

Analysis of Colorado State Board of Parole Decisions: FY 2013 Report

Pursuant to § 17-22.5-404(6)

November 2013

**Colorado Division of Criminal Justice
and
Colorado State Board of Parole**

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Pursuant to § 17-22.5-404 (6), C.R.S.

November 2013

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Executive Summary

Introduction. The Colorado State Board of Parole (“Board”) is described in statute in §17-2-201, C.R.S. The Board, appointed by the Governor and confirmed by the Colorado State Senate, includes seven members who serve three-year terms. The Board may hire additional individuals on contract to serve as release hearing officers and revocation hearing officers.¹ In 1990 when the Board was expanded from five to seven members, the combined average daily population of inmates and parolees of the Department of Corrections (DOC) was 9,453 and by FY 2013 this combined total had grown to 32,757, representing an increase of roughly 245% in the offenders for whom the Board may conduct hearings in a given year. In recent years, the Board has conducted between 25,000 and 30,000 hearings and reviews of various types per year. Among the duties of the Board chair described in §17-2-201(1)(f), C.R.S., is “to ensure that parole board members, release hearing officers, and administrative hearing officers under contract with the board are accurately collecting data and information on his or her decision-making as required by section §17-22.5-404 (6).”

Mandates. Pursuant to §17-22.5-404(6)(a), C.R.S., the Colorado State Board of Parole (“Board”) is mandated to work with the Division of Criminal Justice (DCJ) in the Colorado Department of Public Safety (CDPS) and the Colorado Department of Corrections (DOC) “to develop and implement a process to collect and analyze data related to the basis for and the outcomes of the Board’s parole decisions.” Additionally, pursuant to §17-22.5-107(1), C.R.S., in consultation with the Board, DCJ is mandated to develop an administrative release guideline instrument for use by the Board in evaluating applications for parole. Finally, pursuant to §17-22.5-404(6)(e)(I), C.R.S., the Board and DCJ are mandated to issue a report to the General Assembly by November 1 of each year regarding the outcomes of decisions by the Board. This report covers accomplishments and findings related to these statutory mandates during the period of July 1, 2012 through June 30, 2013.

Parole Board Hearing Application Portal. Substantial progress previously has been made to develop a paperless hearing process and a mechanism for the Board to reliably collect parole hearing data. During FY 2012, DOC’s Office of Information Technology (OIT) in collaboration with the Board, various representatives of DOC including the Time and Release Operations Office, and DCJ made specific improvements to the function of the Parole Board Hearing Application Portal. (The portal is a user interface that gathers information from diverse DOC sources, displays it, and records Board member decisions.) This automation of parole hearings was a necessary first step to enable the tasks necessary to develop and integrate the Parole Board Release Guideline Instrument (PBRGI).

Parole Board Release Guideline Instrument (PBRGI). The goal of the parole release guideline is to provide a consistent framework for the Board to evaluate and weigh specific release decision factors and, based on a structured decision matrix, to offer an advisory release decision recommendation for parole applicants. The PBRGI was derived from a paper-and-pencil draft administrative release guideline instrument created by the Colorado Commission on Criminal and Juvenile Justice (colorado.gov/ccjj). Validity and reliability testing concluded in August of 2012

¹ The Board typically hires no more than 1 to 3 of either type of contract hearing officer. A list of Board members and hearing officers for FY 2013 may be found in Appendix A.

and the system was implemented on September 4, 2012. Since that date, the automated PBRGI system has been available for use within the Parole Board Application Hearing Portal by Board members when conducting parole release application hearings. System refinements and improvements will continue to be made to meet the needs of the Board and to reflect evidenced-based correctional practices.

The PBRGI is a set of thirteen items that combine to create a matrix with two dimensions (the instrument is fully described in Appendix B). The first dimension is *risk of recidivism* and the second dimension is *readiness for parole*. The Colorado Actuarial Risk Assessment Scale (CARAS) and the Level of Supervision Inventory-Revised (LSI-R) are among the data elements that serve as the basis for the risk and readiness information used in the matrix. Drawing on the decision factors in the guidelines that correspond to the statutory parole considerations (§17-22.5-404(4), C.R.S.), DCJ staff constructed algorithms that yield two scores, one for recidivism risk and one for parole readiness.

The combination of these two scores places an offender in a five-level risk by three-level readiness matrix where each matrix position is associated with an advisory release or defer recommendation (§17-22.5-107(1)(b), C.R.S.) (Note that “defer” simply means the offender must continue to serve his or her sentence and the decision to parole is “deferred” to the next possible parole consideration date, as determined by statute.) This advisory recommendation is displayed to Board members through the Parole Board Hearing Application Portal. Members may also view an offender’s specific placement in the decision matrix and the data used to derive the risk and readiness scores. After considering the advisory recommendation and any other information connected to the release application hearing, Board members may choose to concur with or depart from the recommendation. Pursuant to §17-22.5 404(6)(b), C.R.S., a decision that departs from the recommendation requires that the Board member provide the reason(s) for departure. Studies to demonstrate the validity and reliability of the PBRGI may be found in Appendices C, D, and E.

Parole Board Revocation Projects. Pursuant to §17-22.5-404(6), C.R.S., DCJ is required to report Board decisions regarding parole revocation, the reasons for these decisions, and departures from the administrative revocation guidelines (§17-22.5-107(2), C.R.S.). There are two ongoing projects to accomplish this mandate: the Parole Board Revocation Automation Project and the Parole Board Revocation Guidelines Project.

The Board initiated a project with OIT at DOC to automate revocation hearings similar to the automated system for release application hearings. Between February and June 2013 the requirements and features of the Parole Board Revocation hearing system were defined. Considerable progress in programming the system was made in a short time, allowing OIT programmers to preview the system to the Board on June 28, 2013. Based on feedback from the Board, the DOC Division of Adult Parole, the DOC Time & Release Operations office and DCJ, programmers will refine and improve the system’s function and features. Further development and testing will continue during FY 2014.

Simultaneously, the Board initiated the Parole Revocation Working Group to develop the Parole Board Revocation Guidelines. The Board contracted with the Center for Effective Public Policy (“Center”; cepp.com) to provide technical assistance and guidance on the project. Pursuant to §17-22.5-107(2), C.R.S., the revocation guideline will employ the statutory revocation factors (§17-22.5-

404.5(a), C.R.S.) and include a matrix of advisory decision recommendations for different offender risk levels. Additionally, the Board is required to provide decision reasons when the Board departs from advisory revocation recommendation (§17-22.5-404(6)(b), C.R.S.).

In March 2013, the Center convened the working group with individuals representing the Board, DOC Division of Adult Parole, DOC Time and Release Operations, DOC Office of Planning and Analysis, and DCJ to develop the parole revocation guidelines. The Center had previously consulted with the DOC in the development of the Colorado Violation Decision Making Process (CVDMP),² which was implemented in May 2011 and serves as a foundation for the development of revocation guidelines for the Board. Following a series of meetings through June 2013, the Center provided the Proposed Administrative Revocation Guidelines to the Board (see Appendix F). Following approval by the Board, the proposed guidelines were forwarded to OIT at DOC for further specification of elements for integration into the automated Parole Board Revocation hearing system that is under construction. The Board, OIT at DOC and DCJ will continue to collaborate on the conceptualization, programming and testing of the revocation guidelines with the goal of full implementation during FY 2014.

Data and Analytic Support. During the past year, the Board has undertaken considerable effort to increase its access to and use of data regarding Board decision processes. The Board worked closely with the DOC Office of Planning and Analysis (OPA) to identify data and analyses that would inform and enhance the Board's decision-making. The Board collaborated on such topics as the relationship between decision and recidivism types (discretionary vs. mandatory release and the rates of return due to a new crime conviction or parole violations) and the effect of fatigue on decisions (based on patterns of decisions made over the course of the workday). The Board is also working with OPA to increase the frequency of data reports on various decision processes and exploring real-time tracking and reporting of such data.

FY 2013 Decision Analyses. The FY 2013 sample included 7,966 release application hearings conducted for non-sex offenders and finalized between the September 2012 PBRGI implementation and June 2013. Hearings were excluded from the sample if the decision was moot, for example, if a deferral was due to the offender's absence. The PBRGI recommended 4,584 (57.5%) offenders for release and 3,382 (42.5%) for deferral. Note that because 50% of offenders were categorized as "very low" or "low" risk, it is not unexpected that a large percentage of offenders would be assigned an advisory recommendation for release. Of this hearing sample, Board members designated 2,817 (35.4%) offenders for release and 5,149 (64.6%) offenders for deferral.

Collapsing across the decisions to release and defer, 64.1% of all Board member decisions agreed with the PBRGI advisory recommendation and 35.9% of all Board decisions departed from the PBRGI advisory recommendation. The combined agreement percentage (64.1%) conceals that the degree of deferral agreement (83.9%) is nearly 70% higher than the degree of release agreement (49.5%). The combined departure percentage (35.9%) reveals the converse: the degree of deferral departure (16.1%) is nearly 70% lower than the degree of release departures (50.5%).

² The CVDMP is a decision support system for community parole officers (CPO) that encourages the use of intermediate sanctions for parole violations, when appropriate, and increases the consistency in the application of supervision options and sanctions. Additional background and history of the development and implementation of the CVDMP may be found on the DOC website at, doc.state.co.us/sites/default/files/opa/CVDMP%20Dec%202011.pdf.

Of the 16.1% of decisions to depart from the recommendation to defer (and, instead, to release the offender), 80% of these offenders were categorized as “high” or “very high” risk and 63% were categorized as “low” or “medium” readiness. The departure reasons entered by the Board indicated that these offenders’ comprehensive parole plan, their demonstrated growth and program or treatment success compensated for the negative characteristics reflected in the PBRGI advisory recommendation.

Of the 50.5% of decisions to depart from the recommendation to release (and, instead, to defer the offender), 75% of these offenders were categorized as “low” or “very low” risk and 72% were categorized as “medium” or “high” readiness. The departure reasons entered by the Board indicated that aspects of the crime of conviction, the need for additional time to stabilize in community corrections placements, the need for additional program or treatment interventions, and/or a lack of accountability for one’s actions could not overcome the positive PBRGI advisory recommendation.

Next Steps and Challenges. DCJ will continue to collaborate with the Board and various representatives of DOC to improve the PBRGI system and to participate in the implementation of parole revocation guidelines. The addition of revocation decision data and revocation departure reasons to the release application hearing data may necessitate the transition from a fiscal year annual report to a calendar year annual report to provide the time necessary to perform the required analyses and report preparation.

Compliance with the statutory parole guidelines section (§17-22.5-404, C.R.S.) requires that DCJ regularly obtain data from the Parole Board to meet the H.B. 09-1374 requirements as well as the related training requirements included in the statute (see §17-22.5-404 (2)(c), (6)(c), and (6)(d), C.R.S.). As of this FY 2013 report, the Board does not have direct access to the data generated from the hearings they conduct and, thus, is unable to provide data to DCJ staff. DCJ is required to submit requests for data to DOC staff. Because DCJ must analyze and provide training on release and revocation decision-making, the data requirements must include an analysis of any data the members utilize in their decisions. This includes the factors in the release and revocation guidelines and, upon any departure from the guidelines, the data mentioned or implied in the departure justification. Therefore, the data requirements go beyond the data specifically mentioned in the parole guidelines statute and must include the data *implied* by the requirements of the section. The flexible need for data requires ongoing attention to additional methods and improvements in data sharing between the Board, DOC, and DCJ.

Section One: Introduction

The Colorado State Board of Parole (“Board”) is described in statute in §17-2-201, C.R.S. The Board, appointed by the Governor and confirmed by the Colorado State Senate, includes seven members who serve three-year terms. The Board may hire additional individuals on contract to serve as release hearing officers and revocation hearing officers.³ In 1990 when the Board was expanded from five to seven members, the combined average daily population of inmates and parolees of the Department of Corrections (DOC) was 9,453 and by FY 2013 this combined total had grown to 32,757. This represents an increase of roughly 245% in the offenders for whom the Board may conduct hearings in a given year.

In recent years, the Board has conducted between 25,000 and 30,000 hearings and reviews of various types per year, including parole application hearings, parole application file reviews, full board parole application reviews, release rescission hearings (a release reversal), probable cause hearings (to issue warrants related to parole violations), parole revocation hearings, and sexually violent predator designation hearings. Among the duties of the Board chair described in §17-2-201(1)(f), C.R.S., is “to ensure that parole board members, release hearing officers, and administrative hearing officers under contract with the board are accurately collecting data and information on his or her decision-making as required by section §17-22.5-404 (6).”

Pursuant to §17-22.5-404(6)(a), C.R.S., the Colorado State Board of Parole (“the Board”) is mandated to work with the Division of Criminal Justice (DCJ) in the Colorado Department of Public Safety (CDPS) and the Colorado Department of Corrections (DOC) “to develop and implement a process to collect and analyze data related to the basis for and the outcomes of the Board’s parole decisions.”⁴ Additionally, pursuant to §17-22.5-107, C.R.S., in consultation with the Board, DCJ is mandated to develop an administrative release guideline instrument for use by the Board in evaluating applications for parole and DOC is mandated to develop administrative revocation guidelines for use by the Board in evaluating complaints filed for parole revocation.⁵ Finally, pursuant to §17-22.5-404(6)(e)(I), C.R.S., the Board and DCJ are mandated to issue a report to the General Assembly by November 1 of each year regarding the outcomes of decisions by the Board.⁶

The Board and DCJ are mandated to issue a report to the General Assembly regarding outcomes of decisions by the Board.

This report covers the period from July 1, 2012 to June 30, 2013, and provides updates on the following:

- the systems to support Parole Board hearing decisions,
- the findings regarding FY 2013 decisions,
- the general hearing totals for FY 2013, and
- the validation and implementation of the Parole Board Release Guideline Instrument (PBRGI).

³ The Board typically hires no more than 1 to 3 of either type of contract hearing officer. A list of Board members and hearing officers for FY 2013 may be found in Appendix A.

⁴ See Senate Bill 2009-135 in Appendix G.

⁵ See House Bill 2010-1374 in Appendix H.

⁶ See Senate Bill 2011-241 in Appendix I.

The remainder of this report is organized as follows:

- Section Two provides a summary of and update on the parole board decision support systems,
- Section Three describes the summary of statistics and findings regarding parole release application hearing decisions, and
- Section Four includes a report conclusion and describes next steps in future reports.

The report appendices include a description of the Parole Board Release Guideline Instrument (PBRGI), three studies supporting the validity and reliability of the PBRGI, the proposed Parole Board Administrative Revocation Guidelines (PBRVG), and Acts of the State of Colorado mandating this work.

Section Two: Parole Board Decision Support System

There are several elements in the Colorado State Board of Parole (“Board”) decision support system:

- the Parole Board Hearing Application Portal,
- the Parole Board Release Guideline Instrument,
- the automated Parole Board Revocation System,
- the Parole Board Administrative Revocation Guidelines, and
- general data and analytic support.

During FY 2013, the implementation of the Parole Board Release Guideline Instrument (PBRGI) occurred and substantial progress was made on the Parole Board Administrative Revocation Guidelines (PBRVG). This section provides a summary of these elements and any developments occurring since the FY 2012 report.⁷

Parole Board Hearing Application Portal. In October 2011, the Governor’s Office of Information Technology (OIT) at DOC in collaboration with the Board implemented a paperless hearing system, labeled the Parole Board Hearing Application Portal (“Portal”).⁸ The goal of the Portal creation was to automate parole application hearings by providing an interface to display offender case file information and other hearing-related data and documents. The Portal also records hearing decisions on electronic forms and, in the case of a release to parole, records the conditions under which an offender must abide while on parole.

Each year since its implementation, OIT in collaboration with the Board, various representatives of DOC including the Time and Release Operations Office and the Division of Parole, and DCJ, makes specific improvements to the functions of the Portal. For example, since the initial implementation, the Portal has been expanded to schedule hearings, to track the status of hearings and to provide a document repository for letters and statements regarding hearings. It is expected that the Portal will continue to be enhanced and improved with additional data elements and processes as needs are identified by the Board and its agency partners. The Portal provides the platform within which the automated Parole Release Guideline Instrument (PBRGI) is integrated.

Parole Board Release Guideline Instrument. The PBRGI adheres to the mandate in §17-22.5-107(1), C.R.S. to “develop an administrative release guideline instrument for use by the Board in evaluating applications for parole” and to include “a matrix of advisory-release-decision recommendations for the different risk levels.” The goal of the PBRGI is to provide a consistent framework for the Board to evaluate and weigh the statutory, release-decision factors⁹ and, based on a structured decision matrix, to offer an advisory release decision

The goal of the release guideline is to provide a consistent framework for the Board to evaluate and weigh release decision factors.

⁷ The previous annual reports provide a summary and update on the original six projects derived from the legislative mandates in §17-22.5-107 and §17-22.5-404(6), C.R.S., and are available at dcj.state.co.us/ors/research_documents/.

⁸ For a more lengthy description of the “Portal,” see http://www.dcj.state.co.us/ors/pdf/docs/SB09-135/SB11-241_Report_11-01-11.pdf.

⁹ See the statutory consideration for release to parole in §17.22.5-404(4), C.R.S. (available in Appendix H).

recommendation for parole applicants who are not identified as sex offenders.¹⁰ The “Portal” described above afforded the opportunity to automate the decision framework and advisory recommendation processes for ultimate consistency. The PBRGI is based on a draft administrative release guideline instrument designed by the Colorado Commission on Criminal and Juvenile Justice.¹¹

For sex offenders, pursuant to §17-22.5-404 (4)(c)(II), C.R.S., parole release decisions are guided by criteria created by the Sex Offender Management Board (SOMB).¹² Upon entry into DOC, each offender’s history is reviewed for sexually abusive behavior, and offenders are assigned to one of five categories on Sexual Violence Needs with classification updates occurring as warranted. Offenders in the lower two classification levels (no sexual violence treatment needs or a due process hearing determination that there has been no sexually abusive behavior) are not subject to SOMB criteria and, therefore, are assigned a PBRGI recommendation.

The intent of the PBRGI is to provide guidance to the Board as it makes decisions about discretionary parole release. The instrument provides an advisory decision, and Board members must provide the reason if they depart from the advisory decision. The evidence-based guideline instrument offers the significant advantage of uniformity in the application of decision criteria, but the guideline cannot adapt to the unique and emergent characteristics of each offender discovered during the parole application hearing. In fact, there is no objective standard by which Board member decisions may be measured. This point is acknowledged in the legislative declaration of H.B. 10-1374, “...using structured decision-making unites the parole board members with a common philosophy and a set of goals and purposes while retaining the authority of individual parole board members to make decisions that are appropriate for particular situations.”

During FY 2013, final testing and validation of the PBRGI was completed in August of 2012 and it was implemented on September 4, 2012. Ongoing monitoring and modifications of the system continued through the end of November 2012. The final steps in the development, validation, testing, and modifications to the PBRGI are described in Appendices C, D, and E at the end of this report.

The PBRGI forms a decision matrix with two dimensions: the first dimension is risk of recidivism and the second is readiness for parole.

The PBRGI is a set of thirteen items that combine to create a decision matrix with two dimensions: the first dimension is *risk of recidivism* and the second is *readiness for parole*. The thirteen items of the two dimensions of the PBRGI and the advisory decision matrix is described in Appendix B. Drawing on the decision factors in the guidelines draft,

which correspond to the statutory parole considerations,¹³ DCJ staff constructed algorithms that yield two scores, one for risk and one for readiness. The combination of these two scores places an

¹⁰ The exclusion of sex offenders is described below.

¹¹ The Post Incarceration Supervision Task Force of the Colorado Commission on Criminal and Juvenile Justice (CCJJ) developed a draft administrative release guideline instrument as part of a recommendation that, via House Bill 2010-1374, introduced changes to the parole guidelines statute, (§17.22.5-404 and §17-22.5-107(1), C.R.S.

¹² These criteria may be found at the SOMB website (dcj.state.co.us/odvsom/sex_offender/adults.html#standards), in the document entitled *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, in Appendix J: Parole Guidelines for the Discretionary Release on Determinate-Sentenced Sex Offenders (determinate criteria) and in Lifetime Supervision Criteria: Section LS 4.200 - Criteria for Successful Progress in Treatment in Prison: Sex Offender Treatment and Management Program (indeterminate criteria).

¹³ See the statutory consideration for release to parole in §17.22.5-404(4), C.R.S. (available in Appendix H).

offender in a five-level risk by three-level readiness decision matrix where each matrix position is associated with an advisory recommendation to release or defer (§17-22.5-107(1)(b), C.R.S.).¹⁴ This recommendation is displayed through the Parole Board Hearing Application Portal to Board members at the conclusion of a release application hearing. Additionally, members may also view an offender's specific placement in the decision matrix and the rating on each of the eight items that derive the risk score and the five items that derive the readiness score. After considering the advisory recommendation and any other information connected to the release application hearing, Board members may choose to agree with or depart from the recommendation. Pursuant to §17-22.5-404(6)(b), C.R.S., a decision that departs from the recommendation requires that the Board member provide the reason(s) for departure.

The risk and readiness algorithms and the decision matrix of the PBRGI system will continue to be monitored in the context of recidivism outcomes and the system will be updated as these data and evidence from the field of criminal justice on parole decision making warrants.¹⁵

Parole Board Revocation Projects. Pursuant to §17-22.5-404(6), C.R.S., DCJ is required to report Board decisions regarding parole revocation, the reasons for these decisions, and departures from the administrative revocation guidelines (§17-22.5-107(2), C.R.S.). There are two ongoing projects to accomplish this mandate: the Parole Board Revocation Automation Project and the Parole Board Administrative Revocation Guidelines Project. Because the automation of revocation hearings and the administrative revocation guidelines are in development, a system to collect revocation decision data, the reasons for revocation decisions, and the reasons for departures from the revocation guidelines is not yet available, and these data cannot be fully captured at the present time. However, significant progress has been made in this area.

Following the implementation of the PBRGI, the Board initiated a project with OIT at DOC to automate revocation hearings similar to the automated system for release application hearings and enlisted individuals with expertise to develop the administrative revocation guidelines. Between February and June 2013 the requirements and features of the Parole Board Revocation hearing system were defined. Considerable progress in programming the system was made in a short time, allowing OIT programmers to preview the system to the Board on June 28, 2013. Based on feedback from the Board, the DOC Division of Adult Parole, the DOC Time & Release Operations office and DCJ, programmers will refine and improve the system. Further development and testing will continue through FY 2014.

In early 2013, the Board initiated a project with OIT at DOC to automate revocation hearings and seated a Parole Revocation Working Group to develop the Parole Board Revocation Guidelines.

Simultaneously, the Board seated a Parole Revocation Working Group to develop the Parole Board Administrative Revocation Guidelines (PBRVG). The Board contracted with the Center for Effective Public Policy ("Center"; cepp.com) to provide technical assistance and guidance on the project. Pursuant to §17-22.5-107(2), C.R.S., the PBRVG will employ the statutory revocation factors (§17-22.5-404.5(a), C.R.S.) and include a matrix of advisory decision recommendations for different offender

¹⁴ The decision to "defer" simply means the offender must continue to serve his or her sentence and the decision to parole is "deferred" to the next possible parole consideration date, as determined by statute.

¹⁵ Additional background information on the PBRGI development may be found in the Appendices and in previous reports at dcj.state.co.us/ors/research_documents/.

risk levels. Additionally, the Board is required to provide decision reasons when the Board departs from advisory revocation recommendation (§17-22.5-404(6)(b), C.R.S.).

In March 2013, the Center convened the working group with individuals representing the Board, DOC Division of Adult Parole, DOC Time and Release Operations, DOC Office of Planning and Analysis, and DCJ to develop the parole revocation guidelines. The Center had previously consulted with the DOC in the development of the Colorado Violation Decision Making Process (CVDMP),¹⁶ which was implemented in May 2011 and serves as a foundation for the development of revocation guidelines for the Board.

The broad context of revocation guidelines encompasses the initial decision by the community parole officer (CPO) to request that the Board consider an offender for parole revocation. Therefore, the revocation guidelines will be a seamless extension of the CVDMP and will be a decision support system for the Board when determining whether or not to approve a request by the CPO for parole revocation.

Following a series of meetings through June 2013, the Center provided the Proposed Parole Board Administrative Revocation Guidelines to the Board (see Appendix F). Following approval by the Board, the guidelines were forwarded to OIT at DOC for further specification of elements for integration into the automated Parole Board Revocation hearing system that is under construction (described above.) The Board, OIT at DOC and DCJ will continue to collaborate on the conceptualization, programming and testing of the revocation guidelines with the goal of full implementation during FY 2014.

Data and Analytic Support. During the past year, the Board has undertaken considerable effort to increase its access to and use of data regarding Board decision processes. The Board worked closely with the DOC Office of Planning and Analysis (OPA) to identify the data and analyses that would inform and enhance the Board's decision-making. The Board collaborated on such topics as the relationship between decision and recidivism types (discretionary vs. mandatory release and the rates of return due to a new crime conviction or parole violations) and the effect of fatigue on decisions (based on patterns of decisions made over the course of the workday). The Board is also working with OPA to increase the frequency of data reports on various decision processes and exploring real-time tracking and reporting of such data.

The goal of each of the support systems and collaborative efforts described above is to enhance the quality of Board decision-making by identifying patterns and trends that may reduce recidivism and, thereby, enhance public safety.

¹⁶ The CVDMP is a decision support system for community parole officers (CPO) that encourages the use of intermediate sanctions for parole violations, when appropriate, and increases the consistency in the application of supervision options and sanctions. Additional background and history of the development and implementation of the CVDMP may be found on the DOC website at, doc.state.co.us/sites/default/files/opa/CVDMP%20Dec%202011.pdf.

Section Three: Parole Board Decision Findings - FY 2013

Pursuant to §17-22.5-404(6)(c), C.R.S., the State Board of Parole is to provide data to the Division of Criminal Justice (DCJ) for analysis. However, the capability of the Parole Board to extract offender and parole hearing data is not currently in place. Instead, the data were provided by DOC's Office of Planning and Analysis for analysis by DCJ. Following preliminary testing that occurred during FY 2012 (see Appendix C), the Parole Board Release Guideline Instrument (PBRGI) was the subject of continued validity and reliability testing between July 2012 and September 2012.

In August, the PBRGI processes were the subject of live testing with the Board, but the advisory recommendations were not displayed to Board members, given that the performance of the instrument was still being evaluated. Therefore, data from August 2012 was not appropriate for inclusion in this fiscal year summary. The testing method and validity findings from this August 2012 "Blind Test" are available in Appendix D. The PBRGI was implemented on September 4, 2012 and this first month of data was the subject of continued validity testing (see Appendix E). Unlike the August 2012 data, this hearing data was appropriate for inclusion in this FY 2013 summary, along with the remaining months of the 2013 fiscal year.¹⁷ Future comparisons will note that the FY 2013 report of the PBRGI outcomes comprised only a 10-month period.

