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SUPREME COURT STATE OF COLORADO 2 East 14th Ave. Denver, CO 80203	
On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 11CA2030	
GUY LUCERO, Petitioner, v. THE PEOPLE OF THE STATE OF COLORADO, Respondent.	▲ **COURT USE ONLY** ▲ Case No. 13SC624
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PEOPLE'S SUPPLEMENTAL ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the applicable requirements of C.A.R. 28. The Brief contains 3,142 words.

/s/ John T. Lee

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The People submit the following brief in response to the defendant's supplemental brief regarding the impact of S.B. 16-180 and S.B. 16-181.[1]

INTRODUCTION

In holding that the Eighth Amendment bars life-without-parole for juvenile nonhomicide offenders, the United States Supreme Court expressly held that "[a] State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." *Graham v. Florida*, 560 U.S. 48, 75 (2010). What a State must do, however, is provide a juvenile nonhomicide offender with "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* But the Court in *Graham* did not find that its holding required a specific outcome or that it was for the Court to determine what meaningful opportunity a State should provide. On the contrary, the Court directed that "[i]t is for the State, in the first instance, to explore the means and mechanisms for compliance." *Id.*

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[1] S.B. 16-181 is largely inapplicable to the instant case because it addresses juveniles convicted of first-degree murder.

Heeding that request, the General Assembly enacted S.B. 16-180. *See* App. A. Signed into law on June 10, 2016, the new statute amends Colorado's existing sentencing scheme to allow eligible juvenile offenders that have demonstrated maturity and rehabilitation during incarceration to petition for entry into a specialized program. Once an offender successfully completes the program, he or she is presumed to have shown both extraordinary mitigating circumstances justifying early release and that early release is compatible with the safety and welfare of society. The statute requires the governor to consider those presumptions, and accords the governor the authority to grant early parole if those *same* considerations are met in the governor's view.

By enacting a specific practice that allows juvenile offenders like the defendant to obtain parole after 25 years of incarceration, the General Assembly has gone beyond any obligation required by *Graham*. Accordingly, even if this Court determines that *Graham* extends to cumulative sentences, the defendant's sentence is constitutional and should be upheld.

ARGUMENT

I. The defendant's sentence is constitutional under *Graham*.

A. By enacting S.B. 16-180, the General Assembly went beyond what *Graham* requires.

The purpose of S.B. 16-180 is plain. The legislature expressly acknowledged that the United States Supreme Court had recently held that "children are constitutionally different than adults for purposes of sentencing and should be given a meaningful opportunity for release based on demonstrated maturity and rehabilitation." App. A. (Sec. 1, Legislative Declaration, (1)(a)). Consistent with those cases, the General Assembly likewise declared that "Colorado recognizes that children have not yet reached developmental maturity before the age of eighteen years and therefore have a heightened capacity to change behavior and a greater potential for rehabilitation." *Id.* (Sec. 1, Legislative Declaration, (1)(b)). Accordingly, Colorado implemented "a system that allows any offender who committed a serious crime as a juvenile, [who] was treated as an adult by the criminal justice system, and has served more than twenty or twenty-five calendar years of a

sentence . . . during which he or she has exhibited growth and rehabilitation, the opportunity to further demonstrate rehabilitation and earn early release in a specialized program in a less secure setting without compromising public safety." (Sec. 1, Legislative Declaration, (2)).

Under S.B. 16-180, juvenile offenders not convicted of unlawful sexual behavior or certain forms of first-degree murder[2] can petition for placement in a specialized program after serving 20 years of his or her sentence.[3] Although *Graham* never addressed whether its holding extended to cumulative sentences, S.B. 16-180 applies to all eligible juvenile offenders. *See Graham*, 560 U.S. at 63. For eligible offenders, entry into the program is conditioned on demonstrated growth and maturity. These requirements include:

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[2] Juvenile offenders "convicted of murder in the first degree as described in section 18-3-102(1)(b) or (1)(d), C.R.S.," may petition for placement in the specialized program after serving 20 years of his or her sentence, while juvenile offenders convicted of murder in the first degree, as described in section 18-3-102, C.R.S., may petition for placement in the specialized program after serving 25 years of his or her sentence. § 17-34-101(II), (III), C.R.S.

[3] S.B. 16-180 also does not apply to offenders in a treatment program within the Department of Corrections for a serious mental illness.

- obtaining a high school diploma or passing a high school equivalency exam;

- participating in programs offered by the department and demonstrating responsibility and commitment to those programs;

- demonstrating positive growth and change through increasing developmental maturity and quantifiable good behavior during the course of incarceration; and

- accepting responsibility for the criminal behavior underlying the offenses for which the offender was convicted.

§ 17-34-101(1)(a)(I), (D)-(G), C.R.S. Participation in the program is open to all offenders regardless of their sentence or parole eligibility date. § 17-34-101(1)(b), C.R.S.

Upon receiving a petition from an offender, the Executive Director or his or her designee "shall review the petition and determine whether to place the offender in the specialized program." § 17-34-101(2). In making that determination, the statute requires the director or his or her designee to consider, in part:

- the nature of the offense and the circumstances surrounding the offense, including the extent of the offender's participation in the criminal conduct;

- the age of and maturity of the offender at the time of the offense;
- the behavior of the offender in any institution during the duration of his or her sentence; and
- the assessed risks and needs of the offender.

§ 17-34-101(2)(a)-(d). After considering those factors, the executive director *shall* place any offender that is "an appropriate candidate" in the program as soon as practicable. § 17-34-101(4)(a).

Once an offender successfully completes the program, which is designed to take at least three years to complete, and serves at least 25 years of his or her sentence, the statute allows the offender to apply for early parole. § 17-34-102(7), (8)(a)(I), (II), C.R.S. Unless rebutted by relevant evidence, it is then presumed that by completing the program:

> (I) The offender has met the factual burden of presenting extraordinary mitigating circumstances; and
>
> (II) The offender's release to early parole is compatible with the safety and welfare of society.

Id.

When an offender applies for early parole after having successfully completed the specialized program, the offender may file

his or her application with the governor's office. § 17-22.5-403.7(6)(a), C.R.S. The statute authorizes the governor to grant the applicant early parole if, in the governor's opinion, "extraordinary mitigating circumstance exist and the offender's release from institutional custody is compatible with the safety and welfare of society." § 17-22.5-403(4.5)(a), C.R.S. By its terms, the statute *requires* the governor to consider that those considerations are presumptively met based on the offender's successful completion of the program. *Id.* ("After considering any relevant evidence by any person or agency and *considering the presumptions* set forth in section 17-34-102(8), the governor may grant early parole . . .") (emphasis added). As a whole, therefore, S.B. 180 provides juvenile offenders with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

The defendant argues, nevertheless, that the statute does not comply with *Graham*. The defendant contends that by requiring a finding of extraordinary mitigating circumstances, the new statute "turns the Eighth Amendment on its head by making it, by definition, the rare juvenile who will be eligible for the recommendation for early

parole." Defendant's S.B. at 12. But the defendant's claim ignores that the statute imposes no limit on the number of juveniles that can participate in the specialized program. Instead, the statute requires the executive director or his designee to place any offender that is "an appropriate candidate" in the program as soon as practicable. § 17-34-101(4)(a). Accordingly, the statute operates to create a presumption that *any* juvenile offender that completes the program has shown extraordinary circumstances justifying early release; it imposes no limit on the number of juvenile offenders that can achieve early release.

Likewise, the defendant wrongly derides that S.B. 16-180 fails to comply with *Graham* because it does not create a substantive entitlement guaranteeing early release through the judiciary. First, a State is under no duty to guarantee that a juvenile will be paroled. *See Graham*, 560 U.S. at 75. Second, nothing in the United States Supreme Court's recent cases suggests that the decision whether to grant a juvenile early release must be made only by the judiciary. *See, e.g.*, *People v. Franklin*, 2016 Cal. Lexis 3592, **1064 (Cal. May 26, 2016) (rejecting argument that to comply with *Miller*, California's new

sentencing statute required a judge to consider the relevance of the juvenile's youth, because "*Miller* did not restrict the ability of states to impose life *with* parole sentences on juvenile offenders such sentences necessarily contemplate that a parole authority will decide whether a juvenile offender is suitable for release"). Correctly so, because as argued in the Answer Brief, a judicial holding divesting the legislature over all discretion as to what sentence a juvenile offender could receive would violate the separation of powers. *See* People's A.B. at 20.

The defendant's contention that S.B. 16-180 needed to "erect a categorical" bar also misses the mark. Defendant's S.B. at 15. The defendant argues that the "overarching concept of the *Roper-Graham-Miller* trilogy is that because children are constitutionally different from adults for sentencing purposes, they are categorically excluded from certain punishments." *Id.* But that is exactly what S.B. 16-180 does. Under S.B. 16-180, offenders like the defendant, regardless of the length of their sentence, are eligible for early release 25 years after incarceration. For juvenile offenders that fall under S.B. 16-180,

Colorado law categorically prohibits a direct or effective sentence to life without the possibility of parole.

Indeed, S.B. 16-180 goes even further than what this Court has already deemed inappropriate. In *Tate*, this Court held that parole eligibility after serving 40 years is constitutional for a juvenile convicted of first degree murder. *People v. Tate*, 2015 CO 42, ¶ 7; *see also Graham*, 560 U.S. at 123, n.13 (Thomas, J., dissenting) ("it would be impossible to argue that there is any objective evidence of agreement that a juvenile is constitutionally entitled to a parole hearing any sooner than 40 years after conviction"). Similarly, even defense counsel in *Graham* conceded at oral argument that the "Colorado provision [providing parole eligibility after 40 years] would probably be constitutional." *Graham*, 560 U.S. at 123, n.13 (Thomas, J., dissenting). Thus, the legislature, in enacting S.B. 16-180, has gone further than what is required in *Graham* and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), by providing juvenile offenders with the opportunity to receive parole eligibility after serving only 25 years.

Moreover, the statute not only creates a meaningful opportunity for early parole, it also seeks to ensure that juvenile offenders will have a meaningful opportunity to integrate back into the community. In setting forth the parameters for the specialized program, the General Assembly has directed that the program must include components that will allow an offender to experience more independence in daily life, gain additional work-related responsibilities, and reflect the best practices in independent living skills and reentry services. § 17-34-102(2). To facilitate that learning, an offender must participate in that program for at least three years. § 17-34-102(3).

Nor is the defendant's argument saved by his contention that the statute is tantamount to executive clemency and "provides no new authority." Defendant's S.B. at 15. Although executive clemency is insufficient to provide juvenile offenders with a meaningful opportunity for release because of its remote possibility, *Graham*, 560 U.S. at 70, S.B. 16-180 is not executive clemency. In addressing the differences between executive clemency and parole, the Supreme Court held:

> Parole is a regular part of the rehabilitative process. Assuming good behavior, it is the normal expectation in the vast majority of cases. The law generally specifies when a prisoner will be eligible to be considered for parole, and details the standards and procedures applicable at that time. Thus it is possible to predict, at least to some extent, when parole might be granted. Commutation, on the other hand, is an ad hoc exercise of executive clemency. A Governor may commute a sentence at any time for any reason without reference to any standards.

Solem v. Helm, 463 U.S. 277, 300-01 (1983) (internal citations omitted).

