§ 17-2-103. Arrest of parolee - revocation proceedings.

Colorado Statutes

Title 17. CORRECTIONS

DEPARTMENT OF CORRECTIONS

Article 2. Correctional Services

Part 1. DIVISION OF ADULT PAROLE

Current through 11/4/2014 Election and the 2014 Legislative Session

§ 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:

(a) He has a warrant commanding that such parolee be arrested; or

(b) He has probable cause to believe that a warrant for the parolee's arrest has been issued in this state or another state for any criminal offense or for violation of a condition of parole; or

(c) Any offense under the laws of this state has been or is being committed by the parolee in his presence; or

(d) He has probable cause to believe that a crime has been committed and that the parolee has committed such crime; or

(e) He has probable cause to believe that the parolee has violated a condition of his parole or probable cause to believe that the parolee is leaving or about to leave the state, or that the parolee will fail or refuse to appear before the board to answer charges of violations of one or more conditions of parole, or that the arrest of the parolee is necessary to prevent physical harm to the parolee or another person or to prevent the commission of a crime; or

(f) The parolee, who is on parole as a result of a conviction of any felony, has been tested for the illegal or unauthorized use of a controlled substance and the result of such test is positive.

(2) (a) A board hearing relating to the revocation of parole shall be held, at the discretion of the board, in the courthouse or other facility that is acceptable to the board in the county in which the alleged violation occurred, the county of the parolee's confinement, or the county of the parolee's residence if not confined.

(b) In all hearings relating to revocation of parole, one member of the board shall hear the case to a conclusion, unless the chairperson of the board assigns another board member due to the illness or unavailability of the first board member. The parolee may appeal to two members of the board. Such appeal shall be on the record.

(c) At evidentiary hearings concerning revocation of parole, the district attorney of the county in which the hearing is held may be in attendance to present the case.

(d) At all hearings before 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 or other facilities that are acceptable to the board.

(e) All votes of the board at any hearing or appeal held pursuant to this section shall be recorded by member and shall be a public record open to inspection and shall be subject to the provisions of part 3 of article 72 of title 24, C.R.S.

(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. 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 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. 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.

(b) Repealed.

(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:

(a) File a complaint before the board in which the facts are alleged upon which a revocation of parole is sought; or

(b) Order the release of the parolee and request that any warrant be quashed and that any complaint be dismissed, and parole shall be restored; or

(c) Order the release of the parolee and 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.

(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 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 the dismissal to the board, the community parole officer, and the parolee. Upon receipt of 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 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.

(8) Prior to appearance before the board, a parolee shall be advised in writing by the director of the division of adult parole concerning the nature of the charges that are alleged to justify revocation of parole and the substance of the evidence sustaining the charges; the parolee shall be given a copy of the complaint unless he or she has already received one; the parolee shall be informed of the consequences which may follow in the event parole is revoked; the parolee shall then be advised that a full and final hearing will be held before the board at which hearing the parolee will be required to plead guilty or not guilty to the charges contained in the complaint; and the parolee shall be further advised that at the hearing before the board 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 upon a showing of good cause.

(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 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 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 shall accept said conviction as conclusive proof of a violation and shall conduct a hearing as to the disposition of the parole only.

(10) Repealed.

(11) (a) If the board determines that a violation of a condition or conditions of parole has been committed, 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 shall serve upon the parolee a written statement as to the evidence relied on and the reasons for revoking parole.

(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), (III.5), (IV), or (VI) 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 that does not involve the commission of a crime, the parolee has no active felony warrant, felony detainer, or pending felony criminal charge, and the parolee was on parole for an offense that was a level 4 drug felony or 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) .

(III. If the board determines that the parolee has violated any condition of parole

5) that does not involve the commission of a crime, the parolee has no active felony warrant, felony detainer, or pending felony criminal charge, and the parolee was on parole for an offense that was a level 3 drug felony or a class 4 nonviolent felony as defined in section 17-22.5-405(5) (b), except for stalking as described in section 18-9-111(4) , C.R.S., as it existed prior to August 11, 2010, or section 18-3-602 , C.R.S., or any unlawful sexual behavior described 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., and the board revokes parole, the board may 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) for a period not to exceed one hundred eighty days.

