrative costs incurred pursuant to this part 1. The district attorney shall be permitted to use no more than ten percent of the total amount of moneys in the fund for administrative costs. The court administrator shall be permitted to use no more than two and one-half percent of the total amount of moneys in the fund for administrative costs.

(6) Grants of federal funds that are accepted pursuant to this part 1 for the purpose of assisting crime victims shall not be used to supplant state funds available to assist crime victims.

Source: L. 81: Entire article added, p. 1139, § 5, effective July 1. L. 84: (1), (2), and (5) amended, p. 660, § 19, effective May 14. L. 85: (6) added, p. 793, § 4, effective April 11. L. 89: (5) amended, p. 1016, § 2, effective April 23. L. 98: (5) amended, p. 518, § 4, effective April 30.

24-4.1-117.5. Standards for administration of funds - sanctions.

(1) On or before January 1, 1991, the board appointed by the governor pursuant to the federal "Victims of Crime Act", 42 U.S.C. secs. 10601 to 10604, shall approve standards for the administration of the crime victim compensation fund created pursuant to section 24-4.1-117 and the victims and witnesses assistance and law enforcement fund created pursuant to section 24-4.2-103.

(2) (a) There is hereby created in the division of criminal justice of the department of public safety a victims compensation and assistance coordinating committee which shall have the same membership as the board appointed by the governor pursuant to the federal "Victims of Crime Act", 42 U.S.C. secs. 10601 to 10604, and which shall have the authority to develop and impose sanctions for the violation of the standards approved pursuant to subsection (1) of this section. Such coordinating committee shall not have the authority to impose any sanctions until January 1, 1991.

(b) (I) A subcommittee of the coordinating committee created pursuant to paragraph (a) of this subsection (2) shall be appointed by the governor and shall consist of members representing each of the following positions:

- (A) A member of a crime victim compensation board;
- (B) A member of a victims and witnesses assistance and law enforcement board;
- (C) A representative of a local judicial district;
- (D) An administrator of crime victim compensation from a district attorney's office;
- (E) An administrator of victims and witnesses assistance from a district attorney's office;
- (F) A judge;
- (G) An elected district attorney; and
- (H) A representative of a statewide victim's organization.

(II) The subcommittee shall be advisory to the coordinating committee, and the recommendations of the subcommittee shall not be effective until adopted by the coordinating committee.

(c) The members of the coordinating committee and the subcommittee shall serve at the pleasure of the governor or until such member no longer serves in the position which he represents on the subcommittee. The governor shall appoint a chairman of the coordinating committee who shall preside over official meetings of the coordinating committee and a chairman of the subcommittee who shall preside over official meetings of the subcommittee.

(d) The coordinating committee created pursuant to this subsection (2) shall exercise its powers and perform its duties and functions under the division of criminal justice of the department of public safety and the executive director as transferred to the department by a **type 2** transfer, as such transfer is defined in article 1 of this title.

(3) (Deleted by amendment, L. 93, p. 2051, § 2, effective June 9, 1993.)

Source: L. 90: Entire section added, p. 1180, § 3, effective July 1. L. 93: Entire section amended, p. 2051, § 2, effective June 9. L. 95: (2)(b)(l) amended, p. 1401, § 3, effective July 1.

24-4.1-118. Court administrator custodian of fund - disbursements.

The court administrator of each judicial district shall be the custodian of the fund, and all disbursements from the fund shall be paid by him upon written authorization of the board or the court.

Source: L. 81: Entire article added, p. 1140, § 5, effective July 1.

24-4.1-119. Costs levied on criminal actions and traffic offenses.

(1) (a) Except as provided in paragraphs (c) and (d) of this subsection (1), a cost of one hundred twenty-five dollars for felonies, sixty dollars for misdemeanors, and thirty-five dollars for a class 1 misdemeanor traffic offense and twenty-five dollars for a class 2 misdemeanor traffic offense is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section 18-1.3-102, C.R.S., which criminal action is charged pursuant to state statute. These costs shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the costs so received to the court administrator of the judicial district in which the offense occurred for credit to the crime victim compensation fund established in that judicial district.

(b) The costs required by paragraph (a) of this subsection (1) shall not be levied on criminal actions which are charged pursuant to the penalty assessment provisions of section 42-4-1701, C.R.S., or to any violations of articles 1 to 15 of title 33, C.R.S.

(c) A cost of twenty-five dollars is hereby levied on every criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section 18-1.3-102, C.R.S., of a violation of section 42-4-1301 (1) or (2), C.R.S. This cost shall be paid to the clerk of the court, who shall deposit same in the victim compensation fund established in section 24-4.1-117.

(d) A cost, in an amount determined pursuant to paragraph (a) of this subsection (1), is hereby levied on every action upon the filing of a petition alleging a child is delinquent which results in a finding of guilty pursuant to part 8 of article 2 of title 19, C.R.S., or a deferral of adjudication pursuant to section 19-2-709, C.R.S. This cost shall be paid to the clerk of the court, who shall deposit the same in the fund established in section 24-4.1-117.

(e) Repealed.

(2) For purposes of determining the order of priority for payments required of a defendant pursuant to section 18-1.3-204 (2.5), C.R.S., the payments to the victim compensation fund required under this part 1 shall be the first obligation of the defendant.

(3) The provisions of sections 18-1.3-701 and 18-1.3-702, C.R.S., shall be applicable as to the collection of costs levied pursuant to this part 1.