FY 2013 Sample. The sample of FY 2013 hearings included 7,966 non-sex offenders¹⁸ whose release application hearing was finalized between September 1, 2012 and June 30, 2013. Some decisions from release application hearings between May and June 2013 were excluded from the sample because the decision was still pending and other decisions were excluded because the offender did not appear or waived the scheduled hearing.

The FY 2013 sample included 7,966 non-sex offenders whose release hearing occurred between September 2012 and June 2013.

The most common reason for a pending decision was that the application was referred to, awaiting or undergoing full Board review. Because full Board review is required for offenders convicted of a violent offense as defined in statute or whose offense involves violence as defined by the Board, this sample of FY 2013 hearings is missing a small proportion of violent offenders.

The typical reasons for a non-appearance included the following:

- the offender was out to court,
- being transferred, or
- refused to appear.

The typical reasons an offender waived the right to a hearing included the following:

- wanted deferral to the mandatory release date,
- wanted to complete a program or treatment, or
- needed to finalize elements of the parole plan.

¹⁷ See Appendix E for the description of a programming error that resulted in the omission of some departure reasons between September and November 2012 and how the PBRGI programming error was corrected.

¹⁸ The explanation for the exclusion of sex offenders may be found on page 8 and in Footnote 12.

For non-appearances and waivers, the decision is entered as a “deferral.” Because these circumstances do not allow the possibility of a release decision, these perfunctory deferral decisions were not appropriate for inclusion in the analyses of the Board decisions, the analyses of adherence or departure from the PBRGI advisory recommendation, or the analyses of departure reasons. Demographic characteristics of offenders were not included in these hearing data.

The PBRGI findings reported below from the FY 2013 hearing data include the:

- number of offenders assigned to the risk and readiness categories in the PBRGI decision matrix,
- number of release and number of defer Board decisions and PBRGI advisory recommendations,
- number of agreements and departures between Board decisions and PBRGI recommendations overall and by month,
- number of agreements and departures within decision matrix categories,
- categories and counts of the reasons for departure from release and from defer recommendations, and
- summary of reasons for departure by specific decision matrix categories.

Decision Matrix Assignment. Table 1 below provides the counts and percentages of offenders from the FY 2013 sample assigned to each of the 15 risk/readiness positions in the PBRGI decision matrix. The blue/lighter area in the upper left are the combinations where the PBRGI recommends release and the red/darker area in the bottom right are the combinations where the PBRGI recommends defer. The number of offenders placed in either the “very low” (36.2%) or “very high” (26.5%) risk categories was roughly three to four times the number assigned to the three remaining risk categories. About 50% of offenders in the sample are categorized “very low” or “low” risk. Roughly 75% of offenders were placed in the extremes (“low” or “high”) of the readiness dimension. The two highest percentages of offenders in any of the 15 risk/readiness combinations were the 16.2% in “very low” risk/“high” readiness and the 14.0% in “very high” risk/“low” readiness. Only 11.2% of the sample was placed in the “boundary region” of the decision matrix representing the more complex decision circumstances for Board members (namely, offenders placed in the high/high, medium/medium, or low/low risk/readiness categories). The boundary region concept and its effect on Board member decision making are described in Appendix B.

Decision Types. The total numbers and percentages of defer and release decisions by the Board and the recommendations by the PBRGI may be found in Table 2 (specifically, see the “Total” row and column). Although the vernacular of the Board is to “release to MRD” (Mandatory Release Date),

The PBRGI recommended 57.5% of parole candidates for release and 42.5% for defer relative to the Board’s decision to release 35.4% and defer 64.6%.

this decision is the conceptual equivalent of the decision to *defer*. This action, to defer offenders to their impending MRD, is thus labeled in Table 2 the more conceptually accurate, “Defer to Mandatory Release Date.”

Of the 7,966 sample applicants for parole, the PBRGI recommended 4,584 (57.5%) offenders for release and 3,382 (42.5%) for deferral. Given that 50% of offenders were categorized as “very low” or “low” risk (see Table 1), it is not unexpected that a large percentage of offenders would be assigned an advisory recommendation for release. Board members designated 2,817 (35.4%) offenders for release and, combining the two types of deferral, 5,149 (64.6%) offenders for deferral.

Table 1. Counts and percentages of offenders assigned to each PBRGI risk/readiness matrix combination. (FY 2013 PBRGI sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|------------------------------------|-----------------------------|----------------------------------|-----------------|--------------|-------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 1,291 | 645 | 949 | 2,885 |
| | % within Very Low Risk | 44.7% | 22.4% | 32.9% | 100.0% |
| | % within Readiness Category | 44.1% | 34.4% | 30.0% | 36.2% |
| | % of Total | 16.2% | 8.1% | 11.9% | 36.2% |
| 2 Low | Count | 470 | 247 | 361 | 1,078 |
| | % within Low Risk | 43.6% | 22.9% | 33.5% | 100.0% |
| | % within Readiness Category | 16.0% | 13.2% | 11.4% | 13.5% |
| | % of Total | 5.9% | 3.1% | 4.5% | 13.5% |
| 3 Medium | Count | 453 | 307 | 433 | 1,193 |
| | % within Medium Risk | 38.0% | 25.7% | 36.3% | 100.0% |
| | % within Readiness Category | 15.5% | 16.4% | 13.7% | 15.0% |
| | % of Total | 5.7% | 3.9% | 5.4% | 15.0% |
| 4 High | Count | 222 | 175 | 301 | 698 |
| | % within High Risk | 31.8% | 25.1% | 43.1% | 100.0% |
| | % within Readiness Category | 7.6% | 9.3% | 9.5% | 8.8% |
| | % of Total | 2.8% | 2.2% | 3.8% | 8.8% |
| 5 Very High | Count | 494 | 503 | 1,115 | 2,112 |
| | % within Very High Risk | 23.4% | 23.8% | 52.8% | 100.0% |
| | % within Readiness Category | 16.9% | 26.8% | 35.3% | 26.5% |
| | % of Total | 6.2% | 6.3% | 14.0% | 26.5% |
| Total in Readiness Category | Count | 2,930 | 1,877 | 3,159 | 7,966 |
| | % within Risk Category | 36.8% | 23.6% | 39.7% | 100.0% |
| | % within Readiness Category | 100.0% | 100.0% | 100.0% | 100.0% |
| | % of Total | 36.8% | 23.6% | 39.7% | 100.0% |

In addition to the overall comparisons of release and defer rates, the pattern of concurrence within the decision matrix is also of interest. To reiterate a point made earlier, the PBRGI recommendation is not considered a standard by which Board decisions are to be measured, but rather, provides only an advisory recommendation. However, the subsequent presentation will refer to the agreement with or the departure from PBRGI recommendations because statute requires an additional action by Board members when departing from the advisory recommendation. Namely, members must provide a reason for departing from the PBRGI recommendation. Although this convention of expression will be employed (“agreement” versus “departure”), it does not imply a comparative evaluation of Board member decision performance.

Decision Concurrence. Table 2 provides the percentages of agreement and departure between the Board decisions and the PBRGI advisory recommendations. The overall degree of agreement is derived from two sources: agreements with recommendations to release and agreements with

Collapsing across all decisions, 64.1% of Board decisions agreed with the PBRGI advisory recommendations.

recommendations to defer (blue/lighter areas of Table 2). Collapsing these two sources of agreement, *64.1% of all Board member decisions agreed with the PBRGI recommendations.* The combined agreement percentage (64.1%) conceals that the degree of deferral agreement (83.9% or 2,836 agreements within the 3,382 defer recommendations) is nearly 70% higher than the degree of release agreement (49.5% or 2,271 agreements within the 4,584 release recommendations). Alternatively,

when the PBRGI recommendation was to defer, the overall percentage of agreement was five times larger than the overall percentage of departure, 35.6% vs. 6.9%, respectively.

Table 2. Overall counts and percentages of Parole Board hearing decisions by PBRGI advisory recommendations.* (FY 2013 PBRGI sample)

| Parole Board Hearing Decision | | PBRGI Advisory Recommendation | | Total of PB Decisions |
|---------------------------------|---------|-------------------------------|----------------------------|----------------------------|
| | | Defer | Release | |
| Defer | Count | 1,941 | 1,385 | 3,326 |
| | Percent | 24.4% | 17.4% | 41.8% |
| Defer to Mandatory Release Date | Count | 895 | 928 | 1,823 |
| | Percent | 11.2% | 11.6% | 22.9% |
| | | <i>Total Defer = 2,836</i> | <i>Total Defer = 2,313</i> | <i>Total Defer = 5,149</i> |
| | | 35.6% | 29.0% | 64.6% |
| Release Discretionary | Count | 546 | 2,271 | 2,817 |
| | Percent | 6.9% | 28.5% | 35.4% |
| Total of PBRGI Recommendations | Count | 3,382 | 4,584 | 7,966 |
| | Percent | 42.5% | 57.5% | 100.0% |

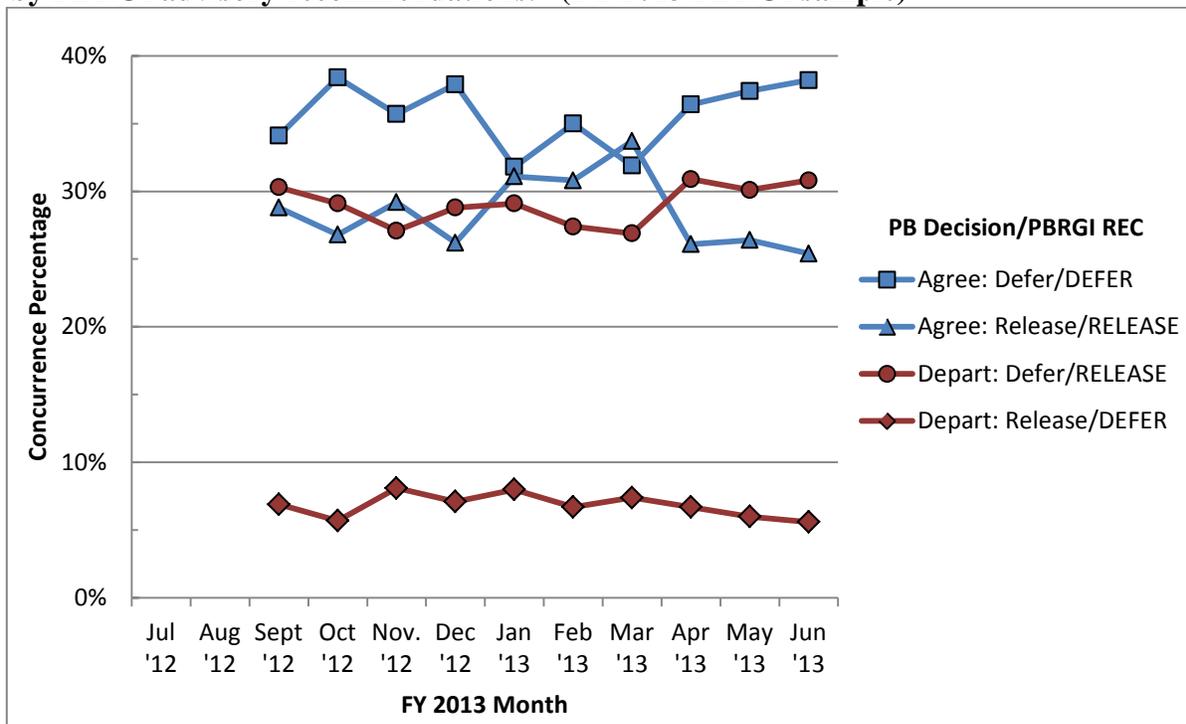
*Blue (lighter cells) indicates agreement between the Board decision and the PBRGI recommendation and red (darker cells) indicates departure by the Board from the PBRGI recommendation.

The overall degree of departure is derived from two sources: departures from recommendations to release and departures from recommendations to defer (red/darker areas in Table 2). Collapsing across these decision types, 35.9% of all Board decisions departed from the PBRGI recommendations. The combined departure percentage (35.9%) reveals the converse of the previous finding: the degree of release departure (50.4% or 2,313 departures within the 4,584 release recommendations) is more than two times higher than the degree of deferral departure (16.1% or 546 departures within the 3,382 defer recommendations). Alternatively, when the PBRGI recommendation was to release, the overall percentage of departure was slightly higher than the overall percentage of agreement, 29.0% vs. 28.5%, respectively.

Figure 1 displays the concurrence percentages by month for hearing decisions during FY 2013. For example, the blue (squares) line represents the month to month agreement between the Board decisions to defer and the PBRGI advisory recommendations to defer. From month to month, there were fluctuations across the two types of agreement (PBRGI release/PB release and PBRGI defer/PB defer) ranging from a low of 0.3 percentage points (representing a change of 1%) to a high of 7.6 percentage points (representing a change of 23%). For the two types of departure (PB release/PBRGI defer and PB defer/PBRGI release), the fluctuations from month to month ranged from a low of 0.3 percentage points (representing a change of 1%) to a high of 4.0 percentage points (representing a change of 15%).

In the next section, an analysis of the pattern of decision concurrence is reported within each combination of the PBRGI risk/readiness decision matrix.

Figure 1. Overall concurrence percentages by month of Parole Board hearing decisions by PBRGI advisory recommendations.* (FY 2013 PBRGI sample)



* The display of data begins after the full implementation of the PBRGI in September of 2012.

Decision Concurrence by Matrix Assignment. Relating to Table 1, Table 3 displays the number of offenders assigned to each of the 15 risk/readiness combinations of the PBRGI decision matrix and the percentage of agreement or departure in that specific combination. The blue/lighter area in the upper left are the combinations where the PBRGI recommends release and the red/darker area in the bottom right are the combinations where the PBRGI recommends defer. When scanning Table 3, one can readily see that the agreement percentages in the “release area” of the decision matrix

The agreement percentages in the “release area” of the decision matrix are generally lower than in the “defer area” of the decision matrix.

(ranging from 30.8% to 64.2%; blue/lighter area) are lower than the agreement percentages in the “defer area” of the decision matrix (ranging from 59.3% to 92.4%; red/darker area).

When collapsing across levels of readiness, there was a larger degree of Board/PBRGI agreement as level of risk increased, from 47.6% to 82.0%. When collapsing levels of risk, the highest degree of agreement was found in the low readiness category at 72.1% followed by the high readiness (62.0%) and medium readiness (53.9%) categories. Given the Board’s propensity to defer versus release (recall overall, 64.6% versus 35.4%, respectively), it is clear from both Tables 2 and 3 that there would be a higher degree of agreement between Board decisions and PBRGI recommendations when the offender was recommended for deferral than when recommended for release (as mentioned above, 83.9% versus 50.5%, respectively).

Of the offenders identified as the better candidates for release (blue outline at upper left of Table 3), the degree of decision agreement was 55.0% (1,458/2,653; numbers are drawn from, but not displayed in, Table 3). Specifically, this would include offenders categorized in either of the two highest levels of readiness (“high” and “medium”) and either of the two lowest levels of risk (“very low” and “low”). Offenders categorized across the entire “very low” risk category were designated as appropriate for release, regardless of level of readiness.¹⁹ The release recommendations for offenders located near the “middle decision boundary” were subject to a lower degree of agreement, 45.9% (combining the agreements in the medium/medium and high/high risk/readiness boundary combinations). Additional support for the difficulty of decisions regarding offenders falling in this middle area also may be seen comparing the degree of agreement in the “medium” level of readiness (53.9%) relative to the “high” and “low” levels of readiness (62.0% and 72.1%, respectively).

The pattern of percentages in Table 3 demonstrates how the degree of agreement reflects the changing “decision environment” as offender readiness drops and the Board appears less willing to release. This pattern of falling degree of agreement with the recommendation to release can be seen at each level of risk. Even among the “very low” risk offenders, there is a precipitous drop in agreement from “high” (64.2%) to “low” (30.8%) readiness. Common departure reasons (for the decision to defer rather than release) offered by the Board for the lower risk/higher readiness offenders mentioned one or more of the following about the offenders:

- nearing completion of programs,
- expressed little or denied accountability for their actions,
- would soon be released on the MRD anyway, or
- had engaged in behaviors that could indicate a continued risk to the community.

Further analysis of the departure reasons may be found below.

¹⁹ See Appendix B for a description of the designation of release or defer in the PBRGI decision matrix.

Table 3. Counts of offenders assigned to each PBRGI risk/readiness matrix combination and the associated percentage of agreement and departure between the Board decision and the PBRGI recommendation.* (FY 2013 PBRGI sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|------------------------------------|-------------|----------------------------------|-----------------|--------------|-------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 1,291 | 645 | 949 | 2,885 |
| | % Agreement | 64.2% | 39.1% | 30.8% | 47.6% |
| | % Departure | 35.8% | 60.9% | 69.2% | 52.4% |
| 2 Low | Count | 470 | 247 | 361 | 1,078 |
| | % Agreement | 61.5% | 35.6% | 82.8% | 62.8% |
| | % Departure | 38.5% | 64.4% | 19.9% | 37.1% |
| 3 Medium | Count | 453 | 307 | 433 | 1,193 |
| | % Agreement | 61.4% | 37.1% | 88.0% | 64.8% |
| | % Departure | 38.6% | 62.9% | 12.0% | 35.2% |
| 4 High | Count | 222 | 175 | 301 | 698 |
| | % Agreement | 58.1% | 83.4% | 92.4% | 79.2% |
| | % Departure | 41.9% | 16.6% | 7.6% | 20.8% |
| 5 Very High | Count | 494 | 503 | 1,115 | 2,112 |
| | % Agreement | 59.3% | 81.7% | 92.2% | 82.0% |
| | % Departure | 40.7% | 18.3% | 7.8% | 18.0% |
| Total in Readiness Category | Count | 2,930 | 1,877 | 3,159 | 7,966 |
| | % Agreement | 62.0% | 53.9% | 72.1% | 64.1% |
| | % Departure | 38.0% | 46.1% | 27.9% | 35.9% |

* The number of decisions that agreed or departed is calculated by multiplying the cell count by the agreement or the departure percentage in the same cell. For example, 829 decisions were in agreement in the “very low” risk by “high” readiness matrix combination (1,291 * 64.2%).

Of the offenders identified as the better candidates for deferral (red outline at lower right of Table 3), the degree of agreement was 89.0% (1,836/2,094). Specifically, this would include offenders categorized in either of the two highest levels of risk (“high” and “very high”) and either of the two lowest levels of readiness (“low” and “medium”). Given the Board’s more conservative approach

The degree of decision agreement was 55% for the offenders identified as the better candidates for release, but 89% for those identified as the better candidates for deferral.

to release, this higher level of agreement on deferrals is true for decisions in one of the difficult “middle boundary” combinations separating the release and defer regions of the recommendation matrix, specifically the 82.8% agreement in the “low” risk/“low” readiness combination.

The “decision environment” specific to deferral side of the matrix can be seen in the drop in deferral agreement from “low” to “high” readiness. At levels of very high agreement relative to release, there is still a slight willingness to consider release on this “deferral side” of the matrix with increasing offender readiness. Offenders categorized across the entire “very high” risk category were designated in the decision matrix for deferral, regardless of level of readiness.²⁰ This drop in deferral agreement is most visible in the “very high” risk category. The degree of agreement to defer for the “very high” risk offenders in the “high” readiness category (59.3%) is lower relative to the lower readiness categories. The Board may have decided release was appropriate for more of these “very high” risk offenders because they demonstrated characteristics that would indicate higher readiness for community re-entry.

Common departure reasons offered by Board members (for the decision to release rather than defer) for offenders categorized both in the higher risk and lower readiness levels mentioned one or more of the following about the offenders:

- presented particularly good parole plans,
- demonstrated growth and accountability,
- had already transitioned to the community and were successful, or
- had several of these characteristics in combination with a positive full Board review.

Further analysis of the departure reasons may be found below.

Decision Concurrence by Decision Type. The following analysis, which relates to Table 2, explores Board decisions from a different perspective by identifying the risk and readiness characteristics of the offenders in the instances where the Board agrees or departs from the PBRGI advisory recommendation. Because statute requires the Board to provide a reason when departing from the advisory recommendation,²¹ the instances of departure will be explored more extensively.

Summary of Agreements: Board Releases and Deferrals. There were 2,271 (28.5%) total decisions where Board members *agreed with the PBRGI advisory recommendation to release*. Of these instances, 1,750 (77.0%) offenders were categorized as “very low” or “low” risk and 1,979 (87.1%) were categorized with “high” or “medium” readiness. There were 2,836 (35.6%) total decisions where Board members *agreed with the PBRGI advisory recommendation to defer*. Of these instances, 2,156 (76.0%) offenders were categorized as “high” or “very high” risk and 2,543

²⁰ See Appendix B for a description of the designation of release or defer in the PBRGI decision matrix.

²¹ See §17-22.5-404(6)(b), C.R.S. (available in Appendix H).

(89.7%) were categorized with “medium” or “low” readiness. These instances of agreement show a correspondence in the offender characteristics (based on the matrix placement in low/high risk/readiness) and the Board’s decision to release or defer. On the other hand, the following analysis of departures indicates discrepancies between the offenders’ matrix placement and the decisions by the Board.

Summary of Departures: Board Decides to Release. This analysis describes the instances where Board members *departed from the PBRGI advisory recommendation to defer* and decided to release the offender to parole. Although Board members demonstrated a high degree of agreement overall with defer recommendations (83.9% or 2,836/3,382 from Table 2), there were 546 (6.9% overall) instances of departure where the Board instead chose to release. This represents 16.1% (546/3,382 from Table 2) of the total advisory recommendations to defer. Of these 546 instances, 432 (79.1%) offenders were categorized by the PBRGI as “high” or “very high” risk and 345 (63.2%) fell in the “low” or “medium” readiness categories. Combining the two dimensions of risk and readiness, the Board chose to release 231 offenders (42.3% of the 546 decisions, but only 3% of all decisions) who were categorized by the PBRGI as the better candidates for deferral (those placed in “very high” or “high” risk *and* in “medium” or “low” readiness). The summary of the Board’s reasons for these departures is provided in the “Departure Reasons” section below.

The Board decision to depart from a recommendation to release was four times more common than the decision to depart from a recommendation to defer.

Summary of Departures: Board Decides to Defer. This analysis describes instances where Board members *departed from the PBRGI advisory recommendation to release* and decided to defer the offender for a continuing period of confinement. As was reported earlier in Table 2, this circumstance occurred at a higher rate with 2,313 (50.5%) departures from the total 4,584 offenders who were assigned an advisory recommendation to release. These 2,313 offenders may be divided into the 1,385 who were deferred and the 928 who were deferred to their MRD. An argument can be made that, for some proportion of the “defer to MRD” offenders, an imminent MRD release date would differ little from a discretionary release date. However, the decision still represents a period, however potentially short, that the offender is held rather than released. Of these 2,313 instances, 1,714 (75.3%) were categorized by the PBRGI as “low” or “very low” risk and 1,656 (71.6%) fell in the “medium” or “high” readiness categories. Combining the two dimensions of risk and readiness, the Board chose to defer 1,195 offenders (51.7% of the 2,313 decisions and 15% of all decisions) who were categorized by the PBRGI as the better candidates for release (placed in “low” or “very low” risk *and* “medium” or “high” readiness). Whereas, the Board decision to release an offender recommended for defer was rare (6.9% of all decisions from Table 2), the decision to defer an offender recommended for release (29.0% of all decisions) was four times more common. The summary of the Board’s reasons for these departures is provided in the next section.

Departure Reasons. There were two decision circumstances that required the Board member to provide reasons for departure: choosing to defer when the recommendation was to release and choosing to release when the recommendation was to defer. Specifically, this meant a departure reason was required for the 2,313 decisions to defer or defer to MRD when release was recommended, representing 29.0% of all decisions, and for the 546 decisions to release when defer was recommended, representing 6.9% of all decisions (see Table 2.). The report of missing departure reasons below is almost exclusively attributed to a data collection error for a subset of

decisions between the September 2012 PBRGI implementation and a programming correction that occurred at the end of November 2012 (see Appendix E for a description of this error and correction).

Summary of Departure Reasons: Board Decides to Release. *When the PBRGI advisory recommendation was to defer*, there were 546 decisions (6.9% of all decisions) where Board members chose to depart from the recommendation and release the offender. An initial review was undertaken to identify and label the primary types of departure reasons across these decisions. Given that Board members could offer more than one reason for a departure, there were 919 total reasons provided. These departure reasons can be grouped into the following general categories:

- Parole plan quality
- Demonstrated growth/positive attitude
- Risk considerations
- Treatment participation considerations
- Time served or imminent MRD/SDD²²
- Program participation considerations
- Performance in the community

Reasons addressing the quality of the parole plan typically indicated that the offender would have a good support system, housing, employment, educational options or the offender would move to a different state or country. Observing evidence of psychological growth was apparent in reasons mentioning positive offender attitude, taking responsibility for actions, positive behavioral adjustment, readiness for parole, and the ability to present a positive plan for the future. Reasons falling in the risk-related category included comments about low risk scores, non-violent offenses, short criminal histories, and committing no or minor violations of the DOC Code of Penal Discipline. The mentions of treatment referenced that the offender had completed treatment or was ready to move to community-based treatment. Some reasons indicated that the offender had served sufficient time, that the offender would soon be released on their mandatory release date (MRD) anyway, or that a period of transition on parole would be preferable to a release with no parole supervision. Reasons related to program participation typically referred to gains made in programs, the successful completion of programs, or a readiness for programs in the community. A final category regarding community performance reflected comments that a transition to community corrections had been successful.

Of the 546 departure decisions, a reason was missing for 73 (13.4%) decisions. For the decisions missing a departure reason, the member did not provide a specific reason, but either simply re-entered the decision (for example, “decided to release”) or indicated that the full Board review outcome was to release.²³ Of the remaining 473 decisions, Board members mentioned one of the

²² The statutory discharge date (SDD) refers to the date representing when both the sentence to DOC and all possible time on parole has been completed.

