

## CHAPTER 378

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**CRIMINAL LAW AND PROCEDURE**


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**HOUSE BILL 08-1382**

BY REPRESENTATIVE(S) Carroll T., Casso, Labuda, McGihon, Rice, and Carroll M.;  
also SENATOR(S) Shaffer.

**AN ACT**

**CONCERNING CRIMINAL PROCEDURAL MATTERS THAT AFFECT CONVICTED PERSONS, AND MAKING  
AN APPROPRIATION IN CONNECTION THEREWITH.**

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

**SECTION 1.** 16-22-103 (2) (d), Colorado Revised Statutes, is amended to read:

**16-22-103. Sex offender registration - required - applicability - exception.**

(2) (d) (I) Notwithstanding any other provision of this section, any stipulation by a district attorney and any finding of BY the court with regard to whether the offense of which a THE person is convicted includes an underlying factual basis involving unlawful sexual behavior, ~~shall not limit or otherwise affect the ability of the department of corrections to make such determination in accordance with department procedures for purposes of classification and treatment of any person sentenced to the department of corrections~~ AS DEFINED IN SECTION 16-22-102, SHALL BE BINDING ON THE DEPARTMENT OF CORRECTIONS FOR PURPOSES OF CLASSIFICATION. ON OR AFTER JULY 1, 2008, IF THE DEPARTMENT OF CORRECTIONS RECEIVES A MITTIMUS THAT DOES NOT INDICATE THE NECESSARY FINDINGS AS REQUIRED BY SECTION 16-22-103 (2) (c) (II), THE DEPARTMENT SHALL NOTIFY THE COURT AND REQUEST THAT THE COURT ENTER THE NECESSARY FINDINGS PURSUANT TO SECTION 16-22-103 (2) (c) (II).

(II) THE DEPARTMENT OF CORRECTIONS SHALL HAVE THE AUTHORITY TO MAKE A DETERMINATION THAT A PERSON IS A SEX OFFENDER, AS DEFINED IN SECTION 16-11.7-102 (2) (a), FOR THE PURPOSES OF CLASSIFICATION AND TREATMENT IF:

(A) THE PERSON HAS ONE OR MORE PRIOR CONVICTIONS FOR A SEX OFFENSE AS DEFINED IN SECTION 16-11.7-102 (3);

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

(B) THE PERSON HAS A PRIOR OFFENSE FOR WHICH A DETERMINATION HAS BEEN MADE BY THE COURT THAT THE UNDERLYING FACTUAL BASIS INVOLVED A SEX OFFENSE AS DEFINED IN SECTION 16-11.7-102 (3); OR

(C) THE PERSON HAS BEEN CLASSIFIED AS A SEX OFFENDER IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS.

(III) THE PROCEDURES ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS TO CLASSIFY A PERSON AS A SEX OFFENDER SHALL REQUIRE THAT:

(A) THE CLASSIFICATION PROCEEDING BE CONDUCTED BY A LICENSED ATTORNEY WHO SHALL SERVE AS AN ADMINISTRATIVE HEARING OFFICER;

(B) THE OFFENDER'S ATTORNEY BE PERMITTED TO ATTEND, REPRESENT, AND ASSIST THE OFFENDER AT THE CLASSIFICATION PROCEEDING; AND

(C) THE OFFENDER BE ENTITLED TO WRITTEN NOTICE OF THE REASON FOR THE PROCEEDING, DISCLOSURE OF THE EVIDENCE TO BE PRESENTED AGAINST HIM OR HER, AN OPPORTUNITY TO BE HEARD IN PERSON AND TO PRESENT WITNESSES AND DOCUMENTARY EVIDENCE, THE RIGHT TO CONFRONT AND CROSS-EXAMINE ADVERSE WITNESSES, UNLESS THE ADMINISTRATIVE HEARING OFFICER FINDS GOOD CAUSE FOR NOT ALLOWING CONFRONTATION, AND WRITTEN FINDINGS AND CONCLUSIONS INDICATING THE EVIDENCE AND REASONS RELIED UPON FOR THE CLASSIFICATION AS A SEX OFFENDER.

(IV) NOTWITHSTANDING ANY STATUTORY PROVISIONS TO THE CONTRARY, THE DEPARTMENT OF CORRECTIONS SHALL ENSURE THAT ALL PROCEDURES AND POLICIES COMPLY WITH THE FEDERAL "PRISON RAPE ELIMINATION ACT OF 2003", PUB.L. 108-79, AS AMENDED.

**SECTION 2.** 16-22-113 (1) (e), Colorado Revised Statutes, is amended to read:

**16-22-113. Petition for removal from registry.** (1) Except as otherwise provided in subsection (3) of this section, any person required to register pursuant to section 16-22-103 or whose information is required to be posted on the internet pursuant to section 16-22-111 may file a petition with the court that issued the order of judgment for the conviction that requires the person to register for an order that discontinues the requirement for such registration or internet posting, or both, as follows:

(e) If the person was younger than eighteen years of age at the time of disposition or adjudication, after the successful completion of and discharge from the sentence, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the

person was tried and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (1), A JUVENILE WHO FILES A PETITION PURSUANT TO THIS SECTION MAY FILE THE PETITION WITH THE COURT TO WHICH VENUE IS TRANSFERRED PURSUANT TO SECTION 19-2-105, C.R.S., IF ANY.

**SECTION 3.** 17-22.5-405 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**17-22.5-405. Earned time.** (5) (a.5) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5), AN OFFENDER WHO IS SENTENCED FOR A FELONY COMMITTED ON OR AFTER JULY 1, 1993, AND PAROLED ON OR AFTER JANUARY 1, 2009, SHALL BE ELIGIBLE TO RECEIVE ANY EARNED TIME WHILE ON PAROLE OR AFTER REPAROLE FOLLOWING A PAROLE REVOCATION. THE OFFENDER SHALL NOT BE ELIGIBLE FOR EARNED TIME WHILE THE OFFENDER IS REINCARCERATED AFTER REVOCATION OF THE MANDATORY PERIOD OF PAROLE PURSUANT TO SECTION 18-1.3-401 (1) (a) (V), C.R.S.

**SECTION 4.** 17-22.5-303 (7), Colorado Revised Statutes, is amended to read:

**17-22.5-303. Parole.** (7) For persons who are granted parole pursuant to subsection (6) of this section, the division of adult parole shall provide a period of up to five years of parole supervision and assistance in securing employment, housing, and such other services as may effect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions for parole for any such offender under this subsection (7) shall be established pursuant to section 17-22.5-404 by the state board of parole prior to such offender's release from incarceration. Upon a determination that the conditions of parole have been violated in a parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the offender to a place of confinement designated by the executive director for a period of not more than five years. In computing the period of reincarceration for an offender other than an offender sentenced for a nonviolent felony offense, as defined in section 17-22.5-405 (5), the time between the offender's release on parole and ~~the~~ RETURN TO CUSTODY IN COLORADO FOR revocation of such parole shall not be considered to be any part of the term of the sentence. In no event shall any period of reincarceration and sentence actually served exceed the sentence imposed pursuant to section 18-1.3-401, C.R.S. The state board of parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.

**SECTION 5.** 17-22.5-403 (6), Colorado Revised Statutes, is amended to read:

**17-22.5-403. Parole eligibility.** (6) For persons who are granted parole pursuant to subsection (5) of this section, the division of adult parole shall provide parole supervision and assistance in securing employment, housing, and such other

services as may affect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions for parole for any such offender under this subsection (6) shall be established pursuant to section 17-22.5-404 by the state board of parole prior to such offender's release from incarceration. Upon a determination that the conditions of parole have been violated in a parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the offender to a place of confinement designated by the executive director for any period of time up to the period remaining on such person's sentence until the discharge date as determined by section 17-22.5-402 or one year, whichever is longer. In computing the period of reincarceration for an offender other than an offender sentenced for a nonviolent felony offense, as defined in section 17-22.5-405 (5), the time between the offender's release on parole and ~~the~~ RETURN TO CUSTODY IN COLORADO FOR revocation of such parole shall not be considered to be part of the term of the sentence. The state board of parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.

**SECTION 6.** 18-1.3-401 (1) (a) (V) (D), Colorado Revised Statutes, is amended to read:

**18-1.3-401. Felonies classified - presumptive penalties.** (1) (a) (V) (D) The mandatory period of parole imposed pursuant to sub-subparagraph (A) of this subparagraph (V) shall commence immediately upon the discharge of an offender from imprisonment in the custody of the department of corrections. If the offender has been granted release to parole supervision by the state board of parole, the offender shall be deemed to have discharged the offender's sentence to imprisonment provided for in sub-subparagraph (A) of this subparagraph (V) in the same manner as if such sentence were discharged pursuant to law; except that the sentence to imprisonment for any person sentenced as a sex offender pursuant to part 10 of this article shall not be deemed discharged on release of said person on parole. When an offender is released by the state board of parole or released because the offender's sentence was discharged pursuant to law, the mandatory period of parole shall be served by such offender. An offender sentenced for nonviolent felony offenses, as defined in section 17-22.5-405 (5), C.R.S., may receive earned time pursuant to section 17-22.5-405, C.R.S., while serving a mandatory parole period in accordance with this section, but not while such offender is reincarcerated after a revocation of the mandatory period of parole. AN OFFENDER WHO IS SENTENCED FOR A FELONY COMMITTED ON OR AFTER JULY 1, 1993, AND PAROLED ON OR AFTER JANUARY 1, 2009, SHALL BE ELIGIBLE TO RECEIVE ANY EARNED TIME WHILE ON PAROLE OR AFTER REPAROLE FOLLOWING A PAROLE REVOCATION. THE OFFENDER SHALL NOT BE ELIGIBLE FOR EARNED TIME WHILE THE OFFENDER IS REINCARCERATED AFTER REVOCATION OF THE MANDATORY PERIOD OF PAROLE PURSUANT TO THIS SUBPARAGRAPH (V).

**SECTION 7. Appropriation - adjustments to the 2008 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of corrections, for

the fiscal year beginning July 1, 2008, the sum of forty-nine thousand two hundred ninety-two dollars (\$49,292) and 0.1 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, the appropriation made in the annual general appropriation act to the department of corrections, management division, executive director's office subprogram, payments to district attorneys, for the fiscal year beginning July 1, 2008, is decreased by forty-nine thousand two hundred ninety-two dollars (\$49,292). Said sum shall be from the general fund.

**SECTION 8. Effective date.** This act shall take effect July 1, 2008.

**SECTION 9. 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: June 2, 2008