Source: **L. 81:** Entire article added, p. 1140, § 5, effective July 1. **L. 82:** (1) amended, p. 364, § 2, effective March 22; (1)(a) amended and (1)(c) added, p. 604, § 5, effective July 1. **L. 83:** (1)(a) amended and (1)(d) added, p. 668, § 15, effective July 1. **L. 84:** (1)(a), (2), and (3) amended, pp. 660, 923, 1120, § § 20, 15, 21, effective July 1. **L. 85:** (1)(a) amended, p. 793, § 5, effective April 11. **L. 86:** (1)(a) amended and (1)(e) added, p. 871, § 1, effective July 1. **L. 87:** (1)(d) and (1)(a) amended and (1)(e) repealed, pp. 819, 1496, 1529, § § 32, 6, 74, effective July 1. **L. 93:** (1) amended, p. 2053, § 3, effective June 9. **L. 94:** (1)(c) and (1)(d) amended, p. 1637, § 48, effective May 31; (1)(b) and (1)(c) amended, p. 2555, § 51, effective January 1, 1995. **L. 96:** (1)(d) amended, p. 1695, § 35, effective January 1, 1997. **L. 2002:** (1)(a), (1)(c), (2), and (3) amended, p. 1529, § 239, effective October 1.

Editor's note: Amendments to subsection (1)(c) by Senate Bill 94-001 and Senate Bill 94-206 were harmonized.

Cross references: (1) For additional costs imposed on criminal actions and traffic offenses, see § 24-4.2-104; for additional costs levied on alcohol- and drug-related traffic offenses, see § § 42-4-1301 (9)(i)(V) and (10)(d) and 43-4-402. (2) For the legislative declaration contained in the 2002 act amending subsections (1)(a), (1)(c), (2), and (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

24-4.1-120. Effective dates of provisions of this article.

Sections 24-4.1-117 to 24-4.1-120 originally took effect July 1, 1981. Sections 24-4.1-101 to 24-4.1-116 originally took effect July 1, 1982.

Source: **L. 81:** Entire article added, p. 1140, § 5, effective July 1.

24-4.1-121. Repeal. (Repealed)

Source: **L. 81:** Entire article added, p. 1140, § 5, effective July 1. **L. 85:** Entire section repealed, p. 794, § 7, effective April 11.

24-4.1-122. Reports.

On or before October 1, 1985, and on or before each October 1 thereafter, the court administrator of each judicial district shall report to the state court administrator the amount of moneys collected by the judicial district in the prior fiscal year and the amount of moneys distributed to crime victims in the prior fiscal year by the board.

Source: **L. 85:** Entire section added, p. 793, § 6, effective April 11.

24-4.1-123. When redistribution of moneys required. (Repealed)

Source: **L. 85:** Entire section added, p. 793, § 6, effective April 11. **L. 2002:** Entire section repealed, p. 48, § 1, effective March 21.

24-4.1-124. State crime victim compensation fund - creation - allocation of moneys. (Repealed)

Source: **L. 85:** Entire section added, p. 794, § 6, effective April 11. **L. 98:** (2) amended, p. 518, § 5, effective April 30. **L. 2002:** Entire section repealed, p. 48, § 2, effective March 21.

PART 2 COMPENSATION FROM BENEFITS OF CRIME

24-4.1-201. Distribution of profits from crime - escrow account - civil suit by victim - definitions.

(1) 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.

(1.3) For purposes of this part 2, "victim" means any natural person against whom any crime has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode or plan or if such person is deceased or incapacitated, the person's spouse, parent, child, sibling, grandparent, significant other, or other lawful representative. For purposes of this part 2, any person under the age of eighteen years is considered incapacitated, unless that person is emancipated.

(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) (I) 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.

(II) Any person or any person's agent or other legal representative who contracts with a convicted person, or the convicted person's representative or assignee, in the manner described in subparagraph (I) of this paragraph (b), shall:

(A) Submit a copy of the contract or a summary of the terms of an oral agreement to the board;

(B) Pay over to the board any moneys or consideration not subject to an order of restitution and that by the terms of the contract would be otherwise owing to the convicted person or owing to a representative or assignee of the convicted person.

(c) Any person who is a victim of the crime from which a convicted person receives profits under paragraph (b) of this subsection (1.5) 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) (I) Upon establishing an escrow account pursuant to paragraph (b) of this subsection (1.5), the board shall notify any victims of the crime of which the person was convicted at such victims' last known addresses of the establishment of the escrow account.

(II) The board, in addition, shall publish at least once annually from the date of the establishment of the escrow account, a notice of the escrow account's establishment in a newspaper having general circulation throughout the county in which the crime was committed. The expenses of notification shall be paid from the amount received in the escrow account. The board, in its discretion, may provide for such additional notice as it deems necessary.

(III) The notice required under subparagraphs (I) and (II) of this paragraph (d) 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 after the date the escrow account is established.

(e) (I) Any person who knowingly fails to comply with any requirement of subparagraph (II) of paragraph (b) of this subsection (1.5) shall be liable for a civil penalty of not less than ten thousand dollars nor more than three times the contract amount.

(II) If two or more persons are adjudged liable for the civil penalty imposed, such persons shall be jointly and severally liable.

(III) After notice and opportunity to be heard is provided, the court, by order of judgment, may assess the penalty described in this paragraph (e). All moneys received from the payment of such penalties shall be paid over to the victims assistance and law enforcement advisory board created pursuant to section 24-33.5-508.

(IV) In any action or proceeding brought to enforce the contract provisions of this subsection (1.5), the court shall have jurisdiction to grant the attorney general, without bond or other undertaking, any injunctive relief necessary to prevent any payment under a contract that is prohibited under this subsection (1.5).

(1.7) For purposes of this section, "person" means any natural person, firm, corporation, partnership, association, or other legal entity.

(2) If funds remain in the escrow account after payment of a money judgment pursuant to subsection (1) of this section and if no civil actions are pending under this section after five years from the establishment of an escrow account, the board shall notify the department of corrections of the existence of such escrow account. The department of corrections shall certify to the board a statement of the costs of maintenance of the person in the state correctional institution or institutions at which the person was incarcerated. A statement of the cost of maintenance shall be submitted annually for payment to the department of corrections by the board until such time as the person is released from custody of the state. No such payment shall be made upon the dismissal of the charges against any individual whose proceeds are placed in the escrow account.

(3) Upon the dismissal of the charges against any individual whose proceeds are placed in the escrow account or upon a showing by the defendant that five years have elapsed from the establishment of an escrow account and that no civil actions are pending against him or her under this section, the board shall immediately pay any money in the escrow account to the

defendant except for funds paid to the department of corrections and anticipated as necessary for future payment to the department of corrections as set forth in subsection (2) of this section.

(4) If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which civil action may be brought bars action by a victim of a crime committed by the person accused or convicted of the crime, as to a claim resulting from the crime, until five years have elapsed from the time the escrow account was established.

(4.5) The escrow account shall be established for a period of five years. If an action is filed by a victim to recover the victim's interest in the escrow account within such five-year period, the escrow account shall continue until the conclusion of such action.

(5) The board shall make payments from an escrow account to the accused upon an order of the court after a showing by the accused that:

(a) The money will be used for the exclusive purpose of retaining legal representation at any stage of the civil or criminal proceedings against him, including the appeals process; and

(b) He has insufficient assets, other than funds in the escrow account and assets which could be claimed as exempt from execution under state law, to provide for payment of the expenses of legal representation.

(6) The attorney general, at the request of the board, shall bring an action to cause profits from the crime to be paid over and held in an escrow account established by the board.

Source: L. 84: Entire part added, p. 652, § 2, effective May 14. L. 88: (1) amended, p. 890, § 1, effective July 1. L. 94: (1) amended and (1.5) added, p. 1050, § 7, effective July 1. L. 2000: (1.3), (1.5)(e), (1.7), (4.5), and (6) added and (1.5)(b), (1.5)(d), (2), and (3) amended, pp. 239, 238, § 2, 1, effective March 29.

C.J.S. See 81A C.J.S., States, § 195.

24-4.1-202. Notification of board.

It shall be the duty of the victim, the victim's attorney, or the victim's representative to notify the board within thirty days of the filing of any compensable claim under section 24-4.1-201.

Source: L. 84: Entire part added, p. 653, § 2, effective May 14.

24-4.1-203. More than one claim.

If more than one claim is filed against the moneys in escrow pursuant to section 24-4.1-201, the board shall disburse payments from the escrow account on a pro rata basis of all judgments obtained, according to the amount of money in the escrow account as compared to the amount of each claim. No compensation shall be disbursed until all pending claims have been settled or reduced to judgment.

Source: L. 84: Entire part added, p. 653, § 2, effective May 14.

24-4.1-204. Actions null and void.

Any action taken by a person who is accused or convicted of a crime or who enters a plea of guilty, whether by way of the execution of a power of attorney, the creation of corporate entities,

or any other action, to defeat the purpose of this part 2 shall be null and void as against the public policy of this state.

Source: L. 84: Entire part added, p. 653, § 2, effective May 14.

24-4.1-205. Interest on moneys in the account.

Interest earned on the moneys deposited in the escrow account pursuant to section 24-4.1-201 shall accrue to the benefit of the payee of the account.

Source: L. 84: Entire part added, p. 654, § 2, effective May 14.

24-4.1-206. Annual reports of funds.

No later than February 15 of each year, the board shall make available a report to the general assembly for the previous calendar year of an accounting of all funds received and disbursed under this part 2. The board shall notify, in the most cost-effective manner available, each member of the general assembly of the availability of such report and offer to provide each member with a copy of the report.

Source: L. 84: Entire part added, p. 654, § 2, effective May 14. **L. 99:** Entire section amended, p. 686, § 2, effective August 4.

24-4.1-207. Applicability.

This part 2 shall apply to offenses committed on or after January 1, 1985.

Source: L. 84: Entire part added, p. 654, § 2, effective May 14.

**PART 3 GUIDELINES FOR ASSURING
THE RIGHTS OF VICTIMS OF
AND WITNESSES TO CRIMES**

24-4.1-301. Legislative declaration.

The general assembly hereby finds and declares that the full and voluntary cooperation of victims of and witnesses to crimes with state and local law enforcement agencies as to such crimes is imperative for the general effectiveness and well-being of the criminal justice system of this state. It is the intent of this part 3, therefore, to assure that all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded criminal defendants.

Source: L. 84: Entire part added, p. 654, § 3, effective May 14.

24-4.1-302. Definitions.

