

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

Probation and parole-amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to probation and parole; amending obsolete
2 provisions; clarifying procedures for arrest of parolees in
3 violation of the terms of parole; requiring peace officers
4 to arrest parolees and probationers as specified;
5 clarifying the amount the department of corrections may pay
6 for housing of detained parolees and probationers;
7 expanding authority for good time allowances as specified;
8 clarifying the authority of the board of parole to address
9 payment of restitution by parolees; providing immunity to
10 probation and parole agents as specified; repealing a
11 prohibition against granting parole to prisoners who have
12 escaped, attempted to escape or assisted an escape from a
13 correctional institution; providing definitions; and
14 providing for an effective date.

1

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

3

4 **Section 1.** W.S. 7-13-303(a)(intro), 7-13-401(a)(ii)
5 and by creating new paragraphs (xiii) through (xv),
6 7-13-402(b)(i) and by creating a new subsection (j),
7 7-13-405(a), (b)(intro) (c), 7-13-407(a)(i), by creating a
8 new paragraph (v) and by renumbering (v) and (vi) as (vi)
9 and (vii), 7-13-408(a), (b), (c)(i) and (e), 7-13-410(a)
10 and by creating a new subsection (c), 7-13-411(a)(iii) and
11 (b) through (e), 7-13-418(a)(intro) and (iv), 7-13-420 by
12 creating a new subsection (c), 7-13-421(b)(intro),
13 (c)(intro) and (i), (d) through (g) and by creating a new
14 subsection (h), 7-13-1107(c) 7-18-108(d) and 35-7-1043 are
15 amended to read:

16

17 **7-13-303. Investigation preceding probation or**
18 **suspension of sentence.**

19

20 (a) When directed by the court, the district
21 attorney, ~~the state~~a probation and parole ~~officer~~agent as
22 defined in W.S. 7-13-401 or, in the case of a minor, a
23 counselor as defined by W.S. 5-3-501(a)(ii) or the

1 department of family services shall investigate and report
2 to the court in writing:

3

4 **7-13-401. Definitions; creation of board; officers;**
5 **compensation; hearing panels; meetings.**

6

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

8

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

13

14 (xiii) "Administrative sanction" means a
15 requirement imposed upon a parolee or probationer in
16 response to an action initiated by the probation and parole
17 agent when the agent believes that there is probable cause
18 that the parolee or probationer has committed a violation
19 of a condition of his supervision;

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21 (xiv) "Field services administrator" means the
22 administrator for the department of corrections division of
23 field services;

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

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

(b) A prisoner is not eligible for parole if he has:

(i) Made an assault with a deadly weapon upon any officer, employee or inmate of any institution. ~~or~~

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

1 ~~agreement shall be retained in the records of the~~
2 ~~department.~~

3
4 (j) The board may order the arrest and return to
5 the custody of the department of any parolee who has
6 absconded from supervision or for whom probable cause of a
7 parole violation has been established pursuant to W.S. 7-
8 13-408. The written order of the board shall be sufficient
9 warrant for any peace officer to return a parolee to
10 custody. All peace officers shall execute any order of the
11 board issued under this subsection. A parolee taken into
12 custody under the order of the board is not subject to
13 release on bail.

14
15 **7-13-405. Field services administrator; hiring of**
16 **agents.**

17 ***** STAFF COMMENT *****
18 **The section heading for W.S. 7-13-405 currently**
19 **reads "State probation and parole officer;**
20 **appointment of agents." The new heading reflects**
21 **current practice.**
22

23 (a) The department has general supervisory authority
24 over state parolees and over probationers for whom the
25 sentencing court requests supervision under W.S.
26 ~~7-13-410(b)~~ 7-13-410.

1

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

5

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

10

11 **7-13-407. Duties of probation and parole agents.**

12

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

15

16 (i) Except as otherwise directed by the
17 director, devote full time to the performance of their
18 duties in carrying out the provisions of W.S. 7-9-104, 7-9-
19 107, 7-13-303, 7-13-401 through 7-13-424, 7-13-1101 through
20 7-13-1107, 7-13-1601 through 7-13-1615 and 35-7-1043;

21

22 (v) Establish supervision strategies based on
23 the assessed risk and needs of the person. The strategies

1 may include placement in specialized caseloads including
2 administrative caseloads, to further the mission of the
3 department and to provide the most effective level of
4 supervision to persons placed on probation or parole;

5 ***** STAFF COMMENT *****

6 This new paragraph (v) is probably the type of
7 implied authority that all executive branch agencies
8 exercise as a necessary component of implementation of
9 their explicit duties. The question is whether it is
10 necessary to make this authority explicit in statute
11 specifically for this division? Perhaps the language, which
12 appears more philosophical than legal, may actually be
13 interpreted to be limiting because some duties, currently
14 or in the future, exercised as an administrative function
15 by the Department may not be included within the scope of
16 this language and a court may then hold that such other
17 authority has not been granted to the Department by the
18 Legislature.

19
20 ~~(v)~~ (vi) Use all practicable and suitable
21 methods, not inconsistent with the conditions imposed by
22 the court, department or board, to aid and encourage
23 persons on probation, parole or conditional release to
24 bring about improvement in their conditions and conduct;

25
26 ~~(vi)~~ (vii) Perform other duties as directed by
27 the director.

28
29 7-13-408. Probation, parole and conditional release
30 administrative jail or adult community correction program
31 sanction and revocation hearing procedures.

1 *** STAFF COMMENT ***

2 The heading for W.S. 7-13-408 has been amended
3 herein to include "...administrative jail or
4 adult community correction program sanction...".
5

6 (a) The ~~state~~ probation and parole ~~officer~~ agent
7 shall notify the department and the board or the
8 appropriate court if it is determined consideration should
9 be given to retaking or reincarcerating a person under the
10 supervision of the department who has violated a condition
11 of his probation, parole or other conditional release.
12 ~~Prior to notification, a~~ When the probation and parole
13 agent intends to initiate a hearing for possible jail or
14 adult community corrections sanctions for a parolee, the
15 probation and parole agent shall notify the board prior to
16 initiating the hearing. When the probation and parole
17 agent intends to pursue a revocation of probation, parole
18 or conditional release, a preliminary hearing shall be held
19 in accordance with this section within a reasonable time,
20 unless a hearing is waived by the probationer, parolee or
21 conditional releasee. In the case of a parolee for whom
22 the alleged violation would result in a new felony
23 conviction, a preliminary hearing is not required under
24 this section. In the case of a probationer, the hearing is
25 only required when the probationer has been reincarcerated

1 and a legal warrant has not been obtained within ten (10)
2 days. As soon as practicable, following termination of any
3 hearing, the appropriate officer or agent shall report to
4 the department and the court or board, furnish a copy of
5 the hearing record and make recommendations regarding the
6 disposition to be made of the probationer, parolee or
7 conditional releasee. Pending any proceeding pursuant to
8 this section, the appropriate agent may take custody of and
9 detain the probationer, parolee or conditional releasee
10 involved for a reasonable period of time prior to the
11 hearing. If it appears to the hearing officer or agent that
12 retaking or reincarceration is likely to follow, the agent
13 may take custody of and detain the probationer, parolee or
14 conditional releasee for a reasonable period after the
15 hearing or waiver as may be necessary to arrange for the
16 retaking or reincarceration.

17

18 (b) Any hearing pursuant to this section may be
19 before the ~~state probation and parole officer~~ field
20 services administrator, his designated hearing officer or
21 any other person authorized pursuant to the laws of this
22 state to hear cases of alleged probation, parole or
23 conditional release violations, except that no hearing

1 officer shall be the person making the allegation of
2 violation. In cases of alleged parole violations by
3 persons who were paroled by the board, hearings pursuant to
4 this section shall be before the executive director of the
5 board or his designated hearing officer.

6

7 (c) With respect to any hearing pursuant to this
8 section, the probationer, parolee or conditional releasee:

9

10 (i) Shall have reasonable notice in writing of
11 the nature and content of the allegations to be made
12 including notice that the purpose of the hearing is to
13 determine whether there is probable cause to believe that
14 he has committed a violation that may lead to a-imposition
15 of an administrative jail or adult community corrections
16 program sanction, or revocation of probation, parole or
17 conditional release;

18

19 (e) The department may establish by rule and
20 regulation a system of imposing the administrative
21 sanctions specified in W.S. 7-13-1107(b) as an alternative
22 to revocation of the parole of any parolee or probation of
23 any probationer who has violated a condition of his parole

1 supervision. Parolees or probationers committed to the
2 county jail or a residential community correctional program
3 pursuant to this subsection shall be housed in accordance
4 with W.S. 7-13-1107(c) or 7-18-115(b).

