§ 18-1.3-401. Felonies classified - presumptive penalties.

Colorado Statutes

Title 18. CRIMINAL CODE

Article 1.3. Sentencing in Criminal Cases

Part 4. SENTENCES TO IMPRISONMENT

Current through Chapter147 and Chapters 500-517 of the 2014 Legislative Session

§ 18-1.3-401. Felonies classified - presumptive penalties

(1) (a) (I) As to any person sentenced for a felony committed after July 1, 1979, and before July 1, 1984, felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class - **Presumptive Range**

1 - Life imprisonment or death

2 - Eight to twelve years plus one year of parole

3 - Four to eight years plus one year of parole

4 - Two to four years plus one year of parole

5 - One to two years plus one year of parole

(II) As to any person sentenced for a felony committed on or after July 1, 1984, and before July 1, 1985, felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class - **Presumptive Range**

1 - Life imprisonment or death

2 - Eight to twelve years

3 - Four to eight years

4 - Two to four years

5 - One to two years

(III) (A) As to any person sentenced for a felony committed on or after July 1, 1985, except as otherwise provided in sub-subparagraph (E) of this subparagraph (III), in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following presumptive ranges may be imposed for the specified classes of felonies:
Class Minimum Sentence Maximum Sentence 1 No fine No fine 2 Five thousand dollars One million dollars 3 Three thousand dollars Seven hundred fifty thousand dollars 4 Two thousand dollars Five hundred thousand dollars 5 One thousand dollars One hundred thousand dollars 6 One thousand dollars One hundred thousand dollars

(A.5) Notwithstanding any provision of law to the contrary, any person who attempts to commit, conspires to commit, or commits against an elderly person any felony set forth in part 4 of article 4 of this title, part 1, 2, 3, or 5 of article 5 of this title, article 5.5 of this title, or section 11-51-603 , C.R.S., shall be required to pay a mandatory and substantial fine within the limits permitted by law. However, all moneys collected from the offender shall be applied in the following order: Costs for crime victim compensation fund pursuant to section 24-4.1-119 , C.R.S.; surcharges for victims and witnesses assistance and law enforcement fund pursuant to section 24-4.2-104 , C.R.S.; restitution; time payment fee; late fees; and any other fines, fees, or surcharges. For purposes of this sub-subparagraph (A.5), an "elderly person" or "elderly victim" means a person sixty years of age or older.

(B) Failure to pay a fine imposed pursuant to this subparagraph (III) is grounds for revocation of probation or revocation of a sentence to community corrections, assuming the defendant's ability to pay. If such a revocation occurs, the court may impose the maximum sentence allowable in the given sentencing ranges.

(C) Each judicial district shall have at least one clerk who shall collect and administer the fines imposed under this subparagraph (III) and under section 18-1.3-501 in accordance with the provisions of sub-subparagraph (D) of this subparagraph (III).

(D) All fines collected pursuant to this subparagraph (III) shall be deposited in the fines collection cash fund, which fund is hereby

created. The general assembly shall make annual appropriations out of such fund for administrative and personnel costs incurred in the collection and administration of said fines. All unexpended balances shall revert to the general fund at the end of each fiscal year.

(E) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (III), a person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction for which he or she is being sentenced shall not be eligible to receive a fine in lieu of any sentence to imprisonment, community corrections, or work release but shall be sentenced to at least the minimum sentence specified in subparagraph (V) of this paragraph (a) and may receive a fine in addition to said sentence.

(IV) As to any person sentenced for a felony committed on or after July 1, 1985, but prior to July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:
Class Minimum Sentence Maximum Sentence 1 Life imprisonment Death 2 Eight years imprisonment Twenty-four years imprisonment 3 Four years imprisonment Sixteen years imprisonment 4 Two years imprisonment Eight years imprisonment 5 One year imprisonment Four years imprisonment 6 One year imprisonment Two years imprisonment

(V) (A) As to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:
Class Minimum Maximum Mandatory Period Sentence Sentence of Parole 1 Life imprisonment Death None 2 Eight years imprisonment Twenty-four years imprisonment Five years 3 Four years imprisonment Twelve years imprisonment Five years 4 Two years imprisonment Six years imprisonment Three years 5 One year imprisonment Three years imprisonment Two years 6 One year imprisonment Eighteen months imprisonment One year

(B) Any person who is paroled pursuant to section 17-22.5-403 , C.R.S., or any person who is not paroled and is discharged pursuant to law, shall be subject to the mandatory period of parole established

pursuant to sub-subparagraph (A) of this subparagraph (V). Such mandatory period of parole may not be waived by the offender or waived or suspended by the court and shall be subject to the provisions of section 17-22.5-403(8) , C.R.S., which permits the state board of parole to discharge the offender at any time during the term of parole upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.

(C) Notwithstanding sub-subparagraph (A) of this subparagraph (V), the mandatory period of parole for a person convicted of a felony offense committed prior to July 1, 1996, pursuant to part 4 of article 3 of this title, or part 3 of article 6 of this title, shall be five years. Notwithstanding sub-subparagraph (A) of this subparagraph (V), and except as otherwise provided in sub-subparagraph (C.5) of this subparagraph (V), the period of parole for a person convicted of a felony offense committed on or after July 1, 1996, but prior to July 1, 2002, pursuant to part 4 of article 3 of this title, or part 3 of article 6 of this title, shall be set by the state board of parole pursuant to section 17-2-201(5) (a.5), C.R.S., but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court.

(C.3) (Deleted by amendment, L. 2002, p. 124§ 1, effective March 26, 2002.)

(C.5) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (V), any person sentenced for a sex offense, as defined in section 18-1.3-1003(5) , committed on or after November 1, 1998, shall be sentenced pursuant to the provisions of part 10 of this article.

(C.7) Any person sentenced for a felony committed on or after July 1, 2002, involving unlawful sexual behavior, as defined in section 16-22-102(9) , C.R.S., or for a felony, committed on or after July 1, 2002, the underlying factual basis of which involved unlawful sexual behavior, and who is not subject to the provisions of part 10 of this article, shall be subject to the mandatory period of parole specified in sub-subparagraph (A) of this subparagraph (V).

(D) The mandatory period of parole imposed pursuant to sub-subparagraph (A) of this subparagraph (V) shall commence immediately upon the discharge of an offender from imprisonment in

the custody of the department of corrections. If the offender has been granted release to parole supervision by the state board of parole, the offender shall be deemed to have discharged the offender's sentence to imprisonment provided for in sub-subparagraph (A) of this subparagraph (V) in the same manner as if such sentence were discharged pursuant to law; except that the sentence to imprisonment for any person sentenced as a sex offender pursuant to part 10 of this article shall not be deemed discharged on release of said person on parole. When an offender is released by the state board of parole or released because the offender's sentence was discharged pursuant to law, the mandatory period of parole shall be served by such offender. An offender sentenced for nonviolent felony offenses, as defined in section 17-22.5-405(5) , C.R.S., may receive earned time pursuant to section 17-22.5-405 , C.R.S., while serving a mandatory parole period in accordance with this section, but not while such offender is reincarcerated after a revocation of the mandatory period of parole. An offender who is sentenced for a felony committed on or after July 1, 1993, and paroled on or after January 1, 2009, shall be eligible to receive any earned time while on parole or after reparole following a parole revocation. The offender shall not be eligible for earned time while the offender is reincarcerated after revocation of the mandatory period of parole pursuant to this subparagraph (V).

(E) If an offender is sentenced consecutively for the commission of two or more felony offenses pursuant to sub-subparagraph (A) of this subparagraph (V), the mandatory period of parole for such offender shall be the mandatory period of parole established for the highest class felony of which such offender has been convicted.

(VI) Any person sentenced for a class 2, 3, 4, or 5 felony, or a class 6 felony that is the offender's second or subsequent felony offense, committed on or after July 1, 1998, regardless of the length of the person's sentence to incarceration and the mandatory period of parole, shall not be deemed to have fully discharged his or her sentence until said person has either completed or been discharged by the state board of parole from the mandatory period of parole imposed pursuant to subparagraph (V) of this paragraph (a).

(b) (I) Except as provided in subsection (6) and subsection (8) of this section and in section 18-1.3-804 , a person who has been convicted of a class 2, class

3, class 4, class 5, or class 6 felony shall be punished by the imposition of a definite sentence which is within the presumptive ranges set forth in paragraph (a) of this subsection (1). In imposing the sentence within the presumptive range, the court shall consider the nature and elements of the offense, the character and record of the offender, and all aggravating or mitigating circumstances surrounding the offense and the offender. The prediction of the potential for future criminality by a particular defendant, unless based on prior criminal conduct, shall not be considered in determining the length of sentence to be imposed.

(II) As to any person sentenced for a felony committed on or after July 1, 1985, a person may be sentenced to imprisonment as described in subparagraph (I) of this paragraph (b) or to pay a fine that is within the presumptive ranges set forth in subparagraph (III) of paragraph (a) of this subsection (1) or to both such fine and imprisonment; except that any person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction for which he or she is being sentenced shall not be eligible to receive a fine in lieu of any sentence to imprisonment as described in subparagraph (I) of this paragraph (b) but shall be sentenced to at least the minimum sentence specified in subparagraph (V) of paragraph (a) of this subsection (1) and may receive a fine in addition to said sentence.

(II.5) Notwithstanding anything in this section to the contrary, any person sentenced for a sex offense, as defined in section 18-1.3-1003(5) , committed on or after November 1, 1998, may be sentenced to pay a fine in addition to, but not instead of, a sentence for imprisonment or probation pursuant to section 18-1.3-1004 .

(III) Notwithstanding anything in this section to the contrary, as to any person sentenced for a crime of violence, as defined in section 18-1.3-406 , committed on or after July 1, 1985, a person may be sentenced to pay a fine in addition to, but not instead of, a sentence for imprisonment.

(IV) If a person is convicted of assault in the first degree pursuant to section 18-3-202 or assault in the second degree pursuant to section 18-3-203 and the victim is a peace officer or firefighter engaged in the performance of his or her duties, as defined in section 18-1.3-501 (1.5) (b), notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (1) and subparagraph (II) of this paragraph (b), the court shall sentence the person to the department of corrections. In addition to a term of imprisonment, the court may impose a fine on such person pursuant to subparagraph (III) of paragraph (a) of this subsection (1).

(c) Except as otherwise provided by statute, felonies are punishable by imprisonment in any correctional facility under the supervision of the executive director of the department of corrections. Nothing in this section shall limit the authority granted in part 8 of this article to increase sentences for habitual criminals. Nothing in this section shall limit the authority granted in parts 9 and 10 of this article to sentence sex offenders to the department of corrections or to sentence sex offenders to probation for an indeterminate term. Nothing in this section shall limit the authority granted in section 18-1.3-804 for increased sentences for habitual burglary offenders.

(2) (a) A corporation which has been found guilty of a class 2 or class 3 felony shall be subject to imposition of a fine of not less than five thousand dollars nor more than fifty thousand dollars. A corporation which has been found guilty of a class 4, class 5, or class 6 felony shall be subject to imposition of a fine of not less than one thousand dollars nor more than thirty thousand dollars.

(b) A corporation which has been found guilty of a class 2, class 3, class 4, class 5, or class 6 felony, for an act committed on or after July 1, 1985, shall be subject to imposition of a fine which is within the presumptive ranges set forth in subparagraph (III) of paragraph (a) of subsection (1) of this section.

(3) Every person convicted of a felony, whether defined as such within or outside this code, shall be disqualified from holding any office of honor, trust, or profit under the laws of this state or from practicing as an attorney in any of the courts of this state during the actual time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation. Upon his or her discharge after completion of service of his or her sentence or after service under probation, the right to hold any office of honor, trust, or profit shall be restored, except as provided in section 4 of article XII of the state constitution.

(4) (a) A person who has been convicted of a class 1 felony shall be punished by life imprisonment in the department of corrections unless a proceeding held to determine sentence according to the procedure set forth in section 18-1.3-1201 , 18-1.3-1302 , or 18-1.4-102 , results in a verdict that requires imposition of the death penalty, in which event such person shall be sentenced to death. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, and before July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole.

(b)

(I) Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (V) of paragraph (a) of subsection (1) of this section and notwithstanding the provisions of paragraph (a) of this subsection (4), as to a person who is convicted as an adult of a class 1 felony following direct filing of an information or indictment in the district court pursuant to section 19-2-517 , C.R.S., or transfer of proceedings to the district court pursuant to section 19-2-518 , C.R.S., the district court judge shall sentence the person to a term of life imprisonment with the possibility of parole after serving a period of forty calendar years. Regardless of whether the state board of parole releases the person on parole, the person shall remain in the legal custody of the department of corrections for the remainder of the person's life and shall not be discharged.

(II) The provisions of this paragraph (b) shall apply to persons sentenced for offenses committed on or after July 1, 2006.

(5) In the event the death penalty as provided for in this section is held to be unconstitutional by the Colorado supreme court or the United States supreme court, a person convicted of a crime punishable by death under the laws of this state shall be punished by life imprisonment. In such circumstance, the court which previously sentenced a person to death shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment.

(6) In imposing a sentence to incarceration, the court shall impose a definite sentence which is within the presumptive ranges set forth in subsection (1) of this section unless it concludes that extraordinary mitigating or aggravating circumstances are present, are based on evidence in the record of the sentencing hearing and the presentence report, and support a different sentence which better serves the purposes of this code with respect to sentencing, as set forth in section 18-1-102.5 . If the court finds such extraordinary mitigating or aggravating circumstances, it may impose a sentence which is lesser or greater than the presumptive range; except that in no case shall the term of sentence be greater than twice the maximum nor less than one-half the minimum term authorized in the presumptive range for the punishment of the offense.

