

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 24, 2015
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB15-1042 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, strike everything below the enacting clause and
2 substitute:
- 3 "SECTION 1. In Colorado Revised Statutes, 16-11-102, **amend**
4 (1) (a) as follows:
- 5 **16-11-102. Presentence or probation investigation.**
6 (1) (a) (I) Following the return of a verdict of guilty of a felony, other
7 than a class 1 felony, or following a finding of guilt on such charge where
8 the issues were tried to the court, or on a plea of guilty or nolo contendere
9 to such a charge, or upon order of the court in any misdemeanor
10 conviction, the probation officer shall make an investigation and written
11 report to the court before the imposition of sentence. Each presentence
12 report ~~shall~~ MUST include a substance abuse assessment or evaluation
13 made pursuant to article 11.5 of this title and, unless waived by the court,
14 ~~shall~~ MUST include, but not be limited to, information as to the defendant's
15 family background, educational history, employment record, and past
16 criminal record, including the defendant's past juvenile delinquency
17 record, if any; **if** INFORMATION INDICATING WHETHER the defendant has
18 been convicted of unlawful sexual behavior as defined in section
19 16-22-102 (9); an evaluation of the alternative dispositions available for
20 the defendant; the information required by the court pursuant to article
21 18.5 of this title; a victim impact statement; and such other information
22 as the court may require.
- 23 (II) EXCEPT AS DESCRIBED IN SUBPARAGRAPH (VI) OF THIS
24 PARAGRAPH (a), IF THE DEFENDANT IS CONVICTED OF A FELONY THAT

1 OCCURRED AFTER JULY 1, 2004, AND HE OR SHE IS ELIGIBLE TO RECEIVE
2 A SENTENCE TO THE DEPARTMENT OF CORRECTIONS, THE REPORT
3 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) MUST INCLUDE
4 THE FOLLOWING STATEMENT:

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

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

21 IF THE DEFENDANT IS SENTENCED TO THE DEPARTMENT OF
22 CORRECTIONS, HE OR SHE MAY BE ELIGIBLE FOR AN EARLY RELEASE, TO
23 AWAIT PAROLE IN A COMMUNITY CORRECTIONS FACILITY, IF SUCH EARLY
24 RELEASE IS APPROVED BY THE LOCAL COMMUNITY CORRECTIONS BOARD.
25 IF THE DEFENDANT WAS NOT CONVICTED OF A CRIME OF VIOLENCE, AS
26 DEFINED IN SECTION 18-1.3-406 (2), C.R.S., HE OR SHE MAY BE MOVED TO
27 A COMMUNITY CORRECTIONS PLACEMENT AS EARLY AS SIXTEEN MONTHS
28 PRIOR TO HIS OR HER PED. IF THE DEFENDANT WAS CONVICTED OF A
29 CRIME OF VIOLENCE, HE OR SHE CANNOT BE MOVED TO A COMMUNITY
30 CORRECTIONS PLACEMENT EARLIER THAN ONE HUNDRED EIGHTY DAYS
31 PRIOR TO HIS OR HER PED.

32 A DEFENDANT'S ELIGIBILITY FOR COMMUNITY CORRECTIONS OR
33 PAROLE DOES NOT NECESSARILY MEAN THAT COMMUNITY CORRECTIONS
34 OR PAROLE WILL BE GRANTED. THE INMATE LOCATOR ON THE INTERNET
35 WEB SITE OF THE DEPARTMENT OF CORRECTIONS CAN ASSIST WITH THE
36 COMPUTATION OF TIME RELATING TO THE SENTENCE OF AN INDIVIDUAL
37 DEFENDANT."

38 (III) THE DISTRICT ATTORNEY'S OFFICE SHALL PREPARE a victim
39 impact statement. ~~shall be prepared by the district attorney's office on and~~
40 ~~after September 1, 1985.~~ The department of human services shall provide
41 the district attorney's office with the information necessary for the

1 preparation of a victim impact statement. In addition, the court, in cases
2 that it deems appropriate, may require the presentence report to include
3 the findings and results of a professionally conducted psychiatric
4 examination of the defendant.

5 (IV) No less than seventy-two hours prior to the sentencing
6 hearing, THE PROBATION DEPARTMENT SHALL PROVIDE copies of the
7 presentence report, including any recommendations as to probation, ~~shall~~
8 ~~be furnished~~ to the prosecuting attorney and defense counsel or to the
9 defendant if he or she is unrepresented. Upon request of either the defense
10 or the district attorney, the probation department shall provide the
11 presentence report at least seven days prior to the sentencing hearing. If
12 the probation department informs the court it cannot provide the report at
13 least seven days prior to the sentencing hearing, the court shall grant the
14 probation department additional time to complete the report and shall
15 reset the sentencing hearing so that the hearing is held at least seven days
16 after the probation department provides the report.

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

20 (VI) THE REPORT DESCRIBED IN SUBPARAGRAPH (I) OF THIS
21 PARAGRAPH (a) NEED NOT INCLUDE THE STATEMENT DESCRIBED IN
22 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IF:

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

27 (B) THE DEFENDANT HAS AT LEAST ONE PREVIOUS CONVICTION
28 FOR A CRIME OF VIOLENCE AND MUST BE REFERRED BY THE DEPARTMENT
29 TO THE STATE BOARD OF PAROLE PURSUANT TO SECTION 17-22.5-403
30 (3.5), C.R.S.;

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

33 (D) THE PROBATION DEPARTMENT HAS REASONABLE GROUNDS TO
34 BELIEVE THAT THE LANGUAGE OF THE STATEMENT IS INAPPLICABLE TO
35 THE DEFENDANT. IF THE PROBATION DEPARTMENT ELECTS TO OMIT THE
36 STATEMENT PURSUANT TO THIS SUB-SUBPARAGRAPH (D), THE PROBATION
37 DEPARTMENT SHALL DOCUMENT ITS GROUNDS FOR DOING SO.

38 **SECTION 2. Act subject to petition - effective date.** This act
39 takes effect at 12:01 a.m. on the day following the expiration of the
40 ninety-day period after final adjournment of the general assembly
41 (August 5, 2015, if adjournment sine die is on May 6, 2015); except that,

1 if a referendum petition is filed pursuant to section 1 (3) of article V of
2 the state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2016 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor."

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