Unlike clemency, S.B. 16-180 is more than a "remote possibility." It is a specialized program of parole eligibility complete with standards and procedures, which specify when an offender will be eligible for parole if he or she complies with the terms of the program. The statute makes clear that its purpose is to allow all eligible juveniles the opportunity to earn early release. App. A. (Legislative Declaration, Section 1(2)). By requiring the governor to consider the application and directing what standards and presumptions that the governor must consider, the statute creates a meaningful opportunity for early release. *See, e.g.,* Colo. Const. Art. IV, Sec. 2 (Under the Colorado Constitution, the governor "shall take care that the laws be faithfully executed").

Finally, the defendant also improperly seeks to advance his argument by pointing to two recent cases from California. But in fact, those cases confirm the validity of the General Assembly's legislative response to *Graham*.

In *Gutierrez*, the California Supreme Court addressed a law creating a procedure allowing juvenile offenders to petition for a recall of a sentence to life without parole after having served 15 years in prison. *People v. Gutierrez*, 324 P.3d 245, 265 (Cal. 2014). As a factual matter, *Gutierrez* addressed the application of *Miller*'s holding that sentencing schemes mandating life without parole for juveniles convicted of homicide offenses violated the Eighth Amendment. *Id.* at 259. Nevertheless, in rejecting the argument that California's procedure allowing a defendant to petition for recall of a life without parole sentence eliminated a *Miller* problem, the California Supreme Court found significant *Graham*'s statement that the Eighth Amendment prohibits states from making a judgment at the outset that juvenile offenders will never be fit to reenter society. *Id.* at 267. According to the court, "*Graham* spoke of providing juvenile offenders with a 'meaningful

opportunity to obtain release' as a constitutionally required alternative to—not as an after-the-fact corrective for—'*making the judgment at the outset* that those offenders never will be fit to reenter society.'" *Id.* (quoting *Graham*, 560 U.S. at 75). Therefore, the ability to petition for a recall of the original sentence did not validate "the initial judgment of incorrigibility underlying the imposition of life without parole . . . ." *Id.*

S.B. 16-180 creates the opposite result. Unlike California's procedure allowing for a recall to potentially overturn a judgment of incorrigibility, Colorado's law expressly recognizes that all juvenile offenders may be fit to reenter society and can demonstrate maturity and rehabilitation. Therefore, by making a legislative judgment that all eligible juvenile offenders may be fit to reenter society after 25 years, Colorado's sentencing scheme makes an affirmative judgment that juvenile offenders *are not incorrigible* at the outset.

Accordingly, Colorado's statute is far more analogous to the statute approved in *Franklin*, 2016 Cal. Lexis 3592. In *Franklin*, the court addressed statutory amendments effectively reforming the defendant's statutorily mandated sentence to life without the possibility

of parole to one where he would be eligible for parole during his 25th year of incarceration. *Id.* at **21. The court found the defendant's claim moot, because by "operation of law, Franklin's sentence is not functionally equivalent to [life without the possibility of parole], and the record here does not include evidence that the Legislature's mandate that youth offender parole hearings must provide for a meaningful opportunity to obtain release is unachievable in practice." *Id.* at **286.

Likewise, in Colorado, S.B. 16-180 makes the defendant eligible for release during his 25th year of incarceration. Although the defendant argues that S.B. 16-180 fails to sufficiently guarantee his early release, there is nothing in the law that suggests that release under its terms is unachievable. Thus, the defendant's sentence is not the functional equivalent to a sentence to life without the possibility of parole, and this Court should reject his challenge to his sentence.

B. Consistent with *Graham*, Colorado's sentencing scheme is justified by the legitimate penological goal of rehabilitation.

In addition, as *Graham* itself explained, even in the context of considering a state's sentencing scheme under the categorical approach,

"[t]he penological justifications for the sentencing practice are also relevant to the analysis." 560 U.S. at 71. Before invalidating Florida's sentencing scheme, *Graham* first considered whether any legitimate penological goals justified the sentencing scheme. *Id.* In answering that question, the Court determined that because "[n]one of the goals of penal sanctions that have been recognized as legitimate—retribution, deterrence, incapacitation, and rehabilitation"—provided an adequate justification for the sentencing practice of imposing life without the possibility of parole, penological theory could not justify life without parole for juvenile nonhomicide offenders. *Id.* Accordingly, Florida's "sentencing practice of life without the possibility of parole was cruel and unusual." *Id.* at 71-72.

Yet, as explained above, S.B. 16-180 significantly changes Colorado's sentencing scheme. Now, under Colorado law, juvenile offenders like the defendant are never subject to a life or an effective life sentence *without* the possibility of parole. Instead, regardless of the length of the offender's sentence, juvenile offenders have the possibility of parole under S.B. 16-180. Therefore, unlike Florida's *mandatory* life

without parole sentencing scheme at issue in *Graham*, by conditioning early release on demonstrated rehabilitation and maturity, Colorado's sentencing scheme is constitutional on the ground that it reflects the rehabilitative ideal and does not make an irrevocable judgment about the juvenile's value and place in society. *Graham*, 560 U.S. at 74.

C. In any event, the holding in *Graham* does not extend to the defendant's sentence.

Regardless, the People maintain that *Graham* does not apply to consecutive term-of-years sentences imposed on juveniles convicted of multiple offenses. In addition, because attempted first-degree murder and conspiracy to commit first-degree murder are homicide offenses, the defendant could have even received a sentence to life without the possibility of parole under *Miller*. *See Graham*, 560 U.S. at 63, 67 ("Juvenile offenders who committed both homicide and nonhomicide crimes present a different situation for a sentencing judge than juvenile offenders who committed no homicide."). And even if this Court concludes that *Graham* applies to effective life sentences, the defendant did not receive a life sentence as he is parole eligible at least as soon as

57 years old. *See People v. Lucero*, 2013 COA 53, ¶ 12; *see also* App. B. (current data from inmate locator, indicating that the defendant will be parole eligible at 56).

