

Section 3: Adults in the criminal justice system

This section describes the complex entity referred to as the criminal justice system.

The idea that there was a “system” involving law enforcement, courts, jails and corrections evolved in the late 1960s. This “system” was defined for the first time in the final report of the President’s Commission on Law Enforcement and the Administration of Justice in 1967. The Commission defined an entity with independent and inter-dependent agencies – sometimes with overlapping jurisdictions and conflicting objectives.

The Commission studied criminal justice in the states for over two years and in its multiple-volume report made hundreds of recommendations for integrating the various elements of the criminal justice system. The Commission’s recommendations included enhancing training and education to increase professionalism, and developing transparent policies that described the methods used to make case processing decisions.

Most of the Commission’s recommendations were incorporated into the Federal 1968 Safe Streets Act. Federal funding to implement improvements in local criminal justice practices began flowing to each state.

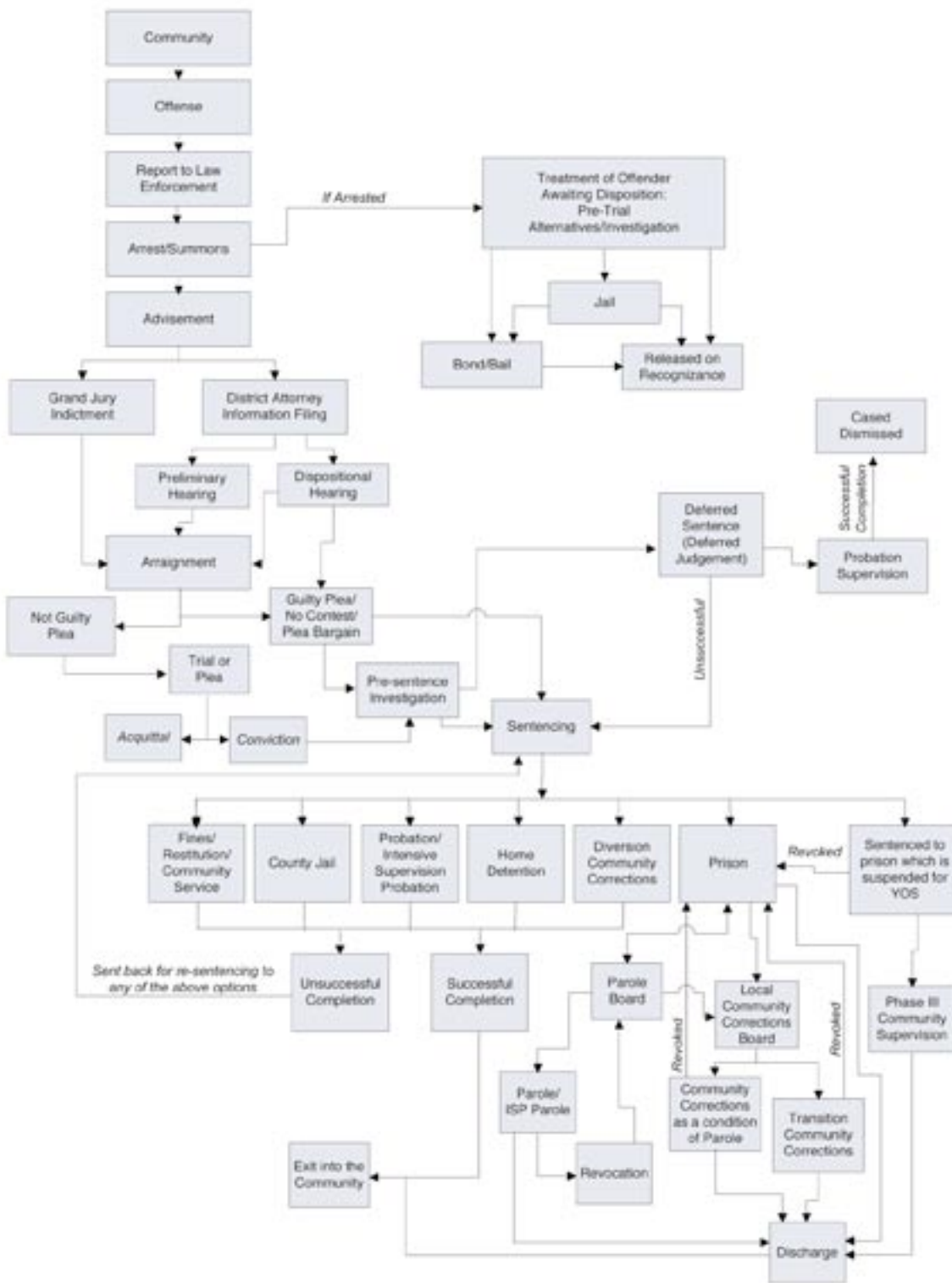
The President’s Commission recommended – and the 1998 Safe Streets Act mandated – the creation of State Planning Agencies that would set priorities for criminal justice improvement. The Commission emphasized the need for research to guide criminal justice planning at the state and local levels.

The Division of Criminal Justice is the state-level criminal justice agency in Colorado. The Office of Research and Statistics (ORS) represents the research effort described in that original Crime Act. Central questions that the ORS targets in all of its research include the following:

- How are cases processed through the criminal justice system? Where are the decision points? What factors affect decisions regarding court case filing, prosecutions, convictions and sentencing?

The adult cases processed through colorado's criminal justice system

Figure 3.1. Adult criminal justice system flowchart



Source: Adapted from Appendix A, Flowchart of Colorado's Adult Correctional System, Legislative Council Staff, January 2001.

1. Community

2. Offense

3. Report to law enforcement

4. Arrest/summons

16-3-101 C.R.S. through 16-3-102 C.R.S.

A peace officer may arrest a person when: there is a warrant commanding that the person be arrested; any crime has been or is being committed by such person in the peace officer's presence; or the peace officer has probable cause to believe that the offense was committed by the person to be arrested.

5. Pre-trial alternatives/pre-trial investigation

Pre-trial service programs in the District Attorney's office establish procedures for screening arrested persons. The programs provide information to the judge to assist in making an appropriate bond decision. The programs may also include different methods and levels of community based supervision as a condition of pretrial release. It is at this stage that the judge decides what, if any, pretrial release is appropriate.

5a. Jail

17-26-101 C.R.S.

Lawfully committed persons and prisoners are housed in a county jail for detention, safekeeping, and confinement. Each county in the state is required to maintain a jail except counties with populations of less than 2,000.

5b. Bond/bail

16-4-101 C.R.S., et seq.

All persons are eligible for bond except:

(a) for capital offenses when proof is evident or presumption is great; or

(b) when, after a hearing held within 96 hours of arrest, the court finds reasonable proof that a crime was committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases:

(I) a crime of violence while on probation or parole resulting from the conviction of a crime of violence;

(II) a crime of violence while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) a crime of violence after two previous felony convictions, or one previous felony conviction if the conviction was for a crime of violence in Colorado or any other state when the crime would have been a felony if committed in Colorado which, if committed in this state, would be a felony;

(IV) a crime of possession of a weapon by a previous offender;

(c) when a person has been convicted of a crime of violence at the trial court level and such person is appealing the conviction or awaiting sentencing for the conviction and the court finds that the public would be placed in significant peril if the convicted person were released on bail.

5c. Released on recognizance

16-4-104 C.R.S.

A defendant may be released from custody upon execution of a personal recognizance bond which is secured only by the personal obligation of the defendant.

6. Advisement (or first appearance)

16-7-207 C.R.S.

At the first appearance of the defendant in court, the court informs the defendant of the following:

(a) need make no statement, and any statement made can and may be used against the defendant;

(b) the right to counsel;

(c) the right to the appointment of counsel or to consult with the public defender;

(d) any plea must be voluntary and not the result of influence or coercion;

(e) the right to bail; whether the law allows bail, and the amount of bail that has been set by the court.

(f) the right to a jury trial; and

(g) the nature of the charges.

7a. Grand jury indictment**13-72-101 C.R.S., et seq, 13-73-101 C.R.S., et seq, 16-5-201 C.R.S., et seq.**

The court or a district attorney may convene a grand jury to investigate a crime and to return an indictment. Colorado statutes allow county grand juries, judicial district grand juries, and statewide grand juries to be impaneled

7b. District attorney (DA) information filing**16-5-208 C.R.S.**

In all cases where an accused is in county court concerning the commission of a felony and is bound over and committed to jail or is granted bail, the district attorney is responsible for filing an information in the district court alleging the accused committed the criminal offense described in the information. If the district attorney decides not to file charges, he is to file in district court a written statement containing the reasons for not doing so.

8. Preliminary hearing**16-5-301 C.R.S. and 18-1-404 C.R.S.**

Every person charged with a class 1, 2, or 3 felony and every person accused of a class 4, 5, or 6 felony which requires mandatory sentencing or is a crime of violence or is a sexual offense has the right to demand and receive a preliminary hearing in order to determine whether probable cause exists to believe that the defendant committed the charged offense.

9. Dispositional hearing**16-5-301 C.R.S. and 18-1-404 C.R.S.**

Persons charged with a class 4, 5, or 6 felony, except those requiring mandatory sentencing or which are crimes of violence or sexual offenses, must participate in a dispositional hearing for the purposes of case evaluation and potential resolution.

10. Arraignment**16-7-201 C.R.S. through 16-7-207 C.R.S.**

At the time of arraignment the defendant may enter one of the following pleas: a) guilty; b) not guilty; c) nolo contendere (no contest) with the consent of the court; or d) not guilty by reason of insanity, in which event a not guilty plea may also be entered.

11a. Not guilty plea >>> proceed to trial**16-7-205 C.R.S.****11b. Guilty plea >>>proceed to sentencing****16-7-205 C.R.S.****11c. Deferred sentencing or deferred judgment****18-1.3-102 C.R.S.**

After a defendant has pled guilty and the court and DA have agreed, the court may defer sentencing or judgment by continuing the case for up to four years from the date the felony plea was entered (two years from the date the misdemeanor plea was entered). The period may be extended for up to 180 days if failure to pay restitution is the sole condition of supervision which has not been fulfilled and the defendant has shown a future ability to pay. During the period of deferred sentencing, the court may place the defendant under the supervision of the probation department. Upon full compliance with conditions of probation and stipulations agreed to by the defendant and the DA, the plea of guilty previously entered into is withdrawn and the charges dismissed with prejudice. Upon a violation of a condition of probation or a breach of the stipulation, the court must enter judgment and impose a sentence on the guilty plea.

