

RECOMMENDATIONS FOR 2002

**INTERIM COMMITTEE TO STUDY THE
CRIMINAL SENTENCING STATUTES**

**Report to the
Colorado General Assembly**

**Research Publication No. 495
December 2001**

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December 2001

To Members of the Sixty-third General Assembly:

Submitted herewith is the final report of the Interim Committee to Study the Criminal Sentencing Statutes. This committee was created pursuant to House Joint Resolution 01-1027. The charge to the committee was to identify ways in which the criminal sentencing statutes could be simplified and clarified as well as ways to improve Colorado's criminal justice system.

At its meeting on November 15, 2001, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2002 session was approved.

Respectfully submitted,

/s/ Senator Stan Matsunaka
Chairman
Legislative Council

SM/CJ/cs

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Interim Committee to Study the Criminal Sentencing Statutes

Members of the Committee

Representative Lynn Hefley Chairman	Senator Ken Gordon Vice-Chairman
Representative Richard Decker	Senator Ken Arnold
Representative Peter Groff	Senator Jim Dyer
Representative Don Lee	Senator Rob Hernandez
Representative Alice Madden	Senator Doug Linkhart
Representative Shawn Mitchell	Senator Sue Windels

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EXECUTIVE SUMMARY

Committee Charge

Pursuant to House Joint Resolution 01-1027, the Interim Committee on Criminal Sentencing was charged with studying Colorado's criminal sentencing statutes with the goal of preserving and protecting the public peace and safety. The committee was directed to examine the sentencing statutes to determine areas that could be simplified or clarified, make recommendations on improving the public safety, consider alternatives to prison, and to ensure a fair, effective, and economic criminal justice system.

Committee Activities

At the first committee meeting, members heard testimony from various interests within the criminal justice system such as state agencies, prosecuting and defense attorneys, judges, victims groups, organizations representing individual rights, and other interested persons. Those who testified explained their concerns with Colorado's sentencing statutes. As a result, the committee decided to create four subcommittees to work during the interim on the major themes expressed by the witnesses. The four subcommittees were directed to focus on the following areas: Substance Abuse Treatment and Alternative Sentencing; Simplification and Clarification; Demographic Disparities; and Truth-in-Sentencing, Parole, and Judicial Discretion. Each subcommittee was charged with holding hearings and then returning to the full committee to report any findings and recommendations for legislation. At the four subsequent committee meetings, the chairmen of the subcommittees presented findings from the subcommittees and bill proposals from subcommittee members.

Substance Abuse Treatment and Alternative Sentencing. The Subcommittee on Substance Abuse Treatment and Alternative Sentencing, chaired by Senator Sue Windels, heard testimony from a number of state agencies, district attorneys, defense attorneys, and other interested persons regarding current drug treatment options available to offenders in Colorado. The subcommittee recommended legislation attempting to increase funds for drug treatment options by lowering prison sentences for certain nonviolent drug offenders.

Simplification and Clarification. The Subcommittee on Simplification and Clarification, chaired by Representative Don Lee, discussed some of the problems, inconsistencies, and complexities of Colorado's sentencing laws. The subcommittee heard testimony from the office of Colorado's Attorney General, the Criminal Defense Bar, the District Attorneys Council, Colorado's Public Defender, and other interested persons on how to make the sentencing laws easier to use and to understand. The subcommittee recommended relocating all sentencing provisions into the criminal code in order to centralize the sentencing statutes. The subcommittee

also recommended a resolution to continue the interim committee for another year in order to continue the work of clarifying and simplifying Colorado's criminal sentencing statutes. This resolution was not approved by the Legislative Council but a resolution to continue the interim committee may be introduced during the 2002 legislative session.

Demographic Disparities. The Subcommittee on Demographic Disparities, chaired by Representative Peter Groff, heard testimony from a number of witnesses who discussed the disproportionate numbers of minorities serving prison sentences as well as a disproportionate increase in women serving prison sentences. Individuals testified to the various reasons for the disparities such as socio-economic factors, practices by local law enforcement officers, and differences in the kinds of crimes that are investigated and charged. The chairman of the subcommittee recommended to the interim committee a bill to study racial and gender disparities in the criminal justice system; however, the interim committee did not approve the recommendation.

Truth-in-Sentencing, Parole, and Judicial Discretion. The Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion, chaired by Representative Richard Decker, heard testimony from members of the Parole Board, Judicial Branch, District Attorneys Council, and other members of the public regarding issues such as the re-victimization of individuals at parole hearings and the coordination of re-entry services for offenders. The subcommittee recommended a bill to coordinate services for adult offenders in each judicial district. A bill was proposed (Bill B), but later withdrawn, that would have denied an inmate convicted of a violent crime from accumulating earned time until 50 percent of his or her sentence was served.

Committee Recommendations

Bill A — Penalties for Persons Convicted of Criminal Violations. Bill A was recommended by the Subcommittee on Substance Abuse Treatment and Alternative Sentencing as an attempt to divert certain drug offenders from prison and to increase funds for drug treatment programs. The bill decreases the penalty for the use of, and for the possession of one gram or less of controlled substances; allows the court to commit a probationer to county jail for up to 180 days in order to divert the offender from prison; and increases the drug offender surcharge for all classes of drug offenders.

Bill A also creates the Drug Offender Treatment Fund that is overseen by the president of the Colorado District Attorneys Council, the State Public Defender, and the State Court Administrator. Monies from the increase in the drug offender surcharges and projected cost savings will be directed to the fund to be distributed to each judicial district for local drug treatment programs. If in FY 2003-04, \$2.2 million is not appropriated to the Drug Offender Treatment Fund from the bill's anticipated savings, then the provisions of the act are to repeal and return to existing language.

Bill C — Local Adult Offender Services Planning Committees. Bill C, recommended by the Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion allows each judicial district to establish an adult offender service planning committee with membership from various criminal justice, social service, and community entities. Once appointed, the committee is to develop and implement plans for the coordination and delivery of services for adult offenders in the judicial district.

Bill E — Relocation of Certain Existing Criminal Sentencing Statutes to a New Article in Title 18, C.R.S. The Subcommittee on Simplification and Clarification heard testimony regarding the complexity of the criminal statutes and the difficulty in locating the appropriate sentencing provisions that are now located in three different titles within the Colorado Revised Statutes. Bill E relocates provisions of the criminal sentencing statutes from Titles 16, 17, and 18 of the Colorado Revised Statutes, to a new article in Title 18. The bill also makes conforming amendments and repeals relocated statutes but does not make any substantive changes or alter the elements of any crime.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Pursuant to House Joint Resolution 01-1027, the Interim Committee on Criminal Sentencing was charged with studying Colorado's criminal sentencing statutes in order to harmonize and clarify the criminal sentencing laws and to prevent misinterpretation of the sentencing provisions. With the goal of preserving and protecting the public peace and safety, the committee was charged with:

- identifying and clarifying conflicting and confusing statutes;
- recommending ways to clarify those statutes;
- considering and recommending, if appropriate, changes to the statutes to keep dangerous criminals separated from the community;
- considering alternative sentencing options; and
- devising the most fair, effective and economic criminal justice system possible.

COMMITTEE ACTIVITIES

Background Information

The Interim Committee to Study the Criminal Sentencing Statutes was created during the 2001 legislative session to help harmonize and clarify the criminal sentencing statutes in Colorado. Members of the General Assembly were concerned that the complexity of Colorado's statutes could result in misinterpretation of the statutory sentencing laws and thought that an analysis was necessary as the laws had not been examined in their totality by the General Assembly in several years.

At the first meeting of the Interim Committee on Criminal Sentencing, members heard testimony from various interests within the criminal justice system such as state agencies, prosecuting and defense attorneys, judges, victims' groups, organizations representing individual rights, and other interested persons. Those who testified explained their concerns with Colorado's sentencing statutes. A number of individuals spoke to the complexity of the statutes while others discussed the need of the criminal justice system to actively pursue the rehabilitation of offenders. Several people testified to the re-victimization of individuals through the sentencing and parole process, and the need for a criminal justice system that treats offenders and victims equally.

As a result of the testimony, the committee decided to create four subcommittees to work during the interim on the major themes expressed by the witnesses. The four subcommittees were directed to focus on the following areas: Substance Abuse Treatment and Alternative Sentencing; Simplification and Clarification; Demographic Disparities; and Truth-in-Sentencing, Parole, and Judicial Discretion. Each subcommittee was charged with holding hearings and then returning to the full committee to report any findings or recommendations for legislation. At the four subsequent committee meetings, the chairmen of the subcommittees presented findings from the subcommittees and bill proposals from subcommittee members.

Subcommittee on Substance Abuse Treatment and Alternative Sentencing

Members of the interim committee heard testimony regarding the pressure that substance abuse puts on the criminal justice system. Prison capacity is strained by new prison admissions resulting from crimes related to drug possession or distribution, as well as parolees who are returned to prison as a result of drug use and subsequent parole revocation. The Department of Corrections reported that nearly two-thirds of inmates have a substance abuse problem.

In addition to the costs of incarceration, there are societal costs as a result of offenders' continuing their drug addictions. Several witnesses testified regarding the lack of adequate substance abuse treatment available for offenders, both in Colorado and across the country. Other states have passed citizen-initiated ballot measures to reduce jail and prison sentences for drug offenders and mandate substance abuse treatment.

At its first meeting, the subcommittee was given an overview of California's Proposition 36 and Arizona's Proposition 200; ballot measures which reduced sanctions for minor drug crimes and increased mandatory treatment. After discussing the merits and flaws of the ballot measures, as well as Connecticut's alternative sentencing program (which allows courts to sentence low-risk offenders to community service, day incarceration, or treatment), the subcommittee focused on two issues for further study: 1) the impact of drug offenders on the state's prison population; and 2) the effectiveness and availability of existing treatment programs. The subcommittee requested additional information including: an estimate of how many offenders are incarcerated for drug possession or use, and how many of those are 'first-time' offenders; current substance abuse treatment programs available throughout the state, including those in prisons; existing gaps in the treatment of offenders; and how additional treatment funds would best be spent.

Impact of drug offenders on Colorado's prison population. The subcommittee heard testimony from state agencies, district attorneys, and other interested parties regarding the issue of sanctions for drug offenders. It was generally agreed that first-time drug offenders convicted of possession or use are rarely sentenced to prison. Most drug offenders sentenced to prison have a prior criminal history, have committed multiple crimes at the time of arrest, or have pled guilty to drug possession rather than face a more serious charge. The Department of Corrections and Legislative Council Staff provided information in response to these issues.

- The Department of Corrections reported that as of June 30, 2000, 3,226 inmates (20.2 percent of the total prison population) were incarcerated for a drug offense, and of those, 1,714 were convicted of drug possession or use. A review of the 1,714 offenders convicted of drug possession or use revealed that 87 percent had at least one prior misdemeanor conviction, and 43 percent had at least one prior felony arrest. Only 51 had no prior criminal history.
- Legislative Council Staff reported that, for those defendants charged with a drug crime between 1996 and 2000: 76 percent of those charged with possession were also charged with additional crimes; and 67 percent of those charged with any drug crime eventually pled guilty to a lesser crime.

Effectiveness and availability of existing substance abuse treatment programs. The Department of Human Services' Alcohol and Drug Abuse Division provided information on treatment programs available statewide; the Department of Corrections provided information on treatment programs available in prison. The division reported that no single treatment is effective

for everyone. However, several programs are licensed by the state and are proven to be effective for specific populations.

Some type of treatment is available in each area of the state. However, the entire range of care—including intensive residential treatment, transitional services, and monitoring—is not available statewide, especially in rural areas. The most significant gaps exist in aftercare (services for those who have recently completed an intense treatment therapy) and residential treatment programs which may not be able to house clients for the time necessary for effective treatment.

Both the Alcohol and Drug Abuse Division and the Department of Corrections reported that resources are inadequate to meet current needs. The Alcohol and Drug Abuse Division estimates that more than 11,000 individuals seeking treatment are unable to get it due to lack of resources. The Department of Corrections estimates that 80 percent of new admissions, 4,919 in FY 2000-01, need some level of treatment. The department has 1,486 treatment slots available, and its ability to handle inmates' treatment needs depends on their length of stay in the various treatment programs. At the current resource level, approximately 50 percent of inmates receive some form of treatment.

Recommendation. The committee proposes Bill A, which reduces the penalty for possession of less than one gram and for use of an illegal drug. The penalty would be lowered from a class 4 felony to a class 6 felony in most cases. The shorter prison sentences associated with the lower penalty will ease the pressure on the Department of Corrections, in turn freeing resources to be directed toward substance abuse treatment programs. The treatment programs would be implemented statewide by the individual judicial districts.

Subcommittee on Simplification and Clarification of Statutes

The interim committee heard from various entities about the need to simplify and clarify the sentencing statutes. Citizens find the sentencing statutes impossible to interpret. District attorneys, public defenders, and defense attorneys find using the sentencing statutes and training new district attorneys and public defenders in Colorado's sentencing scheme to be difficult. Further, courts often have difficulty interpreting the sentencing statutes and determining the legislature's intent when sentencing offenders in criminal court.

Sentencing provisions for some offenses are located in more than one title (e.g. sentencing provisions for sex offenders are located in three titles). There are several different requirements, some of which overlap, for enhanced sentences. In addition, some crimes require a mandatory minimum sentence. When considering all of the statutory sentencing enhancers, mitigators, and aggravators for the crime of second degree assault for instance, there are 34 different possible sentences.

The interim committee recognized that when looking at simplifying and clarifying the sentencing statutes, consideration must be given to judicial discretion. The need to provide defendants, prosecutors, and defense attorneys with a clean, understandable, and usable sentencing scheme, and with some clear sense of legislative intent must be balanced with the discretion of the court to take myriad factors under advisement when deciding a sentence.

Simplification vs. clarification. The Subcommittee on Simplification and Clarification first saw the need to distinguish between simplification and clarification. *Clarification* of the sentencing statutes would mean efforts to *physically move and relocate now-scattered sentencing statutes to one place* so that they are easier to find. Clarification would require a recodification of the criminal sentencing statutes. *Simplification* of the sentencing statutes would mean efforts to *simplify the sentencing schemes* so that courts would find the sentencing statutes easier to administer and so that practitioners would be better able to interpret the sentencing scheme when charging and defending defendants. Simplification would require substantive changes to sentencing laws.

The complexity of the criminal sentencing statutes. In trying to decide whether or not to tackle simplification or clarification or both this legislative interim, the subcommittee received input and assistance from two sub-subcommittees comprised of the following: Judge Ruthanne Polidori, First Judicial District; Chief District Court Judge Harlan Bockman, 17th Judicial District; the Colorado District Attorneys Council; the Colorado Attorney General's Office; the Denver District Attorney's Office; the Colorado Public Defender's Office; and the Colorado Criminal Defense Bar.

The two sub-subcommittees, with the assistance of the Office of Legislative Legal Services (OLLS), compiled several pieces of documentation to illustrate the complexity of and the need for simplification and clarification of the sentencing statutes (these documents are listed on page 19). One chart listed the crimes which provide for enhanced sentences that are specific to that crime. For instance, in the first degree kidnapping statute, first degree kidnapping is a class 2 felony when the victim is liberated unharmed. That statute says that first degree kidnapping is a class 1 felony when the victim suffers bodily injury.

The gist of the complexity in the sentencing statutes is that while some statutes contain enhanced sentences that are specific to that crime (as noted above), other statutes provide for enhanced sentences that can apply to any crime. For instance, first degree kidnapping is a class 1 or 2 felony depending on the elements of the crime, but the sentence for the class 2 felony can be increased or decreased depending upon whether or not the circumstances of the crime included statutory mitigating, aggravating, or sentence-enhancing factors. These mitigating, aggravating, and sentence-enhancing factors are contained in several different statutes. The sentence can increase if the defendant was on parole for another felony at the time of the crime or if the defendant was on bond for another felony. Further lending to the complexity, the same aggravating and sentence-enhancing factors are listed in more than one statute leading to

questions over which law takes precedence. Table 1 illustrates the complexity of the sentencing statutes.

**Table 1:
Colorado Sentencing Law as of July 2001**

Class of Crime	Normal Presumptive Range 18-1-105	Extraordinary Mitigating Circumstances 18-1-105 (6)	Sentence Enhancing Circumstances 18-1-105 (9.5)	Extraordinary Aggravating Circumstances 18-1-105 (9)/ Crime of Violence (16-11-309)	Extraordinary Aggravating Circumstances 18-1-105 (6)	Little Habitual 16-13-101 (1.5)	Big Habitual 16-13-101 (2)	Mandatory Parole 18-1-105
Class 2	8-24 yrs	4-8 yrs	8-48 yrs	16-48 yrs	24-48 yrs	72 yrs	96 yrs	5 yrs
Class 3 (extraordinary risk of harm 18-1-105 (9.7))	4-16	2-4	4-32	10-32	16-32	48	64	5
Class 3	4-12	2-4	4-24	8-24	12-24	36	48	5
Class 4 (extraordinary risk of harm 18-1-105 (9.7))	2-8	1-2	2-16	5-16	8-16	24	32	3
Class 4	2-6	1-2	2-12	4-12	6-12	18	24	3
Class 5 (extraordinary risk of harm 18-1-105 (9.7))	1-4	6 mos - 1 yr	1-8	30 mos - 8 yrs	4-8	12	16	2
Class 5	1-3	6 mos - 1 yr	1-6	2-6	3-6	9	12	2
Class 6 (extraordinary risk of harm 18-1-105 (9.7))	1-2	6 mos - 1 yr	1-4	18 mos - 4 yrs	2-4	NA	8	1
Class 6	1 yr - 18 mos	6 mos - 1 yr	1-3	15 mos - 3 yrs	18 mos - 3 yrs	NA	6	1

Source: Colorado District Attorneys Council, Legislative Council Staff

There are several factors contributing to the complexity in the sentencing statutes:

- 1) in moving from an indeterminate sentencing scheme, the General Assembly provided for determinate sentences which fall into a presumptive sentencing range based on the felony class level of the crime; however
- 2) in order to take into consideration some of the specific aggravating circumstances that are present when a person commits a crime, the General Assembly has adopted numerous statutes that augment the presumptive ranges with increased sentences based on the presence of specific aggravating circumstances; while
- 3) making efforts to provide prosecutors adequate tools with which to prosecute law-breakers; and
- 4) attempting to balance the court's discretion with the need to ensure that the sentence fits the crime.

This has resulted in a sentencing scheme that has been pieced together from year-to-year and that is fragmented, making it difficult for practitioners and judges to interpret and use the statutes.

Recommendations. One of the subcommittee's first realizations was that any effort to simplify statutory crimes and sentences would require examining each crime and its sentence along with the list of sentence mitigators, aggravators, and enhancers in order to simplify the sentencing scheme. Any effort to clarify the sentencing statutes by locating all sentencing provisions together in one statutory article would require searching for sentencing provisions across three different C.R.S. titles and then reorganizing those statutes in an order that is "user friendly" and that makes sense. Either task would take tremendous amounts of time. Ultimately, the subcommittee decided not to attempt both tasks this legislative interim. Instead, the first recommendation from the subcommittee was to ask that the interim committee be extended for another year in order to, among other things, take an additional year to tackle the job of simplifying the sentencing scheme. This recommendation (in the form of a resolution) was not approved by the Legislative Council. However, the resolution will likely be introduced during the 2002 legislative session.

The subcommittee recommends Bill E to clarify the sentencing statutes by moving statutory sentencing provisions that are now scattered throughout Title 16, Title 17, and Title 18 and moving them to a new article in Title 18.

Subcommittee on Demographic Disparities in the Criminal Justice System

The subcommittee on Demographic Disparities in the Criminal Justice System was charged with looking at some of the factors that have contributed to racial and gender disparities within the criminal justice system. According to the Rocky Mountain News, 1 in 19 African American males in the state of Colorado is in prison compared with an average of 1 in 192 white

males. Although the African American community comprises 3.8 percent of the state's population according to 2000 census data, 23.3 percent of the prison population is of African American descent. Table 2 shows the ethnic distribution of Colorado's prison population compared to the 2000 census totals.

**Table 2:
Ethnic Distribution of Colorado's Prison Population**

Race	Number of Inmates	Percent of Prison Population	2000 Census Total	Percent of Total Population*
White	7,182	45.3	3,560,005	82.8
Hispanic	4,516	28.5	735,601	17.1
African American	3,687	23.3	165,063	3.8
American Indian	335	2.1	44,241	1.0
Asian	115	0.7	95,213	2.2
Other/Unknown	11	0.1	309,931	7.2

Source: Colorado Department of Corrections, 2000 Statistical Report and 2000 U.S. Census

*The 2000 census information makes a distinction between race and ethnicity for the Hispanic population. Total population may not equal the sum of all classes combined as Hispanics may be counted in the White and Hispanic categories.

The disparity in the number of minority populations in prison is a nationwide phenomenon. A number of states have taken steps to address the over-representation of minorities at various points of contact within the criminal justice system. Several states have undertaken statewide studies while others have created commissions to address the disproportionate number of minorities in prison. Several communities have developed additional offender reintegration services aimed at helping people of color as well as "race-neutral" computer software to eliminate racial bias in the sentencing of offenders.

A number of witnesses who testified before the subcommittee spoke to socio-economic factors that may contribute to the over-representation of people of color in the criminal justice system. Examples of these factors included generally lower levels of education in minority communities, the types of crimes that are committed which may be more susceptible to detection by law enforcement such as open air drug markets, as well as the distribution of wealth in minority communities which tend to have fewer economic opportunities and lower average incomes. Witnesses also testified that the population of women prisoners has increased at a greater rate than male prisoners in recent years.

The committee chair recommended a bill to study demographic disparities in the criminal justice system but the bill was not approved by the interim committee.

Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion

The Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion discussed a number of issues related to the re-victimization of individuals through the parole process as well as coordinating services when offenders are released from custody and placed on parole or probation. The subcommittee also discussed the need for judicial discretion in delivering sentences and possible ways to ensure that victims are provided with greater certainty regarding the amount of time that an offender will serve in prison.

Parole. Parole is the release of an offender from prison into the community under state supervision with restrictions. In Colorado, non-violent offenders must serve at least 50 percent of their sentence while violent offenders must serve 75 percent of their sentence before being eligible to appear before the Parole Board. However, an offender's sentence may be reduced by up to ten days per month in earned time. (Earned time may be withheld from the offender for misbehavior while in prison.) Non-violent offenders who earn 100 percent of their earned time are eligible to appear before the Parole Board after serving 38 percent of their sentence, while violent offenders who earn 100 percent of their earned time are eligible after serving 56 percent of their sentence. Table 3 below, shows the earliest possible date offenders will be eligible to appear before the Parole Board assuming they earn 100 percent of their earned time.

**Table 3:
Overview of Earliest Possible Parole Eligibility Date (PED)**

Sentence/ Years	Assumes Offender Eligible after Serving:				Maximum Time Served — Assumes Discretionary Parole Denied and 100% Earned Time	
	50% of Sentence, Less Earned Time		75% of Sentence, Less Earned Time		Total Earned Time, Years	Discharge Date, Years
	Total Earned Time, Years	Earliest Possible PED, Years	Total Earned Time, Years	Earliest Possible PED, Years		
1	0.12	0.38	0.19	0.56	0.25	0.75
5	0.62	1.88	0.93	2.82	1.25	3.75
10	1.24	3.76	1.86	5.64	2.50	7.50
15	1.86	5.64	2.78	8.47	3.75	11.25
20	2.47	7.53	3.71	11.29	5.00	15.00
25	3.09	9.41	4.64	14.11	6.25	18.75
30	3.71	11.29	5.57	16.93	7.50	22.50
35	4.33	13.17	6.49	19.76	8.75	26.25

0.12 years = 1.5 months 0.25 years = 3.0 months 0.50 years = 6.0 months 0.75 years = 9.0 months

Source: Legislative Council Staff

Once released on parole, the offender must follow the conditions set by the Parole Board for his or her release. Such conditions generally restrict the freedom of the parolee and may

include electronic monitoring, periodic drug tests, and meeting with parole officers. If the conditions of parole are violated then the parolee has a revocation hearing before the Parole Board. The board may decide to send the parolee back to prison or impose additional conditions on his or her parole.

According to the Department of Corrections, the number of parolees returned to prison has decreased in the past year. Prior to FY01, the DOC reported a yearly increase in the numbers of parolees returned to prison. The Parole Board noted that offenders on mandatory parole have a higher rate of recidivism than parolees who are on discretionary parole. Additionally, revocations of offenders on mandatory parole have increased the number of parole hearings. Table 4 shows the number of parole hearings over the past four fiscal years as well as the number of parolees being released into the community and the number who have been returned to prison.

**Table 4:
Parole Hearings and Returns to Prison**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01
Total Parole Hearings	20,324	22,340	22,559	23,571
Released from Custody	2,775	2,758	2,053	2,220
Returned to Prison	1,633	2,105	2,472	2,437

Source: Department of Corrections

The subcommittee heard testimony from crime victims who stated that due to statutory requirements regarding the frequency and notification of parole hearings, and their desire and obligation to attend those hearings, they are re-victimized while attending parole hearings even though, prior to the hearing, they know that the offender will most likely not be released from prison. While the subcommittee chose not to take any action on this matter, the Parole Board stated that it would look at administrative remedies to prevent victims from being invited to attend parole hearings unnecessarily.

Truth-in-sentencing. In discussing truth-in-sentencing, or requiring an offender to serve a greater portion of his or her sentence, the subcommittee looked at information provided by the National Conference of State Legislatures on what other states have done to ensure that certain prisoners serve a maximum portion of their sentences. Some of the options included requiring violent offenders to serve up to 85 percent of their sentences, and eliminating parole for certain or all felony offenders and requiring them to serve 100 percent of their sentence.

The subcommittee reviewed several versions of truth-in-sentencing bills that were debated by the General Assembly during the 1995 legislative session. Each version of the bill had

different effects on the amount of a sentence which must be served, the felony offenses to which it applied, and when an offender would become parole eligible. Each bill carried a different fiscal note based on the projected change in prison population, varying from \$200,000 to \$41,000,000 in total costs over the first five years.

Judicial discretion. Colorado's sentencing laws provide judges with a presumptive range of sentences to impose upon convicted offenders depending upon the felony level of the crime committed and the circumstances of the crime. Judges may only deliver a sentence that is within the minimum and maximum of the presumptive range. Included in the sentencing structure is the option to prosecute an individual under one of the habitual offender statutes, under Colorado's three strikes law, or as a violent offender. These statutes increase the mandatory minimum and maximum sentences that a judge is allowed to give to an offender. Certain crimes also have mandatory sentences, such as life imprisonment for first degree murder of a peace officer or firefighter, or may have sentence-enhancing circumstances, such as committing the crime while on bond for another offense, which may increase an offender's sentence.

Testimony provided to the committee indicated that Colorado's sentencing laws sometimes require judges to impose sentences upon individuals that the judges think are too harsh and may be unjust. One judge indicated that he is provided sufficient information on the offender and circumstances of the offense at the time of sentencing, and that in certain instances, the mandatory sentences and sentence enhancements limit his discretion in delivering an appropriate sentence.

Recommendations. Although the subcommittee chose not to make changes to Colorado's sentencing laws, the subcommittee did recommend two bills to the interim committee. The committee recommends Bill C to assist local communities in planning for an offender's reintegration into the community. Bill C would allow each judicial district to establish an adult offender service planning committee with membership from various criminal justice, social service, and community entities to implement plans for the coordination and delivery of services for adult offenders in the judicial district.

Bill B, which was withdrawn at the sponsor's request, would have required violent offenders to serve at least 50 percent of their sentence if the crime was committed with a deadly weapon before accumulating any earned time.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following three bills are recommended to the Colorado General Assembly.

Bill A — Concerning Penalties for Persons Convicted of Criminal Violations

Bill A creates new and reduced penalties for possession of less than one gram of a schedule I through schedule IV controlled substance and for use of a schedule I or II controlled substance. The anticipated savings from the reduced prison sentences are intended to fund drug treatment programs. Recognizing that the General Assembly cannot allocate any anticipated savings to drug treatment programs, the bill further states that if the General Assembly does not fund the newly-created Drug Offender Treatment Fund to a certain level, then the sentences that were lowered are repealed and return to their original higher sentence. Following is a summary of the bill's provisions.

The statement of legislative intent declares the following:

- the General Assembly intends to reduce the felony level of drug possession offenses involving small amounts of a controlled substance;
- the General Assembly intends to use the anticipated savings to fund drug offender treatment programs;
- by increasing the funding for drug treatment, the General Assembly wants to decrease the number of drug-dependent Coloradans; and
- the General Assembly finds that fewer drug-dependent Coloradans will reduce the burden on the state's criminal justice system, penal system, and health care system.

The bill makes the following changes to the offense level of use and possession crimes:

- changes from a class 5 felony to a class 6 felony the *use* of a schedule I or II controlled substance;
- maintains current law for *use* of a schedule III, IV, or V controlled substance as a class 1 misdemeanor;
- creates the new offense of *possession* of one gram or less of a schedule I through IV controlled substance, a class 6 felony (under current law, possession of any amount of a schedule I controlled substance is a class 3 felony; possession of any amount of a schedule II or III controlled substance is a class 4 felony; and possession of any amount of a schedule IV controlled substance is a class 5 felony); and

- the new offense of *possession* of one gram or less of a schedule I through IV controlled substance is a class 4 felony for a second or subsequent offense.

In order to account for the reduced penalties and create additional funding for drug treatment programs, the bill increases the drug offender surcharge for class 2 through 6 felonies, class 1, 2, and 3 misdemeanors, and for marihuana petty offenses. The bill also changes the distribution of surcharge moneys so that 65 percent (instead of 90 percent under current law) will go to the Drug Offender Surcharge Fund and that 25 percent will go to the newly-created Drug Offender Treatment Fund. The bill specifies that moneys are to be appropriated from the new fund to the Judicial Department for allocation to the newly-created State Drug Offender Treatment Board to cover the costs associated with drug abuse assessment, testing, education, and treatment.

The bill provides that the Drug Offender Treatment Board is to consist of the president of the Colorado District Attorneys Council, the State Public Defender, and the State Court Administrator or their designees. The board must allocate at least 80 percent of the yearly Drug Offender Treatment Fund allocation to the judicial districts' Drug Offender Treatment Boards. Such allocation must be based upon a formula developed by the State Board that considers the judicial district's population and the number of drug case filings in the judicial district.

The bill creates local Drug Offender Treatment Boards consisting of the district attorney in that judicial district, the chief public defender in that judicial district, and a probation officer working in that judicial district to be chosen by the chief judge in that judicial district. Under the bill, local boards will receive moneys from the State Board and distribute moneys to drug treatment programs in their judicial districts.

In order to avail courts of the additional drug treatment options anticipated by the bill, the bill states that offenders convicted of a second or subsequent violation of less than one gram of a class I through IV controlled substance may be eligible for probation. Under current law, these offenders are ineligible for probation. In order to further avail courts of additional drug treatment options and to divert certain drug offenders from prison, the bill provides that courts may sentence an offender up to 180 days for a felony in a county jail. Current law is 90 days.

In an attempt to ensure that any savings resulting from lowering sentences go towards drug treatment programs, the bill repeals all of the changes if the General Assembly does not appropriate at least \$2.2 million dollars to the Drug Offender Treatment Fund for FY 2004-2005. If the money is not appropriated and the bill's provisions are repealed, current law is re-enacted.

Bill C — Concerning Local Adult Offender Services Planning Committees

Comments received by the Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion concerned the growth in parole hearings and the need for services in the reintegration

of offenders into society. In an attempt to help coordinate community-based programs and reduce recidivism among offenders the interim committee recommends Bill C.

Bill C allows each judicial district to establish an adult offender service planning Committee with membership from various criminal justice, social service, and community entities. Once appointed, the committee is to develop and implement plans for the coordination and delivery of services for adult offenders in the judicial district. The committee is to share information and work with other agencies in providing treatment and supervision of these individuals. Copies of any plans adopted and any reports made by the committee are to be delivered to the House Civil Justice, House Criminal Justice, and Senate Judiciary Committees of the General Assembly.

Bill E — Concerning the Relocation of Certain Existing Criminal Sentencing Statutes to a New Article in Title 18, C.R.S.

The Subcommittee on Simplification and Clarification heard testimony regarding the complexity of the criminal statutes and the difficulty in locating the appropriate sentencing provisions that are now located in three different titles within the Colorado Revised Statutes. Bill E relocates provisions of the criminal sentencing statutes from Titles 16, 17, and 18 of the Colorado Revised Statutes, to a new article in Title 18. The bill also makes conforming amendments and repeals relocated statutes but does not make any substantive changes or alter the elements of any crime.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303) 866-2055. For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir/lcsstaff/2001/01interim.

Meeting Summaries	Topics Discussed
July 10, 2001	Organizational meeting; overview of Colorado criminal sentencing laws; presentations by state agencies, interest groups, law enforcement associations, citizens, and citizen groups.
September 4, 2001	Report from Subcommittee on Simplification and Clarification of Colorado's sentencing laws and consideration of legislative recommendations; progress reports from other subcommittees.
September 26, 2001	Report from Subcommittee on Substance Abuse Treatment and Alternative Sentencing and Subcommittee on Demographic Disparity; consideration of legislative recommendations.
October 4, 2001	Updates on draft bill requests; report from Subcommittee on Truth-in-Sentencing, Parole, and Judicial Discretion; discussion of bill draft requests.
October 23, 2001	Final committee action on draft legislation and selection of bill sponsors.

Memoranda and Reports

Publications

January 2001	<i>An Overview of the Colorado Adult Criminal Justice System</i> , Colorado Legislative Council.
August 2001	<i>DOC Prison and Community Substance Abuse Treatment</i> (presentation materials), Department of Corrections.
August 2001	<i>Criminal History Profile of Incarcerated Drug Offenders</i> , Department of Corrections.
July 2001	<i>Blueprints for Violence Prevention</i> , U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention.
June 2001	<i>From Prison to Home: The Dimensions and Consequences of Prisoner Reentry</i> , The Urban Institute.
June 2001	<i>Critical Choices: Making Drug Policy at the State Level</i> , Drug Strategies.
March 2001	<i>Directory of Licensed Treatment Programs</i> , Colorado Department of Human Services, Alcohol and Drug Abuse Division.
March 2001	<i>Directory of Level I and Level II DUI Treatment Programs</i> , Colorado Department of Human Services, Alcohol and Drug Abuse Division.
October 2000	<i>Reducing Racial Disparity in the Criminal Justice System</i> , The Sentencing Project.
October 1999	<i>Principals of Drug Addiction Treatment</i> , National Institute on Drug Abuse.
March 1998	<i>Breaking the Cycle with Science Based Policy</i> , The Office of National Drug Control Policy.
Undated	<i>Justice on Trial: Racial Disparities in the American Criminal Justice System</i> , Leadership Conference on Civil Rights, Leadership Conference Education Fund.
Undated	<i>State Assembly Presentation Alcohol and Drug Use and Abuse in Colorado: Prevalence and Trends</i> , Colorado Department of Human Services, Alcohol and Drug Abuse Division.

Agency Reports

FY 2001	Listing of Alcohol and Drug Abuse Division payments to substance abuse treatment providers.
FY 2001	Listing of Alcohol and Drug Abuse Division-funded residential substance abuse treatment.
FY 2000	Colorado Board of Parole, Annual Report.
FY 2000	Colorado Department of Corrections, Statistical Report.

Legislative Council Staff Memoranda Titles

September 28, 2001	<i>Juvenile Defendants and Time from Arrest to Adjudication.</i>
September 24, 2001	<i>Representation of Minorities in Colorado Criminal Justice System.</i>
August 17, 2001	<i>Department of Human Services Response to questions from July 17, 2001, Subcommittee Meeting.</i>
August 17, 2001	<i>Legislative Council Staff Response to questions from July 17, 2001, Subcommittee Meeting.</i>
August 8, 2001	<i>National Conference of State Legislatures staff Response to Questions from July 17, 2001, Subcommittee Meeting.</i>
August 7, 2001	<i>Length of Sentence Served/Parole Eligibility.</i>
July 20, 2001	<i>Over-representation of Minorities in Colorado's Criminal Justice System.</i>
July 12, 2001	<i>Alternatives to Incarceration for Non-violent Offenders.</i>
July 2001	<i>List of Felony Offenses.</i>
June 2001	<i>Mandatory Sentences to Incarceration in the Colorado Criminal Code.</i>
June 2001	<i>Sentencing Law as of June 2001.</i>

Other Resource Materials

August 21, 2001	<i>Chart of 34 possible sentences for the crime of second degree assault under current law; prepared by the Department of Law.</i>
July 23, 2001	<i>Example of sentencing under current law for a person convicted of sexual assault on a child; prepared by OLLS.</i>
Undated	<i>Flowchart of the existing sentencing scheme and a new proposed sentencing scheme; prepared by the Department of Law.</i>
Undated	<i>Verbal flowchart of the existing sentencing scheme; prepared by the Department of Law.</i>
Undated	<i>Table of the average actual time served under indeterminate sentencing in Wisconsin and the Wisconsin sentencing guidelines worksheet.</i>

**Second Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

DRAFT

LLS NO. 02-0170.01 Michael Dohr

SENATE BILL

SENATE SPONSORSHIP

Gordon, Linkhart, and Windels

HOUSE SPONSORSHIP

Hefley, Groff, and Madden

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING PENALTIES FOR PERSONS CONVICTED OF CRIMINAL**
102 **VIOLATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Criminal Sentencing. Decreases the penalty for use of a schedule I or II controlled substance to a class 6 felony. Reduces to a class 6 felony the penalty for a first possession offense when the amount of a schedule I through IV controlled substance is one gram or less. Lowers to a class 4 felony the penalty for a second or subsequent possession offense when the amount of a schedule I through IV controlled substance is one gram or less. Increases the drug offender surcharge for all classes of drug offenses.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Reduces the percentage of the drug offender surcharge appropriated to the drug offender surcharge fund. Creates the drug offender treatment fund and appropriates a portion of the drug offender surcharge to said fund. Creates a state drug offender treatment board ("state board"). Identifies the state board membership as the president of the Colorado district attorneys' council, the state public defender, and the state court administrator. Authorizes the state board to allocate moneys to drug treatment programs and drug offender treatment boards in each judicial district. Requires each judicial district to create a drug offender treatment board. Directs each drug offender treatment board to consist of a district attorney, a public defender, and a probation officer. Stipulates that the drug offender treatment boards will distribute moneys to drug treatment providers in the judicial districts.

Allows an offender who has 2 previous felony convictions and who is convicted of possession of one gram or less of a schedule I through IV controlled substance to be placed on probation. Extends the court's power to commit a probationer to county jail during the probation period to an aggregate period of 180 days.

Requires all portions of the act, except the provision implementing the 180-day extension, to return to existing language if the expected savings from the act are not applied to the drug offender treatment fund in the fiscal year beginning in 2004 or any fiscal year thereafter.

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

SECTION 1. Legislative intent. It is the intent of the general assembly to reduce the felony level of drug possession offenses where the defendant possesses a small amount of a controlled substance. In reducing the felony level, the general assembly intends to use the anticipated savings to fund drug offender treatment programs. By increasing the availability of funding for drug treatment, the general assembly anticipates decreasing the number of drug-dependant Coloradans. The general assembly finds that Colorado will benefit from fewer drug-dependant Coloradans through a reduced burden on the state's criminal justice system, penal system, and health care system. In addition, Colorado will experience many other social and economic benefits by reducing the number of drug-dependant Coloradans.

SECTION 2. 18-18-404 (1), Colorado Revised Statutes, is amended, and the said 18-18-404 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

1 **18-18-404. Unlawful use of a controlled substance - repeal.**

2 (1) (a) Except as is otherwise provided for offenses concerning marihuana and
3 marihuana concentrate in sections 18-18-406 and 18-18-406.5, any person who
4 uses any controlled substance, except when it is dispensed by or under the direction
5 of a person licensed or authorized by law to prescribe, administer, or dispense such
6 controlled substance for bona fide medical needs, commits:

7 ~~(a)~~ (I) A class 5 6 felony, if the controlled substance is listed in schedule I
8 or II of part 2 of this article;

9 ~~(b)~~ (II) A class 1 misdemeanor, if the controlled substance is listed in
10 schedule III, IV, or V of part 2 of this article.

11 (b) THIS SUBSECTION (1) IS REPEALED ON THE FIRST DAY OF JULY
12 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE
13 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT
14 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS
15 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE
16 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE
17 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR
18 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE
19 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

20 (1.1) (a) ~~EXCEPT AS IS OTHERWISE PROVIDED FOR OFFENSES~~
21 CONCERNING MARIHUANA AND MARIHUANA CONCENTRATE IN SECTIONS
22 18-18-406 AND 18-18-406.5, ANY PERSON WHO USES ANY CONTROLLED
23 SUBSTANCE, EXCEPT WHEN IT IS DISPENSED BY OR UNDER THE DIRECTION
24 OF A PERSON LICENSED OR AUTHORIZED BY LAW TO PRESCRIBE,
25 ADMINISTER, OR DISPENSE SUCH CONTROLLED SUBSTANCE FOR BONA FIDE
26 MEDICAL NEEDS, COMMITS:

27 (I) A CLASS 5 FELONY, IF THE CONTROLLED SUBSTANCE IS LISTED

1 IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE;

2 (II) A CLASS 1 MISDEMEANOR, IF THE CONTROLLED SUBSTANCE IS
3 LISTED IN SCHEDULE III, IV, OR V OF PART 2 OF THIS ARTICLE.

4 (b) THIS SUBSECTION (1.1) SHALL ONLY BECOME EFFECTIVE IF
5 SUBSECTION (1) OF THIS SECTION IS REPEALED. THIS SUBSECTION (1.1)
6 SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL
7 OF SUBSECTION (1) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES
8 COMMITTED ON OR AFTER THAT DATE.

9 **SECTION 3.** 18-18-405 (2) and (2.5) and the introductory portion to
10 18-18-405 (3) (a), Colorado Revised Statutes, are amended, and the said
11 18-18-405 is further amended BY THE ADDITION OF THE FOLLOWING
12 NEW SUBSECTIONS, to read:

13 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
14 **sale, or possession - repeal.** (2) (a) Except as is otherwise provided for
15 offenses concerning marihuana and marihuana concentrate in section 18-18-406,
16 AND FOR POSSESSION OFFENSES INVOLVING ONE GRAM OR LESS OF A
17 SCHEDULE I THROUGH IV CONTROLLED SUBSTANCE IN SUBSECTION (2.3) OF
18 THIS SECTION, and FOR offenses involving minors in section 18-18-407 (1) (g),
19 any person who violates any of the provisions of subsection (1) of this section:

20 ~~(a)~~ (I) In the case of a controlled substance listed in schedule I or II of part
21 2 of this article, commits:

22 ~~(H)~~ (A) A class 3 felony; except that a person commits a class 4 felony if
23 such violation is based on the possession of a controlled substance listed in schedule
24 II unless otherwise provided in paragraph (a) of subsection (3) of this section; or

25 ~~(H)~~ (B) A class 2 felony, if the violation is committed subsequent to a prior
26 conviction for a violation to which this paragraph (a) SUBPARAGRAPH (I) applies;

27 ~~(b)~~ (II) In the case of a controlled substance listed in schedule III of part 2

1 of this article, commits:

2 ⊕ (A) A class 4 felony; or

3 ⊕ (B) A class 3 felony, if the violation is committed subsequent to any prior

4 conviction under SUBPARAGRAPH (I) OF THIS paragraph (a) ~~of this subsection (2)~~

5 or this ~~paragraph (b)~~ SUBPARAGRAPH (II);

6 ⊕ (III) In the case of a controlled substance listed in schedule IV of part

7 2 of this article, commits:

8 ⊕ (A) A class 5 felony; or

9 ⊕ (B) A class 4 felony, if the violation is committed subsequent to a prior

10 conviction for a violation to which ~~paragraph (a) or (b) of this subsection (2) or this~~

11 ~~paragraph (c)~~ SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) OR THIS

12 SUBPARAGRAPH (III) applies;

13 ⊕ (IV) In the case of a controlled substance listed in schedule V of part 2

14 of this article, commits:

15 ⊕ (A) A class 1 misdemeanor; or

16 ⊕ (B) A class 5 felony, if the violation is committed subsequent to any prior

17 conviction under ~~paragraph (a), (b), or (c) of this subsection (2) or this paragraph~~

18 ~~(d)~~ SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH (a) OR THIS

19 SUBPARAGRAPH (IV).

20 (b) THIS SUBSECTION (2) IS REPEALED ON THE FIRST DAY OF JULY

21 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE

22 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT

23 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS

24 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE

25 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE

26 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR

27 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE

1 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

2 (2.1) (a) EXCEPT AS IS OTHERWISE PROVIDED FOR OFFENSES
3 CONCERNING MARIHUANA AND MARIHUANA CONCENTRATE IN SECTION
4 18-18-406 AND OFFENSES INVOLVING MINORS IN SECTION 18-18-407 (1)(g),
5 ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (1)
6 OF THIS SECTION:

7 (I) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE
8 I OR II OF PART 2 OF THIS ARTICLE, COMMITS:

9 (A) A CLASS 3 FELONY; EXCEPT THAT A PERSON COMMITS A CLASS
10 4 FELONY IF SUCH VIOLATION IS BASED ON THE POSSESSION OF A
11 CONTROLLED SUBSTANCE LISTED IN SCHEDULE II UNLESS OTHERWISE
12 PROVIDED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION; OR

13 (B) A CLASS 2 FELONY, IF THE VIOLATION IS COMMITTED
14 SUBSEQUENT TO A PRIOR CONVICTION FOR A VIOLATION TO WHICH THIS
15 SUBPARAGRAPH (I) APPLIES;

16 (II) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN
17 SCHEDULE III OF PART 2 OF THIS ARTICLE, COMMITS:

18 (A) A CLASS 4 FELONY; OR

19 (B) A CLASS 3 FELONY, IF THE VIOLATION IS COMMITTED
20 SUBSEQUENT TO ANY PRIOR CONVICTION UNDER SUBPARAGRAPH (I) OF THIS
21 PARAGRAPH (a) OR THIS SUBPARAGRAPH (II);

22 (III) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN
23 SCHEDULE IV OF PART 2 OF THIS ARTICLE, COMMITS:

24 (A) A CLASS 5 FELONY; OR

25 (B) A CLASS 4 FELONY, IF THE VIOLATION IS COMMITTED
26 SUBSEQUENT TO A PRIOR CONVICTION FOR A VIOLATION TO WHICH
27 SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH

1 (III) APPLIES;

2 (IV) IN THE CASE OF A CONTROLLED SUBSTANCE LISTED IN

3 SCHEDULE V OF PART 2 OF THIS ARTICLE, COMMITS:

4 (A) A CLASS 1 MISDEMEANOR; OR

5 (B) A CLASS 5 FELONY, IF THE VIOLATION IS COMMITTED

6 SUBSEQUENT TO ANY PRIOR CONVICTION UNDER SUBPARAGRAPH (I), (II), OR

7 (III) OF THIS PARAGRAPH (a) OR THIS SUBPARAGRAPH (IV).

8 (b) THIS SUBSECTION (2.1) SHALL ONLY BECOME EFFECTIVE IF

9 SUBSECTION (2) OF THIS SECTION IS REPEALED. THIS SUBSECTION (2.1)

10 SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL

11 OF SUBSECTION (2) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES

12 COMMITTED ON OR AFTER THAT DATE.

13 (2.3) (a) ANY PERSON WHO VIOLATES THE PROVISIONS OF

14 SUBSECTION (1) OF THIS SECTION BY POSSESSION OF A CONTROLLED

15 SUBSTANCE LISTED IN SCHEDULES I THROUGH IV OF PART 2 OF THIS

16 ARTICLE IN AN AMOUNT WEIGHING ONE GRAM OR LESS COMMITS:

17 (I) A CLASS 6 FELONY; OR

18 (II) A CLASS 4 FELONY, IF THE VIOLATION IS COMMITTED

19 SUBSEQUENT TO ANY PRIOR CONVICTION UNDER SUBPARAGRAPH (I), (II), OR

20 (III) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR THIS

21 SUBSECTION (2.3).

22 (b) THIS SUBSECTION (2.3) IS REPEALED ON THE FIRST DAY OF JULY

23 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE

24 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT

25 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS

26 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE

27 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE

1 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR
2 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE
3 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

4 (2.5) (a) Notwithstanding the provisions of paragraph (c) SUBPARAGRAPH
5 (III) OF PARAGRAPH (a) of subsection (2) of this section, a person who violates the
6 provisions of subsection (1) of this section with regard to flunitrazepam commits a
7 class 3 felony; except that the person commits a class 2 felony if the violation is
8 committed subsequent to a prior conviction for a violation involving flunitrazepam or
9 to which SUBPARAGRAPH (I) OF paragraph (a) of subsection (2) of this section
10 applies.

11 (b) Any person convicted of violating the provisions of subsection (1) of this
12 section with regard to flunitrazepam shall be subject to the mandatory sentencing
13 provisions of subsection (3) of this section.

14 (c) THIS SUBSECTION (2.5) IS REPEALED ON THE FIRST DAY OF JULY
15 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE
16 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT
17 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS
18 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE
19 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE
20 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR
21 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE
22 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

23 (2.6) (a) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH
24 (III) OF PARAGRAPH (a) OF SUBSECTION (2.1) OF THIS SECTION, A PERSON
25 WHO VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION WITH
26 REGARD TO FLUNITRAZEPAM COMMITS A CLASS 3 FELONY; EXCEPT THAT
27 THE PERSON COMMITS A CLASS 2 FELONY IF THE VIOLATION IS COMMITTED

1 SUBSEQUENT TO A PRIOR CONVICTION FOR A VIOLATION INVOLVING
2 FLUNITRAZEPAM OR TO WHICH SUBPARAGRAPH (I) OF PARAGRAPH (a) OF
3 SUBSECTION (2.1) OF THIS SECTION APPLIES.

4 (b) ANY PERSON CONVICTED OF VIOLATING THE PROVISIONS OF
5 SUBSECTION (1) OF THIS SECTION WITH REGARD TO FLUNITRAZEPAM SHALL
6 BE SUBJECT TO THE MANDATORY SENTENCING PROVISIONS OF SUBSECTION
7 (3) OF THIS SECTION.

8 (c) THIS SUBSECTION (2.6) SHALL ONLY BECOME EFFECTIVE IF
9 SUBSECTION (2.5) OF THIS SECTION IS REPEALED. THIS SUBSECTION (2.6)
10 SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL
11 OF SUBSECTION (2.5) OF THIS SECTION AND SHALL APPLY ONLY TO
12 OFFENSES COMMITTED ON OR AFTER THAT DATE.

13 (3) (a) Except as otherwise provided in section 18-18-407 relating to
14 special offenders, any person convicted pursuant to SUBPARAGRAPH (I) OF
15 paragraph (a) of subsection (2) of this section for knowingly manufacturing,
16 dispensing, selling, distributing, possessing, or possessing with intent to manufacture,
17 dispense, sell, or distribute, or inducing, attempting to induce, or conspiring with one
18 or more other persons, to manufacture, dispense, sell, distribute, possess, or possess
19 with intent to manufacture, dispense, sell, or distribute an amount that is or has been
20 represented to be:

21 **SECTION 4.** 18-19-103, Colorado Revised Statutes, is amended to read:

22 **18-19-103. Source of revenues - allocation of moneys - repeal.**

23 (1) For offenses committed on and after July 1, 1996, each drug offender who is
24 convicted, or receives a deferred sentence pursuant to section 16-7-403, C.R.S.,
25 shall be required to pay a surcharge to the clerk of the court in the county in which
26 the conviction occurs or in which the deferred sentence is entered. Such surcharge
27 shall be in the following amounts:

1 (a) For each class 2 felony of which a person is convicted, ~~four thousand~~
2 ~~five hundred~~ FIVE THOUSAND dollars;

3 (b) For each class 3 felony of which a person is convicted, ~~three~~ FOUR
4 thousand dollars;

5 (c) For each class 4 felony of which a person is convicted, ~~one thousand five~~
6 ~~hundred~~ TWO THOUSAND dollars;

7 (d) For each class 5 felony of which a person is convicted, ~~one thousand~~
8 ~~one hundred twenty-five~~ ONE THOUSAND FIVE HUNDRED dollars;

9 (e) For each class 6 felony of which a person is convicted, ~~seven hundred~~
10 ~~fifty~~ ONE THOUSAND dollars;

11 (f) For each class 1 misdemeanor of which a person is convicted, ~~six~~
12 ~~hundred~~ SEVEN HUNDRED FIFTY dollars;

13 (g) For each class 2 misdemeanor of which a person is convicted, ~~four~~
14 ~~hundred fifty~~ SIX HUNDRED dollars;

15 (h) For each class 3 misdemeanor of which a person is convicted, ~~two~~
16 ~~hundred twenty-five~~ THREE HUNDRED dollars.

17 (2) Each drug offender convicted of a violation of section 18-18-406 (1),
18 or who receives a deferred sentence pursuant to section 16-7-403, C.R.S., for a
19 violation of section 18-18-406 (1), shall be assessed a surcharge of one hundred
20 FIFTY dollars.

21 (3) The clerk of the court shall disburse the surcharge required by
22 subsection (1) of this section as follows:

23 (a) Five percent shall be retained by the clerk for purposes of administering
24 the disbursement of the surcharge pursuant to this subsection (3).

25 (b) Four percent shall be disbursed to the investigating agency to cover the
26 costs of fingerprinting and photographing offenders pursuant to section 16-21-104
27 (1), C.R.S.

1 (c) One percent shall be disbursed to the sheriff of the county in which the
2 conviction or deferred sentence is entered, to cover the costs of fingerprinting and
3 photographing offenders pursuant to section 18-18-432 (3).

4 (d) ~~Ninety~~ SIXTY-FIVE percent shall be disbursed to the state treasurer
5 who shall credit the same to the drug offender surcharge fund created pursuant to
6 subsection (4) of this section.

7 (e) TWENTY-FIVE PERCENT SHALL BE DISBURSED TO THE STATE
8 TREASURER WHO SHALL CREDIT THE SAME TO THE DRUG OFFENDER
9 TREATMENT FUND CREATED PURSUANT TO SUBSECTION (5.5) OF THIS
10 SECTION.

11 (4) There is hereby created in the state treasury a drug offender surcharge
12 fund which shall consist of moneys received by the state treasurer pursuant to
13 paragraph (d) of subsection (3) of this section. All interest derived from the deposit
14 and investment of moneys in the fund shall be credited to the fund. Any moneys not
15 appropriated by the general assembly shall remain in the drug offender surcharge
16 fund and shall not be transferred or revert to the general fund of the state at the end
17 of any fiscal year. All moneys in the fund shall be subject to annual appropriation by
18 the general assembly to the judicial department, the department of corrections, the
19 division of criminal justice of the department of public safety, and the department of
20 human services, after consideration of the plan developed pursuant to section
21 16-11.5-102 (3), C.R.S., to cover the costs associated with substance abuse
22 assessment, testing, education, and treatment.

23 (5) The department of public safety shall award such moneys received by
24 it pursuant to subsection (4) of this section as are designated in the plan developed
25 pursuant to section 16-11.5-102 (3), C.R.S., and appropriated by the general
26 assembly for such purpose.

27 (5.5) THERE IS HEREBY CREATED IN THE STATE TREASURY A DRUG

1 OFFENDER TREATMENT FUND THAT SHALL CONSIST OF MONEYS RECEIVED
2 BY THE STATE TREASURER PURSUANT TO PARAGRAPH (e) OF SUBSECTION (3)
3 OF THIS SECTION AND ANY OTHER MONEYS APPROPRIATED THERETO. THE
4 FUND MAY ACCEPT GIFTS, GRANTS, AND DONATIONS. ALL INTEREST
5 DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND
6 SHALL BE CREDITED TO THE FUND. ANY MONEYS NOT APPROPRIATED BY
7 THE GENERAL ASSEMBLY SHALL REMAIN IN THE DRUG OFFENDER
8 TREATMENT FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE
9 GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR. ALL
10 MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY
11 THE GENERAL ASSEMBLY TO THE STATE JUDICIAL DEPARTMENT FOR
12 ALLOCATION TO THE STATE DRUG OFFENDER TREATMENT BOARD, TO
13 COVER THE COSTS ASSOCIATED WITH SUBSTANCE ABUSE ASSESSMENT,
14 TESTING, EDUCATION, AND TREATMENT.

15 (6) (a) The court may not waive any portion of the surcharge required by
16 this section unless the court first finds that the drug offender is financially unable to
17 pay any portion of said surcharge.

18 (b) The finding required by paragraph (a) of this subsection (6) shall only be
19 made after a hearing at which the drug offender shall have the burden of presenting
20 clear and convincing evidence that he OR SHE is financially unable to pay any portion
21 of the surcharge.

22 (c) The court shall waive only that portion of the surcharge which the court
23 has found the drug offender is financially unable to pay.

24 (7) THIS SECTION IS REPEALED ON THE FIRST DAY OF JULY
25 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE
26 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT
27 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS

1 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE
2 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE
3 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR
4 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE
5 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

6 **SECTION 5.** Article 19 of title 18, Colorado Revised Statutes, is
7 amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to
8 read:

9 **18-19-103.1. Source of revenues - allocation of moneys.**

10 (1) FOR OFFENSES COMMITTED ON AND AFTER JULY 1, 1996, EACH DRUG
11 OFFENDER WHO IS CONVICTED, OR RECEIVES A DEFERRED SENTENCE
12 PURSUANT TO SECTION 16-7-403, C.R.S., SHALL BE REQUIRED TO PAY A
13 SURCHARGE TO THE CLERK OF THE COURT IN THE COUNTY IN WHICH THE
14 CONVICTION OCCURS OR IN WHICH THE DEFERRED SENTENCE IS ENTERED.
15 SUCH SURCHARGE SHALL BE IN THE FOLLOWING AMOUNTS:

16 (a) FOR EACH CLASS 2 FELONY OF WHICH A PERSON IS CONVICTED,
17 FOUR THOUSAND FIVE HUNDRED DOLLARS;

18 (b) FOR EACH CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED,
19 THREE THOUSAND DOLLARS;

20 (c) FOR EACH CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED,
21 ONE THOUSAND FIVE HUNDRED DOLLARS;

22 (d) FOR EACH CLASS 5 FELONY OF WHICH A PERSON IS CONVICTED,
23 ONE THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS;

24 (e) FOR EACH CLASS 6 FELONY OF WHICH A PERSON IS CONVICTED,
25 SEVEN HUNDRED FIFTY DOLLARS;

26 (f) FOR EACH CLASS 1 MISDEMEANOR OF WHICH A PERSON IS
27 CONVICTED, SIX HUNDRED DOLLARS;

1 (g) FOR EACH CLASS 2 MISDEMEANOR OF WHICH A PERSON IS
2 CONVICTED, FOUR HUNDRED FIFTY DOLLARS;

3 (h) FOR EACH CLASS 3 MISDEMEANOR OF WHICH A PERSON IS
4 CONVICTED, TWO HUNDRED TWENTY-FIVE DOLLARS.

5 (2) EACH DRUG OFFENDER CONVICTED OF A VIOLATION OF SECTION
6 18-18-406 (1), OR WHO RECEIVES A DEFERRED SENTENCE PURSUANT TO
7 SECTION 16-7-403, C.R.S., FOR A VIOLATION OF SECTION 18-18-406 (1),
8 SHALL BE ASSESSED A SURCHARGE OF ONE HUNDRED DOLLARS.

9 (3) THE CLERK OF THE COURT SHALL DISBURSE THE SURCHARGE
10 REQUIRED BY SUBSECTION (1) OF THIS SECTION AS FOLLOWS:

11 (a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK FOR PURPOSES
12 OF ADMINISTERING THE DISBURSAL OF THE SURCHARGE PURSUANT TO THIS
13 SUBSECTION (3).

14 (b) FOUR PERCENT SHALL BE DISBURSED TO THE INVESTIGATING
15 AGENCY TO COVER THE COSTS OF FINGERPRINTING AND PHOTOGRAPHING
16 OFFENDERS PURSUANT TO SECTION 16-21-104 (1), C.R.S.

17 (c) ONE PERCENT SHALL BE DISBURSED TO THE SHERIFF OF THE
18 COUNTY IN WHICH THE CONVICTION OCCURS OR IN WHICH THE DEFERRED
19 SENTENCE IS ENTERED, TO COVER THE COSTS OF FINGERPRINTING AND
20 PHOTOGRAPHING OFFENDERS PURSUANT TO SECTION 18-18-432 (3).

21 (d) NINETY PERCENT SHALL BE DISBURSED TO THE STATE
22 TREASURER WHO SHALL CREDIT THE SAME TO THE DRUG OFFENDER
23 SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (4) OF THIS
24 SECTION.

25 (4) THERE IS HEREBY CREATED IN THE STATE TREASURY A DRUG
26 OFFENDER SURCHARGE FUND THAT SHALL CONSIST OF MONEYS RECEIVED
27 BY THE STATE TREASURER PURSUANT TO PARAGRAPH (d) OF SUBSECTION

1 (3) OF THIS SECTION. ALL INTEREST DERIVED FROM THE DEPOSIT AND
2 INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND.
3 ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL
4 REMAIN IN THE DRUG OFFENDER SURCHARGE FUND AND SHALL NOT BE
5 TRANSFERRED OR REVERT TO THE GENERAL FUND OF THE STATE AT THE
6 END OF ANY FISCAL YEAR. ALL MONEYS IN THE FUND SHALL BE SUBJECT TO
7 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE JUDICIAL
8 DEPARTMENT, THE DEPARTMENT OF CORRECTIONS, THE DIVISION OF
9 CRIMINAL JUSTICE OF THE DEPARTMENT OF PUBLIC SAFETY, AND THE
10 DEPARTMENT OF HUMAN SERVICES, AFTER CONSIDERATION OF THE PLAN
11 DEVELOPED PURSUANT TO SECTION 16-11.5-102 (3), C.R.S., TO COVER THE
12 COSTS ASSOCIATED WITH SUBSTANCE ABUSE ASSESSMENT, TESTING,
13 EDUCATION, AND TREATMENT.

14 (5) THE DEPARTMENT OF PUBLIC SAFETY SHALL AWARD SUCH
15 MONEYS RECEIVED BY IT PURSUANT TO SUBSECTION (4) OF THIS SECTION
16 AS ARE DESIGNATED IN THE PLAN DEVELOPED PURSUANT TO SECTION
17 16-11.5-102 (3), C.R.S., AND APPROPRIATED BY THE GENERAL ASSEMBLY
18 FOR SUCH PURPOSE.

19 (6) (a) THE COURT MAY NOT WAIVE ANY PORTION OF THE
20 SURCHARGE REQUIRED BY THIS SECTION UNLESS THE COURT FIRST FINDS
21 THAT THE DRUG OFFENDER IS FINANCIALLY UNABLE TO PAY ANY PORTION
22 OF SAID SURCHARGE.

23 (b) THE FINDING REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION
24 (6) SHALL ONLY BE MADE AFTER A HEARING AT WHICH THE DRUG OFFENDER
25 SHALL HAVE THE BURDEN OF PRESENTING CLEAR AND CONVINCING
26 EVIDENCE THAT HE OR SHE IS FINANCIALLY UNABLE TO PAY ANY PORTION
27 OF THE SURCHARGE.

1 (c) THE COURT SHALL WAIVE ONLY THAT PORTION OF THE
2 SURCHARGE THAT THE COURT HAS FOUND THE DRUG OFFENDER IS
3 FINANCIALLY UNABLE TO PAY.

4 (7) THIS SECTION SHALL ONLY BECOME EFFECTIVE IF SECTION
5 18-19-103 IS REPEALED. THIS SECTION SHALL BECOME EFFECTIVE ON THE
6 JULY 1 EFFECTIVE DATE OF THE REPEAL OF SECTION 18-19-103 AND SHALL
7 APPLY ONLY TO OFFENSES COMMITTED ON OR AFTER THAT DATE.

8 **18-19-104. State drug offender treatment boards - repeal.**

9 (1) THERE IS HEREBY CREATED THE STATE DRUG OFFENDER TREATMENT
10 BOARD THAT SHALL CONSIST OF THREE MEMBERS AS FOLLOWS:

11 (a) THE PRESIDENT OF THE COLORADO DISTRICT ATTORNEYS'
12 COUNCIL, OR HIS OR HER DESIGNEE;

13 (b) THE STATE PUBLIC DEFENDER, OR HIS OR HER DESIGNEE; AND

14 (c) THE STATE COURT ADMINISTRATOR, OR HIS OR HER DESIGNEE.

15 (2) (a) THE STATE DRUG OFFENDER TREATMENT BOARD SHALL
16 ALLOCATE AT LEAST EIGHTY PERCENT OF THE YEARLY DRUG OFFENDER
17 TREATMENT FUND ALLOCATION TO THE JUDICIAL DISTRICT DRUG
18 OFFENDER TREATMENT BOARDS CREATED PURSUANT TO SECTION
19 18-19-105. SUCH ALLOCATION SHALL BE BASED UPON A FORMULA
20 DEVELOPED BY THE STATE DRUG OFFENDER TREATMENT BOARD. THE
21 FORMULA, AT A MINIMUM, SHALL ACCOUNT FOR A JUDICIAL DISTRICT'S
22 POPULATION AND THE NUMBER OF DRUG CASE FILINGS IN THE JUDICIAL
23 DISTRICT.

24 (b) THE STATE DRUG OFFENDER TREATMENT BOARD MAY ALLOCATE
25 UP TO TWENTY PERCENT OF THE YEARLY DRUG OFFENDER TREATMENT
26 FUND ALLOCATION TO DRUG TREATMENT PROGRAMS THAT SERVE MORE
27 THAN ONE JUDICIAL DISTRICT. WHEN ALLOCATING FUNDS PURSUANT TO

1 THIS PARAGRAPH (b), THE STATE DRUG OFFENDER TREATMENT BOARD IS
2 ENCOURAGED TO FUND AND DEVELOP INNOVATIVE AND EFFECTIVE DRUG
3 TREATMENT PROGRAMS.

4 (3) THE STATE DRUG OFFENDER TREATMENT BOARD MAY ADOPT
5 RULES AND GUIDELINES AS NECESSARY TO PERFORM THE FUNCTIONS OF
6 THE BOARD.

7 (4) THIS SECTION IS REPEALED ON THE FIRST DAY OF JULY
8 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE
9 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT
10 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS
11 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE
12 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE
13 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR
14 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE
15 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

16 **18-19-105. Judicial district drug offender treatment boards**
17 **- repeal.** (1) EACH JUDICIAL DISTRICT SHALL CREATE A DRUG OFFENDER
18 TREATMENT BOARD CONSISTING OF THE DISTRICT ATTORNEY SERVING THE
19 JUDICIAL DISTRICT OR HIS OR HER DESIGNEE, THE CHIEF PUBLIC DEFENDER
20 SERVING THE JUDICIAL DISTRICT OR HIS OR HER DESIGNEE, AND A
21 PROBATION OFFICER WORKING IN THE JUDICIAL DISTRICT CHOSEN BY THE
22 CHIEF JUDGE OF THE JUDICIAL DISTRICT.

23 (2) EACH DRUG OFFENDER TREATMENT BOARD SHALL RECEIVE
24 MONEYS FROM THE STATE DRUG OFFENDER TREATMENT BOARD PURSUANT
25 TO SECTION 18-19-104 (2) (a) AND SHALL DISTRIBUTE THOSE MONEYS TO
26 DRUG TREATMENT PROGRAMS BASED IN THE JUDICIAL DISTRICT. NO
27 PROGRAM SHALL RECEIVE MONEYS FROM THE DRUG OFFENDER TREATMENT

1 BOARD WITHOUT A MAJORITY VOTE OF THE BOARD.

2 (3) EACH JUDICIAL DISTRICT'S DRUG OFFENDER TREATMENT BOARD
3 MAY ADOPT RULES AND GUIDELINES AS NECESSARY TO PERFORM THE
4 FUNCTIONS OF THE BOARD.

5 (4) THIS SECTION IS REPEALED ON THE FIRST DAY OF JULY
6 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE
7 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT
8 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS
9 GENERATED FROM ESTIMATED SAVINGS FROM THE ENACTMENT OF SENATE
10 BILL 02-____, ENACTED AT THE SECOND REGULAR SESSION OF THE
11 SIXTY-THIRD GENERAL ASSEMBLY, DURING ANY GIVEN FISCAL YEAR
12 COMMENCING ON OR AFTER JULY 1, 2004, WAS NOT APPROPRIATED TO THE
13 DRUG OFFENDER TREATMENT FUND FOR THE SAME FISCAL YEAR.

14 **SECTION 6.** 16-11-201 (2), Colorado Revised Statutes, is amended, and
15 the said 16-11-201 is further amended BY THE ADDITION OF NEW
16 SUBSECTION, to read:

17 **16-11-201. Application for probation - repeal.** (2) (a) A person
18 who has been twice convicted of a felony under the laws of this state, any other state,
19 or the United States prior to the conviction on which his OR HER application is based
20 shall not be eligible for probation; EXCEPT THAT AN OFFENDER CONVICTED OF
21 A SECOND OR SUBSEQUENT VIOLATION OF SECTION 18-18-405 (2.3), C.R.S.,
22 MAY BE ELIGIBLE FOR PROBATION. ~~and~~ Notwithstanding any other provision of
23 law, a person who has been convicted of one or more felonies under the laws of this
24 state, any other state, or the United States within ten years prior to a class 1, 2, or
25 3 felony conviction on which his OR HER application is based shall not be eligible for
26 probation.

27 (b) THIS SUBSECTION (2) IS REPEALED ON THE FIRST DAY OF JULY

1 FOLLOWING RECEIPT BY THE REVISOR OF STATUTES OF WRITTEN NOTICE
2 FROM THE JOINT BUDGET COMMITTEE STAFF DIRECTOR THAT AN AMOUNT
3 OF MONEY OF AT LEAST TWO MILLION TWO HUNDRED THOUSAND DOLLARS
4 GENERATED FROM SAVINGS FROM THE ENACTMENT OF SENATE BILL 02-____,
5 ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL
6 ASSEMBLY, DURING ANY GIVEN FISCAL YEAR COMMENCING ON OR AFTER
7 JULY 1, 2004, WAS NOT APPROPRIATED TO THE DRUG OFFENDER
8 TREATMENT FUND FOR THE SAME FISCAL YEAR.

9 (2.1) (a) A PERSON WHO HAS BEEN TWICE CONVICTED OF A FELONY
10 UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED
11 STATES PRIOR TO THE CONVICTION ON WHICH HIS OR HER APPLICATION IS
12 BASED SHALL NOT BE ELIGIBLE FOR PROBATION, AND NOTWITHSTANDING
13 ANY OTHER PROVISION OF LAW, A PERSON WHO HAS BEEN CONVICTED OF
14 ONE OR MORE FELONIES UNDER THE LAWS OF THIS STATE, ANY OTHER
15 STATE, OR THE UNITED STATES WITHIN TEN YEARS PRIOR TO A CLASS 1, 2,
16 OR 3 FELONY CONVICTION ON WHICH HIS OR HER APPLICATION IS BASED
17 SHALL NOT BE ELIGIBLE FOR PROBATION.

18 (b) THIS SUBSECTION (2.1) SHALL ONLY BECOME EFFECTIVE IF
19 SUBSECTION (2) OF THIS SECTION IS REPEALED. THIS SUBSECTION (2.1)
20 SHALL BECOME EFFECTIVE ON THE JULY 1 EFFECTIVE DATE OF THE REPEAL
21 OF SUBSECTION (2) OF THIS SECTION AND SHALL APPLY ONLY TO OFFENSES
22 COMMITTED ON OR AFTER THAT DATE.

23 **SECTION 7.** 16-11-202 (1), Colorado Revised Statutes, is amended to
24 read:

25 **16-11-202. Probationary power of court.** (1) When it appears to
26 the satisfaction of the court that the ends of justice and the best interest of the public,
27 as well as the defendant, will be served thereby, the court may grant the defendant

1 probation for such period and upon such terms and conditions as it deems best. If
2 the court chooses to grant the defendant probation, the order placing the defendant
3 on probation shall take effect upon entry and, if any appeal is brought, shall remain
4 in effect pending review by an appellate court unless the court grants a stay of
5 probation pursuant to section 16-4-201. Unless an appeal is filed that raises a claim
6 that probation was granted contrary to the provisions of this title, the trial court shall
7 retain jurisdiction of the case for the purpose of adjudicating complaints filed against
8 the defendant that allege a violation of the terms and conditions of probation. In
9 addition to imposing other conditions, the court has the power to commit the
10 defendant to any jail operated by the county or city and county in which the offense
11 was committed during such time or for such intervals within the period of probation
12 as the court determines. The aggregate length of any such commitment whether
13 continuous or at designated intervals shall not exceed ~~ninety~~ ONE HUNDRED EIGHTY
14 days for a felony, sixty days for a misdemeanor, or ten days for a petty offense unless
15 it is a part of a work release program pursuant to section 16-11-212. That the
16 defendant submit to commitment imposed under this section shall be deemed a
17 condition of probation.

18 **SECTION 8.** 42-2-125 (1) (k) (II), Colorado Revised Statutes, is
19 amended to read:

20 **42-2-125. Mandatory revocation of license and permit.** (1) The
21 department shall immediately revoke the license or permit of any driver or minor
22 driver upon receiving a record showing that such driver has:

23 (k) (II) In the case of a minor driver, been convicted of or adjudicated for
24 any offense provided for in section ~~18-18-404 (1) (b), 18-18-405 (2) (d) (I),~~
25 18-18-404 (1) (a) (II), 18-18-405 (2) (a) (IV) (A), or 18-18-406 (1), (3) (a) (I),
26 or (4) (a) (I), C.R.S., or any comparable municipal charter or ordinance offense.

27 **SECTION 9. Effective date - applicability.** (1) This act shall take

1 effect July 1, 2002.

2 (2) The amendments to section 18-18-404 (1) (a) (I), C.R.S., the
3 amendments to section 18-18-405 (2) (a), C.R.S., the amendments to section
4 18-18-405 (2.5), C.R.S., the amendments to section 16-11-201 (2) (a), C.R.S., the
5 newly created subsection 18-18-405 (2.3), the newly created section 18-19-104,
6 the newly created section 18-19-105, and sections 4, 7, and 8 of the act shall apply
7 to offenses committed on or after said July 1, 2002.

8 **SECTION 10. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate preservation of
10 the public peace, health, and safety.

Colorado Legislative Council Staff

**STATE
FISCAL IMPACT**

Drafting Number: LLS 02-0170
Prime Sen. Gordon
Sponsor(s): Rep. Hefley

Date: November 26, 2001
Bill Status: Interim Committee on Criminal
Sentencing
Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING PENALTIES FOR PERSONS CONVICTED OF CRIMINAL VIOLATIONS.

Fiscal Impact Summary	FY 2002/2003	FY 2003/2004
State Revenues		
Drug Offender Surcharge Fund	(\$673,516)	(\$715,274)
Drug Offender Treatment Fund	\$952,494	\$1,011,548
Cash Funds - Courts	\$15,499	\$16,460
State Expenditures		
General Fund	\$0	\$0
FTE Position Change	0.0 FTE	0.0 FTE
TABOR refund from General Fund*		\$309,200
Effective Date: July 1, 2002		
Appropriation Summary for FY 2001/2002: No appropriation is required.		
Local Government Impact: See Local Government Impact section		

* Under current law, the state is required to refund 105 percent of the amount estimated to be refunded by the six-tier sales tax refund mechanism.

Note: The official Legislative Council staff revenue forecast for September 2001 indicates a TABOR revenue surplus for the next several years. However, revenue tracking since the September forecast indicates a potential for a revision downward of the surplus amount. If this occurs, the fiscal note will be revised to reflect the most recent revenue forecast.

Summary of Legislation

This bill makes several changes to the offense level of illegal drug use or possession. Changes include reducing the penalty for **use** of a schedule I or II controlled substance and creating the new penalty of **possession** of one gram or less of a controlled substance. The bill reduces:

- use of a schedule I or II controlled substance from a class 5 felony to a class 6 felony;

Bill A

- possession of a schedule I controlled substance from a class 3 felony to a class 6 felony if the amount is one gram or less;
- possession of a schedule II or III controlled substance from a class 4 felony to a class 6 felony if the amount is one gram or less;
- possession of a schedule IV controlled substance from a class 5 felony to a class 6 felony if the amount is one gram or less; and
- a second or subsequent offense of possession of a schedule I through IV controlled substance to a class 4 felony when the amount is one gram or less.

The bill also increases the Drug Offender Surcharge for all classes of drug offenses, creates the Drug Offender Treatment Fund, and directs 25 percent of Drug Offender Surcharge revenue to the Drug Offender Treatment Fund. The bill creates the State Drug Offender Treatment Board and specifies board membership. The board is authorized to allocate moneys to local Drug Offender Treatment Boards, consisting of a district attorney, a public defender, and a probation officer, for distribution to drug treatment providers in the judicial districts.

The bill allows an offender who has two previous felony convictions and who is convicted of possession of one gram or less of a schedule I through IV controlled substance to be placed on probation. The bill extends the court's power to commit a probationer to county jail during the probation period from 90 days to a cumulative period of 180 days.

The bill requires all portions of the act, except the provision implementing the 180-day extension, to return to existing language if \$2.2 million is not appropriated to the drug offender treatment fund in the fiscal year beginning in 2004 or any fiscal year thereafter.

State Revenues

The bill creates the Drug Offender Treatment Fund, increases drug offender surcharges on felonies, misdemeanors, and marihuana petty offenses, and directs 25 percent of the revenue collected to the Fund. The surcharge increases are shown in Table 1.

Table 1. Drug Offender Surcharge Increases			
Penalty	Current Fine	Proposed Fine	Difference
Class 2 Felony	\$4,500	\$5,000	\$500
Class 3 Felony	3,000	4,000	1,000

Bill A

Class 4 Felony	1,500	2,000	500
Class 5 Felony	1,250	1,500	250
Class 6 Felony	750	1,000	250
Class 1 Misdemeanor	600	750	150
Class 2 Misdemeanor	450	600	150
Class 3 Misdemeanor	225	300	75
Class 2 Petty Offense (marihuana)	100	150	50
Average	\$1,375	\$1,700	\$325

While revenue collections will increase as a result of the higher surcharge amounts, it is estimated that 40 percent of the increased surcharge assessments will be collected. The Judicial Department estimates that FY 2001-02 Drug Offender Surcharge revenue will be approximately \$3.5 million. The bill proposes to increase the assessment of Drug Offender Surcharge fines by 24 percent, or \$840,000. If 40 percent of the increased assessment is actually collected, revenue will increase by \$336,000. However, when taking into account the reduced penalties for drug possession of one gram or less, overall revenue is estimated to increase by \$310,000. Of the total, \$201,500 will be deposited to the Drug Offender Surcharge Fund, \$77,500 will be deposited to the Drug Offender Treatment Fund, and the remainder will be distributed to the court clerks, investigating agencies, and county sheriffs.

Because 25 percent of revenue collected is directed to the Drug Offender Treatment Fund, the bill will reduce the overall revenue directed to the Drug Offender Surcharge Fund. Of the total revenue collected, \$2.48 million will be deposited to the Drug Offender Surcharge Fund, \$0.95 million will be deposited to the Drug Offender Treatment Fund, and the remainder will be distributed to the court clerks, investigating agencies, and county sheriffs. The result is an estimated reduction to the Drug Offender Surcharge Fund of \$673,516.

State Expenditures

This bill will result in a General Fund savings of \$2,364,700 beginning in FY 2004-05 as a result of shorter prison sentences for offenders convicted of possessing one gram or less of an illegal drug. The fiscal note assumes the following:

- The lower penalty will not be offered to those offenders charged with a crime more serious than possession. According to the 1999 Colorado District Attorney's Council database, 2,026 offenders were convicted of possession of a schedule I through IV controlled substance. Of these, 918 were originally charged with a more serious crime, while possession was the most serious charge for 1,108 offenders.

Bill A

- Offenders convicted of the new crime of possessing one gram or less of an illegal drug will be sentenced to prison at the same rate as current possession offenders. Of the 1,108 offenders noted above, 299 were sentenced to the Department of Corrections.
- Approximately one-third of offenders convicted of drug possession will be arrested with one gram or less. Based on the Department of Public Safety, Division of Criminal Justice's 1998 sample of cases from ten judicial districts, 30.9 percent of drug cases involved possession of one gram or less.

Table 2 below shows the number of offenders estimated to be impacted by the lower class 6 felony sentence of possessing one gram or less of an illegal controlled substance. An estimated 93 offenders will be sentenced to the Department of Corrections and serve an average sentence length of 12 months. Beginning in FY 2004-05, the offenders will complete their sentences, resulting in an operating cost reduction compared to current sentences.

Table 2. Offenders Sentenced to DOC for Possessing One Gram or Less of an Illegal Drug					
Controlled Substance	Current Felony Class	Proposed Felony Class	Offenders Convicted of Possession	Offenders Sentenced to DOC	Offenders Sentenced Under Bill A (30.9%)
Schedule I	Class 3	Class 6	106	20	6
Schedule II, III	Class 4	Class 6	748	206	64
Schedule IV	Class 5	Class 6	254	73	23

The lower penalties for use of a schedule I or II controlled substance and for second and subsequent offenses are not anticipated to have a significant impact on the department's operations.

Five-Year Fiscal Impact on Correctional Facilities

Table 3 shows the five-year calculated savings of Criminal Sentencing Interim Committee Bill A. Operating costs are estimated to be \$26,238 per bed. It should be noted that the calculated savings begin in FY 2004-05. This estimate accounts for the estimated time for criminal filing, trial, disposition, and sentencing, followed by the estimated 12 months prison sentence of the new penalty for possessing one gram or less of an illegal drug.

Table 3. Five-Year Impact of Criminal Sentencing Interim Committee Bill A				
Fiscal Year	ADA Impact	Construction Cost	Operating Cost	Total Cost
FY 2002-03	0.0	\$0	\$0	\$0
FY 2003-04	0.0	0	0	0

Bill A

FY 2004-05	(90.1)	0	(2,364,700)	(2,364,700)
FY 2005-06	(154.8)	0	(4,061,424)	(4,061,424)
FY 2006-07	(160.3)	0	(4,207,045)	(4,207,045)
TOTAL		\$0	(\$10,633,168)	(\$10,633,168)

Local Government Impact

County jails will be impacted by the increased length of stay allowed for offenders who violate terms of their probation under the bill. Current law limits to 90 days the cumulative amount of time a probationer may be sentenced to a county jail. The bill expands the limit to 180 days. While the daily cost to house an offender in a county jail facility varies, the FY 2000-01 rate the state pays local jails for holding state inmates is \$49.40 per offender per day. The statewide impact of the increased limit is not estimated at this time.

State Appropriations

No appropriation is required. The bill stipulates that its provisions will be repealed July 1, 2004 if the General Assembly does not appropriate \$2.2 million to the Drug Offender Treatment Fund for FY 2004-05.

Departments Contacted

Corrections Human Services Judicial