

CHAPTER 155

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 00-1201

BY REPRESENTATIVES McElhany, Allen, Chavez, Clapp, Coleman, Dean, Decker, Fairbank, Gagliardi, Gordon, Gottlieb, Grossman, Hagedorn, Hefley, Kaufman, Kester, King, Lawrence, May, McKay, McPherson, Miller, Mitchell, Nuñez, Paschall, Scott, Spence, Spradley, Stengel, Swenson, Tapia, Tochtrop, Tupa, Vigil, S. Williams, Windels, Witwer, and Young; also SENATORS Epps, Hernandez, Powers, and Tebedo.

AN ACT

CONCERNING PROHIBITION OF THE POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 18-12-108 (2) (a), Colorado Revised Statutes, is amended, and the said 18-12-108 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-12-108. Possession of weapons by previous offenders. (2) (a) Except as otherwise provided by paragraphs (b) and (c) of this subsection (2), a person commits a ~~class 1 misdemeanor~~ CLASS 6 FELONY if the person violates subsection (1) of this section.

(d) ANY SENTENCE IMPOSED PURSUANT TO THIS SUBSECTION (2) SHALL RUN CONSECUTIVELY WITH ANY PRIOR SENTENCES BEING SERVED BY THE OFFENDER.

SECTION 2. 18-12-108 (4) (a), Colorado Revised Statutes, is amended, and the said 18-12-108 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

18-12-108. Possession of weapons by previous offenders. (4) (a) Except as otherwise provided by ~~paragraph~~ PARAGRAPHS (b) AND (c) of this subsection (4), a person commits a ~~class 1 misdemeanor~~ CLASS 6 FELONY if the person violates subsection (3) of this section.

(d) ANY SENTENCE IMPOSED PURSUANT TO THIS SUBSECTION (4) SHALL RUN

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

CONSECUTIVELY WITH ANY PRIOR SENTENCES BEING SERVED BY THE OFFENDER.

SECTION 3. 18-12-108, Colorado Revised Statutes, is amended BY THE ADDITION OF NEW SUBSECTION to read:

18-12-108. Possession of weapons by previous offenders. (6) (a) UPON THE DISCHARGE OF ANY INMATE FROM THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT SHALL PROVIDE A WRITTEN ADVISEMENT TO SUCH INMATE OF THE PROHIBITED ACTS AND PENALTIES SPECIFIED IN THIS SECTION. THE WRITTEN ADVISEMENT, AT A MINIMUM, SHALL INCLUDE THE WRITTEN STATEMENT SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (6).

(b) ANY WRITTEN STIPULATION FOR DEFERRED JUDGMENT AND SENTENCE ENTERED INTO BY A DEFENDANT PURSUANT TO SECTION 16-7-403, C.R.S., SHALL CONTAIN A WRITTEN ADVISEMENT OF THE PROHIBITED ACTS AND PENALTIES SPECIFIED IN THIS SECTION. THE WRITTEN ADVISEMENT, AT A MINIMUM, SHALL INCLUDE THE WRITTEN STATEMENT SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (6).

(c) THE WRITTEN STATEMENT SHALL PROVIDE THAT:

(I) (A) A PERSON COMMITS THE CRIME OF POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER IN VIOLATION OF THIS SECTION IF THE PERSON KNOWINGLY POSSESSES, USES, OR CARRIES UPON HIS OR HER PERSON A FIREARM AS DESCRIBED IN SECTION 18-1-901 (3) (h), OR ANY OTHER WEAPON THAT IS SUBJECT TO THE PROVISIONS OF THIS TITLE SUBSEQUENT TO THE PERSON'S CONVICTION FOR A FELONY, OR SUBSEQUENT TO THE PERSON'S CONVICTION FOR ATTEMPT OR CONSPIRACY TO COMMIT A FELONY, OR SUBSEQUENT TO THE PERSON'S CONVICTION FOR A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE AS DEFINED IN 18 U.S.C. SEC. 921 (a) (33) (A), OR SUBSEQUENT TO THE PERSON'S CONVICTION FOR ATTEMPT OR CONSPIRACY TO COMMIT SUCH MISDEMEANOR CRIME OF DOMESTIC VIOLENCE; AND

(B) FOR THE PURPOSES OF THIS PARAGRAPH (c), "FELONY" MEANS ANY FELONY UNDER COLORADO LAW, FEDERAL LAW, OR THE LAWS OF ANY OTHER STATE; AND

(II) A VIOLATION OF THIS SECTION MAY RESULT IN A SENTENCE OF IMPRISONMENT OR FINE, OR BOTH.

(d) THE ACT OF PROVIDING THE WRITTEN ADVISEMENT DESCRIBED IN THIS SUBSECTION (6) OR THE FAILURE TO PROVIDE SUCH ADVISEMENT MAY NOT BE USED AS A DEFENSE TO ANY CRIME CHARGED AND MAY NOT PROVIDE ANY BASIS FOR COLLATERAL ATTACK ON, OR FOR APPELLATE RELIEF CONCERNING, ANY CONVICTION.

SECTION 4. 17-2-103.5 (1), Colorado Revised Statutes, is amended to read:

17-2-103.5. Revocation proceedings - parolee arrested for certain offenses. (1) (a) Notwithstanding any provision of section 17-2-103, a parole officer shall file a complaint seeking revocation of the parole of any parolee who:

(I) Is found in possession of a deadly weapon as defined in section 18-1-901, C.R.S.; ~~or any parolee~~

(II) Is arrested and charged with:

(A) A felony;

(B) A crime of violence as defined in section 16-1-104 (8.5), C.R.S.;

(C) A misdemeanor assault involving a deadly weapon or resulting in bodily injury to the victim; or

(D) Sexual assault in the third degree as defined in section 18-3-404, C.R.S.

(b) A PAROLE OFFICER SHALL PRESENT TO THE DISTRICT ATTORNEY OF THE PROPER JUDICIAL DISTRICT FOR THE PURPOSE OF PROSECUTION ALL THE FACTS ASCERTAINED BY SUCH OFFICER AND ALL OTHER PAPERS, DOCUMENTS, OR EVIDENCE PERTAINING THERETO THAT THE PAROLE OFFICER HAS IN HIS OR HER POSSESSION FOR ANY PAROLEE FOUND IN POSSESSION OF A WEAPON PURSUANT TO SECTION 18-12-108, C.R.S.

(c) A hearing relating to such revocation shall be held, unless a board member is advised that a criminal charge is still pending and no technical violations are alleged, or where the parolee does not request revocation, in which case the hearing shall be delayed until a disposition concerning the criminal charge is reached.

SECTION 5. 16-4-101 (1) (b) (III), (1) (c), and (5), Colorado Revised Statutes, are amended, and the said 16-4-101 (1) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

16-4-101. Bailable offenses. (1) All persons shall be bailable by sufficient sureties except:

(b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that the proof is evident or the presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases:

(III) A crime of violence alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony;
or

(IV) A CRIME OF POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER ALLEGED TO HAVE BEEN COMMITTED IN VIOLATION OF SECTION 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), OR (5), C.R.S.; OR

(c) When a person has been convicted of a crime of violence OR A CRIME OF POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER, AS DESCRIBED IN SECTION 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), OR (5), C.R.S., at the trial court level and such person is appealing such conviction or awaiting sentencing for such conviction and the court finds that the public would be placed in significant peril if the convicted

person were released on bail.

(5) When a person is arrested for a crime of violence, as defined in section 16-1-104 (8.5), or a criminal offense alleging the use or possession of a deadly weapon or the causing of bodily injury to another person, OR A CRIMINAL OFFENSE ALLEGING THE POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER, AS DESCRIBED IN SECTION 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), OR (5), C.R.S., and such person is on parole, the law enforcement agency making the arrest shall notify the department of corrections within twenty-four hours. The person so arrested shall not be eligible for bail to be set until at least seventy-two hours from the time of his OR HER arrest has passed.

