

COMPREHENSIVE SENTENCING TASK FORCE

Presented to the Colorado Commission on Criminal and Juvenile Justice

November 8, 2013

FY14-CS #2 Retroactively provide earned time credit to certain individuals sentenced under the habitual criminal statute

Recommendation FY14-CS #2:

Retroactively expand the availability of earned time credit to individuals sentenced under the “big” provision of the habitual criminal statute for crimes occurring between July 1, 1985, and June 30, 1993. Therefore, amend section 17-22.5-104. (Proposed statutory language is below.)

Discussion:

The goals of this recommendation are basic fairness, providing behavioral incentives to inmates, and cost savings. The Department of Corrections currently houses a small group of individuals convicted under the “big” provision of the habitual criminal statute who are ineligible for parole until they have served forty calendar years. Individuals convicted under that provision today, in contrast, are eligible to receive earned time toward parole eligibility if their crime was committed after July 1, 1993.

The recommendation’s June 30, 1993, date is the product of changes in the habitual criminal statute, section 18-1.3-801. A prior version of that statute’s “big” provision required persons convicted of a felony, after three prior felony convictions, to receive a sentence to “his or her natural life.” The statute was amended effective July 1, 1993, to require a sentence of four times the maximum of the presumptive range for the felony of conviction. Ch. 322, sec. 1, § 16-13-101, 1993 Colo. Sess. Laws 1975-76. People who commit a felony after July 1, 1993, and are sentenced under “big” provision, are eligible for parole in accordance with parole eligibility statute. See §§ 17-22.5-104(2)(d)(II); 17-22.5-403; 18-1.3-801(2), C.R.S. 2012.

The recommendation’s July 1, 1985, date is a product of changes in the parole regulations statute, section 17-22.5-104. When that statute was repealed and reenacted in 1984, it provided that “[n]o inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, shall be paroled until he has served at least twenty calendar years” Ch. 126, sec. 1, § 17-22.5-104, 1984 Colo. Sess. Laws 518. The parole eligibility cutoff was then extended to forty years for crimes committed after July 1, 1985. Ch. 145, sec. 3, § 17-22.5-104, 1985 Colo. Sess. Laws 648. In 1991, the forty year cutoff was limited to people convicted under the “big” provision of the habitual criminal statute and class 1 felonies. Ch. 73, sec. 4, § 17-22.5-104, 1991 Colo. Sess. Laws 404. The cutoff for the “big” provision was removed altogether for crimes committed after July 1, 1993. Ch. 322, sec. 3, § 17-22.5-104, 1993 Colo. Sess. Laws 1978. For present-day offenses, a forty year to parole eligibility limitation exists only as to convictions under section 18-1.3-801(2.5) (conviction of crime of violence following prior habitual criminal sentencing), section 18-1.3-801(1) (three times convicted of a class 1 or 2 felony, or a class 3 felony crime of violence), and juveniles convicted of class 1 felonies after direct filing. See § 17-22.5-104(2)(d), C.R.S. 2012.

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The Task Force recognizes that victims should be notified of changes to the projected date that an offender will become eligible for parole. The Department of Corrections will determine whether the victims of affected offenders have requested notification of any critical stages of the criminal proceedings pursuant to section 24-4.1-302.5, C.R.S. 2012.¹ Those who have will be notified of the offenders' recalculated parole eligibility date. If a victim has not requested notification, the Department of Corrections shall notify the district attorney in the jurisdiction of conviction. The district attorney will make all reasonable efforts to notify the victim of his or her rights pursuant to 24-4.1-302.5, C.R.S. 2012. Because it is estimated that the parole eligibility dates of only 76 offenders will be affected, the Task Force believes this notification process will not be overly burdensome and can be accomplished without a statutory mandate.

Proposed Statutory Language

The Comprehensive Sentencing Task Force recommends amending section 17-22.5-104 as follows:

(c) (I) No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(II) THIS PARAGRAPH (C) SHALL NOT APPLY TO ANY INMATE SENTENCED PURSUANT TO SECTION 16-13-101(2), C.R.S., AS IT EXISTED PRIOR TO JULY 1, 1993, FOR ANY CRIME COMMITTED ON OR AFTER JULY 1, 1985, AND ANY SUCH INMATE SHALL BE ELIGIBLE FOR PAROLE AFTER THE INMATE HAS SERVED FORTY CALENDAR YEARS LESS ANY TIME AUTHORIZED PURSUANT TO SECTION 17-22.5-403.

(d)(I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. ~~No inmate imprisoned under a life sentence pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.~~

¹ "If a victim contacts a criminal justice agency regarding a crime that occurred before 1993, and the offender who committed the crime is currently serving a sentence for the crime, the victim may request notification of any future critical stages of the criminal proceedings. In addition, if an arrest is made for a crime committed before 1993 that was previously unsolved, the victim of the crime may request notification of all future critical stages from the appropriate criminal justice agency. This provision does not require a criminal justice agency to proactively locate victims of crimes that occurred before 1993." § 24-4.1-302.5(4), C.R.S. 2012.

