

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

PREAMENDED

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

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.

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) (d) (IV); and **add** (2) (d) (V) as follows:

5 **17-22.5-104. Parole - regulations.** (2) (d) (IV) Notwithstanding
6 the provisions of subparagraph (I) of this paragraph (d), an inmate
7 imprisoned under a life sentence for a class 1 felony committed BEFORE
8 JULY 1, 1990, OR on or after July 1, 2006, who was convicted as an adult
9 following direct filing of an information or indictment in the district court
10 pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the
11 district court pursuant to section 19-2-518, C.R.S., may be eligible for
12 parole after the inmate has served at least forty ~~calendar~~ years, LESS ANY
13 EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405. An
14 application for parole ~~shall~~ MAY not be made or considered during ~~the~~
15 THIS period. ~~of forty calendar years.~~

16 (V) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF
17 THIS PARAGRAPH (d), AN INMATE SENTENCED TO LIFE IMPRISONMENT FOR
18 A CLASS 1 FELONY COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE
19 JULY 1, 2006, WHO WAS CONVICTED AS AN ADULT FOLLOWING DIRECT
20 FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT
21 PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF PROCEEDINGS
22 TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR
23 PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO
24 THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL
25 96-1005, MAY BE ELIGIBLE FOR PAROLE AFTER SERVING FORTY YEARS,
26 LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

27 **SECTION 3.** In Colorado Revised Statutes, 17-22.5-403, **add** (2)

1 (c) as follows:

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

13 (II) (A) THE STATE BOARD OF PAROLE MAY CONDUCT PAROLE
14 HEARINGS FOR PERSONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS
15 PARAGRAPH (c) BEGINNING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS
16 PARAGRAPH (c).

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

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

21 **17-22.5-405. Earned time - earned release time - achievement**
22 **earned time.** (1.2) SUBSECTION (1) OF THIS SECTION APPLIES TO A
23 PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY
24 COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS
25 SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (b) OR (4) (c), C.R.S.
26 AS TO A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1
27 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS

1 SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IT IS THE
2 INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT AWARD
3 EARNED TIME TO SUCH A PERSON BOTH PROACTIVELY AND
4 RETROACTIVELY FROM THE EFFECTIVE DATE OF THIS SUBSECTION (1.2), AS
5 IF THE PERSON HAD BEEN ELIGIBLE TO BE AWARDED EARNED TIME FROM
6 THE BEGINNING OF HIS OR HER INCARCERATION PURSUANT TO THE
7 SENTENCE THAT HE OR SHE ORIGINALLY RECEIVED FOR SUCH FELONY.

8 (4) (a) EXCEPT AS DESCRIBED IN SUBSECTION (6) OR (9) OF THIS
9 SECTION OR IN PARAGRAPH (b) OF THIS SUBSECTION (4), AND
10 notwithstanding any other provision of this section, earned time may not
11 reduce the sentence of an inmate as defined in section 17-22.5-402 (1) by
12 a period of time that is more than thirty percent of the sentence. This
13 subsection (4) shall not apply to subsection (6) or subsection (9) of this
14 section.

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

18 **SECTION 5.** In Colorado Revised Statutes, **add** part 10 to article
19 13 of title 16 as follows:

20 PART 10

21 RESENTENCING HEARINGS FOR JUVENILE

22 OFFENDERS SERVING LIFE SENTENCES

23 **16-13-1001. Legislative declaration.** (1) THE GENERAL
24 ASSEMBLY FINDS THAT:

25 (a) (I) IN THE 2012 CASE OF *MILLER V. ALABAMA*, THE UNITED
26 STATES SUPREME COURT HELD THAT IMPOSING A MANDATORY LIFE
27 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE ON A JUVENILE IS A

1 CRUEL AND UNUSUAL PUNISHMENT PROHIBITED BY THE EIGHTH
2 AMENDMENT TO THE UNITED STATES CONSTITUTION; AND

3 (II) THE COURT FURTHER HELD THAT CHILDREN ARE
4 CONSTITUTIONALLY DIFFERENT THAN ADULTS FOR PURPOSES OF
5 SENTENCING; AND

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

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

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

19 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

20 (a) A JUVENILE SENTENCED IN COLORADO FOR A CONVICTION OF
21 A CLASS 1 FELONY AS A RESULT OF A DIRECT FILE OR TRANSFER OF AN
22 OFFENSE COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1,
23 2006, WAS SENTENCED TO A MANDATORY LIFE SENTENCE WITHOUT THE
24 POSSIBILITY OF PAROLE; AND

25 (b) APPROXIMATELY FIFTY PERSONS IN COLORADO RECEIVED SUCH
26 AN UNCONSTITUTIONAL SENTENCE.

27 (3) NOW, THEREFORE, THE GENERAL ASSEMBLY HEREBY DECLARES

1 THAT THIS PART 10 IS NECESSARY TO PROVIDE PERSONS SERVING SUCH
2 UNCONSTITUTIONAL SENTENCES THE OPPORTUNITY FOR RESENTENCING.

3 **16-13-1002. Resentencing hearing for persons serving life**
4 **sentences without the possibility of parole as the result of a direct file**
5 **or transfer. (1) A PERSON MAY PETITION THE SENTENCING COURT FOR A**
6 **RESENTENCING HEARING IF HE OR SHE WAS:**

- 7 (a) A JUVENILE AT THE TIME OF HIS OR HER OFFENSE;
- 8 (b) CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING
9 DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT
10 COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF
11 PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518,
12 C.R.S..OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED
13 PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY
14 HOUSE BILL 96-1005; AND

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

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

22 (3) THE PROVISIONS OF SECTIONS 17-22.5-403 (2) (c) AND
23 17-22.5-405 (1.2), C.R.S., TAKE EFFECT UPON RESENTENCING.

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

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

1 **24-4.1-302. Definitions.** As used in this part 3, and for no other
2 purpose, including the expansion of the rights of any defendant:

3 (2) "Critical stages" means the following stages of the criminal
4 justice process:

5 (h) Any sentencing OR RESENTENCING hearing:

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

8 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
9 preserve and protect a victim's rights to justice and due process, each
10 victim of a crime shall have the following rights:

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

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

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

16 **24-4.1-303. Procedures for ensuring rights of victims of**
17 **crimes.** (12) Unless a victim requests otherwise, the district attorney
18 shall inform each victim of the following:

19 (c) The date, time, and location of any sentencing OR
20 RESENTENCING hearing:

21 **SECTION 9. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.