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David S. Kaplan, Vice-Chair  
Michael Anderson  
Karen L. Beye  
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Mark Waller  
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Debra L. Zwirn

# Colorado Commission on Criminal and Juvenile Justice

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## Annual Report

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October 2010



# Colorado Commission on Criminal and Juvenile Justice 2010 Annual Report

*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)*

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**October 2010**

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## ACKNOWLEDGEMENTS

The development of this annual report occurs as the Commission's first chair, Peter Weir, leaves his position as Executive Director of the Department of Public Safety. In doing so, he also leaves as chair of the Commission. Under Mr. Weir's leadership, the Commission made more than 100 recommendations for reform across the criminal justice system, from pretrial bonding practices to parole decision making. Mr. Weir's focus on the Commission's direction, his commitment to inclusiveness, his careful thinking about the issues under study, and his high expectations for what the Commission could accomplish, combined to provide exceptional leadership during its critical formative years. As Mr. Weir hands the baton to a very capable Kathy Sasak, he will be greatly missed. The Commission thanks him for his service.

Since the Commission began, consultant Paul Herman from the Center for Effective Public Policy has provided guidance, perspective, encouragement, and clarity. The Commission and its task forces benefit from Mr. Herman's work with dozens of other states combined with his own distinguished career in corrections. The Commission is grateful to Mr. Herman for his hard work to further its goals, and it is also grateful to the Justice Assistance Grant board for supporting Paul's work with the Commission.

The Commission is thankful for its hard-working task force chairs: Grayson Robinson chairs the Drug Policy Task Force, Peter Weir and Tom Quinn chaired and vice-chaired the Sentencing Policy Task Force and David Kaplan and Christie Donner chaired and vice-chaired the Post Incarceration Supervision Task Force. In addition, Maureen Cain, Christie Donner, Claire Levy, Miles Madorin, Ted Tow, Tom Raynes and Pat Steadman made significant contributions to the Commission's efforts to reform sanctions related to controlled substances and redirecting resources toward behavioral health treatment.

Approximately 50 professionals from across the justice system served on the Commission's task forces and working groups. These individuals devoted considerable time and expertise to issues identified by the Commission as needing study, discussion and consideration. The work of these volunteers resulted in dozens of recommendations for reform in the areas of parole decision making and sentences related to drunk driving, use and possession of controlled substances, probation eligibility and escape/absconson. The Commission extends its gratitude to these important partners whose work resulted in greater efficiencies and improvements in the administration of justice in Colorado.

Finally, the Commission extends a special thank you to Kathy Sasak, Jeanne Smith, and Stephanie Villafuerte who provided valuable support and guidance to the Commission.

The Commission is grateful for the multidisciplinary, collaborative spirit of those in the justice system communities who devote their time and energy to the health and safety of our communities.





## COMMISSION MEMBERS

**Kathy E. Sasak, Chair**

Executive Director  
Department of Public Safety

**David S. Kaplan, Vice Chair**

Haddon, Morgan, & Foreman, P.C.  
Representing Criminal Defense Attorneys

**Michael Anderson**

Vice-Chair  
Colorado State Board of Parole

**Karen L. Beye**

Executive Director  
Department of Human Services

**Rhonda C. Fields**

Victim Representative  
At Large

**Regis F. Groff**

Former State Senator  
At Large

**Peter G. Hautzinger**

District Attorney, 21<sup>st</sup> Judicial District  
Representing District Attorneys

**Regina M. Huerter**

Executive Director  
Denver Crime Prevention & Control Commission  
Representing Juvenile Justice Issues

**William C. Kilpatrick**

Chief, Golden Police Department  
Representing Chiefs of Police

**Reo N. Leslie, Jr.**

Director, Colorado School for Family Therapy  
Representing Mental Health Treatment Providers

**Claire Levy**

State Representative  
House District 13

**Gilbert A. Martinez**

Judge, 4<sup>th</sup> Judicial District  
Representing Judicial

**Inta B. Morris**

Assistant Director, Interdepartmental & External Affairs  
Representative for the Executive Director of the  
Department of Higher Education

**John P. Morse**

State Senator  
Senate District 11

**Donald S. Quick**  
District Attorney, 17<sup>th</sup> Judicial District  
Representing District Attorneys

**Thomas Quinn**  
Director, Division of Probation Services  
Representing Judicial

**J. Grayson Robinson**  
Sheriff, Arapahoe County  
Representing Colorado Sheriffs

**Mark Scheffel**  
State Senator  
Senate District 4

**Steven R. Siegel**  
Victim's Representative, 2<sup>nd</sup> Judicial District  
Representing Victim Rights Organizations

**Jan Dempsey Simkins**  
Representative for the  
Juvenile Parole Board

**Jeanne M. Smith**  
Director, Division of Criminal Justice  
Department of Public Safety

**John W. Suthers**  
Attorney General

**Alaurice M. Tafoya-Modi**  
Criminal Defense Attorney

**Mark Waller**  
State Representative  
House District 15

**Douglas K. Wilson**  
State Public Defender

**Aristedes W. Zavaras**  
Executive Director  
Department of Corrections

**Debra L. Zwirn**  
County Commissioner, Logan County  
Representing County Commissioners



## SUBCOMMITTEE MEMBERS

### Behavioral Health Collaboration Membership

<b>Name</b>	<b>Affiliation</b>
Regina Huerter, <i>Chair</i>	Denver Crime Prevention & Control Commission
Lacey Berumen	National Alliance for the Mentally Ill
Carl Blesch	Office of Community Corrections, Division of Criminal Justice
Louise Boris	Colorado Coalition for the Homeless
'Nita Brown	National Alliance for the Mentally Ill
Heather Cameron	Mental Health America of Colorado
Marceil Case	Department of Healthcare Policy and Financing
Pamela Clifton	Criminal Justice Reform Coalition
Susan Colling	Division of Probation Services
Dean Conder	Juvenile Parole Board
Sue Ferrere	Jefferson County Justice Services
Doyle Forrestal	Colorado Behavioral Healthcare Council
Jessica Gapuzan	Judicial Services Division of the Community Resources Department, Arapahoe County
Joscelyn Gay	Department of Human Services
Spencer Green	Centennial Mental Health Center
Harriet Hall	Jefferson Center for Mental Health
Todd Helvig	Community Behavioral Health Services, Department of Corrections
Leslie Herod	Governor's Office
Melissa Ippolito	Colorado TASC, Peer Assistance Services
Bill Kilpatrick	Golden Police Department
Stephen Kopanos	Mental Health America of Colorado
Mike Kucera	Aurora Mental Health Center
Evelyn Leslie	Colorado School for Family Therapy
Reo Leslie	Colorado School for Family Therapy
Jennifer Martinez	Advocates for Human Potential, Inc.
Sean McDermott	Colorado Criminal Defense Bar
Carmelita Muniz	Colorado Association of Alcohol and Drug Service Providers
Jeffrey Nelson	Jefferson Center for Mental Health
Mark Olson	Aurora Mental Health Center
Elizabeth Pace	Peer Assistance Services
Donald Quick	District Attorney, 17th Judicial District
Jack Reed	Judicial Services Division of the Community Resources Department, Arapahoe County
Kathy Sasak	Department of Public Safety
Gina Shimeall	Arapahoe-Douglas Mental Health Network
Joanie Shoemaker	Department of Corrections
Steve Siegel	Victim's Representative, 2 <sup>nd</sup> Judicial District
Paul Siska	Adams County Sheriff's Department
Charles Smith	Division of Behavioral Health, Department of Human Services

Dave Stephens  
Richard Swanson  
Deborah Ward-White  
Meg Williams

Department of Corrections  
Aurora Mental Health Center  
Family Agency Collaboration, Mental Health Center of Denver  
Office of Adult and Juvenile Justice Assistance, Division of Criminal Justice

## Drug Policy Task Force

### Name

Grayson Robinson, *Chair*  
Dean Conder, *Vice Chair*  
Bill Kilpatrick  
Donald Quick  
Regina Huerter  
Reo Leslie  
Greg Long  
Maureen Cain  
Carmelita Muniz  
Doyle Forrestal  
Christie Donner  
Evie Hudak  
Brian Connors  
Kathleen McGuire  
Tom Raynes  
Miles Madorin  
Nancy Feldman  
Pat Steadman  
Paul Thompson  
Dan Rubenstein  
Mark Hulbert  
Jim Welton  
Shane Bahr  
Janet Wood  
Dolores Poeppel  
Sean McAllister  
Rod Walker  
Mark Waller

### Affiliation

Arapahoe County Sheriff  
Juvenile Parole Board  
Golden Police Department  
District Attorney, 17<sup>th</sup> Judicial District  
Denver Crime Prevention & Control Commission  
Colorado School for Family Therapy  
Chief Deputy District Attorney, 2<sup>nd</sup> Judicial District  
Colorado Criminal Defense Bar  
Colorado Association of Alcohol and Drug Service Providers  
Colorado Behavioral Healthcare Council  
Colorado Criminal Justice Reform Coalition  
Colorado State Senator, 19<sup>th</sup> District  
Colorado Public Defenders Office  
Colorado Public Defenders Office  
Deputy Attorney General's Office  
Deputy District Attorney, 1<sup>st</sup> Judicial District  
Victims of Crime Unit, Division of Criminal Justice  
Colorado State Senator, 31<sup>st</sup> District  
Peer 1  
Chief Deputy District Attorney, 21<sup>st</sup> Judicial District  
District Attorney, 5<sup>th</sup> Judicial District  
Inspector General, Dept. of Corrections  
Problem Solving Courts, Judicial  
Division of Behavioral Health  
Victims Assistance Unit, Colorado State Patrol  
Private Defense Attorney  
Colorado Springs Police Department  
State Representative, 15<sup>th</sup> District

## Legislative Subcommittee Membership

### Name

David Kaplan, *Co-Chair*  
Donald Quick, *Co-Chair*  
Bill Kilpatrick  
Regina Huerter  
Grayson Robinson  
Tom Raynes  
Ted Tow  
Douglas Wilson

### Affiliation

Colorado Criminal Defense Bar  
District Attorney, 17<sup>th</sup> Judicial District  
Golden Police Department  
Denver Crime Prevention & Control Commission  
Arapahoe County Sheriff  
Deputy Attorney General's Office  
Colorado District Attorney Council  
State Public Defender's Office

## Post-Incarceration Supervision Task Force Membership

<b>Name</b>	<b>Affiliation</b>
David Kaplan, <i>Chair</i>	Colorado Criminal Defense Bar
Christie Donner, <i>Task Force Leader</i>	Colorado Criminal Justice Reform Coalition
Lacey Berumen	National Alliance for the Mentally Ill
Carl Blesch	Community Corrections, Division of Criminal Justice
Joe Cannata	Voices of Victims
Tim Hand	Department of Corrections
Peter Hautzinger	District Attorney, 21 <sup>st</sup> Judicial District
Regina Huerter	Denver Crime Prevention & Control Commission
Bill Lovingier	Denver Sheriff's Department
Greg Mauro	Community Corrections
David Michaud	Colorado Parole Board
Jeaneene Miller	Colorado Department of Corrections
Maureen O'Keefe	Colorado Department of Corrections
Dianne Tramutola-Lawson	Colorado CURE
Carolyn Turner	Colorado CURE
Heather Wells	Colorado Department of Corrections
Doug Wilson	State Public Defender

## Re-Entry Oversight Committee Membership

<b>Name</b>	<b>Affiliation</b>
Regina Huerter, <i>Chair</i>	Denver Crime Prevention & Control Commission, Manager of Safety
Louise Boris	Colorado Coalition for the Homeless
Christie Donner	Colorado Criminal Justice Reform Coalition
Regis Groff	Formerly of the State Senate, Senate District 33
David Kaplan	Colorado Criminal Defense Bar
Gil Martinez	District Judge, 4 <sup>th</sup> Judicial District
Jeaneene Miller	Colorado Department of Corrections
Tom Quinn	Division of Probation Services
Mike Riede	Formerly of the Probation Office, 1 <sup>st</sup> Judicial District
Grayson Robinson	Arapahoe County Sheriff
Jeanne Smith	Colorado Division of Criminal Justice
Michelle Sykes	Division of Colorado Works Family Strengthening and Safety Section, Colorado Department of Human Services
Peter Weir	Colorado Department of Public Safety

## **Sentencing Policy Task Force**

<b>Name</b>	<b>Affiliation</b>
Peter Weir, <i>Chair</i>	Department of Public Safety
Tom Quinn, <i>Vice Chair</i>	Division of Probation Services
John Suthers	Attorney General
Douglas Wilson	State Public Defender
Peter Hautzinger	District Attorney, 21 <sup>st</sup> Judicial District
Steve Siegel	Victim's Representative, 2 <sup>nd</sup> Judicial District
Regis Groff	Former State Senate, Senate District 33
Gil Martinez	4 <sup>th</sup> Judicial District Judge
Claire Levy	Colorado State Representative, House District 13
Ellen Roberts	Colorado State Representative, House District 59
Charles Garcia	Denver Crime Prevention & Control Commission
Kathy Sasak	Department of Public Safety
Carl Blesch	Office of Community Corrections, Division of Criminal Justice
Dianne Tramutola-Lawson	Colorado CURE
Ken Plotz	Senior Judge
Beth McCann	Colorado State Representative, House District 8
Mitch Morrissey	District Attorney, 2 <sup>nd</sup> Judicial District
Joe Cannata	Voices of Victims
Lee Foreman	Private Defense Attorney
Stanley Garnett	District Attorney, 20 <sup>th</sup> Judicial District
Susan White	Colorado Department of Corrections
Scott Storey	District Attorney, 1 <sup>st</sup> Judicial District

## **Treatment Funding Working Group**

<b>Name</b>	<b>Affiliation</b>
Regina Huerter	Denver Crime Prevention & Control Commission
Donald Quick	Colorado District Attorney, 17 <sup>th</sup> Judicial District
Janet Wood	Division of Behavioral Health, Department of Human Services
Christie Donner	Colorado Criminal Justice Reform Coalition
Carmelita Muniz	Colorado Association of Alcohol and Drug Service Providers
Eric Philp	Division of Probation Services
Inta Morris	Department of Higher Education
Pat Steadman	Colorado State Senator, 31 <sup>st</sup> District
Annmarie Jensen	Jensen Public Affairs, Inc.



## COMMISSION STAFF

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Colorado Department of Public Safety

**Diane Pasini-Hill**

Manager, Special Projects  
Office of Research and Statistics,  
Division of Criminal Justice





## SECTION 1: INTRODUCTION

This is the Commission's third annual report of activities and accomplishments. During its first year of work, the Commission focused on improving policies and practices related to the re-entry of individuals into the community 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 reform, and many resulted in statutory changes during the 2010 General Assembly. Early in 2010, while the legislature was in session, the Commission completed a series of recommendations pertaining to legislative modifications concerning Driving Under the Influence (DUI) and Driving While Ability Impaired (DWAI; C.R.S. 42-4-1301). Additionally, it recommended comprehensive reforms to the parole guidelines statute, C.R.S. 17-22.5-404, promoting evidence-based correctional practices for parole release and revocation decisions, including the implementation of the new *Colorado Parole Board Release Guidelines Instrument*, developed by the Commission's Post-Incarceration Supervision Task Force. The bills promoted by the Commission can be seen in Table 1.

**Table 1. Commission supported bills that passed in FY 2010**

House Bill 10-1081	Concerning money laundering
House Bill 10-1338	Concerning the eligibility for probation of a person who has two or more felony convictions
House Bill 10-1347	Concerning misdemeanor penalties for persons who are convicted of multiple traffic offenses involving alcohol or drugs
House Bill 10-1352	Concerning changes to crimes involving controlled substances
House Bill 10-1373	Concerning changes to sentencing provisions for escape crimes
House Bill 10-1374	Concerning parole

Note: All these bills are available on the CCJJ website at <http://cdpsweb.state.co.us/ccjj/legislation.html>.

Legislative reforms are one type of systemic change the Commission promotes. It also recommends changes to operational policy, business practice, and agency philosophy. This report reviews both the recent activities of the Commission and provides a status report of its past recommendations. The report is organized as follows: The next section provides a summary of the Commission's legislative intent and membership, Section 3 discusses Commission and task force activities for FY 2010 and a summary of the reports published in the last year, Section 4 details the Commission's recommendations and outcomes throughout the year including 2010 legislation, Section 5 builds on the Commission's December 2008 report and presents a status report on each of the 66 recommendations for improvement in the reentry process for offenders in Colorado, and Section 6 describes the Commission's next steps.





## SECTION 2: LEGISLATIVE INTENT AND MEMBERSHIP

The Commission is comprised of 26 voting members (see pages v-vi), 17 of whom are appointed representatives of specific stakeholder groups, and 9 of whom are identified to serve based on their official position. Eight appointed members are limited to serving no more than two three-year terms (in addition to any partial term) and nine appointments serve two-year terms during the first two years following the establishment of the Commission. House bill 07-1358, which establishes the Commission, can be found in the 2008 and 2009 Commission reports and is available on the CCJJ website at <http://cdpsweb.state.co.us/ccjj/legislation.html>.

Since the last report, the Commission lost four members, Commission Chair Peter Weir, along with Dean Conder, David Michaud, and Representative Ellen Roberts. These members were replaced by Chair Kathy Sasak, Jan Dempsey Simkins, Mike Anderson, and Representative Mark Waller. A previously vacant position was filled by Alaurice Tafoya-Modi.





## SECTION 3: ACTIVITIES OF THE COMMISSION

This section summarizes the activities and accomplishments of the Commission between the publication of the July 2009 commission report and August 2010, which includes:

- The work of the Commission's task forces, subcommittees and specially convened groups (including 61 sentencing-related recommendations<sup>1</sup>),
- Behavioral health initiatives supported by Commission recommendations and funded with over \$4.2M in federal Justice Assistance Grants (JAG),
- The results of a sentencing survey of Colorado district and county court judges regarding their viewpoints on a variety of sentencing topics,
- A sentencing panel discussion including perspectives from victims, offenders, community members, district attorneys, and defense attorneys,
- The allocation of \$8M toward behavioral health treatment based primarily on Commission recommended statutory reforms enacted during the FY2010 legislative session, and
- A review of state and national data on ethnicity and race of those in the justice system, and other states' activities to address minority overrepresentation.

### Commission task forces and subgroups

In the spring of 2009, the Commission wrapped up the majority of work regarding community re-entry from jail and prison. With the conclusion of the re-entry effort, the Commission also agreed to close out the work of three of the four re-entry task forces: Probation, Incarceration and Transition. The Post-Incarceration Supervision Task Force stayed intact to continue its work with the Parole Board regarding release decision-making guidelines. While the Commission was closing down its work on re-entry, commission members were deciding whether the next area of study should focus on juvenile justice or sentencing.

#### SENATE BILL 09-286 SENTENCING WORK AT A GLANCE

*In the FY 2009 General Assembly, legislators passed Senate Bill 09-286 which directed the Commission on Criminal and Juvenile Justice to study sentencing laws and prepare a report by November 30, 2009 that documents its findings, recommendations, and a plan for its continuing study of the state's sentencing statutes. To this end, the Commission reviewed, analyzed, and made recommendations in the following areas specified in SB 09-286: (1) Driving under the influence (DUI), (2) sentences related to drug crimes described in Title 18, C.R.S., and (3) mandatory minimum sentences and judicial discretion. In addition, the Commission studied aggravated sentence ranges and extraordinary risk crimes, the escape statute that requires a mandatory, consecutive prison sentence; and the statutory criteria related to probation eligibility. The Commission's November 2009 report, along with the December 2009 addendum and February 2010 status report addressed these sentencing related topics. See Appendix A for a copy of Senate Bill 09-286.*

<sup>1</sup> Colorado Commission on Criminal and Juvenile Justice. (2009). *Colorado Commission on Criminal and Juvenile Justice: Findings, Recommendations, and Proposed Plan for the Ongoing Study of Sentencing Reform*. Denver, CO: Colorado Division of Criminal Justice, Office of Research and Statistics. This report was followed by an addendum in December and a status report in February 2010. Weir, P. (2009). *Addendum to November report from the Commission on Criminal and Juvenile Justice*. Denver, CO: Colorado Division of Criminal Justice, Office of Research and Statistics. Weir, P. (2010). *February 1 status report per SB 09-286*. Denver, CO: Colorado Division of Criminal Justice, Office of Research and Statistics. Available at [http://dcj.state.co.us/ors/research\\_documents.html](http://dcj.state.co.us/ors/research_documents.html).

Following a discussion by Commission members and local experts regarding the perceived problems with sentencing in Colorado and Commission members' perceptions of the meaning of "sentencing reform," an ad hoc committee was assigned to identify the scope of issues related to sentencing. A second ad hoc committee was charged with identifying the scope of issues related to the juvenile justice system. Each of these groups met one time in the spring of 2009 and summaries of these meetings were presented at the May Commission meeting.

Simultaneous to these efforts, the Governor and Attorney General submitted a letter to the Commission suggesting that they prioritize sentencing reform. Additionally, in June 2009, SB 09-286 was passed mandating the Commission focus on sentencing (see sidebar). Thus, the Commission shifted its attention to sentencing reform and created two new task forces: the Sentencing Policy Task Force and the Drug Policy Task Force to carry out its work. The focus on juvenile justice was then delayed until the summer of 2010.

The **Sentencing Policy Task Force**, consisting of 22 appointed members including 10 Commission members, formed three working groups to study and provide recommendations in the following statutory areas: escape, probation eligibility, and sentence enhancements (aggravated ranges, extraordinary risk, and mandatory minimums). The working groups included task force members and constituents of the community. The **Drug Policy Task Force**, consisting of 23 appointed members including 6 CCJJ members, formed working groups to study and provide recommendations in the following areas: statutes and structure, drug policy/evidence-based practices, and DUI laws. The working groups included task force members and members of the community with expertise in the areas of behavioral health treatment, drug courts, DUI case processing, and the impact of structural changes to sentencing statutes. These two task forces began their work in August 2009. To assist the task forces with information about evidence-based sentencing, staff prepared and distributed a document entitled *Brief research summary for CCJJ sentencing discussion: Evidence-based practices to reduce crime by known offenders*. This document is included as Appendix B. The Commission's November 2009 report, along with the December 2009 Addendum and February 2010 Status Report encapsulate the work accomplished on sentencing reform and are summarized in Section 4.

During this same time period, the **Behavioral Health Work Group** continued the work that it started in April 2009. This work involved defining and prioritizing issues that create significant barriers to effectively integrating behavioral health services and the justice system. On behalf of the Commission, this group promoted the development of three grant applications to address issues prioritized by the committee (discussed below). The Commission also established the **Treatment Funding Working Group** that convened to study the availability of behavioral health treatment funding and resources in Colorado. This group drafted a white paper to discuss issues raised by the Commission, serve as an educational document, and provide a context for its recommendations. The Working Group is completing its tasks as this report goes to press.

## **Behavioral health initiatives**

The American Recovery and Reinvestment Act of 2009 provided over \$4.2M in Justice Assistance Grant (JAG) funding for three large initiatives that were based in part on Commission recommendations and were consistent with the priorities identified by the Behavioral Health Work Group. The grant applications were submitted for consideration in a package on behalf of the Commission, and each were approved for funding. The three projects are described below.

***Metro Crisis Services and the Metro Crisis Line.*** This \$745,000 grant to the City of Golden is supporting Metro Crisis Services, Inc.<sup>2</sup> in operating the Metro Crisis Line, a 24-hour crisis hotline, staffed with mental health and substance abuse treatment professionals which began providing services in May 2010. The Metro Crisis Line is designed to provide suicide prevention and mental health and substance abuse consultation to everyone living in the seven-county Denver Metro area (the seven counties are Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson).

The goal of the project is to divert individuals who are likely to otherwise enter the justice system by directing them to services. The Metro Crisis Line will be the first point of triage in a new crisis system, allowing for the immediate assessment of the level of need and most appropriate point of service for each person who calls. Each caller will receive the same level of professional clinical services around the clock regardless of their insurance coverage, referral source, or call locale. The system is designed to provide a nexus for emergent calls and service referral options in the area of behavioral health for the public, police, 911 systems, hospitals, and criminal justice professionals.

***Criminal Justice Clinical Specialists.*** A \$1,496,570 grant to the Division of Behavioral Health provides funding for 10 specialists placed in behavioral health agencies across the state. These positions are designed to provide a bridge between the criminal justice system and the behavioral health system by providing case management that addresses the needs of the individual and the requirements of both systems. The Criminal Justice (CJ) clinical specialist receives referrals from probation, police, public defenders, pretrial services, and jail diversion. Upon accepting a referral, the CJ clinical specialist conducts an initial assessment of the client's immediate mental health needs. The professional serves as a liaison between the agency and law enforcement, jails, probation, parole, other case managers, and re-entry and transition specialists, coordinating or providing referrals or services. CJ clinical specialists have been placed in the following agencies:

- Arapahoe Douglas Mental Health Center
- Centennial Mental Health Center
- Colorado Coalition for the Homeless
- Colorado West Regional Mental Health Centers
- Community Reach Center
- Jefferson Center for Mental Health
- Larimer Center for Mental Health
- North Range Behavioral Health Center
- San Luis Valley Mental Health Center
- West Central Mental Health Center

The purpose of this project is to provide an agency point-of-contact for criminal justice agency referrals, coordinate with those agencies, and provide direct case management to those referred. The CJ case manager position will align supervision requirements with community treatment agency services. These efforts are intended to increase access to appropriate mental health services and reduce criminal recidivism among people with serious mental illness that are involved with the justice system, a recommendation made by the Commission in 2008.

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<sup>2</sup> MCS is an independent Colorado non-profit corporation, designated as tax-exempt by the IRS.

**CCJJ Evidence-Based Practices Implementation for Capacity (EPIC).** A \$2,104,497 grant was provided to the Colorado Department of Public Safety, Executive Director's Office because, at the time of the grant award, the Commission's chair was the executive director of the Department of Public Safety. The project, which builds on a concept promoted by the Division of Probation Services, is a multiagency training initiative that includes the Department of Corrections, the Division of Behavioral Health, the Division of Probation Services, and the Division of Criminal Justice (Office of Community Corrections). The project involves an unprecedented level of coordination and collaboration to ensure that the effort will enhance the understanding of professional communities and the public, bring a new level of skill and direction to criminal justice practitioners, and will produce immediate and long-term benefits for the criminal justice system by implementing evidence-based practices known to reduce recidivism.

The project includes a training coordinator delegated to each partnering agency, including two for the Department of Corrections, who are responsible for spearheading the work of the project on behalf of the respective agency assignments. Project goals include training over 1,000 professionals in a variety of promising and evidence-based correctional practices including Mental Health First Aid® and Motivational Interviewing® (MI). At the time of this writing, 270 criminal justice and behavioral health professionals working with those involved in the criminal justice system have been trained in Mental Health First Aid. Approximately 90 state criminal justice and private behavioral health professionals have received intensive MI trainings, tape critiques and coaching, following the literature on implementation science. Once fully competent in MI, these 90 champions will in turn coach their peers to proficiency, ultimately bringing the skill set to scale in the selected demonstration sites (Larimer, El Paso, Adams Counties, and Buena and La Vista Correctional facilities) as an integral component of the long term sustainability plan.

The Colorado Defense Bar, the Colorado District Attorneys Association, members of the behavioral health community (public and private service delivery), victim advocates, and judges are or will also be receiving training through the EPIC project.

## **Survey of judges regarding sentencing reform**

As part of the study of sentencing reform, Commission members agreed on the importance of a survey of district and county court judges regarding their viewpoints on a variety of sentencing related topics. In July 2009, in collaboration with the Colorado Judicial Branch, Commission staff created a survey that was sent to 98 district and county court judges. The survey included 25 questions with themes ranging from sentencing discretion and mandatory sentencing to sentencing priorities and availability of resources. The findings from the survey were presented to Commission members during the August 2009 CCJJ meeting (for complete survey results please see Appendix C). A summary of the survey findings regarding Colorado's sentencing structure includes:

- The current sentencing structure is too complex and confusing,
- The structure lacks discretion and flexibility,
- Consider limiting the use of mandatory minimums,
- Problems exist with sex offender and HTO (habitual traffic offender) statutes,
- Differentiate among escape/abscond offenses in statute,
- Increase sentencing alternatives and resources for treatment and other services.

## Expert panels

In addition to the judges' survey, the Commission assembled a stakeholder discussion of the sentencing process. The August 2009 Commission meeting featured five panels representing the perspectives of victims, offenders, the community, prosecutors, and the defense bar. Panel members described their involvement with the criminal justice system and voiced their opinions in response to a variety of questions including what the system did 'right,' what the system could do better, and what would improve the current sentencing system.

## Treatment funding allocation

Modifications to statutes and budgets that reduced incarceration and redirected funding to an expansion of community-based behavioral health treatment were hallmarks of the Commission's accomplishments in FY 2010, including:

- An increase in the minimum persistent drunk driving surcharge from \$50 to \$100 is expected to generate over \$500,000 in future years,
- The bill reducing penalties for use/possession of controlled substances directed \$1.5M to community-based treatment,
- Reducing the penalties for parole technical violations redirected over \$3.5M to community corrections treatment beds and parole wraparound services, and
- The imposition of a sales and use tax on medical marijuana directed \$2M to substance abuse treatment.

State funding for behavioral health treatment (generated in large part from offender fees and surcharges) was approximately \$24M. The increases passed by the 2010 General Assembly represents a nearly 40% increase over existing state behavioral health resources.

## Minority overrepresentation in the justice system

Colorado House Bill 08-1119 directed the Commission to address the issue of racial and ethnic disparities in the justice systems by conducting studies of the policies and practices in Colorado. The statute mandates the Commission to have the goal of reducing disparity and reviewing work and resources compiled by states in the area of disparity reduction. The Division of Probation Services and the Department of Corrections collaborated in the publication of a research report that included a literature review and provided information on the race and ethnicity of offender populations, probation and DOC staff.<sup>3</sup> Further, in each annual report, the Commission includes an appendix that presents information on racial disparity. In this report, Appendix D provides data relevant to racial disparity for both adults and juveniles. It also includes information about other states' initiatives and recommendations from the Sentencing Project and other entities for addressing disparities in the justice system.

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<sup>3</sup> This report is available at [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf).

## Summary

This section reviewed the work of the Commission and its task forces, subcommittees and working groups. The Commission also conducted a survey of judges and gathered input from a variety of stakeholders involved in the sentencing process. Among the Commission's accomplishments was the study and development of 61 recommendations for sentencing reform, many of which were translated into sentencing legislation and passed by the 2010 General Assembly. In addition, over \$4M in grant funding was dedicated to Commission initiatives in the area of behavioral health, along with an increase of millions of dollars in behavioral health resources due to the redirection of funding dollars by the 2010 General Assembly. The Commission also continued its study of racial and ethnic disparities in the justice system. Additional detailed information regarding the 2010 recommendations and 2010 legislation are reported in Section 4.



## SECTION 4: 2010 RECOMMENDATIONS AND OUTCOMES

As mentioned above, in May 2009, the Commission received two directives, one executive (Governor Ritter's 2009 Letter, see Appendix E) and one legislative (SB09-286, see page 5), to begin to review sentencing in Colorado. A letter dated May 12, 2009 sent to the Commission from Governor Ritter and Attorney General John Suthers outlined potential areas of study in sentencing which included, among other things, drug offenses, the felony offense structure, probation eligibility, escape, and parole supervision and violations. The General Assembly passed SB 09-286 which directed the Commission to use evidence-based data to study sentences in Colorado with a suggestion that the Commission address such areas as driving under restraint, drug crimes, and alternatives to incarceration for non-violent offenders. The bill required the Commission to report progress on sentencing efforts by November 2009 and to submit recommendations for statutory changes by February 2010. The November 2009 Report, the December 2009 Addendum, and the February 2010 Status Report are available online at [http://cdpsweb.state.co.us/cccj/Commission\\_Reports.html](http://cdpsweb.state.co.us/cccj/Commission_Reports.html).

The recommendations in the above mentioned reports were the source of the following bills passed during the 2010 Legislative session. The text of these bills may be found on the Commission website at <http://cdpsweb.state.co.us/cccj/legislation.html>:

- HB 10-1081: Concerning money laundering
- HB 10-1338: Concerning the eligibility for probation of a person who has two or more felony convictions
- HB 10-1347: Concerning misdemeanor penalties for persons who are convicted of multiple traffic offenses involving alcohol or drugs
- HB 10-1352: Concerning changes to crimes involving controlled substances
- HB 10-1373: Concerning changes to sentencing provisions for escape crimes
- HB 10-1374: Concerning parole

This section presents the recommendations approved by the Commission that were included in the above mentioned reports. Some recommendations proceeded to the legislation above during the 2010 legislative session while others were policy recommendations that set the stage for future efforts by the Commission. Some of the recommendations in the three sentencing reports underwent revision and refinement. The recommendations provided here comprise the final list of recommendations revised and approved by the Commission.

The numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, "FY10"), a letter indicating the task force from which the recommendation originated (for example, Sentencing Task Force by an "S," Drug Policy Task Force by a "D," and Post-Incarceration Supervision Task Force by a "PIS"), and an ordinal sequence number. For cross-reference purposes, a footnote will indicate if the recommendation appeared in any other report under a different notation scheme.

Five sets of recommendations regarding specific categories of crimes or of policy are presented below in the following order:

- Driving Under the Influence (of drugs or alcohol)
- Non-Alcohol Related Traffic Offenses
- Controlled Substances
- Drug Policy Statement and Drug Law Philosophy
- Escape
- Probation Eligibility
- Aggravated sentencing ranges, extraordinary risk crimes, and mandatory minimum sentences to prison
- Parole and Parole Release Decision-Making

## **DUI recommendations**

The following recommendations on Driving Under the Influence (DUI) and Driving While Ability Impaired (DWAI) <sup>4</sup> were originally prepared by the Drug Policy Task Force's DUI Working Group. This work was undertaken in collaboration with the state Interagency Task Force on Drunk Driving at the Colorado Department of Transportation.

At the Commission's January 8, 2010 meeting, the Commission unanimously voted to send to the Drug Policy Task Force for review, state representative Claire Levy's legislative proposal to modify statutes pertaining to DUI. The Task Force met with Rep. Levy on January 20, 2010 and discussed each item in her DUI proposal. Task force members acknowledged that many of the items in Rep. Levy's proposal were previously approved and recommended for implementation, and documented in the Commission's November 2009 Report and its December 2009 Addendum. After discussion of each aspect of the DUI proposal presented by Rep. Levy, the Task Force voted to approve the entire DUI proposal and this proposal was subsequently approved by the Commission at its February 5, 2010 meeting. The following presentation of DUI recommendations reflects any revisions introduced by Rep. Levy's proposal that were approved by the Task Force and the Commission.

### **FY10-D1 NO NEW FELONY DUI STATUTE**

**The Commission does not support a statute that creates a new felony for driving under the influence of alcohol and drugs.**<sup>5</sup>

#### *DISCUSSION*

*The Commission finds that existing statutes provide a mechanism to invoke felony charges against offenders who have committed multiple dangerous driving crimes. C.R.S. 42-2-202 details the requirements to be declared a habitual traffic offender. These include three or more separate convictions within seven years for driving under the influence (DUI) and driving while ability impaired (DWAI), among other offenses. The following offenses are included as major offenses for the purpose of defining a habitual offender: reckless driving, false swearing on a Department of Motor Vehicle form, vehicular assault, vehicular homicide or manslaughter or criminally negligent homicide which results from the operation of a motor vehicle, and failure to remain at the scene of an accident resulting in death or*

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<sup>4</sup> For the purposes of this report all alcohol- and drug-related driving offenses are subsequently referenced as "DUI."

<sup>5</sup> Previously appeared as DUI-1 in the *November 2009 Report*.

*serious bodily injury. In addition, the accumulation of points for 10 or more convictions within a 5 year period (4 or more points each) or 18 or more convictions within 5 years (3 or less points each) can result in a charge of habitual traffic offender(see 42-2-202(3)).*

*Any person who drives a motor vehicle after being classified as a habitual traffic offender commits a class 1 misdemeanor and is subject to a mandatory minimum of 30 days in county jail, or a mandatory minimum fine of \$3,000, or both per C.R.S. 42-2-206 (1)(a)(II).*

*The crime of aggravated driving with a revoked license (C.R.S. 42-2-206(1)(b)(I)) is a class 6 felony. A person commits aggravated driving with a revoked license if the person is classified a habitual traffic offender, then operates a motor vehicle in Colorado, and while operating the motor vehicle commits any of the following offenses:*

- a) DUI or DUI per se,<sup>6</sup>*
- b) DWAI,*
- c) Reckless driving,*
- d) Eluding or attempting to elude a police officer,*
- e) Any violation of a reporting requirement concerning vehicle accidents, and/or*
- f) Vehicular eluding.*

*Therefore, someone who has been classified as a habitual traffic offender, either with or without an alcohol offense as the major offense(s), who then drives and commits DUI, DUI per se, or DWAI, would be guilty of aggravated driving with a revoked license, and subject to a prison sentence for a class 6 felony.*

#### **FY10-D2 INCREASE THE MINIMUM ALCOHOL SURCHARGE**

**Increase the minimum alcohol surcharge provided in C.R.S. 42-4-1301(7)(d) from \$50 to \$100. The additional funding shall be directed to a persistent impaired driving fund to be used for community and jail-based treatment as provided in C.R.S. 43-3.303, for reimbursement to county jails, evaluation of substance abuse treatment programs and, if warranted (see Recommendations DUI-11 and DUI-12), DUI Court expansion.<sup>7</sup>**

#### **DISCUSSION**

*The Commission agrees that recidivism reduction efforts must include making substance abuse treatment available in county jails. While serving time in jail, offenders may begin to learn how to manage their addiction when substances are unavailable. Many jail administrators are willing to provide space for treatment providers but the costs remain prohibitive. This recommendation for an increase in the surcharge is intended to immediately assist in both providing bed space and substance abuse treatment services for offenders serving a jail sentence. In addition, some money will be available to evaluate these programs.*

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<sup>6</sup> "Per se" laws make it illegal to operate a motor vehicle if there is any detectable level of a prohibited drug, or its metabolites, in the driver's blood.

<sup>7</sup> Previously appeared as "DUI-3" in the *November 2009 Report* and "Section 1a" in the *February 2010 Status Report*.

#### **FY10-D3 SAVINGS REALLOCATED TO EVIDENCE-BASED TREATMENT PROGRAMS**

**Any fiscal savings realized through the implementation of effective reforms shall be reallocated for the purpose of developing and sustaining viable, evidence-based substance abuse treatment programs related to DUI and associated behavioral health problems.<sup>8</sup>**

#### *DISCUSSION*

*The need for substance abuse treatment services for drug- and alcohol-related driving crimes requires dedicated funding for local criminal justice and behavioral health agencies. The National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism have prepared A Guide to Sentencing DWI Offenders<sup>9</sup> that discusses the value of assessment and treatment in the response to driving while intoxicated.*

#### **FY10-D4 TREATMENT CONDITIONS**

**The court shall order treatment from a Department of Human Services approved provider pursuant to an alcohol/drug evaluation. If treatment is commenced during a period of incarceration such treatment shall be credited toward the treatment required as a condition of probation.<sup>10</sup>**

#### **FY10-D5 TREATMENT RECEIVED WHILE INCARCERATED TO BE TRANSFERABLE**

**Substance abuse treatment provided while incarcerated must be accepted by private sector providers during post-release treatment. This means that any treatment module completed or treatment level attained by the offender while incarcerated shall not be required to be repeated once released.<sup>11</sup>**

#### *DISCUSSION*

*This recommendation is intended to maximize the efficient use of substance abuse resources and encourage the offender to progress through meaningful treatment goals. When an offender's performance indicates the need for additional or further treatment, it is sensible to continue or require additional treatment.*

#### **FY10-D6 INFORMATION AVAILABLE TO PEACE OFFICERS**

**The Colorado Bureau of Investigation (CBI), in cooperation with the Division of Motor Vehicle (DMV), should work toward sharing all alcohol- and drug- related driving convictions that are documented in each agency's data bases, and ensure that information on drivers with multiple DUI convictions is available to peace officers via the Colorado Crime Information Center (CCIC).<sup>12</sup>**

#### *DISCUSSION*

*The National Highway Traffic Safety Board and the National Institute on Alcohol Abuse and Addiction emphasize the importance of quickly identifying and intervening with those drivers who have the highest*

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<sup>8</sup> Previously appeared as "DUI-4" in the *November 2009 Report* and "Section 1b" in the *February 2010 Status Report*.

<sup>9</sup> National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism. (2005). *A Guide to Sentencing DWI Offender. (2<sup>nd</sup> edition)*. Available at <http://www.nhtsa.dot.gov/people/injury/alcohol/dwioffenders/index.htm>. See also Quinlan, K.P., Brewer, R.D., Siegel, P., Sleet, D.A., Mokdad, A.H., Shults, R.A., & Flowers, N. (2005). Alcohol-impaired driving among U.S. adults, 1993-2002. *American Journal of Preventative Medicine*, 28, 346-350.

<sup>10</sup> Previously appeared as "Section 2a" in the *February 2010 Status Report*.

<sup>11</sup> Previously appeared as "DUI-5" in the *November 2009 Report* and "Section 2b" in the *February 2010 Status Report* and reiterates recommendation "GP-17" in the *December 2008 Annual Report*.

<sup>12</sup> Previously appeared as "DUI-8" in the *November 2009 Report* and "Section 3a" in the *February 2010 Status Report*.

rates of alcohol-impaired driving.<sup>13</sup> The intent of this recommendation is to flag individuals with two prior DUI/DWAI felony convictions for immediate intervention. The information is available in CCIC, and must be made available to officers with computers in their police vehicles. This recommendation may require programming resources for CBI.

#### **FY10-D7 MODIFY BOND STATUTES FOR DEFENDANTS ACCUSED OF 3<sup>RD</sup> AND SUBSEQUENT ALCOHOL AND DRUG RELATED DRIVING OFFENSES**

On a 3rd and subsequent alcohol-related driving arrest, if the defendant is granted bond, the conditions of the bond must include participation in a treatment program and regular monitoring such as electronic monitoring, alcohol testing and/or vehicle disabling devices. Relief from these conditions can only occur upon motion of the defendant, a hearing, and a written finding by the court that the these conditions are not in the interests of justice and that public safety is not endangered by the removal of the conditions.<sup>14</sup>

#### **FY10-D8 TRAINING ON EVIDENCE-BASED DUI SENTENCING PRACTICES**

Training for court professionals on best practices for DUI cases should be expanded. To this end, the Commission will identify a working group to develop a short training curriculum for professionals in the criminal justice system on the subject of evidence-based sentencing practices for multiple DUI offenders. This information should be presented at the annual conferences for judges, the Colorado District Attorneys Association, and the Colorado Defense Bar.<sup>15</sup>

#### **FY10-D9 STUDY COLORADO'S DUI COURTS**

Examine DUI evaluation studies from other jurisdictions and evaluate Colorado DUI courts.<sup>16</sup>

#### *DISCUSSION*

*Examine DUI evaluation studies from other jurisdictions and evaluate Colorado DUI courts.*

*Studies of the efficacy of DUI Courts<sup>17</sup> have found the following:*

- *Participants were re-arrested significantly less often than comparison group offenders who were sentenced in a traditional court. In an example from one DUI Court site, the comparison offenders from a traditional court were re-arrested nearly six times more often in the first year after starting probation for a DUI charge than the DUI Court participants.<sup>18</sup>*
- *In another example, within a 2-year period, traditionally sentenced offenders in the comparison group were more than 3 times as likely to be re-arrested for any charge and were 19 times more likely to be re-arrested for a DUI charge than the DUI Court participants.*

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<sup>13</sup>National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism. (2005). *A Guide to Sentencing DWI Offender*. (2<sup>nd</sup> edition). Available at <http://www.nhtsa.dot.gov/people/injury/alcohol/dwioffenders/index.htm>. See also Quinlan, K.P., Brewer, R.D., Siegel, P., Sleet, D.A., Mokdad, A.H., Shults, R.A., & Flowers, N. (2005). Alcohol-impaired driving among U.S. adults, 1993-2002. *American Journal of Preventative Medicine*, 28, 346-350.

<sup>14</sup> Previously appeared as "DUI-9" in the *December 2009 Addendum* and "Section 5a" in the *February 2010 Status Report*.

<sup>15</sup> Previously appeared as "DUI-10" in the *November 2009 Report* and "Section 4a" in the *February 2010 Status Report*.

<sup>16</sup> Previously appeared as "DUI-11" in the *November 2009 Report* and "Section 4b" in the *February 2010 Status Report*.

<sup>17</sup> See <http://www.dwicourts.org/learn/about-dwi-courts/research>

<sup>18</sup> Note that the National Center for DWI Courts refers to DUIs and DWIs as DWIs, driving while impaired.

- *Participants in the DUI Court significantly decreased their percent of positive drug tests over time. This provides support that the DUI Court was instrumental in reducing the amount of illegal drug use during the first year participants spent in the program.*
- *Results show that DUI Court participants spent considerably more time in treatment than those sentenced in a traditional court.*
- *The average waiting period between arrest and sentencing was significantly reduced in the DUI Court.*
- *The number of days spent in jail prior to starting a program or probation and the total time in jail for that DUI was also significantly reduced, saving the criminal justice system time and money.*
- *Time enrolled in the program was higher for DUI Court participants. Longer time spent in the program predicted success as measured by both program completion and recidivism reduction.*

*Four DUI courts currently exist in Archuleta, Montezuma, El Paso, and Boulder counties, and four more counties are considering DUI courts should funding become available.<sup>19</sup> The Commission maintains that evaluation studies are needed to examine whether Colorado DUI courts are promoting similar offender outcomes. Appendix F shows the guiding principles for DUI courts as stated by the National Center for DWI Courts.<sup>20</sup>*

#### **FY10-D10 IF JUSTIFIED, EXPAND DUI COURTS STATEWIDE**

**If Colorado DUI court evaluation findings show positive outcomes, DUI courts should be expanded by developing demonstration projects that have local stakeholder commitment and adequate funding. When appropriate, funding sources for DUI courts should be actively explored by local officials.<sup>21</sup>**

#### *DISCUSSION*

*According to experts, the purpose of DUI courts is to make offenders accountable for their actions, bring about a behavioral change that ends recidivism, stop the abuse of alcohol and drugs, protect the public, provide fair and just treatment for the victims of DUI offenders, and educate the public about the community benefits of these courts.<sup>22</sup> If effective, expansion of these courts in Colorado will increase public safety by reducing recidivism. Expansion would also benefit those in need of supervision and substance abuse treatment.*

#### **FY10-D11 PROPOSED DUI SENTENCING REVISIONS<sup>23</sup>**

##### **First DUI Offense**

**D11A.** No changes to penalties for the 1<sup>st</sup> DUI offense.

##### **Second DUI Offense**

**D11B.** For all 2<sup>nd</sup> DUI offenses, the court must impose an initial minimum jail sentence of 10 consecutive days, up to one year.

**D11C.** At least 10 consecutive days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, or trustee status. If work release is granted

<sup>19</sup> Colorado Judicial Department, Division of Planning and Analysis (September 24, 2009).

<sup>20</sup> <http://www.dwicourts.org/learn/about-dwi-courts/-guiding-principles>

<sup>21</sup> Previously appeared as "DUI-12" in the *November 2009 Report* and "Section 4c" in the *February 2010 Status Report*.

<sup>22</sup> Tauber, J. & Huddleston, C.W. (1999) as quoted by Keith, A.L. (2002). *Specialized and problem-solving courts: Trends in 2002: DUI courts. Reports on Trends in State Courts*, Washington, D.C.: National Center for State Courts.

<sup>23</sup> Previously appeared as "Section 7" and items were 7a to 7ff in the *February 2010 Status Report*.

pursuant to this provision then the offender is not eligible for day-for-day credit on work release (C.R.S. 18-1.3-106)

**D11D.** Credit for time served while in custody for the offense prior to conviction is mandatory. If the offender only receives the minimum 10 consecutive days in jail then pretrial confinement will be credited against that period.

**D11E.** A mandatory probation period of 2 years and 1 year of jail suspended must be imposed in addition to the initial jail sentence.

**D11F.** Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.

**D11G.** Imposition of jail sentences or other sanctions for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. The court shall consider the level of severity of any violation when imposing any sanction.

**D11H.** Work release is allowed for existing job, education and court ordered treatment for the first 10 days on a 2<sup>nd</sup> offense.

**D11I.** Between 48 and 120 hours of public service is required.

**D11J.** A fine of \$600-\$1500 is required. However, this can be waived or suspended at judicial discretion.

**D11K.** If a 2<sup>nd</sup> DUI offense is committed on or before 5 years of the date of offense for a prior DUI offense, then no alternative sentence shall be imposed (e.g., in-home detention).

**D11L.** However, once the minimum of 10 consecutive days is served the court may impose an alternative sentence.

**D11M.** If a 2<sup>nd</sup> DUI offense is committed beyond 5 years of the date of offense for a prior DUI offense, then the offender shall be sentenced to jail for 10 days, up to one year, or an alternative sentence may be imposed (e.g., in-home detention). The consecutive requirement does not apply to this section.

### **Third and Subsequent DUI Offenses**

**D11N.** For all 3<sup>rd</sup> and subsequent DUI offenses the court must impose an initial minimum jail sentence of 60 consecutive days, up to one year.

**D11O.** At least 60 consecutive days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, or trustee status. If work release is granted pursuant to this provision then the offender is not eligible for day for day credit on work release (C.R.S. 18-1.3-106)

**D11P.** Credit for time served while in custody for the offense prior to conviction is mandatory.

**D11Q.** A mandatory probation period of 2 years and 1 year of jail suspended must be imposed in addition to the initial jail sentence.

**D11R.** Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.

**D11S.** Imposition of jail sentences or other sanctions for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. The court shall consider the level of severity of any violation when imposing any sanction.

**D11T.** Work release is allowed for existing job, education and court ordered treatment for the first 60 consecutive days on a 3<sup>rd</sup> offense.

**D11U.** No alternative sentence shall be imposed (e.g., in-home detention).

**D11V.** However, once the minimum of 60 consecutive days is served the court may impose an alternative sentence.

**D11W.** Between 48 and 120 hours of public service is required.

**D11X.** A fine of \$600-\$1500 is required. However, this can be waived or suspended at judicial discretion.

**D11Y.** If a 3<sup>rd</sup> DUI offense is committed on or before 7 years of the date of offense for a prior DUI offense, then 60 consecutive days in jail must be served, work release is not allowed and no alternative sentence shall be imposed (e.g., in-home detention).

**D11Z.** To be written as a preamble.<sup>24</sup> The legislature recognizes that the court has the authority and encourages the use of sanctions in addition to a jail sentence as conditions of probation for any DUI offense. This includes, but is not limited to, wearing a continuous alcohol monitoring device, in-home detention during probation, and/or mandatory ignition interlock device even while license is under suspension.

### **Probation**

**D11AA.** A mandatory minimum of two years probation for second and subsequent offenses must be imposed as a separate component of the sentence. This probationary period will commence immediately upon sentencing. The judge may impose up to an additional two years of probation, if necessary, for further monitoring and treatment.

**D11BB.** In addition to the initial jail sentence the court shall impose and suspend 1 year of jail as a condition of probation.

**D11CC.** The initial sentence to jail is not credited against probationary jail time.

**D11DD.** Any alcohol and/or drug education or treatment ordered must be done by an approved provider.

**D11EE.** Court ordered treatment must be completed before the offender may be released from probation. The court may mandate that this treatment begin during any sentence to incarceration.

**D11FF.** The prosecution, defendant, defendant's counsel, or probation officer may petition the court for early termination of probation by demonstrating substantial compliance with all terms and conditions of probation, successful completion of approved alcohol and/or drug treatment, and that the termination of probation will not endanger public safety.

### **POINTS OF CLARIFICATION**

- *The provisions of C.R.S. § 42-4-1301 (7)(c)(II) still apply. This means that repeat offenses do not have to be pled (i.e., repeat DUI offenders, 2<sup>nd</sup> and subsequent, do not have to be pled).*
- *The provisions of C.R.S. § 16-5-402, which provide for limitations of collateral attacks, still apply (i.e., 18 month limit for misdemeanors).*

### **FY10-D12 PUBLIC EDUCATION FUNDING.**

**Funding should be set aside for public education regarding changes to DUI law as proposed by the previous recommendations.**

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<sup>24</sup>The Drug Policy Task Force approved 11Z as a potential preamble to the statute. However, the bill was drafted with specific language in the legislative declarations and in the body of the bill that encourages the use of an approved ignition interlock device as defined in C.R.S. 42-2-132.5(7)(a).

## Non-alcohol related traffic offense recommendations

### FY10-D13 NON-ALCOHOL RELATED TRAFFIC OFFENSES AND LICENSE REVOCATION

Eliminate non-alcohol related Driving Under Revocation (DUR), Driving Under Suspension (DUS) and Driving Under Denial (DUD) as a major offense for consideration by the Division of Motor Vehicle (DMV) for a habitual traffic offense (see C.R.S. 42-2-203).<sup>25</sup>

### FY10-D14 NON-ALCOHOL RELATED TRAFFIC OFFENSES AND HTO

Eliminate non-alcohol related Driving Under Revocation (DUR), Driving Under Suspension (DUS) and Driving Under Denial (DUD) as a major offense for consideration by the DMV as a predicate offense to classification as a Habitual Traffic Offender (HTO). Eliminate mandatory jail sentences for non-alcohol related DUR, DUS and DUD while still retaining them as discretionary (see C.R.S. 42-2-202).<sup>26</sup>

## Controlled substances recommendations

### Introduction

The Commission's Drug Policy Task Force examined both the law and policy of the current drug statutes. This group, comprised of law enforcement representatives, behavioral health experts, treatment providers and other interested and knowledgeable parties, almost unanimously agreed that the current structure and approach to prosecuting drug crimes is frequently ineffective in reducing recidivism and curbing addiction. High rates of recidivism, high rates of drug abuse and addiction in the offender population, and new research on the effect of addiction on the brain and behavior<sup>27</sup> were important considerations. The National Institute on Drug Abuse provides the following information on the intersection between drug addiction and criminal behavior:

The most effective models integrate criminal justice and drug treatment systems and services. Treatment and criminal justice personnel work together on treatment planning including implementation of screening, placement, testing, monitoring, and supervision, as well as on the systematic use of sanctions and rewards.<sup>28</sup>

The effectiveness of substance abuse treatment in the reduction of recidivism and victimization - and the associated cost benefit - has been confirmed by research,<sup>29</sup> and the Drug Policy Task Force determined that a primary omission from current law is a means of assuring prompt and effective treatment of drug offenders. Providing community-based treatment for offenders who suffer from

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<sup>25</sup> Previously appeared as "HTO-1" in the *December 2009 Addendum* and "Section 6a" in the *February 2010 Status Report*.

<sup>26</sup> Previously appeared as "HTO-2" in the *December 2009 Addendum* and "Section 6a" in the *February 2010 Status Report*.

<sup>27</sup> National Institute on Drug Abuse. (2009). *Drugs, the brain, and behavior: The science of addiction*. Washington, D.C.: National Institutes of Health, U.S. Department of Health and Human Services. Available at <http://www.drugabuse.gov/scienceofaddiction>.

<sup>28</sup> National Institute on Drug Abuse. (2009). *Principles of drug addiction treatment: A research-based guide*. Washington, D.C.: National Institutes of Health, U.S. Department of Health and Human Services. Page. 19. Available at <http://www.drugabuse.gov/PODAT/PODATIndex.html>. See also National Institute on Drug Abuse. (2007). *Principles of drug addiction treatment for criminal justice populations: A research-based guide*. Washington, D.C.: National Institutes of Health, U.S. Department of Health and Human Services. Available at [http://www.drugabuse.gov/PODAT\\_CJ/principles](http://www.drugabuse.gov/PODAT_CJ/principles).

<sup>29</sup> The research is conclusive that substance abuse treatment reduces recidivism and is therefore cost beneficial. Funding spent on substance abuse treatment provides up to \$7 in taxpayer benefits for every \$1 in cost. This compares to less than \$.40 in return for every dollar spent incarcerating drug offenders. See Przybylski, R. (2009). *Correctional and sentencing reform for drug offenders: Research findings on selected key issues*. Available at [http://www.ccjrc.org/pdf/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.ccjrc.org/pdf/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)

alcoholism and drug abuse -and mental health problems associated with these addictions<sup>30</sup> - will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. Members of the Task Force and the Commission support a complete modification of the drug laws that would result in a new sentencing grid. This approach reduces current penalties for those individuals whose only crime is possession of drugs for personal use while maintaining prison sentencing options for the most serious offenders. The members agreed that for many offenders intervention and treatment in the community is a far more effective use of resources than the current escalating system of punishment that often results in a prison sentence.<sup>31</sup> **However, the Task Force and Commission members generally agreed that any significant departure from current law requires that resources for the treatment model be in place before changing to the new approach.**

Evidence-based practices require that drug offenders be assessed with scientifically validated assessment instruments that reveal, for each offender, addiction levels, service needs, and risk to the public.<sup>32</sup> This assessment would serve as the foundation of the criminal justice response, so it must be systematically undertaken by trained professionals and the findings must be made available to members of the court. Additionally, focusing on substance abuse treatment requires the availability and accessibility of excellent treatment programs for offenders.<sup>33</sup> It also requires a new level of collaboration among prosecutors, defense attorneys, service providers, supervising officers and family members akin to the cooperative relationships achieved by drug court teams and the development of policies and procedures that account for specific issues related to alcohol and drug addiction.

The Commission's consideration of statutory reform in this area, then, is inherently linked to widespread modification of current practices. The significant expansion of drug treatment resources, along with the development of a method to provide program effectiveness information to local decision makers, must coincide with the careful development of a drug crime sentencing grid. In addition, an analysis must be undertaken to obtain an understanding of current treatment resources, allocations and service gaps. The Commission generally agreed that the study of evidence-based sentencing practices and its application to a new drug sentencing grid and treatment model requires further study and adequate funding for behavioral health treatment.

The recommendations presented below maintain the Commission's public safety priorities, are consistent with the new treatment-oriented sanctioning philosophy promoted by the Commission and provide cost savings to the state. The recommendations were developed using empirical and anecdotal information and included consideration of how drug offenses are committed and how drug laws are

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<sup>30</sup> Nora Volkow, M.D., the Director of the National Institute on Drug Abuse, states the following in the agency's introduction to its publication, *Comorbidity: We need to first recognize that drug addiction is a mental illness. It is a complex brain disease characterized by compulsive, at times uncontrollable drug craving, seeking, and use despite devastating consequences— behaviors that stem from drug-induced changes in brain structure and function. These changes occur in some of the same brain areas that are disrupted in various other mental disorders, such as depression, anxiety, or schizophrenia. It is therefore not surprising that population surveys show a high rate of co-occurrence, or co-morbidity, between drug addiction and other mental illnesses. Even though we cannot always prove a connection or causality, we do know that certain mental disorders are established risk factors for subsequent drug abuse— and vice versa.* For more information on this topic, see <http://www.nida.nih.gov/researchreports/comorbidity/index.html>

<sup>31</sup> Research shows that addiction is a chronic disease, so drug relapse and return to treatment are common features in the path to recovery. See National Institute on Drug Abuse. (2009). *Drugs, the brain, and behavior: The science of addiction*. Washington, D.C.: National Institutes of Health, U.S. Department of Health and Human Services. Available at <http://www.drugabuse.gov/scienceofaddiction>.

<sup>32</sup> Please refer to Appendix G Evidence-based Correctional Practices.

<sup>33</sup> Treatment program success rates interact with the fact that relapse is often deemed a treatment failure. However, relapse rates for addiction resemble those of other chronic diseases such as diabetes, hypertension, and asthma. Studies show that successful treatment for addiction typically requires continual evaluation and modification as appropriate, similar to the approach taken for other chronic diseases, and multiple treatment episodes. See the National Institute on Drug Abuse's Principles of Drug Addiction Treatment, at <http://www.nida.nih.gov/PODAT/faqs.html#Comparison>

applied in practice. The recommendations reflect a genuine effort to differentiate among those drug offenders who are primarily users and addicts from the more serious offenders who engage in the crimes of distribution, manufacturing and trafficking of drugs. The Commission agreed that many of the classifications of drug offenses do not reflect a current assessment of the severity of the offense. Note that elimination of the most severe available penalties still maintain the court's ability to punish offenders, but will likely reduce the use of prison beds for many offenders serving drug sentences. The majority of recommendations address penalties associated with possession of narcotics and marijuana.

Finally, the Commission agreed that this new philosophy integrating treatment services with sanctions and punishment will serve as the foundation for its upcoming study. It agreed that broader sentencing reforms require a comprehensive assessment and strategy. This broader reform will be the Commission's focus in the months to come.

For a summary of recommended changes in crime classification for controlled substances, please see Appendix H (note that this summary uses the recommendations numbering scheme from the November 2009 report).

### **Controlled substances: Possession**

#### **FY10-D15**

**Possession shall be a new and separate statute.**<sup>34</sup>

#### *DISCUSSION*

*Simple possession should be separated from the general controlled substance statute and be placed in its own section of the Colorado Revised Statutes as means of assuring effective and prompt drug addiction treatment of these offenders.*

#### **FY10-D16**

**Possession of four grams or less of any Schedule I or II substance shall be a class 6 felony, except for possession of methamphetamine. Possession of two grams or less of methamphetamine shall be a class 6 felony.**<sup>35</sup>

#### *DISCUSSION*

*Sentencing laws should differentiate between individuals who use or possess controlled substances for personal use and those who are engaged in distribution or manufacture. In 2003, the Colorado General Assembly reduced the penalty for possession of small amounts of controlled substances to a class 6 felony. The amount, one gram or less, may have been selected arbitrarily. After reviewing medical and drug trade research, and obtaining local anecdotal information from interviews,<sup>36</sup> the Commission agreed that four grams of Schedule I and Schedule II controlled substances was a common maximum quantity consistent with possession for personal use. Because methamphetamine use poses a significant health and safety risk, the Commission established a maximum of two grams as the threshold of possession for personal use of this drug.*

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<sup>34</sup> Previously appeared as "CS-1" in the November 2009 Report.

<sup>35</sup> Previously appeared as "CS-2B" in the November 2009 Report.

<sup>36</sup> Interview data were obtained from former drug sellers and an experienced multijurisdictional drug enforcement task force officer.

#### **FY10-D17**

**Possession of an amount of any Schedule I or II substance in excess of the amounts identified in FY10-D16 (above) shall be a class 4 felony.<sup>37</sup>**

#### *DISCUSSION*

*Quantities in excess of those specified in FY10-D16 are considered by the Commission to be greater than a personal use amount and, therefore, fall into a category of distribution or sale. The Commission maintains that such non-possession drug offenses should remain consistent with current statute at this time.*

#### **FY10-D18**

**Possession of any Schedule III – V controlled substance (except Flunitrazepam and Ketamine) shall be a class 1 misdemeanor.<sup>38</sup>**

#### *DISCUSSION*

*Flunitrazepam and Ketamine are commonly referred to as “date rape” drugs. Because abuse of these drugs significantly threatens public safety, they are excluded from the list of drugs in this recommendation.*

*Since 1999, Colorado statutes have required the so called “date rape” drug flunitrazepam, a Schedule III drug, to carry a penalty consistent with a Schedule I drug. This recommendation continues that penalty. In addition, the Commission recommends extending this treatment to ketamine, another drug used in the commission of sexual assault.*

#### **FY10-D19**

**Possession of any amount of Flunitrazepam or Ketamine (date rape drugs) shall be treated like a Schedule I or II controlled substance: four grams or less is a Class 6 felony; more than 4 grams is a class 4 felony.<sup>39</sup>**

#### *DISCUSSION*

*Flunitrazepam and Ketamine are commonly referred to as “date rape” drugs and, as such, are treated here as potential drugs of abuse.*

#### **FY10-D20**

**Use of a controlled substance shall be a class 2 misdemeanor regardless of substance used. This modification eliminates the provisions of the “use” statute allowing a court to dismiss the case upon completion of treatment, but maintains the ability of a defendant to receive a deferred judgment or deferred prosecution upon recommendation of the prosecutor.<sup>40</sup>**

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<sup>37</sup> Previously appeared as “CS-3” in the November 2009 Report.

<sup>38</sup> Previously appeared as “CS-4” in the November 2009 Report.

<sup>39</sup> Previously appeared as “CS-5” in the November 2009 Report.

<sup>40</sup> Previously appeared as “CS-7” in the November 2009 Report.

## DISCUSSION

Research demonstrates that individuals with a felony record have reduced employment and earning potential, and that this burden can last a lifetime. Court sanctions should expand non-felony sentencing options for first-time offenders who are charged with drug possession, thereby increasing offenders' ability to maintain or obtain employment.<sup>41</sup>

### Controlled substances: Distribution and possession with intent to distribute

#### FY10-D21

**Modify C.R.S. 18-18-415 making fraud and deceit a class 6 felony with no increase in the offense level for any subsequent offense.**<sup>42</sup>

## DISCUSSION

Fraud and deceit is currently a class 5 felony, and a subsequent offense is a class 4 felony.

#### FY10-D22

**C.R.S. 18-18-408 limits any type of money laundering activity to drug related crimes only. This provision should be removed from the drug code and a new statute covering any and all criminal money laundering activity should be added to Title 18.**<sup>43</sup>

## DISCUSSION

The Commission agreed that the statute related to money laundering should be extended to encompass all criminal laundering activity and, consequently, should be removed from the drug code.

### Controlled substances: Special offender

#### FY10-D23

**Limit to 100 feet the current 1,000 foot zone that pertains to the sale, distribution, and manufacture of controlled substances.**<sup>44</sup>

## DISCUSSION

This recommendation was previously published in the Commission's November 2009 report with a note that the Commission was still considering modifying the list of zones to which this perimeter applies. After further discussion, no other modifications to C.R.S. 18-18-407(2)(a) were made. The paragraph below reflects the recommended statutory change.

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<sup>41</sup> Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology* 47; Holzer, H.J., Raphael, S., & Stoll, M.A. (2006). Perceived criminality, criminal Background checks, and the racial hiring practices of employers. *Journal of Law and Economics* 49, 451-480; Kurlychek, M.C., Brame, R., & Bushway, S. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy*, 5, 483-504; Kurlychek, M.C., Brame, R., & Bushway, S. (2007). Enduring Risk? Old criminal records and predictions of future criminal involvement. *Crime & Delinquency*, 53, 64-83. Also see Przybylski, R. (2009). *Correctional and sentencing reform for drug offenders: Research findings on selected key issues*. Available at [http://www.ccjrc.org/pdf/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.ccjrc.org/pdf/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)

<sup>42</sup> Previously appeared as "DP-6" in the November 2009 Report.

<sup>43</sup> Previously appeared as "DP-7" in the November 2009 Report.

<sup>44</sup> Previously appeared as "SP-1" in the November 2009 Report and the December 2009 Addendum.

**C.R.S. 18-18-407(2)(a)** *A defendant shall be a special offender if the defendant is convicted of selling, distributing, possessing with intent to distribute, manufacturing, or attempting to manufacture any controlled substance in violation of section 18-18-405 either within or upon the grounds of any public or private elementary, middle, junior high, or high school, vocational school, or public housing development, or within ~~one hundred one thousand~~ **one hundred** feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway, sidewalk, public park, playground, or other area or premises that is accessible to the public, or within any private dwelling that is accessible to the public for the purpose of the sale, distribution, use, exchange, manufacture, or attempted manufacture of controlled substances in violation of this article, or in any school bus as defined in section 42-1-102 (88), C.R.S., while such school bus is engaged in the transportation of persons who are students at any public or private elementary, middle, junior high, or high school. The court is required in addition to imposing the sentence to imprisonment in the department of corrections required by subsection (1) of this section, to fine the defendant without suspension at least twice the minimum fine provided for in section 18-1.3-401 (1) (a) (III) if the defendant's offense is a felony or in section 18-1.3-501 (1) if the defendant's offense is a misdemeanor.*

#### **FY10-D24**

**Create a new crime category involving the sale of any controlled substance (other than marijuana) by a person over the age of 18 to a minor.**<sup>45</sup>

#### *DISCUSSION*

*This recommendation creates a new crime category with enhanced penalties for the distribution and/or sale of drugs to a minor. Create a new crime of sale of any controlled substance (other than marijuana) by a person over the age of 18 to a minor. If the sale is made by a person over the age of 18 who is less than two years older than the minor, the offense will be a class 4 felony. If the sale is made by a person over the age of 18 who is 2 or more years older than the minor, the offense will be an aggravated class 3 felony, special offender status, and subject to a mandatory prison sentence.*

#### **FY10-D25**

**Amend and clarify subsection (1)(f) related to deadly weapons to provide that the special offender provision applies as follows:**<sup>46</sup>

- (I) The defendant used, displayed, or possessed on his or her person or within the defendant's immediate reach, a deadly weapon as defined by section 18-1-901(3)(e) at the time of the commission of a violation of this part 4 of article 18 of title 18, or (II): The defendant, or a confederate, possessed a functional firearm as defined in section 18-1-901(3)(h), in a vehicle the defendant was occupying, or to which the defendant or the confederate had access in a manner which posed an immediate threat to others, during the commission of a violation of this part 4 of article 18 of title 18.**

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<sup>45</sup> Previously appeared as "SP-2" in the *December 2009 Addendum* and replaced "SP-2" in the *November 2009 Report*.

<sup>46</sup> Previously appeared as "SP-3" in the *November 2009 Report*.

## DISCUSSION

*Current provisions only require that the defendant "used, possessed or had available for use a deadly weapon." This can be subject to broad interpretations which can lead to prosecutions in cases where the weapon was separated from the actual drug transaction by both distance and circumstance. The recommendation is intended to keep the focus of the crime narrow by allowing the enhanced provisions when the defendant actually used a deadly weapon or where a firearm was immediately available, even if it was not on the offender's person or in his or her immediate presence.*

### **FY10-D26**

**Amend the special offender statute at subsection (1)(d) (the importation of Schedule I and II drugs provision) to apply only when the amount being transported into the state is more than 4 grams.<sup>47</sup>**

### **Controlled substances: Crimes involving marijuana**

Colorado lawmakers have reduced penalties for small amounts of marijuana over the past 25 years. Currently, possession of up to one ounce is a petty offense punishable only by a fine. Members of the Drug Policy Task Force and the Commission agreed that current levels of crime classification do not reflect how marijuana is used. Possession of up to four ounces is consistent with personal use<sup>48</sup> and possession of up to a pound reflects low-level criminal activity that may not present a threat to public safety. The recommendations presented here preserve the goal of regulation and deterrence while recognizing the fact that marijuana has lost much of its former stature as a drug of abuse.

### **FY10-D27**

**The petty offense for possession shall be increased from the current maximum amount of one ounce to a maximum amount of 4 ounces.<sup>49</sup>**

### **FY10-D28**

**The class 1 misdemeanor for the possession of amounts of marijuana of more than 1 ounce but less than 8 ounces shall be changed to a range of more than 4 ounces to less than 16 ounces (1 pound).<sup>50</sup>**

### **FY10-D29**

**The possession of any amount of marijuana concentrate shall be decreased from a class 5 felony to a class 1 misdemeanor.<sup>51</sup>**

### **FY10-D30**

**Distribution of 4 ounces or less of marijuana without remuneration shall be a petty offense.<sup>52</sup>**

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<sup>47</sup> Previously appeared as "SP-5" in the *November 2009 Report*.

<sup>48</sup> See Footnote 32.

<sup>49</sup> Previously appeared as "MJ-1" in the *November 2009 Report*.

<sup>50</sup> Previously appeared as "MJ-2" in the *November 2009 Report*.

<sup>51</sup> Previously appeared as "MJ-3" in the *November 2009 Report*.

<sup>52</sup> Previously appeared as "MJ-4" in the *November 2009 Report*.

**FY10-D31**

**Possession of 16 ounces (1 pound) or more of marijuana shall be a class 6 felony and there shall be no increase in the felony level on a second offense.<sup>53</sup>**

**FY10-D32**

**Distribution or sale of more than 4 ounces but less than 5 pounds of marijuana shall be a class 5 felony.<sup>54</sup>**

**FY10-D33**

**Distribution or sale of 5 pounds or more of marijuana shall be a class 4 felony.<sup>55</sup>**

**FY10-D34**

**Distribution or sale of any amount of marijuana concentrate shall be a class 5 felony.<sup>56</sup>**

**FY10-D35**

**The distribution or sale of any amount of marijuana to a child by a person over the age of 18 where the seller is older by two years or more than the child shall be a class 3 felony.<sup>57</sup>**

**FY10-D36**

**Cultivation of six plants or less shall be a class 1 misdemeanor.<sup>58</sup>**

**FY10-D37**

**Cultivation of more than 6 plants but less than 30 plants shall be a class 5 felony.<sup>59</sup>**

**FY10-D38**

**Cultivation of more than 30 plants shall be a class 4 felony.<sup>60</sup>**

**FY10-D39**

**The spelling of the marijuana shall be corrected throughout the statutes.<sup>61</sup>**

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<sup>53</sup> Previously appeared as "MJ-5" in the *November 2009 Report*.

<sup>54</sup> Previously appeared as "MJ-6" in the *November 2009 Report*.

<sup>55</sup> Previously appeared as "MJ-7" in the *November 2009 Report*.

<sup>56</sup> Previously appeared as "MJ-8" in the *November 2009 Report*.

<sup>57</sup> Previously appeared as "MJ-9" in the *November 2009 Report*.

<sup>58</sup> Previously appeared as "MJ-10" in the *November 2009 Report*.

<sup>59</sup> Previously appeared as "MJ-11" in the *November 2009 Report*.

<sup>60</sup> Previously appeared as "MJ-12" in the *November 2009 Report*.

<sup>61</sup> Previously appeared as "MJ-13" in the *November 2009 Report*.

## DISCUSSION

Colorado statutes refer to cannabis as “marihuana.” Because both the common spelling and the constitutional amendment pertaining to medical use of this drug used the spelling “marijuana,” the recommendation is to change the spelling throughout the C.R.S. to match.

### **Controlled substances: Further recommendations**

#### **FY10-D40**

**Modify C.R.S. 18-1.3-201(2) to remove the mandatory application of the two prior felony probation exclusion rule to drug cases, consistent with Recommendation P-1 above.**<sup>62</sup>

## DISCUSSION

The significant change here is the elimination of second and subsequent offense penalties. These currently result in a significant increase in the available penalty, especially for those still on probation or parole. For example, possession of more than a gram of Schedule II drugs like cocaine and methamphetamine increase from a class 4 felony, penalty 2-6 years (4-12 for those on probation or parole) to a class 2 felony, penalty 8-24 years (16-48 for those on probation or parole). Recognizing that relapse is a part of addiction recovery, the recommendations acknowledge that such increases in penalty for those whose only crime is possession of drugs neither advances public safety nor accommodates the goal of deterring future behavior. The changes introduced by this recommendation may yield significant savings.

#### **FY10-D41**

**A fiscal analysis should be conducted of the impact of these sentencing modifications on the approximately \$4.8 million collected annually from drug offender surcharges. Based on that analysis, surcharges on class 1 misdemeanors, class 6 felonies and class 5 felonies must be increased to avoid a loss of revenue.**<sup>63</sup>

#### **FY10-D42**

**If the General Assembly generates revenue from the regulation of medical marijuana, it should consider allocating a portion of these funds for drug treatment across the state.**<sup>64</sup>

### **POLICY STATEMENT AND DRUG LAW PHILOSOPHY**<sup>65</sup>

#### **FY10-D43**

**The following policy statements provide the context for the recommendations that follow and were developed, in part, as a proposed replacement of C.R.S. 18-18-401.**<sup>66</sup>

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<sup>62</sup> Previously appeared as “FR-2” in the *November 2009 Report*.

<sup>63</sup> Previously appeared as “FR-3” in the *November 2009 Report*.

<sup>64</sup> Previously appeared as “FR-8” in the *November 2009 Report*.

<sup>65</sup> Much of the research that supports these recommendations and statements can be found at <http://www.drugabuse.gov/drugpages/cj.html>. This page contains links to multiple reports conducted and/or supported by The National Institute on Drug Abuse (NIDA) regarding criminal justice and drug abuse.

<sup>66</sup> Previously appeared as “D-1” in the *December 2009 Addendum*.

Providing community-based treatment for offenders who suffer from alcoholism and drug abuse -- and mental health problems associated with these addictions -- will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. This strategy will provide substantial savings to the taxpayer. The research unequivocally finds that substance abuse treatment reduces drug use and criminal behavior. Research demonstrates that *successful* treatment:

- a) occurs at the earliest possible opportunity,
- b) is based on an individual treatment plan that incorporates natural communities and pro-social supports,
- c) includes family members when they offer a positive impact on the recovery process, and
- d) provides a continuum of community-based services.

To reduce recidivism, therapeutic intervention rather than incarceration alone is required to treat alcoholism and illicit drug use disorders as well as mental illnesses related to these addictions. Prison should be reserved for violent, frequent or serious offenders. Savings that are achieved from reduced confinement of drug offenders shall be directed toward the counties to implement evidence-based sentencing and treatment interventions.

#### **Recommendations related to the above policy statement**

**D43A.** The Commission on Criminal and Juvenile Justice recommends that the public policy of Colorado recognize alcoholism and substance use disorders as illnesses and public health problems affecting the health, safety, economy, and general welfare of the state.

**D43B.** 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 focus on the individual defendant.

This approach will combine accountability, risk and needs assessments, criminal penalties, and appropriate treatment for individuals who are addicted to substances and convicted of criminal offenses. 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.

**D43C.** Persons addicted to or dependent on controlled substances and whose criminal behavior is associated with the addiction should, upon conviction, be sentenced in a manner most likely to promote rehabilitation and to be consistent with public safety.

**D43D.** For those sentenced to the community for a drug crime and who are found to be addicted to or dependant on controlled substances, meaningful interventions should be available and applied to non-violent as well as violent offenders based upon individual needs and demonstrated risk to the community.

**D43E.** The manufacture, distribution and delivery of illicit controlled substances have a substantial and detrimental effect on the health and general welfare of the people of this state, especially children. As such, persons who habitually or commercially engaged in the trafficking of illicit substances and prescription drugs present a menace to public health and safety.

**D43F.** The purpose of sentencing *occasional users and experimenters* is to induce them to shun further contact with controlled substances and to learn acceptable alternatives to drug abuse. This approach requires differentiating recreational or one-time users with few or no addiction treatment needs from those who are chemically dependent and require treatment.

**D43G.** Because addiction is a chronic disease, drug relapse and return to treatment are common features in the path to recovery for individuals with substance use disorders. Therefore, judges, district attorneys, public defenders, private attorneys, probation officers, parole officers, and other professionals involved in the criminal justice system must anticipate, recognize, plan for, and appropriately respond to the potential for relapse that may occur for individuals involved in treatment.

**D43H.** The purpose of sentencing *defendants with treatment needs* can be achieved by promoting evidence-based sentencing of individuals convicted of drug-related offenses. Strategies include the following:

- a) Allowing judges and other judicial officers to use available information and resources to develop informed and flexible evidence-based sentencing plans that meet the needs of the individual offender, that
  - i. ensure appropriate safeguards to protect the defendant's rights while assigning the individual to appropriate treatment programs, and
  - ii. are based on, when practical, the risk level and treatment needs of the offender as determined by objective assessment tools.
- b) Allowing for the appropriate combination of supervision and treatment based on research indicating that this combined approach has the greatest likelihood of recidivism reduction and protecting the public.
- c) Allowing for consideration of the significant collateral consequences that a criminal record has on employment and lifetime earnings of drug-related convictions, and how such convictions can undermine successful community reintegration.
- d) Using treatment programs with demonstrated rates of success.
- e) Targeting interventions to offenders with moderate- to high-level treatment needs rather than those identified with low-risk and low-needs.
- f) Targeting individuals who could benefit from appropriate treatment programs.

#### **FY10-D44**

#### **Identify a working group to develop funding strategies.<sup>67</sup>**

##### *DISCUSSION*

*The Commission shall identify a working group for the purpose of developing a funding strategy to expand treatment resources. This is necessary to ensure the successful implementation of the recommendations presented here.<sup>68</sup>*

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<sup>67</sup> Previously appeared as "D-2" in the *December 2009 Addendum*.

<sup>68</sup> This working group was created by the Commission in November 2009 and its work continues within the Drug Policy Task Force.

#### **FY10-D45**

**Ensure statutory reforms are consistent with sentencing policy, evidence-based practices and recidivism reduction.**<sup>69</sup>

#### *DISCUSSION*

*The complex nature of Colorado statutes pertaining to drug-related sentences requires detailed analysis and careful study to ensure that any recommended modifications conform to broader sentencing policies and structures. Before any suggested reforms can be recommended, the Commission must first undertake this analysis to guarantee that any recommended statutory reforms will be consistent with evidence-based practices and recidivism reduction.*

#### **FY10-D46**

**Establish a transparent mechanism to ensure that fiscal savings resulting from CCJJ recommendations are reallocated toward treatment programs.**<sup>70</sup>

#### *DISCUSSION*

*A transparent mechanism must be immediately established to ensure the reallocation of any fiscal savings realized from the implementation of the Commission's recommendations concerning drug and DUI law modifications. This reallocation must be directed toward expanding and sustaining evidence-based community- and jail-based treatment programs and evaluating the efficacy of these programs.*

#### **FY10-D47**

**Design differential intervention approaches for defendants.**<sup>71</sup>

#### *DISCUSSION*

*Criminal activity, addiction, and illegal drug use can intersect in significantly different ways. Decision makers, including those representing the criminal defense and prosecution, must distinguish among the variety of circumstances surrounding drug offenses. Differential approaches must be designed for defendants who are:*

- a) illegal drug users but not addicted or involved in other criminal activity,*
- b) addicted and engaged in drug activity but not otherwise engaged in other criminal activity,*
- c) addicted and engaged in nonviolent crime to support their addiction,*
- d) addicted and engaged in violent crime, and*
- e) engaged in drug trafficking or manufacturing for profit but not addicted to illegal drugs.*

#### **FY10-D48**

**Community-based treatment should be expedited for alcohol and drug-involved defendants.**<sup>72</sup>

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<sup>69</sup> Previously appeared as "D-3" in the *December 2009 Addendum*.

<sup>70</sup> Previously appeared as "D-4" in the *December 2009 Addendum*.

<sup>71</sup> Previously appeared as "D-5" in the *December 2009 Addendum*.

<sup>72</sup> Previously appeared as "D-6" in the *December 2009 Addendum*.

*DISCUSSION*

*Research shows that timely and relevant consequences produce the most successful outcomes for individuals who are addicted to alcohol or drugs. Sanctions that include community-based treatment should be expedited for alcohol and drug-involved defendants. Due process rights should be protected in expedited cases.*

**FY10-D49**

**Intermediate sanctions and rewards should be authorized when working with drug-involved offenders.<sup>73</sup>**

*DISCUSSION*

*Probation and parole officers should be granted the authority to administer intermediate sanctions and rewards when working with drug-involved offenders.*

**FY10-D50**

**Judicial districts should develop a collaborative decision-making process for cases involving drug-addicted offenders.<sup>74</sup>**

*DISCUSSION*

*Each judicial district should develop a collaborative decision-making process that involves prosecutors, defense attorneys, community supervision officers, treatment providers, and defendants' support systems for cases involving drug-addicted offenders.*

**FY10-D51**

**Those prosecuting drug-involved defendants must proactively address minority over-representation.<sup>75</sup>**

*DISCUSSION*

*Those involved in the prosecution of drug-involved defendants (e.g., policy makers, administrators, supervising officers, and other criminal justice system professionals) must proactively address minority over-representation in drug offenses. This should include, among other efforts, careful consideration of the following practices:*

- a) Frequent law enforcement patrols in specific neighborhoods,*
- b) Use of pleas for drug possession defendants that may avoid a felony record, and*
- c) Cultural competency of those delivering substance abuse treatment.*

**FY10-D52**

**Modify court sanctions for first-time offenders to help individuals maintain or obtain employment.<sup>76</sup>**

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<sup>73</sup> Previously appeared as "D-7" in the *December 2009 Addendum*.

<sup>74</sup> Previously appeared as "D-8" in the *December 2009 Addendum*.

<sup>75</sup> Previously appeared as "D-9" in the *December 2009 Addendum*.

<sup>76</sup> Previously appeared as "D-10" in the *December 2009 Addendum*.

*DISCUSSION*

*Research demonstrates that individuals with a felony record have reduced employment and earnings potential, a burden that can last a lifetime. Court sanctions should expand non-felony sentencing options for first-time offenders who are charged with drug possession, thereby increasing offenders' ability to maintain or obtain employment.*

**FY10-D53**

**Allow felony arrest records to be sealed when the conviction is for a misdemeanor drug crime.<sup>77</sup>**

*DISCUSSION*

*Statutes should allow for the ability to seal the record of a felony drug arrest that results in misdemeanor conviction.*

**FY10-D54**

**Assess all drug-involved defendants for risk and treatment needs as early as possible in the criminal court process.<sup>78</sup>**

*DISCUSSION*

*The court, prosecution and defense must have objective information about the risk and treatment needs of drug-involved defendants prior to disposition and sentencing. All drug-involved defendants must be assessed for risk and treatment needs as early as possible in the criminal court process. The assessment requires the use of a standardized and validated assessment tool that would provide the necessary details for treatment planning.*

**FY10-D55**

**Remove barriers to conducting risk and treatment needs assessments while protecting a defendant's Constitutional rights.<sup>79</sup>**

*DISCUSSION*

*The Commission should assign a workgroup of prosecutors and defense counsel to determine how to remove barriers to conducting these assessments while addressing concerns regarding a defendant's Constitutional rights against self-incrimination and the confidentiality of medical records.*

**FY10-D56**

**Treatment programs that receive state funding should be evaluated and evaluation data should be coordinated through the Division of Behavioral Health at the Colorado Department of Human Services.<sup>80</sup>**

*DISCUSSION*

*Colorado statute should require and provide resources for the development of evidence-based standards, for performance measures within community-based treatment programs, and for the evaluation of those*

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<sup>77</sup> Previously appeared as "D-11" in the *December 2009 Addendum*.

<sup>78</sup> Previously appeared as "D-12" in the *December 2009 Addendum*.

<sup>79</sup> Previously appeared as "D-13" in the *December 2009 Addendum*.

<sup>80</sup> Previously appeared as "D-14" in the *December 2009 Addendum*.

*programs. Treatment programs that receive state funding should be required to capture data that allow for the monitoring of each program's compliance with evidence-based standards and the evaluation of the effectiveness of the program to reduce recidivism. To prevent redundancy, data collection for annual evaluations should be coordinated through the Division of Behavioral Health at the Colorado Department of Human Services so that treatment providers would have a single reporting system. The data should include, but not be limited to:*

- a) population description,
  - i. treatment history*
  - ii. level of addiction*
  - iii. criminal history*
  - iv. risk and needs assessment**
- b) number of individuals served,*
- c) program completion criteria,*
- d) definition of success,*
- e) success rate, and*
- f) cost per client.*

#### **FY10-D57**

**The Division of Criminal Justice, State Judicial Branch, and the Division of Behavioral Health should collaborate in the evaluation of alcohol and drug treatment programs.<sup>81</sup>**

#### **DISCUSSION**

*On behalf of the Commission, the Division of Criminal Justice, State Judicial Branch, and the Division of Behavioral Health should collaborate in the evaluation of alcohol and drug treatment programs. DCJ and Judicial will examine arrest and reconviction data to determine recidivism rates for offenders participating in state-funded programs.*

#### **FY10-D58**

**Develop empirically-based core competencies and standards of practice in offender management along with standardized training and regulation for providers working with offenders.<sup>82</sup>**

#### **DISCUSSION**

*The Division of Behavioral Health, the State Judicial Branch, and the Division of Criminal Justice should develop empirically-based core competencies and standards of practice in offender management to be used to qualify and evaluate service providers. Standardized training should be developed that addresses these core competencies and practice standards and be required for all providers working with offenders. This training should be regulated.*

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<sup>81</sup> Previously appeared as "D-15" in the December 2009 Addendum.

<sup>82</sup> Previously appeared as "D-16" in the December 2009 Addendum.

## Escape recommendations

The following recommendations were proposed by the Sentencing Task Force.

### FY10-S1 ESCAPE MODIFICATION FOR NON-INMATE STATUS<sup>83</sup> OFFENDERS

**Modify C.R.S. 18-8-209 to accomplish the following: Any individual who is on inmate status irrespective of the facility in which they are held will be subject to a mandatory consecutive sentence to prison. Any individual not on inmate status is eligible for a consecutive sentence but not a mandatory consecutive sentence.**<sup>84</sup>

#### DISCUSSION

*In many states, the same behavior that in Colorado is subject to a mandatory consecutive prison sentence is considered a misdemeanor or a technical violation. Annually, fewer than ten individuals escape from a secure Department of Corrections facility.<sup>85</sup> However, every year over 1,100 individuals are convicted of escape for behaviors that range from running from a police after being placed in custody to failing to return on time to a halfway house.*

*The escape statute requires a mandatory prison sentence that is consecutive—not concurrent—with the offender’s original sentence. It is not uncommon for the escape sentence to be longer than the original sentence. In FY 2006 and FY 2007, this was the case for 40 percent and 33 percent, respectively, of parolees who returned to prison for a new crime. Seventy percent of offenders convicted of escape have no current or historical violent crime convictions.<sup>86</sup>*

*Mandatory sentences remove judicial discretion. This approach to sentencing policy is not supported by the criminology literature which consistently reports the need for individualized interventions when the objective is to reduce the likelihood of new criminal behavior and victimization.<sup>87</sup> In fact, this policy may contribute to recidivism: prison “releasees who have just served their first prison sentence have sharply lower rates of recidivism than those who have been imprisoned more than once, regardless of the sex, age, or race of the person or the type of crime” (National Research Council, 2008).<sup>88</sup>*

*Research shows that incarceration has a return on investment when it is used for violent and high frequency offenders.<sup>89</sup> The use of incarceration for lower-rate, non-violent offenders prevents and deters few crimes.<sup>90</sup>*

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<sup>83</sup> “Inmate” and “non-inmate” is a particular status of individuals leaving prison and entering the community. Both types of offenders are under the jurisdiction of the Department of Corrections and are assigned to supervising field officers. Some of these individuals are placed in community corrections halfway houses and some are on intensive supervision. This recommendation calls for those on inmate status to remain eligible for a mandatory prison sentence if they are convicted of escape because they absconded from supervision.

<sup>84</sup> Previously appeared as “E-1” in the *November 2009 Report*.

<sup>85</sup> Rosten, K. (2008). *Fiscal Year 2007 Annual Statistical Report*. Colorado Springs, CO: Colorado Department of Corrections.

<sup>86</sup> See Appendix I in the Commission’s December 2008 *Annual Report*, available at <http://dcj.state.co.us/ors/pdf/docs/12-18-2008%20FINAL%20CCJ%20Report.pdf>

<sup>87</sup> Latessa, E.J., & Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal*, 521-535; Gendreau, P., & Goggin, C. (1995). *Principles of effective correctional programming with offenders*. St. John, New Brunswick, Canada: Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick; McGuire, J. (2001). What works in correctional intervention? Evidence and practical implications. In G. A. Bernfeld, D.P. Farrington, & A. W. Leschied (Eds.), *Offender rehabilitation in practice: Implementing and evaluating effective programs* (pp. 25-43). Chichester, West Sussex, UK: John Wiley & Sons; Gendreau, P., Goggin, C., & Fulton, B. (2001). Intensive supervision in probation and parole settings. In C. R. Hollin (Ed.), *Handbook of offender assessment and treatment* (pp. 195-204). Chichester, West Sussex, UK: John Wiley & Sons.

<sup>88</sup> National Research Council (2008). *Parole, desistance from crime, and community integration*. Washington, D.C.: National Academies Press.

<sup>89</sup> See summary of research by Przybylski, R. (2008). What works: Effective recidivism reduction and risk-focused prevention programs. Lakewood, CO: RKC Group.

*This recommendation would reduce the pool of those eligible for mandatory, consecutive escape sentencing on any given day from approximately 6,500 to 2,300 offenders.<sup>91</sup> Note that this modification would not eliminate consecutive sentences for those who escaped from prison facilities, county jails, or those who abscond from supervision while on inmate status. Nor would this recommendation limit the prosecution from filing charges if new offenses were committed while on walk-away status. Modification of this statute may result in significant cost savings.*

#### **FY10-S2 DEMONSTRATION PROJECT: INTERMEDIATE SANCTIONS FOR ESCAPE FILINGS**

**Study in designated pilot sites the viability of responding to offenders who abscond from a community corrections halfway house or Intensive Supervision Parole (inmate status) by imposing on those offenders intermediate sanctions instead of escape filings. Data from the pilot sites would be combined with community corrections escape data to determine whether intermediate sanctions appear to be safe and effective in the management of offenders who walk away from halfway houses.<sup>92</sup>**

#### *DISCUSSION*

*Anecdotal evidence suggests that many community corrections offenders in Colorado impulsively fail to return from work, job searches, or a recreational pass, but few commit new crimes. This study will track the outcomes of offenders in the determined pilot sites. Further, some policy makers believe that the consequences for this behavior—a mandatory prison sentence for a protracted duration—may influence offenders to remain at-large. The study also will explore this issue.*

### **Probation eligibility recommendations**

#### **FY10-S3**

**Modify C.R.S. 18-1.3-201(2)(a) to allow for probation eligibility for those who have multiple prior felony convictions. Offenders with two or more prior felony convictions, one or more of which is for a crime of violence as defined in 18-1.3-406 or where one of the two or more prior felonies or the present felony was a conviction for manslaughter, 2nd degree burglary, robbery, theft from a person, or a felony offense committed against a child would be ineligible for probation without a recommendation of waiver by the district attorney. Repeal 18-1.3-201(2)(b) and 18-1.3-201(4)(a)(II).<sup>93</sup>**

#### *DISCUSSION*

*Proponents of evidence-based sentencing practices state that judges should use their discretion to consider individual circumstances that are known to affect recidivism, including employment, age, substance abuse and drug treatment history and other risk factors.<sup>94</sup> Modification to the probation*

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<sup>90</sup> Liedka, R.V., Piehl, A.M., & Useem, B. (2006). The crime control effect of incarceration: Does scale matter? *Criminology and Public Policy* 6, 245-276; Piehl, A.M., Useem, B., & Dilulio, Jr., J.J. (1999). *Right-sizing justice: A cost-benefit analysis of imprisonment in three states*. New York: Center for Civic Innovation at the Manhattan Institute. See also Washington State Institute on Public Policy, *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates, and prison economics*. Olympia, WA, available at <http://www.wsipp.wa.gov/pub>; American Bar Association (2004). *Justice Kennedy Commission Report to the House of Delegates*, page 21, available at <http://www.abanet.org/media/kencomm/rep121a.pdf>.

<sup>91</sup> See note 82.

<sup>92</sup> Previously appeared as "E-2" in the *November 2009 Report*.

<sup>93</sup> Previously appeared as "P-1" in the *November 2009 Report*.

<sup>94</sup> Wolff, M. (2008). Evidence-based judicial discretion: Promoting public safety through state sentencing reform. *The New York University Law Review* 83, 1389-1419.

*eligibility criteria expands judicial discretion, and the use of probation sentences encourages offenders to maintain or obtain employment and allows offenders to maintain family relationships. Research on recidivism reduction unequivocally concludes that work and family are the most important factors in the criminal desistance process.<sup>95</sup> Substance abuse treatment and other services are more readily available in the community compared to prison.*

*Further, this recommendation requires that the statutory language regarding probation eligibility be simplified, clarified and include the following:*

- *Require that prior felonies be separately brought and tried.*
- *Crimes that are currently felonies but which were not felonies at the time of commission of the offense will not count as a past felony.*
- *Disallow prior felonies when that offense is based on a crime in another state for an act that is not a felony in Colorado.*

## **Aggravated ranges, extraordinary risk crimes, and mandatory minimum sentences recommendations**

### **FY10-S4**

**The complex nature of Colorado statutes pertaining to aggravated, extraordinary risk, and mandatory minimum sentences requires detailed analysis and careful study to ensure that any recommended modifications conform to broader sentencing policies and structures, and to ensure that the consequences of any modifications are analyzed and well understood by stakeholders. The Commission must first undertake this analysis to guarantee that any recommended statutory reforms must be consistent with evidence-based practices and recidivism reduction.<sup>96</sup>**

### **DISCUSSION**

*The Commission has requested that its Sentencing Policy Task Force undertake a comprehensive study of the entire state sentencing structure, including the enhancements captured by this recommendation: aggravated sentencing ranges, extraordinary risk crimes, and mandatory minimum sentences. These enhancements are interrelated and require considerable analysis to understand the impact of any specific modification.*

## **Parole and parole release decision making recommendations**

The following recommendations were proposed by the Post-Incarceration Supervision Task Force.

### **FY10-PIS1**

**Modify C.R.S. 17-2-207(3) to eliminate mandatory arrest provisions for individuals on parole.<sup>97</sup>**

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<sup>95</sup> National Research Council (2008). *Parole, desistance from crime, and community integration*. Washington D.C.: National Academies Press.

<sup>96</sup> Previously appeared as "A-1" in the *November 2009 Report*.

<sup>97</sup> Previously appeared as "PIS09-1" in the *February 2010 Status Report*.

**Current statute**

CRS 17-2-207 (NOTE: A strikethrough of words indicates suggested deletions from existing statute.)

(3) ~~Offenders on parole shall remain under legal custody and shall be subject at any time to be returned to a correctional facility. If any paroled offender leaves the state without lawful permission, he shall be held as a parole violator and arrested as such. If any parolee not paroled to reside in a county in which a correctional facility is located is found within the boundaries of such county without lawful permission, or if any parolee who is paroled to reside in such county or is in such county without lawful permission is found within the boundaries of state property without lawful permission, he shall be arrested as a parole violator.~~

**DISCUSSION**

*The three elements in the above mentioned statute should be eliminated. These violations are better managed using parole officer discretion which, if appropriate, may involve intermediate sanctions rather than arrest and revocation. In addition, the expansion of correctional and "state property" in most counties makes prohibitive the travel restrictions mandated by this statute.*

*There are some county jails that will not accept technical violators unless the violator is a clear danger to the local community. DOC has made provisions for instances in these circumstances. Some county sheriff's have space and DOC will send a technical violator to those county jails.*

**FY10-PIS2**

**Modify C.R.S. 17-22.5-405 to clarify eligibility exclusions, program compliance, and criminal history disqualifications.**<sup>98</sup>

**Current statute**

CRS 17-22.5-405 (NOTE: Capital letters indicate suggested new material to be added to existing statutes; a strikethrough of words indicates suggested deletions from existing statute.)

- (1.5) (a) Earned time, not to exceed twelve days for each month of incarceration or parole, may be deducted from an inmate's sentence if the inmate:
  - i. Is serving a sentence for a class 4, class 5, or class 6 felony;
  - ii. Has incurred no CLASS I code of penal discipline violations WITHIN THE PREVIOUS TWENTY-FOUR MONTHS AND NO CLASS II CODE OF PENAL DISCIPLINE VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS OR SINCE BEING CURRENTLY INCARCERATED IF LENGTH OF INCARCERATION TIME ON CURRENT CONVICTON IS LESS THAN TWENTY-FOUR MONTHS. ~~while incarcerated~~
  - iii. IS CURRENTLY ~~has been~~ program-compliant; and
  - iv. Was not convicted of, and has not previously been convicted of a felony crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., ~~or~~ section 18-12-109, C.R.S., SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306, or ~~a crime listed in~~ section 24-4.1-302 (1), C.R.S.

<sup>98</sup> Previously appeared as "PIS09-2" in the February 2010 Status Report.

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

- (a) The inmate has INCURRED no CLASS I code of penal discipline violations WITHIN THE PREVIOUS TWENTY-FOUR MONTHS AND NO CLASS II CODE OF PENAL DISCIPLINE VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS OR SINCE BEING CURRENTLY INCARCERATED IF LENGTH OF INCARCERATION TIME ON CURRENT CONVICTON IS LESS THAN TWENTY-FOUR MONTHS.
- (b) The inmate is CURRENTLY program-compliant; and
- (c) The inmate was not convicted of, and has not previously been convicted of a felony crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., ~~or~~ section 18-12-109, C.R.S., SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306 or a ~~crime listed in~~ section 24-4.1-302 (1), C.R.S.

#### DISCUSSION

*These changes limit the period for which a COPD violation would disallow earned time and earned release time as defined in HB 09-1351 rather than leaving this period undefined, potentially including old violations which no longer are characteristic of an offender's behavior.*

*First, the exclusion from eligibility for disciplinary convictions while incarcerated would be time bound. The current language makes inmates ineligible for earned time if they have any Class I or Class II COPD (Code of Penal Discipline) violation.*

- *The new language includes the following time boundaries:*
  - *Earned time under this statute could not be received if an individual was incarcerated for more than 24 months and received*
    - *Any Class I COPD conviction during the previous 24 months or*
    - *Any Class II COPD conviction during the previous 12 months.*
  - *Earned time under this statute could not be received if an individual was incarcerated for less than 24 months and received*
    - *Any Class I COPD conviction during the course of the current incarceration, or*
    - *Any Class II COPD conviction during the past 12 months.*
  - *Earned time under this statute could not be received if an individual was incarcerated for less than 12 months and received*
    - *Any Class I or Class II COPD conviction during this period of incarceration.*

*Second, this recommendation clarifies that an inmate must be currently program compliant to be eligible for earned time and earned release time as defined in this statute. Current language allows eligibility when an inmate was program compliant in the past, but who currently may not be compliant.*

*Third, ineligibility as currently defined by the enumerated statutes includes misdemeanor offenses offense (CRS 18-6-701). The modification recommended here updates "crime" with "felony crime." In addition, it adds "contributing to the delinquency of a minor" as a disqualifying crime since this offense is typically the result of a plea negotiation from a more serious crime.*

## FY10-PIS3

Introduce a structured decision-making guide for use by the Colorado parole board. The form for the *Colorado Parole Board Release Guidelines Instrument* is appended (*see Appendix I*). Include in the legislative declaration (C.R.S. 17-22.5-404) that the guidelines reflect evidence-based practices by prioritizing public safety and actuarially-determined risk, criminogenic needs, and offender readiness for parole; organize and streamline existing information; promote consistency in parole decision making; and allow for systematically collecting data on parole decision making.<sup>99</sup>

### DISCUSSION

Research consistently finds that actuarial instruments outperform professional judgment by a 3:1 ratio, meaning that professional judgment has been found to be wrong two-thirds of the time.<sup>100</sup> Research has also determined that addressing the service needs of high risk offenders can reduce recidivism.<sup>101</sup> Consequently, at the core of recidivism reduction and evidence-based practices in corrections is the use of scientifically developed risk and needs assessment instruments.

The *Colorado Parole Board Release Guidelines Instrument* organizes information systematically and prioritizes public safety by relying on two such instruments, the Colorado Actuarial Risk Assessment Score (CARAS) which predicts risk to reoffend, and the Level of Supervision (LSI), which identifies the individual's needs that are associated with criminal behavior. Both instruments are currently completed by DOC personnel, and the data elements reside in DOC's information management system. As such, the instrument has the capability of being automated when resources allow. DOC supports this Guideline instrument. Currently, the parole board reviews several documents and case summaries when making release decisions but the information is not organized systematically nor is individual, case-level data available for analysis on the decisions made by board members.

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<sup>99</sup> Previously appeared as "PIS09-3" in the *February 2010 Status Report*.

<sup>100</sup> See Monahan, J. (1995). *The Clinical prediction of violent behavior* (Chapter 3). Rockville, MD: National Institute of Mental Health. Additionally, citing numerous classic studies, Hilton and Simmons (2001) report that the accumulation of research into violence and risk assessment has led to the conclusion that unaided clinical judgments are of little value the availability of actuarial instruments will improve forensic decision making. Hilton, N.Z., & Simmons, J.L. (2001). The Influence of Actuarial Risk Assessment in Clinical Judgments. *Law and Human Behavior*, 25, 393-408. See also Grove, W. M. & Meehl, P. E. (1996). Comparative efficiency of information (subjective, impressionistic) and formal (mechanical, algorithmic) prediction procedures: The clinical-statistical controversy. *Psychology, Public Policy, and Law*, 2, 293-323.

<sup>101</sup> Criminogenic risk refers to attributes associated with criminal behaviors and recidivism include (Gendreau, and Andrews, 1990): (1) Anti-social attitudes, values, and beliefs (criminal thinking); (2) Pro-criminal associates and isolation from pro-social associates, (3) Particular temperament and behavioral characteristics (e.g., egocentrism); (4) Weak problem-solving and social skills; (5) Criminal history; (6) Negative family factors (i.e., abuse, unstructured or undisciplined environment), criminality in the family, substance abuse in the family); (7) Low levels of vocational and educational skills (8) Substance abuse. The more risk factors present, the greater the risk for committing criminal acts. See Andrews, D.A. and Bonta, J. L. (2003). *Level of Supervision Inventory-Revised. U.S. Norms Manual Supplement*. Multi Health Systems, Toronto. The LSI assesses the extent of need in the following areas: criminal history, education, employment, financial, family and marital relationships, residential accommodations, leisure and recreation activities, companions, alcohol and drug problems, emotional and personal, and pro-social attitudes and orientations.





## SECTION 5: STATUS OF THE COMMISSION'S 66 REENTRY RECOMMENDATIONS

### Background

In its December 2008 report, the Commission identified 66 recommendations for improving the offender reentry process in Colorado. Not surprisingly, many of the recommendations were directed to agencies that are responsible for offender populations: the Division of Probation Services, the community corrections system, the Department of Corrections, and the Parole Board. The recommendations targeted legislation, general principles, agency business practices, and ideas for immediate cost savings. Some of the recommendations were general and some were specific, but all were intended to remove barriers to offender success while enhancing public safety and reducing victimization. The ultimate goal was to reduce recidivism and make the most efficient use of public resources. Reducing recidivism will reduce costs since many offenders who otherwise would return to correctional confinement and supervision would remain in the community to lead crime-free lives.

As a recap for the work the Commission undertook as its first topic of reform, we rely on an excellent publication to summarize the literature on re-entry and recidivism reduction. The National Research Council of the National Academies published a comprehensive report in January 2008 that reviewed the scientific literature on recidivism reduction. The findings underscore the importance of the Commission's reentry recommendations and provide a vital empirical context for those recommendations. The National Research Council report includes the following findings:<sup>102</sup>

- Parolees are a heterogeneous group and their rates of recidivism vary widely; there is no average parolee.
- Releasees who have just served their first prison sentence have much lower rates of recidivism than those who have been imprisoned multiple times, regardless of age, ethnicity, gender, and crime type.
- Cognitive-behavioral treatment programs can reduce recidivism significantly, especially among young people and high-risk offenders.
- Inadequate program implementation threatens the benefit these programs might provide.
- The first days and weeks out of prison are the riskiest for both the releasee and the public. Recidivism is most likely during this period, and death rates among the released population are 12 times that of the general population in the first weeks following release.
  - Concentrating supervision and services in the first days and weeks out of prison is likely to have the greatest effect on recidivism reduction.
- Strong ties to work, and good and stable marriages, appear to be particularly important in reducing recidivism.
- Administrators of both in-prison and post-release programs should redesign their activities and redirect their resources to provide major support at the time of release.

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<sup>102</sup> National Research Council (2008). *Parole, desistance from crime, and community integration*. Washington D.C.: National Academies Press.

- Individuals should not leave prison without an immediately available plan for post-release life, including:
  - Intensive and detailed prerelease and post-release counseling;
  - Immediate enrollment in drug treatment programs;
  - Intense parole supervision;
  - Assistance finding work;
  - Short-term halfway houses;
  - Mentors who are available at the moment of release;
  - Assistance in obtaining identification, clothes, and other immediate needs.
- Intensive supervision increases recidivism unless it is combined with drug treatment, community service, and employment programs.
  - Employment and education programs must provide workers with credentials that meet private-sector demands.
- Positive incentives for supervision compliance are important complements to sanctions for behaviors that violate conditions of supervision (incentives and rewards for specific positive behaviors can include less intrusive supervision and the remission of previously collected fines).
- Greater contact with family during incarceration (by mail, phone, or in-person visits) is associated with lower recidivism rates.

Finally, the National Research Council’s report suggests that policy makers and program administrators set realistic goals in terms of punishment and rewards. The authors suggest that the goal of crime reduction programs be “less offending and less serious offending,” rather than zero offending, particularly by high-rate offenders released from prison: “Empirical research on desistance [from crime] has consistently demonstrated that this goal can be achieved.”<sup>103</sup>

## Performance measures

After the 2008 recommendations were published, officials and staff from these responsible agencies worked to develop implementation procedures, and Commission staff defined performance measures that would allow the recommendations to be systematically tracked over time. This latter effort is mandated by the Commission’s enabling statute, C.R.S. 316-11.3-103(2)(d): “To study and evaluate the outcomes of Commission recommendations as implemented....”

The implementation of the reentry recommendations, in most cases, involves a variety of significantly complex tasks. Many of the tasks require the identification and removal of compound barriers; some of the recommendations require resources that are difficult to obtain in stark economic times. Much has been accomplished, particularly in the legislative arena, and even more reform is underway, as the following status update demonstrates. This effort to reform reentry in Colorado is ongoing.

A general status report on each recommendation follows. *Please note that performance measures are applicable only when implementation has started.* Descriptions of impact, along with the associated barriers, will become more informative and meaningful over time in future Commission reports as data

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<sup>103</sup> Laub, J., & Sampson, R. J. (2003). *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70*. Cambridge, MA: Harvard University Press; Sampson, R.J., & Laub, J.H. (2003). Desistance from crime over the life course. In J.T. Mortimer and M.J. Shanahan (Eds.), *Handbook of the life course*. New York, NY: Kluwer Academic/Plenum; Sampson, R. J., Laub, J.H., & Wimer, C. (2006). Does Marriage Reduce Crime? A Counterfactual Approach to Within-Individual Causal Effects. *Criminology*, 44, 465-508; Ezell, M.E., & Cohen, L.E. (2005). *Desisting From Crime: Continuity and Change in Long-term Crime Patterns of Serious Chronic Offenders*. Oxford, UK; Oxford University Press.

become available for analysis. Please note that each recommendation in this section starts with the original 2008 recommendation, followed by the 2009 update (taken directly from the 2009 Annual Commission Report), and lastly the most recent 2010 update. Efforts to track the implementation of each recommendation should not distract from the fundamental purpose of those recommendations. Ultimately, the challenge is to reduce the number of individuals who enter the criminal justice system and fail while, at the same time, carefully using available correctional resources in the most effective manner.

## **Legislative**

### **2008 RECOMMENDATION/L-1 DRIVER'S LICENSE RETENTION**

Because the loss of a driver's license is a significant barrier to employment, and because employment is linked to crime reduction, abolish those portions of a statute that require the mandatory revocation or suspension of the defendant's driver's license for a conviction/adjudication of non-driving offenses. This recommendation does not apply to child support enforcement.

#### **Agencies Responsible**

General Assembly

*This recommendation was successfully implemented with the passage of House Bill 09-1266 which limits the loss of driving privileges to only those crimes that are driving related. This important reform removes a significant obstacle to the successful completion of supervision by enhancing an individual's ability to drive to work, treatment, and supervision appointments. To this end, it furthers the intent of the Commission to remove barriers to successful re-entry.*

#### **2009 IMPACT**

The Division of Criminal Justice will work with the Department of Motor Vehicles to gather information annually and this will be reported in future Commission reports.

#### **2009 BARRIER**

Problems may occur with the impact analysis because it may be difficult to differentiate between charges that do and do not result in license suspension/revocation when a case contains multiple convictions.

#### **2010 UPDATE**

Officials with the Department of Motor Vehicles (DMV) report that In FY09, before the effective date of House Bill 09-1266, the following numbers of revocations were tracked in association with the actions subsequently modified by statute:

1. Defacing: 299
2. Felony and Misdemeanor Drug: 6110
3. 1st time Minor in Possession of Alcohol: 4336
4. Forged Penalty Assessment: 0
5. Criminal mischief: 1

**Total = 10,746**

In FY10 the numbers decreased significantly for violations committed after the 8/5/09 effective date:

1. Defacing: 44
2. Felony and Misdemeanor Drug: 246
3. 1st time Minor in Possession of Alcohol: 765
4. Forged penalty assessment: 0
5. Criminal mischief: 0

**Total = 1,055**

The DMV officials report that FY11 should result in very few driving restraints for defacing and drug violations. These will be triggered by pre-8/5/09 cases that were either delayed through trial on the merits of the conviction or reported to DMV after the fact from the court.

Additionally, first time minor in possession restraints are likely to drop slightly then work back up to around 5,000+

per year. HB 09-1266 changed the circumstances under which the department takes action for a first violation to require an accompanying report of non-compliance with court ordered alcohol evaluation or treatment. As courts become more aware and compliant with reporting, the DMV officials expect a likely increase in court ordered evaluations and treatment and corresponding increase in offender non-compliance.

#### **2008 RECOMMENDATION/L-2 REVISE TRUSTEE CALENDAR STATUTE**

Remove the word “calendar” from C.R.S. 17-26-115 to apply the trustee statute to a 30-day period rather than a calendar month.

#### **Agencies Responsible**

General Assembly, county jails to implement

*This recommendation was successfully implemented with the passage of House Bill 09-1263 which clarifies the use of jail time credits and allows jail inmates to be awarded earned time in addition to good time.*

*This important reform provides for the equitable application of time credits in county jails and moderately reduces the average length of stay. The passage of HB 09-1263 is consistent with the Commission’s statutory mandates to “...ensure justice...” and enhance “the cost-effective use of public resources” [C.R.S. 16-11.3-103(1)].*

#### **2009 IMPACT**

Length of stay data from a number of local jails will be analyzed to determine if the average time served is reduced.

#### **2010 UPDATE**

*Implementation complete.* For the purposes of the Commission performance measures, Recommendations L-2, L-3, and L-4 have been combined because the impact overlaps. No centralized jail data system exists that would allow empirical assessments of the implementation impact. However, the impact in a single jail, Arapahoe County, is likely to be multiplied across the state’s jails and must serve as the impact measure for the Commission.

Arapahoe County reports full implementation of this recommendation including modifications to policies and the completion of staff training. The Sheriff’s Office reports that for the 12 month period from June 2009 to May 2010, 7,220 bed days were saved at an approximate cost of \$490,960 in Arapahoe County (assuming a daily cost of \$68/bed). This translates into millions of dollars in savings across county jails each year.

*Note that elements from recommendations L-2, L-3, L-4 and CS-64 were combined into House Bill 09-1263.*

## 2008 RECOMMENDATION/L-3 GOOD TIME CREDITS FOR JAIL INMATES

Clarify C.R.S. 17-26-109 to provide a standardized range of good time credits available to jail inmates.

### Agencies Responsible

General Assembly, county jails to implement

*This recommendation was successfully implemented with the passage of House Bill 09-1263 which clarifies the use of jail time credits and allows jail inmates to be awarded earned time in addition to good time.*

*This important reform provides for the equitable application of time credits in county jails and moderately reduces the average length of stay. The passage of HB 09-1263 is consistent with the Commission's statutory mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 IMPACT

The impact of this reform for local jails is likely to be significant. In Denver County, using data from 2008, officials estimate that this good time provision will reduce the average daily population by 80 beds. At a daily bed cost of approximately \$55, this is a savings of \$4,400 per day. In Arapahoe county, officials calculated that the average daily population in June 2009 was reduced by 25 beds. At a daily bed cost of approximately \$68, this potentially reduces costs by \$1,700 per day.

### 2010 UPDATE

*Implementation complete.* For the purposes of the Commission performance measures, Recommendations L-2, L-3, and L-4 have been combined because the impact overlaps. No centralized jail data system exists that would allow empirical assessments of the implementation impact. However, the impact in a single jail, Arapahoe County, is likely to be multiplied across the state's jails and must serve as the impact measure for the Commission.

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*Note that elements from recommendations L-2, L-3, L-4 and CS-64 were combined into House Bill 09-1263.*

## 2008 RECOMMENDATION/L-4 EARNED TIME CREDITS FOR JAIL INMATES

Modify C.R.S. 17-26-109 to include the ability for jail administrators to award discretionary earned time of 3 to 5 days per 30-day period for the completion of certain programs or education, or for an unusual or extraordinary accomplishment by a jail inmate. This requires that each county sheriff develop an earned time schedule for their jail in keeping with community expectations and standards.

### Agencies Responsible

General Assembly, county jails to implement

*This recommendation was successfully implemented with the passage of House Bill 09-1263 which allows individuals in jail to be awarded up to two days of earned time a month in addition to good time.*

*The use of incentives is a fundamental component of evidence-based correctional practices designed to encourage offenders to engage in behaviors that will improve their likelihood of success in the community. The passage of HB 09-1263 is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 IMPACT

If available, data will be obtained from a number of local jails on length of stay data, earned time awards, and program participation. These data will be analyzed to determine if the average time served is reduced.

### 2010 UPDATE

*Implementation complete.* For the purposes of the Commission performance measures, Recommendations L-2, L-3, and L-4 have been combined because the impact overlaps. No centralized jail data system exists that would allow empirical assessments of the implementation impact. However, the impact in a single jail, Arapahoe County, is likely to be multiplied across the state's jails and must serve as the impact measure for the Commission.

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*Note that elements from recommendations L-2, L-3, L-4 and CS-64 were combined in House Bill 09-1263.*

## 2008 RECOMMENDATION/L-5 REMOVE BARRIERS TO EDUCATION FUNDING

Any statutory impediment to inmates' access to or funding of post-secondary education should be eliminated.

### Agencies Responsible

General Assembly, individual offender

*This recommendation was successfully implemented with the passage of House Bill 09-1264 which removed a statutory barrier that disallowed individuals in prison to receive grants or other funding to enroll in college classes. When financial aid or scholarships are not available, the inmate must pay for higher education classes.*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that approximately 450 inmates enrolled in college courses as of May 2009. HB 09-1264 enables either private pay or grant funded tuition for inmates to be paid directly to the colleges or universities, and DOC will track inmate enrollment and progress (grades). DOC anticipates that there will be an increase of offenders enrolled in colleges and universities as a result of HB 09-1264.

### 2009 IMPACT

Data to determine if there is an increase of offenders enrolled in colleges and universities as a result of HB 09-1264 will be available from DOC at the end of FY 2010.

### 2009 BARRIERS

The Department of Corrections reports that implementation of this recommendation requires expansion of current programs. DOC pays approximately \$30 per student for post-secondary education.

### 2010 UPDATE

*Implementation complete.* Data unavailable to determine impact, however. The Department of Correction officials report that it will continue to work with DOC case managers and education staff to further implement this recommendation.

## 2008 RECOMMENDATION/L-6 SUMMONS IN LIEU OF ARREST WARRANT

The Commission encourages law enforcement agencies to enact policies that are consistent with C.R.S. 16-5-206 and 16-5-207, relative to issuing summonses rather than arrest warrants on appropriate felony class 4, 5, and 6 crimes. Pursuant to C.R.S. 16-5-206 and 16-5-207, a summons should be issued for misdemeanors, and class 4, 5 and 6 felonies, unless law enforcement presents in writing a basis to believe there is a significant risk of flight or that the victim or public safety may be compromised.

### Agencies Responsible

General Assembly, local law enforcement, and State Judicial

*This recommendation was successfully implemented with the passage of House Bill 09-1262 which requires that law enforcement issue a summons in lieu of an arrest for certain lower level offenses unless there is a specific finding by the court that the individual presents a flight risk or risk to public safety.*

*This important reform accomplishes two Commission goals. First, because confinement can result in job loss and destabilization of the individual and his or her family, this new mandate enhances the individual's ability to maintain employment. Research consistently shows that employment is a critical factor in offender success. Second, it reserves limited jail space for more serious offenders. The passage of HB 09-1262 is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 BARRIERS

Unknown data availability may prohibit ability to track impact.

### 2010 UPDATE

Implementation complete. Data unknown and unavailable.

### 2008 RECOMMENDATION/L-7 BOND-TO-THE-COURT SYSTEM

Draft legislation to permit judicial districts to develop a percentage bond-to-the-court (see HB 08-1382), as is provided by the federal court system. Such percentage bond does not eliminate other types of bonds.\*

#### Agencies Responsible

State Judicial

#### 2009 ACTION TO DATE

No action has been taken on this recommendation.

#### 2009 BARRIER

Insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session.

#### 2010 UPDATE

*No implementation.*

*\*This bail bond alternative would require legislation to amend C.R.S. 16-4-104 and 105 and was drafted as House Bill 08-1382.*

### 2008 RECOMMENDATION/L-8 COURT RETENTION OF BOND IN BOND-TO-THE-COURT SYSTEM

When courts use the percentage bond-to-the-court, per Recommendation L-7, and the court plays the role of the surety, it shall retain a percentage of the bond.

#### Agencies Responsible

State Judicial

#### 2009 ACTION TO DATE

No action has been taken on this recommendation.

#### 2009 BARRIER

Insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session.

#### 2010 UPDATE

*No implementation.*

## 2008 RECOMMENDATION/L-9 BOND APPLIED TO PRIORITY OF PAYMENTS

Before any refund to the defendant at the conclusion of the case, the bond held by the court shall be applied according to the priority of payments per C.R.S. 18-1.3-204(2.5).\*

### Agencies Responsible

State Judicial

### 2009 ACTION TO DATE

No action has been taken on this recommendation.

### 2009 BARRIER

Insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session.

### 2010 UPDATE

*Partial Implementation.* During the 2010 legislative session, House Bill 10-1215 passed. This bill is related to L-9 but it did not establish priority of payment for the use of the bond. H.B. 10-1215 allows a cash bond to be used by the court to satisfy fines, fees, and restitution. While this bill was not associated with the Commission, it addresses a gap in the system that was identified by L-9.

*\* This statute specifies the order of priority for offender fees.*

## 2008 RECOMMENDATION/L-10 INCREASE "GATE MONEY"

Increase "gate money" for first-time parolees upon release.

### Agencies Responsible

General Assembly, Department of Corrections

### 2009 ACTION TO DATE

No action has been taken on this recommendation.

### 2009 BARRIER

The fiscal problems currently facing the state inhibit the ability to move forward on this recommendation at this time. The Department of Corrections estimates that an increase in gate money from \$100 per offender to an inflation-adjusted \$390 per offender would cost \$1,560,000 (4,000 offenders x \$390).

### 2010 UPDATE

No implementation.

**2008 RECOMMENDATION/L-11 PROMOTE PARTNERSHIPS FOR CORRECTIONAL FACILITIES**

Encourage the General Assembly to provide funding that promotes partnerships between local and state public or private entities for the construction on publically owned lands of multi-purpose correctional supervision and re-entry facilities.

**Agencies Responsible**

General Assembly

**2009 ACTION TO DATE**

This recommendation continued to be discussed and the Commission strongly supports the increase in multi-purpose corrections beds at the local level. There is an urgent need to meet the need for correctional beds at both the local and state level, and the Commission endorses these partnerships as sound public policy. Local beds can reduce the need for additional state correctional beds, and flexibility in multi-purpose beds is needed to ensure the cost-effectiveness for both state and local corrections.

The Commission urges this recommendation to remain a priority for implementation when funding sources become available.

**2009 BARRIER**

The current fiscal problem facing state and local governments inhibits the ability to move forward on this recommendation. A 200 bed facility is estimated to cost on average \$8,000,000 with \$4,000,000 to be provided by the state and \$4,000,000 to be provided by local government.

**2010 UPDATE**

*No implementation.*

## 2008 RECOMMENDATION/L-12 EARLY TERMINATIONS OF PAROLE

The Commission requests that the Department of Corrections develop and implement a standardized policy regarding early terminations of parole and require parole officers to submit such requests to the parole board when a parolee has served at least half of the parole period and has met other risk reduction benchmarks. In addition, the Department of Corrections should provide data on the numbers and decisions of early termination requests to the Division of Criminal Justice. The Commission further requires that such request comply with the Victim's Rights Act.\*

### Agencies Responsible

Department of Corrections, Parole Board

*Implementation of this recommendation is underway. This effort reflects the evidence-based practice of focusing on individual needs and risk levels, and using parole resources for those most in need of supervision. It is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections developed DOC Administrative Regulation 250-29 and plans on full implementation by January 1, 2010. This regulation was endorsed by the Post Incarceration Supervision Task Force with the modification that violent offenders be included for early discharge consideration. The Department of Corrections supports this modification with the conditions that there is an avenue for victim input and a full parole board review.

### 2009 IMPACT

When data become available, annual Commission reports will include the number of early discharge requests from parole officers and parole board decisions that result in early termination of parole.

### 2009 BARRIERS

The potential barrier noted by the Department of Corrections is that of timing and sequencing. DOC plans complete implementation and acknowledges the requirement of funding for the information technology program Colorado Web-Based Integrated Support Environment (C-WISE) and training of the Community Parole Officers and Parole Board members.

### 2010 UPDATE

*Implementation complete.* Department of Corrections officials report that DOC Administrative Regulation 250-29 "Recommending Early Discharge For Parolees" was signed by DOC Director Ari Zavaras on 9/2/09 and re-enacted on 10/1/10. DOC has fully implemented the recommendation. From September 9, 2009, 1,573 recommendations for early discharge were submitted to the Parole Board. To date (October 2010) the Board has discharged 1,377 offenders.

*\* In a focus group conducted with representatives from the victims' community, participants were comfortable with this recommendation only if this applies to nonviolent offenders, excluding offenders using the Victim Rights Amendment definition of violent crime. Also, focus group representatives wanted to ensure that the victim is informed of every request for early termination, and that these requests should be limited to one per year per offender.*

## **General Principle**

### **2008 RECOMMENDATION/GP-13 PROBATION'S RESPONSE TO TECHNICAL VIOLATION**

The Commission supports the efforts of the Division of Probation Services and district probation offices to enhance the consistent use of appropriate incentives and intermediate sanctions, in court and out of court, particularly in response to technical violations.

#### **Agencies Responsible**

State Judicial

*This recommendation supports existing efforts by the Division of Probation Services. The use of incentives is a fundamental component of evidence-based correctional practices designed to encourage offenders to engage in behaviors that will improve their likelihood of success in the community. This effort furthers the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

#### **2009 ACTION/IMPLEMENTATION**

This work is underway. This recommendation supports the Division of Probation Service's current efforts to use sanctions and incentives to promote positive behavior change and reduce recidivism. In addition to current practices (e.g. training, policies and procedures, specialty court development), a contingency management work group has been created that will address further efforts in this area.

#### **2009 IMPACT**

Efforts to implement evidence-based practices by the Division of Probation Services have already yielded significant results by reducing revocations to prison. In FY 2008, the number of probation revocations to the court remained stable, but revocations to prison declined by 155 despite an increase in the probation population. In comparison, before the changes took place probation revocations to prison between FY 2006 and FY 2007 remained unchanged. Information on probation revocations will be reported in future Commission reports

#### **2010 UPDATE**

*Implementation underway.* For the purposes of the Commission performance measures, Recommendations BP-35, BP-36 and GP-13 have been combined because the impacts overlap. Colorado Judicial Department, Division of Probation Services, reports that it was awarded a Justice Assistance Grant (JAG) in October 2009, to examine using sanctions and incentives as an effective means of supervising probationers. The Center for Effective Public Policy (CEPP), a national consulting group, was selected to complete the assessment. In 2010, the CEPP completed a literature review, convened an advisory group, developed a 9-month work plan, selected pilot districts and convened a stakeholder meeting in April 2010. A multi-disciplinary steering committee was formed to provide feedback and direction. Onsite meetings, interviews, surveys and data collection are underway in each pilot site. This information will be used to develop strategies and guidelines, and an implementation and evaluation plan will be developed for statewide implementation.

## 2008 RECOMMENDATION/GP-14 STANDARD CONDITIONS OF PROBATION

The 19 standard conditions of probation should be reviewed by the Probation Advisory Committee. The Probation Advisory Committee should consider requiring only those conditions that are tailored to each individual, and based on criminogenic risks/needs, and victim and community safety. The PAC should invite members of the CCJJ Re-Entry Probation Task Force to participate in this review. The condition to remain crime-free is reasonable for all offenders.

### Agencies Responsible

State Judicial

*Implementation of this recommendation is underway. Task Force recommendations for specific changes to the standard conditions of probation have been forwarded to the Probation Advisory Committee. The Commission remains committed to the use of empirically-based risk/needs assessments that would form the foundation of individualized conditions of supervision to further the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives...." and ensure the "...cost effective use of public resources." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

According to the Judicial Branch, in May 2009 the Probation Advisory Committee (PAC) reviewed the CCJJ Probation Task Force recommendation and agreed to evaluate the existing adult standard conditions of probation for revisions. PAC members provided an indication that revising the terms and conditions would be beneficial and plans to review a draft version of the standard adult terms and conditions at the next PAC meeting in August 2009.

### 2009 IMPACT

Isolating the impact of probation conditions on recidivism is the ideal measure of impact; however, resources preclude this study.

### 2009 BARRIERS

Judicial reports potential barriers with timing and sequencing.

### 2010 UPDATE

*Implementation underway.* Officials from the Division of Probation Services report that in May, 2009, the Probation Advisory Committee (PAC) reviewed the CCJJ Probation Task Force recommendation. PAC members agreed changes that conditions need to be realistic, relevant and research-based. The first draft reduced the number of conditions from 19 to 13 and was met with a favorable response from PAC. The next phase of the project includes research and review of other states' conditions of probation and a second draft of Colorado's adult standard terms and conditions of probation.

## 2008 RECOMMENDATION/GP-15 CASE PLAN IMPLEMENTATION

Every case plan shall be fully implemented and updated regularly to reflect treatment progress and new skills learned.

### Agencies Responsible

State Judicial, Department of Corrections, Department of Public Safety (Office of Community Corrections/DCJ)

*Implementation of this reform is expected to take several years. An individualized case plan for each offender is a fundamental component of evidence-based practices since it describes the actions required to prepare the individual to live a productive, crime-free life in the community. Because the case plan has multiple purposes, including that it can be used to hold both case managers/supervisors and offenders accountable, it is a necessary component of reform that prioritizes public safety. The Commission remains committed to the complete implementation of individualized case plans to fulfill its statutory mandate to “focus on evidence-based recidivism reduction initiatives....” and ensure the “...cost effective use of public resources.” [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION TO DATE

The Division of Probation Services reports that for several years, case plans and case plan updates have been required in policy and measured with quality assurance tools. The Department of Corrections reports that fulfilling this recommendation would require a revision of the total case management system from the point of intake into the Department, the incarceration phase, community corrections, all the way through parole supervision. Revisions to the case management system would include a standardized offender assessment process and utilizing the LSI to identify risk factors and criminogenic needs. This will generate a case plan to address criminogenic needs and will help to place offenders in appropriate programs.

As of June 2009 neither the CCJJ Community Corrections subcommittee nor the Office of Community Corrections has addressed this recommendation.

### 2009 IMPLEMENTATION PLAN

The Division of Probation Services currently has future plans to review and revise the existing case plan documents. Policy, procedure and program changes have been implemented. In addition, the necessary training is already in progress. Specifically, case plan training and training boosters currently exist.

The Department of Corrections states that a full implementation of these recommendations would be phased in over a five-year period at an estimated cost in excess of \$18 million dollars for revisions to the information system alone. In addition, DOC reports that cost factors have to be determined for additional case managers, clinical staff, community parole staff, and other related programs. Policy, procedure, training and program planning are currently underway.

### 2009 IMPACT

Complete implementation would result in systemic reform. However, resources are unavailable to evaluate the cases planning and management for all offenders. Agencies will provide narrative reports of progress, as is provided here, and these will be reported in the Commission’s annual report.

### 2009 BARRIERS

While State Judicial has overcome barriers within their department regarding this recommendation, the Department of Corrections noted that staffing, funding, a need for technical assistance, and timing/sequencing may hinder the process. Specifically, DOC states that \$20.3 million would be needed to implement this plan (this includes 47.5 FTE).

### 2010 UPDATE

*Implementation underway by the Division of Probation Services (DPS).* DPS reports that case plans, by policy, are currently required for all medium and maximum risk probationers. Case plan training and boosters are routinely provided and are classified as "essential training" for probation officers. Case plan worksheets and templates are available for officer use. Quality assurance tools reinforce officers' use of risk-needs-responsivity principles (RNR) in the case plan. Case plans must also establish reasonable and attainable goals and be developed collaboratively with the probationer. In 2010, the "Big Four" (Andrews & Bonta) criminogenic needs were emphasized and incorporated in educational materials and training: anti-social attitudes, anti-social associates, history of anti-social behaviour and anti-social personality. Additionally, DPS is implementing a new case management system over the next 3 years which includes developing electronic case plans that link assessments to the "Big 4", assisting probation officers in developing quality case plans.

## **2008 RECOMMENDATION/GP-16 INVEST IN EVIDENCE-BASED PROGRAMS**

Invest in evidence-based programs and emerging best practice, treatment and education so that there is sufficient programming available to meet the needs of the offender population.

### **Agencies Responsible**

State Judicial, Department of Corrections, Department of Public Safety (Office of Community Corrections/DCJ)

*Implementation of this recommendation would signal systemic reform. Its full implementation is critical to the reform efforts of the Commission, as specified in C.R.S. 16-11.3-103(1).*

### **2009 ACTION/IMPLEMENTATION**

The Division of Probation Services (DPS) reports that it published a white paper on evidence-based practices (EBP) in late 2007 and soon afterward formed the EBP Committee. The EBP Committee has focused its efforts in three areas: (1) training, (2) implementation and sustainability, and (3) evaluating and enhancing the working relationship between a probation officer and the probationer. The training curriculum has been developed and training is underway. The DPS is currently evaluating two major initiatives, Intensive Supervision Probation and in-house cognitive-behavioral groups.

The Department of Corrections reports that it pursued funding for evidence-based programs through the state budget process. The Division of Adult Parole, Community Corrections and YOS collaborated with the Division of Probation Services and the Division of Criminal Justice in applying to the Justice Assistance Grant program in February 2009 to provide training for parole officers in Motivational Interviewing and cognitive-behavioral programming. DOC reports that it continues to assess evidence-based programs that are appropriate for its offender population.

The Department of Public Safety/Division of Criminal Justice (DCJ) reports that, in collaboration with Probation and DOC, it continues to be engaged in specific evidence-based programming, particularly for special offenders. For example, DCJ's Residential Mental Health Services beds are being converted into expanded Dual Diagnosis programming using EBP. Its 45-day Intensive Residential Treatment (IRT) model for substance abuse demonstrated poor evidence-based outcomes, and has been converted into a 90-day IRT program on the basis of research in Colorado and elsewhere. DCJ is also pursuing the Early, Enhanced Nonresidential Treatment (EENT) pilot, which will study the efficacy of the "early" transfer of selected low-risk offenders from residential community corrections to enhanced nonresidential programming (see GP-29). DCJ reports that, despite these initiatives, there remains a clear

and worsening shortage of evidence-based treatment resources for "average" community corrections offenders.

### **2009 IMPACT**

Complete implementation would result in systemic reform. The rate of new crimes committed by offenders under supervision is expected to decrease as implementation expands; this information will be reported in future Commission reports.

### **2009 BARRIERS**

Judicial anticipates technical assistance needs as well as timing/sequencing may be a barrier to the implementation of evidence-based programs. The Departments of Corrections and Public Safety expect lack of program funding to be a barrier.

### **2010 UPDATE**

*Implementation underway.* Significant progress has been made on this recommendation. In 2009, the Department of Public Safety, on behalf of the Commission, submitted a grant proposal to develop and implement a multi-agency training initiative on evidence-based correctional practices. The Department of Public Safety received a one-time **\$2.1M grant** in collaboration with the Division of Behavioral Health, the Department of Corrections, the Division of Probation Services, the Office of Community Corrections to train over two dozen "train the trainers" and over 1,000 criminal justice professionals and private services providers in Motivational Interviewing®, the science of addiction and mental health problems, and evidence-based case management. This initiative, called Evidence Based Practices Implementation for Capacity, or EPIC, is underway. By September 2010, approximately 240 professionals had been trained in evidenced based correctional practices: approximately 90 were trained in Motivational Interviewing® and 150 in responding to individuals with behavioral health problems.

In addition, in 2009 and on behalf of the Commission, the Division of Behavioral Health was awarded **\$1.48M** in federal grant funds to develop a statewide network of community-based criminal justice clinical specialists to coordinate the case management and clinical treatment services to adult offenders with behavioral health problems. Ten full-time specialists have been hired in mental health centers across the state to serve as the point of contact for criminal justice agencies referring clients. The goals of this project are to reduce recidivism by aligning offender supervision requirements with community treatment agency services including assessment, treatment, medication evaluations, residential services, benefits acquisition, vocational training.

## 2008 RECOMMENDATION/GP-17 TRANSFERABILITY OF PROGRAM AND TREATMENT PARTICIPATION

When possible, participation in programs and treatment phases by offenders in jail or prison should be transferable and accepted across agencies.

### Agencies Responsible

Department of Corrections, local jails, Department of Public Safety, applicable regulatory agencies

*This complex reform initiative furthers the Commission's mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

Because this recommendation requires multiple stakeholders to resolve issues concerning data transferability, confidentiality, and standards for treatment delivery, among other concerns, two Commission members agreed to form a working group that includes representatives from the following agencies: The Domestic Violence Offender Management Board, the Sex Offender Management Board, the Division of Child Welfare, the Division of Behavioral Health, jails, Department of Corrections, and the state parole board. This group will be tasked with exploring this topic in greater detail and report back to the Commission.

### 2009 IMPACT

Future Commission reports will document progress toward this recommendation.

### 2009 BARRIERS

Potential barriers include the multitude of correctional and regulatory agencies involved in this recommendation and the complexity of various treatment components and treatment programs.

### 2010 UPDATE

*No implementation.*

## 2008 RECOMMENDATION/GP-18 MATCH INSTITUTIONAL PROGRAMS WITH OFFENDER NEEDS

To identify the gaps between available services and needs, survey the availability and capacity of all programs in the Department of Corrections, local jails, and community corrections, and compare these with the assessed needs of the corresponding populations.

### Agencies Responsible

Department of Corrections, Department of Public Safety (Office of Community Corrections, DCJ), county jails

*This recommendation is at the core of evidence-based practice. Implementation of the gaps analysis is underway by the Departments of Corrections and Public Safety. Ensuring the availability and provision of offender services and programs is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that documentation of offender needs and program availability is underway in each state prison, with service gaps to be identified by July 2009. DOC's Education Division plans to develop a 3-year strategy for the placement of programs in DOC facilities. Based on the knowledge gained from these efforts, DOC may request funding in the FY 2010 state budget to increase program capacity.

The Department of Public Safety (Office of Research and Statistics, DCJ) assesses, in general, the gaps between service needs and program participation for offenders in community corrections programs, and provides this information in public documents.

### 2009 IMPACT

The results from DOC gaps analysis will be presented when it becomes available. Efforts to correlate needs with services will be documented and presented in future Commission reports.

### 2009 BARRIERS

The Department of Corrections reports that the primary barrier to adequate programming is funding. The Department of Public Safety reports that services delivered are rarely evaluated and therefore the impact of matching needs and programming remains unknown. Further, offenders in community corrections frequently are required to pay for services, creating a barrier for indigent offenders. County jails do minimal assessments of individual programming needs.

### 2010 UPDATE

*Implementation underway.* The Department of Corrections reports that it completed the first phase by providing the program information to the Division of Criminal Justice in November of 2008. However, DOC reports that facilities are still analyzing and planning on how to match offender programs with offender needs and identifying service gaps. DOC's Division of Adult Parole, Community Corrections and YOS reports that it has contracts with 145 treatment service providers. These providers predominantly include mental health, substance abuse and sex offender treatment providers. The number of offenders participating in these programs is tracked by DOC annually, however these numbers were unavailable as this report went to press. DOC officials report a gap in funding availability for substance abuse treatment.

DOC reports that it will complete a gap analysis during FY11, and the following information is provided as a summary of progress: Pre-Release and Community Re-Entry programs are working in collaboration to provide a continuum of services from facility treatment participation through community re-entry, and participation figures are provided in DOC's Offender Programs Quartely Report. DOC staff continually assess the needs of offenders and refer to

available programs including those that focus on housing and employment.

## 2008 RECOMMENDATION/GP-19 EVALUATION OF TREATMENT PROVIDERS

Provide resources to evaluate the assessment practices and program delivery of community-based and institutional treatment providers.

### Agencies Responsible

Department of Corrections, Department of Public Safety (DCJ), Division of Probation Services

*Offender assessment, service delivery, and program evaluation is a fundamental premise of evidence-based practice. If evidence-based practices are not evaluated with fidelity and if services delivered do not result in recidivism reduction, both opportunity and resources are wasted. The Commission considers evaluation of offender services necessary to its statutory mission: enhancing public safety, ensuring justice and the cost-effective use of public resources [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

These agencies evaluate programs as resources are available. The Department of Public Safety (Office of Research and Statistics/DCJ) is currently collaborating with the Division of Behavioral Health, private providers and four community corrections programs to evaluate Short Term Intensive Residential Remediation Treatment (STIRRT) program which delivers services to hundreds of offender annually. The Department of Corrections reports that it will continue to study the prison therapeutic community programs.

### 2009 IMPACT

Efforts to obtain resources for the evaluation of treatment and service delivery will be documented in future Commission reports. Evaluations completed will also be reported.

### 2009 BARRIERS

Hundreds of service providers deliver services to Colorado offenders. Additional resources and staff are required to evaluate treatment providers. DOC indicates the implementation of this recommendation to focus only on in-prison programs would cost \$160,332 for 3 FTE to evaluate the areas of clinical services, education, and prison operations.

### 2010 UPDATE

*Partial implementation.* The evaluation of one program in four sites is nearly complete. The Department of Public Safety (Office of Research and Statistics/DCJ) has completed a study of four programs that provide Short Term Intensive Residential Remediation Treatment (STIRRT) for offenders convicted of drug crimes. This program is intended to serve as a “last stop” before prison. STIRRT has two parts. First, a 14-day residential component designed to stabilize offenders and, second, 6-9 months of outpatient treatment in the community following the residential component. The evaluation report will be published in the fall of 2010. The study analyzed data on 1,324 individuals who participated in STIRRT residential program over an 18-month period. The findings are summarized below:

- Most participants (91%) successfully completed the 14-day residential program.
- The top four substances that clients reported involvement with were marijuana, cocaine, alcohol and methamphetamines.
- Recidivism, measured as new county or district court filing within 12 months of discharge from

residential treatment, was approximately 25%.

## 2008 RECOMMENDATION/GP-20 INCREASE IN MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT

The state should invest in community-based, evidence-based mental health and substance abuse treatment for all citizens to prevent the need for incarceration, and to provide such treatment as an alternative to incarceration where appropriate.

### Agencies Responsible

Department of Human Services, Department of Public Safety, Department of Healthcare Policy and Financing, Department of Public Health and Environment

*This recommendation reflects a decisive need for systemic reform. Many entities are committed to the implementation of this recommendation. The Commission's commitment to a collaborative approach to these issues is an effective method of maximizing resources and builds on existing expertise in the community. This collaborative undertaking, and anticipated reforms that are expected to follow, are embedded in the Commission's statutory mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)]. Providing needed behavioral health treatment to avoid incarceration promotes the Commission's mandate to "focus on evidence-based recidivism reduction initiatives...."[C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Commission formed a Behavioral Health Subcommittee to prioritize areas where there exists a critical intersection of the criminal justice system and behavioral health systems. This group is working with stakeholders in the behavioral health communities, including the governor's Behavioral Health Cabinet (cabinet members who have oversight over aspects of behavioral health and criminal justice), and a "Transformation" initiative managed by the Governor's Office that taps local knowledge to develop a comprehensive strategy for reform. The Commission's Subcommittee will develop recommendations for Commission discussion and approval; these will be available in future Commission reports.

### 2009 IMPACT

National rankings for per capita expenditures on mental health and substance abuse treatment will be included in future Commission reports.

### 2009 BARRIERS

Extensive problems exist regarding access to services and funding availability for mental health and substance abuse treatment. For example, the Department of Corrections reports a significant lack of treatment staff, stating that 45 new staff are needed to expand substance abuse treatment and 14 new positions are needed for mental health treatment.

### 2010 UPDATE

*Implementation underway.* For the purposes of the Commission performance measures, Recommendations GP-20 and GP-21 have been combined because the impact overlaps. The Behavioral Health Subcommittee continues to work with the Transformation initiative and the Office of Health Care and Policy and Finance to expand access to treatment to individuals statewide and in the justice system. On April 20th, 2010, the Governor signed Executive Order B 2010-006 creating the interagency Health Reform Implementation Board. The Colorado Office of Health Care Policy and Finance (HCPF) is coordination with this new Board and is managing the implementation of the

federal Patient Protection and Affordable Care Act (P.L. 111-148, PPACA) and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152). These reforms expand Medicaid and so will significantly improve access to substance abuse and mental health services for many individuals in the justice system, including young adults and adults without children. Funding for these reforms will become available in future years.

In addition, significant resources were directed toward behavioral health treatment in the FY10 legislative session. **House Bill 10-1347:** Among other things, this bill increased the Persistent Drunk Driver Surcharge from \$50 to \$100, and half of the additional revenues will be deposited into the Persistent Drunk Driver Fund (discussed earlier in this section), most of which is directed toward treatment, and half into the newly created court-ordered alcohol treatment fund. This is expected to generate over \$550,000 per year when fully implemented after the first year.

**House Bill 10-1352:** Modified the penalties for personal use and possession of controlled substances. The bill lowers penalties for certain offenses, but raises surcharges imposed on convictions for many drug-related crimes. It is estimated that the bill will result in a decrease of \$1,468,196 in revenue to the State's General Fund, but a commensurate increase in revenue to the Drug Offender Surcharge Fund.

**House Bill 10-1360:** This bill reduced the penalties for technical violations (reducing the number of individuals going to prison) and directed the prison cost savings to community corrections transition offenders and those on parole:

- \$1,545,409 for community corrections treatment beds
  - 30 beds for IRT and follow-up outpatient treatment
  - 20 mental health beds
  - 10 therapeutic community beds
  - 10 sex offender beds
- \$2,057,225 for offenders reentering the community from the Department of Corrections
  - Wrap around services for parolees
  - Outpatient mental health services
  - Another \$500,000 was allocated for job training and employment services

**House Bill 10-1284:** This bill imposes a sales and use tax on medical marijuana. The first \$2,000,000 is appropriated to the Department of Health Services and Health Care, Policy and Finance to fund substance abuse programs.

## 2008 RECOMMENDATION/GP-21 INCREASE FUNDING FOR SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT

The General Assembly must substantially increase state funding for evidence-based and promising practices in substance abuse and mental health treatment.

### Agencies Responsible

General Assembly, Department of Human Services, Department of Public Safety

*This recommendation reflects a decisive need for reform. This specific reform is embedded in the Commission's statutory mandates to "...ensure justice..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

No action has been taken on this recommendation.

The Commission formed a Behavioral Health Subcommittee to prioritize areas where there exists a critical intersection of the criminal justice system and behavioral health systems. It will not address this recommendation.

### 2009 BARRIERS

Funding and access to services represent significant barriers. This broad recommendation exceeds the purview of the Commission but is an essential component to providing access to services by individuals who may face entry into the criminal justice system. Addressing the need for adequate services requires significant collaboration and reform of current practices.

### 2010 UPDATE

*Implementation underway. See 2010 Update for GP-20.*

## 2008 RECOMMENDATION/GP-22 IDENTIFY AND ADDRESS RE-ENTRY SERVICE GAPS

Each judicial district should be required to conduct an inventory of the services and resources, including available housing and the capacity of those resources, to address the needs of offenders reentering the community. This information should be paired with an analysis of the risk/needs of offenders released from the Department of Corrections. Re-entry service gaps must be identified, along with the costs to fill those gaps. Using this information, a plan should be developed that identifies the appropriate parties to provide services and a funding scheme. Inventory reports should be provided to the Division of Criminal Justice, which will forward the information to the Commission.

### Agencies Responsible

Colorado Judicial Districts, Department of Corrections, Department of Human Services, Department of Public Safety (DCJ, Office of Community Corrections)

*This large-scale project assesses the state's ability to match the need for services with the availability of services and, where gaps occur, identify funding requirements. Incorporating needs assessment data into a strategic approach to building service capacity reflects the Commission's commitment to evidence-based practices as the path to recidivism reduction.*

### 2009 ACTION/IMPLEMENTATION

The Division of Criminal Justice, Office of Research and Statistics (ORS), is exploring the availability of program/service information and offender needs data. The ORS plans to convene a group of agency researchers to identify potential sources of information, develop an analysis plan, analyze data when feasible, and prepare a preliminary status report for the Commission.

### 2009 IMPACT

Future Commission reports will document progress toward this recommendation.

### 2009 BARRIERS

Lack of resources and data availability present the largest barrier. For example, DOC reports that this initiative requires four FTE at a cost of \$227,184.

### 2010 UPDATE

*No Implementation.* The Department of Corrections reports that the gaps analysis has not started due to severe staffing shortages in its Office of Planning and Analysis (OPA) and also due to data integrity problems. Since fall of 2009, OPA has taken the lead to fund and manage a project to improve the data tracking of inmates' needs, readiness, and treatment participation. The existing data system was never properly designed to track program participation so new modifications to the database will enable DOC to better identify, refer, and place inmates into recommended programs. When this is done, it will be possible to begin an analysis of the gaps that exist between offender need and treatment services. The database changes are anticipated to be implemented by June 2010 for substance abuse, sex offender, and mental health programs. The Department cannot fully implement this recommendation until the judicial districts complete their gaps analysis and forward their information to the Department of Corrections for coordination.

Resource limitations have precluded the Division of Criminal Justice's ability to convene a group of agency researchers to pursue this recommendation.

## 2008 RECOMMENDATION/GP-23 EXPAND EXISTING APPRENTICESHIP PROGRAMS

The Commission supports efforts by the Department of Corrections to expand existing apprenticeship programs.

### Agencies Responsible

Department of Corrections, Department of Labor

*This recommendation supports existing efforts by the Department of Corrections. Research has confirmed that employment is necessary for successful transition to the community. This effort is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports a concentrated effort to increase the number of offenders in its apprenticeship programs statewide by working with the U.S. Department of Labor. It is coordinating with the Colorado Department of Labor and Employment (Labor Market Information) to identify programs that correspond to the prevailing job market by July 2009. DOC's Education Division has set a goal to open 14 new apprentice programs in FY2010. Additionally, the Department of Corrections will evaluate current and proposed apprenticeship programs to determine delivery practicality, demand and wait-listing of programs by October 2009.

Finally, DOC will coordinate with the Colorado Department of Labor and Employment and the U.S. Department of Labor to develop procedures that will ensure the consistent transfer of credits and hours by October 2009.

### 2009 IMPACT

The availability and capacity of current programs and the number of inmates who complete these programs will be tracked to determine the impact of this recommendation. DOC's Education Division reports that it currently has more than 240 offenders enrolled in apprentice programs for approximately 50 trades, and it takes an average of 3 years for an offender to complete an entire apprentice program.

### 2009 BARRIERS

The Department of Corrections reports potential barriers as funding for program expansion and timing/sequencing of program implementation.

### 2010 UPDATE

*Implementation underway.* Officials from the Department of Corrections report that, per DOC Administrative Regulation 500-01, its Division of Correctional Programs is addressing this recommendation. At this time, the DOC Education Director position is vacant. DOC will extend the action plan into the next fiscal year (FY2012) when the position has been filled. DOC staff from across the state attended Labor Market Information (LMI) Gateway training, conducted by the Colorado Department of Labor and Employment. DOC then conducted training sessions for 100 participants in July 2009 at Pueblo, Mesa County and Denver County Workforce Centers. Moreover, DOC officials report that its community re-entry team collaborated with its technology staff to have a LMI Gateway link added to DOCNET, which is the Department's web-based intranet network.

The Department of Corrections also reports that it will attempt to expand the apprenticeship program during this fiscal year, FY11.

## 2008 RECOMMENDATION/GP-24 EDUCATIONAL OPPORTUNITIES FOR OFFENDERS AND STAFF

Post secondary educational opportunities should be expanded for both inmates and staff.

### Agencies Responsible

Department of Corrections, Department of Higher Education, community college system

*Implementation of this recommendation is underway. Studies of offenders have found that the higher the educational achievement, the lower the recidivism rate. Further, a well-trained and professional correctional staff is necessary to prepare offenders for successful re-entry into the community. The Department of Correction's emphasis on this recommendation is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that it is committed to the continued expansion of its current practice. Tuition is reimbursed for staff at a rate of 50 percent for undergraduate costs and 40 percent for graduate studies. Additionally, DOC has agreements with the community college system and Adams State College to provide educational opportunities for offenders. These agreements describe a process that facilitates the transition of a student from one educational institution to another, and from one education level to the next with a minimal duplication of coursework. DOC intends to increase the number of these agreements by December 2009.

### 2009 IMPACT

DOC intends to develop a system to record participation and course completions by December 2009, for both staff and inmates. This information will be presented in future Commission reports.

### 2009 BARRIERS

The Department of Corrections notes that barriers to the expansion of educational opportunities include funding, timing, and sequencing of the expansion. The Commission suggested that a short-term, multi-disciplinary working group be developed to explore funding sources; this group has not been developed.

### 2010 UPDATE

*Implementation underway.* Department of Corrections officials report that an agreement was reached with the Colorado Community College System (CCCS) and Pueblo Community College (PCC) to ensure that offenders enrolled in DOC vocational programs receive community college credit. Offender students will now be entered into BANNER (CCCS student tracking system) and also receive PCC transcripts. CCCS has dedicated funding for one FTE to be used by PCC for this program. PCC hosted a training session for all affected DOC instructors. Initial student enrollment has been completed. The number of students enrolled in these programs was not reported by DOC.

In addition, DOC officials report that it maintains two training academies, the Correctional Training Academy and the RECLA Training Academy which is within the Division of Adult Parole, Community Corrections & YOS, and provides training opportunities for staff.

Due to fiscal restraints and integration issues with DCIS (DOC's MIS), the Department's Division of Education was not able to move forward with obtaining an outside vendor for offender educational tracking. The Division of Education worked internally with DOC's Business Technologies and the Office of Planning and Analysis to improve offender educational reporting. Additional internal improvement steps and other outside avenues are still being pursued but budget conditions will probably prohibit purchase of a comprehensive system at this time.

## 2008 RECOMMENDATION/GP-25 EDUCATE HOUSING AUTHORITIES

Educate and encourage housing authorities to be no more restrictive than the HUD guidelines in refusing public housing to people with criminal records.

### Agencies Responsible

Department of Corrections, Department of Human Services

*A stable residence is a fundamental component of successful offender re-entry. A proactive effort to expand the availability of housing for individuals with criminal records is consistent with the Commission's mandate to reduce recidivism.*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that it will identify the total capacity of existing housing resources statewide and the housing needs of the parolee population. It plans to develop a housing committee by July 1, 2009. DOC staff plans to meet with officials at the state Division of Housing (DOH) and to provide information on parolee housing needs to the U.S. Department of Housing and Urban Development (HUD) by September 1, 2009. It also plans to explore the DOH and HUD appeal processes. DOC plans to develop a database that identifies housing authorities and landlords willing to accommodate individuals with felony convictions by October 2009. DOC reports that further action will require additional staff resources.

### 2009 IMPACT

DOC's progress on its implementation plan, and the impact this effort has on the availability of housing for offenders, will be reported in future Commission reports.

### 2009 BARRIERS

Lack of willingness of officials and landlords to reduce current housing restrictions is the greatest potential barrier. The Department of Corrections reports that a sustained focus on housing for parolees by DOC would require an FTE to consistently update statewide housing information and attend the necessary meetings, at a cost of approximately \$57,000.

### 2010 UPDATE

*Partial implementation.* The Department of Corrections reports that housing requirements and regulations for HUD/Section 8 is reviewed with staff and posted on its Community Re-Entry Q-Drive which provides information related to community resources to DOC staff assisting individuals with transition into the community. Officials also report that the Department facilitated two meetings (October and November 2009) with the Colorado Community and Interagency Council on Homelessness to discuss barriers to securing housing for offenders. These meetings included staff representing CDOC facility and community operations, mental health and community corrections.

DOC officials also report that its community re-entry specialists continue to seek out felon-friendly landlords to house homeless offenders statewide. Parole officials are part of the Colorado Community and Interagency Council on Homelessness which collaborates with agencies such as the Colorado Behavioral Health Council, Colorado Coalition for the Homeless, Colorado Disability Determination Office, Colorado Health Care Policy and Financing, Social Security Administration and the Veterans Administration. Parole officials collaborated with the Colorado Department of Local Affairs, Division of Housing's Second Chance Act Adult and Juvenile Offender Reentry Demonstration Project grant application.

In December 2009, Interagency Council on Homelessness members began working with DOC staff to identify areas

of collaboration and to increase support for homeless offenders. One result of the collaborative effort with the council was the August 2010 report created, in conjunction with the Harvard Kennedy School, titled "Addressing Homelessness among People Transitioning out of State Corrections." In March 2010, DOC collaborated with, and provided a letter of support to, the Colorado Department of Local Affairs (DOLA), Division of Housing for a Second Chance Act grant titled Colorado Second Chance Housing and Re-Entry Program (C- SCHARP). In August 2010, the Department of Local Affairs received the grant and in September participating agencies met to discuss implementation policy and procedures. The grant provides DOC with a re-entry specialist who will work with team members to secure housing, benefits acquisition, substance/mental health and healthcare services.

In March 2010, DOC issued a Request for Information on housing statewide. One potential vendor responded in Colorado Springs but required guaranteed monthly funding. In September 2010, another RFI was issued; to date the DOC has not received a response.

## **2008 RECOMMENDATION/GP-26 COMMUNITY CORRECTIONS INSTEAD OF PAROLING HOMELESS**

Encourage the use of discretionary parole to community corrections in lieu of homeless parole plans to provide a stable living situation prior to the offender's mandatory parole date (MRD). Six to eight months prior to the MRD, a case manager should submit an application to community corrections for individuals who are likely to parole homeless.

### **Agencies Responsible**

Department of Corrections, Parole Board, Department of Public Safety (Office of Community Corrections/DCJ), Community Corrections Boards

*An innovative response to the problem of homeless parolees is the allocation of county jail work release beds, a pilot project that is underway in Denver. This effort addresses the problem identified in this recommendation by removing barriers to successful completion of parole, and is consistent with the Commission's mission to reduce recidivism.*

### **2009 ACTION/IMPLEMENTATION**

The Office of Community Corrections (DCJ) has partnered with the Denver Sheriff's Department Phase I program to pilot the use of up to 12 beds for a 90-120 day stay for homeless parolees. Five offenders were in the program as of June 5, 2009. This pilot program is underway and, if it seems to adequately meet the needs of these offenders, it could be expanded to 40 beds in FY 2010.

In addition, the Department of Corrections reports that once this recommendation is implemented, it will facilitate community corrections referrals of offenders who lack stable housing resources. The Department of Corrections has offered to train parole board members, case managers, and community parole officers regarding the placement of this population in community corrections programs.

### **2009 IMPACT**

Data on offender homelessness is not available from the Department of Corrections or other agencies. The status of this recommendation will be presented in future Commission reports.

### **2009 BARRIERS**

Barriers include the inability to obtain reliable data on the homelessness of offenders, the lack of discretionary parole releases, and the lack of data on reasons for acceptance (or not) of offenders into community corrections.

Expanding housing resources for homeless parolees, such as the Denver Jail Phase I pilot program, will require staffing and funding.

#### **2010 UPDATE**

*Partial implementation.* The pilot program was implemented in January 2009, focusing on offenders within 10 months of their mandatory parole date. Offenders in this population are generally not appropriate for standard community corrections and have often failed multiple times. By June 2010, more than 20 offenders participated in this pilot program. Data from the program shows a successful termination rate of 75% with an absconder rate of 12% and a technical violations rate of 12%. The Office of Community Corrections is working to expand this program to Fort Collins, Grand Junction and Pueblo. Research shows that El Paso County has the greater need at this point as more people are paroling homeless there than anywhere else in the state.

#### **2008 RECOMMENDATION/GP-27 SUPPORT FOR THE GOVERNOR'S COMMUNITY CORRECTIONS ADVISORY COUNCIL**

The Commission supports the work of the Governor's Community Corrections Advisory Council in the following initiatives:

- The assessment techniques used to establish the treatment needs of community corrections offenders should be evidence-based and implemented as required. This requires training of community corrections staff. The accuracy and completeness of individual offender assessments should be a part of the community corrections performance auditing process.
- The development of individualized treatment plans should directly reflect the identified criminogenic needs of individual offenders. The individualized treatment plans should address offender risk/needs and should be assessed as part of the community corrections performance auditing process.
- The treatment provided to each community corrections offender should be consistent with the individualized treatment plan developed for that offender. The quality of such treatment and its fidelity to the treatment plan should be a part of the community corrections performance auditing process.
- Because criminogenic needs can change during the course of treatment, reassessment of community corrections offenders should be performed in a standardized fashion and at appropriate intervals. Such information should be used to adjust the treatment plans of community corrections offenders, as required. The quality of such reassessments and plan adjustments should be a part of the community corrections performance auditing process.
- The efficacy of community corrections treatment plans in the prevention of recidivism should undergo formal evaluation by the Office of Research and Statistics of the Division of Criminal Justice, with appropriate funding provided for the study.

#### **Agencies Responsible**

Department of Public Safety (Office of Community Corrections/DCJ)

*This recommendation has been partially implemented. Auditing community corrections programs for adequate, individualized and dynamic case planning is a basic component of evidence-based correctional practices. Implementation of this reflects the priority the Commission has given to evidence-based practices, and is a necessary step toward meaningful correctional reform. It is consistent with the Commission’s statutory mandate to “focus on evidence-based recidivism reduction initiatives....” [C.R.S. 16-11.3-103(1)].*

**2009 ACTION/IMPLEMENTATION**

The Office of Community Corrections reports that the items identified in the first four bullets of this recommendation have been incorporated into the community corrections audit requirements and are now part of every audit performed. However, measurement of the quality of treatment and its fidelity to the treatment plan (third bullet) requires evaluation resources outside the scope of current audit procedures.

**2009 BARRIERS**

The impact of the implementation of this recommendation cannot be determined without a focused study, which is the subject of part of the third and the entire last bullet. Resources are unavailable at this time to conduct such a study.

**2010 UPDATE**

*No implementation.*

**2008 RECOMMENDATION/GP-28 COMMUNITY CORRECTIONS GRACE PERIOD STUDY**

The Commission supports an initiative by the Governor's Community Corrections Advisory Council to pilot a carefully controlled study to address the value of providing a two to four week “grace period” in which fees and subsistence payments are delayed until the offender is stabilized in the community. After appropriate data is collected and analyzed, the Advisory Council should determine whether further recommendations to the executive and legislative branches are appropriate.

**Agencies Responsible**

Community Corrections Advisory Committee, Department of Public Safety (DCJ, Office of Community Corrections)

*Implementation of this recommendation is consistent with the Commission’s statutory mandate “to investigate effective alternatives to incarceration [and] the factors contributing to recidivism...” [C.R.S. 16-11.3-103(2)(b)].*

**2009 ACTION/IMPLEMENTATION**

The pilot study proposed by the Governor’s Community Corrections Advisory Council has not received the funding necessary for implementation. Due to the lack of funding, no implementation plan is in place.

**2009 BARRIER**

The Office of Community Corrections estimates that a two week grace period on payment of fees for offenders in community corrections would cost the state \$1,585,000 per year.

**2010 UPDATE**

*No Implementation.*

## **2008 RECOMMENDATION/GP-29 STUDY STANDARD DIVERSION COMMUNITY CORRECTIONS VS. NON-RESIDENTIAL**

The Commission supports the initiative proposed by the Governor's Community Corrections Advisory Council to pilot and study the outcome of two groups of offenders: (1) a control group sentenced to standard diversion residential community corrections, and (2) a study group sentenced to nonresidential status with enhanced services. After appropriate data is collected, the Advisory Council should determine whether further recommendations to the executive and legislative branches are appropriate.

### **Agencies Responsible**

Community Corrections Advisory Council and CCJJ Community Corrections Subcommittee

*Implementation of this recommendation is consistent with the Commission's statutory mandate "to investigate effective alternatives to incarceration [and] the factors contributing to recidivism..." [C.R.S. 16-11.3-103(2)(b)].*

### **2009 ACTION/IMPLEMENTATION**

The Office of Community Corrections reports that funding for enhanced non-residential programming in lieu of continued residential community correction stays has been secured in the FY 2010 state budget. Request for proposals to develop two 20 person non-residential programs that provide enhanced case management for low risk offenders was issued in June 2009. Policies for the program have been developed, and training and research design development is planned.

### **2009 IMPACT**

The study outcome, costs savings achieved, and action by the Advisory Council will be reported in future Commission reports.

### **2010 UPDATE**

*Implementation underway.* State funding was secured in FY 2010 for 40 slots, which will serve an average of about 50 diversion clients each year. This program is called the Early, Enhanced Non-Residential program. This program is currently based at Intervention Community Corrections Services (ICCS) in Jefferson County and at ComCor, Inc., in Colorado Springs. Additional information will be available by December 2010 when data will be reviewed and decisions will be made regarding program expansion.

## 2008 RECOMMENDATION/GP-30 NEW INITIATIVES FISCAL IMPACT

New budget requests should include an analysis and discussion of the full fiscal and non-fiscal impact of initiatives on other agencies (for example, the impact that a state-level initiative might have on a county jail).

### Agencies Responsible

All state agencies

*The Commission is committed to implementing this recommendation when data are available to assess the full impact of initiatives. This effort is consistent with ensuring a comprehensive understanding of "...the cost-effective expenditure of limited criminal justice funds" [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

No formal action has been taken on this recommendation. However, executive branch agencies are required in budget request documents to address this issue. As the Commission begins to study sentencing reform, it is committed to including the impact of sentence modifications on local jurisdictions, including but not limited to county probation agencies and jails.

### 2009 IMPACT

Future Commission reports will include these analyses when appropriate.

### 2009 BARRIER

The availability of data to analyze the potential impact of proposals that impact local agencies is limited.

### 2010 UPDATE

*No Implementation.*

## 2008 RECOMMENDATION/GP-31 SOA-R STUDY

The Commission supports the current work by the Interagency Committee on Adult and Juvenile Correctional Treatment and its study of the reliability and validity of the Standardized Offender Assessment-Revised (SOA-R).

### Agencies Responsible

Department of Human Services, Department of Public Safety (Office of Community Corrections, DCJ), Department of Corrections, Judicial Branch

*The implementation of this recommendation is underway. The SOA-R is an excellent example of evidence-based practice that has been underway in Colorado for many years. Improvement in the systematic substance abuse assessment of every Colorado offender furthers the Commission's statutory mandates to "...ensure justice..." enhance "the cost-effective use of public resources and "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

This work is spearheaded by the Department of Human Services, Division of Behavioral Health, with the support of Justice Assistance Grant. Representatives from the responsible agencies meet regularly to review the progress of the consultant hired by DHS. DOC has agreed to oversee additional analyses, including the development of an algorithm to enhance the client-treatment referral system. DOC plans to pilot the new SOA-R and test the reliability of the instrument. DOC reports that a final technical report will be released in September 2009.

### 2009 IMPACT

The outcome of this project will be reported in the June 2010 Commission report.

### 2010 UPDATE

*Implementation underway.* The agencies involved in the efforts of the Interagency Committee on Adult and Juvenile Correctional Treatment (IACAJCT) continue efforts to implement the study to determine the reliability and validity of the Standardized Offender Assessment-Revised (SOA-R). The Department of Corrections completed and published "An Evaluation Of The Use of the LSI-R with Colorado Inmates" on March 30, 2010. The LSI-R is one component of the SOA-R.

A subcommittee of the IACAJCT has been assembled for the purpose of continuing the work of validating and recommending revisions to the SOA-R. This subcommittee has developed a research design comprised of two phases. The goal of Phase I is to compare the psychometric properties of the Offender Treatment Matching Algorithm (OTMA) instrument and the Adult Substance Use Scale (ASUS).

The Northpointe Institute has been retained to assist with the data collection and analysis of the internal consistency, inter-rater reliability, and content validity and construct validity of these two instruments. Based on the results of this analysis, one of these instruments will be selected to use in combination with the LSI to place offenders into appropriate modalities of treatment. Phase II of the research will assess the effectiveness of this revised treatment matching protocol.

## **Business Practices**

### **2008 RECOMMENDATION/BP-32 SPECIAL CONDITIONS OF PROBATION**

The imposition of special conditions of probation should be based only on specific, individual needs/risk assessment information.

#### **Agencies Responsible**

State Judicial

*Implementation of this recommendation is underway. The Commission remains committed to the use of empirically-based risk/needs assessments that would form the foundation of individualized conditions of supervision to further the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives...." and ensure the "...cost effective use of public resources." [C.R.S. 16-11.3-103(1)].*

#### **2009 ACTION/IMPLEMENTATION**

The Division of Probation Services (DPS) in the Judicial Branch plans to create a training program for judges, emphasizing that any special conditions of probation should be directly linked to the offense and the individual's risks/needs. In addition, DPS plans to create a training program for judges on evidence-based practices and the Division's philosophy regarding the importance of tailoring supervision to each individual.

#### **2009 IMPACT**

The number of judges trained will be reported in the June 2010 Commission report. Resources preclude the study of the extent to which this initiative is implemented and its impact on recidivism.

#### **2009 BARRIER**

Access to judicial training opportunities to inform the court about the reform may be limited.

#### **2010 UPDATE**

*Implementation underway.* Officials from the Judicial Department report that probation continues to emphasize the importance of the pre-sentence investigation report (PSIR), special reports and complaint recommendations. The recommendations should be linked to the individual's assessments, specific criminogenic needs and the current offense (to address victim issues/concerns). This is an ongoing focus of training and discussions with probation staff.

Judicial officials also report that implementation plans are in place to train and provide educational materials to judges. The Division of Probation Services has limited resources and opportunities to provide new and existing judges with training. Colorado Judicial has recently acquired the technological means to create "training on demand" via computer which will expand training available to judges. In addition, the Commission's training initiative described in the 2010 Update for GP-16 (Evidence Based Practices Implementation for Capacity, or EPIC) will provide training for judges on evidence-based practices, including conditions of probation. Approximately 40 judges have been trained in Motivational Interviewing<sup>®</sup> under the EPIC project.

## 2008 RECOMMENDATION/BP-33 MANDATORY EARNED TIME ON PROBATION

As a way to provide incentives while enhancing public safety, a working group shall be formed of representatives from the Division of Probation Services, district court probation departments, prosecutors, defense attorneys, victim representatives, and judges to develop an *earned time schedule* that links specific behaviors, such as completing drug treatment and maintaining “clean” urinalysis tests, to specific reductions in the term of the probation sentence.

### Agencies Responsible

State Judicial

*This recommendation is under discussion by stakeholders. The use of incentives is a fundamental component of evidence-based correctional practices designed to encourage offenders to engage in behaviors that will improve their likelihood of success in the community. The passage of HB 09-1263 is consistent with the Commission’s statutory mandate to ensure the “...cost effective use of public resources...” [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

Further discussion of this recommendation by the Commission’s Probation Task Force uncovered a concern that mandatory earned time might lead to reduction in the use of early termination of probation. Consequently, the Division of Probation surveyed chief probation officers across the state to determine support for this recommendation. The survey found that 17 of 22 judicial districts regularly use early termination of probation; five districts reported obstacles related to obtaining the cooperation of the district attorney or the court. The Probation Advisory Committee has agreed to review the existing early termination policy and provide technical assistance to districts struggling to implement early termination of probation.

The Commission’s Probation Task Force asked that the Community Corrections Subcommittee determine whether or not Diversion clients can be considered for early termination, and if so, what this procedure entails. The Division of Probation Services has expressed its willingness to partner with Community Corrections to share information regarding early termination practices that are happening within probation.

The Commission further suggests that this issue be considered in addition to the use of early termination of probation, and that it be discussed during the Sentencing Reform portion of the Commission’s work.

### 2009 IMPACT

Progress on the discussions among stakeholders about probation earned time will be presented in the June 2010 Commission report.

### 2009 BARRIERS

All stakeholders have not been involved thus far. For example, individual victims and the victim assistance community may not endorse a statewide policy for probation earned time.

### 2010 UPDATE

*No implementation.* The issue is to be discussed further as the Commission focuses on sentencing reform, beginning in the fall of 2010.

## 2008 RECOMMENDATION/BP-34 EXPAND JUDICIAL AND PROBATION OFFICER TRAINING

Judicial and probation officer training should be expanded to develop curricula that promote a culture of successful supervision of probationers.

### Agencies Responsible

State Judicial (Division of Probation Services)

*Implementation of this recommendation would lead to systemic reform. Training is necessary when new expectations require new skills and understanding. The implementation of this recommendation is critical to the reform efforts of the Commission, as specified in C.R.S. 16-11.3-103(1). Implementation of this recommendation would signal systemic reform. Its full implementation is critical to the reform efforts of the Commission, as specified in C.R.S. 16-11.3-103(1).*

### 2009 ACTION/IMPLEMENTATION

In the spring of 2009 the Judicial Department collaborated with the Department of Corrections (Division of Adult Parole, Community Corrections and YOS), the Department of Public Safety and the Department of Human Services (Division of Behavioral Health) to submit a Justice Assistance Grant (JAG) application for funds that would support a multi-agency training initiative. The requested funding would enable the implementation of skill-based training for probation officers, community parole officers, and community corrections case managers. It would also allow for educating judges on evidence-based practices and best practices.

### 2009 IMPACT

The JAG grant request included funding for research. Future Commission reports will include updates on the implementation of this recommendation.

### 2009 BARRIER

Lack of funding will limit implementation.

### 2010 UPDATE

*Implementation underway.* This effort is underway by the training academy of the Division of Probation Services. The effort is enhanced by the **\$2.1M** multiagency training grant to the Department of Public Safety which is being implemented on behalf of the Commission and will result in the training of hundreds of probation officers in evidenced based correctional supervision practices. This initiative is called Evidence Based Practices Implementation for Capacity, or EPIC. See '2010 Update' for recommendation BP-16.

## 2008 RECOMMENDATION/BP-35 POSITIVE REINFORCEMENT AND INCENTIVES

Research shows that positive reinforcement is an important component of behavior modification. The use of incentives to facilitate successful completion of probation should be encouraged. Such incentives should be interpreted as evidence-based efforts to encourage the offender's positive performance for the purpose of enhancing public safety and preventing victimization.

### Agencies Responsible

State Judicial (Division of Probation Services)

*This recommendation has been partially implemented. The use of positive reinforcement and incentives is a fundamental component of evidence-based correctional practices designed to encourage offenders to engage in behaviors that will improve their likelihood of success in the community. Use of positive reinforcement and incentives is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Division of Probation Services (DPS) distributed a memorandum to staff on the use of incentives in December 2007. DPS intends to continue to increase its use of incentives and rewards to reinforce positive behavior change. To this end, it has identified a working group to review existing policy and develop a strategic plan to expand the use of positive reinforcement and incentives for offenders on probation.

### 2009 IMPACT

Resources preclude the study of the extent to which this initiative is implemented and its impact on recidivism. However, the number of cases receiving technical violations, and the number of cases revoked to prison, will be reported in future Commission reports.

### 2009 BARRIERS

Without a comprehensive study, it will be difficult to gauge implementation barriers.

### 2010 UPDATE

*Implementation underway.* For the purposes of the Commission performance measures, Recommendations BP-35, BP-36 and GP-13 have been combined because the impacts overlap. Officials from the Division of Probation Services report that it was awarded a Justice Assistance Grant (JAG) in October 2009 to examine the use of sanctions and incentives as an effective means of supervising probationers. The Center for Effective Public Policy (CEPP), a consulting firm, was selected to complete the assessment. In 2010, the CEPP completed a literature review, convened an advisory group, developed a 9-month work plan, selected pilot districts, and convened a stakeholder meeting for April 2010. A multi-disciplinary steering committee provides feedback and direction. Onsite meetings, interviews, surveys and data collection will be conducted with each pilot district for the purpose of developing strategies and guidelines. A statewide policy will be developed and implemented based on the knowledge gained from the pilot site study.

## 2008 RECOMMENDATION/BP-36 PROBATION TECHNICAL VIOLATIONS SANCTION GUIDELINES

To increase consistency across the state in the response to probation technical and criminal violations, the Division of Probation Services should work with district probation departments to develop a range of probation sanction guidelines that hold offenders accountable while working toward successful completion of probation. These guidelines will be adopted and consistently implemented with the assistance of the court in each jurisdiction.

### Agencies Responsible

State Judicial (Division of Probation Services)

*Implementation is underway by the Division of Probation Services. Consistency and transparency in decision making which result from guidelines furthers the Commission's mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" while prioritizing public safety [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Division of Probation Services (DPS) submitted an application for a Justice Assistance Grant (JAG) to develop a pilot Technical Violations program. A DPS working group has convened to develop policies for the use of sanctions and incentives in probation. A working group, with representatives from the Commission's Probation Task Force and Probation Advisory Committee, developed a list of recommendations for probation regarding the management of technical violators and absconders. The first recommendation is the development of a statewide policy on technical violations.

### 2009 IMPACT

Future Commission reports will present the outcome of the current efforts. In addition, the total number of probation technical violations, and the number of technical violations to prison, will be reported.

### 2009 BARRIER

Isolating the impact of this reform on recidivism reduction would require a comprehensive study; resource limitations preclude the ability to engage in such a study.

### 2010 UPDATE

*Implementation underway.* For the purposes of the Commission performance measures, Recommendations BP-35, BP-36 and GP-13 have been combined because the impacts overlap. See the '2010 Update' for BP-35.

## 2008 RECOMMENDATION/BP-37 PRIORITIZE OFFENDER EMPLOYMENT OVER ROUTINE COURT REVIEW HEARINGS

Minimize court review hearings and appearances to reduce docket overload and interruptions to the offender's employment. Educate judges and probation officers on the necessity of prioritizing support for the offender's employment since research shows that stable employment is linked to recidivism reduction. This does not apply to specialty courts or dockets.

### Agencies Responsible

State Judicial

*Implementation of this recommendation requires the sensible use of review hearings. Recidivism studies show that employed offenders are more likely to remain crime-free when they return to the community. This recommendation is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Division of Probation Services reports that probation officers currently request hearings only when necessary.

### 2009 IMPACT

Data are not available on the frequency of review hearings. The extent to which implementation of this recommendation would reduce recidivism is unknown.

### 2009 BARRIERS

Probation reports that judicial discretion determines the extent of hearings and court appearances. Also, lack of resources precludes undertaking a comprehensive study of this issue.

### 2010 UPDATE

*Implementation complete.* Data are unavailable regarding this recommendation. However, officials at the Division of Probation Services report that this is a routine business practice.

### 2008 RECOMMENDATION/BP-38 RESOLVE NEW COUNTY COURT CASES QUICKLY

Resolve new county court cases as soon as possible because unresolved cases may interfere with the success of district court probation.

#### Agencies Responsible

State Judicial

*This recommendation has not been implemented. Efforts to promote offender success are consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

#### 2009 ACTION/IMPLEMENTATION

No action has been taken on this recommendation.

#### 2009 BARRIER

Resolving county court cases is at the discretion of individual judges.

#### 2010 UPDATE

*No implementation.* Resolving county court cases is at the discretion of individual judges.

### 2008 RECOMMENDATION/BP-39 DEVELOPMENT OF STATEWIDE ADVISORY BONDING GUIDELINES

A statewide committee should be formed to develop an advisory, statewide monetary bond schedule that is generally consistent across jurisdictions. Each judicial district should develop a committee of stakeholders to review the existing monetary bond schedule.

#### Agencies Responsible

Colorado Supreme Court, State Judicial

*This recommendation has not been implemented. This initiative furthers the Commission's mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

#### 2009 ACTION/IMPLEMENTATION

Since the publication of the December 2008 report, this recommendation was revised to suggest the development of statewide advisory bonding guidelines. The Commission recognizes that some existing bonding schedules are antiquated and, in the interest of justice, recommends that these be reexamined and updated. The Supreme Court and the Chief Judges Council are encouraged to create statewide advisory bonding guidelines or give directions to jurisdictions to create such guidelines. The Commission will partner with the Judicial Branch to examine best practices in the area of advisory bonding guidelines. In addition, the Commission recognizes that the Jefferson County Criminal Justice Planning Committee has undertaken a significant study in this area and requests that representatives from this organization be included in these discussions of bond reform.

#### 2009 BARRIER

This recommendation will return to the Commission for discussion. The Commission recognizes that the Jefferson County Criminal Justice Planning Committee has undertaken a significant study in this area and requests that

representatives from this organization be included in these discussions of bond reform.

**2010 UPDATE**

*No implementation.*

**2008 RECOMMENDATION/BP-40 ESTABLISH BOND COMMISSIONERS**

Each judicial district should be encouraged to establish a bond commissioner and process that give authority to the specially trained commissioner or their designee to undertake an individual assessment of the accused and set bonds and/or summonses as appropriate.

**Agencies Responsible**

District and county courts

*This recommendation has been partially implemented. The Commission requested a study which was completed, highlighting the success of the Larimer County bond and pretrial supervision program. This recommendation furthers the Commission's mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

**2009 ACTION/IMPLEMENTATION**

Subsequent to issuing this recommendation, the Commission recommended that the Division of Criminal Justice (DCJ) of the Colorado Department of Public Safety analyze the performance of the bond commission project currently operating in Larimer County, Colorado. DCJ worked with Larimer County bond commission project staff. Please see Appendix U in the 2009 CCJJ Annual Report for the complete study findings.

The study found that an extremely low proportion of individuals on bond and under pretrial supervision failed to appear for their scheduled court hearings:

In 2008, 58,132 court appearances were scheduled for defendants in Larimer County. Of these:

- 19,593 were court appearances by defendants under pretrial supervision.
  - 1.93% did not appear in court (FTA)
- 38,539 were court appearances by defendants NOT under pretrial supervision.
  - 11.5% of these did not appear in court (FTA)

In 2008, 7305 defendants were a part of the Pretrial Supervision Program. Of these:

- 5,692 terminated from the Pretrial Supervision Program.
  - Identify current structure
  - 91.9% were terminated successfully, either sentenced or dismissed.
  - 1.4% were terminated for bond revocation
  - 6.7% were terminated for failure to appear (FTA).

This recommendation will return to the Commission for discussion and action.

**2010 UPDATE**

*Partial Implementation.* Officials from the Judicial Department report that there is partial implementation of this

recommendation by individual district and county courts. This recommendation will be returned to the Commission for further discussion.

## 2008 RECOMMENDATION/BP-41 SUMMONS IN LIEU OF ARREST FOR PROBATION REVOCATIONS

Implement existing statutes (C.R.S. 16-5-206 and 16-5-207) encouraging the use of a summons rather than arrest for probation revocations.

### Agencies Responsible

State Judicial

*This recommendation refers to a practice that is generally implemented.*

### 2009 ACTION/IMPLEMENTATION

Data was collected and analyzed by the Division of Probation Services to determine the use of summons versus arrests to help the Probation Task Force decide if further steps were required to increase the use of summons in appropriate situations. The following information shows that for a random sample of 154 cases summonses are used more often than arrests when a technical violation occurs. The study found the following:

- 2% were arrested
- 54% were issued warrants (these were individuals who had absconded or committed a new crime)
- 44% were issued a summons

In addition, the study found that higher risk offenders were more likely to be the subject of arrest or warrant. The study found the following information when cases were analyzed by risk level:

- Maximum risk: 4.5% arrest, 59% warrant, 35.8% summons
- Medium risk: 0.0% arrest, 47.6% warrant, 52.4% summons
- Minimum risk: 0.0% arrest, 32.0% warrant, 68.0% summons

The Commission recognizes and appreciates the efforts of the bench to that are already underway regarding recommendation.

### 2009 BARRIER

This practice may vary across jurisdictions.

### 2010 UPDATE

*Implementation complete.* Judicial Department officials report that this recommendation is implemented in practice but varies by jurisdiction.

## 2008 RECOMMENDATION/BP-42 ARREST ALTERNATIVES FOR OFFENDERS ON REVOCATION STATUS

Encourage the use of “cash only” bonds rather than arrest and incarceration for offenders on revocation status for nonpayment when the total amount of fees and costs owed is minimal. The judge can convert the cash bond into costs owed should the offender fail to comply with conditions of supervision.

### Agencies Responsible

State Judicial

*This recommendation has not been implemented.*

### 2009 ACTION/IMPLEMENTATION

This recommendation was the subject of further study and discussion. Lack of data impeded progress on this recommendation. The Commission recommends that judges be reminded of arrest alternatives for offenders on revocation status and that probation officers proactively inform attorneys and judges that this option exists.

### 2009 BARRIER

Lack of data prohibits further study.

### 2010 UPDATE

*No implementation*

## 2008 RECOMMENDATION/BP-43 EXPAND USE OF HOME DETENTION IN LIEU OF JAIL

When appropriate, and considering public safety and the safety of the victim, expand the use of home detention in lieu of jail, as a condition of probation or for a probation revocation.

### Agencies Responsible

State Judicial

*This recommendation has not been implemented.*

### 2009 ACTION/IMPLEMENTATION

This recommendation was the subject of further study and discussion. Lack of data impeded progress on this recommendation. The Commission supports the use of home detention when appropriate to promote the most efficient use of correctional resources.

### 2009 BARRIERS

Lack of resources to undertake a comprehensive study of the current and potential use of home detention precludes the Commission’s ability to address this recommendation. In-home detention programs may not be available in every jurisdiction. Some judges may not be willing to use this alternative to incarceration.

### 2010 UPDATE

*No implementation.*

## 2008 RECOMMENDATION/BP-44 OFFENDER RELEASE ASSESSMENT COUPLED WITH SERVICES

Using the Level of Supervision Inventory-Revised (LSI-R) and other tools as appropriate, DOC shall conduct a comprehensive risk/needs assessment of each offender prior to release for the development of a case plan. This plan will form the basis of providing vouchers (or other approved mechanisms) that assist the offender in accessing immediate services, including housing, medication (for example, insulin), mental health services, addiction treatment, and related programs.

### Agencies Responsible

Department of Corrections

*Research suggests that implementation of this recommendation would maximize the reduction of recidivism and signal systemic correctional reform. Its full implementation is critical to the efforts of the Commission, as specified in C.R.S. 16-11.3-103(1).*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that fulfilling this recommendation would require a revision of the total case management system from the point of prison intake, through incarceration and community corrections, to parole supervision.

DOC submitted to the Commission a partial implementation plan that focuses specifically on the LSI-R. The Commission requests that DOC develop other possible strategies to assess offenders and provide services in the areas of medication, mental health services, addiction treatment and related programs. In addition, the Commission requests that DOC develop a plan to ensure assessed needs are matched with services in the community.

### 2009 IMPACT

Updates from DOC regarding its efforts to implement the LSI-R will be included in future Commission reports.

### 2009 BARRIERS

The Department of Corrections reports that barriers include staffing, funding, a need for technical assistance, and timing/sequencing. DOC states that \$20.3 million would be needed to implement this plan (this includes 47.5 FTE).

### 2010 UPDATE

*Implementation underway.* The Department of Corrections reports that it has contracted with LSI trainers to work with prison intake staff, certain case managers including those at the Youthful Offender System, supervising officers, and the Parole Board. This training will allow the DOC to accurately assess and develop a strategic case plan for each offender. The Department of Corrections reports the training will be completed within the current (FY2011) fiscal year.

In addition, the Department is actively participating in the multiagency training initiative (called Evidence Based Practices Implementation for Capacity, or EPIC) described in BP-16 which includes training of case managers and supervising officers on evidenced based correctional supervision.

**2008 RECOMMENDATION/BP-45 RELEASE ASSESSMENT INFO PROVIDED TO PAROLE AND COMMUNITY CORRECTIONS BOARDS**

Ensure current (within the last six months) release assessment information is provided to the parole board and community corrections boards.

**Agencies Responsible**

Department of Public Safety (Office of Community Corrections, DCJ), and the Commission’s Subcommittee on Community Corrections

*Implementation of this recommendation is underway. Using assessment information to ensure offenders receive appropriate and adequate services is a key component of using evidence-based practices for recidivism reduction. This recommendation is consistent with the Commission’s statutory mandate to “focus on evidence-based recidivism reduction initiatives...” [C.R.S. 16-11.3-103(1)].*

**2009 ACTION/IMPLEMENTATION**

The Commission’s Community Corrections Subcommittee decided that boards may need education on methods of accessing the pre-sentence investigation, an important synthesis of information about the offense and offender. Additionally, the Subcommittee suggests that boards may need education on incorporating evidence of progress made by the offender subsequent to the presentence investigation report, and on evidence-based practices. The Office of Community Corrections in the Division of Criminal Justice, Department of Public Safety, agreed to provide education to the board members.

**2010 UPDATE**

*Partial implementation.* The Department of Corrections contracts with the Cheyenne Mountain Re-Entry Center (CMRC) that serves as a pre-release and revocation center. The facility prepares a complete offender assessment package for community corrections boards and the Parole Board. Not all offenders are transitioned through this facility, but DOC continues to refine the information that is available to the releasing authorities.

The Office of Community Corrections provided a wide variety of educational efforts to community corrections boards at quarterly meetings throughout FY 2010. DCJ’s Sex Offender Management Board (SOMB) staff presented a full briefing on technical violations to the local board and community corrections employees in Rifle in May 2010. Presentations have also been provided to board members about the science of addiction. DCJ’s Office of Research and Statistics presented to community corrections professionals on the topic of the Colorado Actuarial Risk Assessment Scale (CARAS). Training has also been provided on the cognitive aspects of brain processes. However, during these interactions, board members reported that they do not receive CARAS instruments and only occasionally receive LSI information.

## 2008 RECOMMENDATION/BP-46 STANDARDIZED COMPREHENSIVE OFFENDER PROFILE

Determine the cost and feasibility to develop a standardized comprehensive profile for each convicted felon, to include a Pre-Sentence Information Report (PSIR) that is entered into an automated system and made accessible to authorized personnel.

### Agencies Responsible

State Judicial, Department of Corrections, the Department of Public Safety, the Governor's Office of Information Technology, local jails

*This recommendation has not been implemented. The Commission is committed to the transfer of information that would form the foundation of individualized, dynamic case plan. This complex reform initiative furthers the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives...." and ensure the "...cost effective use of public resources." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

This recommendation requires significant funding; no action has been taken.

### 2009 BARRIERS

Financial resources and insufficient support by key stakeholders to move forward with this recommendation during the FY 2009 legislative session prohibited implementation.

### 2010 UPDATE

*No implementation.* The Commission identified Offender Profile/Data Sharing as a critical area of study and requested that a task force be convened to address the topic. However, limited staffing resources have delayed convening this task force. At this writing, the Commission has four active task forces (focusing on drug policy reform, comprehensive sentencing reform, sex offenses/sex offenders, and juvenile justice). It is expected that an offender profile/data sharing task force will be convened when the Sex offenses/Sex offenders Task Force completes its work.

## 2008 RECOMMENDATION/BP-47 OFFENDER PROFILE TO FOLLOW THROUGHOUT SYSTEM

Representatives from probation, community corrections, DOC, and local jails must work together to develop and implement a protocol whereby a standardized, comprehensive profile of an offender, the offense, and the victim impact--which may include the PSIR--and individual empirically-based assessment information (such as the Level of Supervision Inventory, and specialized assessments), should follow all individuals convicted of a felony throughout the system, from pre-sentence to release. This assessment should be regularly updated, at a minimum prior to significant decision points in custody or during community supervision, to assure that program placement is linked to criminogenic needs and to document treatment progress and new skills obtained. A systematic quality assurance procedure must be implemented with this initiative. Protocols to share this information while protecting the privacy of the individual must be developed and implemented within and across agencies.

### Agencies Responsible

State Judicial, Department of Corrections, the Department of Public Safety, the Governor's Office of Information Technology, local jails

*This complex recommendation reflects fundamental reform, and has not been implemented. The Commission is committed to the transfer of information that would form the foundation of individualized, dynamic case plan. This complex reform initiative furthers the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives...." and ensure the "...cost effective use of public resources." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

No action has been taken on this recommendation.

### 2009 BARRIERS

Lack of financial resources prohibited implementation.

### 2010 UPDATE

*No implementation.*

## 2008 RECOMMENDATION/BP-48 IMPROVE DOC'S INMATE TRANSPORTATION/DROP-OFF SYSTEM

Develop an efficient system for transferring an offender from DOC institutional custody to the custody of community corrections and/or parole supervision.

### Agencies Responsible

Department of Corrections

*Implementation of this recommendation is underway. Removing barriers to successful offender re-entry into the community is a Commission objective. DOC's efforts to improve the offender's first experience in the transition from prison to the community further the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." and, by doing so, ensure the "...cost effective use of public resources." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that it plans to develop improved drop-off procedures for all offenders, including those that discharge their sentence and have no supervision requirements. It intends to analyze the number and types inmates per location for the purpose of developing an RFP (request for proposal) by August 1, 2009 for transportation services to be performed during regular work hours to Denver's John Inmann Work and Family Center. DOC plans to develop an after hours and emergency process to deliver parolees to their community destination by September 1, 2009. DOC plans to provide re-entry brochures, RTD bus route information and bus tokens for after hours and emergency drop offs by September 1, 2009. DOC plans by December 1, 2009 to begin collaboration with faith- and community-based organizations, including CURE, to coordinate transportation and community services for discharged offenders.

### 2009 IMPACT

Future Commission reports will document the progress made by DOC's response to this recommendation.

### 2009 BARRIERS

The Department of Corrections reports potential barriers regarding staffing and funding. Specifically, contracted transportation services may exceed \$40,000 annually. This recommendation requires careful coordination among three DOC entities: Case Management, Pre-Release, and Central Transport.

### 2010 UPDATE

*Implementation unknown.* Officials from the Department of Corrections report that pre-planning for drafting a solicitation for transportation services began in September 2009. The official solicitation requesting Documented Quotes was published on December 30, 2009. The posting closed on January 29, 2010, and a potential vendor was identified. During the review process, it was found the owner had recently discharged parole and was a convicted sex offender. The RFP process was terminated.

## 2008 RECOMMENDATION/BP-49 DEVELOP ADDITIONAL HOUSING RESOURCES FOR OFFENDERS

Form a collaborative of public and private agencies to identify and develop additional housing resources for special populations who have a criminal record (for example, the aging, those with mental illness, people with developmental disabilities, sex offenders, and those medical problems).

### Agencies Responsible

Department of Corrections, Department of Human Services, Department of Local Affairs

*Implementation of this recommendation requires the collaboration of multiple entities. The Department of Corrections has agreed to convene a multiagency committee through October 2009. The Commission remains committed to promoting the development of housing resources for offenders since a stable living environment is a prerequisite to successful re-entry.*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections has agreed to convene a committee that includes representatives from the Department of Human Service's Office of Behavioral Health and Housing (Development and Supportive Housing and Homeless Programs), and the Division of Housing in the Department of Local Affairs, and CURE (Citizens United for the Reformation of Errants). This group will review information on special populations provided by DOC, and identify city and county ordinances that restrict placement of incarcerated populations. DOC plans to prepare a report of restrictive ordinances by October 1, 2009 for the purpose of facilitating greater collaboration and education on this issue.

### 2009 IMPACT

Future Commission reports will document progress by DOC on the actions described above. Data obtained from stakeholders on the expansion of housing resources, if available, will be included in the June 2010 Commission report.

### 2009 BARRIERS

DOC estimates that additional housing costs could exceed \$50,000 annually. Lack of dedicated staff to continue this initiative is an additional barrier.

### 2010 UPDATE

*Implementation unknown.* Officials from the Department of Corrections report that its Office of Planning and Analysis (OPA) does not track homeless offenders. DOC facilitated two meetings in October and November 2009 with the Colorado Community and Interagency Council on Homelessness to discuss barriers to securing housing for offenders. DOC staff statewide continue to seek out felon- friendly landlords to house homeless offenders. DOC staff sit on the Colorado Community and Interagency Council on Homelessness, which collaborates with agencies such as the Colorado Behavioral Health Council, Colorado Coalition for the Homeless, Colorado Disability Determination Office, Colorado Health Care Policy and Financing, Social Security Administration and the Veterans Administration. DOC is also collaborating with the Colorado Department of Local Affairs, Division of Housing's Second Chance Act Adult and Juvenile Offender Reentry Demonstration Project grant application. Community Re-Entry Specialists identify ordinances statewide, and participated in City and County of Denver meetings on Ordinance 565 (restrictive ordinances) which have been suspended.

## 2008 RECOMMENDATION/BP-50 VERIFIABLE IDENTIFICATION FOR ALL OFFENDERS LEAVING INCARCERATION

Whenever feasible, ensure every offender leaving jail and prison may obtain a driver's license or verifiable state identification upon release to the community by implementing the following business practices:

A. For the Department of Revenue (DOR) to issue a Colorado driver's license or state identification card to an individual incarcerated in a Department of Corrections (DOC) facility, the DOR will accept a certified state or county issued birth certificate and a DOC photo inmate identification card if the name and date of birth on DOC photo inmate identification card match the name on the birth certificate. A match is permissible if DOC card bears the date of birth and the full name of the incarcerated individual, and this name matches the first and last names on the birth certificate. The lack of a middle name or initial on one of these documents will not disallow a match.

- If an incarcerated individual previously had a Colorado driver's license or state identification card and the DOR retains that person's image, signature, and fingerprints in electronic storage, upon submission of a certified state or county issued birth certificate the DOR may determine a match in order to issue a state identification card or driver's license.
- The Department of Revenue will work to ensure that its database will combine and link all known driving records associated with that person so law enforcement can review the person's complete driving history during traffic stops.

B. The Colorado Department of Corrections (DOC) will apply for birth certificates in *every* state (including U.S. territories) on behalf of incarcerated individuals who request this service. Legal citizens born abroad may also qualify, depending upon the funding level of DOC program.

a. If sufficiently funded by the state, DOC will not charge the incarcerated individual for this service. If DOC does not receive additional funding for this recommendation, DOC will apply for birth certificates if the inmate has sufficient funds in his/her inmate banking account.

b. The Administrative Regulation will be amended to reflect this recommendation.

c. All prisons in Colorado, including the private prisons, will comply with this policy.

d. Inmates who request a birth certificate will be provided with a standardized advisory statement written by the office of the Colorado State Public Defender.

C. When DOC determines that the full legal name of the incarcerated individual differs from the name on that person's sentencing mittimus, DOC will include that name with the individual's file. Upon release of that individual, DOC will issue the individual a DOC photo inmate identification card bearing both the name entered on the individual's sentencing mittimus as well as the full legal name of that individual.

- All prisons in Colorado, including the private prisons, will comply with this policy.

D. DOC should sign the newest memorandum of understanding with the Social Security Administration and include all prisons, including the private prisons, on the MOU in order to apply for Social Security cards on behalf of incarcerated individuals whose full legal name they are able to confirm. Eligibility cannot be confined to the name on the mittimus.

a. The Administrative Regulation will be amended to note the changes in this recommendation.

b. The application for a Social Security card will be initiated at least 120 days prior to an individual's expected date of release.

E. Arresting entities should confirm and use a person's full legal name on all documents. This may require training on how to properly identify a person upon arrest.

F. The law enforcement community, including state patrol, local police, sheriffs, and community corrections, should develop a statewide standard regarding the retention of (and consequences for the destruction of) primary identification documents.

G. If the district attorney's office receives information from law enforcement or the defense counsel concerning a defendant's true name and identity, the district attorney's office will review documents and, when appropriate, notify the Court so that the mittimus may reflect the defendant's true name and identity.

H. If the defense counsel receives information concerning a defendant's true name and identity, the defense counsel will review documents and, when appropriate, notify the district attorney's office and the Court so that the mittimus may reflect the defendant's true name and identity.

I. The importance of placing the full legal name on an individual's court record, including the mittimus, as an AKA at the request of a party, should be underscored to judges and clerks.

J. The state court system should investigate whether the court record, if filed in a name other than the individual's full legal name, could contain a field to record the individual's full legal name in addition to listing the full legal name as an AKA, at the request of a party.

K. The Department of Public Health and Environment's Office of Vital Records should develop a memorandum of understanding with departments of corrections in every state. This will allow departments of corrections in states other than Colorado to apply for birth certificates on behalf of inmates born in Colorado.

L. Jail and DOC personnel should provide a one-page explanation to all individuals leaving these facilities who will need to appear at a Division of Motor Vehicle office in order to obtain a driver's license or state identification card.

a. The one-page information sheet, to be developed by the Department of Revenue with the purpose of preparing individuals to successfully obtain an ID at the first visit, will outline local DMV location(s), suggested "best" times to visit, map, and clear information about necessary documents.

M. The General Assembly should provide DOC and jails with the necessary funding to accomplish the tasks explained here, including fees to purchase birth certificates, dossiers, and other required documents.

N. The Commission supports the effort of the Legislative Oversight Committee for the Study of the Treatment of Persons with Mental Illness Who Are Involved in the Justice System to obtain and fund a van that will travel to jails and other locations in the seven-metro county area to provide identification documents

O. The Commission supports DOC's pilot ID project with the DOR involving mobile units that issue identification to individuals releasing from incarceration.

P. All parties addressed in these recommendations should report their progress back to the Commission in February 2009.

## Agencies Responsible

County jails, Departments of Corrections and Revenue

*Parts of this comprehensive recommendation have been implemented, removing certain barriers to obtaining a verifiable state identification card.*

### 2009 ACTION/IMPLEMENTATION

The Departments of Corrections and Revenue continue to collaborate on a pilot project to provide a limited number of offenders with a state identification. Upon release, offenders who participated in the pilot program can receive an ID from a predetermined address in the community.

In March 2009, the DOC implemented Administrative Regulation 550-10, “Assisting Offenders Applying for Replacement Social Security Cards and Birth Certificates.”

In addition, Senate Bill 09-006, spearheaded by the Metro Area County Commissioners (MACC), creates a county jail identification processing unit in the Drivers’ Licenses Division of the Department of Revenue, consisting of a mobile identification processing vehicle staffed by Revenue employees. The bill, which appropriates \$186,000 and 1.2 FTE, mandates that inmates with a medically documented mental illness be prioritized for services.

### 2009 IMPACT

The number of individuals who are affected by the need for a driver’s license or state verifiable ID remains unknown. Future Commission reports will document progress

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### 2009 IMPACT

The number of individuals who are affected by the need for a driver’s license or state verifiable ID remains unknown. Future Commission reports will document progress towards removing barriers for inmates to obtain a verifiable ID.

### 2009 BARRIERS

Cost to adequately expand the pilot program at DOC that provides state IDs to inmates in advance of release. In addition, it is unclear how DOC will issue a verifiable ID with the inmate's full legal name *and* the name on the mittimus when these names are not identical; this circumstance is not included in the new administrative regulation 550-10 (effective March 1, 2009). Nor does the administrative regulation attend to identification documents, such as birth certificates or social security cards, for inmates who are not incarcerated under their legal birth name. Finally, DOC does not intend to apply for birth certificates for legal citizens born abroad.

## 2010 UPDATE

*Partial implementation.* Officials from the Department of Corrections report that it continues to improve and expand the Offender Identification Program. Inmate participation in the program is voluntary, and the offender must have had a previous Colorado State ID or license to obtain identification under this program. For offenders who are sentenced on a name other than their birth name, the Department is assisting and encouraging the offender to obtain birth certificates and other identification documents that will assist them in obtaining a State of Colorado ID. DOC has improved the system to process offender identification requests by investing in technological resources (broad band and computers) that expand the ability of inmates to obtain identification. DOC officials have made specific arrangements to transport offenders from other facilities to use this service. When offenders are located in the community, the DOC staff in the community are collaborating with other agencies to collect IDs and place them in the offender's working file.

The following table reflects, for 17 months, the number of Colorado IDs issued to inmates between June 2008 and September 2010.

<u>Date</u>	<u>Number of IDs</u>
June 2008	94
July 2008	136
October 2008	172
December 2008	153
February 2009	199
March 2009	182
June 2009	222
August 2009	193
September 2009	185
October 2009	151
December 2009	144
March 2010	197
May 2010	124
June 2010	193
July 2010	133
August 2010	112
September 2010	196
<b>TOTAL</b>	<b>2,786</b>

In addition, Senate Bill 10-006 prohibits the Division of Motor Vehicles from charging a fee for a Colorado ID to offenders referred by DOC. In September 2010, a referral process and form was approved between Community Re-Entry and DMV.

## 2008 RECOMMENDATION/BP-51 STANDARDIZE DRIVER'S LICENSE RESTRICTIONS

Any limitation or restriction of an offender's driver's license while on parole and community corrections must be based on specific, written, and standardized criteria.

### Agencies Responsible

Department of Corrections, the state board of parole, local community corrections programs

*The implementation of this recommendation is underway. Its full implementation is intended to remove barriers to successful re-entry into the community while maintaining public safety, per the Commission's statutory mandate [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections reports that they will develop and implement a policy to standardize the practice of approving driving privileges for individuals on parole and in community corrections by October 1, 2009. DOC reports that the policy will be based on statute, offender performance, and public safety. Criteria for approval will be linked to the offender's criminal history, employment opportunities, and program compliance.

The parole board typically defers decisions about driving restrictions to the supervising officer.

### 2009 IMPACT

Progress made toward the development of written criteria pertaining to driving restrictions will be reported in the June 2010 Commission report. Note that it is impossible to measure the impact of restricting certain behaviors (such as driving) in order to protect the public. Lack of data to (1) assess consistency in policy implementation (variation across supervising officers), and (2) determine the extent to which the new policy removes barriers to offender success, precludes assessing this recommendation for its impact on recidivism reduction.

### 2009 BARRIERS

DOC reports no barriers to implementation. Lack of information precludes determining the impact of this recommendation.

### 2010 UPDATE

*Implementation complete.* Department of Corrections officials report that DOC has created a new Administrative Regulation providing guidelines to community parole staff to ensure a more consistent response to the issue of whether offenders are given permission to drive. DOC states the Administrative Regulation stresses that this decision should be based on the offender's individual risk.

## 2008 RECOMMENDATION/BP-52 OFFENDER EMPLOYMENT COLLABORATION

Because the research is conclusive that stable and meaningful employment is critical to recidivism reduction, the Department of Corrections should work with the Department of Labor and the Division of Vocational Rehabilitation, private businesses, trade unions, along with city, county, state and private employers to expand the number and scope of vocational programs offered in prison, and to ensure that the job skills offered by these programs are relevant and transferable to the current job market. Job placement and job readiness programs should be added in the Department of Corrections, and should be a priority for offenders approaching their release date. A focus on creating jobs for individuals coming from the Department of Corrections should be a priority for the collaborating entities.

### Agencies Responsible

Department of Corrections, Department of Labor and Employment, Department of Human Services

*Recidivism studies show that employed offenders are significantly more likely to remain crime-free when they return to the community. This recommendation would maximize the public safety value of time spent in prison by targeting what is arguably the most important barrier to successful re-entry. Complete implementation of this recommendation is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

In addition to the original recommendation, the Commission approved a new and distinct recommendation regarding employment and licensing barriers affecting people with criminal records. The new recommendation reads as follows:

*2009 Recommendation BP52-A. The Commission recommends a review of all state promulgated statutes, rules, regulations and policies that create a barrier to employment or professional licensing for people with a criminal conviction. The Commission also recommends a review of written hiring policies and practices regarding people with a criminal conviction, for every state division and department. The Commission recommends interested members of the General Assembly request such a review and report from Legislative Council.*

The Department of Corrections reports that this work is largely underway as a matter of current business practice. The Department of Corrections continues its long-term partnership with the Department of Labor and Employment and has established a statewide network of workforce centers.

New initiatives in response to this recommendation are also underway and are intended to be completed by the end of 2009. These include the development of a method to assess the skill levels of inmates with vocational needs, the use of labor market information to inform education and vocational training, and expanding its efforts with the community college system to enhance offender employment and training. It is also expanding its staff training in this area.

### 2009 IMPACT

Future Commission reports will include information on the number of offenders participating in DOC's prerelease programs and workforce centers, when available. Additional information, such as the outcome of labor market information on DOC vocation programming, will be included in future reports when available from DOC.

### 2009 BARRIERS

All stakeholders have not convened to address this recommendation. Data may be unavailable to determine the extent to which this recommendation is implemented.

**2010 UPDATE**

*Partial implementation.* Officials from the Department of Corrections report that two Pre-Release Specialist positions are frozen due to budget constraints. DOC data systems are unable to collect information on classroom participation. However, manual data collection shows 3,846 inmates completed the Pre-Release Program with 12,329 accessing the Career & Resource Rooms during FY2010. To enhance offender performance in the community, the Pre-Release Program added the "Accepting Responsibility" video series to its curriculum in July 2010. This video series using evidence-based approaches will be used to enhance the cognitive aspect of the delivery of the existing Pre-Release curriculum by providing interactive opportunities for participants to practice decision making and take responsibility for their transition plan and re-entry into the community. In addition, Community Re-Entry Specialists continue to collaborate with county workforce centers. This includes meeting on a regular basis to discuss programming and collaborating on training (see Recommendations GP 17 and 23). DOC posted an RFP for Employment Subscription Database Services which will provide opportunities and job listings for in-state and out-of-state jobs. DOC is awaiting contract approval to link with *Connect Colorado* through the Colorado Department of Labor and Employment. JobView, DOC's provider, has identified other links to access job postings that the Department will be looking into. Labor Market Information training for CDOC staff has been completed (see GP 23).

**2008 RECOMMENDATION/BP-53 JOB RECOMMENDATIONS FOR DOC INMATES**

Upon request and as appropriate, job supervisors at the Department of Corrections should be encouraged to write job recommendations for individuals being released from incarceration.

**Agencies Responsible**

Department of Corrections

*Implementation of this recommendation is underway. Efforts to promote successful re-entry to the community is consistent with the Commission's mandate to reduce recidivism [C.R.S. 16-11.3-103(1)].*

**2009 ACTION/IMPLEMENTATION**

The Colorado Department of Corrections reports that by July 2009 it will revise policies to allow supervisors to write letters of recommendation based on an offender's job performance. In addition, DOC will identify the number of job recommendations written by July 2010.

**2009 IMPACT**

Data on the number of inmates released to the community with job recommendations will be presented in future Commission reports.

**2010 UPDATE**

*Implementation underway.* The Department of Corrections reports that it is in the process of revising AR 850-3 "Offender Assignment and Pay" to include the ability for supervisors to write a letter of recommendation for the offender that would assist in job placement in the community.

## 2008 RECOMMENDATION/BP-54 EXPLORE LONG DISTANCE LEARNING OPPORTUNITIES

Technological advances should be explored to provide long distance learning opportunities so that to individuals registered in these classes will not lose time or momentum when transferred to a different facility.

### Agencies Responsible

Department of Corrections, Department of Education, Department of Higher Education

*Implementation of this recommendation is underway but full implementation requires significant resources. Recidivism studies show that offenders with higher levels of education are more likely to remain crime-free when they return to the community. The passage of HB 09-1264 is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

This recommendation has been the subject of further review. Formidable technological and cost challenges have been assessed by DOC. One program allows offenders the opportunity to take self-paced renewable energy courses from DVDs and upon completion, offenders are guaranteed a job interview with one of three companies participating in the project. Two facilities are operating pilot web-based programs in collaboration with local community colleges.

New DOC initiatives resulting from this recommendation include exploring the Cisco Networking Academy that provides on-line courses (by October 2009); increasing collaboration with the community college system to increase the number of inmates obtaining GEDs (by October 2009), and incorporating labor market information obtained in response to Recommendation GP-23 into distance learning strategic planning (by November 2009).

As a result of the additional information obtained since this recommendation was first issued, the Commission encourages DOC and the Department of Higher Education to further explore web-based distance learning opportunities for inmates. Progress on this recommendation should be reported to the Re-Entry Oversight Committee. In addition, the pilot programs should be evaluated for effectiveness specifically in terms of academic outcomes, compared to traditional educational delivery systems. If the findings are favorable, efforts should be undertaken to expand web-based programming to other facilities. The Commission acknowledges the associated costs, and the need for funding to promote higher educational opportunities for offenders.

### 2009 IMPACT

Information, if available, on DOC's current and proposed initiatives will be presented in future Commission reports.

### 2009 BARRIERS

The Department of Corrections reports multiple challenges including fiscal, staffing, and technological barriers. Specifically, DOC facilities will have to be wired to broadcast long distance learning; computers, equipment, and bandwidth will need to be purchased for offenders and proctors to participate in classroom learning centers, as well as network systems and outside connections; firewall systems require expansion. These costs could easily exceed \$1,000,000.

### 2010 UPDATE

*No implementation.* Officials from the Department of Corrections report that its Division of Education has explored the possibility of long distance learning opportunities for offenders. However, due to security issues they are not currently able to allow for web-based programming in facilities. DOC has researched and reviewed demonstrations from companies that believe their product would work with appropriate fire walls. The DOC reports it is still exploring those options.

Where a long distance learning program would be most beneficial for DOC offenders would be in college course offerings. However, current statutory mandates do not allow the department to pay tuition for college academic courses. The expense of providing such courses would have to be borne by the offender. In summary, while the Department will continue to research such offerings implementing any such program is not feasible at this time.

#### **2008 RECOMMENDATION/BP-55 TREATMENT PROVIDERS TO EXPAND THEIR HOURS OF OPERATION**

As part of the contract award process, the Department of Corrections will give preference to private service vendors (for example, for treatment, drug tests, etc.) who provide extended hours of operation during the week and/or weekend hours. The Department of Corrections can waive this requirement for vendors in under-served areas of the state, or for those providers for whom this requirement would prevent the delivery of services.

#### **Agencies Responsible**

Department of Corrections

*Implementation of this recommendation is underway. Efforts to promote offender success are consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

#### **2009 ACTION/IMPLEMENTATION**

The Department of Corrections reports that they will modify the request for proposal (RFP) process for the next contract solicitation to include language that offers incentives to service providers that extend program hours of operation, including those that provide wrap-around services. DOC agrees to encourage current contractors to extend their hours of operation.

#### **2009 IMPACT**

DOC intends to report the number of offenders receiving services during extended hours and on weekends. When this information is available, it will be included in future Commission reports.

#### **2009 BARRIERS**

The Department of Corrections reports potential barriers that include funding, timing, and sequencing, and the state procurement process. Specifically, the parole data system will need modification to capture when an offender is provided a service during an extended hour timeframe, at a cost of approximately \$10,000.

#### **2010 UPDATE**

*No implementation.* The Department of Corrections reports the Approved Treatment Provider (ATP) contracts have been awarded by the Department previous to this recommendation being adopted by the Commission. When the Department issues new RFP's extended hours of operation, when feasible, will be included in the RFP and taken into consideration for evaluation and awarding.

## 2008 RECOMMENDATION/BP-56 FUNDING FOR THE PAROLE BOARD

Provide funding to enhance the technology available to the parole board members, hearing officers, and administrative law judges so that they may obtain items such as laptop computers, other hardware, software, and video conferencing, to improve the efficiency and effectiveness of parole board hearings and operations. Allow electronic requests for modifications of conditions of parole.

### Agencies Responsible

Department of Corrections, Board of Parole

*Efforts to obtain funding and implement this recommendation are underway. Improving efficiency and data availability for parole board members furthers the Commission's mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENT

The Department of Corrections reports that new laptops for parole board members were obtained in May 2009. The laptops are currently being tested for connectivity and usability by the Parole Board members.

DOC reports that electronic requests for modifications of conditions of parole require costly updates to the parole information system.

### 2009 IMPACT

Efforts to obtain funding for this recommendation will be documented in future Commission reports. Travel costs for the parole board may decrease with these efficiencies.

### 2009 BARRIERS

Lack of funding to expand current practices.

### 2010 UPDATE

*Implementation underway.* Due to the fact that the Board of Parole has very limited resources, the Department of Corrections has undertaken both the financial and technical support for this project. The Parole Board continued to test the use of the laptops to conduct parole board hearings through 2010. This testing involved two aspects of the system: laptop connectivity and the hearing portal. This first aspect of testing was to determine whether hearing locations required connectivity equipment and which needed enhancement of the available connectivity equipment. The second testing aspect concerned the performance of the Parole Board Application Hearing Portal. DOC computer programmers introduced the Hearing Portal to allow Parole Board members to prepare and conduct hearings using a paperless offender case file. The Portal also was equipped with the capabilities to log parole decisions and generate parole Action Forms. The Parole Board members continued both aspects of system performance testing through July 13, 2010.

## 2008 RECOMMENDATION/BP-57 OUTSIDE AGENCY ANALYSIS AND ASSISTANCE FOR THE PAROLE BOARD

The Commission requests that an independent agency with expertise in paroling authorities (in particular, the Center for Effective Public Policy) provide technical assistance to the parole board to increase efficiency and effectiveness. This assistance would involve bringing to Colorado experts in parole and release to engage in the following tasks:

- Review parole guidelines, policies, procedures, sanction grids, and training standards;
- Review the use of assessments, the decision making process, and how parole decisions are communicated to interested parties;
- Review the parole board's internal capacity for data collection and reporting;
- Review forms used by the parole board;
- Conduct a work-load survey to identify inefficiencies and possible remedies; and
- Review the opportunities for inmate supporters and victims to participate in the parole hearing.

The Commission requests that the Department of Public Safety, on behalf of the Colorado Criminal and Juvenile Justice Commission, apply for funding from the JEHT Foundation to provide the aforementioned assistance.

### Agencies Responsible

Department of Public Safety

*Implementation of this recommendation is underway. This critical re-entry reform initiative furthers the Commission's mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 ACTION/IMPLEMENTATION

The JEHT Foundation closed in January 2009 but activity on this recommendation continued. The Post-Incarceration Supervision Task Force reviewed this recommendation and developed another strategy to implement this recommendation. A request for technical assistance was submitted by the Parole Board to the National Institute of Corrections (NIC) for outside assistance with the first bullet in the recommendation, and the request was approved in April 2009. Experts from the Center for Effective Public Policy are scheduled to begin work with the parole board in June 2009.

In addition, the Department of Public Safety (Office of Research and Statistics (ORS), DCJ) is working with DOC and the parole board to clarify the use of risk assessment, the Colorado Actuarial Risk Assessment Scale (CARAS). CDPS is also developing a database to analyze the decisions of parole board members, and will work with DOC in FY 2010 to automate a revised Parole Board Action Form.

The Department of Corrections has agreed to develop a memorandum of understanding with the parole regarding data analysis duties, and to provide consistently-defined parole release data.

The Commission's Post-Incarceration Supervision Task Force has agreed to work with the parole board to understand its current release decision making criteria including those used to make parole revocation judgments, identify current policy and practice, and identify targets of change in board practice. This task force has also agreed to study the current parole board structure and identify possible modifications; these reforms may require legislative action.

This work will be ongoing throughout FY 2010. Please see the implementation plan attached as Appendix V in the 2009 CCJJ Annual Report.

## **2009 IMPACT**

Progress on implementation will be reported in future Commission reports. Associated information, including parole board workload and decision making, will also be reported as information becomes available.

## **2010 UPDATE**

*Implementation underway.* While technical assistance has not been made available to the Parole Board, some progress has been made on the tasks listed within this recommendation:

- **Review parole guidelines**

The Post Incarceration Supervision Task Force of the Commission developed an administrative release guidelines instrument for use with parole candidates (not incarcerated for sex offenses). The use of these guidelines was included in House Bill 10-1374.

- **Review the use of assessments**

The initial steps of identifying potential decision factors in parole decisions and developing a process to collect this decision factor information are underway.

- **Review the parole board's internal capacity**

The introduction of the Parole Board Application Hearing Portal offered an opportunity to streamline the collection of parole decision data. The Hearing Portal is still in the testing phase.

- **Review forms used by the parole board**

The form used to record parole hearing decisions, "Notice of Parole Board Action," is under revision to accommodate the newly introduced administrative release guidelines and to better reflect parole decision information.

- **Conduct a workload survey**

This task has not been undertaken.

- **Review the opportunities**

This task has not been undertaken.

## 2008 RECOMMENDATION/BP-58 PAROLE SUPERVISION POLICIES AND TRAININGS

To promote continuity of supervision, the Department of Corrections should develop consistent policies and trainings that promote uniformity in establishing and implementing discretionary conditions and privileges of parole supervision.

### Agencies Responsible

Department of Corrections

*Implementation of the recommendation is underway. Its full implementation is critical to the reform efforts of the Commission, as specified in C.R.S. 16-11.3-103(1).*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections has established policies and trainings directly connected to conditions and privileges of parole supervision. DOC reports that these policies and trainings will be reviewed annually to ensure alignment with evidence-based practices. DOC also reports that by January 2010, case plans will be developed based on the criminogenic needs of offenders and updated based on offender compliance.

DOC collaborated with the Division of Probation Services and the Office of Community Corrections to submit an application to the Justice Assistance Grant program that would provide funding to train officers consistently across agencies in evidence-based practices, in Motivational Interviewing® (MI) and in MI coaching.

### 2009 IMPACT

Resource constraints preclude the implementation of a comprehensive study to determine the level of consistency in the application of discretion by supervising officers, the implementation of case plans based on criminogenic needs and the extent to which the plans are regularly updated.

The training grant application includes research and evaluation resources that, if funded, will allow progress reports on some aspects of this recommendation.

### 2009 BARRIERS

Barriers include lack of funding to provide adequate training and coaching in Motivational Interviewing® skills; also resource limitations regarding evaluating of this recommendation.

### 2010 UPDATE

*Implementation underway.* In an effort to develop even more consistency regarding the response to violations, the Division has begun to develop a Colorado Violations Decision Making Process (CVDMP). This instrument, once completed, will provide officers guidelines to address violations, based on the severity of the violation and the level of risk as determined by assessment instruments.

In addition, the Department of Public Safety received a one-time **\$2.1M grant** in collaboration with the Division of Behavioral Health, the Department of Corrections, the Division of Probation Services, the Office of Community Corrections to train over two dozen “train the trainers” and over 1,000 criminal justice professionals and private services providers in Motivational Interviewing®, the science of addiction and mental health problems, and evidence-based case management. This initiative is intended to improve supervision practices across the agencies and, in doing so, promote uniformity in case management. This initiative, called Evidence Based Practices Implementation for Capacity, or EPIC, is underway. By September 2010, approximately 240 professionals had been

trained in evidenced based correctional practices: approximately 90 were trained in Motivational Interviewing® and 150 in responding to individuals with behavioral health problems.

#### **2008 RECOMMENDATION/BP-59 FLEXIBLE REPORTING OPTIONS FOR PAROLEES**

The Commission supports the Department of Corrections' effort to develop more flexibility in reporting options for parolees.

#### **Agencies Responsible**

Department of Corrections

*Implementation of this recommendation is underway. Removing barriers to offenders' successful re-entry into the community is an essential recidivism reduction strategy and is consistent with the Commission's statutory mission per [C.R.S. 16-11.3-103(1)].*

#### **2009 ACTION/IMPLEMENTATION**

The Department of Corrections reports that it will explore the feasibility of establishing a flexible work schedule by January 2010.

#### **2009 IMPACT**

The Department of Corrections reports that it records the amount of field activities conducted by officers in its parole data system. Future Commission reports will provide implementation information, if available.

#### **2009 BARRIERS**

Expanded use of field supervision (versus visits to the office by the offender) may increase technical violation rates.

#### **2010 UPDATE**

*Partial implementation.* Officials from the Department of Corrections report that in an effort to better meet the needs of offenders, each of their field community parole offices has extended its reporting hours. In most offices, office hours have been changed to stay open until 7 p.m. at least one day a week. In other locations, where bus service ends at 5 p.m., offices open early at least one day a week. DOC reports in some cases, the decision whether to open early or stay open late was made based on offender surveys. The Department continues to explore reporting options.

## **2008 RECOMMENDATION/BP-60 DATE-CERTAIN RELEASE FOR COMMUNITY CORRECTIONS AND INTENSIVE SUPERVISION PAROLE**

With limited exceptions, when someone has been transitioned out under inmate status, provide a date-certain release for offenders in community corrections while retaining the authority of the parole board to conduct a rescission hearing and extend or vacate the parole date in the event of noncompliance. Specifically, when an inmate is accepted in community corrections as a transition client, the parole board should set a parole date no later than 12 months from the date of placement in residential community corrections. Likewise, when an inmate has been placed in the Intensive Supervision Program-Inmate (ISP-I), the parole board should set a date for parole at 180 days from the placement on ISP-I.

### **Agencies Responsible**

Department of Corrections, Parole Board, Department of Public Safety (Office of Community Corrections/DCJ)

*Efforts to implement this recommendation are underway, starting with a plan for a pilot program. This recommendation underscores the Commission's statutory mandate to ensure the "...cost effective use of public resources." [C.R.S. 16-11.3-103(1)].*

### **2009 ACTION/IMPLEMENTATION**

This recommendation received further study by the Commission's Post Incarceration Supervision (PIS) Task Force and the Department of Corrections. DOC recommends piloting this idea in a single site to ensure working agreements with the local community corrections board and programs. DOC agrees to coordinate with the parole board, the Department of Public Safety (DCJ/Office of Community Corrections), a local community corrections board and program by September 2009 and develop a plan for a pilot program. DOC reports that it will develop a detailed project design and implementation plan that includes victim notification by September 2010. DOC further agrees to revise its policies, modify the electronic referral process, and train parole board members, case managers and supervising officers on the design and implementation of this initiative.

### **2009 IMPACT**

Implementation of the pilot program will be documented in future Commission reports, including the affect of this initiative on the average length of stay and offender outcomes. The impact of statewide implementation will be documented in future Commission reports as data becomes available.

### **2009 BARRIERS**

The Department of Corrections estimates that training costs related to full implementation approach \$114,000. Additional costs are associated with database modifications and resources related to modifying current procedures related to the publication of parole board hearings, scheduling of hearings, victim notification, prerelease planning, and the community corrections referral process.

### **2010 UPDATE**

*No implementation.* Significant barriers exist across the criminal justice system.

**2008 RECOMMENDATION/BP-61 DEFER SUBSISTENCE PAYMENTS FOR INDIGENT OFFENDERS IN COMMUNITY CORRECTIONS**

For individuals entering community corrections facilities, provide the opportunity to defer the first two to four weeks of subsistence payments for those who are indigent.

**Agencies Responsible**

Department of Public Safety (Office of Community Corrections/DCJ), Community Corrections Advisory Committee

*Implementation of this recommendation is consistent with the Commission’s statutory mandate “to investigate effective alternatives to incarceration [and] the factors contributing to recidivism...” [C.R.S. 16-11.3-103(2)(b)].*

**2009 ACTION/IMPLEMENTATION**

There has been no action taken on this recommendation.

**2009 BARRIER**

State budget limitations preclude implementing this recommendation.

**2010 UPDATE**

*No implementation.*

**2008 RECOMMENDATION/BP-62 INMATE PARENTING AND BONDING PROGRAMS**

Commission supports the Department of Corrections’ effort to expand parenting and bonding programs.

**Agencies Responsible**

Department of Corrections

*Implementation of this recommendation is underway. Implementation of this recommendation is consistent with the Commission’s statutory mandate “to investigate effective alternatives to incarceration [and] the factors contributing to recidivism...” [C.R.S. 16-11.3-103(2)(b)] and to the extent that these programs prevent future criminal behavior on the part of the child and the parent, it enhances “the cost-effective use of public resources” [C.R.S. 16-11.3-103(1)].*

**2009 ACTION/IMPLEMENTATION**

The Department of Corrections reports that it hired instructors who recently started programs at La Vista Correctional Facility for Women and the Denver Women’s Correctional Facility. DOC is working with Colorado State University to develop certified courses and programs for parenting and bonding.

**2009 IMPACT**

The number of inmates participating and completing parenting and bonding programs will be documented in future Commission reports, if available.

**2009 BARRIERS**

The need for additional programming in other institutions has not been addressed. Data to assess the impact of these programs on recidivism are unavailable.

**2010 UPDATE**

*Partial implementation.* Officials from the Department of Corrections report parenting classes are offered at all female facilities and included in some of minimum security facilities for men. DOC officials report that when they receive a pregnant offender through intake in the Denver Complex, she is assigned to Denver Women's Correctional Facility until after the delivery of the child. At the time of delivery, the offender is hospitalized for at least 24 hours to assure she is stable and to allow for time to bond with her infant. Offenders decide where to place the baby during their incarceration.

Denver Women's Correctional Facility has a specialized visiting program to allow offenders to earn the privilege of having their children overnight in an area connected to the visiting room. This allows for offenders to have time with their children during their incarceration. The Department has expanded the program and will continue to explore the opportunities for additional expansion.

The courses related to parenting and bonding developed by Colorado State University (mentioned in the 2009 Action, above) has been implemented at both DOC's women's facilities.

## **Cost Savings**

### **2008 RECOMMENDATION/CS-63 TECHNICAL VIOLATIONS PROGRAM WITHIN PROBATION**

To reduce the number of offenders with probation violations resulting in a prison sentence, the Division of Probation Services should implement a technical violations program that focuses on these offenders and encourages them to become compliant with probation supervision.

#### **Agencies Responsible**

State Judicial

*Implementation of this recommendation is underway. Implementation of this recommendation is consistent with the Commission's statutory mandate "to investigate effective alternatives to incarceration [and] the factors contributing to recidivism..." [C.R.S. 16-11.3-103(2)(b)].*

#### **2009 ACTION/IMPLEMENTATION**

The Commission's Probation Task Force worked with the Probation Advisory Committee to create a list of recommendations for probation to pursue regarding technical violators and absconders. In addition, the Division of Probation Services submitted a proposal for a Justice Assistance Grant (JAG) to provide resources for focus on the issue of technical violations. The Division of Probation Services intends to pursue this program regardless of the outcome of pending the JAG request.

#### **2009 IMPACT**

Progress on this recommendation will be presented in future Commission reports.

#### **2010 UPDATE**

*Implementation underway.* Officials from the Division of Probation Services report that in addition to the information in recommendations BP-35, BP-36, and GP-13, DPS has two evaluation projects aimed at improving outcomes, including the reduction of technical violators that fail on probation. Rather than design a specific program to address technical violators, probation is focusing its efforts on existing evidence-based programs and practices. An evaluation by LeCroy and Milligan Associates of two of the most prevalent cognitive-behavioral skill building groups, *Thinking For a Change* and *Why Try* began in the fall of 2008. The first year's evaluation included staff and client surveys, key informant interviews, training observations and a literature review. The focus of the second year of the study is the development and implementation of a fidelity and outcome study. In early 2008, an evaluation of two intensive programs (Adult Intensive Supervision Probation and Juvenile Intensive Supervision Probation) began. Justice System Assessment and Training, Inc. (JSAT) completed a literature review, focus groups, interviews and a logic model. The second and third year efforts include data analysis, program model development, and education design. The end result of the evaluation may affect how intensive programs are currently structured, including changes to the target populations. Both evaluations were introduced as part of an effort to better serve probationers for the purpose of improving outcomes (decrease criminal behavior and increase pro-social behavior).

## 2008 RECOMMENDATION/CS-64 CREDIT FOR TIME SERVED

Clarify the statute and mandate that parolees receive credit for the time spent in jail pending a technical parole revocation.

### Agencies Responsible

General Assembly, county jails

*This recommendation was successfully implemented with the passage of HB 09-1263. This important reform provides for the equitable application of time credits in county jails and moderately reduces the average length of stay in prison. HB 09-1263 is consistent with the Commission's statutory mandates to "...ensure justice..." and enhance "the cost-effective use of public resources" [C.R.S. 16-11.3-103(1)].*

### 2009 IMPACT

Average length of time in prison for inmates revoked on parole should decrease. However, this information cannot be analyzed until those inmates are released again, and time in prison can be calculated. This information, when available, will be presented in future Commission reports.

### 2010 UPDATE

*Implemented.* This recommendation was implemented through House Bill 09-1263. The fiscal note for this bill estimated that there would be no fiscal impact. Further, since the 2009 impact would not be realized until the technical violators are released, so any impact that might occur would be delayed until 2010.

*Note that elements from recommendations L-2, L-3, L-4 and CS-64 were combined into House Bill 09-1263.*

## 2008 RECOMMENDATION/CS-65 DOC (PAROLE) TECHNICAL VIOLATIONS UNIT

The Commission supports the Department of Corrections' effort to establish a technical violations unit with the goal of enhancing consistency, preserving public safety, and reducing parole revocations for technical violations.

### Agencies Responsible

Department of Corrections

*Implementation of this recommendation is dependent upon funding of a grant application. Implementation of this recommendation is consistent with the Commission's statutory mandate "to investigate effective alternatives to incarceration [and] the factors contributing to recidivism..." [C.R.S. 16-11.3-103(2)(b)].*

### 2009 ACTION/IMPLEMENTATION

The Department of Corrections submitted a Justice Assistance Grant (JAG) application in February 2009 to develop a Technical Violations Unit. Implementation of a Technical Violations Unit is dependent on funding from this grant program.

### 2009 IMPACT

The grant application included funding to evaluate the impact of the Technical Violations Unit.

### 2009 BARRIER

If the grant is not funded, no plans are in place to pursue the Technical Violation Unit.

### 2010 UPDATE

*No implementation.* Officials from the Department of Corrections report that it requested a Justice Assistance Grant (JAG) to create a technical parole violations unit but the grant was not awarded. To develop consistency regarding the response to violations, the Division has begun to develop a Colorado Violations Decision Making Process (CVDMP). This instrument will provide officers with guidelines to address violations based on the severity of the violation and risk level of the offender.

## 2008 RECOMMENDATION/CS-66 GRANT 30/60 DAYS BEHAVIOR-BASED EARNED TIME CREDIT FOR NEW INTAKES AND CURRENT POPULATION (EXCLUDING TECHNICAL VIOLATIONS) SERVING TIME FOR NON-PERSON CRIMES

Since implementation of evidence-based practices requires the reallocation of existing state resources, and because research shows that incentives are a powerful and important method to modify behavior, business practices should be amended to accomplish the following:

To allow for enhanced release planning and services, DOC case managers, time computation staff, and members of the parole board should schedule for release a certain category of offenders up to 60 (class 4 and 5) or 30 days (class 6) prior to MRD. This *earned release* time is available for individuals serving a sentence for non-person conviction crimes\* who meet the following criteria:

- No Code of Penal Discipline (COPD) violations;
- In compliance with recommended programming;
- No prior convictions for a person offense.

Those individuals released in this manner will be classified by DOC as *earned releases* (not discretionary or mandatory releases). The parole board retains discretion over the final release decision.

Note that additional earned time will move up the date that the individual becomes eligible for community corrections, and this may reduce the size of the prison population. Any savings that results from the application of earned time from these changes in practice should be placed in a designated fund for recidivism reduction programming.

### Agencies Responsible

General Assembly

*This recommendation was successfully implemented with the passage of House Bill 09-1351 which increased prison earned time based on demonstrated program progress by inmates. The bill provides for any savings generated to be applied to recidivism reduction programs beginning in FY 2013.*

*The use of incentives is a fundamental component of evidence-based correctional practices designed to encourage offenders to engage in behaviors that will improve their likelihood of success in the community. The passage of HB 09-1351 is consistent with the Commission's statutory mandate to "focus on evidence-based recidivism reduction initiatives..." [C.R.S. 16-11.3-103(1)].*

### 2009 IMPACT

The Department of Corrections received resources for nearly 11 staff in House Bill 09-1351 including parole officers, time computation staff, and information technology staff. Measures of impact will be reported in future Commission reports when data are available.

### 2010 UPDATE

*Implementation complete.* The estimated reduction in beds for FY 2010 was 146, increasing each year to 342.5 in FY 2014. The savings from these reductions are estimated to be \$2.8M in FY 2010 increasing to \$6.6M in 2014.

*\*Nonperson offenses are defined as those identified in the Victim Rights Act plus false imprisonment, violation of a custody order, enticement of a child, Internet luring of a child, Internet sexual exploitation of a child, wrongs to children (C.R.S. 18-7-402 through 18-7-407), arson, first degree burglary, weapons/explosives/incendiary devices (C.R.S. 18-12-102 through 109).*





## SECTION 6: NEXT STEPS

**Task forces.** In August 2010, after careful review and discussion of both issues and staff resources, the Commission identified an action plan for future endeavors. Commission members agreed that efforts in the coming year should be focused in the following four areas of study: continued work on Sentencing and Drug Policy reform, and new work in the area of juvenile justice issues and sex crimes. To this end, work is underway by the following four task forces:

- Drug Policy Task Force (Grayson Robinson, Chair)
- Comprehensive Sentencing Task Force (Jeanne Smith, Chair)
- Juvenile Justice Task Force (Regina Huerter, Chair)
- Sex Offenses/Sex Offenders Task Force (David Kaplan, Chair)

As this report goes to print, recommendations are being prepared in the areas of Drug Policy and Sex Offenses/Offenders to present to the Commission in November and December 2010 in preparation for the FY2011 legislative session.

**Behavioral health.** Work on the behavioral health collaborative will continue with the Commission's commitment to support the many existing reform efforts underway by existing groups such as the Behavioral Health Council, the Transformation Council, and the Department of Health Care Policy and Financing. Future Commission annual reports will continue to report on the accomplishments of the three initiatives discussed on pages 6-8, including the EPIC training project (Evidence Based Practice Implementation for Capacity), all three of which were ranked as priorities by the Commission's behavioral health collaborative.

**Behavioral health treatment capacity.** The Treatment Funding Working Group was charged by the Commission with the investigation issues related to current treatment funding allocations and the development of a strategy that would expand access to treatment. The Working Group decided that this information should be placed in the larger context of prevalence rates, the science of addiction, the criminal justice response to relapse, and treatment effectiveness. This information will be documented in a white paper with recommendations for improvement. This paper will be completed and distributed in the fall of 2010 after which the Working Group will disband.

**Tracking previous recommendations.** Tracking and documenting the status of the Commission's 2008, 2009 and 2010 recommendations, along with other recommendations as these are promulgated, will continue to be presented in future Commission reports.

**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, which can be accessed at <http://cdpsweb.state.co.us/cccj/>. The Commission expects to present its next written report in August 2011.





# APPENDICES



**Appendix A:  
Senate Bill 09-286**



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

# An Act

SENATE BILL 09-286

BY SENATOR(S) Morse and Carroll M., Bacon, Boyd, Foster, Groff, Heath, Hodge, Hudak, Isgar, Newell, Romer, Shaffer B., Tapia, Tochtrop, Veiga, Williams;  
also REPRESENTATIVE(S) Levy and Merrifield, Ferrandino, Kagan, Miklosi, Pommer, Pace, Benefield, Carroll T., Court, Fischer, Green, Hullinghorst, Judd, Kerr A., Labuda, McFadyen, Middleton, Rice, Ryden, Schafer S., Solano, Todd, Kefalas, McCann.

CONCERNING CRIMINAL LAW, AND, IN CONNECTION THEREWITH, CHANGING THE PROVISIONS RELATED TO LEGAL REPRESENTATION OF INDIGENT DEFENDANTS FOR CERTAIN MISDEMEANOR CASES; CHANGING THE OFFENSE LEVEL OR SENTENCING OPTIONS FOR SELECT NONVIOLENT OFFENSES, PROPERTY OFFENSES, AND DRUG OFFENSES; CHANGING THE PRESUMPTIVE SENTENCING RANGES FOR CERTAIN FELONY OFFENSES; REPEALING CERTAIN EXTRAORDINARY RISK SENTENCING PROVISIONS; MAKING CHANGES TO THE HABITUAL OFFENDER STATUTE; AND ALLOWING FOR CERTAIN SENTENCING TIME CREDITS FOR CERTAIN OFFENDERS.

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

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

(a) In 2007, it created the Colorado commission on criminal and juvenile justice, referred to in this section as the "commission", in House Bill 07-1358;

(b) The commission was tasked with enhancing public safety, ensuring justice, and ensuring protection of the rights of victims through the cost-effective use of public resources by studying evidence-based, recidivism reduction initiatives that ensure the cost-effective expenditure of limited criminal justice funds;

(c) Based on that study and consistent with its mission, the commission developed sixty-six recommendations, including six bills referred to the general assembly during the 2009 legislative session; and

(d) The state of Colorado faces an unprecedented budget crisis during the coming fiscal year, and it is imperative that the general assembly consider cost-saving measures in the criminal justice system during the second regular session of the sixty-seventh general assembly.

(2) Therefore, the general assembly determines that it is necessary to direct the commission to prioritize the study of sentencing reform while maintaining the public safety.

**SECTION 2.** 16-11.3-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**16-11.3-103. Duties of the commission - mission - staffing - repeal.** (2.5) (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; AND

(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.

(d) (I) BY NOVEMBER 30, 2009, THE COMMISSION SHALL UPDATE THE GOVERNOR, THE ATTORNEY GENERAL, THE CHIEF JUSTICE OF THE SUPREME COURT, THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, AND THE EXECUTIVE COMMITTEE OF THE GENERAL ASSEMBLY REGARDING THE COMMISSION'S FINDINGS, RECOMMENDATIONS, AND PROPOSED PLAN FOR THE ONGOING STUDY OF SENTENCING REFORM. ADDITIONALLY, BY FEBRUARY 1, 2010, THE COMMISSION SHALL PROVIDE THE EXECUTIVE COMMITTEE OF THE GENERAL ASSEMBLY WITH RECOMMENDATIONS REGARDING WHETHER TO MODIFY ANY SENTENCES OR SENTENCE LAWS.

(II) THIS PARAGRAPH (d) AND PARAGRAPHS (b) AND (c) OF THIS SUBSECTION (2.5) ARE REPEALED, EFFECTIVE JULY 1, 2010.

**SECTION 3. Safety clause.** The general assembly hereby finds,

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

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Terrance D. Carroll  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

---

Karen Goldman  
SECRETARY OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO

**Appendix B:**  
**Brief Research Summary for CCJJ Sentencing Discussion: Evidence-Based  
Practices to Reduce Crime by Known Offenders**



*Evidence-based correctional practices provide an empirical foundation for preventing crime by known offenders, i.e., recidivism reduction. There is no science to direct the number of years in prison that will promote successful re-entry into the community once a sentence is served. Writing about evidence-based sentencing, Justice Michael Wolff of the Missouri Supreme Court states: "We must acknowledge that the reason for sentencing is to punish, but if we choose the wrong punishments, we make the crime problem worse, punishing ourselves as well as those who offend" (Wolff, 2008:1395). President Emeritus of the National Center for State Courts and retired Superior Court Judge Roger Warren (2008:15) writes that "[t]he research unequivocally demonstrates that in the absence of treatment, neither punishment, nor incarceration, nor any other criminal sanction reduces recidivism--beyond the period of confinement, restraint, or surveillance."*

*Studies included here are those that meet the standard of evidence defined in What Works (Przybylski, 2008), are Colorado-specific, or are single studies using complex and robust statistical methods. In the studies cited below, recidivism is defined in various ways but refers to the reduction of criminal behavior by known offenders.*

## Incarceration and crime prevention

1. Incarceration is estimated to avert an average of 15 non-drug crimes per offender per year, using data from the 1980s and 1990s.<sup>1</sup> The majority of these crimes would not be reported to the police.<sup>2</sup>
2. Studies looking at the impact of incarceration on declining crime rates provide findings ranging from no impact to one-third. Several studies suggest that a reasonable estimate is 10 percent; the majority of the drop in crime is attributed to factors other than incarceration.<sup>3</sup>
3. The crime reduction benefit of incarceration declines as more people are incarcerated, resulting in "diminishing returns" of the incapacitation effect of prison.<sup>4</sup> This is because expanding the number of individuals in prison results in locking up less serious offenders.
4. Incarceration has a greater impact and return on investment when it is used for violent and high frequency offenders.<sup>5</sup>
5. The use of incarceration for low-rate, non-violent offenders prevents and deters few crimes.<sup>6</sup>
6. Prison does not reduce drug crime rates.<sup>7</sup>
7. Prison appears to have criminogenic properties in that it mixes less serious (and more pro-social) offenders with more serious (and anti-social) offenders.<sup>8</sup>
8. The stigma and legal restrictions associated with incarceration often make it difficult for former prisoners to secure employment,<sup>9</sup> and when they do find jobs, they tend to earn less than employees with similar background characteristics who have not been in prison.<sup>10</sup>
9. Studies of offenders in Texas, Georgia and Baltimore found that increases in income were linked to reductions in property crime.<sup>11</sup>
10. Both education and reduced drug consumption promote recidivism reduction. Programs addressing these areas should therefore be made available to inmates who are objectively assessed as needing these interventions.<sup>12</sup>
11. Individuals convicted of sex offenses who participated in prison treatment in Colorado had a significantly lower rate of parole technical violations and new violent crime arrests upon release; longer participation in treatment led to better outcomes.<sup>13</sup>

12. In Colorado, participation in the therapeutic community for drug offenders reduced recidivism when those offenders transitioned into a community-based therapeutic community (Peer 1).<sup>14</sup>
13. **Parole.** The time period immediately following institutional release is the riskiest for the offender and the public. In a study of over 240,000 offenders from 13 states, the probability of arrest was almost twice as high in the first month of supervision as it was in the 15<sup>th</sup> month, and arrest probabilities were equal between months 15 and 36, suggesting that longer periods of supervision had only marginal effects on offending.<sup>15</sup>

## Sentencing and recidivism reduction

14. Comparing offenders at equivalent risk levels, persons who serve longer prison sentences are slightly more likely to recidivate than offenders serving shorter sentences.<sup>16</sup>
15. Mandatory minimum prison sentences are inconsistent with the consideration of individual circumstances<sup>17</sup> and contribute to the disproportionate incarceration of minority defendants, particularly where the mandatory minimums apply to drug crimes.<sup>18</sup>
16. Diversion and similar options relating to criminal record retention help the offender avoid the lifetime of difficulties associated with having a criminal record.<sup>19</sup>
17. Young offenders have higher recidivism rates than older offenders.<sup>20</sup> Research on Colorado prisoners shows that the probability of obtaining a new felony filing upon release from prison declines when an individual reaches the age of 40, and declines again at age 47.<sup>21</sup>
18. First time offenders who are 25 or younger tend to have criminal careers of 4-10 years, depending on the study.<sup>22</sup>
19. Low risk offenders do not benefit from criminal justice programming and such interventions can increase recidivism.<sup>23</sup>
20. Evidence-based sentencing begins with an assessment of each offender's recidivism risk level and needs for services.<sup>24</sup>
21. Sentencing requires judicial discretion to focus on individual offender needs.<sup>25</sup>
22. Evidence-based sentencing practices include making information from objective risk assessment and needs assessment instruments available to judges.<sup>26</sup>
23. Important areas of needs assessment include substance use, family support, peer groups, educational and employment history, medical, and mental health.<sup>27</sup>
24. The criminogenic<sup>28</sup> factors most predictive of criminal behavior are the following:
  - a. Low self-control (impulsive behavior)
  - b. Anti-social personality
  - c. Anti-social values

- d. Criminal peers<sup>29</sup>
  - e. Substance abuse
  - f. Dysfunctional family<sup>30</sup>
25. Strong marital ties and stable employment can reduce recidivism; prison sentences often break family ties and make employment more difficult.<sup>31</sup>
  26. Enhancing offender motivation is important to recidivism reduction; excellent programs will not reduce recidivism if offenders do not participate in them.<sup>32</sup>
  27. Meaningful rewards of positive behavior can motivate offenders to comply with conditions of supervision.<sup>33</sup>
  28. The value of education, employment and vocational training in reducing recidivism is supported by research.<sup>34</sup> Acquiring job satisfaction is associated with recidivism reduction, and time spent and connections made at school and work likely serve as informal social controls that prevent criminal behavior.<sup>35</sup>
  29. Studies show that treatment can cut drug abuse in half, reduce criminal activity by up to 80 percent and reduce arrests up to 64 percent.<sup>36</sup>
  30. Substance abusing behavior indicates the need for treatment, or more frequent or intense treatment. Returning offenders to treatment with more frequent or more intense programming is an appropriate criminal justice response to relapse into drug use.<sup>37, 38</sup>
  31. For those addicted to substances, outpatient treatment<sup>39</sup> and residential therapeutic communities with continuing community-based care have good outcomes.<sup>40</sup> In-prison programs must be followed with aftercare in the community.<sup>41</sup>
  32. Substance abuse treatment is cost beneficial (see Table 1).

**Table 1: Benefit to taxpayers and crime victims per dollar spent on programs**



Source: Aos (May 2001). *The Comparative Costs and Benefits of Programs to Reduce Crime*. Olympia, Washington: The Washington Institute for Public Policy. As cited in Justice Policy Institute (2007) Fact Sheet on Effective Investments in Public Safety: Drug Treatment, available at <http://www.justicepolicy.org/content-hmID=1811&smID=1588&ssmID=52.htm>.

33. Correctional supervision and surveillance alone leads to higher return to prison rates; many studies have found that supervision combined with treatment can reduce recidivism by an average of 17 percent.<sup>42</sup> In Colorado in 2005, 22 percent of individuals who discharged their prison sentence and released without parole returned to prison within 3 years compared to 64 percent for those released on mandatory parole and 48 percent for those released on discretionary parole.<sup>43</sup>
34. Skill-training on evidence-based practices for all professionals working with offenders is an important component of efforts to reduce recidivism rates.<sup>44</sup>

### Zero offending or less offending?

35. Longitudinal studies of those who engage in criminal behavior suggest that desistance from crime is a process in which the frequency of crime decelerates and exhibits less variety over time.<sup>45</sup> Understanding this deceleration process may have value to decision makers targeting scarce correctional resources.

<sup>1</sup> Drug crimes are not averted due to the phenomenon of replacement. In the drug trade, individuals sent to prison are immediately replaced. See summary of research by Przybylski (2008).

<sup>2</sup> Levitt (2004). Understanding why crime fell in the 1990s: Four factors that explain the decline and six that do not. *Journal of Economic Perspectives* 18: 163-190; Levitt (1996). The effect of prison population size on crime rates: Evidence from prison overcrowding litigation. *Quarterly Journal of Economics* 111, 319-351. According to data from the National Crime Victimization Survey, in 2008 47 percent of violent crimes and 40 percent of property crimes were reported to the police (see M. Rand [September 2009]. *Criminal Victimization, 2008*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice. NCJ 227777).

<sup>3</sup> Crime rates are most affected by changing demographics, fluctuating economic conditions, changes in the drug trade, the availability of firearms, and changes in law enforcement practices. See also Blumstein and Wallman (2000). *The crime drop in America*. New York: Cambridge University Press; Gainsborough and Mauer (2000). *Diminishing returns: Crime and incarceration in the 1990s*. New York: The Sentencing Project. See summary of research by Przybylski (2008). *What works: Effective recidivism reduction and risk-focused prevention programs*. Lakewood, CO: RKC Group.

<sup>4</sup> Aos (2003). *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates, and prison economics*. Olympia, WA., available at <http://www.wsipp.wa.gov/pub>.

<sup>5</sup> See summary of research by Przybylski (2008). *What works: Effective recidivism reduction and risk-focused prevention programs*. Lakewood, CO: RKC Group.

<sup>6</sup> Liedka, Piehl, and Useem (2006). The crime control effect of incarceration: Does scale matter? *Criminology and Public Policy* 6, 245-276; Piehl, Useem, Dilulio, Jr. (1999). *Right-sizing justice: A cost-benefit analysis of imprisonment in three states*. New York: Center for Civic Innovation at the Manhattan Institute. See also Washington State Institute on Public Policy, *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates, and prison economics*. Olympia, WA., available at <http://www.wsipp.wa.gov/pub>, and American Bar Association (2004). *Justice Kennedy Commission Report to the House of Delegates*, page 21, available at <http://www.abanet.org/media/kencomm/rep121a.pdf>.

<sup>7</sup> Przybylski (2008).

<sup>8</sup> For a review of the research, see Lowencamp and Latessa (2004). *Understanding the risk principle: How and why correctional interventions can harm low risk offenders*. Topics in Community Corrections. Longmont, CO: National Institute of Corrections. Available at <http://www.nicic.org/pubs/2004/period266.pdf>. See also Lowencamp and Latessa (2002). *Evaluation of Ohio's halfway house and community based correctional facilities*. Cincinnati, Ohio: University of Cincinnati, and Andrews and Bonta (1998). *The Psychology of Criminal Conduct*. Cincinnati: Anderson Publishing Co.

<sup>9</sup> Holtzer, Raphael and Stoll (2001). *Will employers hire ex-offenders? Employer preferences, background checks, and their determinants*. (JCPR Working Paper #238). Chicago: Northwestern University/University of Chicago Joint Center for Poverty Research. Also see National Research Council (2008:43).

<sup>10</sup> Bushway and Reuter (2002). Labor markets and crime. In Wilson and Petersilia (Eds.) *Crime: Public policies for crime control*. Oakland, CA: ICS Press. Also see National Research Council (2008:43).

<sup>11</sup> Berk, Lenihan, and Rossi (1980). Crime and poverty: Some experimental evidence from ex-offenders. *American Sociology Review* 45: 766-786. Also see National Research Council (2008:43).

<sup>12</sup> National Research Council (2008).

<sup>13</sup> Lowden, Hetz, Patrick, Pasini-Hill, Harrison, and English (2003). *Evaluation of Colorado's prison therapeutic community for sex offenders: A report of findings*. Denver, CO: Office of Research and Statistics, Division of Criminal Justice, Colorado Department of Public Safety.

<sup>14</sup> O'Keefe, Klebe, Robeken, and Fisher (2004). *Effectiveness of Arrowhead and Peer 1 Therapeutic Communities*. Colorado Department of Corrections/University of Colorado at Colorado Springs. Available at [https://exdoc.state.co.us/userfiles/Treatment/pdf/acc\\_&\\_peer\\_i\\_outcome.pdf](https://exdoc.state.co.us/userfiles/Treatment/pdf/acc_&_peer_i_outcome.pdf).

<sup>15</sup> Analysis by Richard Rosenfeld and Robert Fornango for the National Research Council (2008).

<sup>16</sup> Gendreau and colleagues conducted a meta-analysis of 50 studies involving more than 300,000 prisoners and found a strong connection between longer prison stays and increased recidivism (see Gendreau, Goggin and Cullen [1999]. *The effects of prison sentences on recidivism*. Ottawa, Canada: Solicitor General of Canada). A few years later, Gendreau again found that incarceration was associated with increased recidivism compared with community-based samples, and longer periods of recidivism were associated with higher recidivism rates (see Smith, Goggin, and Gendreau [2002]. *The effects of prison sanctions on recidivism: General effects and individual differences*. Ottawa, Canada: Public Works and Government Services), available at [www.sgc.dc.ca](http://www.sgc.dc.ca). See also Lipsey and Cullen (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science* 3.

<sup>17</sup> American Bar Association (2004). *Justice Kennedy Commission Report to the House of Delegates*, available at <http://www.abanet.org/media/kencomm/rep121a.pdf>; Wolff (2008).

<sup>18</sup> Ehlers, Schiraldi and Jason (March 2004). *Still striking out: Ten years of California's three strikes*. Washington, DC: Justice Policy Institute.

<sup>19</sup> Wolff (2008) recommends diversion-like sentences when possible. Also see Blumstein and Nakamura (2009). Redemption in the presence of widespread criminal background checks. *Criminology* 47; Holzer, Raphael, and Stoll (2006). Perceived criminality, criminal Background checks, and the racial hiring practices of employers, *Journal of Law and Economics* 49, 451-480; Kurlychek, Brame, and Bushway (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy* 5: 483-504; a Kurlychek, Brame, and Bushway (2007). Enduring Risk? Old criminal records and predictions of future criminal involvement. *Crime & Delinquency* 53, 64-83.

<sup>20</sup> National Research Council (2008).

<sup>21</sup> See the Colorado Actuarial Risk Assessment Scale, at [http://dcj.state.co.us/ors/pdf/docs/CARAS\\_descriptionMay20.pdf](http://dcj.state.co.us/ors/pdf/docs/CARAS_descriptionMay20.pdf).

<sup>22</sup> Blumstein and Nakamura (June 2009). 'Redemption' in an Era of Widespread Criminal Background Checks. *NIJ Journal*, Washington, DC: National Institute of Justice, Office of Justice Programs, US Department of Justice. NCJ 226872. See also Kurlychek, Brame and Bushway (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology and Public Policy* 5, 483-504.

<sup>23</sup> For an early review of this literature, see Andrews, Bonta and Hoge. 1990. Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior* 17, 19-52. See also Gendreau, French and Taylor (2002). *What works (what doesn't work): The principles of effective correctional treatment*. Unpublished manuscript. University of New Brunswick at Saint John; Gendreau and Goggin (1996). Principles of effective correctional programming. *Forum on Corrections* 8, 38-41. Lowenkamp and Latessa (2002). *Evaluation of Ohio's halfway house and community based correctional facilities*. Cincinnati, Ohio: University of Cincinnati; Bonta, Wallace-Capretta, and Rooney (2000). A quasi-experimental evaluation of an intensive rehabilitation supervision program. *Criminal Justice and Behavior* 27, 312-329. Lowenkamp and Latessa (2002) studied thousands of offenders in dozens of Ohio halfway houses and found that the same programs that decreased recidivism by 30 percent for high risk offenders actually increased recidivism by the same amount for low risk offenders.

<sup>24</sup> See Colorado Commission on Criminal and Juvenile Justice binder, Tab 9, *Evidence Based Correctional Practices*, prepared by the Division of Criminal Justice, Office of Research and Statistics, based in part on material available from the National Institute of Corrections ([www.nicic.org](http://www.nicic.org)), August 2007. See also Andrews, Bonta and Hoge (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior* 17:19-52; Andrews and Bonta (1998). *The Psychology of Criminal Conduct*. Cincinnati: Anderson Publishing Co.; Clements (1996). Offender classification: Two decades of progress. *Criminal Justice and Behavior* 23, 121-143.

<sup>25</sup> Michael Wolff (2008). Evidence-based judicial discretion: Promoting public safety through state sentencing reform. *The New York University Law Review* 83, 1389-1419.

<sup>26</sup> Wolff (2008:1405). Wolff acknowledges that prediction is inherent in sentencing decisions and thus should be determined systematically. He notes, however, that "the severity of a punishment should not be based on a risk assessment prediction" and cites John Monahan (2006:428): "Past criminal behavior is the only scientifically valid risk factor for violence that unambiguously implicates blameworthiness, and therefore the only one that should enter the jurisprudential calculus in criminal sentencing." Monahan (2006). A jurisprudence of risk assessment: Forecasting harm among prisoners, predators, and patients. *Virginia Law Review* 291.

<sup>27</sup> Latessa (2005). Developing successful reentry programs: Lessons learned from the "what works" research. *Corrections Today*; Andrews, Bonta and Hoge (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior* 17, 19-52; Andrews and Bonta (1998). *The Psychology of Criminal Conduct*. Cincinnati: Anderson Publishing Co.; Clements (1996). Offender classification: Two decades of progress. *Criminal Justice and Behavior* 23, 121-143.

<sup>28</sup> Criminogenic refers to factors associated with criminal activity that can be changed with appropriate interventions, thereby reducing the likelihood of future criminal behavior.

<sup>29</sup> Andrews and Bonta (1998). *The Psychology of Criminal Conduct*. Cincinnati: Anderson Publishing Co.

<sup>30</sup> Gendreau, Little, and Goggin (1996). A meta-analysis of the predictors of adult offender recidivism: What works! *Criminology* 34, 575-607.

<sup>31</sup> National Research Council (2008). *Parole, desistance from crime, and community integration*. Washington, DC: National Academy of Sciences.

<sup>32</sup> Miller and Rollnick (2002). *Motivational interviewing: Preparing people for change*. New York: Guilford Press; Harper and Hardy (2000). An evaluation of motivational interviewing as a method of intervention with clients in a probation setting. *British Journal of Social Work* 30, 393-400; Ryan and Deci (2000). Self determination theory and the facilitation of intrinsic motivation, social development, and well-being. *American Psychologist* 55, 68-78; Clark (2005). Motivational interviewing for probation staff: Increasing the readiness to change. *Federal Probation* 69, 22-24.

<sup>33</sup> See Trotter's (2006). *Working with involuntary clients*. London: Sage; Andrews, Keissling, Russell, and Grant (1979). *Volunteers and one-to-one supervision of adult probationers*. Ontario Ministry of Correctional Services, Toronto; Miller, Herson, Eisler, and Watts (1974). Contingent reinforcement of lowered blood/alcohol levels in an outpatient chronic alcoholic. *Behavior Research and Therapy* 1, 261-263. Also, Dowden and Andrews's (2004) meta-analysis found that effective modeling by corrections staff in a range of situations was strongly and significantly related

to reduced reoffense rates. See also Andrews and Bonta (1998). *Psychology of criminal conduct, second edition*. Cincinnati, OH: Anderson; Taxman 2006). *A behavioral management approach to supervision: Preliminary findings from Maryland's Proactive Community Supervision (PCS) pilot program*. Prepared for the Workshop on Community supervision and Desistance from Crime, Committee on Law and Justice, National Research Council. National Research Council (2008:39). See also Bandura (1977). Self-efficacy: towards a unifying theory of behavioral change. *Psychological Review* 84: 191-215, and Petry, Tedford, Austin, Nich, Carroll, Rounsaville (2004). Prize reinforcement contingency management for treating cocaine users: how low can we go, and with whom? *Addiction* 99, 349-360.

<sup>34</sup> One study by an economist found that a ten percent increase in wages would reduce crime participation by 6-9 percent (Grogger [1998]. Market wages and youth crime. *Journal of Labor Economics* 16, 756-791; National Research Council (2008:42).

<sup>35</sup> Sampson and Laub (1993), *Crime in the making: Pathways and turning points through life*. Cambridge: MA: Harvard University Press. Shover (1996). *Great pretenders: Pursuits and careers of persistent thieves*. Boulder, CO: Westview Press. See also National Research Council (2008:24).

<sup>36</sup> Center for Substance Abuse Treatment (1997). *The National Treatment Improvement Evaluation Study (NTIES)*. Substance Abuse and Mental Health Services Publication Number SMA-97-3156.

<sup>37</sup> The National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations* (no date), states the following: "Detected use can present opportunities for therapeutic intervention. Monitoring drug use through urinalysis or other objective methods, as part of treatment or criminal justice supervision, provides a basis for assessing and providing feedback on the participant's treatment progress. It also provides opportunities to intervene to change unconstructive behavior—determining rewards and sanctions to facilitate change, and modifying treatment plans according to progress." Available at [http://www.nida.nih.gov/PODAT\\_CJ/principles](http://www.nida.nih.gov/PODAT_CJ/principles).

<sup>38</sup> The National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations* (no date), states the following: "Drug addiction is a serious problem that can be treated and managed throughout its course. Effective drug abuse treatment engages participants in a therapeutic process, retains them in treatment for an appropriate length of time, and helps them learn to maintain abstinence over time. Multiple episodes of treatment may be required. Outcomes for drug abusing offenders in the community can be improved by monitoring drug use and by encouraging continued participation in treatment." Available at [http://www.nida.nih.gov/PODAT\\_CJ/principles](http://www.nida.nih.gov/PODAT_CJ/principles).

<sup>39</sup> MacKenzie (2006). *What Works in Corrections: Reducing the Criminal Activities of Offenders and Delinquents*. New York: Cambridge University Press.

<sup>40</sup> Tims, DeLeon, and Jainchill (1994). *Therapeutic Community: Advances in Research and Application*, National Institute on Drug Abuse Research Monograph 144, NIH Pub. No. 94-3633, U.S. Government Printing Office; Inciardi, Tims, and Fletcher (eds.) (1993). *Innovative Approaches in the Treatment of Drug Abuse*, Westport, CT: Greenwood Press; Institute of Medicine (1990). *Treating Drug Problems*. Washington, D.C.: National Academy Press.

<sup>41</sup> MacKenzie (2006). *What Works in Corrections: Reducing the Criminal Activities of Offenders and Delinquents*. New York: Cambridge University Press.

<sup>42</sup> Aos et al. reviewed 11 studies of supervision to reach the conclusion that supervision without treatment does not reduce recidivism. See Aos, Miller and Drake (2006). *Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates*. Olympia: Washington State Institute for Public Policy.

<sup>43</sup> O'Keefe and Barr (June 2009). *Statistical Report: Fiscal Year 2008*. Colorado Springs, CO: Colorado Department of Corrections. Page 51-52.

<sup>44</sup> Latessa, Cullen and Gendreau (2004). Beyond correctional quackery—Professionalism and the possibility of effective treatment. *Federal Probation* 66, 43-49; Mihalic and Irwin (2003). *Blueprints for violence prevention: From research to real world settings—factors influencing the successful replication of model programs*. Boulder, CO: Center for the Study and Prevention of Violence. Also, Miller and Mount (2001). *A small study of training in Motivational Interviewing: Does one workshop change clinician and client behavior?* Albuquerque, NM. Available at [www.nicic.org](http://www.nicic.org); Andrews, Keissling, Russell, and Grant (1979). *Volunteers and one-to-one supervision of adult probationers*. Ontario Ministry of Correctional Services, Toronto, and Andrews and Bonta (2004). *The psychology of criminal conduct*. Cincinnati: Anderson Publishing, as cited in Trotter (2006).

<sup>45</sup> National Research Council (2008:20).

**Appendix C:**  
**Sentencing Survey of Colorado District and County Court Judges**





## **Sentencing Survey of Colorado District and County Court Judges**

**Kevin L. Ford, Ph.D.**  
Office of Research and Statistics  
Division of Criminal Justice

August 14, 2009

### **Survey Design**

- Brief (25 questions delivered via Survey Monkey)
- Variety of sentencing topics
- Provide general impression of topics

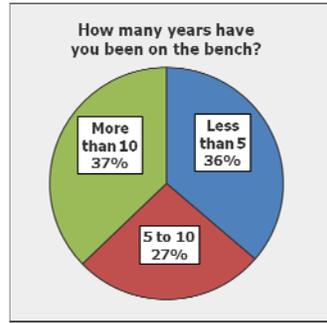
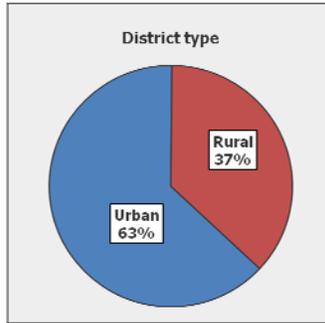
### **Summary Findings**

- Sentencing structure complex/confusing
- Lacking discretion and flexibility
- Limit use of mandatory minimums
- Inadequate sex offender and HTO statutes
- Should differentiate escape types in statute
- Increase sentencing alternatives and resources

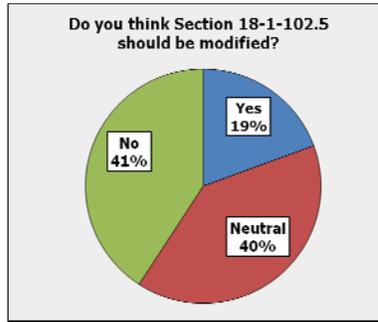
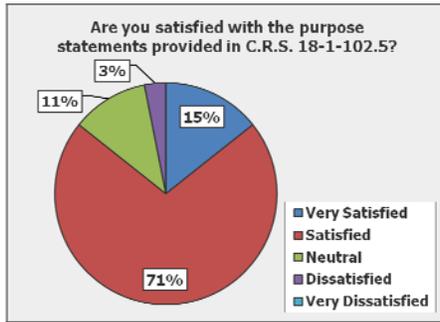
#### **Acknowledgement**

CCJJ and DCJ would like to thank the Colorado Judicial Branch, especially Chief Justice Mary Mullarkey and staff of the Office of Research and Planning, Veronica Marceny and Sherry Stwalley, for disseminating the survey and for collecting and compiling the results.

### Respondent characteristics

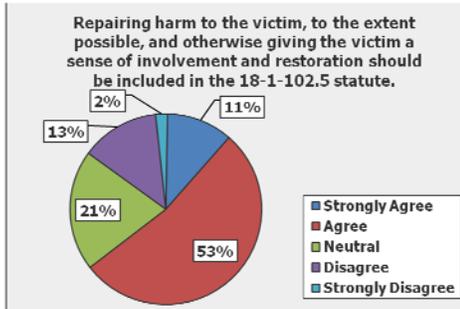


Sample size: 98 district and county court judges  
 Response rate ≈ 36%  
 Survey conducted between July 16 and July 31, 2009

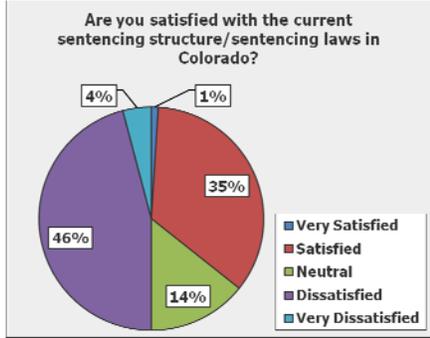


### Purposes of sentencing

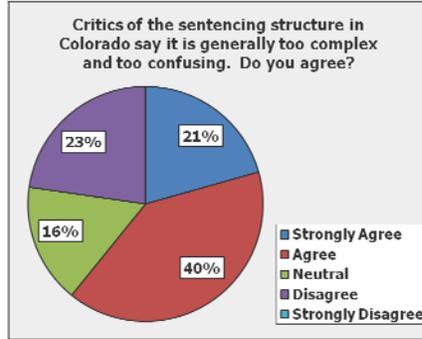
Although judges report general satisfaction with the statute (86%) and that there is no need for modification (41%), when provided an example (namely, victim restoration) judges appear open to statute modification (64%).



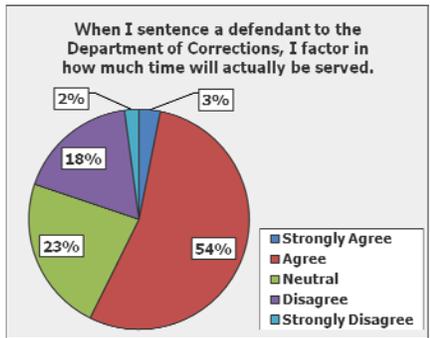
### Sentencing structure



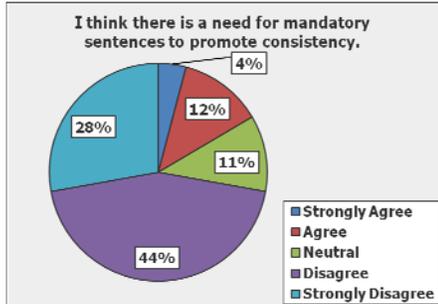
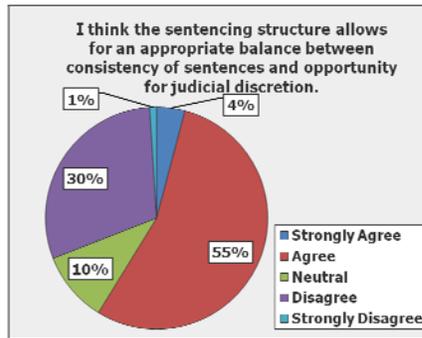
Although opinion is somewhat split, more judges report dissatisfaction (50%) than satisfaction (36%) with sentencing structure/laws and largely agree that sentencing statutes are complex and confusing (61%).



### Sentencing discretion

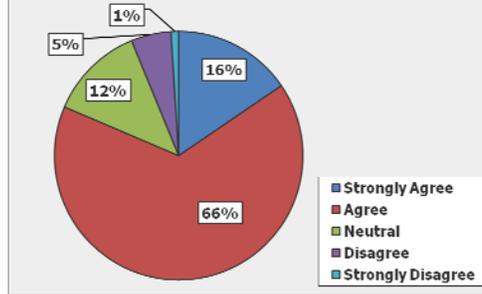


A majority of judges indicate adjusting sentences to account for actual time served (57%). With a healthy minority in opposition (31%), judges largely (59%) report a perceived balance between sentence consistency and discretion, but disagree (72%) with mandatory minimums as an approach to achieve sentencing consistency.



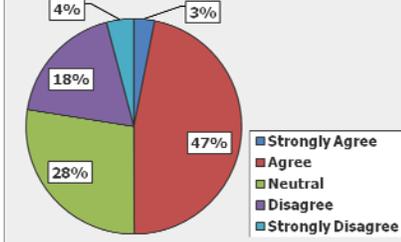
### Sentencing discretion

When a judge is mandated to sentence a defendant to incarceration, it would be useful if residential community corrections were a placement option.

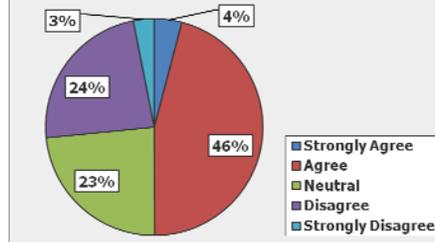


When presented a hypothetical sentencing option [community corrections as a potential placement when a sentencing mandate requires incarceration], judges would overwhelmingly prefer that the statute allow a community corrections placement option (82%). This does not imply that judges would necessarily use the option.

Sentencing statutes concerning aggravators in crimes of violence are appropriate as currently written.



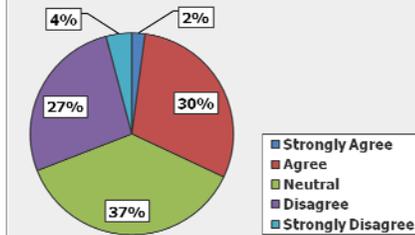
Sentencing statutes concerning aggravators in extraordinary risk crimes are appropriate as currently written.

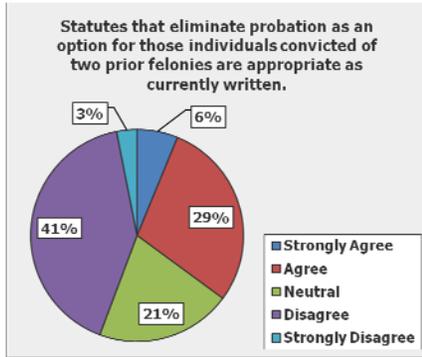


### Sentence aggravators

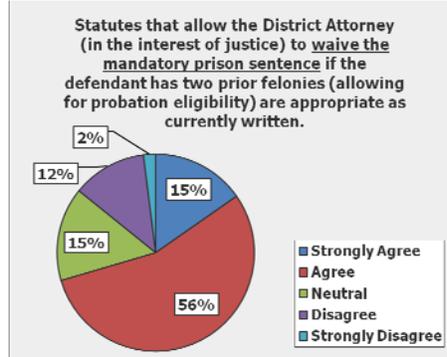
There is greater agreement than disagreement by judges regarding the appropriateness of current statutes concerning crimes of violence (50% vs. 22%) and extraordinary risk (50% vs. 27%). However, opinion is evenly split on statutes addressing habitual traffic offenders.

Colorado statutes pertaining to sentencing of habitual traffic offenders are appropriate as currently written.

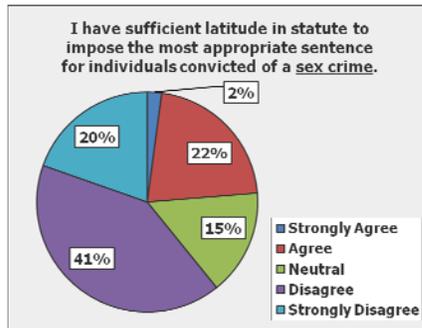
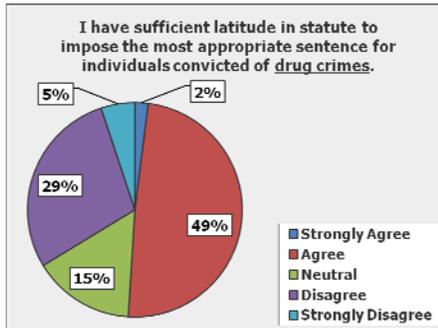




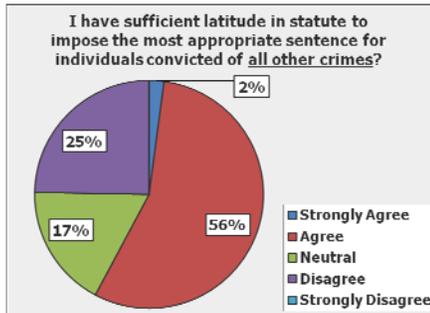
**Two-prior felony statutes**



More judges disagree (44%) than agree (35%) that, in general, the two-prior felony statutes are appropriately written. However, judges overwhelmingly agree (71%) with the aspect of the current statutes that allows DAs to waive a mandatory prison sentence under the two-prior felony condition.

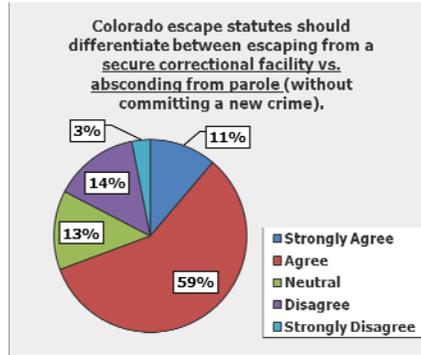
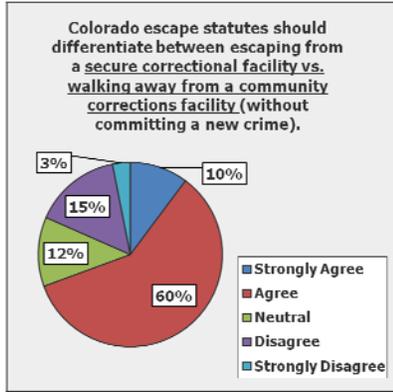


**Sentencing latitude (discretion)**



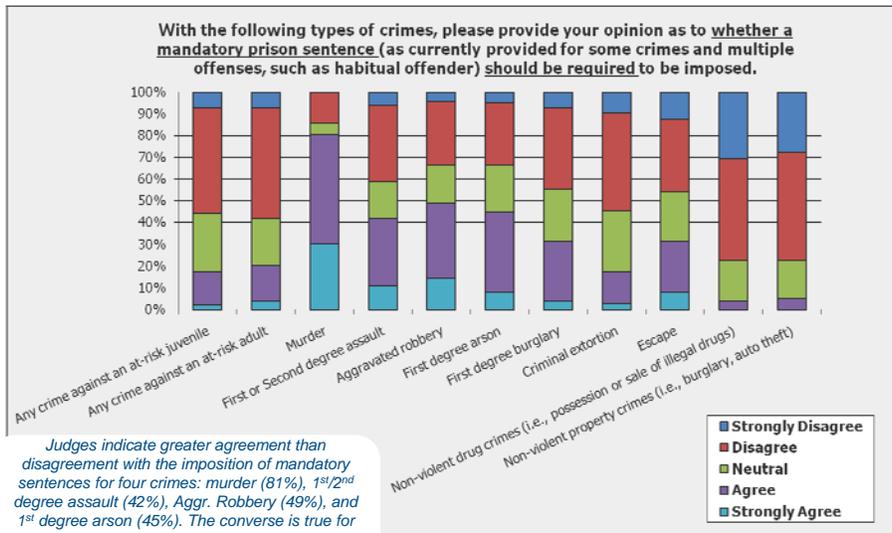
When sentencing drug (51%) and all other crimes (58%), judges tend to agree that there is sufficient sentencing latitude; although there are substantial minorities in disagreement (34% & 27%, respectively). However, judges disagree that sentencing latitude is sufficient for sex crimes (61%).

### Escape statutes



Large proportions of judges agree that escape statutes should differentiate between escaping from a secure correctional facility and either walking away from community corrections (70%) or absconding from parole (70%).

### Mandatory sentencing



Judges indicate greater agreement than disagreement with the imposition of mandatory sentences for four crimes: murder (81%), 1<sup>st</sup>/2<sup>nd</sup> degree assault (42%), Aggr. Robbery (49%), and 1<sup>st</sup> degree arson (45%). The converse is true for the remaining crimes, with proportions in disagreement ranging from 45% (1<sup>st</sup> degree burglary) to 78% (non-violent drug).

**Sentencing priorities**

**What issues do you feel the Commission should prioritize regarding sentencing reform?  
(Ranking of 8 possible choices)**

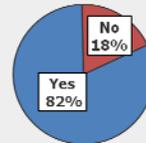
Resultant Rank	Sentencing Priority	Number of #1 Rankings*	Number of #2 Rankings*
1	Additional Judicial Discretion	29	18 48%
2	Consistency in Statutes	26	16 43%
3	Revising Drug Statutes (T.18, A.18)	21	14 36%
4	Probation Eligibility	4	12
5	Mandatory Minimums	9	15
6	Habitual Offender Statutes (non-traffic)	4	9
7	Escape	2	7
8	Increased Focus on Victims	3	7

\*of 98 possible

**Sentencing resources**

**If you could direct additional resources in your district to expand sentencing options, how would you prioritize the following?  
(Ranking of 13 possible choices)**

Would you prefer additional resources in your district for sentencing options?



Resultant Rank	Sentencing Option Resources	Number of #1 Rankings*	Number of #2 Rankings*
1	Drug Treatment	38 49%	15 68%
2	Mental Health Treatment	19 24%	27 59%
3	Community Corrections	5	9
4	Intensive Supervision Probation (ISP)	4	10
5	Vocational Training	0	2
6	Educational Training	0	5
7	Probation	4	5
8	Jail Work-Release	3	3
9	Restorative Justice	1	1
10	Prison Sentences (DOC)	2	0
11	Culturally-Specific Sentencing Alternatives	0	0
12	Gender-Specific Sentencing Alternatives	0	0
13	Other**	2	1

\* of 78 Possible

\*\* There were 13 "Other" resources mentioned: Juvenile programs, Court review hearings, Cognitive restructuring programs, Specialty courts (drug, veterans, mental health), Alternative sex offender programs, Community Corrections for misdemeanors, Alcohol treatment, More innovative programs, Electronic monitoring, Diversion, Boot camp, Fee relief programs for the indigent.



**Appendix D:**  
**Minority Overrepresentation in the Criminal Justice System**



# Minority Overrepresentation in the Criminal Justice System

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**October 2010**

Christine M. Shea Adams, PhD

Office of Research and Statistics  
Division of Criminal Justice  
Colorado Department of Public Safety  
700 Kipling Street, Suite 3000  
Denver, CO 80215  
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**Office of Research and Statistics**  
Kim English, Research Director  
**Division of Criminal Justice**  
Jeanne M. Smith, Director  
**Colorado Department of Public Safety**  
Kathy Sasak, Executive Director



## Introduction

In 2008, the Colorado General Assembly passed House Bill 1119 which directed the Colorado Commission on Juvenile and Criminal Justice to address the issue of racial and ethnic disparities in the juvenile and criminal justice systems by conducting studies of the policies and practices in Colorado with the goal of reducing racial and ethnic disparity and reviewing work and resources compiled by states in the area of racial and ethnic disparity reduction. In each annual report, the Commission includes an appendix that presents information on racial disparity. This appendix reviews data relevant to racial disparity for both adults and juveniles, and includes information about other states' initiatives, and recommendations from the Sentencing Project and other entities for addressing disparities in the justice system.

## Racial Disparity

Racial disparity exists when the proportion of racial or ethnic groups within the criminal justice system is greater than the proportion of the same groups in the general population.<sup>1</sup> Addressing racial disparity and minority overrepresentation in the criminal justice system corresponds with the general desire for public safety as well as a fair justice system. The purpose of the current report is to demonstrate how the proportions of minority populations within the criminal justice system compare to the proportion of these same populations within the United States in general and within Colorado specifically.

Although illegitimate or unwarranted racial disparity in the criminal justice system is the result of dissimilar treatment of individuals in similar situations based on race,<sup>2</sup> the causes of such disparity will vary and can occur at different points in the criminal justice system. Discrepancies in treatment throughout the system may be due to overt racial bias as well as indirect influences associated with race. This report is intended to show policymakers where disproportion lies as a means of providing information for future decision-making as well as provide possible guidelines for addressing this issue.

## Racial Breakdown in the U.S. and Colorado Population

In 2009 the U.S. Census Bureau estimated that the entire U.S. population was approximately 307,006,550 (see Table 1). Of this, 79.6% were White, 18.7% were a minority race and the remaining 1.7% considered themselves to be two or more races. In comparison, Colorado was estimated to have a population of 5,024,748. Of this 89.5% were White, 8.5% were a minority race and the remaining 2.0% considered themselves to be two or more races.

**Table 1. Racial breakdown of the general U.S. and Colorado population in 2009**

Race	U.S. Population Estimates		Colorado Population Estimate	
	U.S. Population	Percentage	Colorado Population	Percentage
White	244,298,393	79.6%	4,497,149	89.5%
Black or African American	39,641,060	12.9%	221,089	4.4%
American Indian and Alaska Native	3,151,284	1.0%	60,297	1.2%
Asian	14,013,954	4.6%	135,668	2.7%
Native Hawaiian and Other Pacific Islander	578,353	0.2%	10,049	0.2%
Two or more races	5,323,506	1.7%	100,495	2.0%
Total population	307,006,550	100.0%	5,024,748	100.0%

**Source:** <http://quickfacts.census.gov/qfd/states/08000.html> (as of July 1, 2009)

**Note:** A separate listing for Hispanic is not included for Census data because the U.S. Census Bureau considers Hispanic ethnicity to mean persons of Spanish/Hispanic/Latino origin including those of Mexican, Cuban, Puerto Rican, Dominican Republic, Spanish, and Central or South American origin living in the US who may be of any race (White, Black, Asian, etc.).

<sup>1</sup> The Sentencing Project. (2008). *Reducing racial disparity in the criminal justice system: A manual for practitioners and policymakers*. Washington, DC: The Sentencing Project.

<sup>2</sup> Ibid.

## Racial Disparity in the U.S. Criminal Justice System

The PEW Center on the States reports that in 2008 2.3 million adults in the United States were incarcerated (prison or jail), or 1 in 100.<sup>3</sup> This number is even higher when all correctional supervision is included, such as probation, parole, and community corrections.<sup>4</sup> Minorities are more likely than Whites to be under some form of correctional supervision. Specifically, in 2006 of adults who were 18 years of age or older:

- 1 in 102 were incarcerated.<sup>5</sup>
  - 1 in 54 adult men were incarcerated.
    - 1 in 106 White adult men.
    - 1 in 36 Hispanic adult men.
    - 1 in 15 Black adult men.
  - 1 in 580 adult women were incarcerated.
    - 1 in 859 White women.
    - 1 in 436 Hispanic women.
    - 1 in 203 Black women.
- 1 in 31 adults are under some form of correctional supervision.<sup>6</sup>
  - 1 in 45 White adults.
  - 1 in 27 Hispanics adults.
  - 1 in 11 Blacks adults.

In addition, Blacks serve probation almost 3 times longer, parole over 5 times longer, are more likely to recidivate than Whites, and were sentenced to death 5 times as often as Whites in similar cases.<sup>7</sup>

The Bureau of Justice Statistics (BJS) examined the differences in length of maximum sentences, time served and the percent of maximum sentence served for various crime types between Whites and Black released from state prison in 2005. The average length of maximum sentence and length of time served was longer for Black offenders than White offenders for each offense category (see Table 2). For violent crimes, Black offenders received 17.7% longer maximum sentences and served 21.7% longer prison time than their White counterparts. The largest discrepancy existed for drug crimes where, although the maximum average sentence for Blacks was only 3.4% longer than Whites, the average time served and percentage of maximum sentence served by Blacks was 38.9% and 34.4% longer than Whites, respectively (data not shown).

A similar examination of Colorado prison data (see Table 3) found that overall Black offenders were received 1.0% longer prison sentenced than their White counterparts and served 5.7% longer. For violent crimes Black offenders in Colorado were given 2.6% longer sentences. However, no differences were found in average time served (data not shown).

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<sup>3</sup> As reported in: The Pew Center on the States. (2009). *One in 100: Behind bars in America 2008*. Washington, DC: The Pew Charitable Trusts. With the exception of the "one in one hundred adults" figure these numbers are all as of June 30, 2006. This one statement is a 2008 statistic.

<sup>4</sup> The Pew Center on the States. (2009). *One in 31: The long reach of American corrections*. Washington, DC: The Pew Charitable Trusts.

<sup>5</sup> The Pew Center on the States. (2009). *One in 100: Behind bars in America 2008*. Washington, DC: The Pew Charitable Trusts. With the exception of the "one in one hundred adults" figure these numbers are all as of June 30, 2006. See Table A-6 in this Pew report for a greater break down by sex, race/ethnicity and age.

<sup>6</sup> The Pew Center on the States. (2009). *One in 31: The long reach of American corrections*. Washington, DC: The Pew Charitable Trusts.

<sup>7</sup> Hartney, C., & Vuong, L. (2009). *Created equal: Racial and ethnic disparities in the US criminal justice system*. Oakland, CA: National Council on Crime and Delinquency.

**Table 2. Sentence length and prison time served by offense and race (First releases from state prison, 2005)**

Most serious offense	WHITE					BLACK				
	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served
	Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean		Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean	
All offenses	36	59	15	26	44.1	48	66	18	33	50.0
Violent offenses	60	79	29	46	58.2	60	93	35	56	60.2
Drug offenses	48	59	13	18	30.5	48	61	16	25	41.0

**Source:** <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2045>; 2005, filename: ncrp0511.csv

**Note:** Data are first releases with a total sentence of more than a year for which the most serious offense, maximum sentence length, and time served is known.

<sup>a</sup> Sentence length refers to the maximum sentence that an offender may be required to serve for the most serious offense.

<sup>b</sup> Includes sentences of life without parole, life plus additional years, life, and death.

<sup>c</sup> Excludes sentences of life without parole, life plus additional years, life, and death.

**Table 3. Sentence length and prison time served by offense and race (First releases from Colorado state prison, 2005)**

Most serious offense	WHITE					BLACK				
	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served	Maximum sentence length <sup>a</sup> (in months)		Prison time served (in months)		% of max. sentence served
	Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean		Median <sup>b</sup>	Mean <sup>c</sup>	Median	Mean	
All offenses	36	54	27	35	64.81	36	55	29	37	67.27
Violent offenses	48	78	35	51	65.38	48	80	33	51	63.75
Drug offenses	36	46	24	28	60.87	36	44	29	32	72.73

**Source:** Special analysis by the Colorado Division of Criminal Justice using data provided by the Department of Corrections for the annual prison population report. Data are considered preliminary, and may vary from that published by DOC.

**Note:** Data are first releases with a total sentence of more than a year for which the most serious offense, maximum sentence length, and time served is known.

<sup>a</sup> Sentence length refers to the maximum sentence that an offender may be required to serve for the most serious offense.

<sup>b</sup> Excludes sentences of life without parole, life plus additional years, life, and death.

<sup>c</sup> Excludes sentences of life without parole, life plus additional years, life, and death.

## Racial Disparity in Colorado

Wells and O'Keefe (2010) examined minority overrepresentation in Colorado.<sup>8</sup> One study focused on the effect that race/ethnicity had on the likelihood of unsuccessful completion of adult probation (unsuccessful termination was defined as revocations to prison for a technical violation, new crimes, and absconding). When compared to White adults (n = 13,762), Blacks (n = 1,632) were 1.73 times more likely to terminate unsuccessfully, Hispanics (n = 2,829) were 1.41 times more likely to terminate unsuccessfully, and Native Americans (n = 202) were 2.37 times more likely to terminate unsuccessfully.<sup>9</sup>

Although the majority of Community Corrections Transition clients were released successfully (67.2%, n = 1,695), Wells and O'Keefe found that overall 32.8% (n = 827) were released unsuccessfully (defined as being returned to prison or

<sup>8</sup> Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>9</sup> p < .001

having escaped). Post-hoc analyses found that race had a significant effect on this difference. Black adults (n = 493) were terminated unsuccessfully statistically more often and Whites (n = 1,342) were terminated statistically less often than if race were unrelated to the outcome.<sup>10</sup>

Wells and O'Keefe also found significant differences across race when examining type of release from parole (successful or unsuccessful). Seventy-one percent of Blacks (n = 1,432) and 72% of Native Americans (n = 193) were terminated unsuccessfully which is higher than would be statistically expected if race were not a factor. Fifty-four percent of both Whites (n = 3,457) and Hispanics (n = 2,393) were terminated unsuccessfully which is less than would be statistically expected if race were not a factor.<sup>11</sup>

Tables 4 and 5 show that depending on race and ethnicity, the percentages at every stage of the criminal justice system diverge from the population numbers, especially for Black Coloradans. Because Hispanics are often combined with Whites, it is difficult to determine an accurate percentage of Hispanics in various levels of the criminal justice system.<sup>12</sup> Although Blacks comprised only 4.4% of the state population, they are found in increasing numbers at different levels of the system: 11.8 % of all arrests, 11.8 % of all filings, 12.4% of all convictions, 19% of all DOC admissions, 22.7% of all parole technical violations, and 24.7% of all parole terminations for a new crime. Thus, their percentage of the population at each phase of the criminal justice system exceeds their proportion of the state population.

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<sup>10</sup>  $p < .01$  for each comparison.

<sup>11</sup> This comparison excludes offenders who died while on parole;  $p < .001$  for each comparison.

<sup>12</sup> The U.S. Census collects ethnicity data (Hispanic vs. non-Hispanic) separately from race.

Table 4. Colorado racial disparity in adult population: General population, arrest, filings, findings and placements, 2008/2009

	N	American Indian	Asian	Black	Hispanic	White	Other	Unknown	Total
<b>General Population</b>									
<i>Colorado Adult Population<sup>a</sup></i>	<i>4,497,149</i>	<i>1.2%</i>	<i>2.7%</i>	<i>4.4%</i>	<i>89.5%</i>	<i>2.0</i>			<i>100%</i>
<b>Arrests<sup>b</sup></b>									
Colorado Adult Arrests <sup>c</sup>	158,062	0.8%	0.9%	11.8%	86.10%			0.60%	100%
<b>Filings<sup>d</sup></b>									
Filings	39,464	0.7%	0.7%	11.8%	9.5%	75.3%	1.3%	0.6%	100.0%
<b>Findings<sup>e</sup></b>									
No Conviction	5897	0.6%	0.6%	10.9%	6.8%	77.3%	2.7%	1.0%	100.0%
Deferred	3190	0.4%	1.1%	9.1%	6.9%	80.9%	1.4%	0.3%	100.0%
Convicted	25,307	0.7%	0.7%	12.4%	10.7%	74.5%	0.8%	0.2%	100.0%
<b>Sentence<sup>f</sup></b>									
Other <sup>g</sup>	834	0.6%	1.2%	5.2%	4.1%	85.9%	1.7%	1.4%	100.0%
Probation	13,469	0.6%	1.0%	11.4%	9.5%	76.4%	1.0%	0.1%	100.0%
ISP	909	0.6%	1.1%	17.1%	9.9%	70.7%	0.7%	0.0%	100.0%
Jail	3045	1.0%	0.6%	9.0%	11.2%	76.7%	1.1%	0.5%	100.0%
Probation and Jail	3814	0.7%	0.6%	8.1%	11.9%	77.9%	0.6%	0.1%	100.0%
Community Corrections	1354	0.7%	0.2%	14.0%	7.3%	77.1%	0.4%	0.2%	100.0%
DOC	6774	0.6%	0.7%	17.5%	12.1%	68.0%	0.9%	0.3%	100.0%

**Source:** Information regarding the source of each piece of data is presented in the corresponding footnote. This table was compiled by the Division of Criminal Justice, Office of Research and Statistics.

<sup>a</sup> <http://quickfacts.census.gov/qfd/states/08000.html> (as of July 1, 2009). Note: A separate listing for Hispanic is not included for Census data because the U.S. Census Bureau considers Hispanic ethnicity to mean persons of Spanish/Hispanic/Latino origin including those of Mexican, Cuban, Puerto Rican, Dominican Republic, Spanish, and Central or South American origin living in the US who may be of any race (White, Black, Asian, etc.).

<sup>b</sup> Uniform Crime Report data provided by the Colorado Bureau of Investigation, Colorado Dept. of Public Safety. Data reflect CY 2008 arrests and are the most recent currently available.

<sup>c</sup> Hispanic ethnicity is included in the White race in Uniform Crime Report data.

<sup>d</sup> Total number of filings taken from FY 2009 Judicial Branch Annual Report. Racial/ethnic breakouts extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>e</sup> FY 2009 criminal court filing data were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>f</sup> Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>g</sup> "Other" sentences include things such as fines/fees/surcharges, community service, and treatment. This list is not all inclusive.

Table 5. Colorado racial disparity in adult population: Probation, DOC and parole, 2008/2009

	N	American Indian	Asian	Black	Hispanic	White	Other	Unknown	Total
<b>Probation Sentence<sup>a</sup> (cases)</b>	<b>13,469</b>	<b>0.6%</b>	<b>1.0%</b>	<b>11.4%</b>	<b>9.5%</b>	<b>76.4%</b>	<b>1.0%</b>	<b>0.1%</b>	<b>100.0%</b>
<b>Probation Terminations<sup>b</sup> (people)</b>									
Successful	23,415	0.8%	1.1%	5.5%	12.5%	79.5%	0.7%		100%
Technical Violation	2,722	1.7%	0.5%	11.3%	17.0%	68.9%	0.5%		100%
New Crime	1,762	0.9%	1.1%	11.6%	18.1%	68.0%	0.4%		100%
Absconder	4,506	2.8%	0.7%	10.7%	19.7%	65.7%	0.5%		100%
<b>DOC Sentence<sup>c</sup> (cases)</b>	<b>6774</b>	<b>0.6%</b>	<b>0.7%</b>	<b>17.5%</b>	<b>12.1%</b>	<b>68.0%</b>	<b>0.9%</b>	<b>0.3%</b>	<b>100.0%</b>
<b>Department of Corrections (people)</b>									
Admits <sup>d</sup>	10,861	3.2%	0.8%	19.0%	33.3%	43.7%			100%
Stock Population <sup>e</sup>	22,961	3.0%	0.0%	20.0%	32.0%	45.0%			100%
YOS admits <sup>f</sup>	61	0.0%	0.0%	16.0%	62.0%	21.0%			100%
COPD convictions <sup>g</sup>	19,602	2.8%	80.0%	21.6%	34.6%	40.1%			100%
<b>Parole</b>									
Parole Population <sup>h</sup>	11,439	2.0%	1.0%	16.0%	34.0%	47.0%			100%
Technical Parole Returns (no new crime) <sup>i</sup>	3773	3.8%	0.7%	22.7%	29.1%	43.8%			100%
Parole Returns with a new crime <sup>j</sup>	1132	4.0%	0.9%	24.7%	29.2%	41.3%			100%

**Source:** Information regarding the source of each piece of data is presented in the corresponding footnote. This table was compiled by the Division of Criminal Justice, Office of Research and Statistics.

**Note:** Judicial race data is often imported via other computer systems which may not distinguish between race and ethnicity (particularly “White” and “Hispanic”). As a result, the ability to accurately interpret this data is limited.

<sup>a</sup> Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>b</sup> Office of Probation Services, Colorado State Court Administrator's Office. Includes adult terminations from regular, intensive, and private probation.

<sup>c</sup> Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

<sup>d</sup> Data provided by the Office of Planning and Analysis, Colorado Department of Corrections and analyzed by the Office of Research and Statistics, Colorado Division of Criminal Justice. Admits includes new court commitments as well as “other” admissions such as bond returns, dual commitments, probation returns (with or without a new crime), court ordered discharge return (with or without a new crime), YOS failure (with or without a new crime), and YOS resentence.

<sup>e</sup> FY 2009 DOC annual report available at <http://www.doc.state.co.us/statistical-reports-and-bulletins>.

<sup>f</sup> Ibid.

<sup>g</sup> Office of Planning and Analysis, Colorado Department of Corrections

<sup>h</sup> FY 2009 DOC annual report available at <http://doc.state.co.us/statistical-reports-and-bulletins>.

<sup>i</sup> Data provided by the Office of Planning and Analysis, Colorado Department of Corrections and analyzed by the Office of Research and Statistics, Colorado Division of Criminal Justice.

<sup>j</sup> Ibid.

Evident in the previous two tables, there is a disproportionate number of Blacks throughout the criminal justice system in Colorado. Arguments can be made that disparity may be due to differences in unfair treatment or may be due to differences in the rates of criminal activity. The argument regarding criminal activity rates is often supported by a reference to criminal history. In a sample of court cases in Colorado between 2004 and 2006, Blacks had significantly higher criminal history scores<sup>13</sup> than Whites and Hispanics (see Table 6). Hispanics, however, had criminal history scores that were significantly lower than that of Whites and Blacks.

**Table 6. Criminal history scores by race/ethnicity (N=1707)**

Race/Ethnicity	Frequency	Mean Criminal History Score
White	1289	2.99 <sup>a</sup>
Black	217	3.30 <sup>a</sup>
Hispanic	176	2.66 <sup>a</sup>
Asian	11	2.73
American Indian	11	2.82

**Source:** Data collected by DCJ from 10 judicial districts (17 counties: Denver, Jefferson, El Paso, Weld, Mesa, Boulder, Broomfield, Douglas, Teller, Gilpin, Jackson, Adams, Arapahoe, Elbert, Lincoln, and Larimer). These judicial districts were chosen based on the top 10 judicial districts for filings in 2005. The original sample was made up of 2626 court cases from 2004, 2005, and 2006 that closed in 2006.

<sup>a</sup> Means with the same superscript differ significantly from one another ( $p < .01$ ).

### Racial Disparity in Colorado Juvenile Justice Population

The Division of Youth Corrections (DYC), within the Department of Human Services (CDHS) manages youth in detention and commitment facilities as well as juvenile parolees. Table 7 shows the racial/ethnic breakdown of the DYC populations in FY 2009. Although Black juveniles made up only 5.0 % of the general population (between the ages of 10 and 17), they represented 16.8 % of those in detention, 18.3 % of those committed, and 6.3 % of those on parole.<sup>14</sup> White juveniles are underrepresented in all groups by approximately 20%. Black youths were detained for an average of 16.8 days whereas white youths were detained for an average of 12.8 days.

<sup>13</sup> The ORS Criminal History score is an index of an offender's past adjudications, convictions, placements, and revocations (weights shown in parentheses). Developed in the mid-1980's by M. Mande, this score has been used for over 20 years. Overall, coded scores can range from 0 to 4 with 0 basically equaling no previous involvement in the criminal justice system and 4 representing an individual with a very serious criminal history. The Criminal History score is calculated as follows: Number of juvenile adjudications x (.5) + Number of juvenile placements (.75) + number of adult prior violent convictions x (1.5) + number of adult felony convictions (1.0) + number of adult probation revocations x (.75) + number of adult parole violations x (2). Scores are collapsed to form a five-point scale ranging from 0 – 4, with 0 representing the lowest and 4 representing the highest measure of criminal history.

<sup>14</sup> General population data is from CY 2008, DYC data is from FY 2009.

**Table 7. Population by race/ethnicity for youth detention, new commitments, and juvenile parole (FY 2009)**

Race	General Juvenile Population (%)	Detention Population		Commitment Population	Parole Population	
		New Admissions (%)	LOS <sup>a</sup> (Months)	New Commitments (%)	Clients Served <sup>b</sup> (%)	LOS <sup>a</sup> (Days)
White	356,837 (61.1)	4,317 (41.9)	12.8	325 (42.8)	522 (41.1)	6.6
Black	26,686 (5.0)	1,631 (15.8)	16.8	139 (18.3)	245 (19.3)	6.3
Hispanic	128,026 (24.1)	3,944 (38.3)	13.9	268 (35.3)	467 (36.8)	6.6
Native American	5,818 (1.1)	188 (1.8)	14.9	17 (2.2)	20 (1.6)	8.6
Asian	14,370 (2.7)	82 (0.8)	16.0	7 (0.9)	9 (0.7)	6.5
Other	0 (0.0)	133(1.3)	10.5	4 (0.5)	8 (0.6)	6.0
TOTAL	531,737 (100)	10,295 (100)	14.2	760 (100)	1,270 (100)	6.8

**Source:** Population estimates were provided by Colorado DOLA, Demography Section (CY 2008). Figures are the most recent currently available. All other data are from Burmeister, K. (2010). *Management reference manual*. Denver, CO: Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections.

<sup>a</sup> LOS, Length of stay.

<sup>b</sup> Counts are approximate based on reported percentages.

The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention has developed a calculation method to determine the minority rate of occurrence at each decision point in the criminal justice system in comparison to the White rate of occurrence at the same decision points.<sup>15</sup> The Relative Rate Index (RRI) shows the likelihood of an event when compared to White youth. The rates for Black and Hispanic youths during a 5 year period (2005-2009) are displayed below in Tables 8 and 9, respectively. For example, Table 8 shows that in FY 2009 African American youth were 4.36 times as likely to be arrested as White youth and 2.51 times as likely to be committed to DYC. Table 9 shows that FY 2009 Hispanic youth were 2.4 times as likely to be arrested but 4.87 times a likely to be committed to DYC as White youth.

<sup>15</sup> Holder, E.H., Robinson, L.O., Slowikowski, J. (2009). *Disproportionate Minority Contact Technical Assistance Manual (4<sup>th</sup> Ed.)*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.  
[http://www.ncjrs.gov/html/ojjdp/dmc\\_ta\\_manual/dmcfull.pdf](http://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmcfull.pdf) (see Chapter 1).

**Table 8. Colorado disproportionate minority contact for African American youth, FY 2005 through FY 2009**

Decision Points	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
<b>Arrest<sup>a,b</sup></b>	3.99*	7.06*	6.21*	4.47*	4.36*
<b>Pre Adjudicated Detention<sup>c</sup></b>	1.27*	.76*	.89*	1.29*	1.32*
<b>Misdemeanor Filing<sup>d</sup></b>	.43*	.07*	.09*	.13*	.12* <sup>e</sup>
<b>Misdemeanor Adjudication<sup>d</sup></b>	.97*	.80	.35*	1.24	.92 <sup>e</sup>
<b>Felony Filing<sup>d</sup></b>	.65*	.32*	1.07	.53*	.53
<b>Felony Adjudication<sup>d</sup></b>	1.06*	1.11	1.12	1.04*	1.03*
<b>Probation Supervision<sup>d</sup></b>	.84*	.96*	1.24*	1.14*	1.02*
<b>Probation Sentence to Detention<sup>d</sup></b>	1.8*	2.39	1.43*	1.82*	1.54*
<b>Commitment DYC<sup>e</sup></b>	2.3*	2.12*	1.97*	3.31*	2.51*

Note: \* indicates that Black youth were significantly more likely than Whites to penetrate the system at that point. For example, FY 2009 African American youth were 4.36 times as likely to be arrested as White youth and 2.51 times as likely to be committed to DYC. Numbers that are not statistically significant cannot be used to analyze or make assumptions about the Relative Rate Index (RRI) at that decision point.

<sup>a</sup> In FY 04-05, FY 05-06 and FY 06-07 the State rate for Hispanic arrest data was calculated by applying a formula based on the percentage of arrests that Hispanic youth represent in jurisdictions where we have Hispanic arrest data and where a large portion of the state's youth population and Hispanic youth population reside. FY 07-08, FY 08-09 arrest rates were calculated based on a formula of the ethnic and racial representation of the number of youth screened applied to the numbers of youth arrested.

<sup>b</sup> NIBRS (National Incident Based Reporting System) arrest data provided by the Colorado Bureau of Investigation. White/Hispanic distribution was estimated based on DYC pre-adjudication detention screens.

<sup>c</sup> Data extracted from TRAILS and provided by CDHS Division of Youth Corrections.

<sup>d</sup> Data extracted from the Integrated Colorado Online Network (ICON) via the Colorado Justice Analytics Support System (CJASS). Note these figures represent cases, not individual youth. This includes all filings in county and district courts excluding the 2nd JD data.

<sup>e</sup> Data extracted from TRAILS and provided by DYC. All new commitments are assessed for treatment and security needs in a secure facility.

**Table 9. Colorado disproportionate minority contact for Hispanic youth, FY 2005 through FY 2009**

Decision Points	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Arrest <sup>a,b</sup>	2.46*	2.42*	2.02*	2.36*	2.40*
Pre Adjudicated Detention <sup>c</sup>	1.11*	1.12*	1.34*	1.17*	1.11*
Misdemeanor Filing <sup>d</sup>	.15*	.09*	.16*	.16*	.09* <sup>e</sup>
Misdemeanor Adjudication <sup>d</sup>	1.4*	1.17*	1.27*	1.34*	1.09 <sup>e</sup>
Felony Filing <sup>d</sup>	.29*	.21*	.30*	.25*	.20
Felony Adjudication <sup>d</sup>	N/A	N/A	N/A	N/A	N/A
Probation Supervision <sup>d</sup>	1.05*	1.06*	1.20*	1.21*	1.17*
Probation Sentence to Detention <sup>d</sup>	1.35*	1.77*	1.29*	1.19*	1.35*
Commitment DYCE <sup>e</sup>	3.53*	1.31*	1.07*	3.52*	4.87*

Note: \* indicates that Hispanic youth were significantly more likely than Whites to penetrate the system at that point. For example, in FY 2009 Hispanic youth were 2.4 times as likely to be arrested but 4.87 times as likely to be committed to DYCE as White youth. Numbers that are not statistically significant cannot be used to analyze or make assumptions about the Relative Rate Index (RRI) at that decision point.

<sup>a</sup> In FY 04-05, FY 05-06 and FY 06-07 the State rate for Hispanic arrest data was calculated by applying a formula based on the percentage of arrests that Hispanic youth represent in jurisdictions where we have Hispanic arrest data and where a large portion of the state's youth population and Hispanic youth population reside. FY 07-08, FY 08-09 arrest rates were calculated based on a formula of the ethnic and racial representation of the number of youth screened applied to the numbers of youth arrested.

<sup>b</sup> NIBRS (National Incident Based Reporting System) arrest data provided by the Colorado Bureau of Investigation. White/Hispanic distribution was estimated based on DYCE pre-adjudication detention screens.

<sup>c</sup> Data extracted from TRAILS and provided by CDHS Division of Youth Corrections.

<sup>d</sup> Data extracted from the Integrated Colorado Online Network (ICON) via the Colorado Justice Analytics Support System (CJASS). Note these figures represent cases, not individual youth. Includes all filings in county and district courts excluding the 2nd JD data.

<sup>e</sup> Data extracted from TRAILS and provided by DYCE. All new commitments are assessed for treatment and security needs in a secure facility.

Wells and O'Keefe (2010) also analyzed data regarding juveniles on probation.<sup>16</sup> They found Black juveniles (n = 587) were 92% more likely to be terminated unsuccessfully and Hispanic juveniles (n = 976) were 40% more likely to be terminated unsuccessfully from Probation when compared to White juveniles (n = 3,190).<sup>17</sup>

The Division of Youth Corrections (DYCE) examined the recidivism rate of youth discharged in FY 2008. Recidivism was defined as having a new filing before or after being discharged from DYCE. Recidivists in each category (pre- or post-discharge) could have recidivated during either or both time periods. Therefore, pre- and post-discharge recidivism must be examined independently (see Table 10). Of the 950 juveniles discharged in FY 2008 35.8% recidivated pre-discharge and 38.8% recidivated post-discharge. Pre-discharge recidivism rates did not vary significantly between White (35.2%), Black (37.2%), and Hispanic (35.1%) youth. However, while not statistically significant, Hispanics recidivated post-discharge at a higher percentage (44.2%) than Whites and Blacks (36.2% and 35.5%, respectively). It can also be seen that

<sup>16</sup> Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>17</sup>  $p < .001$  for each comparison.

the percent of Black youth that recidivated pre- and post- discharge (37.2% and 35.5%, respectively) was higher than the Black portion of the general NYC population (16.0%).

**Table 10. Juvenile recidivism rates by race/ethnicity for FY 2008, pre- and post-discharge**

Ethnicity	General NYC Population % <sup>a</sup>	No Pre-Discharge Recidivism (n=610) % <sup>b</sup>	Pre-Discharge Recidivism (n=340) % <sup>b</sup>	Total (N=950) % <sup>b</sup>
<b>Overall</b>		64.2	35.8	100.0
<b>Black</b>	16.0	62.8	37.2	18.1
<b>Hispanic</b>	38.0	64.9	35.1	36.0
<b>White</b>	42.0	64.8	35.2	42.7
<b>Other</b>	4.0	56.7	43.3	3.2
<b>Total</b>	100.0	64.2	35.8	100.0

Ethnicity	General NYC Population % <sup>a</sup>	No Post-Discharge Recidivism (n=581) % <sup>b</sup>	Post-Discharge Recidivism (n=369) % <sup>b</sup>	Total (N=950) % <sup>b</sup>
<b>Overall</b>		61.2	38.8	100.0
<b>Black</b>	16.0	64.5	35.5	18.1
<b>Hispanic</b>	38.0	55.8	44.2	36.0
<b>White</b>	42.0	63.8	36.2	42.7
<b>Other</b>	4.0	66.7	33.3	3.2
<b>Total</b>	100.0	61.2	38.8	100.0

**Source:** <sup>a</sup>Bermeister, K/ (2010). *Managemnet reference manual*. Denver, CO: Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections.

<sup>b</sup>Sushinsky, J. (2010). *Recidivism evaluation of committed youth discharged in fiscal year 2007-08*. Denver, CO: Department of Human Services, Office of Children, Youth and Family Services, Division of Youth Corrections.

### Racial Diversity in Colorado Drug Courts

Drug courts are judicially supervised court dockets that handle nonviolent substance abuse cases. Drug courts operate under a specialized model in which the judiciary, prosecution, defense, probation, law enforcement, mental health, social service, and treatment communities work together to help non-violent offenders find recovery and to become productive citizens.<sup>18</sup> The first Colorado drug court was established in Denver (the 2<sup>nd</sup> judicial district) in 1994 and, since then, drug courts have expanded to 12 additional districts (19 total locations).<sup>19</sup>

In comparison to the state population (N=4,497,149), Table 11 shows the racial breakdown among a sample of court cases closed in 2006 with offenders who had drugs as their most serious filing (n = 754) as well as the racial breakdown of drug court cases across the state (n = 900). Whites made up almost 77% of the cases with drugs as the highest charge, both of which are lower than their proportion of the general population (89.5%). Blacks made up 11.4% of the cases with drugs as the highest charge and 18.7% of the drug court cases whereas they make up only 4.4% of the Colorado population.

<sup>18</sup> Huddleston, C. W., Marlowe, D. B., & Casebolt, R. L. (2008). *Painting the current picture: A national report card on drug courts and other problem solving courts in the United States* (Vol. 2, No. 1). Alexandria, VA: National Drug Court Institute.

<sup>19</sup> Shane Bahr, State Problem Solving Court Coordinator, Colorado Judicial Department, Planning and Analysis Division (personal communication, July 6, 2010).

**Table 11. Racial breakdown of cases closed in 2006 whose most serious filing was a drug crime**

Race/Ethnicity	Colorado Population Estimate % <sup>a</sup> (N=4,497,149)	% of sample with drugs as highest filing charge % <sup>b</sup> (n = 754)	% of Drug Courts Cases % <sup>c, d</sup> (n = 900)
White	89.5	76.7	64.0
Black	4.4	11.4	18.7
Hispanic	*	10.1	15.2
Asian	2.7	0.7	0.7
American Indian	1.2	0.5	0.4
Other/Two or more races	2.2	0.6	1.0 <sup>e</sup>
Total	100.0	100.0	100.0

**Source:** <sup>a</sup><http://quickfacts.census.gov/qfd/states/08000.html>

<sup>b</sup>Data collected by DCJ from 10 judicial districts (17 counties: Denver, Jefferson, El Paso, Weld, Mesa, Boulder, Broomfield, Douglas, Teller, Gilpin, Jackson, Adams, Arapahoe, Elbert, Lincoln, and Larimer). These judicial districts were chosen based on the top 10 judicial districts for filings in 2005. The original sample was made up of 2626 court cases from 2004, 2005, and 2006 that closed in 2006.

<sup>c</sup>Shane Bahr, State Problem Solving Court Coordinator, Colorado Judicial Department, Planning and Analysis Division.

<sup>d</sup>This sample contains 900 individuals who entered the adult drug court between 7/1/08 through 6/30/09. All existing drug courts are represented in this table. However, it is important to note that some courts have been operating for a much shorter time than others. In addition, counties varied by their target population such that some focused on misdemeanor cases and others focused primarily on felony cases.

<sup>e</sup>Includes missing data.

\*A separate listing for Hispanic is not included for Census data because the U.S. Census Bureau considers Hispanic ethnicity to mean persons of Spanish/Hispanic/Latino origin including those of Mexican, Cuban, Puerto Rican, Dominican Republic, Spanish, and Central or South American origin living in the US who may be of any race (White, Black, Asian, etc.).

## Other State Initiatives

Some states have mandated systematic data collection on race and ethnicity. Additionally, some states have created Commissions explicitly intended to address minority overrepresentation in the justice system (Wisconsin, Illinois) while others (Virginia) have created sentencing guidelines to help regulate sentences and training of local officials and detention staff to increase cultural competencies and awareness.<sup>20</sup> Other states have mandated minority impact statements for all proposed legislation (Iowa, Oregon). Two states (North Carolina, Kentucky) have passed Racial Justice Acts to prohibit race from influencing pursuit of the death penalty. Twenty-two states require race or ethnicity data to be collected for all traffic stops<sup>21</sup> and while not directly related to minority overrepresentation, Arizona created a Spanish-speaking DUI court to develop bilingual and culturally competent courtrooms.<sup>22</sup> The following is intended to provide a more detailed synopsis of what these states have done to address minority overrepresentation and minority data collection.

<sup>20</sup> Culture is defined as the “behavioral, intellectual, mental, physical, social and artistic expression and products of human effort and thought that describe, characterize and are peculiar to a particular group, community, class or society.” This tells people what behaviors are acceptable as well as how to behave within specific situations. Cultural competence is necessary to fully understand behaviors and to anticipate what treatments may be the most beneficial. Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider’s guide)*. Thousand Oaks, CA: SAGE Publications.

<sup>21</sup> Hickman, M.J. (2005), *Traffic stop data collection policies for state police, 2004*. Washington, DC: U.S. Department of Justice, Office of Program Services.

<sup>22</sup> Ray Cruz, Maricopa County DUI Court Supervisor, Programs Division (personal communication, July 7, 2010).

**Wisconsin** created the Commission on Reducing Racial Disparities in the Wisconsin Justice System<sup>23</sup> to determine whether racial discrimination is built into each stage of the criminal justice system and to recommend strategies and solutions to reduce any found disparity.<sup>24</sup> This commission has made the following recommendations:

- All agencies are directed to track racial differences for their populations.
- The state should develop curricula for professional training regarding racial disparity.
- The Department of Corrections (DOC) should maintain and expand reentry programs to ensure valid ID or driver's licenses are provided.
- DOC should also develop a mentoring program that no longer prohibits inmates who mentor during incarceration from continuing to do so once released.
- The prison discipline system should be reviewed. A better computer system for tracking issuance and adjudication of major conduct reports should be developed.
- Review and report (continual process) on probation and parole officer discretion when giving revocations. PO's should review and consider intermediate sanctions and alternatives to revocations or incarceration. Discipline may be needed, but public interest and safety is often best addressed by sentences served in the community.
- Conduct a study to examine prosecutorial discretion, paying special attention to criminal history.
- Create a commission to oversee programs meant to reduce disparity. Members of the commission should be appointed by the governor.

**Illinois** also created a commission to study the impact of disproportionate justice on minority communities.<sup>25</sup> Specifically, this Commission was directed to examine and report on the following:

- Violation and sentencing provisions of the state vehicle codes.
- The criminal code of 1961.
- The Cannabis Control Act.
- The Illinois Controlled Substances Act.
- The Methamphetamine Control and Community Protection Act.
- The unified code of corrections.

**Iowa** requires that prior to any debate on the floor of the legislature a correctional impact statement must be written for all bills, joint resolutions, or amendments.<sup>26</sup> This statement must include a minority impact statement and should estimate immediate and long term effects whenever possible. In addition, the Department of Human Rights should develop protocol for analyzing minority impact and all grant applications submitted to state agencies and must include information on disproportionate minority impact, rationale, and evidence that minority representatives were consulted when impact was anticipated.

**Oregon** mandates a racial and ethnic impact statement be created for all legislation that may, if enacted, affect the race and ethnic composition of the criminal offender population.<sup>27</sup> This includes everyone who is convicted of a crime or adjudicated for an act that would be considered a crime if they were 18 years of age or older. If a state measure will affect the racial and ethnic composition of the criminal offender population an impartial and simple impact statement will be created by the Oregon Criminal Justice Commission to be included in the voters' pamphlet and on the ballot. A standard protocol for this impact statement will be developed by the Oregon Criminal Justice Commission, and will include an estimate of the racial/ethnic profile within the state's offender population affected by the new law. The method used and assumptions made to calculate this estimate must be stated. However, this is only required if the necessary data are available.

<sup>23</sup> The State of Wisconsin, Office of the Governor, *Executive Order #251*. (May 13, 2008). Relating to the findings of the Commission on Reducing Racial Disparities in the Wisconsin Justice System and the creation of the Racial Disparities Oversight Committee.

<sup>24</sup> Coggs, S., & Wray, N. (2008). *Governor Jim Doyle's Commission on reducing racial disparities*. Madison, WU: Office of Justice Assistance.

<sup>25</sup> Illinois General Assembly. (2009). Public Act 095-0995.

<sup>26</sup> Iowa House Democratic Research Staff, 82<sup>nd</sup> General Assembly. (2008). *HF 2393: Minority impact statements*.

<sup>27</sup> 75<sup>th</sup> Oregon Legislative Assembly. (2009). House Bill 2352.

**Virginia's** juvenile justice system has also taken action to reduce minority overrepresentation.<sup>28</sup> Although this movement is specific to the juvenile justice system in Virginia, it is reasonable that these same steps could be taken in the adult criminal justice system. These steps included:

- Creating a demographics web page intended to enable representatives from localities, grantees and other interested parties to learn about minority overrepresentation in the justice system as well as the national requirements for monitoring disproportionate minority confinement. Data is readily available for local population, intake and confinement by race.
- Training of and assistance to local officials and detention staff to ensure that they are aware of the necessity of addressing disproportionate minority confinement.
- Cultural awareness training for local police departments throughout the state. Legislation passed in 2002 required the Virginia Department of Criminal Justice Services to publish guidelines expanding the compulsory training standards for police officers to ensure awareness of cultural diversity as well as the potential for biased policing.
- Creating a race-neutral risk assessment within the Department of Juvenile Justice for use at intake. The intent of the instrument was to reduce the total number of juvenile placements in detention, including minority placements.
- Passing legislation in 2002 that amended Virginia law to ensure that juvenile probation or parole violators could only be detained in a secure detention facility for violations that would have been considered a felony or class 1 misdemeanor if committed by an adult. This precludes secure confinement of juveniles for violations when their original crime was a status crime.

In addition to these steps intended to directly address minority overrepresentation, **Virginia** judges are required to complete a sentencing worksheet for all felony cases for which there are sentencing guidelines.<sup>29</sup> This requirement was intended indirectly to help to monitor any overrepresentation that may occur. Compliance with guideline recommendations is voluntary, whereas completion of the worksheet is mandatory.<sup>30, 31</sup> All completed and signed worksheets (by the judge) are filed with the case and sent to Virginia's Criminal Sentencing Commission for review. The Commission's staff ensures that the forms are filled out correctly and all omissions or mistakes are resolved. All cases are then analyzed to determine if the sentencing guidelines were followed. These results are presented to the Commission semiannually. In 2002, Virginia implemented a statewide nonviolent risk assessment for all felony larceny, fraud and drug cases. The intent of this assessment instrument was to divert low-risk offenders who are recommended for incarceration by the sentencing guidelines to another sanction. In FY 2009 it was found that 50% of eligible offenders for whom a risk assessment was conducted (n=6,704) were recommended for an alternate sanction (primarily supervised probation).<sup>32</sup>

In 2009 **North Carolina** passed the Racial Justice Act<sup>33</sup> in an effort to prohibit seeking or imposing the death penalty because of race.<sup>34</sup> This law establishes a process by which relevant evidence can be presented to show that race was a

<sup>28</sup> Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system*. Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

<sup>29</sup> Virginia Criminal Sentencing Commission. (2009). *2009 Annual report*. Richmond, VA: Virginia Criminal Sentencing Commission.

<sup>30</sup> Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

<sup>31</sup> Michigan and Minnesota have similar systems. In all three states (Michigan, Minnesota, and Virginia) judges must write an explanation for why they depart from the recommended sentence. These explanations, along with the sentencing worksheet must be included in the case file. In Virginia an appellate review is not allowed whereas Michigan and Minnesota do allow for such a review. For more information on the sentencing guidelines in these three states see Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

<sup>32</sup> Virginia Criminal Sentencing Commission. (2009). *2009 Annual report*. Richmond, VA: Virginia Criminal Sentencing Commission.

<sup>33</sup> North Carolina (2009). SL2009-464. See

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=S461>

significant factor when the death penalty was pursued. The burden of proof lies with the defendant who may raise this claim at pre-trial conferences or during post-conviction proceedings. If race is proven to have been a factor in the death penalty process the sentence will be vacated and changed to life without parole. **Kentucky** passed a similar law in 1998.<sup>35</sup>

The Bureau of Justice Statistics<sup>36</sup> reported that, as of October 2004, 29 of the U.S. State patrol agencies required their traffic officers to record the race or ethnicity of the drivers for officer initiated stops. However there was some difference in scenarios requiring such data collection:

- 22 states required that race/ethnicity data be collected for *all* traffic stops.
- 18 states recorded race/ethnicity when a traffic citation was issued.
- 17 states recorded race/ethnicity when an arrest occurs from the traffic stop.
- 14 states recorded race/ethnicity when the vehicle or occupant was searched.
- 13 states recorded race/ethnicity when force was used during the stop.
- 8 states recorded race/ethnicity for reactive traffic stops (e.g., response to an accident or DUI check point).

Fifteen agencies depended exclusively on the officer's observation to determine the race/ethnicity of the driver while 9 others also used information from the State Bureau of Motor Vehicle (the other 2 states used the latter method exclusively). When the 2004 BJS study was conducted the Colorado State Patrol did not collect race/ethnicity information for any officer initiation stop.

As of 2010 the Colorado State Patrol was required to collect race and ethnicity information for all traffic citations and arrests.<sup>37</sup> Local law enforcement policies vary across the state in the collection of race/ethnicity data.<sup>38</sup>

**Colorado** offers court translators (on-site and via telephone) for 50 languages. **Arizona** created a Spanish-only DUI Court in 2001.<sup>39</sup> While not intended to directly address minority overrepresentation in the Arizona criminal justice system, this effort may provide an increased awareness of cultural issues. This program was funded by a grant to the Adult Probation Department from the National Highway Traffic Safety Administration.<sup>40</sup> It has been shown that Spanish-speaking defendants respond more positively to status hearings and treatment if they are able to relate in their own language, and the Spanish DUI court does just this.<sup>41</sup> This court follows the same criteria as traditional DUI courts however everything is conducted in Spanish. The judge, the probation/parole officers, and the treatment providers all speak fluent Spanish. Translators are available for English-only individuals involved in a hearing (e.g., attorneys). The only hearing that is held in English is a custody hearing because of the need for official court records.<sup>42</sup> When this occurs a Spanish translator is provided for the defendant.

## National Initiatives

**Prosecutors** across the country have more discretion than other parties (e.g., law enforcement, judicial) when it comes to criminal cases. This is especially true because police and judicial systems have been examined and scrutinized in

<sup>34</sup> For a summary of research that has shown race to play a role in death penalty decision making see Dieter, R.C. (1998). *The death penalty in black and white: Who lives, who dies, who decides*. [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)

<sup>35</sup> SB 171/FN/LM/CI (BR 1096) See <http://www.lrc.ky.gov/recarch/98RS/SB171.htm>

<sup>36</sup> Hickman, M.J. (2005), *Traffic stop data collection policies for state police, 2004*. Washington, DC: U.S. Department of Justice, Office of Program Services.

<sup>37</sup> Captain Jeff Goodwin, Colorado State Patrol (personal communication October 14, 2010).

<sup>38</sup> Chief Bill Kilpatrick, Golden Police (personal communication October 14, 2010).

<sup>39</sup> Ray Cruz, Maricopa County DUI Court Supervisor, Programs Division (personal communication July 7, 2010).

<sup>40</sup> Mundell, Honorable B. R., (n.d.). *Spanish DUI court*. Phoenix, AZ: Maricopa County Superior Court.

<sup>41</sup> Ibid.

<sup>42</sup> Because custody hearings must put on record they must be in English. Other hearings, including the status hearings are not "on the record." Here the defendant signs a contract and the next court date is noted on said contract. The clerk officially records only the date of the individual's next court date (Ray Cruz, Maricopa County DUI Court Supervisor, Programs Division, personal communication July 7, 2010).

recent years for disparity and fairness. Advocates believe that flexibility in prosecution is important because case-specific information can be taken into account. However, this discretion can also lead to disparate treatment at various points in the judicial process. Aside from the decision to prosecute and the decision as to what charges should be brought against the defendant, the district attorney has significant influence regarding whether diversion to alternate programs should be allowed, what dispositions to seek in plea bargaining, and bail and sentencing decisions available to the judge. The Prosecution and Racial Justice Program within the Vera Institute of Justice<sup>43</sup> was developed in 2005 to help specific counties (Milwaukee County, Wisconsin; Mecklenburg County, North Carolina; and San Diego County, California) monitor discretionary decisions made by district attorneys at critical points in the criminal justice system. This oversight will help attorneys determine if and when racially biased decisions are being made. If concerns arise, this system can help the counties implement corrective policies and procedures.

In addition, to assist jurisdictions in the development of initiatives to reduce juvenile Disproportionate Minority Contact (DMC) the **U.S. Office of Juvenile Justice and Delinquency Prevention** has created the DMC Reduction Best Practices Database.<sup>44</sup> This database uses prevention science to provide guidelines to help states establish intervention plans using a mixture of programs, services, and activities that are most appropriate for their situation. The primary component of this website is a searchable database intended to assist jurisdictions to find DMC initiatives that have shown at least a basic level of effectiveness in the goal of reducing DMC. Each initiative must summarize the jurisdiction's DMC problem, as well as the strategies used to address the problem, and evidence of the effect on DMC trends.

### Creating Sentencing Guidelines

Sentencing guidelines are created to specifically define offense and offender characteristics that should be considered when determining the appropriate sentence for each case.<sup>45</sup> This is typically done with a sentencing grid(s)<sup>46</sup> or worksheet(s) that is completed and scored by the judge.<sup>47</sup> In 2006, the National Center for State Courts (NCSC) published information on all 21 states that currently used sentencing guidelines.<sup>48</sup> This compilation includes information on when and why the state's Sentencing Commission was created, if the Commission was still active, who was represented on the Commission (along with how many individuals served), and where each state fell on the NCSC sentencing guideline continuum. This continuum provides a means to compare and contrast six characteristics of each state's guidelines. Specifically, states varied from the use of more discretionary sentences at one end of the continuum to more mandatory sentences at the other end.<sup>49</sup> The more discretionary states did not monitor compliance, allowed judges to diverge from the guidelines, and appellate review of guidelines was statutorily prohibited. The more mandatory states tightly controlled judicial discretion by monitoring decisions, requiring reasoning for varied decisions, and allowing extensive appellate review.

To examine the effect of such guidelines on predictability and proportionality to the point that discrimination is minimized, the NCSC examined Virginia, Michigan, and Minnesota in more detail.<sup>50</sup> The study found that, in general, guidelines make sentences more predictable, help to effectively limit sentencing disparities, and make sentencing patterns more transparent. In addition, the NCSC determined that Commissions are beneficial to the quality and success

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<sup>43</sup> McKenzie, W., Stemen, D., & Coursen, D. (2009). *Prosecution and racial justice: Using data to advance fairness in criminal prosecution*. Washington, DC: VERA Institute of Justice.

<sup>44</sup> [http://www2.dsgonline.com/mpg/dmc\\_default.aspx](http://www2.dsgonline.com/mpg/dmc_default.aspx)

<sup>45</sup> Kauder, N.B., & Ostrom, B.J. (2006). *State sentencing guidelines: Profiles and continuum*. Williamsburg, VA: National Center for State Courts.

<sup>46</sup> States vary in the number of grids they use, if any, as well as the number of cells in each grid.

<sup>47</sup> Sample worksheets are available at <http://www.vcsc.virginia.gov/worksheets.htm>.

<sup>48</sup> Kauder, N.B., & Ostrom, B.J. (2006). *State sentencing guidelines: Profiles and continuum*. Williamsburg, VA: National Center for State Courts.

<sup>49</sup> Ibid.

<sup>50</sup> Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

of developed guidelines because they can determine if the guidelines are used, if they follow the intended goals, and if necessary the Commission can make the necessary adjustments.<sup>51</sup>

An explicit purpose of creating such guidelines in each of the three states studied by NCSC was to minimize sentencing disparities based on the offender's race, age, gender, and region of the state.<sup>52</sup> It was found that although a small number of racial effects were statistically significant, following the guidelines created by their respective sentencing commissions made the effect of race and economic status negligible.

### Addressing Local Minority Overrepresentation

The Sentencing Project<sup>53</sup> suggests that there are four key steps a state should take to address racial disparity in the criminal justice system:

1. **It is important to acknowledge the cumulative nature of racial disparities.** Racial disparity builds on itself at each stage of the criminal justice system and is not a likely result of actions at any one stage.<sup>54</sup>
2. **Encourage communication across players at all decision points of the system.** The problem must be addressed at every stage of the system. Without an organized and systematic approach, any benefit that is gained at one stage may be offset another stage.
3. **Recognize that what works at one decision point may not work at others.** Each decision point requires a unique strategy to address the problem depending on the degree of disparity at that specific point.
4. **Work toward systemic change.** A system-wide change is impossible without educated leaders who are willing to commit the resources of their agency to measure and address racial disparity at every stage of the criminal justice system as well as the system as a whole.

In addition, The Sentencing Project along with the Virginia Juvenile Justice Services Section<sup>55</sup> suggest that, aside from determining when and why disparities occur, a plan should be created to address any disproportionate minority representation that has been found to exist at any stage of the criminal justice system or within any specific jurisdiction.<sup>56</sup>

1. Examine local and state data to determine if overrepresentation of minorities exists at each of the steps in the justice system.
2. Determine at which decision points racial and ethnic disparities occur.
3. Identify possible reasons for the occurrence of these disparities.
4. Develop a coordinated plan to address overrepresentation including stakeholders from every step in the system.
5. Implement this plan in stages.
6. Evaluate effect and progress as each stage of this plan is implemented.
7. Finalize the details of the plan based on findings from each progressive evaluation.
8. Monitor the effectiveness of these strategies and report annual evaluations and its outcomes.

One way to control for future disparities may be to create sentencing guidelines. The above mentioned NCSC reports demonstrate that states have options when creating their own sentencing guidelines such that policymakers are able to

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> The Sentencing Project. (2008). *Reducing racial disparity in the criminal justice system: A manual for practitioners and policymakers*. Washington, DC: The Sentencing Project.

<sup>54</sup> For a detailed discussion of why minority overrepresentation may exist including the impact of socioeconomic status, discrimination, minority representation within the criminal justice staff as well as legal and political factors please see Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>55</sup> Hanna, A., & Williams, A.B. (2002). *Juvenile services fact sheet: Reducing minority overrepresentation in Virginia's juvenile justice system*. Richmond, VA: Virginia Department of Criminal Justice, Juvenile Justice Services Section.

<sup>56</sup> Local research may show differing degrees of disparity at different stages in the system as well as between jurisdictions. It is important to acknowledge the possible need for different strategies to address these various disparities.

assess where on the continuum their state fits based on their needs and circumstances.<sup>57</sup> Multiple sentencing grids and/or worksheets can be developed to fit the level of detail and discretion desired by policymakers. Such guidelines, regardless of the level of voluntariness, will help the state to create predictable and proportional sentences which in turn will make the criminal justice system more transparent. The effect of developed guidelines could then be monitored, evaluated and modified as needed.

In addition, educating all involved parties on not only the concept of cultural competence, but also on specific information related to the cultures being experienced, will help the involved parties to acclimate to culturally specific behaviors (e.g., in the court room, when interacting with attorneys or case managers). Cultural competence will also help policy makers develop policies that will effectively work in cross-cultural situations.<sup>58</sup>

#### **A culturally competent system:**

- values diversity,
- has the capacity for cultural self-assessment,
- is conscious of the inherent dynamics that occur when cultures interact,
- has institutionalized cultural knowledge, and
- has developed adaptations to diversity.<sup>59</sup>

Experts agree that when developing such competence it is important to balance the need to preserve our own culture's value while accepting the value of other cultures. Although it is impossible to learn about all of the cultures in existence, it is important to tolerate differences that may exist between these cultures and our own. It is important to accept and utilize cultural values that have strengthened and provided sustenance to minorities while not succumbing to cultural stereotypes (e.g., "culture of poverty" is a common stereotype of African Americans; "culture of alcoholism" is common of Native Americans). Furthermore, cultural competence develops over time. It is natural for individuals to be pessimistic about change. Therefore opportunities to discuss these concerns are essential and must be built into the development process. In the end, cultural competence is multidimensional and is not dependent on any one factor. Instead, attitudes must become less ethnocentric, patronizing, and biased; policies must become more flexible and culturally impartial; and organizational structures must be committed to and support the necessary training, guidance and evaluation necessary for the growth of cultural competence.<sup>60</sup>

The Colorado Department of Corrections and the Colorado Judicial Branch currently require staff to participate in cultural competence training.<sup>61</sup> Specifically, DOC requires staff to attend a 1-hour class about discrimination and workplace harassment and a 2-hour class about cultural awareness. Judicial offers a 7-hour class on cultural competence. However, because cultural competence is an ever-evolving process that does not come to the individual, agency or system at one moment, training should be consistent, continual, and mandated for everyone.<sup>62</sup>

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<sup>57</sup> Kauder, N.B., & Ostrom, B.J. (2006). *State sentencing guidelines: Profiles and continuum*. Williamsburg, VA: National Center for State Courts; Ostrom, B.J., Ostrom C.W., Hanson, R.A., & Kleiman, M. (2006). *Assessing consistency and fairness in sentencing: A comparative study in three states*. Williamsburg, VA: National Center for State Courts.

<sup>58</sup> It is important to remember that culture is not limited to race and ethnicity but may involve factors such as gender, socioeconomic status and location (e.g., east coast vs. west coast; urban vs. rural). However, please refer to the Wanberg and Milkman handbook for cultural information specific to African Americans, Hispanics, and Native Americans regarding: demographic and socioeconomic factors; substance use problems; the criminal justice systems; and treatment issues. Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider's guide)*. Thousand Oaks, CA: SAGE Publications.

<sup>59</sup> Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider's guide)*. Thousand Oaks, CA: SAGE Publications.

<sup>60</sup> Ibid.

<sup>61</sup> Wells, H., & O'Keefe, M. (2010). *Minority overrepresentation in Colorado's criminal justice system: An interagency report to the Colorado Commission on Criminal and Juvenile Justice*. [http://www.doc.state.co.us/sites/default/files/opa/MOR\\_2010.pdf](http://www.doc.state.co.us/sites/default/files/opa/MOR_2010.pdf)

<sup>62</sup> Wanberg, K.W., & Milkman, H.B. (1998). *Criminal conduct and substance abuse treatment: Strategies for self-improvement and change (The provider's guide)*. Thousand Oaks, CA: SAGE Publications.



**Appendix E:**  
**Letter from the Governor and Attorney General**



# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

136 State Capitol Building  
Denver, Colorado 80203  
(303) 866 - 2471  
(303) 866 - 2003 fax



**Bill Ritter, Jr.**  
Governor

May 12, 2009

Mr. Peter A. Weir  
Executive Director  
Colorado Department of Public Safety  
Chairman, Colorado Commission on Criminal and Juvenile Justice  
700 Kipling Street  
Denver, CO 80215

Re: Colorado Commission on Criminal and Juvenile Justice ("Commission")

Dear Director Weir:

The challenges facing the criminal justice system in Colorado are myriad and complex. Recognizing the absolute necessity of addressing these issues, and recognizing that these issues affect all Coloradoans regardless of political affiliation, I have joined with Attorney General John Suthers to help focus the sentencing reform efforts of the Colorado Commission on Criminal and Juvenile Justice ("Commission").

Attorney General Suthers and I share a history of many years of experience in the criminal justice system. I have closely monitored the work of the Commission since its inception, and Attorney General Suthers has been a vital member of the Commission for the past eighteen months. It is appropriate that we partner to work on behalf of the citizens of Colorado to identify areas of pressing concern and devise concrete solutions. Therefore, Attorney General Suthers and I offer the following observations to the Commission:

During the past eighteen months, the Commission has done some exceptional work in analyzing and suggesting changes in the criminal justice system that will have a positive impact on reducing the rate that offenders recidivate and re-enter the system. A number of these suggestions resulted in legislative changes during the 2009 session. We encourage the Commission to continue on its successful course so we can work toward developing a criminal justice system that is tough on those who commit violent and sexual offenses; smart with our responses to individuals who can be rehabilitated; effective and efficient with our expenditures of public funds; and responsive to the needs of victims. Most importantly, we need to be mindful that reform must be accomplished without jeopardizing or compromising public safety. While it is clear that the Commission has had some significant accomplishments, there is still much work to be done.

Since we are convinced that collaboration will maximize the efforts of the Commission, we feel compelled to outline some areas of sentencing reform to prioritize for study. We recognize that these areas may be difficult and do not lend themselves to easy solutions. We welcome the recommendations that will not only preserve public safety but enhance public safety, while allowing us to be thoughtful stewards of limited criminal justice dollars. Because this work is of critical importance to the citizens of Colorado, we reconfirm our mutual commitment that reform must be based upon data and evidence-based practices and that public safety must be maintained. We believe there are some specific areas for reform consideration, and we would ask that the Commission examine these areas and provide recommendations:

- 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 revictimization and maximize the expenditure of public funds?
- 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)
- 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.

- 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 population.
- Review the fine schedule and the imposition of fines on non-indigent 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.

Please thank the members of the Commission and all who have participated in the Commission's work thus far. We look forward to receiving the results of your future studies.

Sincerely,



Bill Ritter, Jr.  
Governor



John Suthers  
Attorney General



**Appendix F:  
Guiding Principles for DUI Courts**



## The Guiding Principles<sup>1</sup>

### DWI COURTS FOLLOW THE TEN KEY COMPONENTS OF DRUG COURTS AND THE GUIDING PRINCIPLES OF DWI COURTS

DWI Courts follow the **Ten Key Components of Drug Courts** and the **Guiding Principles of DWI Courts**, as established by the National Association of Drug Court Professionals. It is these 10 Principles that set out the guidelines for DWI Courts.

#### The Guiding Principles of DWI Courts

##### **GUIDING PRINCIPLE #1: Determine the Population**

- Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI Court program. This is a complex task given that DWI Courts, in comparison to traditional Drug Court programs, accept only one type of offender: the hardcore impaired driver. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

##### **GUIDING PRINCIPLE #2: Perform a Clinical Assessment**

- A clinically competent and objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

##### **GUIDING PRINCIPLE #3: Develop the Treatment Plan**

- Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI Courts must carefully select and implement treatment strategies demonstrated through research to be effective with the hardcore impaired driver to ensure long-term success.

##### **GUIDING PRINCIPLE #4: Supervise the Offender**

- Driving while impaired presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with hardcore DWI offenders and to protect against future impaired driving.

##### **GUIDING PRINCIPLE #5: Forge Agency, Organization, and Community Partnerships**

- Partnerships are an essential component of the DWI Court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI Court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of

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<sup>1</sup> <http://www.dwicourts.org/learn/about-dwi-courts>

other agencies, as well as community organizations to form a partnership in support of the goals of the DWI Court program.

**GUIDING PRINCIPLE #6: Take a Judicial Leadership Role**

- Judges are a vital part of the DWI Court team. As leader of this team, the judge's role is paramount to the success of the DWI Court program. The judge must be committed to the sobriety of program participants, possess exceptional knowledge and skill in behavioral science, own recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI Court team, therefore, is of utmost importance.

**GUIDING PRINCIPLE #7: Develop Case Management Strategies**

- Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI Court program.

**GUIDING PRINCIPLE #8: Address Transportation Issues**

- Though nearly every state revokes or suspends a person's driving license upon conviction for an impaired driving offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI Court program. In many cases, the participant and court team can solve the transportation problem created by the loss of their driver's license through a number of strategies. The court must hold participants accountable and detect those who attempt to drive without a license and/or insurance.

**GUIDING PRINCIPLE #9: Evaluate the Program**

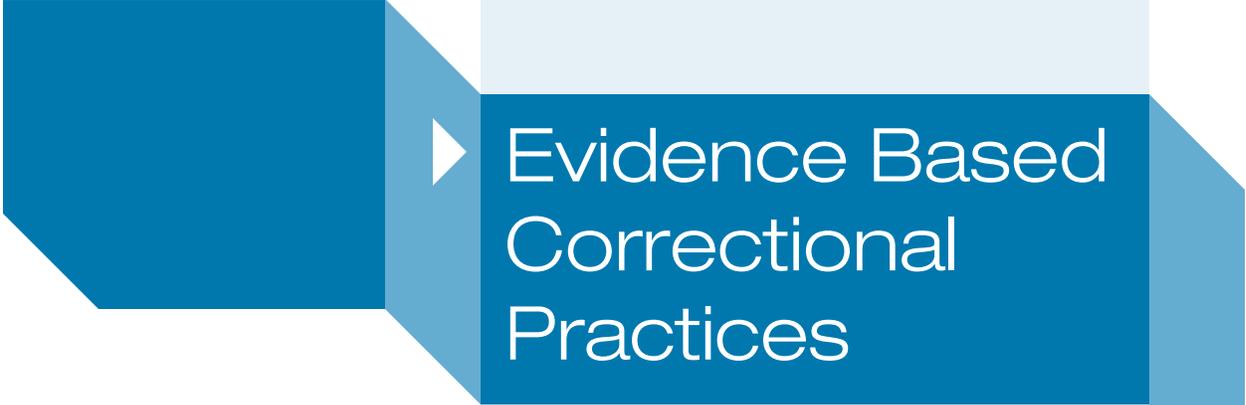
- To convince stakeholders about the power and efficacy of DWI Court, program planners must design a DWI Court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI Court team to rigorously abide by the rules of the evaluation design.

**GUIDING PRINCIPLE #10: Ensure a Sustainable Program**

- The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

**Appendix G:  
Evidence-Based Correctional Practices**





# Evidence Based Correctional Practices

“What works in corrections” is not a program or a single intervention but rather a body of knowledge that is accessible to criminal justice professionals.<sup>1</sup>



The National Institute of Corrections (NIC) has been promoting the use of evidence-based practice for many years. The eight principles of evidence based corrections are summarized on the NIC website.<sup>2</sup> These principles, along with additional discussion, are presented below. Corrections and criminology research conducted over the past several decades provide substantial direction for implementing prison and community-based programs for criminal offenders. Criminologists have spanned the research-practice divide that has emerged over the last fifteen years. Now leaders in corrections must take forward the information learned and implement programs based on the principles of effective intervention.

Prepared by Colorado Division of Criminal Justice, Office of Research and Statistics.  
Based in part on material available from the National Institute of Corrections ([www.nicic.org](http://www.nicic.org)), August 2007.

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<sup>1</sup> Latessa, E. J. and Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal* 521-535.

<sup>2</sup> Available at <http://www.nicic.org>, especially <http://www.nicic.org/pubs/2004/019342.pdf>.

**Recidivism reduction: Implementing new programs and expanding existing programs for the purpose of recidivism reduction requires integrating the principles described here.**

ONE:

### Assess offender risk/need levels using actuarial instruments

Risk factors are both static (never changing) and dynamic (changing over time, or have the potential to change). Focus is on criminogenic needs, that is, offender deficits that put him or her at-risk for continued criminal behavior.<sup>3</sup> For example, many studies show that specific offender deficits are associated with criminal activity, such as lack of employment, lack of education, lack of housing stability, substance abuse addiction. Actuarial instrument tools are available which can assist in the identification of these areas of service needs. One of the most common of these is the Level of Service Inventory (LSI).<sup>4</sup> The LSI (see sidebar) may be the most used instrument: In a 1999 study, researchers found that 14% of the agencies surveyed in a national study were using the LSI-Revised with another 6% planning on implementing it in the near future.<sup>5</sup> It is used in jurisdictions across the U.S. and Canada, and has been the subject of a considerable amount of research. Systematically identifying and intervening in the areas of criminogenic need is effective at reducing recidivism.

<sup>3</sup> Criminogenic risk refers to attributes associated with criminal behaviors and recidivism include (Gendreau, and Andrews, 1990): (1) Anti-social attitudes, values, and beliefs (criminal thinking); (2) Pro-criminal associates and isolation from pro-social associates, (3) Particular temperament and behavioral characteristics (e.g., egocentrism); (4) Weak problem-solving and social skills; (5) Criminal history; (6) Negative family factors (i.e., abuse, unstructured or undisciplined environment), criminality in the family, substance abuse in the family); (7) Low levels of vocational and educational skills (8) Substance abuse. The more risk factors present, the greater the risk for committing criminal acts.

<sup>4</sup> Andrews, D.A. and Bonta, J. L. (2003). *Level of Supervision Inventory-Revised. U.S. Norms Manual Supplement*. Toronto: Multi Health Systems. The LSI assesses the extent of need in the following areas: criminal history, education, employment, financial, family and marital relationships, residential accommodations, leisure and recreation activities, companions, alcohol and drug problems, emotional and personal, and pro-social attitudes and orientations.

<sup>5</sup> Jones, D. A., Johnson, S., Latessa, E. J., and Travis, L. F. (1999). *Case classification in community corrections: Preliminary findings from a national survey*. Topics in Community Corrections. Washington D.C.: National Institute of Corrections, U.S. Department of Justice.

TWO:

### Enhance offender motivation

Humans respond better when motivated- rather than persuaded-to change their behavior. An essential principle of effective correctional intervention is the treatment team playing an important role in recognizing the need for motivation and using proven motivational techniques. Motivational interviewing, for example, is a specific approach to interacting with offenders in ways that tend to enhance and maintain interest in changing their behaviors.

***But when it comes to using this information in the systematic application of program services, most corrections agencies fall short.***

THREE:

### Target interventions

This requires the application of what was learned in the assessment process described in #1 above.<sup>6</sup> Research shows that targeting three or fewer criminogenic needs does *not* reduce recidivism. Targeting four to six needs (at a minimum), has been found to reduce recidivism by 31 percent. Correctional organizations have a long history of assessing inmates for institutional management purposes, if nothing else. But when it comes to using this information in the systematic application of program services, most corrections agencies fall short. While inmate files may contain adequate information identifying offender's deficits and needs, correctional staff are often distracted by population movement, lockdowns, and day-to-day prison operations. Often, these take priority over the delivery of services based on the offender's criminogenic needs. Staff training and professionalism becomes an essential component of developing a culture of personal change: well-trained staff can—and must—role model and promote pro-social attitudes and behaviors even while maintaining a safe and secure environment.

Thus, targeting interventions requires clear leadership and management of the prison culture. Implementation methods include the following:

- **Act on the risk principle.** This means prioritizing supervision and treatment resources for higher risk offenders.

<sup>6</sup> Gendreau, French and Taylor (2002). *What Works (What Doesn't Work) Revised 2002*.

## WHAT IS THE LSI-r?

*The Level of Service Inventory-Revised (LSI-r)<sup>1</sup> is one of the most commonly used classification tools used with adult offenders. The LSI-r is used in a variety of correctional contexts across the United States to guide decision making. In Colorado, the LSI-r is used in probation, community corrections, prison and parole to develop supervision and case management plans, and to determine placement in correctional programs. In some states, the LSI-r is used to make institutional assignments and release from institutional custody decisions. It may be the most used instrument: In a 1999 study, researchers found that 14% of the agencies surveyed in a national study were using the LSI-R with another 6% planning on implementing it in the near future.<sup>2</sup> The instrument is perhaps the most researched correctional risk/needs assessment and, from the first validation study in 1982, it has continued to show consistent predictive validity for a range of correctional outcomes.<sup>3</sup>*

*The LSI-R assessment is administered via a structured interview. Supporting documentation should be collected from family members, employers, case files, drug tests, and other relevant sources.<sup>4</sup> (Andrews & Bonta, 1995).*

*The instrument includes 54 items that measure ten components of risk and need. The components measured are:*

- *Criminal history,*
- *Education,*
- *Employment,*
- *Financial,*
- *Family and marital relationships,*

- *Residential accommodations,*
- *Leisure and recreation activities,*
- *Companions,*
- *Alcohol and drug problems,*
- *Emotional and personal, and*
- *Pro-social attitudes and orientations.*

*The LSI-r predicts recidivism but perhaps more importantly it also provides information pertaining to offender needs. Re-assessment every six months allows for an examination of whether the offender's need level was improved by the intervening programming. Probation and DOC apply differing score paradigms for determining levels of risk and need for their respective individual populations.*

Probation and DOC have set different score categories for designation of risk/need.

RISK/NEED category	Probation	DOC
Low	1-18	0-12
Medium	19-28	13-26
High	29-54	27-54

### Level of Supervision Inventory

Percent chance of recidivism within one year (based on total score).

LSI total score (Raw score)	Percent chance of recidivism
0 to 5	9%
6 to 10	20%
11 to 15	25%
16 to 20	30%
21 to 25	40%
26 to 30	43%
31 to 35	50%
36 to 40	53%
41 to 45	58%
46 to 50	69%
50 to 54	<70%

**Source:** Andrews, D.A. and Bonta, J. L. (2003). *Level of Supervision Inventory-Revised. U.S. Norms Manual Supplement.* Toronto: Multi Health Systems.

<sup>1</sup> Andrews, D.A. and Bonta, J. (1995). *The Level of Service Inventory-Revised.* Toronto: Multi-Health Systems.

<sup>2</sup> Jones, D. A., Johnson, S., Latessa, E. J., and Travis, L. F. (1999). *Case classification in community corrections: Preliminary findings from a national survey.* Topics in Community Corrections. Washington, D.C.: National Institute of Corrections, U.S. Department of Justice.

<sup>3</sup> Andrews, D.A. (1982). *The Level of Supervision Inventory (LSI): The first follow-up.* Toronto: Ontario Ministry of Correctional Services; Andrews, D.A., Dowden, C. and Gendreau, P. (1999). *Clinically relevant and psychologically informed approaches to reduced re-offending: A meta-analytic study of human service, risk, need, responsiveness and other concerns in justice contexts.* Ottawa: Carleton University.

<sup>4</sup> Andrews, D.A. and Bonta, J. (1995). *The Level of Supervision Inventory-revised.* Toronto: Multi-Health Systems.

Some studies have shown that lower risk offenders have a high probability of successfully re-integrating into the community without intense prison programming.<sup>7</sup> They tend to have positive support groups and are not without resources. Placing these offenders in correctional programs tends to disrupt their pro-social networks and increase their likelihood of recidivism.

**Staff training and professionalism becomes an essential component of developing a culture of personal change: well-trained staff can—and must—role model and promote pro-social attitudes and behaviors even while maintaining a safe and secure environment.**

- **Act on the need principle.** The fundamental point of this principle is to provide services according to individual deficits—social skills, thinking errors, vocational training, misuse of leisure time, drug and alcohol abuse—when these are identified by the assessment in #1 above. Sex offenders, for example, have significant deficits that are identified in general assessment tools such as the LSI, but research shows they also have additional treatment needs that require specialized interventions by professionals with specific expertise.
- **Implement the responsivity principle.** Inmates, like other humans, have different temperaments, learning styles, and motivation levels. These must be acknowledged and services must accommodate and consistently promote every individual's ability to participate in a program. Many evidence-based programs, however, have low or no success with offenders of color, and women have very different service and program needs than men. Hence, gender and cultural difference must be accounted for. Recidivism reduction requires developing interventions that are sensitive to the learning styles and psychological needs of all program participants.

<sup>7</sup> Andrews, D. A. and Bonta, J. (2003). *The psychology of criminal conduct*. Cincinnati, OH: Anderson Publishing Co.; Clear, T. R. "Objectives-Based Case Planning," National Institute of Corrections, Monograph 1981, Longmont, CO.; Currie, E. (1998). *Crime and punishment in America*. New York: Metropolitan Books; Palmer, T. (1995). "Programmatic and non-programmatic aspects of successful intervention: New directions for research," *Crime & Delinquency*, 41.

- **Ensure adequate program dose and duration.** Many efficacy studies have found that high-risk offenders should spend 40 to 70 percent of their time in highly structured activities and programming for 3 to 9 months prior to release.<sup>8</sup> However, these are minimum durations and are likely to be inadequate for both sex offender populations and serious drug addicts. Studies of both populations have found that duration and intensity are linked to positive outcomes. For both populations, the need for structured and accountable time throughout the day and week is likely higher than the average 40 to 70 percent found in studies of the general criminal population. The continuity of structure, treatment, and accountability must follow both substance addicts and sex offenders into the community, and treatment should be delivered as a life-long plan for changing entrenched negative lifestyle behaviors.<sup>9</sup> The evidence indicates that incomplete or uncoordinated approaches can have negative effects and increase recidivism and victimization.<sup>10</sup>

**The continuity of structure, treatment, and accountability must follow both substance addicts and sex offenders into the community, and treatment should be delivered as a life-long plan for changing entrenched negative lifestyle behaviors. The evidence indicates that incomplete or uncoordinated approaches can have negative effects and increase recidivism and victimization.**

<sup>8</sup> Gendreau, P. and Goggin, C. (1995). "Principles of effective correctional programming with offenders," Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick; Palmer, T. (1995). "Programmatic and non-programmatic aspects of successful intervention: New directions for research," *Crime & Delinquency*, 41, 100-131; Higgins, H. and Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions*. Washington, D.C.: American Psychological Association.

<sup>9</sup> National Institute on Drug Abuse's *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research Based Guide*, available at [http://www.nida.nih.gov/PODAT\\_CJ/](http://www.nida.nih.gov/PODAT_CJ/) from the U.S. National Institutes of Health.

<sup>10</sup> Higgins, H. and Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions*. American Psychological Association.

- **Implement the treatment principle.** The treatment principle states that cognitive/behavioral treatment should be incorporated into all sentences and sanctions.<sup>11</sup> Treatment is action. First, it is centered on the *present* circumstances and risk factors that are responsible for the offender's behavior. Second, it is *action* oriented rather than talk oriented. Offenders do something about their difficulties rather than just talk about them. Third, clinicians *teach* offenders new, pro-social skills to replace the anti-social ones like stealing, cheating and lying, through modeling, practice, and reinforcement. These behavioral programs would include:
  - o Structured social learning programs where new skills are taught, and behaviors and attitudes are consistently reinforced,
  - o Cognitive behavioral programs that target attitudes, values, peers, substance abuse, anger, etc., and
  - o Family based interventions that train families on appropriate behavioral techniques.

Interventions based on these approaches are very structured and emphasize the importance of modeling and behavioral rehearsal techniques that engender self-efficacy, challenge cognitive distortions, and assist offenders in developing good problem-solving and self-control skills. These strategies have been demonstrated to be effective in reducing recidivism.<sup>12</sup>

#### FOUR:

### **Provide skill training for staff and monitor their delivery of services**

Evidence-based programming emphasizes cognitive-behavior strategies and is delivered by well-trained staff. Staff must coach offenders to learn new behavioral responses and thinking patterns. In addition, offenders must engage in role playing and staff must continually and consistently reinforce positive behavior change.

**Researchers have found that optimal behavior change results when the ratio of reinforcements is four positive to every negative reinforcement.**

#### FIVE:

### **Increase positive reinforcement**

Researchers have found that optimal behavior change results when the ratio of reinforcements is four positive to every negative reinforcement.<sup>13</sup> While this principle should not interfere with the need for administrative responses to disciplinary violations, the principle is best applied with clear expectations and descriptions of behavior compliance. Furthermore, consequences for failing to meet expectations should be known to the offender as part of the programming activity. Clear rules and consistent consequences that allow offenders to make rewarding choices can be integrated into the overall treatment approach.<sup>14</sup>

**Quality control and program fidelity play a central and ongoing role to maximize service delivery. In a study at the Ohio Department of Corrections, programs that scored highest on program integrity measures reduced recidivism by 22 percent. Programs with low integrity actually increased recidivism.**

<sup>11</sup> Latessa, E.J. (no date). From theory to practice: What works in reducing recidivism? University of Cincinnati. Paper prepared for the Virginia Division of Criminal Justice Services. Available at <http://www.dcjs.virginia.gov/corrections/documents/theoryToPractice.pdf>.

<sup>12</sup> Excerpted from page 2, Latessa, E.J. (no date). From theory to practice: What works in reducing recidivism? University of Cincinnati. Paper prepared for the Virginia Division of Criminal Justice Services. Available at <http://www.dcjs.virginia.gov/corrections/documents/theoryToPractice.pdf>.

<sup>13</sup> Gendreau, P. and Goggin, C. (1995). *Principles of effective correctional programming with offender*. Unpublished manuscript, Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick, New Brunswick.

<sup>14</sup> McGuire, J. (2001). "What works in correctional intervention? Evidence and practical implications," *Offender rehabilitation in practice: Implementing and evaluating effective program*; Higgins, S. T and Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions*. Washington, D.C.: American Psychological Association.

SIX:

**Engage ongoing support in natural communities**

For many years research has confirmed the common sense realization that placing offenders in poor environments and with anti-social peers increases recidivism. The prison-based drug and alcohol treatment communities show that the inmate code can be broken and replaced with a positive alternative and, in the process, teach offenders the skills they will need upon release. Likewise, parole supervision requires attending to the pro-social supports required by inmates to keep them both sober and crime free. Building communities in prison and outside of prison for offenders who struggle to maintain personal change is a key responsibility of correctional administrators today. The National Institute of Corrections calls for:

*Realign and actively engage pro-social support for offenders in their communities for positive reinforcement of desired new behaviors.*<sup>15</sup>

SEVEN:

**Measure relevant processes/practices**

An accurate and detailed documentation of case information and staff performance, along with a formal and valid mechanism for measuring outcomes, is the foundation of evidence-based practice. Quality control and program fidelity play a central and ongoing role to maximize service delivery. In a study at the Ohio Department of Corrections, programs that scored highest on program integrity measures reduced recidivism by 22 percent. Programs with low integrity actually increased recidivism.<sup>16</sup>

EIGHT:

**Provide measurement feedback**

Providing feedback builds accountability and maintains integrity, ultimately improving outcomes. Offenders need feedback on their behavioral changes, and program staff need feedback on program integrity. It is important to reward positive behavior—of inmates succeeding in programs, and of staff delivering effective programming. Measurements that identify effective practices need then to be linked to resources, and resource decisions should be based on objective measurement.

Years of research have gone into the development of these evidence-based principles. When applied appropriately, these practices have the best potential to reduce recidivism. These principles should guide criminal justice program development, implementation and evaluation. For further information, please see the material made available by the National Institute of Corrections, at [www.nicic.org](http://www.nicic.org).

<sup>15</sup> National Institute of Corrections, <http://nicic.org/ThePrinciplesofEffectiveInterventions>.

<sup>16</sup> Latessa, E. J. and Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal*.

**Appendix H:  
Controlled Substances Crime Classifications Recommendations**



**SUMMARY: Recommendations for Changes in Controlled Substances Crime Classifications**

<b>Recommendation</b>	<b>Controlled substance offenses POSSESSION</b>	<b>Current classification * Second or subsequent offense</b>	<b>Proposed classification</b>
<b>CS 1</b>	Create and new and separate statute for possession		
<b>CS 2</b>	Possession of a schedule I or II 1 g. or less ( <i>current law</i> )	Felony class 6 *Felony class 4	
	Possession of 4 grams or less of schedule I drug	Felony class 3 *Felony class 2	Felony class 6
	Possession of 4 grams or less of schedule II drug except, possession of 2 grams or less of methamphetamine	Felony class 4 *Felony class 2	Felony class 6
<b>CS 3</b>	Possession of more than 4 grams of schedule I	Felony class 3 *Felony class 2	Felony class 4
	Possession of more than 4 grams of schedule II except possession of more than 2 grams of methamphetamine	Felony class 4 *Felony class 2	Felony class 4
<b>CS 4</b>	Possession of a schedule III or IV 1 gram or less ( <i>current law</i> )	Felony class 6 *Felony class 4	
	Possession of a schedule III	Felony class 4 *Felony class 3	Misdemeanor class 1
	Possession of a schedule IV	Felony class 5 *Felony class 4	Misdemeanor class 1
	Possession of a schedule V	Misdemeanor class 1 *Felony class 5	Misdemeanor class 1
<b>CS 5</b>	Possession of flunitrazepam and ketamine 1 gram or less	Felony class 6 *Felony class 4	Felony class 6
	Possession of 4 grams or less of flunitrazepam	Felony class 3 *Felony class 2	Felony class 6
	Possession of more than 4 grams of flunitrazepam	Felony class 3 *Felony class 2	Felony class 4
	Possession of 4 grams or less of ketamine	Felony class 4 *Felony class 3	Felony class 6
	Possession of more than 4 grams of ketamine	Felony class 4 *Felony class 3	Felony class 4
<b>CS 7</b>	Use of a schedule I or II controlled substance	Felony 6	Misdemeanor class 2
	Use of a schedule III, IV, or V	Misdemeanor class 1	Misdemeanor class 2

**SUMMARY: Recommendations for Changes in Controlled Substances Crime Classifications (cont'd)**

<b>Recommendation</b>	<b>Controlled substance offenses DISTRIBUTION</b>	<b>Current classification * Second or subsequent offense</b>	<b>Proposed classification</b>
<b>DP 6</b>	Fraud and Deceit	Felony class 5 *Felony class 4	Felony class 6
<b>DP 7</b>	Move money laundering out of the drug statute and create a new Money Laundering offense as a general Title 18 offense		
<b>Recommendation</b>	<b>Controlled substance violations SPECIAL OFFENDER</b>	<b>Proposed change</b>	
<b>SP 1</b>	Subsection (2)(a) applies to drug sales and distribution within 1,000 feet of schools, buses, parks, playgrounds, public housing units, sidewalks, alleys, and other public areas.	Limit the applicability of subsection (2)(a) to only apply to drug sales and distribution within 100 feet of a school or on school bus.	
<b>SP 2</b>	Create a new crime of sale of any controlled substance (other than marijuana) by a person over the age of 18 to a minor. If the sale is made by a person over the age of 18 who is less than two years older than the minor, the offense will be a class 4 felony		
<b>SP 3</b>	Subsection (1) (f) applies to drug sales and distribution “involving a deadly weapon”	Amend the definition “involving deadly weapon” to mean: the defendant used, displayed, or possessed on his or her person or within the defendant’s immediate reach, a deadly weapon as defined by section 18-1-901(3)(e) at the time of the commission of a violation of this part 4 of article 18 of title 18, or (II) The defendant, or a confederate, possessed a firearm as defined in section 18-1-901(3)(h), in a vehicle the defendant was occupying, or to which the defendant or the confederate had access in a manner which posed an immediate threat to others, during the commission of a violation of this part 4 of article 18 or title 18.	
<b>SP 5</b>	Subsection (1)(d) applies to the importation of schedule I and II drugs	Amend this subsection to apply if the importation exceeds 4 grams of a schedule I or schedule II drug into the state.	

**SUMMARY: Recommendations for Changes in Controlled Substances Crime Classifications (cont'd)**

<b>Recommendation</b>	<b>Controlled substance offenses MARIJUANA</b>	<b>Current classification * Second or subsequent offense</b>	<b>Proposed classification</b>
<b>MJ 1</b>	Possession up to 1 ounce ( <i>current law</i> )	Petty offense class 2	Petty offense class 2
	Possession 1-4 ounces	Misdemeanor class 1 *Felony class 5	Petty offense class 2
<b>MJ 2</b>	Possession 4-8 ounces	Misdemeanor class 1 *Felony class 5	Misdemeanor class 1
	Possession 8-16	Felony class 5 *Felony class 4	Misdemeanor class 1
<b>MJ 3</b>	Possession of marijuana concentrate	Felony class 5 *Felony class 4	Misdemeanor class 1
<b>MJ 4</b>	Distribution up to 1 ounce without remuneration	Petty offense class 2	Petty offense class 2
	Distribution 1-4 ounces without remuneration	Felony class 4 *Felony class 3	Petty offense class 2
<b>MJ 5</b>	Possession over 16 ounces	Felony class 5 *Felony class 4	Felony class 6
<b>MJ 6</b>	Distribution 4 ounces to 5 pounds	Felony class 4 *Felony class 3	Felony class 5
<b>MJ 7</b>	Distribution over 5 pounds	Felony class 4 *Felony class 3	Felony class 4
<b>MJ 8</b>	Distribution of any amount of concentrate (MJ 8)	Felony class 4 *Felony class 3	Felony class 5
<b>MJ 9</b>	Distribution to a child by an adult more than two years older than the child	Felony class 4 *Felony class 3	Felony class 3
<b>MJ 10</b>	Cultivation of 6 plants or less	Felony class 4 *Felony class 3	Misdemeanor class 1
<b>MJ 11</b>	Cultivation of 7-29 plants	Felony class 4 *Felony class 3	Felony class 5
<b>MJ 12</b>	Cultivation of 30 or more plants	Felony class 4 *Felony class 3	Felony class 4



**Appendix I:  
Colorado Parole Release Guidelines Instrument**



**Colorado Parole Board  
Release Guidelines Instrument**

Colorado Revised Statute § 17-22.5-404 lists the factors the parole board must consider in deciding whether to release someone to discretionary parole. The goal of this administrative release guideline instrument is to provide a framework for the Colorado parole board to evaluate and weigh the statutorily mandated factors, victim, and community impact, in their decision making and offer advisory decision recommendations. These guidelines are advisory and parole board members retain the authority to make the release decision that s/he believes is most appropriate in any particular case. This administrative release guideline instrument is not to be used in considering those inmates for discretionary release for whom the Sex Offender Management Board has established separate and distinct release guidelines.

<b>Inmate Information</b>			
<b>Name</b> _____	<b>Number</b> _____	<b>Age</b> _____	<b>Gender</b> _____
<b>****Other information that would normally be included in the header section for an inmate parole hearing****</b>			
Custody Level: <input type="checkbox"/> V <input type="checkbox"/> IV <input type="checkbox"/> III <input type="checkbox"/> II <input type="checkbox"/> I			
Victim notification required pursuant to Victim's Rights Act: <input type="checkbox"/> Yes <input type="checkbox"/> No			

Has the offender previously absconded or escaped while on community supervision? <input type="checkbox"/> No <input type="checkbox"/> Yes, (when and details) _____
Last COPD conviction for Class 1: (date/description) _____ Class 2A: (date/description) _____
Has inmate been convicted of a COPD violation related to making a verbal or written threat against a victim(s) during the period of incarceration? <input type="checkbox"/> No <input type="checkbox"/> Yes, (when and details) _____

**STEP 1: Determine Risk Level**

CARAS (dated \_\_\_\_\_) score \_\_\_\_\_  very high  high  medium  low  very low

LSI-R (dated \_\_\_\_\_) score \_\_\_\_\_  high (29-54)  medium (19-28)  low (0-18)

**STEP 2: Evaluate Criminogenic Needs (LSI-R domains)**

Education/Employment	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Financial	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Family/Marital	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Accommodation	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Leisure/Recreation	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Companions	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Alcohol/Drug Problems	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Emotional/Personal	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low
Attitude/Orientation	<input type="checkbox"/> high	<input type="checkbox"/> medium	<input type="checkbox"/> low

**STEP 3: Evaluate Readiness/Performance**

*EVALUATE PROTECTIVE FACTORS (LSI-R RATER SCORE)*

**Education/Employment**

Participation/Performance	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Peer interactions	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Authority interactions	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Financial**

Problems	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Family/Marital**

Dissatisfaction with marital/equivalent situation	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Nonrewarding, parental	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Nonrewarding, other	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Criminal family/spouse	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Accommodation**

High crime neighborhood	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Leisure/Recreation**

Could make better use of time	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Alcohol/Drug problems**

Alcohol problem, currently	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Drug problem, currently	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

**Attitude/Orientation**

Supportive of crime	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				
Unfavorable attitude toward convention	-	<table border="1"><tr><td>0</td><td>1</td><td>2</td><td>3</td></tr></table>	0	1	2	3	+
0	1	2	3				

*PROGRESS ASSESSMENT SUMMARY RATINGS*

Date PAS completed \_\_\_\_\_.

- PAS I – Work Level     N/A     high             good             fair     poor             disruptive
- PAS II-Academic/Voc     N/A     good progress     fair progress     progress     minimal progress     no progress
- PAS III-medical             N/A     no limitations     minor/treatable     moderate     moderately severe     severe
- PAS IV-substance abuse     N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS V-sexual violence     N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS VI-mental health     N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS VII-anger             N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS VIII-MRDD             N/A     good progress     fair progress     minimal progress     no progress     regressing
- PAS IX-conduct             N/A     highly acceptable     acceptable     moderate     unacceptable     highly unacceptable
- PAS X-pre-release         N/A     highly acceptable     acceptable     moderate     unacceptable     highly unacceptable

*PAROLE PLAN*

Suitability of parole sponsor:

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Suitability of residence:

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Recommendation for additional conditions:

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After evaluating all of these factors, an inmate is categorized as being “high”, “average”, or “low” readiness for reentry.

**OVERALL PAROLE READINESS**     high             average             low

- **HIGH** readiness is defined as an inmate who has fully participated in and/or successfully completed recommended programs available to him/her (or is likely to participate and successfully complete recommended programs in the community), has demonstrated an acceptable level of institutional behavior, has had few major conduct violations, and has a strong parole plan.
- **AVERAGE** readiness is defined as an inmate that has fully participated in and/or successfully completed some of the recommended core programs available to him/her (or is likely to participate and successfully complete recommended programs in the community), has demonstrated an acceptable level of institutional behavior, has had few major conduct violations, and has an adequate parole plan.
- **LOW** readiness is defined as an inmate who has refused, not fully participated and/or unsuccessfully completed recommended programs available to him/her (and is not likely to participate and/or successfully complete recommended programs in the community), has not demonstrated an acceptable level of institutional behavior, has a pattern of major conduct violations, and does not have an adequate parole plan.

**STEP 4: Parole release decision**

Very low risk: the guidelines suggest the inmate is to be **RELEASED** to discretionary parole at the first (or any subsequent) parole hearing unless:

- the inmate had harassed the victim either verbally or in writing during the period of incarceration; (if present, the parole board should delay release until it is established that the inmate does not pose a threat to the victim and an adequate supervision plan can be developed); or
- the inmate was convicted of a Class I Code of Penal Discipline violation within the past twelve months or a Class II violation within the past three months; (if present, the parole board should delay release until the inmate meets the timeline for being violation free as indicated above); or
- the inmate is currently incarcerated after being regressed from community corrections as a transition inmate; (if present, the parole board does not necessarily have to deny parole but should consider whether any special conditions of parole are warranted based on the reasons for the regression).

Very high risk: the guidelines suggest NOT TO RELEASE on discretionary parole unless:

- there are factors such as advanced age, medical disability, or successful completion of an intensive treatment program that would significantly reduce the risk of re-offense; or
- the parole board has confidence that risk can be reasonably controlled with intensive supervision.

Low, medium or high risk: For those inmates assessed as low, medium or high risk, the advisory decision options are outlined in the following risk by readiness matrix:

	<b>High Readiness</b>	<b>Average Readiness</b>	<b>Low Readiness</b>
<b>Low Risk</b>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p>	<p>Advisory decision recommendation is to NOT RELEASE.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan can be developed with special conditions and transition services to adequately address risk.</p>
<b>Medium Risk</b>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p>	<p>Advisory decision recommendation is to RELEASE if:</p> <p>a suitable parole plan can be developed with conditions and transition services to adequately address risk.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p>	<p>Advisory decision option is to NOT RELEASE.</p> <p>If the decision is to NOT RELEASE, the parole board should indicate to the inmate areas that would address the issues or concerns of the parole board. If the parole board recommends that a program be completed, the prison case manager should assist the inmate in enrolling or being prioritized for enrollment in that program prior to the next scheduled parole hearing, to the greatest extent possible.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan can be developed with special conditions and transition services to adequately address risk.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p>

	<b>High Readiness</b>	<b>Average Readiness</b>	<b>Low Readiness</b>
<b>High risk</b>	<p>Advisory decision option is to RELEASE if</p> <p>a suitable parole plan can be developed with special conditions and transition services to ensure effective monitoring and accountability.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p>	<p>Advisory decision option is to NOT RELEASE.</p> <p>The parole board should indicate to the inmate areas the inmate can work on to increase their readiness in preparation for the next parole hearing.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan is developed with special conditions and transition services that provides for effective monitoring and accountability.</p>	<p>Advisory decision option is to NOT RELEASE.</p> <p>The parole board should indicate to the inmate areas the inmate can work on to increase their readiness prior to the next parole hearing.</p> <p>Or parole board should determine whether the inmate should be referred to community corrections or residential treatment program.</p> <p>If the decision is to RELEASE, the parole board should ensure that a suitable parole plan is developed with special conditions and transition services that provides for effective monitoring and accountability.</p>

### **STEP 5: Setting Conditions**

One of the important roles of the releasing authority is to set conditions of release. The Board has established a list of standard conditions applicable to all offenders released to the supervision of the Division of Adult Parole, Community Corrections, Youth Offender System.

In addition to the standard conditions of release, some offenders may need additional “special conditions” based on their individual risk and need and/or statutory mandates. Special conditions should address the issues for the individual offender identified by the LSI-R. and/or specific issues identified in the progress assessment summary. Great care should be taken to ensure that any special condition is consistent with the criminogenic need area identified by the LSI-R or specific criminogenic need area identified in the progress assessment summary. If there is a need for further evaluation or assessment of a particular criminogenic need area, it is recommended that the Board request an assessment of that area or issue in the community upon release and direct the offender to comply with recommendation(s) that are developed by the parole officer as a result of the assessment.

### **STEP 6: Notice of Colorado Parole Board Action Form**

The parole board action form will be revised to reflect these guidelines, provide required data, and to adequately capture the parole board’s decision-making rationale. If the parole board departs from the advisory decision recommendation, the rationale for such should be documented on the action form.