

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-1011.01 Michael Dohr x4347

HOUSE BILL 23-1292

HOUSE SPONSORSHIP

Weissman and Soper,

SENATE SPONSORSHIP

Gonzales and Gardner,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ADOPTION OF THE 2023 RECOMMENDATIONS OF THE**
102 **COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE**
103 **REGARDING ENHANCED SENTENCING.**

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>.)

Current law requires the court to sentence a person convicted of 2 or more separate crimes of violence arising out of the same incident so that the person's sentences are served consecutively rather than concurrently. The bill allows a person to petition the court for a modification of the consecutive sentences imposed after at least 2

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

HOUSE
Amended 2nd Reading
April 21, 2023

calendar years but no more than 5 calendar years after the final judgment of conviction or sentence is entered. The court may modify the terms of the sentence if the court finds substantial mitigating factors surrounding the case and if the person has demonstrated substantial actions toward rehabilitation as evidenced by engagement in positive programming; assigned work; treatment, when available; and behavior that is compliant with the rules of the facility or facilities where the person is or was placed.

The bill allows the court to sentence the defendant to concurrent sentences for 2 or more crimes of violence arising from the same incident when:

- The parties agreed to waive ineligibility for concurrent sentences; or
- The following factors are proven by a preponderance of the evidence by the defendant or stipulated by the parties at the sentencing hearing:
 - The defendant has no prior felony convictions for a victim rights offense; and
 - The defendant did not use or possess a firearm or explosive in the commission of the offense or threaten the use of a firearm or explosive during the commission of the offense; and
 - The defendant's action did not result in serious bodily injury or death.

A defendant convicted and sentenced as an habitual offender who has been sentenced to 24 years or more and has served at least 10 calendar years of the sentence is allowed to petition the court for a modification of that sentence and any other habitual sentence. The defendant has the burden of demonstrating, by a preponderance of the evidence, that there are substantial mitigating factors regarding the circumstances of the offense or offenses or mitigating factors regarding the circumstances of the defendant at the time of conviction; that the defendant has demonstrated positive, engaged, and productive behavior in the department of corrections; and that the defendant does not currently present a risk to the community at large. If the court determines that a modification of sentence is justified, the court may resentence the defendant to a term of at least the midpoint in the aggravated range for the class of felony for which the defendant was convicted, up to a term less than the current sentence.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-406, **amend**

1 (1) as follows:

2 **18-1.3-406. Mandatory sentences for violent crimes -**
3 **definitions.** (1) (a) Any person convicted of a crime of violence shall be
4 sentenced pursuant to ~~the provisions of~~ section 18-1.3-401 (8) to the
5 department of corrections for a term of incarceration of at least the
6 midpoint in, but not more than twice the maximum of, the presumptive
7 range provided for such offense in section 18-1.3-401 (1)(a), as modified
8 for an extraordinary risk crime pursuant to section 18-1.3-401 (10),
9 without suspension; except that, within ninety-one days after ~~he or she~~
10 THE PERSON has been placed in the custody of the department of
11 corrections, UPON THE REQUEST OF THE DEFENDANT, PROSECUTION, OR
12 THE COURT, the department shall transmit to the sentencing court a report
13 on the evaluation and diagnosis of the violent offender, and the court, in
14 a case ~~which~~ THAT it considers to be exceptional and to involve unusual
15 and extenuating circumstances, may thereupon modify the sentence,
16 effective not earlier than one hundred nineteen days after ~~his or her~~ THE
17 PERSON'S placement in the custody of the department. Such modification
18 may include probation if the person is otherwise eligible therefor.
19 Whenever a court finds that modification of a sentence is justified, the
20 judge shall notify the state court administrator of ~~his or her~~ THE JUDGE'S
21 decision and shall advise ~~said~~ THE administrator of the unusual and
22 extenuating circumstances that justified ~~such~~ THE modification. The state
23 court administrator shall maintain a record, which ~~shall be~~ IS open to the
24 public, summarizing all modifications of sentences and the grounds
25 therefor for each judge of each district court in the state. ~~Except as~~
26 ~~described in paragraph (c) of this subsection (1), a court shall sentence a~~
27 ~~person convicted of two or more separate crimes of violence arising out~~

1 ~~of the same incident so that his or her sentences are served consecutively~~
2 ~~rather than concurrently.~~

3 (b) EXCEPT AS DESCRIBED IN SUBSECTION (1)(e) OF THIS SECTION,
4 A COURT SHALL SENTENCE A PERSON CONVICTED OF TWO OR MORE
5 SEPARATE CRIMES OF VIOLENCE ARISING OUT OF THE SAME INCIDENT SO
6 THAT THE PERSON'S SENTENCES ARE SERVED CONSECUTIVELY RATHER
7 THAN CONCURRENTLY; EXCEPT THAT IF THE PERSON HAS NOT PREVIOUSLY
8 REQUESTED A REVIEW OF THE TERM OF YEARS OF THE MANDATORY
9 SENTENCES PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE
10 PERSON MAY PETITION THE COURT FOR A MODIFICATION OF THE
11 SENTENCES IMPOSED IF AFTER AT LEAST TWO CALENDAR YEARS BUT NO
12 MORE THAN FIVE CALENDAR YEARS AFTER THE ENTRY OF FINAL JUDGMENT
13 OF CONVICTION OR SENTENCE HAS PASSED. THE PERSON IS ENTITLED TO AN
14 EVIDENTIARY HEARING ON THE PETITION FOR MODIFICATION OF SENTENCE,
15 AND THE COURT SHALL APPOINT COUNSEL FOR THE DEFENDANT FOR THE
16 HEARING. THE COURT SHALL SERVE AN ORDER OF APPOINTMENT ON THE
17 OFFICE OF STATE PUBLIC DEFENDER, WHICH SHALL REPRESENT THE
18 DEFENDANT OR NOTIFY THE COURT OF A CONFLICT. THE COURT SHALL
19 ALLOW COUNSEL TO SUPPLEMENT THE PETITION.

20 (c) FOLLOWING THE EVIDENTIARY HEARING AUTHORIZED IN
21 SUBSECTION (1)(b) OF THIS SECTION, THE COURT MAY MODIFY THE TERMS
22 OF THE SENTENCE IF THE COURT FINDS SUBSTANTIAL MITIGATING FACTORS
23 SURROUNDING THE CASE AND IF THE PERSON HAS DEMONSTRATED
24 SUBSTANTIAL ACTIONS TOWARD REHABILITATION AS EVIDENCED BY
25 ENGAGEMENT IN POSITIVE PROGRAMMING; ASSIGNED WORK; TREATMENT,
26 WHEN AVAILABLE; AND BEHAVIOR THAT IS COMPLIANT WITH THE RULES
27 OF THE FACILITY OR FACILITIES WHERE THE PERSON IS OR WAS PLACED. A

1 MODIFICATION ORDERED BY THE COURT MAY INCLUDE THE IMPOSITION OF
2 CONCURRENT SENTENCES OR MODIFICATION OF THE LENGTH OF THE
3 SENTENCES TO INCARCERATION.

4 ~~(b)~~ (d) Notwithstanding the provisions of subsection (1)(a) of this
5 section, any person convicted of a sex offense, as defined in section
6 18-1.3-1003 (5), committed on or after November 1, 1998, that
7 constitutes a crime of violence shall be sentenced to the department of
8 corrections for an indeterminate term of incarceration of at least the
9 midpoint in the presumptive range specified in section 18-1.3-401
10 (1)(a)(V)(A) or ~~18-1.3-401~~ (1)(a)(V)(A.1) up to a maximum of the
11 person's natural life, as provided in section 18-1.3-1004 (1).

12 ~~(c)~~ (e) The court may require a defendant to serve ~~his or her~~ THE
13 DEFENDANT'S sentences concurrently rather than consecutively if the
14 defendant is convicted of two or more separate crimes of violence arising
15 out of the same incident and:

16 (I) One of ~~such~~ THE crimes is:

17 ~~(H)~~ (A) Aggravated robbery, as described in section 18-4-302;

18 ~~(H)~~ (B) Assault in the second degree, as described in section
19 18-3-203; or

20 ~~(H)~~ (C) Escape, as described in section 18-8-208; OR

21 (II) THE PARTIES AGREED TO WAIVE INELIGIBILITY FOR
22 CONCURRENT SENTENCES; OR

23 (III) THE FOLLOWING FACTORS ARE PROVEN BY A PREPONDERANCE
24 OF THE EVIDENCE BY THE DEFENDANT OR STIPULATED BY THE PARTIES AT
25 THE SENTENCING HEARING:

26 (A) THE DEFENDANT HAS NO PRIOR FELONY CONVICTIONS FOR A
27 VICTIM RIGHTS OFFENSE PURSUANT TO SECTION 24-4.1-302; AND

1 (B) THE DEFENDANT DID NOT USE OR POSSESS A FIREARM OR
2 EXPLOSIVE IN THE COMMISSION OF THE OFFENSE OR THREATEN THE USE OF
3 A FIREARM OR EXPLOSIVE DURING THE COMMISSION OF THE OFFENSE; AND

4 (C) THE DEFENDANT'S ACTION DID NOT RESULT IN SERIOUS BODILY
5 INJURY OR DEATH.

