

CRIMINAL SENTENCING IN COLORADO: PAST, PRESENT & FUTURE

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Colorado Commission on Criminal & Juvenile Justice

BACK IN 1977

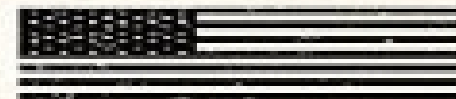
WHAT THINGS COST

FIRST CLASS STAMP	\$0.13
DOZEN EGGS	\$0.82
GALLON OF MILK	\$1.44
GALLON OF GAS	\$0.82
NEW HOUSE	\$40,300.00

AVERAGE INCOME
PER YEAR
\$15,000

U.S. PRESIDENT

★ *Jimmy Carter* ★



WHAT HAPPENED

Star Wars hits theaters for the first time and will go on to be the second highest-grossing film of all time

NAVSTAR Global Positioning System GPS inaugurated by US Department of defense

The first commercial flight Concord London to NYC

Saturday Night Fever sparks the disco inferno and the popularity of movie soundtracks

SPORTS



World Series Champions
Super Bowl Champions
NBA Champions
Stanley Cup Champions

NY Yankees
Oakland Raiders
Portland Trail Blazers
Montreal Canadiens

MUSIC

I JUST WANT TO BE YOUR
EVERYTHING
Andy Gibb

REST OF MY LOVE
Emotions

DON'T LEAVE ME THIS WAY
Thelma Houston

HIGHER AND HIGHER
RitD College

APPLE introduces the
Apple II computer



TOP MOVIES

Star Wars Episode IV: A New Hope

Smokey and the Bandit

Saturday Night Fever

Close Encounters
of the Third Kind



Laverne & Shirley
Happy Days
Three's Company
Charlie's Angels

Television

1977 Sentencing Scheme reflected long ranges in sentences with Parole inside the sentence

- Class 1 Life (10 years parole eligibility) or Death
- Class 2 10 years to 50 years
- Class 3 5 years to 40 years
- Class 4 1 day to 10 years
- Class 5 1 day to 5 years

Sentences were given in indeterminate ranges in accordance with the Indeterminate Sentencing Law of 1973

According to the Legislative Council Report of the Judiciary Committees in December 1978:

Indeterminate Sentencing Law – 1973 The 1972 Legislative Council Committee on Criminal Justice recommended the enactment of a modified form of indeterminate sentencing. The recommendation was adopted by the General Assembly in 1973 (Senate Bill No.8, 1973 General Assembly). The law became effective July 1, 1973. The indeterminate sentencing law in Colorado (Section 16-11-101 (1) (b) and Section 16-11-304, C.R.S. 1973) provides a form of indeterminate sentencing for persons convicted of Class 4 and 5 felony violations.

In these crimes the sentencing courts are to impose only a maximum sentence, with no minimum imposed. The maximum sentence is to be no less than one-third of the maximum provided by law up to the full maximum statutory sentence. The maximum sentence for a Class 4 felony is 10 years and the maximum sentence for a Class 5 felony is five years. The parole board is required to review the matter of parole of each inmate within nine months of the inmate's arrival and within each six months thereafter. Impact of indeterminate sentencing.

Impact of indeterminate sentencing law of 1973.

Data submitted to the 1975 Committee on the Penitentiary by the Parole Board indicated that the number of inmates with an indeterminate sentence at the penitentiary increased from 11 percent of the population on July 1, 1973, to approximately 60 percent of the population on December 31, 1974. ... the board is required to conduct more hearings. The Office of Research and Planning of the Division of Correctional Services estimated, in 1975, that approximately 60 percent of the population at the penitentiary is presently on an indeterminate sentence. More recent data from the 1977 Corrections Master Plan indicates that 47 percent of the offenders sentenced to the department are sentenced for Class 4 and 18 percent are sentenced for Class 5. Thus, 65 percent of offenders sentenced are sentenced to an indeterminate term. Data submitted as of May, 1978, indicate that approximately 68 percent of offenders sentenced are sentenced to an indeterminate term. Class 4 offenders serve an average length of time of 16.18 months and Class 5 offenders serve an average length of time of 12.70 months.

