

CHAPTER 349

CRIMINAL LAW AND PROCEDURE

SENATE BILL 23-164

BY SENATOR(S) Gonzales and Gardner, Buckner, Coleman, Exum, Fields, Hansen, Kolker, Lundeen, Pelton B., Priola, Rich, Smallwood;
also REPRESENTATIVE(S) Bacon and Weissman, Michaelson Jenet.

AN ACT

CONCERNING THE CONTINUATION OF THE SEX OFFENDER MANAGEMENT BOARD, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE 2022 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 16-11-102, **amend** (1)(b)(I) introductory portion as follows:

16-11-102. Presentence or probation investigation. (1) (b) (I) Each presentence report prepared regarding a sex offender, as defined in ~~section 16-11.7-102(2)~~ SECTION 16-11.7-102 (2)(a)(I) TO (2)(a)(III), OR IF REQUESTED BY THE PROSECUTING ATTORNEY OR COURT FOR A PERSON WHO MAY BE DETERMINED TO BE A SEX OFFENDER BASED UPON A PRIOR OFFENSE PURSUANT TO SECTION 16-11.7-102 (2)(a)(IV), with respect to any offense committed on or after January 1, 1996, ~~shall~~ MUST contain the results of an evaluation and identification conducted pursuant to article 11.7 of this ~~title~~ TITLE 16; except that:

SECTION 2. In Colorado Revised Statutes, 16-11.7-102, **amend** (1), (1.5), and (2)(a) as follows:

16-11.7-102. Definitions. As used in this article 11.7, unless the context otherwise requires:

(1) "Adult sex offender" means a person who has been convicted, as described in ~~subparagraphs (I) to (III) of paragraph (a) of subsection (2)~~ SUBSECTION (2)(a)(I), (2)(a)(II), OR (2)(a)(IV) of this section, of a sex offense, BUT DOES NOT INCLUDE A

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.

PERSON WHO MEETS THE DEFINITION OF A "JUVENILE WHO HAS COMMITTED A SEXUAL OFFENSE", AS DEFINED IN SUBSECTION (1.5) OF THIS SECTION, UNLESS THE PERSON HAS ALSO BEEN CONVICTED OF A SEX OFFENSE COMMITTED ON OR AFTER THE DAY THE PERSON ATTAINED EIGHTEEN YEARS OF AGE OR WHO IS SENTENCED FOR A SEX OFFENSE ON OR AFTER THE PERSON ATTAINED TWENTY-ONE YEARS OF AGE.

(1.5) "Juvenile who has committed a sexual offense" means a juvenile who WAS LESS THAN EIGHTEEN YEARS OF AGE AT THE TIME OF THE SEX OFFENSE AND WHO HAS BEEN adjudicated as a juvenile or who receives a deferred adjudication OR WHO IS SENTENCED PRIOR TO ATTAINING TWENTY-ONE YEARS OF AGE AFTER BEING CRIMINALLY CONVICTED IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517 OR 19-2-518 on or after July 1, 2002, OR SECTION 19-2.5-801 OR 19-2.5-802, ON OR AFTER OCTOBER 1, 2021, for an offense that would constitute a sex offense, as defined in subsection (3) of this section, if committed as an adult, or a juvenile who has committed any offense, the underlying factual basis of which involves a sex offense.

(2) (a) "Sex offender" means any person who is:

(I) Convicted in the state of Colorado, on or after January 1, 1994, of any sex offense as defined in subsection (3) of this section; ~~or~~

~~(II) Convicted in the state of Colorado on or after January 1, 1994, of any criminal offense, if such person has previously been convicted of a sex offense as described in subsection (3) of this section in the state of Colorado, or if such person has previously been convicted in any other jurisdiction of any offense that would constitute a sex offense as defined in subsection (3) of this section, or if such person has a history of any sex offenses as defined in subsection (3) of this section; or~~

~~(III) (II) Convicted in the state of Colorado on or after July 1, 2000, of any criminal offense, the underlying factual basis of which involves a sex offense; or~~

~~(IV) (III) A juvenile who has committed a sexual offense; OR~~

(IV) A PERSON WHO:

(A) WAS EVALUATED BECAUSE OF A DISCRETIONARY REQUEST BY A PROSECUTING ATTORNEY OR COURT PURSUANT TO SECTION 16-11-102; AND

(B) A COURT DETERMINES SHOULD UNDERGO SEX OFFENDER TREATMENT BASED UPON THE RECOMMENDATIONS OF THE EVALUATION AND IDENTIFICATION PURSUANT TO SECTION 16-11.7-104; AND

