

**Sentencing in the Criminal Justice System  
Interim Study Committee**

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*November 2017*



# Sentencing in the Criminal Justice System Interim Study Committee

## Committee Charge

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Pursuant to Legislative Council Executive Committee approval of Interim Committee Letter 2017-10, the Sentencing in the Criminal Justice System Interim Study Committee was permitted to meet up to eight times at the Capitol during the 2017 interim and to recommend up to five bills for Legislative Council approval. The committee was authorized to consider the offenses and penalties associated with specific criminal categories in the Colorado sentencing statutes and how evidence-based and cost-effective changes could be implemented that would achieve the statutory goals of sentencing, simplify the sentencing structure, and allow for the use of prison resources for those offenders for whom imprisonment is necessary for purposes of punishment, accountability, and public safety. The policy issues authorized to be studied were:

- considering and evaluating the use of mandatory minimum sentences in Colorado;
- considering and evaluating the continued viability of extraordinary risk crimes;
- examining the current habitual offender scheme in light of current research, best sentencing and correctional practices, and the need to use limited correctional resources for the highest risk offenders; and
- considering the development of “Second Look” legislation that would address long sentences where prison placement is no longer in the interest of public safety and does not further the interest of justice.

## Committee Activities

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The committee held seven meetings during the 2017 interim. Briefings and presentations were made by state departments, local governments, invited experts, and members of the public on a wide range of subjects, including:

- the prison population;
- community-based alternatives to incarceration;
- practitioner’s perspectives on the criminal justice system;
- problem-solving courts;
- restitution for criminal offenses;
- sentencing and corrections reform in other states;
- mandatory minimum sentencing;
- second-look sentencing;
- restorative justice; and
- sex offense reform.

Entities represented before the committee included:

- state agencies and offices, including the Department of Corrections, various offices within the Department of Public Safety, the Judicial Branch and judicial districts, the State Board of Parole, the Office of the State Public Defender, the Attorney General’s Office;
- the Colorado Organization for Victim Assistance;
- Victim Services Network;

- the Rocky Mountain Victim Law Center;
- the Colorado Criminal Defense Bar;
- the Colorado District Attorneys' Council;
- the Colorado Criminal Justice Reform Coalition;
- the Denver District Attorney's Office;
- Second Chance Center;
- the Denver Metro Domestic Violence Fatality Review Board;
- the National Conference of State Legislatures;
- Lifted from the Rut Intervention and Addiction Services;
- the Ohio Department of Rehabilitation and Correction and the Ohio Targeted Community Alternatives to Prison (TCAP) program;
- Right on Crime;
- the American Bar Association;
- RKC Group;
- the Colorado Governor's Office of State Planning and Budgeting;
- Prison Fellowship;
- the Restorative Justice Coordinating Council; and
- the Estes Valley Restorative Justice Partnership.

The committee heard public testimony at every meeting. The committee requested that 19 bills be drafted for its consideration, of which three bills were withdrawn during the drafting stage. Of the 16 bills considered by the committee, five were approved for forwarding to the Legislative Council. The following subsections discuss the committee's activities during the interim in further detail.

***Prison population.*** A panel that included representatives from the Department of Corrections (DOC), the Judicial Branch, and the Division of Criminal Justice within the Department of Public Safety (DPS) presented to the committee on issues related to the prison population and how those offenders came to be incarcerated. The panel discussed offenses committed by incarcerated offenders, the effect of Colorado's sentencing scheme on the prison population, and the use of community-based sentencing such as probation or parole. The panel also commented on private correctional facilities and how the increase in Colorado's overall population impacts the prison population.

***Community-based alternatives to incarceration.*** The committee heard extensive testimony concerning community-based sentencing, including presentations on parole, community corrections, and probation.

***Parole.*** Representatives from the State Board of Parole appeared before the committee on two occasions to discuss Parole Board operations, assessment processes, and presumptive parole. The committee learned of the decision-making instruments that are used by the parole board, and how those instruments and tools are evaluated by the board for continued use. There was significant discussion concerning the process for making parole decisions and the board's approach to addressing backlogs of offenders who are eligible for parole, but are awaiting evaluation. The committee also heard from the Colorado Commission on Criminal and Juvenile Justice (CCJJ) on proposals concerning changing parole eligibility and parole board discretion. The committee recommends Bill D, which changes the period of mandatory parole after a prison sentence.

*Community corrections.* The committee heard from the Division of Criminal Justice within DPS on community corrections programs, including the number of participants, costs associated with such programs, and the role of local governing boards. DOC appeared before the committee to discuss the relationship between community corrections and parole, including issues facing offenders who have completed community corrections programs but have not been granted parole. The committee also heard from a community corrections working group that is working to address issues in community corrections, including unused beds, offenders waiving participation in community corrections, and preparing offenders for community reentry.

*Probation.* Representatives from the Judicial Branch, including the director of the Probation Services Division, presented to the committee on probation, including presentence investigation and the early termination process.

***Practitioner's perspectives on the criminal justice system.*** The committee invited numerous practitioners to provide their perspectives on criminal sentencing. As a part of these efforts, the committee heard from defense attorneys, prosecutors, a sitting judge, community organizations, victim advocates, the Colorado Attorney General's office, and former DPS criminal justice experts. The committee introduced two pieces of legislation relating to the CCJJ, which is a committee comprised of practitioners. The committee recommends Bill C, which reauthorizes the CCJJ, and Bill E, which requires the CCJJ to contract for a study on sentencing issues.

***Restitution for criminal offenses.*** The committee heard a presentation concerning restitution rates from an offender who must pay restitution to victims of his offense. He discussed issues concerning the burdens of owing restitution, restitution interest, and the ability to repay those who were impacted by his actions. He also discussed how restitution affected his ability to find work and take steps to move beyond his criminal behavior.

***Sentencing and corrections reform in other states.*** Committee staff presented to the committee on sentencing schemes in other states, and how those schemes compare to that in Colorado. The National Conference of State Legislatures (NCSL) also presented on sentencing in other states, including information on sentencing commissions that other states use to evaluate sentencing schemes, presumptive and individualized sentencing, mandatory minimums, and time-served calculations.

Individuals from Ohio remotely presented on the Ohio's Targeted Community Alternatives to Prison (TCAP) program. The committee viewed two videos provided by the conferees, and then had an opportunity for dialogue through video conferencing. A former Texas state legislator appeared before the committee to discuss Texas' corrections reform, including a discussion of the legislative efforts to enact such reform.

***Mandatory minimum sentencing.*** The committee heard from CCJJ representatives on its recommendations on mandatory minimum sentencing, which included eliminating extraordinary risk sentencings and its associated minimums, and requiring offenders to serve a minimum amount of time in prison prior to parole. NCSL provided information on mandatory minimum sentencing approaches in other states. The committee also heard a presentation on the American Bar Association's 2017 resolution recommending that states eliminate mandatory minimum sentencing.

Committee staff distributed a memorandum to the committee on minimum sentences in Colorado. Committee staff also provided an overview of Colorado's sentencing scheme at the committee's first meeting, which included a section on mandatory sentencing of habitual offenders. The committee recommends Bill B, relating to sentences for habitual offenders.

**Second-look sentencing.** The committee received a memorandum on second-look sentencing from committee staff that explained second-look sentencing as a review of an offender's sentence after the offender has served a certain length of time to ensure that the sentence continues to further the purposes of sentencing. The committee heard from the Prison Fellowship on the merits of second-look sentencing, including issues relating to reducing recidivism and improving public safety.

**Restorative justice.** Restorative justice practitioners and experts provided the committee with an update on restorative justice practices in Colorado. The panel discussed the process of restorative justice and its benefits. The committee also heard about using restorative justice in high-risk situations.

**Sex offense sentencing.** The committee heard from prosecutors and defense attorneys concerning sex offense sentencing, including a discussion of indeterminate sentencing and the Lifetime Supervision Act, which may apply to those convicted of sex offenses. The committee also heard about sex offender recidivism rates and the use of polygraph tests in association with sex offenders. The committee recommends Bill A, which permits judges to sentence a sex offender to a determinate sentence, rather than requiring an indeterminate sentence, after considering a number of factors relating to the offender's conduct and public safety.

## **Committee Recommendations**

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As a result of committee discussion and deliberation, the Sentencing in the Criminal Justice System Interim Study committee recommends the following five bills for consideration in the 2018 legislative session.

**Bill A – Determinate Sentence for Indeterminate Sex Offense.** Under current law, certain sex offenders must be given an indeterminate sentence with a maximum of the offender's natural life. This bill grants the court discretion to choose between the indeterminate sentence or a determinate sentence for a term of incarceration, probation, or parole. The bill specifies the factors related to punishment and treatment that a court must consider when making its sentencing decision and requires that the court state its reasoning on the record. It also specifies the various ranges of terms of incarceration that the court should use for determinate sentences.

**Incarceration terms.** In deciding the sentence for a term of incarceration, the court is to consider the presentence investigation sex offender evaluation, relevant evidence, and certain enumerated factors concerning the defendant's behavior.

**Probation terms.** In deciding the sentence for a term of probation, the court is to consider certain enumerated factors, including, among others, victim safety, the possibility of recidivism, and the age and maturity of the offender.

**Parole for determinate sentences.** If the court sentences the defendant to an indeterminate period of parole and he or she violates a condition of parole, the parole board may revoke parole for the remainder of his or her determinate term of incarceration sentence or for a period of incarceration not to exceed 90 days.

**Bill B – Sentences for Habitual Criminals.** This bill makes a number of changes with respect to the sentencing of habitual offenders. First, the bill repeals the provision of law that requires an offender who is convicted of a class 1, 2, 3, 4, or 5 felony or a level 1, 2, or 3 drug felony and has two previous, separate felony convictions within the last ten years to be sentenced to the DOC for a term of three times the maximum of the presumptive range (or 48 years for a level 1 drug felony).

Under current law, a court is required to sentence an individual who has three separate, prior felony convictions to four times the maximum of the presumptive range for the most recent felony. The bill amends that requirement so that it only applies to individuals convicted of specified crimes with a sentence of at least one year, both in the prior cases and the most recent case. In these types of cases, the court is required to sentence the individual to the DOC for between two and three times the maximum of the presumptive range for the most recent crime.

The bill makes an exception to the sentencing of habitual offenders when the court finds that the case is exceptional and involves extenuating circumstances. In those cases, the court may sentence an individual to a lesser term, to community corrections, or to probation. The Office of the State Court Administrator is required to compile a report detailing all instances in which lesser sentences are given to habitual offenders.

Finally, the bill allows the habitual offenders addressed by this bill to be eligible for parole after serving 75 percent of their sentence, less earned time.

**Bill C – Reauthorize Commission on Criminal & Juvenile Justice.** This bill extends the repeal of the CCJJ from July 1, 2018, to July 1, 2028.

**Bill D – Lowering Mandatory Parole from 5 Years to 3 Years.** This bill proposes reducing mandatory parole periods to three years for offenders sentenced for class 2 or class 3 felony crimes committed on and after July 1, 2018. Under current law, these crimes carry a mandatory parole period of five years, to be served after an offender's release from prison.

**Bill E – CCJJ Criminal Sentencing Study.** This bill requires the CCJJ to contract for a study on best practices in criminal sentencing. The study must be completed by July 1, 2019. The CCJJ must establish an advisory committee to review the study and make recommendations to the full commission for criminal sentencing changes in Colorado.