

Second Regular Session  
Seventy-fifth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0750.01 Conrad Imel x2313

SENATE BILL 26-115

SENATE SPONSORSHIP

Gonzales J. and Weissman,

HOUSE SPONSORSHIP

(None),

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Senate Committees

Judiciary

House Committees

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A BILL FOR AN ACT

101     **CONCERNING POST-CONVICTION RELIEF FOR CERTAIN OFFENDERS  
102         SENTENCED TO IMPRISONMENT.**

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**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>.)*

The bill sets forth a process for a person in prison to petition for resentencing and for a court to impose a new sentence if:

- The offense resulting in the conviction was committed when the petitioner was younger than 21 years old and the petitioner has served at least 20 calendar years incarcerated for the offense; or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

*Capital letters or bold & italic numbers indicate new material to be added to existing law.*

*Dashes through the words or numbers indicate deletions from existing law.*

- The petitioner is 60 years old or older at the time of filing the petition and has served at least 20 calendar years incarcerated for the offense.

At the hearing on the petition, the petitioner has the burden to show by a preponderance of the evidence that the petitioner no longer presents an identifiable danger to the safety of any person or the community and that there is good cause for the court to modify the sentence. Certain offenses require that the prosecution agree that the interests of justice would be served by departure from the sentence initially imposed.

Upon the court finding that the petitioner has met their burden, the petitioner is permitted to file a motion for reconsideration and reduction of the initial sentence pursuant to the Colorado rules of criminal procedure. At the hearing on the motion, the court shall determine and impose the appropriate sentence.

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

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3     finds and declares that:

4           (a) It is the responsibility of the general assembly to establish  
5     penalties for crimes, which often require long incarceration sentences to  
6     punish and incapacitate persons convicted of serious offenses;

7           (b) While long sentences are appropriate and necessary in certain  
8     cases, providing the opportunity for individuals in lower-risk populations  
9     to be considered for sentence reduction based on demonstrated  
10    rehabilitation after they have served decades in prison incentivizes  
11    positive behavior and is consistent with public safety;

12          (c) Very lengthy sentences present significant public policy issues  
13     that the general assembly must consider, including the ability of the state  
14     to meet its constitutional requirement to provide medical care to the  
15     incarcerated population and the fiscal cost of the state prison system;

16          (d) Persons sentenced while under the age of 21 who have served  
17     more than 20 years in prison should be given the opportunity for a

1 reconsideration of sentence in light of recent research that demonstrates  
2 that the brain functioning that guides and aids rational decision-making  
3 does not fully develop until a person is in their mid- to late twenties, and  
4 the commission of a serious offense as a child or young adult is not  
5 predictive of whether the individual will pose a risk to public safety when  
6 the individual is 40 years old or older;

7 (e) Persons who are over 60 years old and have been incarcerated  
8 for more than 20 years present a significantly low risk to public safety and  
9 disproportionately account for medical expenses and care utilization  
10 within the prison system;

11 (f) The interests of justice are best served by providing to persons  
12 incarcerated while in their youth and to persons who have aged out of risk  
13 to public safety the due process to have their sentences reconsidered if  
14 they can provide evidence of their rehabilitation; and

15 (g) Providing the person incarcerated, the prosecution, and any  
16 victims of the crime the opportunity to be heard at a single public hearing  
17 ensures a fair and transparent deliberative process and recognizes that  
18 hope and change have a place in our criminal legal system.