²³ It may be argued that submitting the outcome of the full Board review may, in and of itself, imply a valid departure reason, namely, the fact that four of seven Board members agreed with the decision is not insignificant. However, this entry still represents a decision and not the reason that the majority of members agreed with the decision to depart from the recommendation. Data missing for this reason is considered a training issue and will continue to be addressed with the Board.

above seven reason categories in 753 unique instances. Board members mentioned a single departure reason category in 253 cases, two categories in 170 cases, and more than two categories in 50 cases. In some instances, Board members mentioned multiple reasons of the same type, but these were counted as a single reference to the particular category of departure reasons. Of the 473 cases where at least one relevant departure reason was provided, the percentage of cases where a departure category was mentioned was as follows:²⁴

- Parole plan quality, 46.7% (221/473 cases where this category was mentioned)
- Demonstrated growth/positive attitude, 40.8% (193 cases)
- Risk considerations, 23.5% (111 cases)
- Program participation considerations, 16.5% (78 cases)
- Performance in the community, 13.1% (62 cases)
- Treatment participation considerations, 9.5% (45 cases)
- Time served or imminent MRD/SDD,²⁵ 9.1% (43 cases)

Of the 546 offenders, 231 were the higher risk/lower readiness offenders identified above as the better candidates for deferral, but who were released by the Board (red outline at bottom right of Table 3). For this group, there were 338 departure reasons offered in similar percentages found in the categories above. The three most frequent reason categories mentioned for this subset of offenders reflected comments indicating that the offender had accomplished one or more of the following:

- demonstrated cognitive growth and a positive attitude
- presented a comprehensive parole plan
- represented a reduced risk to the community

Summary of Departure Reasons: Board Decides to Defer. *When the PBRGI advisory recommendation was to release*, there were 2,313 decisions (15.9% of all decisions) where Board members chose to depart from the recommendation and defer the offender or defer the offender to the MRD. An initial review was undertaken to identify and label the primary types of departure reasons across these decisions. Given that Board members could offer more than one departure reason in a particular case, there were 3,192 specific departure reasons provided. These reasons can be categorized into the following areas of concern:

- Risk considerations,
- Need to stabilize or adjust in the community,
- Program participation or need considerations,
- Attitude or presentation concerns,
- Treatment participation or need considerations,
- Parole plan quality, and
- Time served or imminent MRD/SDD.²⁶

²⁴ Percentages total more than 100% because more than one category was mentioned in 220 of the 473 cases.

²⁵ See Footnote 22.

Reasons given regarding risk concerns included mentions of high risk scores, the crime of conviction or charges for a new crime, poor performance in the institution, and/or general issues of public safety. Offenders who had been placed in community corrections as transition inmates were deferred to allow the offender more time to establish themselves and stabilize in the transition placement. The mentions of treatment or program concerns revolved around the need for the offender to complete an ongoing course of treatment or a program or to receive additional treatment or programming. In some instances, Board members reported that the offender requested a deferral to finish a nearly-completed program or course of treatment. A weak presentation by the offender was apparent in reasons that mentioned that the offender failed to take responsibility for their actions, minimized the consequences of their crime, and/or, was not truthful about confirmable information available in the offender's criminal record or case file. A poor parole plan was indicated in comments about inadequate preparation for housing, social supports, employment, education and other such re-entry considerations. A few comments indicated that a release on the MRD or the SDD was so impending that a discretionary release was moot.

Of the 2,313 departure decisions, a reason was missing in 977 (42.2%) decisions. There are several explanations for the large percentage of missing reasons in this departure type. As mentioned above and described fully in Appendix E, three months of departure reasons were missing due to a data collection error. Additional departure reasons were missing because the member simply re-entered the decision (for example, "defer to MRD") or indicated that the full Board review outcome was to defer without providing a specific reason for the departure.²⁷ Of the remaining 1,336 decisions where reasons were provided, Board members mentioned one of the above seven reason categories in 1,848 unique instances. Board members mentioned a single category of concern in 907 cases, two categories in 354 cases, and more than two categories 75 cases. In some instances, Board members mentioned more than one reason in the same category of concern. Mentions of multiple concerns in the same category were counted as a single reference to the category of concern. Of the 1,336 cases where at least one relevant departure reason was provided, the percentage of cases where a departure category was mentioned was as follows:²⁸

- Risk considerations, 56.2% (751/1,336 cases where the category was mentioned)
- Need to stabilize or adjust in the community, 24.7% (330 cases)
- Program participation or need considerations, 18.2% (243 cases)
- Attitude or presentation concerns, 14.9% (199 cases)
- Treatment participation or need considerations, 11.6% (155 cases)
- Parole plan quality, 10.4% (139 cases)
- Time served or imminent MRD/SDD, 2.3% (31 cases)

Of the 1,336 offenders, 1,195 were the lower risk/higher readiness offenders identified above as the better candidates for release, but who were deferred by the Board (blue outline at upper left of Table 3). For this group, there were 1,574 departure reasons offered in similar percentages to those

²⁶ See Footnote 22.

²⁷ See Footnote 23.

²⁸ Percentages total more than 100% because more than one category was mentioned in 429 of the 1,336 cases.

above. The three most frequent reason categories mentioned for this subset of offenders reflected comments that addressed risk concerns, the need for additional time in transition in the community, and/or continuing needs for programs or treatment.

Summary of Findings. These first analyses following the September 2012 implementation of the Parole Board Release Guideline Instrument (PBRGI) yielded the following overall findings:

- The PBRGI sample of FY 2013 hearings included 7,966 non-sex offenders²⁹ whose release application hearing was finalized between September 1, 2012 and June 30, 2013.
- Approximately 50% of the offenders in the sample were categorized by the PBRGI as “low” or “very low” risk and approximately 37% were categorized as “high” readiness.
- For this FY 2013 sample, the Board designated 2,817 (35.4%) offenders for release and 5,149 (64.6%) offenders for deferral. The PBRGI recommended 4,584 (57.5%) offenders for release and 3,382 (42.5%) for deferral.
- Collapsing across the decisions to release and defer, 64.1% of all Board member decisions agreed with the PBRGI advisory recommendation and 35.9% of all decisions departed from the PBRGI advisory recommendation.
- Of the PBRGI advisory recommendations to release, the Board decision agreed in 49.5% of cases. Of the remaining 50.5% cases where the Board’s decision (to defer) departed from the release recommendation, 75% of the offenders were categorized as “low” or “very low” risk and 72% were categorized as “medium” or “high” readiness. Overall, this departure circumstance represented 29.0% of the 7,966 PBRGI-involved decisions made by the Board.
- Of the PBRGI advisory recommendations to defer, the Board decision agreed in 83.9% of cases. Of the remaining 16.1% of cases where the Board’s decision (to release) departed from the defer recommendation, 80% of the offenders were categorized as “high” or “very high” risk and 63% were categorized as “low” or “medium” readiness. Overall, this departure circumstance represented 6.9% of the 7,966 PBRGI-involved decisions made by the Board.
- The departure reasons offered most frequently by the Board for decisions to release (rather than following the PBRGI recommendation to defer) were that offenders had a good parole plan, had demonstrated positive attitudes and behaviors and/or had ameliorated their risk characteristics.
- The departure reasons offered most frequently by the Board for decisions to defer (rather than following the PBRGI recommendation to release) were that there were still significant risk concerns and/or that additional time in transition in the community or in programs or treatment would enhance the eventual re-entry to the community.

²⁹ The explanation for the exclusion of sex offenders may be found on page 8 and in Footnote 12.

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Section Four: Next Steps and Challenges

Future Annual Reports. DCJ will continue to collaborate with the Board and various representatives of DOC to improve the PBRGI system and to participate in the implementation of the automated parole revocation system and the parole revocation guidelines. The addition of revocation decision data and revocation departure reasons to the release application hearing data may necessitate the transition from a fiscal year annual report to a calendar year annual report to provide the time necessary to perform the required analyses and report preparation.

Pending Mandates. Compliance with the statutory parole guidelines section (§17-22.5-404, C.R.S.) requires that the DCJ regularly obtain data from the Parole Board to meet the H.B. 2009-1374 requirements as well as the related training requirements included in the statute (see §17-22.5-404 (2)(c), (6)(c), and (6)(d), C.R.S.). The intent is that the Parole Board must document each parole release and revocation decision and the reason for that decision, by decision maker, and provide this information to the DCJ. Additionally, the DCJ must obtain the reasons for any departure from the release and the revocation guidelines as established in §17-22.5-107, C.R.S. Because the DCJ must analyze and provide training on release and revocation decision-making, the data requirements must include an analysis of any data the member utilizes in their decision. This includes the factors included in the release and revocation guidelines and, upon any departure from the guidelines, the data mentioned or implied in the departure justification. Therefore, the data requirements go beyond the data specifically mentioned in the parole guidelines section and must include the data *implied* by the requirements of the section.

For example, the information necessary to comply with the statute, includes (at a minimum) the CARAS score, past and current program participation, institutional behavior (type of infractions and dates), demographic data (gender, age, ethnicity), prior parole actions and instructions to the inmate, LSI scores and other assessment information, parole plan characteristics, and time served. Other factors that are important to Board members, such as victim input, family (pro-social) support, and addiction problems are also important to collect and analyze. Information necessary to analyze the recidivism rate includes the inmate number, the state identification number, and date of birth. This information must be available for each and every offender scheduled for a parole hearing. As the analysis of Board decision-making proceeds, the list of data items included for analysis will evolve to correspond with the information reported by Board members and hearing officers as relevant to their decisions.

Much of the data derived from the new automated parole hearing application may not be available for extraction by staff of the Board and, instead, may be provided by staff at the DOC. The Board, the DCJ, and the DOC will continue to build the data infrastructure and the collaborative relationships necessary to collect, extract, and analyze the data required by the statutory mandates.

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Appendices

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APPENDIX A

**COLORADO STATE BOARD OF PAROLE
FY 2013**

BOARD MEMBERS (Term)*

Brandon Shaffer, Chair (2016)
Rebecca Oakes, Vice-Chair (2016)
Denise K. Balazic (2014)
Joe Morales (2016)
John M. O'Dell (2015)
Alfredo Pena (2014)
Anthony P. Young, Psy.D. (2014)

FORMER

BOARD MEMBERS

Michael Anderson, Former Vice Chair
Patricia Waak, Former Vice Chair

**CURRENT
RELEASE HEARING
OFFICERS**

Leslee Waggener

**CURRENT
ADMINISTRATIVE HEARING
OFFICERS**

Daniel Casias
Jim Peters
Tom Waters

*The above list includes the names of current and former members and hearing officers whose decisions are included in this FY 2013 report. Members' terms expire on July 1 of the year in parentheses.

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APPENDIX B

**Parole Board Release Guideline Instrument:
Item and Matrix Descriptions**

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Parole Board Release Guideline Instrument: Item and Matrix Descriptions

Introduction

Pursuant to §17-22.5-107(1), C.R.S., the DCJ, in consultation with the State Board of Parole, developed the Parole Board Release Guideline Instrument (PBRGI). The following elements comprise the PBRGI:

- The PBGRI risk items, which combined, assign offenders to a risk level,
- The PBRGI readiness items, which combined, assign offenders to a readiness level,
- The PBRGI decision matrix with five levels of risk and three levels of readiness, and
- The PBRGI advisory decision to release or defer, based on the decision matrix assignment.

PBRGI Risk Items and Readiness Items

The original draft of the parole release guideline was developed by the Post Incarceration Supervision Task Force of the Colorado Commission on Criminal and Juvenile Justice (CCJJ). This document, approved by the full Commission, served as the source for the recidivism risk and parole readiness items. These items reflect the parole release considerations written into statute, §17-22.5-404(4), C.R.S. DCJ staff, in consultation with staff of the DOC's Office of Planning and Analysis (OPA) and of the Office of Information Technology at DOC and Board members, selected reliable variables to represent each of the elements included in the draft administrative release guideline. Eight variables comprise the risk items and five variables comprise the readiness items of the PBRGI (see Figure B1). Each of the PBRGI items is described below along with a note indicating whether the category assignment is reduced or augmented by the item score.

The original draft of the parole release guideline was developed by the Post Incarceration Supervision Task Force of the Colorado Commission on Criminal and Juvenile Justice.

Risk Items

Item #1: The Colorado Actuarial Risk Assessment Scale. The CARAS (Version 5) is an actuarial risk assessment instrument which, pursuant to §17-22.5-404(2), C.R.S., is developed by DCJ for use by the Parole Board when making release decisions. The CARAS is a 9-item risk scale that predicts three-year recidivism rates defined as re-arrest for any crime or new court filing.³⁰ The CARAS score is based on static (unchangeable) offender risk factors, for example, current age, number of current conviction charges and number of previous incarcerations. Offenders fall into one of five risk categories that range from “very low” to “very high” risk. The assigned CARAS risk category serves as the baseline risk assignment in the risk algorithm.

³⁰ For additional information on the CARAS see, http://dcj.state.co.us/ors/risk_assesment.htm.

Item #2: Code of Penal Discipline / Victim Threat. Any offender with a conviction of a Class II: 25c offense, Harassment of Victim, is assigned to the highest level of risk.³¹ The baseline risk assignment is not altered for offenders without such a conviction.

Item #3: Code of Penal Discipline/ Class I Offense. Any offender with a conviction for a Class I offense during the previous 12 months is re-assigned to the highest level of risk. Offenders with no Class I offense in the last 12 months receive a fractional point reduction in risk (in other words, a partial category reduction).

Item #4: Code of Penal Discipline/ Class II Offense. Any offender with a conviction for a Class II offense, other than Harassment of Victim, during the previous three months is re-assigned two levels higher than the baseline category of risk. For example, an offender whose baseline risk assignment was “very low” would be shifted to “medium” risk. Offenders with no Class II offense in the last three months receive a fractional category reduction in risk.

Item #5: Escape/Abscond or Attempt. The existence of one or more escapes/absconds or attempts results in the offender being advanced two categories of risk. The baseline risk assignment is not altered for offenders with no escape/abscond or attempts.

Item #6: 60 Years of Age or Older (Risk moderator). The baseline risk assignment is reduced by two categories for offenders who are 60 years of age or older. The baseline risk assignment is not altered for offenders who have not reached the age of 60.

Item #7: Medical Condition Reduces Risk of Re-Offense (Risk moderator). The baseline risk assignment is reduced by two categories for offenders whose record indicates a debilitating medical condition that reduces the risk of re-offense. The baseline risk assignment is not altered for offenders who do not have such medical conditions.

Item #8: Manageable in the Community (Risk moderator). *This variable is derived from a rating by the Board member conducting the parole application hearing.* Based on the review of an offender’s record and information gathered during the interview conducted during parole application hearing, Board members rate whether or not they expect a greater likelihood of success for the offender if transitioned to the community. The baseline risk assignment is reduced by one category for offenders who are expected by the member to be successful if placed under community supervision. The baseline risk assignment is not altered for offenders who are not assessed by the member to be successful under community supervision.

Readiness Items

Item #9: Level of Service Inventory-Revised.³² The LSI-R total score serves as a modified baseline in the readiness algorithm. The 54-item LSI-R is a measure of offenders’ criminogenic

³¹ See the DOC Administrative Regulation 150-01, Class II: 25(c) at www.doc.state.co.us/administrative-regulations

³² The LSI is a programming assessment tool comprised of 54 items across ten different subcomponents: criminal history, education/employment, financial, marital/family, accommodations, leisure/recreation, companions, alcohol/drug problems, emotional/personal, and attitudes/orientation. Each item is scored either 0 or 1, where a point indicates that an item is true. After each item is scored, the points are totaled to obtain a composite risk score. Higher scores are indicative of greater service needs.

needs and, based on the total score, offenders are assigned to one of four actuarially-determined readiness categories. The LSI-R is a modified baseline because this item, together with the LSI Rater Box item,³³ is weighed equally with the remaining items in the readiness algorithm.

Item #10: Level of Service Inventory-Rater Box Average. The average of the 13 Rater Box items on the LSI-R contributes points to the overall readiness total. The LSI-R Rater Box items score offenders on positive adjustment characteristics. The LSI Rater Box average, in combination with the LSI-R total score category, is weighed equally with the remaining items in the readiness algorithm.

Item #11: Program Participation / Progress. *This variable is derived from a rating by the Board member conducting the parole application hearing.* The Board member provides a rating of the offender's enrollment, participation, and progress in DOC programs. The assignment of points does not penalize offenders who are wait-listed for programs or, for whatever reason as determined by the Board member, offenders for whom current program participation is considered not applicable. Points assigned to the ratings are added to the overall readiness total.

Item #12: Treatment Participation / Progress. *This variable is derived from a rating by the Board member conducting the parole application hearing.* The Board member provides a rating of the offender's participation and progress in DOC treatment. The assignment of points does not penalize offenders who are wait-listed for treatment or, for whatever reason as determined by the Board member, offenders for whom current treatment is considered not applicable. Points assigned to the ratings are added to the overall readiness total.

Item #13: Parole Plan. *This variable is derived from a rating by the Board member conducting the parole application hearing.* The Board member provides a rating of the quality and thoroughness of the offender's parole plan. Considerations of the parole plan may include the provision for housing, parole location, work, education, treatment, parole sponsor, social support, vocational/leisure activities and other transition factors. Points assigned to the ratings are added to the overall readiness total.

PBRGI Algorithms and Decision Matrix

The first item (Item #1: CARAS) in the risk dimension and the first item (Item #9: LSI) in the Readiness dimension determine a baseline level for each offender on risk and on readiness. The remaining items in the risk or readiness dimension determine whether the offender is shifted up or down the levels of the dimension.

The risk algorithm is calculated by the simple addition of points received for each of the eight risk items and the total number of points is associated with a particular risk level. The readiness algorithm is based on the calculated average of the points received for each of the five readiness items and the average is associated with a particular readiness level (See Figure B1.).

³³ Thirteen of the 54 items are considered dynamic factors that can change to reflect current offender experiences and characteristics. These items are rated on a scale from 0 to 3 (in addition to the item score). The 13 ratings are then totaled to obtain a rater score with higher scores indicating more pro-social influences in an offender's life.

Figure B2. Advisory release decision recommendation matrix with risk and readiness categories and associated recommendations.

| ADVISORY RELEASE DECISION RECOMMENDATION MATRIX | | | |
|--------------------------------------------------------|--------------------------------------------------|-----------------|----------------------------------------------|
| <u>RISK CATEGORY</u> | <u>READINESS CATEGORY</u> | | |
| | 3 High | 2 Medium | 1 Low |
| 1 Very Low | RELEASE (Best candidates for release) | RELEASE | RELEASE |
| 2 Low | RELEASE | RELEASE | DEFER |
| 3 Medium | RELEASE | RELEASE | DEFER |
| 4 High | RELEASE | DEFER | DEFER |
| 5 Very High | DEFER | DEFER | DEFER (Best candidates for defer) |

Placement in the Matrix. As detailed in Figure B1, computations of the risk algorithm *total score* and the readiness algorithm *average score* result in the assignment of each offender to a risk and a readiness level:

Risk Levels

- Very Low (best candidates for release)
- Low
- Medium
- High
- Very High (best candidates for defer)

Readiness Levels

- High (best candidates for release)
- Medium
- Low (best candidates for defer)

The combination of the risk and readiness levels places an offender into one of the 15 categories in the PBRGI decision matrix. The risk by readiness decision matrix comprising the five risk and three readiness levels may be found in Figure B2. Each decision matrix risk/readiness combination is associated with an advisory release decision recommendation either to “RELEASE” the offender to parole or to “DEFER” the offender to a subsequent parole consideration hearing, continuing the

period of incarceration. Note that all parole release candidates falling in the “very low risk” category are recommended for release; whereas, all those falling in the “very high risk” category are recommended for deferral.³⁴ Offenders assigned to the lower risk/higher readiness combinations (the upper left area of the matrix) would be considered the better candidates for release and those assigned to the higher risk/lower readiness combinations (the lower right area of the matrix) would be considered the better candidates for deferral.

Matrix Decision “Environments.” The relative “decision environment” for the Board members is quite different, depending on an offender’s PBRGI risk/readiness assignment under consideration. It is expected that the “release area” of the decision matrix and the “defer area” of the decision matrix will each have its own characteristic decision “environments.” There are several overlapping

The Board’s perceived “decision environment” is predictive of the choice to agree with or depart from the PBRGI recommendation.

descriptors that could be used to describe these varying decision circumstances represented in the matrix: simple vs. complex, easy vs. difficult, and safer vs. riskier. Of course, each of these dimensions is referenced in relative terms, given the stakes inherent in the decision to release an offender from prison to parole. The Board’s perception regarding these decision characteristics may correspond to the degree of agreement with or departure from the advisory recommendation. Given that the Board’s primary, statutory release consideration is risk of re-offense and, thereby, public safety, members tend to make decisions that favor the choice to defer when the decision environment is perceived as, using the descriptors mentioned, complex, difficult, or riskier. The following will describe more specific examples of the Board members’ decision environment employing these descriptors.

The impact of these decision environments is most readily apparent when considering the extreme areas of the decision matrix: an assignment to the upper left (lower risk/higher readiness) or the lower right of the matrix (higher risk/lower readiness). The decision characteristics in these matrix areas may be perceived as relatively simpler, easier, or safer. The less risky, more ready offender would be perceived as more appropriate for release (a simple, easy, or safe decision *to release*) and the more risky, less ready offender would be perceived as more appropriate for a deferral (a simple, easy, or safe decision *to defer*). The Board member is more likely to agree with the advisory recommendation to release or to defer in these circumstances.

Compare this to the opposite areas of the decision matrix where Board members will be more likely to defer than release offenders. This “boundary region” of the matrix (specifically, the low/low, the medium/medium, and the high/high risk/readiness combinations) separates the release from the defer regions of the matrix. The decision to release an offender who is “very low” risk, but also “low” on readiness would be perceived as more complex, difficult or risky. Relatedly, the decision to release would be perceived as more complex, difficult, or risky regarding the offender who is “high” on readiness, but also “high” risk. Again, given the Board’s primary statutory consideration is the risk of re-offense, members are more likely to make the risk avoidant decision to defer the offenders assigned to this boundary area of the matrix, thereby departing from recommendations in the release area and agreeing with recommendations in the defer area.

³⁴ The advisory recommendation to release or defer for each level of risk and readiness was assigned by the original draft administrative guideline instrument.

APPENDIX C

**Parole Board Release Guideline Instrument:
Preliminary Validity Study**

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Parole Board Release Guideline Instrument: Preliminary Validity Study

[These analyses, were previously presented in the “Analysis of Colorado State Board of Parole Decisions: FY 2012 Report” and are included in this report as an appendix for ease of reference.]

Introduction. After the original draft of the Parole Board Release Guideline Instrument (PBRGI) was operationalized (see Appendix B), the following were undertaken to determine the extent to which the assignment of the advisory hearing decision recommendation was reliable and valid:

- A preliminary retrospective recidivism validity study, and
- Reliability testing and confirmation of the PBRGI programming logic.

Preliminary PBRGI Recidivism Validity Study. Following the design of the PBRGI, a retrospective study was undertaken by the staff of the Division of Criminal Justice (DCJ) to estimate its preliminary predictive validity. One approach to test the predictive validity of the PBRGI is to explore the relationship between an offender’s position in the decision recommendation matrix and the offender’s recidivism outcome. This retrospective analysis was conducted on 25,585 non-sex offenders³⁵ who were released from the Colorado Department of Corrections (DOC) between FY 2004 and FY 2007 and whose three-year recidivism rates had already been determined. This retrospective method is necessarily speculative, but allows a tentative estimation of the validity of the decision matrix in predicting “future” recidivism.

Following the design of the PBRGI, a retrospective study was undertaken to estimate its preliminary predictive validity.

It was necessary to calculate a risk and readiness score for each of the 25,585 offenders in the sample, based on the algorithm variables available at the time of each offender’s release. As described above, four variables across the two algorithms require input by Board members at the time of the hearing and, obviously, these data are not available for calculations of risk and readiness in this sample. For these four variables, the “inputs” by Board members were estimated using proxy variables from the offender’s institutional record. The conceptual overlap between these particular variables and concepts underlying items from the Level of Service Inventory-Revised (LSI-R) allowed for adequate estimations.

For example, PBRGI Item #8 in the risk calculation (Is the offender perceived as manageable in the community?) was estimated by using a combination of an offender’s escape/abscond history and items from the Attitude/Orientation Subscale of the LSI-R. Similar estimations using LSI-R items and offender data were constructed for the three remaining “input” variables included in the readiness calculation. Distributions of scores on these estimated “input” variables revealed rather

³⁵ For sex offenders, pursuant to §17-22.5-404 (4)(c)(II), C.R.S., parole release decisions are guided by criteria created by the Sex Offender Management Board (SOMB). These criteria may be found at the SOMB website (dcj.state.co.us/odvsom/sex_offender/adults.html#standards), in the document entitled *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, in Appendix J: Parole Guidelines for the Discretionary Release on Determinate-Sentenced Sex Offenders (determinate criteria) and in Lifetime Supervision Criteria: Section LS 4.200 - Criteria for Successful Progress in Treatment in Prison: Sex Offender Treatment and Management Program (indeterminate criteria).

conservative scoring that was considered appropriate, given the exploratory nature of this initial validity analysis.

With the combination of previously existing and estimated variables, a risk and readiness score was calculated for each of the 25,585 offenders in the sample. Table C1 provides the percentage of offenders in the retrospective sample who would be assigned to each of the 15 risk/readiness positions in the decision matrix. As a reminder, offenders assigned to the blue (lighter) region of the matrix receive an advisory recommendation to release and those in the red (darker) region receive an advisory recommendation to defer.

As described above, the conservative placement of offenders in the readiness dimension is readily apparent in Table C1. Only about 5% of offenders overall were placed in the highest level of readiness. Across the risk dimension, the percentage of offenders is somewhat evenly distributed in the four lower levels of risk (14% to 19%) with a larger percentage of offenders placed in the very high risk category (36%). The overall release and defer recommendation percentages in this conservatively-estimated decision matrix is 33.7% for release and 66.3% for defer.

The next step in the preliminary analysis was to determine how many offenders recidivated of the total number of offenders assigned to each of the matrix combinations. Recidivism was defined to include any of the following events over a three-year period following the release from prison: a new district court case filing, a conviction for a new felony, or a return to prison for a technical violation while on parole.

Table C2 displays the percentage of offenders who met this definition of recidivism in their assigned decision matrix position. With the exception of the “very high” risk category, the percentage of offenders in each risk category who recidivated increases from the “high” to the “low” readiness category. For example, among those offenders categorized as “very low” risk, the percentage that recidivated increases from 20.3% (high readiness) to 38.0% (low readiness). Although this pattern of increasing recidivism rates exists from the “very low” to the “high” risk category, the degree of readiness does not appear to differentiate the recidivism rates of those in the “very high” risk category.

Appropriately, the pattern of increasing recidivism rates is consistent across all the readiness categories at each increasing level of risk. For example, among those categorized as “high” readiness, the percentage of offenders who recidivated increases from 20.3% in the “very low” risk to 74.0% in the “very high” risk categories. This pattern of increasing recidivism also holds for those assigned to the “medium” and “low” readiness categories.

As discussed earlier regarding the “medium or boundary region” of the matrix, the recidivism rates

Therefore, the findings from this retrospective, exploratory analysis are supportive of the predictive validity of the PBRGI decision system.

for these risk/readiness combinations (namely, high risk/readiness at 52.5%, medium risk/readiness at 54.0%, and low risk/readiness at 50.7%) confirms the challenge of release decisions for offenders so assigned.

Therefore, the findings from this retrospective, exploratory analysis are supportive of the predictive validity of the PBRGI decision system. The recidivism rates across the risk and the readiness

Table C1. Validity Study: Counts and percentages of offenders assigned to each PBRGI risk/readiness matrix combination (FY 2004-2007 release sample).

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|------------------------------------|-----------------------------|----------------------------------|-----------------|--------------|-------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 676 | 2,235 | 1,015 | 3,926 |
| | % within Very Low Risk | 17.2% | 56.9% | 25.9% | 100.00% |
| | % within Readiness Category | 53.7% | 18.7% | 8.2% | 15.3% |
| | % of Total | 2.6% | 8.7% | 4.0% | 15.3% |
| 2 Low | Count | 232 | 2,101 | 1,344 | 3,677 |
| | % within Low Risk | 6.3% | 57.1% | 36.6% | 100.0% |
| | % within Readiness Category | 18.4% | 17.6% | 10.9% | 14.4% |
| | % of Total | 0.9% | 8.2% | 5.3% | 14.4% |
| 3 Medium | Count | 146 | 2,118 | 1,745 | 4,009 |
| | % within Medium Risk | 3.6% | 52.8% | 43.5% | 100.0% |
| | % within Readiness Category | 11.6% | 17.7% | 14.1% | 15.7% |
| | % of Total | 0.6% | 8.3% | 6.8% | 15.7% |
| 4 High | Count | 101 | 2,076 | 2,576 | 4,753 |
| | % within High Risk | 2.1% | 43.7% | 54.2% | 100.0% |
| | % within Readiness Category | 8.0% | 17.4% | 20.8% | 18.6% |
| | % of Total | 0.4% | 8.1% | 10.1% | 18.6% |
| 5 Very High | Count | 104 | 3,424 | 5,692 | 9,220 |
| | % within Very High Risk | 1.1% | 37.1% | 61.7% | 100.0% |
| | % within Readiness Category | 8.3% | 28.6% | 46.0% | 36.0% |
| | % of Total | 0.4% | 13.4% | 22.2% | 36.0% |
| Total in Readiness Category | Count | 1,259 | 11,954 | 12,372 | 25,585 |
| | % within Risk Category | 4.9% | 46.7% | 48.4% | 100.0% |
| | % within Readiness Category | 100.0% | 100.0% | 100.0% | 100.0% |
| | % of Total | 4.9% | 46.7% | 48.4% | 100.0% |

categories demonstrated logical and robust recidivism patterns, although an inherent weakness exists in the study regarding the necessity to estimate the readiness algorithm variables.

Additionally, the recidivism rates for offenders assigned in the decision matrix boundary between the release and defer recommendations reflect the actual decision dilemma faced by Board members weighing the release of offenders at the midpoints of risk and readiness. For these reasons, the exploratory validity study, though not definitive, was supportive of the continued development and implementation of the PBRGI. The “blind test” and the first-month implementation test of the PBRGI further assesses the instrument’s validity and are described in Appendices D and E.

Table C2. Validity Study: Counts and percentages of offenders who recidivated for any reason in each PBRGI risk/readiness matrix combination. (FY2004-2007 release sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|--------------------------------------------|--------------------------------------------|----------------------------------|------------------------------|------------------------------|---------------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count % with any recidivism | 137/676 20.3% | 712/2,235 31.9% | 386/1,015 38.0% | 1,235/3,926 31.5% |
| 2 Low | Count % with any recidivism | 89/232 38.4% | 938/2,101 44.6% | 682/1,344 50.7% | 1,709/3,677 46.5% |
| 3 Medium | Count % with any recidivism | 57/146 39.0% | 1,143/2,118 54.0% | 1,026/1,745 58.8% | 2,226/4,009 55.5% |
| 4 High | Count % with any recidivism | 53/101 52.5% | 1,297/2,076 62.5% | 1,690/2,576 65.6% | 3,040/4,753 64.0% |
| 5 Very High | Count % with any recidivism | 77/104 74.0% | 2,539/3,424 74.2% | 4,135/5,692 72.6% | 6,751/9,220 73.2% |
| Total in Readiness Category | Count % with any recidivism | 413/1,259 32.8% | 6,629/11,954 55.5% | 7,919/12,372 64.0% | 14,961/25,585 58.5% |

Reliability Testing of the PBRGI Programming Logic

Introduction. Following the PBRGI exploratory validity study described above, the staff of DCJ worked with the staff of the Office of Information Technology (OIT) at DOC who wrote the programming logic of the PBRGI decision system. The programming logic was carefully reviewed to determine whether the variables from the DOC Information System (DCIS) databases exactly reflected the intent of the variables selected for inclusion in the PBRGI. Upon completion of the programming, staff of the OIT at DOC and the Office of Planning and Analysis (OPA) performed quality assurance tests of the data output from the programming logic.

Reliability Testing. The programming module, written by staff of OIT at DOC, is designed to accomplish the following:

- Identify the parole release applicants appropriate for the PBRGI recommendation (that is, non-sex offenders³⁶),
- Display the four “input questions” and store the ratings entered by Board members,
- Assign points to each applicant for each of the 13 PBRGI variables, including the “live” ratings by Board members,
- Calculate the risk and readiness scores,
- Assign the parole applicant to the appropriate risk and readiness categories,
- Assign the parole applicant to the correct position in the PBRGI decision matrix,
- Display the decision recommendation in the Parole Board Hearing Application Portal to Board members during release application hearings,
- Provide an option to display the matrix placement and derivation of risk and readiness scores for review by the Board member, and
- Require the input of reasons if the actual decision departs from the PBRGI recommendation.

The quality assurance testing of the above programming elements by OPA and OIT staff occurred in two phases and was monitored by staff of DCJ. In the initial phase, begun in April 2012, ten non-sex offenders were randomly chosen from those housed in DOC and the above programming functions were initiated by OIT and the results passed to OPA for verification. All of the outputs from the programming elements were reviewed by staff members who manually calculated the risk and readiness scores and verified the assignments to the decision matrix. After discrepancies were resolved for these ten offenders, the second phase of testing repeated the manual comparison process with 100 randomly-chosen non-sex offenders. By the end of July 2012, all calculation discrepancies were resolved in this second phase of logic testing. The next phase of testing, the “blind test” with members of the Colorado State Board of Parole, was undertaken and is described in Appendix D.

All of the outputs from the programming elements were confirmed by staff members who manually calculated the risk and readiness scores and verified the assignments to the decision matrix.

³⁶ The explanation for the exclusion of sex offenders may be found in Footnote 35.

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APPENDIX D

**Parole Board Release Guideline Instrument:
August 2012 “Blind-Test” Validity Study**

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Parole Board Release Guideline Instrument: August 2012 “Blind-Test” Validity Study

[These analyses were conducted during September 2012]

PBRGI “Bind Test”

Following the preliminary validity study described in Appendix C, the next step in the testing of the Parole Board Release Guideline Instrument (PBRGI) was to conduct a “blind test” of the decision system with the members of the Colorado State Board of Parole (“the Board”). The primary purpose of the blind test was to evaluate further the validity of PBRGI advisory recommendations and determine if there was additional support beyond the findings of the preliminary validity study provided in Appendix C.

It is impossible to know the ideal hearing decision or its future outcome. In other words, there is no objective standard by which parole decisions may be measured. Evaluating the degree and pattern of concurrence between the actual Board decision and the PBRGI recommendation provides a strategy to assess validity. This analysis of the degree of concurrence, with a particular focus on departures, may provide a limited indication of validity. This approach necessarily requires the Board to make decisions without knowing the PBRGI recommendation. The blind test methodology addressed several unmet testing needs in this validity assessment of the PBRGI decision system:

- the offenders were actual candidates under consideration for release to parole,
- Board members provided actual responses to the four questions serving as the four “input” variables in the risk and readiness calculations,
- parole application hearing decisions were actual “live” decisions by Board members,
- Board member decisions could be recorded with no influence from (or while being “blind to”) the PBRGI decision recommendation,
- actual distributions of offender assignments to PBRGI levels of risk and levels of readiness could be examined,
- percentages of actual release and defer decisions by Board members and from the PBRGI recommendations could be compared, and
- the PBRGI decision system could be evaluated for any necessary modifications before its implementation.

During the August 2012 blind test, Board members were required to provide responses to the four “input” variables (Described in Appendix B and noted in Appendix B: Figure B1). The advisory release decision recommendations were generated and stored in the background, but not displayed to Board members. Therefore, Board members made their hearing decisions uninfluenced by the advisory recommendation and, as usual, completed the Notice of Colorado Parole Board Action form for either Release or Defer in accordance with the members’ decisions.

Blind-Test Sample. The blind-test sample included 799 non-sex offenders whose release application hearing was finalized during the month of August 2012.³⁷ Demographic characteristics of offenders were not included in these hearing data. Additional offenders' applications for parole release were excluded from the sample because their hearing decisions were still pending or the offenders did not appear for or waived their scheduled hearing. The most common reason for a pending decision was that the application was referred to, awaiting or undergoing full Board review. Because full Board review is required for offenders convicted of a violent offense as defined in statute or whose offense involves violence as defined by the Board, this test sample does not include a representative percentage of violent offenders.

The typical reasons for a non-appearance included the following: the offender was out to court, being transferred, or refused to appear. The typical reasons an offender waives the right to a hearing included the following: wanted deferral to the mandatory release date, wanted to complete a program or treatment, or needed to finalize elements of the parole plan. For non-appearances and waivers, the decision is entered as a "deferral." Because these circumstances do not allow the possibility of a release decision, these perfunctory deferral decisions were not appropriate for inclusion in the analyses of the decisions and whether there was adherence or departure from the PBRGI advisory recommendation.

As referenced in Footnote 37, the preliminary analyses of blind test data determined that modifications to the PBRGI risk algorithm were necessary. A comparison of the distribution of offenders originally located in the "high" and "very high" baseline risk groups were found to be over-represented in the lower risk categories following the risk algorithm calculation. Point assignments were modified for items #2, 3, and 8 (see Appendix B: Figure B1) to prevent the under-estimation of risk for these higher-risk offenders. No modifications of the readiness algorithm were deemed necessary.

Analyses of this blind test sample of hearing data include the:

- number of offenders assigned to the risk and readiness categories in the PBRGI decision matrix,
- number of release and number of defer Board decisions and PBRGI advisory recommendations,
- number of agreements and departures between Board decisions and PBRGI recommendations, and
- number of agreements and departures within decision matrix categories.

These analyses explore two closely related but different perspectives on the exploration of the validity of the PBRGI:

- Given the assignment of offenders to the positions in the PBRGI decision matrix, are there patterns in the Board's decision to adhere or depart from the advisory recommendations? Do these decision patterns suggest the need to adjust the assignment of "Release" or "Defer" in the PBRGI decision matrix?

³⁷ The DCJ staff analyzed two datasets from the August 2012 blind test: a partial dataset received on August 23rd and a complete dataset received on August 31st. Analysis of the partial dataset allowed the identification of necessary changes in time for the full PBRGI implementation on September 4th. The findings from the partial and the full-month datasets were consistent. The "full-month" findings were chosen for presentation in this report appendix.

- Alternatively, given the Board’s decision to release or defer, are there correspondent characteristics in the risk and readiness assignments of the offenders that would predict this decision outcome? Do these patterns of characteristics suggest the need to adjust the risk and readiness algorithms and, consequently, the PBRGI matrix placements of offenders?

Although the questions were posed separately, the impact of any modification to the PBRGI risk and readiness assignments or the matrix designations of release or defer would be interrelated.

Decision Matrix Assignment. Table D1 provides the count and percentage of offenders from the complete blind test sample assigned to each of the 15 risk/readiness positions in the PBRGI decision matrix. The blue/lighter area in the upper left are the combinations where the PBRGI recommends release and the red/darker area in the bottom right are the combinations where the PBRGI recommends defer. The number of offenders placed in the “very low” (34.7%) or “very high” (24.4%) risk categories was roughly double the number assigned to the three remaining risk categories. Just fewer than 50% of offenders were placed in the “low” readiness category and just over one-third of offenders were placed in the “high” readiness category. The two highest percentages of offenders in any of the 15 risk/readiness combinations were the 15.4% in “very low” risk/”high” readiness and the 14.4% in “very high” risk/”low” readiness. Only 11% (88 offenders) of the sample were placed in the “middle region” of the decision matrix identified earlier in this report as representing the most complex decision circumstances (namely, high/high, medium/medium, and low/low risk readiness).

Decision Types. The total numbers and percentages of defer and release decisions by the Board and the recommendations by the PBRGI are in Table D2 (see row and column “Total”). Although the vernacular of the Board is to “release to MRD” (the Mandatory Release Date), this decision is the conceptual equivalent of the decision to *defer*. This action, to defer offenders to their impending MRD, is thus labeled in Table D2 the more conceptually accurate, “Defer to Mandatory Release Date.”

Of the 799 sample applicants for parole, the PBRGI recommended 451 (56.4%) offenders for release and 348 (43.6%) for defer. As expected relative to the conservative estimates from the preliminary validity study in Appendix C, the percentage of advisory recommendations to release increased from the 33.7% reported previously. Conversely, the percentage of advisory recommendations to defer decreased from the previously reported 66.3%. Board members, who could not see the recommendation during the blind test, decided to release 217 (27.2%) offenders, to defer 385 (48.2%) offenders, and defer 197 (24.7%) offenders to their MRD. Combining the deferral types, therefore, Board members chose to release 27.2% and defer 72.8% of parole applicants, representing 62.6% fewer releases than deferrals during this particular month of study.

In addition to the overall comparisons of release and defer rates, the patterns of decision concurrence is also of interest. The PBRGI recommendation is not considered a standard by which Board decisions will be measured, given that the recommendation is advisory. However, the subsequent presentation will refer to the agreement with or the departure from PBRGI recommendations. Because statute requires an additional action by Board members when departing from the recommendation, namely, providing a departure reason, this convention of expression will be employed, but does not imply a comparative evaluation of Board member decision performance.

Table D1. Counts and percentages of offenders assigned to each PBRGI risk/readiness matrix combination. (FY 2013 August blind-test sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|------------------------------------|-----------------------------|----------------------------------|-----------------|--------------|-------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 123 | 52 | 102 | 277 |
| | % within Very Low Risk | 44.4% | 18.8% | 36.8% | 100.0% |
| | % within Readiness Category | 42.7% | 33.3% | 28.7% | 34.7% |
| | % of Total | 15.4% | 6.5% | 12.8% | 34.7% |
| 2 Low | Count | 53 | 29 | 41 | 123 |
| | % within Low Risk | 43.1% | 23.6% | 33.3% | 100.0% |
| | % within Readiness Category | 18.4% | 18.6% | 11.5% | 15.4% |
| | % of Total | 6.6% | 3.6% | 5.1% | 15.4% |
| 3 Medium | Count | 45 | 25 | 53 | 123 |
| | % within Medium Risk | 36.6% | 20.3% | 43.1% | 100.0% |
| | % within Readiness Category | 15.6% | 16.0% | 14.9% | 15.4% |
| | % of Total | 5.6% | 3.1% | 6.6% | 15.4% |
| 4 High | Count | 22 | 15 | 44 | 81 |
| | % within High Risk | 27.2% | 18.5% | 54.3% | 100.0% |
| | % within Readiness Category | 7.6% | 9.6% | 12.4% | 10.1% |
| | % of Total | 2.8% | 1.9% | 5.5% | 10.1% |
| 5 Very High | Count | 45 | 35 | 115 | 195 |
| | % within Very High Risk | 23.1% | 17.9% | 59.0% | 100.0% |
| | % within Readiness Category | 15.6% | 22.4% | 32.4% | 24.4% |
| | % of Total | 5.6% | 4.4% | 14.4% | 24.4% |
| Total in Readiness Category | Count | 288 | 156 | 355 | 799 |
| | % within Risk Category | 36.0% | 19.5% | 44.4% | 100.0% |
| | % within Readiness Category | 100.0% | 100.0% | 100.0% | 100.0% |
| | % of Total | 36.0% | 19.5% | 44.4% | 100.0% |

Table D2. Counts and overall percentages of Parole Board hearing decisions by PBRGI advisory recommendations.* (FY 2013 August blind test sample)

| Parole Board Hearing Decision | | PBRGI Advisory Recommendation | | Total of PB Decisions |
|----------------------------------------|------------------|--------------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| | | Defer | Release | |
| Defer | Count Percent | 228 28.5% | 157 19.6% | 385 48.2% |
| Defer to Mandatory Release Date | Count Percent | 76 9.5% <i>Total Defer = 304 38.0%</i> | 121 15.1% <i>Total Defer = 278 34.8%</i> | 197 24.7% <i>Total Defer = 582 72.8%</i> |
| Release Discretionary | Count Percent | 44 5.5% | 173 21.7% | 217 27.2% |
| Total of PBRGI Recommendations | Count Percent | 348 43.6% | 451 56.4% | 799 100.0% |

*Blue (lighter cells) indicates agreement between the Board decision and the PBRGI recommendation and red (darker cells) indicates departure by the Board from the PBRGI recommendation.

Decision Concurrence. Also available in Table D2, and adhering to statutory analysis requirements, are the percentages of agreement and departure between the Board decisions and the PBRGI advisory recommendations. The overall degree of agreement is derived from two sources: agreements with recommendations to release and agreements with recommendations to defer (blue/lighter areas of Table D2). Collapsing these two sources of agreement, *59.7% of all Board member decisions agreed with the PBRGI recommendations.* The combined agreement percentage (59.7%) conceals that the degree of deferral agreement (87.4% or 304 agreements within the 348 defer recommendations) is nearly 130% higher than the degree of release agreement (38.4% or 173 agreements within the 451 release recommendations). Alternatively, *when the PBRGI recommendation was to defer, the overall percentage of agreement was seven times larger than the overall percentage of departure, 38.0% vs. 5.5%, respectively.*

The overall degree of departure is derived from two sources: departures from recommendations to release and departures from recommendations to defer (red/darker areas in Table D2). Collapsing across these decision types, *40.3% of all Board decisions departed from the PBRGI recommendations.* The combined departure percentage (40.3%) reveals the converse of the previous

finding: the degree of release departure (61.6% or 278 departures within the 451 release recommendations) is nearly 390% higher than the degree of deferral departure (12.6% or 44 departures within the 348 defer recommendations). Alternatively, *when the PBRGI recommendation was to release*, the overall percentage of departure was higher than the overall percentage of agreement, 34.8% vs. 21.7%, respectively.

In the next section, an analysis of the pattern of decision concurrence is reported within each combination of the PBRGI risk/readiness decision matrix.

Decision Concurrence by Matrix Assignment. Relating to Table D1, Table D3 displays the number of offenders who fall into each of the 15 risk/readiness combinations of the PBRGI decision matrix and the percentage of agreement or departure in that specific combination. Again, this analysis addressed whether the designations of “Release” or “Defer” in the decision matrix were supported. The blue/lighter area in the upper left are the combinations where the PBRGI recommends release and the red/darker area in the bottom right are the combinations where the PBRGI recommends defer. When collapsing across levels of readiness, there was a larger degree of Board/PBRGI agreement with each increasing level of risk, 38.3% to 85.6%. When collapsing levels of risk, the highest degree of agreement was found in the low readiness category at 72.1% and lower agreement of approximately 50% existed in the two remaining readiness categories. Given the Board’s propensity to defer versus release (72.8% versus 27.2%, respectively), it is obvious from both Tables E2 and E3 that there was higher agreement between Board decisions and PBRGI recommendations when the offender was recommended for defer than when recommended for release.

Of the offenders identified as the better candidates for release (blue outline at upper left of Table D3), the degree of decision agreement was 43.6% (112/257). Specifically, this would include offenders categorized in one of the two highest levels of readiness (“high” and “medium”) and one of the two lowest levels of risk (“very low” and “low”). Recall that the offenders categorized across the entire “very low” risk category were designated as appropriate for release, regardless of level of readiness and were also non-violent because they were not the subject of full Board review consideration. The degree of agreement for the “very low” risk offenders in the “low” readiness category was also relatively low (23.5%).

Of the offenders identified as the better candidates for deferral (red outline at lower right of Table D3), the degree of agreement was 92.8% (194/209). Specifically, this would include offenders categorized in one of the two lowest levels of readiness (“low” and “medium”) and one of the two highest levels of risk (“high” and “very high”). Recall that the offenders categorized across the entire “very high” risk category were designated in the decision matrix for deferral, regardless of level of readiness. The degree of agreement for the “very high” risk offenders in the “high” readiness category is lower relative to the other readiness categories (62.2%), indicating that, to an extent, the Board considered “high” readiness a compensating factor when evaluating even the “very high” risk offenders.

The consequences of the conflicting risk and readiness characteristics associated with decisions in the “boundary region” separating the release from the defer areas of the matrix was apparent in these actual decisions by the Board. Again, as described in the “decision environments” section of Appendix B, it was predicted that Board members would be more likely to defer under

circumstances of perceived uncertainty regarding particular combinations of risk and readiness. There was a higher level of agreement on deferrals for decisions in the difficult “middle boundary” combination recommending defer at 90.2% (specifically the “low” risk, but also “low” readiness combination). On the other hand, as predicted, the release recommendations for offenders located near the “middle decision boundary” were subject to a much lower degree of agreement, 34.0% (combining the agreements in the medium/medium and high/high risk/readiness boundary combinations). Additional evidence of the difficulty of decisions regarding offenders falling in the mid-range also may be seen comparing the lower degree of agreement in the “medium” level of readiness (46.8%) relative to the “high” and “low” levels of readiness (51.4% and 72.1%, respectively).

Table D3. Counts of offenders assigned to each PBRGI risk/readiness matrix combination and the associated percentage of agreement and departure between the Board decision and the PBRGI recommendation.* (FY 2013 August blind-test sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|------------------------------------|-------------|---------------------------|----------|-------|------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 123 | 52 | 102 | 277 |
| | % Agreement | 52.8% | 32.7% | 23.5% | 38.3% |
| | % Departure | 47.2% | 67.3% | 76.5% | 61.7% |
| 2 Low | Count | 53 | 29 | 41 | 123 |
| | % Agreement | 45.3% | 20.7% | 90.2% | 54.5% |
| | % Departure | 54.7% | 79.3% | 9.8% | 45.5% |
| 3 Medium | Count | 45 | 25 | 53 | 123 |
| | % Agreement | 46.7% | 24.0% | 84.9% | 58.5% |
| | % Departure | 53.3% | 76.0% | 15.1% | 41.5% |
| 4 High | Count | 22 | 15 | 44 | 81 |
| | % Agreement | 45.5% | 100.0% | 90.9% | 80.2% |
| | % Departure | 54.5% | 0.0% | 9.1% | 19.8% |
| 5 Very High | Count | 45 | 35 | 115 | 195 |
| | % Agreement | 62.2% | 82.9% | 95.7% | 85.6% |
| | % Departure | 37.8% | 17.1% | 4.3% | 14.4% |
| Total in Readiness Category | Count | 288 | 156 | 355 | 799 |
| | % Agreement | 51.4% | 46.8% | 72.1% | 59.7% |
| | % Departure | 48.6% | 53.2% | 27.9% | 40.3% |

* The number of decisions that agreed or departed is calculated by multiplying the cell count by the agreement or the departure percentage in the same cell. For example, 65 decisions were in agreement in the “very low” risk by “high” readiness matrix combination (123 * 52.8%).

Decision Concurrence by Decision Type. In the next sections, which relate to Table D2, Board decisions are explored from a different perspective by identifying the risk and readiness characteristics of the offenders where the Board agrees or departs from the PBRGI advisory recommendation. Again, this analysis addressed whether these patterns of characteristics suggest the need to adjust the risk and readiness algorithms of the PBRGI. Because statute requires the Board to provide a reason when departing from the advisory recommendation,³⁸ these instances will be explored more extensively.

Summary of Agreements: PB Releases and Deferrals. There were 173 (21.7%) decisions where Board members *agreed with the PBRGI advisory recommendation to release*. Of these instances, 136 (78.6%) offenders were categorized as “very low” or “low” risk and 149 (86.1%) were categorized with “high” or “medium” readiness. There were 304 (38.0%) decisions where Board members *agreed with the PBRGI advisory recommendation to defer*. Of these instances, 222 (73.0%) offenders were categorized as “high” or “very high” risk and 276 (90.8%) were categorized with “medium” or “low” readiness.

Analysis of Departures: Board Decides to Release. This analysis describes the instances where Board members *departed from the PBRGI advisory recommendation to defer* and decided to release the offender to parole. Although Board members demonstrated a high degree of agreement overall with defer recommendations (87.4% or 304/348 in Table D2), there were 44 instances of departure where the Board instead chose to release. Still, this represents only 12.6% of the total advisory recommendations to defer. Of these 44 instances, 32 (72.7%) offenders were categorized by the PBRGI as “high” or “very high” risk and 27 (61.4%) fell in the “low” or “medium” readiness categories. Combining the two dimensions of risk and readiness, the Board chose to release 15 (34.1% of the 44 offenders) who were categorized by the PBRGI as the better candidates for deferral (placed in “high” or “very high” risk *and* “low” or “medium” readiness).

Analysis of Departures: Board Decides to Defer. This analysis describes instances where Board members *departed from the PBRGI advisory recommendation to release* and decided to defer the offender for a continuing period of incarceration. As was reported earlier in Table D2, this circumstance occurred at a higher rate with 278 (61.6%) departures from the total 451 offenders who were assigned an advisory recommendation to release. Although these 278 offenders may be divided into 157 who were deferred and 121 who were deferred to their MRD, these groups were combined, given the equivalent outcome of non-release for the offender. Of these 278 instances, 223 (80.2%) were categorized by the PBRGI as “low” or “very low” risk and 200 (71.9%) fell in the “medium” or “high” readiness categories. Combining the two dimensions of risk and readiness, the Board chose to defer 145 (52.2% of the 278 offenders) who were categorized by the PBRGI as the better candidates for release (placed in “low” or “very low” risk *and* “medium” or “high” readiness).

Due to the necessary conditions of the blind test, Board members could not provide departure reasons in either of the two departures circumstances described above. Therefore, these are not available for review to provide supplemental explanation for these decisions to depart from the advisory recommendation.

³⁸ See §17-22.5-404(6)(b), C.R.S., which is available in Appendix H.

Referring to the questions posed previously, the results were reviewed for possible modifications to the decision algorithms and matrix designations. In regard to the concurrence pattern of Board decisions, there was a higher degree of agreement on the decision to defer, but lower agreement on the decision to release. The follow-up of the few deferral departures found that 34.1% of these offenders appeared, according to risk and readiness considerations, to be the better candidates for deferral. The follow-up of the large percentage of release departures found that 52.2% appeared, according to risk and readiness considerations, to be the better candidates for release. It is possible that factors available to or discovered by Board members during the application hearing, and not included in the PBRGI decision system, played a role in these decisions to depart from the PBRGI release recommendations.

Based on the available evidence and without the departure reasons to explore, there was no clear indication how to make modifications to the PBRGI risk/readiness algorithms or matrix designations. Modifications might actually shift classifications of risk and readiness and the designations of “Release” and “Defer” to yield less effective decision support. At the time of the blind-test validity study, the extent to which Board member decisions would be influenced by seeing the display of the advisory recommendation was unknown. Therefore, no modifications were deemed warranted based the data available from the blind test. Although, as previously mentioned, there is no exact standard by which either the Board decisions or the PBRGI advisory recommendations can be precisely measured, the overall moderate degree of agreement found in the above analyses provides another source of preliminary support for the validity of the PBRGI decision system.

The analyses of data from the first month following the implementation of the PBRGI provided additional information to investigate the decision system. Namely, Board members could view the advisory recommendation and provide reasons for departure from the advisory recommendation. Appendix E reports on the September 2012 implementation and the analyses of the first month of hearing decisions.

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APPENDIX E

**Parole Board Release Guideline Instrument:
September 2012 Implementation and Validity Study**

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Parole Board Release Guideline Instrument: September 2012 Implementation and Validity Study

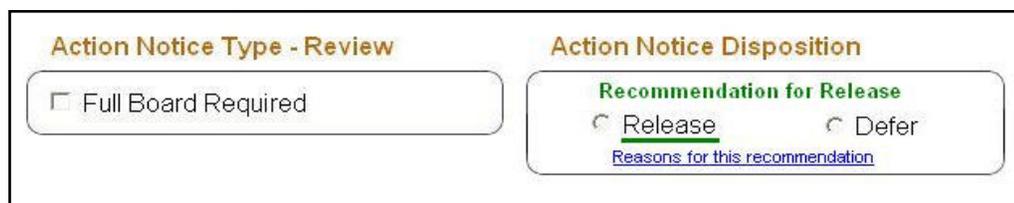
[These analyses were conducted during October 2012]

PBRGI Implementation and First-Month Data

Implementation. Following the August 2012 PBRGI Blind Test with the Board described in Appendix D, the decision system was fully implemented starting on September 4, 2012. Full implementation of the PBRGI resulted in the addition of the full PBRGI feature set to the “Action Notice” area of the automated Parole Board Hearing Application Portal. The full sequence of the parole application decision process with the integrated PBRGI element is as follows:

- 1) After conducting a hearing, Board members select the “Action Notice” tab in the Portal.
- 2) Board members see a pop-up screen that requires responses to four questions connected to PBRGI variables in the risk and readiness algorithms (see Appendix B: Figure B1 for these “PB input” items).
- 3) Upon submitting the responses, four item scores are generated and immediately stored in the Portal system for use by the risk and readiness algorithms.
- 4) Board members then see the “Action Notice” screen where, in the “Action Notice Disposition” area, the PBRGI recommendation is immediately displayed (an example is provided in Figure E1 below).
- 5) The PBRGI recommendation appears in a statement above the “Release” and “Defer” options and the recommended choice is also underlined. Additionally, Board members may view additional information in a pop-up screen by clicking the “Reasons for this recommendation” link. The pop-up displays the parole applicant’s specific risk/readiness position in the decision matrix and each of the applicant’s 13 PBRGI item scores.

Figure E1. Image detail of the “Action Notice” screen in the Parole board Application Hearing Portal with example PBRGI recommendation displayed.



- 6) Board members choose whether, if required or desired, to forward the applicant to full Board review or to “Release” or “Defer” the parole applicant.³⁹
- 7) The choice of “Release” or “Defer” initiates the appearance of either the form labeled, Parole Board Action: Release, or the form labeled, Parole Board Action: Defer.
- 8) At the top of the form, the Board member endorses a checkbox acknowledging that the PBRGI recommendation was seen and, if departing from the advisory recommendation, provides a departure reason(s).
- 9) The Board member completes the remainder of the appropriate form by entering the desired (general) reasons for the hearing decision.
- 10) The choice to release or defer, the PBRGI advisory recommendation, the departure reason(s), if applicable, and all general decision reasons are stored in the Hearing Portal database.

A preliminary review of the first month of PBRGI data identified an omission in the design of the process to request reasons for recommendation departures. The consequences of this omission were, in one decision situation, unnecessarily to request reasons for departures and, in another, to fail to request necessary reasons for departures. This omission was confirmed and the solution identified in a meeting with Board members on October 2, 2012. With additional data supplied by DOC’s Office of Planning and Analysis, the solution allowed DCJ staff to correct the data for the analyses of decision concurrence from the August Blind Test and for the September Implementation Test. Although the description of the problem is somewhat complex, the solution was quite simple.

In order to describe the solution, the six possible Parole Board/PBRGI decision combinations are delineated in Figure E2. It should be noted that the advisory release recommendation from the PBRGI is defined as an order for the imminent (“discretionary”) release of the offender from incarceration to parole. Of the six decision possibilities, four of the decision combinations were appropriately accommodated in the initial departure request process (noted in Figure E2 with asterisks *); however, two of the combinations were not accommodated (noted in Figure E2 with hash marks #). The following paragraph describes the problem pictured in Figure E2.

Historically, the Board employed the Release Action (paper) Form to enter an order that the offender should be “released” at their upcoming mandatory release date (MRD). However, the effective outcome of the decision “to release at MRD” is actually to *defer* offenders to their MRD and does not represent a discretionary release. The design of the electronic form matched this traditional paper design because it was familiar to Board members. To “release at MRD,” Board

³⁹ Board members choose the Defer option and complete the *Defer Action Form* when deciding that the offender should continue the current sentence. The offender is “deferred” to the next scheduled parole application hearing, which may be for another 1-5 years, depending on the discretion of the Board and the offense category. The Defer option is also chosen if the offender cannot appear or waives the right to a hearing. Board members choose the Release option and complete the *Release Action Form* when deciding the offender should be released from incarceration (a “discretionary release”) or released on the mandatory release date (a “mandatory release”). A “release to MRD” may be up to 14 months after the hearing date resulting in an effective release just fewer than 12 months away (assuming that all possible earned time is credited to the offender’s time served).

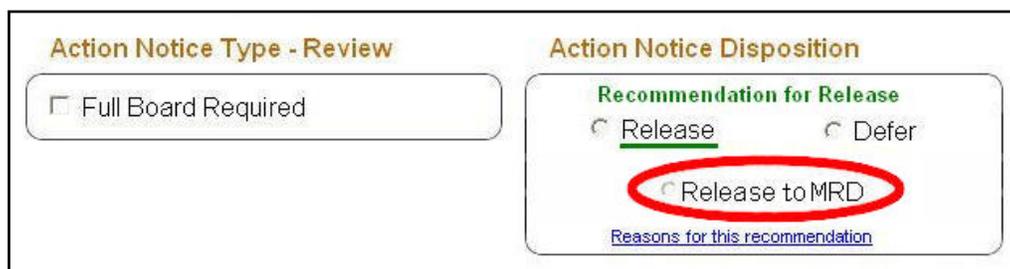
Figure E2. Matrix of Parole Board decisions and PBRGI recommendations indicating whether the request for departure reasons is required.

| Parole Board Decision Choices | PBRGI Recommendations | |
|---------------------------------|------------------------------------------------|------------------------------------------------|
| | Defer | Release: Discretionary |
| Defer | *Agree | *Depart <i>Departure reason(s) required</i> |
| Defer to Mandatory Release Date | #Agree | #Depart <i>Departure reason(s) required</i> |
| Release: Discretionary | *Depart <i>Departure reason(s) required</i> | *Agree |

* Combinations accommodated in the initial design of the PBRGI decision system.

Combinations not accommodated in the PBRGI decision system.

Figure E3. Image detail of the “Action Notice” screen in the Parole Board Hearing Application Portal with “Release to MRD” modification. (Compare to Figure E1)



members chose the *Release* option (pictured in Figure E1 above) to access the electronic Release Action form. Inaccurately, the choice to “release” to MRD” was treated as a decision agreement when the PBRGI recommended release and a decision departure when the PBRGI recommended defer. In actuality and contrary to intuitive labeling, the decision to “release to MRD” represents a departure from the PBRGI recommendation to release and, conversely, represents an agreement with the PBRGI recommendation to defer.

The simple solution to the mislabeling of departures and agreements and the incorrect requests for departure reasons, was to add “Release to MRD” to the Action Notice page of the Parole Board Application Hearing Portal. This decision alternative was included as a third alternative in the

“Action Notice Disposition” area (the modification is pictured in Figure E3). This solution is optimal for three reasons:

1. The OIT programmers at DOC could easily introduce the logic to correctly present or withhold the request for recommendation departure reasons for all six of the possible Parole Board/PBRGI decision combinations (pictured in Figure E2), and
2. It avoided the necessity to design a separate (“Release to MRD”) Action Form that would require additional programming time and alter the traditional decision process familiar to Board members.
3. Maintained the traditional and familiar phrase, “Release to MRD.”

This solution was reviewed and approved by the Board and the programming modification was written and, subsequently implemented on November 26, 2012.

Implementation Sample. The first-month sample included 716 non-sex offenders⁴⁰ whose release application hearing was finalized during the month of September 2012. Demographic characteristics of offenders were not included in these hearing data. Offenders who received a deferral simply because they did not attend the hearing, for whatever reason, were excluded from the sample. As during the August test period, more applications for parole release were heard, but were not yet finalized by the end of September. Full Board review is required for offenders convicted of violent offenses and these hearing decisions were still pending. Consequently, this month’s sample was populated largely by non-violent offenders.

The analyses of this first-month sample of hearing data include the:

- number of offenders assigned to the risk and readiness categories in the PBRGI decision matrix,
- number of release and number of defer Board decisions and PBRGI advisory recommendations,
- number of agreements and departures between Board decisions and PBRGI recommendations,
- number of agreements and departures within decision matrix categories,
- categories and numbers of the reasons for departure from release and from defer recommendations, and
- reasons for departure by decision matrix categories.

As detailed in the August 2012 summary in Appendix D, these analyses explore two closely related but different perspectives on the exploration of the validity of the PBRGI:

- Given the assignment of offenders to the positions in the PBRGI decision matrix, are there patterns in the Board’s decision to adhere or depart from the advisory recommendations? Do these decision patterns suggest the need to adjust the assignment of “Release” or “Defer” in the PBRGI decision matrix?

⁴⁰ For sex offenders, pursuant to §17-22.5-404 (4)(c)(II), C.R.S., parole release decisions are guided by criteria created by the Sex Offender Management Board (SOMB). These criteria may be found at the SOMB website (dcj.state.co.us/odvsom/sex_offender/adults.html#standards), in the document entitled *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, in Appendix J: Parole Guidelines for the Discretionary Release on Determinate-Sentenced Sex Offenders (determinate criteria) and in Lifetime Supervision Criteria: Section LS 4.200 - Criteria for Successful Progress in Treatment in Prison: Sex Offender Treatment and Management Program (indeterminate criteria).

- Alternatively, given the Board’s decision to release or defer, are there correspondent characteristics in the risk and readiness assignments of the offenders that would predict this decision outcome? Do these patterns of characteristics suggest the need to adjust the risk and readiness algorithms and, consequently, the PBRGI matrix placements of offenders?

Although the questions were posed separately, the impact of any modification to the PBRGI risk and readiness assignments or the matrix designations of release or defer would be interrelated.

Decision Matrix Assignment. Table E1 provides the count and percentage of offenders from the first-month sample assigned to each of the 15 risk/readiness positions in the PBRGI decision matrix. The blue/lighter area in the upper left are the combinations where the PBRGI recommends release and the red/darker area in the bottom right are the combinations where the PBRGI recommends defer. Regarding risk, the number of offenders placed in the “very low” (35.5%) or “very high” (29.5%) risk categories was two to three times larger than the number assigned to the three remaining risk categories. These proportions are similar to those found during the August test (see Appendix F, Table F1 to compare). Within readiness, the percentages assigned to “high” (31.8%), “medium” (22.6%), or “low” (45.5%) were comparable to the percentages assigned in the August test. As in the August sample, the two highest percentages of offenders in any of the 15 risk/readiness combinations were the 18.2% in “very high” risk/”low” readiness and the 15.1% in “very low” risk/”high” readiness. The same percentage of offenders (11% or 79 offenders) was placed in the “middle region” of the decision matrix described in Appendix B as representing the more complex decision situations.

Decision Types. The total numbers and percentages of defer and release decisions by the Board and the recommendations by the PBRGI are in Table E2 (see row and column “Total”). The decision to “release to MRD” (the Mandatory Release Date) is labeled the more conceptually accurate, “Defer to Mandatory Release Date” in Table E2.

Of the 716 applicants for parole, the PBRGI recommended 379 (52.9%) offenders for release and 337 (47.1%) for defer. The Board members who, unlike during the August test, viewed the advisory recommendation prior to their decision, chose to release 214 (29.9%) offenders, to defer 316 (44.1%) offenders, and defer 186 (26.0%) offenders to the MRD. Combining the deferral types, therefore, Board members chose to release 29.9% and defer 70.1% of parole applicants, representing 57.3% fewer releases than deferrals. Relative to the rates observed in August, when the PBRGI advisory recommendation was not visible, the rate of deferrals in September decreased by 3.7% and, correspondingly, the rate of releases increased by 9.9%. Whether this change in rates of release and defer was due to the visibility of the PBRGI recommendation or merely represents natural fluctuations in decisions was unknown with only two months of available data.

In addition to the overall comparisons of release and defer rates, the patterns of decision concurrence is also of interest. To reiterate a point made earlier, the PBRGI recommendation is not considered a standard by which Board decisions are measured, given that the recommendation is intended to be advisory. However, the subsequent presentation will refer to the agreement with or the departure from PBRGI recommendations. Because statute requires an additional action by Board members when departing from the recommendation, namely, providing a departure reason, this convention of expression will be employed, but does not imply a comparative evaluation of Board member decision performance.

Table E1. Counts and percentages of offenders assigned to each PBRGI risk/readiness matrix combination. (FY 2013 September implementation sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Category |
|------------------------------------|-----------------------------|----------------------------------|-----------------|--------------|-------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 108 | 59 | 87 | 254 |
| | % within Very Low Risk | 42.5% | 23.2% | 34.3% | 100.0% |
| | % within Readiness Category | 47.4% | 36.4% | 26.7% | 35.5% |
| | % of Total | 15.1% | 8.2% | 12.2% | 35.5% |
| 2 Low | Count | 33 | 19 | 34 | 86 |
| | % within Low Risk | 38.4% | 22.1% | 39.5% | 100.0% |
| | % within Readiness Category | 14.5% | 11.7% | 10.4% | 12.0% |
| | % of Total | 4.6% | 2.7% | 4.7% | 12.0% |
| 3 Medium | Count | 28 | 26 | 42 | 96 |
| | % within Medium Risk | 29.2% | 27.1% | 43.8% | 100.0% |
| | % within Readiness Category | 12.3% | 16.0% | 12.9% | 13.4% |
| | % of Total | 3.9% | 3.6% | 5.9% | 13.4% |
| 4 High | Count | 19 | 17 | 33 | 69 |
| | % within High Risk | 27.5% | 24.6% | 47.8% | 100.0% |
| | % within Readiness Category | 8.3% | 10.5% | 10.1% | 9.6% |
| | % of Total | 2.7% | 2.4% | 4.6% | 9.6% |
| 5 Very High | Count | 40 | 41 | 130 | 211 |
| | % within Very High Risk | 19.0% | 19.4% | 61.6% | 100.0% |
| | % within Readiness Category | 17.5% | 25.3% | 39.9% | 29.5% |
| | % of Total | 5.6% | 5.7% | 18.2% | 29.5% |
| Total in Readiness Category | Count | 228 | 162 | 326 | 716 |
| | % within Risk Category | 31.8% | 22.6% | 45.5% | 100.0% |
| | % within Readiness Category | 100.0% | 100.0% | 100.0% | 100.0% |
| | % of Total | 31.8% | 22.6% | 45.5% | 100.0% |

Decision Concurrence. Available in Table E2 are the overall percentages of agreement and departure between the Board decisions and the PBRGI recommendations. Unlike the August test, Board members could view the PBRGI advisory recommendation when considering their parole decision. Additionally, the reasons Board members were required to enter, if they departed from the advisory recommendation, will be summarized below.

The overall degree of agreement is derived from two sources: agreements with recommendations to release and agreements with recommendations to defer (blue/lighter areas of Table E2). Collapsing these two sources of agreement, *64.1% of all Board member decisions agreed with the PBRGI recommendations.* These overall rates of agreement and departure represent a 7.4% increase in agreement and a 10.9% decrease in departures relative to the August test sample. As mentioned previously, it was unknown whether this change in concurrence rates was due to the visibility of the PBRGI recommendation or merely represents natural fluctuations in decision rates.

The combined agreement percentage (64.1%) conceals that the degree of deferral agreement (86.4% or 291 agreements within the 337 defer recommendations) is about 95% higher than the degree of release agreement (44.3% or 168 agreements within the 379 release recommendations). This

Table E2. Counts and overall percentages of Parole Board hearing decisions by PBRGI advisory recommendations.* (FY 2013 September implementation sample)

| Parole Board Hearing Decision | | PBRGI Advisory Recommendation | | Total of PB Decisions |
|----------------------------------------|------------------|---------------------------------------------------|---------------------------------------------------|----------------------------------------------------|
| | | Defer | Release | |
| Defer | Count Percent | 202 28.2% | 114 15.9% | 316 44.1% |
| Defer to Mandatory Release Date | Count Percent | 89 12.4% <i>Total Defer = 291 40.6%</i> | 97 13.5% <i>Total Defer = 211 29.5%</i> | 186 26.0% <i>Total Defer = 502 70.1%</i> |
| Release Discretionary | Count Percent | 46 6.4% | 168 23.5% | 214 29.9% |
| Total of PBRGI Recommendations | Count Percent | 337 47.1% | 379 52.9% | 716 100.0% |

*Blue (lighter cells) indicates agreement between the Board decision and the PBRGI recommendation and red (darker cells) indicates departure by the Board from the PBRGI recommendation.

deferral agreement finding is similar to the 87.4% identified in the August sample. Alternatively, *when the PBRGI recommendation was to defer*, the overall percentage of agreement was six times larger than the overall percentage of departure, 40.6% vs. 6.4%, respectively. This pattern shows little variance from the August data regarding the agreement with deferral recommendations, but an increase of 14% in departures from deferral recommendations (5.5% to 6.4%).

The overall degree of departure is derived from two sources: departures from recommendations to release and departures from recommendations to defer (red/darker areas in Table E2). Collapsing across these decision types, *35.9% of all Board decisions departed from the PBRGI recommendations*. The combined departure percentage (35.9%) reveals the converse of the previous finding: the degree of release departure (55.7% or 211 departures within the 379 release recommendations) is nearly 310% higher than the degree of deferral departure (13.6% or 46 departures within the 337 defer recommendations). Although still high, the 55.7%, relative to 61.6% August, represents a drop of roughly 9.6% in departures from the advisory recommendation to release. Alternatively, *when the PBRGI recommendation was to release*, the overall percentage of departure was higher than the overall percentage of agreement, 29.5% vs. 23.5%, respectively. Relative to the August analyses, this pattern shows an 8% increase in overall agreement with release recommendations (21.7% to 23.5%) and a 15% decrease in overall departures from release recommendations (34.8% to 29.5%).

A rather technical observation regarding the decision types is that when the advisory recommendation is to “release” and the Board decision is to “defer to the MRD,” there is actually a subset of offenders for whom this decision is virtually equivalent. If the time to MRD is within a 4 to 6 weeks of the parole hearing, the offender is released roughly on the same timeline whether “released” or “deferred to MRD.” This might produce possible adjustments in the degree of agreement, if this were taken into account. It appears this virtual equivalence in timing is true for about 10% of offenders. However, given that a “deferral to MRD” would not be labeled a discretionary release, this adjustment was not made to the concurrence percentages.

Overall, the degree of agreement on deferrals increased by 6.8% relative to the August analyses. The relative increase of 9.9% in decisions to release by the Board was accompanied by an increase in agreements with (and, correspondingly, a decrease in departures from) the PBRGI advisory recommendation to release. Two months of data was insufficient to determine whether this shift in decision concurrence indicates Board members’ conscious choice to adhere more frequently to the PBRGI recommendations or reflects simple fluctuations in decisions. The following section describes the degree of decision concurrence within each PBRGI risk/readiness decision matrix combination.

Decision Concurrence by Matrix Assignment. Relating to Table E1 above, Table E3 displays the number of offenders assigned to each of the 15 risk/readiness combinations of the PBRGI decision matrix and the percentage of agreement or departure in that specific combination. This analysis addressed the question posed above whether the designations of “Release” or “Defer” in the decision matrix were supported. The blue/lighter area in the upper left are the combinations where the PBRGI recommends release and the red/darker area in the bottom right are the combinations where the PBRGI recommends defer.

Table E3. Counts of offenders assigned to each PBRGI risk/readiness matrix combination and the associated percentage of agreement and departure between the Board decision and the PBRGI recommendation.* The direction of change in agreement since the August blind-test analysis is indicated (by arrows).^ (FY 2013 September implementation sample)

| <u>RISK CATEGORY</u> | | <u>READINESS CATEGORY</u> | | | Total in Risk Categories |
|--------------------------------------|-------------|----------------------------------|-----------------|--------------|---------------------------------|
| | | 3 High | 2 Medium | 1 Low | |
| 1 Very Low | Count | 108 | 59 | 87 | 254 |
| | % Agreement | (↑) 62.0% | (↓) 30.5% | (↑) 35.6% | 43.4% |
| | % Departure | 38.0% | 69.5% | 64.4% | 56.6% |
| 2 Low | Count | 33 | 19 | 34 | 86 |
| | % Agreement | (↑) 51.5% | (↓) 15.8% | (↓) 76.5% | 56.5% |
| | % Departure | 48.5% | 84.2% | 20.0% | 43.5% |
| 3 Medium | Count | 28 | 26 | 42 | 96 |
| | % Agreement | (↓) 42.9% | (↑) 38.5% | (↑) 100.0% | 68.3% |
| | % Departure | 57.1% | 61.5% | 0.0% | 31.7% |
| 4 High | Count | 19 | 17 | 33 | 69 |
| | % Agreement | (↑) 52.6% | (↓) 76.5% | (↓) 87.9% | 78.2% |
| | % Departure | 47.4% | 23.5% | 12.1% | 21.8% |
| 5 Very High | Count | 40 | 41 | 130 | 211 |
| | % Agreement | (↓) 60.0% | (↓) 78.0% | (↑) 96.2% | 87.0% |
| | % Departure | 40.0% | 22.0% | 3.8% | 13.0% |
| Total in Readiness Categories | Count | 228 | 162 | 326 | 716 |
| | % Agreement | 57.0% | 46.6% | 77.6% | 64.8% |
| | % Departure | 43.0% | 53.4% | 22.4% | 35.2% |

* The number of decisions that agreed or departed is calculated by multiplying the cell count by the agreement or the departure percentage in the same cell. For example, 67 decisions were in agreement in the “very low” risk by “high” readiness matrix combination (109 * 61.5%).

^ The direction of change is only indicated on the agreement percentage, but the direction of change would obviously be in the opposite direction on the departure percentage within each risk/readiness combination.

The direction of change, relative to the August test, is indicated by small arrows adjacent to the percentage of agreement. The direction arrows are only inserted adjacent to the agreement percentage, but the direction of change would obviously be in the opposite direction on the departure percentage within each risk/readiness combination. For example, in “very low” risk/“high” readiness, the 62.0% agreement is larger than the 52.8% reported in August (from Appendix D, Table D3). To be clear, the arrow and adjacent number do not indicate an increase of 62.0% from August, but simply denotes that there was an increase, in this case, from 52.8% to 62.0%. The corresponding drop in departures in this particular combination can be seen by comparing the 47.2% from August with the 38.0% in September.

When collapsing across levels of readiness, there was, like in the August sample, a larger degree of Board/PBRGI agreement with each increasing level of risk, 43.4% to 87.0%. When collapsing levels of risk, the highest degree of agreement was found in the “low” readiness category at 77.6% followed by the “high” (57.0%) and “medium” (46.6%) readiness categories. As was true in August, there continued to be higher agreement between Board decisions and PBRGI recommendations when the offender was recommended for defer.

In an overall comparison of increases (up arrows in Table E3) and decreases (down arrows) in the agreement to release, the size of the increases in agreement outweighed the instances where agreement decreased. *Across all the risk/readiness combinations recommending release*, there was an average increase of 13.1% in decision agreement from August to September. *Across all the risk/readiness combinations recommending defer*, there was an average decrease of 0.05% in decision agreement from August to September. This perspective on the decision pattern demonstrates that, as the Board increased the rate of release from August (by the 9.9% mentioned above), there was an increase in the degree of agreement on these release decisions while the rate of agreement on the slightly decreased rate of deferrals remained constant.

Of offenders identified as the better candidates for release (blue outline at upper left of Table E3), the degree of decision agreement was 47.9% (105/219). Specifically, this would include offenders categorized in one of the two highest levels of readiness (“high” and “medium”) and one of the two lowest levels of risk (“very low” and “low”). Recall also that the offenders categorized in the “very low” risk category were deemed appropriate for release, regardless of level of readiness, and were also non-violent because they were not included among those pending full Board review. The degree of agreement for the “very low” risk offenders in the “low” readiness category was also relatively low (35.6%), but higher than the level of agreement found in August (23.5%). Overall, these levels of agreement are slightly higher than those observed in August.

Of offenders identified as the better candidates for deferral (red outline at lower right of Table E3), the degree of decision agreement was 90% (199/221). Specifically, this would include offenders categorized in one of the two lowest levels of readiness (“low” and “medium”) and one of the two highest levels of risk (“high” and “very high”). Recall that the offenders categorized across the entire “very high” risk category were designated in the decision matrix for deferral, regardless of level of readiness. The degree of agreement for the “very high” risk offenders in the “high” readiness category is lower relative to the other readiness categories (60.0%). Overall, these levels of agreement are comparable to those observed in August.

As described previously, when offenders are rated in the middle region of the decision matrix (“moderately” ready and/or “moderately” risky), the decision circumstance can be perceived as less certain. As was found in August, there was a higher level of agreement (76.5%) for the defer decision found in this difficult “middle boundary” of the recommendation matrix (specifically, the low/low risk/readiness combination). On the other hand, the release recommendations located in the “middle decision boundary” display a much lower degree of agreement (44.4%, combining the medium/medium and high/high risk/readiness boundary combinations). Once again, there is support for the idea that decisions in the mid-range, especially on the readiness dimension, can lead to more uncertainty by comparing the 46.8% agreement in “medium” readiness to the agreement percentages of 51.0% and 75.3% in the “high” and “low” levels of readiness, respectively.

All in all, the agreement and departure levels reflect the tendency for the Board to attend to the advisory recommendation but also to make a more conservative choice to defer when the “decision environment” is perceived as complex and riskier (see the discussion of matrix decision environments in Appendix B). In assessing the validity of the PBRGI, it is of particular interest to explore further the instances where Board members departed from the PBRGI recommendations to defer and the recommendations to release.

Decision Concurrence by Decision Type. The following, which relates to Table E2, explores Board decisions from a different perspective by identifying the risk and readiness characteristics of the offenders in the instances where the Board agrees or departs from the PBRGI advisory recommendation. Because the statute requires the Board to provide a reason when departing from the advisory recommendation,⁴¹ the instances of departure will be explored more extensively.

Summary of Agreements: Board Releases and Deferrals. There were 168 (23.5%) total decisions where Board members *agreed with the PBRGI advisory recommendation to release*. Of these instances, 136 (80.0%) offenders were categorized as “very low” or “low” risk and 137 (81.5%) were categorized with “high” or “medium” readiness. There were 291 (40.6%) total decisions where Board members *agreed with the PBRGI advisory recommendation to defer*. Of these instances, 223 (76.6%) offenders were categorized as “high” or “very high” risk and 267 (91.8%) were categorized with “medium” or “low” readiness. These instances of agreement show a correspondence in the offender characteristics (based on the matrix placement in low/high risk/readiness) and the Board’s decision to release or defer. Conversely, the following analysis of departures indicates discrepancies between the offender’s matrix placement and the decision by the Board.

Summary of Departures: Board Decides to Release. Board members demonstrated a high degree of agreement overall with the recommendation to defer (86.4% or 291/337 from Table E2). There were only 46 instances (only 6.4% of all decisions made and 13.7% of recommendations to defer) where the Board released the offender rather than adhering to the advisory recommendation to defer (see Table E2). Of this number of offenders that the PBRGI places in the defer region of the decision matrix, the Board released 8 (17.4%) who fell in the “high” risk and 30 (65.2%) from the “very high” risk categories for a total of 82.6% at these two higher levels of risk. From the readiness perspective, the Board released 13 (28.3%) who fell in the “medium” and 17 (37.0%) from the “low” readiness categories for a total of 30 (65.2%) from these two lower levels of

⁴¹ See §17-22.5-404(6)(b), C.R.S. which is available in Appendix H

readiness. A total of 22 offenders (47.8% of the 46 departures or 10.0% of all decisions) were categorized by the PBRGI as the better candidates for deferral (combining across the two lowest readiness categories and the two highest risk categories). The summary of departure reasons connected to these decisions is below.

Summary of Departures: Board Decides to Defer. As reported above, there was a lower degree of concurrence between Board members decisions and the PBGRI advisory recommendation to release. There were 211 instances where the Board departed from the release recommendation, representing 29.5% of all decisions made and 55.7% of release recommendations (see Table E2). Of this number of offenders that the PBRGI places in the release region of the decision matrix, the Board deferred 138 (65.4%) who fell in the “very low” risk and 32 (15.2%) in the “low” risk categories for a total of 80.6% at these two lower levels of risk. From the readiness perspective, the Board deferred 73 (34.6%) who fell in the “medium” and 82 (38.9%) in the “high” readiness categories for a total of 155 (73.5%) in these two higher levels of readiness. A total of 114 offenders (54.0% of the 211 departures or 16.0% of all decisions) were categorized by the PBRGI as the better candidates for release (combining across the two highest readiness categories and the two lowest risk categories). The summary of departure reasons connected to these decisions is provided in the next section.

Departure Reasons. During the August test described in Appendix D, the requirements of the study method did not allow Board members the option to provide reasons for recommendation departures. After the PBRGI implementation, the PBRGI recommendation was displayed to Board members who, in accordance with statute, were required to offer a reason when choosing to depart. There were two decision circumstances that required the Board member to provide reasons for departure: choosing to defer when the recommendation was to release and choosing to release when the recommendation was to defer. Specifically, this meant a departure reason was required in 257 instances: for the 114 deferrals when release was recommended, the 97 deferrals to MRD (mandatory release date) when release was recommended, and the 46 releases when defer was recommended. For the September sample, these numbers and types of departures may be found in the red (darker) areas of Table E2 above.

Due to the system-design problem regarding the choice to “release-to-MRD” described above, there were two specific decision circumstances that resulted in data collection errors. In the first, Board members unnecessarily provided reasons for 89 “release-to-MRD” departures that were actually agreements with a recommendation to defer. Recall that a more conceptually accurate label for this choice is “Defer to MRD.” Relatedly, there were 97 instances where the “release-to-MRD” decision was not recorded as a departure, and, therefore, the system did not request a departure reason. There can be no summary of departure reasons for these two circumstances. In the former case, the collected departure reasons are irrelevant, given the decisions were actually in agreement with the PBRGI advisory recommendation. In the latter case, obviously, the departure reasons were not collected and cannot be reported. Again, the system was corrected on November 26, 2012 allowing the correct collection of data and reports of hearings after this date will allow the analysis of all variations of the departure circumstance.

Summary of Departure Reasons: Board Decides to Release. *When the PBRGI advisory recommendation was to defer*, there were 46 (6.4% overall) decisions where Board members chose to depart from the recommendation and release the offender. An initial review was undertaken to

identify and label the primary types of departure reasons across these decisions. Given that Board members could offer more than one reason for a departure, there were 98 total reasons provided. These departure reasons can be grouped into the following general categories:

- Parole plan quality
- Demonstrated growth/positive attitude
- Treatment participation considerations
- Risk considerations
- Time served or imminent MRD/SDD⁴²
- Program participation considerations
- Performance in the community

Reasons addressing the quality of the parole plan typically indicated that the offender would have a good support system, housing, employment, educational options in place or the offender would move to a different state or country. Observing evidence of psychological growth was apparent in reasons mentioning positive offender attitude, taking responsibility for actions, positive behavioral adjustment, readiness for parole, and the ability to present a positive plan for the future. The mentions of treatment referenced that the offender had completed treatment or was ready to move to community-based treatment. Reasons falling in the risk-related category included comments about low risk scores, non-violent offenses, short criminal histories, and committing no or minor violations of the DOC Code of Penal Discipline. Some reasons indicated that the offender had served sufficient time, that the offender would soon be released on their mandatory release date (MRD) anyway, or that a period of transition on parole would be preferable to direct release to the street. Reasons related to program participation typically referred to the completion of programs or a readiness for programs in the community. A final category regarding community performance reflected comments that a transition to the community had been successful.

Of the 46 departure decisions, a reason was missing for 2 decisions. Of the remaining 44 decisions, Board members mentioned one of the above seven reason categories in 87 unique instances. Board members mentioned a single departure reason category in 14 cases, two categories in 19 cases, three categories in 9 cases and four categories in 2 cases. In some instances, Board members mentioned multiple reasons of the same type, but these were counted as a single reference to the particular category of departure reasons. Of the 44 cases where at least one departure reason was provided, the percentage of cases where a departure category was mentioned was as follows:⁴³

- Parole plan quality, 52.3% (23/44 cases where the category was mentioned)
- Demonstrated growth/positive attitude, 52.3% (23 cases)
- Treatment participation considerations, 25.0% (11 cases)
- Risk considerations, 20.5% (9 cases)

⁴² The statutory discharge date (SDD) refers to the date representing when both the sentence to DOC and all possible time on parole has been completed.

⁴³ Percentages total more than 100% because more than one category was mentioned in 30 of the 44 cases.

- Time served or imminent MRD/SDD,⁴⁴ 20.5% (9 cases)
- Program participation considerations, 15.9% (7 cases)
- Performance in the community, 11.4% (5 cases)

Of the 44 offenders, 22 were the higher risk/lower readiness offenders identified above as the better candidates for deferral, but who were released by the Board (red outline at bottom right of Table E3). For this group, there were 47 departure reasons offered in similar percentages found in the categories above. The three most frequent reason categories mentioned for this subset of offenders reflected comments that the offender had demonstrated a positive attitude and cognitive growth, presented a comprehensive parole plan, and/or represented a reduced risk to the community.

Summary of Departures: Board Decides to Defer. *When the PBRGI advisory recommendation was to release*, there were 211 (29.5%) decisions where Board members chose to depart from the recommendation and defer the offender. Again, due to the data collection error, only 114 decisions remained because the 97 decisions to “defer to MRD” were not available for analysis as described previously. An initial review was undertaken to identify and label the primary types of departure reasons across these decisions. Given that Board members could offer more than one departure reason in a particular case, there were 159 specific departure reasons provided. These reasons can be categorized into the following areas of concern:

- Risk concerns
- Treatment and/or program participation or need
- Community adjustment period needed
- Weak presentation during hearing

Reasons given regarding risk concerns may include mentions of high risk scores, the crime of conviction or charges for a new crime, a poor parole plan that would increase re-entry risk, and/or general issues of public safety. The mentions of treatment or program concerns revolved around the need for the offender to complete an ongoing course of treatment or a program or to receive additional treatment or programming. In some instances, Board members reported that the offender requested a deferral to finish a nearly-completed program or course of treatment. Offenders who had been placed in community corrections as transition inmates were deferred to allow the offender more time to establish themselves and stabilize in the transition placement. A weak presentation by the offender was described as instances where the offender failed to take responsibility for their actions, minimized the consequences of their crime, and/or, was not truthful about confirmable information available in the offender’s criminal record or case file.

Of the available 114 departure decisions, a reason was missing in 15 decisions. For these decisions missing a reason, the member simply re-entered the decision without providing a specific reason for the departure. Of the remaining 99 decisions, Board members mentioned one of the above four reason categories in 123 unique instances. Board members mentioned one category of concern in 75 cases and two or more categories in 24 cases. In some instances, Board members mentioned more than one reason in the same category of concern. Mentions of multiple concerns in the same

⁴⁴ See Footnote 42.

category were counted as a single reference to the category of concern. Of all the 99 cases where at least one relevant departure reason was provided, the percentage of cases where a departure category was mentioned was as follows:⁴⁵

- Risk concerns, 51.5% (51/99 cases where the category was mentioned)
- Treatment and/or program participation or need, 31.3% (31 cases)
- Community adjustment period needed, 30.3% (30 cases)
- Weak presentation during hearing, 11.1% (11 cases)

Of the 99 offenders, 56 were the lower risk/higher readiness offenders identified above as the better candidates for release, but deferred by the Board (blue outline at upper left of Table E3). For this group, there were 77 departure reasons offered in similar percentages found in the categories above. The three most frequent reason categories mentioned for this subset of offenders reflected comments that addressed risk concerns, the need for additional time in transition in the community, and/or continuing needs for treatment or programs.

Conclusion. As in the August test, it was concluded that there should be no modifications of the PBRGI algorithms to shift more of these higher risk/lower readiness offenders in a direction that would result in greater agreement with the Board. Such a modification of the algorithms would likely recommend release for many more than just this percentage of offenders who appear the better candidates for deferral. The shift in Board decisions to greater agreement, especially in the case of release decisions, is not suggestive of the necessity for changes to the PBRGI decision algorithms or the release and defer designations in the PBRGI decision matrix.

⁴⁵ Percentages total more than 100% because more than one category was mentioned in 24 of the 99 cases.

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APPENDIX F

Proposed Parole Board Administrative Revocation Guidelines

This document was created by the Revocation Guidelines Working Group under the direction of the Colorado State Board of Parole and with consultation by Peggy Burke and Paul Herman, Center for Effective Public Policy (CEPP). The document was submitted by CEPP to the Colorado State Board of Parole on June 28, 2013.

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Proposed Parole Board Administrative Revocation Guidelines

Colorado State Board of Parole

This document was created by the Revocation Guidelines Working Group under the direction of the Colorado State Board of Parole and with consultation by Peggy Burke and Paul Herman, Center for Effective Public Policy (CEPP). The document was submitted by CEPP to the Colorado State Board of Parole on June 28, 2013.

The Colorado Board of Parole has been tasked by the legislature with the development of administrative revocation guidelines. Following is a proposed first version of those guidelines.

Goals

The administrative revocation guidelines of the Colorado Board of Parole are based on:

- An overriding concern for public safety;
- A resolve to be responsive to the statutory mandate for creation of the guidelines,
- An intent to be clear regarding the factors to be considered, and the requirements that must be met before revoking for a technical violation including:
 - Determination on the record by a preponderance of the evidence that a violation has occurred and the nature of the violation; and
 - Determination on the record that:
 - intermediate sanctions have been utilized and have been ineffective; or
 - modification of conditions of parole or the imposition of intermediate sanctions is not appropriate or consistent with public safety and the welfare of society;
- A commitment to base policy and practice upon the lessons and principles emerging from sound research on effective interventions;
- Utilization of research-based, empirically reliable and valid assessment tools including the LSI-R, the CARAS, and the Static 99;
- Consistency, in principle, with the philosophy and structure of the Colorado Violation Decision Making Process (CVDMP) utilized to guide supervision practices;
- A value placed upon fundamental fairness and consistency in decision-making; and
- Preserving the discretionary nature of the Board's decisions such that the revocation guidelines are advisory in nature and that, in any given case, the Board may elect to depart from said guidelines for reasons that, in its discretion, indicate otherwise.

Narrative Description of Revocation Guidelines Logic

The Guidelines process will:

1. Begin with establishing—through a stipulation/plea on the part of the parolee or through the conduct of an evidentiary hearing that establishes, using a “preponderance of the evidence”⁴⁶ standard, that a violation has (or violations have) indeed occurred, and what that (those) violation(s) is⁴⁷ (are);
2. Proceed to a consideration of each violation using the typology of behaviors found in the CVDMP framework, which categorizes the violation behavior as Type 1A, Type 1B, Type II, Type III, and Type IV.
 - a. Where more than one violation is being considered, the level of the most serious violation should be used in determining the appropriate level of response;
 - b. Violations in the first two categories (Type IA and 1B) are limited to behaviors that are higher level criminal offenses, or represent inherent risk to the public, and therefore would translate to an advisory guideline recommendation to revoke parole;
 - c. As the remaining categories (Types II, II, & IV) include behavior that is either lower level criminal behavior or technical violation behavior, these categories of behavior would be screened through two criteria (as directed by statute) to determine:
 - i. Whether intermediate sanctions had been tried in the past and proven ineffective; and/or
 - ii. Whether continuation on parole with changed conditions or imposed intermediate sanctions would be inconsistent with public safety
 - d. Within these categories, those violations that warrant a positive response on either dimension would translate to an advisory guideline recommendation to revoke;
 - e. Where multiple violations are considered, a positive response on either dimension—with respect to a single violation—would translate to an advisory guideline recommendation to revoke;
 - f. All other violations would translate to a guideline recommendation to continue on parole—i.e., violations that fall into Type II, III, or IV and which do not meet the criterion on either intermediate responses, or on public safety concerns, would result in a guideline recommendation to continue on parole.

Page 2 of 4

⁴⁶ Black's Law Dictionary 1182 (6th ed. 1990). "The preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in the mind the belief that what is sought to be proved is more likely true than not true."

⁴⁷ At present the automation system available to the Division and Board does not generate a “revised “CVDMP to indicate the “finding of fact” as to the severity level of the violation as determined by the Board in its evidentiary hearing. Some accommodation will have to be reached in order to document sufficiently in various information systems the specific violation and its severity level as determined by the Board—as this will be a key factor in determining the guidelines recommendation.

Colorado Administrative Parole Revocation Guidelines - Responding to Serious Violations of Parole

Based on the categories of violation behavior as stated in the CVDMP, the first two categories—1A and 1B--are limited to behaviors that are either higher level criminal offenses, or represent inherent risk to the public. Therefore, the guideline recommendation in these cases would be for revocation. Of course this is a recommendation and the Board may make a decision to continue on parole if there are specific factors that it believes warrant such a decision.

Responding to Less Serious Violations of Parole

A: Ineffective Intermediate Sanctions

The Board’s decision process will synthesize the information on a case in such a way as to allow the decisionmaker to review the supervision history, focusing on prior violation behavior, whether intermediate sanctions were imposed, and whether they were “ineffective.” The suggestion is that the automated information system underlying the CVDMP would provide an ”intermediate sanctions” tab that would, on a single screen, catalogue the information from the current and previous CVDMP’s including a list of violation behavior, type, risk assessment, response, and the presence of destabilizing factors. It is anticipated that the following information would be available for review:

| Number of CVDMP | Date of CVDMP | Violation Behavior | Violation Type (IA/IB, II, III, or IV) | Assessed risk level (name instrument) | Response | Destabilizing factors noted |
|-----------------|---------------|--------------------|----------------------------------------|---------------------------------------|----------|-----------------------------|
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | | | | | | |
| Etc. | | | | | | |

(The current violation behavior at issue would not include either Type 1A or Type 1B level violations as they are handled differently by the administrative revocation guidelines, however, previous violations might fall into those categories.)

| | Yes | No |
|------------------------------------------------------------------------------|--------------------------|--------------------------|
| The record indicates: | | |
| 1. The record shows more than 3 CVDMP’s in the last 12 months. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Violation behavior is increasing in severity. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. There are decreasing periods of time between the CVDMP’s. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Response(s) have been consistent with the guidance provided by the CVDMP. | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. The response(s) have directly targeted the problem behavior. | <input type="checkbox"/> | <input type="checkbox"/> |

The first three questions define “ineffective” and the last two define “have been utilized.” If all five questions yield “yes” answers, then, by definition, the Guidelines would conclude that intermediate sanctions have been utilized and proven ineffective. The Guidelines Recommendation would be to revoke parole. Of course this is an advisory recommendation and the Board may make a decision to continue on parole if there are specific factors that it believes warrant a conclusion that intermediate sanctions have not been sufficiently utilized, or that they have proven effective or there is reason to believe they may be more effective in the future.

B: Consistency with Public Safety

There will be some cases where, even though intermediate sanctions have not been utilized in the past or where they do not strictly meet the criterion of “not being effective,” there may be significant public safety concerns which make revocation - even for technical violations - warranted. Again, this responds to the specific statutory language about not revoking for a technical violation.... “unless the Board determines on the record that modification of conditions of parole or the imposition of intermediate sanctions is not appropriate or consistent with public safety and the welfare of society.” Also, keeping in mind that the violation behavior at issue is below the level 1A or 1B severity, the following would be considered.

The record indicates:

| | Yes | No |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. The parolee’s criminal history includes specific violent or predatory types of offenses (This would be determined using the Parole Board’s existing classification of violent offenses ⁴⁸ as they relate to adult and juvenile convictions in this parolee’s criminal record.) | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The parolee’s assessed level of risk is high (on LSI-R, CARAS, or Static 99). | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The violation behavior itself gives rise to community safety concerns (e.g., where the technical violation had to do with contact with victim, or a sex offender not abiding by conditions, or an act of violence; or includes substance use and driving) rather than more direct “compliance” concerns; and | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Risk reduction responses are not available/accessible in the community. | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Where all four questions are answered yes, then Criterion B is met and the guidelines advisory recommendation would be to revoke parole.

If neither of the above criteria A or B are met, then—in the presence of Category II, III, or IV violations—the guidelines advisory recommendation would be to continue on parole.

In either case, of course, the Board may decide to depart from the advisory recommendation if there are specific factors that warrant a different conclusion. The Board is required to provide a departure reason when this “different conclusion” is chosen.

⁴⁸ These are the offenses and behaviors described as meeting the “full board criteria” in release decisions.

APPENDIX G

Senate Bill 2009-135

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



SENATE BILL 09-135

BY SENATOR(S) Penry, Boyd, Newell, Tapia, Tochtrop;
also REPRESENTATIVE(S) Miklosi, Baumgardner, Frangas, Gerou,
Green, Merrifield, Nikkel, Stephens, Todd, Vigil, Waller, Weissmann,
Carroll T.

CONCERNING INFORMATION COLLECTION REGARDING PAROLE DECISIONS.

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

SECTION 1. 17-22.5-404 (6) (d), Colorado Revised Statutes, is amended to read:

17-22.5-404. Parole guidelines - repeal. (6) (d) (I) ~~The division of criminal justice shall collect data on parole decisions and report the results of such data collection quarterly to the state board of parole and the division of adult parole. The state board of parole shall provide copies of the parole guidelines forms and parole action forms to the division for such purpose.~~ THE STATE BOARD OF PAROLE SHALL WORK IN CONSULTATION WITH THE DIVISION OF CRIMINAL JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY TO DEVELOP AND IMPLEMENT A PROCESS TO CAPTURE AND ANALYZE DATA RELATED TO THE BASIS FOR AND THE OUTCOMES OF THE BOARD'S PAROLE DECISIONS. THE PROCESS SHALL TRACK DATA RELATED TO THE BOARD'S RATIONALE FOR GRANTING, REVOKING, OR DENYING PAROLE.

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

WHEN THE BOARD GRANTS PAROLE, THE PROCESS SHALL ALSO TRACK DATA RELATED TO WHETHER THE OFFENDER HAS PREVIOUSLY RECIDIVATED, THE TYPE OF RE-ENTRY PROGRAM GIVEN TO THE OFFENDER AS A PART OF THE OFFENDER'S PAROLE PLAN, AND WHETHER THE OFFENDER RECIDIVATES WHILE ON PAROLE.

(II) THE STATE BOARD OF PAROLE SHALL PROVIDE THE DATA TO THE DIVISION OF CRIMINAL JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY FOR ANALYSIS. THE DIVISION OF CRIMINAL JUSTICE SHALL ANALYZE THE DATA RECEIVED PURSUANT TO THIS SUBPARAGRAPH (II) AND SHALL PROVIDE ITS ANALYSIS TO THE BOARD. THE BOARD AND THE DIVISION OF CRIMINAL JUSTICE SHALL USE THE DATA AND ANALYSIS TO IDENTIFY SPECIFIC FACTORS THAT ARE IMPORTANT IN THE DECISION-MAKING PROCESS.

(III) THE DIVISION OF CRIMINAL JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY SHALL PROVIDE THE STATE BOARD OF PAROLE WITH TRAINING REGARDING HOW TO USE THE DATA OBTAINED AND ANALYZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (d) TO FACILITATE THE BOARD'S FUTURE DECISION-MAKING.

(IV) (A) ON OR BEFORE NOVEMBER 1, 2009, THE STATE BOARD OF PAROLE AND THE DIVISION OF CRIMINAL JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY REGARDING THE PROGRESS OF THE IMPLEMENTATION OF THIS PARAGRAPH (d) AND EACH NOVEMBER 1 THEREAFTER, THE STATE BOARD OF PAROLE AND THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL UPDATE THE REPORT.

(B) THIS SUBPARAGRAPH (IV) IS REPEALED, EFFECTIVE JULY 1, 2012.

SECTION 2. 24-33.5-503 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-33.5-503. Duties of division. (1) The division has the following duties:

(t) TO ANALYZE THE DATA FROM THE STATE BOARD OF PAROLE PROVIDED TO THE DIVISION PURSUANT TO SECTION 17-22.5-404 (6), C.R.S., AND TO PROVIDE TRAINING TO THE BOARD, PURSUANT TO SECTION 17-22.5-404 (6), C.R.S., REGARDING HOW TO USE THE DATA OBTAINED AND

ANALYZED TO FACILITATE THE BOARD'S DECISION-MAKING.

SECTION 3. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item,

section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

APPENDIX H

House Bill 2010-1374

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



HOUSE BILL 10-1374

BY REPRESENTATIVE(S) Ferrandino, Levy, Waller, Casso, Fischer, Frangas, Kagan, Labuda, May, McCann, Middleton, Pace, Pommer, Ryden, Schafer S., Solano, Todd, Vigil, Carroll T., Court, Massey;
also SENATOR(S) Penry, Morse, Steadman.

CONCERNING PAROLE, AND MAKING AN APPROPRIATION IN CONNECTION
THEREWITH.

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

SECTION 1. 16-11.7-103 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-11.7-103. Sex offender management board - creation - duties - repeal. (4) The board shall carry out the following duties:

(I) DEVELOP THE SPECIFIC SEX OFFENDER RELEASE GUIDELINE INSTRUMENT AS DESCRIBED BY SECTION 17-22.5-404 (4) (c) (II), C.R.S.

SECTION 2. 16-11.7-103 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-11.7-103. Sex offender management board - creation - duties

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

- **repeal.** (4) The board shall carry out the following duties:

(1) THE BOARD SHALL DEVELOP THE SPECIFIC SEX OFFENDER RELEASE GUIDELINE INSTRUMENT AS DESCRIBED BY SECTION 17-22.5-404 (4) (c) (II), C.R.S.

SECTION 3. Part 1 of article 22.5 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-22.5-107. Administrative release and revocation guidelines

- **creation.** (1) (a) THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY, IN CONSULTATION WITH THE STATE BOARD OF PAROLE, SHALL DEVELOP AN ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT FOR USE BY THE BOARD IN EVALUATING APPLICATIONS FOR PAROLE.

(b) THE ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT SHALL BE USED TO PROVIDE THE STATE BOARD OF PAROLE WITH CONSISTENT AND COMPREHENSIVE INFORMATION RELEVANT TO THE FACTORS LISTED IN SECTION 17-22.5-404 (4) (a). THE INSTRUMENT SHALL INCLUDE A MATRIX OF ADVISORY-RELEASE-DECISION RECOMMENDATIONS FOR THE DIFFERENT RISK LEVELS.

(2) (a) THE DEPARTMENT OF CORRECTIONS, IN CONSULTATION WITH THE STATE BOARD OF PAROLE, SHALL DEVELOP ADMINISTRATIVE REVOCATION GUIDELINES FOR USE BY THE BOARD IN EVALUATING COMPLAINTS FILED FOR PAROLE REVOCATION.

(b) THE ADMINISTRATIVE REVOCATION GUIDELINES SHALL BE USED TO PROVIDE THE STATE BOARD OF PAROLE WITH CONSISTENT AND COMPREHENSIVE INFORMATION BASED ON THE FACTORS IDENTIFIED IN SECTION 17-22.5-404 (5) (a). THE GUIDELINES SHALL INCLUDE A MATRIX OF ADVISORY-DECISION RECOMMENDATIONS FOR THE DIFFERENT RISK LEVELS.

SECTION 4. 17-2-207 (3), Colorado Revised Statutes, is amended to read:

17-2-207. Parole - regulations. (3) Offenders on parole shall remain under legal custody and shall be subject at any time to be returned to a correctional facility. ~~If any paroled offender leaves the state without lawful permission, he shall be held as a parole violator and arrested as such.~~

~~If any parolee not paroled to reside in a county in which a correctional facility is located is found within the boundaries of such county without lawful permission, or if any parolee who is paroled to reside in such county or is in such county without lawful permission is found within the boundaries of state property without lawful permission, he shall be arrested as a parole violator.~~

SECTION 5. 17-22.5-405 (1.5) (a) and (6), Colorado Revised Statutes, are amended to read:

17-22.5-405. Earned time - earned release time. (1.5) (a) Earned time, not to exceed twelve days for each month of incarceration or parole, may be deducted from an inmate's sentence if the inmate:

(I) Is serving a sentence for a class 4, class 5, or class 6 felony;

(II) Has NOT incurred ~~no~~ A CLASS I code of penal discipline ~~violations while incarcerated~~ VIOLATION WITHIN THE TWENTY-FOUR MONTHS IMMEDIATELY PRECEDING THE TIME OF CREDITING OR DURING HIS OR HER ENTIRE TERM OF INCARCERATION IF THE TERM IS LESS THAN TWENTY-FOUR MONTHS OR A CLASS II CODE OF PENAL DISCIPLINE VIOLATION WITHIN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE TIME OF CREDITING OR DURING HIS OR HER ENTIRE TERM OF INCARCERATION IF THE TERM IS LESS THAN TWELVE MONTHS;

(III) ~~Has been~~ IS program-compliant; and

(IV) Was not convicted of, and has not previously been convicted of, a FELONY crime DESCRIBED in SECTION 18-3-303, 18-3-305, 18-3-306, OR 18-6-701, sections 18-7-402 to 18-7-407, ~~C.R.S.~~; OR section 18-12-102 ~~C.R.S.~~; or section 18-12-109, C.R.S., or a FELONY crime listed in section 24-4.1-302 (1), C.R.S.

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

(a) The inmate has ~~no~~ NOT INCURRED A CLASS I code of penal discipline ~~violations~~ VIOLATION WITHIN THE TWENTY-FOUR MONTHS IMMEDIATELY PRECEDING THE TIME OF CREDITING OR DURING HIS OR HER ENTIRE TERM OF INCARCERATION IF THE TERM IS LESS THAN TWENTY-FOUR MONTHS OR A CLASS II CODE OF PENAL DISCIPLINE VIOLATION WITHIN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE TIME OF CREDITING OR DURING HIS OR HER ENTIRE TERM OF INCARCERATION IF THE TERM IS LESS THAN TWELVE MONTHS;

(b) The inmate is program-compliant; and

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

SECTION 6. 17-22.5-404, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

17-22.5-404. Parole guidelines - repeal. (1) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(a) THE RISK OF REOFFENSE SHALL BE THE CENTRAL CONSIDERATION BY THE STATE BOARD OF PAROLE IN MAKING DECISIONS RELATED TO THE TIMING AND CONDITIONS OF RELEASE ON PAROLE OR REVOCATION OF PAROLE;

(b) RESEARCH DEMONSTRATES THAT ACTUARIAL RISK ASSESSMENT TOOLS CAN PREDICT THE LIKELIHOOD OR RISK OF REOFFENSE WITH SIGNIFICANTLY GREATER ACCURACY THAN PROFESSIONAL JUDGMENT ALONE. EVIDENCE-BASED CORRECTIONAL PRACTICES PRIORITIZE THE USE OF ACTUARIAL RISK ASSESSMENT TOOLS TO PROMOTE PUBLIC SAFETY. THE BEST OUTCOMES ARE DERIVED FROM A COMBINATION OF EMPIRICALLY BASED ACTUARIAL TOOLS AND CLINICAL JUDGMENT.

(c) ALTHOUGH THE STATE BOARD OF PAROLE IS MADE UP OF INDIVIDUALS, USING STRUCTURED DECISION-MAKING UNITES THE PAROLE BOARD MEMBERS WITH A COMMON PHILOSOPHY AND SET OF GOALS AND PURPOSES WHILE RETAINING THE AUTHORITY OF INDIVIDUAL PAROLE BOARD

MEMBERS TO MAKE DECISIONS THAT ARE APPROPRIATE FOR PARTICULAR SITUATIONS. EVIDENCE-BASED CORRECTIONAL PRACTICES SUPPORT THE USE OF STRUCTURED DECISION-MAKING.

(d) STRUCTURED DECISION-MAKING BY THE STATE BOARD OF PAROLE PROVIDES FOR GREATER ACCOUNTABILITY, STANDARDS FOR EVALUATING OUTCOMES, AND TRANSPARENCY OF DECISION-MAKING THAT CAN BE BETTER COMMUNICATED TO VICTIMS, OFFENDERS, OTHER CRIMINAL JUSTICE PROFESSIONALS, AND THE COMMUNITY; AND

(e) AN OFFENDER'S LIKELIHOOD OF SUCCESS MAY BE INCREASED BY ALIGNING THE INTENSITY AND TYPE OF PAROLE SUPERVISION, CONDITIONS OF RELEASE, AND SERVICES WITH ASSESSED RISK AND NEED LEVEL.

(2) (a) THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL DEVELOP THE COLORADO RISK ASSESSMENT SCALE TO BE USED BY THE STATE BOARD OF PAROLE IN CONSIDERING INMATES FOR RELEASE ON PAROLE. THE RISK ASSESSMENT SCALE SHALL INCLUDE CRITERIA THAT STATISTICALLY HAVE BEEN SHOWN TO BE GOOD PREDICTORS OF THE RISK OF REOFFENSE. THE DIVISION OF CRIMINAL JUSTICE SHALL VALIDATE THE COLORADO RISK ASSESSMENT SCALE AT LEAST EVERY FIVE YEARS OR MORE OFTEN IF THE PREDICTIVE ACCURACY, AS DETERMINED BY DATA COLLECTION AND ANALYSIS, FALLS BELOW AN ACCEPTABLE LEVEL OF PREDICTIVE ACCURACY AS DETERMINED BY THE DIVISION OF CRIMINAL JUSTICE, THE STATE BOARD OF PAROLE, AND THE DIVISION OF ADULT PAROLE IN THE DEPARTMENT OF CORRECTIONS.

(b) THE DIVISION OF CRIMINAL JUSTICE, THE DEPARTMENT OF CORRECTIONS, AND THE STATE BOARD OF PAROLE SHALL COOPERATE TO DEVELOP PAROLE BOARD ACTION FORMS CONSISTENT WITH THIS SECTION THAT CAPTURE THE RATIONALE FOR DECISION-MAKING THAT SHALL BE PUBLISHED AS OFFICIAL FORMS OF THE DEPARTMENT OF CORRECTIONS. VICTIM IDENTITY AND INPUT SHALL BE PROTECTED FROM DISPLAY ON THE PAROLE BOARD ACTION FORM OR ANY PAROLE HEARING REPORT THAT MAY BECOME A PART OF AN INMATE RECORD.

(c) THE DIVISION OF CRIMINAL JUSTICE, IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS AND THE STATE BOARD OF PAROLE, SHALL PROVIDE TRAINING ON THE USE OF THE ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT DEVELOPED PURSUANT TO SECTION 17-22.5-107 (1) AND THE

COLORADO RISK ASSESSMENT SCALE TO PERSONNEL OF THE DEPARTMENT OF CORRECTIONS, THE STATE BOARD OF PAROLE, ADMINISTRATIVE HEARING OFFICERS, AND RELEASE HEARING OFFICERS. THE DIVISION SHALL CONDUCT THE TRAINING ON A SEMI-ANNUAL BASIS.

(d) THE DEPARTMENT OF CORRECTIONS, IN COOPERATION WITH THE STATE BOARD OF PAROLE, SHALL PROVIDE TRAINING ON THE USE OF THE ADMINISTRATIVE REVOCATION GUIDELINES DEVELOPED PURSUANT TO SECTION 17-22.5-107 (2) TO PERSONNEL OF THE DEPARTMENT OF CORRECTIONS, THE STATE BOARD OF PAROLE, AND ADMINISTRATIVE HEARING OFFICERS. THE DEPARTMENT SHALL CONDUCT THE TRAINING SEMI-ANNUALLY.

(3) FOR A PERSON SENTENCED FOR A CLASS 2, CLASS 3, CLASS 4, CLASS 5, OR CLASS 6 FELONY WHO IS ELIGIBLE FOR PAROLE PURSUANT TO SECTION 17-22.5-403, OR A PERSON WHO IS ELIGIBLE FOR PAROLE PURSUANT TO SECTION 17-22.5-403.7, THE STATE BOARD OF PAROLE MAY CONSIDER ALL APPLICATIONS FOR PAROLE, AS WELL AS ALL PERSONS TO BE SUPERVISED UNDER ANY INTERSTATE COMPACT. THE STATE BOARD OF PAROLE MAY PAROLE ANY PERSON WHO IS SENTENCED OR COMMITTED TO A CORRECTIONAL FACILITY WHEN THE BOARD DETERMINES, BY USING, WHERE AVAILABLE, EVIDENCE-BASED PRACTICES AND THE GUIDELINES ESTABLISHED BY THIS SECTION, THAT THERE IS A REASONABLE PROBABILITY THAT THE PERSON WILL NOT VIOLATE THE LAW WHILE ON PAROLE AND THAT THE PERSON'S RELEASE FROM INSTITUTIONAL CUSTODY IS COMPATIBLE WITH PUBLIC SAFETY AND THE WELFARE OF SOCIETY. THE STATE BOARD OF PAROLE SHALL FIRST CONSIDER THE RISK OF REOFFENSE IN EVERY RELEASE DECISION IT MAKES.

(4) (a) IN CONSIDERING OFFENDERS FOR PAROLE, THE STATE BOARD OF PAROLE SHALL CONSIDER THE TOTALITY OF THE CIRCUMSTANCES, WHICH INCLUDE, BUT NEED NOT BE LIMITED TO, THE FOLLOWING FACTORS:

(I) THE TESTIMONY OR WRITTEN STATEMENT FROM THE VICTIM OF THE CRIME, OR A RELATIVE OF THE VICTIM, OR A DESIGNEE, PURSUANT TO SECTION 17-2-214;

(II) THE ACTUARIAL RISK OF REOFFENSE;

(III) THE OFFENDER'S ASSESSED CRIMINOGENIC NEED LEVEL;

(IV) THE OFFENDER'S PROGRAM OR TREATMENT PARTICIPATION AND PROGRESS;

(V) THE OFFENDER'S INSTITUTIONAL CONDUCT;

(VI) THE ADEQUACY OF THE OFFENDER'S PAROLE PLAN;

(VII) WHETHER THE OFFENDER WHILE UNDER SENTENCE HAS THREATENED OR HARASSED THE VICTIM OR THE VICTIM'S FAMILY OR HAS CAUSED THE VICTIM OR THE VICTIM'S FAMILY TO BE THREATENED OR HARASSED, EITHER VERBALLY OR IN WRITING;

(VIII) AGGRAVATING OR MITIGATING FACTORS FROM THE CRIMINAL CASE;

(IX) THE TESTIMONY OR WRITTEN STATEMENT FROM A PROSPECTIVE PAROLE SPONSOR, EMPLOYER, OR OTHER PERSON WHO WOULD BE AVAILABLE TO ASSIST THE OFFENDER IF RELEASED ON PAROLE;

(X) WHETHER THE OFFENDER HAD PREVIOUSLY ABSCONDED OR ESCAPED OR ATTEMPTED TO ABSCOND OR ESCAPE WHILE ON COMMUNITY SUPERVISION; AND

(XI) WHETHER THE OFFENDER COMPLETED OR WORKED TOWARDS COMPLETING A HIGH SCHOOL DIPLOMA, A GENERAL EQUIVALENCY DEGREE, OR A COLLEGE DEGREE DURING HIS OR HER PERIOD OF INCARCERATION.

(b) THE STATE BOARD OF PAROLE SHALL USE THE COLORADO RISK ASSESSMENT SCALE THAT IS DEVELOPED BY THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IN CONSIDERING INMATES FOR RELEASE ON PAROLE.

(c) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), THE STATE BOARD OF PAROLE SHALL ALSO USE THE ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT DEVELOPED PURSUANT TO SECTION 17-22.5-107 (1) IN EVALUATING AN APPLICATION FOR PAROLE.

(II) THE ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT SHALL NOT BE USED IN CONSIDERING THOSE INMATES CLASSIFIED AS SEX

OFFENDERS WITH INDETERMINATE SENTENCES FOR WHOM THE SEX OFFENDER MANAGEMENT BOARD PURSUANT TO SECTION 18-1.3-1009, C.R.S., HAS ESTABLISHED SEPARATE AND DISTINCT RELEASE GUIDELINES. THE SEX OFFENDER MANAGEMENT BOARD IN COLLABORATION WITH THE DEPARTMENT OF CORRECTIONS, THE JUDICIAL DEPARTMENT, THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY, AND THE STATE BOARD OF PAROLE SHALL DEVELOP A SPECIFIC SEX OFFENDER RELEASE GUIDELINE INSTRUMENT FOR USE BY THE STATE BOARD OF PAROLE FOR THOSE INMATES CLASSIFIED AS SEX OFFENDERS WITH DETERMINATE SENTENCES.

(5) (a) IN CONDUCTING A PAROLE REVOCATION HEARING, THE STATE BOARD OF PAROLE AND THE ADMINISTRATIVE HEARING OFFICER SHALL CONSIDER, WHERE AVAILABLE, EVIDENCE-BASED PRACTICES AND SHALL CONSIDER, BUT NEED NOT BE LIMITED TO, THE FOLLOWING FACTORS:

(I) A DETERMINATION BY THE STATE BOARD OF PAROLE THAT A PAROLEE COMMITTED A NEW CRIME WHILE ON PAROLE, IF APPLICABLE;

(II) THE PAROLEE'S ACTUARIAL RISK OF REOFFENSE;

(III) THE SERIOUSNESS OF THE TECHNICAL VIOLATION, IF APPLICABLE;

(IV) THE PAROLEE'S FREQUENCY OF TECHNICAL VIOLATIONS, IF APPLICABLE;

(V) THE PAROLEE'S EFFORTS TO COMPLY WITH A PREVIOUS CORRECTIVE ACTION PLAN OR OTHER REMEDIATION PLAN REQUIRED BY THE STATE BOARD OF PAROLE OR PAROLE OFFICER;

(VI) THE IMPOSITION OF INTERMEDIATE SANCTIONS BY THE PAROLE OFFICER IN RESPONSE TO THE TECHNICAL VIOLATIONS THAT MAY FORM THE BASIS OF THE COMPLAINT FOR REVOCATION; AND

(VII) WHETHER MODIFICATION OF PAROLE CONDITIONS IS APPROPRIATE AND CONSISTENT WITH PUBLIC SAFETY IN LIEU OF REVOCATION.

(b) THE STATE BOARD OF PAROLE SHALL USE THE ADMINISTRATIVE REVOCATION GUIDELINES DEVELOPED PURSUANT TO SECTION 17-22.5-107

(2), IN EVALUATING COMPLAINTS FILED FOR PAROLE REVOCATION.

(c) THE STATE BOARD OF PAROLE OR THE ADMINISTRATIVE HEARING OFFICER SHALL NOT REVOKE PAROLE FOR A TECHNICAL VIOLATION UNLESS THE BOARD OR ADMINISTRATIVE HEARING OFFICER DETERMINES ON THE RECORD THAT APPROPRIATE INTERMEDIATE SANCTIONS HAVE BEEN UTILIZED AND HAVE BEEN INEFFECTIVE OR THAT THE MODIFICATION OF CONDITIONS OF PAROLE OR THE IMPOSITION OF INTERMEDIATE SANCTIONS IS NOT APPROPRIATE OR CONSISTENT WITH PUBLIC SAFETY AND THE WELFARE OF SOCIETY.

(6) (a) THE STATE BOARD OF PAROLE SHALL WORK IN CONSULTATION WITH THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY AND THE DEPARTMENT OF CORRECTIONS TO DEVELOP AND IMPLEMENT A PROCESS TO COLLECT AND ANALYZE DATA RELATED TO THE BASIS FOR AND THE OUTCOMES OF THE BOARD'S PAROLE DECISIONS. THE PROCESS SHALL COLLECT DATA RELATED TO THE BOARD'S RATIONALE FOR GRANTING, REVOKING, OR DENYING PAROLE. ANY INFORMATION RELATING TO VICTIM IDENTIFICATION OR VICTIM INPUT THAT IS IDENTIFIABLE TO AN INDIVIDUAL DEFENDANT OR CASE SHALL BE MAINTAINED, BUT KEPT CONFIDENTIAL AND RELEASED ONLY TO OTHER GOVERNMENT AGENCIES, PURSUANT TO A NONDISCLOSURE AGREEMENT, FOR THE PURPOSE OF ANALYSIS AND REPORTING, PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (6). WHEN THE BOARD GRANTS PAROLE, THE PROCESS SHALL ALSO COLLECT DATA RELATED TO WHETHER THE OFFENDER HAS PREVIOUSLY RECIDIVATED, THE TYPE OF REENTRY PROGRAM GIVEN TO THE OFFENDER AS A PART OF THE OFFENDER'S PAROLE PLAN, AND WHETHER THE OFFENDER RECIDIVATES WHILE ON PAROLE.

(b) THE STATE BOARD OF PAROLE SHALL ALSO DETERMINE WHETHER A DECISION GRANTING, REVOKING, OR DENYING PAROLE CONFORMED WITH OR DEPARTED FROM THE ADMINISTRATIVE GUIDELINES CREATED PURSUANT TO SECTION 17-22.5-107 AND, IF THE DECISION WAS A DEPARTURE FROM THE GUIDELINES, THE REASON FOR THE DEPARTURE. THE DATA COLLECTED PURSUANT TO THIS PARAGRAPH (b) ARE SUBJECT TO THE SAME VICTIM PROTECTIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (6).

(c) THE STATE BOARD OF PAROLE SHALL PROVIDE THE DATA COLLECTED PURSUANT TO THIS SUBSECTION (6) TO THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY FOR ANALYSIS.

THE DIVISION OF CRIMINAL JUSTICE SHALL ANALYZE THE DATA RECEIVED PURSUANT TO THIS PARAGRAPH (c) AND SHALL PROVIDE ITS ANALYSIS TO THE BOARD. THE BOARD AND THE DIVISION OF CRIMINAL JUSTICE SHALL USE THE DATA AND ANALYSIS TO IDENTIFY SPECIFIC FACTORS THAT ARE IMPORTANT IN THE DECISION-MAKING PROCESS.

(d) THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL PROVIDE THE STATE BOARD OF PAROLE WITH TRAINING REGARDING HOW TO USE THE DATA OBTAINED AND ANALYZED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (6) TO FACILITATE THE BOARD'S FUTURE DECISION-MAKING.

(e) (I) ON OR BEFORE NOVEMBER 1, 2009, THE STATE BOARD OF PAROLE AND THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY REGARDING THE PROGRESS IN IMPLEMENTING THIS SUBSECTION (6), AND NOVEMBER 1 EACH YEAR THEREAFTER, THE STATE BOARD OF PAROLE AND THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL UPDATE THE REPORT. THE DATA SHALL BE REPORTED TO THE GENERAL ASSEMBLY ONLY IN THE AGGREGATE.

(II) THIS PARAGRAPH (e) IS REPEALED, EFFECTIVE JULY 1, 2012.

(7) THE DEPARTMENT OF CORRECTIONS, THE STATE BOARD OF PAROLE, THE DIVISION OF ADULT PAROLE, AND THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL COOPERATE IN IMPLEMENTING ALL ASPECTS OF THIS SECTION.

(8) THIS SECTION SHALL APPLY TO ANY PERSON TO WHOM SECTION 17-22.5-303.5, AS IT EXISTED PRIOR TO MAY 18, 1991, WOULD APPLY PURSUANT TO THE OPERATION OF SECTION 17-22.5-406, BECAUSE THE PROVISIONS OF SUCH SECTIONS ARE SUBSTANTIALLY SIMILAR.

(9) FOR PURPOSES OF THIS SECTION, "TECHNICAL VIOLATION" MEANS A VIOLATION OF A CONDITION OF PAROLE THAT IS NOT A CONVICTION FOR A NEW CRIMINAL OFFENSE OR NOT DETERMINED BY THE STATE BOARD OF PAROLE TO BE A COMMISSION OF A NEW CRIMINAL OFFENSE.

SECTION 7. 24-33.5-503 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW

PARAGRAPHS to read:

24-33.5-503. Duties of division. (1) The division has the following duties:

(w) TO DEVELOP THE ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT FOR USE BY THE STATE BOARD OF PAROLE AS DESCRIBED IN SECTION 17-22.5-107 (1), C.R.S.;

(x) TO DEVELOP THE COLORADO RISK ASSESSMENT SCALE AS DESCRIBED IN SECTION 17-22.5-404 (2) (a), C.R.S.;

(y) TO DEVELOP, IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS AND THE STATE BOARD OF PAROLE, A PAROLE BOARD ACTION FORM; AND

(z) TO PROVIDE TRAINING ON THE COLORADO RISK ASSESSMENT SCALE AND THE ADMINISTRATIVE RELEASE GUIDELINE INSTRUMENT AS REQUIRED BY SECTION 17-22.5-404 (2) (c), C.R.S.

SECTION 8. 22-33-107.5 (1) (b), Colorado Revised Statutes, is amended to read:

22-33-107.5. Notice of failure to attend. (1) Except as otherwise provided in subsection (2) of this section, a school district shall notify the appropriate court or parole board if a student fails to attend all or any portion of a school day, where the school district has received notice from the court or parole board:

(b) Pursuant to section 17-22.5-404, ~~(4.5)~~, 18-1.3-204 (2.3), 19-2-907 (4), 19-2-925 (5), or 19-2-1002 (1) or (3), C.R.S., that the student is required to attend school as a condition of or in connection with any sentence imposed by the court, including a condition of probation or parole; or

SECTION 9. 17-2-201, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

17-2-201. State board of parole. (3.5) THE CHAIRPERSON SHALL ANNUALLY MAKE A PRESENTATION TO JUDICIARY COMMITTEES OF THE

HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, REGARDING THE OPERATIONS OF THE BOARD.

SECTION 10. Appropriation - adjustments to the 2010 long bill.

(1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of corrections, for allocation to the executive director's office and parole subprograms, for research and parole services, for the fiscal year beginning July 1, 2010, the sum of three hundred fifty-three thousand seven hundred eighty-six dollars (\$353,786) and 7.9 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for allocation to the division of criminal justice, for parole guideline duties and actuarial consultation, for the fiscal year beginning July 1, 2010, the sum of eighty thousand one hundred fifty-four dollars (\$80,154) and 0.7 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for allocation to the division of criminal justice, for costs associated with the Colorado criminal and juvenile justice commission, for the fiscal year beginning July 1, 2010, the sum of one hundred fourteen thousand one hundred twenty-seven dollars (\$114,127).

(4) For the implementation of this act, the general fund appropriation made in the annual general appropriation act for the fiscal year beginning July 1, 2010, to the department of corrections, management, external capacity subprogram, for payments to house state prisoners, is decreased by five hundred forty-eight thousand sixty-seven dollars (\$548,067).

SECTION 11. Specified effective date. (1) Sections 3 through 12 of this act shall take effect upon passage.

(2) Section 1 of this act shall take effect only if House Bill 10-1364 is not enacted and shall take effect upon passage of this act.

(3) Section 2 of this act shall take effect only if House 10-1364 is enacted and becomes law and shall have the same effective date as House Bill 10-1364.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

APPENDIX I

Senate Bill 2011-241

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

An Act

SENATE BILL 11-241

BY SENATOR(S) King S. and Carroll, Aguilar, Boyd, Giron, Guzman, Heath, Jahn, Morse, Newell, Steadman, Tochtrop;
also REPRESENTATIVE(S) Gardner B. and Kagan, Duran, Hullinghorst, Labuda, Lee, Solano, Waller.

CONCERNING CHANGES RELATED TO THE OPERATION OF THE PAROLE BOARD,
AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 17-1-102 (7.5), Colorado Revised Statutes, is amended to read:

17-1-102. Definitions. As used in this title, unless the context otherwise requires:

(7.5) (a) "Special needs offender" means a person in the custody of the department:

(I) Who is ~~physically handicapped, is developmentally disabled, or has a mental illness~~ SIXTY YEARS OF AGE OR OLDER AND HAS BEEN DIAGNOSED BY A LICENSED HEALTH CARE PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE DEPARTMENT AS SUFFERING FROM A

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

CHRONIC INFIRMITY, ILLNESS, CONDITION, DISEASE, OR MENTAL ILLNESS AND THE DEPARTMENT OR THE STATE BOARD OF PAROLE DETERMINES THAT THE PERSON IS INCAPACITATED TO THE EXTENT THAT HE OR SHE IS NOT LIKELY TO POSE A RISK TO PUBLIC SAFETY; or

(II) ~~Who is sixty-five years of age or older and incapable of taking care of himself or herself; or~~ WHO, AS DETERMINED BY A LICENSED HEALTH CARE PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT WITH THE DEPARTMENT, SUFFERS FROM A CHRONIC, PERMANENT, TERMINAL, OR IRREVERSIBLE PHYSICAL OR MENTAL ILLNESS, CONDITION, DISEASE, OR MENTAL ILLNESS THAT REQUIRES COSTLY CARE OR TREATMENT AND WHO IS DETERMINED BY THE DEPARTMENT OR THE STATE BOARD OF PAROLE TO BE INCAPACITATED TO THE EXTENT THAT HE OR SHE IS NOT LIKELY TO POSE A RISK TO PUBLIC SAFETY.

(III) (A) ~~Who has a medical condition, other than a mental illness, that is serious enough to require costly care or treatment; and~~

(B) ~~Who is physically incapacitated due to age or the medical condition.~~

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7.5), "special needs offender" does not include a person who:

(I) ~~Has been~~ WAS convicted of a class 1 felony, ~~or~~ UNLESS THE OFFENSE WAS COMMITTED BEFORE JULY 1, 1990, AND THE OFFENDER HAS SERVED AT LEAST TWENTY YEARS IN A DEPARTMENT OF CORRECTIONS FACILITY FOR THE OFFENSE; OR

(II) ~~Has ever been convicted of a crime of violence as defined in section 18-1.3-406, C.R.S.; or~~ WAS CONVICTED OF A CLASS 2 FELONY CRIME OF VIOLENCE AS DESCRIBED IN SECTION 18-1.3-406, C.R.S., AND THE OFFENDER HAS SERVED FEWER THAN TEN YEARS IN A DEPARTMENT OF CORRECTIONS FACILITY FOR THE OFFENSE.

(III) ~~Is or has ever been a sex offender as defined in section 18-1.3-1003(4), C.R.S.~~

SECTION 2. 17-2-201 (1) (a), Colorado Revised Statutes, is amended, and the said 17-2-201 (1) is further amended BY THE

ADDITION OF A NEW PARAGRAPH, to read:

17-2-201. State board of parole. (1) (a) There is hereby created a state board of parole, referred to in this part 2 as the "board", which shall consist of seven members. The members of the board shall be appointed by the governor and confirmed by the senate, and they shall devote their full time to their duties as members of ~~such~~ THE board. The members shall be appointed for three-year terms and may serve consecutive terms. The governor may remove a board member for incompetency, neglect of duty, malfeasance in office, continued failure to use the risk assessment guidelines as required by section 17-22.5-404, or failure to regularly attend meetings as determined by the governor. Final conviction of a felony during the term of office of a board member shall automatically result in the disqualification of the member from further service on the board. The board shall be composed of ~~two~~ representatives from ~~law enforcement, one former parole or probation officer, and four citizen representatives~~ MULTIDISCIPLINARY AREAS OF EXPERTISE. TWO MEMBERS SHALL HAVE EXPERIENCE IN LAW ENFORCEMENT AND ONE MEMBER SHALL HAVE EXPERIENCE IN OFFENDER SUPERVISION, INCLUDING PAROLE, PROBATION, OR COMMUNITY CORRECTIONS. FOUR MEMBERS SHALL HAVE EXPERIENCE IN OTHER RELEVANT FIELDS. ~~The members~~ EACH MEMBER of the board shall have A MINIMUM OF FIVE YEARS OF EXPERIENCE IN A RELEVANT FIELD, AND knowledge of parole LAWS AND GUIDELINES, rehabilitation, correctional administration, the functioning of the criminal justice system, ~~and the issues associated with victims of crime, THE DUTIES OF PAROLE BOARD MEMBERS, AND ACTUARIAL RISK ASSESSMENT INSTRUMENTS AND OTHER OFFENDER ASSESSMENT INSTRUMENTS USED BY THE BOARD AND THE DEPARTMENT OF CORRECTIONS. The three designated members of the board shall each have at least five years' education or experience, or a combination thereof, in their respective fields. No~~ A person who has been convicted of a felony or of a misdemeanor involving moral turpitude or who has any financial interests which conflict with the duties of a member of the parole board shall NOT be eligible for appointment.

(e) EACH BOARD MEMBER SHALL COMPLETE A MINIMUM OF TWENTY HOURS OF CONTINUING EDUCATION OR TRAINING EVERY YEAR IN ORDER TO MAINTAIN PROFICIENCY AND TO REMAIN CURRENT ON CHANGES IN PAROLE LAWS AND DEVELOPMENTS IN THE FIELD. EACH PAROLE BOARD MEMBER SHALL SUBMIT TO THE CHAIRPERSON PROOF OF ATTENDANCE AND DETAILS REGARDING ANY CONTINUING EDUCATION OR TRAINING ATTENDED

INCLUDING THE DATE, PLACE, TOPIC, THE LENGTH OF THE TRAINING, THE TRAINER'S NAME, AND ANY AGENCY OR ORGANIZATIONAL AFFILIATION. MEMBERS MAY ATTEND TRAININGS INDIVIDUALLY OR AS PART OF A SPECIFIC TRAINING OFFERED TO THE PAROLE BOARD AS A WHOLE. THE SOLE REMEDY FOR FAILURE TO COMPLY WITH TRAINING AND DATA COLLECTION REQUIREMENTS SHALL BE REMOVAL OF THE BOARD MEMBER BY THE GOVERNOR, AND THE FAILURE TO COMPLY WITH TRAINING AND DATA COLLECTION REQUIREMENTS SHALL NOT CREATE ANY RIGHT FOR ANY OFFENDER.

SECTION 3. 17-2-201 (3) (c) and (3) (c.5), Colorado Revised Statutes, are amended, and the said 17-2-201 (3) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

17-2-201. State board of parole. (3) The chairperson, in addition to other provisions of law, has the following powers and duties:

~~(c) (I) To contract with licensed attorneys to serve as administrative hearing officers to conduct parole revocation hearings pursuant to rules adopted by the parole board; or~~

~~(H) To appoint an administrative law judge pursuant to the provisions of section 24-30-1003, C.R.S., to conduct parole revocation hearings pursuant to the rules and regulations promulgated pursuant to this subsection (3). Any references to the board regarding parole revocation hearings or revocation of parole shall include an administrative law judge appointed pursuant to this paragraph (c). TO DEVELOP AND UPDATE A WRITTEN OPERATIONAL MANUAL FOR PAROLE BOARD MEMBERS, RELEASE HEARING OFFICERS, AND ADMINISTRATIVE HEARING OFFICERS UNDER CONTRACT WITH THE BOARD BY DECEMBER 31, 2012. THE OPERATIONAL MANUAL SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, BOARD POLICIES AND RULES, A SUMMARY OF STATE LAWS GOVERNING THE BOARD, AND ALL ADMINISTRATIVE RELEASE AND REVOCATION GUIDELINES THAT THE PAROLE BOARD IS REQUIRED TO USE. THE CHAIRPERSON WILL ENSURE THAT ALL NEW PAROLE BOARD MEMBERS RECEIVE TRAINING AND ORIENTATION ON THE OPERATIONAL MANUAL.~~

~~(c.5) To contract with qualified individuals to serve as release hearing officers:~~

~~(I) To conduct parole application hearings for inmates convicted of nonviolent felonies that are class 4 felonies, class 5 felonies, or class 6 felonies, pursuant to rules adopted by the parole board; and~~

~~(II) To set parole conditions for inmates eligible for release to mandatory parole.~~

(e) TO ENSURE THAT PAROLE BOARD MEMBERS, RELEASE HEARING OFFICERS, AND ADMINISTRATIVE HEARING OFFICERS UNDER CONTRACT WITH THE BOARD FULFILL THE ANNUAL TRAINING REQUIREMENTS DESCRIBED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION AND IN SECTION 17-2-202.5. THE CHAIRPERSON SHALL NOTIFY THE GOVERNOR IF ANY BOARD MEMBER, RELEASE HEARING OFFICER, OR ADMINISTRATIVE HEARING OFFICER FAILS TO COMPLY WITH THE TRAINING REQUIREMENTS.

(f) TO ENSURE THAT PAROLE BOARD MEMBERS, RELEASE HEARING OFFICERS, AND ADMINISTRATIVE HEARING OFFICERS UNDER CONTRACT WITH THE BOARD ARE ACCURATELY COLLECTING DATA AND INFORMATION ON HIS OR HER DECISION-MAKING AS REQUIRED BY SECTION 17-22.5-404 (6). THE CHAIRPERSON SHALL NOTIFY THE GOVERNOR IMMEDIATELY IF ANY BOARD MEMBER, RELEASE HEARING OFFICER, OR ADMINISTRATIVE HEARING OFFICER FAILS TO COMPLY WITH DATA COLLECTION REQUIREMENT.

(g) TO CONDUCT AN ANNUAL COMPREHENSIVE REVIEW OF BOARD FUNCTIONS TO IDENTIFY WORKLOAD INEFFICIENCIES AND TO DEVELOP STRATEGIES OR RECOMMENDATIONS TO ADDRESS ANY WORKLOAD INEFFICIENCIES.

(h) (I) TO CONTRACT WITH LICENSED ATTORNEYS TO SERVE AS ADMINISTRATIVE HEARING OFFICERS TO CONDUCT PAROLE REVOCATION HEARINGS PURSUANT TO RULES ADOPTED BY THE PAROLE BOARD; OR

(II) TO APPOINT AN ADMINISTRATIVE LAW JUDGE PURSUANT TO THE PROVISIONS OF SECTION 24-30-1003, C.R.S., TO CONDUCT PAROLE REVOCATION HEARINGS PURSUANT TO THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SUBSECTION (3). ANY REFERENCES TO THE BOARD REGARDING PAROLE REVOCATION HEARINGS OR REVOCATION OF PAROLE SHALL INCLUDE AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO THIS PARAGRAPH (h).

(h.1) TO CONTRACT WITH QUALIFIED INDIVIDUALS TO SERVE AS RELEASE HEARING OFFICERS:

(I) TO CONDUCT PAROLE APPLICATION HEARINGS FOR INMATES CONVICTED OF NONVIOLENT FELONIES WHO HAVE BEEN ASSESSED TO BE LOW OR VERY LOW RISK BY THE COLORADO RISK ASSESSMENT SCALE DEVELOPED PURSUANT TO SECTION 17-22.5-404 (2) (a), C.R.S., PURSUANT TO RULES ADOPTED BY THE PAROLE BOARD; AND

(II) TO SET PAROLE CONDITIONS FOR INMATES ELIGIBLE FOR RELEASE TO MANDATORY PAROLE.

SECTION 4. 17-2-201 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

17-2-201. State board of parole. (4) The board has the following powers and duties:

(f) (I) TO CONDUCT A PAROLE RELEASE REVIEW IN LIEU OF A HEARING, WITHOUT THE PRESENCE OF THE INMATE, IF:

(A) THE APPLICATION FOR RELEASE IS FOR SPECIAL NEEDS PAROLE PURSUANT TO SECTION 17-22.5-403.5, AND VICTIM NOTIFICATION IS NOT REQUIRED PURSUANT TO SECTION 24-4.1-302.5, C.R.S.; OR

(B) A DETAINER FROM THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY HAS BEEN FILED WITH THE DEPARTMENT, THE INMATE MEETS THE CRITERIA FOR THE PRESUMPTION OF PAROLE IN SECTION 17-22-404.8, AND VICTIM NOTIFICATION IS NOT REQUIRED PURSUANT TO SECTION 24-4.1-302.5, C.R.S.

(II) THE BOARD SHALL NOTIFY THE INMATE'S CASE MANAGER IF THE BOARD DECIDES TO CONDUCT A PAROLE RELEASE REVIEW WITHOUT THE PRESENCE OF THE INMATE, AND THE CASE MANAGER SHALL NOTIFY THE INMATE OF THE BOARD'S DECISION. THE CASE MANAGER MAY REQUEST THAT THE BOARD RECONSIDER AND CONDUCT A HEARING WITH THE INMATE PRESENT.

SECTION 5. Part 2 of article 2 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-2-202.5. Administrative hearing officers and release hearing officers - qualifications - duties. (1) (a) TO BE ELIGIBLE TO SERVE AS AN ADMINISTRATIVE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE UNDER CONTRACT WITH THE BOARD, AN ATTORNEY SHALL HAVE FIVE YEARS EXPERIENCE IN THE PRACTICE OF LAW AND BE KNOWLEDGEABLE OF PAROLE LAWS AND GUIDELINES, OFFENDER REHABILITATION, CORRECTIONAL ADMINISTRATION, THE FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM, ISSUES ASSOCIATED WITH VICTIMS OF CRIME, THE DUTIES OF PAROLE BOARD MEMBERS, AND ACTUARIAL RISK ASSESSMENT INSTRUMENTS AND OTHER OFFENDER ASSESSMENT INSTRUMENTS USED BY THE BOARD AND THE DEPARTMENT OF CORRECTIONS.

(b) AN ADMINISTRATIVE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE UNDER CONTRACT WITH THE BOARD IS REQUIRED TO COMPLETE TWELVE HOURS ANNUALLY OF CONTINUING EDUCATION OR TRAINING CONSISTENT WITH SECTION 17-2-201 (1) (e).

(c) AN ADMINISTRATIVE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE UNDER CONTRACT WITH THE BOARD SHALL COMPLY WITH THE DATA AND INFORMATION COLLECTION ON DECISION-MAKING AS REQUIRED BY SECTION 17-22.5-404 (6) AND SHALL TRANSMIT THIS INFORMATION AS DIRECTED BY THE CHAIRPERSON OR BOARD POLICY.

(d) THE SOLE REMEDY FOR FAILURE TO COMPLY WITH TRAINING AND DATA COLLECTION REQUIREMENTS SHALL BE TERMINATION OF THE EMPLOYEE, AND THE FAILURE TO COMPLY WITH TRAINING AND DATA COLLECTION REQUIREMENTS SHALL NOT CREATE ANY RIGHT FOR ANY OFFENDER.

(2) (a) A RELEASE HEARING OFFICER SHALL HAVE THREE YEARS OF RELEVANT EXPERIENCE AND BE KNOWLEDGEABLE OF PAROLE LAWS AND GUIDELINES, OFFENDER REHABILITATION, CORRECTIONAL ADMINISTRATION, THE FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM, THE ISSUES ASSOCIATED WITH VICTIMS OF CRIME, THE DUTIES OF PAROLE BOARD MEMBERS, AND ACTUARIAL RISK ASSESSMENT INSTRUMENTS AND OTHER OFFENDER ASSESSMENT INSTRUMENTS USED BY THE BOARD AND THE DEPARTMENT OF CORRECTIONS.

(b) A RELEASE HEARING OFFICER UNDER CONTRACT WITH THE BOARD IS REQUIRED TO COMPLETE TWELVE HOURS ANNUALLY OF CONTINUING

EDUCATION OR TRAINING CONSISTENT WITH SECTION 17-2-201 (1) (e).

(c) A RELEASE HEARING OFFICER SHALL COMPLY WITH THE DATA AND INFORMATION COLLECTION ON DECISION-MAKING REQUIRED BY SECTION 17-22.5-404 (6) AND SHALL TRANSMIT THIS INFORMATION AS DIRECTED BY THE CHAIRPERSON OR BOARD POLICY.

(d) THE SOLE REMEDY FOR FAILURE TO COMPLY WITH TRAINING AND DATA COLLECTION REQUIREMENTS SHALL BE TERMINATION OF THE EMPLOYEE, AND THE FAILURE TO COMPLY WITH TRAINING AND DATA COLLECTION REQUIREMENTS SHALL NOT CREATE ANY RIGHT FOR ANY OFFENDER.

SECTION 6. 17-22.5-403.5, Colorado Revised Statutes, is amended to read:

17-22.5-403.5. Special needs parole. (1) Notwithstanding any provision of law to the contrary, a special needs offender, as ~~determined pursuant to rules adopted by the state board of parole~~ DEFINED IN SECTION 17-2-102 (7.5) (a), may be eligible for parole prior to OR AFTER the offender's parole eligibility date pursuant to this section if:

(a) The state board of parole determines, based on the special needs offender's condition and a medical evaluation, that he or she does not constitute a threat to public safety and is not likely to commit an offense; and

(b) The STATE board ~~prepares~~ OF PAROLE APPROVES a special needs parole plan that ensures appropriate supervision ~~and placement~~ OF AND CONTINUITY OF MEDICAL CARE FOR the special needs offender.

(2) This section shall apply to any inmate applying for parole on or after July 1, 2001, regardless of when the inmate was sentenced. The provisions of this section shall not affect the length of the parole period to which a special needs offender would otherwise be subject.

(3) (a) THE DEPARTMENT IS RESPONSIBLE FOR IDENTIFYING INMATES WHO MEET THE ELIGIBILITY CRITERIA FOR SPECIAL NEEDS PAROLE AND SHALL SUBMIT A REFERRAL TO THE STATE BOARD OF PAROLE FOR ALL ELIGIBLE INMATES.

(b) THE REFERRAL SHALL INCLUDE:

(I) A SUMMARY OF THE INMATE'S MEDICAL OR PHYSICAL CONDITION AND THE RISK OF REOFFENSE THAT THE INMATE POSES TO SOCIETY. IN RENDERING AN OPINION REGARDING THE INMATE'S LEVEL OF RISK OF REOFFENSE, THE DEPARTMENT MAY CONSIDER SUCH FACTORS AS THE INMATE'S MEDICAL OR PHYSICAL CONDITION, THE SEVERITY OF ANY DISABILITY OR INCAPACITATION, RISK ASSESSMENT SCORES, THE NATURE AND SEVERITY OF THE OFFENSE FOR WHICH THE INMATE IS CURRENTLY INCARCERATED, THE INMATE'S CRIMINAL HISTORY, INSTITUTIONAL CONDUCT, AND OTHER RELEVANT FACTORS.

(II) THE DETAILS OF A SPECIAL NEEDS PAROLE PLAN RECOMMENDED BY THE DEPARTMENT;

(III) ~~(3) The department may recommend~~ A RECOMMENDATION to the parole board that an offender be ~~considered for parole prior to the offender's parole eligibility date~~ RELEASED OR NOT BE RELEASED as a special needs offender pursuant to the provisions of subsection (1) of this section. Prior to making any recommendation pursuant to this ~~subsection (3)~~ SUBPARAGRAPH (III), the department shall establish objective criteria on which to base a recommendation for parole ~~prior to the offender's parole eligibility date~~ pursuant to the provisions of this section; AND

(IV) A VICTIM IMPACT STATEMENT OR RESPONSE FROM THE DISTRICT ATTORNEY THAT PROSECUTED THE OFFENDER, IF RECEIVED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3).

(c) (I) The department shall provide notification to any victim, as required under section 24-4.1-302.5, C.R.S. A victim shall have thirty days after receiving notification to submit a victim impact statement to the department. The department shall include any victim impact statement in the referral to the state board of parole.

(II) AT THE SAME TIME THAT THE DEPARTMENT COMPLETES THE NOTIFICATION REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE DEPARTMENT SHALL NOTIFY THE DISTRICT ATTORNEY THAT PROSECUTED THE OFFENDER IF THE OFFENDER IS SERVING A SENTENCE FOR A CONVICTION OF A CRIME OF VIOLENCE AS DESCRIBED IN SECTION 18-1.3-406, C.R.S., OR A SEX OFFENSE AS LISTED IN SECTION 18-1.3-1004 (4), C.R.S. A DISTRICT

ATTORNEY SHALL HAVE THIRTY DAYS AFTER RECEIVING NOTIFICATION TO SUBMIT A RESPONSE TO THE DEPARTMENT. THE DEPARTMENT SHALL INCLUDE ANY DISTRICT ATTORNEY RESPONSE IN THE REFERRAL TO THE STATE BOARD OF PAROLE.

(4) (a) THE STATE BOARD OF PAROLE SHALL CONSIDER AN INMATE FOR SPECIAL NEEDS PAROLE UPON REFERRAL BY THE DEPARTMENT.

(b) THE STATE BOARD OF PAROLE SHALL MAKE A DETERMINATION OF THE RISK OF REOFFENSE THAT THE INMATE POSES AFTER CONSIDERING SUCH FACTORS AS THE INMATE'S MEDICAL OR PHYSICAL CONDITION, THE SEVERITY OF ANY DISABILITY OR INCAPACITATION, THE INMATE'S RISK ASSESSMENT SCORES, THE NATURE AND SEVERITY OF THE OFFENSE FOR WHICH THE INMATE IS CURRENTLY INCARCERATED, THE INMATE'S CRIMINAL HISTORY, THE INMATE'S INSTITUTIONAL CONDUCT, AND OTHER RELEVANT FACTORS.

(c) THE STATE BOARD OF PAROLE MAY SCHEDULE A HEARING ON THE APPLICATION FOR SPECIAL NEEDS PAROLE WITH THE INMATE PRESENT OR THE BOARD MAY REVIEW THE APPLICATION AND ISSUE A DECISION WITHOUT A HEARING, PURSUANT TO SECTION 17-2-201 (4) (f).

(d) THE STATE BOARD OF PAROLE SHALL MAKE A DETERMINATION OF WHETHER TO GRANT SPECIAL NEEDS PAROLE WITHIN THIRTY DAYS AFTER RECEIVING THE REFERRAL FROM THE DEPARTMENT. THE BOARD MAY DELAY THE DECISION IN ORDER TO REQUEST THAT THE DEPARTMENT MODIFY THE SPECIAL NEEDS PAROLE PLAN.

(e) A DENIAL OF SPECIAL NEEDS PAROLE BY THE STATE BOARD OF PAROLE SHALL NOT AFFECT AN INMATE'S ELIGIBILITY FOR ANY OTHER FORM OF PAROLE OR RELEASE UNDER APPLICABLE LAW.

(5) THE BOARD MAY CONSIDER THE APPLICATION FOR SPECIAL NEEDS PAROLE PURSUANT TO THE PROCEEDINGS SET FORTH IN SECTION 17-2-201 (4) (f) OR 17-2-201 (9) (a). IF THE DEPARTMENT RECOMMENDS TO THE STATE BOARD OF PAROLE THAT AN OFFENDER BE RELEASED TO PAROLE AS A SPECIAL NEEDS OFFENDER PURSUANT TO THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE BOARD MAY DENY PAROLE ONLY BY A MAJORITY VOTE OF THE BOARD.

(6) THE DEPARTMENT SHALL NOT HAVE ANY RESPONSIBILITY FOR

THE PAYMENT OF MEDICAL CARE FOR ANY OFFENDER UPON HIS OR HER RELEASE.

SECTION 7. 17-22.5-404 (6) (e), Colorado Revised Statutes, is amended to read:

17-22.5-404. Parole guidelines. (6) (e) (I) On or before November 1, ~~2009~~ 2011, AND ON OR BEFORE NOVEMBER 1 EACH YEAR THEREAFTER, the state board of parole and the division of criminal justice in the department of public safety shall issue a report to the general assembly regarding ~~the progress in implementing this subsection (6), and November 1 each year thereafter, the state board of parole and the division of criminal justice in the department of public safety shall update the report~~ OUTCOMES OF DECISIONS BY THE STATE BOARD OF PAROLE. The data shall be reported to the general assembly only in the aggregate.

(II) ~~This paragraph (e) is repealed, effective July 1, 2012.~~

SECTION 8. Article 22.5 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-22.5-404.7. Presumption of parole - nonviolent offenders with ICE detainees. (1) THERE SHALL BE A PRESUMPTION, SUBJECT TO THE FINAL DISCRETION OF THE PAROLE BOARD, IN FAVOR OF GRANTING PAROLE TO AN INMATE WHO HAS REACHED HIS OR HER PAROLE ELIGIBILITY DATE AND WHO:

(a) HAS BEEN ASSESSED BY THE COLORADO RISK ASSESSMENT SCALE DEVELOPED PURSUANT TO SECTION 17-22.5-404 (2) (a), TO BE MEDIUM RISK OR BELOW OF REOFFENSE;

(b) IS NOT SERVING A SENTENCE FOR A FELONY CRIME DESCRIBED IN SECTION 18-3-303, 18-3-306, OR 18-6-701, C.R.S.; SECTIONS 18-7-402 TO 18-7-407, C.R.S.; OR SECTION 18-12-102 OR 18-12-109, C.R.S.; SECTION 18-17-104, C.R.S., OR SECTION 18-18-407, C.R.S.; OR A FELONY CRIME LISTED IN SECTION 24-4.1-302 (1), C.R.S.; AND

(c) HAS AN ACTIVE DETAINER LODGED BY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY.

(2) IN DETERMINING WHETHER TO GRANT PAROLE PURSUANT TO PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL CONSIDER THE COST OF INCARCERATION TO THE STATE OF COLORADO IN RELATION TO THE NEEDS OF FURTHER CONFINEMENT OF THE INMATE TO ACHIEVE THE PURPOSE OF THE INMATE'S SENTENCE.

(3) (a) THE STATE BOARD OF PAROLE MAY RELEASE AN ELIGIBLE INMATE, PURSUANT TO SUBSECTION (1) OF THIS SECTION, ONLY TO THE CUSTODY OF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY OR OTHER LAW ENFORCEMENT AGENCY WITH AUTHORITY TO EXECUTE THE DETAINEE ON BEHALF OF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY.

(b) IF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY WITHDRAWS THE DETAINEE OR DECLINES TO TAKE THE INMATE INTO CUSTODY, THE STATE BOARD OF PAROLE SHALL HOLD A RECISSION HEARING TO RECONSIDER THE GRANTING OF PAROLE TO THE INMATE.

(c) IF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY ISSUES AN ORDER OF DEPORTATION FOR THE INMATE, THE DEPARTMENT OF CORRECTIONS SHALL SUBMIT A REQUEST TO THE STATE BOARD OF PAROLE TO DISCHARGE PAROLE.

(d) A DENIAL OF PAROLE BY THE STATE BOARD OF PAROLE PURSUANT TO THIS SECTION SHALL NOT AFFECT AN INMATE'S ELIGIBILITY FOR ANOTHER FORM OF PAROLE OR RELEASE APPLICABLE UNDER LAW.

(4) THE BOARD MAY CONSIDER THE APPLICATION FOR PAROLE PURSUANT TO THE PROCEEDINGS SET FORTH IN SECTION 17-2-201 (4) (f) OR 17-2-201 (9) (a).

(5) FOR INMATES WHO WERE PAROLE ELIGIBLE BEFORE THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT SHALL NOTIFY THE STATE BOARD OF PAROLE OF ANY OF THOSE INMATES WHO MEET THE CRITERIA LISTED IN SUBSECTION (1) OF THIS SECTION AND THE BOARD SHALL EITHER SET A RELEASE HEARING OR CONDUCT A RELEASE REVIEW WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

SECTION 9. Appropriation. (1) In addition to any other

appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of corrections, for allocation to the parole board, contract services, for training and contract administrative and release hearing officers, for the fiscal year beginning July 1, 2011, the sum of forty-three thousand eight hundred dollars (\$43,800), or so much thereof as may be necessary, for the implementation of this act.

(2) It is the intent of the general assembly that the general fund appropriation in subsection (1) of this section shall be derived from savings generated from the implementation of the provisions of House Bill 11-1064, as enacted during the first regular session of the sixty-eighth general assembly.

SECTION 10. Effective date. (1) This act shall only take effect if:

(a) House Bill 11-1064 is enacted at the first regular session of the sixty-eighth general assembly and becomes law; and

(b) The final fiscal estimate for House Bill 11-1064, as determined from the appropriations enacted in said bill, shows a net reduction in the amount of general fund revenues appropriated for the state fiscal year 2011-12, that is equal to or greater than the amount of the general fund appropriation made for the implementation of this act for the state fiscal year 2011-12, as reflected in section 9 of this act; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 15, 2011, that the requirement set forth in paragraph (b) of this subsection (1) has been met.

SECTION 11. Safety clause. The general assembly hereby finds,

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

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

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