

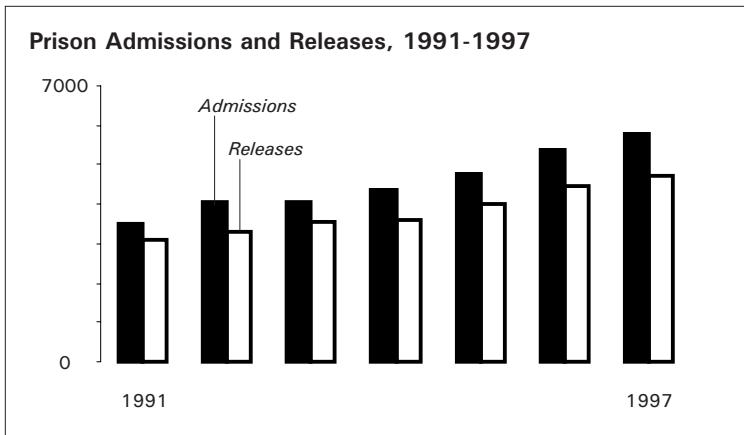
elements of change

highlighting trends and issues in the criminal justice system

VOL. 4 / NO. 1

Admissions and Parole Violations Fueling Rising Prison Populations

- Between 1991 and 1997, Colorado's adult inmate population increased by 57% and is projected to increase another 54% between 1999 and 2005.
- Between 1991 and 1997, prison admissions increased by nearly two-thirds (65%), while prison releases increased by just over one-half (51%).



- Between 1999 and 2005, parole violators (recommitted to prison) are projected to increase at a greater percentage than regular commitments.



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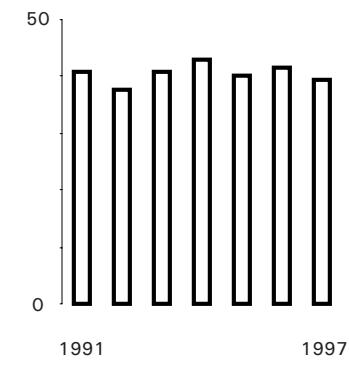
- 1) FALL 1998 PRISON POPULATION PROJECTIONS
- 2) SEXUALLY VIOLENT PREDATOR RISK ASSESSMENT SCALE
- 3) HOMICIDE RATES (LOOKING AT GUN INVOLVEMENT AND AGE)

■ (*CounterPoint*)

The average length of stay (ALOS) in prison increased consistently in the 1980's.

But, since 1991, there has been relatively little movement in the ALOS. The average length of stay in 1997 was 1.1 months shorter than it was in 1991.

Average Length of Stay (ALOS) in Prison, 1991-1997 (months)



Source: Division of Criminal Justice Fall 1998
Adult Prison and Parole Population Projections.

continuing the thought from the previous page...

What Are the Forces Driving Increased Prison Admissions in Colorado?

- 1) Greater efficiency in the criminal justice system, that is, a greater percentage of offenders and cases being moved forward in the system at every level, e.g., arrest to filing, filing to trial, trial to conviction;
- 2) More technical returns and new crimes as the result of mandatory parole; and
- 3) "Tough on crime" public policies.

What Is Causing the Average Length of Stay in Prison to Stabilize?

- 1) More offenders are being committed to prison on offenses that carry shorter prison sentences, e.g., technical violations;
- 2) Mandatory parole legislation; and
- 3) Ability to accumulate "earned time" while in prison.

The net impact of these three factors is that releases are up (although, not as much as admissions), causing the average length of stay (ALOS) to stabilize. Simply, increased releases have taken a bite out of an ALOS that was consistently increasing between 1980 and 1988.

The Division of Criminal Justice Fall 1998 Prison Population Projections, 1999-2005

Date	Men	Women	Total Population
Jan 1999	13,038	1,116	14,154
Jan 2000	14,167	1,234	*15,402
Jan 2001	15,483	1,380	16,863
Jan 2002	16,766	1,513	18,279
Jan 2003	17,846	1,632	19,478
Jan 2004	18,911	1,731	20,642
Jan 2005	19,952	1,835	*21,786
Six Year Growth	+ 53%	+ 64%	+ 54%

* Note: All projections are rounded to the next whole number. Calculations may appear slightly off.
Source: Colorado Division of Criminal Justice Fall 1998 Prison and Parole Projections.

