

CHAPTER 257

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 10-1338

BY REPRESENTATIVE(S) McCann, Court, Kagan, Labuda, Levy, Nikkel, Pace, Pommer, Ryden, Schafer S., Todd, Carroll T.;
also SENATOR(S) Steadman, Bacon, Boyd, Newell, Williams.

AN ACT

**CONCERNING THE ELIGIBILITY FOR PROBATION OF A PERSON WHO HAS TWO OR MORE FELONY
CONVICTIONS, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.**

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

SECTION 1. 18-1.3-201 (2) and (4) (a) (I), Colorado Revised Statutes, are amended, and the said 18-1.3-201 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-1.3-201. Application for probation. (2) (a) THE PROVISIONS OF THIS SUBSECTION (2) SHALL APPLY TO ANY PERSON WHOSE APPLICATION FOR PROBATION IS BASED ON A CONVICTION FOR A FELONY, WHICH CONVICTION OCCURRED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED.

~~(a)~~ (a.5) A person who has been twice OR MORE convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction on which his or her application is based shall not be eligible for probation.

(b) Notwithstanding any other provision of law except the provisions of paragraph (c) of this subsection (2), a person who has been convicted of one or more felonies under the laws of this state, any other state, or the United States within ten years prior to a class 1, 2, or 3 felony conviction on which his or her application is based shall not be eligible for probation.

(c) Notwithstanding the provisions of paragraph ~~(a)~~ (a.5) of this subsection (2) and subsection (4) of this section, an offender convicted of a violation of section 18-18-405 (2.3) may be eligible for probation upon recommendation of the district attorney.

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

(d) Repealed.

(2.5) (a) THE PROVISIONS OF THIS SUBSECTION (2.5) SHALL APPLY TO ANY PERSON WHOSE APPLICATION FOR PROBATION IS BASED ON A CONVICTION FOR A FELONY, WHICH CONVICTION OCCURRED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5).

(b) EXCEPT AS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, A PERSON WHO HAS BEEN TWICE OR MORE CONVICTED OF A FELONY UPON CHARGES SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE CONVICTION ON WHICH HIS OR HER APPLICATION IS BASED SHALL NOT BE ELIGIBLE FOR PROBATION IF THE CURRENT CONVICTION OR A PRIOR CONVICTION IS FOR:

(I) FIRST OR SECOND DEGREE MURDER, AS DESCRIBED IN SECTION 18-3-102 OR 18-3-103;

(II) MANSLAUGHTER, AS DESCRIBED IN SECTION 18-3-104;

(III) FIRST OR SECOND DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-202 OR 18-3-203;

(IV) FIRST OR SECOND DEGREE KIDNAPPING, AS DESCRIBED IN SECTION 18-3-301 OR 18-3-302;

(V) A SEXUAL OFFENSE AS DESCRIBED IN PART 4 OF ARTICLE 3 OF THIS TITLE;

(VI) FIRST DEGREE ARSON, AS DESCRIBED IN SECTION 18-4-102;

(VII) FIRST OR SECOND DEGREE BURGLARY, AS DESCRIBED IN SECTION 18-4-202 OR 18-4-203;

(VIII) ROBBERY, AS DESCRIBED IN SECTION 18-4-301;

(IX) AGGRAVATED ROBBERY, AS DESCRIBED IN SECTION 18-4-302 OR 18-4-303;

(X) THEFT FROM THE PERSON OF ANOTHER, AS DESCRIBED IN SECTION 18-4-401 (5);

(XI) ANY FELONY OFFENSE COMMITTED AGAINST A CHILD, AS DESCRIBED IN ARTICLE 3, 6, OR 7 OF THIS TITLE; OR

(XII) ANY CRIMINAL ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE OFFENSES SPECIFIED IN THIS PARAGRAPH (b).

(c) FAILURE TO REGISTER AS A SEX OFFENDER, AS DESCRIBED IN SECTION 18-3-412.5, SHALL NOT CONSTITUTE A SEXUAL OFFENSE FOR THE PURPOSES OF SUBPARAGRAPH (V) OF PARAGRAPH (b) OF THIS SUBSECTION (2.5).

(4) (a) (I) The restrictions upon eligibility for probation in ~~subsection (2)~~

SUBSECTIONS (2) AND (2.5) of this section may be waived by the sentencing court regarding a particular defendant upon recommendation of the district attorney approved by an order of the sentencing court.

SECTION 2. Repeal. 18-1.3-201 (1) (b) and (4) (a) (II), Colorado Revised Statutes, are repealed.

SECTION 3. Footnote number 21a, as enacted in part VII of section 2 of House Bill 10-1376, is amended to read:

21a Department of Human Services, Division of Child Welfare, Child Welfare Services -- Pursuant to Section 26-5-104 (6), C.R.S., subject to Department rules, counties are authorized to negotiate rates, services, and outcomes with child welfare services providers and are thus not required to provide a specific rate decrease for any individual provider. This provision does not apply, however, to Medicaid treatment rates. The funding appropriated for this line item includes a decrease of ~~\$6,635,156~~ \$4,915,366 based on a ~~2.0~~ 1.48 percent decrease in funding for county staff salaries and benefits, community provider rates including subsidized adoption rates, and Medicaid treatment rates.

SECTION 4. Appropriation - adjustments to the 2010 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 judicial department, probation and related services, for probation programs, for the fiscal year beginning July 1, 2010, the sum of three hundred eight thousand six hundred twenty-eight dollars (\$308,628) and 5.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, the general fund appropriation made in the annual general appropriation act for the fiscal year beginning July 1, 2010, to the department of corrections, management, external capacity subprogram, for payments to house state prisoners, is decreased by two million five hundred forty-one thousand eight hundred ten dollars (\$2,541,810).

SECTION 5. 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 revenue, executive director's office, for personal services, for the fiscal year beginning July 1, 2010, the sum of three hundred thirty-six thousand fifty-seven dollars (\$336,057), or so much thereof as may be necessary, for the implementation of House Bill 09-1137, which was passed during the 2009 regular session and enacted into law.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, department of human services medicaid-funded programs, for child welfare services, for the fiscal year beginning July 1, 2010, the sum of twenty-eight thousand eight hundred eighty-seven dollars (\$28,887), or so much thereof as may be necessary, for the implementation of this act. Said sum from the general fund shall be subject to the "(M)" notation as defined in the general appropriation act. The general assembly anticipates that, for the fiscal year beginning July 1, 2010, the

department of health care policy and financing will receive the sum of forty-six thousand three hundred twenty-two dollars (\$46,322) in federal funds for the implementation of this act. Although these funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of human services, division of child welfare, for child welfare services, for the fiscal year beginning July 1, 2010, the sum of one million seven hundred nineteen thousand seven hundred ninety-four dollars (\$1,719,794), or so much thereof as may be necessary, for the implementation of this act. Of said sum, nine hundred ninety-one thousand nine hundred nineteen dollars (\$991,919) shall be from the general fund, three hundred forty-three thousand nine hundred fifty-nine dollars (\$343,959) shall be cash funds from local funds, seventy-five thousand two hundred nine dollars (\$75,209) shall be from reappropriated funds received from the department of health care policy and financing out of the appropriation made in subsection (1) of this section, and three hundred eight thousand seven hundred seven dollars (\$308,707) shall be from federal funds anticipated to be received pursuant to Title IV-E of the Social Security Act.

SECTION 7. 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, 2010