



The study of the impact of certain drug sentencing reforms, pursuant to Senate Bill 2013-250

Peg Flick, Senior Analyst
Kim English, Research Director
Division of Criminal Justice
Department of Public Safety

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- Overview
 - Background of Commission work on drug policy
 - Overview of Senate Bill 13-250
(created new drug sentencing grid)
 - Study approach
 - Study findings



- S.B.13-250 History

- Drug Policy Task Force worked from August 2009 to October 2013
- Membership...





Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

Drug Policy Task Force Membership

Grayson Robinson, Chair Arapahoe County Sheriff

Dean Conder, Vice Chair, Juvenile Parole Board

Bill Kilpatrick Chief, Golden Police Department

Don Quick District Attorney, 17th Judicial District

Reo Leslie, Jr. Colorado School for Family Therapy

Regina Huerter, Denver Crime Prevention and Control Commission

Greg Long, Deputy District Attorney, 2nd Judicial District

Maureen Cain, Colorado Criminal Defense Bar

Carmelita Muniz, Colorado Association of Alcohol and Drug Service Providers

Brian Connors, Public Defender's Office

Kathleen McGuire, Public Defender's Office

Tom Raynes Attorney, General's Office

Miles Madorin, Deputy District Attorney, 1st Judicial District

Nancy Feldman, Department of Public Safety

Doyle Forrestal, Colorado Behavioral Health Care Council

Christie Donner, Colorado Criminal Justice Reform Coalition

Evie Hudak, State Senator, District 19

Pat Steadman, State Senator, District 31

Paul Thompson, Peer 1, Addiction Research and Treatment Services

Dan Rubinstein, Deputy District Attorney, 21st Judicial District

Mark Hurlbert, District Attorney, 5th Judicial District

Jim Welton, Department of Corrections

Sean McAllister, Criminal Defense Attorney

Shane Bahr, Colorado Judicial Branch



- S.B.13-250 History

In May 2009, the Governor and Attorney General requested that the Commission investigate if

“there [are] evidence-based data to support changes in the length of sentence for those who use controlled substances, and should there be a focus on substituting treatment for punishment?”



- S.B.13-250 History

- **Senate Bill 09-286** modified the duties of the Commission and mandated the study of, among other things, Title 18 drug crimes and sentences “and whether to change those sentences” and mandated a report by Nov. 30, 2009.

- In the 2009 report, “Drug Policy Task Force determined that a primary omission from current law is a means of assuring prompt and effective treatment of drug offenders.” (p. 17)

- and also: “...any significant departure from current law requires that resources for the treatment model be in place before changing to a new approach.” (p. 18)



Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B.13-250 History

--Senate Bill 09-286 mandated the study of drug sentences and a Nov. 2009 report

The November 2009 report, its lengthy addendum, and the 2009, 2010, 2011, and 2012* annual Commission reports contain dozens of drug policy, philosophy, and sentencing recommendations that emphasize the need for treatment to reduce recidivism including this:

The Commission recommends that the Colorado General Assembly seek to improve public safety, reduce recidivism, and promote substance abuse treatment by implementing a system of evidence-based sentencing practices and community-based interventions that...will combine accountability, risk and needs assessments, criminal penalties, and appropriate treatment for individuals who are addicted to substances and convicted of criminal offenses.

*The 2012 report details the recommendations that led to SB13-250.



- S.B.13-250 History

This system will differentiate among the following types of individuals:

- (a) a defendant who is an illegal drug user but is not addicted or involved in other criminal activity;
- (b) a defendant who is addicted but is not otherwise engaged in other criminal activity;
- (c) a defendant who is addicted and engaged in nonviolent crime to support their addiction;
- (d) a defendant who is addicted and engaged in violent crime; and
- (e) a defendant who is engaged in drug trafficking or manufacture for profit who is not addicted to illegal drugs.



DRUG LAW REFORMS 2009/2012

Increase treatment availability prior to restructuring drug laws (2009)

- Increase in Persistent Drunk Driver Surcharge (\$550,000/year) (HB 10-1347)
- Drug offender surcharge *assessed* doubled (HB10-1352)
- \$1,545,409 for community corrections treatment beds (HB10-1360)
- \$2,057,225 services for parolees (HB10-1360)
- First \$2M in medical marijuana sales/use tax fund substance abuse treatment programs (HB10-1284)





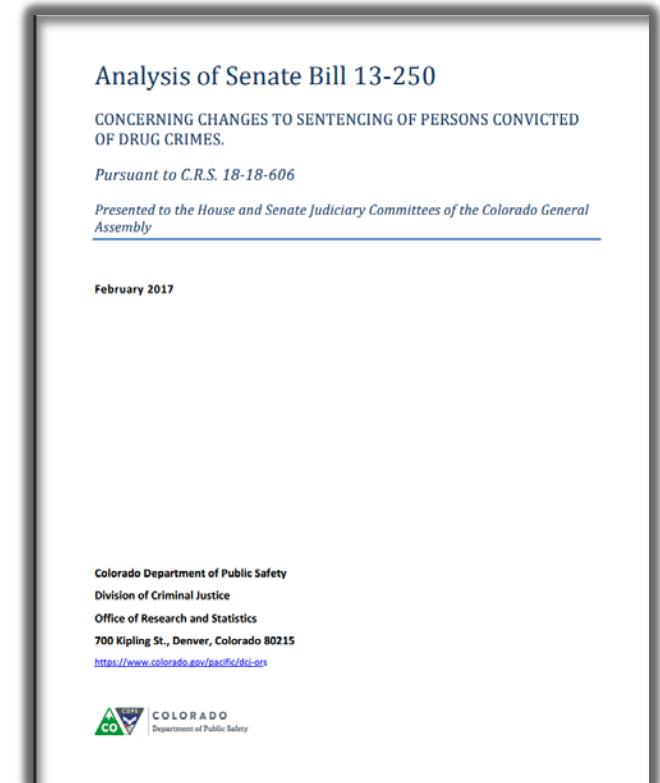
Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B. 13-250 History

With a strong, well-documented, empirically-based philosophical statement about the value of substance abuse treatment, the Commission's work resulted in

- The expansion of treatment services in the community, and
- Senate Bill 13-250
 - which included a mandate to DCJ to study the impact of certain aspects of the drug law modifications





- S.B.13-250 Highlights
 - Created a new sentencing grid for drug offenses
 - Created a new option for drug offenders to avoid a felony conviction (“Wobbler”)
 - Instructed the court to exhaust all remedies before sentencing certain drug offenders to the Department of Corrections



- Study Methodology
 - Compare sentences in the 3 years prior to SB13-250 to the 3 years post-SB13-250.
 - Cases in the pre-SB13-250 period had to all events occurring in the 3 year period:
 - Offense was committed
 - Case was filed
 - Offender convicted and sentenced
 - Exact match between pre- and post-SB13-250 statutes not always possible



- New sentencing grid for drug offenders
 - Five felony classes collapsed to four
 - Except for the highest class DF1, sentence lengths in the presumptive range are all shorter



Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

Pre-SB13-250				
Felonies				
			Aggravated/Mitigated	
	Min	Max	Min	Max
F2	8	24	4	48
F3	4	12	2	24
F4	2	6	1	12
F5	1	3	0.5	6
F6	1	1.5	0.5	3

Post-SB13-250				
Drug Felonies				
			Aggravated	
	Min	Max	Min	Max
DF1	8	32		
DF2	4	8	8	16
DF3	2	4	4	6
DF4	0.5	1	1	2



- New sentencing grid for drug offenders
 - Average DOC sentence length for DF3 to DF1 convictions **5.8** years vs **7.1** years for comparable convictions in the prior 3 years
 - Average sentence length for DF4 convictions was **1.1** years vs **2.5** years for comparable convictions in the prior 3 years



- New sentencing option to avoid a felony conviction (“Wobbler”)
 - Upon successful completion of sentence to the community the DF4 conviction is vacated and a misdemeanor conviction (DM1) is entered.



- New sentencing option to avoid a felony conviction (“Wobbler”)
 - Alternative for offenders who don’t qualify for diversion or deferred sentence
 - Must have only minimal criminal history
 - Available to those being sentenced to a placement in the community
 - Available on four DF4 offenses



- New sentencing option to avoid a felony conviction (“Wobbler”)
 - At the time of the report **160** cases successfully completed sentence and had felony conviction replaced with misdemeanor conviction
 - In comparison* to the pre-SB13-250 period the use of deferred judgments and diversion declined from **35%** to **20%** of convictions.
 - However the wobbler provision enabled an additional **73%** of cases in the post-S.B.13-250 period to potentially have the felony conviction reduced to a misdemeanor, provided they met quantity limits and successfully completed the sentence to the community.

*Criminal history was wobbler-eligible



- Exhaustion of Remedies for DF4 Convictions
 - Instructs the court to exhaust all remedies before sentencing an offender to the DOC:
 - Taking into consideration the facts of the case,
 - Considering the defendant's willingness to participate in treatment,
 - Finding that all other sanctions have been tried and failed,
 - Finding that other sanctions are unlikely to work,
 - Finding that other sanctions present an unacceptable risk to public safety.



- Exhaustion of Remedies for DF4 Convictions
 - Sentences to DOC for DF4 convictions declined from 18% to 14% in the post-SB13-250 period
 - But sentences to DOC for DF1 through DF3 level convictions also declined in the post-SB13-250 period from 42% to 38%.



Full report is on the CCJJ website

https://cdpsdocs.state.co.us/ors/docs/reports/2017_SB250-Rpt.pdf