

# **Sentencing Task Force**

## **Habitual/Mandatory Minimums Working Group**



## **Discussion on Habitual Offender**

**A. The 4 types of habitual charges:**

**1. 18-1.3-801(1) Super Life**

- a. Conviction of any class 1 or 2 felony, or a class 3 felony which is a crime of violence with two prior convictions for any class 1 or 2 felony or a class 3 crime of violence. Sentence shall be life with possibility of parole after 40 years.

**2. 18-1.3-801(1.5) Little**

- a. Conviction of class 1, 2, 3, 4, or 5 felony, with 2 prior felonies within 10 years of commission of underlying felony. Sentence shall be **3 times** the maximum presumptive.

**3. 18-1.3-801(2) Big**

- a. Conviction for any class felony with 3 prior felony convictions. Sentence shall be **4 times** the maximum presumptive.

**4. 18-1.3-801(2.5) Life**

- a. Conviction for a crime of violence with prior conviction under 18-1.3-801(2) (big bitch). Sentence shall be life with possibility of parole after 40 years.

**admissions**

*Table 15. Commitments with Habitual Convictions, FY 2010 Admissions*

Sentencing Law	Crime <sup>a</sup>	Male	Female	Total	Avg Sentence (Yrs.)	
Pre HB 93-1302	<b>Three Previous Convictions</b>					
	Contraband	1	0	1	40	
	<b>Subtotal</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>40</b>	
Post HB 93-1302	<b>Three Previous Convictions</b>					
	Murder	1	0	1	96	
	Kidnapping	1	0	1	96	
	Sexual Assault	1	0	1	12	
	Sexual Assault-Child	2	0	2	48	
	Assault	7	0	7	37	
	Robbery	2	0	2	60	
	Aggravated Robbery	1	0	1	14	
	Public Peace	3	0	3	24	
	Escape	1	0	1	3	
	Burglary	1	0	1	12	
	Theft	1	0	1	12	
	M.V. Theft	2	0	2	36	
	Trespassing/Mischief	2	0	2	5	
	Identify Theft	2	0	2	24	
	Controlled Substances	6	0	6	46	
	Family Offense	1	0	1	6	
	Traffic	1	0	1	6	
	Menacing	2	0	2	12	
	<b>Subtotal</b>	<b>37</b>	<b>0</b>	<b>37</b>	<b>33</b>	
		<b>Two Previous Convictions</b>				
		Murder	1	0	1	72
		Assault	1	0	1	25
	Weapons/Explosives	1	0	1	8	
	Public Peace	2	0	2	23	
	Burglary	2	0	2	11	
	Forgery	2	0	2	6	
	Identify Theft	1	0	1	24	
	Controlled Substances	3	0	3	33	
	Traffic	1	0	1	6	
	Menacing	1	0	1	9	
<b>Subtotal</b>	<b>15</b>	<b>0</b>	<b>15</b>	<b>22</b>		
<b>Total</b>		<b>53</b>	<b>0</b>	<b>53</b>	<b>46</b>	

<sup>a</sup> Crimes include inchoate offenses.

## DOC 2010 Admissions by Ethnicity

Ethnicity	Post-1993 Habitual		Total	Habitual %	DOC 2010 Admissions (N=5,690)
	3 Prior	2 Prior			
Caucasian	14	9	23	44%	45%
Hispanic/Latino	8	3	11	21%	35%
African American	14	2	16	31%	17%
Native American	0	1	1	2%	2%
Asian	1	0	1	2%	1%
<b>Total</b>	<b>37</b>	<b>15</b>	<b>52</b>	<b>100%</b>	<b>100%</b>

Source: Colorado Department of Corrections

The Colorado Department of Corrections  
 Offenders with Habitual Most Serious Crime Convictions as of June 30, 2011

Sentencing Law	Crime <sup>a</sup>	Years until PED			Life	Total <sup>b</sup>	Avg Sentence (Yrs.)
		10	20	40	w/o Parole		
Pre HB 93-1302	<b>1 day to Life Sex Offender Act</b>						
	Sexual Assault					18	Life
	Sexual Assault-Child					11	Life
	<b>Subtotal</b>					<b>29</b>	<b>Life</b>
Pre HB 93-1302	<b>Habitual Small 25 - 50 year sentence</b>						
	Murder					5	46.0
	Kidnapping					4	38.8
	Sexual Assault					6	38.0
	Sexual Assault-Child					3	25.0
	Child Abuse					2	32.3
	Assault					6	43.0
	Robbery					2	33.0
	Aggravated Robbery					12	35.3
	Weapons					2	40.0
	Escape					1	25.0
	Burglary					12	28.0
	Theft					1	35.0
	Drug Offense					3	33.3
		<b>Subtotal</b>					<b>59</b>
Pre HB 93-1302	<b>Three Previous Convictions</b>						
	Murder			5	13	18	34.4
	Kidnapping	1		5	7	13	30.0
	Sexual Assault			3	10	13	35.4
	Sexual Assault-Child				5	5	40.0
	Child Abuse				1	1	40.0
	Assault			1	7	8	37.5
	Robbery				1	1	40.0
	Aggravated Robbery	1		2	22	25	37.2
	Weapons				1	1	40.0
	Hostage				3	3	40.0
	Burglary	1		5	7	13	30.0
	Trespass			1	1	2	30.0
	Drug Offense				6	6	40.0
	Menacing				2	2	40.0
	<b>Subtotal</b>	<b>3</b>	<b>22</b>	<b>86</b>		<b>111</b>	<b>35.2</b>
Pre HB 93-1302	<b>Two Previous Crime of Violence Convictions</b>						
	Kidnapping					2	40.0
	Assault					1	40.0
	Aggravated Robbery					1	40.0
	<b>Subtotal</b>				<b>4</b>	<b>4</b>	<b>40.0</b>
<b>Pre HB 93-1302 Total</b>		<b>3</b>	<b>22</b>	<b>90</b>		<b>203</b>	

<sup>a</sup> Crimes include inchoate offenses.

<sup>b</sup> Fugitives are excluded

Sentencing Law	Crime <sup>a</sup>	Presumptive range			Life	Total <sup>b</sup>	Avg Sentence (Yrs.)
		3X	4X	>=	w/o Parole		
Post HB 93-1302	<b>Three Previous Convictions (Sentence 4X max of presumptive range)</b>						
	Murder		29		1	30	116.4
	Kidnapping		14			14	75.1
	Sexual Assault		14			14	42.4
	Sexual Assault-Child		3			3	53.3
	Child Abuse		5			5	45.2
	Incest		1			1	48.0
	Assault		41			41	40.3
	Robbery		10			10	26.4
	Aggravated Robbery		41			41	53.0
	Arson		2			2	36.0
	Weapons		4			4	8.6
	Stalking		13			13	15.5
	Escape		15			15	24.4
	Hostage		4			4	78.0
	Burglary		50			50	38.5
	Theft		24			24	25.0
	M.V. Theft		11			11	21.0
	Trespassing/Mischief		7			7	11.1
	Forgery		6			6	7.0
	Fraud		5			5	6.0
	ID Theft		4			4	24.0
	Drug Offense		49			49	43.0
	Marijuana		2			2	28.0
	Criminal Negligence		1			1	6.0
	Perjury		2			2	6.0
	Traffic		5			5	6.0
	Organized Crime		7			7	85.9
	Menacing		8			8	12.0
	<b>Subtotal</b>		<b>377</b>		<b>1</b>	<b>378</b>	<b>43.6</b>

<sup>a</sup> Crimes include inchoate offenses.

<sup>b</sup> Fugitives are excluded

Sentencing Law	Crime <sup>a</sup>	Presumptive range			Life	Total <sup>b</sup>	Avg Sentence (Yrs.)
		3X	4X	>=	w/o Parole		
<b>Two Previous Convictions (Sentence 3X max of presumptive range)</b>							
	Murder	19			1	20	109.6
	Kidnapping	6				6	217.7
	Sexual Assault	4				4	41.3
	Sexual Assault-Child	4				4	18.5
	Child Abuse	1				1	48.0
	Assault	7				7	37.0
	Robbery	4				4	19.5
	Aggravated Robbery	9				9	46.2
	Weapons	2				2	7.5
	Stalking	8				8	12.4
	Escape	6				6	11.3
	Hostage	1				1	18.0
	Burglary	26				26	26.5
	Theft	10				10	17.0
	MV Theft	4				4	11.3
	Trespass	6				6	9.5
	Forgery	3				3	9.0
	ID Theft	3				3	15.3
	Drug Offense	22				22	25.0
	Marijuana	1				1	9.0
	Traffic	2				2	6.0
	Organized Crime	1				1	72.0
	Menacing	4				4	8.5
	<b>Subtotal</b>	<b>153</b>			<b>1</b>	<b>154</b>	<b>41.4</b>
<b>Habitual Sex Offender - Children (Sentence &gt;= Maximum of presumptive range)</b>							
	Sexual Assault-Child			5		5	18.6
	Child Abuse			4		4	23.5
	Incest			1		1	16.0
	<b>Subtotal</b>			<b>10</b>		<b>10</b>	<b>20.3</b>
<b>Post-HB 93-1302 Total</b>		<b>153</b>	<b>377</b>	<b>10</b>	<b>2</b>	<b>542</b>	<b>42.6</b>

<sup>a</sup> Crimes include inchoate offenses.

