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Seventy-first General Assembly
STATE OF COLORADO

DRAFT
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BILL 1

LLS NO. 18-0297.01 Michael Dohr x4347

INTERIM COMMITTEE BILL

Sentencing in the Criminal Justice System Interim Study Committee

BILL TOPIC: "Determinate Sentence For Indeterminate Sex Offense"

A BILL FOR AN ACT

101 **CONCERNING GRANTING JUDICIAL DISCRETION TO SENTENCE A**
102 **DEFENDANT TO AN INDETERMINATE OR DETERMINATE SENTENCE**
103 **FOR A SEXUAL OFFENSE, AND, IN CONNECTION THEREWITH,**
104 **REQUIRING THE CRITERIA AND BASIS FOR THE SENTENCING**
105 **DECISION TO BE ARTICULATED ON THE PUBLIC RECORD.**

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://leg.colorado.gov/>.)

Sentencing in the Criminal Justice System Interim Study Committee. Currently, a court is required to sentence certain sex

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

offenders to an indeterminate sentence that is a maximum of the sex offender's life. The bill allows the court to choose either the indeterminate sentence or a determinate sentence in those cases. The bill addresses the factors related to punishment and treatment that a court must consider when deciding between an indeterminate or a determinate sentence. The court must specify its reasons on the record for choosing either a determinate or an indeterminate sentence.

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

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

4 (a) The "Colorado Sex Offender Lifetime Supervision Act of
5 1998", part 10 of article 1.3 of title 18, Colorado Revised Statutes, was
6 predicated on the assumption that a majority of sex offenders are likely
7 to repeat their crimes if they do not receive intensive treatment. Although
8 subsequent research has found that most sex offenders do not sexually
9 reoffend and treatment is most effective for high-risk offenders, the act
10 prohibits the discharge of all offenders serving indeterminate probation
11 and prison sentences until treatment has been completed.

12 (b) Resources for providing treatment have been limited, and the
13 department of corrections treatment program has not been consistently
14 implemented to ensure that high-risk offenders receive treatment before
15 being released into the community and that lower-risk offenders are not
16 indefinitely warehoused in prison due to a lack of access to treatment.
17 The audit found that even if no additional sex offenders were sentenced
18 to prison, it would take the department eight years to treat everyone
19 currently on the wait list.

20 (c) The state parole board has frequently denied parole to
21 offenders under the act even after they have completed treatment and met
22 parole criteria. At the same time, the state parole board often grants parole

1 to untreated high-risk sex offenders.

2 (d) Current law requires indeterminate sentencing for certain
3 crimes with little or no regard to risk levels. Research has shown that the
4 crime of conviction does not predict a person's risk to sexually reoffend.

5 (e) When judges must impose sentences on defendants under the
6 act, they are forced to choose between a potential life sentence to prison
7 or an indeterminate period of probation. Judges are denied the option of
8 imposing determinate periods of prison or probation that might better
9 meet the needs of the victim, the public safety, and the offender's
10 rehabilitation. In the vast majority of cases subject to the act's sentencing
11 requirements, prosecutors have chosen to plea bargain to charges outside
12 the act that permit the imposition of determinate probation or prison
13 sentences, with no transparency around that choice.

14 (f) However, judges have not been similarly empowered to select
15 between determinate and indeterminate sentences. As a result, judges
16 have been limited in their ability to craft a sentence based upon all
17 relevant considerations. When a judge has been reluctant to impose a
18 potential life sentence to prison under the act, and instead sentences a
19 defendant to probation, there has been public outrage at the leniency of
20 a sentence that requires no period of imprisonment.

21 (g) Thus, the unintended consequence of the act is a public
22 perception that sentencing is too lenient by judges who are unable to
23 impose a determinate sentence to incarceration as direct punishment to
24 the offender.

