

CHAPTER 71

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 17-1015

BY REPRESENTATIVE(S) Hooton, Arndt, Becker K., Gray, Herod, Lontine, Melton, Michaelson Jenet, Pabon, Rosenthal, Salazar, Singer, Valdez, Weissman, Exum, McLachlan;
also SENATOR(S) Cooke, Crowder, Fenberg, Martinez Humenik, Merrifield, Moreno, Tate, Grantham.

AN ACT

CONCERNING CLARIFYING THE MANNER IN WHICH REDUCTIONS OF INMATES' SENTENCES ARE ADMINISTERED IN COUNTY JAILS.

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

SECTION 1. In Colorado Revised Statutes, **amend** 17-26-109 as follows:

17-26-109. Deductions of time - record keeping - forfeitures - definition.

(1) Every person who is sentenced to and imprisoned in any county jail of this state or sentenced to pay a fine and costs or either or all thereof and who performs faithfully the duties assigned to him or her during his or her imprisonment therein ~~is entitled to a deduction~~ **EARNs DEDUCTIONS** from the time of his or her sentence ~~of two days in any thirty-day period. If any such person escapes or attempts to escape from the county jail, he or she shall forfeit all deduction from the time of his or her sentence which he or she may have been entitled to up to the time of the escape or attempt at escape, as provided for in this section.~~ **AS FOLLOWS:**

(a) **AN INMATE RECEIVES A ONE-DAY DEDUCTION FOR EACH FIFTEEN DAYS ON HIS OR HER SENTENCE;**

(b) **IN ADDITION TO THE DEDUCTION DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, AN INMATE MAY RECEIVE A TEN-DAY DEDUCTION FOR EACH THIRTY DAYS ON HIS OR HER SENTENCE IF HE OR SHE:**

(I) SUCCESSFULLY COMPLETES A DESIGNATED PROGRAM OR EDUCATIONAL ACTIVITY WITHIN THE JAIL; OR

(II) DEMONSTRATES OUTSTANDING PROGRESS IN ANY DESIGNATED PROGRAM OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

EDUCATIONAL ACTIVITY WITHIN THE JAIL.

(c) IN ADDITION TO THE DEDUCTION DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, AN INMATE MAY RECEIVE A THIRTEEN-DAY DEDUCTION FOR EACH THIRTY DAYS ON HIS OR HER SENTENCE IF THE INMATE:

(I) IS DESIGNATED BY THE COUNTY SHERIFF AS A TRUSTY PRISONER;

(II) IS ENGAGED IN WORK WITHIN OR OUTSIDE THE WALLS OF THE JAIL;

(III) PERFORMS HIS OR HER WORK IN A CREDITABLE MANNER;

(IV) CONDUCTS HIMSELF OR HERSELF IN ACCORDANCE WITH THE RULES OF THE JAIL; AND

(V) IS APPROVED BY THE SHERIFF TO RECEIVE A DEDUCTION PURSUANT TO THIS SUBSECTION (1)(c).

(d) AN INMATE MAY RECEIVE A DEDUCTION OF UP TO THIRTEEN DAYS FOR EACH THIRTY DAYS ON HIS OR HER SENTENCE IF THE INMATE:

(I) IS SENTENCED TO THE COUNTY JAIL AS A DIRECT SENTENCE OR AS A CONDITION OF PROBATION; AND

(II) IS PERMITTED TO PARTICIPATE IN WORK, EDUCATIONAL PROGRAMMING OUTSIDE THE JAIL, MEDICAL RELEASE, HOME DETENTION, OR DAY REPORTING PROGRAMS PURSUANT TO SECTION 18-1.3-106 (1).

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN INMATE MAY NOT RECEIVE A DEDUCTION OF MORE THAN FIFTEEN DAYS IN ANY THIRTY-DAY PERIOD, REGARDLESS OF HOW MANY PROGRAMS THE INMATE PARTICIPATES IN, WHETHER THE INMATE IS DESIGNATED A TRUSTY PRISONER OR IS SENTENCED AS DESCRIBED IN SUBSECTION (1)(d) OF THIS SECTION.

(f) (I) IN ADDITION TO THE DEDUCTIONS DESCRIBED IN SUBSECTIONS (1)(a), (1)(b), (1)(c), AND (1)(d) OF THIS SECTION, AN INMATE MAY RECEIVE A THREE-DAY MAXIMUM DEDUCTION WHEN THE INMATE TAKES AN UNUSUAL OR EXTRAORDINARY ACTION, AS DETERMINED BY THE COUNTY SHERIFF. THIS DEDUCTION MAY BE GRANTED ON AN INCIDENT-BY-INCIDENT BASIS AND IS NOT SUBJECT TO THE DEDUCTION CAP DESCRIBED IN SUBSECTION (1)(e) OF THIS SECTION.

(II) IF A COUNTY SHERIFF AWARDS A DEDUCTION PURSUANT TO THIS SUBSECTION (1)(f), HE OR SHE SHALL NOTIFY THE CHIEF JUDGE OF THE JUDICIAL DISTRICT OF SUCH FACT NOT LATER THAN THREE BUSINESS DAYS AFTER THE DEDUCTION IS AWARDED. IN PROVIDING SUCH NOTICE, THE SHERIFF SHALL INDICATE HOW MANY DAYS WERE DEDUCTED AND THE NATURE OF THE UNUSUAL OR EXTRAORDINARY ACTION TAKEN BY THE INMATE.

(2) ~~A person who is sentenced to and imprisoned in any county jail of this state or sentenced to pay a fine and costs or either or all thereof may be awarded earned time of up to three days in any thirty-day period at the discretion of the county~~

~~sheriff for the successful completion of certain designated programs or educational activities, for outstanding progress in any assigned program or activity, or for unusual or extraordinary actions as determined by the county sheriff. Each county sheriff shall develop and implement an earned time program and schedule for use in his or her county jail in accordance with the expectations and standards of the community in which he or she serves. Earned time shall be in addition to good time as allowed in subsection (1) of this section and section 17-26-115~~ EACH COUNTY SHERIFF SHALL DEVELOP AND IMPLEMENT A PROGRAM AND SCHEDULE FOR ADMINISTERING REDUCTIONS OF INMATES' SENTENCES IN HIS OR HER COUNTY JAIL, AS DESCRIBED IN THIS SECTION AND IN ACCORDANCE WITH THE EXPECTATIONS AND STANDARDS OF THE COMMUNITY IN WHICH HE OR SHE SERVES. EACH COUNTY JAIL SHALL KEEP A RECORD OF EACH INMATE'S DEDUCTIONS OF TIME AND CHANGES IN DEDUCTIONS OF TIME AS A RESULT OF POLICY VIOLATIONS BY THE INMATE.

(3) (a) IF AN INMATE IS FOUND TO HAVE COMMITTED A WILLFUL VIOLATION OF ANY OF THE RULES OR REGULATIONS OF THE JAIL, HE OR SHE MAY FORFEIT SOME OR ALL OF THE DEDUCTIONS FROM HIS OR HER SENTENCE THAT HE OR SHE RECEIVED UP TO THE TIME OF THE VIOLATION, AS DETERMINED BY THE SHERIFF OF THE COUNTY IN WHICH THE JAIL IS SITUATED.

(b) IF AN INMATE ESCAPES OR ATTEMPTS TO ESCAPE FROM A JAIL OR AN ALTERNATIVE SENTENCE PROGRAM, HE OR SHE FORFEITS ALL DEDUCTIONS FROM HIS OR HER SENTENCE THAT HE OR SHE RECEIVED UP TO THE TIME OF THE ESCAPE OR ATTEMPTED ESCAPE.

(4) AN INMATE WHO IS SENTENCED TO ANY ALTERNATIVE SENTENCE PURSUANT TO SECTION 18-1.3-106 ARISING OUT OF A SENTENCE PURSUANT TO SECTION 42-4-1307 (5)(a)(I), (5)(b), OR (6)(a)(I) MAY RECEIVE A SENTENCE DEDUCTION PURSUANT TO THIS SECTION ONLY AFTER SERVING ANY MANDATORY PERIOD OF TIME PURSUANT TO THOSE SECTIONS.

(5) AS USED IN THIS SECTION, "DAY" MEANS A TWENTY-FOUR HOUR CALENDAR DAY.