12a. Trial or plea bargain***Trial:* 16-10-101 C.R.S. through 16-10-401 C.R.S. , 18-1-405 C.R.S. through 18-1-406 C.R.S.*****Plea bargain:* 16-7-301 C.R.S., et seq.*****Trial:***

The right of a person who is accused of an offense other than a non-criminal traffic infraction or a municipal ordinance violation to have a trial by jury is inviolate and a matter of substantive due process of law. If the defendant is not brought to trial within six months from the date of the not guilty plea, he or she is to be discharged from custody if he/she has not been admitted to bail, and the pending charges are to be dismissed. The defendant may not be indicted again, informed against, or committed for the same offense. If a continuance has been granted for the defense, the period is extended for an additional six months. If the prosecuting attorney is granted a continuance, the trial can be delayed up to six months only if certain circumstances are met which are noted in Section 18-1-405 (6), C.R.S.

Every person accused of a felony has the right to be tried by a jury of 12 whose verdict must be unanimous. A person may waive the right to a jury trial except in the case of class 1 felonies.

Plea bargain:

The DA may engage in plea discussions to reach a plea agreement in those instances where it appears that the effective administration of criminal justice will be served. The DA should only engage in plea discussions in the presence of the defense attorney.

When a plea has been reached, the prosecutor informs the court of the terms of the plea agreement and the recommended penalty. The court then advises the defendant that the court exercises independent judgment in deciding whether to grant charge and sentence concessions made in the plea agreement and that the court may sentence the defendant in a manner that is different than that discussed in the plea discussions. The court may then concur or not concur with the proposed plea agreement.

12b. Pre-sentence investigation

16-11-102 C.R.S.

Following each felony (other than a class 1) conviction, or upon court order in a misdemeanor conviction, the probation officer conducts an investigation and makes a written report to the court before sentencing. Pre-sentence reports include a substance abuse assessment or evaluation. The report also includes, but is not limited to, the following information: family background, educational history, employment record, past criminal record including any past juvenile delinquency record involving unlawful sexual behavior, an evaluation of alternative dispositions available, a victim impact statement, and such other information that the court may require. Copies of the report, including any recommendations, are given to the prosecutor and the defense attorney no less than 72 hours prior to the sentencing hearing.

12c. Sentencing

18-1.3-104 C.R.S.

The trial court has the following alternatives in imposing a sentence: grant probation; imprisonment for a definite period of time or even death (which is a separate finding of appropriateness by the jury); the payment of a fine or a term of imprisonment or both a term of imprisonment and the payment of a fine; any other court order authorized by law; or payment of costs. Non-violent offenders may be sentenced to probation, community corrections, home detention, or a specialized restitution and community service program.

13a. Fines, restitution, community service

18-1.3-507 C.R.S., 18-1.3-601 C.R.S., et seq., 18-1.3-701 C.R.S., et seq.

Community Service:

Offenders may be court ordered to perform community or useful public service which will be monitored.

Restitution:

Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense shall include consideration of restitution.

Fines:

Fees and fines are given out when there has been a conviction or adjudication to cover the costs of prosecution, the amount of the cost of care, and any fine imposed.

13b. County jail

18-1.3-501 C.R.S., et seq.

Offenders convicted of a misdemeanor offense are punishable by fine or imprisonment. A term of imprisonment for a misdemeanor is not served in a state correctional facility unless the sentence is served concurrently with a term of conviction for a felony. The court may also sentence an offender to a term of jail and probation (Section 18-1.3-202, C.R.S.), to a term of jail and work release (Section 18-1.3-207, C.R.S.), or to a term of jail and a fine (Section 18-1.3-505, C.R.S.).

13c. Probation

18-1.3-201 C.R.S., et seq.

Offenders are eligible for probation with the following exceptions: (1) those convicted of a class 1 felony or class 2 petty offense; (2) those who have been convicted of two prior felonies in Colorado or any other state; and (3) those convicted of a class 1, 2 or 3 felony within the last ten years in Colorado or any other state. Eligibility restrictions may be waived by the sentencing court upon the recommendation of the DA. In considering whether to grant probation, the court may determine that prison is a more appropriate placement for the following reasons: (1) there is an undue risk that the defendant will commit another crime while on probation; (2) the defendant is in need of correctional treatment; (3) a sentence to probation will unduly depreciate the seriousness of the defendant's crime or undermine respect for law; (4) past criminal record indicates that probation would fail to accomplish its intended purpose; or (5) the crime and the surrounding factors do not justify probation.

13d. Intensive Supervision Probation (ISP)**18-1.3-208 C.R.S.**

The court may sentence an offender who is otherwise eligible for probation and who would otherwise be sentenced to the DOC to ISP if the court determines that the offender is not a threat to society. Offenders on ISP receive the highest level of supervision provided to probationers including highly restricted activities, daily contact between the offender and the probation officer, monitored curfew, home visitation, employment visitation and monitoring, and drug and alcohol screening.

13e. Home detention**18-1.3-105 C.R.S.**

Home detention is an alternative correctional sentence in which a defendant convicted of a felony (except a class 1 felony) is allowed to serve the sentence or term of probation at home or another approved residence. Home detention programs require the offender to stay at the residence at all times except for approved employment, court-ordered activities, and medical appointments. A sentencing judge may sentence an offender to a home detention program after considering several factors such as the safety of the victims and witnesses and the public at large, the seriousness of the offense, the offender's prior criminal record, and the ability of the offender to pay for the costs of home detention and provide restitution to the victims.

13f. Community corrections**18-1.3-301 C.R.S.**

Any district court judge may refer an offender convicted of a felony to a community corrections program unless the offender is required to be sentenced as a violent offender. The court may also refer an offender to community corrections as a condition of probation. Any offender sentenced by the court to community corrections must be approved by the local community corrections board for acceptance into the program.

13g. Prison**18-1.3-401 C.R.S., et seq.**

Persons convicted of felony offenses are subject to a penalty of imprisonment for a length of time that is specified in statute corresponding to the felony class for which the offender was convicted.

13h. Sentence to prison which is suspended for the Youthful Offender System (YOS)**18-1.3-407 C.R.S.**

Certain juveniles tried and sentenced as adults may be sentenced to the YOS as an alternative to a sentence to prison. In order to sentence a juvenile to the YOS, the court must first impose a sentence to the DOC which is then suspended on the condition that the youthful offender complete a sentence to the YOS, including a period of community supervision. A sentence to the YOS is a determinate sentence of not less than two years nor more than six years; except that a juvenile convicted of a class 2 felony may be sentenced for a determinate period of up to seven years. The DOC will also place the youth under community supervision for a period of not less than six months and up to 12 months any time after the date on which the youth has 12 months remaining to complete the determinate sentence.

14a. Unsuccessful completion

Back to sentencing.

14b. Successful completion

Back to the community.

14c. Parole Board**17-2-201 C.R.S., et seq.**

The Parole Board consists of seven members appointed by the Governor and confirmed by the Senate. The board considers all applications for parole and conducts parole revocation hearings. If the board refuses parole, the board must reconsider parole every year thereafter until parole is granted or the offender is discharged. For class 1 or 2 crimes of violence, class 3 sexual assault, habitual offenders, and sex offenders, the board has to review parole once every three years.

14d. Local community corrections board**17-27-103 C.R.S.**

Local community corrections boards are the governing bodies of community corrections programs. Locally elected officials appoint community corrections boards. These boards' authority includes the following: to approve or disapprove the establishment and operation of a community corrections program; to enter into contracts to provide services and supervision for offenders; to accept or reject any offender referred for placement in a community corrections facility:

the authority to reject an offender after placement in a community corrections program: to establish and enforce standards for the operation of a community corrections program; and to establish conditions for the conduct of offenders placed in community corrections programs.

15a. Parole/intensive supervision programs

17-22.5-403 C.R.S. and 17-27.5-101 C.R.S.

Offenders sentenced for class 2, 3, 4, 5, or 6 felonies are eligible for parole after serving 50 percent of their sentence, less earned time. Offenders convicted for more serious crimes, as defined by statute, are required to serve 75 percent of their sentence less earned time before being eligible for parole. DOC inmates who have no more than 180 days until their PED are eligible for placement in ISP. In addition, offenders in a community corrections facility who have met residential program requirements and who have no more than 180 days until their PED are eligible for ISP.

16a. Revocation

17-2-103 C.R.S.

A parolee who violates the conditions of parole, may have their parole revoked. Such violations include a warrant out for the parolee's arrest, a new offense has been committed, belief that the parolee has left the state, refusal to appear before the board to answer charges of violations, or testing positive for an illegal or unauthorized substance. After the arrest or summons of the parolee, a complaint will be filed by the parole office. A parole hearing relating to the revocation will be held. If the board determines that a violation of a condition or conditions of parole has been committed the board will either revoke parole, continue it in effect, or modify the conditions of parole.

16b. Successful discharge

The offender successfully completes the conditions of parole or community corrections and is free to reintegrate into the community.

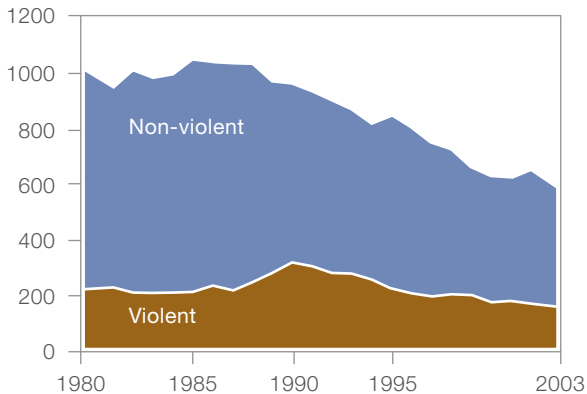
17. Return to Parole Board

Source: Adapted from Appendix A, *Flowchart of Colorado's Adult Correctional System*, Legislative Council Staff, January 2001, p. 181-190.



Adult violent vs. non-violent arrests

Figure 3.2. Colorado adult violent and non-violent arrest rates: 1980-2003

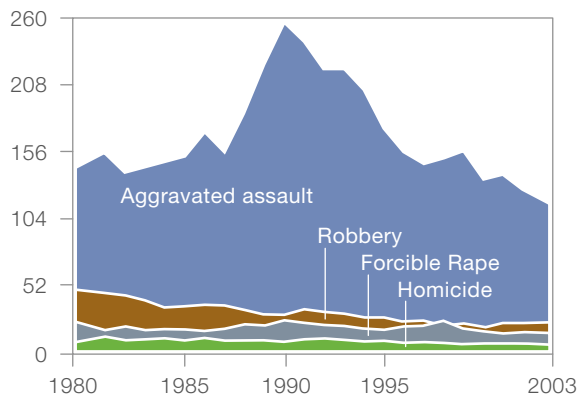


Note: Rates are per 100,000 adults.

Sources: Colorado Bureau of Investigations Annual Reports, 1980-2003. Colorado State Demographer Office, Department of Local Affairs.

- Violent arrests comprise 20 to 25 percent of all arrests.
- Homicides in Colorado peaked in 1990 but are now at rates below those of the early 1980s.
- Nationwide, arrests for violent crime decreased by 33 percent and property crime decreased by 23 percent between 1994 and 2003, and it continued to decrease during the first half of 2004 according to the Federal Bureau of Investigation.

Figure 3.3. Colorado adult arrest rates for violent arrests, 1980-2003

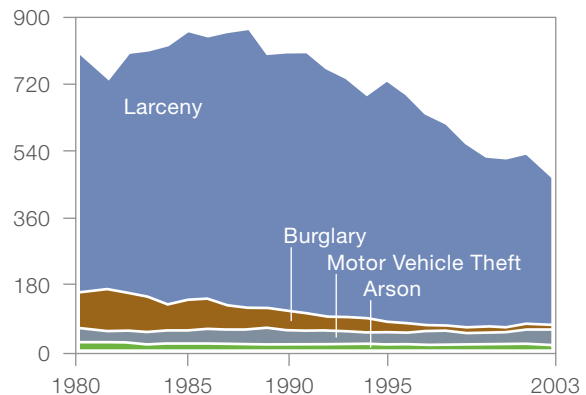


Note: Rates are per 100,000 adults.

Sources: Colorado Bureau of Investigations Annual Reports, 1980-2003. Colorado State Demographer Office, Department of Local Affairs.

- Aggravated assaults make up the vast majority of violent crime arrests.
- Except for aggravated assault, arrests for violent crimes are relatively rare in Colorado.
- All major violent crime arrest rates declined since 1980.
- Homicides accounted for 0.3 percent of major offenses in Colorado in 2003, according to the Colorado Bureau of Investigation's Crime in Colorado Report, 2003.

Figure 3.4. Colorado adult arrest rates for non-violent arrests, 1980-2003



Note: Rates are per 100,000 adults.

Sources: Colorado Bureau of Investigation Annual Reports, 1980-2003. Colorado State Demographer Office, Department of Local Affairs.

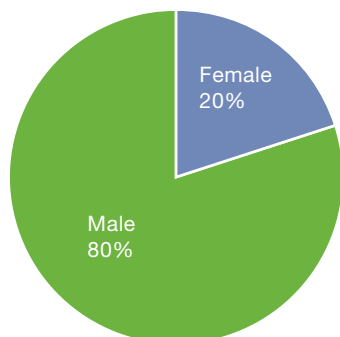
- Larcenies and thefts make up the vast majority of property crimes.
- Household property crimes occur most often to those living in rented property.
- Larceny/theft arrest rates in Colorado have declined significantly since the late 1980s.

Note the differences in scale used in the figures on this page.

Who gets arrested?

Figures 3.5 and 3.6 and Table 3.1 display demographic information on adults arrested in FY03.

Figure 3.5. Colorado arrestee gender, FY03



Source: Colorado Bureau of Investigation.

- Most arrestees are male (80 percent) and are white (87 percent).

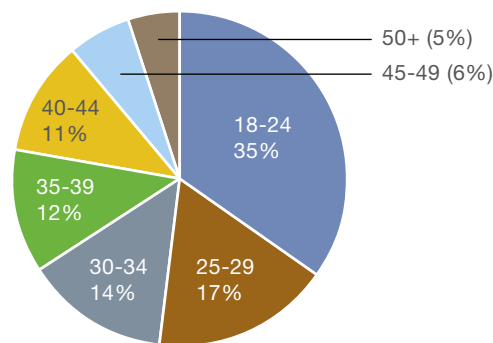
Table 3.1. Colorado arrestee race, FY03

Race	Percent
White	87%
Black	11%
American Indian	1%
Asian	1%
Other	0%

Source: Colorado Bureau of Investigation.

- Black arrestees comprise the second largest ethnic group. Hispanic individuals are not broken out in the arrest data available from the CBI, but are included in the 'white' category.

Figure 3.6. Colorado arrestee age, FY03



Source: Colorado Bureau of Investigation.

- The average age of arrested adults was 31, with a median age of 29. Just over half of all adult arrestees are between the ages of 18 and 29.

The district attorney's job is to prosecute criminals

Table 3.2. Who exercises discretion?

These criminal justice officials...	Must often decide whether or not or how to...
Police	<ul style="list-style-type: none"> • Enforce specific laws • Investigate specific crimes • Search people, vicinities, buildings • Arrest or detain people
Prosecutors	<ul style="list-style-type: none"> • File charges or petitions for adjudication • Seek indictments • Drop cases • Reduce charges
Judges or magistrates	<ul style="list-style-type: none"> • Set bail or conditions for release • Accept pleas • Determine delinquency • Dismiss charges • Impose sentence • Revoke probation
Correctional officials	<ul style="list-style-type: none"> • Assign to type of correctional facility • Award privileges • Punish for disciplinary infractions
Paroling authorities	<ul style="list-style-type: none"> • Determine date and conditions of parole • Revoke parole

Source: "The Justice System," Bureau of Justice Statistics, U.S. Department of Justice available at <http://www.ojp.usdoj.gov/bjs/justsys>.

The American prosecutor is unique in the world

The American prosecutor is a public prosecutor representing the people in matters of criminal law. Traditionally, European societies viewed crimes as wrongs against an individual whose claims could be pressed through private prosecution. The prosecutor in the United States is usually a local official, reflecting the development of autonomous local governments in the colonies. As an elected official, the local prosecutor is responsible only to the voters.

Prosecution is the function of representing the government in criminal cases

After the police arrest a person suspected to have committed a crime, the prosecutor coordinates the government's response to crime – from the initial screening, when the prosecutor decides whether or not to press charges, through trial and, in some instances, at the time of sentencing, by the presentation of sentencing recommendations.

Prosecutors have been accorded much discretion in carrying out their responsibilities. They make many of the decisions that determine whether or not a case will proceed through the criminal justice process.

Most felony cases in Colorado are prosecuted by district attorneys

The primary duty of the district attorney in Colorado is to appear on behalf of the state, the people, or any county in the district in all indictments, actions and proceedings filed in district court. The district attorney will also prosecute cases that are transferred to the district from another by a change of venue.

A district attorney is elected in each of Colorado's 22 judicial districts to prosecute criminal cases on behalf of the state (the people). The district attorney is a part of the executive branch of government. Deputy district attorneys may be appointed by the district attorney to assist with the duties of the office.

The state attorney general and the U.S. attorneys also prosecute cases in the state

The attorney general prosecutes and defends all suits relating to matters of state government except those that involve the legislative branch. The attorney general is elected by the people and is a member of the governor's cabinet. Federal prosecution is the responsibility of 94 U.S. attorneys who are appointed by the president.

A criminal action may be commenced in several ways

A criminal action for violation of any statute may be commenced in one of the following ways:

- Return of an indictment by a grand jury,
- Filing of information in district court, or
- Filing of a felony complaint in county court.

Whatever the method of accusation, the state must demonstrate at this stage that there is probable cause to support the charge

Colorado law provides a simple and expeditious method for the prosecution of misdemeanor and petty offenses in county court.

A summons and complaint can be issued by a police officer for a misdemeanor or petty offense. The summons and complaint directs the defendant to appear in county court at a stated date and time. Or a summons can be issued after a complaint is filed in county court. A trial may be held upon appearance of the defendant before the judge or the case is set for trial as soon as possible. Judgments of the county court in a criminal action under the simplified procedure may be appealed to district court.

When a person is arrested for a class two petty offense (a minor offense) the arresting officer may issue a penalty assessment notice. If the defendant wishes to acknowledge his guilt, he may pay the specified fine in person or by mail. If he chooses not to acknowledge guilt, he shall appear in court as required by the notice.

Small claims courts are divisions of county court. Individuals are allowed to argue their own cases and to have speedy decisions on civil matters involving no more than \$7,500. Court sessions are held during the day or evening to accommodate the public. There are no jury trials in small claims courts, and magistrates sometimes hear these cases rather than a judge. No plaintiff may file more than two claims per month or eighteen claims per year in small claims court.

The decision to charge is solely at the prosecutor's discretion

Once an arrest is made and the case is referred to the district attorney, most district attorneys screen cases to determine whether the case merits prosecution. The district attorney may refuse to prosecute, for example, because of insufficient evidence. The district attorney has the power to dismiss cases or to decide which of several possible charges to press in a prosecution. The decision to charge is not reviewable by any other

Discretion is exercised throughout the criminal justice system

Very few crimes are under exclusive Federal jurisdiction. The responsibility to respond to most crime rests with State and local governments. Police protection is primarily a function of cities and towns. Corrections is primarily a function of State governments. Most justice personnel are employed at the local level.

Discretion is "an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience."²³ Discretion is exercised throughout the government. It is a part of decision making in all government systems from mental health to education, as well as criminal justice. The limits of discretion vary from jurisdiction to jurisdiction.

Concerning crime and justice, legislative bodies have recognized that they cannot anticipate the range of circumstances surrounding each crime, anticipate local mores, and enact laws that clearly encompass all conduct that is criminal and all that is not.²⁴ Therefore, persons charged with the day-to-day response to crime are expected to exercise their own judgment within limits set by law. Basically, they must decide whether to take action where the situation fits in the scheme of law, rules, and precedent which official response is appropriate.²⁵

To ensure that discretion is exercised responsibly, government authority is often delegated to professionals. Professionalism requires a minimum level of training and orientation, which guide officials in making decisions. The professionalism of policing is due largely to the desire to ensure the proper exercise of police discretion.

The limits of discretion vary from State to State and locality to locality. For example, some State judges have wide discretion in the type of sentence they may impose. In recent years other States have sought to limit the judges discretion in sentencing by passing mandatory sentencing laws that require prison sentences for certain offenses.

Source: Bureau of Justice Statistics.

²³ Roscoe Pound, "Discretion, dispensation and mitigation: "The problem of the individual special case," *New York University Law Review* (1960) 35: 925, 926.

²⁴ Wayne R. LaFave, *Arrest: The decision to take a suspect into custody* (Boston: Little, Brown & Co., 1964), p.63-184.

²⁵ Memorandum of June 21, 1977, from Mark Moore to James Vorenberg, "Some abstract notes on the issue of discretion."

branch of government. Some prosecutors accept almost all cases for prosecution; others screen out many cases.

Once charges are filed, a case may be terminated only by official action

The prosecutor can drop a case after making efforts to prosecute, or the court can dismiss the case on motion of the defense on grounds that the government has failed to establish that the defendant committed the crime charged. The prosecution may also recommend dismissal, or the judge may take the initiative in dismissing a case. A dismissal is an official action of the court.

What are the most common reasons for rejection or dismissal?

Many criminal cases are rejected or dismissed because of:

- Evidence problems that result from a failure to find sufficient physical evidence that links the defendant to the offense.
- Victim problems that result when a victim decides to drop the charges.
- Witness problems that arise, for example, when a witness fails to appear, gives unclear or inconsistent statements, is reluctant to testify, or is unsure of the identity of the offender.
- Prosecutive merit wherein the prosecutor decides not to prosecute certain cases based on the merit of the case. For example, some cases referred to the district attorney are more appropriately handled as civil, petty or misdemeanor matters.
- Due process problems that involve violations of the constitutional requirements for seizing evidence and for questioning the accused. Due process problems also result from excessive delays in filing the case.
- Combination with other cases, for example, when the accused is charged in several cases and the prosecutor prosecutes all of the charges in a single case. Cases are often dismissed if the defendant pleads guilty in another case.
- Fugitives from another jurisdiction may have their case dismissed if the other jurisdiction prosecutes.
- Pretrial diversion occurs when the prosecutor and the court agree to drop charges when the accused successfully meets the conditions for diversion, such as completion of a treatment program.

There are many reasons a case is dismissed by the prosecutor, including lack of evidence to pursue the case, dropping charges when a defendant is found guilty to another case, and when a defendant is found not guilty by a jury.

The table on the following page represents an analysis that was done by the Office of Research and Statistics regarding the reasons for dismissal for a small sample of different crime types for cases that were closed in 2003.

The Fourth Amendment Prohibits unreasonable searches and seizures in the collection of evidence

Under the exclusionary rule, evidence obtained in violation of the Fourth Amendment may not be used in criminal proceedings against the accused. Both the police and prosecutors drop cases based on what they find is improperly obtained evidence.

Fewer than 1 percent of the cases filed in Colorado are rejected or dismissed because of due process or constitutional problems.

Most of the cases with due process problems are rejected prior to filing. These types of cases account for approximately 2 percent of the cases that are rejected. Very few cases are dismissed after filing because of constitutional problems.

Table 3.3. Sample of dismissals by crime type, cases closed 2003

Aggravated assault: Sample of 22 dismissals
<ul style="list-style-type: none"> • 3 (14%) DA dismissed because could not locate witness or witness failed to appear • 3 (14%) DA dismissed Nolle Prosequi (insufficient evidence, could not prove case or DA found defendant to be innocent) • 10 (45%) DA dismissed (no reason given) • One (5%) victim was defendants father and did not want to press charges • One (5%) jury found not guilty • Two (9%) DA won't proceed with criminal charges/case filed as a misdemeanor • Two (9%) dismissed due to plea agreement in another case
Rape: Sample of 42 dismissals
<ul style="list-style-type: none"> • 5 (12%) DA dismissed because could not locate witness or witness failed to appear • 8 (19%) DA dismissed Nolle Prosequi (insufficient evidence, could not prove case or DA found defendant to be innocent) • 10 (24%) DA dismissed (no reason given) • One (2%) defendant found incompetent to proceed...in state mental health facility • 5 (12%) jury found not guilty • Two (5%) found guilty and sentenced but currently on appeal • 5 (12%) dismissed due to plea agreement in another case • One (2%) dismissed and extradited to another state • Two (5%) dismissed and charges filed under another case or in another district • Two (5%) set for future hearings • One (2%) defendant killed himself.... DA will file a dismissal when he receives the death certificate
Robbery: Sample of 16 dismissals
<ul style="list-style-type: none"> • One (6%) DA dismissed could not locate witness or witness failed to appear • Two (13%) DA dismissed Nolle Prosequi (insufficient evidence, could not prove case or DA found defendant to be innocent – in one of these the eye witness said it wasn't the defendant) • 5 (31%) DA dismissed (no reason given) • Two (13%) found guilty but not sentenced yet (sentencing October and December 2004) • 5 (31%) dismissed due to plea agreement in another case • One (6%) dismissed and charges filed under another case or in another district
Motor vehicle theft: Sample of 18 cases
<ul style="list-style-type: none"> • 4 (22%) DA dismissed Nolle Prosequi (insufficient evidence, could not prove case or DA found defendant to be innocent) • 5 (28%) DA dismissed (no reason given) • One (6%) defendant found incompetent to proceed...in state mental health facility

(Motor vehicle theft, continued next column.)

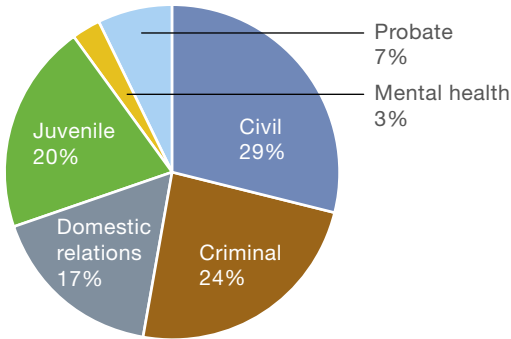
(Motor vehicle theft, continued from previous column.)

<ul style="list-style-type: none"> • One (6%) jury found not guilty • One (6%) jury mistrial and new trial set for future • 4 (22%) dismissed due to plea agreement in another case • One (6%) dismissed and extradited to another state • One (6%) dismissed without prejudice (can file later if the defendant does not carry out terms) until parties reach a tentative agreement
Theft: Sample of 35 cases
<ul style="list-style-type: none"> • Two (6%) DA dismissed in the "interest of justice" • Two (6%) DA dismissed Nolle Prosequi (could not prove case or DA found defendant to be innocent) • 11 (31%) DA dismissed (no reason given) • One (3%) defendant found incompetent to proceed...in state mental health facility • One (3%) case still going on • 13 (37%) dismissed due to plea agreement in another case • One (3%) dismissed DA gave 30 days to file alias or dismissed • Two (6%) dismissed and charges filed under another case or in another district (1 of these to a juvenile case) • One (3%) dismissed and will be filed in county court • One (3%) dismissed and will be amended
Burglary: Sample of 15 cases
<ul style="list-style-type: none"> • 3 (20%) DA dismissed due to insufficient evidence/could not locate witness or witness failed to appear • Two (13%) DA dismissed (no reason given) • One (7%) jury found not guilty • 8 (53%) dismissed due to plea agreement in another case • One (7%) dismissed and charges filed under another case or in another district
Drugs: Sample of 34 cases
<ul style="list-style-type: none"> • Two (6%) DA dismissed because could not locate witness or witness failed to appear • Two (6%) DA dismissed Nolle Prosequi (insufficient evidence, could not prove case or DA found defendant to be innocent) • 12 (35%) DA dismissed (no reason given) (some of these appeared to be because evidence was suppressed because it was collected on illegal search and seizures, etc.) • One (3%) jury found not guilty • 14 (41%) dismissed due to plea agreement in another case • One (3%) dismissed to be prosecuted in county court • One (3%) dismissed and filed jointly in another district • One (3%) where no charges were filed yet... DA requested more time

Source: Disposition data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

Colorado case filings

Figure 3.7. Colorado filings: District court, FY04



- There were 177,358 case filings at the district court level (excluding water cases) during fiscal year 2004.
- Almost a quarter (24 percent) of these filings were for criminal cases.
- Colorado’s district courts terminated 176,306 cases during fiscal year 2004. During the past ten years, district court filings have increased 32.2 percent, rising from 134,160 cases to the current level of filings, with the greatest increase occurring in civil case filings.

Source: Colorado Judicial Branch Annual Statistical Reports Fiscal Year 2004 Chart 2 available at <http://www.courts.state.co.us/panda/statrep/ar2004/trialcourt/chart1-2.pdf>.

Table 3.4. Colorado district court caseloads FY95-FY04

Case class	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04
Civil										
New cases filed	24,054	33,434	33,434	40,389	38,848	39,161	37,235	41,349	43,976	51,846
Cases terminated*	24,074	33,825	33,825	43,442	37,969	38,783	36,817	41,277	4,300	50,777
Criminal										
New cases filed	28,172	30,613	33,867	38,815	37,538	35,770	36,860	39,147	41,257	42,427
Cases terminated*	31,503	40,187	41,680	36,455	38,880	36,037	35,071	37,621	39,725	40,588
Domestic relations										
New cases filed	33,456	31,764	31,819	32,179	31,855	32,318	31,068	32,166	31,771	30,826
Cases terminated*	31,211	38,292	39,426	35,030	38,934	33,146	31,468	33,719	32,282	31,510
Juvenile										
New cases filed	34,689	36,025	37,540	38,905	37,214	36,601	34,481	35,691	36,362	36,078
Cases terminated*	35,096	45,976	59,908	37,062	35,616	40,434	35,910	35,409	35,902	35,561
Mental health										
New cases filed	3,642	3,873	3,840	4,139	4,142	4,141	4,216	4,229	4,330	4,528
Cases terminated*	3,009	3,466	3,803	3,804	4,149	4,544	4,290	4,194	4,405	4,308
Probate										
New cases filed	10,147	11,263	11,432	11,412	11,714	11,605	11,360	11,655	11,762	11,653
Cases terminated*	13,962	12,470	11,768	9,742	9,888	18,618	11,577	13,675	11,946	13,562
Total										
New cases filed	134,160	138,782	151,932	165,839	161,341	159,596	155,220	164,237	169,458	177,358
Cases terminated*	138,855	167,962	190,410	165,535	165,436	171,562	155,133	165,895	167,260	176,306

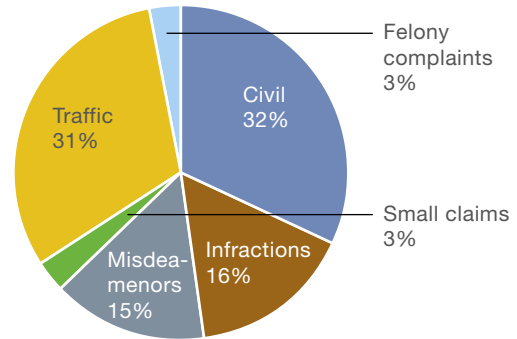
Notes: *Termination levels have fluctuated over the past several years as districts have continued to address issues created by computer conversion. In some instances, conversion caused previously terminated cases to reopen, resulting in a temporary inflated termination count at the time districts reclosed them.

Source: Colorado Judicial Branch Annual Statistical Reports Fiscal Year 2004 Table 12 available at <http://www.courts.state.co.us/panda/statrep/ar2004/trialcourt/table12.pdf>.

Colorado county courts

- There were 514,094 case filings at the county court level during fiscal year 2004. Almost a third (32 percent) of these filings were for civil cases.
- Colorado's county courts were able to terminate 493,563 cases during fiscal year 2004. During the past ten years, county court filings have increased 19.5 percent, rising from 429,919 cases to the current level of filings, with the greatest area of increase occurring in civil filings.

Figure 3.8. Colorado filings: County court, FY04



Source: Colorado Judicial Branch Annual Statistical Reports Fiscal Year 2004 Chart 2 available at <http://www.courts.state.co.us/panda/statrep/ar2004/trialcourt/chart3-4.pdf>.

Table 3.5. Colorado county court caseloads FY95-FY04 (Does not include Denver County Court)

Case class	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04
Civil										
New cases filed	113,817	116,127	119,076	120,846	121,897	127,017	139,919	151,905	165,210	165,324
Cases terminated*	114,284	119,060	116,697	118,561	124,746	137,436	138,581	151,773	162,492	165,761
Infractions										
New cases filed	65,404	74,687	82,963	68,184	64,018	70,094	70,090	69,800	74,947	82,732
Cases terminated*	63,544	70,481	85,288	71,789	66,127	70,776	73,560	72,824	73,597	82,382
Misdemeanors										
New cases filed	65,026	67,376	69,125	70,271	69,932	73,853	72,354	72,973	74,367	74,779
Cases terminated*	63,070	71,779	75,431	70,347	73,182	76,011	71,727	75,212	72,932	74,168
Small claims										
New cases filed	16,899	16,843	17,349	16,650	1,588	15,568	14,961	15,591	15,438	14,292
Cases terminated*	15,342	16,614	16,907	1,646	16,747	17,174	14,587	15,624	15,036	15,113
Traffic										
New cases filed	152,124	164,217	169,593	170,614	159,861	140,183	133,860	138,439	149,720	159,413
Cases terminated*	155,646	175,920	180,755	171,321	170,316	168,898	139,866	139,995	144,555	156,139
Felony complaints**	16,649	18,504	14,345	21,097	20,301	2,010	13,445	21,285	18,833	17,554
Total										
New cases filed	429,919	457,754	472,451	467,662	451,897	446,725	444,629	469,993	498,515	514,094
Cases terminated* ***	411,886	453,854	475,078	448,664	451,118	470,295	438,321	455,428	468,612	493,563

Notes: *Termination levels have fluctuated over the past several years as districts have continued to address issues created by computer conversion. In some instances, conversion caused previously terminated cases to reopen, resulting in a temporary inflated termination count at the time districts reclosed them.

**Felony complaints represent the number of criminal cases, docketed as (CR), that begin in county court. The processing of felony cases varies between locations. The counties processing CR cases hear advisements. Some counties do preliminary hearings in county court before moving the case to district court for completion of the felony process. The case can also be reduced to a misdemeanor and remain in county court. The cases retain the same docket number in either county or district court.

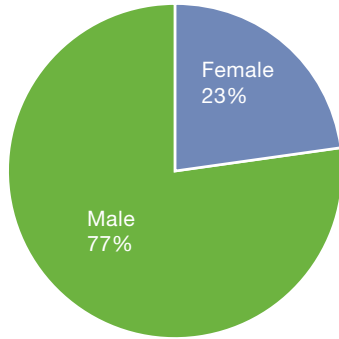
*** Does not include felony complaints.

Source: Colorado Judicial Branch Annual Statistical Reports Fiscal Year 2004 Table 12 available at <http://www.courts.state.co.us/panda/statrep/ar2004/trialcourt/table24.pdf>.

Who gets prosecuted?

This information represents adults whose criminal cases closed in 2003. In many cases, these individuals will have been arrested with charges filed prior to 2003.

Figure 3.9. Gender, cases closed 2003



Source: Filing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The majority of adults with criminal cases filed in court were male (77 percent) and white (75 percent).

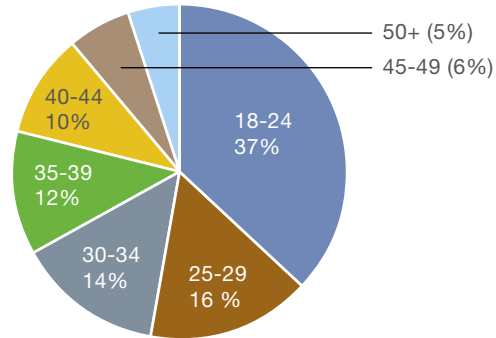
Table 3.6. Race, cases closed 2003

Race	Percent
White	75%
Black	11%
Hispanic	10%
American Indian	1%
Asian	1%
Other	Less than 1%

Source: Filing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The majority of adults with cases filed in district court were white (75 percent). Blacks (11 percent) comprised the second largest ethnic group, while Hispanic individuals made up 10 percent. Note that data concerning Hispanics are available in the filing data extracted from the Judicial Department's data but are not available from CBI. CBI includes individuals of Hispanic ethnicity in with the 'white' race category, as directed by the FBI.

Figure 3.10. Age, cases closed 2003



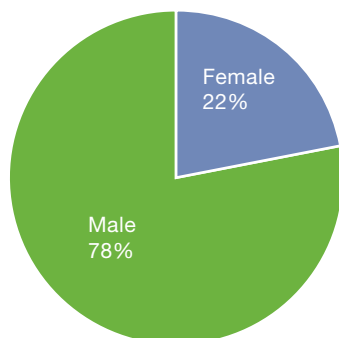
Source: Filing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The average age of adults charged with a crime in district court was 31, with a median age of 28. Just over half of these adults were between the ages of 18 and 29.

Who gets convicted?

This information represents those adults who had a case that was closed in 2003.

Figure 3.11. Gender, cases closed 2003



Source: Filing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The majority of adults convicted were male (78 percent) and white (75 percent).

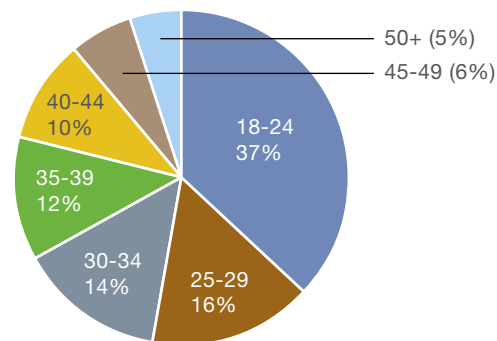
Table 3.7. Race, cases closed 2003

Race	Percent
White	75%
Black	11%
Hispanic	10%
American Indian	1%
Asian	1%
Other	Less than 1%

Source: Filing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The majority of adults convicted were white (75 percent).
- Blacks (11 percent) comprised the second largest ethnic group of adults convicted, while Hispanic individuals made up 10 percent of adults convicted.

Figure 3.12. Age, cases closed 2003



Source: Filing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The average age of adults convicted was 30, with a median age of 28. Just over half of adults convicted were between the ages of 18 and 29.

Were they convicted as charged?

The table below depicts the dispositions of cases closed in 2003. The table shows what a person was charged with and whether or not they were convicted of the original charge or convicted of a lesser charge. For example, if a person was charged with murder, but convicted of aggravated assault, the case would appear in the chart as a murder charge but a violent crime conviction (not including the original charge). If a person was charged with murder and convicted of murder the case would appear in the table as convicted as charged. In this analysis violent charges and convictions include murder, rape, aggravated assault,

and robbery. Non-violent charges and convictions include burglary, theft, motor vehicle theft, and arson. Drugs were kept as a separate category. Note that the crime categories are not mutually exclusive.

- It is common for offenders to be convicted of a different crime category (violent/nonviolent) from the one they were originally charged.
- Those who were charged with a drug crime were most likely to be convicted as charged (76 percent).
- Those who were charged with aggravated assault were least like to be convicted as charged, but nearly 80 percent overall were convicted of a violent crime.

Table 3.8. Adult convictions, cases closed 2003

	Convicted as charged	Violent crime conviction (not including original charge)	Non-violent crime conviction (not including original charge)	Drug conviction
Violent charges				
Murder	38%	50%	19%	1%
Rape	55%	18%	9%	1%
Aggravated assault	29%	49%	20%	1%
Robbery	38%	30%	24%	1%
Non-violent charges				
Burglary	32%	18%	48%	2%
Theft	54%	8%	32%	2%
Motor vehicle theft	51%	6%	31%	3%
Arson	57%	21%	38%	5%
Other charges				
Drugs	76%	4%	14%	NA

Note: Crime categories are not mutually exclusive.

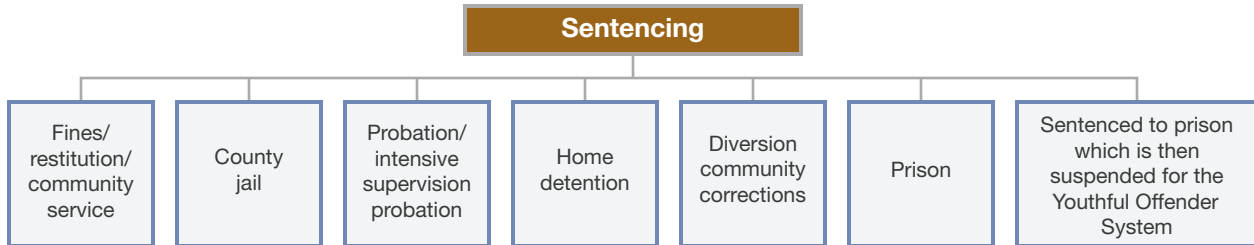
Source: Disposition data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

Adult placements

Once an offender is convicted, the courts will impose a sentence. Sentences vary from payment of a fine to granting probation to imprisonment. Below you will

find these placements and many more. For a description of these placements refer back to The Flow of Adults through Colorado's Criminal Justice System which can be found on page 24.

Figure 3.13. Adult placements



Source: Adapted from Appendix A, *Flowchart of Colorado's Adult Correctional System*, Legislative Council Staff, January 2001.

Some frequently used terms in correctional rehabilitation

Criminogenic need

There are two basic types of criminal risk factors: (1) static, which cannot be changed (e.g., criminal history, age), and (2) dynamic, which are malleable. Dynamic risk factors are also known as criminogenic needs because they are amenable to change and are appropriate targets for intervention and case management. These risk/needs factors include criminal attitudes, thinking and values, antisocial peer associations, problems with substance abuse and lack of self-control. There are also non-criminogenic needs, that is, factors that research has not linked with criminal conduct. These include anxiety and low self-esteem.

Reinforcement

Reinforcement increases prosocial behavior so that it will be repeated in the future. Behavioral treatment programs emphasize the use of three general types of reinforcers: (1) Tangible (money, material goods), (2) Activities (sports, music, TV, socialization), and (3) Social (attention, approval, praise). Research has found positive reinforcement to be many times more effective than punishment.

Relapse prevention

Relapse prevention trains clients to anticipate problem situations and rehearse and practice alternative prosocial responses to cope with difficult situations in their environment that may lead to conflicts. Significant others are trained to offer support, and the opportunity is made available for offenders to return to the program to relearn/reinforce the necessary skills.

Responsivity

This pertains to the interaction between the style of service delivery and offender and therapist characteristics. For example, the style of service delivery is consistent with the learning style of the offender, and offender and therapist characteristics are matched for compatibility to enhance service delivery.

Behavioral treatments

There are three classes of behavioral interventions, the techniques of which overlap but are grounded in a firm yet fair application of reinforcement contingencies. Operant conditioning, or "contingency management," uses positive reinforcement to encourage prosocial behavior. Offenders can earn points for achieving specified prosocial goals, and then exchange points from a menu of reinforcers. Social learning programs rely extensively on modeling appropriate behavior and then having the offender engage in repeated behavioral rehearsal to develop a sense of self-efficacy in mastering the necessary prosocial skills. Assertion training is a part of social learning programs. Social learning is also integrated into therapeutic communities. Cognitive behavior techniques endeavor to change the offender's attitudes, thoughts and beliefs that maintain undesirable behavior. These programs use cognitive restructuring, problem solving, structured learning, reasoning, and self-control techniques to encourage offenders to engage in prosocial behavior.

Source: Paul Gendreau, Sheila A. French, and Angela Gionet (2004). *The Principles of Effective Correctional Treatment*, *Journal of Community Corrections*, Vol XIII, Number 3, Spring 2004.

Colorado criminal code penalties

The Colorado District Attorneys’ Council prepared the following tables and it applies to all sentences that

were committed on or after July 1, 1993. Sentencing laws have been changed many times by the General Assembly, but the overall structure of the sentencing ranges has remained constant since the early 1980s.

Table 3.9. Colorado criminal code penalties, felonies committed on or after July 1, 1993

Presumptive range			Exceptional circumstances		
Class	Minimum	Maximum	Minimum	Maximum	Mandatory parole
1	Life imprisonment	Death	Life imprisonment	Death	
2	8 Years \$5000 fine	24 Years \$1,000,000	4 Years	48 Years	5 Years
3	4 Years \$3000 fine	12 Years \$750,000	2 Years	24 Years	5 Years
Extraordinary risk crime	4 Years \$3000 fine	16 Years \$750,000	2 Years	32 Years	5 Years
4	2 Year \$2000 fine	6 Years \$500,000	1 Year	12 Years	3 Years
Extraordinary risk crime	2 Years \$2000 fine	8 Years \$500,000	1 Year	16 Years	3 Years
5	1 Year \$1000 fine	3 Years \$100,000	6 Months	6 Years	2 Years
Extraordinary risk crime	1 Year \$1000 fine	4 Years \$100,000	6 Months	8 Years	2 Years
6	1 Year \$1000 fine	18 Months \$100,000	6 Months	3 Years	1 Year
Extraordinary risk crime	1 Year \$1000 fine	2 Years \$100,000	6 Months	4 Years	1 Year

Crimes that present an extraordinary risk of harm to society shall include the following:

1. Aggravated robbery, section 18-4-302
2. Child abuse, section 18-6-401
3. Unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, section 18-18-405 (Note – not simple possession)
4. Any crime of violence as defined in section 18-1.3-406
5. Stalking, section 18-9-111 (4)
6. Sale of materials to manufacture controlled substances, section 18-18-412.7 (effective July 1, 2004)

* Section 18-1.3-401 C.R.S. requires a court sentencing a person convicted of a felony committed on or after July 1, 1979, to impose a definite term of incarceration within the range established for the class of felony of which the person was convicted. If the court finds that extraordinary mitigating or aggravating circumstances are present to support a longer or shorter sentence than that permitted by the presumptive range, it may impose a definite term of incarceration within a range of half of the minimum presumptive sentence to twice the maximum presumptive sentence. In addition to the definite term of incarceration, a period of parole supervision is mandatory for persons convicted of class 2, 3, 4, and 5 felonies committed on or after July 1, 1979. The mandatory period of parole supervision for persons convicted of felonies committed between July 1, 1979 and July 1, 1984, is one year, for persons convicted of felonies committed on and after July 1, 1984 and before July 1, 1985, is three years, and for persons convicted of felonies committed on and after July 1, 1985, is a period not to exceed five years. (Section 17-22.5-303(4) and (7) and Section 17-22.5-103 as it existed prior to 1984 repeal and reenactment of Article 22.5 of Title 17. For the text and the former section, see Session Laws of 1979, page 668, or the 1983 Supplement to the 1978 Repl. Volume 8, Colorado Revised Statute). Release on parole of person serving terms of life imprisonment for class 1 felonies committed on or after July 1, 1979 will remain within the discretion of the parole board. (Section 178-2-201(5)(a)). (Section 16-11-103(1)(b)). Those convicted and serving terms of life imprisonment for class 1 felonies committed on or after July 1, 1990, are not parole eligible.

Table 3.9. Colorado criminal code penalties, felonies committed on or after July 1, 1993 (cont.)

<p>Crimes subject to the indeterminate sentencing provisions of section 18-1.3-1004 (offenses committed on or after November 1, 1998)</p> <ol style="list-style-type: none"> 1. Sexual assault, section 18-3-402 2. Sexual assault in the first degree, section 18-3-402 as it existed prior to July 1, 2000 3. Sexual assault in the second degree, section 18-3-403 as it existed prior to July 1, 2000 4. Felony unlawful sexual contact, section 18-3-404 (2) 5. Felony sexual assault in the third degree, section 18-3-404 (2) as it existed prior to July 1, 2000 6. Sexual assault on a child, section 18-3-405 7. Sexual assault on a child in a position of trust, section 18-3-405.3 8. Aggravated sexual assault on a client by a psychotherapist, section 18-3-405.5 (1) 9. Enticement of a child, section 18-3-305 10. Incest, section 18-6-301 11. Aggravated incest, section 18-6-302 12. Patronizing a prostituted child, section 18-7-406 13. Attempt, conspiracy, or solicitation to commit any of these offenses if such attempt, conspiracy, or solicitation would constitute a class 2,3, or 4 felony.
<p>Unlawful sexual behavior requiring sex offender registration</p> <ol style="list-style-type: none"> 1. Sexual assault, 18-3-402 2. Sexual assault in the first degree as it existed prior to July 1, 2000, 18-3-402 3. Sexual assault in the second degree as it existed prior to July 1, 2000, 18-3-403 4. Unlawful sexual contact, 18-3-404 5. Sexual assault in the third degree as it existed prior to July 1, 2000, 18-3-404 6. Sexual assault on a child, 18-3-405 7. Sexual assault on a child in a position of trust, 18-3-405.3 8. Aggravated sexual assault on a client by a psychotherapist, 18-3-405.5 9. Enticement of a child, 18-3-305 10. Incest, 18-6-301 11. Aggravated incest, 18-6-302 12. Trafficking in children, 18-6-402 13. Sexual exploitation of children, 18-6-403 14. Procurement of a child for sexual exploitation, 18-6-404 15. Keeping a place of child prostitution, 18-7-404 16. Pimping of a child, 18-7-405 17. Inducement of a child prostitution, 18-7-405.5 18. Patronizing a prostituted child, 18-7-406 19. Engaging in sexual conduct in a penal institution, 18-7-701 20. Promotion of obscenity to a minor and wholesale promotion of obscenity to a minor, 18-7-102 21. Any offense for which the underlying factual bases involves any of these offenses 22. Attempt, conspiracy, or solicitation to commit any of these offenses



Daily cost of adult placements

Probation

Table 3.10. Daily cost of adult probation

Type of supervision	Cost*	Average Daily Caseload**
Regular probation	\$2.16	39,207
Regular Intensive Supervision Probation (ISP)	\$8.10	1,901
ISP with adult sex offenders	\$19.23	905

Note: *Figures obtained from the Division of Probation Services, located in the State Judicial Office FY05 budget planning document. **These figures reflect the standing caseload as of 6/30/2004.

Source: Division of Probation Services, Colorado Judicial Branch.

- There were 42,013 adult offenders on probation in Colorado as of June 30, 2004.
- Regular probation costs are for administrative and supervisory personnel.
- ISP Probation provides intense supervision and treatment of offenders under conditions established by the Court and agreed to by the offender. The ISP costs include personnel for administration and supervision, treatment dollars, electronic monitoring, drug treatment and sex offender specific treatment.

Community corrections

- The regular per diem of \$34.70 provides room and board, some hygiene products and other basic daily needs. It also pays for staff and costs associated with maintaining the facility.
- Enhanced Per Diem for Transition/Diversion offenders pays for additional services for high-need offenders.
- Enhanced Per Diem for the seriously mentally ill provides them with some treatment, clothing, medications and bus tokens (things that they would not normally think of for themselves).
- Enhanced Per Diem is also provided to Women’s Remediation. These are women on parole for domestic violence or substance abuse who are experiencing problems or in an inappropriate living arrangement and are at risk for being regressed to DOC.
- Offenders pay as much as \$17.00 per day as their portion of the costs.

Department of Corrections (DOC)

- Six different factors go into the total per diem costs of DOC programs. They are:

Table 3.11. Daily cost of community corrections

Type of program	Cost	Enhanced cost	Average daily population*
Residential bed (transition)	\$34.70		1,136
Residential bed (diversion)	\$34.70		1,267
Non-residential (Diversion)	\$4.71		920
Parole	\$34.70		131
Day reporting	\$7.77		165**
Sex offender	\$34.70		108***
Transition/ Diversion IRT	\$34.70	\$16.35	120**
Women’s remediation	\$34.70	\$15.70	17
Mental health	\$34.70	\$30.36	22
TC enhanced	\$34.70	\$13.25	16
TC day treatment	\$30.75		8

Notes: *These figures represent calendar year 2004. **These figures are estimate averages. ***This figure is from fiscal year 2004.

Source: The Office of Community Corrections, Colorado Division of Criminal Justice.

- *Management (administration of the program)*
- *Institutions (cost of maintaining the facility where the program is located)*
- *Support Services (carpenters, mechanics, mail services and all other support services)*
- *Inmate programs, (educational and recreational programs which are provided to inmates)*
- *Community Services (counseling, job placement, and monitoring personnel),*
- *Parole Board.*
- All six of these factors apply to each of the programs mentioned above with the following exceptions: ISP Parole does not pay for institution costs, and neither DOC nor YOS are charged for community services.

Table 3.12. Daily cost of DOC’s offender population in 2003

Type of supervision	Cost	Average Daily Population
DOC	\$76.23	13,610
YOS	\$185.62	237
Parole	\$9.07	3,674
ISP parole	\$19.03	738

Source: Colorado Department of Corrections Statistical Report Fiscal Year 2003.

Where do they go once convicted?

This sentencing data represents sentences received for adult cases closed in 2003. Sentencing is shown by index crimes. Note that crime categories are not mutually exclusive. For example, a person sentenced to DOC could have also received jail time or ISP. Furthermore, not all possible sentencing categories

are listed. Some charges could have received community service, fines, electronic home monitoring, work release, or other types of sentences.

- Most murder cases and robbery cases closed in 2003 received a DOC sentence.
- Most non-violent and drug crimes closed in 2003 received a probation sentence.

Table 3.13. Adult placements by index crime, cases closed 2003

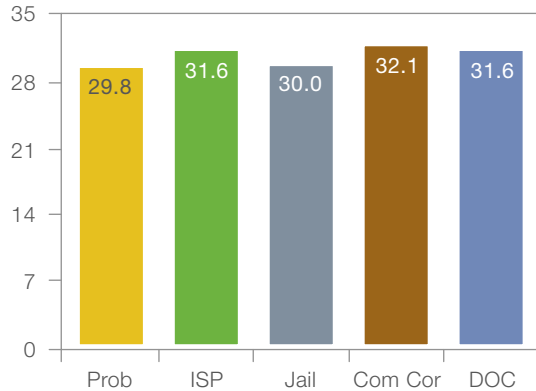
Crime	Probation	ISP	Jail	Community corrections	DOC
Murder	7%	1%	8%	6%	81%
Rape	25%	20%	24%	3%	34%
Aggravated assault	26%	3%	16%	4%	47%
Robbery	17%	6%	14%	8%	64%
Burglary	27%	3%	15%	5%	27%
Theft	40%	1%	21%	2%	7%
Motor vehicle theft	38%	3%	21%	5%	21%
Arson	35%	10%	27%	2%	25%
Drugs	38%	3%	16%	4%	16%

Source: Sentencing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

Characteristics of who goes where

Figures 3.14 and 3.15 and Table 3.14 display demographic information on adults who were sentenced when their cases were closed in 2003.

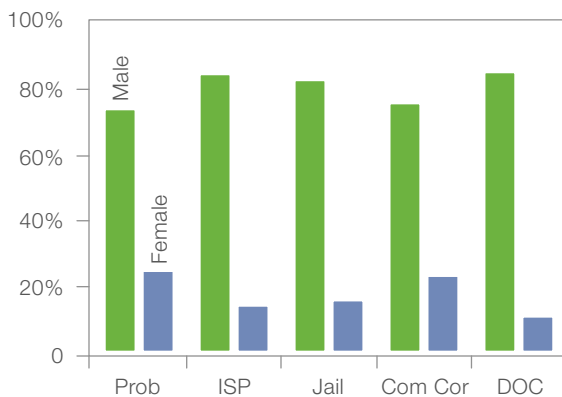
Figure 3.14. Age of offender by placement, cases closed 2003



Source: Sentencing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- The average age of offenders sentenced to either probation, ISP, jail, community corrections, or DOC in Figure 3.14 was between 30 and 32.

Figure 3.15. Gender of offender by placement, cases closed 2003



Source: Sentencing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- Women comprised 50 percent of the state population and between 12 and 25 percent of offenders sentenced to probation, ISP, jail, community corrections, or DOC.

Table 3.14. Race of offenders by placement, cases closed 2003

Race	Probation	ISP	Jail	Community corrections	DOC
Caucasian	75%	70%	77%	74%	68%
African American	10%	14%	9%	16%	15%
Hispanic	12%	13%	11%	6%	12%
Asian	1%	1%	1%	2%	1%
Native American	1%	2%	1%	1%	1%
Other	<1%	<1%	<1%	<1%	<1%

Source: Sentencing data extracted from the Judicial Department's Integrated Colorado Online Network (ICON) information management system were obtained via the Colorado Integrated Criminal Justice Information System (CICJIS) Criminal Justice Analytic Support System (CJASS) and analyzed by DCJ's Office of Research and Statistics.

- Seventy-five percent of the probation population is Caucasian. Information from cases closed shows that 74 percent of individuals sentenced to community corrections were Caucasian.
- 68 percent of individuals sentenced to prison were Caucasian.
- Four percent of the state population is black or African American, while 15 percent of individuals sentenced to prison were black or African American.
- Ten percent of the individuals sentenced to probation were African American and 16 percent of the community correction sentences were African American.

How many people are under correctional supervision?

National figures

- In 2003, 6.9 million people were on probation, in jail or prison, or on parole at yearend 2003 – 3.2 percent of all U.S. adult residents, or 1 in every 32 adults.
- State and federal prison authorities had under their jurisdiction 1,470,045 inmates at yearend 2003: 1,296,986 under state jurisdiction and 173,059 under federal jurisdiction.
- Local jails held or supervised 762,672 persons awaiting trial or serving a sentence at midyear 2003. About 71,400 of these were persons serving their sentence in the community.

Colorado figures

- In Colorado, over 71,300 people are in prison or on probation or parole. Several thousand more are in local jails.
- Over 28,000 people are under the jurisdiction of the Colorado Department of Corrections.
- Approximately one-quarter of the DOC population is on parole.
- In September 2004, the most recent period for which data are available, over 43,300 offenders were serving time on probation in Colorado.

Table 3.15. Year end correctional populations

	Probation	Community corrections	DOC
12/31/04	Not available	3594	20144
12/31/03	42877	3557	19454
12/31/02	Not available	3194	18551
12/31/01	41927	3118	17150
12/31/00	39355	3760	16539
12/31/99	Not available	3625	15372
12/31/98	41142	3486	13966

Source: Probation numbers – State Judicial Department. Community Correction numbers – Division of Criminal Justice, Office of Community Corrections. Department of Corrections numbers – Colorado Department of Corrections.

- Approximately 2700 offenders from probation and DOC were serving time in 35 residential, community-based halfway houses on March 31, 2005.
- Another 967 probation clients were on non-residential community corrections status on March 31, 2005.

Source: Bureau of Justice Statistics at <http://www.ojp.usdoj.gov/bjs/correct.htm>; Division of Probation Services; Colorado Department of Corrections; Colorado Division of Criminal Justice, Office of Community Corrections.

Table 3.16. Top 10 crimes by gender and status for community corrections

Rank	Top 10 crimes diversion men			Top 10 crimes transition men			Top 10 crimes all women		
	Crime	N	% of total population	Crime	N	% of total population	Crime	N	% of total population
1	Drug related	1016	39.2%	Drug related	885	36.5%	Drug related	427	46.8%
2	Theft	500	19.3%	Theft	389	16.5%	Theft	200	21.5%
3	Burglary	307	11.9%	Burglary	315	13.2%	Burglary	82	9.0%
4	Assault	166	6.4%	Assault	213	8.8%	Assault	41	4.5%
5	Forgery	149	5.7%	Forgery	119	4.9%	Forgery	33	3.6%
6	Driving related	127	4.9%	Driving related	106	4.4%	Driving related	25	2.7%
7	Sexual assault	77	3.0%	Sexual assault	93	3.8%	Sexual assault	23	2.5%
8	Fraud	71	2.7%	Fraud	89	3.7%	Fraud	17	1.8%
9	Robbery	33	1.2%	Robbery	55	2.3%	Robbery	17	1.8%
10	Homicide	21	0.8%	Homicide	31	1.3%	Homicide	10	1.1%

Source: Colorado Community Corrections Annual Statistical Report Fiscal Year 2003-2004 Figure F1 available at <http://dcj.state.co.us/occ/pdf/Annual%20Report%2003-04%20FINAL.pdf>.

- More than one-third of community corrections offenders were convicted of a drug-related crime in FY04.
- Theft, burglary, assault, and forgery account for another 40 percent of the conviction crimes of offenders in community corrections.
- The current crime represents the first felony conviction for nearly one-third of community corrections offenders.
- 85 percent of community corrections offenders have a serious substance abuse problem.
- These offenders paid over \$2.2 million in restitution in FY04, \$904,000 in state income taxes and \$2.2 million in federal income taxes.
- Two thirds of men and 75 percent of the women remained crime-free for 24 months following program completion, according to the most recent recidivism study conducted by the Division of Criminal Justice, Office of Research and Statistics, published in 2002.
- Individuals who were released on to supervision with a probation or parole officer, versus discharged outright, were more likely to stay crime-free.

Community Corrections has been a sentencing alternative in Colorado since 1974. It was designed to be an alternative to incarceration in prison. Services are available that promote productive reintegration of offenders back into the community. Services include substance abuse treatment, mental health treatment, money management, life skills training, and education and vocational opportunities. Two groups of offenders are placed in community corrections: (1) Diversion offenders are sentenced directly by the courts or, in rare

Table 3.17. Prison population numbers

Security level	30-Jun-03
Administrative seg/max	21.2%
Medium	24.0%
Restricted-minimum	26.8%
Minimum	28.0%
Total	100.0%

Source: Colorado Department of Corrections Statistical Report Fiscal Year 2003.

In the Colorado Department of Corrections (CDC), offenders are classified into the most appropriate custody level. There are five custody levels: minimum, minimum-restricted, medium, close, and administrative segregation. Administrative segregation is the most restrictive custody level imposed upon an offender. Offenders custody levels are determined through the use of custody rating instruments. Table 3.17 displays the prison population as of June 2003 in the different custody levels.

instances, are sentenced as a condition of probation for up to 30 days; and (2) Transition offenders are “transitioning” to the community after serving a prison sentence. In Fiscal Year 2004, 52 and 48 percent of community corrections offenders were diversion and transition clients, respectively. The average length of stay is approximately six months. Over 5,000 offenders were discharged from community corrections in FY04.

Source: Colorado Community Corrections Annual Statistical Report, FY03-FY04, available at <http://dcj.state.co.us/occ/pdf/Annual%20Report%2003-04%20FINAL.pdf>.

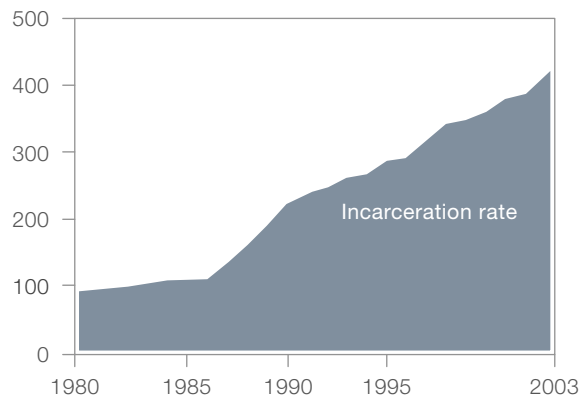
Incarceration rates

Colorado incarcerated 429 individuals for every 100,000 residents in 2004, an increase of .4 percent from the prior year. The 50-state average incarceration rate in 2004 was 433. The incarceration rate is calculated annually by the U.S. Bureau of Justice Statistics.

In Colorado between 1980 and 2003

- *The crime rate fell by 35 percent while the incarceration rate increased by 450 percent.*

Figure 3.16. Colorado incarceration rates, 1980-2003

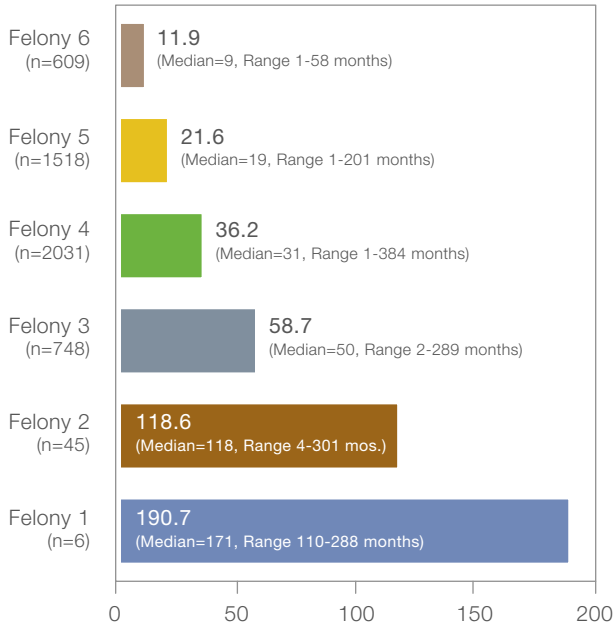


Note: Rate is per 100,000 adults.

Source: U.S. Bureau of Justice Statistics, Annual Census Report on State Prisoners.

Average length of time spent in prison

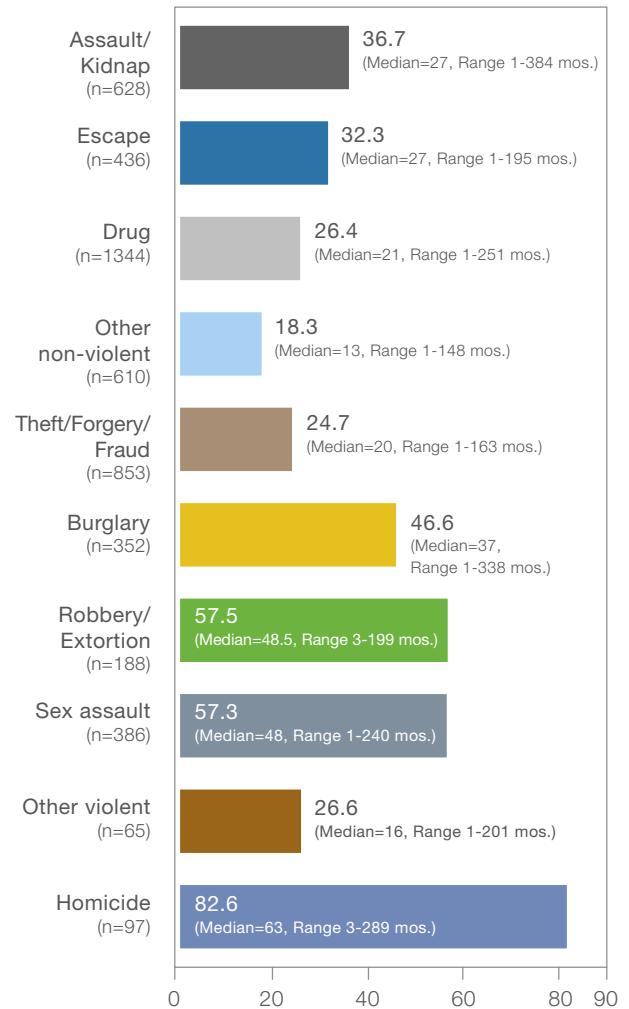
Figure 3.17. Average months spent in prison by felony class: Offenders released in FY03 (n=4959) (Sentence lengths are in months, 2017 technical violations are excluded)



Source: Colorado Department of Corrections, analysis by Colorado Division of Criminal Justice, Office of Research and Statistics.

- Approximately 530 sex offenders are currently incarcerated with indeterminate sentences, which could be as long as a life sentence.
- Thirty percent (2,135) of the prison releases described in these tables were releases to parole.
- In FY03, 65 inmates died while in prison.
- Only offenders who are actually released are included in this analysis. Those released have been convicted of less serious crimes than those still in prison.
- Average length of stay increases with the severity of the conviction felony class.
- Following homicide, those in the sex assault and robbery/extortion categories have the longest sentences, each averaging approximately 57 months.

Figure 3.18. Average time spent in prison by crime type: Offenders released in FY03 (n=4959) (Sentence lengths are in months, 2017 technical violations are excluded)



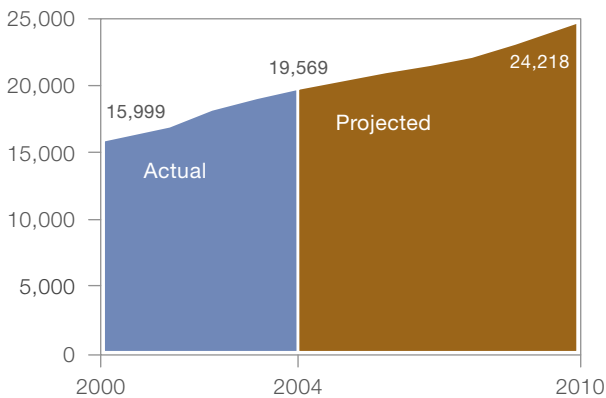
Source: Colorado Department of Corrections, analysis by Colorado Division of Criminal Justice, Office of Research and Statistics.

- Those with “other non-violent” offenses have the shortest incarceration periods, averaging 18.3 months.
- The range of time served in all categories is extremely broad, reflecting the very wide sentencing ranges defined in statute.
- To see a breakout of crimes included in each of these categories, and associated felony classes, see Section 6 Furthermore.

Prison and parole populations in the years to come

The Colorado Division of Criminal Justice is mandated to prepare population projections annually. These projections provide a perspective of how the prison population is growing, and how many inmates will need to be accommodated in the future. The DCJ projection model incorporates census data with other data concerning the age, gender and offense profile of new prison commitments, estimates of the average length of stay in prison and the profile of prisoners carried over from the previous year. In addition, other factors that may influence prison population growth such as arrest rates, new legislation, policy changes and court decisions are incorporated into the projection model. The projection model has proven to be quite accurate: at the end of FY04, the DCJ projections erred by 2.0 percent. In the last eight years, the error has averaged 1.45 percent.

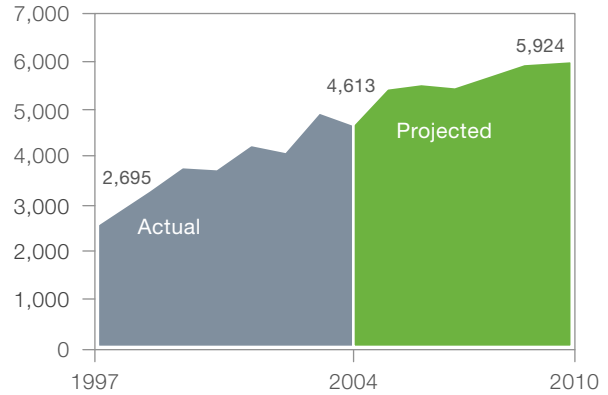
Figure 3.19. Inmate actual and projected populations



Source: Colorado Division of Criminal Justice Adult Prison and Parole Population Projections and Juvenile Commitment and Parole Population Projections, December 2004 available at http://dcj.state.co.us/ors/pdf/docs/FINALPPP_2004.pdf.

- Findings from the 2004 projections indicated that the Colorado adult prison population is expected to grow 23.8 percent between July 2004 and June 2010, from an actual population of 19,569 to a projected population of 24,218 offenders.
- The number of men in prison is expected to increase 20.3 percent between July 2004 and June 2010, from 17,814 to 21,437.
- The number of women in prison is expected to increase an extraordinary 58.5 percent between July 2004 and June 2010, from 1,755 to 2,781.

Figure 3.20. Colorado domestic parole: Historical and forecasted caseload



Source: Colorado Division of Criminal Justice Adult Prison and Parole Population Projections and Juvenile Commitment and Parole Population Projections, December 2004 available at http://dcj.state.co.us/ors/pdf/docs/FINALPPP_2004.pdf.

- The parole population is expected to grow significantly.
- The total number of offenders on parole is expected to increase 21.4 percent, from 5,244 in July 2004 to 6,366 in July 2010.
- Between 1991 and 2003, the average length of stay on parole steadily increased. Last year, the first in 13 years, length of stay on parole declined.

Table 3.18. Fall 2003 adult prison population projections by gender

Fiscal Year End (FYE)	Total prison	Male population	Female population
1993*	9,242	8,712	530
1994*	10,005	9,382	623
1995*	10,669	10,000	669
1996*	11,577	10,808	769
1997*	12,590	11,681	909
1998*	13,663	12,647	1,016
1999*	14,726	13,547	1,179
2000*	15,999	14,733	1,266
2001*	16,833	15,493	1,340
2002*	18,045	16,539	1,506
2003*	18,846	17,226	1,620
2004	19,569	17,814	1,755
2005	20,221	18,255	1,966
2006	20,843	18,699	2,144
2007	21,371	19,077	2,294
2008	21,987	19,562	2,425
2009	22,963	20,367	2,596
2010	24,218	21,437	2,781

Note: *Represents actual data.

Source: Colorado Division Of Criminal Justice Adult Prison and Parole Population Projections and Juvenile Commitment and Parole Population Projections, December 2004 available at http://dcj.state.co.us/ors/pdf/docs/FINALPPP_2004.pdf.