

The Law Offices Of H. Michael Steinberg - Colorado Domestic Violence Defense Lawyer

Title 18. Criminal Code

Article 1.3 Sentencing in Criminal Cases

Part 2 Probation

§ 18-1.3-204. Conditions of probation--interstate compact probation transfer cash fund--creation

(1) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life and to assist the defendant in doing so. The court shall provide as explicit conditions of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation, that the defendant make restitution pursuant to part 6 of this article and article 18.5 of title 16, C.R.S., that the defendant comply with any court orders regarding substance abuse testing and treatment issued pursuant to sections 18-1.3-209 and 18-1.3-211 and article 11.5 of title 16, C.R.S., and that the defendant comply with any court orders regarding the treatment of sex offenders issued pursuant to article 11.7 of title 16, C.R.S. The court shall provide as an explicit condition of every sentence to probation that the defendant not harass, molest, intimidate, retaliate against, or tamper with the victim of or any prosecution witnesses to the crime, unless the court makes written findings that such condition is not necessary.

(1.5) If the defendant is being sentenced to probation as a result of a conviction of a felony offense or a qualifying misdemeanor offense pursuant to the "Interstate Compact for Adult Offender Supervision", part 28 of article 60 of title 24, C.R.S., a condition of probation shall be that the court shall require the defendant to execute or subscribe a written prior waiver of extradition stating that the defendant consents to extradition to this state and waives all formal proceedings in the event that he or she is arrested in another state while at liberty on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state. If the offender is returned to the state pursuant to the "Interstate Compact for Adult Offender Supervision", part 28 of article 60 of title 24, C.R.S., a court may not impose the cost of the offender's return on the offender.

(2)(a) When granting probation, the court may, as a condition of probation, require that the defendant:

(I) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment;

(II) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose. In any case where inpatient psychiatric treatment is indicated, the court shall proceed in accordance with article 65 of title 27, C.R.S., and require the defendant to comply with the recommendation of the professional person in charge of the evaluation required pursuant to section 27-65-105 or 27-65-106, C.R.S.

(III) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(III.5) Participate in restorative justice practices, as defined in section 18-1-901(3)(o.5), if available in the jurisdiction, and the defendant is determined suitable by a designated restorative justice practices facilitator. If a defendant wants to participate in restorative justice practices, the defendant must make the request to the district attorney or the law enforcement agency administering the program and may not make the request to the victim. If requested by the defendant, district attorney, or law enforcement agency, a victim-offender conference may only be conducted after the victim is consulted by the district attorney and offered the opportunity to participate or submit a victim impact statement. If a victim elects not to attend, a victim offender conference may be held with a suitable victim surrogate or victim advocate, and the victim may submit a victim-impact statement. To be eligible for restorative justice practices, the defendant shall not have been convicted of unlawful sexual behavior as defined in section 16-22-102(9), C.R.S., a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3(1), stalking as defined in section 18-3-602, or violation of a protection order as defined in section 18-6-803.5. Any statements made during a restorative justice conference shall be confidential and shall not be used as a basis for charging or prosecuting the defendant unless the defendant commits a chargeable offense during the conference. Failure to complete the requirements arising from a restorative justice conference may be considered a violation of probation. Nothing in this subparagraph (III.5) shall be construed to require a victim to participate in restorative justice practices or a restorative justice victim-offender conference.

(IV) Support the defendant's dependents and meet other family responsibilities, including arranging and fulfilling a payment plan for current child support, child support arrearages, and child support debt due under a court or administrative order through any delegate child support enforcement unit that may have a child support case with the defendant;

(V) Pay reasonable costs of the court proceedings or costs of supervision of probation, or both. The probation supervision fee shall be fifty dollars per month for the length of ordered probation. Notwithstanding the amount specified in this subparagraph (V), the court may lower the costs of supervision of probation to an amount the defendant will be able to pay. The court shall fix the manner of performance for payment of the fee. If the defendant receives probation services from a private provider, the court shall order the defendant to pay the probation supervision fee directly to the provider. The fee shall be imposed for the length of ordered probation.

(VI) Pay any fines or fees imposed by the court;

(VI.5) Repay all or part of any reward paid by a crime stopper organization that led to the defendant's arrest and conviction in accordance with article 15.7 of title 16, C.R.S.;

(VII) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer;

(VIII) Refrain from excessive use of alcohol or any unlawful use of controlled substances, as

defined in section 18-18-102(5), or of any other dangerous or abusable drug without a prescription;

(IX) Report to a probation officer at reasonable times as directed by the court or the probation officer;

(X) Permit the probation officer to visit the defendant at reasonable times at the defendant's home and elsewhere;

(XI) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(XII) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(XIII) Be subject to home detention as defined in section 18-1.3-106(1.1);

(XIV) Be restrained from contact with the victim or the victim's family members in cases in which the defendant was convicted of a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3(1);

(XIV.5) Be subject to electronic or global position monitoring;

(XV) Satisfy any other conditions reasonably related to the defendant's rehabilitation and the purposes of probation.

