

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 11, 2010
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB10-1338 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

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

5 (d) Repealed.

6 (2.5) (a) THE PROVISIONS OF THIS SUBSECTION (2.5) SHALL APPLY
7 TO ANY PERSON WHOSE APPLICATION FOR PROBATION IS BASED ON A
8 CONVICTION FOR A FELONY, WHICH CONVICTION OCCURRED ON OR AFTER
9 THE EFFECTIVE DATE OF THIS SUBSECTION (2.5).

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

18 (I) FIRST OR SECOND DEGREE MURDER, AS DESCRIBED IN SECTION
19 18-3-102 OR 18-3-103;

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

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

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

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

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

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

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

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

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

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

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

10 (c) FAILURE TO REGISTER AS A SEX OFFENDER, AS DESCRIBED IN
11 SECTION 18-3-412.5, SHALL NOT CONSTITUTE A SEXUAL OFFENSE FOR THE
12 PURPOSES OF SUBPARAGRAPH (V) OF PARAGRAPH (b) OF THIS SUBSECTION
13 (2.5).

14 (4) (a) (I) The restrictions upon eligibility for probation in
15 ~~subsection (2)~~ SUBSECTIONS (2) AND (2.5) of this section may be waived
16 by the sentencing court regarding a particular defendant upon
17 recommendation of the district attorney approved by an order of the
18 sentencing court.

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

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

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