

Comprehensive Sentencing Task Force

January 13, 2011, 1:30-4:30PM
710 Kipling, 3rd Floor Conference Room

ATTENDEES:

CHAIR

Jeanne Smith/Division of Criminal Justice

TASK FORCE MEMBERS

Glenn Tapia/Division of Criminal Justice

Christie Donner/Criminal Justice Reform Coalition

Charles Garcia/Denver Crime Prevention & Control Commission

J.P. Moore/DA 17th Judicial

Pete Hautzinger/DA 21st Judicial

Tom Quinn/Director of Probation Services

Celeste Quinones, Parole Board

Dianne Tramutola-Lawson/CURE

Doug Wilson/State Public Defender

Joe Cannata/Voices of Victims

Jason Middleton/ Public Defender/Appellate Division

Joe Pelle/Sheriff, Boulder County

Michael Dougherty/ Deputy Attorney General

Gil Martinez/District Court Judge

Jeaneene Miller/DOC Division of Parole

Claire Levy/State Representative

STAFF

Paul Herman/Center for Effective Public Policy

Kim English/ Division of Criminal Justice

Christine Adams/Division of Criminal Justice

ADDITIONAL ATTENDEES

Jana Locke/Colorado Department of Public Safety

Haley Wilmer/Denver DA's office

Jeff Lin/Criminology Professor DU

Christine Brady/ Attorney General's Office

Shelby Mackenzie/CU Boulder

Mark Evans/ Public Defender's office

Ellen Toomey-Hale/ Criminal Justice Reform Coalition

ABSENT

Mark Scheffel/Senator

John Suthers/Attorney General

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith opened the meeting with introductions and an overview of the agenda and meeting.</p>
--	---

<p>Issue/Topic: Legislative Screening Proposal Update</p>	<p>Discussion: A house sponsor (Rep. Nikkel) has been found for the Legislative Screening Proposal bill; however, no Senate sponsor has been found yet. Specific language still needs to be forwarded to the drafter before he'll start writing the bill.</p>
--	--

<p>Issue/Topic: Restitution Collection Figures Update</p> <p>Action See handout for specific numbers. Restitution is a topic that needs to be discussed in more detail later.</p>	<p>Restitution Collection Figures: Presented by Jeaneene Miller (see handout) –</p> <ul style="list-style-type: none"> • The handout presents the amount paid, number of transactions, and average paid per transaction. • Includes info on different populations (parolees, community corrections transition, incarcerated, correctional industries PIE program). • Back side shows how much has not been paid. <ul style="list-style-type: none"> ○ The conclusion is that this population is not in a place to pay restitution.
---	--

<p>Issue/Topic: Theft Sentencing Issues by Agency</p> <p>Action</p>	<p>Discussion:</p> <p>The discussion continues regarding the issues various stakeholders consider during the proceedings surrounding a theft case. During the November meeting the group heard from Judicial and Probation. During the December meeting the defense and prosecution gave their perspectives. During this meeting the group will hear from the victim's viewpoint and law enforcement.</p> <p>Victim representative Joe Cannata addresses the group. Joe has personally been broken into many times, and although insurance paid some, restitution is never completely collected.</p> <p><u>Discussion Points</u></p> <ul style="list-style-type: none"> • There's a tendency to feel more violated when it's your house vs. a business. • When the court case is done, it is often better to have the individual sentenced to the community where they could make more money and pay more back instead of prison where they can't pay. • Victims should get the first cut of money collected. <ul style="list-style-type: none"> ○ Victims are currently third. ○ If our goal is to make victims whole again we need to reorganize this order. • Treat property case like a collection matter → make the victim whole again.
---	--

- Punishment would be to pay back the money.
- It would be nice if we could make offenders pay MORE than what was stolen to build a fund.
- There is a legal definition of what is and isn't restitution. Constitutionally can't make them pay more restitution than what they stole. But a surcharge could be added to pay into a fund.
- Waiting a year or two, until they get out of prison, to make them think about making the victim whole doesn't have the same effect. Just another fee for them. Incarceration interrupts their ability and motivation to pay.
- Maybe motivate them to pay by using payment as a credit against sentence?
 - Currently there is no penalty for failing to pay restitution.
 - Can be noted in parole revocation, but rare.
 - Many don't work in prison not because they don't want to but because there are no jobs available.
- Joe supports the idea of restorative justice, especially with juvenile offenders. He believes the most critical elements of restorative justice is victim/offender dialog.
- The most important thing is to make the victim whole instead of incarceration.
- But what about the big crimes? Is there a distinction from the victim's perspective as far as dollar amount?
- There will be to some degree. But some things are irreplaceable.
- Does the state have a fund to help compensate the victim where the state would then assume responsibility to collect funds from the offender?
 - This would be the ideal way to pay the victim immediately.
 - If restitution is so important to make the victim whole again, what can we do as a society to help?
 - If the offender can pay right away, great. But we don't have a plan B – except to drag it out for years.
- How important is it for the victim to understand what could happen if they offender fails the alternative sentence?
- Is it important to understand WHY the theft happened?
 - This is where restorative justice would come in. To understand why.
 - Often victims are concerned that the offender will continue this behavior and will continue to victimize.
 - Sense of not feeling safe. Money doesn't make the person feel safe.

Boulder County Sheriff Joe Pelle offers the law enforcement perspective on theft cases:

- Restitution works for general theft. But if you lose personal items, you may never feel whole.
 - Restorative justice and restitution combined may be the answer.
- It is shocking to find out that just because someone is on probation

restitution is not guaranteed.

- Restitution is seen as somewhat of a joke by the cops because they rarely see people complete this. It is rarely tied to the completion of their sentence.
- For personal, irreplaceable items restorative justice *and* money may be best.
- Retribution, restoration, restitution → need something to complete the circle.
 - Police don't see revocations because they don't pay.
 - It's not constitutional to revoke on failure to pay alone, but one can be revoked for failure to appear AND failure to pay.
- What's the solution from the police perspective?
 - Need to make payment of restitution part of what it takes to complete a sentence (including probation) successfully.
 - How can someone complete successfully if they've paid nothing?
 - Probation has no authority except to turn them over to collections.
- There is a broad spectrum of thefts.
 - Sometimes restorative justice is perfect.
 - But for professional thieves it's different. This goes beyond restitution and restorative justice. This goes back to the motivation of the crime.
 - Need to keep the community safe.

Discussion Points

- Can we include in our restitution topic the idea of other forms of restoration? Incarceration and restitution may not be the only way.
- Perception of what is happening to the defendant may be just as important. If the victim never sees what's happening or any progress.. that's where you find the most frustration from the victim

<p style="text-align: center;">Issue/Topic: Theft Working Group Feedback</p> <p style="text-align: center;">Action</p> <p style="text-align: center;">See handout for specific recommendations.</p> <p style="text-align: center;">Next meeting possibly discuss what statutes may be collapsed.</p>	<p style="text-align: center;">Discussion:</p> <p>A small working group met on January 5th to review the theft statutes and start discussions on possibly reworking (combining, condensing) various statutes. Jason Middleton compiled the feedback that came out of the meeting and presented a handout to the group.</p> <p>General Theft Statute</p> <p><u>Discussion Points</u></p> <ul style="list-style-type: none"> ● General theft statute requires intent to permanently deprive. ● The value of the item is important. Intangible/invaluable items are included in their own statute. <ul style="list-style-type: none"> ● Why does a theft offense skip directly from M1 to F4 because of a \$1 difference? ● Trying to treat each defendant consistently, even if their mental
--	--

state was different.

- There is a difference between intentionally and knowingly
- But the loss to the victim may be the same?
- At what point does irresponsibility come into play? What does it mean to temporarily deprive?
 - Theft → intend to permanently keep the item.
 - But if you go into a rental store you are turning over your identification so the intent is assumed to be that you wouldn't keep it forever.
- The magic time is 72 hours for rental property (this is when you can be charged with theft of rental property).
- What's missing in the general theft statute is a petty level.

Theft of Rental Property, CRS § 18-4-402 → recommends that this be made more consistent with the offense classifications for general theft.

Discussion Points

- Theft of rental property is its own statute because it is a temporary loss (instead of permanent loss which is covered by general theft statute)
 - General theft is taking something permanently.

Aggravated Motor Vehicle Theft, CRS §18-4-409 → should remain separate from general theft.

