

CRIMINAL LAW NEWSLETTER



Restitution in Criminal Cases

by Robert J. Dieter

Colorado law requires a sentencing court to include consideration of restitution when imposing a sentence or approving a deferred judgment and sentence.¹ Imposing restitution on criminal defendants is supported by theories of rehabilitation and deterrence,² as well as an effort “to make the victim whole” to the extent practicable and “to take the profit out of crime.”³ The Colorado legislature first endorsed restitution as an alternative or supplement to traditional criminal sanctions during the 1970s.⁴ Significant amendments to restitution statutes were made in 1996.⁵ Now, the enactment of Title 16, Article 18.5 of the Colorado Revised Statutes (“CRS”), which is effective as to restitution orders entered on or after September 1, 2000, makes restitution subject to a more consistent and comprehensive statutory scheme that is (1) centralized in one CRS article, and (2) designed to implement more effective and timely assessment and collection of restitution on behalf of crime victims.⁶

Toward those ends, the Colorado legislature expressed its intention that statutory provisions concerning restitution should be liberally construed in favor of the victims of crime and their immediate families.⁷ This article summarizes that legislation and highlights some of the issues it raises for criminal practitioners.

Restitution to be Addressed In All Criminal Cases

Unless the sentencing court makes a specific finding that no victim of the offense suffered a pecuniary loss,⁸ the court is re-

quired to order a defendant to make restitution in all cases involving a conviction of a felony, misdemeanor, petty, or misdemeanor traffic offense where a “victim” sustains a pecuniary loss due to a defendant’s criminal conduct.⁹ For purposes of restitution, the term “conviction” means a verdict of guilty, a plea of guilty or *nolo contendere*, or receiving a deferred judgment and sentence.¹⁰ Restitution is required to be part of any sentence to probation¹¹ or incarceration¹² and is made a condition of parole.¹³ Further, defendants who have caused the same pecuniary loss are jointly and severally liable for restitution payments.¹⁴

In addition to Title 16, Article 18.5, other statutory provisions afford crime victims the right to restitution.¹⁵ Also, certain offenses, such as crimes committed against at-risk adults and at-risk juveniles and sex offenses committed against children, specifically provide for payment of restitution.¹⁶ Moreover, crime victims may apply for various victim assistance services through the Victims and Witness Assistance and Law Enforcement Fund,¹⁷ and victims of certain types of offenses may be eligible to apply for compensation through the Crime Victim Compensation Fund for emergency needs and for certain out-of-pocket expenses not covered by insurance.¹⁸

The “Victim”

In 1996, the Colorado legislature broadened the definition of the term “victim” so that the term included, among others, “any person aggrieved by a defendant.”¹⁹ This change encompassed not only the immediate and direct victim of the offense, but also the victim’s immediate family members, such as a spouse or child.²⁰ Also added to the definition was any victim compensation board that had paid a victim compensation claim, as well as any person or entity that suffered a loss because of a

contractual obligation with the victim, such as an insurer.²¹ This 1996 definition further included a governmental entity that may qualify as a victim to whom restitution is payable such as, for example, the Department of Social Services from which a defendant fraudulently obtains food stamps.²²

Under the 2000 legislation, the term “victim” for restitution purposes incorporates elements of the existing law as well as additional categories, and now includes: (1) persons against whom any felony, misdemeanor, petty, or traffic misdemeanor offense has been attempted or committed;²³ (2) persons who are harmed by criminal conduct in the course of a scheme, conspiracy, or pattern of criminal behavior;²⁴ (3) persons suffering losses because of a contractual obligation with the victim or an insurer who reimburses the immediate victim of the loss;²⁵ and (4) a victim compensation board that has paid a victim compensation claim.²⁶ The statute excludes any person accountable for the criminal conduct or episode as principal, complicitor, or conspirator.²⁷

There is no requirement in the statute that a person or entity be named as a victim in the charging documents to be eligible to recover restitution, provided that the person or entity is immediately or directly aggrieved by the defendant’s criminal act. For example, in one case, a defen-

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dant was ordered to pay restitution for injuries sustained by both a husband and wife when the defendant rear-ended their van, even though the wife was the only named victim in the charging document.²⁸