Recent Legislation Impacting the Prison Population

Two major pieces of legislation were enacted in 1998 that will impact the number of prison commitments during the projection period. Both pieces of legislation refer to the length of time spent by an offender under parole supervision.

HOUSE BILL 98-1160. This legislation applies to offenses occurring on or after July 1, 1998, and mandates that every offender must complete a period of parole supervision after incarceration.

■ Offenders committing class 2, 3, 4 or 5 felonies or second or subsequent felonies which are class 6, and who are revoked during the period of their mandatory parole, may serve a period up to the end of the mandatory parole period in incarceration. In such a case, one year of parole supervision must follow.

■ If revoked during the last six months of mandatory parole, intermediate sanctions including community corrections, home detention, community service or restitution programs are permitted, as is a re-incarceration period of up to twelve months.

■ If revoked during the one year of parole supervision, the offender may be re-incarcerated (not to exceed one year).

HOUSE BILL 98-1156. This legislation concerns the lifetime supervision of certain sex offenders. A number of provisions in the bill address sentencing, parole terms, and conditions.

■ For certain crimes (except those in the following two bullets), a sex offender shall receive an indeterminate term of at least the minimum of the presumptive range specified in 18-1-105 for the level of offense committed and a maximum of the offender's natural life.

■ For crimes of violence (defined in 16-11-309), a sex offender shall receive an indeterminate term of at least the midpoint in the presumptive range for the level of offense committed and a maximum of the offender's natural life.

■ For sex offenders eligible for sentencing as a habitual sex offender against children (pursuant to 18-3-412), the sex offender shall receive an indeterminate term of at least the upper limit of the presumptive range for the level of offense committed and a maximum of the offender's natural life.

■ The period of parole for any sex offender convicted of a class 4 felony shall be an indeterminate term of at least 10 years and a maximum of the remainder of the offender's natural life.

■ The period of parole for any sex offender convicted of a class 2 or 3 felony shall be an indeterminate term of at least 20 years & a maximum of the offender's natural life.

WHY IS THE INCARCERATION RATE RISING WHILE THE CRIME RATE IS FALLING?

For the past several years, crime rates in Colorado have been significantly declining. In 1991, there were 7,401 violent arrests in Colorado. In 1997, there were 5,569 violent arrests — a nearly one-fourth decrease. However, in the same time period between 1991 and 1997, Colorado's overall prison population increased by over 50 percent from 7,794 to 12,205.

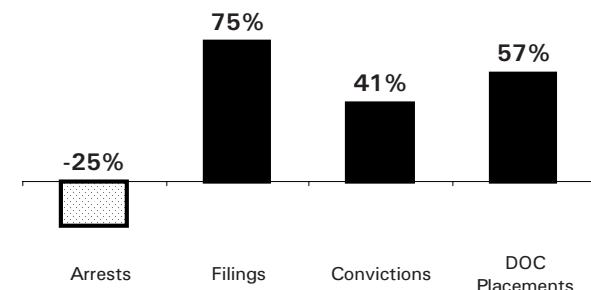
At each stage of the criminal justice system there are opportunities for individuals to be "processed-out" of the system, i.e., for their cases to be terminated. Each of these stages represents a major point in which decision-makers determine whether the case warrants further processing.

If the process of incarceration is viewed as a series of decision-points, streamlining these decisions might make it possible to incarcerate greater numbers of people.* Furthermore, under a *streamlined process*, it is possible to conceive of a situation where fewer crimes may be committed, yet more offenders are sentenced to the Department of Corrections (DOC).

The data clearly indicate that more offenders are being sentenced to prison. However, it is unclear from this data exactly how the criminal justice system has streamlined the process. Uncovering why the criminal justice system is sentencing more offenders to prison is an enormous research project in itself. Several theories are explored below, but each should be investigated further before any definitive conclusions are drawn.

A GREATER PROPORTION OF ARRESTS NOW BECOME FILINGS, CONVICTIONS, AND DOC PLACEMENTS. A number of possible reasons exist as to why the arrest-to-filing/conviction/placement proportions have increased dramatically: 1) the District Attorneys may have been more inclined to pursue certain high-profile crime categories (e.g., sex offenses, domestic violence, etc.); 2) better cooperation between the District Attorney's Office and Police Departments may have resulted in better cases, with better evidence, to prosecute (e.g., the Denver Drug Court); 3) the Federal Crime Act of 1996 placed an additional 100,000 law-enforcement officers on the street, providing law-enforcement with the needed resources to target certain crimes and to make better arrests.

CRIMINAL JUSTICE COMPONENT GROWTH RATES FOR VIOLENT CRIME, 1992 TO 1996



THE CRIMINAL JUSTICE SYSTEM IS EXPERIENCING A SIGNIFICANT INCREASE IN THE NUMBER OF OFFENDERS WHO HAVE PRIOR CRIMINAL HISTORIES. Prison sentences are usually reserved for offenders who have lengthy criminal histories (or who have committed a serious crime). With a few notable exceptions (e.g., murder, kidnapping, etc.), criminal history is generally the determining factor for whether an offender will go to prison.

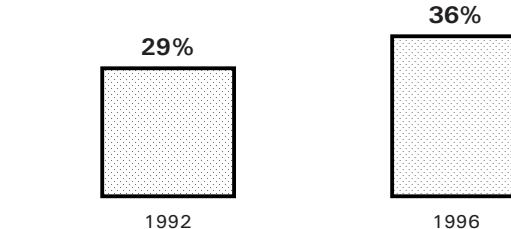
CHANGES IN THE CRIMINAL HISTORY OF DOC PLACEMENTS

PREVIOUS CRIMINAL HISTORY (ADULT)	DOC PLACEMENT (1990)	DOC PLACEMENT (1995)
Non-Violent Arrest	69.3%	75.9%
Violent Arrest	36.2%	40.0%
Non-Violent Conviction	60.1%	72.1%
Violent Conviction	26.5%	28.1%

LEGISLATION AND LOCAL POLICIES MAY HAVE MINIMIZED DISCRETION BY MANDATING CERTAIN POLICIES AND PRACTICES. This lessening of discretion within the criminal justice system appears to be having the effect of sentencing more offenders to prison. Minimizing discretion reduces the possibility of variable treatment and increases the possibility that certain behaviors will result in certain outcomes. The net result of these mandatory policies and practices is that there may be fewer opportunities for individuals to "fall out" of the criminal justice system. For example, with mandatory minimums for certain crimes, a judge loses his or her discretion to sentence an offender to anything less than what is statutorily required.

THE NUMBER OF PLEA-BARGAINS GRANTED TO OFFENDERS HAS INCREASED. The overall impact of plea-bargaining (especially increased plea-bargaining) is that more offenders are convicted of some offense. These offenders, while convicted of a lesser charge, still remain within the criminal justice system.

PERCENTAGE OF OFFENDERS SENTENCED TO PRISON ON A PLEA-BARGAIN



* The term of "streamlining" is meant in this context to describe the process where a larger percentage of offenders who enter into the criminal justice system result in a sentence to DOC. By no means does this term denote that constitutional or other civil rights are being waived for the purpose of incarcerating greater numbers of people.

Source: Division of Criminal Justice Fall 1998 Adult Prison and Parole Population Projections.

DCJ Sex Offender Actuarial Risk Scale Will Help Identify Sexually Violent Predators

Pursuant to C.R.S. 18-3-414.5, the Colorado Division of Criminal Justice (DCJ) worked in consultation with representatives of the state Sex Offender Management Board to develop an actuarial risk assessment screening instrument for use in the identification of *sexually violent predators*. It is important to identify this type of sexual offender because special precautions may be taken regarding their management in the community that will directly affect public safety. For example, offenders identified as sexually violent predators, after July 1, 1999, shall be required to register with local law enforcement officials every quarter.

To create this risk assessment instrument, DCJ collected data on a sample of 494 adult male sex offenders placed on probation, in community corrections (court diversion), on parole, and in prison treatment (Phase One and Phase Two) between December 1, 1996 and November 30, 1997. The sample group was then monitored for one year to track recidivism. Because the follow-up period was only 12 months and sex offenders are rarely caught for a new crime within 12 months, recidivism was defined as "revocation."

The data were analyzed to determine what unique set of factors would empirically predict the probability of recidivism. From the data, the ten most predictive variables were selected to create the risk scale (scale shown on the following page). Each item on the scale is to be scored "yes" or "no," so an offender can receive a score of 0 to 10. The Sex Offender Management Board recommended that cases scoring 4 or above be considered at high risk of committing a new sex crime.

