



Colorado Commission on Criminal and Juvenile Justice

Findings, Recommendations, and Proposed Plan for the Ongoing Study of Sentencing Reform

*Report to the Governor, the Attorney General, the Chief Justice of the State
Supreme Court, the Judiciary Committees of the House of Representatives and
Senate, and the Executive Committee of the General Assembly,
pursuant to C.R.S. 16-11.3-103 (2.5)(d)(I).*

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November 2009

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Colorado Commission on Criminal & Juvenile Justice

November 2009

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This report, from the Colorado Commission on Criminal and Juvenile Justice to the Governor, the Attorney General, the Chief Justice, members of the House and Senate Judiciary Committees, and members of the Executive Committee of the General Assembly, has been prepared pursuant to C.R.S. 16-11.3-103 (2.5)(d)(I). It describes the Commission's work regarding sentencing reform, presents recommendations for modifications to certain sentencing statutes, and provides our proposed plan for the study of sentencing.

Members of the Commission, its task forces, committees and working groups have once again devoted countless hours discussing and analyzing potential improvements to the state's criminal justice system. Our focus on sentencing, like our previous work, has been guided by our commitment to public safety, reduced victimization, and the cost-effective use of limited resources. When available, the Commission has incorporated research into the decision making process. The scientific evidence concludes that recidivism reduction is best accomplished by using empirically-based risk and needs assessment for each offender, and targeting resources to the highest risk individuals. The research tells us that, for appropriate offenders, behavioral health treatment, delivered in a system designed to provide a continuum of care and based explicitly on the service need level of the offender, is most effective. This information has been a useful component of the discussions surrounding the state's sentencing policies.

The Commission has been extremely fortunate to have the assistance of Paul Herman, from the Center for Effective Public Policy, who has helped clarify, organize and facilitate our work since the Commission was empanelled in late 2007. In addition, I am grateful to Tom Quinn who serves as my vice-chair of the Commission's Sentencing Task Force. Likewise, the leadership of Grayson Robinson and Dean Conder, the chair and vice-chair of the Drug Policy Task Force, is invaluable and greatly appreciated. Along with the Commission vice-chair David Kaplan, I thank the members of the Commission and the dozens of professionals who volunteer their time on Task Forces, committees and working groups. The Commission's products reflect this multidisciplinary approach to recidivism reduction, and I am very grateful for the insights and contributions of this broad community of experts.

As the Commission continues to study sentencing reform, I am grateful for the assistance of Miles Madorin, Kathy McGuire, Maureen Cain, Tom Raynes, Representative Beth McCann, Charlie Garcia, Judge Ken Plotz and the many others whose perspectives and expertise are critical to the success of the Commission.

Peter A. Weir, Chair
Colorado Commission on Criminal and Juvenile Justice
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SECTION 1: INTRODUCTION AND OVERVIEW

Introduction

This report was prepared pursuant to C.R.S. 16-11.3-103(2.5)(d)(I), Senate Bill 09-286, directing the Commission on Criminal and Juvenile Justice to study sentencing laws and prepare a report by November 30, 2009 that documents its findings, recommendations, and a plan for its continuing study of the state's sentencing statutes (please see Appendix A for a copy of SB 09-286). To this end, the Commission reviewed, analyzed, and made recommendations in the following areas specified in SB 09-286: (1) Driving under the influence (DUI), (2) sentences related to drug crimes described in Article 18 of Title 18, C.R.S., and (3) mandatory minimum sentences and judicial discretion. In addition, the Commission studied aggravated sentence ranges and extraordinary risk crimes; the escape statute that requires a mandatory, consecutive prison sentence; and the statutory criteria related to probation eligibility. Additionally, SB 09-286 notes that the Commission may study the impact of incarceration on crime rates. Because this has been a subject discussed by the Commission, and a report prepared for the Commission included a review of the research on this topic, an excerpt from that report is included in Section 3.¹

Organization of this report

The remainder of the current section provides a brief overview of the recent work of the Commission and its two task forces, the Sentencing Task Force and the Drug Policy Task Force. It concludes with a description of the voting process used by the Commission to finalize the recommendations set forth in this report. *Section 2* presents the Commission's recommendations for sentencing modifications and further study. *Section 3* responds specifically to the empirical question posed in SB 09-286 regarding the impact of incarceration on crime rates, and *Section 4* presents the Commission's plan to study sentencing.

Background. In January 2008, the Commission initiated an effort to generate evidence-based recommendations in the area of community re-entry from jail and prison. The Commission selected re-entry as its first area of focus because re-entry has the potential for the greatest immediate impact in terms of recidivism reduction and cost savings to the state. This ambitious effort resulted in more than 60 recommendations for the improvement of re-entry policies and practices in Colorado (see the Commission's 2008 and 2009 annual reports for more information²). Work in the area of re-entry remains a focus of the Post-Incarceration Supervision Task Force which will present its next set of recommendations for the Commission's consideration in December, 2009.

In January 2009 the Commission began discussions to determine its next area of study, either juvenile justice or sentencing. The following summary of Commission meetings provides an outline of the

¹ Przybylski, R. (2008). *What works: Effective recidivism reduction and risk-focused prevention programs*. Denver, CO: Office of Research and Statistics, Division of Criminal Justice, Department of Public Safety.

² Available at http://cdpsweb.state.co.us/cccj/Commission_Reports.html

process to address sentencing and the subsequent developments in the Commission's sentencing reform efforts.

January 2009. During a discussion of the upcoming six-month work schedule for the Commission, several members requested that sentencing be included in the planning process that already comprised several other areas demanding attention. These areas included juvenile justice; parole, pending and continuing re-entry efforts; and the issues previously labeled "overarching" or critical issues. The critical issues include minority over-representation, access to data for comprehensive planning, community corrections, training on evidence-based practices, gender issues, and policies related to the intersection of criminal justice and behavioral health.

February through April 2009. Following a discussion by Commission members and local experts regarding the perceived problems with sentencing in Colorado and Commission members' perceptions of the meaning of "sentencing reform," an ad hoc committee was assigned to identify the scope of issues related to sentencing. Presentations were scheduled to occur at the two-day CCJJ meeting in May on both sentencing and on juvenile justice to aid the Commission in its "next step" determination.

May 2009. Presentations were made by representatives of two ad hoc groups charged with identifying the scope of study related to (1) juvenile justice and (2) sentencing. A letter with suggested areas for sentencing reform, jointly written by the Governor and the Attorney General, was presented to the Commission. Additionally, Commission members received copies of SB 09-286 directing the Commission to prioritize the study of sentencing reform. The Commission agreed to pursue the study of sentencing, and other important areas demanding attention by the Commission would be delayed or restructured to accommodate the work on sentencing.

June through September 2009. Following educational presentations by sentencing experts including Chief Justice Michael Wolff from the Missouri Supreme Court on evidence-based sentencing, and discussions of problems with the current criminal code by a consortium of judges in Colorado, the Commission identified the need to create two subcommittees: one to develop recommendations and strategies regarding the overall sentencing structure in Colorado and one to look at issues specific to drug statutes. The first group, labeled the Sentencing Policy Task Force was charged with developing recommendations that could take place in the short-term along with studying the more complex aspects of the overall sentencing structure. The second group, identified as the Drug Policy Task Force was directed to analyze current drug statutes and policy and to also make both short term and longer range recommendations. Both groups were asked to obtain and incorporate input from stakeholders both inside and outside the criminal justice system. The more narrowly defined short-term recommendations from both task forces were to be provided in the November 30, 2009 report mandated by SB 09-286 and in time to be made available for the legislative session starting in January 2010. A tentative schedule of twice-a-month task force meetings, beginning in July and continuing through September, was presented for both groups.

Task Force Activity

Sentencing Task Force. The Sentencing Task Force, consisting of 22 appointed members including 10 CCJJ members,³ formed three working groups to study and provide recommendations in the following statutory areas: Escape; Probation Eligibility; and Aggravated Ranges, Extraordinary Risk, and Mandatory Minimums. The working groups included task force members and members of the community. The Sentencing Policy Task Force met four times in August and September, and the working groups met multiple times during this period producing recommendations that were presented to the full task force for discussion and, subsequently, to the Commission for review at its September meeting. Following feedback from the Commission in September, recommendations were prepared for voting by the Commission at the October meeting.

The **Escape** working group identified two main issues to address, the mandatory consecutive prison sentence and the broad definition of escape, which is not restricted to escape from secure facilities. The group examined the impact of current law as it pertains to a variety of areas including prison populations, evidence-based sentencing practices, recidivism, and habitual offender status.

The **Probation Eligibility** working group centered its efforts on C.R.S. 18-1.3-201, *Application for Probation*. Working group members agreed that the current law is confusing with many links to different statutes and sections of statutes. The group ultimately wanted to provide clear statutory language, expand judicial discretion, retain waiver discretion for prosecutors if one or more of the prior felonies was violent, and add more prosecutor discretion by expanding circumstances in which the prosecutor could allow an offender to be eligible for a sentence to probation. The objective was to provide a more flexible system allowing more individualized sentencing.⁴

The working group studying **Aggravated Ranges, Extraordinary Risk and Mandatory Minimums** (“Enhancers”) found the scope of its work was both broad and complex. Early discussions included the consideration of combining crimes of violence and extraordinary risk to create a category of aggravated crimes for enhanced sentences. The group also considered reducing the mandatory minimum from the current statutory structure of the midpoint of the presumptive range to the minimum of the range. Ultimately, the work was determined to require significant additional study and input from stakeholders.

Drug Policy Task Force. The Drug Policy Task Force, consisting of 23 appointed members including 6 CCJJ members, formed working groups to study and provide recommendations in the following areas: Statutes and Structure, Drug Policy/Evidence-Based Practices, and DUI laws. The working groups included task force members and members of the community with expertise in the areas of behavioral health treatment, drug courts, DUI case processing, and the impact of structural changes to sentencing

³ The chairperson and vice-chairperson of the Sentencing Task Force and the Drug Policy Task Force were selected by the chairperson of the Commission.

⁴ Wolff, M. (2008). Evidence-based judicial discretion: Promoting public safety through state sentencing reform. *The New York University Law Review*, 83, 1389-1419.

statutes. The Drug Policy Task Force met six times from August to October and the working groups met multiple times between those meetings.

The **Statutes and Structure** working group focused on developing a new and separate sentencing grid that would allow the court to consistently and systematically integrate substance abuse treatment into the criminal justice response to drug crimes. This approach represents a paradigm shift away from the current criminal code, and is premised on the ability of the state to ensure that availability of treatment services for those convicted of drug crimes.

The working group identified two significant issues related to the development of a new drug code premised on substance abuse treatment. One is the extent to which evidence-based treatment is actually available and accessible to offenders across the state. The Commission established a working group to gather and analyze information related to this concern. The second issue identified by the Statutes and Structure working group is that the modification of the drug code is an extremely complex undertaking and will require careful study to ensure that modifications are properly integrated with related criminal statutes.

However, the working group was committed to providing the Commission with suggestions for reform that might be considered for the legislative session that begins in January 2010. To this end, the group identified potential changes to existing drug statutes that are consistent with the paradigm shift, have minimal impact on public safety, and can generate immediate cost savings to the state. These changes are presented in Section 2 of this report.

The **Evidence-Based Practices and Policy** working group identified a significant need to study and reconsider Colorado's drug sentencing statutes, particularly given the number of cases affected by the drug code. The number of offenders in prison whose most serious conviction charge was drugs increased from 192 inmates in FY 1987 to 4,502 in FY 2008⁵. Nearly 37 percent of offenders discharged from community corrections in FY 2007 had been sentenced for a drug offense, which represents the most frequently occurring conviction crime for individuals serving time in community corrections.⁶ Further, studies estimate that approximately 50 percent of crimes are committed while the offender was under the influence of drugs or alcohol⁷ and find that drug abusers often commit other crimes to support their drug addiction.⁸

⁵ Colorado Department of Corrections Annual Statistical Reports (1987-2008).

⁶ Office of Community Corrections(2008). *Community Corrections FY 2007 Annual Report*. Denver, CO: Office of Community Corrections, Division of Criminal Justice, Department of Public Safety.

⁷ Mumola, C.J., & Bonzar, T.P. (1996). *Substance abuse treatment of adults on probation, 1995*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice (NCJ 166661); Mumola, C.J. (1999). *Substance abuse and treatment, state and federal prisons*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice (NCJ 172871).

⁸ Nurco, D.N., Hanlon, T.E., Tinlock, T.W. & Duszynski, K.R. (1988). Differential criminal patterns of narcotic addicts over an addiction career. *Criminology* 26, 407-424.

These facts illustrate the need for evidence-based substance abuse treatment.⁹ Providing treatment for offenders with substance abuse problems will not only reduce drug abuse, but will reduce crime rates overall.¹⁰ Reductions in crime and victimization are common reasons that study conclusion report that treatment is cost beneficial.¹¹

The Evidence-Based Practices and Policy working group of the Drug Policy Task Force agreed that recidivism reduction is most likely to occur when there is a blending of a public health approach with the criminal justice response to drug crimes. Research demonstrates that substance abuse interventions are most effective when the approach:

1. Occurs at the earliest possible opportunity;
2. Is based on an individual treatment plan that incorporates natural communities and pro-social supports;
3. Includes family members when they offer a positive impact on the substance abuse recovery process; and
4. Provides a continuum of community-based services.¹²

The Evidence-Based Practices and Policy working group agreed that recidivism reduction requires the combination of accountability, risk and needs assessments, criminal penalties, and appropriate treatment for individuals. The working group may eventually suggest the implementation of a new drug code sentencing grid that differentiates among the following types of individuals:

- An offender who is an illegal drug user but is not addicted or involved in other criminal activity;
- An offender who is addicted but is not otherwise engaged in other criminal activity;
- An offender who is addicted and engaged in nonviolent crime to support their addiction;
- An offender who is addicted and engaged in violent crime; and
- An offender who is engaged in drug trafficking or manufacture for profit who is not addicted to illegal drugs.

The potential consequences and benefits of this type of differentiation require additional study and discussion by the Drug Policy Task Force and the Commission.

⁹ See Przybylski, R. (2008). *What works: Effective recidivism reduction and risk focused prevention programs*. Denver, CO: Office of Research and Statistics, Division of Criminal Justice, Department of Public Safety.

¹⁰ Gerstein, D.R., Datta, R.A., Ingels, J.S., Johnson, R.A., Rasinski, K.A., Schildhaus, S., & Talley, K. (1997). *Final report: National Treatment Improvement Evaluation Survey*. Chicago, IL: National Opinion Research Center.

¹¹ Gerstein, D.R., Harwood, H.J., Suter, N., & Malloy, K. (1994). *Evaluating recovery services: The California drug and alcohol treatment assessment*. Sacramento, CA: National Opinion Research Center for the California Department of Alcohol and Drug Programs, Health and Welfare Agency.

¹² National Institute on Drug Abuse. (2009). *Principles of drug addiction treatment: A research-based guide*. 2nd edition. National Institutes of Health, U.S. Department of Health and Human Services. NIH Publication No. 09-4180.

The goal of the **DUI** working group was to address concerns about the lack of consistency in sentencing multiple DUI offenders. This group consulted with representatives of the Colorado Department of Transportation's Interagency Task Force on Drunk Driving and jointly developed a list of topics for consideration and study by the DUI working group. Both groups agreed that the consequences for multiple DUI offenders should include monitoring/incapacitation and evidence-based substance abuse treatment to reduce the future risk presented by these offenders.

Consistent with the philosophical foundation of the other Drug Task Force working groups, the DUI working group intended to blend a public health approach and evidence-based substance abuse treatment into the criminal justice response to serial DUI/DWAI offenders. The DUI recommendations in this report are intended to simplify the DUI statutes, increase consistency in the response to these offenses across judicial districts and increase the consequences for 2nd alcohol and drug-related driving offenses.

Summary

The work on sentencing by the Commission to this point has focused on compliance with C.R.S. 16-11.3-103(2.5), Senate Bill 09-286, along with the Commission's original statutory mandate to reduce recidivism, study evidence-based practices, and identify cost-effective methods for managing the state's correctional populations. This report reflects the combined efforts of dozens of members of the community who have been engaged in careful study, discussions and analysis. The following section presents nearly 40 recommendations for improvements in the sentencing structure from this preliminary focus on sentencing reform.

SECTION 2: CCJJ NOVEMBER 2009 SENTENCING RECOMMENDATIONS

Commission recommendation review and voting protocol

The Commission met on October 16, 2009 to finalize and vote on recommendations prepared by the two task forces. Final recommendations pertaining to modifications to the state's response to DUI offenders were presented by members of the Drug Policy Task Force. In addition, final recommendations were presented by members of the Sentencing Policy Task Force regarding the three issues of Escape, Probation Eligibility, and Aggravated Ranges, Extraordinary Risk and Mandatory Minimum sentences.

After each set of recommendations was presented by subgroup representatives and discussed, Commission members logged their vote via an electronic voting system by selecting from three alternatives:

- (A) I support it,
- (B) I can live with it, and
- (C) I do not support it.

The threshold for recommendation approval required that 75 percent of Commission members chose the (A) or (B) alternative. This threshold reflects the Commission's commitment to agreeing by consensus; 75 percent was considered the threshold for consensus. A recommendation failed to receive approval when 30 percent of members chose the (C) alternative. To avoid a recommendation passing and failing at the same time, the two thresholds cannot equal 100 percent, and the fail threshold must, in this case, exceed 25 percent.