CONCLUSION

The General Assembly went further than it was required to in creating a sentencing scheme that grants juvenile offenders a meaningful opportunity for early parole 25 years after incarceration based on demonstrated maturity and rehabilitation. For the foregoing reasons, and those in the Answer Brief, the judgment of the Court of Appeals should be affirmed.

CYNTHIA H. COFFMAN
Attorney General

/s/ John T. Lee

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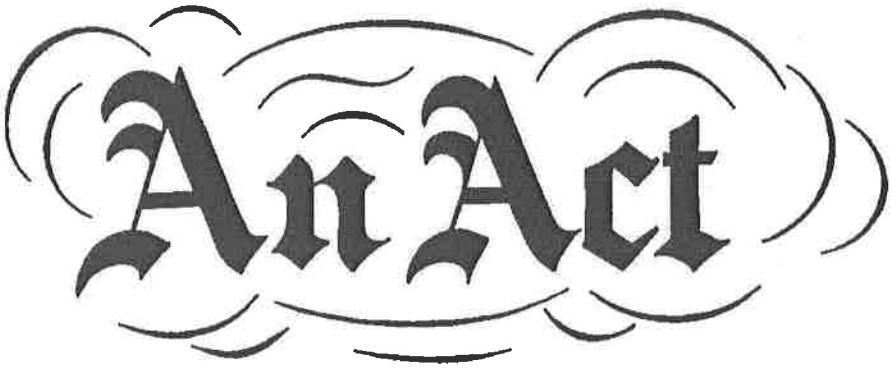
CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **Supplemental Answer Brief** upon **ERIC SAMLER, JAMES HOPKINS, and PHILLIP CHERNER**, via Integrated Colorado Courts E-filing System (ICCES) on July 22, 2016.

/s/ Cortney Jones

APPENDIX A

Senate Bill 16-180, Signed Into Law on 6/10/2016



SENATE BILL 16-180

BY SENATOR(S) Woods and Jahn, Aguilar, Guzman, Kerr, Lundberg, Marble, Martinez Humenik, Merrifield, Newell, Scheffel, Steadman, Todd, Ulibarri, Heath, Kefalas;
also REPRESENTATIVE(S) Kagan and Ransom, Priola, Danielson, Dore, Garnett, Klingenschmitt, McCann, Moreno, Rosenthal, Wist, Becker K., Duran, Kraft-Tharp, Lee, Primavera, Ryden, Arndt, Court, Melton, Salazar, Tyler, Williams, Winter.

CONCERNING A SPECIALIZED PROGRAM WITHIN THE DEPARTMENT OF CORRECTIONS FOR CERTAIN OFFENDERS WHO WERE CONVICTED AS ADULTS FOR OFFENSES THEY COMMITTED AS JUVENILES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) The United States supreme court has held in several recent decisions regarding the criminal sentencing of juveniles that children are constitutionally different than adults for purposes of sentencing and should be given a meaningful opportunity for release based on demonstrated maturity and rehabilitation;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) Colorado recognizes that children have not yet reached developmental maturity before the age of eighteen years and therefore have a heightened capacity to change behavior and a greater potential for rehabilitation;

(c) Colorado has many offenders currently serving sentences in the department of corrections who committed crimes when they were less than eighteen years old and who no longer present a threat to public safety; and

(d) Colorado is committed to research-based best practices in the development and implementation of correctional policies and practices.

(2) Now, therefore, Colorado desires to implement a system that allows any offender who committed a serious crime as a juvenile, was treated as an adult by the criminal justice system, and has served more than twenty or twenty-five calendar years of a sentence to the department of corrections, during which he or she has exhibited growth and rehabilitation, the opportunity to further demonstrate rehabilitation and earn early release in a specialized program in a less secure setting without compromising public safety.

SECTION 2. In Colorado Revised Statutes, **add** article 34 to title 17 as follows:

ARTICLE 34
Specialized Program For Juveniles
Convicted As Adults

17-34-101. Juveniles who are convicted as adults in district court - eligibility for specialized program placement - petitions. (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN OFFENDER SERVING A SENTENCE IN THE DEPARTMENT FOR A FELONY OFFENSE AS A RESULT OF THE FILING OF CRIMINAL CHARGES BY AN INFORMATION OR INDICTMENT PURSUANT TO SECTION 19-2-517, C.R.S., OR THE TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005, AND WHO REMAINS IN THE CUSTODY OF THE DEPARTMENT FOR THAT FELONY OFFENSE MAY PETITION FOR PLACEMENT IN

THE SPECIALIZED PROGRAM DESCRIBED IN SECTION 17-34-102, REFERRED TO WITHIN THIS SECTION AS THE "SPECIALIZED PROGRAM" AS FOLLOWS:

(I) IF THE FELONY OF WHICH THE PERSON WAS CONVICTED WAS NOT MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102, C.R.S., THEN THE OFFENDER MAY PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM AFTER SERVING TWENTY YEARS OF HIS OR HER SENTENCE IF HE OR SHE:

(A) HAS NOT BEEN RELEASED ON PAROLE;

(B) HAS NOT BEEN CONVICTED OF UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), C.R.S.;

(C) IS NOT IN A TREATMENT PROGRAM WITHIN THE DEPARTMENT FOR A SERIOUS MENTAL ILLNESS;

(D) HAS OBTAINED, AT A MINIMUM, A HIGH SCHOOL DIPLOMA OR HAS SUCCESSFULLY PASSED A HIGH SCHOOL EQUIVALENCY EXAMINATION, AS DEFINED IN SECTION 22-33-102 (8.5), C.R.S.;

(E) HAS PARTICIPATED IN PROGRAMS OFFERED TO HIM OR HER BY THE DEPARTMENT AND DEMONSTRATED RESPONSIBILITY AND COMMITMENT IN THOSE PROGRAMS;

(F) HAS DEMONSTRATED POSITIVE GROWTH AND CHANGE THROUGH INCREASING DEVELOPMENTAL MATURITY AND QUANTIFIABLE GOOD BEHAVIOR DURING THE COURSE OF HIS OR HER INCARCERATION; AND

(G) HAS ACCEPTED RESPONSIBILITY FOR THE CRIMINAL BEHAVIOR UNDERLYING THE OFFENSE FOR WHICH HE OR SHE WAS CONVICTED.