The Division of Criminal Justice Sex Offender Risk Scale (SORS) predicts:

- Offenders who score 0-3 points on the 10 scale factors have approximately a 50-50 chance of reoffending. (Half of the offenders scoring 0-3 will get revoked or be "on the brink" of failure within 12 months.)
- Two-thirds of the offenders scoring 4 or more will reoffend.

In addition to scoring 4 or more on the SORS, to be considered a sexually violent predator an offender must meet the other criteria identified in C.R.S. 18-3-414.5:

- The offender has been convicted on or after January 1, 1999 of one or more of the following crimes: sexual assault in the first, second, or third degree, sexual assault on a child, or sexual assault on a child by one in a position of trust.
- The offender must meet one of the following three relationship definitions: 1) the offender is a stranger to the victim, 2) the offender established a relationship primarily for sexual victimization, or 3) the offender promoted an existing relationship primarily for sexual victimization.
- If the offender does not score 4 or more on the SORS, it must be determined that he/she suffers from a mental abnormality, psychosis, or personality disorder by scoring high on the Hare Psychopathy Checklist, Revised, or scoring positively on three or more diagnoses using the MCMI Personality Inventory

The Judicial Department and the Division of Criminal Justice are working together to finalize the assessment criteria and implement the procedure by July 1, 1999.

Actuarial (Statistical) Risk Assessment

Risk assessment is a key component of correctional population management. Research pertaining to offender risk of supervision dates back to the 1920's.

Actuarial risk assessment provides information about the statistical probability of failure for those who fall into risk groups. It is useful to the criminal justice system because it allows programming, resources, and security levels to be accurately and effectively targeted. Actuarial risk assessment also promotes consistent decision making.

Actuarial risk scales are created by gathering information (demographic, criminal history, and current offense) about the target population and then comparing that information with rearrest data. In this way, factors can be statistically selected which will predict reoffense or risky behavior.

The factors that predict risk vary considerably across studies because the studies vary in how risk is defined. Risk is frequently defined in terms of recidivism (rearrest, conviction, or recommitment). Risk can also be defined as program noncompliance or failure (sanctioned behavior without reoffense), as it was in the current study.

The predictive power of actuarial tools lies in identifying at-risk offenders, not in identifying offenders who will not reoffend.

Also, actuarial risk prediction places people in groups with different probabilities of reoffending. That is, the instrument does not predict individual risk. Rather, group risk is explicitly defined, and individuals fall into specific groups with known probabilities of risk.

Finally, actuarial risk prediction should not be used to manage day-to-day risk. Other tools, such as the polygraph, are better at managing immediate risk.

While actuarial risk prediction is not a perfect solution to the prediction of dangerousness, the approximate error rate of group predictions is known. On the other hand, studies of clinical (individual, case-by-case) prediction indicate that experts are wrong in their predictions of dangerousness, on average, two out of three times.

Source: Colorado Sexually Violent Predator Risk Assessment Screening Instrument. Pursuant to 18-3-414.5, Colorado Revised Statutes. Prepared by the Colorado Sex Offender Management Board.

DIVISION OF CRIMINAL JUSTICE SEX OFFENDER RISK SCALE (SORS)

The offender is at greater risk of subsequently committing one of the identified sexually violent predator crimes when **FOUR** more of the following descriptions apply to this offender (*check all that apply and circle source of data*):

- The offender has one or more juvenile felony convictions or adjudications.**
(Include attempts/conspiracies). Data Sources (please circle): PSIR, prison record, NCIC or CCIC.
- The offender has one or more prior adult felony convictions.**
(Include attempts/conspiracies. Include deferred judgements/sentences). Data Sources (please circle): PSIR, prison record, NCIC or CCIC.
- The offender was employed less than full time at arrest.**
(Part-time, sporadic, or day labor are not considered full-time. Multiple, stable part-time jobs are considered full-time employment.) Data sources (please circle): PSIR, prison record, self-report, Sex Offense Specific Mental Health Evaluation required by SOMB Standards.
- The offender failed first or second grade.**
(Whatever the reason, if the offender failed these grades in elementary school, this item scores 1 point.) Data Sources (please circle): Self-report, education records, PSIR, prison record or other official record, Sex Offense Specific Mental Health Evaluation required by the SOMB Standards.
- The offender possessed a weapon during the current crime.**
(A weapon is defined as a gun, knife, or similar object that could be used to intimidate or harm a victim. The offender need only to possess the weapon, not use the weapon.) Data Sources (please circle): PSIR, police report, prison record, self-report, Sex Offense Specific Mental Health Evaluation required by the SOMB Standards, victim statement.
- The victim was intoxicated during the current crime.**
(This includes alcohol, drugs or both.) Data Sources (please circle): Victim statement, PSIR, police report, prison record, self-report, Sex Offense Specific Mental Health Evaluation required by the SOMB Standards.
- The offender reports that he was NOT sexually aroused during the current crime.**
(Sexual arousal refers to penile tumescence). Data Sources (please circle): Self-report, victim statement, Sex Offense Specific Mental Health Evaluation required by the SOMB Standards.

The last three items on this scale are scored from the Colorado Sex Offender Management Board Therapist Checklist (attached). Source: Sex Offense Specific Mental Health Evaluation required by SOMB Standards.

Name, SOMB-Approved Evaluator: _____ Date of Eval: _____

- The offender scored 20 or above on the CO-SOMB Checklist Denial Subscale.***
- The offender scored 20 or above on the CO-SOMB Checklist Deviancy Subscale.***
- The offender scored 20 or below on the CO-SOMB Checklist Motivation Subscale.***

Total DCJ SEX OFFENDER RISK SCALE Score

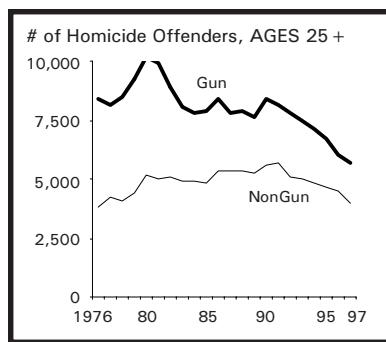
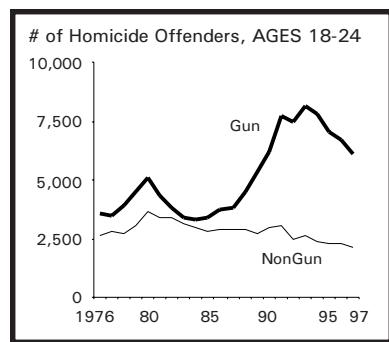
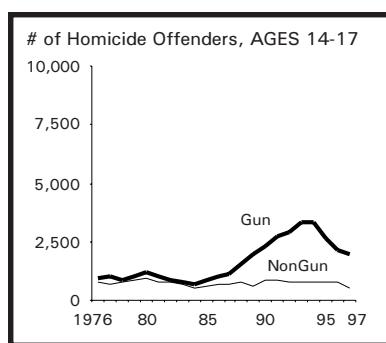
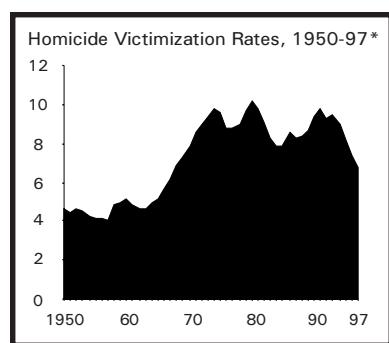
A score of four (4) or more establishes a greater risk of harm, pursuant to 18-3-414.5 (C.R.S.). Those with scores of 4 or more fall into a group with a 66% probability of treatment/supervision noncompliance. Those with scores of 3 or less fall into a group with 50% probability of treatment/supervision noncompliance.

The efficacy of actuarial prediction tools depends on the analysis of accurate data recently collected on the study population. The research underlying this risk tool and the predictors will be updated annually, as resources allow.

* As part of the sex offender risk study, the Colorado Sex Offender Management Board Research Assessment Committee developed a scale measuring eight dimensions of risk. All of the dimensions on the scale empirically predicted risk, and three of the subscales have been included in the Sex Offender Risk Scale.

HOMICIDE (in the United States)

parting glance:



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* Rate per 100,000.

Source: Fox, J.A., and Zawitz, M.W. (1999). Homicide Trends in the United States, *Bureau of Justice Statistics Crime Data Brief*. U.S. Department of Justice, Office of Justice Programs.



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