

Colorado Commission on Criminal & Juvenile Justice

2013 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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Acknowledgements

The Colorado Commission on Criminal and Juvenile Justice undertook its sixth year of work in Fiscal Year 2013. The Commission saw its largest membership turnover this year, welcoming ten new members. Jim Davis, the Executive Director of the Department of Public Safety, continued his service as Commission Chair, however the membership turnover resulted in a new Vice chair. Doug Wilson was appointed by the Governor to fill that position. Under Mr. Davis' leadership, along with Vice Chair Wilson, and consultants Paul Herman and Ken Plotz, the Commission continued its efforts to study and make recommendations to improve the state's justice system.

The Commission is grateful for its hard-working task force chairs: Grayson Robinson chaired the Drug Policy Task Force, Jeanne Smith chaired the Comprehensive Sentencing Reform Task Force and was joined by Norm Mueller in April 2013 to serve as Co-chair, and Regina Huerter chaired the Juvenile Justice Task Force also joined by Co-chair Kelly Friesen in April 2013. Doug Wilson and Margie Enquist Co-chaired the Bail Committee through November 2012 and Jim Davis chaired the Minority Overrepresentation Committee. In addition, the Commission is grateful for the dozens of task force and working group members who volunteer their time to the Commission's efforts. The task force membership reflects a diverse group of experts committed to improving the administration of justice. These individuals volunteer considerable time to study, discuss and consider improvements in current processes. The Commission's effectiveness depends on this expertise and commitment to meet

its statutory mandates to improve the effectiveness and efficiency of the justice system in Colorado.

The Commission extends its gratitude, in particular, to certain task force members and stakeholders. Maureen Cain, Christie Donner, Mark Evans, Jeff McDonald, Tom Raynes, Dan Rubinstein, and Meg Williams devoted an extraordinary amount of time to forward the work of the Commission. Without the interest, support and dedication of these professionals, the Commission could claim far fewer accomplishments.

The Commission extends a special thank you to Paul Herman who has provided guidance, perspective, encouragement and clarity to the Commission since its inception. The Commission, along with its task forces and working groups, benefits from the expertise and experience that Mr. Herman brings to this work. Likewise, the Juvenile Justice Task Force profits from consultant Ken Plotz' leadership and steady hand.

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

Finally, the Commission suffered a tragic loss in Fiscal Year 2013 with the death of Commission member Tom Clements, Executive Director of the Colorado Department of Corrections. Tom was committed to the work of the Commission and requested that it reconvene a task force on prisoner re-entry. The Commission will honor that request in FY 2014.

Commission members*

James H. Davis

CCJJ Chair

Executive Director

Department of Public Safety

David S. Kaplan (term expired July 2012)

CCJJ Vice Chair

Criminal Defense Attorney

Haddon, Morgan, & Foreman, P.C.

Theresa Cisneros

Judge, 4th Judicial District

Representing Colorado State Judicial

Sallie Clark (appointed November 2012)

County Commissioner, El Paso

Representing County Commissioners

Tom Clements (served until March 2013)

Executive Director

Department of Corrections

Michael Dougherty (resigned December 2012)

Deputy Attorney General – Criminal Justice

Attorney General's Office

Matt Durkin (appointed January 2013)

Deputy Attorney General – Criminal Justice

Attorney General's Office

Rhonda C. Fields (term expired July 2012)

Victim's Representative

At Large

Kelly Friesen (appointed August 2012)

Grand County Juvenile Justice Department

At Large

Charles Garcia (reassigned to an At Large

position August 2012)

At Large

Regis F. Groff (term expired July 2012)

Former State Senator

At Large

Peter G. Hautzinger (term expired July 2012,

served through December 2012)

District Attorney, 21st Judicial District

Representing District Attorneys

Regina M. Huerter (term expired June 2013)

Denver Crime Prevention & Control Commission

Representing Juvenile Justice Issues

William C. Kilpatrick (term expired June 2013)

Golden Police Department

Representing Chiefs of Police

Julie Krow

Children, Youth and Families, Director

Department of Human Services

Evelyn Leslie (appointed August 2012)

Colorado School for Family Therapy

Representing Mental Health Treatment Providers

Reo N. Leslie, Jr. (term expired July 2012)

Colorado School for Family Therapy

Representing Mental Health Treatment Providers

Claire Levy

State Representative

House District 13

* At the close of 2013.

Henry Jackson

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

Steve King (appointed July 2012)

State Senator
Senate District 7

John P. Morse

State Senator
Senate District 11

Norm Mueller (appointed August 2012)

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

Kate Horn-Murphy (appointed August 2012)

Victim's Representative, 17th Judicial District
Representing Victims' Rights Organizations

Eric Philp

Director of Probation Services
Representing Colorado State Judicial

Donald S. Quick (term expired July 2012,

served through December 2012)
District Attorney, 17th Judicial District
Representing District Attorneys

J. Grayson Robinson (term expired June 2012)

Arapahoe County
Representing Colorado Sheriffs

Debbie Rose (appointed August 2012)

Representative for the
Juvenile Parole Board

Steven R. Siegel (term expired July 2012)

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

Peter A. Weir (appointed January 2013)

District Attorney, 1st Judicial District
Representing District Attorneys

Douglas K. Wilson

CCJJ Vice Chair
(appointed Vice Chair August 2012)
State Public Defender

Anthony Young

Vice Chairman
Colorado State Board of Parole

Dave Young (appointed January 2013)

District Attorney, 17th Judicial District
Representing District Attorneys

Debra L. Zwirn (term expired July 2012)

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>Co-chair</i>	Denver Crime Prevention & Control Commission
Kelly Friesen, <i>Co-chair</i> (effective 04/05/13)	Grand County Juvenile Justice Department & S.B. 94, 14th Judicial District
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	At Large
John Gomez	Division of Youth Corrections
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
Ann Gail Meinster	1st Judicial District Court
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
Debbie Rose	Juvenile Parole Board
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, Senate District 31
Mark Waller	State Representative, House District 15

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

Comprehensive Sentencing Task Force

Name	Affiliation
Jeanne Smith, <i>Co-chair</i>	Division of Criminal Justice
Norm Mueller, <i>Co-chair</i> (effective 05/07/13)	Criminal Defense Attorney
Denise Balazic	State Parole Board
Joe Cannata	Voices of Victims
Theresa Cisneros	Judge, 4th Judicial District
Christie Donner	Colorado Criminal Justice Reform Coalition

Michael Dougherty	Attorney General's Office, Criminal Justice Section
Matt Durkin	Attorney General's Office, Criminal Justice Section
Martin Egelhoff	Denver District Court
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
Jason Middleton	State Public Defender's Office
J.P. Moore	District Attorney's Office, 17th Judicial District
Kate Horn-Murphy	Victim's Representative, 17th Judicial District
Joe Pelle	Boulder County Sheriff's Department
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice
Dianne Tramutola-Lawson	Colorado CURE
Dana Wilks	Division of Probation Services
Douglas Wilson	State Public Defender's Office
Dave Young	District Attorney's Office, 17th Judicial District

Community Corrections Task Force

Name	Affiliation
Peter Weir, <i>Co-chair</i>	District Attorney's Office, 1st Judicial District
Theresa Cisneros, <i>Co-chair</i>	Judge, 4th Judicial District
Dennis Berry	Mesa County Criminal Justice System
Joe Cannata	Voices of Victims
Shannon Carst	Colorado Community Corrections Coalition
Christie Donner	Criminal Justice Reform Coalition
Bill Gurule	Probation, 12th Judicial District
Steve Hager	Department of Corrections, Division of Adult Parole and Community Corrections
Harriet Hall	Jefferson Center for Mental Health
Stan Hilkey	Mesa County Sheriff's Department
Gregg Kildow	Intervention Community Corrections Services
Steve King	State Senator, Senate District 7
David Lipka	State Public Defender's Office
Greg Mauro	Denver Pretrial Services
Jacqueline McCall	Department of Corrections
Kathryn Otten	Jefferson County Justice Services
Eric Philp	Probation Services, State Judicial Department
Steve Reynolds	9th Judicial District
Brandon Shaffer	Colorado State Board of Parole
Alaurice Tafoya-Modi	Criminal Defense Attorney
Glenn Tapia	Office of Community Corrections, Division of Criminal Justice
Anthony Young	Colorado State Board of Parole

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
Douglas Wilson, <i>Co-chair</i>	State Public Defender's Office
Jason Armstrong	Professional Bail Association of Colorado
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, Denver
Steve Mares	Professional Bail Association of Colorado
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 Overrepresentation 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

Office of Research and Statistics
Division of Criminal Justice

Paul Herman

Consultant

Kenneth Plotz

Consultant

Christine Adams

Office of Research and Statistics
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Peg Flick

Office of Research and Statistics
Division of Criminal Justice

Kevin L. Ford

Office of Research and Statistics
Division of Criminal Justice

Linda Harrison

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Jana Locke

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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



SECTION 1

Introduction

This report describes the Commission's activities for Fiscal Year 2013 (July 2012 through June 2013). This is the first year that the time span covered in the report reflects a fiscal year rather than a calendar year. 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 ready (when applicable) for the following legislative session. All subsequent reports will also reflect the fiscal year time frame.

This report documents the Commission's sixth 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 reform, including work in the area of sex

offender policy. Also, during that 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. 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. In 2012 the Commission approved 23 policy recommendations; four of these required statutory changes which were adopted by the 2012 General Assembly.

During Fiscal Year 2013 the Commission approved 22 recommendations in the areas of drug policy, sentencing, bail practices, minority overrepresentation and juvenile justice. Thirteen of the recommendations produced in Fiscal Year 2013 resulted in statutory changes by the 2013 General Assembly. Another recommendation (the sustainability plan for the 2008 Commission-initiated Evidence Based Practices Implementation for Capacity [EPIC] effort) approved by the Commission the previous year (FY2012), was also approved by the General Assembly, resulting in a total of 14 Commission

recommendations signed into law, the most in a twelve month period. Commission bills passed by the General Assembly in 2013 can be seen in Table 1.

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

This 2013 report is organized as follows: Section 2 provides a summary of the Commission’s legislative intent and membership; Section 3 discusses Commission, task force and committee activities from July 2012 through June 2013; Section 4 details the Commission’s recommendations and outcomes including 2013 legislation; and Section 5 describes the Commission’s next steps.

Table 1.1. Commission supported bills presented to the 2013 General Assembly

Bill number	Bill title	Status
Senate Bill 13-250	Concerning changes to sentencing of persons convicted of drug crimes	Signed
House Bill 13-1325	Concerning penalties for persons who drive while under the influence of alcohol or drugs, and, in connection therewith, making an appropriation	Signed
House Bill 13-1160	Concerning criminal theft <i>(two recommendations included in this bill)</i>	Signed
House Bill 13-1156	Concerning creation of an adult diversion program, and, in connection therewith, making an appropriation	Signed
House Bill 13-1236	Concerning pre-trial release from custody <i>(three recommendations included in this bill)</i>	Signed
House Bill 13-1021	Concerning measures to ensure that students comply with compulsory school attendance requirements, and, in connection therewith, requiring schools to address habitual truancy through a multidisciplinary plan, limiting the length of detention that a court may impose to enforce compulsory school attendance, allowing students who are under juvenile court jurisdiction to obtain a GED, and specifying minimum requirements for education services provided in juvenile detention facilities <i>(two recommendations included in this bill)</i>	Signed
House Bill 13-1129	Concerning creating the evidence-based practices implementation for capacity resource center	Signed
Senate Bill 13-007	Concerning the repeal date of the Colorado Commission on Criminal and Juvenile Justice, and, in connection therewith, making an appropriation	Signed
Senate Bill 13-229	Concerning changes to statutory provisions related to criminal proceedings <i>(two recommendations included in this bill)</i>	Signed
House Bill 13-1148	Concerning changes to aggravated sentencing provisions	Postponed Indefinitely
House Bill 13-114	Concerning penalties for persons who drive while under the influence of alcohol or drugs	Postponed Indefinitely (reintroduced and passed in House Bill 1325)



SECTION 2

Legislative intent and membership

The Commission is comprised of 26 voting members, 18 of whom are appointed representatives of specific stakeholder groups, and 8 of whom are identified to serve based on their official position. Terms of the appointed representatives are variable. For more information please see House Bill 07-1358, which established the Commission, available on the CCJJ website at <http://cdpsweb.state.co.us/ccjj/legislation.html>.

During Fiscal Year 2013, the Commission experienced its largest turnover in membership to date due primarily to term limits. The Commission welcomed ten new members as follows:

- Norm Mueller replaced David Kaplan in the position of Criminal Defense Attorney,
- Matthew Durkin replaced Michael Dougherty as the representative from the Attorney General's Office,
- Kate Horn-Murphy replaced Steven Siegel as the representative of a Victim's Rights Organization,
- Evelyn Leslie replaced Reo Leslie in representing Mental Health Treatment Providers,
- Steve King replaced Ellen Roberts as a member of the General Assembly,
- Debbie Rose replaced Charles Garcia as the Juvenile Parole Board representative.
- Charles Garcia left his role as the representative for the Juvenile Parole Board and instead became an at-large member, replacing Rhonda Fields,
- Kelly Friesen, the Director of the Grand County Juvenile Services Department, replaced former State Senator Regis Groff in an at-large position,
- Sallie Clark replaced Debra Zwirn representing County Commissioners,
- Dave Young replaced Don Quick as one of the Elected District Attorneys, and
- Peter Weir replaced Pete Hautzinger in the other Elected District Attorney position, marking the second appointment to the Commission for Mr. Weir as he previously served as Commission Chair when he was the Executive Director of the Department of Public Safety.

Also, during Fiscal Year 2013 the Governor appointed Doug Wilson as the Vice Chair of the Commission. Mr. Wilson replaced Mr. David Kaplan whose membership term expired.



SECTION 3

Activities of the Commission

This section summarizes the activities and accomplishments of the Commission for Fiscal Year 2013. The topics covered in this section include the following:

- A report on the work of the Commission's task forces and committees,
- An update on the sustainability plan for the Commission created Evidence-Based Practices Implementation for Capacity (EPIC) project,
- A description of Colorado's involvement in the European/American Prison Project,
- A summary of Denver's *Perspectives on Policing* anti-bias training and presentation to the Commission,
- A description of two presentations to the Commission describing disparate viewpoints of the War on Drugs, and
- The extension of the Commission's repeal date to July 1, 2018.

Commission task forces and committees¹

As was noted in the Next Steps section of the Commission's 2012 *Annual Report*, Commission members agreed that efforts for Fiscal Year 2013 should be focused on the following areas of study: Continued work on drug policy, sentencing reform and juvenile justice along with ongoing work in the areas of bail and minority overrepresentation. The Commission also established a new task force in the spring of 2013 to address work in the area of community corrections. To this end, a majority of Commission work during Fiscal Year 2013 was undertaken by the following six groups:

- Drug Policy Task Force
(Grayson Robinson, Chair)
- Comprehensive Sentencing Task Force
(Jeanne Smith and Norm Mueller Co-chairs)

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.

- Juvenile Justice Task Force (Regina Huerter and Kelly Friesen, Co-chairs)
- Community Corrections Task Force (Peter Weir and Judge Theresa Cisneros, Co-chairs)
- Bail Committee (Doug Wilson and Judge Margie Enquist, Co-chairs)
- Minority Overrepresentation Committee (James Davis, Chair)

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 fourth year of work in Fiscal Year 2013. In the final months of 2012, leading up to the 2013 legislative session, the Drug Policy Task Force’s work focused on the following areas:

- Rewriting the Controlled Substances Act including a separate sentencing framework specifically for drug crimes;
- Targeting resources toward residential and jail treatment specifically for people involved in drug-related crimes;

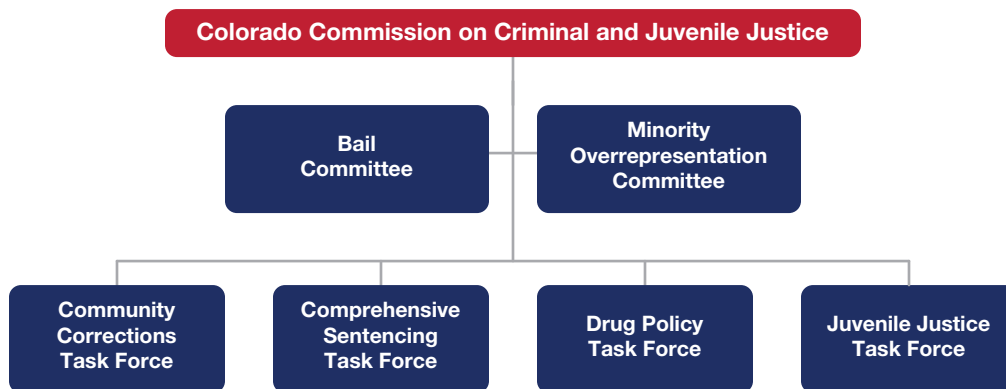
- Expanding Colorado’s substance abuse prevention and treatment programs and practices; and
- Finalizing work around the study of DUID *per se* limits for marijuana (THC) use.

In the fall of 2012, the Drug Policy Task Force presented seven recommendations to the Commission for consideration, all of which passed the Commission and two of which (revising drug sentencing classifications and ranges, and establishing a violation for driving under the influence of marijuana) became legislation that was signed into law in 2013. For detailed information on the seven recommendations from the Drug Policy Task Force, please see Section 4.

The Drug Policy Task Force successfully developed a new sentencing scheme for drug offenders by revising Part 4, Offenses and Penalties, of Article 18, the Uniform Controlled Substances Act (Senate Bill 13-250).² The legislative declaration associated with Part 4 (C.R.S. 18-18-401) reflects the philosophical approach agreed to by the Commission during the early years of the work of the Drug Policy Task Force:

(c) Successful, community based substance abuse treatment and education programs, in conjunction with mental health treatment as necessary, provide effective tools in the effort to reduce drug

Figure 3.1. Commission, task force and committee organizational chart



² Note that in 2012, the General Assembly passed House Bill 1310 which, among other things, mandated that the Commission develop a comprehensive drug sentencing scheme for all drug crimes described in the Uniform Controlled Substances Act. This mandated included that the Commission develop a report of recommendations. This report was due December 15, 2012, and is available on the Commission’s web site at http://www.colorado.gov/ccjdir/Resources/Resources/Report/2012-12_HB12-1310Rpt.pdf.

usage and enhance public safety by reducing the likelihood that drug users will have further contact with the criminal justice system. Therapeutic intervention and ongoing individualized treatment plans prepared through the use of meaningful and proven assessment tools and evaluations offer an effective alternative to incarceration in appropriate circumstances and should be utilized accordingly.

(d) Savings recognized from reductions in incarceration rates should be dedicated toward funding community-based treatment options and other mechanisms that are accessible to all of the state's counties for the implementation and continuation of such programs.

With the revision of Part 4 of the Uniform Controlled Substances Act, the Drug Policy Task Force went on hiatus from December 2012 through June 2013.

Comprehensive Sentencing Task Force

The Comprehensive Sentencing Task Force entered its third year of work in Fiscal Year 2013, focusing on non-violent, value-based crimes. Specifically, the task force studied theft statutes and penalties, and the offender populations charged and convicted of these crimes. Task force members eventually recommended reclassification of many theft offenses and the consolidation of redundant offenses. The group also continued work in the areas of the expansion of adult diversion programs, and the imposition of mandatory minimum sentences to prison.

During Fiscal Year 2013, the task force continued targeted study with the following working groups:

- Theft Consolidation Working Group to study the possibility of combining very specific 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, there were no Felony 5 or 6 theft classifications);
- Adult Diversion Working Group to explore the viability of establishing a statewide adult diversion program; and

- Mandatory Minimums and Habitual Offender Working Group to review sentence lengths.

In the fall of 2012, the Comprehensive Sentencing Task Force presented four recommendations to the Commission for consideration, all of which were approved by the Commission and three of which later became legislation that was signed into law. These recommendations included the following (note the ones with an asterisk (*) became law):

- *Reclassifying and expanding the sentencing options available for theft crimes;
- *Modifying and consolidating theft, theft by receiving, theft of rental property and fuel piracy, and repealing newspaper theft as an isolated offense;
- Eliminating Colorado's extraordinary risk statute; and
- *Expanding the availability of adult pretrial diversion options within Colorado's criminal justice system.

After the successful passage of the theft reclassification and consolidation legislation in the spring of 2013, the Comprehensive Sentencing Task Force decided to further this work by applying the template created for theft to similarly classified, value-based crimes. Starting in June 2013 the Value Based Working Group undertook this work by studying criminal mischief, fraud by check, defrauding a secured creditor, unauthorized use of a financial transaction device and computer crimes. 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 "harmonizing" other value-based offense levels with the 2013 reforms to Colorado's theft statutes, along with recommendations pertaining to earned time credit availability for a small subsection of offenders serving time as habitual criminals. Also as this report was going to print, the recommendation to eliminate Colorado's extraordinary risk sentencing enhancement that was approved by the Commission in FY12, but that failed in the 2013 legislative session, was being clarified for reconsideration during the 2014 legislative session. The outcome of these proposals may result in multiple legislative initiatives in the 2014 legislative session, and will be addressed in the 2014 annual report.

Juvenile Justice Task Force

The Juvenile Justice Task Force entered its third year of work in Fiscal Year 2013. The scope of work for this task force is system-wide, with study being undertaken in a variety of areas. During Fiscal Year 2013, the task force and its working groups explored the following areas in the Juvenile Justice system:

- The Education Working Group studied difficulties related to the provision of educational credits in detention facilities, the issue of imposing detention for truants instead of addressing the problems that cause truancy, and advantages and disadvantages of lowering the minimum age for the acquisition of a GED;
- The Judicial Working Group studied juvenile escapes and sex-offender deregistration, authorizing a subgroup to study Juvenile DUI;
- The Assessment Group collected all screening and assessment tools and placed them in one manual for use across the state; and
- The Consent Adjustment Working Group was created and is working on developing alternative programs to juvenile delinquency proceedings.

Each of these groups addressed some of the perceived gaps in the current system. For example, the Judicial Working Group completed its work on 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 completed its work on 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 urging educators and other groups in the community to address truancy before referring the child to the courts. The Assessments Working Group completed its work collecting and approving all screening and assessment tools and has consolidated them into one reference guide.

During Fiscal Year 2013, the Juvenile Justice Task Force presented five recommendations to the Commission for

consideration. These recommendations were changing Department of Education rules and age restrictions for the General Equivalency Diploma, a revision to the enforcement of the Compulsory School Attendance statute, a revision to the Sex Offender Deregistration statute, a revision to the Juvenile Escape statute and a proposal to give exclusive jurisdiction to the juvenile courts for DUI/DWAI/DUID offenses committed by persons less than 18 years of age. Four of the recommendations were approved by the Commission (all except the DUI recommendation) and three were subsequently signed into law (all except the Sex Offender Deregistration recommendation). Details of these recommendations can be found in Section 4.

As this report was going to press, the Juvenile Justice Task Force was continuing its work investigating ways of expanding options for diverting youth from the juvenile justice system.³ The task force has identified two working groups to explore (1) how current statutes might be modified to expand diversion options, and (2) the development of a “petty ticket” that law enforcement officers could use with first-time juveniles who commit petty offenses.

The outcomes of this work will be addressed in the 2014 annual report.

Community Corrections Task Force

During the January 2013 Commission meeting, members were asked to identify and prioritize issues that they felt should be addressed in the future. Commissioners agreed that a priority area of study would be Community Corrections – its role today and in the future – in the state’s criminal justice system. Community Corrections in Colorado refers to a system of 35 halfway houses that provide residential programming and community-based services to individuals who are being *diverted* from prison and also those *transitioning* from prison back to the community. The system was defined in statute in the late 1970s.

