

CHAPTER 233

CORRECTIONS

HOUSE BILL 23-1268

BY REPRESENTATIVE(S) Lukens and Evans, Boesecker, Brown, Duran, English, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Lieder, Lindsay, Marshall, Story, Young;
also SENATOR(S) Roberts and Pelton B., Marchman, Moreno, Mullica, Pelton R., Priola, Winter F..

AN ACT

CONCERNING CHANGES TO THE PROCESS FOR A PERSON SERVING A CRIMINAL SENTENCE IN COLORADO FOR A CONVICTION IN ANOTHER STATE TO PARTICIPATE IN A PRIVATE TREATMENT PROGRAM.

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

SECTION 1. In Colorado Revised Statutes, 17-27.1-101, **amend** (2)(d), (2)(f), (2)(h), (3)(b), (5), (6), (7), and (9); **repeal** (4); and **add** (7.5) and (13) as follows:

17-27.1-101. Nongovernmental facilities for offenders - registration - notifications - penalties - definitions. (2) As used in this section, unless the context otherwise requires:

(d) "Private treatment program" means any residential or nonresidential program that provides services, treatment, rehabilitation, education, or criminal-history-related treatment for supervised or unsupervised persons ~~but does not include~~ IN NEED OF SUBSTANCE USE TREATMENT, SEX OFFENDER MANAGEMENT SERVICES, OR DOMESTIC VIOLENCE SERVICES REQUIRED AS PART OF THE SENDING STATE'S SENTENCE. "PRIVATE TREATMENT PROGRAM" DOES NOT INCLUDE A LICENSED BEHAVIORAL HEALTH ENTITY ENDORSED TO PROVIDE CRISIS CARE OR WITHDRAWAL MANAGEMENT, a private contract prison facility, a prison facility operated by a political subdivision of the state, a facility providing treatment for persons with mental health disorders or intellectual and developmental disabilities, or a community corrections program established pursuant to article 27 of this title 17.

(f) "Supervised person" means a person eighteen years of age or older who is adjudicated for or convicted of or has agreed to a deferred judgment, deferred

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

sentence, or deferred prosecution for a crime in another state but is or will be under the supervision of a probation officer or community parole officer in Colorado pursuant to the interstate compact. "SUPERVISED INDIVIDUAL" DOES NOT INCLUDE AN INDIVIDUAL CHARGED WITH A CRIME, BUT NOT CONVICTED AND SENTENCED, IN A SENDING STATE.

(h) "Unsupervised person" means a person eighteen years of age or older who, although not required to be under the jurisdiction of a probation officer or community parole officer in Colorado, is adjudicated for or convicted of or has agreed to a deferred judgment, deferred sentence, or deferred prosecution for a crime outside of the state of Colorado and is directed to attend a private treatment program in Colorado by any court, department of corrections, state board of parole, probation department, parole division, adult diversion program, or any other similar entity or program in a state other than Colorado. "UNSUPERVISED INDIVIDUAL" DOES NOT INCLUDE AN INDIVIDUAL CHARGED WITH A CRIME, BUT NOT CONVICTED AND SENTENCED, IN A SENDING STATE.

(3) (b) A sending state shall not permit travel of a supervised person who is a nonresident of this state to the state of Colorado without written notification from the compact administrator of acceptance of the supervised person into a private treatment program WHEN TREATMENT IS REQUIRED BY LAW OR AS PART OF THE SENDING STATE'S SENTENCE.

~~(4) No private treatment program in Colorado shall admit or accept a supervised or unsupervised person into the program unless the supervised or unsupervised person has signed a waiver that authorizes the release of confidential information.~~

~~(5) A private treatment program in Colorado shall not admit or accept~~ THAT ADMITS OR ACCEPTS a supervised or unsupervised person into the program ~~unless the program:~~ SHALL, IMMEDIATELY FOLLOWING INTAKE TO THE PROGRAM, NOTIFY THE SUPERVISED OR UNSUPERVISED PERSON OF THE PERSON'S NEED TO REGISTER WITH THE COMPACT ADMINISTRATOR AND SHALL ASSIST THE SUPERVISED OR UNSUPERVISED PERSON IN PROVIDING THE PERSON'S NAME, DATE OF BIRTH, PROOF OF IDENTIFICATION, AND ANY NECESSARY RELEASE OF INFORMATION TO THE COMPACT ADMINISTRATOR IMMEDIATELY SO THE DEPARTMENT MAY COMPLETE A COMPLETE CRIMINAL HISTORY RECORDS CHECK OF THE PERSON AS SHOWN BY A NATIONAL CRIMINAL INFORMATION CHECK.

