

CHAPTER 187

CORRECTIONS

SENATE BILL 08-172

BY SENATOR(S) Ward, and Kester;
also REPRESENTATIVE(S) Stafford, Gardner B., Garza-Hicks, Labuda, and Todd.

AN ACT

CONCERNING CONFORMING THE USE OF THE TERM COMMUNITY PAROLE OFFICER.

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

SECTION 1. 16-11.5-106, Colorado Revised Statutes, is amended to read:

16-11.5-106. Samples for testing of offenders - collected by probation or community parole officers or contract providers of testing services. Any type of sample for the chemical testing of any offender for the presence of controlled substances or alcohol pursuant to this article may be collected from ~~such~~ THE offender by his OR HER probation officer, COMMUNITY parole officer, case manager within the department of corrections, or any contract provider of testing services.

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

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

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 COMMUNITY 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.

SECTION 3. The introductory portion to 17-2-102 (8.5) (b), Colorado Revised Statutes, is amended to read:

17-2-102. Division of adult parole - general powers, duties, and functions - definition. (8.5) (b) If any parolee described in paragraph (a) of this subsection (8.5) is subjected to a second or subsequent test for the illegal or unauthorized use of a controlled substance and the result of ~~such~~ THE test is positive, the COMMUNITY parole officer shall take one or more of the following actions:

SECTION 4. The introductory portion to 17-2-103 (1), 17-2-103 (3) and (4) (a), the introductory portion to 17-2-103 (5), and 17-2-103 (6), (7), and (12), Colorado Revised Statutes, are amended to read:

17-2-103. Arrest of parolee - revocation proceedings. (1) The director of the division of adult parole or any COMMUNITY parole officer may arrest any parolee when:

(3) (a) Whenever a COMMUNITY parole officer has reasonable grounds to believe that a condition of parole has been violated by any parolee, he OR SHE may issue a summons requiring the parolee to appear before the board at a specified time and place to answer charges of violation of one or more conditions of parole. ~~Such~~ THE summons shall be accompanied by a copy of the complaint filed before the board seeking revocation of parole. Willful failure of the parolee to appear before the board as required by ~~such~~ THE summons is a violation of a condition of parole.

(b) A COMMUNITY parole officer may request that the board issue a warrant for the arrest of a parolee for violation of the conditions of his OR HER parole by filing a complaint with the board showing probable cause to believe that the parolee has violated a condition of his OR HER parole. ~~Such~~ THE warrant may be executed by a peace officer, as described in section 16-2.5-101, C.R.S.

(4) (a) If, rather than issuing a summons, a COMMUNITY parole officer makes an arrest of a parolee, with or without a warrant, or the parolee is otherwise arrested, the parolee shall be held in a county jail or a preparole facility or program pending action by the COMMUNITY parole officer pursuant to subsection (5) of this section.

(5) Not later than ten working days after the arrest of any parolee, as provided in subsection (4) of this section, the COMMUNITY parole officer shall complete his OR HER investigation and either:

(6) (a) Any complaint filed by the COMMUNITY parole officer in which revocation

of parole is sought shall contain the name of the parolee and his OR HER department of corrections number, identify the nature of the charges ~~which~~ THAT are alleged to justify revocation of his OR HER parole, the substance of the evidence sustaining the charges, and the condition of parole alleged to have been violated, including the date and approximate location thereof, together with the signature of the COMMUNITY parole officer. A copy thereof shall be given to the parolee a reasonable length of time before any parole board hearing.

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

(c) The filing of a complaint by the COMMUNITY parole officer tolls the expiration of the parolee's parole.

(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 may grant a delay when 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 may grant a delay when it finds good cause to exist therefor. The board shall notify the sheriff, the COMMUNITY parole officer, and the parolee of the date, time, and place of ~~such~~ THE 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.

(12) If the COMMUNITY parole officer is informed by any law enforcement agency that a parolee has been arrested for a criminal offense and is being detained in the county jail, the COMMUNITY parole officer shall file a complaint alleging the criminal offense as a violation of parole. The COMMUNITY parole officer shall advise the board of any pending criminal proceeding and shall request that a parole revocation proceeding be deferred pending a disposition of the criminal charge.

