

*C.R.S. 17-22.5-404*

## 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  
CORRECTIONAL FACILITIES AND PROGRAMS  
ARTICLE 22.5. INMATE AND PAROLE TIME COMPUTATION  
PART 4. PAROLE ELIGIBILITY AND DISCHARGE FROM CUSTODY

C.R.S. 17-22.5-404 (2017)

17-22.5-404. Parole guidelines - definition

(1) The general assembly hereby finds that:

(a) The risk of reoffense shall be the central consideration by the state board of parole in making decisions related to the timing and conditions of release on parole or revocation of parole;

(b) Research demonstrates that actuarial risk assessment tools can predict the likelihood or risk of reoffense with significantly greater accuracy than professional judgment alone. Evidence-based correctional practices prioritize the use of actuarial risk assessment tools to promote public safety. The best outcomes are derived from a combination of empirically based actuarial tools and clinical judgment.

(c) Although the state board of parole is made up of individuals, using structured decision-making unites the parole board members with a common philosophy and set of goals and purposes while retaining the authority of individual parole board members to make decisions that are appropriate for particular situations. Evidence-based correctional practices support the use of structured decision-making.

(d) Structured decision-making by the state board of parole provides for greater accountability, standards for evaluating outcomes, and transparency of decision-making that can be better communicated to victims, offenders, other criminal justice professionals, and the community; and

(e) An offender's likelihood of success may be increased by aligning the intensity and type of parole supervision, conditions of release, and services with assessed risk and need level.

(2) (a) The division of criminal justice in the department of public safety shall develop the Colorado risk assessment scale to be used by the state board of parole in considering inmates for release on parole. The risk assessment scale shall include criteria that statistically have been shown to be good predictors of the risk of reoffense. The division of criminal justice shall validate the Colorado risk assessment scale at least every five years or more often if the predictive accuracy, as determined by data collection and analysis, falls below an acceptable level of predictive accuracy as determined by the division of criminal justice, the state board of parole, and the division of adult parole in the department of corrections.

(b) The division of criminal justice, the department of corrections, and the state board of parole shall cooperate to develop parole board action forms consistent with this section that capture the rationale for decision-making that shall be published as official forms of the department of corrections. Victim identity and input shall be protected from display on the parole board action form or any parole hearing report that may become a part of an inmate record.

(c) The division of criminal justice, in cooperation with the department of corrections and the state board of parole, shall provide training on the use of the administrative release guideline instrument developed pursuant to section 17-22.5-107 (1) and the Colorado risk assessment scale to personnel of the department of corrections, the state board of parole, administrative hearing officers, and release hearing officers. The division shall conduct the training on a semiannual basis.

(d) The department of corrections, in cooperation with the state board of parole, shall provide training on the use of the administrative revocation guidelines developed pursuant to section 17-22.5-107 (2) to personnel of the department of corrections, the state board of parole, and administrative hearing officers. The department shall conduct the training semiannually.

(3) For a person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony or level 1, level 2, level 3, or level 4 drug felony who is eligible for parole pursuant to section 17-22.5-403, or a person who is eligible for parole pursuant to section 17-22.5-403.7, the state board of parole may consider all applications for parole, as well as all persons to be supervised under any interstate compact. The state board of parole may parole any person who is sentenced or committed to a correctional facility when the board determines, by using, where available, evidence-based practices and the guidelines established by this section, that there is a reasonable probability that the person will not violate the law while on parole and that the person's release from institutional custody is compatible with public safety and the welfare of society. The state board of parole shall first consider the risk of reoffense in every release decision it makes.

(4) (a) In considering offenders for parole, the state board of parole shall consider the totality of the circumstances, which include, but need not be limited to, the following factors:

(I) The testimony or written statement from the victim of the crime, or a relative of the victim, or a designee, pursuant to section 17-2-214;

(II) The actuarial risk of reoffense;

(III) The offender's assessed criminogenic need level;

(IV) The offender's program or treatment participation and progress;

(V) The offender's institutional conduct;

(VI) The adequacy of the offender's parole plan;

(VII) Whether the offender while under sentence has threatened or harassed the victim or the victim's family or has caused the victim or the victim's family to be threatened or harassed, either verbally or in writing;

(VIII) Aggravating or mitigating factors from the criminal case;

(IX) The testimony or written statement from a prospective parole sponsor, employer, or other person who would be available to assist the offender if released on parole;

(X) Whether the offender had previously absconded or escaped or attempted to abscond or escape while on community supervision; and

(XI) Whether the offender successfully completed or worked toward completing a high school diploma, a high school equivalency examination, as defined in section 22-33-102 (8.5), C.R.S., or a college degree during his or her period of incarceration.

(b) The state board of parole shall use the Colorado risk assessment scale that is developed by the division of criminal justice in the department of public safety pursuant to paragraph (a) of subsection (2) of this section in considering inmates for release on parole.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), the state board of parole shall also use the administrative release guideline instrument developed pursuant to section 17-22.5-107 (1) in evaluating an application for parole.

(II) The administrative release guideline instrument shall not be used in considering those inmates classified as sex offenders with indeterminate sentences for whom the sex offender management board pursuant to section 18-1.3-1009, C.R.S., has established separate and distinct release guidelines. The sex offender management board in collaboration with the department of corrections, the judicial department, the division of criminal justice in the department of public safety, and the state board of parole shall

develop a specific sex offender release guideline instrument for use by the state board of parole for those inmates classified as sex offenders with determinate sentences.

(5) (a) In conducting a parole revocation hearing, the state board of parole and the administrative hearing officer shall consider, where available, evidence-based practices and shall consider, but need not be limited to, the following factors:

(I) A determination by the state board of parole that a parolee committed a new crime while on parole, if applicable;

(II) The parolee's actuarial risk of reoffense;

(III) The seriousness of the technical violation, if applicable;

(IV) The parolee's frequency of technical violations, if applicable;

(V) The parolee's efforts to comply with a previous corrective action plan or other remediation plan required by the state board of parole or parole officer;

(VI) The imposition of intermediate sanctions by the parole officer in response to the technical violations that may form the basis of the complaint for revocation; and

(VII) Whether modification of parole conditions is appropriate and consistent with public safety in lieu of revocation.

(b) The state board of parole shall use the administrative revocation guidelines developed pursuant to section 17-22.5-107 (2), in evaluating complaints filed for parole revocation.

(c) The state board of parole or the administrative hearing officer shall not revoke parole for a technical violation unless the board or administrative hearing officer determines on the record that appropriate intermediate sanctions have been utilized and have been ineffective or that the modification of conditions of parole or the imposition of intermediate sanctions is not appropriate or consistent with public safety and the welfare of society.

(6) (a) The state board of parole shall work in consultation with the division of criminal justice in the department of public safety and the department of corrections to develop and implement a process to collect and analyze data related to the basis for and the outcomes of the board's parole decisions. The process shall collect data related to the board's rationale for granting, revoking, or denying parole. Any information relating to victim identification or victim input that is identifiable to an individual defendant or case shall be maintained, but kept confidential and released only to other government agencies, pursuant to a nondisclosure agreement, for the purpose of analysis and reporting, pursuant to paragraph (c) of this subsection (6). When the board grants parole, the process shall also collect data related to whether the offender has previously recidivated, the type of reentry program given to the offender as a part of the offender's parole plan, and whether the offender recidivates while on parole.

(b) The state board of parole shall also determine whether a decision granting, revoking, or denying parole conformed with or departed from the administrative guidelines created pursuant to section 17-22.5-107 and, if the decision was a departure from the guidelines, the reason for the departure. The data collected pursuant to this paragraph (b) are subject to the same victim protections described in paragraph (a) of this subsection (6).

(c) The state board of parole shall provide the data collected pursuant to this subsection (6) to the division of criminal justice in the department of public safety for analysis. The division of criminal justice shall analyze the data received pursuant to this paragraph (c) and shall provide its analysis to the board. The board and the division of criminal justice shall use the data and analysis to identify specific factors that are important in the decision-making process.

(d) The division of criminal justice in the department of public safety shall provide the state board of parole with training regarding how to use the data obtained and analyzed pursuant to paragraph (c) of this subsection (6) to facilitate the board's future decision-making.

(e) (I) Notwithstanding section 24-1-136 (11)(a), C.R.S., on or before March 31, 2017, and on or before March 31 each year thereafter, the state board of parole and the division of criminal justice in the department of public safety shall issue a report to the general assembly regarding outcomes of decisions by the state board of parole. The data must be reported to the general assembly only in the aggregate.

(II) (Deleted by amendment, L. 2011, (SB 11-241), ch. 200, p. 838, § 7, effective May 23, 2011.)

(7) The department of corrections, the state board of parole, the division of adult parole, and the division of criminal justice in the department of public safety shall cooperate in implementing all aspects of this section.

(8) This section shall apply to any person to whom section 17-22.5-303.5, as it existed prior to May 18, 1991, would apply pursuant to the operation of section 17-22.5-406, because the provisions of such sections are substantially similar.

(9) For purposes of this section, "technical violation" means a violation of a condition of parole that is not a conviction for a new criminal offense or not determined by the state board of parole to be a commission of a new criminal offense.

**HISTORY:** Source: L. 90: Entire part added, p. 948, § 19, effective June 7. L. 91: (6) amended and (8) added, p. 334, § 1, effective May 18. L. 93: (2)(a)(VII) amended, p. 1634, § 16, effective July 1. L. 97: (2)(a)(I) and (3)(a)(V) amended, p. 1008, § 9, effective August 6. L. 98: (2)(a)(I) amended, p. 820, § 18, effective August 5. L. 99: (4.5) added, p. 61, § 5, effective July 1. L. 2000: (5), (6)(b), (6)(c), (6)(d), (6)(e), and (7) amended, p. 845, § 42, effective May 24. L. 2006: (1) amended, p. 1054, § 6, effective May 25. L. 2008: (2)(a)(VIII) and (2)(a)(IX) amended, p. 658, § 8, effective April 25. L. 2009: (6)(d) amended, (SB 09-135), ch. 329, p. 1754, § 1, effective August 5. L. 2010: Entire section R&RE, (HB 10-1374), ch. 261, p. 1182, § 6, effective May 25. L. 2011: (6)(e) amended, (SB 11-241), ch. 200, p. 838, § 7, effective May 23. L. 2013: (3) amended, (SB 13-250), ch. 333, p.1934, § 50, effective October 1. L. 2014: (4)(a)(XI) amended, (SB 14-058), ch. 102, p. 378, § 3, effective April 7. L. 2016: (6)(e)(I) amended, (HB 16-1153), ch. 112, p. 317, § 1, effective August 10.

Cross references: For the legislative declaration contained in the 2006 act amending subsection (1), see section 1 of chapter 228, Session Laws of Colorado 2006.

#### ANNOTATION

Mandamus relief under C.R.C.P. 106 is available to challenge the parole board's actions if it has failed to exercise its statutory duties. Although plaintiff did not expressly seek mandamus relief pursuant to C.R.C.P. 106, the gravamen of his complaint was that the parole board's failure to consider any events or circumstances prior to plaintiff's incarceration was in direct violation of statutory guidelines for parole. Under these circumstances, the trial court had jurisdiction to address the merits of the complaint. *Fraser v. Colo. Bd. of Parole*, 931 P.2d 560 (Colo. App. 1996).