(7) In all cases, except as provided in subsection (8) of this section, in which a sentence which is not within the presumptive range is imposed, the court shall make specific findings on the record of the case, detailing the specific extraordinary circumstances which constitute the reasons for varying from the presumptive sentence.

(8) (a) The presence of any one or more of the following extraordinary aggravating circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive

range for the punishment of a felony:

(I) The defendant is convicted of a crime of violence under section 18-1.3-406 ;

(II) The defendant was on parole for another felony at the time of commission of the felony;

(III) The defendant was on probation or was on bond while awaiting sentencing following revocation of probation for another felony at the time of the commission of the felony;

(IV) 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 at the time of the commission of a felony;

(V) At the time of the commission of the felony, the defendant was on appeal bond following his or her conviction for a previous felony;

(VI) At the time of the commission of a felony, the defendant was on probation for or on bond while awaiting sentencing following revocation of probation for a delinquent act that would have constituted a felony if committed by an adult.

(b) In any case in which one or more of the extraordinary aggravating circumstances provided for in paragraph (a) of this subsection (8) exist, the provisions of subsection (7) of this section shall not apply.

(c) Nothing in this subsection (8) shall preclude the court from considering aggravating circumstances other than those stated in paragraph (a) of this subsection (8) as the basis for sentencing the defendant to a term greater than the presumptive range for the felony.

(d) (I) If the defendant is convicted of the class 2 or the class 3 felony of child abuse under section 18-6-401(7) (a) (I) or (7) (a) (III), the court shall be required to sentence the defendant to the department of corrections for a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of that class felony.

(II) In no case shall any defendant sentenced pursuant to subparagraph (I) of this paragraph (d) be eligible for suspension of sentence or for probation or deferred prosecution.

(e) (I) If the defendant is convicted of the class 2 felony of sexual assault in the first degree under section 18-3-402(3) , commission of which offense occurs

prior to November 1, 1998, the court shall be required to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of that class of felony.

(II) In no case shall any defendant sentenced pursuant to subparagraph (I) of this paragraph (e) be eligible for suspension of sentence or probation.

(III) As a condition of parole under section 17-2-201(5) (e), C.R.S., a defendant sentenced pursuant to this paragraph (e) shall be required to participate in a program of mental health counseling or receive appropriate treatment to the extent that the state board of parole deems appropriate to effectuate the successful reintegration of the defendant into the community while recognizing the need for public safety.

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

(f) The court may consider aggravating circumstances such as serious bodily injury caused to the victim or the use of a weapon in the commission of a crime, notwithstanding the fact that such factors constitute elements of the offense.

(g) If the defendant is convicted of class 4 or class 3 felony vehicular homicide under section 18-3-106(1) (a) or (1) (b), and while committing vehicular homicide the defendant was in immediate flight from the commission of another felony, the court shall be required to sentence the defendant to the department of corrections for a term of at least the midpoint in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of the class of felony vehicular homicide of which the defendant is convicted.

(9) The presence of any one or more of the following sentence-enhancing circumstances shall require the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the minimum in the presumptive range but not more than twice the maximum term authorized in the presumptive range for the punishment of a felony:

(a) At the time of the commission of the felony, the defendant was charged with or was on bond for a felony in a previous case and the defendant was convicted of any felony in the previous case;

(a.5) At the time of the commission of the felony, the defendant was charged with or was on bond for a delinquent act that would have constituted a felony if committed by an adult;

(b) At the time of the commission of the felony, the defendant was on bond for having pled guilty to a lesser offense when the original offense charged was a felony;

(c) The defendant was under a deferred judgment and sentence for another felony at the time of the commission of the felony;

(c.5) At the time of the commission of the felony, the defendant was on bond in a juvenile prosecution under title 19 , C.R.S., for having pled guilty to a lesser delinquent act when the original delinquent act charged would have constituted a felony if committed by an adult;

(c.7) At the time of the commission of the felony, the defendant was under a deferred judgment and sentence for a delinquent act that would have constituted a felony if committed by an adult;

(d) At the time of the commission of the felony, the defendant was on parole for having been adjudicated a delinquent child for an offense which would constitute a felony if committed by an adult.

(10) (a) The general assembly hereby finds that certain crimes which are listed in paragraph (b) of this subsection (10) present an extraordinary risk of harm to society and therefore, in the interest of public safety, for such crimes which constitute class 3 felonies, the maximum sentence in the presumptive range shall be increased by four years; for such crimes which constitute class 4 felonies, the maximum sentence in the presumptive range shall be increased by two years; for such crimes which constitute class 5 felonies, the maximum sentence in the presumptive range shall be increased by one year; for such crimes which constitute class 6 felonies, the maximum sentence in the presumptive range shall be increased by six months.

(b) Crimes that present an extraordinary risk of harm to society shall include the following:

(I) to (VIII) Repealed.

(IX) Aggravated robbery, as defined in section 18-4-302 ;

(X) Child abuse, as defined in section 18-6-401 ;

(XI) Unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, as defined in section 18-18-405 ;

(XII) Any crime of violence, as defined in section 18-1.3-406 ;

(XIII) Stalking, as described in section 18-9-111(4) , as it existed prior August 11, 2010, or section 18-3-602 ;

(XIV) Sale or distribution of materials to manufacture controlled substances, as described in section 18-18-412.7 ; and

(XV) Felony invasion of privacy for sexual gratification, as described in section 18-3-405.6 .

(c) Repealed.

(11) When it shall appear to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be best served thereby, the court shall have the power to suspend the imposition or execution of sentence for such period and upon such terms and conditions as it may deem best; except that in no instance shall the court have the power to suspend a sentence to a term of incarceration when the defendant is sentenced pursuant to a sentencing provision that requires incarceration or imprisonment in the department of corrections, community corrections, or jail. In no instance shall a sentence be suspended if the defendant is ineligible for probation pursuant to section 18-1.3-201 , except upon an express waiver being made by the sentencing court regarding a particular defendant upon recommendation of the district attorney and approval of such recommendation by an order of the sentencing court pursuant to section 18-1.3-201(4) .

(12) Every sentence entered under this section shall include consideration of restitution as required by part 6 of this article and by article 18.5 of title 16, C.R.S.

(13) (a) The court, if it sentences a defendant who is convicted of any one or more of the offenses specified in paragraph (b) of this subsection (13) to incarceration, shall sentence the defendant to a term of at least the midpoint, but not more than twice the maximum, of the presumptive range authorized for the punishment of the offense of which the defendant is convicted if the court makes the following findings on the record:

(I) The victim of the offense was pregnant at the time of commission of the offense; and

(II) The defendant knew or reasonably should have known that the victim of the

offense was pregnant.

(III) (Deleted by amendment, L. 2003, p. 2163 § 3, effective July 1, 2003.)

(b) The provisions of this subsection (13) shall apply to the following offenses:

(I) Murder in the second degree, as described in section 18-3-103 ;

(II) Manslaughter, as described in section 18-3-104 ;

(III) Criminally negligent homicide, as described in section 18-3-105 ;

(IV) Vehicular homicide, as described in section 18-3-106 ;

(V) Assault in the first degree, as described in section 18-3-202 ;

(VI) Assault in the second degree, as described in section 18-3-203;

(VII) Vehicular assault, as described in section 18-3-205 .

(c) Notwithstanding any provision of this subsection (13) to the contrary, for any of the offenses specified in paragraph (b) of this subsection (13) that constitute crimes of violence, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406 .

(14) The court may sentence a defendant to the youthful offender system created in section 18-1.3-407 if the defendant is an eligible young adult offender pursuant to section 18-1.3-407.5 .

Cite as C.R.S. § 18-1.3-401

History. L. 2002: Entire article added with relocations, p. 1392, § 2, effective October 1. L. 2002, 3rd Ex. Sess.: (4) amended, p. 15, § 8, effective October 1. L. 2003: (1)(b)(IV), (4), (8)(d)(I), (8)(e.5), (8)(g), (10)(c), and (11) amended, pp. 1425, 1435, 1429, §§ 4, 32, 13, effective April 29; (1)(a)(VI) amended, p. 2679, § 5, effective July 1; (8)(a)(VI), (9)(a.5), (9)(c.5), and (9)(c.7) amended, p. 1431, § 18, effective July 1; (13)(a)(II) and (13)(a)(III) amended, p. 2163, § 3, effective July 1; (10)(b)(XII) and (10)(b)(XIII) amended and (10)(b)(XIV) added, p. 2387, § 3, effective July 1, 2004. L. 2004: (10)(b)(I) to (10)(b)(VIII) and (10)(c) repealed, p. 633, § 1, effective August 4. L. 2006: (4) amended, p. 1052, § 2, effective May 25. L. 2008: (1)(a)(V)(D) amended, p. 1757, § 6, effective July 1; (1)(a)(III)(A.5) amended, p. 1889, § 54, effective August 5. L. 2009: (14) added, (HB09-1122), ch. 77, p. 280, §4, effective October 1. L. 2010: (10)(b)(XIII) amended, (HB10-1233), ch. 88, p. 296, §5, effective August 11; (10)(b)(XIII) and (10)(b)(XIV) amended and (10)(b)(XV) added, (SB10-128), ch. 415, p. 2046, §5, effective July 1, 2012.

Editor's Note:

(1) This section is similar to former §18-1-105 as it existed prior to 2002.

(2) This section was amended in 2002 prior to its relocation on October 1, 2002. For that history, see the source note to §18-1-105.

(3) Amendments to subsection (10)(b)(XIII) by House Bill 10-1233 and Senate Bill 10-128 were harmonized, effective July 1, 2012.

Case Notes:

ANNOTATION

Law reviews. For note, "Disbarment for Crime in Colorado", see 10 Rocky Mt. L. Rev. 203 (1938). For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Colorado Felony Sentencing", see 11 Colo. Law. 1478 (1982). For article, "Colorado Felony Sentencing an Update", see 14 Colo. Law. 2163 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to the death penalty, see 15 Colo. Law. 1596 (1986). For article, "Sentencing Dilemmas", see 29 Colo. Law. 67 (October 2000). For article, "Criminal Sentencing in Colorado After Blakely v. Washington", see 34 Colo. Law. 85 (January 2005).

Annotator's note. Since § 18-1.3-401 is similar to §18-1-105 as it existed prior to the 2002 relocation of certain criminal sentencing provisions and former § 39-10-17, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Constitutionality of death penalty. The imposition and carrying out of the death penalty was held to constitute cruel and unusual punishment in violation of the eighth and fourteenth amendments of the U.S. Constitution. Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972).

Subsection (6) is not unconstitutionally vague and does not deprive a defendant of due process and equal protection on the grounds that no standards are set out in the statute to guide the trial court on what are extraordinary, aggravating or mitigating circumstances. People v. Phillips, 652 P.2d 575 (Colo. 1982).

Although the phrase "aggravating or mitigating circumstances" is not defined in the legislative act, that failure does not render the statute unconstitutionally vague. People v. Phillips, 652 P.2d 575 (Colo. 1982).

Subsection (6) is not unconstitutionally vague because it allegedly fails to indicate precise standards for imposition of an enhanced sentence. People v. Wright, 672 P.2d 518 (Colo. 1983).

Due process requirements for enhanced sentence imposed because of defendant's status at time of offense are met if defendant is given reasonable notice that he is subject to enhanced sentencing and the prosecution proves such status by a preponderance of the evidence if such fact is contested. People v. Reed, 723 P.2d 1343 (Colo. 1986); People v. Simmons, 723 P.2d 1350 (Colo. 1986); People v. Anderson, 784 P.2d 802 (Colo. App. 1989).

Discretionary aggravated range sentence imposed under subsection (6) does not violate due process

requirement announced in U.S. supreme court decision, Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), if defendant was exposed to such sentence when charged with the substantive offense. Trial court, therefore, properly denied post-conviction relief as to 32-year maximum aggravated range sentence imposed for sexual assault on child. People v. Salinas, 55 P.3d 268 (Colo. App. 2002).

Under the mandates of the U.S. supreme court decisions Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and Apprendi v. New Jersey, a discretionary aggravated range sentence may be imposed only when a jury has determined the aggravating factors or when the defendant has admitted them. The fact that the defendant waived the right to a jury determination of the aggravating factors by pleading guilty to the charged offense is irrelevant where no aggravating factors were charged in the information and the defendant did not stipulate to any. People v. Barton, 121 P.3d 230 (Colo. App. 2004).

Sentence in the aggravated range proper when based upon a prior conviction even after U.S. supreme court decision in Blakely v. Washington. People v. Huber, 139 P.3d 628 (Colo. 2006).

A defendant's failure to object to facts in a presentence report does not constitute admission for purposes of Blakely v. Washington unless defendant makes a constitutionally sufficient waiver of his or her right to a jury trial on the facts contained in the report. A sentencing court may not use defendant's admissions to sentence him or her in the aggravated range unless defendant knowingly, voluntarily, and intelligently waives his or her sixth amendment right to have a jury find the facts that support the aggravated sentence. People v. Isaacks, 133 P.3d 1190 (Colo. 2006).

Aggravated sentence proper under People v. Isaacks. Defendant's guilty plea to a single count that named two victims constituted a knowing, voluntary, and intelligently waived right to a jury trial on those facts. Aggravated sentence based upon multiple victims receiving serious bodily injuries was constitutional. People v. Watts, 165 P.3d 707 (Colo. App. 2006).

