

CHAPTER 139

CORRECTIONS

HOUSE BILL 18-1109

BY REPRESENTATIVE(S) Weissman, Arndt, Benavidez, Bridges, Buckner, Coleman, Esgar, Exum, Foote, Ginal, Hamner, Herod, Jackson, Kennedy, Lee, Lontine, Melton, Michaelson Jenet, Pettersen, Roberts, Rosenthal, Saine, Winter, Young, Duran; also SENATOR(S) Cooke, Court, Crowder, Fields, Garcia, Jahn, Jones, Kagan, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Tate, Todd, Williams A., Zenzinger.

AN ACT**CONCERNING DISCRETIONARY PAROLE OF SPECIAL NEEDS OFFENDERS.**

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

SECTION 1. In Colorado Revised Statutes, 17-1-102, **amend** (7.5)(a)(I) and (7.5)(a)(II); and **add** (7.5)(a)(IV) as follows:

17-1-102. Definitions. As used in this title 17, unless the context otherwise requires:

(7.5) (a) "Special needs offender" means a person in the custody of the department:

(I) Who is ~~sixty~~ **FIFTY-FIVE** years of age or older and has been diagnosed by a licensed health care provider who is employed by or under contract with the department as suffering from a chronic infirmity, illness, condition, disease, or behavioral or mental health disorder and the department or the state board of parole determines that the person is incapacitated to the extent that he or she is not likely to pose a risk to public safety; ~~or~~

(II) Who, as determined by a licensed health care provider who is employed by or under contract with the department, suffers from a 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 department or the state board of parole to be incapacitated to the extent that he or she is not likely to pose a risk to public safety; **OR**

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(IV) WHO, AS DETERMINED BY A LICENSED HEALTH CARE PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE DEPARTMENT, ON THE BASIS OF AVAILABLE EVIDENCE, NOT INCLUDING EVIDENCE RESULTING FROM A REFUSAL OF THE PERSON TO ACCEPT TREATMENT, DOES NOT HAVE A SUBSTANTIAL PROBABILITY OF BEING RESTORED TO COMPETENCY FOR THE COMPLETION OF ANY SENTENCE AND IS NOT LIKELY TO POSE A RISK TO PUBLIC SAFETY. AS USED IN THIS SUBSECTION (7.5)(a)(IV), "COMPETENCY" HAS THE SAME MEANING AS "COMPETENT TO PROCEED", AS DEFINED IN SECTION 16-8.5-101 (4).

SECTION 2. In Colorado Revised Statutes, 17-22.5-403.5, **amend** (4)(d) and (5); and **add** (4.5) and (7) as follows:

17-22.5-403.5. Special needs parole. (4) (d) The state board of parole shall make a determination of whether to grant special needs parole within thirty days after receiving the referral from the department. The board may delay the decision in order to request that the department modify the special needs parole plan. If, PRIOR TO OR DURING ANY PAROLE HEARING, THE BOARD OR ANY MEMBER OF THE BOARD HAS A SUBSTANTIAL AND GOOD-FAITH REASON TO BELIEVE THAT THE OFFENDER IS INCOMPETENT TO PROCEED, AS DEFINED IN SECTION 16-8.5-101 (11), THE BOARD SHALL SUSPEND ALL PROCEEDINGS AND NOTIFY THE TRIAL COURT THAT IMPOSED ANY ACTIVE SENTENCE, AND THE COURT SHALL DETERMINE THE COMPETENCY OR INCOMPETENCY OF THE DEFENDANT PURSUANT TO SECTION 16-8.5-103. THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE OFFENDER WITH RESPECT TO THE DETERMINATION OF COMPETENCY OF THE OFFENDER, BUT THE PRESENCE OF THE OFFENDER IS NOT REQUIRED FOR ANY COURT PROCEEDINGS UNLESS GOOD CAUSE IS SHOWN.

(4.5) IF AN OFFENDER IS DETERMINED TO BE INCOMPETENT TO PROCEED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE COURT MAY ORDER THE DEPARTMENT TO PROVIDE OR ARRANGE FOR THE DELIVERY OF APPROPRIATE RESTORATION SERVICES IN ANY SETTING AUTHORIZED BY LAW, BY AN ORDER OF THE COURT, OR BY ANY OTHER ACTION AS PROVIDED BY LAW. NOTHING IN THIS SECTION REQUIRES THE DEPARTMENT OF HUMAN SERVICES TO TAKE CUSTODY OF AN OFFENDER FOR RESTORATION SERVICES. THE DEPARTMENT OF HUMAN SERVICES IS NOT RESPONSIBLE FOR CONDUCTING THE COMPETENCY EVALUATION. IF THE COURT DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY OF THE OFFENDER BEING RESTORED TO COMPETENCY, THE DEPARTMENT MAY REFER THE INMATE FOR SPECIAL NEEDS PAROLE WITH A SPECIAL NEEDS PAROLE PLAN PURSUANT TO THE PROVISIONS OF THIS SECTION.

(5) The board may consider the application for special needs parole pursuant to the proceedings set forth in section 17-2-201 (4)(f) or 17-2-201 (9)(a). If the department recommends to the state board of parole that an offender be released to parole as a special needs offender pursuant to the provisions of subsection (1) of this section, the board may deny parole only by a majority vote of the board AND ONLY IF THE BOARD MAKES A FINDING THAT GRANTING PAROLE WOULD CREATE A THREAT TO PUBLIC SAFETY AND THAT THE OFFENDER IS LIKELY TO COMMIT AN OFFENSE.

(7) FOR ANY OFFENDER WHO IS GRANTED SPECIAL NEEDS PAROLE PURSUANT TO THIS SECTION, THE STATE BOARD OF PAROLE SHALL SET THE LENGTH OF THE PAROLE FOR AN APPROPRIATE TIME PERIOD OF AT LEAST SIX MONTHS BUT NOT EXCEEDING

THIRTY-SIX MONTHS. AT ANY TIME DURING THE OFFENDER'S PAROLE, THE STATE BOARD OF PAROLE MAY REVISE THE DURATION OF THE PAROLE. HOWEVER, IN NO CASE MAY SUCH AN OFFENDER BE REQUIRED TO SERVE A PERIOD OF PAROLE IN EXCESS OF THE PERIOD OF PAROLE TO WHICH HE OR SHE WOULD OTHERWISE BE SENTENCED PURSUANT TO SECTION 18-1.3-401 (1)(a)(V)(A), OR THIRTY-SIX MONTHS, WHICHEVER IS LESS.

SECTION 3. In Colorado Revised Statutes, 16-8.5-101, **amend** the introductory portion and (7) as follows:

16-8.5-101. Definitions. As used in this ~~article~~ ARTICLE 8.5, unless the context otherwise requires:

(7) "Criminal proceedings" means trial, sentencing, SATISFACTION OF THE SENTENCE, execution, and any pretrial matter that is not susceptible of fair determination without the personal participation of the defendant.

SECTION 4. In Colorado Revised Statutes, 16-8.5-102, **amend** (2)(c); and **add** (2)(d) as follows:

16-8.5-102. Mental incompetency to proceed - how and when raised. (2) The question of a defendant's competency to proceed shall be raised in the following manner:

(c) By the affidavit of any chief officer of an institution having custody of a defendant awaiting execution; OR

(d) BY THE STATE BOARD OF PAROLE WHEN A BOARD MEMBER HAS A SUBSTANTIAL AND GOOD-FAITH REASON TO BELIEVE THAT THE OFFENDER IS INCOMPETENT TO PROCEED, AS DEFINED IN SECTION 16-8.5-101 (11), AT A PAROLE HEARING CONDUCTED PURSUANT TO SECTION 17-22.5-403.5.

SECTION 5. In Colorado Revised Statutes, 16-8.5-103, **add** (9) as follows:

16-8.5-103. Determination of competency to proceed. (9) IN ALL PROCEEDINGS UNDER THIS ARTICLE 8.5, WHEN COMPETENCY HAS BEEN RAISED BY THE PAROLE BOARD PURSUANT TO SECTION 16-8.5-102 (2)(d), THE COURT SHALL PAY FOR ANY EVALUATION TO DETERMINE COMPETENCY PURSUANT TO THIS SECTION, AND THE EVALUATION MUST BE CONDUCTED AT THE PLACE WHERE THE DEFENDANT IS IN CUSTODY.

SECTION 6. Applicability. This act applies to applications for special needs parole that are received by the state board of parole on or after the effective date of this act.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 23, 2018