

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0448.01 Richard Sweetman x4333

HOUSE BILL 15-1292

HOUSE SPONSORSHIP

Kagan, Lee

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING SENTENCING OF A PERSON WHO IS CONVICTED AS AN
102 ADULT FOR A CLASS 1 FELONY COMMITTED WHILE THE PERSON
103 WAS A JUVENILE.

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>.)

For any person who is convicted as an adult for a class 1 felony committed while the person was a juvenile, the bill requires the court to sentence the person to either:

! Twenty-four to 48 years of incarceration and a mandatory 10-year period of parole; or

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.

! Life imprisonment with the possibility of parole after serving 20 years.

For any person who was convicted as an adult for a class 1 felony committed while the person was a juvenile on or after July 1, 1990, and before July 1, 2006, and who received a mandatory sentence to life imprisonment without the possibility of parole, the bill requires the court to resentence the person according to the same new sentencing guidelines.

In determining the appropriate sentence in each case, the court shall consider certain factors specified in the bill.

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); 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., FOR AN OFFENSE COMMITTED ON OR
12 AFTER JULY 1, 2006, AND BEFORE JULY 1, 2015, the district court judge
13 shall sentence the person to a term of life imprisonment with the
14 possibility of parole after serving a period of forty calendar years.
15 Regardless of whether the state board of parole releases the person on
16 parole, the person shall remain in the legal custody of the department of
17 corrections for the remainder of the person's life and shall not be
18 discharged.

19 ~~(II) The provisions of this paragraph (b) shall apply to persons~~
20 ~~sentenced for offenses committed on or after July 1, 2006.~~

1 (c) (I) NOTWITHSTANDING THE PROVISIONS OF
2 SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (V) OF PARAGRAPH (a) OF
3 SUBSECTION (1) OF THIS SECTION, AND NOTWITHSTANDING THE
4 PROVISIONS OF PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4), AS TO
5 A PERSON WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY
6 FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE
7 DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER
8 OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION
9 19-2-518, C.R.S., FOR AN OFFENSE COMMITTED ON OR AFTER JULY 1,
10 2015, THE DISTRICT COURT SHALL SENTENCE THE PERSON TO EITHER A
11 DETERMINATE SENTENCE WITHIN THE RANGE OF TWENTY-FOUR TO
12 FORTY-EIGHT YEARS IN PRISON OR TO A TERM OF LIFE IMPRISONMENT WITH
13 THE POSSIBILITY OF PAROLE AFTER SERVING TWENTY CALENDAR YEARS.

14 (II) IF THE PERSON IS SENTENCED WITHIN THE DETERMINATE
15 RANGE OF TWENTY-FOUR TO FORTY-EIGHT YEARS IN PRISON, THE COURT
16 SHALL IMPOSE A MANDATORY SENTENCE OF TEN YEARS PAROLE.

17 (III) IF THE PERSON IS SENTENCED TO LIFE IMPRISONMENT WITH
18 THE POSSIBILITY OF PAROLE AFTER TWENTY YEARS, REGARDLESS OF
19 WHETHER THE STATE BOARD OF PAROLE RELEASES THE PERSON ON
20 PAROLE, THE PERSON SHALL REMAIN IN THE LEGAL CUSTODY OF THE
21 DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF THE PERSON'S LIFE
22 AND SHALL NOT BE DISCHARGED.

23 (IV) IN DETERMINING THE APPROPRIATE SENTENCE, THE COURT
24 SHALL CONDUCT A SENTENCING HEARING, MAKE FACTUAL FINDINGS TO
25 SUPPORT ITS DECISION, AND CONSIDER RELEVANT EVIDENCE PRESENTED
26 BY EITHER PARTY REGARDING THE FOLLOWING FACTORS:

27 (A) THE IMPACT OF THE OFFENSE ON THE VICTIM AND THE VICTIM'S

1 FAMILY;

2 (B) WHETHER THE OFFENSE WAS COMMITTED IN AN AGGRESSIVE,
3 VIOLENT, PREMEDITATED, OR WILLFUL MANNER;

4 (C) WHETHER THE OFFENDER USED, OR POSSESSED AND
5 THREATENED TO USE, A DEADLY WEAPON IN THE COMMISSION OF THE
6 CRIME;

7 (D) THE EXTENT OF THE OFFENDER'S ROLE IN THE CRIME AS A
8 MAJOR OR MINOR PARTICIPANT, INCLUDING WHETHER THE OFFENDER
9 COULD HAVE REASONABLY FORESEEN THAT THE OFFENDER'S CONDUCT IN
10 THE COURSE OF THE COMMISSION OF THE OFFENSE WOULD CAUSE, OR
11 WOULD CREATE A GRAVE RISK OF CAUSING, DEATH TO ANOTHER PERSON;

12 (E) THE AGE AND DEVELOPMENTAL MATURITY OF THE OFFENDER
13 AT THE TIME OF THE OFFENSE;

14 (F) THE OFFENDER'S INTELLECTUAL CAPACITY AND MENTAL
15 HEALTH AT THE TIME OF THE OFFENSE, INCLUDING ANY DIAGNOSIS OR
16 OTHER EVIDENCE OF NEUROLOGICAL OR DEVELOPMENTAL DISABILITY;

17 (G) THE OFFENDER'S FAMILY AND HOME ENVIRONMENT,
18 INCLUDING EXPOSURE TO TRAUMA AND SUBSTANCE ABUSE;

19 (H) THE OFFENDER'S LIVING PATTERN AT THE TIME OF THE
20 OFFENSE;

21 (I) THE OFFENDER'S PRIOR CRIMINAL OR DELINQUENT HISTORY;

22 AND

23 (J) THE OFFENDER'S CAPACITY FOR CHANGE AND POTENTIAL FOR
24 REHABILITATION, INCLUDING ANY EVIDENCE OF THE OFFENDER'S EFFORTS
25 TOWARD, OR AMENABILITY TO, REHABILITATION.

