

**Kristen Hilkey, Chairperson**

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Michelle Geng  
Jason Guidry, MA, LPC  
Daric R. Harvey  
Dr. Brandon Mathews  
Joe M. Morales  
Dr. Davis Talley

**Colorado State Board of Parole**

1600 W. 24<sup>th</sup> St., Bldg 54  
Pueblo, CO 81003  
(719) 583-5800

## **MEMORANDUM**

**DATE:** September 13, 2021  
**TO:** Sentencing Reform Task Force – Sentence Structure Working Group (WG)  
**FROM:** Kristen Hilkey, Chairperson, Colorado State Board of Parole  
**RE:** Response to WG's Inquiry re: the Parole Board's Perspective on Sentencing Structure

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On August 24, 2021, several Parole Board members joined the Sentencing Structure WG meeting. During the meeting, WG members engaged members of the Parole Board and a healthy discussion occurred around sentence structure and the current work being done by the WG. Co-Leader Michael Dougherty requested the Parole Board's thoughts around sentence structure and requested further information.

In response to this request, the Parole Board collected the following thoughts around sentence structure in Colorado. Here are our collective thoughts:

The challenge the criminal justice system continually faces is that punishment and rehabilitation are not always congruent. While placing someone in prison may be warranted to effect a punishment that is justified by the crime, many factors about prison can place a person at higher risk to commit another crime than before they were sent to prison. Providing justice by incarceration for the current victim, unfortunately, may make it more likely there will be future victims. This paradox often creates a pendulum that slowly swings back and forth favoring either goal over time, and/or creates a system made up of a hodgepodge of different components. Each of these components have their own philosophy for what want to try to accomplish; however, there are ways to balance out this incongruence and create an integrated system with clearly defined philosophies for each component.

The criminal justice system must balance the ideas of justice and punishment with the necessary goal of rehabilitating and reducing the risk to reoffend in order to reduce the likelihood of future offending and potentially future victims. Research has continually shown us that a solid understanding of behaviorism is key to reducing risk to recidivate, long-term. The effective principles of behavior change should be at the foundation of the rehabilitative process when designing any criminal justice system. For example, there are eight (8) guiding principles that the NIC (National Institute of Corrections (NIC)) have identified for effectively reducing recidivism through a meta-analysis of research. These principles primarily revolve around the behavior change process, such as identifying needs through assessment, matching to appropriate treatment/programming to the needs (especially cognitive restructuring interventions that rely heavily on building new skills), practicing new skills learned in programming and getting feedback on those skills, building motivation to engage in programming, and building engagement with pro-social supports who can reinforce the new skills and behaviors.

Colorado's current sentencing structure is complicated to say the least. Most of the complication comes from a variety of competing philosophies and initiatives that have been pieced together through the years. Eliminating many of these pieces would make things simpler for victims and offenders alike to understand the structure. With this however, is a complex balance between obtaining justice for the victim(s), while also preventing future victims. As complex of a problem this may be, it is our belief it does not have to be that complex of a solution. What is needed is an integrated model that ties these seemingly different pieces together, rather than simply eliminating some of them in favor of one philosophy over another. The best way to reduce the likelihood of future victims is to unite the overarching philosophy around being a catalyst for long-term behavior change.

For example, clearly structuring the sentence into different phases, with defined different priorities, would create clarity around the sentence. The first phase is often the primarily thought of as the "punishment phase." This phase outlines a portion of time a person will serve no matter what. The primary goal of this phase is incapacitation and retribution for the harm caused to the victims and or community. Ideally, for long-term behavior change, programming would be offered and matched to criminogenic need areas during this phase as a secondary goal, with mechanisms in place to incentivize participation in programming.

