

Colorado Crime Victim Rights



Revised 02/21
(2013-VA-GX-0021)

Introduction

We are sorry to learn you have been a victim of a crime. As a crime victim, you may have experienced injury, loss, confusion, and a disruption of your life. Feelings of shock, disbelief, fear, vulnerability, anger, and frustration may occur. Having information and an understanding about the criminal justice system may be helpful to you at this time.

Once a crime is reported to a law enforcement agency, the criminal justice system process begins. It can be a confusing and sometimes frustrating experience for a person who is a victim of a crime. There are victim/witness advocates throughout Colorado to provide support and assistance to victims of crime during this process. This booklet has been prepared to assist you in understanding your rights and to answer commonly asked questions.

Crime victims are such an important part of the criminal justice system process that Colorado voters amended the state Constitution to include Victim Rights in 1992. The Victim Rights Amendment states:

Any person who is a victim of a criminal act or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed and present at all critical stages of the criminal justice process. All terminology, including the term "critical stages" shall be defined by the general assembly (Article II, Section 16A Colorado State Constitution).

• INTRODUCTION

Crimes Covered by the Victim Rights Act

The Constitution of the State of Colorado and the laws of the state [Section 24-4.1-302(1) C.R.S] guarantee certain rights to victims of the following criminal acts:

- Murder;
- Manslaughter;
- Criminally negligent homicide and vehicular homicide;
- Assault;
- Vehicular assault
- Menacing;
- Kidnapping;
- Sexual assault;
- Incest and aggravated incest;
- Child abuse;
- Sexual exploitation of children;
- Crimes involving child prostitution;
- Crimes against at-risk adults and at-risk juveniles;
- Indecent exposure;
- Violation of a criminal protection order issued against a person charged with sexual assault or stalking;
- Robbery—aggravated, aggravated of a controlled substance;
- Crimes for which the underlying foundation has been determined to be domestic violence;
- Careless driving that results in the death of another person;
- Failure to stop at the scene of an accident that results in the death or serious bodily injury of another person;
- Stalking;
- Human trafficking;
- First degree burglary;
- Invasion of privacy for sexual gratification;
- A Bias motivated crime;
- Retaliation against a victim or witness;
- Tampering with a victim or witness;
- Intimidation and aggravated intimidation of a victim or witness;
- Retaliation against a judge, prosecutor, or juror;
- Posting a private image for harassment or pecuniary gain; and
- Any criminal attempt, conspiracy, criminal solicitation, or accessory involving any of the crimes specified above.

If a victim is deceased or incapacitated, these rights may be exercised by the victim's spouse, parent, child, sibling, grandparent, grandchild, significant other, or other lawful representative.

CRIMES COVERED BY THE VICTIM RIGHTS ACT

Critical Stages

A victim's rights are related to certain "critical stages" in the criminal justice process. These stages include:

- Filing of charges and the decision not to file charges;
- Preliminary hearing;
- Any bond reduction or modification hearing; *
- Arraignment hearing;
- Motions hearing;
- Any subpoena for a victim's mental health, medical, education or victim compensation records; *
- Disposition of the complaint or charges against the person accused; *
- Trial;
- Sentencing, modification of the sentence or Re-sentencing hearing; *
- Appellate review or appellate decision;
- Post-conviction DNA testing and court proceedings initiated based on the result;
- Sentence reconsideration; *
- Probation revocation hearing;
- Resentencing following a probation revocation hearing and request for early termination;
- The filing of a complaint, summons, or warrant by probation for failure to report or because the location of a person convicted of a crime is unknown;
- The change of venue or transfer of probation supervision;
- Request for release from probation supervision prior to the expiration of the defendant's sentence;
- Request for release from community corrections prior to the expiration of the defendant's sentence;
- An attack on judgment or conviction for which a court hearing is set;
- Parole application hearing and full parole board review hearing;
- Parole, release, or discharge from imprisonment of a person convicted of a crime;
- Parole revocation hearing;
- Transfer to or placement of a person convicted of a crime in a non-secure facility;
- Transfer, release, or escape of a person charged with or convicted of a crime from any state hospital;
- Any petition by a sex offender to terminate sex offender registration;
- Any hearing concerning a petition for expungement of a juvenile offender's records; * and
- The execution of an offender in a capital case;
- The decision to enter into a diversion agreement;
- Any court ordered modification of the terms and conditions of probation;
- Any hearing concerning a petition for expungement;

