



FY2023 RECOMMENDATION/FY23-SR04 Change Felony Crime Classifications and Sentence Enhancement Provisions of the Criminal Code [Statutory]

Status: Implementation Complete

Actions/Updates

2023 UPDATE (JUNE)

During the FY 2023 Legislative Session, this recommendation was included in House Bill 2023-1292 (Concerning the adoption of the 2023 recommendations of the Colorado Commission on Criminal and Juvenile Justice regarding enhanced sentencing). The bill was passed by the General Assembly 5/4/2023 and was signed by the Governor 6/1/2023.

With the passage and signing of this bill, this recommendation is considered complete.

2023 UPDATE (MARCH)

This recommendation, approved by the Commission on March 10, 2023, involves statutory revisions and is first applicable for action during the FY 2023 legislative session.

Description

Amends and appends multiple provisions of statute related to felony crimes, including revisions of post-conviction review and sentence reconsideration. This recommendation comprises three elements that each include a Description, a Discussion and Proposed Statutory Language for the following:

- ELEMENT 4.1. Mandatory Consecutive Sentencing and Post-Conviction Review [p. 1-4] includes revisions and/or amendments to §18-1.3-406 and §24-4.1-302/§24-4.1-302.5, C.R.S.
- ELEMENT 4.2. Habitual Sentences [p. 4-6] includes revisions and/or amendments to §18-1.3-801 and §24-4.1-302/§24-4.1-302.5, C.R.S.
- ELEMENT 4.3. Extraordinary Risk [p. 6-7] includes revisions and/or amendments to §18-1.3-401, C.R.S.

[See the "Recommendation Text" for the Proposed Statutory Language.]

Agencies Responsible

General Assembly; Courts

Discussion

Each ELEMENT of this recommendation includes a distinct "Discussion" section, which is provided below BY ELEMENT.

ELEMENT 4.1. Discussion

This recommendation is in response to the Governor's 2022 Biennial Letter [FOOTNOTE 1] that specifically requests the CCJJ to address mandatory consecutive sentencing. This is consistent with the request in 2020 to study sentencing enhancements and long sentences to CDOC.

Significant philosophical disagreement surrounds any discussion of mandatory sentencing. Certain stakeholders support the General Assembly determine when mandatory sentences are necessary in order to define appropriate punishment and increase public safety. Other stakeholders believe legislatively required mandatory sentences interfere with judicial discretion and serve as an instrument for the government to leverage plea bargains. In many ways, this disagreement has no middle ground.

The Sentence Structure Working Group of the Sentencing Reform Task Force recognized this disagreement and attempted to approach the issue by combining three recognized concepts in the adjudication of criminal cases. One is well recognized in federal law (i.e., the "safety valve") which allows the court to impose a sentence not mandated by the statute when certain defined mitigating factors are present. This recommendation element adopts language substantially similar to the deferral language. The next concept added was that of "waiver," Colorado law allows for a waiver of certain statutory mandates by agreement of the parties (e.g. waiver of the "ineligible" for probation rule due to prior criminal history). The recommendation element specifically allows for a waiver when agreed to by the prosecution. The final concept was the expansion of the modification of sentence language included in 18-1.3.406(1) (a). This section allows for the modification of a mandatory COV sentence, including modification to any legally allowable sentence including for probationary sentences when the facts and circumstances supported such a sentence. However, current case law holds that the statute does not allow the court to modify the consecutive nature of any sentence (*People v. Beyer* 793 P2d 644 (Colo. App. 1990)).

After review of the judicial report describing the limited number of sentence modifications under 18-1.3.406(1) (a) since 1977 (with an average 4 to 5 per year), and the time frames and issues that courts found valuable in determining a modification, this recommendation was drafted which allows for a 2 to 5 year time frame (prospectively) for a person to petition once for a sentence modification for both sentence term of years and the concurrent/consecutive nature of the sentence. This "second look" will happen after a period of incarceration and after the judgment of conviction is final. This sentence modification will allow consideration of both the mitigating factors in the case and the behavior of the person in CDOC.

ELEMENT 4.2. Discussion

This recommendation element is in response to the governor's request in 2020 to examine the habitual sentencing statutes "so we are enhancing sentences for those individuals who are truly public safety risks."

This recommendation element is a result of extensive discussions of how best to make the decision about whether a person is "truly a public safety risk." Given the many individual and societal factors that may cause a person to offend multiple times and become eligible for an habitual filing coupled with the data indicating that application of the habitual enhancement is

often a filing decision driven but the policies and practices of individual judicial districts, it was determined that the best way to address habitual sentences was to combine a significant CDOC stay (at least 10 calendar years) with a “post-conviction second look” so that all persons and their sentences can be evaluated in terms of the severity of the particular crimes involved plus a review of the choices made by the person in CDOC to illustrate their change and commitment to positive and “safe” living. These concepts, in concert, will meet the sentencing goals of punishment along with a pathway for change. It allows for persons to demonstrate they are not public safety risks.

There is a national movement toward “second look” statutory provisions which were considered in the discussion regarding long sentences. The recommended changes will be prospective and not retroactive so that all persons, including victims, can be made aware of this opportunity prior to sentencing.

ELEMENT 4.3. Discussion

In an attempt to simplify parts of the criminal code, the extraordinary risk classification was eliminated for almost all misdemeanor offenses in Senate Bill 2021-271. In discussions around felony offenses, it was determined that the extraordinary risk ranges have value for more serious offenses. The discussion recognized that the elevated range for Class 5 and 6 felonies are unnecessary.

Footnotes

[FOOTNOTE 1] The “Biennial Letter” is pursuant to House Bill 2018 - 1287 (see also, §16-11.3-103(7), C.R.S.). Statute requires that in even-numbered years the Commission request a letter from the Governor regarding topics of study. The Governor is encouraged to consult with the Chief Justice of the Colorado Supreme Court and the Majority and Minority Leaders of the Colorado House of Representatives and the Senate. The first of these letters was received June 24, 2020 and encouraged the Commission to study, discuss, and return recommendations to the Governor on a variety of sentencing-related topics. The second Biennial Letter was received September 15, 2022, which included additional sentencing issues along with other criminal justice concerns that require analysis and action.