6 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-801, **add** (6)
7 as follows:

8 **18-1.3-801. Punishment for habitual criminals.** (6) (a) A
9 DEFENDANT CONVICTED AND SENTENCED AS AN HABITUAL OFFENDER
10 PURSUANT TO THIS SECTION WHO HAS BEEN SENTENCED TO TWENTY-FOUR
11 YEARS OR MORE IN THE DEPARTMENT OF CORRECTIONS AND HAS SERVED
12 AT LEAST TEN CALENDAR YEARS OF A SENTENCE FOR A FELONY OFFENSE
13 FOR WHICH THE PERSON WAS SENTENCED AS AN HABITUAL CRIMINAL MAY
14 PETITION THE COURT FOR A MODIFICATION OF THAT SENTENCE OR FOR
15 COUNSEL TO ASSIST IN FILING THE PETITION AND ANY OTHER HABITUAL
16 SENTENCE FOR WHICH THE DEFENDANT IS IMPRISONED IN THE
17 DEPARTMENT OF CORRECTIONS. THE COURT SHALL APPOINT COUNSEL FOR
18 THE DEFENDANT FROM THE OFFICE OF STATE PUBLIC DEFENDER AND SHALL
19 SERVE AN ORDER OF APPOINTMENT ON THE OFFICE, WHICH SHALL
20 REPRESENT THE DEFENDANT OR NOTIFY THE COURT OF A CONFLICT. THE
21 COURT SHALL ALLOW COUNSEL TO SUPPLEMENT THE PETITION.

22 (b) THE COURT SHALL SET THE MATTER FOR EVIDENTIARY
23 HEARING. AT THE HEARING, THE DEFENDANT HAS THE BURDEN OF
24 DEMONSTRATING, BY A PREPONDERANCE OF THE EVIDENCE, THAT:

25 (I) THE STATUTORY ELIGIBILITY CRITERIA ARE MET;

26 (II) THERE ARE MITIGATING FACTORS REGARDING THE
27 DEFENDANT'S CIRCUMSTANCES AT THE TIME OF CONVICTION OR

1 SUBSTANTIAL MITIGATING FACTORS REGARDING THE CIRCUMSTANCES OF
2 THE OFFENSE OR OFFENSES;

3 (III) THE DEFENDANT HAS DEMONSTRATED POSITIVE, ENGAGED,
4 AND PRODUCTIVE BEHAVIOR IN THE DEPARTMENT OF CORRECTIONS; AND

5 (IV) THE DEFENDANT DOES NOT CURRENTLY PRESENT A RISK TO
6 THE COMMUNITY AT LARGE.

7 (c) IF THE DEFENDANT SATISFIES THE BURDEN DESCRIBED IN
8 SUBSECTION (6)(b) OF THIS SECTION AND THE COURT DETERMINES, BASED
9 ON THE TOTALITY OF THE CIRCUMSTANCES, THAT A MODIFICATION OF
10 SENTENCE IS JUSTIFIED, THE COURT MAY RESENTENCE THE DEFENDANT TO
11 A TERM OF AT LEAST THE MIDPOINT IN THE AGGRAVATED RANGE FOR THE
12 CLASS OF FELONY FOR WHICH THE DEFENDANT WAS CONVICTED, UP TO A
13 TERM LESS THAN THE CURRENT SENTENCE.

14 **SECTION 3.** In Colorado Revised Statutes, 24-4.1-302, **add**
15 (2)(x) and (2)(y) as follows:

16 **24-4.1-302. Definitions.** As used in this part 3, and for no other
17 purpose, including the expansion of the rights of any defendant:

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

20 (x) A PETITION FOR MODIFICATION OF SENTENCE FILED PURSUANT
21 TO SECTION 18-1.3-406 (1)(b) AND ANY ASSOCIATED HEARING;

22 (y) A PETITION FOR MODIFICATION OF SENTENCE FILED PURSUANT
23 TO SECTION 18-1.3-801 (6) AND ANY ASSOCIATED HEARING.

24 **SECTION 4. Effective date - applicability.** This act takes effect
25 July 1, 2023, and applies to offenses committed on or after said date.

26 **SECTION 5. Safety clause.** The general assembly hereby finds,

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