(II) IF THE FELONY OF WHICH THE PERSON WAS CONVICTED WAS MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b) OR (1) (d), C.R.S., THEN THE OFFENDER MAY PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM AFTER SERVING TWENTY YEARS OF HIS OR HER SENTENCE IF HE OR SHE SATISFIES THE CRITERIA DESCRIBED IN SUB-SUBPARAGRAPHS (A), (B), (C), (D), (E), (F), AND (G) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(III) IF THE FELONY OF WHICH THE PERSON WAS CONVICTED WAS MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102, C.R.S., BUT WAS NOT MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b) OR (1) (d), C.R.S., THEN THE OFFENDER MAY PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM AFTER SERVING TWENTY-FIVE YEARS OF HIS OR HER SENTENCE IF HE OR SHE SATISFIES THE CRITERIA DESCRIBED IN SUB-SUBPARAGRAPHS (A), (B), (C), (D), (E), (F), AND (G) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(b) AN OFFENDER WHO IS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) MAY APPLY FOR PLACEMENT IN THE SPECIALIZED PROGRAM NOTWITHSTANDING HIS OR HER SENTENCE OR PAROLE ELIGIBILITY DATE.

(2) UPON RECEIVING A PETITION FROM AN OFFENDER DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE SHALL REVIEW THE PETITION AND DETERMINE WHETHER TO PLACE THE OFFENDER IN THE SPECIALIZED PROGRAM. IN MAKING THIS DETERMINATION, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE SHALL CONSIDER THE FOLLOWING CRITERIA:

(a) THE NATURE OF THE OFFENSE AND THE CIRCUMSTANCES SURROUNDING THE OFFENSE, INCLUDING THE EXTENT OF THE OFFENDER'S PARTICIPATION IN THE CRIMINAL CONDUCT;

(b) THE AGE AND MATURITY OF THE OFFENDER AT THE TIME OF THE OFFENSE;

(c) THE BEHAVIOR OF THE OFFENDER IN ANY INSTITUTION FOR THE DURATION OF HIS OR HER SENTENCE, INCLUDING CONSIDERATION OF ANY VIOLATIONS OF THE INMATE CODE OF CONDUCT AND DATES OF THE VIOLATIONS OR, IN THE ALTERNATIVE, THE LACK OF ANY SUCH VIOLATIONS;

(d) THE ASSESSED RISK AND NEEDS OF THE OFFENDER;

(e) THE IMPACT OF THE OFFENSE ON ANY VICTIM AND ANY VICTIM'S IMMEDIATE FAMILY MEMBER; AND

(f) ANY OTHER FACTOR DETERMINED TO BE RELEVANT BY THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE IN ASSESSING AND MAKING A DETERMINATION REGARDING THE OFFENDER'S DEMONSTRATED

REHABILITATION.

(3) THE DEPARTMENT MAY MAKE RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), C.R.S., AVAILABLE TO ANY VICTIM OF ANY OFFENDER WHO PETITIONS FOR PLACEMENT IN THE SPECIALIZED PROGRAM, AS MAY BE APPROPRIATE, BUT ONLY IF REQUESTED BY THE VICTIM AND THE VICTIM HAS REGISTERED WITH THE DEPARTMENT OF CORRECTIONS REQUESTING NOTICE OF VICTIMS' RIGHTS PURSUANT TO THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24, C.R.S.

(4) (a) IF AFTER REVIEW OF AN OFFENDER'S PETITION, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE OFFENDER IS AN APPROPRIATE CANDIDATE FOR PLACEMENT IN THE SPECIALIZED PROGRAM, THE DEPARTMENT SHALL PLACE THE OFFENDER IN THE SPECIALIZED PROGRAM AS SOON AS PRACTICABLE.

(b) ANY VICTIM OR VICTIM'S IMMEDIATE FAMILY MEMBER, AS DEFINED IN SECTION 24-4.1-302 (5) AND (6), C.R.S., HAS THE RIGHT TO BE INFORMED OF THE PLACEMENT OF AN OFFENDER PURSUANT TO SECTIONS 24-4.1-302.5 (1) (q) AND 24-4.1-303 (14), C.R.S.

(5) IF THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE DENIES AN OFFENDER'S PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM BASED ON A DETERMINATION THAT THE OFFENDER IS INAPPROPRIATE FOR SUCH PLACEMENT AFTER CONSIDERATION OF THE CRITERIA SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE OFFENDER MAY PETITION THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE FOR PLACEMENT IN THE SPECIALIZED PROGRAM NOT SOONER THAN THREE YEARS AFTER THE ISSUANCE OF THE DENIAL.

(6) THE DEPARTMENT SHALL DEVELOP POLICIES AND PROCEDURES FOR THE PREPARATION, SUBMISSION, AND REVIEW OF PETITIONS FOR PLACEMENT OF OFFENDERS IN THE SPECIALIZED PROGRAM, AS DESCRIBED IN THIS SECTION.

