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State of Colorado  
**Criminal Justice Commission**  
State Senator Sally Hopper, Chairman  
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MEMORANDUM

DATE: January 6, 1993  
TO: The General Assembly  
FROM: Senator Sally Hopper, Chair *Sally Hopper*  
Criminal Justice Commission  
SUBJECT: Senate Bill 94 Placement Criteria

Pursuant to C.R.S. 19-2-1602 (a), otherwise referred to as Senate Bill 94, a multiagency working group "...shall propose a set of criteria determining which juvenile offenders are appropriate for placement in the physical custody of the department of institutions or in the custody of the department of social services." Further, "the uniform set of criteria shall be developed and approved by the Department of Institutions, the Department of Social Services, and the Judicial Department on or before July 1, 1992, and submitted to the Criminal Justice Commission for analysis and evaluation. The Criminal Justice Commission shall make a written report to the General Assembly regarding analysis and evaluation of such criteria on or before December 31, 1992. Such report may contain any recommendation by the Criminal Justice Commission regarding such criteria."

The attached report combines the final report from the Senate Bill 94 Criteria Committee with the recommendations and comments of the Juvenile Subcommittee of the Criminal Justice Commission and the comments of the full Criminal Justice Commission.

**REPORT FROM THE SENATE BILL 94 CRITERIA COMMITTEE \***

PLEASE NOTE THAT THIS REPORT HAS BEEN MODIFIED TO INCLUDE THE RECOMMENDATIONS/COMMENTS OF THE JUVENILE SUBCOMMITTEE OF THE CRIMINAL JUSTICE COMMISSION AND THE COMMENTS OF THE CRIMINAL JUSTICE COMMISSION. ALL SUCH COMMENTS ARE CAPITALIZED AND CONTAINED IN BOXES.

Senate Bill 91-94 was introduced to address the increasing number of juvenile offenders entering the Division of Youth Services and the Department of Social Services, and develop a uniform set of criteria for out-of-home placement of juvenile offenders. Specific committees formed to implement SB91-94 included the Criteria Committee, the Formula Allocation Committee, the Demonstration Project Committee, and the Emergency Release Committee. This document reports the findings and recommendations of the SB94 Criteria Committee.

The SB94 Criteria Committee was formed to establish criteria related to treatment of juvenile delinquents including 1) detention placements of pre-trial youths, 2) commitment of youths to the Department of Institutions, and 3) transferral of youths to the Department of Social Services. The layout of this report is as follows:

- I. SB94 Criteria Committee Membership
- II. Current Status of Juvenile Detention Admissions and Commitments
- III. Charge of the Committee
- IV. Establishment of a Committee Philosophy
- V. Separation of Detention and Long Term Commitment Criteria
- VI. Recommended Criteria
- VII. Other Findings, Recommendations and Comments
- VIII. History Considered by the Committee
- IX. Results of a Survey on Youths on Probation Only, on Probation with Social Services Involvement, or Committed to the Department of Institutions

THE JUVENILE SUBCOMMITTEE AND THE CRIMINAL JUSTICE COMMISSION ACKNOWLEDGE AND APPRECIATE THE WORK OF THE CRITERIA COMMITTEE AND WISH TO SUPPORT EACH PROVISION OF THE CRITERIA COMMITTEE REPORT EXCEPT AS AMENDED BY THE RECOMMENDATIONS OF THE JUVENILE SUBCOMMITTEE AS THEY APPEAR THROUGHOUT THIS WORKING DOCUMENT.

\* Final Report including the recommendations and comments of the Criminal Justice Commission.

I. SB94 Criteria Committee Membership

Following is a list of members of the SB94 Criteria Committee.

Mr. Bill Bane  
Division of Mental Health  
Treatment Services

Ms. Pat Kirk  
Division of Youth Services

Sheriff Ron Beckham  
Jefferson County

Ms. Marian Lawrence  
Denver County Court

Ms. Bonnie Benedetti  
Executive Director  
CDAC

Hon. Rebeca Love Kourlis  
District Court Judge  
14th Judicial District

Mr. Paul Cooper  
Community Corrections  
Larimer County

Ms. Mary Mande  
Division of Criminal Justice

Mr. Ben Duarte  
Chief Probation Officer  
12th Judicial District

Ms. Betty Marler  
Division of Youth Services  
Treatment Services

Mr. Bill Evans  
Administrator  
Western Academy-RCCF

Mr. Frank Minkner  
Chief Probation Officer  
18th Judicial District

Ms. Linda Fairbairn  
Director  
Lincoln County Social Services

Mr. Anthony Silva  
Director  
Mesa County Social Services

Rep. Marlene Fish  
Lakewood, CO 80215

Mr. Ron Stewart  
County Commissioner  
Boulder County

Ms. Marva Hammons, Director  
Denver Social Services

Mr. John Suthers  
District Attorney  
4th Judicial District

Senator Sally Hopper  
Golden, Colorado

Hon. Richard Toth  
4th Judicial District

Capt. Rick Hollar  
Lamar, Colorado

Hon. Dana Wakefield  
Denver Juvenile Court

Dr. Robert Keller  
Univ. of Southern Colorado

## II. Current Status of Juvenile Detention Admissions and Commitments

Recent figures indicate that the Division of Youth Services has experienced approximately 12,000 admissions to detention and over 600 new commitments to the Department of Institutions in FY 1991-92. State-run detention centers and commitment facilities have been operating at about 170% and 130% of capacity respectively during the last quarter.

Five-year population projections were submitted to DYS from Dr. Mary Mande with whom the Division now contracts. These projections indicate that given no changes in current practices and without SB94 funding the numbers will continue to increase producing a 33% increase in detention average daily population (ADP) and a 26% increase in commitment ADP by 1996-97. The total capacity (average for the year) for delinquent youths in FY 1991-92 was approximately 780. The five year projections indicate that the total bed need to operate at capacity in FY 1996-97 would be 1339.

A combination of the SB94 pilot projects currently underway, and the Intensive Supervised Probation (ISP) program through the Judicial Department is expected to save the Division the need for 125 beds (89 through SB94 projects and 36 through Judicial ISP). Current practices will leave a need for approximately 400 additional beds to house juvenile offenders in the next five years.

## III. Charge of the Committee

Senate Bill 94 establishes various areas which are to be addressed as a part of implementation of the Bill. The Criteria Committee was brought together to address the development of criteria for placement of juvenile offenders as required in CRS 19-2-1602 (1)(a).

"The working group established pursuant to this subsection (1) shall propose a set of criteria determining which juvenile offenders are appropriate for placement in the physical custody of the Department of Institutions or in the custody of the Department of Social Services.

This set of criteria, when adopted by the Department of Institutions, the Department of Social Services, and the Judicial Department, shall be used to promote a more uniform system of determining which juveniles should be placed in the physical custody of the Department of Institutions or in the custody of the Department of Social Services so that decisions for such placement of a juvenile are made based upon a uniform set of criteria throughout the state.

In developing such set of criteria, the working group shall utilize any existing risk scale devised by the Division of Youth Services or any other measures to determine when it is appropriate to place a juvenile in the physical custody of the Department of Institutions or in the custody of the Department of Social Services.

The uniform set of criteria shall be developed and approved by the Department of Institutions, the Department of Social Services, and the Judicial Department on or before July 1, 1992 and submitted to the Criminal Justice Commission for analysis and evaluation. The Criminal Justice Commission shall make a written report to the General Assembly regarding analysis and evaluation of such criteria on or before December 31, 1992. Such report may contain any recommendations by the Criminal Justice Commission regarding such criteria."

#### IV. Establishment of a Committee Philosophy

The Criteria Committee determined early on that it must agree upon a general philosophy in the development of the required criteria. It was ultimately determined that the legislative declaration as to the purposes of the Colorado Children's Code should serve as our philosophical foundation for criteria development. That declaration states in part:

19-1-102. Legislative declaration. (1) The general assembly declares that the purposes of this title are:

- A. To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interest of society;
- B. To preserve and strengthen family ties whenever possible, including improvement of home environment;
- C. To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the court to proceed with all possible speed to a legal determination that will serve the best interests of the child; and
- D. To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

(Italicized sections above reflect those specific philosophy statements the committee deemed to be pivotal in our statutory charge of criteria development.)

#### V. Separation of Detention and Long Term Commitment Criteria

Examination of the criteria development issue identified three specific decision points or statutory conditions in which a juvenile may be placed in either the custody of the Department of Institutions or the Department of Social Services. The committee agreed that the uniqueness of each of these conditions required the development of specific criteria. Therefore the decision was made to develop three sets of criteria. These three criteria areas are:

- A. Criteria for the placement of a juvenile in the physical custody of the Department of Institutions via pretrial detention pursuant to CRS 19-2-203, CRS 19-2-211.
- B. Criteria for the placement of a juvenile in the physical custody of the Department of Institutions as a sentencing option pursuant to CRS 19-2-703 (1) (a) (b).
- C. Criteria for the placement of a juvenile in the physical custody of the Department of Social Services as a sentencing option pursuant to CRS 19-2-703 (2).

## VI. Recommended Criteria

NOTE: While the recommended criteria are being presented at this point of the report, the committee activities and research in Sections VIII and IX should be carefully reviewed as well.

### A. Recommended Use of Juvenile Detention:

The following recommendations are made pertaining to the use of detention facilities for pre-trial holding of juveniles:

**CRITERION 1:** The following juveniles taken to detention or temporary holding by a law enforcement officer shall be held in a secure setting pending a detention hearing pursuant to CRS 19-2-204.

1. Youths taken into custody for a delinquent act of a crime of violence as defined in CRS 16-11-309 (2).
2. Youths taken into custody for a delinquent act of escape from a secure facility operated by or under contract with the Division of Youth Services.
3. Youths taken into custody on a bench warrant or court order in connection with a delinquency petition or delinquency investigation, unless the warrant or order authorizes non-secure placement or is modified by the court or unless bail has been set and bond posted.

### Committee Comments:

1. Without the modification or repeal of the following statutes, the detention criteria cannot be implemented:
  - CRS 19-2-204(3)(c) Mandatory felony hold
  - CRS 19-2-205(1) District Attorney statutory objection to bond

CRIMINAL JUSTICE COMMISSION COMMENTS: SOME MEMBERS EXPRESSED CONCERN ABOUT THE STATUTORY CHANGES NECESSARY TO IMPLEMENT THE CRITERIA. ONE CONCERN REVOLVED AROUND THE DISTRICT ATTORNEY'S RIGHT TO OBJECT TO BOND PRIOR TO JUDICIAL REVIEW. THIS RIGHT SHOULD NOT BE LOST BUT THE PROCESS COULD BE EXPEDITED.

2. It is the intent of the committee that all juveniles who are taken to detention for allegedly committing acts that fall into this category be detained.

CRITERION 2: The following juveniles taken into custody by a law enforcement officer and referred to detention or temporary holding shall be held in a secure setting pending judicial review or subject to locally established judicial policy for release.

JUVENILE SUBCOMMITTEE VOTED TO RECOMMEND REPHRASING CRITERIA 2 IN SUCH A MANNER AS TO EMPHASIZE THE DEVELOPMENT OF COMMUNITY-BASED ALTERNATIVES AND THE USE OF ESTABLISHED JUDICIAL POLICIES FOR RELEASE. THE CURRENT WORDING COULD BE READ AS REQUIRING SECURE HOLDING OF JUVENILES.

RECOMMENDATION FOR REPHRASING: "THE FOLLOWING JUVENILES TAKEN INTO CUSTODY BY A LAW ENFORCEMENT OFFICER AND REFERRED TO DETENTION OR TEMPORARY HOLDING (1) ARE TO BE HELD IN A SECURE SETTING PENDING JUDICIAL REVIEW OR (2) ARE TO BE SUBJECT TO LOCALLY ESTABLISHED JUDICIAL POLICY FOR RELEASE TO APPROPRIATE COMMUNITY-BASED ALTERNATIVES."

Minority Comments: Concern was expressed that social services not be impacted by the attempt to hold more juveniles in the community. Use of social services should be needs driven not delinquency driven.

1. Youths who are currently on probation and are alleged to have violated that probation.
2. Youths taken into custody for a delinquent act and who have a history of prior adjudication.
3. Youths taken into custody for a delinquent act who are at liberty on other bond.
4. Youths taken into custody for a delinquent act which would constitute a felony if committed by an adult.
5. Youths taken into custody as a perpetrator in domestic violence.

6. Youths taken into custody who possess or use a weapon during a delinquent offense.
7. Youths who are a danger to themselves or community and who are taken into custody for a delinquent act.
8. Youths taken into custody for the delinquent act of escape from a community based residential program operated by or under contract to the Division of Youth Services.
9. Youths who are placed on an immigration hold by the Immigration and Naturalization Service (INS) to establish deportability.
10. Youths taken into custody pursuant to 19-3-401(1)(a) or (b) and placed in detention pursuant to 19-3-402(3)(b) and 19-3-403(2).

Committee Comment:

1. It is the intent of the committee to not interfere with the discretion of law enforcement officers to hold or release specific individuals based on their professional judgement. Once an officer makes a decision to take to detention a juvenile who falls into one of these categories, however, the continued detention is determined by judicial review or local judicial policy.
2. This section assumes the availability of release programs such as personal recognizance bonding, electronic monitoring, tracking or other community-based programs funded from the Juvenile Services Fund.

CRITERION 3: The following youths shall not be detained in a secure setting:

1. Youths who have not committed a delinquent act except when otherwise provided for by law or other criteria. (e.g., CRS 19-3-401)
2. Youths who are being held solely as a temporary corrective or punitive measure including "time out" placements for committed youths in community placements.
3. Youths taken into custody for violation of law over which the juvenile court has no jurisdiction as defined in CRS 19-2-102(1)(a).
4. Youths waiting solely for placement by the Department of Social Services.
5. Youths who require medical care beyond the scope of the detention facility's level of medical service or who are intoxicated or under the influence of drugs shall be referred to a hospital or detox center until medical clearance is obtained.



6. Youths who have not committed a delinquent act but who present a danger to themselves as a result of a mental disturbance or developmental disability shall be referred for appropriate screening per 27-10-105, 27-10-106 and 17-10.5-101.

**SOME MEMBERS OF THE CRIMINAL JUSTICE COMMISSION COMMENTED ON THE NEED TO ESTABLISH ALTERNATIVE PROGRAMS FOR YOUTHS WHO MAY NOT BE DETAINED IN A SECURE SETTING, AND YOUTHS WHO MAY NEED A "TIME OUT" ALTERNATIVE TO COMMUNITY PLACEMENTS. IN ADDITION, SOME QUESTIONS WERE RAISED REGARDING THE LOGISTICS OF IMPLEMENTING NUMBERS 5 AND 6 ABOVE.**

CRITERION 4: The following are additional restrictions on the use of detention.

1. Committed youths awaiting placement by the Division of Youth Services after completion of the 30 day assessment period shall not be held in detention facilities. Such youths shall be processed into appropriate programs. They shall not be released.
2. Youths waiting for hearings or for transportation shall not be held longer than two days prior to or two days after completion of judicial proceedings, excluding weekends or holidays unless otherwise ordered by the court for good cause.

Committee Comment: The committee finds that a significant contributing factor to detention overcrowding is the use of the detention facilities by the Division of Youth Services to hold committed youths because of a lack of available institutional or community based resources.

Additional Recommendations Related to Detention Criteria:

1. Steps should be taken to promote the licensing and funding of staff secure shelter care facilities to provide an alternative to locked facilities. The ability for community residential care facilities to provide limited staff secure operations (such as Excelsior) should be promulgated such that youths who have episodic flight response may be treated in the community rather than committing them to more restrictive and more expensive DOI beds.

Moreover, the lack of staff secure shelter care facilities has resulted in occasional out of state runaway youths being held in secure settings. The committee believes holding these youths in secure settings is in violation of current state statute (CRS 19-2-402(2)) and federal law. Continued violation of federal law may place Colorado in the position of losing certain federal juvenile justice funds.

**THE JUVENILE SUBCOMMITTEE VOTED TO STRONGLY ENDORSE THE DEVELOPMENT OF STAFF SECURE FACILITIES FOR JUVENILES WHO NEED CLOSE SUPERVISION BUT DO NOT NEED INCARCERATION.**

2. At the end of the current SB-94 pilot program period, a new risk assessment instrument should be developed in a joint state-local effort in order to benefit from the experiences gained from pilot detention removal programs. This instrument would, in addition to using the items on the existing HB 1024 risk assessment instrument, take into consideration recommendations from the arresting officer and the availability of proper supervision in the home. The instrument would be used to determine "level of care" requirements when secure detention is not allowed or not appropriate.
  3. Other units of government including but not limited to municipalities and immigration authorities authorized by law to place youths in detention centers operated by or under contract to the Division of Youth Services, should be required to reimburse the Division of Youth Services for the cost of detention, when the placement is not under the jurisdiction of the juvenile court. A change in legislation is required to accomplish this.
  4. The General Assembly should provide for sufficient facilities and other resources to eliminate the use of the detention centers for the holding of committed youths solely due to a lack of available institutional or community placements.
  5. The General Assembly should clarify what agency or agencies are responsible for transporting to court hearings juvenile delinquents held by the Division of Youth Services. Adequate resources for fulfilling this responsibility should be provided to the responsible agencies.
- B. Criteria for commitment to Department of Institutions:

**CRITERION 1:** A juvenile may be placed at DYS if the juvenile has been adjudicated on one of the following major felony offenses:

- 1st or 2nd Degree Murder
- Criminal Attempt to Commit 1st or 2nd Degree Murder
- Criminal Conspiracy to Commit 1st or 2nd Degree Murder
- Manslaughter
- 1st or 2nd Degree Assault
- 1st or 2nd Degree Sexual Assault
- Menacing
- Vehicular Homicide
- Vehicular Assault
- Aggravated Robbery
- Robbery

AND, It can be documented that the youth cannot be treated in a community based treatment or correctional program. OR,

The youth has a history of prior criminal activity (at least one prior adjudication). OR,

A sentence to the community would unduly depreciate the seriousness of the offense.

THE JUVENILE SUBCOMMITTEE VOTED TO SUPPORT CRITERION 1 ABOVE.

Minority Comment: The criterion should include "attempt" since in most cases the "attempt" to commit one of these crimes may be as serious as the successful completion of the crime.

CRITERION 2: A juvenile may be placed at DYS if the juvenile has been adjudicated on any offense other than those designated as a major felony offense in criteria 1. AND,

Has been adjudicated a juvenile delinquent twice; or has been adjudicated a juvenile delinquent and his or her probation has been revoked for a delinquent act. AND,

Has a documented history of treatment or corrective efforts within the community.

Committee Comment: Placement at DYS is not mandated by criteria 1 or 2. The courts are urged to consider, in accordance with the Colorado Children's Code, the least restrictive alternative, while considering the issue of public safety.

CRITERION 3: Reasonable grounds exist to believe that the juvenile will not remain in, cooperate with, or benefit from community based services or from a less restrictive setting. If a juvenile is committed to the Department of Institutions pursuant to this criterion AND the criteria listed in Criterion 1 or Criterion 2 do not apply, the Court shall make specific findings of fact relating to the commitment decision. A copy of such findings shall be sent to the Chief Justice of the Supreme Court, who shall report monthly to the Joint Budget Committee and annually to the General Assembly on such commitments.

## IMPACT ON DYS POPULATIONS IN SECURE AND MEDIUM FACILITIES:

Under the current system, the estimated number of new commitments targeted for placement in medium or intensive facilities in FY 1991-92 is 348. Under the new criteria the total number of youths who meet the placement criteria is 670. If youths who meet criteria but who are currently being served in the community continue to be served in the community, the number of new commitments drops to as few as 249 using the new criteria.

However, if the criteria are applied strictly (i.e., all youths who meet them must go to DYS), the number of admissions could rise to 670 under the new system. This finding reinforces the concern of the committee regarding "fixed" criteria. Average Daily Population (ADP) in DOI and DYS will decline only if:

1. Youths who meet criteria but who were previously served in the community (PAC, foster care, probation, etc.) continue to be served in the community. They were reasonable risks under the current system and continue to be under the new system.
2. Effective programs are developed locally which address issues leading to serious delinquent behavior and subsequent incarceration.

**JUVENILE SUBCOMMITTEE COMMENT: ALONG WITH ADEQUATE FUNDING, THE CONCEPTS EXPRESSED IN #1 AND #2 ABOVE ARE KEY TO THE SUCCESS OR FAILURE OF SB 94. THIS CANNOT BE EMPHASIZED TOO STRONGLY. THE FLEXIBILITY OF THE CRITERIA AS THEY HAVE BEEN DEVELOPED IS A STRENGTH; HOWEVER, STRICT APPLICATION OF THE CRITERIA WITHOUT THE DEVELOPMENT AND USE OF LOCAL ALTERNATIVES COULD SUBSTANTIALLY INCREASE OVERCROWDING.**

### C. Criteria for Social Services Out-of-Home Placement:

The criteria for the use of secure detention and for commitment to the Department of Institutions are based on the belief that certain children or youths represent a danger to the community to such a degree that physical security is required or that the youth has committed or is alleged to have committed an act of such severity that the community-at-large will not tolerate any other placement option for the youth. For those who meet the criteria, it is appropriate to place them in a secure setting. For those who do not meet the criteria, community placement is appropriate. However, for some youths who are appropriate to be in the community, out-of-home placement might be the appropriate community placement.

The Department of Social Services uses criteria to determine if out-of-home placement is appropriate. The existing Social Services criteria is included in Appendix B.

The use of a needs based Social Services placement criteria was considered first. Several existing needs assessment tools were reviewed. Upon reflection and in consultation with several placement specialists at county departments of Social Services, it was determined that the needs assessment approach was faulty. A needs assessment defines the issues for treatment. The existence of needs, however, do not in and of themselves lead to placement out-of-home. Placement occurs when the needs of the youth exceed the capacity of the family and/or community to respond to those needs in a manner that allows the youth to remain in the home. When the youth's safety or the safety of the family or community is in doubt due to the absence of such capacity placement becomes necessary.

In this context safety is broadly defined. The committee identified several safety factors that should be taken into consideration in the development of placement criteria. These Safety Factors were then incorporated into the criteria.

Since the need for placement is related to the capacity of the family or community rather than the needs of the youth, an instrument to determine the need for placement would have to measure that capacity.

The absence of any known instrument then led the subcommittee to combine the existing placement criteria used by the Department of Social Services with the safety factors identified by the committee. Pre-adjudicated and adjudicated delinquent children/youths who meet one of the following criteria are appropriate for placement out-of-home:

**CRITERION 1:** The youth's behavior constitutes a danger to the community as shown by commission of an act that would have been a class I, II, or III felony if committed by an adult, OR by repeated commission of other delinquent acts, AND one or more of the following SAFETY FACTORS is present, AND community resources that are appropriate and necessary to maintain the child in his/her home are absent or exhausted.

1. The family home represents an immediate and continuing threat to the youth.
2. There is an imminent risk of physical violence if the youth remains in the home.
3. The parents have injured the youth as the result of inappropriate or excessive punishment.
4. The parents have severed emotional ties with the youth.
5. The parents provide little or no direction or guidance to the youth.
6. The parents actively reject parenting roles and are hostile toward the youth.
7. The youth exhibits behaviors that represent a danger to the family.

**CRITERION 2:** The youth is a mandatory sentence offender and a determination has been made by the court that secure placement is not necessary.

**Committee Comment:** The only reason for establishing Criterion 2 of the Social Services out-of-home placement criteria is the mandatory sentencing law (CRS 19-2-801). The committee recommends review of the law for modification or repeal.

JUVENILE SUBCOMMITTEE VOTED TO RECOMMEND MODIFYING THE MANDATORY SENTENCING LAW TO EXCLUDE JUVENILES WITH THREE MISDEMEANORS AND ALLOWING SPECIALIZED PROGRAMS (SUCH AS JUVENILE ISP) TO BE A SENTENCING OPTION ALONG WITH OUT OF HOME PLACEMENT.

## VII. OTHER FINDINGS/RECOMMENDATIONS OR COMMENTS

- A. There is a great disparity between the amount of state resources committed to adult criminal offenders and those committed to delinquent youths. While crime statistics show that up to 40% of the felony crimes are committed by juveniles, the vast majority of the state's correctional resources go into adult institutions. There are currently 7,496 D.O.C. secure beds in the state for adult offenders and only 334 secure beds for juveniles. If the intent of SB94 is to be achieved, additional resources for juveniles must be provided.
- B. The criteria for commitment to D.O.I. are recommended with the understanding that the conduct of the juveniles who qualify for commitment under criteria should be housed in secure or medium secure facilities for length of time to be specified by law or by court order, and that less secure or community or foster care placements should not be utilized for such juveniles until the juveniles have served the specified length of time and are ready to transition into a less restrictive setting in preparation for a return home or for emancipation.

JUVENILE SUBCOMMITTEE COMMENTS INCLUDED A STRONG CONCERN THAT #CRITERION 2 ABOVE COULD ONLY BE FEASIBLE IF THE MANDATORY SENTENCING LAWS WERE REPEALED OR MODIFIED.

- C. In order to minimize the use of secure beds in conjunction with the criteria established, the following will be necessary:
1. Resources will need to be available at the community level.
  2. New programs and new models for programs will be needed, not just more of what is already there but new designs which address needs not currently being treated in existing programming.

- D. The 80% State/20% County funding formula for community beds and 100% state funding for secure beds must be addressed. The current structure of funding provides no incentive for local communities to create programs which provide services within the community. A structure of funding should be created which provides fiscal incentive for communities to provide services which divert youths from commitment to the secure beds operated by DOI.

**JUVENILE SUBCOMMITTEE COMMENTS: WILL BE DIFFICULT FOR LOCAL COMMUNITIES TO ACCOMMODATE ANY CHANGES IN FUNDING BASE. COMMITMENTS TO DOI SOMETIMES DRIVEN BY LACK OF RESOURCES LOCALLY. SENTENCING DECISIONS SHOULD BE BASED ON THE BEST INTERESTS OF THE CHILD, NOT DOLLARS.**

- E. There are problems with the current vendor system of setting community reimbursement rates. Three state agencies potentially contract for the same beds: Department of Social Services, Department of Institutions, and State Health's Alcohol and Drug Abuse Division. There is a need for parallel rates if the three are all going to negotiate for beds. In addition, reimbursement rates are inadequate. Colorado is losing beds due to low rates. Current caps need to be changed or eliminated.
- F. One factor which historically has driven the commitment of many juveniles is the inability of placements through the Department of Social Services to hold a juvenile from running away while the treatment is being effectuated. RCCF's and other placement facilities should be permitted to lock a facility or a portion thereof in order to prevent the chronic runner from absconding. Currently, only facilities which qualify as R.T.C.'s are allowed to secure their facilities.

**JUVENILE SUBCOMMITTEE COMMENTS: USE STAFF SECURE FACILITIES INSTEAD. DO NOT LOCK STATUS OFFENDERS.**

#### VIII. History Considered by the Committee

As prescribed by CRS 19-2-1602 (1) (a), the criteria committee examined existing risk scales devised by the Division of Youth Services, as well as other instruments or measures available in the juvenile justice system. The other instruments examined included the Department of Social Services Out-of-Home Placement Criteria and the Judicial Department's Juvenile Probation Risk/Need Assessment. The purpose of this examination was to determine a) whether or not one of these instruments could be used as the core of the criteria; and b) to identify what elements are being considered in making placement or classification decisions on juvenile offenders.

However, because of the wide range of interest and representation on the criteria committee, the first step of this process was to have the group discuss any and all items



they believed should be considered in the criteria. The group identified 35 separate items in this process. These items fell into five general categories:

1. Public safety
2. Resource availability and location
3. Seriousness of the offense
4. Treatment needs or risk management factors
5. Procedures and implementation issues

Appendix A lists specific items the committee wanted considered and their inclusion on one of the three instruments previously mentioned.

The group struggled with many issues regarding criteria. Two salient factors rose repeatedly in our discussions:

- A. There are many youths currently on probation who could, within current guidelines, be committed to DOI or sentenced to DYS. Establishing criteria which were "fixed" could force courts to commit or sentence youths who are currently being served in the community.
- B. There are a number of youths currently placed in DOI or DYS who meet existing guidelines, but who could be better served in the community if there were proper resources.

A refinement of the elements to be considered as possible criteria was conducted. This resulted in basically 10 factors which the committee considered as possible modifiers of the level of security in which a child may be placed at the time of sentencing by the court.

The committee determined that an exhaustive data collection effort would be necessary if we were to develop meaningful criteria. We also determined that if we didn't know what the various populations look like now we would never know what we were "trying to fix" and how to "fix it".

The committee arranged to have a data gathering survey completed on a representative population of juveniles sentenced to probation, probation with Social Services involvement, and commitment to the Department of Institutions during the period of July 1, 1991 through October 31, 1991.

IX. Results of a Survey on Youths on Probation Only, on Probation with Social Services Involvement, or Committed to the Department of Institutions:

The Criteria Committee determined that information on youths currently being served on probation only, youths on probation with Social Services involvement and youths committed to DYS would help shed light on current practices, and assist in setting policy affecting appropriate and uniform services for juvenile offenders statewide. Research and technical staff from the three agencies responsible for these juvenile services (i.e., the



Colorado Judicial Department, the Department of Social Services and the Division of Youth Services) were asked to assist in an effort to survey a sample of youths and evaluate data obtained in this survey. The results of this survey are the focus of this section.

- A. Sample: New intakes into probation, probation with Social Services involvement, and the Division of Youth Services (i.e., new commitments) during the four-month time period between July 1, 1991 and October 31, 1991 were targeted for inclusion in the survey. While all youths committed to DYS during this time were included, only half of the new probation cases (selected randomly) were targeted due to the large number of youths placed on probation. The return rate from Probation was estimated at approximately 70%, with all but the 3rd and 11th judicial districts represented in the sample. (While surveys were sent from the 11th district, they were received too late to be included in the analyses). As a method of sampling the Social Services juvenile offender population, a question was included on the probation survey requesting information related to Social Services involvement. Thus, both the Probation and Social Services samples were obtained from the 'probation' survey.

Surveys were completed on 190 new commitments to the Division of Youth Services, and 739 new probation intakes, 103 of whom had received services from the Department of Social Services in addition to probation. Annual estimates (FY 1991-92) of each of these three samples are 570 new commitments to the Department of Institutions, 1037 new probation intakes which include services from the Department of Social Services (an estimated 735 placed in group homes or RCCFs), and 5263 new probation intakes without Social Services involvement. (The probation/Social Services annual estimates are based on new probation cases for FY 1990-91 plus an approximate 10% increase for FY 1991-92. This increase reflects similar increases every year for the past decade. The DYS estimate is based on the actual number of new commitments in the first quarter annualized).

The DYS sample consisted of 96% males compared with 84% males for the Probation Only sample, and 75% males for the Probation plus Social Services sample. Table 1 shows the ethnic distribution of these three samples.

TABLE 1

**ETHNIC BREAKDOWNS OF YOUTHS INCLUDED IN THE  
PROBATION ONLY, PROBATION PLUS SOCIAL SERVICES,  
AND DYS SAMPLES**

Probation Ethnicity	Probation Only		Probation Plus DSS		DYS	
	N	%	N	%	N	%
Anglo	349	55%	57	56%	97	51%
Black	69	11%	10	10%	25	13%
Hispanic	175	28%	27	27%	64	34%
Other	37	6%	8	8%	4	2%
<b>TOTAL</b>	<b>630</b>	<b>100%</b>	<b>102</b>	<b>100%</b>	<b>190</b>	<b>100%</b>

The difference in the proportion of minorities overall in the DYS sample versus the other two samples was relatively small (5%), and reaches statistical significance only when the total probation sample (including DSS) is compared against the DYS sample (chi square = 8.2;  $p < .05$ ). The detailed breakdown indicates that the greatest difference proportionally between the probation samples and the DYS sample appears in the Hispanic group (approximately 28% on probation compared with 34% committed to DYS).

Youths committed to DYS tended to be older than youths on probation. Only 16% of the DYS youths were under 15 years of age compared with 30% in the Probation Only sample, and 44% in the Probation plus DSS sample. (Youths tend to be committed with more prior adjudications thus increasing the likelihood of commitment at an older age).

- B. Procedures: The subcommittee appointed to conduct this study sought to address the following questions:
1. How do youths currently served on probation (with or without an accompanying Social Services involvement) score on the current DYS Commitment Classification Instrument?
  2. How does the distribution of scores compare with those of youths committed to the Department of Institutions?
  3. How do youthful offenders served in the various agencies compare with one another with respect to treatment needs (e.g., family stability, substance use, runaway behavior, job/school performance, etc.)?

Answers to the above questions should help the Committee understand what factors are currently discriminating between youths who are placed on probation, youths who are placed in the custody of Social Services, and youths who are committed to the Department of Institutions.

The subcommittee, consisting of representatives from the Judicial Department, Community Corrections, DYS, DSS, and the private sector, was responsible for designing the study including development of items surveying treatment needs, and analyzing the data. The subcommittee felt that probation officers and client managers are the individuals most knowledgeable about youths' legal status and circumstances related to sentencing. In addition, their ongoing involvement with the youths place them in a position to rate the youths on various factors related to treatment needs.

A survey was designed which incorporated the items from the DYS Commitment Classification instrument (based on offense and factors related to recidivism), additional legal and demographic items (e.g., present sentence, county of offense, sex, ethnicity, age at sentencing or commitment, etc), and the newly created items formulated by the subcommittee. Since the DYS sample had already been assessed on the Commitment Classification instrument, a modified form of the Probation Survey was collected on these youths incorporating the newly created items. A copy of the Probation Survey is included in Appendix C.