* In addition to the right to be informed and present, the victim also has a right to be heard at the following hearings: 1) bond reduction or modification; 2) a subpoena for the victim's records; 3) the court accepts a negotiated plea agreement or a plea of nolo contendere; 4) sentencing; 5) modification of the sentence; 6) the defendant requests a modification of the no contact provision of the criminal protection order; 7) a petition for expungement of juvenile records; and 8) a hearing for a request for progression from the state mental health hospital.

Victims who are unavailable to attend a hearing where they have the right to be heard may request that the court provide them an opportunity to be heard through telephone or other similar technology by making a request to the district attorney's office.

When any person attempting defense-initiated victim outreach contacts any victim of any crime, the person shall immediately provide full and unambiguous disclosure of the person's legal name and the fact that the person is acting as an agent for the person accused of the crime or for the defense team of such person.

The Victim Rights Act

The enabling legislation known as the Victim Rights Act became effective in January of 1993, and was amended in 1995, 1997, 2000, 2006, and 2007, 2008, 2009, 2010, 2011, 2012, 2014, 2016, and 2017. In an attempt to balance the scales of justice, the Victim Rights Act provides victims of crime an active role in the criminal justice process.

The following is a summary of the rights guaranteed by the Victim Rights Act (*For a complete listing of your rights, please refer to Colorado Revised Statutes 24-4.1-301 through 24-4.1-304 at <http://dcj.ovp.state.co.us>*):

- To be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse;
- To be informed of all “critical stages” of the criminal justice process (victims of crime must request notification, in writing, for probation critical stages);
- To be present at specified critical stages in the criminal justice process;
- To be informed about what steps can be taken including information about protection services, if there is any intimidation or harassment by a person accused or convicted of a crime or anyone acting on that person’s behalf;
- To be present and heard regarding bond reduction or modification, a subpoena for the victim’s records, acceptance of a plea agreement, sentencing or modification of a sentence, any request modification to the “no contact” provision or criminal protection order or the petition for expungement;
- To be heard by phone or similar technology when a victim cannot appear in court;
- To be informed of the existence of the criminal protection order and upon request of the victim, the procedure for modifying the protection order if a procedure exists;
- 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;
- To have the victim’s social security number redacted or excluded from criminal justice documents when records are released to someone other than the victim, a criminal justice agency, or the defendant’s attorney of record;
- To be informed of the process the district attorney can use to request protection of the victim’s address (the court may or may not grant the request);
- To consult with the district attorney prior to any disposition of the case or before the case goes to trial and to be informed of the final disposition of the case;
- To be informed of the status of the case and any scheduling changes or cancellations, if known in advance;
- To receive and prepare a victim impact statement and to be present and/or heard at the sentencing hearing;
- To have the court determine restitution and to be informed of the right to pursue a civil judgment against the person convicted of the crime;
- To prevent any party at any court proceeding from compelling testimony regarding a victim’s address, telephone number, place of employment or other locating information;
- To receive a prompt return of property when it is no longer needed as evidence;
- To be informed about the possibility of restorative justice practices;
- To be informed of the availability of financial assistance and community services;
- To be provided with appropriate employer intercession services regarding court appearances and meetings with criminal justice officials;
- 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;
- Whenever practicable, to have a safe, secure waiting area during court proceedings;
- To be informed of and have input about a motion to sequester the victim from a critical stage;
- To be informed of any request for progression from the state mental hospital and the right to be heard at any hearing which a court considers such a request;
- To be notified of the referral of an offender to community corrections and to provide a written victim impact statement to the community corrections board and, if permitted by the board, to provide an oral victim impact statement. In addition, a victim has a right to provide a separate oral statement to the community corrections board if the board is considering a transitional referral from the department of corrections;
- To be heard by phone or similar technology by the community corrections board when the victim is otherwise unavailable;
- Upon written request, to be informed when a person accused or convicted of a crime is released from custody other than the county jail, is paroled, escapes or absconds from probation or parole;
- Upon written request, to be informed of the results of a probation or parole revocation hearing;
- The right to be informed of the filing of a petition to cease sex offender registration;
- Upon request, to be informed when a person who is accused or convicted of a crime is released, discharged, or permanently transferred from the custody of the county jail;
- Upon written request, to be informed of and heard at any proceeding at which any post-conviction release from confinement in a secure state correctional facility is being considered;
- Upon written request, to be informed when a person convicted of a crime against the victim is placed in or transferred to a less secure correctional facility, program, or placed on non-residential status, or is permanently or conditionally transferred or released from any state hospital;
- The right, at the discretion of the district attorney, to view all or a portion of the presentence report of the probation department;
- To be notified of a hearing concerning a petition for sealing of records;
- To be informed of the governor’s decision to commute or pardon a person before such information is publicly disclosed;
- To be informed of the results of any court-ordered HIV testing;
- To be informed of any rights which the victim has pursuant to the Constitution of the United States or the State of Colorado; and
- To be informed of the process for enforcing compliance with the Victim Rights Act.