An insurer is entitled to recover as restitution its payments to victims of a defendant's criminal conduct that are paid pursuant to its contractual obligations.²⁹ The defendant is required to pay the full amount of bills paid by an insurance company under its policy with a person injured by the defendant's criminal act, not simply the deductible that the policyholder paid to the company.³⁰ Further, Colorado's Auto Accident Reparation Act,³¹ which denies insurers the right of recovery of no-fault personal injury protection ("PIP") benefits, does not limit the authority of courts to order a criminal defendant to pay these amounts to the insurer as restitution.³²

If a victim is deceased or incapacitated, various specified family members or lawful representatives may recover restitution.³³ If the victim cannot be found or declines to accept restitution, or if restitution is unclaimed, the defendant nonetheless must pay restitution to the state and distribute as provided by statute.³⁴

Determining the Victim's Pecuniary Loss

Prior law spoke of "actual damages sustained" by the victim but did not statutorily define the term "restitution." As discussed below, the new legislation (1) defines the term in an effort to provide direction on what kinds of losses are included, and (2) provides that the amount of restitution that a court may order is equal to the full amount of a victim's "actual pecuniary loss."³⁵ However, the court can approve a lesser amount agreed on by the prosecutor, the victim, and the defendant.³⁶ A significant change is that a court may no longer consider the defendant's inability to pay restitution when establishing the amount to be paid.³⁷ The new legislation establishes that courts may take into consideration the rate at which defendants can pay off restitution and that restitution orders clearly are "lifelong" obligations of defendants to satisfy whether or not the defendants have otherwise completed their sentence.

Restitution now means any pecuniary loss suffered by a victim and includes, but is not limited to: (1) all out-of-pocket expenses, interest, loss of use of money, or anticipated future expenses; (2) rewards paid by victims; (3) money advanced by law

enforcement agencies; (4) adjustment expenses; and (5) other losses or injuries proximately caused by an offender's conduct that can be reasonably calculated and recompensed in money.³⁸ Restitution also may include any "extraordinary" direct public and all private investigative costs.³⁹

Pecuniary losses include obvious losses, such as the value of stolen or destroyed property, but they also may include incidental costs. For example, the following may serve as proper elements in the restitution calculation: (1) award of interest, if actually paid out by the victim;⁴⁰ (2) cost of counseling for a victim and the victim's family;⁴¹ (3) expenses, including attorney fees incurred by a victim in attempting to recover stolen property;⁴² or (4) the value of the time spent by a corporate victim's employees cooperating with the police and prosecutor.⁴³

A court may order a defendant to pay restitution to an alleged victim for actual pecuniary losses resulting from the defendant's uncharged criminal conduct or when alleged in dismissed counts, provided that the defendant is given the opportunity to contest the court's determinations on these matters.⁴⁴ However, the statute of limitations applies to restitution orders; a court cannot order restitution as to criminal acts for which prosecution is barred by the statute of limitations.⁴⁵

In fixing the amount of restitution, the sentencing court is not bound by the strict rules of civil damages.⁴⁶ For example, in determining the actual pecuniary loss, the court is not necessarily limited to a fair-market valuation determination, provided the record supports a finding that an alternate valuation is reasonable to make the victim whole to the extent practicable.⁴⁷ Similarly, restitution is not subject to reduction in light of a victim's comparative negligence⁴⁸ or comparative fault.⁴⁹ For example, a victim's full pecuniary loss is not subject to reduction based on the victim's alleged provocative conduct giving rise to heat of passion mitigating the class of defendant's offense.⁵⁰

A court may order restitution even when a civil claim for damages by the victim against the defendant is contemplated or pending, and a release from civil liability does not limit a criminal court's authority to order restitution equivalent to actual pecuniary damages.⁵¹ However, the court must subtract from the actual pecuniary loss the amount of any payment attributable to those damages that are received by the victim from the settlement of a civil claim asserted by the victim against the

defendant.⁵² Further, a defendant is entitled to a set-off against any amount later recovered as compensatory damages by a victim in a legal proceeding.⁵³

