

Colorado  
Commission  
on Criminal &  
Juvenile Justice  
**Annual  
Report  
2014**





# Annual Report | 2014

## Colorado Commission on Criminal & Juvenile Justice

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

Office of Research and Statistics  
Kim English, Research Director

Division of Criminal Justice  
Jeanne Smith, Director

Department of Public Safety  
Stan Hilkey, Executive Director

700 Kipling Street, Suite 1000  
Denver, Colorado 80215  
Tel: 303-239-4442  
Fax: 303-239-4491  
<http://www.colorado.gov/ccjj>





# Table of Contents

v	Acknowledgements
vii	Commission members
ix	Task force and committee members
xiii	Commission staff
	.....
1	Section 1: <b>Introduction</b>
3	Section 2: <b>Legislative intent and membership</b>
5	Section 3: <b>Activities of the Commission</b>
17	Section 4: <b>Recommendations and outcomes</b>
27	Section 5: <b>Next steps</b>
	.....
29	Section 6: <b>Appendices:</b>
31	Appendix A: Jessica's Law Letter
49	Appendix B: Concerning the Implementation of Amendment 64
75	Appendix C: Analyses for the Comprehensive Sentencing Task Force regarding motor vehicle theft
83	Appendix D: Subset of habitual offenders incarcerated in DOC
87	Appendix E: Indeterminate-eligible sex offenses: Trial and conviction outcomes
95	Appendix F: Commission Recommendation FY14-CS1
101	Appendix G: Commission Recommendation FY14-CS2

*Tables and figures listed on next page.*

**Tables:**

- 2 Table 1.1: Commission supported bills presented to the 2014 General Assembly
- 17 Table 4.1: 2014 Legislative Session “Commission Bills”
- 22 Table 4.2: Proposed Marijuana penalties for Minor in Possession

.....

**Figures:**

- 11 Figure 3.1: Commission, task force and committee organizational chart

# Acknowledgements

The Commission undertook its seventh year of work in Fiscal Year 2014. Commission Chair Jim Davis, Executive Director of the Department of Public Safety, resigned in March and the Governor appointed Kathy Sasak, Deputy Director of Public Safety, to lead both the Department and the Commission until a search could be completed for a new Executive Director. The Commission is grateful to Ms. Sasak for her leadership until the new Executive Director, Stan Hilkey, took the helms of the Department and the Commission. Doug Wilson remained Vice Chair and, along with consultants Paul Herman and Ken Plotz, the Commission continued its efforts to study and make recommendations to improve the state's justice system.

The Commission is grateful for its hard-working task force chairs: Eric Philp and Charlie Garcia co-chaired the Drug Policy Task Force as it worked to respond to a request in Senate Bill 13-283; Jeanne Smith and Norm Mueller co-chaired the Comprehensive Sentencing Task Force, and Norm Mueller and Kate Horn-Murphy co-chaired the Sex Offense Working Group; Theresa Cisneros and Peter Weir served as co-chairs for the Community Corrections Task Force; and Kelly Friesen and Jeff McDonald led the Juvenile Justice Task Force. Jim Davis, as Chair of the Commission, served as chair for the Minority Overrepresentation Committee.

In particular, the Commission is grateful for the dozens of task force and working group members who volunteer their time to the Commission's efforts. The task force membership reflects a diverse group of experts committed to improving the administration of justice. These individuals invest considerable time to study, discuss and consider improvements in current processes. The Commission's effectiveness depends on this expertise and commitment to meet its statutory mandates to improve the effectiveness and efficiency of the justice system in Colorado.

The Commission extends a special appreciation to Paul Herman who has provided guidance, perspective, encouragement and clarity to the Commission since its inception. The Commission, along with its task forces and working groups, benefits from the expertise and experience that Mr. Herman brings to this work. Likewise, the Juvenile Justice Task Force is assisted by consultant Ken Plotz' guidance.

Finally, the Commission's work does not occur in a vacuum, and the Commission is deeply grateful for the multidisciplinary, collaborative spirit of those in the justice communities who devote their time and energy to the health and safety of our communities.



## Commission members

**James H. Davis** (resigned March 2014)

*CCJJ Chair*

Executive Director

Department of Public Safety

**Kathy Sasak** (March - June 2014)

*Interim CCJJ Chair*

Interim Executive Director

Department of Public Safety

**Stan Hilkey** (appointed June 2014)

*CCJJ Chair*

Executive Director

Department of Public Safety

**Douglas K. Wilson**

*CCJJ Vice Chair*

State Public Defender

**Jennifer Bradford** (appointed February 2014)

Metropolitan State University of Denver

Representative for the Executive Director of  
the Department of Higher Education

**Theresa Cisneros**

Judge, 4th Judicial District

Representing Colorado State Judicial

**Sallie Clark**

County Commissioner, El Paso

Representing County Commissioners

**Matthew Durkin**

Deputy Attorney General – Criminal Justice

Attorney General's Office

**Kelly Friesen**

Grand County Juvenile Justice Department and  
S.B. 94, 14th Judicial District

At Large

**Charles Garcia**

At Large

**Kate Horn-Murphy**

Victim's Representative, 17th Judicial District  
Representing Victims' Rights Organizations

**Henry Jackson** (resigned December 2013)

Metropolitan State University of Denver

Representative for the Executive Director of  
the Department of Higher Education

**Steve King**

State Senator

Senate District 7

**Julie Krow**

Children, Youth and Families, Director  
Department of Human Services

**Evelyn Leslie**

Colorado School for Family Therapy

Representing Mental Health Treatment Providers

**Claire Levy** (resigned October 2013)

State Representative

House District 13

**Beth McCann** (appointed October 2013)

State Representative

House District 8

**Jeff W. McDonald**

Jefferson County, Juvenile Assessment Center  
Juvenile Justice

**John P. Morse** (resigned August 2013)

State Senator  
Senate District 11

**Norm Mueller**

Criminal Defense Attorney  
Haddon, Morgan, & Foreman, P.C.

**Kevin Paletta**

Lakewood Police Department  
Representing Chiefs of Police

**Joe Pelle**

Boulder County Sheriff's Department  
Representing Colorado Sheriffs

**Eric Philp**

Director of Probation Services  
Representing Colorado State Judicial

**Rick Raemisch**

Executive Director  
Department of Corrections

**Debbie Rose** (resigned December 2013)

Representative for the  
Juvenile Parole Board

**Brandon Shaffer** (appointed July 2013)

Chairman  
Colorado State Board of Parole

**Pat Steadman** (appointed October 2013)

State Representative  
Senate District 31

**Alaurice M. Tafoya-Modi**

Criminal Defense Attorney  
At Large

**Mark Waller**

State Representative  
House District 15

**Peter A. Weir**

District Attorney, 1st Judicial District  
Representing District Attorneys

**Meg Williams** (appointed January 2014)

Representative for the  
Juvenile Parole Board

**Dave Young**

District Attorney, 17th Judicial District  
Representing District Attorneys

**Jeanne M. Smith**

Director of the Division of Criminal Justice  
Department of Public Safety  
*Non-Voting Member*

# Task force and committee members

July 2013 - June 2014

## Community Corrections Task Force

Name	Affiliation
Theresa Cisneros, <i>Co-Chair</i>	Judge, 4th Judicial District
Peter Weir, <i>Co-Chair</i>	District Attorney, 1st Judicial District
Dennis Berry	Mesa County Criminal Justice System
Joe Cannata	Voices of Victims
Shannon Carst	Colorado Community Corrections Coalition
Christie Donner	Criminal Justice Reform Coalition
Harriet Hall	Jefferson Center for Mental Health
Gregg Kildow	Intervention Community Corrections Services
Steve King	State Senator, Senate District 7
David Lipka	State Public Defender's Office
Greg Mauro	Denver Pretrial Services
Jacqueline McCall	Department of Corrections
Kathryn Otten	Jefferson County Justice Services
Walt Pesterfield	Department of Corrections, Division of Adult Parole and Community Corrections
Eric Philp	Probation Services, Judicial Department
Brandon Shaffer	Colorado State Board of Parole
Alaurice Tafoya-Modi	Criminal Defense Attorney
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice
Anthony Young	Colorado State Board of Parole

## Comprehensive Sentencing Task Force

Name	Affiliation
Jeanne Smith, <i>Co-chair</i>	Division of Criminal Justice
Norm Mueller, <i>Co-chair</i>	Criminal Defense Attorney
Denise Balazic	State Parole Board
Maureen Cain	Colorado Criminal Defense Bar
Michael Dougherty	District Attorney's Office, 1st Judicial District
Matt Durkin	Attorney General's Office, Criminal Justice Section
Martin Egelhoff	Denver District Court
Mark Evans	State Public Defender's Office ( <i>non-voting member</i> )
Charles Garcia	Commission, At Large member

Kate Horn-Murphy	Victim's Representative, 17th Judicial District
Claire Levy	State Representative, House District 13
Jason Middleton	State Public Defender's Office
Joe Pelle	Sheriff, Boulder County
Walt Pesterfield	Division of Adult Parole
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice
Dianne Tramutola-Lawson	Colorado CURE
Dana Wilks	Division of Probation Services
Douglas Wilson	State Public Defender's Office
Dave Young	District Attorney's Office, 17th Judicial District

## Drug Policy Task Force

Name	Affiliation
Charlie Garcia, <i>Co-chair</i>	Commission, At Large member
Eric Philp, <i>Co-chair</i>	Probation Services, Colorado State Judicial
Maureen Cain	Criminal Defense Bar
Marc Condojani	Division of Behavioral Health, Department of Human Services
Brian Connors	State Public Defender's Office
Christie Donner	Colorado Criminal Justice Reform Coalition
Matt Durkin	Attorney General's Office, Criminal Justice Section
Mike Foote	State Representative, House District 12
Evie Hudack	State Senator, Senate District 19
Ron Kammerzell	Department of Revenue
Vince Niski	Colorado Springs Police Department
Kevin Paletta	Chief, Lakewood Police Department
Tom Raynes	Colorado District Attorneys' Council
Pat Steadman	State Senator, Senate District 31
Mark Waller	State Representative, House District 15

## Juvenile Justice Task Force

Name	Affiliation
Kelly Friesen, <i>Co-Chair</i>	Grand County Juvenile Justice Department and S.B. 94, 14th Judicial District
Jeff McDonald, <i>Co-Chair</i>	Jefferson County Juvenile Assessment Center
Donia Amick	Juvenile Justice and Delinquency Prevention Representative
Karen Ashby	Denver Juvenile Court
Michelle Brinegar	District Attorney's Office, 8th Judicial District
Steve Brittain	La Plata Youth Services
Susan Colling	Division of Probation Services
Kim Dvorchak	Juvenile Defender Coalition
Jacob Eppler	Attorney at Law
Sarah Ericson	District Attorney's Office, 18th Judicial District

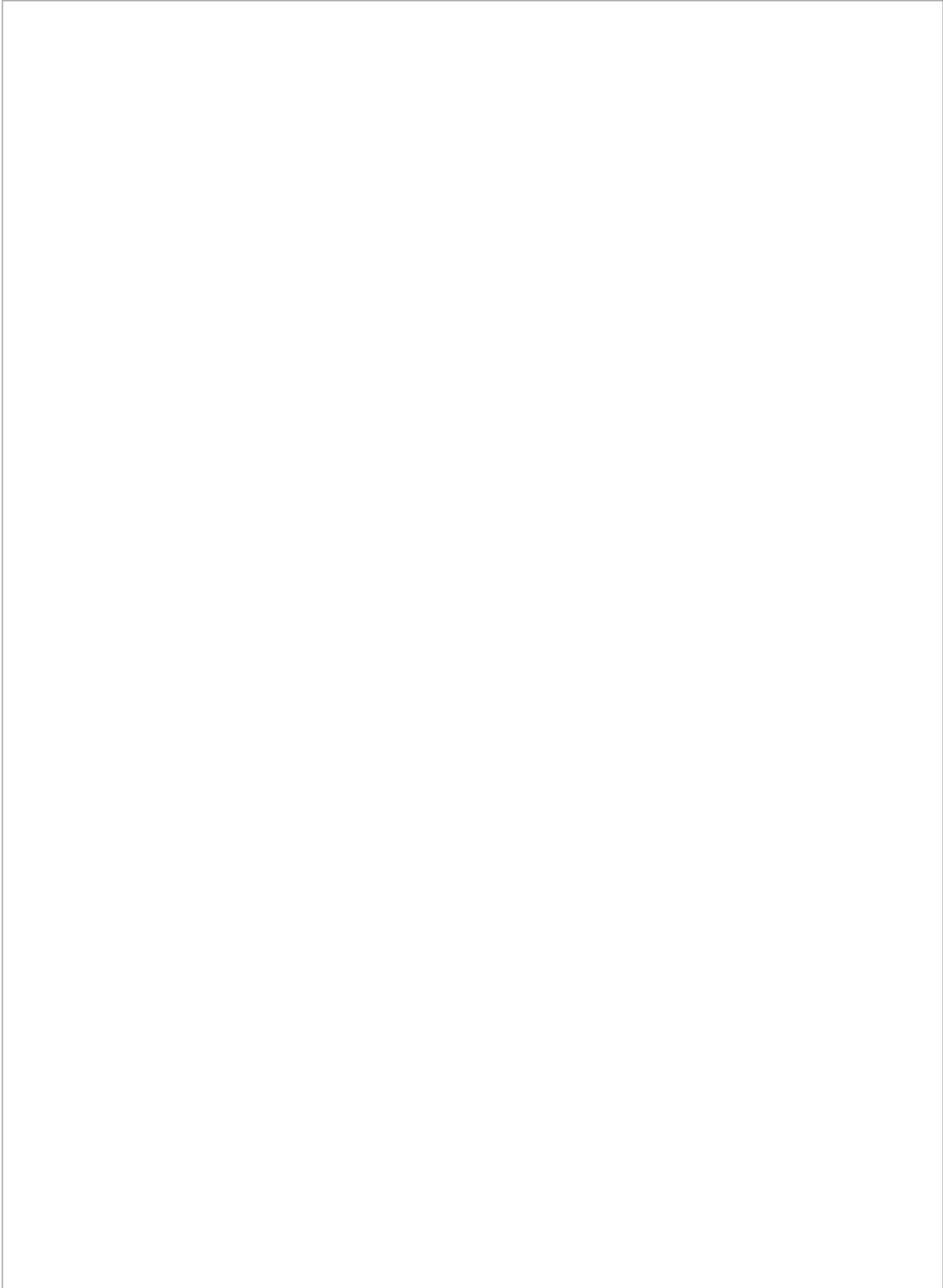
Charles Garcia	Commission, At Large member
John Gomez	Division of Youth Corrections
Joe Higgins	Mesa County Partners
Regina Huerter	Denver Crime Prevention & Control Commission
Bill Kilpatrick	Golden Police Department
Julie Krow	Department of Human Services
Beth McCann	State Representative, House District 8
Ann Gail Meinster	1st Judicial District Court
Linda Newell	State Senator, Senate District 26
Stan T. Paprocki	Division of Behavioral Health, Department of Human Services
Debbie Rose	Juvenile Parole Board
Bonnie Saltzman	Juvenile Justice and Delinquency Prevention Council Representative
Hal Seargent	District Attorney's Office, 1st Judicial District
Norene Simpson	State Public Defender's Office
Meg Williams	Office of Adult and Juvenile Justice Assistance, Division of Criminal Justice

## Legislative Committee

Name	Affiliation
James Davis, <i>Co-Chair</i>	Department of Public Safety
Douglas Wilson, <i>Co-Chair</i>	State Public Defender
Matt Durkin	Attorney General's Office, Criminal Justice Section
Michael Dougherty	District Attorney's Office, 1st Judicial District
Norm Mueller	Criminal Defense Attorney
Joe Pelle	Boulder County Sheriff's Department
Tom Raynes	Colorado District Attorneys' Council
Jeanne Smith	Division of Criminal Justice

## Minority Overrepresentation Committee

Name	Affiliation
James Davis, <i>Chair</i>	Department of Public Safety
Michael Dougherty	District Attorney's Office, 1st Judicial District
Regina Huerter	Denver Crime Prevention & Control Commission
Henry Jackson	Metropolitan State University of Denver
Evelyn Leslie	Colorado School for Family Therapy
Anna Lopez	Division of Criminal Justice
Alaurice Tafoya-Modi	Criminal Defense Attorney
Heather Wells	Office of Planning and Analysis, Department of Corrections



## Commission staff

**Kim English**

Office of Research and Statistics  
Division of Criminal Justice

**Paul Herman**

Consultant

**Kenneth Plotz**

Consultant

**Christine Adams**

Office of Research and Statistics  
Division of Criminal Justice

**Peg Flick**

Office of Research and Statistics  
Division of Criminal Justice

**Kevin L. Ford**

Office of Research and Statistics  
Division of Criminal Justice

**Linda Harrison**

Office of Research and Statistics  
Division of Criminal Justice

**Jana Locke**

Executive Director's Office  
Department of Public Safety

**Adrienne Loye**

Executive Director's Office  
Department of Public Safety

**Laurence Lucero**

Office of Research and Statistics  
Division of Criminal Justice

**Germaine Miera**

Office of Research and Statistics  
Division of Criminal Justice





# 1

## Introduction

This report describes the Commission's activities for Fiscal Year 2014 (July 2013 through June 2014). Reporting on a fiscal year allows for Commission recommendations approved in the summer and fall (the time that most recommendations from task forces are presented to the Commission) to be ready (when applicable) for the following legislative session.

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

system. Seven of the recommendations created in 2010 were supported and passed by the General Assembly in the spring of 2011. In 2011, the Commission continued the efforts that began in 2010 and also initiated work in the areas of bail reform along with more intensive study in the area of minority overrepresentation. In 2012, the Commission approved 23 recommendations with four of those recommendations resulting in statutory changes by the 2012 General Assembly. During 2013 the Commission approved 22 recommendations in the areas of drug policy, sentencing, bail practices, minority overrepresentation and juvenile justice. Thirteen of the recommendations produced in Fiscal Year 2013 resulted in statutory changes by the 2013 General Assembly. Another recommendation (the sustainability plan for the 2008 Commission-initiated Evidence Based Practices Implementation for Capacity [EPIC] effort) approved by the Commission the previous year (FY2012), was also approved by the General Assembly, resulting in a total of 14 Commission recommendations signed into law.

During Fiscal Year 2014 the Commission approved six recommendations in the areas of drug policy and sentencing. Five of these recommendations resulted

in statutory changes by the 2014 General Assembly. Additionally, two other initiatives from the General Assembly in 2014 directed the Commission to examine both the issue of cyber bullying (House Bill 14-1131) and the issue of whether enhanced penalties for perpetrators of crimes whose victims hold certain occupations (e.g., emergency responders) are evidence-based (House Bill 14-1214). Further details of these directives can be found in Section 3 of this report.

Legislative reforms are one type of systemic change the Commission promotes. It also recommends changes

to operational policy, business practice, and agency philosophy.

This 2014 report is organized as follows: Section 2 provides a summary of the Commission’s legislative intent and membership; Section 3 discusses Commission, task force and committee activities from July 2013 through June 2014; Section 4 details the Commission’s recommendations and outcomes, including relevant 2014 legislation; and Section 5 describes the Commission’s next steps.

**Table 1.1. Commission supported bills presented to the 2014 General Assembly**

Bill number	Bill title	Status
Senate Bill 14-129	Concerning changes to criminal provisions related to marijuana, and, in connection therewith, making an appropriation <i>(four recommendations included in this bill)</i>	Signed
House Bill 14-1266	Concerning the penalties for certain value-based offenses, and, in connection therewith, reducing an appropriation <i>(one recommendation included in this bill)</i>	Signed
<b><i>Bills that are related to and provide clarifying changes to previous CCJJ Bills</i></b>		
Senate Bill 14-163	Concerning clarifying changes to provisions related to the sentencing of persons convicted of drug crimes <i>(Note: This bill provides clarifying changes to previous CCJJ-derived, Senate Bill 2013-250 on drug sentencing)</i>	Signed
Senate Bill 14-212	Concerning clarifying changes to the provisions related to best practices in bond setting <i>(Note: This bill clarifies a previous CCJJ bill, House Bill 13-1236, on evidenced-based bond practices)</i>	Signed



# 2

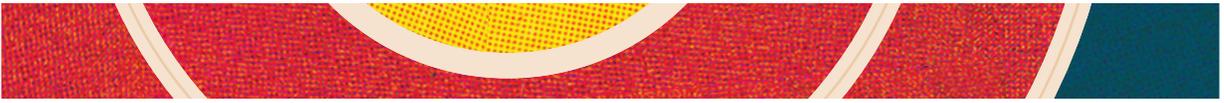
## Legislative intent and membership

The Commission is comprised of 26 voting members, 18 of whom are appointed representatives of specific stakeholder groups, and 8 of whom are identified to serve based on their official position. Terms of the appointed representatives are variable. For more information please see House Bill 07-1358 which established the Commission, available on the CCJJ website at <http://cdpsweb.state.co.us/ccjj/legislation.html>.

During Fiscal Year 2014 the Commission welcomed eight new members. Incoming commissioners included Jennifer Bradford, Jeff McDonald, Kevin Paletta, Joe Pelle, Brandon Shaffer and Meg Williams. Departing

Commissioners included Henry Jackson, Regina Huerter, Bill Kilpatrick, Grayson Robinson, Anthony Young and Debbie Rose. Representative Beth McCann replaced Representative Claire Levy and Senator Pat Steadman replaced Senator John Morse. In March of 2014, Commission Chair James Davis left the Department of Public Safety, and therefore resigned the position of Chair. Kathy Sasak, Deputy Director of the Department of Public Safety, chaired the Commission until June 2014 when Stan Hilkey became the Executive Director of the Department of Public Safety and Chair of the Commission.





# 3

## Activities of the Commission

This section summarizes the activities and accomplishments of the Commission for Fiscal Year 2014. The following topics are included in this section:

- An update on the three mandates forwarded to the Commission from the General Assembly at the conclusion of the 2013 legislative session;
- A description of the significant membership turnover for the Commission in 2013 and efforts to educate new Commissioners on the previous accomplishments and operations of the Commission;
- A description of educational presentations made to the Commission regarding local efforts ranging from offender re-entry and reintegration programs to cultural competency training for those who work in the criminal justice system;
- An update of Colorado's involvement in the European/American Prison Project;
- An update on the Commission inspired EPIC Initiative;
- A description of the Commission's two-day annual retreat along with outcomes and the resulting 2014 strategic plan;

- A summary of the National Institute of Corrections Evidence Based Decision Making Initiative presented to the Commission for possible involvement;
- Commission community outreach efforts; and
- A report on the work of the Commission's task forces and committees.

### Legislative mandates

At the conclusions of the 2013 legislative session, three mandates were forwarded to the Commission as follows:

#### Jessica's Law review

On April 29, 2013 the Governor, Senate President and House Speaker signed a letter requesting the Commission on Criminal and Juvenile Justice assess the potential impacts Florida's Jessica's Law would have if adopted in Colorado. Specifically, the Commission was directed to address the following: impacts of Jessica's Law in other states; literature or documents evaluating Colorado's sexual offender programs; objectives of public safety in regards to sexual offenders; and the most

effective use of criminal justice resources along with any other issues the Commission deemed relevant. The Commission's response to the request and any associated recommendations were due on January 1st, 2014.

The Division of Criminal Justice conducted this study on behalf of the Commission and prepared a draft letter and report in response to the directive. This report was presented to commissioners in October, 2013 for review and discussion. The study found that Colorado's sentencing scheme, actual practices, and supervision requirements met or exceeded Jessica's Law in many ways. The study also found that other provisions in Jessica's Law (mandatory minimum sentencing and an electronic monitoring requirement) were not in keeping with evidence-based sentencing approaches to which the Commission tries to adhere. Study results also outlined that Colorado law includes a broader range of acts when addressing sexual assaults.

The report concluded that it was not possible to assess the impacts of Jessica's Law in Colorado when, at that time, the exact provisions that would be enacted in Colorado were unknown. Commissioners made a minor revision to the letter before approving and submitting it to the Governor's Office and the General Assembly in November 2013. The letter can be found in Appendix A.

