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**M E M O R A N D U M**

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**TO:** Sentencing in the Criminal Justice System Interim Study Committee

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**SUBJECT:** Overview of Colorado's Mandatory Minimum Sentencing Scheme

**Summary**

This memorandum provides an overview of the mandatory minimum sentencing schemes in Colorado law. It provides information on the general categories of offenses subject to enhanced prison sentences and specific crimes that require a mandatory minimum sentence. Three years of sentencing data are included to show the application of the sentencing schemes for each category of offense.

Appendix A provides general information about the sentencing schemes for felony and drug offenses. Appendix B compares felony sentencing schemes among categories of offenses that qualify for enhanced sentencing.

**Background**

Colorado law requires courts to sentence most individuals convicted of certain categories of crimes to a mandatory minimum period of incarceration. Table 1 lists the basic categories, the mandatory sentencing provisions, and the statutory citations associated with each.

**Table 1**  
**Categories of Crimes Requiring a Mandatory Minimum Sentence**

<b>Category</b>	<b>Mandatory Minimum Sentence Provisions</b>	<b>C.R.S. Statutory Citation</b>
<b>Class 1 felonies</b>	An adult convicted of a class 1 felony must be sentenced to at least life imprisonment without the possibility of parole.	18-1.3-401 (4)(a)
	A juvenile charged as an adult and convicted of a class 1 felony must be sentenced to life imprisonment with the possibility of parole after 40 years.	18-1.3-401 (4)(b)
<b>Level 1 drug felony</b>	A person convicted of a level 1 drug felony must be sentenced to a term of imprisonment of at least 8 years unless aggravating circumstances are present, in which case the mandatory minimum is 12 years.	18-1.3-401.5 (7)
<b>Drug Felonies Generally</b>	A person who has been twice convicted of a felony prior to the drug felony conviction for which he or she is being sentenced must be sentenced to at least the minimum sentence of the presumptive range for that drug felony.	18-1.3-401.5 (2)(b)(V)
<b>Crimes of Violence*</b>	A person convicted of a crime of violence must be sentenced to at least the midpoint in the presumptive range for that felony offense as modified for an extraordinary risk crime except in rare cases involving unusual and exceptional circumstances. In addition, if a person is convicted of two or more separate crimes of violence arising out of the same incident, the court must sentence the person so that his or her sentences are served consecutively, except when one of the crimes is aggravated robbery, second degree assault, or escape.	18-1.3-406 (1)(a)
	A person convicted of a sex offense that is a crime of violence must be sentenced to an indeterminate sentence of at least the midpoint in the presumptive range for that felony offense.	18-1.3-406 (1)(b)
	A person convicted of a crime of violence involving a dangerous or semiautomatic assault weapon must be sentenced to an additional five years imprisonment that must be served consecutively to the sentence for the underlying crime of violence.	18-1.3-406 (7)(a)
<b>Habitual Criminals**</b>	A person convicted of a class 1, 2, 3, 4, or 5 felony, or level 1, 2, or 3 drug felony who, within ten years of the date of the commission of the offense, has twice previously been convicted of a felony is adjudicated as a "little habitual" offender. The court is required to sentence such offenders to a term of imprisonment which is three times the maximum of the presumptive range for the felony class for which the person is convicted. For a level 1 drug felony, the little habitual criminal must be sentenced to 48 years imprisonment.	18-1.3-801 (1.5)
	A person convicted of a fourth felony offense is considered a "big habitual" offender and must be sentenced to a term of imprisonment that is four times the maximum of the presumptive range for the class or level of the current felony offense. For a level 1 drug felony, the big habitual offender must be sentenced to 64 years imprisonment. This does not apply to a conviction for a level 4 drug felony for attempt or conspiracy to commit unlawful possession of a controlled substance if the amount of the substance is less than: <ul style="list-style-type: none"> <li>• four grams of a schedule I or schedule II controlled substance;</li> <li>• two grams of methamphetamine, heroin, cathinones, or ketamine; or</li> <li>• four milligrams of flunitrazepam.</li> </ul>	18-1.3-801 (2)

Category	Mandatory Minimum Sentence Provisions	C.R.S. Statutory Citation
Sex offenses***	<p>Any offender who is convicted and sentenced under the big habitual criminal statute and who is subsequently convicted of a felony that is a crime of violence is adjudicated as a “bigger habitual” offender. These offenders must be sentenced to a term of life imprisonment and are ineligible for parole until they have served at least 40 years.</p> <p>An offender convicted of any third class 1 or class 2 felony, class 3 felony that is a crime of violence, or level 1 drug felony is sentenced under the “three strikes you’re out” habitual statute. These offenders must be sentenced to a term of life imprisonment and are ineligible for parole until they have served at least 40 years.</p>	<p>18-1.3-801 (2.5)</p> <p>18-1.3-801 (1)</p> <p>18-1.3-804 (1)</p>
	<p>A person convicted of first degree burglary, first degree burglary of controlled substances, or second degree burglary of a dwelling who, within 10 years of the date of the commission of said offense, has been previously convicted of first degree burglary, first degree burglary of drugs or controlled substances, or second degree burglary of a dwelling, or a similar offense in another state, is adjudicated a habitual burglary offender and must be sentenced to a term of imprisonment greater than the maximum in the presumptive range.</p>	
	<p>A person convicted of a sex offense must be sentenced to an indeterminate period of imprisonment that is at least the minimum in the presumptive range for that offense.</p>	18-1.3-1004 (1)(a)
	<p>A person convicted of a sex offense that is a crime of violence must be sentenced to an indeterminate period of imprisonment that is at least the midpoint in the presumptive range for that felony offense.</p>	18-1.3-1004 (1)(b)
	<p>A person convicted of a sex offense that makes him or her eligible for sentencing as a habitual sex offender against children must be sentenced to an indeterminate period of imprisonment that is at least three times the upper limit of the presumptive range for that felony offense.</p>	18-1.3-1004 (1)(c)
<p>A person who tested positive for HIV prior to committing a sex offense and who is then convicted of a sex offense must be sentenced to an indeterminate period of imprisonment that is at least the upper limit of the presumptive range for that felony offense.</p>	18-1.3-1004 (1)(d) and 18-3-415.5 (5)(b)	

Source: Legislative Council Staff

\*Crimes of violence include any crime against an at-risk adult or at-risk juvenile; murder; first or second degree assault; kidnapping; unlawful felony sex offenses; aggravated robbery; first degree arson; escape; criminal extortion; and first or second degree unlawful termination of pregnancy. Note: certain types of second degree assault do not require a mandatory minimum prison sentence.

\*\*A conviction for escape or attempted escape is not counted for purposes of designating an offender as an habitual criminal unless the offense is from a correctional facility or county jail (Section 18-1.3-801 (5), C.R.S.)

\*\*\*Current law also requires an indeterminate sentence for a class 2, 3, or 4 felony sex offense when the act includes sexual intrusion or penetration against a child under the age of 12 when the offender was an adult and at least 10 years older than the child (Section 18-1.3-1004 (1)(e), C.R.S.).

**Drug felonies.** According to data from the Judicial Branch, there were 155 persons sentenced to a mandatory minimum prison term in the Department of Corrections (DOC) for a level 1 drug felony between January 1, 2014, and December 31, 2016. The average length of sentence was 13.9 years.

**Sentencing data for crimes of violence, including murder.** According to data from the Judicial Branch, between January 1, 2014, and December 31, 2016, 416 defendants were convicted of at least one crime of violence and sentenced to the DOC. Defendants had an average of 2.1 separate convictions for crimes of violence.

**Table 2  
Sentencing Data for Crimes of Violence  
2014 through 2016**

<b>Offense</b>	<b>Average DOC sentence (years)</b>	<b>Number of convictions</b>
Crime against at-risk adult or juvenile	33.8	6
F1 murder	Life	36
Non-F1 murder	33.7	179
First degree assault	21.3	107
Second degree assault	8.6	138
Kidnapping	19.4	61
Sex offense	21.0	74
Aggravated robbery	19.0	182
First degree arson	9.3	38
First degree burglary	19.8	65
Escape	-	0
Criminal Extortion	6.0	2
Unlawful termination of pregnancy (first or second degree)	32.0	2

*Source: Colorado Judicial Department*

**Sentencing data for habitual offenders.** According to data from the Judicial Branch, between January 1, 2014, and December 31, 2016, 150 defendants were convicted as habitual offenders and sentenced to the DOC. Defendants convicted as habitual offenders between 2014 and 2016 had an average of 3.3 convictions for separate felony crimes at their sentencing dates. The number and nature of previous convictions entered before this time period is unknown. Table 3 shows the average number of years a defendant was sentenced to the DOC by offense type and the number of convictions for each offense.

**Table 3  
Sentencing Data for Habitual Offenders  
2014 through 2016**

<b>Offense classification</b>	<b>Average DOC sentence (years)</b>	<b>Number of convictions</b>
F1	Life	9
F2	90.7	12
F3	53.7	40
F4	25.7	36
F5	10.8	29
F6	5.8	14
DF1	56	2
DF2	32	4
DF3	14.7	3
DF4	16	1

*Source: Colorado Judicial Department*

**Sentencing data for sex offenders.** As of December 2016, offenders sentenced under the Colorado Sex Offender Lifetime Supervision Act of 1998 serve an average prison sentence of 296.7 months, or just under 25 years. Between January 1, 2014 and December 31, 2016, a total of 2,181 offenders were sentenced to indeterminate sentences under the act. This includes 693 offenders in 2014, 736 in 2015, and 752 in 2016.

**Other mandatory minimum crimes.** In addition to the general categories shown in Table 1, there are specific crimes for which there is a minimum prison sentence specified in law. Table 4 provides a list of those crimes, the circumstances under which a mandatory minimum sentence is required, the minimum sentence, and a statutory citation.

**Table 4**  
**Crimes Requiring a Mandatory Minimum Prison Sentence**

Category	Mandatory Minimum Sentence Provisions	C.R.S. Statutory Citation
<b>Felony theft from a store</b>	A person convicted of felony theft from a store, who, within the immediately preceding four years, was twice convicted of felony theft from a store is required to be sentenced to a term of incarceration of at least the minimum of the presumptive range for the theft offense. The threshold for felony theft in Colorado is \$2,000.	18-4-413 (2)
<b>Robbery</b>	When the victim is an at-risk adult or an at-risk juvenile, the court is required to impose a term of incarceration of at least the minimum of the presumptive range for a class 3 felony.	18-6.5-103 (4)
<b>Escape</b>	Escape or attempted escape from custody or confinement requires a sentence of at least the minimum of the presumptive range for the offense.	18-8-208 (9) 18-8-208.1 (5)
<b>Possession, use, or Removal of explosives Or incendiary devices</b>	A person convicted of removing or causing the removal of any explosive or incendiary device from the premises where the device is kept by the lawful user, vendor, transporter, or manufacturer without express consent must be sentenced to a minimum term of two years imprisonment.	18-12-109 (5)
	A person convicted of removing or causing the removal of any chemical, biological, or radiological weapon from the premises where the device is kept by the lawful user, vendor, transporter, or manufacturer without express consent must be sentenced to a minimum term of four years imprisonment.	18-12-109 (5.5)

**Other crimes requiring mandatory minimum prison sentences.** For the above offenses, there were no convictions requiring mandatory minimum prison sentences for felony theft from a store or offenses related to explosives and incendiary devices between 2014 and 2016.

**Robbery.** There were a total of 17 felony convictions for robbery where the victim was an at-risk person, including two in 2014, eight in 2015, and seven in 2016. The average sentence length for these cases was 12.4 years.

**Escape.** There were a total of 3,310 convictions for escape between January 1, 2014, and December 31, 2016, that required a sentence to the DOC. This included 1,181 cases in 2014, 1,058 cases in 2015, and 1,071 in 2016. The average length of sentence for these cases was 2.1 years. These cases typically involved escaping from parole or while pending court action for a new offense.

## Appendix A

**Table 5  
Presumptive Sentencing for Felonies Committed on or After July 1, 1993**

Class of Crime	Minimum Sentence <sup>a</sup>	Maximum Sentence <sup>a</sup>	Mandatory Parole
<b>Class 1<sup>b</sup></b>	Life Imprisonment	Death	—
<b>Class 2</b>	8 years, \$5,000 fine	24 years, \$1,000,000 fine	5 years
<b>Class 3</b>	4 years, \$3,000 fine	12 years, \$750,000 fine	5 years
<b>Class 4</b>	2 years, \$2,000 fine	6 years, \$500,000 fine	3 years
<b>Class 5</b>	1 year, \$1,000 fine	3 years, \$100,000 fine	2 years
<b>Class 6</b>	1 year, \$1,000 fine	18 months, \$100,000 fine	1 year
<b>Unclassified Felonies</b>	Specified in statute <sup>c</sup>	Specified in statute <sup>c</sup>	—

Source: Section 18-1.3-401 (1)(a)(V)(A), C.R.S.

<sup>a</sup>Sentences may include imprisonment, fine, or both.

<sup>b</sup>Juveniles convicted as adults for class 1 felonies may be sentenced to life imprisonment with the possibility of parole after serving 40 years (Section 18-1.3-401 (4), C.R.S.).

