C.R.S. 17-2-201

COLORADO REVISED STATUTES

*** Current through all Laws passed and signed in the First Regular and First Extraordinary Sessions of the 71st General Assembly (2017) ***

TITLE 17. CORRECTIONS
DEPARTMENT OF CORRECTIONS
ARTICLE 2.CORRECTIONAL SERVICES
PART 2. STATE BOARD OF PAROLE

C.R.S. 17-2-201 (2017)

17-2-201. State board of parole - duties - definitions

(1) (a) There is hereby created a state board of parole, referred to in this part 2 as the "board", which shall consist of seven members. The members of the board shall be appointed by the governor and confirmed by the senate, and they shall devote their full time to their duties as members of the board. The members shall be appointed for three-year terms and may serve consecutive terms. The governor may remove a board member for incompetency, neglect of duty, malfeasance in office, continued failure to use the risk assessment guidelines as required by section 17-22.5-404, or failure to regularly attend meetings as determined by the governor. Final conviction of a felony during the term of office of a board member shall automatically result in the disqualification of the member from further service on the board. The board shall be composed of representatives from multidisciplinary areas of expertise. Two members shall have experience in law enforcement and one member shall have experience in offender supervision, including parole, probation, or community corrections. Four members shall have experience in other relevant fields. Each member of the board shall have a minimum of five years of experience in a relevant field, and knowledge of parole laws and guidelines, rehabilitation, correctional administration, the functioning of the criminal justice system, issues associated with victims of crime, the duties of parole board members, and actuarial risk assessment instruments and other offender assessment instruments used by the board and the department of corrections. A person who has been convicted of a felony or of a misdemeanor involving moral turpitude or who has any financial interests which conflict with the duties of a member of the parole board shall not be eligible for appointment.

(b) The parole board in existence prior to July 1, 1987, is abolished on July 1, 1987. The governor shall appoint a new parole board pursuant to this section, two members of which shall be appointed for terms of three years, two members of which shall be appointed for terms of two years, and one member of which shall be appointed for a term of one year. Thereafter, members shall be appointed for terms of three years. If a member is appointed during a period of time in which the general assembly is not in session, that member shall serve on a temporary basis until the general assembly next convenes.

(c) The parole board in existence prior to July 1, 1990, shall be expanded to seven members on July 1, 1990. The governor shall appoint an additional law enforcement representative and an additional citizen representative to the board, one for a term of two years to expire on July 1, 1992, and one for a term of three years to expire on July 30, 1993. Thereafter, such members shall be appointed for terms of three years.

(d) The governor may appoint a temporary member to replace any member of the board who becomes temporarily incapacitated. Such temporary member shall not require senate confirmation unless he serves for a period longer than ninety days and shall serve at the pleasure of the governor or until the incapacitated member of the parole board is able to resume his duties. Any temporary member shall assume all the powers and duties of the incapacitated member. Any such temporary member shall have the same qualifications as a permanent member as defined in paragraph (a) of this subsection (1). The board may not have more than two temporary members at any time.

(e) Each board member shall complete a minimum of twenty hours of continuing education or training every year in order to maintain proficiency and to remain current on changes in parole laws and

developments in the field. Each parole board member shall submit to the chairperson proof of attendance and details regarding any continuing education or training attended including the date, place, topic, the length of the training, the trainer's name, and any agency or organizational affiliation. Members may attend trainings individually or as part of a specific training offered to the parole board as a whole. The sole remedy for failure to comply with training and data collection requirements shall be removal of the board member by the governor, and the failure to comply with training and data collection requirements shall not create any right for any offender.

(2) The governor shall appoint one of the members of the board as the chairperson of the board and shall also appoint one of the members as the vice-chairperson. Such appointments are subject to change by the governor. The chairperson shall be the administrative head of the board. The chairperson shall assure that board policy and rules and regulations are enforced. The chairperson shall also assure that proper calendars for hearings are compiled and that members are assigned to conduct such hearings. The vice-chairperson shall act in the absence of the chairperson and may fulfill such administrative duties as are delegated by the chairperson.

(3) The chairperson, in addition to other provisions of law, has the following powers and duties:

(a) To promulgate rules governing the granting and revocation of parole, including special needs parole pursuant to section 17-22.5-403.5, from correctional facilities where adult offenders are confined and the fixing of terms of parole and release dates. All rules governing the granting and revocation of parole promulgated by the chairperson shall be subject to the approval of a majority of the board and shall be promulgated pursuant to the provisions of section 24-4-103, C.R.S.

(b) To promulgate rules for the conduct of board members, the procedures for board hearings, and procedures for the board to comply with state fiscal and procurement regulations. All administrative rules and regulations promulgated by the chairperson shall be promulgated pursuant to the provisions of section 24-4-103, C.R.S.

(c) To develop and update a written operational manual for parole board members, release hearing officers, and administrative hearing officers under contract with the board by December 31, 2012. The operational manual shall include, but need not be limited to, board policies and rules, a summary of state laws governing the board, and all administrative release and revocation guidelines that the parole board is required to use. The chairperson will ensure that all new parole board members receive training and orientation on the operational manual.

(c.5) (Deleted by amendment, L. 2011, (SB 11-241), ch. 200, p. 833, § 3, effective May 23, 2011.)

(d) To adopt a policy pursuant to which the board may conduct parole hearings, parole revocation hearings, and board meetings using video teleconferencing technology. At a minimum, the policy shall identify:

(I) The agenda items, if any, that the board may not consider during video teleconferences of hearings or meetings;

(II) The correctional facilities that the chairperson determines will be accessible via video teleconferencing for purposes of conducting hearings or meetings. In identifying such correctional facilities, the chairperson may include the Colorado mental health institute at Pueblo for purposes of hearings held at the institute pursuant to subsection (10) of this section.

(e) To ensure that parole board members, release hearing officers, and administrative hearing officers under contract with the board fulfill the annual training requirements described in paragraph (e) of subsection (1) of this section and in section 17-2-202.5. The chairperson shall notify the governor if any board member, release hearing officer, or administrative hearing officer fails to comply with the training requirements.

(f) To ensure that parole board members, release hearing officers, and administrative hearing officers under contract with the board are accurately collecting data and information on his or her decision-making as required by section 17-22.5-404 (6). The chairperson shall notify the governor immediately if any board member, release hearing officer, or administrative hearing officer fails to comply with data collection requirements.

(g) To conduct an annual comprehensive review of board functions to identify workload inefficiencies and to develop strategies or recommendations to address any workload inefficiencies;

(h) (I) To contract with licensed attorneys to serve as administrative hearing officers to conduct parole revocation hearings pursuant to rules adopted by the parole board; or

(II) To appoint an administrative law judge pursuant to the provisions of section 24-30-1003, C.R.S., to conduct parole revocation hearings pursuant to the rules and regulations promulgated pursuant to this subsection (3). Any references to the board regarding parole revocation hearings or revocation of parole shall include an administrative law judge appointed pursuant to this paragraph (h).

(h.1) To contract with qualified individuals to serve as release hearing officers:

(I) To conduct parole application hearings for inmates convicted of class 4, class 5, or class 6 felonies or level 3 or level 4 drug felonies who have been assessed to be less than high risk by the Colorado risk assessment scale developed pursuant to section 17-22.5-404 (2)(a), pursuant to rules adopted by the parole board; and

(II) To set parole conditions for inmates eligible for release to mandatory parole.

(3.5) Notwithstanding section 24-1-136 (11)(a)(I), the chairperson shall annually make a presentation to the judiciary committees of the house of representatives and the senate, or any successor committees, regarding the operations of the board.

