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FISCAL NOTE

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Prime Sponsors: Rep. Weissman Bill Status: House Judiciary
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Bill Topic: DISCRETIONARY PAROLE OF SPECIAL NEEDS OFFENDERS

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill decreases an existing age requirement and adds a third category of offenders eligible to apply for the state's special needs offender program. It increases workload and costs for some agencies and increases workload and decreases costs for another agency. These impacts begin in the current FY 2017-18 and are ongoing.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

This bill modifies special needs offender and special needs parole requirements as described below.

Special needs offenders. The bill lowers the age requirement for one of the existing special needs offender categories to include offenders aged 55 years and older, rather than 60 years and older. It adds a third category of special needs offenders to include those determined by a licensed health care provider who is employed or under contract with the Department of Corrections (DOC) to be incompetent to proceed and not likely to pose a risk to public safety.

Special needs parole. Under the bill, the Parole Board must set a special needs parole period of between 6 and 36 months. This period of parole may be revised at any time by the Parole Board; however, in no case may an offender be required to serve a period of parole in excess of the period of parole to which he or she would have otherwise been sentenced or 36 months, whichever is less.

Under current law, the Parole Board may deny an application for special needs parole by a majority vote. This bill requires that an application for special needs parole be approved unless the Parole Board finds that granting parole would present a risk to public safety and that the offender is likely to commit an offense.

Competency. The bill creates a process for the Parole Board to refer a case to the sentencing trial court for a finding of competency if it denies a special needs parole application but has reason to believe that the applicant is incompetent. In such cases, an offender has the right to counsel and indigent offenders are required to be represented by the Office of the State Public Defender or Office of Alternate Defense Counsel.

Background

The special needs parole program identifies and refers eligible offenders for consideration of special needs parole. Currently, a special needs offender is an offender who is in the custody of the DOC and:

- is age 60 or older and has been diagnosed by a licensed health care provider who is employed by or under contract with the DOC as suffering from a chronic infirmity, illness, condition, disease, or behavioral or mental health disorder, and the DOC or the Parole Board determines that the person is incapacitated to the extent that he or she is not likely to pose a risk to public safety; or
- who, as determined by a licensed health care provider who is employed by or under contract with the DOC, suffers from chronic, permanent, terminal, or irreversible physical illness, condition, disease, or a behavioral or mental health disorder that requires costly care or treatment, and who is determined by the DOC or Parole Board to be incapacitated to the extent that he or she is not likely to pose a risk to public safety.

Current law excludes offenders convicted of certain class 1 and class 2 felonies. After a review by its special needs parole committee, the DOC must notify the victim and relevant district attorney's office prior to referring applications to the Parole Board. In making a referral to the Parole Board, the DOC is required to include:

- information about the offender's medical or physical condition and the risk that he or she will reoffend if released;
- details of a special needs parole plan recommended by the DOC;
- a recommendation concerning the release of the offender; and
- a victim impact statement or response from the district attorney that prosecuted the offender.

Upon receiving a referral, the Parole Board reviews the file and is required to make a determination concerning the risk that the offender poses if released, and must issue its decision within 30 days unless it requests that the DOC modify the proposed special needs parole plan. The Parole Board may deny a special needs parole application with a majority vote; it retains its discretion to make parole decisions based on other criteria. In 2017, the DOC referred nine special needs offender applications to the Parole Board. All of these applications were denied/deferred by the Parole Board. In 2016, the DOC received 39 applications: five of which were referred to the Parole Board. Of the five applications received by the Parole Board, two were granted parole, one self-revoked the application; and two died pending an approved parole plan.

State Expenditures

Beginning in the current FY 2017-18, the bill increases workload and costs for the Department of Corrections, Parole Board, and Judicial Department, and may result in reduced prison costs, as discussed below.

Department of Corrections. The bill increases workload for the DOC to process additional applications for offenders who are newly eligible to apply for special needs parole under the bill. As of this writing, the expected number of new applications was not available. To the extent that the changes in this bill cause additional offenders to be released from prison, prison costs will be reduced and parole costs will increase. For informational purposes, it costs the DOC about \$22,000 per year to house an offender in a private prison and about \$38,000 per year in a state-operated prison. Parole costs are about \$4,800 per year, per offender. The fiscal note assumes on net, expenditures will be reduced for any released offenders and that any required reductions in appropriations will be addressed through the annual budget process.

Parole Board. This bill is anticipated to result in additional applications for special needs parole, which will increase workload for the Parole Board to review files. As of this writing, the expected number of new applications was not available and the fiscal note assumes that the current process of file review, rather a board hearing, will continue. This increase in workload can be accomplished within existing appropriations.

Judicial Department. To the extent that cases are referred to the courts for a competency evaluation, workload and costs will increase for the trial courts and agencies that represent indigent offenders. No change in appropriations for any agency within the Judicial Department is expected.

Department of Human Services. To the extent that the courts refer any offenders for a competency evaluation, workload and costs will increase for the Department of Human Services to conduct the evaluations. As of this writing, this impact is assumed to be minimal and the department can request any necessary increases in appropriations through the annual budget process.

Technical Note

The bill creates a process for the court to make a determination on whether an individual applying for special needs parole is competent after his or her application is denied or deferred by the Parole Board. However, the referral is to occur after a suspension in a proceeding whereupon the Parole Board has a substantial and good faith reason to question an offender's competency. Current practice is that the Parole Board makes its decisions after reviewing an offender's file; it does not conduct a separate hearing with the applicant. In addition, the bill does not grant authority for the court to take any action concerning the case; it is assumed that the authority to grant parole for these cases is retained by the Parole Board.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to special needs parole applications received by the Parole Board on or after this date.

State and Local Government Contacts

Corrections
Information Technology

District Attorneys
Judicial

Human Services