Sentence enhancement statute not violative of procedural due process provided that defendant receives adequate notice that he is subject to enhanced punishment and the prosecution meets its burden of proof concerning defendant's status as a parolee. People v. Henderson, 729 P.2d 1028 (Colo. App. 1986), cert. denied, 752 P.2d 93 (Colo. 1988).

Although this section does not set forth the procedural framework that must be followed when a defendant is charged with violating the conditions of a suspended sentence, minimum due process protections must be afforded to a person facing revocation of such a suspended sentence. These requirements include: (1) Written notice of the claimed violations; (2) disclosure to the defendant of evidence against him or her; (3) a fair opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses, unless there is good cause to deny such a right; (5) a neutral and detached hearing officer or judge; and (6) a written statement by the fact finder as to the evidence relied on and reasons for the revocation. People v. Scura, 72 P.3d 431 (Colo. App. 2003).

Equal protection does not require same procedural safeguards as are contained in crimes of violence statute

since cases involving crimes of violence involve more complicated factual situations than the mere determination of defendant's status at the time of the offense. People v. Simmons, 723 P.2d 1350 (Colo. 1986).

No equal protection violation where conviction for child abuse resulting in death under this section is interpreted to preclude a sentence reduction below the mandatory minimum as compared to a reduction or modification of a mandatory crime of violence sentence. People v. Smith, 992 P.2d 635 (Colo. App. 1999).

No equal protection violation where person convicted of class 4 felony theft is punished more severely than a class 4 felony sex offender. Felony classes do not themselves create "classes" for purposes of equal protection analysis; defendant is only "similarly situated" with defendants who commit the same or similar acts. People v. Friesen, 45 P.3d 784 (Colo. App. 2001); People v. Walker, 75 P.3d 722 (Colo. App. 2002); People v. Fritschler, 87 P.3d 186 (Colo. App. 2003).

No equal protection violation where felony first degree murder carries a greater punishment than aggravated vehicular homicide. These offenses are distinguished by the level of intent, the actus reus (commission or omission), the requirement that the actor operate or drive a motor vehicle for vehicular homicide, and the predicate felonies. People v. Prieto, 124 P.3d 842 (Colo. App. 2005).

This section is not unconstitutional for lack of a provision regarding proof of probationary status by the prosecutor. Such proof is only required to be proven by a preponderance of the evidence if the defendant contests his alleged probationary status. People v. Lacey, 723 P.2d 111 (Colo. 1986); People v. Murphy, 722 P.2d 407 (Colo. 1986).

A sentence in the aggravated range under subsection (6) violates the sixth amendment right to trial by jury, unless the facts found by the trial court to support the sentence, including the ultimate finding that these facts are extraordinary: (1) Are reflected in the jury's verdict; (2) were admitted by the defendant for purposes of sentencing; or (3) involve prior criminality, to the extent permitted by Apprendi. People v. Moon, 121 P.3d 218 (Colo. App. 2004).

The U.S. supreme court concluded in Miller v. Alabama, __U.S. __, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), that the eighth amendment prohibits a mandatory life sentence without the possibility of parole for juvenile offenders. People v. Banks, 2012 COA 157, __ P.3d __.

Because defendant was a minor when the trial court mandatorily sentenced him to life imprisonment without the possibility of parole, and because defendant's case was still pending on direct review when the U.S. supreme court decided Miller, the no-parole provisions contained in subsection (4)(a) of this section and §17-22.5-104(2)(d)(I) are unconstitutional as applied to defendant in that they deny defendant the opportunity of parole. People v. Banks, 2012 COA 157, __ P.3d __.

The legislative intent of this section and §17-22.5-104 support sentencing defendant to life imprisonment with the possibility of parole after 40 calendar years. People v. Banks, 2012 COA 157, __ P.3d __.

Mandatory parole provision does not violate the constitutional protection against double jeopardy since the

general assembly has mandated a period of parole for all convicted felons, in addition to a sentence to the department of corrections, and therefore the defendant has not been subjected to separate proceedings for the imposition of his sentence. People v. Mayes, 981 P.2d 1106 (Colo. App. 1999); People v. Xiong, 10 P.3d 719 (Colo. App. 2000).

Mandatory period of parole for consecutive sentencing of two or more felony offenses pursuant to subsection (1)(a)(V)(A) not unconstitutionally overbroad, because it does not proscribe any conduct constitutionally protected and it has a rational relationship to a legitimate governmental interest of promoting the rehabilitation and reintegration of defendants while recognizing the need for public safety. People v. Boyd, 23 P.3d 1242 (Colo. App. 2001).

Mandatory parole is part of a sentence imposed by the court. Even though the parole board may administer the parole, that does not mean that the board imposes it; hence there is no separate penalty imposed in a separate proceeding and thus, no violation of double jeopardy. People v. Xiong, 10 P.3d 719 (Colo. App. 2000).

Retrospective application of mandatory parole provisions in subsection (1)(a)(V) not violative of ex post facto clause where defendant had pleaded guilty to underlying offense with stipulation that the offense occurred within a time frame that happened to include time periods both prior and subsequent to the date such provisions were enacted. People v. Flagg, 18 P.3d 792 (Colo. App. 2000).

1988 amendment establishing lower mandatory aggravated ranged sentencing applicable to offenses committed on or after July 1, 1988 inapplicable to defendant who committed offenses in April and May of 1988, regardless of fact that the amendment had taken effect prior to the time defendant was sentenced. Defendant was properly sentenced under higher mandatory range in effect on dates offenses were committed. Riley v. People, 828 P.2d 254 (Colo. 1992).

1988 amendment to former subsection (1)(b)(VII) applicable to post conviction sentence reduction proceedings which provided for retroactive application of reduced sentences was applicable only to persons eligible for presumptive range sentencing. Riley v. People, 828 P.2d 254 (Colo. 1992) (decided under law as it existed prior to June 7, 1990 repeal of subsection).

Classification does not create substantive offense. A classification of felony does not in and of itself create a substantive offense; it merely establishes the boundaries within which a court may impose a sentence. People v. Beigel, 646 P.2d 948 (Colo. App. 1982).

Retroactive application. This section is to be given retroactive application because a defendant is entitled to the benefits of amendatory legislation which mitigates penalties for crimes when the relief is sought before finality has attached to the judgment of conviction. Salas v. District Court, 190 Colo. 447, 548 P.2d 605 (1976); People v. Johnson, 638 P.2d 61 (Colo. 1981).

Court should not apply Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), retroactively to convictions that were already final when the U.S. supreme court issued its opinion. A new rule of criminal procedure is not applied retroactively unless it forbids criminal punishment of certain kinds of conduct or is a "watershed" rule. Apprendi does not represent a "watershed" rule, that is, a rule that implicates the fundamental

fairness of the trial. People v. Bradbury, 68 P.3d 494 (Colo. App. 2002); People v. Hall, 87 P.3d 210 (Colo. App. 2003); People v. Shepard, 98 P.3d 905 (Colo. App. 2004); People v. Alexander, 129 P.3d 1051 (Colo. App. 2005).

The U.S. supreme court held in Apprendi that, other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. People v. Bradbury, 68 P.3d 494 (Colo. App. 2002).

1979 amendment inapplicable where crime committed before July 1, 1979. Where acts for which defendants were convicted occurred well in advance of July 1, 1979, the effective date of H.B. 1589, it was not error to refuse to sentence under the provisions of that legislation. People v. Lopez, 624 P.2d 1301 (Colo. 1981).

Since the crime for which a defendant was sentenced was committed well before the effective date of either the 1977 or 1979 version of House Bill 1589, he is not entitled to be resentenced under the provisions of those acts. People v. Stewart, 626 P.2d 685 (Colo. 1981).

In resentencing a defendant originally convicted before the 1979 reduction in the sentencing range for class 3 felonies, the trial court may consider the new sentencing range, but is not bound by it. People v. Watkins, 684 P.2d 234 (Colo. 1984).

For sentencing under H.B. 1589, see People v. Montoya, 647 P.2d 1203 (Colo. 1982).

1981 amendments not irreconcilable. The two 1981 amendments, S.B. 304 and H.B. 1156, are not irreconcilable. They can be harmonized by recognizing that nonadversary reviews under former §18-1-409.5 and C.A.R. 4(d), no longer exist with respect to sentences imposed for the conviction of a felony committed on or after July 1, 1981. People v. Rafferty, 644 P.2d 102 (Colo. App. 1982).

Since § 16-11-802(1)(b) (now §18-1.3-1302(1)(b)) has a later effective date, was later enacted, and operates in an ameliorative manner for criminal defendants, it controls and that portion of §18-1-105(4) (now § 18-1.3-401(4)) which provides for no possibility of parole for persons sentenced to life imprisonment following conviction for class 1 felony offenses occurring during the period from July 1, 1990, until September 19, 1991, is abrogated by this later enactment. Thus, §16-11-103(1)(b) (now §18-1.3-1201(1)(b)), as amended by House Bill 91S-1001, controls parole eligibility for convictions and sentences to life imprisonment based on class 1 felony offenses occurring on or after September 20, 1991, and § 16-11-802(1)(b) (now §18-1.3-1302(1)(b)) controls parole eligibility for class 1 felony offenses occurring during the period from July 1, 1990, until September 19, 1991. People v. District Court, 834 P.2d 236 (Colo. 1992).

Legislative intent of subsection (9)(c) is to encourage careful consideration by the trial judge of all relevant factual matters developed during the course of proceedings prior to selecting an appropriate sentence. People v. Sanchez, 769 P.2d 1064 (Colo. 1989).

When the court misapprehends the sentencing range, the sentence must be vacated and defendant must be re-sentenced within the correct range. Defendant's class 4 felony conspiracy conviction was subject to enhanced

sentencing under subsection (8)(a)(III), requiring a sentence between four to 12 years, but the court erred in believing the range was 10 to 32 years. People v. Linares-Guzman, 195 P.3d 1130 (Colo. App. 2008).

Sentencing is a discretionary decision which requires weighing of various factors and striking a fair accommodation between the defendant's need for rehabilitation or corrective treatment and society's interest in safety and deterrence. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980); People v. Reed, 43 P.3d 644 (Colo. 2001).

The discretion implicit in the sentencing decision is not an unrestricted discretion devoid of reason or principle. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Sentencing is discretionary and a judge has wide latitude in arriving at a synthesis which is reflective of the interests of society and the defendant. People v. Hotopp, 632 P.2d 600 (Colo. 1981); People v. Swepston, 822 P.2d 510 (Colo. App. 1991).

In determining an appropriate sentence, the trial court may conduct a broad inquiry, largely unlimited as to the kinds of information it may consider, and it has wide discretion in determining what sentence is appropriate, and sentences imposed within statutory limits are generally not subject to review. People v. Graham, 678 P.2d 1043 (Colo. App. 1983), cert. denied, 467 U.S. 1216, 104 S. Ct. 2660, 81 L. Ed. 2d 366 (1984).

Sentencing involves an exercise in judicial discretion and, accordingly, a sentencing judge has wide latitude in arriving at a final decision. People v. Cohen, 617 P.2d 1205 (Colo. 1980).

Sentencing is by its very nature a discretionary decision, and many factors must be considered in arriving at a decision that protects the rights of society and the defendant. People v. Horne, 657 P.2d 946 (Colo. 1983).

In imposing a sentence, the trial court must weigh many factors, including the nature of the offense and the record of the offender, and must impose a definite sentence within the presumptive range unless it concludes that extraordinary mitigating or aggravating factors are present. People v. Clements, 732 P.2d 1245 (Colo. App. 1986).

No abuse of discretion found. See People v. Sellers, 762 P.2d 749 (Colo. App. 1988).

Where trial court discussed its reasoning thoroughly and took into account a variety of factors, it did not abuse its discretion in imposing maximum aggravated sentences. People v. Robinson, 874 P.2d 453 (Colo. App. 1993).

Where trial court considered the nature of the offense, the character of the defendant, the public interest in safety and deterrence, and mitigating and aggravating circumstances, and imposed a sentence within the range prescribed by law, based on appropriate considerations and factually supported by the circumstances, there was no abuse of discretion. People v. Martinez, 32 P.3d 582 (Colo. App. 2001); People v. Martinez, 179 P.3d 23 (Colo. App. 2007).

The sentencing court's consideration of defendant's role in the crimes that later led to the murders was not tantamount to punishing him for crimes of which he was acquitted, rather the court properly evaluated the overall circumstances of the crimes of which he was convicted and of the serious risks that attend such crimes. People v. Le, 74 P.3d 431 (Colo. App. 2003).

It is not improper for the sentencing court, on its own volition, to sentence contrary to the district attorney's recommendation, when the court considered aggravating factors and its consideration of mitigating factors was implicit in the court's selection of a sentence to a term in the lower end of the presumptive range. People v. Fell, 832 P.2d 1015 (Colo. App. 1991).

Sentencing decision should reflect rational selection from various sentencing alternatives in a manner consistent with the dominant aims of the sentencing process. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Proper and fair sentence is one that can be reasonably explained. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

The range of punishments available to a trial court is determined by the applicable law as of the date of the offense and the factors to be considered by the court in sentencing are those factors existing on the date of sentencing. People v. Wieghard, 743 P.2d 977 (Colo. App. 1987).

Factors considered in sentencing. Some of the more common factors to be considered in sentencing are: The gravity of the offense in terms of harm to person or property, or in terms of the culpability requirement of the law; the defendant's history of prior criminal conduct; the degree of danger the defendant might present to the community if released forthwith; the likelihood of future criminality in the absence of corrective incarceration or treatment; the prospects for rehabilitation under some less drastic sentencing alternative, such as probation; and the likelihood of depreciating the seriousness of the offense were a less drastic sentencing alternative chosen. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Factors to be considered in imposing sentence include the nature of the offense, the character of the offender, the public interest, and whether the record establishes a clear justification for the sentence imposed. People v. Hotopp, 632 P.2d 600 (Colo. 1981).

