

NOTE: The governor signed this measure on 6/10/2016.

An Act

SENATE BILL 16-181

BY SENATOR(S) Woods and Jahn, Aguilar, Carroll, Cooke, Guzman, Hill, Kerr, Lundberg, Marble, Martinez Humenik, Newell, Scheffel, Steadman, Todd, Donovan, Garcia, Heath, Holbert, Kefalas, Lambert, Merrifield, Neville T., Tate, Ulibarri;
also REPRESENTATIVE(S) Kagan and Dore, Garnett, Wist, Arndt, Becker K., Court, Duran, Esgar, Klingenschmitt, Lee, Melton, Pabon, Primavera, Rosenthal, Ryden, Salazar, Singer, Tyler, Williams.

CONCERNING THE SENTENCING OF PERSONS CONVICTED OF CLASS 1
FELONIES COMMITTED WHILE THE PERSONS WERE JUVENILES.

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

SECTION 1. In Colorado Revised Statutes, 18-1.3-401, **amend** (4) (b) (I); and **add** (4) (c) as follows:

18-1.3-401. Felonies classified - presumptive penalties.
(4) (b) (I) Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (V) of paragraph (a) of subsection (1) of this section and notwithstanding the provisions of paragraph (a) of this subsection (4), as to a person who is convicted as an adult of a class 1 felony following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

pursuant to section 19-2-518, C.R.S., the district court judge shall sentence the person to a term of life imprisonment with the possibility of parole after serving a period of forty ~~calendar~~ years, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S. Regardless of whether the state board of parole releases the person on parole, the person shall remain in the legal custody of the department of corrections for the remainder of the person's life and shall not be discharged.

(c) (I) NOTWITHSTANDING THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (V) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4), AS TO A PERSON WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING A DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005, WHICH FELONY WAS COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, AND WHO RECEIVED A SENTENCE TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE:

(A) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b), THEN THE DISTRICT COURT, AFTER HOLDING A HEARING, MAY SENTENCE THE PERSON TO A DETERMINATE SENTENCE WITHIN THE RANGE OF THIRTY TO FIFTY YEARS IN PRISON, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S., IF, AFTER CONSIDERING THE FACTORS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), THE DISTRICT COURT FINDS EXTRAORDINARY MITIGATING CIRCUMSTANCES. ALTERNATIVELY, THE COURT MAY SENTENCE THE PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S.

(B) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS NOT MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b), THEN THE DISTRICT COURT SHALL SENTENCE THE PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION

17-22.5-405, C.R.S.

(II) IN DETERMINING WHETHER EXTRAORDINARY MITIGATING CIRCUMSTANCES EXIST, THE COURT SHALL CONDUCT A SENTENCING HEARING, MAKE FACTUAL FINDINGS TO SUPPORT ITS DECISION, AND CONSIDER RELEVANT EVIDENCE PRESENTED BY EITHER PARTY REGARDING THE FOLLOWING FACTORS:

(A) THE DIMINISHED CULPABILITY AND HEIGHTENED CAPACITY FOR CHANGE ASSOCIATED WITH YOUTH;

(B) THE OFFENDER'S DEVELOPMENTAL MATURITY AND CHRONOLOGICAL AGE AT THE TIME OF THE OFFENSE AND THE HALLMARK FEATURES OF SUCH AGE, INCLUDING BUT NOT LIMITED TO IMMATURITY, IMPETUOSITY, AND INABILITY TO APPRECIATE RISKS AND CONSEQUENCES;

(C) THE OFFENDER'S CAPACITY FOR CHANGE AND POTENTIAL FOR REHABILITATION, INCLUDING ANY EVIDENCE OF THE OFFENDER'S EFFORTS TOWARD, OR AMENABILITY TO, REHABILITATION;

(D) THE IMPACT OF THE OFFENSE UPON ANY VICTIM OR VICTIM'S IMMEDIATE FAMILY; AND

(E) ANY OTHER FACTORS THAT THE COURT DEEMS RELEVANT TO ITS DECISION, SO LONG AS THE COURT IDENTIFIES SUCH FACTORS ON THE RECORD.

(III) IF A PERSON IS SENTENCED TO A DETERMINATE RANGE OF THIRTY TO FIFTY YEARS IN PRISON PURSUANT TO THIS PARAGRAPH (c), THE COURT SHALL IMPOSE A MANDATORY PERIOD OF TEN YEARS PAROLE.