(3.7) (a) Notwithstanding any other provision in this section, an inmate is not eligible for parole if the inmate:

(I) Has been convicted of a class 1 code of penal discipline violation within the twelve months preceding his or her next ordinarily scheduled parole hearing; or

(II) Has, within the twelve months preceding his or her next ordinarily scheduled parole hearing, declined in writing to participate in programs that have been recommended and made available to the inmate.

(b) An inmate who is described by subparagraph (I) or (II) of paragraph (a) of this subsection (3.7) may be eligible for parole when the applicable condition has not been in effect for the preceding twelve months.

(c) If two schedules with different parole application hearing dates apply to the same inmate, the board shall give effect to the schedule that includes the later parole application hearing date.

(d) The board shall provide victim notification in accordance with section 24-4.1-302.5, C.R.S., for all parole application hearings for which the inmate is eligible for parole, as such eligibility is determined pursuant to the provisions of this section.

(e) As used in this subsection (3.7), "eligible for parole" means an inmate is eligible to make application to the board for parole and includes an inmate's initial application as well as any subsequent application for parole review or reconsideration.

(4) The board has the following powers and duties:

(a) To meet as often as necessary every month to consider all applications for parole. The board may parole any person who is sentenced or committed to a correctional facility when such person has served his or her minimum sentence, less time allowed for good behavior, and there is a strong and reasonable probability that the person will not thereafter violate the law and that release of such person from institutional custody is compatible with the welfare of society. If the board refuses an application for parole, the board shall reconsider the granting of parole to such person within one year thereafter, or earlier if the board so chooses, and shall continue to reconsider the granting of parole each year thereafter until such person is granted parole or until such person is discharged pursuant to law; except that, if the person applying for parole was convicted of any class 3 sexual offense described in part 4 of article 3 of title 18, C.R.S., a habitual criminal offense as defined in section 18-1.3-801 (2.5), C.R.S., or of

any offense subject to the requirements of section 18-1.3-904, C.R.S., the board need only reconsider granting parole to such person once every three years, until the board grants such person parole or until such person is discharged pursuant to law, or if the person applying for parole was convicted of a class 1 or class 2 felony that constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S., the board need only reconsider granting parole to such person once every five years, until the board grants such person parole or until such person is discharged pursuant to law.

(b) To conduct hearings on parole revocations as required by section 17-2-103. Such hearings shall be exempt from the requirements set forth in section 24-4-105, C.R.S. Judicial review of any revocation of parole shall be held pursuant to section 18-1-410 (1)(h), C.R.S.

(c) To issue, pursuant to rules and regulations, an order of exigent circumstances to place an offender under parole supervision immediately upon release from a correctional facility when the board is prevented from complying with publication and interview requirements due to the application of time served prior to confinement in a correctional facility and the operation of good time credits;

(d) To carry out the duties prescribed in article 11.5 of title 16, C.R.S.;

(e) To carry out the duties prescribed in article 11.7 of title 16, C.R.S.;

(f) (I) To conduct an initial or subsequent parole release review in lieu of a hearing, without the presence of the inmate, if:

(A) The application for release is for special needs parole pursuant to section 17-22.5-403.5, and victim notification is not required pursuant to section 24-4.1-302.5;

(B) A detainer from the United States immigration and customs enforcement agency has been filed with the department, the inmate meets the criteria for the presumption of parole in section 17-22.5-404.7, and victim notification is not required pursuant to section 24-4.1-302.5;

(C) The inmate has a statutory discharge date or mandatory release date within six months after his or her next ordinarily scheduled parole hearing and victim notification is not required pursuant to section 24-4.1-302.5; or

(D) The inmate is assessed to be a "low" or "very low" risk on the validated risk assessment instrument developed pursuant to section 17-22.5-404 (2) and meets readiness criteria established by the board and victim notification is not required pursuant to section 24-4.1-302.5.

(II) The board shall notify the inmate's case manager if the board decides to conduct a parole release review without the presence of the inmate, and the case manager shall notify the inmate of the board's decision. The case manager may request that the board reconsider and conduct a hearing with the inmate present.

(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.

(a.3) (I) Any person sentenced as a habitual criminal pursuant to section 18-1.3-801 (1.5) or (2), C.R.S., for an offense committed on or after July 1, 2003, shall be subject to the mandatory parole set forth in section 18-1.3-401 (1)(a)(V)(A) or 18-1.3-401.5, C.R.S., for the class or level of felony of which the person is convicted.

(II) As to any person sentenced as a habitual criminal pursuant to section 18-1.3-801 (1) or (2.5), C.R.S., for an offense committed on or after July 1, 2003, upon completion of forty calendar years of

incarceration in the department of corrections, the parole board may schedule a hearing to determine whether the inmate may be released on parole. If the inmate is released on parole, the life sentence shall continue and shall not be deemed to be discharged until such time as the parole board may discharge the offender. The offender shall serve at least five years on parole prior to discharge. If the parole board revokes the parole, the offender shall be returned to the department of corrections to serve the remainder of the life sentence. The parole board need only reconsider granting parole to such inmate once every three years.

(a.5) Except as otherwise provided in paragraph (a.7) of this subsection (5), 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 on or after July 1, 1996, but prior to July 1, 2002, 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.

(a.6) As to any person who is sentenced for conviction of an offense committed on or after July 1, 2002, involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., or for conviction of an offense committed on or after July 1, 2002, the underlying factual basis of which involved unlawful sexual behavior, and who is not subject to the provisions of part 10 of article 1.3 of title 18, C.R.S., such person shall be subject to the mandatory period of parole set forth in section 18-1.3-401 (1)(a)(V)(A), C.R.S.

(a.7) As to any person sentenced for conviction of a sex offense pursuant to the provisions of part 10 of article 1.3 of title 18, C.R.S., committed on or after November 1, 1998, the board shall grant parole or refuse to grant parole, fix the conditions thereof, and set the duration of the term of parole granted pursuant to the provisions of part 10 of article 1.3 of title 18, C.R.S.

(b) Conditions imposed for parole may include, but are not limited to, requiring that the offender pay reasonable costs of supervision of parole or placing the offender on home detention as defined in section 18-1.3-106 (1.1), C.R.S.

(c) (I) As a condition of parole, the board shall order that the offender make restitution to the victim or victims of his or her conduct if such restitution has been ordered by the court pursuant to article 18.5 of title 16. The order must require the offender to make restitution within the period of time that the offender is on parole as specified by the board. In the event that the defendant does not make full restitution by the date specified by the board, the restitution may be collected as provided for in article 18.5 of title 16.

(II) If the offender fails to pay the restitution, he or she may be returned to the board and, upon proof of failure to pay, the board shall:

(A) (Deleted by amendment, L. 96, p. 1779, § 5, effective June 3, 1996.)

(B) Order that the offender continue on parole or extend the period of parole, either subject to the same condition or modified conditions of parole; or

(C) Revoke the 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

(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 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 with the department of corrections; or

(E) 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 with the department of corrections.

(III) (Deleted by amendment, L. 2000, p. 1043, § 4, effective September 1, 2000.)

(d) If, as a condition of parole pursuant to paragraph (b) of this subsection (5), a parolee will be required

to attend a postsecondary educational institution as a part of his parole plan, the board, before granting parole, shall first notify the postsecondary educational institution and the prosecuting attorney of the parolee's plan and request their comments thereon. The notice shall include all relevant information pertaining to the person and the crime for which he was convicted. The postsecondary educational institution and the prosecuting attorney shall reply to the board in writing within ten days of receipt of the notification or within such other reasonable time in excess of ten days as specified by the board. The postsecondary educational institution's reply shall include a statement of whether or not it will accept the parolee as a student. Acceptance by a state postsecondary educational institution shall be pursuant to section 23-5-106, C.R.S.

(e) As a condition of parole of every person convicted of the class 2 felony of sexual assault in the first degree under section 18-3-402 (3), C.R.S., for an offense committed prior to November 1, 1998, the board shall require that the parolee participate in a program of mental health counseling or receive appropriate treatment to the extent that the board deems appropriate to effectuate the successful reintegration of the parolee into the community.

(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:

(A) That the parolee shall go directly to a place designated by the board upon his release from the institution to which he has been confined;

(B) That the parolee shall establish a residence of record and shall not change it without giving prior notification to his or her community parole officer and that the parolee shall not leave 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, and allow the community parole officer to make searches of his or her person, residence, or vehicle;

(E) That the parolee shall not own, possess, or have under his control or in his custody any firearm or other deadly weapon;

(F) Repealed.

(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;

(H) That the parolee shall not abuse alcoholic beverages or use illegal drugs while on parole;

(I) That the parolee shall abide by any other condition the board may determine to be necessary;

(J) That the parolee shall contact any delegate child support enforcement unit with whom the parolee may have a child support case to arrange and fulfill a payment plan to pay current child support, child support arrearages, or child support debt due under a court or administrative order.

(II) The parole agreement shall also contain a notification to the parolee that, should he violate any of the said conditions or should his behavior while on parole indicate the potentiality for criminality or violence, his parole may be subject to revocation.

(III) The provisions of this paragraph (f) shall apply to any person paroled on or after July 1, 1987, and to any person whose parole conditions are modified by the board on or after said date.

(g) (I) As a condition of parole, the board shall require any offender convicted of or who pled guilty or nolo contendere to an offense for which the factual basis involved a sexual offense as described in part 4 of article 3 of title 18, C.R.S., to submit to chemical testing of a biological substance sample from the

offender to determine the genetic markers thereof and to chemical testing of his or her saliva to determine the secretor status thereof. Such testing shall occur prior to the offender's release from incarceration, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.

(II) The provisions of this paragraph (g) shall apply to any person who is paroled on or after May 29, 1988, and to any person whose parole conditions are modified by the board on or after said date.

(III) Any costs of implementing this paragraph (g) shall be derived solely from appropriations made from moneys in the victims assistance and law enforcement fund created pursuant to section 24-33.5-506, C.R.S.

(h) Repealed.

(i) (Deleted by amendment, L. 2001, p. 955, § 3, effective July 1, 2001.)

(j) As a condition of parole, the board may order any person who is not otherwise subject to the provisions of article 22 of title 16, C.R.S., and is convicted of an offense, the underlying factual basis of which is determined by the department of corrections to involve unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., to register as a sex offender for the period of the person's parole. Such registration shall be completed as provided in article 22 of title 16, C.R.S. Within five business days after completion of the period of parole and final discharge from the legal custody of the department of corrections, the department of corrections shall notify the Colorado bureau of investigation to remove the person's name from the Colorado sex offender registry.

(k) As a condition of every grant of parole, the board shall require the offender to execute a written prior waiver of extradition stating that the offender consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that the offender is arrested in another state upon an allegation that the defendant has violated the terms of his or her parole, and acknowledging that the offender shall not be admitted to bail in any other state pending extradition to this state.

(5.5) (a) As a condition of parole, the board may require every parolee at the parolee's own expense to submit to random chemical testing of a biological substance sample from the parolee to determine the presence of drugs or alcohol.

(b) For purposes of this subsection (5.5), "drug" means:

(I) Any "controlled substance" as defined in section 18-18-102 (5), C.R.S.; and

(II) Any "drug" as defined in section 27-80-203 (13), C.R.S., if chemical testing conducted pursuant to paragraph (a) of this subsection (5.5) reveals such drug is present at such a level as to be considered abusive pursuant to regulations established by the board in consultation with the department of human services.

(c) (I) If chemical testing is required as a condition of parole, the community parole officer is responsible for acquiring at random a biological substance sample from a parolee.

(II) At the time the community parole officer acquires a biological substance sample pursuant to subparagraph (I) of this paragraph (c), the community parole officer shall direct the parolee to pay the necessary fee for the testing of his or her biological substance sample directly to the private laboratory under contract with the department, the department of public safety, or a local governmental agency pursuant to subparagraph (IV) of this paragraph (c).

(III) The community parole officer shall submit the biological substance sample to a private laboratory under contract with the department, the department of public safety, or a local governmental agency pursuant to subparagraph (IV) of this paragraph (c) for testing. The contracting laboratory shall return the results of the tests to the community parole officer within five working days after receipt of the sample. The results of the test shall be made available by the community parole officer to the parolee or the parolee's attorney on request.

(IV) The department and the department of public safety and local governmental agencies for inmates

paroled to community corrections facilities shall enter into one or more contracts with private laboratories for chemical testing under this subsection (5.5). Any private laboratory that contracts with the department, the department of public safety, or a local governmental agency shall use appropriate methods to ensure compliance with evidentiary rules and requirements. Any contract entered into pursuant to this subparagraph (IV) shall specify the fee to be charged the parolee for chemical biological substance sample testing.

(d) (I) If a chemical test administered pursuant to the requirements of this subsection (5.5) reflects the presence of drugs or alcohol, the parolee may be required to participate at his own expense in an appropriate drug or alcohol program, community correctional nonresidential program, mental health program, or other fee-based or non-fee-based treatment program approved by the parole board.

(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.

(B) A parolee may be arrested and a proceeding for revocation may be initiated pursuant to the provisions of section 17-2-103 if any subsequent chemical test reflects the presence of drugs pursuant to subparagraph (I) of paragraph (b) of this subsection (5.5).

(C) A parolee may be arrested and proceedings for revocation may be initiated pursuant to section 17-2-103 if any subsequent chemical test reveals the presence of drugs as defined in subparagraph (II) of paragraph (b) of this subsection (5.5) at a level considered to be abusive as established by the board pursuant to said section.

(e) Repealed.

(f) Section 16-3-309, C.R.S., pertaining to the admissibility of laboratory tests shall apply to the admissibility of chemical tests required by this subsection (5.5) in parole revocation hearings conducted pursuant to section 17-2-103.

(g) This subsection (5.5) shall not apply to any parolee to whom article 11.5 of title 16, C.R.S., applies.

(5.7) If, as a condition of parole, an offender is required to undergo counseling or treatment, unless the parole board determines that treatment at another facility or with another person is warranted, the treatment or counseling must be at a facility or with a person:

(a) Approved by the office of behavioral health in the department of human services, established in article 80 of title 27, if the treatment is for alcohol or drug abuse;

(b) Certified or approved by the sex offender management board, established in section 16-11.7-103, C.R.S., if the offender is a sex offender;

(c) Certified or approved by a domestic violence treatment board, established pursuant to part 8 of article 6 of title 18, C.R.S., if the offender was convicted of or the underlying factual basis of the offense included an act of domestic violence as defined in section 18-6-800.3, C.R.S.; or

(d) Licensed or certified by the division of adult parole in the department of corrections, the department of regulatory agencies, the office of behavioral health in the department of human services, the state board of nursing, or the Colorado medical board, whichever is appropriate for the required treatment or counseling.

