COLORADO COMMISSION ON CRIMINAL & JUVENILE JUSTICE

2011 ANNUAL REPORT

Colorado Commission on Criminal and Juvenile Justice

2011 Annual Report

Report to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Chief Justice of the Colorado Supreme Court, pursuant to C.R.S. 16-11.3-103(5)

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Acknowledgements

The Commission undertook its fourth year of work with a new Colorado governor and a new cabinet which seated three new Commission members: Reggie Bicha, Executive Director of the Department of Human Services (who subsequently appointed Julie Krow to serve in his place); Tom Clements, Executive Director of the Department of Corrections; and Jim Davis, Executive Director of the Department of Public Safety. Mr. Davis was appointed by the Governor to serve as chair of the Commission. Under Mr. Davis' leadership, along with co-chair David Kaplan, and consultants Paul Herman and Ken Plotz, the Commission continued its efforts to study and make recommendations to improve the state's justice system.

The Commission is grateful for its hard-working task force chairs: Grayson Robinson chairs the Drug Policy Task Force, Jeanne Smith chairs the Comprehensive Sentencing Reform Task Force, David Kaplan chairs the Sex Offenders/Sex Offenses Task Force, and Regina Huerter chairs the Juvenile Justice Task Force. In addition, the Commission is grateful for its many task force and working group members who volunteer their time to the Commission's efforts. The task force membership reflects a diverse group of experts committed to improving the administration of justice. These individuals volunteer considerable time to study, discuss and consider improvements in current processes. The Commission's effectiveness depends on this expertise and commitment to meet its statutory mandates to improve the effectiveness and efficiency of the justice system in Colorado.

The Commission extends its gratitude, in particular, to certain task force members and stakeholders. Karen Ashby, Maureen Cain, Christie Donner, Erin Jemison, Peggy Heil, Laurie Kepros, Jeff McDonald, Carmelita Muniz, Tom Raynes, Dan Rubinstein, Kathy Sasak, Ted Tow and Meg Williams devoted an extraordinary amount of time in forwarding the work of the Commission. Without the interest, support and dedication of these professionals, the Commission could claim many fewer accomplishments.

Finally, the Commission extends a special thank you to Paul Herman who has provided guidance, perspective, encouragement and clarity to the Commission since its inception. The Commission, along with its task forces and working groups, benefits from the expertise and experience that Mr. Herman brings to this work. Likewise, the Juvenile Task Force profits from consultant Ken Plotz' leadership and steady hand.

The Commission is grateful for the multidisciplinary, collaborative spirit of those in the justice system communities who devote their time and energy to the health and safety of our communities.

Commission members*

James H. Davis
CCJJ Chair
Executive Director
Department of Public Safety

David S. Kaplan
CCJJ Vice-Chair
Criminal defense attorney
Haddon, Morgan, & Foreman, P.C.

Tom Clements
Executive Director
Department of Corrections

Michael Dougherty
Deputy Attorney General

Rhonda C. Fields
Victim's Representative

Charles Garcia
Juvenile Parole Board

Regis F. Groff
Former State Senator

Peter G. Hautzinger
District Attorney, 21st Judicial District

Regina M. Huerter
Denver Crime Prevention & Control Commission

William C. Kilpatrick
Golden Police Chief

Julie Krow
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Representing Mental Health Treatment Providers

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House District 13

Gilbert A. Martinez
Judge, 4th Judicial District

Inta B. Morris
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John P. Morse
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Senate District 11

Eric Philp
Director of Probation Services

Donald S. Quick
District Attorney, 17th Judicial District

Ellen Roberts
State Senator
Senate District 6

J. Grayson Robinson
Arapahoe County Sheriff

Steven R. Siegel
Victim's Representative, 2nd Judicial District

Alaurice M. Tafoya-Modi
Criminal defense attorney

* At the close of 2011.

Mark Waller
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House District 15

Douglas K. Wilson
State Public Defender

Anthony Young
State Board of Parole

Debra L. Zwirn
County Commissioner, Logan County

Jeanne M. Smith
Director of the Division of Criminal Justice

Subcommittee members – 2011

Juvenile Justice Task Force

Name	Affiliation
Regina Huerter, *Chair*	Denver Crime Prevention & Control Commission
Karen Ashby	Denver Juvenile Court
Karen Beye	Department of Human Services (resigned January 2011)
Reggie Bicha	Department of Human Services (appointed January 2011)
Julie Krow	Department of Human Services (appointed August 2011)
Michelle Brinegar	Chief Deputy District Attorney, 8th Judicial District
Susan Colling	Division of Probation Services
Kim Dvorchak	Juvenile Defender Coalition
Charles Garcia	Juvenile Parole Board
John Gomez	Division of Youth Corrections
Regis Groff	Retired State Senator
Kirk Henwood	Montrose County School District
Joe Higgins	Mesa County Partners
Bill Kilpatrick	Golden Police Department
Beth McCann	State Representative, House District 8
Jeff McDonald	Jefferson County Juvenile Assessment Center
Inta Morris	Department of Higher Education
Linda Newell	State Senator, Senate District 26
Stan T. Paprocki	Division of Behavioral Health, Department of Human Services
Donald Quick	District Attorney's Office, 17th Judicial District
Bonnie Saltzman	Juvenile Justice and Delinquency Prevention Council Representative
Norene Simpson	State Public Defender's Office
Meg Williams	Office of Adult and Juvenile Justice Assistance, Division of Criminal Justice

Drug Policy Task Force

Name	Affiliation
Grayson Robinson, *Chair*	Arapahoe County Sheriff's Department
Shane Bahr	Problem Solving Courts, Judicial Department
Chris Brousseau	District Attorney's Office, 1st Judicial District
Maureen Cain	Criminal Defense Bar
Brian Connors	State Public Defender's Office

George DelGrosso	Behavioral Healthcare Council
Christie Donner	Colorado Criminal Justice Reform Coalition
Nancy Feldman	Victims of Crime Unit, Colorado Division of Criminal Justice
Christine Flavia	Division of Behavioral Health, Colorado Department of Human Services
Regina Huerter	Denver Crime Prevention & Control Commission
Tim Hand	Division of Adult Parole, Community Corrections and Youthful Offender System
Mark Hulbert	District Attorney's Office, 5th Judicial District
Evie Hudak	State Senator, 19th District
Bill Kilpatrick	Golden Police Department
Reo Leslie	Colorado School for Family Therapy
Greg Long	District Attorney's Office, 2nd Judicial District
Sean McAllister	Private Defense Attorney
Kathleen McGuire	State Public Defender's Office
Carmelita Muniz	Colorado Association of Alcohol and Drug Service Providers
John O'Dell	State Board of Parole
Dolores Poeppel	Victims Assistance Unit, Colorado State Patrol
Donald Quick	District Attorney's Office, 17th Judicial District
Tom Raynes	Colorado District Attorneys' Council
Dan Rubinstein	District Attorney's Office, 21st Judicial District
Pat Steadman	State Senator, 31st District
Rod Walker	Colorado Springs Police Department
Mark Waller	State Representative, 15th District

Legislative Subcommittee

Name	**Affiliation**
David Kaplan, *Co-Chair*	Criminal Defense Bar
Donald Quick, *Co-Chair*	District Attorney's Office, 17th Judicial District
Michael Dougherty	Attorney General's Office, Criminal Justice Section
Regina Huerter	Denver Crime Prevention & Control Commission
Bill Kilpatrick	Golden Police Department
Tom Raynes	Colorado District Attorneys' Council
Grayson Robinson	Arapahoe County Sheriff's Department
Douglas Wilson	State Public Defender's Office

Sex Offender/Offenses Task Force

Name	Affiliation
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Michael Anderson	State Board of Parole
Norma Anderson	Former State Senator
Maureen Cain	Criminal Defense Bar
Peggy Heil	Department of Corrections
Erin Jemison	Colorado Coalition Against Sexual Assault
Laurie Kepros	Criminal Defense Bar
Dianna Lawyer-Brook	Colorado CURE
Chris Lobanov-Rostovosky	Sex Offender Management Board, Colorado Division of Criminal Justice
Richard Schneider	Sex Offender Registration, Denver Police Department
Steve Siegel	Victim's Representative, 2nd Judicial District
Adrian Van Nice	District Attorneys' Council and District Attorney's Office, 20th Judicial District
Angel Weant	Probation Department, Sex Offender Programs

Re-Entry Oversight Committee

Name	Affiliation
Regina Huerter, *Chair*	Denver Crime Prevention & Control Commission
Louise Boris	Colorado Coalition for the Homeless
James Davis	Department of Public Safety
Christie Donner	Colorado Criminal Justice Reform Coalition
Regis Groff	Retired State Senator
David Kaplan	Criminal Defense Bar
Gil Martinez	District Judge, 4th Judicial District
Tom Quinn	Division of Probation Services (resigned June 2011)
Mike Riede	Probation Office, 1st Judicial District (retired)
Grayson Robinson	Arapahoe County Sheriff's Department
Karl Spiecker	Department of Corrections
Jeanne Smith	Division of Criminal Justice
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice

Comprehensive Sentencing Task Force

Name	Affiliation
Jeanne Smith, *Chair*	Division of Criminal Justice
Denise Balazic	State Parole of Board
Joe Cannata	Voices of Victims
Christie Donner	Colorado Criminal Justice Reform Coalition
Michael Dougherty	Attorney General's Office, Criminal Justice Section
Charles Garcia	Juvenile Parole Board
Tim Hand	Division of Adult Parole, Community Corrections and Youthful Offender System
Peter Hautzinger	District Attorney's Office, 21st Judicial District
William Hood III	Denver District Court Judge
Claire Levy	State Representative, House District 13
Gil Martinez	Judge, 4th Judicial District
Jason Middleton	State Public Defender's Office
J.P. Moore	District Attorney's Office, 17th Judicial District
Joe Pelle	Boulder County Sheriff's Department
Eric Philp	Division of Probation Services
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice
Dianne Tramutola-Lawson	Colorado CURE
Douglas Wilson	State Public Defender's Office

Treatment Funding Working Group

Name	Affiliation
Regina Huerter, *Chair*	Denver Crime Prevention & Control Commission
Donald Quick	District Attorney's Office, 17th Judicial District
Janet Wood	Division of Behavioral Health, Department of Human Services (resigned December 2010)
Christie Donner	Colorado Criminal Justice Reform Coalition
Carmelita Muniz	Colorado Association of Alcohol and Drug Service Providers
Eric Philp	Division of Probation Services
Inta Morris	Department of Higher Education
Pat Steadman	State Senator, 31st District
Annmarie Jensen	Jensen Public Affairs, Inc.

Minority Over-representation Subcommittee

Name	Affiliation
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Michael Dougherty	Attorney General's Office, Criminal Justice Section
Regina Huerter	Denver Crime Prevention & Control Commission
Reo Leslie	Colorado School for Family Therapy
Anna Lopez	Division of Criminal Justice
Alaurice Tafoya-Modi	Private Defense Attorney
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SECTION 1

Introduction

This report documents the Commission's fourth year of activities and accomplishments. During its first year of work, the Commission focused on improving policies and practices related to the re-entry of individuals returning to the community from jail and prison. This work resulted in 66 recommendations for removing barriers to successful re-entry, summarized in the Commission's December 2008 annual report. In 2009 the Commission made 45 recommendations regarding sentencing and drug reform, many of which resulted in statutory changes during the 2010 General Assembly. In 2010, the Commission focused its efforts on drug policy and sentencing statutes reform, including work in the area of sex offender/sex offenses policy. Also, during this time period, the Commission launched its efforts to study and make recommendations for reform of the juvenile justice system.

As 2010 came to a close, the Commission approved 42 recommendations in the areas of drug, sentencing and sex offenses reform. Many of the recommendations resulted in statutory changes by the 2011 General Assembly. The bills promoted by the Commission can be seen in Table 1.1.

Legislative reforms are one type of systemic change the Commission promotes. It also recommends changes to operational policy, business practice, and agency philosophy. Because it is currently focused on sentencing reform and juvenile justice, legislative changes will be reported here.

This report highlights the Commission's initiatives, recommendations and activities spanning from October 2010 through September 2011. The report is organized as follows: Section 2 provides a summary of the Commission's legislative intent and membership, Section 3 discusses Commission and task force activities for FY 2011, Section 4 details the Commission's recommendations and outcomes throughout the year including 2011 legislation, and Section 5 describes the Commission's next steps. Past Commission reports included a section ("Status of Prior Commission Recommendations") that is omitted from the current report. Because the Commission continues to generate dozens of recommendations every year, the tracking and performance measures related to its recommendations will be posted online starting in the spring of 2012. More detail regarding the migration of performance measures from the annual report to an online format can be found in Section 3, "Activities of the Commission."

Table 1.1. Commission supported bills presented to the 2011 General Assembly

Bill number	Bill title	Status
Senate Bill 11-096	Concerning excluding simple possession as a qualifying habitual offense	Signed
House Bill 11-1064	Concerning creation of a parole presumption for certain drug offenders	Signed
House Bill 11-1167	Concerning making multiple changes to the petition process for sealing certain drug offense records	Signed
House Bill 11-1189	Concerning changes in bail bond conditions for repeat DUI and DWAI offenders	Signed
House Bill 11-1239	Concerning including additional information about the need for new crimes through legislative fiscal notes	Signed
House Bill 11-1268	Concerning addressing unintended consequences for first time DUI offenders created by H.B. 10-1347	Signed
House Bill 11-1278	Concerning making multiple changes to sex offender registration statutes	Signed
Senate Bill 11-186	Concerning allowing judicial districts to create alternative bond programs	Not passed by Legislature
House Bill 11-1261	Concerning establishing a per se limit for driving under the influence of marijuana	Not passed by Legislature
No Bill title	Concerning making multiple changes to sex offender sentencing statutes	Not sponsored
No Bill title	Concerning establishing a standardized mental health screening instrument	Not sponsored

SECTION 2

Legislative intent and membership

The Commission is comprised of 26 voting members (see pages vii-viii), 17 of whom are appointed representatives of specific stakeholder groups, and 9 of whom are identified to serve based on their official position. Eight appointed members are limited to serving no more than 2 3-year terms (in addition to any partial term) and 9 appointments serve 2 2-year terms. House Bill 07-1358, which established the Commission, is available on the Commission website at http://cdpsweb.state.co.us/cccjj/legislation.html.

In 2011 the Commission welcomed eight new members. This was the largest turnover in membership since the Commission was established in 2007. Over the course of the year, the Commission lost Aristedes Zavaras, Michael Anderson, Karen Beye, Thomas Quinn, Mark Scheffel, and Jan Dempsey Simkins. These members were replaced by Tom Clements, Anthony Young, Julie Krow, Michael Dougherty, Eric Philp, Ellen Roberts (returning to the Commission) and Charles Garcia. James Davis replaced Kathy Sasak, who had served as chair following the departure of Peter Weir in 2010.

SECTION 3

Activities of the Commission

This section summarizes the activities and accomplishments of the Commission between the publication of the October 2010 annual report and September 2011. The topics covered in this section include the following:

- Colorado's newly elected Governor and new members on the Commission,
- A report on the work of the Commission's task forces, subcommittees and specially convened groups,
- An update on the behavioral health initiatives supported by Commission recommendations and funded with over $4.2M in federal Justice Assistance Grants (JAG),
- A review of the work by the Treatment Funding Working Group and the publication of that group's findings in the Treatment Funding *White Paper*,
- A synopsis of work by the Commission regarding minority over-representation in the justice system, and
- A report on the status of the Commission's Performance Measures.

Governor's visit

Governor Hickenlooper was elected into office in November 2010 and addressed the Commission at its May 2011 meeting. The Governor reiterated comments from his State of the Union address where he emphasized that his administration would work on issues in a non-partisan manner. He told Commission members that they represent an excellent example of working in a non-partisan manner. The Governor also discussed the need for fewer victims and safer communities, and tied these to the need for offenders to succeed after they served their sentence and returned to the community. Governor Hickenlooper commended the Commission for considering the "human side" of criminal behavior and taking a broad approach to crime prevention; for recognizing that substance abuse and mental health problems are common aspects of criminal activities; and for making recommendations that support housing and jobs for offenders because these kinds of efforts have "real results." The Governor said he was pleased that the Commission was discussing disproportionate minority over-representation in the justice system, and he expressed his hope that the Commission will continue

to use data to inform its recommendations for improving criminal justice policy and practice.

New CCJJ chair and new Commission membership

The November 2010 election resulted in a new governor, a new cabinet and, in turn, a new Commission chairperson. Jim Davis, executive director of the Department of Public Safety, replaced Kathy Sasak and was named chair of the Commission. In addition, other cabinet members and members of the Commission were replaced: Tom Clements replaced Aristedes Zavaras as the Executive Director of the Department of Corrections; Dr. Anthony Young, the chair of the Colorado State Board of Parole replaced Michael Anderson as the representative for parole board; Reggie Bicha replaced Karen Beye as the Executive Director of the Department of Human Services. Mr. Bicha subsequently appointed Julie Krow to the Commission as his permanent designee.

The Commission experienced other turnovers in membership. Thomas Quinn, the Director of the Division of Probation Services retired in the summer of 2011 and was replaced by Eric Philp. Mr. Philp took Mr. Quinn's place on the Commission as the representative from the Colorado Judicial Department. State Senator Mark Scheffel was replaced by State Senator Ellen Roberts, a returning member to the Commission. Charles Garcia is the new representative for the Juvenile Parole Board, replacing Jan Dempsey Simkins. Finally, Attorney General John Suthers appointed Deputy Attorney General Michael Dougherty as the official representative for the Attorney General's office.