### **Human trafficking case review**

House Bill 13-1195 mandated the Commission to review the results of the implementation of C.R.S. 18-3-501 to 18-3-503 (pertaining to human trafficking and slavery) since its enactment in 2006. Specifically, the mandate called for the Commission to submit a report including the following information: the number of cases prosecuted and convicted, the number of inchoate offenses, circumstances of the cases, sentences imposed and the appropriateness of those sentences along with any other information deemed relevant. This report was due on January 1, 2014.

On behalf of the Commission, the Division of Criminal Justice analyzed data regarding the charging and conviction outcomes for three state statutes regarding human trafficking and slavery. A draft of the review was presented to Commissioners at the October 2013 Commission meeting and included: a summary of human trafficking cases in Colorado; the United Nations

Guidelines and Principals; the number of juveniles in Colorado charged with prostitution; Safe Harbor Laws, Model Human Trafficking Laws; the National Conference of Commissioners on Uniform State Laws; and a note from the United Nations regarding abuse of those in position of vulnerability.

The Human Trafficking and Slavery Report was approved by the Commission and presented to the Judiciary Committees of the House of Representatives and the Senate in October 2013. The Human Trafficking Report can be found on the Commission's website at [https://cdpsdocs.state.co.us/ccjj/Resources/Report/2013-10-11\\_CCJJHumanTraffickingRpt-HB1195.pdf](https://cdpsdocs.state.co.us/ccjj/Resources/Report/2013-10-11_CCJJHumanTraffickingRpt-HB1195.pdf).

### **Amendment 64 review**

Senate Bill 13-283 mandated that the Commission's Drug Policy Task Force make recommendations to the Commission which, in turn, was mandated to make recommendations to the General Assembly regarding criminal laws requiring revision in light of the November 2012 passage of Amendment 64. Amendment 64 legalized the possession of small amounts of marijuana for personal use. Specifically, the Drug Policy Task Force was mandated to ensure that Title 18, Article 18 (Uniform Controlled Substances Act), and other relevant criminal statutes, were compatible with the intent of Section 16 of Article XVIII of the state constitution.

The Drug Policy Task Force convened six meetings from July through October 2013 to specifically address the issues related to Amendment 64. At the conclusion of those meetings four recommendations were presented to and approved by the Commission. The recommendations included: revisions to the peace officer training for Advanced Roadside Impaired Driving Enforcement (ARIDE); open marijuana container restrictions; funding for public education, prevention and treatment and; revisions to the minor in possession statute. Both the recommendations and the report entitled Concerning Implementation of Amendment 64 (Personal Use and Regulation of Marijuana) were presented to the General Assembly in December 2013. A copy of the report can be found at Appendix B, and the recommendations can be found in Section 4 of this report.

## Commissioner turnover

The Commission welcomed eight new members in Fiscal Year 2014, in addition to another 10 new members who were selected or designated in Fiscal Year 2013. With this large turnover in membership, Commission leadership and staff presented a New Member Introduction and refresher to commissioners during the August 2013 meeting. Topics discussed included the following: Commission background, membership and statutory duties; Commission and Task Force structure; recommendation process; voting process and member expectations; staff roles and resources; and Commission accomplishments. Highpoints of the Commission's history and accomplishments included the fact that the Commission, overall, has produced more than 200 recommendations and helped identify more than \$4 million dollars to provide support for behavioral health treatment and training for criminal justice professionals (for example, see the EPIC Program, [Colorado.gov/ccjdir/L/EPIC.html](http://Colorado.gov/ccjdir/L/EPIC.html)).

## Educational presentations

One Commission objective is ensuring that its commissioners are informed and apprised of recidivism reduction initiatives and other cost-effective program expenditures. As part of this goal, educational presentations are offered to commissioners at various times throughout the year. During Fiscal Year 2014, experts presented on the following three topics:

### Own Your Future Colorado

In 2008, the Commission approved a recommendation that promoted an increase in offenders' access to higher education (FY08-GP24: Educational Opportunities for Offenders and Staff [specifically referring to the Department of Corrections staff]). Corresponding to this Commission priority, College in Colorado (CiC), a division of the Colorado Department of Higher Education, developed a planning and goal-setting resource titled "Own Your Future" ([OwnYourFutureColorado.com](http://OwnYourFutureColorado.com)) that ex-offenders can use to create a plan to build a new life "on the outside."

CiC representatives attended the August 2013 Commission meeting and provided a PowerPoint

presentation and live "walk-through" of their online site to Commissioners. The CiC campaign is federally funded (through College Assist, the State Guarantee Agency), and its purpose is to help students of all ages in Colorado find a path to pursue higher education. CiC presenters noted that during web site creation, College in Colorado held several focus groups that included ex-offenders as well as criminal justice experts.

The site launched in July 2013 as a free Colorado program that helps ex-offenders rebuild their lives after incarceration with tools to help overcome barriers and find opportunities. Representatives from CiC report that they are tracking the number of visits to the site and hope to develop the capacity to distinguish ex-offenders from non ex-offender visits. CiC is also working to develop a partnership with the Department of Corrections in the hopes of getting the website into prison facilities in the future.

### Affordable Care Act and Colorado's offender populations

In October 2013 a panel of individuals was invited to present information to the Commission on the Affordable Healthcare Act (ACA) and its impacts on the criminal justice system and offenders in Colorado. Presenters included Chris Underwood from the Colorado Department of Healthcare Policy and Financing, Elisabeth Arenales from the Colorado Center on Law and Policy, Christie Donner from the Colorado Criminal Justice Reform Coalition, and Gary Wilson of the Denver Sheriff's Office.

Topics covered during the presentation included the following: how the Affordable Care Act will affect Medicaid eligibility; new opportunities for coverage for offenders; the expansion of mental health and substance abuse treatment; and enrollment efforts for offenders re-entering communities from prison, jail and community corrections.

### Creating a culturally responsive criminal justice system

During Fiscal Year 2013, members of the Denver Police Department (DPD) presented a program to Commissioners that was under development regarding an anti-bias training curriculum called *Perspective on*

*Policing.* The 10-hour training module was made up of multiple sections including a brief history of race in the United States, immigration law, racial profiling, national, regional and local legal issues including stop and frisk, the Fourth and Fourteenth Amendments, and the ethical considerations of disengagement. One reason for presenting this information to the Commission was to build momentum for providing the training to other law enforcement agencies across the state.

During Fiscal Year 2014 the Minority Overrepresentation (MOR) Subcommittee worked with the Denver Police Department trainers to fine tune and shorten the training. In May 2014, representative from the Denver Crime Prevention and Control Commission along with other stakeholders returned to the Commission to present an updated version of the training program, now called *Creating a Culturally Responsive Criminal Justice System*. More information on the presentation can be found later in this section under the update for the Minority Overrepresentation Committee. The Commission agreed to work with the Denver representatives to explore avenues for distribution of the training curriculum.

## European/American Prison Project

In Fiscal Year 2013, representatives from the Commission participated in the European-American Prison Project, a venture funded by the Prison Law Office and managed by the Vera Institute of Justice. Delegations from Colorado, Georgia, and Pennsylvania visited Germany and the Netherlands to tour prison facilities, speak with corrections officials, and interact with inmates. The goal was to expose project participants to radically different correctional systems and practices in order to advance an international dialogue around effective corrections and to stimulate reform efforts in the United States.

Commissioners Doug Wilson, Tom Clements and Theresa Cisneros participated in the project and reported on their experiences to the Commission. Important differences between the U.S. and the European correctional systems that were noted by the commissioners included shorter sentences, much smaller correctional facilities, prisoners allowed to wear their own clothing,

and special programming that allowed mothers to keep their babies with them to facilitate bonding.

As a follow-up, in January 2014 Theresa Cisneros and Kellie Wasko (representing the Department of Corrections) presented findings from the project's final report prepared by the Vera Institute of Justice, entitled "Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States."<sup>1</sup>

## EPIC (Evidence Based Implementation for Capacity) sustainability plan

The Commission is mandated by statute to make recommendations to improve "the effective administration of justice." Some of its earliest recommendations included investing in evidence-based programs (EBP) and practices, and training in EBP for criminal justice professionals. These recommendations, combined with funding from a federal American Recovery and Reinvestment Act (ARRA)/Justice Assistance Grant (JAG), resulted in the development of a groundbreaking professional skill development initiative called EPIC (Evidence-Based Practices Implementation for Capacity). EPIC was designed to improve the capacity of state entities and their affiliates to implement EBPs in corrections. During the four years that EPIC operated under the federal grant, it worked with 1,014 criminal justice professionals to develop their skills in Motivational Interviewing<sup>®</sup> and trained over 3,200 staff in Mental Health First Aid.

In 2013, the Colorado General Assembly provided funding to ensure the continued operation of EPIC. This followed a 2012 recommendation by the Commission to the General Assembly that EPIC receive permanent funding. That recommendation became House Bill 13-1129, creating the Evidence-Based Practices Implementation for Capacity Resource Center located within the Division of Criminal Justice in the Department of Public Safety. EPIC is mandated to work with the Department of Corrections (both the Division of Adult Parole and Community Corrections and the Division of Institutions), the Division of Criminal

<sup>1</sup> For more information, see [www.vera.org/pubs/sentencing-prison-germany-netherlands](http://www.vera.org/pubs/sentencing-prison-germany-netherlands).

Justices' Office of Community Corrections, the Division of Probation Services in the State Court Administrator's Office, and the Office of Behavioral Health in the Department of Human Services to continue building a collaborative, comprehensive effort to systemically enhance the knowledge and skill base of justice system professionals.

For more information on EPIC, please see <http://dcj.epic.state.co.us/>.

## Commission retreat

In March 2014 the Commission held a two-day retreat aimed at educating commissioners on best practices and evidence-based trends, building commissioner collaboration, and establishing a 2014 strategic plan. National and local experts presented on a variety of topics including national policy initiatives, trends concerning juvenile policy initiatives, evidence based practices in law enforcement and what works to reduce recidivism. Representatives from Mesa County also presented results from their participation in the National Institute of Corrections (NIC) Evidence Based Decision Making Initiative along with information on an opportunity to expand that program statewide (see more information on the EBDM Initiative below).

At the conclusion of the retreat, commissioners discussed and evaluated the current work of the Commission and produced a strategic plan for future work. That strategy included the following work plans for each of the Commission's task forces and subcommittees:

- **Comprehensive Sentencing Task Force and the Sex Offense Working Group**

At the retreat, it was determined that the Comprehensive Sentencing Task Force had one issue on which it would continue to work. The Sex Offense Working Group within the Sentencing Task Force was asked by the Commission to continue to examine the option for Determinate F4 sex offenses and issues surrounding supervision options within the Lifetime Supervision Act. If recommendations were developed, the Working Group was expected to present these to the Task Force in August 2014. Co-Chair of the Task Force, Jeanne Smith reported that members of the Task Force wanted to clearly state that no one was of the opinion that the work around sentencing

is complete. However, given there are other priorities for the Commission to address, the Task Force can be suspended to free resources to allow a focus on these other priorities. It is also possible that a focus on re-entry processes may, in fact, have an impact on sentencing issues without the necessity for specific sentencing legislation.

- **Community Corrections Task Force**

The next area examined during the retreat concerned the work of the Community Corrections Task Force. It was decided that there are three areas this Task Force should continue to examine: 1) community corrections and community corrections boards, 2) populations being served by community corrections, and 3) the client referral processes from DOC and the courts.

- **Juvenile Justice Task Force**

It was determined that the Juvenile Justice Task Force should continue its work in four areas, 1) identifying pre-filing diversion options, 2) developing a petty ticket option for law enforcement, 3) identifying standards of practice for those working with youth in the justice system; and 4) determining if modifications should be made to the minimum age of delinquency/detention. The task force was asked by the Commission to present recommendations regarding these topics by the end of summer 2014. Once this short-term work is completed, the Commission will decide if the task force will address other potential topics, including revising parts of the Children's Code.

- **Minority Over-Representation Committee**

The Minority Over-Representation Committee presented two items that should be accomplished by summer 2014: a recommendation for the collection of race and ethnicity data and the development of a cultural responsiveness tool kit, an effort led by the Denver Crime Prevention and Control Commission (DCPCC). In May, the DCPCC presented its work on the tool kit to the Commission. Commissioners agreed the Minority Over-Representation Committee should go on hiatus during summer 2014. However, the issue of minority overrepresentation will continue to be considered by each task force and committee.

During the March 2014 retreat, two new areas of study were identified for attention once the work of the existing task forces is complete at the end of summer 2014. Those areas are as follows:

- **Re-Entry**

A small working group on Re-Entry will be convened in the fall of 2014 to identify and prioritize pressing issues and to develop a scope of work and timeline for presentation to the Commission. It is assumed there will be discussions with both administrators at the Department of Corrections and jail officials to identify areas of focus which may include such topics as wrap-around services, collateral consequences of a conviction, mental health, health services, housing and employment.

- **Data Sharing**

Like re-entry, a small working group will be convened to identify and prioritize issues related to data access. The Commission previously identified (in 2010) the issue of data access and data sharing as critical to systemic improvements in the criminal justice system. The issue was raised again at the March retreat and was identified as a high-priority issue. Not only is data sharing and access an issue critical to the effective administration of the justice system, but, in the new era of evidence-based decision making, it is also a necessary component in determining the efficacy of programs and system functions.

Also, it was decided that an Evidence Based Decision Making (EBDM) Committee would be established to focus on supporting local jurisdictions as participants in the EBDM Initiative (described more fully below).

## Evidence Based Decision Making Initiative

During the March Commission retreat, representatives from Mesa County presented information about their work as one of seven pilot sites selected by the National Institute of Corrections for participation in NIC's Evidence-Based Decision Making (EBDM) Initiative. The goal of the EBDM Initiative is to test the framework for evidence-based decision making in local jurisdictions.<sup>2</sup> The Mesa County multidisciplinary

EBDM team focused its work on medium to high risk offenders and developed a system-wide logic model to chart desired outcomes. As a result of this project, Mesa County representatives reported that they now make more consistent bonding decisions because they developed a structured decision making tool. Before the project, the risk levels of offenders in the jail were not known. Now, the Sheriff's Office has staff to identify low risk offenders and to find alternatives to jail incarceration. Mesa County officials reported that the project is currently in the implementation phase and results are being studied.

Mesa County presenters informed commissioners that the National Institute of Corrections would like to take this project statewide, and will assist new participants (five or six additional jurisdictions) in developing their own models. However, for Colorado to proceed, NIC required a letter of interest from the state by March 31st. During the strategic planning session of the March 2014 retreat, commissioners agreed to move forward with NIC's EBDM Initiative and submit a letter of interest to participate in the next phase of the initiative.

In April 2014 NIC selected five states, including Colorado, to participate in Phase IV of the EBDM Initiative. The goal of NIC's Phase IV was to give the selected five states approximately six months to explore the EBDM Initiative and, if desired, to develop a competitive proposal to expand the EBDM Initiative statewide from the initial "seed site" in Mesa County.

In May, NIC technical assistance providers traveled to Colorado for an on-site introductory meeting with Colorado's EBDM Planning Team (made up of a handful of commissioners and other stakeholders) for an on-site planning session. The main objectives of that meeting were to provide more in-depth background on the EBDM process at both state and local levels, and to help the Colorado Planning Team identify key strategy issues that would need to be addressed, and develop a preliminary action plan for preparing the full NIC application, due in the fall of 2014.

The EBDM Planning Team continued to meet through the summer of 2014 and worked to advance local awareness of the initiative through a variety of outreach efforts.

<sup>2</sup> For more information, see <http://cepp.com/documents/EBDM%20Framework.pdf>.

## Community outreach efforts

In October 2013, Commissioners Kelly Friesen, Jeff McDonald, and Jeanne Smith appeared at the annual state-wide Senate Bill 94 Conference, a state/local juvenile justice conference, and provided a “Commission 101” presentation along with information about the work of the Juvenile Justice Task Force. During that same month, Commissioners Kate Horn-Murphy and Jeanne Smith, along with Tom Raynes, the Executive Director of the Colorado District Attorney’s Council, gave a similar presentation to the annual conference of the Colorado Association for Victim’s Assistance (COVA).

## Commission Task Forces and Committees<sup>3</sup>

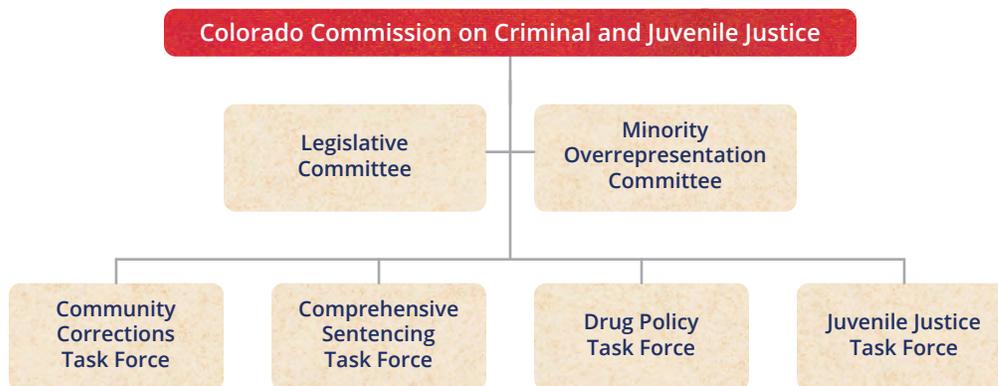
As was noted in the Next Steps section of the Commission’s 2013 *Annual Report*, Commission members agreed that efforts for Fiscal Year 2014 should be focused on the following areas of study: Continued work in the areas of community corrections, juvenile justice and sentencing reform (with an emphasis on sex

offense statutes) along with ongoing work in the area of minority overrepresentation. As was mentioned earlier in this report, the Commission was also charged by the General Assembly to reconstitute the Drug Policy Task Force to address the issues raised in Senate Bill 13-283 regarding marijuana as a result of Amendment 64. To this end, a majority of Commission work during Fiscal Year 2014 was undertaken by the following five groups:

- Drug Policy Task Force  
(Charles Garcia and Eric Philp, Co-chairs)
- Comprehensive Sentencing Task Force  
(Jeanne Smith and Norm Mueller, Co-chairs)
- Juvenile Justice Task Force  
(Kelly Friesen and Jeff McDonald, Co-chairs)
- Community Corrections Task Force  
(Theresa Cisneros and Peter Weir, Co-chairs)
- Minority Overrepresentation Committee  
(James Davis, Chair)

Figure 3.1 reflects the organization and scope of work undertaken by the Commission, Task Forces and Committees.

**Figure 3.1. Commission, task force and committee organizational chart**



<sup>3</sup> Task forces are long term working groups with multiple objectives; Committees are short term (usually meeting for less than one year) with a few focused objectives.

## Drug Policy Task Force

Senate Bill 13-283 mandated the Drug Policy Task Force to make recommendations to the Commission, which in turn, was mandated to make recommendations to the General Assembly, regarding criminal laws that needed to be revised as they pertained to the implementation of Amendment 64 (which legalized the personal use and regulation of marijuana for adults 21 and older). The Drug Policy Task Force had been on hiatus since December 2012 after years of substantial work regarding the revision of Part 4 of the Uniform Controlled Substances Act. However, with this mandate from the General Assembly, the Drug Policy Task Force reconvened in July 2013.

The Drug Policy Task Force met six times from July through October 2013 to address the following mandates listed in SB13-283:

- Make recommendations to the General Assembly regarding criminal laws that need to be revised to ensure that Title 18, C.R.S., and other relevant criminal statutes are compatible with the intent and plain meaning of Section 16 of Article XVIII of the State Constitution.
- Consider when developing recommendations that the intent of Section 16 of Article XVIII of the State Constitution was to:
  - Decriminalize consumption of small amounts of marijuana,
  - Create a lawful marketplace for adults to obtain safe and legal marijuana,
  - Protect against youth access and consumption of marijuana, and
  - Eliminate the illicit drug marketplace for marijuana;
- Consider the recommendations of the Governor's Amendment 64 Implementation Task Force in developing its recommendations;
- Consider ways to harmonize conflicts raised by the introduced version of House Bill 13-1317 parts 5 through 10 and sections 12-43.3-901 (unlawful acts regarding medical marijuana), 12-43.4-901 (unlawful acts concerning retail marijuana) and 18-18-414 (unlawful acts regarding controlled substances, amended by Senate Bill 13-250);

- Consider penalties for unlawful activities of persons 18 years of age or older but under 21 years of age involving marijuana pursuant to Section 16 of Article XVIII of the State Constitution; and
- Make recommendations that assist in eliminating participation in the illicit drug market for marijuana by buyers, sellers, and producers, including appropriate fines and criminal sanctions on all activity that occurs outside the legal marketplace.

In the fall of 2013, the Drug Policy Task Force presented four recommendations to the Commission for consideration, all of which were approved by the Commission. These recommendations were included in a single bill, Senate Bill 14-129, which was signed into law in 2014. The recommendations pertained to the following: revisions to the peace officer training for Advanced Roadside Impaired Driving Enforcement (ARIDE); open marijuana container restrictions; funding for public education, prevention and treatment; and revisions to the Minor in Possession statute. For detailed information on the four recommendations from the Drug Policy Task Force, please see Section 4. Also, for the final report from the Drug Policy Task Force and the Commission to the General Assembly please see Appendix B.

## Comprehensive Sentencing Task Force

The Comprehensive Sentencing Task Force entered its fourth year of work in Fiscal Year 2014, specifically continuing the work of the previous year that focused on non-violent, value-based crimes. In Fiscal Year 2013 the Task Force was responsible for the recommendation, which eventually became a bill, which revised Colorado's theft statutes and penalties. At that time, Task Force members recommended reclassification of many theft offenses and the consolidation of redundant offenses. After the successful passage of the theft reclassification and consolidation legislation in the spring of 2013, the Comprehensive Sentencing Task Force agreed to further this work by applying the template created for theft to other similarly classified, value-based crimes.

Starting in June 2013 the Task Force undertook this work by studying criminal mischief, fraud by check, defrauding a secured creditor, unauthorized use of a financial transaction device, computer crimes, and

aggravated motor vehicle theft.<sup>4</sup> In the fall of 2013 Task Force members developed a recommendation to modify these value-based statutes making them consistent with the previous year's revisions to the theft statute.

The Comprehensive Sentencing Task Force also produced a recommendation targeted to a subset of habitual offenders sentenced to DOC whom the law prohibits from obtaining earned time while incarcerated.<sup>5</sup> The Task Force proposed expanding the availability of earned time credit to individuals sentenced under the habitual criminal statute for crimes occurring between July 1, 1985 and June 30, 1993. As of June 30, 2012, 104 offenders were incarcerated in DOC and unable to earn time credits toward their parole eligibility date. The Task Force discussed this recommendation in terms of equity and fairness, the use of earned time in providing behavioral incentives to inmates, and cost savings. The Commission approved this recommendation in the fall of 2013. Details of both aforementioned recommendations can be found in Section 4 of this report.

Additional work by the Comprehensive Sentencing Task Force in FY2014 included oversight of the Sex Offense Working Group. The Sex Offense Working Group convened in June 2013 with a charge from the Commission to review the potential for creating a new determinate class 4 felony offense<sup>6</sup> and to explore the possibility of creating a remedy whereby an offender may work his or her way through successful supervision and be eligible to be removed from lifetime supervision. The Sex Offense Working Group met from June 2013 through August 2014. As this report was going to print, a recommendation for early discharge from Lifetime Supervision Probation for sex offenders due to disability or incapacitation was being presented to the Commission. The outcome of this proposal may result in a legislative initiative in the 2015 legislative session, and will be addressed in the 2015 annual report.

<sup>4</sup> Please see Appendix C for an example of analyses undertaken on behalf of the Task Force.

<sup>5</sup> Please see Appendix D more information about these cases.

<sup>6</sup> Please see Appendix E for an example of data analyzed on behalf of the working group's efforts to better understand indeterminate sex offenses.

