

COMPREHENSIVE SENTENCING TASK FORCE
RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
October 10, 2014

FY15-CS #01 Early discharge from Lifetime Supervision Probation for sex offenders due to disability or incapacitation

Recommendation FY15-CS #01

Amend C.R.S. 18-1.3-1008 to provide that offenders sentenced to the Lifetime Supervision Act, who suffer from a severe disability to the extent they are deemed incapacitated and do not present an unacceptable level of risk to public safety, may petition the court for early discharge from probation supervision. Also, if necessary, make conforming amendments to the Colorado Victims' Rights Act regarding a "critical stage" for victim notification.

Discussion

A mechanism to apply for early discharge from indeterminate probation sentences should be in place for sex offenders who, due to a significant mental or physical disability, are deemed incapacitated to the extent that he or she does not present an unacceptable level of risk to public safety and is not likely to commit a new offense. A severe disability can render a person unable to participate in or benefit from sex offender supervision or treatment. Also, continued supervision of an offender with a severe medical or mental health diagnosis (e.g., severe dementia, Alzheimer's, terminal illness, physical incapacitation) may be ineffective while also requiring ongoing allocation of resources with little benefit.

Proposed statutory language

Amend C.R.S. 18-1.3-1008 to include the additional provision as follows:

(The entire section is new, but is not displayed in caps for ease of viewing.)

18-1.3-1008.1 – Discharge from probation for a sex offender suffering from a mental or physical disability – definitions and procedure

(1) (a) Notwithstanding any provision of the law to the contrary, a sex offender may obtain early discharge from probation if the sex offender or his or her lawful representative, the probation department or the prosecutor files with the court a verified petition for early termination alleging that the sex offender is a special needs sex offender as defined in subsection (2) and, because of the special needs, the sex offender is unable to participate in or benefit from sex offender treatment or supervision and that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

(b) A verified petition filed pursuant to this section shall include:

(i) records from a licensed health care provider responsible for the treatment of the sex offender which include a summary of the sex offender's medical or physical condition, which shall include, but not be limited to, the diagnosis of the disability or incapacitation, a description of severity of the disability or incapacitation, any information describing the permanent, terminal or irreversible nature of the disability or incapacitation;

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- (ii) information regarding the risk of the sex offender based upon the most recent evaluations conducted in accordance with the criteria established by the sex offender management board pursuant to section 18-1.3-1009.
 - (iii) a statement from the supervising probation department supporting the request for early discharge with a description of the sex offender's case history and the facts supporting the probation department position that the sex offender is no longer able to participate in or benefit from continued supervision.
 - (iv) information from the treatment provider for the sex offender outlining the history of the treatment of the sex offender, and a statement of whether, in the opinion of the treatment provider, the sex offender is able to participate in or benefit from continued treatment or supervision.
- (c) If the verified petition is filed by the sex offender or the probation department, the prosecutor shall have thirty days to respond to the petition.
- (d) the filing of a verified petition for early termination of probation due to a mental or physical disability shall operate as a waiver of any confidentiality of any and all relevant health records of the sex offender.
- (e) Upon receipt of the petition and any responsive pleadings, the court shall determine if the verified petition is sufficient on its face. If the petition is sufficient on its face, the court shall set the matter for hearing. At any hearing, the court shall consider all relevant evidence including, but not limited to, the nature and extent of the physical or mental disability or incapacitation, the nature and severity of the offense or offenses for which the sex offender has been sentenced, the risk and needs assessments conducted in accordance with the criteria of the sex offender management board, the recommendations of the probation department, the recommendations of any treatment providers approved for sex offender treatment pursuant to the provisions of 16-11.7-103, and the statement of any victim of the sex offender, if available.
- (f) The court shall make findings on the record if the court grants or denies the petition for early discharge. If the petition is granted, the court must find by clear and convincing evidence that the sex offender is a special needs offender as defined in subsection (2). If the court does not grant the petition, the court may enter any orders regarding probation consistent with the goals of sentencing as outlined in 18-1-102.5.

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(g) If the court does not discharge the offender from probation after a hearing on a petition filed pursuant to this section, the sex offender or his or her lawful representative, the probation department or the prosecutor may file a subsequent petition once every year pursuant to this section, if the verified petition presents additional information not previously considered by the court which is relevant to the status of the sex offender as a special needs offender.

(2) A “special needs sex offender” as used in this section means a person who is sentenced to probation as a sex offender pursuant to section 18-1.3-1004, who, as determined by a licensed health care provider, suffers from a permanent, terminal or irreversible physical or mental illness, condition or disease, that renders the person unable to participate in or benefit from sex offender supervision or treatment and who is incapacitated to the extent that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

Amend the Colorado Victims’ Rights Act (Title 24, Article 4.1, Part 3):

If necessary, make conforming amendments in C.R.S. 24-4.1-302 (2) (j.5) and/or (k.7), C.R.S., 24-4.1-302.5, and/or C.R.S., 24-4.1-303 (13.5) (a), to make this hearing a “critical stage” and regarding the right to be informed and present for “critical stages” of the criminal justice process.