

CHAPTER 228

CORRECTIONS

HOUSE BILL 06-1315

BY REPRESENTATIVE(S) Hefley, Borodkin, Carroll T., Coleman, Jahn, Madden, McFadyen, McGihon, Pommer, Stafford, and Welker;
also SENATOR(S) Gordon.

AN ACT

CONCERNING JUVENILES WHO ARE CONVICTED AS ADULTS OF CLASS 1 FELONIES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) Under the existing sentencing laws, a juvenile who is convicted as an adult of a class 1 felony is automatically sentenced to life imprisonment without the possibility of parole, which is the same sentence that applies to an adult who is convicted of a class 1 felony and who does not receive a death sentence;

(b) Persons younger than eighteen years of age may commit crimes that are sufficiently serious, violent, or heinous to warrant punishment in the adult correctional system, and it is in the interest of public safety to ensure that a juvenile who commits an adult-level crime receives an appropriately severe degree of punishment in correlation to the level of crime committed;

(c) Because of their level of physical and psychological development, juveniles who are convicted as adults may, with appropriate counseling, treatment services, and education, be rehabilitated to a greater extent than may be possible for adults whose physical and psychological development is more complete when they commit the crimes that result in incarceration;

(d) A sentence to lifetime imprisonment without the possibility of parole for a juvenile who is convicted as an adult of a class 1 felony condemns the juvenile to a lifetime of incarceration without hope and, in most cases, without education 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.

rehabilitation services, and results in the irredeemable loss of a person to society.

(2) The general assembly finds, therefore, that it is not in the best interests of the state to condemn juveniles who commit class 1 felony crimes to a lifetime of incarceration without the possibility of parole. Further, the general assembly finds that it is in the interest of justice to recognize the rehabilitation potential of juveniles who are convicted as adults of class 1 felonies by providing that they are eligible for parole after serving forty calendar years of their sentences.

SECTION 2. 18-1.3-401 (4), Colorado Revised Statutes, is amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (4) (a) A person who has been convicted of a class 1 felony shall be punished by life imprisonment in the department of corrections unless a proceeding held to determine sentence according to the procedure set forth in section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, results in a verdict that requires imposition of the death penalty, in which event such person shall be sentenced to death. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, and before July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole.

(b) (I) NOTWITHSTANDING THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (V) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4), AS TO A PERSON WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., THE DISTRICT COURT JUDGE SHALL SENTENCE THE PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING A PERIOD OF FORTY CALENDAR YEARS. REGARDLESS OF WHETHER THE STATE BOARD OF PAROLE RELEASES THE PERSON ON PAROLE, THE PERSON SHALL REMAIN IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF THE PERSON'S LIFE AND SHALL NOT BE DISCHARGED.

(II) THE PROVISIONS OF THIS PARAGRAPH (b) SHALL APPLY TO PERSONS SENTENCED FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 2006.

SECTION 3. 17-22.5-104 (2) (d), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

17-22.5-104. Parole - regulations. (2) (d) (IV) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), AN INMATE IMPRISONED UNDER A LIFE SENTENCE FOR A CLASS 1 FELONY COMMITTED ON OR AFTER JULY 1, 2006, WHO WAS CONVICTED AS AN ADULT FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., MAY BE ELIGIBLE FOR PAROLE AFTER THE INMATE HAS SERVED AT LEAST FORTY CALENDAR YEARS. AN APPLICATION FOR PAROLE SHALL

NOT BE MADE OR CONSIDERED DURING THE PERIOD OF FORTY CALENDAR YEARS.

SECTION 4. 17-22.5-402 (3), Colorado Revised Statutes, is amended to read:

17-22.5-402. Discharge from custody. (3) This part 4 shall not apply to any offender to whom ~~section 17-22.5-104 (2)~~ SECTION 17-22.5-104 (2) (a), (2) (b), (2) (c), (2) (d) (I), (2) (d) (II), OR (2) (d) (III) applies.

SECTION 5. Part 4 of article 22.5 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-22.5-403.7. Parole eligibility - class 1 felony - juvenile offender convicted as adult. (1) AS USED IN THIS SECTION, "INMATE" MEANS A PERSON:

(a) (I) WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S.; OR

(II) WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S.; AND

(b) WHO IS SENTENCED TO LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING A PERIOD OF FORTY CALENDAR YEARS AS PROVIDED IN SECTION 18-1.3-401 (4) (b), C.R.S.

(2) THE GOVERNOR MAY GRANT PAROLE TO AN INMATE PRIOR TO THE INMATE'S PAROLE ELIGIBILITY DATE IF, IN THE GOVERNOR'S OPINION, EXTRAORDINARY MITIGATING CIRCUMSTANCES EXIST AND THE INMATE'S RELEASE FROM INSTITUTIONAL CUSTODY IS COMPATIBLE WITH THE SAFETY AND WELFARE OF SOCIETY.

(3) UPON APPLICATION FOR PAROLE BY AN INMATE, 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 INMATE ON PAROLE IS APPROPRIATE, THE INMATE SHALL REMAIN IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF HIS OR HER LIFE. IF AN APPLICATION FOR PAROLE IS REFUSED BY THE STATE BOARD OF PAROLE, THE STATE BOARD OF PAROLE SHALL RECONSIDER WITHIN FIVE YEARS THEREAFTER WHETHER THE INMATE SHOULD BE GRANTED PAROLE. THE STATE BOARD OF PAROLE SHALL CONTINUE SUCH RECONSIDERATION AT LEAST ONCE EVERY FIVE YEARS THEREAFTER UNTIL THE INMATE IS GRANTED PAROLE.

(4) (a) IF THE STATE BOARD OF PAROLE GRANTS PAROLE PURSUANT TO SUBSECTION (3) 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 THE INMATE INTO THE COMMUNITY WHILE RECOGNIZING THE NEED FOR PUBLIC SAFETY.

(b) THE CONDITIONS FOR PAROLE FOR THE INMATE UNDER THIS SUBSECTION (4)

SHALL BE ESTABLISHED PURSUANT TO SECTION 17-22.5-404 BY THE STATE BOARD OF PAROLE PRIOR TO THE INMATE'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:

(I) CONTINUE THE PAROLE IN EFFECT;

(II) MODIFY THE CONDITIONS OF PAROLE IF CIRCUMSTANCES THEN SHOWN TO EXIST REQUIRE SUCH MODIFICATIONS AND SET FORTH THOSE CIRCUMSTANCES IN WRITING; OR

(III) REVOKE THE PAROLE AND ORDER THE RETURN OF THE INMATE TO A PLACE OF CONFINEMENT DESIGNATED BY THE EXECUTIVE DIRECTOR FOR ANY PERIOD OF TIME REMAINING ON THE INMATE'S SENTENCE TO INCARCERATION.

(c) AN INMATE WHO HAS BEEN REINCARCERATED DUE TO A PAROLE REVOCATION PURSUANT TO THIS SUBSECTION (4) SHALL BE ELIGIBLE FOR PAROLE AT ANY TIME DURING THE REINCARCERATION.

(5) (a) IF AN INMATE IS SUBSEQUENTLY REINCARCERATED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION, FOLLOWING REINCARCERATION, THE INMATE 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 REFUSES THE APPLICATION FOR PAROLE, THE STATE BOARD OF PAROLE SHALL RECONSIDER WITHIN ONE YEAR THEREAFTER WHETHER THE INMATE SHOULD BE GRANTED PAROLE. THE STATE BOARD OF PAROLE SHALL CONTINUE SUCH RECONSIDERATION EACH YEAR THEREAFTER, UNTIL THE BOARD GRANTS THE INMATE PAROLE.

(b) IF THE STATE BOARD OF PAROLE GRANTS PAROLE TO AN INMATE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5), THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION SHALL APPLY WHILE THE INMATE IS SERVING THE REMAINDER OF THE PERIOD OF PAROLE.

SECTION 6. 17-22.5-404 (1), Colorado Revised Statutes, is amended to read:

17-22.5-404. Parole guidelines. (1) As to any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony who is eligible for parole pursuant to section 17-22.5-403, OR A PERSON WHO IS ELIGIBLE FOR PAROLE PURSUANT TO SECTION 17-22.5-403.7, the board may consider all applications for parole, as well as all persons to be supervised under any interstate compact, and may parole any person who is sentenced or committed to a correctional facility when the board determines, by using the guidelines established by this section, that there is a strong and reasonable probability that the person will not thereafter violate the law and that ~~his~~ THE PERSON'S release from institutional custody is compatible with the welfare of society. The board shall first consider the risk of violence to the public in every release decision it makes.

SECTION 7. 17-2-201 (5) (a), Colorado Revised Statutes, is amended to read:

17-2-201. State board of parole. (5) (a) As to any person sentenced for conviction of a felony committed prior to July 1, 1979, or of a misdemeanor and as to any person sentenced for conviction of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., committed prior to July 1, 1996, or a class 1 felony and as to any person sentenced as a habitual criminal pursuant to section 18-1.3-801, C.R.S., for an offense committed prior to July 1, 2003, the board has the sole power to grant or refuse to grant parole and to fix the condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court or five years, whichever is less; EXCEPT THAT THE FIVE-YEAR LIMITATION SHALL NOT APPLY TO PAROLE GRANTED PURSUANT TO SECTION 17-22.5-403.7 FOR A CLASS 1 FELONY.

SECTION 8. 17-1-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

17-1-103. Duties of the executive director. (4) FOR AN INMATE WHO WAS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., THE EXECUTIVE DIRECTOR SHALL ENSURE THAT THE INMATE HAS THE OPPORTUNITY TO PARTICIPATE IN TREATMENT, PROGRAMS, AND SERVICES THAT IS EQUAL TO THE OPPORTUNITIES GRANTED TO OTHER INMATES WHO WILL BE ELIGIBLE FOR PAROLE OR DISCHARGE.

SECTION 9. Appropriation. 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 allocation to the information systems subprogram, for computer programming, for the fiscal year beginning July 1, 2006, the sum of four thousand four hundred eighty dollars (\$4,480), or so much thereof as may be necessary, for the implementation of this act.

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 25, 2006