A BILL FOR AN ACT

CONCERNING MEASURES TO MANAGE THE STATE PRISON POPULATION.

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/.)

Prison Population Management Interim Study Committee.
Under current law, the Centennial south campus of the Centennial correctional facility is only able to house inmates under limited circumstances. The bill would open the facility for close custody inmates and require that for each inmate who is housed at the facility, an inmate must be removed from a private prison until the facility is full.

The bill directs the department of corrections (department) to study how to end the practice of using private prisons by 2025 in a responsible
way. The study must include:

- Evidence-based strategies to stop using private prisons and move individuals into alternative facilities or programs;
- An analysis of the economic impacts on affected communities, including the loss of local tax revenue;
- An analysis of the impact that reducing private prison beds would have on local governments and community-based providers;
- A utilization analysis of all state-operated facilities and all other facilities that can be used for housing inmates;
- An analysis of the effect of releasing sex offenders who are assessed as low risk;
- An analysis of what state-operated facilities and programs may be utilized to keep pace with demand;
- An analysis of the best practices and programs that are necessary for successful reintegration of offenders;
- An analysis of the feasibility of the department to obtain private prison facilities in Colorado; and
- An analysis of the resources necessary to accomplish the strategies required to transition the state away from private prisons.

The bill adds to the list of achievements that allow an inmate to receive earned time showing exemplary leadership through mentoring, community service, and distinguished actions benefiting the health, safety, environment, and culture for staff and other inmates.

Under current law, an offender is not entitled to an evidentiary hearing for resentencing when the offender is rejected for placement in a community corrections program. The bill requires the sentencing court to provide the offender with an evidentiary hearing, or in the alternative a new sentencing hearing, for any termination from a community corrections program.

The bill amends the escape statutes to exclude direct sentences, transitioning from the department to a community corrections program, or placement in an intensive supervision parole program from the concepts of custody or confinement for purposes of escape. The bill lowers the penalties for escape and attempted escape crimes. The bill creates a new crime of absconding if the location of a person on intensive supervision parole or a person in a community corrections program is unknown to the authorized agency responsible for the person's supervision.

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

SECTION 1. In Colorado Revised Statutes, 17-1-104.3, amend
(1)(b.5); and **repeal** (1)(b.7) as follows:

17-1-104.3. Correctional facilities - locations - security level.

(1) (b.5) Notwithstanding the provisions of paragraph (b) of this subsection (1), beginning February 1, 2013, NOT MORE THAN SIX HUNDRED AND FIFTY BEDS AT the Centennial south campus of the Centennial correctional facility shall not MAY be operated by the department for the purpose of housing inmates in the housing units but, if necessary, may be maintained to provide support and other services to the Centennial correctional facility. The department shall actively pursue options to sell or lease the Centennial south campus of the Centennial correctional facility, which is also known as Colorado state penitentiary H or CSP H. Any proceeds received as a result of a sale or lease of Centennial south campus of the Centennial correctional facility shall be first applied to the payment of the certificates of participation WHO ARE CLOSE CUSTODY INMATES. AT THE DISCRETION OF THE EXECUTIVE DIRECTOR, THE DEPARTMENT MAY HOUSE INMATES OF A LOWER THAN CLOSE CUSTODY LEVEL FOR NO LONGER THAN THREE MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION IN ORDER TO FACILITATE THE MOVEMENT OF INMATES DISPLACED AS A RESULT OF PRISON CLOSURE OR IF THE LOWER THAN CLOSE CUSTODY INMATE IS VOLUNTARILY SERVING AS A MENTOR PEER-SUPPORT, OR IN ANOTHER OTHER LEADERSHIP ROLE AS PART OF DEPARTMENTAL PROGRAMMING WITH THE PURPOSE OF PROGRESSING CLOSE CUSTODY INMATES TO LOWER SECURITY LEVELS.