(C) IS CONVICTED IN THE STATE OF COLORADO ON OR AFTER JANUARY 1, 1994, OF ANY CRIMINAL OFFENSE AND, IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF A SEX OFFENSE AS DEFINED IN SUBSECTION (3) OF THIS SECTION, IN THE STATE OF COLORADO; OR IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED IN ANY OTHER JURISDICTION OF ANY OFFENSE THAT WOULD CONSTITUTE A SEX OFFENSE AS DEFINED IN SUBSECTION (3) OF THIS SECTION; OR IF THE PERSON HAS A HISTORY OF ANY SEX OFFENSES AS DEFINED IN SUBSECTION (3) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, 16-11.7-103, **amend** (4)(b)(I), (4)(j)(I), and (6); and **add** (4)(h.5) and (4)(m) as follows:

16-11.7-103. Sex offender management board - creation - duties - repeal.
(4) Duties of the board. The board shall carry out the following duties:

(b) Guidelines and standards for treatment of adult offenders. (I) The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat adult sex offenders, including adult sex offenders with intellectual and developmental disabilities, incorporating in the guidelines and standards the concepts of the risk-need-responsivity or another evidence-based correctional model, which guidelines and standards can be used in the treatment of offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(b) must be as flexible as possible so that the programs may be accessed by each adult sex offender to prevent the offender from harming victims and potential victims. Programs must include a continuing monitoring process and a continuum of treatment options available to an adult sex offender as ~~he or she~~ THE OFFENDER proceeds through the criminal justice system. Treatment options must be determined by a current risk assessment and evaluation and may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, or treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(b) must, to the extent possible, be accessible to all adult sex offenders in the criminal justice system, including those offenders with behavioral, mental health, and co-occurring disorders AND MUST ENSURE, TO THE EXTENT POSSIBLE, THAT TREATMENT IS RESPONSIVE TO THE AGE AND DEVELOPMENTAL STATUS OF THE OFFENDER AT THE TIME OF TREATMENT, AS WELL AS THE LINGUISTIC, CULTURAL, RELIGIOUS, AND RACIAL CHARACTERISTICS; SEXUAL ORIENTATION, AS DEFINED IN SECTION 24-34-301; GENDER IDENTITY, AS DEFINED IN SECTION 24-34-301; AND GENDER EXPRESSION, AS DEFINED IN SECTION 24-34-301, OF THE OFFENDERS SERVED. The procedures for evaluation, identification, treatment, and monitoring developed pursuant to this subsection (4) must be implemented only to the extent that money is available in the sex offender surcharge fund created in section 18-21-103 (3).

(h.5) Compliance reviews of treatment providers. BEGINNING SEPTEMBER 1, 2024, AND EVERY TWO YEARS THEREAFTER, THE BOARD SHALL PERFORM A COMPLIANCE REVIEW OF AT LEAST TEN PERCENT OF TREATMENT PROVIDERS.

(j) (I) Guidelines and standards for treatment of juveniles who have committed a sexual offense. The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat juveniles who have committed A sexual ~~offenses~~ OFFENSE, including juveniles with intellectual and developmental disabilities, incorporating in the guidelines and standards the concepts of the risk-need-responsivity or another evidence-based correctional model, which guidelines and standards may be used for ~~juvenile offenders~~ JUVENILES who are placed on probation, committed to the department of human services, SENTENCED TO COMMUNITY CORRECTIONS, SENTENCED TO THE DEPARTMENT OF CORRECTIONS, placed on parole, or placed in out-of-home placement. Programs implemented

pursuant to the guidelines and standards developed pursuant to this subsection (4)(j) must be as flexible as possible so that the programs may be accessed by each juvenile offender to prevent ~~him or her~~ THE JUVENILE from harming victims and potential victims. Programs must provide a continuing monitoring process and a continuum of treatment options available to AS a juvenile offender as he or she proceeds through the juvenile OR CRIMINAL justice system. Treatment options may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, and treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this subsection (4)(j) must be, to the extent possible, accessible to all juveniles who have committed sexual offenses and who are in the juvenile OR CRIMINAL justice system, including juveniles with behavioral, mental health, or co-occurring disorders AND MUST ENSURE, TO THE EXTENT POSSIBLE, THAT TREATMENT IS RESPONSIVE TO THE AGE AND DEVELOPMENTAL STATUS OF THE JUVENILE AT THE TIME OF TREATMENT, AS WELL AS THE LINGUISTIC, CULTURAL, RELIGIOUS, AND RACIAL CHARACTERISTICS; SEXUAL ORIENTATION, AS DEFINED IN SECTION 24-34-301; GENDER IDENTITY, AS DEFINED IN SECTION 24-34-301; AND GENDER EXPRESSION, AS DEFINED IN SECTION 24-34-301, OF THE JUVENILES SERVED.

(m) Release guideline instrument for sex offenders with determinate sentences. (I) ON OR BEFORE DECEMBER 1, 2023, AND AS INDICATED THEREAFTER, THE BOARD, IN COLLABORATION WITH THE STATE BOARD OF PAROLE, SHALL REVISE THE SPECIFIC SEX OFFENDER RELEASE GUIDELINE INSTRUMENT, AS REQUIRED BY SECTION 17-22.5-404 (4)(c)(II), FOR USE BY THE STATE BOARD OF PAROLE FOR THOSE INMATES CLASSIFIED AS SEX OFFENDERS WITH DETERMINATE SENTENCES. THE REVISED RELEASE GUIDELINE INSTRUMENT MUST INCORPORATE THE CONCEPTS OF RISK-NEED-RESPONSIVITY OR ANOTHER EVIDENCE-BASED CORRECTIONAL MODEL AND MUST BE AS FLEXIBLE AS POSSIBLE TO ENSURE THAT THE PROGRAMS NECESSARY CAN BE TIMELY ACCESSED BY THE ADULT SEX OFFENDER TO PREVENT THE OFFENDER FROM HARMING VICTIMS OR POTENTIAL VICTIMS. THE REVISED RELEASE GUIDELINE INSTRUMENT MUST CONSIDER THE INTERSECTION OF THE GUIDELINE INSTRUMENT WITH THE FACTORS OUTLINED IN SECTION 17-22.5-404 (4)(a); HOWEVER, THE RELEASE GUIDELINE INSTRUMENT MUST NOT INCLUDE THE OFFENDER'S INABILITY TO ACCESS TREATMENT DURING INCARCERATION, WHEN DETERMINED TO BE ELIGIBLE FOR TREATMENT WITHIN THE DEPARTMENT OF CORRECTIONS, AS A BASIS FOR DENIAL OF PAROLE.

(II) IN DEVELOPING THE REVISED RELEASE GUIDELINE INSTRUMENT, THE BOARDS SHALL CONSIDER CURRENT RESEARCH, INFORMATION, AND DATA REGARDING:

(A) FACTORS CONSISTENT WITH THE OFFENDER'S INDIVIDUAL STATIC AND DYNAMIC RISK AND WHETHER PARTICIPATION IN TREATMENT WHILE INCARCERATED WILL SIGNIFICANTLY REDUCE THE RISK PRIOR TO RELEASE;

(B) THE MOST EFFECTIVE USE OF LIMITED TREATMENT RESOURCES WITHIN THE DEPARTMENT OF CORRECTIONS;

(C) THE AVAILABILITY OR LACK OF AVAILABILITY OF TREATMENT DURING INCARCERATION FOR OFFENDERS WITH DETERMINATE SENTENCES WHO MIGHT

OTHERWISE BE ELIGIBLE FOR RELEASE PURSUANT TO SECTION 17-22.5-404 (4)(a);
AND

(D) THE EFFICACY OF TREATMENT AS A CONDITION OF COMMUNITY SUPERVISION
ON PAROLE.

(6) **Repeal.** This section is repealed, effective ~~September 1, 2023~~ SEPTEMBER 1,
2028. Before the repeal, this section is scheduled for review in accordance with
section 24-34-104.

SECTION 4. In Colorado Revised Statutes, 16-11.7-104, **amend** (1) as follows:

16-11.7-104. Sex offenders - evaluation and identification required.

(1) WHEN REQUIRED AS PART OF THE PRESENTENCE OR PROBATION INVESTIGATION
PURSUANT TO SECTIONS 16-11-102 (1)(b)(I) AND 16-11.7-102 (2)(a)(I) TO (2)(a)(IV),
on and after January 1, 1994, each convicted adult sex offender and juvenile who
has committed a sexual offense who is to be considered for probation ~~shall be~~ IS
required as a part of the presentence or probation investigation required pursuant to
~~section 16-11-102~~, to submit to an evaluation for treatment, an evaluation for risk,
procedures required for monitoring of behavior to protect victims and potential
victims, and an identification developed pursuant to section 16-11.7-103 (4).

SECTION 5. In Colorado Revised Statutes, 16-11.7-105, **amend** (2); and **add**
(1.5) and (3) as follows:

**16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation
and identification required - subcommittee created.** (1.5) (a) THE DEPARTMENT

OF CORRECTIONS SHALL IDENTIFY ALL INMATES WHO ARE CLASSIFIED TO UNDERGO
TREATMENT, ARE ELIGIBLE TO RECEIVE TREATMENT PURSUANT TO THE DEPARTMENT
OF CORRECTIONS' POLICY, AND HAVE NOT BEEN PROVIDED WITH THE OPPORTUNITY
TO UNDERGO TREATMENT WHILE INCARCERATED. FOR EACH INMATE, THE
DEPARTMENT OF CORRECTIONS SHALL PROVIDE THE FOLLOWING DATA TO THE
BOARD ON OR BEFORE JULY 31, 2023:

(I) THE INMATE'S DEPARTMENT OF CORRECTIONS IDENTIFICATION NUMBER;

(II) THE DATE OF THE INMATE'S SENTENCE, THE CRIME OF CONVICTION, AND
LENGTH OF THE SENTENCE, INCLUDING LENGTH OF PAROLE;

(III) WHETHER THE SENTENCE TO THE DEPARTMENT OF CORRECTIONS WAS A
RESULT OF A PAROLE REVOCATION;

(IV) THE DATE THE INMATE WAS PLACED ON THE GLOBAL REFERRAL LIST AS
ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS;

(V) THE ACTUAL OR PROJECTED PAROLE ELIGIBILITY DATE AND MANDATORY
RELEASE DATE, AS OF JULY 31, 2023, AS WELL AS, IF APPLICABLE, WHETHER THE
INMATE IS ENROLLED IN OR HAS PARTICIPATED IN TRACK I OR TRACK II TREATMENT,
OR WHETHER THE INMATE HAS BEEN PLACED IN THE MAINTENANCE PHASE; AND

(VI) THE DEPARTMENT OF CORRECTIONS SHALL QUALIFIER CODE FOR THE INMATE, IF ANY.

(b) THE DEPARTMENT OF CORRECTIONS SHALL FURTHER IDENTIFY, IN WRITING:

(I) IN THE AGGREGATE, VALIDATED STATIC RISK ASSESSMENT SCORES OF THE INMATES DESCRIBED IN THIS SECTION, IF AVAILABLE, SEPARATELY IDENTIFYING THOSE SERVING INDETERMINATE AND DETERMINATE SENTENCES;

(II) THE TOTAL TREATMENT CAPACITY IN THE DEPARTMENT OF CORRECTIONS AND, FOR EACH FACILITY PROVIDING SEX OFFENDER TREATMENT AND MONITORING PROGRAM TREATMENT SERVICES, THE TREATMENT PROGRAM CAPACITY AND THE PHASES OR TRACKS OF TREATMENT OFFERED;

(III) THE NAMES OF ALL BOARD-APPROVED PROVIDERS EMPLOYED BY OR CONTRACTING WITH THE DEPARTMENT OF CORRECTIONS, THE AMOUNT OF TIME EACH PROVIDER OR CONTRACTOR HAS BEEN WORKING WITH THE DEPARTMENT OF CORRECTIONS, AND AT WHICH LOCATION EACH PROVIDER OR CONTRACTOR IS PROVIDING SERVICES EACH MONTH;

(IV) THE FREQUENCY OF SEX OFFENDER TREATMENT AND MONITORING PROGRAM TREATMENT GROUPS AND THE FREQUENCY OF CANCELLATION OF SUCH GROUPS IN ALL FACILITIES;

(V) THE NUMBER OF OPEN POSITIONS FOR ANY SEX OFFENDER TREATMENT AND MONITORING PROGRAM PROVIDERS, INCLUDING GROUP THERAPY POSITIONS, POLYGRAPH PROVIDERS, OR ANY OTHER POSITIONS NECESSARY TO OPERATE THE PROGRAM; AND

(VI) ANY AND ALL EFFORTS MADE BY THE DEPARTMENT OF CORRECTIONS IN THE PAST FIVE YEARS TO INCREASE THE CAPACITY OF THE SEX OFFENDER TREATMENT AND MONITORING PROGRAM, FILL AND MAINTAIN THE ALLOCATED FULL-TIME OR CONTRACT POSITIONS, AND ANY DATA AVAILABLE TO ADDRESS ANY HIRING CHALLENGES IDENTIFIED BY THE DEPARTMENT.

(c) THE DEPARTMENT OF CORRECTIONS SHALL PROVIDE THIS DATA TO THE BOARD PRIOR TO JULY 31, 2023. THE BOARD SHALL FORM A SUBCOMMITTEE WITH REPRESENTATIVES FROM THE BOARD, COMMUNITY SEX OFFENDER TREATMENT PROVIDERS, THE DEPARTMENT OF CORRECTIONS, THE DIVISION OF ADULT PAROLE IN THE DEPARTMENT OF CORRECTIONS, AND THE STATE PAROLE BOARD CREATED PURSUANT TO SECTION 17-2-201. THE PURPOSE OF THE SUBCOMMITTEE IS TO DEVELOP SOLUTIONS TO ADDRESS TREATMENT RESOURCES FOR SEX OFFENDERS WHO ARE INCARCERATED OR IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS, INCLUDING A LEGAL AND EVIDENCE-BASED ANALYSIS OF INMATES WHO ARE REQUIRED TO PROGRESS IN TREATMENT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO ANY RELEASE PURSUANT TO SECTION 18-1.3-1006 AND THOSE WHO ARE CLASSIFIED BY THE DEPARTMENT OF CORRECTIONS AS AN INMATE WHO IS REQUIRED TO PARTICIPATE IN TREATMENT. THE SUBCOMMITTEE SHALL:

(I) ANALYZE THE DATA PROVIDED BY THE DEPARTMENT OF CORRECTIONS AND PREPARE A COMPREHENSIVE REPORT ON THE CURRENT PRISON POPULATION TO

IDENTIFY INMATES WHO ARE ELIGIBLE TO RECEIVE TREATMENT, WITH SPECIAL PRIORITY TOWARDS INMATES WHO ARE PAST PAROLE ELIGIBILITY DATE, HAVE NOT BEEN PROVIDED A TREATMENT OPPORTUNITY, AND REQUIRE TREATMENT TO MEET COMMUNITY CORRECTIONS OR PAROLE ELIGIBILITY REQUIREMENTS PURSUANT TO SECTION 18-1.3-301 (1)(f), 18-1.3-1006, AND 17-22.5-404 (4)(c)(II);

(II) IDENTIFY ALL BARRIERS THE DEPARTMENT OF CORRECTIONS FACES IN PROVIDING TIMELY ACCESS TO TREATMENT TO INMATES WHO REQUIRE TREATMENT TO MEET PAROLE ELIGIBILITY REQUIREMENTS PURSUANT TO SECTIONS 18-1.3-1006 AND 17-22.5-404 (4)(c)(II) AND MAKE RECOMMENDATIONS FOR WORKABLE SOLUTIONS TO INCREASE TREATMENT ACCESS IN THE DEPARTMENT OF CORRECTIONS, INCLUDING EVIDENCE-BASED, VALIDATED PROJECTIONS DEVELOPED IN CONJUNCTION WITH THE DIVISION OF CRIMINAL JUSTICE EXPERTS IN PRISON POPULATION PROJECTIONS, FOR THE DECREASE IN BACKLOG THAT WOULD OCCUR WITH THE IMPLEMENTATION OF ANY SOLUTIONS;

(III) DETERMINE WHICH, IF ANY, STANDARDS ARE BARRIERS TO PROVIDING TIMELY ACCESS TO TREATMENT AND MAKE RECOMMENDATIONS CONCERNING CHANGES OR EXCEPTIONS TO THE STANDARDS FOR SEX OFFENDERS INCARCERATED IN THE DEPARTMENT OF CORRECTIONS;

(IV) REVIEW AND CONSIDER REVISIONS TO THE DEPARTMENT OF CORRECTIONS POLICIES AND ADMINISTRATIVE REGULATIONS TO PREVENT UNNECESSARY BACKLOG IN MAKING TREATMENT ACCESSIBLE TO INMATES WHO REQUIRE TREATMENT TO MEET PAROLE ELIGIBILITY REQUIREMENTS;

(V) REVIEW THE CRITERIA ESTABLISHED PURSUANT TO SECTION 18-1.3-1009 AND MAKE REVISIONS TO POLICIES OF THE DEPARTMENT OF CORRECTIONS AND ADMINISTRATIVE REGULATIONS TO PREVENT UNNECESSARY BACKLOG IN MAKING TREATMENT ACCESSIBLE TO INMATES WHO REQUIRE TREATMENT TO MEET PAROLE ELIGIBILITY REQUIREMENTS PURSUANT TO SECTION 18-1.3-1006;

(VI) REVIEW PAROLE GUIDELINES FOR THOSE INMATES CLASSIFIED AS SEX OFFENDERS WITH DETERMINATE SENTENCES ESTABLISHED PURSUANT TO SECTION 17-22.5-404 AND MAKE REVISIONS AS NECESSARY TO PREVENT UNNECESSARY BACKLOG IN MAKING TREATMENT ACCESSIBLE TO INMATES WHO REQUIRE TREATMENT TO MEET PAROLE ELIGIBILITY REQUIREMENTS;

(VII) DETERMINE WHETHER ADDITIONAL TREATMENT PROVIDERS WILL CONTRACT WITH THE DEPARTMENT OF CORRECTIONS TO PROVIDE EVALUATION OR TREATMENT SERVICES TO INCARCERATED INDIVIDUALS AND MAKE WORKABLE RECOMMENDATIONS CONCERNING HOW TO IMMEDIATELY INCREASE INMATE ACCESS TO THOSE APPROVED PROVIDERS;

(VIII) DETERMINE WHETHER INCREASED FUNDING OR ANY OTHER RESOURCES COULD MAKE ACCESS TO TELEHEALTH TREATMENT VIABLE FOR INMATES AND THE AMOUNT OF INCREASED FUNDING OR RESOURCES NECESSARY TO ACCOMPLISH THIS GOAL; AND

(IX) IN CONSIDERATION OF ANY EXISTING TREATMENT BACKLOG AND OF FINITE TREATMENT RESOURCES, MAKE RECOMMENDATIONS FOR PROCURING OR MAKING

AVAILABLE SUFFICIENT TREATMENT RESOURCES WITHOUT NEGATIVELY IMPACTING PUBLIC SAFETY AND PROTECTION OF VICTIMS.

(d) THE SUBCOMMITTEE CREATED IN SUBSECTION (1.5)(c) OF THIS SECTION SHALL PRESENT ITS WRITTEN FINDINGS IN A REPORT AND PROPOSAL TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, ON OR BEFORE FEBRUARY 1, 2024. THE DEPARTMENT OF CORRECTIONS AND THE PAROLE BOARD SHALL COMMENT ON THE REPORT'S FINDINGS AND RECOMMENDATIONS ON OR BEFORE MARCH 1, 2024.

(2) For offenders who begin community supervision on or after August 10, 2016 THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, the supervising agency of each adult sex offender and juvenile who has committed a sexual offense shall provide the offender with a choice of two appropriate treatment provider agencies staffed by approved providers unless the supervising agency documents in the file that, based upon the nature of the program offered, the needs of the offender, or the proximity of the appropriate treatment provider agency, fewer than two such agencies can meet the specific needs of the offender, ensure the safety of the public, and provide the supervising agency with reasonable access to the treatment provider agency and the offender during the course of treatment. ACCESS TO A COMPLETE LIST OF TREATMENT PROVIDERS WHO ARE APPROVED PURSUANT TO SECTION 16-11.7-106 AND WHO HAVE THE EXPERTISE TO WORK WITH THE SPECIFIC RISKS AND NEEDS OF THAT PARTICULAR OFFENDER. THE SUPERVISING AGENCY SHALL ALSO MAKE SPECIFIC RECOMMENDATIONS TO THE OFFENDER. WHEN MAKING A LIST OF REFERRALS, THE SUPERVISING AGENCY SHALL CONSIDER THE INDIVIDUAL RISKS AND TREATMENT NEEDS OF THE PARTICULAR OFFENDER, ABILITY OF THE TREATMENT PROVIDER TO ACCEPT NEW CLIENTS, GEOGRAPHIC PROXIMITY OF THE PROVIDER, AND THE NATURE OF THE PROGRAMS, AND TAILOR REFERRALS TO THOSE CONSIDERATIONS AND ANY OTHER FACTOR RELEVANT TO THE TREATMENT NEEDS OF THE OFFENDER, CAPABILITY OF THE PROVIDER, AND SAFETY OF THE COMMUNITY. FOR AN OFFENDER WHO IS A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS DESCRIBED IN SECTION 25.5-10-202, THE SUPERVISING AGENCY SHALL REFER THAT OFFENDER TO A PROVIDER APPROVED BY THE SEX OFFENDER MANAGEMENT BOARD TO WORK WITH THAT POPULATION. FOR OFFENDERS WHO PREFER TO DO TREATMENT IN A LANGUAGE OTHER THAN ENGLISH, REFERRALS MUST BE OFFERED, WHEN POSSIBLE, TO PROVIDERS WHO ARE FLUENT IN THE TARGET LANGUAGE. Once selected, the treatment provider or agency may not be changed by the offender without the approval of the community supervision team, the multidisciplinary team, or the court, EXCEPT THE OFFENDER MAY CHANGE THE TREATMENT PROVIDER OR AGENCY ONCE WITHIN NINETY DAYS OF THE COURT IMPOSING SENTENCE OR THE OFFENDER'S RELEASE ON PAROLE.

(3) THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION DO NOT APPLY TO THE DIVISION OF YOUTH SERVICES BASED ON THE NATURE OF THE PROGRAM, THE COMPLEX NEEDS OF THE JUVENILES SERVED, AND THE PLACEMENTS AND APPROVED TREATMENT PROVIDERS AVAILABLE TO WORK WITH JUVENILES FROM THE DIVISION OF YOUTH SERVICES. THE DIVISION OF YOUTH SERVICES SHALL ASSIGN JUVENILES WHO HAVE COMMITTED A SEXUAL OFFENSE TO A TREATMENT PROVIDER BASED ON THE INDIVIDUAL RISKS AND NEEDS OF THE JUVENILE AND HAVE PROCEDURES IN PLACE TO ALLOW FOR A JUVENILE OR FAMILY TO REQUEST A CHANGE IN TREATMENT PROVIDERS BASED ON RESPONSIVITY FACTORS. THE MULTIDISCIPLINARY TEAM FOR

THE JUVENILE SHALL REVIEW ALL REQUESTS FOR CHANGES IN TREATMENT PROVIDERS AND APPROVE REQUESTS IF THE MULTIDISCIPLINARY TEAM DETERMINES THE JUVENILE'S RISKS, NEEDS, AND RESPONSIVITY FACTORS CAN BE BETTER SERVED BY AN ALTERNATE TREATMENT PROVIDER.

SECTION 6. In Colorado Revised Statutes, 16-11.7-106, **amend** (2)(a) introductory portion, (2)(a)(I), and (2)(b); and **add** (1.5) and (8) as follows:

16-11.7-106. Sex offender evaluation, treatment, and polygraph services - contracts with providers - placement on provider list - grievances - fund created - repeal. (1.5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT OF CORRECTIONS MAY EMPLOY OR CONTRACT WITH AN INDIVIDUAL OR ENTITY TO PROVIDE SEX-OFFENDER-SPECIFIC EVALUATION, TREATMENT, OR POLYGRAPH SERVICES PURSUANT TO THIS ARTICLE 11.7 IF THE DIRECTOR OF THE PROGRAM IS AN APPROVED PROVIDER AND THE DEPARTMENT OPERATES A SEX OFFENDER TREATMENT AND MONITORING PROGRAM THAT CONFORMS WITH THE GUIDELINES AND STANDARDS DEVELOPED PURSUANT TO SECTION 16-11.7-103 AND THE EMPLOYEES AND CONTRACTORS ARE TRAINED TO COMPLY WITH THE STANDARDS OF THE CONFORMING PROGRAM.

(a) ANY INDIVIDUAL PROVIDING SEX-OFFENDER-SPECIFIC EVALUATION OR TREATMENT MUST HAVE A BACCALAUREATE DEGREE OR ABOVE IN A BEHAVIORAL SCIENCE WITH TRAINING OR PROFESSIONAL EXPERIENCE IN COUNSELING OR THERAPY; MUST HOLD A PROFESSIONAL MENTAL HEALTH LICENSE OR BE APPROVED BY THE DEPARTMENT OF REGULATORY AGENCIES AS AN UNLICENSED PSYCHOTHERAPIST, CERTIFIED ADDICTION COUNSELOR, LICENSED PROFESSIONAL COUNSELOR CANDIDATE, LICENSED MARRIAGE AND FAMILY THERAPIST CANDIDATE, OR PSYCHOLOGIST CANDIDATE; OR CLINICAL SOCIAL WORKER.

(b) ANY POLYGRAPH EXAMINER MUST HAVE GRADUATED FROM AN ACCREDITED AMERICAN POLYGRAPH ASSOCIATION SCHOOL AND HAVE A BACCALAUREATE DEGREE FROM A FOUR-YEAR INSTITUTION OF HIGHER EDUCATION. THE DEPARTMENT OF CORRECTIONS SHALL COMPLETE COMPLIANCE MONITORING OF CONTRACTED PROVIDERS AND POLYGRAPH EXAMINERS WHO ARE NOT APPROVED BY THE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION ON AN ANNUAL BASIS.

(c) IN THE EVENT THAT A PROVIDER WHO CONTRACTED WITH THE DEPARTMENT OF CORRECTIONS IS FOUND TO HAVE VIOLATED THE GUIDELINES AND STANDARDS DEVELOPED PURSUANT TO SECTION 16-11.7-103, THE DEPARTMENT OF CORRECTIONS SHALL TERMINATE THE CONTRACT WITH THE PROVIDER.

(d) THIS SUBSECTION (1.5) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2028. PRIOR TO REPEAL, THIS SUBSECTION (1.5) IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 16-11.7-103 (6).

(2) (a) The board shall develop an application and review process for treatment providers, evaluators, and polygraph examiners who provide services pursuant to this ~~article~~ ARTICLE 11.7 to adult sex offenders and to juveniles who have committed sexual offenses. The application and review process ~~shall~~ MUST allow providers to demonstrate that they are in compliance with the standards adopted pursuant to this

~~article~~ ARTICLE 11.7. The application and review process ~~shall consist~~ CONSISTS of the following three parts:

(I) The board shall develop separate application and review processes for standards that apply to the criminal justice component, such as criminal history record checks, for evaluators, individual treatment providers, and polygraph examiners. Applications for the criminal justice components, ~~including~~ EXCLUDING fingerprints, ~~shall~~ MUST be submitted to the board. ~~The board shall~~ DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL WORK WITH A THIRD-PARTY VENDOR TO TAKE AND forward the fingerprints to the Colorado bureau of investigation for use in conducting a state criminal history record check and for transmittal to the federal bureau of investigation for a national criminal history record check. The board may use information obtained from the state and national criminal history record checks to determine an applicant's eligibility for placement on the approved provider list. The board ~~shall be~~ IS responsible for the implementation of ~~the provisions of this subparagraph (I)~~ THIS SUBSECTION (2)(a)(I).

(b) After the process developed pursuant to ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION is established and providers have met all the criteria of the application and review process, the board may approve the provider. The board ~~and the department of regulatory agencies~~ shall jointly publish, at least annually, a list of approved providers. The board shall forward the list to the office of the state court administrator, the department of public safety, the department of human services, and the department of corrections. The board shall update and forward the list of approved providers as necessary.

(8) SUPERVISING OFFICERS SHALL FOLLOW THE GUIDELINES AND STANDARDS DEVELOPED PURSUANT TO THIS SECTION WHEN WORKING WITH SEX OFFENDERS. AGENCIES EMPLOYING SUPERVISING OFFICERS SHALL COLLABORATE WITH THE BOARD TO DEVELOP PROCEDURES TO HOLD ACCOUNTABLE A SUPERVISING OFFICER WHO FAILS TO FOLLOW THE GUIDELINES AND STANDARDS.

SECTION 7. In Colorado Revised Statutes, 18-1.3-101, **amend** (6) as follows:

18-1.3-101. Pretrial diversion - appropriation - repeal. (6) In a jurisdiction that receives state moneys for the creation or operation of diversion programs pursuant to this section, an individual accused of a sex offense as defined in section 18-1.3-1003 (5) is not eligible for pretrial diversion unless charges have been filed and, after the individual has had an opportunity to consult with counsel, the individual has completed a sex-offense-specific evaluation, which includes the use of a sex-offense-specific risk assessment instrument, conducted by an evaluator approved by the sex offender management board as required by section 16-11.7-103 (4). ~~C.R.S.~~ The district attorney may agree to place the individual in the diversion program established by the district attorney pursuant to this section if he or she finds that, based on the results of that evaluation and the other factors in subsection (3) of this section, the individual is appropriate for the program. Notwithstanding that a successfully completed diversion agreement does not constitute a history of sex offenses for purposes of sections 16-11.7-102 (2)(a)(II), 16-11.7-102 (2)(a)(IV)(C), and 16-22-103 (2)(d), ~~C.R.S.~~, the information constituting the crimes charged and facts alleged shall be available for use by a court, district attorney, any law enforcement agency, or agency of the state judicial department, if otherwise

permitted by law, in any subsequent criminal investigation, prosecution, risk or needs assessment evaluation, sentencing hearing, or during a probation or parole supervision period.

SECTION 8. In Colorado Revised Statutes, 17-22.5-404, **amend** (6)(b) as follows:

17-22.5-404. Parole guidelines - definition. (6) (b) The state board of parole shall also determine whether a decision granting, revoking, or denying parole conformed with or departed from the administrative guidelines created pursuant to ~~section 17-22.5-107~~ SECTIONS 17-22.5-107 AND 16-11.7-103 (4)(m) and, if the decision was a departure from the guidelines, the reason for the departure. The data collected pursuant to this ~~paragraph (b)~~ SUBSECTION (6) are subject to the same victim protections described in ~~paragraph (a) of this subsection (6)~~ SUBSECTION (4)(a) OF THIS SECTION.

SECTION 9. In Colorado Revised Statutes, 24-34-104, **repeal** (24)(a)(XIII); and **add** (29)(a)(XX) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal.

(24) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2023:

(XIII) ~~The sex offender management board created in section 16-11.7-103.~~

(29) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2028:

(XX) THE SEX OFFENDER MANAGEMENT BOARD CREATED IN SECTION 16-11.7-103.

SECTION 10. Appropriation. (1) For the 2023-24 state fiscal year, \$163,946 is appropriated to the department of public safety for use by the division of criminal justice. This appropriation is from the general fund and is based on an assumption that the division will require an additional 1.8 FTE. To implement this act, the division may use this appropriation for sex offender supervision.

(2) For the 2023-24 state fiscal year, \$43,122 is appropriated to the judicial department for use by courts administration. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.5 FTE. To implement this act, the division may use this appropriation for general courts administration.

SECTION 11. Appropriation - adjustments to 2023 long bill. To implement this act, the general fund appropriation made in the annual general appropriation act for the 2023-24 state fiscal year to the judicial department for use by the probation and related services for probation programs is decreased by \$136,680, and the related FTE is decreased by 1.9 FTE.

SECTION 12. 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.

Approved: June 5, 2023