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**M E M O R A N D U M**

August 8, 2017

**TO:** Sentencing in the Criminal Justice System Interim Study Committee  
**FROM:** Amanda Hayden, Fiscal Analyst, 303-866-4918  
**SUBJECT:** Crimes of Violence and Habitual Offender Sentencing Data

**Summary**

This memo explains enhanced sentencing requirements for two different criminal offense categories: crimes of violence and habitual offenders. It also provides sentencing data for offenders convicted of crimes of violence or as habitual offenders between 2014 and 2016. During this three-year period, 416 offenders were sentenced to the Department of Corrections (DOC) for crimes of violence and 150 were sentenced to the DOC as habitual offenders. Sentencing data for these offenders are shown by crime, felony classification, sentence range, and county.

**Crimes of Violence**

The commission of, conspiracy to commit, or attempt to commit criminal actions that (1) involve the use, possession, or threat of a deadly weapon or (2) cause serious bodily injury or death of any other person except the offender are classified by Colorado law as crimes of violence and subject to enhanced sentencing<sup>1</sup>. These crimes include:

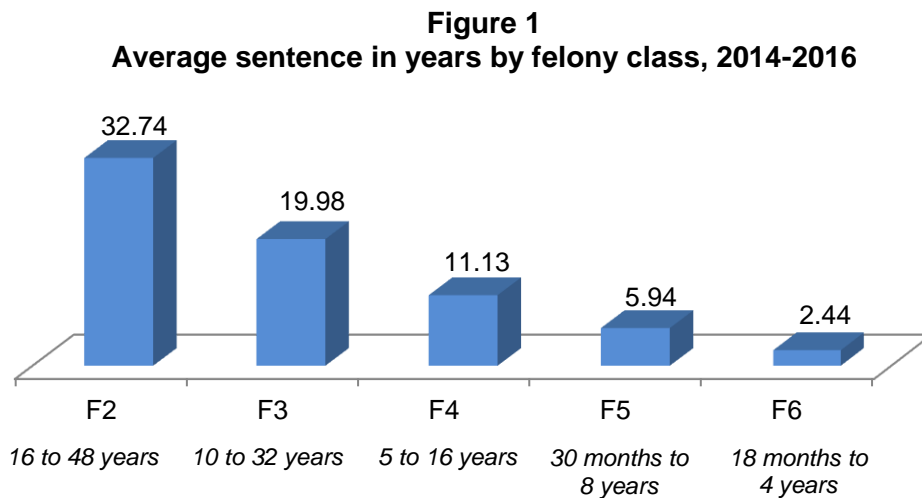
- any crime against an at-risk adult or at-risk juvenile;
- murder;
- first or second degree assault;
- kidnapping;
- aggravated robbery;
- first degree arson;
- first degree burglary;
- escape;
- criminal extortion;
- first or second degree unlawful termination of pregnancy; and
- any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.

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<sup>1</sup>See Section 18-1.3-406, C.R.S.

**Sentencing requirements.** Generally, any offender convicted of a crime of violence must be sentenced to a term of incarceration in the DOC of at least the midpoint in the presumptive range but not more than twice the maximum term for the offense, as modified by the extraordinary risk crime statute. An offender convicted of a sex offense that is a crime of violence must be sentenced to an indeterminate term that is at least the midpoint of the presumptive range to a maximum of the offender’s natural life. An offender who is convicted of a crime of violence and who used a dangerous or semiautomatic assault weapon must also be sentenced to an additional five years in the DOC. Except when one of the crimes is aggravated robbery, second degree assault, or escape, a person convicted of two or more crimes of violence arising from the same incident must serve his or her sentences consecutively rather than concurrently. In certain cases after specific conditions are met, the court can modify an offender’s sentence to include probation or other reductions.

**Sentencing data for crimes of violence.** According to data from the Judicial Branch, between January 1, 2014, and December 31, 2016, 416 defendants were convicted of at least one crime of violence and sentenced to the DOC. Defendants had an average of 2.1 convictions for separate crimes of violence. Figure 1 shows the average DOC sentence in years by felony classification for crimes of violence sentenced between 2014 and 2016. The ranges shown below are the enhanced sentencing guidelines for crimes of violence—the midpoint of the presumptive range to twice the maximum. All class 1 felony convictions received life sentences.



Source: Colorado Judicial Department data.

Table 1 shows the average number of years a defendant was sentenced to the DOC by offense type and the number of convictions for each offense.

**Table 1**  
**Sentencing Data for Crimes of Violence, 2014-2016**

Offense	Average DOC sentence (years)	Number of convictions
Crime against at-risk adult or juvenile	33.8	6
F1 murder	Life	36
Non-F1 murder	33.7	179
First degree assault	21.3	107
Second degree assault	8.6	138
Kidnapping	19.4	61
Sex offense	21.0	74
Aggravated robbery	19.0	182
First degree arson	9.3	38
First degree burglary	19.8	65
Escape	-	0
Criminal extortion	6.0	2
Unlawful termination of pregnancy (first or second degree)	32.0	2

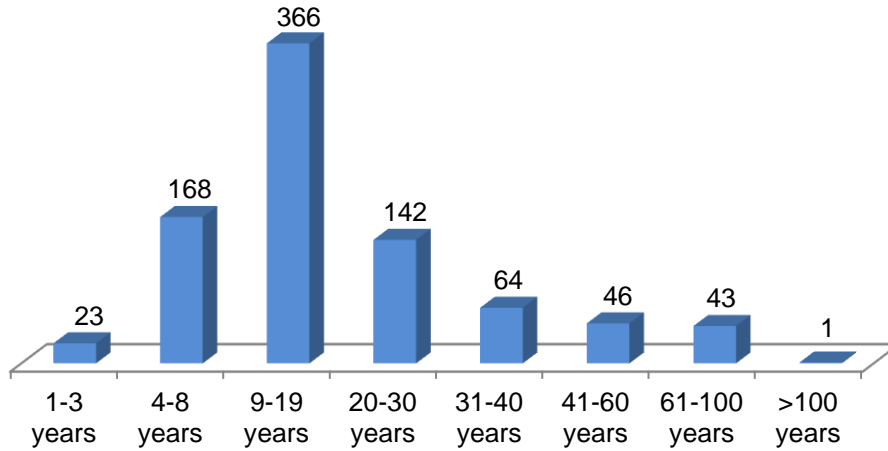
*Source: Colorado Judicial Department data.*

Using the same data for convictions between 2014 and 2016, below is a sample of the longest DOC sentences for crimes of violence:

- **192 years:** attempted felony 1 murder by extreme indifference;
- **96 years:** first degree assault of an at-risk individual causing serious bodily injury; attempted felony 1 murder after deliberation; second degree murder; second degree kidnapping where person is victim of a sexual offense or robbery; aggravated robbery of controlled substances with a weapon; sexual assault with the aid of others, use of a weapon, or causing serious bodily injury;
- **72 years:** sexual assault of a person under 15 with the aid of others, use of a weapon, or causing serious bodily injury;
- **64 years:** first degree assault with a deadly weapon causing serious bodily injury; first degree assault threatening a peace officer with a weapon; robbery of an at-risk individual; first degree armed burglary; attempted second degree murder; aggravated robbery, menacing or wounding/striking the victim with a weapon; and
- **48 years:** first degree assault with a deadly weapon causing serious bodily injury; first degree burglary with assault or menacing; first degree kidnapping; attempted murder of a peace officer; aggravated robbery of controlled substances with a weapon.

Figure 2 shows the number of DOC sentences by sentence range for convictions of crimes of violence entered between 2014 and 2016.

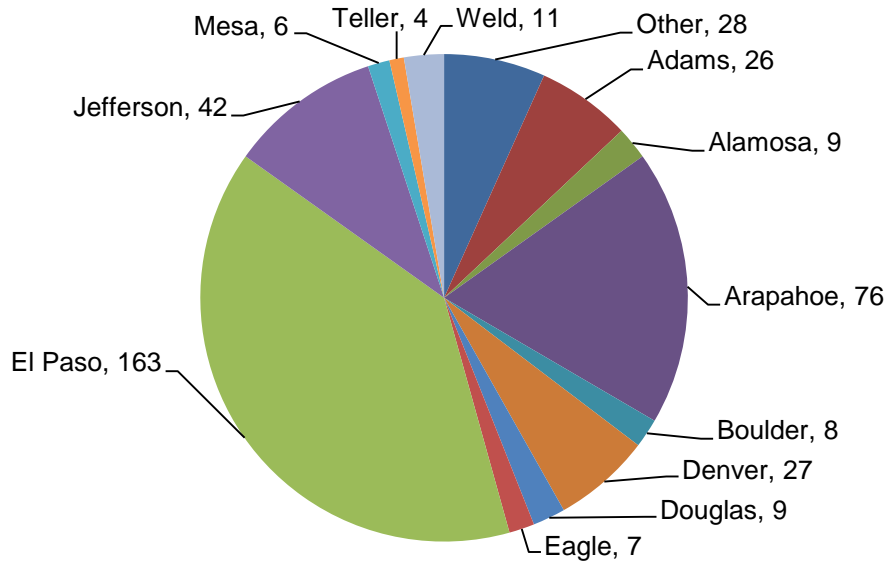
**Figure 2**  
**Number of Sentences for Crimes of Violence by Range in Years, 2014-2016**



Source: Colorado Judicial Department data.

Figure 3 shows the number of convictions entered for crimes of violence by county between 2014 and 2016. The category “other” includes 17 counties that had three or fewer convictions.

**Figure 3**  
**Convictions by county, 2014-2016**



Source: Colorado Judicial Department data.

### Habitual Offenders

Under current law<sup>2</sup> a person is adjudicated as an habitual criminal and is subject to enhanced sentencing if:

<sup>2</sup>Section 18-1.3-801, C.R.S.

- he or she is convicted of a third, separate class 1 or 2 felony, level 1 drug felony, or class 3 felony crime of violence;
- he or she is convicted of a class 1, 2, 3, 4, or 5 felony or a level 1, 2, or 3 drug felony and has two previous, separate felony convictions within the last ten years; or
- he or she is convicted of any felony and has three previous, separate felony convictions.

**Sentencing requirements.** Sentencing for habitual criminals is as follows:

- for offenders who commit a third class 1 or 2 felony, level 1 drug felony, or class 3 felony crime of violence, the penalty is life in prison with the possibility of parole after 40 years;
- for offenders with two previous, separate felony convictions, the penalty is a sentence to the DOC of three times the maximum of the presumptive range. If the offender's third offense was a level 1 drug felony, the penalty is 48 years in prison; and
- for offenders with three previous, separate felony convictions, the penalty is a sentence of four times the maximum of the presumptive range for the class or level of felony, unless the conviction is for a level 1 drug felony, in which case the sentence is 64 years in prison, or a crime of violence, in which case the sentence is life in prison.

A conviction for escape or attempt to escape cannot be used to adjudicate a person as an habitual criminal unless the conviction is based on the offender's escape or attempt to escape from a correctional facility or county jail.

**Sentencing data for habitual offenders.** According to data from the Judicial Branch, between January 1, 2014, and December 31, 2016, 150 defendants were convicted as habitual offenders and sentenced to the DOC. The number and nature of previous convictions entered before this time period is unknown. Table 2 shows the average number of years a defendant was sentenced to the DOC by last offense type and the number of convictions for each offense.

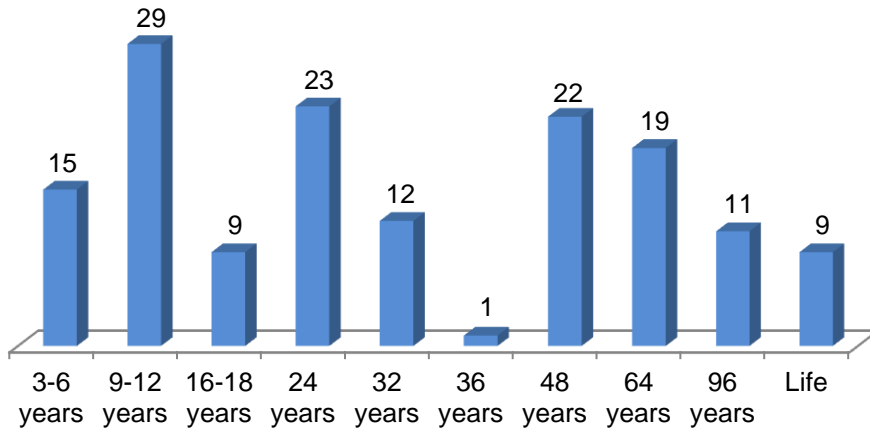
**Table 2**  
**Sentencing Data for Habitual Offenders, 2014-2016**

<b>Offense classification</b>	<b>Average DOC sentence (years)</b>	<b>Number of convictions</b>
F1	Life	9
F2	90.7	12
F3	53.7	40
F4	25.7	36
F5	10.8	29
F6	5.8	14
DF1	56	2
DF2	32	4
DF3	14.7	3
DF4	16	1

*Source: Colorado Judicial Department data.*

Figure 4 shows the DOC sentence received by each offender sentenced as an habitual criminal, grouped by length of sentence in years.

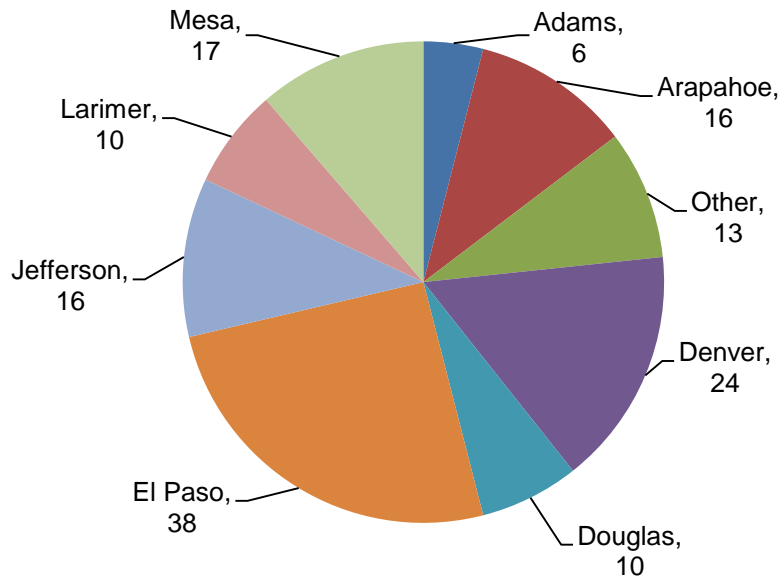
**Figure 4**  
**Length of Sentence per Offender,**  
**2014-2016**



Source: Colorado Judicial Department data.

Figure 5 shows where each of the 150 defendants convicted as habitual criminals between 2014 and 2016 were sentenced. The “other” category includes 9 counties with fewer than three convictions each.

**Figure 5**  
**Convictions by county, 2014-2016**



Source: Colorado Judicial Department data.