

ENROLLED ACT NO. 17, SENATE

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2011 GENERAL SESSION

AN ACT relating to probation and parole; amending obsolete provisions; clarifying procedures for arrest of parolees in violation of the terms of parole; requiring peace officers to arrest parolees and probationers as specified; clarifying the amount the department of corrections may pay for housing of detained parolees and probationers; expanding authority for good time allowances as specified; clarifying the authority of the board of parole to address payment of restitution by parolees; mandating execution on restitution orders in the same manner as for civil judgments and authorizing the division of victim services to request issuance of execution; providing immunity to probation and parole agents as specified; clarifying a prohibition against granting parole to prisoners who have escaped, attempted to escape or assisted an escape from a correctional institution; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 7-9-103(d), 7-13-303(a)(intro), 7-13-401(a)(ii) and by creating new paragraphs (xiii) and (xiv), 7-13-402(b)(intro), (d) and by creating a new subsection (j), 7-13-405(a), (b)(intro) and (c), 7-13-407(a)(i), 7-13-408(a) and (b), 7-13-410(a), 7-13-411(a)(iii) and (c) through (e), 7-13-418(a)(intro) and (iv), 7-13-420 by creating a new subsection (c), 7-13-421(d) through (g) and by creating a new subsection (h), 7-13-1107(c), 7-18-108(d) and 35-7-1043 are amended to read:

7-9-103. Determination of amount owed; execution.

(d) Any order for restitution under this chapter constitutes a judgment by operation of law on the date it

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is entered. To satisfy the judgment, the clerk, upon request of the victim, the division of victim services or the district attorney, ~~may~~shall issue execution in the same manner as in a civil action.

7-13-303. Investigation preceding probation or suspension of sentence.

(a) When directed by the court, the district attorney, ~~the state a~~ probation and parole ~~officer~~agent as defined in W.S. 7-13-401 or, in the case of a minor, a counselor as defined by W.S. 5-3-501(a)(ii) or the department of family services shall investigate and report to the court in writing:

7-13-401. Definitions; creation of board; officers; compensation; hearing panels; meetings.

(a) As used in W.S. 7-13-401 through 7-13-424:

(ii) "Conditional release" means any form of release by an institution or by a court, other than parole or probation, which is subject to conditions imposed by the institution or court, but excludes release on bail;

(xiii) "Field services administrator" means the administrator for the department of corrections division of field services;

(xiv) "Probation and parole agent" means an employee of the department of corrections, division of field services, who supervises a parolee or probationer.

7-13-402. General powers and duties of board; eligibility for parole; immunity.

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(b) A prisoner is not eligible for parole on a sentence if, while serving that sentence, he has:

(d) No person granted a parole shall be released from an institution until he has signed an agreement that he will comply with the terms and conditions under which he has been released and abide by the laws of the state. In addition, no person shall be granted a parole until the board makes a reasonable effort to notify victims who have registered to receive notification pursuant to W.S. 1-40-204(d) of the parole hearing and provides a reasonable opportunity for the victims to provide written comments to the board relative to the parole. ~~The agreement shall be retained in the records of the department.~~

(j) The board may order the arrest and return to the custody of the department of any parolee who has absconded from supervision, been charged with or convicted of a crime while on parole or committed an alleged violation of parole for which probable cause has been established through a hearing, or waiver thereof, pursuant to W.S. 7-13-408. The written order of the board shall be sufficient warrant for any peace officer to return a parolee to custody. All peace officers shall execute any order of the board issued under this subsection. A parolee taken into custody under the order of the board is not subject to release on bail.

7-13-405. Field services administrator; hiring of agents.

(a) The department has general supervisory authority over state parolees and over probationers for whom the sentencing court requests supervision under W.S. ~~7-13-410(b)~~ 7-13-410.

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(b) The director shall appoint a ~~state probation and parole officer~~ field services administrator. The department shall:

(c) The ~~state probation and parole officer~~ field services administrator, with the approval of the director, shall ~~appoint~~ coordinate the hiring of probation and parole agents.

7-13-407. Duties of probation and parole agents.

(a) Under direction and supervision of the director, probation and parole agents shall:

(i) Except as otherwise directed by the director, devote full time to the performance of their duties in carrying out the provisions of W.S. 7-9-104, 7-9-107, 7-13-303, 7-13-401 through 7-13-424, 7-13-1101 through 7-13-1107, 7-13-1601 through 7-13-1615 and 35-7-1043;

7-13-408. Probation, parole and conditional release administrative jail or adult community correction program sanction and revocation hearing procedures.

(a) The ~~state~~ probation and parole ~~officer~~ agent shall notify the department and the board or the appropriate court if it is determined consideration should be given to retaking or reincarcerating a person under the supervision of the department who has violated a condition of his probation, parole or other conditional release. Prior to notification, a hearing shall be held in accordance with this section within a reasonable time, unless a hearing is waived by the probationer, parolee or conditional releasee. In the case of a parolee for whom the violation is based on a new felony conviction, a

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preliminary hearing is not required under this section. In the case of a probationer, the hearing is only required when the probationer has been reincarcerated and a legal warrant has not been obtained within ten (10) days. As soon as practicable, following termination of any hearing, the appropriate officer or agent shall report to the department and the court or board, furnish a copy of the hearing record and make recommendations regarding the disposition to be made of the probationer, parolee or conditional releasee. Pending any proceeding pursuant to this section, the appropriate agent may take custody of and detain the probationer, parolee or conditional releasee involved for a reasonable period of time prior to the hearing. If it appears to the hearing officer or agent that retaking or reincarceration is likely to follow, the agent may take custody of and detain the probationer, parolee or conditional releasee for a reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the ~~state probation and parole officer~~ field services administrator, his designated hearing officer or any other person authorized pursuant to the laws of this state to hear cases of alleged probation, parole or conditional release violations, except that no hearing officer shall be the person making the allegation of violation. In cases of alleged parole violations by persons who were paroled by the board, hearings pursuant to this section shall be before the executive director of the board or his designated hearing officer.

7-13-410. Notice of probation order; request for probation supervision or report.

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(a) The clerk of the court granting probation to a person convicted of a crime shall send a certified copy of the order to the ~~state probation and parole officer~~ department of corrections or, in the case of a minor juvenile, to the department of family services.

7-13-411. Apprehension of violators.

(a) A probation and parole agent may, in the performance of his duties:

(iii) Arrest without warrant any probationer or parolee if the probation and parole agent has probable cause to believe the person has violated the terms conditions of his probation or parole. A person arrested under this paragraph may be detained for a reasonable period of time until a legal warrant is obtained or pending further proceedings under W.S. 7-13-408.

(c) A peace officer ~~or probation and parole agent~~ may take into custody and hold a person granted parole or on probation from another state when requested to do so by the probation and parole agent or the proper authorities from the other state.

(d) A parole or probation violator apprehended ~~by a probation and parole agent~~ shall be accepted and held in the county jail at the request of the probation and parole agent.

(e) Any expense incurred in holding a parolee in county jail at the request of a probation and parole agent or pending proceedings under W.S. 7-13-408, including costs of shelter, food, clothing, and necessary medical, dental and hospital care and any expense for transporting the parolee shall be paid by the department unless there are

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local charges pending. The per diem cost of holding parolees under this section shall be agreed upon by the sheriff and the department, ~~and but~~ shall not exceed the ~~per diem cost of housing an inmate at the Wyoming state penitentiary amount established by the department based on funds appropriated to the department for housing of offenders.~~

7-13-418. Selection, training and powers of local volunteer; compensation.

(a) In order to further the objectives of W.S. 7-13-401 through 7-13-424, the ~~state probation and parole officer~~ field services administrator may select, organize and train local volunteer citizens who, acting under his supervision, may:

(iv) Not receive compensation from the state. At the discretion of the ~~state probation and parole officer~~ field services administrator, however, volunteers may be reimbursed for necessary and actual expenses incurred in performing the duties described in this section.

