DATE FILED: May 05, 2023 2:59 PM

SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #30 ("Concerning Parole Eligibility") **Petitioners:** Christine M. Donner **v.** **Respondents:** Steven Ward and Suzanne Taheri **and** **Title Board:** Theresa Conley, Jeremiah Barry, and Kurt Morrison	**▲COURT USE ONLY▲**
Attorneys for Petitioners: Mark G. Grueskin, #14621 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com nate@rklawpc.com	Case Number:

PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #30 ("CONCERNING PAROLE ELIGIBILITY")

Christine M. Donner ("Petitioner"), registered elector of the City & County of Denver and the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #30 ("Concerning Parole Eligibility").

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #30.

Steven Ward and Suzanne Taheri (hereafter "Proponents") proposed Initiative 2023-2024 #30 (the "Proposed Initiative"). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted original, amended, and final versions of the Proposed Initiative to the Secretary of State for submission to the Title Board.

A Title Board hearing was held on April 19, 2023, at which time titles were set for 2023-2024 #30. On April 26, 2023, Petitioner, Christine M. Donner, filed a Motion for Rehearing, alleging that a title was set for Initiative #30, contrary to the requirements of Colo. Const. art. V, sec. 1(5.5), and that the Title Board set titles which were misleading and confusing as they do not fairly communicate the true intent and meaning of the measure.

The Title Board's rehearing was held on April 28, 2023, at which time the Motion for Rehearing was granted insofar to the extent of certain changes made by the Board to the titles but denied as to other requested relief.

B. Jurisdiction

Petitioners are entitled to review before the Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioners; (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioners believe that the Title Board erred in denying certain aspects of the Motion for Rehearing; and (5) exhibits submitted to the Board by the parties at the rehearing. The matter is properly before this Court.

GROUNDS FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed by the Colorado Constitution and pertinent statute. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. Whether the Title Board erred by setting titles for Initiative #30, given its recognition that voters will be forced to make a trade-off between: (a) repeal of existing parole provisions to be replaced with new restrictions on parole eligibility; and (b) reenactment of the governor's authority to make parole decisions, without regard for the new restrictions and based on his "opinion" of the circumstances.

2. Whether the Title Board erred by setting titles for Initiative #30, the subject of which could not be "clearly stated" as required by the Constitution given the lack of clarity (and the Board's confusion) about a key issue – what constitutes a "crime of violence" that restricts parole eligibility.

3. Whether the Board substantively misstated the measure in referring to parole limitations for an offender convicted of "any" crime of violence, given that Proponents did not intend all "crimes of violence" to be covered by the measure.

4. Whether the Board created voter confusion and inaccurately summarized the measure by adopting titles that modify "crimes of violence" with the phrase, "not just those enumerated in this measure."

5. Whether the Board, after correctly striking "crimes of violence" from one part of the titles, erred by using that political catchphrase elsewhere in the titles.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of Board jurisdiction or, if the Court finds the Board had jurisdiction over #30, direct the Board to correct the title's misstatements, remove its political slogan, and address its confusing phraseology.

Respectfully submitted this 5th day of May, 2023.

s/ Mark G. Grueskin
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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Kate Sorice, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #30 ("CONCERNING PAROLE ELIGIBILITY")** was sent electronically via Colorado Courts E-Filing this day, May 5, 2023, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for Proponents:
Suzanne Taheri
West Group
6501 E. Belleview Ave, Suite 375
Denver, CO 80111

/s Kate Sorice

DATE FILED: May 05, 2023 2:59 PM

STATE OF COLORADO

DEPARTMENT OF STATE

CERTIFICATE

I, **JENA GRISWOLD,** Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #30 'Concerning Eligibility for Parole'".....

.....**IN TESTIMONY WHEREOF** I have unto set my hand .....
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 1st day of May, 2023.

Jena Griswold

SECRETARY OF STATE

Ballot Title Setting Board

Proposed Initiative 2023-2024 #30[1]

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning parole eligibility for an offender convicted of a violent crime, and, in connection therewith, requiring an offender who is convicted of committing crimes of violence including second degree murder; first degree assault; class 2 felony kidnapping; sexual assault; first degree arson; first degree burglary; or aggravated robbery on or after January 1, 2025, to serve eighty-five percent of the sentence imposed before being eligible for parole, and requiring an offender convicted of committing any such crime on or after January 1, 2025, who has twice previously been convicted of crimes of violence, to serve the full sentence imposed before beginning to serve parole.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning parole eligibility for an offender convicted of a violent crime, and, in connection therewith, requiring an offender who is convicted of committing crimes of violence including second degree murder; first degree assault; class 2 felony kidnapping; sexual assault; first degree arson; first degree burglary; or aggravated robbery on or after January 1, 2025, to serve eighty-five percent of the sentence imposed before being eligible for parole, and requiring an offender convicted of committing any such crime on or after January 1, 2025, who has twice previously been convicted of crimes of violence, to serve the full sentence imposed before beginning to serve parole?

Hearing April 19, 2023:
Single subject approved; staff draft amended; titles set.
Board members: Theresa Conley, Jerry Barry, Eric Meyer
Hearing adjourned 11:03 A.M.

[1] Unofficially captioned **"Concerning Eligibility for Parole"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #30[1]

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning parole eligibility for an offender convicted of certain crimes, and, in connection therewith, requiring an offender who is convicted of second degree murder; first degree assault; class 2 felony kidnapping; sexual assault; first degree arson; first degree burglary; or aggravated robbery on or after January 1, 2025, to serve eighty-five percent of the sentence imposed before being eligible for parole; requiring an offender convicted of committing any such crime on or after January 1, 2025, who has twice previously been convicted of any crime of violence not just those crimes enumerated in this measure, to serve the full sentence imposed before beginning to serve parole; and continuing the governor's authority to grant parole for any such offender before the eligibility date if extraordinary mitigating circumstances exist.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning parole eligibility for an offender convicted of certain crimes, and, in connection therewith, requiring an offender who is convicted of second degree murder; first degree assault; class 2 felony kidnapping; sexual assault; first degree arson; first degree burglary; or aggravated robbery on or after January 1, 2025, to serve eighty-five percent of the sentence imposed before being eligible for parole; requiring an offender convicted of committing any such crime on or after January 1, 2025, who has twice previously been convicted of any crime of violence not just those crimes enumerated in this measure, to serve the full sentence imposed before beginning to serve parole; and continuing the governor's authority to grant parole for any such offender before the eligibility date if extraordinary mitigating circumstances exist.?

Hearing April 19, 2023:
Single subject approved; staff draft amended; titles set.
Board members: Theresa Conley, Jerry Barry, Eric Meyer
Hearing adjourned 11:03 A.M.

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[1] Unofficially captioned **"Concerning Eligibility for Parole"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Rehearing April 28, 2023:
Motion for Rehearing (Movant) granted only to the extent that the Board made changes to the title (2-1, Morrison dissented)
Board members: Theresa Conley, Jerry Barry, Kurt Morrison
Hearing adjourned 11:40 A.M.

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact**, **with amendments**, section 17-22.5-303.3 as follows:

17-22.5-303.3. Violent offenders – parole.

(1) ANY PERSON SENTENCED FOR SECOND DEGREE MURDER, FIRST DEGREE ASSAULT, FIRST DEGREE KIDNAPPING, UNLESS THE FIRST DEGREE KIDNAPPING IS A CLASS 1 FELONY, FIRST OR SECOND DEGREE SEXUAL ASSAULT, FIRST DEGREE ARSON, FIRST DEGREE BURGLARY, OR AGGRAVATED ROBBERY, COMMITTED ON OR AFTER JULY 1, 1987, BUT BEFORE JANUARY 1, 2025, WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME OF VIOLENCE, SHALL BE ELIGIBLE FOR PAROLE AFTER HE HAS SERVED SEVENTY-FIVE PERCENT OF THE SENTENCE IMPOSED LESS ANY TIME AUTHORIZED FOR EARNED TIME PURSUANT TO SECTION 17-22.5-302. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) APPLY.

(2) ANY PERSON CONVICTED AND SENTENCED FOR SECOND DEGREE MURDER; FIRST DEGREE ASSAULT; CLASS 2 FELONY KIDNAPPING; SEXUAL ASSAULT UNDER PART 4, ARTICLE 3 OF TITLE 18; FIRST DEGREE ARSON; FIRST DEGREE BURGLARY; OR AGGRAVATED ROBBERY, COMMITTED ON OR AFTER JANUARY 1, 2025, SHALL BE ELIGIBLE FOR PAROLE AFTER SUCH PERSON HAS SERVED EIGHTY-FIVE PERCENT OF THE SENTENCE IMPOSED UPON SUCH PERSON. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) APPLY.

(3) ANY PERSON CONVICTED AND SENTENCED FOR A CRIME COMMITTED BEFORE JANUARY 1, 2025, FOR ANY CRIME ENUMERATED IN SUBSECTION (1) OF THIS SECTION, WHO HAS TWICE PREVIOUSLY BEEN CONVICTED FOR A CRIME OF VIOLENCE, SHALL BE ELIGIBLE FOR PAROLE AFTER HE HAS SERVED THE SENTENCE IMPOSED LESS ANY TIME AUTHORIZED FOR EARNED TIME PURSUANT TO SECTION 17-22.5-302. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) APPLY.

(4) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS TITLE 17, ANY PERSON CONVICTED AND SENTENCED FOR A CRIME COMMITTED ON OR AFTER JANUARY 1, 2025, FOR ANY CRIME ENUMERATED IN SUBSECTION (2) OF THIS SECTION, WHO HAS TWICE PREVIOUSLY BEEN CONVICTED FOR A CRIME OF VIOLENCE, SHALL BEGIN PAROLE AFTER HE HAS SERVED THE FULL SENTENCE IMPOSED. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) APPLY.