On November 13, 2009, the Commission met to continue its discussion, review, and voting on the sentencing recommendations. The same voting system, 3-option protocol, and thresholds employed for the October meeting was used at this meeting. Due to time limitations, the discussion and vote on some recommendations were delayed until the December 2009 meeting and will be documented in an *Addendum* to the current report. The presentation and voting on this remaining set of recommendations in December will complete the initial, short-term phase of sentencing work by the task forces, laying the foundation for the longer-term study of sentencing reform described in Section 4.

Commission November 2009 Recommendations¹³

Five sets of recommendations regarding specific categories of crimes are presented below in the following order:

- Driving under the influence of drugs or alcohol
- Escape
- Probation eligibility
- Aggravated sentencing ranges, extraordinary risk crimes, and mandatory minimum sentences to prison
- Controlled substances

Please note that the numbering scheme for the recommendations below is not sequential. It reflects the dynamic decision making process between the task forces and the Commission. Many of the original recommendations were sent back to the task forces for clarification or modification and subsequently will be returned to the Commission for discussion and voting. Depending on the outcome of the voting process, additional recommendations on these topics may be included in the December *Addendum* or future Commission reports.

DUI RECOMMENDATIONS¹⁴

The following recommendations were originally prepared by the Drug Policy Task Force's DUI working group. This work was undertaken in collaboration with the state Interagency Task Force on Drunk Driving at the Colorado Department of Transportation. **Several DUI recommendations remain under consideration by the Drug Policy Task Force.** These recommendations will be forwarded to the Commission for consideration during its December 2009 meeting. At that time, the Commission will discuss the additional DUI recommendations and vote, using the process described above. Following that meeting, **an *Addendum* to this report will be prepared** and will include all of the DUI recommendations approved by the Commission, along with any non-DUI recommendations that may be approved at the December 2009 meeting.

DUI-1 NO NEW FELONY DUI STATUTE

The Commission does not support a statute that creates a new felony for driving under the influence of alcohol and drugs.

¹³ These recommendations were voted on by Commission members at meetings held in October and November, 2009. The designation "November 2009" refers to the date of the report mandated in SB 09-286.

¹⁴ For the purposes of this report all alcohol- and drug-related driving offenses are referred to as DUI.

DISCUSSION

The Commission finds that existing statutes provide a mechanism to invoke felony charges against offenders who have committed multiple dangerous driving crimes. C.R.S. 42-2-202 details the requirements to be declared a habitual traffic offender. These include three or more separate convictions within seven years for driving under the influence (DUI) and driving while ability impaired (DWAI), among other offenses. The following offenses are included as major offenses for the purpose of defining a habitual offender: reckless driving; false swearing on a Department of Motor Vehicle form; vehicular assault, vehicular homicide or manslaughter or criminally negligent homicide which results from the operation of a motor vehicle; and failure to remain at the scene of an accident resulting in death or serious bodily injury. In addition, the accumulation of points for 18 or more convictions within a 5 year period can result in a charge of habitual traffic offender.

Any person who drives a motor vehicle after being classified as a habitual traffic offender commits a class 1 misdemeanor and is subject to a mandatory minimum 30 days in county jail, or a mandatory minimum fine of \$3,000, or both per C.R.S. 42-2-206 (1)(a)(II).

The crime of aggravated driving with a revoked license (C.R.S. 42-2-206(1)(b)(I)) is a class 6 felony. A person commits aggravated driving with a revoked license if the person is classified a habitual traffic offender, then operates a motor vehicle in Colorado, and while operating the motor vehicle commits any of the following offenses:

- (A) DUI or DUI per se;¹⁵*
- (B) DWAI;*
- (C) Reckless driving;*
- (D) Eluding or attempting to elude a police officer;*
- (E) Any violation of a reporting requirement concerning vehicle accidents;*
- (F) Vehicular eluding.*

Therefore, someone who has been classified as a habitual traffic offender, either with or without an alcohol offense as the major offense(s), who then drives and commits DUI, DUI per se, or DWAI, would be guilty of aggravated driving with a revoked license, and subject to a prison sentence for a class 6 felony.

DUI-3 (LEGISLATIVE) INCREASE THE MINIMUM ALCOHOL SURCHARGE

Increase the minimum alcohol surcharge provided in C.R.S. 42-4-1301(7)(d) from \$50 to \$100. The additional funding shall be directed to a persistent impaired driving fund to be used for community and jail-based treatment as provided in C.R.S. 43-3.303, for reimbursement to county jails, evaluation of substance abuse treatment programs and, if warranted (see Recommendations DUI-11 and DUI-12), DUI Court expansion.

DISCUSSION

The Commission agrees that recidivism reduction efforts must include making substance abuse treatment available in county jails. While serving time in jail, offenders may begin to learn how to manage their addiction when substances are unavailable. Many jail administrators are willing to provide space for treatment providers but the costs remain prohibitive. This recommendation for an increase in the surcharge is intended to immediately assist in

¹⁵ "Per se" laws make it illegal to operate a motor vehicle if there is any detectable level of a prohibited drug, or its metabolites, in the driver's blood.

both providing the bed space and substance abuse treatment services for offenders serving a jail sentence and evaluating these programs.

DUI-4 (LEGISLATIVE) SAVINGS REALLOCATED TO EVIDENCE-BASED TREATMENT PROGRAMS

Any fiscal savings realized through the implementation of effective reforms shall be reallocated for the purpose of developing and sustaining viable, evidence-based substance abuse treatment programs related to DUI and associated behavioral health problems.

DISCUSSION

The need for substance abuse treatment services for drug- and alcohol-related driving crimes requires dedicated funding for local criminal justice and behavioral health agencies. The National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism have prepared A Guide to Sentencing DWI Offenders (see footnote 18) that discusses the value of assessment and treatment in the response to driving while intoxicated.

DUI-5 (LEGISLATIVE) TREATMENT RECEIVED WHILE INCARCERATED TO BE TRANSFERABLE

Substance abuse treatment provided while incarcerated must be accepted by private sector providers during post-release treatment. This means that any treatment module completed or treatment level attained by the offender while incarcerated shall not be required to be repeated once released.

DISCUSSION

This recommendation reiterates a Commission recommendation published in its December, 2008 Annual Report.¹⁶ This recommendation is intended to maximize the efficient use of substance abuse resources and encourage the offender to progress through meaningful treatment goals. When an offender's performance indicates the need for additional or further treatment, it is sensible to continue or require additional treatment.

DUI-8 INFORMATION AVAILABLE TO PEACE OFFICERS¹⁷

The Colorado Bureau of Investigation (CBI), in cooperation with the Division of Motor Vehicle (DMV), should work toward sharing all alcohol- and drug- related driving convictions that are documented in each agency's data bases, and ensure that

¹⁶ See Recommendation GP-17 on page 32 of the Commission's 2008 *Annual Report*, available at <http://dcj.state.co.us/ors/pdf/docs/12-18-2008%20FINAL%20CCJJ%20Report.pdf>.

¹⁷ As mentioned above, several recommendations remain under consideration and will be subject to vote at the Commission's December 2010 meeting. Therefore, the numbering of the recommendations presented here are not sequential.

information on drivers with multiple DUI convictions is available to peace officers via the Colorado Crime Information Center (CCIC).

DISCUSSION

The National Highway Traffic Safety Board and the National Institute on Alcohol Abuse and Addiction emphasize the importance of quickly identifying and intervening with those drivers who have the highest rates of alcohol-impaired driving.¹⁸ The intent of this recommendation is to flag individuals with two prior DUI/DWAI felony convictions for immediate intervention. The information is available in CCIC, and must be made available to officers with computers in their police vehicles. This recommendation may require programming resources for CBI.

DUI-10 TRAINING ON EVIDENCE-BASED DUI SENTENCING PRACTICES

Training for court professionals on best practices for DUI cases should be expanded. To this end, the Commission will identify a working group to develop a short training curriculum for professionals in the criminal justice system on the subject of evidence-based sentencing practices for multiple DUI offenders. This information should be presented at the annual conferences for judges, the Colorado District Attorneys Association, and the Colorado Defense Bar.

DUI-11 STUDY COLORADO'S DUI COURTS

Examine DUI evaluation studies from other jurisdictions and evaluate Colorado DUI courts.

DISCUSSION

Studies of the efficacy of DWI Courts¹⁹ have found the following:

- Participants were re-arrested significantly less often than comparison group offenders who were sentenced in a traditional court. In an example from one DUI Court site, the comparison offenders from a traditional court were re-arrested nearly six times more often in the first year after starting probation for a DUI charge than the DUI Court participants.²⁰*
- In another example, within a 2-year period, traditionally sentenced offenders in the comparison group were more than 3 times as likely to be re-arrested for any charge and were 19 times more likely to be re-arrested for a DUI charge than the DUI Court participants.*
- Participants in the DUI Court significantly decreased the percent of positive drug tests over time. This provides support that the DUI Court was instrumental in reducing the amount of illegal drug use during the first year participants spent in the program.*

¹⁸National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism (2005). *A Guide to Sentencing DWI Offenders*, 2nd edition. Available at <http://www.nhtsa.dot.gov/people/injury/alcohol/dwioffenders/index.htm>. See also Quinlan, K.P., Brewer, R.D., Siegel, P., Sleet, D.A., Mokdad, A.H., Shults, R.A., & Flowers, N. (2005). Alcohol-impaired driving among U.S. adults, 1993-2002. *American Journal of Preventative Medicine* 28, 346-350.

¹⁹ <http://www.dwicourts.org/learn/about-dwi-courts/research>

²⁰ Note that the National Center for DWI Courts refers to DUIs and DWIs as DWIs, driving while impaired.

- Results show that DUI Court participants spent considerably more time in treatment than those sentenced in a traditional court. Furthermore, the average waiting period between arrest and sentencing was significantly reduced in the DUI Court.
- The number of days spent in jail prior to starting a program or probation and the total time in jail for that DUI was also significantly reduced, saving the criminal justice system time and money.
- Time enrolled in the program was higher for DUI Court participants. Longer time spent in the program predicts success as measured by both program completion and recidivism reduction.

Four DUI courts currently exist in Archuleta, Montezuma, El Paso, and Boulder counties, and four more counties are considering DUI courts should funding become available.²¹ The Commission maintains that evaluation studies are needed to examine whether Colorado DUI courts are promoting similar offender outcomes. Appendix B shows the guiding principles for DUI courts as stated by the National Center for DWI Courts.²²

DUI-12 IF JUSTIFIED, EXPAND DUI COURTS STATEWIDE

If Colorado DUI court evaluation findings show positive outcomes, DUI courts should be expanded by developing demonstration projects that have local stakeholder commitment and adequate funding. When appropriate, funding sources for DUI courts should be actively explored by local officials.

DISCUSSION

According to experts, the purpose of DUI courts is to make offenders accountable for their actions, bring about a behavioral change that ends recidivism, stop the abuse of alcohol and drugs, protect the public, provide fair and just treatment for the victims of DUI offenders, and educate the public about the community benefits of these courts.²³ If effective, expansion of these courts in Colorado will increase public safety by reducing recidivism. Expansion would also benefit those in need of supervision and substance abuse treatment.

²¹ Colorado Judicial Department, Division of Planning and Analysis (September 24, 2009).

²² <http://www.dwicourts.org/learn/about-dwi-courts/-guiding-principles>

²³ Tauber, J. & Huddleston, C.W. (1999) as quoted by Keith, A.L. (2002). Specialized and problem-solving courts: Trends in 2002: DUI courts. *Reports on Trends in State Courts*, Washington, D.C.: National Center for State Courts.

ESCAPE RECOMMENDATIONS

E-1 (LEGISLATIVE) ESCAPE MODIFICATION FOR NON-INMATE STATUS²⁴ OFFENDERS

Modify C.R.S. 18-8-209 to accomplish the following: Any individual who is on inmate status irrespective of the facility in which they are held will be subject to a mandatory consecutive sentence to prison. Any individual not on inmate status is eligible for a consecutive sentence but not *a mandatory* consecutive sentence.

DISCUSSION

In many states, the same behavior that in Colorado is subject to a mandatory consecutive prison sentence is considered a misdemeanor or a technical violation. Annually, fewer than ten individuals escape from a secure Department of Corrections facility.²⁵ However, every year over 1,100 individuals are convicted of escape for behaviors that range from running from a police officer after being placed in custody to failing to return on time to a halfway house.

The escape statute requires a mandatory prison sentence that is consecutive—not concurrent—with the offender’s original sentence. It is not uncommon for the escape sentence to be longer than the original sentence. In FY 2006 and FY 2007, this was the case for 40 percent and 33 percent, respectively, of parolees who returned to prison for a new crime. Seventy percent of offenders convicted of escape have no current or historical violent crime convictions.²⁶

Mandatory sentences remove judicial discretion. This approach to sentencing policy is not supported by the criminology literature which consistently reports the need for individualized interventions when the objective is to reduce the likelihood of new criminal behavior and victimization.²⁷ In fact, this policy may contribute to recidivism: prison “releasees who have just served their first prison sentence have sharply lower rates of recidivism than those who have been imprisoned more than once, regardless of the sex, age, or race of the person or the type of crime” (National Research Council, 2008).²⁸

²⁴ “Inmate” and “non-inmate” is a particular status of individuals leaving prison and entering the community. Both types of offenders are under the jurisdiction of the Department of Corrections and are assigned to supervising field officers. Some of these individuals are placed in community corrections halfway houses and some are on intensive supervision. This recommendation calls for those on inmate status to remain eligible for a mandatory prison sentence if they are convicted of escape because they absconded from supervision.

²⁵ Rosten, K (2008). *Fiscal Year 2007 Annual Statistical Report*. Colorado Department of Corrections, Colorado Springs, CO.

²⁶ See Appendix I in the Commission’s December 2008 *Annual Report*, available at <http://dcj.state.co.us/ors/pdf/docs/12-18-2008%20FINAL%20CCJJ%20Report.pdf>

²⁷ Latessa, E.J., & Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal*, 521-535; Gendreau, P., & Goggin, C. (1995). *Principles of effective correctional programming with offenders*. Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick; McGuire, J. (2001). What works in correctional intervention? Evidence and practical implications. In G. A. Bernfeld, D.P. Farrington, & A. W. Leschied (Eds.), *Offender rehabilitation in practice: Implementing and evaluating effective programs* (pp. 25-43). Chichester, West Sussex, UK: John Wiley & Sons; Gendreau, P., Goggin, C., & Fulton, B. (2001). Intensive supervision in probation and parole settings. In C. R. Hollin (Ed.), *Handbook of offender assessment and treatment* (pp. 195-204). Chichester, West Sussex, UK: John Wiley & Sons.

²⁸ National Research Council (2008). *Parole, desistance from crime, and community integration*. Washington, D.C.: National Academies Press.

Research shows that incarceration has a return on investment when it is used for violent and high frequency offenders.²⁹ The use of incarceration for lower-rate, non-violent offenders prevents and deters few crimes.³⁰

This recommendation would reduce the pool of those eligible for mandatory, consecutive escape sentencing on any given day from approximately 6,500 to 2,300 offenders.³¹ Note that this modification would not eliminate consecutive sentences for those who escaped from prison facilities, county jails, or those who abscond from supervision while on inmate status. Nor would this recommendation limit the prosecution from filing charges if new offenses were committed while on walk-away status.

Modification of this statute may result in significant cost savings.

E-2 DEMONSTRATION PROJECT: INTERMEDIATE SANCTIONS FOR ESCAPE FILINGS

Study in designated pilot sites the viability of responding to offenders who abscond from a community corrections halfway house or Intensive Supervision Parole (inmate status) by imposing on those offenders intermediate sanctions instead of escape filings. Data from the pilot sites would be combined with community corrections escape data to determine whether intermediate sanctions appear to be safe and effective in the management of offenders who walk away from halfway houses.

DISCUSSION

Anecdotal evidence suggests that many community corrections offenders in Colorado impulsively fail to return from work, job searches, or recreational pass, but few commit new crimes. This study will track the outcomes of offenders in the pilot sites. Further, some policy makers believe that the consequences for this behavior—a mandatory prison sentence for a protracted duration—may influence offenders to remain at-large. The study also will explore this issue.

²⁹ See summary of research by Przybylski, R. (2008). What works: Effective recidivism reduction and risk-focused prevention programs. Lakewood, CO: RKC Group.

³⁰ Liedka, R.V., Piehl, A.M., & Useem, B. (2006). The crime control effect of incarceration: Does scale matter? *Criminology and Public Policy* 6, 245-276; Piehl, A.M., Useem, B., & Dilulio, Jr., J.J. (1999). *Right-sizing justice: A cost-benefit analysis of imprisonment in three states*. New York: Center for Civic Innovation at the Manhattan Institute. See also Washington State Institute on Public Policy, *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates, and prison economics*. Olympia, WA, available at <http://www.wsipp.wa.gov/pub>; American Bar Association (2004). *Justice Kennedy Commission Report to the House of Delegates*, page 21, available at <http://www.abanet.org/media/kencomm/rep121a.pdf>.

³¹ See note 26.

PROBATION ELIGIBILITY RECOMMENDATIONS

P-1 (LEGISLATIVE)

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 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).

