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| Certiorari to the Colorado Court of Appeals<br>Case No. 10CA2414 | |
| THE PEOPLE OF THE STATE OF COLORADO,<br><br>Petitioner<br><br>v.<br><br>ATORRUS LEON RAINER,<br><br>Respondent | σ **COURT USE ONLY** σ |
| Kathleen A. Lord<br>Lord Law Firm, LLC<br>1544 Race Street<br>Denver, Colorado 80206<br>(303) 947-5371 (Telephone)<br>(303)-321-7781 (Fax)<br>kathleen@klordlaw.com<br>Registration Number: 14190<br><br>Ashley Ratliff<br>Ashley Ratliff Attorney at Law LLC<br>P.O. Box 22769<br>Denver, Colorado 80222<br>(720) 515-0288 (Telephone)<br>aratlifflaw@gmail.com<br>Registration Number: 37870<br><br>(Alternate Defense Counsel) | Case Number: 13SC408 |

**ATORRUS RAINER'S SUPPLEMENTAL BRIEF**

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

KATHLEEN A. LORD

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## INTRODUCTION

Pursuant to the Court's June 23, 2016 Order, Mr. Rainer submits his response to the petitioner's supplemental brief and addresses the impact of Senate Bills 16-180 and 16-181 on the issues before this Court.[1]

## PERTINENT STATEMENT OF THE CASE

Senate Bills 16-180 and 16-181 were signed into law by the governor on June 10, 2016, two days after oral argument in this case.[2]

Days before the argument, the State filed as supplemental authority S.B. 16-180, a Bill that outlines a potential specialized DOC program for juvenile

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[1] The two issues on certiorari are:

> Whether the court of appeals erred by extending *Graham v. Florida,* 130 S.Ct. 2011 (2010), and *Miller v. Alabama,* 132 S.Ct. 2455 (2012), to invalidate a consecutive term-of-years sentence imposed on a juvenile convicted of multiple offenses.
>
> Whether a conviction for attempted murder is a non-homicide offense within the meaning of *Graham v. Florida*, 130 S.Ct. 2011 (2010).

[2] For the Court's convenience, the two Acts are attached to this brief as Appendix A and B. *See* App. A [**S.B. 16-180** 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 APPLICATION] and App. B [**S.B. 16-181** CONCERNING THE SENTENCING OF PERSONS CONVICTED OF CLASS 1 FELONIES COMMITTED WHILE THE PERSONS WERE JUVENILES]. Senate Bill 16-181 went into effective on June 10 upon signing, and S.B. 16-180 is scheduled to go into effect on August 10, 2016.

offenders. The State asserted S.B. 16-180 supported its argument that, even if the court of appeals had correctly applied *Graham v. Florida*, 560 U.S. 48 (2010), to consecutive sentences, any Eighth Amendment violation in Mr. Rainer's aggregate 112-year sentence was remedied because S.B. 16-180 provided him a meaningful opportunity for release during his lifetime.

At oral argument, the State claimed S.B. 16-180 rendered the appeal moot. Through questioning, Justice Eid clarified the State was not actually arguing the appeal was moot, but was, instead, asking the Court to find S.B. 16-180 created a meaningful opportunity for release for juvenile offenders, like Mr. Rainer.[3]

Counsel for Mr. Rainer disagreed, arguing that S.B. 16-180's specialized DOC program would not even be created for another year and did not afford juvenile offenders any rights they did not already have. Moreover, pursuant to the new law, the governor would have unreviewable and unfettered discretion to grant or deny parole to juvenile offenders who completed the specialized program for any reason or no reason at all. Thus, the Bill gives offenders no right to or limited liberty interest in release based on a demonstration of growth and rehabilitation.[4]

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[3] *See* https://cojudicial.ompnetwork.org/shows/13sc408-13sc945-14sc127-13sc624?iframe_mode=true at 1:27:23—1:28:36. [This citation and link is to the video file of the June 8, 2016 oral argument located on the Colorado Court's website.]

[4] *See* https://cojudicial.ompnetwork.org/shows/13sc408-13sc945-14sc127-13sc624?iframe_mode=true at 1:0840—1:11:35.

Two days after oral argument, the governor signed S.B 16-180 and S.B 16-181, and Mr. Rainer filed S.B. 16-181 as supplemental authority. This Bill creates a new sentencing scheme for juveniles convicted of class one felonies, one that abolishes life without parole (LWOP) as a punishment for juveniles and replaces it with a sentence of either 40 years to life (LWPP) with earned time, which will allow parole eligibility at 30 years, or a determinate sentence between 30 and 50 years for first degree felony murder when extraordinary mitigation is found.

On June 23, this Court issued an order permitting supplemental briefing on the impact of S.B. 16-180 and 16-181.

## SUMMARY OF ARGUMENT

Senate Bills 16-180 and 16-181 reflect the General Assembly's judgment (and its understanding of *Graham* and *Miller*) that juveniles must be treated differently than adults for sentencing purposes. Senate Bill 16-181 abolishes LWOP for juveniles convicted of first degree murder, while it remains the only punishment for adult offenders. The potential program outlined by S.B. 16-180 finds that all juvenile offenders serving lengthy sentences (except for sex offenders and those being treated for serious mental illness) should be afforded an opportunity to demonstrate their rehabilitation and earn their release after serving

30 years (offenders convicted of specified types of first degree murder) or 25 years (offenders convicted of all other offenses).

This legislative judgment is inconsistent with the State's position that *Graham* and *Miller* apply only to juvenile offenders sentenced to LWOP for a single offense, and only these offenders are entitled to a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

The State is wrong when it argues that the anticipated, but not yet designed specialized DOC program envisioned by S.B. 16-180 creates the "meaningful opportunity for release based on demonstrated maturity and rehabilitation" the Eighth Amendment requires for juvenile offenders. The Act provides offenders with no new rights and, like clemency, leaves to the governor's unfettered and unreviewable discretion the decision whether to grant early parole.

## ARGUMENT

### I. Senate Bills 16-180 and 16-181 Reveal a Previously Unavailable Expression of Legislative Intent and Judgment Which Provides Additional Support For the Court of Appeals Decision that Mr. Rainer's 112-Year Sentence Must Be Vacated As It Violates the Eighth Amendment.

Senate Bills 16-180 and 16-181 represent the first time the General Assembly has dealt directly with juvenile sentencing since the Supreme Court

decided *Graham* and *Miller*.[5] This new legislation sets forth a clear legislative judgment that (1) juvenile offenders cannot, pursuant to Colorado law, be sentenced to life without parole and (2) juvenile offenders who can demonstrate maturity and rehabilitation should be considered for release in their early forties.

These Bills provide this Court with the legislative guidance it lacked when it decided *People v. Tate*, 352 P.3d 959 (2015), and held that juveniles sentenced to mandatory LWOP sentences for first degree murder should be resentenced to either LWOP or life with parole eligibility after 40 years (LWPP). The Court fashioned this remedy in "the absence of any legislative action." *Id.* at ¶¶ 6,7,18,19,20. Now, the legislature has expressed its unequivocal view that juvenile offenders should not be sentenced so harshly. Pursuant to S.B. 16-181, the maximum sentence available now for a juvenile convicted of first degree murder is LWPP less earned time with parole eligibility after thirty years. *See* S.B. 16-181 §1.[6]

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[5] In 2012, the legislature passed H.B. 12-1271, which provided juveniles with judicial review and additional protections before they can be subjected to adult prosecution and sentencing.

[6] *See* §18-1.3-401(4)(b)(1), C.R.S. (2016)(provides earned time for all juvenile offenders sentenced to 40-year life for class 1 felonies committed on or after July 1, 2006); §18-1.3-401(4)(c)(1)(A) (juveniles convicted of felony murder committed on or after July 1, 1990 and before July 1, 2006 may be sentenced to LWWP after 40 years, less earned time or to a determinate sentence in the range of 30 to 50 years, if the court finds extraordinary mitigating circumstances); §18-1.3-401(4)(c)(1)(B) (juveniles convicted of class 1 felonies committed on or after July

The general assembly has also declared in S.B. 16-181, §5 that the Supreme Court in *Montgomery* "made it clear that a sentence to a lifetime in prison is an unconstitutional sentence for all but the rarest of children." §16-13-1001 (1)(b)(III); *see Montgomery v. Louisiana,* 136 S.Ct. 718, 736 (2016).

In S.B. 16-180, which envisions a future specialized DOC program for juvenile offenders, the legislature has expressed its belief that those offenders who can demonstrate maturity and rehabilitation may be ready for release after serving 25 years (all offenders except those convicted of specified types of first degree murder) or 30 years (offenders convicted of all types of first degree murder except felony murder and extreme indifference murder).

This newly expressed legislative judgment that juvenile offenders may be sufficiently punished and ready to show they are deserving of release in their early forties supports the court of appeals decision that Mr. Rainer's 112-year sentence is constitutionally disproportionate, since he will not be entitled to release until he serves his entire sentence and will not even be parole eligible until he is 75-years-

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1, 1990 and before July 1, 2006 and sentenced to LWOP to be resentenced to LWWP after 40 years, less any earned time); *see also* §17-22.5-405(1.2), (4)(b) (earned time may not reduce the sentence of a juvenile convicted of a class 1 felony offense more than 25%).

old, which is past his life expectancy. [7] *Rainer* at ¶67; *see also Dean v. People*, 366 P.3d 593, 600 (Colo. 2016) ("Release on parole prior to an offender's mandatory release date is entirely discretionary. A convicted person has no constitutional or inherent right to be conditionally released before the expiration of a valid sentence.").

