

C.R.S. 24-4.1-302.5

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. 24-4.1-302.5 (2014)

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); except that the victim shall have the right to be informed of, without being present for, the critical stages described in section 24-4.1-302 (2) (a), (2) (a.5), (2) (a.7), (2) (e.5), (2) (k.3), (2) (n), (2) (p), (2) (q), and (2) (u);

(b.5) The right to be informed of and present for the critical stages described in section 24-4.1-302 (2) (k) to (2) (q) and (2) (s), upon the written request of the victim; except that the victim shall have the right to be informed of the critical stage described in section 24-4.1-302 (2) (l) without submitting a written request for notification;

(b.7) For a victim of a sex offense, the right to be informed of the filing of a petition by the perpetrator of the offense to terminate sex offender registration pursuant to section 16-22-113 (2) (c), C.R.S.;

(b.9) The right to receive a free copy of the initial incident report from the investigating law enforcement agency; except that the release of a document associated with the investigation is at the discretion of the law enforcement agency based on the status of the case or security and safety concerns in a correctional facility, local jail, or private contract prison as defined in section 17-1-102, C.R.S.;

(c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c):

(A) 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 county jail;

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

(II) With respect to the release, discharge, or permanent transfer of a person from a county jail or correctional facility, the provisions of subparagraph (I) of this paragraph (c) shall apply when the person released, discharged, or permanently transferred is no longer within the care and control of the supervising law enforcement or correctional agency. The provisions of subparagraph (I) of this paragraph (c) shall not apply to the temporary transfer of the care and control of a person from a county jail or a correctional facility by the supervising law enforcement or correctional agency to another equally or more secure county jail or correctional facility, so long as the person will return to the care and control of the transferring supervisory agency.

(d) The right to be heard at any court proceeding:

(I) Involving the defendant's bond as specified in section 24-4.1-302 (2) (c);

(II) At which the court accepts a plea of nolo contendere;

(III) At which the court accepts a negotiated plea agreement;

(IV) At which a person accused or convicted of a crime against the victim is sentenced;

(V) At which the sentence of a person accused or convicted of a crime against the victim is modified;

(VI) At which the defendant requests a modification of the no contact provision of the mandatory criminal protection order under section 18-1-1001, C.R.S., or section 19-2-707, C.R.S.;

(VII) Involving a subpoena for records concerning the victim's medical history, mental health, education, or victim compensation, or any other records that are privileged pursuant to section 13-90-107, C.R.S.; or

(VIII) Involving a petition for expungement as described in section 19-1-306 (5) (a), C.R.S.

(d.5) (I) If a victim or a victim's designee is unavailable to be present for the critical stages described in paragraph (d) of this subsection (1) and the victim or the victim's designee wishes to address the court, the right to request that the court, within the court's resources, arrange and provide the means for the victim and the victim's designee to provide input to the court beyond a written victim impact statement.

(II) For purposes of this paragraph (d.5), "unavailable" means that the victim or the victim's designee is physically unable to attend the court hearing, may sustain a financial hardship to attend the court hearing, is concerned for his or her safety if he or she attends the court hearing, may suffer significant emotional impact by attending the hearing, or is unavailable for other good cause.

(III) The victim or the victim's designee shall notify the district attorney within a reasonable time that he or she is unavailable to attend the court hearing. The district attorney's office shall then inform the court that the victim or the victim's designee, due to his or her unavailability, is requesting the court to arrange for and provide the means to address the court, which may include but need not be limited to appearing by phone or similar technology. The district attorney shall inform the victim or the victim's designee of the court's decision regarding an alternate arrangement.

(IV) This paragraph (d.5) applies to a victim who is incarcerated or otherwise being held in a local county jail, the department of corrections, or the division of youth corrections in the department of human services, but is limited to participation by telephone.

(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 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 and the court, in writing, by a victim impact statement, and by an oral statement, of the harm that the victim has sustained as a result of the crime, with the determination of whether the victim makes written input or oral input, or both, to be made at the sole discretion of the victim;

(h) The right to have the court determine the amount, if any, of restitution to be paid to a victim pursuant to part 6 of article 1.3 of title 18, 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) (Deleted by amendment, L. 2006, p. 645, § 4, effective July 1, 2006.)

(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.3) The right to be notified of a referral of an offender to community corrections;

(j.5) (I) The right to provide a written victim impact 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. A community corrections board may allow a victim to provide an oral statement to the community corrections board when an offender is being considered for a direct sentence to community corrections and may place reasonable limits on the victim's oral statement.

(II) For purposes of this paragraph (j.5), the victim shall have the right to provide a separate oral statement to the community corrections board considering a transitional referral, but the board shall have discretion to place reasonable parameters on the victim's oral statement. If a community corrections board denies the offender's referral to community corrections, the victim's right under this subparagraph (II) to provide an oral statement shall not take effect.

(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 that belongs to a victim and that 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;

(l.5) The right to be informed about the possibility of restorative justice practices, as defined in section 18-1-901 (3) (o.5), C.R.S., which includes victim-offender conferences;

(m) The right to be informed about what steps can be taken by a victim or a witness, including information regarding protection services, 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);

(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.;

(v) The right to prevent any party at any court proceeding from compelling testimony regarding the current address, telephone number, place of employment, or other locating information of the victim unless the victim consents or the court orders disclosure upon a finding that a reasonable and articulable need for the information exists. Any proceeding conducted by the court concerning whether to order disclosure shall be in camera.

(w) The right to have 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 make all reasonable efforts to exclude or redact a victim's social security number or a witness' social security number from a 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, the defense attorney of record, the defense attorney's agent, or a criminal justice agency that has duties under this article;

(x) The right to be notified of how to request protection of their address pursuant to the Colorado rules of criminal procedure;

(y) The right to receive a copy of the victim impact statement form from the district attorney's office;

(z) The right to be notified of a hearing concerning a petition for sealing of records described in section 24-72-308 filed by a defendant in the criminal case whose crime falls under section 24-4.1-302 (1).

(1.6) The right to be informed of 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.

(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.

(4) (a) If a victim contacts a criminal justice agency regarding a crime that occurred before 1993, and the offender who committed the crime is currently serving a sentence for the crime, the victim may request notification of any future critical stages of the criminal proceedings. This provision does not require a criminal justice agency to proactively locate victims of crimes that occurred before 1993.

(b) If an arrest is made for a crime committed before 1993 that was previously unsolved, the appropriate criminal justice agency shall notify the crime victim of all future critical stages.

HISTORY: 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. L. 2006: (1)(b), (1)(c), (1)(g), (1)(h), (1)(i.5), (1)(j.5), (1)(k), (1)(t), and (1)(u) amended and (1)(b.5), (1)(j.3), and (1)(v) added, p. 645, § 4, effective July 1. L. 2007: (1)(b.5) amended and (1)(b.7) added, pp. 839, 840, §§ 2, 3, effective May 14. L. 2008: (1)(d) amended, p. 326, § 2, effective April 7. L. 2009: (1)(j.5) amended, (HB 09-1181), ch. 76, p. 276, § 1, effective August 5. L. 2011: (1)(l.5) added, (HB 11-1032), ch. 296, p. 1408, § 19, effective August 10. L. 2012: (1)(b), (1)(c)(II), (1)(d)(V), (1)(d)(VI), (1)(j.5)(I), (1)(m), and (1)(u) amended and (1)(d)(VII), (1)(d.5), (1)(w), (1)(x), (1)(y), (1.6), and (4) added, (HB 12-1053), ch. 244, p. 1152, § 2, effective August 8. L. 2013: (1)(b) amended, (HB 13-1156), ch. 336, p. 1958, § 8, effective August 7; (1)(d)(VI) and (1)(d)(VII) amended and (1)(d)(VIII) added, (HB 13-1082), ch. 238, p. 1157, § 3, effective August 7; (1)(l.5) amended, (HB 13-1254), ch. 341, p. 1990, § 11, effective August 7. L. 2014: (1)(b.9) and (1)(z) added and (1)(d.5)(IV) and (4) amended, (HB 14-1148), ch. 95, p. 348, § 2, effective August 6.

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.

ANNOTATION

A victim's right to be present at all critical stages of the criminal justice process under § 16a of article II of the state constitution and subsection (1)(d) takes precedence over a party's right to sequester witnesses under C.R.E. 615. The father of a murder victim who testified in the defendant's trial was wrongly excluded from subsequent portions of the trial. *People v. Coney*, 98 P.3d 930 (Colo. App. 2004).

A victim's "right to be heard" under Colo. Const. art. II § 16a is limited by subsection (1)(d) 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 § 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 § 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 doctrine of abatement ab initio does not apply to civil judgments created by restitution orders. Where defendant died after conviction and entry of the order of restitution, but before determination of the direct appeal, the common law doctrine of abatement ab initio applied to defendant's conviction. Because of the importance of protecting the rights of victims, however, the restitution order, which created a civil judgment under § 18-1.3-603 (4)(a), was not subject to abatement but could be appealed by defendant's estate. *People v. Daly*, 313 P.3d 571 (Colo. App. 2011).

The general assembly did not act improperly in limiting the proceedings in which a victim has the right to be heard. Since § 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 § 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).

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