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.³² 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.³³ 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 and 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.*

³² Wolff, M. (2008). Evidence-based judicial discretion: Promoting public safety through state sentencing reform. *The New York University Law Review* 83, 1389-1419.

³³ National Research Council (2008). *Parole, desistance from crime, and community integration*. Washington D.C.: National Academies Press.

AGGRAVATED RANGES, EXTRAORDINARY RISK CRIMES, AND MANDATORY MINIMUM SENTENCES RECOMMENDATIONS

A-1 (FURTHER STUDY)

The complex nature of Colorado statutes pertaining to aggravated, extraordinary risk, and mandatory minimum sentences requires detailed analysis and careful study to ensure that any recommended modifications conform to broader sentencing policies and structures, and to ensure that the consequences of any modifications are analyzed and well understood by stakeholders. The Commission must first undertake this analysis to guarantee that any recommended statutory reforms must be consistent with evidence-based practices and recidivism reduction.

DISCUSSION

The Commission has requested that its Sentencing Policy Task Force undertake a comprehensive study of the entire state sentencing structure, including the enhancements captured by this recommendation: aggravated sentencing ranges, extraordinary risk crimes, and mandatory minimum sentences. These enhancements are interrelated and require considerable analysis to understand the impact of any specific modification.

Please refer to Section 4, Plan for the Study of Sentencing, for more information.

CONTROLLED SUBSTANCES RECOMMENDATIONS

Introduction. The Commission's Drug Policy Task Force examined both the law and policy of the current drug statutes. This group, comprised of law enforcement representatives, behavioral health experts, treatment providers and other interested and knowledgeable parties, nearly unanimously agreed that the current structure and approach to prosecuting drug crimes is frequently ineffective in reducing recidivism and curbing addiction. High rates of recidivism, high rates of drug abuse and addiction in the offender population, and new research on the effect of addiction on the brain and behavior³⁴ were important considerations. The National Institute on Drug Abuse provides the following information on the intersection between drug addiction and criminal behavior:

*The most effective models integrate criminal justice and drug treatment systems and services. Treatment and criminal justice personnel work together on treatment planning—including implementation of screening, placement, testing, monitoring, and supervision—as well as on the systematic use of sanctions and rewards.*³⁵

The effectiveness of substance abuse treatment in the reduction of recidivism and victimization - and the associated cost benefit - has been confirmed by research,³⁶ and the Drug Policy Task Force determined that a primary omission from current law is a means of assuring prompt and effective treatment of drug offenders. Providing community-based treatment for offenders who suffer from alcoholism and drug abuse -and mental health problems associated with these addictions³⁷ - will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. Members of the Task Force and the Commission support a complete modification of the drug laws that would result in a new sentencing grid. This approach reduces current penalties for those individuals whose only crime is possession of drugs for personal use while

³⁴ National Institute on Drug Abuse (2009). *Drugs, the brain, and behavior: The science of addiction*. National Institutes of Health, U.S. Department of Health and Human Services. Available at <http://www.drugabuse.gov/scienceofaddiction>.

³⁵ National Institute on Drug Abuse (2009). *Principles of drug addiction treatment: A research-based guide*. National Institutes of Health, U.S. Department of Health and Human Services. Page. 19. Available at <http://www.drugabuse.gov/PODAT/PODATIndex.html> See also National Institute on Drug Abuse (2007). *Principles of drug addiction treatment for criminal justice populations: A research-based guide*. National Institutes of Health, U.S. Department of Health and Human Services. Available at http://www.drugabuse.gov/PODAT_CJ/principles.

³⁶ The research is conclusive that substance abuse treatment reduces recidivism and is therefore cost beneficial. Funding spent on substance abuse treatment provides up to \$7 in taxpayer benefits for every \$1 in cost. This compares to less than \$.40 in return for every dollar spent incarcerating drug offenders. See Przybylski, R. (2009). *Correctional and sentencing reform for drug offenders: Research findings on selected key issues*. Report commissioned on behalf of the Colorado Criminal Justice Reform Coalition. Lakewood, CO: RKC Group. Available at http://www.ccjrc.org/pdf/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf

³⁷ Nora Volkow, M.D., the Director of the National Institute on Drug Abuse, states the following in the agency's introduction to its publication, *Comorbidity: We need to first recognize that drug addiction is a mental illness. It is a complex brain disease characterized by compulsive, at times uncontrollable drug craving, seeking, and use despite devastating consequences—behaviors that stem from drug-induced changes in brain structure and function. These changes occur in some of the same brain areas that are disrupted in various other mental disorders, such as depression, anxiety, or schizophrenia. It is therefore not surprising that population surveys show a high rate of co-occurrence, or co-morbidity, between drug addiction and other mental illnesses. Even though we cannot always prove a connection or causality, we do know that certain mental disorders are established risk factors for subsequent drug abuse— and vice versa.* For more information on this topic, see <http://www.nida.nih.gov/researchreports/comorbidity/index.html>

maintaining prison sentencing options for the most serious offenders. The members agreed that for many offenders intervention and treatment in the community is a far more effective use of resources than the current escalating system of punishment that often results in a prison sentence.³⁸ **However, the Task Force and Commission members generally agreed that any significant departure from current law requires that resources for the treatment model be in place before the changing to the new approach.**

Evidence-based practices require that drug offenders be assessed with scientifically validated assessment instruments that reveal, for each offender, addiction levels, service needs, and risk to the public.³⁹ This assessment would serve as the foundation of the criminal justice response, so it must be systematically undertaken by trained professionals and the findings must be made available to members of the court. Additionally, focusing on substance abuse treatment requires the availability and accessibility of excellent treatment programs for offenders.⁴⁰ It also requires a new level of collaboration among prosecutors, defense attorneys, service providers, supervising officers, and family members akin to the cooperative relationships achieved by drug court teams and the development of policies and procedures that account for specific issues related to alcohol and drug addiction.

The Commission's consideration of statutory reform in this area, then, is inherently linked to widespread modification of current practices. The significant expansion of drug treatment resources, along with the development of a method to provide program effectiveness information to local decision makers, must coincide with the careful development of a drug crime sentencing grid. In addition, an analysis must be undertaken to obtain an understanding of current treatment resources, allocations and service gaps. The Commission generally agreed that the study of evidence-based sentencing practices and its application to a new drug sentencing grid and treatment model requires further study and adequate funding for behavioral health treatment.

The recommendations presented below maintain the Commission's public safety priorities, are consistent with the new treatment-oriented sanctioning philosophy promoted by the Commission and provide cost savings to the state. The recommendations were developed using empirical and anecdotal information and included consideration of how drug offenses are committed and how drug laws are applied in practice. The recommendations reflect a genuine effort to differentiate among those drug offenders who are primarily users and addicts from the more serious offenders who engage in the crimes of distribution, manufacturing and trafficking of drugs. The Commission agreed that many of the

³⁸ Research shows that addiction is a chronic disease, so drug relapse and return to treatment are common features in the path to recovery. See National Institute on Drug Abuse (2009). *Drugs, the brain, and behavior: The science of addiction*. National Institutes of Health, U.S. Department of Health and Human Services. Available at <http://www.drugabuse.gov/scienceofaddiction>.

³⁹ Please refer to Appendix C, *Evidence-based Correctional Practices*.

⁴⁰ Treatment program success rates interact with the fact that relapse is often deemed a treatment failure. However, relapse rates for addiction resemble those of other chronic diseases such as diabetes, hypertension, and asthma. Studies show that successful treatment for addiction typically requires continual evaluation and modification as appropriate, similar to the approach taken for other chronic diseases, and multiple treatment episodes. See the National Institute on Drug Abuse's Principles of Drug Addiction Treatment, at <http://www.nida.nih.gov/PODAT/faqs.html#Comparison>

classifications of drug offenses do not reflect a current assessment of the severity of the offense. Note that elimination of the most severe available penalties still maintain the court's ability to punish offenders, but will likely reduce the use of prison beds for many offenders serving drug sentences. The majority of recommendations address penalties associated with possession of narcotics and marijuana.

Finally, the Commission agreed that this new philosophy integrating treatment services with sanctions and punishment will serve as the foundation for its upcoming study. It agreed that broader sentencing reforms require a comprehensive assessment and strategy. This broader reform will be the Commission's focus in the months to come.

For a summary of recommended changes in crime classification for controlled substances, please see Appendix D.

CONTROLLED SUBSTANCES: POSSESSION

CS-1 (LEGISLATIVE)

Possession shall be a new and separate statute.

DISCUSSION

Simple possession should be separated from the general controlled substance statute and be placed in its own section of the Colorado Revised Statutes as means of assuring effective and prompt drug addiction treatment of these offenders.

CS-2B (LEGISLATIVE)

Possession of four grams or less of any Schedule I or II substance shall be a class 6 felony, except for possession of methamphetamine. Possession of two grams or less of methamphetamine shall be a class 6 felony.

DISCUSSION

Sentencing laws should differentiate between individuals who use or possess controlled substances for personal use and those who are engaged in distribution or manufacture. In 2003, the Colorado General Assembly reduced the penalty for possession of small amounts of controlled substances to a class 6 felony. The amount, one gram or less, may have been selected arbitrarily. After reviewing medical and drug trade research, and obtaining local anecdotal information from interviews,⁴¹ the Commission agreed that four grams of Schedule I and Schedule II controlled substances was a common maximum quantity consistent with possession for personal use. Because methamphetamine use poses a significant health and safety risk, the Commission established a maximum of two grams as the threshold of possession for personal use of this drug.

⁴¹ Interview data were obtained from former drug sellers and an experienced multijurisdictional drug enforcement task force officer.

CS-3 (LEGISLATIVE)

Possession of an amount of any Schedule I or II substance in excess of the amounts identified in CS-2B (above) shall be a class 4 felony.

DISCUSSION

Quantities in excess of those specified in CS-2B are considered by the Commission to be greater than a personal use amount and, therefore, fall into a category of distribution or sale. The Commission maintains that such non-possession drug offenses should remain consistent with current statute at this time.

CS-4 (LEGISLATIVE)

Possession of any Schedule III – V controlled substance (except Flunitrazepam and Ketamine) shall be a class 1 misdemeanor.

DISCUSSION

Flunitrazepam and Ketamine are commonly referred to as “date rape” drugs. Because abuse of these drugs significantly threatens public safety, they are excluded from the list of drugs in this recommendation.

Since 1999, Colorado statutes have required the so called “date rape” drug flunitrazepam, a Schedule III drug, to carry a penalty consistent with a Schedule I drug. This recommendation continues that treatment. In addition, the Commission recommends extending this treatment to ketamine, another drug used in the commission of sexual assault.

CS-5 (LEGISLATIVE)

Possession of any amount of Flunitrazepam or Ketamine (date rape drugs) shall be treated like a Schedule I or II controlled substance: four grams or less is a Class 6 felony; more than 4 grams is a class 4 felony.

DISCUSSION

Flunitrazepam and Ketamine are commonly referred to as “date rape” drugs and, as such, are treated here as potential drugs of abuse.

CS-7 (LEGISLATIVE)

Use of a controlled substance shall be a class 2 misdemeanor regardless of substance used. This modification eliminates the provisions of the “use” statute allowing a court to dismiss the case upon completion of treatment, but maintains the ability of a defendant to receive a deferred judgment or deferred prosecution upon recommendation of the prosecutor.

DISCUSSION

*Research demonstrates that individuals with a felony record have reduced employment and earning potential, and that this burden can last a lifetime. Court sanctions should expand non-felony sentencing options for first-time offenders who are charged with drug possession, thereby increasing offenders' ability to maintain or obtain employment.*⁴²

CONTROLLED SUBSTANCES: DISTRIBUTION AND POSSESSION WITH INTENT TO DISTRIBUTE

DP-6 (LEGISLATIVE)

Modify C.R.S. 18-18-415 making fraud and deceit a class 6 felony with no increase in the offense level for any subsequent offense.

DISCUSSION

Fraud and deceit is currently a class 5 felony, and a subsequent offense is a class 4 felony.

DP-7 (LEGISLATIVE)

C.R.S. 18-18-408 limits any type of money laundering activity to drug related crimes only. This provision should be removed from the drug code and a new statute covering any and all criminal money laundering activity should be added to Title 18.

DISCUSSION

The Commission agreed that the statute related to money laundering should be extended to encompass all criminal laundering activity and, consequently, should be removed from the drug code.

⁴² Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology* 47; Holzer, H.J., Raphael, S., & Stoll, M.A. (2006). Perceived criminality, criminal Background checks, and the racial hiring practices of employers, *Journal of Law and Economics* 49, 451-480; Kurlychek, M.C., Brame, R., & Bushway, S. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy* 5: 483-504; Kurlychek, M.C., Brame, R., & Bushway, S. (2007). Enduring Risk? Old criminal records and predictions of future criminal involvement. *Crime & Delinquency* 53, 64-83. Also see Przybylski, R. (2009). *Correctional and sentencing reform for drug offenders: Research findings on selected key issues*. Available at http://www.ccjrc.org/pdf/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf

CONTROLLED SUBSTANCES: SPECIAL OFFENDER

SP-1 (LEGISLATIVE)

Limit to 100 feet the current 1,000 foot zone that pertains to the sale, distribution, and manufacture of controlled substances.⁴³

DISCUSSION

The state's special offender statute provides for a class 2 felony with a sentencing range from 8-48 years. The special offender drug laws make certain crimes subject to enhanced penalties based on the location that the crime was committed. These locations include schools, public housing, parks, playgrounds, alleys, and school buses. These laws also enhance sentencing if the offense was committed within 1,000 feet of these locations. The reduction of the zone to 100 feet recognizes that these locations be given special consideration. However, studies in other states found that designation as a "protected" zone had a disproportionate prosecution effect on the minority community, and that the zone laws had no impact on the problem of selling drugs to children and vulnerable persons.⁴⁴ The 100-foot zone creates a more reasonable nexus between the enhanced sentencing and the protected location, and is consistent with other safety zones identified in statute, such as the distance required between open alcoholic beverages and voting locations.

SP-2 (LEGISLATIVE)

Create a new class 3 felony for sale of any controlled substance (other than marijuana) to a minor, if the seller is over 18 and more than two years older than the child.

DISCUSSION

This is a new crime that reflects the Commission's concern about drug use by children. Current law provides a class 4 felony when sale to a minor is made by an individual who is less than 2 years older than the minor.

SP-3 (LEGISLATIVE)

Amend and clarify subsection (1)(f) related to deadly weapons to provide that the special offender provision applies as follows:

- (I) The defendant used, displayed, or possessed on his or her person or within the defendant's immediate reach, a deadly weapon as defined by section 18-1-901(3)(e) at the time of the commission of a violation of this part 4 of article 18 of title 18, of (II): The defendant, or a confederate,**

⁴³ The specific zones addressed by this measure will be clarified in the CCJJ December 2009 *Addendum Report*.

⁴⁴ Brownsberger, W.N., & Aromaa, S. (2001). *An empirical study of school zone law in three cities in Massachusetts*. Boston, MA: Boston University School of Public Health.

possessed a functional firearm as defined in section 18-1-901(3)(h), in a vehicle the defendant was occupying, or to which the defendant or the confederate had access in a manner which posed an immediate threat to others, during the commission of a violation of this part 4 of article 18 of title 18.

DISCUSSION

Current provisions only require that the defendant "used, possessed or had available for use a deadly weapon." This can be subject to broad interpretations which can lead to prosecutions in cases where the weapon was separated from the actual drug transaction by both distance and circumstance. The recommendation is intended to keep the focus of the crime narrow by allowing the enhanced provisions when the defendant actually used a deadly weapon or where a firearm was immediately available, even if it was not on the offender's person or in his or her immediate presence.

SP-5 (LEGISLATIVE)

Amend the special offender statute at subsection (1)(d) (the importation of Schedule I and II drugs provision) to apply only when the amount being transported into the state is more than 4 grams.

CONTROLLED SUBSTANCES: CRIMES INVOLVING MARIJUANA

Colorado lawmakers have reduced penalties for small amounts of marijuana over the past 25 years. Currently, possession of up to one ounce is a petty offense punishable only by a fine. Members of the Drug Policy Task Force and the Commission agreed that current levels of crime classification do not reflect how marijuana is used. Possession of up to four ounces is consistent with personal use⁴⁵ and possession of up to a pound reflects low-level criminal activity that may not present a threat to public safety. The recommendations presented here preserve the goal of regulation and deterrence while recognizing the fact that marijuana has lost much of its former stature as a drug of abuse.

MJ-1 (LEGISLATIVE)

The petty offense for possession shall be increased from the current maximum amount of one ounce to a maximum amount of 4 ounces.

MJ-2 (LEGISLATIVE)

The class 1 misdemeanor for the possession of amounts of marijuana of more than 1 ounce but less than 8 ounces shall be changed to a range of more than 4 ounces to less than 16 ounces (1 pound).

⁴⁵ See Note 41.

MJ-3 (LEGISLATIVE)

The possession of any amount of marijuana concentrate shall be decreased from a class 5 felony to a class 1 misdemeanor.

MJ-4 (LEGISLATIVE)

Distribution of 4 ounces or less of marijuana without remuneration shall be a petty offense.

MJ-5 (LEGISLATIVE)

Possession of 16 ounces (1 pound) or more of marijuana shall be a class 6 felony and there shall be no increase in the felony level on a second offense.

