Colorado Commission on Criminal & Juvenile Justice
Annual Report 2015

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Colorado Commission on Criminal & Juvenile Justice

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

Fiscal Year 2015 marked the Commission's eighth year of work. Under the leadership of Chair Stan Hilkey and Vice-Chair Doug Wilson, 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: Theresa Cisneros and Peter Weir served as co-chairs for the Community Corrections Task Force until Judge Cisneros resigned from the Commission in December 2014 (Mr. Weir continues to serve as chair of the Task Force); Kevin Paletta chaired the Cyberbullying Committee; Jeanne Smith and Norm Mueller co-chaired the Comprehensive Sentencing Task Force until it concluded its work in the fall of 2014; Kelly Friesen and Jeff McDonald led the Juvenile Justice Task Force through October 2014; Stan Hilkey chaired the Minority Overrepresentation Committee; Doug Wilson chairs the Mandatory Parole Committee; Jeanne Smith chairs the Data Sharing Task Force and Stan Hilkey chairs the Re-Entry Task Force. Jeanne Smith also led the effort to respond to a request from the General Assembly to study the efficacy of imposing sentencing enhancements for certain crimes committed against first responders.

The Commission could not complete its work without the dedication of dozens of task force and working group members who volunteer their time to work on topics the Commission has prioritized. The task force members attend at least monthly meetings and undertake homework assignments in between meetings, reflecting a strong dedication to improving the administration of justice in Colorado. These professionals invest considerable time to study and discuss improvements in current processes, and the Commission is grateful for their expertise and commitment to this work.

The Commission is particularly grateful to its consultant, Paul Herman, who has provided guidance, perspective, encouragement and clarity to the Commission since its inception. The Commission and its task forces and working groups benefit from the expertise and experience that Mr. Herman applies to the Commission's work. Likewise, the Commission is indebted to consultant Ken Plotz who guided and facilitated the Juvenile Justice Task Force.

Finally, the Commission is deeply appreciative of the multidisciplinary, collaborative spirit of those in the justice communities who devote their time and energy to the health and safety of our neighborhoods and our state.

Commission members

Stan Hilkey
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Jennifer Bradford
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Representing Colorado State Judicial

Sallie Clark (resigned April 2015)
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July 2014 - June 2015

Community Corrections Task Force

Name	Affiliation
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Dennis Berry	Mesa County Criminal Justice System
Joe Cannata	Voices of Victims
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Christie Donner	Criminal Justice Reform Coalition
Harriet Hall	Jefferson Center for Mental Health
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Greg Mauro	Denver Pretrial Services
Mike McIntosh	Adams County Sheriff (appointed April 2015)
Angel Medina	Department of Corrections, Case Management (appointed March 2015)
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Comprehensive Sentencing Task Force

Name	Affiliation
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Denise Balazic	State Parole Board
Maureen Cain	Colorado Criminal Defense Bar
Michael Dougherty	District Attorney's Office, 1st Judicial District
Matt Durkin	Attorney General's Office, Criminal Justice Section
Martin Egelhoff	Judge, Denver District Court
Mark Evans	State Public Defender's Office (non-voting member)

Charles Garcia	CCJJ At Large member
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Eric Philp	Division of Probation Services
Meg Williams	Juvenile Parole Board
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Susan Colling	State Court Administrators Office, Probation Services
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Julie Krow	Department of Human Services
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Norene Simpson	Indigent Juvenile Defense Counsel
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Legislative Committee

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Matt Durkin	Attorney General's Office, Criminal Justice Section
Norm Mueller	Criminal Defense Attorney
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Tom Raynes	Colorado District Attorneys' Council
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Douglas Wilson	State Public Defender's Office

Mandatory Parole Committee

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Michael Dougherty	District Attorney's Office, 1st Judicial District
Charles Garcia	CCJJ At Large member
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Christie Donner	Colorado Criminal Justice Reform Coalition
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Tom Giacinti	Community Corrections Representative
Regina Huerter	Denver Crime Prevention & Control Commission
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1 Introduction

This report describes the Commission's activities for Fiscal Year 2015 (July 2014 through June 2015). 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.

This report documents the Commission's eighth year of activities and accomplishments. It was a busy year for the Commission. The Commission was tasked by the General Assembly with making recommendations on topics related to cyberbullying and enhanced sentencing for offenses against victims who are first responders (peace officers, firefighters, or emergency medical services providers). The Commission also submitted a letter of interest to the National Institute of Corrections (NIC) as NIC pursued the expansion of its Evidence-Based Decision Making (EBDM) initiative. In doing so, the Commission worked with local jurisdictions to determine the feasibility of working with NIC on this project. In addition, the Commission empaneled exploratory planning groups to define key issues and identify "next steps" in the areas of re-entry and data sharing. These became the topics of full task force study, along with the Mandatory Parole Committee. The Commission also explored issues of concern around the collection of race and ethnicity data, received an update from the Department of Corrections on the implementation of its new case management system (the Colorado Transitional Accountability Plan, CTAP), hosted a presentation on the state's new Human Trafficking Council, and continued the work of the Community Corrections Task Force. The Comprehensive Sentencing Task Force and the Juvenile Justice Task Force were concluded, for now, after four years of work.

During the 2015 legislative session, three pieces of legislation that originally began as Commission recommendations were signed into law (see Table 1.1). Specifically in Fiscal Year 2015, the Commission approved 14 recommendations in the areas of community corrections, juvenile justice and comprehensive sentencing with one of these recommendations resulting in a statutory change by the General Assembly (House Bill 15-1022). The Commission also produced a number of findings in its December 2014 Cyberbullying Report, one of which resulted in a statutory change (House

Bill 15-1072). A recommendation that was originally approved by the Commission in Fiscal Year 2014 was also sponsored and signed into law in 2015. This recommendation called for retroactively providing earned time credit to certain individuals sentenced under the habitual criminal statute (House Bill 15-1203).

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

This 2015 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 2014 through June 2015; Section 4 details the Commission's recommendations and outcomes, including 2015 legislation; and Section 5 describes the Commission's next steps.

Table 1.1. Commission supported bills presented to the 2015 General Assembly

Bill number	Bill title	Status
House Bill 15-1022	Concerning juveniles charged with certain minor offenses	Signed
House Bill 15-1072	Concerning harassment through an interactive electronic medium	Signed
House Bill 15-1203	Concerning earned time for certain offenders serving life sentences as habitual offenders	Signed
Senate Bill 15-007	Concerning standards related to Community Corrections	Failed due to cost
No Bill title	Early discharge from lifetime supervision for sex offenders to due disability or incapacitation	Not sponsored

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.

During Fiscal Year 2015 the Commission welcomed seven new members. Incoming new commissioners included Rose Rodriguez, Scott Turner, Michael Vallejos, Robert Werthwein and Dave Weaver. These commissioners replaced Alaurice Tafoya-Modi, Matthew Durkin, Theresa Cisneros, Julie Krow and Sallie Clark. Representative Lang Sias replaced Representative Mark Waller and Senator John Cooke replaced Senator Steve King. Newly elected Attorney General Cynthia Coffman served on the Commission briefly from February through April 2014 before designating Scott Turner to serve in her place. Also during Fiscal Year 2015 the Department of Public Safety's Executive Director Stan Hilkey completed his first year as the Commission Chair.

3 Activities of the Commission

This section summarizes the activities and accomplishments of the Commission for Fiscal Year 2015. The topics covered in this section include the following:

- An update on the two mandates forwarded to the Commission from the General Assembly at the conclusion of the 2014 legislative session,
- A summary of Colorado's involvement in the National Institute of Correction's Evidence Based Decision Making Initiative,
- A description of the planning process undertaken to define the work strategy for the Commission's priority issue areas for calendar year 2015,
- A summary of the educational presentations made to the Commission regarding local and national criminal justice initiatives and efforts, and
- A report on the work of the Commission's Task Forces and Committees.

Legislative mandates

At the conclusion of the 2014 legislative session, the General Assembly requested that the Commission undertake studies related to cyberbullying and sentencing enhancements for first responders. These are discussed below.

Cyberbullying

In April 2014, the General Assembly, including the sponsors of an indefinitely-postponed bill on cyberbullying (House Bill 2014-1131), submitted a letter to the Commission requesting a study to determine if there was a need for specific legislation addressing the issues of cyberbullying and sexting (Appendix A). The letter outlined six topics for the Commission to consider regarding the use of interactive computers, cellular services, and social media by youth to bully, harass, or threaten minor victims. The Commission was tasked with determining the most effective strategies to address and prevent these behaviors and, taking developmental issues into account, the most effective justice system response to such behaviors. The letter requested a report be delivered to the Judiciary Committees of the Senate and House and the Governor's Office of Legal Counsel by December 1, 2014.

In response, the Commission empaneled a Cyberbullying Committee, chaired by Commission member and Lakewood Police Chief Kevin Paletta. The Committee was comprised of 10 members including four commissioners, and it met five times from August through November 2014. The Committee explored the state of cyberbullying, including prevalence and program intervention data; existing Colorado laws; and legislation in other states. The final report (available in Appendix B) detailed six findings in response to the directives from the General Assembly. The first finding advised against passing new legislation to address the problem of cyberbullying since the Committee found that existing legislation was adequate to address the problem, especially with some possible enhancements. Specifically, minor language modifications to the harassment statute (C.R.S. 18-9-111-Harassment) were recommended to clarify perceived gaps. This recommendation resulted in House Bill 2015-1072.

Another finding concluded that cyberbullying legislation had the risk of criminalizing a broad range of adolescent behaviors and that such legislation might be vulnerable to constitutional challenges regarding freedom of speech if written too broadly. The Committee also determined that the justice system is not always the best remedy for addressing adolescent behaviors. In fact, the Committee noted that many prevention and intervention programs already exist in schools and communities, and funding for local prevention programs that address bullying would be an effective approach.

First responder

Another legislative request was forwarded to the Commission via House Bill 2014-1214 which directed the Commission to examine whether there should be increased penalties for certain violent crimes when the victim is an emergency medical service provider. The Commission assigned this task to its standing Legislative Committee with a response due to the Senate and House Judiciary Committees by March 1, 2015.

The Legislative Committee met and discussed the best method to determine whether enhanced penalties are evidence-based and, if so, how best to incorporate this into statute. The Committee also reviewed the frequency of these types of incidents in Colorado. That is, the Committee examined the number of cases that charges were filed, over a five year period, when the victim was a peace officer, firefighter, or emergency medical service provider. Committee members agreed that with a lack of available evidence-based studies regarding enhanced sentencing based on a victim's occupation, they would consider the following two issues by which to craft their findings: 1) the purposes and policy goals of sentencing, and 2) the prevalence of enhanced sentencing laws in other states and the rate of charging of these offenses in Colorado.

The Commission submitted its response to the General Assembly on February 27, 2015. In summary, the Commission found that: 1) enhanced sentences for certain classes of victims or occupations are not specifically addressed in the evidence-based literature but such enhancements may serve other purposes of sentencing, 2) enhanced sentences and mandatory sentences are policy and legislative expressions that may reflect public perceptions about frequency or severity of offenses, and 3) more in-depth study is necessary to define and determine equity and parity of sentencing based on victim occupation. The Committee's response letter can be found in Appendix C.

Evidence-Based Decision Making Initiative

In 2010, the National Institute of Corrections initiated the Evidence-Based Decision Making project in seven local jurisdictions around the country, including Mesa County, Colorado. At the March 2014 Commission retreat, representatives from Mesa County presented on the implementation process of the EBDM Initiative in their jurisdiction, noting that the project provides participants a framework to examine all the decision points – from arrest to discharge – in the criminal justice system for evidenced-based opportunities.

At this same time, NIC began exploring the potential expansion of the initiative from the seven original pilot sites to their associated states as a whole.[1] The EBDM Initiative included an offer of significant technical assistance from NIC and its partners, but no actual monetary funds. During the March 2014 retreat, commissioners agreed to help explore this possibility in Colorado and sent a letter to NIC expressing interest in offering the

[1] For more information, see www.ebdmoneless.org.

EBDM framework to other Colorado jurisdictions. A copy of the letter can be found in Appendix D.

A planning group was formed to determine the amount of study, data, and resources that were required in Mesa County and how to translate these requirements to jurisdictions across the state. The group developed an outreach plan to identify local jurisdictions that might be willing to learn more about participating as an EBDM site. This outreach took place from May through August 2014 and included a full day preliminary strategic planning session with a variety of stakeholder agencies and representatives from Mesa County along with NIC technical assistance providers. The outreach efforts also included an informational webinar, a detailed letter to local leaders describing the EBDM effort and supplementary support, and another full day statewide awareness-building session attended by representatives from nine interested jurisdictions.

To be considered for participation in the new initiative, NIC required a commitment from at least five jurisdictions in each interested state; once these jurisdictions were identified, NIC would invite the state (in this case, the Commission) to submit a comprehensive application to NIC. The Commission's EBDM planning group developed and distributed an application packet to all interested jurisdictions. However, despite the outreach orchestrated by the Commission, fewer than five Colorado jurisdictions expressed a commitment to the EBDM Initiative.

Even though Colorado was unable to meet the requirements to submit a formal application for participation in the project, the NIC offered a week-long training to six participants from each of the states that considered the EBDM opportunity. The purpose of the event was to enhance the knowledge and skills of these "Capacity Builders" to ensure the ability of each state to move forward independently with the EBDM framework, regardless of whether they participated in the full initiative. The Commission's EBDM planning team identified representatives from four local jurisdictions and two state agencies to take part in the Capacity Building Training at the Bureau of Prisons/National Institute of Corrections training facility in Aurora the first week of November, 2014.

Commission strategic planning

The September 2014 Commission meeting included a review and discussion of the work of two of its long-time Task Forces – Comprehensive Sentencing and Juvenile Justice – along with a conversation about how best to initiate work in new areas identified as priorities by Commissioners. The group decided that the Comprehensive Sentencing Task Force, established in September 2010, would officially conclude its work in October 2014. In its four years of work, the Task Force produced a variety of recommendations that led to sentencing modifications, including the revision of Colorado's theft statute, an expansion of the availability of adult pretrial diversion options in the state, and the elimination of walkaway escapes as eligibility for habitual criminal sentencing. The conclusion of the Task Force was an indication that the Commission members believed that, while sentencing remains an important topic of study and potential reform, current priorities required that it conclude its work for now. Commissioners agreed that they will likely return to this topic in the future.

Similarly, at the direction of the Commission, the Juvenile Justice Task Force, which was also empaneled in September 2010, finished its work in October 2014. This Task Force also recommended many changes to the juvenile justice system including the creation of a petty ticket option available to law enforcement, an amendment to the Colorado Department of Education rules regarding age restrictions for the General Equivalency Diploma, a revision of the enforcement of the compulsory school attendance statute, and a revision to the escape statute concerning youth arrested as a juvenile but who commit an escape after turning 18 years of age. Like the conclusion of the Comprehensive Sentencing Task Force, the close of the Juvenile Justice Task Force was not a suggestion that there is no further work in the area of juvenile justice, but rather a redistribution of limited Commission resources toward new priorities. Specific details about the accomplishments of the Comprehensive Sentencing Task Force and the Juvenile Justice Task Force during Fiscal Year 2015 can be found under the "Commission Task Forces and Committees" section of the report.

The conclusion of the two Task Forces was prompted by the consideration, during the March 2014 Commission retreat, of priority areas of study. At the retreat, Commissioners were asked to identify topics they would focus on during the upcoming year, and to develop action plans to address those areas. Three issues surfaced as new priority areas of study including Evidence Based Decision Making (described above), re-entry, and data sharing. Commissioners agreed to convene preliminary planning groups in the fall of 2014 to focus on these topics, define key issues, and propose longer term work plans.

The Exploratory Re-entry Planning Group met three times between November 2014 and January 2015. The group was comprised of stakeholders from various agencies including Probation, Parole, Community Corrections, the Department of Corrections and the Department of Public Safety, among others. The planning group members prioritized problem areas for re-entry consideration and presented those issue areas to the Commission for consideration and approval in February 2015. The three highest priority areas identified by the planning group included: 1) collateral consequences of conviction and the resulting roadblocks to successful re-entry, 2) the high rate of technical violations in probation, parole and community corrections, and 3) the significant barriers offenders face in accessing medical and mental health care upon release from incarceration, including access to medication. The Exploratory Re-entry Planning Group also proposed a list of potential stakeholder participants if a full Re-entry Task Force were to be seated. The Commission approved the proposed scope of work for a Re-entry Task Force along with the suggested list of task force members. The Re-entry Task Force held its first meeting in April 2015 and details of that group's work can be found in the "Commission Task Forces and Committees" section of this report.