25 (2) The general assembly therefore finds that:

26 (a) Justice would best be served by giving judges the option to
27 sentence offenders found guilty of sex crimes to terms of a fixed duration,

1 as well as retaining the option of imposing an indeterminate sentence for
2 the highest-risk offenders when public safety would be enhanced by the
3 defendant's ongoing supervision or detention; and

4 (b) Judicial accountability of judges for their sentencing decisions
5 would be heightened by providing judges with meaningful guidelines for
6 deciding between determinate and indeterminate sentences, and requiring
7 them to state on the record the basis for that component of their
8 sentencing decisions.

9 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-1004, **amend**
10 (1) and (2)(a); and **add** (2.5) as follows:

11 **18-1.3-1004. Indeterminate or determinate sentence.**

12 (1) (a) Except as otherwise provided in this subsection (1) and in
13 subsection (2) of this section, the district court having jurisdiction shall
14 sentence a sex offender to the custody of the department for:

15 (I) An indeterminate term of at least the minimum of the
16 presumptive range specified in section 18-1.3-401 for the level of offense
17 committed and a maximum of the sex offender's natural life; OR

18 (II) A DETERMINATE TERM WITHIN THE PRESUMPTIVE RANGE
19 SPECIFIED IN SECTION 18-1.3-401 UNLESS THE COURT CONCLUDES THAT
20 EXTRAORDINARY MITIGATING OR AGGRAVATING CIRCUMSTANCES ARE
21 PRESENT AND IMPOSES A DETERMINATE SENTENCE PURSUANT TO SECTION
22 18-1.3-401 (6).

23 (b) If the sex offender committed a sex offense that constitutes a
24 crime of violence, as defined in section 18-1.3-406, the district court shall
25 sentence the sex offender to the custody of the department for:

26 (I) An indeterminate term of at least the midpoint in the
27 presumptive range for the level of offense committed and a maximum of

1 the sex offender's natural life; OR

2 (II) A DETERMINATE TERM OF AT LEAST THE MIDPOINT IN, BUT NOT
3 MORE THAN TWICE THE MAXIMUM OF, THE PRESUMPTIVE RANGE PROVIDED
4 FOR SUCH OFFENSE IN SECTION 18-1.3-401.

5 (c) If the sex offender committed a sex offense that makes him or
6 her eligible for sentencing as an habitual sex offender against children
7 pursuant to section 18-3-412, the district court shall sentence the sex
8 offender to the custody of the department for:

9 (I) An indeterminate term of at least three times the upper limit of
10 the presumptive range for the level of offense committed and a maximum
11 of the sex offender's natural life; OR

12 (II) A DETERMINATE TERM OF AT LEAST THREE TIMES THE UPPER
13 LIMIT OF THE PRESUMPTIVE RANGE FOR THE LEVEL OF OFFENSE
14 COMMITTED.

15 (d) If the sex offender committed a sex offense that constitutes a
16 sexual offense, as defined in section 18-3-415.5, and the sex offender,
17 prior to committing the offense, had notice that he or she had tested
18 positive for the human immunodeficiency virus (HIV) and HIV infection,
19 and the infectious agent of the HIV infection was in fact transmitted, the
20 district court shall sentence the sex offender to the custody of the
21 department for:

22 (I) An indeterminate term of at least the upper limit of the
23 presumptive range for the level of offense committed and a maximum of
24 the sex offender's natural life; OR

25 (II) A DETERMINATE TERM OF AT LEAST THE UPPER LIMIT OF THE
26 PRESUMPTIVE RANGE FOR THE LEVEL OF OFFENSE COMMITTED.

27 (e) (I) Notwithstanding any other provision of law, the district

1 court shall sentence a sex offender to the custody of the department for
2 an indeterminate term as specified in ~~subparagraph (H) of this paragraph~~
3 ~~(e) SUBSECTION (1)(e)(II) OF THIS SECTION OR A DETERMINATE TERM AS~~
4 SPECIFIED IN SUBSECTION (1)(e)(II.5) OF THIS SECTION if the sex offender:

5 (A) Committed a class 2, class 3, or class 4 FELONY sex offense
6 in violation of section 18-3-402, 18-3-405, or 18-3-405.3 when the act
7 includes sexual intrusion as defined in section 18-3-401 (5) or sexual
8 penetration as defined in section 18-3-401 (6);

9 (B) Committed the act against a child who was under twelve years
10 of age at the time of the offense; and

11 (C) Was at least eighteen years of age and at least ten years older
12 than the child.

