

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 16-1200.01 Richard Sweetman x4333

SENATE BILL 16-181

SENATE SPONSORSHIP

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A BILL FOR AN ACT

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

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>.)

In *Miller v. Alabama* (2012), 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. In Colorado, a juvenile sentenced for a class 1 felony committed on or after July 1, 1990, and before July 1, 2006, was sentenced to a mandatory life sentence without

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.

HOUSE
3rd Reading Unamended
May 10, 2016

HOUSE
Amended 2nd Reading
May 9, 2016

SENATE
3rd Reading Unamended
May 3, 2016

SENATE
Amended 2nd Reading
May 2, 2016

the possibility of parole.

The bill provides a procedure for resentencing these offenders. A district court may resentence such an offender to:

- ! A term of life imprisonment with the possibility of parole after serving 40 years, less any earned time granted; or
- ! 24 to 48 years in prison if, after considering certain factors, the district court finds extraordinary mitigating circumstances.

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

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

4 **18-1.3-401. Felonies classified - presumptive penalties.**

5 (4) (b) (I) Notwithstanding the provisions of sub-subparagraph (A) of
6 subparagraph (V) of paragraph (a) of subsection (1) of this section and
7 notwithstanding the provisions of paragraph (a) of this subsection (4), as
8 to a person who is convicted as an adult of a class 1 felony following
9 direct filing of an information or indictment in the district court pursuant
10 to section 19-2-517, C.R.S., or transfer of proceedings to the district court
11 pursuant to section 19-2-518, C.R.S., the district court judge shall
12 sentence the person to a term of life imprisonment with the possibility of
13 parole after serving a period of forty ~~calendar~~ years, LESS ANY EARNED
14 TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S. Regardless of
15 whether the state board of parole releases the person on parole, the person
16 shall remain in the legal custody of the department of corrections for the
17 remainder of the person's life and shall not be discharged.

18 (c) (I) NOTWITHSTANDING THE PROVISIONS OF
19 SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (V) OF PARAGRAPH (a) OF
20 SUBSECTION (1) OF THIS SECTION AND NOTWITHSTANDING THE PROVISIONS
21 OF PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4), AS TO A PERSON

1 WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING A
2 DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT
3 COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF
4 PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518,
5 C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED
6 PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY
7 HOUSE BILL 96-1005, WHICH FELONY WAS COMMITTED ON OR AFTER JULY
8 1, 1990, AND BEFORE JULY 1, 2006, AND WHO RECEIVED A SENTENCE TO
9 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE:

10 (A) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS
11 MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b),
12 THEN THE DISTRICT COURT, AFTER HOLDING A HEARING, MAY SENTENCE
13 THE PERSON TO A DETERMINATE SENTENCE WITHIN THE RANGE OF THIRTY
14 TO FIFTY YEARS IN PRISON, LESS ANY EARNED TIME GRANTED PURSUANT
15 TO SECTION 17-22.5-405, C.R.S., IF, AFTER CONSIDERING THE FACTORS
16 DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), THE DISTRICT
17 COURT FINDS EXTRAORDINARY MITIGATING CIRCUMSTANCES.
18 ALTERNATIVELY, THE COURT MAY SENTENCE THE PERSON TO A TERM OF
19 LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING
20 FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION
21 17-22.5-405, C.R.S.

22 (B) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS NOT
23 MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b),
24 THEN THE DISTRICT COURT SHALL SENTENCE THE PERSON TO A TERM OF
25 LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING
26 FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION
27 17-22.5-405, C.R.S.

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

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

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

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

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

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

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

23 (IV) IF A PERSON IS SENTENCED TO A TERM OF LIFE IMPRISONMENT
24 WITH THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, LESS ANY
25 EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S.,
26 REGARDLESS OF WHETHER THE STATE BOARD OF PAROLE RELEASES THE
27 PERSON ON PAROLE, THE PERSON SHALL REMAIN IN THE LEGAL CUSTODY

1 OF THE DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF HIS OR HER
2 LIFE AND SHALL NOT BE DISCHARGED.

3 **SECTION 2.** In Colorado Revised Statutes, 17-22.5-104, **amend**
4 **(2) (c) (I) and (2) (d) (IV); and add (2) (d) (V) as follows:**

5 **17-22.5-104. Parole - regulations.** (2) (c) (I) EXCEPT AS
6 DESCRIBED IN SECTION 18-1.3-401 (4) (c), C.R.S., AND IN
7 SUBPARAGRAPHS (IV) AND (V) OF PARAGRAPH (d) OF THIS SUBSECTION
8 (2), no inmate imprisoned under a life sentence for a crime committed on
9 or after July 1, 1985, shall be paroled until such inmate has served at least
10 forty calendar years, and no application for parole shall be made or
11 considered during such period of forty years.

12 (d) (IV) Notwithstanding the provisions of subparagraph (I) of
13 this paragraph (d), an inmate imprisoned under a life sentence for a class
14 1 felony committed BEFORE JULY 1, 1990, OR on or after July 1, 2006,
15 who was convicted as an adult following direct filing of an information
16 or indictment in the district court pursuant to section 19-2-517, C.R.S., or
17 transfer of proceedings to the district court pursuant to section 19-2-518,
18 C.R.S., may be eligible for parole after the inmate has served at least forty
19 calendar years, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION
20 17-22.5-405. An application for parole shall MAY not be made or
21 considered during the THIS period. of forty calendar years.

22 (V) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF
23 THIS PARAGRAPH (d), AN INMATE SENTENCED TO LIFE IMPRISONMENT FOR
24 A CLASS 1 FELONY COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE
25 JULY 1, 2006, WHO WAS CONVICTED AS AN ADULT FOLLOWING DIRECT
26 FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT
27 PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS

1 TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR
2 PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO
3 THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL
4 96-1005, MAY BE ELIGIBLE FOR PAROLE AFTER SERVING FORTY YEARS,
5 LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

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

8 **17-22.5-403. Parole eligibility - repeal.** (2) (c) (I) A PERSON
9 WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING A
10 DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT
11 COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF
12 PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518,
13 C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED
14 PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY
15 HOUSE BILL 96-1015, WHICH FELONY WAS COMMITTED ON OR AFTER JULY
16 1, 1990, AND BEFORE JULY 1, 2006, AND WHO IS RESENTENCED PURSUANT
17 TO SECTION 18-1.3-401 (4) (c), C.R.S., IS NOT ENTITLED TO RECEIVE ANY
18 REDUCTION OF HIS OR HER SENTENCE PURSUANT TO THIS SECTION.

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

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

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

27 **17-22.5-405. Earned time - earned release time - achievement**

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

14 (4) (a) EXCEPT AS DESCRIBED IN SUBSECTION (6) OR (9) OF THIS
15 SECTION OR IN PARAGRAPH (b) OF THIS SUBSECTION (4), AND
16 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, EARNED TIME MAY NOT
17 REDUCE THE SENTENCE OF AN INMATE AS DEFINED IN SECTION 17-22.5-402 (1) BY
18 A PERIOD OF TIME THAT IS MORE THAN THIRTY PERCENT OF THE SENTENCE. THIS
19 SUBSECTION (4) SHALL NOT APPLY TO SUBSECTION (6) OR SUBSECTION (9) OF THIS
20 SECTION.

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

24 **SECTION 5.** In Colorado Revised Statutes, **add** part 10 to article
25 13 of title 16 as follows:

26 PART 10
27 RESENTENCING HEARINGS FOR JUVENILE

1 OFFENDERS SERVING LIFE SENTENCES

2 **16-13-1001. Legislative declaration.** (1) THE GENERAL
3 ASSEMBLY FINDS THAT:

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

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

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

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

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

25 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

26 (a) A JUVENILE SENTENCED IN COLORADO FOR A CONVICTION OF
27 A CLASS 1 FELONY AS A RESULT OF A DIRECT FILE OR TRANSFER OF AN

1 OFFENSE COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1,
2 2006, WAS SENTENCED TO A MANDATORY LIFE SENTENCE WITHOUT THE
3 POSSIBILITY OF PAROLE; AND

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

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

9 **16-13-1002. Resentencing hearing for persons serving life**
10 **sentences without the possibility of parole as the result of a direct file**
11 **or transfer. (1) A PERSON MAY PETITION THE SENTENCING COURT FOR A**
12 **RESENTENCING HEARING IF HE OR SHE WAS:**

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

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

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

24 (2) IF A PETITION IS FILED PURSUANT TO SUBSECTION (1) OF THIS
25 SECTION, THE SENTENCING COURT SHALL CONDUCT A RESENTENCING
26 HEARING AND RESENTENCE THE OFFENDER AS DESCRIBED IN SECTION
27 18-1.3-401 (4) (c), C.R.S.

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

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

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

7 **24-4.1-302. Definitions.** As used in this part 3, and for no other
8 **purpose, including the expansion of the rights of any defendant:**

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

11 **(h) Any sentencing OR RESENTENCING hearing:**

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

14 **24-4.1-302.5. Rights afforded to victims. (1) In order to**
15 **preserve and protect a victim's rights to justice and due process, each**
16 **victim of a crime shall have the following rights:**

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

18 **(IV) At which a person accused or convicted of a crime against**
19 **the victim is sentenced OR RESENTENCED:**

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

22 **24-4.1-303. Procedures for ensuring rights of victims of**
23 **crimes. (12) Unless a victim requests otherwise, the district attorney**
24 **shall inform each victim of the following:**

25 **(c) The date, time, and location of any sentencing OR**
26 **RESENTENCING hearing:**

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

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