Discussion Points

- The group doesn't believe that the \$1000 value is a good dividing line.
- Why can't this be included in the general theft classification?
 - Don't have the intent to permanently deprive.
 - Different mental state.
 - There are many qualifications that are specific to MV theft (what can be counted as MV theft) that don't fit neatly under general theft.
 - The impact on someone's life may be the same regardless of the item's value (\$1000 car vs. BMW – a person who owns the latter probably has better resources). Feels elitist that we're distinguishing the poor.
 - From a victim's perspective, this makes sense.
 - But from a prosecution/defense perspective it is simpler to get a monetary distinction.
 - Similar to general theft distinctions.
 - The impact on the victim should be considered.
 - Is the monetary value of what was stolen what really should be considered?

Theft by Receiving, CRS § 18-4-410 → recommend that it be eliminated as its own offense and incorporated into general theft.

Discussion Points

- Mental state matters – did the person know they were receiving a stolen item?
- “Knowing” is what makes this distinct.
- Language would have to be played with to account for this if this is worked into the general theft statute.

Newspaper Theft, CRS § 18-4-419 - Discussion Points

Theft of Medical Marijuana Card, CRS § 18-18-406.5(3)

Theft of Farm Products, CRS § 12-16-118

Theft or Mutilation of Library Property, CRS § 24-90-117

Theft of Motor Vehicle Parts, CRS § 42-5-104

- Each of these could be incorporated into the general theft statute.
 - There is no monetary value on some things which would change the crime level for some of these because they would go under the lowest level covered by the general theft statute.

Fuel Piracy, CRS § 18-4-418 → could be covered by general theft if M2 was included to cover low monetary amounts.

OFFENSES WITHOUT RECOMMENDED CHANGES Discussion Points :

- Other items were left as is due to the difficulty of placing value on items.
- Some had variations and subcategories that would be difficult to encompass in the general theft statute.
- Some of the items (e.g., livestock) probably could be given a value. But there are so many sub-statutes that are already included it would be difficult to simplify.
- Should value drive the classification? If so, what are the values that should be used? Does it have to be an exact value? What if you can't determine exactly?
 - Some of these were kept as they currently are because placing these distinctions would be difficult.
- What about restitution? Is it realistic? What's possible?
 - Culpability and mental state should be considered.
 - We don't want to make it more complicated but instead want to add clarity and reason.
 - What's the expectation of the victim?

Issue/Topic:	Discussion:
Sentencing Goals and Pathways	<p>What are we trying to accomplish? What is more important? And how does that impact what we want to do with the theft statutes?</p> <ul style="list-style-type: none"> • What should sentencing look like? • What should theft in general look like? • What is the primary policy for theft? <ul style="list-style-type: none"> ○ If we decide recidivism reduction is the #1 priority, what leads to recidivism reduction? <ul style="list-style-type: none"> ▪ What does the research say? ▪ How do we deal with the issue of value vs. motivation ▪ Restoration may lead to recidivism reduction for some crimes, but not all. • This would apply to any crime category: <ul style="list-style-type: none"> ○ Pathways –generic vs. criminal enterprise ○ Fairness → why is this a class X felony or misdemeanor? <ul style="list-style-type: none"> ▪ Is it fair to various parties? ▪ Regardless of offense, fairness should be part of scheme. ○ How visible is this action to the public? <p>Recidivism reduction:</p> <ul style="list-style-type: none"> • Is it that we don't want them to steal anymore? Or do we not want them to commit any offense? • The group agreed that general recidivism is the concern. <ul style="list-style-type: none"> ○ But we're talking about theft. <ul style="list-style-type: none"> ▪ Recidivism from violent to property crime may be acceptable but is a different conversation. • What do we know about how to reduce recidivism? <ul style="list-style-type: none"> ○ For generic criminals use the same methods you'd use elsewhere. ○ But for the criminal enterprise people it would take other means. • Can't talk about recidivism reduction without acknowledging collateral consequences. <ul style="list-style-type: none"> ○ The inability to get a job is going to be a key issue when it comes to recidivism reduction. ○ Need to be able to get a job, get an education. • Pathways: <ul style="list-style-type: none"> ○ Current pathways available (at time of sentencing, what is available to the court): <ul style="list-style-type: none"> ▪ Probation <ul style="list-style-type: none"> • Jail as a condition of probation • Electronic monitoring → part of probation, part of jail (including work release) ▪ Community corrections ▪ Prison ▪ Jail ▪ Diversion <ul style="list-style-type: none"> • Instead of being processed through CJ system – in lieu of filing. • Different from deferred which is filed, but the plea gets rid of it later.

