



Legislative Council Staff

Research Note

Version: Final

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Bill Number

Senate Bill 16-180

Sponsors

***Senators Woods and Jahn
Representatives Kagan and
Ransom***

Short Title

***Department of Corrections
Program For Juvenile Offenders***

Research Analyst

Conrad Imel (x2756)

Status

This research note reflects the final version of the bill, which was signed by the Governor on June 10, 2016, and became law on August 10, 2016.

Summary

This bill requires the Department of Corrections (DOC) to create a specialized program for offenders who committed a felony as a juvenile and were sentenced as an adult.

Eligibility. An offender is eligible to petition the DOC executive director, or his or her designee, for placement in the program if the offender:

- has served at least 20 calendar years of his or her sentence;
- has not been released to parole;
- has not been convicted of certain types of murder in the first degree or unlawful sexual behavior;
- is not in a treatment program within the DOC for a serious mental illness;
- has obtained, at a minimum, a high school diploma or has passed a high school equivalency exam;
- has participated in programs offered by the DOC and demonstrated responsibility and commitment in those programs;
- has demonstrated positive growth and change through increasing developmental maturity and quantifiable good behavior during the course of incarceration; and
- has accepted responsibility for the criminal behavior underlying the offense for which he or she was convicted.

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The DOC is required to develop policies and procedures for the receipt and review of petitions. Criteria for placement decisions includes:

- the nature of and circumstances surrounding the offense;
- the age and maturity of the offender at the time of the offense;
- the behavior and conduct of the offender while incarcerated;
- the assessed risk and needs of the offender;
- the impact of the offense on the victim or a member of the victim's immediate family; and
- any other factor determined relevant by the DOC executive director.

The DOC is allowed to make restorative justice practices available to any victim or any immediate family member of a victim of any offender who petitions for placement in the program upon request by a victim registered with the DOC requesting notice of victims' rights. If the DOC denies a petition for placement in the program or an offender is terminated from the program, the offender may petition again after at least three years.

Program operations. The program's goals are to foster independent living skills development, reentry services, and intensive supervision and monitoring. The program is to be housed in a minimum security facility. Program design must be completed by August 10, 2017, and placement is to begin no later than November 10, 2017. If the program is not operational by this date, the DOC is required to notify the General Assembly on or before November 30, 2017. Rules for the program are to include procedures for terminating participation for offenders who do not comply with requirements and eligibility to apply for early parole upon successful completion of the program.

Program completion. Each offender must participate for a minimum of three years in order to complete the program. If an offender has served at least 25 calendar years of his or her sentence and successfully completed the program it is presumed that the offender has met the factual burden of presenting extraordinary mitigating circumstances and that the offender's release to early parole is compatible with the safety and welfare of society.

Reporting. The DOC is required to report on program progress and outcomes, on and after January 1, 2018, during its annual presentation before the Joint Judiciary Committee.

Parole eligibility. Participants that complete the program may submit applications for early parole for review and approval by the Governor. At the time of application, notice must be provided to the State Board of Parole (board), which is to make a parole recommendation to the Governor within 90 days. The DOC must, in cooperation with the board, develop any necessary policies and procedures for implementation, including notice to victims and the prosecuting district attorney's office. Any victim must have the opportunity to be heard at the hearing.

Background

Under existing Colorado law, Section 18-1.3-401 (4)(a), C.R.S., anyone convicted of a class 1 felony committed after July 1, 1990, is automatically sentenced to life in prison without the possibility of parole, unless the person is sentenced to the death penalty. In 2006, an exception was added that permits juveniles convicted as adults of class 1 felonies to be sentenced to life imprisonment with the possibility of parole after 40 years. This exemption is not retroactive. Between 1991 and 2006, 48 juveniles were sentenced to life in prison without the possibility of parole under this law.

In 2012, the U.S. Supreme Court, in *Miller v. Alabama*, ruled that the Eighth Amendment to the U.S. Constitution prohibits a sentencing scheme that requires life in prison without the possibility

of parole for juvenile homicide offenders. In 2016, in *Montgomery v. Louisiana*, the Court decided that the ruling in *Miller* applies retroactively to convictions that were made prior to the *Miller* decision.

Senate Action

Senate Judiciary Committee (April 20, 2016). At the hearing, the committee received testimony in support of the bill from representatives of the State Public Defender, the Incarcerated Children's Advocacy Network, the Second Chance Center, the Youth Transformation Center, the Words Beyond Bars Project, the Independence Institute, Right on Crime, the Colorado Catholic Conference, the League of Women Voters, the Pendulum Foundation, the Office of Alternate Defense Counsel, and private citizens. Testimony in opposition to the bill was presented by representatives of the Colorado Attorney General's Office, Colorado Victims for Justice, and various district attorney's offices. The DOC provided neutral testimony on the bill.

The committee adopted amendments L.001, L.002, L.004, L.005, and L.006, and referred the bill, as amended, to the Senate Appropriations Committee.

Amendment L.001, as amended by amendments L.002 and L.004, amends the bill to:

- require that offenders petitioning to participate in the program have not committed a sex offense and have not been determined by DOC to suffer from a serious mental illness;
- permit DOC to make restorative justice programs available to victims, if requested;
- permit an offender rejected or terminated from the program to reapply no sooner than three years after the denial or termination;
- permit the program to be implemented within a DOC-operated facility;
- require that DOC not allow any offender to complete the program in less than three years;
- extend the deadlines for the DOC to complete the design of the program to August 10, 2017, to begin placing offenders in the program to November 10, 2017, and to report to the General Assembly if the program is not operational by the stated deadline to November 30, 2017;
- remove provisions relating to clemency;
- require the board to hold a hearing for any offender for whom it considers making a recommendation for early parole after the offender has completed the program; and
- make other clarifying and technical amendments.

