

CHAPTER 344

CORRECTIONS

SENATE BILL 94-172

BY SENATORS Wells and Johnson;
also REPRESENTATIVES Shoemaker and Martin.

AN ACT**CONCERNING THE STATE BOARD OF PAROLE.**

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

SECTION 1. 17-2-103 (11), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-2-103. Arrest of parolee - revocation proceedings. (11) (a) If the board ~~or the administrative law judge~~ determines that a violation of a condition or conditions of parole has been committed, ~~such board or administrative law judge~~ THE BOARD shall, within five working days after the completion of the final hearing, either revoke the parole, AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (11), or continue it in effect, or modify the conditions of parole if circumstances then shown to exist require such modifications. If parole is revoked, the board ~~or the administrative law judge~~ shall serve upon the parolee a written statement as to the evidence relied on and the reasons for revoking parole. ~~In the event the parole is revoked, the board or the administrative law judge shall cause the parolee to be transported to a place of confinement designated by the executive director. Said transportation shall be furnished by the sheriff of the county in which the hearing was held.~~

(b) (I) IF THE BOARD DETERMINES THAT THE PAROLEE HAS VIOLATED PAROLE THROUGH COMMISSION OF A CRIME, THE BOARD MAY REVOKE PAROLE AND REQUEST THE SHERIFF OF THE COUNTY IN WHICH THE HEARING IS HELD TO TRANSPORT THE PAROLEE TO A PLACE OF CONFINEMENT DESIGNATED BY THE EXECUTIVE DIRECTOR.

(II) IF THE BOARD DETERMINES THAT THE PAROLEE HAS VIOLATED ANY CONDITION OF PAROLE OTHER THAN COMMISSION OF A CRIME, THE BOARD MAY:

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

(A) REVOKE PAROLE AND REQUEST THE SHERIFF OF THE COUNTY IN WHICH THE HEARING IS HELD TO TRANSPORT THE PAROLEE TO A PLACE OF CONFINEMENT DESIGNATED BY THE EXECUTIVE DIRECTOR; OR

(B) REVOKE PAROLE FOR A PERIOD NOT TO EXCEED ONE HUNDRED EIGHTY DAYS AND REQUEST THE SHERIFF OF THE COUNTY IN WHICH THE HEARING IS HELD TO TRANSPORT THE PAROLEE TO A COMMUNITY CORRECTIONS FACILITY PURSUANT TO SECTION 17-27-105 (3), A PLACE OF CONFINEMENT WITHIN THE DEPARTMENT OF CORRECTIONS, OR ANY PRIVATE FACILITY THAT IS UNDER CONTRACT TO THE DEPARTMENT OF CORRECTIONS; OR

(C) REVOKE PAROLE FOR A PERIOD NOT TO EXCEED NINETY DAYS AND REQUEST THE SHERIFF OF THE COUNTY IN WHICH THE HEARING IS HELD TO TRANSPORT THE PAROLEE TO THE COUNTY JAIL OF SUCH COUNTY OR TO ANY PRIVATE FACILITY THAT IS UNDER CONTRACT TO THE DEPARTMENT OF CORRECTIONS.

SECTION 2. 17-27-105 (3) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-27-105. Authority to place offenders in community corrections programs.

(3) (a) The state board of parole may refer any parolee for placement in a community corrections program. Such placement, if approved by the community corrections board pursuant to section 17-27-103 and the community corrections program pursuant to section 17-27-104, may be made a condition of release on parole or as a modification of the conditions of an offender's parole after release OR UPON TEMPORARY REVOCATION OF PAROLE PURSUANT TO SECTION 17-2-103 (11).

SECTION 3. 17-2-201 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-2-201. State board of parole. (1) (b) The parole board in existence prior to July 1, 1987, is abolished on July 1, 1987. The governor shall appoint a new parole board pursuant to this section, two members of which shall be appointed for terms of three years, two members of which shall be appointed for terms of two years, and one member of which shall be appointed for a term of one year. Thereafter, members shall be appointed for terms of three years. If a member is appointed during a period of time in which the general assembly is not in session, that member shall serve on a temporary basis until the general assembly next convenes. No member shall serve more than ~~two~~ THREE consecutive full three-year terms after the initial term. ~~All board members may succeed themselves.~~ ANY PERSON WHO IS APPOINTED TO FILL A VACANCY ON THE BOARD AND WHO SERVES AT LEAST ONE-HALF OF THE TERM OF OFFICE SHALL BE CONSIDERED TO HAVE SERVED A FULL TERM IN THE OFFICE FOR PURPOSES OF THIS SECTION.

SECTION 4. 17-2-201 (3) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-2-201. State board of parole. (3) The chairperson, in addition to other provisions of law, has the following powers and duties:

(c) ~~To contract with attorneys to serve as administrative law judges~~ TO APPOINT AN

ADMINISTRATIVE LAW JUDGE PURSUANT TO THE PROVISIONS OF SECTION 24-30-1003, C.R.S., to conduct parole revocation hearings pursuant to the rules and regulations promulgated pursuant to this subsection (3). ANY REFERENCES TO THE BOARD REGARDING PAROLE REVOCATION HEARINGS OR REVOCATION OF PAROLE SHALL INCLUDE AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO THIS PARAGRAPH (c).

SECTION 5. 17-2-201 (4) (a), (7), (8), and (9) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

17-2-201. State board of parole. (4) The board has the following powers and duties:

(a) To meet as often as necessary every month to consider all applications for parole. The board may parole any person who is sentenced or committed to a correctional facility when such person has served his OR HER minimum sentence, less time allowed for good behavior, and there is a strong and reasonable probability that the person will not thereafter violate the law and that ~~his~~ release OF SUCH PERSON from institutional custody is compatible with the welfare of society. If THE BOARD REFUSES an application for parole, ~~is refused by the board,~~ the board shall reconsider the granting of parole to such person within one year thereafter, or earlier if the board so chooses, and shall continue to reconsider the granting of parole each year thereafter until such person is granted parole or until ~~he~~ SUCH PERSON is discharged pursuant to law; EXCEPT THAT, IF THE PERSON APPLYING FOR PAROLE WAS CONVICTED OF A CLASS 1 OR CLASS 2 CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309, C.R.S., ANY CLASS 3 SEXUAL OFFENSE DESCRIBED IN PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., A HABITUAL CRIMINAL OFFENSE AS DEFINED IN SECTION 16-13-101 (2.5), C.R.S., OR OF ANY OFFENSE SUBJECT TO THE REQUIREMENTS OF SECTION 16-13-203, C.R.S., THE BOARD NEED ONLY RECONSIDER GRANTING PAROLE TO SUCH PERSON ONCE EVERY THREE YEARS, UNTIL THE BOARD GRANTS SUCH PERSON PAROLE OR UNTIL SUCH PERSON IS DISCHARGED PURSUANT TO LAW.

(7) The board ~~or an administrative law judge designated pursuant to this section~~ has exclusive power to conduct all proceedings involving an application for revocation of parole.

(8) The board has the power, in the performance of official duties, to issue warrants and subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of its inquiry, ~~to appoint an administrative law judge pursuant to the provisions of section 24-30-1003, C.R.S.,~~ and to administer oaths and take the testimony of persons under oath. The issuance of a warrant tolls the expiration of a parolee's parole.

(9) (b) When a recommendation has been made before the board for revocation or modification of a parole, the final disposition of such application shall be reduced to writing. The parolee shall be advised by the board ~~or administrative law judge~~ of the final decision at the conclusion of the hearing or in no event more than five working days following said hearing. A copy of the final order of the board shall be delivered to the parolee within ten working days after the completion of the hearing.

SECTION 6. 17-22.5-303 (6), Colorado Revised Statutes, 1986 Repl. Vol., as

amended, is amended to read:

17-22.5-303. Parole. (6) Any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony committed on or after July 1, 1985, shall be eligible for parole after ~~he~~ SUCH PERSON has served the sentence imposed less any time authorized for good time earned pursuant to section 17-22.5-301 and for earned time pursuant to section 17-22.5-302. Upon an application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole and, if granted, the length of the period of parole, which may be for a period of up to five years. If an application for parole is refused by the state board of parole, the state board shall reconsider within one year thereafter the granting of parole to such person and shall continue the reconsideration each year thereafter until such person is granted parole or until ~~he~~ SUCH PERSON is discharged pursuant to law; EXCEPT THAT, IF THE PERSON APPLYING FOR PAROLE WAS CONVICTED OF A CLASS 1 OR CLASS 2 CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309, C.R.S., ANY CLASS 3 SEXUAL OFFENSE DESCRIBED IN PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., A HABITUAL CRIMINAL OFFENSE AS DEFINED IN SECTION 16-13-101 (2.5), C.R.S., OR OF ANY OFFENSE SUBJECT TO THE REQUIREMENTS OF SECTION 16-13-203, C.R.S., THE BOARD NEED ONLY RECONSIDER GRANTING PAROLE TO SUCH PERSON ONCE EVERY THREE YEARS, UNTIL THE BOARD GRANTS SUCH PERSON PAROLE OR UNTIL SUCH PERSON IS DISCHARGED PURSUANT TO LAW.

SECTION 7. 17-22.5-403 (5) and (7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

17-22.5-403. Parole eligibility. (5) For any offender who is incarcerated for an offense committed prior to July 1, 1993, upon application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole and, if granted, the length of the period of parole. The state board of parole may set the length of the period of parole for any time period up to the date of final discharge as determined in accordance with section 17-22.5-402. If an application for parole is refused by the state board of parole, the state board of parole shall reconsider within one year thereafter whether such inmate should be granted parole. The state board of parole shall continue such reconsideration each year thereafter until such inmate is granted parole or until such inmate is discharged pursuant to law; EXCEPT THAT, IF THE INMATE APPLYING FOR PAROLE WAS CONVICTED OF A CLASS 1 OR CLASS 2 CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309, C.R.S., ANY CLASS 3 SEXUAL OFFENSE DESCRIBED IN PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., A HABITUAL CRIMINAL OFFENSE AS DEFINED IN SECTION 16-13-101 (2.5), C.R.S., OR OF ANY OFFENSE SUBJECT TO THE REQUIREMENTS OF SECTION 16-13-203, C.R.S., THE BOARD NEED ONLY RECONSIDER GRANTING PAROLE TO SUCH INMATE ONCE EVERY THREE YEARS, UNTIL THE BOARD GRANTS SUCH INMATE PAROLE OR UNTIL SUCH INMATE IS DISCHARGED PURSUANT TO LAW.

(7) For any offender who is incarcerated for an offense committed on or after July 1, 1993, upon application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole. The state board of parole, if it determines that placing an offender on parole is appropriate, shall set the

length of the period of parole at the mandatory period of parole established in section 18-1-105 (1) (a) (V), C.R.S. If an application for parole is refused by the state board of parole, the state board of parole shall reconsider within one year thereafter whether such inmate should be granted parole. The state board of parole shall continue such reconsideration each year thereafter until such inmate is granted parole or until such inmate is discharged pursuant to law; EXCEPT THAT, IF THE INMATE APPLYING FOR PAROLE WAS CONVICTED OF A CLASS 1 OR CLASS 2 CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309, C.R.S., ANY CLASS 3 SEXUAL OFFENSE DESCRIBED IN PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., A HABITUAL CRIMINAL OFFENSE AS DEFINED IN SECTION 16-13-101 (2.5), C.R.S., OR OF ANY OFFENSE SUBJECT TO THE REQUIREMENTS OF SECTION 16-13-203, C.R.S., THE BOARD NEED ONLY RECONSIDER GRANTING PAROLE TO SUCH INMATE ONCE EVERY THREE YEARS, UNTIL THE BOARD GRANTS SUCH INMATE PAROLE OR UNTIL SUCH INMATE IS DISCHARGED PURSUANT TO LAW.

SECTION 8. 17-2-201 (9) (a) (I), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

17-2-201. State board of parole. (9) (a) (I) Whenever an ~~application for parole is made~~ INMATE INITIALLY APPLIES FOR PAROLE, the board shall conduct an interview with the inmate. At such interview at least one member of the board shall be present. Any final action on an application shall not be required to be made in the presence of the inmate or parolee, and any such action shall require the concurrence of at least two members of the board. When the two members do not concur, a third member shall review the record and, if deemed necessary, interview the applicant and cast the deciding vote. ANY SUBSEQUENT APPLICATION FOR PAROLE SHALL BE CONSIDERED BY THE BOARD IN ACCORDANCE WITH THE PROVISIONS OF SECTION 17-2-201 (4) (a).

SECTION 9. 17-10-102 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-10-102. Definitions. (3) "Inmate" means a person confined to a correctional facility OR PLACED ON PAROLE BY THE STATE BOARD OF PAROLE as the result of conviction of a crime, an offender sentenced to a home detention program, or a person placed on probation by the sentencing court.

SECTION 10. 17-22.5-106, Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

17-22.5-106. Right to attend parole hearings - right to notification of parole hearings. (1) ~~The victim of any crime or any person requested by the victim to appear on behalf of such victim or a relative of the victim, if the victim has died or is a minor or is incapacitated and unable to appear, has the right to attend all parole proceedings as specified in section 17-2-214.~~

~~(2) Any person has the right to be notified by the state board of parole of any parole proceeding concerning an offender as specified in section 17-2-215.~~

~~(3) The provisions of subsections (1) and (2) of this section shall apply to any parole proceeding held on or after July 1, 1985, irrespective of when the offender was sentenced or incarcerated.~~

SECTION 11. 17-2-214 (2), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

17-2-214. Right to attend parole hearings. (2) (a) In the case of any offenses against the person, as specified in article 3 of title 18, C.R.S., notice of any parole proceeding shall be sent by THE DEPARTMENT OF CORRECTIONS, WORKING IN COOPERATION WITH the board, to any victim of the crime or relative of the victim, if the victim has died, at least sixty days before the hearing. Such notice shall be sent to the last address in the possession of THE DEPARTMENT OF CORRECTIONS OR the board, and the victim of the crime or relative of the victim, if the victim has died, has the duty to keep THE DEPARTMENT OF CORRECTIONS OR the board informed of his or her most current address.

(b) In the case of any offenses other than offenses against the person as specified in article 3 of title 18, C.R.S., notice of any parole proceeding shall be sent by THE DEPARTMENT OF CORRECTIONS, WORKING IN COOPERATION WITH the board, only upon request TO THE DEPARTMENT OF CORRECTIONS OR THE BOARD, to any victim of the crime or relative of a victim, if the victim has died, who makes such a request at least sixty days before the hearing. Such notice shall be sent to the last address in the possession of THE DEPARTMENT OF CORRECTIONS OR the board, and the victim of the crime or relative of the victim, if the victim has died, has the duty to keep THE DEPARTMENT OF CORRECTIONS OR the board informed of his or her most current address.

SECTION 12. 17-2-215, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

17-2-215. Notification of parole proceeding. In addition to the notice required by section 17-2-214 (2), the ~~board~~ DEPARTMENT OF CORRECTIONS shall establish a system of notification under which any person may make a written request to THE DEPARTMENT OF CORRECTIONS OR the board for the notification of any parole proceeding concerning an offender, which notice shall be given by the ~~board~~ DEPARTMENT OF CORRECTIONS, WORKING IN COOPERATION WITH THE BOARD, at least thirty days before the hearing. Such notice shall be sent to the last-known address of the person making a written request for notification in the possession of THE DEPARTMENT OF CORRECTIONS OR the board, and the person making such written request for notification has the duty to keep THE DEPARTMENT OF CORRECTIONS OR the board informed of his or her current address.

SECTION 13. 17-2-103 (2) (a), (2) (b), (2) (d), (6) (b), (7), (8), (9), and (11), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

17-2-103. Arrest of parolee - revocation proceedings. (2) (a) A board hearing relating to the revocation of parole shall be held, at the discretion ~~of the administrative law judge or~~ of the board, in the courthouse ~~of~~ OR OTHER FACILITY THAT IS ACCEPTABLE TO THE BOARD IN the county in which the alleged violation occurred, ~~in~~ the county of the parolee's confinement, or ~~in~~ the county of the parolee's residence if not confined.

(b) In all hearings relating to revocation of parole, one member of the board ~~or an administrative law judge appointed by the chairperson of the board~~ shall hear the case

to a conclusion, unless the chairperson of the board assigns another board member ~~or administrative law judge~~ due to the illness or unavailability of the first board member. ~~or administrative law judge~~. The parolee may appeal to two members of the board. Such appeal shall be on the record.

(d) At all hearings before the ~~administrative law judge or the board~~ which are held outside of the institution to which the parolee is sentenced, it is the duty of the county sheriff to provide for the safety of all persons present. All counties shall make SUFFICIENT ROOM available TO CONDUCT PAROLE REVOCATION PROCEEDINGS in their respective courthouses ~~sufficient room to conduct parole revocation proceedings~~ OR OTHER FACILITIES THAT ARE ACCEPTABLE TO THE BOARD.

(6) (b) At any time after the filing of a complaint, the director of the division of adult services may cause the revocation proceedings to be dismissed by giving written notification of ~~his~~ THE decision for such dismissal to ~~the administrative law judge or the board, the parole officer, and the parolee~~. Upon receipt of such notification by the director, the parole officer shall order the release of the parolee pursuant to subsection (5) of this section, and parole shall be restored.

(7) If the parolee is in custody pursuant to subsection (4) of this section, or the parolee was arrested and then released pursuant to paragraph (c) of subsection (5) of this section, the hearing on revocation shall be held within a reasonable time, not to exceed thirty days after the parolee was arrested; except that the board ~~or the administrative law judge~~ may grant a delay when ~~the board or the administrative law judge~~ IT finds good cause to exist therefor. If the parolee was issued a summons, the final hearing shall be held within thirty working days from the date the summons was issued; except that the board ~~or the administrative law judge~~ may grant a delay when ~~the board or the administrative law judge~~ IT finds good cause to exist therefor. The board shall notify the sheriff, the parole officer, and the parolee of the date, time, and place of such hearing. It shall be the responsibility of the sheriff to assure the presence of the parolee being held in custody at the time and place of the hearing and to provide for the safety of all present.

(8) Prior to ~~the appearance of a parolee before the board, or the administrative law judge, he~~ A PAROLEE shall be advised in writing by the director of the division of adult services concerning the nature of the charges which are alleged to justify revocation of ~~his~~ parole and the substance of the evidence sustaining the charges; ~~he~~ THE PAROLEE shall be given a copy of the complaint unless he OR SHE has already received one; ~~he~~ THE PAROLEE shall be informed of the consequences which may follow in the event ~~his~~ parole is revoked; ~~he~~ THE PAROLEE shall then be advised that a full and final hearing will be held before the board ~~or an administrative law judge~~ at which hearing ~~he~~ THE PAROLEE will be required to plead guilty or not guilty to the charges contained in the complaint; and ~~he~~ THE PAROLEE shall be further advised that at the hearing before the board ~~or the administrative law judge~~ he OR SHE may be represented by an attorney and that he OR SHE may testify and present witnesses and documentary evidence in defense of the charges or in mitigation or explanation thereof. The hearing may be continued by the board ~~or the administrative law judge~~ upon a showing of good cause.

(9) (a) In the event of a plea of not guilty, the division of adult services, at the final hearing before the board, ~~or the administrative law judge~~, shall have the burden of

establishing by a preponderance of the evidence the violation of a condition of parole; except that the commission of a criminal offense must be established beyond a reasonable doubt, unless the parolee has been convicted thereof in a criminal proceeding. When it appears that the alleged violation of a condition or conditions of parole consists of an offense with which the parolee is charged in a criminal case then pending, testimony given before the board ~~or the administrative law judge~~ in a parole revocation proceeding shall not be admissible in such criminal proceeding before a court. When, in a parole revocation hearing, the alleged violation of a condition of parole is the parolee's failure to pay court-ordered compensation to appointed counsel, probation fees, court costs, restitution, or reparations, evidence of the failure to pay shall constitute prima facie evidence of a violation. The board ~~or the administrative law judge~~ shall revoke the parole if requested to do so by the parolee. Any evidence having probative value shall be admissible in all proceedings related to a parole violation complaint, regardless of its admissibility under the exclusionary rules of evidence, if the parolee is accorded a fair opportunity to rebut hearsay evidence. The parolee shall have the right to confront and to cross-examine adverse witnesses unless ~~the administrative law judge~~ or the board specifically finds good cause for not allowing confrontation of an informer.

(b) If the parolee has been convicted of a criminal offense while on parole, the board ~~or the administrative law judge~~ shall accept said conviction as conclusive proof of a violation and shall conduct a hearing as to the disposition of the parole only.

(11) If the board ~~or the administrative law judge~~ determines that a violation of a condition or conditions of parole has been committed, ~~such~~ THE board ~~or administrative law judge~~ shall, within five working days after the completion of the final hearing, either revoke the parole or continue it in effect, or modify the conditions of parole if circumstances then shown to exist require such modifications. If parole is revoked, the board ~~or the administrative law judge~~ shall serve upon the parolee a written statement as to the evidence relied on and the reasons for revoking parole. In the event the parole is revoked, the board ~~or the administrative law judge~~ shall cause the parolee to be transported to a place of confinement designated by the executive director. Said transportation shall be furnished by the sheriff of the county in which the hearing was held.

SECTION 14. 17-2-103.5 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-2-103.5. Revocation proceedings - parolee arrested for certain offenses.

(1) Notwithstanding any provision of section 17-2-103, a parole officer shall file a complaint seeking revocation of the parole of any parolee who is found in possession of a deadly weapon as defined in section 18-1-901, C.R.S., or any parolee arrested and charged with a felony, a crime of violence as defined in section 16-1-104 (8.5), C.R.S., a misdemeanor assault involving a deadly weapon or resulting in bodily injury to the victim, or sexual assault in the third degree as defined in section 18-3-404, C.R.S. A hearing relating to such revocation shall be held, unless ~~the administrative law judge~~ or 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 15. 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 3, 1994