



**COLORADO  
DEPARTMENT  
OF PUBLIC SAFETY**

Office of the Executive Director  
700 Kipling St.  
Suite 1000  
Denver, CO 80215-5865  
(303) 239-4398  
FAX (303) 239-4670

**Date:** February 1, 2010

**To:** Governor Ritter, Attorney General Suthers, Chief Justice Mullarkey of the Colorado 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); Members of the Colorado Commission on Criminal and Juvenile Justice; Members of the Commission’s task forces and working groups

**From:** Peter Weir, Executive Director of the Department of Public Safety, Chair of the Commission on Criminal and Juvenile Justice

**Re: February 1 status report per SB 09-286**

**Background.** During the 2009 Legislative Session, C.R.S. 16-11.3-103 (2.5)(d)(I) was modified by Senate Bill 286 to require that the Colorado Commission on Criminal and Juvenile Justice prioritize the study of sentencing and “...provide the executive committee of the general assembly with recommendations regarding whether to modify any sentences or sentence laws.” The legislation also required the Commission to document its recommendations in a report by November 30, 2009. That report has been published and is posted on the Commission’s web site at [http://cdpsweb.state.co.us/cccj/Commission\\_Reports.html](http://cdpsweb.state.co.us/cccj/Commission_Reports.html). The report includes an addendum with additional recommendations prepared and distributed in December, 2009, available at [http://dcj.state.co.us/ors/pdf/docs/2009\\_Nov\\_Report/SB09-286-Report\\_Addendum12-22-09.pdf](http://dcj.state.co.us/ors/pdf/docs/2009_Nov_Report/SB09-286-Report_Addendum12-22-09.pdf). The attachments to this memo are the final requirements identified in SB 286; in fact, subsection 2.5 of C.R.S. 16-11.3-103 is set to repeal on July 1, 2010.

**Driving Under the Influence (DUI) and Driving While Ability Impaired (DWAI).** At the Commission’s January 8, 2010 meeting, the Commission unanimously voted to send to its Drug Policy Task Force for review state representative Clair Levy’s legislative proposal to modify statutes pertaining to DUI and DWAI (Driving While Ability Impaired). The Task Force met with Rep. Levy on January 20, 2010 and discussed each item in her DUI proposal. Task force members acknowledged that many of the items in Rep. Levy’s proposal were previously approved and recommended for implementation, and documented in the Commission’s November 2009 report and its December addendum. After discussion of each aspect of the DUI proposal presented by Rep. Levy, the Task Force voted to approve the entire DUI proposal for review by the full Commission at its February 5, 2010 meeting. A summary of the recommendations previously approved by the Commission, and the new elements discussed and approved by the Task Force on January 20 is attached to this memorandum as Appendix A.

It is important to note that Rep. Levy deviated from one aspect of the Task Force approvals. This deviation pertains to ignition interlock devices and is noted in Appendix A. Rep. Levy intends to discuss this deviation with the Commission at its meeting on February 5.

Bill Ritter, Jr.  
GOVERNOR  
  
Peter A. Weir  
EXECUTIVE DIRECTOR  
  
Colorado State  
Patrol  
  
Colorado Bureau  
of Investigation  
  
Division of  
Criminal Justice  
  
Office of Preparedness,  
Security, and Fire Safety



**Recommendations regarding parole supervision and parole decision making.** During its first year of work, the Commission focused on improving policies and practices related to the re-entry of individuals into the community from jail and prison. This work is summarized in the Commission's December 2008 *Annual Report* which includes 66 recommendations for removing barriers to successful re-entry. After publication of the report, the majority of the Commission's efforts turned to sentencing reform. However, the Post-Incarceration Supervision Task Force (PIS Task Force), which was formed when the Commission focused on re-entry, continued to study and develop recommendations in the areas of parole release decision making, parole supervision, and revocation procedures.

On January 8, 2010, PIS Task Force members presented to the Commission its recommendations for reform in the parole decision making process and updates to current parole statutes. At that meeting, the recommendations were approved by the Commission. These recommendations are included as Appendix B.

One of the approved recommendations in Appendix B is the use of a **structured decision-making guide** for use by the adult parole board. The instrument was developed by the PIS Task Force and provides a framework for board members to systematically evaluate in the release decision-making process each offender's risk to reoffend, service/program needs and readiness for parole supervision, and victim and community impact. These guidelines are advisory and parole board members retain the authority to make the release decision that she or he believes is most appropriate in any particular case. A copy of the *Colorado Parole Board Release Guidelines Instrument* is included as Appendix C.

The PIS Task Force undertook the task of examining the current parole guidelines statute, C.R.S. 17-22.5-404, and recommended updating the statute with language that reflects evidence-based correctional practices, that introduces a new section to address parole revocation decisions, and that ensures the statute describing parole decision making comports with the new *Colorado Parole Board Release Guidelines Instrument*. At the February 5, 2010 Commission meeting, the statutory language proposed by the PIS Task force will be discussed and voted on as a potential Commission recommendation. The proposed language is included as Appendix D.