Additional rights and services are provided to child victims of crime. Law enforcement officials, prosecutors and judges are encouraged to designate one or more individuals to try to ensure that the child and his/her family understand the legal proceedings and have support and assistance to deal with the emotional impact of the crime and the subsequent criminal proceedings.

THE VICTIM RIGHTS ACT

Agency Responsibilities

Criminal justice agencies have certain responsibilities for assuring that victims receive their rights. These responsibilities are as follows:

LAW ENFORCEMENT'S RESPONSIBILITIES

Law enforcement agencies have the responsibility to provide victims of crime with written information about:

- The rights enumerated in the Victim Rights Act;
- The availability of financial resources such as victim compensation benefits and how to apply for those benefits;
- The availability of protective court orders in order to obtain protection from the person accused of committing the crime; and
- The availability of a free copy of the initial incident report. Law enforcement maintains discretion to determine when the initial incident report can be released to the victim.

In addition, law enforcement agencies are required to:

- Provide information about community services such as crisis intervention services, victim assistance resources, legal resources, mental health services, financial services, applicable protection services, and other support services;
- Provide information about interpretation services, assistance in dealing with creditors due to financial setbacks caused by the crime and childcare to enable a crime victim to cooperate with the prosecution;
- Provide the victim of crime with the business address and telephone number of the district attorney's office, the file number of the case and the name, business address and telephone number of any law enforcement officer assigned to investigate the case;
- Keep the victim of crime informed as to whether a suspect has been taken into custody and, if known, whether the suspect has been released from custody, any bond conditions imposed upon the suspect, and how the victim may register for notification from the jail of an escape, release, transfer or death of the suspect;
- Update the victim on the status of the case, prior to the filing of charges;
- Upon the request of the victim, return the victim's property within 5 working days when it is no longer needed for evidentiary reasons;
- Inform the victim of the existence of the criminal protection order and upon the request of the victim, the procedure for modifying the protection order if a procedure exists;
- Inform victims of the offender's change of status from jail;
- Inform victims of crime about decisions not to file charges in misdemeanor cases;
- Inform all victims of cold cases of any change in the status of the case; and
- Provide victims of cold cases for which the crime has a statute of limitations of longer than three years with an annual update concerning the status of the case.

DISTRICT ATTORNEYS' RESPONSIBILITIES

District Attorney's Offices have the responsibility to notify crime victims of:

- The filing of charges, an explanation of the charges, and decisions not to file charges in felony cases;
- Appropriate critical stages and the date, time and place of specified critical stages in the court proceedings;
- The name of the deputy district attorney handling the case and the court to which the case is assigned;
- The existence of the criminal protection order and upon the request of the victim, the procedure for modifying the protection order if a procedure exists;
- The availability of the district attorney to seek a court order to protect a victim's residential address;
- Any pending motion that may substantially delay the prosecution and inform the court of the victim's position on the motion;
- Any hearing concerning a petition for sealing of records;
- The availability of any benefits and/or transportation to and from court;
- Any scheduling changes or cancellations, if such changes or cancellations are known in advance;
- How the victim may request notification of the offender's status from probation;
- The request for progression from the state mental hospital for an offender in its custody; and
- The availability of restorative justice practices.

In addition, the District Attorney shall:

- Consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, dismissal or other dispositions;
- Minimize contact between the victim and the defendant before, during, and immediately after a court proceeding;
- Facilitate the prompt return of a victim's property when it is no longer needed for evidentiary reasons;
- Provide the victim with the opportunity to prepare a victim impact statement that is given to the Court;
- Inform the victim of the function of a presentence report and the name and telephone number of the probation officer preparing the report, as well as the defendant's right to view the presentence report and the victim impact statement;
- Explain the victim's right to attend and express an opinion at the sentencing hearing;
- Inform the victim of any hearing for reconsideration or modification of a sentence pursuant to a 35 (a) or 35(b) of the CO Rules of Criminal Procedure, (Note: a probation department shall notify a victim of a court ordered modification of the terms and conditions of probation); and
- Inform the victim of any pending motion or decision to sequestered the victim from a critical stage of the case;
- Inform the victim of a hearing concerning the sealing of records in their case; and

- Inform the victim of the right and means to receive information from probation departments, correctional officials or the state mental health hospital concerning a change of status of the offender including release, escape, death or transfers.

AGENCY RESPONSIBILITIES

COURT'S RESPONSIBILITIES

The Courts have the responsibility to:

- State on the record a victim's objection to any motion that may substantially delay the prosecution and that the objection was considered prior to granting any delay;
- Acknowledge that a victim may be present at all critical stages of a criminal proceeding unless exclusion of the victim is deemed necessary;
- State on the record a victim's objection to any motion to sequester the victim from a critical stage in the case and that the objection was considered prior to granting the motion;
- Inquire as to whether the victim is present and allow the victim to be heard at any court proceeding which involves: a bond reduction or modification, a subpoena for the victim's records, the acceptance of a negotiated plea agreement, the sentencing, re-sentencing, or modification of a sentence of any person accused or convicted of a crime against the victim; defendant's request to modify the no contact provision of the mandatory protection order, or hearing for a request for progression from the state mental health hospital;
- Make arrangements for a victim to appear by phone or similar technology when a victim is unavailable to appear in person for critical stages where the victim has a right to be heard (including victims that are incarcerated in a local jail, the Department of Corrections or the Division of Youth Corrections);
- Inform the victim of the results of any court-ordered HIV testing;
- Make all reasonable efforts to accommodate the victim upon the return of a verdict by the jury;
- Determine the amount, if any, of restitution to be paid to a victim by any person convicted of a crime;
- Inform the DA's Office and Probation Department of a request by the probationer for early termination or probation or changes in the terms and conditions of probation;
- Provide victim information to any entity responsible for victim notification after the defendant is sentenced; and
- Upon request, to notify the victim of petitions filed by sex offenders to stop sex offender registration (see C.R.S.16-22-113(2)(c)).

DEPARTMENT OF CORRECTIONS', COMMUNITY CORRECTIONS', DIVISION OF YOUTH CORRECTIONS' RESPONSIBILITIES

The Department of Corrections, public and private community corrections agencies, and the Division of Youth Corrections shall:

- Keep confidential certain information such as the address, telephone number, place of employment, or other personal information about the victim;
- Include the victim impact statement submitted by a victim with the referral to place an offender in a public or private community corrections facility or program; and
- Notify the victim of the institution in which the person is incarcerated; the projected date of the person's release from confinement; any release of the person on furlough, work release, or to a community correctional facility (in advance); any parole hearing; any escape, transfer, or release of the person; the transfer to a non-secure facility or non-residential status; the death of the person while in custody; parole hearings; decisions by the Parole Board; decisions by the Governor to commute or pardon; and the date, time and place of a scheduled execution.

JUVENILE PAROLE BOARD'S RESPONSIBILITIES

The juvenile parole board shall notify the victim of the following: any scheduled juvenile parole hearing, any escape, placement change, or discharge from a facility.

DEPARTMENT OF HUMAN SERVICES & STATE HOSPITAL'S RESPONSIBILITIES

The Department of Human Services and any State Hospital shall notify the victim of the following: the institution in which the person is incarcerated; the projected date of the person's release; any release of the person on furlough or work release (in advance); any escape, transfer, or release; the transfer to a non-secure facility; and the death of the person while in custody.