Amendment L.005 clarifies the applicability of the program, consistent with a change made by amendment L.001. Amendment L.006 extends the date of repeal for the section concerning deadlines for DOC to design, make operational, and report on the program to December 1, 2017, consistent with changes made by amendment L.001.

Senate Appropriations Committee (April 29, 2016). The committee adopted amendment J.001, which adds an appropriations clause to the bill, and referred the bill to the Senate Committee of the Whole.

Senate second reading (May 2, 2016). The Senate Committee of the Whole adopted amendment L.012 to the Senate Judiciary Committee report and adopted the Judiciary Committee report, as amended, and the Appropriations Committee report. The Committee of the Whole also adopted amendment L.013 and passed the bill, as amended, on second reading.

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Amendment L.012 removes the requirement that an offender petitioning to participate in the program not have been determined to suffer from a serious mental illness by DOC, and requires that the offender:

- not be in a DOC treatment program for mental illness;
- obtain a high school diploma or pass a high school equivalency exam;
- demonstrate responsibility and commitment in other programs offered by DOC;
- demonstrate growth and change; and
- accept responsibility for the criminal behavior for which the offender was convicted.

Amendment L.013 clarifies that victims have certain rights regarding notice and the ability to be heard, afforded to them when an offender is being considered for placement in the program.

Senate third reading (May 3, 2016). The Senate passed the bill on third reading.

Senate consideration of House amendments (May 11, 2016). The Senate did not concur with the House amendments and requested a conference committee.

House Action

House Judiciary Committee (May 5, 2016). At the hearing, the committee received testimony in support of the bill from representatives of the New Life Christian Center, the Second Chance Center, the League of Women Voters, the Restorative Justice Center, the Words Beyond Bars program, the Colorado Bar Association, the Colorado Criminal Defense Institute, and multiple private citizens. The committee heard testimony opposing the bill from representatives of the Colorado Attorney General's Office and the Colorado District Attorneys' Council. The DOC provided neutral testimony on the bill.

The committee adopted amendments L.014, L.015, L.017, and L.018, and referred the bill, as amended, to the House Appropriations Committee.

Amendment L.014 removes the requirement that the program allow an offender to experience a less secure or less restrictive placement. Amendment L.015 permits certain presumptions about offenders who complete the program to be rebutted by relevant evidence, and clarifies that the Governor may consider any relevant evidence presented by any person or agency before granting early parole.

Amendment L.017 requires an offender convicted of first degree murder to have served 27 years of his or her sentence before petitioning to participate in the program. This 27-year requirement does not apply when the conviction for first degree murder was the result of a murder caused while committing or attempting to commit arson, robbery, burglary, kidnapping, certain sexual assaults, or the crime of escape under Section 18-3-102 (1)(b), C.R.S. Amendment L.018 would prohibit offenders who committed first degree murder other than that described above, while the offender was at least 17 years old, from participating in the program.

House Appropriations Committee (May 9, 2016). The committee did not make any amendments and referred the bill to the House Committee of the Whole.

House second reading (May 9, 2016). The House Committee of the Whole adopted Amendment L.022 to the House Judiciary Committee report, which clarifies the provisions of Amendment L.018, and adopted the report, as amended. The Committee of the Whole passed the bill, as amended, on second reading.

House third reading (May 10, 2016). The House passed the bill on third reading.

Conference Committee

First conference committee (May 11, 2016). The Senate did not concur with the House amendments and a conference committee was formed. The first conference committee agreed that the House would recede from its amendments to the bill, and agreed to amend the reengrossed bill to:

- remove the requirement that the program allow an offender to experience a less secure or less restrictive placement;
- permit certain presumptions about offenders who complete the program to be rebutted by relevant evidence; and
- clarify that the Governor may consider any relevant evidence presented by any person or agency before granting early parole.

House Action (May 11, 2016). The House rejected the first conference committee report and requested that the first conference committee be dissolved and a second conference committee be appointed.

Second conference committee (May 11, 2016). The second conference committee agreed that the Senate would accede to the House amendments, and to amend the rerevised bill to:

- remove the prohibition on participation for those convicted of a sex offense, and prohibiting participation by those convicted of unlawful sexual behavior;
- require an offender convicted of first degree murder to have served 27 years of his or her sentence before petitioning to participate in the program when the conviction was for first degree murder under circumstances evidencing an attitude of universal malice and extreme indifference to human life, and knowingly engaging in conduct which creates a grave risk of death, and causes death described in Section 18-3-102 (1)(d), C.R.S.; and
- require an offender convicted of first degree murder other than while committing another crime under Section 18-3-102 (1)(b), C.R.S., or under the circumstances described above under Section 18-3-102 (1)(d), C.R.S., to have served 25 years of his or her sentence before petitioning to participate in the program, and to have served 30 years of his or her sentence and completed the program to be granted certain presumptions offered to those who have completed the program.

House action (May 11, 2016). The House adopted the first report of the second conference committee and repassed the bill.

Senate action (May 11, 2016). The Senate adopted the first report of the second conference committee and repassed the bill.

Relevant Research

Legislative Council Staff, *Special Sentencing for Felony and Misdemeanor Offenses*, Interested Persons Memorandum, October 2012: <http://tinyurl.com/j8wsm44> (pdf).

Legislative Council Staff, *Sealing Adult and Juvenile Criminal Records*, Interested Persons Memo, September 2012: <http://tinyurl.com/gkvbfo6> (pdf).

Legislative Council Staff, 2010 Sentencing Reform, Issue Brief, December 2010, updated

March 2012: <http://tinyurl.com/zoe472m> (pdf).