

## CHAPTER 261

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**CRIMINAL LAW AND PROCEDURE**

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## SENATE BILL 94-196

BY SENATORS Owens, Schaffer, Ament, Blickensderfer, Wells, Bishop, Norton, R. Powers, Schroeder, Tebedo, and Wattenberg; also REPRESENTATIVES Martin, Ratterree, Faatz, Adkins, Allen, Coffman, Dyer, Lawrence, Reeser, Acquafresca, Anderson, Armstrong, Berry, Chlouber, Epps, Fleming, Grampsas, Jerke, Kaufman, Kreutz, Moellenberg, Morrison, Nichol, Pankey, Pierson, Salaz, Schauer, Shoemaker, Snyder, and Taylor.

**AN ACT**

**CONCERNING THE IMPOSITION OF A LIFE SENTENCE WITHOUT PAROLE FOR PERSONS WHO ARE CONVICTED FOR COMMITTING A THIRD VIOLENT FELONY AFTER HAVING BEEN CONVICTED PREVIOUSLY OF TWO VIOLENT FELONIES.**

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

**SECTION 1.** 16-13-101 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 16-13-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**16-13-101. Punishment for habitual criminals.** (1) (a) ~~Every person convicted in this state of any class 1, 2, 3, 4, or 5 felony who, within ten years of the date of the commission of the said offense, has been twice previously convicted upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted by confinement in a correctional facility for a term of three times the maximum of the presumptive range pursuant to section 18-1-105, C.R.S., for the class of felony of which such person is convicted.~~ A PERSON SHALL BE ADJUDGED AN HABITUAL CRIMINAL AND SHALL BE PUNISHED BY A TERM OF LIFE IMPRISONMENT IF THE PERSON:

(I) IS CONVICTED OF:

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(A) ANY CLASS 1 OR 2 FELONY; OR

(B) ANY CLASS 3 FELONY THAT IS A CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309 (2); AND

(II) HAS BEEN TWICE CONVICTED PREVIOUSLY FOR ANY OF THE OFFENSES DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(b) A FELONY DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1) IS:

(I) ONE BASED UPON CHARGES SEPARATELY BROUGHT AND TRIED, AND ARISING OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES, IN THIS OR ANY OTHER STATE; OR

(II) A CRIME UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES, WHICH, IF COMMITTED WITHIN THIS STATE, WOULD BE SUCH A FELONY DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1).

(c) NO PERSON SENTENCED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ELIGIBLE FOR PAROLE UNTIL SUCH PERSON HAS SERVED AT LEAST FORTY CALENDAR YEARS.

(d) NOTHING IN THIS SUBSECTION (1) PROHIBITS THE GOVERNOR FROM ISSUING A PARDON OR A CLEMENCY ORDER ON A CASE-BY-CASE BASIS; HOWEVER, THE GOVERNOR SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY ON EACH SUCH PARDON OR CLEMENCY ORDER IN ACCORDANCE WITH SECTION 7 OF ARTICLE IV OF THE STATE CONSTITUTION.

(e) NOTHING IN THIS SUBSECTION (1) IS TO BE CONSTRUED TO PROHIBIT A PERSON CONVICTED OF A CLASS 1 FELONY FROM BEING SENTENCED PURSUANT TO SECTION 16-11-103.

(f) THIS SUBSECTION (1) SHALL NOT APPLY TO A PERSON CONVICTED OF FIRST OR SECOND DEGREE BURGLARY, WHICH PERSON SHALL BE SUBJECT TO SUBSECTIONS (1.5), (2), AND (2.5) OF THIS SECTION AND SECTION 18-4-202.1, C.R.S.

(1.5) EVERY PERSON CONVICTED IN THIS STATE OF ANY CLASS 1, 2, 3, 4, OR 5 FELONY WHO, WITHIN TEN YEARS OF THE DATE OF THE COMMISSION OF THE SAID OFFENSE, HAS BEEN TWICE PREVIOUSLY CONVICTED UPON CHARGES SEPARATELY BROUGHT AND TRIED, AND ARISING OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES, EITHER IN THIS STATE OR ELSEWHERE, OF A FELONY OR, UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES, OF A CRIME WHICH, IF COMMITTED WITHIN THIS STATE, WOULD BE A FELONY SHALL BE ADJUDGED AN HABITUAL CRIMINAL AND SHALL BE PUNISHED FOR THE FELONY OFFENSE OF WHICH SUCH PERSON IS CONVICTED BY CONFINEMENT IN A CORRECTIONAL FACILITY FOR A TERM OF THREE TIMES THE MAXIMUM OF THE PRESUMPTIVE RANGE PURSUANT TO SECTION 18-1-105, C.R.S., FOR THE CLASS OF FELONY OF WHICH SUCH PERSON IS CONVICTED.

(4) A PERSON WHO MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION SHALL BE ADJUDGED AN HABITUAL CRIMINAL AND SENTENCED ONLY IN ACCORDANCE WITH THAT SUBSECTION AND NOT PURSUANT TO SUBSECTIONS (1.5), (2), AND (2.5) OF THIS SECTION.

**SECTION 2.** 17-22.5-104 (2) (d) (III), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**17-22.5-104. Parole - regulations.** (2) (d) (III) No inmate imprisoned under a life sentence pursuant to section 16-13-101 (2.5), C.R.S., AND NO INMATE IMPRISONED UNDER A LIFE SENTENCE PURSUANT TO SECTION 16-13-101 (1), C.R.S., ON AND AFTER JULY 1, 1994, FOR A CRIME COMMITTED ON AND AFTER THAT DATE, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

**SECTION 3. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**SECTION 4. Effective date - applicability.** This act shall take effect upon passage, and section 16-13-101 (1) and (4), Colorado Revised Statutes, and section 2 of this act shall apply to any felony described in section 16-13-101 (1) (a) (I), Colorado Revised Statutes, which is committed on or after said date and which is committed subsequent to the two prior convictions required by section 16-13-101 (1) (a) (II), Colorado Revised Statutes, regardless of whether the two previous convictions were committed on or before such 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, and safety.

Approved: May 31, 1994