SECTION 5. The introductory portion to 17-2-103.5 (1) (a) and 17-2-103.5 (1) (b), Colorado Revised Statutes, are 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 COMMUNITY parole officer shall file a complaint seeking revocation of the parole of any parolee who:

(b) A COMMUNITY parole officer shall present to the district attorney of the proper judicial district for the purpose of prosecution all the facts ascertained by ~~such~~ THE COMMUNITY PAROLE officer and all other papers, documents, or evidence pertaining thereto that the COMMUNITY 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.

SECTION 6. 17-2-201 (5) (f) (I) (B), (5) (f) (I) (C), (5) (f) (I) (D), (5) (f) (I) (F), (5) (f) (I) (G), (5.5) (c) (I), (5.5) (c) (II), (5.5) (c) (III), and (5.5) (d) (II) (A), Colorado Revised Statutes, are amended to read:

17-2-201. State board of parole. (5) (f) (I) As a condition of every parole, the parolee shall sign a written agreement that contains such parole conditions as deemed appropriate by the board, which conditions shall include but need not be limited to the following:

(B) That the parolee shall establish a residence of record and shall not change it without the knowledge and consent of his OR HER COMMUNITY parole officer and that the parolee shall not leave the area or the state without the permission of his OR HER COMMUNITY parole officer;

(C) That the parolee shall obey all state and federal laws and municipal ordinances, conduct himself OR HERSELF as a law-abiding citizen, and obey and cooperate with his OR HER COMMUNITY parole officer;

(D) That the parolee shall make reports as directed by his OR HER COMMUNITY parole officer, permit residential visits by the COMMUNITY parole officer, submit to urinalysis or other drug tests, and allow the COMMUNITY parole officer to make searches of his OR HER person, residence, or vehicle;

(F) That the parolee shall not associate with any other person on parole, on probation, or with a criminal record or with any inmate of a correctional facility without the permission of his OR HER COMMUNITY parole officer;

(G) That the parolee shall seek and obtain employment or shall participate in a full-time educational or vocational program while on parole, unless such requirement is waived by his OR HER COMMUNITY parole officer;

(5.5) (c) (I) The COMMUNITY parole officer shall be responsible for acquiring at random, but within the time requirements of paragraph (a) of this subsection (5.5), a urine specimen from a parolee. The department of public health and environment shall designate the container to be used for the collection of ~~such~~ THE specimen. A labeling system shall be established by the department to ensure compliance with evidentiary rules and requirements.

(II) The department of public health and environment shall establish by rule ~~and regulation~~ the fee to be charged to the parolee pursuant to paragraph (a) of this subsection (5.5) for chemical testing of the parolee's urine. The COMMUNITY parole officer shall collect ~~such~~ THE fee from the parolee at the same time the COMMUNITY parole officer acquires a urine specimen pursuant to subparagraph (I) of this paragraph (c).

(III) The COMMUNITY parole officer shall submit the urine specimen to the department of public health and environment or to a private laboratory under contract with the board pursuant to subparagraph (IV) of this paragraph (c) for testing. The department of public health and environment or the contracting laboratory shall return the results of ~~such~~ THE tests to the COMMUNITY parole officer within five working days of receipt of the specimen. The results of the test shall be

made available by the COMMUNITY parole officer to the parolee or the parolee's attorney on request.

(d) (II) (A) Any subsequent chemical testing reflecting the presence of alcohol may be grounds for arrest of the parolee and the initiation of revocation proceedings at the discretion of the COMMUNITY parole officer pursuant to section 17-2-103.

SECTION 7. 17-2-210, Colorado Revised Statutes, is amended to read:

17-2-210. Duties of board. The board, acting through its chairperson or an assistant or a COMMUNITY parole officer, shall promptly commence civil proceedings pursuant to section 17-2-209 and shall notify the office of the attorney general, who shall then represent the board in the hearings.