**Plan for further study of sentencing.** The Commission's November 2009 report, mandated in S.B. 286, contains 40 recommendations for sentencing reform, and the report's December addendum includes an additional 5 recommendations. These recommendations completed Phase One of the Commission's study of sentencing. In addition, the November report provided a brief outline of the proposed continued study of sentencing laws. That outline describes Phase 2 of the Commission's study of sentencing. The Phase 2 plan will continue to be clarified by the Commission over the next few months as it agrees on a more specific study strategy and timeline.

## APPENDIX A

### Driving Under the Influence (DUI) and Driving While Ability Impaired (DWAI)

#### **Section 1a (PREVIOUSLY APPROVED BY THE COMMISSION). 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. 42-3-303, for reimbursement to county jails, evaluation of substance abuse treatment programs and, if warranted (see Section 4b and 4c), DUI Court expansion.

#### **Section 1b (PREVIOUSLY APPROVED BY THE COMMISSION). 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.

#### **Section 2a (LEVY). Treatment conditions.**

The court shall order treatment from a Department of Human Services approved provider pursuant to an alcohol/drug evaluation. If treatment is commenced during a period of incarceration such treatment shall be credited toward the treatment required as a condition of probation.

#### **Section 2b (PREVIOUSLY APPROVED BY THE COMMISSION). 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.

#### **Section 3a (PREVIOUSLY APPROVED BY THE COMMISSION). Information available to peace officers.**

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

#### **Section 4a (PREVIOUSLY APPROVED BY THE COMMISSION). 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 Council, and the Colorado Defense Bar.

**Section 4b (PREVIOUSLY APPROVED BY THE COMMISSION). Study Colorado's DUI courts.**

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

**Section 4c (PREVIOUSLY APPROVED BY THE COMMISSION). 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.

**Section 5a (PREVIOUSLY APPROVED BY THE COMMISSION). Modify bond statutes for defendants accused of 3<sup>rd</sup> and subsequent alcohol and drug related driving offenses.**

On a 3<sup>rd</sup> and subsequent alcohol-related driving arrest, if the defendant is granted bond, the conditions of the bond must include participation in a treatment program and regular monitoring such as electronic monitoring, alcohol testing and/or vehicle disabling devices. Relief from these conditions can only occur upon motion of the defendant, a hearing, and a written finding by the court that these conditions are not in the interests of justice and that public safety is not endangered by the removal of the conditions.

**Section 6a (PREVIOUSLY APPROVED BY THE COMMISSION).<sup>1</sup> Eliminate some non-alcohol/drug driving offenses as prerequisites for HTO's and eliminate mandatory jail sentences for non-alcohol offenses.**

Eliminate non-alcohol related Driving Under Revocation (DUR), Driving Under Suspension (DUS) and Driving Under Denial (DUD) as a major offense for consideration by the DMV as a predicate offense to classification as a Habitual Traffic Offender. Eliminate mandatory jail sentences for non-alcohol related DUR, DUS and DUD while still retaining them as discretionary.

**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, including three or more separate convictions within 7 years for driving under the influence (DUI) and driving while ability impaired (DWAI), driving under revocation (DUR), driving under suspension (DUS), and driving under denial (DUD), among other things. 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.*

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<sup>1</sup> What is now numbered as Section 6a is a combination of what was HTO-1 and HTO-2 on page 8 of the December Addendum (2009). HTO refers to habitual traffic offense.

*Any person who drives a motor vehicle after being classified as an habitual traffic offender commits a class 1 misdemeanor and may be subject to penalties including a mandatory minimum 30 days in county jail, 40 hours of community service, a mandatory minimum fine of \$3,000, or a combination 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 an 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; "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.*
- 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.*

## **Section 7. Proposed DUI Sentencing Revisions**

The Commission's DUI/Drug Policy Task Force approved the following elements of DUI sentencing reform at its January 20, 2010 meeting. In this fashion, the Task Force recommends to the Commission that it approve these elements as recommendations. The Commission will vote on whether to recommend these elements as part of its sentencing reform efforts at its February 5, 2010 meeting.

<b>7a.</b> No changes to penalties for the 1 <sup>st</sup> DUI offense.
<b>7b.</b> For all 2 <sup>nd</sup> DUI offenses, the court must impose an initial minimum jail sentence of 10 consecutive days, up to one year.
<b>7c.</b> At least 10 consecutive days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, or trustee status. If work release is granted pursuant to this provision then the offender is not eligible for day for day credit on work release (C.R.S. 18-1.3-106)
<b>7d.</b> Credit for time served while in custody for the offense prior to conviction is mandatory. If the offender only receives the minimum 10 consecutive days in jail then pretrial confinement will be credited against that period.
<b>7e.</b> A mandatory probation period of 2 years and 1 year of jail suspended must be imposed in addition to the initial jail sentence.
<b>7f.</b> Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.
<b>7g.</b> Imposition of jail sentences or other sanctions for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. The court shall consider the level of severity of any violation when imposing any sanction.

