

CHAPTER 200

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 04-1388

BY REPRESENTATIVE(S) Hefley, Carroll, Coleman, Fran gas, McGihon, and Roman off;
also SENATOR(S) Dyer.

AN ACT

**CONCERNING NONSUBSTANTIVE CHANGES TO STATUTORY PROVISIONS IDENTIFYING CRIMES THAT
POSE AN EXTRAORDINARY RISK OF HARM TO SOCIETY.**

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

SECTION 1. Repeal. 18-1.3-401 (10) (b) (I), (10) (b) (II), (10) (b) (III), (10) (b) (IV), (10) (b) (V), (10) (b) (VI), (10) (b) (VII), (10) (b) (VIII), and (10) (c), Colorado Revised Statutes, are repealed as follows:

18-1.3-401. Felonies classified - presumptive penalties. (10) (b) Crimes that present an extraordinary risk of harm to society shall include the following:

(I) ~~(A) Sexual assault, as defined in section 18-3-402; or~~

~~(B) Sexual assault in the first degree, as defined in section 18-3-402, as it existed prior to July 1, 2000;~~

~~(II) Sexual assault in the second degree, as defined in section 18-3-403, as it existed prior to July 1, 2000;~~

(III) ~~(A) Unlawful sexual contact, as defined in section 18-3-404; or~~

~~(B) Sexual assault in the third degree, as defined in section 18-3-404, as it existed prior to July 1, 2000;~~

(IV) ~~Sexual assault on a child, as defined in section 18-3-405;~~

~~(V) Sexual assault on a child by one in a position of trust, as defined in section 18-3-405.3;~~

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

~~(VI) Sexual assault on a client by a psychotherapist, as defined in section 18-3-405.5;~~

~~(VII) Incest, as defined in section 18-6-301;~~

~~(VIII) Aggravated incest, as defined in section 18-6-302;~~

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

SECTION 2. 18-1.3-406 (1), Colorado Revised Statutes, is 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 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, ~~the presumptive range;~~ but not more than twice the maximum ~~term~~ 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 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 SPECIFIED IN SECTION 18-1.3-401 (1) (a) (V) (A) up to a maximum of the person's natural life, as provided in section 18-1.3-1004 (1).

SECTION 3. 18-1.3-501 (3) (a), Colorado Revised Statutes, is amended to read:

18-1.3-501. Misdemeanors classified - penalties. (3) (a) The general assembly hereby finds that certain misdemeanors which are listed in paragraph (b) of this subsection (3) present an extraordinary risk of harm to society and therefore, in the

interest of public safety, the maximum sentence ~~in the presumptive range~~ for such misdemeanors shall be increased by six months.

SECTION 4. 18-3-204, Colorado Revised Statutes, is amended to read:

18-3-204. Assault in the third degree. A person commits the crime of assault in the third degree if ~~he~~ THE PERSON knowingly or recklessly causes bodily injury to another person or with criminal negligence ~~he~~ THE PERSON causes bodily injury to another person by means of a deadly weapon. Assault in the third degree is a class 1 misdemeanor AND IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

SECTION 5. 18-3-402 (3) and (6), Colorado Revised Statutes, are amended to read:

18-3-402. Sexual assault. (3) IF COMMITTED UNDER THE CIRCUMSTANCES OF PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION, sexual assault is a class 1 misdemeanor ~~if committed under the circumstances of paragraph (e) of subsection (1) of this section~~ AND IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

(6) Any person convicted of FELONY sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.

SECTION 6. 18-3-404 (2) and (3), Colorado Revised Statutes, are amended to read:

18-3-404. Unlawful sexual contact. (2) (a) Unlawful sexual contact is a class 1 misdemeanor ~~but it~~ AND IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), UNLAWFUL SEXUAL CONTACT is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to PARAGRAPH (b) OF subsection ~~(1.5) or~~ (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; except that this subsection (3) shall not apply ~~to~~ IF THE ACTOR ENGAGES IN THE CONDUCT DESCRIBED IN paragraph (g) of subsection (1) of this section. ~~as it applies to subsection (2) of this section.~~

SECTION 7. 18-3-412.5 (3), Colorado Revised Statutes, is amended to read:

18-3-412.5. Failure to register as a sex offender. (3) Failure to register as a sex offender is a class 1 misdemeanor if the person was convicted of misdemeanor unlawful sexual behavior, or of another offense, the underlying factual basis of which involves misdemeanor unlawful sexual behavior, or if the person received a

disposition or was adjudicated for an offense that would constitute misdemeanor unlawful sexual behavior if committed by an adult, or for another offense, the underlying factual basis of which involves misdemeanor unlawful sexual behavior. A CLASS 1 MISDEMEANOR CONVICTION PURSUANT TO THIS SUBSECTION (3) IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

SECTION 8. 18-4-302 (3), Colorado Revised Statutes, is amended to read:

18-4-302. Aggravated robbery. (3) Aggravated robbery is a class 3 felony AND IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10).

SECTION 9. 18-6-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-6-401. Child abuse. (7.3) FELONY CHILD ABUSE IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10). MISDEMEANOR CHILD ABUSE IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

SECTION 10. 18-6-803.5 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-6-803.5. Crime of violation of a protection order - penalty - peace officers' duties. (2) (a.5) A SECOND OR SUBSEQUENT VIOLATION OF A PROTECTION ORDER IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

SECTION 11. 18-9-111 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-9-111. Harassment - stalking. (5) Where a person commits stalking under paragraph (b) of subsection (4) of this section, the following shall apply:

(a.7) STALKING IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10).

SECTION 12. 18-18-405 (3) (a), Colorado Revised Statutes, is amended, and the said 18-18-405 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession - repeal. (3) (a) Unless a greater sentence is required pursuant to the provisions of another statute, any person convicted pursuant to subparagraph (I) of 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:

(I) At least twenty-five grams or one ounce but less than four hundred fifty grams of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in section 18-18-203 or 18-18-204 shall be sentenced to the department of corrections for at least the minimum term of incarceration in the presumptive range provided for such offense in section 18-1.3-401 (1) (a) WITH REGARD TO OFFENSES OTHER THAN MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE, AND FOR AT LEAST THE MINIMUM TERM OF INCARCERATION IN THE PRESUMPTIVE RANGE PROVIDED FOR SUCH OFFENSE IN SECTION 18-1.3-401 (1) (a) AS MODIFIED PURSUANT TO SECTION 18-1.3-401 (10) WITH REGARD TO MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE;

(II) At least four hundred fifty grams or one pound but less than one thousand grams of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in section 18-18-203 or 18-18-204 shall be sentenced to the department of corrections for a term of at least the midpoint of the presumptive range but not more than twice the maximum presumptive range provided for such offense in section 18-1.3-401 (1) (a) WITH REGARD TO OFFENSES OTHER THAN MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE, AND FOR A TERM OF AT LEAST THE MIDPOINT OF THE PRESUMPTIVE RANGE BUT NOT MORE THAN TWICE THE MAXIMUM PRESUMPTIVE RANGE PROVIDED FOR SUCH OFFENSE IN SECTION 18-1.3-401 (1) (a) AS MODIFIED PURSUANT TO SECTION 18-1.3-401 (10) WITH REGARD TO MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE;

(III) One thousand grams or one kilogram or more of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in section 18-18-203 or 18-18-204 shall be sentenced to the department of corrections for a term greater than the maximum presumptive range but not more than twice the maximum presumptive range provided for such offense in section 18-1.3-401 (1) (a) WITH REGARD TO OFFENSES OTHER THAN MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE, AND FOR A TERM GREATER THAN THE MAXIMUM PRESUMPTIVE RANGE BUT NOT MORE THAN TWICE THE MAXIMUM PRESUMPTIVE RANGE PROVIDED FOR SUCH OFFENSE IN SECTION 18-1.3-401 (1) (a) AS MODIFIED PURSUANT TO SECTION 18-1.3-401 (10) WITH REGARD TO MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE.

(3.5) THE FELONY OFFENSE OF UNLAWFULLY MANUFACTURING, DISPENSING, SELLING, DISTRIBUTING, OR POSSESSING WITH INTENT TO UNLAWFULLY MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE A CONTROLLED SUBSTANCE IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10).

SECTION 13. 18-18-412.7 (2), Colorado Revised Statutes, as it will become effective July 1, 2004, is amended to read:

18-18-412.7. Sale or distribution of materials to manufacture controlled substances. (2) A violation of this section is a class 3 felony. A VIOLATION OF THIS SECTION IS AN EXTRAORDINARY RISK CRIME THAT IS SUBJECT TO THE MODIFIED PRESUMPTIVE SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-401 (10).

SECTION 14. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 23, 2004