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SENATE BILL 22-043

BY SENATOR(S) Cooke and Gonzales, Buckner, Hansen, Lee, Liston, Priola, Rankin, Scott, Woodward, Zenzinger;
also REPRESENTATIVE(S) Lynch and Duran, Bacon, Burnett, Bird, Boesenecker, Caraveo, Daugherty, Esgar, Exum, Froelich, Gonzales-Gutierrez, Jodeh, Lindsay, McCluskie, McCormick, McLachlan, Michaelson Jenet, Mullica, Ricks, Roberts, Sandridge, Sirota, Snyder, Soper, Sullivan, Titone, Young, Garnett.

CONCERNING ENHANCING RESTITUTION SERVICES FOR VICTIMS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Restitution aims to restore a victim and repair the financial harm a crime created in the victim's life;

(b) Instead of ignoring the harm inflicted on a victim, restitution has the ability to repair part of the injury the crime caused;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) Restitution has the ability to rehabilitate an offender, allowing the offender to acknowledge the guilt and shame associated with the crime, and provides the offender the opportunity to make things right;

(d) What qualifies as an allowable restitution expense is subjective and varies from jurisdiction to jurisdiction;

(e) Between January 2020 and April 2021, inmates who were incarcerated in the department of corrections received stimulus checks from the federal government through the "Coronavirus Aid, Relief, and Economic Security Act", Pub.L. 116-136;

(f) If an inmate does not meet the inmate's financial obligation to pay restitution to the inmate's victim, the victim and the victim's family suffer financial distress;

(g) To alleviate the financial distress of victims, at least eight states and the federal government require that an inmate's federal stimulus checks be used to pay restitution to victims; and

(h) Courts, including the United States Court of Appeals for the Tenth Circuit, have ruled that garnishing federal stimulus money from an inmate's bank account to pay restitution to victims is constitutional and enforceable.

(2) Therefore, the general assembly finds that, to help restore a victim, there must be efforts to improve the restitution system, including:

(a) To expand the list of allowable restitution expenses that are proximately caused by the crime; and

(b) To access an inmate's federal stimulus money to pay restitution to the victim.

SECTION 2. In Colorado Revised Statutes, 18-1.3-602, **add** (2.2) and (3.7) as follows:

18-1.3-602. Definitions. As used in this part 6, unless the context otherwise requires:

(2.2) "CRITICAL STAGES" MEANS THE STAGES OF THE CRIMINAL JUSTICE PROCESS AS DESCRIBED IN SECTION 24-4.1-302 (2).

(3.7) "TRAVEL EXPENSES" MEANS EXPENSES INCURRED BY AIRPLANE, TRAIN, BUS, OR CAR TRAVEL, INCLUDING BAGGAGE FEES INCURRED BY TRAVEL EXPENSES; FARES FOR TRANSPORTATION TO AND FROM THE AIRPORT, TRAIN STATION, BUS STATION, OR HOTEL TO THE COURT PROCEEDING OR SECURE SITE; RENTAL CAR EXPENSES OR THE COST OF OPERATING A PERSONAL VEHICLE EQUAL TO THE LATEST PUBLISHED RATES FROM THE UNITED STATES GENERAL SERVICES ADMINISTRATION FOR GOVERNMENT EMPLOYEES, AS DETERMINED PURSUANT TO 5 U.S.C. 5701 ET SEQ., AS AMENDED; AND MEAL AND LODGING PER DIEM EQUAL TO THE LATEST PUBLISHED RATES FROM THE UNITED STATES GENERAL SERVICES ADMINISTRATION FOR GOVERNMENT EMPLOYEES, AS DETERMINED PURSUANT TO 5 U.S.C. 5701 ET SEQ., AS AMENDED.

SECTION 3. In Colorado Revised Statutes, 18-1.3-603, **amend** (2); and **add** (11) as follows:

18-1.3-603. Assessment of restitution - corrective orders.

(2) (a) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety-one days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution.