- Juveniles → divert straight to restorative justice (run by sheriffs in Boulder).
- Juveniles → teen court (El Paso)
- Decriminalize – becomes a civil case (this is a hybrid of diversion/deferred)
 - Focus is on restorative justice.
- Home detention
 - In lieu of jail
 - Condition of probation
 - Can stand alone
 - Usually includes electronic monitoring
 - Company who controls the monitors sends reports to sheriff.
 - Work release
 - Part of jail
 - Part of home detention (would be combined with electronic monitoring).
- Deferred sentence (controlled by prosecutor)
- Fines/fees
- Direct to treatment or community service is unlikely for theft
 - This can typically only happen in county court.
- Desired pathways:
 - Resource impediment → may not be legal issue, but lack of resources.
 - Drug or mental health needs (typically will be post-charge).
 - Residential facility with monitoring capability.
 - Immediacy, like drug courts provide – while the case goes through the system.
 - If we can get rid of treatment, employment, and education needs we will solve a lot of needs.
 - Allow for court ordered deferred sentence for the correct crime type and classification.
 - This would help avoid the inevitable collateral consequences.
 - Similar to diversion which is controlled by prosecution. Need more judicial discretion.
 - Allow for this sentencing argument.
 - Could be post trial or post conviction.
 - Adult diversion program → this is a resource issue.
 - Monitoring prior to the filing of a case.
 - Would be county DA office that would do similar tasks as probation.
 - DA can't afford to do it, but we pay probation/judge/DA to do same thing.
 - DA could do it all on their own with the correct budget.
 - Mediation (pre-charge)
 - Sit down with victim to work something out from a restorative justice perspective.
 - Saves expensive resources (judge/attorneys)

- Saves collateral damages.
 - Will be for a small group of offenders and offenses.
 - Two units of analysis – the behavior (theft) and the person. If we want to reduce recidivism we need to treat the person regarding why they did what they did.
 - It's less about the placement and more about what happens within the placement.
 - ❖ Should we prioritize the paths? A decision tree starting at a presumed disposition. Factors would then lead off of that presumed disposition.
 - What is the purpose of each path and what person should go each route?
 - Need to define the expectation for each pathway.
 - Based on the purpose of each path, who should be placed there?
 - We don't have rules for what we CAN'T do.
 - Missing piece in many jurisdictions is the criteria for using each option.
 - Ideally these criteria can then be applied to other offenses.
 - What approaches should we take to achieve recidivism reduction?
 - ❖ Rep. Levy hopes to put recidivism reduction into statute as a specific goal of sentencing.
 - We already have these tools, why aren't we already doing this?
 - Because the person in control is different in every jurisdiction.
- Restitution:
- Driving factor for what we want to accomplish?
 - This was lower down on the list of importance for most on the Task Force, but it was obviously very important today.
 - Christie – restitution and restoration would be higher on her list than she thought last week (based on today's conversation).
 - Intangible concept of wholeness/healing.

Issue/Topic:	Discussion:
Next Steps	
Action	<ul style="list-style-type: none"> • Discuss Sentencing Options • Discuss the expected results for each sentencing option. • Go right into presumption issues. How is a judge or legislator to look at it? • Decision tree – start with everyone getting probation and move from there. <ul style="list-style-type: none"> ○ Why not start earlier and presume the least (diversion)? <ul style="list-style-type: none"> ▪ <u>Need to start the tree at diversion</u> – pre filing but post arrest - with the understanding that this may not be available in all jurisdictions. • Need data about why theft is committed. What do they need? <ul style="list-style-type: none"> ○ Motive for the crime will change what we want to happen. ○ What about when we don't know the motive? • The roll of restitution should be on the table when building the tree. Just because restitution isn't always realistic shouldn't knock someone out of the lower sentence.

Issue/Topic:	Discussion:
Adjourn and Next Meeting	The meeting adjourned at 4:30pm. The next meeting is set for February 10, 2011

Future Meeting Dates:**Meeting Schedule**

February 10 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
March 10 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
April 7 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
May 12 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
June 9 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room