

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**REREVISED**

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

LLS NO. 09-0701.04 Michael Dohr

**SENATE BILL 09-286**

**SENATE SPONSORSHIP**

**Morse and Carroll M.**, Bacon, Boyd, Foster, Groff, Heath, Hodge, Hudak, Isgar, Newell, Romer, Shaffer B., Tapia, Tochtrop, Veiga, Williams

**HOUSE SPONSORSHIP**

**Levy and Merrifield**, Ferrandino, Kagan, Miklosi, Pommer, Pace, Benefield, Carroll T., Court, Fischer, Green, Hullinghorst, Judd, Kerr A., Labuda, McFadyen, Middleton, Rice, Ryden, Schafer S., Solano, Todd

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**Senate Committees**  
Judiciary

**House Committees**  
Judiciary

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**A BILL FOR AN ACT**

101      **CONCERNING CRIMINAL LAW, AND, IN CONNECTION THEREWITH,**  
102                    **CHANGING THE PROVISIONS RELATED TO LEGAL**  
103                    **REPRESENTATION OF INDIGENT DEFENDANTS FOR CERTAIN**  
104                    **MISDEMEANOR CASES; CHANGING THE OFFENSE LEVEL OR**  
105                    **SENTENCING OPTIONS FOR SELECT NONVIOLENT OFFENSES,**  
106                    **PROPERTY OFFENSES, AND DRUG OFFENSES; CHANGING THE**  
107                    **PRESUMPTIVE SENTENCING RANGES FOR CERTAIN FELONY**  
108                    **OFFENSES; REPEALING CERTAIN EXTRAORDINARY RISK**  
109                    **SENTENCING PROVISIONS; MAKING CHANGES TO THE HABITUAL**  
110                    **OFFENDER STATUTE; AND ALLOWING FOR CERTAIN SENTENCING**  
111                    **TIME CREDITS FOR CERTAIN OFFENDERS.**

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**Bill Summary**

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

HOUSE  
Am ended 3rd Reading  
May 6, 2009

HOUSE  
Am ended 2nd Reading  
May 4, 2009

SENATE  
Am ended 3rd Reading  
April 30, 2009

SENATE  
Am ended 2nd Reading  
April 29, 2009

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Sections 2-4.** Repeals the requirement that a defendant engage in plea negotiations with the district attorney for certain offenses before state-supported legal representation may be supplied.

**Sections 5-35.** Changes the offense level for certain criminal offenses. For certain offenses, eliminates incarceration as a sentencing option for a first offense. Limits the applicability of the "little" and "big" habitual offender statutes to crimes of violence.

**Sections 36-40.** Changes the presumptive sentencing ranges for felonies committed on or after July 1, 2009.

**Section 41.** Allows the court to grant the defendant a deferred judgment under certain circumstances without district attorney consent.

**Sections 42-43.** Permits the court to waive the prohibition on probation for a defendant with 2 previous felony convictions under certain circumstances.

**Sections 44-52.** Eliminates certain extraordinary risk sentencing provisions.

**Sections 53-56.** Limits the escape and attempt to escape offenses to correctional facilities and jails, and repeals the consecutive sentencing provisions. Creates a new offense for escape from confinement.

**Sections 57-58.** Prohibits the court from imposing a sentence of incarceration for a probation violation unless it is a new crime. Increases the amount of time the court may sentence a defendant to county jail under a probation sentence to 180 days.

**Section 59.** Increases the amount of earned time that may be earned on a monthly basis from 10 days to 12 days. Permits the executive director of the department of corrections to deduct up to 60 days from a nonviolent offender's sentence based on progress made on the criteria in the earned time statute.

**Sections 60-61.** Requires a group or individual seeking to create a new crime or increase the penalty of an existing crime to present its proposal to the Colorado commission on criminal and juvenile justice for its review and recommendation.

Makes conforming amendments.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly

3 finds and declares that:

1           (a) In 2007, it created the Colorado commission on criminal and  
2 juvenile justice, referred to in this section as the "commission", in House  
3 Bill 07-1358;

4           (b) The commission was tasked with enhancing public safety,  
5 ensuring justice, and ensuring protection of the rights of victims through  
6 the cost-effective use of public resources by studying evidence-based,  
7 recidivism reduction initiatives that ensure the cost-effective expenditure  
8 of limited criminal justice funds;

9           (c) Based on that study and consistent with its mission, the  
10 commission developed sixty-six recommendations, including six bills  
11 referred to the general assembly during the 2009 legislative session; and

12           (d) The state of Colorado faces an unprecedented budget crisis  
13 during the coming fiscal year, and it is imperative that the general  
14 assembly consider cost-saving measures in the criminal justice system  
15 during the second regular session of the sixty-seventh general assembly.

16           (2) Therefore, the general assembly determines that it is necessary  
17 to direct the commission to prioritize the study of sentencing reform while  
18 maintaining the public safety.

19           **SECTION 2.** 16-11.3-103, Colorado Revised Statutes, is  
20 amended BY THE ADDITION OF A NEW SUBSECTION to read:

21           **16-11.3-103. Duties of the commission - mission - staffing -**  
22 **repeal.** (2.5) (a) USING EMPIRICAL ANALYSIS AND EVIDENCE-BASED  
23 DATA, THE COMMISSION SHALL STUDY SENTENCES IN COLORADO.

24           (b) IN ADDITION TO ANY OTHER AREAS DEEMED APPROPRIATE BY  
25 THE COMMISSION, THE COMMISSION MAY STUDY THE FOLLOWING AREAS:

26           (I) A STATEWIDE DEPARTMENT OF CORRECTIONS CORRECTIONAL  
27

1 FACILITY MANAGEMENT PLAN AND POTENTIAL DEPARTMENT OF  
2 CORRECTIONS CORRECTIONAL FACILITY BED LIMITATION;

3 (II) SENTENCES RELATED TO THE OFFENSE OF DRIVING UNDER  
4 RESTRAINT DESCRIBED IN SECTION 42-2-138, C.R.S., AND WHETHER TO  
5 CHANGE THOSE SENTENCES;

6 (III) SENTENCES RELATED TO DRUG CRIMES DESCRIBED IN ARTICLE  
7 18 OF TITLE 18, C.R.S., AND WHETHER TO CHANGE THOSE SENTENCES;

8 (IV) WHETHER PAROLE SHOULD BE INCLUDED IN THE SENTENCE OR  
9 OUTSIDE THE SENTENCE; AND

10 (V) ALTERNATIVES TO INCARCERATION FOR NONVIOLENT  
11 FIRST-TIME OFFENDERS; AND

12 (VI) THE CONSEQUENCES AND EFFICACY OF MANDATORY MINIMUM  
13 SENTENCES AND OTHER PROVISIONS THAT LIMIT JUDICIAL DISCRETION IN  
14 THE SENTENCING PROCESS.

15 (c) IN ADDITION, THE COMMISSION MAY STUDY THE IMPACT OF  
16 INCARCERATION ON CRIME RATES.

17 (d) (I) BY NOVEMBER 30, 2009, THE COMMISSION SHALL UPDATE  
18 THE GOVERNOR, THE ATTORNEY GENERAL, THE CHIEF JUSTICE OF THE  
19 SUPREME COURT, THE JUDICIARY COMMITTEES OF THE HOUSE OF  
20 REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, AND  
21 THE EXECUTIVE COMMITTEE OF THE GENERAL ASSEMBLY REGARDING THE  
22 COMMISSION'S FINDINGS, RECOMMENDATIONS, AND PROPOSED PLAN FOR  
23 THE ONGOING STUDY OF SENTENCING REFORM. ADDITIONALLY, BY  
24 FEBRUARY 1, 2010, THE COMMISSION SHALL PROVIDE THE EXECUTIVE  
25 COMMITTEE OF THE GENERAL ASSEMBLY WITH RECOMMENDATIONS  
26 REGARDING WHETHER TO MODIFY ANY SENTENCES OR SENTENCE LAWS.

27 [REDACTED]

1           (II) THIS PARAGRAPH (d) AND PARAGRAPHS (b) AND (c) OF THIS  
2           SUBSECTION (2.5) ARE REPEALED, EFFECTIVE JULY 1, 2010.

3           **SECTION 3. Safety clause.** The general assembly hereby finds,  
4           determines, and declares that this act is necessary for the immediate  
5           preservation of the public peace, health, and safety.