

CHAPTER 423

CORRECTIONS

SENATE BILL 03-252

BY SENATOR(S) Kester, Anderson, Andrews, Cairns, Dyer, Entz, Evans, Gordon, Groff, Grossman, Isgar, Johnson S., Jones, May R., Owen, Tapia, Teck, Tupa, Hanna, Hillman, and Nichol;
 also REPRESENTATIVE(S) Stengel, Boyd, Carroll, Coleman, Crane, Frangas, Hefley, Hodge, Jahn, Larson, Madden, McFadyen, Merrifield, Paccione, Plant, Rippy, Spence, Spradley, Stafford, Weissmann, Williams S., and Young.

AN ACT

**CONCERNING THE PLACEMENT FOLLOWING PAROLE REVOCATION OF A PAROLEE ON PAROLE FOR A
 NONVIOLENT FELONY, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. 17-2-103 (9) (a) and (11) (b), Colorado Revised Statutes, are amended, and the said 17-2-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

17-2-103. Arrest of parolee - revocation proceedings. (9) (a) In the event of a plea of not guilty, the division of adult parole, at the final hearing before the board, 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 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 ~~shall~~ MAY 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 board specifically finds

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

good cause for not allowing confrontation of an informer.

(11) (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 AND IS NOT SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (III) OR SUBPARAGRAPH (IV) OF THIS PARAGRAPH (b), the board may:

(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 program pursuant to section 18-1.3-301 (3), C.R.S., 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; or

(D) Revoke parole for a period not to exceed one hundred eighty days and request the sheriff of the county in which the hearing is heard to transport the parolee to the facility described in section 17-1-206.5.

(II.5) THE BOARD MAY EXTEND A PERIOD OF PAROLE REVOCATION IMPOSED PURSUANT TO SUB-SUBPARAGRAPH (A), (B), (C), OR (D) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) BEYOND THE SPECIFIED MAXIMUM IF THE PAROLEE VIOLATES A CONDITION OF THE PAROLEE'S PLACEMENT PURSUANT TO THE NOTICE AND HEARING PROCEDURES IN THIS SECTION.

(III) IF THE BOARD DETERMINES THAT THE PAROLEE HAS VIOLATED ANY CONDITION OF PAROLE OTHER THAN COMMISSION OF A CRIME AND THE PAROLEE WAS ON PAROLE FOR AN OFFENSE THAT WAS A CLASS 5 OR CLASS 6 NONVIOLENT FELONY AS DEFINED IN SECTION 17-22.5-405 (5) (b), EXCEPT FOR MENACING AS DEFINED IN SECTION 18-3-206, C.R.S., OR ANY UNLAWFUL SEXUAL BEHAVIOR CONTAINED IN SECTION 16-22-102 (9), C.R.S., OR UNLESS THE PAROLEE WAS SUBJECT TO ARTICLE 6.5 OF TITLE 18, C.R.S., OR SECTION 18-6-801, C.R.S., THE BOARD MAY 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 THE FACILITY DESCRIBED IN SECTION 17-1-206.5 (3).

(IV) IF THE BOARD DETERMINES THAT THE PAROLEE HAS VIOLATED ANY CONDITION OF PAROLE OTHER THAN COMMISSION OF A NEW CRIME AND THE PAROLEE WAS NOT ON PAROLE FOR A CRIME OF VIOLENCE AS DEFINED IN SECTION 18-1.3-406 (2), C.R.S., THE BOARD MAY:

(A) 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 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 PROGRAM; OR

(C) 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 THE FACILITY DESCRIBED IN SECTION 17-1-206.5.

(V) THE BOARD MAY EXTEND A PERIOD OF PAROLE REVOCATION IMPOSED PURSUANT TO SUB-SUBPARAGRAPH (A), (B), OR (C) OF SUBPARAGRAPH (IV) OF THIS PARAGRAPH (b) BEYOND THE SPECIFIED MAXIMUM IF THE PAROLEE VIOLATES A CONDITION OF THE PAROLEE'S PLACEMENT PURSUANT TO THE NOTICE AND HEARING PROCEDURES IN THIS SECTION.