The factors which should be considered in sentencing include the nature of the offenses, the prior record of the defendant, his probability of rehabilitation, his age, and the criminal justice goals of punishment, deterrence, and protection of society. People v. Soper, 628 P.2d 604 (Colo. 1981).

Some factors to be considered in sentencing decision include gravity of offense, defendant's societal history, the risk of future criminal conduct, and the potential for effective rehabilitation. People v. Swepston, 822 P.2d 510 (Colo. App. 1991).

Trial court did not abuse its discretion in sentencing defendant to the maximum sentence since the sentence was within the presumptive range, was based on appropriate considerations in the record, and was factually supported by the circumstances of the case. People v. Gagnon, 997 P.2d 1278 (Colo. App. 1999).

No abuse of discretion in sentencing defendant in the aggravated range. People v. Heimann, 186 P.3d 77 (Colo. App. 2007).

It was not improper for trial court to consider during sentencing that violent crimes have a greater public impact in small rural communities than in larger urban ones since a sentencing court should always consider the interests of the public involved and this factor was not decisive of the court's decision. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Consideration of prior criminal record in sentencing. A defendant's criminal record may be considered by a court as "extraordinary mitigating or aggravating circumstances" as that term is used in subsection (6). People v. Gonzales, 44 Colo. App. 411, 613 P.2d 905 (1980); People v. Cantwell, 636 P.2d 1313 (1981); People v. Romero, 694 P.2d 1256 (Colo. 1985).

The trial court properly considered the defendant's prior criminal history in its determination of extraordinary circumstances. Flower v. People, 658 P.2d 266 (Colo. 1983); People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994).

A defendant's record may be a basis for sentencing beyond the presumptive range. People v. Gonzales, 44 Colo. App. 411, 613 P.2d 905 (1980).

The lack of a prior criminal record is only one consideration in determining whether to impose a maximum sentence. People v. Naranjo, 200 Colo. 1, 612 P.2d 1099 (1980).

Prior convictions are an appropriate consideration in sentencing outside the presumptive range. People v. Ward, 673 P.2d 47 (Colo. App. 1983).

Defendant's prior criminal record is an appropriate factor in sentencing outside presumptive range. People v. Abbott, 690 P.2d 1263 (Colo. 1984).

There is no sixth amendment violation when the sentencing court's conclusion that an enhanced sentence is warranted is based solely upon a factual determination of the defendant's prior convictions. People v. Orth, 121 P.3d 256 (Colo. App. 2005).

A prior conviction in violation of a constitutional right of the accused cannot be used to enhance punishment in a subsequent criminal proceeding. Watkins v. People, 655 P.2d 834 (Colo. 1982).

A court may consider the failure of a defendant to comply with a previous sentence even if such sentence may be constitutionally defective. People v. Carabajal, 720 P.2d 991 (Colo. App. 1986).

But, where defendant's previous conviction was under another jurisdiction's youthful offender statute which specified that a youthful offender adjudication was not a judgment of conviction for a crime, such previous conviction could not be considered an aggravating circumstance justifying sentence beyond the presumptive range. People v. Pellien, 701 P.2d 1244 (Colo. App. 1985).

Trial court properly considered serious criminal convictions which occurred between the original sentencing and the resentencing after appeal when the court increased the sentence of the defendant upon remand. People v. Wieghard,

743 P.2d 977 (Colo. App. 1987).

A trial court may properly consider an adult's juvenile record as a factor when imposing a sentence within the presumptive range. People v. Cisneros, 745 P.2d 262 (Colo. App. 1987); People v. McGregor, 757 P.2d 1082 (Colo. App. 1987).

Guilty plea constitutes a conviction within the meaning of subsection (9). Defendant, who had pled guilty to a separate offense and was out on bond, asserted that because he or she had not yet been sentenced for the prior felony at the time the trial court for the latter offense sentenced him or her, he or she was not yet "convicted". Defendant's guilt of a prior felony, not the punishment sentenced or received, is what is relevant for the purpose of defining "conviction" under subsection (9)(a). People v. French, 141 P.3d 856 (Colo. App. 2005), cert. granted in part and denied in part, judgment vacated, and case remanded to the Colorado court of appeals for reconsideration in light of People v. Isaacks, 133 P.3d 1190 (Colo. 2006), and People v. Huber, 139 P.3d 628 (Colo. 2006), aff'd, 165 P.3d 836 (Colo. App. 2007).

The maximum and minimum sentences of imprisonment prescribed in subsection (1)(a)(V)(A) were clearly not intended to be sentences exclusively to the custody of the executive director of the department of corrections. The reference in any specific sentencing provision to the ranges authorized by this section, without more, therefore does not prohibit a sentence to a community corrections program. Shipley v. People, 45 P.3d 1277 (Colo. 2002).

Mandatory parole is a direct consequence of a guilty plea, and defendant must be advised of this requirement. However, when the total sentence imposed, including mandatory parole, was less than the potential sentence of which defendant was advised in accepting the plea, the trial court's failure to advise defendant correctly of the mandatory parole term does not invalidate the guilty plea. People v. Montaine, 7 P.3d 1065 (Colo. App. 1999).

Although the defendant's sentence to imprisonment and mandatory parole was not inevitable at the time of his pleas and, in fact, could not have been lawfully imposed prior to his subsequent breach of the terms of his deferred sentencing agreement, it was a direct consequence of his plea to burglary and, therefore, the defendant should have been advised of the mandatory parole. People v. Marez, 39 P.3d 1190 (Colo. 2002).

Court may not eliminate one-year parole. While subsection (1)(a)(I) authorizes a trial judge to impose a sentence below the minimum presumptive range, it does not authorize a trial court to eliminate the requirement of one year of parole. People v. McKnight, 628 P.2d 628 (Colo. App. 1981).

A sentencing court may not waive or suspend a period of mandatory parole under subsection (1)(a)(V)(B) and such a parole period is a required part of defendant's sentence. People v. Calderon, 992 P.2d 1201 (Colo. App. 1999).

The trial court's failure to enter the mandatory period of parole on the mittimus does not affect the requirement that it be served. The mittimus may be corrected by the sentencing court to reflect the required period of parole. People v. Snare, 7 P.3d 1025 (Colo. App. 1999).

Case remanded for entry of a corrected mittimus to reflect that defendant is subject to a one-year period of mandatory parole. People v. Ramos, 53 P.3d 1178 (Colo. App. 2002).

Court may not impose parole as part of sentence under subsection (1)(a)(II). Sentencing court exceeded its jurisdiction by imposing parole as part of the sentence for an offense committed after July 1, 1984, and before July 1, 1985. Qureshi v. District Court, 727 P.2d 45 (Colo. 1986); People v. McGregor, 757 P.2d 1082 (Colo. App. 1987); People v. Swepston, 822 P.2d 510 (Colo. App. 1991).

No conflict between this section and §18-18-405. In §18-18-405, the general assembly defined the elements of the crime of possession with intent to distribute and incorporated the presumptive range found in subsection (1)(a) of this section. Section 18-18-405 does not preclude the finding that an offense is an extraordinary risk crime and does not preclude the application of subsection (10) of this section to increase the presumptive range found in subsection (1)(a). People v. Hinojos-Mendoza, 140 P.3d 30 (Colo. App. 2005), aff'd in part and rev'd in part on other grounds, 169 P.3d 662 (Colo. 2007).

The provisions of §17-2-201(5)(a) and subsection (1)(a)(V)(C) of this section are in conflict. Section 17-2-201(5)(a) is a specific provision related to the parole of sex offenders while subsection (1)(a)(V)(C) of this section is the general sentencing statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, §17-2-201(5)(a) shall be given effect for all sex offender parole for crimes committed before July 1, 1996. Martin v. People, 27 P.3d 846 (Colo. 2001); People v. Pauley, 42 P.3d 57 (Colo. App. 2001).

Section 17-2-201(5) (a.5) is a specific provision related to the parole of sex offenders while subsection (1)(a)(V) of this section is the general sentencing statute for all felonies. As such, applying the statutory construction rule that the specific provision prevails over the general provision, §17-2-201(5) (a.5) shall be given effect for all sex offender parole for crimes committed between July 1, 1996, and July 1, 1998. People v. Cooper, 27 P.3d 348 (Colo. 2001).

Sex offenders convicted of offenses occurring between July 1, 1993, and July 1, 1998, are subject to discretionary parole pursuant to §17-2-201(5)(a), and not mandatory parole pursuant to subsection (1)(a)(V)(C) of this section. People v. Koehler, 30 P.3d 694 (Colo. App. 2000).

Habitual offenders are subject to a period of discretionary parole rather than a period of statutory mandatory parole. The provisions of §17-2-201(5)(a) and §17-2-213 irreconcilably conflict with the provisions of §17-22.5-403(7) and subsection (1)(a)(V). Thus, the specific provision of §17-2-201(5)(a) and §17-2-213 prevail over the general provisions of §17-22.5-403(7) and subsection (1)(a)(V). People v. Falls, 58 P.3d 1140 (Colo. App. 2002).

While the parole period in subsection (1)(a)(V)(A) is mandatory, the minimum and maximum sentences are "presumptive ranges." Bullard v. Dept. of Corr., 949 P.2d 999 (Colo. 1997).

Felony sex offenders who committed crimes between July 1, 1996, and November 1, 1998, and who were sentenced to a term of imprisonment were subject to discretionary parole, not mandatory parole. People v. Jones, 992 P.2d 710 (Colo. App. 1999).

A sentencing court may not waive or suspend a period of mandatory parole under subsection (1)(a)(V)(A) and thus the two-year period of mandatory parole was a required part of defendant's original sentence. People v. Barth, 981 P.2d 1102 (Colo. App. 1999); People v. Espinoza, 985 P.2d 68 (Colo. App. 1999).

The period of mandatory parole that attaches by operation of subsection (1)(a)(V) is an incidental and distinct element of the defendant's sentence, separate from the term of incarceration imposed by the trial court. People v. Johnson, 13 P.3d 309 (Colo. 2000).

While an offender subject to discretionary parole will never be confined for a period greater than the original sentence imposed, an offender subject to mandatory parole faces a sentence to prison, a period of parole, and possibly another period of confinement not necessarily limited to the original term of incarceration imposed. People v. Hall, 87 P.3d 210 (Colo. App. 2003).

A period of confinement attributable to parole revocation was not a "period of mandatory parole". When a person is reincarcerated on a parole revocation, he is no longer serving his original sentence. Therefore, when a person is sentenced for the crime of escape during a period of mandatory parole for another offense, ordering such a sentence to run consecutive with the period of incarceration for the parole revocation did not violate sub-subparagraph (1)(a)(V)(E). People v. Luther, 58 P.3d 1013 (Colo. 2002).

Once paroled, a mandatory parolee has discharged his prison sentence as a matter of law. However, the mandatory parole period is a component of an offender's sentence. People v. Norton, 49 P.3d 344 (Colo. App. 2001), rev'd on other grounds, 63 P.3d 339 (Colo. 2003); In re Miranda, 2012 CO 69, 289 P.3d 957.

Subsection (3) bars convicted felons from practicing law while they serve out all components of their sentences, including parole. In re Miranda, 2012 CO 69, 289 P.3d 957.

Attorney serving mandatory parole portion of felony criminal sentence cannot be reinstated to practice of law until he has completed his felony sentence. In re Miranda, 2012 CO 69, 289 P.3d 957.

A discharge of the sentence to imprisonment under subsection (1)(a)(V)(D) is not equivalent to the satisfaction and discharge of mandatory parole. People v. Taylor, 74 P.3d 396 (Colo. App. 2002).

The maximum sentences in the presumptive ranges set out in this section do not establish maximum periods of probation to which a defendant may be sentenced under part 2 of article 11 of title 16. People v. Flenniken, 749 P.2d 395 (Colo. 1988).

The minimum sentences established under this section do not establish the minimum period of probation to which a defendant may be sentenced under §16-11-202. The length of probation is at the sentencing judge's discretion. People v. Herr, 868 P.2d 1121 (Colo. App. 1993).

District court possessed jurisdiction to sentence defendant to a term of probation which did not exceed the maximum term of imprisonment in the aggravated range for the crime committed; the term of probation was not

limited to the presumptive range for the crime committed. Hunter v. People, 757 P.2d 631 (Colo. 1988).

When charges against defendant are not supported by identical evidence, trial court has discretion in imposing either consecutive or concurrent sentences. People v. Corbett, 713 P.2d 1337 (Colo. App. 1985).

No automatic conversion of a death sentence to a life sentence when death penalty statute is held unconstitutional. People v. Corbett, 713 P.2d 1337 (Colo. App. 1985).

This section did not put defendants on notice that death was a possible penalty for first degree murder, where death penalty statute is found unconstitutional, this section gives notice that maximum penalty is life imprisonment. Retroactive application of new death penalty statute would violate ex post facto laws. People v. Aguayo, 840 P.2d 336 (Colo. 1992).

Legislatively prescribed parameters on sentencing may not be circumvented by suspending part of the sentence. People v. Hinchman, 196 Colo. 526, 589 P.2d 917 (1978), cert. denied, 442 U.S. 941, 99 S. Ct. 2883, 61 L. Ed. 2d 311 (1979); People v. White, 679 P.2d 602 (Colo. 1984).