13 (II) The district court shall sentence a sex offender to THE
14 CUSTODY OF the department of corrections for an indeterminate term OR
15 DETERMINATE TERM of incarceration ~~of~~ IF THE DEFENDANT COMMITTED
16 A CRIME AS DESCRIBED IN SUBSECTION (1)(e)(I) OF THIS SECTION, THE
17 TERM OF INCARCERATION IS:

18 (A) At least ten to sixteen years for a class 4 felony AND UP to a
19 maximum of the person's natural life, ~~as provided in this subsection (1),~~
20 ~~if he or she committed a crime as described in subparagraph (I) of this~~
21 ~~paragraph (e) IF AN INDETERMINATE TERM OF INCARCERATION IS IMPOSED;~~

22 (B) At least eighteen to thirty-two years for a class 3 felony to a
23 maximum of the person's natural life, ~~as provided in this subsection (1),~~
24 ~~if he or she committed a crime as described in subparagraph (I) of this~~
25 ~~paragraph (e); and~~ IF AN INDETERMINATE TERM OF INCARCERATION IS
26 IMPOSED; OR

27 (C) At least twenty-four to forty-eight years for a class 2 felony,

1 to a maximum of the person's natural life, ~~as provided in this subsection~~
2 ~~(1), if he or she committed a crime as described in subparagraph (f) of~~
3 ~~this paragraph (e)~~ IF AN INDETERMINATE TERM OF INCARCERATION IS
4 IMPOSED.

5 (II.5) THE DISTRICT COURT MAY SENTENCE A SEX OFFENDER TO
6 THE CUSTODY OF THE DEPARTMENT FOR A DETERMINATE TERM OF
7 INCARCERATION OF:

8 (A) AT LEAST TEN TO SIXTEEN YEARS FOR A CLASS 4 FELONY IF HE
9 OR SHE COMMITTED A CRIME AS DESCRIBED IN SUBSECTION (1)(e)(I) OF
10 THIS SECTION;

11 (B) AT LEAST EIGHTEEN TO THIRTY-TWO YEARS FOR A CLASS 3
12 FELONY IF HE OR SHE COMMITTED A CRIME AS DESCRIBED IN SUBSECTION
13 (1)(e)(I) OF THIS SECTION; OR

14 (C) AT LEAST TWENTY-FOUR TO FORTY-EIGHT YEARS FOR A CLASS
15 2 FELONY IF HE OR SHE COMMITTED A CRIME AS DESCRIBED IN SUBSECTION
16 (1)(e)(I) OF THIS SECTION.

17 (III) If the defendant is placed on parole, the parole board shall
18 order the defendant to wear electronic monitoring for the duration of his
19 or her period of parole.

20 (f) (I) IF THE COURT SENTENCES THE DEFENDANT TO THE
21 DEPARTMENT FOR A DETERMINATE SENTENCE OF INCARCERATION
22 PURSUANT TO THIS SUBSECTION (1), IT SHALL SENTENCE THE DEFENDANT
23 TO EITHER THE MANDATORY PERIOD OF PAROLE ASSOCIATED WITH THE
24 LEVEL OF OFFENSE COMMITTED OR AN INDETERMINATE PERIOD OF PAROLE.

25 (II) IF THE COURT SENTENCES THE DEFENDANT TO AN
26 INDETERMINATE PERIOD OF PAROLE PURSUANT TO THIS SUBSECTION (1)(f)
27 AND THE DEFENDANT VIOLATES A CONDITION OF PAROLE WHILE SERVING

1 THE INDETERMINATE PERIOD OF PAROLE, THE PAROLE BOARD MAY REVOKE
2 PAROLE FOR THE REMAINDER OF HIS OR HER DETERMINATE SENTENCE OR
3 FOR A PERIOD OF INCARCERATION NOT TO EXCEED NINETY DAYS FOR ANY
4 PAROLE VIOLATION.

