

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0107.02 Michael Dohr

HOUSE BILL 11-1287

HOUSE SPONSORSHIP

Levy and Nikkel,

SENATE SPONSORSHIP

Newell,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE OPPORTUNITY FOR COMMUNITY SUPERVISION FOR
102 A JUVENILE WHO IS CONVICTED AS AN ADULT AFTER THE
103 JUVENILE HAS SERVED A SPECIFIED PERIOD OF TIME.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill retroactively applies the current 40-year sentence for juveniles sentenced as adults. For a person sentenced as an adult who was charged by a direct filing or a juvenile transfer proceeding to a sentence in excess of 40 years, the person will be eligible for parole after

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

40 years. All juveniles sentenced as adults serving a sentence to incarceration in the department of corrections (DOC) shall be eligible for parole after serving no more than 40 years of their sentence unless otherwise eligible before then.

The bill provides the opportunity for a juvenile who was sentenced to the DOC to be placed in a community placement by the executive director of the DOC (executive director) after the juvenile completes a specified portion of his or her sentence. The executive director must consider the juvenile for community placement at least once no later than 10 years before the juvenile's parole eligibility date. The executive director must consider specified criteria in determining whether to place the individual in a community placement. If the offender meets the criteria for placement and is not housed in a minimum security facility, the executive director must place the offender in a minimum security facility for at least 6 months, but no more than 24 months, to observe how the offender adjusts to a less secure environment. If the offender meets the criteria for placement, the offender must undergo a clinical assessment to identify the needs of the offender in order to function in a community placement. If, after reviewing the criteria and the clinical assessment, the executive director determines that the offender still meets the criteria for community placement and determines there is a suitable placement for the offender, the executive director shall refer the offender to community placement, unless the executive director determines that doing so would create a public safety risk. Prior to placement, the department will develop a continuity of care and long-term supervision plan for the offender. If an offender is not referred to community placement, he or she may apply again in a year if he or she has addressed the reasons for the denial of placement. The executive director shall consider those applications using the same criteria for the initial application.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) With the exception of the youthful offender system, the
5 sentencing provisions of title 18, Colorado Revised Statutes, which also
6 apply to youths sentenced as adults, were deliberated and endorsed by the
7 general assembly in the context of fully grown adults who engage in
8 criminal behavior;

1 (b) The prosecution of juveniles in adult court automatically
2 subjects adolescents to a complex scheme of mandatory, long-term, and
3 lifetime sentencing provisions that results in youth serving a greater
4 percentage of their lives in prison, on average, than if they had been
5 adults when they committed the crimes;

6 (c) Modern developments in psychology and science continue to
7 show fundamental differences between juvenile and adult minds,
8 lessening the culpability of juveniles as compared to adults, and allowing
9 for a greater possibility that a juvenile's character deficiencies will be
10 reformed;

11 (d) Juveniles who commit serious and heinous crimes may warrant
12 punishment in the adult correctional system, but mandatory sentencing
13 schemes deny courts the ability to make an individualized assessment of
14 a juvenile's characteristics and his or her capacity for change and
15 reformation;

16 (e) Mandatory long-term incarceration also imposes significant
17 costs on the state, which costs can be mitigated when the juvenile matures
18 into adulthood and demonstrates that he or she can become a responsible,
19 contributing member of society.

20 (2) Therefore, the general assembly determines that a balanced
21 approach that permits adult sentences but provides judicial discretion in
22 sentencing and resentencing should apply to all persons who committed
23 crimes as juveniles, prospectively and retroactively, because prior
24 sentencing schemes were not designed for juveniles, are not
25 evidence-based, and do not reflect scientific understanding of adolescent
26 behavior.

27 **SECTION 2.** 18-1.3-401 (4) (b) (II), Colorado Revised Statutes,

1 is amended, and the said 18-1.3-401 (4) is further amended BY THE
2 ADDITION OF A NEW PARAGRAPH, to read:

3 **18-1.3-401. Felonies classified - presumptive penalties.**

4 (4) (b) (II) The provisions of this paragraph (b) shall apply to ~~persons~~
5 ~~sentenced for offenses committed on or after July 1, 2006~~ ALL PERSONS
6 COVERED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), REGARDLESS OF
7 THE DATE THE OFFENSE WAS COMMITTED.

8 (c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
9 CONTRARY, A PERSON WHO IS CONVICTED AS AN ADULT FOLLOWING
10 DIRECT FILING OF AN INFORMATION OR AN INDICTMENT IN THE DISTRICT
11 COURT PURSUANT TO SECTION 19-2-517, C.R.S., OR TRANSFER OF
12 PROCEEDINGS TO THE DISTRICT COURT PURSUANT TO SECTION 19-2-518,
13 C.R.S., AND IS SENTENCED AS AN ADULT TO A TERM OF IMPRISONMENT
14 THAT IS GREATER THAN FORTY CALENDAR YEARS, SHALL BE ELIGIBLE FOR
15 PAROLE AFTER SERVING A PERIOD OF FORTY CALENDAR YEARS UNLESS THE
16 PERSON IS OTHERWISE ELIGIBLE FOR PAROLE IN LESS THAN FORTY YEARS.

17 **SECTION 3.** Part 5 of article 2 of title 19, Colorado Revised
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
19 read:

20 **19-2-519. Sentencing of juveniles who are convicted as adults**

21 **in district court.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW
22 TO THE CONTRARY, AN OFFENDER CURRENTLY SERVING A SENTENCE IN
23 THE DEPARTMENT OF CORRECTIONS AS A RESULT OF THE FILING OF
24 CRIMINAL CHARGES BY AN INFORMATION OR INDICTMENT PURSUANT TO
25 SECTION 19-2-517 OR 19-2-518, WHO WAS CONVICTED OF A FELONY
26 OFFENSE AND WHO REMAINS IN THE CUSTODY OF THE DEPARTMENT OF
27 CORRECTIONS ON THAT FELONY CONVICTION SHALL BE ELIGIBLE FOR

1 COMMUNITY PLACEMENT AT THE DISCRETION OF THE EXECUTIVE
2 DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, OR HIS OR HER
3 DESIGNEE. THE EXECUTIVE DIRECTOR SHALL CONSIDER AN OFFENDER
4 DESCRIBED IN THIS SUBSECTION (1) FOR COMMUNITY PLACEMENT AT
5 LEAST ONCE NO LATER THAN TEN YEARS BEFORE THE OFFENDER'S PAROLE
6 ELIGIBILITY DATE.

7 (2) IF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
8 CORRECTIONS DECIDES TO CONSIDER AN OFFENDER FOR COMMUNITY
9 PLACEMENT, HE OR SHE SHALL REQUIRE THE OFFENDER TO FILE A PETITION
10 THAT ADDRESSES, AT A MINIMUM, THE CRITERIA OUTLINED IN SUBSECTION
11 (3) OF THIS SECTION.

12 (3) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
13 CORRECTIONS, OR HIS OR HER DESIGNEE, SHALL REVIEW THE OFFENDER'S
14 PETITION SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION
15 WITHIN NINETY DAYS AFTER RECEIPT OF THE PETITION AND DETERMINE
16 WHETHER THE OFFENDER SHALL BE REFERRED TO COMMUNITY PLACEMENT
17 PURSUANT TO SUBSECTION (6) OF THIS SECTION. IN DETERMINING
18 WHETHER TO PLACE AN OFFENDER ELIGIBLE FOR COMMUNITY PLACEMENT,
19 THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL CONSIDER THE
20 FOLLOWING CRITERIA:

21 (a) THE RISK LEVEL OF THE OFFENDER, BASED UPON A VALIDATED
22 RISK ASSESSMENT AS USED BY THE DEPARTMENT OF CORRECTIONS;

23 (b) THE OFFENDER'S INSTITUTIONAL BEHAVIOR, INCLUDING
24 CONSIDERATION OF IMPROVEMENTS IN BEHAVIOR AS THE OFFENDER HAS
25 MATURED OVER TIME;

26 (c) WHETHER THE OFFENDER HAS PERFORMED ACTS THAT TEND TO
27 INDICATE REHABILITATION OR THE POTENTIAL FOR REHABILITATION,

1 INCLUDING BUT NOT LIMITED TO THE COMPLETION OF REHABILITATIVE,
2 EDUCATIONAL, OR VOCATIONAL PROGRAMS, IF THOSE PROGRAMS HAVE
3 BEEN MADE AVAILABLE;

4 (d) WHETHER THE OFFENDER HAS ACCEPTED RESPONSIBILITY FOR
5 THE CIRCUMSTANCES OF THE OFFENSE AND SHOWN REMORSE;

6 (e) THE CRITERIA AS ENUMERATED IN SECTION 17-22.5-404 (4) (a),
7 C.R.S., AND THE RESULTS FROM THE ADMINISTRATIVE RELEASE GUIDELINE
8 INSTRUMENT DEVELOPED PURSUANT TO SECTION 17-22.5-403, C.R.S.; AND

9 (f) ANY OTHER RELEVANT CONSIDERATION RELATED TO PUBLIC
10 SAFETY, REHABILITATION, AND THE SAFETY AND WELFARE OF SOCIETY.