SECTION 2. In Colorado Revised Statutes, 17-26-107, **add** (4) and (5) as follows:

17-26-107. Prisoners to work - work outside of jail - expenses. (4) EXCEPT AS DESCRIBED BY THE TERMS OF A JUDGMENT, ANY PERSON SENTENCED TO AND CONFINED IN THE COUNTY JAIL SHALL PERFORM LABORS UNDER SUCH RULES AND REGULATIONS AS MAY BE PRESCRIBED BY THE COUNTY COMMISSIONERS OR SHERIFF OF THE COUNTY IN WHICH THE JAIL IS SITUATED.

(5) UPON THE WRITTEN REQUEST OF A MAJORITY OF THE BOARD OF COUNTY COMMISSIONERS OF ANY COUNTY, THE SHERIFF SHALL DETAIL SUCH INMATES IN THE COUNTY JAIL AS IN HIS OR HER JUDGMENT SEEMS PROPER, NOT EXCEEDING THE NUMBER SPECIFIED IN THE WRITTEN REQUEST, TO WORK UPON SUCH PUBLIC ROADS AND HIGHWAYS OF THE COUNTY OR STREETS AND ALLEYS OF ANY MUNICIPALITY WITHIN THE COUNTY AS ARE DESIGNATED IN THE WRITTEN REQUEST OF THE COUNTY COMMISSIONERS. THE COUNTY SHALL FURNISH ALL TOOLS AND MATERIALS NECESSARY IN THE PERFORMANCE OF THE WORK. NO SUCH WORK SHALL BE DONE

WITHIN THE LIMITS OF A MUNICIPALITY WITHOUT THE CONSENT OF THE PROPER AUTHORITIES THEREOF, BUT WHEN SUCH WORK IS DONE WITHIN THE LIMITS OF A MUNICIPALITY WITHIN SUCH COUNTY, THE MUNICIPALITY WHERE THE WORK IS DONE SHALL PAY ALL ADDITIONAL EXPENSES OF GUARDING THE INMATES WHILE THEY PERFORM THE WORK AND SHALL FURNISH ALL TOOLS AND NECESSARY MATERIALS USED IN THE WORK.

SECTION 3. In Colorado Revised Statutes, **repeal** 17-26-110 as follows:

~~**17-26-110. Forfeiture of good time.** In case any such person in the county jail is guilty of willful violation of any of the rules or regulations of the jail and is entitled to any deduction from the time of his sentence by the provisions of section 17-26-109, he shall forfeit the right of such deduction, the violation to be determined by the sheriff of the county in which such jail is situated.~~

SECTION 4. In Colorado Revised Statutes, **repeal** 17-26-110.5 as follows:

~~**17-26-110.5. Restriction of privileges because of lawsuit filed without justification.** (1) If any person is convicted of a crime and confined in any county jail and such person files a lawsuit against the county or against any county government official, officer, employee, or agent, the county may deny any of the privileges allowed to such person if, upon the motion of any party or the court itself, a state or federal court finds that the action, or any part thereof, lacked substantial justification, was baseless, or was malicious or that the action, or any part thereof, was interposed for harassment. As used in this section, "lacked substantial justification" has the same meaning as that provided for such term in section 13-17-102 (4), C.R.S.~~

~~(2) The county may deny privileges to a person pursuant to subsection (1) of this section for a period not to exceed one hundred twenty days for any such lawsuit.~~

~~(3) The county may not deny privileges to a person pursuant to the provisions of this section if the court determines the lawsuit was asserted by the person in a good faith attempt to establish a new theory of law in Colorado.~~

~~(4) The county may determine not to deny privileges to a person pursuant to the provisions of this section if, after filing the lawsuit, a voluntary dismissal of the action is filed within a reasonable time after the person filing the dismissal knew, or reasonably should have known, that he or she would not prevail in the action.~~

SECTION 5. In Colorado Revised Statutes, **amend** 17-26-111 as follows:

~~**17-26-111. Separate sentences continuous.** For the purpose of sections SECTION 17-26-109, to 17-26-115, when any such persons confined in the county jail are sentenced under several convictions, with separate sentences, they shall be construed as one continuous sentence.~~

SECTION 6. In Colorado Revised Statutes, **repeal** 17-26-112 as follows:

~~**17-26-112. Sheriff to keep record.** It is the duty of the sheriff of each county to keep a record, in a book for that purpose, of all infractions of the prison rules and~~

regulations, as may be prescribed by law or by him:

SECTION 7. In Colorado Revised Statutes, **repeal** 17-26-113 as follows:

17-26-113. Prisoners to work. ~~All persons sentenced to and confined in the county jail under the laws of this state, except such as are precluded by the terms of the judgment, shall perform labors under such rules and regulations as may be prescribed by the county commissioners or sheriff of the county in which such jail is situated.~~

SECTION 8. In Colorado Revised Statutes, **repeal** 17-26-114 as follows:

17-26-114. Work on highways - expenses. ~~Upon the written request of a majority of the board of county commissioners of any county, the sheriff shall detail such persons in the county jail as in his judgment seems proper, not exceeding the number specified in said written request, to work upon such public roads and highways of such county or streets and alleys of any municipality within such county as are designated in said written request of said county commissioners. Such county shall furnish all tools and materials necessary in the performance of said work. No such work shall be done within the limits of a municipality without the consent of the proper authorities thereof, but, when such work is done within the limits of a municipality within such county, the municipality where said work is done shall pay all additional expenses of guarding such persons while performing said work and shall furnish all tools and necessary materials used in said work.~~

SECTION 9. In Colorado Revised Statutes, **repeal** 17-26-115 as follows:

17-26-115. Trusty prisoners - good time. ~~Persons confined in the county jail, undergoing any sentence in accordance with law, who are engaged in work within or outside the walls of the jail, and who are designated by the sheriff as trusty prisoners, and who conduct themselves in accordance with the rules of the sheriff of the county and perform their work in a creditable manner, upon approval of the sheriff, may be granted such good time, in addition to that allowed in section 17-26-109, as the sheriff may order, not to exceed ten days in any thirty-day period.~~

SECTION 10. In Colorado Revised Statutes, 18-1.3-106, **amend** (3) and (4); and **repeal** (12) as follows:

18-1.3-106. County jail sentencing alternatives - work, educational, and medical release - home detention - day reporting. (3) The sheriff OR THE DIRECTOR OF AN ALTERNATIVE SENTENCING PROGRAM may endeavor to secure employment for unemployed prisoners under this section. If a prisoner is employed for wages or salary, the sheriff may collect the same or require the prisoner to turn over his or her wages or salary in full when received, and the sheriff shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner.

(4) Every prisoner gainfully employed shall be liable for the cost of his or her board in the jail or the cost of the supervision and administrative services if he or she is home-detained, as fixed by the board of county commissioners. If necessarily absent from jail at mealtime, he or she shall, at his or her request, be furnished with

an adequate nourishing lunch to carry to work. The sheriff OR THE DIRECTOR OF THE ALTERNATIVE SENTENCING PROGRAM, AS MAY BE APPLICABLE, shall charge his or her account, if he or she has one, for such board. If the prisoner is gainfully self-employed, he or she shall pay the sheriff OR THE DIRECTOR OF THE ALTERNATIVE SENTENCING PROGRAM for such board, in default of which his or her privilege under this section ~~shall be~~ IS automatically forfeited. If the jail food is furnished directly by the county, the sheriff OR THE DIRECTOR OF THE ALTERNATIVE SENTENCING PROGRAM shall account for and pay over such board payments to the county treasurer. The board of county commissioners may, by resolution, provide that the county furnish or pay for the transportation of prisoners employed under this section to and from the place of employment. The sheriff OR THE DIRECTOR OF THE ALTERNATIVE SENTENCING PROGRAM shall reimburse the county or other disbursing agent for all such expenses incurred in accordance with this section and article 26 of title 17, ~~C.R.S.~~, as soon as adequate funds are available in the prisoner's account and in accordance with ~~paragraph (b) of subsection (5)~~ SUBSECTION (5)(b) of this section.