(b.7) (I) Notwithstanding subsection (1)(b.5) of this section, the Centennial south campus of the Centennial correctional facility may be used to house inmates on a limited basis when the state male prison
vacant bed rate, excluding RTP treatment beds, remains below one percent vacancy for two consecutive months and the department has exhausted all options pursuant to section 17-1-119.7. The department shall not house more than one hundred twenty-six inmates at one time in the Centennial south campus. Once the state male prison vacant bed rate surpasses one percent vacancy, including calculating the inmates housed in the Centennial south campus, the department shall transfer inmates housed in the Centennial south campus to an appropriate facility under the department’s control within thirty calendar days.

(II) The department shall report the use of the Centennial south campus of the Centennial correctional facility to the joint budget committee and the judiciary committees of the senate and the house of representatives, or any successor committees, within five calendar days after the use of the Centennial south campus. For each month that the Centennial south campus of the Centennial correctional facility is used, the department shall report on the first day of every month the continued nature of the use of the Centennial south campus at the Centennial correctional facility, the steps taken by the department to address the vacancy issue, and the expected time frame for the vacancy issue to end.

(III) The department shall consider input from any legislative interim committee that meets during the 2019 interim regarding prison population management, specifically including:

(A) Strategies to safely reduce the prison population and reduce recidivism; and

(B) Prison use analysis including the Centennial south campus at the Centennial correctional facility, private prisons, and alternative bed programs.
(IV) This subsection (1)(b.7) is repealed, effective September 1, 2020.

SECTION 2. In Colorado Revised Statutes, 17-1-104.5, amend (2)(b); and repeal (2)(a) as follows:

17-1-104.5. Incarceration of inmates from other states - private contract prison facilities. (2) No inmate from a state other than Colorado may be received into the state of Colorado and be housed in a private contract prison facility or a prison facility operated by a political subdivision of the state:

(a) Without the express approval of the executive director, which approval shall not be unreasonably withheld; and

(b) Unless the private contract prison facility or a prison facility operated by a political subdivision is designed to meet or exceed the appropriate security level for the inmate.

EXECUTIVE DIRECTOR, IN CONSULTATION, WITH THE GOVERNOR DETERMINES THAT EXIGENT CIRCUMSTANCES REQUIRE THAT INMATES BE HOUSED IN A PRIVATE CONTRACT PRISON FACILITY IN ORDER TO PROTECT PUBLIC HEALTH OR SAFETY.

SECTION 3. In Colorado Revised Statutes, 17-1-119.7, amend (2)(a)(II) and (2)(a)(IV)(A) as follows:

17-1-119.7. Prison population management measures.

(2) (a) If the vacancy rate in correctional facilities and state-funded private contract prison beds falls below three percent for thirty consecutive days, the department shall:

(II) Request that the parole board review a list of inmates who are within ninety days of their mandatory release date have an approved parole plan; and do not require full board review or victim notification.
pursuant to section 24-4.1-302.5 (1)(j);

(IV) (A) Submit to the parole board a list of eligible inmates with favorable parole plan who have been assessed to be medium or lower risk on the validated risk assessment scale developed pursuant to section 17-22.5-404 (2). Except as provided in subsection (2)(a)(IV)(B) of this section, the parole board shall conduct a file review of each inmate on the list and set conditions of release for the inmate within thirty days after receipt of the list and set a day of release no later than thirty days after conducting the file review.

SECTION 4. In Colorado Revised Statutes, 17-1-201, add (3) as follows:

17-1-201. Duties of department - report - rules. (3) (a) The Department shall study how to end the use of private prisons to incarcerate individuals in Colorado in a responsible way. While conducting the study, the department shall solicit input from local communities and other interested parties or issue experts, including but not limited to public safety, victim's advocates, prosecutors, defense attorneys, and community reentry providers.

(b) The study must include:

(I) Evidence-based strategies to stop using private prisons and move individuals into alternative facilities or programs;

(II) An analysis of the economic impacts on affected communities, including the loss of local tax revenue;

(III) An analysis of the impact that reducing private prison beds would have on local governments and community-based providers;
(IV) A UTILIZATION ANALYSIS OF ALL STATE-OPERATED FACILITIES AND ALL OTHER FACILITIES THAT CAN BE USED FOR HOUSING INMATES;

(V) AN ANALYSIS OF WHAT STATE-OPERATED FACILITIES AND PROGRAMS MAY BE UTILIZED TO KEEP PACE WITH DEMAND;

(VI) AN ANALYSIS OF THE BEST PRACTICES AND PROGRAMS THAT ARE NECESSARY FOR SUCCESSFUL REINTEGRATION OF OFFENDERS, ALTERNATIVES TO INCARCERATION, AND RECIDIVISM REDUCTION STRATEGIES CONSISTENT WITH PUBLIC SAFETY;

(VII) AN ANALYSIS OF THE FEASIBILITY OF THE DEPARTMENT TO OBTAIN PRIVATE PRISON FACILITIES IN COLORADO; AND

(VIII) AN ANALYSIS OF THE RESOURCES NECESSARY TO ACCOMPLISH THE STRATEGIES REQUIRED TO TRANSITION THE STATE AWAY FROM PRIVATE PRISONS.

(c) THE DEPARTMENT SHALL PROVIDE THE STUDY TO THE JOINT BUDGET COMMITTEE WHEN PRESENTING ITS BUDGET RECOMMENDATIONS FOR FISCAL YEAR 2021-22 AND SHALL PROVIDE COPIES OF THE STUDY TO THE MEMBERS OF THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES.

SECTION 5. In Colorado Revised Statutes, 17-2-103, amend (11)(c) introductory portion as follows:


(11) (c) If the board determines that the parolee is in need of treatment, and is amenable to treatment, the board shall consider placing the parolee in one of the following treatment options and, if appropriate, may modify the conditions of parole to include:

SECTION 6. In Colorado Revised Statutes, 17-22.5-405, amend
(1) introductory portion and (1.5)(b); and add (1)(h) as follows:

17-22.5-405. Earned time - earned release time - achievement

earned time - definition. (1) Earned time, not to exceed ten days for each month of incarceration or parole, may be deducted from the inmate's sentence upon a demonstration to the department by the inmate, which is certified by the inmate's case manager or community parole officer, that he or she has made consistent progress in the following categories as required by the department of corrections:

(h) THE INMATE HAS SHOWN EXEMPLARY LEADERSHIP THROUGH MENTORING, COMMUNITY SERVICE, AND DISTINGUISHED ACTIONS BENEFITING THE HEALTH, SAFETY, ENVIRONMENT, AND CULTURE FOR STAFF AND OTHER INMATES.

(1.5) (b) The earned time specified in paragraph (a) of this subsection (1.5) SUBSECTION (1.5)(a) OF THIS SECTION may be deducted based upon a demonstration to the department by the inmate, which is certified by the inmate's case manager or community parole officer, that he or she has made consistent progress in the categories described in subsection (1) of this section POSITIVE PROGRESS IN ACCORDANCE WITH PERFORMANCE STANDARDS ESTABLISHED BY THE DEPARTMENT.

SECTION 7. In Colorado Revised Statutes, 18-1.3-301, amend (1)(g) as follows:

18-1.3-301. Authority to place offenders in community corrections programs. (1) (g) The sentencing court may make appropriate orders for the detention, transfer, or resentencing of any offender whose placement in a community corrections program is terminated pursuant to section 17-27-103 (7) C.R.S.; or section 17-27-104 (5). C.R.S. As to any offender held pursuant to section 17-27-104 (6) ...
C.R.S., in a jail operated by a unit of local government in a county other than where the offender's original conviction occurred, the sentencing court shall order the transfer of the offender to the jail of the county where the original conviction occurred as soon as possible. The sentencing court is not required to provide the offender with an evidentiary hearing pertaining to the rejection of placement in a community corrections program prior to resentencing.

The sentencing court shall provide the offender with a new sentencing hearing, for any termination from a community corrections program, including a violation of section 18-8-208.2. At any new sentencing hearing, the court may consider any sentencing alternative originally available to the court when ordering the appropriate sentence.

SECTION 8. In Colorado Revised Statutes, 18-8-208, amend (11) as follows:

18-8-208. Escapes. (11) If a person who is serving a direct sentence to a community corrections program pursuant to section 18-1.3-301, or is transitioning from the Department of Corrections to a community corrections program, or is placed in an intensive supervision program pursuant to section 17-27.5-101, or is participating in a work release or home detention program pursuant to section 18-1.3-106(1.1), intensive supervision program or any other similar authorized supervised or unsupervised absence from a detention facility as defined in section 18-8-203 (3), is housed in a staff secure facility as defined in section 19-1-103 (101.5), or is placed in a community corrections program for purposes of obtaining residential treatment as a condition of
probation pursuant to section 18-1.3-204 (2.2) or 18-1.3-301 (4)(b), THEN
THE PERSON is not in custody or confinement for purposes of this section.

SECTION 9. In Colorado Revised Statutes, 18-8-208.1, amend
(1.5); and repeal (6) as follows:

18-8-208.1. Attempt to escape. (1.5) If a person, while in
custody or confinement following conviction of a felony and either
serving a direct sentence to a community corrections program pursuant to
section 18-1.3-301, or having been placed in an intensive supervision
parole program pursuant to section 17-27.5-101, C.R.S., knowingly
attempts to escape from his or her custody or confinement, he or she
commits a class 5 felony. The sentence imposed pursuant to this
subsection (1.5) may run concurrently or consecutively with any sentence
being served by the offender IF A PERSON IS SERVING A DIRECT SENTENCE
TO A COMMUNITY CORRECTIONS PROGRAM PURSUANT TO SECTION
18-1.3-301, OR IS TRANSITIONING FROM THE DEPARTMENT OF
CORRECTIONS TO A COMMUNITY CORRECTIONS PROGRAM, OR IS PLACED IN
AN INTENSIVE SUPERVISION PROGRAM PURSUANT TO SECTION
17-27.5-101, OR IS PARTICIPATING IN A WORK RELEASE OR HOME
DETECTION PROGRAM PURSUANT TO SECTION 18-1.3-106 (1.1), INTENSIVE
SUPERVISION PROGRAM OR ANY OTHER SIMILAR AUTHORIZED SUPERVISED
OR UNSUPERVISED ABSENCE FROM A DETENTION FACILITY AS DEFINED IN
SECTION 18-8-203 (3), IS HOUSED IN A STAFF SECURE FACILITY AS DEFINED
IN SECTION 19-1-103 (101.5), OR IS PLACED IN A COMMUNITY
CORRECTIONS PROGRAM FOR PURPOSES OF OBTAINING RESIDENTIAL
TREATMENT AS A CONDITION OF PROBATION PURSUANT TO SECTION
18-1.3-204 (2.2) OR 18-1.3-301 (4)(b), THEN THE PERSON IS NOT IN
CUSTODY OR CONFINEMENT FOR PURPOSES OF THIS SECTION.
A person who participates in a work release program, a home detention program, as defined in section 18-1.3-106 (1.1), a furlough, an intensive supervision program, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

SECTION 10. In Colorado Revised Statutes, add 18-8-208.2 as follows:

18-8-208.2. Unauthorized absence. (1) A person who is serving a direct sentence to a community corrections program pursuant to section 18-1.3-301; transitioning from the department of corrections to a community corrections program or placed in an intensive supervision program pursuant to section 17-27.5-101; participating in a work release or home detention program pursuant to 18-1.3-106 (1.1), intensive supervision program, or any other similar authorized supervised or unsupervised absence from a detention facility as defined in section 18-8-203 (3); or is housed in a staff secure facility as defined in section 19-1-103 (101.5) commits the crime of unauthorized absence if the person knowingly:

(a) Leaves or fails to return to his or her residential or facility location without permission of the supervising agency and in violation of the terms and conditions of supervision; or

(b) Removes or tampers with an electronic monitoring device required by the supervising agency to be worn by the person in order to monitor his or her location, without permission and with the intent to avoid arrest, prosecution,
MONITORING OR OTHER LEGAL PROCESS.