(5) THE GOVERNOR MAY GRANT PAROLE TO AN OFFENDER TO WHOM THIS SECTION APPLIES BEFORE SUCH OFFENDER'S PAROLE ELIGIBILITY DATE IF, IN THE GOVERNOR'S OPINION, EXTRAORDINARY MITIGATING CIRCUMSTANCES EXIST AND SUCH OFFENDER'S RELEASE FROM INSTITUTIONAL CUSTODY IS COMPATIBLE WITH THE SAFETY AND WELFARE OF SOCIETY.

SECTION 2. In Colorado Revised Statutes, 17-22.5-403, **repeal and reenact, with amendments,** (2.5)(a) as follows:

17-22.5-403. Parole Eligibility.

(2.5)(a) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, ANY PERSON CONVICTED AND SENTENCED FOR SECOND DEGREE MURDER, FIRST DEGREE ASSAULT, FIRST DEGREE KIDNAPPING

UNLESS THE FIRST DEGREE KIDNAPPING IS A CLASS 1 FELONY, FIRST DEGREE ARSON, FIRST DEGREE BURGLARY, OR AGGRAVATED ROBBERY, COMMITTED ON OR AFTER JULY 1, 2004, BUT BEFORE JANUARY 1, 2025, SHALL BE ELIGIBLE FOR PAROLE AFTER SUCH PERSON HAS SERVED SEVENTY-FIVE PERCENT OF THE SENTENCE IMPOSED UPON SUCH PERSON, LESS ANY TIME AUTHORIZED FOR EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

SECTION 3. Effective Date.
This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR INITIATIVE 2023-2024 #30 ("CONCERNING ELIGIBILITY FOR PAROLE")

Initiative Proponents:
Suzanne Taheri & Steven Ward

Objector:
Christine M. Donner

MOTION FOR REHEARING

By undersigned counsel, Christine M. Donner, a registered voter of the City and County of Denver, objects to the titles set for Initiative #30, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On April 19, 2023, the Title Board set the following ballot title and submission clause for Initiative #30:

> *Shall there be a change to the Colorado Revised Statutes concerning parole eligibility for an offender convicted of a violent crime, and, in connection therewith, requiring an offender who is convicted of committing crimes of violence including second degree murder; first degree assault; class 2 felony kidnapping; sexual assault; first degree arson; first degree burglary; or aggravated robbery on or after January 1, 2025, to serve eighty-five percent of the sentence imposed before being eligible for parole, and requiring an offender convicted of committing any such crime on or after January 1, 2025, who has twice previously been convicted of crimes of violence, to serve the full sentence imposed before beginning to serve parole?*

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #30.

A. The single subject requirement is intended to prevent voters from having to weigh a goal they support against a goal they oppose and thus attract votes for an initiative's purpose(s) that cannot stand alone to gain an electoral majority.

The single subject requirement is a bar against forcing voters into policy trade-offs – getting one goal they support on the condition that they accept a policy they oppose. "[T]he single subject requirement for ballot initiatives prevents proponents from engaging in 'log

rolling' tactics, that is, combining multiple subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests." *In re Title, Ballot Title, & Submission Clause for Initiative 2015-2016 #132*, 2016 CO 55, ¶13, 374 P.3d 460 (Colo. 2016).

B. Giving the governor the power to grant parole is a separate subject.

The obvious subject of the measure is the change in conditions to parole for persons who committed of certain crimes. It is not, however, the only subject of Initiative #30.

The governor cannot now grant parole. He may grant reprieves, commutations, and pardons. Colo. Const., art. IV, sec. 7. Those powers are different in nature and kind from parole. A person on parole is still in the custody of the State. *Danielson v. Dennis*, 139 P.3d 688, 692 (Colo. 2006) ("The legislature's mandate that prisoners remain in legal custody during parole, and that parole is not a discharge from imprisonment, reflects the long-prevailing view of parole"). A person who has received discretionary parole will "serve some portion of the sentence under the parole board's supervision in lieu of imprisonment." *People v. Cooper*, 8 P.3d 554, 557 (Colo. App. 2000). The decision to grant or withhold parole is within the "exclusive authority" of the Parole Board. *People v. Luther*, 58 P.3d 1013, 1016 (Colo. 2002).

In contrast, a person who has had his sentence commuted or is pardoned is fully released from any obligation to the state. As such, the governor has no responsibility to oversee the acts of a person who has been pardoned or received a reprieve or whose sentence is commuted.

This measure gives the governor that power of parole, one he had in certain cases beginning in 1899 but which he has not had in more than half a century. As such, Initiative #30 represents a marked reversal in state policy, giving a single elected official a task that he hasn't been authorized to perform for decades. This structural change, combined with a dramatic policy change, raises single subject concerns. *See In re Title, Ballot Title, & Submission Clause for Initiative 2007-2008 #17*, 172 P.3d 871, 875 (Colo. 2007).

In so doing, this measure is an example of log-rolling. First, it is designed to appeal to "tough-on-crime" voters by making parole more difficult or, in some cases, impossible to obtain. Preventing the state's Parole Board from even considering such offenders is intended to and will appeal to such voters.[1]

Initiative #30 also opens a new door of parole via a person holding political office. It does so, subject only to that officer's discretion of what constitutes "extraordinary mitigating circumstances" and the judgment that societal safety and welfare will be kept intact. For those who advocate less incarceration either for persons who commit certain crimes or who find the

[1] *See, e.g., Warning signs: Colorado parole changes put Fort Collins child at risk,* The Coloradan (Mar. 3, 2017); https://www.coloradoan.com/story/news/2017/03/03/warning-signs-colorado-parole-changes-put-fort-collins-child-risk-abuse/98548214/; *Colorado parole operations blasted for giving parolees too much leniency*, The Denver Post (Jan. 4, 2017); https://www.denverpost.com/2017/01/04/parolee-reduction-policies-danger-colorado/ (last viewed Apr. 26, 2023).

Parole Board's practices to be too restrictive, this second element is bait to get their votes. And those who believe in restricting the governor's power to change sentences after conviction will likewise be conflicted, given the limitation on Parole Board powers under the measure's other provisions but the expansion of the governor's powers as well.[2]

C. The measure's use of undefined "crimes of violence" is incomprehensible, and the Board cannot set a title for a measure that defies understanding.

The title states that a person who "commit[s] crimes of violence including" certain stated crimes must serve 85% of the sentence before seeking parole and/or 100% of the sentence imposed if a person "has twice previously been convicted of crimes of violence." As addressed below, the listed crimes are not referred to as "crimes of violence" in the measure itself, and thus these references are misleading.

Initiative #30 provides only that persons who have committed the various listed crimes and who also have "previously been convicted of a crime of violence" must serve a minimum sentence before being eligible for parole. Is that new condition a conviction of a "crime of

[2] One former district attorney, now a political commentator, expressed umbrage about discretionary decisions made by a governor regarding sentences imposed in this way:

> A governor can substitute their own judgement for what the appropriate outcome of a case is regardless of what the prosecutor, judge and jury determined at the time of conviction and sentencing. A governor can apply whatever modern ideological analysis to any case, far removed from the laws and values governing the community in which the crime was committed. **It is generational hubris. Those in power believe themselves to be the arbiter of what justice looks like — not just for themselves — but for generations past.**

Brauchler, G., *Jared Polis – Colorado's Pardoner in chief*, Colorado Politics (Dec. 29, 2022) (emphasis added); https://www.coloradopolitics.com/opinion/jared-polis-colorado-s-pardoner-in-chief-brauchler/article_a8f29b54-86ea-11ed-8fa5-5bb4c1a7e8fe.html (last viewed Apr. 26, 2023).

violence" as defined by C.R.S. § 18-1.3-406(2)(a)(I)[3]? Or as defined by C.R.S. § 16-1-104(8.5)(I)[4]? Or by C.R.S. § 24-10-106.3[5]? Initiative #30 does not say which definition applies.

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[3] Under C.R.S. § 18-1.3-406(2)(a)(I):

> "Crime of violence" means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:
> (A) Used, or possessed and threatened the use of, a deadly weapon; or
> (B) Caused serious bodily injury or death to any other person except another participant.
> (II) Subparagraph (I) of this paragraph (a) applies to the following crimes:
> (A) Any crime against an at-risk adult or at-risk juvenile;
> (B) Murder;
> (C) First or second degree assault;
> (D) Kidnapping;
> (E) A sexual offense pursuant to part 4 of article 3 of this title;
> (F) Aggravated robbery;
> (G) First degree arson;
> (H) First degree burglary;
> (I) Escape;
> (J) Criminal extortion; or
> (K) First or second degree unlawful termination of pregnancy.
> (b) (I) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (I), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), and "bodily injury" shall have the same meaning as set forth in section 18-1-901(3)(c).
> (II) The provisions of subparagraph (I) of this paragraph (b) shall apply only to felony unlawful sexual offenses.

[4] Under C.R.S. § 16-1-104(8.5)(I):

> "Crime of violence" means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission or attempted commission of any crime committed against an elderly person or a person with a disability or a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion, or during the immediate flight therefrom, or the defendant caused serious bodily injury or death to any person, other than himself or herself or another participant, during the commission or attempted commission of any such felony or during the immediate flight therefrom.
> (II) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411(1), C.R.S., and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3)(c), C.R.S.

[5] Under C.R.S. § 24-10-106.3:

> "Crime of violence" means that the person committed, conspired to commit, or attempted to commit one of the following crimes:
> (I) Murder;
> (II) First degree assault; or
> (III) A felony sexual assault, as defined in section 18-3-402, C.R.S.

Notably, Title 17 of the Colorado Revised Statutes (amended by this initiative) does not help resolve which statutory definition might be applicable. There are cross-references to both C.R.S. § 18-1.3-406 and C.R.S. § 16-1-104 within that title. Compare C.R.S. § 17-22.5-303(6) (precluding consideration of parole more than once every five years for persons who commit crimes of violence under C.R.S. § 18-1.3-406) with C.R.S. § 17-2-103.5(1)(II)(B) (authorizing revocation of parole of persons who commit crimes of violence under C.R.S. §16-1-104(8.5).

Additionally, these statutory definitions are not the full extent of the legal meaning of "crime of violence." A "crime of violence" includes an attempt to commit such a crime. *People v. Laurson*, 70 P.3d 564 (Colo. App. 2002) (courts treat "attempt" as a crime of violence). It also includes conspiracy to commit a crime of violence also a crime of violence. *Terry v. People*, 977 P.2d 145 (Colo. 1999) (courts treat such a "conspiracy" as a crime of violence). And *per se* crimes of violence are treated on par with those that are listed in statute. *Chavez v. People*, 2015 CO 62, ¶13, 359 P.3d 1040, 1043 (*per se* crimes of violence and statutorily defined crimes of violence are both treated as crimes of violence in sentencing). Does the Title Board know if these crimes are included in Initiative #30's reach? And will voters?

In a related context, it is also unclear if "crime of violence" has the same meaning as "violent crime." Under existing statutes, it does not.[6] The ballot title set uses both phrases ("crime of violence" and "violent crime"), but "violent crime" does not appear in the text of Initiative #30. Its meaning as used in the ballot title is therefore unclear and confusing.

It is also possible that "crime of violence" under this measure means something entirely different from these existing definitions, given the measure's silence on the issue. Unfortunately, when perusing this title, voters won't know. And for now, the Title Board cannot know either.

The Board lacks jurisdiction to set a title where it does not know what the measure before it will accomplish. If the Board does not understand the way in which the measure will operate if adopted by voters, voters will not be able to understand it either. As such, the Board cannot find the initiative contains a single subject. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 468-69 (Colo. 1999). Therefore, the Title Board lacks jurisdiction to set a title for Initiative #30.

II. The ballot title is misleading, unfair, and inaccurate.

A. The measure is so vague as to defy understanding, given the use of the undefined term "crimes of violence" as the central factor for changing parole eligibility.

As addressed above, "crimes of violence" is a phrase that has so many meanings and is so imprecise under this measure, a clear ballot title cannot be set. The Board cannot set "titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear." *Id.*at 469.

[6] This term is defined by C.R.S. § 18-22-102(3) as follows:

> "Violent crime" means a felony enumerated as a crime of violence pursuant to section 18-1.3-406 or a felony involving a weapon or firearm.

Proponents are entitled to use undefined terms in their measure, up to a point. If voters cannot know what they may be authorizing or prohibiting by a "yes" vote – and here, they cannot – the Title Board necessarily will set a misleading ballot title. A ballot title "is illogical and inherently confusing [where it] does not allow voters 'to determine intelligently whether to support or oppose the proposal.'" *In the Matter of the Title, Ballot Title and Submission Clause for Initiative 2015-2016 #156*, 2016 CO 56, ¶13, 375 P.3d 123 (Colo. 2016) (citation omitted). This is true even where the measure "substantially tracks language found in the initiative itself and thus may faithfully express the initiative's intent." *Id.*, ¶15.

B. "Violent crime" and "crimes of violence" are political slogans, designed to prejudice voters' consideration of this measure.

A ballot title should allow voters to consider the merits of a proposal without using language that appeals to voters' emotions. "By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *In re Proposed Initiative 1999-2000 # 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000) A catch phrase "encourage[s] prejudice in favor of the issue and, thereby, distract[s] voters from consideration of the proposal's merits." *Id.* Sometimes that slogan, when used in another context, is be a neutral statement but as used in the ballot title, it becomes politically charged wording that diverts voters from the measure's relative merits. *Id.* (holding that the term "as rapidly and effectively as possible," used in relation to teaching children English, was improper catch phrase).

This ballot title uses "violent crime" in the single subject statement and "crimes of violence" twice in the balance of the titles. These are terms that are used for purposes of political positioning.[7] Recent research shows a skewed voter reaction to "violent crime" without regard to statistical evidence about it.[8] Such language is sure to detract from substantive debate over changes to parole eligibility.

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[7] Such wording is regularly used to set the stage for political campaigns and to enflame voter emotions. For example, one political actor's recent op-ed used "violent crime" in its headline and five other times to persuade voters s to a certain viewpoint, concluding: "As Coloradans drown in crime, there is a lifeboat in the distance with two words on its side becoming clearer every day: 'Election 2022.'" Brauchler, G., *Colorado violent crime is higher than the national average for the first time in decades*," The Denver Post (Oct. 21, 2021); https://www.denverpost.com/2021/10/04/colorado-violent-crime-higher-national-average-brauchler/ (last viewed Apr. 25, 2023). Notably, this opinion piece uses yet a different definition of "violent crime," one that is used by the Federal Bureau of Investigation which does not mirror any Colorado law. *Id.* ("violent crime [is] defined as a homicide, murder, nonnegligent manslaughter, rape, robbery, and aggravated assault").

[8] *See* Pew Research Center, *Violent crime is a key midterm voting issue, but what does the data say?*, https://www.pewresearch.org/short-reads/2022/10/31/violent-crime-is-a-key-midterm-voting-issue-but-what-does-the-data-say/ (last viewed Apr. 26, 2023) ("Media coverage could affect voters' perceptions about violent crime, too, as could public statements from political candidates and elected officials…. More broadly, the public often tends to believe that crime is up, even when the data shows it is down. In 22 of 26 Gallup surveys conducted since 1993, at least six-in-ten U.S. adults said there was more crime nationally than there was the year before, despite the general downward trend in the national violent crime rate during most of that period.").

C. The use of "violent crime" in the single subject statement is unwarranted and misleading.

As stated above, the titles use the phrase, "convicted of a violent crime." The initiative does not use this terminology. Whether it is equivalent to "crimes of violence" is not apparent. As noted, the two phrases are defined differently by statute with "violent crime" being defined more narrowly than two statutory definitions and more broadly than one other definition. One thing is certain: it is prejudicial and misleading and should be stricken from the titles.

D. The use of "any such crime" in the titles is unclear and misleading.

The titles refer to "an offender convicted of committing any such crime." Does "any such crime" refer to the crimes listed earlier in the title? Or to "crimes of violence?" Or to both? A voter cannot know based on the current wording of the titles, and this lack of clarity should not burden petition signers or voters.

E. The use of "convicted of committing crimes of violence including" certain listed crimes is unclear and misleading.

The titles refer to persons "convicted of committing crimes of violence including" a list of stated crimes. "Including" is an expansive term that indicates the list is non-exclusive. *Lyman v. Town of Bow Mar*, 533 P.2d 1129, 1133 (1975) ("[T]he word 'include' is ordinarily used as a word of extension or enlargement…. To hold otherwise here would transmogrify the word 'include' into the word 'mean.'") *Arnold v. Colo. Dep't of Corr.*, 978 P.2d 149, 151 (Colo. App. 1999) ("[T]he word 'include' is ordinarily used as a word of extension or enlargement and is not definitionally equivalent to the word 'mean.'")

If the Board intended to use "including" to be expansive, it should identify what other crimes are included. If this was not the Board's intent, "including" should be stricken from the titles. Either way, the title as currently phrased is misleading.

F. The governor's ability to parole certain persons who have been convicted of certain crimes is not addressed at all in the titles, making the titles misleading to voters.

As addressed above, giving the governor a power he does not now – and has not for decades – possessed is a key element of this measure. The ability of a governor to have an expanded power in this regard will be notable to voters. *See* fn.2, *supra*. The titles are silent on the transfer of power and thus the measure's breadth. This silence will mislead voters.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should reverse its single subject decisions regarding Initiative #30, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

RESPECTFULLY SUBMITTED this 26th day of April, 2023.

RECHT KORNFELD, P.C.

s/ Mark Grueskin
Mark G. Grueskin
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com

CERTIFICATE OF SERVICE

I, Kate Sorice, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #30** was sent this day, April 26, 2023, via email to counsel for the proponents at:

ST@westglp.com

And mailed first-class, postage prepaid to Proponents:

Suzanne Taheri & Steven Ward
6501 E. Belleview Ave, Suite 375
Denver, CO 80111

s/ Kate Sorice

TIME

- IDEAS
- POLITICS

Politicians' Tough-on-Crime Messaging Could Have Devastating Consequences

Getty Images

IDEAS

BY UDI OFER

NOVEMBER 3, 2022 10:54 AM EDT

Ofer is a professor at Princeton University and the founding director of its Policy Advocacy Clinic. He is also the former Deputy National Political Director of the ACLU

In the majority of hotly contested 2022 midterm races across the country, tough-on-crime rhetoric is at the top of the agenda. Close to 60% of Republican spending on campaign ads since September has been on the topic of crime, with tens of thousands of ads running on the issue, and Democrats have responded with their own $36 million war chest. Not since the height of America's mass incarceration era has the nation seen law and order politics play such an outsized role in candidate races up and down the ballot. The outcome could put the country in danger of entering a new era of more mass incarceration.

In Florida, Governor Ron DeSantis is attacking "leftist politicians and Soros-backed prosecutors" for "pro-crime ideology." In Pennsylvania, Republicans are accusing John Fetterman of being soft on crime by supporting criminal justice reform. In Wisconsin, Republicans are going after Mandela Barnes for supporting bail reform and police reform, running ads that many have compared to the racist Willie Horton ad of 1988 and displaying pictures of Barnes alongside three Congress Members—Alexandria Ocasio-Cortez, Ilhan Omar, and Rashida Tlaib, all women of color—and calling him "different" and "dangerous."

