

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 26-0750.01 Conrad Imel x2313

SENATE BILL 26-115

SENATE SPONSORSHIP

Gonzales J. and Weissman,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

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

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

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.

- for the offense; or
- 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.

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;

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

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

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

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

15 **18-1.3-411. Post-conviction relief - sentence reconsideration -**
16 **offenders sixty years old or older.**

17 (1) AN INDIVIDUAL SERVING A SENTENCE IN THE DEPARTMENT OF
18 CORRECTIONS MAY FILE A PETITION WITH THE COURT WHERE THE
19 CONVICTION WAS OBTAINED REQUESTING POST-CONVICTION RELIEF FROM
20 THE TERMS OF THE SENTENCE IF THE PETITIONER IS SIXTY YEARS OLD OR
21 OLDER AT THE TIME OF FILING THE PETITION AND HAS SERVED AT
22 LEAST TWENTY CALENDAR YEARS INCARCERATED FOR THE OFFENSE
23 RESULTING IN THE CONVICTION.

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

1 ONE OF THE FOLLOWING OFFENSES, UNLESS THE PROSECUTION AGREES
2 THAT THE INTERESTS OF JUSTICE WOULD BE SERVED BY GRANTING
3 POST-CONVICTION RELIEF FROM THE TERMS OF THE SENTENCE AND THE
4 RELIEF IS CONSISTENT WITH THE INTERESTS OF PUBLIC SAFETY:

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

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

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

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

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

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

24 (b) THE COURT SHALL GIVE COUNSEL APPOINTED IN ACCORDANCE
25 WITH THIS SUBSECTION (3) THE OPPORTUNITY TO AMEND, SUPPLEMENT, OR
26 OTHERWISE FILE DOCUMENTS SUPPORTING THE PETITION. WITHIN ONE
27 HUNDRED EIGHTY DAYS AFTER THE APPOINTMENT, APPOINTED COUNSEL

1 SHALL, AFTER REVIEW OF THE FACTS AND EVIDENCE SUPPORTING THE
2 PETITION, ADVISE THE COURT IN WRITING WHETHER THE PETITIONER
3 WISHES TO PROCEED TO AN EVIDENTIARY HEARING ON THE PETITION OR
4 WITHDRAW THE PETITION AND REFILE THE PETITION AT A LATER DATE,
5 SUBJECT TO THE LIMITATION DESCRIBED IN SUBSECTION (5)(b) OF THIS
6 SECTION.

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

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

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

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

20 (7) (a) AT THE HEARING ON THE PETITION, THE PETITIONER HAS
21 THE BURDEN TO SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE
22 PETITIONER NO LONGER PRESENTS A DANGER TO THE SAFETY OF ANY
23 PERSON OR THE COMMUNITY AND THAT THERE IS GOOD CAUSE FOR THE
24 COURT TO MODIFY THE PETITIONER'S SENTENCE. THE COURT MAY ACCEPT
25 ANY STIPULATION OF THE PARTIES THAT THE PETITIONER HAS MET THEIR
26 BURDEN AS DESCRIBED IN THIS SUBSECTION (7)(a) IF THE COURT
27 DETERMINES THAT THE STIPULATION IS SUPPORTED BY THE EVIDENCE AS

1 AGREED TO BY THE PARTIES.

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

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

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

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

15 (c) THE NATURE OF THE OFFENSE, THE EXTENT OF THE
16 PETITIONER'S ROLE IN THE OFFENSE, AND WHETHER AND TO WHAT EXTENT
17 ANOTHER PERSON WAS INVOLVED IN THE OFFENSE;

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

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

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

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

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

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

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

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

20 (b) UPON A FINDING THAT THE PETITIONER HAS MET THEIR BURDEN
21 DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION AND, IF NECESSARY,
22 THAT THE PROSECUTION AGREES TO THE DEPARTURE FROM THE INITIAL
23 SENTENCE PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE
24 PETITIONER IS PERMITTED TO FILE A MOTION FOR RECONSIDERATION AND
25 REDUCTION OF THE INITIAL SENTENCE PURSUANT TO RULE 35 (b) OF THE
26 COLORADO RULES OF CRIMINAL PROCEDURE. THE MOTION IS NOT SUBJECT
27 TO THE TIME LIMITS CONTAINED IN RULE 35 (b) OF THE COLORADO RULES

1 OF CRIMINAL PROCEDURE AND MAY BE MADE ORALLY AT THE TIME OF THE
2 HEARING OR SUBMITTED IN WRITING WITHIN NINETY-ONE DAYS AFTER THE
3 COURT'S RULING.

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

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

21 (11) IF A PERSON IN THE CUSTODY OF THE DEPARTMENT OF
22 CORRECTIONS IS NOT ELIGIBLE FOR POST-CONVICTION RELIEF PURSUANT
23 TO THIS SECTION, THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED
24 THE OFFENSE RESULTING IN THE CONVICTION MAY PETITION THE COURT
25 REQUESTING THAT THE COURT GRANT POST-CONVICTION RELIEF TO THE
26 PERSON. IF THE DISTRICT ATTORNEY FILES A PETITION DESCRIBED IN THIS
27 SUBSECTION (11), THE PROVISIONS OF SUBSECTIONS (3) TO (10) OF THIS

1 SECTION REGARDING THE APPOINTMENT OF COUNSEL, THE BURDEN OF
2 PROOF, THE RELEVANT EVIDENTIARY FACTORS, THE DUE PROCESS
3 GRANTED TO THE INCARCERATED PERSON, AND THE PROSECUTION AND
4 ANY STIPULATION OF THE PARTIES, APPLY. A DISTRICT ATTORNEY WHO
5 FILES A PETITION PURSUANT TO THIS SUBSECTION (11) MAY FILE A MOTION
6 REQUESTING THE COURT APPOINT COUNSEL FOR THE PERSON.

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

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

24 (14) BEGINNING IN JANUARY 2027, AND IN JANUARY EVERY YEAR
25 THEREAFTER, THE JUDICIAL DEPARTMENT SHALL INCLUDE, AS PART OF ITS
26 PRESENTATION DURING ITS "SMART ACT" HEARING REQUIRED BY
27 SECTION 2-7-203, INFORMATION CONCERNING THE NUMBER OF PETITIONS

1 FILED PURSUANT TO THIS SECTION, THE NUMBER OF HEARINGS SET
2 PURSUANT TO SUBSECTION (5) OF THIS SECTION, AND THE NUMBER OF
3 SENTENCES DETERMINED AND IMPOSED PURSUANT TO SUBSECTION (10) OF
4 THIS SECTION.

5 **SECTION 3. Appropriation.** (1) For the 2026-27 state fiscal
6 year, \$50,240 is appropriated to the judicial department for use by the
7 office of the state public defender. This appropriation is from the general
8 fund. To implement this act, the office may use this appropriation as
9 follows:

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

12 (b) \$7,640 for use by the office of the state public defender for
13 operating expenses.

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

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

24 **SECTION 5. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly (August 12, 2026, if adjournment sine die is on May 13,

1 2026); except that, if a referendum petition is filed pursuant to section 1
2 (3) of article V of the state constitution against this act or an item, section,
3 or part of this act within such period, then the act, item, section, or part
4 will not take effect unless approved by the people at the general election
5 to be held in November 2026 and, in such case, will take effect on the
6 date of the official declaration of the vote thereon by the governor.

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