11 (4) IF THE OFFENDER IS NOT HOUSED IN A MINIMUM SECURITY
12 FACILITY WITHIN THE DEPARTMENT OF CORRECTIONS AT THE TIME OF
13 PETITION REVIEW BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
14 CORRECTIONS AND THE EXECUTIVE DIRECTOR HAS DETERMINED THAT THE
15 OFFENDER MEETS THE CRITERIA FOR COMMUNITY PLACEMENT, THE
16 DEPARTMENT SHALL PLACE THE OFFENDER IN AN APPROPRIATE MINIMUM
17 SECURITY FACILITY FOR AT LEAST SIX MONTHS BUT NO LONGER THAN
18 TWENTY-FOUR MONTHS TO ALLOW THE EXECUTIVE DIRECTOR OF THE
19 DEPARTMENT OF CORRECTIONS, OR HIS OR HER DESIGNEE, THE
20 OPPORTUNITY TO ASSESS THE OFFENDER IN A LESS SECURE SETTING AND
21 ALLOW THE OFFENDER TO DEMONSTRATE RESPONSIBILITY AND COMPLIANT
22 BEHAVIOR IN THE LESS SECURE SETTING TO ASSIST IN DETERMINING
23 WHETHER THE OFFENDER SHOULD BE REFERRED FOR COMMUNITY
24 PLACEMENT.

25 (5) IF, AFTER REVIEW OF ALL OF THE CRITERIA, THE EXECUTIVE
26 DIRECTOR OF THE DEPARTMENT OF CORRECTIONS DETERMINES THAT THE
27 OFFENDER HAS MET THE CRITERIA FOR COMMUNITY PLACEMENT, THE

1 EXECUTIVE DIRECTOR SHALL REQUEST THAT A CURRENT CLINICAL
2 ASSESSMENT OF THE OFFENDER BE COMPLETED. THE ASSESSMENT SHALL
3 IDENTIFY THE PSYCHOLOGICAL FUNCTIONING OF THE OFFENDER AND
4 IDENTIFY, TO THE EXTENT POSSIBLE, THE NEEDS AND SKILLS OF THE
5 OFFENDER AND THE OFFENDER'S ABILITY TO FUNCTION IN A STABLE AND
6 PRODUCTIVE MANNER IN A COMMUNITY PLACEMENT.

7 (6) AFTER A FINAL REVIEW OF THE CRITERIA LISTED IN SUBSECTION
8 (3) OF THIS SECTION, COMPLETION OF THE TIME SERVED PURSUANT TO
9 SUBSECTION (4) OF THIS SECTION, IF ANY, AND REVIEW OF THE CLINICAL
10 ASSESSMENT DESCRIBED IN SUBSECTION (5) OF THIS SECTION, THE
11 EXECUTIVE DIRECTOR SHALL DETERMINE WHETHER TO REFER THE
12 OFFENDER FOR COMMUNITY PLACEMENT. UNLESS THE EXECUTIVE
13 DIRECTOR FINDS THAT THERE IS SUBSTANTIAL EVIDENCE THAT THE
14 OFFENDER'S RELEASE TO COMMUNITY PLACEMENT WILL PRESENT A
15 CURRENT PUBLIC SAFETY RISK, THE EXECUTIVE DIRECTOR SHALL DIRECT
16 THE DEPARTMENT TO REFER THE OFFENDER FOR COMMUNITY PLACEMENT
17 IF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS
18 DETERMINES THAT THE OFFENDER MEETS THE CRITERIA FOR COMMUNITY
19 PLACEMENT AND THAT THERE IS A PROGRAM AS DESCRIBED IN SUBSECTION
20 (10) OF THIS SECTION THAT IS SUITABLE FOR THE OFFENDER. IF THE
21 OFFENDER IS DENIED COMMUNITY PLACEMENT, THE OFFENDER SHALL BE
22 NOTIFIED IN WRITING THE REASONS FOR THE DENIAL AND WHAT THE
23 OFFENDER NEEDS TO DO TO BE ELIGIBLE FOR COMMUNITY PLACEMENT IN
24 THE FUTURE.

25 (7) PRIOR TO THE DEPARTMENT'S REFERRAL FOR COMMUNITY
26 PLACEMENT, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
27 CORRECTIONS SHALL DIRECT THE DEPARTMENT TO DEVELOP CONTINUITY

1 OF CARE AND LONG-TERM SUPERVISION PLANS FOR THE OFFENDER BASED
2 UPON THE CLINICAL ASSESSMENT OF THE OFFENDER COMPLETED PRIOR TO
3 THE REFERRAL FOR COMMUNITY PLACEMENT. THE CONTINUITY OF CARE
4 PLAN SHALL INCLUDE A LONG-TERM PLACEMENT IN A RESIDENTIAL
5 PROGRAM AND A LONG-TERM SUPERVISION PLAN FOR THE OFFENDER IN
6 THE COMMUNITY, WHICH PLAN PRESERVES THE SAFETY OF THE
7 COMMUNITY.

8 (8) (a) AN OFFENDER WHO IS DENIED COMMUNITY PLACEMENT
9 MAY PETITION THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
10 CORRECTIONS FOR AN ADDITIONAL REVIEW ONE CALENDAR YEAR AFTER
11 THE DENIAL IF THE OFFENDER CAN DEMONSTRATE THAT HE OR SHE HAS
12 ADDRESSED THE REASONS FOR THE DENIAL OF COMMUNITY PLACEMENT.
13 THE OFFENDER'S PETITION FOR AN ADDITIONAL REVIEW SHALL INCLUDE
14 EVIDENCE DEMONSTRATING THAT THE OFFENDER HAS ADDRESSED THE
15 REASONS FOR DENIAL OF COMMUNITY PLACEMENT.

16 (b) UPON RECEIPT OF A VALID PETITION FILED UNDER THIS
17 SUBSECTION (8), THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE,
18 SHALL CONSIDER THE PETITION PURSUANT TO THE PROCESS AND CRITERIA
19 IN SUBSECTIONS (3), (4), (5), AND (6) OF THIS SECTION.

20 (9) ANY OFFENDER GRANTED COMMUNITY PLACEMENT PURSUANT
21 TO THIS SECTION SHALL REMAIN ON INMATE STATUS UNLESS OR UNTIL THE
22 OFFENDER IS GRANTED PAROLE.

23 (10) (a) AN OFFENDER REFERRED FOR COMMUNITY PLACEMENT
24 PURSUANT TO THIS SECTION SHALL BE REFERRED TO A COMMUNITY
25 CORRECTIONS PROGRAM WITH A LONG-TERM RESIDENTIAL AND HOUSING
26 COMPONENT OR A LONG-TERM NONRESIDENTIAL, INTENSIVE SUPERVISION
27 OR SUPERVISION COMPONENT. THE PROGRAM SHALL SERVE AS A

1 SPECIALIZED PROGRAM FOR THOSE OFFENDERS WHO HAVE BEEN
2 SENTENCED FOR A FELONY OFFENSE AS A RESULT OF THE FILING OF
3 CRIMINAL CHARGES BY AN INFORMATION OR INDICTMENT PURSUANT TO
4 SECTIONS 19-2-517 AND 19-2-518 AND WHO ARE ELIGIBLE FOR
5 COMMUNITY PLACEMENT PURSUANT TO THIS SECTION.

6 (b) THE SPECIALIZED COMMUNITY CORRECTIONS PROGRAM SHALL
7 INCORPORATE PROGRAMS THAT WILL ASSIST AND SUPPORT SUCCESSFUL
8 REINTEGRATION INTO THE COMMUNITY FOR ELIGIBLE OFFENDERS WHO
9 HAVE NEVER LIVED INDEPENDENTLY OR FUNCTIONED IN THE COMMUNITY
10 AS ADULTS. THE PROGRAM SHALL REFLECT BEST PRACTICES IN INTENSIVE
11 SUPERVISION AND MONITORING. EACH OFFENDER'S PROGRAM AND
12 PLACEMENT SHALL BE SUPERVISED THROUGH A CONTINUITY OF CARE PLAN
13 DEVELOPED TO ASSIST THE OFFENDER IN HIS OR HER COMMUNITY
14 PLACEMENT AND TO ENSURE THE SAFETY OF THE PUBLIC.

15 (c) THE PROGRAM SHALL OPERATE AS A SPECIALIZED COMMUNITY
16 CORRECTIONS PROGRAM, AS DEFINED IN SECTION 17-27-102, C.R.S., AND
17 WORK WITH ESTABLISHED PRACTICES FOR COMMUNITY CORRECTIONS
18 PROGRAMS. PLACEMENT OF AN OFFENDER IN SUCH A SPECIALIZED
19 PROGRAM SHALL BE SUBJECT TO REVIEW BY THE COMMUNITY
20 CORRECTIONS BOARD OR BOARDS ESTABLISHED PURSUANT TO SECTION
21 17-27-103, C.R.S.

22 **SECTION 4. Act subject to petition - effective date.** This act
23 shall take effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part shall not take effect
2 unless approved by the people at the general election to be held in
3 November 2012 and shall take effect on the date of the official
4 declaration of the vote thereon by the governor.