(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 ninety 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 if, at the time of the revocation hearing, the inmate is assessed as below high risk based upon a research-based risk assessment instrument approved by the department of corrections and the state board of parole; 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 place of confinement designated by the executive director if, at the time of the revocation hearing, the inmate is assessed as high risk or greater based upon a research-based risk assessment instrument approved by the department of corrections and the state board of parole; 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 a community corrections program; 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 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), (C), or (D) 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.

(VI) If the board determines that a parolee who has been designated as a sexually violent predator pursuant to section 18-3-414.5 , C.R.S., or found to be a sexually violent predator or its equivalent in any other state or jurisdiction, including but not limited to a military or federal jurisdiction, has violated any condition of parole, 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.

(c) If the board determines that the parolee is in need of treatment and is amenable to treatment, the board shall consider placing the parolee in one of the following treatment options and, if appropriate, may modify the conditions of parole to include:

(I) Participation in an outpatient program for the treatment of substance abuse, mental illness, or co-occurring disorders; or

(II) (A) Placement in a residential treatment program for the treatment of substance abuse, mental illness, or co-occurring disorders, which program is under contract with the department of public safety and may include, but need not be limited to, intensive residential treatment, therapeutic community, and mental health programs.

(B) A parolee may be placed in a residential treatment program only upon acceptance by the residential treatment program and any community corrections board with jurisdiction over the residential treatment program. Residential treatment programs and community corrections boards are encouraged to develop an expedited review process to facilitate decision-making and placement of the parolee, if accepted.

(d) If the parole board orders the parolee to participate in a treatment program as a condition of parole pursuant to paragraph (c) of this subsection (11), the level of treatment ordered shall be consistent with the treatment level need of the parolee based upon an assessment instrument approved for use by the unit within the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse.

(e) If the parolee is unsuccessful in participating in a treatment program ordered

pursuant to paragraph (c) of this subsection (11) and his or her participation is terminated, the board may consider placement of the parolee in additional treatment, as appropriate, including a higher level of treatment.

(f) (I) A parolee who violates the conditions of his or her parole by removing or tampering with an electronic monitoring device that the parolee is required to wear as a condition of his or her parole is subject to an immediate warrantless arrest.

(II) Notwithstanding any other provision of this section, if the board determines that a parolee has violated the conditions of his or her parole by removing or tampering with an electronic monitoring device that the parolee is required to wear as a condition of his or her parole, the board may revoke the parolee's parole pursuant to paragraph (b) of this subsection (11).

(11.5) Each fiscal year, the general assembly shall appropriate a portion of the savings generated by House Bill 10-1360, enacted in 2010. This appropriation shall be used only for re-entry support services for parolees related to obtaining employment, housing, transportation, substance abuse treatment, mental health treatment, mental health medication, or offender-specific services. The appropriation shall be made after consideration of the division of adult parole's status report required pursuant to section 17-2-102(11) .

(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.

(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.

Cite as C.R.S. § 17-2-103

History. Amended by 2014 Ch. 199, §2, eff. 5/15/2014.

Amended by 2013 Ch. 333, §46, eff. 10/1/2013.

