
Municipal Criminal Sentencing

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Budget and Policy Committee, January 12, 2026



DENVER
OFFICE OF CITY COUNCIL

Historical Overview: Denver Sentencing

Denver's general penalty for most municipal crimes

- **Before 1982:** 90 days/\$300
- **1982** charter amendment 1 (recommended by city council): 180 days/\$999
- **1993:** 365 days/\$999
 - Connected to the "Summer of Violence"
 - Media coverage and crime wave narrative
- **2017:** 300 days/\$999
 - Exception: seven Class 1 offenses at 365 days max
 - Exception: eight Class 2 offenses at 60 days max



Historical Overview: 2021 State sentencing reform

In 2021, the state passed SB21-271, implementing misdemeanor and petty offense **sentencing reforms** and ensuring that sentences were (1) consistent and (2) not overlong throughout state law.

The bill was the work of the **Sentencing Reform Task Force** of the Colorado Commission on Criminal and Juvenile Justice. This bipartisan task force, composed of prosecutors, public defenders, defense attorneys, law enforcement, judges, victim advocates, legislators, and people with lived experience, was acting upon direction from Governor Polis to ensure statewide consistency in sentences.

SB21-271 passed the House with a strong majority and the Senate unanimously, with bipartisan sponsors.

Our Problem Statement Today

After sentencing reform at the state level, the punishment for the same conduct for misdemeanors and petty offense is often **very different** at the state versus municipal level.

People in Denver face jail sentences up to **30x higher** than what is allowed under state law for the same type of misconduct.

Update: The Colorado Supreme Court recently held that municipal sentences which are higher than state sentences for the same conduct **violate the state constitution** and are unconstitutional.

As OMPD will present today, without Council action, applying this rule to our sentencing ordinances will lead to endless litigation, confusion, and additional violations of Denverites' constitutional rights.

Problem Statement cont'd: Collateral consequences of jail time

- 30-day rule: incarceration exceeding 30 days incarceration are grounds to suspend Social Security benefits
- SSDI: Social Security Disability Insurance
- Supplemental Security Income (SSI)
- Medicaid, SNAP
- Loss of housing
- Loss of employment
- Education
- Inability to care for Children: Custody and Visitation Rights –DHS contact
- Immigration/ deportation





Colorado Supreme Court Ruling

*City of
Westminster
v. Camp
&
City of Aurora
v. Simon*

Defendants were charged in municipal court in the cities of Westminster and Aurora with **theft of less than \$300 and trespass** under municipal code (instead of being charged with state offenses).

In state court, all the crimes they were charged with would be petty offenses with a maximum sentence of **10 days in jail** and a **\$300 fine**.

The sentences at the municipal level were much higher.

For example, the sentence for theft of less than \$300 in Westminster was up to **364 days in jail** and a **\$2,650 fine**.

Decided December 22, 2025

Supreme Court Ruling

Higher municipal sentences for identical conduct are preempted by state law: When a municipal ordinance and state statute prohibit the same conduct, state law limits the punishment that can be imposed. State law prohibits cities—like Denver—from imposing harsher punishments for conduct that is also criminal at the state level.

State Interest: The court found state law preempts higher municipal sentences for the same misconduct because the state has an interest in maintaining uniform criminal sentencing across Colorado. Allowing higher municipal sentences for the same conduct impedes this interest.

Impact: Denver’s Municipal Code is unconstitutional to the extent it imposes higher criminal sentences than state law would allow.

Amending Denver's Code

Because of our supreme court's ruling, the Denver Municipal Code needs to be amended to ensure that sentences for criminal conduct do not exceed the sentences allowed for the same conduct under state law.

Until Denver's code is amended, there are legal questions about **whether our city's criminal laws are enforceable** because the sentences for many offenses are unclear.

There is also a risk that **defendants will receive illegal sentences** because municipal court judges might come to conclusions that higher courts later overturn when determining what the maximum sentence is for an offense under the Supreme Court ruling.

Immediate Impacts

Bond advisements: Properly advising the client what the maximum penalties are at the first appearance in a criminal case.

Meeting with and advising client: Explaining the options for resolving a case to clients when the municipal code still lists the old sentences.

Plea advisements and paperwork: Defense lawyer must advise defendant about maximum penalty for a crime, judge must also advise, and the plea paperwork must reflect the appropriate sentencing range. (If it does not and client accepts a sentencing offer in return for pleading guilty, this may be a constitutional violation.)

Open plea: If a defendant wants to plead “open” and let a judge decide the appropriate sentence, defense attorney must advise client about the possible penalties, with no clear guidance.

Case-by-case litigation: Many defendants will appeal sentences. Judges may reach different conclusions that must be resolved by higher courts. Sentences may then be vacated. Defendants will also challenge their sentences collaterally claiming constitutional violations (improper plea advisement, equal protection compared to others, deficient advice from non-OMPD defense attorneys unaware of the implications of the ruling, etc.) Huge expense and uncertainty for years to come.

Example of Plea Paperwork with Sentencing Advisement

<p>DENVER COUNTY AND MUNICIPAL COURT, State of Colorado</p> <p>THE CITY AND COUNTY OF DENVER Plaintiff</p> <p>v. Defendant [REDACTED]</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case Number: [REDACTED]</p> <p>Courtroom: 4E</p>
<p>PROPOSED DISPOSITION</p>	

If Defendant pleads Guilty to: **38-115 ~ TRESPASS** in [REDACTED] **Maximum penalties: 300 days jail and/or \$999 for each charge**

Elements of the Crime of: _____ (Defendant Initial)

38-115 ~ TRESPASS, (a) It is unlawful for any person knowingly to enter or remain upon the premises of another when consent to enter or remain is absent, denied, or withdrawn by the owner, occupant, or person having lawful control thereof.

(b) It shall be prima facie evidence that consent is absent, denied, or withdrawn, to enter or remain upon the premises of another when:

- (1) Any person fails or refuses to remove himself from said premises when requested to leave by the owner, occupant or person having lawful control thereof; or
- (2) Such premises are fenced or otherwise enclosed in a manner designed to exclude intruders; or
- (3) Private property or public property, which is not then open to the public, is posted with signs which give notice that entrance is forbidden.

(c) For purpose of subsection (b)(3):

- (1) A "conspicuous sign" shall mean a sign that is at least one (1) square foot in size and sufficiently lighted to be clear and visible and that is posted in a conspicuous location.
- (2) "Sufficient notice" that entrance is forbidden shall be established when the lettering on a conspicuous sign is at least one (1) inch in height and contains language that is substantially similar to the following: "Private property: Keep out Violators subject to arrest" or "Private property Violators subject to arrest between the hours of _____ and _____."

If Defendant pleads Guilty to: **38-115 ~ TRESPASS** in [REDACTED] **Maximum penalties: 300 days jail and/or \$999 for each charge**

Dismiss: [REDACTED]

Sentence Conditions: Twelve month of court supervised probation, 24 hours of community service, abide by Area Restriction, no new violations of law.

If the Defendant fails to comply with any term of probation, a sentence—up to the maximum possible penalty for each charge of the plea—may be imposed.

Date

Reg. No. [REDACTED]
Assistant City Attorney

Comparable Petty Offense: Trespass

Trespass,
D.R.M.C. § 38-115(a):
"It is unlawful for any person knowingly to enter or remain upon the premises of another when consent to enter or remain is absent, denied, or withdrawn by the owner, occupant, or person having lawful control thereof."

Third-Degree Trespass,
§ 18-4-504, C.R.S.:
"A person commits the crime of third-degree criminal trespass if such person unlawfully enters or remains in or upon premises of another."



Penalty for Trespass under State Law

- Because Denver's trespass ordinance prohibits the **same conduct** as the state third-degree trespass statute, under the new Supreme Court ruling, the state statute sets the maximum penalty that may constitutionally be imposed for trespass charged under Denver's municipal code.
- Denver Municipal Code says the maximum sentence for trespass is 300 days jail and a \$999.00 fine.
- But the maximum penalty for trespass under § 18-4-504, C.R.S., is 10 days jail and a \$300.00 fine.

Comparable Offense: Petty Theft

Petty Theft, D.R.M.C. § 38-51.8:

"(b) A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and:

- (1) Intends to deprive the other person permanently of the use or benefit of the thing of value; or
- (2) Knowingly uses, conceals or abandons the thing of value in such manner as to permanently deprive the person entitled to possession of the thing of value's use or benefit; or
- (3) Uses, conceals or abandons the thing of value intending that such use, concealment or abandonment will permanently deprive the person entitled to possession of the thing of value's use and benefit; or
- (4) Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the person entitled to possession...."

Theft, § 18-4-401, C.R.S.:

"(1) A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception...and:

- (a) Intends to deprive the other person permanently of the use or benefit of the thing of value;
- (b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit
- (c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use or benefit; [or]
- (d) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person;...."



Penalty for Petty Theft under State Law

- Because Denver's petty theft ordinance prohibits the **same conduct** as the state theft statute, the state theft statute sets the maximum penalties that may constitutionally be imposed for petty theft charged under Denver's municipal code.
- Denver Municipal Code says the maximum sentence for petty theft of any amount of property is 300 days jail and a \$999.00 fine.
- But the maximum penalties set by state code under § 18-4-401, C.R.S. are:
 - Petty theft of less than \$300: 10 days jail and a \$300.00 fine
 - Petty theft of \$300 to \$1000: 120 days jail and a \$750.00 fine

Comparable offence: Shoplifting.

Shoplifting,

D.R.M.C. § 38-51.5

"It shall be unlawful for any person to take or conceal or exercise control over any goods, wares or merchandise (property) of another which is displayed or in any other manner offered for sale and which has an aggregate value of less than one thousand dollars (\$1,000.00), when the person intends to avoid payment for the merchandise or knowingly deprives the person entitled to possession of the property of the use and benefit of the property."

Theft, § 18-4-401, C.R.S.:

"(1) A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception...and:

(a) Intends to deprive the other person permanently of the use or benefit of the thing of value;

[or]

(b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit...."



Shoplifting ordinance uses different language but prohibits same conduct as state theft statute.

The language in the municipal shoplifting and state theft laws is not identical, but it does not have to be. The Court explained that what matters is that the state and municipal laws prohibit the same kind of **conduct**. If they do, the municipal ordinance is preempted by state law to the extent the municipal sentence exceeds the state sentence for a crime.

Indeed, the state theft statute specifically states that shoplifting is a covered form of theft:

Section 18-4-403: "If any law of this state refers to or mentions larceny, stealing, embezzlement (except embezzlement of public moneys), false pretenses, confidence games, or shoplifting, that law shall be interpreted as if the word "theft" were substituted therefor; and in the enactment of sections 18-4-401 to 18-4-403 it is the intent of the general assembly to define one crime of theft and to incorporate therein such crimes, thereby removing distinctions and technicalities which previously existed in the pleading and proof of such crimes."

(This statute replaced a specific state "shoplifting" statute back in 1971. So, there is no question the state theft statute includes shoplifting as a specific form of conduct.)

Based on this statutory language, courts are likely to find that the state theft statute also limits the penalties for shoplifting under Denver's municipal code.

Comparable offense: Park Curfew Violations encompassed within State Trespass

Curfews and Closure,
D.R.M.C. § 39-3:

"It shall be unlawful for any person, other than authorized personnel, to go upon or remain in any park, parkway median, mountain park or other recreational facility, or any area or part of the same, at any time when the same is declared to be closed to the public by the manager."

Third-Degree Trespass,
§ 18-4-504, C.R.S.:

"A person commits the crime of third-degree criminal trespass if such person unlawfully enters or remains in or upon premises of another."



Higher sentences are still available for serious offenses.

City Council may wish to amend some ordinances to match state offenses with *longer* sentences to ensure those sentences are also available in municipal court. City ordinances tend to be written more broadly than state criminal laws. These ordinances could be rewritten to separate more-serious and less-serious conduct or to add language making it clear that they are aligned with a more serious offense under state law.

Example: Assault. As discussed in the state legislature last spring, Denver could amend its assault ordinance, D.R.M.C. § 39-93, to match the state third-degree assault statute, § 18-3-204. This would guarantee that the City has authority to sentence people convicted of assault to the current municipal maximum of 300 days jail and a \$999.00 fine. This is because third-degree assault under state law is a class 1 misdemeanor with a maximum sentence of up to 364 days in jail and a \$1,000 fine.

To align our assault ordinance with state law, the City just needs to add a requirement that the victim suffer an injury or experience some kind of pain. Without this element, courts may hold that our current assault ordinance instead aligns with state laws carrying lower maximum sentences.

The City still has authority to prosecute and punish people for domestic violence crimes, including assault, to the full extent allowed by state law. The City can still order supervised domestic violence probation with treatment and classes and impose jail sentences that are as long as those allowed under state law.

Sponsors' Proposed Solution

- Revise DRMC to match sentences to the maximum sentences for comparable state offenses (so that what our code says matches what the state constitution requires, and sentences do not have to be litigated case by case).
- For reasons of fairness, cap sentence for all offenses in the municipal code that *do not have* a comparable state offense at the level allowed for petty offenses under state law (up to 10 days jail and a \$300.00 fine).
- Revise the language of certain offenses (e.g., assault) to align the prohibited conduct with a more stringent state law and retain the ability to impose a higher sentence.

Stakeholding to date

- Office of Municipal Public Defenders
- City Attorney's Office – Prosecution and Code Enforcement (August 2024 first meeting)
- Municipal Judges and Magistrates
- CO State Rep. Mabrey, State Sen. Weissman
- 1147 Coalition led by Colorado Freedom Fund
- Colorado Criminal Justice Reform Coalition
- Mayor council discussion (Feb 2025)
- Budget and Policy presentation (June 2025)
- Department of Public Safety (July 2025)
- Mayor's Office (July 2025)
- Denver District Attorney (October 2025)
- City Council (briefings offered, many completed)

Questions?