## Juvenile Justice Task Force

The Juvenile Justice Task Force entered its fourth year of work in Fiscal Year 2014. The scope of work for this task force was system-wide, with study being undertaken in a variety of areas. During Fiscal Year 2014, the Task Force and its working groups explored the following areas:

- The Juvenile Screening and Assessment Working Group collected all screening assessment tools and placed them in one manual called the "Colorado Reference Guide: Juvenile Screening and Assessment Instruments."<sup>7</sup>
- The Professionalism Working Group studied the development of professional standards of practice for those working in the juvenile system.
- The Petty Ticket Working Group studied the creation of a petty ticket option for law enforcement as a step beyond "lecture and release," while still providing an alternative to initiating formal proceedings for youth.
- The Age of Detention Working Group started as a study group to examine and reconsider the minimum age of juvenile delinquency court in Colorado. The working group was created to develop a proposal restricting pre-trial detention of younger children.
- The Pre-Filing Options Working Group was created to investigate ways of expanding options for diverting youth from the juvenile justice system.

The Juvenile Screening and Assessment Working Group was tasked with examining assessment instruments and procedures used across the state. The working group reviewed instruments that effectively screen and assess juveniles in the areas of behavioral health, trauma, and risk classification. The Working Group produced a document entitled the *Colorado Reference Guide: Juvenile Screening and Assessment Instruments*. The manual was presented to the Commission in August 2013. The Juvenile Justice Task Force recommended that the *Guide* be used by agencies across the state and updated every two years. The Commission agreed to post the *Guide* on its website (see Footnote 7).

<sup>7</sup> This document can be found on the Commission's web site, at [https://cdpsdocs.state.co.us/ccjj/Resources/Report/2013-07\\_CORefGuide\\_JuvScreen-Assess.pdf](https://cdpsdocs.state.co.us/ccjj/Resources/Report/2013-07_CORefGuide_JuvScreen-Assess.pdf).

The Professionalism Working Group produced a recommendation during the summer of 2014 which was the result of a multi-agency collaboration. The recommendation proposed that agencies within the Executive and Judicial branches of government, along with agencies involved in critical decisions concerning case processing and treatment of juvenile offenders, commit to and participate in the development, adoption and implementation of statewide juvenile professional practice standards. As this report was going to press, the Standards of Practice recommendation was scheduled to be presented to the Commission for a vote; outcomes will be reported in the Commission's Fiscal Year 2015 report.

The Petty Ticket Working Group studied and recommended the development of a petty ticket option for law enforcement as an alternative to initiating formal proceeding for youth. The purpose of this recommendation was to create a petty ticket system for juveniles who commit minor offenses and who law enforcement officers believe should be held accountable beyond a lecture and release response. Research shows that juveniles and public safety are best served when youth avoid juvenile justice system processing.<sup>8</sup> Commissioners approved the Petty Ticket recommendation at the May 2014 meeting.

The Age of Detention Working Group was created to review recent research about child and adolescent brain development for the purpose of considering issues related to increasing the age of delinquency as defined in statute. The working group could not agree on the issues concerning age of delinquency, and the discussion evolved into considerations regarding increasing the statutory minimum age (from 10 to 12) that youth can be held in detention facilities, in order to avoid mixing younger children with adolescents. Research indicates that detaining younger children in detention facilities is detrimental and that these settings are not appropriate for younger children.<sup>9</sup> The working group developed

a recommendation that no child under that age of 13 shall be placed into a detention facility or temporary holding facility unless it is alleged that the juvenile has committed a class 1, 2 or 3 felony crime against persons and/or crimes of violence. This recommendation is scheduled for a vote by the Commission during the fall of 2014.

The Pre-Filing Option Working Group was created to explore options for diverting youth from the juvenile justice system. The group worked on a recommendation to amend the diversion statutes in the Children's Code to ensure that diversion programs are an alternative to the formal legal system while recognizing victims' rights. The group addressed modifying and combining the diversion statutes in Article 2 of the Children's Code. This group also considered the following approach to addressing modifications to the Code: 1) re-write the Diversion statute (C.R.S. 19-1-103(44)) using the adult diversion statutes as a reference, and 2) create a new juvenile diversion statute (C.R.S. 19-2-704) to include language regarding the right to legal counsel, the ability to enter diversion while under social service custody, the ability for district attorneys to dismiss a case that has been filed, and access to diversion programs. The working group was unable to complete this charge given the timetable provided by the Commission. However, work may continue in this area in the future.

In sum, during Fiscal Year 2014, the Juvenile Justice Task Force produced a reference guide of assessment instruments that screen and assess juveniles in a variety of domains. The Task Force also produced a recommendation that was subsequently approved by the Commission creating a petty ticket option for law enforcement as an alternative to initiating formal proceeding for youth. The Juvenile Justice Task Force created two other recommendations regarding the statewide development of professional juvenile justice practices, and restricting detention for children under the age of 13 years old. The outcomes of these two recommendations will be presented in the Commission's Fiscal Year 2015 report. The Commission asked the Juvenile Justice Task Force to complete its work by the end of summer in 2014.

<sup>8</sup> A systematic review that included 7,304 juveniles across 29 experiments reported over a 35-year period found juvenile system processing does not appear to have a crime control effect. See Petrosino A., Turpin-Petrosino C., Guckenburg, S. (2010). *Formal system processing of juveniles: Effects on delinquency*. Campbell Systematic Reviews. The report is available at [http://www.campbell-collaboration.org/lib/?go=monograph&search=juvenile+justice+system&search\\_criteria=all\\_text](http://www.campbell-collaboration.org/lib/?go=monograph&search=juvenile+justice+system&search_criteria=all_text).

<sup>9</sup> For more information, see Holman and Ziedenberg (2011) *The Dangers of Detention, A Justice Policy Institute Report* at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf).

## Community Corrections Task Force

Community Corrections in Colorado refers to a system of halfway house facilities located throughout the state that provide residential placement and community-based programming to individuals who are being *diverted* from prison as well as those *transitioning* from prison back to the community. The Community Corrections Task Force began meeting in April 2013.

During Fiscal Year 2014 the Task Force educated members on the history and background of community corrections in Colorado with the purpose of looking for barriers and gaps in the current system when compared to the needs of offenders and the correctional system as a whole. The following is the Task Force's purpose statement, developed by the group:

*The purpose of community corrections is to ensure public safety and further the sentencing goals of the State of Colorado. This is accomplished by utilizing community corrections boards and the local community to identify **appropriate individuals** to be placed in the community, **implement research-based policies, practices and programs** to assist individuals so that they may successfully function in the community.*

After developing the purpose statement, three working groups were created to focus on the following areas of study:

- The Local Boards Working Group discussed board membership and a need to train board members on community corrections in the context of the larger criminal justice system as well as evidence-based decision making.
- The Population Working Group discussed who should be targeted for placement in community corrections, and how the population has changed in the past 20 years (to include more offenders with behavioral health needs) and the need to align programming with the needs of offenders.
- The Referral Process Working Group analyzed the referral process from DOC for transition offenders (diversion offenders will be discussed at a later time) and identified many gaps and problems with information exchange.

During the summer of 2014 the Task Force and its working groups were in the process of developing recommendations to present to the Commission.

## Minority Overrepresentation Committee

House Bill 08-1119 directed the Commission to include the study and reduction of racial and ethnic disparities in the justice system within its scope of work. The statute mandates that the Commission review the work and resources compiled by other states in the area of disparity reduction and make recommendations for reform. In response to this mandate, when possible, data analyses performed by the Division of Criminal Justice on behalf of the Commission includes a breakdown of race and ethnicity (please see Appendix D for an example). Also, the Commission's website includes a Disproportionate Minority Contact page which provides data and resources on MOR.<sup>10</sup> Current work by the Minority Overrepresentation Committee includes the following:

- Exploring the feasibility of creating a recommendation for state and local justice agencies about data collection practices regarding race and ethnicity information on the populations they serve; and
- Continued work with representatives from Denver as they update and develop a Cultural Competency Toolkit.

At the request of the MOR Committee, in May 2014, representatives from the Denver Crime Prevention and Control Commission (DCPC) along with other key stakeholders and subject matter experts presented a training program to Commissioners called "Creating a Culturally Responsive Criminal Justice System." This presentation was a follow-up to a previous presentation in February 2013 by members of the Denver Police Department regarding an anti-bias training program called Perspectives on Policing. The DCPC Commission developed the training based on research that examined the issue of minority overrepresentation in the Denver County criminal justice system. The training is a component of a broader DCPC toolkit to address culture, bias, and disparity in the criminal justice system.

The May training presentation to the Commission was intended to provide a history of the development of the

<sup>10</sup> See <https://www.colorado.gov/pacific/ccij/ccij-dmc>.

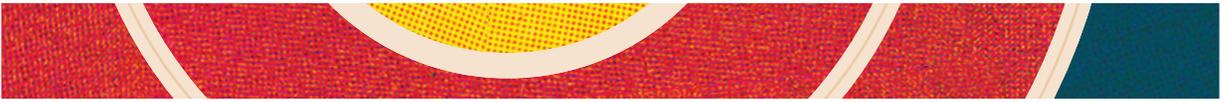
training; explore concepts of culture, racial disparity and bias; and identify culturally responsive practices within the criminal justice system. Another reason for presenting the training to the Commission was to build momentum for offering the training to other criminal justice agencies in Colorado. At the conclusion of the presentation trainers asked for feedback, and they informed the commissioners that the training package was nearly finalized and would soon be available for use by other agencies.

As this report goes to press, the MOR Committee continues its work exploring the viability of creating a recommendation regarding data collection of both race and ethnicity information from criminal justice agencies across the state.

## Summary

This section reviewed the work of the Commission and its task forces, committees and working groups

from July 2013 through June 2014. The Commission continued to be responsive to the requests of the General Assembly, and thus completed work on three mandates forwarded by the legislature in Fiscal Year 2013. The Commission made significant progress by continuing the work of its task forces (Drug Policy, Comprehensive Sentencing, Community Corrections and Juvenile Justice) and the continuation of one committee (Minority Overrepresentation). Additionally, among the Commission's activities and accomplishments was participation in the National Institute of Correction's Evidence Based Decision Making Initiative, proactive outreach by commissioners to community organizations, along with various informational presentations to commissioners. Finally, the Commission produced five recommendations in Fiscal Year 2014, 4 of which became bills passed by the 2014 General Assembly. Additional information regarding Fiscal Year 2014 recommendations and subsequent 2014 legislation is reported in Section 4.



# 4

## Recommendations and outcomes

This section presents the recommendations approved by the Commission in Fiscal Year 2014. The following is a list of bills that began as Commission recommendations

and passed during the 2014 legislative session and were signed by the Governor.<sup>11</sup>

**Table 4.1. 2014 Legislative Session “Commission Bills”**

Bill number	Bill title (and Commission recommendation)
Senate Bill 14-129	Concerning changes to criminal provisions related to marijuana and, in connection therewith, making an appropriation <ul style="list-style-type: none"> <li>• <i>FY14-DP1 Advanced Roadside Impaired Driving Enforcement (ARIDE) training should occur during Peace Officer Standard and Training (POST)</i></li> <li>• <i>FY14-DP2 Revise the marijuana open container provisions</i></li> <li>• <i>FY14-DP3 Funding for public education, prevention and treatment regarding marijuana use</i></li> <li>• <i>FY14-DP4 Revisions to the Minor in Possession (MIP) statute</i></li> </ul>
House Bill 14-1266	Concerning the penalties for certain value-based offenses, and, in connection therewith, reducing an appropriation <ul style="list-style-type: none"> <li>• <i>FY14-CS1 Harmonize other value-based offense levels with the 2013 amendment to Colorado’s theft statute</i></li> </ul>

Table continued on next page.

<sup>11</sup> The full text of each bill may be found on the Commission’s website at [www.colorado.gov/ccjdir/L/Legislation.html](http://www.colorado.gov/ccjdir/L/Legislation.html).

**Table 4.1. 2014 Legislative Session “Commission Bills” (continued)**

Bill number	Bill title (and Commission recommendation)
<b><i>Bills that are related to and provide clarifying changes to previous Commission recommendations</i></b>	
Senate Bill 14-163	Concerning clarifying changes to provisions related to the sentencing of persons convicted of drug crimes <i>(Note: This bill provides clarifying changes to Commission-derived Senate Bill 13-250 pertaining to changes in drug sentences)</i>
Senate Bill 14-212	Concerning clarifying changes to the provisions related to best practices in bond setting <i>(Note: This bill clarifies Commission-derived House Bill 13-1236, on evidenced-based bond practices)</i>

Two sets of recommendations produced by two task forces are presented in this section in the following order: Drug Policy and Comprehensive Sentencing.

The recommendations reported below include the original text approved by the Commission. However, in instances where recommendations were drafted into legislation and passed into law, the language may have been modified to better reflect statutory intent.

Please note the following formatting guides:

- Numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, “FY14”), letters indicating the task force from which the

recommendation originated (e.g., Drug Policy Task Force by a “DP”, or Comprehensive Sentencing by a “CS”), and a sequence number.

- Some recommendations may appear to have been skipped or missing, but this is not the case. If a recommendation was numbered and presented to the Commission, but not approved, it is not included in this report.
- Recommendations may include additions to existing statutory or rule language as indicated by CAPITAL letters or deletions that are represented as ~~strikethroughs~~.

## Drug policy recommendations

### FY14-DP1 **Advanced Roadside Impaired Driving Enforcement (ARIDE) training should occur during Peace Officer Standard and Training (POST)**

Revise C.R.S. 24-31-314 (1) to clarify that Advanced Roadside Impaired Driving Enforcement (ARIDE) training should take place during POST (Peace Officer Standard and Training) continuing education and advanced training, rather than during basic academy peace officer training.

Amend section C.R.S. 24-31-314 as follows:

#### **24-31-314. Advanced roadside impaired driving enforcement training.**

(1) On and after October 1, 2013, the P.O.S.T. Board is encouraged to include advanced roadside impaired driving enforcement training in the curriculum for persons who enroll in a training academy for basic peace officer training **AS AN ELECTIVE TO BASIC FIELD SOBRIETY TEST (BFST) TRAINING RECERTIFICATION.**

(2) Subject to the availability of sufficient moneys, the P.O.S.T. Board shall arrange to provide training in advanced roadside impaired driving enforcement to drug recognition experts who will act as trainers in advanced roadside impaired driving enforcement for all peace officers described in section 16-2.5-101, C.R.S.

#### *Discussion*

*The Task Force Report on the Implementation of Amendment 64<sup>12</sup> recommended ARIDE training as a mandatory training element in Colorado Peace Officer Standards and Training (POST) certification, and encouraged local law enforcement agencies to have their peace officers trained in ARIDE, to increase and enhance the ability of law enforcement officers to detect impaired driving.<sup>13</sup>*

*The CCJJ Drug Policy Task Force recognizes the importance of advanced training for law enforcement officers to be able to quickly and skillfully recognize the signs of impairment by drugs other than alcohol. However, the Drug Policy Task Force agrees that this training is advanced and very specific, and is therefore much more appropriate for officers to undertake after they have received basic training.*

*As the ARIDE (Advanced Roadside Impaired Driving Enforcement) course is currently designed, it was not intended for inclusion in a Basic Police Training Academy. This is an intermediate level course designed to offer more than a basic understanding of the impairing effects of drugs (illicit and licit), alcohol, and/or the combination of both.*

*Basic level police recruits would be best served by completing the mandated 24 hours of Standardized Field Sobriety Testing training currently mandated by POST. As an elective, the ARIDE would satisfy the POST requirement for recertification for the Basic Field Sobriety Test (BSFT). Currently a POST certified officer is required to complete BSFT training in the Basic Academy. This training assists an officer in identifying driver's suspected of being under the*

<sup>12</sup> The Governor empanelled a task force following the passage of Amendment 64 to study and make recommendations for the implementation of the amendment. The legislative charge to the Commission's Drug Policy Task Force included a review of the recommendations from the Governor's Amendment 64 Task Force. The Commission's Drug Policy Task Force included members of the Governor's Amendment 64 Task Force.

<sup>13</sup> Amendment 64 Task Force. (March 13, 2013). *Task Force Report on the Implementation of Amendment 64, Regulation of Marijuana in Colorado*. Full report available at <http://www.colorado.gov/cms/forms/dor-tax/A64TaskForceFinalReport.pdf>.

*influence. This includes alcohol and drugs. Following the initial training, POST requires an officer recertify every two years. By delaying the ARIDE training from the Basic to recertification phase, it allows an officer to obtain the necessary practical experience utilized in the ARIDE program. The ARIDE would be offered at the appropriate intermediate level versus basic level. This would be more in line with the original intent to provide enhanced training to law enforcement in order to better identify impaired drivers.*

**FY14-DP2      Revise the marijuana open container provisions**

Revise C.R.S. 42-4-1305.5 as it pertains to open marijuana container and motor vehicles to ensure that the marijuana container is open, has a broken seal, contents are partially removed AND there is evidence of consumption.

Amend C.R.S. 42-4-1305.5 as follows:

**42-4-1305.5. Open marijuana container – motor vehicle – prohibited.**

- (1) **Definitions.** As used in this section, unless the context otherwise requires:
  - (a) “Marijuana” shall have the same meaning as in section 16 (2) (f) of Article XVIII of the State Constitution.
  - (b) “Motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways but does not include a vehicle operated exclusively on a rail or rails.
  - (c) “Open marijuana container” means a receptacle or marijuana accessory that contains any amount of marijuana and:
    - (i) That is open or has a broken seal;
    - (ii) The contents of which are partially removed; or **AND**
    - (iii) There is evidence that marijuana has been consumed within the motor vehicle.

**FY14-DP3      Funding for public education, prevention and treatment regarding marijuana use**

The General Assembly should allocate resources from the marijuana cash fund (created in C.R.S. 12-43.3-501) toward the Adolescent Substance Abuse Prevention and Treatment Fund (C.R.S. 25-1.5-111) for the purposes of public education and prevention efforts focused on discouraging youth access.

*Discussion      According to the National Institute on Drug Abuse, research from different areas is converging on the fact that regular marijuana use by young people can have long-lasting negative impact on the structure and function of the brain. A recent study of marijuana users who began using in adolescence revealed a profound deficit in connections between brain areas responsible for learning and memory. Importantly, the lost cognitive abilities were not restored in those who quit*

*smoking marijuana as adults. (Individuals who started smoking marijuana in adulthood did not show significant IQ declines.) Further, NIDA estimates that about nine percent of users become addicted to marijuana, and this number increases to 17 percent among those who start young. Finally, the annual NIDA-supported Monitoring the Future survey of adolescent drug use and attitudes has detected, over the past several years, increasing use of marijuana by teens associated with a decreasing perception of marijuana's harmfulness.<sup>14</sup>*

*While regulations promulgated by the Colorado Department of Revenue are intended to protect youth access and consumption of marijuana, there is a critical need for public education and prevention efforts targeting adolescent marijuana use. The state's Office of Behavioral Health manages the Adolescent Substance Abuse Prevention and Treatment Fund and has the capacity to develop evidence-based prevention programs provided that resources are available.*

#### **FY14-DP4**

#### **Revisions to the Minor in Possession (MIP) statute**

This proposal to revise C.R.S. 18-13-122 is designed to support education and treatment, as necessary and appropriate, for illegal use of alcohol and marijuana for those persons under the age of 21. Criminal sanctions are NOT the primary consideration underlying these revision recommendations. It is not the intent of this recommendation to increase currently existing penalties for marijuana, but, rather, to treat alcohol and marijuana similarly under Colorado law.

The following are the suggested revisions of the statute:

**18-13-122 – Illegal Possession or consumption of ethyl alcohol, MARIJUANA OR MARIJUANA PARAPHERNALIA by an underage person – LEGISLATIVE DECLARATION – definitions – Adolescent Substance Abuse prevention and Treatment Fund**

- 1) The legislative declaration should be stricken from current law and rewritten. The language should support intervention and education to prevent the illegal use of alcohol and marijuana by persons under 21. The intent is to educate individuals about the dangers of early use, about responsible use once they are of legal age to consume, and to encourage young persons to be successful and productive members of the community.
- 2) Continue the Adolescent Fund with a surcharge of \$25, which is the current amount for minor in possession (MIP), but supplement it with dollars from marijuana taxes so that all the court-ordered programs can be free to individuals under the age of 21 to the extent that funds have been appropriated.
- 3) Maintain all definitions in the current MIP statute, but add definitions of marijuana and marijuana paraphernalia.
- 4) Continue all current affirmative defenses for alcohol consumption. Add marijuana MIP to the “immune from prosecution” language if an underage person calls for 911 under the same circumstances as alcohol.
- 5) Maintain all language under current law regarding the admissibility of alcohol testing. Add to that language any necessary and appropriate language that is enacted in the 2013 DUID bill regarding the admissibility of testing of marijuana.

<sup>14</sup> See <http://www.drugabuse.gov/publications/drugfacts/marijuana>.

- 6) Continue current law that law enforcement needs regarding probable cause to enter on to private property.

**Crimes**

NOTE: For offenses to be properly tracked the ethyl alcohol violation is in one subsection, marijuana is in another and marijuana paraphernalia is in another. However, the penalties will be the same for all.

A) **Alcohol**

Except as provided in C.R.S. § 18-1-711 (4.5), a person under 21 years of age who possesses or consumes ethyl alcohol in the state of Colorado commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

B) **Marijuana**

Except as provided in Medical Marijuana (Article 18, Section 14, Paragraph 6 of the Colorado Constitution), a person under the age of 21 years who possesses one ounce or less of marijuana or consumes any amount of marijuana in the state of Colorado commits illegal possession or consumption of marijuana by an underage person. Illegal possession or consumption of marijuana by an underage person is a strict liability offense.

C) **Marijuana paraphernalia**

A person under 21 years of age who possesses marijuana paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this state commits illegal possession of marijuana paraphernalia by an underage person.

**Table 4.2. Proposed penalties for Minor in Possession**

<b>Section #1</b>	<b>Introduction</b>	Illegal possession or consumption of ethyl alcohol (A), Marijuana (B) or Marijuana Drug Paraphernalia (C) is an unclassified petty offense under the laws of the state of Colorado and is punishable as described below.
<b>Section #2</b>	<b>First offense (part 1)</b>	Current statute/practice, which leaves the discretion with the prosecutor.
<b>Section #3</b>	<b>First offense (part 2)</b>	Upon first conviction: <ul style="list-style-type: none"> <li>• Up to \$100 fine AND</li> <li>• Substance abuse education program as determined by the Court and approved by DBH.</li> <li>• If the defendant successfully complies with court orders the case shall be automatically sealed.</li> </ul>
<b>Section #4</b>	<b>Second offense</b>	Upon second conviction: <ul style="list-style-type: none"> <li>• Up to \$100 fine AND</li> <li>• Substance abuse education AND</li> <li>• If determined appropriate by the court, a substance abuse assessment and any recommended therapy resulting from such assessment, AND</li> <li>• Up to 24 hours of community service</li> <li>• With successful completion, case is eligible for sealing after one year.</li> </ul>

Table continued on next page.

**Table 4.2. Proposed penalties for Minor in Possession** (continued)

<b>Section #5</b>	<b>Third offense</b>	Upon third and subsequent conviction: <ul style="list-style-type: none"> <li>• A fine of up to \$250 fine AND</li> <li>• Shall undergo a substance abuse assessment AND shall be required to follow any recommended therapy from such assessment AND</li> <li>• Up to 36 hour of useful public service</li> <li>• With successful completion, case is eligible for sealing after one year.</li> </ul>
<b>Section #6</b>	<b>Unsealing</b>	Any offense sealed shall automatically be unsealed upon a subsequent offense.
<b>Section #7</b>	<b>Final provision</b>	Any prosecutor is encouraged to enter into a diversion or deferred judgment agreement with any underage person for any offense under this section if such an agreement would be consistent with the legislative declaration of this section.

## Comprehensive sentencing recommendations

### **FY14-CS1 Harmonize value-based offense levels with the 2013 revision to Colorado's theft statute**

Amend the statutes defining the following value-based crimes, thereby harmonizing their offense levels with the General Assembly's recent revisions to the theft statute: Criminal Mischief, § 18-4-501; Fraud by Check, § 18-5-205; Defrauding a Secured Creditor or Debtor, § 18-5-206; Unauthorized Use of a Financial Transaction Device, § 18-5-702, and Computer Crime, § 18-5.5-102.

#### *Discussion*

*In 2013 the General Assembly amended the monetary amounts associated with the various offense levels for the crime of theft. That amendment established a petty offense for crimes involving less than fifty dollars, raised the felony threshold to two thousand dollars, and eliminated previously existing gaps between offense levels. The crime of theft is now punishable as a class 1 petty offense up to a class 2 felony, depending upon the value of the thing involved.*

*The Comprehensive Sentencing Task Force set out to evaluate whether other value-based offenses could and should be amended to reflect the offense levels associated with the new theft statute. It found that four crimes were appropriate for adopting identical monetary offense level delineations: Fraud by Check, Defrauding a Secured Creditor, Unauthorized Use of a Financial Transaction Device, and the value-based components of Computer Crime. Those four crimes—like theft—are property offenses. It is thus logical to define the punishment level for those offenses in a manner identical to theft.*

*The offense levels for the crime of Criminal Mischief are currently defined by the same monetary amounts as the pre-2013 theft statute. For that offense, however, the Task Force decided not to raise the monetary amount which defines a felony offense. The recommendation for Criminal Mischief adopts many elements of the new theft statute, while leaving in place the one thousand dollar cutoff which elevates the crime to a felony.*

*The Task Force recommends leaving in place the currently existing maximum offense levels for all five crimes in this recommendation. Although the 2013 amendment to the theft statute created a class 2 felony theft, the Task Force decided that was unnecessary for other value-based offenses.*

*The copy of the full recommendation, FY14-CS1, may be found in Appendix F.*

## FY14-CS2      **Retroactively provide earned time credit to certain individuals sentenced under the habitual criminal statute**

Retroactively expand the availability of earned time credit to individuals sentenced under the “big” provision of the habitual criminal statute for crimes occurring between July 1, 1985, and June 30, 1993. Therefore, amend section 17-22.5-104. (Proposed statutory language is below.)

The Comprehensive Sentencing Task Force recommends amending section 17-22.5-104 as follows:

(c) (I) No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

**(II) THIS PARAGRAPH (C) SHALL NOT APPLY TO ANY INMATE SENTENCED PURSUANT TO SECTION 16-13-101(2), C.R.S., AS IT EXISTED PRIOR TO JULY 1, 1993, FOR ANY CRIME COMMITTED ON OR AFTER JULY 1, 1985, AND ANY SUCH INMATE SHALL BE ELIGIBLE FOR PAROLE AFTER THE INMATE HAS SERVED FORTY CALENDAR YEARS LESS ANY TIME AUTHORIZED PURSUANT TO SECTION 17-22.5-403.**

(d)(I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. No inmate imprisoned under a life sentence pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

### Discussion

*The goals of this recommendation are basic fairness, providing behavioral incentives to inmates, and cost savings. The Department of Corrections currently houses a small group of individuals convicted under the “big” provision of the habitual criminal statute who are ineligible for parole until they have served forty calendar years. Individuals convicted under that provision today, in contrast, are eligible to receive earned time toward parole eligibility if their crime was committed after July 1, 1993.*

*The recommendation’s June 30, 1993, date is the product of changes in the habitual criminal statute, section 18-1.3-801. A prior version of that statute’s “big” provision required persons convicted of a felony, after three prior felony convictions, to receive a sentence to “his or her natural life.” The statute was amended effective July 1, 1993, to require a sentence of four times the maximum of the presumptive range for the felony of conviction. Ch. 322, sec. 1, § 16-13-101, 1993 Colo. Sess. Laws 1975-76. People who commit a felony after July 1, 1993, and are sentenced under “big” provision, are eligible for parole in accordance with parole eligibility statute. See §§ 17-22.5-104(2)(d)(II); 17-22.5-403; 18-1.3-801(2), C.R.S. 2012.*

*The recommendation’s July 1, 1985, date is a product of changes in the parole regulations statute, section 17-22.5-104. When that statute was repealed and reenacted in 1984, it provided that “[n]o inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, shall be paroled until he has served at least twenty calendar years ....” Ch. 126, sec. 1, § 17-22.5-104, 1984 Colo. Sess. Laws 518. The parole eligibility cutoff was then extended to forty years for crimes committed after July 1, 1985. Ch. 145, sec. 3, § 17-22.5-104, 1985 Colo. Sess. Laws 648. In 1991, the forty year cutoff was limited to people convicted under the “big” provision of the habitual criminal statute and class 1 felonies. Ch. 73, sec. 4, § 17-22.5-104, 1991 Colo. Sess. Laws 404. The cutoff for the “big” provision was removed altogether for crimes*

*committed after July 1, 1993. Ch. 322, sec. 3, § 17-22.5-104, 1993 Colo. Sess. Laws 1978. For present-day offenses, a forty year to parole eligibility limitation exists only as to convictions under section 18-1.3-801(2.5) (conviction of crime of violence following prior habitual criminal sentencing), section 18-1.3-801(1) (three times convicted of a class 1 or 2 felony, or a class 3 felony crime of violence), and juveniles convicted of class 1 felonies after direct filing. See § 17-22.5-104(2)(d), C.R.S. 2012.*

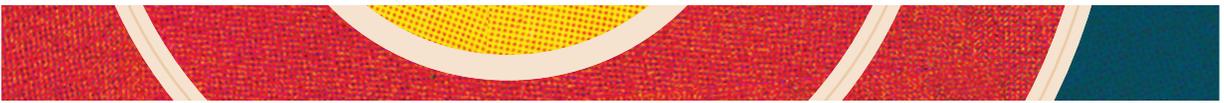
*The Task Force recognizes that victims should be notified of changes to the projected date that an offender will become eligible for parole. The Department of Corrections will determine whether the victims of affected offenders have requested notification of any critical stages of the criminal proceedings pursuant to section 24-4.1-302.5, C.R.S. 2012.<sup>15</sup> Those who have will be notified of the offenders' recalculated parole eligibility date. If a victim has not requested notification, the Department of Corrections shall notify the district attorney in the jurisdiction of conviction. The district attorney will make all reasonable efforts to notify the victim of his or her rights pursuant to 24-4.1-302.5, C.R.S. 2012. Because it is estimated that the parole eligibility dates of only 76 offenders will be affected, the Task Force believes this notification process will not be overly burdensome and can be accomplished without a statutory mandate.*

*The copy of the full recommendation, FY14-CS2, may be found in Appendix G.*

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<sup>15</sup> "If a victim contacts a criminal justice agency regarding a crime that occurred before 1993, and the offender who committed the crime is currently serving a sentence for the crime, the victim may request notification of any future critical stages of the criminal proceedings. In addition, if an arrest is made for a crime committed before 1993 that was previously unsolved, the victim of the crime may request notification of all future critical stages from the appropriate criminal justice agency. This provision does not require a criminal justice agency to proactively locate victims of crimes that occurred before 1993." § 24-4.1-302.5(4), C.R.S. 2012.





# 5

## Next steps

### Task forces and committees

The Commission continues to support the ongoing work of the following three Task Forces and one Committee:

- Comprehensive Sentencing Task Force  
(Jeanne Smith and Norm Mueller, co-chairs)
- Juvenile Justice Task Force  
(Kelly Friesen and Jeff McDonald, co-chairs)
- Community Corrections Task Force  
(Theresa Cisneros and Peter Weir, co-chairs)
- Minority Overrepresentation Committee  
(Stan Hilkey, chair)

The work of the Comprehensive Sentencing Task Force is expected to conclude in the fall 2014. The Juvenile Justice Task Force has been asked by the Commission to complete its current scope of work by the end of the summer of 2014. The Community Corrections Task Force will continue its work, as will the Minority Overrepresentation Committee. The Commission also looks forward to supporting the work of the recently established (April 2014) Evidence Based Decision

Making Committee, and exploring re-entry and data sharing as potential new areas of study (see below).

As this report goes to press, recommendations are being presented to the Commission by the task forces listed above in preparation for the FY2015 legislative session.

### New areas of study

During the March 2014 Commission retreat, commissioners were asked to identify issues and priorities for the upcoming year and to develop an action plan to address those areas. Three issues surfaced as new priority areas of study including Evidence Based Decision Making (EBDM), re-entry, and data sharing. At the retreat, commissioners agreed to approach those new study areas as follows:

- **Evidence Based Decision Making:** The Commission agreed to create a short-term committee to shepherd the Phase IV activities of NIC's Evidence Based Decision Making Initiative (scheduled for March 2014 through November 2014). The Commission also agreed that at the conclusion of Phase IV it would reassess further involvement in Phase V.

- **Re-entry:** Commissioners agreed to convene a planning group in the fall of 2014 to assess current re-entry issues and to reexamine re-entry issues that arose during the first year of Commission work (2008). This planning group is charged with developing a longer term scope of work for a full Re-entry Task Force to tentatively be seated in early 2015.
- **Data sharing:** As with re-entry, the Commission agreed to seat a preliminary data sharing planning group in the fall of 2014 to define key issues, identify key stakeholders and prepare a proposed scope of work for a full Data Task Force to tentatively be seated in early 2015.

## New Commission Chair

Commission Chair James Davis retired from public service in March 2014 and with that also left the Department of Public Safety and his position as Commission Chair. Governor Hickenlooper appointed Stan Hilkey as the new Executive Director of the

Colorado Department of Public Safety in June 2014. Mr. Hilkey was appointed after the June Commission meeting and therefore his first meeting as Chair of the Commission occurred during timeframe of next year's annual report.

## Summary

The Commission will continue to meet on the second Friday of the month, and information about the meetings, documents from those meetings, and information about the work of the Task Forces and Committees can be found on the Commission's web site at [www.colorado.gov/ccjj](http://www.colorado.gov/ccjj). The Commission expects to present its next written report in the fall of 2015. That report will encompass the activities of the Commission during Fiscal Year 2015.



# 6

## Appendices

### Appendices table of contents

31	Appendix A: Jessica's Law Letter
49	Appendix B: Concerning the Implementation of Amendment 64
75	Appendix C: Analyses for the Comprehensive Sentencing Task Force regarding motor vehicle theft
83	Appendix D: Subset of habitual offenders incarcerated in DOC
87	Appendix E: Indeterminate-eligible sex offenses: Trial and conviction outcomes
95	Appendix F: Commission Recommendation FY14-CS1
101	Appendix G: Commission Recommendation FY14-CS2



**Appendix A:**  
**Jessica's Law Letter**





## Colorado Commission on Criminal & Juvenile Justice

### James H. Davis

Chair

P 303-239-4398  
F 303-239-4670  
James.Davis@cdps.state.co.us

### Douglas K. Wilson

Vice-Chair

P 303-764-1400  
F 303-764-1478  
Doug.Wilson@state.co.us

Theresa Cisneros

Sallie Clark

Matt Durkin

Kelly L. Friesen

Charles Garcia

Kathleen Horn-Murphy

Henry Jackson, Jr.

Steve King

Julie Krow

Evelyn Leslie

Beth McCann

Jeff W. McDonald

Norm R. Mueller

Kevin L. Paletta

Joseph K. Pelle

Eric Philp

Rick Raemisch

Debbie Rose

Brandon Shaffer

Jeanne M. Smith

Pat Steadman

Alaurice M. Tafoya-Modi

Mark Waller

Peter Weir

Dave Young

**To: Governor John Hickenlooper  
Senate President-Elect Morgan Carroll  
House Speaker Mark Ferrandino**

**From: Commission on Criminal and Juvenile Justice**

**Re: Review of Jessica's Law and Colorado's Sex Offender Laws**

**Date: November 14, 2013**

### Request

By letter dated April 29, 2013 the Commission on Criminal and Juvenile Justice (CCJJ) was requested to assess the potential impacts Jessica's Law would have if adopted in Colorado. Specifically, the CCJJ was directed to consider:

- The impacts that Jessica's Law has had in other states that have implemented it;
- Any literature or documents available that evaluate Colorado's sexual offender programs based upon empirical analysis and evidence-based practices;
- The objectives of protecting the public, especially children, from dangerous sexual offenders while ensuring the most effective expenditure of Colorado's criminal justice resources; and,
- Any other issues that the CCJJ determines to be important and relevant to the goals of the CCJJ and its assessment of Colorado's criminal laws applicable to sexual offenders.

### Background

Jessica's Law refers to an act adopted by the Florida legislature in 2005 (Jessica Lunsford Act; Florida House Bill 2005-1877). The act made a number of changes to the sentencing and registration consequences faced by sex offenders in that state. Other states have adopted some pieces of the Florida statutes, but there is no uniform model that has been adopted wholesale in other jurisdictions. The major points in the act are outlined in a chart prepared by Jessika Shipley of the Colorado Legislative Council Staff in a memorandum to the General Assembly dated March 2012 (revised from an earlier report of April 2008). The chart also compares those major points to relevant provisions in Colorado law. The chart is included with this memorandum as Table A. While there are a variety of conditions included in the act, two points are generally mentioned as the cornerstones of Jessica's Law. The first is a 25-year mandatory minimum prison sentence for the offense of sexual assault on a child and the second is lifetime supervision with electronic monitoring.



## Colorado Commission on Criminal & Juvenile Justice

States that are credited with having implemented Jessica's Law have not met even those two conditions in the same manner, nor have they uniformly adopted the other provisions of Florida's act. The National Conference of State Legislatures prepared a chart summarizing each state's laws relating specifically to the 25-year mandatory minimum and the lifetime electronic monitoring requirements. This chart is included herein as Table B. The chart underscores a number of differences in the definitions and categories that make state-to-state comparisons difficult. In Florida, the definition of a child for these purposes means a person under 12 years of age. California differentiates between victims under 14 for some crimes and victims under 10 for others. Delaware, Georgia, Kansas, Mississippi, and Texas use 14 as the cut point. Other states define a child victim as being under 16, 15, 13, or 12. Colorado defines a child victim with regards to sexual assault as a person under age 15 for most crimes. There are some sex offenses relating to positions of trust that extend the definition of a child victim to age 18.

Other variants are apparent when comparing the types of sexual assault covered by the laws as well as the applicable sentences. While Florida's act covers "lewd and lascivious molestation of a child," which includes touching, other states have restricted the increased penalties to more specific acts of penetration or other use of violence or to repeat offenders. Nebraska, for instance, has a 15-year minimum sentence for First Degree Sexual Assault of a Child under 12. In Nebraska, that crime requires an act of penetration and does not include contact-only offenses. Repeat offenders are subject to a 25-year minimum sentence. Ohio adopted 25 years to life as a sentence but restricted it to rape of a child under 13. Michigan enacted the 25-year minimum sentence but also applied it only to acts of penetration on a child under 13. Alabama uses a 20-year minimum sentence for their category of "Class A" offenses and 10-year mandatory for "Class B" and "Class C" offenses on victims under 12 if the act was committed with a deadly weapon.

The Jessica's Law condition of electronic monitoring for life following release from prison is also treated differently in the states credited with the adoption of the act. Alaska requires GPS only when aggravating factors are present. Arkansas mandates it for 10 years after release. Iowa sets a minimum of 5 years of electronic tracking for parolees or probationers. Many others authorize, but do not require, the use of electronic monitoring as a condition of supervision. Finally, some states, such as California, require electronic monitoring for registered, unsupervised sex offenders but implementation of this requirement was prevented by a lack of funding authorization.

### Analysis

The effort to assess the impacts of Jessica's Law on other states that have implemented it is thus hampered by the variety of what has been implemented. Further, every state started from a different platform of laws and sentencing before adopting their versions of Jessica's Law. Conducting a study of the impacts of the changes in each state would be a monumental undertaking. A search was conducted to determine whether published reports exist within any state that discussed such impacts but none were found. The Washington Institute for Public Policy, one of the most active and well-funded state research arms, has issued reports on the effects of sex offender registration and the use of risk assessment tools for classifying sex offenders, but not on the sentencing range effects nor the results of electronic monitoring specifically on sex offenders. Other states have attempted to study the impact of electronic monitoring on offenders, including sex offenders, but the outcomes to date have not supported the efficacy of this intervention.<sup>1</sup>

<sup>1</sup> See, for example, Aos, Miller, & Drake, 2006; Gies, Gainey, Cohen, Healy, Yeide, Bekelman, Bobnis, & Hopps, 2012; New Jersey State Parole Board, 2007; Tennessee Board of Probation and Parole, 2007; and Turner & Janetta, 2007.



## Colorado Commission on Criminal & Juvenile Justice

### Mandatory Minimum Sentences

Colorado defines sexual assault on a child as any sexual contact on a victim less than 15 if the actor is at least 4 years older than the victim. This includes all types of behaviors from touching to penetration. For persons in a position of trust, the age extends to a victim under 18 years old. All sexual assaults on a child in Colorado are subject to the indeterminate sentence provisions of C.R.S. 18-1.3-1004. That statute also incorporates mandatory minimum levels from the crime of violence sentencing ranges. This requires, for example, that an offender convicted of sexual assault on a child as a class 3 felony must be sentenced to no less than a number from 8 to 24 years, with the automatic maximum of life as the undetermined top end on every sentence. If an offender is paroled for a class 3 felony sex offense, the period of parole must be at least 20 additional years up to a maximum of life under C.R.S. 18-1.3-1006. For a class 4 felony, the mandatory minimum is between 2 and 6 years with the automatic maximum of life on each sentence, followed by a period of parole of at least 10 years to life. Sexual assault on a child is a Class 3 felony if there was any use of force, threats, or intimidation or if the act was part of a pattern of conduct. This applies regardless of the nature of the sexual contact. It is a class 4 felony only in the absence of any of those factors. Other sexual offenses with child victims such as enticement of a child, patronizing a prostituted child, and internet sexual exploitation of a child are also covered by the indeterminate sentence statute if the crime included the use of force, threats, or intimidation or resulted in bodily injury and was therefore a crime of violence.

For purposes of comparison it is important to note that Jessica's Law allows for an alternative of EITHER a sentence to life OR a determinate sentence of at least 25 years. In Colorado, every sentence has life as the upper end of an indeterminate range.

Determining the potential impact of adopting some or all of the facets of Jessica's Law in Colorado is as much a moving target as trying to determine the impact of changes in other states. Would Colorado choose to create a new category of victims under 12? The specific ages of child victims are not currently entered in the criminal justice databases so they are not searchable as a data element. Would Colorado apply any new sentencing provision to all types of sexual contact, or restrict it as some states have done to only acts of penetration, or to other aggravators such as use of force or pattern of conduct? Would the electronic monitoring become a mandatory condition of parole or remain as an option as other states have done? Would Colorado retain the indeterminate life sentence as the maximum in each case, incorporate the alternative determinate sentence option authorized by Jessica's Law, or switch completely to a determinate sentence model? How would such a change impact sentencing practices by the courts? The impact of these variables would be little more than guesswork without more information about the criteria and detail of any changes.

### Electronic Monitoring

Colorado requires that any sex offender released from prison must comply with the intensive supervision parole program. That program incorporates the option of electronic monitoring as a condition. Sex offenders who have been designated as Sexually Violent Predators (SVPs), are sentenced to indeterminate sentences, or are identified as high risk are required to be on intensive supervised parole (ISP) with the condition of electronic monitoring when first released from prison. In addition, non-ISP parolees can also be placed on electronic monitoring based on certain criteria (e.g., violent crime, high-profile case, career criminal, use of a weapon, gang affiliation, history of escapes, etc.).

The offender's parole agreement typically reads, "Parolee shall participate in intensive supervision while on parole for 180 days at the discretion of the Parole Officer." The Parole Board has the option to extend ISP and electronic monitoring beyond 180 days in cases where the offender is on an indeterminate sentence or designated an SVP. Therefore, sex offenders placed on electronic monitoring generally remain on such



## Colorado Commission on Criminal & Juvenile Justice

supervision for 6 months. Parolees can be removed from electronic monitoring at the discretion of the community supervision team when they progress to a lower level of supervision except for offenders sentenced to indeterminate sentences, who must be lowered to minimum supervision prior to being removed from electronic monitoring.<sup>2</sup>

If an offender is placed on probation, the court may order electronic monitoring as a condition. The probation officer also has discretion to require electronic monitoring based on assessments and behavior. Probation as a possible sentence is discussed more fully under the Research section to follow.

### Research Findings

Assessing the current status of offenders convicted of crimes related to sexual assaults on children requires combining information from multiple sources. The Lifetime Supervision of Sex Offenders Annual Report, published jointly by the Department of Corrections, the Department of Public Safety, and the State Judicial Department tracks sex offenders sentenced to an indeterminate range but does not distinguish between cases involving adult or child victims. The November 2012 edition of that report indicates that 1,129 hearings were held to consider lifetime sex offenders for parole in FY 2012. Some offenders had multiple hearing dates so the number of hearings is greater than the number of offenders considered. Of those, 107 were granted parole; 102 were “new” parolees, that is, they had not been on parole previously as part of the current sentence (p. 6). It is unknown how many of the 107 inmates paroled from lifetime supervision had assaulted victims below 12 years of age. For comparison, in FY 2011, 844 hearings were held for this population, 21 offenders were granted parole and 17 of those were “new” parolees (Lifetime Supervision of Sex Offenders Annual Report, 2011, p. 5). The increase in releases between FY 2011 and FY 2012 is expected to continue in the near term as more inmates reach parole eligibility under the lifetime sentencing laws that went into effect in Colorado in 1998.

The Department of Corrections Fiscal Year Statistical Report for FY 2011, published in May 2012, indicates that, as of the end of FY 2011, there were 1,678 inmates in prison for sexual assault on a child (p. 43). This aggregate number is not necessarily informative in a review of Jessica’s Law impact as some of those sentences may have been applied under previous laws requiring a determinate sentence while others require an indeterminate sentence as enacted in 1998. It is more pertinent to look at the admissions for FY 2011 for the crimes of sexual assault on a child, sexual assault-position of trust, aggravated incest, and sexual exploitation of a child (DOC Statistical Report FY 2011, Table 17). Remembering that these offenses include victims under 15 or 18, the sentencing patterns are useful to consider. According to an analysis conducted by the Division of Criminal Justice, there was only one class 2 felony admission and it resulted in a sentence of 16 years to life. The sentence lengths for class 3 felonies averaged 21.3 years for 3 aggravated incest cases, 23.4 years for the 28 sexual assault-position of trust cases, and 35.5 years for the 11 sexual assault on a child cases. Thus, a 25-year mandatory minimum would have little effect on sentencing practices for these more serious cases.

The class 4 felonies show a significantly lower minimum sentence as would be expected from the lower severity represented by the crime classification. The sentence lengths for class 4 sex assault-position of trust cases averaged a 6.5 year minimum for 13 offenders, the 35 sexual assault on a child cases averaged 5.7 years, and the single sexual exploitation of a child resulted in a 2-year minimum. However, since the maximum for all of these cases is life, and it is difficult to know how long these inmates will actually serve before being granted parole, assessing the impact of a change in the law to a 25-year minimum is still problematic. It would be informative,

<sup>2</sup> Department of Corrections Administrative Regulation (AR) 250-02. Specific procedures for sex offenders can be found in AR 250-48.



## Colorado Commission on Criminal & Juvenile Justice

although not definitive at this point, to study all the lifetime sex offenders in prison for abusing a child victim; however, that requires more time and resources than are available for this report.

Class 4 felonies are also eligible for a sentence to probation for a minimum term of 10 years up to the offender's natural life. Probation requires a pre-sentence investigation that includes a sex offender-specific evaluation and other assessments that guide the imposition of conditions, including treatment and electronic monitoring. These assessments are part of the risk and need determination that have demonstrated effectiveness in the reduction of recidivism (Andrews, Dowden, & Gendreau, 1999; Dowden, 1998; Gendreau, French, & Gionet, 2004; Hanson, Bourgon, Helmus, & Hodgson, 2009).

Like the indeterminate-to-life sentence in place in Colorado for all child sex offenses, some other Colorado requirements are more stringent than those in Jessica's Law. That law allows for an offender to be relieved of designation as a sexual predator after 30 years. Colorado does not allow for removal of that designation at any time. Jessica's Law requires a sexual predator to register twice yearly. Colorado requires quarterly registration for designated sexually violent predators and any offender subject to lifetime supervision.

### Outcome Studies

The request from the Governor and legislature also asked the CCJJ to consider literature or documents evaluating Colorado's sexual offender programs as part of the CCJJ's determination of the potential impacts of Jessica's Law. There have been a limited number of evaluations funded to examine sex offender treatment programs. In 2012 the legislature funded a study of the Sex Offender Treatment and Monitoring Program (SOTMP) within the Department of Corrections. This report was completed in January 2013. Its focus was not on recidivism reduction or offender success in treatment. Rather, it was intended to evaluate the SOTMP for adherence to accepted methods of offender assessment and delivery of appropriate treatment. While the recommendations in the report are useful for those issues, they do not provide facts or data that inform the question of the potential impact of Jessica's Law in Colorado. Whether or not provisions of Jessica's Law may be adopted, some form of sex offender treatment will still be offered in prison. .

The use of in-prison treatment programs has been shown to be an effective component of offender rehabilitation when coupled with follow-up treatment in the community per the 2003 study of the Sex Offender Treatment and Monitoring Program (Colorado Division of Criminal Justice, Office of Research and Statistics, 2003). In addition, a study by the Sex Offender Management Board (2011) found a low rate of sexual recidivism (2.6% over three years post-supervision) for sex offenders who successfully completed probation or parole.

### **Evidence-based Sentencing**

As a whole, sentencing for criminal offenses is undergoing a shift in emphasis to the effective use of evidence-based principles in assigning consequences for criminal behavior. These principles are based on an assessment of an offender's risks and needs that tend to drive criminal behavior. The sentence should incorporate conditions that address the needs appropriately. The focus of these evidence-based principles is to reduce recidivism and offender risk (Hanson, Bourgon, Helmus, & Hodgson, 2009; SOTMP Evaluation, 2013). Research has demonstrated that crime of conviction alone does not coincide with risk for recidivism, and other factors should also be considered in sentencing including actuarial risk assessment information (Freeman & Sandler, 2009; Zgoba, Miner, Knight, Letourneau, Levenson, & Thornton, 2012).

The focus of these evidence-based principles is that the sentencing process can help reduce recidivism and offender risk. Evidence-based sentencing is individualized and based on information about an offender's



## Colorado Commission on Criminal & Juvenile Justice

specific risk and treatment needs. The use of mandatory minimums is contrary to the effective use of sentencing to reduce recidivism. Judge Roger K. Warren, in his 2008 paper entitled, “Evidence-based Practice to Reduce Recidivism: Implications for State Judiciaries,” discussed the importance of ensuring “that state sentencing policy allows sufficient flexibility and discretion to sentencing judges to permit implementation of risk-reduction strategies.” Warren notes that evidence-based sentencing relies on 30 years of criminology research that provides significant guidance in our efforts to improve public safety.

Evidence-based principles in sentencing do not address all components of a sentence. For instance, it is accepted that a sentence should reflect the seriousness of the presenting crime and should also be comparable to sentences imposed on other persons for the same offense. These principles of equity and fairness are not subject to scientific testing. There is no study that can establish whether the sentence for a theft should be shorter or longer than a sentence for murder. Those issues are policy considerations based on what a community believes is the relative damage caused by each crime. The same is true for sexual assault on a child compared to sexual assault on an adult. A community expects that children should receive additional protections and that violating a child should receive more severe punishment. Because the criminal justice system is society’s organized method of dealing with violations of behavioral codes, these concerns are as valid as the goal of treating each offender individually to reach a successful result for that offender. Therefore, a consideration of sex offender sentencing and management necessarily includes direct steps to provide for victim protection and community safety (Sex Offender Management Board enabling statute, 16-11.7.101 C.R.S.).

### Review Results

Colorado’s sentencing scheme, actual practices, and supervision requirements meet or exceed Jessica’s Law in many important ways. Colorado’s structure was designed over a period of years with input from many professionals in the field. There has been regular review and revision influenced by research, practical applications, and shifts in public policy. It is expected these reviews will continue. The provisions of Jessica’s Law that Colorado currently lacks are not in keeping with evidence-based sentencing practices as they would move the state further away from the ability to impose a sentence designed to address the level of seriousness of the offense as well as the risk levels of the offenders.

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James H. Davis, Chair  
Commission on Criminal and Juvenile Justice

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Douglas K. Wilson, Vice-Chair  
Commission on Criminal and Juvenile Justice

**Table A**  
**Comparison of the Provisions of Jessica's Law and Colorado Law on Sex Offenders**

*This Table is excerpted from the original memo to the General Assembly prepared by Jessika Shipley. A complete version of that document is available at:  
<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251827965184&ssbinary=true>*

<b>Subject</b>	<b>Jessica's Law</b>	<b>Colorado</b>
<b>Mandatory minimum sentences for serious sex offenses on a victim who is under the age of 12</b>	An individual convicted of lewd and lascivious molestation of a child, who is not sentenced to life, must be sentenced to at least 25 years imprisonment, followed by probation or community supervision for the remainder of the individual's natural life.	Most sex offenders in Colorado are subject to the Colorado Sex Offender Lifetime Supervision Act of 1998. Additionally, most sex offenses against children are subject to enhanced sentencing provisions. See Attachment A for an explanation of indeterminate sentencing of sex offenders.
<b>Petitions to remove a sexual predator designation</b>	An individual must wait 30 years after being designated as a sexual predator prior to petitioning the court to remove the designation.	Designation as a sexually violent predator is made during the probation or parole process using a risk assessment tool and by a determination of the court. It may be appealed, but the designation may not be removed.
<b>Death penalty</b>	Prosecutors may seek the death penalty in cases where the child victim of a sexual predator dies during (or as an immediate result of) lewd and lascivious molestation.	Prosecutors may seek the death penalty in cases where an individual commits sexual assault on a child and the victim dies during (or as an immediate result of) the sexual assault.
<b>Failure to register as a sex offender</b>	Third degree felony, punishable by a term of imprisonment not to exceed 5 years.	A first offense is a class 6 felony (punishable by 1 year to 18 months in prison, a fine of \$1,000 to \$100,000, or both) and a second offense is a class 5 felony (punishable by 1 to 3 years in prison, a fine of \$1,000 to \$100,000, or both). Depending on the circumstances of the case, an individual may petition to be removed from the sex offender registry.

**Table A (cont'd)**  
**Comparison of the Provisions of Jessica's Law and Colorado Law on Sex Offenders**

Subject	Jessica's Law	Colorado
<b>Harboring a sex offender</b>	Third degree felony, punishable by a term of imprisonment not to exceed 5 years.	It is a class 5 felony to harbor an individual who has committed, been convicted of, or is charged with a crime, or is suspected or wanted for a crime that is a class 3, 4, or 5 felony (all felony sex offenses fall into one of these three categories). <sup>3</sup>
<b>Electronic monitoring</b>	All sexual predators are required to be monitored electronically, via global positioning satellite (GPS), for the entire period of probation.	Electronic monitoring, including GPS, is used as a sentence by the courts in lieu of jail. It is also used as a condition of bond for pre-trial supervision, as well as for monitoring some residential and non-residential parolees out in the community. All offenders who are subject to Intensive Supervision Program Parole (ISP-P) are monitored electronically. <sup>4</sup>
<b>Sex offender registration and reporting requirements</b>	Sexual predators are required to report in person to re-register twice a year.	Sexually violent predators and individuals subject to lifetime supervision must register quarterly (every 90 days). All other sex offenders re-register annually. (See Attachment B for details of the Sex Offender Registration Act of 2002.)
<b>County probation officials</b>	County probation officials are required to search the state sex offender registry any time they are assigned a new offender.	In Colorado, probation cases are assigned according to judicial district, rather than by counties. Probation officers are not statutorily required to check the sex offender registry, although some may do so as a matter of local policy. Probation officers do receive presentence reports, which include a criminal history, on every offender.

<sup>3</sup> A class 5 felony is punishable by one to three years in prison, a fine of \$1,000 to \$100,000, or both.

<sup>4</sup> The ISP-P was established by statute for high risk-high needs offenders who present increased risk to the community. These offenders would not generally be considered as good candidates for parole by the board and would not receive favorable consideration for release (discretionary) because of the risk posed were it not for the increased supervision, surveillance, and contact by community parole officers this program offers.



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**State Statutes Related to Jessica's Law**

In February 2005, a nine year old Florida girl named Jessica Lunsford was raped and murdered. The accused offender lived across the street from Jessica and had a history of crimes against children. He was required to register as a sex offender under Florida law but failed to keep his registration information current, as required. This case prompted Florida House Bill 1877 later that year, which increased punishment and monitoring of child sex offenders. Two major components of the bill include a mandatory 25 years to life prison sentence for first time offenders convicted of sex crimes against children and the use of global positioning satellites (GPS) or electronic devices to track the location of sex offenders following release. Several states have since passed similar versions of the original Jessica's Law although the title of acts may vary by state.

At least 25 states have enacted mandatory 25 year minimum sentences for first time child sex crime offenders; at least 39 states have enacted GPS or electronic monitoring provisions specific to sex offenders; and at least 23 states have enacted *both* GPS or electronic monitoring and 25 year minimums, identified below by an asterisk next to the state name. Some states have not yet enacted these Jessica's Law components but may have comparable or related provisions; that information is also included below.

**Table B**  
**State Statutes Related to Jessica's Law**

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
Alabama	§13A-5-6; §15-20-21; § 15-20-26.1	SB 53 (2005)	20 year minimum sentence for Class A and 10 years for a Class B or C felony sex offenses involving a child under age 12 while using a deadly weapon. Numerous criminal sex offenses enumerated in §15-20-21 including sexual abuse, kidnap, enticement.	Requires electronic monitoring of sexual violent predators.
Alaska	§12.55.125; §33.16.150	SB 218 (2006):	SB 218 raised presumptive sentencing ranges for sex related crimes against minors including 1st 2nd, 3rd degree sex assault, sex abuse w/ a minor, prostitution, etc.	Requires GPS as condition of parole/probation when aggravating factors are found - not specific to sex offenders.
Arizona	§13-604.01; §13-1423	SB 1141(1998)	Life sentence for 1st degree dangerous crimes against children including sexual assault or sexual conduct w/ a minor 12 years or younger & violent sex assault. Provides presumptive sentences ranging from 20-30 years for other sex related crimes.	Not Specified
*Arkansas	§5-14-103; §12-12-923	HB 1004 (2006) HB 1005 (2006)	25 year mandatory minimum sentence for rape of a child under 14 years of age.	Requires electronic monitoring of sexually violent predators for minimum 10 years after release.

Table B (cont'd) – State Statutes Relating to Jessica’s Law (Source: National Conference of State Legislatures)

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
*California	Penal Code: §269; 288.7; §3010; §3004	SB 1128 (2006) SB 619 (2005) SB 963 (2005) Prop 83 (2006)	25 years to life mandatory minimum sentence for intercourse or sodomy w/ child 10 years or younger and 15 years to life for oral copulation or sexual penetration w/ child 10 years or younger. 15 years to life w/ consecutive sentencing for additional sex acts w/ a child 14 years or younger.	Requires GPS monitoring of felony sex offenders for life.
Colorado	§18-1.3-406; §18-1.3-401	---	Presumptive sentencing with mandatory ranges provided for sex offenses constituting violent crimes.	Not Specified
*Connecticut	§53a-70c; §53a-90a; §53-21; §53a-30	SB 1458 (2007) HB 5846 (2006)	25 year mandatory minimum for aggravated sexual assault of a minor younger than 13 years. Also provides restrictions on sentence reduction or suspension, requiring specified periods of imprisonment ranging from 2-10 years for crimes including sexual assault of a minor, impairing morals of a child, child pornography, enticing a minor, etc.	Court authorized to impose GPS monitoring as a condition of probation - not specific to sex offenders.
Delaware	Chapter 11: §4205A	HB 404 (2006)	25 years to life mandatory minimum sentence when victim is younger than 14 years and the crime is rape, continuous sexual abuse of a child, or a dangerous crime against a child.	Not Specified
*Florida	§800.04; §775.082;	HB 1877 (2005)	25 years to life mandatory minimum sentence for lewd or lascivious molestation against a victim less than 12 years of age.	Requires electronic monitoring of specified sex offenders for life.
*Georgia	§16-5-21 §17-10-6.2 §16-6-4 §16-5-21 §42-1-14	HB 1059 (2006)	25 year mandatory minimum sentence for crimes of sexual assault, aggravated assault with intent to rape, incest, kidnapping against a child less than 14 years old; aggravated child molestation, aggravated sodomy with child 13-15 years old; rape; aggravated sexual battery	Requires sexually dangerous predators to wear GPS electronic monitoring device for life.
Hawaii	---	---	---	Not Specified
Idaho	§20-219	HB 381 (2008)	---	Requires sexually violent predators be electronically monitored throughout probation or parole period.
Illinois	§730 ILCS 5/3-3-7; §720 ILCS 5/12-14.1	SB 1397 (2007) HB 4222 (2006)	Provides for extended sentencing periods of 15 and 20 years or minimum 50 years for predatory criminal sexual assault of a child; depending on use of firearm or resulting bodily injury.	Requires sexually violent predators be electronically monitored throughout probation or parole period.

Table B (cont'd) – State Statutes Relating to Jessica’s Law (Source: National Conference of State Legislatures)

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
<b>Indiana</b>	§11-13-3-4; §35-50-2-2; §35-50-2-4	SB 125 (2005) HB 1155 (2005) SB 12 (2005)	Provides fixed felony class A sentencing ranges of 20-50 years for specified sex crimes involving deadly force, including sexual misconduct w/ a minor and child molestation. Also limits suspension of class A child molestation sentence only to that in excess of 30 years.	Requires sexually violent predators be electronically monitored, includes GPS.
<b>Iowa</b>	§901A.2; §692A.4A; §903B.1; §903B.2; §902.14	HF 619 (2005)	Provides enhanced and special sentences up to life imprisonment for certain repeat sex offenders.	Requires certain sex offenders be electronically monitored or tracked for at least 5 years as condition of parole or probation.
<b>*Kansas</b>	§21-4642; §21-4643; §22-3717	HB 2576 (2006)	25 years to life mandatory minimum sentence for certain child (under 14) sex offenses including rape, sexual exploitation, sodomy, prostitution, trafficking, etc, with specific exceptions. Provides 40 year minimum for repeat offenders of certain sex offenses. Requires life imprisonment without the possibility of parole for repeat offenders classified as aggravated habitual sex offenders.	Requires electronic monitoring for life of certain sex offenders.
<b>Kentucky</b>	§431.520; §532.080; §532.060;	HB 003 (2006)	Certain sex related crimes classified as class A felonies are subject to indeterminate sentencing ranges from 20-50 years. 25 years to life for a 1st degree persistent repeat felony sex offender.	Court is authorized to require electronic monitoring of certain sex offenders
<b>*Louisiana</b>	§14:78.1; §14.81.2; §14.81.1; §14.43.1; §15:550; §15:560.4	HB 004 (2006) HB 642 (2008) SB 164 (2004) HB 572 (2006)	25-99 years at hard labor mandatory minimum sentence for sex crimes against a child under 13 years old including: aggravated incest, molestation of a juvenile, sexual battery, pornography involving juveniles, etc.	Requires electronic monitoring for life of certain sex offenders.
<b>Maine</b>	17-A §253; 17-A §1252; 17-A §1231	HP 1224 (2006)	Provides definite minimum sentence of 20 years for gross sexual assault of a child under age 12.	Conviction of gross sexual assault requires supervised release including electronic monitoring for duration.
<b>*Maryland</b>	Crime Code: §3-305; §3-303; §11-724	HB 2A (2006)	25 years to life mandatory minimum sentence for 1st degree sex offense and rape with a child under age 13.	Parole Commission is authorized to use GPS as part of sex offender supervision.

Table B (cont'd) – State Statutes Relating to Jessica’s Law (Source: National Conference of State Legislatures)

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
Massachusetts	265, §23; 265, §47	HB 5234 (2006) HB 4811 (2008)	Provides for a minimum 10 years for rape of a child under 16 using a weapon. Minimum 25 year sentencing similar to "Jessica's Law" was removed from HB 4811 before passage.	Requires GPS monitoring for certain sex offenders throughout probation.
*Michigan	§750.520b; §750.520n	HB 5421 (2006) HB 5531 (2006) H 5532 (2006) SB 709 (2006) SB 1122 (2006)	25 years to life mandatory minimum sentence for 1st degree sexual conduct with a child under age 13.	Requires lifetime electronic monitoring when convicted of criminal sexual conduct with a child under age 13
Minnesota	§609.3455	---	Provides for mandatory life sentence for egregious first-time offenders convicted of sexual conduct when the fact finder determines that a heinous element exists	Allows use of electronic surveillance on certain sex offenders.
Mississippi	§97-3-101; §99-19-84	SB 2527 (2006)	Minimum 20 years to life for sexual battery of a child under 14 years old.	Allows court to order electronic monitoring on certain sex offenders.
*Missouri	§566.030; §566.060; §566.213; §217.735; §559.106	HB 353 (2005)	Mandatory minimum 25 years for sexual trafficking of a child under age 12. Mandatory minimum 30 years to life for forcible rape or sodomy of a child under age 12.	Requires lifetime electronic monitoring/tracking using GPS for specified sex offenders.
*Montana	§45-5-625; §45-5-503; §45-5-507; §46-18-222; §46-18-206; §46-18-207; §46-23-1010	SB 207 (2005)	Mandatory minimum 25 years to life, with some exceptions, for sex related crimes with a child 12 years or younger including: sexual intercourse without consent, sexual abuse of children, incest, etc.	Requires electronic monitoring using GPS for level 3 sex offenders and authorizes use for other levels of sex offenders.
Nebraska	§28-319.01; §83-174.03	LB 1199 (2006)	Provides for minimum 15 year sentence for 1st offense of 1st degree sexual assault of a child under 12 years of age; repeat offenders subject to 25 year minimum.	Authorizes office of parole to use electronic monitoring on certain sex offenders.
*Nevada	§200.366; §176A.410; §213.1243; §213.1255	SB 471 (2007)	Mandatory life imprisonment with eligibility for parole only after 25 years has been served for sexual assault of a child under age 16 and substantial bodily harm did not occur; mandatory life imprisonment w/o parole if substantial bodily injury did occur. Mandatory life imprisonment with eligibility for parole only after 35 years has been served for sexual assault against a child under age 14 and substantial bodily harm did not occur.	Authorizes use of electronic monitoring device that will provide information related to sex offender's geographic location.

Table B (cont'd) – State Statutes Relating to Jessica's Law (Source: National Conference of State Legislatures)

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
<b>New Hampshire</b>	§651:6; §632-A:2	HB 1692 (2006)	Authorizes but does not mandate extended sentencing of 25 years to life for 1st degree sexual assault or aggravated felonious sexual assault against a child under age 13.	Not Specified
<b>New Jersey</b>	§30:4-123.92	SB 484 (2007)	Several bills have been recently introduced but died in committee. (2006: AB 960, SB 1204. 2004: SB 2594, AB 4177, AB 4067, AB 4068.)	Authorizes satellite-based monitoring of sex offenders
<b>New Mexico</b>	§31-21-10.1; §31-18-23; §31-18-25	---	Provides mandatory life imprisonment for repeat violent sexual offenders, not 1st time offenders.	Requires GPS monitoring of sex offenders for the duration of parole.
<b>New York</b>	Penal Code: §130.95; §130.96; §70.08; §70.00; §70.06; §65.10; Exec. §837-r	AB 8939 (2006)	10 years to life minimum sentence for sex related crimes classified as predatory sexual assault & predatory sexual assault against a child less than 13 years old. 25 years to life minimum for persistent violent felony offenders.	Allows use of electronic monitoring on certain sex offenders as a condition of release.
<b>*North Carolina</b>	§14-27.2A §14-27.4A §14-208.40 §14-208.40A	HB 933 (2008) HB 1896 (2006)	Mandatory 25 years to life for sex related offenses against a child under 13 years of age including rape of a child, sexual offense with a child.	Requires satellite based monitoring for life of certain sex offenders.
<b>North Dakota</b>	§12.1-20-03; §25-03.3-24; §12-67-01; §12-67-02	HB 1216 (2007) SB 2029 (2007)	20 year mandatory minimum sentence for gross sexual imposition against a child under 15 but provides that the court may deviate from the minimum when it would impose manifest injustice, in which case a 5 year minimum must be observed.	Authorizes GPS monitoring for sex offender containment, requires for sexually dangerous persons.
<b>Ohio</b>	§2929.13 §2971.03	SB 260 (2007) HB 95 (2006)	25 years to life <i>indefinite</i> minimum sentence for rape of a child under age 13.	Authorizes GPS monitoring for certain sex offenders.
<b>*Oklahoma</b>	22 §991a; 10 §7115; 21 §1021;	SB 631 (2005) HB 1816 (2007)	25 years to life mandatory minimum sentence for sex related crimes against a child under 12 including sexual abuse & exploitation by a parent, child pornography, and sexual battery and lewd acts with a child under 16.	Requires GPS monitoring of habitual or aggravated sex offenders.
<b>*Oregon</b>	§137.700; §163.235;	HB 3511A (2006)	25 year mandatory minimum sentences for 1st degree sex related offenses against a child under 12 including rape, sodomy, kidnapping, sexual penetration.	Requires lifetime "active tracking" of certain sex offenders.
<b>*Rhode Island</b>	§11-37-8.2.1 §11-37-8.2 §13-8-30	SB 2058 (2006) HB 7040 (2006)	25 years to life mandatory minimum sentence for 1st degree child molestation sexual assault against a child 14 years and under.	Requires lifetime GPS monitoring for convicted child molesters and high risk offenders.

Table B (cont'd) – State Statutes Relating to Jessica’s Law (Source: National Conference of State Legislatures)

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
Pennsylvania	42 §9718.2; 42 §9798.3;	HB 944 (2005)	Provides 10 year minimum sentence for sexual assault of a child under 16; 25 year minimum for 2nd offenders and life imprisonment for 3rd time offenders.	Authorizes GPS monitoring for certain sex offenders.
*South Carolina	§16-3-655; §23-3-540	SB 1138 (2006) HB 3328 (2005)	25 years to life mandatory minimum sentence for criminal sexual conduct with a minor under 11 years old. Mandatory life imprisonment or death for subsequent offenders.	Requires active electronic monitoring for certain sex offenders.
South Dakota	§22-22-1.2 §23A-27-12.1; §24-15A-24	SB 208 (2006) SB 148 (2006)	Provides for minimum 15 year sentence for rape of a child under age 13.	Authorizes use of GPS and electronic monitoring for parole and probation – not specific to sex offenders.
*Tennessee	§39-13-522 §40-39-302 §40-39-303	HB 2314 (2007) HB 3182 (2004)	25 years to life mandatory minimum sentence for rape of a child under age 13.	Authorizes use of GPS and electronic monitoring on sex offenders.
*Texas	Penal Code: §21.02 Crim. Proc: §17.43; §42.12	HB 008 (2007)	25 years to life mandatory minimum sentence for continuous Sexual Abuse of a child under age 14.	Authorizes use of GPS and electronic monitoring on sex offenders.
Utah	§76-5-402.1; §76-1-301 §76-5-403.1 §76-5-402.3	HB 013 (2008) HB 256 (2008)	25 years to life mandatory minimum sentence for sex related crimes against a child under age 14 including rape of a child, object rape of a child, sodomy of a child.	Not Specified
Vermont	13, §3253 28, §351	HB 856 (2006)	Provides presumptive sentencing minimum of 10 years, mandatory minimum 5 years, and mandatory maximum of life for sexual assault on a child under 13 years old.	Includes electronic monitoring in definition of an alternative sentencing program – not specific to sex offenders.
*Virginia	§ 18.2-61; § 18.2-67.1; § 18.2-67.2; §19.2-295.2:1	HB 846 (2006) SB 559 (2006)	25 year mandatory minimum sentence for rape, forcible sodomy, object sexual penetration against a child under 13 years old when committed in commission of or part of the same course of conduct as kidnapping, abduction, burglary, aggravated malicious wounding, etc. Provides for an additional suspended sentence of 40 years.	Requires GPS tracking for certain sex offenders.

