

**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

Woods and Jahn, Aguilar, Carroll, Cooke, Guzman, Hill, Kerr, Lundberg, Marble, Martinez Humenik, Newell, Scheffel, Steadman, Todd

HOUSE SPONSORSHIP

Kagan and Dore, Garnett, Wist

Senate Committees
Judiciary

House Committees

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., 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 NEITHER MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION
12 18-3-102 (1) (b), NOR MURDER IN THE FIRST DEGREE, AS DESCRIBED IN
13 SECTION 18-3-102(1), BASED ON A THEORY OF COMPLICITY, AS DESCRIBED
14 IN SECTION 18-1-603, THEN THE DISTRICT COURT SHALL SENTENCE THE
15 PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF
16 PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED
17 PURSUANT TO SECTION 17-22.5-405, C.R.S.; OR

18 (B) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS
19 EITHER MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102
20 (1) (b), OR MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION
21 18-3-102 (1), BASED ON A THEORY OF COMPLICITY, AS DESCRIBED IN
22 SECTION 18-1-603, THEN THE DISTRICT COURT, AFTER HOLDING A
23 HEARING, MAY SENTENCE THE PERSON TO A DETERMINATE SENTENCE
24 WITHIN THE RANGE OF THIRTY TO FIFTY YEARS IN PRISON, LESS ANY
25 EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S., IF,
26 AFTER CONSIDERING THE FACTORS DESCRIBED IN SUBPARAGRAPH (II) OF
27 THIS PARAGRAPH (c), THE DISTRICT COURT FINDS EXTRAORDINARY

1 MITIGATING CIRCUMSTANCES THAT WARRANT A SENTENCE OTHER THAN
2 THE SENTENCE DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS
3 SUBPARAGRAPH (I). ALTERNATIVELY, THE COURT MAY SENTENCE THE
4 PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF
5 PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED
6 PURSUANT TO SECTION 17-22.5-405, C.R.S.

7 (II) IN DETERMINING WHETHER EXTRAORDINARY MITIGATING
8 CIRCUMSTANCES EXIST, THE COURT SHALL CONDUCT A SENTENCING
9 HEARING, MAKE FACTUAL FINDINGS TO SUPPORT ITS DECISION, AND
10 CONSIDER RELEVANT EVIDENCE PRESENTED BY EITHER PARTY REGARDING
11 THE FOLLOWING FACTORS:

12 (A) THE DIMINISHED CULPABILITY AND HEIGHTENED CAPACITY
13 FOR CHANGE ASSOCIATED WITH YOUTH;

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

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

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

23 (E) ANY OTHER FACTORS THAT THE COURT DEEMS RELEVANT TO
24 ITS DECISION, SO LONG AS THE COURT IDENTIFIES SUCH FACTORS ON THE
25 RECORD.

26 (III) IF A PERSON IS SENTENCED TO A DETERMINATE RANGE OF
27 THIRTY TO FIFTY YEARS IN PRISON PURSUANT TO THIS PARAGRAPH (c), THE

1 COURT SHALL IMPOSE A MANDATORY PERIOD OF TEN YEARS PAROLE.

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

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

11 **17-22.5-104. Parole - regulations.** (2) (d) (IV) Notwithstanding
12 the provisions of subparagraph (I) of this paragraph (d), an inmate
13 imprisoned under a life sentence for a class 1 felony committed BEFORE
14 JULY 1, 1990, OR on or after July 1, 2006, who was convicted as an adult
15 following direct filing of an information or indictment in the district court
16 pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the
17 district court pursuant to section 19-2-518, C.R.S., may be eligible for
18 parole after the inmate has served at least forty ~~calendar~~ years, LESS ANY
19 EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405. An
20 application for parole ~~shall~~ MAY not be made or considered during ~~the~~
21 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 CONVICTED AND SENTENCED AS AN ADULT FOR A CLASS 1 FELONY
10 COMMITTED WHILE THE PERSON WAS A JUVENILE ON OR AFTER JULY 1,
11 1990, AND BEFORE JULY 1, 2006, AND SENTENCED TO A DETERMINATE
12 SENTENCE WITHIN THE RANGE OF THIRTY TO FIFTY YEARS PURSUANT TO
13 SECTION 18-1.3-401 (4) (c), C.R.S., IS ELIGIBLE FOR PAROLE AFTER HE OR
14 SHE HAS SERVED SEVENTY-FIVE PERCENT OF HIS OR HER SENTENCE, LESS
15 ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

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

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

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

24 **17-22.5-405. Earned time - earned release time - achievement**
25 **earned time.** (1.2) SUBSECTION (1) OF THIS SECTION APPLIES TO A
26 PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY
27 COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS

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

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

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

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

23 PART 10
24 RESENTENCING HEARINGS FOR JUVENILE
25 OFFENDERS SERVING LIFE SENTENCES

26 **16-13-1001. Legislative declaration.** (1) THE GENERAL
27 ASSEMBLY FINDS THAT:

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

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

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

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

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

22 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

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

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

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

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

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

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

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

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

25 (3) THE PROVISIONS OF SECTIONS 17-22.5-403 (2) (c) AND
26 17-22.5-405 (1.2), C.R.S., TAKE EFFECT UPON RESENTENCING.

27 (4) A PETITION FILED UNDER THIS SECTION IS NOT A MOTION UNDER

1 RULE 35 (c) OF THE COLORADO RULES OF CRIMINAL PROCEDURE.

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