

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0602.01 Richard Sweetman x4333

SENATE BILL 15-124

SENATE SPONSORSHIP

Merrifield,

HOUSE SPONSORSHIP

Lee,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF EVIDENCE-BASED PRACTICES IN RESPONSE**
102 **TO TECHNICAL VIOLATIONS OF PAROLE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

With certain exceptions, a community parole officer (parole officer) must exhaust all appropriate and available intermediate sanctions before filing a complaint to revoke a parolee's parole for a technical violation of a condition of parole for which the underlying behavior is not a criminal offense. However, a parole officer may bypass the use of intermediate sanctions if:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- ! The parolee has received 4 or more intermediate sanctions committing the parolee to a brief jail term; or
- ! The nature of the technical violation, in combination with the parolee's criminal history, indicates a heightened risk to public safety.

If a parolee has 2 or more technical violations in a 90-day period, the parolee's parole officer, with the approval of the director of the division of adult parole (division) or the director's designee, may impose a brief term of confinement in the county jail, not to exceed 5 consecutive days, as an intermediate sanction. The division shall reimburse county jails for the use of beds, and a county jail may negotiate with the department of corrections the number of beds that are used.

Under current law, a parolee who refuses to submit to chemical testing shall be arrested, and revocation proceedings shall be initiated against him or her. Under the bill, a parolee who refuses to submit to chemical testing is deemed to have tested positive for the presence of drugs.

Under current law, the director of the division or any parole officer may arrest a parolee under certain conditions, including when the parolee is on parole as a result of a felony conviction and has tested positive for the illegal or unauthorized use of a controlled substance.

The bill removes this condition and adds a new condition under which a parole officer may arrest a parolee. That is, if the parole officer has probable cause to believe that the parolee has committed a technical violation of parole for which the underlying behavior is not a criminal offense and the parole officer has exhausted all appropriate or available intermediate sanctions, treatment, and support services, then the parole officer can arrest the parolee. Testing positive for the use of illegal drugs is considered a technical violation of parole.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Research shows that using traditional mechanisms of
5 surveillance-based supervision and reincarceration in prison as
6 punishment for technical violations of parole are not the most effective
7 approaches to reducing recidivism or improving public safety; and

8 (b) Recent studies show that swift, certain, consistent, and

1 proportional sanctions, in combination with treatment-based interventions
2 that address drug and alcohol dependency and criminogenic behaviors,
3 can reduce noncompliance with supervision, enhance public safety, and
4 reduce state correctional expenditures.

5 (2) Now, therefore, the general assembly declares that it intends
6 this legislation to align parole supervision with evidence-based practices
7 in responding to technical violations.

8 **SECTION 2.** In Colorado Revised Statutes, 17-2-103, **amend** (1);
9 and **add** (1.5) as follows:

10 **17-2-103. Arrest of parolee - revocation proceedings.** (1) The
11 director of the division of adult parole or any community parole officer
12 may arrest any parolee when:

13 (a) He OR SHE has a warrant commanding that such parolee be
14 arrested; or

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

18 (c) Any offense under the laws of this state has been or is being
19 committed by the parolee in ~~his~~ THE COMMUNITY PAROLE OFFICER'S
20 presence; or

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

23 (e) He OR SHE has probable cause to believe that the parolee ~~has~~
24 ~~violated a condition of his parole or probable cause to believe that the~~
25 ~~parolee is leaving or about to leave the state; or that the parolee will fail~~
26 ~~or refuse to appear before the board to answer charges of violations of~~
27 ~~one or more conditions of parole, or that the arrest of the parolee is~~

1 ~~necessary to prevent physical harm to the parolee or another person or to~~
2 ~~prevent the commission of a crime; or~~

3 ~~(f) The parolee, who is on parole as a result of a conviction of any~~
4 ~~felony, has been tested for the illegal or unauthorized use of a controlled~~
5 ~~substance and the result of such test is positive. HE OR SHE HAS PROBABLE~~
6 CAUSE TO BELIEVE THAT THE PAROLEE HAS VIOLATED ONE OR MORE
7 CONDITIONS OF PAROLE AND THAT THE PAROLEE WILL FAIL OR REFUSE TO
8 APPEAR BEFORE THE BOARD TO ANSWER CHARGES OF VIOLATIONS OF ONE
9 OR MORE CONDITIONS OF PAROLE; OR

10 (g) HE OR SHE HAS A REASONABLE BELIEF THAT THE ARREST IS
11 NECESSARY TO PREVENT SERIOUS BODILY INJURY TO THE PAROLEE OR ANY
12 OTHER PERSON OR TO PREVENT THE COMMISSION OF A CRIME; OR

13 (h) HE OR SHE HAS PROBABLE CAUSE TO BELIEVE THAT THE
14 PAROLEE HAS COMMITTED A TECHNICAL VIOLATION OF PAROLE FOR WHICH
15 THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL OFFENSE AND THE
16 COMMUNITY PAROLE OFFICER HAS EXHAUSTED ALL APPROPRIATE OR
17 AVAILABLE INTERMEDIATE SANCTIONS, TREATMENT, AND SUPPORT
18 SERVICES.

19 (1.5) (a) EXCEPT WHERE ARREST OR REVOCATION IS MANDATORY
20 PURSUANT TO SECTIONS 17-2-103.5 OR 17-2-103, AND EXCEPT AS
21 PROVIDED IN PARAGRAPH (g) OF THIS SUBSECTION (1.5), A COMMUNITY
22 PAROLE OFFICER MUST EXHAUST ALL APPROPRIATE AND AVAILABLE
23 INTERMEDIATE SANCTIONS, AS DETERMINED BY THE POLICIES OF THE
24 DIVISION OF ADULT PAROLE, BEFORE HE OR SHE FILES A COMPLAINT FOR
25 REVOCATION OF A PAROLEE FOR A TECHNICAL VIOLATION OF A CONDITION
26 OF PAROLE FOR WHICH THE UNDERLYING BEHAVIOR IS NOT A CRIMINAL
27 OFFENSE.

1 (b) A COMMUNITY PAROLE OFFICER SHALL UTILIZE INTERMEDIATE
2 SANCTIONS TO ADDRESS A PAROLEE'S NONCOMPLIANCE OR SEEK
3 MODIFICATION OF PAROLE CONDITIONS, OR DO BOTH, AS DEEMED
4 APPROPRIATE BY THE COMMUNITY PAROLE OFFICER, IN A MANNER THAT
5 IS CONSISTENT WITH THE SEVERITY OF THE NONCOMPLIANCE AND THE RISK
6 LEVEL OF THE PAROLEE.

7 (c) A COMMUNITY PAROLE OFFICER SHALL ALSO MAKE REFERRALS
8 TO ANY NEEDED TREATMENT OR OTHER SUPPORT SERVICES THAT MAY
9 HELP A PAROLEE BECOME COMPLIANT WITH THE CONDITIONS OF PAROLE
10 AND SUCCEED IN REINTEGRATING INTO SOCIETY. FOR THE PURPOSES OF
11 THIS SECTION, TESTING POSITIVE FOR THE USE OF ILLEGAL DRUGS IS
12 CONSIDERED A TECHNICAL VIOLATION OF PAROLE.

13 (d) IF A PAROLEE HAS A TECHNICAL VIOLATION, THE PAROLEE'S
14 COMMUNITY PAROLE OFFICER, WITH THE APPROVAL OF THE DIRECTOR OF
15 THE DIVISION OF ADULT PAROLE OR THE DIRECTOR'S DESIGNEE, MAY
16 IMPOSE A BRIEF TERM OF CONFINEMENT IN THE COUNTY JAIL, NOT TO
17 EXCEED FIVE CONSECUTIVE DAYS, AS AN INTERMEDIATE SANCTION.