(b) IN COMPUTING RESTITUTION PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION, THE FOLLOWING EXPENSES ARE ALLOWABLE IF PROXIMATELY CAUSED BY THE CRIME, INCLUDING BUT NOT LIMITED TO:

(I) LONG-TERM OR ONGOING MEDICAL EXPENSES AS A RESULT OF THE CRIME FOR WHICH THE OFFENDER WAS CONVICTED OR OF ANY CONDUCT ARISING OUT OF THE CASE;

(II) REIMBURSEMENT FOR INSURANCE DEDUCTIBLES, INCLUDING DEDUCTIBLES FOR MEDICAL EXPENSES FOR PHYSICAL AND MENTAL HEALTH

ISSUES, PROPERTY DAMAGE OR LOSS, AND AUTOMOBILE DAMAGE OR LOSS;

(III) REPLACEMENT COSTS FOR DAMAGED OR DESTROYED PROPERTY, INCLUDING LOCKS, WINDOWS, AND DOORS;

(IV) TRAVEL EXPENSES TO COURT HEARINGS IF THE VICTIM TRAVELS OVER ONE HUNDRED MILES ONE WAY FROM THE LOCATION OF THE COURT PROCEEDING OR WHEN THE VICTIM IS AWAY FROM HOME LONGER THAN ONE DAY, REQUIRING AN OVERNIGHT STAY. A VICTIM MAY RECEIVE TRAVEL EXPENSES FOR TRAVEL TO CRITICAL STAGES OF THE CASE ONLY FOR THE CRITICAL STAGES DESCRIBED IN SECTION 24-4.1-302 (2)(b), (2)(e), (2)(f), (2)(g), AND (2)(h).

(V) TRAVEL EXPENSES TO A SECURE SITE, IF REQUIRED, TO PARTICIPATE VIRTUALLY IN COURT PROCEEDINGS;

(VI) CHILD CARE EXPENSES WHILE THE VICTIM PARTICIPATES IN COURT PROCEEDINGS; AND

(VII) REIMBURSEMENT FOR LOST WAGES TO ATTEND A CRITICAL STAGE OF THE CASE FOR THE CRITICAL STAGES DESCRIBED IN SECTION 24-4.1-302 (2)(b), (2)(e), (2)(f), (2)(g), AND (2)(h).

(c) THE COURT SHALL REVIEW THE TRAVEL EXPENSES DESCRIBED IN SUBSECTIONS (2)(b)(IV) AND (2)(b)(V) OF THIS SECTION TO ENSURE THE TRAVEL EXPENSES ARE REASONABLE. IF THE COURT FINDS THE TRAVEL EXPENSES ARE UNREASONABLE, THE COURT MAY REDUCE THE AMOUNT OF RECOVERABLE TRAVEL EXPENSES TO A REASONABLE AMOUNT.

(d) NOTWITHSTANDING THE DETERMINATION OF RESTITUTION, AN ORDER OF CONVICTION IS FINAL.

(11) ABSENT AN AGREEMENT BETWEEN THE DEFENDANT AND THE PROSECUTION AT THE TIME THE PLEA IS ENTERED, A COURT MAY NOT IMPOSE RESTITUTION FOR PECUNIARY LOSSES PROXIMATELY CAUSED BY CONDUCT EXCLUSIVELY RELATED TO DISMISSED CHARGES.

SECTION 4. In Colorado Revised Statutes, 16-18.5-106, **add** (2.5) as follows:

16-18.5-106. Restitution for persons sentenced to the department of corrections. (2.5) (a) THE DEPARTMENT OF CORRECTIONS SHALL INTERCEPT GOVERNMENT WINDFALL PAYMENTS BEFORE THE GOVERNMENT WINDFALL PAYMENTS ARE MADE AVAILABLE IN AN INMATE'S BANK ACCOUNT. THE DEPARTMENT OF CORRECTIONS SHALL SEND FUNDS FROM INTERCEPTED GOVERNMENT WINDFALL PAYMENTS TO THE JUDICIAL DEPARTMENT IN AN AMOUNT EQUAL TO ANY AMOUNT OWED BY THE INMATE PURSUANT TO SECTION 16-18.5-110. THE JUDICIAL DEPARTMENT SHALL THEN DISPERSE THE FUNDS IN ACCORDANCE WITH SECTION 16-18.5-110. THE DEPARTMENT OF CORRECTIONS SHALL DISPERSE ANY REMAINING FUNDS IN ACCORDANCE WITH SECTION 16-18.5-106. IF ANY FUNDS REMAIN AFTER ALL OF THE INMATE'S OUTSTANDING OBLIGATIONS ARE FULFILLED, THE EXCESS FUNDS MUST BE PLACED IN THE INMATE'S BANK ACCOUNT.