L. 77: Entire title R&RE, p. 908, § 10, effective August 1. L. 78: (11) amended, p. 356, § 2, effective April 27. L. 79: (2)(a), (2)(d), (4), (5)(a), (6)(b), and (9)(a) amended, p. 686, § 26, effective July 1. L. 83: (9)(a) amended, p. 665, § 6, effective July 1. L. 85: (1)(e), (2)(a), (2)(b), (2)(d), (3), (4)(a), (5), (6), (7), (8), (9), and (11) amended and (2)(c), (4)(b), and (10) repealed, pp. 633, 641, §§ 1, 11, effective July 1; (2)(e) added, p. 643, § 1, effective July 1. L. 87: (2)(a), (2)(b), (2)(d), (6)(b), (7) to (9), and (11) amended, p. 952, § 55, effective March 13; (2)(b) amended, (2)(c) RC&RE, and (6)(c) added, p. 651, §§ 3, 4, 5, effective July 1. L. 89: (12) added, p. 863, § 5, effective April 12; (1)(f) added, p. 877, § 14, effective June 5. L. 90: (4)(a) amended, p. 944, § 15, effective June 7. L. 94: (2)(a), (2)(b), (2)(d), (6)(b), (7), (8), (9), and (11) amended, pp. 2600, 2594, §§ 13, 1, effective June 3. L. 95: (11)(b)(II)(B) amended, p. 1097, § 16, effective May 31. L. 2000: IP(1), (6)(b), (8), and (9)(a) amended, p. 840, § 25, effective May 24. L. 2001: (11)(b)(II)(C) amended and (11)(b)(II)(D) added, p. 502, § 2, effective May 16. L. 2002: (11)(b)(II)(B) amended, p. 1499, § 158, effective October 1. L. 2003: (9)(a) and (11)(b) amended and (13) and (14) added, p. 2674, § 1, effective July 1; (3)(b) amended, p. 1614, § 9, effective August 6. L. 2008: IP(1), (3), (4)(a), IP(5), (6), (7), and (12) amended, p. 655, § 4, effective April 25; (11)(b)(III) amended, p. 1035, § 1, effective August 5. L. 2010: IP(11)(b)(II) amended and (11)(b)(VI) added, (HB10-1089), ch. 56, p. 204, §1, effective March 31; IP(11)(b)(II), (11)(b)(IV), and (11)(b)(V) amended and (11)(b)(III.5), (11)(c), (11)(d), (11)(e), and (11.5) added, (HB 10-1360), ch. 263, pp. 1193, 1194, 1196, §§ 2, 4, 5, effective May 25; IP(11)(b)(II) amended and (11)(b)(III.5) added, (HB10-1360), ch. 263, p. 1194, §3, effective August 11. L. 2011: (11)(d) amended, (HB11-1303), ch. 264, p. 1156, §28, effective August 10.

Editor's Note:

(1) This section is similar to former § 17-1-103 as it existed prior to 1977.

(2) Amendments to subsection (11) in sections 1 and 13 of Senate Bill 94-172 were harmonized.

(3) Amendments to IP(11)(b)(II) by House Bill 10-1089 and House Bill 10-1360 were harmonized.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Criminal Procedure in Colorado -- A Summary and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For note, "The Evolution of the Police Officer's Right to Arrest Without a Warrant in Colorado", see 43 Den. L.J. 366 (1966). For comment on Williams v. Patterson (389 F.2d 374 (10th Cir. 1968)), see 40 U. Colo. L. Rev. 617 (1968). For article, "Due Process, Equal Protection and State Parole Revocation Proceedings", see 42 U. Colo. L. Rev. 197 (1970).

Annotator's note. Since § 17-2-103 is similar to § 17-1-103 as it existed prior to the 1977 repeal and reenactment of this title, relevant cases construing that provision have been included in the annotations to this section.

No violation of ex post facto clause of federal constitution when provisions which were in existence when a prisoner is sentenced are deleted prior to prisoner's arrest for violation of parole. Turman v. Romer, 729 F. Supp. 1276 (D. Colo. 1990).

For purposes of determining when the thirty-day time limitation for a parole revocation hearing begins to run, the parolee is not considered "arrested" until he is delivered into the custody of Colorado authorities. Turman v. Buckallew, 784 P.2d 774 (Colo. 1989).

Parole officer's decision to hold the plaintiff pending a parole revocation hearing is protected by qualified immunity, not absolute immunity, by virtue of the distance of the decision from the judicial process. Mee v. Ortega, 967 F.2d 423 (10th Cir. 1992).

Whereas, damage resulting from parole officer's testimony at state habeas proceeding was protected by absolute immunity, because as a witness, the parole officer directly serves the court. Mee v. Ortega, 967 F.2d 423 (10th Cir. 1992).

Subsection (6)(c) of this section does not negate or change the general rule for applying presentence confinement credit set forth in § 18-1.3-405 , which provides that a defendant receive presentence confinement credit on his or her original sentence and not on the new sentence. Rather, the filing of a parole revocation complaint merely provides jurisdiction to the parole board, but once the parole board makes its decision, the time starts running again from the date of the complaint whether the complaint is dismissed or parole is revoked. People v. Wallin, 167 P.3d 183 (Colo. App. 2007).

