

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0304.01 Jerry Barry x4341

SENATE BILL 18-037

SENATE SPONSORSHIP

Kagan,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING CLARIFICATION OF SENTENCES FOR HABITUAL
102 CRIMINALS.

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 repeals the provision that requires a court to sentence a person who has been convicted of 2 prior felonies within 10 years of the commission of another felony to the department of corrections for a term of 3 times the maximum of the presumptive range for the level of felony last committed.

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

Under current law, a court must sentence a person convicted of a felony who has been convicted of 3 prior felonies to 4 times the maximum of the presumptive range of the last felony. The bill changes the provision so that it applies only to a person convicted of one of the specified felonies who has 3 prior convictions relating to the specified felonies. It requires the court to sentence the person to between 2 and 3 times the maximum of the presumptive range for the felony for which he or she is being sentenced, unless the court finds the case to be exceptional and involves extenuating circumstances. If the court finds extenuating circumstances, it may sentence the person to a lesser term, to community corrections, or to probation, but the court must notify the state court administrator of the extenuating circumstances justifying such a sentence. A person sentenced as an habitual offender is eligible for parole after he or she has served 75% of the sentence imposed less any earned time granted.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-801, **amend**
3 (1)(f), (4), and (5); **repeal** (1.5); and **repeal and reenact, with**
4 **amendments**, (2) as follows:

5 **18-1.3-801. Punishment for habitual criminals.** (1) (f) This
6 subsection (1) ~~shall~~ DOES not apply to a person convicted of first or
7 second degree burglary, which person ~~shall be~~ IS subject to subsections
8 ~~(1.5)~~ SUBSECTIONS (2) and (2.5) of this section and section 18-1.3-804.

9 ~~(1.5) Except as otherwise provided in subsection (5) of this~~
10 ~~section, every person convicted in this state of any class 1, 2, 3, 4, or 5~~
11 ~~felony or level 1, 2, or 3 drug felony who, within ten years of the date of~~
12 ~~the commission of the said offense, has been twice previously convicted~~
13 ~~upon charges separately brought and tried, and arising out of separate and~~
14 ~~distinct criminal episodes, either in this state or elsewhere, of a felony or,~~
15 ~~under the laws of any other state, the United States, or any territory~~
16 ~~subject to the jurisdiction of the United States, of a crime which, if~~
17 ~~committed within this state, would be a felony shall be adjudged an~~

1 ~~habitual criminal and shall be punished:~~

2 ~~(a) For the felony offense of which such person is convicted by~~
3 ~~imprisonment in the department of corrections for a term of three times~~
4 ~~the maximum of the presumptive range pursuant to section 18-1.3-401 for~~
5 ~~the class or level of felony of which such person is convicted; or~~

6 ~~(b) For the level 1 drug felony offense of which such person is~~
7 ~~convicted by imprisonment in the department of corrections for a term of~~
8 ~~forty-eight years.~~

9 (2) (a) A PERSON IS ADJUDGED AN HABITUAL CRIMINAL IF HE OR
10 SHE IS CONVICTED OF ONE OF THE FOLLOWING CRIMES AND HAS BEEN
11 THREE TIMES PREVIOUSLY CONVICTED, ON CHARGES SEPARATELY
12 BROUGHT AND TRIED AND ARISING OUT OF SEPARATE AND DISTINCT
13 CRIMINAL EPISODES, EITHER IN THIS STATE OR ELSEWHERE, OF ANY OF THE
14 FOLLOWING CRIMES OR CONVICTED OF A CRIME UNDER THE LAWS OF ANY
15 OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE
16 JURISDICTION OF THE UNITED STATES THAT WOULD BE ONE OF THE
17 FOLLOWING CRIMES IF COMMITTED IN THIS STATE AND HAD BEEN
18 SENTENCED TO A PERIOD OF IMPRISONMENT OF AT LEAST ONE YEAR:

19 (I) ANY FELONY CRIME AGAINST A PERSON, AS DESCRIBED IN
20 ARTICLE 3 OF THIS TITLE 18;

21 (II) ANY FELONY CRIME AGAINST PREGNANT WOMEN, AS
22 DESCRIBED IN ARTICLE 3.5 OF THIS TITLE 18;

23 (III) FIRST DEGREE ARSON, AS DESCRIBED IN SECTION 18-4-102;

24 (IV) FIRST DEGREE BURGLARY, AS DESCRIBED IN SECTION
25 18-4-202;

26 (V) SECOND DEGREE BURGLARY, AS DESCRIBED IN SECTION
27 18-4-203, IF IT IS A BURGLARY OF A DWELLING;

- 1 (VI) AGGRAVATED ROBBERY, AS DESCRIBED IN SECTION 18-4-302,
2 OR AGGRAVATED ROBBERY OF A CONTROLLED SUBSTANCE, AS DESCRIBED
3 IN SECTION 18-4-303;
- 4 (VII) INCEST, AS DESCRIBED IN SECTION 18-6-301;
- 5 (VIII) AGGRAVATED INCEST, AS DESCRIBED IN SECTION 18-6-302;
- 6 (IX) CHILD ABUSE, AS DESCRIBED IN SECTION 18-6-401;
- 7 (X) SEXUAL EXPLOITATION OF A CHILD, AS DESCRIBED IN SECTION
8 18-6-403;
- 9 (XI) PROCUREMENT OF A CHILD FOR SEXUAL EXPLOITATION, AS
10 DESCRIBED IN SECTION 18-6-404;
- 11 (XII) PIMPING, AS DESCRIBED IN SECTION 18-7-206;
- 12 (XIII) A CRIME INVOLVING CHILD PROSTITUTION, AS DESCRIBED IN
13 PART 4 OF ARTICLE 7 OF THIS TITLE 18;
- 14 (XIV) DISARMING A PEACE OFFICER, AS DESCRIBED IN SECTION
15 18-8-116;
- 16 (XV) ANY FELONY CRIME OF AIDING ESCAPE, AS DESCRIBED IN
17 SECTION 18-8-201;
- 18 (XVI) AIDING ESCAPE FROM AN INSTITUTION FOR THE CARE AND
19 TREATMENT OF PERSONS WITH BEHAVIORAL OR MENTAL HEALTH
20 DISORDERS, AS DESCRIBED IN SECTION 18-8-201.1;
- 21 (XVII) INTRODUCING CONTRABAND IN THE FIRST DEGREE, AS
22 DESCRIBED IN SECTION 18-8-203;
- 23 (XVIII) ASSAULT DURING ESCAPE, AS DESCRIBED IN SECTION
24 18-8-206;
- 25 (XIX) HOLDING HOSTAGES, AS DESCRIBED IN SECTION 18-8-207;
- 26 (XX) ESCAPE, WHILE BEING HELD IN CUSTODY OR CONFINEMENT,
27 AS DESCRIBED IN SECTION 18-8-208 (1) TO (3), EXCEPT THAT THIS

1 SUBSECTION (2)(a)(XX) DOES NOT APPLY IF THE PERSON IS IN A
2 COMMUNITY CORRECTIONS FACILITY, AS DEFINED IN SECTION 17-27-102
3 (2.5), OR A HALFWAY HOUSE, AS DEFINED IN SECTION 19-1-103 (62);

4 (XXI) INTIMIDATING A JUROR, AS DESCRIBED IN SECTION
5 18-8-608;

6 (XXII) JURY-TAMPERING, AS DESCRIBED IN SECTION 18-8-609;

7 (XXIII) RETALIATION AGAINST A JUDGE, AS DESCRIBED IN SECTION
8 18-8-615, OR RETALIATION AGAINST A PROSECUTOR, AS DESCRIBED IN
9 SECTION 18-8-616;

10 (XXIV) BRIBING A WITNESS OR VICTIM, AS DESCRIBED IN SECTION
11 18-8-703;

12 (XXV) INTIMIDATING A WITNESS OR VICTIM, AS DESCRIBED IN
13 SECTION 18-8-704;

14 (XXVI) AGGRAVATED INTIMIDATION OF A WITNESS OR VICTIM, AS
15 DESCRIBED IN SECTION 18-8-705;

16 (XXVII) RETALIATION AGAINST A WITNESS OR VICTIM, AS
17 DESCRIBED IN SECTION 18-8-706;

18 (XXVIII) RETALIATION AGAINST A JUROR, AS DESCRIBED IN
19 SECTION 18-8-706.5;

20 (XXIX) TAMPERING WITH A WITNESS OR VICTIM, AS DESCRIBED IN
21 SECTION 18-8-707;

22 (XXX) THE CLASS 5 FELONY OF INCITING A RIOT, AS DESCRIBED IN
23 SECTION 18-9-102;

24 (XXXI) THE CLASS 4 FELONY OF ENGAGING IN A RIOT, AS
25 DESCRIBED IN SECTION 18-9-104;

26 (XXXII) THE CLASS 3 OR CLASS 4 FELONY OF VEHICULAR
27 ELUDING, AS DESCRIBED IN SECTION 18-9-116.5;

1 (XXXIII) POSSESSING FIREARMS, EXPLOSIVES, OR INCENDIARY
2 DEVICES IN FACILITIES OF PUBLIC TRANSPORTATION, AS DESCRIBED IN
3 SECTION 18-9-118;

4 (XXXIV) TERRORIST TRAINING ACTIVITIES, AS DESCRIBED IN
5 SECTION 18-9-120;

6 (XXXV) TREASON, AS DESCRIBED IN SECTION 18-11-101;

7 (XXXVI) INSURRECTION, AS DESCRIBED IN SECTION 18-11-102;

8 (XXXVII) INTENTIONALLY SETTING A WILDFIRE, AS DESCRIBED IN
9 SECTION 18-13-109.5; OR

10 (XXXVIII) SMUGGLING OF HUMANS, AS DESCRIBED IN SECTION
11 18-13-128;

12 (b) A PERSON ADJUDGED AN HABITUAL CRIMINAL PURSUANT TO
13 THIS SUBSECTION (2) SHALL BE PUNISHED FOR THE FELONY OFFENSE OF
14 WHICH THE PERSON IS CONVICTED BY IMPRISONMENT IN THE DEPARTMENT
15 OF CORRECTIONS FOR A TERM OF BETWEEN TWO AND THREE TIMES THE
16 MAXIMUM OF THE PRESUMPTIVE RANGE PURSUANT TO SECTION 18-1.3-401
17 FOR THE CLASS OR LEVEL OF FELONY OF WHICH THE PERSON IS BEING
18 SENTENCED.

19 (c) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2)(b) OF
20 THIS SECTION, AFTER RECEIPT OF A PRESENTENCE INVESTIGATION REPORT,
21 DESCRIBED IN SECTION 16-11-102, ON THE EVALUATION AND DIAGNOSIS
22 OF A PERSON ADJUDGED AN HABITUAL OFFENDER PURSUANT TO THIS
23 SUBSECTION (2), IF THE COURT FINDS THAT THE CASE IS EXCEPTIONAL AND
24 INVOLVES EXTENUATING CIRCUMSTANCES, A COURT NEED NOT SENTENCE
25 THE PERSON TO BETWEEN TWO AND THREE TIMES THE MAXIMUM OF THE
26 PRESUMPTIVE RANGE BUT MAY SENTENCE THE PERSON TO A LESSER TERM,
27 TO COMMUNITY CORRECTIONS, OR TO PROBATION. IF THE JUDGE

1 SENTENCES A PERSON TO LESS THAN BETWEEN TWO AND THREE TIMES THE
2 MAXIMUM OF THE PRESUMPTIVE RANGE PURSUANT TO THIS SUBSECTION
3 (2)(c), THE JUDGE SHALL NOTIFY THE STATE COURT ADMINISTRATOR OF
4 HIS OR HER DECISION AND ADVISE THE ADMINISTRATOR OF THE
5 EXTENUATING CIRCUMSTANCES THAT JUSTIFIED THE LESSER SENTENCE.
6 THE STATE COURT ADMINISTRATOR SHALL MAINTAIN A RECORD, WHICH IS
7 OPEN TO THE PUBLIC, SUMMARIZING ALL MODIFICATIONS OF SENTENCES
8 AND THE GROUNDS THEREFOR FOR EACH JUDGE OF EACH DISTRICT COURT
9 IN THE STATE.

10 (4) A person who meets the criteria set forth in subsection (1) of
11 this section shall be adjudged an habitual criminal and sentenced only in
12 accordance with that subsection and not pursuant to ~~subsections (1.5)~~
13 SUBSECTIONS (2) and (2.5) of this section.

14 (5) A current or prior conviction for escape, as described in
15 section 18-8-208 (1), (2), or (3), or attempt to escape, as described in
16 section 18-8-208.1 (1), (1.5), or (2), may not be used for the purpose of
17 adjudicating a person an habitual criminal as described in ~~subsection (1.5)~~
18 ~~or~~ subsection (2) of this section unless the conviction is based on the
19 offender's escape or attempt to escape from a correctional facility, as
20 defined in section 17-1-102, or from physical custody within a county jail;
21 except that, for the purposes of this section, "correctional facility" does
22 not include a community corrections facility, as defined in section
23 17-27-102 (2.5), or a halfway house, as defined in section 19-1-103 (62).

24 **SECTION 2.** In Colorado Revised Statutes, 17-2-201, **amend**
25 (5)(a.3)(I) as follows:

26 **17-2-201. State board of parole - duties - definitions.**
27 (5) (a.3) (I) Any person sentenced as a AN habitual criminal pursuant to

1 ~~section 18-1.3-801 (1.5) or (2), C.R.S.~~ SECTION 18-1.3-801 (2), for an
2 offense committed on or after July 1, 2003, ~~shall be~~ IS subject to the
3 mandatory parole set forth in section 18-1.3-401 (1)(a)(V)(A) or
4 18-1.3-401.5 ~~C.R.S.~~, for the class or level of felony of which the person
5 is convicted.

6 **SECTION 3.** In Colorado Revised Statutes, 17-22.5-403, **amend**
7 (2)(a) as follows:

8 **17-22.5-403. Parole eligibility.** (2) (a) (I) Notwithstanding
9 subsection (1) of this section, any person convicted and sentenced for
10 second degree murder, first degree assault, first degree kidnapping unless
11 the first degree kidnapping is a class 1 felony, first or second degree
12 sexual assault, first degree arson, first degree burglary, or aggravated
13 robbery, committed on or after June 7, 1990, and before July 1, 2004,
14 which person has previously been convicted of a crime which would have
15 been a crime of violence as defined in section 18-1.3-406, ~~C.R.S.~~, shall
16 be eligible for parole after such person has served seventy-five percent of
17 the sentence imposed upon such person, less any time authorized for
18 earned time granted pursuant to section 17-22.5-405.

19 (II) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, ANY
20 PERSON CONVICTED AND SENTENCED AS AN HABITUAL OFFENDER
21 PURSUANT TO THE PROVISIONS OF SECTION 18-1.3-801 (2) SHALL BE
22 ELIGIBLE FOR PAROLE AFTER SUCH PERSON HAS SERVED SEVENTY-FIVE
23 PERCENT OF THE SENTENCE IMPOSED UPON SUCH PERSON, LESS ANY TIME
24 AUTHORIZED FOR EARNED TIME GRANTED PURSUANT TO SECTION
25 17-22.5-405.

26 **SECTION 4. Effective date - applicability.** This act takes effect
27 July 1, 2018, and applies to offenses committed on or after said date.

1 **SECTION 5. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.