

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
10.13.17

BILL 6

LLS NO. 18-0302.01 Richard Sweetman x4333

INTERIM COMMITTEE BILL

Sentencing in the Criminal Justice System Interim Study Committee

BILL TOPIC: "Discretionary Parole For Special Needs Offenders"

A BILL FOR AN ACT

101 **CONCERNING DISCRETIONARY PAROLE OF SPECIAL NEEDS OFFENDERS.**

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/>.)

Sentencing in the Criminal Justice System Interim Study Committee. Current law provides 2 definitions by which an offender in the custody of the department of corrections (department) may be considered a "special needs offender". The first definition describes a person "who is 60 years of age or older and has been diagnosed by a licensed health care provider who is employed by or under contract with the department as suffering from a chronic infirmity, illness, condition,

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

disease, or behavioral or mental health disorder and the department or the state board of parole (parole board) determines that the person is incapacitated to the extent that he or she is not likely to pose a risk to public safety". The bill amends this definition by changing "60 years" to "55 years".

The bill also adds a third definition by which such an offender may be considered a "special needs offender". That is, an offender who, as determined by a licensed health care provider who is employed by or under contract with the department, is incompetent to proceed and not likely to pose a risk to public safety.

Under current law, if the department recommends to the parole board that an offender be released to parole as a special needs offender, the parole board may deny parole only by a majority vote of the parole board. The bill states that under such conditions, the parole board shall grant the parole unless a supermajority of at least 75% of the parole board finds that granting parole would pose a present risk to public safety.

If the parole board denies or defers the granting of special needs parole but has reason to believe the offender is presently incompetent to proceed, the parole board shall notify the trial court that imposed any active sentence, and the court shall determine the competency or incompetency of the offender.

For any offender who is granted special needs parole, the parole board shall set the length of the parole to not exceed 36 months. At any time during such an offender's parole, the parole board may revise the duration of the offender's parole. However, in no case may such an offender be required to serve a period of parole in excess of the period of parole to which he or she would otherwise be sentenced, or 36 months, whichever is less.

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

2 **SECTION 1.** In Colorado Revised Statutes, 17-1-102, **amend**
3 (7.5)(a)(I) and (7.5)(a)(II); and **add** (7.5)(a)(IV) as follows:

4 **17-1-102. Definitions.** As used in this title 17, unless the context
5 otherwise requires:

6 (7.5) (a) "Special needs offender" means a person in the custody
7 of the department:

8 (I) Who is ~~sixty~~ FIFTY-FIVE years of age or older and has been
9 diagnosed by a licensed health care provider who is employed by or under

1 contract with the department as suffering from a chronic infirmity, illness,
2 condition, disease, or behavioral or mental health disorder and the
3 department or the state board of parole determines that the person is
4 incapacitated to the extent that he or she is not likely to pose a risk to
5 public safety; or

6 (II) Who, as determined by a licensed health care provider who is
7 employed by or under contract with the department, suffers from a
8 chronic, permanent, terminal, or irreversible physical illness, condition,
9 disease, or a behavioral or mental health disorder that requires costly care
10 or treatment and who is determined by the department or the state board
11 of parole to be incapacitated to the extent that he or she is not likely to
12 pose a risk to public safety; OR

13 (IV) WHO, AS DETERMINED BY A LICENSED HEALTH CARE
14 PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE
15 DEPARTMENT, IS INCOMPETENT TO PROCEED AS DESCRIBED IN SECTION
16 16-8.5-101 (11) AND NOT LIKELY TO POSE A RISK TO PUBLIC SAFETY.

17 **SECTION 2.** In Colorado Revised Statutes, 17-22.5-403.5,
18 **amend** (4)(d) and (5); and **add** (7) as follows:

19 **17-22.5-403.5. Special needs parole.** (4) (d) The state board of
20 parole shall make a determination of whether to grant special needs
21 parole within thirty days after receiving the referral from the department.
22 The board may delay the decision in order to request that the department
23 modify the special needs parole plan. IF THE BOARD DENIES OR DEFERS
24 THE GRANTING OF SPECIAL NEEDS PAROLE BUT HAS REASON TO BELIEVE
25 THE DEFENDANT IS PRESENTLY INCOMPETENT TO PROCEED AS DEFINED IN
26 SECTION 16-8.5-101 (11), THE BOARD SHALL NOTIFY THE TRIAL COURT
27 THAT IMPOSED ANY ACTIVE SENTENCE, AND THE COURT SHALL DETERMINE

1 THE COMPETENCY OR INCOMPETENCY OF THE DEFENDANT PURSUANT TO
2 SECTION 16-8.5-103. THE OFFENDER HAS THE RIGHT TO BE REPRESENTED
3 BY COUNSEL AT THE HEARING. IF THE OFFENDER IS DETERMINED TO BE
4 INDIGENT PURSUANT TO SECTION 21-1-103, THE COURT SHALL APPOINT
5 THE OFFICE OF THE STATE PUBLIC DEFENDER OR, IN THE CASE OF A
6 CONFLICT, THE OFFICE OF ALTERNATE DEFENSE COUNSEL.

7 (5) The board may consider the application for special needs
8 parole pursuant to the proceedings set forth in section 17-2-201 (4)(f) or
9 17-2-201 (9)(a). If the department recommends to the state board of
10 parole that an offender be released to parole as a special needs offender
11 pursuant to the provisions of subsection (1) of this section, the board ~~may~~
12 ~~deny~~ SHALL GRANT parole ~~only by~~ UNLESS a ~~majority vote~~
13 SUPERMAJORITY OF AT LEAST SEVENTY-FIVE PERCENT of the board FINDS
14 THAT GRANTING PAROLE WOULD POSE A PRESENT RISK TO PUBLIC SAFETY.

15 (7) FOR ANY OFFENDER WHO IS GRANTED SPECIAL NEEDS PAROLE
16 PURSUANT TO THIS SECTION, THE STATE BOARD OF PAROLE SHALL SET THE
17 LENGTH OF THE PAROLE TO NOT EXCEED THIRTY-SIX MONTHS. AT ANY
18 TIME DURING THE OFFENDER'S PAROLE, THE STATE BOARD OF PAROLE MAY
19 REVISE THE DURATION OF THE PAROLE. HOWEVER, IN NO CASE MAY SUCH
20 AN OFFENDER BE REQUIRED TO SERVE A PERIOD OF PAROLE IN EXCESS OF
21 THE PERIOD OF PAROLE TO WHICH HE OR SHE WOULD OTHERWISE BE
22 SENTENCED PURSUANT TO SECTION 18-1.3-401 (1)(a)(V)(A), OR
23 THIRTY-SIX MONTHS, WHICHEVER IS LESS.

24 **SECTION 3. Applicability.** This act applies to applications for
25 special needs parole that are received by the state board of parole on or
26 after the effective date of this act.

27 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.