

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

**REVISED**

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

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.**

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**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  
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.

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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.