



Legislative Council Staff
Research Note

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Bill Number

Senate Bill 16-181

Sponsors

***Senators Woods and Jahn
Representatives Kagan and
Dore***

Short Title

***Sentencing Juveniles Convicted
Of Class 1 Felonies***

Research Analyst

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Status

This research note reflects the final version of the bill, which was signed by the Governor and became effective on June 10, 2016.

Summary

This bill requires that a person convicted of a class 1 felony between July 1, 1990, and July 1, 2006, for an offense committed while a juvenile be sentenced according to the offense.

The bill allows for offenders who were sentenced to a life sentence without the possibility of parole for a class 1 felony committed as a juvenile between July 1, 1990, and July 1, 2006, to petition the court for a resentencing hearing. It specifies factors that can be considered in order to make a finding of the presence of extraordinary mitigating circumstances, such as the offender's age and maturity level at the time of the crime, and his or her capacity for rehabilitation.

Felonies other than murder in the first degree during the commission of another offense. For all class 1 felonies, the court must sentence the offender to life imprisonment with the possibility of parole after 40 years, less any earned time granted, unless person was convicted of murder in the first degree when the murder was the result of a murder caused while committing or attempting to commit arson, robbery, burglary, kidnapping, certain sexual assaults, or the crime of escape, under Section 18-3-102 (1)(b), C.R.S.

Murder in the first degree during the commission of another offense. If the person was convicted of murder in the first degree and the murder was the result of a murder caused while committing or attempting to commit arson, robbery, burglary, kidnapping, certain sexual assaults, or the crime of escape, under Section 18-3-102 (1)(b), C.R.S., the court may sentence the offender

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to life imprisonment with the possibility of parole after 40 years, less any earned time granted, or to a determinate term of 30 to 50 years in prison, less any earned time granted.

Determinate sentencing. If the court issues a determinate sentence of 30 to 50 years, it is required to impose a mandatory 10 year period of parole, for which the offender is eligible after serving 75 percent of his or her sentence, less any earned time accrued. The State Board of Parole may begin conducting parole hearings for existing offenders one year after the effective date of this bill.

Life sentences. If the court issues a life sentence, when that offender is released after serving 40 years, less any earned time accrued, he or she is to remain on parole for the remainder of his or her natural life.

Earned time. The bill clarifies that its intent is to ensure that the Department of Corrections (DOC) apply earned time calculations retroactively, as if the offender had been eligible for earned time awards from the beginning of his or her incarceration, as well as proactively. The bill clarifies that earned time may not reduce the sentence of a person convicted as an adult for a class 1 felony committed while the person was a juvenile by more than 25 percent.

Victim's rights. The bill requires that victims be notified of and be heard at any resentencing hearing.

Background

Under existing Colorado law, Section 18-1.3-401 (4)(a), C.R.S., anyone convicted of a class 1 felony committed after July 1, 1990, is automatically sentenced to life in prison without the possibility of parole, unless the person is sentenced to the death penalty. In 2006, an exception was added that permits juveniles convicted as adults of class 1 felonies to be sentenced to life imprisonment with the possibility of parole after 40 years. This exemption is not retroactive. Prior to the hearing on this bill, 48 juveniles were sentenced to life in prison without the possibility of parole under this law. The length of stay for these offenders ranges from 7.9 years to 23 years. Of this number, 39 offenders have additional sentences, many of which are consecutive to the current life sentence.

In 2012, the U.S. Supreme Court, in *Miller v. Alabama*, ruled that the Eighth Amendment to the U.S. Constitution prohibits a sentencing scheme that requires life in prison without the possibility of parole for juvenile homicide offenders. In 2016, in *Montgomery v. Louisiana*, the Court decided that the ruling in *Miller* applies retroactively to convictions that were made prior to the *Miller* decision.

Senate Action

Senate Judiciary Committee (April 20, 2016). At the hearing, the committee received testimony in support of the bill from representatives of the Colorado Juvenile Defender Center, the Colorado League of Women Voters, the Colorado Bar Association, the Sam Cary Bar Association, the Colorado Chapter of the National Association of Blacks in Criminal Justice, the Colorado Catholic Conference, the Colorado Criminal Defense Bar, and private citizens. Testimony opposing the bill was provided by representatives of Colorado Victims for Justice, the Colorado Organization for Victim Assistance, the Colorado Attorney General's Office, the Jefferson County Sheriff's Office, the County Sheriffs of Colorado, various district attorney's offices, and private citizens.

The committee adopted amendments L.002 and L.004, and referred the bill, as amended, to the Senate Committee of the Whole.

Amendment L.002 permits the court, when sentencing a juvenile as an adult for a class 1 felony to consider the impact of the offense on a victim or the victim's immediate family; prohibits earned time reducing the sentence of a juvenile convicted as an adult of a class 1 felony by more than 25 percent of the sentence; and makes other clarifying and technical amendments.

Amendment L.004 makes the following changes:

- requires a sentence of life imprisonment with the possibility of parole after 40 years, less any earned time, if the conviction is for first degree murder, other than first degree murder while committing another crime under Section 18-3-102 (1)(b), C.R.S., or first degree murder based on a theory of complicity, as described in Section 18-1-603, C.R.S.;
- permits a discriminate sentence of 30 to 50 years, less any earned time, if the conviction is for first degree murder while committing another crime under Section 18-3-102 (1)(b), C.R.S., or first degree murder based on a theory of complicity, as described in Section 18-1-603, C.R.S., or, in the alternative, a sentence of life imprisonment with the possibility of parole after 40 years, less any earned time; and
- makes technical amendments.

Senate second reading (May 2, 2016). The Senate Committee of the Whole adopted amendment L.010 to the Senate Judiciary Committee report and adopted the report, as amended. The Committee of the Whole also adopted amendment L.013, and passed the bill, as amended, on second reading.

Amendment L.010 permits a court to sentence a juvenile offender convicted as an adult of first degree murder while committing another crime under Section 18-3-102 (1)(b), C.R.S., to a discriminate sentence of 30 to 50 years, less any earned time, following a hearing, if the court finds extraordinary mitigating circumstances. In the alternative, the court may sentence the offender to life imprisonment with the possibility of parole after 40 years, less any earned time. For all other class 1 felonies, the court is required to sentence the juvenile offender to life imprisonment with the possibility of parole after 40 years, less any earned time. Amendment L.011 makes technical changes related to resentencing.

Senate third reading (May 3, 2016). The Senate passed the bill on third reading.

Senate consideration of House amendments (May 11, 2016). The Senate concurred with the House amendments and repassed the bill.

House Action

House Judiciary Committee (May 5, 2016). At the hearing, the committee received testimony in support of the bill from representatives of the Office of the State Public Defender, the Twentieth Judicial District, the Colorado Juvenile Defender Center, the Sam Cary Bar Association, the Office of the Alternate Defense Counsel, the Colorado Criminal Defense Bar, and private citizens. Testimony opposing the bill was provided by representatives of the Colorado District Attorneys' Council, the Colorado Organization for Victim Assistance, the Colorado Coalition for Criminal and Juvenile Justice, the Attorney General's Office, various district attorney's offices, and private citizens.

The committee adopted amendment L.016, which prohibits a juvenile offender resentenced to 30 to 50 years from receiving a reduction of his or her sentence because of parole eligibility, and referred the bill, as amended, to the House Committee of the Whole.

House second reading (May 9, 2016). The House Committee of the Whole adopted the House Judiciary Committee report and second reading amendment L.019, which amends statutory sections related to parole to be consistent with the provisions of the bill, and passed the bill, as amended, on second reading.

House third reading (May 10, 2016). The House passed the bill on third reading.

Relevant Research

Legislative Council Staff, *Special Sentencing for Felony and Misdemeanor Offenses*, Interested Persons Memorandum, October 2012: <http://tinyurl.com/j8wsm44> (pdf).

Legislative Council Staff, *Sealing Adult and Juvenile Criminal Records*, Interested Persons Memo, September 2012: <http://tinyurl.com/gkvbfo6> (pdf).

Legislative Council Staff, 2010 Sentencing Reform, Issue Brief, December 2010, updated March 2012: <http://tinyurl.com/zoe472m> (pdf).