5 (2) (a) The district court having jurisdiction, based on
6 consideration of the evaluation conducted pursuant to section 16-11.7-104
7 ~~C.R.S.~~, and the factors specified in section 18-1.3-203, may sentence a
8 sex offender to probation for an indeterminate period of at least ten years
9 for a class 4 felony or twenty years for a class 2 or 3 felony and a
10 maximum of the sex offender's natural life OR A DETERMINATE PERIOD OF
11 PROBATION PURSUANT TO SECTION 18-1.3-204; except that, if the sex
12 offender committed a sex offense that constitutes a crime of violence, as
13 defined in section 18-1.3-406, or committed a sex offense that makes him
14 or her eligible for sentencing as a habitual sex offender against children
15 pursuant to section 18-3-412, or a sex offense requiring sentencing
16 pursuant to ~~paragraph (c) of subsection (1)~~ SUBSECTION (1)(e) of this
17 section, the court shall sentence the sex offender to THE CUSTODY OF the
18 department of corrections as provided in subsection (1) of this section.
19 For any sex offender sentenced to probation pursuant to this subsection
20 (2), the court shall order that the sex offender, as a condition of probation,
21 participate in an intensive supervision probation program established
22 pursuant to section 18-1.3-1007, until further order of the court.

23 (2.5) (a) THE COURT SHALL DETERMINE THE APPROPRIATE
24 DETERMINATE OR INDETERMINATE SENTENCE. THE COURT SHALL
25 CONSIDER THE PURPOSES OF SENTENCING OUTLINED IN SECTION
26 18-1-102.5, WHICH INCLUDE THE IMPOSITION OF PUNISHMENT THAT
27 PROPERLY RELATES TO THE SERIOUSNESS OF THE OFFENSE AS WELL AS THE

1 IMPOSITION OF REHABILITATION PROGRAMMING THAT IS INDIVIDUALIZED
2 AND REDUCES THE POTENTIAL THAT THE DEFENDANT WILL ENGAGE IN
3 FUTURE CRIMINAL CONDUCT, IN DETERMINING WHETHER TO IMPOSE A
4 DETERMINATE OR INDETERMINATE SENTENCE. WHEN DECIDING WHETHER
5 TO SENTENCE THE DEFENDANT TO A DETERMINATE OR AN INDETERMINATE
6 SENTENCE OF INCARCERATION PURSUANT TO SUBSECTION (1) OF THIS
7 SECTION, THE COURT SHALL CONSIDER THE EVALUATION CONDUCTED
8 PURSUANT TO SECTION 16-11.7-104, ANY RELEVANT EVIDENCE PRESENTED
9 AT THE SENTENCING HEARING, AND THE FOLLOWING FACTORS TO
10 DETERMINE WHETHER THE POTENTIAL FOR LIFETIME INCARCERATION IS
11 THE APPROPRIATE SENTENCE:

12 (I) WHETHER THE DEFENDANT IS PRESENTLY A HIGH RISK TO
13 SEXUALLY REOFFEND;

14 (II) WHETHER THE DEFENDANT POSES A HIGH RISK OF SEXUAL
15 RECIDIVISM THAT IS UNLIKELY TO CHANGE WITH AGE OR DEVELOPMENTAL
16 MATURITY;

17 (III) WHETHER THE DEFENDANT DEMONSTRATES UNLAWFUL
18 SEXUAL BEHAVIOR THAT IS ONGOING AND PERSISTENT AND THE
19 DEFENDANT APPEARS UNABLE TO STOP HIMSELF OR HERSELF FROM
20 SEXUALLY REOFFENDING;

21 (IV) WHETHER THE DEFENDANT APPEARS UNABLE TO LIVE IN THE
22 COMMUNITY WITHOUT ENGAGING IN ILLEGAL SEXUAL BEHAVIOR;

23 (V) WHETHER THE DEFENDANT DISPLAYS AN ONGOING
24 WILLINGNESS TO HARM OTHERS;

25 (VI) WHETHER THE DEFENDANT IS DIAGNOSED AS A PEDOPHILE OR
26 DISPLAYS A FIXED SEXUAL ATTRACTION TO PREPUBESCENT CHILDREN OR
27 OTHER VULNERABLE POPULATIONS;