17-34-102. Specialized program for juveniles convicted as adults - report - repeal. (1) THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT A SPECIALIZED PROGRAM FOR OFFENDERS WHO HAVE BEEN SENTENCED TO AN ADULT PRISON FOR A FELONY OFFENSE COMMITTED WHILE THE OFFENDER WAS LESS THAN EIGHTEEN YEARS OF AGE AS A RESULT

OF THE FILING OF CRIMINAL CHARGES BY AN INFORMATION OR INDICTMENT PURSUANT TO SECTION 19-2-517, C.R.S., OR THE TRANSFER OF PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S., OR PURSUANT TO EITHER OF THESE SECTIONS AS THEY EXISTED PRIOR TO THEIR REPEAL AND REENACTMENT, WITH AMENDMENTS, BY HOUSE BILL 96-1005, AND WHO ARE DETERMINED TO BE APPROPRIATE FOR PLACEMENT IN THE SPECIALIZED PROGRAM. THE DEPARTMENT SHALL IMPLEMENT THE SPECIALIZED PROGRAM WITHIN OR IN CONJUNCTION WITH A FACILITY OPERATED BY, OR UNDER CONTRACT WITH, THE DEPARTMENT.

(2) THE SPECIALIZED PROGRAM MUST INCLUDE COMPONENTS THAT ALLOW AN OFFENDER TO EXPERIENCE PLACEMENT WITH MORE INDEPENDENCE IN DAILY LIFE, WITH ADDITIONAL WORK-RELATED RESPONSIBILITIES AND OTHER PROGRAM COMPONENTS THAT WILL ASSIST AND SUPPORT THE OFFENDER'S SUCCESSFUL REINTEGRATION INTO THE COMMUNITY OF OFFENDERS WHO HAVE NEVER LIVED INDEPENDENTLY OR FUNCTIONED IN THE COMMUNITY AS AN ADULT. THE SPECIALIZED PROGRAM MUST ALSO INCLUDE BEST AND PROMISING PRACTICES IN INDEPENDENT LIVING SKILLS DEVELOPMENT, REENTRY SERVICES FOR LONG-TERM OFFENDERS, AND INTENSIVE SUPERVISION AND MONITORING.

(3) THE DEPARTMENT SHALL NOT ALLOW ANY PARTICIPATING OFFENDER TO COMPLETE THE SPECIALIZED PROGRAM IN LESS THAN THREE YEARS.

(4) THE DEPARTMENT MAY MAKE RESTORATIVE JUSTICE PRACTICES, AS DEFINED IN SECTION 18-1-901 (3) (o.5), C.R.S., AVAILABLE TO ANY VICTIM OF ANY OFFENDER WHO PETITIONS FOR PLACEMENT IN THE SPECIALIZED PROGRAM, AS MAY BE APPROPRIATE, BUT ONLY IF REQUESTED BY THE VICTIM AND THE VICTIM HAS REGISTERED WITH THE DEPARTMENT OF CORRECTIONS REQUESTING NOTICE OF VICTIMS' RIGHTS PURSUANT TO THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24, C.R.S.

(5) (a) THE DEPARTMENT SHALL COMPLETE THE DESIGN OF THE SPECIALIZED PROGRAM ON OR BEFORE AUGUST 10, 2017. THE DEPARTMENT SHALL COMMENCE PLACEMENT OF ELIGIBLE OFFENDERS IN THE SPECIALIZED PROGRAM ON OR BEFORE NOVEMBER 10, 2017. IF THE SPECIALIZED PROGRAM IS NOT OPERATIONAL BY THIS DATE, THE EXECUTIVE DIRECTOR SHALL REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE NOVEMBER 30, 2017, THE REASONS FOR THE DELAY AND THE DATE THAT THE SPECIALIZED

PROGRAM WILL BE OPERATIONAL.

(b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE DECEMBER 1, 2017.

(6) (a) THE DEPARTMENT SHALL INCLUDE IN THE SPECIALIZED PROGRAM RULES OF CONDUCT FOR PROGRAM PARTICIPANTS AND A POLICY WHEREBY PROGRAM PARTICIPANTS WHO FAIL TO COMPLY WITH THE RULES OF CONDUCT ARE TERMINATED FROM PARTICIPATION IN THE SPECIALIZED PROGRAM AND RETURNED TO AN APPROPRIATE PRISON PLACEMENT.

(b) AN OFFENDER WHO IS TERMINATED FROM THE SPECIALIZED PROGRAM MAY NOT RE-PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM SOONER THAN THREE YEARS FROM THE DATE OF SUCH TERMINATION.

(7) NOTWITHSTANDING ANY PROVISION OF LAW, AN OFFENDER WHO SUCCESSFULLY COMPLETES THE SPECIALIZED PROGRAM IS ELIGIBLE TO APPLY FOR EARLY PAROLE PURSUANT TO THE PROVISIONS OF SECTION 17-22.5-403 (4.5) OR 17-22.5-403.7.

(8) (a) EXCEPT AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (8), IF AN OFFENDER HAS SERVED AT LEAST TWENTY-FIVE CALENDAR YEARS OF HIS OR HER SENTENCE AND SUCCESSFULLY COMPLETED THE SPECIALIZED PROGRAM, UNLESS REBUTTED BY RELEVANT EVIDENCE, IT IS PRESUMED THAT:

(I) THE OFFENDER HAS MET THE FACTUAL BURDEN OF PRESENTING EXTRAORDINARY MITIGATING CIRCUMSTANCES; AND

(II) THE OFFENDER'S RELEASE TO EARLY PAROLE IS COMPATIBLE WITH THE SAFETY AND WELFARE OF SOCIETY.

(b) IF AN OFFENDER WHO COMMITTED MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (a), (1) (c), (1) (e), OR (1) (f), C.R.S., HAS SERVED THIRTY YEARS OF HIS OR HER SENTENCE AND SUCCESSFULLY COMPLETED THE PROGRAM, UNLESS REBUTTED BY RELEVANT EVIDENCE, THE PRESUMPTIONS DESCRIBED IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (a) OF THIS SUBSECTION (8) APPLY.