As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(1) "Crime" means any of the following offenses as defined by the statutes of the state of Colorado, whether committed by an adult or a juvenile:

(a) Murder in the first degree, in violation of section 18-3-102, C.R.S.;

- (b) Murder in the second degree, in violation of section 18-3-103, C.R.S.;
- (c) Manslaughter, in violation of section 18-3-104, C.R.S.;
- (d) Criminally negligent homicide, in violation of section 18-3-105, C.R.S.;
- (e) Vehicular homicide, in violation of section 18-3-106, C.R.S.;
- (f) Assault in the first degree, in violation of section 18-3-202, C.R.S.;
- (g) Assault in the second degree, in violation of section 18-3-203, C.R.S.;
- (h) Assault in the third degree, in violation of section 18-3-204, C.R.S.;
- (i) Vehicular assault, in violation of section 18-3-205, C.R.S.;
- (j) Menacing, in violation of section 18-3-206, C.R.S.;
- (k) (Deleted by amendment, L. 95, p. 1256, § 22, effective July 1, 1995.)
- (l) First degree kidnapping, in violation of section 18-3-301, C.R.S.;
- (m) Second degree kidnapping, in violation of section 18-3-302, C.R.S.;
- (n) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;
- (o) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;
- (p) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;
- (q) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;
- (r) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;
- (s) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;
- (t) Robbery, in violation of section 18-4-301, C.R.S.;
- (u) Aggravated robbery, in violation of section 18-4-302, C.R.S.;
- (v) Aggravated robbery of controlled substances, in violation of section 18-4-303, C.R.S.;
- (w) Repealed.

(x) Incest, in violation of section 18-6-301, C.R.S.;

(y) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(z) Child abuse, in violation of section 18-6-401, C.R.S.;

(aa) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(bb) Crimes against at-risk adults or at-risk juveniles, in violation of section 18-6.5-103, C.R.S.;

(cc) Any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., pursuant to section 18-6-801 (1), C.R.S.;

(cc.1) Stalking, in violation of section 18-9-111 (4), C.R.S.;

(cc.3) Ethnic intimidation, in violation of section 18-9-121, C.R.S.;

(cc.5) Careless driving, in violation of section 42-4-1402, C.R.S., that results in the death of another person;

(cc.6) Failure to stop at the scene of an accident, in violation of section 42-4-1601, C.R.S., where the accident results in the death of another person;

(dd) Any criminal attempt, as described in section 18-2-101, C.R.S., any conspiracy, as described in section 18-2-201, C.R.S., any criminal solicitation, as described in section 18-2-301, C.R.S., and any accessory to a crime, as described in section 18-8-105, C.R.S., involving any of the crimes specified in this subsection (1);

(ee) Retaliation against a witness or victim, in violation of section 18-8-706, C.R.S.; or

(ff) Tampering with a witness or victim, in violation of section 18-8-707, C.R.S.

(1.3) "Correctional facility" means any private or public entity providing correctional services to offenders pursuant to a court order including, but not limited to a county jail, a community corrections provider, the division of youth corrections, and the department of corrections.

(1.5) "Correctional official" means any employee of a correctional facility.

(2) "Critical stages" means the following stages of the criminal justice process:

(a) The filing of charges against a person accused of a crime;

(b) The preliminary hearing;

(c) Any bond reduction or modification hearing in which the request is made:

(I) For a bond lower than the scheduled or customary amount for the specific charge;

(II) For a change in the type or condition of a bond;

(III) For an alternative to a bond; or

(IV) To appear without posting of a bond;

(d) The arraignment of a person accused of a crime;

(e) Any hearing on motions concerning evidentiary matters or pre-plea or post-plea relief;

(f) Any disposition of the complaint or charges against the person accused;

(g) The trial;

(h) Any sentencing hearing;

(i) Any appellate review or appellate decision;

(j) Any subsequent modification of the sentence;

(k) Any probation revocation hearing;

(k.3) The filing of any complaint, summons, or warrant by the probation department for failure to report to probation or because the location of a person convicted of a crime is unknown;

(k.5) The request for change of venue or transfer of probation supervision from one jurisdiction to another;

(k.7) The request for any release from probation supervision prior to the expiration of the original sentence;

(l) Any attack on a judgment or conviction;

(m) Any parole application hearing;

(n) The parole, release, or discharge from imprisonment of a person convicted of a crime;

(o) Any parole revocation hearing;

(p) The transfer to or placement of a person convicted of a crime in a non-secured facility;
and

(q) The transfer, release, or escape of a person charged with or convicted of a crime from any state hospital.

(3) "Lawful representative" means any person who is designated by the victim or appointed by the court to act in the best interests of the victim.

(4) "Significant other" means any person who is in a family-type living arrangement with a victim and who would constitute a spouse of the victim if the victim and such person were married.

(5) "Victim" means any natural person against whom any crime has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as crime is defined under the laws of this state or of the United States, or, if such person is deceased or incapacitated, the person's spouse, parent, child, sibling, grandparent, significant other, or other lawful representative. For purposes of notification under this part 3, any person under the age of eighteen years is considered incapacitated, unless that person is legally emancipated. It is the intent of the general assembly that this definition of the term "victim" shall apply only to this part 3 and shall not be applied to any other provision of the laws of the state of Colorado that refer to the term "victim".

(6) "Victim's immediate family" means the spouse, any child by birth or adoption, any stepchild, the parent, the stepparent, a sibling, a legal guardian, significant other, or a lawful representative of the victim.

(7) "Witness" means any natural person:

(a) Having knowledge of the existence or nonexistence of facts relating to any crime;

(b) Whose declaration under oath is received or has been received as evidence for any purpose;

(c) Who has reported any crime to any peace officer, correctional officer, or judicial officer;

(d) Who has been served with a subpoena issued under the authority of any court in this state, of any other state, or of the United States; or

(e) Who would be believed by any reasonable person to be an individual described in paragraph (a), (b), (c), or (d) of this subsection (7).