~~(12) Persons sentenced to the county jail as a direct sentence or sentenced to the county jail as a condition of probation who are permitted to participate in work, educational, medical release, home detention, or day reporting programs pursuant to subsection (1) of this section shall receive one day credit against their sentences for each day spent in such programs. As used in this section, "day reporting program" means an alternative correctional sentence wherein a defendant is allowed to serve his or her sentence by reporting daily to a central location wherein the defendant is supervised in court-ordered activities.~~

SECTION 11. In Colorado Revised Statutes, 42-4-1307, **amend** (5)(a) introductory portion, (5)(a)(I), (6)(a) introductory portion, and (6)(a)(I) introductory portion; and **repeal** (5)(c) and (6)(b) as follows:

42-4-1307. Penalties for traffic offenses involving alcohol and drugs - legislative declaration - definitions - repeal. (5) **Second offenses.** (a) Except as otherwise provided in subsection (6) of this section, a person who is convicted of DUI, DUI per se, or DWAI who, at the time of sentencing, has a prior conviction of DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106 (1)(b), ~~C.R.S.~~; vehicular assault pursuant to section 18-3-205 (1)(b), ~~C.R.S.~~; aggravated driving with a revoked license pursuant to section 42-2-206 (1)(b)(I)(A) or (1)(b)(I)(B), as that crime existed before August 5, 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1)(d), shall be punished by:

(I) Imprisonment in the county jail for at least ten consecutive days but no more than one year; except that the court shall have discretion to employ the sentencing alternatives described in section 18-1.3-106. ~~C.R.S.~~ During the mandatory ten-day period of imprisonment, the person ~~shall~~ IS not be eligible for ~~earned time or good time~~ DEDUCTIONS OF HIS OR HER SENTENCE pursuant to section 17-26-109, ~~C.R.S.~~; or for trusty prisoner status pursuant to ~~section 17-26-115, C.R.S.~~ SECTION 17-26-109 (1)(c); except that the person ~~shall receive~~ RECEIVES credit for any time that he or she served in custody for the violation prior to his or her conviction.

(c) ~~Notwithstanding the provisions of section 18-1.3-106 (12), C.R.S., if,~~

~~pursuant to paragraph (a) or (b) of this subsection (5), a court allows a person to participate in a program pursuant to section 18-1.3-106, C.R.S., the person shall not receive one day credit against his or her sentence for each day spent in such a program, as provided in said section 18-1.3-106 (12), C.R.S.~~

(6) **Third and subsequent offenses.** (a) Except as provided in section 42-4-1301 (1)(a), (1)(b), and (2)(a), a person who is convicted of DUI, DUI per se, or DWAI who, at the time of sentencing, has two or more prior convictions of DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106 (1)(b), ~~C.R.S.~~; vehicular assault pursuant to section 18-3-205 (1)(b), ~~C.R.S.~~; aggravated driving with a revoked license pursuant to section 42-2-206 (1)(b)(I)(A) or (1)(b)(I)(B), as that crime existed before August 5, 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1)(d) shall be punished by:

(I) Imprisonment in the county jail for at least sixty consecutive days but no more than one year. During the mandatory sixty-day period of imprisonment, the person ~~shall~~ IS NOT BE ELIGIBLE FOR ~~earned time or good time~~ DEDUCTIONS OF HIS OR HER SENTENCE pursuant to section 17-26-109, ~~C.R.S.~~; or for trusty prisoner status pursuant to ~~section 17-26-115, C.R.S.~~ SECTION 17-26-109 (1)(c); except that a person ~~shall receive~~ RECEIVES credit for any time that he or she served in custody for the violation prior to his or her conviction. During the mandatory period of imprisonment, the court ~~shall~~ DOES NOT HAVE ~~any~~ discretion to employ any sentencing alternatives described in section 18-1.3-106; ~~C.R.S.~~; except that the person may participate in a program pursuant to section 18-1.3-106 (1)(a)(II), (1)(a)(IV), or (1)(a)(V), C.R.S., only if the program is available through the county in which the person is imprisoned and only for the purpose of:

(b) ~~Notwithstanding the provisions of section 18-1.3-106 (12), C.R.S., if, pursuant to paragraph (a) of this subsection (6), a court allows a person to participate in a program pursuant to section 18-1.3-106 (1)(a)(II), (1)(a)(IV), or (1)(a)(V), C.R.S., the person shall not receive one day credit against his or her sentence for each day spent in such a program, as provided in said section 18-1.3-106 (12), C.R.S.~~

SECTION 12. 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 (August 9, 2017, if adjournment sine die is on May 10, 2017); 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 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 23, 2017