HOUSE BILL 21-1209

HOUSE SPONSORSHIP
Gonzales-Gutierrez and Daugherty,

SENATE SPONSORSHIP
Lee,

A BILL FOR AN ACT

CONCERNING OFFENDERS WHO COMMITTED AN OFFENSE WHEN UNDER TWENTY-FIVE YEARS OF AGE.

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, 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.

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

SECTION 1. In Colorado Revised Statutes, 17-22.5-403, add (10) as follows:

17-22.5-403. Parole eligibility. (10) (a) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, AN OFFENDER SERVING A SENTENCE IN THE DEPARTMENT FOR A FELONY OFFENSE THAT WAS COMMITTED WHILE THE OFFENDER WAS EIGHTEEN TO TWENTY-FOUR YEARS OF AGE IS ELIGIBLE FOR PAROLE AFTER SERVING FIFTY PERCENT OF THE SENTENCE AND AFTER THE OFFENDER HAS SERVED AT LEAST FIFTEEN CALENDAR YEARS OF A SENTENCE IN THE CUSTODY OF THE DEPARTMENT.

(b) THERE SHALL BE A PRESUMPTION, SUBJECT TO THE FINAL DISCRETION OF THE PAROLE BOARD, IN FAVOR OF GRANTING PAROLE TO AN OFFENDER WHO IS ELIGIBLE FOR PAROLE PURSUANT TO SUBSECTION (10)(a) OF THIS SECTION WHO HAS NOT HAD ANY CODE OF PENAL DISCIPLINE VIOLATIONS IN THE PREVIOUS FIVE YEARS AND NO CLASS I CODE OF PENAL DISCIPLINE VIOLATIONS IN THE PREVIOUS TEN YEARS AND WHO HAS COMPLETED ANY PROGRAM REQUIRED AS A PART OF THE OFFENDER'S SENTENCE TO INCARCERATION.

(c) IN DETERMINING WHETHER TO GRANT PAROLE TO AN OFFENDER
ELIGIBLE PURSUANT TO SUBSECTION (10)(a) OF THIS SECTION, THE PAROLE
BOARD SHALL CONSIDER, AT A MINIMUM, WHETHER THE PURPOSE OF
SENTENCING WOULD BE BETTER SERVED BY GRANTING PAROLE TO THE
OFFENDER RATHER THAN CONTINUING INCARCERATION.

(d) THE PROVISIONS OF THIS SUBSECTION (10) APPLY TO ANY
INCARCERATED OFFENDER, REGARDLESS OF THE OFFENDER'S DATE OF
CONVICTION.

(e) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN
INCARCERATED OFFENDER SERVING A LIFE SENTENCE WITHOUT THE
POSSIBILITY OF PAROLE PURSUANT TO SECTION 18-1.3-401 (4)(a).

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

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

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

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

(b) Colorado recognizes that children PERSONS have not yet
reached developmental maturity before the age of eighteen TWENTY-ONE
years and therefore have a heightened capacity to change behavior and a
greater potential for rehabilitation;

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

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

(2) Now, therefore, Colorado THE GENERAL ASSEMBLY desires to
implement a system that allows any offender who committed a serious
crime as a juvenile, was treated as an adult by the criminal justice system,
and has served more than twenty or twenty-five calendar years of a
sentence to the department of corrections, during which he or she has
exhibited growth and rehabilitation, OR WHO AS A YOUNG ADULT UNDER
TWENTY-ONE YEARS OF AGE WHO COMMITTED A SERIOUS CRIME AND
WHILE SERVING THE SENTENCE TO THE DEPARTMENT OF CORRECTIONS HAS
EXHIBITED GROWTH AND REHABILITATION, the opportunity to further
demonstrate rehabilitation and earn early release in a specialized program
in a less secure setting without compromising public safety.
SECTION 3. In Colorado Revised Statutes, 17-34-101, amend (1)(a) introductory portion, (1)(a)(I)(B), (1)(a)(I)(C), and (4)(a) as follows:

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

(1) (a) Notwithstanding any other provision of law, an offender serving a sentence in the department for a felony offense as a result of the filing of criminal charges by an information or indictment pursuant to section 19-2-517, or the transfer of proceedings to the district court pursuant to section 19-2-518, or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by House Bill 96-1005, OR A YOUNG ADULT OFFENDER SERVING A SENTENCE IN THE DEPARTMENT FOR A FELONY OFFENSE THAT WAS COMMITTED WHEN THE OFFENDER WAS UNDER TWENTY-ONE YEARS OF AGE, and who THE OFFENDER IN ANY OF THESE CASES remains in the custody of the department for that felony offense, may petition for placement in the specialized program described in section 17-34-102, referred to within this section as the "specialized program", as follows:

(I) If the felony of which the person was convicted was not murder in the first degree, as described in section 18-3-102, then the offender may petition for placement in the specialized program after serving twenty years of his or her sentence if he or she:

(B) Has not been convicted of AN OFFENSE OF unlawful sexual behavior, as defined in section 16-22-102 (9) C.R.S. OR AN OFFENSE THAT THE UNDERLYING FACTUAL BASIS IS UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9);
(C) Is not OR HAS NOT BEEN PREVIOUSLY PLACED in a treatment program within the department for a serious behavioral or mental health disorder;

(4) (a) (I) If after review of an offender's petition the executive director or his or her designee determines that the offender is an appropriate candidate for placement in the specialized program, the department shall place the offender in the specialized program as soon as practicable.

(II) IF THE OFFENDER APPLYING IS SERVING A SENTENCE IN THE DEPARTMENT FOR A FELONY OFFENSE THAT WAS COMMITTED WHILE THE OFFENDER WAS EIGHTEEN TO TWENTY YEARS OF AGE, THE DEPARTMENT MAY ONLY PLACE THE OFFENDER IN THE SPECIALIZED PROGRAM IF THERE IS SPACE AVAILABLE IN THE PROGRAM AND PLACEMENT IN THE PROGRAM DOES NOT PREVENT AN OFFENDER WHO IS SERVING A SENTENCE IN THE DEPARTMENT AS A RESULT OF THE FILING OF CRIMINAL CHARGES BY AN INFORMATION OR INDICTMENT PURSUANT TO SECTION 19-2-517, OR THE TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005, FROM BEING PLACED IN THE PROGRAM.

SECTION 4. In Colorado Revised Statutes, 17-34-102, amend (1), (4), (8)(a) introductory portion, and (8)(b) as follows:

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

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

(8) (a) Except as described in paragraph (b) of this subsection (8)
SUBSECTION (8)(b) OF THIS SECTION, if an offender has served at least
twenty-five TWENTY-THREE calendar years of his or her sentence and
successfully completed the specialized program, unless rebutted by
relevant evidence, it is presumed that:

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

SECTION 5. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly; except
that, if a referendum petition is filed pursuant to section 1 (3) of article V
of the state constitution against this act or an item, section, or part of this
act within such period, then the act, item, section, or part will not take
effect unless approved by the people at the general election to be held in
November 2022 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.