³ A recent systematic review of 29 experiments that were conducted on juvenile system case processing (7,304 juveniles) found that the juvenile justice system does not have a crime control effect. In fact, almost all of the study results show increases in offending behavior following entry into the juvenile justice system, as measured by prevalence, incidence, severity, and self-report outcomes. See Petrosino, Turpin-Petrosino, and Guckenburg (2010), *Formal System Processing of Juveniles: Effects on Delinquency*, available at http://www.campbellcollaboration.org/news/_formal_processing_reduce_juvenile_delinquency.php.

Specifically, commissioners requested the following issues be addressed:

- What was the original purpose of Community Corrections, how has it evolved, and how should it be used in the future?
- How are offenders routed into and out of Community Corrections?
- What treatment options are available to offenders in Community Corrections?
- What are the gaps and barriers in the current system and how could they best be addressed?

With this charge in mind, the Community Corrections Task Force held its first meeting in April 2013. The task force is co-chaired by Peter Weir and Theresa Cisneros and includes membership representation from a wide variety of stakeholder groups. To date the group's work has centered around learning the full history and background of community corrections in Colorado, identifying key issues, barriers and gaps, and developing a strategic work plan.

It is expected that the work of the Community Corrections task force may span multiple years and the progress of the group will be updated in future reports.

Bail Committee

In September 2011, the Commission created the Bail Committee to examine issues related to bail/bond reform and to reconsider five Commission recommendations approved in 2008 pertaining to bail/bond reform.

The Bail Committee convened in December 2011 with membership including individuals from the prosecution and defense bar, members of the Professional Bail Bond Association of Colorado, pretrial supervision program professionals, law enforcement, a county commissioner and a crime victim representative.

The Committee created the following mission statement to guide its work:

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.

In the fall of 2012, the Bail Committee presented 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 financial bonds. The Commission approved all four recommendations and subsequently three were signed into law during the 2013 legislative session. For detailed information on these recommendations from the Bail Committee, please see Section 4.

As stated previously, committees of the Commission are established for specific, targeted work to be accomplished in a short time-frame. With the passing of the four Bail Committee recommendations in the fall of 2012, the Committee disbanded in November 2012.

Minority Overrepresentation (MOR) Committee

One year after the Commission was empanelled in 2007, House Bill 08-1119 directed the Commission to include within its scope of work the study and reduction of racial and ethnic disparities in the justice system. 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.

The Commission as a whole conducted five months of targeted study regarding Minority Overrepresentation in 2011 and produced seven recommendations. Shortly thereafter, in the summer of 2011, the Commission created and established the MOR Committee to clarify and develop strategies to move the seven recommendations forward.

In Fiscal Year 2013, the MOR Committee held four meetings (July 2012, August 2012, November 2012 and April 2013) and during that time conducted various work including:

- Tracking the work of the Racial and Ethnic Disparities Reduction Project sponsored by the Center for Children's Law and Policy;
- Creating and distributing a statewide survey to gather information from state and local justice agencies about data collection practices regarding race and ethnicity information on the populations they serve; and
- Developing (in collaboration with the Division of Criminal Justice) a disproportionate minority contact web page on the Commission web site to promote recognition and understanding of the problem, including local, state and national data and links to educational resources.⁴

In October 2012 the MOR Committee presented a recommendation to the Commission requesting justice agencies track the racial and ethnic diversity of their staff. Commissioners approved the recommendation (details can be found in Section 4). Also, there were two recommendations presented to and approved by the Commission during the previous fiscal year (in January 2012), one of which was legislative in nature and signed into law during the 2013 legislative session, and therefore included in this report. That recommendation concerned a requirement to include gender and racial/ethnicity data in all fiscal notes prepared for criminal justice bills.⁵ Please see Section 4 for more information.

As this report goes to press, the MOR Committee continues its work on the statewide race and ethnicity survey and should have outcomes and/or a recommendation(s) that will be documented in the 2014 annual report.

EPIC (Evidence Based Implementation for Capacity) Sustainability Plan

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 a Justice Assistance Grant (JAG), resulted in the development of a groundbreaking training initiative designed to improve the capacity of state entities and their affiliates to implement EBP in corrections. This initiative, named EPIC (Evidence Based Implementation for Capacity), received General Fund support in July 2013 to sustain the project after the end of the federal grant, following a 2012 recommendation by the Commission to the General Assembly that EPIC receive permanent funding. That recommendation became House Bill 13-1129 and was signed into law during the 2013 legislative session. Details of the recommendation can be found in Section 4. For more information on EPIC, please see http://www.colorado.gov/ccjdir/Resources/Resources/Ref/EOC_Vol16_May2012.pdf.

European/American Prison Project

In February 2013, delegations from Colorado, Georgia and Pennsylvania participated in the European-American Prison Project. Delegates visited Germany and the Netherlands, toured prison facilities, spoke with corrections officials, and interacted with inmates. The goal was to expose project participants, through firsthand experience, to radically different correctional systems and practices in order to advance an international dialogue around effective corrections and to stimulate reform efforts in the United States.⁶

Commissioners Doug Wilson, Tom Clements and Theresa Cisneros participated in the project and reported on their experiences to the Commission. Important differences between the U.S. and the European correctional systems that were noted by the commissioners included shorter sentences, much smaller correctional facilities, prisoners who wore their own clothing rather than uniforms, and special programming that allowed mothers to keep their babies with them to facilitate bonding.

⁴ See <http://www.colorado.gov/cs/Satellite/CDPS-CCJJ/CBON/1251627784180>.

⁵ 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).

⁶ For more information, see www.vera.org/pubs/sentencing-prison-germany-netherlands

As this report was going to press, the Center on Sentencing and Corrections published the project outcomes. The full report can be found at <http://www.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v3.pdf>

Denver's Perspectives on Policing anti-bias training

The February 2013 Commission meeting featured a presentation by members of the Denver Police Department (DPD). The presentation summarized an anti-bias training program called *Perspectives on Policing*. The DPD training team consists of seven Denver police officers, from patrol to command level, and this group delivers the training curriculum to all DPD command staff. A new version of the training commenced in March 2013 and became mandatory for every DPD officer regardless of rank. The training module is 10 hours and is made up of multiple sections including a brief history of race and immigration laws in the United States, racial profiling, national, regional and local legal issues including stop and frisk, the fourth and fourteenth amendments, and the ethical considerations of disengagement.

One of the goals of presenting the information to the Commission was to build momentum for providing the training to other law enforcement agencies across the state. Commission chair Jim Davis assigned this topic to the MOR Committee to explore opportunities to expand the training, starting with the Colorado State Patrol. The MOR Committee continues to work on avenues to help establish and distribute this training.

Two presentations on the War on Drugs

“The House I Live In”

During the January 2013 Commission meeting, an optional presentation was offered to commissioners prior to the start of the official meeting. This optional item was an edited version of a feature documentary called “The House I Live In.” Commission Vice Chair Doug Wilson introduced the documentary stating that it affirms the work of the Commission, particularly in the areas of drug sentencing reform and raising awareness of minority

overrepresentation in the justice system, collateral consequences, drug abuse and addiction, and mandatory minimum sentences. The documentary received the Grand Jury Prize at the Sundance Film Festival in 2012. The following is the official movie review:

Over forty years, the War on Drugs has accounted for more than 45 million arrests, mostly of people of color. Yet for all that, drugs are cheaper, purer, and more available today than ever before.

*Filmed in more than twenty states, **The House I Live In** captures stories from individuals at all levels of America's War on Drugs, including law enforcement, judges and prisoners. The film offers a penetrating look inside America's longest war, revealing its profound human implications. Recognizing the seriousness of drug abuse as a matter of public health, the film investigates the tragic errors and shortcomings when it is treated only as a matter for law enforcement. The film makes a case for the War on Drugs creating a vast machine that feeds largely on America's poor, and especially on minority communities.*

A drug agent's perspective on the Drug War

During the June 2013 Commission meeting, another optional presentation was offered to commissioners after the close of the official meeting, describing a different perspective on the War on Drugs. Jeff Sweetin, a former Special Agent in Charge of the Denver (Rocky Mountain) Division of the U.S. Drug Enforcement Administration (DEA), offered a presentation about the work the DEA has done to enforce controlled substances laws and reduce the availability of illicit controlled substances and, in the process, arrest and prosecute major drug traffickers and terrorists. For more information, see the DEA website, www.justice.gov/dea/, or the Denver Division web page at www.justice.gov/dea/divisions/den/den.shtml.

Elimination of Commission repeal date

The Commission's enabling legislation, House Bill 07-1358, included a repeal date of July 1, 2013. At the July 2012 Commission meeting, members unanimously voted in favor of a recommendation to continue the

Colorado Commission on Criminal and Juvenile Justice beyond the statutory terminate date of June 30, 2013. Details of the recommendation can be found in Section 4. The recommendation became Senate Bill 13-007 and was signed into law during the 2013 legislative session. The new repeal date is July 1, 2018.

Summary

In sum, this section reviewed the work of the Commission and its task forces, committees and working groups from July 2012 through June 2013. The Commission made significant progress by continuing the work of previously established task forces (Drug Policy, Comprehensive Sentencing and Juvenile Justice) along with the creation of one new task force (Community

Corrections) and the continuation of two committees (Minority Overrepresentation and Bail). Additionally, among the Commission's activities and accomplishments was the permanent funding of the EPIC project, participation by three commissioners in the Vera Institute's European/American Prison Project, along with various informational presentations to commissioners. In addition, the continuation of the Commission was established by extending the repeal date to July 1, 2018. Finally, the Commission produced 22 recommendations in Fiscal Year 2013, 13 of which became legislation passed by the 2013 General Assembly. One additional recommendation approved by the Commission in Fiscal year 2012 also became law. Additional information regarding Fiscal Year 2013 recommendations and subsequent 2013 legislation is reported in Section 4.



SECTION 4

Recommendations and outcomes

This section presents the recommendations approved by the Commission in Fiscal Year 2013. Many recommendations were drafted into legislation for the 2013 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 that began as Commission recommendations and passed during the 2013 legislative session and were signed by the Governor.⁷

Table 4.1. 2013 Legislative Session “Commission Bills”

Bill number	Bill title (and originating Commission recommendation)
Senate Bill 13-250	Concerning changes to sentencing of persons convicted of drug crimes <ul style="list-style-type: none"> • <i>FY13-DP1 Revise drug sentencing classifications and ranges</i>
House Bill 13-1325	Concerning penalties for persons who drive while under the influence of alcohol or drugs <ul style="list-style-type: none"> • <i>FY13-DP7 Establish a violation for driving under the influence of marijuana</i>
House Bill 13-1160	Concerning criminal theft <ul style="list-style-type: none"> • <i>FY13-CS1 Modify and expand CRS 18-4-401, theft offenses</i> • <i>FY13-CS2 Modify and consolidate Colorado Revised Statute 18-4-401 to increase clarity and reduce duplication</i>

Table continued on next page.

⁷ The full text of each bill may be found on the Commission’s website at www.colorado.gov/ccjdir/L/Legislation.html.

Table 4.1. 2013 Legislative Session “Commission Bills” (continued from previous page)

Bill number	Bill title (and originating Commission recommendation)
House Bill 13-1156	Concerning creation of an adult diversion program, and, in connection therewith, making an appropriation <ul style="list-style-type: none"> • <i>FY13-CS4 Expand the availability of adult pretrial diversion options within Colorado’s criminal justice system</i>
House Bill 13-1236	Concerning pre-trial release from custody <ul style="list-style-type: none"> • <i>FY13-BL1 Implement evidence based decision making practices and standardized bail release decision making guidelines</i> • <i>FY13-BL2 Discourage the use of financial bond for pretrial detainees and reduce the use of bonding schedules</i> • <i>FY13-BL3 Expand and improve pretrial approaches and opportunities in Colorado</i>
House Bill 13-1021	Concerning measures to ensure that students comply with compulsory school attendance requirements, and, in connection therewith, requiring schools to address habitual truancy through a multidisciplinary plan, limiting the length of detention that a court may impose to enforce compulsory school attendance, allowing students who are under juvenile court jurisdiction to obtain a GED, and specifying minimum requirements for education services provided in juvenile detention facilities <ul style="list-style-type: none"> • <i>FY13-JJ1 Amend Colorado Department of Education rules regarding age restrictions for the General Equivalency Diploma</i> • <i>FY13-JJ2 Revise the Enforcement of Compulsory School Attendance statute to address issues including the definition of absence, policies and procedures regarding attendance, identification of at-risk students, truancy charges, and parental roles</i>
House Bill 13-1129	Concerning creating the evidence-based practices implementation for capacity resource center <ul style="list-style-type: none"> • <i>FY13-EPIC1 Permanently fund EPIC (Evidence-Based Practices Implementation for Capacity) for the purposes of sustainability and expansion statewide</i>
Senate Bill 13-007	Concerning the repeal date of the Colorado Commission on Criminal and Juvenile Justice <ul style="list-style-type: none"> • <i>FY13-CCJJ1 Continue the Colorado Commission on Criminal and Juvenile Justice beyond the statutory terminate date of June 30, 2013</i>
Senate Bill 13-229	Concerning changes to statutory provisions related to criminal proceedings <ul style="list-style-type: none"> • <i>FY12-MOR1 Modify legislation to include gender and minority data in all fiscal notes written for criminal justice bills</i> • <i>FY13-JJ4 Revise C.R.S. 18-8-208 Escapes to provide that an adjudicated juvenile who turns 18 while in custody, but is not in custody in a state-operated facility, commits a class 3 misdemeanor rather than a felony if convicted of an escape</i>

Four sets of recommendations produced by four task forces and committees are presented in this section in the following order: Drug Policy, Comprehensive Sentencing, Juvenile Justice, and Bail. This section also includes one recommendation that supports the EPIC project (described previously), one recommendation eliminating the repeal date of the Commission, and two MOR recommendations, one of which, originally approved in FY12, was included in the FY13 Criminal Omnibus Bill (SB13-229).

The recommendations reported below include the original text approved by the Commission. However, in instances where recommendations were drafted into legislation and passed into law, the language may have been modified to better reflect statutory intent.

Please note the following formatting guides:

- Numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, “FY13”), letters indicating the task force from which the

recommendation originated (e.g., Drug Policy Task Force by a “DP”, Comprehensive Sentencing Task Force by a “CS”, and Juvenile Justice Task Force by a “JJ”), and a sequence number.

- Some recommendations may appear to have been skipped or missing, but this is not the case. If a recommendation was numbered and presented to the

Commission, but not approved, it is not included in this report.

- Recommendations may include additions to existing statutory or rule language as indicated by CAPITAL letters or deletions that are represented as strikethroughs.

Drug policy recommendations

FY13-DP1 **Revise drug sentencing classifications and ranges**

The Drug Policy Task Force presents this proposal for a revision of the Controlled Substances Act that includes a separate sentencing framework based on a drug crime classification that has four felony offense levels, two misdemeanor offense levels and petty offenses. (Note: the current petty offense level will continue as in current law and is not addressed here.) Each felony offense level includes both a presumptive and aggravated sentencing range, except for the DF1. Each felony level also has a corresponding period of parole that would be a mandatory provision of any prison sentence.

Table 4.2. Separate drug sentencing scheme

Drug crime level	Presumptive range	Aggravated range	Parole period
D Felony 1	8-32 years Mandatory Minimum 8 years	None	3 years
D Felony 2	4-8 years	8-16 years	2 years
D Felony 3	2-4 years	4-6 years	1 year
D Felony 4	6-12 months	1-2 years	1 year
D Misdemeanor 1	3-18 months		
D Misdemeanor 2	0-12 months		

Discussion

This proposal is consistent with the policy goals of CCJJ, addresses most of the issues as identified in SB 12-1310 (aka SB 12-163) and is a compromise of concepts and ideas that make a thoughtful and well-reasoned sentencing scheme.

Successful drug treatment programs and drug courts commit to recovery. Colorado has moved a substantial amount of dollars into treatment, has expanded the eligible offenders and the permissible uses of those dollars and, with this proposal, members of the Drug Policy Task Force have addressed most of the concerns raised during the previous year’s legislative session.

However, it is extremely important that many options other than incarceration are needed to address the drug problems experienced in Colorado. The Commission should continue to explore civil and medical/health focused strategies, particularly as they may be effective in

addressing the growing problem of prescription drug abuse/misuse. The idea is to expand our approaches and the “buckets” that can deal with this health/criminal justice problem. While we need a bit more time to detail those proposals, they are a very important part of this strategy.

The Commission considers the following important evidence-based information from its 2010 White Paper from the Treatment Funding Working Group:⁸

- Providing community-based treatment for offenders who suffer from alcoholism and drug abuse – and mental health problems associated with these addictions – will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. Research unequivocally finds that substance abuse treatment reduces drug abuse and criminal behavior.*
- Prison should be reserved for violent, frequent or serious offenders.*
- High rates of recidivism, high rates of substance use disorders in the offender population, and new research on the effect of addiction on the brain and behavior suggest it is time for a new approach.*
- Client progress in early recovery is often marked by episodes of perceived stress, resumed drug use or full-blown relapse, and multiple treatment admissions. Too often treatment episodes are brief, sometimes lasting only a few weeks. This approach to care has been based on the notion that a client who enters and completes a single episode of care should then be able to maintain abstinence and continue the recovery process independently. Although some individuals can successfully recover within this framework, more than half of the clients entering substance abuse treatment today require multiple episodes of care over several years to achieve and sustain recovery.*
- Scientific evidence supports a blended public/health/public safety approach to dealing with the addicted offender.*

Tables 4.3 and 4.4 detail the proposed crime classifications for controlled substances and marijuana, along with the definitions of Scheduled Drugs.

⁸ Available at http://www.colorado.gov/ccjjdir/Resources/Resources/Report/2010-12_TxtFundingWP.pdf.

FURTHER CLARIFICATION »

Table 4.3. Proposed crime classification overview, scheduled controlled substances

Crime	Misd 2 (0-12 mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 yrs	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Drug use	Any drug					
Possession III, IV, V		Any amount				
Possession I/II and fluni/ketamine			Any amount			
Transfer/sharing		Sch III/IV	4g or less – Sch I/II 2g or less – meth			
Sale – Schedule V		Any amount				
Sale – imitation substance			To adult	To minor		
Sale – Schedule III/IV			4g or less	>4g		
Sale – Schedule I/II				14g or less (1/2 oz or less)	>14g - 225g (>1/2 oz - 8oz)	>225g (>8 oz)
Sale – meth				7g or less (1/4 oz or less)	>7g - 112g (>1/4 oz - 4oz)	>112g meth (>4 oz)
Sale to minor and adult is +2yrs older than minor					Sch III, IV, V	Sch I, II
Importation I/II						>14g; >7g meth

Scheduled Drugs – Definition

- **Schedule I Drug** – Has a high potential for abuse; has no currently accepted medical use in the US; and lacks accepted safety for use under medical supervision. Examples include: heroin, psilocybin (mushrooms), LSD, GHB, peyote.
- **Schedule II Drug** – Has a high potential for abuse; currently accepted for medical use in the US; and abuse may lead to dependence. Examples include: cocaine, methamphetamine, oxycodone, morphine, fentanyl.
- **Schedule III Drug** – Has a potential for abuse that is less than drugs included in schedules I/II; has currently accepted medical use in US; and abuse may lead to moderate or low dependence. Examples include: Vicodin.
- **Schedule IV Drug** – Has a low potential for abuse relative to drugs in schedule III, has currently accepted medical use in US; and abuse may lead to limited dependence relative to drugs in Schedule III.
- **Schedule V Drug** – Has a low potential for abuse relative to substances included in Schedule IV, has currently accepted medical use in treatment; and abuse may lead to limited dependence relative to drugs in Schedule IV.

Table 4.4. Marijuana and concentrate offenses (where quantity dictates crime level)

Crime	Petty offense	Misd 2 (0-12 mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 yrs	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Possession MJ	2 oz or less	>2 oz - 6 oz	>6 oz - 12 oz	>12 oz			
Poss of concentrate-hash			3 oz or less	>3 oz			
Transfer/share MJ	2 oz or less						
Cultivation MJ			Up to 6	>6 - 30 plants	>30 plants		
Sale/distribution MJ			4 oz or less	>4 oz - 12 oz	>12 oz - 5 lbs	>5 lbs - 50 lbs	> 50 lbs
Sale concentrate-hash			2 oz or less	>2 oz - 6 oz	>6 oz - 2.5 lbs	>2.5 lbs - 25 lbs	> 25 lbs
Sale to minor MJ & adult +2yrs older				1 oz or less	>1 oz - 6 oz	>6 oz - 2.5 lbs	>2.5 lbs
Sale to minor hash & adult +2yrs older				1/2 oz or less	>1/2oz - 3oz	>3oz - 1 lb	> 1lb

The copy of the complete recommendation FY13-DP1 may be found in Appendix A.

FY13-DP2 Replicate the Summit View (Mesa County) model of state/local partnerships for residential treatment in communities

Expand residential treatment capacity by allowing a state funding mechanism to local governments for the capital construction or acquisition of real property for the purposes of providing residential treatment in the community. Regional collaboration is permitted to expand residential treatment options in rural or otherwise underserved areas. Clients could include referral from criminal justice, child welfare, other agencies or voluntary admissions.

Discussion There is a critical shortage of residential treatment beds in Colorado. Substance abuse disorders and other mental health problems are significant cost drivers in criminal justice, child welfare and medical care systems. The overwhelming majority of residential treatment beds are available only for criminal justice involved persons who are accepted into a community corrections programs.

Mesa County officials developed a community-based residential treatment program instead of expanding the local jail. In 2007, Summit View opened and accepts people from many referral systems, including criminal justice and child welfare, along with voluntary admissions. The results from Mesa County’s experience could be a model for other communities throughout Colorado. Given the budget crisis faced by many county governments, the state could be a valuable partner in expanding capacity for residential treatment services. The Division of Behavioral Health may also be able to leverage and target its funding to help support operations for the delivery of residential treatment.

FY13-DP3 Develop a jail option for the completion of specific drug-related, short prison sentences

Request that the Department of Corrections (DOC) evaluate the feasibility of allowing defendants sentenced to prison with a relatively short sentence who need substance abuse treatment to serve their prison sentence in the county jail if the jail can provide the appropriate level of substance abuse

treatment. The Sheriff and the DOC would need to both agree to a defendant serving his/her prison sentence in jail. DOC would be responsible to pay for the cost of incarceration at the jail per diem set by the legislature.

Discussion *People sentenced to prison for relatively short sentences who have substance abuse treatment needs are not likely to receive treatment while in prison. There is a lack of treatment available in prison, particularly for people with shorter sentences. Processing inmates through the DOC Denver Reception & Diagnostic Center (DRDC) is very costly and involves numerous tests and assessments.*

The treatment funds appropriated to the Division of Behavioral Health from HB 10-1352 have been used to expand or develop the capacity to provide substance abuse treatment in jail through the Jail Based Behavioral Health Services (JBBS) program. In FY11-12, \$1,450,000 was appropriated to the Division of Behavioral Health and JBBS grants were awarded to the Sheriff's Departments in Alamosa, Arapahoe, Boulder, Delta, Denver, El Paso, Jefferson, La Plata, Larimer, and Logan counties.⁹

Allowing inmates to serve a relatively short prison sentence in jail may increase their likelihood of receiving substance abuse treatment services while incarcerated. If allowed to serve the prison sentence in jail, inmates may have better access to family visitation and re-entry support services offered by the jail or local community-based programs. This may help promote successful re-entry following release.

This recommendation may present some operational and logistical challenges for the jail, DOC administration, and the Parole Board. For example, DOC inmates in jail would need to be eligible to be awarded any earned time as other DOC inmates. A DOC inmate serving his/her sentence in jail would still be eligible under state law to be referred to community corrections (unless waived) or, alternatively, a DOC inmate could be eligible for a jail work-release program, if offered. DOC inmates in jail would still be eligible under state law for consideration by the Parole Board when eligible. Further discussion would be needed on these issues to determine whether this recommendation is viable and further discussion may also be needed regarding whether the current jail reimbursement rate paid by DOC would be adequate in this circumstance.

FY13-DP4 Expand IRT availability in DOC

Encourage the General Assembly to provide funding to the DOC to develop or expand an intensive residential treatment program for inmates who have relatively short sentences who are assessed to need that level of treatment.

Discussion *Approximately 51% of new commitments to prison in FY11 were assessed to be in the moderately/severe (level 4) or severe (level 5) need of substance abuse treatment.¹⁰ Another 39% were assessed to be in moderate (level 3) need of substance abuse treatment.¹¹*

Inmates with relatively short sentences, regardless of the nature of the conviction, are unlikely to receive treatment services while incarcerated. Public safety and inmate recovery could be promoted by providing more inmates with an intensive residential treatment modality for those in high need within DOC and prioritize those with relatively short sentences.

⁹ Treatment Funding Work Group. (September, 2012). *Impact of CCJJ bills on substance use disorder treatment.*

¹⁰ Barr, B., Gilbert, C.R., & O'Keefe, M.L. (2012). *Statistical Report Fiscal Year 2011*. Colorado Springs, CO: Colorado Department of Corrections.

¹¹ Ibid.

FY13-DP5 Expand civil remedies to prevent, intervene in, and treat substance abuse

Allow for expansion of civil remedies (e.g. consumer protection and/or use of public health regulatory authority) as part of building more comprehensive drug policy. Areas related to this proposal include strategies to prevent and effectively intervene in prescription drug abuse/misuse and adopting medical models for detoxification programs.

Discussion *Comprehensive drug policy should integrate law enforcement, treatment, public health and civil law strategies designed to prevent drug abuse, promote recovery from addiction, and reduce the supply of illegal drugs in Colorado.*

In 2012, the Colorado Legislature revised the Colorado Consumer Protection Act to promote its use in stopping retailers from selling designer drugs like “bath salts” and “spice”. There may be other applications of the Colorado Consumer Protection Act. Currently, the Colorado Department of Public Health and Environment does not have any regulations regarding the possession or sale of illegal drugs.

One emerging drug problem involves the misuse or abuse of prescription pharmaceuticals, particularly opiates (“pain pills”). Opiates can result in death by overdose and can be highly addictive for patients with legitimate medical needs for the treatment of pain. There is also an increasing problem of prescription medications being diverted for non-medical use. Developing an addiction to prescription opiates or stimulants may also lead to more people switching to illegal drugs like heroin, methamphetamine, and cocaine.

In Colorado, the dominant model for detoxification programs is a “social” model that is largely ineffective as a strategy for engaging people in treatment. Also, people with long-term histories of alcohol or opiate use may face significant or potentially life-threatening medical emergencies during detoxification.

The Drug Policy Task Force of the CCJJ is encouraged to explore the expansion of civil law strategies and to collaborate with medical and behavioral health treatment providers, their respective regulatory agencies/boards, and health departments to develop recommendations related to preventing and intervening in the misuse of prescription medications and development of medical-based models for detoxification services in Colorado.

FY13-DP6 Expand access to trauma-informed substance abuse treatment

If there are projected cost-savings from legislation reforming the Colorado Controlled Substances Act, the Drug Policy Task Force recommends that the General Assembly prioritize expanding access to trauma-informed treatment services for people with a substance abuse disorder to the extent that is appropriate and available.

Discussion *The General Assembly has appropriated approximately \$8M to expand treatment services since the passage of HB 1352 in 2010.¹² However, there are still gaps in access to treatment services for indigent offenders. Additionally, the federal Substance Abuse and Mental Health Services Administration (SAMSA) recommends that treatment for substance abuse disorder be provided in a manner that is informed by best practices in trauma care due to the high prevalence of*

¹² Treatment Funding Work Group. (September, 2012). *Impact of CCJJ bills on substance use disorder treatment.*

traumatic histories among substance abuse treatment clients. Currently, in Colorado, few substance abuse treatment providers are specifically trained in providing trauma-informed care.

FY13-DP7 Establish a violation for driving under the influence of marijuana

Establish rebuttable presumption or permissible inference of intoxication for driving under the influence of marijuana by establishing that it shall be an unclassified misdemeanor traffic offense for any person to drive a motor vehicle when the person has a level of 5 nanograms of Delta-9 THC/mL whole blood or more at the time of driving or within two hours after driving and to create this permissible inference for all allegations of DUID, vehicular assault and vehicular homicide.

Discussion

The Colorado Department of Transportation reports an increase in the number of drivers involved in fatal vehicle accidents that tested positive for marijuana. The science is clear that use of cannabis leads to immediate behavioral impairment which can negatively affect driving abilities. Having a per se law sends a message that driving while impaired will not be tolerated. Experts agree that chronic use, such as that by medical marijuana patients, can lead to drug tolerance but impairment may still be present when chronic users consume THC and drive.

The controversy about establishing a defined intoxication level, similar to that used for alcohol, in large part involves the fact that, whereas Blood Alcohol Content (BAC) can be accurately measured and correlated with driving impairment, this is more difficult with cannabis. Alcohol is water soluble; cannabis is stored in the fat and is metabolized differently, making a direct correlation with behavior difficult to measure. High levels of active THC may remain in the blood long after use, perhaps up to 24 hours, whereas driving impairment that would negatively affect driving occurs closer to the time the THC was consumed. There is a lack of consensus among experts about the duration of impairment and the appropriate per se limit. A low threshold may include individuals whose driving ability was not impaired because consumption occurred many hours prior to the blood test and it may not necessarily imply driving impairment, especially for chronic users.

Comprehensive sentencing recommendations

FY13-CS1 Modify and expand CRS 18-4-401, theft offenses

Reclassify C.R.S. 18-4-401 to expand the sentencing options available for theft crimes. Specifically, reclassify theft C.R.S. 18-4-401 as specified in the following tables. Any cost savings from this recommendation should be reinvested in diversion and justice system programs.

Table 4.5. Current vs. proposed theft offense levels

Current offense level	Value	Proposed offense level	Value
F3	\$20K and up	F2	\$1M and up
F4	\$1K - \$20K	F3	\$100K - \$1M
F5	\$1K - \$20K (rental property)	F4	\$20K - \$100K
F6		F5	\$5K - \$20K
M1	\$500 - \$1K	F6	\$2K - \$5K
M2	Less than \$500	M1	\$750 - \$2K
M3		M2	\$300 - \$750
PO1		M3	\$100 - \$300
		PO1	Less than \$100

Discussion

The current theft crime classification does not allow for Felony 6 offenses or lower level classifications. Further, the monetary values have not been updated in many years. This is an effort to bring theft classification levels up to date with present-day values and develop a more evenly distributed set of crime categories.

FURTHER CLARIFICATION »

Figure 4.1 shows the current and proposed distributions of reclassifying theft offense levels.

Figure 4.1. Percent of FY07-11 Theft* cases under the current and proposed classifications

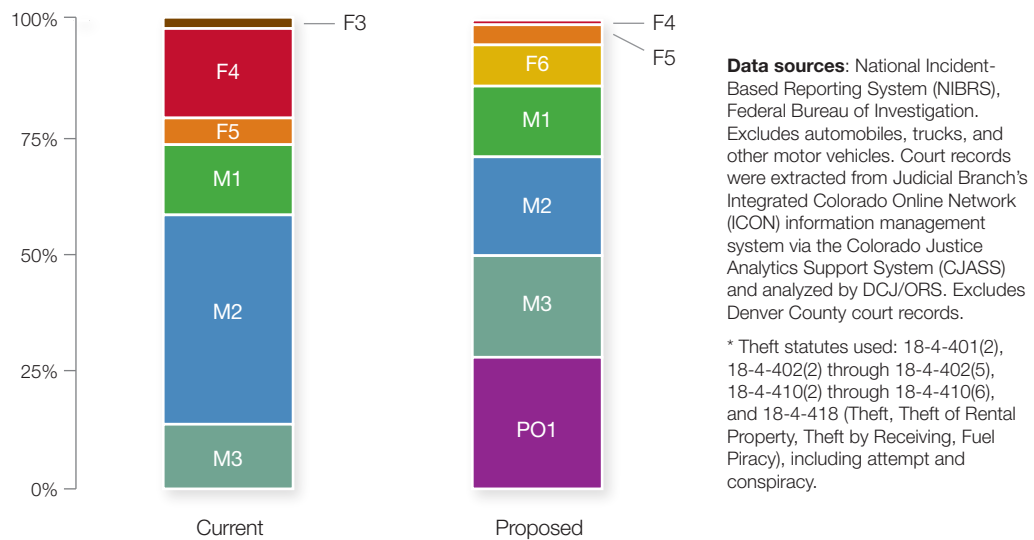


Table 4.6 shows how Theft offenders would be reallocated under the proposed system. The table shows that 3,959 offenders (green cells) during this time period who were formally prison-eligible would receive a misdemeanor or petty offense classification under the new classification. In addition, 8,923 offenders which were formerly misdemeanors would be classified at the PO1 level under the new system.

Table 4.6. Current vs. proposed law classifications of Theft* offenders in FY07-FY11

Current class	Proposed class									
	F2	F3	F4	F5	F6	M1	M2	M3	PO1	Total
F3	1	31	249	220						501
F4				1,133	2,805	2,136				6,074
F5						1,794				1,794
F6						29				29
M1						838	3,907			4,745
M2							2,777	6,893	4,530	14,200
M3									4,393	4,393
Total	1	31	249	1,353	2,805	4,797	6,684	6,893	8,923	31,736

Data sources: National Incident-Based Reporting System (NIBRS), Federal Bureau of Investigation. Excludes automobiles, trucks, and other motor vehicles. Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

* Theft statutes used: C.R.S. 18-4-401(2), 18-4-402(2) through 18-4-402(5), 18-4-410(2) through 18-4-410(6), and 18-4-418 (Theft, Theft of Rental Property, Theft by Receiving, Fuel Piracy), including attempt and conspiracy.

A sample of offenders convicted of a theft offense as their most serious crime was collected from the Judicial Branch ICON system from FY07-FY11. Table 4.7 details these numbers by race.

Table 4.7. FY07-11 cases with Theft* as the most serious conviction charge by Race**

Law class	N	Asian (N=339)	Black (N=2,847)	Hispanic (N=2,742)	Native Am. (N=147)	Other (N=356)	White (N=25,189)	Blank (N=116)	Total (N=31,736)
F3	501	3%	10%	5%	<1%	1%	80%	0%	100%
F4	6,074	1%	12%	10%	<1%	1%	76%	<1%	100%
F5	1,794	1%	10%	9%	<1%	1%	78%	<1%	100%
F6	29	0%	7%	7%	0%	3%	83%	0%	100%
M1	4,745	1%	10%	9%	1%	1%	78%	<1%	100%
M2	14,200	1%	8%	9%	1%	1%	81%	<1%	100%
M3	4,393	1%	8%	7%	<1%	1%	82%	1%	100%
Total	31,736	1%	9%	9%	<1%	1%	79%	<1%	100%

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

* Theft statutes used: C.R.S. 18-4-401(2), 18-4-402(2) through 18-4-402(5), 18-4-410(2) through 18-4-410(6), and 18-4-418 (Theft, Theft of Rental Property, Theft by Receiving, Fuel Piracy), including attempt and conspiracy.

** Judicial race data often does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

FY13-CS2 Modify and consolidate C.R.S. 18-4-401 to increase clarity and reduce duplication

Consolidate theft, theft by receiving, theft of rental property, and fuel piracy. Repeal newspaper theft as an isolated offense. Revise C.R.S. 18-4-401(1) as follows:

(1) A person commits theft when he knowingly obtains, RETAINS, or exercises control over anything of value of another without authorization, or by threat or deception, and OR OBTAINS CONTROL OVER STOLEN PROPERTY KNOWING OR BELIEVING THE PROPERTY TO HAVE BEEN STOLEN, and:

- (a) Intends to deprive the other person permanently of the use or benefit of the thing of value; or
- (b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or
- (c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or
- (d) Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person, or
- (E) IF THE THING OF VALUE WAS FOR HIRE OR LEASE, KNOWINGLY FAILS TO RETURN THE THING OF VALUE WITHIN 72 HOURS OF THE TIME OF THE AGREED RETURN.

Discussion

A goal of the Comprehensive Sentencing Task Force and the Commission is to simplify, reduce redundancy and increase transparency of the current sentencing structure. After careful study, some theft crimes were found to be redundant and could appropriately be charged under other existing statutes. This recommendation identifies offenses that could be charged under general theft statutes.

FY13-CS3 Eliminate Colorado’s Extraordinary Risk Statute

Colorado’s Revised Statutes pertaining to Crimes of Violence, Extraordinary Risk Crimes and Aggravated Ranges are complex, convoluted and often duplicative. The CCJJ Comprehensive Sentencing Task Force recommends the following changes:

1. Eliminate Extraordinary Risk (C.R.S.18-1.3-401(10)) and move child abuse (C.R.S. 18-6-401(1)(a);(7)(a)(I) and 18-6-401(1)(a);(7)(a)(III)) and 2nd and subsequent stalking (18-3-602(3)(b)) to the Crime of Violence Statute (C.R.S. 18-1.3-406), and strike C.R.S. 18-3-602(5) as follows:

If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against the person, prohibiting the behavior described in this section, the person commits a class 4 felony. In addition, when a violation under this section is committed in connection with a violation of a court order, including but not limited to any protection order or any order that sets forth the conditions of a bond, any sentence imposed for the violation pursuant to this subsection (5) shall run consecutively and not concurrently with any sentence imposed pursuant to section 18-6-803.5 and with any sentence imposed in a contempt proceeding for violation of the court order.

2. Change Crime of Violence and mandatory minimum (C.R.S.18-1.3-401(8)) ranges set to the minimum of the presumptive range.
3. The upper end of the sentencing ranges for Crimes of Violence mirrors the current upper end ranges in the statute.

Discussion

The goal of this recommendation is to simplify the sentencing code while at the same time providing the prosecution with more discretion in charging and negotiations, along with giving judges more discretion in sentencing. This change would also increase sentencing possibilities for some child abuse and stalking offenses.

Eliminating Colorado's Extraordinary Risk Statute is also consistent with evidence-based sentencing practices and goals, while continuing public safety through incapacitation when necessary, but not mandatorily with high minimum mandatory ranges.

This recommendation continues previous discussions by the Commission reflected in FY10-S4 that requested a detailed analysis and careful study of aggravated ranges, extraordinary risk crimes and mandatory minimum sentences. That recommendation from the October 2010 annual report can be found in Appendix B.

FURTHER CLARIFICATION »

Extraordinary Risk – Felonies

Crimes that present an extraordinary risk of harm to society shall include the following:

1. Aggravated robbery, C.R.S. 18-4-302
2. Child abuse, C.R.S. 18-6-401
3. Unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, C.R.S. 18-18-405 (Note-not simple possession)
4. Any crime of violence as defined in C.R.S. 18-1.3-406
5. Stalking, C.R.S. 18-3-602, or C.R.S. 18-9-111(4) as it existed prior to August 11, 2010
6. Sale of materials to manufacture controlled substances, section C.R.S.18-18-412.7
7. Felony invasion of privacy for sexual gratification as described in C.R.S. 18-3-405.6 (Note: Effective July 1, 2012)

Table 4.8 and 4.9 display the existing (as of FY2012) and proposed sentencing ranges by crime classifications, respectively.

Table 4.8. Existing sentencing ranges by crime classification

Felonies committed on or after July 1, 1993					
Class	Presumptive range		Exceptional circumstances		
	Minimum	Maximum	Minimum	Maximum	Mandatory Parole
1	Life imprisonment	Death	Life imprisonment	Death	
2	8 years \$5000 fine	24 years \$1,000,000	4 years	48 years	5 years
3	4 years \$3000	12 years \$750,000	2 years	24 years	5 years
Extraordinary risk crime	4 years \$3000 fine	16 years \$750,000	2 years	32 years	5 years
4	2 years \$2000 fine	6 years \$500,000	1 year	12 years	3 years
Extraordinary risk crime	2 years \$2000 fine	8 years \$500,000	1 year	16 years	3 years
5	1 year \$1000 fine	3 years \$100,000	6 months	6 years	2 years
Extraordinary risk crime	1 year \$1000 fine	4 years \$100,000	6 months	8 years	2 years
6	1 year \$1000 fine	18 months \$100,000 fine	6 months	3 years	1 year
Extraordinary risk crime	1 year \$1000 fine	2 years \$100,000	6 months	4 years	1 year

Table 4.9. Proposed revised sentencing ranges by crime classification

Felonies				
Class	Presumptive range		Crime of violence range	
	Minimum	Maximum	Minimum	Maximum
1	Life imprisonment	Death	Life imprisonment	Death
2	8 years	24 years	8 years	48 years
3	4 years	12 years	4 years	32 years
4	2 years	6 years	2 years	16 years
5	1 year	3 years	1 year	8 years
6	1 year	18 months	1 year	4 years

FY13-CS4 Expand the availability of adult pretrial diversion options within Colorado’s criminal justice system

The Comprehensive Sentencing Task Force recommends enhancing the availability of pretrial diversion options throughout the state, as well as developing appropriate funding alternatives, by:

1. Replacing the existing deferred prosecution statute (C.R.S. 18-1.3-101) with the three statutory sections proposed below.
2. Amending the Victim’s Rights Act to ensure victims are able to provide input to the pretrial diversion decision.

Discussion

Diversion is a voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a prescribed set of conditions or complete a formal program designed to address, treat, or remedy issues related to or raised by the allegation. Upon successful completion of the conditions or program, the charges against the defendant are dismissed or not filed.¹³ Goals of diversion include, but are not limited to:

- *Preventing defendants from committing additional criminal acts;*
- *Restoring victims of crime;*
- *Assisting district attorneys’ offices, courts, detention facilities, and the state public defender by reducing the number of cases within the criminal justice system; and*
- *Limiting defendants’ penetration into the criminal justice system.¹⁴*

In Colorado, “deferred prosecution” and “deferred sentencing” are both currently permitted by statute. The deferred sentencing option requires a defendant to enter a guilty plea and the punishment, or sentence, is then suspended for a period of time.¹⁵ Provided the defendant successfully completes certain requirements of the deferred sentencing, the charge is subsequently dismissed. Deferred sentencing is a well-accepted and frequently employed option, and thus is not the focus here.

Deferred prosecution, as it exists under current law, is a form of pretrial diversion where prosecution of the offense is deferred for a period of time and then formal charges are not filed if the defendant satisfactorily completes supervision.¹⁶ This option is rarely used in Colorado.¹⁷ Although it is difficult to pinpoint precisely why deferred prosecution is seldom employed, commonly expressed reasons include:

- *District attorneys do not have the resources to screen defendants for deferment, implement a deferment agreement, and then monitor defendants for compliance;*
- *The ability to follow through with prosecution is impeded by fading memories, scattering witnesses, and other practical impediments to gathering evidence when prosecutorial action on an offense is delayed; and*

¹³ There is no universally accepted definition of diversion. The definition here is drawn from the National Association of Pretrial Services Agencies, *Performance Standards and Goals for Pretrial Diversion/Intervention*, standard 1.1 (2008) [hereinafter NAPSA standards], as well as a draft of the American Bar Association Diversion Standards (publication pending).

¹⁴ Different organizations assign different goals to diversion. The four goals listed here, however, are widely accepted. They are consistent with the stated goals of programs currently operating in Colorado’s first and seventeenth judicial districts, as well as the National District Attorneys Association, *National Prosecution Standards* 55 (3d ed.) [hereinafter NDAA standards], and NAPSA standard 1.2.

¹⁵ See § 18-1.3-102, C.R.S. 2011.

¹⁶ See § 18-1.3-101, C.R.S. 2011.

¹⁷ Statistics provided by the Colorado Judicial Branch, Division of Planning and Analysis, indicate that in FY 2011, approximately 0.5% of misdemeanor cases (216 of 42,590) and 1.7% of felony cases (484 of 28,536) received a court-involved deferred prosecution.

- *There is little motivation for prosecutors to make it available because deferred prosecution inures solely to the benefit of defendants.*

This recommendation is an effort to address those concerns. It would replace the presently existing deferred prosecution statute, and strives to facilitate diversion of appropriate defendants in a way that is:

- *More readily available to criminal justice practitioners statewide;*
- *More beneficial to prosecutors; and*
- *More consistent with the long-term rehabilitation and recidivism reduction of individual defendants.*

The recommended statutory changes are intended to operate simply and flexibly. District attorneys can agree to divert a defendant at any point before plea or trial, including before charges are filed. They can preserve their ability to reinstate prosecution by requiring a signed “statement of facts” upon which the allegation is based. The terms of a diversion agreement can restore victims and require defendants to address criminogenic needs. Compliance with the agreement can be monitored and enforced by any approved entity, including, but not limited to, diversion programs run by district attorneys’ offices, law enforcement agencies, and pretrial service organizations. Alternatively, a diversion agreement may be filed with a court, thus allowing the defendant to be ordered to the supervision of the Probation Department. If the agreement is successfully completed, the defendant is returned to the same legal status as if the offense had never occurred.

Pretrial diversion is intended to increase the available options for resolution after a crime has occurred. Prosecutors will have the discretion to pursue diversion, deferred sentencing, a traditional plea, or a jury trial. As explained below, that decision will be based upon the nature of the offense, the characteristics of the offender, and the interests of the public.

To further encourage the expansion and use of diversion programs, the Commission recommends that cost-savings associated with FY13-CS#1 (regarding the reclassification of various theft offenses) be used for that purpose consistent with this recommendation.

This recommendation seeks to improve public safety by allowing people accused of a crime to take responsibility for their mistakes while limiting the collateral consequences that accompany a criminal record.

The copy of the complete recommendation FY13-CS4 may be found in Appendix C.

Juvenile Justice recommendations

FY13-JJ1 Amend Colorado Department of Education rules regarding age restrictions for the General Equivalency Diploma

Request that the Colorado Department of Education (CDE) amend its rules (1 CCR 301-2) to permit the General Equivalency Diploma (GED) option be opened for 16 year old juveniles appearing before the court when provided sufficient information to determine it is in the best interest of the youth.

Discussion The Commission members believe that all children should be provided an opportunity to achieve a high school diploma. Not all juveniles benefit from a traditional school experience, especially those who become disengaged in their early education years. Although CDE has numerous opportunities to address these needs (EARRS programs, alternative schools) older students who have already lost years of academic credit need options such as pursuing a GED to complete their secondary education. The adoption of this recommendation may result in a reduction in detention of juveniles that refuse to attend school and therefore cycle in and out of the court system for contempt of valid court orders to attend school.

FURTHER CLARIFICATION »

Suggested rule amendment to the administration of General Educational Development (GED) testing program:

130.01 (A) A sixteen (16) year old candidate may be tested provided he/she meets the following conditions. (A) the candidate must complete AND SUBMIT an age waiver application form, CDE 381.1; and (B) ALONG WITH EITHER (1) they provide a written letter from a university, college or vocational education program stating that the candidate is required to show documentation of a high school diploma or the equivalent to be eligible for admission to a specific educational or vocational education program OR (2) UPON APPROVAL BY A JUDICIAL OFFICER OR ADMINISTRATIVE HEARING OFFICER WHEN THE CANDIDATE IS CURRENTLY SUBJECT TO THE COURT'S JURISDICTION as a result of a delinquency or status offender hearing AND WHERE IT HAS BEEN DETERMINED THAT SUCH REQUEST IS IN THE BEST INTEREST OF THE JUVENILE. THIS DETERMINATION WILL BE BASED UPON THE FOLLOWING CRITERIA: A) THE NUMBER OF CREDITS EARNED TO DATE BY THE JUVENILE AND NUMBER OF CREDITS NEEDED TO GRADUATE; B) THE OUTCOME OF CREDIT RECOVERY AND SCHOOL REENGAGEMENT PLANS DEVELOPED BY THE SCHOOLS for WITH THE JUVENILE; AND C) WISHES OF THE JUVENILE AND/OR HIS/HER PARENTS/GUARDIANS.

FY13-JJ2 **Revise the Enforcement of Compulsory School Attendance statute to address issues including the definition of absence, policies and procedures regarding attendance, identification of at-risk students, truancy charges, and parental roles**

Discussion Chronic absence refers to children missing extended periods of schools and includes both excused and unexcused absences. Missing 10% or more of school over a school year is associated with declining academic performance. Chronic absence in Kindergarten is also associated with lower academic performance in 1st grade among all children and most significantly reading proficiency for Latino youngsters. Among poor children, chronic absence in kindergarten predicts the lowest levels of educational achievement at the end of fifth grade. A high level of chronic absence suggests the existence of systemic issues affecting large numbers of students and families.¹⁸

The Commission recommends that the State begin looking at excused absences along with unexcused absences in an effort to identify and serve, as early as possible, those children at risk of school disengagement. Missing school is also a symptom of other family, school and/or

¹⁸ Chang, Hedy. Annie E Casey Foundation. *Chronic Early Absence: What It Matter? What Can we Do?* PowerPoint Presentation at PTA Legislative Conference, March 11, 2009.

community issues that are contributing to chronic absence and need to be addressed through multi-disciplinary approaches. Multi-disciplinary teams exist in many local communities (for example, through the Colorado Management Program [HB 04-1451]) located in 33 of the 64 counties which can be used either as the multi-disciplinary body or as a template for developing such a multi-disciplinary body.

All of the recommendations presented here have been developed because Commission members recognize that the short and long term consequences for children not attending school can be severe and there is a need to respond as early as possible to excessive absences, to engage the parents in seeking solutions for their child's disengagement and, finally, to recognize that there are often multiple issues which contribute to truancy suggesting the need for a multi-disciplinary response.

The Commission also recognizes that even when agencies offer services, there may be times when parents and/or the child do not avail themselves of the services and the truant behavior continues. The recommendations in this document are intended to be used only as a last resort by the courts, when all other efforts have failed.

The courts have various options available to them in current statute which includes sentencing the child to detention for failing to obey a court order and sentencing a parent to jail or ordering a fine. Truancy petitions filed in juvenile court have been gradually increasing each year ultimately rising overall by 5.9% between 2005 and 2011. During the same time period, use of detention for status offenders who do not abide by court orders grew by 73% (from 122 to 467). There are no records for when parents have been fined or jailed but the courts have anecdotally stated this option is rarely if ever exercised.

FURTHER CLARIFICATION »

Revise C.R.S. 22-33-107, Enforcement of Compulsory School Attendance, as follows:

(3) (a) As used in this subsection (3), a child who is "habitually truant" means a child who has attained the age of six years on or before August 1 of the year in question and is under the age of seventeen years having four unexcused absences from public school in any one month or ten unexcused absences from public school during any school year. Absences due to suspension or expulsion of a child shall be considered excused absences for purposes of this subsection (3). TRACKING OF ABSENCES WILL BE PURSUANT TO THE BOARD OF EDUCATION RULES DEFINING ABSENCES.

(b) The board of education of each school district shall adopt and implement policies and procedures concerning children who are habitually truant REGARDING STUDENT ATTENDANCE BEGINNING WITH ELEMENTARY SCHOOL TO INCLUDE BOTH UNEXCUSED AND EXCUSED days absent ABSENCES FROM SCHOOL. The policies and procedures shall include provisions for the development of a MULTI-DISCIPLINARY plan TO ADDRESS EXCESSIVE ABSENCES. The plan shall be developed with the goal of assisting the child to remain ENGAGED in school and, when practicable, with the full participation of THE CHILD, THE child's parent, guardian, or legal custodian, AND WITH OTHER AGENCIES THAT can PROVIDE additional SERVICES TO ADDRESS THE SOCIAL, MEDICAL, ECONOMIC AND/OR ACADEMIC NEEDS OF THE CHILD AND FAMILY WHICH ARE IMPACTING THE CHILD'S ATTENDANCE. Appropriate school personnel shall make all reasonable efforts to meet with the parent, guardian, or legal custodian of the child to review and evaluate the reasons for the child's attendance DEFICITS. The policies and procedures may also include but need not be limited to the following:

(I) (Deleted by amendment, L. 96, p. 1808, § 4, effective July 1, 1996.)

(II) Annually at the beginning of the school year and upon any enrollment during the school year, notifying the parent of each child enrolled in the public schools in writing of such parent's obligations pursuant to section 22-33-104 (5), and requesting that the parent acknowledge in writing awareness of such obligations AND THEIR AWARENESS THAT SERVICES ARE AVAILABLE IF PROBLEMS REGARDING ATTENDANCE ARISE;

(III) Annually at the beginning of the school year and upon any enrollment during the school year, obtaining from the parent of each child a telephone number or other means of contacting such parent during the school day; and

(IV) Establishing a system of monitoring individual ~~unexcused~~ absences of children which shall provide that, whenever a child who is enrolled in a public school fails to report to school on a regularly scheduled school day and school personnel have received no indication that the child's parent is aware of the child's absence, school personnel or volunteers under the direction of school personnel shall make a reasonable effort to notify by telephone such parent. Any person who, in good faith, gives or fails to give notice pursuant to this subparagraph (IV) shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed and shall have the same immunity with respect to any judicial proceeding which results from such notice or failure to give such notice; and

(V) ESTABLISHING A SYSTEM OF MONITORING INDIVIDUAL ~~excused~~ ABSENCES OF CHILDREN WHICH SHALL PROVIDE THAT, WHENEVER A CHILD WHO IS ENROLLED IN A PUBLIC SCHOOL MISSES 10% OR MORE OF INSTRUCTIONAL SCHOOL TIME ~~school~~ INCLUDING EXCUSED AND UNEXCUSED ABSENCES, EVEN IF THE PARENT/GUARDIAN REPORTS TO SCHOOL ON A REGULARLY SCHEDULED SCHOOL DAY AND SCHOOL PERSONNEL HAVE RECEIVED INDICATION THAT THE CHILD'S PARENT IS AWARE OF THE CHILD'S ABSENCE. SCHOOL PERSONNEL SHALL MAKE A REASONABLE EFFORT TO ADDRESS THESE ABSENCES THROUGH A MULTI-DISCIPLINARY STAFFING AND SUBSEQUENT PLAN AS DESCRIBED IN 22-33-107 (3)(B); and

~~(VI) Establishing a system of monitoring and tracking attendance for students engaged in on-line schooling.~~

C.R.S. 22-33-104 (5)(a):

The general assembly hereby declares that two of the most important factors in ensuring a child's educational development are parental involvement and parental responsibility. The general assembly further declares that it is the obligation of every parent to ensure that every child under such parent's care and supervision receives adequate education and training. Therefore, every parent of a child who has attained the age of six years on or before August 1 of each year and is under the age of seventeen years shall ensure that such child attends the public school in which such child is enrolled in compliance with this section.

Revise C.R.S. 22-33-108, Judicial Proceedings, as follows:

(5) As a last-resort approach for addressing the problem of truancy, to be used only after a school district has attempted other options WHICH MUST INCLUDE A MULTI-DISCIPLINARY STAFFING AND SUBSEQUENT PLAN DEVELOPED, IMPLEMENTED AND SIGNED BY THE CHILD AND PARENT/GUARDIAN /LEGAL CUSTODIAN PURSUANT TO C.R.S.

22-33-107(3)(B) for addressing truancy that employ best practices and research-based strategies to minimize the need for court action and the risk of detention orders against a child or parent, court proceedings shall be initiated to compel compliance with the compulsory attendance statute after the parent and the child have been given written notice by the attendance officer of the school district or of the state that proceedings will be initiated if the child does not comply with the provisions of this article. The school district may combine the notice and summons. If combined, the petition shall state the date on which proceedings will be initiated, which date shall not be less than five days from the date of the notice and summons. The notice shall state the provisions of this article with which compliance is required and shall state that the proceedings will not be brought if the child complies with that provision before the filing of the proceeding.

(6) In the discretion of the court before which a proceeding to compel attendance is brought, an order may be issued against the child or the child's parent or both compelling the child to attend school as provided by this article or compelling the parent to take reasonable steps to ASSURE THE CHILD'S ATTENDANCE. THE ORDER SHOULD MAY REQUIRE THE SCHOOL, CHILD OR AND PARENT/GUARDIAN/LEGAL CUSTODIAN or both to follow the MULTIDISCIPLINARY PLAN DEVELOPED PURSUANT TO C.R.S. 22-33-107 (3)(B) an appropriate treatment plan that addresses problems affecting the child's school attendance and that ensures the child has an opportunity to obtain a quality education.

(7) (a) If the child does not comply with the valid court order issued against the child or against both the parent/GUARDIAN/LEGAL CUSTODIAN and the child, the court may order that an investigation be conducted as provided in C.R.S. 19-3-501, ~~19-3-307~~ AND C.R.S. 19-3-102 (D), ~~19-2-510 (2)~~; unless the department of social services was involved in the development and provision of services identified in the multidisciplinary staffing and subsequent plan developed pursuant to C.R.S. 22-33-107(3)(b), and the court may order the child to show cause why he or she should not be held in contempt of court.

(B) The court may include as a sanction after a finding of contempt an appropriate treatment plan ADDITIONAL SANCTIONS that may include, but need not be limited to, community service to be performed by the child, supervised activities, participation in services for at-risk students, as described by C.R.S. 22-33-204, and other activities having goals that shall ensure that the child has an opportunity to obtain a quality education.

(C) IF THE COURT FINDS THAT THE CHILD HAS FAILED TO COMPLY WITH THE APPROPRIATE WRITTEN MULTIDISCIPLINARY PLAN PREPARED BY THE CHILD'S SCHOOL DISTRICT PURSUANT TO 22-3107(3)(B), SIGNED BY THE JUVENILE AND HIS/HER PARENT/GUARDIAN/LEGAL CUSTODIAN, AND APPROVED BY THE COURT PURSUANT TO 22-33-108, THE court may impose on the child as a sanction for contempt of court a sentence to incarceration to any juvenile detention facility operated by or under contract with the department of human services pursuant to C.R.S. 19-2-402, and any rules promulgated by the Colorado supreme court.

(8) If the parent refuses or neglects to obey the order issued against the parent or against both the parent and the child, the court may order the parent to show cause why he or she should not be held in contempt of court, and, if the parent fails to show cause, the court may impose a fine of up to but not more than twenty-five dollars per day or confine the parent in the county jail until the order is complied with.

References for citations in above statutes:

- C.R.S. 19-3-501 Petition initiation – preliminary investigation – informal adjustment
 - (1) Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the county department or the local law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The county department shall submit a report of confirmed child abuse or neglect within sixty days of receipt of the report to the state department in a manner prescribed by the state department.
- C.R.S. 19-3-102 Neglected or dependent child
 - (d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;
- C.R.S. 19-2-510 Preliminary investigation
 - (1) Whenever it appears to a law enforcement officer or any other person that a juvenile is or appears to be within the court’s jurisdiction, as provided in C.R.S. 19-2-104, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the district attorney, who shall determine whether the interests of the juvenile or of the community require that further action be taken.
 - (2) Upon the request of the district attorney, the matter may be referred to any agency for an investigation and recommendation.

FY13-JJ3**Revise the Sex Offender Deregistration Statute to allow a person who committed an offense while under 18 years of age to deregister as an adult after successful completion of the terms of the sentence***Discussion*

Under the current statute, the determinative factor for deregistration is the person’s age at the time of the disposition or adjudication. With the proposed change, the determinative factor is the age at the date of the alleged act. This change means that a person who was charged while under 18 years of age, but was not adjudicated or sentenced until over 18, would have the benefits of deregistration that juveniles have.

Such a change would prevent a situation where a person well into adulthood, who was charged with a sexual offense that s/he committed while under 18, would not be eligible for deregistration as a juvenile even though that person was a juvenile at the time of the commission of the offense. The current statute creates situations such as this: a 14 year old who commits an offense, but that offense is not reported until 5 years later is charged. Because the person is now an adult, s/he must register as an adult and therefore has impediments to employment, education, and housing opportunities.

In 2011, 175 Public Defender clients, statewide, were charged with sexual offenses in Juvenile court. Forty-three of those cases reached disposition after the young person turned 18. Those 43 people would be held to the registration requirements of the adult registration statute, for offenses that occurred when they were between the ages of 10 and 18.

FURTHER CLARIFICATION »

Revise the language of the current section of the sex offender deregistration statute, C.R.S. 16-22-113 (1)(e), as follows:

(e) EXCEPT AS OTHERWISE PROVIDED IN C.R.S. (1.3)(B)(II), if the person was younger than eighteen years of age at the time of disposition or adjudication, THE COMMISSION OF THE OFFENSE, after the successful completion of and discharge from the A JUVENILE sentence OR DISPOSITION, AND if the person prior to such time has not been subsequently convicted of OR HAS A PENDING PROSECUTION FOR, of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (b) of subsection (1.3) of this section. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person’s probation or community parole officer, the person’s treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried and on the recommendations included in the person’s presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. Notwithstanding the provisions of this subsection (1), a juvenile who files a petition pursuant to this section may file the petition with the court to which venue is transferred pursuant to section 19-2-105, C.R.S., if any.

FY13-JJ4 Revise C.R.S. 18-8-208, Escapes, to provide that an adjudicated juvenile who turns 18 while in custody, but is not in custody in a state-operated facility, commits a class 3 misdemeanor rather than a felony if convicted of an escape

Discussion *Adjudicated juveniles who are committed to the Division of Youth Corrections often turn 18 while in custody. There are times when such persons are placed outside a secure facility in a group home or similar placement. Under the current statute, when a person walks away from such a group home and does not return, that person may be charged with a class three felony even though that person has never been convicted of any underlying felony.*

The purpose of these proposed changes is to eliminate that scenario and provide that a person in such a situation would still have criminal liability, but could only be convicted of a class three misdemeanor. This would avoid a situation where a young adult could be placed in the Department of Corrections for such an escape, but would have never been convicted of an underlying felony. The changes would also provide that the sentencing judge would have discretion to grant or deny probation since the recommended changes to section (9) eliminate the mandatory sentence requirement for the “walk-away” juvenile.

Note that C.R.S. 18-8-208(4.1) would not make all escapes by an adjudicated person a misdemeanor. The statute would still provide that persons who escaped from the facilities listed in section (4.1) could suffer a felony conviction.

FURTHER CLARIFICATION »**Add C.R.S. 18-8-208(4.1) to provide:**

(4.1) A PERSON COMMITS A CLASS 3 MISDEMEANOR IF, HAVING BEEN adjudicated COMMITTED TO DYC FOR A DELINQUENT ACT AND IS OVER 18 YEARS OF AGE, ESCAPES FROM A STAFF SECURE FACILITY AS DEFINED IN C.R.S. 19-1-103(101.5) OTHER THAN the Adams Youth Services Center, the Gilliam Youth Services Center, the Foote Youth Services Center, The Mount View Youth Services Center, the Platte Valley Youth Services Center, the Grand Mesa Youth Services Center, the Lookout Mountain Youth Services Center, the Pueblo Youth Services Center, the Spring Creek Youth Services Center, and the Zebulon Pike Youth Services Center. A STATE-OPERATED LOCKED FACILITY.

Amend C.R.S.18-8-208(9) to provide:

(9) The minimum sentences provided by C.R.S. 18-1.3-401, 18-1.3-501, and 18-1.3-503, respectively, for violation of the provisions of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; except that the court may grant a suspended sentence if the court is sentencing a person to the youthful offender system pursuant to C.R.S. 18-1.3-407. THE PROVISIONS OF THIS SECTION, HOWEVER, SHALL NOT APPLY TO SECTION (4.1) OF THIS STATUTE.

Delete 18-8-208(10):

(10) Any person held in a staff secure facility, as defined in section 19-1-103 (101.5), C.R.S., shall be deemed to be in custody or confinement for purposes of this section.

C.R.S. 18-8-210.1. Persons in custody or confinement – juvenile offenders.

For the purposes of this part 2, any reference to custody, confinement, charged with, held for, convicted of, a felony, misdemeanor, or petty offense shall be deemed to include a juvenile who is detained OR COMMITTED for the commission of an act which would constitute such a felony, misdemeanor, or petty offense if committed by an adult or who is the subject of a petition filed pursuant to article 2 of title 19, C.R.S., alleging the commission of such a delinquent act or a juvenile who has been adjudicated a juvenile delinquent as provided for in Article 2 of title 19, C.R.S., for an act which would constitute a felony, misdemeanor, or petty offense if committed by an adult.

Bail recommendations**FY13-BL1 Implement evidence-based decision making practices and standardized bail release decision making guidelines**

Judicial districts should implement evidence-based decision making practices regarding pre-release decisions, including the development and implementation of a standardized bail release decision making process.

Discussion

The use of evidence-based practices is essential in all areas of criminal justice to maximize efficiencies and reduce recidivism, including the pretrial release decision making process. Using evidence-based practices at pretrial release is intended to increase the success rate of pretrial

detainees, reduce failure to appear rates, reduce recidivism, and reduce jail crowding. Nationally, 60% of local jail populations are pretrial detainees, a figure that has remained relatively stable over time.¹⁹ According to the Pretrial Justice Institute, “the pretrial decision affects how limited jail space is allocated and how the risks of non-appearance and pretrial crime by released defendants are managed. The pretrial decision also affects defendants’ abilities to assert their innocence, negotiate a disposition, and mitigate the severity of a sentence.”²⁰ Use of empirically developed risk assessment instruments can improve decision making by classifying defendants based on their predicted level of pretrial failure. Those with very high risk scores or high-violence index crimes may be held in jail pretrial but must be afforded a due process hearing.

Research undertaken on pretrial defendants in ten Colorado judicial districts found that the majority of individuals appear in court and remain crime-free during the pretrial period.²¹ This research resulted in the development of the Colorado Pretrial Assessment Tool (CPAT), a four-category risk instrument that identifies the relative risk of pretrial defendants. This instrument is currently being implemented in at least four Colorado judicial districts. Pretrial program staff in these districts have begun working with local stakeholders to identify recommended/suggested release decisions, alternatives to incarceration, and **individualized** conditions of release based on a defendant’s characteristics such as offense charge and risk assessment score. An example of a risk-focused, structured decision making matrix is provided in Table 4.10. This matrix can serve as a starting point for stakeholders in local jurisdictions to modify according to local needs.

Table 4.10. Release decision guidelines matrix

		Top charge														DUI	DV		
		F1		F2		F3		F4		F5		F6		M	Petty			T	
		Person	Prop	Person	Prop	Person	Prop	Person	Prop	Person	Prop	Person	Prop	Person	Prop			Prop	Non-DUI Traffic
Risk assessment score	4	Red	Yellow	Yellow	Yellow	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Green	White	White	White	Yellow	Yellow
	3	Red	Yellow	Yellow	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Green	Green	White	White	White	Yellow	Yellow
	2	Red	Yellow	Yellow	Yellow	Yellow	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow
	1	Red	Yellow	Green	Green	White	White	White	White	White	White	White	White	White	White	White	White	Yellow	Yellow

 Detention with due process assuming the court applies Article II Sections 19 and 20 of the Colorado Constitution and C.R.S. 16-4-101
 Intense supervision AND/OR conditions
 Basic/enhanced supervision AND/OR conditions
 Release with no supervision or conditions

¹⁹ Minton, Todd D. (April 2012). Jail Inmates at Midyear 2011—Statistical Tables. Bureau of Justice Statistics, Washington, D.C. Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim11st.pdf>.

²⁰ Mamalian, Cynthia. A. (March 2011). *State of the Science of Pretrial Risk Assessment*. Jointly published by the Pretrial Justice Institute and the Bureau of Justice Assistance. Washington D.C. Page 4. Citing Mahoney, Beaudin, Carver, Ryan, and Hoffman (March 2001). *Pretrial Services Programs: Responsibilities and Potential*. National Institute of Justice: Issues and Practices. Washington, D.C.

²¹ Pretrial Justice Institute & JFA Institute. (February, 2012). *The Colorado Pretrial Assessment Tool (CPAT), A Joint Partnership among Ten Colorado Counties, the Pretrial Justice Institute, and the JFA Institute*. Pretrial Justice Institute, Washington, D.C. See also Pretrial Justice Institute. (August 2012). *Revised Risk Categories for the Colorado Pretrial Assessment Tool (CPAT)*. Pretrial Justice Institute, Washington, D.C.

FY13-BL2 Discourage the use of financial bond for pretrial detainees and reduce the use of bonding schedules

Limit the use of monetary bonds in the bail decision making process, with the presumption that all pretrial detainees are eligible for pretrial release unless due process hearing is held pursuant to Article 2 Section 19 of the Colorado Constitution and C.R.S. 16-4-101.

Discussion

Bail is part of a larger process in which a defendant is taken into custody by law enforcement, is issued a summons or transported to the local detention facility, appears before a judicial officer, is given or denied a bail bond with or without specific conditions, and is detained in jail or released into the community until the disposition of the case.²² The purpose of bail, according to the American Bar Association, is to provide due process to the accused; ensure the defendant's appearance at all court hearings; and protect victims, witnesses and the community from threats, danger and interference.²³ Financial bond is not necessary to meet the purposes of bail.

A prior recommendation from the Commission specified the development of a statewide monetary bond schedule (2008, BP-39).²⁴ However, upon further study, the research shows that monetary conditions do not ensure court appearance or improve public safety. The American Bar Association asserts the following:

Regular use of bail schedules often unintentionally fosters the unnecessary detention of misdemeanants, indigents, and nondangerous defendants because they are unable to afford the sum mandated by the schedule. Such detentions are costly and inefficient, and subject defendants to a congeries of often devastating and avoidable consequences, including the loss of employment, residence, and community ties.²⁵

Research conducted in Jefferson County, Colorado found that financial bonds as low as \$50 precludes some individuals from pretrial release. This study found no negative effect on defendant outcomes when judges moved away from money bonds as compared to when judges more heavily relied on money.²⁶ Jefferson County successfully eliminated the bond schedule in April 2011.

Other studies have found that financial conditions do not ensure public safety, ensure court appearance, or guarantee people will not reoffend while on pre-trial release, nor do they guarantee safety for victims.²⁷ These facts have been known for nearly 50 years, as noted by Robert F. Kennedy when, as attorney general, he addressed the American Bar Association in 1964. Kennedy stated, "Repeated recent studies demonstrate that there is little—if any—relationship between appearance at trial and the ability to post bail," citing research by the Vera Foundation in New York.²⁸ The Commission supports the opinion of the current United States Attorney

²² Mamalian, Cynthia A. (March 2011). State of the Science of Pretrial Risk Assessment. Joint publication by the Pretrial Justice Institute and the U.S. Bureau of Justice Assistance. Washington, D.C. Citing Jefferson County, Colorado, Criminal Justice Planning Unit. *Bail History and Reform: An Introduction* (2009).

²³ *Jefferson County Bail Project and Impact Study*. Presented by the Jefferson County Criminal Justice Planning Staff to the CCJJ Bail Subcommittee, on May 4, 2012.

²⁴ Bail schedules provide judges with standardized money bail amounts based on the offense charged and typically regardless of the characteristics of an individual defendant (Carlson, 2011).

²⁵ Carlson, Lindsay. (2011). *Bail Schedules: A Violation of Judicial Discretion?* American Bar Association. Available at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsp11_bail.authcheckdam.pdf.

²⁶ Brooker, C. M. B. (2012, May). *Analyses from the Jefferson County Bail Project: Summary Report on Outcome Data*. Presented to the Commission's Bail Subcommittee, Denver, CO.

²⁷ See Carlson (2011).

²⁸ Address by Attorney General Robert F. Kennedy to the Criminal Law Section of the American Bar Association, Americana Hotel, New York City, August 10, 1964.

General, who stated in the matter of individuals being detained pretrial as a result of bond they cannot afford that “(a)lmost all of these individuals could be released and supervised in their communities – and allowed to pursue and maintain employment and participate in educational opportunities and their normal family lives – without risk of endangering their fellow citizens or fleeing from justice.”²⁹

Further, bond schedules do not allow for consideration of actuarial risk factors or individualized conditions of release, both of which are considered evidence-based practices. Organizations that support reform include the Association of Prosecuting Attorneys, American Bar Association, the National Association of Criminal Defense Lawyers, the American Council of Chief Defenders, the U.S. Department of Justice, the National Legal Aid and Defender Association, and the National Sheriff’s Association, among others.

FY13-BL3 Expand and improve pretrial approaches and opportunities in Colorado

Discussion

Only 12 of 22 Colorado judicial districts have pretrial services. Even among established programs, there is a lack of consistency in services provided and a lack of information provided to crime victims, according to a brief survey undertaken by the Commission’s Bail Committee. Many jurisdictions continue to use a bond schedule that assigns a dollar amount based upon the criminal charge, without consideration for risk to the community or likelihood of court appearance. Pretrial service programs can investigate and verify the defendant’s background, stability in the community, risk to reoffend or flee, and provide objective recommendations to the court for appropriate individualized release conditions that can address these concerns. These agencies also can offer supervision services to the court.

Pretrial services or, where these are not available, jail or appropriate staff should be trained to conduct actuarial risk assessments through a comprehensive interview with the defendant and, when appropriate, recommend to the court very specific release conditions that are individualized for each offender. At a minimum, the court should have access to a completed risk assessment for every defendant to inform pretrial decision making.

Many release conditions commonly assigned to defendants are unrelated to the offense, unrelated to the individual defendant, and lack clarity and specificity. Neither bail amounts nor the conditions of bond should be used to punish defendants.

FY13-BL4 Standardized Jail Data Collection across all Colorado Jurisdictions

Implement a standardized data collection instrument in all Colorado jurisdictions and jails that includes, but is not limited to, information on total jail population, index crime, crime class, type of bond, bond amount if any, length of stay, assessed risk level, and the proportion of pretrial, sentenced and hold populations.

Discussion

Policies and procedures for jails vary widely across jurisdictions. Consequently, there is no standardized or mandated data collection effort, leaving it impossible to obtain accurate information on population trends and possible causes for those trends. Without this basic information, it

²⁹ Eric Holder, Bureau of Justice Assistance, National Symposium on Pretrial Justice: Summary Report of Proceedings (Washington, DC, 2012), at 30.

is difficult to identify statewide, regional, or local problems and solutions, particularly as these relate to facility overcrowding.

This data should be collected biannually by jail officials and forwarded to the Colorado Division of Criminal Justice which will compile the information and place it on its website.

Minority overrepresentation recommendations

FY13-MOR1 Justice agencies to track racial and ethnic diversity of staff

All justice agencies should track the racial and ethnic diversity of their staff. Law enforcement agencies, sheriff's offices, prosecutors' offices, the public defender's office, courts, probation, community corrections, the Department of Corrections, the Department of Public Safety, and the Division of Youth Corrections, shall track the racial and ethnic composition of their staffs and report the data to the Division of Criminal Justice on an annual basis. Additionally, every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.

Discussion *The goals of this recommendation are to obtain and publish data on staff ethnicity/race in Colorado's criminal justice agencies; to raise awareness of the important need to diversify; and to provide potential job applicants with information about the agencies' diversity. Efforts are underway by some organizations, such as the National Association for Legal Career Professionals,³⁰ to proactively provide this information to potential job applicants. The Commission should partner with existing entities and initiatives to further current work in this area.³¹ Legislation may be necessary to facilitate the implementation of this recommendation.*

FY12-MOR1 Minority data in legislative fiscal notes³²

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.*

³⁰ See <http://www.nalp.org/diversity2>.

³¹ The San Francisco Sheriff's Department uses an exemplary array of methods to recruit from minority communities, for example. For a description of these efforts by the SFSD, see a report prepared by the Division of Criminal Justice, Office of Research and Statistics, available at http://www.dcj.state.co.us/ors/pdf/PREA/Building_Block_Bulletins/BB_No3_SF_ver4_rev.pdf.

³² This recommendation was approved by the Commission in FY 2012 but did not become a legislative bill until the following year. For this reason, the recommendation is included both in this report and in the 2012 report.

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.

Colorado Commission on Criminal and Juvenile Justice

FY13-CCJJ1 Continue the Colorado Commission on Criminal and Juvenile Justice beyond the statutory termination date of June 30, 2013

The critical mission of the Commission—to study and make recommendations that ensure public safety, respect the rights of crime victims, and reduce recidivism, and that are evidence-based, cost-effective, and sensitive to disproportionate minority overrepresentation—requires ongoing effort. C.R.S. 16-11.3-101 should be amended to remove the termination date.

Discussion

The 26-member Commission was established by the General Assembly in 2007. Its membership consists of 18 appointed representatives of specific stakeholder groups and eight members based on their official position in state government. Commission membership also includes one non-voting member based on position (the Director of the Division of Criminal Justice in the Department of Public Safety). Much work is accomplished through the Commission's many task forces and committees which are comprised of both Commission and non-commission members. Members of the Commission and its task forces have committed hundreds of hours of collaborative work to improving the administration of justice.

Selected accomplishments include the following:

- Promulgated a new, evidence-based, accountability/treatment sentencing philosophy for drug-involved offenders and reduced criminal penalties for use and possession drug crimes; reinvested estimated savings into treatment;*
- Supported successful grant applications that resulted in \$5M in federal funds directed to behavioral health initiatives for the purpose of reducing recidivism;*
- Recommended reforms to DUI laws to hold serial offenders more accountable;*
- Reduced penalties for parole technical violations and redirected \$3.5 million to community corrections treatment beds and parole wraparound services;*
- Improved the process of getting identification cards to hundreds of inmates in jail and prison (removing a major barrier to housing, employment, and obtaining a driver's license);*
- Clarified jail good time rules, reducing time served and annually saving millions of dollars in jail costs in counties across the state; and*
- 5,000 fewer people per year have drivers' licenses revoked for non-driving crimes (removing a barrier to employment).*

Current areas of Commission work include juvenile justice systemic reform, bail, drug policy, sentencing policy, sex offender policy, re-entry, and minority overrepresentation.



SECTION 5

Next steps

Task forces and committees

The Commission continues to support the following four task forces and one committee:

- Comprehensive Sentencing Task Force
(Jeanne Smith and Norm Mueller, Co-chairs)
- Drug Policy Task Force
(Eric Philp and Charles Garcia, Co-chairs)
- Juvenile Justice Task Force
(Kelly Friesen and Jeff McDonald, Co-chairs)
- Community Corrections Task Force
(Theresa Cisneros and Peter Weir, Co-chairs)
- Minority Overrepresentation Committee
(James Davis, Chair)

The work of these task forces is expected to continue into Fiscal Year 2014. The Minority Overrepresentation committee will remain active indefinitely to continue to address minority overrepresentation and disproportionate minority contact issues.

As this report goes to press, recommendations are being presented to the Commission by the task forces listed above in preparation for the FY2014 legislative session.

Governor and General Assembly's mandates to Commission

At the conclusions of the 2013 legislative session, three mandates were forwarded to the Commission as follows:

1. On April 29, 2013 the Governor, Senate President and House Speaker signed a letter requesting the Commission on Criminal and Juvenile Justice assess the potential impacts Jessica's Law would have if adopted in Colorado (Appendix D). Specifically, the Commission was directed to address the following: impacts of Jessica's Law in other states, literature or documents evaluating Colorado's sexual offender programs, objectives of public safety in regards to sexual offenders and the most effective use of criminal justice resources along with any other issues the Commission deemed relevant. The Commission's

response to the request and any associated recommendations are due on January 1st, 2014.

2. The Governor signed HB13-1195 mandating the Commission to review the results of the implementation of C.R.S. 18-3-501 to 18-3-503 (human trafficking and slavery) since its enactment in 2006 (Appendix E). Specifically, the mandate calls for the Commission to submit a report including the following information: the number of cases prosecuted and convicted, the number of inchoate offenses, circumstances of the cases, sentences imposed and the appropriateness of those sentences along with any other information deemed relevant. The report is due on January 1st, 2014.
3. Senate Bill 13-283 mandated the Drug Policy Task Force of the Colorado Commission on Criminal and Juvenile Justice to make recommendations to the Commission, which in turn, is mandated to make recommendations to the General Assembly regarding criminal laws that need to be revised as they pertain to the implementation of Amendment 64 (Appendix F). Specifically, the Drug Policy Task Force is to ensure that title 18, C.R.S., and other relevant criminal statutes are compatible with the intent and plain meaning of Section 16 or Article XVIII of the state constitution. At this writing, recommendations are being presented to the Commission from the Drug Policy Task Force and a report is being prepared for the mandatory due date of December 15, 2013. Both the recommendations and the report will be available on the Commission's web site at www.colorado.gov/ccjj.

Commission areas of study

During the January 2013 Commission meeting, commissioners were asked to identify issues and priorities for the upcoming year and to develop an action plan to address those areas. Three issues surfaced as priority areas of study including community corrections, re-entry, and sex offense statutes specifically pertaining to determinate and indeterminate sentencing. At the February 2013 meeting, commissioners agreed to approach those study areas as follows:

- **Sex offense statutes:** Empanel a Sex Offense Determinate Working Group under the Comprehensive Sentencing Task Force in the spring of 2013 with an expected work timeline of one year.
- **Re-entry:** Create and seat a task force in the winter of 2013/2014 to re-assess issues that arose during the first year of commission work (2008), and to explore other prevailing matters that have surfaced since that time.

The first two groups (Community Corrections and the Sex Offense Working Group) have been created and are actively involved in the work suggested by the Commission. The creation of the Re-entry Task Force is anticipated for winter 2013/2014.

Membership turnover

The Commission welcomed 10 new members in Fiscal Year 2013 and is will welcome at least three more new members in the coming year. The June 2013 Commission meeting (the final FY13 meeting represented in the time frame for this report) was the last meeting for Regina Huerter, Bill Kilpatrick and Grayson Robinson. All three commissioners were term-limited as of June 2013 and will be replaced in Fiscal Year 2014 by a juvenile justice representative, a representative for the Chiefs of Police and a representative for Colorado Sheriffs Association.

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 fall of 2014. That report will encompass the activities of the Commission during Fiscal Year 2014.



SECTION 6

Appendices

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CCJJ recommendation FY13-DP1

Drug Policy Task Force

Structure Working Group

RECOMMENDATION PRESENTED TO THE CCJJ

November 9, 2012

FY13-DP1 **Revise drug sentencing classifications and ranges**

The Drug Policy Task Force presents this proposal for a revision of the Controlled Substances Act that includes a separate sentencing framework based on a drug crime classification that has four felony offense levels, two misdemeanor offense levels and petty offenses. (Note: the current petty offense level will continue as in current law and is not addressed here.) Each felony offense level includes both a presumptive and aggravated sentencing range, except for the DF1. Each felony level also has a corresponding period of parole that would be a mandatory provision of any prison sentence.

Table A.1. Separate drug sentencing scheme

Drug crime level	Presumptive range	Aggravated range	Parole period
D Felony 1	8-32 years Mandatory Minimum 8 years	None	3 years
D Felony 2	4-8 years	8-16 years	2 years
D Felony 3	2-4 years	4-6 years	1 year
D Felony 4	6-12 months	1-2 years	1 year
D Misdemeanor 1	3-18 months		
D Misdemeanor 2	0-12 months		

Other provisions

- 1a. Mandatory sentencing. All DF1 offenses carry a mandatory minimum sentence of 8 years to the Department of Corrections. There is only one sentencing range for DF1 crimes which is 8 to 32 years.
- 1b. Continue and encourage all current plea bargaining options. The “wobbler” as described below will not be a replacement for current options such as misdemeanor plea or a deferred judgment. No changes to current probation statutes except as described below.
- 1c. Support the expansion of diversion programs that is being developed and recommended by the comprehensive sentencing task force. Divert the appropriate amount of cost savings from the CCJJ approved theft statute reform, if possible and approved by CCJJ, to expand District Attorney diversion programs. Attempt to develop a dedicated fund for DA diversion with the highest priority given to those districts that currently have no program at all.
- 1d. Use of deferred judgment. Give the court discretion to accept an admission to violation of the deferred judgment or make a finding of a violation of the deferred judgment without

revocation the deferred and entering the judgment of conviction. This requires a change to 18-1.3-102(2) changing the “shall” to “may” for drug offenses. This is consistent with the need for exhaustion of sanctions described below.

- 1e. In order to accommodate the filing structure of drug courts and other concerns of stakeholders, all drug possession offenses for schedule I/II controlled substances will continue to be a felony (DF4). However, there are two additional provisions:
 - All possession offenses for schedule I/II shall be a DF4 and will not be weight-based like current law.
 - Creation of a “Wobbler” in state law. If a defendant is convicted of an eligible DF4 offense, the felony conviction would “wobble” to a misdemeanor upon successful completion of a probation or community corrections sentence. The wobbler is available for the first two convictions (which includes a diversion or a prior dismissed deferred or a prior “wobbled” case”) of the following DF 4 drug offenses: 1) simple possession when the possession quantity is 4 grams or less of Schedule I/II or 2 grams of meth or heroin, 2) the DF4 MJ/hash possession offense, 3) the transfer without remuneration of the small quantities schedule I/II (TBD language) and 4) 18-18- 415 fraud and deceit crimes. Defendants are eligible for the wobble even if the defendant goes to trial. Exclusions from eligibility are: 1) prior conviction for a COV and 2) ineligibility for probation pursuant to 18-1.3-201.
- 1f. There will be statutory language regarding exhaustion of remedies prior to sentencing a defendant to prison for a D4 felony offense. (This is important in trying to preserve defendant’s “wobbler” opportunities.) While prison is available as a sentence in these cases, we recommend an exhaustion of remedies model for courts to follow and for all parties to consider in sentencing. Prior to revocation of community supervision or sentence, the court must determine that reasonable and appropriate response options to the violation(s) have been exhausted by the supervising agencies given: 1) the nature of the violation(s), 2) the treatment needs of the offender and 3) the risk level of the offender. The court must determine that a sentence to prison is the most suitable option given the facts and circumstances of the individual case and available resources. In making this determination, the court should, to the extent available, review the information provided by the supervising agency which shall include, but shall not be limited, to a complete statement as to what interventions have been tried and failed, what other community options are available (including lateral sanctions or placement for the community corrections clients) and the reasons why any other available options appear to be unlikely to succeed if tried or would present an unacceptable risk to public safety. Under current law, the defendant is entitled to a hearing on probation revocation. We recommend that for community corrections clients, if defendant makes a written request, there will be a court review (details still need to be worked out with community corrections if paper review or appearance review and the logistics) of the termination from Community Corrections when there is a recommendation to DOC. We have previously discussed this idea with representatives from Community corrections and need to do more work on this.
- 1g. COCCA (Colorado Organized Crime Act) remains the same. The COCCA statute would need to be amended to include the newly reframed drug crimes eligible for use as predicates. Address the habitual offender sentencing provisions on drug offenses. (still working on those details but anticipate a unanimous recommendation.)

- 1h. Aggregation: Preserve 18-18-405(5) which allows drug quantities to be aggregated for purposes of establishing crime level and sentencing requirements if sale/dist./possess w/intent dist I/II occurs twice or more within a period of six months so long as defendant has not been placed in jeopardy for the prior offense or offenses
- 1i. Clarification that this drug sentencing scheme applies only when the defendant is sentenced for an offense under 18-18. If the defendant is convicted of another criminal offense, sentence shall be imposed as provided by current law. Court shall retain all current ability to imposed concurrent or consecutive sentences as provided by law.
- 1j. Allow for a PR bond (with treatment conditions when appropriate) more readily on DF cases involving possession if defendant is not assessed as high risk on bond (as determined by a researched based risk assessment instrument). But allow for a defined waiting period on this to allow fast track drug courts to process cases as appropriate. NOTE: this is an issue that will also be included in the Bail sub-committee's recommendations to CCJJ. It is important that we preserve the Denver Drug Court and the court's fast track processes so we will need to craft language that will not affect that.
- 1k. No sealing waiver required on plea or included in the Rule 11. Make statute clear that a district attorney may not require a defendant to waive his/her right to petition the court to seal an eligible criminal conviction as part of plea negotiations or in the Rule 11. District Attorneys with the power to veto or object to a petition to seal should make best efforts to conduct an individualized assessment of the merits (or lack thereof) of a petitioner's request to seal prior to exercising that power.
- 1l. Develop a data collection system for this legislation that will allow for assessment of what is happening statewide in the implementation of these changes, transparency regarding the policies and practices of District Attorneys and other criminal justice agencies, collating and tracking sentences given by the court in these cases, and allowing for assessment of outcomes. Use cost savings from bill to fund this effort, as needed.
- 1m. In any legislation developed pursuant to drug sentencing reform recommendations, include a requirement of a post-enactment review in 3 years to use the data collected and assess implementation and make any appropriate recommendations for change.
- 1n. Change state law to allow probation to create and to determine who is appropriate for an intensive supervision program for to include misdemeanor offenders. Statute should include a requirement that any placement of a misdemeanor defendant onto intensive supervised probation be based on a research-based risk/need assessment that indicates that intensive supervision is appropriate.
- 1o. Change state law to allow misdemeanor drug defendants to be required to participate in a residential treatment program as a condition of probation. Statute should include a requirement that placement in a residential treatment program as a condition of probation must be based on an assessed treatment need level that indicates IRT is appropriate and the Correctional Treatment Fund appropriation should be available to pay for the treatment. If the residential treatment program is offered through a community corrections program, the community corrections probation and community corrections board must both accept/approve probation client prior to placement.

- 1p. Sync the quantities and classifications of bath salts, salvia and cannabinoids to the structure as necessary and appropriate. Also address flunitrazepam and ketamine as appropriate and any other pharmaceuticals, as needed.

List of 18 – 18 Crimes

DF-1 Felony

Presumptive range: 8-32

Mandatory minimum of 8 years (DOC)

18-18-405: distribution/manufacture/possession with intent to distribute more than 225 grams of Schedule I/II (more than 8 ounces) or more than 112g of meth or heroin (more than 4 oz)

18-18-407(1)(b): offense was part of a pattern of manufacturing, sale, dispensing, or distributing which constituted a substantial source of that person's income and in which the person manifested special skill or expertise.

18-18-407(1)(c): offense was part of a conspiracy to distribute, manufacture, sell drugs and the defendant initiated, organized, plan, finance, direct, etc part of conspiracy.

18-18-407(1)(d): introduction, distributed, or imported into the state more than 14 grams of any schedule I or II or more than 7g of methamphetamine or heroin.

18-18-407(1) (e): sale, distribution, possession or importation in excess of 50 pounds of marijuana or 25 pounds of concentrate. (Also, 18-18-406: distribution over 50 pounds of marijuana or over 25 pounds of concentrate.)

18-18-407(1) (f): use or possession of deadly weapon or firearm during commission of drug crime (NOTE: requires sentencing in the aggravated range)

18-18-407(1)(g): use of a child for the purposes of drug dealing

18-18-407(1)(h): offense was part of a continuing criminal enterprise- 5 or more people involved in 2 or more drug crimes on separate occasions.

18-18-407(2)(a): drug distribution/manufacture within or upon the groups of school, vocational school or public housing development or within 1,000 feet of the perimeter of any school, public housing, etc.

18-18-405: sale of a schedule I or II controlled substance (any quantity) other than marijuana to a minor by adult and the adult is at least 2 years older than the minor

18-18-406: sale to minor of 2.5 lbs or more of marijuana or more than 1 lb of concentrate (hash) if adult is at least 2 years older than the minor

DF-2 Felony*Presumptive range: 4-8 years**Aggravated range: 8-16 years*

18-18-405: distribution/manufacture/possession with intent to distribute more than 14 grams up to 225 grams of Schedule I/II (1/2 – 8 ounce) or more than 7g – 112g of meth or heroin (1/4 oz–4 oz)

18-18-405: sale of a schedule III, IV, or V controlled substance other than marijuana to a minor by adult and the adult is at least 2 years older than the minor

18-18-406: distribution of more than 5 pounds of marijuana but not more than 50 pounds of marijuana or more than 2 1/2 pounds but not more than 25 pounds of concentrate

18-18-406(7): sale/transfer to a minor by adult of more than 6 oz of marijuana but not more than 2.5 pounds or more than 3 oz but not more than 1 pound of concentrate if adult is at least 2 years older

18-18-406.2 –sale of synthetic cannabinoids or salvia by adult to minor and adult is more than 2 years older.

18-18-412.5: unlawful possession of ephedrine, pseudoephedrine, or phenylpropanolamine with intent to manufacture methamphetamine and amphetamine.

DF-3 Felony*Presumptive range: 2-4 years**Aggravated range: 4-6 years*

18-18-405: distribution/manufacture/possession with intent to distribute up to 14 grams of Schedule I/II (up to 1/2 oz) or up to 7 grams of meth or heroin (1/4 ounce)

18-18-405: distribution of more than 4 grams of schedule III and IV

18-18-406: distribution of more than 12 ounces but not more than 5 pounds of marijuana or more than 6 ounces but not more than 2 1/2 pounds of concentrate; cultivation of more than 30 marijuana plants

18-18-406: knowingly process or manufacture marijuana or concentrate or knowingly allow land owned, occupied or controlled for same except as authorized pursuant to part 3 of article 22 of title 12 CRS.

18-18-406(7): sale/transfer to a minor by adult of more than 1 oz but not more than 6 oz of marijuana or more than 1/2 oz but not more than 3 oz of concentrate if adult is more than 2 years older

18-18-406.2: distribution, sale of synthetic cannabinoids or salvia divinorum

18-18-412.7: sale or distribution of materials to manufacture controlled substances

18-18-416: inducing consumption by fraudulent means

18-18-422: distribution of imitation controlled substance (adult to minor and adult at least 2 years older)

18-18-423: manufacture, deliver or possess with intent a counterfeit substance

DF-4 Felony

Presumptive range: 6-12 months

Aggravated range: 1-2 years

18-18-403.5: simple possession of Schedule I/II drugs or ketamine/flunitrazipam.

18-18-405: transfer without remuneration of up to up to 4 grams of Schedule I/II or up to 2 grams of meth or heroin.

18-18-405: manufacture, dispense, sell, distribute, possession with intent 4g or less of schedule III or IV

18-18-406: cultivation of more than 6 but less than 30 marijuana plants

18-18-406: possession of over 12 ounces of marijuana or over 3 ounces of hash

18-18-406:distribution of more than 4 ounces but not more than 12 ounces of marijuana or more than 2 ounces but not more than 6 ounces of concentrate

18-18-415: obtaining controlled substance by fraud and deceit

18-18-406(7): sale/transfer to a minor by adult of 1 oz or less of marijuana or 1/2 oz or less of concentrate if adult is more than 2 years older

18-18-422: distribution of imitation controlled substance (adult to adult)

DM-1 Misdemeanor

Sentence range 6-18 months

18-18-403.5 (2)(b)(II)(c): possession schedule III, IV, V (except flunitrazepam and ketamine)

18-18-405: transfer with no remuneration of 4 grams or less of schedule III, IV

18-18-405(2)(a)(IV)(A): sale/distribution of schedule V (with or without remuneration)

18-18-406(4)(b): marijuana possession more than 6 ounces but not more than 12 ounces or 3 oz or less of concentrate

18-18-406: sale/distribution of 4 oz or less of marijuana or 2 ounces or less of concentrate

18-18-406.5: unlawful use of marijuana in a detention facility

18-18-406(7.5)(a): cultivation of up to 6 marijuana plants, except as otherwise provided by Amendment 64.

18-18-411: maintaining, renting or making available property used for dist/manufacture of controlled substances

18-18-422(3): promotion of distribution of imitation controlled substances via advertising

DM-2 Misdemeanor*Sentence range 0-12 months*

18-18-404(1)(a): use of scheduled drugs

18-18-406(2): failure to appear in court on marijuana summons

18-18-406(4)(a) possession of more than two ounces but not more than 6 ounces of marijuana

18-18-406.1: unlawful use or possession of synthetic cannabinoids or salvia divinorum

18-18-412: abusing toxic vapors

18-18-412.8: retail sale or purchase of meth precursor >3.6g in 24 hours; sale to minor

18-18-414(e-n): pharmacy and hospital violations related to refills on schedule III, IV, V, failure to maintain required records, failure to obtain required license... etc. (currently just listed as "misdemeanor" without class level)

18-18-429: sale/delivery or manufacture with intent to deliver drug paraphernalia

18-18-430: advertising to promote sale of drug paraphernalia

Petty Offense

18-18-406(1): marijuana possession 2 ounces or less, except as otherwise provided by Amendment 64.

18-18-406(3)(a)(I): public display or consumption of 2 ounces or less of marijuana

18-18-406(5): transfer without remuneration of 2 ounces or less of marijuana

18-18-413: authorized possession of controlled substance in wrong container

18-18-428: possession of drug paraphernalia

Table A.2. Proposed crime classification overview, scheduled controlled substances

Crime	Misd 2 (0-12 mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 yrs	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Drug use	Any drug					
Possession III, IV, V		Any amount				
Possession I/II & fluni/ketamine			Any amount			
Transfer/sharing		Sch III/IV	4g or less – Sch I/II 2g or less – meth			
Sale – Schedule V		Any amount				
Sale – imitation substance			To adult	To minor		
Sale – Schedule III/IV			4g or less	>4g		
Sale – Schedule I/II				14g or less (1/2 oz or less)	>14g - 225g (>1/2 oz - 8oz)	>225g (>8 oz)
Sale – meth				7g or less (1/4 oz or less)	>7g - 112g (>1/4 oz - 4oz)	>112g meth (>4 oz)
Sale to minor & adult is +2yrs older than minor					Sch III, IV, V	Sch I, II
Importation I/II						>14g; >7g meth

Scheduled Drugs – Definition

- **Schedule I Drug** – Has a high potential for abuse; has no currently accepted medical use in the US; and lack accepted safety for use under medical supervision. Examples include: heroin, psilocybin (mushrooms), LSD, GHB, peyote.
- **Schedule II Drug** – Has a high potential for abuse; currently accepted for medical use in the US; and abuse may lead to dependence. Examples include: cocaine, methamphetamine, oxycodone, morphine, fentanyl.
- **Schedule III Drug** – Has a potential for abuse that is less than drugs included in schedules I/II; has currently accepted medical use in US; and abuse may lead to moderate or low dependence. Examples include: Vicodin.
- **Schedule IV Drug** – Has a low potential for abuse relative to drugs in schedule III, has currently accepted medical use in US, and abuse may lead to limited dependence relative to drugs in Schedule III.
- **Schedule V Drug** – Has a low potential for abuse relative to substances included in Schedule IV, has currently accepted medical use in treatment, and abuse may lead to limited dependence relative to drugs in Schedule IV.

Table A.3. Marijuana and concentrate offenses (where quantity dictates crime level)

Crime	Petty offense	Misd 2 (0-12 mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 yrs	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Possession MJ	2 oz or less	>2 oz - 6 oz	>6 oz - 12 oz	>12 oz			
Poss of concentrate-hash			3 oz or less	>3 oz			
Transfer/share MJ	2 oz or less						
Cultivation MJ			Up to 6	>6 - 30 plants	>30 plants		
Sale/distribution MJ			4 oz or less	>4 oz - 12 oz	>12 oz - 5 lbs	>5 lbs - 50 lbs	> 50 lbs
Sale concentrate-hash			2 oz or less	>2 oz - 6 oz	>6 oz - 2.5 lbs	>2.5 lbs - 25 lbs	> 25 lbs
Sale to minor MJ & adult +2yrs older				1 oz or less	>1 oz - 6 oz	>6 oz - 2.5 lbs	>2.5 lbs
Sale to minor hash & adult +2yrs older				1/2 oz or less	>1/2oz – 3oz	>3oz - 1 lb	> 1lb

Discussion This proposal is consistent with the policy goals of CCJJ, addresses most of the issues as identified in SB 12-1310 aka SB 12-163 and is a compromise of thoughts and ideas that make a thoughtful and well-reasoned sentencing scheme.

Successful drug treatment programs and drug courts commit to recovery. Colorado has moved a substantial amount of dollars into treatment, has expanded the eligible offenders and the permissible uses of those dollars and, with this proposal, members of the Drug Policy Task Force have addressed most of the concerns raised during last year's legislative session.

However, it is extremely important that many options other than incarceration are needed to address the drug problem we have in this state and country. The Commission should continue to explore civil and medical/health focused strategies, particularly as they may be effective in addressing the growing problem of prescription drug abuse/misuse. The idea is to expand our approaches and the "buckets" that can deal with this health/criminal justice problem. While we need a bit more time to detail those proposals, they are a very important part of this strategy.

The Commission considers the following important evidence-based information from its 2010 White Paper:

- Providing community-based treatment for offenders who suffer from alcoholism and drug abuse – and mental health problems associate with these addictions – will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. Research unequivocally finds that substance abuse treatment reduces drug abuse and criminal behavior.
- Prison should be reserved for violent, frequent or serious offenders.
- High rates of recidivism, high rates of substance use disorders in the offender population, and new research on the effect of addiction on the brain and behavior suggest it is time for a new approach.

- *Client progress in early recovery is often marked by episodes of perceived stress, resumed drug use or full-blown relapse, and multiple treatment admissions. Too often treatment episodes are brief, sometimes lasting only a few weeks. This approach to care has been based on the notion that a client who enters and completes a single episode of care should then be able to maintain abstinence and continue the recovery process independently. Although some individuals can successfully recover within this framework, more than half of the clients entering substance abuse treatment today require multiples episode of care over several years to achieve and sustain recovery.*
- *Scientific evidence supports a blended public/health/public safety approach to dealing with the addicted offender.*

Appendix B:
CCJJ recommendation FY10-S4

Sentencing Task Force

Aggravated Ranges, Extraordinary Risk and Mandatory Minimums Working Group

RECOMMENDATION PRESENTED TO THE CCJJ

November 2009

FY10-S4 Aggravated ranges, extraordinary risk crimes, and mandatory minimum sentences recommendations

The complex nature of Colorado statutes pertaining to aggravated, extraordinary risk, and mandatory minimum sentences requires detailed analysis and careful study to ensure that any recommended modifications conform to broader sentencing policies and structures, and to ensure that the consequences of any modifications are analyzed and well understood by stakeholders. The Commission must first undertake this analysis to guarantee that any recommended statutory reforms must be consistent with evidence-based practices and recidivism reduction.¹

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

¹ Previously appeared as "A-1" in the November 2009 Report.

Appendix C:
CCJJ recommendation FY13-CS4

Comprehensive Sentencing Task Force

Diversion Working Group

RECOMMENDATION PRESENTED TO THE CCJJ

November 9, 2012

FY13-CS4 Expand the availability of adult pretrial diversion options within Colorado’s criminal justice system

The Comprehensive Sentencing Task Force recommends enhancing the availability of pretrial diversion options throughout the state, as well as developing appropriate funding alternatives, by:

1. Replacing the existing deferred prosecution statute (C.R.S. 18-1.3-101) with the three statutory sections proposed below.
2. Amending the Victim’s Rights Act to ensure victims are able to provide input to the pretrial diversion decision.

Discussion

Diversion is a voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a prescribed set of conditions or complete a formal program designed to address, treat, or remedy issues related to or raised by the allegation. Upon successful completion of the conditions or program, the charges against the defendant are dismissed or not filed.¹ Goals of diversion include, but are not limited to:

- *Preventing defendants from committing additional criminal acts;*
- *Restoring victims of crime;*
- *Assisting district attorneys’ offices, courts, detention facilities, and the state public defender by reducing the number of cases within the criminal justice system; and*
- *Limiting defendants’ penetration into the criminal justice system.²*

In Colorado, “deferred prosecution” and “deferred sentencing” are both currently permitted by statute. The deferred sentencing option requires a defendant to enter a guilty plea and the punishment, or sentence, is then suspended for a period of time.³ Provided the defendant successfully completes certain requirements of the deferred sentencing, the charge is subsequently dismissed. Deferred sentencing is a well-accepted and frequently employed option, and thus is not the focus here.

Deferred prosecution, as it exists under current law, is a form of pretrial diversion where prosecution of the offense is deferred for a period of time and then dismissed if the defendant satisfactorily completes supervision.⁴ This option is rarely used in Colorado.⁵ Although it is difficult to pinpoint precisely why deferred prosecution is seldom employed, commonly expressed reasons include:

¹ There is no universally accepted definition of diversion. The definition here is drawn from the National Association of Pretrial Services Agencies, *Performance Standards and Goals for Pretrial Diversion/Intervention*, standard 1.1 (2008) [hereinafter NAPSA standards], as well as a draft of the American Bar Association Diversion Standards (publication pending).

² Different organizations assign different goals to diversion. The four goals listed here, however, are widely accepted. They are consistent with the stated goals of programs currently operating in Colorado’s first and seventeenth judicial districts, as well as the National District Attorneys Association, *National Prosecution Standards* 55 (3d ed.) [hereinafter NDAA standards], and NAPSA standard 1.2.

³ See § 18-1.3-102, C.R.S. 2011.

⁴ See § 18-1.3-101, C.R.S. 2011.

⁵ Statistics provided by the Colorado Judicial Branch, Division of Planning and Analysis, indicate that in FY 2011, approximately 0.5% of misdemeanor cases (216 of 42,590) and 1.7% of felony cases (484 of 28,536) received a court-involved deferred prosecution.

- *District attorneys do not have the resources to screen defendants for deferment, implement a deferment agreement, and then monitor defendants for compliance;*
- *The ability to follow through with prosecution is impeded by fading memories, scattering witnesses, and other practical impediments to gathering evidence when prosecutorial action on an offense is delayed; and*
- *There is little motivation for prosecutors to make it available because deferred prosecution inures solely to the benefit of defendants.*

This recommendation is an effort to address those concerns. It would replace the presently existing deferred prosecution statute, and strives to facilitate diversion of appropriate defendants in a way that is:

- *More readily available to criminal justice practitioners statewide;*
- *More beneficial to prosecutors; and*
- *More consistent with the long-term rehabilitation and recidivism reduction of individual defendants.*

The recommended statutory changes are intended to operate simply and flexibly. District attorneys can agree to divert a defendant at any point before plea or trial, including before charges are filed. They can preserve their ability to reinstate prosecution by requiring a signed “statement of facts” upon which the allegation is based. The terms of a diversion agreement can restore victims and require defendants to address criminogenic needs. Compliance with the agreement can be monitored and enforced by any approved entity, including, but not limited to, diversion programs run by district attorneys’ offices, law enforcement agencies, and pretrial service organizations. Alternatively, a diversion agreement may be filed with a court, thus allowing the defendant to be ordered to the supervision of the Probation Department. If the agreement is successfully completed, the defendant is returned to the same legal status as if the offense had never occurred.

Pretrial diversion is intended to increase the available options for resolution after a crime has occurred. Prosecutors will have the discretion to pursue diversion, deferred sentencing, a traditional plea, or a jury trial. As explained below, that decision will be based upon the nature of the offense, the characteristics of the offender, and the interests of the public.

To further encourage the expansion and use of diversion programs, the Commission recommends that cost-savings associated with FY13-CS#1 (regarding the reclassification of various theft offenses) be used for that purpose consistent with this recommendation.

This recommendation seeks to improve public safety by allowing people accused of a crime to take responsibility for their mistakes while limiting the collateral consequences that accompany a criminal record.

**Proposed Statutory Change #1:
18-1.3-101. Pretrial Diversion Authorized**

(1) The intent of this section is to facilitate and encourage pretrial diversion when diversion is consistent with preventing defendants from committing additional criminal acts, restoring victims of crime, and reducing the number of cases in the criminal justice system. Diversion strives to

ensure defendant accountability while allowing defendants to avoid the stigma and collateral consequences associated with criminal charges and convictions.⁶

(2) Except as otherwise provided in section 18-6-801(4), in any case, either before or after charges are filed, with the consent of the defendant and the prosecution, prosecution of the offense may be diverted for a period not to exceed two years. The period of diversion may be extended for an additional time up to one year if the failure to pay restitution is the sole condition of supervision which has not been fulfilled, because of inability to pay, and the defendant has shown a future ability to pay. During that time the defendant may be placed under the supervision of the probation department or a diversion program approved by the district attorney.⁷

(3) Each district attorney shall adopt policies and guidelines delineating eligibility criteria for pretrial diversion,⁸ and may agree to diversion in any case in which there exists sufficient admissible evidence to support a conviction.⁹ In determining whether an individual is appropriate for diversion, the district attorney shall consider:

- (a) the nature of the crime charged and the circumstances surrounding it;
- (b) any special characteristics or circumstances of the defendant;
- (c) whether diversion is consistent with the defendant's rehabilitation and reintegration; and
- (d) whether the public interest will be best served by diverting the individual from prosecution.¹⁰

(4) Before consenting to diversion, the district attorney may require any defendant requesting diversion to provide information regarding prior criminal charges, education and work experience, family, residence in the community, and other information relating to the diversion program.¹¹ The defendant shall not be denied the opportunity to consult with counsel before consenting to diversion.¹² Counsel may be appointed as provided under article 1 of title 21.

(5) A diversion program's receipt of diversion related funding provided under section 18-19-103(5)(d)(I) shall be contingent upon the referring district attorney's office having adopted pretrial diversion policies and guidelines pursuant to section 18-1.3-101(2).

(6) Diversion programs may include, but are not limited to, programs operated by law enforcement upon agreement with a district attorney, district attorney internally operated programs, programs operated by other approved agencies, restorative justice programs, or supervision under the probation department. References to "deferred prosecution" in Colorado statutes and court rules shall apply to pretrial diversion as authorized by this section.

Explanation *This statute is designed to facilitate increased availability of the diversion option. It encourages district attorneys' offices to consider diversion as an option in appropriate cases, and provides*

⁶ This language is consistent with the Model Penal Code § 6.02A(3) (Discussion Draft No. 4, 2012).

⁷ This language clarifies that supervision can be facilitated by the Probation Department via a court filing, or can be delegated to any entity approved by the district attorney.

⁸ This language is drawn from NAPSA standards 1.3 and 3.3, and the commentary to section 3 of part IV of the NDAA standards. It is consistent with the *ABA Standards for Criminal Justice, Prosecution Function and Defense Function*, standard 3-3.8 (3d ed. 1993) [hereinafter ABA standards].

⁹ Consistent with ABA standard 3-3.9(a) and NAPSA standard 1.4, diversion is not intended as a disposition option for cases that could not otherwise be prosecuted.

¹⁰ These criteria are a generalized version of those found in NDAA standard 4-3.5.

¹¹ This language is modeled on S.C. Code Ann. § 17-22-70 (2011). It is consistent with NDAA standard 4-3.4.

¹² Consistent with NAPSA standard 2.2, ABA standard 3-3.10, and Colorado's Crim. P. 11(f)(1).

basic criteria for evaluating whether individual defendants are appropriate for diversion. It does not require that diversion be offered to any individual defendant; it merely provides guidelines designed to increase the legitimacy of diversion as a disposition option.

The statute is also designed to address resource-related concerns regarding supervision of diverted defendants. Successful diversion depends upon: (1) defendants receiving the education or treatment necessary to address the criminogenic factors contributing to the behavior resulting in the offense, and (2) repairing any harm done to victims through payment of restitution or other restorative mechanisms. Individual jurisdictions can accomplish this through locally operated diversion programs independent of the state judiciary. Where that is not possible, however, the Probation Department is already well suited for facilitating these goals, and has currently existing statewide facilities. Creating an efficient mechanism by which individual defendants can be placed under the supervision of the Probation Department is thus consistent with the goals of diversion. It bears emphasizing that the cohort likely to be appropriate for diversion is similar to the cohort who, if their case was either pleaded or tried, would be sentenced to probation. It is thus unlikely this statute will substantially affect the Probation Department's caseload.

The Task Force will strive to make the attached Diversion Agreement form widely available to criminal justice practitioners, either through education or by inclusion in the Rules of Criminal Procedure. Prosecutors will be able to easily dispense with appropriate cases by including the terms of a diversion agreement on the form, and then allowing the selected entity to monitor compliance.

The ability to be represented by counsel during any diversion conference with the district attorney is critical to ensuring the maintenance of basic constitutional rights. Especially where a defendant completes a statement of facts pursuant to proposed section 18-1.3-101.1(4), entering a diversion agreement can amount to confession of the offense. Although consultation with an attorney is not necessary, proceeding without counsel should not be a condition of entry into a diversion agreement.

This statute allows district attorneys' offices to continue to operate pre-existing diversion programs or establish new diversion programs. It is not intended to detract in any way from diversion programs currently in operation. The statute is intended simply to facilitate and legitimize the option of placing defendants under supervision by an appropriate entity while bypassing a formal guilty plea and the associated long-term impediments to rehabilitation.

**Proposed Statutory Change #2:
18-1.3-101.1. Diversion Agreements**

(1) All pretrial diversions shall be governed by the terms of a diversion agreement signed by the defendant, the defendant's attorney if the defendant is represented by an attorney, and the district attorney.

(2) The diversion agreement shall include a written waiver of the right to a speedy trial for the period of the diversion.¹³ All diversion agreements shall include as a condition that the defendant not commit any criminal offense during the period for which the agreement is to remain in effect. Diversion agreements may also include provisions, agreed to by the defendant, concerning payment of restitution and court costs, payment of a supervision fee not to exceed that provided for in

¹³ This requirement is consistent with the currently existing deferred prosecution statute. § 18-1.3-101(3), C.R.S. 2011.

section 18-1.3-204(2)(a)(V),¹⁴ or participation in restorative justice practices as defined in section 18-1-901(3)(o.5). The conditions of diversion shall be limited to those specific to the individual defendant or necessary for proper supervision of the individual defendant.¹⁵

(3) The diversion agreement may require an assessment of the defendant's criminogenic needs, to be performed after the period of diversion has begun by either the probation department or a diversion program approved by the district attorney. Based on the results of that assessment, the probation department or approved diversion program may direct the defendant to participate in programs offering medical, educational, vocational, corrective, preventive, or other rehabilitative services. Defendants with the ability to pay may be required to pay for such programs or services.

(4) The diversion agreement may include a statement, authored by the defendant and agreed to by the defendant's attorney if the defendant is represented by an attorney, and the district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the diversion agreement and criminal proceedings are resumed, the statement will be admissible as impeachment evidence against the defendant in those proceedings.¹⁶

(5) No defendant shall be required to enter any plea to a criminal charge as a condition of pretrial diversion.¹⁷ No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement, other than a statement provided for in section 18-1.3-101.1(4), shall be admissible as evidence in criminal proceedings on the crimes charged or facts alleged in the complaint.¹⁸

(6) If the district attorney agrees to offer diversion in lieu of further criminal proceedings and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement may be either filed with the court or held by the parties. A court filing shall be required only if the probation department is involved in the diversion agreement. If the agreement is filed, the court shall stay further proceedings.

(7) A diversion agreement shall provide that if the defendant fulfills the obligations described therein, the court shall order any criminal charges filed against the defendant dismissed with prejudice.¹⁹

Explanation This statute is designed to make diversion a more attractive option to prosecutors. By allowing a statement of facts related to the offense, the statute permits prosecutors to require a limited confession as a condition of diversion. This addresses concerns associated with the passage of time impeding the ability to prosecute if the defendant does not successfully complete the terms of the diversion agreement.

Because the statute diverts defendants from prosecution before a guilty plea is entered, it furthers the goal of facilitating long-term rehabilitation. Many impediments to employment, housing, and education take effect upon entry of a guilty plea. National and local policy makers have recognized that the inability to find stable employment and housing is strongly related to recidivism. By

¹⁴ Specifies a maximum supervision fee of fifty dollars per month.

¹⁵ Consistent with NAPSA standards 4.2 and 5.3.

¹⁶ This provision is loosely modeled on Kan. Stat. Ann. § 22-2909C (2011).

¹⁷ Consistent with the currently existing deferred prosecution statute, section 18-1.3-101(1), C.R.S. 2011, as well as NAPSA standard 4.3.

¹⁸ This requirement is consistent with Colorado's Crim. P. 11(f)(6).

¹⁹ Consistent with the currently existing deferred prosecution statute. § 18-1.3-101(2), C.R.S. 2011.

avoiding those collateral consequences of a conviction, diversion can decrease recidivism and increase public safety while saving costs to the courts and district attorneys' offices.

The terms of the diversion agreement between the defendant and the prosecutor are critical to victim restoration, recidivism reduction, and the long-term rehabilitation of the defendant. The statute discourages numerous "standard conditions" of supervision unrelated to the offense at issue. It provides that diversion agreements should require individual defendants to stay out of trouble, restore any victims of their offense, and address the criminogenic factors that contributed to their offense.

As with proposed section 18-1.3-101, this statute allows great flexibility in the structure of diversion programs. Compliance with the agreement can be monitored by a diversion program operated by a district attorney's office, an entity selected by a district attorney, or the Probation Department.

**Proposed Statutory Change #3:
18-1.3-101.2. Diversion Outcomes**

(1) During the period of diversion, the supervising program or agency designated in the diversion agreement shall provide the level of supervision necessary to facilitate rehabilitation and ensure the defendant is completing the terms of the diversion agreement.

(2) Upon the defendant's satisfactory completion of and discharge from supervision, any charge against the defendant shall be dismissed with prejudice.²⁰ The effect of the dismissal is to restore the defendant, in the contemplation of the law, to the status he or she occupied before the arrest, citation, or summons.²¹ A successfully completed diversion shall not be considered a conviction for any purpose. No person as to whom an order of dismissal pursuant to this article has been entered may be held to be guilty under Colorado law of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge the arrest, citation, or summons in response to any inquiry made for any purpose.²²

(3) At any point after a diversion agreement is entered a defendant may petition the court to seal all arrest and other criminal records pertaining to the offense, using the procedure described in section 24-72-308. Unless otherwise prohibited under section 24-72-308(3)(a), the court shall issue a sealing order if requested by the defendant following successful completion of a diversion agreement.

(4) If the conditions of the diversion agreement are violated, the defendant and the court shall be provided written notice of the violation. Revocation of a diversion agreement shall be initiated by the filing of a criminal complaint, information, or indictment, or if charges have already been filed by giving the court notice of intent to proceed with the prosecution. The defendant may, within fourteen days of the first court appearance following such a filing, request a hearing at which to contest whether a violation occurred. The burden in such a hearing shall be upon the district attorney by a preponderance of the evidence to show that a violation has in fact occurred, and the procedural safeguards required in a revocation of probation hearing shall apply.²³ The court may, when it appears that the alleged violation of the diversion agreement consists of an offense with

²⁰ Consistent with the currently existing deferred prosecution statute. § 18-1.3-101(2), C.R.S. 2011.

²¹ Modeled on S.C. Code Ann. § 17-22-150(a) (2011).

²² Modeled on S.C. Code Ann. § 17-22-150(a) (2011).

²³ Consistent with the currently existing deferred sentencing statute. § 18-1.3-102(2), C.R.S. 2011.

which the defendant is charged in a criminal proceeding then pending, continue the diversion revocation hearing until the termination of the criminal proceeding.²⁴ If the court finds a violation has occurred, or no hearing is requested, the prosecution may continue. If the court finds the district attorney has not proven a violation, the court shall dismiss the criminal case without prejudice and return the defendant to the supervision of the diversion program to complete the terms of the agreement.

(5) If a defendant is prosecuted following violation of a diversion agreement, a factual statement entered pursuant to 18-1.3-101.1(4) shall be admissible as impeachment evidence. No other information concerning diversion, including participation in a diversion program, the terms of a diversion agreement, or statements made to treatment providers during a diversion program, shall be admitted into evidence at trial for any purpose.

Explanation

This statute is designed to make diversion beneficial to both prosecutors and individual defendants. If the defendant does not abide by the terms of the agreement, the prosecutor can proceed with the case and admit as impeachment evidence against the defendant the statement of facts provided for in proposed section 18-1.3-101.1(4). This allows prosecutors and supervision providers sufficient leverage to ensure defendants will take seriously the terms of their diversion agreement.

If a violation of the diversion agreement occurs, no hearing is necessary prior to the district attorney's reinstatement of prosecution. In accordance with the requirements of due process, however, the defendant is to be provided notice of the alleged violation and the opportunity to contest whether a violation occurred.

The statute encourages candid participation in diversion by protecting all diversion related information—other than a statement of facts agreed to by the defendant—from admissibility in a criminal trial. Additionally, the statute leaves in place the currently existing privilege for communications with counselors, social workers, and therapists, which applies to all proceedings. See § 13-90-107(1)(g), C.R.S. 2011. That privilege recognizes defendants must be able to provide honest information to treatment providers in order to address their criminogenic needs. If a diversion agreement is revoked and a conviction is obtained, however, the statute contemplates that information such as the fact of a prior diversion, as well as the defendant's performance during diversion, may be presented to the court to assist in making decisions as to bond, sentencing, probation conditions, and credit for effort already expended.

The statute facilitates the long-term rehabilitation of defendants and takes measures to reduce recidivism. If the defendant successfully completes the terms of the diversion agreement, he or she is to be treated by the law as if the offense had never occurred and he or she may seal any record of the offense. This allows defendants to continue to pursue employment, housing, and education options without the collateral consequences associated with a conviction or deferred sentence. By removing these barriers, the diversion option enhances public safety by reducing the likelihood that an individual defendant will engage in future criminal behavior.

²⁴ Consistent with the currently existing probation revocation hearing statute. § 16-11-206(3), C.R.S. 2011.

Proposed Statutory Change #4:

Amendments to the existing Guidelines for Assuring the Rights of Victims of and Witnesses to Crimes

Include the italicized in section 24-4.1-302, Definitions:

(2) “Critical stages” means the following stages of the criminal justice process:

(a) The filing of charges against a person accused of a crime;

(a.5) The decision not to file charges against a person accused of a crime;

(a.6) The decision to enter a diversion agreement pursuant to section 18-1.3-101;

Include the italicized in section 24-4.1-302.5, Rights Afforded to Victims:

(1) In order to preserve and protect a victim’s rights to justice and due process, each victim of a crime shall have the following rights:

(a) The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

(b) The right to be informed of and present for all critical stages of the criminal justice process as specified in section 24-4.1-302(2); except that the victim shall have the right to be informed of, without being present for, the critical stages described in section 24-4.1-302(2)(a), (2)(a.5), (2)(a.6), (2)(e.5), (2)(k.3), (2)(n), (2)(p), and (2)(q);

Explanation

Restoring victims of crime is one of the primary goals of pretrial diversion. As such, it is critical that victims have input regarding the diversion process.

This statutory amendment ensures that victims of crime are informed of the decision to enter a diversion agreement as to any crime to which the Guidelines for Assuring the Rights of Victims of and Witnesses to Crimes are applicable. It reinforces the currently-existing right under section 24-4.1-302.5(1)(e) to: “consult with the prosecution after any crime against the victim has been charged, prior to any disposition of the case, or prior to any trial of the case, and the right to be informed of the final disposition of the case.”

Proposed Statutory Change #5:

Amendments to the existing sealing of arrest and criminal records statute

Include the italicized in section 24-72-308(1)(a)(I):

(1)(a)(I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged *or entered a diversion agreement pursuant to section 18-1.3-101*, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

Include the italicized in section 24-72-308(1)(c):

(c) Except as provided in section 18-1.3-101.2(3), after the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

Explanation

This statutory amendment clarifies that courts may seal records pertaining to a diverted offense at any point after a diversion agreement is entered, and must grant a request to seal following successful completion of a diversion agreement.

**Attachment 1:
Diversion Agreement Form**

The attached form (following page) is intended to serve as an example diversion agreement where the parties have decided the agreement should be filed with a court. A court filing is unnecessary unless the Probation Department is selected as the entity to ensure compliance with the agreement.

This page intentionally blank.

Court Name Court Address	Court Use Only
<p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>v.</p> <p>DEFENDANT</p>	
Attorney or Party Without Attorney Address Phone Fax E-mail Attorney Registration #	Case Number:
<p>DIVERSION AGREEMENT</p>	

The *insert name of judicial district* District Attorney has reason to believe that *insert name of accused* (the “Accused”) has committed the offense of *insert offense or offenses*. The parties agree that justice is best served by diverting this case from prosecution. If the defendant successfully completes the terms of this Diversion Agreement (the “Agreement”), the court shall act to have charges related to the offense dismissed with prejudice. In support of this Agreement, the parties state as follows:

Conditions of Diversion

- The Accused waives his or her right to a speedy trial for the duration during which this Agreement is to remain in effect.
- The Accused shall not commit any additional criminal offense during the period for which this Agreement is to remain in effect.
- If necessary: The Accused shall pay restitution in the amount of \$ insert amount.
- If necessary: The Accused agrees to undergo a needs assessment performed by insert name of diversion program or Probation Department, and to participate in any programs or services deemed necessary by that assessment. The Accused may be required to pay for those programs or services.
- If necessary: The parties agree to entry of the Statement of Fact, attached hereto as Exhibit A.
- This Agreement will be effective as of insert date and will remain in effect for a period of 0 to 24 months.
- During the period of diversion, compliance with this Agreement will be supervised by insert name of diversion program or Probation Department, who may be contacted at insert the contact information.

If the conditions of this Agreement are violated during the period of diversion, the Accused may be prosecuted for the offense or offenses listed above. Prior to prosecution, the Accused shall be provided notice of the violation and the opportunity to request a hearing at which to contest the existence of a violation. A hearing must be requested within fourteen days following the first court appearance after revocation of the Agreement.

If the Accused is prosecuted for the offense or offenses listed above, the attached Statement of Fact can be admitted in court against the Accused for purposes of impeachment.

Signature of Defendant	Date

Address of Defendant

Phone of Defendant

Signature of Defendant’s Attorney	Date

Signature of District Attorney	Date

STATEMENT OF FACT

As a condition of diversion *insert name of accused* submits this Statement of Fact (“Statement”) related to the offense of *insert name of offense or offenses*.

The parties understand and agree that this Statement will be admissible against the Accused for purposes of impeachment if the terms of the Agreement are violated. By completing this Statement, the Accused waives his or her right to silence and right to be free from self-incrimination only as those rights relate to the content of this Statement.

This statement has been reviewed and agreed upon by the defendant, the defendant’s attorney if the defendant is represented by an attorney, and the district attorney.

_____	_____
Signature of Defendant	Date

_____	_____
Signature of Defendant’s Attorney	Date

_____	_____
Signature of District Attorney	Date

Court Name Court Address	Court Use Only
<p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>v.</p> <p>DEFENDANT</p>	
<p>[PROPOSED] ORDER ACCEPTING DIVERSION AGREEMENT</p>	

The Court, having reviewed the Diversion Agreement and its accompanying exhibits, hereby

ACCEPTS filing of this Diversion Agreement. The Court orders *insert name of accused* to the supervision of the *insert name of diversion program or Probation Department*, in accordance with the terms of the Diversion Agreement. IT IS SO ORDERED.

Dated:

District/County Court Judge

Appendix D:
Letter requesting study of Jessica's Law

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003



John W. Hickenlooper
Governor

April 29, 2013

Mr. James H. Davis
Executive Director
Department of Public Safety
700 Kipling Street #1000
Denver, CO 80215

Mr. Douglas K. Wilson
Colorado State Public Defender
1300 Broadway, Suite 400
Denver, CO 80203

Dear Mr. Davis and Mr. Wilson,

In recent weeks we have received various requests to consider legislation similar to the Jessica Lunsford Act, known as "Jessica's Law," enacted in Florida in 2005 in response to the tragic abduction, sexual assault and murder of nine year old Jessica Marie Lunsford. Jessica's Law was designed to reduce a sexual offender's ability to reoffend through stringent measures such as mandatory minimum sentencing, lifetime supervision and monitoring, and registration and reporting requirements.

In response to these requests, we believe it is in the best interest of the citizens of Colorado to thoroughly review the impacts the law's enactment would have on our state. As such, we are asking the Colorado Commission on Criminal and Juvenile Justice (CCJJ) to assess Colorado's current criminal laws applicable to sexual offenders to determine whether the passage of provisions in Jessica's Law would improve these laws. The General Assembly established the CCJJ in 2007 to enhance public safety, ensure justice and protect the rights of victims through the cost-effective use of public resources by focusing on evidence-based recidivism reduction initiatives and the efficient expenditure of the state's limited criminal justice funds. The CCJJ is comprised of experts in criminal justice, including law enforcement, corrections, mental health, drug abuse, victims' rights, higher education, juvenile justice, local government, state lawmakers and other pertinent disciplines.


Specifically, we ask that the CCJJ assess (i) the crimes and penalties applicable to sexual offenders, (ii) the sentencing guidelines and requirements applicable to sexual offenders, and (iii) the Colorado Lifetime Supervision of Sex Offenders Act and its goals, and make recommendations to the Governor and the General Assembly regarding any enhancements or changes that should be made to Colorado law, including those provisions of Jessica's law. In conducting its assessment, we ask that the CCJJ work with stakeholders to consider:

- the impacts that Jessica's Law has had in other states that have implemented it;
- any literature or documents available that evaluate Colorado's sexual offender programs based upon empirical analysis and evidence-based practices;
- the objectives of protecting the public, especially children, from dangerous sexual offenders while ensuring the most effective expenditure of Colorado's criminal justice resources; and
- any other issues that the CCJJ determines to be important and relevant to the goals of the CCJJ and its assessment of Colorado's criminal laws applicable to sexual offenders.

We ask that that the CCJJ provides a written report of its recommendations in regards to the changes needed, if any, to the sexual offender laws in Colorado to the Governor's Office of Legal Counsel and to the Colorado House and Senate Judiciary Committees no later than January 1, 2014. If the CCJJ is unable to bring forth any recommendations for the General Assembly to consider, we would ask it to provide the reasons that it could not make any recommendations and, if possible, describe the specific areas of disagreement that prevented the CCJJ from making recommendations.

We look forward to working with the CCJJ on this important issue.

Sincerely,



Governor John Hickenlooper



Senate President John Morse



House Speaker Mark Ferrandino

Appendix E:
House Bill 13-1195

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 13-1195

BY REPRESENTATIVE(S) Wright and Nordberg, Waller, Conti, Duran, Exum, Fields, Gardner, Gerou, Holbert, Hullinghorst, Humphrey, Lebsock, Lee, Melton, Moreno, Pettersen, Primavera, Priola, Rankin, Rosenthal, Saine, Schafer, Scott, Szabo, Williams, Young;
also SENATOR(S) Hill, Baumgardner, Brophy, Cadman, Crowder, Grantham, Heath, Kefalas, King, Lambert, Marble, Newell, Roberts, Scheffel, Morse.

CONCERNING HUMAN TRAFFICKING, AND, IN CONNECTION THEREWITH,
MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 18-3-504 as follows:

18-3-504. Human trafficking and slavery - directive to Colorado commission on criminal and juvenile justice - repeal. (1) THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE CREATED AND EXISTING PURSUANT TO SECTION 16-11.3-102, C.R.S., SHALL REVIEW THE RESULTS OF THE IMPLEMENTATION OF THE PROVISIONS OF THIS PART 5 SINCE THEIR ENACTMENT IN 2006. THE COMMISSION SHALL COMPLETE A REPORT OF ITS FINDINGS AND SUBMIT THE REPORT TO THE JUDICIARY COMMITTEES

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, ON OR BEFORE JANUARY 1, 2014.

(2) THE REPORT, AT A MINIMUM, SHALL INCLUDE:

(a) THE NUMBER OF CASES PROSECUTED AND CONVICTIONS DECLARED WITHIN THE STATE FOR THE OFFENSES DESCRIBED IN SECTIONS 18-3-501, 18-3-502, AND 18-3-503;

(b) THE NUMBER OF CASES PROSECUTED AND CONVICTIONS DECLARED WITHIN THE STATE FOR ATTEMPTS, SOLICITATIONS, AND CONSPIRACIES TO COMMIT THE OFFENSES DESCRIBED IN SECTIONS 18-3-501, 18-3-502, AND 18-3-503;

(c) THE CIRCUMSTANCES INVOLVED IN THESE CASES, INCLUDING ANY CIRCUMSTANCES THAT SEEM CONSISTENTLY PRESENT IN MULTIPLE CASES;

(d) THE SENTENCE IMPOSED FOR EACH CONVICTION, INCLUDING CONSIDERATION OF THE APPROPRIATENESS OF EACH SENTENCE; AND

(e) ANY OTHER INFORMATION THAT THE COMMISSION DEEMS TO BE RELEVANT TO ASSIST THE GENERAL ASSEMBLY IN CONSIDERING THE RESULTS OF THE IMPLEMENTATION OF THE PROVISIONS OF THIS PART 5 SINCE THEIR ENACTMENT IN 2006.

(3) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 2, 2014.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for the fiscal year beginning July 1, 2013, the sum of \$9,020 and 0.1 FTE, or so much thereof as may be necessary, for allocation to the division of criminal justice, for DCJ administrative services, for the review of human trafficking statutes required by this act.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state

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constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Appendix F:
Senate Bill 13-283

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 13-283

BY SENATOR(S) Jahn and Baumgardner, Schwartz, Carroll, Grantham, Kerr, Newell, Todd, Ulibarri, Tochtrop;
also REPRESENTATIVE(S) May, Buckner, Ginal, Hullinghorst, Labuda, Ryden, Schafer, Singer.

CONCERNING IMPLEMENTATION OF AMENDMENT 64, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 9-7-113 as follows:

9-7-113. Use of flammable gases in home marijuana cultivation - prohibited. A LOCAL GOVERNMENT MAY BAN THE USE OF A COMPRESSED, FLAMMABLE GAS AS A SOLVENT IN THE EXTRACTION OF THC OR OTHER CANNABINOIDS IN A RESIDENTIAL SETTING.

SECTION 2. In Colorado Revised Statutes, 12-43.3-1101, **amend as added by House Bill 13-1061** (1); and **add** (2.5) as follows:

12-43.3-1101. Responsible vendor program - standards - designation - program. (1) A person who wants to offer a responsible

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

medical OR RETAIL marijuana vendor server and seller training program must submit an application to the state licensing authority for approval, which program is referred to in this part 11 as an "approved training program". The state licensing authority, in consultation with the department of public health and environment, shall approve the submitted program if the submitted program meets the minimum criteria described in subsection (2) of this section. The department of public health and environment shall review each submitted program and shall provide the state licensing authority with the department's analysis of whether the portions of the program related to the department's oversight meet the minimum criteria described in this section.

(2.5) WHEN PROMULGATING PROGRAM STANDARDS PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE LICENSING AUTHORITY SHALL CONSIDER INPUT FROM OTHER STATE AGENCIES, LOCAL JURISDICTIONS, THE MEDICAL AND RETAIL MARIJUANA INDUSTRY, AND ANY OTHER STATE OR NATIONAL SELLER SERVER PROGRAM.

SECTION 3. In Colorado Revised Statutes, 12-43.3-1102, **amend as added by House Bill 13-1061** (1) and (2) as follows:

12-43.3-1102. Responsible vendor - designation. (1) (a) A medical marijuana business licensed pursuant to this article OR A RETAIL MARIJUANA BUSINESS LICENSED PURSUANT TO ARTICLE 43.4 OF THIS TITLE may receive a responsible vendor designation from the program vendor after successfully completing a responsible medical OR RETAIL marijuana vendor server and seller training program approved by the state licensing authority. A responsible vendor designation is valid for two years from the date of issuance.

(b) Successful completion of an approved training program is achieved when the program has been attended by and, as determined by the program provider, satisfactorily completed by all employees selling and handling medical OR RETAIL marijuana, all managers, and all resident on-site owners, if any.

(c) In order to maintain the responsible vendor designation, the licensed medical OR RETAIL marijuana business must have each new employee who sells or handles medical OR RETAIL marijuana, manager, or resident on-site owner attend and satisfactorily complete a responsible

PAGE 2-SENATE BILL 13-283

medical OR RETAIL marijuana vendor server and seller training program within ninety days after being employed or becoming an owner. The licensed medical marijuana business shall maintain documentation of completion of the program by new employees, managers, or owners.

(2) A licensed medical OR RETAIL marijuana business that receives a responsible vendor designation from the program vendor shall maintain information on all persons licensed pursuant to this article who are in its employment and who have been trained in an approved training program. The information includes the date, place, time, and duration of training and a list of all licensed persons attending each specific training class, which class includes a training examination or assessment that demonstrates proficiency.

SECTION 4. In Colorado Revised Statutes, **add** part 6 to article 22 of title 13 as follows:

PART 6
MARIJUANA CONTRACTS ENFORCEABLE

13-22-601. Contracts pertaining to marijuana enforceable. IT IS THE PUBLIC POLICY OF THE STATE OF COLORADO THAT A CONTRACT IS NOT VOID OR VOIDABLE AS AGAINST PUBLIC POLICY IF IT PERTAINS TO LAWFUL ACTIVITIES AUTHORIZED BY SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION AND ARTICLE 43.4 OF TITLE 12, C.R.S.

SECTION 5. In Colorado Revised Statutes, 16-11.3-103, **add** (2.8) as follows:

16-11.3-103. Duties of commission - mission - staffing - repeal. (2.8) (a) ON OR BEFORE DECEMBER 15, 2013, THE DRUG POLICY TASK FORCE OF THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE SHALL MAKE RECOMMENDATIONS TO THE COMMISSION WHO SHALL, IN TURN, MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING CRIMINAL LAWS THAT NEED TO BE REVISED TO ENSURE THAT TITLE 18, C.R.S., AND OTHER RELEVANT CRIMINAL STATUTES ARE COMPATIBLE WITH THE INTENT AND PLAIN MEANING OF SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION. IN MAKING THE RECOMMENDATIONS, THE COMMISSION SHALL:

(I) CONSIDER THAT THE INTENT OF SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION WAS TO DECRIMINALIZE CONSUMPTION OF SMALL AMOUNTS OF MARIJUANA, TO CREATE A LAWFUL MARKETPLACE FOR ADULTS TO OBTAIN SAFE AND LEGAL MARIJUANA, TO PROTECT AGAINST YOUTH ACCESS AND CONSUMPTION OF MARIJUANA, AND TO ELIMINATE THE ILLICIT DRUG MARKETPLACE FOR MARIJUANA;

(II) CONSIDER THE RECOMMENDATIONS OF THE AMENDMENT 64 IMPLEMENTATION TASK FORCE ESTABLISHED PURSUANT TO EXECUTIVE ORDER B 2012-004 IN DEVELOPING ITS RECOMMENDATIONS;

(III) CONSIDER WAYS TO HARMONIZE CONFLICTS RAISED BY SECTIONS 5 TO 10 OF THE INTRODUCED VERSION OF HOUSE BILL 13-1317 AND SECTIONS 12-43.3-901, 12-43.4-901, AND 18-18-414, C.R.S.;

(IV) CONSIDER PENALTIES FOR UNLAWFUL ACTIVITIES BY PERSONS EIGHTEEN YEARS OF AGE OR OLDER BUT UNDER TWENTY-ONE YEARS OF AGE INVOLVING MARIJUANA PURSUANT TO SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION; AND

(V) MAKE RECOMMENDATIONS THAT ASSIST IN ELIMINATING PARTICIPATION IN THE ILLICIT DRUG MARKET FOR MARIJUANA BY BUYERS, SELLERS, AND PRODUCERS, INCLUDING APPROPRIATE FINES AND CRIMINAL SANCTIONS ON ALL ACTIVITY THAT OCCURS OUTSIDE THE LEGAL MARKETPLACE.

(b) THIS SUBSECTION (2.8) IS REPEALED, EFFECTIVE JULY 1, 2014.

SECTION 6. In Colorado Revised Statutes, 18-18-426, **add** (2) as follows:

18-18-426. Drug paraphernalia - definitions. As used in sections 18-18-425 to 18-18-430, unless the context otherwise requires:

(2) "DRUG PARAPHERNALIA" DOES NOT INCLUDE ANY MARIJUANA ACCESSORIES AS DEFINED IN SECTION 16 (2) (g) OF ARTICLE XVIII OF THE STATE CONSTITUTION IF POSSESSED OR USED BY A PERSON AGE TWENTY-ONE OR OLDER.

SECTION 7. In Colorado Revised Statutes, **add** 24-20-112 as

follows:

24-20-112. Implementation of section 16 of article XVIII of the Colorado constitution - list of banned substances - cultivation and laboratory practices - education oversight and materials.

(1) THE GOVERNOR SHALL DESIGNATE A STATE AGENCY TO CREATE A LIST OF SUBSTANCES THAT MAY NOT BE USED IN THE CULTIVATION OR PROCESSING OF MARIJUANA AS AUTHORIZED PURSUANT TO ARTICLE 43.4 OF TITLE 12, C.R.S. THE DESIGNATED AGENCY MAY CONSULT WITH OTHER STATE AGENCIES IN COMPILING THE LIST. THE STATE AGENCY SHALL PROMULGATE RULES FOR THE LIST OF SUBSTANCES THAT MAY NOT BE USED IN THE CULTIVATION OF MARIJUANA.

(2) THE GOVERNOR SHALL DESIGNATE A STATE AGENCY TO WORK WITH A PRIVATE ADVISORY GROUP TO DEVELOP GOOD CULTIVATION AND HANDLING PRACTICES FOR THE MARIJUANA INDUSTRY. THE DESIGNATED AGENCY IS ENCOURAGED TO ASSIST IN THE FORMATION OF A PRIVATE ADVISORY GROUP. IF A PRIVATE ADVISORY GROUP DEVELOPS GOOD CULTIVATION AND HANDLING PRACTICES, AN ENTITY LICENSED PURSUANT TO ARTICLE 43.4 OF TITLE 12, C.R.S., THAT FOLLOWS THOSE PRACTICES MAY INCLUDE A STATEMENT OF COMPLIANCE ON ITS LABEL AFTER RECEIVING CERTIFICATION OF COMPLIANCE. THE DESIGNATED AGENCY MAY CONSULT WITH OTHER STATE AGENCIES TO RECEIVE TECHNICAL ASSISTANCE.

(3) THE GOVERNOR SHALL DESIGNATE A STATE AGENCY TO WORK WITH A PRIVATE ADVISORY GROUP TO DEVELOP GOOD LABORATORY PRACTICES FOR THE RETAIL MARIJUANA INDUSTRY. THE DESIGNATED AGENCY IS STRONGLY ENCOURAGED TO ASSIST IN THE FORMATION OF A PRIVATE ADVISORY GROUP. THE DESIGNATED AGENCY MAY CONSULT WITH OTHER STATE AGENCIES TO RECEIVE TECHNICAL ASSISTANCE.

(4) THE GOVERNOR SHALL DESIGNATE A STATE AGENCY THAT MUST ESTABLISH AN EDUCATIONAL OVERSIGHT COMMITTEE COMPOSED OF MEMBERS WITH RELEVANT EXPERIENCE IN MARIJUANA ISSUES. THE COMMITTEE SHALL DEVELOP AND IMPLEMENT RECOMMENDATIONS FOR EDUCATION OF ALL NECESSARY STAKEHOLDERS ON ISSUES RELATED TO MARIJUANA USE, CULTIVATION, AND ANY OTHER RELEVANT ISSUES. THE COMMITTEE SHALL ENCOURAGE PROFESSIONS TO INCLUDE MARIJUANA EDUCATION, IF APPROPRIATE, AS A PART OF CONTINUING EDUCATION PROGRAMS.

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(5) THE GOVERNOR SHALL DESIGNATE A STATE AGENCY THAT SHALL ESTABLISH EDUCATIONAL MATERIALS REGARDING APPROPRIATE RETAIL MARIJUANA USE AND PREVENTION OF MARIJUANA USE BY THOSE UNDER TWENTY-ONE YEARS OF AGE. IN ESTABLISHING EDUCATIONAL MATERIALS, TO THE GREATEST EXTENT POSSIBLE, THE STATE AGENCY SHALL UTILIZE ESTABLISHED BEST PRACTICES AND EXISTING FEDERAL AND STATE RESOURCES.

SECTION 8. In Colorado Revised Statutes, **add** 24-31-314 as follows:

24-31-314. Advanced roadside impaired driving enforcement training. (1) ON AND AFTER OCTOBER 1, 2013, THE P.O.S.T. BOARD IS ENCOURAGED TO INCLUDE ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TRAINING IN THE CURRICULUM FOR PERSONS WHO ENROLL IN A TRAINING ACADEMY FOR BASIC PEACE OFFICER TRAINING.

(2) SUBJECT TO THE AVAILABILITY OF SUFFICIENT MONEYS, THE P.O.S.T. BOARD SHALL ARRANGE TO PROVIDE TRAINING IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TO DRUG RECOGNITION EXPERTS WHO WILL ACT AS TRAINERS IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT FOR ALL PEACE OFFICERS DESCRIBED IN SECTION 16-2.5-101, C.R.S.

SECTION 9. In Colorado Revised Statutes, **add** 24-33.5-516 as follows:

24-33.5-516. Study marijuana implementation. (1) THE DIVISION SHALL GATHER DATA AND UNDERTAKE OR CONTRACT FOR A SCIENTIFIC STUDY OF LAW ENFORCEMENT'S ACTIVITY AND COSTS RELATED TO THE IMPLEMENTATION OF SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION OVER THE TWO-YEAR PERIOD BEGINNING JANUARY 1, 2006, AND OVER THE TWO-YEAR PERIOD BEGINNING JANUARY 1, 2014.

(2) TO BE INCLUDED IN THE STUDY, THE DIVISION OR CONTRACTOR MUST HAVE DATA FOR BOTH OF THE TWO-YEAR PERIODS DESCRIBED IN SUBSECTION (1) IN THIS SECTION. THE STUDY MUST INCLUDE INFORMATION CONCERNING:

(a) MARIJUANA-INITIATED CONTACTS BY LAW ENFORCEMENT,

BROKEN DOWN BY JUDICIAL DISTRICT AND BY RACE AND ETHNICITY;

(b) COMPREHENSIVE SCHOOL DATA, BOTH STATEWIDE AND BY INDIVIDUAL SCHOOL, INCLUDING SUSPENSIONS, EXPULSIONS, AND POLICE REFERRALS RELATED TO DRUG USE AND SALES, BROKEN DOWN BY SPECIFIC DRUG CATEGORIES;

(c) MARIJUANA ARREST DATA, INCLUDING AMOUNTS OF MARIJUANA WITH EACH ARREST, BROKEN DOWN BY JUDICIAL DISTRICT AND BY RACE AND ETHNICITY;

(d) TRAFFIC ACCIDENTS, INCLUDING FATALITIES AND SERIOUS INJURIES RELATED TO BEING UNDER THE INFLUENCE OF MARIJUANA;

(e) DIVERSION OF MARIJUANA TO PERSONS UNDER TWENTY-ONE YEARS OF AGE;

(f) DIVERSION OF MARIJUANA OUT OF COLORADO;

(g) CRIME OCCURRING IN AND RELATING TO THE OPERATION OF MARIJUANA ESTABLISHMENTS;

(h) UTILIZATION OF PARCEL SERVICES FOR THE TRANSFER OF MARIJUANA;

(i) DATA RELATED TO DRUG-ENDANGERED CHILDREN, SPECIFICALLY FOR MARIJUANA;

(j) PROBATION DATA;

(k) DATA ON EMERGENCY ROOM VISITS RELATED TO THE USE OF MARIJUANA AND THE OUTCOMES OF THOSE VISITS, INCLUDING INFORMATION FROM COLORADO POISON CONTROL CENTER;

(l) OUTDOOR MARIJUANA CULTIVATION FACILITIES;

(m) MONEY LAUNDERING RELATING TO BOTH LICENSED AND UNLICENSED MARIJUANA; AND

(n) THE ROLE OF ORGANIZED CRIME IN MARIJUANA.

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(3) THE DIVISION IS NOT REQUIRED TO PERFORM THE DUTIES REQUIRED BY THIS SECTION UNTIL THE MARIJUANA CASH FUND, CREATED IN SECTION 12-43.3-501, C.R.S., HAS RECEIVED SUFFICIENT REVENUE TO FULLY FUND THE APPROPRIATIONS MADE TO THE DEPARTMENT OF REVENUE RELATED TO ARTICLES 43.3 AND 43.4 OF TITLE 12, C.R.S., AND THE GENERAL ASSEMBLY HAS APPROPRIATED SUFFICIENT MONEYS FROM THE FUND FOR SUCH DUTIES.

SECTION 10. In Colorado Revised Statutes, **add** 25-1.5-111 as follows:

25-1.5-111. Monitor health effects of marijuana. THE DEPARTMENT SHALL MONITOR CHANGES IN DRUG USE PATTERNS, BROKEN DOWN BY COUNTY AND RACE AND ETHNICITY, AND THE EMERGING SCIENCE AND MEDICAL INFORMATION RELEVANT TO THE HEALTH EFFECTS ASSOCIATED WITH MARIJUANA USE. THE DEPARTMENT SHALL APPOINT A PANEL OF HEALTH CARE PROFESSIONALS WITH EXPERTISE IN CANNABINOID PHYSIOLOGY TO MONITOR THE RELEVANT INFORMATION. THE PANEL SHALL PROVIDE A REPORT BY JANUARY 31, 2015, AND EVERY TWO YEARS THEREAFTER TO THE STATE BOARD OF HEALTH, THE DEPARTMENT OF REVENUE, AND THE GENERAL ASSEMBLY. THE DEPARTMENT SHALL MAKE THE REPORT AVAILABLE ON ITS WEB SITE. THE PANEL SHALL ESTABLISH CRITERIA FOR STUDIES TO BE REVIEWED, REVIEWING STUDIES AND OTHER DATA, AND MAKING RECOMMENDATIONS, AS APPROPRIATE, FOR POLICIES INTENDED TO PROTECT CONSUMERS OF MARIJUANA OR MARIJUANA PRODUCTS AND THE GENERAL PUBLIC. THE DEPARTMENT MAY COLLECT COLORADO-SPECIFIC DATA THAT REPORTS ADVERSE HEALTH EVENTS INVOLVING MARIJUANA USE FROM THE ALL-PAYER CLAIMS DATABASE, HOSPITAL DISCHARGE DATA, AND BEHAVIORAL RISK FACTORS. THE DEPARTMENT AND PANEL ARE NOT REQUIRED TO PERFORM THE DUTIES REQUIRED BY THIS SECTION UNTIL THE MARIJUANA CASH FUND, CREATED IN SECTION 12-43.3-501, C.R.S., HAS RECEIVED SUFFICIENT REVENUE TO FULLY FUND THE APPROPRIATIONS MADE TO THE DEPARTMENT OF REVENUE RELATED TO ARTICLES 43.3 AND 43.4 OF TITLE 12, C.R.S., AND THE APPROPRIATION TO THE DIVISION OF CRIMINAL JUSTICE RELATED TO SECTION 24-33.5-516, C.R.S., AND THE GENERAL ASSEMBLY HAS APPROPRIATED SUFFICIENT MONEYS FROM THE FUND TO THE DEPARTMENT TO PAY FOR THE MONITORING REQUIRED BY THIS SECTION.

SECTION 11. In Colorado Revised Statutes, 25-14-103.5, **amend**

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(3) (a) (I) as follows:

25-14-103.5. Prohibition against the use of tobacco products and retail marijuana on school property - legislative declaration - education program - special account. (3) (a) (I) The board of education of each school district shall adopt appropriate policies and rules ~~which~~ THAT mandate a prohibition against the use of all tobacco products AND ALL RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS AUTHORIZED PURSUANT TO ARTICLE 43.4 OF TITLE 12, C.R.S., on all school property by students, teachers, staff, and visitors and ~~which~~ THAT provide for the enforcement of such policies and rules.

SECTION 12. In Colorado Revised Statutes, **amend** 25-14-202 as follows:

25-14-202. Legislative declaration. The general assembly hereby finds and determines that it is in the best interest of the people of this state to protect nonsmokers from involuntary exposure to environmental tobacco AND MARIJUANA smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment. The general assembly further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco products AND COMBUSTIBLE MARIJUANA and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products AND COMBUSTIBLE MARIJUANA in certain designated public areas and in private places. Therefore, the general assembly hereby declares that the purpose of this part 2 is to preserve and improve the health, comfort, and environment of the people of this state by limiting exposure to tobacco AND MARIJUANA smoke.

SECTION 13. In Colorado Revised Statutes, 25-14-203, **amend** (16); and **add** (11.5) as follows:

25-14-203. Definitions. As used in this part 2, unless the context otherwise requires:

(11.5) "MARIJUANA" SHALL HAVE THE SAME MEANING AS IN SECTION 16 (2) (f) OF ARTICLE XVIII OF THE STATE CONSTITUTION.

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(16) "Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or ~~medical~~ marijuana, ~~as defined by section 12-43.3-104 (7), C.R.S.~~

SECTION 14. In Colorado Revised Statutes, 25-14-204, **amend** (1) introductory portion as follows:

25-14-204. General smoking restrictions. (1) Except as provided in section 25-14-205, and in order to reduce the levels of exposure to environmental tobacco AND MARIJUANA smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

SECTION 15. In Colorado Revised Statutes, 26-6-108, **amend** (2) (c); and **add** (2.6) as follows:

26-6-108. Denial of license - suspension - revocation - probation - refusal to renew license - fines. (2) The department may deny an application, or suspend, revoke, or make probationary the license of any facility regulated and licensed under this part 1 or assess a fine against the licensee pursuant to section 26-6-114 should the licensee, an affiliate of the licensee, a person employed by the licensee, or a person who resides with the licensee at the facility:

(c) Use any controlled substance, as defined in section 18-18-102 (5), C.R.S., INCLUDING RETAIL MARIJUANA, or consume any alcoholic beverage during the operating hours of the facility or be under the influence of a controlled substance or alcoholic beverage during the operating hours of the facility; or

(2.6) THE STATE DEPARTMENT SHALL DENY AN APPLICATION FOR AN ENTITY LICENSED UNDER THIS ARTICLE AND SHALL REVOKE THE LICENSE OF AN ENTITY LICENSED UNDER THIS ARTICLE IF THE ENTITY CULTIVATES MARIJUANA PURSUANT TO THE AUTHORITY IN SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

SECTION 16. In Colorado Revised Statutes, 27-10.5-109, **add** (6) (d) as follows:

27-10.5-109. Community residential home - licenses - rules.

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(6) The department of human services and the state board of health shall promulgate such rules as are necessary to implement this section, pursuant to the provisions specified in article 4 of title 24, C.R.S. The rules shall include, but shall not be limited to, the following:

(d) PROHIBITING THE CULTIVATION, USE, OR CONSUMPTION OF RETAIL MARIJUANA ON THE PREMISES OF A COMMUNITY RESIDENTIAL HOME.

SECTION 17. In Colorado Revised Statutes, **amend** 27-10.5-301 as follows:

27-10.5-301. Regional centers for persons with developmental disabilities. There are hereby established state regional centers in Wheat Ridge, Pueblo, and Grand Junction. The essential object of such regional centers shall be to provide state operated services and supports to persons with developmental disabilities. A REGIONAL CENTER MAY NOT PERMIT THE CULTIVATION, USE, OR CONSUMPTION OF RETAIL MARIJUANA ON ITS PREMISES.

SECTION 18. In Colorado Revised Statutes, 39-22-104, **add** (4) (s) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal. (4) There shall be subtracted from federal taxable income:

(s) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014, IF A TAXPAYER IS LICENSED UNDER THE "COLORADO RETAIL MARIJUANA CODE", ARTICLE 43.4 OF TITLE 12, C.R.S., AN AMOUNT EQUAL TO ANY EXPENDITURE THAT IS ELIGIBLE TO BE CLAIMED AS A FEDERAL INCOME TAX DEDUCTION BUT IS DISALLOWED BY SECTION 280E OF THE FEDERAL "INTERNAL REVENUE CODE" BECAUSE MARIJUANA IS A CONTROLLED SUBSTANCE UNDER FEDERAL LAW.

SECTION 19. In Colorado Revised Statutes, 39-22-304, **add** (3) (n) as follows:

39-22-304. Net income of corporation. (3) There shall be subtracted from federal taxable income:

(n) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014, IF A TAXPAYER IS LICENSED UNDER THE "COLORADO RETAIL MARIJUANA CODE", ARTICLE 43.4 OF TITLE 12, C.R.S., AN AMOUNT EQUAL TO ANY EXPENDITURE THAT IS ELIGIBLE TO BE CLAIMED AS A FEDERAL INCOME TAX DEDUCTION BUT IS DISALLOWED BY SECTION 280E OF THE FEDERAL "INTERNAL REVENUE CODE" BECAUSE MARIJUANA IS A CONTROLLED SUBSTANCE UNDER FEDERAL LAW.

SECTION 20. In Colorado Revised Statutes, **add** 42-4-1305.5 as follows:

42-4-1305.5. Open marijuana container - motor vehicle - prohibited. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MARIJUANA" SHALL HAVE THE SAME MEANING AS IN SECTION 16 (2) (f) OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(b) "MOTOR VEHICLE" MEANS A VEHICLE DRIVEN OR DRAWN BY MECHANICAL POWER AND MANUFACTURED PRIMARILY FOR USE ON PUBLIC HIGHWAYS BUT DOES NOT INCLUDE A VEHICLE OPERATED EXCLUSIVELY ON A RAIL OR RAILS.

(c) "OPEN MARIJUANA CONTAINER" MEANS A RECEPTACLE OR MARIJUANA ACCESSORY THAT CONTAINS ANY AMOUNT OF MARIJUANA AND:

(I) THAT IS OPEN OR HAS A BROKEN SEAL;

(II) THE CONTENTS OF WHICH ARE PARTIALLY REMOVED; OR

(III) THERE IS EVIDENCE THAT MARIJUANA HAS BEEN CONSUMED WITHIN THE MOTOR VEHICLE.

(d) "PASSENGER AREA" MEANS THE AREA DESIGNED TO SEAT THE DRIVER AND PASSENGERS, INCLUDING SEATING BEHIND THE DRIVER, WHILE A MOTOR VEHICLE IS IN OPERATION AND ANY AREA THAT IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER WHILE IN HIS OR HER SEATING POSITION, INCLUDING BUT NOT LIMITED TO THE GLOVE COMPARTMENT.

(2) (a) EXCEPT AS OTHERWISE PERMITTED IN PARAGRAPH (b) OF THIS

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SUBSECTION (2), A PERSON WHILE IN THE PASSENGER AREA OF A MOTOR VEHICLE THAT IS ON A PUBLIC HIGHWAY OF THIS STATE OR THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY OF THIS STATE MAY NOT KNOWINGLY:

(I) USE OR CONSUME MARIJUANA; OR

(II) HAVE IN HIS OR HER POSSESSION AN OPEN MARIJUANA CONTAINER.

(b) THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT APPLY TO:

(I) PASSENGERS, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, LOCATED IN THE PASSENGER AREA OF A MOTOR VEHICLE DESIGNED, MAINTAINED, OR USED PRIMARILY FOR THE TRANSPORTATION OF PERSONS FOR COMPENSATION;

(II) THE POSSESSION BY A PASSENGER, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, OF AN OPEN MARIJUANA CONTAINER IN THE LIVING QUARTERS OF A HOUSE COACH, HOUSE TRAILER, MOTOR HOME, AS DEFINED IN SECTION 42-1-102 (57), OR TRAILER COACH, AS DEFINED IN SECTION 42-1-102 (106) (a);

(III) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN THE AREA BEHIND THE LAST UPRIGHT SEAT OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK; OR

(IV) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN AN AREA NOT NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER IN A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK.

(c) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (2) COMMITS A CLASS A TRAFFIC INFRACTION AND SHALL BE PUNISHED BY A FINE OF FIFTY DOLLARS AND A SURCHARGE OF SEVEN DOLLARS AND EIGHTY CENTS AS PROVIDED IN THIS SECTION AND SECTION 42-4-1701 (4) (a) (I) (N).

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT OR LIMIT THE AUTHORITY OF ANY STATUTORY OR HOME RULE TOWN, CITY, OR CITY AND COUNTY TO ADOPT ORDINANCES THAT ARE NO LESS RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION.

SECTION 21. In Colorado Revised Statutes, 12-43.3-501, **amend** (1) as follows:

12-43.3-501. Marijuana cash fund - repeal. (1) (a) All moneys collected by the state licensing authority pursuant to this article AND ARTICLE 43.4 OF THIS TITLE shall be transmitted to the state treasurer, who shall credit the same to the ~~medical~~ marijuana ~~license~~ cash fund, which fund is hereby created and referred to in this section as the "fund". THE FUND CONSISTS OF THE MONEYS IN THE FUND SO COLLECTED, ANY EXCISE TAX OR ADDITIONAL SALES TAX IMPOSED PURSUANT TO ARTICLE 28.8 OF TITLE 39, C.R.S., ANY OTHER SALES TAX, AND ANY ADDITIONAL GENERAL FUND MONEYS APPROPRIATED TO THE FUND THAT ARE NECESSARY FOR THE OPERATION OF THE STATE LICENSING AUTHORITY. MONEYS IN THE FUND shall be subject to annual appropriation by the general assembly to the department of revenue for the direct and indirect costs associated with implementing this article AND ARTICLE 43.4 OF THIS TITLE. Any moneys in the fund not expended for the purpose of this article OR ARTICLE 43.4 OF THIS TITLE may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. UPON A DETERMINATION BY THE GENERAL ASSEMBLY THAT THE DEPARTMENT OF REVENUE HAS ESTABLISHED A SUFFICIENT REVENUE STREAM TO FUND THE STATE LICENSING AUTHORITY'S REGULATORY EFFORTS AND ALL OTHER PROGRAMS TO BE FUNDED BY THE FUND, THE GENERAL ASSEMBLY SHALL DIRECT THE STATE TREASURER TO TRANSFER ANY EXCESS BALANCE IN THE FUND TO THE GENERAL FUND TO REPAY ANY APPROPRIATION MADE FROM THE GENERAL FUND TO INITIALLY SUPPORT THE SPENDING AUTHORITY OF THE STATE LICENSING AUTHORITY.

(b) (I) ANY UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND AS OF JULY 1, 2013, ARE APPROPRIATED TO THE STATE LICENSING AUTHORITY FOR THE 2013-14 FISCAL YEAR.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2014.

SECTION 22. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the marijuana cash fund created in section 12-43.3-501 (1) (a), Colorado

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Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2013, the sum of \$307,542 and 4.0 FTE, or so much thereof as may be necessary, for allocation to the disease control and environmental epidemiology division, environmental epidemiology subdivision, for the cannabis health environmental and epidemiological training, outreach, and surveillance line item related to the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the marijuana cash fund created in section 12-43.3-501 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of public safety, for the fiscal year beginning July 1, 2013, the sum of \$154,034, or so much thereof as may be necessary, for allocation to the division of criminal justice for the DCJ administrative services line item related to the implementation of this act.

SECTION 23. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of \$280,000, or so much thereof as may be necessary, for allocation to the taxation business group for computer programming costs related to the implementation of this act.

SECTION 24. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the P.O.S.T. board cash fund created in section 24-31-303 (2) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$20,000, or so much thereof as may be necessary, for allocation to the criminal justice and appellate unit for peace officers standards and training board support expenses related to the implementation of section 24-31-314, Colorado Revised Statutes.

SECTION 25. Effective date. (1) This act takes effect upon passage; except that:

(a) Section 23 takes effect only if House Bill 13-1042 does not become law.

SECTION 26. Safety clause. The general assembly hereby finds,

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determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

John P. Morse
PRESIDENT OF
THE SENATE

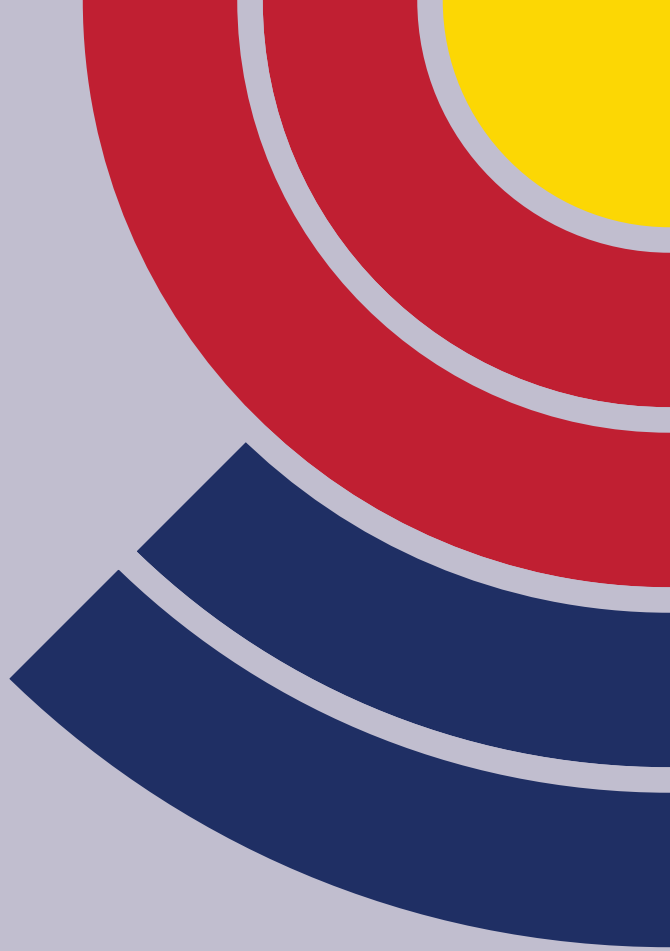
Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO



COLORADO COMMISSION ON CRIMINAL & JUVENILE JUSTICE
2013 Annual Report

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