Mandatory Sentencing Law – In 1976, the General Assembly enacted a mandatory sentencing law for repeat offenders and offenders who commit violent crimes. The act, House Bill 1111 (1976 Session), provided that certain repeat offenders and offenders who commit violent crimes were not eligible for an indeterminate sentence if the offense was a Class 4 or Class 5 felony. If the offense for which the person was being sentenced was a Class 5 felony, the authorized minimum sentence shall be not less than one year imprisonment, and, if a Class 4 felony, the authorized minimum sentence shall be not less than two years imprisonment.

Department Numbers in 1977

Population - ADA

- 2404 - 1ST quarter
- 2495 - 2ND quarter
- 2464 - 3RD quarter
- 2419 - 4TH quarter
- Yearly average: 2446

Average Length of Stay

- 18.58 months in December 1977
- 24 months for Maximum security facility
- 21 months average on parole

First Change Attempt – HB 1589 – Legislative Intent

The act was intended to eliminate disparate sentences which result from the operation of the present system through the accomplishment of the following three primary purposes:

- 1. That those who have committed similar crimes, if sentenced to imprisonment, would be sentenced for similar lengths of time;
- 2. That the sentence imposed is based upon the crime that was committed, and the circumstances surrounding it; and
- 3. That offenders who are sentenced to imprisonment will serve the sentence which is imposed by the court, minus the good time which they can earn.

New Sentencing in Presumptive Ranges Based on the average sentences at the time the bill was passed

Class of Felony

- Class 1
- Class 2
- Class 3
- Class 4
- Class 5

Presumptive Sentence

- Life (now 20 years for parole/ Death)
- 7 ½ years
- 4 ½ years
- 2 years
- 18 months

One year of parole for each class

Court could increase the presumptive sentence by 20% for aggravating circumstances or 50% if has prior felony conviction

New Gorsuch Bill introduced – Determinate Sentences with Small Ranges

- Credit for Presentence confinement
- fix a determinate sentence
- Grant parole on felonies before 7/1/79, sex offense under lifetime or class 1 or habitual but rest is automatic parole determined by good time and earned time
- Parole for 1 year on class 2, 3, 4 and 5
- Sentence in presumptive range except for extraordinary aggravating or mitigating with written findings and auto appeal to court of appeals
- Good time at 15 days per month with earned time and additional 15 days every 6 months.
- Mandatory sentences for COV – minimum of presumptive range
- Class 1 – life or death
- Class 2 – 8 to 12 years
- Class 3 – 4 to 8 years
- Class 4 – 2 to 4 years
- Class 5 – 1 to 2 years



CCJJ: Sentencing Reform Task Force, 9/9/2020



Criminal Sentencing in Colorado

PROBLEMS FROM 1979 TO 1985

Political pressures that the sentence ranges were too short. The population at DOC was increasing somewhat 2128 in 77-78 to 2394 to 81-82 to 2899 in 1983-84 but not significantly.

Mielke Bill – 1985 -Double or Nothing

Multiple bills made changes – HB 1320, HB1292, HB 1116

- Class 1- Life (40 until PED) or death
- Class 2 – 8 to 24
- Class 3 – 4 to 16
- Class 4 – 2 to 8
- Class 5 – 1 to 4
- (doubled the presumptive maximum)
- (doubled the range for aggravating circumstances – created two kinds of aggravating factors permissive and mandatory)
- COV sentence in aggravated range was changed in 1981 but now longer range
- Changed the court’s discretion on concurrent v. consecutive – mandatory consecutive for COV arising out of the same incident
- Auto appeal of extraordinary sentence was repealed in 1982
- Parole: Accumulation of good time only entitled offender to apply for parole/ get a PED date. Good time does not vest as it did under Gorsuch
- The parole board is once again in the business of determining release and LOS.

What happens at DOC?

