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Fiscal Note

Drafting Number: LLS 21-0567
Prime Sponsors: Sen. Lee
Rep. Bacon

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Bill Status: Senate Judiciary
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Bill Topic: **IMPROVE PRISON RELEASE OUTCOMES**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill modifies the eligibility criteria for special needs parole; requires the Department of Corrections (DOC) to award earned time to inmates for time served during the declared disaster emergency; requires the Office of the State Public Defender to provide a liaison to the DOC; requires the DOC to pay health insurance premiums for up to one year for released inmates 65 and older; and requires studies on health care coverage for senior inmates upon release and of the youthful offender system. On net, the bill reduces state expenditures on an ongoing basis beginning in FY 2021-22.

Appropriation Summary:

For FY 2021-22, the bill requires a net reduction in appropriations of \$10.2 million. See State Expenditures section for detailed impacts to the DOC, the Office of the State Public Defender, and the Department of Human Services.

Fiscal Note Status:

The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-146

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	General Fund	(\$10,188,541)	(\$9,949,302)
	Centrally Appropriated	\$418,995	\$274,121
	Total Expenditures	(\$9,769,546)	(\$9,675,181)
	Total FTE	11.2 FTE	12.3 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill primarily makes changes to parole eligibility and re-entry requirements for senior and special needs inmates in the Department of Corrections (DOC). It also authorizes earned time for inmates housed in the DOC during the COVID-19 declared disaster emergency. These and the bill's other provisions are detailed below.

Special needs offenders and parole. Except for certain inmates convicted to high-level felonies, the bill changes the eligibility criteria for special needs offenders to include inmates:

- with serious impairment, defined as a chronic physical or mental health condition that limits an inmate's ability to function or perform basic self-care;
- 64 or older who have served at least 10 years or 25 percent of their sentence;
- diagnosed as incompetent or with dementia; and
- with a terminal illness.

The DOC and the Parole Board are required to develop policies and procedures to improve the special needs parole process. An inmate may request that the DOC determine whether they are eligible for special needs parole. The bill removes the requirement that the DOC make a recommendation as to whether an inmate eligible for special needs parole should be released. In all cases where an inmate is eligible for special needs parole, the inmate may only be denied parole upon a majority vote of the Parole Board.

General parole requirements. The bill requires the DOC to develop a recommended parole plan for every inmate prior to release from prison; develop policies and procedures related to pre-release planning; and include in its monthly population report information related to delayed parole decisions. The Parole Board is prohibited from denying parole based solely on the lack of a recommended parole plan.

Earned time. The DOC is required to award one day of earned time for each day that an inmate was incarcerated during the COVID-19 declared disaster emergency, up to 120 days per year.

Parole board hearings for unauthorized absence offenders. The bill requires the Parole Board to schedule a parole hearing for an inmate serving a sentence for escape or attempt to escape, which would now constitute the offense of unauthorized absence, within 60 days.

Public Defender Liaison. The bill requires the Office of State Public Defender (OSPD) to provide a liaison to the DOC and the Parole Board to assist inmates with legal matters related to detainers, bonds, holds, competency, special needs parole applications, commutation applications, or other criminal-related legal matters.

Health insurance premium coverages for senior inmates upon release. The DOC must ensure that any inmate who is 65 years of age or older and is being released from prison is enrolled in the most appropriate medical insurance benefit plan. The DOC must pay any insurance premiums and penalties for up to 12 months from the start of coverage.

Commission on Aging study of health insurance for senior inmates upon release. The bill requires the Colorado Commission on Aging in the Department of Human Services (DHS) to study and make recommendations related to health insurance enrollment for inmates who are 65 years of age or older upon release from prison. The commission is requiring to report its findings to the legislature by January 1, 2022.

Youth Offender System study and requirements. The DOC is required to conduct a study, using gifts, grants, and donations, with external experts regarding the effectiveness of the Youthful Offender System (YOS) and the potential of expanding the system to serve offenders up to 25 years old. The bill also requires YOS staff to be trained in the first 45 days of employment and repeals the requirement that district attorneys keep records of all juveniles sentenced to the YOS.

Inmate movement during a declared disaster emergency. Finally, the bill allows the Colorado State Penitentiary II to be used to house inmates to facilitate movement of inmates during a declared disaster emergency that impacts state prison operations.

State Revenue

The bill may increase revenue to the DOC from gift, grants, and donations related to the study of YOS effectiveness. This revenue is not subject to TABOR.

State Expenditures

The bill reduces General Fund expenditures in the DOC, as shown in Table 2. The bill also creates General Fund expenditures for the DOC, the OSPD, and the DHS, as shown in Table 3.

Department of Corrections expenditure reductions. The bill's special needs parole and earned time provisions will reduce the prison population, as shown in Table 2 and explained below. These impacts are estimates; the Parole Board will likely approve a different number of inmates for special needs parole and earned time eligibility. The fiscal note assumes these out-year impacts will be closely followed and addressed through the prison population forecast and the annual budget process.

**Table 2
 Prison and Parole Operating Impacts Under SB 21-146**

FY 2021-22	Prison ADP	Prison Total	Parole ADP	Parole Total	Grand Total
Special Needs	(191)	(\$4,444,928)	191	\$989,012	(\$3,455,916)
Earned Time	(516)	(\$11,998,963)	449	\$2,323,597	(\$9,675,366)
Totals	(706)	(\$16,443,891)	640	\$3,312,609	(\$13,131,282)
FY 2022-23					
Special Needs	(197)	(\$4,575,507)	87	\$1,018,066	(\$3,557,441)
Earned Time	(373)	(\$8,682,923)	106	\$550,535	(\$8,132,388)
Totals	(570)	(\$13,258,430)	193	\$1,568,601	(\$11,689,829)

- **Special needs parole.** There are currently 1,101 inmates who would become eligible for special needs parole under the bill. This amount includes inmates with serious impairments, who are at least 65 years old, or who have dementia; it does not include inmates who are incompetent to proceed or suffering from a terminal illness, as data on this population are not available. Applying the rate of special needs parole approval for inmates recommended by the DOC, which has averaged 17 percent over the past ten years, an estimated 191 inmates will be paroled in FY 2021-22. Following this initial wave of inmates meeting the new eligibility criteria, an additional 33 inmates meet the age criteria in FY 2022-23, of which 17 percent, or 4 inmates, are estimated to be paroled. The out-year reduction also shows the cumulative change in average daily population (ADP) compared to current law.
- **Earned time.** Assuming that inmates will receive an average of 80 days of earned time under the bill, there are 2,352 inmates who are expected to be paroled early in FY 2021-22, resulting in a reduction of 516 in the average daily population and an increase of 449 in the parole population. These numbers differ because some prisoners will reach their statutory release date and not require parole. In FY 2022-23, another 1,702 inmates are expected to be paroled early, resulting in a reduction of 373 in the average daily population and an increase of 106 in the parole population.

Reductions in the prison population are assumed to reduce the number of private prison beds contracted by the state at an average rate of \$23,276 per bed per year. If the reductions in the state prison population instead occur at state facilities, cost reductions will be comparatively greater. If reductions instead occur in the jail backlog, cost reductions will be comparatively smaller.

Table 3
Expenditure Impacts Under SB 21-146

Cost Components	FY 2021-22	FY 2022-23
Department of Corrections¹		
Personal Services	\$671,222	\$732,243
Operating Expenses	\$21,600	\$21,600
Capital Outlay Costs	\$67,820	-
Basic Training	\$14,500	-
Legal Services	\$49,980	\$49,980
Computer Programming	\$240,720	-
Health Insurance Premium Payments	\$778,393	\$778,393
Overtime	\$890,747	-
Centrally Appropriated Costs ²	\$380,327	\$232,253
FTE – Personal Services	9.1 FTE	10 FTE
FTE – Legal Services	0.3 FTE	0.3 FTE
DOC Subtotal	\$3,115,309	\$1,814,469

¹ DOC costs include additional Parole Board members to manage the parole-related workload created by the bill; however, these members are not currently authorized in statute. DOC costs also include the effects of changing prison and parole populations on operational expenses; these are presented in Table 2 and omitted from Table 3.

² Centrally appropriated costs are not included in the bill's appropriation.

**Table 3
 Expenditure Impacts Under SB 21-146 (Cont.)**

Cost Components	FY 2021-22	FY 2022-23
Office of the State Public Defender		
Personal Services	\$142,470	\$155,422
Operating Expenses	\$2,890	\$2,890
Capital Outlay Costs	\$12,400	-
Centrally Appropriated Costs ²	\$38,668	\$41,867
FTE – Personal Services	1.8 FTE	2 FTE
OSPD Subtotal	\$196,428	\$200,179
Department of Human Services		
Aging Commission Study	\$50,000	-
DHS Subtotal	\$50,000	\$0
Total	\$3,361,736	\$2,014,648
Total FTE	11.2 FTE	12.3 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Corrections expenditure increases. Both the DOC and the Parole Board require expenditure increases under the bill, as shown in Table 3 on the previous page and detailed below.

- **DOC Staff.** The DOC requires a total of 6.0 FTE, which includes 1.0 FTE Psychologist for competency assessments; 2.0 FTE Case Managers, 1.0 FTE Clinical Administrative Assistant, and 1.0 FTE Victims Services Liaison for additional special needs parole proceedings; and 0.5 FTE Community Program Specialist and 0.5 FTE Administrative Assistant to coordinate health insurance coverage. Costs include standard operating and capital outlay costs, as well as basic training. First-year costs are prorated for the General Fund pay date shift.

Parole Board Staff. The Parole Board requires a total of 4.0 FTE, which includes 2.0 FTE Parole Board members for process additional special needs parole proceedings (these members are included in the fiscal note, but are not currently authorized in statute; see Technical Note); 1.0 FTE Administrative Assistant to assist additional special needs parole proceedings; and 1.0 FTE Administrative Assistant to oversee parole eligible inmates with mental health issues and provide information to the OSPD liaison. Parole Board costs include standard operating and capital outlay costs, basic training, and Parole Board member computer systems and cell phones.

The fiscal note does not include Parole Board staff for unauthorized absence proceedings because it is assumed that file review will be acceptable for these 365 inmates in light of the bill's two-month processing window, and that many of these inmates are already parole-eligible pursuant to HB 20-1019.

- **Legal services.** Legal services are estimated at 470 hours annually, including 285 hours to address procedural and eligibility changes regarding special needs parole; 100 hours to address health care coverage for inmates who at least 65 years old upon re-entry; and 85 hours to address changes to earned time. Legal services are calculated at a rate of \$106.34 per hour. These costs will be reappropriated to the Department of Law.

- **Computer programming.** The Office of Information Technology will make modifications the Parole Board Hearing Application and the Inmate Benefit Assistance Application Program to meet the bill's requirements related to parole and health insurance coverage. Costs assume 2,030 hours at an average rate of \$110 per hour and software costs of \$17,000. These costs will be reappropriated to the Office of Information Technology.
- **Health insurance premium payments.** Health insurance premiums will be required for approximately 137 inmates age 65+ leaving DOC each year. Premium costs are estimated at \$631 per individual, which represents the average monthly cost of Medicare Part A and B, at a total cost per month of \$86,488. The fiscal note assumes an average of 9 months of coverage per senior inmate in their first re-entry year. These costs are expected to be revisited once the Commission on the Aging makes its recommendations.
- **Overtime.** Time and Release Operations and Case Management will require approximately 17,000 hours of overtime in FY 2021-22 only to calculate earned time for each eligible inmate, estimated to require a Technician III an average of one half-hour per file for inmates within 240 days of their statutory or mandatory release dates or parole eligibility, and to require a Case Manager II an average of 4 hours per parole packet for these inmates. An additional 20 minutes per inmate of time compensation analysis is estimated for the remainder of inmates who served time during COVID, but are not within release or parole eligibility timeframes. Technician III overtime is calculated at \$50 per hour, and Case Manager II overtime is calculated at \$45 per hour.
- **Youth Offender System study.** If gifts, grants, and donations are received, the study of the Youthful Offender System is estimated to cost \$250,000. For simplicity and due to the fact that it is unknown if sufficient funding will be received, this cost has been excluded from the DOC cost estimate in this fiscal note. No appropriation is required to spend gift, grants, and donations.

Office of the State Public Defender. The OSPD requires 1.0 FTE Lead Deputy Public Defender and 1.0 FTE Legal Assistant to serve as a liaison support for the DOC and the Parole Board. Standard operating and capital outlay costs are included, as well as the annual attorney registration fee.

Department of Human Services. Based on studies of comparable scope, the Commission on Aging requires \$50,000 to conduct the study on health insurance enrollment for inmates who are 65 years of age or older upon release from prison.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$418,995 in FY 2021-22 and \$274,121 in FY 2022-23.

Technical Note

The fiscal note includes estimated expenditures for two Parole Board members who are not currently authorized in statute. Without authorization in this bill or separate legislation for additional parole board members, the work of processing and approving parole applications would occur over a longer period of time, which would increase average daily population and costs compared to this fiscal note estimate.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2021-22, the bill requires a net reduction in General Fund appropriations of \$10,396,301 to the Department of Corrections, which includes:

- a bed decrease of \$16,443,891;
- a parole increase of \$3,312,609; and
- an expenditure increase of \$2,734,981 and 9.1 FTE, of which \$49,980 and an additional 0.3 FTE is reappropriated to the Department of Law and \$240,720 is reappropriated to the Office of Information Technology.

In addition, the following General Fund appropriations are also required in the bill:

- \$157,760 and 1.8 FTE to the Office of the State Public Defender in the Judicial Branch; and
- \$50,000 to the Department of Human Services.

State and Local Government Contacts

Corrections
Human Services
Law

Counties
Information Technology
Public Defender

District Attorneys
Judicial
Public Safety