New member orientation

The large turnover in membership described above was the first of its kind since the Commission's inception in 2007. Consequently, the Commission staff created a New Member Orientation curriculum. This effort had the following objectives:

- Educate new members on Commission background, mandates and procedures;
- Present background information on Commission activities, products and impact; and
- Provide a forum for new members to share information and their interests.

Commission leadership, its consultant Paul Herman, and staff held two New Member Orientation meetings in 2011, one in the spring and one in the fall. New Commission members were given binders with the Commission's by-laws, processes and protocols, accomplishments, member backgrounds, guiding principles, enabling legislation, a paper on evidence based practices, and a CD with agendas and minutes for all past Commission meetings.

Commission task forces and subgroups

As was noted in the Next Steps portion of the Commission's 2010 *Annual Report*, Commission members agreed that efforts in 2011 should be focused on the following four areas of study: continued work on sentencing and drug policy reform, and new work in the areas of juvenile justice issues and sex offenses. To this end, a majority of Commission work in 2011 was undertaken by the following four task forces:

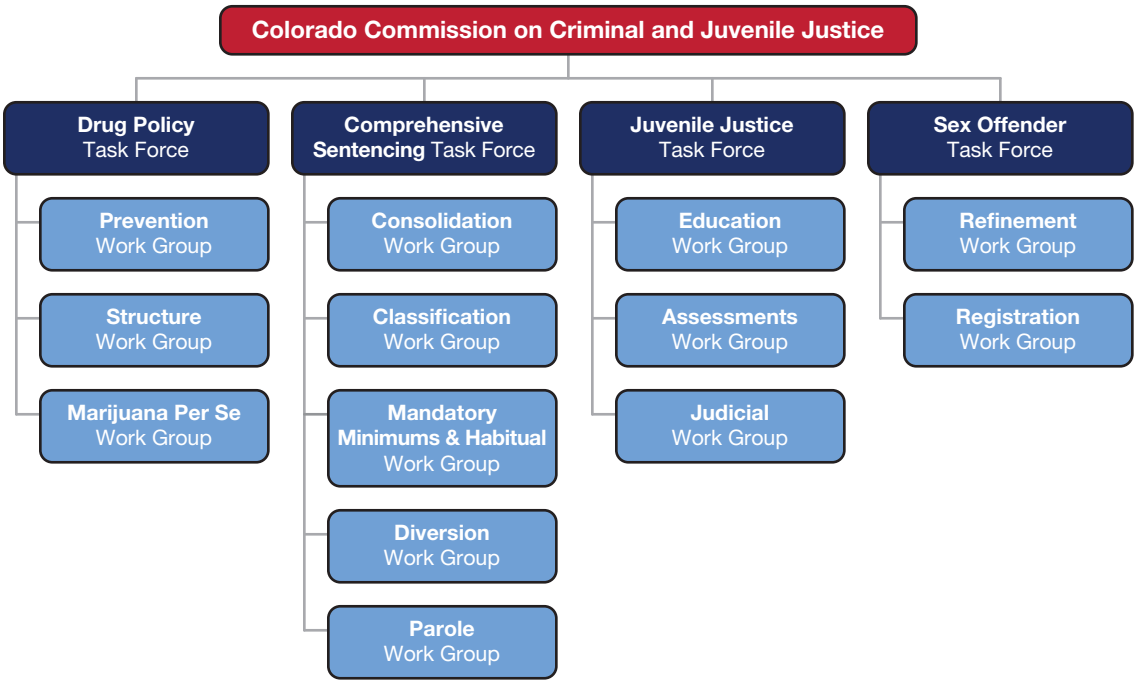
- Drug Policy Task Force (Grayson Robinson, Chair)
- Comprehensive Sentencing Task Force (Jeanne Smith, Chair)
- Juvenile Justice Task Force (Regina Huerter, Chair)
- Sex Offender/Sex Offenses Task Force (David Kaplan, Chair)

Figure 3.1 on the opposite page reflects the organization and scope of work undertaken by the Commission and Task Forces.

Drug Policy Task Force

The Drug Policy Task Force continued the work that it started in August 2009. In the final months of 2010 (leading up to the 2011 legislative session), the Drug Policy Task Force's work focused on the following topics: DUID Per Se limits, the filing of habitual offender charges based on felony drug convictions, sealing of drug records, parole issues faced by drug offenders, behavioral health treatment funding consolidation, and unintended

Figure 3.1. CCJJ task force and working group organizational chart



consequences of DUI House Bill 09-1347. In the fall of 2010 the Drug Policy Task Force presented 18 recommendations to the Commission for consideration, some of which eventually turned into proposed legislation that was signed into law. For detailed information on the 18 recommendations from the Drug Policy Task Force, please see Section 4.

In 2011 the Drug Policy Task Force established three working groups: the Drug Use Prevention Working Group, the Drug Sentencing Structure Working Group and the Marijuana Per Se Working Group, with the intent to examine and make recommendations for improvement in the following areas:

- Drug abuse prevention and early intervention;
- The consolidation and tracking of state treatment funds;
- The development of a comprehensive drug sentencing scheme along with a review and possible revision of the classification of designer drugs; and
- Revisit the Marijuana DUID Per Se limit recommendation that failed in the 2011 legislative session.

As this report was going to print, the recommendations from the Drug Policy Task Force and three working groups were being prepared for presentation to the Commission. Outcomes will be reported in the 2012 annual report.

Also in 2011, the Drug Policy Task Force produced a Drug Policy Fact Sheet for educational purposes. The Fact Sheet was produced over several months as task force members provided input into its content. It focused on prevalence rates, co-occurring disorders, the broad range of negative outcomes associated with substance abuse, and the prevalence of alcohol abuse. The Fact Sheet may be found in Appendix A.

Comprehensive Sentencing Task Force

The Comprehensive Sentencing Task Force held its initial meeting in September 2010. The Commission charged the Task Force with approaching sentencing reform by analyzing specific crimes types, starting with theft. The Commission also requested this task force examine a "sunrise review process" for any new criminal justice legislation introduced in the Colorado

Legislature. Much like the current sunset review process, this idea would establish a process for reviewing new legislation to ensure that the proposed new crime could not be covered by an existing statute. This would avoid duplication and redundancy in Colorado's criminal justice statutes, and further the Commission's goal of simplifying the sentencing structure. In the fall of 2010 the Comprehensive Sentencing Task Force presented this recommendation to the Commission for consideration. That recommendation was approved by the Commission, presented as House Bill 11-1239 to the Colorado legislature and eventually signed into law. Details of this recommendation can be found in Section 4.

Throughout most of 2011 the Comprehensive Sentencing Task Force continued its work regarding possible sentencing reform by analyzing the current theft statutes and penalties, and the offender populations appropriate to available sentencing options. In late 2011, the Task Force established the following five working groups to study a variety of areas related to this task:

- Adult Diversion Working Group to explore the viability of establishing a statewide adult diversion program;
- Consolidation Working Group to study the possibility of combining current "designer offenses" such as theft of ski tickets into broader categories of theft;
- Classification Working Group to make recommendations for establishing a more equitable distribution of theft crimes, e.g., there are no Felony 5 or 6 thefts;
- Mandatory Minimums and Habitual Offenders Working Group to review sentence lengths; and
- Parole Working Group to review the impact of sentencing changes on the parole process.

As this report was going to print the Comprehensive Sentencing Task Force was continuing its long range work in these areas of sentencing reform. It intends to have recommendations for reform for the 2013 Legislative Session.

Juvenile Justice Task Force

The Juvenile Justice Task Force held its initial meeting in September 2010. Judge Kenneth Plotz joined the Commission staff to work with the Juvenile Justice Task Force. The Juvenile Justice Task Force identified its mission as conducting a comprehensive analysis and assessment of the Juvenile Justice system in Colorado. The Task Force identified the following activities as central to its mission:

- Review the Colorado Children's Code;
- Analyze information and data sharing across juvenile justice and social service agencies;
- Study statewide inconsistencies in the use of evidence-based practices;
- Study disproportionate minority contact;
- Analyze truancy and other status offenses;
- Promote comprehensive evidence-based training and education of key players in the system;
- Review gaps and inadequacies in funding for juvenile programming; and
- Review current practices in delinquency prevention and intervention.

The Task Force held a two-day retreat in March to examine the myriad of issues facing the juvenile justice system, and design a strategy for addressing the issues. After the retreat, the task force members established the following three working groups:

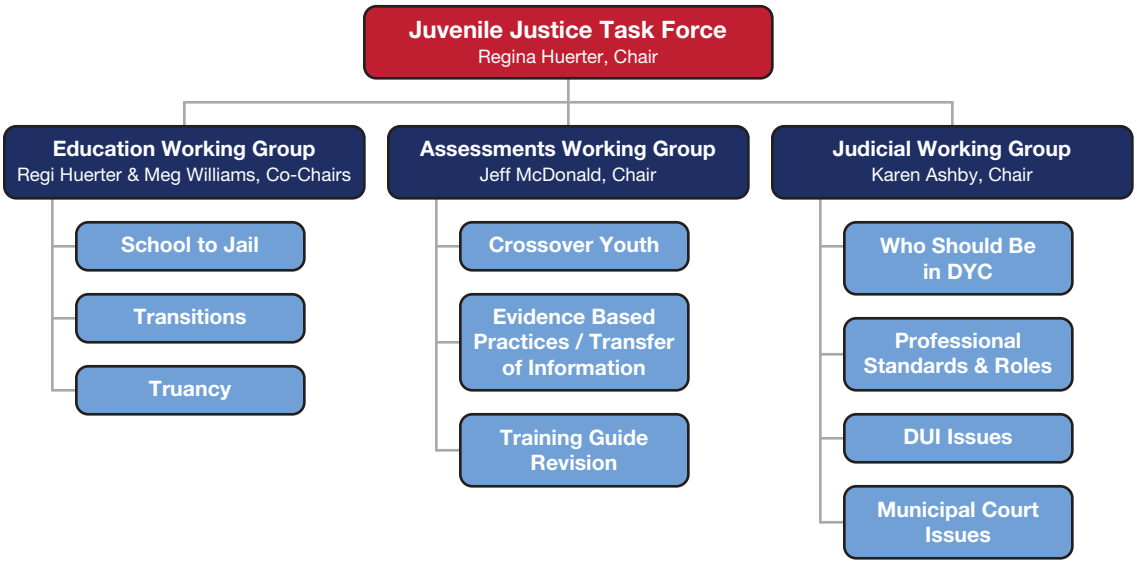
- Judicial Working Group
- Education Working Group
- Assessments Working Group

Two of the working groups (Education and Assessments) established three subcommittees each: Transitions, School to Jail, Truancy, Training, Evidence Based Practices and a Crossover Youth Committee. The Judicial Working Group also established four subcommittees. Figure 3.2 on the opposite page reflects the organization and scope of work undertaken by the Juvenile Justice Task Force.

Sex Offender/Sex Offenses Task Force

The Sex Offender/Sex Offenses Task Force held its initial meeting in September 2010. The members of this task force agreed that their mission is to uphold the overall Commission mission and to conduct a comprehensive analysis and assessment of adult and juvenile sex offenses and the issues surrounding the dispositions of sex offenders in Colorado. One of the goals for this task force was to develop recommendations for the Commission and, if possible, develop legislative recommendations for the

Figure 3.2. CCJJ Juvenile Justice Task Force organizational chart



2011 legislative session. Following a discussion of the problem areas, task force members generated a list of initial issues to prioritize and study.

- Registration/Deregistration
  - o Failure to register,
  - o Transient sex offenders,
  - o Sexually Violent Predator designation, and
  - o Juvenile registration.
- Statutory Review and Refinement (Indeterminate/ Determinate)
  - o Review statutes for inconsistency and gaps.
- Parole Release/Guidelines with Lifetime Supervision (*if time permits*)

The task force created two working groups to work on Registration/Deregistration and Statutory Review and Refinement.

Also, as per the request by former Governor Bill Ritter in his May 21, 2010 veto message (Appendix B) for House Bill 10-1363 (the Sex Offender Management Board reauthorization), the Commission and its Sex Offender/Sex Offenses Task Force worked with the Colorado Coalition Against Sexual Assault in the preparation of the subsequent SOMB reauthorization bill (House Bill 11-1138). Findings in support of the reauthorization were presented to the Commission at its December 2010 meeting.

As this report was going to print, the recommendations from the Sex Offender/Sex Offenses Task Force and its two working groups were being presented to the Commission. Outcomes of this activity will be reported in the 2012 annual report.

Additional working groups

In the fall of 2011 the Commission appointed a subcommittee to further study the issues surrounding minority over-representation. Please see page 12 for details regarding both that group's work and the Commission's targeted work on MOR in 2011.

Behavioral health initiatives update

Some of the Commission's most far-reaching initiatives to date were launched in 2009 when the American Recovery and Reinvestment Act provided over $4.2M in federal Justice Assistance Grant (JAG) funding for three large projects that were based in part on Commission recommendations and were consistent with the priorities identified by the Commission's Behavioral Health Work Group. Those three projects are the Metro Crisis Services and the Metro Crisis Line ($745,000 grant), the Criminal Justice Clinical Specialists program ($1,496,570 grant) and the Evidence-Based

Practices Implementation for Capacity (EPIC) project ($2,104,497 grant). Status reports on these initiatives are provided below.

Metro Crisis Services and Metro Crisis Line

This $745,000 grant to the City of Golden is supporting Metro Crisis Services, Inc., an independent non-profit corporation. The Metro Crisis Line, a 24-hour crisis hotline, is staffed with mental health and substance abuse treatment professionals that began providing services in May 2010. The Metro Crisis Line is designed to provide suicide prevention and mental health and substance abuse consultation to the seven-county Denver Metro area (the seven counties are Adams, Arapaho, Boulder, Broomfield, Denver, Douglas, and Jefferson).

The goal of the project is to divert individuals who are otherwise likely to enter the criminal justice system by redirecting them to services. The Metro Crisis Line is the first point of triage in a new crisis system, allowing for the immediate assessment of the level of need and most appropriate point of service for each person who calls. Each caller receives the same level of professional clinical services around the clock regardless of insurance coverage, referral source or call locale. The system is designed to provide a nexus for emergency calls and behavioral health service referral options for the public, police, 911 systems, hospitals, and criminal justice professionals.

Traditionally, emergency rooms are the means by which many individuals enter the system to obtain mental health and substance abuse treatment. In fact, in 2010, approximately 80,754 adults and 34,609 children who went to the emergency room had a primary diagnosis of a mental health or substance abuse disorder. In addition, an estimated 4,195 people were treated in metro Denver hospital emergency rooms following suicide attempts and non-fatal self-harm.

Work on Metro Crisis Services began more than four years ago when a group of subject matter experts from the seven metro counties gathered to discuss behavioral health services that were not being accessed by individuals who needed treatment. This original effort was supported by local hospitals, local foundations and the Robert Wood Johnson Foundation. The group estimated that approximately 681,000 individuals in the seven metro counties would have a diagnosable mental health or substance abuse problem in a twelve month period. Statewide, they estimated this figure to be approximately 1.2 million people. The call center's 800-number receives calls from across the state; no one is turned away, however responders may not have complete information on local referral sources for locations outside the metro area.

The JAG grant enabled hiring staff and intensive outreach to 37 metro Denver law enforcement agencies. Currently, the call center handles approximately 2,000 callers each month. The call center has likely already contributed to significant crime prevention, fielding calls from 75 individuals with homicidal intent. Call center staff de-escalated each situation and law enforcement was notified. In addition, to date, over 2,500 callers have reported suicide intent.

Staff from Metro Crisis Services is working with the Division of Mental Health to develop a plan to expand call center services statewide.

Criminal Justice Clinical Specialist (CJCS) Program

A $1,496,570 JAG grant to the Division of Behavioral Health provides funding for 10 criminal justice clinical specialists placed in behavioral health agencies across the state. These positions are providing case management that addresses the needs of individual and the requirements of both the justice and behavioral health systems. The criminal justice clinical specialists receive referrals from probation, police, public defenders, pretrial services, and jail diversion. Upon accepting a referral, the specialist conducts an initial assessment of the client's immediate mental health needs. The specialists serve as a liaison between the agency and law enforcement, jails, probation, parole, other case managers, and re-entry and transition specialists, coordinating or providing referrals or services. The specialists have been placed in the following agencies:

- Arapaho Douglas Mental Health Center
- Centennial Mental Health Center
- Colorado Coalition for the Homeless
- Colorado West Regional Mental Health Centers
- Community Reach Center
- Jefferson Center for Mental Health
- Larimer Center for Mental Health
- North Range Behavioral Health Center

- San Luis Valley Mental Health Center
- West Central Mental Health Center

The purpose of this project is to provide an agency point-of-contact for criminal justice agency referrals, coordinate with these agencies, and provide direct case management to those referred. The specialist position aligns supervision requirements with community treatment service agencies. These efforts are intended to increase access to appropriate mental health services and reduce criminal recidivism among people with serious mental illness who are involved with the justice system, a recommendation made by the Commission in 2008.

The project launched an online Client Data Tracking database. In 2010, criminal justice clinical specialists served 737 clients. Many clients have been placed in jail diversion programs and residential treatment programs. The project uses grant funds to assist clients with the cost of medication and treatment co-pays when no other funding is available. Some centers assist an individual by obtaining birth certificates so proper state identification can be acquired.

Project challenges include an inability to stay in touch with homeless clients; that resources vary depending on area; offenders in the community who are on "inmate status" are ineligible for Medicaid benefits; and because of confidentiality concerns, difficulty identifying offenders who are releasing from DOC.