Table B (cont'd) – State Statutes Relating to Jessica’s Law (Source: National Conference of State Legislatures)

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
<b>*Washington</b>	§9.94A.712; §9.94A.713	HB 3277 (2006) HB 2407 (2006)	25 year mandatory minimum sentence for predatory offenses of 1st & 2nd degree rape of a child and 1st degree child molestation. Also provides 25 year minimum when victim is less than 15 years of age for 1st & 2nd degree rape, indecent liberties by forcible compulsion, 1 <sup>st</sup> degree kidnapping w/ sexual motivation. 25 year minimum also provided relating to sex crimes involving a person developmentally disabled, mentally disordered, a frail elder, or a vulnerable adult.	Allows for electronic monitoring of sex offenders released as a condition of community custody.
<b>*West Virginia</b>	§61-8B-3; §61-8B-7; §62-11D-1; §62-11D-3	HB 101A (2006)	25-100 year mandatory minimum sentence for 1st degree sexual assault or sexual abuse against a child less than 12 years of age.	Requires electronic monitoring including GPS of sexually violent predators.
<b>*Wisconsin</b>	§939.616 §301.48	AB 784 (2005) AB 591 (2005)	25 year mandatory minimum prison sentence for sexual assault against a child under age 13 and repeated acts of sexual assault of the same child.	Requires lifetime GPS tracking for certain sex offenders.
<b>Wyoming</b>	§6-2-306 §7-13-1102	---	Provides for mandatory life imprisonment for repeat, not 1st time, sex offenders convicted of sexual abuse of a minor.	Allows electronic monitoring as part of intensive supervision programs - not specific to sex offenders.

NCSL's Criminal Justice Program is in Denver, Colorado, at 303-364-7700; or [cj-info@ncsl.org](mailto:cj-info@ncsl.org)  
 Statutes and bills provided are summarized. Full text can be retrieved through: <http://www.ncsl.org/public/leglinks.cfm>



**Appendix B:  
Concerning the Implementation of Amendment 64**





***Colorado Commission on Criminal and Juvenile Justice  
and its Drug Policy Task Force***

**Concerning the Implementation of Amendment 64 (Personal Use and  
Regulation of Marijuana): Recommendations to the General Assembly  
per Senate Bill 13-283**

**December 2013**

Division of Criminal Justice  
Colorado Department of Public Safety  
700 Kipling Street  
Denver CO 80215  
<http://www.colorado.gov/cs/Satellite/CDPS-CCJJ/CBON/1251617151523>

**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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## **Concerning the Implementation of Amendment 64 (Personal Use and Regulation of Marijuana): Recommendations to the General Assembly per Senate Bill 13-283**

*Prepared on behalf of the Colorado Commission on Criminal and Juvenile Justice and its Drug Policy Task Force by*

Kim English, Division of Criminal Justice  
Germaine Miera, Division of Criminal Justice



**James H. Davis, Executive Director**  
Colorado Department of Public Safety

**Jeanne M. Smith, Director**  
Division of Criminal Justice

**Kim English, Research Director**  
Office of Research and Statistics

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**TABLE OF CONTENTS**

Background	4
Findings	5
Recommendation FY14-DP#1	6
Recommendation FY14-DP#2	8
Recommendation FY14-DP#3	10
Recommendation FY14-DP#4	11
Appendix A (Task Force Membership)	15
Appendix B (Summary of marijuana laws, C.R.S. 18-18-406)	17

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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## Concerning the Implementation of Amendment 64 (S.B. 13-283)

### BACKGROUND

The Colorado General Assembly passed Senate Bill 2013-283, requiring the Drug Policy Task Force of the Colorado Commission on Criminal and Juvenile Justice, and the Commission, to make recommendations on or before December 15, 2013 as follows:

- Make recommendations to the General Assembly regarding criminal laws that need to be revised to ensure that Title 18, C.R.S., and other relevant criminal statutes are compatible with the intent and plain meaning of Section 16 of Article XVIII of the State Constitution;
- Consider when developing recommendations that the intent of Section 16 of Article XVIII of the State Constitution was to
  - decriminalize consumption of small amounts of marijuana,
  - to create a lawful marketplace for adults to obtain safe and legal marijuana,
  - to protect against youth access and consumption of marijuana, and
  - to eliminate the illicit drug marketplace for marijuana;
- Consider the recommendations of the Governor’s Amendment 64 Implementation Task Force in developing its recommendations;
- Consider ways to harmonize conflicts raised by the introduced version of House Bill 13-1317 parts 5 through 10<sup>1</sup> and sections 12-43.3-901 (unlawful acts regarding medical marijuana), 12-43.4-901 (unlawful acts concerning retail marijuana) and 18-18-414 (unlawful acts regarding controlled substances, amended by Senate Bill 13-250);
- Consider penalties for unlawful activities by persons 18 years of age or older but under 21 years of age involving marijuana pursuant to Section 16 of Article XVIII of the State Constitution; and
- Make recommendations that assist in eliminating participation in the illicit drug market for marijuana by buyers, sellers, and producers, including appropriate fines and criminal sanctions on all activity that occurs outside the legal marketplace.

The Drug Policy Task Force met six times between July and October 2013 to address the mandates listed above.<sup>2</sup> Additional meetings were held by smaller working groups. A list of the Task Force membership may be found in Appendix A. This document reports the Task Force’s findings and, based on that work, the Commission’s final recommendations to the General Assembly.

<sup>1</sup> Note that the final version of H.B. 1317 did not contain Sections 5 to 10; the Task Force considered Part 9—Unlawful Acts.

<sup>2</sup> The minutes of these meetings may be found at <http://www.colorado.gov/cs/Satellite/CDPS-CCJJ/CBON/1251623050451> under the tab “Previous Meetings.”

## Concerning the Implementation of Amendment 64 (S.B. 13-283)

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### FINDINGS

The Drug Policy Task Force of the Colorado Commission on Criminal and Juvenile Justice reviewed the recommendations of the Governor's Amendment 64 Implementation Task Force and, in fact, two members of the Amendment 64 Task Force were members of the Drug Policy Task Force. The Drug Policy Task Force also reviewed Senate Bill 13-250 (concerning changes to sentencing of persons convicted of drug crimes), House Bill 13-1317 (concerning the implementation of Amendment 64), House Bill 13-1325 (concerning penalties for persons who drive while under the influence of alcohol or drugs), 42-4-1305.5, C.R.S. (open marijuana container, motor vehicle, prohibited), Title 18, C.R.S (Uniform Controlled Substances Act), and Section 16 of Article XVIII of the State Constitution (personal use and regulation of marijuana), among other documents.

The Task Force concluded that Senate Bill 13-250, which became effective October 1, 2013, and provides for a revised sentencing scheme for drug related offenses, is consistent with Section 16 of Article XVIII of the State Constitution (see, in particular, Section 31 or 18-18-433, C.R.S., which makes possession of one ounce or less of marijuana legal for those 21 years of age or older). Furthermore, the Task Force found that House Bill 13-1317 is consistent with Section 16 of Article XVIII of the State Constitution, however, makes a recommendation regarding the definition of "open container" and the personal transport of marijuana (42-4-1305.5, C.R.S.).

Regarding penalties for unlawful activities by persons 18-20 years of age related to marijuana, the Task Force concluded that Senate Bill 13-250 addresses the issues of sale and transfer. If an individual possesses more than one ounce of marijuana, the penalties in S.B. 13-250 apply. Additionally, S.B. 13-250 has a specific provision that exempts from criminal prosecution activities that are permissible under Section 16 of Article XVIII of the State Constitution. However the issue of minor in possession for those under the age of 21 is the focus of Recommendation #4, presented in the next section. Please see Appendix B for a summary of Senate Bill 250 under Title 18-18-406, C.R.S.

Task Force members agreed that the regulations promulgated by the Colorado Department of Revenue are intended to protect against youth access and consumption of marijuana, and that these regulations incorporate appropriate sanctions for retail operations that occur outside the legal marketplace.

The Task Force submitted the following recommendations to the Commission on Criminal and Juvenile Justice, and these recommendations were approved by the Commission in November 2013.

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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## RECOMMENDATIONS

**FY14-DP #1    Revise C.R.S. 24-31-314 to clarify that Advanced Roadside Impaired Driving Enforcement (ARIDE) training should take place during POST (Peace Officer Standard and Training) continuing education and advanced training, rather than during basic academy peace officer training.**

### **Recommendation FY14-DP #1**

The Commission recommends amending C.R.S. 24-31-314 as follows:

**24-31-314. Advanced roadside impaired driving enforcement training.**

(1) ON AND AFTER OCTOBER 1, 2013, THE P.O.S.T. BOARD IS ENCOURAGED TO INCLUDE ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TRAINING ~~IN THE CURRICULUM FOR PERSONS WHO ENROLL IN A TRAINING ACADEMY FOR BASIC PEACE OFFICER TRAINING AS AN ELECTIVE TO BASIC FIELD SOBRIETY TEST (BFST) TRAINING RECERTIFICATION.~~

(2) SUBJECT TO THE AVAILABILITY OF SUFFICIENT MONEYS, THE P.O.S.T. BOARD SHALL ARRANGE TO PROVIDE TRAINING IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TO DRUG RECOGNITION EXPERTS WHO WILL ACT AS TRAINERS IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT FOR ALL PEACE OFFICERS DESCRIBED IN SECTION 16-2.5-101, C.R.S.

### **Discussion**

The Governor's Task Force Report on the Implementation of Amendment 64 recommended ARIDE training as a mandatory training element in Colorado Peace Officer Standards and Training (POST) certification, and encouraged local law enforcement agencies to have their peace officers trained in ARIDE to increase and enhance the ability of law enforcement officers to detect impaired driving.<sup>3</sup>

The CCJJ Drug Policy Task Force and the Commission recognize the importance of advanced training for law enforcement officers to be able to quickly and skillfully recognize the signs of impairment by drugs other than alcohol. However, the Drug Policy Task Force and the Commission agree that this training is advanced and very specific, and is therefore more appropriate for officers to undertake after they have received basic training.

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<sup>3</sup> Implementation of the Amendment 64 Task Force. (March 13, 2013). Task Force Report on the Implementation of Amendment 64, Regulation of Marijuana in Colorado.

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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As the ARIDE (Advanced Roadside Impaired Driving Enforcement) course is currently designed, it was not intended for inclusion in a Basic Police Training Academy. This is an *intermediate* level course designed to offer more than a basic understanding of the impairing effects of drugs (illicit and licit), alcohol, and/or the combination of both.

Basic level police recruits would be best served by completing the mandated 24 hours of Standardized Field Sobriety Testing training currently mandated by POST. As an elective, the ARIDE would satisfy the POST requirement for recertification for the Basic Field Sobriety Test (BSFT). Currently a POST certified officer is required to complete BSFT training in the Basic Academy. This training assists an officer in identifying driver's suspected of being under the influence of alcohol or drugs. Following the initial training, POST requires an officer recertify every two years. By delaying the ARIDE training from the Basic to recertification phase, it allows an officer to obtain the necessary practical experience utilized in the ARIDE program. The ARIDE would be offered at the appropriate intermediate level versus basic level. This approach is consistent with the original intent to provide enhanced training to law enforcement in order to better identify impaired drivers.

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**FY14-DP #2    Revise C.R.S. 42-4-1305.5 as it pertains to open marijuana container and motor vehicles to ensure that the marijuana container is open, has a broken seal, contents are partially removed AND there is evidence of consumption.**

**Recommendation FY14-DP #2**

The Commission recommends amending C.R.S. 42-4-1305.5 as follows:

**42-4-1305.5. Open marijuana container - motor vehicle - prohibited.**

(1) DEFINITIONS. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MARIJUANA" SHALL HAVE THE SAME MEANING AS IN SECTION 16 (2) (f) OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(b) "MOTOR VEHICLE" MEANS A VEHICLE DRIVEN OR DRAWN BY MECHANICAL POWER AND MANUFACTURED PRIMARILY FOR USE ON PUBLIC HIGHWAYS BUT DOES NOT INCLUDE A VEHICLE OPERATED EXCLUSIVELY ON A RAIL OR RAILS.

(c) "OPEN MARIJUANA CONTAINER" MEANS A RECEPTACLE OR MARIJUANA ACCESSORY THAT CONTAINS ANY AMOUNT OF MARIJUANA AND:

(I) THAT IS OPEN OR HAS A BROKEN SEAL;

(II) THE CONTENTS OF WHICH ARE PARTIALLY REMOVED; ~~OR~~ **AND**

(III) THERE IS EVIDENCE THAT MARIJUANA HAS BEEN CONSUMED WITHIN THE MOTOR VEHICLE.

(d) "PASSENGER AREA" MEANS THE AREA DESIGNED TO SEAT THE DRIVER AND PASSENGERS, INCLUDING SEATING BEHIND THE DRIVER, WHILE A MOTOR VEHICLE IS IN OPERATION AND ANY AREA THAT IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER WHILE IN HIS OR HER SEATING POSITION, INCLUDING BUT NOT LIMITED TO THE GLOVE COMPARTMENT.

(2) (a) EXCEPT AS OTHERWISE PERMITTED IN PARAGRAPH (b) OF THIS SUBSECTION (2), A PERSON WHILE IN THE PASSENGER AREA OF A MOTOR

VEHICLE THAT IS ON A PUBLIC HIGHWAY OF THIS STATE OR THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY OF THIS STATE MAY NOT KNOWINGLY:

(I) USE OR CONSUME MARIJUANA; OR

(II) HAVE IN HIS OR HER POSSESSION AN OPEN MARIJUANA CONTAINER.

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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(b) THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT APPLY TO:

(I) PASSENGERS, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, LOCATED IN THE PASSENGER AREA OF A MOTOR VEHICLE DESIGNED, MAINTAINED, OR USED PRIMARILY FOR THE TRANSPORTATION OF PERSONS FOR COMPENSATION;

(II) THE POSSESSION BY A PASSENGER, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, OF AN OPEN MARIJUANA CONTAINER IN THE LIVING QUARTERS OF A HOUSE COACH, HOUSE TRAILER, MOTOR HOME, AS DEFINED IN SECTION 42-1-102 (57), OR TRAILER COACH, AS DEFINED IN SECTION 42-1-102 (106) (a);

(III) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN THE AREA BEHIND THE LAST UPRIGHT SEAT OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK; OR

(IV) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN AN AREA NOT NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER IN A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK.

(c) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (2) COMMITS A CLASS A TRAFFIC INFRACTION AND SHALL BE PUNISHED BY A FINE OF FIFTY DOLLARS AND A SURCHARGE OF SEVEN DOLLARS AND EIGHTY CENTS AS PROVIDED IN THIS SECTION AND SECTION 42-4-1701 (4) (a) (I) (N).

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT OR LIMIT THE AUTHORITY OF ANY STATUTORY OR HOME RULE TOWN, CITY, OR CITY AND COUNTY TO ADOPT ORDINANCES THAT ARE NO LESS RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION.

**Discussion**

While the Drug Policy Task Force and the Commission sought parity for penalties related to the illegal use of alcohol and marijuana, this recommendation sets a different standard for marijuana because, presently, marijuana is not sealed in a container in the same fashion as alcohol. In addition, marijuana can be consumed in many forms, from ointment to edibles. It can also be home-grown. Law enforcement representatives of both the Task Force and the Commission stated that this addition to the open container law is consistent with their ability to enforce the law.

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**FY14-DP #3 Funding for public education, prevention and treatment as these pertain to marijuana use.****Recommendation FY14-DP #3**

The General Assembly should allocate resources from the marijuana cash fund (created in C.R.S. 12-43.3-501) toward the Adolescent Substance Abuse Prevention and Treatment Fund (C.R.S. 25-1.5-111) for the purposes of public education and prevention efforts focused on discouraging youth access.

**Discussion**

According to the National Institute on Drug Abuse, research from different areas is converging on the fact that regular marijuana use by young people can have long-lasting negative impact on the structure and function of the brain. A recent study of marijuana users who began using in adolescence revealed a profound deficit in connections between brain areas responsible for learning and memory. Importantly, the lost cognitive abilities were not restored in those who quit smoking marijuana as adults. (Individuals who started smoking marijuana in adulthood did not show significant IQ declines.) Further, NIDA estimates that about nine percent of users become addicted to marijuana, and this number increases to 17 percent among those who start young. Finally, the annual NIDA-supported *Monitoring the Future* survey of adolescent drug use and attitudes has detected, over the past several years, increasing use of marijuana by teens associated with a decreasing perception of marijuana's harmfulness.<sup>4</sup>

While regulations promulgated by the Colorado Department of Revenue are intended to protect against youth access and consumption of marijuana, there is a critical need for public education and prevention efforts targeting adolescent marijuana use. The state's Office of Behavioral Health manages the Adolescent Substance Abuse Prevention and Treatment Fund and has the capacity to develop evidence-based prevention programs provided that resources are available.

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<sup>4</sup> See <http://www.drugabuse.gov/publications/drugfacts/marijuana>.

**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**FY14-DP #4    Revise the Minor in Possession (MIP) statute, C.R.S. 18-13-122.**

**Recommendation FY14-DP #4**

The Commission recommends that C.R.S. 18-13-122 be revised as follows:

***Introduction***

- 1) Rewrite the legislative declaration to support intervention and education to prevent the illegal use of alcohol and/or marijuana by persons under 21. The declaration should educate persons about the dangers of early use, about responsible use once they are able to legally consume, and encourage young persons to be successful and productive members of the community.
- 2) Expand the Adolescent Substance Abuse Prevention and Treatment Fund with the current \$25 surcharge (current amount for alcohol MIP) but supplement the Fund with dollars from marijuana taxes so that all the court-ordered programs can be free to persons under the age of 21 to the extent funds have been appropriated.
- 3) Continue with all the definitions in current MIP statute but add in the definitions of marijuana and marijuana paraphernalia (see below).
- 4) Continue all current affirmative defenses for alcohol consumption. In addition, add marijuana to the current “immune from prosecution” alcohol provision which can apply when an underage person calls for 911 for assistance.
- 5) Continue all language under current law regarding admissibility of alcohol testing. Add to that provision any necessary and appropriate language regarding the DUID and the testing of marijuana.
- 6) Continue current law that law enforcement needs probable cause to enter on private property.

***Crimes***

*NOTE: Ethyl alcohol violations, marijuana, and marijuana paraphernalia are presented here as separate subsections so that these offenses can be tracked over time. However, the penalties are the same.*

**Alcohol**

- A. Except as provided in C.R.S. 18-1-711 and subsection (4.5), a person under 21 years of age who possesses or consumes ethyl alcohol anywhere in Colorado commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

**Marijuana**

- B. Except as provided in for by medical marijuana (C.R.S. 12-43.3-103), a person under 21 years of age who possesses one ounce or less of marijuana or consumes any amount of marijuana in Colorado commits illegal possession or consumption of marijuana by an

### Concerning the Implementation of Amendment 64 (S.B. 13-283)

underage person. Illegal possession or consumption of marijuana by an underage person is a strict liability offense.

#### Marijuana paraphernalia

- C. A person under 21 years of age who possesses marijuana paraphernalia and knowingly or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the law commits illegal possession of marijuana paraphernalia by an underage person.

#### **Penalties**

Introduction	Illegal possession or consumption of ethyl alcohol (A), marijuana (B) or marijuana drug paraphernalia (C) is an <u>unclassified petty offense</u> and is punishable as described below.
First offense (part 1)	Current statute/practice in which prosecutor discretion is preserved.
First offense (part 2)	Upon first conviction: <ul style="list-style-type: none"> <li>• Up to \$100 fine AND</li> <li>• Substance abuse education program as determined by the court and approved by the Office of Behavioral Health in the Department of Human Services.</li> <li>• If the defendant successfully complies with court orders the case shall be automatically sealed.</li> </ul>
Second offense	Upon second conviction: <ul style="list-style-type: none"> <li>• Up to \$100 AND</li> <li>• Substance abuse education AND</li> <li>• If determined appropriate by the court, a substance abuse assessment and any recommended therapy resulting from such assessment, AND</li> <li>• Up to 24 hours of community service.</li> <li>• With successful completion, case is eligible for sealing after one year.</li> </ul>
Third offense	Upon third and subsequent convictions: <ul style="list-style-type: none"> <li>• Up to \$250 AND</li> <li>• Shall undergo a substance abuse assessment AND shall be required to follow any recommended therapy from such assessment AND</li> <li>• Up to 36 hour of useful public service.</li> <li>• With successful completion, case is eligible for sealing after one year.</li> </ul>
Unsealing	Any offense sealed shall automatically be unsealed upon a subsequent offense.
Final provision	Prosecutors are encouraged to enter into a diversion or deferred judgment agreement with any underage person for any offense under this section if such an agreement would be consistent with the legislative declaration of this section.

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

**Discussion**

This recommendation is designed to support education and treatment, as necessary and appropriate, for illegal possession of marijuana for persons under the age of 21. Education and service interventions are the primary considerations for underage persons who violate this statute for this avoids the negative consequences associated with a conviction. Finally, it is the intent of this recommendation to treat alcohol and marijuana the same under Colorado law.

**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**APPENDIX A**

**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**Colorado Commission on Criminal and Juvenile Justice  
Drug Policy Task Force Membership / 2013**

<b>Affiliation</b>	<b>Representative</b>
Co-Chair / Judicial Branch / CCJJ	Eric Philp, Probation Services
Co-Chair / At Large / CCJJ	Charles Garcia, Special Council to the Governor
Attorney General's Office / CCJJ	Matt Durkin, Attorney General's Office
Law Enforcement / CCJJ	Kevin Paletta, Lakewood Police Department
Legislative, CO House	Mike Foote, House District 12
Legislative, CO Senate	Evie Hudak, Senate District 19
Legislative, CO Senate	Pat Steadman, Senate District 31
Behavioral Health	Marc Condojani, Division of Behavioral Health
Department of Revenue	Ron Kammerzell, Enforcement Group
Colorado Criminal Defense Bar	Maureen Cain, Defense Attorney
Public Defender	Brian Connors, State Public Defender's Office
Prosecution	Tom Raynes, Colorado District Attorney's Council
Community at Large	Christie Donner, Colorado Criminal Justice Reform Coalition
Law Enforcement	Vince Niski, Colorado Springs Police Department

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**APPENDIX B**

**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

**SB 250 summary on marijuana laws under Title 18-18-406 (see SB 250 at pages 20-24)<sup>5</sup>**

Crime	Petty offense	Misd 2 (0-12mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 years	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Possession MJ	2oz or less \$100 fine	>2oz - 6oz	>6 -12oz	> 12 oz			
Poss-MJ concentrate			3 oz or less	>3 oz			
Public use, display, consumption -MJ	2oz or less (\$100 fine/24 hr comm. service)	Same as possession	Same as possession	Same as possession			
Public use, display, consumption-MJ concentrate			Same as possession	Same as possession			
Transfer/dispense from one person to another for no consideration - MJ	2 oz or less						
Cultivation MJ			up to 6	>6 - 30plants	> 30 plants		
Sale MJ*			4 oz or less	> 4oz - 12oz	>12oz - 5 lbs	>5 lbs -50 lbs	> 50 lbs
SaleMJ concentrate*			2 oz or less	>2oz - 6 oz	>6oz - 2.5lbs	>2.5lb - 25lbs	> 25 lbs
Sale, transfer, dispensing of MJ to minor if adult +2yrs older				1 oz or less	> 1 oz - 6 oz	>6oz - 2.5 lbs	>2.5 lbs
Sale, transfer, dispensing of MJ concentrate to minor if adult +2yrs older				½ oz or less	>1/2oz – 3oz	>3oz-1 lb	> 1lb

\* sale includes: dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute; or attempt, induce, attempt to induce, or conspire with one or more other persons, to dispense, sell, distribute, or possess with intent to manufacture, dispense, sell or distribute MJ or MJ concentrate (dispense does not include labeling)

Other criminal provisions related to MJ in 18-18

18-18-406.5- DM1 unlawful use of MJ in detention center

18-18-428-Petty Offense (\$100 fine)-possession of drug paraphernalia

18-18-429 DM2-manufacture, sale, delivery of drug paraphernalia

18-18-430 DM2-advertisement of drug paraphernalia

18-18-433. Constitutional provisions (Section 31, p. 36 of SB 250): The provisions of this part 4 do not apply to a person twenty-one years of age or older acting in conformance with sections 14 and 16 of article XVIII of the state Constitution

18-1-711-Immunity from prosecution (Good Samaritan)-includes several MJ offenses

18-18-406(2)(a): DF3 to knowingly process or manufacture MJ or MJ concentrate or knowingly allow to be processed or manufactured on land owned, occupied, or controlled by him or her except as authorized by CRS 12-42.5, Part 1 or CRS 27-80, Part 2

<sup>5</sup> Prepared for the Drug Policy Task Force by the Colorado Criminal Justice Reform Coalition, July 2013.  
Colorado Commission on Criminal and Juvenile Justice, December 2013



**Appendix C:**  
**Analyses for the Comprehensive Sentencing Task Force**  
**regarding motor vehicle theft**



## Aggravated Motor Vehicle Theft – Prior Charges/Convictions

Table 1 addresses the question of what percentage of offenders charged with second degree aggravated motor vehicle theft (MVT) are serial offenders. The majority of offenders charged in the 3 year period (81%) did not have any prior cases involving MVT. These results should be viewed with caution for the following reasons:

- Prior cases were found using name and date of birth matching.
- Denver county data were not included.
- Out of state data were not included.

**Table 1. Prior MVT Cases for Offenders\* charged with C.R.S. 18-4-409(4) in Cases Filed from FY 2010 to FY2012. See Table 3 for race breakdown.**

Number of Prior Cases Containing <u>any</u> MVT Charge	%	N
0	81%	1,979
1	12%	303
2	4%	94
3	2%	45
4	1%	18
5	<1%	5
6	<1%	1
7	<1%	1
8	<1%	1
<b>Total</b>	<b>100%</b>	<b>2,447</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

\*If offenders had more than one case during this time period the last case was selected.

Table 2 shows the breakdown for offenders convicted of the F3 first degree MVT (18-4-409(3)(b)), by whether the value exceeded \$20,000 or if the defendant had two prior convictions. The majority of those convicted (92%) were convicted for the vehicle value, not prior convictions.

**Table 2. Offenders\* convicted of C.R.S. 18-4-409(3)(b) in Cases Filed from FY2010 to FY2012.**

See Table 4 for race breakdown.

Conviction Charge	%	N
Motor Vehicle Theft/Agg 1-Over \$10,000	1%	1
MOTOR VEHICLE THEFT/AGG1-OVER \$20,000	75%	60
MOTOR VEHICLE THEFT/AGG1-OVER 20,000-ATT	9%	7
MOTOR VEHICLE THEFT/AGG1-OVER 20,000-CSP	6%	5
MOTOR VEHICLE THEFT/AGG-OVER \$15,000	1%	1
MOTOR VEHICLE THEFT/AGG-W/TWO PRIORS	8%	6
<b>Total</b>	<b>100%</b>	<b>80</b>

Data source: Court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

\*If offenders had more than one case during this time period the last case was selected.

**Table 3. Prior MVT Cases for Offenders<sup>1</sup> charged with C.R.S. 18-4-409(4) in Cases Filed from FY 2010 to FY2012, by Race<sup>2</sup>**

Number of Prior Cases Containing any MVT Charge	Asian	Black	Hispanic	Native American	Other	White	N	%
0	1%	8%	12%	2%	2%	75%	1,966	100%
1	1%	10%	11%	1%	0%	77%	303	100%
2	0%	5%	15%	3%	0%	76%	92	100%
3	0%	4%	16%	0%	0%	80%	45	100%
4	6%	0%	17%	0%	0%	78%	18	100%
5	0%	20%	0%	0%	0%	80%	5	100%
6	0%	100%	0%	0%	0%	0%	1	100%
7	0%	0%	0%	0%	0%	100%	1	100%
8	0%	0%	0%	0%	0%	100%	1	100%
<b>Total</b>	<b>1%</b>	<b>8%</b>	<b>12%</b>	<b>1%</b>	<b>2%</b>	<b>75%</b>	<b>2,432</b>	<b>100%</b>

Data source: Court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records. Fifteen offender records had no race data.

<sup>1</sup>If offenders had more than one case during this time period the last case was selected.

<sup>2</sup>Judicial race data often does not distinguish between race and ethnicity (particularly “White” and “Hispanic”). As a result, the ability to accurately interpret this data is limited.

**Table 4. Offenders<sup>1</sup> convicted of C.R.S. 18-4-409(3)(b) in Cases Filed from FY2010 to FY2012, by Race<sup>2</sup>**

Conviction Charge	Asian	Black	Hispanic	Other	White	N	%
Motor Vehicle Theft/Agg 1-Over \$10,000	0%	0%	0%	0%	100%	1	100%
MOTOR VEHICLE THEFT/AGG1-OVER \$20,000	2%	15%	5%	3%	75%	60	100%
MOTOR VEHICLE THEFT/AGG1-OVER 20,000-ATT	0%	29%	0%	0%	71%	7	100%
MOTOR VEHICLE THEFT/AGG1-OVER 20,000-CSP	0%	20%	0%	0%	80%	5	100%
MOTOR VEHICLE THEFT/AGG-OVER \$15,000	0%	0%	0%	0%	100%	1	100%
MOTOR VEHICLE THEFT/AGG-W/TWO PRIORS	0%	0%	0%	17%	83%	6	100%
<b>Total</b>	<b>1%</b>	<b>15%</b>	<b>4%</b>	<b>4%</b>	<b>76%</b>	<b>80</b>	<b>100%</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

<sup>1</sup>If offenders had more than one case during this time period the last case was selected.

<sup>2</sup>Judicial race data often does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

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## Outcomes for Motor Vehicle Theft (C.R.S. 18-4-409) Filing Charges

Tables 1 and 2 contain outcomes for cases having Aggravated Motor Vehicle Theft (MVT) as the most serious filing charge. Outcomes include:

- Convicted as Charged.
- Convicted of attempt of the original filing charge.
- Convicted of another MVT charge.
- Other Theft Conviction: convicted of a non-MVT Theft charge (18-4-4\*).
- Other Conviction: convicted of a non-MVT, non-Theft charge.
- Not guilty, case dismissed, no finding in the record.

**Table 1. Outcomes for cases with 1<sup>st</sup> Degree Aggravated Motor Vehicle Theft as most serious filing charge in cases filed FY 08 to FY 12**

Most Serious Filing Charge	Convicted as Charged	Attempt Conviction	Other MVT Conviction	Other Theft Conviction	Other Conviction	Not Guilty/ No Finding/ Dismissed	%	N
<b>F</b>	<b>23%</b>	<b>0%</b>	<b>23%</b>	<b>0%</b>	<b>31%</b>	<b>23%</b>	<b>100%</b>	<b>13</b>
18-4-409(2)(a)	0%	0%	0%	0%	25%	75%	100%	4
18-4-409(2)(b)	100%	0%	0%	0%	0%	0%	100%	2
18-4-409(2)(c)	0%	0%	100%	0%	0%	0%	100%	2
18-4-409(2)(d)	50%	0%	0%	0%	50%	0%	100%	2
18-4-409(2)(e)	0%	0%	0%	0%	100%	0%	100%	2
18-4-409(2)(h)	0%	0%	100%	0%	0%	0%	100%	1
<b>F3</b>	<b>25%</b>	<b>5%</b>	<b>29%</b>	<b>9%</b>	<b>17%</b>	<b>15%</b>	<b>100%</b>	<b>539</b>
18-4-409(2)(d)	0%	0%	0%	0%	100%	0%	100%	1
18-4-409(2),(3)(b)	25%	5%	29%	9%	17%	15%	100%	538
<b>F4</b>	<b>30%</b>	<b>7%</b>	<b>20%</b>	<b>8%</b>	<b>18%</b>	<b>17%</b>	<b>100%</b>	<b>3,642</b>
18-4-409(2)(d)	0%	0%	0%	0%	100%	0%	100%	1
18-4-409(2),(3)(a)	30%	7%	20%	8%	18%	17%	100%	3,632
18-4-409(2),(3)(b)	33%	0%	22%	11%	11%	22%	100%	9
<b>F5</b>	<b>31%</b>	<b>0%</b>	<b>19%</b>	<b>0%</b>	<b>28%</b>	<b>22%</b>	<b>100%</b>	<b>36</b>
18-4-409(2),(3)(a)	31%	0%	19%	0%	28%	22%	100%	36
<b>Total</b>	<b>29%</b>	<b>7%</b>	<b>21%</b>	<b>8%</b>	<b>18%</b>	<b>17%</b>	<b>100%</b>	<b>4,230</b>

Data sources: Motor vehicle theft records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (JASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

**Table 2. Outcomes for Cases with 2nd Degree Aggravated Motor Vehicle Theft as most serious filing charge in cases filed FY 08 to FY 12**

Most Serious Filing Charge	Convicted as Charged	Attempt Conviction	Other MVT Conviction	Other Theft Conviction	Other Conviction	Not Guilty/ No Finding/ Dismissed	%	N
<b>F5</b>	<b>39%</b>	<b>8%</b>	<b>22%</b>	<b>5%</b>	<b>11%</b>	<b>15%</b>	<b>100%</b>	<b>169</b>
18-4-409(4)	100%	0%	0%	0%	0%	0%	100%	1
18-4-409(4)(a)	39%	8%	22%	5%	11%	15%	100%	168
<b>F6</b>	<b>42%</b>	<b>0%</b>	<b>18%</b>	<b>7%</b>	<b>14%</b>	<b>20%</b>	<b>100%</b>	<b>1,665</b>
18-4-409(4)(a)	22%	0%	44%	0%	33%	0%	100%	9
18-4-409(4)(b)	42%	0%	18%	7%	14%	20%	100%	1,656
<b>M1</b>	<b>46%</b>	<b>6%</b>	<b>1%</b>	<b>7%</b>	<b>13%</b>	<b>26%</b>	<b>100%</b>	<b>134</b>
18-4-409(4)(c)	46%	6%	1%	7%	13%	26%	100%	134
<b>M2</b>	<b>67%</b>	<b>0%</b>	<b>6%</b>	<b>6%</b>	<b>6%</b>	<b>17%</b>	<b>100%</b>	<b>18</b>
18-4-409(4)	38%	0%	13%	0%	13%	38%	100%	8
18-4-409(4)(c)	90%	0%	0%	10%	0%	0%	100%	10
<b>M3</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>100%</b>	<b>100%</b>	<b>1</b>
18-4-409(4)	0%	0%	0%	0%	0%	100%	100%	1
<b>Total</b>	<b>42%</b>	<b>1%</b>	<b>17%</b>	<b>7%</b>	<b>13%</b>	<b>20%</b>	<b>100%</b>	<b>1,987</b>

Data sources: Motor vehicle theft records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

**Appendix D:**  
**Subset of habitual offenders incarcerated in DOC**



## Habitual Criminals Incarcerated Under Pre-1993 Law

There are 104<sup>1</sup> offenders incarcerated in the Department of Corrections (DOC) under the pre-1993 Habitual Offender law as of June 30, 2012. Of those, 28 offenders were released on parole but returned due to a technical violation or a new crime. The remaining 76 offenders have never been paroled since their Habitual Offender conviction. Tables 1 to 4 describe the characteristics of these 76 offenders. Table 5 shows the potential earned time estimated by DOC that offenders could have received had they been entitled to under current law. The potential earned time estimation excludes time lost for COPD violations and time spent in administrative segregation. Other factors can deduct from earned time: the offender is not program compliant; group living compliant; or work and/or training compliant. These factors would require a manual file search and were not included in DOC's estimation. In the same June 30, 2012, population, 512 offenders with a habitual enhanced sentence were eligible to be awarded earn time. Overall these habitual offenders earned 89% of the awarded days.

**Table 1. Age of offenders as of June 30,2012**

Age	%	N
40-49	11%	8
50-59	55%	42
60-69	24%	18
70+	11%	8
<b>Total</b>	<b>100%</b>	<b>76</b>

Data Source: Department of Corrections

**Table 2. Race/ethnicity of offenders**

Race/Ethnicity	%	N
Black	36%	27
Hispanic	25%	19
Native American	1%	1
White	38%	29
<b>Total</b>	<b>100%</b>	<b>76</b>

Data Source :Department of Corrections

**Table 3. Felony class of most serious crime**

Felony Class	%	N
1	5%	4
2	29%	22
3	41%	31
4	20%	15
5	4%	3
6	1%	1
<b>Total</b>	<b>100%</b>	<b>76</b>

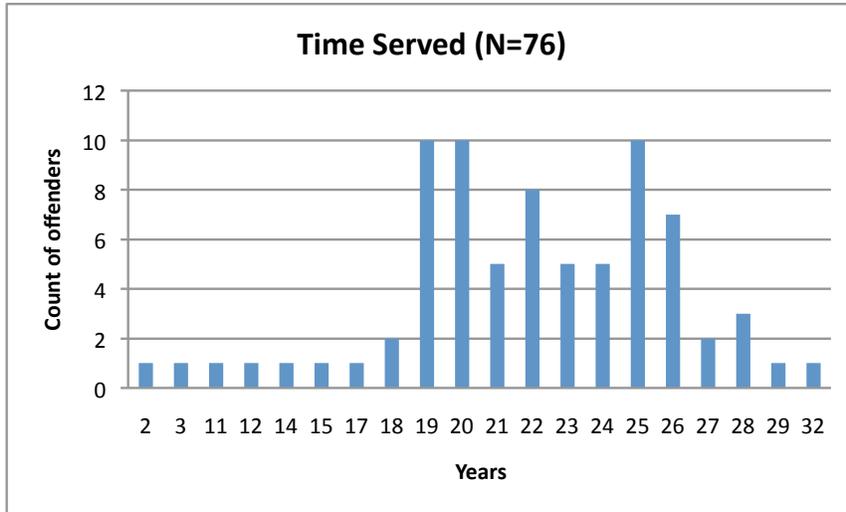
Data Source: Department of Corrections

**Table 4. Most serious crime**

Crime	N
Agg Robbery	19
Assault	6
Burglary	6
Child Abuse	1
Contraband	1
Controlled Substance	2
Kidnapping	9
Manslaughter	2
Menacing	1
Miscellaneous	1
Murder	13
Sexual Assault	8
Sexual Assault/Child	5
Weapons/Explosives	2
<b>Total</b>	<b>76</b>

Data Source: Department of Corrections

<sup>1</sup> The original count of 109 included 5 offenders whose conviction offense occurred after 1993.



Data Source: Department of Corrections

**Table 5. Estimated potential earned time for offenders by time served.**

Time Served (Years)	N	Estimated Potential Earned Time (Years)										Total	
		0	1	2	3	4	5	6	7	8	9		
2	1		100%										100%
3	1		100%										100%
11	1		100%										100%
12	1					100%							100%
14	1						100%						100%
15	1						100%						100%
17	1					100%							100%
18	2							100%					100%
19	10				10%	20%	10%	60%					100%
20	10	20%	10%			10%		40%	20%				100%
21	5			20%		20%		20%	40%				100%
22	8							25%	75%				100%
23	5						20%		80%				100%
24	5							20%	40%	40%			100%
25	10				20%	20%			40%	20%			100%
26	7	14%		14%				14%	14%	43%			100%
27	2	50%								50%			100%
28	3									100%			100%
29	1								100%				100%
32	1											100%	100%
<b>Total</b>	<b>76</b>	<b>3%</b>	<b>5%</b>	<b>3%</b>	<b>4%</b>	<b>11%</b>	<b>5%</b>	<b>22%</b>	<b>29%</b>	<b>14%</b>	<b>1%</b>	<b>100%</b>	<b>100%</b>

Data Source: Department of Corrections

**Appendix E:**  
**Indeterminate-eligible sex offenses:**  
**Trial and conviction outcomes**



## Indeterminate-Eligible Sex Offenses: Trials and Conviction Outcomes

**Table 1. Trials Conducted in Cases with Mandatory Indeterminate Sentence Charge as Most Serious Filing Charge for Cases Filed in Selected Years.**

Most Serious Filing Charge	FY Case Filed			
	1997	2001	2006	2011
<b>Trial Conducted</b>				
<b>18-3-305 (ENTICEMENT OF A CHILD)</b>	<b>6</b>	<b>33</b>	<b>46</b>	<b>14</b>
NO	83%	97%	100%	93%
YES	17%	3%	0%	7%
<b>18-3-306(3) (F4 INTERNET LURING OF A CHILD)</b>				<b>34</b>
NO				97%
YES				3%
<b>18-3-402 (SEXUAL ASSAULT)</b>	<b>203</b>	<b>255</b>	<b>344</b>	<b>259</b>
NO	85%	84%	80%	79%
YES	15%	16%	20%	21%
<b>18-3-403 (SEXUAL ASSAULT-2ND DEGREE PRIOR TO JUL 1,2000)</b>	<b>55</b>	<b>31</b>	<b>6</b>	
NO	87%	87%	67%	
YES	13%	13%	33%	
<b>18-3-404(2) (FELONY UNLAWFUL SEXUAL CONTACT)</b>	<b>17</b>	<b>6</b>	<b>7</b>	<b>2</b>
NO	88%	83%	100%	50%
YES	12%	17%	0%	50%
<b>18-3-405 (SEX ASSAULT ON A CHILD)</b>	<b>420</b>	<b>540</b>	<b>464</b>	<b>416</b>
NO	92%	89%	89%	92%
YES	8%	11%	11%	8%
<b>18-3-405.3 (SEX ASSAULT ON CHILD-POSITION OF TRUST)</b>	<b>341</b>	<b>302</b>	<b>316</b>	<b>272</b>
NO	91%	87%	84%	82%
YES	9%	13%	16%	18%
<b>18-3-405.4 (INTERNET SEX EXPLOITATION OF A CHILD)</b>				<b>60</b>
NO				97%
YES				3%
<b>18-3-405.5(1) (AGGRAVATED SEXUAL ASSAULT ON A CLIENT)</b>	<b>6</b>	<b>1</b>		
NO	83%	100%		
YES	17%	0%		
<b>18-6-301 (INCEST)</b>	<b>22</b>	<b>23</b>	<b>22</b>	<b>17</b>
NO	100%	91%	95%	94%
YES	0%	9%	5%	6%
<b>18-6-302 (AGGRAVATED INCEST)</b>	<b>42</b>	<b>63</b>	<b>60</b>	<b>35</b>
NO	86%	92%	83%	86%
YES	14%	8%	17%	14%
<b>18-7-406 (PATRONIZING PROSTITUTED CHILD)</b>	<b>5</b>	<b>1</b>		<b>5</b>
NO	100%	100%		100%
<b>Total</b>	<b>1117</b>	<b>1255</b>	<b>1265</b>	<b>1114</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

**Table 2. Trials Conducted in Cases with Discretionary Indeterminate Sentence Charge as Most Serious Filing Charge for Cases Filed in Selected Years.**

Most Serious Filing Charge Trial Conducted	FY Case Filed			
	1997	2001	2006	2011
<b>18-6-403 (SEXUAL EXPLOITATION OF CHILDREN)</b>	<b>11</b>	<b>49</b>	<b>68</b>	<b>160</b>
NO	82%	94%	88%	94%
YES	18%	6%	12%	6%
<b>18-6-404 (PROCUREMENT OF A CHILD FOR SEXUAL EXPLOITATION)</b>				<b>1</b>
NO				100%
<b>18-7-402 (SOLICITING FOR CHILD PROSTITUTION)</b>	<b>1</b>	<b>4</b>	<b>7</b>	<b>2</b>
NO	100%	75%	100%	100%
YES	0%	25%	0%	0%
<b>18-7-403 (PANDERING OF A CHILD)</b>	<b>3</b>	<b>1</b>		<b>4</b>
NO	100%	100%		100%
<b>18-7-403.5 (PROCUREMENT OF A CHILD)</b>				<b>2</b>
NO				100%
<b>18-7-404 (KEEPING A PLACE OF CHILD PROSTITUTION)</b>				<b>1</b>
YES				100%
<b>18-7-405 (PIMPING A CHILD)</b>	<b>1</b>			<b>3</b>
NO	100%			67%
YES	0%			33%
<b>18-7-405.5 (INDUCEMENT OF CHILD PROSTITUTION)</b>		<b>1</b>	<b>2</b>	<b>2</b>
NO		100%	100%	100%
<b>Total</b>	<b>16</b>	<b>55</b>	<b>77</b>	<b>175</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

**Table 3. Conviction Outcomes Indeterminate-Eligible Cases Filed FY 2009 to FY 2011.**

Most Serious Filing Charge	Conviction Charge Outcome					Total	
	Convicted as Charged	Attempt	Other Indeterminate	Other Sex Offense*	Other*	N	%
<b>Mandatory</b>	<b>22%</b>	<b>21%</b>	<b>20%</b>	<b>13%</b>	<b>25%</b>	<b>3393</b>	<b>100%</b>
18-3-305 (ENTICEMENT OF A CHILD)	10%	3%	60%	5%	21%	58	100%
18-3-306(3) (F4 INTERNET LURING OF A CHILD)	8%	6%	54%	5%	26%	140	100%
18-3-402 (SEXUAL ASSAULT)	19%	24%	4%	18%	35%	789	100%
18-3-403 (SEXUAL ASSAULT-2ND DEGREE PRIOR TO JUL 1,2000)	0%	0%	100%	0%	0%	1	100%
18-3-404(2) (FELONY UNLAWFUL SEXUAL CONTACT)	11%	0%	0%	78%	11%	9	100%
18-3-405 (SEX ASSAULT ON A CHILD)	24%	28%	15%	14%	20%	1262	100%
18-3-405.3 (SEX ASSAULT ON CHILD-POSITION OF TRUST)	25%	13%	32%	10%	21%	759	100%
18-3-405.4 (INTERNET SEX EXPLOITATION OF A CHILD)	9%	26%	20%	8%	38%	213	100%
18-3-405.5(1)(AGGRAVATED SEXUAL ASSAULT ON A CLIENT)	100%	0%	0%	0%	0%	1	100%
18-6-301 (INCEST)	59%	5%	9%	18%	9%	44	100%
18-6-302 (AGGRAVATED INCEST)	27%	1%	43%	16%	14%	109	100%
18-7-406 (PATRONIZING PROSTITUTED CHILD)	0%	0%	50%	0%	50%	8	100%
<b>Non-Mandatory</b>	<b>34%</b>	<b>34%</b>	<b>9%</b>	<b>6%</b>	<b>18%</b>	<b>452</b>	<b>100%</b>
18-6-403 (SEXUAL EXPLOITATION OF CHILDREN)	35%	37%	8%	5%	14%	409	100%
18-6-404 (PROCUREMENT OF A CHILD FOR SEXUAL EXPLOITATION)	100%	0%	0%	0%	0%	1	100%
18-7-402 (SOLICITING FOR CHILD PROSTITUTION)	0%	6%	44%	13%	38%	16	100%
18-7-403 (PANDERING OF A CHILD)	25%	0%	0%	0%	75%	8	100%
18-7-403.5 (PROCUREMENT OF A CHILD)	33%	0%	0%	0%	67%	3	100%
18-7-404 (KEEPING A PLACE OF CHILD PROSTITUTION)	33%	0%	33%	33%	0%	3	100%
18-7-405 (PIMPING A CHILD)	14%	14%	0%	0%	71%	7	100%
18-7-405.5 (INDUCEMENT OF CHILD PROSTITUTION)	20%	0%	0%	0%	80%	5	100%
<b>Total</b>	<b>23%</b>	<b>22%</b>	<b>18%</b>	<b>12%</b>	<b>24%</b>	<b>3845</b>	<b>100%</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

\*See Tables 4 and 5.

**Table 4. "Other Sex Offenses" for Indeterminate-Eligible Cases filed FY 2009 to FY 2011 from Table 2.**

Statute	Description	N
18-3-404(1)(a)	SEXUAL CONTACT-NO CONSENT	371
18-3-404(1)(b)	SEXUAL CONTACT-VICT INCAPABLE APPRAISING	31
18-3-404(1.7)	SEXUAL CONTACT-PEEPING TOM	15
18-3-404	SEX ASSAULT 3-UNSPECIFIED	12
18-3-404(1)(a),(2);18-3-402(4)	SEXUAL CONTACT-NO CONSENT-FORCE/THREAT	11
18-3-302(1),(3)	KIDNAPPING 2-VICTIM SEX OFFENSE/ROBBERY	6
18-3-404(1.5)	SEXUAL CONTACT-COERCE CHILD	5
18-3-404(1)(c)	SEXUAL CONTACT-VICTIM HELPLESS	3
18-2-101	CRIMINAL ATTEMPT-SEXUAL ASSAULT CHILD	3
18-7-701(1),(3)	SEX/PENAL INSTITUT-EMPLOYEE-INTRUS/PENET	2
18-6.5-103(7)(c);18-3-404(1)(a)	AT-RISK-SEXUAL CONTACT-NO CONSENT	2
18-3-302(1),(3)(a)	KIDNAPPING 2-SEIZE/CARRY VICT-SEX ASSLT	2
18-7-208	PROMOTING SEXUAL IMMORALITY	1
18-3-404(1.7),(2);18-3-402(4)	SEXUAL CONTACT-PEEPING TOM-FORCE	1
18-7-301(1)(a)	PUBLIC INDECENCY-SEXUAL INTERCOURSE	1
18-3-412.5(1)(b),(2)	SEX OFFENDER (FELONY)-FALSE INFO ON REG	1
18-3-412.5(1)(a),(3)	SEX OFFENDER (MISD)-FAIL TO REGISTER	1
18-3-404(1)(g)	SEXUAL CONTACT-FAKE MEDICAL EXAM	1
<b>Total</b>		<b>469</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Table 5. "Other Offenses" for Indeterminate-Eligible Cases filed FY 2009 to FY 2011 from Table 2.

Category	Category Examples	N
Assault	Assault, Menacing, Reckless Endangerment	266
Wrongs to Children	Child Abuse, Child Sexual Exploitation	157
Contributing to Delinquency	Contributing to Delinquency of a Minor	150
Indecency	Public Indecency, Indecent Exposure	94
Kidnapping	Kidnapping, Imprisonment, Internet Luring of a Child	66
Public Peace	Harassment, Stalking	60
Criminal Mischief	Criminal Mischief \$500-\$1,000, Trespass	31
Obscenity	Wholesale Promotion to a Minor	16
Burglary	Burglary of a Building or Dwelling	13
Prostitution	Prostitution, Pimping, Pandering-Induce by Menacing	9
Minors and Alcohol	Minor in Possession of Alcohol, Provide to Minor	6
Drug Distribution	Possession with Intent to Distribute	5
Escape	Escape, Contraband Possession	4
Forgery	Criminal Impersonation	4
Computer Crime	Computer Crime – Unauthorized Access	4
Miscellaneous Offenses	Criminal Libel	4
Obstruction of Justice	Resisting Arrests, Accessory to a Crime	3
Domestic Violence	Protection Order Violation	3
Robbery	Robbery	3
Theft	Theft, Theft by Receiving	3
Stalking	Stalking	2
Communications Offenses	Telephone – Obstruct Service	2
Wrongs to At-Risk Adults	At-Risk Assault 3	2
Marijuana	Marijuana Sale, Distribution	2
Menacing	Menacing	2
Abuse of Office	Official Misconduct	1
Harboring a Minor	Harboring a Minor	1
Arson	Arson 4	1
Drugs	Paraphernalia Possession	1
Theft of Sound Recordings	Theft of Sound Recordings	1
Criminal Invasion of Privacy	Criminal Invasion of Privacy	1
Drug Possession	Drug Possession	1
Firearms	Prohibited Use, Reckless	1
Judicial Proceedings	Tampering with Evidence	1
Juvenile Code	Child Abuse – Failure to Report	1
<b>Total</b>		<b>921</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

**Table 6. Conviction Class for Indeterminate-Eligible Cases filed FY 2009 to FY 2011**

Most Serious Filing Class	Conviction Charge Class											Total	
	F2	F3	F4	F5	F6	M1	M2	M3	PO1	PO2	UC	N	%
<b>Mandatory Indeterminate</b>	<b>28</b>	<b>475</b>	<b>1125</b>	<b>914</b>	<b>71</b>	<b>683</b>	<b>28</b>	<b>62</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>3393</b>	<b>100%</b>
F2	28%	16%	23%	19%		9%	1%	1%		1%	1%	<b>99</b>	<b>100%</b>
F3		26%	36%	21%	1%	14%	<1%	1%		<1%	<1%	<b>1760</b>	<b>100%</b>
F4			33%	35%	4%	25%	1%	2%	<1%			<b>1429</b>	<b>100%</b>
F5				37%	5%	54%	3%					<b>59</b>	<b>100%</b>
M1						78%	11%	7%	4%			<b>46</b>	<b>100%</b>
<b>Discretionary Indeterminate</b>	<b>0</b>	<b>75</b>	<b>147</b>	<b>74</b>	<b>100</b>	<b>45</b>	<b>7</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>452</b>	<b>100%</b>
F2			100%									<b>2</b>	<b>100%</b>
F3		30%	35%	14%	12%	6%	1%	1%				<b>251</b>	<b>100%</b>
F4			36%	24%	27%	9%	2%	1%				<b>154</b>	<b>100%</b>
F5				50%	50%							<b>2</b>	<b>100%</b>
F6					63%	35%	2%					<b>43</b>	<b>100%</b>
<b>Total</b>	<b>28</b>	<b>550</b>	<b>1272</b>	<b>988</b>	<b>171</b>	<b>728</b>	<b>35</b>	<b>66</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>3845</b>	<b>100%</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CIASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

**Appendix F:**  
**Commission Recommendation FY14-CS1**



**COMPREHENSIVE SENTENCING TASK FORCE**  
 RECOMMENDATION PRESENTED TO THE  
 COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
 October 10, 2014

**FY15-CS #01 Early discharge from Lifetime Supervision Probation for sex offenders due to disability or incapacitation**

**Recommendation FY15-CS #01**

Amend C.R.S. 18-1.3-1008 to provide that offenders sentenced to the Lifetime Supervision Act, who suffer from a severe disability to the extent they are deemed incapacitated and do not present an unacceptable level of risk to public safety, may petition the court for early discharge from probation supervision. Also, if necessary, make conforming amendments to the Colorado Victims' Rights Act regarding a "critical stage" for victim notification.

**Discussion**

A mechanism to apply for early discharge from indeterminate probation sentences should be in place for sex offenders who, due to a significant mental or physical disability, are deemed incapacitated to the extent that he or she does not present an unacceptable level of risk to public safety and is not likely to commit a new offense. A severe disability can render a person unable to participate in or benefit from sex offender supervision or treatment. Also, continued supervision of an offender with a severe medical or mental health diagnosis (e.g., severe dementia, Alzheimer's, terminal illness, physical incapacitation) may be ineffective while also requiring ongoing allocation of resources with little benefit.

**Proposed statutory language**

Amend C.R.S. 18-1.3-1008 to include the additional provision as follows:  
*(The entire section is new, but is not displayed in caps for ease of viewing.)*

18-1.3-1008.1 – Discharge from probation for a sex offender suffering from a mental or physical disability – definitions and procedure

- (1) (a) Notwithstanding any provision of the law to the contrary, a sex offender may obtain early discharge from probation if the sex offender or his or her lawful representative, the probation department or the prosecutor files with the court a verified petition for early termination alleging that the sex offender is a special needs sex offender as defined in subsection (2) and, because of the special needs, the sex offender is unable to participate in or benefit from sex offender treatment or supervision and that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.
- (b) A verified petition filed pursuant to this section shall include:
- (i) records from a licensed health care provider responsible for the treatment of the sex offender which include a summary of the sex offender's medical or physical condition, which shall include, but not be limited to, the diagnosis of the disability or incapacitation, a description of severity of the disability or incapacitation, any information describing the permanent, terminal or irreversible nature of the disability or incapacitation;

**COMPREHENSIVE SENTENCING TASK FORCE**  
RECOMMENDATION PRESENTED TO THE  
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
**October 10, 2014**

- (ii) information regarding the risk of the sex offender based upon the most recent evaluations conducted in accordance with the criteria established by the sex offender management board pursuant to section 18-1.3-1009.
  - (iii) a statement from the supervising probation department supporting the request for early discharge with a description of the sex offender's case history and the facts supporting the probation department position that the sex offender is no longer able to participate in or benefit from continued supervision.
  - (iv) information from the treatment provider for the sex offender outlining the history of the treatment of the sex offender, and a statement of whether, in the opinion of the treatment provider, the sex offender is able to participate in or benefit from continued treatment or supervision.
- (c) If the verified petition is filed by the sex offender or the probation department, the prosecutor shall have thirty days to respond to the petition.
- (d) the filing of a verified petition for early termination of probation due to a mental or physical disability shall operate as a waiver of any confidentiality of any and all relevant health records of the sex offender.
- (e) Upon receipt of the petition and any responsive pleadings, the court shall determine if the verified petition is sufficient on its face. If the petition is sufficient on its face, the court shall set the matter for hearing. At any hearing, the court shall consider all relevant evidence including, but not limited to, the nature and extent of the physical or mental disability or incapacitation, the nature and severity of the offense or offenses for which the sex offender has been sentenced, the risk and needs assessments conducted in accordance with the criteria of the sex offender management board, the recommendations of the probation department, the recommendations of any treatment providers approved for sex offender treatment pursuant to the provisions of 16-11.7-103, and the statement of any victim of the sex offender, if available.
- (f) The court shall make findings on the record if the court grants or denies the petition for early discharge. If the petition is granted, the court must find by clear and convincing evidence that the sex offender is a special needs offender as defined in subsection (2). If the court does not grant the petition, the court may enter any orders regarding probation consistent with the goals of sentencing as outlined in 18-1-102.5.

**COMPREHENSIVE SENTENCING TASK FORCE**  
RECOMMENDATION PRESENTED TO THE  
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE  
**October 10, 2014**

- (g) If the court does not discharge the offender from probation after a hearing on a petition filed pursuant to this section, the sex offender or his or her lawful representative, the probation department or the prosecutor may file a subsequent petition once every year pursuant to this section, if the verified petition presents additional information not previously considered by the court which is relevant to the status of the sex offender as a special needs offender.
- (2) A “special needs sex offender” as used in this section means a person who is sentenced to probation as a sex offender pursuant to section 18-1.3-1004, who, as determined by a licensed health care provider, suffers from a permanent, terminal or irreversible physical or mental illness, condition or disease, that renders the person unable to participate in or benefit from sex offender supervision or treatment and who is incapacitated to the extent that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

Amend the Colorado Victims’ Rights Act (Title 24, Article 4.1, Part 3):

If necessary, make conforming amendments in C.R.S. 24-4.1-302 (2) (j.5) and/or (k.7), C.R.S., 24-4.1-302.5, and/or C.R.S., 24-4.1-303 (13.5) (a), to make this hearing a “critical stage” and regarding the right to be informed and present for “critical stages” of the criminal justice process.



**Appendix G:**  
**Commission Recommendation FY14-CS2**



## COMPREHENSIVE SENTENCING TASK FORCE

Presented to the Colorado Commission on Criminal and Juvenile Justice  
November 8, 2013

### **FY14-CS #2      Retroactively provide earned time credit to certain individuals sentenced under the habitual criminal statute**

#### **Recommendation FY14-CS #2:**

**Retroactively expand the availability of earned time credit to individuals sentenced under the “big” provision of the habitual criminal statute for crimes occurring between July 1, 1985, and June 30, 1993. Therefore, amend section 17-22.5-104.** (Proposed statutory language is below.)

#### **Discussion:**

The goals of this recommendation are basic fairness, providing behavioral incentives to inmates, and cost savings. The Department of Corrections currently houses a small group of individuals convicted under the “big” provision of the habitual criminal statute who are ineligible for parole until they have served forty calendar years. Individuals convicted under that provision today, in contrast, are eligible to receive earned time toward parole eligibility if their crime was committed after July 1, 1993.

The recommendation’s June 30, 1993, date is the product of changes in the habitual criminal statute, section 18-1.3-801. A prior version of that statute’s “big” provision required persons convicted of a felony, after three prior felony convictions, to receive a sentence to “his or her natural life.” The statute was amended effective July 1, 1993, to require a sentence of four times the maximum of the presumptive range for the felony of conviction. Ch. 322, sec. 1, § 16-13-101, 1993 Colo. Sess. Laws 1975-76. People who commit a felony after July 1, 1993, and are sentenced under “big” provision, are eligible for parole in accordance with parole eligibility statute. See §§ 17-22.5-104(2)(d)(II); 17-22.5-403; 18-1.3-801(2), C.R.S. 2012.

The recommendation’s July 1, 1985, date is a product of changes in the parole regulations statute, section 17-22.5-104. When that statute was repealed and reenacted in 1984, it provided that “[n]o inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, shall be paroled until he has served at least twenty calendar years ....” Ch. 126, sec. 1, § 17-22.5-104, 1984 Colo. Sess. Laws 518. The parole eligibility cutoff was then extended to forty years for crimes committed after July 1, 1985. Ch. 145, sec. 3, § 17-22.5-104, 1985 Colo. Sess. Laws 648. In 1991, the forty year cutoff was limited to people convicted under the “big” provision of the habitual criminal statute and class 1 felonies. Ch. 73, sec. 4, § 17-22.5-104, 1991 Colo. Sess. Laws 404. The cutoff for the “big” provision was removed altogether for crimes committed after July 1, 1993. Ch. 322, sec. 3, § 17-22.5-104, 1993 Colo. Sess. Laws 1978. For present-day offenses, a forty year to parole eligibility limitation exists only as to convictions under section 18-1.3-801(2.5) (conviction of crime of violence following prior habitual criminal sentencing), section 18-1.3-801(1) (three times convicted of a class 1 or 2 felony, or a class 3 felony crime of violence), and juveniles convicted of class 1 felonies after direct filing. See § 17-22.5-104(2)(d), C.R.S. 2012.

## COMPREHENSIVE SENTENCING TASK FORCE

Presented to the Colorado Commission on Criminal and Juvenile Justice  
November 8, 2013

The Task Force recognizes that victims should be notified of changes to the projected date that an offender will become eligible for parole. The Department of Corrections will determine whether the victims of affected offenders have requested notification of any critical stages of the criminal proceedings pursuant to section 24-4.1-302.5, C.R.S. 2012.<sup>1</sup> Those who have will be notified of the offenders' recalculated parole eligibility date. If a victim has not requested notification, the Department of Corrections shall notify the district attorney in the jurisdiction of conviction. The district attorney will make all reasonable efforts to notify the victim of his or her rights pursuant to 24-4.1-302.5, C.R.S. 2012. Because it is estimated that the parole eligibility dates of only 76 offenders will be affected, the Task Force believes this notification process will not be overly burdensome and can be accomplished without a statutory mandate.

### Proposed Statutory Language

The Comprehensive Sentencing Task Force recommends amending section 17-22.5-104 as follows:

(c) **(I)** No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

**(II) THIS PARAGRAPH (C) SHALL NOT APPLY TO ANY INMATE SENTENCED PURSUANT TO SECTION 16-13-101(2), C.R.S., AS IT EXISTED PRIOR TO JULY 1, 1993, FOR ANY CRIME COMMITTED ON OR AFTER JULY 1, 1985, AND ANY SUCH INMATE SHALL BE ELIGIBLE FOR PAROLE AFTER THE INMATE HAS SERVED FORTY CALENDAR YEARS LESS ANY TIME AUTHORIZED PURSUANT TO SECTION 17-22.5-403.**

~~(d)(I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. No inmate imprisoned under a life sentence pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.~~

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<sup>1</sup> "If a victim contacts a criminal justice agency regarding a crime that occurred before 1993, and the offender who committed the crime is currently serving a sentence for the crime, the victim may request notification of any future critical stages of the criminal proceedings. In addition, if an arrest is made for a crime committed before 1993 that was previously unsolved, the victim of the crime may request notification of all future critical stages from the appropriate criminal justice agency. This provision does not require a criminal justice agency to proactively locate victims of crimes that occurred before 1993." § 24-4.1-302.5(4), C.R.S. 2012.

## COMPREHENSIVE SENTENCING TASK FORCE

Presented to the Colorado Commission on Criminal and Juvenile Justice

November 8, 2013

### Habitual Criminals Incarcerated Under Pre-1993 Law

There are 104<sup>2</sup> offenders incarcerated in the Department of Corrections (DOC) under the pre-1993 Habitual Offender law as of June 30, 2012. Of those, 28 offenders were released on parole but returned due to a technical violation or a new crime. The remaining 76 offenders have never been paroled since their Habitual Offender conviction. Tables 1 to 4 describe the characteristics of these 76 offenders. Table 5 shows the potential earned time estimated by DOC that offenders could have received had they been entitled to under current law. The potential earned time estimation excludes time lost for COPD violations and time spent in administrative segregation. Other factors can deduct from earned time: the offender is not program compliant; group living compliant; or work and/or training compliant. These factors would require a manual file search and were not included in DOC's estimation. In the same June 30, 2012, population, 512 offenders with a habitual enhanced sentence were eligible to be awarded earned time. Overall these habitual offenders earned 89% of the awarded days.

**Table 1. Age of offenders, June 30, 2012**

Age	%	N
40-49	11%	8
50-59	55%	42
60-69	24%	18
70+	11%	8
<b>Total</b>	<b>100%</b>	<b>76</b>

Data Source: Department of Corrections

**Table 2. Race/ethnicity of offenders**

Race/Ethnicity	%	N
Black	36%	27
Hispanic	25%	19
Native American	1%	1
White	38%	29
<b>Total</b>	<b>100%</b>	<b>76</b>

Data Source :Department of Corrections

**Table 3. Felony class of most serious crime**

Felony Class	%	N
1	5%	4
2	29%	22
3	41%	31
4	20%	15
5	4%	3
6	1%	1
<b>Total</b>	<b>100%</b>	<b>76</b>

Data Source: Department of Corrections

**Table 4. Most serious crime**

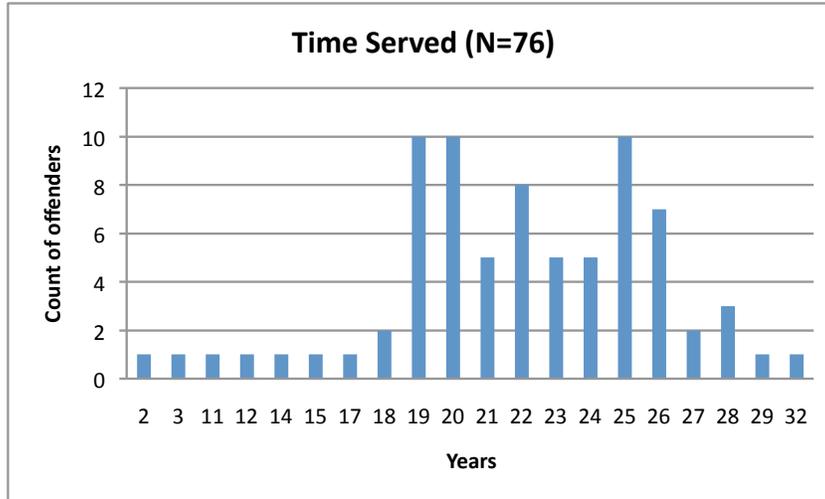
Crime	N
Agg Robbery	19
Assault	6
Burglary	6
Child Abuse	1
Contraband	1
Controlled Substance	2
Kidnapping	9
Manslaughter	2
Menacing	1
Miscellaneous	1
Murder	13
Sexual Assault	8
Sexual Assault/Child	5
Weapons/Explosives	2
<b>Total</b>	<b>76</b>

Data Source: Department of Corrections

<sup>2</sup> The original count of 109 included 5 offenders whose conviction offense occurred after 1993.

### COMPREHENSIVE SENTENCING TASK FORCE

Presented to the Colorado Commission on Criminal and Juvenile Justice  
November 8, 2013

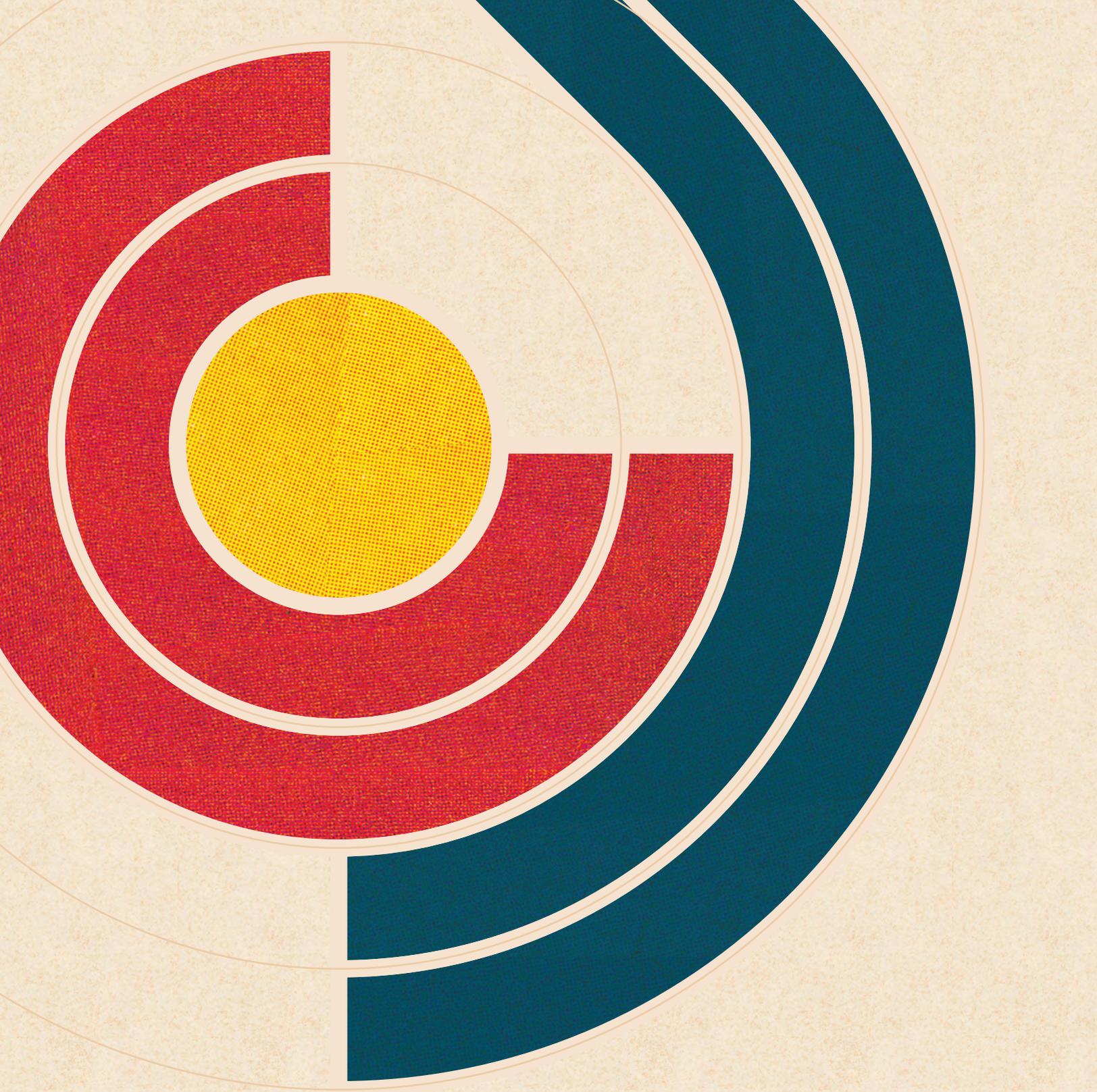


Data Source: Department of Corrections

**Table 5. Estimated potential earned time for offenders by time served.**

Years Served	N	Estimated Potential Earned Time (Years)										Total	
		0	1	2	3	4	5	6	7	8	9		
2	1		100%										100%
3	1		100%										100%
11	1		100%										100%
12	1					100%							100%
14	1						100%						100%
15	1						100%						100%
17	1					100%							100%
18	2							100%					100%
19	10				10%	20%	10%	60%					100%
20	10	20%	10%			10%		40%	20%				100%
21	5			20%		20%		20%	40%				100%
22	8							25%	75%				100%
23	5						20%		80%				100%
24	5							20%	40%	40%			100%
25	10				20%	20%			40%	20%			100%
26	7	14%		14%					14%	14%	43%		100%
27	2	50%									50%		100%
28	3										100%		100%
29	1									100%			100%
32	1											100%	100%
<b>Total</b>	<b>76</b>	<b>3%</b>	<b>5%</b>	<b>3%</b>	<b>4%</b>	<b>11%</b>	<b>5%</b>	<b>22%</b>	<b>29%</b>	<b>14%</b>	<b>1%</b>	<b>100%</b>	<b>100%</b>

Data Source: Department of Corrections



Colorado Commission on Criminal & Juvenile Justice  
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Colorado Department of Public Safety  
700 Kipling Street, Suite 1000  
Denver, Colorado 80215  
<http://www.colorado.gov/ccj>