MJ-6 (LEGISLATIVE)

Distribution or sale of more than 4 ounces but less than 5 pounds of marijuana shall be a class 5 felony.

MJ-7 (LEGISLATIVE)

Distribution or sale of 5 pounds or more of marijuana shall be a class 4 felony.

MJ-8 (LEGISLATIVE)

Distribution or sale of any amount of marijuana concentrate shall be a class 5 felony.

MJ-9 (LEGISLATIVE)

The distribution or sale of any amount of marijuana to a child by a person over the age of 18 where the seller is older by two years or more than the child shall be a class 3 felony.

MJ-10 (LEGISLATIVE)

Cultivation of six plants or less shall be a class 1 misdemeanor.

MJ-11 (LEGISLATIVE)

Cultivation of more than 6 plants but less than 30 plants shall be a class 5 felony.

MJ-12 (LEGISLATIVE)

Cultivation of more than 30 plants shall be a class 4 felony.

MJ-13 (LEGISLATIVE)

The spelling of the marijuana shall be corrected throughout the statutes.

CONTROLLED SUBSTANCES: FURTHER RECOMMENDATIONS

FR-2 (LEGISLATIVE)

Modify C.R.S. 18-1.3-201(2) to remove the mandatory application of the two prior felony probation exclusion rule to drug cases, consistent with Recommendation P-1 above.

DISCUSSION

The significant change here is the elimination of second and subsequent offense penalties. These currently result in a significant increase in the available penalty, especially for those still on probation or parole. For example, possession of more than a gram of Schedule II drugs like cocaine and methamphetamine increase from a class 4 felony, penalty 2-6 years (4-12 for those on probation or parole) to a class 2 felony, penalty 8-24 years (16-48 for those on probation or parole). Recognizing that relapse is a part of addiction recovery, the recommendations acknowledge that such increases in penalty for those whose only crime is possession of drugs neither advances public safety nor accommodates the goal of deterring future behavior. The changes introduced by this recommendation may yield significant savings.

FR-3 (LEGISLATIVE)

A fiscal analysis should be conducted of the impact of these sentencing modifications on the approximately \$4.8 million collected annually from drug offender surcharges. Based on that analysis, surcharges on class 1 misdemeanors, class 6 felonies and class 5 felonies must be increased to avoid a loss of revenue.

FR-8 (LEGISLATIVE)

If the General Assembly generates revenue from the regulation of medical marijuana, it should consider allocating a portion of these funds for drug treatment across the state.

DISCUSSION

Colorado statutes refer to cannabis as "marihuana." Because both the common spelling and the constitutional amendment pertaining to medical use of this drug used the spelling, "marijuana," the recommendation is to change the spelling throughout CRS to match.

SECTION 3: THE IMPACT OF INCARCERATION ON CRIME RATES⁴⁶

Given the increased use of incarceration as a crime control strategy, this review provides a summary of recent research on the impact of incarceration on crime. Numerous studies on the topic have been undertaken in recent years, though none are specific to Colorado.

Crimes are averted by incarceration thereby affecting crime in a number of ways. First, crimes may be averted because offenders in prison or jail are *incapacitated*. As long as offenders are locked up, they cannot commit crimes in the community. Second, the threat of incarceration may *deter* potential individuals from committing criminal acts. Finally, the prison experience itself may deter those who have been incarcerated from resuming criminal conduct once they return to the community.

Targeting high rate offenders is key to the effective use of incarceration. One of the most comprehensive analyses of the frequency of offending was conducted by Blumstein et al. (1986) and published in the National Academy of Sciences report *Criminal Careers and Career Criminals*. Averages of 2 to 4 violent crimes per year for active violent offenders and 5 to 10 property crimes per year for active property offenders were reported. Estimates derived from self-reports of *inmates* were higher.⁴⁷ Before being incarcerated, those who were active in robbery committed an average of 15 to 20 robberies annually and those who were active in burglary committed 45 to 50 burglaries. Blumstein et al. also found that the median offender commits very few crimes annually, while a small percentage of offenders commit more than 100. Replicating this research in Colorado, the Division of Criminal Justice found in interviews with nearly 2,000 prisoners in the Colorado Department of Corrections found the average self-reported crime rate to be less than ten crimes per year across eight crime types (Mande & English, 1988;⁴⁸ English & Mande, 1992⁴⁹).

Property crimes most likely to be averted

One of the more frequently cited studies on the number of crimes averted when an offender is incarcerated was published by economist Steven Levitt.⁵⁰ Using data from 12 states for the years 1971 to 1992, Levitt estimated that each additional prisoner leads to a reduction of between 5 and 6 reported crimes per year. Including unreported crime raises the total to 15 crimes eliminated per prisoner per year. The bulk of the crime reduction – about 80 percent – is in property crimes. A 1994 study by Marvell and Moody produced generally similar estimates.⁵¹ They examined incarceration rate data from 49

⁴⁶ Excerpted from Przybylski, R. (2008). *What works? Effective recidivism reduction and risk-focused prevention programs*. Denver, CO: Office of Research and Statistics, Division of Criminal Justice, Department of Public Safety. Available at http://dcj.state.co.us/ors/pdf/docs/WW08_022808.pdf.

⁴⁷ Blumstein, A., Cohen, J., Roth, J.A., & Visher, C.A. (1986). Introduction: Studying Criminal Careers. In A. Blumstein, J. Cohen, J.A. Roth, and C.A. Visher (Eds.) *Criminal Careers and "Career Criminals,"* Vol. 1, p. 12-30. Washington, DC: National Academy Press.

⁴⁸ Mande, M. & English, K. (1988). Validation of the Iowa Risk Assessment Scale on a 1982 Release Cohort of Colorado Inmates: Final Report for National Institute of Justice, Project Number 84-IJ-CX-0034. Denver, CO: Colorado Division of Criminal Justice, Department of Public Safety.

⁴⁹ Mande, M. & English, K. (1992). *Measuring crime rates of prisoners: Final report for National Institute of Justice, Project Number 87-IJ-CX-0048*. Denver, CO: Colorado Division of Criminal Justice, Department of Public Safety.

⁵⁰ Levitt, S.D. (1996). The effect of prison population size on crime rates: Evidence from prison overcrowding litigation. *Quarterly Journal of Economics*, 111, 319–351.

⁵¹ Marvell, T.B. & Moody, C.E. (1994). Prison population growth and crime reduction. *Journal of Quantitative Criminology*, 10, 109-140.

states for the years 1971 to 1989 and estimated that about 17 crimes, primarily property, were averted annually for each additional prisoner behind bars.

More recently, Bhati (2007) used arrest data from the mid-1990s from 13 states to estimate the number of crimes averted by incapacitation.⁵² The average number of crimes against persons averted annually was 1.93 (with a median of 1.41), while the average number of property crimes averted annually was 8.47 (with a median of 5.75). The estimated mean number of *all* crimes averted annually was 18.5 (with a median of 13.9).

Researchers have noted that the number of crimes averted is linked to the type of crime. A careful analysis by Cohen and Canela-Cacho (1994) found that incarcerating violent offenders was associated with crime reduction, but imprisoning drug offenders had no effect on crime. Incarcerated property and drug offenders seem to be “replaced” in the community, confounding the ability to estimate the affect of incarceration on overall crime.

Does incarceration work to reduce the crime rate?

A considerable amount of research has examined the relationship between incarceration rates and crime rates in recent years. Overall, these studies have produced somewhat disparate results depending on the type of measures used. A 2007 report published by the Vera Institute for Justice provides a good illustration.⁵³ Fifteen different studies that examined the impact of incarceration on crime rates were identified in the Vera report, each with different conclusions. The estimated impact of a 10 percent increase in the incarceration rate ranged from a 22 percent reduction in serious crime to virtually no impact at all. One study reported a 28 percent reduction in violent index crime for every 10 percent increase in the incarceration rate.

One reason for the variation in findings is the type of data used. Whereas some of the earliest studies used national data, more recent research has been based on state and community-level data. Researchers generally agree that localized data provide more accurate and reliable results.⁵⁴

Studies using *national-level* homicide data report about a 15 percent drop in homicides with a 10 percent increase in the prison population. Recent studies using *state-level* crime data, however, have generally found a more modest impact on crime rates overall. For every 10 percent increase in the prison population, reductions in the index crime rate ranging from less than 1 percent to about 4 percent have typically been reported.

Two highly rigorous studies looking at incarceration and *violent crime* are worth noting. Rosenfeld (2000) analyzed the effect of incarceration growth on homicide using community-level data and concluded that, at most, incarceration explains 15-20 percent of the decline in adult homicide since 1980.⁵⁵ And Spelman’s (2000) analysis of violent crime and prison data over a 25-year period ending in

⁵² Bhati, A.S. (2007). An Information Theoretic Method for Estimating the Number of Crimes Averted by Incarceration. Washington, D.C.: Urban Institute.

⁵³ Stemen, D. (2007). Reconsidering incarceration: New directions for reducing crime. Vera Institute of Justice, New York, NY.

⁵⁴ For example, see: MacKenzie, D. L. (2006). *What Works? Reducing the Criminal Activities of Offenders and Delinquents*. New York, NY: Cambridge University Press.

⁵⁵ Rosenfeld, R. (2000). The Limited Importance of Prison Expansion. In A. Blumstein and J. Wallman (Eds.). *The Crime Drop In America*. New York, NY : Cambridge University Press.

1996 found that “the crime drop would have been 27 percent smaller than it actually was, had the prison buildup never taken place” (p. 123).⁵⁶

Incarceration and crime: Summary

As the 2007 Vera Institute report points out, one could use the available research to argue that an increase in incarceration is associated with a substantial drop in crime or no drop in crime at all. Despite the disparate findings, at least three conclusions can be drawn from the research:

First, the relationship between incarceration and crime rates is quite complex. The fact that crime has dropped over the past two decades while incarceration rates have increased is not conclusive evidence that prisons are effective. In fact, the relationship between higher rates of imprisonment and crime rates is quite uneven across time and jurisdictions. Zimring (2007), for example, recently showed the crime rates actually increased in the late 1980s when a 54 percent increase in incarceration occurred.⁵⁷ Second, the drop in crime that most jurisdictions experienced over the past two decades is primarily due to factors other than incarceration. Even those studies that have found the largest impacts of incarceration on crime conclude that factors other than incarceration are responsible for at least 75 percent of the crime drop that has occurred over the past two decades. Third, incarceration has contributed to the drop in crime that occurred in recent years, but the size of that contribution is modest in comparison to other factors. The conclusions reached by several recent, highly rigorous studies are remarkably consistent in finding that a 10 percent higher incarceration rate was associated with a 2 percent to 4 percent reduction in the crime rate. While the impact on violent crime may be appreciably greater, economic, demographic and other social factors have had a far greater impact on crime and violence than incarceration.

Research also demonstrates that the impact of incarceration on crime largely depends on who goes to prison and for what length of time.⁵⁸ Incarceration has a far greater impact and return on investment when it is used for violent and high-rate offenders. Prisons are expensive, but violent and career criminals impose tremendous financial and social costs on society. The empirical evidence is increasingly clear, however, that the increased use of incarceration for low-rate, non-violent offenders prevents and deters few crimes.⁵⁹

Diminishing returns

Several recent studies have confirmed that incarceration becomes less effective at reducing crime as the prison population grows.⁶⁰ From a policy making perspective, it is important to recognize that the

⁵⁶ Spelman, W. (2000). The Limited Importance of Prison Expansion. In A. Blumstein and J. Wallman (Eds.), *The Crime Drop In America*. Cambridge University Press: New York, N.Y.

⁵⁷ Zimring, F. E. (2007). *The Great American Crime Decline*. Oxford University Press, New York, NY.

⁵⁸ Austin, J. & T. Fabelo. (2004). The Diminishing Returns of Incarceration, A Blueprint to Improve Public Safety and Reduce Costs. Malibu, CA: JFA Institute.

⁵⁹ See for example: Piehl, A.M., Useem, B., & J. Dilulio, Jr. (1999). *Right-Sizing Justice: A Cost Benefit Analysis of Imprisonment in Three States*, New York, NY: Center for Civic Innovation at the Manhattan Institute, No. 8.; Aos, S. (2003). *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates, and prison economics*. Olympia, WA: Washington State Institute on Public Policy. Available at <http://www.wsipp.wa.gov/pub.asp?docid=03-01-1202>.

⁶⁰ See for example Spelman, W. (2000) “The Limited Importance of Prison Expansion.” In *The Crime Drop In America*, edited by Alfred Blumstein and Joel Wallman. Cambridge University Press: New York, N.Y.; Liedka, R.V., Piehl, A.M., & Useem, B. (2006). The crime control effect of incarceration: Does scale matter? *Criminology and Public Policy* 6, 245-276; and Cohen, J. & Canela-

increased use of imprisonment eventually results in diminishing returns. The reason for this is simple: locking up more and more people eventually leads to the incarceration of less serious offenders. When that happens, costs increase without a commensurate increase in public safety.

Incarceration may decrease crime, but Liedka, Piehl and Useem (2006) also found that there is a point beyond which increases in the incarceration rate are actually associated with *higher* crime rates.⁶¹ Using state-level prison and crime data from 1972 through 2000, they found that higher crime rates begin to occur when a state's incarceration rate reaches between 3.25 and 4.92 inmates per 1,000 persons in the general population. Colorado's incarceration rate in 2006 reached 4.69 per 1,000 persons.⁶²

Prison and recidivism

Another aspect of incarceration that research has examined is the relationship between imprisonment and post-release offending. Two meta-analyses conducted by Gendreau and his colleagues have actually found that imprisonment is associated with negative reoffending outcomes. In 1999, Gendreau and colleagues (1999) conducted a meta-analysis of 50 studies involving more than 300,000 prisoners and found no evidence that prison sentences reduced recidivism. In fact, the more rigorous studies in that analysis found a strong connection between longer prison stays and increased recidivism.⁶³ In a separate meta-analysis conducted a few years later, Gendreau et al. (2002) found that incarceration was associated with an increase in recidivism when compared with community-based sanctions, and that longer time periods in prison (compared with shorter sentences) were associated with higher recidivism rates, too.⁶⁴ A systematic review of the research published by Lipsey and Cullen (2007:8) reached similar conclusions. In summarizing the evidence on deterrence-oriented corrections programs and the effects of longer prison terms, the authors stated the following:

*In sum, research does not show that the aversive experience of receiving correctional sanctions greatly inhibits subsequent criminal behavior. Moreover, a significant portion of the evidence points in the opposite direction—some such actions may increase the likelihood of recidivism. The theory of specific deterrence inherent in the view that harsher treatment of offenders will dissuade them from further criminal behavior is thus not consistent with the preponderance of available evidence.*⁶⁵

Cacho, J. (1994). Incarceration and Violent Crime: 1965-1988. In A.J. Reiss Jr. and J. Roth (eds.) *Understanding and Preventing Violence*. (Vol IV). Report of Panel on the Understanding and Control of Violent Behavior, National Research Council, National Academy of Sciences. Washington, D.C.: National Academy Press.

⁶¹ Liedka, R.V., Piehl, A.M., & Useem, B.. (2006). The crime-control effect of incarceration: Does scale matter? *Criminology and Public Policy*, 5(2): 245-276.

⁶² Sabol, W.J., Courtur, H., & Harrison, P.M. (2007). *Prisoners in 2006*. Bureau of Justice Statistics, U.S. Department of Justice. Appendix Table 5. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p06.pdf>.

⁶³ Gendreau, P., Goggin, C. & Cullen, F. (1999). *The Effects of Prison Sentences on Recidivism*. A Report to the Corrections Research and Development and Aboriginal Policy Branch, Solicitor General of Canada, Ottawa.

⁶⁴ Smith, P., Goggin, C., & Gendreau, P. (2002). *The effects of prison sentences and intermediate sanctions on recidivism: General effects and individual differences*. Canada: Public Works and Government Services.

⁶⁵ Lipsey, M.W. & Cullen, F.T. (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science*, 3.

SECTION 4: PLAN FOR THE STUDY OF SENTENCING

The Commission has discussed sentencing since its inception. In its early meetings, the Commission members agreed that sentencing and parole laws should be simple, fair, constitutional, supported by research, and developed to reduce crime and future victimization (see the Commission's 2008 annual report, page 9). In the winter of 2009, the Commission convened expert groups to discuss issues concerning the criminal code, and the participants consistently identified problems with the current code, including its complexity and lack of transparency. In particular, prison sentences were mentioned as problematic for both the offender and the victim because the actual length of time an offender is incarcerated is subject to an extremely complex and dynamic formula. These conversations informed the Commission's approach to the study of sentencing.

Before it began the work presented in this report, the Commission agreed on the following ***purposes of sentencing***:

- To achieve justice for all and ensure public safety;
- To render sentences in all cases within a range of severity proportionate to the gravity of offenses;
- To achieve offender rehabilitation, reduce risk, reduce recidivism, general deterrence, incapacitation of dangerous offenders, and restoration of crime victims and communities;
- To render sentences no more severe than necessary to achieve the above.

In addition, the Commission established the following ***guiding principles*** to assist in the discussions of sentencing reform and direct the development of recommendations pertaining to modifications of the criminal code:

- Recommendations should reflect and support the Commission's ***purposes of sentencing***.
- Strive for internal consistency.
- Prioritize clarity and transparency.
- Be mindful of the impact of sentencing on disparity.
- Good behavior should be rewarded with incentives.
- Balance judicial discretion and judicial accountability.
- Apply evidence-based practices when possible.
- Respect victims and community.
- Promote consistency across judicial districts.
- Consider the offender's developmental maturity.
- Consider individual risk/needs assessments.
- Consider the availability of resources.
- Punishment has value.

The purposes of sentencing and the guiding principles were used in the development of the recommendations presented here, and will advance and focus its continuing work in this area. The following provides a brief description of the Commission's proposed work plan regarding sentencing. The plan is evolving and requires additional input and final approval from Commission members.

As reflected in the plan below, the Commission accomplishes much of its study and analysis with the assistance of task forces and working groups. The task force members and chairpersons are appointed by the chairperson of the Commission, the Commission chair and task force chair approve members of the working group. While these are open meetings, only members may vote.

Note that the following time periods are approximate and are dependent upon staff support and associated resources, along with the continued dedication of Commission members and the community experts who have devoted their time to assisting the Commission fulfill its mission.

Phase 1 (3 months). Since the passage of SB 09-286, the work of the Commission and its task forces has been guided by a short-term focus on relatively narrow aspects of the criminal code requiring intensive but less complex study. The objective of this approach was to provide recommendations for the FY 2010 legislative session and develop the foundation for long-term study. Some of the short-term work is not yet complete and will be presented in a short *Addendum* report that will be published on behalf of the Commission in December 2009. Upon completion of the short-term work resulting in the recommendations in this report, the next step is for the Commission to return to its earlier discussions regarding the macro level of sentencing reform and affirm the following:

- The Purpose of Sentencing
- The Principles of Sentencing

Once the Commission has affirmed the purpose and principles of sentencing it must turn to the task of developing and finalizing specific goals that will assist in achieving the purpose of sentencing, and specific objectives to assist in achieving the goals of sentencing. The setting of goals and objectives helps to establish a critical path towards achieving the overall purpose of sentencing.

The Commission will clarify new expectations of the existing task forces and set a schedule of work that includes an outline of the information to be presented in its February 1, 2010 report pursuant to SB 09-286 and organize the work described below. In addition, the Substance Abuse Funding working group will continue to meet and prepare recommendations that support the public health approach to sanctioning drug offenders and the public education effort will be updated and renewed.

Phase 2 (3-6 months). This work will occur in conjunction with that described above in Phase 1. The Commission's work will continue with the current Sentencing Task Force and Drug Policy Task Forces. The next period of work will involve several phases of data collection and analysis regarding Colorado law and current practice, including a review of relevant research from other states to lay the foundation necessary for developing evidence-based sentencing reform recommendations.

Specifically, the first phase of this long-term work will require a complete examination of sentencing practices in Colorado. This effort involves compiling data on sentence placements and sentence lengths for current convictions across crime classes. The review of sentence placements such as probation, jail, community corrections, and prison will identify current sentencing practices. This is a particularly complex analysis because it requires the empirical examination of combinations of crimes (offenders are frequently charged and convicted of multiple offenses). In addition to sentence placements, it is necessary to analyze the length of the sentence along with actual time served. Prison release practices will be an important component of this review. This information is required to determine the impact of current sentencing practices both on public safety and the criminal justice supervision institutions. The information generated in Phase 2 must then be compared with what the larger criminology research literature has identified as evidence-based correctional practices. Examples of analyses conducted on behalf of the Commission's study of sentencing are included in Appendix E.

Phase 3A (9 months). This phase of work will involve assessing the current state of sentencing from a variety of perspectives to determine the need for reform. This work will involve analyzing how modifications to current practices may impact the flow of offenders into sentencing placements, including probation, jail, community corrections, prison, and parole. This requires significant data analysis capability and resources. In addition to this data analysis and scenario modeling component, it will be necessary to divide the Commission's study among several workgroups for analysis and preliminary recommendations. These groups must work both individually and collaboratively, given the integration of the criminal code. For example, the subgroups and tasks may include the following:

- Offense structure:
 - Determine the appropriate classification of offenses based on severity, proportionality, equity, parsimony and other criteria identified by the Commission.
 - Based on the work above, build a classification structure and application consistent with severity, proportionality, equity, parsimony and any other criteria identified above.
 - Identify, develop and articulate evidence-based disposition options.
 - Develop recommendations for the new offense structure.
- Risk and other assessment protocols:
 - Collaborate with Behavioral Health Task Force.
 - Identify appropriate risk assessment instruments for use at multiple decision points.
 - Identify additional evidence-based assessment processes for use at these decision points.
 - Develop strategy to provide this information to the appropriate decision maker(s) at each decision point.
 - Develop recommendations.
- Dispositions
 - Develop a comprehensive evidence-based community supervision structure and plan (probation/community corrections).

- o Develop a comprehensive evidence-based institutional (jail and prison) plan.
- o Ensure the plans developed above are based on an ongoing, dynamic continuum that guarantees on the continuity of intervention and treatment.
- o Develop recommendations.
- Institutional release
 - o Develop comprehensive review of and plan for release/re-entry preparation and planning.
 - o Develop comprehensive review of and plan for Parole Board practices and decisions.
 - o Develop comprehensive review of technical violations and plan for intermediate sanctions
 - o Develop recommendations.

Phase 3B (9 months). This phase of work, which will occur both simultaneously and subsequently to the phase mentioned above, will require a group to study the recommendations from such subgroups in totality to determine the systemic impact of the recommendations. This subgroup and its areas of focus may be defined as:

- Impact Task Force
 - o Develop a correctional simulation model to project the impact of initial recommendations.
 - o Develop a correctional simulation model and process for future recommendations.
 - o Develop recommendations.

Phase 4 (4 months). This phase will conclude with a final review and preparation of recommendations for consideration by the full Commission. In addition, an Implementation and Monitoring Task Force⁶⁶ will be appointed and assigned the task to develop an implementation plan and timeline for the approved recommendations. Also, this group will devise a monitoring and evaluation system to track the implementation of the recommendations and identify future changes or improvements as necessary.

Phase 5 (3 months). The Commission will review, revise, and finalize recommendations.

Phase 6 (2 months). During the final phase of study, the Commission will develop recommendations for sustaining the ongoing monitoring and evaluation of the recommendations. Further, it is essential for the Commission to establish an ongoing process to ensure that new legislation is consistent with the purposes of sentencing and conforms to the established construct of the sentencing structure, assessment processes, and dispositional continuity of care as outlined in Phase 3A.

Conclusion

As mandated in SB 09-286, this section presents the Commission’s plan for the study of sentencing. However, it is important to note that the time periods are approximate, certain elements in some

⁶⁶ The chair of the Commission will select a task force chair who, in turn, will select the members of this task force.

phases will occur simultaneously, and the entire effort is dependent upon the Commission having adequate resources to accomplish the work described in this section.

Previous sections of this report describe the areas of study and the specific recommendations approved thus far by the Commission in the area of sentencing reform. Some recommendations remain under consideration and to ensure that the information is available to the General Assembly for its 2010 session, the Commission will soon publish a *December 2009 Addendum Report*. Finally, as mandated in SB 09-286, the Commission shall provide the Executive Committee of the General Assembly with recommendations regarding the modification of sentencing laws.

Appendix A:
Senate Bill 09-286

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 09-286

BY SENATOR(S) Morse and Carroll M., Bacon, Boyd, Foster, Groff, Heath, Hodge, Hudak, Isgar, Newell, Romer, Shaffer B., Tapia, Tochtrop, Veiga, Williams;
also REPRESENTATIVE(S) Levy and Merrifield, Ferrandino, Kagan, Miklosi, Pommer, Pace, Benefield, Carroll T., Court, Fischer, Green, Hullinghorst, Judd, Kerr A., Labuda, McFadyen, Middleton, Rice, Ryden, Schafer S., Solano, Todd, Kefalas, McCann.

CONCERNING CRIMINAL LAW, AND, IN CONNECTION THEREWITH, CHANGING THE PROVISIONS RELATED TO LEGAL REPRESENTATION OF INDIGENT DEFENDANTS FOR CERTAIN MISDEMEANOR CASES; CHANGING THE OFFENSE LEVEL OR SENTENCING OPTIONS FOR SELECT NONVIOLENT OFFENSES, PROPERTY OFFENSES, AND DRUG OFFENSES; CHANGING THE PRESUMPTIVE SENTENCING RANGES FOR CERTAIN FELONY OFFENSES; REPEALING CERTAIN EXTRAORDINARY RISK SENTENCING PROVISIONS; MAKING CHANGES TO THE HABITUAL OFFENDER STATUTE; AND ALLOWING FOR CERTAIN SENTENCING TIME CREDITS FOR CERTAIN OFFENDERS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(a) In 2007, it created the Colorado commission on criminal and juvenile justice, referred to in this section as the "commission", in House Bill 07-1358;

(b) The commission was tasked with enhancing public safety, ensuring justice, and ensuring protection of the rights of victims through the cost-effective use of public resources by studying evidence-based, recidivism reduction initiatives that ensure the cost-effective expenditure of limited criminal justice funds;

(c) Based on that study and consistent with its mission, the commission developed sixty-six recommendations, including six bills referred to the general assembly during the 2009 legislative session; and

(d) The state of Colorado faces an unprecedented budget crisis during the coming fiscal year, and it is imperative that the general assembly consider cost-saving measures in the criminal justice system during the second regular session of the sixty-seventh general assembly.

(2) Therefore, the general assembly determines that it is necessary to direct the commission to prioritize the study of sentencing reform while maintaining the public safety.

SECTION 2. 16-11.3-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-11.3-103. Duties of the commission - mission - staffing - repeal. (2.5) (a) USING EMPIRICAL ANALYSIS AND EVIDENCE-BASED DATA, THE COMMISSION SHALL STUDY SENTENCES IN COLORADO.

(b) IN ADDITION TO ANY OTHER AREAS DEEMED APPROPRIATE BY THE COMMISSION, THE COMMISSION MAY STUDY THE FOLLOWING AREAS:

(I) A STATEWIDE DEPARTMENT OF CORRECTIONS CORRECTIONAL FACILITY MANAGEMENT PLAN AND POTENTIAL DEPARTMENT OF CORRECTIONS CORRECTIONAL FACILITY BED LIMITATION;

(II) SENTENCES RELATED TO THE OFFENSE OF DRIVING UNDER RESTRAINT DESCRIBED IN SECTION 42-2-138, C.R.S., AND WHETHER TO

CHANGE THOSE SENTENCES;

(III) SENTENCES RELATED TO DRUG CRIMES DESCRIBED IN ARTICLE 18 OF TITLE 18, C.R.S., AND WHETHER TO CHANGE THOSE SENTENCES;

(IV) WHETHER PAROLE SHOULD BE INCLUDED IN THE SENTENCE OR OUTSIDE THE SENTENCE; AND

(V) ALTERNATIVES TO INCARCERATION FOR NONVIOLENT FIRST-TIME OFFENDERS; AND

(VI) THE CONSEQUENCES AND EFFICACY OF MANDATORY MINIMUM SENTENCES AND OTHER PROVISIONS THAT LIMIT JUDICIAL DISCRETION IN THE SENTENCING PROCESS.

(c) IN ADDITION, THE COMMISSION MAY STUDY THE IMPACT OF INCARCERATION ON CRIME RATES.

(d)(I) BY NOVEMBER 30, 2009, THE COMMISSION SHALL UPDATE THE GOVERNOR, THE ATTORNEY GENERAL, THE CHIEF JUSTICE OF THE SUPREME COURT, THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, AND THE EXECUTIVE COMMITTEE OF THE GENERAL ASSEMBLY REGARDING THE COMMISSION'S FINDINGS, RECOMMENDATIONS, AND PROPOSED PLAN FOR THE ONGOING STUDY OF SENTENCING REFORM. ADDITIONALLY, BY FEBRUARY 1, 2010, THE COMMISSION SHALL PROVIDE THE EXECUTIVE COMMITTEE OF THE GENERAL ASSEMBLY WITH RECOMMENDATIONS REGARDING WHETHER TO MODIFY ANY SENTENCES OR SENTENCE LAWS.

(II) THIS PARAGRAPH (d) AND PARAGRAPHS (b) AND (c) OF THIS SUBSECTION (2.5) ARE REPEALED, EFFECTIVE JULY 1, 2010.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

Appendix B:
Guiding Principles for DUI Courts

The Guiding Principles¹

DWI COURTS FOLLOW THE TEN KEY COMPONENTS OF DRUG COURTS AND THE GUIDING PRINCIPLES OF DWI COURTS

DWI Courts follow the **Ten Key Components of Drug Courts** and the **Guiding Principles of DWI Courts**, as established by the National Association of Drug Court Professionals. It is these 10 Principles that set out the guidelines for DWI Courts.

The Guiding Principles of DWI Courts

GUIDING PRINCIPLE #1: Determine the Population

- Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI Court program. This is a complex task given that DWI Courts, in comparison to traditional Drug Court programs, accept only one type of offender: the hardcore impaired driver. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

GUIDING PRINCIPLE #2: Perform a Clinical Assessment

- A clinically competent and objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

GUIDING PRINCIPLE #3: Develop the Treatment Plan

- Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI Courts must carefully select and implement treatment strategies demonstrated through research to be effective with the hardcore impaired driver to ensure long-term success.

GUIDING PRINCIPLE #4: Supervise the Offender

- Driving while impaired presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with hardcore DWI offenders and to protect against future impaired driving.

GUIDING PRINCIPLE #5: Forge Agency, Organization, and Community Partnerships

- Partnerships are an essential component of the DWI Court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI Court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of

¹ <http://www.dwicourts.org/learn/about-dwi-courts>

other agencies, as well as community organizations to form a partnership in support of the goals of the DWI Court program.

GUIDING PRINCIPLE #6: Take a Judicial Leadership Role

- Judges are a vital part of the DWI Court team. As leader of this team, the judge's role is paramount to the success of the DWI Court program. The judge must be committed to the sobriety of program participants, possess exceptional knowledge and skill in behavioral science, own recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI Court team, therefore, is of utmost importance.

GUIDING PRINCIPLE #7: Develop Case Management Strategies

- Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI Court program.

GUIDING PRINCIPLE #8: Address Transportation Issues

- Though nearly every state revokes or suspends a person's driving license upon conviction for an impaired driving offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI Court program. In many cases, the participant and court team can solve the transportation problem created by the loss of their driver's license through a number of strategies. The court must hold participants accountable and detect those who attempt to drive without a license and/or insurance.

GUIDING PRINCIPLE #9: Evaluate the Program

- To convince stakeholders about the power and efficacy of DWI Court, program planners must design a DWI Court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI Court team to rigorously abide by the rules of the evaluation design.

GUIDING PRINCIPLE #10: Ensure a Sustainable Program

- The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

Appendix C:
Evidence-Based Correctional Practices



Evidence Based Correctional Practices

“What works in corrections” is not a program or a single intervention but rather a body of knowledge that is accessible to criminal justice professionals.¹



The National Institute of Corrections (NIC) has been promoting the use of evidence-based practice for many years. The eight principles of evidence based corrections are summarized on the NIC website.² These principles, along with additional discussion, are presented below. Corrections and criminology research conducted over the past several decades provide substantial direction for implementing prison and community-based programs for criminal offenders. Criminologists have spanned the research-practice divide that has emerged over the last fifteen years. Now leaders in corrections must take forward the information learned and implement programs based on the principles of effective intervention.

Prepared by Colorado Division of Criminal
Justice, Office of Research and Statistics.
Based in part on material available from
the National Institute of Corrections
(www.nicic.org), August 2007.

¹ Latessa, E. J. and Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal* 521-535.

² Available at <http://www.nicic.org>, especially <http://www.nicic.org/pubs/2004/019342.pdf>.

**Recidivism reduction:
Implementing new programs
and expanding existing programs
for the purpose of recidivism
reduction requires integrating
the principles described here.**

ONE:

Assess offender risk/need levels using actuarial instruments

Risk factors are both static (never changing) and dynamic (changing over time, or have the potential to change). Focus is on criminogenic needs, that is, offender deficits that put him or her at-risk for continued criminal behavior.³ For example, many studies show that specific offender deficits are associated with criminal activity, such as lack of employment, lack of education, lack of housing stability, substance abuse addiction. Actuarial instrument tools are available which can assist in the identification of these areas of service needs. One of the most common of these is the Level of Service Inventory (LSI).⁴ The LSI (see sidebar) may be the most used instrument: In a 1999 study, researchers found that 14% of the agencies surveyed in a national study were using the LSI-Revised with another 6% planning on implementing it in the near future.⁵ It is used in jurisdictions across the U.S. and Canada, and has been the subject of a considerable amount of research. Systematically identifying and intervening in the areas of criminogenic need is effective at reducing recidivism.

³ Criminogenic risk refers to attributes associated with criminal behaviors and recidivism include (Gendreau, and Andrews, 1990): (1) Anti-social attitudes, values, and beliefs (criminal thinking); (2) Pro-criminal associates and isolation from pro-social associates; (3) Particular temperament and behavioral characteristics (e.g., egocentrism); (4) Weak problem-solving and social skills; (5) Criminal history; (6) Negative family factors (i.e., abuse, unstructured or undisciplined environment), criminality in the family, substance abuse in the family; (7) Low levels of vocational and educational skills (8) Substance abuse. The more risk factors present, the greater the risk for committing criminal acts.

⁴ Andrews, D.A. and Bonta, J. L. (2003). *Level of Supervision Inventory-Revised. U.S. Norms Manual Supplement*. Toronto: Multi Health Systems. The LSI assesses the extent of need in the following areas: criminal history, education, employment, financial, family and marital relationships, residential accommodations, leisure and recreation activities, companions, alcohol and drug problems, emotional and personal, and pro-social attitudes and orientations.

⁵ Jones, D. A., Johnson, S., Latessa, E. J., and Travis, L. F. (1999). *Case classification in community corrections: Preliminary findings from a national survey*. Topics in Community Corrections. Washington D.C.: National Institute of Corrections, U.S. Department of Justice.

TWO:

Enhance offender motivation

Humans respond better when motivated- rather than persuaded-to change their behavior. An essential principle of effective correctional intervention is the treatment team playing an important role in recognizing the need for motivation and using proven motivational techniques. Motivational interviewing, for example, is a specific approach to interacting with offenders in ways that tend to enhance and maintain interest in changing their behaviors.

***But when it comes to using
this information in the systematic
application of program services,
most corrections agencies
fall short.***

THREE:

Target interventions

This requires the application of what was learned in the assessment process described in #1 above.⁶ Research shows that targeting three or fewer criminogenic needs does *not* reduce recidivism. Targeting four to six needs (at a minimum), has been found to reduce recidivism by 31 percent. Correctional organizations have a long history of assessing inmates for institutional management purposes, if nothing else. But when it comes to using this information in the systematic application of program services, most corrections agencies fall short. While inmate files may contain adequate information identifying offender's deficits and needs, correctional staff are often distracted by population movement, lockdowns, and day-to-day prison operations. Often, these take priority over the delivery of services based on the offender's criminogenic needs. Staff training and professionalism becomes an essential component of developing a culture of personal change: well-trained staff can—and must—role model and promote pro-social attitudes and behaviors even while maintaining a safe and secure environment.

Thus, targeting interventions requires clear leadership and management of the prison culture. Implementation methods include the following:

- **Act on the risk principle.** This means prioritizing supervision and treatment resources for higher risk offenders.

⁶ Gendreau, French and Taylor (2002). *What Works (What Doesn't Work)* Revised 2002.

WHAT IS THE LSI-r?

The Level of Service Inventory-Revised (LSI-r)¹ is one of the most commonly used classification tools used with adult offenders. The LSI-r is used in a variety of correctional contexts across the United States to guide decision making. In Colorado, the LSI-r is used in probation, community corrections, prison and parole to develop supervision and case management plans, and to determine placement in correctional programs. In some states, the LSI-r is used to make institutional assignments and release from institutional custody decisions. It may be the most used instrument: In a 1999 study, researchers found that 14% of the agencies surveyed in a national study were using the LSI-R with another 6% planning on implementing it in the near future.² The instrument is perhaps the most researched correctional risk/needs assessment and, from the first validation study in 1982, it has continued to show consistent predictive validity for a range of correctional outcomes.³

The LSI-R assessment is administered via a structured interview. Supporting documentation should be collected from family members, employers, case files, drug tests, and other relevant sources.⁴ (Andrews & Bonta, 1995).

The instrument includes 54 items that measure ten components of risk and need. The components measured are:

- *Criminal history,*
- *Education,*
- *Employment,*
- *Financial,*
- *Family and marital relationships,*

- *Residential accommodations,*
- *Leisure and recreation activities,*
- *Companions,*
- *Alcohol and drug problems,*
- *Emotional and personal, and*
- *Pro-social attitudes and orientations.*

The LSI-r predicts recidivism but perhaps more importantly it also provides information pertaining to offender needs. Re-assessment every six months allows for an examination of whether the offender's need level was improved by the intervening programming. Probation and DOC apply differing score paradigms for determining levels of risk and need for their respective individual populations.

Probation and DOC have set different score categories for designation of risk/need.

RISK/NEED category	Probation	DOC
Low	1-18	0-12
Medium	19-28	13-26
High	29-54	27-54

Level of Supervision Inventory

Percent chance of recidivism within one year (based on total score).

LSI total score (Raw score)	Percent chance of recidivism
0 to 5	9%
6 to 10	20%
11 to 15	25%
16 to 20	30%
21 to 25	40%
26 to 30	43%
31 to 35	50%
36 to 40	53%
41 to 45	58%
46 to 50	69%
50 to 54	<70%

Source: Andrews, D.A. and Bonta, J. L. (2003). *Level of Supervision Inventory-Revised. U.S. Norms Manual Supplement*. Toronto: Multi Health Systems.

¹ Andrews, D.A. and Bonta, J. (1995). *The Level of Service Inventory-Revised*. Toronto: Multi-Health Systems.

² Jones, D. A., Johnson, S., Latessa, E. J., and Travis, L. F. (1999). *Case classification in community corrections: Preliminary findings from a national survey*. Topics in Community Corrections. Washington, D.C.: National Institute of Corrections, U.S. Department of Justice.

³ Andrews, D.A. (1982). *The Level of Supervision Inventory (LSI): The first follow-up*. Toronto: Ontario Ministry of Correctional Services; Andrews, D.A., Dowden, C. and Gendreau, P. (1999). *Clinically relevant and psychologically informed approaches to reduced re-offending: A meta-analytic study of human service, risk, need, responsivity and other concerns in justice contexts*. Ottawa: Carleton University.

⁴ Andrews, D.A. and Bonta, J. (1995). *The Level of Supervision Inventory-revised*. Toronto: Multi-Health Systems.

Some studies have shown that lower risk offenders have a high probability of successfully re-integrating into the community without intense prison programming.⁷ They tend to have positive support groups and are not without resources. Placing these offenders in correctional programs tends to disrupt their pro-social networks and increase their likelihood of recidivism.

Staff training and professionalism becomes an essential component of developing a culture of personal change: well-trained staff can—and must—role model and promote pro-social attitudes and behaviors even while maintaining a safe and secure environment.

- **Act on the need principle.** The fundamental point of this principle is to provide services according to individual deficits—social skills, thinking errors, vocational training, misuse of leisure time, drug and alcohol abuse—when these are identified by the assessment in #1 above. Sex offenders, for example, have significant deficits that are identified in general assessment tools such as the LSI, but research shows they also have additional treatment needs that require specialized interventions by professionals with specific expertise.
- **Implement the responsivity principle.** Inmates, like other humans, have different temperaments, learning styles, and motivation levels. These must be acknowledged and services must accommodate and consistently promote every individual's ability to participate in a program. Many evidence-based programs, however, have low or no success with offenders of color, and women have very different service and program needs than men. Hence, gender and cultural difference must be accounted for. Recidivism reduction requires developing interventions that are sensitive to the learning styles and psychological needs of all program participants.

- **Ensure adequate program dose and duration.** Many efficacy studies have found that high-risk offenders should spend 40 to 70 percent of their time in highly structured activities and programming for 3 to 9 months prior to release.⁸ However, these are minimum durations and are likely to be inadequate for both sex offender populations and serious drug addicts. Studies of both populations have found that duration and intensity are linked to positive outcomes. For both populations, the need for structured and accountable time throughout the day and week is likely higher than the average 40 to 70 percent found in studies of the general criminal population. The continuity of structure, treatment, and accountability must follow both substance addicts and sex offenders into the community, and treatment should be delivered as a life-long plan for changing entrenched negative lifestyle behaviors.⁹ The evidence indicates that incomplete or uncoordinated approaches can have negative effects and increase recidivism and victimization.¹⁰

The continuity of structure, treatment, and accountability must follow both substance addicts and sex offenders into the community, and treatment should be delivered as a life-long plan for changing entrenched negative lifestyle behaviors. The evidence indicates that incomplete or uncoordinated approaches can have negative effects and increase recidivism and victimization.

⁷ Andrews, D. A. and Bonta, J. (2003). *The psychology of criminal conduct*. Cincinnati, OH: Anderson Publishing Co.; Clear, T. R. "Objectives-Based Case Planning," National Institute of Corrections, Monograph 1981, Longmont, CO.; Currie, E. (1998). *Crime and punishment in America*. New York: Metropolitan Books; Palmer, T. (1995). "Programmatic and non-programmatic aspects of successful intervention: New directions for research," *Crime & Delinquency*, 41.

⁸ Gendreau, P. and Goggin, C. (1995). "Principles of effective correctional programming with offenders," Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick; Palmer, T. (1995). "Programmatic and non-programmatic aspects of successful intervention: New directions for research," *Crime & Delinquency*, 41, 100-131; Higgins, H. and Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions*. Washington, D.C.: American Psychological Association.

⁹ National Institute on Drug Abuse's *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research Based Guide*, available at http://www.nida.nih.gov/PODAT_CJ/ from the U.S. National Institutes of Health.

¹⁰ Higgins, H. and Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions*. American Psychological Association.

- **Implement the treatment principle.** The treatment principle states that cognitive/behavioral treatment should be incorporated into all sentences and sanctions.¹¹ Treatment is action. First, it is centered on the *present* circumstances and risk factors that are responsible for the offender's behavior. Second, it is *action* oriented rather than talk oriented. Offenders do something about their difficulties rather than just talk about them. Third, clinicians *teach* offenders new, pro-social skills to replace the anti-social ones like stealing, cheating and lying, through modeling, practice, and reinforcement. These behavioral programs would include:

- o Structured social learning programs where new skills are taught, and behaviors and attitudes are consistently reinforced,
- o Cognitive behavioral programs that target attitudes, values, peers, substance abuse, anger, etc., and
- o Family based interventions that train families on appropriate behavioral techniques.

Interventions based on these approaches are very structured and emphasize the importance of modeling and behavioral rehearsal techniques that engender self-efficacy, challenge cognitive distortions, and assist offenders in developing good problem-solving and self-control skills. These strategies have been demonstrated to be effective in reducing recidivism.¹²

FOUR:

Provide skill training for staff and monitor their delivery of services

Evidence-based programming emphasizes cognitive-behavior strategies and is delivered by well-trained staff. Staff must coach offenders to learn new behavioral responses and thinking patterns. In addition, offenders must engage in role playing and staff must continually and consistently reinforce positive behavior change.

Researchers have found that optimal behavior change results when the ratio of reinforcements is four positive to every negative reinforcement.

FIVE:

Increase positive reinforcement

Researchers have found that optimal behavior change results when the ratio of reinforcements is four positive to every negative reinforcement.¹³ While this principle should not interfere with the need for administrative responses to disciplinary violations, the principle is best applied with clear expectations and descriptions of behavior compliance. Furthermore, consequences for failing to meet expectations should be known to the offender as part of the programming activity. Clear rules and consistent consequences that allow offenders to make rewarding choices can be integrated into the overall treatment approach.¹⁴

Quality control and program fidelity play a central and ongoing role to maximize service delivery. In a study at the Ohio Department of Corrections, programs that scored highest on program integrity measures reduced recidivism by 22 percent. Programs with low integrity actually increased recidivism.

¹¹ Latessa, E.J. (no date). From theory to practice: What works in reducing recidivism? University of Cincinnati. Paper prepared for the Virginia Division of Criminal Justice Services. Available at <http://www.dcjs.virginia.gov/corrections/documents/theoryToPractice.pdf>.

¹² Excerpted from page 2, Latessa, E.J. (no date). From theory to practice: What works in reducing recidivism? University of Cincinnati. Paper prepared for the Virginia Division of Criminal Justice Services. Available at <http://www.dcjs.virginia.gov/corrections/documents/theoryToPractice.pdf>.

¹³ Gendreau, P. and Goggin, C. (1995). *Principles of effective correctional programming with offender*. Unpublished manuscript, Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick, New Brunswick.

¹⁴ McGuire, J. (2001). "What works in correctional intervention? Evidence and practical implications," *Offender rehabilitation in practice: Implementing and evaluating effective program*; Higgins, S. T and Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions*. Washington, D.C.: American Psychological Association.

SIX:

Engage ongoing support in natural communities

For many years research has confirmed the common sense realization that placing offenders in poor environments and with anti-social peers increases recidivism. The prison-based drug and alcohol treatment communities show that the inmate code can be broken and replaced with a positive alternative and, in the process, teach offenders the skills they will need upon release. Likewise, parole supervision requires attending to the pro-social supports required by inmates to keep them both sober and crime free. Building communities in prison and outside of prison for offenders who struggle to maintain personal change is a key responsibility of correctional administrators today. The National Institute of Corrections calls for:

*Realign and actively engage pro-social support for offenders in their communities for positive reinforcement of desired new behaviors.*¹⁵

SEVEN:

Measure relevant processes/practices

An accurate and detailed documentation of case information and staff performance, along with a formal and valid mechanism for measuring outcomes, is the foundation of evidence-based practice. Quality control and program fidelity play a central and ongoing role to maximize service delivery. In a study at the Ohio Department of Corrections, programs that scored highest on program integrity measures reduced recidivism by 22 percent. Programs with low integrity actually increased recidivism.¹⁶

EIGHT:

Provide measurement feedback

Providing feedback builds accountability and maintains integrity, ultimately improving outcomes. Offenders need feedback on their behavioral changes, and program staff need feedback on program integrity. It is important to reward positive behavior—of inmates succeeding in programs, and of staff delivering effective programming. Measurements that identify effective practices need then to be linked to resources, and resource decisions should be based on objective measurement.

Years of research have gone into the development of these evidence-based principles. When applied appropriately, these practices have the best potential to reduce recidivism. These principles should guide criminal justice program development, implementation and evaluation. For further information, please see the material made available by the National Institute of Corrections, at www.nicic.org.

¹⁵ National Institute of Corrections, <http://nicic.org/ThePrinciplesofEffectiveInterventions>.

¹⁶ Latessa, E. J. and Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal*.

Appendix D:
Controlled Substance Crime Classification Summary

SUMMARY: Recommendations for Changes in Controlled Substances Crime Classifications

Recommendation	Controlled substance offenses POSSESSION	Current classification * Second or subsequent offense	Proposed classification
CS 1	Create and new and separate statute for possession		
CS 2	Possession of a schedule I or II 1 g. or less (<i>current law</i>)	Felony class 6 *Felony class 4	
	Possession of 4 grams or less of schedule I drug	Felony class 3 *Felony class 2	Felony class 6
	Possession of 4 grams or less of schedule II drug except, possession of 2 grams or less of methamphetamine	Felony class 4 *Felony class 2	Felony class 6
CS 3	Possession of more than 4 grams of schedule I	Felony class 3 *Felony class 2	Felony class 4
	Possession of more than 4 grams of schedule II except possession of more than 2 grams of methamphetamine	Felony class 4 *Felony class 2	Felony class 4
CS 4	Possession of a schedule III or IV 1 gram or less (<i>current law</i>)	Felony class 6 *Felony class 4	
	Possession of a schedule III	Felony class 4 *Felony class 3	Misdemeanor class 1
	Possession of a schedule IV	Felony class 5 *Felony class 4	Misdemeanor class 1
	Possession of a schedule V	Misdemeanor class 1 *Felony class 5	Misdemeanor class 1
CS 5	Possession of flunitrazepam and ketamine 1 gram or less	Felony class 6 *Felony class 4	Felony class 6
	Possession of 4 grams or less of flunitrazepam	Felony class 3 *Felony class 2	Felony class 6
	Possession of more than 4 grams of flunitrazepam	Felony class 3 *Felony class 2	Felony class 4
	Possession of 4 grams or less of ketamine	Felony class 4 *Felony class 3	Felony class 6
	Possession of more than 4 grams of ketamine	Felony class 4 *Felony class 3	Felony class 4
CS 7	Use of a schedule I or II controlled substance	Felony 6	Misdemeanor class 2
	Use of a schedule III, IV, or V	Misdemeanor class 1	Misdemeanor class 2

SUMMARY: Recommendations for Changes in Controlled Substances Crime Classifications (cont'd)

Recommendation	Controlled substance offenses DISTRIBUTION	Current classification * Second or subsequent offense	Proposed classification
DP 6	Fraud and Deceit	Felony class 5 *Felony class 4	Felony class 6
DP 7	Move money laundering out of the drug statute and create a new Money Laundering offense as a general Title 18 offense		
Recommendation	Controlled substance violations SPECIAL OFFENDER	Proposed change	
SP 1	Subsection (2)(a) applies to drug sales and distribution within 1,000 feet of schools, buses, parks, playgrounds, public housing units, sidewalks, alleys, and other public areas.	Limit the applicability of subsection (2)(a) to only apply to drug sales and distribution within 100 feet of a school or on school bus.	
SP 2	Create a new crime of sale of any controlled substance (other than marijuana) by a person over the age of 18 to a minor. If the sale is made by a person over the age of 18 who is less than two years older than the minor, the offense will be a class 4 felony		
SP 3	Subsection (1) (f) applies to drug sales and distribution "involving a deadly weapon"	Amend the definition "involving deadly weapon" to mean: the defendant used, displayed, or possessed on his or her person or within the defendant's immediate reach, a deadly weapon as defined by section 18-1-901(3)(e) at the time of the commission of a violation of this part 4 of article 18 of title 18, or (II) The defendant, or a confederate, possessed a firearm as defined in section 18-1-901(3)(h), in a vehicle the defendant was occupying, or to which the defendant or the confederate had access in a manner which posed an immediate threat to others, during the commission of a violation of this part 4 of article 18 or title 18.	
SP 5	Subsection (1)(d) applies to the importation of schedule I and II drugs	Amend this subsection to apply if the importation exceeds 4 grams of a schedule I or schedule II drug into the state.	

SUMMARY: Recommendations for Changes in Controlled Substances Crime Classifications (cont'd)

Recommendation	Controlled substance offenses MARIJUANA	Current classification * Second or subsequent offense	Proposed classification
MJ 1	Possession up to 1 ounce (<i>current law</i>)	Petty offense class 2	Petty offense class 2
	Possession 1-4 ounces	Misdemeanor class 1 *Felony class 5	Petty offense class 2
MJ 2	Possession 4-8 ounces	Misdemeanor class 1 *Felony class 5	Misdemeanor class 1
	Possession 8-16	Felony class 5 *Felony class 4	Misdemeanor class 1
MJ 3	Possession of marijuana concentrate	Felony class 5 *Felony class 4	Misdemeanor class 1
MJ 4	Distribution up to 1 ounce without remuneration	Petty offense class 2	Petty offense class 2
	Distribution 1-4 ounces without remuneration	Felony class 4 *Felony class 3	Petty offense class 2
MJ 5	Possession over 16 ounces	Felony class 5 *Felony class 4	Felony class 6
MJ 6	Distribution 4 ounces to 5 pounds	Felony class 4 *Felony class 3	Felony class 5
MJ 7	Distribution over 5 pounds	Felony class 4 *Felony class 3	Felony class 4
MJ 8	Distribution of any amount of concentrate (MJ 8)	Felony class 4 *Felony class 3	Felony class 5
MJ 9	Distribution to a child by an adult more than two years older than the child	Felony class 4 *Felony class 3	Felony class 3
MJ 10	Cultivation of 6 plants or less	Felony class 4 *Felony class 3	Misdemeanor class 1
MJ 11	Cultivation of 7-29 plants	Felony class 4 *Felony class 3	Felony class 5
MJ 12	Cultivation of 30 or more plants	Felony class 4 *Felony class 3	Felony class 4

Appendix E: Examples of Analyses



**COLORADO
DEPARTMENT
OF PUBLIC SAFETY**

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To: Kim English
From: Linda Harrison
Date: September 2009
Regarding Mandatory Minimum Sentences

The following presents a description of district courts cases involving crimes carrying a mandatory minimum sentence. The Aggravated Ranges, Extraordinary Risk and Mandatory Minimums Subgroup of the Sentencing Task Force identified the crimes included in this analysis. These crimes are given in Table 1.

The following information was compiled using data extracted from the Judicial Department's management information system, ICON. It includes data on convictions which occurred between January 2005 and December 2008.

Table 1. Crimes with Mandatory Minimum Sentences

Law Number	Law Description	Felony Class
18-3-103(1)	Murder 2	2
18-3-202(1)(1)	Assault 1	3
18-3-202(1)(b)		
18-3-202(1)(c)		
18-3-202(1)(e)		
18-3-202(1)(e.5)		
18-3-202(1)(f)		
18-3-203(1)(b)	Assault 2	3/4
18-3-203(1)(c)		
18-3-203(1)(d)		
18-3-203(1)(f)		
18-3-203(1)(f.5)		
18-3-203(1)(g)		
18-3-301	Kidnap 1	1/2
18-3-302	Kidnap 2	2/3/4
18-4-202	Burglary 1	2/3
18-4-302	Aggravated Robbery	3
18-6-401	Child Abuse	2/3
18-8-705	Aggravated Intimidation of Witness/Victim	3

- Between calendar years 2005 and 2008, 15,975 cases were filed in Colorado district courts which involved at least one charge carrying a mandatory minimum sentence.
- Although 12,516 of these cases resulted in a conviction, only 3,309 (26.4%) involved a conviction with a mandatory minimum sentence.

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- In 94.6% (3,130) of the cases involving a mandatory minimum conviction crime, the crime carrying the mandatory minimum sentence was the most serious conviction crime. In the other 5.4% of cases, the defendant was convicted of a crime carrying a potentially more serious sentence.
- The following tables describe these 3,130 cases in which a crime carrying a mandatory minimum sentence was the most serious conviction crime. Table 2 outlines the crime types involved in these cases.
- Table 3 gives the felony class of the conviction crimes within each crime category.

Table 2: Crime types

Crime Type	N	Percent
Assault	1862	59.5
Burglary 1	207	6.6
Child Abuse	299	9.6
Kidnapping	16	0.5
Murder 2	182	5.8
Aggravated Robbery	562	18.0
Aggravated Witness/Victim Intimidation	2	0.1
Total	3130	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 3: Crime type by felony class

Crime Type	Law Class	N	Percent within crime type
Assault	F1	0	0.0
	F2	0	0.0
	F3	188	10.1
	F4	1385	74.4
	F5	289	15.5
	Total	1862	100.0
Burglary 1	F1	0	0.0
	F2	0	0.0
	F3	147	71.0
	F4	60	29.0
	F5	0	0.0
	Total	207	100.0
Child Abuse	F1	0	0.0
	F2	24	8.0
	F3	80	26.8
	F4	195	65.2
	F5	0	0.0
	Total	299	100.0
Kidnapping	F1	5	31.3
	F2	8	50.0
	F3	3	18.8
	F4	0	0.0
	F5	0	0.0
	Total	16	100.0

Crime Type	Law Class	N	Percent within crime type
Murder 2	F1	0	0.0
	F2	112	61.5
	F3	70	38.5
	F4	0	0.0
	F5	0	0.0
	Total	182	100.0
Aggravated Robbery	F1	0	0.0
	F2	0	0.0
	F3	398	70.8
	F4	164	29.2
	F5	0	0.0
	Total	562	100.0
Aggravated Witness/Victim Intimidation	F1	0	0.0
	F2	0	0.0
	F3	1	50.0
	F4	1	50.0
	F5	0	0.0
	Total	2	100.0
Total	F1	5	0.2
	F2	144	4.6
	F3	887	28.3
	F4	1805	57.7
	F5	289	9.2
	Total	3130	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

- Tables 4, 5 and 6 display the demographics of the defendants convicted of the crimes carrying mandatory minimum sentences by crime category.

Table 4: Crime type by defendant gender

	Female		Male		Total	
	N	%	N	%	N	%
Assault	181	9.8	1667	90.2	1848	100
Burglary 1	16	7.7	191	92.3	207	100
Child Abuse	91	30.4	208	69.6	299	100
Kidnapping	0	0.0	16	100.0	16	100
Murder 2	15	8.4	164	91.6	179	100
Aggravated Robbery	47	8.4	513	91.6	560	100
Aggravated Witness/Victim Intimidation	0	0.0	2	100.0	2	100
Total	350	11.3	2761	88.7	3111	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 5: Crime type by defendant race/ethnicity

	Asian		Black		Hispanic		American Indian		Other		White		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Assault	13	0.7	343	18.5	360	19.5	35	1.9	11	0.6	1088	58.8	1850	100
Burglary 1	1	0.5	28	13.5	25	12.1	0	0.0	1	0.5	152	73.4	207	100
Child Abuse	4	1.3	42	14.1	59	19.8	1	0.3	2	0.7	190	63.8	298	100
Kidnapping	0	0.0	2	12.5	4	25.0	0	0.0	0	0.0	10	62.5	16	100
Murder 2	0	0.0	33	18.5	34	19.1	8	4.5	1	0.6	102	57.3	178	100
Aggravated Robbery	6	1.1	156	27.8	89	15.9	1	0.2	6	1.1	303	54.0	561	100
Aggravated Witness/Victim Intimidation	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0	1	50.0	2	100
Total	25	0.8	604	19.4	571	18.3	45	1.4	21	0.7	1846	59.3	3112	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 6: Crime type by defendant age

Crime Type	Average Age	N
Assault	29.5	1859
Burglary 1	26.9	207
Child Abuse	28.9	299
Kidnapping	28.6	16
Murder 2	28.9	182
Aggravated Robbery	26.2	562
Aggravated Witness/Victim Intimidation	38.0	2
Total	28.6	3127

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

- Table 7 displays the sentencing placements given to defendants convicted of the crimes carrying mandatory minimum sentences. Table 8 outlines these placements by crime category, while Table 9 outlines these placements by felony class.

Table 7: Sentencing placements

Sentence	N	Percent
Probation	344	11.0
Jail	34	1.1
Probation and Jail	151	4.8
Community Corrections	68	2.2
Department of Corrections	1943	62.1
Department of Corrections: Life	10	0.3
Youthful Offender System	128	4.1
Unknown	391	12.5
Other	61	1.9
Total	3130	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 8: Sentence placement by crime type

Crime Type	Sentence	N	Percent within crime type
Assault	Probation	237	12.7
	Jail	24	1.3
	Probation and Jail	89	4.8
	Community Corrections	26	1.4
	Department of Corrections	1149	61.7
	Department of Corrections: Life	3	0.2
	Youthful Offender System	59	3.2
	Unknown	237	12.7
	Other	38	2.0
	Total	1862	100.0
Burglary 1	Probation	29	14.0
	Jail	5	2.4
	Probation and Jail	16	7.7
	Community Corrections	13	6.3
	Department of Corrections	95	45.9
	Department of Corrections: Life	1	0.5
	Youthful Offender System	8	3.9
	Unknown	25	12.1
	Other	15	7.2
	Total	207	100.0
Child Abuse	Probation	58	19.4
	Jail	4	1.3
	Probation and Jail	36	12.0
	Community Corrections	15	5.0
	Department of Corrections	133	44.5
	Department of Corrections: Life	2	0.7
	Youthful Offender System	3	1.0
	Unknown	44	14.7
	Other	4	1.3
	Total	299	100.0
Kidnapping	Probation	1	6.3
	Jail	0	0.0
	Probation and Jail	0	0.0
	Community Corrections	0	0.0
	Department of Corrections	10	62.5
	Department of Corrections: Life	4	25.0
	Youthful Offender System	0	0.0
	Unknown	1	6.3
	Other	0	0.0
	Total	16	100.0
Murder 2	Probation	0	0.0
	Jail	0	0.0
	Probation and Jail	0	0.0
	Community Corrections	0	0.0
	Department of Corrections	164	90.1
	Department of Corrections: Life	0	0.0
	Youthful Offender System	7	3.8
	Unknown	10	5.5
	Other	1	0.5
	Total	182	100.0
Aggravated Robbery	Probation	18	3.2
	Jail	1	0.2
	Probation and Jail	10	1.8
	Community Corrections	13	2.3
	Department of Corrections	392	69.8
	Department of Corrections: Life	0	0.0
	Youthful Offender System	51	9.1

Crime Type	Sentence	N	Percent within crime type
Aggravated Robbery	Unknown	74	13.2
	Other	3	0.5
	Total	562	100.0
Aggravated Witness/Victim Intimidation	Probation	1	50.0
	Jail	0	0.0
	Probation and Jail	0	0.0
	Community Corrections	1	50.0
	Department of Corrections	0	0.0
	Department of Corrections: Life	0	0.0
	Youthful Offender System	0	0.0
	Unknown	0	0.0
	Other	0	0.0
	Total	2	100.0

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 9: Sentence placement by felony class

Felony Class	Sentence	N	Percent within most serious conviction law class
Felony 1	Probation	0	0.0
	Jail	0	0.0
	Probation and Jail	0	0.0
	Community Corrections	0	0.0
	Department of Corrections	1	20.0
	Department of Corrections: Life	4	80.0
	Youthful Offender System	0	0.0
	Unknown	0	0.0
	Other	0	0.0
	Total	5	100.0
Felony 2	Probation	1	0.7
	Jail	1	0.7
	Probation and Jail	0	0.0
	Community Corrections	0	0.0
	Department of Corrections	132	91.7
	Department of Corrections: Life	0	0.0
	Youthful Offender System	0	0.0
	Unknown	9	6.3
	Other	1	0.7
	Total	144	100.0
Felony 3	Probation	32	3.6
	Jail	6	0.7
	Probation and Jail	21	2.4
	Community Corrections	19	2.1
	Department of Corrections	604	68.1
	Department of Corrections: Life	5	0.6
	Youthful Offender System	85	9.6
	Unknown	101	11.4
	Other	14	1.6
	Total	887	100.0
Felony 4	Probation	280	15.5
	Jail	23	1.3
	Probation and Jail	113	6.3
	Community Corrections	44	2.4
	Department of Corrections	1025	56.8
	Department of Corrections: Life	1	0.1
	Youthful Offender System	41	2.3
	Unknown	240	13.3
	Other	38	2.1
	Total	1805	100.0

Felony Class	Sentence	N	Percent within most serious conviction law class
Felony 5	Probation	31	10.7
	Jail	4	1.4
	Probation and Jail	17	5.9
	Community Corrections	5	1.7
	Department of Corrections	181	62.6
	Department of Corrections: Life	0	0.0
	Youthful Offender System	2	0.7
	Unknown	41	14.2
	Other	8	2.8
	Total	289	100.0

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

- Tables 10 and 11 display the prison sentences given by conviction crime type and by felony class.

Table 10: Department of Corrections sentence lengths (years) by crime type

Crime type	Mean	N	Minimum	Maximum
Assault	7.9	1152	1	151
Burglary 1	13.1	96	2	64
Child Abuse	14.2	133	1	64
Kidnapping	26.8	10	16	48
Murder 2	29.4	164	1	96
Aggravated Robbery	13.6	393	1	64
Aggravated Witness/Victim Intimidation	11.6	1948	1	151

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 11: Department of Corrections sentence lengths (years) by felony class

Law class	Mean	N	Minimum	Maximum
Felony 1	48.0	1	48	48
Felony 2	32.4	132	1	96
Felony 3	16.9	607	1	64
Felony 4	7.2	1027	1	50
Felony 5	4.2	181	1	151
Total	11.6	1948	1	151

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

- Tables 12 and 13 identify the county and judicial district of conviction by crime category.

Table 12: Crime type by conviction county

	Assault		Burglary 1		Child Abuse		Kidnapping		Murder 2		Aggravated Robbery		Aggravated Witness/Victim Intimidation		Total	
County	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Adams	233	61.8	9	2.4	38	10.1	1	0.3	16	4.2	80	21.2	0	0.0	377	100
Alamosa	9	81.8	1	9.1	1	9.1	0	0.0	0	0.0	0	0.0	0	0.0	11	100
Arapahoe	87	35.7	24	9.8	33	13.5	2	0.8	14	5.7	84	34.4	0	0.0	244	100
Archuleta	4	50.0	3	37.5	1	12.5	0	0.0	0	0.0	0	0.0	0	0.0	8	100
Bent	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100
Boulder	30	50.0	4	6.7	8	13.3	1	1.7	6	10.0	11	18.3	0	0.0	60	100
Broomfield	6	50.0	0	0.0	3	25.0	0	0.0	0	0.0	3	25.0	0	0.0	12	100
Chaffee	9	90.0	0	0.0	0	0.0	0	0.0	0	0.0	1	10.0	0	0.0	10	100
Clear Creek	3	50.0	0	0.0	2	33.3	0	0.0	0	0.0	1	16.7	0	0.0	6	100
Conejos	3	75.0	0	0.0	0	0.0	0	0.0	1	25.0	0	0.0	0	0.0	4	100
Crowley	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	100

	Assault		Burglary 1		Child Abuse		Kidnapping		Murder 2		Aggravated Robbery		Aggravated Witness/Victim Intimidation		Total	
County	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Custer	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100
Delta	2	66.7	0	0.0	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	3	100
Denver	587	67.4	19	2.2	77	8.8	1	0.1	49	5.6	137	15.7	1	0.1	871	100
Douglas	12	37.5	6	18.8	2	6.3	1	3.1	3	9.4	8	25.0	0	0.0	32	100
Eagle	4	44.4	3	33.3	2	22.2	0	0.0	0	0.0	0	0.0	0	0.0	9	100
El Paso	158	46.6	35	10.3	25	7.4	4	1.2	20	5.9	96	28.3	1	0.3	339	100
Fremont	56	82.4	2	2.9	9	13.2	0	0.0	1	1.5	0	0.0	0	0.0	68	100
Garfield	20	74.1	0	0.0	4	14.8	0	0.0	3	11.1	0	0.0	0	0.0	27	100
Gilpin	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100
Grand	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100
Gunnison	6	85.7	0	0.0	1	14.3	0	0.0	0	0.0	0	0.0	0	0.0	7	100
Huerfano	3	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	100
Jefferson	255	63.4	37	9.2	27	6.7	1	0.2	18	4.5	64	15.9	0	0.0	402	100
Kit Carson	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0	1	50.0	0	0.0	2	100
La Plata	13	68.4	6	31.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	19	100
Lake	6	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	6	100
Larimer	43	42.6	12	11.9	20	19.8	3	3.0	3	3.0	20	19.8	0	0.0	101	100
Las Animas	6	54.5	0	0.0	0	0.0	0	0.0	3	27.3	2	18.2	0	0.0	11	100
Lincoln	6	85.7	0	0.0	0	0.0	0	0.0	1	14.3	0	0.0	0	0.0	7	100
Logan	21	91.3	1	4.3	0	0.0	0	0.0	0	0.0	1	4.3	0	0.0	23	100
Mesa	45	60.0	2	2.7	10	13.3	0	0.0	5	6.7	13	17.3	0	0.0	75	100
Moffat	6	60.0	1	10.0	3	30.0	0	0.0	0	0.0	0	0.0	0	0.0	10	100
Montezuma	13	68.4	2	10.5	0	0.0	0	0.0	4	21.1	0	0.0	0	0.0	19	100
Montrose	2	28.6	3	42.9	0	0.0	0	0.0	2	28.6	0	0.0	0	0.0	7	100
Morgan	12	75.0	1	6.3	2	12.5	0	0.0	1	6.3	0	0.0	0	0.0	16	100
Otero	3	42.9	0	0.0	2	28.6	0	0.0	2	28.6	0	0.0	0	0.0	7	100
Park	4	66.7	0	0.0	1	16.7	0	0.0	1	16.7	0	0.0	0	0.0	6	100
Phillips	0	0.0	3	75.0	1	25.0	0	0.0	0	0.0	0	0.0	0	0.0	4	100
Prowers	3	50.0	1	16.7	1	16.7	0	0.0	0	0.0	1	16.7	0	0.0	6	100
Pueblo	79	65.8	10	8.3	5	4.2	0	0.0	12	10.0	14	11.7	0	0.0	120	100
Rio Blanco	1	33.3	1	33.3	0	0.0	0	0.0	1	33.3	0	0.0	0	0.0	3	100
Rio Grande	2	66.7	0	0.0	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	3	100
Routt	4	66.7	1	16.7	1	16.7	0	0.0	0	0.0	0	0.0	0	0.0	6	100
San Miguel	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100
Sedgwick	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100
Summit	12	92.3	0	0.0	1	7.7	0	0.0	0	0.0	0	0.0	0	0.0	13	100
Teller	2	28.6	1	14.3	2	28.6	0	0.0	1	14.3	1	14.3	0	0.0	7	100
Washington	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100
Weld	71	49.0	19	13.1	14	9.7	2	1.4	15	10.3	24	16.6	0	0.0	145	100
Yuma	2	66.7	0	0.0	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	3	100
Total	1862	59.5	207	6.6	299	9.6	16	0.5	182	5.8	562	18.0	2	0.1	3130	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 13: Crime type by judicial district