5

6 **7-13-410. Notice of probation order; request for**
7 **probation supervision or report.**

8

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

14

15 (c) The department of corrections shall only be
16 requested to provide supervision of probationers where the
17 duration of supervision is at least one (1) year or more in
18 length.

19

20 **7-13-411. Apprehension of violators.**

21

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

1

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

9

10 (b) A peace officer ~~may~~ shall arrest without warrant
11 an alleged probation or parole violator after receiving a
12 written statement from a probation and parole agent setting
13 forth that the probationer or parolee has, in the judgment
14 of the probation and parole agent, violated the conditions
15 of his probation or parole. A person arrested under this
16 subsection may be detained for a reasonable period of time
17 until a legal warrant is obtained or pending further
18 proceedings under W.S. 7-13-408.

19

20 (c) A peace officer ~~or probation and parole agent may~~
21 shall take into custody and hold a person granted parole or
22 on probation from another state when requested to do so by

1 the probation and parole agent or the proper authorities
2 from the other state.

3

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

8

9 (e) Any expense incurred in holding a parolee in
10 county jail at the request of a probation and parole agent
11 or pending proceedings under W.S. 7-13-408, including costs
12 of shelter, food, clothing, and necessary medical, dental
13 and hospital care and any expense for transporting the
14 parolee shall be paid by the department unless there are
15 local charges pending. The department shall be responsible
16 for the per diem cost for a probationer held as an
17 administrative sanction. The per diem cost of holding
18 parolees under this section shall be agreed upon by the
19 sheriff and the department, ~~and but~~ shall not exceed the
20 ~~per diem cost of housing an inmate at the Wyoming state~~
21 ~~penitentiary~~ amount established by the department based on
22 funds appropriated to the department for housing of
23 inmates.

1

2 **7-13-418. Selection, training and powers of local**
3 **volunteer; compensation.**

4

5 (a) In order to further the objectives of W.S.
6 7-13-401 through 7-13-424, the ~~state probation and parole~~
7 ~~officer~~ field services administrator may select, organize
8 and train local volunteer citizens who, acting under his
9 supervision, may:

10

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

16

17 **7-13-420. Good time allowances.**

18

19 (c) The department shall further establish a system
20 of good time allowance for those individuals placed on
21 probation pursuant to W.S. 7-13-410(b) based on their
22 positive progression towards the goals of the case plan as
23 well as the overall compliance with the conditions imposed

1 by the court. The court may adjust the period of a
2 probationer's supervised probation on the recommendation of
3 the probation and parole agent for good time allowance.

4
5 **7-13-421. Restitution as condition of parole.**

6
7 (b) The board shall ~~provide for~~ require compliance
8 with a plan for payment of restitution in the amount
9 ~~determined ordered~~ by the court pursuant to W.S. 7-9-103 as
10 a condition of parole, unless the board finds the parolee
11 is not reasonably capable of making ~~the payments~~ or paying
12 the court ordered amount in full during the time remaining
13 on the sentence, in which case the board may modify the
14 amount of restitution to be paid as a condition of parole,
15 taking into account the factors enumerated in W.S. 7-9-106.
16 ~~The board may require payment of the following obligations~~
17 ~~as conditions of parole if it finds the parolee is~~
18 ~~reasonably capable of making the payments, taking into~~
19 ~~account the factors enumerated in W.S. 7-9-106(a)(iii):~~

20
21 (c) If the parolee fails to pay the restitution as
22 ~~provided~~ required by the board pursuant to this section the
23 board may:

1

2 (i) Modify the amount of the restitution to be3 paid as a condition of parole; or

4

5 (d) The board may waive the payment of some or all of

6 the restitution as a condition of parole and allow the7 sentence to expire without full payment of restitution if8 it finds ~~the~~ that continuing payment of some or all of the9 restitution while on parole will work an undue hardship on10 the parolee or his family or that revocation based on11 nonpayment of restitution will not be a cost effective use12 of the corrections system or will be contrary to the13 parolee's successful reintegration into the community. If14 the victim ~~can be located through the exercise of~~15 ~~reasonable diligence~~ has registered to receive16 notifications pursuant to W.S. 1-40-204(d), he shall be

17 given notice and an opportunity to be heard prior to the

18 board making a decision to waive some or all of the

19 restitution under this subsection.

20

21 (e) Nothing in this section:

22

1 (i) Authorizes the board to waive or modify the
2 parolee's continuing obligation after parole to repay in
3 full the amount of restitution ordered by the court; or
4

5 (ii) Shall limit or impair the rights of victims
6 to sue and recover damages from the ~~defendant-parolee~~ in a
7 civil action. However, any restitution payment by the
8 ~~defendant-parolee~~ to a victim shall be set off against any
9 judgment in favor of the victim in a civil action arising
10 out of the same facts or event.

11
12 (f) The fact that restitution was required or made
13 under this section shall not be admissible as evidence in a
14 civil action unless offered by the ~~defendant-parolee~~.

15
16 (g) In the event a victim is not satisfied with the
17 restitution plan ~~approved~~-required or modified by the
18 board, the victim's ~~sole and exclusive remedy is~~ remedies
19 are a civil action against the parolee or execution on the
20 restitution order pursuant to W.S. 7-9-103 (d).

21
22 (h) The board may require payment of the following
23 obligations as conditions of parole if it finds the parolee

1 is reasonably capable of making the payments, taking into
2 account the factors enumerated in W.S. 7-9-106(a)(iii):

3
4 (i) Support of dependents of the parolee;

5
6 (ii) Court ordered fines, reimbursement for the
7 services of the public defender or court appointed counsel
8 and the surcharge imposed under W.S. 1-40-119;

9
10 (iii) Costs or partial costs of evaluations,
11 treatment, services, programs or assistance the parolee is
12 receiving;

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

16
17 **7-13-1107. Administrative sanctions for program**
18 **violations.**

19
20 (c) The county sheriff shall house probationers
21 and parolees committed to the county jail pursuant to this
22 section. The cost of housing a program violator in the
23 county jail shall be paid by the department at a per diem

1 rate not to exceed the ~~daily cost of keeping an inmate at~~
2 ~~the Wyoming state penitentiary~~ amount established by the
3 department based on funds appropriated for housing of
4 inmates.

5

6 **7-18-108. Placement of offender in program by court;**
7 **placement by department as administrative sanction.**

8

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

16

17 **35-7-1043. Immunity from prosecution.**

18

19 All duly authorized peace officers including any special
20 agents or other personnel appointed by the commissioner,
21 and probation and parole agents as defined in W.S. 7-13-
22 401, while investigating violations of this act in
23 performance of their official duties, shall be immune from

1 prosecution under this act. Any person working under the
2 immediate direction, supervision or instruction of a duly
3 authorized peace officer, special agent or other person
4 appointed by the commissioner, may be granted immunity from
5 prosecution under this act by the commissioner. In addition
6 to the foregoing persons, such immunity may also be granted
7 to any person whose testimony is necessary to secure a
8 conviction under this act with the consent of district
9 judge in the district wherein prosecution is to take place.
10 Any person granted immunity under this section shall not be
11 excused from testifying or producing evidence on the ground
12 that the testimony or evidence required of him may tend to
13 incriminate him or subject him to penalty or forfeiture.
14 Any person who except for the provisions of this act, would
15 have been privileged to withhold the testimony given or the
16 evidence produced by him shall not be prosecuted, subjected
17 to any penalty, forfeiture, for or on account of any
18 transaction, matter or thing concerning which, by reason of
19 said immunity, he gave testimony and produced evidence; and
20 no such testimony given or evidence produced shall be
21 received against him in any criminal proceeding. Provided,
22 no person given immunity under this section shall be exempt
23 from prosecution for perjury or contempt committed while

1 giving testimony or producing evidence under compulsion as
2 provided in this section.

3

4 **Section 2.** W.S. 7-13-402(b)(ii), 7-13-411(a)(i) and
5 (ii) and W.S. 7-13-421(a), (b)(i) through (iv) and (c)(ii)
6 are repealed.

7

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

9

10

(END)