

Colorado Commission on Criminal and Juvenile Justice
May 9, 2008

An Overview of the Colorado Sentencing Scheme

Presented by:

The Honorable Christopher J. Munch
District Judge for the First Judicial District

Philip Cherner
Defense Attorney

Catherine Adkisson
Assistant Solicitor General
Colorado Attorney General's Office

- I. Introduction to the Colorado Sentencing Structure – Classifications of Crimes and Potential Penalties -- Judge Munch
- II. Factors that Limit Judicial Discretion in Sentencing -- Cathy Adkisson
- III. An Overview of a Felony Case from Arrest through Sentencing – Phil Cherner

(Question and Answer Period)
- IV. A look at the Colorado Parole System – Cathy Adkisson
- V. Sex Offender Sentencing -- Phil Cherner
- VI. Recommendations -- Panel

(Question and Answer Period)

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Classification of Crimes

Felony

[Prison is possible]

Misdemeanor

DUI, Theft under \$1000, 3rd Degree Assault

Petty Offenses

Drug Paraphernalia, Less than 1 oz Marijuana

Traffic Offenses

City Ordinance Violations

Classification of Crimes

Felony

[Prison is possible]

Misdemeanor

DUI, Theft under \$1000, 3rd Degree Assault

Petty Offenses

Drug Paraphernalia, Less than 1 oz Marijuana

Traffic Offenses

City Ordinance Violations

Felony Punishments

Felony [Prison is possible but not always mandatory]

Money Fine

Probation

With County Jail time (up to 90 days)

With Work or Educational Release (up to 2 years)

With Home Detention

Community Corrections

County Board must agree to pay;

Facility must accept offender

Prison

Felony Classifications

- Class 1.** 1st Degree Murder Life in Prison or Death
- Class 2.** 2nd Degree Murder
- Class 3.** Armed Robbery, Home Burglary, Theft over \$20,000, 1st Degree Assault, Dealing hard drugs or possessing over one ounce
- Class 4.** Business Burglary, Theft over \$1000, Possession over one gram hard drugs
- Class 5.** Menacing with a weapon, Forgery
- Class 6.** Less than one gram hard drugs

Penalties for Felonies

Figure 1.1: Felony Class Presumptive Ranges

Felony Class		Pre-1979	1979	1985	1989	1993 (current law in 2006)
1	Minimum	Life	Life	Life	Life	Life
	Maximum	Death	Death	Death	Death	Death
2	Minimum	10 years	8 years	8 years	8 years	8 years
	Maximum	50 years	12 years	24 years	24 years	24 years
3	Minimum	5 years	4 years	4 years	4 years	4 years
	Maximum	40 years	8 years	16 years	16 years	12 years
4	Minimum	1 day	2 years	2 years	2 years	2 years
	Maximum	10 years	4 years	8 years	8 years	6 years
5	Minimum	1 day	1 year	1 year	1 year	1 year
	Maximum	5 years	2 years	4 years	4 years	3 years
6	Minimum	NA	NA	NA	1 year	1 year
	Maximum	NA	NA	NA	2 years	18 months

NA: Not applicable.

Note: The class 6 felony did not exist until 1989.

Current Presumptive Penalties

- Class 1: Life or Death
- Class 2: 8-24 years
- Class 3: 4-12 years
- Class 4: 2-6 years
- Class 5: 1-3 years
- Class 6 1-1 1/2 years

Penalties: Range of Penalties

Figure 1.2 is a history of sentencing ranges for special sentencing categories. This table illustrates the year each special sentencing category was adopted by the General Assembly. This table also illustrates how the presumptive sentencing ranges have changed over the years.

Figure 1.2: History of Sentencing Ranges for Special Sentencing Categories

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1979 Normal Presumptive Ranges	8 to 12 years	4 to 8 years	2 to 4 years	1 to 2 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 24 years	2 to 16 years	1 to 8 years	6 months to 4 years	NA
Crime of Violence	8-year min. for violent crimes	4-year min. for violent crimes	2-year min. for violent crimes	1-year min. for violent crimes	NA
1981 Normal Presumptive Ranges	8 to 12 years	4 to 8 years	2 to 4 years	1 to 2 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 24 years	2 to 16 years	1 to 8 years	6 months to 4 years	NA
Extraordinary Aggravating Circumstances/Crime of Violence	12 to 24 years	8 to 16 years	4 to 8 years	2 to 4 years	NA
1985 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	NA
Extraordinary Aggravating Circumstances/Crime of Violence	24 to 48 years	16 to 32 years	8 to 16 years	4 to 8 years	NA
1988 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	NA
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	10 to 32 years	5 to 16 years	2.5 to 8 years	NA
1989 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	1 to 2 years
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	10 to 32 years	5 to 16 years	2.5 to 8 years	18 months to 4 years
1990 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	1 to 2 years
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	10 to 32 years	5 to 16 years	2.5 to 8 years	18 months to 4 years
Sentence-Enhancing Circumstances	8 to 48 years	4 to 32 years	2 to 16 years	1 to 8 years	1 to 4 years
1993 Normal Presumptive Ranges (current law in 2006)	8 to 24 years	4 to 12 years	2 to 6 years	1 to 3 years	1 year to 18 months
Extraordinary Mitigating or Extraordinary Aggravating Circumstances	4 to 48 years	2 to 24 years	1 to 12 years	6 months to 6 years	6 months to 3 years
Extraordinary Risk of Harm to Society	NA	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	8 to 24 years	4 to 12 years	2 to 6 years	15 months to 3 years
Extraordinary Risk of Harm to Society	NA	10 to 32 years	5 to 16 years	30 months to 8 years	18 months to 4 years
Sentence-Enhancing Circumstances	8 to 48 years	4 to 24 years	2 to 12 years	1 to 6 years	1 to 3 years
Extraordinary Risk of Harm to Society	NA	4 to 32 years	2 to 16 years	1 to 8 years	1 to 4 years