II. ARREST AND INVESTIGATION OF PAROLEE.

Parolees, as a class, pose a greater threat of criminal activity to law enforcement authorities than ordinary citizens. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

The parole authority must be vested with the power to investigate a parolee to ascertain whether a parole violation has occurred if it is to fulfill its statutory function. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

The police officer does not have the broad power to supervise parolees that is granted to parole officers. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

A parole officer may cause a police officer to accompany him when a search is being made. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

The fact that a person is on parole does not justify a search without a warrant by any law enforcement officer, other than a parole officer. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

Presence of reasonable cause eliminates need for warrant. A parole officer who is investigating a parole violation is required to have reasonable grounds to believe that a parole violation has occurred. Under these circumstances, when he conducts his search in connection with that investigation, the need for a search warrant is eliminated. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975) (decided prior to the enactment of § 17-2-201(5)(f)(I)(D)).

Unrelated evidence admissible in prosecution of another crime. Evidence seized within the scope of a reasonable search by a parole officer, even though unrelated to the parole violation, is admissible in the prosecution of another crime. People v. Anderson, 189 Colo. 34, 536 P.2d 302 (1975).

Arrest ends constructive custody. The arrest of a parolee for an alleged violation of the conditions of his parole results in a transposition from constructive to physical custody of such parolee. Schooley v. Wilson, 150 Colo. 483, 374 P.2d 353 (1962).

Section limits period of imprisonment, not authority of board to act. The time limitations contained in this section do not limit or prescribe the time within which the parole board must act in order to properly suspend or revoke one's parole. Such time limitations only fix the maximum period of time a suspected parole violator may be held in jail by the parole authorities while they investigate his activities and determine what action should be taken. Folks v. Patterson, 159 Colo. 403, 412 P.2d 214 (1966); Mora v. Patterson, 370 F.2d 923 (10th Cir. 1967); Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

Thus, board may revoke parole after 15 [now 30] days. The contention that the parole board was deprived of any power to revoke parole once the 15-day [now 30-day] period had passed has been decided adversely, and the

supreme court adheres to this ruling. Williams v. Patterson, 161 Colo. 259, 421 P.2d 474 (1966).

Actions prior to revocation are moot. Once the parole board has revoked one's parole, the fact that such person prior to such revocation may have been held for more than the period permitted by this section is of no moment. Folks v. Patterson, 159 Colo. 403, 412 P.2d 214 (1966).

Questions with respect to matters transpiring prior to the time a parolee is transferred to the state penitentiary are not justiciable after the transfer. Mora v. Patterson, 370 F.2d 923 (10th Cir. 1967).

Habeas corpus is the remedy for an unlawful restraint of one's liberty under this section as well as for an unlawful imprisonment, and a person on parole can resort to the remedy of habeas corpus where parole officers are not following the mandate of this section in regard to revocatory proceedings. Schooley v. Wilson, 150 Colo. 483, 374 P.2d 353 (1962).

Where a parolee was arrested and held in actual custody more than 15 [now 30] days without release or revocation of his parole in violation of this section, habeas corpus was the proper remedy. Schooley v. Wilson, 150 Colo. 483, 374 P.2d 353 (1962).

Habeas corpus will lie where a parolee was being detained by the authorities for a time longer than that permitted by this section prior to the parole board's alternative action of either releasing him or revoking his parole. Johnson v. Tinsley, 157 Colo. 539, 404 P.2d 159 (1965).

Relief is discharge only prior to revocation. The proviso now appearing in this section that no parolee shall be kept in jail by the division of parole for a period of more than 15 [now 30] days means that a suspected parole violator who is held in jail for more than 15 [now 30] days while his activities are being investigated is entitled to relief by way of habeas corpus, the relief being discharge-not from the penitentiary or institution following revocation-but from the institution to which confined prior to revocation. People ex rel. Patterson v. District Court, 159 Colo. 142, 410 P.2d 630 (1966).

Since subsection (4)(a) does not expressly require the county to accept "technical" parole violators and evidence existed to show the county jail was overcrowded, the county had no obligation to accept such parole violators. State for Use of Dept. of Corr. v. Pena, 837 P.2d 210 (Colo. App. 1992).