(IV) IF A PERSON IS SENTENCED TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S., REGARDLESS OF WHETHER THE STATE BOARD OF PAROLE RELEASES THE PERSON ON PAROLE, THE PERSON SHALL REMAIN IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF HIS OR HER LIFE AND SHALL NOT BE DISCHARGED.

SECTION 2. In Colorado Revised Statutes, 17-22.5-104, **amend**

(2) (c) (I) and (2) (d) (IV); and **add** (2) (d) (V) as follows:

17-22.5-104. Parole - regulations. (2) (c) (I) EXCEPT AS DESCRIBED IN SECTION 18-1.3-401 (4) (c), C.R.S., AND IN SUBPARAGRAPHS (IV) AND (V) OF PARAGRAPH (d) OF THIS SUBSECTION (2), no inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(d) (IV) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), an inmate imprisoned under a life sentence for a class 1 felony committed BEFORE JULY 1, 1990, OR on or after July 1, 2006, who was convicted as an adult following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S., may be eligible for parole after the inmate has served at least forty ~~calendar~~ years, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405. An application for parole ~~shall~~ MAY not be made or considered during ~~the~~ THIS period. ~~of forty calendar years.~~

(V) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), AN INMATE SENTENCED TO LIFE IMPRISONMENT FOR A CLASS 1 FELONY COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, WHO WAS CONVICTED AS AN ADULT FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005, MAY BE ELIGIBLE FOR PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

SECTION 3. In Colorado Revised Statutes, 17-22.5-403, **add** (2) (c) as follows:

17-22.5-403. Parole eligibility - repeal. (2) (c) (I) A PERSON WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING A DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO

THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005, WHICH FELONY WAS COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, AND WHO IS RESENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IS NOT ENTITLED TO RECEIVE ANY REDUCTION OF HIS OR HER SENTENCE PURSUANT TO THIS SECTION.

(II) (A) THE STATE BOARD OF PAROLE MAY CONDUCT PAROLE HEARINGS FOR PERSONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) BEGINNING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (c).

(B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (c).

SECTION 4. In Colorado Revised Statutes, 17-22.5-405, **amend** (4); and **add** (1.2) as follows:

17-22.5-405. Earned time - earned release time - achievement earned time. (1.2) SUBSECTION (1) OF THIS SECTION APPLIES TO A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (b) OR (4) (c), C.R.S. AS TO A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT AWARD EARNED TIME TO SUCH A PERSON BOTH PROSPECTIVELY AND RETROACTIVELY FROM THE EFFECTIVE DATE OF THIS SUBSECTION (1.2), AS IF THE PERSON HAD BEEN ELIGIBLE TO BE AWARDED EARNED TIME FROM THE BEGINNING OF HIS OR HER INCARCERATION PURSUANT TO THE SENTENCE THAT HE OR SHE ORIGINALLY RECEIVED FOR SUCH FELONY.

(4) (a) EXCEPT AS DESCRIBED IN SUBSECTION (6) OR (9) OF THIS SECTION OR IN PARAGRAPH (b) OF THIS SUBSECTION (4), AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, EARNED TIME MAY NOT REDUCE THE SENTENCE OF AN INMATE AS DEFINED IN SECTION 17-22.5-402 (1) BY A PERIOD OF TIME THAT IS MORE THAN THIRTY PERCENT OF THE SENTENCE. ~~This subsection (4) shall not apply to subsection (6) or subsection (9) of this~~

section:

(b) EARNED TIME MAY NOT REDUCE THE SENTENCE OF AN INMATE DESCRIBED IN SUBSECTION (1.2) OF THIS SECTION BY A PERIOD OF TIME THAT IS MORE THAN TWENTY-FIVE PERCENT OF THE SENTENCE.