1 (VII) WHETHER THE DEFENDANT IS UNCOOPERATIVE AND
2 UNWILLING TO PURSUE A PROSOCIAL LIFESTYLE THAT IS FREE FROM
3 SUBSTANCE ABUSE, INCLUDES APPROPRIATE EMPLOYMENT IF APPLICABLE,
4 AND THAT DEVELOPS A HEALTHY SUPPORT SYSTEM;

5 (VIII) WHETHER THE DEFENDANT PRESENTS RISK FACTORS THAT
6 HAVE NOT BEEN ADEQUATELY MITIGATED AND WILL BE DIFFICULT TO
7 ADEQUATELY MITIGATE BY THERAPEUTIC INTERVENTIONS;

8 (IX) WHETHER THE DEFENDANT LACKS AND IS UNLIKELY TO
9 DEVELOP THE NECESSARY PROTECTIVE FACTORS THAT RESEARCH
10 DEMONSTRATES WOULD PREVENT REOFFENSE; AND

11 (X) WHETHER THE DEFENDANT'S PHYSICAL OR MENTAL HEALTH
12 PRESENTS AN UNACCEPTABLE THREAT TO VICTIMS OR POTENTIAL VICTIMS.

13 (b) WHEN DECIDING WHETHER TO SENTENCE THE DEFENDANT TO
14 A DETERMINATE OR AN INDETERMINATE SENTENCE OF PROBATION
15 PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE COURT SHALL
16 CONSIDER THE EVALUATION CONDUCTED PURSUANT TO SECTION
17 16-11.7-104, ANY RELEVANT EVIDENCE PRESENTED AT THE SENTENCING
18 HEARING, AND THE FOLLOWING FACTORS TO DETERMINE WHETHER THE
19 POTENTIAL FOR LIFETIME SUPERVISION IS THE APPROPRIATE SENTENCE:

20 (I) WHETHER THE DEFENDANT IS LIKELY TO INDEFINITELY REQUIRE
21 ONGOING MONITORING AND MANAGEMENT TO ENSURE THE SAFETY OF
22 VICTIMS OR POTENTIAL VICTIMS;

23 (II) WHETHER THE DEFENDANT APPEARS ABLE TO LIVE IN THE
24 COMMUNITY BUT PRESENTS NEEDS THAT ARE LIKELY TO REQUIRE LIFETIME
25 SUPPORT IN ORDER TO LIVE A STABLE AND PROSOCIAL LIFESTYLE;

26 (III) WHETHER THE DEFENDANT IS LACKING IN THE DEVELOPMENT
27 OF CERTAIN PROTECTIVE FACTORS THAT WOULD PREVENT REOFFENSE

1 WITHOUT THE POSSIBILITY OF LIFETIME SUPERVISION FROM THE CRIMINAL
2 JUSTICE SYSTEM;

3 (IV) WHETHER THE AGE AND THE DEVELOPMENTAL MATURITY OF
4 THE DEFENDANT AT THE TIME OF SENTENCING INDICATE THE NEED FOR THE
5 POSSIBILITY OF LIFETIME SUPERVISION; AND

6 (V) ANY OTHER RELEVANT FACTORS PRESENTED IN THE
7 PRESENTENCE EVALUATION OR OTHER RELEVANT EVIDENCE PRESENTED TO
8 THE COURT.

9 (c) WHEN SENTENCING THE DEFENDANT, THE COURT SHALL STATE
10 ON THE RECORD THE BASIS FOR ITS DECISION TO SENTENCE THE
11 DEFENDANT TO EITHER A DETERMINATE OR AN INDETERMINATE SENTENCE.

12 **SECTION 3.** In Colorado Revised Statutes, 18-1.3-1006, **amend**
13 (1)(b) as follows:

14 **18-1.3-1006. Release from incarceration - parole - conditions.**

15 (1) (b) If a sex offender is released on parole pursuant to this section, the
16 sex offender's sentence to incarceration shall continue and shall not be
17 deemed discharged until such time as the parole board may discharge the
18 sex offender from parole pursuant to subsection (3) of this section. FOR
19 A SEX OFFENDER SENTENCED TO AN INDETERMINATE SENTENCE, the period
20 of parole for any sex offender convicted of a class 4 felony shall be an
21 indeterminate term of at least ten years and a maximum of the remainder
22 of the sex offender's natural life. FOR A SEX OFFENDER SENTENCED TO AN
23 INDETERMINATE SENTENCE, the period of parole for any sex offender
24 convicted of a class 2 or 3 felony shall be an indeterminate term of at
25 least twenty years and a maximum of the remainder of the sex offender's
26 natural life.

27 **SECTION 4.** In Colorado Revised Statutes, 18-1.3-1008, **amend**

1 (1.5), (2), and (3)(a) as follows:

2 **18-1.3-1008. Probation - conditions - release.** (1.5) If the court
3 as a condition of AN INDETERMINATE probation TERM sentences a sex
4 offender to a residential community corrections program, following
5 completion of the minimum period of sentence specified by the court, the
6 community corrections program shall notify the judicial department when
7 it determines that the sex offender has successfully progressed in
8 treatment and would not pose an undue threat to the community if
9 allowed to live in the community while continuing on intensive
10 supervision probation. The community corrections program shall base its
11 determination on the criteria established by the management board
12 pursuant to section 18-1.3-1009. The judicial department shall file the
13 recommendations of the community corrections program with the court.
14 Upon order of the court, the sex offender shall be released from the
15 community corrections program, and the court shall order the sex
16 offender, as a condition of probation, to participate in the intensive
17 supervision program created in section 18-1.3-1007. The sex offender
18 shall participate in such program until further order of the court.

19 (2) FOR A SEX OFFENDER SENTENCED TO AN INDETERMINATE
20 PROBATION TERM, on completion of twenty years of probation for any sex
21 offender convicted of a class 2 or 3 felony or on completion of ten years
22 of probation for any sex offender convicted of a class 4 felony, the court
23 shall schedule a review hearing to determine whether the sex offender
24 should be discharged from probation. In making its determination, the
25 court shall determine whether the sex offender has successfully
26 progressed in treatment and would not pose an undue threat to the
27 community if allowed to live in the community without treatment or

1 supervision. The sex offender's probation officer and treatment provider
2 shall make recommendations to the court concerning whether the sex
3 offender has met the requirements of this section such that he or she
4 should be discharged from probation.

5 (3) (a) FOR A SEX OFFENDER SENTENCED TO AN INDETERMINATE
6 PROBATION TERM, in determining whether to discharge a sex offender
7 from probation pursuant to this section, the court shall consider the
8 recommendations of the sex offender's probation officer and treatment
9 provider. The recommendations of the probation officer and the treatment
10 provider shall be based on the criteria established by the management
11 board pursuant to section 18-1.3-1009. If the court chooses not to follow
12 the recommendations made, the court shall make findings on the record
13 in support of its decision.

14 **SECTION 5.** In Colorado Revised Statutes, 18-1-1102, **amend**
15 (1)(b) as follows:

16 **18-1-1102. Scope.** (1) The provisions of this part 11 shall apply
17 to the preservation of DNA evidence only when:

18 (b) The filed charges resulted in a conviction for a class 1 felony
19 or for a sex offense that carries ~~an~~ A POSSIBLE indeterminate sentence
20 pursuant to section 18-1.3-1004; or

21 **SECTION 6.** In Colorado Revised Statutes, 18-1.3-401, **amend**
22 (1)(a)(V)(C.7) and (8)(e.5) as follows:

23 **18-1.3-401. Felonies classified - presumptive penalties.**

24 (1) (a) (V) (C.7) Any person sentenced for a felony committed on or after
25 July 1, 2002, involving unlawful sexual behavior, as defined in section
26 16-22-102 (9), ~~C.R.S.~~, or for a felony, committed on or after July 1, 2002,
27 the underlying factual basis of which involved unlawful sexual behavior,

1 and who is not subject to, OR WHO RECEIVES A DETERMINATE SENTENCE
2 OF IMPRISONMENT PURSUANT TO, the provisions of part 10 of this ~~article~~
3 ARTICLE 1.3, shall be subject to the mandatory period of parole specified
4 in ~~sub-subparagraph (A) of this subparagraph (V)~~ SUBSECTION
5 (1)(a)(V)(A) OF THIS SECTION.

