A BILL FOR AN ACT

CONCERNING ALLOWING LOW-RISK SEX OFFENDERS TO RECEIVE REQUIRED SEX OFFENDER TREATMENT IN A COMMUNITY-BASED PROGRAM.

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 bill requires the sex offender management board, in collaboration with the department of corrections, the judicial department, and the parole board, and in consultation with sex offender research experts, to establish evidence-based criteria for the release of low-risk offenders. The bill requires the department of corrections to allow a
low-risk sex offender to complete his or her required treatment in a community-based program if the department does not have sufficient prison-based treatment for the offender. The bill prohibits the parole board from denying parole to a low-risk sex offender because the offender did not complete treatment if the offender is seeking release to complete treatment in a community-based program.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) In a 2013 state-funded external study of the department of corrections' sex offender treatment and monitoring program (SOTMP), the study recommended that the department of corrections prioritize sex offender treatment for inmates while incarcerated based on risk to sexually reoffend. Yet, a 2016 state audit found that, despite receiving additional financial resources from the general assembly, the department has not been able to hire adequate, qualified staff to treat everyone recommended for sex offender treatment and to implement the recommendation to prioritize treatment based upon risk.

(b) In a 2014 state-funded external study of the sex offender management board, experts noted "low risk sexual offenders represent a risk for sexual offending that is about the same as that presented by nonsexual offenders under supervision";

(c) All offenders sent to prison for a sexual offense or for any nonsexual crime when they have a prior adult or juvenile sex offense are referred for treatment, regardless of risk;

(d) The decision whether to release the offender can turn on whether the offender has completed sex offender treatment;

(e) The 2016 audit found that there are over 1200 offenders on the
SOTMP referral list who have passed their parole eligibility date, at an annual cost to the state of as much as $44 million for each year that these offenders continue to be incarcerated. Even if no additional sex offenders were sentenced to prison, it would take eight more years to process the current backlog through SOTMP.

(f) The result is that there are many prison beds occupied by low-risk sex offenders waiting for sex offender treatment; and

(g) Colorado would be better served by having low-risk sex offenders start treatment in the community, allowing prison beds to be used for those offenders who pose a greater public safety risk.

(2) Therefore, the general assembly declares that there should be release criteria for low-risk sex offenders whose risk level makes it appropriate for them to start sex offense treatment in the community, and the parole board is encouraged to release those low-risk inmates who otherwise meet parole criteria, to allow them to undertake treatment in the community, freeing up prison-based sex offense treatment beds for those inmates who pose the greatest public safety risk upon release.

SECTION 2. In Colorado Revised Statutes, 16-11.7-105, add (3) as follows:

16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation and identification required. (3) For an adult sex offender sentenced to incarceration in the Department of Corrections and who has been determined to be low risk to sexually reoffend pursuant to the evaluation and identification made pursuant to Section 16-11.7-104 and any other evidence-based and validated assessment or evaluation conducted by the Department of Corrections, which is designed
TO ASSESS RISK OF SEXUAL RECIDIVISM, AND THE SEX OFFENDER HAS BEEN
RECOMMENDED FOR SEX-OFFENSE-SPECIFIC TREATMENT, THE OFFENDER
SHALL START AND OBTAIN THE RECOMMENDED TREATMENT IN THE
COMMUNITY PLACEMENT PHASE OF THE SEX OFFENDER'S SENTENCE, WHICH
MAY INCLUDE COMMUNITY CORRECTIONS PLACEMENT, INTENSIVE
SUPERVISION PAROLE, INMATE STATUS, PAROLE, OR OTHER SIMILAR
COMMUNITY-BASED PHASE OF A SENTENCE TO INCARCERATION; EXCEPT
THAT THE OFFENDER MAY RECEIVE THE NECESSARY TREATMENT WHILE IN
PRISON IF THE DEPARTMENT OF CORRECTIONS HAS SUFFICIENT AND
APPROPRIATE PRISON-BASED TREATMENT BEDS THAT WOULD REASONABLY
ALLOW THE OFFENDER TO COMPLETE THE RECOMMENDED TREATMENT
PROGRAM OR THE RECOMMENDED PORTION OF THE TREATMENT PROGRAM
PRIOR TO THE OFFENDER'S FIRST PAROLE ELIGIBILITY DATE.

SECTION 3. In Colorado Revised Statutes, 17-22.5-403, amend
(7)(a) as follows:

17-22.5-403. Parole eligibility - repeal. (7) (a) For any offender
who is incarcerated for an offense committed on or after July 1, 1993,
upon application for parole, the state board of parole, working in
conjunction with the department and using the guidelines established
pursuant to section 17-22.5-404, shall determine whether or not to grant
parole. FOR ANY SEX OFFENDER DETERMINED TO BE LOW RISK TO
SEXUALLY REOFFEND PURSUANT TO THE EVALUATION DESCRIBED IN
SECTION 16-11.7-105 (3) AND ANY OTHER EVIDENCED-BASED AND
VALIDATED ASSESSMENT OR EVALUATION CONDUCTED BY THE
DEPARTMENT OF CORRECTIONS, WHICH IS DESIGNED TO ASSESS THE RISK
OF SEXUAL RECIDIVISM, AND FOR WHOM THE DEPARTMENT OF
CORRECTIONS IS RECOMMENDING THE SEX OFFENDER’S RELEASE TO
PAROLE SO THAT THE SEX OFFENDER CAN RECEIVE THE RECOMMENDED TREATMENT IN THE COMMUNITY, THE PAROLE BOARD SHALL NOT DENY PAROLE TO THE SEX OFFENDER FOR FAILURE TO START OR COMPLETE TREATMENT WITHIN THE DEPARTMENT. The state board of parole, if it determines that placing an offender on parole is appropriate, shall set the length of the period of parole at the mandatory period of parole established in section 18-1.3-401 (1)(a)(V) or 18-1.3-401.5 (2)(a), C.R.S., except as otherwise provided for specified offenses in section 17-2-201 (5)(a), (5)(a.5), and (5)(a.7).

SECTION 4. In Colorado Revised Statutes, 17-22.5-404, amend (4)(a)(IV) and (4)(c)(II) as follows:

17-22.5-404. Parole guidelines. (4) (a) In considering offenders for parole, the state board of parole shall consider the totality of the circumstances, which include, but need not be limited to, the following factors:

(IV) The offender's program or treatment participation and progress, BUT FOR ANY SEX OFFENDER DETERMINED TO BE LOW RISK TO SEXUALLY REOFFEND PURSUANT TO THE EVALUATION AS DESCRIBED IN SECTION 16-11.7-105 (3) AND ANY OTHER EVIDENCED-BASED AND VALIDATED ASSESSMENT OR EVALUATION CONDUCTED BY THE DEPARTMENT OF CORRECTIONS, WHICH IS DESIGNED TO ASSESS THE RISK OF SEXUAL RECIDIVISM, AND FOR WHOM THE DEPARTMENT OF CORRECTIONS IS RECOMMENDING THE SEX OFFENDER'S RELEASE TO PAROLE SO THAT THE SEX OFFENDER CAN RECEIVE THE RECOMMENDED TREATMENT IN THE COMMUNITY, THE PAROLE BOARD SHALL NOT DENY PAROLE TO THE SEX OFFENDER FOR FAILURE TO START OR COMPLETE TREATMENT WITHIN THE DEPARTMENT;
(c)(II) The administrative release guideline instrument shall not be used in considering those inmates classified as sex offenders with indeterminate sentences for whom the sex offender management board pursuant to section 18-1.3-1009, C.R.S., has established separate and distinct release guidelines. The sex offender management board in collaboration with the department of corrections, the judicial department, the division of criminal justice in the department of public safety, and the state board of parole shall develop a specific sex offender release guideline instrument for use by the state board of parole for those inmates classified as sex offenders with determinate sentences. ON OR BEFORE OCTOBER 1, 2017, THE SEX OFFENDER MANAGEMENT BOARD, IN COLLABORATION WITH THE DEPARTMENT OF CORRECTIONS, THE JUDICIAL DEPARTMENT, AND THE PAROLE BOARD, IN CONSULTATION WITH EXPERT PROFESSIONAL RESEARCHERS WORKING IN THE AREA OF SEX OFFENDER TREATMENT, AND AFTER A REVIEW OF THE RELEVANT RESEARCH, SHALL ESTABLISH EVIDENCE-BASED CRITERIA FOR THE RELEASE OF A LOW-RISK SEX OFFENDER FOR TREATMENT IN THE COMMUNITY PURSUANT TO THE CIRCUMSTANCES DESCRIBED IN SECTION 16-11.7-105 (3) AND CONSISTENT WITH THE PROVISIONS OF SECTION 18-1.3-1006 (1)(a)(II), THEREBY ALLOWING THE LOW-RISK OFFENDER TO BE RELEASED TO THE COMMUNITY OR ON PAROLE TO START TREATMENT WHILE SERVING THE COMMUNITY-BASED PORTION OF HIS OR HER SENTENCE. THE PAROLE BOARD SHALL CONSIDER THESE CRITERIA IN MAKING DECISIONS CONCERNING THE RELEASE OF A SEX OFFENDER.

SECTION 5. In Colorado Revised Statutes, 18-1.3-1006, amend (1)(a) as follows:

18-1.3-1006. Release from incarceration - parole - conditions.
(1) (a) (I) On completion of the minimum period of incarceration specified in a sex offender's indeterminate sentence, less any earned time credited to the sex offender pursuant to section 17-22.5-405, C.R.S., the parole board shall schedule a hearing to determine whether the sex offender may be released on parole. In determining whether to release the sex offender on parole, the parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if released under appropriate treatment and monitoring requirements and whether there is a strong and reasonable probability that the person will not thereafter violate the law. The department shall make recommendations to the parole board concerning whether the sex offender should be released on parole and the level of treatment and monitoring that should be imposed as a condition of parole. The recommendation shall be based on the criteria established by the management board pursuant to section 18-1.3-1009.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(a)(I) OF THIS SECTION, IF A SEX OFFENDER IS DETERMINED TO BE LOW RISK TO SEXUALLY REOFFEND PURSUANT TO THE EVALUATION DESCRIBED IN SECTION 16-11.7-105 (3) AND ANY OTHER EVIDENCE-BASED AND VALIDATED ASSESSMENT OR EVALUATION CONDUCTED BY THE DEPARTMENT OF CORRECTIONS, WHICH IS DESIGNED TO ASSESS THE RISK OF SEXUAL RECIDIVISM, THE SEX OFFENDER HAS COMPLETED THE MINIMUM PERIOD OF INCARCERATION SPECIFIED IN THE SEX OFFENDER'S INDETERMINATE SENTENCE, AND THE DEPARTMENT OF CORRECTIONS IS RECOMMENDING THE SEX OFFENDER'S RELEASE TO PAROLE SO THAT THE SEX OFFENDER CAN RECEIVE RECOMMENDED TREATMENT IN THE COMMUNITY, THE PAROLE BOARD SHALL NOT DENY PAROLE TO THE SEX
OFFENDER FOR FAILURE TO START OR COMPLETE TREATMENT WITHIN THE
DEPARTMENT. NOTHING IN THIS SECTION LIMITS THE AUTHORITY OF THE
PAROLE BOARD TO REVOKE PAROLE OF A SEX OFFENDER SENTENCED TO AN
INDETERMINATE SENTENCE IF THE OFFENDER FAILS TO COOPERATE WITH,
PROGRESS IN, OR COMPLETE TREATMENT WITHIN THE COMMUNITY.

SECTION 6. In Colorado Revised Statutes, 18-1.3-1009, add (2)
as follows:

18-1.3-1009. Criteria for release from incarceration, reduction
in supervision, and discharge. (2) NOTWITHSTANDING THE PROVISIONS
OF SUBSECTION (1) OF THIS SECTION, ON OR BEFORE OCTOBER 1, 2017, THE
MANAGEMENT BOARD, IN COLLABORATION WITH THE DEPARTMENT OF
CORRECTIONS, THE JUDICIAL DEPARTMENT, AND THE PAROLE BOARD, IN
CONSULTATION WITH EXPERT PROFESSIONAL RESEARCHERS WORKING IN
THE AREA OF SEX OFFENDER TREATMENT, AND AFTER A REVIEW OF THE
RELEVANT RESEARCH, SHALL ESTABLISH EVIDENCE-BASED CRITERIA FOR
THE RELEASE OF A LOW-RISK SEX OFFENDER FOR TREATMENT IN THE
COMMUNITY PURSUANT TO THE CIRCUMSTANCES DESCRIBED IN SECTION
16-11.7-105 (3) AND CONSISTENT WITH THE PROVISIONS OF SECTION
18-1.3-1006 (1)(a)(II), THEREBY ALLOWING THE LOW-RISK OFFENDER TO
BE RELEASED TO THE COMMUNITY OR ON PAROLE TO START TREATMENT
WHILE SERVING THE COMMUNITY-BASED PORTION OF HIS OR HER
SENTENCE. THE PAROLE BOARD SHALL CONSIDER THESE CRITERIA IN
MAKING DECISIONS CONCERNING THE RELEASE OF A SEX OFFENDER.

SECTION 7. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2018 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.