

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 23-1214

BY REPRESENTATIVE(S) Epps, Weissman, Bacon, Garcia, Gonzales-Gutierrez, Mabrey, Woodrow, Amabile, Boesenecker, Brown, Dickson, English, Jodeh, Joseph, Lieder, Lindsay, Ricks, Sharbini, Story, Valdez, Willford, Marshall, Martinez, Sirota, Velasco, Vigil;
also SENATOR(S) Coleman and Gonzales, Buckner, Cutter, Exum, Fields, Marchman, Priola, Winter F..

CONCERNING ESTABLISHING PROCEDURES RELATED TO APPLYING FOR
COMMUTATION OF A CRIMINAL SENTENCE, AND, IN CONNECTION
THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **amend** 16-17-101 as follows:

16-17-101. Governor may commute sentence. The governor is hereby fully authorized, when ~~he~~ THE GOVERNOR deems it proper and advisable and consistent with the public interests and the rights and interests of the condemned, to commute the sentence in any case by reducing the penalty ~~in a capital case to~~ IN A CASE WITH A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR A CASE OF imprisonment for life ~~or for~~ WITH

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE POSSIBILITY OF PAROLE TO a term of not less than twenty years ~~at hard labor~~ IN THE DEPARTMENT OF CORRECTIONS.

SECTION 2. In Colorado Revised Statutes, **add** 16-17-101.5 as follows:

16-17-101.5. Definitions. AS USED IN THIS ARTICLE 17, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPLICANT" MEANS AN INCARCERATED PERSON OR AN INCARCERATED PERSON'S LEGAL COUNSEL WHO SUBMITS A REQUEST OR AN APPLICATION FOR COMMUTATION OF THE INCARCERATED PERSON'S SENTENCE. THE APPLICANT MAY ALSO SUBMIT A REQUEST OR APPLICATION FOR A PARDON.

(2) "BOARD" MEANS THE EXECUTIVE CLEMENCY BOARD ESTABLISHED THROUGH EXECUTIVE ORDER, OR THE GOVERNOR'S OFFICE IF AN EXECUTIVE CLEMENCY BOARD DOES NOT EXIST.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS.

(4) "DEPARTMENT STAFF" INCLUDES, BUT IS NOT LIMITED TO, A PERSON WHO IS EMPLOYED BY THE DEPARTMENT, VOLUNTEER, GROUP FACILITATOR, CONTRACT WORKER, OR EDUCATOR PROVIDING SERVICES WITHIN A DEPARTMENT FACILITY.

(5) "EXECUTIVE CLEMENCY REPRESENTATIVE" MEANS AN INDIVIDUAL APPOINTED BY THE GOVERNOR WHO IS RESPONSIBLE FOR THE ADMINISTRATIVE PROCESSES SET FORTH IN THIS ARTICLE 17.

(6) "SUPPORT LETTER" MEANS A LETTER INCLUDED IN AN APPLICATION FOR COMMUTATION OF SENTENCE WRITTEN BY FAMILY, FRIENDS, EMPLOYERS, DEPARTMENT STAFF, OR OTHERS THAT SHOWS THE APPLICANT'S ABILITY TO CONTRIBUTE TO SOCIETY; WORK ETHIC, PERSONAL GROWTH, AND LEADERSHIP SKILLS; CONDUCT WITHIN THE DEPARTMENT; ACTS OF HEROISM; OR OTHER SKILLS OR ATTRIBUTES OBSERVED BY THE LETTER'S AUTHOR, WHICH MAY, BUT NEED NOT INCLUDE, A RECOMMENDATION THAT THE APPLICANT BE GRANTED A COMMUTATION OF SENTENCE.

SECTION 3. In Colorado Revised Statutes, 16-17-102, **repeal** (1).

SECTION 4. In Colorado Revised Statutes, **add** 16-17-102.3 as follows:

16-17-102.3. Procedure for application for commutation of sentence by governor - application materials - timeline - responsibilities of the executive clemency representative. (1) THE EXECUTIVE CLEMENCY REPRESENTATIVE IS RESPONSIBLE FOR PROCESSING AN APPLICATION THROUGH THE ENTIRE PROCESS. THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL PRODUCE THE APPLICATION, INCLUDING DESIGNING AND MAILING THE APPLICATION CONSISTENT WITH LANGUAGE IN THE CURRENT EXECUTIVE ORDER CREATING THE BOARD.

(2) FOR CONSIDERATION OF COMMUTATION OF AN APPLICANT'S SENTENCE, THE APPLICANT SHALL REQUEST AN APPLICATION FROM THE EXECUTIVE CLEMENCY REPRESENTATIVE OR LOCATE THE APPLICATION ON THE GOVERNOR'S WEBSITE. IF THE APPLICATION IS REQUESTED BY MAIL, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL MAIL THE APPLICATION FOR COMMUTATION TO THE APPLICANT WITHIN TEN BUSINESS DAYS AFTER RECEIPT OF THE REQUEST.

(3) AFTER AN APPLICANT RECEIVES THE APPLICATION, THE APPLICANT SHALL COMPLETE THE APPLICATION AND MAIL IT TO THE EXECUTIVE CLEMENCY REPRESENTATIVE. THE APPLICATION MUST CONTAIN SUPPORTING MATERIALS, INCLUDING, BUT NOT LIMITED TO:

(a) A PERSONAL LETTER FROM THE APPLICANT EXPLAINING WHY A COMMUTATION OF SENTENCE IS WARRANTED;

(b) PLANS FOR REENTERING THE COMMUNITY;

(c) CERTIFICATIONS OF PROGRAMS COMPLETED AND A LISTING OF ACCOMPLISHMENTS AND EDUCATIONAL MILESTONES ACHIEVED WHILE INCARCERATED;

(d) SUPPORT LETTERS FROM THE COMMUNITY, INCLUDING, BUT NOT LIMITED TO, FAMILY, FRIENDS, COMMUNITY MEMBERS, GOVERNMENT OFFICIALS, RELIGIOUS GROUPS, PREVIOUS OR FUTURE EMPLOYERS, AND DEPARTMENT STAFF; AND

(e) IF APPROPRIATE, A SUPPORT LETTER FROM THE VICTIM OR VICTIM'S FAMILY MAY BE INCLUDED.

(4) THE APPLICANT MAY INCLUDE MULTIMEDIA COMPONENTS IN THE APPLICATION.

(5) DEPARTMENT STAFF SHALL SUBMIT ANY SUPPORT LETTERS DIRECTLY TO THE APPLICANT FOR INCLUSION IN THE FINAL APPLICATION. ANY DEPARTMENT STAFF MAY SUBMIT A SUPPORT LETTER ON BEHALF OF AN APPLICANT. IF THE DEPARTMENT STAFF MEMBER CHOOSES TO DO SO, THE DEPARTMENT SHALL NOT PREVENT OR DISCOURAGE THE DEPARTMENT STAFF MEMBER FROM SUBMITTING A SUPPORT LETTER.

(6) WHEN AN APPLICATION IS RECEIVED BY THE EXECUTIVE CLEMENCY REPRESENTATIVE, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL NOTIFY THE APPLICANT THAT THE APPLICATION HAS BEEN RECEIVED AND IS COMPLETE. IF THE APPLICATION IS INCOMPLETE, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL INFORM THE APPLICANT OF ANY MISSING MATERIALS. THE APPLICANT SHALL SUBMIT THE MISSING MATERIAL WITHIN THIRTY DAYS AFTER THE NOTICE THAT THE APPLICATION IS MISSING MATERIALS.

(7) (a) AFTER AN APPLICATION FOR COMMUTATION OF SENTENCE IS SUBMITTED BY THE APPLICANT, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL REQUEST A CERTIFICATE OF CONDUCT FROM THE SUPERINTENDENT OF THE APPLICANT'S CURRENT CORRECTIONAL FACILITY AND ANY OTHER CORRECTIONAL FACILITIES WHERE THE APPLICANT WAS HOUSED. THE CERTIFICATE MUST INCLUDE A SUMMARY OF THE APPLICANT'S CONDUCT DURING CONFINEMENT IN THE CORRECTIONAL FACILITY. THE SUPERINTENDENT SHALL SUBMIT THE CERTIFICATE OF CONDUCT TO THE EXECUTIVE CLEMENCY REPRESENTATIVE WITHIN SIXTY DAYS AFTER THE EXECUTIVE CLEMENCY REPRESENTATIVE'S REQUEST. THE CERTIFICATE MUST ALSO INCLUDE THE APPLICANT'S COLORADO ACTUARIAL RISK ASSESSMENT SCALE (CARAS) SCORE, THE APPLICANT'S COLORADO TRANSITIONAL ACCOUNTABILITY PLAN (CTAP), REPORTS OF ANY DISCIPLINARY SANCTIONS AGAINST THE APPLICANT, AND PRESENTENCE INVESTIGATION REPORTS, DETAINER NOTIFICATIONS, OR OTHER SIMILAR LAW ENFORCEMENT COMMUNICATIONS.

(b) THE DEPARTMENT SHALL, UPON REQUEST FROM THE APPLICANT,

UPDATE ANY RISK ASSESSMENT INSTRUMENT DETAILED IN THIS SUBSECTION (7) WITHIN THIRTY DAYS AFTER THE EXECUTIVE CLEMENCY REPRESENTATIVE'S REQUEST FOR A CERTIFICATE OF CONDUCT PURSUANT TO THIS SUBSECTION (7).

(8) THE DEPARTMENT SHALL SEND A COPY OF ALL DOCUMENTS COLLECTED FOR THE CERTIFICATE OF CONDUCT TO THE APPLICANT AND THE EXECUTIVE CLEMENCY REPRESENTATIVE.

(9) AFTER THE APPLICANT RECEIVES THE DOCUMENTS REQUIRED PURSUANT TO SUBSECTION (8) OF THIS SECTION, THE APPLICANT HAS SIXTY DAYS TO SUBMIT A RESPONSE TO ANY INFORMATION IN THE DOCUMENTS TO THE EXECUTIVE CLEMENCY REPRESENTATIVE BEFORE THE FINAL APPLICATION IS SENT TO THE EXECUTIVE CLEMENCY BOARD. IN THE EVENT THAT AN EXECUTIVE CLEMENCY BOARD DOES NOT EXIST, THE FINAL APPLICATION SHALL BE SENT TO THE GOVERNOR'S OFFICE FOR FINAL REVIEW. IN ALL CASES, THE GOVERNOR RETAINS FULL DECISION-MAKING AUTHORITY OVER EVERY REQUEST FOR COMMUTATION OF SENTENCE.

(10) THE EXECUTIVE CLEMENCY BOARD MAY REQUEST AN INTERVIEW WITH THE APPLICANT. THE APPLICANT MAY ACCEPT OR DENY THE INTERVIEW WITH THE EXECUTIVE CLEMENCY BOARD. IF THE APPLICANT ACCEPTS THE INTERVIEW, THE APPLICANT MAY HAVE LEGAL COUNSEL PRESENT THROUGHOUT THE INTERVIEW.

SECTION 5. In Colorado Revised Statutes, **add** 16-17-104 as follows:

16-17-104. District attorney responsibility - submission of response and materials - applicant response - notification to victim.

(1) (a) BEFORE THE EXECUTIVE CLEMENCY BOARD REVIEWS AN APPLICATION FOR COMMUTATION, BUT AFTER THE APPLICANT HAS HAD THE OPPORTUNITY TO RESPOND TO ANY DOCUMENTS SUBMITTED BY THE DEPARTMENT, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL FORWARD THE APPLICATION, TOGETHER WITH ANY SUPPORTING MATERIALS, INCLUDING THE DEPARTMENT RESPONSE AND THE APPLICANT'S RESPONSE TO THE DEPARTMENT'S RESPONSE, TO THE DISTRICT ATTORNEY WHO PROSECUTED THE CASE, OR THE DISTRICT ATTORNEY'S SUCCESSOR IN OFFICE, WITHIN TEN DAYS AFTER THE APPLICANT'S FINAL RESPONSE TO THE EXECUTIVE CLEMENCY REPRESENTATIVE.

(b) THE DISTRICT ATTORNEY SHALL NOTIFY THE VICTIM AND THE VICTIM'S FAMILY, IF THE DISTRICT ATTORNEY SUPPORTS OR DOES NOT OPPOSE THE COMMUTATION REQUEST, OF THE APPLICANT'S REQUEST FOR A COMMUTATION OF SENTENCE WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE APPLICATION FROM THE EXECUTIVE CLEMENCY REPRESENTATIVE.

(2) (a) WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE APPLICATION AND ALL SUPPORTING MATERIALS, THE DISTRICT ATTORNEY WHO PROSECUTED THE CASE, OR THE DISTRICT ATTORNEY'S SUCCESSOR IN OFFICE, MAY SUBMIT, IN WRITING, THE DISTRICT ATTORNEY'S POSITION ON THE APPLICATION TO THE EXECUTIVE CLEMENCY REPRESENTATIVE.

(b) IF THE DISTRICT ATTORNEY SUBMITS A RESPONSE WITHIN FORTY-FIVE DAYS, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL FORWARD A COPY OF THE DISTRICT ATTORNEY'S RESPONSE TO THE APPLICANT. THE APPLICANT HAS THIRTY DAYS AFTER RECEIPT OF THE DISTRICT ATTORNEY'S RESPONSE TO REPLY DIRECTLY TO THE EXECUTIVE CLEMENCY REPRESENTATIVE REGARDING ANY OF THE INFORMATION SUBMITTED BY THE DISTRICT ATTORNEY PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION.

(c) (I) IF, AFTER THE FORTY-FIVE-DAY DEADLINE FOR THE RECEIPT OF A RESPONSE FROM THE DISTRICT ATTORNEY HAS PASSED AND NO INPUT HAS BEEN RECEIVED FROM THE DISTRICT ATTORNEY, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL SUBMIT THE APPLICATION TO THE EXECUTIVE CLEMENCY BOARD. IN THE EVENT THAT AN EXECUTIVE CLEMENCY BOARD DOES NOT EXIST, THE FINAL APPLICATION SHALL BE SENT TO THE GOVERNOR'S OFFICE FOR FINAL REVIEW. IN ALL CASES, THE GOVERNOR RETAINS FULL DECISION-MAKING AUTHORITY OVER EVERY REQUEST FOR COMMUTATION OF SENTENCE.

(II) IF THE DISTRICT ATTORNEY SUBMITS A RESPONSE, THE EXECUTIVE CLEMENCY REPRESENTATIVE SHALL, THIRTY DAYS AFTER FORWARDING THE RESPONSE TO THE APPLICANT PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION, SUBMIT THE APPLICATION, INCLUDING THE DISTRICT ATTORNEY'S RESPONSE AND ANY APPLICANT'S RESPONSE, TO THE EXECUTIVE CLEMENCY BOARD. IN THE EVENT THAT AN EXECUTIVE CLEMENCY BOARD DOES NOT EXIST, THE FINAL APPLICATION SHALL BE SENT TO THE GOVERNOR'S OFFICE FOR FINAL REVIEW. IN ALL CASES, THE GOVERNOR RETAINS FULL DECISION-MAKING AUTHORITY OVER EVERY REQUEST FOR

COMMUTATION OF SENTENCE.

SECTION 6. In Colorado Revised Statutes, **add** 16-17-105 as follows:

16-17-105. Factors for consideration by executive clemency board and governor in evaluating an application for commutation of sentence. (1) IN EVALUATING AND DETERMINING THE OUTCOME OF AN APPLICATION FOR COMMUTATION OF SENTENCE, THE BOARD MAY, BUT IS NOT REQUIRED TO, CONSIDER THE FOLLOWING FACTORS RELATED TO THE APPLICANT:

- (a) GOOD CHARACTER PREVIOUS TO CONVICTION;
- (b) GOOD CONDUCT DURING CONFINEMENT;
- (c) STATEMENTS AND SUPPORTING MATERIALS FROM THE DISTRICT ATTORNEY, IF ANY;
- (d) NATURE AND CIRCUMSTANCE OF THE CASE RESULTING IN THE CONTROLLING SENTENCE;
- (e) ANY AND ALL VICTIM IMPACT STATEMENTS AND POSITIONS; AND
- (f) ANY OTHER MATERIAL CONCERNING THE MERITS OF THE APPLICATION.

(2) THE BOARD SHALL GIVE THE FACTORS DESCRIBED IN SUBSECTION (1) OF THIS SECTION SUCH WEIGHT AS IS JUST AND PROPER, IN VIEW OF THE CIRCUMSTANCES OF EACH PARTICULAR CASE, WITH DUE REGARD FOR THE REHABILITATION OF THE APPLICANT.

(3) AN APPLICANT WHO CLAIMS INNOCENCE IS NOT REQUIRED TO ADMIT GUILT OR SHOW REMORSE FOR OFFENSES CONVICTED OF IN ORDER TO BE CONSIDERED FOR A COMMUTATION OF SENTENCE.

(4) THE BOARD MAY MAKE SPECIAL CONSIDERATION FOR APPLICANTS WHO:

- (a) ARE VETERANS OF THE UNITED STATES ARMED FORCES;

(b) WERE CONVICTED OF CRIMES FOR WHICH PENALTIES HAVE BEEN DECREASED SINCE THE APPLICANT'S CONVICTION; OR

(c) WERE PROSECUTED FOR CRIMES THAT OCCURRED WHEN THE APPLICANT WAS A JUVENILE.

(5) THE GOVERNOR HAS SOLE DISCRETION IN EVALUATING COMMENTS CONTAINED IN THE APPLICATION AND IN SOLICITING OTHER COMMENTS AS THE GOVERNOR DEEMS APPROPRIATE.

(6) IN ALL CASES, THE GOVERNOR RETAINS FULL DECISION-MAKING AUTHORITY OVER EVERY REQUEST FOR COMMUTATION OF SENTENCE.

SECTION 7. Appropriation. For the 2023-24 state fiscal year, \$28,221 is appropriated to the office of the governor. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.4 FTE. To implement this act, the office may use this appropriation for administration of the governor's office and residence.

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO