

Chapter 3 — Colorado's Adult Sentencing Laws

This chapter provides an overview of sentencing law since 1979 in Colorado, and outlines what sentencing laws require of judges. The sentencing of offenders is at the discretion of the judge (within statutory parameters) after conviction. Colorado's sentencing laws are complex and have varying levels of application for various types of offenders.

This chapter focuses on the variables which affect the sentence handed down by a judge. Once an offender has entered prison, the sentence may subsequently be reduced by earned time. However, earned time is applied post-sentence only for the purpose of determining a parole eligibility date. Further, earned time does not change or reduce the *sentence* handed down by the sentencing court, it reduces the *time served in prison*. Earned time will be discussed in the chapter on parole.

This chapter highlights the following:

- sentencing ranges;
- special sentencing categories; and
- habitual offender sentences.

SENTENCING RANGES

From the late 1970s through the early 1990s, Colorado's sentencing laws changed frequently and sometimes dramatically. The sentencing scheme underwent the most drastic changes in 1979 and then again in 1985. These changes appear to have had the greatest impact on the prison population. Other important changes to the sentencing scheme occurred in 1989 and 1993.

Table 3.1 is a side-by-side comparison of the various sentencing schemes from 1979 through current law.

Table 3.1: Felony Class Presumptive Ranges

Felony Class		Pre-1979	1979	1985	1989	1993 (current law in 2000)
1	Minimum	Life	Life	Life	Life	Life
	Maximum	Death	Death	Death	Death	Death
2	Minimum	10 years	8 years	8 years	8 years	8 years
	Maximum	50 years	12 years	24 years	24 years	24 years
3	Minimum	5 years	4 years	4 years	4 years	4 years
	Maximum	40 years	8 years	16 years	16 years	12 years
4	Minimum	1 day	2 years	2 years	2 years	2 years
	Maximum	10 years	4 years	8 years	8 years	6 years
5	Minimum	1 day	1 year	1 year	1 year	1 year
	Maximum	5 years	2 years	4 years	4 years	3 years
6	Minimum	NA	NA	NA	1 year	1 year
	Maximum	NA	NA	NA	2 years	18 months

NA: Not applicable.

Note: The class 6 felony did not exist until 1989.

The following sections summarize Colorado's sentencing law prior to 1979, and major changes to sentencing laws in 1979, 1985, 1989, and 1993.

Sentencing prior to July 1, 1979. Convicted offenders sentenced for a crime committed prior to July 1, 1979, were sentenced under an "indeterminate" sentencing scheme. Under indeterminate sentencing, judges had discretion in sentencing an offender within a broad range set forth in law, depending on that offender's criminal history and the circumstances of the particular crime for which the offender was convicted. This judicial discretion resulted in widely divergent sentences handed down to offenders convicted of similar crimes.

House Bill 79-1589. In 1979, the General Assembly went to a presumptive or "determinate" sentencing scheme by adopting H.B. 79-1589 (Representative Gorsuch). Under this determinate sentencing schedule, presumptive ranges for each felony class were more narrowly defined. The new

determinate sentencing ranges under H.B. 79-1589 resulted in less divergent sentences handed down for similar offenses. More narrowly defined presumptive ranges also resulted in longer minimum sentences and shorter maximum sentences.

House Bill 85-1320. By 1985, “tough on crime” politics focused nationwide attention on crime. Because of the perception that shorter sentences under Colorado’s relatively new determinate sentencing scheme were to blame for an increase in crime in Colorado, the General Assembly adopted H.B. 85-1320 (Representative Mielke). Under H.B. 85-1320, the maximum sentence in the presumptive range was doubled for all felony classes. This doubling of the maximum sentence was the first step towards restoring the broad sentencing ranges of indeterminate sentencing in Colorado.

Senate Bill 89-246. Doubling the maximum sentence in the presumptive range for all felony classes resulted in increased prison populations and prison overcrowding. One strategy upon which the General Assembly agreed to deal with this problem was to adopt S.B. 89-246 (Senator Wells) which added a new felony class, the class 6 felony. The addition of the new class 6 felony, with shorter sentences in the presumptive range, was intended to result in shorter prison sentences which would, in turn, alleviate prison overcrowding. In order to accommodate the new class 6 felony, some class 4 felonies were reduced to class 5 felonies and in turn, some class 5 felonies became class 6 felonies.

House Bill 93-1302. The most recent major change to the sentencing structure in Colorado was in 1993. Continually increasing prison populations resulted in unprecedented growth in prison construction. In an effort to deal with both the prison population and the prison construction issues, the General Assembly adopted H.B. 93-1302 (Representative Tucker). House Bill 93-1302 reduced by 25 percent the maximum sentence in the presumptive range for class 3, 4, 5, and 6 felonies. House Bill 93-1302 also created a special sentencing category of crimes presenting an extraordinary risk of harm to society. *The maximum sentence in the presumptive range for class 3 through 6 felonies was not reduced for these crimes which are discussed later in this chapter.*

SPECIAL SENTENCING CATEGORIES

The presumptive ranges specified in the previous section are the base from which judges calculate sentences. However, since 1979, the General Assembly has adopted several special sentencing categories which require longer sentences for offenders convicted of certain more serious crimes. Sentences in these special sentencing categories are intended to provide for longer sentences outside of the presumptive range, for particularly violent crimes or when certain circumstances are present for the crime or the offender. Sentences in these special sentencing categories have the effect of bringing sentencing in Colorado full circle from indeterminate sentencing to determinate sentencing and back to indeterminate sentencing again. There are five special sentencing categories as follows:

- crimes with extraordinary mitigating or aggravating circumstances;
- crimes of violence;
- crimes with extraordinary aggravating circumstances;
- crimes with sentence-enhancing circumstances; and
- crimes presenting an extraordinary risk of harm to society.

Table 3.2 is a history of sentencing ranges for special sentencing categories. This table illustrates the year each special sentencing category was adopted by the General Assembly. This table also illustrates how the presumptive sentencing ranges have changed over the years.

Table 3.2: History of Sentencing Ranges for Special Sentencing Categories

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1979 Normal Presumptive Ranges	8 to 12 years	4 to 8 years	2 to 4 years	1 to 2 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 24 years	2 to 16 years	1 to 8 years	6 months to 4 years	NA
Crime of Violence	8-year min. for violent crimes	4-year min. for violent crimes	2-year min. for violent crimes	1-year min. for violent crimes	NA
1981 Normal Presumptive Ranges	8 to 12 years	4 to 8 years	2 to 4 years	1 to 2 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 24 years	2 to 16 years	1 to 8 years	6 months to 4 years	NA
Extraordinary Aggravating Circumstances/Crime of Violence	12 to 24 years	8 to 16 years	4 to 8 years	2 to 4 years	NA
1985 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	NA
Extraordinary Aggravating Circumstances/Crime of Violence	24 to 48 years	16 to 32 years	8 to 16 years	4 to 8 years	NA
1988 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	NA
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	NA
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	10 to 32 years	5 to 16 years	2.5 to 8 years	NA
1989 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	1 to 2 years
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	10 to 32 years	5 to 16 years	2.5 to 8 years	18 months to 4 years
1990 Normal Presumptive Ranges	8 to 24 years	4 to 16 years	2 to 8 years	1 to 4 years	1 to 2 years
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	10 to 32 years	5 to 16 years	2.5 to 8 years	18 months to 4 years
Sentence-Enhancing Circumstances	8 to 48 years	4 to 32 years	2 to 16 years	1 to 8 years	1 to 4 years
1993 Normal Presumptive Ranges (current law in 2000)	8 to 24 years	4 to 12 years	2 to 6 years	1 to 3 years	1 year to 18 months
Extraordinary Mitigating or Extraordinary Aggravating Circumstances	4 to 48 years	2 to 24 years	1 to 12 years	6 months to 6 years	6 months to 3 years
Extraordinary Risk of Harm to Society	NA	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	8 to 24 years	4 to 12 years	2 to 6 years	15 months to 3 years
Extraordinary Risk of Harm to Society	NA	10 to 32 years	5 to 16 years	30 months to 8 years	18 months to 4 years
Sentence-Enhancing Circumstances	8 to 48 years	4 to 24 years	2 to 12 years	1 to 6 years	1 to 3 years
Extraordinary Risk of Harm to Society	NA	4 to 32 years	2 to 16 years	1 to 8 years	1 to 4 years

Source: Legislative Council Staff

NA: Not applicable.

Note: The class 6 felony classification did not exist until 1989, and the Extraordinary Risk of Harm to Society category does not apply to class 2 felonies.

Extraordinary Mitigating or Aggravating Circumstances

The court may impose a sentence that is lesser or greater than those in the presumptive range when the court finds that extraordinary mitigating or aggravating circumstances are present. Aggravating or mitigating factors may be determined by the court based on evidence in the record at the sentencing hearing and information contained in the presentence investigation report. The court may not impose a sentence which is less than one-half of the minimum sentence in the presumptive range, and not more than twice the maximum in the presumptive range. The sentencing ranges after applying extraordinary mitigating or aggravating circumstances are in Table 3.3.

Table 3.3 — Sentences for Extraordinary Mitigating or Aggravating Circumstances

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1993 Normal Presumptive Ranges (current law in 2000)	8 to 24 years	4 to 12 years	2 to 6 years	1 to 3 years	1 year to 18 months
Extraordinary Mitigating or Aggravating Circumstances	4 to 48 years	2 to 24 years	1 to 12 years	6 months to 6 years	6 months to 3 years

Crimes of Violence (Section 16-11-309, C.R.S.)

Any offender convicted of a crime of violence must be sentenced to a prison term which is at least at the midpoint in the presumptive range but not more than twice the maximum term. The following offenses which are committed, conspired to be committed, or attempted to be committed are specified in statute as crimes of violence. *These crimes of violence are listed again under the following special sentencing categories: crimes with extraordinary aggravating circumstances and crimes presenting an extraordinary risk of harm to society:*

- a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon;
- a crime resulting in serious bodily injury or death;
- a crime against an at-risk adult or at-risk juvenile;
- murder;
- first or second degree assault;
- kidnapping;
- sexual assault;
- aggravated robbery;
- first degree arson;
- first or second degree burglary;
- escape;

- criminal extortion; or
- 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.

The sentencing ranges for an offender convicted of a crime of violence are in Table 3.4.

Table 3.4 — Sentences for Crimes of Violence (Section 16-11-309, C.R.S.)

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1993 Normal Presumptive Ranges (current law in 2000)	<i>8 to 24 years</i>	<i>4 to 12 years</i>	<i>2 to 6 years</i>	<i>1 to 3 years</i>	<i>1 year to 18 months</i>
Crime of Violence/Extraordinary Aggravating Circumstances	16 to 48 years	8 to 24 years	4 to 12 years	2 to 6 years	15 months to 3 years

Extraordinary Aggravating Circumstances

An offender convicted of a crime with extraordinary aggravating circumstances must be sentenced to a term of at least the midpoint in the presumptive range but not more than twice the maximum term. Offenders committing offenses under the following scenarios are charged with a crime which has extraordinary aggravating circumstances:

- the defendant is convicted of a Section 16-11-309, C.R.S., crime of violence (*see page 32 for a listing of these crimes*);
- the defendant was on parole for another felony at the time he or she committed the felony offense;
- the defendant was on probation or was on bond while awaiting sentencing following revocation of probation for another felony when he or she committed the felony offense;
- the defendant was under confinement, in prison, or in any correctional institution as a convicted felon, or an escapee from any correctional institution for another felony when he or she committed the felony offense;
- the defendant was on appeal bond when he or she committed the felony offense following a conviction for a previous felony; or
- the defendant is less than 18 years of age and, at the time he or she committed the offense, was on probation for or on bond while awaiting sentencing following revocation of probation for another offense that would have been a felony if committed by an adult.

The sentencing ranges for an offender convicted of a crime with extraordinary aggravating circumstances are in Table 3.5.

Table 3.5 — Sentences for Extraordinary Aggravating Circumstances

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1993 Normal Presumptive Ranges (current law in 2000)	<i>8 to 24 years</i>	<i>4 to 12 years</i>	<i>2 to 6 years</i>	<i>1 to 3 years</i>	<i>1 year to 18 months</i>
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	8 to 24 years	4 to 12 years	2 to 6 years	15 months to 3 years

Sentence-Enhancing Circumstances

Offenders convicted of a crime with sentence-enhancing circumstances are required to serve a sentence which is at least the minimum in the presumptive range but not more than twice the maximum in the presumptive range. Following are sentence-enhancing circumstances:

- the defendant was charged with or was on bond for a previous felony when he or she committed the felony and the defendant was subsequently convicted of the felony;
- when the defendant committed the felony, he or she was on bond for having pled guilty to a lesser offense when the original offense charged was a felony;
- the defendant was under a deferred judgement and sentence for another felony when he or she committed the felony;
- the defendant is less than 18 years of age and, at the time he or she committed the felony, was on bond for having pled guilty to a lesser offense when the original offense charged was an offense that would have constituted a felony if committed by an adult;
- the defendant is less than 18 years of age and, when he or she committed the felony, was under a deferred judgement and sentence for another offense that would have constituted a felony if committed by an adult; or
- when the defendant committed the felony, he or she was on parole for having been adjudicated a delinquent child for an offense which would constitute a felony if committed by an adult.

Sentence ranges for offenders convicted of crimes with sentence-enhancing circumstances are in Table 3.6.

Table 3.6 — Sentences for Sentence-Enhancing Circumstances

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
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1993 Normal Presumptive Ranges (current law in 2000)	8 to 24 years	4 to 12 years	2 to 6 years	1 to 3 years	1 year to 18 months
Sentence-Enhancing Circumstances	8 to 48 years	4 to 24 years	2 to 12 years	1 to 6 years	1 to 3 years

Crimes Presenting an Extraordinary Risk of Harm to Society

Sentences for offenders convicted of crimes presenting an extraordinary risk of harm to society are increased as follows (only class 3 through 6 felonies are increased since none of the crimes presenting an extraordinary risk of harm to society are class 1 or 2 felonies):

- the maximum sentence in the presumptive range is increased by four years for class 3 felonies;
- the maximum sentence in the presumptive range is increased by two years for class 4 felonies;
- the maximum sentence in the presumptive range is increased by one year for class 5 felonies; and
- the maximum sentence in the presumptive range is increased by six months for class 6 felonies.

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

- first, second, and third degree sexual assault;
- sexual assault on a child and sexual assault on a child by one in a position of trust;
- sexual assault on a client by a psychotherapist;
- incest and aggravated incest;
- aggravated robbery;
- child abuse;
- unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense; and
- any Section 16-11-309, C.R.S., crime of violence (*see page 32 for a listing of these crimes*).

Presumptive sentence ranges for crimes presenting an extraordinary risk of harm to society apply to all class 2 through class 6 special sentencing categories and are listed in Table 3.7.

Table 3.7 — Sentences for Crimes Presenting an Extraordinary Risk of Harm to Society

	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1993 Normal Presumptive Ranges (current law in 2000)	8 to 24 years	4 to 12 years	2 to 6 years	1 to 3 years	1 year to 18 months
Extraordinary Mitigating or Extraordinary Aggravating Circumstances	4 to 48 years	2 to 24 years	1 to 12 years	6 months to 6 years	6 months to 3 years
Extraordinary Risk of Harm to Society	NA	2 to 32 years	1 to 16 years	6 months to 8 years	6 months to 4 years
Extraordinary Aggravating Circumstances/Crime of Violence	16 to 48 years	8 to 24 years	4 to 12 years	2 to 6 years	15 months to 3 years
Extraordinary Risk of Harm to Society	NA	10 to 32 years	5 to 16 years	30 months to 8 years	18 months to 4 years

Sentence-Enhancing Circumstances	8 to 48 years	4 to 24 years	2 to 12 years	1 to 6 years	1 to 3 years
Extraordinary Risk of Harm to Society	NA	4 to 32 years	2 to 16 years	1 to 8 years	1 to 4 years

HABITUAL OFFENDER STATUTES

Sentencing for habitual offenders bypasses the presumptive sentencing ranges and requires judges to sentence habitual offenders to a determinate sentence that is significantly higher than the maximum in the felony class presumptive ranges.

Since 1979, the habitual offender statute has evolved from two levels of habitual offenders — the "little habitual" and the "big habitual" — to four levels of habitual offenders today: the "little habitual;" the "big habitual;" the "bigger habitual;" and the "three strikes you're out" habitual.

Table 3.8 summarizes the major changes in the habitual offender statutes since 1979. The habitual offender statutes have not been amended since 1994.

Table 3.8: Habitual Offender Sentencing Ranges

	Class 1 Felony	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1979 Normal Presumptive Ranges	<i>Life to Death</i> 8 to 12 years 4 to 8 years 2 to 4 years 1 to 2 years NA					
Little Habitual (3rd conviction)	25 to 50 years	25 to 50 years	25 to 50 years	NA	NA	NA
Big Habitual (4th conviction)	Life	Life	Life	Life	Life	NA
1985 Normal Presumptive Ranges	<i>Life to Death</i> 8 to 24 years 4 to 16 years 2 to 8 years 1 to 4 years NA					
Little Habitual (3rd conviction)	25 to 50 years	25 to 50 years	25 to 50 years	25 to 50 years	NA	NA
Big Habitual (4th conviction)	Life	Life	Life	Life	Life	NA
1993 Normal Presumptive Ranges	<i>Life to Death</i> 8 to 24 years 4 to 12 years 2 to 6 years 1 to 7 years 1 year to 18 months					
Little Habitual (3rd conviction)	Life	72 years	36 years	18 years	9 years	NA
Big Habitual (4th conviction)	Life	96 years	48 years	24 years	12 years	6 years
Bigger Habitual (5th conviction)	Life	Life	Life	Life	Life	Life
1994 Normal Presumptive Ranges (current law in 2000)	<i>Life to Death</i> 8 to 24 years 4 to 12 years 2 to 6 years 1 to 3 years 1 year to 18 months					
Little Habitual (3rd conviction)	Life	72 years	36 years	18 years	9 years	NA
Big Habitual (4th conviction)	Life	96 years	48 years	24 years	12 years	6 years
Bigger Habitual (5th conviction)	Life	Life	Life	Life	Life	Life

	Class 1 Felony	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
"Three Strikes You're Out" Habitual (3rd conviction of class 1, 2, or 3/violent felonies)	Life	Life	Life (only class 3 felonies which are crimes of violence)	NA	NA	NA

NA: Not Applicable.

Following is a brief explanation of when and how each of these habitual sentences applies.

The "little habitual." Offenders convicted of a class 1, 2, 3, 4, or 5 felony who, within ten years of the date of the commission of the offense, have twice previously been convicted of a felony in Colorado, another state, or in federal court are adjudicated habitual offenders under the little habitual statute. The sentencing court is required to sentence such offenders to a term of imprisonment which is three times the maximum of the presumptive range for the felony class for which the person is convicted. The General Assembly chose not to apply the little habitual to class 6 felonies. Sentencing under the little habitual statute is in Table 3.9.

Table 3.9 — Sentencing Under the Little Habitual Statute

	Class 1 Felony	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1994 Normal Presumptive Ranges (current law in 2000)	<i>Life to Death</i>	<i>8 to 24 years</i>	<i>4 to 12 years</i>	<i>2 to 6 years</i>	<i>1 to 3 years</i>	<i>1 year to 18 months</i>
Little Habitual (3rd conviction)	Life	72 years	36 years	18 years	9 years	NA

The "big habitual." Offenders convicted of a fourth felony, regardless of the felony class, in Colorado, another state, or in federal court are adjudicated habitual offenders under the big habitual statute. The sentencing court is required to sentence such offenders to a term of imprisonment which is four times the maximum in the presumptive range for the class of felony for which the person is convicted. Sentencing under the big habitual statute is in Table 3.10.

Table 3.10 — Sentencing Under the Big Habitual Statute

	Class 1 Felony	Class 2 Felony	Class 3 Felony	Class 4 Felony	Class 5 Felony	Class 6 Felony
1994 Normal Presumptive Ranges (current law in 2000)	<i>Life to Death</i>	<i>8 to 24 years</i>	<i>4 to 12 years</i>	<i>2 to 6 years</i>	<i>1 to 3 years</i>	<i>1 year to 18 months</i>
Big Habitual (4th conviction)	Life	96 years	48 years	24 years	12 years	6 years

The "bigger habitual." Any offender convicted and sentenced under the big habitual statute, who is subsequently convicted of a felony which is a crime of violence as defined by Section 16-11-309, C.R.S., is adjudicated an habitual offender under the bigger habitual statute. Offenders convicted of the bigger habitual are to be sentenced to a term of life imprisonment. Offenders sentenced to life imprisonment under this provision are ineligible for parole until serving at least 40 calendar years.

The "three strikes you're out" habitual. The newest level of habitual offender applies to offenders convicted of a third class 1, 2, or 3 felony which is a crime of violence as defined in Section 16-11-309, C.R.S. Such offenders are to be adjudicated an habitual offender and are to be sentenced to a term of life imprisonment. Offenders sentenced under the three strikes provisions are ineligible for parole until serving at least 40 calendar years.