(b) AS USED IN THIS SUBSECTION (2.5), "GOVERNMENT WINDFALL PAYMENT" MEANS AN UNUSUAL PAYMENT FROM A GOVERNMENTAL ENTITY TO AN INMATE IN THE DEPARTMENT OF CORRECTIONS AND INCLUDES ECONOMIC STIMULUS PAYMENTS AND ANY OTHER UNUSUAL GOVERNMENT PAYMENTS. "GOVERNMENT WINDFALL PAYMENT" DOES NOT INCLUDE PAYMENTS TO INMATES FOR WAGES, PENSIONS, DISABILITY PAYMENTS, CHILD SUPPORT, TUITION, RESTITUTION, AND VICTIMS COMPENSATION.

SECTION 5. In Colorado Revised Statutes, **add** 16-18.5-113 as follows:

16-18.5-113. Office of restitution services - created. (1) THERE IS CREATED IN THE JUDICIAL DEPARTMENT THE OFFICE OF RESTITUTION SERVICES, REFERRED TO IN THIS SECTION AS THE "OFFICE". THE PURPOSE OF THE OFFICE IS TO ASSIST VICTIMS WHO ARE OWED COURT-ORDERED RESTITUTION.

(2) THE OFFICE SHALL:

(a) RECEIVE REQUESTS FROM VICTIMS REQUESTING SEMIANNUAL STATEMENTS AS SET FORTH IN SUBSECTION (3) OF THIS SECTION;

(b) ANSWER GENERAL QUESTIONS AND ASSIST VICTIMS WITH CASE-SPECIFIC QUESTIONS RELATED TO COURT-ORDERED RESTITUTION;

(c) CREATE AND MAINTAIN A WEB PAGE ON THE JUDICIAL

DEPARTMENT WEBSITE WITH RESOURCES AND INFORMATION ON COURT-ORDERED RESTITUTION;

(d) ASSIST WITH TRAINING RELATED TO THE ADMINISTRATION OF THE RESTITUTION SYSTEM;

(e) ENHANCE COMMUNICATIONS FOR POSTSENTENCE RESTITUTION;
AND

(f) COLLABORATE WITH VICTIM ADVOCACY PROGRAMS.

(3) (a) A VICTIM WHO IS OWED COURT-ORDERED RESTITUTION MAY SUBMIT A REQUEST TO THE OFFICE TO PROVIDE SEMIANNUAL STATEMENTS DETAILING THE RESTITUTION PAYMENTS THE DEFENDANT HAS MADE TO THE VICTIM AND THE DISBURSEMENTS THE COURT HAS MADE TO THE VICTIM. THE STATEMENT MUST INCLUDE THE OUTSTANDING AMOUNT OF COURT-ORDERED RESTITUTION OWED TO THE VICTIM.

(b) THE OFFICE SHALL VERIFY THE IDENTITY OF THE VICTIM MAKING THE REQUEST DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION TO ENSURE THE VICTIM IS OWED COURT-ORDERED RESTITUTION FOR THE CASE.

(c) THE OFFICE SHALL NOT PROVIDE INFORMATION RELATED TO COURT-ORDERED RESTITUTION TO OTHER VICTIMS IN THE SAME CASE OR IN OTHER CASES IN WHICH THE VICTIM REQUESTS A SEMIANNUAL STATEMENT PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION.

SECTION 6. Appropriation. (1) For the 2022-23 state fiscal year, \$129,359 is appropriated to the judicial department. This appropriation is from the judicial collection enhancement fund created in section 16-11-101.6 (2), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$116,319 for the office of restitution services, which amount is based on an assumption that the office will require an additional 1.6 FTE; and

(b) \$13,040 for capital outlay.

SECTION 7. Act subject to petition - effective date. This act

takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Steve Fenberg
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO