

POTENTIAL AREAS OF WORK: Sentencing Clarification

Previous Directives/Mandates to CCJJ

[EXAMINED / POTENTIAL AREAS FOR EXAMINATION]

Senate Bill 2009-286 (repealed, 7/1/2010)

(a) Using empirical analysis and evidence-based data, the commission shall study sentences in Colorado.

(b) In addition to any other areas deemed appropriate by the commission, the commission may study the following areas:

- (i) A statewide department of corrections correctional facility management plan and potential department of corrections correctional facility bed limitation;
 - (ii) Sentences related to the offense of driving under restraint described in section 42-2-138, C.R.S., and whether to change those sentences;
 - (iii) Sentences related to drug crimes described in article 18 of title 18, C.R.S., and whether to change those sentences;
 - (iv) Whether parole should be included in the sentence or outside the sentence;
 - (v) Alternatives to incarceration for nonviolent first-time offenders; and
 - (vi) The consequences and efficacy of mandatory minimum sentences and other provisions that limit judicial discretion in the sentencing process.
- (c) In addition, the commission may study the impact of incarceration on crime rates.

The Ritter/Suthers Letter to the Commission (May 2009)

“We believe there are some specific areas for reform consideration, and we would ask that the Commission examine these areas and provide recommendations:”

- **[Review and improve the problem of failures while on parole.]** Realizing that a high percentage of offenders return to prison without successfully completing parole, what systemic and statutory reforms to the Parole Board and parole would assist the offenders, protect the citizens from re-victimization and maximize the expenditure of public funds?
- **[Review drug offenses, drug sentencing and options for treatment.]** Review drug offenses in Article 18 of Title 18. Within these statutes, is there 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? Does this data apply to all types of controlled substances? Understanding there is a distinction between a drug dealer's impact on society and public safety vs. a user, are there changes that would be meaningful and appropriate? A comprehensive review of the variety of sentences included in Article 18 (deferred judgments with treatment to long mandatory minimum sentences) would be helpful.
- **Review whether there should be a reclassification or simplification of all felony offenses** - with the application of aggravators, such as for extraordinary risk crimes, crimes of violence and minimum mandatory sentences, we have a very complex sentencing structure. Is there a better way to identify and structure sentencing aggravators?
- **Review of the statutory requirements for probation eligibility** (number and type of prior felony convictions that would limit an offender's eligibility for probation).
- **Review the escape statutes**, particularly the distinctions between the application of these laws to escapes from secure settings (jail and prison) vs. community corrections (residential and non-residential settings)
- **[Address habitual traffic offenders with history of substance abuse.]** There is significant concern, both within the criminal justice community and the public, regarding the incidence of repeated traffic offenses committed by individuals with a history of chronic alcohol and substance abuse. Examine the current statutes and practices directed toward habitual traffic offenders and offer recommendations to more effectively address this offender population.
- **[Review responses to aging prison population.]** Data suggests that as age increases, costs associated with incarceration also increase, while the risk of recidivism and danger to the public decreases. Excluding sex offenders, review possible criminal justice system responses to this risk for this [aging] population.
- **Review the fine schedule and the imposition of fines on non-indigent offenders.**
- **[Study consistency and discretion in mandatory sentencing and habitual offenders.]** There's an inherent tension between consistency of sentences and appropriate opportunity for judicial discretion in evaluating the unique circumstances of each case. This tension is particularly apparent in the areas of mandatory sentences and habitual offender sentencing. We would urge the Commission to study, discuss and perhaps offer recommendations in these areas.

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2017 Interim Study Committee: Sentencing in the Criminal Justice System

Proposed Bills

[EXAMINED by CCJ / POTENTIAL AREAS FOR EXAMINATION]

BILLS SELECTED

Bill #1 – Determinate Sentence for Indeterminate Sex Offense. Establishes a determinate sentence option for sex offenses with the relevant sentencing factors. Re-run of SB 17-087. *(Examined by Comprehensive Sentencing TF in 2014.)*

Bill #8 – Habitual Offender Statute. Identifies offenses that can be sentenced under the habitual offender statute and determines mandatory minimums and when they should apply. *(Related to FAILED FY12-CS#2 “Reduce multiplier.”)*

Bill #9 – Reauthorize CCJ for Ten Years. Reauthorizes the CCJ until 2028.

Bill #12 – Mandatory Parole Periods. Reduces mandatory parole periods from five years to three years.

