

CHAPTER 199

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 03-1236

BY REPRESENTATIVE(S) Hefley, Paccione, Romanoff, and Stengel;
also SENATOR(S) Dyer.

AN ACT

CONCERNING STRENGTHENING COLORADO'S SUBSTANTIVE CRIMINAL LAW.

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

SECTION 1. The introductory portion to 18-18-407 (1) and 18-18-407 (2) (a) and (5), Colorado Revised Statutes, are amended to read:

18-18-407. Special offender. (1) Upon a felony conviction under this part 4, the presence of any one or more of the following extraordinary aggravating circumstances designating the defendant a special offender shall require the court to sentence the defendant to THE DEPARTMENT OF CORRECTIONS FOR a term of at least the minimum term of years within the presumptive range for a class 2 felony but not more than twice the maximum term of years within the presumptive range for a class 2 felony:

(2) (a) A defendant shall be a special offender if the defendant is convicted of selling, distributing, possessing with intent to distribute, manufacturing, or attempting to manufacture any controlled substance in violation of section 18-18-405 either within or upon the grounds of any public or private elementary, middle, junior high, or high school, vocational school, or public housing development, or within one thousand feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway, sidewalk, public park, playground, or other area or premises that is accessible to the public, or within any private dwelling that is accessible to the public for the purpose of the sale, distribution, use, exchange, manufacture, or attempted manufacture of controlled substances in violation of this article, or in any school bus as defined in section 42-1-102 (88), C.R.S., while such school bus is engaged in the transportation of persons who are students at any public or private elementary, middle, junior high, or high school. The court is required in addition to imposing the sentence to imprisonment IN THE DEPARTMENT OF

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

CORRECTIONS required by subsection (1) of this section, to fine the defendant without suspension at least twice the minimum fine provided for in section 18-1.3-401 (1) (a) (III) if the defendant's offense is a felony or in section 18-1.3-501 (1) if the defendant's offense is a misdemeanor.

(5) ~~Nothing in this section shall preclude the court from imposing a greater sentence set forth in any other statute.~~ IF A DEFENDANT WHO IS SUBJECT TO THE PROVISIONS OF THIS SECTION IS SUBJECT TO A GREATER SENTENCE PURSUANT TO THE PROVISIONS OF ANOTHER STATUTE, THE COURT SHALL IMPOSE SENTENCE PURSUANT TO THAT STATUTE. THE PROSECUTION SHALL NOT BE FORCED TO ELECT UNDER WHICH STATUTE TO PROCEED.

SECTION 2. The introductory portion to 18-18-405 (3) (a), Colorado Revised Statutes, is amended to read:

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession. (3) (a) ~~Except as otherwise provided in section 18-18-407 relating to special offenders~~ UNLESS A GREATER SENTENCE IS REQUIRED PURSUANT TO THE PROVISIONS OF ANOTHER STATUTE, any person convicted pursuant to paragraph (a) of subsection (2) of this section for knowingly manufacturing, dispensing, selling, distributing, possessing, or possessing with intent to manufacture, dispense, sell, or distribute, or inducing, attempting to induce, or conspiring with one or more other persons, to manufacture, dispense, sell, distribute, possess, or possess with intent to manufacture, dispense, sell, or distribute an amount that is or has been represented to be:

SECTION 3. 18-1.3-406 (1) and (7) (a), Colorado Revised Statutes, are amended to read:

18-1.3-406. Mandatory sentences for violent crimes. (1) (a) Any person convicted of a crime of violence shall be sentenced pursuant to section 18-1.3-401 (8) to THE DEPARTMENT OF CORRECTIONS FOR a term of incarceration of at least the midpoint in the presumptive range, but not more than twice the maximum term, provided for such offense in section 18-1.3-401 (1) (a), without suspension; except that, within ninety days after he or she has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his or her 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 decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state. A person convicted of two or more separate crimes of violence arising out of the same incident shall be sentenced for such crimes so that sentences are served consecutively rather than concurrently.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), 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 up to a maximum of the person's natural life, as provided in section 18-1.3-1004 (1).

(7) (a) In any case in which the accused is charged with a crime of violence as defined in this section and the indictment or information specifies the use of a dangerous weapon as defined in sections 18-12-101 and 18-12-102, or the use of a semiautomatic assault weapon as defined in paragraph (b) of this subsection (7), upon conviction for said crime of violence, the judge shall impose an additional sentence TO THE DEPARTMENT OF CORRECTIONS of five years for the use of such weapon. The sentence of five years shall be in addition to the mandatory sentence imposed for the substantive offense and shall be served consecutively to any other sentence and shall not be subject to suspension or probation.

SECTION 4. 18-1.3-401 (1) (b) (IV), (4), (8) (d) (I), (8) (e.5), and (8) (g), Colorado Revised Statutes, are amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (1) (b) (IV) If a person is convicted of assault in the first degree pursuant to section 18-3-202 or assault in the second degree pursuant to section 18-3-203 and the victim is a peace officer or firefighter engaged in the performance of his or her duties, as defined in section 18-1.3-501 (1.5) (b), notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (1) and subparagraph (II) of this paragraph (b), the court shall sentence the person to ~~a term of imprisonment~~ THE DEPARTMENT OF CORRECTIONS. In addition to such A term of imprisonment, the court may impose a fine on such person pursuant to subparagraph (III) of paragraph (a) of this subsection (1).

(4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment IN THE DEPARTMENT OF CORRECTIONS unless a proceeding held to determine sentence according to the procedure set forth in section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, results in a verdict that requires imposition of the death penalty, in which event such person shall be sentenced to death. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, and before July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole.

(8) (d) (I) If the defendant is convicted of the class 2 or the class 3 felony of child abuse under section 18-6-401 (7) (a) (I) or (7) (a) (III), the court shall be required to sentence the defendant to THE DEPARTMENT OF CORRECTIONS FOR a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of that class felony.

(e.5) If the defendant is convicted of the class 2 felony of sexual assault under section 18-3-402 (5) or the class 2 felony of sexual assault in the first degree under section 18-3-402 (3) as it existed prior to July 1, 2000, commission of which offense

occurs on or after November 1, 1998, the court shall be required to sentence the defendant to THE DEPARTMENT OF CORRECTIONS FOR an indeterminate sentence of at least the midpoint in the presumptive range for the punishment of that class of felony up to the defendant's natural life.

(g) If the defendant is convicted of class 4 or class 3 felony vehicular homicide under section 18-3-106 (1) (a) or (1) (b), and while committing vehicular homicide the defendant was in immediate flight from the commission of another felony, the court shall be required to sentence the defendant to THE DEPARTMENT OF CORRECTIONS FOR a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of the class of felony vehicular homicide of which the defendant is convicted.

SECTION 5. The introductory portion to 18-1.3-801 (1) (a) and 18-1.3-801 (1.5), (2), and (2.5), Colorado Revised Statutes, are amended to read:

18-1.3-801. Punishment for habitual criminals. (1) (a) A person shall be adjudged an habitual criminal and shall be punished by a term IN THE DEPARTMENT OF CORRECTIONS of life imprisonment if the person:

(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~~ IMPRISONMENT in ~~a correctional facility~~ THE DEPARTMENT OF CORRECTIONS for a term of three times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class of felony of which such person is convicted.

(2) Every person convicted in this state of any felony, who has been three times 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 imprisonment in ~~a correctional facility~~ THE DEPARTMENT OF CORRECTIONS for a term of four times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class of felony of which such person is convicted. Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information. Nothing in this part 1 shall abrogate or affect the punishment by death in any and all crimes punishable by death on or after July 1, 1972.

(2.5) Any person who is convicted and sentenced pursuant to subsection (2) of this section, who is thereafter convicted of a felony which is a crime of violence pursuant to section 18-1.3-406, shall be adjudged an habitual criminal and shall be punished by a term IN THE DEPARTMENT OF CORRECTIONS of life imprisonment. No person

sentenced pursuant to this subsection (2.5) shall be eligible for parole until such person has served at least forty calendar years.

SECTION 6. 18-1.3-804 (1), Colorado Revised Statutes, is amended to read:

18-1.3-804. Habitual burglary offenders - punishment - legislative declaration. (1) Every person convicted in this state of first degree burglary, first degree burglary of controlled substances, or second degree burglary of a dwelling who, within ten years of the date of the commission of the said offense, has been previously convicted upon charges separately brought and tried, either in this state or elsewhere, of first degree burglary, first degree burglary of drugs or first degree burglary of controlled substances, or second degree burglary of a dwelling or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a felony which, if committed within this state, would be first degree burglary, first degree burglary of drugs or first degree burglary of controlled substances, or second degree burglary of a dwelling shall be adjudged a habitual burglary offender and shall be sentenced to THE DEPARTMENT OF CORRECTIONS FOR a term of incarceration greater than the maximum in the presumptive range, but not more than twice the maximum term, provided for such offense in section 18-1.3-401 (1) (a).

SECTION 7. 18-3-412 (2) and (4), Colorado Revised Statutes, are amended to read:

18-3-412. Habitual sex offenders against children - indictment or information - verdict of the jury. (2) Every person convicted in this state of an unlawful sexual offense who has been previously convicted upon charges prior to the commission of the present act, which were separately brought, either in this state or elsewhere, of an unlawful sexual offense or who has been previously convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act that, if committed within this state, would be an unlawful sexual offense shall be adjudged an habitual sex offender against children. If the second or subsequent unlawful sexual offense for which a defendant is convicted constitutes a felony, ~~the sentence imposed~~ COURT shall IMPOSE A SENTENCE TO THE DEPARTMENT OF CORRECTIONS OF not ~~be~~ less than three times the upper limit of the presumptive range for that class felony as set out in section 18-1.3-401. If the second or subsequent unlawful sexual offense for which a defendant is convicted constitutes a misdemeanor, ~~the sentence imposed~~ COURT shall IMPOSE A SENTENCE TO THE COUNTY JAIL OF not ~~be~~ less than three times the maximum sentence for that class misdemeanor as set out in section 18-1.3-501.

(4) Any person who is subject to the provisions of this section shall not be eligible for ~~probation~~ or suspension of sentence.

SECTION 8. 18-4-413 (2), Colorado Revised Statutes, is amended to read:

18-4-413. Mandatory sentencing for repeated felony theft from a store - store defined. (2) Any person convicted of felony theft, which felony theft was from a store, who within the immediately preceding four years was twice convicted of felony theft, which felony theft was each time from a store, shall be sentenced to at least the minimum term provided for such offense. A PERSON CONVICTED UNDER THIS

SECTION SHALL NOT BE ELIGIBLE FOR PROBATION OR SUSPENSION OF SENTENCE.

SECTION 9. 18-6-401.2 (2), Colorado Revised Statutes, is amended to read:

18-6-401.2. Habitual child abusers - indictment or information - verdict of the jury. (2) Every person convicted in this state of an act of child abuse who has been previously convicted upon charges prior to the commission of the present act, which were separately brought, either in this state or elsewhere, of an act of child abuse or who has been previously convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act which, if committed within this state, would be an act of child abuse shall be adjudged an habitual child abuser. If the second or subsequent act of child abuse for which a defendant is convicted constitutes a class 3 felony under section 18-6-401 (7) (a) (II) or a class 4 felony under section 18-6-401 (7) (a) (IV), the sentence imposed shall BE SERVED IN THE DEPARTMENT OF CORRECTIONS AND SHALL not be less than the upper limit of the presumptive range for that class felony as set out in section 18-1.3-401. If the second or subsequent act of child abuse for which a defendant is convicted constitutes a misdemeanor, the sentence imposed shall BE SERVED IN THE COUNTY JAIL AND SHALL not be less than the maximum sentence for that class misdemeanor as set out in section 18-1.3-501.

SECTION 10. 18-6.5-103 (4), Colorado Revised Statutes, is amended to read:

18-6.5-103. Crimes against at-risk adults and at-risk juveniles - classifications. (4) Any person who commits robbery, as such crime is described in section 18-4-301 (1), and the victim is an at-risk adult or an at-risk juvenile, commits a class 3 felony. If the offender is convicted of robbery of an at-risk adult or an at-risk juvenile, the court shall ~~impose~~ SENTENCE THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS FOR at least the presumptive sentence under section 18-1.3-401 (1).

SECTION 11. 18-12-109 (5) and (5.5), Colorado Revised Statutes, are amended to read:

18-12-109. Possession, use, or removal of explosives or incendiary devices - possession of components thereof - chemical, biological, and nuclear weapons - persons exempt - hoaxes. (5) Any person who removes or causes to be removed or carries away any explosive or incendiary device from the premises where said explosive or incendiary device is kept by the lawful user, vendor, transporter, or manufacturer thereof, without the consent or direction of the lawful possessor, commits a class 4 felony. A person convicted of this offense shall be subjected to a mandatory minimum sentence of two years IN THE DEPARTMENT OF CORRECTIONS.

(5.5) Any person who removes or causes to be removed or carries away any chemical, biological, or radiological weapon from the premises where said chemical, biological, or radiological weapon is kept by the lawful user, vendor, transporter, or manufacturer thereof, without the consent or direction of the lawful possessor, commits a class 3 felony. A person convicted of this offense shall be subject to a mandatory minimum sentence of two years IN THE DEPARTMENT OF CORRECTIONS.

SECTION 12. 18-18-406 (7) (c) and (9), Colorado Revised Statutes, are amended

to read:

18-18-406. Offenses relating to marihuana and marihuana concentrate.

(7) (c) Any person commits a class 3 felony, if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which this subsection (7) applies or would apply if convicted in this state, and, in addition to the punishment provided in section 18-1.3-401, ~~shall be punished by a fine of not more than ten thousand dollars, and the court shall have no jurisdiction to suspend the sentence of imprisonment or to grant probation to such person~~ SENTENCE THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS FOR AT LEAST THE MINIMUM TERM IN THE PRESUMPTIVE RANGE. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section 18-1.3-401 (1) (a) (III).

(9) ~~If the provisions of subsection (7) of this section are found to be invalid, such invalidity shall apply to this entire section. It is hereby declared by the general assembly that, but for the provisions of subsection (7) of this section, the general assembly would not have enacted this section.~~

SECTION 13. 18-1.3-401 (11), Colorado Revised Statutes, is amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (11) When it shall appear to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be best served thereby, the court shall have the power to suspend the imposition or execution of sentence for such period and upon such terms and conditions as it may deem best; except that in no instance shall the court have the power to suspend a sentence to a term of incarceration when the defendant is sentenced pursuant to a ~~mandatory~~ sentencing provision THAT REQUIRES INCARCERATION OR IMPRISONMENT IN THE DEPARTMENT OF CORRECTIONS, COMMUNITY CORRECTIONS, OR JAIL. In no instance shall ~~any such~~ A sentence be suspended if the defendant is ineligible for probation pursuant to section 18-1.3-201, except upon an express waiver being made by the sentencing court regarding a particular defendant upon recommendation of the district attorney and approval of such recommendation by an order of the sentencing court pursuant to section 18-1.3-201 (4).

SECTION 14. 18-1.3-301 (1) (a), Colorado Revised Statutes, is amended to read:

18-1.3-301. Authority to place offenders in community corrections programs.

(1) (a) Any judge of a district court may refer any offender convicted of a felony to a community corrections program unless such offender is required to be sentenced pursuant to section 18-1.3-406 (1) OR A SENTENCING PROVISION THAT REQUIRES A SENTENCE TO THE DEPARTMENT OF CORRECTIONS. If an offender who is sentenced pursuant to section 18-1.3-406 (1) has such sentence modified upon the finding of unusual and extenuating circumstances pursuant to such section, such offender may be referred to a community corrections program if such offender is otherwise eligible for such program and is approved for placement pursuant to section 17-27-103 (5), C.R.S., and section 17-27-104 (3), C.R.S. For the purposes of this article, persons sentenced pursuant to the provisions of sections 19-2-908 (1) (a) (I) and (1) (c) (I) (B) and 19-2-910 (2), C.R.S., shall be deemed to be offenders.

SECTION 15. 18-1.3-302 (2) (a), Colorado Revised Statutes, is amended to read:

18-1.3-302. Legislative declaration - offenders who may be sentenced to the specialized restitution and community service program. (2) Any offender shall be eligible to be placed in a specialized restitution and community service program if:

(a) The offender IS NOT ELIGIBLE FOR PROBATION PURSUANT TO SECTION 18-1.3-201, AND has been convicted of an offense other than a crime of violence, as described in section 18-1.3-406 (2) (a), or any felony offense committed against a child set forth in articles 3, 6, and 7 of this title, OR AN OFFENSE THAT REQUIRES INCARCERATION OR IMPRISONMENT IN THE DEPARTMENT OF CORRECTIONS OR COMMUNITY CORRECTIONS, OR ANY SEXUAL OFFENSE AS DEFINED IN SECTION 18-1.3-1003; and

SECTION 16. 18-3-202 (1) (f), Colorado Revised Statutes, is amended to read:

