

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0775.01 Jane Ritter x4342

HOUSE BILL 23-1214

HOUSE SPONSORSHIP

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House Committees
Judiciary

Senate Committees
Judiciary

SENATE
Amended 3rd Reading
May 3, 2023

A BILL FOR AN ACT

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

SENATE
Amended 2nd Reading
May 2, 2023

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>.)

HOUSE
3rd Reading Unamended
April 26, 2023

The bill formalizes and establishes details concerning the process for an incarcerated individual (applicant) to apply for a commutation of sentence. The process includes requiring the executive clemency representative to gather information from the district attorney who prosecuted the applicant's case and creating a list of factors that the

HOUSE
Amended 2nd Reading
April 25, 2023

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

governor and executive clemency board may consider when evaluating the application and deciding whether the applicant's sentence should be commuted. The governor retains the ultimate decision-making authority whether to commute a sentence.

The bill permits the governor to grant pardons to a class of defendants who were convicted of the possession of up to 2 ounces of marijuana without complying with the commutation process.

The bill requires the governor's office to keep statistics on applications for commutation of sentence and post a report of the statistics annually on its website.

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

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

4 **16-17-101. Governor may commute sentence.** The governor is
5 ~~hereby~~ fully authorized, when ~~he~~ THE GOVERNOR deems it proper and
6 advisable and consistent with the public interests and the rights and
7 interests of the condemned, to commute the sentence in any case by
8 reducing the penalty ~~in a capital case to~~ IN A CASE WITH A SENTENCE OF
9 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR A CASE OF imprisonment for
10 life ~~or for~~ WITH THE POSSIBILITY OF PAROLE TO a term of not less than
11 twenty years ~~at hard labor~~ IN THE DEPARTMENT OF CORRECTIONS.

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

14 **16-17-101.5. Definitions.** AS USED IN THIS ARTICLE 17, UNLESS
15 THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

22 _____

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

25 **16-17-102.3. Procedure for application for commutation of**
26 **sentence by governor - application materials - timeline -**
27 **responsibilities of the executive clemency representative. (1) THE**

1 EXECUTIVE CLEMENCY REPRESENTATIVE IS RESPONSIBLE FOR PROCESSING
2 AN APPLICATION THROUGH THE ENTIRE PROCESS. THE EXECUTIVE
3 CLEMENCY REPRESENTATIVE SHALL PRODUCE THE APPLICATION,
4 INCLUDING DESIGNING AND MAILING THE APPLICATION CONSISTENT WITH
5 LANGUAGE IN THE CURRENT EXECUTIVE ORDER CREATING THE BOARD.

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

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

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

19 (b) PLANS FOR REENTERING THE COMMUNITY;

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

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

27 (e) IF APPROPRIATE, A SUPPORT LETTER FROM THE VICTIM OR

1 VICTIM'S FAMILY MAY BE INCLUDED.

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

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

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

18 (7) (a) AFTER AN APPLICATION FOR COMMUTATION OF SENTENCE
19 IS SUBMITTED BY THE APPLICANT, THE EXECUTIVE CLEMENCY
20 REPRESENTATIVE SHALL REQUEST A CERTIFICATE OF CONDUCT FROM THE
21 SUPERINTENDENT OF THE APPLICANT'S CURRENT CORRECTIONAL FACILITY
22 AND ANY OTHER CORRECTIONAL FACILITIES WHERE THE APPLICANT WAS
23 HOUSED. THE CERTIFICATE MUST INCLUDE A SUMMARY OF THE
24 APPLICANT'S CONDUCT DURING CONFINEMENT IN THE CORRECTIONAL
25 FACILITY. THE SUPERINTENDENT SHALL SUBMIT THE CERTIFICATE OF
26 CONDUCT TO THE EXECUTIVE CLEMENCY REPRESENTATIVE WITHIN SIXTY
27 DAYS AFTER THE EXECUTIVE CLEMENCY REPRESENTATIVE'S REQUEST. THE

1 CERTIFICATE MUST ALSO INCLUDE THE APPLICANT'S COLORADO
2 ACTUARIAL RISK ASSESSMENT SCALE (CARAS) SCORE, THE APPLICANT'S
3 COLORADO TRANSITIONAL ACCOUNTABILITY PLAN (CTAP), REPORTS OF
4 ANY DISCIPLINARY SANCTIONS AGAINST THE APPLICANT, AND
5 PRESENTENCE INVESTIGATION REPORTS, DETAINER NOTIFICATIONS, OR
6 OTHER SIMILAR LAW ENFORCEMENT COMMUNICATIONS.

7 (b) THE DEPARTMENT SHALL, UPON REQUEST FROM THE
8 APPLICANT, UPDATE ANY RISK ASSESSMENT INSTRUMENT DETAILED IN THIS
9 SUBSECTION (7) WITHIN THIRTY DAYS AFTER THE EXECUTIVE CLEMENCY
10 REPRESENTATIVE'S REQUEST FOR A CERTIFICATE OF CONDUCT PURSUANT
11 TO THIS SUBSECTION (7).

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

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

24 (10) THE EXECUTIVE CLEMENCY BOARD MAY REQUEST AN
25 INTERVIEW WITH THE APPLICANT. THE APPLICANT MAY ACCEPT OR DENY
26 THE INTERVIEW WITH THE EXECUTIVE CLEMENCY BOARD. IF THE
27 APPLICANT ACCEPTS THE INTERVIEW, THE APPLICANT MAY HAVE LEGAL

1 COUNSEL PRESENT THROUGHOUT THE INTERVIEW.

2

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

5 **16-17-104. District attorney responsibility - submission of**
6 **response and materials - applicant response - notification to victim.**

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

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

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

27 (b) IF THE DISTRICT ATTORNEY SUBMITS A RESPONSE WITHIN

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

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

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

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

1 follows:

2 **16-17-105. Factors for consideration by executive clemency**
3 **board and governor in evaluating an application for commutation of**

4 **sentence.** (1) IN EVALUATING AND DETERMINING THE OUTCOME OF AN
5 APPLICATION FOR COMMUTATION OF SENTENCE, THE BOARD MAY, BUT
6 IS NOT REQUIRED TO, CONSIDER THE FOLLOWING FACTORS RELATED TO
7 THE APPLICANT:

8 (a) GOOD CHARACTER PREVIOUS TO CONVICTION;

9 (b) GOOD CONDUCT DURING CONFINEMENT;

10 (c) STATEMENTS AND SUPPORTING MATERIALS FROM THE DISTRICT
11 ATTORNEY, IF ANY;

12 (d) NATURE AND CIRCUMSTANCE OF THE CASE RESULTING IN THE
13 CONTROLLING SENTENCE;

14 (e) ANY AND ALL VICTIM IMPACT STATEMENTS AND POSITIONS;
15 AND

16 (f) ANY OTHER MATERIAL CONCERNING THE MERITS OF THE
17 APPLICATION.

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

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

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

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

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

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

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

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

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12 **SECTION 7. Appropriation.** For the 2023-24 state fiscal year,
13 \$28,221 is appropriated to the office of the governor. This appropriation
14 is from the general fund and is based on an assumption that the office will
15 require an additional 0.4 FTE. To implement this act, the office may use
16 this appropriation for administration of the governor's office and
17 residence.

18 **SECTION 8. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, or safety.