Evidence-Based Practices Implementation for Capacity (EPIC)

A $2,104,497 grant was provided to the Colorado Department of Public Safety, Executive Director's Office to develop a training program on behalf of the Commission. The project is a multiagency training initiative that includes the Department of Corrections, the Division of Behavioral Health, the Division of Probation Services, and the Division of Criminal Justice (Office of Community Corrections). The project involves an unprecedented level of coordination and collaboration to ensure that the effort will enhance the understanding of professionals and the public, bring a new level of skill and direction to criminal justice practitioners, and will produce immediate and long-term benefits for the criminal justice system by implementing evidence-based practices known to reduce recidivism.

The project includes a training coordinator delegated to each partnering agency, including two for the Department of Corrections, who are responsible for spearheading the work of the project on behalf of the respective agency. Project goals include training professionals in a variety of promising and evidence-based correctional practices including Mental Health First Aid® and Motivational Interviewing® (MI). At the time of this writing, over 1200 criminal justice and behavioral health professionals working with those involved in the criminal justice system have been trained in Mental Health First Aid. In addition, approximately 300 state criminal justice and private behavioral health professionals have received intensive MI trainings, tape critiques and coaching. In fact, over 850 client sessions have been taped, coded and become the subject of coaching sessions.

The Colorado Defense Bar, the Colorado District Attorneys Association, members of the behavioral health community (public and private service delivery), victim advocates, and judges have also received training through the EPIC project.

Currently, the EPIC project is developing a sustainability plan to continue the training effort after the grant funding ends in February 2013.

Treatment Funding Working Group of the Drug Policy Task Force

In 2009, the Commission and its Drug Policy Task Force recommended that the public policy of Colorado recognize alcoholism and substance use disorders as illnesses and public health problems affecting the general welfare of the state. To this end, the Commission made a series of recommendations concerning the need to prioritize treatment for certain alcohol and drug-involved offenders, and to promote the use of evidence-based sentencing practices and community-based interventions. Using empirically-based risk and needs assessments, the system would differentiate among offenders whose criminal behavior is primarily driven by behavioral health problems and those whose criminal behavior is related primarily to antisocial attitudes and a pro-criminal lifestyle.

Importantly, Commission and Drug Policy Task Force members generally agreed that any significant departure from current law requires that treatment resources be in place before changing to the new approach. To this end,

the Treatment Funding Working Group was established in November 2009 to investigate issues related to current treatment availability and funding allocations. The Working Group decided that this information should be placed in the larger context of prevalence rates, the science of addiction, the criminal justice response to relapse, and treatment effectiveness. In December 2010 the Treatment Funding Working Group presented the *Treatment Funding White Paper* to the Commission, along with six treatment funding recommendations, all of which were approved by the Commission. The recommendations can be found in Section 4, Recommendations and Outcomes.

The *White Paper* covers the following elements: The first section introduces an evidence-based drug policy paradigm. The following section describes the problem of unmet need for behavioral health treatment nationwide. The third section contains information on the most recent research in the area of addiction science. The fourth section covers addiction treatment challenges, efficacy, and outcomes. The fifth and last section addresses treatment availability and funding. The paper can be accessed at the following link: http://cdpsweb.state.co.us/cccjj/PDF/Commission%20reports/Revised%202-14-11%20Treatment%20Funding%20White%20Paper.pdf.

Minority over-representation in the justice system

Colorado House Bill 08-1119 directed the Commission to address the issue of racial and ethnic disparities in the justice system by conducting studies of the policies and practices in Colorado. The statute mandates the Commission to have the goal of reducing disparity and reviewing work and resources compiled by states in the area of disparity reduction. To this end, the Commission dedicated the majority of five monthly meetings in 2011 (March through June, and August) to focusing on minority over-representation (MOR). Summaries of presentations to the Commission are in Appendix C, and included the following topics:

- How MOR is addressed in other states;
- Driving factors behind MOR, according to the criminology literature;
- The City and County of Denver's approach to addressing racial disparity; and
- Data on MOR from the Department of Corrections and the Division of Probation Services.

At the May 2011 meeting, Commission members worked in small groups to discuss recurring topics surrounding MOR. Four areas of significant concern were identified and Commission members worked in one of four groups, each focused on one of the areas of concern. Each group was asked to decide (a) which issues had feasible solutions; and (b) to what degree the solutions for this concern would impact MOR. The four groups addressed the following topic areas:

- Provide culturally relevant services,
- Improve cultural competence,
- System change, and
- MOR Research.

The information from this exercise was summarized and at the next monthly meeting Commission members prioritized the findings from the four groups. The result was seven general recommendations that were further prioritized by the Commission, each rated as having high impact and high feasibility. The seven recommendations follow.

1. Require comprehensive cultural competency training for all justice agencies and for all treatment and service organizations used by justice system agencies.
2. All justice agencies should track the racial and ethnic diversity of their staff. Every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.
3. State and local justice agencies should collect race *and* ethnicity information on the populations they serve.
4. Develop a mechanism that requires a specific review of proposed justice legislation to determine whether the legislation will have an adverse impact on minority over-representation. Some states refer to this as a Minority Impact Statement.
5. The Commission should develop and maintain a disproportionate minority representation website to promote recognition and understanding of this problem. The site should have local, state and national data and link to educational resources.
6. To serve as a model for its expectations of criminal justice agencies, the Commission should develop and

implement a Commission-specific mentoring program for minority juveniles and young adults who are interested in working in the criminal justice system.

7. The Commission's Sentencing, Drug, and Juvenile Task Forces shall review recommendations to ensure those proposals do not have a negative impact on minority over-representation.

In the summer of 2011, the Commission established the MOR Subcommittee to develop a strategy to move the seven recommendations forward. The MOR Subcommittee held its first meeting in October 2011. The subcommittee's work will be reported in future Commission reports.

Re-entry Oversight Committee meeting/performance measures

The Commission's first set of recommendations – the majority of which were recommendations to change policy and business practices to improve the re-entry process – were published in 2008 and the responsible agencies developed implementation plans and procedures. Many of the re-entry recommendations require the identification and removal of compound barriers and some of the recommendations require resources that are difficult to obtain in troubled economic times.

Commission staff has been tracking the implementation status of the 2008 recommendations, along with recommendations from subsequent years. This effort is mandated by the Commission's enabling statute, C.R.S. 316-11.3-103(2)(d): "To study and evaluate the outcomes of Commission recommendations as implemented." To track the outcome of the recommendations, the Commission's 2009 and 2010 annual reports included a section detailing the implementation status of the Commission's first year recommendations. However, given the number of new recommendations promulgated each year, Commission members decided in 2011 to remove the performance measures section from the annual report and instead place the information online. Commission staff intends to have a Performance Measures page on the Commission's website by spring 2012.

In addition, the Commission asked the 2008 Re-Entry Oversight Committee to meet annually to oversee the management of the performance measures for 2008 and subsequent years. To that end, the Re-Entry Oversight Committee met in May 2011 to review the 66 recommendations from 2008. The Oversight committee organized the 66 reentry recommendations into the following categories:

A. *No further action needed* – Implementation complete or 2008 recommendation not feasible to implement.

B. *Continue passive monitoring* – Review this recommendation annually.

C. *Continue active monitoring* – More specific action, further inquiry, and a point person assigned to follow-up and report back to DCJ and Commission staff.

D. *Pursue and develop an action plan OR Revisit and redesign the recommendation* – More action required on behalf of the Commission.

E. *Forward to Data Sharing Task Force* – Recommendations to be forwarded to a future Commission Task Force.

Summary

This section reviewed the work of the Commission and its task forces, subcommittees and working groups. The Commission saw significant turnover in membership during 2011 which coincided with the newly elected Governor and incoming cabinet. Among the Commission's accomplishments was an examination of the issues surrounding minority over-representation in the criminal justice system, which resulted in the development of seven recommendations for further study. In addition, work continued on the three behavioral health initiatives that received more than $4M in grant funding. Also, the Commission produced 42 recommendations, many of which were translated into legislation and passed by the 2011 General Assembly. Additional information regarding the 2010 recommendations and subsequent 2011 legislation are reported in Section 4.

SECTION 4

Recommendations and outcomes

This section presents the recommendations approved by the Commission between September 2010 and October 2011, the time period covered by this report. Some recommendations were drafted into legislation for the 2011 legislative session (see table below) while others were policy recommendations that established the foundation for future work by the Commission.

The following is a list of bills passed in the 2011 legislative session and signed by the Governor that began as Commission recommendations. The full text of each bill may be found on the Commission website at http://cdpsweb.state.co.us/cccjj/legislation.html.

Table 4.1. 2011 Legislative Session "Commission Bills"

Bill number	Bill title
Senate Bill 11-096	Concerning excluding simple possession as a qualifying habitual offense
House Bill 11-1064	Concerning creation of a parole presumption for certain drug offenders
House Bill 11-1167	Concerning making multiple changes to the petition process for sealing certain drug offense records
House Bill 11-1189	Concerning changes in bail bond conditions for repeat DUI and DWAI offenders
House Bill 11-1239	Concerning including additional information about the need for new crimes through legislative fiscal notes
House Bill 11-1268	Concerning addressing unintended consequences for first time DUI offenders created by H.B. 10-1347
House Bill 11-1278	Concerning making multiple changes to sex offender registration statutes

Nine sets of recommendations regarding specific categories of crimes or policy are presented in this section in the following order: Driving Under the Influence Bill – Clean Up; Driving Under the Influence of Marijuana-Per Se; Parole; Habitual Offender; Sealing of Records (Drug Offenses); Treatment Funding; Legislative Fiscal Note Requirements for New Criminal Justice Legislation; Sex Offender Registration; and Sex Offender Law Refinement.

Please note that the numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, "FY11"), a letter indicating the task force from which the recommendation originated (i.e., Drug Policy Task Force by a "D", Comprehensive Sentencing Task Force by an "CS", and Sex Offender/Sex Offenses Task Force by an "SO"), and a sequence number.

Drug policy and legislation recommendations

FY11-D1 **Unintended consequences of H.B. 10-1347 (DUI Bill technical corrections)**

The Commission recommends that technical corrections be made to any of last year's (2010) multiple offense DUI provisions as set forth in H.B. 10-1347 that inadvertently created unintended consequences on first-time DUI violations.

Discussion *The statute should be clarified to state that probation is mandatory for second and subsequent offenses and discretionary for first time offenders, and that courts have the discretion to suspend fines for first, second, third and subsequent offenses.*

FY11-D2 **Establish a "per se" violation for driving under the influence**

Establish a "per se" violation for driving under the influence of marijuana by establishing that it shall be an unclassified misdemeanor traffic offense for any person to drive a motor vehicle or vehicle when the person has a level of 5 nanograms of THC/mL whole blood or more at the time of driving or within two hours after driving.

FY11-D3 **Clarify the express consent statute regarding blood testing**

Amend or clarify the express consent statute to clearly ascertain that in the event an officer establishes probable cause to believe that a person is driving under the influence of marijuana, the person shall submit to a blood test, if necessary.

FY11-D4 **Amend administrative laws regarding driver's license revocations**

Amend current administrative laws relating to driver's license revocations and hearings on revocation as applicable to establish a mandatory license revocation of three months for a first offense (DUI/DUID), one year for a second offense (DUI/DUIC) and two years for a third and subsequent offense (DUI/DUID) resulting from driving under the influence of marijuana per se.

FY11-D5 **Amend administrative laws regarding reinstatement of a license**

Amend the administrative laws where necessary to establish that a violation or conviction for driving under the influence of marijuana per se shall mirror the consequences of conviction for a DUID per se violation regarding the administrative penalties and procedures for reinstatement of a license, insurance via SR-22, and court ordered treatment programs as reasonably necessary to effect the purpose of treating a DUID marijuana as seriously as a DUI alcohol offense.

FY11-D6 **Clarify DUID/marijuana per se regarding multiple offense convictions**

Clarify wherever necessary in the DUI and administrative statutes the inclusion of DUID/marijuana per se as a qualifying offense for application any multiple offense DUI/DWAI/habitual/UDD/vehicular homicide and assault convictions and penalties.

Discussion *For D2 through D6*

Approximately 15 states have statutes that identify a specific limit for the amount of THC/ml at which point driving is considered (per se) to be impaired.[1] High levels of active THC may remain in the blood long after use, perhaps up to 24 hours, whereas impairment that would negatively affect driving occurs closer to the time the THC was consumed. While BAC (Blood Alcohol Content) can be accurately measured and correlated with driving impairment, this is more difficult with cannabis. Alcohol is water soluble whereas cannabis is stored in the fat and is metabolized differently, making a direct correlation with behavior difficult to measure.

Science is clear that the use of cannabis leads to immediate behavioral impairment which can negatively affect driving. However, there is a lack of consensus among experts about the duration of impairment (approximately 2-4 hours for smoking, 8 hours for edibles). Expert opinions about "per se" limits related to driving impairment range from 1-2 ng/ml to 15 ng/ml. A low threshold may include individuals whose driving ability was not impaired because consumption occurred many hours prior to the blood test. Also, a low threshold may not necessarily imply driving impairment, especially for chronic users. However, a high threshold may make prosecution for nanogram levels below the designated number very difficult, possibly resulting in dismissed cases. The proportion of drivers, especially chronic users, whose behavior may not be impaired while testing positive at, for example, 5 ng/ml is unknown.

In addition, the Commission finds that administrative sanctions (such as revocation of a driver's license) for impaired driving due to active THC in the blood are a critical ingredient for a successful "per se" law but will likely result in a fiscal impact.

FY11-D7 **Establish a parole pilot program**

Create a parole board pilot program to further encourage and facilitate parole board release approval, and corresponding community services, for parole-eligible inmates currently incarcerated with a controlling sentence for drug use or possession.

[1] Please note that the information contained in this discussion is from testimony provided by multiple experts to the Marijuana/DUID per se Working Group of the Drug Policy Task Force.

Discussion

*In 2010, H.B. 10-1352 lowered sentences for convictions for drug **use and possession** offenses and redirected cost savings from corrections to behavioral health treatment. H.B. 10-1352 was based on recommendations approved by the Commission which determined that supervision and treatment in the Community would be a more effective use of resources than the current system of escalating punishments that often results in a prison sentence for those convicted of drug use and possession.*

The sentencing reforms in H.B. 10-1352 cannot be applied retroactively to those inmates who committed a drug use or possession offense prior to its enactment. According to information received from the Department of Corrections, as of August 2010 there were approximately 1,600 inmates in prison whose governing sentence was for drug use/possession who were sentenced prior to the enactment of H.B. 10-1352. Of this group, 92% are or will be past their parole eligibility date by the end of the year.

This parole pilot program is a strategy that aims to apply the Commission's new drug crime philosophy combining treatment and accountability to those sentenced before the passage of H.B.10-1352.[2] Providing for more comprehensive pre-release planning, community-based treatment and support services to parolees is expected to increase success on parole and reduce recidivism.

Therefore, the Commission recommends developing legislation to establish a pilot program creating a presumption, subject to the final discretion of the Parole Board, that the Parole Board grant parole to those inmates currently convicted and incarcerated with a "controlling sentence" for drug possession or use occurring prior to the enactment of H.B. 10-1352 provided they meet core criteria. The release criteria for the pilot program would include those to whom H.B. 10-1352 would have applied to had their crime been committed today and also that the inmate meet the following conditions:

- *Be at or past his or her parole eligibility date (PED);*
- *Has no current or prior felony convictions for violent crimes, crimes against children, weapons offenses or a sex offense;*
- *Has a record of acceptable institutional conduct to include no Class I COPD convictions within 12 months, no Class II COPD convictions within 3 months;*
- *Has not refused to participate in any DOC recommended programs;*
- *Has no active felony or immigration detainer; and*
- *Has an approved parole plan including information relating to treatment need level and amenability to treatment.*

While such a presumption of release shall exist if the conditions are met, the Parole Board shall always retain the discretion to deny parole when appropriate. All or some of any cost savings from DOC resulting from this program should be reinvested into pre-release services inside of DOC and toward expanding current funding for community based behavioral health treatment and wrap-around services for parolees. The DOC and the Parole Board should be mandated to provide an annual status report to the General Assembly on the impact of this program.

[2] Please see the *White Paper from the Treatment Funding Working Group* (December 2010) for more information on the treatment/accountability approach to sentencing and corrections, available at http://cdpsweb.state.co.us/cccjj/PDF/Commission%20reports/Revised%202-14-11%20Treatment%20Funding%20White%20Paper.pdf.

FY11-D8 **Revise habitual criminal offense charges in relation to drug offenders**

Simple possession drug offenses (**Class 6** felony or attempt or conspiracy to commit simple possession) shall **not** qualify as the presenting offense for the filing of habitual criminal offense charges under 18-1.3-801, CRS. This change in law would be effective only for new offenses committed after the 2011 effective date of the bill.

Discussion

In 2009, the Commission voted for and supported a new approach to sentencing drug offenses that clearly distinguished possession offenses from sale, distribution, or intent to distribute offenses. The new approach emphasizes a combination of treatment and accountability, and is consistent with the approach recommended by the National Institute on Drug Abuse.[3] A review of the data (see Table 4.2) indicates that the charge of possession of a controlled substance is infrequently used as a presenting offense for habitual offender charges; nevertheless, this recommendation is intended to ensure consistency in charging practices across the state and to emphasize that a possession offense should be treated differently from other drug crimes.