In response, many Democrats are touting their own tough-on-crime message. They're slamming Republicans as the ones who are soft on crime and not "backing the blue," as well as attacking parole reform, bail reform, and efforts to no longer prosecute drug possession. Joy Hofmeister, the Democratic challenger to Republican Oklahoma governor Kevin Stitt, even hammered the governor for supporting a clemency initiative in his state that was supported by advocates on the left and right. Meanwhile, President Joe Biden is reminding Americans that he has already allowed at least $10 billion in federal stimulus funds to be used to hire more police and police equipment.

While Republicans are leading this charge, both parties are playing with fire, as the political rhetoric being deployed this election season has the potential to trigger a new surge in incarceration, as occurred following previous election cycles that starred tough-on-crime rhetoric. Between 1973-2009, the nation saw an exponential growth in incarceration, from approximately 300,000 people in prisons and jails in 1973 to 2.2 million by 2009, making the U.S. the largest incarcerator in the world, with a rate 5 to 10 times higher than Western Europe and other democracies. Hundreds of new laws and practices passed at the local, state, and federal levels, including new mandatory minimums with harsh sentences, more cash bail and pretrial detention, and more aggressive prosecutorial and policing practices like stop-and-frisk.

Along with mass incarceration came extreme racial inequities that spread well beyond the carceral system. A Black boy born in the 2000s had a 1 in 3 chance of ending up incarcerated, compared to a 1 in 17 chance for a white boy. Mass incarceration has contributed significantly to the racial achievement gap, poorer health outcomes in Black communities, and economic hardship for Black families. Mass incarceration also changed the political process, as millions of Americans became disenfranchised because of a felony record. Until as recently as 2016, more than 20% of Black Americans were disenfranchised in Florida, Kentucky, and Virginia because of a felony record. Today, 48 states continue in varying degrees to bar people with a criminal conviction from voting, which explains why scholars like Michelle Alexander have called mass incarceration the New Jim Crow.

This crisis in mass incarceration, which only recently began to dip, has roots that run deep in efforts to politicize and racialize crime. Mass incarceration has been fueled by moments like the one we are living in today, where following years of gains on civil rights, a backlash ensues and crime is conflated with reforms and civil rights protests.

In the 1960s, as demonstrations against the Jim Crow south were sweeping the nation and beginning to make progress, a backlash formed with tough-on-crime rhetoric at its core. Republicans began to attack Democrats as being soft on crime, blaming civil rights protests and new civil rights laws on rising crime rates. In the 1964 presidential election, Barry Goldwater attacked Democrats as endangering law and order, running political ads accusing them of "Juvenile Delinquency! Crime! Riots!" while images of protesters mixed with images of violence.

Goldwater lost in 1964, but he changed the policy trajectory of not only the Republican Party, but the Democratic Party as well, which eventually caved fully to the law-and-order playbook. In 1965, President Lyndon Johnson launched the first national war on crime, and in 1968, President Johnson and a Democratic Congress passed the Omnibus Crime Control and Safe Streets Act, which initially invested $400 million into the war on crime but eventually led to billions in federal money spent to hire more police and supply local police with military-grade equipment. As professor Elizabeth Hinton has documented, this led to more heavily armed police in Black neighborhoods and to a disproportionate increase in arrests of Black people, helping drive racial disparities in incarceration and undercutting other Great Society initiatives.

For the next 40 years, the tough on crime message gripped both political parties. Candidate Richard Nixon dedicated 17 speeches to the topic and ran television ads calling on voters to reject the lawlessness of the civil rights movement. Ronald Reagan focused on a war on drugs, George H. W. Bush on Willie Horton, and Bill Clinton on three strike laws, truth-in-sentencing laws and the 1994 Crime Bill, the largest crime bill in United States history.

It wasn't until the past 10 years that a bipartisan movement for criminal justice reform formed, pushing for an alternative approach. This movement by Democrats and Republicans has worked together in states across the country to pass bipartisan reforms, such as sentencing reform in Louisiana and Oklahoma, bail reform in New Jersey and Colorado, second chance laws in Georgia, Michigan, Pennsylvania and Utah, drug law reform in Oregon and Rhode Island, and much more. The nationwide prison population began to drop to 1.2 million, and the U.S. moved from first to fifth place in the global ranking of imprisonment rates, right between Cuba and Panama. Families were reunited with their loved ones, and some of the states that have seen the largest decrease in incarceration are also some of the safest states in the nation, like New Jersey.

But today, just as nationwide incarceration rates were beginning to slowly drop, public anxiety over crime is being turned into a wedge issue between the two political parties to undermine progress made on civil rights and criminal justice reform. Bail reform, police reform, parole reform, and sentencing reform are wrongfully being blamed for a rise in crime. These criticisms come on the heels of gains made by the civil rights movement,

this time under the banner of Black Lives Matter, which has drawn renewed attention to the nation's history of police violence and white supremacy, and has generated among the largest civil rights protests in U.S. history.

Today's midterm elections appear once again to hinge, in some part, on a conflation of civil rights with a rise in crime. Candidates for office are running ads reminiscent of the Barry Goldwater and Richard Nixon era, conflating political protests with crime, like the ad by Louisiana Senator John Kennedy blaming "woke leaders" for crime, and other political ads that show footage of Black Lives Matter protesters interspersed with images of violence. It doesn't matter that crime is increasing in red states and red cities that have seen no significant criminal justice reform. These are, simply, inconvenient truths.

Unfortunately, this political strategy appears to be working. An October Pew Research Center poll found 61% of registered voters saying violent crime is very important when making their decision on who to vote for this year, up from 54% in March. An October *New York Times* Siena College poll also found 3% of voters citing crime as the "most important problem" facing the country, up from 1% of voters in the same poll in July, a difference that can make or break a close election. While there is no evidence that nationwide crime soared during this period to explain this additional attention by voters, what appears to have changed is the additional spending on political ads touting a tough-on-crime message and increased coverage of the issue by Fox News, CNN, and MSNBC. In fact, a recent Gallup poll found that 56% of Americans think crime has gone up, the highest increase in perception of crime in 50 years, and contrary to the most recent data from both the Bureau of Justice Statistics and FBI showing no rise in the overall violent crime rate in 2021.

Yet it doesn't have to be this way. Candidates for office can resist the tough-on-crime impulse that has grown so common since Barry Goldwater's 1964 run for office. They can provide a new vision for safety, one that many communities have been calling for—one the emphasizes prevention and investments in public health, schools, jobs, housing and community support structures, and relegates incarceration to the last possible option, after all other intervention efforts have failed.

In fact, research conducted by organizations like Vera Action and HIT Strategies has found that while voters care deeply about crime, they want more than the one-dimensional tough-on-crime message being delivered. Candidates benefit by articulating a vision that recognizes that public safety is achieved when we provide people with the resources they need to thrive, like earning a living wage, receiving a good education, and having stable housing. Voters understand that police shouldn't be the ones charged with solving every social problem, from kids skipping school to mental health needs to homelessness. Instead, voters are seeking long term solutions rooted in prevention, like a good education and a good job.

So far, too few politicians on both the right and left are moving away from the reflexive tough-on-crime rhetoric that has proven to be so devastating in the past. It won't be clear until after the midterms how much this rhetoric has impacted voter choices, but the damage may have already been done. Unless more politicians change course, the U.S. is on the verge of a new wave of mass incarceration—as history repeats itself.

https://time.com/6227704/politicians-crime-messaging-mass-incarceration/

OCTOBER 31, 2022

Violent crime is a key midterm voting issue, but what does the data say?

BY JOHN GRAMLICH

Political candidates around the United States have released thousands of ads focusing on violent crime this year, and most registered voters see the issue as very important in the Nov. 8 midterm elections. But official statistics from the federal government paint a complicated picture when it comes to recent changes in the U.S. violent crime rate.

With Election Day approaching, here's a closer look at voter attitudes about violent crime, as well as an analysis of the nation's violent crime rate itself. All findings are drawn from Center surveys and the federal government's two primary measures of crime: a large annual survey from the Bureau of Justice Statistics (BJS) and an annual study of local police data from the Federal Bureau of Investigation (FBI).

How we did this ⊕

1 Around six-in-ten registered voters (61%) say violent crime is very important when making their decision about who to vote for in this year's congressional elections. Violent crime ranks alongside energy policy and

health care in perceived importance as a midterm issue, but far below the economy, according to the Center's October survey.

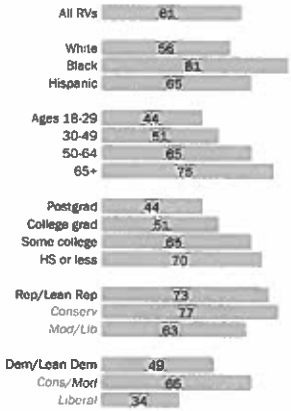
2 Republican voters are much more likely than Democratic voters to see violent crime as a key voting issue this year. Roughly three-quarters of Republican and GOP-leaning registered voters (73%) say violent crime is very important to their vote, compared with around half of Democratic or Democratic-leaning registered voters (49%).

Conservative Republican voters are especially focused on the issue: About eight-in-ten (77%) see violent crime as very important to their vote, compared with 63% of moderate or liberal Republican voters, 65% of moderate or conservative Democratic voters and only about a third of liberal Democratic voters (34%).

3 Older voters are far more likely than younger ones to see violent crime as a key election issue. Three-quarters of registered voters ages 65 and older say violent crime is a very important voting issue for them this year, compared with fewer than half of voters under 30 (44%).

About eight-in-ten Black U.S. voters say violent crime is very important to their 2022 midterm vote

% of registered voters who say violent crime is very important when making their decision about who to vote for in the 2022 congressional elections



Notes: Based on registered voters. There were not enough Asian American voters in the survey to analyze independently.
Source: Survey of U.S. adults conducted Oct. 10-16, 2022.

PEW RESEARCH CENTER

There are other demographic differences, too. When it comes to education, for example, voters without a college degree are substantially more likely than voters who have graduated from college to say violent crime is very important to their midterm vote.

4 Black voters are particularly likely to say violent crime is a very important midterm issue. Black Americans have consistently been more likely than other racial and ethnic groups to express concern about violent crime, and that remains the case this year.

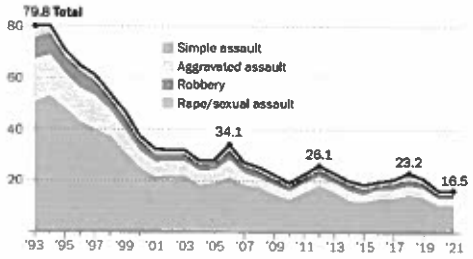
Some 81% of Black registered voters say violent crime is very important to their midterm vote, compared with 65% of Hispanic and 56% of White voters. (There were not enough Asian American voters in the Center's survey to analyze independently.)

Differences by race are especially pronounced among Democratic registered voters. While 82% of Black Democratic voters say violent crime is very important to their vote this year, only a third of White Democratic voters say the same.

5 Annual government surveys from the Bureau of Justice Statistics show no recent increase in the U.S. violent crime rate. In 2021, the most recent year with available data, there were 16.5 violent crimes for every 1,000 Americans ages 12 and older. That was statistically unchanged from the year before, below pre-pandemic levels and far below the rates recorded in the 1990s, according to the National Crime Victimization Survey.

Federal surveys show no increase in U.S. violent crime rate since start of the pandemic

Violent victimizations per 1,000 Americans ages 12 and older



Note: Data for 2006 is not comparable to other years.
Source: U.S. Bureau of Justice Statistics.

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For each of the four violent crime types tracked in the survey – simple assault, aggravated assault, robbery and rape/sexual assault – there was no statistically significant increase either in 2020 or 2021.

The National Crime Victimization Survey is fielded each year among approximately 240,000 Americans ages 12 and older and asks them to describe any recent experiences they have had with crime. The survey counts threatened, attempted and completed crimes, whether or not they were reported to police. Notably, it does *not* track the most serious form of violent crime, murder, because it is based on interviews with surviving crime victims.

6 The FBI also estimates that there was no increase in the violent crime rate in 2021. The other major government study of crime in the U.S., the National Incident-Based Reporting System from the Federal Bureau of Investigation, uses a different methodology from the BJS survey and only tracks crimes that are reported to police.

The most recent version of the FBI study shows no rise in the national violent crime rate between 2020 and 2021. That said, there is considerable uncertainty around the FBI's

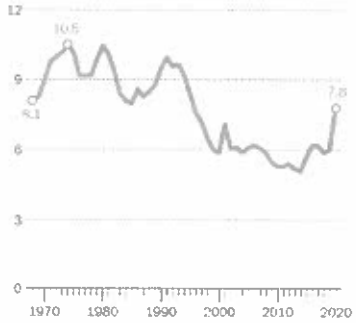
figures for 2021 because of a transition to a new data collection system. The FBI reported an *increase* in the violent crime rate between 2019 and 2020, when the previous data collection system was still in place.

The FBI estimates the violent crime rate by tracking four offenses that only partly overlap with those tracked by the National Crime Victimization Survey: murder and non-negligent manslaughter, rape, aggravated assault and robbery. It relies on data voluntarily submitted by thousands of local police departments, but many law enforcement agencies do not participate.

In the latest FBI study, around four-in-ten police departments – including large ones such as the New York Police Department – did not submit data, so the FBI estimated data for those areas. The high nonparticipation rate is at least partly due to the new reporting system, which asks local police departments to submit far more information about each crime than in the past. The new reporting system also makes it difficult to compare recent data with data from past years.

U.S. murder rate rose sharply in 2020, but remains below previous highs

Murders per 100,000 people in the U.S.



Note: 2020 data is provisional.
Source: Centers for Disease Control and Prevention.

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7 While the total U.S. violent crime rate does not appear to have increased recently, the most serious form of violent crime – murder – *has* risen significantly during the pandemic. Both the FBI and the Centers for Disease Control and Prevention (CDC) reported a roughly 30% increase in the U.S. murder rate between 2019 and 2020, marking one of the largest year-over-year increases ever

recorded. The FBI's latest data, as well as provisional data from the CDC, suggest that murders continued to rise in 2021.

Despite the increase in the nation's murder rate in 2020, the rate remained well below past highs, and murder remains the least common type of violent crime overall.

8 There are many reasons why voters might be concerned about violent crime, even if official statistics do not show an increase in the nation's total violent crime rate. One important consideration is that official statistics for 2022 are not yet available. Voters might be reacting to an increase in violent crime that has yet to surface in annual government reports. Some estimates from nongovernmental organizations *do* point to an increase in certain kinds of violent crime in 2022: For example, the Major Cities Chiefs Association, an organization of police executives representing large cities, estimates that robberies and aggravated assaults increased in the first six months of this year compared with the same period the year before.

Voters also might be thinking of specific *kinds* of violent crime – such as murder, which has risen substantially – rather than the *total* violent crime rate, which is an aggregate measure that includes several different crime types, such as assault and robbery.

Some voters could be reacting to conditions in their own communities rather than at the national level. Violent crime is a heavily localized phenomenon, and the national violent crime rate may not reflect conditions in Americans' own neighborhoods.

Media coverage could affect voters' perceptions about violent crime, too, as could public statements from political candidates and elected officials. Republican candidates, in particular, have emphasized crime on the campaign trail this year.

More broadly, the public often tends to believe that crime is up, even when the data shows it is down. In 22 of 26 Gallup surveys conducted since 1993, at least six-in-ten U.S. adults said there was more crime nationally than there was the year before, despite the general downward trend in the national violent crime rate during most of that period.

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John Gramlich *is an associate director at Pew Research Center.*
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Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact**, **with amendments**, section 17-22.5-303.3 as follows:

17-22.5-303.3. Violent offenders – parole.

(1) ANY PERSON SENTENCED FOR SECOND DEGREE MURDER, FIRST DEGREE ASSAULT, FIRST DEGREE KIDNAPPING, UNLESS THE FIRST DEGREE KIDNAPPING IS A CLASS 1 FELONY, FIRST OR SECOND DEGREE SEXUAL ASSAULT, FIRST DEGREE ARSON, FIRST DEGREE BURGLARY, OR AGGRAVATED ROBBERY, COMMITTED ON OR AFTER JULY 1, 1987, BUT BEFORE JANUARY 1, 2025, WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME OF VIOLENCE, SHALL BE ELIGIBLE FOR PAROLE AFTER HE HAS SERVED SEVENTY-FIVE PERCENT OF THE SENTENCE IMPOSED LESS ANY TIME AUTHORIZED FOR EARNED TIME PURSUANT TO SECTION 17-22.5-302. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) ~~shall~~ APPLY.

(2) ANY PERSON CONVICTED AND SENTENCED FOR SECOND DEGREE MURDER; FIRST DEGREE ASSAULT; CLASS 2 FELONY KIDNAPPING; SEXUAL ASSAULT UNDER PART 4, ARTICLE 3 OF TITLE 18; FIRST DEGREE ARSON; FIRST DEGREE BURGLARY; OR AGGRAVATED ROBBERY, COMMITTED ON OR AFTER JANUARY 1, 2025, SHALL BE ELIGIBLE FOR PAROLE AFTER SUCH PERSON HAS SERVED EIGHTY-FIVE PERCENT OF THE SENTENCE IMPOSED UPON SUCH PERSON. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) APPLY.

(3) ANY PERSON CONVICTED AND SENTENCED FOR A CRIME COMMITTED BEFORE JANUARY 1, 2025, FOR ANY CRIME ENUMERATED IN SUBSECTION (1) OF THIS SECTION, WHO HAS TWICE PREVIOUSLY BEEN CONVICTED FOR A CRIME OF VIOLENCE, SHALL BE ELIGIBLE FOR PAROLE AFTER HE HAS SERVED THE SENTENCE IMPOSED LESS ANY TIME AUTHORIZED FOR EARNED TIME PURSUANT TO SECTION 17-22.5-302. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) ~~shall~~ APPLY.

~~(3)~~ (4) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS TITLE 17, ANY PERSON CONVICTED AND SENTENCED FOR A CRIME COMMITTED ON OR AFTER JANUARY 1, 2025, FOR ANY CRIME ENUMERATED IN SUBSECTION (2) OF THIS SECTION, WHO HAS TWICE PREVIOUSLY BEEN CONVICTED FOR A CRIME OF VIOLENCE, SHALL BEGIN PAROLE AFTER HE HAS SERVED THE FULL SENTENCE IMPOSED. THEREAFTER, THE PROVISIONS OF SECTION 17-22.5-303 (6) AND (7) APPLY.

(5) THE GOVERNOR MAY GRANT PAROLE TO AN OFFENDER TO WHOM THIS SECTION APPLIES BEFORE SUCH OFFENDER'S PAROLE ELIGIBILITY DATE IF, IN THE GOVERNOR'S OPINION, EXTRAORDINARY MITIGATING CIRCUMSTANCES EXIST AND SUCH OFFENDER'S RELEASE FROM INSTITUTIONAL CUSTODY IS COMPATIBLE WITH THE SAFETY AND WELFARE OF SOCIETY.