18 (e) A PAROLEE'S COMMUNITY PAROLE OFFICER MUST NOTIFY THE
19 PAROLEE WHEN A BRIEF TERM OF INCARCERATION IN JAIL MAY BE IMPOSED
20 AS AN INTERMEDIATE SANCTION AGAINST THE PAROLEE.

21 (f) THE DIVISION OF ADULT PAROLE IS RESPONSIBLE FOR
22 REIMBURSING COUNTY JAILS FOR BEDS USED AS AN INTERMEDIATE
23 SANCTION. THE SHERIFF OF EACH COUNTY HAS THE AUTHORITY AND
24 DISCRETION TO DETERMINE THE NUMBER OF JAIL BEDS, IF ANY, THAT ARE
25 AVAILABLE TO THE DEPARTMENT OF CORRECTIONS IN THEIR RESPECTIVE
26 FACILITIES FOR THE PURPOSE OF IMPOSING AN INTERMEDIATE SANCTION.
27 IF JAIL BEDS ARE UNAVAILABLE IN THE LOCAL COMMUNITY OF THE

1 FACILITY IN WHICH THE PAROLEE IS BEING SUPERVISED , THE DIVISION OF
2 ADULT PAROLE IS AUTHORIZED TO UTILIZE OTHER AVAILABLE COUNTY JAIL
3 BEDS IF TRANSPORTATION TO AND FROM THE JAIL IS PROVIDED TO THE
4 PAROLEE.

5 (g) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
6 A COMMUNITY PAROLE OFFICER MAY BYPASS THE USE OF INTERMEDIATE
7 SANCTIONS OR ANY ADDITIONAL INTERMEDIATE SANCTIONS IN RESPONSE
8 TO A TECHNICAL VIOLATION OF PAROLE AND FILE A COMPLAINT SEEKING
9 REVOCATION OF PAROLE IF:

10 (I) THE PAROLEE HAS RECEIVED FOUR OR MORE INTERMEDIATE
11 SANCTIONS COMMITTING THE PAROLEE TO A BRIEF TERM OF
12 INCARCERATION IN JAIL; OR

13 (II) THE NATURE OF THE TECHNICAL VIOLATION, IN COMBINATION
14 WITH THE PAROLEE'S CRIMINAL HISTORY, INDICATES A HEIGHTENED RISK
15 TO PUBLIC SAFETY, AS DEFINED BY POLICY OF THE DIVISION OF ADULT
16 PAROLE.

17 **SECTION 3.** In Colorado Revised Statutes, 17-2-102, **add** (13)
18 as follows:

19 **17-2-102. Division of adult parole - general powers, duties, and**
20 **functions - definitions.** (13) ON OR BEFORE JANUARY 1, 2016, AND ON
21 OR BEFORE JANUARY 1 EACH YEAR THEREAFTER, THE DIVISION OF ADULT
22 PAROLE SHALL PROVIDE TO THE JUDICIARY COMMITTEES OF THE SENATE
23 AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES,
24 A STATUS REPORT ON THE EFFECT ON PAROLE OUTCOMES AND THE USE OF
25 ANY MONEYS ALLOCATED PURSUANT TO HOUSE BILL 15-____, ENACTED
26 IN 2015.

27 **SECTION 4.** In Colorado Revised Statutes, 17-2-201, **amend**

1 (5.5) (e) as follows:

2 **17-2-201. State board of parole.** (5.5) (e) FOR THE PURPOSES OF
3 SECTION 17-2-103, a parolee who refuses to submit to chemical testing of
4 a sample of his or her biological substance pursuant to the requirements
5 of this subsection (5.5) ~~shall be arrested, and revocation proceedings shall~~
6 ~~be initiated pursuant to section 17-2-103~~ IS DEEMED TO HAVE TESTED
7 POSITIVE FOR THE PRESENCE OF DRUGS.

8 **SECTION 5. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2016 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.