<b>7h.</b> Work release is allowed for existing job, education and court ordered treatment for the first 10 days on a 2 <sup>nd</sup> offense.
<b>7i.</b> Between 48 and 120 hours of public service is required.
<b>7j.</b> A fine of \$600-\$1500 is required. However, this can be waived or suspended at judicial discretion.
<b>7k.</b> If a 2 <sup>nd</sup> DUI offense is committed on or before 5 years of the date of offense for a prior DUI offense, then <b>no</b> alternative sentence shall be imposed (e.g., in-home detention).
<b>7l.</b> However, once the minimum of 10 consecutive days is served the court may impose an alternative sentence.
<b>7m.</b> If a 2 <sup>nd</sup> DUI offense is committed beyond 5 years of the date of offense for a prior DUI offense, then the offender shall be sentenced to jail for 10 days, up to one year, or an alternative sentence may be imposed (e.g., in-home detention). The consecutive requirement does not apply to this section.
<b>7n.</b> For <b>all 3<sup>rd</sup> and subsequent DUI offenses</b> the court must impose an initial minimum jail sentence of 60 consecutive days, up to one year.
<b>7o.</b> At least 60 consecutive days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, or trustee status. If work release is granted pursuant to this provision then the offender is not eligible for day for day credit on work release (C.R.S. 18-1.3-106)
<b>7p.</b> Credit for time served while in custody for the offense prior to conviction is mandatory.
<b>7q.</b> A mandatory probation period of 2 years and 1 year of jail suspended must be imposed in addition to the initial jail sentence.
<b>7r.</b> Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.
<b>7s.</b> Imposition of jail sentences or other sanctions for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. The court shall consider the level of severity of any violation when imposing any sanction.
<b>7t.</b> Work release is allowed for existing job, education and court ordered treatment for the first 60 consecutive days on a 3 <sup>rd</sup> offense.
<b>7u.</b> No alternative sentence shall be imposed (e.g., in-home detention).
<b>7v.</b> However, once the minimum of 60 consecutive days is served the court may impose an alternative sentence.
<b>7w.</b> Between 48 and 120 hours of public service is required.
<b>7x.</b> A fine of \$600-\$1500 is required. However, this can be waived or suspended at judicial discretion.

**7y.** If a 3<sup>rd</sup> DUI offense is committed on or before 7 years of the date of offense for a prior DUI offense, then 60 consecutive days in jail must be served, work release is not allowed and no alternative sentence shall be imposed (e.g., in-home detention).

**To be written as a preamble<sup>2</sup>**

**7z. The legislature recognizes that the court has the authority and encourages the use of sanctions in addition to a jail sentence as conditions of probation for any DUI offense. This includes, but is not limited to, wearing a continuous alcohol monitoring device, in-home detention during probation, and/or mandatory ignition interlock device even while license is under suspension.**

**Probation**

**7aa.** A mandatory minimum of two years probation for second and subsequent offenses must be imposed as a separate component of the sentence. This probationary period will commence immediately upon sentencing. The judge may impose up to an additional two years of probation, if necessary, for further monitoring and treatment.

**7bb.** In addition to the initial jail sentence the court shall impose and suspend 1 year of jail as a condition of probation.

**7cc.** The initial sentence to jail is not credited against probationary jail time.

**7dd.** Any alcohol and/or drug education or treatment ordered must be done by an approved provider.

**7ee.** Court ordered treatment must be completed before the offender may be released from probation. The court may mandate that this treatment begin during any sentence to incarceration.

**7ff.** The prosecution, defendant, defendant's counsel, or probation officer may petition the court for early termination of probation by demonstrating substantial compliance with all terms and conditions of probation, successful completion of approved alcohol and/or drug treatment, and that the termination of probation will not endanger public safety.

*Points of clarification*

- The provisions of C.R.S. § 42-4-1301 (7)(c)(II) still apply. This means that repeat offenses do not have to be pled (i.e., repeat DUI offenders, 2<sup>nd</sup> and subsequent, do not have to be pled).
- The provisions of C.R.S. § 16-5-402, which provide for limitations of collateral attacks, still apply (i.e., 18 month limit for misdemeanors).

**No number. (Additional Drug Policy Task Force recommendation). Public education funding.**

Funding should be set aside for public education regarding changes to DUI law as proposed by the previous recommendations.

<sup>2</sup>The DUI/Drug Policy Task Force approved 7z as a potential preamble to the statute. However, the bill is likely to be drafted with specific language in the body of the bill, rather than a preamble, that encourages the use of an approved ignition interlock device as defined in C.R.S. 42-2-132.5(7)(a) as a condition of bond, probation, and day-release from jail for work, education, medical or substance abuse treatment participation.



## APPENDIX B

### COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

#### RECOMMENDATIONS

##### PAROLE AND PAROLE RELEASE DECISION MAKING

#### **PIS09-1. Modify C.R.S. 17-2-207(3) to eliminate mandatory arrest provisions for individuals on parole.**

##### **Current statute**

CRS 17-2-207 (NOTE: A strikethrough of words indicates suggested deletions from existing statute.)  
(3) ~~Offenders on parole shall remain under legal custody and shall be subject at any time to be returned to a correctional facility. If any paroled offender leaves the state without lawful permission, he shall be held as a parole violator and arrested as such. If any parolee not paroled to reside in a county in which a correctional facility is located is found within the boundaries of such county without lawful permission, or if any parolee who is paroled to reside in such county or is in such county without lawful permission is found within the boundaries of state property without lawful permission, he shall be arrested as a parole violator.~~

##### **Discussion**

*The three elements of this paragraph should be eliminated. These violations are better managed using parole officer discretion which, if appropriate, may involve intermediate sanctions rather than arrest and revocation. In addition, the expansion of correctional and "state property" in most counties makes prohibitive the travel restrictions mandated by this statute.*

*There are some county jails that will not accept technical violators unless the violator is a clear danger to the local community. DOC has made provisions for instances in these circumstances. Some county sheriff's have space and DOC will send a technical violator to those county jails.*

#### **PIS09-2. Modify C.R.S. 17-22.5-405 to clarify eligibility exclusions, program compliance, and criminal history disqualifications.**

##### **Current statute**

CRS 17-22.5-405 (NOTE: Capital letters indicate suggested new material to be added to existing statutes; a strikethrough of words indicates suggested deletions from existing statute.)  
(1.5) (a) Earned time, not to exceed twelve days for each month of incarceration or parole, may be deducted from an inmate's sentence if the inmate:

- (I) Is serving a sentence for a class 4, class 5, or class 6 felony;
- (II) Has incurred no CLASS I code of penal discipline violations WITHIN THE PREVIOUS TWENTY-FOUR MONTHS AND NO CLASS II CODE OF PENAL DISCIPLINE VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS OR SINCE BEING CURRENTLY INCARCERATED IF LENGTH OF INCARCERATION TIME ON CURRENT CONVICITON IS LESS THAN TWENTY-FOUR MONTHS. ~~while incarcerated~~
- (III) IS CURRENTLY ~~has been~~ program-compliant; and
- (IV) Was not convicted of, and has not previously been convicted of a felony crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., ~~or~~ section 18-12-109, C.R.S., SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306, or a ~~crime listed in~~ section 24-4.1-302 (1), C.R.S.



(6) Earned release time shall be scheduled by the parole board and the time computation unit in the department of corrections for inmates convicted of class 4 and class 5 felonies up to sixty days prior to the mandatory release date and for inmates convicted of class 6 felonies up to thirty days prior to the mandatory release date for inmates who meet the following criteria:

(a) The inmate has INCURRED no CLASS I code of penal discipline violations WITHIN THE PREVIOUS TWENTY-FOUR MONTHS AND NO CLASS II CODE OF PENAL DISCIPLINE VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS OR SINCE BEING CURRENTLY INCARCERATED IF LENGTH OF INCARCERATION TIME ON CURRENT CONVICITON IS LESS THAN TWENTY-FOUR MONTHS.

(b) The inmate is CURRENTLY program-compliant; and

(c) The inmate was not convicted of, and has not previously been convicted of a felony crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., or section 18-12-109, C.R.S., SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306 or a crime listed in section 24-4.1-302 (1), C.R.S.

### **Discussion**

*These changes limit the period for which a COPD violation would disallow earned time and earned release time as defined in HB 09-1351 rather than leaving this period undefined, potentially including old violations which no longer are characteristic of an offender's behavior.*

*First, the exclusion from eligibility for disciplinary convictions while incarcerated would be time bound. The current language makes earned time ineligible for inmates who have any Class I or Class II COPD (Code of Penal Discipline) violation.*

- *The new language includes the following time boundaries:*
  - *Earned time under this statute could not be received if an individual was incarcerated for more than 24 months and received*
    - *Any Class I COPD conviction during the previous 24 months or*
    - *Any Class II COPD conviction during the previous 12 months.*
  - *Earned time under this statute could not be received if an individual was incarcerated for less than 24 months and received*
    - *Any Class I COPD conviction during the course of the current incarceration, or*
    - *Any Class II COPD conviction during the past 12 months.*
  - *Earned time under this statute could not be received if an individual was incarcerated for less than 12 months and received*
    - *Any Class I or Class II COPD conviction during this period of incarceration.*

*Second, this recommendation clarifies that an inmate must be currently program compliant to be eligible for earned time and earned release time as defined in this statute. Current language allows eligibility when an inmate was program compliant in the past, but who currently may not be compliant.*

*Third, ineligibility as currently defined by the enumerated statutes includes misdemeanor offenses offense (CRS 18-6-701). The modification recommended here updates "crime" with "felony crime." In addition, it adds "contributing to the delinquency of a minor" as a disqualifying crime since this offense is typically the result of a plea negotiation from a more serious crime.*

**PIS09-3. Introduce a structured decision-making guide for use by the Colorado parole board. The form for the *Colorado Parole Board Release Guidelines Instrument* is appended (see Appendix C). Include in the legislative declaration (C.R.S. 17-22.5-404) that the guidelines reflect evidence-based practices by prioritizing public safety and actuarially-determined risk, criminogenic needs, and offender readiness for parole; organize and streamline existing information; promote consistency in parole decision making; and allow for systematically collecting data on parole decision making.**

### **Discussion**

*Research consistently finds that actuarial instruments outperform professional judgment by a 3:1 ratio, meaning that professional judgment has been found to be wrong two-thirds of the time.<sup>3</sup> Research has also determined that addressing the service needs of high risk offenders can reduce recidivism.<sup>4</sup> Consequently, at the core of recidivism reduction and evidence-based practices in corrections is the use of scientifically developed risk and needs assessment instruments.*

*The **Colorado Parole Board Release Guidelines Instrument** organizes information systematically and prioritizes public safety by relying on two such instruments, the Colorado Actuarial Risk Assessment Score (CARAS) which predicts risk to reoffend, and the Level of Supervision (LSI), which identifies the individual's needs that are associated with criminal behavior. Both instruments are currently completed by DOC personnel, and the data elements reside in DOC's information management system. As such, the instrument has the capability of being automated when resources allow. DOC supports this Guideline instrument. Currently, the parole board reviews several documents and case summaries when making release decisions but the information is not organized systematically nor is individual, case-level data available for analysis on the decisions made by board members.*

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<sup>3</sup> See *The Clinical Prediction of Violent Behavior*, by John Monahan (1995: Chapter 3). Additionally, citing numerous classic studies, Hilton and Simmons report that the accumulation of research into violence and risk assessment has led to the conclusion that unaided clinical judgments are of little value the availability of actuarial instruments will improve forensic decision making (eg, Dawes, 1994; Dawes, Faust & Meehl, 1989; Grove & Meehl, 1996; Janus & Meehl, 1997; Mullen & Reinehr, 1982; Rice & Harris, and others). In N.Z. Hilton, J.L. Simmons. (2001). The Influence of Actuarial Risk Assessment in Clinical Judgments. *Law and Human Behavior*, 25, 393-408. See also Grove, W. M. & Meehl, P. E. (1996). Comparative efficiency of information (subjective, impressionistic) and formal (mechanical, algorithmic) prediction procedures: The clinical-statistical controversy. *Psychology, Public Policy, and Law*, 2, 293-323.

<sup>4</sup> 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. See Andrews, D.A. and Bonta, J. L. (2003). *Level of Supervision Inventory-Revised. U.S. Norms Manual Supplement*. Multi Health Systems, Toronto. 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.

## Appendix C

On January 8, 2010, the Colorado Commission on Criminal and Juvenile Justice approved the following recommendation which refers to the instrument that begins on the following page (page 13).

**PIS09-3. Introduce a structured decision-making guide for use by the Colorado parole board. The form for the *Colorado Parole Board Release Guidelines Instrument* is appended. Include in the proposed legislative declaration (C.R.S. 17-22.5-404) that the guidelines reflect evidence-based practices by prioritizing public safety and actuarially-determined risk, criminogenic needs, and offender readiness for parole; organize and streamline existing information; promote consistency in parole decision making; and allow for systematically collecting data on parole decision making.**

**Colorado Parole Board  
Release Guidelines Instrument**

Colorado Revised Statute § 17-22.5-404 lists the factors the parole board must consider in deciding whether to release someone to discretionary parole. The goal of this administrative release guideline instrument is to provide a framework for the Colorado parole board to evaluate and weigh the statutorily mandated factors, victim, and community impact, in their decision making and offer advisory decision recommendations. These guidelines are advisory and parole board members retain the authority to make the release decision that s/he believes is most appropriate in any particular case. This administrative release guideline instrument is not to be used in considering those inmates for discretionary release for whom the Sex Offender Management Board has established separate and distinct release guidelines.

<b>Inmate Information</b>			
<b>Name</b> _____	<b>Number</b> _____	<b>Age</b> _____	<b>Gender</b> _____
<b>****Other information that would normally be included in the header section for an inmate parole hearing****</b>			
Custody Level: <input type="checkbox"/> V <input type="checkbox"/> IV <input type="checkbox"/> III <input type="checkbox"/> II <input type="checkbox"/> I			
Victim notification required pursuant to Victim's Rights Act: <input type="checkbox"/> Yes <input type="checkbox"/> No			

Has the offender previously absconded or escaped while on community supervision? <input type="checkbox"/> No <input type="checkbox"/> Yes, (when and details) _____
Last COPD conviction for Class 1: (date/description) _____ Class 2A: (date/description) _____
Has inmate been convicted of a COPD violation related to making a verbal or written threat against a victim(s) during the period of incarceration? <input type="checkbox"/> No <input type="checkbox"/> Yes, (when and details) _____

**STEP 1: Determine Risk Level**

CARAS (dated \_\_\_\_\_) score \_\_\_\_\_  very high  high  medium  low  very low

LSI-R (dated \_\_\_\_\_) score \_\_\_\_\_  high (29-54)  medium (19-28)  low (0-18)

**STEP 2: Evaluate Criminogenic Needs (LSI-R domains)**

Education/Employment	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Financial	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Family/Marital	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Accommodation	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Leisure/Recreation	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Companions	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Alcohol/Drug Problems	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Emotional/Personal	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Attitude/Orientation	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low

**STEP 3: Evaluate Readiness/Performance**

*EVALUATE PROTECTIVE FACTORS (LSI-R RATER SCORE)*

**Education/Employment**

Participation/Performance	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Peer interactions	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Authority interactions	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Financial**

Problems	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Family/Marital**

Dissatisfaction with marital/equivalent situation	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Nonrewarding, parental	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Nonrewarding, other	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Criminal family/spouse	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Accommodation**

High crime neighborhood	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Leisure/Recreation**

Could make better use of time	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Alcohol/Drug problems**

Alcohol problem, currently	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Drug problem, currently	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Attitude/Orientation**

Supportive of crime	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Unfavorable attitude toward convention	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

*PROGRESS ASSESSMENT SUMMARY RATINGS*

Date PAS completed \_\_\_\_\_.

- PAS I – Work Level     N/A     high             good             fair     poor             disruptive
- PAS II-Academic/Voc     N/A     good progress     fair progress     progress     minimal progress     no progress
- PAS III-medical             N/A     no limitations     minor/treatable     moderate     moderately severe     severe
- PAS IV-substance abuse     N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS V-sexual violence     N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS VI-mental health     N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS VII-anger             N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS VIII-MRDD             N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS IX-conduct             N/A     highly acceptable     acceptable     moderate     unacceptable     highly unacceptable
- PAS X-pre-release         N/A     highly acceptable     acceptable     moderate     unacceptable     highly unacceptable

*PAROLE PLAN*

Suitability of parole sponsor:

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Suitability of residence:

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Recommendation for additional conditions:

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After evaluating all of these factors, an inmate is categorized as being “high”, “average”, or “low” readiness for reentry.

**OVERALL PAROLE READINESS**     high             average             low

- **HIGH** readiness is defined as an inmate who has fully participated in and/or successfully completed recommended programs available to him/her (or is likely to participate and successfully complete recommended programs in the community), has demonstrated an acceptable level of institutional behavior, has had few major conduct violations, and has a strong parole plan.
- **AVERAGE** readiness is defined as an inmate that has fully participated in and/or successfully completed some of the recommended core programs available to him/her (or is likely to participate and successfully complete recommended programs in the community), has demonstrated an acceptable level of institutional behavior, has had few major conduct violations, and has an adequate parole plan.
- **LOW** readiness is defined as an inmate who has refused, not fully participated and/or unsuccessfully completed recommended programs available to him/her (and is not likely to participate and/or successfully complete recommended programs in the community), has not demonstrated an acceptable level of institutional behavior, has a pattern of major conduct violations, and does not have an adequate parole plan.

**STEP 4: Parole release decision**

Very low risk: the guidelines suggest the inmate is to be **RELEASED** to discretionary parole at the first (or any subsequent) parole hearing unless:

- the inmate had harassed the victim either verbally or in writing during the period of incarceration; (if present, the parole board should delay release until it is established that the inmate does not pose a threat to the victim and an adequate supervision plan can be developed); or
- the inmate was convicted of a Class I Code of Penal Discipline violation within the past twelve months or a Class II violation within the past three months; (if present, the parole board should delay release until the inmate meets the timeline for being violation free as indicated above); or
- the inmate is currently incarcerated after being regressed from community corrections as a transition inmate; (if present, the parole board does not necessarily have to deny parole but should consider whether any special conditions of parole are warranted based on the reasons for the regression).

Very high risk: the guidelines suggest NOT TO RELEASE on discretionary parole unless:

- there are factors such as advanced age, medical disability, or successful completion of an intensive treatment program that would significantly reduce the risk of re-offense; or
- the parole board has confidence that risk can be reasonably controlled with intensive supervision.