19 **SECTION 2.** In Colorado Revised Statutes, **add** 18-1.3-411 as  
20 follows:

21 **18-1.3-411. Post-conviction relief - sentence reconsideration -**  
22 **offenses committed as a youth - offenders sixty years old or older.**

23 (1) AN INDIVIDUAL SERVING A SENTENCE IN THE DEPARTMENT OF  
24 CORRECTIONS MAY FILE A PETITION WITH THE COURT WHERE THE  
25 CONVICTION WAS OBTAINED REQUESTING POST-CONVICTION RELIEF FROM  
26 THE TERMS OF THE SENTENCE IF:

27 (a) THE OFFENSE RESULTING IN THE CONVICTION WAS COMMITTED

1 WHEN THE PETITIONER WAS YOUNGER THAN TWENTY-ONE YEARS OLD AND  
2 THE PETITIONER HAS SERVED AT LEAST TWENTY CALENDAR YEARS  
3 INCARCERATED FOR THE OFFENSE; OR

4 (b) THE PETITIONER IS SIXTY YEARS OLD OR OLDER AT THE TIME OF  
5 FILING THE PETITION AND HAS SERVED AT LEAST TWENTY CALENDAR  
6 YEARS INCARCERATED FOR THE OFFENSE RESULTING IN THE CONVICTION.

7 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF  
8 THIS SECTION, AN INDIVIDUAL IS NOT ELIGIBLE FOR POST-CONVICTION  
9 RELIEF PURSUANT TO THIS SECTION IF THE INDIVIDUAL IS IN THE CUSTODY  
10 OF THE DEPARTMENT OF CORRECTIONS AS THE RESULT OF CONVICTION FOR  
11 ONE OF THE FOLLOWING OFFENSES, UNLESS THE PROSECUTION AGREES  
12 THAT THE INTERESTS OF JUSTICE WOULD BE SERVED BY GRANTING  
13 POST-CONVICTION RELIEF FROM THE TERMS OF THE SENTENCE AND THE  
14 RELIEF IS CONSISTENT WITH THE INTERESTS OF PUBLIC SAFETY:

15 (a) A SEX OFFENSE DESCRIBED IN SECTION 16-11.7-102 (3);

16 (b) AN OFFENSE THAT RESULTED IN A SENTENCE TO LIFE  
17 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE;

18 (c) AN OFFENSE FOR WHICH THE VICTIM WAS A CHILD YOUNGER  
19 THAN TWELVE YEARS OLD; OR

20 (d) AN OFFENSE AGAINST A PEACE OFFICER, EMERGENCY MEDICAL  
21 SERVICE PROVIDER, EMERGENCY MEDICAL CARE PROVIDER, OR  
22 FIREFIGHTER ENGAGED IN THE PERFORMANCE OF THEIR DUTIES.

23 (3) (a) THE PETITIONER HAS A RIGHT TO COUNSEL FOR ALL  
24 PROCEEDINGS ARISING FROM A PETITION FILED PURSUANT TO THIS  
25 SECTION. UPON RECEIPT OF A PRO SE PETITION REQUESTING  
26 POST-CONVICTION RELIEF, THE COURT SHALL APPOINT COUNSEL FROM THE  
27 OFFICE OF STATE PUBLIC DEFENDER TO REPRESENT THE PETITIONER. IF THE

1        OFFICE OF PUBLIC DEFENDER NOTIFIES THE COURT OF A CONFLICT OF  
2        INTEREST, THE COURT SHALL APPOINT THE OFFICE OF ALTERNATE DEFENSE  
3        COUNSEL TO REPRESENT THE PETITIONER.

4                (b) THE COURT SHALL GIVE COUNSEL APPOINTED IN ACCORDANCE  
5        WITH THIS SUBSECTION (3) THE OPPORTUNITY TO AMEND, SUPPLEMENT, OR  
6        OTHERWISE FILE DOCUMENTS SUPPORTING THE PETITION. WITHIN ONE  
7        HUNDRED EIGHTY DAYS AFTER THE APPOINTMENT, APPOINTED COUNSEL  
8        SHALL, AFTER REVIEW OF THE FACTS AND EVIDENCE SUPPORTING THE  
9        PETITION, ADVISE THE COURT IN WRITING WHETHER THE PETITIONER  
10        WISHES TO PROCEED TO AN EVIDENTIARY HEARING ON THE PETITION OR  
11        WITHDRAW THE PETITION AND REFILE THE PETITION AT A LATER DATE,  
12        SUBJECT TO THE LIMITATION DESCRIBED IN SUBSECTION (5)(b) OF THIS  
13        SECTION.