The legislative findings in these 2016 laws can also provide some guidance to the sentencing court on remand in deciding an appropriate sentence for Mr. Rainer, after considering his youth at the time of the offense and its attendant circumstances as required by the Supreme Court's recent Eighth Amendment jurisprudence. *See, e.g., McKinley v. Butler*, 809 F.3d 908, 910 (7th Cir. 2016).

Although these new statutes provide some legislative intent vis-à-vis when a juvenile offender may be ready for release based on demonstrated maturity and rehabilitation, the State is not correct when it claims S.B. 16-180 provides Mr. Rainer with the constitutionally required meaningful opportunity for release. This Bill gives offenders no rights they did not already possess and, like other forms of

[7] Throughout these proceedings the State has asked this Court to take judicial notice of the Colorado Department of Corrections "inmate locator" website, which the State claims shows Mr. Rainer is now eligible for parole at 69. *See, e.g.*, Supp.Br. at 5. However, the date an inmate is eligible for parole is not the sort of fact that is "not subject to reasonable dispute" and, thus, it is not properly the subject of judicial notice. *Doyle v. People*, 343 P.3d 961, 964 (Colo. 2015).

parole and clemency, it does not provide the realistic or meaningful opportunity for release the Eighth Amendment requires, since whether early parole is granted is entirely dependent on the governor's unfettered and unreviewable discretion.

A. The 2016 legislation supports the court of appeals holding that *Miller* and *Graham* apply to juvenile offenders who, like Mr. Rainer, are sentenced to consecutive sentences that constitute a de facto life sentence.

A core disagreement on appeal concerns the scope of *Graham* and *Miller's* holdings, with the State claiming these cases and the Eighth Amendment are violated only when a juvenile is sentenced to LWOP for a single non-homicide offense. Thus, the State argues the court of appeals erred when it applied these cases to multiple consecutive sentences. *See* OB at 6, 9, 10, 26; Supp.Br. at 1, ¶2.

Mr. Rainer, in contrast, has argued, and the court of appeals held, that the holdings in *Graham* and *Miller* are far broader than the State suggests and these cases require that: (1) a sentencing court consider youth and its attendant circumstances before imposing a sentence; and (2) all juveniles, except for the rarest of juveniles convicted of murder, be afforded a realistic and meaningful opportunity for release, based on demonstrated maturity and rehabilitations. *See* AB at 15-20; *Rainer, supra* at ¶78.

The Colorado Legislature has now rejected the State's narrow interpretation of the Supreme Court's Eighth Amendment juvenile sentencing jurisprudence in S.B. 16-181, §5, *supra*, and in S.B. 16-180, §1 where the general assembly finds:

> (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;
>
> (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.

No part of this legislative declaration supports the State's position that *Graham* merely precludes sentencing juveniles to LWOP for a single non-homicide offense or that juveniles who commit more than one offense may be sentenced to an aggregate sentence that condemns them to die in prison without violating the Eighth Amendment.

Instead, the legislature has embraced the principles underlying *Graham* and *Miller*, and now *Montgomery*, that children cannot be treated as if they were adults for purposes of imposing severe punishments. This is because they are less culpable than adults and more capable of change. A sentence that condemns a child to spend their lives in prison is categorically prohibited for offenders convicted of non-homicide offenses and is, likewise, constitutionally disproportionate for children convicted of murder "for all but the rarest of children, those whose crimes reflect irreparable corruption." *Montgomery, supra* at 736 (quoting *Miller*,132 S.Ct. at 2469).

The court of appeals holding that *Miller* and *Graham* apply to a lengthy aggregate sentence, like Atorrus Rainer's 112-year sentence, because it denies the offender any chance to demonstrate growth and maturity and be released, is amply supported by this new legislation. *See Rainer, supra* at 78.¶

B. The new legislation abolishes LWOP for juveniles and contemplates that juvenile offenders may be rehabilitated and ready for release after serving 25 or 30 years. This necessarily impacts the decision in *People v. Tate*, 352 P.3d 959 (Colo. 2015).

In 2015, when this Court held that juveniles sentenced to mandatory LWOP must be sentenced to either discretionary LWOP or life with parole eligibility after 40 years (LWPP), it had no guidance whatsoever from the state legislature and was, thus, required to speculate as to what the legislature would have done had it

been aware that mandatory LWOP for juveniles violated the Eighth Amendment. In light of this legislative void, the Court held *Miller* entitled juveniles serving mandatory LWOP to a new sentencing hearing where the court would decide between discretionary LWOP and LWPP. Clearly, S.B. 16-181's sentencing scheme for juveniles convicted of class one felonies necessarily alters this Court's decision regarding the appropriate remedy for Colorado juvenile offenders sentenced to mandatory LWOP. *See* fn.6, *supra* at 6,

C. Senate Bill 16-180, which may someday result in a specialized DOC program aimed toward assisting juvenile offenders in applying for entirely discretionary "early parole" from the governor, does not alter Mr. Rainer's 112-year sentence or cure its constitutional defects.