SECTION 2. In Colorado Revised Statutes, 17-22.5-403, **repeal and reenact, with amendments,** (2.5)(a) as follows:

17-22.5-403. Parole Eligibility.

(2.5)(a) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, ANY PERSON CONVICTED AND

SENTENCED FOR SECOND DEGREE MURDER, FIRST DEGREE ASSAULT, FIRST DEGREE KIDNAPPING UNLESS THE FIRST DEGREE KIDNAPPING IS A CLASS 1 FELONY, FIRST DEGREE ARSON, FIRST DEGREE BURGLARY, OR AGGRAVATED ROBBERY, COMMITTED ON OR AFTER JULY 1, 2004, BUT BEFORE JANUARY 1, 2025, SHALL BE ELIGIBLE FOR PAROLE AFTER SUCH PERSON HAS SERVED SEVENTY-FIVE PERCENT OF THE SENTENCE IMPOSED UPON SUCH PERSON, LESS ANY TIME AUTHORIZED FOR EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

SECTION 3. Effective Date.
This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

C.R.S. 17-22.5-303.3

Statutes current through Chapter 65 from the 2023 Regular Session and effective as of April 11, 2023. The text of this section is not final. It will not be final until compared to, and updated from, the text provided by the Colorado Office of Legislative Legal Services later this year.

17-22.5-303.3. Violent offenders - parole.

(1) Any person sentenced for second degree murder, first degree assault, first degree kidnapping, unless the first degree kidnapping is a class 1 felony, first or second degree sexual assault, first degree arson, first degree burglary, or aggravated robbery, committed on or after July 1, 1987, who has previously been convicted of a crime of violence, shall be eligible for parole after he has served seventy-five percent of the sentence imposed less any time authorized for earned time pursuant to section 17-22.5-302. Thereafter, the provisions of section 17-22.5-303 (6) and (7) shall apply.

(2) Any person sentenced for any crime enumerated in subsection (1) of this section, who has twice previously been convicted for a crime of violence, shall be eligible for parole after he has served the sentence imposed less any time authorized for earned time pursuant to section 17-22.5-302. Thereafter, the provisions of section 17-22.5-303 (6) and (7) shall apply.

(3) The governor may grant parole to an offender to whom this section applies before such offender's parole eligibility date if, in the governor's opinion, extraordinary mitigating circumstances exist and such offender's release from institutional custody is compatible with the safety and welfare of society.

History

Source: L. 87: Entire section added, p. 655, § 12, effective July 1. **L. 88:**(1) amended, p. 1435, § 28, effective June 11.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 17

C.R.S. Title 17, Art. 22.5

State Notes

ANNOTATION

Definition of "crime of violence"

in § 16-11-309 applies in determining when a convicted person is eligible for parole under § 17-22.5-303.3 (1). Busch v. Gunter, 870 P.2d 586 (Colo. App. 1993).

A convicted person is eligible for parole after serving seventy-five percent of the person's sentence

if previously convicted of a crime in which a deadly weapon was used, possessed, or threatened to be used. Busch v. Gunter, 870 P.2d 586 (Colo. App. 1993).

End of Document

C.R.S. 17-22.5-403

Statutes current through Chapter 65 from the 2023 Regular Session and effective as of April 11, 2023. The text of this section is not final. It will not be final until compared to, and updated from, the text provided by the Colorado Office of Legislative Legal Services later this year.

17-22.5-403. Parole eligibility.

(1) Any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony, or a level 1, level 2, level 3, or level 4 drug felony, or any unclassified felony shall be eligible for parole after such person has served fifty percent of the sentence imposed upon such person, less any time authorized for earned time granted pursuant to section 17-22.5-405. However, the date established by this subsection (1) upon which any person shall be eligible for parole may be extended by the executive director for misconduct during incarceration. The executive director shall promulgate rules and regulations concerning when and under what conditions any inmate's parole eligibility date may be extended. Such rules and regulations shall be promulgated in such a manner as to promote fairness and consistency in the treatment of all inmates.

(2)

(a) Notwithstanding subsection (1) of this section, any person convicted and sentenced for second degree murder, first degree assault, first degree kidnapping unless the first degree kidnapping is a class 1 felony, first or second degree sexual assault, first degree arson, first degree burglary, or aggravated robbery, committed on or after June 7, 1990, and before July 1, 2004, which person has previously been convicted of a crime which would have been a crime of violence as defined in section 18-1.3-406, C.R.S., shall be eligible for parole after such person has served seventy-five percent of the sentence imposed upon such person, less any time authorized for earned time granted pursuant to section 17-22.5-405.

(b) The provisions of paragraph (a) of this subsection (2) shall not apply to persons sentenced pursuant to part 10 of article 1.3 of title 18, C.R.S.

(c)

(I) A person who is convicted as an adult of a class 1 felony following a direct filing of an information or indictment in the district court pursuant to section 19-2.5-801, or transfer of proceedings to the district court pursuant to section 19-2.5-802, or pursuant to either of these sections as they existed prior to their repeal and

reenactment, with amendments, by House Bill 96-1005, which felony was committed on or after July 1, 1990, and before July 1, 2006, and who is resentenced pursuant to section 18-1.3-401 (4)(c), is not entitled to receive any reduction of the person's sentence pursuant to this section.

(II) Repealed.

(2.5)

(a) Notwithstanding subsection (1) of this section, any person convicted and sentenced for second degree murder, first degree assault, first degree kidnapping unless the first degree kidnapping is a class 1 felony, first degree arson, first degree burglary, or aggravated robbery, committed on or after July 1, 2004, shall be eligible for parole after such person has served seventy-five percent of the sentence imposed upon such person, less any time authorized for earned time granted pursuant to section 17-22.5-405.

(b) The provisions of paragraph (a) of this subsection (2.5) shall only apply to:

(I) A person convicted and sentenced for a crime listed in paragraph (a) of this subsection (2.5) that is a class 2 or class 3 felony offense; or

(II) A person convicted and sentenced for a crime listed in paragraph (a) of this subsection (2.5) that is a class 4 or class 5 felony offense, which person has previously been convicted of a crime of violence as defined in section 18-1.3-406, C.R.S.

(3) Notwithstanding subsection (1) or (2) of this section, any person convicted and sentenced for any crime enumerated in subsection (2) of this section, committed on or after June 7, 1990, and before July 1, 2004, who has twice previously been convicted for a crime which would have been a crime of violence as defined in section 18-1.3-406, C.R.S., shall be eligible for parole after such person has served seventy-five percent of the sentence served upon such person, at which time such person shall be referred by the department to the state board of parole which may place such person on parole for a period of time which does not exceed the time remaining on such person's original sentence. For offenses committed on or after July 1, 1993, such person shall be placed on parole for the period of time specified in section 18-1.3-401 (1)(a)(V), C.R.S. Section 17-22.5-402 (2) shall not apply to any such offender.

(3.5)

(a) Notwithstanding subsection (1) or (2.5) of this section, any person convicted and sentenced for any crime enumerated in subsection (2.5) of this section, committed on or after July 1, 2004, who has previously been convicted for a crime which would have been a crime of violence as defined in section 18-1.3-406, C.R.S., shall be eligible for parole after such person has served seventy-five percent of the sentence served upon such person, at which time such person shall be referred by the department to the state board of parole which may place the person on parole for the period of time specified in section 18-1.3-401 (1)(a)(V), C.R.S. Section 17-22.5-402 (2) shall not apply to any such offender.

(b) The provisions of paragraph (a) of this subsection (3.5) shall only apply to:

(I) A person convicted and sentenced for a crime listed in paragraph (a) of subsection (2.5) of this section that is a class 2 or class 3 felony offense; or

(II) A person convicted and sentenced for a crime listed in paragraph (a) of subsection (2.5) of this section that is a class 4 or class 5 felony offense, which person has twice previously been convicted of a crime of violence as defined in section 18-1.3-406, C.R.S.

(4) The governor may grant parole to an inmate to whom subsection (2) or (3) of this section applies prior to such inmate's parole eligibility date or discharge date if, in the governor's opinion, extraordinary mitigating circumstances exist and such inmate's release from institutional custody is compatible with the safety and welfare of society.

(4.5)

(a) After considering any relevant evidence presented by any person or agency and considering the presumptions set forth in section 17-34-102 (8), the governor may grant early parole to an offender to whom subsection (1) or (2.5) of this section applies when the offender successfully completes the specialized program described in section 17-34-102 if, in the governor's opinion, extraordinary mitigating circumstances exist and the offender's release from institutional custody is compatible with the safety and welfare of society.

(b) When an offender applies for early parole pursuant to paragraph (a) of this subsection (4.5) after having successfully completed the specialized program described in section 17-34-102, the offender shall make his or her application to the governor's office with notice and a copy of the application sent to the state board of parole created in section 17-2-201. The state board of parole shall review the offender's application and all supporting documents and schedule a hearing if the board considers making a recommendation for early parole, at which hearing any victim must have the opportunity to be heard, pursuant to section 24-4.1-302.5 (1)(j), C.R.S. Not later than ninety days after receipt of a copy of an offender's application for early parole, the state board of parole, after considering the presumptions set forth in section 17-34-102 (8), shall make a recommendation to the governor concerning whether early parole should be granted to the offender.

(c) The department, in consultation with the state board of parole, shall develop any necessary policies and procedures to implement this subsection (4.5), including procedures for providing notice to any victim, as required by sections 24-4.1-302.5 (1)(j) and 24-4.1-303 (14), C.R.S., and to the district attorney's office that prosecuted the crime for which the offender was sentenced.

(5) For any offender who is incarcerated for an offense committed prior to July 1, 1993, upon application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole and, if granted, the length of the period of parole. Prior to the parole release hearing, the division of adult parole shall conduct a parole plan investigation and inform the state board of parole of the results of the investigation. If the state board of parole finds an inmate's parole plan inadequate, it shall table the parole release decision and inform the director of the division of adult parole that

the parole plan is inadequate. The director of the division of adult parole shall ensure that a revised parole plan that addresses the deficiencies in the original parole plan is submitted to the parole board within thirty days after the notification. The parole board is responsible for monitoring the department's compliance with this provision and shall notify the director of the division of adult parole if a revised parole plan is not submitted to the parole board within thirty days. The state board of parole may set the length of the period of parole for any time period up to the date of final discharge as determined in accordance with section 17-22.5-402. If an application for parole is refused by the state board of parole, the state board of parole shall reconsider within one year thereafter whether such inmate should be granted parole. The state board of parole shall continue such reconsideration each year thereafter until such inmate is granted parole or until such inmate is discharged pursuant to law; except that:

(a) If the inmate 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 inmate once every three years, until the board grants such inmate parole or until such inmate is discharged pursuant to law; or

(b) If the inmate 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 inmate once every five years, until the board grants such inmate parole or until such inmate is discharged pursuant to law.

(6) For persons who are granted parole pursuant to subsection (5) of this section, the division of adult parole shall provide parole supervision and assistance in securing employment, housing, and such other services as may effect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions for parole for any such offender under this subsection (6) shall be established pursuant to section 17-22.5-404 by the state board of parole prior to such offender's release from incarceration. Upon a determination in a parole revocation proceeding that the conditions of parole have been violated, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the offender to a place of confinement designated by the executive director for any period of time up to the period remaining on such person's sentence, including the remainder of the offender's natural life if applicable, until the discharge date as determined by section 17-22.5-402 or one year, whichever is longer. In computing the period of reincarceration for an offender other than an offender sentenced for a nonviolent felony offense, as defined in section 17-22.5-405 (5), the time between the offender's release on parole and return to custody in Colorado for revocation of such parole shall not be considered to be part of the term of the sentence. The state board of parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.

(7)

(a) For any offender who is incarcerated for an offense committed on or after July 1, 1993, upon application for parole, the state board of parole, working in conjunction with the department and using the guidelines established pursuant to section 17-22.5-404, shall determine whether or not to grant parole. The state board of parole, if it determines that placing an offender on parole is appropriate, shall set the length of the period of parole at the mandatory period of parole established in section 18-1.3-401 (1)(a)(V) or 18-1.3-401.5 (2)(a), C.R.S., except as otherwise provided for specified offenses in section 17-2-201 (5)(a), (5)(a.5), and (5)(a.7).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), for any sex offender, as defined in section 18-1.3-1003 (4), C.R.S., who is sentenced pursuant to the provisions of part 10 of article 1.3 of title 18, C.R.S., for commission of a sex offense committed on or after November 1, 1998, the state board of parole shall determine whether or not to grant parole as provided in section 18-1.3-1006, C.R.S. If the state board of parole determines that placing a sex offender on parole is appropriate, it shall set an indeterminate period of parole as provided in section 18-1.3-1006, C.R.S.

(c) If the state board of parole does not grant parole pursuant to subsection (7)(a) or (7)(b) of this section because it finds an inmate's parole plan inadequate, it shall table the parole release decision and inform the director of the division of adult parole that the parole plan is inadequate. The director of the division of adult parole shall ensure that a revised parole plan that addresses the deficiencies in the original parole plan is submitted to the parole board within thirty days after the notification. The parole board is responsible for monitoring the department's compliance with this provision and shall notify the director of the division of adult parole if a revised parole plan is not submitted to the parole board within thirty days.

(8)

(a) For persons who are granted parole pursuant to paragraph (a) of subsection (7) of this section, the division of adult parole shall provide parole supervision and assistance in securing employment, housing, and such other services as may affect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions for parole for any such offender under this paragraph (a) shall be established pursuant to section 17-22.5-404 by the state board of parole prior to such offender's release from incarceration. Upon a determination that the conditions of parole have been violated in a parole revocation proceeding, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the offender to a place of confinement designated by the executive director for any period of time up to the period remaining on such person's mandatory period of parole established in section 18-1.3-401 (1)(a)(V) or 18-1.3-401.5 (2)(a), C.R.S. Any offender who has been reincarcerated due to a parole revocation pursuant to this paragraph (a) shall be eligible for parole at any time during such reincarceration. The state board of parole may discharge an offender granted parole under this section at any time during the term of parole upon a determination that the offender has been sufficiently

rehabilitated and reintegrated into society and can no longer benefit from parole supervision. In making any such determination, the state board of parole shall make written findings as to why such offender is no longer in need of parole supervision.

(b) For sex offenders, as defined in section 18-1.3-1003 (4), C.R.S., who are convicted of an offense committed on or after November 1, 1998, and who are granted parole pursuant to paragraph (b) of subsection (7) of this section, the division of adult parole shall provide parole supervision and assistance in securing employment, housing, and such other services as may affect the successful reintegration of the sex offender into the community while recognizing the need for public safety. The conditions for parole for any sex offender shall be established pursuant to section 18-1.3-1006, C.R.S., and section 17-22.5-404 by the state board of parole prior to the sex offender's release from incarceration. Upon a determination in a parole revocation proceeding that the sex offender has violated the conditions of parole, the state board of parole shall continue the parole in effect, modify the conditions of parole if circumstances then shown to exist require such modifications, which circumstances shall be set forth in writing, or revoke the parole and order the return of the sex offender to a place of confinement designated by the executive director for any period of time up to the remainder of the sex offender's natural life. The revocation hearing shall be held and the state board of parole shall make its determination as provided in section 18-1.3-1010, C.R.S. The state board of parole may discharge a sex offender from parole as provided in section 18-1.3-1006 (3), C.R.S.

(9) The state board of parole 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.

History

Source: L. 90: Entire part added, p. 947, § 19, effective June 7. **L. 93:**(1) amended, p. 1730, § 11, effective July 1; entire section amended, p. 1978, § 4, effective July 1. **L. 94:**(5) and (7) amended, p. 2597, § 7, effective June 3. **L. 95:**(6) amended, p. 878, § 13, effective May 24. **L. 98:**(9) added, p. 1445, § 37, effective July 1; (7) and (8) amended, p. 1291, § 12, effective November 1. **L. 2000:**(6), (8), and (9)(c) amended, p. 854, § 63, effective May 24. **L. 2002:**(7)(a) amended, p. 125, § 3, effective March 26; (2), (3), (5), (7)(a), (7)(b), (8)(a), (8)(b), and (9)(a) amended, p. 1504, § 164, effective October 1. **L. 2003:**(2) amended, p. 975, § 10, effective April 17; (7)(a) amended, p. 813, § 2, effective July 1; (9) amended, p. 2677, § 4, effective July 1. **L. 2004:**(2) and (3) amended and (2.5) and (3.5) added, p. 1739, § 1, effective June 4. **L. 2008:**(6) amended, p. 1756, § 5, effective July 1. **L. 2013:**(1), (7)(a), and (8)(a) amended,(SB 13-250), ch. 333, p.1932, § 49, effective October 1. **L. 2015:**(5), (6), (7), and (8)(b) amended,(HB 15-1122), ch. 37, p. 89, § 5, effective March 20. **L. 2016:**(2)(c) added,(SB 16-181), ch. 353, p. 1449, § 3, effective June 10; (4.5) added,(SB 16-180), ch. 352, p. 1443, § 3,

effective August 10. **L. 2017:**IP(5) amended,(HB 17-1326), ch. 394, p. 2030, § 5, effective August 9. **L. 2019:**IP(5) amended and (7)(c) added,(SB 19-143), ch. 286, p. 2660, § 6, effective May 28. **L. 2021:**(2)(c)(I) amended,(SB 21-059), ch. 136, p. 716, § 34, effective October 1.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 17

C.R.S. Title 17, Art. 22.5

C.R.S. Title 17, Art. 22.5, Pt. 4

State Notes

Notes

Editor's note:

(1) Amendments to this section by House Bill 93-1302 and House Bill 93-1088 were harmonized. Amendments to subsection (7)(a) by House Bill 02-1223 and House Bill 02-1046 were harmonized, effective October 1, 2002.

(2) Subsection (2)(c)(II)(B) provided for the repeal of subsection (2)(c)(II), effective one year after June 10, 2016. (See L. 2016, p. 1449.)

ANNOTATION

Application of the triennial review authorized in subsection (5) does not violate the ex post facto clauses

in the federal or state constitution. Martinez v. Colo. State Bd. of Parole, 989 P.2d 256 (Colo. App. 1999).

Retrospective application of the 1993 mandatory parole provisions of this section, in conjunction with § 18-1-105 (1)(a)(V), not violative of ex post facto clause

where defendant had pleaded guilty to underlying offense with stipulation that the offense occurred within a time frame that happened to include time periods both prior and subsequent to the date such provisions were enacted. People v. Flagg, 18 P.3d 792 (Colo. App. 2000).

Retroactive application of the policy of the parole board to no longer reconsider a parole application

two months early does not extend a prisoner's actual period of confinement and is appropriate. Mulberry v. Neal, 96 F. Supp. 2d 1149 (D. Colo. 2000).

The crime of violence qualifier in subsection (2.5)(b) only applies to subsection (2.5)(b)(II), not all of subsection (2.5)(b).

Owens v. Williams, 2020 COA 177, 490 P.3d 1050.

In enacting statutory section, general assembly did not intend 75% provision

to apply only to persons whose prior violent crime resulted in a separate charge and separate conviction. Instead, general assembly's general goal was to make parole eligibility more difficult for all persons who have previously committed a violent crime. Outler v. Norton, 934 P.2d 922 (Colo. App. 1997).