(5.8) Notwithstanding the provisions of subsection (5.7) of this section, if, as a condition of parole, an offender who was convicted of or pled guilty to an offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., is required to undergo counseling or treatment, such treatment or counseling shall be at a facility or with a person listed in subsection (5.7) of this section and the parole board may not determine treatment at another facility or with another person is warranted.

(5.9) As a condition of parole of each person convicted of a felony DUI offense described in section 42-4-1301 (1)(a), (1)(b), or (2)(a), C.R.S., the board shall require the parolee to use an approved ignition interlock device for the entire period of the person's parole.

(6) The board has the authority at any time after the period of any parole is fixed to shorten the period thereof or to lengthen said period within the limits specified in subsection (5) of this section; except that the provisions of this subsection (6) shall not apply to any person sentenced as a sex offender pursuant to part 10 of article 1.3 of title 18, C.R.S.

(7) The board has exclusive power to conduct all proceedings involving an application for revocation of parole.

(8) The board has the power, in the performance of official duties, to issue warrants and subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of its inquiry, and to administer oaths and take the testimony of persons under oath. The issuance of a warrant tolls the expiration of a parolee's parole.

(9) (a) (I) Except as otherwise provided in subparagraph (I) of paragraph (f) of subsection (4) of this section, whenever an inmate initially applies for parole, the board shall conduct an interview with the inmate. At such interview at least one member of the board shall be present. Any final action on an application shall not be required to be made in the presence of the inmate or parolee, and any such action shall require the concurrence of at least two members of the board. When the two members do not concur, a third member shall review the record and, if deemed necessary, interview the applicant and cast the deciding vote. Any subsequent application for parole shall be considered by the board in accordance with the provisions of paragraph (a) of subsection (4) of this section.

(II) The provisions of subparagraph (I) of this paragraph (a) shall also apply to all interviews of inmates who apply for parole pursuant to section 17-22.5-303, who were sentenced for an offense committed on or after July 1, 1979.

(b) When a recommendation has been made before the board for revocation or modification of a parole, the final disposition of such application shall be reduced to writing. The parolee shall be advised by the board of the final decision at the conclusion of the hearing or within a period not to exceed five working days following said hearing; however, a parolee may waive the five-day notice requirement. A copy of the final order of the board shall be delivered to the parolee within ten working days after the completion of the hearing.

(c) If the parolee decides to appeal the decision to revoke his parole, such appeal shall be filed within thirty days of such decision. The parolee shall remain in custody pending the appeal. Two members of the board, excluding the one who conducted the revocation proceeding, shall review the record within fifteen working days after the filing of the appeal. They shall notify the parolee of their decision in writing within ten working days after such decision has been made.

(d) The district attorney or the attorney general may appeal the decision of a member of the board to two members of the board, excluding the member who conducted the parole revocation proceeding.

(10) The board shall interview all parole applicants at the institution or in the community in which the inmate is physically held or through teleconferencing as provided in subparagraph (II) of paragraph (d) of subsection (3) of this section. The site location of an interview shall not be changed within the thirty days preceding the interview date without the approval of the board. Any inmate of an adult correctional institution who has been transferred by executive order or by civil commitment or ordered by a court of law to the Colorado mental health institute at Pueblo may be heard at the Colorado mental health institute at Pueblo upon an application for parole.

(11) Repealed.

(12) 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.

(13) (a) The board may appoint or contract with an attorney to represent a parolee at a parole revocation hearing only if:

(I) The parolee denies that he violated the condition or conditions of his parole, as set forth in the

complaint;

(II) The parolee is incapable of speaking effectively for himself;

(III) The parolee establishes to the satisfaction of the board that he is indigent; and

(IV) The board, after reviewing the complaint, makes specific findings in writing that the issues to be resolved are complex and that the parolee requires the assistance of counsel.

(b) Repealed.

(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.

(15) Each correctional facility and private contract prison shall make available to the board hearing room space and video teleconferencing technology that are acceptable to the board for the purpose of conducting parole hearings within the administrative area of or another location within the facility acceptable to the board.

HISTORY: Source: L. 77: Entire title R&RE, p. 911, § 10, effective August 1. L. 79: (3)(a), (3)(b), (6), and (7) amended, (3)(c) repealed, pp. 688, 705, §§ 27, 88, effective July 1; (3)(f) added and (5)(a) amended, p. 666, §§ 11, 12, effective July 1. L. 81: (5)(b) amended and (5)(c) added, p. 942, § 2, effective July 1. L. 84: (5)(d) added, p. 497, § 2, effective April 5; (3)(g) added and (5)(c)(II)(B) amended, p. 511, §§ 2, 1, effective April 13; (5)(c)(II)(B) amended, p. 524, § 4, effective July 1. L. 85: (3) and (4) R&RE, p. 639, § 4, effective June 6; (1), (2), (7), (8), (9), and (11) amended, pp. 637, 638, §§ 2, 3, effective July 1; (5)(c)(I) and (5)(c)(III) amended, p. 628, § 2, effective July 1; (5)(e) added, p. 667, § 4, effective July 1; (12) added, p. 643, § 2, effective July 1. L. 87: (3)(c), (7), (8), and (9)(b) amended, p. 954, § 56, effective March 13; (1)(b) amended, p. 906, § 11, effective June 15; (1) and (9)(c) amended and (5)(f) and (13) added, pp. 651, 653, §§ 7, 8, effective July 1; (5.5) added, p. 660, § 1, effective July 1. L. 88: (5)(g) added, p. 701, § 1, effective May 29; (5)(b) amended, p. 709, § 5, effective July 1. L. 90: (1)(a) and (1)(b) amended and (1)(c) and (1)(d) added, p. 959, § 1, effective June 7. L. 91: (10) amended, p. 1142, § 5, effective May 18; (4)(d) and (5.5)(g) added, p. 442, §§ 6, 7, effective May 29. L. 92: (1)(a) amended, p. 2172, § 22, effective June 2; (4)(e) added, p. 461, § 5, effective June 2; (5)(f)(I)(H) and (5)(f)(I)(I) amended and (5)(f)(I)(J) added, p. 211, § 14, effective August 1. L. 94: (1)(b), (3)(c), (4)(a), (7), (8), (9)(a)(I), and (9)(b) amended, pp. 2595, 2596, 2598, §§ 3, 4, 5, 8, effective June 3; (5.5)(b)(II) and (5.5)(c) amended, p. 2732, § 355, effective July 1. L. 95: (3)(c) and (9)(b) amended, p. 1272, § 5, effective June 5; (5.5)(c) amended, p. 465, § 9, effective July 1. L. 96: (5)(c) amended, p. 1779, § 5, effective June 3; (5)(a) amended and (5)(a.5) added, p. 1584, § 6, effective July 1. L. 97: (5)(c)(I) amended, p. 1566, § 14, effective July 1. L. 98: (13)(b) repealed, p. 727, § 9, effective May 18; (5)(a.7) added and (5)(e) and (6) amended, p. 1291, §§ 10, 11, effective November 1. L. 99: (5)(h) and (5)(i) added, p. 1168, § 2, effective July 1. L. 2000: (11) repealed, p. 842, § 28, effective May 24; (3)(d) added, p. 1056, § 1, effective May 26; (5.7) added, p. 236, § 7, effective July 1; (5)(c) amended, p. 1043, § 4, effective September 1; (3)(a) amended, p. 1496, § 3, effective July 1, 2001. L. 2001: (3)(c.5) added, p. 502, § 3, effective May 16; (5.8) added, p. 658, § 7, effective May 30; (5)(g), (5)(h), and (5)(i) amended, p. 955, § 3, effective July 1. L. 2002: (5)(a.5) amended and (5)(a.6) added, p. 125, § 2, effective March 26; (5.7)(a) amended, p. 666, § 11, effective May 28; (5)(g)(I) and (5.8) amended, p. 1017, § 22, effective June 1; (5)(a), (5)(a.5), (5)(a.6), and (5.8) amended and (5)(j) added, pp. 1185, 1192, 1181, §§ 19, 40, 5, effective July 1; (5)(g)(I) and (5)(h)(I) amended, p. 1152, § 8, effective July 1; (4)(a), (5)(a), (5)(a.6), (5)(a.7), (5)(b), (5)(c)(II)(D), and (6) amended, pp. 1500, 1566, §§ 159, 388, effective October 1. L. 2003: (5)(g)(I) amended, p. 1433, § 25, effective April 29 and (5)(a) amended and (5)(a.3) added, p. 1436, § 33, effective July 1; (4)(a) amended, p. 813, § 3, effective July 1; (14) added, p. 2676, § 3, effective July 1. L. 2004: (1)(a), (1)(b), and (1)(c) amended, p. 437, § 1, effective April 13; (10) amended and (15) added, p. 587, § 1, effective April 21. L. 2006: (5)(a) amended, p. 1054, § 7, effective May 25; (5)(k) added, p. 342, § 5, effective July 1; (5)(h)(IV) added by revision, pp. 1689, 1693, §§ 6, 17. L. 2008: IP(5.5)(a), (5.5)(c), and (5.5)(e) amended, p. 461, § 1, effective April 14; (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) amended, p. 657, § 6, effective April 25; (5.5)(c)(II) amended, p. 1888, § 49, effective August 5. L. 2010: (5.7)(a) amended, (SB 10-175), ch. 188, p. 784, § 24, effective April

29; (3.5) added, (HB 10-1374), ch. 261, p. 1187, § 9, effective May 25; (5.7)(d) amended, (HB 10-1260), ch. 403, p. 1986, § 75, effective July 1; (9)(a)(I) amended, (HB 10-1422), ch. 419, p. 2073, § 30, effective August 11. L. 2011: (1)(a), (3)(c), and (3)(c.5) amended and (1)(e), (3)(e), (3)(f), (3)(g), (3)(h), (3)(h.1), and (4)(f) added, (SB 11-241), ch. 200, pp. 832, 833, 834, §§ 2, 3, 4, effective May 23; (3.5) amended, (HB 11-1064), ch. 234, p. 1010, § 2, effective May 27; (5.7)(d) amended, (HB 11-1303), ch. 264, p. 1156, § 29, effective August 10. L. 2012: (3)(h.1)(I) amended, (HB 12-1310), ch. 268, p. 1403, § 27, effective June 7; (5.5)(b) amended, (HB 12-1311), ch. 281, p. 1617, § 36, effective July 1. L. 2013: (3)(h.1)(I) amended, (SB 13-250), ch. 333, p. 1932, § 47, effective October 1. L. 2014: (5)(a.3)(I) amended, (SB 14-163), ch. 391, p. 1969, § 4, effective June 6. L. 2015: (4)(f)(I) and (9)(a)(I) amended and (3.7) added, (HB 15-1122), ch. 37, p. 88, § 2, effective March 20;(5.5)(e) amended, (SB 15-124), ch. 251, p. 918, § 4, effective May 29; (5.9) added, (HB 15-1043), ch. 262, p. 998, § 10, effective August 5. L. 2016: (4)(f)(I)(B) amended, (SB 16-189), ch. 210, p. 759, § 27, effective June 6. L. 2017: IP(5.7), (5.7)(a), and (5.7)(d) amended, (SB 17-242), ch. 263, p. 1253, § 11, effective May 25; (3.5) amended, (SB 17-031), ch. 92, p. 281, § 7, effective August 9; (4)(f)(I) amended, (HB 17-1326), ch. 394, p. 2030, § 4, effective August 9; (5)(c)(I), (5)(f)(I)(B), (5)(f)(I)(D), (5.5)(a), and (5.5)(c)(I) amended and (5)(f)(I)(F) and (5.5)(e) repealed, (HB 17-1308), ch. 371, p. 1928, § 2, effective August 9.

Editor's note: This title was numbered as articles 17 and 18 of chapter 39, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1977, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1977, consult Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Editor's note: (1) Prior to the repeal and reenactment of this title in 1977, the substantive provisions of this article were contained in article 1 of this title.

(2) For additional historical information concerning the repeal and reenactment of this title, see the editor's note at the beginning of this title.

Cross references: For the "Interstate Compact for Adult Offender Supervision", see part 28 of article 60 of title 24.

Editor's note: (1) This section is similar to former § 17-1-201 as it existed prior to 1977.

(2) Amendments to subsections (5)(a) and (5)(a.6) by House Bill 02-1046 and Senate Bill 02-010 were harmonized, effective October 1, 2002. Amendments to subsection (5)(a.5) by House Bill 02-1223 and Senate Bill 02-010 were harmonized. Amendments to subsection (5)(g)(I) by Senate Bill 02-159 and Senate Bill 02-019 were harmonized. Amendments to subsection (5.8) by Senate Bill 02-159 and Senate Bill 02-010 were harmonized.

(3) Subsection (5)(h)(IV) provided for the repeal of subsection (5)(h), effective July 1, 2007. (See L. 2006, pp. 1689, 1693.)

(4) Amendments to subsection (5.5)(c) by Senate Bill 08-171 and Senate Bill 08-172 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (5.5)(b)(II) and (5.5)(c), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsections (4)(a), (5)(a), (5)(a.6), (5)(a.7), (5)(b), (5)(c)(II)(D), and (6), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2006 act amending subsection (5)(a), see section 1 of chapter 228, Session Laws of Colorado 2006. For the legislative declaration in HB 15-1122, see section 1 of chapter 37, Session Laws of Colorado 2015. For the legislative declaration in SB 15-124, see section 1 of chapter 251, Session Laws of Colorado 2015. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in HB 17-1326, see section 1 of chapter 394, Session Laws of Colorado 2017. For the legislative declaration in HB 17-1308, see section 1 of chapter 371, Session Laws of Colorado 2017.

ANNOTATION

I. General Consideration.
II. Power to Grant Parole.
III. Power to Revoke Parole.

I.GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For article, "Adult Parole in Colorado: An Overview", see 44 Colo. Law. 37 (May 2015).

Annotator's note. Since ง 17-2-201 is similar to ง 17-1-201 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.

Section 16-13-101 does not violate the constitution. Even though a person sentenced to life imprisonment may be eligible for parole before a person sentenced for a term of not less than 25 years and not more than 50 years under ง 16-13-101, it does not violate the equal protection clause because the statutory scheme gives the parole board discretionary power to grant parole on the basis of factors other than the length of a prisoner's sentence and this is reasonably related to a legitimate government interest. People v. Alexander, 797 P.2d 1250 (Colo. 1990).

While obtaining and analyzing the DNA or saliva of an inmate convicted of a sex offense is a search and seizure implicating fourth amendment concerns, it is a reasonable search and seizure in light of an inmate's diminished privacy rights; the minimal intrusion of saliva and blood tests; and the legitimate government interest in the investigation and prosecution of unsolved and future criminal acts by the use of DNA in a manner not significantly different from the use of fingerprints. Boling v. Romer, 101 F.3d 1336 (10th Cir. 1996).

