



Legislative Council Staff

Research Note

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Bill Number

Senate Bill 16-098

Sponsors

**Senator Steadman
(None)**

Short Title

***Restore Judicial Discretion In
Criminal Sentencing***

Research Analyst

Conrad Imel (x2756)

Status

This research note reflects the final version of the bill. The bill was postponed indefinitely by the Senate Judiciary Committee on February 22, 2016.

Summary

This bill repeals many mandatory sentencing provisions for felonies, drug felonies, and misdemeanors. The bill also repeals the extraordinary risk of harm sentencing enhancer. The bill reclassifies certain stalking and child abuse offenses as crimes of violence, and repeals the sentencing enhancer for using a dangerous or semiautomatic assault weapon in the commission of a crime of violence. The bill also amends other mandatory sentencing requirements to require a court to sentence a defendant to the minimum of the presumptive range instead of the midpoint of a presumptive range. Finally, the bill repeals many consecutive sentencing requirements.

Background

Colorado law recognizes several categories of crimes, including felonies, misdemeanors, petty offenses, traffic offenses, and traffic infractions. The most serious crimes are categorized as felonies, and they are the only offenses for which a sentence to a state prison is possible. Felonies are further classified as class 1 through 6, and misdemeanors are further classified as class 1 through 3, although there are some unclassified felonies and misdemeanors. Class 1 felonies are the most serious crimes, and include offenses such as first degree murder, treason, and kidnapping.

For each class of felony and misdemeanor, Colorado law specifies a presumptive sentencing range. However, the General Assembly has adopted several special sentencing categories that provide the court with the discretion to impose a sentence that is shorter or longer than the presumptive range if certain circumstances exist. Special sentencing categories include:

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- crimes with extraordinary aggravating or mitigating circumstances (no specific circumstances listed);
- crimes of violence;
- crimes with specific extraordinary aggravating circumstances;
- crimes with sentence-enhancing circumstances or victims; and
- crimes presenting an extraordinary risk of harm to society.

If one or more of these circumstances exist, courts may be required to sentence the defendant to a term of incarceration and that term may be increased relative to the presumptive range for that classification. Information on sentencing for specific classifications is provided below.

Felonies. The penalty for the commission of a certain felony offense depends on its classification. Under existing law, some crimes are classified as crimes of violence or crimes that present an extraordinary risk of harm to society. The penalty scheme for felonies is indicated in Table 1 below.

**Table 1
Felony Sentencing Under Existing Law**

Class of Crime	Minimum Sentence	Maximum Sentence	Mandatory Parole
Class 1	Life Imprisonment	Death	—
Class 2 (crime of violence)	16 years, \$5,000 fine	48 years, \$1,000,000 fine	5 years
Class 2	8 years, \$5,000 fine	24 years, \$1,000,000 fine	5 years
Class 3 (crime of violence)	10 years, \$3,000 fine	32 years, \$750,000 fine	5 years
Class 3 (extraordinary risk of harm)	4 years, \$3,000 fine	16 years, \$750,000 fine	5 years
Class 3	4 years, \$3,000 fine	12 years, \$750,000 fine	5 years
Class 4 (crime of violence)	5 years, \$2,000 fine	16 years, \$500,000 fine	3 years
Class 4 (extraordinary risk of harm)	2 years, \$2,000 fine	8 years, \$500,000 fine	3 years
Class 4	2 years, \$2,000 fine	6 years, \$500,000 fine	3 years
Class 5 (crime of violence)	30 months, \$1,000 fine	8 years, \$100,000 fine	3 years
Class 5 (extraordinary risk of harm)	1 year, \$1,000 fine	4 years, \$100,000 fine	2 years
Class 5	1 year, \$1,000 fine	3 years, \$100,000 fine	2 years
Class 6 (crime of violence)	18 months, \$1,000 fine	4 years, \$100,000 fine	1 year
Class 6 (extraordinary risk of harm)	1 year, \$1,000 fine	2 years, \$100,000 fine	1 year
Class 6	1 year, \$1,000 fine	18 months, \$100,000 fine	1 year
Unclassified Felonies	Specified in statute	Specified in statute	—

Drug Felonies. Drug-related felonies committed on or after October 1, 2013, are subject to a different sentencing scheme than other felonies. Drug felonies are categorized as follows: level 1, level 2, level 3, and level 4. The penalty for the commission of a certain drug felony depends on its classification and whether any aggravating factors are involved. The sentencing scheme for felonies is indicated in Table 2 below.

Table 2
Sentencing Scheme for Drug Felonies Committed on or After October 1, 2013,
Under Existing Law

Level	Minimum Sentence	Maximum Sentence	Mandatory Parole
Level 1	8 years, \$5,000 fine, or both	32 years, \$1 million fine, or both	3 years
Level 2 Aggravated	8 years, \$3,000 fine, or both	16 years, \$750,000 fine, or both	2 years
Level 2	4 years, \$3,000 fine, or both	8 years, \$750,000 fine, or both	2 years
Level 3 Aggravated	4 years, \$2,000 fine, or both	6 years, \$500,000 fine, or both	1 year
Level 3	2 years, \$2,000 fine, or both	4 years, \$500,000 fine, or both	1 year
Level 4 Aggravated	1 year, \$1,000 fine, or both	2 years, \$100,000 fine, or both	1 year
Level 4	6 months, \$1,000 fine, or both	1 year, \$100,000 fine, or both	1 year

Misdemeanors. Misdemeanor offenses are categorized as follows: class 1, class 2, class 3, and unclassified misdemeanors. The penalty for the commission of a misdemeanor offense depends on its classification. The penalty scheme for misdemeanors is indicated in Table 3 below.

Table 3
Sentencing Scheme for Misdemeanors and Traffic Offenses Under Existing Law

Class of Misdemeanor	Minimum Sentence	Maximum Sentence
Class 1 (extraordinary risk of harm)	6 months jail, \$500 fine, or both	24 months jail, \$5,000 fine, or both
Class 1	6 months jail, \$500 fine, or both	18 months jail, \$5,000 fine, or both
Class 2	3 months jail, \$250 fine, or both	12 months jail, \$1,000 fine, or both
Class 3	\$50 fine	6 months jail, \$750 fine, or both
Class 1 Traffic Offense	10 days jail, \$100 fine, or both	12 months jail, \$1,000 fine, or both
Class 2 Traffic Offense	10 days jail, \$150 fine, or both	90 days jail, \$300 fine, or both
Unclassified	Specified in statute	Specified in statute

Senate Action

Senate Judiciary Committee (February 22, 2016). At the hearing, representatives from the Colorado District Attorneys' Council, the 18th Judicial District, the Colorado Attorney General's Office, and the County Sheriffs of Colorado testified in opposition to the bill. Representatives of the Colorado Criminal Defense Bar, Colorado Criminal Defense Institute, and the Colorado State Public Defender testified in support of the bill. The committee postponed the bill indefinitely.

Relevant Research

Legislative Council Staff, *Special Sentencing for Felony and Misdemeanor Offenses*, Interested Persons Memorandum, October 2012, <http://tinyurl.com/j8wsm44>

Legislative Council Staff, *Crime Classification Guide*, 2014, <http://tinyurl.com/h86ovzd>