

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0559.01 Richard Sweetman x4333

HOUSE BILL 18-1109

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

Cooke,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING DISCRETIONARY PAROLE OF SPECIAL NEEDS OFFENDERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law provides 2 definitions by which an offender in the custody of the department of corrections (department) may be considered a "special needs offender". The first definition describes a person "who is 60 years of age or older and has been diagnosed by a licensed health care provider who is employed by or under contract with the department as suffering from a chronic infirmity, illness, condition, disease, or behavioral or mental health disorder and the department or the state board of parole (parole board) determines that the person is incapacitated to the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
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extent that he or she is not likely to pose a risk to public safety". The bill amends this definition by changing "60 years" to "55 years".

The bill also adds a third definition by which such an offender may be considered a "special needs offender". That is, an offender who, as determined by a licensed health care provider who is employed by or under contract with the department, on the basis of available evidence, not including evidence resulting from a refusal of the person to accept treatment, does not have a substantial probability of being restored to competency and is not likely to pose a risk to public safety.

Under current law, if the department recommends to the parole board that an offender be released to parole as a special needs offender, the parole board may deny parole only by a majority vote of the parole board. The bill states that to deny parole under such conditions, the parole board must also make a finding that granting parole would create a threat to public safety and that the offender is likely to commit an offense.

The bill states that if, prior to or during any parole hearing, the parole board or any member of the parole board has a substantial and good-faith reason to believe that the offender is incompetent to proceed, the parole board shall suspend all proceedings and notify the trial court that imposed any active sentence, and the court shall determine the competency or incompetency of the offender.

For any offender who is granted special needs parole, the parole board shall set the length of the parole for an appropriate time period of at least 6 months but not exceeding 36 months. At any time during such an offender's parole, the parole board may revise the duration of the offender's parole. However, in no case may such an offender be required to serve a period of parole in excess of the period of parole to which he or she would otherwise be sentenced, or 36 months, whichever is less.

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

2 **SECTION 1.** In Colorado Revised Statutes, 17-1-102, **amend**
3 (7.5)(a)(I) and (7.5)(a)(II); and **add** (7.5)(a)(IV) as follows:

4 **17-1-102. Definitions.** As used in this title 17, unless the context
5 otherwise requires:

6 (7.5) (a) "Special needs offender" means a person in the custody
7 of the department:

8 (I) Who is ~~sixty~~ FIFTY-FIVE years of age or older and has been
9 diagnosed by a licensed health care provider who is employed by or under

1 contract with the department as suffering from a chronic infirmity, illness,
2 condition, disease, or behavioral or mental health disorder and the
3 department or the state board of parole determines that the person is
4 incapacitated to the extent that he or she is not likely to pose a risk to
5 public safety; ~~or~~

6 (II) Who, as determined by a licensed health care provider who is
7 employed by or under contract with the department, suffers from a
8 chronic, permanent, terminal, or irreversible physical illness, condition,
9 disease, or a behavioral or mental health disorder that requires costly care
10 or treatment and who is determined by the department or the state board
11 of parole to be incapacitated to the extent that he or she is not likely to
12 pose a risk to public safety; OR

13 (IV) WHO, AS DETERMINED BY A LICENSED HEALTH CARE
14 PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE
15 DEPARTMENT, ON THE BASIS OF AVAILABLE EVIDENCE, NOT INCLUDING
16 EVIDENCE RESULTING FROM A REFUSAL OF THE PERSON TO ACCEPT
17 TREATMENT, DOES NOT HAVE A SUBSTANTIAL PROBABILITY OF BEING
18 RESTORED TO COMPETENCY FOR THE COMPLETION OF ANY SENTENCE AND
19 IS NOT LIKELY TO POSE A RISK TO PUBLIC SAFETY. AS USED IN THIS
20 SUBSECTION (7)(a)(IV), "COMPETENCY" HAS THE SAME MEANING AS
21 "COMPETENT TO PROCEED", AS DEFINED IN SECTION 16-8.5-101 (4).

22 **SECTION 2.** In Colorado Revised Statutes, 17-22.5-403.5,
23 **amend** (4)(d) and (5); and **add** (4.5) and (7) as follows:

24 **17-22.5-403.5. Special needs parole.** (4) (d) The state board of
25 parole shall make a determination of whether to grant special needs
26 parole within thirty days after receiving the referral from the department.
27 The board may delay the decision in order to request that the department

1 modify the special needs parole plan. If, PRIOR TO OR DURING ANY
2 PAROLE HEARING, THE BOARD OR ANY MEMBER OF THE BOARD HAS A
3 SUBSTANTIAL AND GOOD-FAITH REASON TO BELIEVE THAT THE OFFENDER
4 IS INCOMPETENT TO PROCEED, AS DEFINED IN SECTION 16-8.5-101 (11),
5 THE BOARD SHALL SUSPEND ALL PROCEEDINGS AND NOTIFY THE TRIAL
6 COURT THAT IMPOSED ANY ACTIVE SENTENCE, AND THE COURT SHALL
7 DETERMINE THE COMPETENCY OR INCOMPETENCY OF THE DEFENDANT
8 PURSUANT TO SECTION 16-8.5-103. THE COURT SHALL APPOINT COUNSEL
9 TO REPRESENT THE OFFENDER WITH RESPECT TO THE DETERMINATION OF
10 COMPETENCY OF THE OFFENDER, BUT THE PRESENCE OF THE OFFENDER IS
11 NOT REQUIRED FOR ANY COURT PROCEEDINGS UNLESS GOOD CAUSE IS
12 SHOWN.