<sup>c</sup>Section 18-1.3-402, C.R.S. If the penalty is not fixed by statute, the punishment is a maximum 5 years in prison, maximum \$15,000, or both. Section 18-1.3-403, C.R.S.

**Table 6  
Penalties for Felony Drug Offenses**

Offense Level	Presumptive Range	Aggravated Range <sup>a</sup>	Mandatory Parole
<b>DF 1</b>	8 to 32 years \$5,000 to \$1,000,000	—	3 years
<b>DF 2</b>	4 to 8 years \$3,000 to \$750,000	8 to 16 years \$3,000 to \$750,000	2 years
<b>DF 3</b>	2 to 4 years \$2,000 to \$500,000	4 to 6 years \$2,000 to \$500,000	1 year
<b>DF 4</b>	6 months to 1 year \$1,000 to \$100,000	1 to 2 years \$1,000 to \$100,000	1 year

Source: Section 18-1.3-401.5, C.R.S.

<sup>a</sup>This range applies to cases where the court finds aggravating circumstances exist. These circumstances include whether the defendant was on parole for another felony; on probation or bond while awaiting sentencing following revocation of probation for another felony; under confinement, in prison, or in any correctional institution as a convicted felon, or an escapee from any correctional institution for another felony; on appeal bond following his or her conviction for a previous felony; or on probation for or on bond while awaiting sentencing following revocation of probation for a delinquent act that would have constituted a felony if committed by an adult.

**Appendix B  
Felony Imprisonment Sentencing Ranges**

<b>Class of Crime</b>	<b>Presumptive Range<sup>a</sup></b>	<b>Extraordinary Aggravating or Mitigating Circumstances<sup>b</sup></b>	<b>Sentence-Enhancing Circumstances<sup>c</sup></b>	<b>Extraordinary Aggravating Circumstances<sup>d</sup></b>	<b>Crimes of Violence<sup>e</sup></b>
<b>Class 1<sup>f</sup></b>	Life to Death	—	—	—	—
<b>Class 2</b>	8 to 24 years	4 to 48 years	8 to 48 years	16 to 48 years	16 to 48 years
<b>Class 3 (extraordinary risk of harm)<sup>g</sup></b>	4 to 16 years	2 to 32 years	4 to 32 years	10 to 32 years	10 to 32 years
<b>Class 3</b>	4 to 12 years	2 to 24 years	4 to 24 years	8 to 24 years	—
<b>Class 4 (extraordinary risk of harm)</b>	2 to 8 years	1 to 16 years	2 to 16 years	5 to 16 years	5 to 16 years
<b>Class 4</b>	2 to 6 years	1 to 12 years	2 to 12 years	4 to 12 years	—
<b>Class 5 (extraordinary risk of harm)</b>	1 to 4 years	6 months to 8 years	1 to 8 years	30 months to 8 years	30 months to 8 years
<b>Class 5</b>	1 to 3 years	6 months to 6 years	1 to 6 years	2 to 6 years	—
<b>Class 6 (extraordinary risk of harm)</b>	1 to 2 years	6 months to 4 years	1 to 4 years	18 months to 4 years	18 months to 4 years
<b>Class 6</b>	12 to 18 months	6 months to 3 years	1 to 3 years	15 months to 3 years	—

<sup>a</sup>Sentences may include imprisonment, fine, or both; this table only concerns ranges of imprisonment.

<sup>b</sup>Courts may impose a sentence outside of the presumptive range, but it must not be more than twice the maximum, nor less than one-half the minimum of the presumptive range. Section 18-1.3-401 (6), C.R.S.

<sup>c</sup>Courts must sentence the offender to at least the minimum, but no more than twice the maximum of the presumptive range. Section 18-1.3-401 (9), C.R.S.

<sup>d</sup>If the offender is sentenced to imprisonment, the presumptive sentencing range for specified extraordinary aggravating circumstances is at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range. Section 18-1.3-401 (8), C.R.S.

<sup>e</sup>Courts must sentence crimes of violence offenders to at least the minimum, but no more than twice the maximum, of the presumptive range of the offense as modified for an extraordinary risk crime. Section 18-1.3-406, C.R.S.

<sup>f</sup>Juveniles convicted as adults for class 1 felonies may be sentenced to life imprisonment with the possibility of parole after serving 40 years. Section 18-1.3-401 (4), C.R.S.

<sup>g</sup>Section 18-1.3-401 (10), C.R.S.