After the "punishment phase" is complete, the primary goal should shift from primarily incapacitation to ensuring rehabilitation (i.e. long-term behavior change), the "rehabilitation phase." During the rehabilitation phase, a determination of how and where to best address the needs that are driving the risk to reoffend. Essentially, determining if the needs can be addressed in the community, or if continued incapacitation is needed to address the needs because the risk to reoffend is too high. Cognitive Behavioral Therapy (CBT) in community corrections programs has been shown to reduce recidivism and should be utilized as a tool to aid in the successful reintegration after incarceration<sup>[1]</sup>.

Shifting from the "punishment phase" to the "rehabilitation phase" is the area in which Colorado has one of the most complicated and unclear systems. When someone becomes eligible for parole vs. eligible for community corrections vs. eligible for ISP-I is very convoluted, and not at all congruent. It's currently based on complex calculations of a variety of different earned time buckets that can be granted, the type of crime and a variety of other factors, many of which are not evidence-based. It also creates a very fuzzy line for determining when the system has shifted to primarily focusing on rehabilitation. The concept of earned time, community correction referrals and discretionary parole are all good concepts when designing a system around change; unfortunately none of these factors are integrated, currently. They are all separate concepts used for different purposes at different times. Additional factors, such as ongoing community referrals based solely on time, mandatory parole hearings, good time on parole and early parole discharge add to the confusion and incongruence.

<sup>[1]</sup> Harbinson, E., Laskorunsky, J.. & Mitchell, K. (2020) *Using Cognitive Behavioral Therapy in Community Supervision*.

[https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/core\\_correctional\\_practices.pdf](https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/core_correctional_practices.pdf)

A releasing authority, such as a parole board, can be utilized as an effective catalyst for the behavior change process and for aligning system goals. Research is clear that offenders who are released on discretionary parole have better outcomes than those who are released on a mandatory release date. The use of discretionary parole can be most effective in the change process if the release decisions are based on releasing individuals who are actively engaged in the change process, have been appropriately matched to interventions that addressed assessed need areas and have actively worked on a transition plan that will address future needs. The best practice for releasing authorities is to create structured decision making tools that are focused on these concepts. The Colorado Board of Parole uses a tool in exactly this way. Individuals that have not had their needs addressed appropriately, and still pose too great of a risk to the community, may have their incarceration time continued; however, the primary goal in this "rehabilitation phase" is to leverage the change process. Inmates must be given clear guidance and feedback as to their need areas and how to address them if they are not released in this phase.

Example of an integrated model:

*(Please note, this is a simplified example in which all of these concepts could be integrated, in lieu of being simply eliminated.)*

1. Discretionary parole period would be **INSIDE** the sentence. *(Do not have two separate sentences to complicate things)*
  - a. Inmates have one sentence with a defined parole eligibility date (PED) and mandatory release date (MRD). The parole period is the amount of time left to MRD after granting a release after PED.
  - b. Early parole discharge can still be earned (addressed below)
2. The period that must be served before being eligible for parole is **CLEARLY** defined.
  - a. This would be the parole eligibility date (PED).
  - b. This would not be based on a complex set of factors.
  - c. This period is clearly defined as the incapacitation period for victims, i.e. the punishment for the crime.
  - d. Incentivize DOC to use this time to prepare for the next phase of the sentence which is rehabilitation (behavior change) and reintegration.
3. Earned time would only be granted for very specific behavior targeted around completing programs that are effective at reducing risk and would be matched to identified criminogenic needs.
  - a. Earned time could be given specific to reducing only MRD, only PED, or both.
  - b. For earned time to be effective at behavior change it must be tied to specific desired behaviors. Granting earned time to everyone for generally good behavior is not effective for overall behavior change.
4. Once an individual reaches their PED, they would be reviewed by a releasing authority, i.e. parole board.
  - a. A clear delineation must be made here for victims, inmates, and the community, that the goal is now primarily rehabilitation and the punishment phase is complete.
  - b. The time between PED and MRD is used by the system to leverage the change process.
  - c. The releasing authority can make an initial determination about the best way to have this person's needs met based on risk and readiness, such as:
    - i. continued incarceration with identified treatment goals; or
    - ii. referral to community corrections (matching this type of program to specific needs, rather than having every inmate referred indiscriminately.); or
    - iii. parole to the community with conditions to address needs (parole period is time left to MRD).