Source: Legislative Council Staff

NA: Not applicable.

Note: The class 6 felony classification did not exist until 1989, and the Extraordinary Risk of Harm to Society category does not apply to class 2 felonies. Minimum and maximum sentences for Class 1 felonies, life and death, respectively, are not included in figures 1.2 through 1.7 since those sentences have not changed during the time period covered.

Figure 1.11: Colorado Sentencing Law in 2006

Felony Class of Crime	Normal Presumptive Range 18-1.3-401 (1) (a) (V) (A)	Extraordinary Aggravating or Mitigating Circumstances 18-1.3-401 (6)	Sentence Enhancing Circumstances 18-1.3-401 (9)	Extraordinary Aggravating Circumstances 18-1.3-401 (8)/ Crime of Violence 18-1.3-406	Little Habitual 18-1.3-801 (1.5)	Big Habitual 18-1.3-801 (2)	Mandatory Parole 18-1.3-401 (1) (a) (V) (A)
Class 2	8 - 24 yrs	4 - 48 yrs	8 - 48 yrs	16 - 48 yrs	72 yrs	96 yrs	5 yrs
Class 3	4 - 12	2 - 24	4 - 24	8 - 24	36	48	5
Class 3 (Extraordinary Risk of Harm 18-1.3-401 (10))	4 - 16	2 - 32	4 - 32	10 - 32	48	64	5
Class 4	2 - 6	1 - 12	2 - 12	4 - 12	18	24	3
Class 4 (Extraordinary Risk of Harm)	2 - 8	1 - 16	2 - 16	5 - 16	24	32	3
Class 5	1 - 3	6 mos - 6 yrs	1 - 6	2 - 6	9	12	2
Class 5 (Extraordinary Risk of Harm)	1 - 4	6 mos - 8 yrs	1 - 8	2.5 - 8 yrs	12	16	2
Class 6	1 yr - 18 mos	6 mos - 3 yrs	1 - 3	15 mos - 3 yrs	NA	6	1
Class 6 (Extraordinary Risk of Harm)	1 - 2	6 mos - 4 yrs	1-4	18 mos - 4 yrs	NA	8	1

Source: Legislative Council Staff

Figure 1.4 — Sentences for Crimes of Violence

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1993 Normal Presumptive Ranges (current law in 2006)	<i>8 to 24 years</i>	<i>4 to 12 years</i>	<i>2 to 6 years</i>	<i>1 to 3 years</i>	<i>1 year to 18 months</i>
Crime of Violence	16 to 48 years	8 to 24 years	4 to 12 years	2 to 6 years	15 months to 3 years

Sentencing Factors that Limit
Judicial Discretion and Influence
Plea Bargaining.

The Process...

Arrest to Sentence and Beyond

- The decision to arrest
- The charging decision
- Plea bargaining decisions
- Sentencing decision
- Post sentencing decisions
 - probation
 - community
 - parole
 - revocations

Felony Conviction Collateral Damage

- Voting Rights
- Gun Rights
- Professional Licensing
- Civil Liability
- Ostracism
- Sex Offender Registration
- Immigration
- Etc.

Parole

Lifetime Sex Offender Sentencing, §18-1.3-101 *et. seq.*

- Life sentence
 - Indeterminate to life, i.e, 2- life, 10-life, etc.
 - Parole board makes release decision.
 - Prison or probation (ISP).
- Application
 - Mandatory for most F4 and up sex crimes.
 - Permissive for “economic” sex crimes.
 - Crime of violence applies

Lifetime Sex Offenders

As of 03/31/2008:

1,233 incarcerated under lifetime provisions

7 offenders on parole (1 additional offender paroled and subsequently revoked)

7 offenders in community corrections (including ISP-inmate)

Racial Disparity

In a state that is roughly 4% Afro-American, DOC's inmate population is over 19% Afro-American.