

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0795.01 Jane Ritter x4342

HOUSE BILL 22-1164

HOUSE SPONSORSHIP

Williams,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON APPLICATIONS FOR CLEMENCY.

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 restricts a person from applying for clemency for a crime if a resentencing hearing is scheduled or has been requested or if the person has not exhausted all state appeal and administrative processes before applying or being considered for clemency. If an application for clemency was submitted before a resentencing hearing was scheduled or requested, the governor is barred from considering and acting upon such application until the conclusion of the resentencing hearing. The executive director of the department of corrections shall promulgate rules

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.

relating to the determination of whether an individual is incapable of exhausting all state or administrative processes due to indigence or other matters.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) On April 25, 2019, Rogel Aguilera-Mederos was hauling a full
5 load of lumber from Wyoming to Texas when he crashed into stopped
6 traffic under an overpass in Lakewood, killing four people and injuring
7 several others;

8 (b) The inexperienced trucker was seen driving recklessly hours
9 before the crash and had passed at least one runaway truck ramp after he
10 lost his brakes on eastbound interstate 70 after Berthoud Pass;

11 (c) On October 15, 2021, a jury found Aguilera-Mederos guilty of
12 twenty-seven out of forty-two charges, including four counts of vehicular
13 homicide;

14 (d) District court judge Bruce Jones held a sentencing hearing on
15 December 13, 2021, at which he imposed a one hundred and ten-year
16 sentence, stating he was compelled to do so by law but suggesting that he
17 was open to reducing the prison term through a future hearing;

18 (e) Judge Jones, at the request of the first judicial district attorney
19 who prosecuted the case, scheduled another hearing for January 13, 2022,
20 to reconsider the lengthy mandatory minimum sentence, which had
21 resulted in an online petition to shorten the sentence;

22 (f) At the resentencing hearing, the district attorney planned to
23 request a new sentence of twenty to thirty years; and

24 (g) On December 30, 2021, prior to the resentencing hearing,

1 Governor Jared Polis granted clemency to Aguilera-Mederos, commuted
2 his sentence to ten years, and granted him parole eligibility in five years.

3 (2) Therefore, the general assembly finds and declares that it is in
4 the best interests of the citizens of Colorado to assess the appropriateness
5 and reasonableness of Colorado's laws related to applications for
6 clemency and the granting of clemency.

7 **SECTION 2.** In Colorado Revised Statutes, 16-17-102, **amend**
8 (1) as follows:

9 **16-17-102. Application for commutation of sentence,**
10 **clemency, or pardon - character certificate - restrictions on**
11 **application - rules.** (1) (a) After a conviction, all applications for
12 commutation of sentence, CLEMENCY, or pardon for crimes committed
13 must be accompanied by a certificate of the respective superintendent of
14 the correctional facility, showing the conduct of an applicant during the
15 applicant's confinement in the correctional facility, together with such
16 evidences of former good character as the applicant is able to produce.
17 Before the governor approves ~~such~~ THE application, it must be first
18 submitted to the present district attorney of the district in which the
19 applicant was convicted and to the judge who sentenced and the attorney
20 who prosecuted at the trial of the applicant, if available, for such
21 comment as they may deem proper concerning the merits of the
22 application, so as to provide the governor with information upon which
23 to base the governor's action. The governor shall make reasonable efforts
24 to locate the judge who sentenced and the attorney who prosecuted at the
25 trial of the applicant and shall afford them a reasonable time, not less than
26 fourteen days, to comment on such applications. The requirements of this
27 section are deemed to have been met if the persons to whom the

1 application is submitted for comment do not comment within fourteen
2 days after their receipt of the application or within such other reasonable
3 time in excess of fourteen days as specified by the governor, or if the
4 sentencing judge or prosecuting attorney cannot be located, are
5 incapacitated, or are otherwise unavailable for comment despite the
6 good-faith efforts of the governor to obtain their comments. Good
7 character previous to conviction, good conduct during confinement in the
8 correctional facility, the statements of the sentencing judge and the
9 district attorneys, if any, and any other material concerning the merits of
10 the application must be given such weight as seems just and proper to the
11 governor, in view of the circumstances of each particular case, with due
12 regard for the reformation of the accused. The governor has sole
13 discretion in evaluating said comments and in soliciting other comments
14 the governor deems appropriate.

15 (b) A PERSON SUBMITTING AN APPLICATION FOR COMMUTATION,
16 CLEMENCY, OR PARDON SHALL:

17 (I) NOT SUBMIT SUCH APPLICATION IF A RESENTENCING HEARING
18 HAS BEEN REQUESTED OR SCHEDULED, OR, IF THE APPLICATION WAS
19 SUBMITTED BEFORE THE RESENTENCING HEARING WAS SCHEDULED, THE
20 GOVERNOR SHALL NOT CONSIDER OR TAKE ACTION ON SUCH APPLICATION
21 OR ON THE GOVERNOR'S OWN AUTHORITY UNTIL AFTER THE CONCLUSION
22 OF THE RESENTENCING HEARING; AND

23 (II) EXHAUST ALL STATE APPEAL OR ADMINISTRATIVE PROCESSES
24 BEFORE APPLYING OR BEING CONSIDERED FOR CLEMENCY. THE EXECUTIVE
25 DIRECTOR SHALL PROMULGATE RULES RELATED TO THE DETERMINATION
26 OF WHETHER AN INDIVIDUAL IS INCAPABLE OF EXHAUSTING ALL STATE
27 AND ADMINISTRATIVE PROCESSES DUE TO INDIGENCE OR OTHER MATTERS.

1 **SECTION 3.** In Colorado Revised Statutes, 16-17-103, **amend**
2 (2) as follows:

3 **16-17-103. Effect of pardon and commutation of sentence -**
4 **definitions.** (2) If the governor grants a pardon, ~~or~~ a request for
5 commutation of sentence, OR A CLEMENCY APPLICATION, the governor
6 shall provide a copy of the pardon or commutation of sentence to the
7 Colorado bureau of investigation, and the Colorado bureau of
8 investigation shall note in the individual's record in the Colorado crime
9 information center that a pardon was issued, ~~or~~ A commutation of
10 sentence was granted, OR CLEMENCY WAS GRANTED.

11 **SECTION 4. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly; except
14 that, if a referendum petition is filed pursuant to section 1 (3) of article V
15 of the state constitution against this act or an item, section, or part of this
16 act within such period, then the act, item, section, or part will not take
17 effect unless approved by the people at the general election to be held in
18 November 2022 and, in such case, will take effect on the date of the
19 official declaration of the vote thereon by the governor.