

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0519.01 Michael Dohr x4347

HOUSE BILL 13-1148

HOUSE SPONSORSHIP

Foote,

SENATE SPONSORSHIP

Roberts,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CHANGES TO AGGRAVATED SENTENCING PROVISIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill repeals the extraordinary risk sentencing enhancer. The bill makes certain child abuse crimes and stalking crimes a crime of violence. Under current law there are numerous mandatory sentences in which the court is required to sentence to at least the midpoint of the presumptive range. The bill changes that sentencing requirement to at least the minimum of the presumptive range. The bill increases the maximum range for class 3 through 6 felony crimes of violence.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill makes conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-401, **amend**
3 (8) (a) introductory portion, (8) (d) (I), (8) (e) (I), (8) (e.5), (8) (g), and
4 (13) (a) introductory portion as follows:

5 **18-1.3-401. Felonies classified - presumptive penalties.**

6 (8) (a) The presence of any one or more of the following extraordinary
7 aggravating circumstances shall require the court, if it sentences the
8 defendant to incarceration, to sentence the defendant to a term of at least
9 the ~~midpoint~~ MINIMUM in the presumptive range but not more than ~~twice~~
10 ~~the maximum term authorized in the presumptive range for the~~
11 ~~punishment of a felony~~ FORTY-EIGHT YEARS FOR A CLASS 2 FELONY,
12 THIRTY-TWO YEARS FOR A CLASS 3 FELONY, SIXTEEN YEARS FOR A CLASS
13 4 FELONY, EIGHT YEARS FOR A CLASS 5 FELONY, AND FOUR YEARS FOR A
14 CLASS 6 FELONY WITHOUT SUSPENSION:

15 (d) (I) If the defendant is convicted of the class 2 or the class 3
16 felony of child abuse under section 18-6-401 (7) (a) (I) or (7) (a) (III), the
17 court shall be required to sentence the defendant to the department of
18 corrections for a term of at least the ~~midpoint~~ MINIMUM in the
19 presumptive range but not more than ~~twice the maximum term authorized~~
20 ~~in the presumptive range for the punishment of that class felony~~
21 FORTY-EIGHT YEARS FOR A CLASS 2 FELONY OR THIRTY-TWO YEARS FOR
22 A CLASS 3 FELONY WITHOUT SUSPENSION.

23 (e) (I) If the defendant is convicted of the class 2 felony of sexual
24 assault in the first degree under section 18-3-402 (3), commission of
25 which offense occurs prior to November 1, 1998, the court shall be

1 required to sentence the defendant to a term of at least the ~~midpoint~~
2 MINIMUM in the presumptive range but not more than ~~twice the maximum~~
3 ~~term authorized in the presumptive range for the punishment of that class~~
4 ~~of felony~~ FORTY-EIGHT YEARS FOR THE CLASS 2 FELONY WITHOUT
5 SUSPENSION.

6 (e.5) If the defendant is convicted of the class 2 felony of sexual
7 assault under section 18-3-402 (5) or the class 2 felony of sexual assault
8 in the first degree under section 18-3-402 (3) as it existed prior to July 1,
9 2000, commission of which offense occurs on or after November 1, 1998,
10 the court shall be required to sentence the defendant to the department of
11 corrections for an indeterminate sentence of at least the ~~midpoint~~
12 MINIMUM in the presumptive range for the punishment of that class of
13 felony up to the defendant's natural life.

14 (g) If the defendant is convicted of class 4 or class 3 felony
15 vehicular homicide under section 18-3-106 (1) (a) or (1) (b), and while
16 committing vehicular homicide the defendant was in immediate flight
17 from the commission of another felony, the court shall be required to
18 sentence the defendant to the department of corrections for a term of at
19 least the ~~midpoint~~ MINIMUM in the presumptive range but not more than
20 ~~twice the maximum term authorized in the presumptive range for the~~
21 ~~punishment of the class of felony vehicular homicide of which the~~
22 ~~defendant is convicted~~ THIRTY-TWO YEARS FOR A CLASS 3 FELONY OR
23 SIXTEEN YEARS FOR A CLASS 4 FELONY WITHOUT SUSPENSION.

24 (13) (a) The court, if it sentences a defendant who is convicted of
25 any one or more of the offenses specified in paragraph (b) of this
26 subsection (13) to incarceration, shall sentence the defendant to a term of
27 at least the ~~midpoint~~ MINIMUM, but not more than ~~twice the maximum~~, of

1 ~~the presumptive range authorized for the punishment of the offense of~~
2 ~~which the defendant is convicted~~ FORTY-EIGHT YEARS FOR A CLASS 2
3 FELONY, THIRTY-TWO YEARS FOR A CLASS 3 FELONY, SIXTEEN YEARS FOR
4 A CLASS 4 FELONY, EIGHT YEARS FOR A CLASS 5 FELONY, AND FOUR YEARS
5 FOR A CLASS 6 FELONY WITHOUT SUSPENSION if the court makes the
6 following findings on the record:

7 **SECTION 2.** In Colorado Revised Statutes, **repeal** 18-1.3-401
8 (10).

9 **SECTION 3.** In Colorado Revised Statutes, 18-1.3-406, **amend**
10 (1) (a), (1) (b), and (2) (a) (II) (I); and **add** (2) (a) (II) (K), (2) (a) (II) (L),
11 and (2) (a) (II) (M) as follows:

12 **18-1.3-406. Mandatory sentences for violent crimes.**

13 (1) (a) Any person convicted of a crime of violence shall be sentenced
14 pursuant to the provisions of section 18-1.3-401 (8) to the department of
15 corrections for a term of incarceration of at least the ~~midpoint~~ MINIMUM
16 ~~in, but not more than twice the maximum~~ of the presumptive range
17 provided for such offense in section 18-1.3-401 (1) (a), ~~as modified for~~
18 ~~an extraordinary risk crime pursuant to section 18-1.3-401 (10)~~ BUT NOT
19 MORE THAN FORTY-EIGHT YEARS FOR A CLASS 2 FELONY, THIRTY-TWO
20 YEARS FOR A CLASS 3 FELONY, SIXTEEN YEARS FOR A CLASS 4 FELONY,
21 EIGHT YEARS FOR A CLASS 5 FELONY, AND FOUR YEARS FOR A CLASS 6
22 FELONY WITHOUT SUSPENSION. Except that, within ninety-one days after
23 he or she has been placed in the custody of the department of corrections,
24 the department shall transmit to the sentencing court a report on the
25 evaluation and diagnosis of the violent offender, and the court, in a case
26 which it considers to be exceptional and to involve unusual and
27 extenuating circumstances, may thereupon modify the sentence, effective

1 not earlier than one hundred nineteen days after his or her placement in
2 the custody of the department. Such modification may include probation
3 if the person is otherwise eligible therefor. Whenever a court finds that
4 modification of a sentence is justified, the judge shall notify the state
5 court administrator of his or her decision and shall advise said
6 administrator of the unusual and extenuating circumstances that justified
7 such modification. The state court administrator shall maintain a record,
8 which shall be open to the public, summarizing all modifications of
9 sentences and the grounds therefor for each judge of each district court
10 in the state. A person convicted of two or more separate crimes of
11 violence arising out of the same incident shall be sentenced for such
12 crimes so that sentences are served consecutively rather than
13 concurrently.

14 (b) Notwithstanding the provisions of paragraph (a) of this
15 subsection (1), any person convicted of a sex offense, as defined in
16 section 18-1.3-1003 (5), committed on or after November 1, 1998, that
17 constitutes a crime of violence shall be sentenced to the department of
18 corrections for an indeterminate term of incarceration of at least the
19 ~~midpoint~~ MINIMUM in the presumptive range specified in section
20 18-1.3-401 (1) (a) (V) (A) up to a maximum of the person's natural life,
21 as provided in section 18-1.3-1004 (1).

22 (2) (a) (II) Subparagraph (I) of this paragraph (a) applies to the
23 following crimes:

24 (I) Escape; or

25 (K) ANY VIOLATION OF SECTION 18-6-401 (7) (a) (I);

26 (L) ANY VIOLATION OF SECTION 18-6-401 (7) (a) (III); OR

27 (M) ANY VIOLATION OF SECTION 18-3-602 (3) (b).

1 **SECTION 4.** In Colorado Revised Statutes, 18-1.3-1004, **amend**
2 (1) (b) as follows:

3 **18-1.3-1004. Indeterminate sentence.** (1) (b) If the sex offender
4 committed a sex offense that constitutes a crime of violence, as defined
5 in section 18-1.3-406, the district court shall sentence the sex offender to
6 the custody of the department for an indeterminate term of at least the
7 ~~midpoint~~ MINIMUM in the presumptive range for the level of offense
8 committed and a maximum of the sex offender's natural life.

9 **SECTION 5.** In Colorado Revised Statutes, 18-3-602, **repeal** (4)
10 and (9) as follows:

11 **18-3-602. Stalking - penalty - definitions - Vonnie's law.**
12 (4) ~~Stalking is an extraordinary risk crime that is subject to the modified~~
13 ~~presumptive sentencing range specified in section 18-1.3-401 (10):~~

14 (9) ~~When a violation under this section is committed in connection~~
15 ~~with a violation of a court order, including but not limited to any~~
16 ~~protection order or any order that sets forth the conditions of a bond, any~~
17 ~~sentences imposed pursuant to this section and pursuant to section~~
18 ~~18-6-803.5 or any sentence imposed in a contempt proceeding for~~
19 ~~violation of the court order shall be served consecutively and not~~
20 ~~concurrently.~~

21 **SECTION 6.** In Colorado Revised Statutes, 18-3-405.6, **amend**
22 (2) (b) introductory portion as follows:

23 **18-3-405.6. Invasion of privacy for sexual gratification.**
24 (2) (b) Invasion of privacy for sexual gratification is a class 6 felony ~~and~~
25 ~~is an extraordinary risk crime subject to the modified sentencing range~~
26 ~~specified in section 18-1.3-401 (10)~~ if either of the following
27 circumstances exist:

1 **SECTION 7.** In Colorado Revised Statutes, 18-4-302, **amend** (3)
2 as follows:

3 **18-4-302. Aggravated robbery.** (3) Aggravated robbery is a
4 class 3 felony. ~~and is an extraordinary risk crime that is subject to the~~
5 ~~modified presumptive sentencing range specified in section 18-1.3-401~~
6 ~~(10).~~

7 **SECTION 8.** In Colorado Revised Statutes, 18-6-401, **amend**
8 (7.3) as follows:

9 **18-6-401. Child abuse.** (7.3) ~~Felony child abuse is an~~
10 ~~extraordinary risk crime that is subject to the modified presumptive~~
11 ~~sentencing range specified in section 18-1.3-401 (10).~~ Misdemeanor child
12 abuse is an extraordinary risk crime that is subject to the modified
13 sentencing range specified in section 18-1.3-501 (3).

14 **SECTION 9.** In Colorado Revised Statutes, 18-18-405, **amend**
15 (3) (a) and (7); and repeal (3.5) as follows:

16 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
17 **or sale.** (3) (a) Unless a greater sentence is required pursuant to the
18 provisions of another statute, any person convicted pursuant to
19 subparagraph (I) of paragraph (a) of subsection (2) of this section for
20 knowingly manufacturing, dispensing, selling, distributing, or possessing
21 with intent to manufacture, dispense, sell, or distribute, or inducing,
22 attempting to induce, or conspiring with one or more other persons, to
23 manufacture, dispense, sell, distribute, or possess with intent to
24 manufacture, dispense, sell, or distribute an amount that is or has been
25 represented to be:

26 (I) At least twenty-five grams or one ounce but less than four
27 hundred fifty grams of any material, compound, mixture, or preparation

1 that contains a schedule I or schedule II controlled substance as listed in
2 section 18-18-203 or 18-18-204 shall be sentenced to the department of
3 corrections for at least the minimum term of incarceration in the
4 presumptive range provided for such offense in section 18-1.3-401 (1) (a)
5 with regard to offenses other than manufacturing, dispensing, selling,
6 distributing, or possessing with intent to manufacture, dispense, sell, or
7 distribute, and for at least the minimum term of incarceration in the
8 presumptive range provided for such offense in section 18-1.3-401 (1) (a)
9 ~~as modified pursuant to section 18-1.3-401 (10)~~ with regard to
10 manufacturing, dispensing, selling, distributing, or possessing with intent
11 to manufacture, dispense, sell, or distribute;

