

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
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BILL 2

LLS NO. 18-0298.01 Michael Dohr x4347

INTERIM COMMITTEE BILL

Sentencing in the Criminal Justice System Interim Study Committee

BILL TOPIC: "Second-look Criminal Sentencing"

A BILL FOR AN ACT

101 **CONCERNING THE OPPORTUNITY FOR CERTAIN OFFENDERS TO FILE A**
102 **MOTION FOR RESENTENCING AFTER SERVING A SPECIFIED**
103 **PERIOD OF TIME INCARCERATED.**

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. The bill allows an inmate who is not serving a life sentence or a death sentence to file a motion for resentencing if the inmate has served at least 15 years of incarceration in the department of corrections for his or her current offense.

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

The department of corrections must notify each inmate who will be eligible for resentencing at least 6 months before he or she is eligible.

Once an inmate files a motion for resentencing, the court shall set a hearing on the motion no more than 182 days after receiving the motion. The district attorney shall notify the victim about the motion and hearing. The inmate must prove by a preponderance of the evidence that a new sentence is consistent with the goals of the sentencing code. The inmate and prosecution are permitted to present evidence of the inmate's behavior in prison and other relevant information. The victim is allowed to submit a new victim impact statement and testify at the hearing.

If the court grants the inmate's motion for resentencing, the court can impose a new sentence to incarceration, a direct sentence to community corrections, or a sentence to probation. If the court imposes a new sentence to incarceration, the court shall impose a sentence no greater than the current sentence within the applicable presumptive range in effect at the time of the resentencing. If the court denies the motion, the inmate may not file a motion for resentencing for 5 years from the date of the denial.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-1.3-410 as
3 follows:

4 **18-1.3-410. Motion for resentencing.** (1) AN INMATE WHO IS
5 NOT SERVING A SENTENCE OF LIFE IMPRISONMENT OR IS NOT SENTENCED
6 TO DEATH IS ELIGIBLE TO FILE A MOTION FOR RESENTENCING IF THE
7 INMATE HAS SERVED AT LEAST FIFTEEN YEARS OF INCARCERATION IN THE
8 DEPARTMENT OF CORRECTIONS FOR HIS OR HER CURRENT OFFENSE.

9 (2) IF AN INMATE IS ELIGIBLE TO FILE A MOTION FOR
10 RESENTENCING PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE
11 DEPARTMENT OF CORRECTIONS SHALL NOTIFY THE INMATE OF THE DATE
12 HE OR SHE IS ELIGIBLE TO FILE A MOTION FOR RESENTENCING AT LEAST SIX
13 MONTHS PRIOR TO THE DATE.

14 (3)(a) AN INMATE ELIGIBLE TO FILE A MOTION FOR RESENTENCING
15 PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST FILE THE MOTION

1 WITH THE COURT THAT SENTENCED THE INMATE AND SEND A COPY OF THE
2 MOTION TO THE DISTRICT ATTORNEY THAT PROSECUTED THE INMATE'S
3 CASE.

4 (b) UPON RECEIPT OF A MOTION FOR RESENTENCING PURSUANT TO
5 THIS SECTION, THE COURT SHALL SET THE MATTER FOR A RESENTENCING
6 HEARING WITHIN ONE HUNDRED EIGHTY-TWO DAYS.

7 (c) THE DISTRICT ATTORNEY SHALL PROVIDE THE VICTIM WITH
8 NOTIFICATION OF THE MOTION AND HEARING.

9 (d) (I) AT THE HEARING, THE INMATE HAS THE BURDEN OF
10 PROVIDING BY A PREPONDERANCE OF THE EVIDENCE THAT THE PURPOSES
11 OF SENTENCING AS DESCRIBED IN SECTION 18-1-102.5 ARE BETTER SERVED
12 BY HAVING THE COURT IMPOSE A MODIFIED SENTENCE. THE INMATE HAS
13 THE RIGHT TO BE REPRESENTED BY COUNSEL AT THE HEARING. IF THE
14 INMATE IS FOUND TO BE INDIGENT PURSUANT TO SECTION 21-1-103 (3),
15 THE COURT SHALL APPOINT THE OFFICE OF THE STATE PUBLIC DEFENDER,
16 OR, IN THE CASE OF A CONFLICT, THE OFFICE OF ALTERNATE DEFENSE
17 COUNSEL FOR THE INMATE.