(13) (a) THE BOARD MAY REVOKE THE PAROLE IF REQUESTED TO DO SO BY THE PAROLEE. IF A PAROLEE REQUESTS TO HAVE HIS OR HER PAROLE REVOKED, THE PAROLEE SHALL PROVIDE THE BOARD A JUSTIFIABLE REASON FOR REQUESTING REVOCATION OF PAROLE.

(b) PRIOR TO REVOKING PAROLE UPON THE REQUEST OF A PAROLEE, THE BOARD MAY RECOMMEND OR IMPLEMENT APPROPRIATE INTERVENTIONS IN ORDER TO ASSIST IN THE PAROLEE WITH REINTEGRATION AND PREVENT A RETURN TO INCARCERATION.

(c) IF THE BOARD REVOKES THE PAROLE UPON THE REQUEST OF THE PAROLEE, THE BOARD SHALL PROCEED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (11) OF THIS SECTION.

(14) IF THE BOARD REVOKES PAROLE AND PLACES THE PAROLEE IN CUSTODY, COMPLETION OF THE TERM OF CUSTODY SHALL NOT CONSTITUTE DISCHARGE OF THE PAROLEE'S REMAINING PERIOD OF PAROLE UNLESS THE TERM OF CUSTODY IS EQUAL TO THE PAROLEE'S REMAINING PERIOD OF PAROLE.

SECTION 2. 17-22.5-303, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

17-22.5-303. Parole. (8) THE STATE BOARD OF PAROLE SHALL CONSIDER THE PAROLE OF A PERSON WHOSE PAROLE IS REVOKED EITHER FOR A TECHNICAL VIOLATION OR BASED ON A SELF-REVOCATION AT LEAST ONCE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE REVOCATION IF THE PERSON'S RELEASE DATE IS MORE THAN NINE MONTHS FROM THE DATE OF THE PERSON'S REVOCATION; EXCEPT THAT A PERSON WHOSE PAROLE IS REVOKED BASED ON A TECHNICAL VIOLATION THAT INVOLVED THE USE OF A WEAPON SHALL NOT BE CONSIDERED FOR PAROLE FOR ONE YEAR.

SECTION 3. 17-2-201, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

17-2-201. State board of parole. (14) THE BOARD SHALL CONSIDER THE PAROLE OF A PERSON WHOSE PAROLE IS REVOKED EITHER FOR A TECHNICAL VIOLATION OR BASED ON A SELF-REVOCATION AT LEAST ONCE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE REVOCATION IF THE PERSON'S RELEASE DATE IS MORE THAN NINE MONTHS FROM THE DATE OF THE PERSON'S REVOCATION; EXCEPT THAT A PERSON WHOSE PAROLE IS REVOKED BASED ON A TECHNICAL VIOLATION THAT INVOLVED THE USE OF A WEAPON SHALL NOT BE CONSIDERED FOR PAROLE FOR ONE YEAR.

SECTION 4. 17-22.5-403 (9), Colorado Revised Statutes, is amended to read:

17-22.5-403. Parole eligibility. (9) (a) ~~The provisions of this subsection (9) shall apply to any offender who is paroled for a class 2, 3, 4, or 5 felony or a class 6 felony that is the offender's second or subsequent felony offense committed on or after July 1, 1998, and is subsequently reincarcerated pursuant to subsection (8) of this section. Following reincarceration, the offender may apply for parole and 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 to grant parole. If the state board of parole determines that placing the offender on parole is appropriate, it shall set the length of the period of parole at any time remaining on the offender's mandatory period of parole established in section 18-1.3-401 (1) (a) (V), C.R.S.; except that, if the offender's remaining mandatory period of parole is less than twelve months, the state board of parole shall release the offender to twelve months of supervision and the offender shall not be required to serve the remaining mandatory period of parole. 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 the offender should be granted parole. The state board of parole shall continue such reconsideration each year thereafter, except as otherwise provided for the crimes specified in subsection (7) of this section, until the board grants the offender parole or releases the offender on supervision or until the offender completes the mandatory period of parole in incarceration. If the offender completes the mandatory period of parole in incarceration, he or she shall be released to a twelve-month period of supervision.~~

~~(b) (i) If the state board of parole grants parole to an offender pursuant to paragraph (a) of this subsection (9) for the period remaining on the offender's mandatory period of parole, the provisions of subsection (8) of this section shall apply while the offender is serving the remainder of the mandatory period of parole; except that, if the state board of parole subsequently revokes the offender's parole as provided in subsection (8) of this section and the offender's remaining period of mandatory parole is less than six months, the state board shall impose intermediate sanctions as provided in paragraph (f) of this subsection (9) or return the offender to a place of confinement for a period of up to twelve months and the offender shall not be required to serve the remaining mandatory period of parole. Any person reincarcerated for a period of up to twelve months pursuant to this paragraph (b) shall be eligible for subsequent release for a twelve-month period of supervision at any time during such reincarceration or upon completion of such incarceration.~~

~~(ii) If the offender completes the mandatory period of parole or the state board of parole discharges the offender from mandatory parole pursuant to subsection (8) of this section, the offender's sentence shall be deemed fully discharged.~~

~~(c) For any offender released to a twelve-month period of supervision pursuant to this subsection (9), the division of adult parole shall provide supervision and assistance in securing employment, housing, and such other services as may affect the offender's successful reintegration into the community while recognizing the need for public safety. The state board of parole, pursuant to section 17-22.5-404, shall establish the conditions for the offender's twelve-month supervision prior to the offender's release from incarceration. Upon a determination in a revocation proceeding that the conditions of supervision have been violated, the state board of parole shall continue the supervision in effect, modify the conditions of supervision if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the supervision and impose intermediate sanctions as provided in paragraph (f) of this subsection (9) or order the return of the offender to a place of confinement designated by the executive director for any period of time up to twelve months. Any offender who has been reincarcerated due to a supervision revocation pursuant to this paragraph (c) shall be eligible for subsequent release for a twelve-month period of supervision at any time during such reincarceration.~~

~~(d) The state board of parole may discharge an offender released on supervision under this subsection (9) at any time during the term of supervision upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from supervision. In making any such determination, the state board of parole shall make written findings as to why the offender is no longer in need of supervision. Upon completion of twelve consecutive months of supervision or discharge from supervision as provided in this paragraph (d), the offender's sentence shall be deemed fully discharged.~~

~~(e) Notwithstanding any provisions of this subsection (9) to the contrary, the total amount of time spent by an offender in incarceration as a result of revocation of supervision shall not exceed the length of the offender's original sentence to incarceration plus the length of the offender's original sentence to mandatory parole plus twelve months. In calculating the time spent in incarceration by an offender for purposes of this paragraph (e), the offender shall receive credit for time spent in incarceration as a result of the original sentence to incarceration, any time spent in incarceration as a result of revocation of mandatory parole, and any time spent in incarceration as a result of revocation of supervision.~~

~~(f) If revocation of mandatory parole for less than twelve months or revocation of supervision is based on a technical violation of the conditions of parole or supervision, the state board of parole shall impose intermediate sanctions where facilities appropriate for such intermediate sanctions are available. For purposes of this paragraph (f), "intermediate sanctions" may include, but are not limited to, a community corrections program, as defined in section 17-27-102 (3), a home detention program, as described in article 27.8 of this title, or a specialized restitution and community service program, as described in article 27.9 of this title. THE STATE BOARD OF PAROLE SHALL CONSIDER THE PAROLE OF A PERSON WHOSE PAROLE IS REVOKED EITHER FOR A TECHNICAL VIOLATION OR BASED ON A SELF-REVOCATION AT LEAST ONCE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE REVOCATION IF THE PERSON'S RELEASE DATE IS MORE THAN NINE MONTHS FROM THE DATE OF THE PERSON'S REVOCATION; EXCEPT THAT A PERSON WHOSE PAROLE IS REVOKED BASED ON A TECHNICAL VIOLATION THAT INVOLVED THE USE OF A WEAPON SHALL NOT BE~~

CONSIDERED FOR PAROLE FOR ONE YEAR.

SECTION 5. 18-1.3-401 (1) (a) (VI), Colorado Revised Statutes, is amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (1) (a) (VI) Any person sentenced for a class 2, 3, 4, or 5 felony, or a class 6 felony that is the offender's second or subsequent felony offense, committed on or after July 1, 1998, regardless of the length of the person's sentence to incarceration and the mandatory period of parole, shall not be deemed to have fully discharged his or her sentence until said person has either completed or been discharged by the state board of parole from the mandatory period of parole imposed pursuant to subparagraph (V) of this paragraph (a). ~~or completed or been discharged by the state board of parole from the twelve-month period of supervision imposed pursuant to section 17-22.5-403 (9), C.R.S., whichever occurs first. Prior to fully discharging his or her sentence, upon revocation of parole, a person may be returned to incarceration for the periods specified in section 17-22.5-403 (9), C.R.S.~~

SECTION 6. 17-1-206.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

17-1-206.5. Preparole release and revocation facility - community return to custody facility. (3) IN ADDITION TO THE PREPAROLE RELEASE AND REVOCATION FACILITY DESCRIBED IN SUBSECTIONS (1) AND (2) OF THIS SECTION, THE DEPARTMENT HAS THE AUTHORITY TO OPERATE COMMUNITY RETURN-TO-CUSTODY FACILITIES AND PROVIDE OTHER SUPPORT AND MONITORING SERVICES AS A REVOCATION FACILITY FOR THE PLACEMENT OF NONVIOLENT PAROLEES WHOSE PAROLE IS REVOKED PURSUANT TO SECTION 17-2-103 (11) (b) (III) UNDER THE FOLLOWING CONDITIONS:

(a) THE FACILITIES SHALL BE LIMITED TO THE PLACEMENT OF NONVIOLENT PAROLEES WHOSE PAROLE IS REVOKED PURSUANT TO SECTION 17-2-103 (11) (b) (III);

(b) THE SCOPE OF THE FACILITIES' PROGRAMMING SHALL BE LIMITED TO SERVICES AND MONITORING THAT ADDRESS THE FAILURE OF A NONVIOLENT PAROLEE WHOSE PAROLE IS REVOKED PURSUANT TO SECTION 17-2-103 (11) (b) (III) AND WILL ALLOW FOR LIMITED PERFORMANCE-BASED ACCESS TO THE COMMUNITY. A REQUEST FOR PROPOSALS FOR SUCH SERVICES AND MONITORING SHALL BE ISSUED BY THE DEPARTMENT ON OR BEFORE AUGUST 31, 2003, AND THE CONTRACTS AWARDED BY NOVEMBER, 2003.

(c) THE DEPARTMENT MAY ASSESS AND COLLECT FEES FROM PAROLEES PLACED IN THE FACILITY PURSUANT TO SECTION 17-2-103 (11) (b) (III).

SECTION 7. Appropriation - adjustments to the 2003 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 payments to community corrections programs, for the fiscal year beginning July 1, 2003, the sum of seven hundred fifty-nine thousand nine hundred sixty dollars (\$759,960), or so much thereof as may be necessary, for the implementation of this act.

(2) 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 community services, community supervision subprogram, for personal services, for the fiscal year beginning July 1, 2003, the sum of thirty-eight thousand one hundred fifty-four dollars (\$38,154) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2003, shall be adjusted as follows:

(a) The general fund appropriation to the department of corrections, management, external capacity subprogram, payments to house state prisoners, for local jails, is decreased by seven hundred forty-eight thousand three hundred twenty-six dollars (\$748,326).

(b) The general fund appropriation to the department of corrections, management, external capacity subprogram, payments to house state prisoners, for private prisons, is decreased by eight hundred ten thousand seven hundred eighty-five dollars (\$810,785).

SECTION 8. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to violations of parole committed on or after said date.

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.

Became Law: June 7, 2003