Restitution is a criminal penalty, and courts may not substitute it for a civil action for damages. The court has authority to order restitution only for pecuniary losses that result from the defendant's criminal conduct.⁵⁴ Further, release from civil liability does not necessarily limit a criminal court's authority to order restitution equivalent to actual pecuniary losses,⁵⁵ although an order for restitution may be decreased if the defendant has otherwise compensated the victim.⁵⁶

Assessment Procedures

The sentencing court determines the amount of restitution that a defendant must pay, and endorses the amount of restitution on the record. The specific amount of restitution must be determined when the order of conviction is entered or within ninety days immediately following the order of conviction, unless that time period is extended by the court.⁵⁷ The order may obligate a defendant to pay for a victim's costs of specific future treatment proximately caused by the defendant's conduct.⁵⁸ Further, a restitution order can be modified if additional victims or losses not known to the judge or the prosecutor at the time or the order of restitution was entered are later discovered, but only if the final amount of restitution due has not been set by the court.⁵⁹

The prosecutor has the burden of proving the amount of restitution and that the defendant was responsible for the pecuniary loss. The prosecutor must compile the information using victim impact statements or other means, such as testimony at trial, or through statements by a probation officer or victim at the sentencing hearing.⁶⁰ A defendant must be given adequate notice of restitution claims to be able to contest liability.⁶¹ A defendant's failure to present evidence contesting the matter may result in a waiver of an objection to the amount of restitution.⁶² In addition, a defendant can appeal a restitution order pursuant to procedures applicable to the appellate review of a sentence.⁶³

Ensuring Payment and Consequences for Failure To Make Restitution

Restitution is due and payable at the time that the order of conviction is en-

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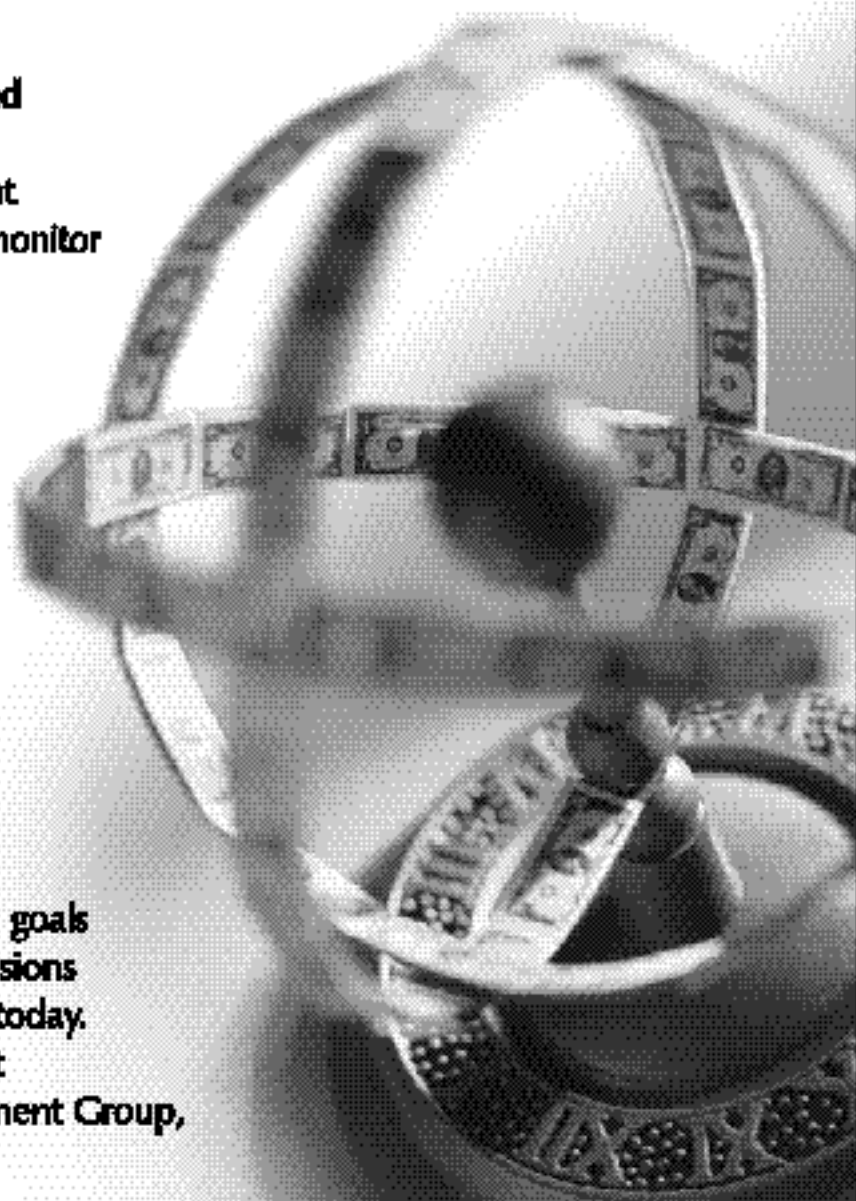
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tered.⁶⁴ If the defendant cannot pay the full amount of restitution at the time the order is entered, a "collections investigator" is to establish a payment schedule to monitor and collect the money owed.⁶⁵ The collections investigator may modify the payment schedule and institute collection procedures.⁶⁶ In felony cases in which the defendant is sentenced to prison, the Colorado Department of Corrections performs these functions.⁶⁷ For persons sentenced to community corrections, the community corrections program is authorized to establish a restitution payment schedule.⁶⁸

If restitution is not paid at the time a restitution order is entered, the defendant is assessed an additional one-time fee of \$25, payable after the defendant has satisfied all orders for restitution.⁶⁹ In addition, a defendant may be assessed a \$10 late fee on each late payment. These fees may be waived due to a defendant's indigency.⁷⁰

Interest is owed at the rate of 12 percent per annum,⁷¹ and courts are authorized to require a defendant to provide security for the payment of restitution, for example, requiring a defendant to execute a promissory note and deed of trust.⁷² However, to pay restitution, a state court may not require a defendant to assign or otherwise alienate Employee Retirement Income Security Act⁷³ ("ERISA") qualified pension funds.⁷⁴

Prior to 2000, restitution ordered as a condition of probation was to be paid within twelve months, regardless of the amount owed.⁷⁵ Under the new legislation, defendants are to make restitution within a period of time specified by the court.⁷⁶ Failure to pay restitution that is ordered as a condition of probation can result in the court modifying, extending, or revoking probation,⁷⁷ including imposing work-release program sentences⁷⁸ or finding defendants in contempt of court.⁷⁹ Before any punitive actions can be taken, it must be shown that the defendants had the financial ability to make the payments owed when they were due.⁸⁰ However, the mere fact of non-payment constitutes *prima facie* evidence of a violation of an order to pay restitution. In that situation, the burden falls on the defendants to prove by a preponderance of the evidence that they are unable to make restitution payments as they became due.⁸¹

Revocation and punitive proceedings must be instituted before the term of probation has expired. Otherwise, the trial court lacks jurisdiction to revoke proba-

tion for failure to pay restitution.⁸² For example, in *People v. Gore*⁸³ the Colorado Supreme Court held that, absent a timely request to extend probation, the trial court lacked jurisdiction to revoke probation where the defendant's restitution check was returned for insufficient funds seven days after expiration of the probationary period and where no revocation request was filed before the period of probation ran.

Restitution required as a condition of parole must be paid within the period of time that the defendant is on parole. If not timely paid, the restitution may be subject to collection processes and the board may extend the period of parole (subject to statutory limitations) or revoke the parole.⁸⁴ The new legislation also clarifies the procedures available to victims in enforcing the order. Restitution orders are enforceable in the same manner as a final judgment in a civil matter, including the recovery of reasonable attorney fees and costs, among other ways.⁸⁵

When a defendant fails to pay restitution, the court or a victim may commence collection, including the use of lawyers and collection agencies, with a fee cap of 25 percent that is added to the amount of restitution due.⁸⁶ The court also may order attachment of up to 50 percent of the defendant's "earnings" to be applied to past due restitution.⁸⁷ Collection procedures include the recording of a lien against the defendant's real or personal property, including motor vehicles.⁸⁸ During any period of time that a defendant is incarcerated as a state prisoner, the superintendent of the facility may direct that a portion of the defendant's wages or compensation earned in work programs be applied to any unpaid restitution.⁸⁹

Dischargeability in Bankruptcy

In *Kelly v. Robinson*,⁹⁰ the U.S. Supreme Court held that restitution obligations imposed on criminal defendants as a condition of probation in state criminal proceedings were not subject to discharge in proceedings under Chapter 7 of the Bankruptcy Code ("Code"). In 1990, Congress passed legislation amending the Code, making criminal restitution obligations non-dischargeable in Chapter 13 proceedings as well.⁹¹ The Colorado legislation specifically provides that restitution obligations are a debt for "willful and malicious" injury for purposes of exceptions to discharge in bankruptcy as provided in 11 U.S.C. § 523.⁹²

Restitution in Juvenile Proceedings

The juvenile code contains specific statutory provisions authorizing courts to impose restitution obligations on juvenile offenders in juvenile proceedings. Prior to September 1, 2000, these statutes exempted juveniles for whom restitution would cause serious hardship or injustice. Effective September 1, 2000, as with adult offenders, juvenile offenders must pay restitution in a reasonable manner regardless of their circumstances. These restitution orders are made subject to the collection provisions of CRS Title 16 Article 18.5.⁹³ In addition, the cap on parental liability was raised from \$3,500 to \$25,000 for damages caused by a juvenile's delinquent act.⁹⁴ However, this obligation may be absolved on a court finding that the guardian, legal guardian, or parent "has made diligent, good faith efforts to prevent or discourage the juvenile from engaging in delinquent activity."⁹⁵

Constitutional Issues

Implementing the various legislative changes raises several constitutional issues, including double jeopardy and *ex post facto* application of the law. Ordinarily, once a court imposes a legal sentence and the defendant begins serving that sentence, the court cannot increase the amount of restitution ordered, except as may be provided by statute. Otherwise, an order increasing the amount of restitution has the effect of increasing the punishment originally imposed. Thus, the order would violate constitutional prohibitions against double jeopardy.⁹⁶ Similarly, litigation has focused on when a court may order restitution under amendatory legislation that becomes effective after the date of the commission of the defendant's offense. In this context, defendants have challenged restitution orders alleging violation of the prohibition on *ex post facto* application of the laws.

In *People v. Woodward*,⁹⁷ the Colorado Supreme Court held that ordering a defendant to pay restitution to a victim's insurer did not constitute an *ex post facto* violation, even though the insurance company was not named within the class of victims eligible for restitution under the statutory scheme in effect at the time the defendant committed the crime. The Court reasoned that because the defendant was directed to pay the same amount of restitution as in the original order, the defendant's punishment was not made more

burdensome simply by ordering payment to the insurance company for the amount it had reimbursed to the victim for his loss. The order did not increase the defendant's obligation; it simply directed that the restitution originally ordered be paid to a different entity. Thus, in this instance, retroactive application of the amended statute, which enlarged the class of victims to include insurance companies, did not affect the amount of restitution due; it simply redirected the payment obligation.

Conclusion

The new legislation significantly tightens the enforceability of restitution orders in favor of the victims of crime and will add to the responsibilities of the courts, prosecutors, and defense counsel. The elimination of a court's ability to consider a defendant's ability to pay when establishing the amount of restitution will make restitution obligations more onerous for indigent defendants.

The reach of restitution orders to encompass claims of pecuniary loss by a victim's immediate family members is problematic, as are the uncertainties of a defendant's rights to contest restitution, such as the right to demand, for example, an independent evaluation, medical or otherwise, of a victim's claims or an insurance company's payments. Finally, courts may be faced with the prospect of determining whether a particular witness's entitlement to restitution might open the door for an attack on that witness's motive for testifying. In sum, these legislative changes will complicate defense counsel's obligation to advise the client of the consequences of entering into a disposition where monetary loss and expenses are incurred as a result of the defendant's conduct or involvement in a crime.

