



ANNUAL REPORT | 2012

Colorado Commission on Criminal & Juvenile Justice

Colorado Commission on Criminal and Juvenile Justice

2012 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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Commission members*

James H. Davis

CCJJ Chair

Executive Director
Department of Public Safety

David S. Kaplan

CCJJ Vice-Chair

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

Theresa Cisneros (appointed March 2012)

Judge, 4th Judicial District
Representing Colorado State Judicial

Tom Clements

Executive Director
Department of Corrections

Michael Dougherty

Deputy Attorney General – Criminal Justice
Attorney General's Office

Rhonda C. Fields

Victim's Representative
At Large

Charles Garcia

Representative for the Juvenile Parole Board

Regis F. Groff

Former State Senator
At Large

Peter G. Hautzinger

District Attorney, 21st Judicial District
Representing District Attorneys

Regina M. Huerter

Crime Prevention & Control Commission
Representing Juvenile Justice Issues

William C. Kilpatrick

Golden Police Department
Representing Chiefs of Police

Julie Krow

Children, Youth and Families, Director
Department of Human Services

Reo N. Leslie, Jr.

Colorado School for Family Therapy
Representing Mental Health Treatment Providers

Claire Levy

State Representative
House District 13

Gilbert A. Martinez (resigned February 2012)

Judge, 4th Judicial District
Representing Colorado State Judicial

Henry Jackson

Metropolitan State University of Denver
Representative for the Executive Director of the
Department of Higher Education

John P. Morse

State Senator
Senate District 11

Eric Philp

Director of Probation Services
Representing Colorado State Judicial

* At the close of 2012.

Donald S. Quick

District Attorney, 17th Judicial District
Representing District Attorneys

Ellen Roberts

State Senator
Senate District 6

J. Grayson Robinson

Arapahoe County Sheriff
Representing Colorado Sheriffs

Steven R. Siegel

Victim's Representative, 2nd Judicial District
Representing Victims' Rights Organizations

Alaurice M. Tafoya-Modi

Criminal Defense Attorney
At Large

Mark Waller

State Representative
House District 15

Douglas K. Wilson

State Public Defender

Anthony Young

Vice-Chairman
Colorado State Board of Parole

Debra L. Zwirn

County Commissioner, Logan County
Representing County Commissioners

Jeanne M. Smith

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

Task Force and Committee members

Juvenile Justice Task Force

Name	Affiliation
Regina Huerter, <i>Chair</i>	Denver Crime Prevention & Control Commission
Karen Ashby	Denver Juvenile Court
Michelle Brinegar	District Attorney's Office, 8th Judicial District
Susan Colling	Division of Probation Services
Kim Dvorchak	Juvenile Defender Coalition
Charles Garcia	Juvenile Parole Board
John Gomez	Division of Youth Corrections
Regis Groff	Retired State Senator
Kirk Henwood	Montrose County School District
Joe Higgins	Mesa County Partners
Bill Kilpatrick	Golden Police Department
Julie Krow	Department of Human Services
Beth McCann	State Representative, House District 8
Jeff McDonald	Jefferson County Juvenile Assessment Center
Inta Morris	Department of Higher Education
Linda Newell	State Senator, Senate District 26
Stan T. Paprocki	Division of Behavioral Health, Department of Human Services
Donald Quick	District Attorney's Office, 17th Judicial District
Bonnie Saltzman	Juvenile Justice and Delinquency Prevention Council Representative
Norene Simpson	State Public Defender's Office
Meg Williams	Office of Adult and Juvenile Justice Assistance, Division of Criminal Justice

Drug Policy Task Force

Name	Affiliation
Grayson Robinson, <i>Chair</i>	Arapahoe County Sheriff's Department
Chris Brousseau	District Attorney's Office, 1st Judicial District
Maureen Cain	Criminal Defense Bar
Marc Condojani	Division of Behavioral Health, Department of Human Services
Brian Connors	State Public Defender's Office
Christie Donner	Colorado Criminal Justice Reform Coalition

Tim Hand	Division of Adult Parole, Community Corrections and Youthful Offender System
Evie Hudak	State Senator, 19th District
Regina Huerter	Denver Crime Prevention & Control Commission
Mark Hurlbert	District Attorney's Office, 5th Judicial District
Terri Hurst	Colorado Behavioral Healthcare Council
Bill Kilpatrick	Golden Police Department
Bridget Klauber	Private Defense Attorney
Reo Leslie	Colorado School for Family Therapy
Helen Morgan	District Attorney's Office, 2nd Judicial District
Kathleen McGuire	State Public Defender's Office
Vince Niski	Colorado Springs Police Department
John O'Dell	State Board of Parole
Eric Philp	Probation Services, Judicial Department
Donald Quick	District Attorney's Office, 17th Judicial District
Tom Raynes	Colorado District Attorneys' Council
Dan Rubinstein	District Attorney's Office, 21st Judicial District
Pat Steadman	State Senator, 31st District
Mark Waller	State Representative, 15th District

Legislative Committee

Name	Affiliation
David Kaplan, <i>Co-Chair</i>	Criminal Defense Bar
Donald Quick, <i>Co-Chair</i>	District Attorney's Office, 17th Judicial District
Michael Dougherty	Attorney General's Office, Criminal Justice Section
Regina Huerter	Denver Crime Prevention & Control Commission
Bill Kilpatrick	Golden Police Department
Tom Raynes	Colorado District Attorneys' Council
Grayson Robinson	Arapahoe County Sheriff's Department
Douglas Wilson	State Public Defender's Office

Sex Offense Task Force

Name	Affiliation
David Kaplan, <i>Chair</i>	Criminal Defense Bar
Michael Anderson	State Board of Parole
Norma Anderson	Former State Senator
Maureen Cain	Criminal Defense Bar
Peggy Heil	Department of Corrections
Erin Jemison	Colorado Coalition Against Sexual Assault

Laurie Kepros	Criminal Defense Bar
Dianna Lawyer-Brook	Colorado CURE and Boulder Community Corrections Board
Chris Lobanov-Rostovsky	Sex Offender Management Board, Colorado Division of Criminal Justice
Richard Schneider	Sex Offender Registration, Denver Police Department
Steve Siegel	Victim's Representative, 2nd Judicial District
Adrian Van Nice	Colorado District Attorney's Council and District Attorney's Office, 20th Judicial District
Angel Weant	Probation Department, Sex Offender Programs

Comprehensive Sentencing Task Force

Name	Affiliation
Jeanne Smith, <i>Chair</i>	Division of Criminal Justice
Denise Balazic	State Parole Board
Joe Cannata	Voices of Victims
Theresa Cisneros	Judge, 4th Judicial District (appointed March 2012)
Christie Donner	Colorado Criminal Justice Reform Coalition
Michael Dougherty	Attorney General's Office, Criminal Justice Section
Charles Garcia	Juvenile Parole Board
Tim Hand	Division of Adult Parole, Community Corrections and Youthful Offender System
Peter Hautzinger	District Attorney's Office, 21st Judicial District
William Hood III	Denver District Court Judge
Claire Levy	State Representative, House District 13
Gil Martinez	Judge, 4th Judicial District (resigned February 2012)
Jason Middleton	State Public Defender's Office
J.P. Moore	District Attorney's Office, 17th Judicial District
Joe Pelle	Boulder County Sheriff's Department
Eric Philp	Division of Probation Services
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice
Dianne Tramutola-Lawson	Colorado CURE
Douglas Wilson	State Public Defender's Office

Bail Committee

Name	Affiliation
Margie Enquist, <i>Co-chair</i>	Judge, 1st Judicial District
Grayson Robinson, <i>Co-chair</i>	Arapahoe County Sheriff's Department (resigned March 2012)
Douglas Wilson, <i>Co-chair</i>	State Public Defender's Office (appointed April 2012)
Jason Armstrong	Professional Bail Agents of Colorado (appointed June 2012)
Maureen Cain	Criminal Defense Bar

Sallie Clark	County Commissioner, 4th Judicial District
Michael Dougherty	Attorney General's Office, Criminal Justice Section
Bill Kilpatrick	Golden Police Department
John Marcucci	County Court Judge, 2nd Judicial District
Steve Mares	Professional Bail Agents of Colorado (resigned May 2012)
Greg Mauro	Denver Pretrial Services
Kate Horn-Murphy	Victim's Representative, 17th Judicial District
Scott Storey	District Attorney's Office, 1st Judicial District
Sharon Winfree	Colorado Association of Pretrial Services

Minority Over-representation Committee

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

Commission staff

Kim English

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Consultant

Kenneth Plotz

Consultant

Christine Adams

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Peg Flick

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Division of Criminal Justice

Kevin L. Ford

Office of Research and Statistics
Division of Criminal Justice

Linda Harrison

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Jana Locke

Executive Director's Office
Department of Public Safety

Adrienne Loye

Executive Director's Office
Department of Public Safety

Laurence Lucero

Office of Research and Statistics
Division of Criminal Justice

Germaine Miera

Office of Research and Statistics
Division of Criminal Justice

Diane Pasini-Hill

Office of Research and Statistics
Division of Criminal Justice



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SECTION

Introduction

This report describes the Commission's activities from October 2011 through June 2012. Previous Commission reports generally covered a 12-month time frame that began and ended in the fall. However, this year's annual report spans a shortened time period of nine months in order for the Commission reports to switch to a fiscal year cycle. Reporting on a fiscal year allows for Commission recommendations approved in the summer and fall (the time that most recommendations from task forces are presented to the Commission) to be followed through the following legislative session. Next year's annual report will cover the activities of the Commission from July 2012 through June 2013, and all subsequent reports will also reflect the fiscal year time frame.

This report documents the Commission's fifth year of activities and accomplishments. During its first year of work, the Commission focused on improving policies and practices related to the community re-entry of individuals returning from jail and prison. This work resulted in 66 recommendations for removing barriers to successful re-entry, summarized in the Commission's December 2008 annual report. In 2009 the Commission made 45 recommendations for sentencing and drug reform, many of which resulted in statutory changes

during the 2010 General Assembly. In 2010, the Commission focused its efforts on drug policy and sentencing statutes reform, including work in the area of sex offender policy. Also, during this time period, the Commission launched its efforts to study and make recommendations for reform of the juvenile justice system. Seven of the recommendations created in 2010 were supported and passed by the General Assembly in the spring of 2011. Then in 2011, the Commission continued the efforts that began in 2010 and also initiated work in the areas of Bail reform along with more intensive study in the area of minority overrepresentation.

During the timeframe for this report (October 2011 through June 2012) the Commission approved 23 recommendations in the areas of drug policy, sentencing, sex crimes, minority overrepresentation and juvenile justice reform. The Commission also endorsed a recommendation for a sustainability plan for the 2008 Commission-initiated Evidence Based Practices Implementation for Capacity (EPIC) effort. Four of the recommendations resulted in statutory changes by the 2012 General Assembly. Commission initiated and supported bills passed by the General Assembly in 2012 can be seen in Table 1.1.

Table 1.1. Commission supported bills presented to the 2012 General Assembly

Bill number	Bill title	Status
House Bill 12-1346	Concerning sex offender registration (two recommendations included in this bill)	Signed
House Bill 12-1310	Concerning changes to statutory provisions related to criminal proceedings, and, in connection therewith, making an appropriation	Signed
House Bill 12-1213	Concerning the penalty for a person who escapes from a place of confinement other than a county jail or correctional facility	Signed

Legislative reforms are one type of systemic change the Commission promotes. It also recommends changes to operational policy, business practice, and agency philosophy.

This 2012 report is organized as follows: Section Two provides a summary of the Commission's legislative intent and membership; Section 3 discusses Commission, task force and committee activities from October 2011 through June 2012; Section 4 details the Commission's recommendations and outcomes including 2012 legislation and Section 5 describes the Commission's next steps. Previous Commission

reports included a section ("Status of Prior Commission Recommendations") that was omitted from the 2011 report and is also omitted here. However, because the Commission continues to generate dozens of recommendations every year, the tracking and performance measures related to its past recommendations was transferred to the web in 2012. The status of all Commission-generated recommendations can be found on the Commission's website at www.colorado.gov/ccjj under the Resources tab.



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 2 3-year terms (in addition to any partial term) and 9 appointments serve 2 2-year terms. House Bill 07-1358, which established the Commission, is available on the CCJJ website at <http://cdpsweb.state.co.us/ccjj/legislation.html>.

During the timeframe represented in this report (October 2011 through June 2012), the Commission welcomed two new members. Dr. Henry Jackson replaced Inta Morris as the representative for the Department of Higher Education, and Judge Theresa Cisneros, from the 4th Judicial District, replaced Judge Gilbert Martinez, also of the 4th Judicial District.



SECTION 3

Activities of the Commission

This section summarizes the activities and accomplishments of the Commission between the publication of the October 2011 *Annual Report* and June 2012. The topics covered in this section include the following:

- A report on the work of the Commission's task forces and committees;
- A description of various Commission initiatives and products now accessible on the web;
- An update on the behavioral health initiatives supported by Commission; recommendations and funded with over \$4.2M in federal Justice Assistance Grants (JAG);
- An update on the sustainability plan for the Commission's Evidence-Based Practices Implementation for Capacity (EPIC) project;
- A review of revisions to Commission's operating procedures;
- A synopsis of House Bill 09-1352 findings;
- An update on the Commission's work in the area of Parole Administrative Guidelines;
- A description of a visit from a coalition from Tennessee; and

- A review of Commissioner conversations with Chair James Davis.

Commission task forces and committees¹

As was noted in the Next Steps section of the Commission's 2011 *Annual Report*, Commission members agreed that efforts in late 2011 and throughout 2012 should be focused on the following areas of study: Continued work on drug policy and sentencing reform along with ongoing work in the areas of juvenile justice and sex offenses. The Commission also established two new Committees in the fall of 2011 to address work in the critical areas of minority overrepresentation and bail reform. To this end, a majority of Commission work between October 2011 and June 2012 (the time period covered by this report) was undertaken by the following six groups:

- Drug Policy Task Force
(Grayson Robinson, Chair)

¹ Task forces are long term working groups with multiple objectives; Committees are short term (usually meeting for less than one year) with a few focused objectives.

- Comprehensive Sentencing Task Force
(Jeanne Smith, Chair)
- Juvenile Justice Task Force
(Regina Huerter, Chair)
- Sex Offense Task Force
(David Kaplan, Chair)
- Minority Overrepresentation Committee
(James Davis, Chair)
- Bail Committee
(Doug Wilson and Judge Margie Enquist, Co-chairs)

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

Drug Policy Task Force

The Drug Policy Task Force entered its third year of work in the fall of 2011. In the final months of 2011 (leading up to the 2012 legislative session), the Drug Policy Task Force's work focused on the following areas:

- Developing a sentencing scheme specifically for drug crimes;
- Consolidating behavioral health treatment funding;
- Expanding Colorado's substance abuse prevention and treatment programs and practices; and
- Continuing work around the study of DUID *per se* limits for marijuana (THC).

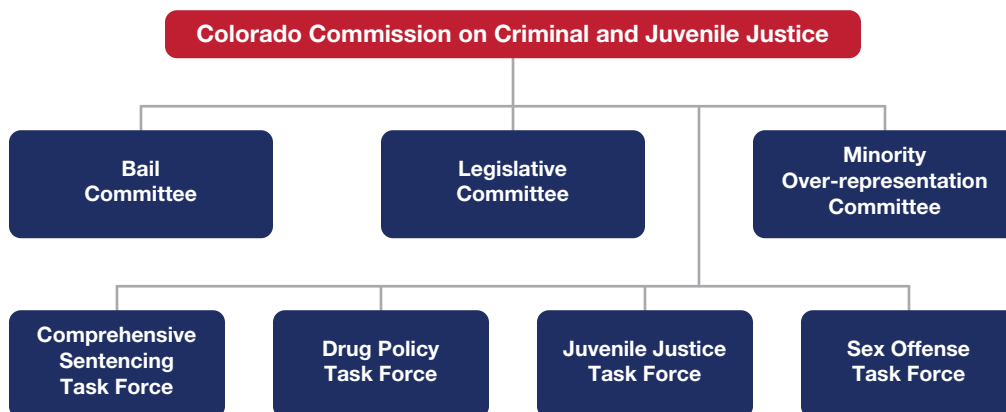
In the fall of 2011, the Drug Policy Task Force presented five recommendations to the Commission for consideration, all of which passed the Commission and one of which (consolidating behavioral health treatment funding) became legislation that was signed into law in 2012. For detailed information on the five recommendations from the Drug Policy Task Force, please see Section 4.

During 2012, the Drug Policy Task Force continued the efforts of its three working groups: The Drug Use Treatment and Prevention Working Group, the Drug Sentencing Structure Working Group, and the DUID *Per Se* Working Group, with the intent of examining and making recommendations for reform in the following areas:

- Drug abuse prevention and early intervention;
- The development of a comprehensive drug sentencing scheme along with a review and possible revision of the classification of designer drugs; and
- The renewed study of the marijuana DUID *per se* limit recommendation that did not pass the General Assembly in either the 2011 or the 2012 legislative sessions.

In the spring of 2012, the General Assembly passed House Bill 1310 which, among other things, modified the duties of the Commission to include the development of a comprehensive drug sentencing scheme for all drug crimes described in Article 18 of Title 18, *Uniform Controlled Substances Act*. The legislation mandates a report on this topic by December 15, 2012. The Commission asked the Drug Policy Task Force to address

Figure 3.1. Commission, Task Force and Committee organizational chart



this mandate, and its Drug Sentencing Structure Working Group made responding to HB 12-1310 a priority.

As this report went to press, the recommendations from the Drug Policy Task Force and its three working groups were being prepared for the Commission. Outcomes will be reported in the 2013 annual report, along with related outcomes from the 2013 General Assembly.

Comprehensive Sentencing Task Force

The Comprehensive Sentencing Task Force entered its second year of work in the fall 2011, continuing its study in a variety of areas for possible sentencing reform. After considerable study and deliberation, members of the task force decided that focusing on a single non-violent crime category for potential reform might result in a template for the study and reform of other crimes, including violent crimes. Thus, the task force focused primarily on theft statutes and penalties, and the offender populations charged and convicted of this crime. From the fall of 2011 through most of 2012, the task force undertook targeted study with the following working groups:

- Theft Consolidation Working Group to study the possibility of combining current “designer offenses” such as theft of ski tickets and theft of free newspapers into existing theft crime classifications;
- Theft Classification Working Group to reconsider the dollar amounts that correspond to the theft classification categories, and make recommendations for establishing an equitable distribution of theft crimes (for example, currently there are no Felony 5 or 6 theft classifications);
- Adult Diversion Working Group to explore the viability of establishing a statewide adult diversion program;
- Mandatory Minimums and Habitual Offender Working Group to review sentence lengths; and
- Parole Working Group to review the impact of sentencing changes on the parole process.

In January 2012, the Comprehensive Sentencing Task Force presented two recommendations to the Commission for consideration, one of which was approved by the Commission and later became legislation that was signed into law. This recommendation proposed the removal of “walk-away” escapes as crimes eligible for habitual criminal sentencing. For detailed information

on this recommendation from the Comprehensive Sentencing Task Force, please see Section 4.

Throughout most of 2012 the Comprehensive Sentencing Task Force continued its work regarding possible sentencing reform by focusing on theft offenses reclassification and consolidation. The group also continued work in the areas of adult diversion and the imposition of mandatory minimum sentences to prison.

As this report was going to print the Comprehensive Sentencing Task Force was preparing to present multiple recommendations to the Commission in the areas of theft reclassification, adult diversion programs, and mandatory minimum and extraordinary risk sentences to prison. The outcome of these proposals may result in multiple legislative initiatives in the 2013 legislative session, and will be addressed in the 2013 annual report.

Juvenile Justice Task Force

The Juvenile Justice Task Force entered its second year of work in the fall of 2011. The scope of work for this task force is system-wide, with study being undertaken in a variety of areas.

From the fall of 2011 through most of 2012 the Task Force and its three working groups undertook targeted studies in the following areas:

- The Judicial Working Group to study juvenile escapes and sex-offender deregistration. It also authorized a sub-group to study Juvenile DUI;
- The Education Working Group to study difficulties related to the provision of educational credits in detention facilities, and the relationship between truancy and detention; and
- The Assessment Group to study the current screening and assessment procedures for juveniles entering the juvenile justice system.

Each of these groups addressed some of the perceived gaps in the current system. For example, the Judicial Working Group addressed the issue of escape in the context of an adjudicated juvenile who turns eighteen while in custody in the juvenile system. The working group determined that such a person should not be subject to the current felony adult penalties (which can include a sentence to the Department of Corrections) when she or he walks away from a group home or other non-locked facility.

The Education Working Group addressed the issue of truancy and detention. The group found that juveniles placed in detention for truancy were more likely to enter into the juvenile justice system. Therefore the working group developed a recommendation requiring educators and other groups in the community to address truancy before referring the child to the courts.

The Assessments Working Group is currently working on ensuring that juvenile screenings and assessments are applied in a more uniform manner across the state.

In January 2012, the Juvenile Justice Task Force presented one recommendation to the Commission for consideration regarding the requirement that school boards provide education and educational materials, as outlined in the Colorado model educational content standards, to juveniles from their schools that are in short-term detention facilities. While this recommendation was approved by the Commission, it entered the legislative session too late to obtain a sponsor. However, this recommendation has been identified as a Commission bill for the 2013 legislative session. For detailed information on this recommendation from the Juvenile Justice Task Force, please see Section 4.

As this report was going to press, the Juvenile Justice Task Force was in the process of developing recommendations for the Commission in the areas of sex offender deregistration and escape, as these pertain to juveniles. The expectation for the 2013 legislative session is that the Commission will propose one juvenile justice reform bill that will include four recommendations from the Commission in 2012 in these areas: education and educational materials provided to juvenile detention facilities; revision of the compulsory school attendance statute; sex offender deregistration; and modifications to the escape statute as it pertains to juveniles in non-secure detention facilities. Since this report covers activities from October 2011 to June 2012, the recommendations approved during the summer and fall of 2012 will be presented in the Commission's 2013 annual report which will also include the legislative outcomes.

Sex Offense Task Force

In early 2012 the Sex Offense Task Force completed two years of concentrated work regarding a comprehensive assessment of adult and juvenile sex offense penalties

and issues. The task force created two working groups to address work in the areas of Registration/ Deregistration and Statutory Review and Refinement.

In the fall of 2011 the task force presented a package of 16 recommendations to the Commission. Of these 16 recommendations 13 were approved by the Commission, 2 were not approved, and 1 was tabled indefinitely. Of the 13 recommendations that were approved, 2 were legislative in nature and were eventually signed into law during the 2012 session: House Bill 12-1346 clarified residence registration requirements for and self-verification by individuals convicted of sex crimes who are without a fixed residence yet are required to register their address with local law enforcement. It also addressed the issue of a grace period by allowing a five-day grace period for quarterly sex offender re-registration. Details of the 13 recommendations that were approved by the Commission in 2011 can be found in Section 4.

In February 2012 the Sex Offense Task Force concluded its final meeting. In March of that same year the task force distributed a final report to the Commission detailing its work and the final outcomes for all the recommendations created by the task force. A copy of this report can be found in Appendix A.

Minority Overrepresentation Committee

One year after the Commission was empanelled in 2007, House Bill 08-1119 directed the Commission to include the study and reduction of racial and ethnic disparities in the justice system within its scope of work. The statute mandates that the Commission review the work and resources compiled by other states in the area of disparity reduction and make recommendations for reform. In 2011 members of the Commission undertook five consecutive months of study focusing on minority overrepresentation (MOR), breaking into small discussion and work groups for at least half of its monthly meetings. Members studied and analyzed potential recommendations for reform. That effort resulted in seven general recommendations developed by the Commission as a whole. The seven recommendations follow.

1. Require comprehensive cultural competency training for all justice agencies and for all treatment and service organizations used by justice system agencies.

2. Justice agencies should track the racial and ethnic diversity of their staff. Every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.
3. State and local justice agencies should collect race and ethnicity information on the populations they serve.
4. Develop a mechanism that requires a specific review of proposed justice legislation to determine whether the legislation will have an adverse impact on minority overrepresentation. Some states refer to this as a Minority Impact Statement (this recommendation was eventually numbered FY12-MOR#1).
5. The Commission should develop and maintain a disproportionate minority representation website to promote recognition and understanding of this problem. The site should have local, state and national data and link to educational resources.
6. To serve as a model for its expectations of criminal justice agencies, the Commission should develop and implement a Commission-specific mentoring program for minority juveniles and young adults who are interested in working in the criminal justice system.
7. The Commission's Sentencing, Drug, and Juvenile Task Forces shall review recommendations to ensure those proposals do not have a negative impact on minority overrepresentation (this recommendation was eventually numbered FY12-MOR#2).

In the summer of 2011, the Commission created and established the MOR Committee to clarify and develop strategies to move forward the above seven recommendations. The MOR Committee held its first meeting in October 2011.

In January 2012 the MOR Committee presented two (#4 and #7) of the aforementioned recommendations to the Commission for voting. The two recommendations concerned a requirement to include gender and racial/ethnicity data in all fiscal notes prepared for criminal justice bills,² and the recommendation for inclusion of analyses of race/ethnicity in task force considerations

and Commission legislative recommendations. Details of both recommendations can be found in Section 4. While both of these recommendations were approved by the Commission, the proposal to include an MOR Impact Statement with fiscal notes written for criminal justice bills entered the 2012 legislative session too late for sponsorship. This recommendation will be considered a Commission bill in the 2013 legislative session if a sponsor can be found.

Final products from the MOR Committee are expected to be completed in the fall of 2012. Due to the time-frame of this report (October 2011 through June 2012) the remaining work by the MOR Committee will be reported in the next annual report.

Bail Committee

In 2008, the Commission approved five recommendations on the topic of bail/bond (L-7, L-8, L-9, BP-39 and BP-40; see the annual Commission Reports at http://cdp-web.state.co.us/cccj/Commission_Reports.html). For a variety of reasons, progress on those five recommendations stalled and none were implemented. In September 2011, the Commission created the Bail Committee to reconsider the five 2008 recommendations. Officials in Jefferson County had been examining issues related to bail/bond reform for several years, and the Commission agreed to work with Jefferson County professionals on this initiative to build on the experience and expertise they had gained and to avoid duplication of efforts.

A small group of individuals from Jefferson County were willing to collaborate with the Commission on this endeavor. In particular, Judge Margie Enquist, who was willing to co-chair the Committee, and Mike Jones, a criminal justice planner for Jefferson County with research and subject matter expertise, agreed to assist the Commission. The membership of this Committee included the individuals from the prosecution and defense bar, members of the Professional Bail Agents of Colorado, pretrial supervision program professionals, law enforcement representatives, a county commissioner and a crime victim representative.

The Bail Committee convened in December 2011 to review the original five recommendations from 2008. The Committee created the following mission statement to guide its work:

² This would result in an MOR Awareness Statement to be attached to criminal justice legislation, and the information presented would include information about the distribution of race/ethnicity among the general Colorado population, and at arrest, filing, conviction, and placement (probation, prison, community corrections).

The mission of the Bail Committee is to conduct a comprehensive review and analysis of the Colorado bail system. This review and analysis should include, but not be limited to: the purpose of bail; current practice; strengths and weaknesses; evidence based practice/emerging best practice locally and nationally; and, identifying gaps between the current system and the preferred system for Colorado. Upon the completion of the analysis, develop recommendations (policy and/or legislative) for submission to the Commission by September 30, 2012, that will enhance the efficiency and effectiveness of the Colorado bail system.

As this report was going to press, the Bail Committee was preparing to send a set of four recommendations to the Commission regarding the implementation of evidence based decision making, the expansion of pretrial services, jail data collection and reporting, and reduction of the use of money bond. It is expected that these proposals will be voted on by the Commission in time for those that pass to be considered during the 2013 legislative session.

As stated previously, due to the time period of this report (covering activities from October 2011 to June 2012) the recommendations created by the Bail Committee during the fall of 2012 will be presented in the 2013 annual report, along with the legislative outcomes of these proposals.

Commission web site

Since the Commission's inception in 2008, Commission staff has worked to ensure all documents, reports and general Commission information are streamlined and accessible. To this end, the staff undertook three initiatives to promote the ease with which information could be accessed.

First, Commission staff tracks the implementation status of all of the Commission's recommendations. This 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." To track the outcome of the recommendations, the Commission's 2009 and 2010 annual reports included a section detailing the implementation status of the Commission's first year recommendations.

However, given the number of new recommendations promulgated each year, Commission members decided in 2011 to remove the performance measures section from the annual report and to instead place the information on its website. In the spring of 2012 Commission staff unveiled its on-line Performance Measures tracking page available on the Commission's website. All of the Commission's recommendations and the status of those recommendations can now be found at www.colorado.gov/ccjj.

Second, in 2012 Commission staff unveiled a newly designed website. The new website contains background information about the Commission and its task forces and Committees. Sections include detailed meeting information and a master calendar. The Resource section also contains a wide variety of publications, and the minority overrepresentation (MOR) section provides race/ethnicity data from judicial districts across the state in addition to general resource information about the topic of MOR. The website can be accessed at www.coloradoccjj.com

Finally, in another effort to promote outreach and communication, the Commission launched a Facebook page in the spring of 2012. This page allows members to interact and provided recent and relevant articles and publications as well as event/meeting information. The Commission's Facebook page can be found at <http://www.facebook.com/CriminalAndJuvenileJusticeCommission>.

Behavioral health initiatives update

Behavioral Health Transformation Council

Prior to August 2012, the Commission's Behavioral Health Work Group acted on behalf of the Behavioral Health Transformation Council where the primary focus of 2011 was on streamlining the mental health and substance abuse processes. In August 2012 the Council held a retreat and decisions were made to restructure the working groups. There will no longer be a specific focus just on criminal justice. Instead, applicable justice system issues will be incorporated into each of the newly formed working groups which are health care reform, service delivery/systems of care, and service gaps.

Certification issues will continue to be examined and solutions pursued under the auspices of the Service Gaps Working Group. This council is staffed and led by the Department of Human Services.

Interagency Council on Correctional Treatment

Based on a Commission recommendation, H.B. 12-1310 combined three committees that formerly existed as the Interagency Advisory Committee on Adult and Juvenile Correctional Treatment (to plan for and distribute drug surcharge funds), S.B. 318 (provides funding for local drug court funds) and H.B. 1352 (distribution of newer general treatment funds). These groups combined into the Interagency Council on Correctional Treatment with representatives from the Departments of Corrections, Public Safety and Human Services; the Judicial Branch, the Sheriffs' Association, prosecutors and the defense bar. The members are responsible for state-wide planning and distribution of the combined fund of several million dollars for offenders' substance abuse treatment, or the treatment of co-occurring substance abuse and mental health disorders.

Three grant-funded Commission initiatives

In addition, some of the Commission's most far-reaching initiatives to date were launched in 2009 when the American Recovery and Reinvestment Act provided over \$4.2M in federal Justice Assistance Grant (JAG) funding for three large projects that were based in part on Commission recommendations and were consistent with the priorities identified by the Commission's Behavioral Health Work Group. The three projects are the Evidence-Based Practices Implementation for Capacity (EPIC) training project (\$2,104,497 grant), the Metro Crisis Services and the Metro Crisis Line (\$745,000 grant), and the Criminal Justice Clinical Specialists program (\$1,496,570 grant). Updates on these initiatives are provided below.

Evidence-based Practices Implementation for Capacity (EPIC)

The Commission is mandated by statute to make recommendations to improve "the effective administration of justice." Some of its earliest recommendations included investing in evidence-based programs (EBP) and practices, and training in EBP for criminal justice professionals.

These recommendations, combined with funding from the Justice Assistance Grant (JAG) program, resulted in the development of a groundbreaking training initiative designed to improve the capacity of five state entities and their affiliates to implement EBP in corrections.

EPIC has a staff of seven professionals dedicated to the effective implementation of the selected EBPs. EPIC is a collaborative effort by the following agencies to increase skill levels among staff who work with offender populations:

- Department of Public Safety/Office of Community Corrections
- Department of Human Services/Division of Behavioral Health
- Department of Corrections/Parole
- Department of Corrections/Institutions
- Judicial Branch/Division of Probation Services

Ultimately, EPIC seeks to change the way correctional agencies conduct daily business by changing how staff interact with offenders. A growing body of research shows that the relationship between the supervising officer and the offender is pivotal in helping the offender engage in the process of personal change towards pro-social behavior. EPIC's work is based on three decades of research which shows that the use of evidence-based correctional practices can reduce recidivism. EPIC is using the knowledge gained from research on EBPs to train individuals in Mental Health First Aid (a 12-hour training course that helps practitioners identify and properly refer for services individuals with behavioral health problems) and Motivational Interviewing, a communication style used by the trained supervising officer that helps the offender develop his/her commitment to the process of personal change. Motivational Interviewing (MI) skill development requires coaching and feedback, and the use of "communities of practice" where EPIC trainees regularly convene to hone their MI skills.

The impact of the EPIC project on trainees has been significant. For example, the average skill level for active listening among Colorado trainees starting EPIC is about 21%. After feedback and coaching sessions, the skill level improves to 86%. To date, EPIC has trained over 2,600 individuals, including 43 train-the-trainers in Mental Health First Aid and 33 MI trainers, building agency and institutional capacity to implement these skills.

In June 2012, the Commission passed a recommendation that the General Assembly reinvest justice cost savings to permanently fund EPIC to continue its state-level training efforts and to allow for the expansion of EBP training to local agencies. For more information on EPIC, please see http://www.colorado.gov/ccjdir/Resources/Resources/Ref/EOC_Vol16_May2012.pdf.

Metro Crisis Services and Metro Crisis Line

Metro Crisis Services, Inc. (an independent non-profit corporation) operates the Metro Crisis Line, a 24-hour crisis hotline staffed with mental health and substance abuse treatment professionals that 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, Arapaho, Boulder, Broomfield, Denver, Douglas, and Jefferson). The goal of the project is to divert individuals who are otherwise likely to enter the criminal justice system by redirecting them to services. The Metro Crisis Line is 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 receives the same level of professional clinical services around the clock regardless of insurance coverage, referral source, or call locale. The system is designed to provide a nexus for emergency calls and service referral options in the area of behavioral health for the public, police, 911 systems, hospitals, and criminal justice professionals.

Work on this effort began more than five years ago when a group of subject matter experts from the seven metro counties gathered to discuss mental health and substance abuse services that were not being accessed by individuals who needed treatment. This original effort was supported by local hospitals, local foundations, and the Robert Wood Johnson Foundation. The group estimated that approximately 681,000 individuals in the seven metro counties would have a diagnosable mental health or substance abuse problem in a twelve month period. Statewide, they estimated this figure to be approximately 1.2 million people. The call center's 800-number receives calls from across the state; no one is turned away, however responders may not have complete information on local referral sources for locations outside the metro area.

Metro Crisis Line staff have also developed a Program Services Director to assist in the referral process and, in 2013, project officials intend to develop one or more Crisis Centers that will operate as urgent care-style clinics for people with mental health or substance abuse emergencies. This initiative is intended to provide an alternative to the use of hospital emergency departments or jail for individuals with behavioral health emergencies.

Criminal Justice Clinical Specialist (CJCS) Program

This project involves the placement of ten specially trained clinicians in behavioral health agencies across the state specifically to provide case management that addresses both the needs of individuals and the requirements of both the justice and behavioral health systems. The Criminal Justice Clinical Specialists receive referrals from probation, police, public defenders, pretrial services, and jail diversion. Upon accepting a referral, the specialist conducts an initial assessment of the client's immediate mental health needs. The specialist 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. The specialists were placed in the following agencies:

- Arapaho 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 specialist provides a point-of-contact for criminal justice agency referrals, coordinate with these agencies, provide direct case management to those referred, and assist in the cost of medication and treatment. The specialist position aligns supervision requirements with community treatment service agencies. These efforts are intended to increase access to appropriate mental health services and reduce criminal recidivism among people with serious mental illness who are involved

with the justice system, a recommendation made by the Commission in 2008.

The project launched an online Client Data Tracking database. By the end of the grant period, the criminal justice clinical specialists served more than 1,000 clients. Eight of the 10 agencies continued the employment of the specialist after the grant period.

Commission operations

During the period covered by this report (October 2011 to June 2012), several issues regarding Commission policies and procedures were reviewed and addressed. Those issues included Commissioners responsibilities regarding legislative matters, attendance at commission meetings, and responsibilities regarding participation in task forces and committees. These are discussed below.

- ***Commissioner responsibilities regarding the legislative process***

Efforts were made to clarify the roles and responsibilities of Commissioners relative to Commission recommendations that become legislative bills. Specifically, members are encouraged to either actively support the proposal or to remain silent. On recommendations that were not passed by the Commission, members are free to act independently on the matter. Legislators who sponsor Commission bills are encouraged to make every effort to maintain the substance of the bill to ensure that it is consistent with the original recommendation. Commission member legislators are encouraged to refrain from sponsoring bills that are contrary to an official vote on a recommendation. In addition, members of a task force or working group are encouraged to abide by this policy and, if a member takes a position contrary to one officially adopted by the Commission or promotes an issue that was not the subject of action by the full Commission, the member should refrain from speaking on behalf of the Commission or its task forces. The full policy on roles and responsibilities for legislative recommendations can be found in Appendix B.

The Commission also clarified that recommendations concerning statutory revisions should contain as much detail as possible, and changes to legislation will be reviewed by members of the Commission's Legislative Committee to ensure consistency between the intent

of the recommendation and the language in the bill. The legislative policy can be found in Appendix C.

- ***Attendance***

During the time period of this report, Commission members addressed concerns about the need for consistent attendance at the monthly meetings. Topics related to recommendations are discussed across several meetings, including the meeting when voting occurs. Members were concerned that lack of consistent attendance would interfere with the knowledge necessary to cast an informed vote. Additionally, since Commission members each represent specific constituencies, it is important that these voices be represented at each Commission meeting.

Consequently, an amendment to the By-Laws (5.7.3) was introduced and approved by the Commission in March 2012. That amendment reads as follows:

Commission members shall regularly attend and actively participate at meetings. Upon demonstration of compelling need, the chairperson of the commission may authorize a commission member to attend and participate in meetings by teleconference. Commission members, other than those appointed by the legislature, with three or more absences per calendar year may be removed from the Commission pursuant to Section 5.8 of these by-laws.

House Bill 10-1352 findings

In May 2010 the Colorado General Assembly passed House Bill 10-1352 which substantially altered Article 18, Title 18, concerning Uniform Controlled Substances. The intent of H.B.10-1352, as specified in its legislative declaration, was to generate savings from reduced drug crime classifications and the resulting sentences, and direct those savings into substance abuse treatment. H.B.10-1352 created a distinction between drug use and possession, and the crimes of manufacturing and distribution. Specifically, the bill lowered the crime classification for use and possession crimes, and directed expected savings to the state's Drug Offender Treatment Fund. H.B.10-1352 also increased the Drug Offender Surcharge for felony, misdemeanor, and petty offenses.

H.B. 10-1352 was the result of recommendations promulgated by the Commission in 2009. The Division of

Criminal Justice (DCJ) was directed to prepare a report on the savings generated by classification changes created by H.B. 10-1352. DCJ researchers examined and compared the cost of sentences received prior to H.B. 10-1352 to sentences received after the bill. The following is a synopsis of 2012 findings:

- For Unlawful Use of Controlled Substance
 - Felony 6 convictions decreased from 76% to 1%;
 - Misdemeanor 2 convictions increased from 2% to 99%;
 - Jail sentences increased from 5% to 23%;
 - DOC sentences decreased from 2% to 0%; and
 - Because of the increase in jail sentences, the cost of sentences increased \$44,989.
- For Distribution, Manufacturing, Dispensing or Sale
 - The threshold for Felony 6 filings went from 1 gram to 4 grams;
 - Possession of more than 4 grams of Schedule I or II drugs, or more than 2 grams Methamphetamine, was reduced to Felony 4 from higher felony classes;
 - The classification for possession of Schedule III through V drugs from higher felony classes was reduced to Misdemeanor 1;
 - The increased felony class for prior convictions was removed;
 - Fewer individuals were sentenced to DOC and Community Corrections;
 - More individuals were sentenced to probation and jail; and
 - The result was \$587,313 in *savings*.
- Marijuana Offenses
 - The threshold quantities for possession offenses for various classifications were increased;
 - A similar classification scheme for marijuana concentrate (< 3oz M1, >3oz F6) was created;
 - The bill reduced crime classification for cultivation and bases it on the number of plants;
 - Felony 4 convictions and Misdemeanor 1 convictions decreased;
 - Convictions for Felony 5 and 6, Misdemeanor 2 and Petty Offense 2 charges increased;

- The distribution of the initial sentence placements stayed relatively the same; and
- The *savings* were \$407,133.

- Taking into account the increased jail costs, the total cost savings were \$949,457.

The full report on H.B. 10-1352 prepared by DCJ can be found at http://www.colorado.gov/ccjdir/Resources/Resources/Report/2012-01_HB1352Rpt.pdf.

Parole administrative release guidelines

H.B. 10-1374, and a prior non-Commission bill (S.B. 09-135), mandated changes to the Parole Board hearing process. These legislative modifications required that the Board record and report the rationale for its decisions, and that the Board work with the Division of Criminal Justice (DCJ) to develop and use release guidelines in making parole release decisions. DCJ research staff are responsible for facilitating the development and implementation of the parole administrative release guidelines, and preparing a report for the General Assembly each November.

This work began in the Commission's Post-Incarceration Supervision Task Force with the development of a draft administrative release guidelines instrument. The final release guideline instrument, implemented in September 2012, identifies thirteen factors used to calculate an offender's risk to reoffend and readiness to re-enter the community. The risk and readiness ratings place an offender into a matrix that offers an advisory decision to release or to defer the inmate. Board members must document reasons for departing from the advisory guideline.

The Parole Board, in conjunction with DCJ, DOC's Office for Information Technology and Office of Planning and Analysis, will automate the guidelines for ease of use. The guidelines are expected to be implemented in the fall of 2012. The 2012 status report prepared by DCJ may be accessed here: http://www.dcj.state.co.us/ors/research_documents.htm

Commission visitors

In the spring of 2012 representatives from the Tennessee Criminal Justice Coordinating Council inquired

about the Commission's accomplishments to date and Commission procedures. The director of the Council reported that its members had been following the work of Colorado's Commission and, impressed with the amount and quality of the work accomplished, requested the opportunity to visit and observe Commission activities. Consequently, in June 2012, a three member delegation from the Tennessee Council spent four days in Colorado attending task force and working group meetings, along with the full Commission meeting. The Colorado Commission welcomed its guests, and was honored to be recognized by the Tennessee Council.

Commissioners meet with the Chair

In March 2012, Commission chair James Davis held one-on-one meetings with each of the CCJJ commissioners to address any concerns they might have had about the Commission and to discuss the vision for the future of the Commission in light of its July 2013 repeal date in the enabling statute. Mr. Davis reported that there was a consensus among all commissioners that the work done by the group was highly valuable and everyone supported the Commission's work continuing. Commissioner's also discussed the challenges involved in reaching consensus as the issues of interest become more complex and controversial.

Members took this opportunity to discuss the value of the Commission's founding principles of reducing recidivism, reducing the cost of incarceration and enhancing public safety, and the need to consider evidence-based research. Members also mentioned to Chairperson Davis that the Commission should recognize that it can only control the crafting of legislative recommendations and not the changes that may occur in the legislative process.

Finally, concern was expressed that important issues resulting in potential recommendations were being discussed and sometimes tabled by task forces before the Commission as a whole had an opportunity to review the material. In this way, important ideas may not make it out of a task force for presentation to the Commission. Commission members expressed that they wanted to see what the task forces are working on and make decisions themselves about ideas that should or should not move forward. This portion of Mr. Davis' conversations with commissioners was consistent with the understanding, previously voiced at Commission meetings, that task forces should not filter or restrict the presentation of ideas to the Commission.

Summary

In sum, this section reviewed the work of the Commission and its task forces, committees and working groups from October 2011 through June 2012. The Commission made significant progress by continuing the work of the previously established four task forces (Drug Policy, Comprehensive Sentencing, Juvenile Justice and Sex Offense) along with the creation of two new committees (Minority Overrepresentation and Bail). Additionally, among the Commission's activities were the transfer of Commission documents and resources to the web, along with an updated Commission website with a section devoted to minority overrepresentation, and the implementation of a Facebook page. In addition, important work continued on the three behavioral health initiatives that received more than \$4M in grant funding. Also, the Commission produced 23 recommendations, 4 of which became legislation passed by the 2012 General Assembly. Additional information regarding the 2011 recommendations and subsequent 2012 legislation is reported in Section 4.



SECTION 4

Recommendations and outcomes

This section presents the recommendations approved by the Commission between October 2011 and June 2012, the time period covered by this report. Some recommendations were drafted into legislation for the 2012 legislative session (see table below) while others were policy recommendations that established the foundation for future work by the Commission.

The following is a list of bills passed during the 2012 legislative session and signed by the Governor that began as Commission recommendations.³

Five sets of recommendations produced by five task forces and committees are presented in this section in the following order: Drug Policy; Comprehensive

Table 4.1. 2012 Legislative Session “Commission Bills”

Bill number	Bill title (and originating Commission recommendation)
House Bill 12-1346	Concerning sex offender registration - FY12-SO1 Registration requirements for sex offenders who lack a fixed residence - FY12-SO16 Allow a five-day grace period for quarterly sex offender re-registration
House Bill 12-1310	Concerning changes to statutory provisions related to criminal proceedings, and, in connection therewith, making an appropriation FY12-D1 Legislative proposal for treatment funding consolidation and reporting
House Bill 12-1213	Concerning the penalty for a person who escapes from a place of confinement other than a county jail or correctional facility FY12-S1 Remove walkaway escapes as crimes eligible for habitual criminal sentencing

³ The full text of each bill may be found on the Commission’s website at www.colorado.gov/ccjdir/L/Legislation.html.

Sentencing; Sex Offenses; Juvenile Justice; and Minority Overrepresentation. This section also includes one recommendation that supports the EPIC project (described previously).

Please note that the numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, “FY12”), a letter indicating the task force from which

the recommendation originated (e.g., Drug Policy Task Force by a “D”, Comprehensive Sentencing Task Force by an “S”, and Sex Offense Task Force by an “SO”), and a sequence number. Also, note that some recommendations may appear to have been skipped or missing. If a recommendation was numbered and presented to the Commission, but not approved, it is not included in this report.

Drug policy recommendations

FY12-D1 Treatment funding consolidation and reporting

Consolidate the Drug Offender Surcharge Cash Fund (to include the H.B.1352 general fund appropriation) and the Drug Treatment Fund (created in S.B.03-318) into a single fund (Correctional Treatment Cash Fund). In addition, consolidate the three oversight bodies into a single decision making body.

Discussion

The purpose of this recommendation is to increase efficiency and foster cross-agency collaboration in the delivery of treatment to people under supervision of the criminal justice system and to enhance reporting requirements on specific treatment outcomes and programs. Currently, there are three major funding sources for substance abuse treatment for individuals in the criminal justice system: Drug Offender Surcharge revenues, funding per H.B.10-1352, and funding per S.B.03-318. Each of these three sources has its own fund in state statute, has a separate oversight and/or decision-making body, and has different permissible uses of the funds and reporting requirements.

The following was recommended to the Colorado Commission Criminal and Juvenile Justice by the Interagency Advisory Committee on Adult and Juvenile Correctional Treatment (IACAJECT), Interagency Task Force on Treatment (ITFT), the HB-1352 Advisory Board and the Commission’s Drug Policy Task Force:

- a. *Consolidation of the three oversight bodies into a single decision making body would include one voting representative from each of the eight statutorily named departments, divisions, offices or professional associations: Department of Corrections, Judicial Department (Division of Probation Services), Department of Public Safety, Department of Human Services, Office of the State Public Defender, Colorado District Attorneys’ Council, County Sheriffs of Colorado, and Colorado Counties, Inc.*
- b. *The combined fund would retain interest earned and at year-end all unexpended monies would remain in the account as re-appropriated funds.*
- c. *The statutorily identified purposes for the funds will be consolidated and expanded to include data collection, analysis and administrative support. The following are approved purposes:*
 1. *Screening,*
 2. *Testing,*
 3. *Assessment/Evaluation,*
 4. *Education,*

5. *Statewide conference,*
 6. *Treatment for assessed substance use and co-occurring disorders,*
 7. *Recovery support services to be defined by oversight body, and*
 8. *Data collection, data analysis, and administrative support.*
- d. *The funded programs would serve the following populations:*
1. *Diversion: adult and juvenile,*
 2. *Probation: adult and juvenile,*
 3. *Parole: adult and juvenile,*
 4. *Community corrections, and*
 5. *Jail.*
- e. *Data collection and reporting on treatment outcomes for people in the criminal justice system should be enhanced. Although treatment-related data is already collected by treatment providers through the DACOD system and maintained by the Division of Behavioral Health (DBH), there has not been a history of data sharing and reporting with criminal justice system stakeholders. DBH would be required to report the following data by treatment program (organized by Judicial District) to the committee:*
1. *Referring criminal justice agency,*
 2. *Treatment program name and location (county and judicial district),*
 3. *Client name and demographic information including gender and ethnicity,*
 4. *Level of treatment delivered,*
 5. *Actual length of time in treatment,*
 6. *Discharge status (with reasons for negative discharge), and*
 7. *Special licenses held by the treatment program (offender, youth, gender specific, bi-lingual, etc.).*
- f. *It is not currently possible to include either a client's assessed treatment need level or a risk/need assessment score. DACODS does not have fields for either of those variables. DBH has been working on an electronic dashboard report about each treatment program that receives funding. The dashboard will include performance indicators such as: length of stay in treatment, any reduction of drug use during course of treatment, any change in employment status, any change in housing, and any change in criminal involvement. A prototype of the dashboard should be in operation by the end of 2012. DBH is also in the process of developing the Offender Management System (OMS) which would ultimately envision linking databases with probation, parole and drug courts to collect and report progress information on all offender clients receiving treatment services. The concept is similar to the DUI/DWAI Reporting System which shares information that has been collected with DUI clients in treatment who are also under criminal justice supervision.*
- g. *Local 318 boards should be re-constituted to include additional members: one from community corrections boards, one local parole representative, and one representative from local government to represent county jails.*
- h. *The role of the local 318 boards should be expanded to coordinate with the single decision making body regarding the allocation of treatment dollars from all funding sources in order to meet local treatment needs.*
- i. *The single decision-making body shall prepare an annual treatment funding plan pursuant to a formula that will allow for a fair and reasonable allocation of resources throughout all*

regions of the state. The single decision-making body shall develop this plan based on the available data and in consultation with the local 318 boards. The re-constituted 318 boards should send recommendations to the single decision-making body based on assessed local needs and the information available to the re-constituted boards regarding what the most effective treatment programs would be to meet those needs.

- j. Additional stakeholders may be invited to participate in meetings but would not be voting members. The oversight body would be responsible for developing the funding allocation formula between agencies, determining how to gather input on local needs, the annual conference budget, developing a mechanism to retain drug courts as a high priority, defining a plan for data collection and analysis, and any written guidelines or policies governing the operations of the oversight body.*

FY12-D2 Public safety requires sober driving

Public safety requires that drivers not be impaired from alcohol, cannabis, or any other medication or drug, while operating a motor vehicle.

Discussion Drunk drivers are involved in 25% of motor vehicle fatalities, and many accidents involve drivers who test positive for cannabis.⁴ Public education campaigns and proactive, preventive messaging regarding cannabis use and driving should follow the lead of MADD campaigns.

FY12-D3 Standardized fatality data collection and sharing

Government entities should expand and improve efforts to collect and share data related to drugged driving and traffic fatalities with the purpose of producing a single annual report on the characteristics of all drivers (living and dead) involved in fatality crashes.

Discussion Strategies to decrease traffic fatalities and incidents are dependent on our understanding of these events. Current data collection efforts involve multiple parties and multiple reporting efforts, and face regulatory limits and HIPPA protections, resulting in a fragmented approach with problems of data quality and missing data. The Colorado Department of Transportation should be given the authority to convene relevant parties to facilitate the production of an annual motor vehicle incident and fatality report.

FY12-D4 Increased number of Drug Recognition Experts

Increase the number of Drug Recognition Experts (DREs) ensuring sufficient coverage in rural and frontier areas of the state.

Discussion A Drug Recognition Expert (DRE) is a law enforcement officer who has received specialized training and has been certified by the International Association of Chiefs of Police to evaluate and determine if a subject is behaviorally impaired, what drug category(s) is/are causing the impairment or if a medical condition is causing the impairment. A law enforcement officer will

⁴ Sewell, R.A., Poling, J., & Sofuoglu, M. (2009). The effect of cannabis compared with alcohol on driving. *American Journal of Addiction*, 18(3), 185-193.

often ask for assistance from a specialized DRE officer if they are having difficulty determining the cause of impairment. As of 2010, Colorado had 173 certified DRE officers. The number of DRE officers is growing and is estimated to soon reach 200; however experts estimate the need to be 250-300.⁵ Rural and frontier parts of the state frequently do not have immediate access to DREs. Funding for more DREs is a challenge at both state and local levels.

FY12-D5 Public education regarding marijuana dispensaries

A strong public education campaign that focuses on disseminating information to dispensary owners, customers, and the public is a priority to enhance public safety on the roadways.

- a. The campaign should mention the severe impairment that results from the combined use of marijuana and alcohol.
- b. A sub-campaign should target young people because they are prone to engage in risky behavior.
- c. The Department of Revenue Medical Marijuana Enforcement Division should impose labeling requirements on receipts from dispensaries stating that patients should not consume cannabis and drive.

Discussion Impaired driving significantly decreases public safety. The success of the MADD campaigns should inspire the method and underscore the need for a broad-based public education campaign aimed at the public, youth, and medical marijuana patients.

Comprehensive sentencing recommendations

FY12-S1 Remove walkaway escapes as eligibility for habitual criminal sentencing

Remove walkaway escapes as crimes eligible for habitual criminal sentencing by adding the following subsection to C.R.S. 18-1.3-801:

(2.6) THE PROVISIONS OF PARAGRAPHS (1.5) AND (2)(A) SHALL NOT APPLY TO A CONVICTION OF FELONY ESCAPE PURSUANT TO SECTION 18-8-208(1), (2) AND (3) OR FOR A CONVICTION OF ATTEMPT TO ESCAPE PURSUANT TO SECTION 18-8-208.1(1), (1.5) AND (2) UNLESS THE PLACE OF CUSTODY OR CONFINEMENT IS A CORRECTIONAL FACILITY AS DESCRIBED IN SECTION 17-1-104.3 OR FROM INSIDE A COUNTY JAIL FACILITY OR FROM TRANSPORT IN PHYSICAL CUSTODY.

Discussion The Commission recommends eliminating walkaway offenses from habitual criminal sentencing. The habitual criminal statute currently treats all felonies of the same class alike, regardless of the type of crime committed (with the exception of drug offenses). Walkaway escapes are, however, different than escapes from a DOC facility.

⁵ Glenn Davis, Manager of Impaired Driving Programs, Office of Transportation Safety, Colorado Department of Transportation.

On average, three individuals per year escape from a secure DOC facility.⁶ Nevertheless, over 1,100 individuals are annually convicted of escape for behaviors that range from running from a police car to failing to return on time to a halfway house. For the same behavior that results in issuing an arrest warrant and pursuing a technical violation for those on probation, hundreds of individuals on parole and in community corrections receive lengthy prison sentences because of their criminal justice status.⁷

This proposal would eliminate walkaway offenses from eligibility as either a presenting offense or a predicate offense for purposes of habitual criminal charges. It would effectively define a “walkaway” offense as an escape or attempted escape from a place of custody or confinement other than a Department of Corrections (DOC) facility. Escape from a DOC facility would still be habitual-eligible as either a present offense or a predicate offense. Note that this proposal would in no way change the sentencing options currently available for escapes from the DOC, or for any criminal offense other than walkaways.

Sex offense recommendations

FY12-SO1 Sex offender registration for those who lack a fixed residence

Clarify and create in statute the registration requirement for and self-verification by sex offenders who “Lack a Fixed Residence.”⁸

Discussion The registration of offenders who lack a fixed residence (often referred to as “transient” or “homeless”) is implied but not explicitly defined in Colorado statute. Law enforcement jurisdictions have differing policies regarding the treatment of such offenders. In some cases, the registration of these offenders is accepted while in others it is not and offenders are often encouraged to travel to a jurisdiction where their registration will be accepted. This places an unfair burden on “accepting jurisdictions.” Additionally, the case of *People v. Griffin* (Case no. 08CA2694) regarding intent to reside is pending a review by the Colorado Supreme Court and may require statutory clarification regarding the definition of “residence.”⁹

Colorado statute(s) should be modified to clarify the responsibility of offenders who lack a fixed residence to register and to require that law enforcement jurisdictions accept the registration of such offenders. Offenders who find themselves without a traditional, stable living situation will not be referenced as “transient” or as “homeless,” but as offenders who “lack a fixed residence.” The terms “transient” and “homeless” have specific definitions in Federal law that direct specific provision of services and individual rights. The following nine items comprise this single recommendation.

⁶ For more information, please see pages 49-50 of the DOC’s *Statistical Report: Fiscal Year 2010*, available at http://www.doc.state.co.us/sites/default/files/opa/StatRprt_FY10_1.pdf. Of the two escapes from DOC in 2010, one occurred while the inmate was out for court.

⁷ For more information, please see page 160 of the Commission’s 2008 annual report, Appendix I, “Escape: Mandatory Consecutive Sentences” a position paper prepared by the Post-Incarceration Supervision Reentry Task Force, available at www.colorado.gov/ccjdir/Resources/Resources/Report/2008-12_CCJAnnRpt.pdf.

⁸ The elements and language of the original recommendations are presented here, but may have been amended or modified in the related bill passed as H.B. 2012-1346.

⁹ A petition for a writ of certiorari was granted by the Colorado Supreme Court on October, 11, 2011 (No. 11SC351). There were no further developments on the case at the time of this report.

- a. **“Lacks a Fixed Residence.”** Add definition: C.R.S. 16-22-102 (7.6) – “lacks a fixed residence” means that a person does not have a living situation that meets the definition of residence pursuant to C.R.S. 16-22-102(5.7). This includes, but is not limited to, outdoor sleeping locations or any public or private locations not designed as **TRADITIONAL LIVING regular sleeping accommodations**. “Lacks a fixed residence” also includes public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the owner or facility providing the housing consents to the person utilizing the location as his or her temporary address for purposes of registration as a person without a fixed residence and if the person remains at the location for less than 30 days.

Also, Move 16-22-102 (5.7) to 16-22-102 (7.5).

[PLEASE NOTE: This definition will conflict with language in 16-22-105(3) which says, “Notwithstanding the existence of any other evidence of intent, occupying or inhabiting a dwelling for more than 14 days in a thirty day period shall constitute the establishment of a residence.” The language that eventually passed (in H.B. 12-1346) was amended to read “for less than 14 days.” Also, language throughout article 22 of title 16 is currently in dispute in the case of *People vs. Griffin* (08CA2694) regarding “intent” to reside. Modifications of the above (and other conforming revisions of statute) may be required by the Griffin case.]

- b. **Shelters as a residence.** Amend definition in 16-22-102(5.7) of “residence” to clarify that it only applies to occupancy in a shelter for a time period longer than 30 days.
- c. **Requirement to register and to accept registrations.** Change 16-22-108 – each person who is required to register pursuant to 16-22-103 shall register with local law enforcement in each jurisdiction in which the person resides “or is located without a fixed residence pursuant to 16-22-102 (7.6).” Law enforcement is required to accept the registration of offenders who “lack a fixed residence.”

If the location at which a person attempts to register would be in violation of a local ordinance, law enforcement shall so advise the offender. The offender shall then be required to secure alternate residence and remain in compliance with all other provisions of this article. Law enforcement officials are not required to accept a person’s registration to an unlawful location or residence.

- d. **“Geo-locations.”** Change 16-22-109(1) – If a person lacks a fixed residence as defined in 16-22-102 (7.6), the person shall be required to provide to local law enforcement the public or private locations where the offender habitually sleeps. This can include, but is not limited to cross streets, intersections, direction and identifiable landmarks of the locations.
- e. **Self-verification.** Change 16-22-109 (3.5) to add:

1. If a person lacks a fixed residence, verification of the location reported by the registrant shall be accomplished by self-verification reporting as described in section 16-22-
(INSERT THE NEW SECTION REFERENCE HERE THAT DEFINES THE ENHANCED REPORTING REQUIREMENTS/VERIFICATION EVENT AS SEEN BELOW IN “1g”).

Also, add language that says:

2. “Law enforcement shall not be required to verify the physical address of an offender who is required to comply with section 16-22-.... (AS SEEN in “1g”)

- f. **Residence/non-fixed residence changes.** Add new section regarding changing to and from “lacks a fixed residence:”
 1. A person with a residence as defined in 16-22-102 (7.5) who vacates the residence and, subsequently, has no fixed residence shall report that change in status within 5 days after ceasing to have a fixed residence and shall comply with the requirements of 16-22 – (AS SEEN IN “1g”) and 16-22-109 for the time period during which the person has no fixed residence.
 2. A person who lacks a fixed residence as defined in 16-22-102 (7.6) who obtains fixed residence as defined in 16-22-102 (7.5) shall report the change in status within 5 days after establishing the residence.
 3. Make clear that failure to comply with this section is a failure to report a change of address and punishable as provided under current law as a failure to register.
- g. **Reporting requirements and penalties.** Add a new section regarding the self-verification process describing the enhanced reporting requirements and penalties:
 1. In addition to any other requirements pursuant to this section, a person who is subject to annual registration and without a fixed residence shall, **AT LEAST** every 90 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, **WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN 5 BUSINESS DAYS BEFORE OR AFTER THE OFFENDER'S BIRTHDATE.** The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
 2. In addition to any other requirements pursuant to this section, a person who is subject to quarterly registration pursuant to this section and who is without a fixed residence shall, **AT LEAST** every 30 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification reporting shall be accomplished consistent with any time schedule established by the local jurisdiction, **WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN 5 BUSINESS DAYS BEFORE OR AFTER THE OFFENDER'S BIRTHDATE.** The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
 3. An offender without a fixed residence who fails to comply with the provision of this section shall be subject to prosecution for the crime of failure to verify location. Failure to verify location by an offender without a fixed residence shall constitute a criminal misdemeanor offense punishable by a sentence to the county jail of up to 30 days. A third or subsequent offense shall constitute a misdemeanor offense punishable by a sentence of up to one year in the county jail. Failure to verify location shall not be labeled a sex offense per 16-11.7-102(2)(a)(II) which would subject the offender to the requirements of evaluation and identification required in CRS 16-11.7-104 and the treatment required by CRS 16-11.7-105.
- h. Determine whether the drafter thinks this offense should be in Title 18.

Offender notification. Amend section 16-22-106 and 107 to require a notification to any offender required to register, pursuant to this section, of the duty to report the change of address to “lacks a fixed residence” status and the requirement to comply with the statutory provisions regarding self-verification.

- i. **Data reporting.** Add language that requires local law enforcement and CBI to report to CDPS information regarding the number of offenders who lack a fixed residence and any other information requested by the Department to follow up with this legislation to assess its effectiveness and/or need for modification.

FY12-SO2 Collaborative sex offender training modules

Develop collaborative training programs.

Individuals from, but not limited to, the Sex Offender Management Board, the Judicial Department, law enforcement, the Department of Corrections, and the EPIC project¹⁰ shall collaborate to develop and provide a uniform curriculum of sex offender training modules that could be offered to various groups (supervising officers, treatment providers, community corrections staff, State Board of Parole, judges, legislators, law enforcement, etc.).

Discussion It is anticipated that training could be offered more frequently and consistently through this collaborative effort to address such topics as the Lifetime Supervision Act, an overview of the SOMB standards, motivational interviewing, and trauma informed treatment.

FY12-SO3 Improve the collection and consistency of Lifetime Supervision data

Improve the collection and consistency of data to evaluate the impact of the Lifetime Supervision Act.

A committee shall be created including, but not limited to, representatives from the Department of Corrections, the Colorado Bureau of Investigation, the Division of Criminal Justice, and the Judicial Branch, to evaluate and improve the consistency of data collected across agencies to facilitate the study of the impact of the Lifetime Supervision Act. The collaborating agencies should identify and resolve the gaps and inconsistencies in electronic databases. The agencies shall review and provide recommendations to improve the annual Lifetime Supervision Report by July 1, 2012.

FY12-SO5 Enhanced per diem funding differential for sex offenders in community corrections

Support funding an enhanced per diem differential (\$33.02) for community corrections programs that house sex offenders and that applies to specialized programming for Diversion, Transition, Condition of Probation and Condition of Parole clients.

Discussion When appropriate and warranted, based on evidence-based practice and public safety considerations, some sex offenders could be managed and treated more cost effectively in community corrections. The goal of this recommendation is to increase community corrections placement options and bed capacity for sex offenders, expanding the use of this intermediate sanction as an alternative to placement in the Department of Corrections or Probation. Without this intermediate option, the only options become either the most expensive but, possibly, excessive option – incarceration – or the less expensive but, possibly, insufficient options – probation or parole.

¹⁰ The Evidence-Based Practice Implementation for Capacity project would require funding to continue beyond its current conclusion date. See <http://www.colorado.gov/ccjdir/L/EPIC.html>.

Currently, the funding for the enhanced per diem differential is supported by a Justice Assistance Grant that expires at the end of FY 2012. Without the enhanced per diem, most programs will not accept sex offenders because higher paid, specialized staff are required to work with these individuals. Additional costs to programs are incurred because sex offenders are less able to pay the required subsistence fees due to the greater challenge for sex offenders to find and maintain employment while also paying for treatment and monitoring costs. The Office of Community Corrections (OCC) at the Division of Criminal Justice (DCJ) would define the program criteria and specialized scope of work to qualify for the enhanced per diem which would include having a minimum of five beds in each funded program.

FY12-SO7 Study potential savings of placing sex offenders in community corrections

Charge the Sex Offense Task Force or a succeeding group as designated by the Commission to work in collaboration with, but not limited to, the Division of Criminal Justice, the Department of Corrections, and Probation, to study the potential, long-term cost savings related to the placement of sex offenders in community corrections (with enhanced per diem) relative to the costs of the retention of sex offenders in or revocation of sex offenders to DOC. This work must be completed by January 1, 2012.

Discussion It is expected that placement option in community corrections for sex offenders determined to be appropriate for this placement will result in a cost savings relative to placement or retention in the Department of Corrections. This cost savings could fund the increased availability and enhanced per diem of this intermediate community corrections option. The average length of stay for the treatment of specific and appropriate offenders may be shorter in community corrections than if these offenders are retained or returned to the Department of Corrections. Due to the potential waiting time for treatment and for parole release, the length of stay in DOC is likely to extend well beyond the stay for the necessary treatment in community corrections.

FY12-SO8 Training for community corrections board members

The Office of Community Corrections in the Division of Criminal Justice in collaboration with the SOMB shall work with the CACCB¹¹ and the GCCAC¹² on training for community corrections board members regarding the Lifetime Supervision Act and sex offender supervision.

Discussion Community corrections board members are especially cautious about accepting sex offenders into community corrections programs. Training to address the standards and specifics of treatment and supervision of sex offenders could enhance board member understanding and inform board members' evaluation of applications by sex offenders for community corrections programs.

FY12-SO9 Increase funding for DOC beds in community corrections for sex offender treatment

Support funding for the Division of Parole in the Department of Corrections to negotiate an increase in the number of beds in Community Corrections agencies and programs to house condition of parole sex offenders for residential sex offender treatment.

¹¹ Colorado Association of Community Corrections Boards.

¹² Governor's Community Corrections Advisory Council.

<i>Discussion</i>	<i>Currently there are only ten beds funded through HB10-1360 that are designated for the residential treatment of sex offenders in community corrections.</i>
FY12-SO10	Increase treatment resources at the Department of Corrections
	Increase treatment resources at DOC.
<i>Discussion</i>	<i>Expanded treatment resources would increase the availability of treatment for wait-listed lifetime supervision offenders (those with indeterminate sentences) and provide treatment to sex offenders with determinate sentences.</i>
FY12-SO11	Funding for sex offender victim specialist
	Support continued funding of the Department of Corrections' Sex Offender Victim Specialist to work in coordination with the sex offender treatment program to continue the current services.
<i>Discussion</i>	<i>This Specialist is assigned to provide education to victims who are enrolled in the DOC victim notification program regarding sex offender treatment in DOC, to prepare victims for parole release applications hearings, and to prepare victims for the possible re-entry of sex offenders into the community. If victims are amenable, the specialist can provide an opportunity for victims to be informed of and to provide input into the offender's treatment. The funding for this grant-funded position expires September 30, 2012.</i>
FY12-SO12	Training for parole board members
	Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.
<i>Discussion</i>	<i>The necessity for this training should be added to the list of topics in the annual training schedule in the Colorado State Board of Parole Policy Manual. C.R.S. 17-2-201 (1) (e) requires specific hours of parole board member training and (3) (c) requires a Parole Board Policy Manual.</i>
FY12-SO13	Feedback to treatment staff when sex offenders are denied parole
	The State Board of Parole and treatment staff of the Department of Corrections' Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.
<i>Discussion</i>	<i>The intent is to increase the communication between parole board members and treatment staff, while avoiding the establishment of specific benchmarks for release.</i>
FY12-SO15	Child safety zones in lieu of residency restrictions
	The Commission supports a statewide public policy and an education strategy led by the Sex Offender Management Board to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.

Discussion Colorado municipalities and counties continue to implement sex offender housing restrictions and zoning ordinances which reduce options for housing that promote public safety. These actions tend to result in a domino effect causing adjacent municipalities and counties to also implement restrictions to discourage the “re-settlement” of displaced offenders. These restrictions result in negative consequences that impede better public safety options for managing sex offenders on probation and parole. Child safety zones define protected areas that sex offenders are prohibited from entering except in limited and safe circumstances, such as schools and childcare facilities.¹³ These zones are a more effective public safety option than is typically included among the conditions required of sex offenders who are under parole or probation supervision. **The size and design of child safety zones should be carefully defined to prevent the zone from becoming a de facto residency restriction.** The Commission will monitor the educational efforts and will consider legislative solutions on this matter at some point in the future after the 2012 legislative session. See the Child Safety Zones fact sheet (Appendix D) and the Housing Restrictions fact sheet (Appendix E).

This recommendation is consistent with a resolution by the Sex Offender Management Board, passed September 19, 2011, that states:

“The Board does not support sex offender residency restrictions or zoning restrictions that are counter productive to the effective supervision of sex offenders.”

FY12-SO16 Five-day grace period for quarterly sex offender re-registrants

Modify C.R.S. 16-22-108(1)(d)(I) to allow quarterly re-registration to occur within five business days before or after the offender’s required re-registration date.¹⁴

Discussion For quarterly sex offender registrants, the existing statute required re-registration to occur on an exact date or on the first business day following a weekend or holiday. This change will allow an offender who registers quarterly to re-register within five business days before or after their required re-registration date. For annual registrants, this “five-day” modification was enacted in H.B. 11-1278. This recommendation will allow consistency across re-registration procedures for all sex offenders and for law enforcement.

Proposed modification (language to be refined by the drafter):

C.R.S. 16-22-108. Registration – procedure – frequency – place – change of address – fee.

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subparagraph (II) of this paragraph (d) has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subparagraph (II) of this paragraph (d), the person may petition the court for discontinuation of the duty to register as provided in section 16-22-113 (1) (d). In addition to registering as required in paragraph (a) of this subsection (1), such person shall reregister **IN** ninety days **WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR** after the date he or she was released from incarceration for commission

¹³ This wording is from the statement on Sex Offender Residency Restrictions in Iowa by the Iowa County Attorneys Association (December 11, 2006).

¹⁴ The elements and language of the original recommendations are presented here, but may have been amended or modified in the related bill passed as H.B. 2012-1346 (Section 4).

of the offense requiring registration, or **IN** ninety days **WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR** after the date he or she received notice of the duty to register, if the person was not incarcerated, and **EVERY NINETY DAYS WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR AFTER THE NINETIETH DAY** thereafter until such person's birthday. Such person shall reregister **WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THE PERSON'S** on his or her birthday and shall reregister every ninety days **WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR AFTER THE NINETIETH DAY** thereafter. ~~If a person's birthday or other reregistration day falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday or other reregistration day.~~ Such person shall reregister pursuant to this paragraph (d) with the local law enforcement agency of each jurisdiction in which the person resides **WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER** on the reregistration date, in the manner provided in paragraph (a) of this subsection (1).

Juvenile justice recommendations

FY12-JJ1 Educational materials provided to juvenile detention facilities

School boards to provide education and materials to juvenile detention facilities as outlined in the Colorado model content standard¹⁵ by revising C.R.S. 19-2-402(3)(a) as follows:

The school boards of the school districts that a juvenile detention facility serves or in which the juvenile detention facility is located shall satisfy the requirements as defined by C.R.S. 22-33-104¹⁶ and shall furnish teachers, materials, and content that are designed to meet the Colorado model content standards.

Discussion The average stay for a juvenile in detention is 14.2 days.¹⁷ The Commission feels that it is important that the education of a juvenile continue during this time period.

It is also important that such education is standardized enough so that when a juvenile is able to return to school, he or she will be able to continue without disadvantage. Surveys have been sent to eight state-operated detention facilities to assess the uniformity of education provided by the school districts within the catchment area of the detention facilities. Three responses do not show consistency in hours or curriculum.

It is also believed that the existing requirement that the detaining judge request that educational services be provided is unnecessary and obsolete.

The existing statute reads as follows: The school boards of the school districts that a juvenile detention facility serves or in which the juvenile detention facility is located, when requested by the judge of the juvenile court, shall furnish teachers and any books or equipment needed for the proper education of such juveniles as may be present in the juvenile detention facility.

¹⁵ A brief explanation of such standards can be found at <http://www.cde.state.co.us/standardsandinstruction/>.

¹⁶ C.R.S. § 22-33-104 as amended is commonly known as the Compulsory School Attendance Law.

¹⁷ *Management Reference Manual*, CDHS Office of Children, Youth and Family Services, Division of Youth Corrections, FY 09-10, Page V, January, 2011. Available at: http://www.Colorado.gov/cdhsdyc/Resources-Publications/MRM0910_FINAL.pdf.

This proposal removes the necessity of requiring the judge to order education. It also clarifies the necessity of the school district to provide appropriate education as currently required by the Colorado model content standards.

Minority overrepresentation recommendations

FY12-MOR1 Minority data in legislative fiscal notes

Modify legislation to include gender and minority data in all fiscal notes written for criminal justice bills.

Discussion Minority data information is intended to provide a general overview of supervised populations by gender, race and ethnicity, where available, as well as census data. An example of “Minority Data Information” in the sample Iowa fiscal note (attached as Appendix F) should be used as a model.

FY12-MOR2 Minority impact statements in Commission legislative recommendations

Commission legislative recommendations shall include a minority impact statement.

Discussion The following tables show that, depending on race and ethnicity, the percentages of Colorado minorities at every stage of the criminal justice system diverge from the state population figures, especially for Blacks. Because Hispanics are often combined with Whites, it is difficult to determine an accurate percentage of Hispanics at criminal justice decision points.¹⁸ 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 many stages of the criminal justice system exceeds their proportion of the state population.

¹⁸ The U.S. Census collects ethnicity data (Hispanic vs. non-Hispanic) separately from race.

Table 4.2. 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
General Population									
Colorado Adult Population ^a	4,497,149	1.2%	2.7%	4.4%	89.5%	2.0			100.0%
Arrests^b									
Colorado Adult Arrests ^c	158,062	0.8%	0.9%	11.8%	86.1%			0.6%	100.0%
Filings^d									
Filings	39,464	0.7%	0.7%	11.8%	9.5%	75.3%	1.3%	0.6%	100.0%
Findings^e									
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%
Sentence^f									
Other ^g	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.

^a <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.).

^b 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.

^c Hispanic ethnicity is included in the White race in Uniform Crime Report data.

^d 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).

^e FY 2009 criminal court filing data were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

^f Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

^g "Other" sentences include things such as fines/fees/surcharges, community service, and treatment. This list is not all inclusive.

Table 4.3. Colorado racial disparity in adult population: Probation, DOC and parole, 2008/2009

	N	American Indian	Asian	Black	Hispanic	White	Other	Unknown	Total
Probation Sentence ^a (cases)	13,469	0.6%	1.0%	11.4%	9.5%	76.4%	1.0%	0.1%	100.0%
Probation Terminations^b (people)									
Successful	23,415	0.8%	1.1%	5.5%	12.5%	79.5%	0.7%		100.0%
Technical Violation	2,722	1.7%	0.5%	11.3%	17.0%	68.9%	0.5%		100.0%
New Crime	1,762	0.9%	1.1%	11.6%	18.1%	68.0%	0.4%		100.0%
Absconder	4,506	2.8%	0.7%	10.7%	19.7%	65.7%	0.5%		100.0%
DOC Sentence ^c (cases)	6774	0.6%	0.7%	17.5%	12.1%	68.0%	0.9%	0.3%	100.0%
Department of Corrections (people)									
Admits ^d	10,861	3.2%	0.8%	19.0%	33.3%	43.7%			100.0%
Stock Population ^e	22,961	3.0%	0.0%	20.0%	32.0%	45.0%			100.0%
YOS Admits ^f	61	0.0%	0.0%	16.0%	62.0%	21.0%			100.0%
COPD Convictions ^g	19,602	2.8%	80.0%	21.6%	34.6%	40.1%			100.0%
Parole									
Parole Population ^h	11,439	2.0%	1.0%	16.0%	34.0%	47.0%			100.0%
Technical Parole Returns (no new crime) ⁱ	3773	3.8%	0.7%	22.7%	29.1%	43.8%			100.0%
Parole Returns with a New Crime ^j	1132	4.0%	0.9%	24.7%	29.2%	41.3%			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.

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.

^a Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

^b Office of Probation Services, Colorado State Court Administrator's Office. Includes adult terminations from regular, intensive, and private probation.

^c Initial sentences imposed in FY 2009 were extracted from ICON via the Colorado Justice Analytics Support System (CJASS).

^d 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.

^e FY 2009 DOC annual report available at <http://www.doc.state.co.us/statistical-reports-and-bulletins>.

^f Ibid.

^g Office of Planning and Analysis, Colorado Department of Corrections

^h FY 2009 DOC annual report available at <http://doc.state.co.us/statistical-reports-and-bulletins>.

ⁱ 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.

^j Ibid.

Evidence-Based Practices Implementation for Capacity (EPIC) recommendation

FY13-EPIC1 Permanently fund EPIC (Evidence-Based Practices Implementation for Capacity) for the purposes of sustainability and expansion statewide

The General Assembly should invest in EPIC as an evidence-based initiative that is consistent with the Commission's mandate to focus on *"evidence-based recidivism reduction initiatives and the cost-effective expenditure of limited criminal justice funds."* Permanent funding ensures the expansion of EPIC statewide, and would expand training to local justice agencies.

Discussion

This skill building initiative began as a result of Commission recommendations to expand professional training in the juvenile and criminal justice systems and to expand the use of evidence-based practices (EBPs) for the purposes of reducing recidivism. EPIC is a collaborative effort among the Departments of Public Safety, Corrections, Human Services, and the Judicial Branch to increase skill levels of those who work with the offender population. EPIC consists of a team of professionals who coach and facilitate "communities of practice" to change the way supervising officers and prison staff interact with offenders. EPIC uses methods from the field of implementation science to train practitioners in Motivational Interviewing (MI) and Mental Health First Aid, and will soon begin to train on the Level of Supervision Inventory (LSI), a needs assessment tool used across agencies in Colorado. The EPIC model seeks to marry EBPs with effective implementation practices to enhance the likelihood of sustainable change for both the practitioner and ultimately the offender.

Motivational interviewing has been widely studied and is considered an evidence-based practice. EPIC's focus on MI is strategic in that it acts as a gateway skill set to enhance the effectiveness of other complementary EBPs. In fact, MI was selected as the initial intervention to be disseminated across agencies because of its focus on foundational communication skills and its ability to strategically elicit and focus on conversations that address criminogenic need (criminogenic needs are those problem areas that lead to criminal behavior). This approach, based on years of research, is based on its substantial success in the medical and addictions fields.

EPIC began with grant funds from the U.S. Department of Justice and in three years has trained and coached over 2,000 professionals from dozens of agencies in probation, parole, behavioral health, and community corrections. Staff from ten Colorado prisons are also involved in EPIC. The training provides professionals with new knowledge and skills to enhance the offender's willingness to engage in the process of personal change. Deciding to change lifestyle behaviors and personal attitudes and beliefs that lead to criminal behavior is critical to prevent a return to criminal behavior. Trainees learn to work with offenders to help them identify problems and help them seek opportunities to change. Trainees also learn to work with offenders' ambivalence about the change process.



SECTION 5

Next steps

Task forces and committees

As this report goes to press, the Commission continues to support the following three task forces and two committees:

- Drug Policy Task Force
(Grayson Robinson, Chair)
- Comprehensive Sentencing Task Force
(Jeanne Smith, Chair)
- Juvenile Justice Task Force
(Regina Huerter, Chair)
- Minority Over-representation Committee
(James Davis, Chair)
- Bail Committee
(Doug Wilson and Judge Margie Enquist, Co-chairs / Grayson Robinson, Former Chair)

The work of the three task forces will continue through 2012 and will likely carry on into 2013 as was originally expected. Both Committees have a defined, targeted area of work and will likely conclude at the end of 2012.

Also, as this report goes to press, recommendations are being presented to the Commission by the three task forces and both Committees in preparation for the FY2013 legislative session.

Governor's mandate to Commission

At the conclusions of the 2012 legislative session the Governor signed HB12-1310 mandating the Commission to further study, develop, and report on a proposal by December 15, 2012 for the reform of Article 18, Title 18 in Colorado Revised Statutes, Uniformed Controlled Substance Act. The Commission sent this mandate to the Drug Policy Task Force since the Structure Working Group of this task force has been studying and making recommendations in this area for three years. At this writing, a new sentencing grid for drug offenses and related recommendations were being prepared for presentation to the Commission. The December 15 report will be available on the Commission's web site at www.colorado.gov/ccjj.

Term limit turnover

The Commission's enabling legislation, HB07-1538, states the membership terms. In the summer of 2012, eight Commissioner's terms expired. As this report goes to print, new members were participating in orientation sessions prepared by staff.

Commission termination date

House Bill 07-1538, the Commission's enabling legislation, calls for the Commission to terminate in July 2013. At the time of this report, Commissioners are in support of a bill that would extend the work of the Commission. This proposed legislation would eliminate

the termination date and, once a sponsor is found to carry the bill, will be presented to the General Assembly during the 2013 legislative session.

Summary

The Commission will continue to meet on the second Friday of the month, and information about the meetings, documents from those meetings, and information about the work of the task forces and Committees can be found on the Commission's web site at www.colorado.gov/ccjj. The Commission expects to present its next written report in the summer of 2013. That report will encompass the activities of the Commission during FY2013.



SECTION 6

Appendices

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Appendix A:
Sex Offense Task Force Final Report

Colorado Commission on Criminal and Juvenile Justice
Sex Offense Task Force
FINAL REPORT with REVISIONS
March 9, 2012
(revised December 2012)

The Sex Offense Task Force concluded its final meeting on February 29, 2012. The original version of this report was posted March 12, 2012. *This report was revised to reflect recent decisions by the Commission regarding sex offense-related recommendations and legislative outcomes.*

TASK FORCE MEMBERS (FY 2011 & FY 2012)

- | | |
|---|---|
| <ul style="list-style-type: none"> • David Kaplan*, Chair • Steve Siegel*, 2nd Judicial District representing Victim's Organizations • Norma Anderson, Former State Senator • Michael Anderson, CO State Board of Parole • Maureen Cain, CO Criminal Defense Bar • Peggy Heil, Department of Corrections • Erin Jemison, Colorado Coalition Against Sexual Assault • Laurie Rose Kepros, Sex Offender Defense, State Public Defender's Office | <ul style="list-style-type: none"> • Dianna Lawyer-Brook, Boulder Community Corrections Board, SOMB and CURE • Chris Lobanov-Rostovsky, DCJ/SOMB • Richard Schneider, SO Registration, Denver PD • Adrian Van Nice, CDAC and 20th Judicial District, Boulder DA's Office • Angel Weant, Sex Offender Programs, Probation Division <p>Members during FY 2011:</p> <ul style="list-style-type: none"> ○ Ted Tow, previously CDAC ○ Scot Smith, Judicial |
|---|---|

*Commission members

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CCJJ: Sex Offense Task Force - FINAL REPORT

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TASK FORCE FEEDBACK TO CCJJ

Upon its conclusion, the Sex Offense Task Force offered the following points of general feedback to the Commission.

#1. The Sex Offense Task Force issues a unanimous proposal that the Commission address the following as a priority for future efforts:

- **CCJJ should seat a Data Task Force or Subcommittee** to explore the improvement and consistency of criminal justice data collection systems and to propose methods for simpler access to criminal justice data (by approved agencies) for the purpose of research and evaluation. If such a task force is seated, the Sex Offense Task Force requests the inclusion of sex offender-related data as part of the charge to this task force. **and/or**
- **CCJJ should, as part of the work of the above or as a separate effort, define and recommend a Colorado Institute of Data and Public Policy** (modeled after the Washington State Institute of Public Policy) to improve criminal justice data collection systems, to propose and establish methods for simpler access to criminal justice data, and to conduct criminal justice policy and cost benefit research. The definition of the Policy Institute should differentiate the role and function of the proposed Policy Institute, the Colorado Legislative Council, the Joint Budget Committee, and the various research units located within state agencies.

#2. The Sex Offense Task Force issues a divided* position statement that the following is a priority for the State of Colorado in regard to compliance with the Adam Walsh Act:

The Sex Offense Task Force urges the State of Colorado to not implement any requirement that employer address be a part of the public access portion of the sex offender registry.

* Reflects a 6-5 (2 absent) vote in favor on practical considerations, although all agree philosophically with the position.

The following are supplemental advisements regarding CCJJ-approved, FY12 Sex Offense Task Force recommendations for the purpose of tracking for performance measurement:

FY12-SO2. Develop collaborative training programs.

Recommend the Sex Offender Management Board organize a collaborative effort (with identified partners, such as agency and/or EPIC staff) to provide regular training through agency resource sharing and report back to CCJJ by January 2013. Recommend the collaborative effort also address the training needs identified in FY12-SO12: Parole Board training on Lifetime Supervision.

FY12-SO3. Improve the collection and consistency of data to evaluate the impact of the lifetime supervision act.

See "Recommendations for Future CCJJ Priorities" above.

FY12-SO12. Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.

As mentioned previously as a part of this recommendation, it is recommended that regular lifetime supervision sentence training be included in the Parole Board Policy Manual.

FY12-SO13. The State Board of Parole and treatment staff of the DOC Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.

Recommend the Parole Board and SOTMP develop a system of feedback, document the process in the parole board manual and report back to the CCJJ by February 2013.

FY12-SO15. The commission supports a statewide public policy and an education strategy led by the Sex Offender Management Board to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.

Request a report to CCJJ on January 11, 2013 by the Sex Offender Management Board on the efforts and accomplishments regarding work with stakeholders, including representatives of Colorado counties and municipalities, to provide education about sex offender housing restrictions and ordinances and evidence-based practices of shared living arrangements. When these efforts are determined to be sufficient, the outcome should be a recommendation for legislation to address restrictions and ordinances regarding sex offender housing.

FINAL REPORT

March 9, 2012; Revised December 2012

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FY 2012 RECOMMENDATIONS

Provides the complete list of FY 2012 recommendations approved by CCJJ through the March 2012 meeting.

CCJJ-PASS: 14-2-3 (84% - 16%). APPROVED October 14, 2011.

FY12-SO1. Clarify and create in statute the registration requirement for and self-verification by sex offenders who “Lack a Fixed Residence.”

DISCUSSION: The registration of offenders who lack a fixed residence (often referred to as “transient” or “homeless”) is implied but not explicitly defined in Colorado statute. Law enforcement jurisdictions have differing policies regarding the treatment of such offenders. In some cases, the registration of these offenders is accepted and in other cases the registration of these offenders is not accepted and offenders are encouraged to travel to a jurisdiction where their registration will be accepted. This places an unfair burden on “accepting jurisdictions.” Additionally, the People v. Griffin case regarding intent to reside is pending in Colorado courts and may require statutory clarification regarding the definition of “residence.”

Colorado statute should be modified to clarify the responsibility of offenders, who lack a fixed residence, to register and to require that law enforcement jurisdictions accept the registration of such offenders. Offenders who find themselves without a traditional, stable living situation will not be referenced as “transient” or as “homeless,” but as offenders who “lack a fixed residence.” The terms “transient” and “homeless” have specific meaning defined by Federal law that direct specific provision of services and individual rights. The following 9 items comprise this single recommendation.

- a) **“Lacks a Fixed Residence.”** Add definition: 16-22-102 (7.6) – “lacks a fixed residence” means that a person does not have a living situation that meets the definition of residence pursuant to 16 -22-102(5.7). This includes, but is not limited to, outdoor sleeping locations or any public or private locations not designed as **TRADITIONAL LIVING** ~~regular sleeping~~ accommodations. “Lacks a fixed residence” also includes public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the owner or facility providing the housing consents to the person utilizing the location as his or her temporary address for purposes of registration as a person without a fixed residence and if the person remains at the location for less than 30 days.

Also, Move 16-22-102 (5.7) to 16-22-102 (7.5).

[PLEASE NOTE: This definition will conflict with language in 16-22-105(3) which says, “Notwithstanding the existence of any other evidence of intent, occupying or inhabiting a dwelling for more than 14 days in a thirty day period shall constitute the establishment of a residence.” Also, language throughout article 22 of title 16 is currently in dispute in the case of People vs. Griffin (08CA2694) regarding “intent” to reside. Modifications of the above (and other conforming revisions of statute) may be required by the Griffin case.]

- b) **Shelters as a residence.** Amend definition in 16-22-102(5.7) of “residence” to clarify that it only applies to occupancy in a shelter for a time period longer than 30 days.
- c) **Requirement to register and to accept registrations.** Change 16-22 -108 -- each person who is required to register pursuant to 16-22-103 shall register with local law enforcement in each jurisdiction in which the person resides “or is located without a fixed residence pursuant to 16-22-102 (7.6).” Law enforcement is required to accept the registration of offenders who “lack a fixed residence.”
If the location at which a person attempts to register would be in violation of a local ordinance, law enforcement shall so advise the offender. The offender shall then be required to secure alternate residence and remain in compliance with all other provisions of this article. Law enforcement officials are not required to accept a person’s registration to an unlawful location or residence.

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FY12-SO1 (continued)

- d) **“Geo-locations.”** Change 16-22-109(1) – If a person lacks a fixed residence as defined in 16-22-102 (7.6), the person shall be required to provide to local law enforcement the public or private locations where the offender habitually sleeps. This can include, but is not limited to cross streets, intersections, direction and identifiable landmarks of the locations.
- e) **Self-verification.** Change 16-22-109 (3.5) to add:
 - (I) If a person lacks a fixed residence, verification of the location reported by the registrant shall be accomplished by self-verification reporting as described in section 16-22- (INSERT THE NEW SECTION REFERENCE HERE THAT DEFINES THE ENHANCED REPORTING REQUIREMENTS/VERIFICATION EVENT AS SEEN BELOW IN “1g”).
 - Also, add language that says:
 - (II) “Law enforcement shall not be required to verify the physical address of an offender who is required to comply with section 16-22-.... (AS SEEN in “1g”)
- f) **Residence/non-fixed residence changes.** Add new section regarding changing to and from “lacks a fixed residence”:
 - i. a person with a residence as defined in 16-22-102 (7.5) who vacates the residence and, subsequently, has no fixed residence shall report that change in status within 5 days after ceasing to have a fixed residence and shall comply with the requirements of 16-22 – (AS SEEN IN “1g”) and 16-22-109 for the time period during which the person has no fixed residence.
 - ii. A person who lacks a fixed residence as defined in 16-22-102 (7.6) who obtains fixed residence as defined in 16-22-102 (7.5) shall report the change in status within 5 days after establishing the residence.
 - iii. Make clear that failure to comply with this section is a failure to report a change of address and punishable as provided under current law as a failure to register.
- g) **Reporting requirements and Penalties.** Add a new section regarding the self-verification process describing the enhanced reporting requirements and penalties:
 - i. In addition to any other requirements pursuant to this section, a person who is subject to annual registration and without a fixed residence shall, **AT LEAST** every 90 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, **WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN 5 BUSINESS DAYS BEFORE OR AFTER THE OFFENDER’S BIRTHDATE.** The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
 - ii. In addition to any other requirements pursuant to this section, a person who is subject to quarterly registration pursuant to this section and who is without a fixed residence shall, **AT LEAST** every 30 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification reporting shall be accomplished consistent with any time schedule established by the local jurisdiction, **WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN 5 BUSINESS DAYS BEFORE OR AFTER THE OFFENDER’S BIRTHDATE.** The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.

CCJJ: Sex Offense Task Force - FINAL REPORT**5****FY12-SO1 (continued)**

- iii. An offender without a fixed residence who fails to comply with the provision of this section shall be subject to prosecution for the crime of failure to verify location. Failure to verify location by an offender without a fixed residence shall constitute a criminal misdemeanor offense punishable by a sentence to the county jail of up to 30 days. A third or subsequent offense shall constitute a misdemeanor offense punishable by a sentence of up to one year in the county jail. Failure to verify location shall not be labeled a sex offense per 16-11.7-102(2)(a)(II) which would subject the offender to the requirements of evaluation and identification required in CRS 16-11.7-104 and the treatment required by CRS 16-11.7-105.
- iv. Determine whether the drafter thinks this offense should be in Title 18.
- h) **Offender notification.** Amend section 16-22- 106 and 107 to require a notification to any offender required to register, pursuant to this section, of the duty to report the change of address to “lacks a fixed residence” status and the requirement to comply with the statutory provisions regarding self-verification.
- i) **Data reporting.** Add language that requires local law enforcement and CBI to report to CDPS information regarding the number of offenders who lack a fixed residence and any other information requested by the Department to follow up with this legislation to assess its effectiveness and/or need for modification.

CCJJ-PASS: 19-0-0 (100% - 0%). APPROVED October 14, 2011.**FY12-SO2. Develop collaborative training programs.**

Individuals from, but not limited to, the Sex Offender Management Board, the Judicial Department, law enforcement, the Department of Corrections, and the EPIC project* shall collaborate to develop and provide a uniform curriculum of sex offender training modules that could be offered to various groups (supervising officers, treatment providers, community corrections staff, State Board of Parole, judges, legislators, law enforcement, etc.). It is anticipated that training could be offered more frequently and consistently through this collaborative effort to address such topics as information on the Lifetime Supervision Act, an overview of the SOMB standards, motivational interviewing, and trauma informed treatment.

(*The Evidence-Based Practice Implementation for Capacity project would require funding to continue beyond its current funding conclusion date. See cdpsweb.state.co.us/cccj/epic.html)

CCJJ-PASS: 17-1-0 (100% - 0%). APPROVED October 14, 2011.**FY12-SO3. Improve the collection and consistency of data to evaluate the impact of the lifetime supervision act.**

A committee shall be created including, but not limited to, representatives from the Department of Corrections, the Colorado Bureau of Investigation, the Division of Criminal justice, and the Judicial Branch, to evaluate and improve the consistency of data collected across agencies to facilitate the study of the impact of the Lifetime Supervision Act. The collaborating agencies should identify and resolve the gaps and inconsistencies in electronic databases. The agencies shall review and provide recommendations to improve the annual Lifetime Supervision Report by July 1, 2012.

CCJJ: Sex Offense Task Force - FINAL REPORT**6****CCJJ-FAIL: 4-7-7 (61% - 39%). APPROVED October 14, 2011.****FY12-SO4. Identify a group to study sex offender specialty courts and determine their viability in Colorado.**

Gather information on other states' experiences with sex offender courts to determine the viability of sex offender courts in Colorado and whether such courts would increase communication, consistency, and public education and would result in more informed decisions regarding sex offender management in the criminal justice system. At a minimum, this group could include representatives from the Judicial Department, the Sex Offender Management Board, and the Department of Corrections and the work should be conducted within the Refinement Working Group of the Sex Offense Task Force, or a succeeding group as designated by the CCJJ.

TABLED October 14, 2011. APPROVED March 9, 2012.**CCJJ-PASS: 16-6-0 (100% - 0%)****FY12-SO5. Support funding an enhanced per diem differential (\$33.02) that applies to specialized Diversion, Transition, Condition of Probation and Condition of Parole community corrections programs for sex offenders.**

The goal of this recommendation is to increase community corrections placement options and bed capacity for sex offenders as an intermediate alternative to placement in the Department of Corrections or Probation. When appropriate and warranted, based on evidence-based practice and public safety considerations, some sex offenders could be managed and treated more cost effectively in community corrections. Without this intermediate option, the only options become either the most expensive but, possibly, excessive option - incarceration - or the less expensive but, possibly, insufficient option - probation or parole.

Currently, the funding for the enhanced per diem differential is supported by a Justice Assistance Grant that expires at the end of FY 2012. Without the enhanced per diem, most programs will not accept sex offenders because higher paid, specialized staff are required to work with sex offenders. Additional costs to programs are incurred because sex offenders are less able to pay the required subsistence fees due to the greater challenge for sex offenders to find and maintain employment while paying for treatment and monitoring costs. The Office of Community Corrections (OCC) at the Division of Criminal Justice (DCJ) would define the program criteria and specialized scope of work to qualify for the enhanced per diem which would include having a minimum of 5 beds in each funded program. The implementation of this recommendation would be most effective in conjunction with Recommendation #6.

TABLED October 14, 2011. MOOT - Task Force recommends no further action. No action taken by CCJJ.**FY12-SO6. Change the DCJ OCC rule to remove the 30-day funding limit for treatment of sex offenders in community corrections.**

There are several instances where Probation has requested that the Office of Community Corrections (OCC) of the Division of Criminal Justice fund the placement of COPr (Condition of Probation) sex offenders in community corrections. The OCC enforces a contractual funding imperative that places a 30-day maximum for regular COPr offenders. This 30-day period is not a sufficient length of stay for sex offenders in residential supervision and treatment. Given an enhanced differential per diem, the OCC should change this limitation for COPr sex offenders in order to provide a sufficient length of stay for supervision and treatment. This recommendation would enhance the implementation of Recommendation #5.

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CCJJ-PASS: 14-3-1 (94% - 6%). APPROVED October 14, 2011.

FY12-SO7. Charge the Refinement Working Group of the Sex Offense Task Force or a succeeding group as designated by the CCJJ to work in collaboration with, but not limited to, the Division of Criminal Justice, the Department of Corrections, and Probation, to study the potential, long-term cost savings related to the placement of sex offenders in community corrections (with enhanced per diem) relative to the costs of the retention of sex offenders in or revocation of sex offenders to DOC. This work must be completed by January 1, 2012.

It is expected that the intermediate placement option in community corrections for sex offenders determined to be appropriate for this placement will result in a cost savings relative to placement or retention in the Department of Corrections. This cost savings could fund the increased availability and the enhanced per diem of this intermediate community corrections option. The average length of stay for the treatment of specific and appropriate offenders may be shorter in community corrections than if these offenders are retained or returned to the Department of Corrections. Due to the potential wait time for treatment and for parole release, the length of stay in DOC is likely to extend well beyond the stay for the necessary treatment in community corrections. This recommendation would support the implementation of Recommendations #5 and 6.

CCJJ-PASS: 18-0-0 (100% - 0%). APPROVED October 14, 2011.

FY12-SO8. The Office of Community Corrections in the Division of Criminal Justice in collaboration with the SOMB shall work with the CACCB* and the GCCAC^ on training for community corrections board members regarding the Lifetime Supervision Act and sex offender supervision.

Community corrections board members are especially cautious about accepting sex offenders into community corrections programs. Training to address the standards and specifics of treatment and supervision of sex offenders could enhance understanding and inform the evaluation of sex offender application for community corrections programs. (*Colorado Association of Community Corrections Boards; ^Governor's Community Corrections Advisory Council)

TABLED October 14, 2011. APPROVED March 9, 2012.

CCJJ-PASS: 19-3-0 (100% - 0%)

FY12-SO9. Support funding for the Division of Parole (DOC) to negotiate an increase in the number of beds in Community Corrections agencies and programs to house COPa (condition of parole) sex offenders for residential sex offender treatment.

Currently there are only 10 beds funded through HB10-1360 that are designated for the residential treatment of sex offenders in community corrections.

CCJJ-PASS: 18-1-1 (95% - 5%). APPROVED October 14, 2011.

FY12-SO10. Increase treatment resources at DOC.

Expanded treatment resources would increase the availability of treatment for the backlog of wait-listed lifetime supervision offenders (indeterminate sentence) and provide treatment to sex offenders with determinate sentences.

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TABLED October 14, 2011. APPROVED March 9, 2012.

CCJJ-PASS: 19-2-1 (95% - 5%)

FY12-SO11. Support continued funding of the Sex Offender Victim Specialist (SOVS) FTE to work in coordination with the sex offender treatment program to continue the current DOC grant-funded SOVS services.

This Specialist is assigned to provide education to victims (enrolled in the DOC victim notification program) regarding sex offender treatment in DOC, to prepare victims for parole release applications hearings, and to prepare victims for the possible re-entry of sex offenders into the community. If victims are amenable, the specialist can provide an opportunity for victims to be informed of and to provide input into the offender's treatment. The funding for this grant-funded position expires September 30, 2012.

CCJJ-PASS: 19-0-0 (100% - 0%). APPROVED October 14, 2011.

FY12-SO12. Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.

The necessity for this training should be added to the list of topics in the annual training schedule in the Colorado State Board of Parole Policy Manual [CRS 17-2-201 (1) (e) requires specific hours of parole board member training and (3) (c) requires a Parole Board Policy Manual].

CCJJ-PASS: 17-1-1 (95% - 5%). APPROVED October 14, 2011.

FY12-SO13. The State Board of Parole and treatment staff of the DOC Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.

Without creating liberty benchmarks, the intent is to increase the communication between parole board members and treatment staff.

CCJJ-FAIL: 3-1-16 (20% - 80%). APPROVED October 14, 2011.

FY12-SO14. Recommend there be multiple-member review of all parole release applications to the State Board of Parole (full board or 3-person review) when a sex offender meets all SOMB treatment criteria.

This practice would avoid placing a single individual Parole Board member in a position to be solely accountable for sex offender release application decisions whether the decision is to release or to defer. This policy should be included in the Colorado State Board of Parole Policy Manual [CRS 17-2-201 (3) (c)].

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CCJJ-PASS: 11-3-4 (78% - 22%). APPROVED October 14, 2011.

FY12-SO15. The Commission supports a statewide public policy and an education strategy led by the Sex Offender Management Board to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.

DISCUSSION: Colorado municipalities and counties continue to implement sex offender housing restrictions and zoning ordinances which reduce options for housing that promotes public safety. These actions tend to result in a domino effect causing adjacent municipalities and counties to also implement restrictions to discourage the “re-settlement” of displaced offenders. These restrictions result in negative consequences that impede better public safety options for managing sex offenders on probation and parole. Child safety zones define protected areas that sex offenders are prohibited from entering except in limited and safe circumstances. These zones are a more effective public safety option that is typically included among the conditions required of sex offenders who are under parole or probation supervision. The size and design of child safety zones should be carefully defined to prevent the zone from becoming a de facto residency restriction. The Commission will monitor the educational efforts and will consider legislative solutions on this matter at some point in the future after the 2012 legislative session.

This recommendation is consistent with a resolution by the Sex Offender Management Board, passed September 19, 2011, that states:

“The Board does not support sex offender residency restrictions or zoning restrictions that are counter-productive to the effective supervision of sex offenders.”

Child Safety Zone

Protected areas that sex offenders would be prohibited from entering except in limited and safe circumstances. Such areas might include schools and childcare facilities.

[Statement on Sex Offender Residency Restrictions in Iowa, Iowa County Attorneys Association (December 11, 2006).]

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CCJJ-PASS: 14-7-0 (100% - 0%). APPROVED October 14, 2011.**FY12-SO #16.****Modify CRS 16-22-108 (1) (d) (I) to allow quarterly re-registration to occur within 5 business days before or after the offender's required re-registration date.**

DISCUSSION: For quarterly sex offender registrants, statute currently requires re-registration to occur exactly on a required date or on the first business day following a weekend or holiday. This change will allow an offender who registers quarterly to re-register within 5 business days before or after their required re-registration date. For annual registrants, this "5-day" modification was already enacted by HB11-1278. This recommendation will allow consistency across re-registration procedures for all sex offenders and for law enforcement.

Proposed modification:**[The language will be refined by the drafter.]****16-22-108. Registration - procedure - frequency - place - change of address - fee.**

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subparagraph (II) of this paragraph (d) has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subparagraph (II) of this paragraph (d), the person may petition the court for discontinuation of the duty to register as provided in section 16-22-113 (1) (d). In addition to registering as required in paragraph (a) of this subsection (1), such person shall reregister **IN** ninety days **WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR** after the date he or she was released from incarceration for commission of the offense requiring registration, or **IN** ninety days **WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR** after the date he or she received notice of the duty to register, if the person was not incarcerated, and **EVERY NINETY DAYS WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR AFTER THE NINETIETH DAY** thereafter until such person's birthday. Such person shall reregister **WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER THE PERSON'S** ~~on his or her~~ birthday and shall reregister every ninety days **WITH A GRACE PERIOD OF FIVE BUSINESS DAYS BEFORE OR AFTER THE NINETIETH DAY** thereafter. ~~If a person's birthday or other reregistration day falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday or other reregistration day.~~ Such person shall reregister pursuant to this paragraph (d) with the local law enforcement agency of each jurisdiction in which the person resides **WITHIN FIVE BUSINESS DAYS BEFORE OR AFTER** ~~on~~ the reregistration date, in the manner provided in paragraph (a) of this subsection (1).

STATUTE SHOULD MAKE CLEAR...

Regardless of the actual date of registration during the period 5 days before or 5 days after the required registration date, the 90-day period for re-registration is always calculated:

- A. From the offender's OFFICIAL date of re-registration, or
- B. Upon applicability, from the offender's BIRTHDATE (following the transition to the offender's birthdate as the OFFICIAL re-registration date).

In other words, re-registering on any day, 5 days before or after the "required date" or birthdate, is the equivalent of registering on the "required date" or birthdate. An earlier or later actual date of re-registration (by no more than the 5 days before or after) does not shift any required future date of re-registration.

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FY 2011 RECOMMENDATIONS

Provides the complete list of FY 2011 recommendations approved by CCJJ during FY 2011.

PASS or other notations indicate the outcome from the December 10, 2010 and February 11, 2011 meetings of the Colorado Commission on Criminal and Juvenile Justice. The Sex Offense Task Force seated two working groups. The recommendations are organized according to the work group from which they originated: the Registration Working Group (#1-16) and the Refinement Working Group (#17-19).

PASS - FY11-SO #1. Create a simultaneous termination hearing/de-registration process for those juvenile offenders currently eligible for de-registration under CRS 16-22-113 (e).

Reason: Many offenders who are eligible to de-register fail to do so or are uninformed of the option.

Proposed fix: Amend the relevant statutes as necessary in CRS Titles 16 and 19. This would not change the substance of current law in CRS 16-22-113, only the procedures. This does not alter which juvenile offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties and the court will have treatment records for juvenile. This should apply to juvenile probation and juvenile parole. Victim notice would still be accomplished.

PASS - FY11-SO #2. Create a simultaneous termination hearing/de-registration process for adult offenders with a deferred judgment who are currently eligible for de-registration under CRS 16-22-113 (d).

Reason: Many offenders who are eligible to de-register fail to do so or are uninformed of the option.

Proposed fix: Amend the relevant statutes as necessary in CRS Titles 16 and 18. This would not change the substance of current law in CRS 16-22-113, only the procedures. This does not alter which adult offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties. This would not change the substance of current law, only the procedures. Victim notice would still be accomplished.

PASS - FY11-SO #3. Modify CRS 16-22-108 (7) to establish a consistent fee structure for sex offender registration.

Reason: This is a state-wide issue raised by law enforcement requiring attention due to the reported problems created by the inconsistencies in registration procedures and the wide disparity in registration fees. The registration fee was not intended to pay for the administration of registries. It is more important that sex offenders are registered than strict adherence to the collection of the registration fee.

Proposed fix: This recommendation would include the following statutory elements:

- Change CRS 16-22-108 to allow for a fee up to \$25.00 for each initial annual or quarterly re-registration.
- No allowable fee for updates to address, employment, email, etc or registration cancellations.
- It would allow for collection of fees civilly and would include specific language that allows a jurisdiction to waive the registration fee, if the offender is indigent.
- This would require law enforcement to accept sex offender registrations, even if the offender does not have the money to pay the fee.

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PASS - FY11-SO #4. Create a simultaneous registration/cancellation of registration process in CRS 16-22-108 for registrations within Colorado.

Reason: This is a state-wide issue raised by law enforcement. The lag time between a cancellation and a new registration would be eliminated along with unnecessary failure to register charges. This would reduce the burden on offenders who are often required to return to a previous location to cancel a registration before being allowed to register in a new jurisdiction.

Proposed fix: Law enforcement agencies would simultaneously submit a notice of registration cancellation to a previous jurisdiction when registering an offender. This would be more efficient for offenders and law enforcement. This would only apply to registries within the state of Colorado. An electronic registration system would allow for streamlined implementation of this improved process. For example, the Sex Offender Tracking and Registration (STAR) system developed in Douglas County and being implemented in Denver County is a secure, web-based system to manage sex offender registration, allowing for multi-jurisdictional access.

PASS - FY11-SO #5. Add and clarify language in CRS 16-22-106 (3) (a) regarding the registration of offenders sentenced to or held in jail.

Reason: The added language requires re-registration of offenders held in jail pending court disposition for more than 5 days. This re-registration and notification to law enforcement will prevent unnecessary investigation into offenders presumed to have failed to register. The clarified language for offenders sentenced to jail would specify that the re-registration requirement applies to offenders sentenced to jail for *any offense* and not just sex offenses and would include a notification to the previous registration jurisdiction.

Proposed fix: Amend CRS 16-22-106 (3) (a) (I) as follows:

IF A PERSON WHO IS REQUIRED TO REGISTER PURSUANT TO 16-22-103 IS HELD IN A COUNTY JAIL PENDING COURT DISPOSITION FOR ANY OFFENSE FOR MORE THAN FIVE (5) WORKING DAYS, THE SHERIFF OF THE COUNTY IN WHICH THE COUNTY JAIL IS LOCATED, OR HIS OR HER DESIGNEE, SHALL TRANSMIT TO LOCAL LAW ENFORCEMENT OF THE JURISDICTION IN WHICH THE PERSON WAS LAST REGISTERED AND THE CBI CONFIRMATION OF THE PERSON'S REGISTRATION ON A STANDARDIZED FORM PROVIDED BY THE CBI, USING THE ADDRESS OR ADDRESSES AT WHICH THE PERSON WILL RESIDE WHILE IN CUSTODY OF THE COUNTY JAIL, AND INCLUDING THE PERSON'S DATE OF BIRTH, A CURRENT PHOTOGRAPH OF THE PERSON, AND THE PERSON'S FINGERPRINTS.

(II) If a person who is required to register pursuant to 16-22-103 is sentenced to a county jail FOR ANY OFFENSE, the sheriff of the county in which the county jail is located, or his or her designee, as soon as possible following sentencing, shall transmit TO LOCAL LAW ENFORCEMENT OF THE JURISDICTION IN WHICH THE PERSON WAS LAST REGISTERED AND the CBI confirmation of the person's registration on a standardized form provided by the CBI, using the address or addresses at which the person will reside while in custody of the county jail, and including the person's date of birth, a current photograph of the person, and the person's fingerprints.

(III) The provisions of this paragraph (II) shall apply to persons sentenced on or after January 1, 2005.

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PASS* - FY11-SO #6. Define “transient” in statute and require registration of offenders who are homeless or have no permanent residence.

* The Sex Offense Task Force withdrew the original recommendation at the December 10, 2010 CCJJ meeting without a vote. This revision was approved by CCJJ at the February 11, 2011 CCJJ meeting.

Reason: This is a state-wide issue raised by law enforcement. The current method to register and track transient offenders is inadequate.

Proposed fix: This recommendation includes the following statutory elements for drafting:

- Define “transient” in statute.
- Require law enforcement to register transient offenders.

Note: The Sex Offense Task Force and its working groups will continue to collaborate with law enforcement on the elements of the recommendation that were removed. These elements include the intent to develop a self-verification procedure for homeless offenders that is not overly punitive to offenders or burdensome to law enforcement.

PASS - FY11-SO #7. Modify CRS 16-22-108 (1) (b) to allow annual re-registration to occur within 5 business days of the offender’s birthday.

Reason: The change would eliminate a burden to time registration exactly on or around an offender’s birth date. The statute currently requires re-registration to occur on an offender’s birthday or on the first business day following a weekend or holiday birthday. The change will allow an offender to register within 5 business days before or after the offender’s birthday.

Proposed fix: Amend CRS 16-22-108 (1) (b) as follows:

Except as otherwise provided in paragraph (d) of this subsection (1), each person who is required to register pursuant to section 16-22-103 shall reregister ~~on~~ WITHIN FIVE BUSINESS DAYS OF the person's first birthday following initial registration and annually ~~on~~ WITHIN FIVE BUSINESS DAYS OF the person's birthday thereafter. ~~If a person's birthday falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday.~~ Such person shall reregister pursuant to this paragraph (b) with the local law enforcement agency of each jurisdiction in which the person resides ~~on~~ WITHIN FIVE BUSINESS DAYS OF his or her birthday, in the manner provided in paragraph (a) of this subsection (1).

PASS - FY11-SO #8. Modify CRS 16-22-108 (3) to add “within 5 business days” as the time required to re-register due to the changes in life circumstances listed in the statute.

Reason: The statute currently includes no time reference for the requirement to re-register. The change will provide a clear expectation for this registration requirement to occur within 5 business days before or after the change in offender circumstances detailed in the subsection.

Proposed fix: Amend 16-22-108 (3) as follows: Any person who is required to register pursuant to section 16-22-103 shall be required to register WITHIN 5 BUSINESS DAYS each time such person:

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PASS - FY11-SO #9. Add to the place of trial venues in CRS 18-1-202 (12) the county where an offender completed his/her last registration.

Reason: This is a state-wide issue raised by law enforcement. The change provides another option for law enforcement to deal with offenders who fail to register.

Proposed fix: Amend CRS 18-1-202 (12) as follows:

If a person commits the offense of failure to register as a sex offender as provided in section 18-3-412.5, the offense is committed and the offender may be tried in the county in which the offender was released from incarceration for commission of the offense requiring registration or in the county in which the offender resides or in the county in which the offender is apprehended OR THE COUNTY WHERE AN OFFENDER COMPLETED HIS/HER LAST REGISTRATION.

PASS - FY11-SO #10. Eliminate the language requiring mandatory Intensive Supervision (ISP) as a condition of probation or parole for failure to register in CRS 18-3-412 (2) (b) and 18-1.3-1007 (1.5).

Reason: The change provides judicial discretion to determine whether Intensive Supervision: Probation/Parole (ISP) is appropriate.

Proposed fix: Amend CRS 18-3-412 (2) (b) as follows:

Any person convicted of felony failure to register as a sex offender shall be sentenced pursuant to the provisions of section 18-1.3-401. If such person is sentenced to probation, the court ~~shall~~ MAY require, as a condition of probation, that the person participate until further order of the court in an intensive supervision probation program established pursuant to section 18-1.3-1007. If such person is sentenced to incarceration and subsequently released on parole, the parole board ~~shall~~ MAY require, as a condition of parole, that the person participate in an intensive supervision parole program established pursuant to section 18-1.3-1005.

And: Amend CRS 18-1.3-1007 (1.5) as follows:

In addition to the persons specified in subsection (1) of this section, the court ~~shall~~ MAY require any person convicted of felony failure to register as a sex offender, as described in section 18-3-412.5, and sentenced to probation to participate, as a condition of probation and until further order of the court, in the intensive supervision probation program established pursuant to this section.

PASS - FY11-SO #11. Add affirmative defense for failure to register from Adam Walsh.

Reason: Although, in practice, charges may infrequently be filed under these circumstances, an affirmative defense for failure to register should be established in statute to accommodate uncontrollable circumstances. The Adam Walsh Act provides a model for this affirmative defense.

Proposed fix: Introduce into statute, regarding 16-22-103 CRS and 18-3-412.5 CRS, for example...

AFFIRMATIVE DEFENSE. In a prosecution for a violation of failure to register, it is an affirmative defense that (1) uncontrollable circumstances prevented the individual from complying; (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and (3) the individual complied as soon as such circumstances ceased to exist. [See Adam Walsh Act, Title 1, Sec. 141, § 2250 (b)]

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PASS - FY11-SO #12. Request State Public Defender's Office to create informational documents for offenders on registration/re-registration and de-registration.

Reason: Many offenders are uninformed regarding requirements to register and eligibility to de-register. There are instructions on the state judicial web site but more substantive documentation and timely distribution of information with advice would be advantageous.

Proposed fix: Request the Colorado State Public Defender's Office to prepare a registration and re-registration information fact sheet and a de-registration fact sheet that public defenders, local law enforcement and other law enforcement agencies can use to advise eligible persons on the registration, re-registration and de-registration processes. The SPDO should collaborate with relevant agencies and stakeholders. Provide the documents to CCJJ and the Sex Offense Task Force or any successor subcommittee for review.

PASS* - FY11-SO #13. Add language to CRS 16-13-902 (and relevant sections in Title 18) on SVP equivalency criteria in a manner that ensures the assessment procedure is constitutional.

* The original vote on this recommendation at the December 10, 2010 CCJJ meeting did not pass. The Sex Offense Task Force presented this revision that was approved at the February 11, 2011 CCJJ meeting.

Reason: Currently missing from statute is the language to establish the process and who is responsible to evaluate sex offenders entering from other states who may meet the definition of sexually violent predator. This has led to inconsistencies across jurisdictions when dealing with offenders from particular states.

Proposed fix:

a) The procedure to classify out-of state offenders moving to and registering in Colorado should not place a different assessment standard on these offenders than is used for in-state offenders. (The procedure is currently under review and, if necessary, modifications will be made to the suggested statutory fix that ensures constitutionality.)

b) Amend CRS 16-13-902 (5) as follows:

"Sexually violent predator" means a sex offender who is identified as a sexually violent predator pursuant to section 18-3-414.5, C.R.S., or who is found to be a sexually violent predator or its equivalent in any other state or jurisdiction, including but not limited to a military or federal jurisdiction. FOR PURPOSES OF THIS SUBSECTION (5), "EQUIVALENT", WITH RESPECT TO AN OFFENDER FOUND TO BE A SEXUALLY VIOLENT PREDATOR OR ITS EQUIVALENT, MEANS A SEX OFFENDER CONVICTED IN ANOTHER STATE OR JURISDICTION, INCLUDING BUT NOT LIMITED TO A MILITARY, TRIBAL, TERRITORIAL, OR FEDERAL JURISDICTION, WHO HAS BEEN ASSESSED OR LABELED AT THE HIGHEST REGISTRATION AND NOTIFICATION **LEVELS** IN THE JURISDICTION WHERE THE CONVICTION WAS ENTERED AND WHO SATISFIES THE AGE, DATE OF OFFENSE, AND CONVICTION REQUIREMENTS FOR SEXUALLY VIOLENT PREDATOR STATUS PURSUANT TO COLORADO LAW. A SEX OFFENDER CONVICTED IN ANOTHER JURISDICTION WHO IS DESIGNATED AS A SEXUALLY VIOLENT PREDATOR BY THE DEPARTMENT OF PUBLIC SAFETY FOR PURPOSES OF COLORADO LAW SHALL BE NOTIFIED OF HIS OR HER DESIGNATION AND SHALL HAVE THE RIGHT TO APPEAL THE DESIGNATION IN DISTRICT COURT.

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PASS - FY11-SO #14. Add Second degree kidnapping, CRS 18-3-302 (3) (a), as a sex offense when the underlying offense is the offense of sexual assault.

Reason: It was assumed that offenders convicted of the second degree kidnapping where a sex assault was involved would simultaneously be convicted of the sex offense. This has not occurred. Some violent offenders convicted of second degree kidnapping have not been convicted of the associated sex crime and are therefore not required to register.

Proposed fix: Add second degree kidnapping, CRS 18-3-302 (3) (a), as a sex offense when the underlying offense is the offense of sexual assault to the offenses requiring registration, CRS 16-22-102(9).

PASS - FY11-SO #15. Add tribal and territorial offenders in the list of those required to register, CRS 16-22-103 (1) (b), pursuant to Adam Walsh Act requirements.

Reason: To enhance compliance with Adam Walsh requirements and improve consistency in Colorado statute.

Proposed fix: Amend CRS 16-22-103 (1) (b) as follows:

Any person who was convicted on or after July 1, 1991, in another state or jurisdiction, including but not limited to a military, TRIBAL, TERRITORIAL or federal jurisdiction, of an offense that, if committed in Colorado, would constitute an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.; and *[Ed: statute continues to separate paragraph]*

SUPPORTED* - FY11-SO #16. Create an improved risk assessment classification of registered sex offenders and a public notification system that is more functional to law enforcement and more informative to the community.

Reason: The current registry does not provide gradation of risk beyond those categorized as SVP and everyone else. An improved risk designation would be helpful to law enforcement and would inform the public which offenders may be a public risk. The degree of risk would determine the method by which public notification could occur. Not all registrations necessarily warrant a public meeting, which could be reserved for those offenders who may present the greatest risk to the public.

Proposed fix: As per 16-11.7-103 (4) (c.5), the Sex Offender Management Board (SOMB) working in collaboration with representatives of the Division of Criminal Justice, Judicial and the Probation Division, the Division of Parole, the Department of Corrections, and law enforcement should revise the risk assessment screening system to assign sex offenders to categories based on risk and devise a set of notification options commensurate with the level of risk. This initial screening based on static risk factors should not preclude subsequent assessments of risk during the monitoring and treatment of sex offenders in justice agencies such as the department of corrections, probation, parole, or community corrections. This work has been assigned by the SOMB to one of its subcommittees, the Community Notification Technical Assistance Team

*** No vote. CCJJ members support continued work in this area.**

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PASS - FY11-SO #17. Repeal the current mandatory prison sentence provisions for commission of Unlawful Sexual Contact by Force, Threat, or Intimidation, 18-3-404 (3).

Reason: Unlawful *Sexual Contact* by Force, Threat, or Intimidation is a mandatory prison F4, while *Sexual Assault* by Force, Threat, or Intimidation (which involves sexual penetration or intrusion, not merely sexual contact) is a probation eligible F3. The less egregious conduct of contact should not carry a necessarily greater penalty.

Proposed fix: Amend 18-3-404(3) as follows:

- (3) If a defendant is convicted of ~~the class 4 felony of unlawful sexual contact pursuant to paragraph (b) or subsection (2)~~ SUBSECTION (1.5) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; ~~except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.~~

PASS - FY11-SO #18. Extend the amount of time available on a deferred judgment and sentence for a sex offense requiring treatment, and clarify when the period of the deferred begins.

Reason: For the majority of sex offenders, treatment will take longer than 4 years. However, the statute currently only permits a maximum of 4 years for a deferred judgment. Also, because a sex offense requires an evaluation before treatment can begin, there is often a two-month lag between the entry of the plea for the deferred and the beginning of that treatment. The period of the deferred needs to begin at the time supervision and treatment can begin.

Proposed fix: Amend the Deferred Judgment statute, C.R.S. 18-1.3-102, to provide that for offenses listed in C.R.S. 16-11.7-102(3) (i.e., those requiring sex offender treatment), the court is permitted, with the consent of the parties, to extend the length of the Deferred Judgment period for an additional two years for good cause. In addition, amend the same statute to make clear that the period of the deferred for any plea begins the date the plea is entered if no presentence investigation report or offense specific evaluation is ordered; but if a presentence investigation or offense specific evaluation is ordered, the case is to be set over for another date so those reports can be completed. At that subsequent court date, the period of the deferred will begin.

PASS - FY11-SO #19. Fix the currently unconstitutional provision in C.R.S. 18-1.3-1004(4).

Reason: This section of the statute purports to permit the sentencing court to convert an otherwise determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography (often called commercial or economic sex crimes). This can be done if the Court finds, based on an SVP analysis, that the defendant is likely to commit sexual assault or sexual assault on a child in the future. There are two problems with this provision. First, it is unconstitutional, as it permits increasing the maximum penalty to which a defendant is exposed based on a fact-finding by the Court, rather than a jury. Second, even if such a Court finding were sufficient, the SVP analysis is by definition inapplicable to these cases, because the first question in the SVP analysis is whether the defendant was convicted on a sexual assault or sexual assault on a child. In these cases, the defendant was not.

Proposed fix: Two possible solutions were discussed, and the task force agreed to bring them both forward.

TASK FORCE OPPOSED - 19 (a): Repeal subsection (4) of 18-1.3-1004.

TASK FORCE APPROVED - 19 (b): Amend subsection (4) to permit its use provided the defendant agrees to have the judge make such a finding; and require the development of a different analytical tool to be used that makes sense in this area. The prosecutors involved in the discussion have used this provision as a plea bargain, where an otherwise indeterminate charge is plead to one of these crimes, with an agreement that the Court would have the power to make the statutory finding. This gives a useful tool to resolve cases that may otherwise have to go to trial.

CCJJ: Sex Offense Task Force - FINAL REPORT**18****LEGISLATION**

Below are each of the bills passed that were derived from Commission recommendations that originated from the Sex Offense Task Force. Each of the recommendations may be found in the recommendation lists above.

FY 2011**House Bill 2011 - 1278. Concerning sex offender registration.**

This bill included elements derived from these Commission recommendations:

FY11-SO #01
 FY11-SO #02
 FY11-SO #03
 FY11-SO #04
 FY11-SO #05
 FY11-SO #07
 FY11-SO #08
 FY11-SO #09
 FY11-SO #10
 FY11-SO #11
 FY11-SO #13
 FY11-SO #14
 FY11-SO #15

FY 2012**House Bill 2012 - 1346. Concerning sex offender registration.**

This bill included elements derived from these Commission recommendations:

FY12-SO #01
 FY12-SO #16

FY 2013 (proposed)**House Bill 2013 - To be determined. (To address sex offenses).**

This bill may include elements derived from these Commission recommendations:

FY11-SO #17
 FY11-SO #18
 FY11-SO #19

Appendix B:
**Commission Policy – Roles and Responsibilities for
Legislative Recommendations**

Colorado Commission on Criminal and Juvenile Justice

Policy Relating to Roles and Responsibilities for Legislative Recommendations

The Commission on Criminal and Juvenile Justice (CCJJ) was established by HB07-1358 as a broad and diverse partnership of stakeholders from the criminal justice system. There are 26 members and one ex-officio member that are charged with identifying problems, issues, and to offer solutions to improve the criminal justice system. Proposing legislation is one of the methods that will be used by the Commission to effect positive changes. In recognition of the diversity of the Commission and realizing the depth of research and vetting that is accomplished, the following policy relating to members' responsibilities and actions relative to legislative matters is enacted to promote a collaborative atmosphere among members of the Commission and to protect, maintain and enhance the integrity and credibility of the CCJJ legislative process. Members understand that accepting an appointment on the Commission carries with it the responsibility to work constructively to find common ground that is in the best interests of the state and its citizens.

To aid in maintaining consistency, a point of contact person will be designated for each legislative issue that receives Commission endorsement, and this person will serve as the communication connection to the Commission. Because the Commission's endorsements have undergone significant discussion before receiving approval, it is important that the issues retain their content throughout the legislative process. The value of adhering to the substance of the Commission's recommendations should be considered by each legislator who agrees to sponsor a CCJJ bill and by each member of the Commission who participates in the legislative process.

Roles and Responsibilities:

I. Commission Members

- a. After a vote by the Commission to approve a recommendation and to propose legislation pursuant to CCJJ rules, members are encouraged to either actively support the proposal or remain silent. Members agree not to actively oppose the recommendation or related legislation.
- b. If a recommendation does not receive the required majority to be approved, then the CCJJ shall have officially taken no position and members are free to act independently on the matter. Issues that are not voted on by the Commission as a whole are also not deemed an official action, whether or not the issue has been addressed by a task force or working group.

II. Legislators, including non-Commission members who are bill sponsors

- a. Any legislator who sponsors a bill that arises from a CCJJ approved recommendation is encouraged to make every effort to maintain the substance of the bill in a manner consistent with the original recommendation. The sponsor commits to opposing substantive changes to the bill. If the sponsor learns of proposals that would substantively change the bill, the sponsor will promptly contact the CCJJ point of contact and work in concert with the CCJJ to maintain the integrity of the recommendation.
- b. Commission member legislators are encouraged to refrain from actively working to defeat or substantively change a CCJJ approved recommendation. This policy does not infringe on a legislator's responsibility to cast votes in the legislature or its committees according to his/her beliefs.

- c. Commission member legislators are encouraged to refrain from sponsoring bills that are contrary to an official vote of the CCJJ on a recommendation.

III. Task Force Members (other than Commission members)

Members of a task force or working group are encouraged to abide by the policy set forth in I. above for Commission members. If a non-CCJJ task force member takes a position contrary to one officially adopted by CCJJ, or promotes an issue that has not been the subject of official action by CCJJ, the task force member is required to refrain from identifying him/herself in any way as speaking on behalf of CCJJ or the task force. If a member of a task force or working group fails to abide by these policies, the Chair of the task force will consider whether the non-compliance should result in the member's removal from the CCJJ task force or working group.

Appendix C:

Commission Policy – Legislative Recommendations

Colorado Commission on Criminal and Juvenile Justice

Policy Regarding Legislative Recommendations

1. Recommendation passed by CCJJ will include as much detail as possible and identify significant policy issues when possible.
2. When a recommendation requires a statutory change, DCJ will compile research, discussion points, and policy bases for the recommendation from the work of the subcommittees and discussion of CCJJ.
3. A person will be identified by the CCJJ chair to coordinate legislative sponsors and work with the drafters to compose a bill. When possible, this point person will be the CDPS legislative liaison. Otherwise, this person may be selected from CCJJ membership or participants on a task force or subcommittee.
4. The bill draft will be sent to the legislative committee whose role is solely to determine consistency of language between the bill draft and the CCJJ recommendation.
5. Changes to the bill as drafted will be reviewed in the following manner to determine whether the change affects the bill status as a CCJJ approved recommendation:
 - a. If there is a CCJJ meeting scheduled prior to the time a decision must be made, the issue will be raised for discussion and vote by the Commission as a whole. A simple majority will be needed to ratify the change or withdraw CCJJ support.
 - b. If there is not sufficient time for a CCJJ meeting, then the point person for the bill will contact the DCJ Director or designee serving as staff to the legislative committee. DCJ staff will engage the legislative committee in discussions in person, by e-mail, or phone conference to explain the change. The legislative committee will vote by simple majority to either maintain or withdraw CCJJ support for the bill.
 - c. If the change is occurring on an immediate basis at the legislature, the point person in attendance on behalf of CCJJ will contact 2 members of the legislative committee who have been previously identified by the chair of the legislative committee as having the authority to determine whether a change is consistent with the original CCJJ recommendation. If the change is deemed consistent by both persons, then the approved status is maintained. If both persons believe the change is inconsistent, or if there is disagreement between the 2 members, then the approval is withdrawn.
 - d. If approval is withdrawn and the bill is subsequently amended to restore consistency with the CCJJ recommendation, the point person may express that to the legislature.
 - e. If either (b) or (c) occur, the point person will make a report in writing outlining the changes that occurred and the results and submit the report to the CCJJ chair, vice-chair, or DCJ staff for eventual dissemination to the CCJJ.

Colorado Commission on Criminal and Juvenile Justice

Policy Regarding Legislative Committee Role and Membership

The role of the CCJJ Legislative Committee is to match the language of a bill as closely as possible with the language and intent of CCJJ recommendations. The Legislative Committee has the authority to continue or withdraw CCJJ approval regarding bills that were initiated through the CCJJ process. The role of a legislative committee member is **only** to determine the consistency of a bill with the original recommendation as the bill is drafted and subsequently amended. A legislative committee member shall not use this position to represent an interest group or personal agenda. All legislative committee members shall be chosen from the CCJJ membership and appointed by the CCJJ chair.

The members shall be as follows:

- a. Either the Chair or Vice-chair of the CCJJ, who shall act as chair of the legislative committee.
- b. The Attorney General or his/her CCJJ designee.
- c. The State Public Defender
- d. A representative of a local governmental entity.

The Legislative Committee will be staffed by the DCJ Director or his/her designee.

Appendix D:

Child Safety Zones Fact Sheet

Child Safety Zone

A child safety zone prohibits registered sex offenders from being present within defined areas where children congregate or are frequently found, except in limited and safe circumstances. The behavior prohibited is defined as “loitering,” whether on foot or in a vehicle, regardless of intent. Provisions should preempt additional patchwork and inconsistent restriction by local ordinance.

The following are some typical elements found in such provisions with examples of sub-provisions:

Categories of Offender

The definition can identify particular subgroups of sex offenders or all sex offenders, for example:

- Zones may restrict only registered sex offenders who have committed offenses against children.
- Zones may restrict all registered sex offenders.
- Zones may include all registered sex offenders, but exclude offenders who no longer appear on a registry.
- Zones may restrict anyone (registered or not) with a previous conviction for a child sex offense.

Locations

Such zones are defined by the locations where children may be found or often frequent. For example, a sex offender cannot knowingly loiter in the following areas while children are present:

- | | | | |
|----------------------|----------------------|-------------------|----------------------------|
| • Schools | • Public parks | • Amusement parks | • Swimming or wading pools |
| • School bus stops | • Playgrounds | • Bathing beaches | • Sports field or facility |
| • Child care centers | • Recreation centers | • Video arcade | • Surrounding land |

Distances

The size of the safety zone may be defined by different distances. For example, common distances include:

- Not within or on property boundaries
- Not within 300 ft. of property, or
- 500 ft.

Exceptions

The definitions of such zones often include exceptions that allow offenders to move through or be in the area of a child safety zone under specific circumstances, for example:

- Does not apply to single trips by the sex offender when traveling past a specified location while in route to another destination.
- Does not apply to single trips when a sex offender, who is also a parent or guardian of a child, accompanies his/her child or ward to or from one of the specified locations.
- Does not apply to single trips by the sex offender when entering a specified location that is serving as a polling place for a public caucus, primary, or election. The offender must leave the facility immediately following the event.
- Does not apply to registered sex offenders who are on probation or parole and whose conditions would already violate the safety zone provisions.
- Does not apply to sex offenders whose established residence is regulated by state law or subsequently becomes adjacent to one of the specified locations.

Violations and Penalties

Penalty and penalty combinations can begin at different degrees of progressive consequence. For example:

- A warning to vacate the area.
- If under supervision, consequences are applied for the violation of conditions of parole or probation.
- A misdemeanor for an initial violation of the zone restriction.
- An increasing fine for repeated violations.
- A particular number of subsequent violations can result in a felony.

Appendix E:

Housing Restrictions Fact Sheet

Housing Restriction Fact Sheet

There is a growing trend to pass residency restrictions and zoning ordinances in Colorado. Although these restrictions may make people feel safer, research indicates that, as demonstrated below, these restrictions do little to increase public safety.

- The vast majority of sex offenses are committed against a person the offender knows.
 - 93% of child sexual abuse victims know their abusers. Children are at the highest risk of being sexually victimized by people they know including acquaintances, family friends, and family members (Snyder, 2000).
 - 83% of adult female rape victims knew the offender (Tjaden & Thoennes, 2006)
- Over 86% of new sex crimes are committed by someone with no previous conviction for a sex offense and 95% of new sex crimes against children are committed by someone with no previous conviction for sex offense against a child (Langan, Schmitt, & Durose, 2003).
- Sex offense recidivism is unrelated to the proximity of the offender's residence to schools, parks, or daycare centers (Minnesota DOC, 2007; SOMB, 2004).
- When offenders victimize a stranger, they are more likely to find victims in a different neighborhood (Minnesota DOC, 2007).
- Sex offenders with stable housing, employment, and social support are much less likely to commit a new sex offense (Willis & Grace, 2008).
- Seven months after Iowa implemented a 2000 ft. residency restriction from child care centers and schools, the number of sex offenders whose location was unknown jumped from 1 in 46 (142 offenders) to roughly 1 in 20 (298 offenders) (Rood, 2006).
- Following the implementation of residency restrictions in California, the number of sex offender parolees registering as transient increased by 2400% from November 2006 through September 2009 (California Sex Offender Management Board, 2011).

The Jacob Wetterling Resource Center

"Because residency restrictions have been shown to be ineffective at preventing harm to children, and may indeed actually increase the risks to kids, JWRC does not support residency restriction laws. Such laws can give a false sense of security while sapping resources that could produce better results used elsewhere."

Colorado Sex Offender Management Board

On September 19, 2011, the Colorado Sex Offender Management Board endorsed the following statement (SOMB *Draft Minutes*, September 19, 2011),

"The SOMB does not support sex offender residency restrictions or zoning restrictions that are counter-productive to the effective supervision of sex offenders"

[References on back]

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Appendix F:

Iowa Fiscal Note Template



Fiscal Note

Fiscal Services Division



SF 93 – Strangulation (LSB 1267SV)

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Fiscal Note Version – New

Requested by Senator Gene Fraise

Description

Senate File 93 enhances the penalty for certain domestic abuse assault cases where the offender knowingly strangles another person. The Bill provides for an aggravated misdemeanor or a non-forcible Class D felony, depending on the injury.

Background

Correctional and Fiscal Information

- Current law provides for a graduated system of penalties for domestic abuse assault, ranging from a simple to an aggravated misdemeanor for the first conviction, a serious or aggravated misdemeanor for the second conviction, and a Class D felony for a third or subsequent conviction.
- Creating a non-forcible Class D felony for the specific offense of strangulation provides that the offender may receive a sentence of prison or probation.
- The table below shows the number of offender-based convictions for domestic abuse assault for the last two fiscal years. Data regarding the number of offenders who strangled their victim is not available.

Number of Offenders Convicted of Domestic Abuse Assault		
	<u>FY 2009</u>	<u>FY 2010</u>
Simple Misdemeanor	1,207	1,204
Serious Misdemeanor	1,032	1,029
Aggravated Misdemeanor	560	546
Class D Felony	48	47
	<u>2,847</u>	<u>2,826</u>

- An estimated 336 offenders annually will be charged under this bill as follows: 124 offenders currently charged for a simple misdemeanor and 15 offenders currently charged for a serious misdemeanor will be charged as an aggravated misdemeanor; 129 offenders currently charged for a serious misdemeanor will be charged for a Class D felony; 52 offenders currently charged for an aggravated misdemeanor will remain as an aggravated misdemeanor; and 16 offenders currently charged for a Class D felony will remain as a Class D felony.
- The following current dismissal and acquittal rates for domestic abuse assault were applied to the charges as follows: 48.0% for simple misdemeanors, 39.0% for serious misdemeanors, 33.0% for aggravated misdemeanors, and 27.0% for Class D felonies. Current plea bargaining practices were applied.

- The marginal cost per day for prison is \$16.75. The incarceration rate to prison is 51.5% for a Class D felony, 14.4% for an aggravated misdemeanor, and 2.1% for a serious misdemeanor.
- The average length of stay in prison is 22 months for a Class D felony and 9.9 months for an aggravated misdemeanor – crimes against people.
- The average cost per day for parole or probation is \$3.24. The average length of stay on probation is 10.8 months for a serious misdemeanor, 19.6 months for an aggravated misdemeanor, and 32.3 months for a Class D felony. The average length of stay on parole is 5.6 months for an aggravated misdemeanor and 12.8 months for a Class D felony.
- The marginal cost per day for county jails is \$15.00. The average length of stay for a serious misdemeanor offender is 37 days. The average length of stay for an aggravated misdemeanor offender is 40 days.
- The average cost per case for indigent defense is \$300 for a simple misdemeanor, \$600 for a serious misdemeanor, and \$1,200 for an aggravated misdemeanor or Class D felony.
- The average cost per case for a bench trial is \$27 for a simple misdemeanor, \$201 for a serious or aggravated misdemeanor, and \$410 for a Class D felony.

Minority Data Information

- For FY 2009 convictions where race was known, 61.8% were white, 26.1% were black, and 12.1% were other minorities. For FY 2010 where race was known, 64.8% were white, 23.9% were black, and 11.3% were other minorities.
- The U.S. Census estimate for Iowa was 3.0 million people as of July 1, 2009 (the most current estimates available). Men comprise 49.3% of the population. Approximately 92.7% of Iowa's population is white. The composition of the remaining 7.3% is: 2.5% black, 0.3% American Indian or Alaska Native; 1.7% Asian; and 2.9% is of two or more races or unknown.
- Iowa's prison population was 8,603 offenders on June 30, 2010. Men comprised 91.8% of the population. According to the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights, the racial composition of the prison system was: 71.7% white; 25.5% black; 1.0% Asian or Pacific Islander; and 1.8% American Indian or Alaska Native. Included in these racial groups were 6.8% that identified themselves as Hispanic (nearly all of these identified themselves racially as being white).
- According to the Department of Corrections (DOC), 72.2% of offenders on probation on June 30, 2010, were men. Approximately 78.5% of offenders on probation are white; 13.4% are black; 5.1% are Hispanic or Latino; 1.1% are American Indian or Alaska Natives; 1.0% are Asian or Pacific Islander; and 1.0% were of unknown race.
- According to the DOC, 83.7% of offenders on parole on June 30, 2010, were men. Approximately 75.5% of offenders on parole are white; 18.1% are black; 3.9% are Hispanic or Latino; 1.5% are American Indian or Alaska Natives; and 1.0% are Asian or Pacific Islander.
- According to the CJJPD, on June 30, 2010, approximately 8.2% of the offenders in prison were women and 26.1% of offenders under supervision in Community-Based Corrections (CBC) were women. Approximately 21.5% of the total offender population under correctional supervision consisted of women.

Assumptions

Correctional and Fiscal Information

- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
- The law will become effective July 1, 2011. A lag effect of six months is assumed from the effective date to the date of first entry of affected offenders into the correctional system.
- Half of the defendants will be indigent.
- These cases will be bench trials.

Minority Data Information

Approximately 14.8% of Iowa's population has at least one disability. The number of disabled offenders convicted under this Bill may be 14.8%.

Summary of Impacts

Correctional Impact

On an annual basis, it is estimated there will be 107 fewer misdemeanor convictions, three additional serious misdemeanor convictions, 109 more aggravated misdemeanor convictions, and 14 additional Class D felony convictions. On an annual basis, there will be an estimated 23 new admissions to prison, consisting of seven Class D felons and 16 aggravated misdemeanants. On an annual basis, there will be 55 admissions to probation or parole: there will be 11 fewer simple, one additional serious misdemeanant, and 48 aggravated misdemeanants admitted to probation, plus 7 Class D felons. In addition, 10 offenders annually will be released from prison and placed on parole. The table below shows the impact on the corrections system, both the prisons and Community-Based Corrections (CBC). Admissions are adjusted the first year due to the six-month lag effect. The population increases by more than the number of admissions because the average length of stay crosses fiscal years.

Projected Corrections Population Increase					
	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Prison	12	25	26	26	26
CBC	28	55	67	68	68

It is also expected there will be a correctional impact on county jails. On an annual basis, 26 fewer serious misdemeanants and 48 additional aggravated misdemeanants will be held in county jails. This is a net increase of 22 offenders.

Minority Impact

This Bill may have a minority impact inasmuch as minority offenders may be under correctional supervision for a longer period than current law. However, there is no data available to predict the percentage of possible change.

Fiscal Impact

The fiscal impact is estimated to be an increased cost to the General Fund of \$127,000 in FY 2012 and \$366,000 in FY 2013. The table below shows the impact by areas within the State criminal justice system.

State General Fund Fiscal Impact		
	FY 2012	FY 2013
Indigent Defense	\$ 50,000	\$ 99,000
Court System	25,000	49,000
Prison	36,000	153,000
CBC	16,000	65,000
Total	<u>\$127,000</u>	<u>\$366,000</u>

There is expected to be a minimal impact on county jail operations. On an annual basis, 22 offenders will be held in county jails for an average increase of three days. The statewide cost to counties is anticipated to be approximately \$1,000.

To the extent that prosecutors concentrate resources on the enhanced penalty in this Bill, charges and convictions may increase, resulting in a correctional and fiscal impact greater than indicated in this fiscal note.

Sources

Department of Corrections
Department of Human Rights, Criminal and Juvenile Justice Planning Division
Office of the State Public Defender
Office of the Attorney General
Judicial Branch

/s/ Holly M. Lyons

February 8, 2011

The fiscal note for this bill was prepared pursuant to Joint Rule 17 and the correctional and minority impact statements were prepared pursuant to Iowa Code Section 2.56. Data used in developing this fiscal note, including correctional and minority impact information, is available from the Fiscal Services Division of the Legislative Services Agency upon request.



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