(9) ON AND AFTER JANUARY 1, 2018, DURING ITS ANNUAL PRESENTATION BEFORE THE JOINT JUDICIARY COMMITTEE OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR JOINT COMMITTEE, PURSUANT TO SECTION 2-7-203, C.R.S., THE DEPARTMENT SHALL INCLUDE A STATUS REPORT REGARDING THE PROGRESS AND OUTCOMES OF THE SPECIALIZED PROGRAM DEVELOPED AND IMPLEMENTED BY THE DEPARTMENT PURSUANT TO THIS SECTION DURING THE PRECEDING YEAR. THE REPORT, AT A MINIMUM, SHALL INCLUDE:

(a) A DESCRIPTION OF THE SPECIALIZED PROGRAM, INCLUDING THE EVIDENCE-BASED AND PROMISING PRACTICES THAT ARE INCLUDED IN THE SPECIALIZED PROGRAM;

(b) THE POLICIES AND PROCEDURES DEVELOPED BY THE DEPARTMENT TO DETERMINE WHICH ELIGIBLE OFFENDERS MAY BE PLACED IN THE SPECIALIZED PROGRAM;

(c) THE POLICIES AND PROCEDURES DEVELOPED BY THE DEPARTMENT TO ADDRESS THE CONDUCT OF PARTICIPANTS IN THE SPECIALIZED PROGRAM;

(d) THE LOCATION OF THE PROGRAM AND THE NUMBER OF BEDS AVAILABLE FOR SPECIALIZED PROGRAM PARTICIPANTS;

(e) THE NUMBER OF OFFENDERS SELECTED TO PARTICIPATE IN THE SPECIALIZED PROGRAM; THE NUMBER OF OFFENDERS WHO WERE DENIED PLACEMENT IN THE SPECIALIZED PROGRAM, INCLUDING THE REASONS FOR SUCH DENIALS; AND THE NUMBER OF OFFENDERS WHO WERE REMOVED FROM THE SPECIALIZED PROGRAM AND THE REASONS FOR THEIR REMOVAL;

(f) A SUMMARY CONCERNING THE STAFFING OF THE SPECIALIZED PROGRAM;

(g) INFORMATION CONCERNING THE BEHAVIOR PATTERNS OF THE OFFENDERS IN THE SPECIALIZED PROGRAM;

(h) THE NUMBER OF OFFENDERS WHO SUCCESSFULLY COMPLETED THE SPECIALIZED PROGRAM;

(i) THE NUMBER OF SPECIALIZED PROGRAM PARTICIPANTS WHO

HAVE BEEN REFERRED TO THE PAROLE BOARD FOR EARLY PAROLE; AND

(j) THE NUMBER OF SPECIALIZED PROGRAM PARTICIPANTS WHO WERE GRANTED EARLY PAROLE BY THE GOVERNOR.

SECTION 3. In Colorado Revised Statutes, 17-22.5-403, **add** (4.5) as follows:

17-22.5-403. Parole eligibility. (4.5) (a) AFTER CONSIDERING ANY RELEVANT EVIDENCE PRESENTED BY ANY PERSON OR AGENCY AND CONSIDERING THE PRESUMPTIONS SET FORTH IN SECTION 17-34-102 (8), THE GOVERNOR MAY GRANT EARLY PAROLE TO AN OFFENDER TO WHOM SUBSECTION (1) OR (2.5) OF THIS SECTION APPLIES WHEN THE OFFENDER SUCCESSFULLY COMPLETES THE SPECIALIZED PROGRAM DESCRIBED IN SECTION 17-34-102 IF, IN THE GOVERNOR'S OPINION, EXTRAORDINARY MITIGATING CIRCUMSTANCES EXIST AND THE OFFENDER'S RELEASE FROM INSTITUTIONAL CUSTODY IS COMPATIBLE WITH THE SAFETY AND WELFARE OF SOCIETY.

(b) WHEN AN OFFENDER APPLIES FOR EARLY PAROLE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4.5) AFTER HAVING SUCCESSFULLY COMPLETED THE SPECIALIZED PROGRAM DESCRIBED IN SECTION 17-34-102, THE OFFENDER SHALL MAKE HIS OR HER APPLICATION TO THE GOVERNOR'S OFFICE WITH NOTICE AND A COPY OF THE APPLICATION SENT TO THE STATE BOARD OF PAROLE CREATED IN SECTION 17-2-201. THE STATE BOARD OF PAROLE SHALL REVIEW THE OFFENDER'S APPLICATION AND ALL SUPPORTING DOCUMENTS AND SCHEDULE A HEARING IF THE BOARD CONSIDERS MAKING A RECOMMENDATION FOR EARLY PAROLE, AT WHICH HEARING ANY VICTIM MUST HAVE THE OPPORTUNITY TO BE HEARD, PURSUANT TO SECTION 24-4.1-302.5 (1) (j), C.R.S. NOT LATER THAN NINETY DAYS AFTER RECEIPT OF A COPY OF AN OFFENDER'S APPLICATION FOR EARLY PAROLE, THE STATE BOARD OF PAROLE, AFTER CONSIDERING THE PRESUMPTIONS SET FORTH IN SECTION 17-34-102 (8), SHALL MAKE A RECOMMENDATION TO THE GOVERNOR CONCERNING WHETHER EARLY PAROLE SHOULD BE GRANTED TO THE OFFENDER.

(c) THE DEPARTMENT, IN CONSULTATION WITH THE STATE BOARD OF PAROLE, SHALL DEVELOP ANY NECESSARY POLICIES AND PROCEDURES TO IMPLEMENT THIS SUBSECTION (4.5), INCLUDING PROCEDURES FOR PROVIDING NOTICE TO ANY VICTIM, AS REQUIRED BY SECTIONS 24-4.1-302.5

(1) (j) AND 24-4.1-303 (14), C.R.S., AND TO THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE CRIME FOR WHICH THE OFFENDER WAS SENTENCED.

