

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 21-0533.01 Michael Dohr x4347

HOUSE BILL 21-1209

HOUSE SPONSORSHIP

Gonzales-Gutierrez and Daugherty,

SENATE SPONSORSHIP

Lee,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING OFFENDERS WHO COMMITTED AN OFFENSE WHEN UNDER**
102 **TWENTY-ONE YEARS OF AGE, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

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 makes an offender serving a sentence in the department of corrections for a felony offense that was committed while the offender was 18 to 24 years of age eligible for parole after the offender serves 50% of the sentence and after the offender has served at least 15 calendar years in prison. There is a presumption, subject to the parole board's discretion,

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.

HOUSE
Amended 2nd Reading
May 22, 2021

that the offender will be released on parole if the offender has not had any code of penal discipline violations in the last 5 years and no class I code of penal discipline violations in the last 10 years.

The department of corrections operates a specialized program for offenders who are serving a prison sentence for a felony offense committed while the offender was a juvenile as a result of criminal charges filed by direct file or transfer proceedings. The bill would expand program eligibility to adults serving a sentence for a felony that was committed when the person was under 21 years of age. The bill changes some of the eligibility criteria for the specialized program for an offender who was a juvenile as a result of criminal charges filed by direct file or transfer proceedings.

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

2
3 **SECTION 1.** In Session Laws of Colorado 2016, **amend** section
4 1 of chapter 352 as follows:

5 Section 1. **Legislative declaration.** (1) The general assembly
6 finds and declares that:

7 (a) The United States supreme court has held in several recent
8 decisions regarding the criminal sentencing of juveniles that children are
9 constitutionally different than adults for purposes of sentencing and
10 should be given a meaningful opportunity for release based on
11 demonstrated maturity and rehabilitation;

12 (a.5) MORE RECENT RESEARCH ABOUT BRAIN DEVELOPMENT
13 DEMONSTRATES THAT THE BRAIN FUNCTIONING THAT GUIDES AND AIDS
14 RATIONAL DECISION-MAKING DOES NOT FULLY DEVELOP UNTIL A PERSON
15 IS IN HIS OR HER MID- TO LATE TWENTIES, WHICH INDICATES THAT A
16 YOUNG ADULT DOES NOT OFTEN POSSESS THE DEVELOPMENTAL MATURITY
17 AND DECISION-MAKING SKILLS OF A MATURE ADULT;

18 (b) Colorado recognizes that ~~children~~ PERSONS have not yet
19 reached developmental maturity before the age of ~~eighteen~~ TWENTY-ONE

1 years and therefore have a heightened capacity to change behavior and a
2 greater potential for rehabilitation;

3 (c) Colorado has many offenders currently serving sentences in
4 the department of corrections who committed crimes when they were less
5 than ~~eighteen~~ TWENTY-ONE years old and who no longer present a threat
6 to public safety; ~~and~~

7 (d) Colorado is committed to research-based best practices in the
8 development and implementation of correctional policies and practices.
9 BEST PRACTICES SUPPORT THE RELEASE OF OFFENDERS WHO NO LONGER
10 PRESENT A THREAT TO THE SAFETY OF OTHER PERSONS OR THE
11 COMMUNITY AND WHO HAVE DEMONSTRATED THAT THROUGH
12 OBSERVABLE AND VERIFIED POSITIVE BEHAVIOR. RECONSIDERING
13 OFFENDERS' SENTENCES AFTER LENGTHY INCARCERATION CREATES HOPE
14 FOR AND HELPS DEVELOP MATURITY AND RESPONSIBILITY IN OFFENDERS
15 WHO WERE JUVENILES OR YOUNG ADULTS WHEN THEIR CRIMES WERE
16 COMMITTED; AND

17 (e) COLORADO IS COMMITTED TO PROVIDING VICTIMS THE
18 OPPORTUNITY TO BE ADVISED AND HEARD REGARDING THE RELEASE OF
19 OFFENDERS WHO HAVE COMMITTED SERIOUS CRIMES AS WELL AS THE
20 OPPORTUNITY TO ENGAGE IN RESTORATIVE JUSTICE PRACTICES UPON
21 REQUEST OF A VICTIM OR VICTIM'S IMMEDIATE FAMILY.