5. Time left to MRD is used to determine where and how to best to have criminogenic needs addressed (rehabilitation period).
  - a. For example, while on parole an inmate;
    - i. can be referred to community based treatment; or
    - ii. can be revoked back to prison for a period of time; or
    - iii. can be referred into community corrections specialty treatment programs; or
    - iv. can be reviewed for early discharge.
  - b. All decisions would be in alignment with the long-term goal of behavior change, not simply incapacitation, unless the risk is too high and there is not a willingness to engage with programming.
  - c. The individual maintains the “inmate” status until reaching their MRD. Eliminating the need for separate parole and inmate status.
6. Structure parole around effective community supervision strategies which are focused on behavior change.
  - a. Community supervision models based on surveillance have been proven to be ineffective and in fact often increase risk to reoffend.
  - b. Community supervision practice models that have been proven to be effective (i.e. STICS, STARR, EPICS) are case management models based on officers having skills such as:
    - i. Assessing needs, prioritizing, matching services to needs (broker services effectively)
    - ii. Effectively balancing dual roles of support and accountability
    - iii. Ability to skill train around cognitive skills
    - iv. Have skills for building engagement and motivation with supervision and treatment
    - v. Know the proper use of effective disapproval
    - vi. Have in depth knowledge of the change process (and what disrupts change process)
    - vii. Are able to build community support around individuals
  - c. Implement a practice model in parole to a level of fidelity would take a concerted effort over time and dedicated implementation resources.
7. Utilize an early parole discharge model based on the effective reduction of risk.
  - a. If an individual can demonstrate they have completed appropriate programming and reduced their overall risk (rehabilitation), then they can apply to have their sentence discharged.

Example of a sentence in this integrated model:

- 10 year non-violent sentence has a PED set at 4 years.
  - 4 years of a guaranteed incarceration period
  - 6 years of rehabilitation period, focused on creating a reduction in risk.
- Rehabilitation period could include more incarceration in the form of not being granted parole, revocations, etc.; however, the goal is to leverage behavior change, and if the inmate can demonstrate that change in the community, they can potentially have their rehabilitation sentence period discharged early.
- Failure to engage in the change process could result in them serving the full 10 years while incarcerated.

**This model has 2 clear phases.**

1. First, to provide a period of punishment and some amount of justice to a victim.
2. Secondly, the system will strive to reduce future victims by integrating rehabilitation into the reentry process to reduce recidivism.

Behavior change can be long and hard process, but systems that are designed around these principles have made great strides in reducing recidivism, helping those who commit crimes reintegrate and reach their full potential in life, and have created safer communities.

## Revocation Hearing Outcomes\* \*\*

Continued on parole (not revoked)	785	40.4%
Parole Revoked	1,158	59.6%
Total	1,943	100.0%

### Reason for revocation

Revocation for new felony charge(s)	294	25.4%
Revocation for felony and misdemeanor charge(s)	74	6.4%
Revocation for new misdemeanor charge(s)	481	41.5%
Revocation for traffic/Petty offense(s)	5	0.4%
Revocation for Absconding	121	10.4%
Technical Violation only	183	15.8%
Total	1,158	100.0%

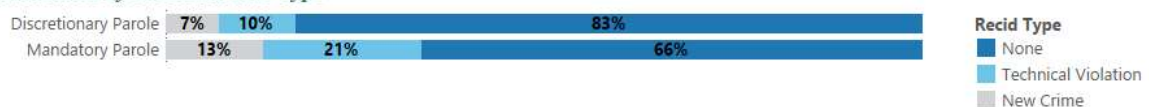
\*Includes only finalized Parole Board Revocation Hearing outcomes completed from November 10, 2020 through August 31, 2021.

\*\*Does not include hearing continuance hearings or self-revocation request decisions.

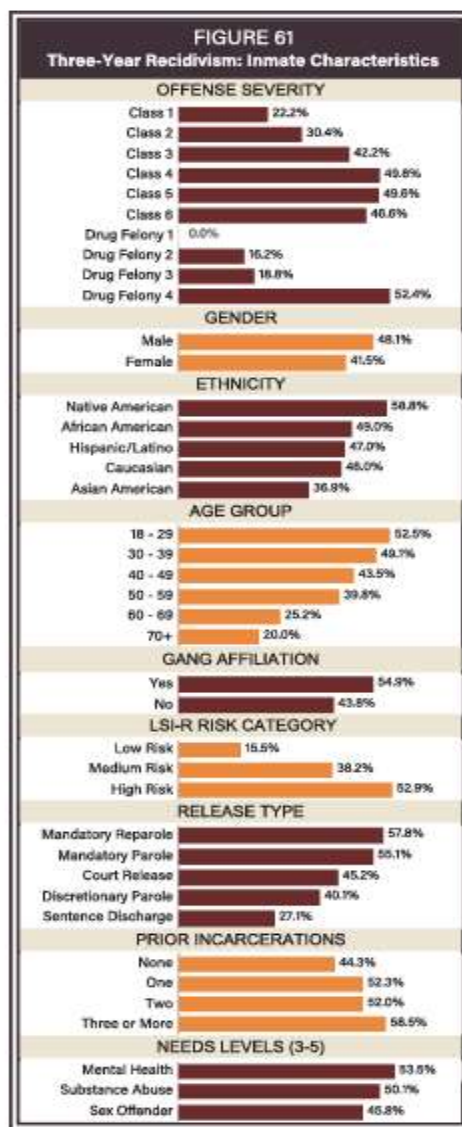
Revocation statutes and practices have changed drastically over the years in Colorado. The current statutes and policies of the Parole Board foster an environment that allows for the successful integrated re-entry into the community after incarceration. There are still steps the system and individual agencies can make to allow for the rehabilitation process to be at the forefront of all decisions and processes in the parole process. The Parole Board's current practice is to confirm decisions to revoke an individual's parole for new criminal convictions and serious infractions after all interventions have been exhausted by the Division of Adult Parole.

Releasing authorities, such as the Parole Board, can be utilized to create a reduction in recidivism, as well as foster better outcomes from release decisions. In Colorado, individuals who are released discretionarily by the board return to prison at a lower rate than those who are released at the mandatory release date.

### 1-Year Return Rates by Parole Release Type



Recidivism rates vary by inmate characteristics (Figure 61). The most stand out characteristics include: having a Drug Felony 4 conviction, being younger than age 40, having gang affiliation, having a high LSI-R Risk score, having been mandatory paroled or re-paroled, and having one or more past incarcerations. While Native American ethnicity showed a distinctively high rate, this is based on a relatively small subgroup and can't be assumed to be a generalizable characteristic. Although rates were not distinctively elevated, certain moderate-to-high needs areas, including mental health, substance use, and sex offender, may figure into any inmate's risk for recidivating.



\*Values may not total 100% due to rounding.

\*Source: CDOC FY19 Annual Statistical Report

A 2017 study published in the journal *Corrections: Policy, Practice and Research* found statistically significant differences in rearrest rates between individuals released mandatorily and discretionarily: **“The results demonstrated that offenders released by discretionary parole release had a 31 percent lower hazard of re-arrest than mandatory release offenders.”**[2]

[2] Marble, D. (2017). The impact of discretionary release on offender recidivism using survival analysis. *Corrections: Policy, Practice and Research*, 1-14.

The length of parole terms also has an influence on both prison populations as well as the success of individuals in the community. Individuals who fail community supervision typically do so within the first 12 months on parole. Designing parole terms, conditions and support services to strengthen rehabilitation after incarceration is only the first step in successful reentry and lowering recidivism. The length of parole terms should be tailored to foster rehabilitation and should be shortened in consideration of the goal of this portion of the sentence.

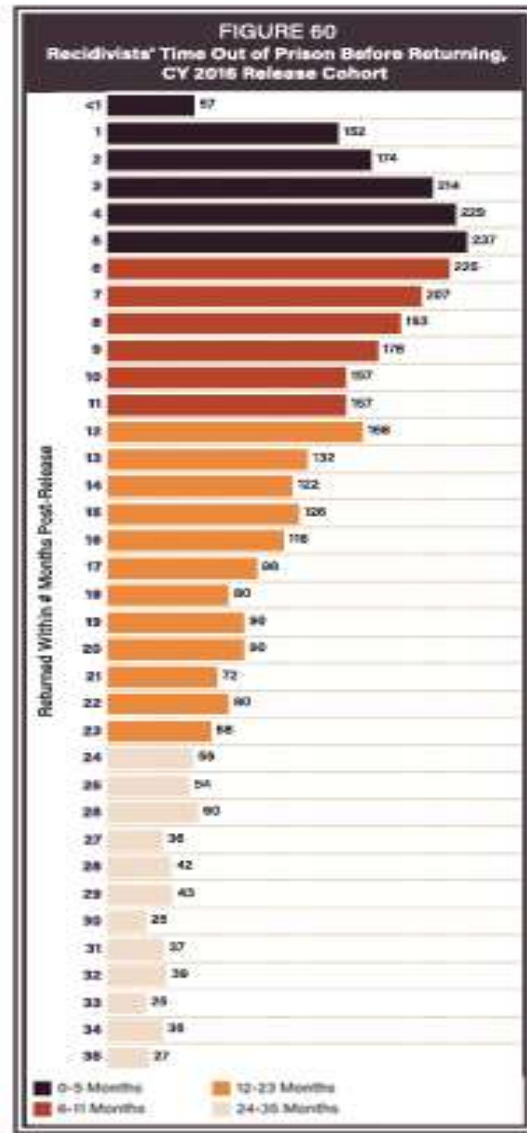
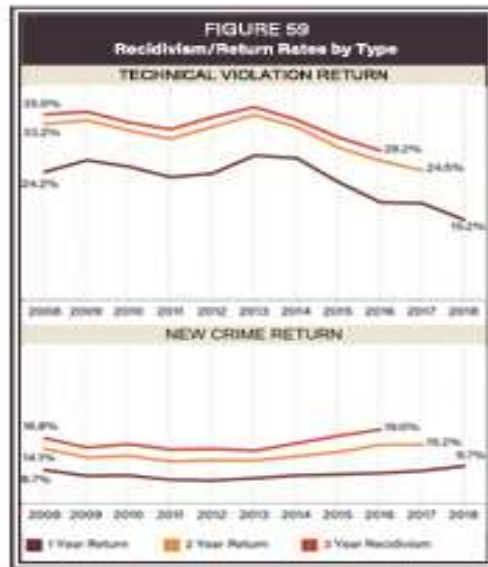


Figure 60 illustrates the 2016 release cohort, detailing the amount of time it took an inmate to return to inmate status. The largest proportion of inmates failed within the first year (26.4%) compared to other post-release spans of time. Within this first year, 12.9% of inmates returned within 5 months, while a larger portion (13.5%) returned 6-11 months post release. This pattern is different than previous years where inmates were at the highest risk to return within their first six-months post-release. Between one and two years post-release, an additional 15.0% returned; followed by 5.8% between two and three years post-release. A total of 52.8% of inmates did not return within three years.

