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SENATE BILL 26-115

BY SENATOR(S) Gonzales J. and Weissman, Amabile, Benavidez, Cutter, Jodeh, Kipp, Rodriguez, Wallace, Coleman;
also REPRESENTATIVE(S) Bacon and Mabrey, Camacho, Carter, English, Espenoza, Garcia, Jackson, Lindsay, Nguyen, Story, Zokaie.

CONCERNING POST-CONVICTION RELIEF FOR CERTAIN OFFENDERS
SENTENCED TO IMPRISONMENT, AND, IN CONNECTION THEREWITH,
MAKING AND REDUCING AN APPROPRIATION.

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

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

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

(b) While long sentences are appropriate and necessary in certain cases, providing the opportunity for individuals in lower-risk populations to be considered for sentence reduction based on demonstrated rehabilitation after they have served decades in prison incentivizes positive

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

behavior and is consistent with public safety;

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

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

(e) The interests of justice are best served by providing to persons who have aged out of risk to public safety the due process to have their sentences reconsidered if they can provide evidence of their rehabilitation; and

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

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

18-1.3-411. Post-conviction relief - sentence reconsideration - offenders sixty years old or older.

(1) AN INDIVIDUAL SERVING A SENTENCE IN THE DEPARTMENT OF CORRECTIONS MAY, ON OR BEFORE THREE YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, FILE A PETITION WITH THE COURT WHERE THE CONVICTION WAS OBTAINED REQUESTING POST-CONVICTION RELIEF FROM THE TERMS OF THE SENTENCE IF THE PETITIONER IS SIXTY YEARS OLD OR OLDER AT THE TIME OF FILING THE PETITION AND HAS SERVED AT LEAST TWENTY CALENDAR YEARS INCARCERATED FOR THE OFFENSE RESULTING IN THE CONVICTION.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, AN INDIVIDUAL IS NOT ELIGIBLE FOR POST-CONVICTION RELIEF PURSUANT TO THIS SECTION IF THE INDIVIDUAL IS IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AS THE RESULT OF CONVICTION FOR ONE OF

THE FOLLOWING OFFENSES:

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

(b) HUMAN TRAFFICKING FOR INVOLUNTARY SERVITUDE PURSUANT TO SECTION 18-3-503 OR HUMAN TRAFFICKING FOR SEXUAL SERVITUDE PURSUANT TO SECTION 18-3-504;

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

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

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

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

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

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

PETITION.

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

(b) A DEFENDANT IS ENTITLED TO ONLY ONE EVIDENTIARY HEARING ON THE MERITS PURSUANT TO THIS SECTION. AFTER A DEFENDANT HAS HAD AN EVIDENTIARY HEARING ON THE MERITS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL NOT FILE A SUBSEQUENT PETITION PURSUANT TO THIS SECTION.

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

(7) 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 A DANGER TO THE SAFETY OF ANY PERSON OR THE COMMUNITY AND THAT THERE IS GOOD CAUSE FOR THE COURT TO MODIFY THE PETITIONER'S SENTENCE. THE COURT MAY ACCEPT ANY STIPULATION OF THE PARTIES THAT THE PETITIONER HAS MET THEIR BURDEN AS DESCRIBED IN THIS SUBSECTION (7) IF THE COURT DETERMINES THAT THE STIPULATION IS SUPPORTED BY THE EVIDENCE AS AGREED TO BY THE PARTIES.

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

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

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

(c) THE NATURE OF THE OFFENSE, THE EXTENT OF THE PETITIONER'S ROLE IN THE OFFENSE, AND WHETHER AND TO WHAT EXTENT ANOTHER

PERSON WAS INVOLVED IN THE OFFENSE;

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

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

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

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

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

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

(j) WHETHER THE DEFENDANT HAS COMPLIED WITH CRIMINAL OR CIVIL PROTECTION ORDERS; AND

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

(9) (a) IF THE COURT FINDS THAT THE PETITIONER HAS NOT MET THEIR BURDEN DESCRIBED IN SUBSECTION (7) OF THIS SECTION, THE COURT SHALL DENY THE PETITION AND SET FORTH THE REASONS FOR THE FINDING IN ITS ORDER.