- C. Data Analysis and Results: Descriptive comparisons among the three samples were prepared and shared with the full committee. In addition to demographic characteristics reported above (See Sample), comparisons on scores on the DYS Classification Instrument, type of offense, and number of prior adjudications were done. The tables in Appendices D, E and F show the results of these comparisons for the original sample, and projected out for FY 1991-92. Essentially, the tables show that while the DYS population consists of a higher proportion of youths with serious offenses (cells 16 and above), there are substantial numbers of youths with similar offenses served on probation (with and without Social Services involvement). Likewise, all three agencies are serving youths with less serious offenses. The results indicated the need to examine what factors appear to be influencing sentencing decisions.

Logistic regression and discriminant analyses were done to identify factors which best explain why youths are placed on probation versus committed to the Department of Institutions. Results obtained using these analyses provided information on the relative contributions of factors which significantly contribute to predictions of 1) how youths would be categorized (in terms of targeted placement of home, community residential, medium secure, or intensive secure) on the DYS Classification Instrument, and 2) whether youths would be placed on probation or committed.

Table 2 shows results of the above analyses.

## TABLE 2

### RELATIVE WEIGHTS OF FACTORS CONTRIBUTING TO PLACEMENT ON THE DYS CLASSIFICATION GRID AND PROBATION VERSUS COMMITMENT

#### TABLE 2 OMITTED FROM THIS DOCUMENT

- \* These figures actually represent canonical standardized weights from discriminant function analysis, a measure similar to the BETA weight derived from regression analyses.

The category labeled BETA reflects relative weights of each factor in explaining the outcomes (placement on grid or probation versus commitment) after all of the other factors have been considered. Factors not listed did not significantly discriminate between groups beyond that obtained with the factors listed. Essentially, the data show that youths fall into categories within the DYS grid primarily as a result of seriousness of offense, and secondarily because of treatment history and age at first adjudication. Youths are committed, however, based primarily on the number of prior adjudications, drug/alcohol disruption, and treatment history. Ninety percent of DYS youths were determined to use drugs and/or alcohol occasionally to frequently compared to 27% of the Probation Only sample and 36% of the Probation plus Social Services sample (Appendix G). Seriousness of the offense is secondary to specific treatment needs in predicting commitment versus probation. The above findings were relayed to the full committee with the following interpretive statements:

1. The DOI grid, as revised, seems to place individuals in settings with regard to offense and risk but without significant regard to the treatment needs of the youth.
2. The data collected indicates historical use of DOI beds has been driven more by treatment issues combined with risk.
3. We need to foster treatment in the community so youths with high treatment needs can be served there, reserving the beds at DOI for the more serious youth.
4. Anything we do must foster drug/alcohol programs at the community level and increase support systems' stability if it is to succeed.

After reviewing the data, the committee discussed the implications of the current practice, and felt that criteria should center around seriousness of the offense and prior adjudications. They further emphasized the only way these new criteria could work is through the development of effective programs in the community for appropriate youths who have significant treatment needs.

## **APPENDIX B**

### **EXISTING DEPARTMENT OF SOCIAL SERVICES CRITERIA FOR OUT-OF-HOME PLACEMENT**

The dysfunction of the child and or the family is within at least one of the conditions that bring about the issue of out-of-home placement:

- A. The child has no parent or guardian, and the child has no appropriate and willing relatives with whom he may live; or
- B. The child is in need of protection; or
- C. The child has medical, physical or nursing care needs to the degree that 24-hour out-of-home care is required; or
- D. There is a finding of mental illness as provided in Section 27-10-101, CRS., or the child has severe psychological problems of a nature that requires 24- hour out-of-home care; or
- E. The child's behavior constitutes a danger to the community as shown by commission of an act that would have been a class I, II or III felony if committed by an adult, or by other felonious acts; and

**CRITERION 2:** Community resources that are appropriate and necessary to maintain the child in his/her home must be absent or exhausted; and

**CRITERION 3:** Out-of-home placement is most likely to remedy the dysfunction that is raising the issue of placement of the child out of her/his home.

In order to be placed out-of-home, the child/youth must meet one or more of A through E, as well as both criteria 2 and 3.

**APPENDIX H**

The Senate Bill 94 Committee would like to recognize non-committee members who contributed to the development of criteria.

The following individuals assisted in the writing of the detention criteria:

Regina Walter	4th Judicial District
Ed Griemel	Division of Youth Services
Lloyd Malone	El Paso County Department of Social Services
Leslie Smith	Judicial Department
Lucy Martinez	18th Judicial District Probation
Pam Gorden	District Attorney's Office, 18th Judicial District
Victor Reyes	Public Defenders Office, Pueblo
Jim Rogers	Division of Youth Services
Jim Covina	Public Defenders Office, Denver

The following individuals assisted in the writing of the Social Services out-of-home placement criteria:

Michelle Carol	Jefferson County Department of Social Services
Shirley Rhodus	El Paso County Department of Social Services
Lynn Thayer	Adams County Department of Social Services