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MEMORANDUM

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August 27, 2002

TO: Interim Committee on Criminal Sentencing

FROM: Carl Jarrett, Principal Analyst, 303-866-4791

SUBJECT: Mandatory Sentence History for Certain Offenses

At the August 20 meeting of the Task Force on Short-term Criminal Sentencing Issues, the Colorado Criminal Defense Bar asked the Task Force to consider legislation to repeal mandatory sentencing provisions for:

- nonviolent habitual offenders;
- offenders who are late in returning to a community corrections facility and subsequently charged with escape; and
- offenses related to violation of bail bond conditions.

In addition, the Defense Bar asked the Task Force to consider legislation to repeal the statutory requirement that any sentence pursuant to a conviction for escape be served consecutively with any sentence the offender was serving at the time of the escape.

The Task Force asked for information on the history of the mandatory sentencing provisions and the consecutive sentence provision. That information follows in Table I.

Table I
**History of Mandatory Sentencing Provisions for Selected Habitual Offender,
 Escape, Attempted Escape, and Violation of Bail Bond Statutes**

C.R.S. Citation	Elements of Offense	Mandatory Sentence	Legislative History	Comments
16-13-101 (1.5)	<i>Punishment for habitual criminals ("little habitual").</i> A person convicted of a class 1, 2, 3, 4, or 5 felony who, within ten years of the date of the commission of the offense, has twice previously been convicted of a felony must be adjudged an habitual criminal.	Three times the maximum of the presumptive range for the class of felony for which the person is convicted.	The mandatory sentencing provision was originally enacted in SB 26 during the 1929 legislative session (L.29, p.310, §2). The maximum sentence was originally three times the maximum; was changed to 25 to 50 years in 1976; and was changed back to three times the maximum in 1993.	The statute does not differentiate between violent and nonviolent prior offenses that make an offender eligible for the habitual criminal sentence.
16-13-101 (2)	<i>Punishment for habitual criminals ("big habitual").</i> A person convicted of a fourth felony, regardless of the felony class, must be adjudged an habitual criminal.	Four times the maximum of the presumptive range for the class of felony for which the person is convicted.	The mandatory sentencing provision was originally enacted in SB 26 during the 1929 legislative session (L.29, p.310, §3). The maximum sentence was originally life and was changed to four times the maximum in 1993.	The statute does not differentiate between violent and nonviolent prior offenses that make an offender eligible for the habitual criminal sentence.
18-8-208 (1)	<i>Escapes.</i> Knowingly escaping while in custody or confinement following a conviction for a class 1 or 2 felony (class 2 felony).	Eight-year mandatory minimum sentence to the DOC.	The escape statute was first enacted in SB 55-70 (L.55, p.284, §1) and included a mandatory sentencing provision, attempted escape provisions, and consecutive sentencing provisions. The current version of the crime of escape was first codified in 1971 (L.71, p.459, §1) without mandatory sentencing provisions, attempt provisions, and with a separate section for consecutive sentence provisions (see 18-8-209 below). A new section with mandatory sentencing provisions was adopted in HB 95-1070 (L.95, p.1255, §16).	Pursuant to Section 18-8-208 (9), all minimum sentences for all crimes of escape are mandatory and adult offenders are ineligible for probation and are ineligible for a suspended sentence.

C.R.S. Citation	Elements of Offense	Mandatory Sentence	Legislative History	Comments
18-8-208 (2)	Escapes. Knowingly escaping while in custody or confinement following a conviction for a class 3, class 4, class 5, or class 6 felony (class 3 felony).	Four-year mandatory minimum sentence to the DOC.	Same as above.	Same as above.
18-8-208.1 (1)	Attempt to escape. Knowingly attempting to escape from custody or confinement following conviction of a felony (class 4 felony).	Mandatory two-year sentence to the DOC.	Attempted escape provisions were first included in the escape statute originally adopted in 1955 (see 18-8-208 (1) above). Attempted escape provisions were taken out of the escape statute and included in the new criminal attempt law adopted in SB 63-36 (L.63, p.331, §27). A separate attempted escape statute, including a mandatory sentence provision, was adopted in HB 76S-1007 (L.76S, p.10, §2).	Pursuant to Section 18-8-208.1 (5), the minimum sentence for attempt to escape is mandatory and adult offenders are ineligible for probation and are ineligible for a suspended sentence.
18-8-209	Consecutive sentences. Any sentence imposed following conviction of an escape offense under section 18-8-208 must run consecutively with any sentence which the offender was serving at the time of the escape (consecutive sentencing provisions for attempted escape are included in the attempted escape statute, see above).	N/A	Consecutive sentence provisions for escape were included in the original escape statute adopted in SB 55-70 (L.55, p.284, §1). A separate consecutive sentences statute was adopted in 1971 (L.71, p.459, §1) and is current law in substantively the same form.	

C.R.S. Citation	Elements of Offense	Mandatory Sentence	Legislative History	Comments
18-8-212 (1)	<p>Violation of bail bond conditions. A person who is released on bail bond of any kind and either before, during, or after release is charged with any felony arising from the conduct for which he was arrested commits a class 6 felony if he knowingly fails to appear for trial or other proceedings in the case in which the bail bond was filed or if he knowingly violates the conditions of the bail bond.</p>	<p>At least one year imprisonment. Such person is not eligible for probation or for a suspended sentence.</p>	<p>The violation of bail bond law with mandatory sentence provisions was adopted in SB 63-001 (L.63, p.590, §1) and created the unclassified misdemeanor offense of failing to appear in court to avoid trial and prosecution for any criminal violation. The provision was re-written in SB 79-363 (L.79, p.663, §3) to create separate offenses for those on bond for felony offenses and those on bond for misdemeanor offenses.</p>	<p>This subsection (1) was a class 5 felony when adopted in 1979 but became a class 6 felony in HB 89-246 (L.89, p.839, §80).</p>
18-8-212 (2)	<p>Violation of bail bond conditions. A person who is released on bail bond of any kind and either before, during, or after release is charged with a misdemeanor arising from the conduct for which he was arrested commits a class 3 misdemeanor if he knowingly fails to appear for trial or other proceedings in the case in which the bail bond was filed or if he knowingly violates the conditions of the bail bond.</p>	<p>At least 6 months imprisonment. Such person is not eligible for probation or for a suspended sentence.</p>	<p>Same as above.</p>	