

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0462.02 Nicole Myers x4326

HOUSE BILL 18-1065

HOUSE SPONSORSHIP

Beckman and Buckner,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING DISCIPLINE OF A DEPARTMENT OF HUMAN SERVICES
102 EMPLOYEE WHEN THE EMPLOYEE IS FOUND TO HAVE
103 MISTREATED A VULNERABLE PERSON.

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>.)

The Colorado department of human services (department) operates numerous facilities in the state that provide direct care to vulnerable people, including veterans and their families, youth in rehabilitation programs, people with intellectual and developmental disabilities, and people with mental health diagnoses. Current law specifies when an

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.

employee of the department (employee) will be suspended or dismissed after being charged with specified criminal offenses. However, the department has encountered difficulty in suspending, dismissing, or otherwise disciplining employees through the administrative process when the employee was involved in an egregious incident of mistreatment of a vulnerable person but was not convicted of a criminal offense. The bill specifies that:

- ! In considering a disciplinary action against an employee for engaging in mistreatment, abuse, exploitation, or neglect against a vulnerable person, the appointing authority shall give predominant weight to the safety of vulnerable persons over the interests of any other person.
- ! If the disciplinary action includes a written finding by the appointing authority that the employee has engaged in mistreatment, abuse, exploitation, or neglect against a vulnerable person, the employee is presumed to have engaged in serious and flagrant willful misconduct or serious and flagrant willful failure to perform his or her duties (presumption).
- ! If the employee petitions for a hearing before the state personnel board, the presumption may be rebutted only if the employee presents clear and convincing evidence to contradict and overcome the appointing authority's finding that the employee has engaged in mistreatment, abuse, exploitation, or neglect against a vulnerable person.

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

2 **SECTION 1.** In Colorado Revised Statutes, 27-90-111, **add** (15)
3 as follows:

4 **27-90-111. Employment of personnel - screening of applicants**
5 **- disqualifications from employment.** (15) (a) IN CONSIDERING ANY
6 DISCIPLINARY ACTION UNDER SECTION 24-50-125 (1) AGAINST AN
7 EMPLOYEE WHO IS CERTIFIED TO ANY CLASS OR POSITION IN THE STATE
8 PERSONNEL SYSTEM FOR ENGAGING IN MISTREATMENT, ABUSE,
9 EXPLOITATION, OR NEGLECT AGAINST A VULNERABLE PERSON, THE
10 APPOINTING AUTHORITY SHALL GIVE PREDOMINANT WEIGHT TO THE
11 SAFETY OF VULNERABLE PERSONS OVER THE INTERESTS OF ANY OTHER

1 PERSON. FOR PURPOSES OF THIS SUBSECTION (15), "MISTREATMENT",
2 "ABUSE", "EXPLOITATION", OR "NEGLECT" SHALL HAVE THE SAME
3 MEANINGS AS DEFINED BY FEDERAL OR STATE LAW, RULES, REGULATIONS,
4 OR POLICIES GOVERNING THE TYPE OF SERVICE PROVIDED BY THE
5 DEPARTMENT TO THE VULNERABLE PERSON.

6 (b) IF THE DISCIPLINARY ACTION INCLUDES A WRITTEN FINDING BY
7 THE APPOINTING AUTHORITY THAT THE EMPLOYEE HAS ENGAGED IN
8 MISTREATMENT, ABUSE, EXPLOITATION, OR NEGLECT AGAINST A
9 VULNERABLE PERSON, THE EMPLOYEE IS PRESUMED TO HAVE ENGAGED IN
10 SERIOUS AND FLAGRANT WILLFUL MISCONDUCT OR SERIOUS AND
11 FLAGRANT WILLFUL FAILURE TO PERFORM HIS OR HER DUTIES UNDER
12 SECTION 24-50-125 (1).

13 (c) IF THE EMPLOYEE PETITIONS FOR A HEARING BEFORE THE STATE
14 PERSONNEL BOARD UNDER 24-50-125 (3), THE PRESUMPTION SET FORTH
15 IN SUBSECTION (15)(b) OF THIS SECTION MAY BE REBUTTED ONLY IF THE
16 EMPLOYEE PRESENTS CLEAR AND CONVINCING EVIDENCE TO CONTRADICT
17 AND OVERCOME THE APPOINTING AUTHORITY'S FINDING THAT THE
18 EMPLOYEE HAS ENGAGED IN MISTREATMENT, ABUSE, EXPLOITATION, OR
19 NEGLECT AGAINST A VULNERABLE PERSON.

20 (d) THIS SUBSECTION (15) APPLIES REGARDLESS OF WHETHER THE
21 EMPLOYEE HAS BEEN CHARGED WITH OR CONVICTED OF A DISQUALIFYING
22 OFFENSE UNDER SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION.

23 **SECTION 2. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2018 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.