~~(a) Is registered with the compact administrator, and, if the person is a supervised person, the private treatment program is:~~

~~(I) Approved by the behavioral health administration in the department of human services if the program provides alcohol or drug abuse treatment;~~

~~(II) Certified or approved by the sex offender management board, established in section 16-11.7-103, C.R.S., if the program provides sex offender treatment;~~

~~(III) Certified or approved by a domestic violence treatment board, established pursuant to part 8 of article 6 of title 18, C.R.S., if the program provides treatment for persons who were convicted of an act of domestic violence as defined in section~~

~~18-6-800.3, C.R.S., or of an act for which the underlying factual basis included an act of domestic violence; or~~

~~(IV) Licensed or certified by the division of adult parole in the department of corrections, the department of regulatory agencies, the behavioral health administration in the department of human services, the state board of nursing, or the Colorado medical board if the program provides treatment that requires certification or licensure;~~

~~(b) If the person is unsupervised, has notified the compact administrator of the following information for each such unsupervised person:~~

~~(I) Name, date and place of birth, and social security number;~~

~~(II) Complete criminal history of the person as shown by a national criminal information check;~~

~~(III) Name and address of any court, department, board of parole, probation department, parole division, adult diversion program, or other similar entity or program having jurisdiction over the person; and~~

~~(IV) Terms and conditions under which the person is required or directed to attend the program; and~~

~~(c) (I) If the person is supervised and is a resident of the state of Colorado, has confirmed that the sending state has provided all information concerning the supervised person required by the interstate compact to the compact administrator; and~~

~~(II) If the person is supervised and is a nonresident of the state of Colorado, has confirmed that the compact administrator has accepted the person for placement in the private treatment program.~~

~~(6) (a) Pursuant to criteria established by the interstate compact, the compact administrator shall either accept or reject the placement of the supervised person in the private treatment program. THE DEPARTMENT SHALL, WITHIN FORTY-EIGHT HOURS, RUN A COMPLETE CRIMINAL HISTORY RECORDS CHECK ON THE INDIVIDUAL AND VERIFY THE PERSON IS A SUPERVISED OR AN UNSUPERVISED PERSON. IF THE PERSON IS DETERMINED TO BE A SUPERVISED OR AN UNSUPERVISED PERSON, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE PRIVATE TREATMENT PROGRAM AND THE CHIEF LAW ENFORCEMENT OFFICIAL WHERE THE PRIVATE TREATMENT PROGRAM IS LOCATED AND, IF SUPERVISED, THE PERSON'S PROBATION OR COMMUNITY PAROLE OFFICER, OF THE PERSON'S STATUS.~~

~~(b) For all unsupervised persons and for supervised persons that the compact administrator accepts for placement in a private treatment program, the compact administrator shall immediately notify the appropriate chief law enforcement official and the director of the Colorado bureau of investigation. PURSUANT TO CRITERIA ESTABLISHED BY THE INTERSTATE COMPACT, THE COMPACT ADMINISTRATOR SHALL EITHER ACCEPT OR REJECT THE PLACEMENT OF THE SUPERVISED PERSON IN THE PRIVATE TREATMENT PROGRAM.~~

(c) (Deleted by amendment, L. 2000, p. 232, § 1, effective July 1, 2000.)

(d) FOR ALL UNSUPERVISED PERSONS AND FOR SUPERVISED PERSONS THAT THE COMPACT ADMINISTRATOR ACCEPTS FOR PLACEMENT IN A PRIVATE TREATMENT PROGRAM, THE COMPACT ADMINISTRATOR SHALL IMMEDIATELY NOTIFY THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION.

~~(7) By written policy, a local law enforcement agency shall require a supervised or unsupervised person to physically appear at the local law enforcement agency for fingerprinting and photographing.~~ THE DEPARTMENT SHALL NOTIFY THE PRIVATE TREATMENT PROGRAM AND CHIEF LAW ENFORCEMENT OFFICIAL WHERE THE PRIVATE TREATMENT PROGRAM IS LOCATED IF THE PERSON IS DETERMINED TO BE A SUPERVISED OR AN UNSUPERVISED PERSON.

(7.5) (a) A SUPERVISED OR AN UNSUPERVISED PERSON MAY BE REQUIRED TO APPEAR AT A LAW ENFORCEMENT AGENCY FOR FINGERPRINTING AND PHOTOGRAPHING. A PROBATION DEPARTMENT, THE DIVISION OF PAROLE, OR OTHER AGENCY RESPONSIBLE FOR SUPERVISING A SUPERVISED PERSON IS RESPONSIBLE FOR NOTIFYING THE PERSON OF THE FINGERPRINTING AND PHOTOGRAPHING REQUIREMENT. THE COMPACT ADMINISTRATOR SHALL ARRANGE FOR NOTIFICATION TO AN UNSUPERVISED PERSON OF THE FINGERPRINTING AND PHOTOGRAPHING REQUIREMENT AND MAY REQUIRE AUTHORITIES IN THE SENDING STATE TO ASSIST WITH NOTIFICATION. A LAW ENFORCEMENT AGENCY SHALL TAKE PHOTOGRAPHS AND FINGERPRINTS OF A SUPERVISED OR UNSUPERVISED PERSON AS REQUIRED BUT MAY SET REASONABLE LIMITATIONS ON THE HOURS AND LOCATION.

(b) FOR A SUPERVISED PERSON, THE PRIVATE TREATMENT PROGRAM MUST BE:

(I) APPROVED BY THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT OF HUMAN SERVICES IF THE PROGRAM PROVIDES ALCOHOL OR SUBSTANCE USE TREATMENT TO A SUPERVISED PERSON IF THE TREATMENT WOULD BE REQUIRED IF THE OFFENSE HAD BEEN COMMITTED IN COLORADO;

(II) CERTIFIED OR APPROVED BY THE SEX OFFENDER MANAGEMENT BOARD, ESTABLISHED IN SECTION 16-11.7-103, IF THE PROGRAM PROVIDES SEX OFFENDER TREATMENT TO A SUPERVISED PERSON IF THE TREATMENT WOULD BE REQUIRED IF THE OFFENSE HAD BEEN COMMITTED IN COLORADO;

(III) CERTIFIED OR APPROVED BY THE DOMESTIC VIOLENCE OFFENDER MANAGEMENT BOARD, ESTABLISHED IN SECTION 16-11.8-103, IF THE PROGRAM PROVIDES TREATMENT TO A SUPERVISED PERSON IF THE TREATMENT FOR AN OFFENSE IF COMMITTED IN COLORADO WOULD HAVE BEEN AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3, OR OF AN ACT FOR WHICH THE UNDERLYING FACTUAL BASIS INCLUDED AN ACT OF DOMESTIC VIOLENCE; OR

(IV) LICENSED OR CERTIFIED BY THE DIVISION OF ADULT PAROLE IN THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF REGULATORY AGENCIES, THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT OF HUMAN SERVICES, THE STATE BOARD OF NURSING, OR THE COLORADO MEDICAL BOARD, IF THE PROGRAM PROVIDES TREATMENT THAT REQUIRES CERTIFICATION OR LICENSURE.

(c) (I) IF THE SUPERVISED PERSON IS A RESIDENT OF THE STATE OF COLORADO, THE SUPERVISED PERSON SHALL CONFIRM THAT THE SENDING STATE HAS PROVIDED ALL INFORMATION CONCERNING THE SUPERVISED PERSON REQUIRED BY THE INTERSTATE COMPACT TO THE COMPACT ADMINISTRATOR.

(II) IF THE SUPERVISED PERSON IS A NONRESIDENT OF THE STATE OF COLORADO, THE SUPERVISED PERSON SHALL CONFIRM THAT THE COMPACT ADMINISTRATOR HAS ACCEPTED THE PERSON FOR PLACEMENT IN THE PRIVATE TREATMENT PROGRAM.

(9) (a) Any private treatment program or supervising person that violates this section ~~commits a misdemeanor. Upon a first conviction, the private treatment program or supervising person shall be punished by a fine of five hundred dollars. Upon a second conviction, a private treatment program or supervising person shall be punished by a fine of one thousand dollars. Upon a third or subsequent conviction, a private treatment program or supervising person shall be punished by a fine of five thousand dollars~~ MAY BE REPORTED TO THE APPROPRIATE LICENSING, CERTIFYING, OR APPROVING AGENCY RESPONSIBLE FOR OVERSIGHT OF THE PRIVATE TREATMENT PROGRAM FOR POTENTIAL CORRECTIVE ACTION.

(b) ~~Each failure to comply with a provision of this section by a private treatment program or supervising person relating to a different person constitutes a separate violation.~~

(13) THE DEPARTMENT SHALL PERIODICALLY UPDATE THE OUT-OF-STATE OFFENDER QUESTIONNAIRE USED BY PRIVATE TREATMENT PROVIDERS. IN UPDATING THE QUESTIONNAIRE, THE DEPARTMENT SHALL ENGAGE STAKEHOLDERS, INCLUDING, BUT NOT LIMITED TO, THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT OF HUMAN SERVICES, SUBSTANCE USE TREATMENT PROVIDERS, LAW ENFORCEMENT, THE OFFICE OF THE STATE PUBLIC DEFENDER, AND OTHER CONCERNED STAKEHOLDERS.

SECTION 2. In Colorado Revised Statutes, 25-1-1202, **repeal** (1)(bb) as follows:

25-1-1202. Index of statutory sections regarding medical record confidentiality and health information. (1) Statutory provisions concerning policies, procedures, and references to the release, sharing, and use of medical records and health information include the following:

~~(bb) Section 17-27.1-101 (4), C.R.S., concerning nongovernmental facilities for offenders and the waiver of confidential information;~~

SECTION 3. In Colorado Revised Statutes, 18-6-801, **amend** (1)(a) and (1)(b) as follows:

18-6-801. Domestic violence - sentencing. (1) (a) In addition to any sentence that is imposed upon a person for violation of any criminal law under this ~~title~~ TITLE 18, any person who is convicted of any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), or any crime against property, whether or not such crime is a felony, when such crime is used as a method of coercion, control,

punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship shall be ordered to complete a treatment program and a treatment evaluation that conform with the standards adopted by the domestic violence offender management board as required by section 16-11.8-103 (4); ~~C.R.S.~~, EXCEPT A PERSON GRANTED PROBATION WHOSE SUPERVISION IS TRANSFERRED TO ANOTHER STATE PURSUANT TO THE INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS SHALL FOLLOW THE REQUIREMENTS FOR A TREATMENT EVALUATION AND A TREATMENT PROGRAM OF THE STATE WHERE THE PERSON IS BEING SUPERVISED. EXCEPT FOR A PERSON GRANTED PROBATION WHOSE SUPERVISION IS TRANSFERRED PURSUANT TO THE INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS, if an intake evaluation conducted by an approved treatment program provider discloses that sentencing to a treatment program would be inappropriate, the person shall be referred back to the court for alternative disposition.

(b) The court may order a treatment evaluation to be conducted prior to sentencing if a treatment evaluation would assist the court in determining an appropriate sentence. The person ordered to undergo such evaluation shall be required to pay the cost of the treatment evaluation. If such treatment evaluation recommends treatment, and if the court so finds, the person shall be ordered to complete a treatment program that conforms with the standards adopted by the domestic violence offender management board as required by section 16-11.8-103 (4); ~~C.R.S.~~, EXCEPT A PERSON GRANTED PROBATION WHOSE SUPERVISION IS TRANSFERRED TO ANOTHER STATE PURSUANT TO THE INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS SHALL FOLLOW THE REQUIREMENTS FOR A TREATMENT EVALUATION AND A TREATMENT PROGRAM OF THE STATE WHERE THE PERSON IS BEING SUPERVISED.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 20, 2023