14                (4) IF THE PETITIONER REQUESTS A HEARING ON A PETITION FOR  
15        POST-CONVICTION RELIEF FILED PURSUANT TO THIS SECTION, THE COURT  
16        SHALL GRANT THE DISTRICT ATTORNEY TIME TO RESPOND IN WRITING TO  
17        THE PETITION.

18                (5) (a) AFTER RECEIPT OF THE DISTRICT ATTORNEY'S RESPONSE  
19        FILED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE COURT SHALL,  
20        AS SOON AS PRACTICABLE, SET A HEARING ON THE PETITION.

21                (b) A DEFENDANT IS ENTITLED TO ONLY ONE EVIDENTIARY  
22        HEARING ON THE MERITS PURSUANT TO THIS SECTION.

23                (6) THE DISTRICT ATTORNEY SHALL NOTIFY THE VICTIM OF ANY  
24        OFFENSE IN ACCORDANCE WITH THE "VICTIM RIGHTS ACT", PART 3 OF  
25        ARTICLE 4.1 OF TITLE 24, AND THE COURT SHALL PROVIDE THE VICTIM AN  
26        OPPORTUNITY TO BE HEARD AT THE HEARING.

27                (7) (a) AT THE HEARING ON THE PETITION, THE PETITIONER HAS

1 THE BURDEN TO SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE  
2 PETITIONER NO LONGER PRESENTS A DANGER TO THE SAFETY OF ANY  
3 PERSON OR THE COMMUNITY AND THAT THERE IS GOOD CAUSE FOR THE  
4 COURT TO MODIFY THE PETITIONER'S SENTENCE. THE COURT MAY ACCEPT  
5 ANY STIPULATION OF THE PARTIES THAT THE PETITIONER HAS MET THEIR  
6 BURDEN AS DESCRIBED IN THIS SUBSECTION (7)(a) IF THE COURT  
7 DETERMINES THAT THE STIPULATION IS SUPPORTED BY THE EVIDENCE AS  
8 AGREED TO BY THE PARTIES.

9 (b) IN ORDER FOR THE COURT TO GRANT THE PETITION IF THE  
10 PETITIONER WAS CONVICTED OF AN OFFENSE DESCRIBED IN SUBSECTION (2)  
11 OF THIS SECTION, THE PROSECUTION MUST AGREE THAT THE INTERESTS OF  
12 JUSTICE WOULD BE SERVED BY DEPARTURE FROM THE SENTENCE INITIALLY  
13 IMPOSED.

14 (8) AT THE HEARING ON THE PETITION, THE COURT SHALL  
15 CONSIDER THE FOLLOWING FACTORS RELATED TO THE PETITIONER AND  
16 THE OFFENSE THAT IS THE SUBJECT OF THE PETITION AND ADMIT ANY  
17 EVIDENCE RELEVANT TO ANY OF THE FACTORS:

18 (a) THE PETITIONER'S AGE AT THE TIME OF THE OFFENSE AND THE  
19 RELATIONSHIP OF AGE TO DIMINISHED CULPABILITY;

20 (b) THE PETITIONER'S AGE OF THE TIME OF THE HEARING AND THE  
21 LIKELIHOOD OF REOFFENSE GIVEN THE CURRENT AGE OF THE PETITIONER;

22 (c) THE NATURE OF THE OFFENSE, THE EXTENT OF THE  
23 PETITIONER'S ROLE IN THE OFFENSE, AND WHETHER AND TO WHAT EXTENT  
24 ANOTHER PERSON WAS INVOLVED IN THE OFFENSE;

25 (d) THE CHARACTERISTICS OF THE PETITIONER AND THE  
26 PETITIONER'S HISTORY, INCLUDING ANY HISTORY OF TRAUMA, ABUSE,  
27 INVOLVEMENT IN THE CHILD WELFARE SYSTEM, OR OTHER MITIGATING

1 CIRCUMSTANCES;

2 (e) THE PETITIONER'S COMPLIANCE WITH THE RULES OF THE  
3 INSTITUTIONS IN WHICH THE PETITIONER HAS BEEN CONFINED,  
4 PARTICULARLY WITHIN THE PRIOR FIVE YEARS;

5 (f) THE PETITIONER'S PARTICIPATION IN EDUCATIONAL,  
6 VOCATIONAL, OR OTHER PROGRAMS OFFERED BY THE DEPARTMENT OF  
7 CORRECTIONS OR OTHER ENTITIES;

8 (g) THE HISTORY AND CHARACTERISTICS OF THE PETITIONER AT  
9 THE TIME OF THE HEARING, INCLUDING DEMONSTRATED MATURITY,  
10 SUCCESSFUL REHABILITATION, AND FITNESS TO REENTER SOCIETY  
11 SUFFICIENT TO JUSTIFY A SENTENCE REDUCTION;

12 (h) A STATEMENT OR OTHER EVIDENCE OFFERED BY A VICTIM OR  
13 A VICTIM'S REPRESENTATIVE, INCLUDING ANY EVIDENCE OF A CONTINUING  
14 IMPACT OF THE CRIME ON THE VICTIM;

15 (i) A REPORT OF A PHYSICAL, MENTAL, OR BEHAVIORAL  
16 EXAMINATION OF THE PETITIONER CONDUCTED BY A HEALTH  
17 PROFESSIONAL; AND

18 (j) ANY OTHER FACTOR THE COURT DEEMS RELEVANT TO THE  
19 COURT'S DETERMINATION OF WHETHER THE PETITIONER HAS MET THEIR  
20 BURDEN DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION.

21 (9) (a) IF THE COURT FINDS THAT THE PETITIONER HAS NOT MET  
22 THEIR BURDEN DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION OR, IF  
23 THE PROSECUTION IS REQUIRED TO AGREE TO THE DEPARTURE FROM THE  
24 INITIAL SENTENCE PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE  
25 PROSECUTION DOES NOT AGREE, THE COURT SHALL DENY THE PETITION  
26 AND SET FORTH THE REASONS FOR THE FINDING IN ITS ORDER.

27 (b) UPON A FINDING THAT THE PETITIONER HAS MET THEIR BURDEN

1 DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION AND, IF NECESSARY,  
2 THAT THE PROSECUTION AGREES TO THE DEPARTURE FROM THE INITIAL  
3 SENTENCE PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE  
4 PETITIONER IS PERMITTED TO FILE A MOTION FOR RECONSIDERATION AND  
5 REDUCTION OF THE INITIAL SENTENCE PURSUANT TO RULE 35 (b) OF THE  
6 COLORADO RULES OF CRIMINAL PROCEDURE. THE MOTION IS NOT SUBJECT  
7 TO THE TIME LIMITS CONTAINED IN RULE 35 (b) OF THE COLORADO RULES  
8 OF CRIMINAL PROCEDURE AND MAY BE MADE ORALLY AT THE TIME OF THE  
9 HEARING OR SUBMITTED IN WRITING WITHIN NINETY-ONE DAYS AFTER THE  
10 COURT'S RULING.

