

C.R.S. 24-4.1-303

COLORADO REVISED STATUTES

* This document reflects changes current through all laws passed at the Second Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2014) and changes approved by the electorate at the November 2014 election *

TITLE 24. GOVERNMENT - STATE
ADMINISTRATIONARTICLE 4.1. CRIME VICTIM COMPENSATION AND VICTIM AND WITNESS RIGHTS
PART 3. GUIDELINES FOR ASSURING THE RIGHTS OF VICTIMS OF AND WITNESSES TO
CRIMES

C.R.S. 24-4.1-303 (2014)

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

(1) Law enforcement agencies, prosecutorial agencies, judicial agencies, and correctional agencies shall ensure 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 ensure 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) Interpretation services and information printed in languages other than the English language;

(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; and

(h) The existence of a criminal protection order under section 18-1-1001, C.R.S., or section 19-2-707, C.R.S., and, upon request of the victim, information about provisions that may be added or modified and the process for requesting such an addition or modification.

(10) (a) After the initial contact between a victim and a law enforcement agency responsible for investigating a crime, the 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 right of a victim to request a copy of the law enforcement report and other documents related to the case, including the right to receive a free copy of the initial incident report. The release of any documents associated with the investigation is at the discretion of the law enforcement agency based on the status of 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;

(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;

(IV) The law enforcement agency shall provide the victim in a cold case information concerning any change in the status of the case. In addition, upon the written request of the victim, the law enforcement agency shall provide an update at least annually to the victim concerning the status of a cold case involving one or more crimes for which the criminal statute of limitations is longer than three years.

(V) Any final decision not to file misdemeanor charges against a person accused of committing any crime specified in section 24-4.1-302 (1) against the victim unless law enforcement and the district attorney's office in a judicial district have developed a policy specifying the manner in which to inform victims of decisions not to file charges in a case.

(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; or a final decision not to file felony charges against a person for whom law enforcement has requested, pursuant to section 16-21-103 (2) (a), C.R.S., the filing of charges for any of the crimes specified in section 24-4.1-302 (1) committed against the victim unless law enforcement and the district attorney's office in a judicial district have developed a policy specifying the manner in which to inform victims of decisions not to file charges in a case;

(a.5) The charges to be filed, prior to filing of the charges, if the most serious charge to be filed is lower than the most serious charge for which the individual was arrested and the filing of the lower charge may result in the court issuing a new, lower bond;

(b) Any of the critical stages specified in section 24-4.1-302 (2) (a) to (2) (j) and (2) (l) of a criminal proceeding relating to a person accused of a crime against the victim; except that the district attorney shall not be obligated to inform the victim of any appellate review undertaken by the attorney general's office;

(b.5) Any critical stage described in section 24-4.1-302 (2) (r.3) relating to a hearing concerning a petition for the expungement of juvenile records, which records concern an

offense committed by the juvenile against the victim;

(b.7) Any hearing concerning a petition for sealing of records as described in section 24-72-308 that was filed by a defendant in the criminal case and whose crime falls under section 24-4.1-302 (1). The notification should be made using the last known contact information that is available for 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 any of the critical stages specified in section 24-4.1-302 (2) (a) to (2) (j) and (2) (l) 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;

(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);

(g) The availability of restorative justice practices, as defined in section 18-1-901 (3) (o.5), C.R.S., which includes victim-offender conferences;

(h) The right to complete a written victim impact statement. The victim has the option to complete the statement on a form provided by the district attorney's office. The district attorney shall inform the victim that the defendant has a right to view the victim impact statement.

(i) The availability of the district attorney to seek a court order to protect a victim's residential address.

(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) Any sentence imposed;

(f) (I) The date, time, and location of any hearing for modification of a sentence pursuant to rule 35 (a) or rule 35 (b) of the Colorado rules of criminal procedure or any provision of state or federal law.

(II) If a hearing is not scheduled and the court has reviewed a written motion for modification of sentence and is considering granting any part of the motion without a hearing, the court shall inform the district attorney, and the district attorney shall notify and receive input from the

victim to give to the court before the court rules on the motion.

(III) If the court has reviewed and denied the written motion without a hearing, the district attorney is not required to notify the victim regarding the filing of or ruling on the motion.

(IV) This paragraph (f) does not modify the probation department's responsibility to notify a victim that has opted to receive notifications described in subsection (13.5) of this section.

(f.5) Any motion to modify the terms and conditions of an unsupervised deferred sentence for which the district attorney's office is the monitoring agency. The procedures for notifying victims outlined in subparagraphs (I) and (II) of paragraph (f) of this subsection (12) apply to the district attorney and the court with regard to this motion.

(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.

(h) The right to receive information from the probation department concerning information outlined in subsection (13.5) of this section regarding a person convicted of a crime against the victim; and

(i) The decision, whether by court order, stipulation of the parties, or otherwise, to conduct postconviction DNA testing to establish the actual innocence of the person convicted of a crime against the victim. If court proceedings are initiated based on the results of the postconviction DNA testing, the victim shall be notified of the court proceedings by the district attorney's office that filed and prosecuted the charges resulting in the entry of the judgment of conviction challenged by the defendant. If the attorney general's office is the agency that decides to conduct postconviction DNA testing, the attorney general's office is responsible for notifying the victim.

(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 request for release of the person in advance of the person's 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 motion filed by the probation department requesting permission from the court to modify the terms and conditions of probation as described in section 18-1.3-204, C.R.S., if the motion has not been denied by the court without a hearing;

(V.5) Any change of venue, transfer of probation supervision from one jurisdiction to another, or interstate compact transfer of probation supervision;

(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;

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

(VIII) Concerning domestic violence cases, any conduct by the defendant that results in an increase in the supervision level by the probation department; and

(IX) Any court-ordered modification of the terms and conditions of probation as described in section 18-1.3-204, C.R.S.

(b) Repealed.

(14) Upon receipt of a written victim impact 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 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;

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

(i) The transition of the person from a residential facility to a nonresidential setting.

(14.2) Upon receipt of a written statement as provided in section 24-4.1-302.5 (1) (j.5), the department of human services shall include the statement with any referral made by the department of human services or a district court to place an offender in a public or private community corrections facility or program. Upon written request of the victim, the department of human services and any state hospital 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;

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

(i) Any request by the department of human services to the juvenile court to modify the sentence to commitment and any decision by the juvenile court to modify the sentence to commitment.

(14.3) Upon receipt of a written statement from the victim, the juvenile parole board shall notify the victim of the following information regarding any person who was charged with or convicted of an offense against the victim:

(a) Any scheduled juvenile parole hearings pursuant to sections 19-2-1002 and 19-2-1004, C.R.S., regarding the person, and any changes in the scheduling of the hearings in advance of the hearing;

(b) Any escape by the person while serving juvenile parole and any subsequent recapture of the person;

(c) Any placement change that occurs during the period of parole that may impact the victim's safety or public safety as determined by the division of youth corrections; and

(d) Any discharge from juvenile parole.

(14.4) 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 in which the testing was ordered.

(14.5) (a) 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.

(b) At a proceeding specified in section 24-4.1-302.5 (1) (d) (VII), involving a subpoena for records of a victim, the court shall ascertain whether the victim received notice from the district attorney's office of the subpoena. After considering all evidence relevant to the subpoena, the court shall deny a request for a victim's records that are privileged pursuant to section 13-90-107, C.R.S., unless the court makes a finding supported by specific facts that a victim has expressly or impliedly waived the victim's statutory privilege specified in section 13-90-107, C.R.S.

(14.7) (a) The court or its designee shall ensure that victim information be provided to any

entity responsible for victim notification after the defendant is sentenced.

(b) The court shall notify the victim of petitions filed by sex offenders to cease sex offender registration pursuant to section 16-22-113 (2) (c), C.R.S.

(15) (a) Unless specifically stated otherwise, the requirements of this section to provide information to the victim may be satisfied by either written, electronic, or oral communication with the victim or the victim's designee. The person responsible for providing the information shall do so in a timely manner and advise the victim or the victim's designee of any significant changes in the information. The victim or the victim's designee shall keep appropriate criminal justice authorities informed of the name, address, electronic mail address, if available, and telephone number of the person to whom the information should be provided, and any changes of the name, address, electronic mail address, and telephone number.

(a.5) A victim who turns eighteen years of age has the right to request notification from a criminal justice agency and to become the primary point of contact. The designee for the victim shall also continue to receive notifications if the designee has requested notification; except that the notifying agency has the discretion to notify only the victim if the victim so requests or if the agency deems that extenuating and documentable circumstances justify discontinuing notification to the victim's designee. The right of a victim's designee to address the court remains in effect even if the victim requests notification from a criminal justice agency.

(b) An agency that is required to notify a victim under this part 3 shall make reasonable attempts to contact the victim or the victim's designee by mail, electronic communication, if the victim or the victim's designee has provided an electronic mail address, and by telephone. If the victim or the victim's designee does not provide the agency with a forwarding address, electronic mail address, and telephone number and the agency is unable to locate the victim or the victim's designee after reasonable attempts have been made to contact the victim or the victim's designee, the agency shall be deemed to have met its obligation under this part 3 and shall not be required to notify the victim or victim's designee until the victim or victim's designee provides the agency with the current address, electronic mail address, if available, and telephone of the victim and the name of the victim's current designee, if applicable.

(c) An agency that is required to notify a victim under this part 3 may use an automated victim notification system.

(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 crime victim services advisory board created in section 24-4.1-117.3 (1) of any noncompliance with this article. The crime victim services advisory board shall review any report of noncompliance, and, if the board determines that the report of noncompliance has a basis in fact and cannot be resolved, the board shall refer the report of noncompliance to the governor, who shall request that the attorney general file suit to enforce compliance with this article. A person, corporation, or other legal entity shall not be entitled to claim or to receive any damages or other financial redress for any failure to comply with this article.

(18) The district attorney, a law enforcement agency, a probation department, a state or private correctional facility, the department of human services, or the Colorado mental health institute at Pueblo shall make all reasonable efforts to exclude or redact a victim's social security number or a witness' social security number from any criminal justice document or record created or compiled as a result of a criminal investigation when the document or record is released to anyone other than the victim, a criminal justice agency that has duties under this article, or the attorney for the defendant.

HISTORY: 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.L. 2006: (9)(f), (10)(b)(II), (11)(a), (11)(b), (11)(d), (13.5)(a)(III), (13.5)(a)(V), (13.5)(a)(VI), (13.5)(a)(VII), IP(14), (14.7), and (15) amended and (10)(b)(IV), (10)(b)(V), (13.5)(a)(VIII), and (14.2) added, pp. 646, 647, 648, § § 5, 6, 7, 8, 9, 10, effective July 1.L. 2007: IP(14.2) amended, p. 840, § 4, effective May 14.L. 2008: (11)(a.5) added, p. 327, § 3, effective April 7; (14.2)(g), (14.2)(h), and (14.3) amended and (14.2)(i) and (14.4) added, p. 1108, § § 14, 15, effective July 1.L. 2009: (1), (9)(a), and (17) amended, (SB 09-047), ch. 129, p. 557, § 6, effective July 1.L. 2011: (11)(e) and (11)(f) amended and (11)(g) added, (HB 11-1032), ch. 296, p. 1408, § 20, effective August 10.L. 2012: (9)(f), (9)(g), IP(10)(a), (10)(a)(V), (11)(f), (11)(g), (12)(e), (12)(f), (13.5)(a)(V), IP(14), (14)(g), (14)(h), (14.5), and (15) amended and (9)(h), (11)(h), (11)(i), (12)(f.5), (12)(h), (12)(i), (13.5)(a)(V.5), (14)(i), and (18) added, (HB 12-1053), ch. 244, p. 1154, § 3, effective August 8.L. 2013: (11)(b.5) added, (HB 13-1082), ch. 238, p. 1158, § 4, effective August 7; (11)(g) amended, (HB 13-1254), ch. 341, p. 1990, § 12, effective August 7.L. 2014: (11)(b.7) and (13.5)(a)(IX) added, (HB 14-1148), ch. 95, p. 349, § 3, effective August 6.

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 protection orders against defendants, see § 18-1-1001; for restitution to victims of crime, see article 28 of title 17.

ANNOTATION

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).