SECTION 4. In Colorado Revised Statutes, 17-22.5-403.7, **amend** (2); and **add** (6) as follows:

17-22.5-403.7. Parole eligibility - class 1 felony - juvenile offender convicted as adult. (2) AFTER CONSIDERING ANY RELEVANT EVIDENCE PRESENTED BY ANY PERSON OR AGENCY AND CONSIDERING THE PRESUMPTIONS SET FORTH IN SECTION 17-34-102 (8), the governor may grant parole to an inmate prior to the inmate's parole eligibility date if, in the governor's opinion, extraordinary mitigating circumstances exist and the inmate's release from institutional custody is compatible with the safety and welfare of society.

(6) (a) WHEN AN OFFENDER APPLIES FOR EARLY PAROLE PURSUANT TO THIS SECTION AFTER HAVING SUCCESSFULLY COMPLETED THE SPECIALIZED PROGRAM DESCRIBED IN SECTION 17-34-102, THE OFFENDER SHALL MAKE HIS OR HER APPLICATION TO THE GOVERNOR'S OFFICE WITH NOTICE AND A COPY OF THE APPLICATION SENT TO THE STATE BOARD OF PAROLE CREATED IN SECTION 17-2-201. THE STATE BOARD OF PAROLE SHALL REVIEW THE OFFENDER'S APPLICATION AND ALL SUPPORTING DOCUMENTS AND SCHEDULE A HEARING IF THE BOARD CONSIDERS MAKING A RECOMMENDATION FOR EARLY PAROLE, AT WHICH HEARING ANY VICTIM MUST HAVE THE OPPORTUNITY TO BE HEARD, PURSUANT TO SECTION 24-4.1-302.5 (1) (j), C.R.S. NOT LATER THAN NINETY DAYS AFTER RECEIPT OF A COPY OF AN OFFENDER'S APPLICATION FOR EARLY PAROLE, THE STATE BOARD OF PAROLE, AFTER CONSIDERING THE PRESUMPTIONS SET FORTH IN SECTION 17-34-102 (8), SHALL MAKE A RECOMMENDATION TO THE GOVERNOR CONCERNING WHETHER EARLY PAROLE SHOULD BE GRANTED TO THE OFFENDER.

(b) THE DEPARTMENT, IN CONSULTATION WITH THE STATE BOARD OF PAROLE, SHALL DEVELOP ANY NECESSARY POLICIES AND PROCEDURES TO IMPLEMENT THIS SUBSECTION (6), INCLUDING PROCEDURES FOR PROVIDING NOTICE TO ANY VICTIM, AS REQUIRED BY SECTIONS 24-4.1-302.5 (1) (j) AND 24-4.1-303 (14), C.R.S., AND TO THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE CRIME FOR WHICH THE OFFENDER WAS SENTENCED.

SECTION 5. In Colorado Revised Statutes, 24-4.1-302.5, **amend** (1) (j) as follows:

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

(j) The right to be informed, upon written request from the victim, of any proceeding at which any postconviction release from confinement in a secure state correctional facility is being considered for any person convicted of a crime against the victim and the right to be heard at any such proceeding or to provide written information thereto. For purposes of this subsection (1), "proceeding" means reconsideration of sentence, a parole hearing, ~~or~~ commutation of sentence, OR CONSIDERATION FOR PLACEMENT IN THE SPECIALIZED PROGRAM DEVELOPED BY THE DEPARTMENT OF CORRECTIONS PURSUANT TO SECTION 17-34-102, C.R.S.

SECTION 6. Appropriation. For the 2016-17 state fiscal year, $95,504 is appropriated to the department of corrections. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.8 FTE. To implement this act, the department may use this appropriation as follows:

Inspector General Subprogram	
Operating Expenses	$25
Superintendents Subprogram	
Personal Services	$44,071 (0.8 FTE)
Operating Expenses	$5,450
Start-up costs	$45,328
Communications Subprogram	
Operating Expenses	$405
Training Subprogram	

Operating Expenses	$25

Information Systems Subprogram

Operating Expenses	$200

SECTION 7. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED 9:44 am 6/10/16

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

APPENDIX B

Guy Lucero's Estimated Parole Eligibility Date
taken from, http://www.doc.state.co.us/oss/

Last visited 7/21/16.

Colorado Department of Corrections Thursday, July 21, 2016, 3:32 pm

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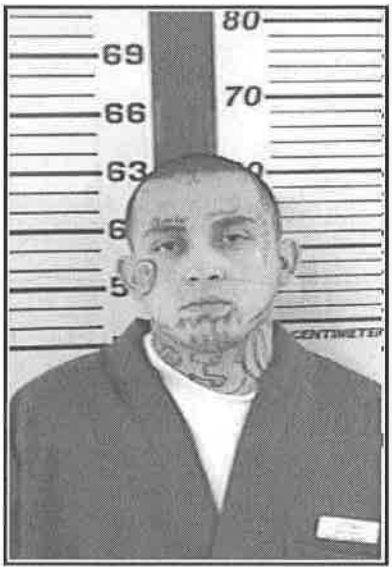

LUCERO, GUY

Name:	LUCERO, GUY	DOC Number:	135712
Age:	26	Est. Parole Eligibility Date:	04/04/2046
Ethnicity:	HISPANIC	Next Parole Hearing Date:	Jan 2046
Gender:	MALE		
Hair Color:	BLACK	This offender is scheduled on the Parole Board agenda for the month and year above. Please contact the facility case manager for the exact date.	
Eye Color:	BROWN		
Height:	5' 04"	Est. Mandatory Release Date:	01/06/2088
Weight:	150	Est. Sentence Discharge Date:	
		Current Facility Assignment:	STERLING CORRECTIONAL FACILITY

CURRENT CONVICTIONS

Sentence Date	Sentence	County	Case No.
03/15/2007	74Y-74Y	DENVER	05CR4442
03/15/2007	10Y-10Y	DENVER	05CR4442