SECTION 5. In Colorado Revised Statutes, **add** part 10 to article 13 of title 16 as follows:

PART 10
RESENTENCING HEARINGS FOR JUVENILE
OFFENDERS SERVING LIFE SENTENCES

16-13-1001. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

(a) (I) IN THE 2012 CASE OF *MILLER V. ALABAMA*, THE UNITED STATES SUPREME COURT HELD THAT IMPOSING A MANDATORY LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE ON A JUVENILE IS A CRUEL AND UNUSUAL PUNISHMENT PROHIBITED BY THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION; AND

(II) THE COURT FURTHER HELD THAT CHILDREN ARE CONSTITUTIONALLY DIFFERENT THAN ADULTS FOR PURPOSES OF SENTENCING; AND

(b) (I) IN THE 2016 CASE OF *MONTGOMERY V. LOUISIANA*, THE COURT HELD THAT *MILLER V. ALABAMA* ANNOUNCED A SUBSTANTIVE RULE OF CONSTITUTIONAL LAW THAT APPLIES RETROACTIVELY; AND

(II) IN LIGHT OF THE COURT'S HOLDING THAT CHILDREN ARE CONSTITUTIONALLY DIFFERENT THAN ADULTS IN THEIR LEVEL OF CULPABILITY, THE COURT FURTHER HELD THAT PRISONERS SERVING LIFE SENTENCES FOR CRIMES THAT THEY COMMITTED AS JUVENILES MUST BE GIVEN THE OPPORTUNITY TO SHOW THAT THEIR CRIMES DID NOT REFLECT IRREPARABLE CORRUPTION AND, IF THEY DID NOT, THEN THEIR HOPE FOR SOME YEARS OF LIFE OUTSIDE PRISON WALLS MUST BE RESTORED; AND

(III) THE COURT MADE IT CLEAR THAT A SENTENCE TO A LIFETIME IN PRISON IS AN UNCONSTITUTIONAL SENTENCE FOR ALL BUT THE RAREST OF

CHILDREN.

(2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

(a) A JUVENILE SENTENCED IN COLORADO FOR A CONVICTION OF A CLASS 1 FELONY AS A RESULT OF A DIRECT FILE OR TRANSFER OF AN OFFENSE COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, WAS SENTENCED TO A MANDATORY LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE; AND

(b) APPROXIMATELY FIFTY PERSONS IN COLORADO RECEIVED SUCH AN UNCONSTITUTIONAL SENTENCE.

(3) NOW, THEREFORE, THE GENERAL ASSEMBLY HEREBY DECLARES THAT THIS PART 10 IS NECESSARY TO PROVIDE PERSONS SERVING SUCH UNCONSTITUTIONAL SENTENCES THE OPPORTUNITY FOR RESENTENCING.

16-13-1002. Resentencing hearing for persons serving life sentences without the possibility of parole as the result of a direct file or transfer. (1) A PERSON MAY PETITION THE SENTENCING COURT FOR A RESENTENCING HEARING IF HE OR SHE WAS:

(a) A JUVENILE AT THE TIME OF HIS OR HER OFFENSE;

(b) CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005; AND

(c) SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR AN OFFENSE COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006.

(2) IF A PETITION IS FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE SENTENCING COURT SHALL CONDUCT A RESENTENCING HEARING AND RESENTENCE THE OFFENDER AS DESCRIBED IN SECTION 18-1.3-401 (4) (c), C.R.S.

(3) THE PROVISIONS OF SECTIONS 17-22.5-403 (2) (c) AND 17-22.5-405 (1.2), C.R.S., TAKE EFFECT UPON RESENTENCING.

(4) A PETITION FILED UNDER THIS SECTION IS NOT A MOTION UNDER RULE 35 (c) OF THE COLORADO RULES OF CRIMINAL PROCEDURE.

SECTION 6. In Colorado Revised Statutes, 24-4.1-302, **amend** (2) (h) as follows:

24-4.1-302. Definitions. As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(2) "Critical stages" means the following stages of the criminal justice process:

(h) Any sentencing OR RESENTENCING hearing;

SECTION 7. In Colorado Revised Statutes, 24-4.1-302.5, **amend** (1) (d) (IV) as follows:

24-4.1-302.5. Rights afforded to victims. (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(d) The right to be heard at any court proceeding:

(IV) At which a person accused or convicted of a crime against the victim is sentenced OR RESENTENCED;

SECTION 8. In Colorado Revised Statutes, 24-4.1-303, **amend** (12) (c) as follows:

24-4.1-303. Procedures for ensuring rights of victims of crimes. (12) Unless a victim requests otherwise, the district attorney shall inform each victim of the following:

(c) The date, time, and location of any sentencing OR RESENTENCING hearing;

SECTION 9. Safety clause. The general assembly hereby finds,

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

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO