

COMPREHENSIVE SENTENCING TASK FORCE

Extraordinary Risk Working Group

RECOMMENDATION PRESENTED TO THE CCJJ
October 12, 2012

FY13-CS #3 Eliminate Colorado's Extraordinary Risk Statute

Recommendation FY13-CS#3

Colorado's Revised Statutes pertaining to Crimes of Violence, Extraordinary Risk Crimes and Aggravated Ranges are complex, convoluted and often duplicative. The CCJJ Comprehensive Sentencing Task Force recommends the following changes:

- 1) Eliminate **Extraordinary Risk (18-1.3-401(10))** and move child abuse (18-6-401(1)(a);(7)(a)(I) and 18-6-401(1)(a);(7)(a)(III)) and 2nd and subsequent stalking (18-3-602(3)(b)) to the **Crime of Violence Statute (18-1.3-406)**, and strike 18-3-602(5) as follows:

If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against the person, prohibiting the behavior described in this section, the person commits a class 4 felony. ~~In addition, when a violation under this section is committed in connection with a violation of a court order, including but not limited to any protection order or any order that sets forth the conditions of a bond, any sentence imposed for the violation pursuant to this subsection (5) shall run consecutively and not concurrently with any sentence imposed pursuant to section 18-6-803.5 and with any sentence imposed in a contempt proceeding for violation of the court order.~~

- 2) Change **Crime of violence** and **mandatory minimum** (18-1.3-401(8)) ranges set to the minimum of the presumptive range.
- 3) The upper end of the sentencing ranges for Crimes of Violence mirrors the current upper end ranges in the statute.

Discussion:

The goal of this recommendation is to simplify the sentencing code while at the same time providing the prosecution with more discretion in charging and negotiations, along with giving the bench more discretion in sentencing. Currently, extraordinary risk sentences, that is, sentences above the presumptive range, are only used ten percent of the time in a study from 2009-2011 (Figure 1).¹ This change would also increase sentencing possibilities for some child abuse and stalking offenses.

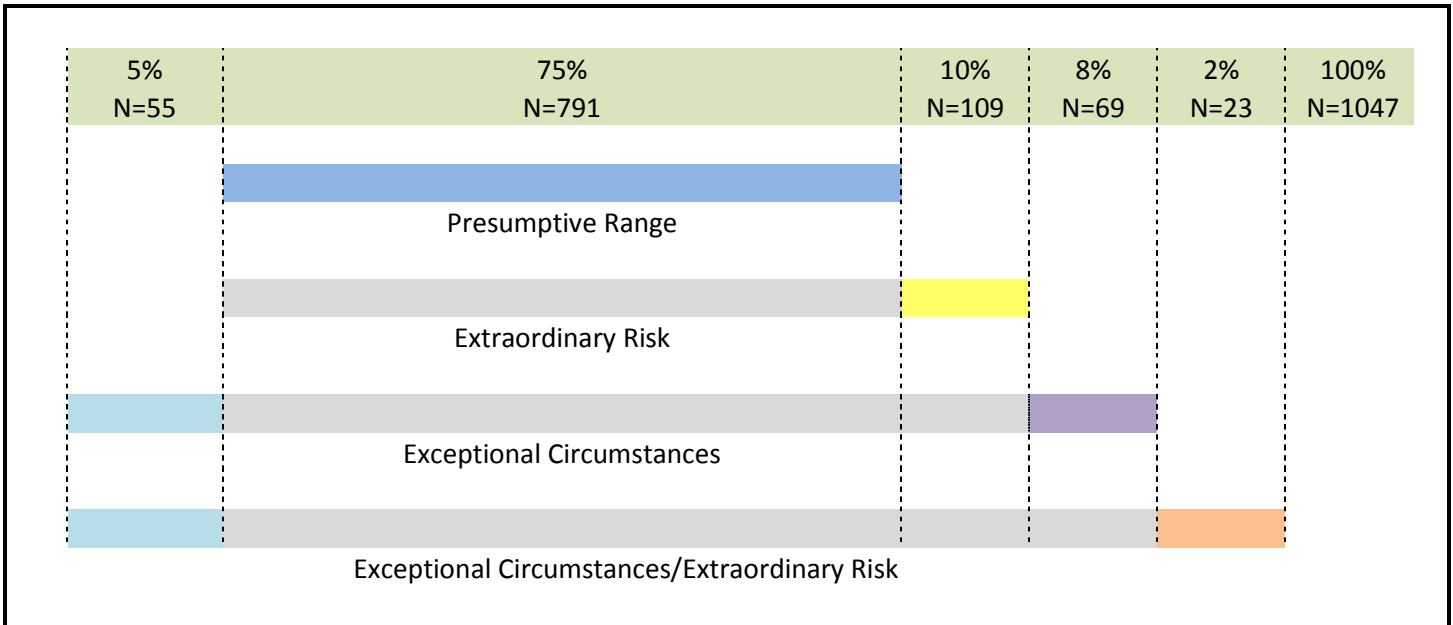
Extraordinary Risk – Felonies

Crimes that present an extraordinary risk of harm to society shall include the following:

¹ Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CIASS) and analyzed by DCJ/ORS.

1. Aggravated robbery, section 18-4-302
2. Child abuse, section 18-6-401
3. Unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, section 18-18-405 (Note-not simple possession)
4. Any crime of violence as defined in section 18-1.3-406
5. Stalking, section 18-3-602, or section 18-9-111(4) as it existed prior to August 11, 2010
6. Sale of materials to manufacture controlled substances, section 18-18-412.7
7. Felony invasion of privacy for sexual gratification as described in section 18-3-405.6 (Note-effective July 1, 2012)

Figure 1. Extraordinary Risk Convictions Sentenced to DOC, CY 2009 to 2011 (N=1047)



Data source: Court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS on 03/30/2012.

Excludes aggravated robbery, crimes of violence, and sentence-enhanced offenders.

Table 1. Offenders with Extraordinary Risk crimes as most serious conviction charge sentenced to DOC by crime, CY 2009 to 2011 (N=1047).

| Crime | Below Presumptive | Presumptive | Extraordinary Risk | Exceptional Circumstances | Exceptional/Extraordinary | Total |
|--------------|-------------------|------------------|--------------------|---------------------------|---------------------------|--------------------|
| Child Abuse | 2% (3) | 40% (59) | 20% (30) | 24% (36) | 14% (21) | 100% (149) |
| Drugs | 6% (51) | 83% (679) | 8% (66) | 3% (22) | <1% (1) | 100% (819) |
| Stalking | 1% (1) | 67% (53) | 16% (13) | 14% (11) | 1% (1) | 100% (79) |
| Total | 5% (55) | 75% (791) | 10% (109) | 8% (69) | 2% (23) | 100% (1047) |

Data source: Court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS on 03/30/2012. Excludes aggravated robbery, crimes of violence, and sentence-enhanced offenders. Note: Sentence length may reflect other factors such as number of conviction charges, co-occurring cases, or data entry error.

Eliminating Colorado’s Extraordinary Risk Statute is also consistent with evidence based sentencing practices and goals, while continuing public safety through incapacitation when necessary, but not mandatorily with high minimum mandatory ranges.

Also, this recommendation is in response to the Commission approved FY10-S4 recommendation regarding Aggravated ranges, extraordinary risk crimes and mandatory minimum sentences. That recommendation from the October 2010 annual report and outcome are as follows:

Aggravated ranges, extraordinary risk crimes, and mandatory minimum sentences recommendations

FY10-S4

The complex nature of Colorado statutes pertaining to aggravated, extraordinary risk, and mandatory minimum sentences requires detailed analysis and careful study to ensure that any recommended modifications conform to broader sentencing policies and structures, and to ensure that the consequences of any modifications are analyzed and well understood by stakeholders. The Commission must first undertake this analysis to guarantee that any recommended statutory reforms must be consistent with evidence-based practices and recidivism reduction.²

DISCUSSION

The Commission has requested that its Sentencing Policy Task Force undertake a comprehensive study of the entire state sentencing structure, including the enhancements captured by this recommendation: aggravated sentencing ranges, extraordinary risk crimes, and mandatory minimum sentences. These enhancements are interrelated and require considerable analysis to understand the impact of any specific modification.

² Previously appeared as "A-1" in the *November 2009 Report*.

Recommendation Clarification:

Current Sentencing Ranges by Crime Classification

| FELONIES COMMITTED ON OR AFTER JULY 1, 1993 | | | | | |
|--|------------------------|-----------------------------|---------------------------|----------|------------------|
| PRESUMPTIVE RANGE | | | EXCEPTIONAL CIRCUMSTANCES | | |
| CLASS | MINIMUM | MAXIMUM | MINIMUM | MAXIMUM | MANDATORY PAROLE |
| 1 | Life Imprisonment | Death | Life Imprisonment | Death | |
| 2 | 8 years \$5000 fine | 24 years \$1,000,000 | 4 years | 48 years | 5 years |
| 3 | 4 years \$3000 | 12 years \$750,000 | 2 years | 24 years | 5 years |
| Extraordinary Risk Crime | 4 years \$3000 fine | 16 years \$750,000 | 2 years | 32 years | 5 years |
| 4 | 2 years \$2000 fine | 6 years \$500,000 | 1 year | 12 years | 3 years |
| Extraordinary Risk Crime | 2 years \$2000 fine | 8 years \$500,000 | 1 year | 16 years | 3 years |
| 5 | 1 year \$1000 fine | 3 years \$100,000 | 6 months | 6 years | 2 years |
| Extraordinary Risk Crime | 1 year \$1000 fine | 4 years \$100,000 | 6 months | 8 years | 2 years |
| 6 | 1 year \$1000 fine | 18 months \$100,000 fine | 6 months | 3 years | 1 year |
| Extraordinary Risk Crime | 1 year \$1000 fine | 2 years \$100,000 | 6 months | 4 years | 1 year |

Proposed Revised Sentencing Ranges by Crime Classification

| FELONIES | | | | |
|-----------------|--------------------------|----------------|--------------------------------|----------------|
| | PRESUMPTIVE RANGE | | CRIME OF VIOLENCE RANGE | |
| CLASS | MINIMUM | MAXIMUM | MINIMUM | MAXIMUM |
| 1 | Life Imprisonment | Death | Life Imprisonment | Death |
| 2 | 8 years | 24 years | 8 years | 48 years |
| 3 | 4 years | 12 years | 4 years | 32 years |
| 4 | 2 years | 6 years | 2 years | 16 years |
| 5 | 1 year | 3 years | 1 year | 8 years |
| 6 | 1 year | 18 months | 1 year | 4 years |