



Colorado Commission on Criminal and Juvenile Justice

Minutes

November 13, 2015

Employee Relations Training Room, Lakewood Civic Center
480 South Allison Parkway, Lakewood, CO 80226

Commission Member Attendance

Stan Hilkey, Chair	Joe Morales	Scott Turner
Doug Wilson, Vice-Chair	Norm Mueller	Dave Weaver
Jennifer Bradford	Kevin Paletta	Michael Vallejos
John Cooke	Joe Pelle	Peter Weir
Kelly Friesen	Eric Philp	Robert Werthwein
Charles Garcia	Rick Raemisch - ABSENT	Meg Williams
Kate Horn-Murphy - ABSENT	Rose Rodriguez	Dave Young - ABSENT
Evelyn Leslie - ABSENT	Lang Sias	Jeanne Smith, <i>Ex Officio</i> - ABSENT
Beth McCann	Pat Steadman	Juv. Justice Rep. - VACANT

Substitutes: Melissa Robert for Rick Raemisch

CALL TO ORDER AND OPENING REMARKS

Stan Hilkey, Chair

Stan Hilkey (Chair of the Commission and Colorado Department of Public Safety Executive Director) welcomed commissioners and additional attendees to the meeting. He noted that a few known absentees would include Jeanne Smith, Dave Young, Kate Horn-Murphy and Evelyn Leslie. Senator Cooke may be late and Melissa Roberts is sitting in for Director Raemisch.

After everyone introduced themselves, Mr. Hilkey asked for approval of the October Minutes and requested any additions, corrections or suggestions. No changes were offered and he subsequently requested a motion to approve the Minutes. The motion was entered and seconded and the Minutes for the October meeting were unanimously approved.

CCJJ Fiscal Year 2015 Annual Report Distribution

Kim English, Division of Criminal Justice

Ms. English presented Commissioners with the 2015 Annual Report. She explained that the Commission is mandated by the General Assembly to present an annual report. This report describes the activities of the Commission and Task Forces during FY. In this report, cyberbullying was the highlighted topic. The table of contents outlines the areas you may want to explore further.

MANDATORY PAROLE SUBCOMMITTEE RECOMMENDATIONS**Doug Wilson, Mandatory Parole Subcommittee Chair**

Last month, two recommendations were presented by the Mandatory Parole Subcommittee (MP Subc). The first proposal was to redefine the purposes of parole (FY16-MP#01). Concerns were expressed regarding an aspect of the second proposal (FY16-MP#02), which will be discussed later in the meeting.

To remind everyone, the following is the composition of the Subcommittee:

MEMBERS

Doug Wilson, Chair/CCJJ	State Public Defender
Brandon Shaffer & Joe Morales/CCJJ	Parole Board Chair
Charles Garcia/CCJJ	Commission At Large Position
Kate Horn-Murphy/CCJJ	Victim's Representative, 17 th Judicial District
Norm Mueller/CCJJ	Criminal Defense Attorney
Rep. Daniel Kagan	State Representative House District 3
James Quinn	Attorney General's Office
Michael Dougherty	District Attorney's Office, 1 st Judicial District
Melissa Roberts & Kellie Wasko	Division of Parole
Christie Donner	Colorado Criminal Justice Reform Coalition

The group has worked since May and has convened 8 meetings along with other discussions. FY16-MP#01 was presented for a vote. The conceptual presentation of FY16-MP#02 occurred in November and it was re-presented at this meeting for further discussion, but no vote.

FY16-MP#01: The first recommendation revises the statute that describes the purposes of parole (C.R.S. 17-22.5-102.5).

Current Purposes of Parole

(C.R.S. 17-22.5-102.5)

- To punish a convicted offender by assuring that his length of incarceration and period of parole supervision are in relation to the seriousness of his offense
- To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in length of incarceration, and establishing fair procedures for the imposition of a period of parole supervision; and
- To promote rehabilitation by encouraging the successful reintegration of convicted offenders into the community while recognizing the need for public safety.

The MP Subc proposed an amendment (**in bold**) in the first statement to align with evidence-based practices surrounding parole.

PROPOSED Purposes of Parole

(C.R.S. 17-22.5-102.5)

- To further all purposes of sentencing and to improve public safety by reducing the incidence of **technical violations and** crime committed by people on parole

- To prepare, select, and assist people who, after serving a statutorily defined period of incarceration, will be transitioned and returned to the community
- To set individualized conditions of parole and to provide supervision services and support to assist the people on parole in addressing identified risks and needs
- To achieve a successful discharge from parole supervision for people on parole through compliance with the terms and conditions of release which address their risks and needs.

Discussion

Ms. Roberts requested, on behalf of Mr. Raemisch, that the first bullet point include, “technical violations and” (Note: For the purposes of these Minutes that change was bolded in the proposal statement above).

- Senator Cooke asked whether this change was discussed and previously approved unanimously by the MP Subc? Yes.
- Mr. Weir commented that he really liked the proposal and stated that it reflects the goal of parole, which is to focus on offender success. The statements nicely dovetail with the efforts by the Community Corrections Task Force and highlight the importance of risks and needs and identifying appropriate individualized services. This is very similar to the goals of community corrections and parole in general, so it works well with community corrections.
- There were no other questions or comments and the Commission prepared to vote.

The process for voting on a final recommendation was explained. To pass, a Commission recommendation requires approval by 75% of the members, combining the A and B votes.

- A = I support it
- B = I can live with it
- C = I do not support it

Mr. Mueller noted for new members that, while individual votes are not displayed onscreen (the system only logs that a vote has been entered and displays the final count), individual votes are subsequently provided in a public document on the CCJJ website.

Final Vote:

- A: 16
- B: 1
- C:1

FY16-MP#01 passes.

FY16-MP#02: Prison Release Date Determined by Crime of Violence/Non-Crime of Violence Status and Mandatory Parole Period Based Upon Risk Score.

- No vote was conducted on this proposal today.
- Members were reminded of the concerns regarding this proposal expressed specifically by Mr. Weir on behalf of the Community Corrections Task Force (CCTF).
- A previous request for a 60-day delay prior to voting was still in place. The vote was scheduled for the December meeting.

Starting on October 22nd, the MP Subc. members held or attended a flurry of meetings.

- MP Subc. representatives attended a CCTF meeting on Oct. 22.

- On November 6th, Mr. Wilson gave a presentation on the recommendation to the Governor's Community Corrections Advisory Council (GAC). Multiple CCJJ/MP Subc. members attended, including Melissa Roberts and Eric Philp.
- The MP Subc. met on Monday, November 9th and, as a result of these discussions with the community corrections representatives, the Subcommittee revised the recommendation.

The revised recommendation is to base release from prison on COV/non-COV status (COV is "Crime of Violence" as defined in statute). The length of parole will be determined by the CARAS risk score.

The MP Subcommittee began its work in May after Brandon Schaffer (former Parole Board Chair and Commission member) asked the Commission to study whether mandatory parole should be reformed.

- A second request for the group was to look at the length of parole. Does the evidence support the current parole durations? Currently, parole lengths are 1, 2, 3, or 5 years depending on the felony class of the conviction.
- A third discussion focused on the lack of clarity in the current sentence/parole structure. Given the combination of sentence length, good time, earned time, and the possibility of discretionary release by the Parole Board, it is difficult for an offender or for a victim to predict the actual time spent in prison prior to release to parole.

These items comprised the areas of study of the Subcommittee.

The Commissioners were reminded of the first element of the recommendation, which was introduced in October and that had not changed. The second element had been revised since the October presentation and the changes were described

Element #1: Release Date Determined by COV/Non-COV (No changes)

- COVs: released to mandatory parole after serving a minimum of 75% of his/her sentence (100% of sentence minus earned time)
- Non-COVs: released to mandatory parole after serving a minimum of 50% of his/her sentence (100% of sentence minus earned time)
- An individual convicted of a COV would serve 75% of the sentence. The time served begins at 100% and is reduced only by earned time. The maximum time that may be earned is 75% of that original sentence. [Note: Currently, an individual "starts" the time to be served at 75% and any earned time is subtracted from that 75% sentence length.]
 - An analysis of sentence lengths determined that this "75% proposal" would increase the time served for COVs because, currently, the average percentage of time served for these individuals is 66%.
 - The same analysis also found that non-COVs actually serve a longer proportion of their sentence compared to COVs. Individual convicted of a COV serve a much longer sentence, but percentage-wise, on average, serve 66% of the sentence while non-COVs, on average, serve 68% of the sentence. This was a surprise to the Subcommittee.
- The CC TF reported no qualms with this element of the recommendation and, therefore, no changes were made.

Element #2: Parole Periods (Revisions were requested and made)

The length of parole periods occupied the majority the discussions. The original recommendation proposed that the parole period would be based on the risk to reoffend as determined by the CARAS (Colorado Actuarial Risk Assessment Scale). Originally, parole periods were set based on the COV/non-COV distinction, but this distinction was eliminated in favor of risk-based distinctions to determine parole periods. This element of the proposal was created because the Subcommittee concluded that the discretionary parole process simply was not working.

- Under discretionary parole, individuals were released at their parole eligibility date only 23% of the time.
- An effort was made to provide clarity to the release date and to ensure that offenders with a high risk to reoffend would be supervised.
- The Subcommittee created two working groups to consider the following options:
 - A discretionary parole period decided by the Parole Board, with parole served inside the sentence. An advantage of this approach is the presence of multiple opportunities to earn incentives by the participation in programs, but a disadvantage is the uncertainty when the release from parole would occur. Ultimately, this option was not favored.
 - A mandatory parole period. This option would provide 100% certainty and clarity, eliminating good time and earned time, and require offenders to serve every day of the parole period. A disadvantage of this approach is that all incentives related to regulation compliance and program participation while on parole would be lost.

Original Proposal

Crime of Violence (COV) mandatory parole periods:

- Very Low and Low Risk 6 months
- Medium Risk 1 year
- High and Very High Risk 2 years

Non-Crime of Violence mandatory parole periods:

- Very Low and Low Risk 6 months
- Medium, High and
Very High Risk 1 year

These parole durations were derived from a chart in the Department of Corrections FY 2013 Statistical Report (p. 44, Figure 59) indicating that within 6 months of release 18% of offenders returned to prison, between 6 and 12 months another 14% returned to prison, and between 12 and 24 months another 12% are returned to prison. Under the revised proposal (described below), 87% of the returns to prison for technical violations while on parole would still be captured.

After numerous follow-up meetings, primarily with Community Corrections, the Subcommittee revised the recommendation to reflect mandatory parole periods based on risk to reoffend.

Revised Proposal (Underlined CAPS indicate changes from original proposal)

- NO DISTINCTION TO BE MADE BETWEEN COV AND NON-COV REGARDING THE PAROLE PERIOD.

Parole periods for all as follows:

- Very Low / Low Risk 1 YEAR [previously, 6 months]
- Medium Risk 18 MONTHS [previously, 1 year]
- High / Very High Risk 2 years

The biggest change was the elimination of parole periods based on the COVs / non-COV distinction. After meeting with stakeholders from community corrections, who wanted to ensure there was sufficient programming time to effect behavior change of offenders, the parole terms were modified to 1 year, 18 months, and 2 years.

Another important modification to the original proposal is that

- EARNED TIME WOULD BE ALLOWED FOR THOSE ON PAROLE, NOT TO EXCEED 5 DAYS PER MONTH.
 - Both community corrections and parole representatives expressed the importance of the opportunity for individuals to earn incentives while on parole and in community corrections.
 - Currently, parolees receive 10 days of earned time per month, which, under this proposal, would be reduced to 5 days.

Community Corrections Section of Recommendation**Original Proposal**

- COVs may be placed in community corrections as a condition of parole at the termination of their prison sentence
- Non-COVs may be placed in community corrections 6 months prior to the termination of their prison sentence

Based on conversations over the last month with stakeholders, the proposal was revised such that individuals could be placed in community corrections up to 12 months prior to the completion of a prison sentence while on inmate status.

Revised Proposal (Underlined CAPS indicate changes from original proposal)

INDIVIDUALS MAY BE PLACED IN COMMUNITY CORRECTIONS UP TO 12 MONTHS PRIOR TO COMPLETION OF HIS/HER PRISON SENTENCE, AND CAN OBTAIN EARNED TIME DURING THIS PERIOD (five days/month).

- Which group recidivates more, COV or non-COV?
 - The crime for which an individual serves time does not predict recidivism. Therefore, the two groups are not that different in regard to recidivism. But partially for this reason, the Subcommittee switched to a risk-based parole system in the revised recommendation.
- Does the CARAS score reflect the crime that was committed? Crime of conviction was not predictive and is not included, but criminal history is reflected in the score.

- With the change in the community corrections provision is the possibility of community corrections as a condition of parole eliminated? No.
 - The Parole Division has agreed to make completion of a community corrections program a condition of parole to make sure offenders previously on transition status (in community corrections) finish any programs that were in progress.
- DOC will administer earned time and risk scores will provide the determination of the length of parole.

How does victim input/feedback play a role in the parole release decision (because release to parole under this proposal is mandatory)?

Revised Proposal (Underlined CAPS indicate changes from original proposal)

ENSURE a mechanism for victim notification and **FOR VICTIM INPUT ON:**

- Setting of terms and conditions of parole,
- Early terminations of parole, and
- Revocations of parole.

To be clear, this proposal is not retroactive. It would apply only to crimes committed on or after the implementation date stated in the statute.

- This proposal will not eliminate the need for the Parole Board. The Board would still be required to make release decisions for the inmate population prior to the statute implementation.
- Additionally, the Board will continue to make decisions regarding those serving indeterminate sentences (primarily, sex offenders).
- Under the new proposal, the Board would still set conditions of parole.

To review, the in FY 2014, the *Parole Release Guidelines Instrument* recommend 49% of offenders be released and 51% be deferred. The actual proportion of offenders released by the Board was about 25%.

- The Board agreed with the *Guidelines* recommendation to defer 93% of the time, but agreed with the *Guidelines* recommendation to release only 43% of the time.
- The average length of time on parole is actually 26 months, although the current scheme includes durations of 1, 2, 3, or 5 years. This, along with the fact that most people recidivate within the first two years, drove the recommended changes.

Questions from Commissioners

- Is an inmate's involvement in programming while in prison included in the earned time calculation? Yes.
- Does the CARAS take into consideration treatment that they may have engaged in and completed while in the institution as part of their risk/needs when coming out? Data to reflect treatment and program participation are not available as potential predictors in the CARAS. However, the *Guidelines* do take this into consideration.
- On page 5 of the handout, monetary savings are addressed. First, the Subcommittee did a great job designating funds to provide for victim services. But, regarding offender services funds, the population with the greatest needs will be parolees and yet this seems

to be open to anyone on community supervision. These funds should be dedicated to parolees.

- Another confusing point is that statement that funds are for anyone under community supervision or has criminal record. That is a huge population. This would overly dilute the value of these savings. It would be preferable to focus on a smaller population. Individuals on parole fail early in large proportions and funds should be directed those at this point in the system.
 - There are a large number of justice-involved people who have needs for services.
 - Two Commission meetings ago, Commissioner Kate Horn-Murphy gave a presentation about the acute nature of funding and that there is a lack in long-term funding for victim services.
 - “Anyone who has a criminal record” is the problematic language because that will be a large population. There won’t be enough money to help everyone with a criminal history. The focus should be on parolees, not just anyone with a criminal record. A large proportion of offenders fail early.
 - Senator Steadman stated that he is in favor of this idea, but maybe with some additional language. Does “criminal record” include an arrest record? I like the inclusive language, but maybe it should also include an administrative directive to prioritize those who are at the highest risk.
 - Mr. Wilson noted that he didn’t mean to skip this in his presentation, but nothing was changed here from last month. The intent of the recommendation was never to create savings. The cost savings was an ancillary benefit. The primary savings will be a few years out and it will be derived from savings in parole days rather than from DOC beds.
- Mr. Weir stated that, speaking for the Community Corrections Task Force and not the District Attorney’s Council, the Task Force is appreciative of the last few meetings and that they were productive. The community corrections program providers feel there have been positive modifications. A sentiment remains that the focus of the Subcommittee was the impact on parole and the clarity and certainty of prison release and parole periods, and although those goals may have been met, the goals should be broader.
 - Will the proposal further the opportunities for success for those coming out of community corrections?
 - Other questions should be asked, including will this increase or decrease interest in community corrections from offenders?
 - There was an issue whether the programs to which offenders were referred correlated with the degree of risk as measured by the CARAS. Other assessments are administered to assist in program placement, once someone arrives in community corrections. What are the consequences for failure to comply?
 - One thing that has been addressed is the concern that there be enough time to complete a community corrections program.
 - The benefits of earned time should also be considered thoughtfully. A non-COV could complete their time on inmate status (as a Transition client) in 6 months and a COV in 9 months, given both will earn time similar to the earned time system in prison.
 - The impact on local boards should also be considered, including the time between application and the mandatory release date. An additional sentiment was that it is

- better to transition someone through community corrections than to send them straight to parole.
- Ms. Rodriguez (member of the CCTF) stated that she was most concerned that new, undiscussed concerns were raised at every meeting.
 - Ms. Roberts stated that she doesn't agree with Mr. Weir's recollection of every point, but noted that it was a good summary of the conversations. She stated that there have been a lot of conversations and compromises. Is everyone happy? No. DOC preferred the original recommendation better, but everyone was willing to compromise.
 - Mr. Wilson stated that earned time was added because community corrections wanted a "carrot" and the "one year prior to MRD" was added because community corrections stakeholders requested it. Overall, the proposal follows the evidence which is the primary mission of the Commission.
- Mr. Wilson clarified that the initial Subcommittee discussions focused on mandatory parole. Specifically, two pieces: status and length of parole. Some have suggested that the Subcommittee has not done any evidence-based work, but he disagreed. One could propose 20-year parole sentences to catch every recidivism instance, but why keep everyone longer if 80% of recidivism events occur in the first 2 years?
 - At the last MP Subc. meeting, the community corrections guests were asked if they had any concerns before the final vote on the revisions and there were none. There was total support in the room.
 - Judge Vallejos stated that he felt the CCTF acknowledged that their suggestions had been included in the recommendation and they were appreciative.

The MP Subc. has one more meeting on Dec. 7.

Before advancing to the next agenda item, Mr. Hilkey asked whether there were any legislators in the room who were interested in sponsoring a bill to support the first Mandatory Parole recommendation that was passed (FY16-MP #01). If so, he asked that they speak to him or Jana Locke. Senator McCann stated she may be interested.

COMMUNITY CORRECTIONS TASK FORCE UPDATE

Glenn Tapia, was asked to present the work underway in community corrections. It was first explained that there are four ways to enter community corrections – diversion, transition, condition of parole, and condition of probation.

The Division of Criminal Justice, Office of Community Corrections (DCJ: OCC) has a FY 2016 budget of \$69 million. DCJ: OCC distributes those funds, establishes state standards, audits programs for compliance against performance standards, and provides training and technical assistance to local boards and programs.

DCJ: OCC contracts directly with judicial districts (usually county governments) which contract with local programs. There are 31 facilities that serve between 40 and 200+ offenders. The local government establishes a community corrections board, administers state funds, assures that providers are compliant with state and local standards as well as all levels of law (they are the

first level of government to handle complaints), serves as the initial regulatory agency, works with other local governments to facilitate programs, and screens referrals for placement. One can think of community corrections as being co-regulated through local, county and state governments.

The benefits of residential community corrections include 24-hour supervision with a high level of structure that keep clients very busy which is supported by the literature; community-based programs allow for employment and a wide range of services for criminogenic needs; offenders pay into restitution, child support, supervision costs, and state/federal taxes; and there are cost savings compared to prison.

Our population generally fluctuates. Today, about 56% are in diversion placements, 38% in transition, 5% in condition of parole and 1% in condition of probation. But, the general rule of thumb is that ½ are DOC clients (Transition) and ½ are Probation clients (Diversion).

Of the approximately 3,700 community corrections clients, about 2,500 are in regular community corrections placements, about 20% are in specialized programs, and about 600 clients are in non-residential placements, which resembles regular probation and is the next step after successfully completing a diversion residential program.

DCJ: OCC has been tracking the offenders' scores on the Level of Supervision Inventory risk/needs assessment (LSI) over the last 15 years and, over time, offenders accepted into community corrections have higher risks, higher needs, and higher criminal history scores (a score created by our research unit a long time ago that looks at the density of one's criminal past). Community corrections programs are also accepting clients with a higher incidence of mental illness.

The main approach follows the risk reduction principle to focus the most resources on the highest risk offenders. While community corrections is a small slice of the criminal justice system, it is the community-based strategy for dealing with high risk/high need offenders. This is opposite of the initial strategy for community corrections when it was first established in the 1970s. Then, it primarily targeted low risk offenders who were really only in need of housing. Now, clients are high risk, have high needs and extensive criminal histories. Only about 8% are low risk (such as sex offenders) or low risk/high stakes (such as vehicular homicide) while about half are high risk (37%) or very high risk (14%), with the remaining 41% categorized as medium risk. But, keep in mind that these figures exclude the special needs population, which would add even more high risk offenders.

The rate of successful completions has trended down over the last 15 years with a recent increase. Recently, technical violations are falling, while escapes have fluctuated in the teens with a slight increase in recent years. Overall, because the risk/needs of clients are trending upward and successful outcomes are trending downward, community corrections must re-focus on this new and challenging client composition.

Regarding recidivism, recidivism is defined as, of the successful completions, how many were charged in court with a new crime (felony or misdemeanor) one and two years out. There has

been no significant change in recidivism, even with the increase in higher risk/higher need offenders. However, in the interest of recidivism reduction, this too could improve.

Overall, the lower one's risk, the lower the likelihood of recidivism (at 1 and 2 years) and the lower the failure rate (with "failure" defined as escape, technical violation, and new crime combined). There is a very clear relationship between the LSI scores (need/risk) and client outcomes.

Community corrections reassesses need/risk with the LSI every 6 months and there is a reduction in reoffense risk around 13% overall. In this way, on average, offenders leave community corrections better prepared for the community than when they arrived.

Risk Factor Analysis. This process requires that the performance of community corrections programs be compared against public safety standards. This tool incorporates multiple scores where a smaller score is better. DCJ: OCC tracked the average score across all programs for 10 years with arbitrary cutoff points for what was considered a good score. Over time, fewer programs had "bad" scores.

- Right now, all programs are "in the green" (the only "red" score for this last year was a program that no longer exists). However, this means that program performance has increased while outcomes have decreased. DCJ: OCC realized that the standards are generally not evidence-based. DCJ: OCC is currently in a process to revise the standards to increase the number of programs that are evidence based (noting that, not all efforts in corrections can be evidence based).

The following was a list of current and future initiatives described by Mr. Tapia:

- Progression Matrix
- Structured Sanctions/Incentives (Grant Funded)
- Effective Interventions with Offenders (Motivational Interviewing and Behavior Change Support)
- Evidence Based Professional Standards
- MAYBE: Program Evaluation Tool (Hopefully)?
- MAYBE: Performance Based Contracting?
- MAYBE: Specialized Program for Very High Risk/High Need/Criminality

DATA SHARING TASK FORCE

Kevin Palleta (for Jeanne Smith), Data Sharing Task Force Chair

Chief Palleta stated that Ms. Smith, the Chair of the Data Sharing Task Force, was out of town and that he would provide the update for the group.

The issue of data silos is well known. The Task Force is observing the work underway in Adams County, spearheaded by their criminal justice coordinating council. Technology isn't the primary challenge in data sharing efforts; rather, the challenge is determining who can have access to what information. The Adams County initiative is exploring a system that could be scaled to include a multitude of data depending on who is willing to share and who needs access.

This Task Force is preparing a recommendation for the Commission that the state should form a strategic planning committee with experts who might utilize the Adams County model as a blueprint. This recommendation is in draft form and is expected to be presented at an upcoming meeting.

December Preview**Stan Hilkey, Chair and Doug Wilson, Vice-Chair****Adjournment**

At the next meeting, on December 11, there will be a vote on the second Mandatory Parole Subcommittee recommendation.

Commission leadership is proposing that the February 2016 meeting be a retreat. In case this is confirmed, please save the whole day for this potential retreat.

Mr. Hilkey thanked both Commissioners and presenters for their participation in the meeting and the informative and passionate conversations. He asked the group for final comments. With no further business, Mr. Hilkey adjourned the meeting at 3:17 p.m.