

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1200.01 Richard Sweetman x4333

SENATE BILL 16-181

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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.

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., WHICH FELONY WAS COMMITTED ON OR AFTER JULY 1, 1990, AND
6 BEFORE JULY 1, 2006, AND WHO RECEIVED A SENTENCE TO LIFE
7 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, THE DISTRICT
8 COURT, AFTER HOLDING A SENTENCING HEARING, MAY SENTENCE THE
9 PERSON TO:

10 (A) A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF
11 PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED
12 PURSUANT TO SECTION 17-22.5-405, C.R.S.; OR

13 (B) A DETERMINATE SENTENCE WITHIN THE RANGE OF
14 TWENTY-FOUR TO FORTY-EIGHT YEARS IN PRISON, LESS ANY EARNED TIME
15 GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S., IF, AFTER
16 CONSIDERING THE FACTORS DESCRIBED IN SUBPARAGRAPH (II) OF THIS
17 PARAGRAPH (c), THE DISTRICT COURT FINDS EXTRAORDINARY MITIGATING
18 CIRCUMSTANCES THAT WARRANT A SENTENCE OTHER THAN THE SENTENCE
19 DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I).

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

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

27 (B) THE OFFENDER'S DEVELOPMENTAL MATURITY AND

1 CHRONOLOGICAL AGE AT THE TIME OF THE OFFENSE AND THE HALLMARK
2 FEATURES OF SUCH AGE, INCLUDING BUT NOT LIMITED TO IMMATURITY,
3 IMPETUOSITY, AND INABILITY TO APPRECIATE RISKS AND CONSEQUENCES;

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

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

10 (III) IF A PERSON IS SENTENCED TO A DETERMINATE RANGE OF
11 TWENTY-FOUR TO FORTY-EIGHT YEARS IN PRISON PURSUANT TO THIS
12 PARAGRAPH (c), THE COURT SHALL IMPOSE A MANDATORY PERIOD OF TEN
13 YEARS PAROLE.

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

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

23 **17-22.5-104. Parole - regulations.** (2) (d) (IV) Notwithstanding
24 the provisions of subparagraph (I) of this paragraph (d), an inmate
25 imprisoned under a life sentence for a class 1 felony committed BEFORE
26 JULY 1, 1990, OR on or after July 1, 2006, who was convicted as an adult
27 following direct filing of an information or indictment in the district court

1 pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the
2 district court pursuant to section 19-2-518, C.R.S., may be eligible for
3 parole after the inmate has served at least forty ~~calendar~~ years, LESS ANY
4 EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405. An
5 application for parole ~~shall~~ MAY not be made or considered during ~~the~~
6 THIS period. ~~of forty calendar years.~~

7 (V) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF
8 THIS PARAGRAPH (d), AN INMATE SENTENCED TO LIFE IMPRISONMENT FOR
9 A CLASS 1 FELONY COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE
10 JULY 1, 2006, WHO WAS CONVICTED AS AN ADULT FOLLOWING DIRECT
11 FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT
12 PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS
13 TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., MAY BE
14 ELIGIBLE FOR PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED
15 TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

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

18 **17-22.5-403. Parole eligibility - repeal.** (2) (c) (I) A PERSON
19 CONVICTED AND SENTENCED AS AN ADULT FOR A CLASS 1 FELONY
20 COMMITTED WHILE THE PERSON WAS A JUVENILE ON OR AFTER JULY 1,
21 1990, AND BEFORE JULY 1, 2006, AND SENTENCED TO A DETERMINATE
22 SENTENCE WITHIN THE RANGE OF TWENTY-FOUR TO FORTY-EIGHT YEARS
23 PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IS ELIGIBLE FOR PAROLE
24 AFTER HE OR SHE HAS SERVED SEVENTY-FIVE PERCENT OF HIS OR HER
25 SENTENCE, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION
26 17-22.5-405.

27 (II) (A) THE STATE BOARD OF PAROLE MAY CONDUCT PAROLE

1 HEARINGS FOR PERSONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS
2 PARAGRAPH (c) BEGINNING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS
3 PARAGRAPH (c).

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

6 **SECTION 4.** In Colorado Revised Statutes, 17-22.5-405, **add**
7 (1.2) as follows:

8 **17-22.5-405. Earned time - earned release time - achievement**
9 **earned time.** (1.2) SUBSECTION (1) OF THIS SECTION APPLIES TO A
10 PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY
11 COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS
12 SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (b) OR (4) (c), C.R.S.
13 AS TO A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1
14 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS
15 SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IT IS THE
16 INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT AWARD
17 EARNED TIME TO SUCH A PERSON BOTH PROACTIVELY AND
18 RETROACTIVELY FROM THE EFFECTIVE DATE OF THIS SUBSECTION (1.2), AS
19 IF THE PERSON HAD BEEN ELIGIBLE TO BE AWARDED EARNED TIME FROM
20 THE BEGINNING OF HIS OR HER INCARCERATION PURSUANT TO THE
21 SENTENCE THAT HE OR SHE ORIGINALLY RECEIVED FOR SUCH FELONY.

22 **SECTION 5.** In Colorado Revised Statutes, **add** part 10 to article
23 13 of title 16 as follows:

24 PART 10

25 RESENTENCING HEARINGS FOR JUVENILE
26 OFFENDERS SERVING LIFE SENTENCES

27 **16-13-1001. Legislative declaration.** (1) THE GENERAL

1 ASSEMBLY FINDS THAT:

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

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

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

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

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

23 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

24 (a) A JUVENILE SENTENCED IN COLORADO FOR A CONVICTION OF
25 A CLASS 1 FELONY AS A RESULT OF A DIRECT FILE OR TRANSFER OF AN
26 OFFENSE COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1,
27 2006, WAS SENTENCED TO A MANDATORY LIFE SENTENCE WITHOUT THE

1 POSSIBILITY OF PAROLE; AND

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

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

7 **16-13-1002. Resentencing hearing for persons serving life**
8 **sentences without the possibility of parole as the result of a direct file**
9 **or transfer.** (1) A PERSON MAY PETITION THE SENTENCING COURT FOR A
10 RESENTENCING HEARING IF HE OR SHE WAS:

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

12 (b) CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING
13 DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT
14 COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF
15 PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518,
16 C.R.S.; AND

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

20 (2) IF A PETITION IS FILED PURSUANT TO SUBSECTION (1) OF THIS
21 SECTION, THE SENTENCING COURT SHALL CONDUCT A RESENTENCING
22 HEARING AND RESENTENCE THE OFFENDER AS DESCRIBED IN SECTION
23 18-1.3-401 (4) (c), C.R.S.

24 (3) THE PROVISIONS OF SECTIONS 17-22.5-403 (2) (c) AND
25 17-22.5-405 (1.2), C.R.S., TAKE EFFECT UPON RESENTENCING.

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

1 **SECTION 6. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.