Effect of conviction for felony. By subsection (2)(now subsection (3)), the consequences resulting from a conviction of a felony are made much more serious than those arising from a conviction of a misdemeanor. Brooks v. People, 14 Colo. 413, 24 P. 553 (1890).

This section declares that a person convicted of a felony shall also suffer an additional penalty therefor, namely, that he be disqualified from holding any office of honor, trust, or profit under the laws of this state, and that he be also disqualified from practicing as an attorney in any of our state courts. This latter disqualification constitutes a part of the total penalty prescribed by the general assembly for anyone convicted of a felony. People v. Buckles, 167 Colo. 64, 453 P.2d 404 (1968).

Section consistent with separation of powers. The statute disqualifying a convicted felon of holding an office of trust or practicing as an attorney in nowise interferes with the exclusive right of the supreme court to determine the rules and regulations which shall govern those seeking admission to our bar. Nor does the statute impinge in any real sense the judicial right to discipline those licensed to practice law. Rather, this is an effort by the general assembly under its police power to bar convicted felons from practicing law in the courts. The general assembly has the power to do so, and this section does not violate the separation of powers doctrine. People v. Buckles, 167 Colo. 64, 453 P.2d 404 (1968).

For disqualification from practice of law for conviction of felony, see People ex rel. Colo. Bar Ass'n v. Bryce, 36 Colo. 125, 84 P. 816 (1906); People v. Warren, 91 Colo. 99, 12 P.2d 348 (1932); People ex rel. Attorney Gen. v. Brayton, 100 Colo. 92, 65 P.2d 1438 (1937).

For conviction of felony outside Colorado, see People ex rel. Attorney Gen. v. Laska, 101 Colo. 221, 72 P.2d 693 (1937).

Relief from a sentence validly imposed may not be obtained through the judiciary after final conviction. People v. Rupert, 185 Colo. 288, 523 P.2d 1406 (1974).

Court order held within power of court. Court order authorizing a sentence to run concurrently with another sentence, to be served at an out-of-state institution, was within the power and jurisdiction of the sentencing court. People v. Lewis, 193 Colo. 203, 564 P.2d 111 (1977).

Sentence may be imposed to run consecutively to sentence already imposed. A sentencing court has discretion to impose a sentence to be served concurrently with or consecutively to a sentence already imposed upon a defendant. People v. Flower, 644 P.2d 64 (Colo. App. 1981), aff'd, 658 P.2d 266 (Colo. 1983); People v. Martinez, 179 P.3d 23 (Colo. App. 2007).

Multiple sentences may be imposed to run as one continuous sentence with a single period of mandatory parole where defendant is sentenced under subsection (1)(a)(V)(E), and this section is read together with §17-22.5-101. People v. Starcher, 107 P.3d 1127 (Colo. App. 2004).

A trial court may not require a sentence otherwise properly imposed to be served consecutively to some other sentence not yet imposed in another pending case. People v. Flower, 644 P.2d 64 (Colo. App. 1981), aff'd, 658 P.2d 266 (Colo. 1983).

Termination of a first sentence has no effect on a second sentence, and first court cannot modify sentence of second, where sentences are concurrent. Bullard v. Dept. of Corr., 949 P.2d 999 (Colo. 1997).

When offender's mandatory parole is revoked, the offender is no longer serving parole, but rather incarceration, therefore imposing a consecutive sentence plus another period or mandatory parole does not violate subsection (1)(a)(V)(E). The mandatory parole from the first conviction is extinguished so there are no longer two sentences of mandatory parole. People v. Perea, 74 P.3d 326 (Colo. App. 2002).

Plain language of subsection (1)(a)(V)(E) requires a defendant sentenced to consecutive felony offenses to serve the period of mandatory parole for the highest class felony; the order that the defendant serves the consecutive sentences is irrelevant to the determination of the period of mandatory parole. People v. Boyd, 23 P.3d 1242 (Colo. App. 2001).

Credit required for presentence confinement. A sentencing judge is constitutionally required to give an indigent defendant credit for time served in presentence confinement, even where the total of the presentence confinement and the sentence imposed after trial is less than the maximum sentence allowed for the offense. Godbold v. Wilson, 518 F. Supp. 1265 (D. Colo. 1981).

However, trial court's consideration of the effect of presentence confinement credit on defendant's actual incarceration time does not constitute an infringement on defendant's constitutional rights to due process and fundamental fairness. People v. Reed, 43 P.3d 644 (Colo. 2001).

Applicability of requirement of specific findings. The requirement to have specific findings on the record of the case in justification of a sentence outside the presumptive range is applicable to all sentences which do not come under the exceptions listed in subsection (9). People v. Rafferty, 644 P.2d 102 (Colo. App. 1982).

Trial court has obligation under subsection (7) to make specific findings when the sentence-enhancing factors contained in subsection (9.5) are present. People v. Blackmon, 20 P.3d 1215 (Colo. App. 2000).

Trial court did not erroneously apply the general sentence enhancer in subsection (8)(a)(IV) of this section to defendant's assault conviction under §18-3-203(1) (f.5). Application of the sentence enhancement provisions of this section did not have the effect of raising the class of felony for which defendant was convicted. Plus, the elemental statute under which defendant was charged did not contain specific sentencing requirements that would have superseded the provisions of the sentencing statute. People v. Wylie, 260 P.3d 57 (Colo. App. 2010).

"Prior criminal conduct", as used in this section, does not require proof of a prior criminal conviction, but may consist of a record of juvenile offenses or other criminal conduct which has not been the subject of prior prosecution. People v. McGregor, 757 P.2d 1082 (Colo. App. 1987).

Subsection (1)(b)(I) does not limit consideration of "criminal conduct" to felony convictions. People v. McGregor, 757 P.2d 1082 (Colo. App. 1987); People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994).

Trial court did not abuse its discretion in determining defendant's sentence by relying on facts from another case before the same court in which defendant was acquitted of first and second degree murder. A trial court may consider a wide range of evidence in determining a defendant's sentence, including facts relating to charges of which the defendant has been acquitted. People v. Beatty, 80 P.3d 847 (Colo. App. 2003).

Where record contains no indication of prior criminal conduct by defendant, trial court improperly predicted potential for future criminality of defendant. People v. Garciadealba, 736 P.2d 1240 (Colo. App. 1986).

Sentence must be supported by reasons in record. When the maximum or near-maximum sentence is imposed, it must be supported by sound reasons in the record. People v. Naranjo, 200 Colo. 1, 612 P.2d 1099 (1980).

In felony convictions involving the imposition of a sentence to a correctional facility, the sentencing judge must state on the record the basic reasons for the imposition of sentence. The statement need not be lengthy, but should include the primary factual considerations bearing on the judge's sentencing decision. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Where a sentence is imposed for an extended term, the record must clearly justify the action of the sentencing judge. People v. Cohen, 617 P.2d 1205 (Colo. 1980); People v. Tijerina, 632 P.2d 570 (Colo. 1981).

There must be sufficient facts in the record to support the trial court's final decision. People v. Walters, 632 P.2d 566 (Colo. 1981).

When sentence is in presumptive range, court need only set forth the basic reasons and primary factual

considerations bearing on the court's sentencing decision. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

The trial court is required to state on the record the basic reasons for imposing a sentence in a particular case. There is no ritualistic format for placing in the record the trial court's justification of the imposed sentence; however, appellate review of the propriety of a sentence outside the presumptive range requires sufficient findings by the trial court to demonstrate a threshold consideration of the factors set forth in subsection (1)(b), supplemented by sufficient findings pursuant to subsection (6). People v. Piro, 671 P.2d 1341 (Colo. App. 1983).

When a court imposes an aggravated sentence that is not based on a factor set forth in subsection (9)(a), the court must make specific findings, supported by evidence in the record of the sentencing hearing or the presentence report, detailing the extraordinary aggravating factors present. People v. O'Dell, 53 P.3d 655 (Colo. App. 2001).

When a sentence outside the presumptive range is imposed, the court is required to place on the record its findings as to the aggravating or mitigating circumstances that justify variation from the presumptive range. People v. Vela, 716 P.2d 150 (Colo. App. 1985); People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994).

However, it is not necessary for the sentencing court to refer explicitly to each of the factors. To the extent that People v. Piro (671 P.2d 1341) may suggest otherwise, it is disapproved. People v. Walker, 724 P.2d 666 (Colo. 1986); People v. Powell, 748 P.2d 1355 (Colo. App. 1987); People v. Sudduth, 991 P.2d 315 (Colo. 1999); People v. Bradbury, 68 P.3d 494 (Colo. App. 2002).

A plea agreement that does not constrain the sentencing court's discretion cannot be construed to limit the possible sentence to the presumptive range. People v. Moriarity, 8 P.3d 566 (Colo. App. 2000).

The court's statutory authority to sentence a defendant to the department of corrections does not expressly include the authority to dictate the conditions of confinement. The management, supervision, and control of department facilities are exclusively vested in its director. People v. Harris, 934 P.2d 882 (Colo. App. 1997).

A trial court may impose a sentence outside the applicable presumptive range only if extraordinary aggravating and mitigating circumstances are present based on evidence in the record of the sentencing hearing and the presentence report. People v. Walker, 724 P.2d 666 (Colo. 1986); People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994); People v. O'Dell, 53 P.3d 655 (Colo. App. 2001).

Subsection (5) conflicts with the provisions of §18-1.4-102(8) and (9). Subsection (5) of this section requires the court to impose a life sentence on a defendant sentenced to death under an unconstitutional death penalty scheme. In contrast, §18-1.4-102(8) and (9) allow the supreme court to review the death sentence or remand for a new sentencing hearing. Subsection (5) is a mandatory provision and therefore it applies over the discretionary provision. Woldt v. People, 64 P.3d 256 (Colo. 2003).

Subsection (6), properly applied, is constitutional in light of Apprendi v. New Jersey, 530 U.S. 466(2000), and Blakely v. Washington, 542 U.S. 296(2004). A constitutional aggravated sentence based on subsection (6) must rely on one of four kinds of facts: (1) Facts found by a jury beyond a reasonable doubt; (2) facts admitted by the

defendant; (3) facts found by the judge after the defendant stipulates to judicial fact-finding for sentencing purposes; (4) facts regarding prior convictions. The first three are "Blakely-compliant" facts, and the fourth is a "Blakely-exempt" fact. Defendant's aggravated sentence was based in part on a prior conviction; therefore, the sentence was constitutional. Lopez v. People, 113 P.3d 713 (Colo. 2005); People v. Huber, 139 P.3d 628 (Colo. 2006); People v. Smith, 183 P.3d 726 (Colo. App. 2008).

A conviction for an offense that occurs after the offense that the court is applying aggravated sentencing to may be a "prior conviction" for "Blakely-exempt" purposesif the conviction is entered before the sentencing on the aggravated sentence offense. Lopez v. People, 113 P.3d 713 (Colo. 2005); People v. Smith, 183 P.3d 726 (Colo. App. 2008).

All convictions obtained in accordance with the sixth and fourteenth amendments of the federal constitution fall within the prior-conviction exception to Apprendi and Blakely. People v. Huber, 139 P.3d 628 (Colo. 2006).

The exception extends beyond the fact of conviction to facts regarding prior convictions. People v. Huber, 139 P.3d 628 (Colo. 2006).

A defendant's prior-conviction-related probation or supervision falls within the exception. The prior-conviction exception extends to facts regarding prior convictions that are contained in conclusive judicial records. Because a defendant's sentence to probation or supervision can be found in the judicial record, a trial court may properly consider this fact without violating the defendant's Blakely rights. People v. Huber, 139 P.3d 628 (Colo. 2006).

A single "Blakely-compliant" fact or "Blakely-exempt" fact is sufficient to support an aggravated sentence. Lopez v. People, 113 P.3d 713 (Colo. 2005); DeHerrera v. People, 122 P.3d 992 (Colo. 2005); People v. Huber, 139 P.3d 628 (Colo. 2006).

The sentence is constitutional even if the court relies on facts that satisfy Blakely and facts that violate Blakely. Lopez v. People, 113 P.3d 713 (Colo. 2005); DeHerrera v. People, 122 P.3d 992 (Colo. 2005).

Court erred in aggravating the kidnapping sentence based upon the jury's finding that defendant used a deadly weapon during the sexual assault. Because the jury did not specifically find that defendant used the weapon during the kidnapping, the weapon's use was neither a "Blakely-compliant" nor a "Blakely-exempt" fact. People v. Glasser, 293 P.3d 68 (Colo. App. 2011).

Prior conviction exception includes prior misdemeanor convictions. Reliance on defendant's prior misdemeanor convictions to enhance defendant's sentence does not violate defendant's constitutional rights under Apprendi v. New Jersey and Blakely v. Washington. People v. Martinez, 128 P.3d 291 (Colo. App. 2005).

Prior conviction exception includes prior juvenile adjudications. Under Apprendi and Blakely, a sentencing court may determine facts regarding juvenile adjudications and use them as a basis to impose an aggravated range sentence despite the lack of a right to a jury trial in delinquency proceedings. People v. Mazzoni, 165 P.3d 719 (Colo. App. 2006).

Extraordinary aggravating circumstances in subsection (6) are the normal circumstances a trial court considers in imposing a sentence, including the character and history of the defendant and the particular circumstances of the offense, which become "extraordinary" because of their quantity or quality. They are not specified facts or considerations that, if found, mandate an increased penalty range or class of the offense. People v. Allen, 78 P.3d 751 (Colo. App. 2001); People v. Trujillo, 75 P.3d 1133 (Colo. App. 2003).

Sentence of twice the maximum term authorized in the presumptive range not abuse of court's discretion pursuant to subsection (6) where trial court identified a number of extraordinary circumstances beyond those which constituted elements of the offense with which defendant was charged. People v. Jones, 851 P.2d 247 (Colo. App. 1993); People v. Allen, 78 P.3d 751 (Colo. App. 2001); People v. Kitsmiller, 74 P.3d 376 (Colo. App. 2002).

Sentence found excessive. Defendant's sentence of a minimum of 32 years exceeded what is authorized by subsection (6), since the minimum sentence is greater than twice the 12-year presumptive maximum for a class 3 felony. People v. Clark, 214 P.3d 531 (Colo. App. 2009), aff'd on other grounds, 232 P.3d 1287 (Colo. 2010).

To impose a sentence beyond the presumptive range, the court must make a specific finding on the record that the Blakely-compliant or Blakely-exempt fact is extraordinarily aggravating. Although a court may rely on facts that are not Blakely-compliant or Blakely-exempt to further justify its imposition of an aggravated sentence, it may do so only if it has found a Blakely-compliant or Blakely-exempt fact to be extraordinarily aggravating. People v. Fiske, 194 P.3d 495 (Colo. App. 2008).

The determination whether Blakely-compliant or Blakely-exempt facts are extraordinarily aggravating circumstances remains within the discretion of the trial court. People v. Fiske, 194 P.3d 495 (Colo. App. 2008).

A sentence based on extraordinary aggravating factors, subsection (6), does not require an Apprendi jury finding. The sentence was based on unenumerated and unspecified factors frequently considered in sentencing decisions. Those are not the types of factors considered in Apprendi and its progeny. People v. Rivera, 62 P.3d 1056 (Colo. App. 2002).

Judicial finding of extraordinary aggravating circumstances not unlawful under Apprendi. People v. Lopez, 97 P.3d 223 (Colo. App. 2004).

Particularly where sentence involves restrictive form of deprivation. Requirement that sentencing judge state on the record the basic reasons for imposing a sentence is particularly essential in those cases where the sentence involves a very restrictive form of deprivation, such as a term of confinement to a correctional facility. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

If plea agreement does not acknowledge presence of aggravating factors,Apprendi is applicable, and no sentence beyond the presumptive range may be imposed unless the facts relied upon to aggravate the sentence have been submitted to and determined by a jury. People v. Misenhelter, 121 P.3d 230 (Colo. App. 2004).

While defendant admitted at providency hearing and in written plea agreement that prior misdemeanor

conviction constituted a Blakely-exempt fact that widened the sentencing range and that the court could consider to impose an aggravated sentence, defendant did not admit that the prior misdemeanor was an extraordinary aggravating fact. Because the court imposed a sentence beyond the presumptive range without determining whether the sole Blakely-exempt fact was an extraordinarily aggravating fact that supported an aggravated sentence, the sentence was vacated and the case remanded for resentencing. People v. Fiske, 194 P.3d 495 (Colo. App. 2008).

Defendant's right to a jury determination of aggravating factors is not waived by pleading guilty to the charged offense. A guilty plea cannot be interpreted as a waiver of the right to have a jury determine factors exposing a defendant to greater punishment than otherwise authorized by the sentencing statute. A sentence beyond the relevant statutory maximum may be imposed only if a jury has determined the aggravating factors or the defendant has admitted them. People v. Solis-Martinez, 121 P.3d 215 (Colo. App. 2004).

Colorado law does not contemplate an increase in the statutory maximum sentence to which a defendant has subjected himself by pleading guilty, based on subsequent jury findings, which are the functional equivalent of elements of a greater offense than the one to which he pled. People v. Lopez, 148 P.3d 121 (Colo. 2006).

Allowing consideration of subsequent jury findings to increase a defendant's statutory maximum sentence would violate the requirement of Crim. P. 11 that the defendant understand the elements of the offense to which he pleads and the effects of his plea before his plea can be accepted. People v. Lopez, 148 P.3d 121 (Colo. 2006).

Defendant has no constitutional right to a jury trial to determine whether or not he or she has a prior conviction. That is an inquiry and finding the trial judge is entitled to make. People v. French, 141 P.3d 856 (Colo. App. 2005), cert. granted in part and denied in part, judgment vacated, and case remanded to the Colorado court of appeals for reconsideration in light of People v. Isaacks, 133 P.3d 1190 (Colo. 2006), and People v. Huber, 139 P.3d 628 (Colo. 2006), aff'd, 165 P.3d 836 (Colo. App. 2007).

The statutory maximum for purposes of applying Apprendi and Blakely is the maximum in the presumptive range. People v. Moon, 121 P.3d 218 (Colo. App. 2004).

If the court resentences an offender to prison after rejection by community corrections, it is not a new sentence (requiring new findings for a sentence outside the presumptive range) unless the offender would suffer some substantial procedural prejudice. The court found no prejudice because the length of the original sentence was not changed and the offender received full credit for time served in community corrections. People v. Kitsmiller, 74 P.3d 376 (Colo. App. 2002).

Failure to state reasons creates obstacle to appellate review. The failure of a sentencing judge to state on the record the basic reasons for the selection of a particular sentence creates a burdensome obstacle to effective and meaningful appellate review of sentences. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

When the defendant stipulates to a sentence in the aggravated range as part of a plea agreement, the defendant also stipulates that sufficient facts exist to warrant an aggravated sentence, thus the trial court must

not make additional findings on the record to comply with subsection (7). People v. Shepard, 98 P.3d 905 (Colo. App. 2004).

Trial court was not required to make specific findings detailing its reasons for varying from the presumptive range. People v. Roy, 948 P.2d 99 (Colo. App. 1977).

Trial court not required to discuss each factor enumerated in sentencing statute. People v. Bustamante, 694 P.2d 879 (Colo. App. 1984).

When written findings of specific extraordinary circumstances not necessary at sentencing. The fact that the court did not enter written findings of the specific extraordinary circumstances justifying a sentence beyond the presumptive stage until a week after the sentencing did not invalidate the sentence, where the judge had stated the reasons for the sentence orally at the time it was imposed. People v. Cantwell, 636 P.2d 1313 (Colo. App. 1981).

The decision of the trial court to sentence consecutively for separate offenses is discretionary and, in general, courts are free to impose concurrent or consecutive sentences as the situation warrants. People v. Wieghard, 743 P.2d 977 (Colo. App. 1987); People v. Williams, 33 P.3d 1187 (Colo. App. 2001).

And in determining the appropriateness of the sentence, the trial court relies on the sentencing factors set forth in §18-1-102.5. People v. King, 765 P.2d 608 (Colo. App. 1988), aff'd, 785 P.2d 596 (Colo. 1990).

No abuse of discretion in the sentence imposed under subsection (7) where trial court sufficiently separated its findings of extraordinary aggravating circumstances in the two cases and gave due consideration to all relevant sentencing factors. People v. Lopez, 97 P.3d 223 (Colo. App. 2004).

The aggravator for committing a felony while on probation applies to a defendant on probation in another state. People v. Fogle, 116 P.3d 1227 (Colo. App. 2004).

When defendant admits the fact that is the basis for the enhanced sentence, the defendant's sentence was not illegal under Apprendi v. New Jersey, 530 U.S. 466(2000). Even though it was defense counsel that represented the defendant was on probation during the commission of the felony, the defendant did not object to this statement. Thus, the statement was an admission of the defendant. People v. Fogle, 116 P.3d 1227 (Colo. App. 2004).

Court may aggravate sentence pursuant to subsection (8)(a)(III) based on the judge-found fact that defendant was on probation at the time of the crime. People v. Roberts, 179 P.3d 129 (Colo. App. 2007).

If a fact admitted by a defendant is a Blakely-compliant factor, it is sufficient to support imposition of an aggravated sentence. People v. Blinderman, 148 P.3d 232 (Colo. App. 2006).

Imposition of an aggravated range sentence pursuant to subsection (8)(a)(II) satisfies Blakely where defense counsel admitted that defendant had been on parole at the time of the offense and defendant did not object to counsel's statement or dispute the truth of it. People v. Scott, 140 P.3d 98 (Colo. App. 2005); People v. Blinderman,

148 P.3d 232 (Colo. App. 2006).

Where controlled substance offenses were reclassified as class 2 felonies, it was proper for court to apply sentence enhancers of subsection (8)(a)(II). People v. Robinson, 187 P.3d 1166 (Colo. App. 2008).

The general sentence aggravator in subsection (8)(a)(IV) of this section does not apply to the crime of second degree assault on a correctional officer. Section 18-3-203 (1)(f) defines second degree assault on a correctional officer and contains its own aggravator. Therefore, the specific aggravator applies, not the general one. People v. Willcoxon, 80 P.3d 817 (Colo. App. 2002).

Nothing in the language of subsection (8)(g) of this section or §18-3-106 suggests a legislative intent to preempt the felony murder statute. People v. Prieto, 124 P.3d 842 (Colo. App. 2005).

An aggravated range sentence has both a qualitative and a quantitative dimension. The sentencing court makes a qualitative decision to depart from the presumptive range, which is subject to sixth amendment scrutiny under Blakely. The court then makes a quantitative decision of where to sentence within the aggravated range, which is not subject to further sixth amendment challenge. These two dimensions make exclusion of a constitutionally impermissible factor articulated in support of the sentence especially difficult, unless the record clearly shows that this factor was considered only to determine placement within the aggravated range. People v. Moon, 121 P.3d 218 (Colo. App. 2004).

A sentence within the aggravated range is mandated whenever any of the extraordinary aggravating circumstances specifically enumerated in subsection (9)(a) are present. People v. District Court, 713 P.2d 918 (Colo. 1986); People v. Leonard, 755 P.2d 447 (Colo. 1988); People v. Chavez, 764 P.2d 356 (Colo. 1988); People v. French, 141 P.3d 856 (Colo. App. 2005), cert. granted in part and denied in part, judgment vacated, and case remanded to the Colorado court of appeals for reconsideration in light of People v. Isaacks, 133 P.3d 1190 (Colo. 2006), and People v. Huber, 139 P.3d 628 (Colo. 2006), aff'd, 165 P.3d 836 (Colo. App. 2007).

Prior felony conviction that was the event that triggered enhanced sentencing falls within the prior conviction exception to the Apprendi rule. People v. Ramirez, 140 P.3d 169 (Colo. App. 2005).

Where defendant committed second degree kidnapping while on bond for a felony charge for which he was subsequently convicted by the time of the sentencing hearing for kidnapping, trial court was obligated to impose sentence pursuant to subsection (9)(a). People v. Ramirez, 140 P.3d 169 (Colo. App. 2005).

Extraordinary circumstances required in findings. Sentence vacated and case remanded for sentencing where trial court failed to make specific findings on the record detailing extraordinary circumstances to vary from the presumptive range. People v. Leonard, 872 P.2d 1325 (Colo. App. 1993); People v. Blankenship, 30 P.3d 698 (Colo. App. 2000).

Mandatory sentencing of defendant on parole status under subsection (9) is a definite, immediate, and automatic consequence of plea which defendant must understand. People v. Chippewa, 713 P.2d 1311 (Colo. App. 1985).

Guilty plea constitutes a conviction within the meaning of subsection (9). Defendant, who had pled guilty to a separate offense and was out on bond, asserted that because he or she had not yet been sentenced for the prior felony at the time the trial court for the latter offense sentenced him or her, he or she was not yet "convicted". Defendant's guilt of a prior felony, not the punishment sentenced or received, is what is relevant for the purpose of defining "conviction" under subsection (9)(a). People v. French, 141 P.3d 856 (Colo. App. 2005), cert. granted in part and denied in part, judgment vacated, and case remanded to the Colorado court of appeals for reconsideration in light of People v. Isaacks, 133 P.3d 1190 (Colo. 2006), and People v. Huber, 139 P.3d 628 (Colo. 2006), aff'd, 165 P.3d 836 (Colo. App. 2007).

Escape from confinement while on probation required sentencing in aggravated range. People v. Herman, 767 P.2d 752 (Colo. App. 1988).

Due process requires that defendant be given reasonable notice that he is subject to enhanced sentencing under subsection (9)(a)(III) of this section. People v. Lacey, 723 P.2d 111 (Colo. 1986); People v. Murphy, 722 P.2d 407 (Colo. 1986).

Because defendant was convicted of a per se crime of violence under §16-11-309, the trial court was required to sentence him under the enhanced sentence provisions of subsection (9) of this section. The prosecution was not required to charge a crime of violence separately and the jury was not required to determine its existence in order for the trial court to sentence defendant under the provisions of subsections (9) and (9.7). People v. Lee, 989 P.2d 777 (Colo. App. 1999); People v. Hoang, 13 P.3d 819 (Colo. App. 2000). But see People v. Banks, 9 P.3d 1125 (Colo. 2000).

Subsection (9)(a)(III) does not violate equal protection for lack of express provisions concerning the rights to reasonable notice and to have the prosecution prove the asserted probationary status where those rights exist independently of the statute. People v. Lacey, 723 P.2d 111 (Colo. 1986); People v. Murphy, 722 P.2d 407 (Colo. 1986); People v. Herman, 767 P.2d 752 (Colo. App. 1988).

Subsection (9)(a)(IV) does not violate defendant's equal protection rights since there is a reasonable basis for the classification. People v. Anderson, 784 P.2d 802 (Colo. App. 1989).

Subsection (9)(a)(V) did not apply to the crime of escape and attempted escape where the general assembly had provided for enhanced punishment for the crimes of escape elsewhere, specifically in §§18-8-208.1 and 18-8-209, and where the general assembly did not amend this section to make it specifically applicable to escape crimes. People v. Andrews, 871 P.2d 1199 (Colo. 1994).

