

The Colorado Lawyer
March 2007
Vol. 36, No. 3 [Page 23]

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Articles
Criminal Law

Criminal Sentencing Reform in Colorado
by Sean T. McAllister, Kenneth M. Plotz

Criminal Law articles are sponsored by the CBA Criminal Law Section and generally are written by prosecutors, defense lawyers, and judges to provide information about case law, legislation, and advocacy affecting the prosecution, defense, and administration of criminal cases in Colorado state and federal courts.

Editors' Note:

This article is a departure from the usual substantive law articles published in *The Colorado Lawyer*. It is intended to present information about the Colorado Lawyers Committee and the CBA Colorado Sentencing Project and their work in the area of sentencing reform in Colorado. Any opinions or positions expressed in this article are those of the authors and committees.

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Colorado has experienced unprecedented growth in its prison population over the past twenty-five years. Despite building several new prisons, Colorado currently is out of prison space and this shortage is projected to continue. This article discusses ongoing efforts to evaluate incarceration policy in Colorado that seek to ease the fiscal burden of increased incarceration while maintaining public safety.

Colorado's prison population has been experiencing unprecedented growth in recent years. The state's prison population increased from approximately 4,500 in 1985 to nearly 21,000 today.¹ This growth far exceeds the regional and national average.² Colorado's prison population has grown ten times faster than population growth in the past twenty-five years,³ and the incarceration rate has risen more than fourfold—from 92 per 100,000 adults in 1980 to 457 per 100,000 adults in 2005.⁴ The percentage of the state budget appropriated to the Colorado Department of Corrections (DOC) has more than tripled in the past twenty-five years.⁵

After nearly two decades of prison construction, costing more than \$5.2 billion dollars,⁶ more prisons are needed to keep pace with the current incarceration rate. On October 5, 2006, the General Assembly approved \$153,887 in emergency appropriations to allow DOC to transfer 720 prisoners to facilities in Oklahoma, because Colorado prisons are full.⁷ The state will need to add another 8,000 prison beds by 2011 to keep pace with the current population growth, at a cost of \$550 million over the next four years.⁸

This article briefly discusses the Colorado Lawyers Committee (CLC) and its work toward establishing a sentencing commission in Colorado. The article introduces the CBA Criminal Sentencing Project, which is examining criminal sentencing and drug policy issues in Colorado. An overview of several commonly suggested reforms to address rapid prison growth in Colorado also is provided.

The Prison Population

Twenty percent of Colorado inmates (approximately 4,000 people) are incarcerated primarily for nonviolent drug crimes.⁹ Approximately 2,000 of the drug offenders are in prison for simple possession. The cost of incarcerating nonviolent drug offenders in Colorado exceeds \$100 million per year.¹⁰ Colorado ranks last in the nation in per capita spending on drug treatment.¹¹

More than one-third of all people in Colorado prisons are there as a result of a violation of probation or parole.¹² As explained below, two-thirds of people released on parole return to prison and more than 30 percent of people convicted of crimes fail probation, subjecting them to additional probation or prison time.

There remains considerable debate about the validity or value of many of these statistics. Some would argue the statistics above do not accurately reflect the extent to which increased incarceration is a result of the massive population growth in Colorado in recent years. Others note that few criminals receive prison time for relatively minor first offenses, and that it is likely that most prisoners are repeat offenders who worked their way into prison. Debate about the prison statistics in Colorado exists in part because there is no nonpartisan agency or organization charged with producing nonbiased statistics on a regular basis. In fact, Colorado agencies produce contradictory statistics that rely on different assumptions about the size and composition of Colorado's prison population. For example, there is no uniform definition of what constitutes a nonviolent offender, with different state agencies having different definitions of what constitutes nonviolent behavior.

There is a growing chorus of voices calling for a change, or at least a full evaluation, of Colorado's incarceration policies. The CLC, a bipartisan group of attorneys, recently produced a draft report recommending the creation of a sentencing commission to evaluate the cost effectiveness of Colorado's current incarceration policies.¹³ Also, the CBA recently created the Colorado Criminal Sentencing Project, which will evaluate criminal justice policy, including sentencing, probation and parole, and drug policy issues.

Sentencing Commissions

In response to the fiscal pressures of increased incarceration and in an effort to bring more coherency to criminal codes, approximately twenty states have created or are actively studying the creation of sentencing commissions.¹⁴ The focus of these sentencing commissions varies among the states, with some creating new mandatory sentencing guidelines and others being advisory and providing input to the legislature. The American Law Institute has recommended that every state adopt a sentencing commission, and the American Bar Association long has supported the creation of sentencing commissions.¹⁵

Sentencing commissions can provide the following benefits:

- a forum for increased study and debate of sentencing rules
- an opportunity for system-wide policymaking, including comparing severity of penalties of crimes to ensure greater coherence
- examination of the equity of mandatory minimum sentences
- creation of high-quality information to inform legislative choices on criminal sanctions
- an improved ability to predict future sentencing patterns and implications, which allows for fiscal impact forecasts
- increased credibility of criminal sanctions, given the participation of all sectors of the criminal justice system, including representatives from state and local government and members of the public interest community.¹⁶

Empirical data shows that states with sentencing commissions have lower rates of incarceration growth than states that do not have sentencing commissions.¹⁷

The CLC Report

The CLC, chaired by James E. Scarboro of Arnold & Porter LLC, held a series of meetings in 2005–06 with experts to discuss the value of a sentencing commission in Colorado. After these meetings, the CLC prepared a draft report recommending the establishment of a sentencing commission in Colorado. The report outlined the success of sentencing commissions in other states, including North Carolina, Kansas, and Virginia.¹⁸ The CLC estimates the cost of establishing a sentencing commission in Colorado to be between \$250,000 and \$750,000 per year.¹⁹ Governor Bill Ritter has expressed support for the creation of a sentencing commission to fully evaluate Colorado's criminal sentencing system.²⁰ Representative Terrance Carroll is expected to introduce a sentencing commission bill in the 2007 session of the General Assembly. If the bill passes, such a commission could be created as soon as the summer of 2007.

CBA Colorado Criminal Sentencing Project

In February 2006, the CBA sponsored a one-day CLE program, discussing Colorado's criminal justice sentencing scheme and the impact of drug policy on the effective administration of justice. Approximately twenty-five attendees expressed interest in the creation of an *ad hoc* committee to further study criminal sentencing and drug policy issues in the state. In response, the CBA formed the Colorado Criminal Sentencing Project, the proposed mission of which is as follows:

The CBA Criminal Sentencing Project seeks to establish a unique partnership of lawyers, doctors, scholars, treatment providers and other professionals to examine criminal sentencing and drug policy issues in Colorado. The Project seeks to foster the effective administration of justice with a focus on how current policies might be adjusted to more effectively:

- increase public safety;
- reduce crime and public disorder;
- utilize scarce public resources;
- improve public health;
- improve access to effective substance abuse treatment programs for all Coloradans.

The Colorado Criminal Sentencing Project recognizes that a large amount of our state budget is allocated to the capital and operating expenses of the Colorado Department of Corrections. The Criminal Sentencing Project will explore ways to address this growth rate without compromising public safety. The Project may establish subcommittees to evaluate specific issues including a sentencing subcommittee, a drug policy subcommittee, and other subcommittees deemed appropriate by the Project.²¹

The Bar associations of King County in Washington state, New York state, Vermont, Wisconsin, Alabama, and Miami also have conducted or currently are forming Bar projects focused on sentencing or drug policy reform.²² The reforms listed below are among the most common suggested reform proposals.

Probation Reform

Fifty-nine percent of convicted criminals are sentenced to probation.²³ Of that 59 percent, almost 32 percent eventually fail to complete probation successfully.²⁴ The first-time offender for a crime such as second-degree burglary, theft, or a drug possession offense usually is sentenced to a term of probation with conditions.²⁵ When that happens, the judge first imposes restitution, a statutory requirement whenever a victim suffers a pecuniary loss.²⁶ Then, the judge imposes statutory mandated costs, which include payments to the Victim Compensation Cost Fund,²⁷ a Victim's Assistance Surcharge,²⁸ court costs,²⁹ public defender application fees,³⁰ and a drug offender surcharge where applicable,³¹ which could total \$1,500. Probation also requires a monthly probation supervision fee,³² a contribution to the law enforcement assistance fund,³³ and other charges, depending on the crime. Many of these costs can be waived or reduced at the discretion of the court.

If the crime involves domestic violence, there are conditions mandated by statute, which may include counseling.³⁴ Drug and alcohol offenses impose mandatory evaluation and counseling and drug testing conditions as part of probation.³⁵ Offenders may be required to complete community service. All offenders are required to report to their probation officers.³⁶

In 1997, 83 percent of all probationers successfully completed probation.³⁷ In 2001, 70 percent successfully completed probation;³⁸ in 2004, 68 percent successfully completed probation.³⁹

Clearly, the number of probationers who complete probation has decreased.

One way to increase the number of probationers who complete probation successfully would be to increase the state allocation for probation services. Colorado spends 90 percent of its corrections budget on prisons and 7 percent on probation.⁴⁰ However, only 23 percent of the criminal population is in prison, and 59 percent is on probation.⁴¹ An adult on probation under regular conditions costs taxpayers \$684 per year. A person incarcerated in DOC costs taxpayers approximately \$28,280 per year.⁴²

Finally, while traditional probation and prisons receive 97 percent of state corrections funding, very little funding goes to intermediate or heightened levels of supervision.⁴³ Intermediate supervision includes in-home detention, the intensive supervision program, or other forms of monitoring and supervision that strictly monitor probationers without putting them in prison. Such programs receive only 3 percent of state funding.⁴⁴ These higher levels of intensive supervision could be considered a less costly alternative to prison for those who violate probation. For example, the adult intensive supervision program, which can include monitored sobriety and an ankle bracelet to monitor movement, costs approximately \$2,800 per year per offender, compared with the \$28,000-plus per year cost for incarceration.⁴⁵ Changing these spending priorities and supervision techniques might help slow prison population growth without "going easy on crime."

Parole Reform

In 1993, the Colorado legislature passed a law requiring all felons to serve a period of mandatory parole when they are released from prison.⁴⁶ The length of the mandatory parole is determined by the class of the felony and ranges from one to five years.⁴⁷ The implementation of mandatory parole has increased the number of parolees.

Colorado also maintains a system of discretionary parole, where a parole board reviews each parolee's case to determine if early release is justified. Generally, inmates are eligible for discretionary parole after serving at least one-half of their sentence. However, the number of discretionary parole releases has declined sharply in recent years.⁴⁸

Parole may be revoked if a parolee commits a new crime or a technical violation of the parole conditions. Technical violations include failing drug tests, missing regular check-ins with a parole officer, and failing to inform DOC of a change of address. Nearly two-thirds of those released on mandatory parole, and one-half of those released on discretionary parole, return to prison within three years of their release, due to a new crime or a technical violation.⁴⁹

The high rate of parole revocation has led to nearly one-third of all inmates being incarcerated because of a parole violation.⁵⁰ In 2003, the General Assembly enacted a law limiting to 180 days the amount of time a person can serve in prison on a technical parole violation.⁵¹ Advocates of this reform hoped it would save the state millions of dollars in prison costs.⁵² However, since the law's enactment, revocation hearings have increased substantially, negating any cost savings from the measure.⁵³ Some suggest that more parolees are violating parole now that the consequences for a violation appear to be less severe.⁵⁴ Others argue that prosecutors have been filing charges for new crimes, along with any allegations of parole violations, as opposed to sending parolees back to prison on the technical violation and declining to charge the additional crimes.

Colorado's parole board grants discretionary early release in less than 10 percent of parole hearings.⁵⁵ Fewer early releases mean larger prison populations. Some states have experimented with eliminating discretionary parole. The elimination of discretionary parole moves discretion back to the sentencing judge and away from politically appointed parole boards. The American Law Institute's study on sentencing reform under the Model Penal Code concludes that, in combination with the creation of a sentencing commission, the elimination of discretionary parole is "most frequently associated with below-average rates of prison growth."⁵⁶

Another possibility is to impose sanctions other than prison for technical parole violations. For example, if a parolee tests positive for illegal drug use, the parole period could be lengthened or the parolee could be referred to treatment. Other intermediate sanctions might include increased restitution penalties, increased levels of supervision, or additional community service for minor parole violations.

Drug Policy Changes

Suggestions for reform of drug policies can be met with fierce suspicion by all sides of the debate. Those calling for a reduction of penalties for drug crimes may be accused of being soft on crime and favoring full legalization of all drugs. Those wanting to increase penalties may be accused of unnecessarily invading the privacy of otherwise law-abiding citizens and being insensitive to the disparate racial impact of drug laws. Reform of drug policies may have the potential to reduce crime, effectively treat those with substance abuse issues, and improve the administration of justice.

The war on drugs has been a major driver of prison expansion and has contributed to the imprisonment of a disproportionate number of women and people of color in Colorado.⁵⁷ The legislature took a step to ameliorate these negative effects in 2003 when it passed Senate Bill (S.B.) 318, which lowered the prison penalty for simple possession of one gram or less of drugs such as cocaine, crack cocaine, and methamphetamine.⁵⁸ However, at this time, no new money has been allocated to drug treatment as a result of this reform.⁵⁹

This reform will sunset in 2007 if the General Assembly does not re-authorize it. An interagency task force appointed to study this issue has determined that the reform will begin to produce \$2–\$5 million savings per year over the next several years.⁶⁰ It is expected that a bill will be introduced in the 2007 General Assembly to reauthorize this reform.

Addressing drug dependence and abuse issues and conserving scarce public resources at the same time is a matter of interest and concern. Some reform suggestions to accomplish this are listed below.

Creating a separate sentencing range for drug offenses: In 2005, Colorado's Independence Institute released a study recommending that Colorado consider establishing a separate and less harsh felony penalty range for drug offenses.⁶¹ The study noted that numerous statutes that enhance prison sentences could be amended to exclude drug offenders.⁶² For example, Colorado could de-link drug crimes from the "three strikes you're out" laws that triple or quadruple prison sentence times based on prior felony convictions.⁶³ At least eleven states have enacted some type of sentencing reform in the last decade to reduce sentences in drug crime cases.⁶⁴

In 2001, the King County Bar Association (KCBA) released a report titled "Is It Time To End The War On Drugs?"⁶⁵ This report was instrumental in prompting the Washington legislature to reform drug sentencing laws in 2002 by creating a separate sentencing range for drug offenses and providing for increased discretion by courts to use treatment as an alternative to incarceration.⁶⁶

Reducing simple drug possession to a misdemeanor: With the exception of marijuana, all simple possession drug crimes are felonies. The Independence Institute's study suggests

reducing these drug crimes to the less serious misdemeanor level.⁶⁷ Misdemeanor penalties can be no greater than one year in county jail. It is possible that counties and cities would oppose this reform, because an increase in misdemeanor cases could result in a significant increase in county and city jail populations.

Mandatory and voluntary treatment for drug offenders: Arizona became the first state to mandate treating drug offenders, rather than incarcerating them, with passage of Proposition 200 in 1996. Proposition 200 required that nonviolent drug offenders arrested for simple possession or use of an illegal drug must receive treatment instead of jail time for their first and second offenses.⁶⁸ According to state estimates, the initiative saved more than \$2.5 million in its first fiscal year, and 77.5 percent of offenders tested negative for drug use after completing the treatment program.⁶⁹ In its second year, the program saved the state of Arizona approximately \$6 million in prison costs.⁷⁰ The Arizona Supreme Court concluded that Proposition 200:

has allowed the judicial branch to build an effective probation model to treat and supervise substance abusing offenders . . . resulting in safer communities and more substance abusing probationers in recovery.⁷¹

California enacted a similar law in 2000 when voters approved Proposition 36, which mandates treatment for first- and second-time drug offenders.⁷² Proposition 36 also required the legislature to allocate \$120 million per year in new funding for substance abuse treatment.⁷³ A recent University of California at Los Angeles study revealed that Proposition 36 saved the state of California \$173 million in the first year, and \$2.50 for every dollar invested since 2001.⁷⁴ Drug policy reform advocates have extrapolated those savings and estimated a total savings of approximately \$1.4 billion in the first five years, when the avoidance of prison construction costs is factored into the equation.⁷⁵

The cost and effectiveness of treatment can vary widely. A 2001 report on Colorado substance abuse treatment found that community-based treatment costs range from \$400 (for education-based programs) to \$20,075 (for residential programs) per patient per year—contrasted with \$28,000 to incarcerate someone in prison.⁷⁶ Surveys conducted by the Colorado Drug and Alcohol Abuse Division revealed that of those patients who had been arrested prior to treatment, 80 percent had no re-arrest after treatment, and unemployment among the patients surveyed decreased 41 percent after completion of treatment.⁷⁷ However, many skeptics question the true cost effectiveness of treatment, given that there are many different kinds of treatment and many different ways to measure success.⁷⁸ Others argue that some kinds of treatment, such as intensive inpatient care, can be just as expensive as incarceration, resulting in no cost savings. Given the high rates of drug dependence in Colorado⁷⁹ and the fact that Colorado ranks last in per capita spending on drug treatment programs,⁸⁰ allocating additional resources for drug treatment programs may be warranted. The City and County of Denver is about to restart its "drug court" program, which was terminated in 2002, as a way to divert low-level drug offenders into treatment and away from jail and prison.⁸¹

Conclusion

The current approach to criminal justice issues has created unsustainable growth in prison populations and has clogged court dockets. The solution is not likely to come from any one interest group alone. The stakeholders in this area are skeptical of calls for reform. There is considerable momentum for the creation of a nonpartisan sentencing commission to provide verifiable, defensible, and trusted statistics to give policy makers a clear understanding of the criminal justice system. The creation of a sentencing commission, or giving life to the CBA's Criminal Sentencing Project, could provide the nonpartisan forum for reaching consensus on possible reforms.

The authors encourage interested Bar members to become involved in one of these efforts. Attorneys interested in participating in the CBA Criminal Sentencing Project should contact committee organizer Brian Vicente at (720) 280-4067.

NOTES

1. Colorado Department of Corrections (DOC), "Monthly Population Report" (Jan. 31, 2006 Census Data). DOC also oversees 6,644 people on parole; the total number of people under DOC supervision exceeds 28,000 as of January 31, 2006.
2. Colorado's average growth rate has been 7 percent and the national average is 4.3 percent. The growth rate in the immediate region is as follows: Kansas (3.4 percent); Oklahoma (3.8 percent); Wyoming (5.3 percent); New Mexico (5.7 percent); Arizona (5.8 percent); and Utah (6.9 percent). See Joint Budget Committee, "FY 2006–07 Staff Budget Briefing, DOC" (Jan. 3, 2006); DOC, "Budget Hearing" (Jan. 9, 2006).
3. Joint Budget Committee, *supra* note 2.
4. Colorado Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics, "Adult Prison and Parole Population Projections" (Dec. 2005) at 47. See also Bureau of Justice Statistics, "Prisoners 2005," available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf>.
5. See Joint Budget Committee, *supra* note 2 at 4.
6. This includes construction and operating expenses. Operating budget figures from Joint Budget Committee, "Appropriations Report" (FY 1991–2004). Figures through fiscal year 2002 are actual expenditures; fiscal years 2003 and 2004 are appropriated funds. Capital construction budgets through fiscal year 2001 are from Legislative Council Staff, *An Overview of the Colorado Adult Criminal Justice System* (1996 and 2001 eds.). Fiscal year 2002–04 figures come from annual long appropriation bills. These reports are on file with author McAllister.
7. See Fong, "Prison Request Approved: Budget Panel Oks Emergency Funding for Out of State Beds," *Rocky Mountain News* (Oct. 6, 2006), available at http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5046692,00.html.
8. DOC, *supra* note 2 at 11. Similarly, the DOC parole population is projected to exceed 8,000 by 2011. *Id.*
9. Rosten, "DOC Statistical Report for Fiscal Year 2004" (2005) at 70; DOC "Profile of Drug Offenders in Colorado Department of Corrections" (2001) (on file with author McAllister).
10. *Id.*
11. Columbia University, National Center on Addiction and Substance Abuse, *Shoveling up: The Impact of Substance Abuse on State Budgets* (2001) at 25 (on file with author McAllister).
12. Colorado Judicial Branch, Division of Probation Services, "Recidivism Study Report FY 2004" at 19, available at the Division of Probation Services website, <http://www.courts.state.co.us/dps/dpsindex.htm>; Colorado Legislative Council, Study on the State Parole System, Research Publication No. 439 (1998) 23-24, 36, 40-41, 73-74, 76, 86; Rosten, *supra* note 9 at 31, 65.
13. The draft report is available by contacting Jim Scarboro of Arnold & Porter at (303) 863-2311.
14. See American Law Institute (ALI), "Model Penal Code: Sentencing Report" (April 11, 2003) at 47, available at <http://www.ali.org>, under the "ALI Projects Online" link. See also Reitz, "American Law Institute, Model Penal Code: Sentencing, Plan for Revision," 6 *Buff. Crim. L.Rev.* 525, 558 (2002). Some form of sentencing commission is in place in 40 percent of U.S. jurisdictions. See Reitz, "The Cutting Edge of Sentencing Reform," 8 *Fed.Sent.R.* 64 (Sept./Oct. 1985).
15. See ALI, *supra* note 14 at 4. See also American Bar Association (ABA), "Kennedy Commission Report," available at <http://www.abanet.org/crimjust/kennedy/JusticeKennedyCommissionReportsFinal.pdf>; ABA, "Legislative Issues," available at <http://www.abanet.org/poladv/legiss.pdf>.
16. See ALI, *supra* note 14 at 49-50.
17. *Id.* at 72-85.
18. See Colorado Lawyers Committee, Task Force on Sentencing, "Draft: Report on the Sentencing System in Colorado: A Serious Fiscal Problem on the Horizon" (Aug. 31, 2006) (on file with author). The Report noted that the North Carolina Sentencing Commission recommended, and the Legislature adopted:

far-reaching changes that increased prison time for violent offenders, abolished parole, and added non-prison sanctions. By the late 1990s the state's incarceration rate had dropped to 31st in the nation, and prison admissions between 1993 and 1997 decreased 52%, from approximately 28,000 to 13,000. During the same period the state's crime rate dropped 12.5%.

19. *Id.* at 23.
20. Cain, "Legislative Update—2006 Session," *Colorado Criminal Defense Bar Rap Sheet* (Summer 2006) at 6.
21. The Colorado Criminal Sentencing Project Mission Statement is on file with author.
22. See King County Bar Association (KCBA) project at <http://www.kcba.org>; Vermont Bar Association Drug Policy Project at <http://www.drugpolicy.org/docUploads/VTBarNewsletterMay23rd.pdf>; New York County Lawyers Association Drug Policy Task Force at <http://www.druglibrary.org/Schaffer/LIBRARY/studies/nycla/nycla.htm>. For information on other efforts around the country, contact Roger Goodman, through the KCBA website at <http://www.kcba.org>.
23. Colorado Judicial Branch, *supra* note 12 at 19.
24. *Id.*
25. See CRS § 18-1.3-204.
26. CRS § 18-1.3-603.
27. CRS § 24-4.1-119.
28. CRS §§ 24-4.2-104(1)(a)(1) and 42-4-1701.
29. CRS § 13-32-105(1).
30. CRS § 21-1-103(3).
31. CRS § 18-19-103.
32. CRS § 18-1.3-204(2)(a)(V).
33. CRS § 43-4-402(1).
34. CRS § 18-1.3-204(2)(b).
35. CRS § 18-1.3-209.
36. Standard conditions of adult probation Form 07.04.06.
37. Colorado Judicial Branch, *supra* note 12 at 19.
38. *Id.*
39. *Id.*
40. The prison costs include the cost for state-run and private prisons and for community corrections. The probation costs include the cost of traditional probation and intensive supervision programs. Tom Quinn, Director of Colorado Division of Probation Services, "Power Point Presentation to the CBA, January 30, 2007" (available from Mr. Quinn and on file with author McAllister).
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. See CRS § 18-1.3-401(1)(V)(I).
47. *Id.*
48. In 2004, 49.4 percent of inmates were past their parole eligibility date, meaning they had been seen and were denied discretionary release by the parole board one or more times. Rosten, *supra* note 9 at 77.
49. Colorado Legislative Council, *supra* note 12 at 23-24, 36, 40-41, 73-74, 76, 86; Rosten, *supra* note 9 at 31, 65.
50. Colorado Legislative Council, *supra* note 12.
51. Senate Bill (S.B.) 03-252, now codified at CRS § 17-2-103(11)(b)(II)(B).
52. See *id.*; Rosten, *supra* note 9 at 31, 65.
53. Rosten, *supra* note 9.
54. *Id.*
55. Prendergast, "Over and Over Again," *Westword* (April 6, 2006), available at <http://www.westword.com/Issues/2006-04-06/news/feature.html>.
56. See ALI, *supra* note 14 at 76.
57. Rosten, *supra* note 9 at 73 (nearly 70 percent of people in Colorado prisons for drug use or possession are people of color, although they comprise no more than 30 percent of the state's population and use drugs at statistically no greater rate than whites). The incarceration rate for

women has grown twice as fast as that of men, and 35 percent of female prisoners are in prison on drug charges. See Legislative Council Staff, "Forecasts 2003–08" (Dec. 2003) at 49 (on file with author McAllister).

58. Amending Colorado controlled substance statutes CRS §§ 18-18-404 and -405. The new law allows a maximum penalty of up to three years in prison, where the old law allowed up to six years in prison.

59. The new money cannot be allocated until an Interagency Task Force on Treatment, appointed by the General Assembly, confirms that the law is resulting in cost savings. The Interagency Task Force on Treatment has just completed its study and has found some cost savings that can be directed to increased treatment funding. See Interagency Task Force on Treatment, "SB03-318 Cost Avoidance Analysis" (on file with author McAllister).

60. *Id.*

61. Krauss, "Getting Smart on Crime: Time to Reform Colorado's Drug Offense Sentencing Policy," available at http://www.i2i.org/main/author.php?author_id=77.

62. *E.g.*, CRS §§ 18-1.3-401 (presumptive penalties for felonies); -405(3.5) (drug offenses as "extraordinary risk" crimes); -407 (special drug offender enhancements); -405(2)(a) (unlawful distribution, manufacturing, dispensing, sale, or possession of drugs); -412.7 (sale or distribution of materials to manufacture controlled substances); and -406 (crime of violence penalties).

63. See CRS § 18-1.3-801(1.5) and (2).

64. See Families Against Mandatory Minimums, "Smart on Crime: Positive Trends in State-Level Sentencing and Corrections Policy" at 13, available at http://www.famm.org/pdfs/82751_Positive%20Trends.pdf.

65. KCBA, "Is It Time to End the War on Drugs?: An Examination Of Current Law And Practice In Drug Abuse Prevention, Drug Addiction Treatment And The Use Of Criminal Sanctions" (Dec. 2001), available at <http://www.kcba.org/druglaw/pdf/report.pdf>.

66. See KCBA website, Drug Policy Project page, available at <http://www.kcba.org/druglaw/index.html>. The project published a law review article on its findings, "Drug Policy In America—A Continuing Debate: Report Of The Task Force On The Use Of Criminal Sanctions To The King County Bar Association Board Of Trustees," 30 *Fordham Urb. L.J.* 499 (2003).

67. Krauss, *supra* note 61 at 6.

68. KCBA, *supra* note 66 at 553.

69. *Id.*

70. See Drug Policy Alliance, "State by State Report," available at <http://www.drugpolicy.org/statebystate/arizona>.

71. *Id.*

72. KCBA, *supra* note 66 at 554.

73. *Id.*

74. University of California Los Angeles Integrated Substance Abuse Programs, "SACPA Cost Analysis Report (First and Second Years)" (March 13, 2006), available at http://www.uclaisap.org/prop36/documents/SACPA_COSTANALYSIS.pdf.

75. Drug Policy Alliance, "State by State Report," available at <http://www.drugpolicy.org/news/pressroom/pressrelease/pr040606.cfm>.

76. Interagency Advisory Committee on Adult and Juvenile Correctional Treatment, "Statewide Bulletin: Analysis of Offender Substance Abuse Treatment Needs and the Availability of Treatment Services" (Dec. 2001); Colorado Department of Human Services, Alcohol and Drug Abuse Division, "The Costs and Effectiveness of Alcohol and Drug Abuse Programs in the State of Colorado, Report to the Colorado General Assembly" (Oct. 2002).

77. Colorado Department of Human Services, Alcohol and Drug Abuse Division, *Problems in Colorado: Characteristics & Trends* (1998) (on file with author).

78. See, *e.g.*, National Institute on Drug Abuse, "Measuring and Improving Costs, Cost-Effectiveness, and Cost-Benefit for Substance Abuse Treatment Programs," available at <http://www.nida.nih.gov/IMPCOST/IMPCOSTIndex.html>.

79. Colorado has the fifth highest rate of drug dependence and abuse of the fifty states and District of Columbia. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, "State Estimates of Substance Abuse from the 2000 National Household Survey on Drug Abuse," § v.I at 134-35 (Oct. 2002).

80. A 2001 study by the National Center for Alcohol and Substance Abuse found that Colorado has the lowest per capita spending on substance abuse prevention, treatment, and research of the forty-six reporting states. Columbia University, *supra* note 11 at 25.

81. See Lindsay, "City Resurrects Drug Court," *Rocky Mountain News* (Jan. 15, 2007), available at http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5280585,00.html.

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