There are two distinct constitutional defects with Mr. Rainer's 112-year sentence. First, the sentencing court decided at the outset that Mr. Rainer should serve the remainder of his days in prison and did this without any consideration of his youth and its attendant circumstances and how those counsel again sentencing a juvenile offender to life in prison. *See Rainer* at ¶78; *see also State v. Boston,* 363 P.3d 453, 456 (Nev. 2015). In other words, the trial court sentenced Mr. Rainer as if he were an adult without any regard to the mitigating circumstances of his youth. This, the Eighth Amendment does not allow.

Mr. Rainer's 112-year sentence is also constitutionally disproportionate because it deprives him of a realistic and meaningful opportunity to obtain release

based on demonstrated maturity and rehabilitation, and this *Graham* categorically prohibits. *See Rainer*, *supra*. The State asserts this constitutional problem is cured by the yet to be designed specialized DOC program and possible early parole application suggested by S.B. 16-180. The State's position, however, misconstrues both (1) the nature of the "realistic" and "meaningful opportunity for release" required for a juvenile's de jure or de facto life sentence to be constitutionally proportionate and (2) what S.B. 16-180 actually provides.

1. Atorrus Rainer's 112-year sentence is unconstitutional because the trial court sentenced him at the outset to spend the rest of his days in prison as if he were an adult and without any consideration of his youth and its attendant circumstances and how these counsel against sentencing a juvenile to a lifetime in prison.

Nothing in S.B. 16-180 changes Mr. Rainer's 112-year sentence or the fact the sentencing court failed to consider his youth and related circumstances in making its decision at the outset to sentence him to a term of years that would have him die in prison, and the State does not suggest it does. Accordingly, Mr. Rainer remains entitled to a new sentencing hearing where the court can take into account the defining features of youth and how they counsel against a lifetime prison sentence.

2. Atorrus Rainer's 112-year sentence is also unconstitutional because it denies him the required realistic and "meaningful opportunity for release based on demonstrated maturity and rehabilitation."

If S.B. 16-180 actually provided juvenile offenders like Mr. Rainer with a right to participate in a specialized program and a right to release, upon successful completion of the program and demonstration of rehabilitation and maturity, it could correct an otherwise constitutionally disproportionate sentence like Mr. Rainer's, but S.B. 16-180 does not do this.

As sentenced, Mr. Rainer has no right, expectation or limited liberty interest in release before he serves his entire 112-year sentence, and S.B. 16-180 does not change this reality. *See, e.g., Dean, supra; Ankeney v. Raemisch*, 344 P.3d 847, 852 (2015). Under existing Colorado law, including S.B. 16-180, Mr. Rainer simply has no enforceable expectation in release before he serves entire sentence, and this is true even if he has fully demonstrated that he has matured, is rehabilitated and poses no risk of safety to the community. As Colorado's parole law currently stands, "[t]he discretionary denial of parole … merely continues punishment already imposed for the underlying offense and does not itself implicate the Eighth amendment." *Diaz v. Lampela*, 601 Fed.Appx. 670, 676 (10th Cir. 2015), citing *Lustgarden v. Gunter*, 966 F.2d 552, 555 (10th Cir. 1992).

*a. Senate Bill 16-180 does not provide juvenile offenders with any rights they did not already possess by statute and the clemency provisions of the Colorado Constitution.*

Senate Bill 16-180 proposes the creation of a specialized DOC program that would assist juvenile offenders who have spent decades in prison by (1) providing a venue where they could demonstrate their maturity and rehabilitation and show they deserve to return to the community, and (2) teaching skills to aid in a successful transition back into the community.

By design, however, S.B. 16-180 does not provide juvenile offenders with any rights they did not already have prior to the Bill's enactment. As Rep. Kagan, one of the Bill's sponsors, repeatedly informed the House Judiciary Committee, S.B. 16-180 does not give juvenile offenders anything they did not already have. 5.5.16 H.Jud.Comm. at 4:03:01-4:03:20, 4:11:17; 6:27.[8] Before the Bill's passage, juvenile offenders already had the right to petition the governor for early release or to seek clemency at any time. *See* Colo.Const. art. IV, §7; §17.22.5-403(4), C.R.S. (2015); §17-22.5-403.7(2), C.R.S. (2015).

[8] Audio files of the pertinent legislative history can be found at http://www.leg.state.co.us/clics/cslFrontPages.nsf/Audio?OpenPage. The Senate Judiciary Committee Hearings on S.B. 16-180 and 16-181 were held on 5.20.16; the House Judiciary Committee Hearings were held 5.5.16. Citations in this brief are to the hour, minute and second available) of the cited committee hearing.

The Bill leaves the governor with "complete unfettered discretion to either grant or deny [early parole] for any reason or to deny it for any reason or no reason at all." 5.5.16 H.Jud.Comm. at 4:07:03-4:07:54. As with clemency, the governor's refusal to grant any application contemplated by S.B. 16-180, §3, like the governor's refusal to grant other forms of early parole or clemency, is not subject to any review. *See Schwartz v. Owens*, 134 P.3d 455, 458 (Colo. App. 2005).

Senate Bill 16-180 is purposefully vague and leaves the specialized program's design and implementation entirely to the DOC. 5.5.16 H.Jud.Comm. at 4:14. Senate Bill 16-180 will not go into effect until August 10, 2016, and then the DOC will have another to complete the design of the program. *See* §17-34-102(5)(a), C.R.S. (2016). If for any reasons, the program is not operational by August 10, 2017, the Executive Director is required to make a report to the general assembly by November 30, 2017. In short, as of the filing of this brief, neither the parties, nor the Court have any idea what the specialized program will look like, what types of offenders will be deemed "appropriate candidates" for the program by the Executive Director or his designee, or whether the program will even exist in a year's time.

Assuming arguendo the specialized program is developed, it is far from certain that it will be available to all juvenile offenders as the State claims. *See* Supp. Br. at 3. A DOC witness, Travis Trani, testified before the House Judiciary Committee that 117 offenders could be eligible for the program and DOC anticipated the initial 3-year program would include 15-25 individuals. 5.5.16 H.Jud.Comm. at 4:42-4:43:30.

Moreover, even assuming some offenders complete the program successfully in three or more years and make an application to the governor for early parole, the governor is not required to grant parole. Nor is the governor required to state any reasons for denying the application. Nor is his decision reviewable. As Rep. Kagan told the judiciary committee, offenders could always ask the governor for early parole, S.B. 16-180 simply seeks to make the application more meaningful. *Id.* at 6:36.

*b. Senate Bill 16-180's potential specialized program, like the possibility of clemency and the pre-existing right to apply to the governor for early parole, does not render Mr. Rainer's 112-year sentence constitutional by providing the meaningful opportunity for release that the Eighth Amendment requires to ensure a juvenile is not required to serve a constitutionally disproportionate sentence.*

The State acknowledges that clemency is insufficient to provide juvenile offenders with a meaningful opportunity of release because it is "an ad hoc

exercise of executive clemency." Supp.Br. at 7, citing *Graham*, 560 U.S. at 70 (quoting *Solem v. Helm*, 463 U.S. 277, 300-301 (1983)). The State, however, fails to recognize that S.B. 16-180 works just like clemency, since the governor retains complete, unfettered discretion to deny an inmate's application for early parole for any reason or no reason at all. *See* §17-22.5-403(4.5)(a), C.R.S. (2016).

*Graham* created a categorical ban on LWOP sentences for non-homicide offenses in part because of the "unacceptable likelihood" that the brutality of a particular crime would overpower mitigating arguments based on youth and would regularly result in imposing LWOP on juveniles who were not sufficiently culpable to warrant that punishment. *See id.* at 74-75. The same practical concerns apply to a governor's unreviewable decision-making regarding early parole. The facts underlying a juvenile offender's offenses and their impact on the victims may always outweigh the rehabilitation of the offender, in a governor's view, even though the lifetime incarceration of a truly rehabilitated juvenile offender violates the Eighth Amendment.

The State submits that this Court has already held that a life sentence with parole eligibility after forty years (LWPP) is constitutional. Supp.Br. at 6. Accordingly, the State argues that the possibility of applying for early parole at twenty-five years is surely constitutional. *Id.* The State's position is flawed.

First, as noted above, *Tate* decided, "in the absence of any legislative guidance," what the appropriate sentence would be for a juvenile convicted of a class 1 felony when the only available statutory sentence was mandatory LWOP, which clearly violated *Miller*. *See Tate*, *supra* at ¶7. In this context, the Court held that the two possible sentences would be LWOP or LWPP, which the sentencing court could impose after an individualized hearing where the court would consider youth and its attendant circumstances.

Second, when the *Tate* Court wrote that LWPP "was constitutional" it did so in the context of rejecting the defendant's argument "that LWPP is unconstitutional under *Miller* because like LWOP, it is mandatory in nature." *Id.* at ¶50. The court, however, did not address the pertinent issue here: whether Colorado's parole system affords juvenile offenders the requisite meaningful opportunity of parole. *Cf. State v. Louisell*, 865 N.W.2d 590, 602 (Iowa 2015) (recognizing question concerning the punishment permitted by statute is distinct from question whether state's parole system, in fact, provides juveniles with constitutionally required meaningful opportunity of release); *see also* Laura Cohen, Freedom's Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida, 35 Cardozo L. Rev. 1031, 1056-61 (2014).

Under Colorado law, mere parole eligibility does not provide a juvenile offender with a realistic or meaningful opportunity of release. The reasons this is so are discussed at length in the Amicus Brief filed by the CCDB (Colorado Criminal Defense Bar). *See also* AB at 26-31. An offender may fortuitously be released before the expiration of his or her sentence by receiving clemency or parole, but the offender has no right or limited liberty interest in such release upon a showing of demonstrated maturity and rehabilitation. However, a juvenile offender has a liberty interest to release upon such a showing; otherwise the offender will serve a constitutionally disproportionate life sentence.

Notably, what is required for a juvenile's lengthy de jure or de facto life sentence to comply with the Eighth Amendment is a realistic or meaningful "opportunity for **release**," not clemency or a possible opportunity to file an application with the governor seeking early parole, as contemplated by S.B. 16-180, or an opportunity to meet with the Colorado Parole Board when none of these avenues afford the juvenile offender any expectation of release even if he or she can demonstrate rehabilitation and have served many years.

Mr. Rainer has an aggregate sentence of 112 years. Pursuant to Colorado law, he has no right or expectation to release before he fully serves this sentence. However, given the Supreme Court's Eighth Amendment juvenile sentencing cases

in the last six years, he has a "substantive constitutional right not to be punished with life imprisonment for a crime 'reflect[ing] transient immaturity.'" *Hawkins v. New York State Dept. of Corrections*, ___ N.Y.S.3d ___ (2016) (quoting *Montgomery*, *supra* at 735).

Although the Supreme Court suggested the government "may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them," it assumed consideration for parole would afford the offender a real and predictable opportunity for release. *Montgomery* at 736 (citing, *e.g.,* Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). However, not all parole systems are equal, and whether a state's parole system does, in fact, cure a *Miller* or *Graham* violation depends entirely on the state law that governs "parole."

Unlike the parole envisioned by the Court as a possible remedy for a *Miller* violation, Colorado's current parole system does not create a "normal expectation in the vast majority of cases" for early release "assuming good behavior." To the contrary, as explained in some detail in the Amicus Brief filed by the CCDB, it is the rare offender in Colorado who is released on parole before their mandatory release date. *Compare, e.g., Louisell, supra, citing* Iowa Code § 906.4 (2015) (Iowa's parole statutes and administrative rules currently provide the board of

parole *shall parole* an inmate when "there is *reasonable probability* that the person can be released without detriment to the community" or to themselves. (emphasis in quote supplied by court); *see also* Cohen, *supra* at 1059 ("Far from creating a 'normal expectation' of early release, the parole process [in many jurisidictions] often seems a futile, 'ad hoc' enterprise" like clemency).

The Supreme Court recognized parole consideration as a potential remedy because it assumed that allowing juvenile offenders who had been sentenced to life "to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery*, *supra* at 736. Like Colorado's adult parole system, S.B. 16-180 does not ensure that anyone, including a juvenile "whose crimes reflected only transient immaturity" and not "irreparable corruption," will be released before the end of their sentence.

## II. Senate Bills 16-180 and 16-181, like *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), Lessen The Importance of Any Distinction Between Homicide and Non-Homicide Offenses Vis-À-Vis the Constitutional Requirements of Juvenile Sentencing and Suggest This Court May Wish to Revisit Its Decision to Grant Certiorari on this Issue.

Since certiorari was granted to decide whether attempted murder qualifies as a non-homicide governed by *Graham*, the Supreme Court decided *Montgomery*,

which held that *Miller*, like *Graham*, applies retroactively to collateral proceedings. Since the Court's Eighth Amendment jurisprudence applies retroactively whether an offender is convicted of homicide or non-homicide offenses, any need for this Court to resolve whether attempted murder should be characterized as a homicide or non-homicide is lessened.

Similarly, S.B. 16-180 envisions a specialized program for juvenile offenders without regard to whether they are convicted of homicide or non-homicide, though individuals convicted of certain types of first degree murder must wait five years longer to petition for the program or apply to the governor for release than juveniles convicted of all other types of offenses (including attempted murder). And while *Miller* continues in theory to permit LWOP sentences for the rare juvenile convicted of murder, S.B. 16-181 abolishes LWOP as a punishment for all juvenile offenders, as a matter of state law. Thus, under the new laws, there is little need to answer the second question on which the court granted certiorari, especially in light of the growing recognition that it is the juvenile's status which implicates the Eighth Amendment protections guaranteed by *Graham*, *Miller* and *Montgomery*. *See, e.g., Henry v. State*, 175 So.3d 675 (Fla. 2015), *cert. den'd* 136 S.Ct. 1455 (2016); *see also Miller, supra* at 2458.

## CONCLUSION

Senate Bills 16-180 and 16-181 support Mr. Rainer's position and the court of appeals decision that *Graham* and *Miller* apply to lengthy aggregate sentences imposed on juvenile offenders. And, though the new laws do not remedy Mr. Rainer's unconstitutional 112-year sentence, they do reflect a legislative understanding that juvenile offenders should be provided a meaningful opportunity to demonstrate their rehabilitation and show they are deserving of release in their early forties.

These new laws, thus, lend additional support for Mr. Rainer's request that this Court affirm the court of appeals decision vacating his sentence and remand for resentencing so that the district court may take into account his youth at the time of the offenses and its attendant circumstances and sentence him to an aggregate term of years that affords him a meaningful opportunity for release based on his demonstrated maturity and rehabilitation.

LORD LAW FIRM, LLC

KATHLEEN A. LORD, No. 14190
1544 Race Street
Denver, Colorado 80206
(303) 947-5371

ASHLEY RATLIFF ATTORNEY AT LAW LLC

*/s/ Ashley Ratliff*

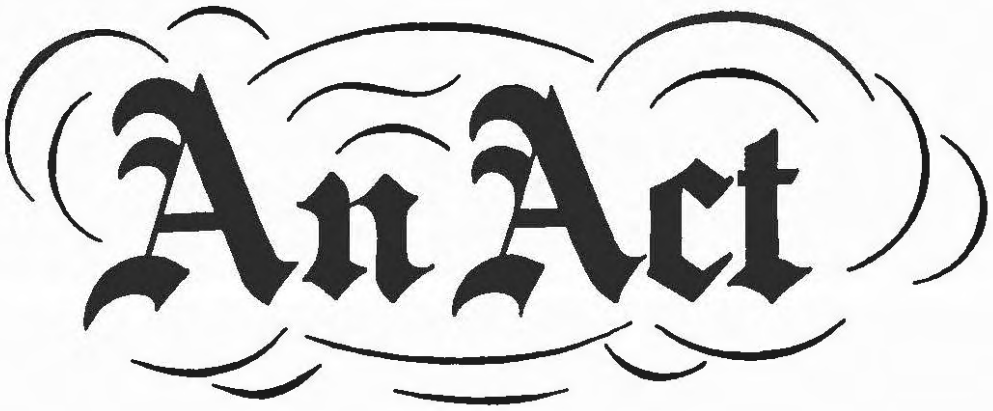
ASHLEY RATLIFF, No. 37870
P.O. Box 22769
Denver, Colorado 80222
(720) 515-0288

*Attorneys for Atorrus Rainer*

CERTIFICATE OF SERVICE

I certify that, on July 25, 2016 a copy of this Supplemental Brief was electronically served through ICCES on Rebecca A. Adams, Senior Assistant Attorney General.

# ATTACHMENT A




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;

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*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

# ATTACHMENT B


SENATE BILL 16-181

BY SENATOR(S) Woods and Jahn, Aguilar, Carroll, Cooke, Guzman, Hill, Kerr, Lundberg, Marble, Martinez Humenik, Newell, Scheffel, Steadman, Todd, Donovan, Garcia, Heath, Holbert, Kefalas, Lambert, Merrifield, Neville T., Tate, Ulibarri;
also REPRESENTATIVE(S) Kagan and Dore, Garnett, Wist, Arndt, Becker K., Court, Duran, Esgar, Klingenschmitt, Lee, Melton, Pabon, Primavera, Rosenthal, Ryden, Salazar, Singer, Tyler, Williams.

CONCERNING THE SENTENCING OF PERSONS CONVICTED OF CLASS 1 FELONIES COMMITTED WHILE THE PERSONS WERE JUVENILES.

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

**SECTION 1.** In Colorado Revised Statutes, 18-1.3-401, **amend** (4) (b) (I); and **add** (4) (c) as follows:

**18-1.3-401. Felonies classified - presumptive penalties.** (4) (b) (I) Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (V) of paragraph (a) of subsection (1) of this section and notwithstanding the provisions of paragraph (a) of this subsection (4), as to a person who is convicted as an adult of a class 1 felony following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court

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

pursuant to section 19-2-518, C.R.S., the district court judge shall sentence the person to a term of life imprisonment with the possibility of parole after serving a period of forty ~~calendar~~ years, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S. Regardless of whether the state board of parole releases the person on parole, the person shall remain in the legal custody of the department of corrections for the remainder of the person's life and shall not be discharged.

(c) (I) NOTWITHSTANDING THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (V) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4), AS TO A PERSON WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING A DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR 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, WHICH FELONY WAS COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, AND WHO RECEIVED A SENTENCE TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE:

(A) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b), THEN THE DISTRICT COURT, AFTER HOLDING A HEARING, MAY SENTENCE THE PERSON TO A DETERMINATE SENTENCE WITHIN THE RANGE OF THIRTY TO FIFTY YEARS IN PRISON, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S., IF, AFTER CONSIDERING THE FACTORS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), THE DISTRICT COURT FINDS EXTRAORDINARY MITIGATING CIRCUMSTANCES. ALTERNATIVELY, THE COURT MAY SENTENCE THE PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405, C.R.S.

(B) IF THE FELONY FOR WHICH THE PERSON WAS CONVICTED IS NOT MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102 (1) (b), THEN THE DISTRICT COURT SHALL SENTENCE THE PERSON TO A TERM OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION

17-22.5-405, C.R.S.

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

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

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

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

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

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

(III) IF A PERSON IS SENTENCED TO A DETERMINATE RANGE OF THIRTY TO FIFTY YEARS IN PRISON PURSUANT TO THIS PARAGRAPH (c), THE COURT SHALL IMPOSE A MANDATORY PERIOD OF TEN YEARS PAROLE.

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

**SECTION 2.** In Colorado Revised Statutes, 17-22.5-104, **amend**

(2) (c) (I) and (2) (d) (IV); and **add** (2) (d) (V) as follows:

**17-22.5-104. Parole - regulations.** (2) (c) (I) EXCEPT AS DESCRIBED IN SECTION 18-1.3-401 (4) (c), C.R.S., AND IN SUBPARAGRAPHS (IV) AND (V) OF PARAGRAPH (d) OF THIS SUBSECTION (2), no inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(d) (IV) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), an inmate imprisoned under a life sentence for a class 1 felony committed BEFORE JULY 1, 1990, OR on or after July 1, 2006, who was convicted as an adult following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S., may be eligible for parole after the inmate has served at least forty ~~calendar~~ years, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405. An application for parole ~~shall~~ MAY not be made or considered during ~~the~~ THIS period. ~~of forty calendar years.~~

(V) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), AN INMATE SENTENCED TO LIFE IMPRISONMENT FOR A CLASS 1 FELONY COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, WHO WAS CONVICTED AS AN ADULT FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR 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, MAY BE ELIGIBLE FOR PAROLE AFTER SERVING FORTY YEARS, LESS ANY EARNED TIME GRANTED PURSUANT TO SECTION 17-22.5-405.

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

**17-22.5-403. Parole eligibility - repeal.** (2) (c) (I) A PERSON WHO IS CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING A DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR 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, WHICH FELONY WAS COMMITTED ON OR AFTER JULY 1, 1990, AND BEFORE JULY 1, 2006, AND WHO IS RESENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IS NOT ENTITLED TO RECEIVE ANY REDUCTION OF HIS OR HER SENTENCE PURSUANT TO THIS SECTION.

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

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

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

**17-22.5-405. Earned time - earned release time - achievement earned time.** (1.2) SUBSECTION (1) OF THIS SECTION APPLIES TO A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (b) OR (4) (c), C.R.S. AS TO A PERSON WHO WAS CONVICTED AS AN ADULT FOR A CLASS 1 FELONY COMMITTED WHILE THE PERSON WAS A JUVENILE AND WHO WAS SENTENCED PURSUANT TO SECTION 18-1.3-401 (4) (c), C.R.S., IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT AWARD EARNED TIME TO SUCH A PERSON BOTH PROSPECTIVELY AND RETROACTIVELY FROM THE EFFECTIVE DATE OF THIS SUBSECTION (1.2), AS IF THE PERSON HAD BEEN ELIGIBLE TO BE AWARDED EARNED TIME FROM THE BEGINNING OF HIS OR HER INCARCERATION PURSUANT TO THE SENTENCE THAT HE OR SHE ORIGINALLY RECEIVED FOR SUCH FELONY.

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

~~section.~~

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

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

PART 10
RESENTENCING HEARINGS FOR JUVENILE OFFENDERS SERVING LIFE SENTENCES

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

(a) (I) IN THE 2012 CASE OF *MILLER V. ALABAMA*, 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; AND

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

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

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

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

CHILDREN.

(2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

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

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

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

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

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

(b) CONVICTED AS AN ADULT OF A CLASS 1 FELONY FOLLOWING DIRECT FILING OF AN INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR 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

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

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

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

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

**SECTION 6.** In Colorado Revised Statutes, 24-4.1-302, **amend** (2) (h) as follows:

**24-4.1-302. Definitions.** As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(2) "Critical stages" means the following stages of the criminal justice process:

(h) Any sentencing OR RESENTENCING hearing;

**SECTION 7.** In Colorado Revised Statutes, 24-4.1-302.5, **amend** (1) (d) (IV) 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:

(d) The right to be heard at any court proceeding:

(IV) At which a person accused or convicted of a crime against the victim is sentenced OR RESENTENCED;

**SECTION 8.** In Colorado Revised Statutes, 24-4.1-303, **amend** (12) (c) as follows:

**24-4.1-303. Procedures for ensuring rights of victims of crimes.** (12) Unless a victim requests otherwise, the district attorney shall inform each victim of the following:

(c) The date, time, and location of any sentencing OR RESENTENCING hearing;

**SECTION 9. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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 9:46 am 6/10/16

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO