

# Sentencing for Felony and Misdemeanor Convictions—Time Actually Served

by Philip A. Cherner

*This article reviews Colorado sentencing data to determine how much time defendants serve in custody as a percentage of their court-imposed sentence. The average time served for felonies is approximately 70 percent.*

Criminal sentencing in Colorado, especially for felony convictions, can be complicated, and it is difficult to predict the length of prison time an inmate will serve. The defendant, family members, defense counsel, the prosecutor, the victim, and members of the public are allowed to attend the sentencing hearing. At the hearing, the court pronounces a sentence. By statute, the court advises the audience that:

[t]he defendant may spend less time incarcerated than the term announced. . . . The actual time served will be influenced by a number of factors including, but not limited to, previous criminal activities, eligibility for earned time for good behavior, correctional education program earned time, credit for time served, or community corrections eligibility.<sup>1</sup>

Thus, the sentenced term and the actual time served are not necessarily the same.

Parole decisions and complications about when an inmate will become eligible for parole make it difficult to know what portion of an imposed sentence a defendant will serve. Familiarity with the factors that drive these uncertainties and an analysis of release statistics might be edifying for judges, lawyers, defendants, and victims.<sup>2</sup> This article reviews factors and statistics for felony and misdemeanor cases and generally discusses sentencing in Colorado.

## Time Computations

Inmates may not be released on parole until they reach their parole eligibility date (PED). The parole release decision is only one uncertainty when estimating in advance how much time an inmate will actually serve; there also are uncertainties and complications in the process of calculating an inmate's PED.<sup>3</sup>

### *PED Release Consideration*

The general rule of time computation is that a felony defendant will be eligible to meet the parole board for parole release consider-

ation after serving 50 percent of the sentence, less earned time (not to exceed 30 percent of the sentence) and presentence confinement credit.<sup>4</sup> Presentence confinement credit is the amount of time the defendant spent in custody awaiting sentencing. It includes time spent in jail and in residential community corrections before the prison sentence was imposed. This rule of time computation is a general rule because there are a number of crimes where this no longer applies.

**Automatic deduction.** Lawyers and judges may sometimes speak of "good time"; however, this was abolished approximately twenty years ago and replaced by the automatic 50 percent deduction. This means that 50 percent time off for good behavior is awarded to most inmates who enter the Department of Corrections (DOC). For example, an offender sentenced on January 1, 2009 to eight years for the class 3 felony of burglary would receive a four-year reduction at the time the sentence was imposed. The PED, without any additional deductions, would be January 1, 2013.

**Presentence credits and earned time.** Additional deductions come from presentence confinement credits and earned time. All felony defendants are entitled to credit against their sentences for any time spent in custody before the sentences were imposed.<sup>5</sup> In the burglary example above, if the inmate was in custody for seven months prior to sentencing, the PED would be June 1, 2012.

Earned time of up to ten days for every month served may be awarded.<sup>6</sup> Unlike presentence credits that apply to every defendant, earned time is discretionary. It can be earned through participation in one of seven categories of DOC programming:

- 1) work;
- 2) training;
- 3) group living;
- 4) progress toward goals;
- 5) compliance with parole;

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- 6) no harassment of victim; and
- 7) progress in literacy or education.<sup>7</sup>

A common reason for refusal to award earned time is failure to participate in a sex offender treatment program.<sup>8</sup> Earned time also can be taken away after it is awarded for general disciplinary reasons. It may not be awarded for program participation during presentence confinement.<sup>9</sup>

The DOC has devised a computer program for figuring out earned time, which can require detailed calculation. The general rule is that if an inmate earns and keeps the maximum amount of earned time, after the 50 percent automatic deduction, the PED will be at approximately 37.5 percent of the imposed sentence, less presentence confinement credit.<sup>10</sup> Consider the defendant in the burglary example, who received an eight-year sentence.

- After subtracting the 50 percent automatic deduction, forty-eight months to parole eligibility remain.
- After subtracting an additional seven months for presentence confinement credit, forty-one months are left.
- Subtracting the maximum allowable earned time of ten days per month results in approximately ten months of earned time credit.
- This leaves thirty-one months to be served from the date of sentencing (January 1, 2009).

So, if the burglar earned all the earned time he could earn, and did not lose any of it for disciplinary reasons, he would be parole-eligible on or about August 1, 2011.

**Mandatory release date.** Not all eligible inmates receive early parole release. The maximum time inmates can serve—assuming

they are denied parole at the PED and at every parole hearing thereafter—is the full length of the imposed sentence, less any presentence confinement credits and earned time. This is called the mandatory release date (MRD). Inmates might be released as early as the PED or as late as the MRD (if they are not paroled earlier and never earn any time). For example, on an eight-year sentence, there is an uncertainty of five and one-half years.

### Exceptions

There are two major categories of exceptions to the computational rules: one for violent offenders and one for sex offenders. A discussion of each follows.

**Violent offenders.** If the current conviction is a crime of violence,<sup>11</sup> the automatic 50 percent deduction for good behavior is reduced to 25 percent. The PED for violent crimes is 75 percent of the imposed sentence (commonly known as the “75 percent rule”). If such offenders have no prior convictions for crimes of violence, they may receive credits for earned time; however, those convicted of a crime of violence who also have a prior conviction for a crime of violence will serve 75 percent with no earned time deduction before they may be paroled.<sup>12</sup> A person convicted of armed robbery and sentenced to the minimum of ten years (assuming there are no prior violent convictions) will have to serve seven and one-half years, less presentence and earned time credits, before parole eligibility. If there are prior violent crime convictions, time served will be seven and one-half years less only presentence credits.

**Sex offenders.** Different rules apply to sex offenders. In 1998, Colorado enacted a lifetime sex offender sentencing scheme called

the Colorado Sex Offender Lifetime Supervision Act (Act).<sup>13</sup> The Act covers a wide variety of offenses, but generally provides for a potential life sentence for class 4 and more serious sex felonies.<sup>14</sup> Individuals sentenced under the Act receive an indeterminate life sentence. The maximum must be life (in prison or on probation). If the court imposes a prison sentence, it also imposes a minimum period, scaled to the offense of conviction; this minimum determines the PED. The minimum will be no less than the minimum presumptive sentence for the felony class of crime and no more than twice the presumptive maximum.<sup>15</sup> For example, sexual assault on a child, a class 4 felony, carries a prison sentence of two years to life, because the presumptive minimum for a class 4 felony is two years.<sup>16</sup> The sentence could be as long as twelve years to life, because the presumptive maximum for a class 4 felony is six years.

Although earned time discounts are allowed for sex offenders, there is neither the automatic 50 percent deduction that is available for non-sex felonies, nor the 25 percent deduction available for crimes of violence.<sup>17</sup> Sex offenders will serve 100 percent of their imposed minimum sentence, less presentence credits and earned time. A sex offender serving a sentence of two years to life would become eligible for parole after two years, less presentence and earned time deductions. There is no MRD, and because the sentence is indeterminate and release is entirely at the discretion of the parole board, offenders could serve life sentences. When there are differing computational rules for different concurrent sentences, the case law applies the computation rules from the “governing” or longest sentence.<sup>18</sup>

### *Release on Parole*

The parole board decides whether inmates who have reached their PED should be granted parole before their MRD.<sup>19</sup> Generally, inmates serve a period of parole supervision that is linked to the severity of the offense.<sup>20</sup> An offender who is rejected may re-apply for parole after a specified length of time (referred to as the “setback”). The setback can be as short as six months and as long as five years.<sup>21</sup> However, eligibility for parole does not equate to release on parole, and only a fraction of inmates are released at their PED.

All class 3 felonies carry a mandatory parole period of five years. If there is a violation of the terms and conditions, parole could be revoked and the parolee could be returned to prison to serve the balance of the parole period (not the balance of the underlying sentence).<sup>22</sup> If a class 3 felony burglar earned no time credits, was paroled on the MRD, and parole was revoked the same day, the offender could end up serving a full thirteen years on an eight-year sentence.

### *Statistics on Actual Time Served*

The uncertainties in parole decisions and earned time can be understood by looking at sentencing and release statistics. There are a few ways to gather sentencing and release data.

➤ *Average length of stay.* One way is to review a group of offenders who have just been released and compute how long they have served. This period of time is determined by legislative dictates (statutes defining the lawful sentence), judicial sentencing patterns, and parole board discretion—a combination of decisions from all

three branches of government. This average length of stay (ALOS) can be accurately measured, but may have a limited utility because it points backward. If a group of burglars served thirty-one months on average before being paroled this month, it is not accurate to say that all burglars sentenced this month will serve thirty-one months, because statutes, case law, and the sentencing culture evolve over time. This method of calculation continues to be useful, as long as it is understood that past performance is not a predictor of future performance. Only offenders who were actually released are included in this analysis. As stated in a Colorado Division of Criminal Justice article:

[I]t is important to note that this approach will always underestimate actual length of stay (LOS) because the group of those releasing is overrepresented by those who have been convicted of less serious crimes. Those with the longest lengths of stay are underrepresented in the analysis because fewer of them are released.<sup>23</sup>

➤ *Trend-watching.* A second method used to gather data is to look at trends in parole decisions, because the parole decision is the biggest variable in the time actually served. However, this data is not specific to particular crimes, or even levels of felony. It is backward-looking because it computes actual past parole behaviors.

➤ *Legislative and executive projections.* Finally, a forward-looking method is to look at legislative and executive projections regarding the building of new prisons. Projections are done at least annually by the Colorado Division of Criminal Justice (DCJ) and the Legislative Council.

### Average Length of Stay Data

Parole at the PED or at the first parole hearing is rare. Parole board statistics show that approximately 1.5 percent of applicants are paroled at their first parole hearing,<sup>24</sup> and half the inmates in prison are past their PED (a little less than half not yet having hit their PED).<sup>25</sup>

Table 1 below was created from data from tables 20 and 21 of DOC's annual statistical report during fiscal year (FY) 2008, which was released in June 2009.<sup>26</sup> It shows that for inmates released to parole in FY 2008, the average sentence was forty-nine months and the average time served was twenty-nine months—for an average percentage of time served of 59.1 percent. Presentence confinement credits were excluded, which the report notes “may have a significant impact on the overall time and proportion of sentence served in prison.”<sup>27</sup> Data from the Colorado DCJ indicates that the average inmate serves five and one-half months in presentence confinement. Adding just five months to the DOC's twenty-nine month figure results in thirty-four months in custody, or 69 percent of the sentence.

The same adjustment can be calculated for numerous felonies by using presentence confinement data recently made available by DOC. The average presentence confinement credit was eight and one-half months for a class 2 felony, seven months for a class 3 felony, six months for a class 4 felony, five months for a class 5 felony, and four and one-half months for a class 6 felony. Table 2, which can be found beginning on page 34, includes these presentence confinement averages and re-computes the average percentage of sentence served for individual felonies.

Table 1

Crime	Average Length of Stay Without Presentence Confinement Credit (Months)	Average Length of Sentence (Months)	Percentage of Sentence Served in Prison, Without Presentence Confinement Credit
F3 Assault	112	165	67.88%
F4 Assault	49	71	69.01%
F3 Robbery	111	169	65.68%
F4 Robbery	40	60	66.67%
F3 Burglary	58	96	60.42%
F4 Burglary	32	55	58.18%
F5 Menacing	17	28	60.71%
F4 Theft/MV Theft	27	49	55.10%
F3 Drugs	41	77	53.25%
F4 Drugs	24	44	54.55%
F5 Drugs	12	24	50.00%
F6 Drugs	7	16	43.75%
All F2	131	228	57.46%
All F3	58	99	58.59%
All F4	31	53	58.49%
All F5	17	29	58.62%
All F6	8	16	50.00%

For inmates released in FY 2008, per DOC FY 2008 Report Tables 20 and 21

Table 3

Intakes in FY 2003	Revoked	Successfully Moved to Regular Probation	Terminated From Probation	Still on SOISP
End of Year 1	14.50%	1.30%	2.30%	77.50%
End of Year 2	28.20%	3.90%	5.70%	58.40%
End of Year 3	35.40%	8.00%	6.50%	43.60%
End of Year 4	39.30%	10.30%	10.30%	33.30%

### Indeterminate Sentences for Sex Offenses

Because of the indeterminate nature of the sentences imposed for serious sex crimes, release data on those sentences deserves mention. The percentage of sex offenders paroled from indeterminate sentences is small. As of June 30, 2009, there were 1,359 inmates serving indeterminate sentences in prison for sex offenses.<sup>28</sup> In the first ten-year period the indeterminate system was in place, only eight of those offenders were released to lifetime parole,<sup>29</sup> and one of those had parole revoked. This represents a release rate of 0.78 percent.

There is a recent trend toward greater release rates for sex offenders. In FY 2009, the parole board granted parole in thirty-one of 483 lifetime sex offender parole applications (5 percent).<sup>30</sup> Whether this is an anomaly or a long-term trend is unknown.

When lifetime felony sex offender probation is revoked, the probation sentences may be converted to life prison sentences. The data in Table 3 comes from the State Judicial Department, and addresses sex offenders in the Sex Offender Intensive Supervision Program (SOISP). After four years, almost 40 percent of all sex offenders in the SOISP had their probation revoked and were back in prison.

### Parole Board Discretion

The parole board has release discretion and, along with the sentencing court, can determine the actual amount of time an inmate serves. What follows is a historical look at how parole board discretion has been exercised.

In November 2008, the state auditor released a report that found that 65 percent of offenders are not granted parole until their MRD. The DOC calls this “mandatory parole” and all earlier parole “discretionary parole.” The auditors found that:

more than three quarters of discretionary parole requests are denied by the board. For example, in fiscal year 2008, the board denied 15,000, or 84 percent, of the 17,800 requests for discretionary parole.<sup>31</sup>

The parole board is a political institution and is subject to political pressures. In December 2005, the parole board and DOC decided to stop releasing inmates on weekends. Inmates whose MRD fell on a Saturday or Sunday were released a day or two early. This decision caused a statistical (and politically unfavorable) increase in the number of releases before the MRD, as well as a corresponding decrease in those released on their MRD. The parole board ultimately reworked its statistics, adding a new category of “weekend mandatory releases,” which were distinguished from discretionary releases.<sup>32</sup> Aggressive media coverage also has had an impact on sentencing decisions by government officials.<sup>33</sup>

It is not easy to predict whether an inmate will be released on parole. The parole board has available to it a statistical risk assessment score pursuant to CRS § 17-2.5-404, but the 2008 auditors found that board members are not adequately trained in its use. The auditors also found that the parole board does not maintain data on its parole decisions or track the effect of the decisions after release of an inmate.<sup>34</sup> Legislation was enacted in 2009 to improve parole board decision-making.<sup>35</sup>

### Prison Population Projections

The DOC plans prison space years in advance and requires accurate projections. ALOS is a key component that helps forecast prison-bed demand.

The DCJ provides statistics to the DOC and the General Assembly to assist in projecting future space requirements.<sup>36</sup> In its lat-

est report, the ALOS is assessed for inmates sentenced in FY 2008. The number used is 70.9 percent of the sentence imposed, including time spent in presentence confinement.<sup>37</sup> The numbers were slightly higher in FY 2007 (72.2 percent) and FY 2006 (73.4 percent).<sup>38</sup> These projections are consistent with the historical ALOS percentages in Table 2.

A 1998 study by the General Assembly's Legislative Council staff projected that the ALOS for all felons sentenced in FY 1996–97 would be 57.8 percent of the sentence imposed, but it was not clear if presentence confinement credit was considered in this calculation.<sup>39</sup> The projected percentages ranged from 48 percent of the sentence served for some drug crimes to in excess of 70 percent for sexual assault. The study also concluded that:

average length of stay has hovered around 55 percent of the sentence length imposed during the last 13 years. As a result, the average length of stay tends to mirror the trends occurring with sentence lengths.<sup>40</sup>

These estimators concluded that the parole board's release rates were constant over time. ALOS changes were a result of changing sentencing practices.

## Misdemeanors

Misdemeanor sentences are served in county jails (unless served concurrently with a felony sentence). The jails and the sheriffs who run county jails have their own computation rules. Inmates can receive deductions for good behavior (two days per month),<sup>41</sup> earned time (three days per month—just added in 2009),<sup>42</sup> and trustee

time (not to exceed ten days per month).<sup>43</sup> There is no parole for misdemeanors. Practitioners and their clients who may not be familiar with local time computation practices would do well to find out how county jails calculate sentences.

## The Future

In September 2009, the parole board was instructed by Colorado's Governor Bill Ritter to initiate an accelerated transition program. As a consequence, the parole board will now consider paroling inmates who are within six months of their MRD, to save space and money.<sup>44</sup> Class 1 and class 2 felony offenders, sex offenders, and habitually violent offenders are excluded from the program. All of these inmates are past their PED, and already could have been released if the parole board chose to do so. It is not clear what criteria will be applied, beyond those previously used in parole release decisions. The DOC asserts that criminal records and treatment needs will be assessed when reviewing offender transition.<sup>45</sup>

In the spring of 2009, the General Assembly authorized an award of up to two additional days of earned time per month for certain non-violent, compliant offenders.<sup>46</sup> It also increased earned time for county jail inmates serving misdemeanors.<sup>47</sup>

## Conclusion

Understanding the rules of time computation, the historical behavior of the parole board, and the prison projections made by various governmental agencies should help everyone directly concerned—defendants, victims, lawyers, and judges—better estimate the amount of time a sentenced defendant will actually serve. Average length of stay is, of course, just that; it is of limited value in predicting how long a particular individual will stay in prison or, more precisely, what percentage of a sentence an individual will serve. Nevertheless, it is inconceivable that a competent defense lawyer, for example, would ignore either the time computation rules or the data in Table 2 in advising his or her client about whether to accept a plea bargain to a stipulated sentence.

How the data on averages helps judges is more complicated. The question remains whether a sentencing judge should assume the defendant will serve an average length of stay or that his or her behavior will be “average” while in custody.

Whether this kind of analysis will help other players in the institutional mix also is complicated. Parole board culture has changed over time and likely will continue to change. With the discretion to release most inmates spanning between 38 percent and 75 percent of the sentence, the influence of parole culture is huge. The authors of the 1996 legislative study worked under the assumption that both parole board and legislative culture would remain static and that actual time served would remain at approximately 55 percent of the sentence. As previously noted, it was unclear whether this figure excluded presence confined credit. If it did, it was still 5 percent less than the FY 2008 numbers indicate; if it did not, then there is a 15 percent jump to 70 percent in the percentage of sentence actually served. Where it will go from here, with prison space at a premium and prison costs increasing, is anyone's guess; however, it is vital that the guesses be informed ones.

### Notes

1. CRS § 18-1.3-404(2)(a). By contrast, there are thirty-nine criteria for granting parole in the parole board statute, CRS § 17-22.5-404.
2. Budget restraints in Colorado and related gubernatorial decisions and enactments by the Colorado General Assembly may be referenced where appropriate in this article.
3. This article discusses time computation rules for defendants convicted for felonies committed on or after July 1, 1993. For rules that apply to crimes committed before July 1, 1993, *see* Cherner, "Colorado Felony Sentencing," 11 *The Colorado Lawyer* 1479 (June 1982); Cherner, "Colorado Felony Sentencing: An Update," 14 *The Colorado Lawyer* 2163 (Dec. 1985); Cherner, "Felony Sentencing in Colorado," 1689 *The Colorado Lawyer* 1689 (Sept. 1989); Cherner, "Colorado Felony Sentencing: Law and Practice," 24 *The Colorado Lawyer* 2669 (Dec. 1995) (updated version available from author).
4. CRS § 17-22.5-403(1).
5. CRS § 18-1.3-405.
6. CRS § 17-22.5-405(1); H.B. 09-1351 (2009); CRS § 17-22.5-405(1.5) (allows an award of an additional two days per month earned time to a narrow class of inmates).
7. CRS § 17-22.5-405.
8. *See, e.g., Reeves v. Colorado DOC*, 155 P.3d 648 (Colo.App. 2007) (four days per month earned time withheld for failure to participate in sex offender treatment program).
9. *People v. Maestas*, 920 P.2d 875 (Colo.App. 1996). Presentence confinement credit is applied to any time the inmate spent in residential community corrections.
10. This calculation assumes a maximum of ten days per month earned time, because even under the most recent legislation, individuals convicted of class 3 felonies can receive only a maximum of ten days per month earned time credit. CRS § 17-22.5-405(1.5).
11. The violent crimes are detailed in CRS § 17-22.5-403(2), (2.5), and (3).
12. CRS § 17-22.5-403.
13. CRS §§ 18-1.3-1001 *et seq.*
14. CRS § 18-1.3-1004.
15. *Vensor v. People*, 151 P.3d 1274, 1280 (Colo. 2007).
16. CRS § 18-3-405(2).
17. CRS § 18-1.3-1006(1)(a).
18. *Spoto v. Colorado State Dep't of Corrections*, 883 P.2d 11 (Colo. 1994); *Thiret v. Kautzky*, 792 P.2d 801 (Colo. 1990) (governing sentence rule applicable to concurrent sentences); *Vaughn v. Gunter*, 820 P.2d 659 (Colo. 1991) (rule inapplicable to consecutive sentences).
19. CRS § 17-22.5-404.
20. The period of parole supervision is five years for class 2 and class 3 felonies, three years for a class 4 felony, two years for a class 5 felony, and one year for a class 6 felony. CRS § 18-1.3-401(1)(a)(V). Certain sex offenses have longer periods of parole.
21. CRS § 17-22.5-403(7).
22. CRS § 17-22.5-403(8)(a).
23. Colorado Division of Criminal Justice (DCJ), "Crime and Justice in Colorado 2006" 64 (June 2007), available at [dcj.state.co.us/ors/research\\_documents.htm](http://dcj.state.co.us/ors/research_documents.htm).
24. DCJ, "Information Collection and Analysis of Parole Board Decisions: Status Report" 6-8 (Nov. 1, 2009), available at [dcj.state.co.us/ors/research\\_documents.htm](http://dcj.state.co.us/ors/research_documents.htm).
25. Colorado Department of Corrections (DOC), "Statistical Report, FY2008" 43, table 33 (June 2009), available at [exdoc.state.co.us/secure/combo2.0.0/ajax/ajax\\_nodes\\_contentPreview.php?id=5106](http://exdoc.state.co.us/secure/combo2.0.0/ajax/ajax_nodes_contentPreview.php?id=5106).
26. *Id.*
27. *Id.* at 27.
28. DCJ, "Lifetime Supervision of Sex Offenders Annual Report" 4 (2009), available at [dcj.state.co.us/odvsom/sex\\_offender/reports.html](http://dcj.state.co.us/odvsom/sex_offender/reports.html).
29. DCJ, "Lifetime Supervision of Sex Offenders Annual Report" 6 (2008), available at [dcj.state.co.us/odvsom/sex\\_offender/SO\\_Pdfs/Complete%202008%20Lifetime%20Report.pdf](http://dcj.state.co.us/odvsom/sex_offender/SO_Pdfs/Complete%202008%20Lifetime%20Report.pdf).
30. DOC, the Colorado Department of Public Safety, and the State Judicial Department, "Lifetime Supervision of Sex Offenders, Annual Report" (Nov. 1, 2009), available at [dcj.state.co.us/odvsom/sex\\_offender/reports.html](http://dcj.state.co.us/odvsom/sex_offender/reports.html).
31. Report of the State Auditor, "Discretionary Parole, State Board of Parole-Performance Audit" 2-3 (Nov. 2008), available at [www.state.co.us/auditor](http://www.state.co.us/auditor).
32. DOC, "Monthly Population and Capacity Report, as of Sept. 30, 2009" 5, available at [exdoc.state.co.us/secure/combo2.0.0/ajax/ajax\\_nodes\\_contentPreview.php?id=5106](http://exdoc.state.co.us/secure/combo2.0.0/ajax/ajax_nodes_contentPreview.php?id=5106).
33. *See, e.g., Mitchell*, "First 10 felons set free under Colorado early-release initiative," *The Denver Post* 1 (Oct. 15, 2009), available at [www.denverpost.com/search/ci\\_13564285](http://www.denverpost.com/search/ci_13564285).
34. Report of the State Auditor, "Discretionary Parole, State Board of Parole-Performance Audit" 10-17 (Nov. 2008), available at [www.state.co.us/auditor](http://www.state.co.us/auditor).
35. S.B. 09-135 (2009); CRS § 17-22.5-404(6)(d)(III).
36. CRS § 24-33.5-503(m).
37. This percentage does not include time spent in prison after a parole revocation unless the revocation is for a new offense (private communication with DCJ staff).
38. Harrison, "Correctional Population Forecasts" 28 (DCJ, Dec. 2008), available at [dcj.state.co.us/ors/ppp.htm](http://dcj.state.co.us/ors/ppp.htm).
39. Report to the Colorado General Assembly, "An Overview of the Colorado Adult Criminal Justice System," Research Pub. No. 452, ch. 5, table 5.3 (Dec. 1998), available at [law.du.edu/images/uploads/library/CLC/452a.pdf#search='an](http://law.du.edu/images/uploads/library/CLC/452a.pdf#search='an).
40. *Id.*
41. CRS § 17-26-109(1).
42. CRS § 17-26-109(2).
43. CRS § 17-26-115.
44. Details of the program are available on the DOC website at [exdoc.state.co.us/secure/comboweb/weblets/index.php/news/view/57](http://exdoc.state.co.us/secure/comboweb/weblets/index.php/news/view/57).
45. *Id.*
46. Sess. L. 2009, H.B. 09-1351 (2009), ch. 359, p. 1866, § 1; CRS § 17-22.5-405(1.5).
47. The General Assembly's ruling adds three days of earned time plus two days' time off for good behavior. Sess. L. 2009, H.B. 09-1263 (2009), ch. 105, p. 382, § 1; CRS § 17-26-115. ■

Table 2 on next page.

Table 2—FY 2008 Releases, Percentage of Sentence Served, Per DOC Data

Felony Class	Offense	Number of Offenders	Per DOC, Average Presentence Confinement Credit (Days)	Average Presentence Confinement Credit (Months)	Table 20 Average Time Served (Months)	Total Time in Confinement (Months)	Table 21 Average Governing Sentence (Months)	Percentage of Time Served
II	Murder	20	247.3	8.24	182	190.24	303	62.79%
	Kidnapping	8	357.8	11.93	128	139.93	209	66.95%
	Sexual Assault	2	270.0	9.00	138	147.00	192	76.56%
	Drug Offenses	10	117.1	3.90	89	92.90	156	59.55%
	Org. Crime Act	12	308.5	10.28	76	86.28	168	51.36%
	Other Class II	3	224.3	7.48	146	153.48	288	53.29%
	<b>Class II Total</b>	<b>55</b>	<b>254.4</b>	<b>8.48</b>	<b>131</b>	<b>139.48</b>	<b>228</b>	<b>61.18%</b>
III	Murder	17	309.3	10.31	117	127.31	178	71.52%
	Homicide	14	220.2	7.34	80	87.34	121	72.18%
	Kidnapping	7	269.0	8.97	128	136.97	201	68.14%
	Sexual Assault	15	234.1	7.80	86	93.80	126	74.45%
	Child Abuse	17	190.7	6.36	79	85.36	124	68.84%
	Assault	40	218.1	7.27	112	119.27	165	72.28%
	Robbery	71	205.5	6.85	111	117.85	169	69.73%
	Escape	19	47.5	1.58	90	91.58	126	72.69%
	Burglary	125	249.2	8.31	58	66.31	96	69.07%
	Theft/MV Theft	83	265.2	8.84	43	51.84	86	60.28%
	Drug Offenses	433	212.2	7.07	41	48.07	77	62.43%
	Other Class III	18	287.2	9.57	40	49.57	76	65.23%
<b>Class III Total</b>	<b>859</b>	<b>212.5</b>	<b>7.08</b>	<b>58</b>	<b>65.08</b>	<b>99</b>	<b>65.74%</b>	
IV	Murder	32	223.4	7.45	58	65.45	84	77.91%
	Kidnapping	28	252.8	8.43	38	46.43	64	72.54%
	Sexual Assault	16	290.1	9.67	72	81.67	102	80.07%
	Child Abuse	77	210.2	7.01	32	39.01	50	78.01%
	Assault	224	165.1	5.50	49	54.50	71	76.77%
	Robbery	157	187.0	6.23	40	46.23	60	77.06%
	Escape	195	22.7	0.76	34	34.76	55	63.19%
	Burglary	181	215.8	7.19	32	39.19	55	71.26%
	Theft/MV Theft	525	209.9	7.00	27	34.00	49	69.38%
	Drug Offenses	642	214.9	7.16	24	31.16	44	70.83%
	Other Class IV	123	201.4	6.71	28	34.71	47	73.86%
<b>Class IV Total</b>	<b>2,200</b>	<b>185.6</b>	<b>6.19</b>	<b>31</b>	<b>37.19</b>	<b>53</b>	<b>70.16%</b>	
V	Sexual Assault	127	207.5	6.92	22	28.92	34	85.05%
	Assault	24	158.1	5.27	22	27.27	34	80.21%
	Public Peace	95	169.5	5.65	19	24.65	32	77.03%
	Escape	187	20.5	0.68	20	20.68	34	60.83%
	Burglary	43	191.3	6.38	20	26.38	30	87.92%
	Theft	185	200.0	6.67	14	20.67	27	76.54%
	Trespassing	179	194.7	6.49	14	20.49	26	78.81%
	Forgery	150	189.5	6.32	15	21.32	28	76.13%
	Drug Offenses	154	181.5	6.05	12	18.05	24	75.21%
	Menacing	383	167.8	5.59	17	22.59	28	80.69%
	Other Class V	115	188.4	6.28	16	22.28	28	79.57%
	<b>Class V Total</b>	<b>1,692</b>	<b>142.7</b>	<b>4.76</b>	<b>17</b>	<b>21.76</b>	<b>29</b>	<b>75.02%</b>

Table 2 continued on next page.

Table 2—FY 2008 Releases, Percentage of Sentence Served, Per DOC Data (cont.)

Felony Class	Offense	Number of Offenders	Per DOC, Average Presentence Confinement Credit (Days)	Average Presentence Confinement Credit (Months)	Table 20 Average Time Served (Months)	Total Time in Confinement (Months)	Table 21 Average Governing Sentence (Months)	Percentage of Time Served
VI	Assault	74	116.5	3.88	12	15.88	19	83.60%
	Weapons	53	129.7	4.32	9	13.32	17	78.37%
	Theft	64	147.5	4.92	9	13.92	17	81.86%
	Trespassing	36	156.7	5.22	7	12.22	15	81.49%
	Forgery	151	132.2	4.41	7	11.41	15	76.04%
	Drug Offenses	303	134.9	4.50	7	11.50	16	71.85%
	Traffic	136	102.8	3.43	10	13.43	18	74.59%
	Other Class VI	163	129.1	4.30	8	12.30	16	76.90%
	Class VI Total	930	129.7	4.32	8	12.32	16	77.02%
Other	Habitual-Other	26	235.8	7.86	119	126.86	198	64.07%
	Habitual-Life	2	0.0	0.00	306	306.00	Life	N/A
	Lifetime Sex	3	250.6	8.35	53	61.35	Life	N/A
	Other Total	31	233.3	7.78	125	132.78	198	67.06%
<b>TOTAL</b>		<b>5,772</b>	<b>171.3</b>	<b>5.71</b>	<b>29</b>	<b>34.71</b>	<b>49</b>	<b>70.84%</b>