Table 4.2. Habitual drug cases

Judicial District	# of drug cases with habitual filed (closed in 2009)	# of drug cases with habitual pled/proven that had sentence enhanced (closed in 2009)	# of drug cases with habitual with possession as only eligible felony offense (closed in 2009)
1st – Jefferson/Gilpin	0		
2nd – Denver	1		0
3rd – Las Animas/Huerfano	1		1
4th – El Paso/Teller	20	0	6
5th – Summit/Eagle/Clear Creek/Lake	0		
6th – La Plata/San Juan/Archuleta	1		0
7th – Delta/Montrose/Gunnison/ San Miguel/Ouray/Hinsdale	1		0
8th – Larimer/Jackson	3	1	0
9th – Garfield/Rio Blanco	0		
10th – Pueblo	2		0
11th – Fremont/Park/Chaffee/Custer	1		0
12th – Alamosa/Rio Grande/Saguache/ Mineral/Conejos/Costilla	1		0
13th – Logan/Sedgwick/Phillips/ Washington/ Yuma/Kit Carson	4	0	0

Table continued next page.

[3] This philosophy is expressed in the Commission's November 2009 report and its December 2009 addendum to that report, and may be found at the following links: http://cdpsweb.state.co.us/cccjj/pdf/commission%20reports/sb09-286-report_11-30-09.pdf and http://cdpsweb.state.co.us/cccjj/pdf/commission%20reports/sb09-286-report_addendum12-22-09.pdf.

Table 4.2. Habitual drug cases (*continued from previous page*)

Judicial District	# of drug cases with habitual filed (closed in 2009)	# of drug cases with habitual pled/proven that had sentence enhanced (closed in 2009)	# of drug cases with habitual with possession as only eligible felony offense (closed in 2009)
14th – Grand/Routt/Moffat	0		
15th – Kiowa/Cheyenne/Prowers/Baca	0		
16th – Crowley/Otero/Bent	1		0
17th – Adams/Broomfield	0		
18th – Arapahoe/Douglas/Elbert/Lincoln	57		27
19th – Weld	3	3	0
20th – Boulder	1		0
21st – Mesa	12	1	1
22nd – Montezuma/Dolores	1		0
TOTAL	**110**	**5**	**35**

Source: Prepared by Jessica Zender, Colorado State Judicial Department (2011) for the CCJJ Drug Policy Task Force.

The following recommendations for record sealing are for new crimes committed after the bill's 2011 effective date[4]

FY11-D9 **Sealing of records (#1): Petty drug offense**

For petty drug offenses, records may be sealed three years from final disposition of the case or release from supervision, whichever is later. Sealing will be automatic upon filing if the offender pays the fee and proves there were no convictions incurred and are no charges pending during the waiting period. Notice to the district attorney is not required.

FY11-D10 **Sealing of records (#2): M2 and M3 drug offense**

Records may be sealed three years from final disposition of the case or release from supervision, whichever is later. Sealing is automatic if notice is sent to the district attorney, no objection is filed by the district attorney, and the petitioner demonstrates that there were no convictions or pending charges incurred during the waiting period.

[4] These recommendations were encompassed, with changes, by *H.B. 11-1167: Concerning the petition process for the sealing of certain drug offense records*. The provisions of the bill apply to convictions entered on and after July 1, 2011. For convictions prior to July 1, 2011, the time frames of the bill are applicable but sealing of the criminal records is available only with the consent of the district attorney and subsequent court review and approval.

FY11-D11 **Sealing of records (#3): M1 drug offense**

Records may be sealed five years from final disposition of the case or release from supervision, whichever is later. Sealing is automatic if notice is sent to the district attorney, no objection is filed by the district attorney, and petitioner demonstrates there were no convictions or pending charges incurred during the waiting period.

FY11-D12 **Sealing of records (#4): F6 and F5 drug possession**

Records may be sealed seven years from final disposition of the case or release from supervision, whichever is later. Sealing requires filing of a petition and notice to the district attorney. If there is no objection by the district attorney, it is at the court's discretionary if there needs to be a hearing to determine eligibility based on statutory criteria (this is the same as current practice but is codified). The petitioner must demonstrate that there was conviction or pending charges incurred during the waiting period.

FY11-D13 **Sealing of records (#5): Any other felony drug offenses**

Records can be sealed ten years from final disposition or release from supervision with district attorney approval. Court review is required to determine eligibility based on statutory criteria. The petitioner must demonstrate that there was no conviction or pending charges incurred during the waiting period.

FY11-D14 **Sealing of records (#6): District Attorney guidance**

District Attorney approval shall be guided by the current statutory criteria in 24 -72-308.5, CRS to provide for consistency and transparency.

FY11-D15 **Sealing of records (#7): For convictions before the 2011 effective date of the bill**

The time periods identified in FY11-D9 through FY11-D14 shall be applicable for record sealing of convictions before the 2011 effective date of the bill, however district attorney approval shall always be required when district attorney approval is required under current law. Note that DA approval is required for all drug offenses committed before July 1, 2008. For possession offenses between July 1, 2008 and July 1, 2011, assuming the latter is the effective date of the bill, there will be a ten year waiting period and district attorney notice. Court approval shall be required.

FY11-D16 **Sealing of records (#8): Exception to the need for DA approval**

Allow sealing for all old drug petty offenses without district attorney approval (veto power) but with court approval.

FY11-D17 **Sealing of records (#9): Number dates of offenses**

Amend current law to require that the court and the district attorney consider the number of convictions and the dates of the offenses in granting a petition to seal. Under current law, there is no limitation on the number of cases or criminal episodes that are eligible for sealing after the statutory waiting period.

FY11-D18 **Sealing of records (#10): Conviction inquiries**

Amend 24-72-308.5(2)(d) to state that the defendant and law enforcement agencies may properly reply, upon inquiry, that no "public" conviction records exist with respect to the defendant.

Discussion *Current law allows for drug possession convictions to be sealed after a ten year waiting period. The recommendations presented here reduce the waiting time period for low level offenses and recommend waiting periods consistent with the research which has found that after a certain period former offenders create no higher risk to public safety than those with no criminal history. Specifically, researchers have found that the likelihood to reoffend decreases dramatically for those who remain crime-free for 7 years, nearly matching the risk of new offenses among those with no criminal history.*[5]

FY11-D19 **Coordinate funding mechanisms related to offender treatment**

The criminal justice committee of the state's Behavioral Health Transformation Council should meet with the appropriate stakeholders to develop a plan to (a) streamline and coordinate existing funding mechanisms related to offender treatment and (b) expand data collection and reporting.

Discussion *Multiple treatment funding sources and mechanisms, each with their own governing board or oversight group, exist in Colorado. Agency data also exist in independent, stand-alone systems and cannot be easily integrated to evaluate treatment availability, treatment matching accuracy,*[6] *and case and program outcomes. Common data items and oversight will make future analysis of resources and outcomes possible. The recently implemented TMS (Treatment Management System) for DUI clients is an excellent example of overcoming confidentiality and privacy barriers.*[7]

FY11-D20 **Implement a standardized mental illness screening instrument**

Implement a standardized mental illness screening instrument as part of the presentence investigation or, if none was completed, at post-sentence probation intake.

Discussion *Assessment is a critical component of evidence-based correctional practices to reduce recidivism. The lack of empirical information regarding the mental health status of defendants, particularly at the beginning of the criminal justice process, creates an immediate barrier to the*

[5] For example, see Kurlycheck, M.C., Brame, R., & Bushway, S.D. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy, 5(3)*, 483-504.

[6] Matching the level of treatment need with the appropriate level of services is supported by research and considered a fundamental evidence-based practice by the National Institute of Corrections. Please see http://nicic.gov/Library/024107 for more information.

[7] This system was developed by the Division of Behavioral Health and the Division of Probation Services.

successful completion of a criminal sentence. Colorado has valid and reliable mental illness screening instruments for adults and juveniles and these should be completed routinely as part of all pre-sentence investigations and post-sentence intake processes.

FY11-D21 **Prioritize early health care interventions and alignment of resources**

The commission supports the efforts of the Department of Health Care Policy and Financing (HCPF) to prioritize early health care interventions and the alignment of resources to increase the efficiency of service delivery and patient access to services.

Discussion *To expand access to services, every effort should be made to remove barriers to accessing behavioral health service benefits for offenders. This requires proactively considering the justice population in health care reforms. HCPF plays a key role in this proposal because it is managing the implementation of the federal Patient Protection and Affordable Care Act (P.L. 111-148, PPACA) and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152). These reforms expand Medicaid and so will significantly improve access to substance abuse and mental health services for many individuals in the justice system, including young adults and adults without children.*

FY11-D22 **Funding consolidation**

Consolidate and streamline funding for the Division of Behavioral Health.

Discussion *The Division of Probation requested and received such a budget modification from the Joint Budget Committee, considerably increasing its ability to direct funding to populations most in need of resources. This recommendation would provide a similar adjustment for the Division of Behavioral Health.*

FY11-D23 **Use the *EPIC Program* as an example to educate criminal justice professionals**

Use the Commission's Evidence-based Practices Training Initiative (EPIC) as a vehicle to educate criminal justice professionals in effective behavioral health assessment and treatment.

Discussion *The Commission's Evidence-Based Practices Training Initiative (Evidence Based Practices Implementation for Capacity, or EPIC) should include in its overall plan the training of professionals to use a comprehensive approach to treatment matching. This requires educating those involved in sentencing and supervision (judges, prosecutors, defense attorneys, probation/parole/community corrections officers and supervisors, and private treatment providers) on strategies to enhance successful treatment completion. This approach requires an understanding of the need to view behavioral health treatment as a response to a chronic rather than an acute medical condition.*

The length of supervision and treatment must align to produce the most optimal offender outcome. Judges, supervising officers, and treatment providers must work together to link the length of the sentence with the treatment plan. Individuals progress through drug abuse treatment at different rates, but research concludes that lasting reductions in criminal activity and substance abuse are related to longer lengths of treatment. A longer continuum of treatment and supervision may be indicated for offenders with severe or multiple problems, and shorter periods may be

indicated for those with less serious problems—but the duration of the sentence and the period of treatment should be synchronized to maximize positive outcomes.

Legal pressure can improve retention in treatment, according to the National Institute on Drug Abuse.[8] Supervising officers and other judicial officials must carefully leverage this pressure specifically to improve offender participation in, and completion of, treatment requirements. Outcomes for drug abusing offenders in the community can be improved when supervising officers actively monitor treatment compliance. Further, supervising officers must skillfully encourage and promote each offender to successfully complete treatment.

The education process should include the following information, explaining that:

a. *Objective offender assessments and case management should result in treatment matching in the areas of frequency, duration and intensity; and that it is the responsibility of the court, those who supervise offenders in the community, and those in the healthcare system to ensure the appropriate treatment is delivered.*

b. *The dynamics of addiction and recovery should be delivered to those involved in sentencing and supervision (judges, prosecutors, defense attorneys, field staff and supervisors, and private treatment providers) to maximize treatment resources and promote recidivism reduction.*

FY11-D24 **Develop strategies to expand access to Medicaid for community corrections clients**

The criminal justice committee of the Behavioral Health Transformation Council should discuss and identify potential strategies to expand access to Medicaid for community corrections clients.

Comprehensive sentencing recommendation

FY11-CS1 **To reduce "designer crimes"**

Require that Legislative Council provide additional information in fiscal notes provided to the general assembly when a bill creates a new criminal offense, increases or decreases the crime classification of an existing criminal offense, or changes an element of an existing offense in such a way that the offense would create a new factual basis for the offense. The additional information provided in the fiscal note would include:

1. The unique elements of the proposed crime;
2. Whether the offense proposed in the legislation can already be charged under current law;
3. Whether the crime classification and potential penalty proposed in the bill is appropriate given other offenses of a similar type; and
4. The anticipated prevalence of the behavior the proposed legislation is intended to address.

[8] Please see http://www.drugabuse.gov/PODAT_CJ/faqs/faqs1.html#3.

Discussion *Legislative Council is the general assembly's nonpartisan research agency that, in addition to other responsibilities, is required to prepare fiscal notes. The fiscal note provides a summary of the proposed law, an explanation of its fiscal impact on state and local government revenue and spending, and an explanation of how it will be implemented. This recommendation is intended to guide the Colorado General Assembly when making a determination of whether a proposed new criminal law is redundant with existing criminal statutes, and whether the proposed crime classification is consistent with the seriousness of the offense relative to other crimes. The additional information provided by Legislative Council will not draw any policy conclusions or make any assessment of whether the bill would further public safety.*

Sex offender/sex offenses recommendations

FY11-SO1 **Regarding sex offender registration, combine termination hearing/de-registration for juveniles convicted of a sex offense**

Create a simultaneous termination hearing/de-registration process for those juvenile offenders currently eligible for de-registration under 16-22-113(e), CRS.

Discussion *Many offenders who are eligible to de-register fail to do so or are uninformed of the option. This recommendation is intended to amend the relevant statutes as necessary in CRS Titles 16 and 19. This would not change the substance of current law in 16-22-113(e), CRS, only the procedures. This does not alter which juvenile offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate supervision and registration. Proper notice can be given to all parties and the court will have treatment records for juvenile. This should apply to juvenile probation and juvenile parole. Victim notice would still be accomplished.*

FY11-SO2 **Regarding sex offender registration, combine termination hearing/de-registration for adults convicted of a sex offense**

Create a simultaneous termination hearing/de-registration process for adult offenders with a deferred judgment who are currently eligible for de-registration under 16-22-113(d), CRS.

Discussion *Many offenders who are eligible to de-register fail to do so or are uninformed of the option. This recommendation is intended to amend the relevant statutes as necessary in Titles 16 and 18, CRS. This would not change the substance of current law in 16-22-113(d), CRS, only the procedures. This does not alter which adult offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties. This would not change the substance of current law, only the procedures. Victim notice would still be accomplished.*

FY11-SO3 **Establish a consistent fee structure for sex offender registration**

Modify 16-22-108(7), CRS, to establish a consistent fee structure for sex offender registration.

Discussion *This is a state-wide issue raised by law enforcement requiring attention due to the problems created by the inconsistencies in registration procedures and the wide disparity in registration fees.*

The registration fee was not intended to pay for the administration of registries. It is more important that sex offenders are registered than strict adherence to the collection of the registration fee.

Details of the proposed modification would include the following statutory elements:

- *Change 16-22-108(7), CRS, to allow for a fee up to $25.00 for each initial annual or quarterly re-registration.*
- *No allowable fee for updates to address, employment, email, or registration cancellations.*
- *Allow for collection of fees civilly and include specific language that allows a jurisdiction to waive the registration fee if the offender is indigent.*
- *This would require law enforcement to accept sex offender registrations, even if the offender does not have the money to pay the fee.*

FY11-SO4 **Combined registration/cancellation process for sex offenders**

Create a simultaneous registration/cancellation of registration process in 16-22-108, CRS.

Discussion *This is a state-wide issue raised by law enforcement. The lag time between a cancellation and a new registration would be eliminated along with unnecessary failure to register charges. This would reduce the burden on offenders who are often required to return to a previous location to cancel a registration before being allowed to register in a new jurisdiction.*

With this proposed change, law enforcement agencies would simultaneously submit a notice of registration cancellation to a previous jurisdiction when registering an offender. This would be more efficient for offenders and law enforcement and would only apply to registries within the state of Colorado. An electronic registration system would allow for streamlined implementation of this improved process. For example, the STAR system developed in Douglas County and being implemented in Denver County is a secure, web-based system to manage sex offender registration, allowing for multi-jurisdictional access.

FY11-SO5 **Clarification regarding registration of sex offenders in jail**

Add and clarify language in 16-22-106(3)(a), CRS, regarding the registration of offenders sentenced to or held in jail.

Discussion *The added language requires re-registration of offenders held in jail pending court disposition for more than 5 days. This re-registration and notification to law enforcement will prevent unnecessary investigation into offenders presumed to have failed to register. The clarified language for offenders sentenced to jail would specify that the re-registration requirement applies to offenders sentenced to jail for any offense, not just sex offenses, and would include a notification to the previous registration jurisdiction.*

FY11-SO7 **Annual registration within 5 days of an offender's birthday**

Modify 16-22-108(1)(b), CRS to allow annual re-registration to occur within 5 business days of the offender's birthday.

Discussion *The statute currently requires re-registration to occur exactly on an offender's birthday or on the first business day following a weekend or holiday birthday. The change will allow an offender to register within 5 business days before or after the offender's birthday which would implicitly provide flexibility around weekends and holidays.*

FY11-SO8 **Modify the time required to re-register due to changes in life circumstances**

Modify 16-22-108(1)(b), CRS, to allow annual re-registration to occur within 5 business days of the offender's birthday.

Discussion *The statute currently includes no time reference for the requirement to re-register due to changes in life circumstances. The change will provide a clear expectation for this registration requirement to occur within 5 business days before or after the change in offender circumstances detailed in the subsection.*

FY11-SO9 **Trial venues to include the county where an offender was registered**

Add to the place of trial venues in 18-1-202(12), CRS, the county where an offender completed his or her last registration.

Discussion *This is a state-wide issue raised by law enforcement and prosecutors. The change provides another option for law enforcement to manage offenders and another location in which prosecutors may charge those who fail to register.*

FY11-SO1O **Eliminate mandatory Intensive Supervision Probation (ISP) for failure to register**

Eliminate the language requiring mandatory ISP as a condition of probation or parole for failure to register in 18-3-412(2)(b) and 18-1.3-1007(1.5), CRS.

Discussion *This change provides judicial discretion to determine whether ISP is appropriate.*

FY11-SO11 **Affirmative defense for failure to register per the Federal Adam Walsh Act**

Add an affirmative defense for failure to register based on the model provided in the Adam Walsh Act.

Discussion *Although, in practice, charges may infrequently be filed under these circumstances, an affirmative defense for failure to register should be established in statute to accommodate uncontrollable circumstances. The Adam Walsh Act provides a model for this affirmative defense.*

FY11-SO12 **Information documents created for registered sex offenders**

The State Public Defender's Office should create informational documents for offenders on registration/re-registration and de-registration.

Discussion *Many offenders are uninformed regarding requirements to register and eligibility to de-register. There are instructions on the state judicial web site but more substantive documentation and timely distribution of information with advice would be advantageous. This recommendation directs the Colorado State Public Defender's Office (SPDO) to prepare a registration and re-registration information fact sheet and a de-registration fact sheet that public defenders, local law enforcement and other law enforcement agencies can use to advise eligible persons on the registration, re-registration and de-registration processes. The SPDO should collaborate with relevant agencies and stakeholders and provide the documents to the Commission and the Sex Offender/Offense Task Force or any successor subcommittee for review prior to finalization.*

FY11-SO13 **Establish a Sexually Violent Predator equivalency and assessment process for sex offenders from other states**

Add language to 16-13-902, CRS, and relevant sections of Title 18 on Sexually Violent Predator equivalency criteria in a manner that ensures the assessment procedure is constitutional.

Discussion *Currently missing from statute is the language to establish the process and who is responsible to evaluate sex offenders entering from other states who may meet the definition of sexually violent predator. This has led to inconsistencies across jurisdictions when processing offenders convicted of sex crimes in particular states. The procedure to classify out-of state offenders moving to and registering in Colorado should involve an assessment process that is similar to that which is used for in-state offenders. Also, the statutory language should accommodate circumstances where there is a mismatch in the number of levels or categories applicable to the SVP designation between Colorado and other states.*

FY11-SO14 **Second degree kidnapping to be a sex offense when sexual assault is involved**

Add Second degree kidnapping, 18-3-302(3)(a), CRS, as a sex offense when the underlying offense is the offense of sexual assault.

Discussion *Some violent offenders convicted of second degree kidnapping have not been convicted of the associated sex crime and are therefore not required to register as sex offenders. This recommendation adds second degree kidnapping, 18-3-302(3)(a), CRS, as a sex offense when the underlying offense is the offense of sexual assault to the offenses requiring registration, 16-22-102(9), CRS.*

FY11-SO15 **Addition of tribal and territorial offenders to those required to register**

Add tribal and territorial offenders to the list of those required to register, 16-22-103(1)(b), CRS, pursuant to the federal Adam Walsh Act requirements.

Discussion *The goal of this recommendation is to enhance compliance with Adam Walsh requirements and improve consistency in the Colorado statute.*

FY11-SO17 **Address inconsistencies in the unlawful sexual contact statute**

Repeal the current mandatory prison sentence provisions for commission of unlawful sexual contact by force, threat, or intimidation, 18-3-404(3), CRS.

Discussion *Unlawful sexual contact by force, threat, or intimidation is an Felony 4 offense with a mandatory prison sentence, while sexual assault by force, threat, or intimidation, which involves sexual penetration or intrusion not only sexual contact, is an Felony 3 offense and is probation eligible. The less egregious conduct of contact should not necessarily carry a greater penalty.*

FY11-SO18 **Amend the period of deferred judgement and available treatment lengths for sex offenses**

Extend the amount of time available on a deferred judgment and sentence for a sex offense requiring treatment, and clarify when the period of the deferred begins.

Discussion *For the majority of sex offenders, treatment will take longer than four years. However, the current statute, 18-1.3-102, CRS, only permits a maximum of four years for a deferred judgment. Because a sex offense requires an evaluation before treatment can begin, there is often a two-month lag between the entry of the plea for the deferred judgment and the beginning of that treatment. This recommendation would allow the period of the deferred judgment to begin at the time that supervision and treatment can begin. The new language would allow the court, with the consent of the parties, to extend the length of the deferred judgment period for an additional two years for good cause. Additionally, it should be clear that the period of the deferred judgment for any plea begins the date the plea is* ***entered*** *if no presentence investigation report or offense-specific evaluation is ordered. If a presentence investigation or offense-specific evaluation is ordered, the case is to be set over for another date so those reports can be completed. At that subsequent court date, the period of the deferred judgment should begin.*

FY11-SO19 **Address the unconstitutional provision on Sexually Violent Predator analysis in 18-1.3-1004(4), CRS**

Correct the currently unconstitutional provision in 18-1.3-1004(4), CRS.

Discussion *This section of the statute purports to permit the sentencing court to convert an otherwise determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography (often called commercial or economic sex crimes). This can be done if the court finds, based on a Sexually Violent Predator analysis, that the defendant is likely to commit a sexual assault in the future. There are two problems with this provision. First, it is unconstitutional as it permits increasing the maximum penalty to which a defendant is exposed based on a fact-finding by the court, rather than a jury. Second, even if such a court finding were sufficient, the SVP analysis is by definition inapplicable to these cases because the first question in the SVP analysis is whether the defendant was convicted of a sexual assault or sexual assault on a child. In cases of deferred judgment, the defendant is not convicted.*

The proposed modification will amend subsection (4) to permit its use, provided the defendant agrees to have the judge make such a finding. In addition, it requires the development of a different analytical tool. The prosecutors involved in the discussion have used this provision in plea bargaining where an otherwise indeterminate charge is plead to one of these crimes, with an agreement that the court would have the power to make the statutory finding. This provides a useful process to resolve cases that may otherwise go to trial.

SECTION 5

Next steps

Task forces

In 2011, the Commission continued to support the following four task forces:

- Drug Policy Task Force (Grayson Robinson, Chair)
- Comprehensive Sentencing Task Force (Jeanne Smith, Chair)
- Juvenile Justice Task Force (Regina Huerter, Chair)
- Sex Offenses/Sex Offenders Task Force (David Kaplan, Chair)

When these four areas of study were originally agreed upon in 2010, Commissioners were aware that the work of the task forces would likely last at least two years. At the time of this writing, all four groups will continue into 2012.

Also, as this report goes to print, recommendations are being presented by the Drug Policy, Comprehensive Sentencing and Sex Offenses/Offenders Task Forces to the Commission in preparation for the FY 2012 legislative session.

Subcommittees

In September 2011, after careful review and discussion, Commission members established two subcommittees to address critical areas. The **Minority Over-representation Subcommittee** is charged with further developing the seven preliminary recommendations compiled by the Commission in the summer of 2011 (see page 12), defining the scope of work and establishing timelines to move each recommendation forward. The **Bail Subcommittee** was established to address the revitalization of the five Commission recommendations issued in 2008 around bail and bond. This group will study bail, bond and pretrial issues in Colorado and develop recommendations for the Commission to consider.

Behavioral health

Work on the behavioral health collaborative will continue with the Commission's commitment to support the many current reform efforts underway by existing groups such as the Behavioral Health Transformation Council, its criminal justice subcommittee, and the Department

of Health Care Policy and Financing. Future annual reports will continue to document the accomplishments of the three initiatives discussed on pages 9-11, including the EPIC training project (Evidence Based Practice Implementation for Capacity), all three of which were ranked as priorities by the Commission's behavioral health collaborative.

Tracking previous recommendations

From 2008 through 2010, documenting the status of the Commission's recommendations had been presented in annual Commission reports. Starting with this 2011 annual report, the Commission's recommendations and the status of each will be available online beginning in the spring of 2012.

Summary

The Commission will continue to meet on the second Friday of the month, and information about the meetings, documents from those meetings, and information about the work of the task forces and committees can be found on the Commission's web site at http://cdpsweb.state.co.us/cccjj/. The Commission expects to present its next written report in the winter of 2012.

SECTION 6

Appendices

Appendices table of contents

Appendix A:

CCJJ Drug Policy Task Force Fact Sheet

CCJJ DRUG POLICY TASK FORCE **FACT SHEET** CCJJ DRUG POLICY TASK FORCE

In 2009, the Commission on Criminal and Juvenile Justice and its Drug Policy Task Force recommended that the public policy of Colorado recognize that alcoholism and substance addiction are illnesses and public health problems affecting the general welfare of the state.

ABOUT ADDICTION

- Because addiction begins with a voluntary behavior, and is expressed in the form of excess behavior, it is often assumed that individuals should be able to quit by force of will alone. However, since their brains have been altered by drug use, **very few addicts stop on their own.**[1]
- Research has provided overwhelming evidence that not only do alcohol and other drugs interfere with normal brain functioning by creating powerful feelings of pleasure, but they also have long-term effects on brain metabolism and activity. Scientists and medical **experts today consider drug addiction a mental illness**.* This is why many individuals continue to use alcohol and drugs despite serious personal, social and legal consequences.[2]
- Research has found that
    - Drug abuse can cause a mental illness
    - Mental illness can lead to drug abuse
    - Drug abuse and mental disorders are both caused by other common risk factors
- In the 1950s, the American Medical Association **recognized alcohol addiction as a disease**.[3]
- Early detection followed by appropriate **interventions and treatments are key to preventing** future substance-related crime.[4]
- Recovery from drug addiction is a long term process and frequently requires multiple episodes of treatment. As with other chronic illnesses, **relapses to drug abuse can occur and reflects a need for treatment to be reinstated** and perhaps intensified.
- Studies show that when addicted offenders are provided with well-structured drug treatment while under criminal justice control, subsequent drug use is reduced by 50-60% and criminal behavior is reduced by more than 40%. Research has found that substance abuse **treatment provides up to $7 in taxpayer benefits for every $1 in cost**. When savings related to health care are included, total savings can exceed costs by a ratio of 12 to 1.[5]

SUBSTANCE USE DISORDERS, ADDICTION AND CRIME

- Of the 2.3 million inmates crowding our nations prisons and jails in 2006:
    - 1.5 million (65%) meet the **medical criteria for alcohol or other drug use disorder** (within the last 12 months).
    - Another 458,000 (20%)
        - had histories of substance abuse
        - were under the influence of alcohol or other drugs at the time of their crime
        - committed their offense to get money to buy drugs
        - were incarcerated for an alcohol or drug law violation, or
        - shared some combination of these characteristics[6]

*Mental illness is a psychiatric disorder that results in disruption in a person's thinking, feeling, moods, and ability to relate to others.

    - 77.5% of those incarcerated for a **violent crime** in jails and prisons in 2006 reported substance misuse and addiction[7]

October 2011 *K. English/Division of Criminal Justice/Office of Research and Statistics*

- Comparatively, **10-11% of the general population is estimated to have a substance disorder (12-month prevalence)**: 2.9% for illicit drug use disorders and 7.7% for alcohol use disorders among those aged 12 and over[8]
- **Alcohol and other drugs are significant factors in all crime**. In a 2006 national survey, prisoners reported that alcohol and other drugs were involved in criminal activity:
    - 78% of violent crimes
    - 83% of property crimes
    - 77% of public order, immigration or weapon offenses, and probation/parole violations.
- Compared with inmates who are not substance involved, substance-involved inmates are four times likelier to receive income through illegal activity (25% vs. 6%)[9]
- A 2006 study of **Colorado district court cases** found most offenders convicted of the following crimes had serious problems with alcohol or illicit drugs (note that this finding does not mean that drug use caused criminal activity):[10]
    - Convicted of assault 82%
    - Convicted of robbery 95%
    - Convicted of theft 75%
    - Convicted of sex offense 65%
    - Convicted of burglary 85%
    - Convicted of forgery 79%
    - Convicted of fraud 84%
    - Convicted of MVT 86%
    - Convicted of drugs 92%
    - Convicted of escape 85%
- According to a 2009 survey of men booked into the **Denver City Jail**, 69% tested positive for one of five drugs (excluding alcohol). The majority tested positive for the following:
    - marijuana (45%)
    - cocaine (28%)[11]
- Rather than questioning which came first--criminal behavior or substance abuse--research now focuses on evidence-based cognitive behavioral treatment which addresses thinking patterns that lead to poor choices.

Alcohol is the primary drug of abuse in Colorado: Treatment admissions, 2008

Source: SAMHSA. (December 2008). *States in brief: Colorado. Substance abuse and mental health issues at-a-glance. A short report from the Office of Applied Studies.* Available at http://www.samhsa.gov/statesinbrief/2009/COLORADO_508.pdf.

- **Alcohol** use is implicated in the incarceration of over half (57%) of all inmates in America. Inmates in a 2006 survey reported that they were either under the influence of alcohol at the time of the crime, had a history of alcohol treatment or had an alcohol use disorder.
- **Alcohol** was involved in the following crimes of prisoners incarcerated in 2006:
    - 56% of those who committed a property crime
    - 58% of inmates who committed a violent crime
    - 52% of those who committed other crimes[12]
- Half (52%) of the **juvenile or youthful offenders** incarcerated in state prisons and local jails in 2006 met the clinical criteria for alcohol or other drug disorders.
    - The problem is particularly severe among youth incarcerated in local jails where 54% meet such clinical criteria compared with 37% of juvenile inmates in state prison.
    - State and local juvenile and youthful offenders are more likely to have co-occurring mental health and substance use disorders than non-youthful offenders (28% versus 25%).[13]
- In FY2008, of the 950 youth discharged from the **Colorado Division of Youth Corrections** (DYC) 796 (84%) were assessed at intake as needing *Intervention* or *Treatment* level substance abuse services.[14]
- Being arrested at an early age, being convicted as a juvenile and beginning alcohol or other drug use at an early age all are related to **recidivism**.[15]

SUBSTANCE USE DISORDERS AND MENTAL ILLNESS

- **60% of those with a substance use disorder also suffer from another form of mental illness**. This combination of diseases is referred to as "co-occurring disorders." This does not necessarily mean that one condition is caused by the other, even if one appeared first. Drug abuse can cause a mental illness; mental illness can lead to drug abuse; and drug abuse and mental disorders are both caused by other common risk factors.[16]
    - By way of comparison, *serious psychological distress* (the phrase used by survey researchers to reflect medical diagnostic criteria) was present in nearly 12% of adult population, according to a household survey of more than 136,000 persons in the U.S.[17]
- **Drug abuse and other mental disorders are both caused by common factors**, such as underlying brain deficits and early exposure to stress or trauma. For example, brain circuits that involve dopamine are typically affected by addictive substances and may also be involved in depression, schizophrenia, and other psychiatric disorders.[18]
- **Drug abuse and mental illness are developmental disorders.** They often begin in childhood or adolescence, periods when the brain is undergoing dramatic developmental changes.[19]
- **Early exposure to drugs** of abuse can change the brain in ways that increase the risk for mental illness, just as early symptoms of a mental disorder may increase vulnerability to drug abuse.
- Individuals with overt, mild, or even subclinical mental disorders may abuse drugs as a form of **self-medication to reduce symptoms.**[20]
- **Fetal Alcohol Spectrum Disorders (FASD)** is an umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. There is no safe level of alcohol consumption by pregnant women. Babies can be

born with some or all of these effects, many of which increase the likelihood that FASD-affected individuals will abuse substances:

- Attention and memory problems
- Learning disabilities
- Hyperactivity and behavior problems
- Difficulty with judgment and reasoning
- Poor coordination or delayed motor skills
- Growth deficits
- Altered facial features (thin upper lip and no groove above lip)
- Mental retardation[21]

- Individuals receiving treatment for mental and substance use disorders frequently are diagnosed with **psychological trauma.** Unresolved and untreated trauma is central to the development of multiple, severe, and persistent health and mental health problems, substance abuse, criminal behavior**. Trauma-informed treatment** is a critical component of substance disorder interventions**.**[22]

- In June 2008, The National Institute on Drug Abuse published a study that found that a **specially designed group intervention improved client functioning in the community.** A 6-month course of Behavioral Treatment for Substance Abuse in Severe and Persistent Mental Illness (BTSAS) reduced drug abuse, boosted treatment-session attendance, and improved the quality of life of outpatients with a wide spectrum of mental disorders. BTSAS therapy comprises six integrated components:

  - motivational interviews (directive counseling that explores and resolves ambivalence) to increase the desire to stop using drugs;
  - contingency contracts linking drug-free urine samples with small financial rewards ($1.50-$3.50 per drug test);
  - realistic, short-term, structured goal-setting sessions;
  - training in social and drug-refusal skills;
  - information on why and how people become addicted to drugs and the dangers of substance use for people with mental illness; and
  - relapse-prevention training that inculcates behavioral strategies for coping with cravings, lapses, and high-risk situations.[23]

MARIJUANA USE AND OTHER ILLICIT DRUGS AND ADOLESCENCE

- Underage smoking and alcohol use typically precede marijuana use, so those two substances--rather than marijuana--are considered by professionals to be 'gateway drugs' to illicit substance use.[24]

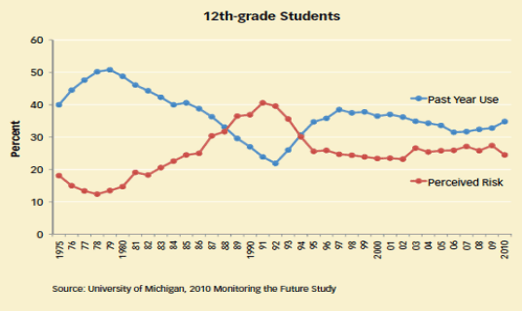
- Because their brains are still developing in the areas that govern decision making, judgment, and self-control, adolescents may be especially prone to risk-taking behaviors, including trying drugs of abuse.[25]

- **Teens using marijuana are more likely to use other illicit drugs.** Among teens aged 12 to 17 with no other problem behaviors, those who used marijuana at least once in the past 30 days are 13 times more likely than those teens who have not used marijuana in the past 30 days (34% vs. 4%) to use another drug like cocaine, heroin, methamphetamines, LSD or Ecstasy, and almost 26 times more likely than those teens who have never used marijuana (34% versus 1%) to use another drug like cocaine, heroin, methamphetamines, LSD or Ecstasy.[26]

  - Scientists acknowledge that teenagers sometimes act without regard for consequences, linking this impulsiveness and risk-taking to immaturity of the brain region called the orbitofrontal cortex which exaggerates the reward response for adolescents. New research suggests that, in addition to having an underdeveloped restraint system, the teenage brain generates more intense reward impulses than a child's or an adult's.[27]

- Adolescents' heightened sensitivity to drug reward puts them at an enhanced risk for progressing from drug experimentation to addiction and may also increase their challenges in recovery. Drug-addicted adolescents may have a **higher risk of relapse than adults**, leading to greater prevalence of addiction in this population.[28]

- Teenage marijuana use has been increasing slightly every year since 2005. During the past 35 years, the percentage of 12th-grade students reporting past-year marijuana use has shown ups and downs. Such use has risen when risk perception falls and has fallen when risk perception rises (see figure). [29]



SUBSTANCE ABUSE, CHILDREN AND ADVERSE LIFE OUTCOMES

- The **minor children of inmates** are at a much higher risk of juvenile delinquency, adult criminality and substance misuse than are minor children of parents who have not been incarcerated.[30]

    - Almost four-fifths of incarcerated mothers (77% in state prison and 83% in federal prison) reported being the primary caregiver for their children prior to their imprisonment.

    - 26% of fathers incarcerated in state prisons and 31% incarcerated in federal prisons reported being the primary caregiver for their children prior to incarceration.

- **Maternal absence** increases adult children's chances of being convicted of a crime or being on probation by 75%.[31] A study of the likelihood of incarceration found that youth living in single-parent families were at nearly twice the risk for incarceration compared to youth from intact families.[32]

- Compared to persons who grew up with no parental alcohol abuse, adverse childhood experiences-- including domestic violence, parental marital discord, mental illness in the home, and exposure to criminal activity--was **2 to 13 times higher** for children when either or both parents abused alcohol.[33]

- Recent research reveals that between 1997 and 2002, **2,355 children in the U.S. died in alcohol-related crashes**; 68% of those children were riding with a driver who had been drinking. Drugs other than alcohol (e.g., marijuana and cocaine) have been identified as factors in 18% of motor vehicle driver deaths.[34]

    - **Alcohol** is found in the blood of approximately 60% of motor vehicle crash victims, 50% of suicides, 46% of homicide victims, 50% of drowning victims and 64% of fire and burn fatalities.[35]

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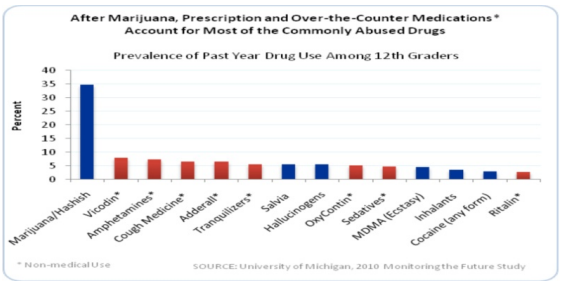
EMERGING PROBLEM: PRESCRIPTION DRUG ABUSE

- Excluding tobacco and alcohol, prescription and over-the-counter medications are the most frequently abused drugs, following marijuana, for adolescents (see figure below).[36]



** Red bars reflect prescription drugs used for non-medical reasons.*

RISK AND PROTECTIVE FACTORS IN DRUG ABUSE PREVENTION

The National Institute on Drug Abuse (NIDA) has identified **important principles for prevention programs** for the family, school, and community. Prevention programs are often designed to enhance "protective factors" and to reduce "risk factors." **Protective factors** are those associated with reduced potential for drug use. **Risk factors** are those that make drug use more likely. Research has shown that many of the same factors apply to other problematic behaviors such as *youth violence, delinquency, school dropout, risky sexual behaviors, and teen pregnancy*.[37]

PROTECTIVE FACTORS

- Strong and positive family bonds;
- Parental monitoring of children's activities and peers;
- Clear rules of conduct that are consistently enforced within the family;
- Involvement of parents in the lives of their children;
- Success in school performance; strong bonds with institutions, such as school and religious organizations; and
- Adoption of conventional norms about drug use.

RISK FACTORS

- Chaotic home environments, particularly when parents abuse substances or suffer from mental illnesses;
- Ineffective parenting, especially with children with difficult temperaments or conduct disorders;
- Lack of parent-child attachments and nurturing;
- Inappropriately shy or aggressive behavior in the classroom;
- Failure in school performance;
- Poor social coping skills;
- Affiliations with peers displaying deviant behaviors; and
- Perceptions of approval of drug-using behaviors in family, work, school, peer, and community environments.[38]

PRINCIPLES OF EVIDENCE-BASED CORRECTIONAL PRACTICE*

October 2011 *K. English/Division of Criminal Justice/Office of Research and Statistics*

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- **Assess offender risk/need levels using actuarial instruments.**
- **Enhance offender motivation.**
- **Target interventions as follows:**
  - ✓ **Act on the risk principle. Target services to medium and high risk offenders rather than low risk offenders.**
  - ✓ **Act on the need principle. Provide services that address at least 4 criminogenic needs (needs that are directly related to criminal activity).**
  - ✓ **Implement the responsivity principle. Provide services according to the offender's learning style.**
  - ✓ **Ensure adequate program dose and duration.**
- **Provide skill training for staff and monitor their delivery of services.**
- **Increase positive reinforcement.**
- **Engage ongoing support in natural communities.**
- **Measure relevant processes/practices.**
- **Provide measurement feedback.**

**PRINCIPLES OF EBP SOURCE: NATIONAL INSTITUTE OF CORRECTIONS NICIC.ORG.*

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[5] Excerpts from Mark Stanford, Director of Medical and Clinical Services, Department of Alcohol & Drug Services, Addiction Medicine Division, Santa Clara County Health & Hospital System, reviewing the literature in an editorial in the San Jose Mercury News, December 29, 2008.

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[9] National Center on Addiction and Substance Abuse at Columbia University (CASA), *Behind Bars II*, February 2010. CASA analysis of the *Survey of Inmates in Federal Correctional Facilities* (2004), *Survey of Inmates in State Correctional Facilities* (2004), *Survey of Inmates in Local Jails* (2002) [Data files], and U.S. Bureau of Justice Statistics Reports, *Prisoners in 2006*.

[10] Serious problem means some or serious disruption of daily functioning. The source for this figure is data collected from court files by DCJ researchers. Data were collected from a sample of cases in 10 judicial districts (17 counties: Denver, Jefferson, El Paso, Weld, Mesa, Boulder, Broomfield, Douglas, Teller, Gilpin, Jackson, Adams, Arapahoe, Elbert, Lincoln, and Larimer). These judicial districts were chosen based on the top 10 judicial districts for filings in 2005. The sample is made up on 1,298 court cases from 2004, 2005, and 2006 that were sentenced to probation in 2006. Researchers used a subjective scale to code in data in the file using the following measures (1) no problem, (2) yes a problem but no interference with daily functioning, (3) yes a problem and some disruption of daily functioning, and (4) yes a problem with serious disruption of functioning.

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[12] National Center on Addiction and Substance Abuse at Columbia University (CASA), Behind Bars II, February 2010. CASA analysis of the Survey of Inmates in Federal Correctional Facilities (2004), Survey of Inmates in State Correctional Facilities (2004), Survey of Inmates in Local Jails (2002) [Data files], and U.S. Bureau of Justice Statistics Reports, Prisoners in 2006.

[13] Ibid.

[14] Division of Youth Corrections. (January 2010). Recidivism Evaluation of Committed Youth Discharged in Fiscal Year 2007-08. Colorado Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections: Denver, CO. Page 84.

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October 2011 *K. English/Division of Criminal Justice/Office of Research and Statistics*

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[24] The Institute of Medicine's 1999 report, *Marijuana and Medicine: Assessing the Science Base,* states: "Not surprisingly, most users of other illicit drugs have used marijuana first. In fact, most drug users begin with alcohol and nicotine before marijuana--usually before they are of legal age." See Joy, J. E., Watson, S. J., Jr., & Benson, J. A. (Eds.). (1999). *Marijuana and medicine: Assessing the science base.* Washington, DC: National Academy Press.
[25] National Institute on Drug Abuse, available at http://www.drugabuse.gov/infofacts/understand.html.
[26] The National Center on Addiction and Substance Abuse (CASA) at Columbia University. (2004a). *Non-medical marijuana II: Rite of passage or Russian roulette?* New York: The National Center on Addiction and Substance Abuse (CASA) at Columbia University.
[27] National Institute on Drug Abuse, available at http://www.drugabuse.gov/infofacts/understand.html.
[28] Brenhouse, H. C. & Andersen, S.L. (Apr 2008). Delayed extinction and stronger reinstatement of cocaine conditioned place preference in adolescent rats, compared to adults. *Behavioral Neuroscience, 122,* 460-465.
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Appendix B:

Governor Ritter's Veto Message for House Bill 1364

OFFICE OF GOV. BILL RITTER, JR.
PRESS RELEASE: FOR IMMEDIATE RELEASE
FRIDAY, MAY 21, 2010

GOV. RITTER'S VETO MESSAGE FOR HOUSE BILL 1364

May 21, 2010

Honorable Colorado House of Representatives
67th General Assembly
Second Regular Session
State Capitol
Denver, CO 80203

Ladies and Gentlemen,

I am filing with the Secretary of State House Bill 10-1364, "Concerning the sex offender management board, and, in connection therewith, continuing the sex offender management board, and making an appropriation." I vetoed this bill as of 2:39 p.m. today and this letter sets forth my reasons for doing so.

In 1992, the Colorado General Assembly created the Sex Offender Treatment Board in order to develop standards and guidelines for the assessment, evaluation, treatment, and behavioral monitoring of sex offenders. See C.R.S. § 16-11.7-101, et seq. In 1998, the General Assembly changed the name of the board to the Sex Offender Management Board ("SOMB") to more accurately reflect the duties assigned to the SOMB.

Currently, the SOMB consists of community partners from around the state, including the Department of Corrections, the Judicial Department, law enforcement, the public defender's office, private criminal defense attorneys, rural and urban county commissioners, clinical polygraph examiners, the Department of Public Safety, district attorneys, Department of Human Services, licensed mental health professionals with expertise in treating sex offenders, the victim services community, and community corrections. The reason for this approach is that effective supervision of sexual offenders require, a multidisciplinary, team approach. This coordinated system for the management and treatment of sex offenders "contains" the offender and enhances the safety of the community and the protection of victims.

The SOMB operates from Standards and Guidelines ("Standards"), which were first published in January 1996. The Standards have been revised on four occasions over the last fourteen years to address omissions in the original Standards that were identified during implementation and to keep the Standards consistent with the developing literature in the field of sex offender management.

House Bill 10-1364 was introduced because the SOMB is due to sunset on July 1, 2010. See C.R.S. § 16-11.7-103(6)(a). As is the case with each board scheduled for sunset, the Department of Regulatory Agencies ("DORA") prepared a sunset review report. In that forty-eight page report, DORA recommended that the SOMB be continued for five years and that certain policy changes be included in the reauthorization legislation. The changes recommended in the sunset review report, many of which were included in House Bill 10-1364, are important and would improve the operation of the SOMB. Some of the most important changes – which enjoyed broad consensus among legislators, program administrators, and other stakeholders – include: (1) requiring the board to review the effectiveness of current treatment methods by monitoring offender success or compliance with treatment; (2) moving the complaints, investigations, and discipline of treatment providers from the SOMB to DORA, which builds objectivity into the complaint process; (3) requiring the SOMB to produce and present an annual report to the General Assembly; and (4) authorizing the SOMB to collect data from approved providers, which is necessary to evaluate and assess the effectiveness of approved providers. These provisions are all included in House Bill 10-1364 and are designed to provide information to our community regarding whether sexual offenders can be adequately and safely monitored in the community. Moreover, these proposed changes in the law were part of the bill as it was debated in the Judiciary Committees of the House and Senate, which held hearings that totaled more than twelve hours and took testimony from a wide array of experts.

Unfortunately, an amendment to this bill was introduced and adopted on second reading in the second chamber of the General Assembly on Friday, May, 7, 2010, after the last of the public hearings on the bill had been concluded. The amendment, as modified in a conference committee report adopted on the last day of the legislative session, provides:

Each offender entering treatment on or after July 1, 2010, shall be given a choice by his or her supervising agency of at least three appropriate approved providers where available, unless the supervising agency documents in writing that, based on the nature of the program offered and the needs of the offender, fewer than three providers can meet the specific treatment needs of the offender and ensure the safety of the public.

See House Bill 10-1364 at p. 12, § 5 (C.R.S. § 16-11.7-105(1)).

Proponents of the amendment argue that the amendment is critical to improving offender-treatment matching, which is a key element to an offender's success in treatment. Proponents further argue that the amendment does not give a sexual offender free reign to choose his or her treatment provider, but instead only allows an offender to choose an appropriate provider from a list of three providers, each of whom have been certified and approved by the SOMB.

Opponents argue that this amendment does not provide adequate safeguards to ensure that an offender knows which treatment provider would be most effective, thereby circumventing an appropriate treatment plan. Opponents further argue that the approach embodied in this amendment fails to recognize that the supervising authority, be it probation or parole officer, often have far greater experience in determining the appropriate treatment provider.

The SOMB Standards are designed to establish a basis for the systematic management and treatment of adult sex offenders. The legislative mandate of the SOMB and the primary goals of the Standards are to improve community safety and protect victims. The language of the amendment discussed above does not, in my view, adequately provide for the systematic treatment of offenders. In fact, allowing offenders to choose from a list of three providers potentially degrades systematic management and treatment, based on specific evaluation tools and accepted practices.

Furthermore, while this amendment appears to be aimed at striking a balance between public safety and the legitimate interest in increasing the likelihood of success in treatment by improving treatment matching for offenders, this proposal was not included in the sunset review report for the SOMB, nor was it thoroughly vetted during the legislative process, a process that includes an opportunity for lawmakers to hear from experts in the field. On an issue that is this critical to public safety and the overall success of the sex offender treatment program, this failure of adequate vetting and thorough debate constitutes a fatal flaw with the bill.

For these reasons, I am vetoing House Bill 10-1364.

Finally, it is important to note that my veto of House Bill 10-1364 will not bring the SOMB to an end on July 1, 2010. Instead, pursuant to C.R.S. § 24-34-104(5), the SOMB will continue to function with full authority through July 1, 2011, giving the General Assembly adequate time during next legislative session to reauthorize the board. ***I will direct my office, the Colorado Criminal Justice Commission, the Sex Offender Management Board, and the impacted executive agencies to work with the members of the General Assembly to prepare a bill that can be introduced on the first day of the 2011 legislative session [emphasis added].*** *The early introduction of such a bill will permit an adequate opportunity for a thorough debate on all aspects of this critical legislation.*

Sincerely,

Bill Ritter, Jr.
Governor

[Retrieved December 20, 2011 at…
http://www.colorado.gov/cs/Satellite?c=Page&childpagename=GovRitter%2FGOVRLayout&cid=1251574762620&pagename=GOVRWrapper **]**

Appendix C:

Minority Over-representation Presentations

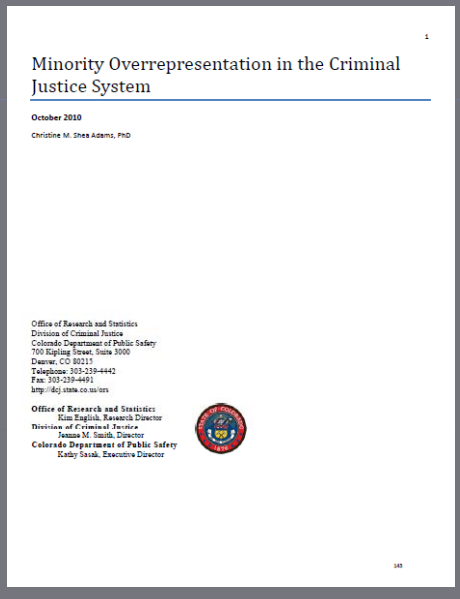
Minority Overrepresentation: Initiatives in Other Jurisdictions

Wisconsin	**Iowa**
Illinois	**Connecticut**
Virginia	**Oregon**
North Carolina	**State Patrol Agencies**
Kentucky	

and

An approach recommended by The Sentencing Project

Presented for discussion and direction to Task Forces
Colorado Commission on Criminal and Juvenile Justice
March 2011



1

Minority Overrepresentation in the Criminal Justice System

October 2010

Christine M. Shea Adams, PhD

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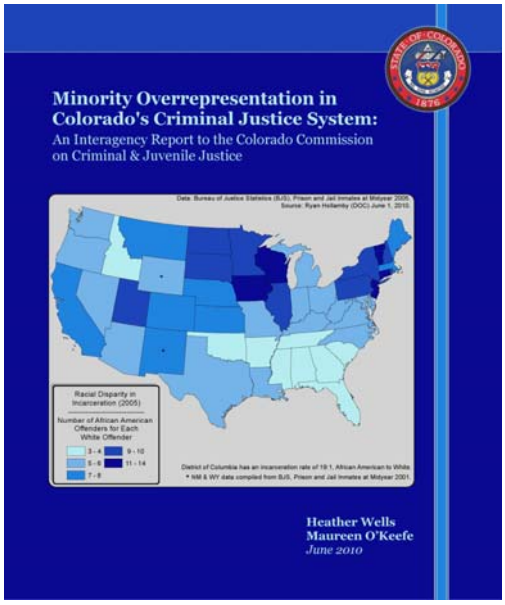


Wisconsin

Commission on Reducing Racial Disparities

- The following summarizes the points in the Governor's Executive Order derived from the commission's 57 recommendations:
  - All agencies are directed to **track racial differences** for their populations.
  - The state should develop curricula for **professional training** regarding racial disparity.
  - The Department of Corrections (DOC) should maintain and expand reentry programs to **ensure valid ID or driver's licenses** are provided.
  - DOC should also develop a **mentoring program** that no longer prohibits inmates who mentor during incarceration from continuing to do so once released.
  - The **prison discipline system** should be reviewed. A better computer system for tracking issuance and adjudication of major conduct reports should be developed.

Coggs, S., & Wray, N. (2008). *Governor Jim Doyle's Commission on reducing racial disparities.* Madison, WU: Office of Justice Assistance.

Wisconsin

Commission on Reducing Racial Disparities

- **Review and report** (continual process) on probation and parole officer discretion when giving **revocations.**
  - PO's should review and consider intermediate sanctions and alternatives to revocations or incarceration.
  - Discipline may be needed, but public interest and safety is often best addressed by sentences served in the community.
- Conduct a study to **examine prosecutorial discretion**, paying special attention to criminal history.
- **Create a commission** to oversee programs meant to reduce disparity. Members of the commission should be appointed by the governor.

Coggs, S., & Wray, N. (2008). *Governor Jim Doyle's Commission on reducing racial disparities.* Madison, WU: Office of Justice Assistance.

Illinois

- A **commission** was created to study and report on the following:

1. Violation and sentencing provisions of the state criminal codes.
2. The criminal code of 1961.
3. The Cannabis Control Act.
4. The Illinois Controlled Substances Act.
5. The Methamphetamine Control and Community Protection Act.
6. The unified code of corrections.

Illinois General Assembly. (2009). Public Act 095-0995.

Illinois: State level policy Recommendations

1. Legislators should be able to **request** that a **Racial & Ethnic Impact statement** be attached to bills or appropriation measures that impact criminal offenses, penalties, sentencing, probation, or parole policies.

2. A **Racial & Ethnic Impact Research task force** should be created to ensure the standardized collection and analysis of data on the racial and ethnic identity of arrestees.

Illinois: Statutory and Practice Recommendations

3. Establish a task force to **review drug laws**.
   - Review the effectiveness of laws and the potential for unintended consequences.

4. Support jurisdictions in maximizing their **use of diversionary programs and sentencing alternatives**.

5. Each local district attorney's office should conduct **felony review** for filing of charges in new cases.

Illinois: Mitigation of Long-Term Harm Recommendations

6. The state should **prohibit** the inclusion of **drug-related arrests that do not result in conviction** in criminal histories collected for employment related purposes.
   - County clerk offices and third-party background check firms should be held liable for the unauthorized release of such information.

7. Establish **automatic sealing procedures** for F4 possession charges or convictions that result in one or more of the following:
   - Successful participation in specialty court (e.g., drug court).
   - Successful completion of first offender probation.
   - Successful completion supervised probation within a designated program.

8. Develop and promote a business classification to make such businesses eligible for state, county and local tax incentives as a result of **training and/or hiring former offenders**.

Illinois: Funding Recommendations

9. Jurisdictions should define criteria that would trigger a portion of the drug asset forfeiture funds to **support treatment and diversion programs**.

10. The state should establish budget policy and priorities to promote the **full use of existing diversion programs or alternate sentences**.

Virginia

Virginia's juvenile justice system has also taken action to reduce minority overrepresentation.

- A **demographics web page** was created to enable interested parties to learn about minority overrepresentation in the justice system as well as the national requirements for monitoring disproportionate minority confinement. This data should be readily available.
- **Training of and assistance to local officials** and detention staff is provided to ensure that they are aware of the need to address disproportionate minority confinement.

Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system.* Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

Virginia

- Cultural awareness **training** for local police departments is provided throughout the state.
- A **race-neutral risk assessment** was created within the Department of Juvenile Justice for use at intake. The intent of the instrument is to reduce the total number of juvenile placements in detention, including minority placements.

Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system.* Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

North Carolina and Kentucky

- In 2009 **North Carolina** passed the **Racial Justice Act** in an effort to prohibit seeking or imposing the **death penalty** because of race.
  - This law establishes a process by which relevant evidence can be presented to show that race was a significant factor when the death penalty was pursued.
  - The burden of proof lies with the defendant who may raise this claim at pre-trial conferences or during post-conviction proceedings.
  - If race is proven to have been a factor in the death penalty process the sentence will be vacated and changed to life without parole.
- **Kentucky** passed a similar law in 1998.

North Carolina (2009). SL2009-464. See http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=S461

SB 171/FN/LM/CI (BR 1096) See http://www.lrc.ky.gov/recarch/98RS/SB171.htm

State Patrol Agencies

- As of October 2004, **29 of the U.S. State patrol agencies** required their traffic officers to record the race or ethnicity of the drivers for officer initiated stops. However, there was some difference in scenarios requiring such data collection:
  - 22 states required that race/ethnicity data be collected for *all* traffic stops.
  - 18 states recorded race/ethnicity when a traffic citation was issued.
  - 17 states recorded race/ethnicity when an arrest occurs from the traffic stop.
  - 14 states recorded race/ethnicity when the vehicle or occupant was searched.
  - 13 states recorded race/ethnicity when force was used during the stop.
  - 8 states recorded race/ethnicity for reactive traffic stops (e.g., response to an accident or DUI check point).

State Patrol Agencies

- 15 agencies depended exclusively on the **officer's observation to determine the race/ethnicity of the driver** while 9 others also used **information from the State Bureau of Motor Vehicle** (2 others used the latter method exclusively).
- When the 2004 BJS study was conducted the Colorado State Patrol did not collect race/ethnicity information for any officer initiation stop.
  - However, as of **2010 the Colorado State Patrol is required to collect race and ethnicity information for all traffic contacts, citations, arrests and searches** (According to Chief Wolfinbarger).
    - This information is **based on officer observation**.

Racial Impact Statements

PROGRESSIVE STATES Network
NATIONAL CHANGE STATE BY STATE

http://www.progressivestates.org/node/22559

THE SENTENCING PROJECT

http://www.sentencingproject.org/doc/rd_abaarticle.pdf

- Racial impact should be examined whenever criminal justice policies are considered.

Racial Impact Statements

- **Estimate the disparate racial impacts of criminal justice policies** in the same way that fiscal or environmental impact statements describe the budgetary and ecological effects of other policies.
  - This allows legislators to make an informed consideration of the racial impacts when crafting solutions to crime and delinquency, and helps ensure that racial justice costs are included in the dialogue regarding criminal justice choices.
- Those states that have formally incorporated racial impact statements into their criminal justice policy development process have focused their use on **sentencing and corrections policy.**

http://www.progressivestates.org/node/22559

Racial Impact Statements
Iowa and Connecticut

- Prior to any debate on the floor of the **Iowa** legislature a correctional impact statement must be written for all bills, joint resolutions, or amendments.
  - This statement must include a minority impact statement and should estimate immediate and long term effects whenever possible.
- **Connecticut** passed a similar law in June of 2008.
  - This statement is not mandatory, instead, a majority of members on relevant committees can request a statement.

Iowa House Democratic Research Staff, 82nd General Assembly. (2008). *HF 2393: Minority impact statements.*

Racial Impact Statements
Oregon

- A racial and ethnic impact statement is **mandated for all criminal justice legislation** that may, if enacted, affect the race and ethnic composition of the offender population.
  - This includes everyone who is convicted of a crime or adjudicated for an act that would be considered a crime if they were 18 years of age or older.
- If a **state referendum measure** will affect the racial and ethnic composition of the criminal offender population an impartial and simple impact statement will be created by the Oregon Criminal Justice Commission to be **included in the voters' pamphlet** and on the ballot.
- A **standard protocol** for this impact statement will be developed by the **Oregon Criminal Justice Commission**, and will include an estimate of the racial/ethnic profile within the state's offender population affected by the new law.
  - The method used and assumptions made to calculate this estimate must be stated. However, this is only required if the necessary data are available.

75th Oregon Legislative Assembly. (2009). House Bill 2352.

Recommendations for Addressing the Issue

Addressing Minority Overrepresentation

- **Acknowledge the cumulative nature of racial disparities.** Racial disparity builds on itself at each stage of the criminal justice system and is not a likely result of actions at any one stage. Study WHY it occurs at each stage.
- **Encourage communication across players at all decision points of the system.** The problem must be addressed at every stage of the system. Without an organized and systematic approach, any benefit that is gained at one stage may be offset another stage.
- **Recognize that what works at one decision point may not work at others.** Each decision point requires a unique strategy to address the problem depending on the degree of disparity at that specific point.
- **Work toward systemic change.** A system-wide change is impossible without educated leaders who are willing to commit the resources of their agency to measure and address racial disparity at every stage of the criminal justice system as well as the system as a whole.

The Sentencing Project. (2008). *Reducing racial disparity in the criminal justice system: A manual for practitioners and policymakers.* Washington, DC: The Sentencing Project.

Develop a Plan

The Sentencing Project along with the **Virginia Juvenile Justice Services** suggest developing a plan to address **any** disproportionate minority representation that has been found to exist at **any** stage of the criminal justice system or within **any** specific jurisdiction.

- **Examine local and state data** to determine if overrepresentation of minorities exists at each of the steps in the justice system.
- Determine **at which decision points racial and ethnic disparities occur**.
- **Identify possible reasons** for the occurrence of these disparities.
- **Develop a coordinated plan** to address overrepresentation including stakeholders from every step in the system.
- **Implement this plan in stages**.
- **Evaluate effect and progress** as each stage of this plan is implemented.
- **Finalize the details of the plan based on findings** from each progressive evaluation.
- Monitor the effectiveness of these strategies and **report annual evaluations and its outcomes.**

Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system.* Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

Minority Overrepresentation: Driving Factors and Follow-Up

Presented for discussion and direction to Task Forces
Colorado Commission on Criminal and Juvenile Justice
April 2011

Driving Factors Behind DMC

Rates of Juvenile Minority Contact 2009/2010

Statewide: July 1, 2009 through June 30, 2010	Total Youth	White	Black or African-American	Hispanic or Latino	Asian / Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/ Mixed	All Minorities Combined
A. Population at risk (age **0** through **17**)	1225603	58.0%	4.1%	30.5%	2.8%	0.6%	4.1%	42.0%
B. Juvenile Arrests	32800	44.1%	15.0%	38.7%	1.2%	0.5%	0.5%	55.9%
C1. Secure Initial Detention	4708	41.7%	15.6%	39.0%	***	***	3.8%	58.3%
C3 Misdemeanor Juvenile Filings	5742	84.4%	4.2%	8.5%	0.7%	0.7%	1.2%	15.3%
D3a. Misd Filing - Deferred	889	91.5%	2.4%	3.5%	1.5%	0.0%	0.8%	8.1%
D3b. Misd Filing - Dismissed	2645	83.5%	4.6%	8.7%	0.9%	0.7%	1.2%	16.1%
D3c. Misd Filing -Adjudicated	2288	84.5%	3.8%	9.4%	0.3%	0.5%	1.2%	15.2%
C4. Felony Juvenile Filings	11645	68.9%	11.7%	12.9%	0.9%	0.7%	2.4%	28.5%
D4a. Felony Filing - Deferred	2072	76.6%	7.0%	12.3%	0.6%	0.7%	1.7%	22.4%
D4b. Felony Filing - Dismissed	3112	77.7%	14.2%	9.0%	1.0%	0.7%	3.7%	28.6%
D4c. Felony Filing - Adjudicated	6040	68.5%	12.4%	14.4%	0.9%	0.7%	2.4%	30.8%
E Total Adjudications	8328	72.9%	10.0%	13.0%	0.8%	0.7%	2.0%	26.5%
F1. Probation Supervision	4259	67.8%	10.1%	18.3%	0.8%	0.9%	2.0%	32.1%
G1. Probation - Sentence Detention	487	63.9%	10.9%	20.9%	1.6%	1.8%	1.6%	37.0%
F2. Commitment to DYC	2418	42.6%	18.9%	35.5%	***	***	2.9%	57.4%
G3. DYC - Secure Confinement	2418	42.6%	18.9%	35.5%	***	***	2.9%	57.4%
C5. Direct File to Adult Court	175	65.7%	21.1%	10.9%	0.0%	0.0%	2.3%	34.3%
D5. Direct File Dismissed	36	52.8%	36.1%	5.6%	0.0%	0.0%	5.6%	47.2%
D6. Direct File Convicted	127	55.1%	27.6%	16.7%	***	0.8%	0.8%	44.9%
E6a. Direct File Convicted - Y.O.S.	84	17.9%	25.0%	52.4%	1.2%	3.6%	0.0%	82.1%
E6b. Direct File Convicted - D.O.C.	12	58.3%	33.3%	8.3%	0.0%	0.0%	0.0%	41.7%
E6c. Direct File Convicted - Probation	19	63.2%	21.1%	15.8%	0.0%	0.0%	0.0%	36.8%

***Included in "other."

Compiled by Harrison, L. (2010). Colorado Division of Criminal Justice. Denver, CO.

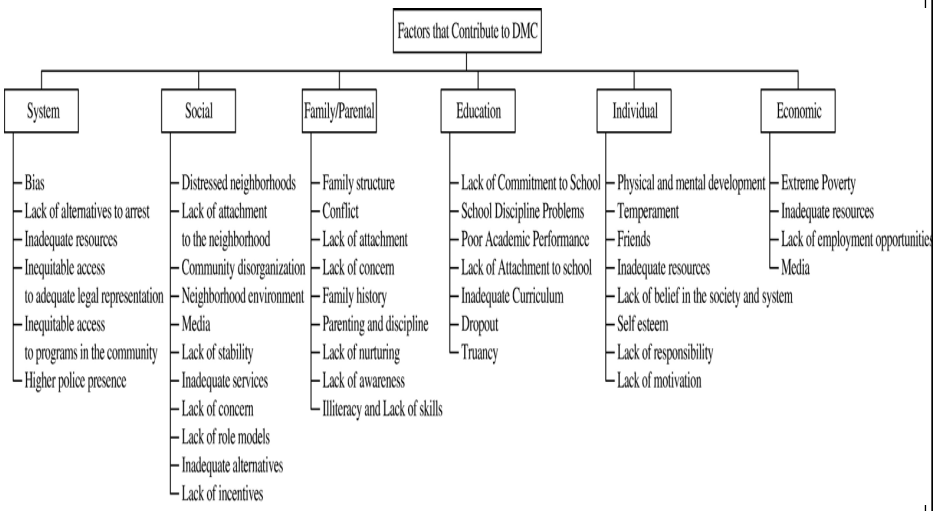
Driving Factors Behind DMC

- Over-involvement in crime
  - Disproportionate involvement of minority youth in serious and violent crime (Conley, 1994).
- Community risk factors
  - Juveniles who live in high risk communities are more likely to be involved in and arrested for criminal activities (Kakar, 2006).
- Educational system failures (Devine, Coolbaugh & Jenkins, 1998; Mata, 1997)
  - Inadequate early childhood education.
  - Inadequate programs to prevent early dropouts.
  - Lack of appropriate cultural education.
  - Increased minority truancy, suspensions, and expulsions.

Driving Factors, cont.

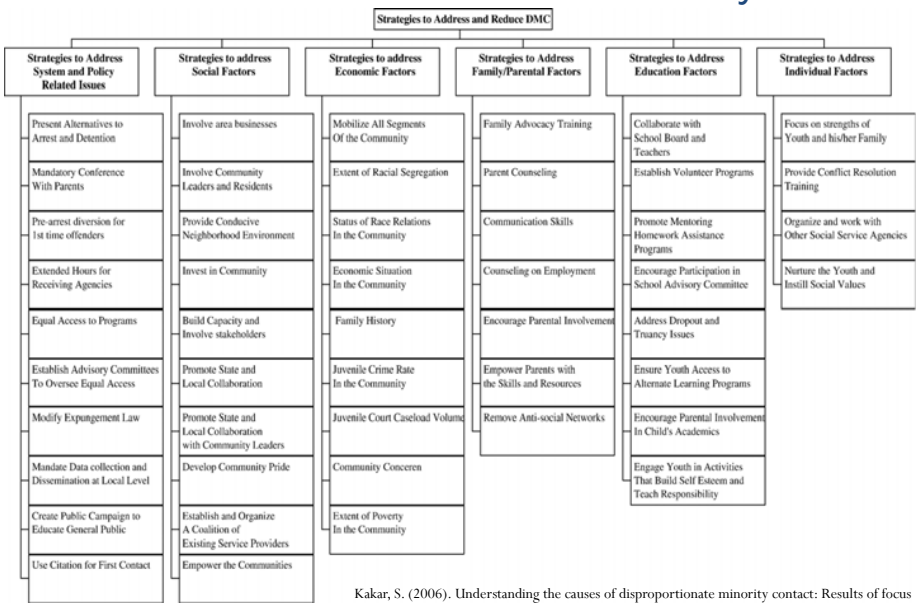
- Lack of adequate resources (Devine et al., 1998)
  - Lack of adequate diversion programs for minority juveniles.
  - Lack of culturally appropriate juvenile services.
  - Lack of cultural understanding within juvenile justice system.
- Socioeconomic status and family structure (Winers et al., 1996; Devine et al., 1998)
  - Inner city residence
  - Broken families/Single parent households
  - Welfare income/Low socioeconomic status
    - Lack of parental supervision due to parents work schedule (prevents supervision which may look bad to the court, increasing the likelihood of confinement.
  - Criminality in the family
- System bias
  - Minority youth are more likely to be arrested and detained in a secure facility (Snyder & Sickmund, 1999; Hsia et al., 2004).
  - Detention for the purpose of accessing services (Cahn, 2006; Kempf-Leonard, 2007).

Summary of Driving Factors



Kakar, S. (2006). Understanding the causes of disproportionate minority contact: Results of focus group discussions. *Journal of Criminal Justice, 34,* 369-381.

Possible Solutions For Juvenile System



Kakar, S. (2006). Understanding the causes of disproportionate minority contact: Results of focus group discussions. *Journal of Criminal Justice, 34,* 369-381.

Follow-Up: Iowa and Virginia

Iowa Requirement for Minority Impact Statements

- Minority impact statements are not directly related to minority incarceration rates as these are only done on proposed legislation, not existing criminal code and sentencing practice.
- These impact statements need to be applied retroactively to existing law to have an effect.
  - Without this the laws that created the disparity to begin with will continue exist.

Paul Stageberg, PhD (Iowa SAC Director), March 24, 2011

Virginia's Sentencing Guidelines

- **PURPOSE: Establish rational and consistent sentencing standards to reduce unwarranted sentencing disparity.**
- Guidelines are voluntary – judges may use them as a reference but are not constrained to them.

Kern, R.P., Sands, K.R.D., Creech, J.C., Kauder, N.B., & Merritt, N.A. (September, 1989). *Voluntary sentencing guidelines: Pilot program evaluation.* Richmond, VA: Judicial Sentencing Oversight Committee.

Virginia: Using Guidelines Works

- Voluntary sentencing guidelines have reduced sentencing disparities for extralegal reasons.
  - Prior to the guidelines approximately 50% of sentencing variation could be explained by factors unrelated to the current crime or criminal history.
    - Example: Race, identity of the judge, and location.
  - Following the creation of the sentencing guidelines variation was (and is) significantly more likely to be attributed to legal distinctions in the offense.
    - Example: Weapon use, victim injury, and/or criminal history.

Kern, R.P., Sands, K.R.D., Creech, J.C., Kauder, N.B., & Merritt, N.A. (September, 1989). *Voluntary sentencing guidelines: Pilot program evaluation.* Richmond, VA: Judicial Sentencing Oversight Committee.

Crime	Decision	% of Decision Accounted for by Extralegal Factors BEFORE Guidelines	% of Decision Accounted for by Extralegal Factors AFTER Guidelines
Burglary	Prison or Other	38%	17%
	Prison Length	36%	10%
Larceny	Prison or Other	42%	12%
	Prison Length	33%	0%
Drugs	Prison or Other	35%	32%
	Prison Length	53%	21%
Robbery	Prison or Other	29%	31%
	Prison Length	14%	0%

Kern, R.P., Sands, K.R.D., Creech, J.C., Kauder, N.B., & Merritt, N.A. (September, 1989). *Voluntary sentencing guidelines: Pilot program evaluation.* Richmond, VA: Judicial Sentencing Oversight Committee.

Addressing Racial Disparity in Denver

Denver Crime Prevention and Control Commission

April 8, 2011

Overview

- Timeline: Foundational work to address disparity in Denver
- CPCC's Racial and Gender Disparity Committee
- Denver data to date
- Challenges
- Next steps

Denver Timeline

- 2000 Biased Policing Task Force
- 2005 Crime Prevention and Control Commission (CPCC) established by city ordinance
- 2008 Fix Broken Policing Campaign
- 2009
  - CPCC seats the Racial and Gender Disparity Committee
  - CPCC adopts the Resolution condemning racial disparity in Denver's adult and juvenile justice systems
- 2010
  - Decision points are identified and defined and work begins to collect and analyze decision point data

CPCC Resolution

Adopted August 19, 2009

The Crime Prevention and Control Commission (CPCC) condemns racial and gender disparity in the adult and juvenile criminal justice system in Denver, Colorado.

Racial and gender disparity is a result of many factors which may include those outside of the criminal justice system itself and is defined as the unequal treatment of people by the criminal justice system based on race and/or gender.

The CPCC resolves to actively assess and counteract the impact of policies and procedures that contribute to disparity at all decision points within the system and will consider racial/gender impact as part of any decision to back any funding, initiative, new program, etc. Agencies are urged to do the same.

The Executive Director is urged to push for similar policies by The Colorado Criminal and Juvenile Justice Commission.

Denver legislators are urged to do the same; and to seek legislation requiring racial/gender impact assessments.

CPCC – Racial and Gender Disparity Committee

- CPCC leadership committee planning: 2008
- RGD committee seated: May, 2009
  - Comprises 7 community members, 13 CPCC members and representatives from the Dept of Human Services and CO Dept of Public Safety
- Conducted literature review of the issue
- Committee adapted OJJDP's model for addressing disparity in the juvenile justice system to the adult criminal justice system in Denver
- Determined and defined major decision points for analysis

OJJDP Disproportionate Minority Contact Technical Assistance Manual (4th Edition, August, 2009)

1. Identification and Monitoring
   Where, for who, and to what extent does disparity exist?
2. Assessment
   Testing potential causes, or mechanisms, of disparity
3. Preparation at the Local Level
   Funding, collaborations, prioritization of work
- Interventions
  Direct services, Training/technical assistance, System change
- Evaluation
  Establishing performance measures
  Process and outcomes
  How will data be collected, by whom and how reported?

Possible Mechanisms Causing Disparity

- Differential Behavior
- Mobility Effects
- Indirect Effects
- Differential Opportunities for Prevention and Treatment
- Differential Processing or Inappropriate Decision-making Criteria
- Legislation, Policies, and Legal Factors

Relative Rate Index

- Measures rates of volume of activity between two or more different categories/groups
- Moves across decision points to measure increase/decrease in representation through the system
- Does not require transactional data or single source of data
- Does not rely on population numbers for each decision point

Denver to Date

- Stages 1 and 3: Identification, Preparation at the Local Level
- Decision points reviewed
  - Police contact*
  - (Cite and Release) and Custodial arrests*
  - Pretrial decisions (those referred for pretrial assessments/ services)**

**Unable to examine race/ethnic level data at calls for service/contact level unless the suspect is known or an arrest takes place (cite/release or custodial arrest). Cite/release data does not capture ethnicity, skews Latino data as all Latinos are likely classified as White.*

***Due to data integrity issues, information on defendants who bond and amount of bail paid is not complete and cannot be studied at this time*

Denver to Date continued

- Committee established, strong participation of system leadership, consensus on strategic work (goals and objectives) and priorities: initial focus on data, education on system processing, dialog between system and community members
- Education
  - Police contact types, arrest and processing
  - Bonding process and pretrial assessments and supervision
  - Prosecution process at District and City Attorney levels

Custodial Arrests and Pretrial Decisions Data

Decision Point Data Element	Asian	Black	Latino	Native American	White
Population at Risk	16,562	44,885	127,947	5,908	256,637
Custodial Arrests	192	6,411	8,973	145	9,833
Arrests per 1,000	10	140	70	30	40
Arrests per 1,000	0.01	0.14	0.07	0.03	0.04
RRI	0.30	3.73	1.83	0.78	1.00
Pretrial Recommendations	41	1,821	1,998	29	1,920
Pretrial Per 100 Arrests	21	28	22	20	20
Pretrial Per 100 Arrests	0.21	0.28	0.22	0.20	0.20
RRI	1.09	1.45	1.14	1.02	1.00

- Population and race data based on 2010 Census data for Denver County, Age 18+ (data total excludes approximately 16,000 residents (3%) who identified as 2+ races within age 18+ population)
- Latino population data based on estimates as percentage of race data
- Arrest data represents 1/1/2010-12/31/2010 and is limited to custodial arrests
- Arrest data includes race/ethnicity data. Where Hispanic listed as Ethnicity, defendant classified as Latino
- Pretrial data represents 1/1/2009-12/31/2009, includes Hispanic as race, not ethnicity and includes those arrested on felony or Class 1 misdemeanors who have not bonded.

Challenges

- Resource intensive (staffing)
- Time to work through stages
- Data challenges:
  - Data integrity
  - Access to data
    - Police, Sheriff moving to new data systems
    - City Attorney bringing on new data system
    - City's Technology Services Department traditionally functions as technical support, not a data analysis unit
    - Budget cuts have delayed implementation of analysis tools
  - Availability of data
    - District Attorney does not include race/ethnicity in its tracking of cases
    - Ethnic data limited to Hispanic or Non-Hispanic
    - Race/ethnicity is usually determined and recorded by officers, not self-reported
    - Political will and understanding of scope and depth of work

Next steps/opportunities

- Complete data collection at remaining decision points
- Select decision point/population for further examination
- Assess causes, develop interventions, evaluate of interventions
- Incorporate social/economic information, victim data, conduct analysis by census blocks/neighborhood

Contact Information

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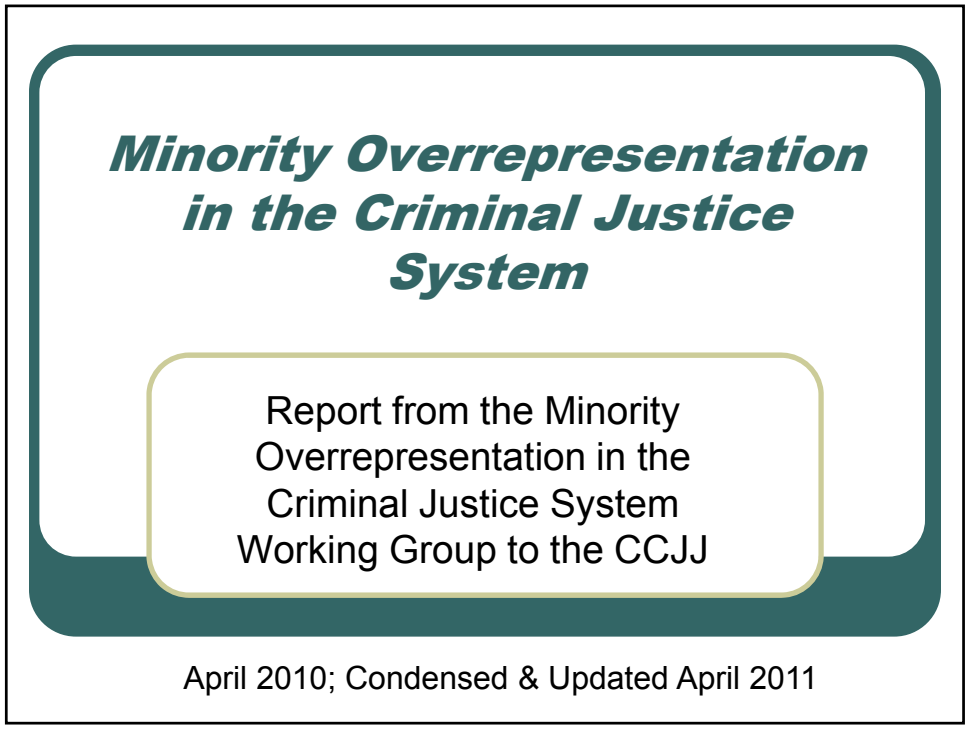
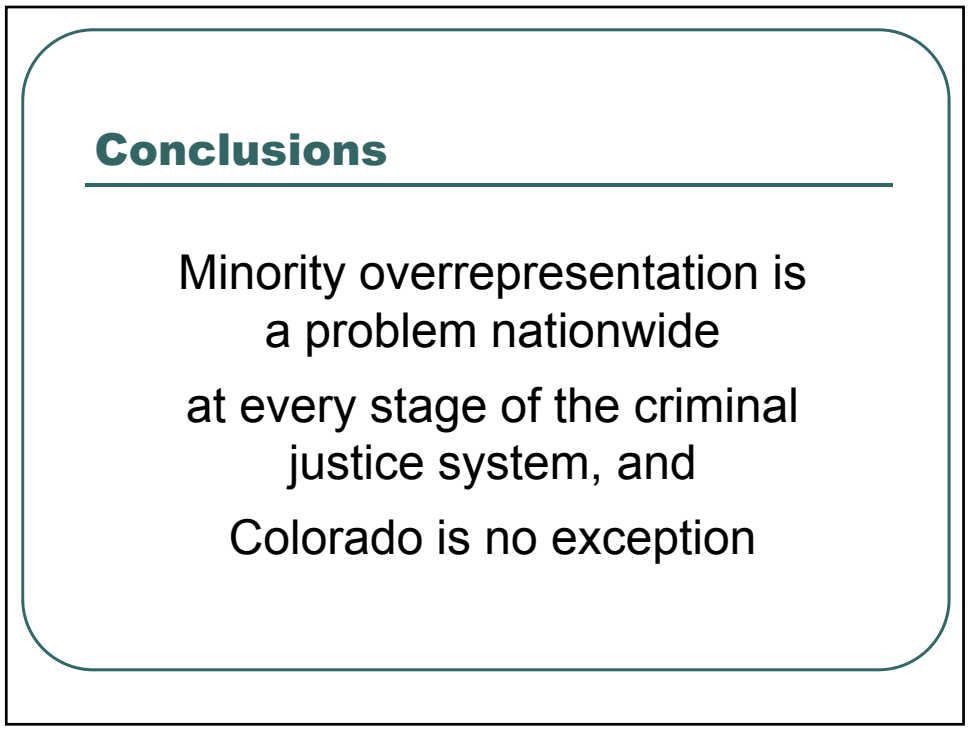

Minority Overrepresentation in the Criminal Justice System
Report from the Minority Overrepresentation in the Criminal Justice System Working Group to the CCJJ
April 2010; Condensed & Updated April 2011


Conclusions
Minority overrepresentation is a problem nationwide
at every stage of the criminal justice system, and
Colorado is no exception

Conclusions: National

- More African Americans are arrested, incarcerated, denied early parole & re-arrested than would be expected given their representation in the overall population
- There is some evidence that Hispanics are overrepresented, but many government agencies do not collect ethnicity data

Conclusions: Colorado

- African Americans are disproportionately represented among
  - Arrests
  - Charges filed
  - Convictions
  - Incarceration
  - Parole release , intensity of supervision & failure
  - Probation failure
- Some similar evidence for Hispanics

Conclusions: Colorado

- Diversity of DOC Staff (6/30/09)
  - Fairly comparable to Colorado Population
  - Compared to DOC offenders, a smaller percentage of DOC staff is African American or Hispanic.

Conclusions: Colorado

- Diversity of Court Staff (May 2009)
  - Fairly comparable to *Colorado* Population except the Hispanic population is under-represented
  - Court Staff Compared to *Probation* Population
    - Low on African American
    - High on White
    - Comparable on Hispanic, Asian, & American Indian

Conclusions: Colorado

- Diversity of Probation Staff (May 2009)
  - Fairly comparable to *Colorado* Population
    - Low on White and Asian
  - Compared to *Probation* Population
    - Low on African American
    - High on Hispanic
    - Comparable on White, Asian & American Indian

Conclusions

The research evidence for "what works" to reduce racial/ethnic disparity is limited.

However, the following considerations have some theoretical and/or empirical support.

Evidence-Based Practices to Reduce Minority Overrepresentation

- A multimodal approach may be most effective, because many factors contribute to minority overrepresentation (Devine, Coolbaugh, and Jenkins, 1998).
- Collaboration between agencies is essential
- Considerations fall into four categories:
  - Equalizing access to services
  - Improving cultural competence
  - System change
  - Research
- Considerations from the CU law school conference on overrepresentation should be explored.

Considerations: Equalizing Access to Services

Identify and fill gaps in services to juveniles and adults

- Prevention/Early Intervention (e.g. increase mentoring and after school programs for minority youth)
- Diversion
- Advocacy Programs
- Restorative Justice
- Specialty Courts

Considerations: Improving Cultural Competence

- Seek technical assistance to develop high quality cultural competence training with an emphasis on skill building and case management strategies.
- Collaborate with stakeholders from other agencies and invite them to develop a joint action plan.
- Recruit minority group members to serve on community and advisory boards.
- Provide culturally appropriate services grounded in the value system, traditions, and language of the group being served.

Considerations: System Change

- Review proposed and existing criminal justice legislation to determine whether it will create adverse impact.
- Adopt structured decision making instruments for parole and probation violations.

Considerations: Research

- Determine at what step in the criminal justice system does the most adverse impact occur for adult offenders*.
- Measure race and ethnicity with separate items in order to more accurately assess Latino over-representation in the criminal justice system
- After the changes are implemented, evaluate to what degree they are effective.

*For juvenile offenders, the most adverse impact occurs at arrest and commitment to DYC.

Questions from March meeting

- Are the following related to minority overrepresentation in the criminal justice system?
  - Educational opportunities
  - Employment opportunities
  - Marriage and family

Education

- There is some evidence to suggest that an increase in education is associated with a reduced risk of arrest and incarceration.
  - Education increases earnings from legitimate work, which increases the opportunity cost of crime.
  - Education may increase patience.

Education

- Lochner & Moretti (2004) estimate that 23% of the difference in incarceration rates for African Americans and whites is due to differences in years of education.
- Quality of education may also be associated with reduced incarceration rates.
  - Student-teacher ratios
  - Teacher quality

Employment

- From 2005-2009, the unemployment rate for African Americans, Hispanics, and non-Hispanic whites was 13%, 9%, and 6%, respectively.
- A lack of legitimate employment opportunities can lead to crime, and a criminal history can be a barrier to employment.

Concentrated disadvantage

- Minority groups disproportionately reside in areas of concentrated urban poverty.
- These neighborhoods tend to have poorer quality schools, fewer job opportunities, and more crime.

Marriage and family

- 43% of African American adults, 34% of Hispanic adults, and 23% of non-Hispanic whites have never been married.
- There's some evidence to suggest that married people are less likely to commit crimes.
- People who have been incarcerated may also be less likely to get married.

Marriage and family

- The high unemployment and high incarceration rate among African American men may contribute to the low marriage rate among African Americans.

COLORADO COMMISSION ON CRIMINAL & JUVENILE JUSTICE

2011 Annual Report

Colorado Department of Public Safety
700 Kipling Street, Suite 1000
Denver, Colorado 80215
http://cdpsweb.state.co.us/cccjj