18 (II) THE INMATE MAY PRESENT EVIDENCE OF HIS OR HER BEHAVIOR
19 IN THE DEPARTMENT OF CORRECTIONS, INCLUDING EDUCATIONAL
20 ACHIEVEMENTS AND ANY OTHER RELEVANT EVIDENCE.

21 (III) THE DISTRICT ATTORNEY MAY PRESENT EVIDENCE OF THE
22 INMATE'S BEHAVIOR IN THE DEPARTMENT OF CORRECTIONS, INCLUDING
23 ANY CODE OF PENAL DISCIPLINE VIOLATIONS, EVIDENCE RELATED TO THE
24 ORIGINAL CRIME, AND ANY OTHER RELEVANT EVIDENCE.

25 (IV) A VICTIM MAY PROVIDE THE COURT WITH A NEW VICTIM
26 IMPACT STATEMENT AND MAY PROVIDE TESTIMONY AT THE HEARING.

27 (V) THE COURT SHALL CONSIDER THE EVIDENCE OF THE INMATE'S

1 BEHAVIOR WHILE INCARCERATED WHEN DETERMINING WHETHER TO
2 GRANT RESENTENCING.

3 (e) (I) IF THE COURT FINDS BY A PREPONDERANCE OF THE
4 EVIDENCE THAT THE PURPOSES OF SENTENCING WOULD BE BETTER SERVED
5 BY IMPOSING A NEW SENTENCE ON THE INMATE, THE COURT SHALL IMPOSE
6 A NEW SENTENCE ON THE INMATE THAT IS NOT GREATER THAN THE
7 ORIGINAL SENTENCE. THE COURT MAY IMPOSE A NEW SENTENCE TO
8 INCARCERATION IN THE DEPARTMENT OF CORRECTIONS, A DIRECT
9 SENTENCE TO COMMUNITY CORRECTIONS PURSUANT TO SECTION
10 18-1.3-301, OR A SENTENCE TO PROBATION PURSUANT TO SECTION
11 18-1.3-202.

12 (II) (A) IF THE COURT IMPOSES A NEW SENTENCE TO
13 INCARCERATION IN THE DEPARTMENT OF CORRECTIONS, THE COURT SHALL
14 IMPOSE THE SENTENCE WITHIN THE PRESUMPTIVE RANGE THAT IS IN
15 EFFECT AT THE TIME OF RESENTENCING. THE SENTENCING PROVISIONS OF
16 SECTIONS 18-1.3-401 (6), 18-1.3-401 (8), AND 18-1.3-401 (10) APPLY, BUT
17 THE PROVISIONS OF SECTIONS 18-1.3-201 AND 18-1.3-801 DO NOT APPLY.

18 (B) WHEN THE INMATE RECEIVES A NEW SENTENCE OF
19 INCARCERATION TO THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT
20 OF CORRECTIONS SHALL CREDIT THE NEW SENTENCE WITH THE TIME
21 ALREADY SERVED BY THE INMATE AND RECALCULATE THE INMATE'S
22 PAROLE ELIGIBILITY DATE AND MANDATORY RELEASE DATE.

23 (III) IF THE COURT DENIES THE INMATE'S MOTION FOR
24 RESENTENCING, THE INMATE MAY NOT FILE A MOTION FOR FIVE YEARS
25 FROM THE DATE OF THE COURT'S DENIAL. THE COURT SHALL SPECIFY THE
26 DATE WHEN THE INMATE MAY FILE A MOTION WITH THE COURT FOR
27 RESENTENCING IN THE DENIAL ORDER.

1 **SECTION 2.** In Colorado Revised Statutes, 24-4.1-302, **amend**
2 (2)(t); and **add** (2)(v) as follows:

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

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

7 (t) A hearing held pursuant to section 18-1-414 (2)(b); ~~C.R.S.~~; and

8 (v) A MOTION FILED PURSUANT TO SECTION 18-1.3-410 AND ITS
9 ASSOCIATED HEARING.

10 **SECTION 3. Applicability.** This act applies to any inmate who
11 meets the eligibility criteria in section 18-1.3-410 (1), Colorado Revised
12 Statutes, on or after the effective date of this act.

13 **SECTION 4. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.