SECTION 8. 17-22.5-404 (2) (a) (VIII) and (2) (a) (IX), Colorado Revised Statutes, are amended to read:

17-22.5-404. Parole guidelines. (2) (a) In considering offenders for parole, the board shall consider, but need not be limited to, the following factors:

(VIII) The offender's demonstration of good faith efforts to remain within prescribed geographical boundaries and notify the court or the COMMUNITY parole officer of any change in the offender's address or employment;

(IX) The offender's demonstration of good faith efforts to report as directed to the COMMUNITY parole officer;

SECTION 9. The introductory portion to 17-22.5-405 (1), Colorado Revised Statutes, is amended to read:

17-22.5-405. Earned time. (1) Earned time, not to exceed ten days for each month of incarceration or parole, may be deducted from the inmate's sentence upon a demonstration to the department by the inmate, which is certified by the inmate's case manager or COMMUNITY parole officer, that he OR SHE has made consistent progress in the following categories as required by the department of corrections:

SECTION 10. 17-27-102 (3.5), Colorado Revised Statutes, is amended to read:

17-27-102. Definitions. As used in this article:

(3.5) "Community corrections program agent" or "agent" means a ~~person~~ COMMUNITY PAROLE OFFICER who is an employee of the department and is a peace officer, as described in sections 16-2.5-101 and 16-2.5-136, C.R.S., with the powers and duties described in section 17-27-105.5.

SECTION 11. 17-27.1-101 (2) (f), (2) (h), and (8), Colorado Revised Statutes, are amended to read:

17-27.1-101. Nongovernmental facilities for offenders - registration - notifications - penalties. (2) As used in this section, unless the context otherwise requires:

(f) "Supervised person" means a person eighteen years of age or older who is adjudicated for or convicted of or has agreed to a deferred judgment, deferred sentence, or deferred prosecution for a crime in another state but is or will be under the supervision of a probation officer or COMMUNITY parole officer in Colorado pursuant to the interstate compact.

(h) "Unsupervised person" means a person eighteen years of age or older who, although not required to be under the jurisdiction of a probation officer or COMMUNITY parole officer in Colorado, is adjudicated for or convicted of or has agreed to a deferred judgment, deferred sentence, or deferred prosecution for a crime outside of the state of Colorado and is directed to attend a private treatment program in Colorado by any court, department of corrections, state board of parole, probation department, parole division, adult diversion program, or any other similar entity or program in a state other than Colorado.

(8) (a) The private treatment program shall immediately notify the chief law enforcement official where the program is located and, if supervised, the person's probation or COMMUNITY parole officer whenever any person directed to appear in a facility operated by the program fails to appear or is absent without authority.

(b) The private treatment program shall notify the chief law enforcement official where the program is located and, if supervised, the person's probation or COMMUNITY parole officer at least seven days prior to the release of any person placed in such program.

SECTION 12. 17-27.5-103, Colorado Revised Statutes, is amended to read:

17-27.5-103. Confinement in county jail. Where the community corrections administrator of an intensive supervision program has cause to believe that an offender placed in the program has violated any rule or condition of his OR HER placement or cannot be safely supervised in that program, the administrator shall certify to the supervising COMMUNITY parole officer the facts ~~which~~ THAT are the basis for his OR HER belief and execute a transfer order to the sheriff of the county in which the program is being operated, who shall confine the offender in the county jail pending a determination by the supervising COMMUNITY parole officer as to whether or not the offender shall remain in the program.

SECTION 13. 18-1.3-1005 (2), Colorado Revised Statutes, is amended to read:

18-1.3-1005. Parole - intensive supervision program. (2) The department shall require that sex offenders and any other persons in the intensive supervision parole program established pursuant to this section receive the highest level of supervision that is provided to parolees. The intensive supervision parole program may include, but is not limited to, severely restricted activities, daily contact between the sex offender or other person and the COMMUNITY parole officer, monitored curfew, home visitation, employment visitation and monitoring, drug and alcohol screening, treatment referrals and monitoring, including physiological monitoring, and payment of restitution. In addition, the intensive supervision parole program shall be designed to minimize the risk to the public to the greatest extent possible.

