

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0200.01 Richard Sweetman x4333

HOUSE BILL 15-1042

HOUSE SPONSORSHIP

Foote,

SENATE SPONSORSHIP

Cooke,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRING PRESENTENCE REPORTS TO INCLUDE**
102 **INFORMATION CONCERNING THE AMOUNT OF TIME A**
103 **DEFENDANT IS EXPECTED TO ACTUALLY SPEND IN**
104 **INCARCERATION.**

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://www.leg.state.co.us/billsummaries>.)

Under current law, following the return of a verdict of guilty of a felony other than a class 1 felony, or following a finding of guilt on such a charge where the issues were tried to the court, or following a plea of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

guilty or nolo contendere to such a charge, or upon order of the court in any misdemeanor conviction, a probation officer must make an investigation and written report to the court before the imposition of sentence.

The bill requires that, if a defendant is eligible to receive a sentence to the department of corrections, the presentence report must include a statement concerning the estimated amount of time that the defendant is expected to actually spend in incarceration, including consideration of certain potentially sentence-reducing factors.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-11-102, **amend**

3 (1) (a) as follows:

4 **16-11-102. Presentence or probation investigation.**

5 (1) (a) (I) Following the return of a verdict of guilty of a felony, other
6 than a class 1 felony, or following a finding of guilt on such charge where
7 the issues were tried to the court, or on a plea of guilty or nolo contendere
8 to such a charge, or upon order of the court in any misdemeanor
9 conviction, the probation officer shall make an investigation and written
10 report to the court before the imposition of sentence. Each presentence
11 report ~~shall~~ **MUST** include a substance abuse assessment or evaluation
12 made pursuant to article 11.5 of this title and, unless waived by the court,
13 ~~shall~~ **MUST** include, but not be limited to, information as to the defendant's
14 family background, educational history, employment record, and past
15 criminal record, including the defendant's past juvenile delinquency
16 record, if any; ~~if~~ **INFORMATION INDICATING WHETHER** the defendant has
17 been convicted of unlawful sexual behavior as defined in section
18 16-22-102 (9); an evaluation of the alternative dispositions available for
19 the defendant; the information required by the court pursuant to article
20 18.5 of this title; a victim impact statement; and such other information

1 as the court may require.

2 (II) EXCEPT AS DESCRIBED IN SUBPARAGRAPH (VI) OF THIS
3 PARAGRAPH (a), IF THE DEFENDANT IS CONVICTED OF A FELONY THAT
4 OCCURRED AFTER JULY 1, 2004, AND HE OR SHE IS ELIGIBLE TO RECEIVE
5 A SENTENCE TO THE DEPARTMENT OF CORRECTIONS, THE REPORT
6 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) MUST INCLUDE
7 THE FOLLOWING STATEMENT:

8 "IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF
9 CORRECTIONS, HE OR SHE MAY NOT SERVE HIS OR HER ENTIRE SENTENCE
10 IN PRISON BUT MAY BE RELEASED TO COMMUNITY CORRECTIONS OR
11 PAROLE. THE DEFENDANT'S PAROLE ELIGIBILITY DATE (PED) OCCURS
12 AFTER HE OR SHE HAS SERVED FIFTY OR SEVENTY-FIVE PERCENT OF HIS OR
13 HER SENTENCE, AS PROVIDED IN SECTION 17-22.5-403, C.R.S., LESS ANY
14 AUTHORIZED EARNED TIME.

15 IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF
16 CORRECTIONS, HE OR SHE MAY BE ELIGIBLE FOR A REDUCTION IN THE
17 LENGTH OF HIS OR HER SENTENCE BY EARNED TIME. REGULAR EARNED
18 TIME IS UP TO TEN OR TWELVE DAYS PER MONTH, NOT TO EXCEED THIRTY
19 PERCENT OF THE DEFENDANT'S SENTENCE; HOWEVER, THE DEFENDANT
20 MAY BE ELIGIBLE FOR FURTHER LIMITED REDUCTIONS THROUGH THE
21 APPLICATION OF VARIOUS TYPES OF EARNED TIME PROVIDED IN STATUTE
22 AND ADMINISTERED PURSUANT TO THE POLICY OF THE DEPARTMENT OF
23 CORRECTIONS.

24 IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF
25 CORRECTIONS, HE OR SHE MAY BE ELIGIBLE FOR AN EARLY RELEASE, TO
26 AWAIT PAROLE IN A COMMUNITY CORRECTIONS FACILITY, IF SUCH EARLY
27 RELEASE IS APPROVED BY THE LOCAL COMMUNITY CORRECTIONS BOARD.

1 IF THE DEFENDANT WAS NOT CONVICTED OF A CRIME OF VIOLENCE, AS
2 DEFINED IN SECTION 18-1.3-406 (2), C.R.S., HE OR SHE MAY BE MOVED TO
3 A COMMUNITY CORRECTIONS PLACEMENT AS EARLY AS SIXTEEN MONTHS
4 PRIOR TO HIS OR HER PED. IF THE DEFENDANT WAS CONVICTED OF A
5 CRIME OF VIOLENCE, HE OR SHE CANNOT BE MOVED TO A COMMUNITY
6 CORRECTIONS PLACEMENT EARLIER THAN ONE HUNDRED EIGHTY DAYS
7 PRIOR TO HIS OR HER PED.

8 A DEFENDANT'S ELIGIBILITY FOR COMMUNITY CORRECTIONS OR
9 PAROLE DOES NOT NECESSARILY MEAN THAT COMMUNITY CORRECTIONS
10 OR PAROLE WILL BE GRANTED. THE INMATE LOCATOR ON THE INTERNET
11 WEB SITE OF THE DEPARTMENT OF CORRECTIONS CAN ASSIST WITH THE
12 COMPUTATION OF TIME RELATING TO THE SENTENCE OF AN INDIVIDUAL
13 DEFENDANT."

14 (III) THE DISTRICT ATTORNEY'S OFFICE SHALL PREPARE a victim
15 impact statement. ~~shall be prepared by the district attorney's office on and~~
16 ~~after September 1, 1985.~~ The department of human services shall provide
17 the district attorney's office with the information necessary for the
18 preparation of a victim impact statement. In addition, the court, in cases
19 that it deems appropriate, may require the presentence report to include
20 the findings and results of a professionally conducted psychiatric
21 examination of the defendant.

22 (IV) No less than seventy-two hours prior to the sentencing
23 hearing, THE PROBATION DEPARTMENT SHALL PROVIDE copies of the
24 presentence report, including any recommendations as to probation, ~~shall~~
25 ~~be furnished~~ to the prosecuting attorney and defense counsel or to the
26 defendant if he or she is unrepresented. Upon request of either the defense
27 or the district attorney, the probation department shall provide the

1 presentence report at least seven days prior to the sentencing hearing. If
2 the probation department informs the court it cannot provide the report at
3 least seven days prior to the sentencing hearing, the court shall grant the
4 probation department additional time to complete the report and shall
5 reset the sentencing hearing so that the hearing is held at least seven days
6 after the probation department provides the report.

7 (V) THE COURT SHALL TRANSMIT a copy of the presentence report
8 ~~shall be transmitted~~ to the department of corrections together with the
9 mittimus.

10 (VI) THE REPORT DESCRIBED IN SUBPARAGRAPH (I) OF THIS
11 PARAGRAPH (a) NEED NOT INCLUDE THE STATEMENT DESCRIBED IN
12 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IF:

13 (A) THE DEFENDANT IS A SEX OFFENDER FOR WHOM THE SEX
14 OFFENDER MANAGEMENT BOARD HAS ESTABLISHED SEPARATE AND
15 DISTINCT RELEASE GUIDELINES PURSUANT TO SECTION 18-1.3-1009,
16 C.R.S.;

17 (B) THE DEFENDANT HAS AT LEAST ONE PREVIOUS CONVICTION
18 FOR A CRIME OF VIOLENCE AND MUST BE REFERRED BY THE DEPARTMENT
19 TO THE STATE BOARD OF PAROLE PURSUANT TO SECTION 17-22.5-403
20 (3.5), C.R.S.;

21 (C) THE DEFENDANT IS CONVICTED OF A CLASS 1 FELONY OR IS A
22 JUVENILE CONVICTED AS AN ADULT OF A CLASS 1 FELONY; OR

23 (D) THE PROBATION DEPARTMENT HAS REASONABLE GROUNDS TO
24 BELIEVE THAT THE LANGUAGE OF THE STATEMENT IS INAPPLICABLE TO
25 THE DEFENDANT. IF THE PROBATION DEPARTMENT ELECTS TO OMIT THE
26 STATEMENT PURSUANT TO THIS SUB-SUBPARAGRAPH (D), THE PROBATION
27 DEPARTMENT SHALL DOCUMENT ITS GROUNDS FOR DOING SO.

1 **SECTION 2. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly
4 (August 5, 2015, if adjournment sine die is on May 6, 2015); except that,
5 if a referendum petition is filed pursuant to section 1 (3) of article V of
6 the state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2016 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.