Source: L. 84: Entire part added, p. 654, § 3, effective May 14. L. 87: (2) amended, p. 1581, § 35, effective July 10. L. 92: Entire section amended, p. 415, § 2, effective January 14, 1993. L. 93: (1)(k) and (1)(w) amended, p. 1653, § 53, effective July 1. L. 95: (1)(w) repealed, p. 1110, § 64, effective May 31; IP(1), (1)(bb), (1)(cc), (2)(c), (2)(e), (2)(l), and (5) amended and (1)(dd) added, p. 1402, § 4, effective July 1; (1)(k) and (1)(bb) amended, p. 1256, § 22, effective July 1. L. 97: (1)(cc) and (1)(dd) amended and (1)(cc.1), (1)(cc.3), (1)(cc.5), (1)(cc.6), (2)(k.3), (2)(k.5), and (2)(k.7) added, pp. 1560, 1561, § § 4, 5, effective July 1. L. 99: (1)(cc.1) amended, p. 794, § 2, effective July 1. L. 2000: (1)(cc.6) amended and (1)(ee), (1)(ff), (1.3), and (1.5) added, pp. 241, 240, § § 4, 3, effective March 29; (1)(n), (1)(o), and (1)(p) amended, p. 707, § 34, effective July 1.

Editor's note: Amendments to subsection (1)(bb) by House Bill 95-1070 and House Bill 95-1346 were harmonized.

24-4.1-302.5. Rights afforded to victims.

(1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(a) The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

(b) The right to be informed of and present for all critical stages of the criminal justice process as specified in section 24-4.1-302 (2);

(c) The right to be informed, upon request by the victim, when a person who is accused or convicted of a crime against the victim is released or discharged from custody, is paroled, escapes from a secure or nonsecure correctional facility or program, or absconds from probation or parole;

(d) The right to be heard at any court proceeding that involves a bond reduction or modification, the acceptance of a negotiated plea agreement, or the sentencing or any modification of sentence of any person accused or convicted of a crime against such victim;

(e) The right to consult with the prosecution after any crime against the victim has been charged, prior to any disposition of the case, or prior to any trial of the case, and the right to be informed of the final disposition of the case;

(f) The right to be informed by local law enforcement agencies, prior to the filing of charges with the court, or by the district attorney, after the filing of charges with the court, of the status of any case concerning a crime against the victim, and any scheduling changes or cancellations, if such changes or cancellations are known in advance;

(g) The right to be present at the sentencing hearing, including any hearing conducted pursuant to section 16-11-103 or section 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

Editor's note: This version of paragraph (g) is effective until October 1, 2002.

(g) The right to be present at the sentencing hearing, including any hearing conducted pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney or the court, in writing, by a victim impact statement, or in person by an oral statement, of the harm that the victim has sustained as a result of the crime;

Editor's note: This version of paragraph (g) is effective October 1, 2002.

(h) The right to have the court determine the amount, if any, of restitution to be paid to a victim pursuant to article 18.5 of title 16, C.R.S., by any person convicted of a crime against such victim for the actual pecuniary damages that resulted from the commission of the crime;

(i) The right to be informed of the victim's right to pursue a civil judgment against any person convicted of a crime against the victim for any damages incurred by the victim as a result of the commission of the crime regardless of whether the court has ordered such person to make restitution to the victim;

(i.5) In a case of domestic violence, as that term is defined in section 18-6-800.3 (1), C.R.S., the right to be informed of the violation of any condition of probation and the right to receive copies of all probation reports submitted to the court and notice of probation revocation hearings;

(j) The right to be informed, upon written request from the victim, of any proceeding at which any postconviction release from confinement in a secure state correctional facility is being considered for any person convicted of a crime against the victim and the right to be heard at any such proceeding or to provide written information thereto. For purposes of this subsection (1), "proceeding" means reconsideration of sentence, a parole hearing, or commutation of sentence.

(j.5) The right to provide a written statement that will be included with any referral made by the department of corrections or a district court to place an offender in a community corrections facility or program;

(j.7) The right, at the discretion of the district attorney, to view all or a portion of the presentence report of the probation department;

(k) The right to promptly receive any property belonging to a victim which is being held by a prosecutorial or law enforcement agency unless there are evidentiary reasons for the retention of such property;

(l) The right to be informed of the availability of financial assistance and community services for victims, the immediate families of victims, and witnesses, which assistance and community services shall include, but shall not be limited to, crisis intervention services, victim compensation funds, victim assistance resources, legal resources, mental health services, social services, medical resources, rehabilitative services, and financial assistance services, and the right to be informed about the application process for such services;

(m) The right to be informed about what steps can be taken by a victim or a witness in case there is any intimidation or harassment by a person accused or convicted of a crime against the victim, or any other person acting on behalf of the accused or convicted person;

(n) The right to be provided with appropriate employer intercession services to encourage the victim's employer to cooperate with the criminal justice system in order to minimize the loss of employment, pay, or other benefits resulting from a victim's court appearances or other required meetings with criminal justice officials;

(o) The right to be assured that in any criminal proceeding the court, the prosecutor, and other law enforcement officials will take appropriate action to achieve a swift and fair resolution of the proceedings;

(p) The right to be provided, whenever practicable, with a secure waiting area during court proceedings that does not require a victim or a witness to be seen or to be in close proximity to the person accused or convicted of a crime against the victim or such person's family or friends;

(q) The right to be informed, upon written request by the victim, when a person convicted of a crime against the victim is placed in or transferred to a less secure public or private correctional facility or program;

(r) The right to be informed, upon written request by the victim, when a person who is or was charged with or convicted of a crime against the victim escapes or is permanently or conditionally transferred or released from any public hospital, private hospital, or state hospital;

(s) The right to be informed of any rights which the victim has pursuant to the constitution of the United States or the state of Colorado;

(t) The right to be informed of the process for enforcing compliance with this article pursuant to section 24-4.1-303 (17); and

(u) The right to be informed of the results of any HIV testing that is ordered and performed pursuant to section 18-3-415, C.R.S.

(2) Subsection (1) of this section shall not be construed to imply that any victim who is incarcerated by the department of corrections or any local law enforcement agency has a right to be released to attend any hearing or that the department of corrections or the local law enforcement agency has any duty to transport such incarcerated victim to any hearing.

(3) Municipalities and municipal courts shall be encouraged to adopt policies which afford the rights granted to crime victims pursuant to this section to crime victims at the municipal court level, to the extent the adoption of such policies is practicable in the particular municipality.

Source: **L. 92:** Entire section added, p. 418, § 3, effective January 14, 1993. **L. 94:** (1)(i.5) added, p. 2042, § 25, effective July 1. **L. 95:** (1)(b), (1)(c), (1)(e), (1)(h), (1)(i.5), (1)(j), and (1)(p) to (1)(r) amended and (1)(j.5) added, p. 1403, § 5, effective July 1. **L. 97:** (1)(g) amended, p. 47, § 1, effective March 21; (1)(r) and (1)(s) amended and (1)(t) added, p. 1561, § 6, effective July 1. **L. 2000:** (1)(d), (1)(q), and (1)(r) amended and (1)(j.7) and (1)(u) added, p. 241, § 5, effective March 29; (1)(h) amended, p. 1051, § 21, effective September 1. **L. 2002:** (1)(g) amended, p. 1530, § 240, effective October 1. **L. 2002, 3rd Ex. Sess.:** (1)(g) amended, p. 34, § 31, effective July 12 and (1)(g) amended, p. 34, § 32, effective October 1.

Cross references: (1) For the legislative declaration contained in the 2002 act amending subsection (1)(g), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the legislative declaration contained in the 2002 Third Extraordinary Session act amending subsection (1)(g), see section 16 of chapter 1, Session Laws of Colorado 2002, Third Extraordinary Session.

A victim's "right to be heard" under Colo. const. art. II sec. 16a is limited by subsection (1)(d) of this section to "any court proceeding which involves a bond reduction or modification, the acceptance of a negotiated plea agreement, or the sentencing of any person accused or convicted of a crime" against the victim. *Gansz v. People*, 888 P.2d 256 (Colo. 1995).

Colo. const art. II sec. 16a authorizes the general assembly to define "all terminology". The enactment of subsection (1)(d) reflects a legislative determination as to when a victim's input would be relevant, and, therefore, when a right to be heard would be appropriate. *Gansz v. People*, 888 P.2d 256 (Colo. 1995).

Colo. const. art. II sec. 16a does not grant an alleged crime victim standing or the right to contest a district attorney's decision to dismiss criminal charges or the right to appellate review of the order dismissing the charges, nor does that section and the enabling legislation under this section grant an alleged crime victim the right to be heard on a district attorney's motion to dismiss a criminal charge. *Gansz v. People*, 888 P.2d 256 (Colo. 1995).

Mother convicted of contributing to the delinquency of her minor son was required to pay restitution since he was the victim of the crime. *People v. Miller*, 830 P.2d 1092 (Colo. App. 1991).

The general assembly did not act improperly in limiting the proceedings in which a victim has the right to be heard. Since section 16a of article II of the state constitution grants the general assembly the power to define "critical stages" and "right to be heard", the constitution does not guarantee a victim the right to be heard at all stages of the trial. *People v. Herron*, 874 P.2d 435 (Colo. App. 1993).

In implementing section 16a of article II of the state constitution, the general assembly did not give victims the right to appeal a district attorney's decision to dismiss the charges. *People v. Herron*, 874 P.2d 435 (Colo. App. 1993).

24-4.1-303. Procedures for assuring rights of victims of crimes.

(1) Law enforcement agencies, prosecutorial agencies, judicial agencies, and correctional agencies shall assure that victims of crimes are afforded the rights described in section 24-4.1-302.5.

(2) Upon request of a victim, all correctional officials shall keep confidential the address, telephone number, place of employment, or other personal information of such victim or members of such victim's immediate family.

(3) The district attorney's office, if practicable, shall inform the victim of any pending motion that may substantially delay the prosecution. The district attorney shall inform the court of the victim's position on the motion, if any. If the victim has objected, the court shall state in writing or on the record prior to granting any delay that the objection was considered.

(4) After a crime has been charged, unless inconsistent with the requirements of investigative activities, the district attorney shall consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, diversion, dismissal, seeking of death penalty, or other disposition. Failure to comply with this subsection (4) shall not invalidate any decision, agreement, or disposition. This subsection (4) shall not be construed as a restriction on or delegation of the district attorney's authority under the constitution and laws of this state.

(5) All reasonable attempts shall be made to protect any victim or the victim's immediate family from harm, harassment, intimidation, or retaliation arising from cooperating in the reporting, investigation, and prosecution of a crime. Law enforcement officials and the district attorney shall provide reasonable efforts to minimize contact between the victim and the victim's immediate family and the defendant and the relatives of the defendant before, during, and immediately after a judicial proceeding. Whenever possible, a waiting area shall be provided that is separate in both proximity and sight from that of the defendant, the defendant's relatives, and any defense witnesses.

(6) (a) A victim or an individual designated by the victim may be present at all critical stages of a criminal proceeding regarding any crime against such victim unless the court or the district attorney determines that exclusion of the victim is necessary to protect the defendant's right to a fair trial or the confidentiality of juvenile proceedings. If the victim is present, the court, at the victim's request, may permit the presence of an individual to provide support to the victim.

(b) A victim may be present at the phase of the trial at which the defendant is determined to be guilty or not guilty and may be heard at such phase of the trial if called to testify by the district attorney, defense, or court if any such statement would be relevant.

(c) The court shall make all reasonable efforts to accommodate the victim upon the return of a verdict by the jury. If the court is informed by the district attorney that the victim is en route to the courtroom for the reading of the verdict, the court shall state on the record that it has considered the information provided by the district attorney prior to the return of the verdict by the jury.

(7) When a victim's property is no longer needed for evidentiary reasons, the district attorney or any law enforcement agency shall, upon request of the victim, return such property to the victim within five working days unless the property is contraband or subject to forfeiture proceedings.

(8) An employer may not discharge or discipline any victim or a member of a victim's immediate family for honoring a subpoena to testify in a criminal proceeding or for participating in the preparation of a criminal proceeding.

(9) The district attorney and any law enforcement agency shall inform each victim as to the availability of the following services:

(a) Follow-up support for the victim and the victim's immediate family in order to assure that the necessary assistance is received by such persons;

(b) Services for child victims and elderly victims, and services for victims who are persons with disabilities, which are directed to the special needs of such victims;

(c) Referral to special counseling facilities and community service agencies by providing the names and telephone numbers of such facilities or agencies, whether public or private, which provide such services as crisis intervention services, victim compensation funds, victim assistance resources, legal resources, mental health services, social services, medical resources, rehabilitative services, financial assistance, and other support services;

(d) Transportation and household assistance to promote the participation of any victim or the victim's immediate family in the criminal proceedings;

(e) Assistance in dealing with creditors and credit reporting agencies to deal with any financial setbacks caused by the commission of a crime;

(f) Translation services and information printed in languages other than the English language; and

(g) Child care services to enable a victim or the victim's immediate family to give testimony or otherwise cooperate in the prosecution of a criminal proceeding.

(10) (a) After the initial contact between a victim and a law enforcement agency responsible for investigating a crime, such agency shall promptly give the victim the following information in writing:

(I) A statement of the victim's rights as enumerated in this article;

(II) Information concerning the availability of victim assistance, medical, and emergency services;

(III) Information concerning the availability of compensatory benefits pursuant to this article and the name, address, and telephone number of any person to contact to obtain such benefits;

(IV) The availability of protection for the victim from the person accused of committing a crime against the victim, including protective court orders; and

(V) The availability of public records related to the case.

(b) As soon as available, the law enforcement agency shall give to each victim, as appropriate, the following information:

(I) The business address and business telephone number of the office of the district attorney;

(II) The file number of the case and the name, business address, and business telephone number of any law enforcement officer assigned to investigate the case; and

(III) Unless such information would be inconsistent with the requirements of the investigation, information as to whether a suspect has been taken into custody and, if known, whether the suspect has been released and any conditions imposed upon such release.

(11) The district attorney shall inform a victim of the following:

(a) The filing of charges against a person accused of committing any of the crimes specified in section 24-4.1-302 (1) against the victim, including an explanation of the charges when necessary;

(b) Any of the critical stages specified in section 24-4.1-302 (2) of a criminal proceeding relating to a person accused of a crime against the victim;

(c) The assignment of any case regarding a crime against the victim, including the file number of such case and, if available, the name, business address, and business telephone number of any deputy district attorney assigned to the case, and the court room to which the case is assigned;

(d) The date, time, and place of all critical stages of the proceeding;

(e) The availability of benefits pursuant to this article and the name, address, and telephone number of any person to contact to obtain such benefits; and

(f) The availability of transportation to and from any court proceeding for any victim, except as provided in section 24-4.1-302.5 (2).

(12) Unless a victim requests otherwise, the district attorney shall inform each victim of the following:

(a) The function of a presentence report, including the name and telephone number of the probation office preparing any such report regarding a person convicted of a crime against the victim, and the right of a victim, or a member of the victim's immediate family, to make a victim impact statement pursuant to this article;

(b) The defendant's right to view the presentence report and the victim impact statement;

(c) The date, time, and location of any sentencing hearing;

(d) The right of the victim, or a member of the victim's immediate family, to attend and to express an opinion at the sentencing hearing as to the appropriateness of any sentence proposed to the court for consideration;

(e) The date, time, and location of any hearing for reconsideration of any sentence imposed;

(f) Any sentence imposed and any modification of such sentence; and

(g) The right to receive information from correctional officials concerning the imprisonment and release of a person convicted of a crime against the victim pursuant to subsection (14) of this section.

(13) If a person convicted of a crime against the victim seeks appellate review or attacks the conviction or sentence, the district attorney or the office of the attorney general, whichever is appropriate, shall inform the victim of the status of the case and of the decision of the court.

(13.5) (a) Following a sentence to probation and upon the written request of a victim, the probation department shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(I) The location and telephone number of the probation department responsible for the supervision of the person;

(II) The date of the person's termination from probation supervision;

(III) Any release of the person in advance of the originally imposed sentence or period of probation;

(IV) Any probation revocation or modification hearing regarding the person and any changes in the scheduling of the hearings;

(V) Any change of venue, jurisdiction, or transfer of probation supervision from one jurisdiction to another;

(VI) Any complaint, summons, or warrant filed by the probation department for failure to report to probation or because the location of a person convicted of a crime is unknown; and

(VII) The death of the person while under the jurisdiction of the probation department.