DOC experiences unprecedented growth. In the 1988-89 report, the department notes:

- Inmate population has nearly tripled since 1979.
- The impact of COV sentencing increase
- HB 1320, the Meilke bill, has increases the average length of stay for new intakes from 28 months to 53 months
- The change from Gorsuch parole to Meilke parole has added to length of stay.
- The incarceration rate doubles in the years from 1985 to 1989
- DOC is sued for jail backlog
- Prisoners are sent out of state
- Prisons are operating at 152% capacity
- Drug sentences increase 147% over 2 years
- Average sentence for class 2 felony increases from 25 years to 43.3 years over a 2 year period

The following years are collection of changes to sentence ranges, parole, earned time and habitual offender – Sometimes a yo-yo, back and forth

Increases

- Life sentences become life without the possibility of parole
- Habitual offender sentencing changes – up to 4xs the maximum of the presumptive range
- Eliminate earned time on parole
- Mandated a period of parole outside of sentence (significant impact)
- Increased time served before PED for certain violent to 75% of the sentence (significant impact)
- Passed the LSA for sex offenders (significant impact)

Decreases/Adjustments

- Raise the amount of earned time to 10, then to 12 days per month for certain offenders
- Grant earned time on parole for some parolees
- Create YOS and decrease the age eligibility
- Expand YOS and increase the age eligibility
- Reduce juveniles to 40 to life from class 1 felonies
- COV sentencing at midpoint of the presumptive range
- Decreased the amount of time for return to prison for a technical violation if non-violent offense

Creation of CCJJ in 2009 resulted in some sentencing changes

Decrease in felony level for certain drug offenses – twice – 1352 and 250

Modified value-based crime penalties

Expanded probation eligibility for non-violent offenders with priors

Outside of CCJJ – since 2009

Required minimum mandatory for certain sex offenses against children

SOMB decides who gets parole

Created some parole presumptions for special needs and immigration detainees and drug offenders (limited use)

Direct file changes – must be 16 and certain crimes

Felony DUI

Multiple changes for technical violations on parole and use of intermediate sanctions

Creation of JCAP program for juveniles convicted as adults

Creation of the WAGEES program – community programs to support reentry

Decrease the level of crime for drug possession

Lower the mandatory parole periods for certain crimes



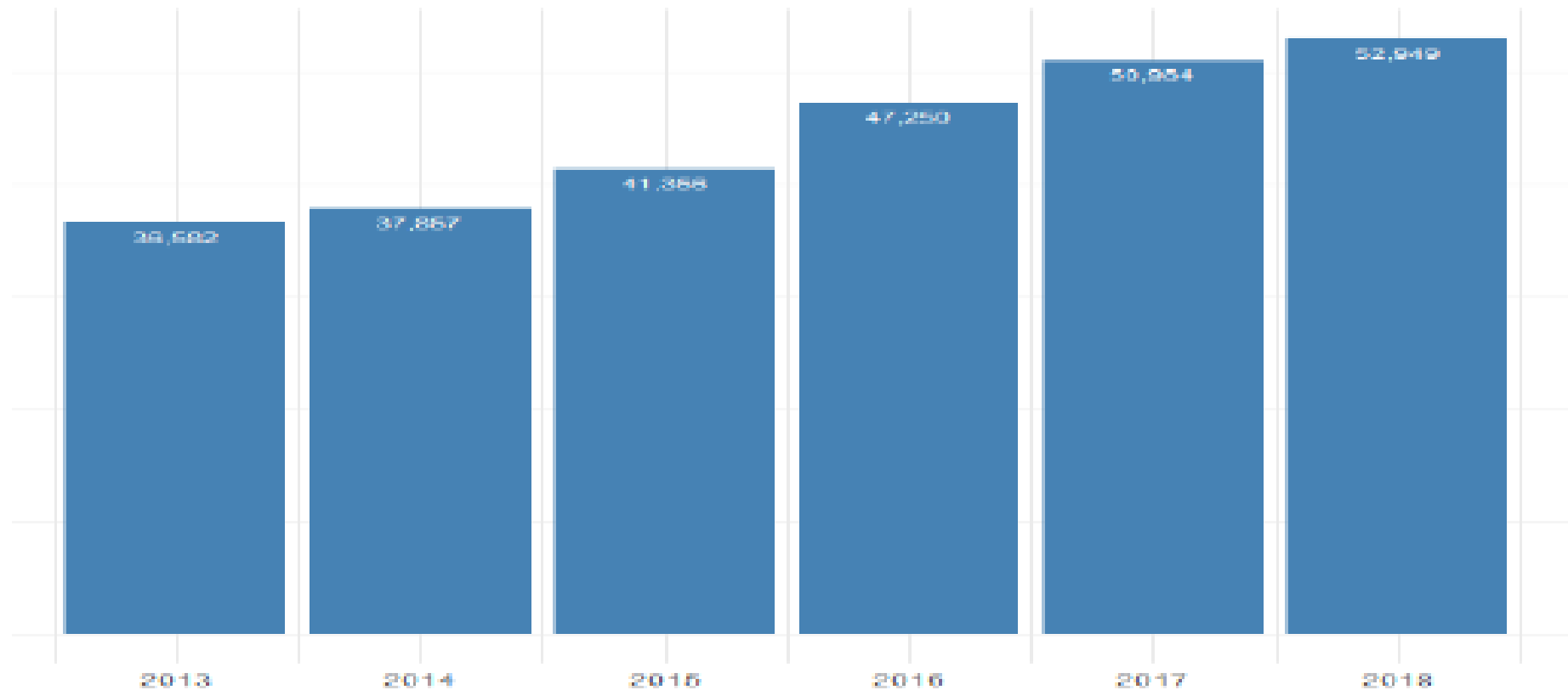
FELONY FILINGS HAVE GONE UP STATEWIDE

Section One: Statewide District Court Filings 2013-2018

	2013	2014	2015	2016	2017	2018	Percent Change
Number of filings	36,582	37,857	41,356	47,250	50,984	52,949	44.7%
Rate/100K*	907	921	986	1,104	1,168	1,190	31.2%

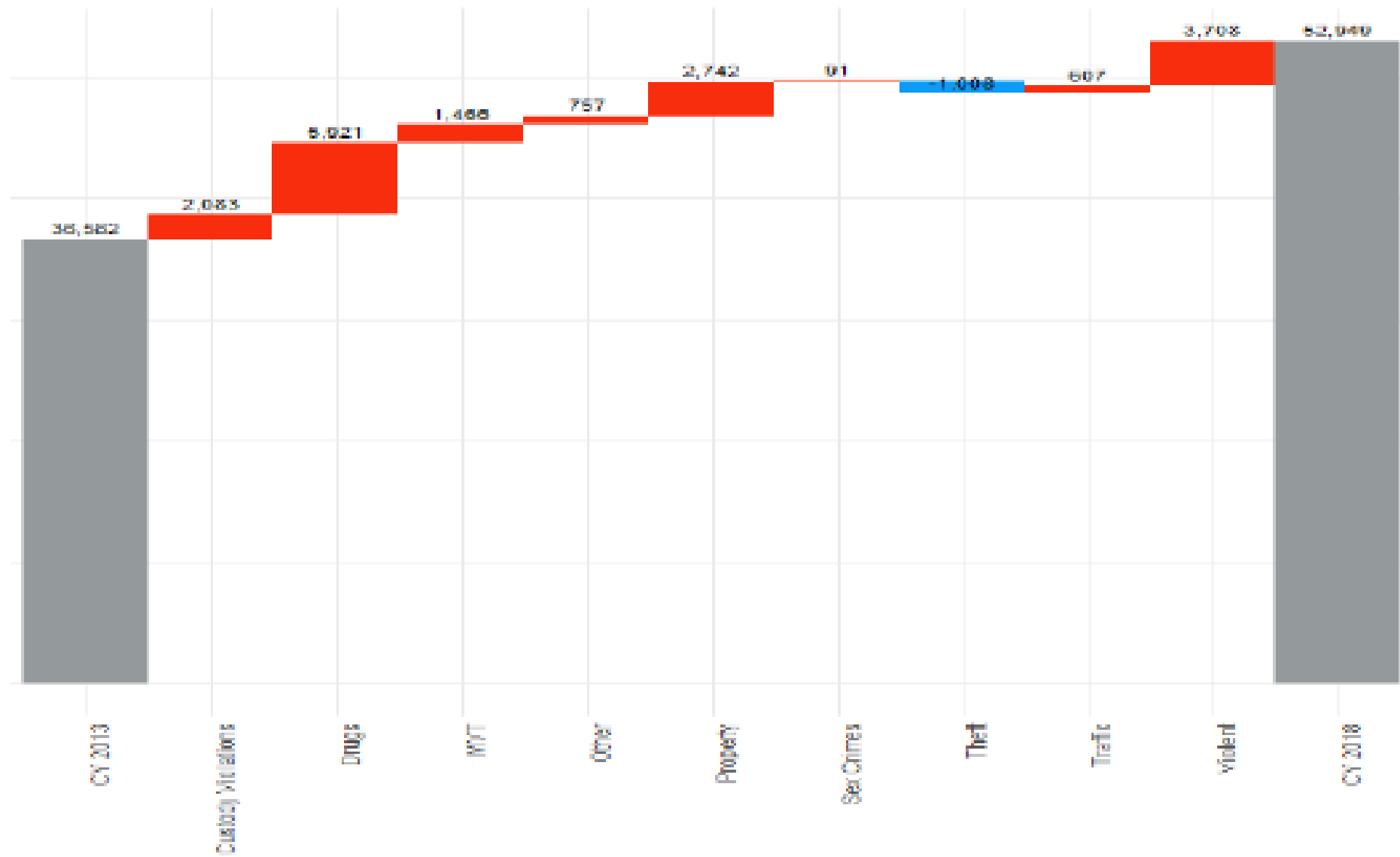
* Rate per 100,000 adult Colorado residents

Statewide increase in filings from CY 2013 to 2018



Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

Statewide Increase in filings from CY 2013 to 2018 by crime type

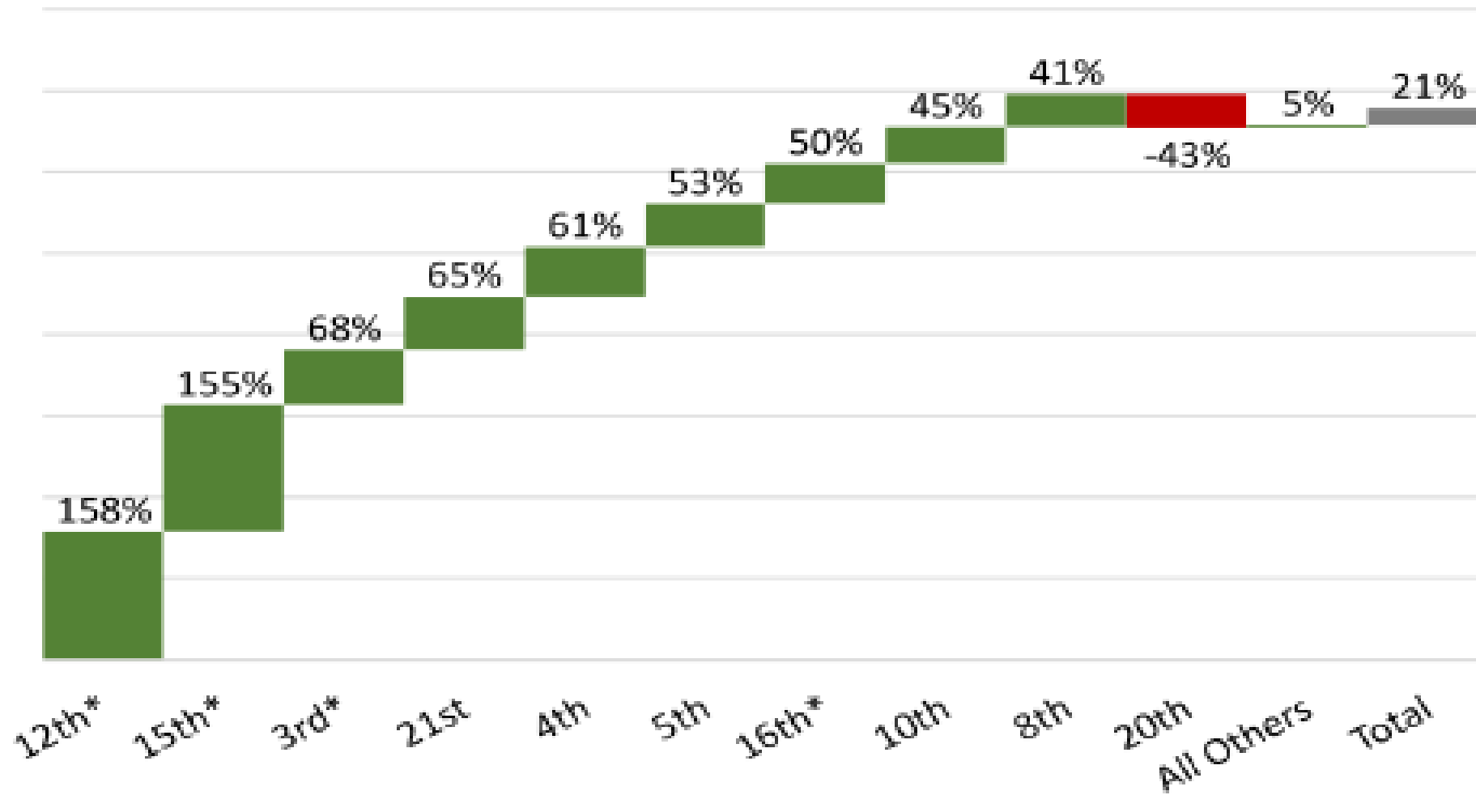


Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

Where are we now by the numbers? At DOC, Judicial Community Corrections

- Colorado Judicial Department reports in 2019 that they received approximately 14,000 new felony cases for supervision. The total number of adult felony clients supervised is approximately 20,000.
- Colorado Division of Criminal Justice reports in fiscal year 2018, 1544 residential beds were available and 1507 transitional beds. There were 584 non-residential slots available
- Colorado Department of Corrections reports that, after a decline in population during FY 2014 to 2016 , increases were reported in FY 17 and FY18. reported in 2018, the total inmate population was 20,003 and parole population was 10,528.

Figure 4: Percentage change in prison admissions FY 2013 to 2018: Top 10 judicial districts



* Caution must be used with interpreting data from districts with very low numbers of admissions.

Source: Data extracts supplied by the Colorado Department of Corrections and analyzed by DCJ/ORS.

Prison Population: Increase in Admissions from '13 – '18

- Between July 1, 2012 and June 30, 2018, admissions of inmates with new sentences to Colorado prisons increased by 20%. Admissions of women increased by 56%.
- The increase in prison admissions was particularly evident among Caucasians, for whom the number of prison admissions statewide increased by 30%. Admissions of Hispanic inmates increased by 13%, while admissions of Black inmates increased by only 3%.

Drug Cases

*Significantly, despite **drug case filings increasing** by almost 6,000 cases statewide between 2013 to CY 2018*

...

***Prison admissions for drug offenses actually decreased** by 5% over that same period of time*

Felony Imprisonment Sentencing Ranges

Class of Crime	Presumptive Range	Extraordinary Aggravating/ Mitigating Circumstances	Sentence Enhancing Circumstances	Extraordinary Aggravating Circumstances	Crimes of Violence
Class 1	Life to Death				
Class 2	8 to 24 years	4 to 48 years	8 to 48 years	16 to 48 years	16 to 48 years
Class 3 (extraordinary risk)	4 to 16 years	2 to 32 years	4 to 32 years	10 to 32 years	10 to 32 years
Class 3	4 to 12 years	2 to 24 years	4 to 24 years	8 to 24 years	
Class 4 (extraordinary risk)	2 to 8 years	1 to 16 years	2 to 16 years	5 to 16 years	5 to 16 years
Class 4	2 to 6 years	1 to 12 years	2 to 12 years	4 to 12 years	
Class 5 (extraordinary risk)	1 to 4 years	6 months to 8 years	1 to 8 years	30 months to 8 years	30 months to 8 years
Class 5	1 to 3 years	6 months to 6 years	1 to 6 years	2 to 6 years	
Class 6 (extraordinary risk)	1 to 2 years	6 months to 4 years	1 to 4 years	18 months to 4 years	18 months to 4 years
Class 6	12 to 18 months	6 months to 3 years	1 to 3 years	15 months to 3 years	

Sentences may include imprisonment, fine, or both; this table only concerns ranges of imprisonment. 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. 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. 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. 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. 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. Section 18-1.3-401 (10), C.R.S.

Penalties for Felony Drug Offenses

Offense Level	Presumptive Range	Aggravated Range	Mandatory Parole
DF 1	8 to 32 years \$5,000 to \$1,000,000		3 years
DF 2	4 to 8 years \$3,000 to \$750,000	8 to 16 years \$3,000 to \$750,000	2 years
DF 3	2 to 4 years \$2,000 to \$500,000	4 to 6 years \$2,000 to \$500,000	1 year
DF 4	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. This aggravated 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.

