



FY2010 RECOMMENDATION/FY10-S03 PROBATION ELIGIBILITY RECOMMENDATION

Status: Implementation Complete

Actions/Updates

2012 ACTION/IMPLEMENTATION

This recommendation was implemented with the passage of House Bill 2010-1338.

Description

Modify C.R.S. 18-1.3-201(2)(a) to allow for probation eligibility for those who have multiple prior felony convictions. Offenders with two or more prior felony convictions, one or more of which is for a crime of violence as defined in 18-1.3-406 or where one of the two or more prior felonies or the present felony was a conviction for manslaughter, 2nd degree burglary, robbery, theft from a person, or a felony offense committed against a child would be ineligible for probation without a recommendation of waiver by the district attorney. Repeal 18-1.3-201(2)(b) and 18-1.3-201(4)(a)(II).

Agencies Responsible

Discussion

Proponents of evidence-based sentencing practices state that judges should use their discretion to consider individual circumstances that are known to affect recidivism, including employment, age, substance abuse and drug treatment history and other risk factors. Modification to the probation eligibility criteria expands judicial discretion, and the use of probation sentences encourages offenders to maintain or obtain employment and allows offenders to maintain family relationships. Research on recidivism reduction unequivocally concludes that work and family are the most important factors in the criminal desistance process. Substance abuse treatment and other services are more readily available in the community compared to prison.

Further, this recommendation requires that the statutory language regarding probation eligibility be simplified, clarified and include the following:

- *Require that prior felonies be separately brought and tried.*
- *Crimes that are currently felonies but which were not felonies at the time of commission of the offense will not count as a past felony.*
- *Disallow prior felonies when that offense is based on a crime in another state for an act that is not a felony in Colorado.*