18-3-202. Assault in the first degree. (1) A person commits the crime of assault in the first degree if:

(f) While lawfully confined or in custody as a result of being charged with or convicted of a crime or as a result of being charged as a delinquent child or adjudicated as a delinquent child and with intent to cause serious bodily injury to a person employed by or under contract with a detention facility, as defined in section 18-8-203 (3), or to a person employed by the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series, he OR SHE threatens with a deadly weapon such a person engaged in the performance of his OR HER duties and the offender knows or reasonably should know that the victim is such a person engaged in the performance of his OR HER duties while employed by or under contract with a detention facility or while employed by the division in the department of human services responsible for youth services. A sentence imposed pursuant to this paragraph (f) shall be ~~mandatory (and the court shall not grant probation or a suspended sentence, in whole or in part)~~ SERVED IN THE DEPARTMENT OF CORRECTIONS and shall run consecutively with any sentences being served by the offender. A person who participates in a work release program, a furlough, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

SECTION 17. 18-3-203 (1) (f), Colorado Revised Statutes, is amended to read:

18-3-203. Assault in the second degree. (1) A person commits the crime of assault in the second degree if:

(f) While lawfully confined or in custody, he or she knowingly and violently applies physical force against the person of a peace officer or firefighter engaged in the performance of his or her duties, or a judge of a court of competent jurisdiction, or an officer of said court, or, while lawfully confined or in custody as a result of being charged with or convicted of a crime or as a result of being charged as a delinquent child or adjudicated as a delinquent child, he or she knowingly and

violently applies physical force against a person engaged in the performance of his or her duties while employed by or under contract with a detention facility, as defined in section 18-8-203 (3), or while employed by the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series, and the person committing the offense knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, or a judge of a court of competent jurisdiction, or an officer of said court, or a person engaged in the performance of his or her duties while employed by or under contract with a detention facility or while employed by the division in the department of human services responsible for youth services. A sentence imposed pursuant to this paragraph (f) shall be ~~mandatory (and the court shall not grant probation or a suspended sentence, in whole or in part)~~ SERVED IN THE DEPARTMENT OF CORRECTIONS and shall run consecutively with any sentences being served by the offender; except that, if the offense is committed against a person employed by the division in the department of human services responsible for youth services, the court may grant probation or a suspended sentence in whole or in part, and such sentence may run concurrently or consecutively with any sentences being served. A person who participates in a work release program, a furlough, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

SECTION 18. 18-1.3-401 (8) (a) (VI), (9) (a.5), (9) (c.5), and (9) (c.7), Colorado Revised Statutes, are amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (8) (a) The presence of any one or more of the following extraordinary aggravating circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony:

(VI) ~~The defendant is under eighteen years of age and,~~ At the time of the commission of a felony, the defendant was on probation for or on bond while awaiting sentencing following revocation of probation for ~~another offense~~ A DELINQUENT ACT that would have constituted a felony if committed by an adult.

(9) The presence of any one or more of the following sentence-enhancing circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the minimum in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony:

(a.5) ~~The defendant is under eighteen years of age and,~~ At the time of the commission of the felony, the defendant was charged with or was on bond for a ~~previous offense~~ DELINQUENT ACT that would have constituted a felony if committed by an adult;

(c.5) ~~The defendant is under eighteen years of age and,~~ At the time of the commission of the felony, the defendant was on bond IN A JUVENILE PROSECUTION

UNDER TITLE 19, C.R.S., for having pled guilty to a lesser ~~offense~~ DELINQUENT ACT when the original ~~offense~~ DELINQUENT ACT charged ~~was an offense that~~ would have constituted a felony if committed by an adult;

(c.7) ~~The defendant is under eighteen years of age and;~~ At the time of the commission of the felony, the defendant was under a deferred judgment and sentence for ~~another offense~~ A DELINQUENT ACT that would have constituted a felony if committed by an adult;

SECTION 19. 18-12-108 (4) (b), Colorado Revised Statutes, is amended to read:

18-12-108. Possession of weapons by previous offenders. (4) (b) A person commits a class 5 felony, as provided by section 18-12-102, if the person violates subsection ~~(+)~~ (3) of this section and the weapon is a dangerous weapon, as defined in section 18-12-102 (1).

SECTION 20. 18-3-302 (3) (a), Colorado Revised Statutes, is amended to read:

18-3-302. Second degree kidnapping. (3) Second degree kidnapping is a class 2 felony if any of the following circumstances exist:

(a) The person kidnapped is a victim of a sexual ~~assault~~ OFFENSE PURSUANT TO PART 4 OF THIS ARTICLE; or

SECTION 21. 18-1.3-406 (2) (a) (II) (E), Colorado Revised Statutes, is amended to read:

18-1.3-406. Mandatory sentences for violent crimes. (2) (a) (II) Subparagraph (I) of this paragraph (a) applies to the following crimes:

(E) A sexual ~~assault~~ OFFENSE PURSUANT TO PART 4 OF ARTICLE 3 OF THIS TITLE;

SECTION 22. 18-3-401 (1), Colorado Revised Statutes, is amended to read:

18-3-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Actor" means the person accused of ~~criminal~~ A sexual ~~assault~~ OFFENSE PURSUANT TO THIS PART 4.

SECTION 23. 13-22-106 (1) and (2) (a), Colorado Revised Statutes, are amended to read:

13-22-106. Minors - consent - sexual offense. (1) Any physician licensed to practice in this state, upon consultation by a minor as a patient who indicates that he or she was the victim of a sexual ~~assault~~ OFFENSE PURSUANT TO PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., with the consent of such minor patient, may perform customary and necessary examinations to obtain evidence of the sexual ~~assault~~ OFFENSE and may prescribe for and treat the patient for any immediate condition caused by the sexual ~~assault~~ OFFENSE.

(2) (a) Prior to examining or treating a minor pursuant to subsection (1) of this section, a physician shall make a reasonable effort to notify the parent, parents, legal guardian, or any other person having custody or decision-making responsibility with respect to the medical care of such minor of the sexual ~~assault~~ OFFENSE.

SECTION 24. 13-90-106 (1) (b) (II), Colorado Revised Statutes, is amended to read:

13-90-106. Who may not testify. (1) The following persons shall not be witnesses:

(b) (II) This proscription does not apply to a child under ten years of age, in any civil or criminal proceeding for child abuse, sexual abuse, ~~sexual assault~~ A SEXUAL OFFENSE PURSUANT TO PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., or incest, when the child is able to describe or relate in language appropriate for a child of that age the events or facts respecting which the child is examined.

SECTION 25. 17-2-201 (5) (g) (I), Colorado Revised Statutes, is amended to read:

17-2-201. State board of parole. (5) (g) (I) As a condition of parole, the board shall require any offender convicted of or who pled guilty or nolo contendere to an offense for which the factual basis involved a sexual ~~assault~~ OFFENSE as ~~defined~~ DESCRIBED in part 4 of article 3 of title 18, C.R.S., to submit to chemical testing of a biological substance sample from the offender to determine the genetic markers thereof and to chemical testing of his or her saliva to determine the secretor status thereof. Such testing shall occur prior to the offender's release from incarceration, and the results thereof shall be filed with and maintained by the Colorado bureau of investigation. The results of such tests shall be furnished to any law enforcement agency upon request.

SECTION 26. 18-12-109 (5.5), Colorado Revised Statutes, is amended to read:

18-12-109. Possession, use, or removal of explosives or incendiary devices - possession of components thereof - chemical, biological, and nuclear weapons - persons exempt - hoaxes. (5.5) Any person who removes or causes to be removed or carries away any chemical, biological, or radiological weapon from the premises where said chemical, biological, or radiological weapon is kept by the lawful user, vendor, transporter, or manufacturer thereof, without the consent or direction of the lawful possessor, commits a class 3 felony. A person convicted of this offense shall be subject to a mandatory minimum sentence of ~~two~~ FOUR years.

SECTION 27. The introductory portion to 18-8-704 (1), Colorado Revised Statutes, is amended to read:

18-8-704. Intimidating a witness or victim. (1) A person commits intimidating a witness or victim if, by use of a threat, act of harassment AS DEFINED IN SECTION 18-9-111, or act of harm or injury to any person or property directed to or committed upon a witness or a victim to any crime, a person he OR SHE believes has been or is to be called or who would have been called to testify as a witness or a victim, a member of the witness' family, a member of the victim's family, a person in close

relationship to the witness or victim, a person residing in the same household with the witness or victim, or any person who has reported a crime or who may be called to testify as a witness to or victim of any crime, he OR SHE intentionally attempts to or does:

SECTION 28. 18-8-706 (1), Colorado Revised Statutes, is amended to read:

18-8-706. Retaliation against a witness or victim. (1) An individual commits retaliation against a witness or victim if such person uses a threat, act of harassment AS DEFINED IN SECTION 18-9-111, or act of harm or injury upon any person or property, which action is directed to or committed upon a witness or a victim to any crime, an individual whom the person believes has been or would have been called to testify as a witness or victim, a member of the witness' family, a member of the victim's family, an individual in close relationship to the witness or victim, an individual residing in the same household with the witness or victim, as retaliation or retribution against such witness or victim.

SECTION 29. 18-8-706.5 (1), Colorado Revised Statutes, is amended to read:

18-8-706.5. Retaliation against a juror. (1) An individual commits retaliation against a juror if such individual uses a threat, act of harassment AS DEFINED IN SECTION 18-9-111, or act of harm or injury upon any person or property, which action is directed to or committed upon a juror who has served for a criminal or civil trial involving the individual or a person or persons on whose behalf the individual is acting, a member of the juror's family, an individual in close relationship to the juror, or an individual residing in the same household with the juror, as retaliation or retribution against such juror.

SECTION 30. 18-9-202 (1) (a), (1.5), (2) (a.5) (I) (A), (2) (a.5) (II), (2) (b) (II), and (2) (b) (III), Colorado Revised Statutes, are amended to read:

18-9-202. Cruelty to animals - aggravated cruelty to animals - neglect of animals - offenses - repeal. (1) (a) A person commits cruelty to animals if he OR SHE knowingly, RECKLESSLY, or with criminal negligence overdrives, overloads, overworks, ~~tortures~~, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, ~~needlessly mutilates, needlessly kills~~; carries or confines in or upon any vehicles in a cruel or reckless manner, or otherwise mistreats or neglects any animal, or causes or procures it to be done, or, having the charge or custody of any animal, fails to provide it with proper food, drink, or protection from the weather, or abandons it.

(1.5) (a) A person commits ~~aggravated~~ cruelty to animals if he or she ~~knowingly torments~~; RECKLESSLY OR WITH CRIMINAL NEGLIGENCE tortures, NEEDLESSLY MUTILATES, or NEEDLESSLY kills an animal.

(b) A PERSON COMMITS AGGRAVATED CRUELTY TO ANIMALS IF HE OR SHE KNOWINGLY TORTURES, NEEDLESSLY MUTILATES, OR NEEDLESSLY KILLS AN ANIMAL.

(2) (a.5) (I) (A) In addition to the sentence imposed pursuant to this subsection (2), any person convicted of ~~committing cruelty to animals pursuant to subsection (1) of this section or~~ aggravated cruelty to animals pursuant to subsection (1.5) of this

section ~~the underlying factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal that needlessly injures, mutilates, or kills an animal~~ shall pay a surcharge of up to four hundred dollars to the clerk of the court in the county in which the conviction occurs or in which a deferred sentence is entered. Each clerk shall transmit the moneys to the court administrator of the judicial district in which the offense occurred for credit to the fund.

(II) In addition to ~~the ANY OTHER sentence imposed pursuant to subparagraph (I) of this paragraph (a.5) any person convicted of committing cruelty to animals pursuant to subsection (1) of this section or aggravated cruelty to animals pursuant to subsection (1.5) of this section, the underlying factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal that needlessly injures, mutilates, or kills an animal;~~ FOR A VIOLATION OF THIS SECTION, THE COURT may ~~be ordered~~ ORDER AN OFFENDER to complete an anger management treatment program or any other appropriate treatment program.

(b) (II) In any case where the court sentences a person convicted of a class 6 felony under the provisions of this paragraph (b) to probation, the court shall, in addition to any other condition of probation imposed, order that:

(A) The offender, pursuant to section ~~16-11-202 (1), C.R.S.~~ 18-1.3-202 (1), be committed to the county jail for ninety days; or

(B) The offender, pursuant to section ~~17-27-8-102 (3), C.R.S.;~~ 18-1.3-105 (3), be subject to home detention for no fewer than ninety days.

(III) In any case where an offender is committed to the county jail or placed in home detention pursuant to subparagraph (II) of this paragraph (b), the court shall enter judgment against the offender for all costs assessed pursuant to section ~~16-11-501, C.R.S.;~~ 18-1.3-701, including, but not limited to, the cost of care.

SECTION 31. 18-7-302 (2) and (4), Colorado Revised Statutes, are amended to read:

18-7-302. Indecent exposure. (2) (a) ~~Indecent exposure to a person fifteen years of age or older is a class 3 misdemeanor.~~

(b) ~~Indecent exposure to a child under the age of fifteen years is a class 1 misdemeanor.~~

(4) ~~Any third or subsequent offense of the offense described in paragraph (b) of subsection (2) of this section following a conviction for any such offense is a class 6 felony.~~ INDECENT EXPOSURE IS A CLASS 6 FELONY IF THE VIOLATION IS COMMITTED SUBSEQUENT TO TWO PRIOR CONVICTIONS OF A VIOLATION OF THIS SECTION OR OF A VIOLATION OF A COMPARABLE OFFENSE IN ANY OTHER STATE OR IN THE UNITED STATES, OR OF A VIOLATION OF A COMPARABLE MUNICIPAL ORDINANCE.

SECTION 32. 18-1.3-401 (10) (c), Colorado Revised Statutes, is amended to read:

18-1.3-401. Felonies classified - presumptive penalties. (10) (c) With respect

to the offenses specified in subparagraphs (I) to (VIII) of paragraph (b) of this subsection ~~(9.7)~~ (10) and sexual offenses that constitute crimes of violence, the provisions of this subsection ~~(9.7)~~ (10) apply only to offenses committed prior to November 1, 1998.

SECTION 33. 17-2-201 (5) (a), Colorado Revised Statutes, is amended, and the said 17-2-201 (5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

17-2-201. State board of parole. (5) (a) As to any person sentenced for conviction of a felony committed prior to July 1, 1979, or of a misdemeanor and as to any person sentenced for conviction of an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., committed prior to July 1, 1996, or a class 1 felony and as to any person sentenced as a habitual criminal pursuant to section 18-1.3-801, C.R.S., FOR AN OFFENSE COMMITTED PRIOR TO JULY 1, 2003, the board has the sole power to grant or refuse to grant parole and to fix the condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court or five years, whichever is less.

(a.3) (I) ANY PERSON SENTENCED AS A HABITUAL CRIMINAL PURSUANT TO SECTION 18-1.3-801 (1.5) OR (2), C.R.S., FOR AN OFFENSE COMMITTED ON OR AFTER JULY 1, 2003, SHALL BE SUBJECT TO THE MANDATORY PAROLE SET FORTH IN SECTION 18-1.3-401 (1) (a) (V) (A), C.R.S., FOR THE CLASS OF FELONY OF WHICH THE PERSON IS CONVICTED.

(II) AS TO ANY PERSON SENTENCED AS A HABITUAL CRIMINAL PURSUANT TO SECTION 18-1.3-801 (1) OR (2.5), C.R.S., FOR AN OFFENSE COMMITTED ON OR AFTER JULY 1, 2003, UPON COMPLETION OF FORTY CALENDAR YEARS OF INCARCERATION IN THE DEPARTMENT OF CORRECTIONS, THE PAROLE BOARD MAY SCHEDULE A HEARING TO DETERMINE WHETHER THE INMATE MAY BE RELEASED ON PAROLE. IF THE INMATE IS RELEASED ON PAROLE, THE LIFE SENTENCE SHALL CONTINUE AND SHALL NOT BE DEEMED TO BE DISCHARGED UNTIL SUCH TIME AS THE PAROLE BOARD MAY DISCHARGE THE OFFENDER. THE OFFENDER SHALL SERVE AT LEAST FIVE YEARS ON PAROLE PRIOR TO DISCHARGE. IF THE PAROLE BOARD REVOKES THE PAROLE, THE OFFENDER SHALL BE RETURNED TO THE DEPARTMENT OF CORRECTIONS TO SERVE THE REMAINDER OF THE LIFE SENTENCE. THE PAROLE BOARD NEED ONLY RECONSIDER GRANTING PAROLE TO SUCH INMATE ONCE EVERY THREE YEARS.

SECTION 34. Effective date - applicability. Sections 1 through 17, 19 through 25, 32, 34, and 35 of this act shall take effect upon passage. The remainder of this act shall take effect July 1, 2003, and shall apply to offenses committed on or after said date.

SECTION 35. 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: April 29, 2003