(b) Repealed.

(14) Upon receipt of a written statement as provided in section 24-4.1-302.5 (1) (j.5), the department of corrections shall include the statement with any referral made by the department of corrections or a district court to place an offender in a public or private community corrections facility or program. Upon written request of a victim, the department of corrections, the department of human services, any state hospital, or the public or private local corrections authorities shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(a) The institution in which such person is incarcerated or otherwise being held;

(b) The projected date of such person's release from confinement;

(c) Any release of such person on furlough or work release or to a community correctional facility or other program, in advance of such release;

(d) Any scheduled parole hearings regarding such person and any changes in the scheduling of such hearings;

(e) Any escape by such person or transfer or release from any state hospital, a detention facility, a correctional facility, a community correctional facility, or other program, and any subsequent recapture of such person;

(f) Any decision by the parole board to release such person or any decision by the governor to commute the sentence of such person or pardon such person;

(g) The transfer to or placement in a nonsecured facility of a person convicted of a crime, any release or discharge from confinement of the person, and any conditions attached to the release; and

(h) The death of such person while in custody or while under the jurisdiction of the state of Colorado concerning the crime.

(14.3) The court or its designee, pursuant to section 18-3-415, C.R.S., shall disclose the results of any HIV testing that is ordered and performed pursuant to section 18-3-415, C.R.S., to any victim of a sexual offense in the case where such testing was ordered.

(14.5) At any proceeding specified in section 24-4.1-302.5 (1) (d), the court shall inquire whether the victim is present and wishes to address the court. The court shall advise the victim of his or her right to address the court regarding issues relevant to the case.

(14.7) The court or its designee shall ensure that victim information be provided to any entity responsible for victim notification after the defendant is sentenced.

(15) Unless specifically stated otherwise, the requirements of this section to provide information to the victim may be satisfied by either written or oral communication with the victim or the victim's designee. The person responsible for providing such information shall do so in a timely manner and advise the victim or the victim's designee of any significant changes in such information. The victim or the victim's designee shall keep appropriate criminal justice authorities informed of the name, address, and telephone number of the person to whom such information should be provided, and any changes of such name, address, and telephone number. Any duties which are required to be performed by the district attorney pursuant to this part 3 may be performed by a designee of the district attorney.

(16) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this article.

(17) Any affected person, except as provided in subsection (16) of this section, may enforce compliance with this article by notifying the victims compensation and assistance coordinating committee created pursuant to section 24-4.1-117.5 (2) (a) of any noncompliance with this article. Such committee shall review any such report of noncompliance and if the committee determines that such report of noncompliance has a basis in fact, and cannot be resolved, the committee shall refer such report of noncompliance to the governor, who shall request that the attorney general file suit to enforce compliance with this article. No person, corporation, or other legal entity shall be entitled to claim or to receive any damages or other financial redress for any failure to comply with this article.

Source: L. 84: Entire part added, p. 655, § 3, effective May 14. L. 87: (1)(i.5) added, p. 922, § 1, effective July 1. L. 92: Entire section amended, p. 421, § 4, effective January 14, 1993. L. 94: IP(14) amended, p. 2693, § 229, effective July 1. L. 95: (3) to (5), (10)(a)(I), (11)(a), (11)(b), IP(14), (14)(c), (14)(e), (14)(g), and (14)(h) amended and (14.5) added, p. 1404, § 6, effective July 1. L. 97: (13.5) added, p. 1562, § 7, effective July 1. L. 2000: (2), (6), and IP(14) amended and (14.3) and (14.7) added, p. 241, § 6, effective March 29. L. 2001: (13.5) amended, p. 32, § 2, effective August 8. L. 2002: (13.5)(b) repealed, p. 123, § 1, effective August 7.

Editor's note: Subsection (13.5)(b) was contained in a 2002 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For content of victim impact statements, see § 16-11-102 (1.5); for the right of victims to attend sentencing hearings and parole hearings, see § § 16-11-601 and 17-2-214; for the issuance of restraining orders against defendants, see § 18-1-1001; for restitution to victims of crime, see article 28 of title 17.

C.J.S. See 81A C.J.S., States, § 195.

Law reviews. For article, "1994 Legislature Strengthens Domestic Violence Protective Orders", see 23 Colo. Law. 2327 (1994).

Subsection (4) makes it clear that the General Assembly did not grant victims the right to appeal a district attorney's decision to dismiss the charges. People v. Herron, 874 P.2d 435 (Colo. App. 1993).

24-4.1-304. Child victim or witness - rights and services.

(1) In addition to all rights afforded to a victim or witness under section 24-4.1-302.5, law enforcement agencies, prosecutors, and judges are encouraged to designate one or more persons to provide the following services on behalf of a child who is involved in criminal proceedings as a victim or a witness:

(a) To explain, in language understood by the child, all legal proceedings in which the child will be involved;

(b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate in any court proceeding;

(c) To assist the child and the child's family in coping with the emotional impact of the crime and any subsequent criminal proceeding in which the child is involved;

(d) To advise the district attorney concerning the ability of a child witness to cooperate with the prosecution and concerning the potential effects of the proceeding on the child.

Source: L. 84: Entire part added, p. 656, § 3, effective May 14. **L. 85:** IP(1) amended, p. 1361, § 18, effective June 28. **L. 92:** IP(1) amended, p. 427, § 5, effective January 14, 1993.