Since DNA samples are not testimonial in nature, requiring such samples from inmates does not amount to compulsory self-incrimination under the fifth amendment.$R Boling v. Romer, 101 F.3d 1336 (10th Cir. 1996).

Taking DNA samples only from inmates convicted of sex offenses does not deprive those inmates of the equal protection of the laws since a rational relationship exists between the government's decision to classify inmates as convicted sex offenders and the government's stated objective to investigate and prosecute unsolved and future sex crimes. Boling v. Romer, 101 F.3d 1336 (10th Cir. 1996).

Subsection (5)(g), by its plain language, applies only to those offenders who are convicted of a sexual offense after the date the statute took effect (May 29, 1988) and who subsequently are eligible for parole. Thus the statute was not retrospectively applied to defendant who was convicted July 28, 1988, as a sex offender. Jamison v. People, 988 P.2d 177 (Colo. App. 1999).

As applied to the defendant, the 1994 amendment to subsection (4)(a) that decreased the frequency of parole suitability hearings for certain classes of prisoners did not violate the ex post facto clause of the United States Constitution. Raymer v. Enright, 113 F.3d 172 (10th Cir. 1997).

The parole board, as a Colorado state agency, benefits from the immunity conferred by the eleventh amendment to the federal constitution.$R Hughes v. Colo. Dept. of Corr., 594 F. Supp. 2d 1226 (D. Colo. 2009).

The trial court correctly determined that the board of parole is exempt from the requirements of the APA. This section governs the responsibilities, authority, and discretion of the board. McCallum v. Colo. State Bd. of Parole, 23 P.3d 1226 (Colo. App. 2000).

Review of acts of parole board. Acts of the parole board being definitely of grace are not such a function as is reviewable by the courts by certiorari, habeas corpus or mandamus. Berry v. State Bd. of Parole, 148 Colo. 547, 367 P.2d 338 (1961), cert. denied, 370 U.S. 927, 82 S. Ct. 1569, 8 L. Ed. 2d 507 (1962).

A person denied parole can seek judicial review only as provided by C.R.C.P. 106(a)(2). In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

It is only when the Colorado state board of parole has failed to exercise its statutory duties that the courts of Colorado have the power to review the board's actions. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Absent specific criteria which mandate release. The Colorado statutory scheme does not create a constitutionally protected entitlement to parole. Thompson v. Riveland, 714 P.2d 1338 (Colo. App. 1986); Andretti v. Johnson, 779 P.2d 382 (Colo. 1989).

Persons sentenced as habitual criminals are subject to the discretionary parole period established in subsection (5)(a). People v. Denton, 91 P.3d 388 (Colo. App. 2003).

Subsection (5)(a) mandates that parole is discretionary for sexual offenders.$R Grenemyer v. Gunter, 770 F. Supp. 1432 (D. Colo. 1991).

There is no mandatory parole for persons convicted of an offense involving unlawful sexual behavior committed on or after July 1, 1996, but prior to November 1, 1998. Pursuant to subsection (5)(a.5), the parole board sets the length of parole that cannot exceed the sentence imposed. People v. Cooper, 8 P.3d 554 (Colo. App. 1999), aff'd, 27 P.3d 348 (Colo. 2001).

Rather, subsection (5)(a.5) requires discretionary parole for an offense involving unlawful sexual behavior, as defined in ง 18-3-412.5 (1), and for an offense for which the factual basis involved an offense involving unlawful sexual behavior. Thus, an offense that is not an unlawful sexual behavior offense will still trigger the discretionary parole requirement as long as there is a factual basis that involves an offense involving unlawful sexual behavior. People v. Pahlavan, 83 P.3d 1138 (Colo. App. 2003).

The phrase "in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court" means the period of parole granted by the board cannot be longer than the unserved portion of the sentence of incarceration. Martin v. People, 27 P.3d 846 (Colo. 2001).

The phrase "maximum sentence" refers only to the sentence of incarceration.$R Martin v. People, 27 P.3d 846 (Colo. 2001).

The provisions of subsection (5)(a) of this section and ง 18-1-105 (1)(a)(V)(C) are in conflict. Subsection (5)(a) is a specific provision related to the parole of sex offenders while ง 18-1-105 (1)(a)(V)(C) is the general sentencing statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, subsection (5)(a) of this section shall be given effect for all sex offender parole for crimes committed before July 1, 1996. Martin v. People, 27 P.3d 846 (Colo. 2001); People v. Pauley, 42 P.3d 57 (Colo. App. 2001).

Subsection (5)(a.5) of this section is a specific provision related to the parole of sex offenders while ง 18-1-105 (1)(a)(V) is the general sentencing statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, subsection (5)(a.5) of this section shall be given effect for all sex offender parole for crimes committed between July 1, 1996, and July 1, 1998. People v. Cooper, 27 P.3d 348 (Colo. 2001).

Sex offenders convicted of offenses occurring between July 1, 1993, and July 1, 1998, are subject to discretionary parole pursuant to subsection (5)(a), and not mandatory parole pursuant to ง 18-1-105 (1)(a)(V)(C).$R People v. Koehler, 30 P.3d 694 (Colo. App. 2000).

Under subsections (5)(a) and (5)(a.5), a factual basis for unlawful sexual behavior must be established by statements made by the defendant, facts or fact-finding stipulated to by the defendant, or facts found by a jury. People v. Rockwell, 125 P.3d 410 (Colo. 2005).

Habitual offenders are subject to a period of discretionary parole rather than a period of statutory mandatory parole. The provisions of subsection (5)(a) of this section and ง 17-2-213 irreconcilably conflict with the provisions of ง 17-22.5-403 (7) and ง 18-1-105 (1)(a)(V). Thus, the specific provision of subsection (5)(a) of this section and ง 17-2-213 prevail over the general provisions of ง 17-22.5-403 (7) and ง 18-1-105 (1)(a)(V). People v. Falls, 58 P.3d 1140 (Colo. App. 2002).

The provisions of subsection (5)(a) of this section and § 17-22.5-403 (7) are in conflict. Subsection (5)(a) of this section is a specific provision related to the parole of sex offenders while § 17-22.5-403 (7) is the mandatory parole statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, subsection (5)(a) of this section is an exception to § 17-22.5-403 (7), which creates a specialized schedule for sex offenders who committed crimes prior to July 1, 1996. Martin v. People, 27 P.3d 846 (Colo. 2001).

Subsection (5)(a.5) of this section is a specific provision related to the parole of sex offenders while § 17-22.5-403 (7) is the mandatory parole statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, subsection (5)(a.5) of this section is an exception to § 17-22.5-403 (7), which creates a specialized schedule for sex offenders who committed crimes between July 1, 1996, and July 1, 1998. People v. Cooper, 27 P.3d 348 (Colo. 2001).

Where plaintiff does not dispute that parole in Colorado is discretionary, subsection (5)(g) does not implicate any liberty interest protected by due process by conditioning parole on an inmate's submission of DNA samples. Boling v. Romer, 101 F.3d 1336 (10th Cir. 1996).

Immunity of state officials from civil liability. Federal officials are immune from any form of civil liability arising out of the authorized performance of official judgment or discretionary functions. Allegations of malice, while sufficient to raise a cause of action in those few jurisdictions recognizing only a qualified privilege, do not defeat the absolute liability recognized by the great weight of federal decisions. Advancing the effective administration of state government is a no less important policy goal than securing fearless federal decision-making. Belveal v. Bray, 253 F. Supp. 606 (D. Colo. 1966).

Subsection (5)(f)(I)(D) authorizes a warrantless search if it is conducted in furtherance of the purposes of parole, i.e., related to the rehabilitation and supervision of the parolee; and it is not arbitrary, capricious, or harassing. People v. McCullough, 6 P.3d 774 (Colo. 2000).

Although it becomes the duty of the parole board to provide, as a condition of parole, that offender make restitution to the victim or victim's immediate family, it is error for court to require that defendant pay restitution to the police of cost of extradition. The proper way to effectuate this result is for court to enter judgment in favor of state of Colorado for amount of costs of prosecution under § 16-1-501. People v. Lemons, 824 P.2d 56 (Colo. App. 1991).

Position as officer of state parole board not fundamental right. An officer of the state parole board has no property or vested interest in the public office and procedural protections of due process do not apply. Wilkerson v. State of Colo., 830 P.2d 1121 (Colo. App. 1992).

While the trial court is authorized to fix the amount of restitution owing by the defendant, the manner and time of payment of restitution is exclusively within the jurisdiction of the parole board.$R People v. Strock, 931 P.2d 538 (Colo. App. 1996).

Under subsection (5)(c)(I) the term "victim" includes insurers and other parties who have suffered a loss because of a contractual relationship with the immediate victim. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Searches by parole officers of a parolee's residence pursuant to the statutory waiver (subsection (5)(f)(I)(D)) require no more than reasonable suspicion, supported by specific and articulable facts that the parolee has committed a parole violation or crime.$R People v. Tafoya, 985 P.2d 26 (Colo. App. 1999).

Search of parolee's residence was a special-needs parole search because participating police officer acted under the direction of a parole officer. Special-needs exception to the warrant and probable-cause requirements applies when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable. A parole officer must authorize the search and would normally be present during the search, and the search must be related to the rehabilitation and supervision of the parolee. United States v. Warren, 566 F.3d 1211 (10th Cir.), cert. denied, 558 U.S. 1018, 130 S. Ct. 569, 175 L. Ed. 2d 393 (2009).

Although the department of corrections did not have the statutory authority to draw defendant's blood for a DNA test, suppression of the DNA evidence is not warranted. In contrast to a constitutional violation, a statutory violation does not ordinarily require suppression of relevant evidence. Generally, only willful and

recurrent statutory violations require exclusion of evidence. In this case there was no evidence of willfulness or recurrence, so suppression is not required. People v. Shreck, 107 P.3d 1048 (Colo. App. 2004).

The plain language of subsection (5.5)(g) of this section and § 17-2-102 (8.5)(c) prohibits the application of either subsection (5.5) of this section or § 17-2-102 (8.5) to any parolee to whom the Substance Abuse Act, article 11.5 of title 16, applies.$R Whidden v. People, 78 P.3d 1092 (Colo. 2003).

Applied in Sorenson v. Zapien, 455 F. Supp. 1207 (D. Colo. 1978); Turman v. Buckallew, 784 P.2d 774 (Colo. 1989); People v. Apodaca, 998 P.2d 25 (Colo. App. 1999).

II.POWER TO GRANT PAROLE.

Parole is a mere matter of grace, favor, or privilege and is not a matter of right. Berry v. State Bd. of Parole, 148 Colo. 547, 367 P.2d 338 (1961), cert. denied, 370 U.S. 927, 82 S. Ct. 1569, 8 L. Ed. 2d 507 (1962); Ferchaw v. Tinsley, 234 F. Supp. 922 (D. Colo. 1964); Folks v. Patterson, 159 Colo. 403, 412 P.2d 214 (1966).

Parole is a privilege, and no prisoner is entitled to it as a matter of right. Silva v. People, 158 Colo. 326, 407 P.2d 38 (1965).

Parole is a privilege under Colorado law. Belveal v. Bray, 253 F. Supp. 606 (D. Colo. 1966).

It is exercise of discipline by state. Acts authorizing the parole of convicts are an exercise of the power of discipline possessed by the state, implemented through the general assembly. Silva v. People, 158 Colo. 326, 407 P.2d 38 (1965).

Imposition of mandatory term of parole not within court's jurisdiction, but is within the exclusive province of the parole board.$R People v. Howard, 886 P.2d 296 (Colo. App. 1994).

The parole board has absolute discretion in the granting or denial of parole. The determinations involved in granting parole depend exclusively on the judgment and discretion of the board. Wilkerson v. Patterson, 174 Colo. 264, 483 P.2d 365 (1971).

The ultimate decision as to the granting or denial of parole is entrusted to the state parole board. Ferchaw v. Tinsley, 234 F. Supp. 922 (D. Colo. 1964).

The decision of the Colorado state board of parole to grant or deny parole is clearly discretionary since parole is a privilege, and no prisoner is entitled to it as a matter of right. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

The decision to grant parole or absolute release to an inmate incarcerated for an indeterminate sentence under the Colorado Sex Offender Lifetime Supervision Act is vested within the sound discretion of the state parole board. The parole board's discretion is plenary and is not subject to judicial review. People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

The parole board must act within scope of delegated authority. The parole board is authorized to act only in specified ways. Absolute quasi-judicial immunity to acts not permitted by law does not serve the purpose of more efficient government. Officials who act without the scope of their delegated authority must, at the least, proceed at their own risk. Belveal v. Bray, 253 F. Supp. 606 (D. Colo. 1966).

Decision of the board to deny parole is not an abuse of discretion as long as there is sufficient evidence before the board to support its decision.$R Mulberry v. Neal, 96 F. Supp. 2d 1149 (D. Colo. 2000).

An inmate has a substantial interest in knowing the reason or reasons from the board for denial of parole.$R Johnson v. Heggie, 362 F. Supp. 851 (D. Colo. 1973).

And board must give written reasons. Notwithstanding any other policy to the contrary, the board must, by the very terms and conditions of its own rules and regulations, give written reasons for denial or deferral of parole to the inmate concerned. Johnson v. Heggie, 362 F. Supp. 851 (D. Colo. 1973).

The general assembly did not intend to provide a mandatory period of parole.$R Wilkerson v. Patterson, 174 Colo. 264, 483 P.2d 365 (1971).

Board must reconsider application yearly after denial. The parole board is explicitly not required to grant an application, but when it does not grant a parole, it must reconsider the application each succeeding year until the prisoner is discharged pursuant to law, that is, until he has fully served the maximum term of his sentence less time allowed for good behavior, if any. Wilkerson v. Patterson, 174 Colo. 264, 483 P.2d 365 (1971).

Habeas corpus in the federal district court is not available to secure relief from the decisions of the parole board as to the grant or denial of parole. Ferchaw v. Tinsley, 234 F. Supp. 922 (D. Colo. 1964).

Denial of parole raises no federal question of due process. The action of the parole board denying petitioner parole and requiring him to serve the maximum sentence originally imposed by the sentencing court raises no federal question of violation of due process or equal protection. Ferchaw v. Tinsley, 234 F. Supp. 922 (D. Colo. 1964).

Restitution as a condition of parole. Sentence which ordered defendant to pay restitution as a condition of parole after serving time in prison is consistent with the applicable statutory scheme governing parole and restitution. People v. Martinez, 734 P.2d 650 (Colo. App. 1987).

The court's duty to fix the amount of restitution is not confined to sentences to probation but applies equally to sentences to imprisonment. People v. Johnson, 780 P.2d 504 (Colo. 1989).

A codefendant is jointly responsible for restitution when he is also a complicitor in the crime. People v. Fichtner, 869 P.2d 539 (Colo. 1994).

Codefendants were participants and complicitors in the same criminal acts, therefore, each is responsible for the damage he caused and also for the damage caused by the other. People v. Fichtner, 869 P.2d 539 (Colo. 1994).

Where the parole board fails to issue a warrant for the arrest of a parolee, and the period of parole expires, law enforcement agencies have no authority to arrest the parolee, and the good faith exception and the fellow officer rule do not apply. People v. Fields, 785 P.2d 611 (Colo. 1990).

Subsection (5)(a) plainly and unambiguously provides that all habitual criminals sentenced pursuant to ง 16-13-101 are subject to discretionary parole, regardless of when their current offenses were committed. People v. Marquez, 983 P.2d 159 (Colo. App. 1999).

Under subsection (5)(a), parole for inmates convicted of sexual offenses under ง 16-13-202 (5) was discretionary, not mandatory.$R Lustgarden v. Kautzky, 811 P.2d 1098 (Colo. 1991); Lustgarden v. Gunter, 779 F. Supp. 500 (D. Colo. 1991); Lustgarden v. Gunter, 966 F.2d 552 (10th Cir. 1992), cert. denied, 506 U.S. 1008, 113 S. Ct. 624, 121 L. Ed. 2d 556 (1992); Jackson v. Zavaras, 963 P.2d 1118 (Colo. App. 1998).

The provisions of ง 16-13-216 (1) granting yearly parole consideration for persons sentenced to an indeterminate term pursuant to ง 16-13-203 conflict with the provisions of subsection (4)(a) of this section, which allow the parole board to consider parole for sex offenders every three years. Since subsection (4)(a) is the later enacted statute, the provisions of subsection (4) prevail. A person sentenced to an indeterminate sentence pursuant to ง 16-13-203 is entitled to parole consideration only every three years. White v. Van Pelt, 55 P.3d 823 (Colo. App. 2002).

Where defendant was convicted of both a sexual offense and attempted murder, and received equal and concurrent sentences for each crime, parole was discretionary pursuant to subsection (5)(a).$R Mahn v. Gunter, 978 F.2d 599 (10th Cir. 1992).

No equal protection violation where offender convicted of a nonsexual offense would receive mandatory parole, but an offender convicted of a comparable nonsexual offense in which there is an underlying factual basis of unlawful sexual behavior would receive discretionary parole under subsection (5)(a). Offenders are not similarly situated because different behavior triggers the different parole requirements. People v. Fritschler, 87 P.3d 186 (Colo. App. 2003).

Retroactive application of the parole board's reinterpretation of subsection (5)(a), where the reinterpretation of the ambiguous statutory language was foreseeable, did not result in a violation of the ex post facto clause or the due process requirements. Lustgarden v. Gunter, 779 F. Supp. 500 (D. Colo. 1991); Lustgarden v. Gunter, 966 F.2d 552 (10th Cir. 1992), cert. denied, 506 U.S. 1008, 113 S. Ct. 624, 121 L. Ed. 2d 556 (1992).

Because subsection (5)(a) leaves it to the parole board's discretion whether to grant parole before a sex offender completes his sentence, petitioner's unilateral belief that good-time credits would result in his early release did not give rise to a constitutionally protected interest. Lustgarden v. Gunter, 779 F. Supp. 500 (D. Colo. 1991); Lustgarden v. Gunter, 966 F.2d 552 (10th Cir. 1992), cert. denied, 506 U.S. 1008, 113 S. Ct. 624, 121 L. Ed. 2d 556 (1992).

Where defendant was convicted of sexually assaulting the victim over a period of four years that ended July 6, 1998, the elements of the crime were not complete, and the crime was not committed, until that date. Therefore, the provisions of subsection (5)(a.5) apply and, if the parole board releases the defendant to a period of discretionary parole when he has more than five years of his prison sentence remaining, the length of the parole period may be up to the full amount of the unserved portion of his sentence and shall not be subject to the five-year cap. People v. Myers, 45 P.3d 756 (Colo. App. 2001).

Consideration of application for parole is matter entrusted solely to the discretion of the parole board for parolee convicted of sexual offenses. White v. People, 866 P.2d 1371 (Colo. 1994).

Court may correct erroneous sentence of person convicted of unlawful sexual offense from one-year probation to the period set forth in subsection (5)(a). People v. Reynolds, 907 P.2d 670 (Colo. App. 1995).

Court may correct the mittimus where the trial court neglected to specify that its sentence included a mandatory period of parole. People v. Mayes, 981 P.2d 1106 (Colo. App. 1999).

Parole decision is subtle and dependent on an amalgam of elements some of which are factual and many of which are purely subjective appraisals by the parole board members based upon their experience. White v. People, 866 P.2d 1371 (Colo. 1994).

Although parole agreement is anticipated, it is not a condition to grant of parole but a condition to release on parole. Regulations do not suggest that grant of parole not effective until prisoner actually released from custody. Prisoner granted parole to a county detainer and serving consecutive sentence on another conviction made prima facie case for writ of habeas corpus relief when he alleged that parole had not been suspended or rescinded. Cardiel v. Brittian, 833 P.2d 748 (Colo. 1992) (decided prior to enactment of § 17-2-201 (5)(f)(I)).

III.POWER TO REVOKE PAROLE.

Law reviews. For article, "Due Process, Equal Protection and State Parole Revocation Proceedings", see 42 U. Colo. L. Rev. 197 (1970).

The decision to revoke is discretionary, and the degree to which personal factors dictate a positive disposition is not susceptible to legal analysis. 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).

Rules of board provide adequate opportunity to be heard. The rules and regulations of the state board of parole providing that where the parolee has been returned to custody he shall be brought before the board for interview, that he shall be informed of the reason for the suspension and of grounds asserted for revocation, and shall be given an opportunity to be heard in regard thereto, satisfy the requirements of law in that they adequately provide for an inquiry by the board together with an opportunity for the parolee to be heard with respect to the alleged violations. Hutchison v. Patterson, 267 F. Supp. 433 (D. Colo. 1967).

Probation and parole revocation distinguished. Probation revocation proceedings involving deferred sentencing are quite distinct from parole revocation proceedings. The Colorado provisions on probation, § 16-11-201 et seq., do not provide probationers more in substance than what is accorded parolees.

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).

Acts of parole board in revoking parole were not subject to review by the judiciary, be it through the medium of certiorari, habeas corpus or mandamus. Folks v. Patterson, 159 Colo. 403, 412 P.2d 214 (1966).

Colorado affords no judicial review of the acts of the state board of parole in conducting revocation proceedings and therefore no state remedy is available to petitioner upon his claim that his present confinement is unlawfully premised on a parole revocation hearing at which he was denied due process. Green v. Patterson, 370 F.2d 560 (10th Cir. 1966).

Federal court found no prejudice where parolees did not deny violations. Appellants' allegations do not at any place deny that they violated the conditions of their respective paroles. Appellants easily could have made a record in this regard and in the absence of that the court cannot conclude that any appellant was prejudiced in the proceedings before the parole board. In view of the nature of the decision to be made in parole revocation proceedings, the presumption of correctness accorded to the proceedings of parole boards, and limited review of such decisions for abuse of discretion, the court cannot conclude that the parole revocation proceedings accorded each appellant lacked inherent fairness. 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).

Subsection (5.5)(d), when read together with § 17-2-102, prohibits parole revocation upon initial drug or alcohol testing even if the result is positive, but does allow revocation upon any subsequent positive test if the initial test was not positive. People v. Whidden, 56 P.3d 1201 (Colo. App. 2002), aff'd on other grounds, 78 P.3d 1092 (Colo. 2003).