The prohibition against the suspension of a sentence for felony child abuse contained in subsection (9)(d)(II) is an exception to the general rule for suspending sentences in subsection (10). Subsection (9)(d)(II) is the more specific statute and subsection (10) is a statute of broader scope. People v. Smith, 932 P.2d 830 (Colo. App. 1996).

Subsection (9)(a)(III) is a sentence enhancement statute to which procedural safeguards attach. People v. Lacey, 723 P.2d 111 (Colo. 1986).

Subsection (9)(a)(III) applies to persons on probation for felonies committed outside of Colorado. This provision was intended to subject all felony probationers sentenced to incarceration to a sentence in the aggravated range, regardless of the jurisdiction in which the felony conviction was entered and, if deemed a felony in another state, irrespective of the offense classification in this state. People v. Sellers, 762 P.2d 749 (Colo. App. 1988).

The language of subsection (9)(a)(III) is not ambiguous. The felony for which a defendant is on probation need not be the same felony offense for which he or she is being sentenced. People v. Moltrer, 983 P.2d 810 (Colo. App. 1999).

The provisions of subsection (9)(a)(III) that increase the minimum sentence to a point within the original presumptive range do not implicate Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Thus the allegation of whether defendant was on probation at the time of the offenses need not be submitted to the jury and proved beyond a reasonable doubt. People v. Gardner, 55 P.3d 231 (Colo. App. 2002).

Subsection (9)(a)(V) does not require the imposition of a sentence beyond the presumptive range upon conviction of the crime of escape under §18-8-208. People v. Jackson, 703 P.2d 618 (Colo. App. 1985); People v. Russell, 703 P.2d 620 (Colo. App. 1985); People v. Brewer, 720 P.2d 583 (Colo. App. 1985).

Nor does subsection (9)(a)(V) require the imposition of such a sentence upon conviction of the crime of attempted escape under §18-8-208. People v. Martinez, 703 P.2d 619 (Colo. App. 1985).

Nor does subsection (9)(a)(V) require the imposition of such a sentence upon conviction of criminal attempt to commit escape under §18-2-101. People v. Lobato, 703 P.2d 623 (Colo. App. 1985).

Subsection (9)(a)(V) did not apply to the crime of second-degree burglary where defendant had been charged with, but not convicted of, another felony at the time of commission of the burglary. People v. Nichols, 920 P.2d 901 (Colo. App. 1996).

Phrase "at least" in §18-1-105(9) does not require the court to set the minimum length of the indeterminate sentence at the midpoint of the presumptive range. The court may impose a minimum length to the indeterminate sentence that is greater than the midpoint of the presumptive range. People v. Becker, 55 P.3d 246 (Colo. App. 2002).

Sections 16-11-309(1)(c) and 18-1-105(9) (e.5) conflict irreconcilably with § 16-13-804(1)(b). The phrase "up to the defendant's natural life" in §§16-11-309(1)(c) and 18-1-105(9) (e.5) conflicts with the phrase "a maximum of the sex offender's natural life" in § 16-13-804(1)(b). Statutory construction calls for § 16-13-804(1)(b) to prevail, requiring the court to set the maximum length of the indeterminate sentence at the defendant's natural life. People v. Becker, 55 P.3d 246 (Colo. App. 2002).

Escapee properly sentenced in the aggravated range pursuant to subsection (9.5) when the felony escape occurred while the defendant was charged with a previous felony, and was convicted of that previous felony. People v. Phillips, 885 P.2d 359 (Colo. App. 1994).

The intent of the general assembly in enacting subsection (9.5)(b) is to discourage the recidivism by subjecting those persons who are on bond and subsequently convicted of a felony to sentencing in the aggravated range. People v. Saucerman, 926 P.2d 130 (Colo. App. 1996).

A defendant who commits a felony while on bond after having pled guilty to a lesser offense is subject to the sentence-enhancing provisions of this statute. People v. Saucerman, 926 P.2d 130 (Colo. App. 1996).

Aggravated sentence based upon element which was also element of substantive offense did not offend equal protection or create double jeopardy. Aggravated sentence was permissible where defendant's confinement in correctional facility was both element of controlled substances offense and circumstance requiring sentence in aggravated range under subsection (9)(a)(V). People v. Leonard, 755 P.2d 447 (Colo. 1988).

An aggravated sentence is allowed where the defendant's confinement in correctional facility was both an element of attempt to introduce contraband into a detention facility and a circumstance requiring sentence in aggravated range under subsection (9)(a)(V). People v. Chavez, 764 P.2d 356 (Colo. 1988).

Aggravated sentence allowed where the defendant's confinement in a detention facility was an element of unlawful possession of marihuana in a detention facility and the confinement as a convicted felon was a circumstance requiring a sentence in the aggravated range under what is now subsection (8)(a)(IV). People v. Nitz, 104 P.3d 240 (Colo. App. 2004).

Violent crime sentence enhancer cannot apply to first degree heat of passion assault. People v. Harris, 797 P.2d 816 (Colo. App. 1990).

Constitutional bar to subjecting defendant to greater penalty for causing serious bodily injury with deadly weapon than if defendant had caused death of victim. People v. Harris, 797 P.2d 816 (Colo. App. 1990).

The term "under confinement", for purposes of subsection (9)(a)(V), includes a sentence to community corrections for a prior felony, even if the defendant had been transferred to nonresidential status at community corrections, and such a defendant must be sentenced within the aggravated range. People v. Miller, 747 P.2d 12 (Colo. App. 1987).

Parole statutes may be considered as aggravating circumstances. People v. Romero, 694 P.2d 1256 (Colo. 1985).

Sentence supported by finding of "aggravating circumstances". A finding of "aggravating circumstances" justifies the imposition of a sentence at the higher end of the presumptive range, pursuant to subsection (1)(b), but cannot be the basis for a sentence outside of the presumptive range, because such a finding is not specific enough to satisfy the requirements of subsection (7). People v. Maldonado, 635 P.2d 240 (Colo. App. 1981).

There was ample support for the aggravated sentence imposed where the court properly considered the defendant's prior criminal record. The fact that the court found aggravating factors more compelling than mitigating factors does

not constitute an abuse of discretion or indicate that the court did not consider mitigating factors. People v. Loomis, 857 P.2d 478 (Colo. App. 1992); People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994).

Sentencing error where extraordinary aggravating circumstances not found. Judge erred in sentencing a 19-year old beyond the presumptive range because extraordinary aggravating circumstances justifying the sentence were not found even though the defendant was accused of committing five felonies in a nine-month period, including an arrest while on probation. People v. Jenkins, 674 P.2d 981 (Colo. App. 1983).

Where the court justified variation from the presumptive sentencing range solely upon the harm done to the victim and as a deterrent to others in the community, the trial court erred and is reversed. People v. Manley, 707 P.2d 1021 (Colo. App. 1985).

When reviewing sentences for excessiveness, appellate courts must consider the nature of the offense, the character of the offender, and the public interest in safety and deterrence. People v. Ramos, 53 P.3d 1178 (Colo. App. 2002).

Appellate courts must also accord considerable deference to a sentence imposed by the trial court because of that court's familiarity with the circumstances of the case. People v. Fuller, 791 P.2d 702 (Colo. 1990); People v. Ramos, 53 P.3d 1178 (Colo. App. 2002).

No error where trial court considered defendant's presentation of perjured testimony in imposing the maximum aggravated sentence for his felony conviction. People v. Ramos, 53 P.3d 1178 (Colo. App. 2002) (citing United States v. Dunnigan, 507 U.S. 87, 113 S. Ct. 1111, 122 L. Ed. 2d 445 (1993)).

Trial court considered defendant's presentation of perjured testimony only in determining the appropriate penalty within the sentencing range mandated by statute, rather than making any factual determination that altered the applicable sentencing range. People v. Ramos, 53 P.3d 1178 (Colo. App. 2002) (distinguishing Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)).

Sentencing beyond presumptive range not justified where defendant was under supervision of probation department at time of commission of felony and not under confinement or in an institution as required by statute. People v. Wells, 691 P.2d 361 (Colo. App. 1984).

The presumptive range for a class 6 felony could not be doubled and then the sentence quadrupled because the defendant was also considered an habitual offender. The defendant was convicted of stalking while the defendant was on parole from prison. The stalking offense qualified the defendant as an habitual offender. Stalking is a class 6 felony. This section requires the doubling of the presumptive range of the conviction for offenses that occur while on parole. Section 16-13-101(2) requires the quadrupling of offenses committed by habitual offenders. Section 16-13-101(2) , however, does not authorize the quadrupling of a sentence that is already increased. People v. Bastian, 981 P.2d 203 (Colo. App. 1998).

Person must be convicted of same felony for which charged for court to find extraordinary aggravating

circumstance. Conviction of criminal impersonation when sexual assaults were committed did not constitute an aggravating circumstance. People v. Tuck, 937 P.2d 810 (Colo. App. 1996).

However, for the extraordinary aggravating circumstance described in subsection (9)(a)(III) to apply, the felony for which a defendant is on probation need not be the same felony offense for which he or she is being sentenced. People v. Moltrer, 983 P.2d 810 (Colo. App. 1999).

Where defendant was on probation for another felony at the time of the commission of a felony, the failure of the court to sentence the defendant to a term greater than the presumptive range due to the presence of an extraordinary aggravating circumstance was error. People v. Garcia, 698 P.2d 801 (Colo. 1985).

Cost to the taxpayers of the defendant's trials and the fact defendant acted alone are not aggravating sentencing factors and were improperly considered in sentencing. People v. Arguello, 737 P.2d 436 (Colo. App. 1987).

Factor which constitutes an element of the substantive crime could not constitute an extraordinary aggravating circumstance. People v. Garciadealba, 736 P.2d 1240 (Colo. App. 1986).

However, factual matters relevant to particular elements of an offense but that do not actually establish any elements may be considered by the trial court as extraordinary aggravating circumstances. People v. Sanchez, 769 P.2d 1064 (Colo. 1989); People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994).

Subsection (9)(c) permits the sentencing court to consider aggravating factors other than those specifically set forth in statute when imposing an extraordinary aggravated sentence. People v. Hernandez-Luis, 879 P.2d 429 (Colo. App. 1994).

Subsection (10) does not apply to crimes of violence that are sexual offenses. People v. Tillery, 231 P.3d 36 (Colo. App. 2009), aff'd on other grounds sub nom. People v. Simon, 266 P.3d 1099 (Colo. 2011).

Aggravated sentence supported by appropriate factors and sufficient findings where the court found that the offense was extremely violent, the victim lay helpless and unconscious through most of the attack, the victim in no way provoked the attack, the defendant denied his involvement in the attack, and the defendant had consumed alcohol the night of the incident. People v. Moore, 902 P.2d 366 (Colo. App. 1994).

Defendant's argument that the use of force in committing assault was an essential element of the crime and should not be considered as an aggravating factor was without merit. People v. Silva, 782 P.2d 846 (Colo. App. 1989).

Defendant's argument that, before a court can consider psychological or other adverse impacts of a crime on victims and their families as an extraordinary aggravating circumstance, there must be evidence that the impact is greater than that which is "normally" experienced by other victims of crime was found to be without merit. Such a requirement would be inconsistent with the legislative intent that sentencing courts be granted broad discretion in

distinguishing between "ordinary" and "extraordinary" circumstances depending upon the specific facts of each case. People v. Leske, 957 P.2d 1030 (Colo. 1998).

Sentence modified on appeal only if trial court abused discretion. The trial court has great leeway in imposing sentence and, absent a clear abuse of discretion, the trial court's decision will not be modified on appeal. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980); People v. Clements, 732 P.2d 1245 (Colo. App. 1986).

Proof of clear abuse of discretion needed to overturn sentencing decision. The trial court's sentencing decision will not be overturned on appeal absent a showing that the trial court's wide latitude is marked by a clear abuse of discretion. People v. Hotopp, 632 P.2d 600 (Colo. 1981).

Factors considered in appellate review of sentence. On review of the propriety of a sentence, the Colorado supreme court considers three factors: (1) The nature of the offense; (2) the public interest in safety and deterrence; and (3) the character of the offender. People v. Naranjo, 200 Colo. 1, 612 P.2d 1099 (1980); People v. Cohen, 617 P.2d 1205 (Colo. 1980); People v. Colasanti, 626 P.2d 1136 (Colo. 1981); People v. Magee, 626 P.2d 1139 (Colo. 1981); People v. Walters, 632 P.2d 566 (Colo. 1981); People v. Tijerina, 632 P.2d 570 (Colo. 1981).

Felonies committed before July 1, 1981. The requirement for written findings survives for felonies committed before July 1, 1981. People v. Sanchez, 644 P.2d 95 (Colo. App. 1982).

Sentence upheld. Sentence of 15 to 30 years for second-degree murder was not an abuse of discretion. People v. La Plant, 670 P.2d 802 (Colo. App. 1983).

Minimum sentence within presumptive range for criminally negligent child abuse resulting in death was proper when it was supported by the evidence, reflected a proper balancing of mitigating and aggravating factors, and did not give undue weight to any one factor. People v. Clements, 732 P.2d 1245 (Colo. App. 1986).

Fifteen-year sentence for second-degree arson committed while defendant was on parole did not constitute abuse of discretion by trial court. People v. Swepston, 822 P.2d 510 (Colo. App. 1991).

Sentence of 40 years' imprisonment for defendant convicted of child abuse resulting in death did not constitute abuse of discretion on the part of the trial court. The sentence was within the range required by subsection (9)(d)(I), and the trial court made extensive and detailed findings in imposing the sentence, took into consideration the sentencing factors set forth in §18-1-102.5, and appropriately considered mitigating and aggravating factors in imposing the sentence. People v. Garcia, 964 P.2d 619 (Colo. App. 1998), rev'd on other grounds, 997 P.2d 1 (Colo. 2000).

The trial court did not abuse its discretion in imposing an aggravated sentence that was not based on a factor specified in subsection (9)(a) where the court made written findings that defendant posed a danger to society, that defendant had inflicted substantial emotional and psychological harm on his victims, that the victims were extremely vulnerable, that defendant was likely to reoffend, and that the jury had determined that one of the counts was a crime of violence. People v. Gholston, 26 P.3d 1 (Colo. App. 2000).

In light of the requirement that defendant receive an enhanced sentence if sentenced to a term of imprisonment, the trial court did not err in failing to consider a suspended sentence as a sentencing option. People v. Nastiuk, 914 P.2d 421 (Colo. App. 1995).

Sentence vacated and case remanded for re-sentencing where defendant was sentenced in an enhanced range for being on bond for an offense which was later dismissed. People v. Bachofer, 192 P.3d 454 (Colo. App. 2008).

Statutory authority of court to suspend sentences applicable to both misdemeanor and felony offenses. People v. Schwartz, 823 P.2d 1386 (Colo. App. 1991).

When a defendant receives two convictions and challenges only one of the convictions, the trial court has no authority to alter the sentence for the unchallenged conviction. People v. Wieghard, 743 P.2d 977 (Colo. App. 1987).

Under subsection (6), since defendant knew that failure to meet conditions of probation might constitute extraordinary aggravating circumstances which would justify sentencing beyond the presumptive range, the court was justified in doubling of presumptive range of sentence when defendant met neither the community service nor the restitution condition of probation. Montoya v. People, 864 P.2d 1093 (Colo. 1993); People v. Smith, 183 P.3d 726 (Colo. App. 2008).

Trial court properly related aggravating factors to defendant and the circumstances of the crime for conviction as an accessory. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

Consideration of request for reduction of sentence for a crime committed after a certain date by a person sentenced after the date that sentences for that crime was increased does not require that such a sentence be reduced, but rather leaves the matter to the discretion of the trial court. People v. Gallegos, 789 P.2d 461 (Colo. App. 1989) (decided under law in effect prior to 1989 repeal of subsection (1)(b)(VII)).

Persons convicted of child abuse resulting in death are eligible for sentence modification pursuant to §17-27.7-104 upon successful completion of the regimented inmate training program, but the sentencing court's discretion is limited by the relevant mandatory sentencing limits. People v. Smith, 971 P.2d 1056 (Colo. 1999).

"Incarceration", for purposes of subsection (9)(a), includes a direct sentence to community corrections. People v. Saucedo, 796 P.2d 11 (Colo. App. 1990).

Conspiracy to distribute a controlled substance is not an extraordinary risk crime. A plain reading of the statute does not include inchoate crimes. People v. Valenzuela, 216 P.3d 588 (Colo. 2009).

Where the defendant was convicted of "extraordinary risk of harm" crime and adjudicated as a habitual criminal, trial court properly calculated defendant's sentence by increasing the maximum presumptive range sentence pursuant to subsection (9.7) and then multiplying it by three pursuant to § 16-13-101 (1.5). People v. Hoefer, 961 P.2d 563 (Colo. App. 1998).

The trial court appropriately increased the maximum presumptive penalty based on subsection (9.7)(a) before applying the presumptive penalty provisions applicable to crimes of violence under §16-11-309. Thus, §16-11-309 permits a doubling of the maximum penalty that is already increased under subsection (9.7)(a) for certain extraordinary risk crimes. People v. Greymountain, 952 P.2d 829 (Colo. App. 1997).

The extraordinary risk sentencing provisions of subsection (9.7) do not apply unless the defendant is actually charged with and convicted of a crime of violence, as described in §16-11-309. In situations in which the defendant is convicted of a crime, such as second degree assault against a police officer under §18-3-203(2)(c), that mandates the same enhanced presumptive sentencing range as applies to a crime of violence, the defendant is not subject to the additional sentence enhancing provisions specified in subsection (9.7) unless the prosecution has specifically alleged and proved the elements of a crime of violence, as described in §16-11-309. People v. Banks, 9 P.3d 1125 (Colo. 2000).

Because defendant was convicted of a per se crime of violence under §16-11-309, the defendant was subject to an increase in the sentencing range under the extraordinary risk crime provisions of subsection (9.7); the prosecution was not required to charge a crime of violence separately and the jury was not required to determine its existence in order for the trial court to sentence defendant under the provisions of subsections (9) and (9.7). People v. Lee, 989 P.2d 777 (Colo. App. 1999). But see People v. Banks, 9 P.3d 1125 (Colo. 2000).

Imposition of a 25-year sentence for second degree murder committed in the heat of passion was not abuse of discretion and was within the range prescribed by law, because it is a per se crime of violence under §16-11-309 and an extraordinary risk of harm crime pursuant to subsection (9.7); thus, the presumptive sentencing range was 10 to 32 years and the trial court was required to sentence defendant to a term of incarceration of at least the midpoint in the presumptive range, but not more than twice the maximum presumptive term for the offense. People v. Martinez, 32 P.3d 582 (Colo. App. 2001).

Because defendant's sentence for felony murder was not based on the habitual criminal statutes and because defendant's conviction for robbery, which was based on habitual criminal statutes, was vacated, the habitual criminal convictions must be vacated as well. People v. Cook, 22 P.3d 947 (Colo. App. 2000).

Subsection (10) allows the trial court only to suspend the imposition or execution of a sentence, not the length of the sentence, and in light of the mandatory language of § 18-18-107, the trial court was required to sentence the defendant within the range set forth in the statute. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Distinction between imposition and execution of a sentence under subsection (10). Where court suspended the execution, but not the imposition, of a four-year term in the department of corrections on condition that defendant serve two years in a community corrections facility, the court was not thereafter precluded from resentencing defendant to four years in the department. People v. Seals, 899 P.2d 359 (Colo. App. 1995).

Prison sentence originally imposed becomes final notwithstanding suspension of the sentence. Suspension does not result in withdrawal of the original sentence, but in the suspension of the execution of the sentence subject to express conditions. If a condition is violated, the suspension may be vacated, and execution of the original sentence can be

carried out. In such a circumstance, the pronouncement of a new sentence is both unnecessary and improper. People v. Frye, 997 P.2d 1223 (Colo. App. 1999).

Amendment to subsection (10), requiring recommendation for suspended sentence, applies prospectively and is inapplicable to defendant who committed crime prior to date amendment was enacted. People v. Munoz, 857 P.2d 546 (Colo. App. 1993).

The court may impose a fine in lieu of incarceration or probation without the consent of the prosecutor where the defendant is convicted of a class 2 felony not involving violence or an assault on a firefighter or a peace officer. People v. Thompson, 897 P.2d 857 (Colo. App. 1994).

Former §18-1-105(10) does not authorize a court to suspend a statutorily enhanced sentence where mandatory minimum sentence was applicable to defendant who was on probation at the time of offense. People v. Munoz, 857 P.2d 546 (Colo. App. 1993).

Pursuant to the plain language of former §18-1-105(10) (now recodified with amendments under subsection (11)), if a defendant is sentenced pursuant to a mandatory sentencing provision, the sentencing court has no power to suspend either the imposition or execution of the sentence. People v. Hummel, 131 P.3d 1204 (Colo. App. 2006).

The statutory authority to impose a sentence is determined by the sentencing scheme in effect on the date of the offense. To the extent People v. Hummel annotated above suggests otherwise, the appellate court declined to follow it. People v. Wolfe, 213 P.3d 1035 (Colo. App. 2009).

Court not bound to apply original sentence upon revocation of probation. Because suspension of a sentence is in conjunction with, rather than contradistinction to, the imposition of a statutorily prescribed alternative to imprisonment, the sentencing court's resentencing options upon revocation were dictated by statutory provisions governing revocation of probation. Fierro v. People, 206 P.3d 460 (Colo. 2009).

Defendant was incorrectly sentenced under the extraordinary risk enhancement provision in subsection (10) because it is inapplicable to offenses committed after November 1, 1998. People v. Kyle, 111 P.3d 491 (Colo. App. 2004).

The presumptive sentencing range for the class 4 felony offense of attempted unlawful distribution of a schedule II controlled substance is two years to six years, pursuant to subsection (1)(a)(V)(A). Such an attempt does not constitute a crime that presents an extraordinary risk of harm to society as defined in the legislative intent stated in subsection (10)(a). Thus, the maximum sentence in the presumptive range shall neither be increased nor be subject to subsection (10)(b)(XI). People v. Blinderman, 148 P.3d 232 (Colo. App. 2006).

Not illegal sentence when court first increased maximum presumptive sentence for extraordinary risk enhancement pursuant to subsection (10) for felony child abuse and then applied mandatory language of subsection (8)(d). People v. Ortega, 266 P.3d 424 (Colo. App. 2011).

Applied in People ex rel. Dunbar v. Moore, 125 Colo. 571, 245 P.2d 467 (1952); People v. Peters, 151 Colo. 409, 378 P.2d 205 (1963); People v. Alvarez, 187 Colo. 290, 530 P.2d 506 (1975); People v. Bruebaker, 189 Colo. 219, 539 P.2d 1277 (1975); People v. Marchese, 37 Colo. App. 65, 541 P.2d 1264 (1975); People v. Lobato, 192 Colo. 357, 559 P.2d 224 (1977); People v. Smith, 195 Colo. 404, 579 P.2d 1129 (1978); People v. Lake, 195 Colo. 454, 580 P.2d 788 (1978); People v. Montoya, 196 Colo. 111, 582 P.2d 673 (1978); People v. Burns, 197 Colo. 284, 593 P.2d 351 (1979); People v. Mikkleson, 42 Colo. App. 77, 593 P.2d 975 (1979); People v. Toomer, 43 Colo. App. 343, 604 P.2d 1180 (1979); People v. Malacara, 199 Colo. 243, 606 P.2d 1300 (1980); People v. Wylie, 605 P.2d 494 (Colo. App. 1980); People v. Hostetter, 606 P.2d 80 (Colo. App. 1980); People v. Abila, 606 P.2d 80 (Colo. App. 1980); People v. Horne, 619 P.2d 53 (Colo. 1980); People v. Hall, 619 P.2d 492 (Colo. 1980); People v. Marcy, 628 P.2d 69 (Colo. 1981); People v. Martinez, 628 P.2d 608 (Colo. 1981); Smith v. District Court, 629 P.2d 1055 (Colo. 1981); People v. Moody, 630 P.2d 74 (Colo. 1981); People v. Francis, 630 P.2d 82 (Colo. 1981); People v. Valencia, 630 P.2d 85 (Colo. 1981); People v. Scott, 630 P.2d 615 (Colo. 1981); People v. Macias, 631 P.2d 584 (Colo. 1981); People v. Beland, 631 P.2d 1130 (Colo. 1981); People v. Lucero, 632 P.2d 585 (Colo. 1981); People ex rel. Gallagher v. District Court, 632 P.2d 1009 (Colo. 1981); People v. Christian, 632 P.2d 1031 (Colo. 1981); People v. Quintana, 634 P.2d 413 (Colo. 1981); People v. Hamling, 634 P.2d 1023 (Colo. App. 1981); People v. Noble, 635 P.2d 203 (Colo. 1981); People v. Reynolds, 638 P.2d 43 (Colo. 1981); People v. Lowery, 642 P.2d 515 (Colo. 1982); People v. Mattas, 645 P.2d 254 (Colo. 1982); People v. Williams, 651 P.2d 899 (Colo. 1982); People v. White, 656 P.2d 690 (Colo. 1983); People v. Castro, 657 P.2d 932 (Colo. 1983); People v. Turman, 659 P.2d 1368 (Colo. 1983); People v. Dunoyair, 660 P.2d 890 (Colo. 1983); Corr v. District Court, 661 P.2d 668 (Colo. 1983); People v. Bridges, 662 P.2d 161 (Colo. 1983); People v. Espinoza, 669 P.2d 142 (Colo. App. 1983), aff'd, 712 P.2d 476 (Colo. 1985); People v. Piro, 701 P.2d 878 (Colo. App. 1985); People v. Jenkins, 710 P.2d 1157 (Colo. App. 1985); People v. Lucero, 714 P.2d 498 (Colo. App. 1985); People v. Broga, 750 P.2d 59 (Colo. 1988); People v. Flores, 757 P.2d 159 (Colo. App. 1988); People v. Wilson, 819 P.2d 510 (Colo. App. 1991); Patton v. People, 35 P.3d 124 (Colo. 2001).

Cross References:

For the legislative declaration contained in the 2002 act amending subsection (4), see section 16 of chapter 1 of the supplement to the Session Laws of Colorado 2002, Third Extraordinary Session. For the legislative declaration contained in the 2003 act amending subsections (10)(b)(XII) and (10)(b)(XIII) and enacting subsection (10)(b)(XIV), see section 1 of chapter 360, Session Laws of Colorado 2003. For the legislative declaration contained in the 2003 act amending subsections (13)(a)(II) and (13)(a)(III), see section 1 of chapter 340, Session Laws of Colorado 2003. For the legislative declaration contained in the 2006 act amending subsection (4), see section 1 of chapter 228, Session Laws of Colorado 2006.