Subsection (1)(e) does not define a city or county's obligation to accept technical parole violators. The State of Colorado, for the Use of the Dept. of Corr. v. Pena, 855 P.2d 805 (Colo. 1993).

Subsection (4)(a) does not mandate that a county or city accept all alleged parole violators who are arrested. The right to arrest and take a parolee to jail for detention does not entail a duty on the part of jails to accept, without discretion, such parolees. The State of Colorado, for the Use of the Dept. of Corr. v. Pena, 855 P.2d 805 (Colo. 1993) (decided under law in effect prior to 1990 amendment).

Subsection (11), read in conjunction with §§ 17-2-201 (5.5)(d) and 17-2-102 (8.5), does not require revocation of parole upon an initial positive drug or alcohol testing. But parole board had authority to revoke defendant's parole based on a single drug or alcohol violation when it occurred in a subsequent test. People v. Whidden, 56 P.3d 1201 (Colo. App. 2002), aff'd on other grounds, 78 P.3d 1092 (Colo. 2003).

The substance abuse in the criminal justice system statutes, article 11.5 of title 16, and this section authorize, but do not require, the board to revoke parole and return a parolee to the department of corrections based upon a single positive drug test that occurs after the baseline test. People v. Whidden, 78 P.3d 1092 (Colo. 2003).

III. REVOCATION PROCEEDINGS.

Probable cause hearing required as promptly as convenient. Although this section is silent regarding a time limitation within which the probable cause hearing required by subsection (4) must be held, due process requires only

that a hearing be conducted as "promptly as convenient". Mijares v. Shipley, 197 Colo. 282, 592 P.2d 414 (1979).

Due process requires fairness in revocation hearings. Parolees in parole revocation hearings are not entitled to the specifics of due process available to an accused in the first instance, but this in no way negates their right to enjoy due process as that mandate reflects the right of all persons to inherent fairness in all compulsive processes. Martinez v. Patterson, 429 F.2d 844 (10th Cir. 1970), cert. denied, 402 U.S. 934, 91 S. Ct. 1528, 28 L. Ed. 2d 868 (1971).

While the parolee's liberty cannot be terminated without reason, it does not follow that he is entitled to all of the federal constitutional procedures and safeguards guaranteed by the due process clause of the fourteenth amendment. Thus, he is not entitled to a speedy public trial pursuant to the sixth amendment, but is entitled to a fair hearing for the purpose of ascertaining whether or not he has violated his parole. Hutchison v. Patterson, 267 F. Supp. 433 (D. Colo. 1967).

The due process clause of the fourteenth amendment of the federal constitution does not generate rights to confrontation, to cross-examination, or to compulsory process at parole revocation hearings. Due process does not comprehend the dual rights to witnesses under oath and evidence in conditional release hearings. Firkins v. Colo., 434 F.2d 1232 (10th Cir. 1970).

This includes right to know charges and hearing free of caprice. The right of a prisoner to be heard at a revocation hearing is inviolative; so, too, is the right to know and be specifically informed of the charges and the nature of the evidence against him; and, finally, the right to be free from pure caprice on the part of the discretionary authority before whom the proceedings occur. The right to gather and file written statements before the board is an empty right unless parole violators are given notice of the charges prior to their hearing before the parole board. Martinez v. Patterson, 429 F.2d 844 (10th Cir. 1970), cert. denied, 402 U.S. 934, 91 S. Ct. 1528, 28 L. Ed. 2d 868 (1971).

There is no federal constitutional right to counsel at a parole revocation proceeding. Wilkerson v. Patterson, 303 F. Supp. 665 (D. Colo. 1969).

There is no constitutional right to counsel at parole revocation hearings. Firkins v. Colo., 434 F.2d 1232 (10th Cir. 1970).

The denial of the assistance of counsel at a parole revocation hearing was no ground for federal habeas corpus relief. Williams v. Patterson, 389 F.2d 374 (10th Cir. 1968); Martinez v. Patterson, 429 F.2d 844 (10th Cir. 1970), cert. denied, 402 U.S. 934, 91 S. Ct. 1528, 28 L. Ed. 2d 868 (1971).

Failure to appoint counsel under former section did not deny equal protection. The argument for a federal constitutional right to appointed counsel under the equal protection clause does not apply where the services rendered by a retained counsel are slight and not dependent on unique capabilities with which the attorney is endowed by virtue of his legal training. An indigent defendant suffers no substantial disadvantage because an attorney is not made available to him to write letters to the state parole board. No invidious discrimination is present and no violation of the equal protection clause has occurred. Wilkerson v. Patterson, 303 F. Supp. 665 (D. Colo. 1969); Martinez v. Patterson, 429 F.2d 844 (10th Cir. 1970), cert. denied, 402 U.S. 934, 91 S. Ct. 1528, 28 L. Ed. 2d 868 (1971).

Parole revocation reincarceration is not a new sentence. Since the sentencing power of the judiciary is not implicated, there is no separation of powers or due process violation. People v. Barber, 74 P.3d 444 (Colo. App. 2003).

No statutory duty to preserve testimony in parole revocation hearing. Neither the state parole board nor an administrative law judge conducting a parole revocation hearing has a statutory duty to preserve the testimony at a parole revocation hearing. In fact, such testimony is inadmissible in a criminal proceeding against the parolee based

on the offense giving rise to the parole violation. People v. Schrecongost, 796 P.2d 45 (Colo. App. 1990), aff'd, 810 P.2d 1068 (Colo. 1991).

If a parolee pleads not guilty to a parole violation complaint alleging the commission of a crime for which he has not been convicted, the authority seeking parole revocation has the burden of establishing beyond a reasonable doubt that the parolee committed the alleged offense. People v. White, 804 P.2d 247 (Colo. App. 1990).

Retroactive application of subsection (12) denied under Crim. P. 35(c)(1) because Crim. P. 35(c)(1) provides a remedy to an offender whose conviction or sentence is affected by a change in the law during the pendency of a direct appeal of such conviction or sentence, but not to an offender claiming the benefit of changes in the law that occur during the pendency of other postconviction proceedings. People v. White, 804 P.2d 247 (Colo. App. 1990).

This section does not limit the amount of time within which the parole board must act on the issue of revocation of parole. Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

The tolling provisions in subsection (6) do not impose additional punishment on the parolee. If the board determines there was no parole violation, the parolee's status should be reinstated as if no complaint had been filed. Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

Where a complaint was filed against the parolee near the end of the parole term and the board dismissed the first complaint and brought a second complaint after the parolee's term had expired, the board was without jurisdiction to revoke the parolee's parole based on the second complaint. Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

Tolling of expiration of parole upon the filing of a parole violation complaint does not impose additional punishment and does not violate the prohibition against ex post facto laws. Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

Rather, it allows the parole board to maintain its jurisdiction over parolee while authorities investigate the alleged parole violations and to hold a revocation hearing. Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

Tolling of expiration of parole upon filing of a parole violation complaint by parole officer applies to all offenders, including those who committed crimes before the statute was enacted. Duran v. Price, 868 P.2d 375 (Colo. 1994).

The plain meaning of subsection (7) provides that, upon finding good cause by the parole board, a parole revocation hearing can be delayed beyond 30 days after the parolee's arrest and a parolee can be held in custody for a reasonable time pending a revocation hearing. The section does not convey automatic good cause to delay a parole hearing for pending resolution of an underlying criminal case, nor does the statute require a parolee to be released from custody after 30 days. Colo. Dept. of Corr. v. Madison, 85 P.3d 542 (Colo. 2004).

Subsection (11)(b) and § 17-22.5-403(8)(b) conflict when a parole revocation is for a sex offender subject to lifetime supervision. Since § 17-22.5-403(8)(b) is the more specific provision, it applies to the revocation of a lifetime supervision sex offender's parole. People v. Back, 2013 COA 114, __ P.3d __.

Cross References:

(1) For other provisions concerning parole revocation proceedings, see § 17-2-201 .

(2) For the legislative declaration contained in the 2002 act amending subsection (11)(b)(II)(B), see section 1 of chapter 318, Session Laws of Colorado 2002.