Subsection (1) applies only to an offender sentenced for a crime committed on or after July 1, 1979.

Vashone-Caruso v. Suthers, 29 P.3d 339 (Colo. App. 2001).

Notwithstanding subsection (1) of this section, in computing an inmate's parole eligibility date, § 17-22.5-101 requires the department of corrections to construe all sentences as one continuous sentence

when the inmate has been committed under several convictions with separate sentences, even when doing so results in the inmate becoming parole eligible before serving at least 50 percent of the second sentence. Nowak v. Suthers, 2014 CO 14, 320 P.3d 340.

Subsection (1) of this section is not irreconcilable with § 17-22.5-101.

The two statutes can be harmonized by construing the "sentence imposed upon such person", as used in subsection (1), as the one continuous sentence mandated by § 17-22.5-101. Nowak v. Suthers, 2014 CO 14, 320 P.3d 340.

Plain and ordinary meaning of the words "would have been a crime of violence" as used in the section

includes the situation in which a criminal defendant has been previously convicted of a crime which satisfies definition of crime of violence contained in § 16-11-309 (2). Outler v. Norton, 934 P.2d 922 (Colo. App. 1997).

The language of subsection (3) is unambiguous

and contains no qualification that the crimes arise out of separate criminal transactions and have been separately tried and convicted. Koucherik v. Zavaras, 940 P.2d 1063 (Colo. App. 1996).

Defendant's assertion that the application of subsection (3) to his circumstances denied him equal protection of the law

was not supported by any evidence and defendant therefore failed to meet his burden to show that he was being treated differently from other persons who were similarly situated. Koucherik v. Zavaras, 940 P.2d 1063 (Colo. App. 1996).

Extension of inmate's parole eligibility date under subsection (2)(a) or (3) does not alter or increase inmate's sentence.

Jenner v. Ortiz, 155 P.3d 563 (Colo. App. 2006).

Defendant's post-conviction challenge to imposition of mandatory parole period

as an unconstitutional violation of the double jeopardy clause based on the assertion that only the parole board has the authority to impose parole was denied, since the parole board only administers parole and the court imposes it; hence there is no separate penalty imposed in a separate proceeding. People v. Xiong, 10 P.3d 719 (Colo. App. 2000).

With a mandatory parole period, an offender does not begin serving the period of parole until his or her prison sentence has been fully served or the parole board determines that he or she is ready for parole.

People v. Hall, 87 P.3d 210 (Colo. App. 2003).

While an offender subject to discretionary parole will never be confined for a period greater than the original sentence imposed, an offender subject to mandatory parole faces a sentence

to prison, a period of parole, and possibly another period of confinement not necessarily limited to the original term of incarceration imposed. People v. Hall, 87 P.3d 210 (Colo. App. 2003).

Only the parole board, not a parole officer, has the authority to direct that an offender attend a community corrections program as a condition of parole.

People v. Lanzieri, 996 P.2d 156 (Colo. App. 1999), rev'd on other grounds, 25 P.3d 1170 (Colo. 2001).

Subsection (9) does not violate separation of powers or double jeopardy.

The constitution does not provide that sentencing is within the sole province of the judiciary. The general assembly has the power to prescribe punishment and limit the court's sentencing authority. In this case, the general assembly, by enacting subsection (9), simply extended Colorado's parole supervision scheme to provide additional means for successfully reintegrating

offenders into the community consistent with public safety. People v. Jackson, 109 P.3d 1017 (Colo. App. 2004).

Defendant was on notice that, under certain circumstances, he or she could be subject to post-release supervision and reincarceration following mandatory parole. Thus, he or she could not have had a legitimate expectation of finality in the sentence announced by the court at sentencing. Therefore, the defendant's double jeopardy rights were not violated when, because of intervening circumstances, the defendant was subject to the additional period of statutorily required supervision. People v. Jackson, 109 P.3d 1017 (Colo. App. 2004).

Department of corrections acted properly

when it combined all of defendant's sentences, treating them as a continuous sentence, before the applicable parole date was determined. People v. Gallegos, 975 P.2d 1135 (Colo. App. 1998).

When the department of corrections calculates an inmates parole eligibility date based on multiple convictions

and one conviction would be subject to subsection (1) and the others would be subject to subsection (2.5), the department may apply subsection (2.5) to the one continuous sentence. When sentences are for a mix of offenses that implicate different parole eligibility date calculations, the department may, using its discretion and expertise, apply a governing sentencing theory in administering the one continuous sentence. Owens v. Williams, 2020 COA 177, 490 P.3d 1050.

When a defendant is paroled under this section or under § 17-22.5-303, he must be reincarcerated for a parole violation under the same statute.

People v. Gallegos, 975 P.2d 1135 (Colo. App. 1998).

A period of confinement attributable to a parole revocation was not a "period of mandatory parole".

When a person is reincarcerated on a parole revocation, he is no longer serving his original sentence. Therefore, when a person is sentenced for the crime of escape during a period of mandatory parole for another offense, ordering such a sentence to run consecutive with the period of incarceration for the parole revocation did not violate § 18-1.3-401 (1)(a)(V)(E). People v. Luther, 58 P.3d 1013 (Colo. 2002).

Subsection (5) applied to defendant convicted of first degree murder, even though defendant was not convicted of a separate count of crime of violence.

This subsection does not require proof of conviction of a crime of violence count, instead it applies to any defendant convicted of any crime described as a crime of violence in § 16-11-309. Martinez v. Colo. State Bd. of Parole, 989 P.2d 256 (Colo. App. 1999).

Defendant's argument that he did not enter into a voluntary plea because he was not advised that a violation of mandatory parole could lead to reincarceration was without merit.

Pursuant to subsection (7), a term of mandatory parole is imposed in addition to, and not in lieu of, a term of incarceration. If parole is granted, it must be for the mandatory period established by statute and it is implied that an advisement on mandatory parole includes notice that violation of such parole may result in imprisonment. People v. Jones, 957 P.2d 1046 (Colo. App. 1997).

The provisions of § 17-2-201 (5)(a) and subsection (7) of this section are in conflict.

Section 17-2-201 (5)(a) is a specific provision related to the parole of sex offenders while subsection (7) of this section is the mandatory parole statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, § 17-2-201 (5)(a) is an exception to subsection (7) of this section by creating a specialized schedule for sex offenders who committed crimes prior to July 1, 1996. Martin v. People, 27 P.3d 846 (Colo. 2001).

Section 17-2-201 (5)(a.5) is a specific provision related to the parole of sex offenders while subsection (7) of this section is the mandatory parole statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, § 17-2-201 (5)(a.5) is an exception to subsection (7) of this section, 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).

Subsection (8)(b) and § 17-2-103 (11)(b) conflict when a parole revocation is for a sex offender subject to lifetime supervision.

Since this section is the more specific provision, it applies to the revocation of a lifetime supervision sex offender's parole. People v. Back, 2013 COA 114, 412 P.3d 565.

Habitual offenders are subject to a period of discretionary parole rather than a period of statutory mandatory parole.

The provisions of § 17-2-201 (5)(a) and § 17-2-213 irreconcilably conflict with the provisions of subsection (7) of this section and § 18-1-105 (1)(a)(V). Thus, the specific provision of § 17-2-201 (5)(a) and § 17-2-213 prevail over the general provisions of subsection (7) of this section and § 18-1-105 (1)(a)(V). People v. Falls, 58 P.3d 1140 (Colo. App. 2002).

Petition to review mandatory parole is ripe

for judicial review even though the defendant has not completed period of incarceration. People v. Wirsching, 30 P.3d 227 (Colo. App. 2000).

An advisement that a defendant is subject to mandatory parole without disclosing the period of parole

is not sufficient to meet the requirements of this section and may allow the defendant to withdraw his or her plea agreement. People v. Wirsching, 30 P.3d 227 (Colo. App. 2000).

The parole board has the discretion to revoke a sex offender's parole for the rest of his or her indeterminate sentence.

People v. Back, 2013 COA 114, 412 P.3d 565.

Research References & Practice Aids

Cross references:

For the legislative declaration contained in the 2002 act amending subsections (2), (3), (5), (7)(a), (7)(b), (8)(a), (8)(b), and (9)(a), see section 1 of chapter 318, Session Laws of Colorado 2002. 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 16-180, see section 1 of chapter 352, Session Laws of Colorado 2016. For the legislative declaration in HB 17-1326, see section 1 of chapter 394, Session Laws of Colorado 2017.

End of Document

Initiative 30

Legislative
Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date:	April 14, 2023	**Fiscal Analyst:**	Aaron Carpenter (303-866-4918)

LCS TITLE: CONCERNING ELIGIBILITY FOR PAROLE

Fiscal Summary of Initiative 30

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at **www.colorado.gov/bluebook**. This fiscal summary identifies the following impact.

State expenditures. The initiative will increase state expenditures in future fiscal years to house offenders for longer periods in Department of Corrections facilities instead of releasing them on parole. According to the Department of Corrections, about 449 offenders on average are sentenced to prison for the offenses identified in the initiative and spend on average 12 to 24 years in prison. Actual costs will depend on the change to an offender's length of stay, which are subject to numerous factors and cannot be estimated. For informational purposes, it currently costs $56,765 per year to house an offender in prison and $7,749 per year to supervise an offender on parole. The measure will apply to offenders convicted after passage of this measure, so the impacts on the correctional system under the measure would likely start in the mid-2030's and beyond, based on the average sentences for these offenses.

Economic impacts. Longer prison sentences will reduce workforce participation, which may reduce economic activity from labor and spending and may increase government spending on prisons and social welfare programs. To the extent that the initiative decreases criminal activity, those otherwise impacted by crime may experience better economic outcomes.