Low, medium or high risk: For those inmates assessed as low, medium or high risk, the advisory decision options are outlined in the following risk by readiness matrix:

	<b>High Readiness</b>	<b>Average Readiness</b>	<b>Low Readiness</b>
<b>Low Risk</b>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p>	<p>Advisory decision recommendation is to NOT RELEASE.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan can be developed with special conditions and transition services to adequately address risk.</p>
<b>Medium Risk</b>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p>	<p>Advisory decision option is to NOT RELEASE.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan can be developed with special conditions and transition services to adequately address risk.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p>



	<b>High Readiness</b>	<b>Average Readiness</b>	<b>Low Readiness</b>
<b>High risk</b>	<p>Advisory decision option is to RELEASE if</p> <p>a suitable parole plan can be developed with special conditions and transition services to ensure effective monitoring and accountability.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p>	<p>Advisory decision option is to NOT RELEASE.</p> <p>The parole board should indicate to the inmate areas the inmate can work on to increase their readiness in preparation for the next parole hearing.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan is developed with special conditions and transition services that provides for effective monitoring and accountability.</p>	<p>Advisory decision option is to NOT RELEASE.</p> <p>The parole board should indicate to the inmate areas the inmate can work on to increase their readiness prior to the next parole hearing.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan is developed with special conditions and transition services that provides for effective monitoring and accountability.</p>

### **STEP 5: Setting Conditions**

One of the important roles of the releasing authority is to set conditions of release. The Board has established a list of standard conditions applicable to all offenders released to the supervision of the Division of Adult Parole, Community Corrections, Youth Offender System.

In addition to the standard conditions of release, some offenders may need additional “special conditions” based on their individual risk and need and/or statutory mandates. Special conditions should address the issues for the individual offender identified by the LSI-R. and/or specific issues identified in the progress assessment summary. Great care should be taken to ensure that any special condition is consistent with the criminogenic need area identified by the LSI-R or specific criminogenic need area identified in the progress assessment summary. If there is a need for further evaluation or assessment of a particular criminogenic need area, it is recommended that the Board request an assessment of that area or issue in the community upon release and direct the offender to comply with recommendation(s) that are developed by the parole officer as a result of the assessment.

### **STEP 6: Notice of Colorado Parole Board Action Form**

The parole board action form will be revised to reflect these guidelines, provide required data, and to adequately capture the parole board’s decision-making rationale. If the parole board departs from the advisory decision recommendation, the rationale for such should be documented on the action form.

## Appendix D

**The Post-Incarceration Supervision Task Force of the Colorado Commission on Criminal and Juvenile Justice approved to forward to the Commission for discussion and possible recommendation the following modification to C.R.S. 17-22.5-404, Parole Guidelines. The modification updates the current statute, which was drafted more than two decades ago, and it ensures that it corresponds with the *Colorado Parole Board Release Guidelines Instrument* (see Appendix C).**

**On February 5, 2010, the Commission will vote on whether to recommend that the language in C.R.S. 17-22.5-404 be replaced with the following.**

### **C.R.S. 17-22.5-404 Parole guidelines.**

Legislative declaration. (1) The General Assembly hereby finds that:

- The risk of reoffense shall be a central consideration by the parole board in making decisions related to the timing and conditions of release on parole or revocation from parole.
- Research demonstrates that structured assessment tools can predict the risk of reoffense more effectively than professional judgment alone. These studies show that seasoned professionals who rely exclusively on their experience and professional judgment predict recidivism rates no better than chance. The use of actuarial tools, however, has been demonstrated to improve prediction rates. The best predictive outcomes are derived from a combination of empirically-based actuarial tools combined with clinical judgment.
- Although the parole board is made up of individuals, using structured decision-making unites the parole board members with a common philosophy and set of goals and purposes while retaining the authority of individual parole board members to make decisions that he or she believes are appropriate given the particular situation.
- Structured decision making by the parole board also provides for greater accountability, standards for evaluating results, and transparency of decision-making that can be better communicated to victims, offenders, other criminal justice professionals, and the community.
- An offender's likelihood of success can be increased by aligning the intensity and type of parole supervision, conditions of release, and services with assessed risk and need level.

(1) As to any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony who is eligible for parole pursuant to section 17-22.5-403, or a person who is eligible for parole pursuant to section 17-22.5-403.7, the board may consider all applications for parole, as well as all persons to be supervised under any interstate compact, and may parole any person who is sentenced or committed to a correctional facility when the board determines, by using

the guidelines established by this section, that there is a reasonable probability that the person will not thereafter violate the law and that the person's release from institutional custody is compatible with public safety. The board shall consider the risk of violence to the public in every release decision it makes.

(2) In considering offenders for parole, the board shall consider, but need not be limited to, the following factors:

(a) assessed risk of reoffense level

(b) assessed criminogenic need level

(c) program or treatment participation and progress

(d) institutional conduct

(e) adequacy of parole plan

(f) the testimony or written statement of the victim of the crime or a relative of the victim, if the victim has died, pursuant to section 17-2-214

(g) whether the offender has harassed or threatened the victim either verbally or in writing while under sentence

(h) aggravating or mitigating factors from the criminal case that are relevant in determining the risk of reoffense

(i) the testimony or written statement from a prospective parole sponsor, employer or other person that would be available to assist the offender if released on parole.

(j) whether the offender had previously absconded or escaped while on community supervision.

(3) (a) The parole board shall use the Colorado risk assessment scale as developed by the division of criminal justice of the department of public safety in considering inmates for release on parole or revocation from parole. This risk assessment scale shall include criteria which statistically have been shown to be good predictors of risk of reoffense. The division of criminal justice shall validate the Colorado risk assessment scale whenever the predictive accuracy, as determined by data collection, falls below an acceptable level of predictive accuracy of the scale as determined by the state board of parole and the division of adult parole. Such validation shall be carried out at least every five years.

(b) The parole board shall also use an administrative release guideline instrument in evaluating an application for parole. This instrument will provide the parole board with consistent and comprehensive information relevant to the factors listed in subsection (2). The administrative release guideline instrument will also include a matrix of advisory decision recommendations for the different risk levels.

(c) The goal of this administrative release guideline instrument is to provide a framework for the parole board to evaluate and weigh the statutorily mandated factors and victim and community impact in their decision making and to offer decision recommendations. These guidelines are advisory and parole board members retain the authority to make the release decision that is most appropriate in any particular case.

(d) This administrative release guideline instrument shall not be used in considering those inmates classified as sex offenders with indeterminate sentences for whom the Sex Offender Management Board pursuant to 18-1.3-1009 has established separate and distinct release guidelines. The Sex Offender Management Board in collaboration with the department of corrections, the judicial department, and the state board of parole shall develop a specific sex offender release guideline instrument for use by the state board of parole for those inmates classified as sex offenders with determinate sentences.

(e) The division of criminal justice shall, in cooperation with the department of corrections and the state board of parole, provide training on the use of the administrative guideline instruments and the Colorado risk assessment scale to personnel of the department of corrections, the parole board, administrative hearing officers and release hearing officers. Such training shall be carried out on a semiannual basis.

(f) The division of criminal justice, the department of corrections, and the state board of parole shall cooperate to develop parole board action forms consistent with this statute that captures the rationale for decision-making which shall be published as official forms of the department of corrections.

(4) (a) In reviewing a complaint for parole revocation, the parole board and administrative hearing officer shall consider, but need not be limited to, the following factors:

(I) assessed risk of reoffense level

(II) seriousness of the technical violation

(III) frequency of technical violation(s)

(IV) effort by the parolee to comply with previous corrective action plan or other remediation plan required by the parole board or parole officer

(V) the imposition of intermediate sanctions by the parole officer in response to the technical violations which form the basis of the complaint for revocation

(VI) whether modification of parole conditions is appropriate and consistent with public safety in lieu of revocation

(b) The department of corrections in consultation with the parole board shall develop and use an administrative revocation guideline instrument in evaluating complaints filed for parole revocation. This instrument will provide the parole board with consistent and comprehensive information on the factors identified in subsection 4(a). This instrument will also include a matrix of advisory decision recommendations for the different risk levels.

(c) These administrative revocation guidelines are advisory and the board members and administrative hearing officers retain the authority to make the decision that is most appropriate in any particular case regarding parole revocation.

(d) Prior to revoking parole for a technical violation, the parole board or administrative hearing officer must make a factual finding that the parole officer has fully utilized intermediate sanctions or that the modification of conditions of parole or the imposition of intermediate sanctions is not appropriate or consistent with public safety.

(5) (a) The parole board shall work in consultation with the division of criminal justice of the department of public safety and the department of corrections to develop and implement a process to capture and analyze data related to the basis for and the outcomes of the board's parole decisions. The process shall track data related to the board's rationale for granting, revoking, or denying parole. When the board grants parole, the process shall also track data related to whether the offender has previously recidivated, the type of re-entry program given to the offender as a part of the offender's parole plan, and whether the offender recidivates while on parole.

(b) The parole board shall also track whether the decision rendered conformed or departed from the administrative release guideline instrument and, if the decision was to depart from the guidelines, the reason for such departure.

(c) The parole board shall provide the data to the division of criminal justice of the department of public safety for analysis. The division of criminal justice shall analyze the data received pursuant to this subparagraph (II) and shall provide its analysis to the board. The board and the division of criminal justice shall use the data and analysis to identify specific factors that are important in the decision-making process.

(d) The division of criminal justice of the department of public safety shall provide the parole board with training regarding how to use the data obtained and analyzed to facilitate the board's future decision-making.

(e) On or before November 1, 2009, the state board of parole and the division of criminal justice of the department of public safety shall issue a report to the general assembly regarding the progress of the implementation of this paragraph (d) and each November 1 thereafter, the state board of parole and the division of criminal justice in the department of public safety shall update the report/

(f) This subparagraph (IV) is repealed, effective July 1, 2012

(g) The department of corrections, the parole board, the division of adult parole, and the division of criminal justice shall cooperate in implementing all aspects of this section.

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**Revision must also include:**

7(b) (deleted by amendment, L.2000, p.845, § 42, effective May 24, 2000.

(8) This section shall apply to any person to whom section 17-22.5-303.5, as it existed prior to May 18, 1991, would apply pursuant to the operation of section 17-22.5-406, because the provisions of such sections are substantially similar.