

**COMPREHENSIVE SENTENCING TASK FORCE**  
**Habitual and Mandatory Minimums Working Group**

January 13, 2012

**FY12-CS #1 Remove walkaway escapes as crimes eligible for habitual criminal sentencing.**

**Recommendation:**

Add the following subsection to CRS 18-1.3-801:

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

**Clarification:**

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

**Discussion:**

The Comprehensive Sentencing Task Force recommends eliminating walkaway offenses from habitual criminal sentencing. The habitual criminal statute presently treats all felonies of the same class alike, regardless of what type of crime was involved (with the exception of drug offenses). Walkaway escapes are, however, different than escapes from a DOC facility.

On average, three individuals per year escape from a secure DOC facility.<sup>1</sup> Nevertheless, over 1,100 individuals annually are convicted of escape for behaviors that range from running from a police car to failing to return on time to a halfway house. For the same behavior that results in issuing an arrest warrant and pursuing a technical violation for those on probation, hundreds of individuals on parole and in community corrections receive lengthy prison sentences because of their particular criminal justice status.<sup>2</sup>

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<sup>1</sup> For more information, please see pages 49-50 of the DOC's *Statistical Report: Fiscal Year 2010*, available at <http://www.doc.state.co.us/opa-publications/132>. Of the three escapes from DOC in 2010, one occurred while the inmate was out to court.

<sup>2</sup> For more information, please see page 160 of the Commission's 2008 annual report, Appendix I, "Escape: Mandatory Consecutive Sentences" a position paper prepared by the Post-Incarceration Supervision Reentry Task Force, available at <http://cdpsweb.state.co.us/cccj/PDF/2008%20Recommendations/12-18-2008%20FINAL%20CCJ%20Report.pdf>.