

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 10-0913.01 Richard Sweetman

HOUSE BILL 10-1338

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Steadman,

House Committees

Judiciary  
Appropriations

Senate Committees

Judiciary  
Appropriations

A BILL FOR AN ACT

101 CONCERNING THE ELIGIBILITY FOR PROBATION OF A PERSON WHO HAS  
102 TWO OR MORE FELONY CONVICTIONS, AND MAKING  
103 APPROPRIATIONS IN CONNECTION THEREWITH.

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 allows a person who has 2 or more prior felony convictions to be eligible for probation unless he or she has at least one prior conviction of a crime of violence, manslaughter, 2nd degree burglary, robbery, theft, or a felony offense committed against a child.

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.*

SENATE  
Am ended 2nd Reading  
May 7, 2010

HOUSE  
3rd Reading Unam ended  
April 22, 2010

HOUSE  
Am ended 2nd Reading  
April 21, 2010

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

2 **SECTION 1.** 18-1.3-201 (2) and (4) (a) (I), Colorado Revised  
3 Statutes, are amended, and the said 18-1.3-201 is further amended BY  
4 THE ADDITION OF A NEW SUBSECTION, to read:

5 **18-1.3-201. Application for probation.** (2) (a) THE PROVISIONS  
6 OF THIS SUBSECTION (2) SHALL APPLY TO ANY PERSON WHOSE  
7 APPLICATION FOR PROBATION IS BASED ON A CONVICTION FOR A FELONY,  
8 WHICH CONVICTION OCCURRED BEFORE THE EFFECTIVE DATE OF THIS  
9 SUBSECTION (2), AS AMENDED.

10 (a) (a.5) A person who has been twice OR MORE convicted of a  
11 felony under the laws of this state, any other state, or the United States  
12 prior to the conviction on which his or her application is based shall not  
13 be eligible for probation.

14 (b) Notwithstanding any other provision of law except the  
15 provisions of paragraph (c) of this subsection (2), a person who has been  
16 convicted of one or more felonies under the laws of this state, any other  
17 state, or the United States within ten years prior to a class 1, 2, or 3 felony  
18 conviction on which his or her application is based shall not be eligible  
19 for probation.

20 (c) Notwithstanding the provisions of paragraph (a) (a.5) of this  
21 subsection (2) and subsection (4) of this section, an offender convicted of  
22 a violation of section 18-18-405 (2.3) may be eligible for probation upon  
23 recommendation of the district attorney.

24 (d) Repealed.

25 (2.5) (a) THE PROVISIONS OF THIS SUBSECTION (2.5) SHALL APPLY  
26 TO ANY PERSON WHOSE APPLICATION FOR PROBATION IS BASED ON A

1 CONVICTION FOR A FELONY, WHICH CONVICTION OCCURRED ON OR AFTER  
2 THE EFFECTIVE DATE OF THIS SUBSECTION (2.5).

3 (b) EXCEPT AS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4)  
4 OF THIS SECTION, A PERSON WHO HAS BEEN TWICE OR MORE CONVICTED OF  
5 A FELONY UPON CHARGES SEPARATELY BROUGHT AND TRIED AND ARISING  
6 OUT OF SEPARATE AND DISTINCT CRIMINAL EPISODES UNDER THE LAWS OF  
7 THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE  
8 CONVICTION ON WHICH HIS OR HER APPLICATION IS BASED SHALL NOT BE  
9 ELIGIBLE FOR PROBATION IF THE CURRENT CONVICTION OR A PRIOR  
10 CONVICTION IS FOR:

11 (I) FIRST OR SECOND DEGREE MURDER, AS DESCRIBED IN SECTION  
12 18-3-102 OR 18-3-103;

13 (II) MANSLAUGHTER, AS DESCRIBED IN SECTION 18-3-104;

14 (III) FIRST OR SECOND DEGREE ASSAULT, AS DESCRIBED IN  
15 SECTION 18-3-202 OR 18-3-203;

16 (IV) FIRST OR SECOND DEGREE KIDNAPPING, AS DESCRIBED IN  
17 SECTION 18-3-301 OR 18-3-302;

18 (V) A SEXUAL OFFENSE AS DESCRIBED IN PART 4 OF ARTICLE 3 OF  
19 THIS TITLE;

20 (VI) FIRST DEGREE ARSON, AS DESCRIBED IN SECTION 18-4-102;

21 (VII) FIRST OR SECOND DEGREE BURGLARY, AS DESCRIBED IN  
22 SECTION 18-4-202 OR 18-4-203;

23 (VIII) ROBBERY, AS DESCRIBED IN SECTION 18-4-301;

24 (IX) AGGRAVATED ROBBERY, AS DESCRIBED IN SECTION 18-4-302  
25 OR 18-4-303;

26 (X) THEFT FROM THE PERSON OF ANOTHER, AS DESCRIBED IN  
27 SECTION 18-4-401 (5);

1 (XI) ANY FELONY OFFENSE COMMITTED AGAINST A CHILD, AS  
2 DESCRIBED IN ARTICLE 3, 6, OR 7 OF THIS TITLE; OR

3 (XII) ANY CRIMINAL ATTEMPT OR CONSPIRACY TO COMMIT ANY OF  
4 THE OFFENSES SPECIFIED IN THIS PARAGRAPH (b).

5 (c) FAILURE TO REGISTER AS A SEX OFFENDER, AS DESCRIBED IN  
6 SECTION 18-3-412.5, SHALL NOT CONSTITUTE A SEXUAL OFFENSE FOR THE  
7 PURPOSES OF SUBPARAGRAPH (V) OF PARAGRAPH (b) OF THIS SUBSECTION  
8 (2.5).

9 (4) (a) (I) The restrictions upon eligibility for probation in  
10 ~~subsection (2)~~ SUBSECTIONS (2) AND (2.5) of this section may be waived  
11 by the sentencing court regarding a particular defendant upon  
12 recommendation of the district attorney approved by an order of the  
13 sentencing court.

14 **SECTION 2. Repeal.** 18-1.3-201 (1) (b) and (4) (a) (II),  
15 Colorado Revised Statutes, are repealed.

16 **SECTION 3.** Footnote number 21a, as enacted in part VII of  
17 section 2 of House Bill 10-1376 is amended to read:

18 21a Department of Human Services, Division of Child Welfare, Child  
19 Welfare Services -- Pursuant to Section 26-5-104 (6), C.R.S.,  
20 subject to Department rules, counties are authorized to negotiate  
21 rates, services, and outcomes with child welfare services providers  
22 and are thus not required to provide a specific rate decrease for  
23 any individual provider. This provision does not apply, however,  
24 to Medicaid treatment rates. The funding appropriated for this line  
25 item includes a decrease of ~~\$6,635,156~~ \$4,915,366 based on a ~~2.0~~  
26 1.46 percent decrease in funding for county staff salaries and  
27 benefits, community provider rates including subsidized adoption

1           rates, and Medicaid treatment rates.

2           **SECTION 4. Appropriation - adjustments to the 2010 long**

3 **bill.** (1) In addition to any other appropriation, there is hereby  
4 appropriated, out of any moneys in the general fund not otherwise  
5 appropriated, to the judicial department, probation and related services,  
6 for probation programs, for the fiscal year beginning July 1, 2010, the  
7 sum of three hundred eight thousand six hundred twenty-eight dollars  
8 (\$308,628) and 5.2 FTE, or so much thereof as may be necessary, for the  
9 implementation of this act.

10           (2) For the implementation of this act, the general fund  
11 appropriation made in the annual general appropriation act for the fiscal  
12 year beginning July 1, 2010, to the department of corrections,  
13 management, external capacity subprogram, for payments to house state  
14 prisoners, is decreased by two million five hundred forty-one thousand  
15 eight hundred ten dollars (\$2,541,810).

16           **SECTION 5. Appropriation.** In addition to any other  
17 appropriation, there is hereby appropriated, out of any moneys in the  
18 general fund not otherwise appropriated, to the department of revenue,  
19 executive director's office, for personal services, for the fiscal year  
20 beginning July 1, 2010, the sum of three hundred thirty-six thousand  
21 fifty-seven dollars (\$336,057), or so much thereof as may be necessary,  
22 for the implementation of House Bill 09-1137, which was passed during  
23 the 2009 regular session and enacted into law.

24           **SECTION 6. Appropriation.** (1) In addition to any other  
25 appropriation, there is hereby appropriated, to the department of health  
26 care policy and financing, department of human services medicaid-funded  
27 programs, for child welfare services, for the fiscal year beginning July 1,

1 2010, the sum of twenty-eight thousand eight hundred eighty-seven  
2 dollars (\$28,887), or so much thereof as may be necessary, for the  
3 implementation of this act. Said sum from the general fund shall be  
4 subject to the "(M)" notation as defined in the general appropriation act.  
5 The general assembly anticipates that, for the fiscal year beginning July  
6 1, 2010, the department of health care policy and financing will receive  
7 the sum of forty-six thousand three hundred twenty-two dollars (\$46,322)  
8 in federal funds for the implementation of this act. Although these funds  
9 are not appropriated in this act, they are noted for the purpose of  
10 indicating the assumptions used relative to these funds.

11 (2) In addition to any other appropriation, there is hereby  
12 appropriated, to the department of human services, division of child  
13 welfare, for child welfare services, for the fiscal year beginning July 1,  
14 2010, the sum of one million seven hundred nineteen thousand seven  
15 hundred ninety-four dollars (\$1,719,794) , or so much thereof as may be  
16 necessary, for the implementation of this act. Of said sum, nine hundred  
17 ninety-one thousand nine hundred nineteen dollars (\$991,919) shall be  
18 from the general fund, three hundred forty-three thousand nine hundred  
19 fifty-nine dollars (\$343,959) shall be cash funds from local funds,  
20 seventy-five thousand two hundred nine dollars (\$75,209) shall be from  
21 reappropriated funds received from the department of health care policy  
22 and financing out of the appropriation made in subsection (1) of this  
23 section, and three hundred eight thousand seven hundred seven dollars  
24 (\$308,707) shall be from federal funds anticipated to be received pursuant  
25 to Title IV-E of the Social Security Act. \_\_\_\_\_

26 **SECTION 7. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.