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An Act

HOUSE BILL 23-1292

BY REPRESENTATIVE(S) Weissman and Soper, Story, Amabile;
also SENATOR(S) Gonzales and Gardner, Moreno, Priola.

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

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

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

18-1.3-406. Mandatory sentences for violent crimes - definitions.

(1) (a) Any person convicted of a crime of violence shall be sentenced pursuant to ~~the provisions of~~ section 18-1.3-401 (8) to the department of corrections for a term of incarceration of at least the midpoint in, but not more than twice the maximum of, the presumptive range provided for such offense in section 18-1.3-401 (1)(a), as modified for an extraordinary risk crime pursuant to section 18-1.3-401 (10), without suspension; except that, within ninety-one days after ~~he or she~~ **THE PERSON** has been placed in the custody of the department of corrections, **UPON THE REQUEST OF THE DEFENDANT, PROSECUTION, OR THE COURT,** the department shall transmit to

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case ~~which~~ THAT it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred nineteen days after ~~his or her~~ THE PERSON'S placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of ~~his or her~~ THE JUDGE'S decision and shall advise ~~said~~ THE administrator of the unusual and extenuating circumstances that justified ~~such~~ THE modification. The state court administrator shall maintain a record, which ~~shall be~~ IS open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state. ~~Except as described in paragraph (c) of this subsection (1), a court shall sentence a person convicted of two or more separate crimes of violence arising out of the same incident so that his or her sentences are served consecutively rather than concurrently.~~

(b) EXCEPT AS DESCRIBED IN SUBSECTION (1)(e) OF THIS SECTION, FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 2023, A COURT SHALL SENTENCE A PERSON CONVICTED OF TWO OR MORE SEPARATE CRIMES OF VIOLENCE ARISING OUT OF THE SAME INCIDENT SO THAT THE PERSON'S SENTENCES ARE SERVED CONSECUTIVELY RATHER THAN CONCURRENTLY; EXCEPT THAT IF THE PERSON HAS NOT PREVIOUSLY REQUESTED A REVIEW OF THE TERM OF YEARS OF THE MANDATORY SENTENCES PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE PERSON MAY PETITION THE COURT FOR A MODIFICATION OF THE SENTENCES IMPOSED IF AFTER AT LEAST TWO CALENDAR YEARS BUT NO MORE THAN FIVE CALENDAR YEARS AFTER THE ENTRY OF FINAL JUDGMENT OF CONVICTION OR SENTENCE HAS PASSED. THE PERSON IS ENTITLED TO AN EVIDENTIARY HEARING ON THE PETITION FOR MODIFICATION OF SENTENCE, AND THE COURT SHALL APPOINT COUNSEL FOR THE DEFENDANT FOR THE HEARING. THE COURT SHALL SERVE AN ORDER OF APPOINTMENT ON THE OFFICE OF STATE PUBLIC DEFENDER, WHICH SHALL REPRESENT THE DEFENDANT OR NOTIFY THE COURT OF A CONFLICT. THE COURT SHALL ALLOW COUNSEL TO SUPPLEMENT THE PETITION.

(c) FOLLOWING THE EVIDENTIARY HEARING AUTHORIZED IN SUBSECTION (1)(b) OF THIS SECTION, 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. A MODIFICATION ORDERED BY THE COURT MAY INCLUDE THE IMPOSITION OF CONCURRENT SENTENCES OR MODIFICATION OF THE LENGTH OF THE SENTENCES TO INCARCERATION.

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

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

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

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

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

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

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

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

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

(B) 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

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

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

18-1.3-801. Punishment for habitual criminals. (6) (a) FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 2023, A DEFENDANT CONVICTED AND SENTENCED AS AN HABITUAL OFFENDER PURSUANT TO THIS SECTION WHO HAS BEEN SENTENCED TO TWENTY-FOUR YEARS OR MORE IN THE DEPARTMENT OF CORRECTIONS AND HAS SERVED AT LEAST TEN CALENDAR YEARS OF A SENTENCE FOR A FELONY OFFENSE FOR WHICH THE PERSON WAS SENTENCED AS AN HABITUAL CRIMINAL MAY PETITION THE COURT FOR A MODIFICATION OF THAT SENTENCE OR FOR COUNSEL TO ASSIST IN FILING THE PETITION AND ANY OTHER HABITUAL SENTENCE FOR WHICH THE DEFENDANT IS IMPRISONED IN THE DEPARTMENT OF CORRECTIONS. THE COURT SHALL APPOINT COUNSEL FOR THE DEFENDANT FROM THE OFFICE OF STATE PUBLIC DEFENDER AND SHALL SERVE AN ORDER OF APPOINTMENT ON THE OFFICE, WHICH SHALL REPRESENT THE DEFENDANT OR NOTIFY THE COURT OF A CONFLICT. THE COURT SHALL ALLOW COUNSEL TO SUPPLEMENT THE PETITION.

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

(I) THE STATUTORY ELIGIBILITY CRITERIA ARE MET;

(II) THERE ARE MITIGATING FACTORS REGARDING THE DEFENDANT'S CIRCUMSTANCES AT THE TIME OF CONVICTION OR SUBSTANTIAL MITIGATING FACTORS REGARDING THE CIRCUMSTANCES OF THE OFFENSE OR OFFENSES;

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

(IV) THE DEFENDANT DOES NOT CURRENTLY PRESENT A RISK TO THE

COMMUNITY AT LARGE.

(c) IF THE DEFENDANT SATISFIES THE BURDEN DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION AND THE COURT DETERMINES, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, 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.

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

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

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

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

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

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

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

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

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO