

Colorado's Adult Sentencing Laws - An Overview Part I

(Post 1993)

(Federal Crimes, even when committed in Colorado, are not covered in this Article)

Part I of this article discusses briefly the Colorado Adult Sentencing Laws relating to Felonies where the defendant is sentenced to the Department of Corrections. Part II of this article will discuss briefly the Colorado Adult Sentencing Laws relating to Misdemeanors where the defendant is sentenced to jail. Part III of this article will discuss briefly the Colorado Adult Sentencing Laws relating to Sentencing Alternatives concerning Felonies. Part IV of this article will discuss briefly the Colorado Adult Sentencing Laws relating to Sentencing Alternatives concerning Misdemeanors. Part V of this article will discuss briefly Habitual Offender Statutes. Part VI of this article will discuss briefly the Colorado Adult Sentencing Laws relating to Other Matters in the Sentencing Scheme.

I. History

Colorado's Sentencing laws for crimes changed frequently from the late 1970s through the early 1990s. Some of these changes were quite dramatic and possibly harsh (from the view point of the person convicted, his or her family and friends (but not from the perspective of the victim, his or her family and friends, and most of the citizenry of Colorado). In 1979 and again in 1985 drastic changes were made to the sentencing scheme. It would appear that these changes may have had the greatest impact on Colorado prisoner population. Some other significant changes were made in 1989 and in 1993. Since 1993 to date (about 16 years) there were no real changes to Colorado's Sentencing laws.

II. Crime Classification for Sentencing

Under Colorado's Sentencing Scheme, crimes are broadly classified as under:

- A. Felonies
- B. Misdemeanors (Discussed in Part II)
- C. Petty Offenses (Discussed in Part II)

A. I What are Felonies?

Crimes which are classified as felonies require the person so convicted to serve the sentence imposed under the care, custody, and control of the Colorado Department of Corrections. The Colorado Department of Corrections is under the control of the Executive Branch of the Colorado Government. Felonies are considered serious crimes resulting in several collateral consequences. The collateral consequences of felonies are beyond the scope of this article and will be considered in another separate article. (So watch out for the article on Collateral Consequences of Felony Convictions in the near future). Thus, the place of incarceration distinguishes between a felony and a misdemeanor. Therefore, the duration of the sentence, however long, does not control whether the crime is classified a felony or a misdemeanor. Once a person is convicted of a felony and is not eligible for Alternative Sentencing Schemes (discussed in a Part III to be released in the near future) he or she must serve the sentence with the Department of Corrections (even if the sentence is for a few days, a month or months, or years).

A. II How are Felonies Structured?

Felonies are classified into Classes ranging from Class 1 to Class 6. The Class 1 felonies being the most serious and earmarked with the harshest of punishment ranging from life imprisonment to death. Class 6 felonies being the least serious and earmarked with a presumptive range sentence ranging from one year to 18 months. Class 2 felonies are very serious crimes but less serious than Class 1 felonies and earmarked with a harsh presumptive range punishment ranging from eight years to 24 years. Class 3 felonies are

serious crimes but less serious than Class 2 felonies and earmarked with a stiff presumptive range punishment ranging from four years to 12 years. Class 4 felonies are serious crimes but less serious than Class 3 felonies and earmarked with a presumptive range punishment ranging from two years to six years. Class 5 felonies are serious crimes but less serious than Class 4 felonies and earmarked with a punishment ranging from one year to 3 years.

A.III What is Presumptive Range Sentencing?

The presumptive ranges in sentencing is the base from which judge must calculate the sentence to be imposed for the specific class of felony. The presumptive range sentencing has a minimum sentence and a maximum for each class of felony.

A.IV What is Exceptional Circumstances in the Sentencing Scheme?

The exceptional circumstances in the sentencing scheme are those circumstances either during the commission of the crime, during the investigation of the crime, the criminal history of the person convicted, status of the convict when the crime was committed (either on probation, bond, or parole), actions or inaction of the person convicted during pending of the case till the verdict that either reduces the minimum presumptive range or increases the maximum presumptive range sentence.

A.V What are Mitigating Circumstances?

Mitigating circumstances are those exceptional circumstances in the sentencing scheme which justifies the judge in reducing the minimum presumptive range sentence.

Mitigating circumstances are those that convinces and allows a judge to show some leniency when punishing the defendant. Generally, when mitigating circumstances exist which the judge is convinced to accept as such then the minimum sentence is reduced by up to one-half of the minimum presumptive range sentence for the specific felony class. Thus in case of a class 6 felony the minimum presumptive range sentence is one year. However, if the judge is convinced of mitigating circumstances the judge can then lower the minimum presumptive range to 6 months (reduced by one-half). This scheme applies

to all felonies except Class 1 felonies where the minimum and maximum presumptive range do not change for mitigating circumstances, except to impose life imprisonment instead of death.

A.VI What are Aggravating Circumstances?

Aggravating circumstances are those exceptional circumstances in the sentencing scheme which justifies the judge in increase the maximum presumptive range sentence.

Aggravating circumstances are those that convinces and allows a judge to impose a harsher and to show no or less leniency when punishing the defendant. Generally, when Aggravating circumstances exist that the judge is convinced to accept as such then the maximum sentence in the presumptive range is increased (usually twice the maximum in the presumptive range for the specific class of felony. Thus in case of a class 6 felony the maximum presumptive range sentence is 18 months. However, if the judge is convinced of aggravating circumstances the judge can then increase the maximum presumptive range to 3 years (the increase is doubled). This scheme applies to all felonies except Class 1 felony where the minimum and maximum presumptive range do not change for aggravating circumstances, except to impose death instead of life imprisonment.

A.VII Must the Sentence imposed be the Minimum or the Maximum in the Sentencing Scheme?

This may appear to be a trick question but in fact it is not. Once it is determined that the defendant convicted of a specific class of felony is not eligible for alternative sentencing schemes (such as probation or community corrections) the judge must sentence the convicted defendant to not less than the minimum sentence for that specific class of felony in the presumptive range unless the judge finds mitigating circumstances. But the judge need not impose just the minimum - it is just the starting point within the range from which the judge can impose the sentence. Thus, where mitigating circumstances is found in a class 6 felony the minimum range is starts from 6 months to 1 year. Similarly, where aggravating circumstances is found in a class 6 felony the maximum range starts from 18 months to 3 years. The maximum is the upper limit which the judge can impose

a sentence for the specific class of felony. The judge cannot impose any higher sentence for the specific class of felony. The minimum is the lowest limit which the judge can impose a sentence for the specific class of felony. The judge cannot impose any lower sentence. Thus, the minimum and maximum presumptive allows the judge some discretion to impose sentence.

A. VIII What is Parole?

Parole is when a person is released earlier than the term to which he or she was sentenced. Parole allows the person to be out living in the community somewhat like a free person except that he or she has certain restrictions imposed on the place, manner of living in the community. Some of these restrictions are no alcohol or illegal drug possession or consumption, not committing any crimes, curfew times may be imposed, periodic reporting to Parole Officer, unannounced visits to home and work by Parole Officer (no need for a search warrant to inspect the home of the parolee (a person on parole is called a parolee), restrictions on possessing weapons or firearms, restrictions on associating with other parolees or convicted felons.

A.IX What is Mandatory Parole?

The Colorado Legislature requires that any one convicted of any Class 6 through Class 2 felony (not being eligible for alternative sentencing schemes - discussed in a separate part of this article) and sentenced to the Department of Corrections must also complete a specific number of years in mandatory parole in addition to the term of imprisonment. The judge has no discretion in this matter. Thus, once a defendant is convicted and sentenced to the Department of Corrections for a specific Class of felony the defendant must also undergo mandatory parole upon completion of the sentence imposed or on release from imprisonment (including early or other release). Thus, mandatory parole is not an additional imprisonment but rather an additional condition of sentence upon completion of sentence or early release. Mandatory Parole is automatic on sentencing upon conviction for the specific felony. Even the Department of Correction nor the Parole Board can change the mandatory period of parole.

A. X. Why is there no Mandatory Parole for Class 1 Felony?

This is a trick question. There is no mandatory parole for a Class 1 felony because both the minimum presumptive range sentence and the minimum range if exceptional mitigating circumstances existed is still Life Imprisonment. While the maximum presumptive range sentence and the maximum range if exceptional aggravating circumstances existed is still Death. It would be meaningless to also impose an additional term of mandatory parole. In such a cases it is very unlikely that the person sentenced upon conviction of a Class 1 felony will be ever released from his or her incarceration.

A.XI What is the Period of Mandatory Parole?

The period of mandatory parole depends on the Class of Felony. For a Class 6 felony the mandatory parole is 1 year. For a Class 5 felony the mandatory parole is 2 years. For a Class 4 felony the mandatory parole is 3 years. For a Class 3 and a Class 2 felony the mandatory parole is 5 years.

A. XII Does the Period of Mandatory Parole Change for the Minimum and Maximum Sentence in the Presumptive Range?

The period of mandatory parole does not change whether the defendant is sentenced to the minimum or maximum sentence in the presumptive range. The period of parole is fixed and is determined based on the Class of Felony and is not determined upon the term of sentence.

A. XIII What is Extraordinary Risk Crimes?

The Colorado Legislature has determined that certain types of crimes pose an extraordinary risk of harm to society. By so doing and classifying certain specific crimes as posing extraordinary risk of harm to society allows for the imposition of an increase in

the maximum presumptive range for the specific class of felony. The following are some of the crimes classified as extraordinary risk of harm to society:

Aggravated robbery

Child Abuse

Unlawful distribution of a controlled substance

Unlawful manufacturing of a controlled substance

Unlawful dispensing of a controlled substance

Unlawful sale of a controlled substance

Unlawful possession of a controlled substance with intent to sell *

Unlawful possession of a controlled substance with intent to distribute *

Unlawful possession of a controlled substance with intent to manufacture *

Unlawful possession of a controlled substance with intent to dispense *

* Note : (Simple possession of a controlled substance is **not** an extraordinary risk of harm of society crime.

Any crime of Violence (discussed in a subsequent Part to be released in the near future).

Stalking

Unlawful Sale of Materials to manufacture controlled substances

A. XIV What are crimes with sentence-enhancing circumstances?

Defendants convicted of a felony under certain circumstances are required to serve a sentence which is at least the minimum within in the presumptive range but not more than twice the maximum in the presumptive range. Some of the sentence enhancing circumstances crimes are:

Defendant was on bond for a previous felony and committed a felony while on bond and was convicted of the felony

The defendant was on a deferred judgment and sentence for another felony when the felony was committed and was convicted of the felony

The defendant is under 18 years of age when the felony was committed and was on a deferred judgment and sentence for another offense that would have been a felony if committed by an adult

The defendant committed the felony while on parole for a previous felony

The defendant committed the felony while on parole for having been a delinquent child for an offense which would have been a felony if committed by an adult

A. XV What is Concurrent and Consecutive Sentences?

When a defendant is convicted of more than one felony he or she can be sentenced to each felony so convicted. The judge can impose concurrent sentences. In case concurrent sentences is imposed on each conviction, the sentence for each conviction runs side by side (at the same time). However, there are certain circumstances (discussed in a separate Part of this article to be released later) the judge can impose consecutive sentences. In case consecutive sentences is imposed on each conviction, the sentences for a conviction runs upon completion of another sentence. (The sentence for the second or subsequent conviction commences upon completion of the first or previous conviction. The sentences runs one after the other for each conviction and not at the same time).