13 (4.5) IF AN OFFENDER IS DETERMINED TO BE INCOMPETENT TO
14 PROCEED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE COURT MAY
15 ORDER THE DEPARTMENT TO PROVIDE OR ARRANGE FOR THE DELIVERY OF
16 APPROPRIATE RESTORATION SERVICES IN ANY SETTING AUTHORIZED BY
17 LAW, BY AN ORDER OF THE COURT, OR BY ANY OTHER ACTION AS
18 PROVIDED BY LAW. NOTHING IN THIS SECTION REQUIRES THE DEPARTMENT
19 OF HUMAN SERVICES TO TAKE CUSTODY OF AN OFFENDER FOR
20 RESTORATION SERVICES. THE DEPARTMENT OF HUMAN SERVICES IS NOT
21 RESPONSIBLE FOR CONDUCTING THE COMPETENCY EVALUATION. IF THE
22 COURT DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY OF
23 THE OFFENDER BEING RESTORED TO COMPETENCY, THE DEPARTMENT MAY
24 REFER THE INMATE FOR SPECIAL NEEDS PAROLE WITH A SPECIAL NEEDS
25 PAROLE PLAN PURSUANT TO THE PROVISIONS OF THIS SECTION.

26 (5) The board may consider the application for special needs
27 parole pursuant to the proceedings set forth in section 17-2-201 (4)(f) or

1 17-2-201 (9)(a). If the department recommends to the state board of
2 parole that an offender be released to parole as a special needs offender
3 pursuant to the provisions of subsection (1) of this section, the board may
4 deny parole only by a majority vote of the board AND ONLY IF THE BOARD
5 MAKES A FINDING THAT GRANTING PAROLE WOULD CREATE A THREAT TO
6 PUBLIC SAFETY AND THAT THE OFFENDER IS LIKELY TO COMMIT AN
7 OFFENSE.

8 (7) FOR ANY OFFENDER WHO IS GRANTED SPECIAL NEEDS PAROLE
9 PURSUANT TO THIS SECTION, THE STATE BOARD OF PAROLE SHALL SET THE
10 LENGTH OF THE PAROLE FOR AN APPROPRIATE TIME PERIOD OF AT LEAST
11 SIX MONTHS BUT NOT EXCEEDING THIRTY-SIX MONTHS. AT ANY TIME
12 DURING THE OFFENDER'S PAROLE, THE STATE BOARD OF PAROLE MAY
13 REVISE THE DURATION OF THE PAROLE. HOWEVER, IN NO CASE MAY SUCH
14 AN OFFENDER BE REQUIRED TO SERVE A PERIOD OF PAROLE IN EXCESS OF
15 THE PERIOD OF PAROLE TO WHICH HE OR SHE WOULD OTHERWISE BE
16 SENTENCED PURSUANT TO SECTION 18-1.3-401 (1)(a)(V)(A), OR
17 THIRTY-SIX MONTHS, WHICHEVER IS LESS.

18 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-101, **amend**
19 the introductory portion and (7) as follows:

20 **16-8.5-101. Definitions.** As used in this ~~article~~ ARTICLE 8.5,
21 unless the context otherwise requires:

22 (7) "Criminal proceedings" means trial, sentencing, SATISFACTION
23 OF THE SENTENCE, execution, and any pretrial matter that is not
24 susceptible of fair determination without the personal participation of the
25 defendant.

26 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-102, **amend**
27 (2)(c); and **add** (2)(d) as follows:

1 **16-8.5-102. Mental incompetency to proceed - how and when**
2 **raised.** (2) The question of a defendant's competency to proceed shall be
3 raised in the following manner:

4 (c) By the affidavit of any chief officer of an institution having
5 custody of a defendant awaiting execution; OR

6 (d) BY THE STATE BOARD OF PAROLE WHEN A BOARD MEMBER HAS
7 A SUBSTANTIAL AND GOOD-FAITH REASON TO BELIEVE THAT THE
8 OFFENDER IS INCOMPETENT TO PROCEED, AS DEFINED IN SECTION
9 16-8.5-101 (11), AT A PAROLE HEARING CONDUCTED PURSUANT TO
10 SECTION 17-22.5-403.5.

11 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-103, **add** (9)
12 as follows:

13 **16-8.5-103. Determination of competency to proceed.** (9) IN
14 ALL PROCEEDINGS UNDER THIS ARTICLE 8.5, WHEN COMPETENCY HAS BEEN
15 RAISED BY THE PAROLE BOARD PURSUANT TO SECTION 16-8.5-102 (2)(d),
16 THE COURT SHALL PAY FOR ANY EVALUATION TO DETERMINE COMPETENCY
17 PURSUANT TO THIS SECTION, AND THE EVALUATION MUST BE CONDUCTED
18 AT THE PLACE WHERE THE DEFENDANT IS IN CUSTODY.

19 **SECTION 6. Applicability.** This act applies to applications for
20 special needs parole that are received by the state board of parole on or
21 after the effective date of this act.

22 **SECTION 7. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.