AGENCY RESPONSIBILITIES (CONTINUED)

PROBATION DEPARTMENT'S RESPONSIBILITIES

Upon written request of the victim, the Probation Department shall:

- Provide the victim with the location and telephone number of the probation department responsible for the supervision of the person;
- Notify the victim of the date of the person's termination from probation supervision;
- Advise the victim of any requested release of the person in advance of the person's imposed sentence;
- Notify the victim of the date of a probation revocation, modification, or resentencing hearing as the result of a revocation;
- Inform the victim of any court-ordered modification of the terms and conditions of probation;
- Inform the victim of any modifications to the probationer's sentence;
- Advise the victim of any change of venue, transfer of probation supervision from one jurisdiction to another, or interstate compact transfer of probation supervision;
- Notify the victim of any complaint, summons, or warrant filed by the probation department for failure to report to probation or because the location of the person is unknown;
- Notify the victim of the death of a person while under the jurisdiction of the probation department; and
- In domestic violence cases, notify the victim of any conduct by the defendant that results in an increase in the defendant's supervision level by probation.

AGENCY RESPONSIBILITIES (CONTINUED)

VICTIM'S RESPONSIBILITIES

Victims of crime have the following responsibilities:

- Keep appropriate criminal justice authorities informed of their or their representative's current name, address, email address, and telephone number, and any changes in this information;
- Provide a written request to the Probation Department if they want to be notified of information regarding the probation process;
- To request notification by the court of a defendant's petition to stop sex offender registration; and
- To request that correctional officials keep their address, telephone, place of employment and other personal information confidential.

The Process for Ensuring Your Victim Rights

Colorado state law provides that victims of crime may enforce compliance with the provisions of the Constitutional Amendment by contacting the Crime Victim Services Advisory Board (Board).

What to do if you feel your rights have not been provided to you:

If possible, first attempt to seek compliance at the local level. This may include, but is not limited to:

- Contacting the person whom you feel has not provided you with your rights and explaining specifically what has not been done;
- Seeking assistance from your victim advocate, or other supportive persons such as a counselor; and
- Seeking assistance from the elected official or the head of the agency you feel is not providing you with your rights.

Contacts may be verbal or in writing. Accurate records of your efforts to seek compliance at the local level will be helpful to you and to the Crime Victim Services Advisory Board (Board) should you decide to file a formal request for compliance with the Victim Rights Act.

If you feel you are unable to address your concerns at the local level or your efforts to resolve your concerns have been unsuccessful, you may request assistance from the Crime Victim Services Advisory Board (Board) by contacting the Victim Rights Act Specialist at:

Colorado Department of Public Safety
Division of Criminal Justice
700 Kipling Street, Suite 1000
Denver, CO 80215-5865
303-239-4497
1-888-282-1080 Toll Free (outside the Denver Metro area)

The Crime Victim Services Advisory Board

The Crime Victim Services Advisory Board (Board) is a statutorily mandated Board appointed by the Executive Director of the Department of Public Safety. The Board has statewide representation and its members include representatives from law enforcement and district attorneys' offices, as well as legislators, victims of crime and members of the community.

The Board is mandated to review any reports of non-compliance with the Victim Rights Act and determine if there is a basis in fact to the report.

The Board has designated a Victim Rights Act Subcommittee, which meets on a regular basis, to review all written complaints of non-compliance with the Victim Rights Act.

The Division of Criminal Justice (DCJ) provides staff assistance to the Board and the Victim Rights Act Subcommittee. Reports of non-compliance are reviewed by the Division of Criminal Justice staff who attempt to resolve issues as early as possible in the compliance process.

The staff at the Division of Criminal Justice will talk to you about your concerns regarding non-compliance with the Victim Rights Act. Following that discussion, the staff will contact the agency identified in the complaint. It should be noted that the vast majority of complaints are successfully resolved by DCJ at the local level through informal mediation and intervention. Some complaints, however, cannot be resolved informally and proceed to the formal complaint process described on the following page.

ENSURING YOUR RIGHTS

The Formal Complaint Process

1. A copy of the complaint will be reviewed by DCJ staff and the Victim Rights Act (VRA) Subcommittee to determine if the complaint is within the purview of the Victim Rights Act.
2. DCJ staff and the VRA Subcommittee will review the complaint to determine whether the allegation(s) would rise to the level of a violation of the VRA.
3. If the complaint falls within the purview of the Victim Rights Act and the allegation(s) would rise to the level of a violation of the VRA, a copy of the complaint and all the information accompanying that complaint will be sent to the identified agency(ies).
4. DCJ staff and the VRA Subcommittee may also make an informal request for information of the identified agency(ies) to assist in the determination of purview and whether the allegations in a complaint would rise to the level of a violation of the VRA. In addition, DCJ staff and the VRA Subcommittee may make an informal request for information to determine whether the goal of the VRA compliance has been met and/or whether the identified agency(ies) met its obligations as enumerated in the VRA.
5. The agency's response will be provided to the victim, who has an opportunity to provide any additional or clarifying information.
6. All the information from both the complainant and the identified agency will be reviewed by the Victim Rights Act Subcommittee to determine if there is a basis in fact for a Victim Rights Act violation.
7. If there is not a basis in fact, the case will be closed at that time.
8. If there is a basis in fact, the Subcommittee will set forth requirements for the agency that is found to be in violation. These requirements are designed to improve a current problem and to help prevent similar concerns within the system on behalf of future victims.
9. The victim will be kept informed of the outcome of the Subcommittee's meetings and of the progress the agency makes in fulfilling the requirements.
10. Either party has a right to request a reconsideration of the findings of the Victim Rights Act Subcommittee. If the Subcommittee does not grant a request for reconsideration, the party requesting the reconsideration may appeal the Subcommittee's decision to the Board.
11. Either party may request an appeal to the Board of the Victim Rights Act Subcommittee's reconsideration findings as to whether or not there is a basis in fact that a victim's rights were violated under the VRA.
12. If an agency is unwilling to fulfill the requirements, the case will be referred to the Governor's office. The Governor then refers the case to the Colorado Attorney General to file a suit to enforce compliance with the Victim Rights Act.

Resources

Victim Compensation

Victims of crime often need financial assistance as a result of the crime. A victim may apply for compensation for costs related to medical expenses, lost employment, mental health treatment, burial expenses, the loss of medically necessary devices such as eye glasses or hearing aids, the loss of support to dependents, and damage to home security devices such as doors, windows, and locks. Each Judicial District has a Victim Compensation fund. Persons convicted of a crime or a traffic offense pay into this fund. Contact your local District Attorney's Office for information on how to apply for Victim Compensation.

Statewide Resources

Your local community has resources to provide you with support and assistance. A good place to start is with your victim advocate located at either the police department, or sheriff's office, the district attorney's office, or a community service provider.

Other **statewide** resources include:

- **Asian Pacific Development Center** Services for Asian populations.....**Denver:** (303) 393-0304; **Aurora:** (303) 365-2959
.....**Colorado Springs:** (719) 459-3947
- **Colorado Anti-Violence Program**.....(303) 839-5204 or 1-888-557-4441
- **Violence Free Colorado (Domestic Violence)**.....(303) 831-9632 or 1-888-778-7091
- **Colorado Coalition Against Sexual Assault (C.C.A.S.A.)**.....(303) 839-9999
- **Colorado Organization for Victim Assistance (C.O.V.A.)**.....(303) 861-1160 or 1-800-261-2682
- **Colorado Division of Criminal Justice**.....(303) 239-5719 or 1-888-282-1080
- **The Center For Trauma & Resilience**.....**Crisis:** (303) 894-8000 or (303) 718-8289 (Español)
- **Domestic Violence Initiative for Women with Disabilities**.....(303) 839-5510 (also TTY/TDD)
- **Kempe National Center for the Prevention of Child Abuse and Neglect**.....(303) 864-5300
- **Parents of Murdered Children and Other Survivors of Homicide**.....1-888-818-POMC
- **United Way**.....Call 2-1-1 for resources
.....1-866-760-6489 (Mile High United Way resource line if 2-1-1 does not work from your phone)