12 (II) At least four hundred fifty grams or one pound but less than
13 one thousand grams of any material, compound, mixture, or preparation
14 that contains a schedule I or schedule II controlled substance as listed in
15 section 18-18-203 or 18-18-204 shall be sentenced to the department of
16 corrections for a term of at least the ~~midpoint~~ MINIMUM of the
17 presumptive range but not more than twice the maximum presumptive
18 range provided for such offense in section 18-1.3-401 (1) (a) with regard
19 to offenses other than manufacturing, dispensing, selling, distributing, or
20 possessing with intent to manufacture, dispense, sell, or distribute, and for
21 a term of at least the ~~midpoint~~ MINIMUM of the presumptive range but not
22 more than twice the maximum presumptive range provided for such
23 offense in section 18-1.3-401 (1) (a) ~~as modified pursuant to section~~
24 ~~18-1.3-401 (10)~~ with regard to manufacturing, dispensing, selling,
25 distributing, or possessing with intent to manufacture, dispense, sell, or
26 distribute;

27 (III) One thousand grams or one kilogram or more of any material,

1 compound, mixture, or preparation that contains a schedule I or schedule
2 II controlled substance as listed in section 18-18-203 or 18-18-204 shall
3 be sentenced to the department of corrections for a term greater than the
4 maximum presumptive range but not more than twice the maximum
5 presumptive range provided for such offense in section 18-1.3-401 (1) (a)
6 with regard to offenses other than manufacturing, dispensing, selling,
7 distributing, or possessing with intent to manufacture, dispense, sell, or
8 distribute, and for a term greater than the maximum presumptive range
9 but not more than twice the maximum presumptive range provided for
10 such offense in section 18-1.3-401 (1) (a) ~~as modified pursuant to section~~
11 ~~18-1.3-401 (10)~~ with regard to manufacturing, dispensing, selling,
12 distributing, or possessing with intent to manufacture, dispense, sell, or
13 distribute.

14 (3.5) ~~The felony offense of unlawfully manufacturing, dispensing,~~
15 ~~selling, distributing, or possessing with intent to unlawfully manufacture,~~
16 ~~dispense, sell, or distribute a controlled substance is an extraordinary risk~~
17 ~~crime that is subject to the modified presumptive sentencing range~~
18 ~~specified in section 18-1.3-401 (10).~~

19 (7) Notwithstanding the provisions of subsection (2) of this
20 section, and except as otherwise provided in sub-subparagraph (B) of
21 subparagraph (I) of paragraph (a) of subsection (2) or paragraph (a) of
22 subsection (2.5) of this section, a person who violates subsection (1) of
23 this section by selling, dispensing, or distributing a controlled substance
24 other than marijuana or marijuana concentrate to a minor under eighteen
25 years of age and who is at least eighteen years of age and at least two
26 years older than the minor commits a class 3 felony and, unless a greater
27 sentence is provided under any other statute, shall be sentenced to the

1 department of corrections for a term of at least the minimum, but not
2 more than twice the maximum, of the presumptive range provided for
3 such offense in section 18-1.3-401 (1) (a). ~~as modified pursuant to section~~
4 ~~18-1.3-401 (10).~~

5 **SECTION 10.** In Colorado Revised Statutes, 18-18-406.8,
6 **amend** (2) introductory portion as follows:

7 **18-18-406.8. Unlawful distribution, manufacturing,**
8 **dispensing, or sale of cathinones.** (2) A person who violates subsection
9 (1) of this section commits a class 3 felony and shall be sentenced as
10 provided in section 18-1.3-401; except that, unless a greater sentence is
11 provided under any other statute, the person shall be sentenced to the
12 department of corrections for a term of at least the minimum, but not
13 more than twice the maximum, of the presumptive range provided for the
14 offense in section 18-1.3-401 (1) (a) ~~as modified pursuant to section~~
15 ~~18-1.3-401 (10)~~; if the person is at least eighteen years of age and:

16 **SECTION 11.** In Colorado Revised Statutes, 18-18-412.7,
17 **amend** (2) as follows:

18 **18-18-412.7. Sale or distribution of materials to manufacture**
19 **controlled substances.** (2) A violation of this section is a class 3 felony.
20 ~~A violation of this section is an extraordinary risk crime that is subject to~~
21 ~~the modified presumptive sentencing range specified in section~~
22 ~~18-1.3-401 (10).~~

23 **SECTION 12. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.