22 (2) Now, therefore, Colorado THE GENERAL ASSEMBLY desires to
23 implement a system that allows any offender who committed a serious
24 crime as a juvenile, was treated as an adult by the criminal justice system,
25 and has served more than twenty or twenty-five calendar years of a
26 sentence to the department of corrections, during which he or she has
27 exhibited growth and rehabilitation, OR WHO AS A YOUNG ADULT UNDER

1 TWENTY-ONE YEARS OF AGE WHO COMMITTED A SERIOUS CRIME AND HAS
2 SERVED MORE THAN TWENTY OR THIRTY CALENDAR YEARS IF SENTENCED
3 TO THE DEPARTMENT OF CORRECTIONS, AND WHILE SERVING THE
4 SENTENCE TO THE DEPARTMENT OF CORRECTIONS HAS EXHIBITED GROWTH
5 AND REHABILITATION, the opportunity to further demonstrate
6 rehabilitation and earn early release in a specialized program in a less
7 secure setting without compromising public safety.

8 **SECTION 2.** In Colorado Revised Statutes, 17-34-101, **amend**
9 (1)(a) introductory portion, (1)(a)(I)(B), and (1)(a)(I)(C) and **add**
10 (1)(a)(IV) as follows:

11 **17-34-101. Juveniles and young adults who are convicted as**
12 **adults in district court and young adults convicted under twenty-one**
13 **years of age - eligibility for specialized program placement - petitions.**

14 (1) (a) Notwithstanding any other provision of law, an offender serving
15 a sentence in the department for a felony offense as a result of the filing
16 of criminal charges by an information or indictment pursuant to section
17 19-2-517, or the transfer of proceedings to the district court pursuant to
18 section 19-2-518, or pursuant to either of these sections as they existed
19 prior to their repeal and reenactment, with amendments, by House Bill
20 96-1005, OR A YOUNG ADULT OFFENDER SERVING A SENTENCE IN THE
21 DEPARTMENT FOR A FELONY OFFENSE THAT WAS COMMITTED WHEN THE
22 OFFENDER WAS UNDER TWENTY-ONE YEARS OF AGE AND THAT SENTENCE
23 IS NOT A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, and ~~who~~
24 THE OFFENDER IN ANY OF THESE CASES remains in the custody of the
25 department for that felony offense, may petition for placement in the
26 specialized program described in section 17-34-102, referred to within
27 this section as the "specialized program", as follows:

1 (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(IV) OF THIS
2 SECTION, if the felony of which the person was convicted was not murder
3 in the first degree, as described in section 18-3-102, then the offender
4 may petition for placement in the specialized program after serving
5 twenty years of his or her sentence if he or she:

6 (B) Has not been convicted of AN OFFENSE OF unlawful sexual
7 behavior, as defined in section 16-22-102 (9) ~~C.R.S.~~ OR AN OFFENSE THAT
8 THE UNDERLYING FACTUAL BASIS IS UNLAWFUL SEXUAL BEHAVIOR, AS
9 DEFINED IN SECTION 16-22-102 (9);

10 (C) Is not OR HAS NOT BEEN PREVIOUSLY PLACED in a treatment
11 program within the department for a serious behavioral or mental health
12 disorder;

13 (IV) IF THE FELONY THE PERSON WAS CHARGED WITH WAS MURDER
14 IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102, WITH THE
15 POSSIBLE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, AND THE
16 PERSON WAS EIGHTEEN YEARS OF AGE OR OLDER BUT LESS THAN
17 TWENTY-ONE YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE
18 OFFENSE, AND THE PERSON ENTERED A PLEA OF GUILTY TO A LESSER
19 FELONY OFFENSE AND RECEIVED A DETERMINATE SENTENCE TO THE
20 DEPARTMENT WITH THE POSSIBILITY OF PAROLE, THEN THE OFFENDER MAY
21 ONLY PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM AFTER
22 SERVING THIRTY CALENDAR YEARS OF HIS OR HER SENTENCE AND THE
23 OFFENDER MAY ONLY BE RELEASED ON EARLY PAROLE PURSUANT TO THE
24 PROVISIONS OF SECTION 17-22.5.403.7 (2) AFTER SERVING THIRTY-FIVE
25 CALENDAR YEARS.

26
27 **SECTION 3.** In Colorado Revised Statutes, 17-34-102, **amend**

1 (1), (4), (8)(a) introductory portion, and (8)(b); and **add (8)(c)** as follows:

2 **17-34-102. Specialized program for juveniles and young adults**
3 **convicted as adults and young adults convicted under twenty-one**
4 **years of age - report.** (1) The department shall develop and implement
5 a specialized program for offenders who have been sentenced to an adult
6 prison for a felony offense committed while the offender was ~~less than~~
7 UNDER eighteen years of age as a result of the filing of criminal charges
8 by an information or indictment pursuant to section 19-2-517, ~~€R.S.~~, or
9 the transfer of proceedings to the district court pursuant to section
10 19-2-518, ~~€R.S.~~, or pursuant to either of these sections as they existed
11 prior to their repeal and reenactment, with amendments, by House Bill
12 96-1005, OR OFFENDERS SERVING A SENTENCE IN THE DEPARTMENT FOR
13 A FELONY OFFENSE THAT WAS COMMITTED WHEN THE OFFENDER WAS
14 UNDER TWENTY-ONE YEARS OF AGE, and ~~who~~ THE OFFENDERS IN ANY OF
15 THESE CASES are determined to be appropriate for placement in the
16 specialized program. The department shall implement the specialized
17 program within or in conjunction with a facility operated by, or under
18 contract with, the department.

19 (4) The department ~~may~~ SHALL make restorative justice practices,
20 as defined in section 18-1-901 (3)(o.5), ~~€R.S.~~, available to any victim of
21 any offender who petitions for placement in the specialized program, as
22 may be appropriate, but only if requested by the victim and the victim has
23 registered with the department of corrections requesting notice of victims'
24 rights pursuant to the provisions of part 3 of article 4.1 of title 24. ~~€R.S.~~

25 (8) (a) Except as described in ~~paragraph (b) of this subsection (8)~~
26 SUBSECTION (8)(b) **AND (8)(c)** OF THIS SECTION, if an offender has served
27 at least ~~twenty-five~~ TWENTY-THREE calendar years of his or her sentence

1 and successfully completed the specialized program, unless rebutted by
2 relevant evidence, it is presumed that:

3 (b) If an offender who committed murder in the first degree, as
4 described in section 18-3-102 (1)(a), (1)(c), (1)(e), or (1)(f), ~~C.R.S.~~, has
5 served ~~thirty~~ TWENTY-EIGHT years of his or her sentence and successfully
6 completed the program, unless rebutted by relevant evidence, the
7 presumptions described in ~~subparagraphs (I) and (II) of paragraph (a) of~~
8 ~~this subsection (8)~~ SUBSECTIONS (8)(a)(I) AND (8)(a)(II) OF THIS SECTION
9 apply.

10 (c) IF THE FELONY THE PERSON WAS CHARGED WITH WAS MURDER
11 IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102, WITH THE
12 POSSIBLE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, AND THE
13 PERSON WAS EIGHTEEN YEARS OF AGE OR OLDER BUT LESS THAN
14 TWENTY-ONE YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE
15 OFFENSE, AND THE PERSON ENTERED A PLEA OF GUILTY TO A LESSER
16 FELONY OFFENSE AND RECEIVED A DETERMINATE SENTENCE TO THE
17 DEPARTMENT WITH THE POSSIBILITY OF PAROLE, AND THE OFFENDER HAS
18 SERVED THIRTY-FIVE CALENDAR YEARS OF HIS OR HER SENTENCE AND
19 SUCCESSFULLY COMPLETED THE PROGRAM, UNLESS REBUTTED BY
20 RELEVANT EVIDENCE, THE PRESUMPTIONS DESCRIBED IN SUBSECTIONS
21 (8)(a)(I) AND (8)(a)(II) OF THIS SECTION APPLY.

22 **SECTION 4.** In Colorado Revised Statutes, 17-22.5-403.7,
23 **amend** (1)(a) and (2) as follows:

24 **17-22.5-403.7. Parole eligibility - youthful offender - juvenile**
25 **offender convicted as adult - definition.** (1) As used in this section,
26 "inmate" means a person:

27 (a) (I) Who is convicted as an adult of a ~~class 1~~ felony following

1 direct filing of an information or indictment in the district court pursuant
2 to section 19-2-517; ~~C.R.S.~~; or

3 (II) Who is convicted as an adult of a ~~class 1~~ felony following
4 transfer of proceedings to the district court pursuant to section 19-2-518;
5 ~~C.R.S.~~; and OR

6 (III) WHO IS CONVICTED AS AN ADULT OF A FELONY OFFENSE AND
7 SENTENCED TO THE DEPARTMENT WHEN THE OFFENSE FOR WHICH THE
8 PERSON CONVICTED WAS COMMITTED WHEN THE PERSON WAS EIGHTEEN
9 YEARS OF AGE OR OLDER BUT LESS THAN TWENTY-ONE YEARS OF AGE; AND

10 (2) After considering any relevant evidence presented by any
11 person or agency and considering the presumptions set forth in section
12 17-34-102 (8), the governor may grant parole to an inmate prior to the
13 inmate's parole eligibility date if, in the governor's opinion, extraordinary
14 mitigating circumstances exist and the inmate's release from institutional
15 custody is compatible with the safety and welfare of society. HOWEVER,
16 NOTHING IN THIS SECTION GRANTS THE GOVERNOR THE AUTHORITY TO
17 GRANT EARLY PAROLE PURSUANT TO THE PROVISIONS OF THIS SECTION TO
18 AN INMATE SERVING A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF
19 PAROLE.

20 **SECTION 5.** In Colorado Revised Statutes, 18-1.3-404, **add** (2.5)
21 as follows:

22 **18-1.3-404. Duration of sentences for felonies.** (2.5) IF A COURT
23 SENTENCES A DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OF
24 CORRECTIONS AND THE DEFENDANT WAS UNDER TWENTY-ONE YEARS OF
25 AGE WHEN THE OFFENSE WAS COMMITTED, THE COURT SHALL MAKE A
26 STATEMENT THAT THERE IS THE POSSIBILITY OF THE DEFENDANT BEING
27 ELIGIBLE TO SERVE A PORTION OF THE DEFENDANT'S SENTENCE IN THE

1 DEPARTMENT OF CORRECTIONS SPECIALIZED PROGRAM CREATED
2 PURSUANT TO SECTION 17-34-102.

3 **SECTION 6. Appropriation.** (1) For the 2021-22 state fiscal
4 year, \$118,976 is appropriated to the department of corrections for use by
5 institutions. This appropriation is from the general fund. To implement
6 this act, the department may use this appropriation as follows:

7 (a) \$101,466 for personal services related to the youthful offender
8 system subprogram, which amount is based on an assumption that the
9 department will require an additional 1.4 FTE; and

10 (b) \$17,510 for operating expenses related to the youthful
11 offender system subprogram.

12 **SECTION 7. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly; except
15 that, if a referendum petition is filed pursuant to section 1 (3) of article V
16 of the state constitution against this act or an item, section, or part of this
17 act within such period, then the act, item, section, or part will not take
18 effect unless approved by the people at the general election to be held in
19 November 2022 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.