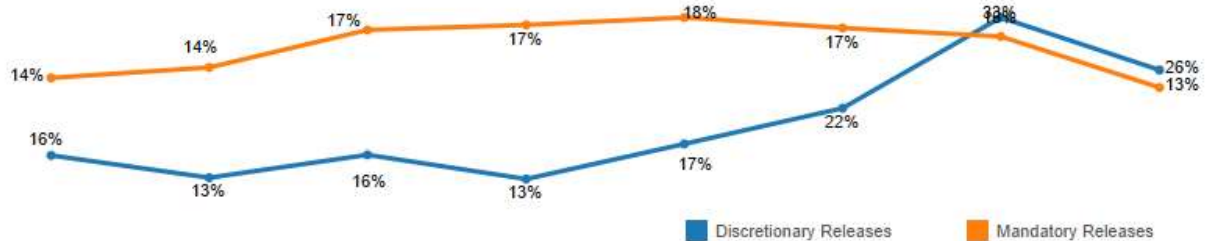
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\*Source: CDOC FY19 Annual Statistical Report



CDOC's prison population has changed over the years as a result of sentencing practices, release practices and statutory changes.

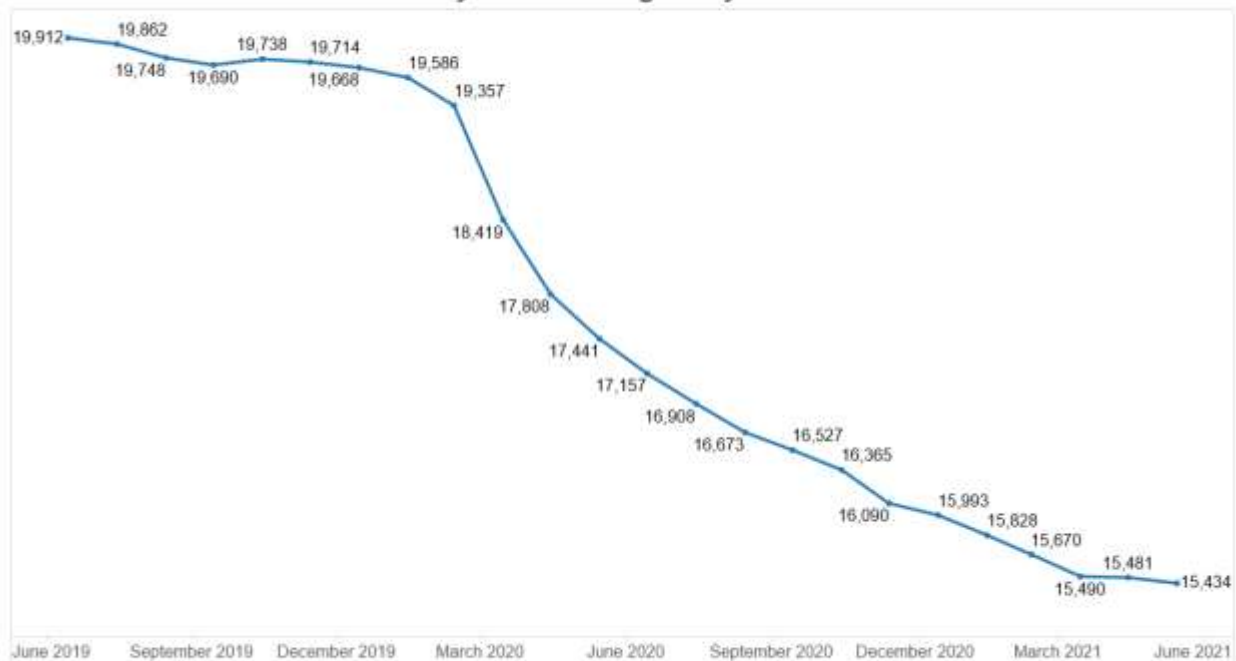
Percentage of the CDOC prison population (as of the end of each FY) with Discretionary and Mandatory Releases



Prison Population by Fiscal Year (population as of June 30 of each corresponding year)

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
20,522	20,623	19,619	20,101	20,137	19,951	17,441	15,434

CDOC Total Inmate Jurisdictional Population  
July 2019 through July 2021\*



\*Source: Colorado Department of Corrections (CDOC) Monthly Population and Capacity Reports  
(<https://www.colorado.gov/pacific/cdoc/departamental-reports-and-statistics>)

\*\*Vacancy Rates include RTP beds.