11 (10) (a) AT THE HEARING ON THE PETITIONER'S MOTION FOR  
12 RECONSIDERATION OF THE INITIAL SENTENCE PURSUANT TO RULE 35 (b)  
13 OF THE COLORADO RULES OF CRIMINAL PROCEDURE, THE COURT SHALL  
14 DETERMINE AND IMPOSE THE APPROPRIATE SENTENCE, WHICH MUST  
15 INCLUDE, IF THE PETITIONER IS ELIGIBLE FOR RESENTENCING PURSUANT TO  
16 SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION, A SENTENCE TO  
17 IMPRISONMENT THAT TOTALS AT LEAST TWENTY-FIVE YEARS BUT NO  
18 LONGER THAN ORIGINALLY IMPOSED BY THE COURT, INCLUDING UP TO FIVE  
19 YEARS OF PAROLE; AN ALTERNATIVE SENTENCE PERMITTED BY LAW,  
20 INCLUDING A COMMUNITY CORRECTIONS DIRECT SENTENCE; OR A  
21 SENTENCE STIPULATED TO BY THE PARTIES; OR

22 (b) IF A PETITIONER IS ELIGIBLE FOR RESENTENCING AND IS  
23 SERVING SENTENCES FOR MULTIPLE OFFENSES, THE COURT HAS THE  
24 DISCRETION TO MODIFY A SENTENCE TO BE CONCURRENT WITH ANY OTHER  
25 SENTENCE IMPOSED ON THE PETITIONER, AND THE MODIFIED SENTENCE IS  
26 NOT SUBJECT TO THE PROVISIONS OF SECTION 18-1.3-406.

27 (11) IF A PERSON IN THE CUSTODY OF THE DEPARTMENT OF

1     CORRECTIONS IS NOT ELIGIBLE FOR POST-CONVICTION RELIEF PURSUANT  
2     TO SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION, THE DISTRICT  
3     ATTORNEY'S OFFICE THAT PROSECUTED THE OFFENSE RESULTING IN THE  
4     CONVICTION MAY PETITION THE COURT REQUESTING THAT THE COURT  
5     GRANT POST-CONVICTION RELIEF TO THE PERSON. IF THE DISTRICT  
6     ATTORNEY FILES A PETITION DESCRIBED IN THIS SUBSECTION (11), THE  
7     PROVISIONS OF SUBSECTIONS (3) TO (10) OF THIS SECTION REGARDING THE  
8     APPOINTMENT OF COUNSEL, THE BURDEN OF PROOF, THE RELEVANT  
9     EVIDENTIARY FACTORS, THE DUE PROCESS GRANTED TO THE  
10    INCARCERATED PERSON, AND THE PROSECUTION AND ANY STIPULATION OF  
11    THE PARTIES, APPLY.

12                   (12) UPON THE REQUEST OF THE PETITIONER AND EXECUTION BY  
13    THE PETITIONER OF ANY NECESSARY CONFIDENTIALITY WAIVERS, THE  
14    DEPARTMENT OF CORRECTIONS SHALL PROVIDE THE PETITIONER OR THE  
15    PETITIONER'S ATTORNEY OF RECORD WITH ANY INFORMATION IN THE  
16    POSSESSION OF THE DEPARTMENT REQUESTED FOR THE PREPARATION OF  
17    THE PETITION FOR POST-CONVICTION RELIEF, INCLUDING ALL TIME  
18    COMPUTATION INFORMATION AVAILABLE FOR THE PETITIONER, INCLUDING  
19    ALL EARNED TIME AWARDED AGAINST THE PETITIONER'S SENTENCE THAT  
20    WOULD BE CREDITED AGAINST ANY NEW SENTENCE IMPOSED.

21                   (13) UPON THE REQUEST OF A PARTY, THE COURT SHALL GRANT  
22    REASONABLE DISCOVERY DISCLOSURES TO THE PARTY TO EFFECTUATE  
23    FAIR PREPARATION AND PRESENTATION OF RELEVANT EVIDENCE RELATED  
24    TO THE FACTORS SET FORTH IN SUBSECTION (8) OF THIS SECTION IN ORDER  
25    TO ENSURE A FAIR HEARING. THE COURT HAS THE DISCRETION TO ENTER  
26    ORDERS TO CURE OR REMEDY A VIOLATION OF ANY DEADLINES OR OTHER  
27    DISCOVERY REQUIREMENTS.