6 (8) (e.5) If the defendant is convicted of the class 2 felony of
7 sexual assault under section 18-3-402 (5) or the class 2 felony of sexual
8 assault in the first degree under section 18-3-402 (3) as it existed prior to
9 July 1, 2000, commission of which offense occurs on or after November
10 1, 1998, the court shall ~~be required to~~ sentence the defendant to THE
11 CUSTODY OF the department of ~~corrections~~ for an indeterminate sentence
12 of at least the midpoint in the presumptive range for the punishment of
13 that class of felony up to the defendant's natural life OR A DETERMINATE
14 SENTENCE OF AT LEAST THE MIDPOINT IN THE PRESUMPTIVE RANGE FOR
15 THE PUNISHMENT OF THAT CLASS OF FELONY.

16 **SECTION 7.** In Colorado Revised Statutes, 18-1.3-406, **amend**
17 (1)(b) as follows:

18 **18-1.3-406. Mandatory sentences for violent crimes -**
19 **definitions.** (1) (b) Notwithstanding the provisions of ~~paragraph (a) of~~
20 ~~this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, any person
21 convicted of a sex offense, as defined in section 18-1.3-1003 (5),
22 committed on or after November 1, 1998, that constitutes a crime of
23 violence shall be sentenced to THE CUSTODY OF the department of
24 ~~corrections~~ for an indeterminate term OR A DETERMINATE TERM of
25 incarceration of at least the midpoint in the presumptive range specified
26 in section 18-1.3-401 (1)(a)(V)(A) up to a maximum of the person's
27 natural life, as provided in section 18-1.3-1004 (1).

1 **SECTION 8.** In Colorado Revised Statutes, **amend** 18-1.3-408
2 as follows:

3 **18-1.3-408. Determinate sentence of imprisonment imposed by**
4 **court.** When a person has been convicted of a felony and a sentence of
5 imprisonment imposed, the court imposing the sentence shall fix a
6 definite term of imprisonment, which shall be not longer than the terms
7 authorized in section 18-1.3-401; except that, for persons convicted on or
8 after November 1, 1998, of a sex offense, as defined in section
9 18-1.3-1003 (5), the court ~~shall~~ MAY impose an indeterminate sentence as
10 provided in part 10 of this ~~article~~ ARTICLE 1.3.

11 **SECTION 9.** In Colorado Revised Statutes, 18-3-415.5, **amend**
12 (5)(b) as follows:

13 **18-3-415.5. Testing persons charged with certain sexual**
14 **offenses for serious sexually transmitted infections - mandatory**
15 **sentencing.** (5) (b) If the court determines that the person tested pursuant
16 to subsection (2) of this section had notice of the HIV infection prior to
17 the date the offense was committed and the infectious agent of the HIV
18 infection was in fact transmitted, the judge shall sentence the person to a
19 mandatory term of incarceration of at least the upper limit of the
20 presumptive range for the level of offense committed, up to the remainder
21 of the person's natural life, as provided in section 18-1.3-1004 OR TO A
22 DETERMINATE SENTENCE OF AT LEAST THE UPPER LIMIT OF THE
23 PRESUMPTIVE RANGE OF THE LEVEL OF OFFENSE COMMITTED.

24 **SECTION 10. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly (August 8, 2018, if adjournment sine die is on May 9,

1 2018); except that, if a referendum petition is filed pursuant to section 1
2 (3) of article V of the state constitution against this act or an item, section,
3 or part of this act within such period, then the act, item, section, or part
4 will not take effect unless approved by the people at the general election
5 to be held in November 2018 and, in such case, will take effect on the
6 date of the official declaration of the vote thereon by the governor.

7 (2) This act applies to offenses committed on or after the
8 applicable effective date of this act.