NOTES

1. CRS §§ 16-18.5-101 (effective as to restitution orders entered on or after Sept. 1, 2000) and 24-4.1-302.5(1)(h) (establishes crime victim's right to restitution for actual pecuniary damages). *See also* *People v. Tipton*, 973 P.2d 713 (Colo.App. 1998), *cert. denied*, Docket No. 99SC26 (April 12, 1999).

2. CRS § 16-18.5-101(c-d). *See* Colorado Legislative Council, *Study of Criminal Restitution in Colorado: Report to the Colorado General Assembly*, Research Pub. No. 467 (Nov. 1999).

3. *People v. Milne*, 690 P.2d 829, 836 (Colo. 1984). *See also* CRS § 24-4.1-201 (making any profits from a crime available as restitution).

4. 1976 Colo. Sess. Laws. 551, codified at CRS §§ 27-28-101 to -102.

5. CRS §§ 16-11-102(4), 16-11-204.5(1), and 17-2-201(5)(c)(I) (effective as to restitution orders entered on or after June 3, 1996).

6. CRS §§ 16-18.5-101 *et seq.* (effective as to restitution orders entered on or after Sept. 1, 2000). In addition, many existing statutory provisions were amended as necessary and cross-referenced to the new CRS article.

7. CRS § 16-18.5-101(2).

8. CRS § 16-18.5-103(1)(d).

9. CRS § 16-18.5-101. *See also* CRS §§ 16-11-102(4), 16-11-204.5(1), and 17-2-201(5)(c)(I). Additional statutory provisions include: CRS §§ 18-1-105(12) (felony sentence); 18-1-106(5)

(misdemeanor sentence); 18-1-107(1) (petty offense); and 42-4-1701(3)(a)(II)(B) (traffic offense).

10. CRS § 16-18.5-102(2).

11. CRS §§ 16-11-204.5 and -204(1). *See also* *People v. Maxich*, 971 P.2d 268 (Colo.App. 1998) (discussing CRS § 16-11-204.5).

12. CRS § 16-11-102(4). *See also* *People v. Johnson*, 780 P.2d 504 (Colo. 1989); *People v. Apodaca*, 998 P.2d 25 (Colo.App. 1999), *cert. denied*, Docket No. 99SC591 (April 24, 2000); *Tipton*, *supra*, note 1.

13. CRS § 17-2-201(5)(c)(I). *See also* CRS § 16-18.5-106(3).

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14. CRS § 16-11-204.5(4) (effective June 3, 1996).

15. CRS § 24-4.1-302.5(1)(h) (establishes crime victim's right to restitution for "actual pecuniary damages").

16. CRS §§ 18-6.5-106(3) and 18-3-414. Other such offenses include: CRS §§ 18-9-206(3) (unauthorized release of research or quarantined animals), 18-9-204.5(3)(e)(III) (ownership of dangerous dog), 18-9-113(1)(c) (desecration of venerated object), and 18-5-205(6) and 16-7-304 and -404 (fraud by check).

17. CRS § 24-4.2-105.

18. CRS §§ 24-4.1-108 and -109.

19. CRS § 16-18.5-102(4)(a).

20. CRS § 16-11-204.5(1) (term includes victim's spouse and parent, siblings, or child who is living with the victim). *See also People v. Estes*, 923 P.2d 358 (Colo.App. 1996), *cert. denied*, Docket No. 96SC257 (Sept. 16, 1996).

21. CRS §§ 16-11-102(4), 16-11-204.5(4), and 17-2-201(5)(c)(I). *See also People v. Rivera*, 968 P.2d 1061 (Colo.App. 1997).

22. *People v. Witt*, 15 P.3d 1109 (Colo.App. 2000), *cert. denied*, Docket No. 00SC567 (Dec. 18, 2000).

23. CRS § 16-18.5-102(4)(a)(I). This element apparently does not encompass "traffic infractions" that are not criminal offenses.

24. CRS § 16-18.5-102(4)(a)(II).

25. CRS § 16-18.5-102(4)(a)(III). *See also Rivera, supra*, note 21.

26. CRS § 16-18.5-102(4)(a)(IV).

27. CRS § 16-18.5-102(4)(c).

28. *People v. Lunsford*, 30 *Colo.Law.* 215 (May 2001) (App.No. 99CA2274, *ann'd* 5/10/01).

29. *Id.* (defendant ordered to pay restitution for noneconomic damages including pain and suffering, future inconvenience, future impairment, and future wage loss). *See also* CRS § 16-18.5-102(4)(a)(III).

30. *Lunsford, supra*, note 28.

31. CRS §§ 10-4-701 *et seq.*

32. *People v. Rogers*, 20 P.3d 1238 (Colo.App. 2000), *cert. denied*, Docket No. 00SC956 (April 9, 2001) (defendant ordered to pay restitution to victim's workers' compensation insurer who had paid victim's medical expenses).

33. CRS § 16-18.5-102(4)(a)(V).

34. CRS § 16-18.5-109(1-2).

35. CRS §§ 16-11-101.5(1), 16-11-102(4), 16-11-204.5(1), 16-11-204.5(5), and 17-2-201(5)(c)(I) (effective as to restitution orders entered on or after June 3, 1996).

36. CRS § 16-18.5-103(3)(b)(I).

37. CRS § 16-18.5-103. *See also People v. Duran*, 991 P.2d 313 (Colo.App. 1999), *cert. denied*, Docket No. 99SC668 (Dec. 20, 1999); *Rivera, supra*, note 21. *Cf. People v. Stewart*, 926 P.2d 105 (Colo.App. 1996), *cert. denied*, Docket No. 96SC265 (Oct. 21, 1996) (decided under prior version of statute).

38. CRS § 16-18.5-102(3)(a). *See also Witt, supra*, note 22 (defendant ordered to pay restitution to the Department of Social Services of cost of investigating defendant's fraudulently obtaining food stamps); *People v. Dillingham*, 881 P.2d 440 (Colo.App. 1994), *cert. denied*,

Docket No. 94SC404 (Oct. 11, 1994) (reward money for information leading to the recovery of stolen property included in restitution).

39. CRS § 16-18.5-102(3)(b). *See People v. Phillips*, 732 P.2d 1226 (Colo.App. 1986) (investigation costs, including attorney fees, can be ordered paid to an insurer).

40. *Stewart, supra*, note 37.

41. *Estes, supra*, note 20.

42. *People v. Wright*, 18 P.3d 816 (Colo.App. 2000), *cert. denied*, Docket No. 00SC806 (Feb. 20, 2001).

43. *People v. Dwall*, 908 P.2d 1178 (Colo.App. 1995).

44. *People v. Borquez*, 814 P.2d 382 (Colo. 1991) (where plea agreement based on series of thefts, trial court did not err in ordering defendant to pay restitution for actual, pecuniary damages to victim sustained as result of other, uncharged offenses). *Cf. People v. Quinonez*, 735 P.2d 159 (Colo. 1987) (restitution cannot be ordered paid to person whose injuries were not alleged in the charging document to have resulted from defendant's charged conduct).

45. *People v. Davalos*, 30 *Colo.Law.* 209 (May 2001) (App.No. 98CA2352, *ann'd* 5/10/01) (trial court erred in ordering restitution for those thefts against victim committed outside the statute of limitations period).

46. *People v. Valenzuela*, 874 P.2d 420 (Colo. App. 1993), *aff'd in part, rev'd in part*, 893 P.2d 97 (Colo. 1995). *Cf. People v. Hoisington*, 902 P.2d 887 (Colo.App. 1995), *cert. denied*, Docket No. 95SC293 (Sept. 5, 1995) (trial court deducted setoff for unpaid wages owing defendant).

47. *See also People v. Brigner*, 978 P.2d 163 (Colo.App. 1999) (amount of restitution owed by defendant who defrauded victim by selling collateral without victim's permission was fair market value of property at time defendant sold it and not victim's alleged actual net loss).

48. *Johnson, supra*, note 12.

49. *Duran, supra*, note 37.

50. *Id.*

51. *Maxich, supra*, note 11 (release from civil liability does not limit a criminal court's authority to order restitution equivalent to actual pecuniary damages).

52. *Stewart, supra*, note 37.

53. CRS § 16-18.5-103(6).

54. *Brigner, supra*, note 47. *See also Estes, supra*, note 20 (court improperly ordered restitution for cost of automobile loan that was not the result of defendant's criminal conduct, but was simply an unrelated debt defendant owed victim).

55. *Johnson, supra*, note 12; *Maxich, supra*, note 11 (release from civil liability does not limit a criminal court's authority to order restitution equivalent to actual pecuniary damages).

56. CRS § 16-18.5-103(3)(b)(II).

57. CRS § 16-18.5-103(1)(b).

58. CRS § 16-18.5-103(1)(c).

59. CRS § 16-18.5-103(3)(a).

60. CRS § 16-18.5-103(2).

61. *People v. Valdez*, 928 P.2d 1387 (Colo.App. 1996). *See also People v. McGraw*, Docket No. 99CA1704 (June 7, 2001) (where trial court did

not specify a time within which defendant was required to respond to the prosecution's statement of restitution, defendant's request for hearing filed ten days after prosecution's statement was not untimely and entitled defendant to a hearing to contest restitution recommended by prosecution).

62. *People v. Miller*, 830 P.2d 1092 (Colo.App. 1991), *cert. denied*, Docket No. 92SC51 (May 26, 1992).

63. *People v. Stephenson*, 12 P.3d 266 (Colo. App. 1999). *See also Stewart, supra*, note 37 (by accepting court's offer of probation rather than incarceration, defendant does not waive right to object to terms of restitution).

64. CRS § 16-18.5-104(1).

65. CRS §§ 16-18.5-102(1) and -104.

66. CRS §§ 16-18.5-104 and -105.

67. CRS § 16-18.5-106.

68. CRS §§ 17-27-104(10) and 17-28-102.

69. CRS § 16-18.5-104(2).

70. CRS § 16-11-101.6(1).

71. CRS § 16-18.5-103(4)(b)(I).

72. *People v. Neptune*, 866 P.2d 176 (Colo. App. 1993).

73. 29 U.S.C. §§ 1056(d)(1) and 1144(a).

74. *Stephenson, supra*, note 63.

75. CRS § 16-11-204.5(1).

76. Pub.L.No. 200, p. 1046, § 9, effective Sept. 1, 2000, codified at CRS § 16-11-204.5(1).

77. CRS § 16-18.5-105(3)(I) and (III).

78. CRS § 16-18.5-105(3)(d)(II).

79. CRS § 16-18.5-105(3)(d)(IV).

80. CRS § 16-18.5-105(3)(b). *See also Strickland v. People*, 594 P.2d 578 (Colo. 1979). *Cf. People v. Afentul*, 773 P.2d 1081 (Colo. 1989) (defendant entitled to establish financial inability to pay restitution as defense to charge of violating restitution requirement of deferred sentence).

81. CRS § 16-11-206(3).

82. *People v. Gore*, 774 P.2d 877 (Colo. 1989).

83. *Id.*

84. CRS § 17-2-201(5)(c)(I) and (II). Colorado is a member of an interstate compact authorizing collection of restitution for Colorado offenders paroled to another state. CRS § 24-60-2802, Article VII (d)(vi).

85. CRS §§ 16-18.5-104 and -107.

86. CRS §§ 16-11-101.6(3), -204.5(1), and 17-2-201(5)(c)(I).

87. CRS § 16-18.5-105(3)(b).

88. CRS § 16-18.5-104(5).

89. CRS § 16-11-101.6(5).

90. *Kelly v. Robinson*, 479 U.S. 36 (1986).

91. Criminal Victims Protection Act of 1990, Pub.L.No. 101-581, 204 Stat. 2865 (amending 11 U.S.C. § 1328(a)(3)).

92. CRS § 16-18.5-103(4)(d).

93. CRS § 19-2-918.

94. CRS § 19-2-919(2).

95. CRS § 19-2-919(2)(a).

96. *People v. Wright, supra*, note 42 at 1090. *See also People v. Shepard*, 989 P.2d 183 (Colo. App. 1999), *cert. denied*, Docket No. 99SC393 (Nov. 8, 1999); *Stewart, supra*, note 37.

97. 11 P.3d 1090 (Colo. 2000). ■