

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0940.01 Owen Hatch x2698

SENATE BILL 26-159

SENATE SPONSORSHIP

Weissman and Gonzales J.,

HOUSE SPONSORSHIP

Mabrey and Martinez,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES FOR MANAGING THE CAPACITY OF THE
102 DEPARTMENT OF CORRECTIONS.

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 adjusts certain earned time formulas for an inmate serving a sentence to the department of corrections (DOC). The DOC is directed to enact policy changes to incentivize inmates to pursue activities that award earned time.

The bill creates a working group to make recommendations for a capacity management plan for the DOC with input from impacted groups.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

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

2 **SECTION 1.** In Colorado Revised Statutes, 17-22.5-405, **amend**
3 (1), (1.2), (2), (3.7)(a) introductory portion, (4)(a), (7), and (9)(a); **repeal**
4 (1.5); and **add** (9)(a.7) and (10) as follows:

5 **17-22.5-405. Earned time - earned release time - achievement**
6 **earned time - working group - definition - repeal.**

7 (1) (a) Earned time ~~not to exceed ten days for each month of~~
8 ~~incarceration or parole~~, may be deducted from the inmate's sentence upon
9 a demonstration to the department by the inmate, which is certified by the
10 inmate's case manager or community parole officer, that the inmate has
11 made consistent progress in the following categories as required by the
12 department of corrections:

13 ~~(a)~~ (I) Work and training, including attendance, promptness,
14 performance, cooperation, care of materials, and safety;

15 ~~(b)~~ (II) Group living, including housekeeping, personal hygiene,
16 cooperation, social adjustment, and double bunking;

17 ~~(c)~~ (III) Participation in counseling sessions and involvement in
18 self-help groups;

19 ~~(d)~~ (IV) Progress toward the goals and programs established by
20 the Colorado diagnostic program;

21 ~~(e)~~ (V) For any inmates who have been paroled, compliance with
22 the conditions of parole release;

23 ~~(f)~~ (VI) The offender has not harassed the victim either verbally
24 or in writing;

25 ~~(g)~~ (VII) The inmate has made positive progress, in accordance
26 with performance standards established by the department, in the

1 correctional education program established pursuant to article 32 of this
2 title; AND

3 (h) (VIII) The inmate has shown exemplary leadership through
4 mentoring, community service, and distinguished actions benefiting the
5 health, safety, environment, and culture for staff and other inmates.

6 (b) THIS SUBSECTION (1) APPLIES TO AN INMATE WHO:

7 (I) HAS NOT INCURRED A CLASS I CODE OF PENAL DISCIPLINE
8 VIOLATION WITHIN TWENTY-FOUR MONTHS IMMEDIATELY PRECEDING THE
9 TIME OF CREDITING OR DURING THE INMATE'S ENTIRE TERM OF
10 INCARCERATION IF THE TERM IS LESS THAN TWENTY-FOUR MONTHS OR A
11 CLASS II CODE OF PENAL DISCIPLINE VIOLATION WITHIN TWELVE MONTHS
12 IMMEDIATELY PRECEDING THE TIME OF CREDITING OR DURING THE
13 INMATE'S ENTIRE TERM OF INCARCERATION IF THE TERM IS LESS THAN
14 TWELVE MONTHS; AND

15 (II) IS PROGRAM-COMPLIANT.

16 (1.2) (a) ~~Subsection (1) of this section applies to a person who~~
17 ~~was convicted as an adult for a class 1 felony committed while the person~~
18 ~~was a juvenile and who was sentenced pursuant to section 18-1.3-401~~
19 ~~(4)(b) or (4)(c), C.R.S. As to~~ THE DEPARTMENT MAY DEDUCT UP TO
20 TWELVE DAYS FROM AN INMATE'S SENTENCE FOR EACH MONTH OF
21 INCARCERATION OR PAROLE PURSUANT TO SUBSECTION (1) OF THIS
22 SECTION; EXCEPT THAT THE DEPARTMENT MAY DEDUCT UP TO TEN DAYS
23 FOR EACH MONTH OF INCARCERATION OR PAROLE FOR THE FOLLOWING
24 INMATES:

25 (I) A PERSON CONVICTED OF A FELONY CRIME DESCRIBED IN
26 SECTION 18-3-303, 18-3-305, 18-3-306, OR 18-6-701, SECTIONS 18-7-402
27 TO 18-7-407, OR SECTION 18-12-102 OR 18-12-109, OR A FELONY CRIME

1 LISTED IN SECTION 24-4.1-302 (1), OR A PERSON WHO IS SERVING A
2 SENTENCE PURSUANT TO 18-4-409; OR

3 (II) A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1
4 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS
5 SENTENCED PURSUANT TO SECTION 18-1.3-401 (4)(b) OR (4)(c).

6 (b) FOR a person who was convicted as an adult for a class 1
7 felony committed while the person was a juvenile, ~~and who was~~
8 ~~sentenced pursuant to section 18-1.3-401 (4)(c), C.R.S., it is the intent of~~
9 ~~the general assembly~~ GENERAL ASSEMBLY'S INTENT that the department
10 award earned time to ~~such a~~ THE person both prospectively and
11 retroactively from June 10, 2016, as if the person had been eligible to be
12 awarded earned time from the beginning of ~~his or her~~ THE PERSON'S
13 incarceration pursuant to the sentence that ~~he or she~~ THE PERSON
14 originally received for ~~such~~ THE felony. Pursuant to this subsection (1.2),
15 THE MAXIMUM MONTHLY ACCRUAL OF EARNED TIME IS TEN DAYS.

16 (1.5) ~~(a) Earned time, not to exceed twelve days for each month~~
17 ~~of incarceration or parole, may be deducted from an inmate's sentence if~~
18 ~~the inmate:~~

19 (I) ~~Is serving a sentence for a class 4, class 5, or class 6 felony or~~
20 ~~level 3 or level 4 drug felony;~~

21 (II) ~~Has not incurred a class I code of penal discipline violation~~
22 ~~within the twenty-four months immediately preceding the time of~~
23 ~~crediting or during his or her entire term of incarceration if the term is~~
24 ~~less than twenty-four months or a class II code of penal discipline~~
25 ~~violation within the twelve months immediately preceding the time of~~
26 ~~crediting or during his or her entire term of incarceration if the term is~~
27 ~~less than twelve months;~~

1 ~~(III) Is program-compliant; and~~
2 ~~(IV) Was not convicted of, and has not previously been convicted~~
3 ~~of, a felony crime described in section 18-3-303, 18-3-305, 18-3-306, or~~
4 ~~18-6-701, sections 18-7-402 to 18-7-407, or section 18-12-102 or~~
5 ~~18-12-109, C.R.S., or a felony crime listed in section 24-4.1-302 (1);~~
6 ~~C.R.S.~~

7 ~~(b) The earned time specified in subsection (1.5)(a) of this section~~
8 ~~may be deducted based upon a demonstration to the department by the~~
9 ~~inmate, which is certified by the inmate's case manager or community~~
10 ~~parole officer, that he or she has made positive progress in accordance~~
11 ~~with performance standards established by the department.~~

12 ~~(c) Nothing in this subsection (1.5) shall preclude an inmate from~~
13 ~~receiving earned time pursuant to subsection (1) of this section if the~~
14 ~~inmate does not qualify for earned time pursuant to this subsection (1.5).~~

15 (2) The department shall develop objective standards for
16 measuring consistent progress in the categories listed in ~~subsection (1)~~
17 ~~SUBSECTION (1)(a) of this section. Such~~ THE standards shall MUST be
18 applied in all evaluations of inmates for the earned time authorized in this
19 section.

20 (3.7) (a) For an inmate sentenced for a nonviolent felony offense
21 as described in subsection (5) of this section, in addition to the earned
22 time deducted pursuant to subsection (1) ~~or (1.5)~~ of this section, earned
23 time shall MUST be deducted from the inmate's sentence for each
24 accredited degree or other credential awarded by a regionally accredited
25 institution of higher education designated by the department pursuant to
26 subsection (3.7)(b) of this section to the inmate while the inmate is
27 incarcerated or on parole as follows:

1 (4) (a) Except as described in subsection (3.7), (4)(b), (6), or (9)
2 of this section, and notwithstanding any other provision of this section,
3 earned time may not reduce the sentence of an inmate as defined in
4 section 17-22.5-402 (1) by a period of time that is more than ~~thirty~~
5 THIRTY-FIVE percent of the sentence.

6 (7) ~~Beginning in the fiscal year 2012-13,~~ The general assembly
7 may appropriate the savings generated by ~~subsections (1.5) and (6)~~
8 SUBSECTION (6) of this section to recidivism-reduction programs.

9 (9) (a) (I) Notwithstanding any provision of this section to the
10 contrary, in addition to the earned time authorized in this section, an
11 offender who successfully completes a milestone or phase of an
12 educational, vocational, therapeutic, or reentry program ~~or who~~
13 ~~demonstrates exceptional conduct that promotes the safety of correctional~~
14 ~~staff, volunteers, contractors, or other persons under the supervision of~~
15 ~~the department of corrections,~~ may be awarded as many as sixty days of
16 achievement earned time per program milestone or phase, ~~or per instance~~
17 ~~of exceptional conduct,~~ at the discretion of the executive director; except
18 that an offender shall not be awarded more than one hundred twenty days
19 of achievement earned time pursuant to this subsection (9).

20 (II) THE DEPARTMENT OF CORRECTIONS SHALL MAKE POLICY
21 CHANGES TO MAXIMIZE THE INCENTIVES TO PARTICIPATE IN ACTIVITIES
22 THAT AWARD ACHIEVEMENT EARNED TIME FOR OFFENDERS WHO COMMIT
23 TO AND PARTICIPATE IN SELF-IMPROVEMENT ACTIVITIES, INCLUDING
24 THERAPEUTIC AND EDUCATIONAL PROGRAMMING. APPLICABLE POLICY
25 CHANGES MAY INCLUDE, BUT ARE NOT LIMITED TO:

26 (A) ENSURING THAT PROGRAMS OF SIMILAR INTENSITY AND
27 DURATION ARE AWARDED A SIMILAR NUMBER OF CREDITS;

1 (B) INCREASING CREDIT AWARDS FOR SUSTAINED, HIGH
2 ENGAGEMENT IN WORK ASSIGNMENTS; AND

3 (C) INCREASING CREDIT AWARDS FOR THE COMPLETION OF A
4 PROGRAM.

5 (III) FOR OFFENDERS WHO SUCCESSFULLY COMPLETE A MILESTONE
6 OR PHASE OF A BEHAVIORAL HEALTH PROGRAM IN AN AREA RELATED TO
7 RECOVERY FROM A CONDITION THAT CONTRIBUTED TO THE OFFENDER'S
8 UNDERLYING OFFENSE, INCLUDING SUBSTANCE USE TREATMENT, ANGER
9 MANAGEMENT, OR OTHER BEHAVIORAL HEALTH NEEDS, AS RECOMMENDED
10 BASED ON NEEDS IDENTIFIED ON THE INTAKE ASSESSMENT, THE TOTAL
11 ACHIEVEMENT EARNED TIME THAT CAN BE AWARDED PURSUANT TO THIS
12 SUBSECTION (9)(a) IS ONE HUNDRED FIFTY DAYS.

13 (a.7) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
14 CONTRARY, IN ADDITION TO THE EARNED TIME AUTHORIZED IN THIS
15 SECTION, AN OFFENDER WHO DEMONSTRATES EXCEPTIONAL CONDUCT
16 THAT PROMOTES THE SAFETY OF CORRECTIONAL STAFF, VOLUNTEERS,
17 CONTRACTORS, OR OTHER PERSONS UNDER THE SUPERVISION OF THE
18 DEPARTMENT OF CORRECTIONS MAY BE AWARDED AS MANY AS SIXTY
19 DAYS OF ACHIEVEMENT EARNED TIME PER INSTANCE OF EXCEPTIONAL
20 CONDUCT, AT THE DISCRETION OF THE EXECUTIVE DIRECTOR; EXCEPT THAT
21 AN OFFENDER SHALL NOT BE AWARDED MORE THAN ONE HUNDRED
22 TWENTY DAYS OF ACHIEVEMENT EARNED TIME PURSUANT TO THIS
23 SUBSECTION (9)(a.7).

24 (10) (a) THERE IS CREATED THE DEPARTMENT OF CORRECTIONS
25 COMPREHENSIVE PLANNING WORKING GROUP, REFERRED TO IN THIS
26 SECTION AS THE "WORKING GROUP". THE EXECUTIVE DIRECTOR OF THE
27 DEPARTMENT, OR THEIR DESIGNEE, SHALL SERVE AS CHAIR OF THE

1 WORKING GROUP. THE WORKING GROUP SHALL DEVELOP
2 RECOMMENDATIONS FOR A CAPACITY MANAGEMENT PLAN FOR THE
3 DEPARTMENT THAT IS DATA-DRIVEN, ALIGNS WITH BEST PRACTICES, AND
4 IS INFORMED BY THE INPUT OF DEPARTMENT STAFF, INCARCERATED
5 PEOPLE, VICTIMS, AND OTHER CRIMINAL JUSTICE STAKEHOLDERS AND
6 SUBJECT MATTER EXPERTS REGARDING STRATEGIES TO:

7 (I) ASSESSEFFICACY, AVAILABILITY, ANDGAPS REGARDING PRISON
8 PROGRAMMING AND CLINICAL CARE TO MAXIMIZE INMATE
9 REHABILITATION AND PREPARATION FOR RELEASE;

10 (II) IDENTIFY BOTTLENECKS AND INEFFICIENCIES REGARDING
11 INMATE RELEASE PROCESSES, CROSS-AGENCY COORDINATION, VICTIM
12 NOTIFICATION AND ENGAGEMENT, AND INMATE RELEASE
13 DECISION-MAKING;

14 (III) ENSURE THAT APPROPRIATE SUPERVISION, PLACEMENT
15 OPTIONS, AND SERVICES ARE AVAILABLE TO IMPROVE SUCCESSFUL
16 OUTCOMES FOR PERSONS RELEASED FROM PRISON;

17 (IV) MANAGE GROWTH IN PRISON POPULATION TO AVOID
18 OVERCROWDING; AND

19 (V) IDENTIFY CHANGES NEEDED TO CURRENT PRISON
20 OPERATIONAL CAPACITY, INMATE CLASSIFICATION, OR FACILITY SECURITY
21 CLASSIFICATION LEVEL TO MOST COST-EFFECTIVELY ADDRESS CURRENT
22 PRISON BED UTILIZATION AND ANY PROJECTED FUTURE PRISON BED NEEDS
23 TO ENSURE ALIGNMENT BETWEEN THE CLASSIFICATION LEVEL OF THE
24 INMATE POPULATION AND THE SECURITY LEVEL OF PRISON BEDS
25 AVAILABLE OR NEEDED.

26 (b) THE WORKING GROUP CONSISTS OF:

27 (I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, OR THEIR

- 1 DESIGNEE, WHO IS THE CHAIR OF THE WORKING GROUP;
- 2 (II) THE EXECUTIVE DIRECTOR OF THE DIVISION OF CRIMINAL
3 JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY, OR THEIR DESIGNEE;
- 4 (III) ONE DISTRICT ATTORNEY, OR THEIR DESIGNEE, APPOINTED BY
5 THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT ATTORNEYS'
6 COUNCIL;
- 7 (IV) ONE PUBLIC DEFENDER, OR THEIR DESIGNEE, APPOINTED BY
8 THE STATE PUBLIC DEFENDER;
- 9 (V) ONE SHERIFF, OR THEIR DESIGNEE, APPOINTED BY THE
10 PRESIDENT OF THE COUNTY SHERIFFS OF COLORADO BOARD OF DIRECTORS;
- 11 (VI) ONE BEHAVIORAL HEALTH EXPERT OR PROFESSIONAL,
12 APPOINTED BY THE PRESIDENT OF THE SENATE;
- 13 (VII) ONE MEDICAL PROFESSIONAL WITH EXPERIENCE IN
14 PRISON-BASED HEALTH SERVICES, APPOINTED BY THE PRESIDENT OF THE
15 SENATE;
- 16 (VIII) ONE CRIME VICTIM OR SURVIVOR, OR A REPRESENTATIVE OF
17 A GROUP THAT ADVOCATES FOR CRIME VICTIMS OR SURVIVORS, APPOINTED
18 BY THE HOUSE MINORITY LEADER;
- 19 (IX) ONE FORMERLY INCARCERATED PERSON, OR A
20 REPRESENTATIVE OF A GROUP THAT ADVOCATES FOR INCARCERATED OR
21 FORMERLY INCARCERATED PERSONS, APPOINTED BY THE SPEAKER OF THE
22 HOUSE;
- 23 (X) ONE REPRESENTATIVE OF AN ORGANIZATION WITH EXPERIENCE
24 IN COMMUNITY-BASED RE-ENTRY SERVICES, APPOINTED BY THE SPEAKER
25 OF THE HOUSE;
- 26 (XI) ONE CURRENT OR FORMER STATE BOARD OF PAROLE MEMBER,
27 APPOINTED BY THE CHAIR OF THE STATE BOARD OF PAROLE;

1 (XII) ONE CURRENT COMMUNITY CORRECTIONS REPRESENTATIVE,
2 APPOINTED BY THE SENATE MINORITY LEADER; AND

3 (XIII) ONE CURRENT EMPLOYEE OF THE DEPARTMENT, APPOINTED
4 BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

5 (c) MEMBERS OF THE HOUSE OF REPRESENTATIVES JUDICIARY
6 COMMITTEE AND THE SENATE JUDICIARY COMMITTEE, OR THEIR
7 SUCCESSOR COMMITTEES, AND THE JOINT BUDGET COMMITTEE, MAY
8 SUBMIT IN WRITING TO THE CHAIR OF THE WORKING GROUP A REQUEST TO
9 PRIORITIZE SPECIFIC ISSUES OR PROVIDE OTHER RELEVANT INFORMATION.

10 (d) THE WORKING GROUP MAY REQUEST INFORMATION FROM THE
11 DEPARTMENT OF CORRECTIONS AND THE CERTIFIED EMPLOYEE
12 ORGANIZATION DEFINED IN SECTION 24-50-1102 FOR PURPOSES OF
13 ASSESSING UNDERLYING CONDITIONS AND THE OPERATIONAL FEASIBILITY
14 OF RECOMMENDATIONS.

15 (e) (I) THE WORKING GROUP SHALL SOLICIT INPUT FROM
16 DEPARTMENT STAFF, THE DEPARTMENT OF PERSONNEL AND
17 ADMINISTRATION AND THE CERTIFIED EMPLOYEE ORGANIZATION DEFINED
18 IN SECTION 24-50-1102, INMATES, INMATE FAMILIES, CRIME VICTIMS OR
19 SURVIVORS, CRIMINAL JUSTICE STAKEHOLDERS, ELECTED OFFICIALS AT
20 THE STATE AND LOCAL LEVEL, THE LEGISLATIVE COUNCIL, JOINT BUDGET
21 COMMITTEE STAFF, STATE AGENCIES, AND OTHER PERSONS WITH SUBJECT
22 MATTER EXPERTISE.

23 (II) THE WORKING GROUP SHALL NOT BARGAIN, NEGOTIATE, OR
24 OTHERWISE MAKE RECOMMENDATIONS RELATED TO ANY MATTERS THAT
25 ARE SUBJECT TO THE EXCLUSIVE PARTNERSHIP PROCESS BETWEEN THE
26 STATE AND THE CERTIFIED EMPLOYEE ORGANIZATIONS PURSUANT TO
27 SECTION 24-50-1112 (2).

1 (f) THE CHAIR OF THE WORKING GROUP MAY SOLICIT AND ACCEPT
2 GIFTS, GRANTS, AND DONATIONS TO SUPPORT THE WORKING GROUP,
3 INCLUDING FOR FACILITATION, RESEARCH, STRATEGIC PLANNING, REPORT
4 WRITING, AND SURVEYS OR OTHER METHODS TO PURSUE THE GOALS LISTED
5 IN SUBSECTION (10)(a) OF THIS SECTION, IN ACCORDANCE WITH
6 APPLICABLE STATE LAWS.

7 (g) THE WORKING GROUP SHALL SUBMIT AN INTERIM REPORT TO
8 THE GENERAL ASSEMBLY, THE DEPARTMENT'S CERTIFIED EMPLOYEE
9 ORGANIZATION, AND THE GOVERNOR'S OFFICE IN DECEMBER 2026 AND A
10 FINAL REPORT ON JUNE 30, 2028.

11 (h) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JANUARY 15,
12 2029.

13 **SECTION 2. Applicability.** This act applies to an inmate
14 accruing earned time on or after the effective date of this act.

15 **SECTION 3. Safety clause.** The general assembly finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety or for appropriations for
18 the support and maintenance of the departments of the state and state
19 institutions.