26 (V) IN ADDITION TO THE FACTORS DESCRIBED IN
27 SUB-SUBPARAGRAPHS (A) TO (J) OF SUBPARAGRAPH (IV) OF THIS

1 PARAGRAPH (c), THE COURT MAY CONSIDER ANY OTHER FACTORS THAT
2 THE COURT DEEMS RELEVANT TO ITS DECISION, SO LONG AS THE COURT
3 IDENTIFIES ANY SUCH FACTOR ON THE RECORD.

4 **SECTION 2.** In Colorado Revised Statutes, 17-22.5-104, **add** (2)
5 (d) (V) as follows:

6 **17-22.5-104. Parole - regulations.**

7 (2) (d) (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, OR COMMITTED ON OR AFTER JULY 1, 2015, WHO WAS
11 CONVICTED AS AN ADULT FOLLOWING DIRECT FILING OF AN INFORMATION
12 OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517,
13 C.R.S., OR TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT
14 TO SECTION 19-2-518, C.R.S., MAY BE ELIGIBLE FOR PAROLE AFTER
15 SERVING TWENTY CALENDAR YEARS. AN APPLICATION FOR PAROLE SHALL
16 NOT BE MADE OR CONSIDERED DURING THE PERIOD OF TWENTY CALENDAR
17 YEARS.

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

20 **17-22.5-403. Parole eligibility.** (2) (c) ANY PERSON CONVICTED
21 AND SENTENCED AS AN ADULT FOR A CLASS 1 FELONY COMMITTED WHILE
22 A JUVENILE ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, OR
23 COMMITTED ON OR AFTER JULY 1, 2015, AND SENTENCED TO A
24 DETERMINATE SENTENCE WITHIN THE RANGE OF TWENTY-FOUR TO
25 FORTY-EIGHT YEARS PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S.,
26 SHALL BE ELIGIBLE FOR PAROLE AFTER SUCH PERSON HAS SERVED
27 SEVENTY-FIVE PERCENT OF THE SENTENCE IMPOSED UPON SUCH PERSON,

1 LESS ANY TIME AUTHORIZED FOR EARNED TIME GRANTED PURSUANT TO
2 SECTION 17-22.5-405.

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

5 **17-22.5-405. Earned time - earned release time - achievement**
6 **earned time.** (1.2) SUBSECTION (1) OF THIS SECTION APPLIES TO A
7 PERSON CONVICTED AS AN ADULT FOR A CLASS 1 FELONY COMMITTED
8 WHILE A JUVENILE ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006,
9 OR COMMITTED ON OR AFTER JULY 1, 2015, AND SENTENCED TO A
10 DETERMINATE SENTENCE WITHIN THE RANGE OF TWENTY-FOUR TO
11 FORTY-EIGHT YEARS PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S.

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

14 PART 10

15 RESENTENCING HEARINGS FOR JUVENILE

16 OFFENDERS SERVING LIFE SENTENCES

17 **16-13-1001. Legislative declaration.** (1) THE GENERAL
18 ASSEMBLY FINDS THAT:

19 (a) IN THE RECENT CASE OF *MILLER V. ALABAMA*, THE UNITED
20 STATES SUPREME COURT HELD THAT IMPOSING A MANDATORY LIFE
21 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE ON A JUVENILE IS A
22 CRUEL AND UNUSUAL PUNISHMENT PROHIBITED BY THE EIGHTH
23 AMENDMENT TO THE UNITED STATES CONSTITUTION; AND

24 (b) THE COURT FURTHER HELD THAT "CHILDREN ARE
25 CONSTITUTIONALLY DIFFERENT THAN ADULTS FOR PURPOSES OF
26 SENTENCING".

27 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

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

6 (b) APPROXIMATELY FIFTY PERSONS IN COLORADO HAVE
7 RECEIVED UNCONSTITUTIONAL SENTENCES AS A RESULT OF BEING
8 SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR OFFENSES
9 COMMITTED WHILE A JUVENILE ON OR AFTER JULY 1, 1990, AND BEFORE
10 JULY 1, 2006.

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

14 **16-13-1002. Resentencing hearing for persons serving life**
15 **sentences without the possibility of parole as the result of a direct file**
16 **or transfer.** (1) A PERSON MAY PETITION THE SENTENCING COURT FOR A
17 RESENTENCING HEARING IF HE OR SHE WAS:

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

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

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

27 (2) IF A PETITION IS FILED PURSUANT TO SUBSECTION (1) OF THIS

1 SECTION, THE SENTENCING COURT SHALL CONDUCT A RESENTENCING
2 HEARING AND RESENTENCE THE OFFENDER AS DESCRIBED IN SECTION
3 18-1.3-401 (4) (b), C.R.S.

4 (3) IF THE PERSON IS RESENTENCED TO A DETERMINATE SENTENCE
5 OF TWENTY-FOUR TO FORTY-EIGHT YEARS IN PRISON, THE PROVISIONS OF
6 SECTIONS 17-22.5-403 (2) (c) AND 17-22.5-405 (1.2), C.R.S., SHALL TAKE
7 EFFECT UPON RESENTENCING.

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

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