SECTION 14. 18-1.3-1006 (2), (3), and (4), Colorado Revised Statutes, are amended to read:

18-1.3-1006. Release from incarceration - parole - conditions. (2) (a) As a condition of release on parole pursuant to this section, a sex offender shall participate in the intensive supervision parole program created by the department pursuant to section 18-1.3-1005. Participation in the intensive supervision parole program shall continue until the sex offender can demonstrate that he or she has successfully progressed in treatment and would not pose an undue threat to the community if paroled to a lower level of supervision, at which time the sex offender's COMMUNITY parole officer may petition the parole board for a reduction in the sex offender's level of supervision. The sex offender's COMMUNITY parole officer and treatment provider shall make recommendations to the parole board concerning whether the sex offender has met the requirements specified in this subsection (2) such that the level of parole supervision should be reduced. The recommendations shall be based on the criteria established by the management board pursuant to section 18-1.3-1009.

(b) Following reduction in a sex offender's level of parole supervision pursuant to paragraph (a) of this subsection (2), the sex offender's COMMUNITY parole officer may return the sex offender to the intensive supervision parole program if the COMMUNITY parole officer determines that an increased level of supervision is necessary to protect the public safety. The COMMUNITY parole officer shall notify the parole board as soon as possible after returning the sex offender to the intensive supervision parole program. To subsequently reduce the sex offender's level of supervision, the COMMUNITY parole officer may petition the parole board as provided in paragraph (a) of this subsection (2).

(3) (a) On completion of twenty years on parole for any sex offender convicted of a class 2 or 3 felony or on completion of ten years of parole for any sex offender convicted of a class 4 felony, the parole board shall schedule a hearing to determine whether the sex offender may be discharged from parole. In determining whether to discharge the sex offender from parole, the parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if allowed to live in the community without treatment or supervision. The sex offender's COMMUNITY parole officer and treatment provider shall make recommendations to the parole board concerning whether the sex offender has met the requirements specified in this subsection (3) such that the sex offender should be discharged from parole. The recommendations shall be based on the criteria established by the management board pursuant to section 18-1.3-1009.

(b) If the parole board does not discharge the sex offender from parole pursuant to paragraph (a) of this subsection (3), the parole board shall review such denial at least once every three years until it determines that the sex offender meets the criteria for discharge specified in paragraph (a) of this subsection (3). At each review, the sex offender's COMMUNITY parole officer and treatment provider shall make recommendations, based on the criteria established by the management board pursuant to section 18-1.3-1009, concerning whether the sex offender should be discharged.

(4) In determining whether to release a sex offender on parole, reduce the level of supervision, or discharge a sex offender from parole pursuant to this section, the parole board shall consider the recommendations of the department and the sex offender's COMMUNITY parole officer and treatment provider. If the parole board chooses not to follow the recommendations made, it shall make findings on the record in support of its decision.

SECTION 15. 18-1.3-1010 (1), Colorado Revised Statutes, is amended to read:

18-1.3-1010. Arrest of parolee or probationer - revocation. (1) (a) A sex offender paroled pursuant to section 18-1.3-1006 is subject to arrest and revocation of parole as provided in sections 17-2-103 and 17-2-103.5, C.R.S. At any revocation proceeding, the sex offender's COMMUNITY parole officer and the treatment provider shall submit written recommendations concerning the level of treatment and monitoring that should be imposed as a condition of parole if parole is not revoked or whether the sex offender poses a sufficient threat to the community that parole should be revoked. The recommendations shall be based on the criteria established by the management board pursuant to section 18-1.3-1009. If the parole board revokes the sex offender's parole, the sex offender shall continue to be subject to the provisions of this part 10.

(b) At a revocation hearing held pursuant to this subsection (1), the parole board shall consider the recommendations of the COMMUNITY parole officer and the treatment provider, in addition to evidence concerning any of the grounds for revocation of parole specified in sections 17-2-103 and 17-2-103.5, C.R.S. If the parole board chooses not to follow the recommendations made, it shall make findings on the record in support of its decision.

SECTION 16. 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: April 25, 2008