	Assault		Burglary 1		Child Abuse		Kidnapping		Murder 2		Aggravated Robbery		Aggravated Witness/Victim Intimidation		Total	
District	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
1	256	63.5	37	9.2	27	6.7	1	0.2	18	4.5	64	15.9	0	0.0	403	100
2	590	67.5	19	2.2	77	8.8	1	0.1	49	5.6	137	15.7	1	0.1	874	100
3	9	64.3	0	0.0	0	0.0	0	0.0	3	21.4	2	14.3	0	0.0	14	100
4	160	46.2	36	10.4	27	7.8	4	1.2	21	6.1	97	28.0	1	0.3	346	100
5	25	73.5	3	8.8	5	14.7	0	0.0	0	0.0	1	2.9	0	0.0	34	100
6	17	63.0	9	33.3	1	3.7	0	0.0	0	0.0	0	0.0	0	0.0	27	100
7	12	63.2	3	15.8	2	10.5	0	0.0	2	10.5	0	0.0	0	0.0	19	100
8	43	42.6	12	11.9	20	19.8	3	3.0	3	3.0	20	19.8	0	0.0	101	100
9	21	70.0	1	3.3	4	13.3	0	0.0	4	13.3	0	0.0	0	0.0	30	100
10	79	65.8	10	8.3	5	4.2	0	0.0	12	10.0	14	11.7	0	0.0	120	100
11	71	82.6	2	2.3	10	11.6	0	0.0	2	2.3	1	1.2	0	0.0	86	100
12	14	77.8	1	5.6	2	11.1	0	0.0	1	5.6	0	0.0	0	0.0	18	100
13	38	76.0	5	10.0	4	8.0	0	0.0	1	2.0	2	4.0	0	0.0	50	100
14	12	66.7	2	11.1	4	22.2	0	0.0	0	0.0	0	0.0	0	0.0	18	100
15	3	50.0	1	16.7	1	16.7	0	0.0	0	0.0	1	16.7	0	0.0	6	100
16	9	69.2	0	0.0	2	15.4	0	0.0	2	15.4	0	0.0	0	0.0	13	100
17	239	61.4	9	2.3	41	10.5	1	0.3	16	4.1	83	21.3	0	0.0	389	100
18	105	37.1	30	10.6	35	12.4	3	1.1	18	6.4	92	32.5	0	0.0	283	100
19	71	49.0	19	13.1	14	9.7	2	1.4	15	10.3	24	16.6	0	0.0	145	100
20	30	50.0	4	6.7	8	13.3	1	1.7	6	10.0	11	18.3	0	0.0	60	100
21	45	60.0	2	2.7	10	13.3	0	0.0	5	6.7	13	17.3	0	0.0	75	100
22	13	68.4	2	10.5	0	0.0	0	0.0	4	21.1	0	0.0	0	0.0	19	100
Total	1862	59.5	207	6.6	299	9.6	16	0.5	182	5.8	562	18.0	2	0.1	3130	100

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

To: Kim English
From: Linda Harrison
Date: September 2009
Regarding the Prison Population by Age Group

In response to questions that have come up during meetings of the Colorado Commission for Criminal and Juvenile Justice, the following analysis examines the prevalence of elderly inmates among the Colorado prison population. Data extracts concerning the prison population are provided annually to the Division of Criminal Justice by the Colorado Department of Corrections for the purpose of preparing prison population projections. These data extracts were utilized to provide the information contained in this report.

All statistics provided exclude the prison population sentenced to life without parole eligibility. As of June 30, 2009, there were 503 of these inmates. No data concerning their age is currently available. Approximately 97% of these were convicted of 1st degree murder, and 3% were convicted of 1st degree kidnapping.¹

The tendency of inmates to engage in high-risk behaviors, such as alcohol and drug abuse, coupled with their lack of preventive health care, leads to the “early aging” of inmates. Inmates tend to have health problems that are more common in persons ten years older. Therefore, inmates 50 and older may be considered “elderly”.²

- As shown in Table 1, the average age of the prison population has increased slightly between 2005 and 2008.

Table 1. Average age of prison population by year, 2005-2008.

Year	Mean Age	N
2005	35.4	20025
2006	35.6	21286
2007	35.8	21900
2008	36.1	22830
Total	35.7	86041

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

¹ This is based upon the most recent prison population data from October 2007.

² Martinez, P., Benson, E., Harrison, K., Lansing, C. & Munson, M. (1999). *Elderly Offenders in Texas Prisons*. Austin, TX: Criminal Justice Policy Council, Texas Department of Criminal Justice.

Table 2 shows that

- Between 2005 and 2008, the percentage of the prison population over the age of 70 has remained less than half a percentage point. As of October 2008, there were 94 such individuals in prison.
- The population over the age of 60 has increased from 2.0% to 2.5% between 2005 and 2008. As of October 2008, there were 571 such individuals in prison.
- The population over the age of 50 has increased from 9.7% to 11.7% over the same time frame. As of October 2008, there were 2,661 such individuals in prison.

Table 2. Age of prison population by year, 2005-2008

Year	< 49		50 - 59		60 - 69		70+		Total	
	Count	%	Count	%	Count	%	Count	%	Count	%
2005	18074	90.3	1553	7.8	333	1.7	65	0.3	20025	100
2006	19119	89.8	1712	8.0	381	1.8	74	0.3	21286	100
2007	19524	89.2	1865	8.5	432	2.0	79	0.4	21900	100
2008	20169	88.3	2090	9.2	477	2.1	94	0.4	22830	100

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

Table 3 shows the annual rate of growth in the prison population each year for 2006, 2007 and 2008. As can be seen, each of the 50 and over age groups have grown at a much greater rate than the under 50 population. In 2008, the prison population under the age of 50 increased by 3.3%, while the population over 50 increased by 12.0%. The prison population over the age of 70 increased by 19.0%.

Table3. Growth rate of prison population by age group, 2006-2008

Year	< 49	50 - 59	60 - 69	70+	All 50+	Total
2006	5.8%	10.2%	14.4%	13.8%	11.1%	6.3%
2007	2.1%	8.9%	13.4%	6.8%	9.6%	2.9%
2008	3.3%	12.1%	10.4%	19.0%	12.0%	4.2%

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

As shown in Table 4, the length of time incarcerated increases with rising age. Those over 70 had been incarcerated for an average of 11.6 years. Those between 60 and 69 had been incarcerated for an average of 9.1 years, while those between 50 and 59 had been incarcerated for an average of 6.9 years. Those under 50 had been in prison for an average of 3 years. Tables 4 through 8 display information regarding the prison population as of October, 2008 only.

Table 4. Years incarcerated by age for the Colorado prison population October 2008.

Age Group	Mean	Minimum	Maximum	Median	Count
< 49	3.0	0	31	2	20169
50 - 59	6.9	0	36	4	2090
60 - 69	9.1	0	35	7	477
70+	11.6	0	40	9.5	94
Total	3.5	0	40	2	22830

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

Female inmates tend to have disproportionately lower representation among older inmates than do males. As shown in Table 5, 89.6% of the under 50 population was male and 10.4% female as of October, 2008. Of the 50 and over population, 93.5% were male. This remains fairly consistent with increasing age, as 95.1% of the 60 and over population were male, as were 93.6% of the 70 and over population.

In terms of ethnicity, a larger proportion of the older population was white. Less than half (44%) of inmates under 50 were white, while the majority of those over 50 were white (54.5%). This percentage increases with age: 61.8% of the 60 and over population were white, as were 64.9% of the 70 and over population.

Whereas 19.7% of the under 50 population was black, this proportion falls to 13.0% for the 60 and over population.

Table 5. Gender and Ethnicity by age group for the Colorado prison population October 2008.

	Age < 50		Age 50+		Age 60+		Age 70+		Total*	
	Count	%	Count	%	Count	%	Count	%	Count	%
Gender										
Female	2107	10.4	173	6.5	28	4.9	6	6.4	2280	10.0
Male	18062	89.6	2488	93.5	543	95.1	88	93.6	20550	90.0
Ethnicity										
Black	3975	19.7	528	19.8	74	13.0	13	13.8	4503	19.7
Hispanic	6598	32.7	599	22.5	130	22.8	20	21.3	7197	31.5
White	8879	44.0	1451	54.5	353	61.8	61	64.9	10330	45.2
Other	717	3.6	83	3.1	14	2.5	0	0.0	800	3.5
	20169	100	2661	100	571	100	94	100	22830	100

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

*Total does not equal sum of age categories, as individuals are counted in multiple age categories. For example, those in the 70+ group are also counted in both the 50+ and 60+ age groups.

Table 6, below, displays the felony class of the crime associated with the governing sentence. As shown, 30.8% of the 70 and over prison population was in prison for felony class 1 and 2 crimes. Only 10.2% of the under 50 population was in prison for such crimes.

- 20.2 percent of the 50 and over population was in prison for felony 1 and 2 crimes, while 25.2 percent of the 60 and over population was in prison for felony class 1 and 2 crimes.

Table 6. Felony class of governing crime by age group for the Colorado prison population October 2008.

	Age < 50		Age 50+		Age 60+		Age 70+		Total*	
	Count	%	Count	%	Count	%	Count	%	Count	%
1	539	2.7	217	8.2	59	10.3	13	13.8	756	3.3
2	1506	7.5	320	12.0	85	14.9	16	17.0	1826	8.0
3	5289	26.2	921	34.6	239	41.9	34	36.2	6210	27.2
4	7953	39.4	774	29.1	134	23.5	25	26.6	8727	38.2
5	3627	18.0	284	10.7	42	7.4	4	4.3	3911	17.1
6	1255	6.2	145	5.4	12	2.1	2	2.1	1400	6.1
Total	20169	100.0	2661	100	571	100	94	100.0	22830	100.0

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

*Total does not equal sum of age categories, as individuals are counted in multiple age categories. For example, those in the 70+ group are also counted in both the 50+ and 60+ age groups.

As shown in Table 7, 85.1% of the 70 and over prison population was in prison for violent crimes, compared to 42.8% of the under 50 population.

Of the entire 50 and over population:

- 61.7% were in prison for violent crimes
- 15.3% were in prison for property crimes
- 13.7% were in prison for drug crimes

Of the entire 60 and over population:

- 77.4% were in prison for violent crimes
- 12.8% were in prison for property crimes
- 6.3% were in prison for drug crimes.

Table 7. Governing crime type by age group for the Colorado prison population October 2008.

Crime Type	Age < 50		Age 50+		Age 60+		Age 70+		Total*	
	Count	%	Count	%	Count	%	Count	%	Count	%
Violent	8638	42.8	1642	61.7	442	77.4	80	85.1	10280	45.0
Property	4221	20.9	407	15.3	73	12.8	9	9.6	4628	20.3
Drug	3753	18.6	365	13.7	36	6.3	4	4.3	4118	18.0
Other Non Violent	1465	7.3	120	4.5	11	1.9	1	1.1	1585	6.9
Escape	2092	10.4	127	4.8	9	1.6	0	0.0	2219	9.7
Total	20169	100	2661	100	571	100	94	100	22830	100

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

*Total does not equal sum of age categories, as individuals are counted in multiple age categories. For example, those in the 70+ group are also counted in both the 50+ and 60+ age groups.

The vast majority (95.7%) of those over 70 were new court commitments, indicating that only 4.3% of this population has been previously released to parole and returned to prison (see Table 8).

- 82.6% of the over 50 population was comprised of new court commitments, whereas 17.4% were parole returns.
- 74.4% of the over 60 population was comprised of new court commitments, whereas 25.6% were parole returns.

Table 8. Most recent admission type by age group for the Colorado prison population October 2008.

Admission Type	Age <50		Age 50+		Age 60+		Age 70+		Total*	
	Count	%	Count	%	Count	%	Count	%	Count	%
Parole violators with a new crime	3020	15.0	277	10.4	50	8.8	3	3.2	3297	14.4
Technical violators, no new crime	2140	10.6	185	7.0	22	3.9	1	1.1	2325	10.2
New court commitments /other admits	15009	74.4	2199	82.6	499	87.4	90	95.7	17208	75.4
Total	20169	100	2661	100	571	100	94	100	22830	100

Source: Data extracts provided by Colorado Department of Corrections for purposes of prison population projections and analyzed by Division of Criminal Justice Office of Research and Statistics. All data are considered preliminary.

Note: Excludes inmates sentenced to life without parole.

*Total does not equal sum of age categories, as individuals are counted in multiple age categories. For example, those in the 70+ group are also counted in both the 50+ and 60+ age groups.



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To: Kim English
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Regarding Sentences for Sexual Offenders, Cases Closed in CY 2008

The following analyses were conducted in response to the following two questions:

1. What is the percentage of convicted sex offenders that are sentenced to prison as opposed to probation?
2. What percentage of those charged with sex offenses are sentenced to DOC with a sex offense conviction?

The data used to conduct these analyses were extracted from the Judicial Department's information management system (ICON) and analyzed by the Division of Criminal Justice's Office of Research and Statistics.

Table 1 displays the sentencing placements for 960 individuals convicted of sexual assault during 2008. Only cases in which the sexual assault was the most serious conviction crime are included.

Table 2 displays the sentencing placements for 325 individuals convicted of sexual offense other than sexual assault during 2008. Only cases in which the non-assault sexual offense was the most serious conviction crime are included. Convictions for failure to register as a sex offender are excluded.

Table 3 displays the sentencing placements for 1285 individuals convicted of any sexual offense during 2008. Only cases in which the sexual offense was the most serious conviction crime are included. Convictions for failure to register as a sex offender are excluded.

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Table 1.**Sentences for those convicted of Sexual Assault
as most serious crime**

		Frequency	Valid Percent
Valid	Probation	589	62.5
	Jail	46	4.9
	Prob/Jail	57	6.1
	ComCor	12	1.3
	DOC	183	19.4
	Life/Death	22	2.3
	Other/Unk	33	3.5
	Total	942	100.0
Missing	System	18	
Total		960	

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 2.**Sentences for those convicted of a non-assault
sex crime as most serious crime**

		Frequency	Valid Percent
Valid	Probation	219	68.4
	Jail	10	3.1
	Prob/Jail	13	4.1
	ComCor	7	2.2
	DOC	59	18.4
	Life/Death	2	.6
	Other/Unk	10	3.1
	Total	320	100.0
Missing	System	5	
Total		325	

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 3.**Sentences for those convicted of any sex crime
as most serious crime**

		Frequency	Valid Percent
Valid	Probation	808	64.0
	Jail	56	4.4
	Prob/Jail	70	5.5
	ComCor	19	1.5
	DOC	242	19.2
	Life/Death	24	1.9
	Other/Unk	43	3.4
	Total	1262	100.0
Missing	System	23	
Total		1285	

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

Table 4 gives the percentage of those charged with sex offenses who are sentenced to prison with a sex offense conviction. Out of 2,355 filings involving a sexual offense, almost 15 percent resulted in a sex offense conviction and a sentence to DOC. The remaining 85 percent were either not convicted of the sexual offense they were charged with, or were convicted but not sentenced to DOC.

Table 4.

Sex offense filings closed in CY 2008

	Frequency	Percent
Either not convicted OR not sentenced to DOC	2009	85.3
Convicted of sex offense and sentenced to DOC	346	14.7
Total	2355	100.0

Source: Judicial Department data extracted from ICON and analyzed by DCJ/ORS

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