(2) (a) If a person commits unauthorized absence for a crime listed in section 24-4.1-302 (1) or a crime of violence as described in section 18-1.3-406, unauthorized absence is a class 6 felony and an attempt thereof is a class 6 felony.

(b) If a person commits unauthorized absence for a crime other than the crimes listed in section 24-4.1-302 (1) and the crime is not a crime of violence as described in section 18-1.3-406, unauthorized absence is a class 3 misdemeanor and an attempt thereof is a class 3 misdemeanor.

(c) A person who knowingly violates a permanent or temporary protection order issued pursuant to section 18-1-1001(1), 13-14-103, 13-14-104.5, or 13-14-106 during the commission of unauthorized absence commits a class 3 felony.

(3) If a parolee placed in a community corrections or in an intensive supervision program pursuant to section 17-27.5-101 has an unauthorized absence, the department of corrections shall notify the appropriate community reentry program described in section 17-33-101 (7)(a), and provide contact information for the purposes of assisting the person to reengage with supervision.

SECTION 11. In Colorado Revised Statutes, 18-1.3-801, amend (5) as follows:

18-1.3-801. Punishment for habitual criminals. (5) A current or prior conviction for escape, as described in section 18-8-208 (1), (2), or (3), or attempt to escape, as described in section 18-8-208.1 (1) (1.5), or (2), may not be used for the purpose of adjudicating a person an
habitual criminal as described in subsection (1.5) or subsection (2) of this
section unless the conviction is based on the offender's escape or attempt
to escape from a correctional facility, as defined in section 17-1-102, or
from physical custody within a county jail; except that, for the purposes
of this section, "correctional facility" does not include a community
corrections facility, as defined in section 17-27-102 (2.5), or a halfway
house, as defined in section 19-1-103 (62).

SECTION 12. In Colorado Revised Statutes, 24-4.1-302.5, amend (1)(c)(I)(B) as follows:

24-4.1-302.5. Rights afforded to victims - definitions. (1) In
order to preserve and protect a victim's rights to justice and due process,
each victim of a crime has the following rights:

(c) (I) Except as otherwise provided in subsection (1)(c)(II) of this
section:

(B) The right to be informed when a person who is accused or
convicted of a crime against the victim is released or discharged from
custody other than county jail, is paroled, escapes from a secure or
nonsecure correctional facility or program, or absconds from probation
or parole, OR COMMITS AN UNAUTHORIZED ABSENCE AS DESCRIBED IN
SECTION 18-8-208.2 (1).

SECTION 13. In Colorado Revised Statutes, 24-4.1-303, amend
(14)(e) and (14.2)(e) as follows:

24-4.1-303. Procedures for ensuring rights of victims of
crimes. (14) Upon receipt of a written victim impact statement as
provided in section 24-4.1-302.5 (1)(j.5), the department of corrections
shall include the statement with any referral made by the department of
corrections or a district court to place an offender in a public or private
community corrections facility or program. The department of corrections or the public or private local corrections authorities shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(e) Any escape OR UNAUTHORIZED ABSENCE AS DESCRIBED IN SECTION 18-8-208.2 (1) by such person, or transfer or release from any state hospital, a detention facility, a correctional facility, a community correctional facility, or other program, and any subsequent recapture of such person;

(14.2) Upon receipt of a written statement as provided in section 24-4.1-302.5 (1)(j.5), the department of human services, division of youth services, shall include the statement with any referral made by the department of human services or a district court to place an offender in a public or private community corrections facility or program. The department of human services and any state hospital shall notify the victim of the following information regarding any person who was charged with or adjudicated of a crime against the victim:

(e) Any escape OR UNAUTHORIZED ABSENCE AS DESCRIBED IN SECTION 18-8-208.2 (1) by the person, or transfer or release from any state hospital, a detention facility, a correctional facility, a community correctional facility, parole supervision, or other program, and any subsequent recapture of the person;

SECTION 14. 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.