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Habitual Criminals Incarcerated Under Pre-1993 Law

There are 104² offenders incarcerated in the Department of Corrections (DOC) under the pre-1993 Habitual Offender law as of June 30, 2012. Of those, 28 offenders were released on parole but returned due to a technical violation or a new crime. The remaining 76 offenders have never been paroled since their Habitual Offender conviction. Tables 1 to 4 describe the characteristics of these 76 offenders. Table 5 shows the potential earned time estimated by DOC that offenders could have received had they been entitled to under current law. The potential earned time estimation excludes time lost for COPD violations and time spent in administrative segregation. Other factors can deduct from earned time: the offender is not program compliant; group living compliant; or work and/or training compliant. These factors would require a manual file search and were not included in DOC's estimation. In the same June 30, 2012, population, 512 offenders with a habitual enhanced sentence were eligible to be awarded earned time. Overall these habitual offenders earned 89% of the awarded days.

Table 1. Age of offenders, June 30, 2012

Age	%	N
40-49	11%	8
50-59	55%	42
60-69	24%	18
70+	11%	8
Total	100%	76

Data Source: Department of Corrections

Table 2. Race/ethnicity of offenders

Race/Ethnicity	%	N
Black	36%	27
Hispanic	25%	19
Native American	1%	1
White	38%	29
Total	100%	76

Data Source: Department of Corrections

Table 3. Felony class of most serious crime

Felony Class	%	N
1	5%	4
2	29%	22
3	41%	31
4	20%	15
5	4%	3
6	1%	1
Total	100%	76

Data Source: Department of Corrections

Table 4. Most serious crime

Crime	N
Agg Robbery	19
Assault	6
Burglary	6
Child Abuse	1
Contraband	1
Controlled Substance	2
Kidnapping	9
Manslaughter	2
Menacing	1
Miscellaneous	1
Murder	13
Sexual Assault	8
Sexual Assault/Child	5
Weapons/Explosives	2
Total	76

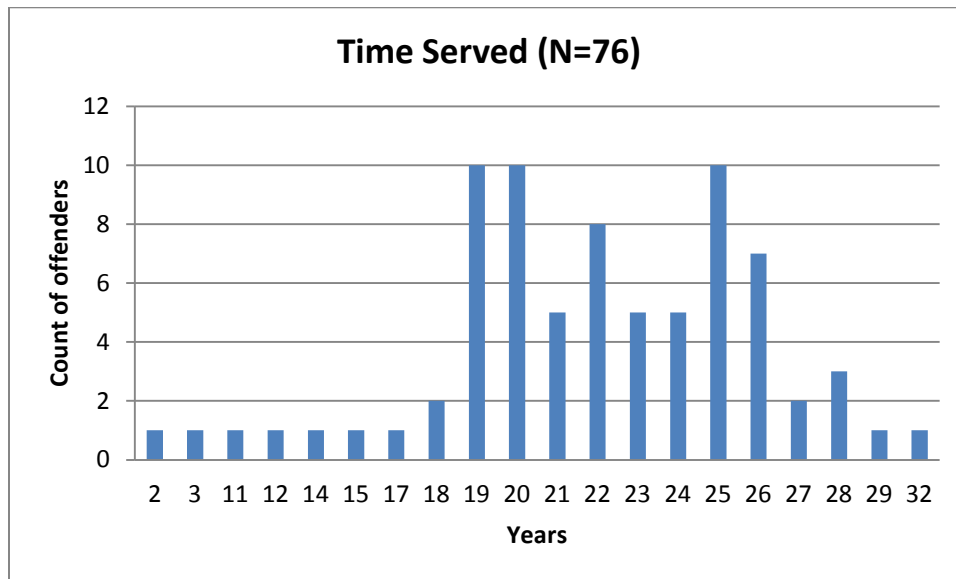
Data Source: Department of Corrections

² The original count of 109 included 5 offenders whose conviction offense occurred after 1993.

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Data Source: Department of Corrections

Table 5. Estimated potential earned time for offenders by time served.

Years Served	N	Estimated Potential Earned Time (Years)										Total	
		0	1	2	3	4	5	6	7	8	9		
2	1		100%										100%
3	1		100%										100%
11	1		100%										100%
12	1					100%							100%
14	1						100%						100%
15	1						100%						100%
17	1					100%							100%
18	2							100%					100%
19	10				10%	20%	10%	60%					100%
20	10	20%	10%			10%		40%	20%				100%
21	5			20%		20%		20%	40%				100%
22	8							25%	75%				100%
23	5						20%		80%				100%
24	5							20%	40%	40%			100%
25	10				20%	20%			40%	20%			100%
26	7	14%		14%				14%	14%	43%			100%
27	2	50%								50%			100%
28	3									100%			100%
29	1								100%				100%
32	1										100%		100%
Total	76	3%	5%	3%	4%	11%	5%	22%	29%	14%	1%	100%	100%

Data Source: Department of Corrections