7-13-420. Good time allowances.

(c) The court may adjust the period of a probationer's supervised probation on the recommendation of the probation and parole agent, which shall be based on the probationer's positive progression towards the goals of the case plan as well as the overall compliance with the conditions imposed by the court.

7-13-421. Restitution as condition of parole.

(d) The board may waive the payment of some or all of the restitution as a condition of parole if it finds the

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payment of some or all of the restitution will work an undue hardship on the parolee or his family. ~~If the victim can be located through the exercise of reasonable diligence, he~~ Victims who have requested to receive notification pursuant to W.S. 1-40-204(f) of information authorized to be released pursuant to W.S. 1-40-204(d) shall be given notice and an opportunity to be heard prior to the board making a decision to waive some or all of the restitution under this subsection.

(e) Nothing in this section shall limit or impair the rights of victims to sue and recover damages from the ~~defendant-parolee~~ in a civil action. However, any restitution payment by the ~~defendant-parolee~~ to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event.

(f) The fact that restitution was required or made under this section shall not be admissible as evidence in a civil action unless offered by the ~~defendant-parolee~~.

(g) In the event a victim is not satisfied with the restitution plan ~~approved-required~~ or modified by the board, the victim's ~~sole and exclusive remedy is remedies are~~ a civil action against the parolee or execution on the restitution order pursuant to W.S. 7-9-103(d).

(h) The board may require payment of the following obligations as conditions of parole if it finds the parolee is reasonably capable of making the payments, taking into account the factors enumerated in W.S. 7-9-106(a)(iii):

(i) Support of dependents of the parolee;

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(ii) Court ordered fines, reimbursement for the services of the public defender or court appointed counsel and the surcharge imposed under W.S. 1-40-119;

(iii) Costs or partial costs of evaluations, treatment, services, programs or assistance the parolee is receiving;

(iv) Cost or partial costs of supervision of the parolee imposed under W.S. 7-13-1102(a)(iii).

7-13-1107. Administrative sanctions for program violations.

(c) The county sheriff shall house probationers and parolees committed to the county jail pursuant to this section. The cost of housing a program violator in the county jail shall be paid by the department at a per diem rate not to exceed the daily cost of keeping an inmate at the Wyoming state penitentiary amount established by the department based on funds appropriated for housing of offenders.

7-18-108. Placement of offender in program by court; placement by department as administrative sanction.

(d) The probation and parole ~~officers~~agent for the judicial district shall ~~be responsible for including~~ include in the presentence report to the sentencing judge recommendations for the utilization of any governmental or, when available, nongovernmental adult community correctional facility or program which has been approved for use by the corrections board.

35-7-1043. Immunity from prosecution.

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All duly authorized peace officers including any special agents or other personnel appointed by the commissioner, and probation and parole agents as defined in W.S. 7-13-401, while investigating violations of this act in performance of their official duties, shall be immune from prosecution under this act. Any person working under the immediate direction, supervision or instruction of a duly authorized peace officer, special agent or other person appointed by the commissioner, may be granted immunity from prosecution under this act by the commissioner. In addition to the foregoing persons, such immunity may also be granted to any person whose testimony is necessary to secure a conviction under this act with the consent of district judge in the district wherein prosecution is to take place. Any person granted immunity under this section shall not be excused from testifying or producing evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture. Any person who except for the provisions of this act, would have been privileged to withhold the testimony given or the evidence produced by him shall not be prosecuted, subjected to any penalty, forfeiture, for or on account of any transaction, matter or thing concerning which, by reason of said immunity, he gave testimony and produced evidence; and no such testimony given or evidence produced shall be received against him in any criminal proceeding. Provided, no person given immunity under this section shall be exempt from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

Section 2. W.S. 7-13-411(a)(i) and (ii) and 7-13-421(a), (b)(i) through (iv) and (c)(ii) are repealed.

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Section 3. This act is effective July 1, 2011.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk