

# Escape: Mandatory Consecutive Sentences

## *Position Paper*

Prepared by

**Post-Incarceration Supervision Reentry Task Force**

**Colorado Commission on Criminal and Juvenile Justice**

### **Background**

This paper was prompted by questions identified by members of the Post-Incarceration Supervision Task Force on Re-Entry of the Colorado Commission on Criminal and Juvenile Justice. The Task Force has been charged with identifying barriers to successful prisoner reentry into the community, and potential solutions to these barriers. The Task Force is reviewing evidence-based correctional practices that reduce recidivism and victimization, and the Commission's statutory mandate includes the promulgation of practices that make the most cost effective use of expensive correctional resources.

Two primary concerns prompted this paper, the mandatory sentence provision and the definition that is not restricted to escape from secure facilities. First, consecutive sentences for escape convictions are mandated in statute. For nearly all other criminal sentences, consecutive sentences are at the discretion of the judge. It is the mandatory nature of the sentencing provision that concerns members of the Task Force. This broad brush approach to sentencing policy is not supported by the criminology literature which consistently reports the need for individualized interventions to reduce the likelihood of new criminal behavior and victimization.<sup>1</sup> Further, this policy increases the prison population when the escape sentence is longer than the sentence for the original crime.

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<sup>1</sup>Latessa, E.J., & Lowenkamp, C. (2006). What works in reducing recidivism? *University of St. Thomas Law Journal*, 521-535; Gendreau, P., & Goggin, C. (1995). *Principles of effective correctional programming with offenders*. Center for Criminal Justice Studies and Department of Psychology, University of New Brunswick; McGuire, J. (2001). What works in correctional intervention? Evidence and practical implications. In G. A. Bernfeld, D.P. Farrington, & A. W. Leschied (Eds.), *Offender rehabilitation in practice: Implementing and evaluating effective programs* (pp. 25-43). Chichester, West Sussex, UK: John Wiley & Sons; Gendreau, P., Goggin, C., & Fulton, B. (2001). Intensive supervision in probation and parole settings. In C. R. Hollin (Ed.), *Handbook of offender assessment and treatment* (pp. 195-204). Chichester, West Sussex, UK: John Wiley & Sons.

Second, the broad definition of escape subjects many individuals to the mandatory sentencing provision. Fewer than ten individuals escape from a secure Department of Corrections facility every year.<sup>2</sup> However, over 1,100 individuals annually are convicted of escape for behaviors that range from running from a police car<sup>3</sup> to failing to return on time to a halfway house. For the same behavior that results in issuing an arrest warrant and pursuing a technical violation for those on probation, hundreds of individuals every year receive lengthy prison sentences because of their particular criminal justice status.

In addition to escape from a secure prison facility, escape charges can result from any of the following behaviors:

- Absconding while on intensive parole supervision, including electronic home monitoring;
- Absconding from community centers where an individual may have been placed as a condition of parole;
- Not returning to a halfway house;
- Not returning from jail work release;<sup>4</sup> and
- Escaping from a juvenile commitment center.<sup>5</sup>

Mandatory consecutive sentences and the broad definition of escape have been the subject of much debate by the state's criminal justice policy community, and legislation was proposed in 2007 and 2008 to modify these statutes. The Task Force requested that data on escape convictions be compiled and used to further this discussion. Researchers from the Division of Criminal Justice and the Department of Corrections worked together to provide the data presented here.

## Task Force Questions

- What do we know about the current implementation of these policies? Can we profile the offenders charged and convicted of escape?
- What is the evidence that those individuals whose criminal justice status makes them eligible for escape convictions are at a particularly high risk of committing a new crime?
  - Community corrections board members historically indicated their favor of the mandatory consecutive escape charge as a consequence for the "violation of public trust."

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<sup>2</sup> Rosten, K. (2008). *Fiscal Year 2007 Annual Statistical Report*. Colorado Department of Corrections, Colorado Springs, CO.

<sup>3</sup> Division of Criminal Justice researchers examined over 400 district court case files and documented the behaviors associated with escape charges. The charge for running from a police car is often vehicular eluding; in many cases reviewed by researchers, these individuals were also charged with escape.

<sup>4</sup> Escape charges may be filed against individuals who are on work release or diversion community corrections as a condition of probation.

<sup>5</sup> DOC also houses individuals who escaped from juvenile facilities after they turned 18 years old.

- Years ago, local stakeholders said they would approve DOC's Intensive Supervision Program only if mandatory consecutive escape charges applied to the population
- Is the mandatory consecutive escape statute consistent with the research on evidence-based practices? Implementing evidence based correctional practice, an objective of the Commission on Criminal and Juvenile Justice, emphasizes the use of individualized risk/needs assessments to direct criminal justice interventions rather than mandatory broad-brush policies.
- Is this escape statute encouraging the use of incarceration for the most dangerous offenders?
- The experience of task force members led them to conclude that most escapes are impulsive acts and are often associated with substance abuse activity. Deterrence has minimal impact in these circumstances.
- Is this policy cost effective?

## Organization of this paper

This paper relies on research, and so it begins with a brief description of the sources of the Colorado-specific data presented below. Next, the paper describes escape behaviors and the impact of escape convictions on the DOC population. Then, using data from the Judicial Branch and the Department of Corrections, it provides answers to some commonly asked questions about the population of offenders convicted of escape. The paper concludes with a brief review of research by national experts.

## Data Sources

Several sources of data were used in the analyses presented below. Conviction data from the Judicial Branch was analyzed by researchers at the Colorado Division of Criminal Justice (DCJ); DCJ researchers also analyzed DOC release data; and DOC researchers analyzed prison admission data.

## Impact of Current Escape Laws

In 2006, over 90 percent of escape convictions received a prison sentence,<sup>6</sup> and over three-quarters of those convicted received a consecutive sentence for escape.<sup>7</sup>

The mandatory consecutive escape conviction is part or all of the governing sentence for over half of those sentenced to DOC for escape.<sup>8</sup> The *governing sentence* is the sentence or combination of

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<sup>6</sup> DCJ's Office of Research and Statistics analyzed data on 448 offenders sentenced for escape in FY06. This group is a random sample of offenders from ten judicial districts across the state (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 17<sup>th</sup> through 21<sup>st</sup>). The data were hand-collected by DCJ staff that pulled individual case files and collected data on-site, with permission from officials at the Judicial Branch.

<sup>7</sup> Rosten, K. (2008). Fiscal Year 2007 Annual Statistical Report. Colorado Department of Corrections, Colorado Springs, CO.

sentences imposed that governs the incarceration and parole periods of a given offender. Escape is the governing offense for about five percent of new court commitments to prison (see Table 1). In FY07 this totaled approximately 340 individuals. In addition, since FY 2000, almost one-third (31.8 percent) of parole violators with a new felony conviction returned to prison with escape as their most serious crime (see Table 2). In FY07, this totaled over 330 parole readmissions to DOC for escape, in addition to the 340 new court commitments for escape. Another 579 were admitted to DOC in FY07 with escape convictions that were *not* part of the governing sentence so did not increase the length of the offenders prison term. However, apart from the impact of consecutive sentences on the growing prison population, escape convictions contribute to habitual offender status which again contributes to prison population growth.

**Table 1: Governing Offense Type by DOC Admission Type: FY00-07<sup>9</sup>**

Year	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Total Cases</b>	4044	4324	4905	5107	5146	5755	6201	6513	41995
	%	%	%	%	%	%	%	%	%
<b>Violent</b>	30.12	30.18	29.28	30.06	28.60	26.52	27.16	27.61	28.51
<b>Drug</b>	26.34	26.73	29.13	26.65	27.36	26.36	26.38	26.84	26.96
<b>Escape</b>	5.96	5.78	4.55	4.48	5.13	6.53	5.79	5.25	5.44
<b>Other</b>	37.59	37.30	37.04	38.81	38.90	40.59	40.67	40.30	39.09
<b>Total</b>	100	100	100	100	100	100	100	100	100

Source: Data extracts provided by DOC and analyzed by DCI. Data are considered preliminary, and may vary from that published by DOC. These data are based on sentencing data which differ slightly from strict admission numbers.

Note: the offense identified here is the most serious crime associated with the current incarceration. *It is likely that many more escape convictions occur with this population, but the offense data presented here reflect only the single most serious crime.*

<sup>8</sup> Ibid.

<sup>9</sup> Source for Tables 1 and 2: Data extracts provided by DOC. Data are considered preliminary, and may vary from that published by DOC. These data are based on sentencing data which differ slightly from strict admission numbers. Violent crimes include homicide, assault, kidnap, child abuse, sexual assault, robbery, extortion, intimidation, retaliation and riots in detention facilities. Escape also includes aiding escape, attempted escape, attempted escape while in custody, escape insanity law, escape pursuant to extradition, offenses relating to custody and contraband and violation of a bail bond. The 'other' crimes category includes burglary, theft, forgery, fraud, motor vehicle theft, arson, weapons violations, parental custody violations, contributing to the delinquency of a minor, offenses against public peace, dueling, criminal libel, false reporting, possession of contraband, unspecified inchoate offenses, obstructing law enforcement, vandalism, criminal trespassing, criminal mischief, bribery, criminal negligence, non-support of family, perjury, tampering, traffic-related violations, workers' compensation fraud, social services fraud, destruction of wildlife, hazardous waste violations, habitual criminal, organized crime control act.

**Table 2: Parole Returns to DOC, Most Serious Crime: FY00-FY07**

Year	2000	2001	2002	2003	2004	2005	2006	2007	Total
<b>Total Cases</b>	413	402	410	433	449	824	1034	1008	4973
	%	%	%	%	%	%	%	%	%
<b>Violent</b>	9.20	8.46	9.27	10.62	10.47	11.29	11.61	15.18	11.44
<b>Drug</b>	27.85	29.35	29.27	27.48	27.62	22.33	20.79	19.94	24.05
<b>Escape</b>	27.60	23.88	25.12	24.48	27.62	35.19	40.23	33.13	31.83
<b>Other</b>	35.35	38.31	36.34	37.41	34.30	31.19	27.37	31.75	32.68
<b>Total</b>	100	100	100	100	100	100	100	100	100

Source: Data extracts provided by DOC and analyzed by DCJ. Data are considered preliminary, and may vary from that published by DOC. These data are based on sentencing data which differ slightly from strict admission numbers.

Note: Escape convictions in this table reflect the most serious crime for which the returned parolee is serving a prison sentence; for some small portion of those with escape convictions in Table 2, their original conviction crime may have been escape and their return charge is a lesser sentence.

## Frequently asked questions

### *How many escape convictions are sentenced to prison?<sup>10</sup>*

- 2005 1,248
- 2006 1,391
- 2007 1,249<sup>11</sup>

### *Where did they escape from?<sup>12</sup>*

- 32.4% escaped from Diversion community corrections
- 27.2% escaped from Parole
- 24.7% escaped from Transition community corrections
- 15.8% escaped from jail work release, day reporting, electronic home monitoring

### *How often is escape the offense charged but not convicted?<sup>13</sup>*

As shown in Table 3, in 2006 56 percent of individuals who received court filings for escape were actually convicted of escape. (Please see Footnote 12 for a description of the sample.)

<sup>10</sup>Rosten, K. (2008). *Fiscal Year 2007 Annual Statistical Report*. Colorado Department of Corrections, Colorado Springs, CO.

<sup>11</sup> Eight hundred nine of these were convictions for attempted escape.

<sup>12</sup> DCJ's Office of Research and Statistics analyzed data on 448 offenders sentenced for escape in FY06. This group is a random sample of offenders from ten judicial districts across the state (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 17<sup>th</sup> through 21<sup>st</sup>). The data were hand-collected by DCJ staff that pulled individual case files and collected data on-site, with permission from Judicial.

<sup>13</sup> Ibid.

**Table 3: A sample of escape charges filed and convicted in 2006**

	Filed	Convicted
<b>Aiding Escape</b>	1	1
<b>Assisting Escape</b>	5	1
<b>Attempted Escape</b>	248	331*
<b>Escape</b>	449	113
<b>Total</b>	703	446

\*Note that that number of attempted escape convictions is higher than the number of attempted escape charges (filings). This is because many of the attempted escape charges were added or amended to the original charge of escape. This means that this charge was added to the original charge and then the individual was convicted only on the attempted charge.

***What felony class was the escape CONVICTION charge?<sup>14</sup>***

- F3            8.2%
- F4            36.9
- F5            54.3
- F6            .6
- TOTAL       100.0

***Did these individuals have a history of violence?<sup>15</sup>***

- 69.2% of those sentenced to DOC for escape had no history of violent crime convictions and their current crimes were not violent.
- 30.8% had a prior juvenile or adult arrest for a violent crime.
  - More than half of these were arrests for assault.
  - Eight had a homicide arrest as part of their criminal history record, and 3 had been convicted of homicide.

<sup>14</sup> FY07 admissions to DOC. Excludes habitual enhanced sentences and sentences to YOS; includes amended or reinstated sentences. Source: Colorado Department of Corrections FY07 analysis of escape convictions (October 2008).

<sup>15</sup> DCJ's Office of Research and Statistics analyzed data on 448 offenders sentenced for escape in FY06. This group is a random sample of offenders from ten judicial districts across the state (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 17<sup>th</sup> through 21<sup>st</sup>). The data were hand-collected by DCJ staff that pulled individual case files and collected data on-site, with permission from Judicial. The analysis of the *offenders' history* of violent crimes included *any arrest* for the following crimes: homicide, kidnapping, robbery, assault, weapons-related offenses, and sex offenses.

**Table 6: Crimes Sentenced Consecutively with Escape**

N	%	Offense
1	0.1%	Murder
2	0.2%	Other related homicide
6	0.6%	Kidnapping
10	1.0%	Sexual Assault
8	0.8%	Wrongs to Children
34	3.5%	Assault
1	0.1%	Criminal Extortion
5	0.5%	Weapons
17	1.7%	Public Peace
121	12.3%	Escape
4	0.4%	Offenses Relating to Custody and Contraband
72	7.3%	Burglary
140	14.3%	Theft
78	8.0%	Motor Vehicle Theft
66	6.7%	Vandalism
54	5.5%	Forgery
6	0.6%	Fraud
7	0.7%	Financial Transaction Device & Equity Skimming Fraud
1	0.1%	Bribery
268	27.3%	Controlled Substance Abuse
2	0.2%	Family Offenses
13	1.3%	Traffic
1	0.1%	Accessory to a Crime
2	0.2%	Domestic Violence
1	0.1%	Organized Crime Control Act
35	3.6%	Menacing

***How many individuals under community supervision are eligible for escape charges?***

On any given day, approximately 6,524 individuals serving state sentences in the community belong to the pool of offenders who are eligible for felony escape charges. This is a minimum number since it does not include offenders on work release in the county jail, or those in transit.

Individuals in diversion community correction residential and nonresidential placements are eligible for escape charges. There are 1470 diversion residential beds and 1230 non-residential beds, totaling over 2730 offenders. DOC's Division of Adult Parole, Community Corrections and Youthful Offender System manage five categories of offenders: (1) Parole, (2) Intensive Supervision Program-Inmate Status (ISP-I), (3) Intensive Supervision Program-Parole Status (ISP), (4) Community Corrections Transition, and (5) YOS Phase III (Community Phase). All but those on parole (community status<sup>19</sup>)

<sup>19</sup> DOC offenders in the community can be on "inmate" status or "community" status, and various laws apply depending on this status.

- Diversion community corrections Over 2,730
- Felony charges for escape can be filed for any offender re-entering the community *except* those on regular parole status. The following represents the pool of offenders who can receive felony escape charges for the same behavior that a parolee would receive a technical violation:
  - Intensive Supervision Program, Inmate Status 960<sup>20</sup>
  - Intensive Supervision Program, Parole Status 1,258<sup>21</sup>
  - Transition community corrections offenders who are not “condition of parole” status
    - 1,418 minus 80 condition-of-parole beds 1,339
  - Those on current escape status 228
  - YOS offenders in Phase III, community placement 39

## National Research Council Study

The National Research Council of the National Academy of Sciences recently published a comprehensive review of research related to recidivism reduction and public safety: “It is in the broad public interest to... reduce the rate of recidivism—the return to prison for parole violations or the commission of new crimes. Reductions in recidivism would simultaneously reduce state corrections costs and improve community safety.”<sup>22</sup> To this end, the authors reviewed the considerable research on this topic and conclude the following:

...a realistic goal for ex-offenders, especially for high-rate offenders released from prison, is not zero offending, but reduced offending (reduced in terms of frequency and seriousness) and increased lengths of non-offending periods. Empirical research on [harm reduction] has consistently demonstrated that this goal can be achieved.<sup>23</sup>

Further, the report, which summarizes hundreds of studies conducted over the past 25 years, underscores the importance of policy makers recognizing that there are multiple pathways and factors involved in individual decisions to desist from criminal behavior: “There is remarkable heterogeneity in criminal offending.”<sup>24</sup> This research synthesis encourages individualized treatment. Mandatory consecutive sentences for escape ignore the need to provide individual-level responses to reduce recidivism, and are in conflict with empirically-driven efforts to increase public safety.

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<sup>20</sup> Except where noted, in this bullet population numbers are from DOC’s June 30, 2008 capacity report available at [https://exdoc.state.co.us/secure/combo2.0.0/userfiles/folder\\_15/Current.pdf](https://exdoc.state.co.us/secure/combo2.0.0/userfiles/folder_15/Current.pdf)

<sup>21</sup> This number represents the capacity, according to parole officials.

<sup>22</sup> National Research Council (2008). *Parole, desistance from crime, and community integration*. National Academies Press, Washington D.C.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.



**Table 4: How old were these offenders at sentencing?<sup>16</sup>**

Age	%	N
Under 25 years	30.6	137
25 - 30 years	20.4	91
31- 35 years	15.0	67
36 – 40 years	13.9	62
41 – 50 years	17.9	80
51- 65 years	2.2	10
<i>Total</i>	<i>100.0</i>	<i>447</i>

**Table 5: Which counties file the most escape charges in district court?**

County	2003	2004	2005	2006	2007
Adams	114	170	185	179	125
Arapahoe	142	164	166	122	93
Denver	211	330	403	496	344
El Paso	159	189	265	211	169
Jefferson	130	153	210	120	119
Weld	109	139	131	116	114

Source: Data extract provided by the Judicial Department and analyzed by DCJ's Office of Research and Statistics.

***How many serve prison sentences for escape convictions?***

- In FY07, 1,249 offenders were sentenced to prison for escape convictions, including attempt to escape (809).<sup>17</sup> Many of these sentences were not imposed consecutively and, for those that were imposed consecutively, escape is not always the governing sentence.
  - 940 (75.3%) were consecutive to another felony sentence, and another 41 (3.3%) had a felony consecutive to this sentence.
  - Of the 1,248 individuals admitted to DOC in FY07 to serve sentences for escape, 981 were given consecutive sentences with the following offense:<sup>18</sup>

<sup>16</sup> DCJ's Office of Research and Statistics analyzed data on 448 offenders sentenced for escape in FY06. This group is a random sample of offenders from ten judicial districts across the state (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 17<sup>th</sup> through 21<sup>st</sup>). The data were hand-collected by DCJ staff that pulled individual case files and collected data on-site, with permission from Judicial.

<sup>17</sup> Rosten, K. (2008). *Fiscal Year 2007 Annual Statistical Report*. Colorado Department of Corrections, Colorado Springs, CO.

<sup>18</sup> Ibid.