Bill #14 – CCJ Criminal Sentencing Study. Authorizes the Commission to contract for another “What Works” report and requests criminal sentencing recommendations. *[See Potential Legislative Mandates below.]*

BILLS NOT SELECTED

Bill #2 – Second-Look Criminal Sentencing. Outlines criteria and circumstances for which an inmate’s sentence could be re-evaluated by the court.

Bill #3 – Relief from Collateral Consequences. As described in committee, this will focus on state licensure. *(Includes aspects of CCJ recommendations from the Re-entry Task Force.)*

Bill #4 – Prison Release Date Determined by COV / Non COV. Requires 50% of a non-COV sentence to be served and 75% of a COV sentence to be served. *(Based on CCJ FY16-MP#02)* (Also, unselected Bill #7 of Interim “Jails” Committee.)

Bill #5 – Range for Extraordinary Aggravating Circumstances. Changes mandatory minimum for COVs from the mid-point of the range to the bottom of the range. *(Includes aspects of FY13-CS#3 “Eliminate Colorado’s Extraordinary Risk Statute.”)*

Bill #6 – Discretionary Parole for Special Needs Offenders (Compassionate Release). Expand the compassionate release statute to apply to additional individuals who are elderly and low-risk or have a medical condition that lowers their risk.

Bill #10 – Restitution Interest & Continuation. Make changes to victim restitution rate and allow offenders who still owe restitution to be eligible to end probation or parole.

Bill #11 – Extraordinary Mitigating Circumstances. Make statutory language more clear that judges can sentence below the presumptive range due to mitigating circumstances.

Bill #16 – Earned Timed/Early Termination of Probation. Create an earned time program for probation. *(Includes aspects of FY08-BP33 “Mandatory Earned Time on Probation.”)*

Bill #17 – Make Sex Offender Registration More Effective. Reform requirements for the sex offender registry.

Bill #18 – Pre-Trial Substance Abuse Treatment. Allow Probation to spend money on drug treatment prior to conviction.

Bill #19 – Limit Number of Beds in DOC. Establishes a bed cap for DOC.

WITHDRAWN BEFORE SELECTION PROCESS

Bill #7 – Direct Referrals to Community Corrections (Referrals to IRT and RDDT). Allow direct referrals for DOC offenders into IRT and RDDT programs.

Bill #13 – DOC Intensive Supervision Program Criteria. Revises five elements of the process to refer inmates to community corrections. *(Based on CCJ Recommendation FY17-CC#2).*

Bill #15 – Alternatives to Prison Program (Change Sentencing for DF 4). Prohibit DF 4s from being sent to DOC and require that these offenders receive treatment in the community.

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Potential Legislative Mandates

Criminal Sentencing Changes:

Study & Produce Recommendations

2017 Interim Study Committee: Sentencing in the Criminal Justice System BILL #14 (“What Works” Update & Recommendations)

SECTION 1. In Colorado Revised Statutes, 16-11.3-103, add 3 (2.6) as follows:

16-11.3-103. Duties of the commission - mission - staffing - repeal.

(2.6) (a) The **Commission shall contract for a study** based on empirical analysis and evidence-based data that identifies the most effective criminal sentencing practices available. The study must be completed by July 1, 2019.

(b) **The commission shall establish an advisory committee** to review the study's outcome and, based on the review of the study, **make recommendations to the full Commission for criminal sentencing changes in Colorado.**

(c) This subsection (2.6) is repealed, effective July 1, 2020.

CCJJ effective period of work: CY 2018/2019 for FY 2020 Legislative Session.

Efficacy and Impact of Criminal Penalties Related to Opioids:

Study & Produce Recommendations

2017 Interim Study Committee: Opioid and Other Substance Use Disorders BILL C (Measures to Address the Opioid Crisis)

SECTION 12. In Colorado Revised Statutes, add 16-11.3-103.7 as follows:

16-11.3-103.7. Study of penalties related to opioids and synthetic opioids - repeal.

(1) As soon as practicable, **the Commission shall study criminal penalties related to opioids and synthetic opioids**, as specified in section 18-18-204 (2), to determine:

(a) The **efficacy of criminal penalties** related to the unlawful manufacturing, distribution, dispensing, and sale of carfentanyl, fentanyl, and other synthetic opioids; and

(b) **The extent to which current criminal penalties** for the unlawful use and possession of opioids and synthetic opioids **impact the ability of a person with a substance use disorder to seek treatment.**

(2) The commission shall include its findings and any recommendations based on its findings in the annual report specified in section 16-11.3-103 (2)(c).

(3) This section is repealed, effective July 1, 2019.

16-11.3-103. Duties of the commission - mission - staffing.

(2) The commission shall have the following duties:

(c) To make an annual report of findings and recommendations, including evidence-based analysis and data;

CCJJ effective period of work: CY 2018, concluding with FY 2019 SMART Government Report.

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National Trends in Sentencing Policy

SEPTEMBER 2010 - Vera Institute of Justice

POLICY REPORT: *Criminal Justice Trends Key Legislative Changes in Sentencing Policy, 2001–2010*

This report reviews state sentencing policy from 2001 through 2010. The beginning and end of this period coincided with economic recessions and spikes in criminal justice legislation. These three distinct themes in state sentencing legislation emerged:

- A. States redefined and reclassified criminal offenses**, often resulting in a reduction in offense severity and sentence length.
- B. States strengthened alternatives to incarceration**, with an emphasis on increasing investment in substance use treatment, specialty courts, and community supervision.
- C. States took steps to reduce prison terms**, from rolling back mandatory minimum sentences to enhancing mechanisms designed to accelerate sentence completion.

APRIL 2014 - Vera Institute of Justice

POLICY REPORT: *Playbook for Change? States Reconsider Mandatory Sentences*

Since 2000, at least 29 states have taken steps to roll back mandatory sentences, with 32 bills passed in just the last five years. Legislative activity largely has focused on adjusting penalties for nonviolent drug offenses through the use of one or a combination of the following approaches:

- A. Enhance judicial discretion** by creating so-called “safety valve” provisions that keep the mandatory minimum penalty in place but allow a judge to bypass the sentence if he or she deems it not appropriate and if certain factual criteria are satisfied.
- B. Narrow the scope of automatic sentence enhancements.**
- C. Repeal mandatory minimum laws** or their downward revision for specified offenses, particularly in relation to drug offenses or first- or second- time offenders.

JULY 2014 - Vera Institute of Justice

POLICY REPORT: *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends*

In 2013, 35 states passed at least 85 bills that largely eschew the tough-on-crime policies of the past. Lawmakers exhibited a willingness to pursue change consistent with the growing body of research that demonstrates carefully implemented and well-targeted community-based programs and practices can produce better outcomes at less cost than incarceration. In particular, states enacted legislation to:

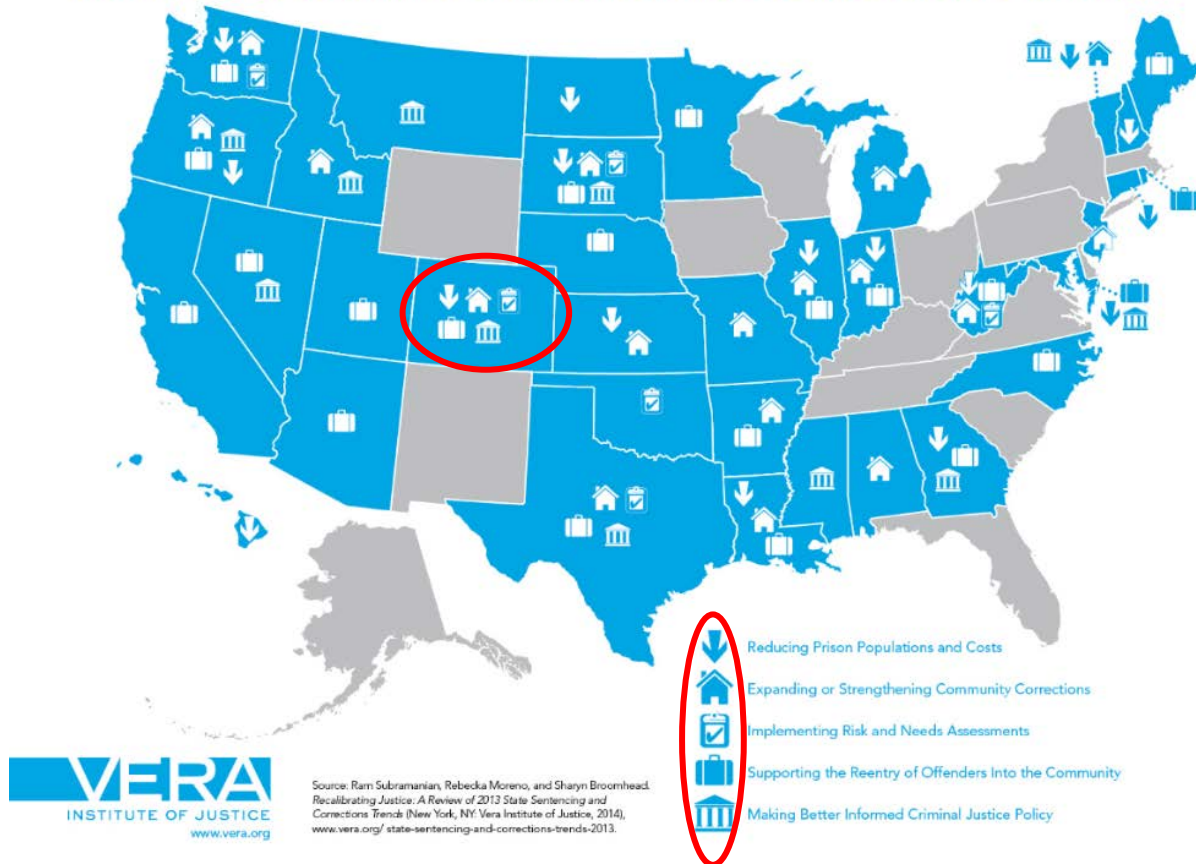
- A. Reduce prison populations and costs.** States repealed or narrowed mandatory sentencing schemes, reclassified offenses, or altered sentencing presumptions. States also sought to expand access to early release mechanisms - such as good time credits—designed to accelerate sentence completion.
- B. Expand or strengthen community-based sanctions.** States introduced or strengthened community corrections programs proven to reduce recidivism. Some states expanded eligibility for diversion programs - a sentencing alternative through which charges will be dismissed or expunged if a defendant completes a community-based program or stays out of trouble for a specified period. States also expanded community-based sentencing options, including the use of problem-solving courts.
- C. Implement risk and needs assessments.** Several states focused on the use of validated risk and needs assessments as the basis for implementing individualized offender case plans. These states passed laws requiring assessments of an offender’s risk of recidivism as well as his or her criminogenic needs - characteristics, such as drug addiction and mental illness - that when addressed can reduce that risk. States incorporated these assessments at different points in the criminal justice process - at the pre-trial stage, at the pre-sentencing stage, or to inform supervision and programming, whether in prison or in the community.

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D. Support the reentry of offenders into the community. States passed laws to mitigate the “collateral consequences” of criminal convictions - such as restrictions on housing and social benefits and exclusion from employment. In some states, legislators sought to clarify, expand, or create ways to seal or expunge criminal records from the public record. Others focused on helping offenders transition from prison or jail back into the community by increasing in-prison and post-release support.

E. Make better informed criminal justice policy. A number of states sought a deliberate discussion about the purpose and impact of proposed sentencing and corrections legislation and looked to external groups to debate proposals, collect and analyze data, and formulate policy recommendations.

MAPPING 2013 STATE SENTENCING AND CORRECTIONS TRENDS



MAY 2016 - Vera Institute of Justice

POLICY REPORT: *Justice in Review: New Trends in State Sentencing and Corrections 2014-2015*

In 2014 and 2015, states passed laws to:

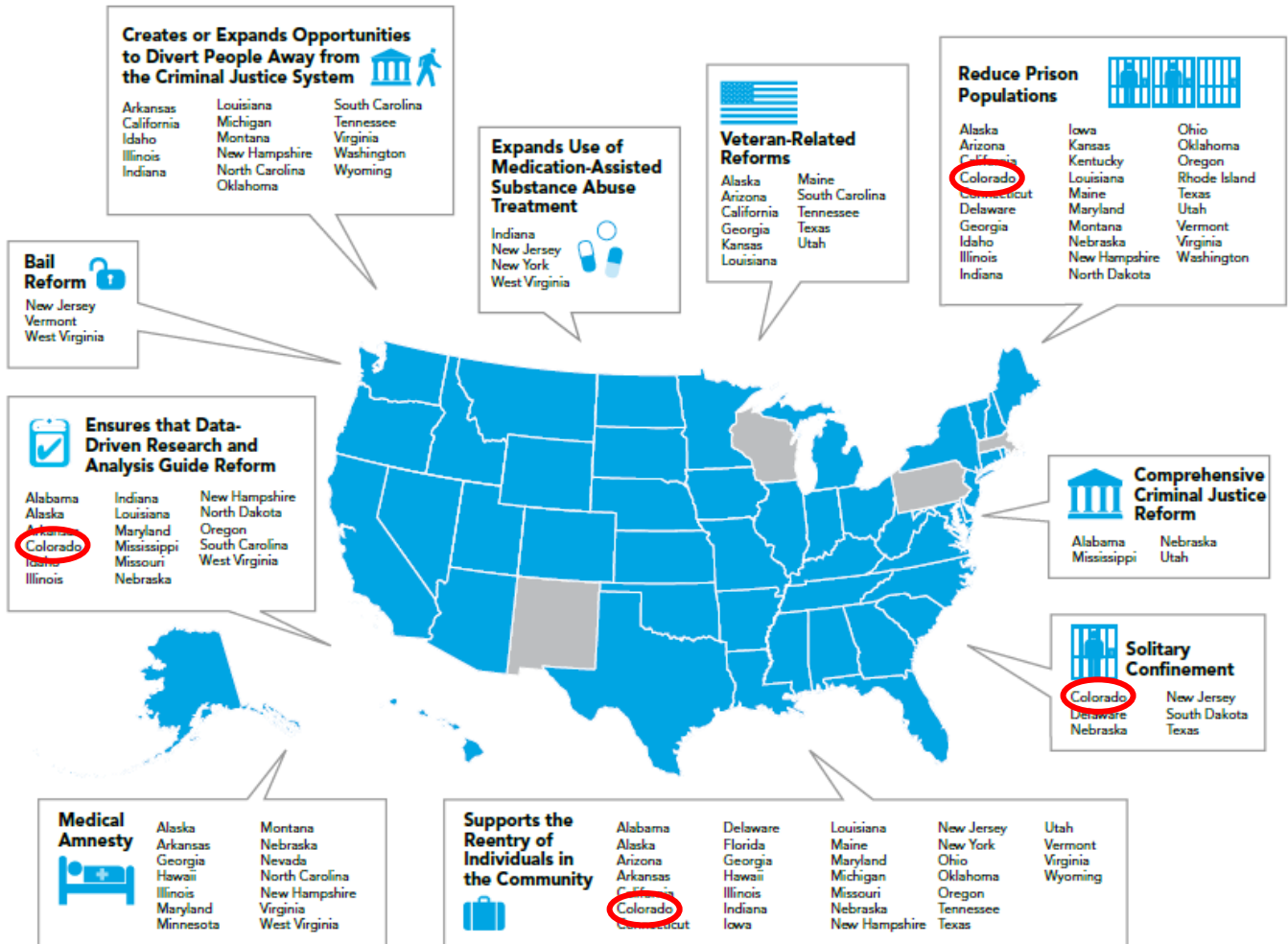
A. Create or expand opportunities to divert people away from the criminal justice system. States increased the use of alternative case dispositions; expanded or strengthened the use of problem-solving courts; and passed laws that empower arresting officers to divert certain defendants - especially those with an identified mental health need - into treatment instead of detention.

B. Reduce prison populations. States enacted laws to reduce or contain prison populations by 1) making certain offenses eligible for community-based sentences; 2) reducing the length and severity of custodial sentences by redefining or reclassifying crimes or repealing mandatory penalties; 3) shortening lengths of stay in prison by expanding opportunities to earn sentence credits, which shave off time in custody and advance parole eligibility; and 4) reducing the influx of people into prison for violations of community supervision by implementing evidence-based practices such as graduated responses to violations.

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C. Support people’s successful reentry into the community. To reduce recidivism, states, 1) changed their reentry systems to provide better coordination between prisons and community supervision agencies and to increase programming and treatment; 2) are supporting family relationships by facilitating family visitation, supporting relationships between incarcerated parents and their children, and ensuring that children of incarcerated people receive care and support; 3) are also helping people who are justice-involved obtain benefits, state identification, and exercise their voting rights; 4) are improving employment prospects by limiting bars on professional licenses and providing certificates of rehabilitation and employability; 5) are waiving fines and fees that often create economic obstacles to reintegration; and 5) are making it easier for people to expunge prior convictions and more difficult for private entities to disseminate criminal records data.

MAPPING SENTENCING AND CORRECTIONS TRENDS 2014–2015



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