(b) When granting probation, in addition to the consideration of the provisions set forth in paragraph (a) of this subsection (2), the court shall order as a condition of probation in cases in which the defendant was convicted of a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3(1), that the defendant:

(I) Comply with existing court orders regarding family support;

(II) Comply with any existing court orders concerning a proceeding to determine paternity, custody, the allocation of decision-making responsibility, parenting time, or support;

(III) Comply with the terms of any protection order in effect against the defendant during the probation period;

(IV) Refrain from possessing a firearm, destructive device, or other dangerous weapon, unless granted written permission by the court or probation officer which shall not be granted in such domestic violence cases unless:

(A) It is required by the defendant's employment; and

(B) The court finds that the defendant's possession of the weapon does not endanger the victim or the victim's children; and

(C) The weapon is stored away from the home and the yard surrounding the home.

(c) If the court orders counseling or treatment as a condition of probation, unless the court makes a specific finding that treatment in another facility or with another person is warranted, the court shall order that such treatment or counseling be at a facility or with a person:

(I) Approved by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, established in article 80 of title 27, C.R.S., if the treatment is for alcohol or drug abuse;

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

(III) Certified or approved by the domestic violence offender management board created in section 16-11.8-103, C.R.S., if the offender was convicted of or the underlying factual basis of the offense included an act of domestic violence as defined in section 18-6-800.3; or

(IV) Licensed or certified by the division of adult parole in the department of corrections, the department of regulatory agencies, the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, the state board of nursing, or the Colorado medical board, whichever is appropriate for the required treatment or counseling.

(d) Notwithstanding the provisions of paragraph (c) of this subsection (2), if the court orders counseling or treatment as a condition of probation for an offender convicted of an offense involving unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S., the court shall order such treatment or counseling be at a facility or with a person listed in paragraph (c) of this subsection (2), and the court may not make a specific finding that treatment in another facility or with another person is warranted.

(e) If the defendant is convicted of an offense that subjects the defendant to genetic testing pursuant to section 16-11-102.4, C.R.S., the court shall assess to the defendant the cost of collecting and testing a biological substance sample from the defendant as required in section 16-11-102.4, C.R.S.

(2.2) If a defendant is sentenced to probation for a drug offense, the court may include as a condition of probation a requirement that the defendant participate in drug treatment. If the defendant's assessed treatment need is for residential treatment, the court may make residential drug treatment a condition of probation and may place the offender in a community corrections program that can provide the appropriate level of treatment subject to the provision of section 18-1.3-301(4).

(2.3)(a) When granting probation, the court may, as a condition of probation, require any defendant who is less than eighteen years of age at the time of sentencing to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102(8.5), C.R.S.; except that the court shall not require any such juvenile to attend a school from which he or she has been expelled without the prior approval of that school's local board of education.

(b) Following specification of the terms and conditions of probation for a defendant who is less than eighteen years of age at the time of sentencing, where the conditions of probation include the requirement that the defendant attend school, the court shall notify the school district in which the defendant will be enrolled of such requirement.

(2.5) The order of priority for any payments required of a defendant pursuant to subparagraph (IV), (V), (VI), or (VI.5) of paragraph (a) of subsection (2) of this section shall be as follows:

(a) Payment of a current child support order;

(b) Payment of child support arrearage;

(c) Payment of child support debt order;

(d) Payment of spousal maintenance;

(e) Payment of costs for the crime victim compensation fund, pursuant to section 24-4.1-119, C.R.S.;

(f) Payment of surcharges for the victims and witnesses assistance and law enforcement fund, pursuant to section 24-4.2-104, C.R.S.;

(g) Payment of restitution;

(h) Payment of a time payment fee;

(i) Payment of late fees;

(i.2) Payment of probation supervision fees;

(i.4) Payment of a drug offender surcharge pursuant to article 19 of this title;

(i.6) Payment of a sex offender surcharge pursuant to article 21 of this title;

(i.7) Payment of a surcharge for a crime against an at-risk person pursuant to section 18-6.5-107;

(i.8) Payment of collection and chemical testing of a biological substance to determine the

genetic markers thereof;

(i.9) Payment of a surcharge related to the address confidentiality program pursuant to section 24-30-2114, C.R.S.;

(j) Payment of any other fines, fees, or surcharges; and

(k) Repayment of all or part of any reward paid by a crime stopper organization that led to the defendant's arrest and conviction.

(3) When a defendant is granted probation, he or she shall be given a written statement explicitly setting forth the conditions on which he or she is being released.

(4)(a) For good cause shown and after notice to the defendant, the district attorney, and the probation officer, and after a hearing if the defendant or the district attorney requests it, the judge may reduce or increase the term of probation or alter the conditions or impose new conditions.

(b)(I) If an offender applies to transfer his or her probation to another state, the offender shall pay a filing fee of one hundred dollars, unless the offender is indigent.

(II)(A) The clerk of the court shall transmit all moneys collected pursuant to this paragraph (b) to the state treasurer, who shall credit the same to the interstate compact probation transfer cash fund, which fund is hereby created and referred to in this paragraph (b) as the "fund". Beginning January 1, 2013, the moneys in the fund are subject to annual appropriation by the general assembly to the judicial department for the direct and indirect costs associated with returning probationers to Colorado. The state treasurer may invest any moneys in the fund not expended for the purpose of this paragraph (b) as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and shall not be credited or transferred to the general fund or another fund.

(B) On or after January 1, 2013, a law enforcement agency may submit to the state court administrator a request to be reimbursed for the costs of returning a probationer pursuant to the "Interstate Compact for Adult Offender Supervision", part 28 of article 60 of title 24, C.R.S., incurred on or after January 1, 2013. The state court administrator shall, to the extent that funds are available, reimburse reasonable costs incurred by a law enforcement agency for the return of the probationer.