Mandatory Sentencing for Violent Crimes

- (1)(a) Any person convicted of a crime of violence shall be sentenced pursuant to the provisions of section 18-1.3-401(8) to the department of corrections for a term of incarceration of **at least the midpoint** in, but **not more than twice the maximum** of, the presumptive range provided for such offense in section 18-1.3-401(1)(a), **as modified for an extraordinary risk crime** pursuant to section 18-1.3-401(10)

§ 18-1.3-401. Felonies classified– presumptive penalties

- (10)(a) The general assembly hereby finds that certain crimes which are listed in paragraph (b) of this subsection (10) present an extraordinary risk of harm to society and therefore, in the interest of public safety,
 - for such crimes which constitute **class 3 felonies**, the maximum sentence in the presumptive range shall be **increased by four years**;
 - for such crimes which constitute **class 4 felonies**, the maximum sentence in the presumptive range shall be **increased by two years**;
 - for such crimes which constitute **class 5 felonies**, the maximum sentence in the presumptive range shall be **increased by one year**;
 - for such crimes which constitute **class 6 felonies**, the maximum sentence in the presumptive range shall be **increased by six months**.

(b) Crimes that present an extraordinary risk of harm to society include:

- (IX) **Aggravated robbery**, as defined in [section 18-4-302](#);
- (X) **Child abuse**, as defined in [section 18-6-401](#);
- (XI) Unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, as defined in [section 18-18-405](#);
- (XII) **Any crime of violence**, as defined in [section 18-1.3-406](#);
- (XIII) Stalking, as described in [section 18-9-111\(4\)](#), as it existed prior to August 11, 2010, or [section 18-3-602](#);
- (XIV) Sale or distribution of materials to manufacture controlled substances, as described in [section 18-18-412.7](#);
- (XV) Felony invasion of privacy for sexual gratification, as described in [section 18-3-405.6](#);
- (XVI) A class 3 felony offense of human trafficking for involuntary servitude, as described in [section 18-3-503](#);
- (XVII) A class 3 felony offense of human trafficking for sexual servitude, as described in [section 18-3-504](#); and
- (XVIII) **Assault in the second degree**, as described in [section 18-3-203\(1\)\(i\)](#).

Mandatory DOC Reconsideration

- Within ninety-one days after he or she has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence...
- Such modification may include probation if the person is otherwise eligible therefor.



CERTAINTY IN SENTENCING

20th JD Snapshot analysis on Habitual Criminal

Number of felony arrests in data set 8/1 - 10/31/19	Number of cases where defendant was habitual eligible after filing of charges	Number of cases eligible under “big” habitual (3 or more prior convictions)	Number of cases eligible under “little” habitual (2 within 10 years)	Number of cases in which habitual counts were filed
583	92	54*	36*	1

WHAT NEXT ?

Not since 1985 has there been a comprehensive look
at the structure of sentencing

Who participated and who did not in 1985?

Systems people

- CDAC/AG
- Public Defenders
- ACLU
- Corrections
- Bar Association

But Not:

- Community
- Victims
- Formerly incarcerated
- Many research professionals (a lot more research since 1985 on “What works?”)

Have we resolved the core dichotomy? “Just Desserts” v. “rehabilitation”

Justice Antonin Scalia during [Miller v Alabama](#) Argument

- “Well, I thought that modern penology has abandoned that rehabilitation thing, and they no longer call prisons reformatories – or whatever, and punishment is the criterion now. Deserved punishment for crime.”

Bryan Stevenson – “Just Mercy: A Story of Justice and Redemption”

- “There is a strength, a power even, in understanding brokenness, because embracing our brokenness creates a need and desire for mercy, and perhaps a corresponding need to show mercy. When you experience mercy, you learn things that are hard to learn otherwise. You see things you can't otherwise see; you hear things you can't otherwise hear. You begin to recognize the humanity that resides in each of us.”

Recent Discussions on Sentencing Reform

- What are the goals of sentencing?
- The need for “Certainty in Sentencing”
- Analysis of other states
- Determinate/indeterminate Sentences
- Multiple Sentencing Grids
- Crime Severity Analysis
 - *Felony to Misdemeanor classification*
 - *Reducing/eliminating some misdemeanor offenses*
 - *Misdemeanor Sentencing Grid*



SENTENCING IN COLORADO

ACHIEVING THE BALANCE

THOUGHTS AND QUESTIONS?