<sup>b</sup> Fugitives are excluded

The Colorado Department of Corrections  
 Offenders with Habitual Most Serious Crime Convictions as of June 30, 2011

	Pre HB 93-1302			Post HB 93-1302			Total	Percent	
	1 day to life Sex Offender Act	Habitual Small 25 - 50 year sentence	Three Previous Convictions	Two Previous Crime of Violence Convictions	Three Previous Convictions	Two Previous Convictions			Habitual Sex Offender - Children
<b>County of Conviction</b>									
Denver	7	20	50	3	92	29	203	27%	
Arapahoe	2	16	14	0	71	27	131	18%	
Mesa	3	2	1	0	68	52	128	17%	
El Paso	2	6	14	0	47	20	90	12%	
Jefferson	1	3	7	1	24	4	43	6%	
Adams	0	2	9	0	19	3	34	5%	
Larimer	4	1	5	0	10	2	22	3%	
Douglas	0	2	1	0	12	4	19	3%	
Weld	1	2	1	0	12	1	17	2%	
Boulder	3	2	1	0	4	0	10	1%	
Pueblo	3	0	1	0	3	3	10	1%	
Fremont	1	0	1	0	2	2	6	1%	
Bent	0	0	2	0	2	0	4	1%	
La Plata	0	0	0	0	3	1	4	1%	
Eagle	0	0	1	0	1	1	3	0%	
Garfield	0	0	1	0	2	0	3	0%	
Lincoln	0	0	0	0	0	3	3	0%	
Crowley	0	0	2	0	0	0	2	0%	
Archuleta	0	0	0	0	1	0	1	0%	
Lake	0	1	0	0	0	0	1	0%	
Las Animas	0	0	0	0	0	1	1	0%	
Logan	0	0	0	0	1	0	1	0%	
Moffat	0	1	0	0	0	0	1	0%	
Montezuma	1	0	0	0	0	0	1	0%	
Morgan	0	0	0	0	1	0	1	0%	
Park	0	0	0	0	1	0	1	0%	
Pitkin	1	0	0	0	0	0	1	0%	
Summit	0	1	0	0	0	0	1	0%	
Washington	0	0	0	0	1	0	1	0%	
<b>Total</b>	<b>29</b>	<b>59</b>	<b>111</b>	<b>4</b>	<b>377</b>	<b>153</b>	<b>10</b>	<b>743</b>	<b>100%</b>

Note . Percents may not total 100% due to rounding error.



# Sentencing Task Force

## Discussion on Theft, Habitual, Restitution



September 8, 2011

Data from Judicial

Prepared by DCJ/ORS

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CCJJ 1/13/2012

# Who is Charged/Convicted of **Habitual**?

- Cases sentenced to DOC, January 1, 2007 – Sept 30, 2010
- 2028 charged
- **200 convicted** (1828 not convicted)
  - 5% female
  - Mean age 36
  - No difference by race
- Felony Class (Index) of Habitual
  - F1....4%
  - F2....11.5%
  - F3....18%
  - F4....24.5%
  - F5....23.5%
  - F6....18.5%

## Crime type (Index) of Habitual

Violent	44%
Property	29%
Drugs	11.5%
Other	15.5%

# How Many are Charged/Convicted of **Habitual**?

(Judicial Districts 1 - 11)

Judicial District	Number of Cases	Not proven %	Proven %	Proven % of Total
1	55	76%	24%	6.5%
2	67	51%	49%	16.5%
3	8	100%	0%	0%
4	372	91%	9%	17.0%
5	25	92%	8%	1.0%
6	57	100%	0%	0%
7	17	94%	6%	0.5%
8	48	90%	10%	2.5%
9	12	83%	17%	1.0%
10	63	98%	2%	0.5%
11	30	90%	10%	1.5%

# How Many are Charged/Convicted of **Habitual**?

(Judicial Districts 12 - 22)

Judicial District	Number of Cases	Not Proven %	Proven %	Proven % of Total
12	3	100%	0%	0%
13	44	96%	5%	1.0%
14	15	100%	0%	0%
15	1	100%	0%	0%
16	6	100%	0%	0%
17	24	71%	29%	3.5%
18	988	95%	5%	23.5%
19	10	50%	50%	2.5%
20	41	88%	12%	2.5%
21	140	71%	29%	20.0%
22	2	100%	0%	0%
<b>TOTAL</b>	<b>2028</b>	<b>90% (1828)</b>	<b>10% (200)</b>	<b>100.0%</b>