SECTION 6. 16-4-201.5 (1), Colorado Revised Statutes, is amended to read:

16-4-201.5. Right to bail after a conviction - exceptions. (1) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by this part 2; except that no bail is allowed for persons convicted of:

- (a) Murder;
- (b) Any felony sexual assault involving the use of a deadly weapon;
- (c) Any felony sexual assault committed against a child who is under fifteen years of age;
- (d) A crime of violence, as defined in section 16-11-309; ~~or~~
- (e) Any felony during the commission of which the person used a firearm; OR
- (f) A CRIME OF POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER, AS DESCRIBED IN SECTION 18-12-108 (2) (b), (2) (c), (4) (b), (4) (c), OR (5), C.R.S.

SECTION 7. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-130. Appropriation to comply with section 2-2-703 -HB00-1201.

(1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 00-1201 ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2000, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED FIFTY-TWO DOLLARS (\$442,852).

(b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2001, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF ONE MILLION ONE

HUNDRED SIXTEEN THOUSAND NINE HUNDRED SEVENTY-ONE DOLLARS (\$1,116,971).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2001, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE HUNDRED SIXTY-SEVEN THOUSAND TWO HUNDRED SIXTY-SEVEN DOLLARS (\$167,267).

(c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2002, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF ONE HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED SIXTY-SEVEN DOLLARS (\$121,567).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2002, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FIVE HUNDRED EIGHTY-NINE THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS (\$589,152).

(d) FOR THE FISCAL YEAR BEGINNING JULY 1, 2003, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF SIX HUNDRED THIRTY-FIVE THOUSAND SIXTY-NINE DOLLARS (\$635,069).

(e) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF TWO HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED SEVENTY-TWO DOLLARS (\$233,872).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF SIX HUNDRED THIRTY-FIVE THOUSAND SIXTY-NINE DOLLARS (\$635,069).

SECTION 8. The introductory portion to 24-75-302 (2) and 24-75-302 (2) (m), (2) (n), and (2) (o) are amended, and the said 24-75-302 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-75-302. Capital construction fund - capital assessment fees - calculation.
(2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2002, AND ON JULY 1, 2004, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(m) On July 1, 2000, one hundred million dollars, plus one hundred eighty-four thousand ninety dollars pursuant to H.B. 97-1186; plus four hundred seventy-eight thousand six hundred thirty-four dollars pursuant to H.B. 97-1077, enacted at the first regular session of the sixty-first general assembly; plus twelve thousand two hundred seventeen dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus seventy-one thousand two hundred seven dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; PLUS FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED FIFTY-TWO DOLLARS PURSUANT TO H.B. 00-1201, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY;

(n) On July 1, 2001, one hundred million dollars, plus one hundred fifty-four thousand six hundred thirty-six dollars pursuant to H.B. 97-1186; plus nine hundred five thousand seven hundred twenty-three dollars pursuant to H.B. 97-1077, enacted at the first regular session of the sixty-first general assembly; plus nine thousand eight hundred ninety dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus three hundred forty-nine thousand fifty-five dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; PLUS ONE MILLION ONE HUNDRED SIXTEEN THOUSAND NINE HUNDRED SEVENTY-ONE DOLLARS PURSUANT TO H.B. 00-1201, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY; ~~and~~

(o) On July 1, 2002, thirteen thousand nine hundred sixty-two dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus eight million three hundred seven thousand five hundred nine dollars pursuant to H.B. 98-1156, enacted at the second regular session of the sixty-first general assembly; plus three hundred ninety-seven thousand nine hundred twenty-three dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; ~~ASSEMBLY;~~ PLUS ONE HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED SIXTY-SEVEN DOLLARS PURSUANT TO H.B. 00-1201, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY; AND

(q) ON JULY 1, 2004, TWO HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED SEVENTY-TWO DOLLARS PURSUANT TO H.B. 00-1201, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 2000, and shall apply to offenses committed on or after said date.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 19, 2000