Likewise, the Exploratory Data Planning Group also met multiple times between November 2014 and January 2015. This group was asked to define the data sharing problem, identify key stakeholders, and propose a work plan for a new task force. Two areas of work were considered: 1) an approach that would focus on helping policy makers evaluate criminal justice programs and processes, and 2) a focus on improving offender management and reducing recidivism through the development of a web-based data portal that would allow authorized users to view integrated criminal justice-related information from multiple sources. After extensive study and discussion the planning group agreed that a focus on the role data plays in offender management would have a greater impact. It would promote the exchange of information as moves through the system, reducing redundancy in data collection and entry and enhancing access to, for example, risk assessment information and program participation/engagement. The Commission approved the recommended work plan and established the Data Sharing Task Force. The Data Sharing Task Force held its initial meeting in April 2015 and details of the work by that Task Force can be found at the end of this section.

Educational presentations

The monthly Commission meetings provide a platform for ongoing education and information sharing on local and national criminal justice issues and trends. During Fiscal Year 2015, experts were brought in to present on five issues discussed below.

PEW-MacArthur Foundation's Results First Initiative

At the September 2014 Commission meeting, representatives from the PEW-MacArthur Foundation's Results First[2] initiative addressed Commissioners and provided a presentation on this work by staff at the Governor's Office. The Deputy Director of the Governor's Office of State Planning and Budget (OSPB) introduced the presenters and explained that this is a joint project between the Governor's Office and the General Assembly, the latter of which has provided funds to support the effort. He stated that the purpose of this effort is to use data from state agencies to populate the Results First statistical model for the purpose of determining the cost-benefit derived from programs studied. The cost-benefit information can help policy makers identify and invest in the most effective programs. In Colorado, the focus of the First Results study will be in the areas of criminal and juvenile justice, and in child welfare.

The PEW-MacArthur Foundation provides the technical assistance, but does not advocate or drive the

[2] For more information, see pewtrusts.org/en/projects/pew-macarthur-results-first-initiative.

decision about policies or how funds should be spent. Instead, the focus is to build the capacity to collect and analyze the data necessary to inform decisions about funding allocations. At the conclusion of the presentation Commissioners were provided an opportunity for questions and the representative from OSPB stated that updates would be provided to the Commission as the Initiative progressed.

National Association of Pretrial Services Agencies / video presentation

During the September 2014 Commission meeting Chair Stan Hilkey shared a video with Commissioners that was produced by the Pretrial Justice Institute and presented as part of a keynote address at the National Association of Pretrial Services Agencies (NAPSA) Conference in Denver that same month. He noted that the video highlights the Colorado Pre-Trial Risk Assessment tool (the CPAT) and the work done by the Commission and its Bail Committee. The CPAT can be used to assist in bail/bond setting and can help prioritize the use of jail for individuals with a higher risk to reoffend. Chair Hilkey thanked the Commission and Committee members for their significant contribution and congratulated them on the national recognition of their work. The video can be found at youtu.be/1pwPR7VkGr0.

Race and ethnicity data collection

At the onset of the Commission's work in 2008, the General Assembly passed House Bill 08-1119, clarifying that one of the duties of the Commission was to include the study of minority over-representation (MOR) in the justice system in Colorado. The legislation further mandated that the Commission have the goal of reducing disparity and reviewing work and resources compiled by other states in the area of disparity reduction.

In 2011 the Commission dedicated five consecutive monthly meetings to focusing its efforts on the study of MOR and, subsequently, produced seven recommendations that Commissioners felt had a high probability of both impact and feasibility. In the summer of 2011, the Commission established the MOR Committee to develop a strategy to implement and move those seven recommendations forward.

From 2011 to 2014 the MOR Committee made significant progress on six of the seven recommendations. However, due to the complexity of local, state and federal law enforcement agency practices, the ability to devise a plan of action for one particular recommendation proved unachievable. Recommendation MOR#3 called for all "state and local justice agencies to collect race **and** ethnicity information on the populations they serve." This recommendation was created because many agencies collect either race or ethnicity data, but rarely do they collect both. This results in important gaps in the information necessary to track minority over-representation in the justice system. One example includes the fact that some agencies collect race but not ethnicity which results in Hispanic ethnicity being placed in the White race category. Collecting this information is critical to promote analyses that improve the understanding of which decision points in the system are more and less likely to result in disproportionality.

In an attempt to explain the mechanics and complexity of this issue to Commissioners, the March 2015 Commission meeting was dedicated to an examination of the policies and practices at various decision points in the criminal justice system. A panel of eight presenters discussed data collection processes from the point of law enforcement contact to booking, and described the role of the Colorado Bureau of Investigation and the National Incident-Based Reporting System (NIBRS). The panel presentation also included an explanation of district attorney practices and a review of the data collection system used by the Judicial Branch. Panelists also explained data collection processes for the Division of Probation Services, the Department of Corrections and the Parole Board.

Another reason for the in-depth race and ethnicity data collection presentation was to help inform the discussion around pending legislation as it related to this issue. Senator Rhonda Fields was in attendance at the meeting since she was one of the sponsors of Senate Bill 15-185, which required law enforcement to report race, ethnicity, and gender for all law enforcement stops and arrests.

Many challenges concerning race and ethnicity data collection surfaced during the presentation including but not limited to the following: different definitions of race and ethnicity by the U.S. Census Bureau, NIBRS and state and local agencies; **how** the information is

gathered, either via self-report or determined by an officer or agent; categorizing people who are of mixed racial and/or ethnic backgrounds; municipal court data is not centralized in one location; and the flow of data from one agency to another.

At the conclusion of the panel presentation, Commissioners and presenters alike agreed that this was not a simple data collection problem with a simple fix and while there was agreement that this is worthwhile work, resolution of these problems would be expensive and require long-term implementation. Representative Fields expressed that it had been a challenge for legislators to identify the best way to approach data collection issues in Colorado, but she felt a strong sense of urgency to make headway on this issue. Chairman Hilkey concluded the conversation by sharing that the Commission will continue to discuss and address these issues through the Data Sharing Task Force along with other committees.

Colorado Transitional Accountability Plan

In an effort to inform Commissioners of important criminal justice system reforms, representatives from the Department of Corrections (DOC) presented, in April 2015, on its new comprehensive case management system, the Colorado Transitional Accountability Plan (CTAP).

CTAP was the result of a DOC strategic planning process in 2011 which identified the need for a meaningful process to address offenders' needs throughout the incarceration experience. DOC collaborated with the University of Cincinnati and other stakeholders to create the automated and integrated CTAP case management system. CTAP provides the ability to assess the offender when they are admitted to prison, program them through their incarceration, and prepare them to transfer to specialized services communities. CTAP accomplishes this through the following:

- A seamless and comprehensive case plan,
- An automated data system that improves information sharing and guides offender progress from incarceration through discharge, and
- An integrated case management program which optimizes resources, focusses on criminogenic needs, uses validated assessment instruments, and relies on collaborating with the offender to ensure a smooth transition from prison to the community.

DOC presenters explained that, prior to CTAP, when an offender came in with a ten year sentence, programming did not start until four years before release. Under the CTAP system, behavior modification programming begins the moment an offender starts his or her sentence, regardless of how long the sentence is. A goal of CTAP is to address offender behaviors more quickly, resulting in fewer negative behaviors, especially violent behavior. Another desired outcome is an increase in program engagement and completion rates, especially educational and employment programs.

Presenters explained that the Department of Corrections developed a comprehensive process to ensure effective implementation of the CTAP. That implementation process included concentrated work by an Automation Committee, a Communications Committee, a Policy Committee and a Training Committee. DOC also utilized the help of Implementation Specialists from EPIC, the Evidence-Based Practices Implementation for Capacity Resource Center housed in the Division of Criminal Justice.

The Department of Corrections expects CTAP to increase communication both internally and with external stakeholders such as the Division of Parole, Community Corrections Boards, and the Parole Board. The overall goal of CTAP is improved offender outcomes, reducing recidivism and improving public safety.

Human Trafficking Council

In response to House Bill 13-1195, in October 2013, the Commission produced a report on the implementation of C.R.S. 18-3-501 to 18-3-503, pertaining to human trafficking and slavery.[3] The following year, the legislature passed House Bill 14-1273 which established a 30 person Human Trafficking Council within the Division of Criminal Justice. In June 2015 the Program Manager for the Human Trafficking Council addressed the Commission and provided an overview of the topic of human trafficking generally, and the work of the Council specifically. The presentation included an overview of

[3] The report is available at https://cdpsdocs.state.co.us/ccjj/Resources/Report/2013-10-11_CCJJHumanTraffickingRpt-HB1195.pdf.

the problem, root causes, a description of both victims and traffickers and a summary of Colorado's trafficking statutes. Commissioners learned about the Human Trafficking Council, its legislative mandates and priorities, and future legislative and policy considerations.

The work of the Human Trafficking Council will include the development of training standards and curricula regarding human trafficking with a specific area of focus on implementation and dissemination of law enforcement training. Agencies around the state are either establishing or expanding their human trafficking units, including Colorado State Patrol, the Rocky Mountain Innocence Lost Task Force, and the Denver and Lakewood Police Departments, among others. For complete information on all the efforts of the Colorado Human Trafficking Council (CHTC) please see the CHTC website (sites.google.com/a/state.co.us/cdps-prod/home/human-trafficking-council).

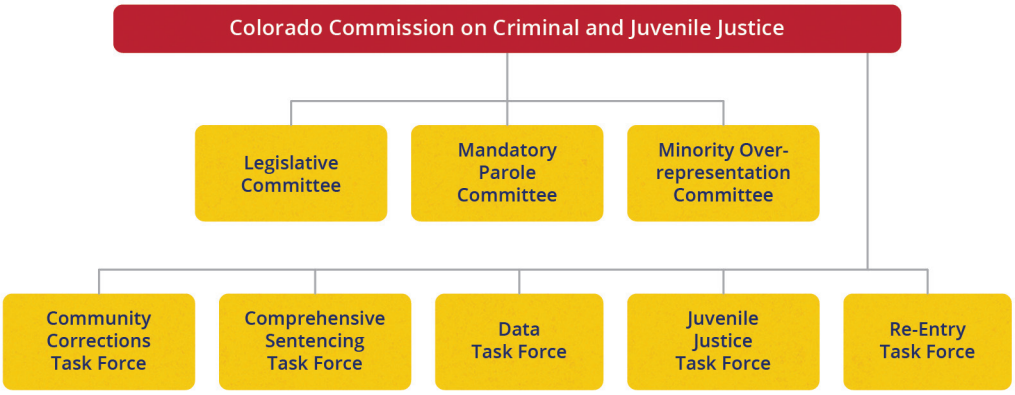
Commission task forces and committees[4]

As was noted in the Next Steps section of the Commission's 2014 *Annual Report*, Commission members agreed that efforts for Fiscal Year 2015 should continue in the area of community corrections along with new work in the areas of re-entry and data sharing. As was also noted in the 2014 report, the work of the Comprehensive Sentencing Task Force and the Juvenile Justice Task Force was expected to conclude in Fiscal Year 2015. Also during the timeframe for this report, the Minority Overrepresentation Committee completed its work on the seventh MOR recommendations originally given to it by the Commission in 2011. Also in Fiscal Year 2015, the Commission agreed to address one additional area of study regarding Mandatory Parole. To this end, a majority of Commission work during Fiscal Year 2015 was undertaken by the following six groups:

- Community Corrections Task Force (Theresa Cisneros and Peter Weir, Co-chairs)
- Re-entry Task Force (Stan Hilkey, Chair)
- Data Sharing Task Force (Jeanne Smith, Chair)
- Comprehensive Sentencing Task Force (Jeanne Smith and Norm Mueller, Co-chairs)
- Juvenile Justice Task Force (Kelly Friesen and Jeff McDonald, Co-chairs)
- Minority Overrepresentation Committee (Stan Hilkey, Chair)
- Mandatory Parole Committee (Doug Wilson, Chair)

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

Figure 3.1. Commission, task force and committee organizational chart



[4] 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.

Community Corrections Task Force

Community Corrections in Colorado refers to a system of halfway houses located throughout the state that provide residential and community-based programming to individuals who are being *diverted* from prison as well as those *transitioning* from prison back to the community. The Community Corrections Task Force began meeting in April 2013 and is chaired by Peter Weir. A wide variety of stakeholder groups are represented by the members. The following is Task Force's statement of the purpose of community corrections:

> *The purpose of community corrections is to ensure public safety and further the sentencing goals of the State of Colorado. This is accomplished by utilizing community corrections boards and the local community to identify appropriate individuals to be placed in the community, implement research-based policies, practices and programs to assist individuals so that they may successfully function in the community.*

During Fiscal Year 2015, the Task Force had three Working Groups that focused their efforts on the following areas of study: 1) local boards, 2) offender populations, and 3) the community corrections referral process.

During Fiscal Year 2015, the Boards Working Group presented a total of nine recommendations to the full Commission, five of which were included in Senate Bill 15-007 (recommendations FY15-CC#01, 03, 04, 06, and 08). This bill required a specific membership in community local corrections boards, and it also required each board to develop and implement a research-based decision-making process. Senate Bill 15-007 also called for the Division of Criminal Justice to develop and implement both a training orientation and a continuing education curriculum to educate board members. The Division of Criminal Justice was also required to develop a program evaluation tool to assess each program's adherence to evidence-based principles and practices, and to identify each program's ability to provide appropriate programing for those found to be very high risk to reoffend. However, Senate Bill 15-007 did not pass due to the cost associated with the development of the program evaluation tool. The Task Force continued to work on these important issues and it hopes to find a sponsor who will reintroduce a revised bill in the next session with a reduced fiscal note.

Other recommendations from the Boards Working Group addressed the following concerns:

- Receiving reliable and consistent information from the Department of Corrections (FY15-CC#02). This recommendation was not approved by the Commission due to concerns expressed by the Department of Corrections. However, follow-up collaboration between Task Force members and DOC representatives resulted in a revision of DOC's Administrative Regulation 250-03 to address this recommendation.
- Funding for specialized treatment programs intended for very high risk offenders (FY15-CC#05). This recommendation was approved by the Commission.
- Flexibility within programs to provide appropriate supervision of low, medium and high risk sex offenders rather than the current standards that do not allow for any differentiation (FY15-CC#07). This recommendation was approved by the Commission.
- Establishment of a specialized three-quarter house or shared living program that would be available for low-risk, but high-stakes cases (FY15-CC#09). This recommendation was approved by the Commission.

The Referral Working Group presented a total of seven recommendations to the Commission, including:

- Development of a risk-informed referral process for DOC to refer inmates to community corrections (FY15-CC#10). This recommendation initially failed but was then tabled to provide time for additional work by the Task Force along with DOC representatives.
- The Department of Corrections should allow appropriate personnel to provide an objective recommendation (positive or negative) for community placement (FY15-CC#11). This was not approved by the Commission due to safety concerns expressed by the Department of Corrections.
- The Department of Corrections should research the creation of a readiness-to-change assessment (FY15-CC#12). This was intended to be a way for the previous recommendation (FY15-CC#11) to be implemented. It was defeated due to concerns stated by the Department of Corrections.

- Recommending that offenders should not be allowed to refuse a referral to community corrections (FY15-CC#13). This recommendation failed.
- The need for community corrections boards, along with DOC, to develop a mechanism to provide feedback on referral rejections was identified (FY15-CC#14). This recommendation passed the Commission.
- Limit the number of referral options to a primary and alternate community corrections destination (FY15-CC#15). There is concern that when up to four options are provided extra DOC staff and local board work is needed. But because the 3rd and 4th options have very low acceptance rates and are often unrelated to a relevant parole plan this work is unnecessary. This recommendation was approved by the Commission.
- The Department of Corrections and community corrections should collaborate to develop an intensive Residential Treatment (IRT) and Residential Dual Diagnosis Treatment (RDDT) referral process (FY15-CC#16). This recommendation was approved by the Commission.

Following the presentation of these recommendations to the Commission, the Referral Process Working Group shifted its focus from Transition to Diversion. This work began with a survey that was sent to multiple criminal justice systems to determine what is considered when deciding on diversion referrals. Additionally, the Task Force continued to review issues related to funding Senate Bill 15-007 along with judicial education about community corrections, and incentivizing communities to allow for new community corrections programs. The Population Working Group was put on hiatus until further work is done by the Governor's Advisory Council regarding performance-based contracts and the effective distribution of specialized programs.

Re-entry Task Force

The Re-entry Task Force held its first meeting in April 2015. The Task Force consists of 19 members and is chaired by Stan Hilkey, who also chairs the Commission. As noted earlier, three priority work areas assigned to this group include the study of technical violations, collateral consequences of conviction, and the study of issues pertaining to access of medical and mental health care for offenders. Re-entry task force members decided that the best way to approach the work would be to focus on one priority area at a time and to begin with technical violations.

Work began by educating Task Force members about issues related to technical violations at both a state and national level. Representatives from Probation, Parole, and Community Corrections presented to the Task Force about technical violation rates and agency efforts to reduce these rates. Members identified the most significant issues and data needed to pursue its work and developed a plan of study.

As this report goes to print, the Re-entry Task Force continues planning for long range work in the area of technical violations with the intention of submitting recommendations for reform to the Commission in Fiscal Years 2016 and 2017.

Data Sharing Task Force

The Data Sharing Task Force is made up of six Commission members and one member from the defense bar. It was initiated as a policy oversight group because the governance agreements for data sharing will require the commitment of top level agency officials. The group first met in April, 2015, where existing data systems were discussed and a goal was identified of exploring a cross-agency, web-based, offender data portal that would allow authorized users to view integrated criminal justice-related information from multiple sources. The group requested that Commission staff hold focus groups with practitioners across the state to gather information about what data would be most valuable to assist their work and help reduce recidivism. The focus groups were being planned as this report goes to press.

Comprehensive Sentencing Task Force

This Task Force commenced in 2010 and included efforts through the years by many working groups on a variety of topics including diversion, crime classification, crime consolidation, and habitual/mandatory sentencing, among others.

The final area of work for the Comprehensive Sentencing Task Force was carried out by the Sex Offense Working Group. In September 2014, the Working Group presented a recommendation to the

Task Force (FY15-CS1) that called for early discharge from lifetime supervision for individuals who suffer from a disability or incapacitation. Both the Comprehensive Sentencing Task Force and the Commission approved the proposal, however, no legislators carried a bill with this recommendation. Details of the recommendation can be found in Section 4.

Juvenile Justice Task Force

At its March 2014 retreat, the Commission asked the Juvenile Justice Task Force, empaneled in 2010, to complete its pending work and present recommendations by the end of the summer in 2014. Therefore, the Juvenile Justice Task Force completed its work in the following areas:

- The Professionalism Working Group studied the development of standards of practice for those working in the juvenile justice system. A recommendation to develop Professional Standards of Juvenile Practice through the efforts of a multi-agency collaborative (FY15-JJ#3) was approved by the Commission in August 2014.
- The Age of Detention Working Group developed a proposal to restrict the use of pre-trial detention. Specifically, a recommendation to restrict the use of detention for children under the age of 13 (FY15-JJ#2) was presented to the Commission in October 2014. This recommendation was not approved.
- The Pre-Filing Options Working Group studied ways to expand the use of diversion. However, the working group was unable to complete this work, and no recommendation was presented to the Commission.

The Juvenile Justice Task Force concluded its work in October 2014 so that the Commission could address other priorities.

Minority Overrepresentation Committee

The Commission established the Minority Overrepresentation (MOR) Committee in 2011 to develop an implementation plan for seven MOR recommendations produced by the Commission in 2011. From 2011 through 2014, the MOR Committee advanced six of the seven MOR recommendations. The final recommendation involved requiring justice agencies to collect race AND ethnicity data on offenders. During the Committee's final meeting in February 2015, Committee members acquiesced to the realization that significant challenges and barriers exist that prevent the implementation of this recommendation at this time. The Committee brought the issue of data collection to the Commission in March 2015. For details and outcomes of that meeting, please see the full description in the "Educational Presentations" earlier in this section. At the close of the March 2015 meeting the Commission placed the work of the Minority Overrepresentation Committee on hiatus.

Mandatory Parole Committee

The Mandatory Parole Committee was seated in May 2015 with the charge of studying the efficacy of the mandatory parole. The group was also tasked with exploring the ideal system to best serve the needs of offenders and to enhance public safety. The Committee consists of 10 stakeholder members and is chaired by Commission Vice-Chair Doug Wilson.

The Committee met twice during the timeframe for this report, in May and June 2015. The first meetings consisted of an educational component on the history of parole reform both nationally and in Colorado, along with a discussion about the purpose of parole in the overall sentencing scheme.

As this report goes to press, the Committee is in the process of developing recommendations to present to the Commission. Outcomes of this activity will be reported in the 2016 annual report.

Summary

This section reviewed the work of the Commission and its Task Forces, Committees and Working Groups from July 2014 through June 2015. The Commission was responsive to the requests of the General Assembly and completed work on two mandates forwarded by the legislature in Fiscal Year 2014. The Commission made significant progress by continuing the work of previously established Task Forces (Comprehensive Sentencing, Community Corrections, and Juvenile Justice) and the continued work of one committee (Minority Overrepresentation). The Commission also established three new areas of work with the creation of

the Data Sharing Task Force, the Re-entry Task Force and the Mandatory Parole Committee. Additionally, the Commission worked with local communities to determine if Colorado would participate in the National Institute of Correction's Evidence Based Decision Making Initiative. The Commission benefitted from various informational presentations, and it approved 14 recommendations in Fiscal Year 2015. The General Assembly passed three pieces of legislation that originated as Commission recommendations. Additional information regarding Fiscal Year 2015 recommendations and subsequent 2015 legislation is available in Section 4.

4 Recommendations and outcomes

This section presents the recommendations approved by the Commission in Fiscal Year 2015. Not all of the Commission's recommendations are legislative in nature, and recommendations that do become bills are not always signed into law. However, the following is a list of bills that did begin as Commission recommendations, passed during the 2015 legislative session and were signed by the Governor.[5]

Table 4.1. 2015 Legislative Session "Commission Bills"

Bill number	**Bill title** *(and originating Commission recommendation)*
House Bill 15-1022	Concerning juveniles charged with certain minor offenses • *FY15-JJ1: Create a petty ticket option for law enforcement as an alternative to initiating formal proceedings for youth.*
House Bill 15-1072	Concerning harassment through an interactive electronic medium • *Cyberbullying Report/Finding #1: Existing statutes can apply to bullying behaviors, including cyberbullying. Minor language changes to the harassment statute could clarify perceived gaps in existing legislation.*
House Bill 15-1203	Concerning earned time for certain offenders serving life sentences as habitual offenders • *FY14-CS2: Retroactively provide earned time credit to certain individuals sentenced under the habitual criminal state.* (Note: This recommendation was approved by the Commission in Fiscal Year 2014, however there was no legislative sponsor until the 2015 legislative session.)

[5] The full text of each bill may be found on the Commission's website at www.colorado.gov/ccjjdir/L/Legislation.html.

Three sets of recommendations produced by three Task Forces are presented in this section in the following order: Community Corrections, Juvenile Justice and Comprehensive Sentencing. Another recommendation (FY14-CS2) that was approved by the Commission in Fiscal Year 2014, but was not signed into law until Fiscal Year 2015, can also be found at the end of this section.

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, "FY15"), letters indicating the task force from which the recommendation originated (e.g., Community Corrections Task Force by a "CC", or Juvenile Justice 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~~.

Community corrections recommendations

FY15-CC1 **Community corrections board member training**

The Department of Public Safety shall work with local community corrections boards and key stakeholders to develop and implement a mandatory introductory orientation and an annual continuing education curriculum to ensure appropriate and consistent community placement decisions by board members.

Discussion *To promote the use of evidence-based correctional practices along with an understanding of the larger criminal justice system and local community concerns, new community corrections board members must complete an introductory orientation within the first six months of membership on the board. After the first year, all members must participate in continuing education annually which may be tailored to the local community's needs.*

FY15-CC3 **Community corrections board membership and composition**

Colorado community corrections boards from every judicial district must have a mandatory minimum membership that includes representatives from the offices of the district attorney, public defender, law enforcement, probation, the Department of Corrections, a victim or survivor representative, and a citizen member. Board membership should strive to reflect the composition and values of the local community.

Discussion *To ensure consistency across jurisdictions, and to ensure that the voices of key stakeholders are heard, local community corrections boards must include, at a minimum, the perspectives of the multidisciplinary group described above. Further, board membership should represent the configuration and the values of the local community.*

FY15-CC4 **Community corrections board member reappointment procedures**

Each judicial district and appointing authority[6] shall review how often each community corrections board member should apply for reappointment to the board.

Discussion *Jurisdictions vary considerably in the length of the members' appointments to the local community corrections board. Because it is important to retain local control, this variation is appropriate as long as membership is reviewed periodically to allow for the rotation of individuals on and off the board.*

[6] See C.R.S. 17-27-103.

FY15-CC5 **Funding for very high risk offenders**

The General Assembly should provide funding in the community corrections budget for a specialized program for very high risk offenders. This program requires a differential per diem, appropriate standards of practice, and services to address what criminologists refer to the "top four criminogenic needs."[7]

Discussion

The target population for this specialized program is very high risk offenders as identified by the Level of Service Inventory (LSI-R). According to research,[8] the program should provide:

- *60 days of intensive behavioral change/Cognitive Behavioral Therapy (CBT) interventions prior to community access;*
- *150 hours minimum of direct therapeutic contact (within 60 days) with a CBT intervention; and*
- *Minimum of 50% of overall time structured in clinical, psycho-educational, and re-entry services.*

Programming should prioritize antisocial attitudes, peer relations, and impulse control over all other criminogenic or non-criminogenic needs.

The risk profile, based on the LSI, of the FY2011 residential community corrections population is as follows:[9]

- *Very high: 14%*
- *High: 37%*
- *Medium: 41%*
- *Low: 8%*

FY15-CC6 **Professional judgement and research-based decision making**

Community corrections boards shall develop and implement a structured, research-based decision making process that combines professional judgment and actuarial risk assessment tools. This structured decision making process should sort offenders by risk, need and appropriateness for community placement. The Division of Criminal Justice shall receive resources to assist local boards in developing these processes.

Discussion

Evidence-based correctional practices include the use of structured and data-informed decision making processes that include considerations of risk of recidivism combined with needs assessments and service availability. Community corrections boards should develop and build an empirically-supported decision making process for the purpose of identifying and accepting higher risk offenders when services are available to meet their needs. Recidivism rates are reduced an average of 30% when

[7] These include antisocial thinking, antisocial companions, antisocial personality/temperament, and family and/or marital problems. For more information see National Institute of Corrections. (2004). *Implementing evidence-based practice in community corrections: The principles of effective intervention*. Washington, DC: Department of Justice.

[8] See for example Sperber, K.G., Latessa, E.J., & Makarios, M.D. (2013). Establishing a risk-dosage research agenda: Implications for policy and practice. *Justice Research and Policy, 15*, 123-141.

[9] Analysis conducted for the Task Force by the Division of Criminal Justice, Office of Research and Statistics (2014).

medium and high risk offenders receive appropriate behavior changing programming.[10] Conversely, offenders assessed as low risk to reoffend do not benefit from behavior changing programming[11] and are slightly more likely to recidivate when they are overly supervised or programmed.[12]

FY15-CC7 **Flexibility within programs**

The Colorado Community Corrections Standards developed by the Division of Criminal Justice (DCJ) shall be changed to allow flexibility within a program to provide appropriate and effective supervision and treatment of sex offenders in accordance with the Sex Offender Management Board (SOMB) Standards and Guidelines, and to provide effective and appropriate supervision and treatment of low, medium, high and very high risk offenders.

Discussion

Currently, DCJ's Colorado Community Corrections Standards are inflexible and do not allow for differential supervision of low, medium and high risk clients. Community Corrections programs would benefit from more flexibility in the Standards with respect to supervision and monitoring of low risk versus high risk clients. The current one-size-fits-all Standards could have a negative impact on a program's ability to effectively manage clients. Examples of standards that can be modified include:

- *4-110 Interim UA Testing*
- *4-130 BA and UA for Alcohol*
- *4-220 On Grounds Surveillance (Pat Searches and Room Searches)*
- *6-070 Weekly Meetings with Case Managers*
- *4-160 Off Site Monitoring (Frequency and Method)*
- *4-170 Passes*
- *4-260 Escape (keep timeframes at 2 hours but encourage programs to consider offender risk level as part of decision to keep or terminate an offender who returns from escape status)*
- *4-161 Job Search Accountability*

[10] See for example: Andrews, D. A. (2007). Principles of effective correctional programs. In L. L. Motiuk and R. C. Serin (Eds.), *Compendium 2000 on effective correctional programming*. Ottawa, ON: Correctional Services Canada. Andrews, D. A., & Bonta, J. (2007). *Risk-need-responsivity model for offender assessment and rehabilitation* (2007-06). Ottawa: Public Safety Canada; Lipsey, M. W., & Cullen, F. T. (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science, 3*, 297–320. Smith, P., Gendreau, P., & Swartz, K. (2009). Validating the principles of effective intervention: A systematic review of the contributions of meta-analysis in the field of corrections. *Victims and Offenders, 4*, 148–169.

[11] Ibid.

[12] See for example: Andrews, D. A., & Bonta, J. (2007). *Risk-need-responsivity model for offender assessment and rehabilitation* (2007-06). Ottawa: Public Safety Canada; Bonta, J., Wallace-Capretta, S., & Rooney, R. (2000). A quasi-experimental evaluation of an intensive rehabilitation supervision program. *Criminal Justice and Behavior, 27*(3), 312–329; Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. In J. Horney (Ed.), *Criminal justice 2000: Policies, processes, and decisions of the criminal justice system*. Washington, DC: U.S. Department of Justice, National Institute of Justice; Lowenkamp C. T., Latessa E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs? *Crime and Delinquency, 52*, 77–93.

FY15-CC8 Develop a program evaluation tool

The Division of Criminal Justice (DCJ) shall develop a program evaluation tool that will assess each program's adherence to evidence-based principles and practices and identify each program's capacity for providing appropriate programming to very high risk offenders. The DCJ should receive funding from the General Assembly to obtain expert consultation on the development of the instrument and to complete a statewide assessment of community corrections programs using the new tool. The current Risk Factor Analysis requirement of DCJ shall be removed from statute.[13]

Discussion

The current DCJ Risk Factor Analysis for community corrections programs does not measure the quality of programming nor does it measure adherence to the Principles of Effective Correctional Intervention.[14] The new instrument should be rooted in best practice principles. With project-specific funding, DCJ's Office of Community Corrections should hire a consultant to review the new instrument and hire temporary staff to immediately assess all community corrections programs.

FY15-CC9 Three-quarter house living arrangement

The General Assembly should increase the community corrections appropriation to include a specialized Three-Quarter House or Shared Living Arrangement program for lower risk offenders that includes a specialized per diem, appropriate program standards, and access to services to address stabilization and the minimum supervision needs of lower risk offenders.

Discussion

This new program should focus on life skills rather than clinical behavior change; the per diem rate should be between that of residential and non-residential programs; and offenders should augment funding with a small subsistence fee.

FY15-CC14 Feedback on referral rejection

Community corrections boards and programs, in conjunction with the Department of Corrections (DOC) shall develop a communication mechanism to provide appropriate feedback to the inmate regarding the decision to reject placement for a transition referral.

Discussion

Currently, community corrections boards notify DOC that a case was rejected and do not provide the rationale for the decision. Details regarding the reasons for the placement denial would assist the inmate to prepare for future release to community corrections (a checklist of common reasons could be created). This information is particularly useful if there are dynamic risk factors that can be addressed that allow the offender to be a more suitable candidate in the future.

[13] C.R.S. 17-27-108.

[14] For more information about the "risk principle" and evidence based correctional practices, see http://www.colorado.gov/ccjjdir/Resources/Resources/Ref/CCJJ_EBP_rpt_v3.pdf.

FY15-CC15 **Limit referrals to two options**

Transition referrals from the Department of Corrections (DOC) to community corrections shall be to a primary and alternate release destination only. A primary referral shall be a viable and verified county of parole destination or county of conviction. County of conviction shall not be used for crimes occurring within a Department of Corrections facility.

Discussion *Currently, DOC provides up to four location recommendations. However, due to low acceptance rates by the 3rd and 4th level referrals, this process requires significant additional work for DOC staff and local boards. Additionally, these options are not typically associated with a relevant parole plan or county of conviction.*

FY15-CC16 **Intensive Residential Treatment (IRT) referral process**

The Department of Corrections shall collaborate with community corrections stakeholders to develop an Intensive Residential Treatment (IRT)[15] and Residential Dual Diagnosis Treatment (RDDT)[16] referral process that is focused on where the individual will eventually parole.

Discussion *Currently, the DOC sends a single referral to each of the six IRT programs, regardless of where the offender will live and work upon release. The first IRT program to respond with an acceptance decides placement. Similar concerns exist for the RDDT placement referral process.*

[15] For more information on IRT programs see section III of the *Colorado Community Corrections FY2012 Annual Report*. docs.google.com/a/state.co.us/file/d/0B2U96WYBS1wNd3RUVE1VUHA0ZUE/edit.

[16] For more information on RDDT programs see section IV of the same report docs.google.com/a/state.co.us/file/d/0B2U96WYBS1wNd3RUVE1VUHA0ZUE/edit.

Juvenile justice recommendations

FY15-JJ1 **Create a petty ticket option for law enforcement as an alternative to initiating formal proceedings for youth**

Amend 19-2-302 C.R.S. by adding a section that provides for a disposition of petty offenses committed by juveniles between the ages of ten and seventeen that gives law enforcement officers the option to do more than "lecture and release" but less than the initiation of formal proceedings. (See proposed statutory language below.)

Discussion

The purpose of this proposed statute is to create a petty ticket system for juveniles who commit minor offenses and who law enforcement officers believe should be held accountable beyond a lecture and release response. Research shows that most juveniles fare better in terms of reoffending when they are diverted from formal processing.[17] *This proposal creates an option for law enforcement officers between lecture and release and the formal process.*

Any prosecutor may engage in the formal procedure where deemed appropriate. But this procedure does not include initial prosecutorial review because it intentionally reflects the actual law enforcement practice "on the streets." That is, a law enforcement officer often detains a juvenile and releases the juvenile after a stern lecture or an informal discussion with a parent.

This process is unique in that it crosses the boundary between the juvenile courts and the municipal courts. It can be implemented by either court, or it can be implemented by both the municipal and juvenile court with an inter-governmental agreement.

Members of the Task Force expressed concerns regarding record keeping. As an example, some group members pointed out that a police officer in Denver would be unaware of the fact that a juvenile might be subject to a petty offense contract in Lakewood. However, most members agreed that the level of offense was so low (petty offenses) that creating a tracking system was not necessary.

Proposed statutory language

Create 19-2-302.1 to read as follows:

(1) WHENEVER A LAW ENFORCEMENT OFFICER CONTACTS A JUVENILE FOR A DELINQUENT ACT OR A MUNICIPAL ORDINANCE VIOLATION, THE OFFICER MAY GIVE THE JUVENILE A PETTY TICKET THAT REQUIRES AN AGREEMENT TO APPEAR BEFORE AN ASSESSMENT OFFICER OR THE SCREENING TEAM AS DESIGNATED BY THE COURT. IF SUCH A PETTY TICKET IS ISSUED AS AN ALTERNATIVE TO THE FILING OF A PETITION OF DELINQUENCY, AN ASSESSMENT OFFICER OR SCREENING TEAM SHALL ENTER INTO A CONTRACT, NOT TO EXCEED 90 DAYS, WITH THE JUVENILE AND THE JUVENILE'S PARENT OR LEGAL GUARDIAN IF:

[17] See Hobbs and Wulf-Ludden (2013). *Assessing Youth Early in the Juvenile Justice System*. This provides a summary of studies that show that "unnecessary involvement in the juvenile justice system generally results in negative long-term outcomes" and that "research indicates that unnecessary court involvement may contribute to worse outcomes, which can ultimately culminate in detention (Holman & Ziedenberg, 2006)."

(A) THE JUVENILE HAS NO PRIOR ADJUDICATION OR NON-TRAFFIC CONVICTION IN MUNICIPAL COURT;

(B) THE ALLEGED FACTS WOULD CONSTITUTE THE BASIS FOR A CLASS ONE, TWO, OR UNCLASSIFIED PETTY OFFENSE;

(C) THE JUVENILE ADMITS TO THE OFFENSE;

(D) A PETTY TICKET WOULD BE IN THE BEST INTERESTS OF THE JUVENILE.

IF THE JUVENILE IS OTHERWISE ELIGIBLE FOR A PETTY TICKET AS SET FORTH IN THIS SECTION AND THE ASSESSMENT OFFICER OR THE SCREENING TEAM DOES NOT FIND THAT SUCH AN ADJUSTMENT IS IN THE BEST INTERESTS OF THE JUVENILE, THE ASSESSMENT OFFICER OR THE SCREENING TEAM SHALL STATE THE REASONS IN WRITING. THE WRITTEN STATEMENT SHALL BE MAINTAINED BY THE SCREENING ENTITY.

(2) EVERY CONTRACT SHALL BE IN WRITING AND MAY CONTAIN THE FOLLOWING:

(A) CONSENT TO THE CONTRACT TERMS BY THE JUVENILE'S PARENT OR LEGAL GUARDIAN;

(B) A REQUIREMENT OF RESTORATIVE JUSTICE PRACTICES, WHERE APPROPRIATE;

(C) AN AGREEMENT TO PAY RESTITUTION, WHERE APPLICABLE;

(D) AN AGREEMENT TO PERFORM USEFUL COMMUNITY SERVICE;

(E) AN AGREEMENT TO ATTEND SCHOOL UNLESS THE JUVENILE IS IN A CERTIFIED HOME STUDY PROGRAM OR IS OTHERWISE LEGALLY EXCUSED FROM SUCH ATTENDANCE;

(F) A REQUIREMENT THAT THE JUVENILE NOT COMMIT A DELINQUENT ACT WHILE UNDER CONTRACT;

(G) ANY OTHER CONDITIONS DETERMINED APPROPRIATE BY THE ASSESSMENT OFFICER OR SCREENING TEAM.

(3) UPON THE SUCCESSFUL COMPLETION OF THE CONTRACT TO THE SATISFACTION OF THE LAW ENFORCEMENT OFFICER, ASSESSMENT OFFICER AND/OR SCREENING TEAM, THE JUVENILE SHALL BE RELEASED FROM ANY FURTHER OBLIGATION AND A PETITION IN DELINQUENCY FOR THE ADMITTED ACT SHALL NOT BE FILED. THE COMPLETED CONTRACT SHALL REMAIN CONFIDENTIAL EXCEPT TO THE TICKETING AGENCY AND THE CHILD'S PARENT OR LEGAL GUARDIAN.

(4) IN THE EVENT THAT A JUVENILE FAILS TO COMPLY WITH A WRITTEN CONDITION OF THE CONTRACT WITHIN A SPECIFIC TIME DESIGNATED IN THE CONTRACT THE PROSECUTING ATTORNEY MAY FILE CHARGES WITH THE COURT. ANY STATEMENTS CONTAINED IN THE CONTRACT OR MADE BY THE JUVENILE TO THE OFFICER ADMINISTERING THE CONTRACT SHALL NOT BE USED AGAINST THE JUVENILE.

FY15-JJ3 **Develop professional standards of juvenile practice via a multi-agency collaborative**

The Commission on Criminal and Juvenile Justice supports agencies within the Executive and Judicial branches of government, and agencies involved in critical decisions of case processing and treatment of juvenile offenders, committing to and participating in the creation, adoption and implementation of statewide juvenile professional development standards as directed by the state's Juvenile Justice and Delinquency Prevention Council. We recommend the following timeline for implementation:

- **Phase 1** (September 1, 2014 – September 30, 2015): Commit to and participate in the creation of statewide juvenile professional development, including core training standards, and an achievable implementation plan.
- **Phase 2** (October 1, 2015 – September 30, 2018): Implement the plan, institutionalize core professional development standards in administrative practice, and ensure that training content will be continuously informed by new knowledge.

Implementation of adopted professional development and core training standards include:

- Expansion of organizational training offerings to better equip internal staff and contract provider staff with the competencies necessary to best meet the needs of the youth and families they serve.
- Institution of universal core standard trainings for professionals working with youth at entities such as, but not limited to, district attorney offices, the Colorado District Attorney's Council, the Department of Human Services, the Office of the State Public Defender, Colorado Office of Child's Representative, the State Court Administrator's Office, the Division of Probation Services, and Colorado Association of Family and Children's Agencies (CAFCA).
- Participation of agencies in exploring potential federal, state and local funding opportunities that support collaborative workforce development efforts.
- Assessment by Colorado's Executive, Judicial and administrative agencies and, when applicable, nonprofit agencies, of their ability to make the trainings that they currently offer available to outside professionals
- Partnerships with existing and natural training entities such as colleges and universities, juvenile assessment centers, and professional organizations, in adopting and expanding professional development opportunities.
- Standardization of trainings in recommended core competency areas.
- Commitment of youth-serving agencies to improving public and private cross-system knowledge and working relationships through coordinated universal core standard trainings.

Discussion

A deficit of comprehensive professional development strategies for staff that work with justice-involved youth can impede ensuring best outcomes for those youth. Unlike adult offenders, youth are involved in multiple systems with little coordination. As research demonstrates,

> *…once youth are in multiple systems, they risk being subject to multiple processes by multiple agencies with little or no coordination to achieve optimal case plans. Assessments are often duplicated, little or no attention is given to the integration of*

> *findings from the various assessments, and case plans may be duplicative or even contradictory. This lack of a coordinated response is not only unproductive in terms of addressing the youths' needs and criminogenic factors, but it can push youth further into the juvenile justice and other systems (Herz et al, 2012).*[18]

A number of states have already taken steps to address the deficit in professional development for their juvenile justice workforce and the impact this lack of professional development has on justice-involved youth and their families. For example, Missouri has developed a Juvenile Division Education Committee, whose purpose is to provide education for new and existing juvenile court professional personnel. The committee has identified ten knowledge and skill sets that contribute to well trained, highly effective juvenile and family court professionals. The committee was instrumental in developing curricula that provides fundamental skills in juvenile justice, intermediate and advanced course work and ongoing training.[19] *Florida has institutionalized an Office of Staff Development and Training (SD&T), which provides professional training, development, and support for all Department of Juvenile Justice staff (and private provider staff, as requested) through instructor-led and online courses.*[20]

There are numerous benefits to establishing and adopting statewide professional development standards for professionals working with justice-involved youth, including, but not limited to:

- *Improved agency and cross-discipline coordination and consistency.*
- *Creates common knowledge and framework across professionals when addressing youth and family issues.*
- *Expanded staff capacity and a more integrated approach to care.*
- *Reduced likelihood that youth are pushed further into the juvenile justice system and other systems when they fail to meet the requirements of contradictory case plans.*
- *Reduction of overall system costs and staff training.*
- *Improved outcomes for youth and families (e.g., reduce recidivism rates of justice-involved youth).*

A precedent exists in Colorado of instituting statewide professional standards for those working with children and families involved in child welfare. Colorado set minimum statutorily-defined requirements for those working in child welfare and, subsequently, a comprehensive child welfare training academy has been developed and is currently being expanded upon and strengthened to meet those standards. This affords an opportunity to expand this concept to other youth-serving systems. The training academy created by Senate Bill 09-164 is intended to ensure "all children in the public welfare system have access to quality services and to professionals with the knowledge, skills and abilities to make decisions that will help keep them safe and secure."[21] *Establishing core professional developments standards for Colorado professionals who serve justice-involved youth is a natural extension of the work the state has already done to ensure the well-being and safety of system-involved children, youth and families.*

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[18] Herz, D., Lee, P., Lutz, P., Tuell, J. & Wiig, J. (2012) *Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice*. Boston, Massachusetts: The Center for Juvenile Justice Reform and Robert F. Kennedy Children's Action Corps. Retrieved from: cjjr.georgetown.edu/.

[19] See cdpsdocs.state.co.us/ccjj/Committees/JuvenileTF/Handout/MoSC-TrainingStandards-JJProfessionals.pdf; retrieved from https://www.courts.mo.gov/file/.

[20] See www.djj.state.fl.us/services/support/office-of-staff-development-training.

[21] For information see, cdpsdocs.state.co.us/ccjj/Committees/JuvenileTF/Handout/RitterPR-CWTA_2009-05-19.pdf, cdpsdocs.state.co.us/ccjj/Committees/JuvenileTF/Handout/SB09-164.pdf, and www.coloradocwts.com.

Table 4.2. Recommended core competency areas

Brain development Youth brain development and behavior/decisions.
Effective case management Screening, assessment, effective report writing, case planning, and referral.
Consent, release of information, HIPAA, FERPA, 42CFR and confidentiality Privacy and confidentiality rights of youth, what and how data information can be shared across agencies.
Effective communication strategies Appropriate, respectful strategies to ensure effective communication between providers and justice-involved youth.
Family engagement Best practices for involving parents and families in the treatment process of justice-involved youth.
Behavioral health • Trauma-informed response and/ or care: Best practices for providers in trauma-informed services; an understanding of the high prevalence of traumatic experiences in justice-involved youth and the neurological, biological, psychological and social effects of trauma and violence on youth. • Best practices in supporting youth with mental health challenges • Strategies for addressing vicarious trauma in providers working with justice-involved youth • Principles of substance abuse, prevention, treatment and recovery

Comprehensive sentencing recommendations

FY14-CS2 **Retroactively expand the availability of earned time credit to individuals sentenced under the "big" provision of the habitual criminal statute for crimes occurring between July 1, 1985, and June 30, 1993**

The Comprehensive Sentencing Task Force recommends amending section 17-22.5-104 as follows:

(1) Any inmate in the custody of the department may be allowed to go on parole in accordance with section 17-22.5-403, subject to the provisions and conditions contained in this article and article 2 of this title.

(2)(a) No inmate imprisoned under a life sentence for a crime committed before July 1, 1977, shall be paroled until such inmate has served at least ten calendar years, and no application for parole shall be made or considered during such period of ten years.

(b) No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, but before July 1, 1985, shall be paroled until such inmate has served at least twenty calendar years, and no application for parole shall be made or considered during such period of twenty years.

(c) **(I)** No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(II) This paragraph (c) shall not apply to any inmate sentenced pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for any crime committed on or after July 1, 1985, and any such inmate shall be eligible for parole after the inmate has served forty calendar years less any time authorized pursuant to section 17-22.5-403.

(d)(I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. ~~No inmate imprisoned under a life sentence pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years~~.

(II) This paragraph (d) shall not apply to any inmate sentenced pursuant to section 18-1.3-801(2), C.R.S., for any crime committed on or after July 1, 1993, and any such inmate shall be eligible for parole in accordance with section 17-22.5-403.

(III) No inmate imprisoned under a life sentence pursuant to section 18-1.3-801(2.5), C.R.S., and no inmate imprisoned under a life sentence pursuant to section 18-1.3-801(1), C.R.S., on and after July 1, 1994, for a crime committed on and after that date, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(IV) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), an inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 2006, who was convicted as an adult following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court pursuant

to section 19-2-518, C.R.S., may be eligible for parole after the inmate has served at least forty calendar years. An application for parole shall not be made or considered during the period of forty calendar years.

Discussion

The goals of this recommendation are basic fairness, providing behavioral incentives to inmates, and cost savings. The Department of Corrections currently houses a small group of individuals convicted under the "big" provision of the habitual criminal statute who are ineligible for parole until they have served forty calendar years. Individuals convicted under that provision today, in contrast, are eligible to receive earned time toward parole eligibility if their crime was committed after July 1, 1993.

The recommendation's June 30, 1993, date is the product of changes in the habitual criminal statute, section 18-1.3-801. A prior version of that statute's "big" provision required persons convicted of a felony, after three prior felony convictions, to receive a sentence to "his or her natural life." The statute was amended effective July 1, 1993, to require a sentence of four times the maximum of the presumptive range for the felony of conviction. Ch. 322, sec. 1, § 16-13-101, 1993 Colo. Sess. Laws 1975-76. People who commit a felony after July 1, 1993, and are sentenced under "big" provision, are eligible for parole in accordance with parole eligibility statute. See §§ 17-22.5-104(2)(d)(II); 17-22.5-403; 18-1.3-801(2), C.R.S. 2012.

The recommendation's July 1, 1985, date is a product of changes in the parole regulations statute, section 17-22.5-104. When that statute was repealed and reenacted in 1984, it provided that "[n]o inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, shall be paroled until he has served at least twenty calendar years ...." Ch. 126, sec. 1, § 17-22.5-104, 1984 Colo. Sess. Laws 518. The parole eligibility cutoff was then extended to forty years for crimes committed after July 1, 1985. Ch. 145, sec. 3, § 17-22.5-104, 1985 Colo. Sess. Laws 648. In 1991, the forty year cutoff was limited to people convicted under the "big" provision of the habitual criminal statute and class 1 felonies. Ch. 73, sec. 4, § 17-22.5-104, 1991 Colo. Sess. Laws 404. The cutoff for the "big" provision was removed altogether for crimes committed after July 1, 1993. Ch. 322, sec. 3, § 17-22.5-104, 1993 Colo. Sess. Laws 1978. For present-day offenses, a forty year to parole eligibility limitation exists only as to convictions under section 18-1.3-801(2.5) (conviction of crime of violence following prior habitual criminal sentencing), section 18-1.3-801(1) (three times convicted of a class 1 or 2 felony, or a class 3 felony crime of violence), and juveniles convicted of class 1 felonies after direct filing. See § 17-22.5-104(2)(d), C.R.S. 2012.

The Task Force recognizes that victims should be notified of changes to the projected date that an offender will become eligible for parole. The Department of Corrections will determine whether the victims of affected offenders have requested notification of any critical stages of the criminal proceedings pursuant to section 24-4.1-302.5, C.R.S. 2012.[22] *Those who have will be notified of the offenders' recalculated parole eligibility date. If a victim has not requested notification, the Department of Corrections shall notify the district attorney in the jurisdiction of conviction. The district attorney will make all reasonable efforts to notify the victim of his or her rights pursuant to 24-4.1-302.5, C.R.S. 2012. Because it is estimated that the parole eligibility dates of only 76 offenders will be affected, the Task Force believes this notification process will not be overly burdensome and can be accomplished without a statutory mandate.*

[22] "If a victim contacts a criminal justice agency regarding a crime that occurred before 1993, and the offender who committed the crime is currently serving a sentence for the crime, the victim may request notification of any future critical stages of the criminal proceedings. In addition, if an arrest is made for a crime committed before 1993 that was previously unsolved, the victim of the crime may request notification of all future critical stages from the appropriate criminal justice agency. This provision does not require a criminal justice agency to proactively locate victims of crimes that occurred before 1993." § 24-4.1-302.5(4), C.R.S. 2012.

FY15-CS1 **Early discharge from Lifetime Supervision Probation for sex offenders due to disability or incapacitation**

Amend C.R.S. 18-1.3-1008 to provide that offenders sentenced to the Lifetime Supervision Act, who suffer from a severe disability to the extent they are deemed incapacitated and do not present an unacceptable level of risk to public safety, may petition the court for early discharge from probation supervision. Also, if necessary, make conforming amendments to the Colorado Victims' Rights Act regarding a "critical stage" for victim notification.

Discussion

A mechanism to apply for early discharge from indeterminate probation sentences should be in place for sex offenders who, due to a significant mental or physical disability, are deemed incapacitated to the extent that he or she does not present an unacceptable level of risk to public safety and is not likely to commit a new offense. A severe disability can render a person unable to participate in or benefit from sex offender supervision or treatment. Also, continued supervision of an offender with a severe medical or mental health diagnosis (e.g., severe dementia, Alzheimer's, terminal illness, physical incapacitation) may be ineffective while also requiring ongoing allocation of resources with little benefit.

Proposed statutory language

Amend C.R.S. 18-1.3-1008 to include the additional provision as follows:

(The entire section is new, but is not displayed in caps for ease of viewing.)

18-1.3-1008.1 – Discharge from probation for a sex offender suffering from a mental or physical disability – definitions and procedure

(1)(a) Notwithstanding any provision of the law to the contrary, a sex offender may obtain early discharge from probation if the sex offender or his or her lawful representative, the probation department or the prosecutor files with the court a verified petition for early termination alleging that the sex offender is a special needs sex offender as defined in subsection (2) and, because of the special needs, the sex offender is unable to participate in or benefit from sex offender treatment or supervision and that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

(b) A verified petition filed pursuant to this section shall include:

(i) records from a licensed health care provider responsible for the treatment of the sex offender which include a summary of the sex offender's medical or physical condition, which shall include, but not be limited to, the diagnosis of the disability or incapacitation, a description of severity of the disability or incapacitation, any information describing the permanent, terminal or irreversible nature of the disability or incapacitation;

(ii) information regarding the risk of the sex offender based upon the most recent evaluations conducted in accordance with the criteria established by the sex offender management board pursuant to section 18-1.3-1009.

(iii) a statement from the supervising probation department supporting the request for early discharge with a description of the sex offender's case history and the facts supporting the probation department position that the sex offender is no longer able to participate in or benefit from continued supervision.

(iv) information from the treatment provider for the sex offender outlining the history of the treatment of the sex offender, and a statement of whether, in the opinion of the treatment provider, the sex offender is able to participate in or benefit from continued treatment or supervision.

(c) If the verified petition is filed by the sex offender or the probation department, the prosecutor shall have thirty days to respond to the petition.

(d) the filing of a verified petition for early termination of probation due to a mental or physical disability shall operate as a waiver of any confidentiality of any and all relevant health records of the sex offender.

(e) Upon receipt of the petition and any responsive pleadings, the court shall determine of the verified petition is sufficient on its face. If the petition is sufficient on its face, the court shall set the matter for hearing. At any hearing, the court shall consider all relevant evidence including, but not limited to, the nature and extent of the physical or mental disability or incapacitation, the nature and severity of the offense or offenses for which the sex offender has been sentenced, the risk and needs assessments conducted in accordance with the criteria of the sex offender management board, the recommendations of the probation department, the recommendations of any treatment providers approved for sex offender treatment pursuant to the provisions of 16-11.7-103, and the statement of any victim of the sex offender, if available.

(f) The court shall make findings on the record if the court grants or denies the petition for early discharge. If the petition is granted, the court must find by clear and convincing evidence that the sex offender is a special needs offender as defined in subsection (2). If the court does not grant the petition, the court may enter any orders regarding probation consistent with the goals of sentencing as outlined in 18-1-102.5.

(g) If the court does not discharge the offender from probation after a hearing on a petition filed pursuant to this section, the sex offender or his or her lawful representative, the probation department or the prosecutor may file a subsequent petition once every year pursuant to this section, if the verified petition presents additional information not previously considered by the court which is relevant to the status of the sex offender as a special needs offender.

(2) A "special needs sex offender" as used in this section means a person who is sentenced to probation as a sex offender pursuant to section 18-1.3-1004, who, as determined by a licensed health care provider, suffers from a permanent, terminal or irreversible physical or mental illness, condition or disease, that renders the person unable to participate in or benefit from sex offender supervision or treatment and who is incapacitated to the extent that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

Amend the Colorado Victims' Rights Act (Title 24, Article 4.1, Part 3):

If necessary, make conforming amendments in C.R.S. 24-4.1-302 (2) (j.5) and/or (k.7), C.R.S., 24-4.1-302.5, and/or C.R.S., 24-4.1-303 (13.5) (a), to make this hearing a "critical stage" and regarding the right to be informed and present for "critical stages" of the criminal justice process.

5 Next steps

Task forces and committees

The Commission continues to support the ongoing work of the following three Task Forces and one Committee:

- Community Corrections Task Force (Peter Weir, Chair)
- Re-entry Task Force (Stan Hilkey, Chair)
- Data Sharing Task Force (Jeanne Smith, Chair)
- Mandatory Parole Committee (Douglas Wilson, Chair)

The Community Corrections Task Force is scheduled to continue its work through Fiscal Year 2016. The Mandatory Parole Committee is expected to complete its scope of work by December 2015. The Commission looks forward to supporting the work of the recently established (April 2014) Re-entry and Data Sharing Task Forces through Fiscal Year 2016 and beyond.

As this report goes to press, recommendations are being prepared for presentation to the Commission by the Community Corrections Task Force and the Mandatory Parole Committee.

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 2016. That report will encompass the activities of the Commission during Fiscal Year 2016.

6 Appendices

Appendices table of contents

Appendix A:
Cyber-bullying letter

General Assembly
State of Colorado
Denver

April 15, 2014

Commission on Criminal and Juvenile Justice

Dear Chair Davis and Commission Members,

The increased abuse of interactive computer and cellular services and social media by youth for purposes of bullying, harassing or making threats against minor victims is an issue that was recently considered by the Colorado State Legislature. Unfortunately, no clear consensus could be reached among the stakeholders regarding HB14-1131.

Therefore, we respectfully request that the Colorado Commission on Juvenile Justice take a comprehensive look at these wrongful behaviors and determine the most effective strategies to address and ultimately prevent cyberbullying. Further, we are requesting that the CCJJ assess the best criminal or juvenile justice responses to these behaviors by Colorado youth, with consideration of factors including the age and the developmental maturity of both victims and perpetrators of cyber bullying.

We respectfully ask the Commission to develop recommendations for a comprehensive response to address cyberbullying, taking into consideration the following parameters:

- The existing criminal statutes that address acts that are committed through the internet, cellular phones or other forms of social media, the sufficiency of those statutes, and any gaps in the law that may need to be addressed;
- Effective prevention and intervention methods that include, but are not limited to, intervention in schools and other educational settings;
- The role of victim-initiated restorative justice in addressing cyberbullying and how restorative justice may be used to aid victims, educate perpetrators, and inform communities to achieve a positive and more productive resolution when these behaviors occur;
- The specific and problematic use of pornography to harass or damage a minor victim;
- Methods and interventions that may assist victims to recover from the damage caused by cyberbullying; and
- Relevant impacts related to criminal convictions or juvenile adjudications; and

- Other analysis and research the commission deems relevant including consideration of best practices in other political subdivisions and evidence-based practices

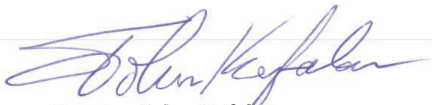
We further request that the commission provide a written report of its findings and recommendation to the Judiciary committees of the Colorado House of Representatives and the Senate and the Governor's Office of Legal Counsel on or before December 1, 2014. Such findings and recommendations will be very important and helpful for the legislature to make informed decisions about 2015 legislation to address the problem of cyberbullying.

We look forward to working with the Commission on this request.

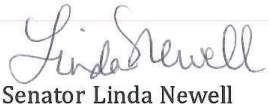
Sincerely,

Senate President Morgan Carroll

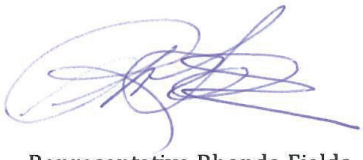
Speaker Mark Ferrandino



Senator John Kefalas



Senator Linda Newell



Representative Rhonda Fields

Appendix B:
Cyber-bullying report

COLORADO
Commission on Criminal & Juvenile Justice

Department of Public Safety
Colorado.gov/CCJJ

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Vice-Chair
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TO: Judiciary Committees of the Colorado House of Representatives and the Senate
Governor's Office of Legal Counsel

FROM: Commission on Criminal and Juvenile Justice
Stan Hilkey, Chair of the Commission
Executive Director, Department of Public Safety
Kevin L. Paletta, Chair of the Cyberbullying Subcommittee
Chief, Lakewood Police Department

RE: Cyberbullying Report (attached)

DATE: December 1, 2014

By letter dated April 15, 2014, the Commission on Criminal and Juvenile Justice was requested to study wrongful behaviors associated with cyberbullying and determine the most effective strategies to address and prevent those behaviors. Specifically, the Commission was asked to consider the following:

- Existing criminal statutes that address acts that are committed through the internet, cellular phones, or other forms of social media, the sufficiency of those statutes, and any gaps in the law that may need to be addressed;
- Effective prevention and intervention methods that include, but are not limited to, intervention in schools and other educational settings;
- The role of victim-initiated restorative justice and how restorative justice may be used to aid victims, educate perpetrators, and inform communities to achieve a positive and productive resolution when these behaviors occur;
- The specific and problematic use of pornography to harass or damage a minor victim;
- Methods and interventions that may assist victims to recover from the damage caused by cyberbullying;
- Relevant impacts related to criminal convictions or juvenile adjudications; and
- Other analysis and research the Commission deems relevant including consideration of best practices in other political subdivisions and evidence-based practices.

The Commission formed the Cyberbullying Subcommittee to address the letter's request for information. Commission member and Lakewood Police Chief Kevin Paletta chaired the Subcommittee. The Subcommittee met between August and November and prepared the attached report. This concludes the Commission's work on this matter. Please feel free to contact Chief Paletta at kevpal@lakewoodco.org if you have any questions or to request additional information.

Colorado Commission on Criminal & Juvenile Justice

REPORT OF THE CYBERBULLYING SUBCOMMITTEE OF THE COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

December 2014

Background. In a letter dated April 15, 2014, the leadership and several members of the Colorado General Assembly asked the Colorado Commission on Criminal and Juvenile Justice (CCJJ) to conduct a comprehensive review of cyberbullying to include the use of interactive computers, cellular services, and social media by youth to bully, harass, or threaten minor victims. The request asked that the Commission to report its findings and recommendations to the General Assembly by December 1, 2014. Subsequently, the Commission received a follow-up request to include a study of sexting. The Commission formed the Cyberbullying Subcommittee to respond to the requests for information. Sexting was addressed by the Subcommittee only as it is used in acts of cyberbullying. The Subcommittee discussed sexting and recognized that it is a very different issue from cyberbullying and was therefore beyond the scope of the current study and beyond the timeframe available to the Subcommittee. However, this report does include findings that are applicable to all types of bullying, including sexting. Because of time constraints in meeting the December 1 deadline for this response, the Subcommittee's work was not presented to the Commission as a whole. The findings and discussion should not be read as official Commission recommendations.

The Cyberbullying Subcommittee was seated in August of 2014 to respond to the request for information. The Cyberbullying Subcommittee consisted of the following professionals (an asterisk identifies the person as Commission member):

*Kevin Paletta, Chief, Lakewood Police Department (chair)
*Jennifer Bradford, Metropolitan State University
Christine Brite, Detective, Douglas County Sheriff's Office
Maureen Cain, Criminal Defense Bar
*Kelly Friesen, Senate Bill 94 Coordinator, Grand County
Chris Harms, Director, Colorado School Safety Resource Center
Denise Maes, American Civil Liberties Union
Patty Moschner, Victim Advocate, Douglas County Sheriff's Office
Linda Newell, Colorado Senator, District 26
Tom Raynes, Executive Director, Colorado District Attorneys' Council
Division of Criminal Justice (DCJ) staff to the committee included *Jeanne Smith, Kim English, Jana Locke, Ken Plotz, and Laurence Lucero

Overview of the problem. Traditional forms of bullying have been present in society and schools for many years. Colorado law concerning education defines bullying as "any written or verbal expression, or physical or electronic act or gesture, or pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student" (C.R.S. 22-32-109.1). What may constitute bullying in the eyes of one person may be seen as expected adolescent behavior in the eyes of another, or possibly an expression of free speech. The Subcommittee was cognizant in its discussions of not confusing cyberbullying with other juvenile behavior to include peer conflicts, arguing, ignoring, roughhousing, and constitutionally protected freedom of speech.

Cyberbullying is a relatively new twist on bullying. It involves the use of electronic mediums including email, text messaging, instant messaging, blogs, websites, online gaming, and other social networking sites. Compared to traditional bullying, cyberbullying is potentially more anonymous, shared with a wider audience, and not restrained by space or time. Tragic and sensational cases where cyberbullying has resulted in assaults, sexual assaults, and suicides have spawned discussions about how to best deal with this new method of bullying.

Research on traditional bullying has shown that bullied children may experience problems associated with their health, emotional well-being, and academic work. They are more likely to report feelings of anxiety, depression, and low self-esteem (Kowalski & Limber, 2013). In a presentation to the Cyberbullying Subcommittee on August 26, 2014, Dr. Jenn Capps and Dr. Denise Mowder, JD, on faculty at Metropolitan State University, reported the following research findings regarding cyberbullying:

- Girls are just as likely as boys to be bullying victims and offenders;
- Offenders are just as likely to be students earning A's as ones earning C's and D's;
- Bullying is related to reports of low self-esteem, suicidal ideation, anger, frustration, and other psychological problems;
- Nationally, traditional bullying victims were 1.7 times more likely to attempt suicide and cyberbullying victims were 1.9 times more likely to have made such attempts;
- There is no research that shows a causal link between bullying or cyberbullying and suicidality. Family dynamics, substance abuse, mental illness, depression, and low self-esteem are more significant factors in suicides;
- Nationally reported victimization rates for traditional bullying are 19.9% with cyberbullying rates reported at 25.2%.

In Colorado, according to the Healthy Kids Colorado Survey,[1] in 2013 20.0% of students reported being the victim of traditional bullying in the past 12 months, and 15.1% reported being victimized by cyberbullying in the past 12 months. Middle school youth were asked if they had ever been the victim of traditional bullying (47.4%) and cyberbullying (22.7%).

[1]This survey is sponsored jointly by the Colorado Department of Education, Colorado Department of Public Health and Environment, and the Colorado Department of Human Services-Office of Behavioral Health. It can be found at: http://www.ucdenver.edu/academics/colleges/PublicHealth/community/CEPEG/UnifYouth/Pages/HealthyKidsSurvey.aspx

A review of state statutes, conducted by Colorado Department of Criminal Justice (DCJ) staff, found that very few states have enacted specific criminal cyberbullying laws. Those that have include Louisiana, Georgia, New Mexico, North Carolina, and Virginia. Many states have chosen instead to deal with bullying and cyberbullying in their harassment and stalking statutes. These states include Alaska, Illinois, Indiana, Iowa, Kansas, Massachusetts, New York, and Texas. Like Colorado, nearly every state has adopted legislation directing school districts to develop policies requiring teacher training and the application of sanctions when dealing with bullying and cyberbullying.

Laws are already in place in Colorado to reduce and respond to acts of bullying. The state law cited above, updated by Senate Bill 01-080 and House Bill 11-1254 (Concerning Measures to Reduce the Frequency of Bullying in Schools Act), requires schools to provide a safe learning environment for all students. This includes the development of school and district policies concerning bullying prevention, education, and reporting. It further requires the Colorado Department of Education to create a page on its website to make available evidence-based practices concerning anti-bullying programs.[2]

The Subcommittee was unable to find evidence-based prevention or intervention programs related to cyberbullying. This is due in large part to the fact that cyberbullying is a relatively new phenomenon. Norway's Olweus Bullying Prevention Program (Olweus & Limber, 2010), listed on the University of Colorado's Blueprints for Healthy Youth Development website, is considered a "promising program" for traditional bullying, meaning that the program has clearly identified outcomes and some research indicating positive change with no harmful effects.[3] This program uses discussions and activities designed to reduce and prevent school bullying by establishing anti-bullying values and norms. In the absence of specific cyberbullying evidence-based practices, the Subcommittee recommends modeling any intervention programs after existing evidence-based programs such as the LifeSkills program which has been found to reduce aggression, fighting and delinquency by up to 50%.[4]

The Subcommittee has learned that truly effective anti-bullying public policies will require a multi-disciplinary approach that includes the school, justice system, community organizations, faith-based groups, and the family. The Subcommittee found some excellent anti-bullying policies and practices in place in school districts across the state, although such efforts have limitations. These limitations include factors such as little or no funding, broadly worded legal requirements, the lack of evidence-based anti-bullying programs, extensive requirements already existing on the schools, and the difficulty of getting voluntary youth and parent involvement in prevention and intervention efforts.

[2] See http://www.cde.state.co.us/pbis/bullying/index.

[3] See Blueprints for Healthy Youth Development, University of Colorado, Institute of Behavioral Science, at http:www.blueprintsprograms.com.

[4] For more information, see http://www.lifeskillstraining.com.

RESPONSE TO THE DIRECTIVES FROM THE GENERAL ASSEMBLY

After gathering data on the issue and hearing presentations from experts, the Cyberbullying Subcommittee assembled the following findings, as requested by the General Assembly. The Subcommittee paraphrased the requests for clarity in this document.

REQUEST 1: Are existing (Colorado) criminal statutes adequate to address acts of cyberbullying? What gaps may exist with existing laws?

***FINDING 1*: Existing statutes can apply to bullying behaviors, including cyberbullying. Minor language changes to the harassment statute could clarify perceived gaps in existing legislation.**

Discussion. There are at least 19 criminal statutes that could be used to prosecute actions taken by persons who engage in bullying and cyberbullying behavior. The Subcommittee identified the relevant criminal statutes and these are attached to this document as Exhibit A. The statutes include: harassment, stalking, criminal impersonation, criminal invasion of privacy, disorderly conduct, interference with staff, faculty or students, criminal extortion, internet luring of a child, unlawful sexual contact, internet sexual exploitation, hazing, abuse of telephone and telegraph services, obstruction of telephone or telegraph services, menacing, bias-motivated crimes, public indecency, indecent exposure, revenge pornography (posting of a private image for harassment or pecuniary gain), and computer crime.

It is the general agreement of the Subcommittee that there are sufficient criminal statutes currently in effect in Colorado to permit, where appropriate, the prosecution of behavior that would be considered "cyberbullying." The Subcommittee agreed that clarifying a section in the harassment statute would be helpful. The Subcommittee would recommend language as follows (new language in **bold**):

C.R.S. 18-9-111 – Harassment

A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he or she:

(e) **Directly or indirectly**, initiates communication with a person **or directs language toward another person**, anonymously, or otherwise, by telephone, telephone network, data network, text message, computer, computer network, computer system or **other interactive electronic medium** in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system or **other interactive electronic medium** that is obscene….

REQUEST 2: Provide recommendations on effective prevention and intervention methods for addressing cyberbullying to include, but not be limited to, schools and other educational settings.

FINDING 2: **Provide funding to support the intent of the grant programs created in House Bill 11-1254 that would assist schools in implementing proven social-emotional learning (SEL) practices and include support for long-term evaluation research.**

Discussion. The literature points to the fact that cyberbullying is a medium for bullying and cannot be addressed in isolation from traditional bullying. Most of the bullying prevention and intervention efforts are centered in schools. Traditional bullying is still experienced more frequently by Colorado students than is cyberbullying. As mentioned previously, the 2013 Healthy Kids Colorado Survey found that 20.0% of Colorado high school students report having been bullied on school property during the past 12 months and 15.1% reporting having been cyberbullied within the past 12 months. This study also found that 47.4% of middle school students reported having ever been bullied on school property and 22.7% reporting having ever been cyberbullied. Research from the University of Illinois supports a transactional relationship between traditional bullying and cyberbullying. That is, bullying perpetration is an antecedent of cyberbullying perpetration in middle school (Espelage, et al., 2013).

It is clear that some students who experience cyberbullying may feel depressed, sad, angry and frustrated, and schools have a role in protecting these students. Since 2001, Colorado schools have been required to have "a specific policy concerning bullying prevention and education" (C.R.S. 22-32-109.1, "Safe Schools Act").

Concern about bullying and suicide persist and, indeed, research has found a link between bullying behavior and an increased risk of suicide. Traditional bullying victims were 1.7 times more likely and traditional bullying perpetrators were 2.1 times more likely to have attempted suicide than those who were not victims or perpetrators. Similarly, cyberbullying victims were 1.9 times more likely and cyberbullying perpetrators were 1.5 times more likely to have attempted suicide than those who were not cyberbullying victims or perpetrators. However, many of the teens who committed suicide after experiencing bullying or cyberbullying had other emotional and social issues.[5] The researchers (Hinduja & Patchin, 2009) concluded the following:

> …it is unlikely that the experience with cyberbullying by itself leads to youth suicide. Rather, it tends to exacerbate instability and hopelessness in the minds of adolescents already struggling with stressful life circumstances.

It is understood that the viral nature of cyberbullying means that others can easily witness and or contribute to the pain while the perpetrator may remain anonymous. However, Mitchell et al. (2011) reported that 75% of students who are bullied and harassed via the internet say they were not upset but rather either deleted messages or blocked senders.

[5] According to Hertz, Donato, & Wright (2013), there is a strong association between bullying and suicide-related behaviors, but this relationship is often mediated by other factors, including depression and delinquency.

There is limited data on programs that are effective in reducing bullying particularly within the United States and no research on programs that reduce cyberbullying. However, school-based bullying prevention programs have been found decrease bullying by over 20% (Ttofi & Farrington, 2009).[6] Programs based on the Olweus Bullying Prevention Program in Norway have demonstrated the most effectiveness in reducing both bullying perpetration and victimization.

In a meta-analysis of 44 bullying programs, Ttofi & Farrington (2009)[7] found the programs that decreased bullying had the following components: parent training/meetings; improved playground supervision; schools using effective disciplinary methods and classroom management strategies; teacher training; classroom rules; whole-school anti-bullying policies; cooperative group work; and a greater number of elements to combat bullying over a longer period of time. The researchers suggested that implementation of programs should include an evaluation component. Ttofi, Farrington, Losel, and Loeber (2011) conducted a longitudinal study of bullying victimization and concluded that high quality bullying prevention programs could be considered public health and delinquency prevention initiatives.

Research suggests that schools focus on ensuring an overall positive school climate as a way to address and eliminate bullying and harassment as well as increase academic performance and other positive student outcomes. Due to substantial time and resource constraints, educators would rather use a program that focuses on multiple issues; quality social-emotional learning (SEL) curricula have been shown to do just that. For instance, a study of *The Second Step: Student Success Through Prevention*,[8] a program for middle school students that addresses social emotional learning and multiple issues, found substantial reductions in bully perpetration, peer victimization, physical aggression, homophobic name calling perpetration, homophobic name calling victimization, sexual harassment perpetration, and sexual harassment victimization (Cooke, et al., 2007).

Schools would welcome the General Assembly funding the grant programs outlined in H.B. 11-1254. This would enable them to provide evidence-based SEL (social-emotional learning) programs from elementary through high school. The Subcommittee agreed that providing funding to support the intent of H.B.11-1254 would be an important step forward for these efforts. Additionally, the Subcommittee strongly recommends funding for long-term evaluation research to establish the effectiveness of such programs.

REQUEST 3: What role should victim-initiated restorative justice play in acts of cyberbullying?

[6] The study found that on average, school-based anti-bullying programs decreased bullying behavior by 20%-23% and victimization by bullies by 17%-20% (Ttofi & Farrington, 2009).
[7] See http://www.campbellcollaboration.org/lib/project/77/ for the full report.
[8] According to the nonprofit Committee for Children, the Second Step program teaches empathy and communication, emotion-management and coping skills, and decision making. These skills help students stay engaged in school, make good choices, set goals, and avoid peer pressure, substance abuse, bullying, and cyber bullying. For more information, see http://www.cfchildren.org/second-step.aspx.

***FINDING 3*: Restorative justice principles provide a useful option for resolving conflicts, but decisions on their use in any individual case should be guided by local policies and resources, and must ultimately rest with the interest and consent of the victim and the discretion of the district attorney.**

Discussion. Restorative justice is one of many tools that should be considered as an alternative to prosecution, if appropriate, but there is no known research about the effectiveness of restorative justice programs as they relate specifically to bullying.[9] While a variety of programs and models incorporating restorative justice (RJ) principles exist across the state, both within and outside of district attorneys' offices, there is no single model that appropriately fits all situations or all crimes. Each and every bullying scenario is unique and requires careful analysis before choosing any method of intervention or education or both.

Additionally, some aspects of RJ programs are far easier to apply than others. The notion of getting an offender to understand and empathize with the impact of his or her conduct on the victim is fundamental to the RJ process. Accordingly, in many other criminal scenarios, victim/offender mediation programs have been folded into some restorative justice practices. This approach should be done with extreme caution in bullying cases as the premise of any bullying is that the victim is in a weaker position compared to the offender and further interaction could aggravate that relationship, especially after the mediation when the actors are not in a controlled setting. While RJ may well be a positive and effective strategy for some cases, it is not a process that fits all cases.

In any situation, seeking such an alternative to prosecution or other solutions, the victim should have the controlling voice both as to whether it will be used and, if so, how far the RJ process will go. Failure to allow the victim to have such final authority in these situations could easily result in continued re-victimization.

There are currently four district attorneys' offices operating state-funded RJ pilot programs in Colorado. These programs are in place in the following judicial districts: 10th (Pueblo), 12th (operating in Alamosa), 19th (Weld) and the 20th (Boulder). It is important to note that each one of these programs has different criteria for eligibility and different approaches to how RJ is used, as determined to be in the best interest of each community. However, there is no specific tracking of RJ's application and effectiveness related to bullying events. This regional approach to RJ accurately reflects the structure of the criminal justice system in Colorado which is purposefully designed to provide for local control and local influence on policy and resource allocation. Tailoring these programs to the local community is essential and the most responsible way to implement RJ concepts in a locally relevant and responsible manner. Each community is

[9] Strang et al. (2013) conducted a systematic review of ten experimental studies of face-to-face restorative justice conferencing where victims and offenders involved in a crime meet in the presence of a trained facilitator, with their families and friends or others affected by the crime, to discuss and resolve the offense and its consequences. The review found RJ conferences (delivered in the manner of the ten studies in this review) appear likely to reduce future detected crimes among the kinds of offenders who are willing to consent to RJ conferences, and whose victims are also willing to consent. The condition of consent is crucial for the generalizability of these findings. See Strang et al. (2013) for more information, at http://www.campbellcollaboration.org/lib/project/63/.

different and each community has different expectations and priorities related to criminal justice and public safety. Accordingly, while the use and consideration of RJ principles may well be a useful tool in some bullying scenarios and should always be an available option, decisions to utilize RJ in any given case should be guided by local policies and resources and must ultimately rest within the discretion of the prosecutor and the interest and consent of the victim.

REQUEST 4: Address the specific and problematic role pornography plays in cyberbullying.

FINDING 4: **To the extent that criminal laws can address this behavior either through prevention or intervention, there are adequate statutes currently in place in Colorado (see Exhibit A, attached*).***

Discussion. The ease with which a picture, especially a picture of intimate parts or sexual behavior, can be used to harass and intimidate another makes this behavior particularly troubling and problematic. There are numerous statutes in Colorado that address the use of images of private intimate parts (from consensual images of a person's private parts to pornographic images under the law). To the extent that the juvenile and adult justice system can address this behavior, either through prevention or intervention, there are available and adequate criminal statutes (see Exhibit A and the response to Request 1). All interventions described in other sections of this document should be used to educate persons about the wrongful use of private images and the damage that can be caused by a simple click of a camera or a "send" button.

REQUEST 5: What methods and interventions are or should be available to assist the victims with their recovery from the damages caused by cyberbullying?

FINDING 5: While there are connections and services available for victims who are engaged with the justice system, there is a need for general behavioral health service access through non-profits, schools, and community-based centers. This is as applicable for victims of bullying as it is for all persons needing behavioral health assistance.

Discussion. There are multiple sources of assistance and information for victims of any kind of bullying, not restricted to cyberbullying. At the federal level, the website *stopbullying.gov* has suggestions for how victims and families can get help. The link from that web site for Colorado is answered by the Rocky Mountain Crisis Partners (formerly the Metro Crisis Services) who help people connect with counseling, suicide hot lines, and other services. This agency has its own marketing within Colorado. Anonymous reporting methods, such as Safe2Tell in Colorado, are effective ways of getting information about bullying and providing intervention. For school year 2013-2014, calls related to bullying were the second highest category of reports for Safe2Tell. These calls allowed for intervention and provision of services where appropriate.

Many schools have implemented bullying prevention programs and regularly publicize help lines or other assistance for victims. A program called Positive Behavior Interventions and Supports sponsored through the Colorado Department of Education is an evidence-based practice that has been introduced in over a thousand schools in the state.[10]

There are multiple local efforts to reach truant, runaway and homeless youth who are more likely to be victims of multiple types of abuse, including bullying. Special populations are targeted through organizations such as Special Olympics through their program called Project UNIFY™ for persons with intellectual challenges. Multiple agencies do outreach to persons in the LGBT community who are at higher risk of being bullied. Parents, Family and Friends of Lesbians and Gays (PFLAG) chapters across the state are examples of such agencies.

Where bullying behavior results in a criminal complaint, a victim has access to justice system victim advocates who can help connect the individual with appropriate services. For crimes enumerated in the Victims' Rights Act, victim compensation funds are available to pay for counseling or other assistance. However, there is not the same access to assistance for victims outside the justice system. There is a need for additional behavioral health services in community-based centers, non-profit agencies, and schools.

REQUEST 6: What other research and analysis does the committee deem relevant, to include best practices in other political venues and evidence-based models?

***FINDING 6*: Research concludes that some school-based programs can be effective in addressing bullying behavior. Broad-based policies should be initiated with caution until a long-term investment in evaluation research can support particular approaches.**

Discussion. The research on cyberbullying is limited, but is evolving. Much of the existing body of literature combines both traditional bullying and cyberbullying, making the delineation of the impact of one over the other difficult to discern. Further, the more pressing issues that have created a greater awareness regarding cyberbullying revolve around the impact of cyberbullying specifically on mental health issues and suicide ideation. Although research has suggested that there is a link between cyberbullying and increased suicide ideation, it simultaneously suggests that there are myriad factors that contribute to these negative outcomes, and cause and effect relationship should not be presumed (Tokanuga, 2010). Instead, efforts should focus on best practices for providing support services and resources for these victims (Schneider, et al., 2012). Additionally, it is also argued that much of the issues that are currently being experienced regarding cyberbullying may be addressed by using the same methods directed at traditional bullying (Olweus, 2012).

[10] According to the Colorado Department of Education, the mission of the Colorado Positive Behavioral Interventions and Supports Initiative is to establish and maintain effective school environments that maximize academic achievement and behavioral competence of all learners in Colorado. For more information, see http://www.cde.state.co.us/pbis#sthash.A0hXm2JK.dpuf.

Currently, the United States is perceived as leading the way in bullying research, which includes cyberbullying. However, much of the work that is being done internationally is not only contributing to the evolving body of research, but it is also highlighting some areas that future research in the U.S. should focus on. One such area is the issue of the status emphasis that has been placed on bullying/cyberbullying (DeSmet, et al., 2014). A potential notable difference between the U.S. and other countries with regards to the prevalence of bullying issues is that the U.S. has raised a greater awareness of bullying and therefore has also potentially inadvertently contributed to the existing stigma of bullying. As much of the research thus far has indicated, many self-response measures of bullying/cyberbullying indicate that the vast majority of respondents indicate that bullying does not pose a particular problem to them (Ortega, et al., 2012). International studies are highlighting a potential cause for this as minimizing the stigma and therefore the impact of bullying, reducing its overall importance to the potential victims. Future research in the U.S. should focus specifically on this stigma/status issue to identify if the increase in awareness campaigns is actually having an adverse effect.

Past and current research is largely disjointed based upon a lack of a solid theoretical framework, disparate conceptual and operational definitions of cyberbullying, and overlapping risk factors and victim responses between traditional and cyberbullying (Tokanuga, 2010). Therefore, future research needs to be broader-based and less anecdotal. Additionally, increased qualitative research could find deeper or hidden trends/patterns within the contextual nature of bullying to help delineate the true impact of cyberbullying, if any. Along with this, delineating any psychological impacts between the two forms of bullying would substantially contribute to our knowledge-base. While research concludes that some school-based programs can be effective in addressing bullying behavior, broad-based policies should be initiated cautiously until a long-term investment in evaluation research can support particular approaches. Ultimately, more research in all areas needs to continue. Over time, it is suspected that there will be an increase in understanding of the true effects of cyberbullying. It is certainly expected that the nature of bullying through an electronic/cyberspace forum will continue as technology and accessibility to technology continues to increase.

CONCLUSION

The Cyberbullying Subcommittee of the Commission on Criminal and Juvenile Justice conducted an in-depth analysis of the state of cyberbullying, including a review of available research, a review of existing laws in Colorado, an examination and discussion of legislation in other states, as well as discussions within the Subcommittee by professionals in the fields of research, victimization, and justice. In the end, the Subcommittee is recommending against the passage of legislation specific to cyberbullying. The Subcommittee's reasons include the following:

- Such legislation has a strong likelihood to unintentionally criminalize a broad range of adolescent behaviors and speech.
- The justice system is not likely the best remedy to resolve acts of cyberbullying.
- Many applicable laws already exist to address bullying behaviors that warrant justice system involvement.

- Programs and policies already exist in schools and public safety agencies to prevent, deter, and address acts of cyberbullying. These programs could be expanded and enhanced.
- Cyberbullying is frequently difficult to investigate and prosecute due to other contributing factors involved in adolescent behavior, and legislation specific to cyberbullying would not solve this problem. Further, such legislation is likely to face first amendment challenges.

Instead, the Subcommittee suggests that there could be a benefit achieved by amending the harassment statute to include the language suggested in the response to Request #1.

The Subcommittee was in strong agreement that, if there is still a desire to sponsor legislation directed toward cyberbullying, the statute should be worded with specific language and contain clear definitions to ensure that it is enforceable, prosecutable, and constitutional. In the recent case of the *People v. Marquan M.,* heard in the New York State Court of Appeals, in a 5-2 decision, found that an Albany law regarding cyberbullying was unconstitutional due to its overly broad and poorly written language. The court went on to say, "It appears that the provision would criminalize a broad spectrum of speech outside the popular understanding of cyberbullying...." Colorado must avoid creating similar legislation.

The Subcommittee encourages adding funds to H.B.11-1254 so the intent of that legislation, to expand the availability of anti-bullying efforts in schools, can be implemented.

These findings bring to a conclusion the work of the Cyberbullying Subcommittee of the Colorado Commission on Criminal and Juvenile Justice. The chair wishes to thank all of the members for their diligent efforts and commitment.

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EXHIBIT A

COLORADO CRIMINAL STATUTES THAT MIGHT BE RELEVANT TO BULLYING/CYBERBULLYING AS CRIMINAL BEHAVIOR

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For CCJJ Cyberbullying Subcommittee
October 2014

HARASSMENT

CRS 18-9-111 --- Harassment

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:

(a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

(b) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) Follows a person in or about a public place; or

(d) Repealed.

(e) Initiates communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, or computer system that is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except

that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to subsection (1) of this section with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, or national origin.

(3) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

STALKING

CRS 18-3-602

(1) A person commits stalking if directly, or indirectly through another person, the person knowingly:

(a) Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or

(b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

(c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this paragraph (c), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.

(2) For the purposes of this part 6:

(a) Conduct "in connection with" a credible threat means acts that further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat.

(b) "Credible threat" means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.

(d) "Repeated" or "repeatedly" means on more than one occasion.

(3) A person who commits stalking:

(a) Commits a class 5 felony for a first offense except as otherwise provided in subsection (5) of this section; or

(b) Commits a class 4 felony for a second or subsequent offense, if the offense occurs within seven years after the date of a prior offense for which the person was convicted.

(4) Stalking is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in section 18-1.3-401 (10).

(5) 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.

CRIMINAL IMPERSONATION

18-5-113. Criminal impersonation

(1) A person commits criminal impersonation if he or she knowingly:

(b) Assumes a false or fictitious identity or capacity, legal or other, and in such identity or capacity he or she:

(I) Performs an act that, if done by the person falsely impersonated, might subject such person to an action or special proceeding, civil or criminal, or to liability, charge, forfeiture, or penalty; or

(II) Performs any other act with intent to unlawfully gain a benefit for himself, herself, or another or to injure or defraud another.

(2) Criminal impersonation is a class 6 felony.

(3) For the purposes of subsection (1) of this section, using false or fictitious personal identifying information, as defined in section 18-5-901 (13), shall constitute the assumption of a false or fictitious identity or capacity.

CRIMINAL INVASION OF PRIVACY

18-7-801. Criminal invasion of privacy

(1) A person who knowingly observes or takes a photograph of another person's intimate parts, as defined in section 18-3-401 (2), without that person's consent, in a situation where the person observed or photographed has a reasonable expectation of privacy, commits criminal invasion of privacy.

(2) Criminal invasion of privacy is a class 2 misdemeanor.

(3) For the purposes of this section, "photograph" includes a photograph, motion picture, videotape, live feed, print, negative, slide, or other mechanically, electronically, digitally, or chemically reproduced visual material.

DISORDERLY CONDUCT

18-9-106. Disorderly conduct

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

INTERFERENCE WITH STAFF , FACULTY OR STUDENTS

18-9-109. Interference with staff, faculty, or students of educational institutions

(1) No person shall, on or near the premises or facilities of any educational institution, willfully deny to students, school officials, employees, and invitees:

(a) Lawful freedom of movement on the premises;

(b) Lawful use of the property or facilities of the institution;

(c) The right of lawful ingress and egress to the institution's physical facilities.

(2) No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties or willfully impede a student of the institution in the lawful pursuit of his educational activities through the use of restraint, abduction, coercion, or intimidation or when force and violence are present or threatened.

(5) Any person who violates any of the provisions of this section, except subsection (6) of this section, commits a class 3 misdemeanor.

(6) (a) A person shall not knowingly make or convey to another person a credible threat to cause death or to cause bodily injury with a deadly weapon against:

(I) A person the actor knows or believes to be a student, school official, or employee of an educational institution; or

(II) An invitee who is on the premises of an educational institution.

(b) For purposes of this subsection (6), "credible threat" means a threat or physical action

that would cause a reasonable person to be in fear of bodily injury with a deadly weapon or death.

(c) A person who violates this subsection (6) commits a class 1 misdemeanor.

CRIMINAL EXTORTION

18-3-207. Criminal extortion - aggravated extortion

(1) A person commits criminal extortion if:

(a) The person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person; and

(b) The person threatens to cause the results described in paragraph (a) of this subsection (1) by:

(I) Performing or causing an unlawful act to be performed; or

(II) Invoking action by a third party, including but not limited to, the state or any of its political subdivisions, whose interests are not substantially related to the interests pursued by the person making the threat.

(1.5) A person commits criminal extortion if the person, with the intent to induce another person against that other person's will to give the person money or another item of value, threatens to report to law enforcement officials the immigration status of the threatened person or another person.

(3) For the purposes of this section, "substantial threat" means a threat that is reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury, or damage will occur.

(4) Criminal extortion, as described in subsections (1) and (1.5) of this section, is a class 4 felony. Aggravated criminal extortion, as described in subsection (2) of this section, is a class 3 felony.

INTERNET LURING OF A CHILD

18-3-306. Internet luring of a child

(1) An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication by computer, computer network, telephone network, data network, text message, or instant message, describes explicit sexual conduct as defined in section 18-6-403 (2) (e), and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

(2) It shall not be a defense to this section that a meeting did not occur.

(a) and (b) (Deleted by amendment, L. 2007, p. 1688, § 8, effective July 1, 2007.)

(3) Internet luring of a child is a class 5 felony; except that luring of a child is a class 4 felony if committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in section 18-6-403 or sexual contact as defined in section 18-3-401.

(4) For purposes of this section, "in connection with" means communications that further, advance, promote, or have a continuity of purpose and may occur before, during, or after the invitation to meet.net Luring

UNLAWFUL SEXUAL CONTACT

18-3-404. Unlawful sexual contact

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

(a) The actor knows that the victim does not consent; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or

(g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Repealed.

(2) (a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or

subsection (1.5) of this section.

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

(4) A person who is convicted on or after July 1, 2013, of unlawful sexual contact under this section, upon conviction, shall be advised by the court that the person has no right:

(a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that offense;

(b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;

(c) Of inheritance from a child conceived as a result of the commission of that offense; and

(d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.

INTERNET SEXUAL EXPLOITATION

18-3-405.4. Internet sexual exploitation of a child

(1) An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

(a) Expose or touch the person's own or another person's intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or

(b) Observe the actor's intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.

(2) (Deleted by amendment, L. 2009, (HB 09-1163), ch. 343, p. 1797, § 1, effective July 1, 2009.)

(3) Internet sexual exploitation of a child is a class 4 felony.

HAZING

18-9-124. Hazing - penalties - legislative declaration

(1) (a) The general assembly finds that, while some forms of initiation constitute acceptable behavior, hazing sometimes degenerates into a dangerous form of intimidation and degradation. The general assembly also recognizes that although certain criminal statutes cover the more egregious hazing activities, other activities that may not be covered by

existing criminal statutes may threaten the health of students or, if not stopped early enough, may escalate into serious injury.

(b) In enacting this section, it is not the intent of the general assembly to change the penalty for any activity that is covered by any other criminal statute. It is rather the intent of the general assembly to define hazing activities not covered by any other criminal statute.

(2) As used in this section, unless the context otherwise requires:

(a) "Hazing" means any activity by which a person recklessly endangers the health or safety of or causes a risk of bodily injury to an individual for purposes of initiation or admission into or affiliation with any student organization; except that "hazing" does not include customary athletic events or other similar contests or competitions, or authorized training activities conducted by members of the armed forces of the state of Colorado or the United States.

(b) "Hazing" includes but is not limited to:

(I) Forced and prolonged physical activity;

(II) Forced consumption of any food, beverage, medication or controlled substance, whether or not prescribed, in excess of the usual amounts for human consumption or forced consumption of any substance not generally intended for human consumption;

(III) Prolonged deprivation of sleep, food, or drink.

(3) It shall be unlawful for any person to engage in hazing.

(4) Any person who violates subsection (3) of this section commits a class 3 misdemeanor.

COMPUTER CRIME

18-5.5-102. Computer crime

(1) A person commits computer crime if the person knowingly:

(a) Accesses a computer, computer network, or computer system or any part thereof without authorization; exceeds authorized access to a computer, computer network, or computer system or any part thereof; or uses a computer, computer network, or computer system or any part thereof without authorization or in excess of authorized access; or

(b) Accesses any computer, computer network, or computer system, or any part thereof for the purpose of devising or executing any scheme or artifice to defraud; or

(c) Accesses any computer, computer network, or computer system, or any part thereof to obtain, by means of false or fraudulent pretenses, representations, or promises, money; property; services; passwords or similar information through which a computer, computer network, or computer system or any part thereof may be accessed; or other thing of value; or

(d) Accesses any computer, computer network, or computer system, or any part thereof to commit theft; or

(e) Without authorization or in excess of authorized access alters, damages, interrupts, or causes the interruption or impairment of the proper functioning of, or causes any damage to, any computer, computer network, computer system, computer software, program, application, documentation, or data contained in such computer, computer network, or computer system or any part thereof; or

(f) Causes the transmission of a computer program, software, information, code, data, or command by means of a computer, computer network, or computer system or any part thereof with the intent to cause damage to or to cause the interruption or impairment of the proper functioning of or that actually causes damage to or the interruption or impairment of the proper functioning of any computer, computer network, computer system, or part thereof; or

ABUSE OF TELEPHONE AND TELEGRAPH SERVICES

18-9-306. Abuse of telephone and telegraph service

(1) A person commits a class 3 misdemeanor, if:

(b) He knowingly sends or delivers a false message or furnishes or conspires to furnish such message to an operator to be sent or delivered with intent to injure, deceive, or defraud any person, corporation, or the public; or

(d) He impersonates another, and thereby procures the delivery to himself of the message directed to such person, with the intent to use, destroy, or detain the same; or

(e) He knowingly and without authorization reads or learns the contents or meaning of a message on its transit and uses or communicates to another any information so obtained;

OBSTRUCTION OF TELEPHONE OR TELEGRAPH SERVICES

18-9-306.5. Obstruction of telephone or telegraph service

(1) A person commits obstruction of telephone or telegraph service if the person knowingly prevents, obstructs, or delays, by any means whatsoever, the sending, transmission, conveyance, or delivery in this state of any message, communication, or report by or through any telegraph or telephone line, wire, cable, or other facility or any cordless, wireless, electronic, mechanical, or other device.

(2) Obstruction of telephone or telegraph service is a class 1 misdemeanor.

MENACING

18-3-206. Menacing

(1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a class 3 misdemeanor, but, it is a class 5 felony if committed:

(a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon; or

(b) By the person representing verbally or otherwise that he or she is armed with a deadly weapon.

BIAS-MOTIVATED CRIMES

18-9-121. Bias-motivated crimes

(1) The general assembly hereby finds and declares that it is the right of every person, regardless of race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. The general assembly further finds that the advocacy of unlawful acts against persons or groups because of a person's or group's race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation for the purpose of inciting and provoking bodily injury or damage to property poses a threat to public order and safety and should be subject to criminal sanctions.

(2) A person commits a bias-motivated crime if, with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he or she:

(a) Knowingly causes bodily injury to another person; or

(b) By words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person's property and such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or

(c) Knowingly causes damage to or destruction of the property of another person.

(3) Commission of a bias-motivated crime as described in paragraph (b) or (c) of subsection (2) of this section is a class 1 misdemeanor. Commission of a bias-motivated crime as described in paragraph (a) of subsection (2) of this section is a class 5 felony; except that commission of a bias-motivated crime as described in said paragraph (a) is a class 4 felony if the offender is physically aided or abetted by one or more other persons during the commission of the offense.

(3.5) (a) In determining the sentence for a first-time offender convicted of a bias-motivated crime, the court shall consider the following alternatives, which shall be in addition to and not in lieu of any other sentence received by the offender:

(I) Sentencing the offender to pay for and complete a period of useful community service intended to benefit the public and enhance the offender's understanding of the impact of the offense upon the victim;

(II) At the request of the victim, referring the case to a restorative justice or other suitable alternative dispute resolution program established in the judicial district pursuant to section 13-22-313, C.R.S.

(b) In considering whether to impose the alternatives described in paragraph (a) of this subsection (3.5), the court shall consider the criminal history of the offender, the impact of

the offense on the victim, the availability of the alternatives, and the nature of the offense. Nothing in this section shall be construed to require the court to impose the alternatives specified in paragraph (a) of this subsection (3.5).

(4) The criminal penalty provided in this section for commission of a bias-motivated crime does not preclude the victim of such action from seeking any other remedies otherwise available under law.

(5) For purposes of this section:

(a) "Physical or mental disability" refers to a disability as used in the definition of the term "person with a disability" in section 18-6.5-102 (11).

(b) "Sexual orientation" means a person's actual or perceived orientation toward heterosexuality, homosexuality, bisexuality, or transgender status.

PUBLIC INDECENCY

18-7-301. Public indecency

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(a) An act of sexual intercourse; or

(c) A lewd exposure of an intimate part as defined by section 18-3-401 (2) of the body, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person; or

(d) A lewd fondling or caress of the body of another person; or

(e) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), public indecency is a class 1 petty offense.

(b) Public indecency as described in paragraph (e) of subsection (1) of this section is a class 1 misdemeanor if the violation is committed subsequent to a conviction for a violation of paragraph (e) of subsection (1) of this section or for a violation of a comparable offense in any other state or in the United States, or for a violation of a comparable municipal ordinance.

INDECENT EXPOSURE

18-7-302. Indecent exposure

(1) A person commits indecent exposure:

(a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;

(b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) (a) (Deleted by amendment, L. 2003, p. 1435, § 31, effective July 1, 2003.)

(b) Indecent exposure is a class 1 misdemeanor.

(3) (Deleted by amendment, L. 2002, p. 1587, § 21, effective July 1, 2002.)

(4) Indecent exposure is a class 6 felony if the violation is committed subsequent to two prior convictions of a violation of this section or of a violation of a comparable offense in any other state or in the United States, or of a violation of a comparable municipal ordinance.

(5) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

REVENGE PORN

18-7-107. Posting a private image for harassment - definitions

(1) (a) An actor who is eighteen years of age or older commits the offense of posting a private image for harassment if he or she posts or distributes through the use of social media or any web site any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older:

(I) With the intent to harass the depicted person and inflict serious emotional distress upon the depicted person;

(II) (A) Without the depicted person's consent; or

(B) When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private; and

(III) The conduct results in serious emotional distress of the depicted person.

(b) Posting a private image for harassment is a class 1 misdemeanor.

(c) Notwithstanding the provisions of section 18-1.3-501 (1) (a), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this paragraph (c) shall be credited to the crime victim compensation fund created in section 24-4.1-117, C.R.S.

(2) It shall not be an offense under this section if the photograph, video, or image is related to a newsworthy event.

(3) Nothing in this section precludes punishment under any section of law providing for greater punishment.

(4) (a) An individual whose private intimate parts have been posted in accordance with this

section may bring a civil action against the person who caused the posting of the private images and is entitled to injunctive relief, the greater of ten thousand dollars or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney fees and costs.

(b) An individual whose private intimate parts have been posted in accordance with this section shall retain a protectable right of authorship regarding the commercial use of the private image.

(5) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f) (2), an information service, as defined in 47 U.S.C. sec. 153, or a telecommunications service, as defined in 47 U.S.C. sec. 153, for content provided by another person.

(6) For purposes of this section, unless the context otherwise requires:

(a) "Newsworthy event" means a matter of public interest, of public concern, or related to a public figure who is intimately involved in the resolution of important public questions or, by reason of his or her fame, shapes events in areas of concern to society.

(b) "Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.

(c) "Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet web site profiles.

18-7-108. Posting a private image for pecuniary gain - definitions

(1) (a) An actor who is eighteen years of age or older commits the offense of posting a private image for pecuniary gain if he or she posts or distributes through social media or any web site any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older:

(I) With the intent to obtain a pecuniary benefit from any person as a result of the posting, viewing, or removal of the private image; and

(II) (A) When the actor has not obtained the depicted person's consent; or

(B) When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private.

(b) Posting a private image for pecuniary gain is a class 1 misdemeanor.

(c) Notwithstanding the provisions of section 18-1.3-501 (1) (a), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this paragraph (c) shall be credited to the crime victim compensation fund created in section 24-4.1-117, C.R.S.

(2) It shall not be an offense under this section if the photograph, video, or image is related to a newsworthy event.

(3) Nothing in this section precludes punishment under any section of law providing for greater punishment.

(4) (a) An individual whose private intimate parts have been posted in accordance with this section may bring a civil action against the person who caused the posting of the private images and is entitled to injunctive relief, the greater of ten thousand dollars or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney fees and costs.

(b) An individual whose private intimate parts have been posted in accordance with this section shall retain a protectable right of authorship regarding the commercial use of the private image.

(5) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f) (2), an information service, as defined in 47 U.S.C. sec. 153, or a telecommunications service, as defined in 47 U.S.C. sec. 153, for content provided by another person.

(6) For purposes of this section, unless the context otherwise requires:

(a) "Newsworthy event" means a matter of public interest, of public concern, or related to a public figure who is intimately involved in the resolution of important public questions or, by reason of his or her fame, shapes events in areas of concern to society.

(b) "Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.

(c) "Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet web site profiles.

Appendix C:
First responder letter

COLORADO
Commission on Criminal & Juvenile Justice

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Colorado.gov/CCJJ

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February 27, 2015

Senator Ellen Roberts, Chair
Senate Judiciary Committee

Representative Daniel Kagan, Chair
House Judiciary Committee

Re: HB 14-1214 Report
C.R.S.16-11.3-103.5

Dear Senator Roberts and Senate Judiciary Committee Members, and
Representative Kagan and House Judiciary Committee Members,

The provisions of HB 14-1214 require the Colorado Commission on Criminal and Juvenile Justice (CCJJ) to "review section 18-1.3-401(1)(b)(IV), C.R.S., and the efficacy of implementing enhanced sentencing for first-degree assault, second-degree assault, and first-degree murder of an emergency medical service provider, as defined in section 25-3.5-103(8), C.R.S. to determine whether:

(a) Colorado's sentencing laws, including Article 1.3 of Title 18, C.R.S. provide equity and parity of sentencing with respect to enhanced sentencing based on the victim's occupation; and
(b) There is evidence-based support for enhanced sentencing based on the victim's occupation."

Lacking availability of evidence-based studies about enhanced sentencing based on victim's occupation, the CCJJ Legislative Subcommittee considered two issues in creating this response: 1) the purposes and policy goals of sentencing, and 2) the prevalence of enhanced sentencing laws in other states and the rate of charging of these offenses in Colorado.

Purposes and Policy Goals of Sentencing

The efficacy of any sentencing law refers to whether that sentence achieves the desired result or effect. There are multiple goals expected from the justice system response to the commission of a crime, and C.R.S. 18-1-102 and 102.5 set forth a number of purposes including punishment, deterrence, rehabilitation, public protection, proportionality, consistency, accountability, restoration to victims and the community, and recidivism reduction. These criteria can be generally grouped into those goals that focus on the offense itself, those that are most concerned with the risks and needs of the offender, and those that are concerned with public safety and the effect of the crime on the victim and the community. While there is research and evidence relating to how sentencing alternatives rehabilitate offenders or reduce recidivism and the impacts of incarceration, there is little evidence that can answer questions relating to policies regarding community expectations or the relative seriousness of crime levels, as well as the impact on victims and public safety overall.

For a thorough review and examples of this type of research, see Przybylski, R. (2008), *What works: Effective Recidivism Reduction and Risk Focused Prevention Programs,* Colorado Department of Public Safety, Division of Criminal Justice, Denver, CO, available at https://cdpsdocs.state.co.us/ors/docs/reports/2008_WhatWorks.pdf.

Identifying a special class of victims and providing enhanced sentencing for harming those victims may not have been motivated by rehabilitation or recidivism reduction. It may, however, address some of the other purposes of sentencing. Those are the purposes that relate to the perceived level of seriousness of a crime, the desire to protect the public, the impact on the victim, and community ideals and expectations. Categories of victims are selected for special protections to recognize a particular harm that is unique to that class of victim, e.g., children, elderly, or at-risk persons, or to provide a special protection consistent with public interest and community expectations, e.g., judges, police, firefighters, or first-responders. By singling out certain victims by occupation, the Legislature sought to confirm that those occupations are recognized as important and necessary for the public good. Further, the increase in crime classifications and requirements of mandatory sentences recognizes that persons in those professions have accepted a level of danger to themselves in order to protect the public good. These policies reflect varying societal values and are difficult to research for "effectiveness" through any measurable outcome.

Sentencing laws serve as statements about the seriousness of the offense and also give direction to the judiciary to support consistency in sentencing. Mandatory sentencing laws are frequently the result of perceived disparities in sentencing from one judge to the next, or one jurisdiction to the next. It is fairly straightforward to study the impact of mandatory sentences after their enactment. The enactment of mandatory sentencing moves away from the goals of sentencing relating to the benefits of individualized sentences with the intent of moving toward the goals of consistency and recognition of the public perception of the seriousness of an offense.

The various purposes of sentencing laws are valued differently by type of crime. For instance, with crimes that involve serious injury or death the purposes of public safety and victim impact are valued relatively higher than addressing offender needs. For property crimes, we tend to place a greater focus on restitution, rehabilitation and recidivism reduction. The laws relating to increased sentencing for persons in certain public service occupations all involve personal injury or death. It can be assumed that the assessment of effectiveness should thus focus more on the victim impact, community expectations, and public safety purposes with less attention to the purposes served by individualized sentencing. There is little research or evidence to rely upon in such an analysis. Certainly, public opinion as expressed through legislative action can be seen as one measure of the importance of additional protections for certain occupations. The message the laws send concerning the seriousness of the offense and the protection of persons in harm's way for the public good indicates a value placed on those occupations by the public.

Prevalence in Other States and Rates of Charging in Colorado

Most, if not all, states have some form of enhanced sentencing for crimes against certain types of victims. To gauge the frequency at which these offenses are charged in Colorado, the Division of Criminal Justice ran data from calendar years 2010 through 2014 for offenses in Article 1.3 of Title 18, as shown in the following table.

Number of cases containing the filing charge where the victim was a Peace Officer, Firefighter, or Emergency Medical Service Provider

	CY				
Filed Charge	**2010**	**2011**	**2012**	**2013**	**2014**
1st Degree Murder, premeditated	7	2	2	6	7

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	CY				
Filed Charge	**2010**	**2011**	**2012**	**2013**	**2014**
1st Degree Murder, universal malice	2		4	8	2
1st Degree Assault, threat with deadly weapon	70	45	55	60	69
1st Degree Assault, threat with deadly weapon, heat of passion	1				
2nd Degree Assault, intentional bodily injury	433	492	528	569	558
2nd Degree Assault, heat of passion	6	1	2	2	1
2nd Degree Assault, lacks intent but SBI occurs during commission of other felony	4	1	1	2	1
	523	**541**	**592**	**647**	**638**

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.

Researchers at the University of Northern Colorado conducted a survey of emergency medical service providers in Colorado to determine the prevalence of violence against those professionals. Over 90% of the respondents had been struck, kicked, or been the victim of an attempted assault. Many times the EMS personnel work directly alongside police and firefighters to treat or stabilize an individual. Treating all those professionals similarly under the law may support consistency. Gathering additional data more specific to charges relating to each victim occupation would require a hand search of individual files.

In summary, the CCJJ submits to the General Assembly three responses to the inquiries posed in HB 14-1214: 1) Enhanced sentences for certain classes of victims or occupations are not specifically addressed in the literature as evidence-based practices but may serve other purposes of sentencing; 2) Enhanced sentences and mandatory sentences are policy and legislative expressions that may reflect public perceptions about frequency or severity of offenses; and 3) More in-depth study is necessary to define and determine equity and parity of sentencing based on victim occupation.

Please let us know if you have any questions.

Respectfully submitted,

Stan Hilkey, Chair, CCJJ
Executive Director
Colorado Department of Public Safety

Douglas K. Wilson, Vice-Chair, CCJJ
Colorado State Public Defender

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Appendix D:
Evidence Based Decision Making interest letter

Colorado Commission on Criminal & Juvenile Justice

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Ms. Lori Eville
National Institute of Corrections
320 First Street
Washington, D.C. 20534

March 19, 2014

Re: Evidence Based Decision Making Initiative/Letter of Interest from Colorado

Dear Ms. Eville:

This letter is to express significant interest in becoming part of the National Institute of Corrections' expansion of its EBDM initiative. This letter is submitted by the Colorado Commission on Criminal and Juvenile Justice on behalf of the following stakeholders:

- The Colorado Commission on Criminal and Juvenile Justice,
- The Colorado Department of Public Safety,
- The Division of Probation Services (State Court Administrator's Office),
- The Office of the State Public Defender,
- The Office of Alternate Defense Counsel,
- The Colorado Department of Corrections, and
- The Colorado Criminal Justice Reform Coalition (CCJRC).

The Colorado Commission on Criminal and Juvenile Justice is a 26 member group of all major stakeholders in the state criminal justice system. Membership includes representatives from the Attorney General's office, human services, the juvenile and adult parole boards, victims' rights organizations, probation, law enforcement, four legislators, a county commissioner, two elected district attorneys, the executive directors of the Departments of Corrections and also Public Safety, and the state public defender's office, among others**. On March 14, the Commission agreed to submit this letter of interest to NIC.**

The EBDM initiative is consistent with the mission of the Commission to promote evidence-based programs, practices, and decision making as these relate to criminal and juvenile justice issues in Colorado. Among its statutory mandates, the Commission is to:

> *Conduct an empirical analysis of and collect evidence-based data on sentencing policies and practices, including but not limited to the effectiveness of the sentences imposed in meeting the purposes of sentencing and the need to prevent recidivism and re-victimization, and,*

Colorado Commission on Criminal & Juvenile Justice

To investigate effective alternatives to incarceration, the factors contributing to recidivism, evidence-based recidivism reduction initiatives, and cost-effective crime prevention programs.

The Commission makes annual recommendations for reform and, for example, last year recommended the use of evidence-based decision making in the area of pretrial reform. This recommendation, which also discouraged the use of financial bonds, became House Bill 13-1236 and was signed by the governor last spring. Dozens of Commission recommendations have become law in this fashion, including an early recommendation to develop a research-based decision making tool for the adult parole board, a successful project whose progress is documented in an annual report (see http://www.colorado.gov/ccjjdir/Resources/ Resources/Report/2013-11_SB11-241Rpt.pdf). In a final example, the Department of Public Safety, on behalf of the Commission, obtained the state's largest ever Byrne/Justice Assistance Grant ($2.1M) in 2010 to develop and implement a multi-agency, highly collaborative Evidence-Based Practices training initiative called EPIC (Evidence-Based Practices Implementation for Capacity), which has focused on providing training, coaching and audio-tape based feedback to probation and parole officers, prison case managers and custody staff, and community corrections case managers across the state. Among its many accomplishments, EPIC supports more than 20 cross-discipline "communities of practice" in jurisdictions across the state where professionals meet monthly to hone their Motivational Interviewing skills. This initiative reflects grassroots—and supervisor/administrative support—for evidence-based practices, along with important state-level support: In 2013, the General Assembly passed House Bill 13-1129, with an appropriation of over $740,000, to make EPIC a permanent part of state government. These examples reflect the Commission's commitment to evidence-based practices and its ability to successfully promote this approach at both the state and local levels. The Commission's ability to enhance justice processes, particularly in local jurisdictions, would be greatly facilitated by becoming a part of the next step in NIC's EBDM Initiative.

Additionally, as you know, Colorado is the home of the Mesa County EBDM Initiative. This project has had strong support from state agencies including the state's Division of Probation Services, the Public Defender's Office, and the Alternative Defense Counsel, along with local agencies. The elected district attorney from Mesa County was a member of the Commission until last year when his term ended, so the Commission has been aware of both the work undertaken by Mesa County stakeholders and the enthusiasm of those stakeholders. The Commission would like to build on the accomplishments of Mesa County to strengthen and coordinate the application of evidence-based practices among relevant state agencies and additional local jurisdictions.

The Commission is appreciative of NIC's efforts in Mesa County, and the state has indeed capitalized on the reforms underway in the county. Many Colorado officials have expressed significant interest in (and benefitted from) the work underway, and expertize being developed, in Mesa County. Some examples of this are: Mesa County District Court Judge David Bottger has conducted several trainings for judges on smarter sentencing in various judicial districts in Colorado. These were arranged and endorsed by the Judicial Branch. Stan Hilkey, Dennis Berry and Joel Bishop have conducted trainings for other Colorado counties on pretrial services, bonding issues, and jail use. Pete Hautzinger, former member of the Commission, serves on a statewide committee to reform discovery procedures statewide. Sandy Castleberry is working with the Judicial Department regarding data collection and analysis. Bert Nieslanik continues to develop and train defense lawyers on smarter sentencing.

The Commission is uniquely positioned to promote EBDM and to regularly convene a multidisciplinary policy team that will increase state- and local-level evidence-based decision making. The Commission

conducts its work through task forces that focus on specific topics with hard working members that seek to achieve results. Task forces study a topic, use research and data when these are available, and make recommendations to the Commission for systemic reform. This structure--which includes professional researchers from the Division of Criminal Justice in the Department of Public Safety who staff the task forces, and consultation, strategic planning, and facilitation by Paul Herman (Center for Effective Public Policy)—has been used since 2008 with 15 topic-specific task forces and has resulted in scores of reform recommendations for statutory and policy/practice modifications.

An EBDM task force consisting of state and local stakeholders could serve as the EBDM Statewide Project Planning Team to review state level decision points, work to remove barriers to EBDM practices, and convene and actively support local teams. An EBDM task force, convened by the Chair and Co-chair of the Commission, would have two Commission members as co-chairs, and membership would consist of EBDM participants from the identified local jurisdictions and state agency officials whose participation will support state-level EBDM and whose authority can be leveraged to remove barriers to effective practice at both state and local levels. We have identified Germaine Miera of the Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics, to serve as the point of contact for this project, should Colorado be selected to expand EBDM with NIC's assistance. Since 2008, Ms. Miera has served as the lead staff coordinator for Commission activities, and she currently staffs the Commission's Sentencing Task Force and its Sex Offense Working Group. Acting on behalf of the Chair and Co-chair of the Commission, she serves as the interdepartmental liaison for all Commission members and stakeholders, and is ready to assume responsibilities related to NIC's EBDM project focusing on state agencies and multiple local jurisdictions.

The names of stakeholders whose support and commitment is essential to advancing EBDM work within Colorado include the following:

The Colorado Commission on Criminal and Juvenile Justice, Chair James Davis and Vice-chair Doug Wilson
The Office of the State Public Defender, Doug Wilson
The Executive Director of the Department of Public Safety, James Davis
The Chief Justice of the Colorado Supreme Court, Nancy Rice
The State Probation Department, Eric Philp (Commission member)
The Alternate Defense Counsel, Lindy Frolich
The Division of Criminal Justice/Department of Public Safety, Jeanne Smith (Commission member)
The Colorado Criminal Justice Reform Coalition, Christie Donner (Commission task force member)

All but two of the above stakeholders participated in NIC's webinar in February. Following the webinar, those who participated convened a meeting to discuss the prospect of building capacity for EBDM in Colorado. Each webinar participant has been in touch with either Stan Hilkey or Bert Nieslanik (from Mesa County) and stated their commitment to this letter of intent. (Note that the executive director of the Department of Corrections is a Commission member and agreed to this letter of intent.)

Should Colorado be selected by NIC into Phase IV of the NIC initiative, we would ask for assistance in identifying local jurisdictions to participate in the project and build EBDM capacity. We know that chief probation officers in six jurisdictions have expressed interest in NIC's EBDM expansion, and we know there is also interest in the 18th Judicial District. Colorado has a long and strong history of "local control"

Colorado Commission on Criminal & Juvenile Justice

which means that local jurisdictions are expected to act autonomously but cooperatively with state initiatives. The Commission would work with officials in Mesa County and NIC to develop an outreach strategy to identify local jurisdictions that are willing and able to collaborate and implement EBDM initiatives.

Thank you for this opportunity to apply for participation in Phase IV. We sincerely hope that, working with NIC technical assistance providers, we can greatly expand the use of EBDM in Colorado at both the state and local levels. We believe that NIC's initiative is consistent with the mission and the work of the Commission, and we believe that the working structure established by the Commission allows for an effective mechanism for advancing EBDM in Colorado. Please let me know if you have any questions.

Sincerely,

James Davis, Executive Director
Colorado Department of Public Safety
Chair, Colorado Commission on Criminal and Juvenile Justice

Colorado Commission on Criminal & Juvenile Justice
Annual Report 2015

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