(b) UPON A FINDING THAT THE PETITIONER HAS MET THEIR BURDEN DESCRIBED IN SUBSECTION (7) OF THIS SECTION, THE PETITIONER IS

PERMITTED TO FILE A MOTION FOR RECONSIDERATION AND REDUCTION OF THE INITIAL SENTENCE PURSUANT TO RULE 35 (b) OF THE COLORADO RULES OF CRIMINAL PROCEDURE. THE MOTION IS NOT SUBJECT TO THE TIME LIMITS CONTAINED IN RULE 35 (b) OF THE COLORADO RULES OF CRIMINAL PROCEDURE AND MAY BE MADE ORALLY AT THE TIME OF THE HEARING OR SUBMITTED IN WRITING WITHIN NINETY-ONE DAYS AFTER THE COURT'S RULING.

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

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

(11) IF A PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS IS NOT ELIGIBLE FOR POST-CONVICTION RELIEF PURSUANT TO THIS SECTION, THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE OFFENSE RESULTING IN THE CONVICTION MAY PETITION THE COURT REQUESTING THAT THE COURT GRANT POST-CONVICTION RELIEF TO THE PERSON. IF THE DISTRICT ATTORNEY FILES A PETITION DESCRIBED IN THIS SUBSECTION (11), THE PROVISIONS OF SUBSECTIONS (3) TO (10) OF THIS SECTION REGARDING THE APPOINTMENT OF COUNSEL, THE BURDEN OF PROOF, THE RELEVANT EVIDENTIARY FACTORS, THE DUE PROCESS GRANTED TO THE INCARCERATED PERSON, AND THE PROSECUTION AND ANY STIPULATION OF THE PARTIES, APPLY. A DISTRICT ATTORNEY WHO FILES A PETITION PURSUANT TO THIS SUBSECTION (11) MAY FILE A MOTION REQUESTING THE COURT APPOINT COUNSEL FOR THE PERSON.

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

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

(14) BEGINNING IN JANUARY 2027, AND IN JANUARY EVERY YEAR THEREAFTER, THE JUDICIAL DEPARTMENT SHALL INCLUDE, AS PART OF ITS PRESENTATION DURING ITS "SMART ACT" HEARING REQUIRED BY SECTION 2-7-203, SUBJECT TO THE AVAILABILITY OF THE INFORMATION, THE FOLLOWING:

- (a) THE NUMBER OF PETITIONS FILED PURSUANT TO THIS SECTION;
- (b) THE NUMBER OF HEARINGS SET PURSUANT TO SUBSECTION (5) OF THIS SECTION;
- (c) THE NUMBER OF SENTENCES DETERMINED AND IMPOSED PURSUANT TO SUBSECTION (10) OF THIS SECTION;
- (d) THE AVERAGE HOURLY LENGTH OF THE HEARINGS HELD PURSUANT TO SUBSECTION (5) OF THIS SECTION;
- (e) WHETHER VICTIM INPUT WAS PROVIDED IN CONSIDERATION OF EACH MATTER FILED PURSUANT TO THIS SECTION; AND
- (f) FOR EACH CASE IN WHICH THE COURT GRANTED A PETITION

PURSUANT TO THIS SECTION, THE UNDERLYING OFFENSE AND THE RISK LEVEL OF THE PETITIONER AS DETERMINED BY A RISK ASSESSMENT COMPLETED PURSUANT TO SUBSECTION (12) OF THIS SECTION, WHETHER VICTIMS CHOSE TO PARTICIPATE IN THE EVIDENTIARY HEARING, WHETHER THE PROSECUTOR WAS ABLE TO LOCATE ANY VICTIMS, WHETHER THE ORIGINAL SENTENCE WAS THE RESULT OF A PLEA AGREEMENT OR A JURY VERDICT AND COURT-IMPOSED SENTENCE, AND HOW MANY MONTHS WERE REMAINING ON THE ORIGINAL SENTENCE.

SECTION 3. Appropriation. (1) For the 2026-27 state fiscal year, \$50,840 is appropriated to the judicial department for use by the office of the state public defender. This appropriation is from the general fund. To implement this act, the office may use this appropriation as follows:

(a) \$42,600 for personal services, which amount is based on an assumption that the office will require an additional 0.5 FTE; and

(b) \$8,240 for use by the office of the state public defender for operating expenses.

(2) For the 2026-27 state fiscal year, \$50,326 is appropriated to the department of corrections for use by community services. This appropriation is from the General Fund. To implement this act, the department may use this appropriation for the wrap-around services program.

SECTION 4. Appropriation - adjustments to 2026 long bill. To implement this act, the general fund appropriation made in the annual general appropriation act for the 2026-27 state fiscal year to the department of corrections for use by management for payments to local jails at a rate of \$77.16 per inmate per day is decreased by \$168,980.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to individuals convicted of an offense before, on, or after the applicable effective date of this act.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO