

## Comprehensive Sentencing Task Force

February 10, 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

Charles Garcia/Denver Crime Prevention & Control Commission

J.P. Moore/DA 17<sup>th</sup> Judicial (phone)

Pete Hautzinger/DA 21<sup>st</sup> 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 (phone)

#### **STAFF**

Paul Herman/Center for Effective Public Policy

Kim English/ Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

#### **ADDITIONAL ATTENDEES**

Haley Wilmer/Denver DA's office

Mark Evans/ Public Defender's office

#### **ABSENT**

Christie Donner/Criminal Justice Reform Coalition - no

John Suthers/Attorney General

Jana Locke/Colorado Department of Public Safety

Jeff Lin/Criminology Professor DU

Jeanne Miller/DOC Division of Parole - no

Claire Levy/State Representative -no

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| <p><b>Issue/Topic:</b><br/>Welcome and Introductions</p> | <p><b>Discussion:</b><br/>Jeanne Smith opened the meeting with introductions and an overview of the agenda and meeting.</p> |
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| <p><b>Issue/Topic:</b><br/>UPDATE - Legislative Screening Proposal Update</p> <p><b>Action</b><br/>Another update will be provided in March</p> | <p><b>Discussion:</b><br/><u>HB1239 UPDATE</u><br/>Jeanne updates the group on <b>HB1239 Concerning A Requirement to Include Additional Information in Fiscal Notes For Certain Bills Related to Criminal Offenses.</b></p> <p>This bill came out of a recommendation to the CCJJ from the Sentencing Task Force in November 2010. Representative Nikkel and Senator Roberts are sponsoring the bill. It is scheduled to be heard in the House Judiciary committee on 2/24/11. Jeanne will update the group on the bill's progress at the March meeting.</p>   |
| <p><b>Issue/Topic:</b><br/>UPDATE - Restitution Ordered vs. Paid Update</p> <p><b>Action</b></p>  | <p><u>RESTITUTION DATA - UPDATE</u><br/>Tom Quinn provides updated information to the group regarding restitution ordered vs. restitution paid data.</p> <ul style="list-style-type: none"> <li>• The new data now includes the 'N' information. And breaks out misdemeanors and felonies.</li> <li>• The new data also is specific to cases TERMINATED from probation in the last 5 years rather than sentenced.</li> <li>• The new data also shows money collected.</li> <li>• The felons pay more money overall but more misdemeanants actually pay restitution</li> <li>• Over 25% of the people terminated from probation in the last 5 fiscal years on theft charges owed and paid \$500 or less.</li> <li>• 60% of people terminated from probation with theft charges paid all their restitution.</li> </ul> <p>Tom says they are still working on gathering data for those cases closed out of probation but still owing restitution (and referred to collections).</p> |

| <b>Issue/Topic:</b>   | <b>Discussion:</b>  |
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| <p data-bbox="142 279 483 310">Sentencing Issues by Agency</p> <p data-bbox="272 388 354 415"><b>Action</b></p> <p data-bbox="103 457 526 558">The Dept. of Corrections will be the next agency to report back on this topic (hopefully in March)</p> | <p data-bbox="560 279 1528 449">The group continues the discussion of ‘Sentencing Issues by Agency’. To date the group has heard from Judicial, Probation, the Defense, the Prosecution, the Victim Community and Law Enforcement. Today, Celeste Quinones talks to the group about cases that come in front of the Parole Board and considerations regarding theft vs. non-theft cases.</p> <p data-bbox="560 491 1057 522"><u>Parole Board considerations for ALL cases</u></p> <ul data-bbox="609 529 1198 1077" style="list-style-type: none"><li>• Public Safety</li><li>• Victim impact and victim input</li><li>• Risk</li><li>• CARAS, LSI, Treatment needs, biographic data</li><li>• Children and child support</li><li>• PG/TC</li><li>• Admittance</li><li>• Priors</li><li>• Probation Parole revocations</li><li>• Institutional Adjustment</li><li>• Drug/Alcohol Support</li><li>• Children and child support</li><li>• Parole Plan/Viability</li><li>• Family support</li><li>• Inmates own statement</li></ul> <p data-bbox="560 1119 1174 1150"><u>Parole Board considerations specific to THEFT cases</u></p> <ul data-bbox="609 1157 1503 1518" style="list-style-type: none"><li>• Restitution</li><li>• Has the offender made efforts while in prison to get the money paid back* (Restitution, extraordinary efforts)</li><li>• Have they tried to do some cognitive treatment regarding their offense</li><li>• Have they thought out the implication of this conviction on viable employment</li><li>• Was the theft part of a gambling addiction</li><li>• Was the theft part of substance abuse issue</li><li>• Revocations are looked at regarding is it the same behavior or an escalating behavior.</li></ul> <p data-bbox="560 1591 802 1623"><u>DISCUSSION POINTS</u></p> <ul data-bbox="609 1629 1528 1696" style="list-style-type: none"><li>• Does parole consider the motivation for the crime? Celeste says that yest they do, and overwhelmingly it’s tied to substance abuse.</li></ul> |

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| <p><b>Issue/Topic:</b></p> <p>Theft Statute Discussion</p> <p><b>Action</b></p> <p>No action recommended at this point</p> | <p><b>Discussion:</b></p> <p>The group continues the discussion about whether task force members came to any conclusion about collapsing theft statutes (in light of the Theft Statute Working Group’s analysis).</p> <p><u>DISCUSSION POINTS</u></p> <ul style="list-style-type: none"> <li>• There probably shouldn’t be any action on collapsing as of yet</li> <li>• The current theft statute doesn’t provide a low enough penalty to capture a handful of the offense categories that are currently out there.</li> <li>• Sentencing considerations would have an impact on collapsing or combining offenses.</li> <li>• If we’re looking at simplification and greater transparency maybe we should add an M3 category for the lower level offenses.</li> <li>• Down the road that is a totally viable.</li> <li>• Let’s table the discussion on collapsing and come back to it at a later date.</li> </ul> |
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| <p><b>Issue/Topic:</b></p> <p>Sentencing Goals and Pathways</p> | <p><b>Discussion:</b></p> <p>Paul Herman leads a group discussion on sentencing options that have been identified and asks the group to look at those options from a couple different perspectives.</p> <p>The group has identified two driving forces of <b>Recidivism Reduction</b> and <b>Restoration</b>. With that in mind, Paul asks the group to go through each sentencing option and look at the following three topics-</p> <ol style="list-style-type: none"> <li>1. What the sentencing option is (e.g. Diversion)</li> <li>2. Unique features to that sentencing option</li> <li>3. Who that sentencing option is tailored to</li> </ol> <p><b><u>DIVERSION</u></b></p> <p>Define Diversion-</p> <p>‘Diversion’ is an opportunity for the accused to be diverted from the criminal justice system by doing a, b, c, - restitution, therapeutic counseling, etc. If you successfully complete the contract it’s like it never happened in the first place.</p> <p>EXPECTATIONS from Diversion-</p> <ul style="list-style-type: none"> <li>• Accept responsibility</li> <li>• A change in behavior</li> <li>• Some kind of counseling or treatment</li> <li>• Reasonable restoration/restitution</li> <li>• Cost savings</li> <li>• The ability to self-monitor behavior</li> <li>• Case resolved soon – restitution paid faster</li> <li>• No prior adjudication or conviction</li> </ul> |
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#### UNIQUE FEATURES of Diversion-

- Mentor
- Jurisdiction specific who/hold/program content
- Not statutorily mandated
- Does not create collateral consequences

#### POPULATION served-

- Accused who accepts responsibilities
- Limited or no priors
- Willing to restore the victim
- Reasonable probability of services
- Community ties (stability)

#### Should we define by RISK LEVEL (of recidivism)?

- Low Risk
- Med
- High

When talking about Diversion you don't really know the risk because you're talking about people who have never been in the system before, front end folks. You can't answer risk without defining recidivism.

#### DISCUSSION POINTS *(the comments in orange are more specific to juvenile diversion)*

- Is Diversion more about 'monitoring' rather than helping?
- Diversion is much more mentoring rather than punitive
- Juvenile Diversion often has counselors that assess, refer to treatment, oversee and meet with the juvenile to change behavior
- Boulder runs a juvenile diversion program that runs straight into a restorative justice model. The deputy, the victim and the offender make this decision regarding thefts, criminal mischief, etc. Everyone has to agree to participate (all sides including the kid). This is done BEFORE an arrest. The goal is to not have the kid in the system at all and to restore the victim. Has a 93% approval rating from victims and families. Self selecting - Juvenile has to accept culpability up front. If victims don't agree it goes forward to DA. This is usually neighborhood kids, neighbors, issues with schools.
- Every community is different, sometime police, sometime DA's
- Not every jurisdiction has a Diversion program and each district is going to have different admission criteria. While this may work in Boulder, it may not work in Grand Junction (due to different mindset of communities and elected DA, etc.).
- There are no statutes that require or allow Juvenile Diversion and diversion programs are often cut first from the budget.
- Should we have a law enforcement Diversion discussion vs. DA Diversion
- Before RJ came into existence this didn't happen in Boulder.
- The sheriff's RJ/Diversion program is new and fairly limited by communities
- There has to be cost savings if you're litigating
- There is a control group study out of Harrisburg, PA
- With a Diversion/RJ case it's resolved usually in about two weeks

- Regular Diversion cases don't have arrests either (not just RJ Diversion)
- There must be no prior adjudication or convictions for Diversion cases.
- Keep in mind we're talking about ADULT Diversion here , not juvenile
- Diversion does not create collateral consequences
- This discussion is about can we get more organized and effective about how we sentence thieves, and then we have the discussion on how to roll out a possible proposed model.
- You can't force things into slots by dollar amounts, you HAVE to look at circumstances (is someone stealing baby formula or a stack of CD's)
- When the victim, offender and law enforcement all agree that this is the best way to go (Diversion/RJ) – that's when it succeeds.
- Keep in mind what info you should have about an individual before deciding options – you should always have a risk assessment of some sort before looking at options.
- Diversion should be a consideration about the amount taken and the ability to pay back- that's it.
- Driving forces SHOULDN'T be record and amount
- Where does MOTIVATION play into this

**DEFERRED JUDGEMENT AND SENTENCE** – Should this be a viable option

EXPECTATIONS from Deferred-

- Payment of restitution
- If successful – no conviction. Instead the record shows arrest, charge filed, and disposition listed as dismissal down the road

UNIQUE FEATURES

- Court involvement
- Plea
- Split plea possible
- Can be supervised or unsupervised
- More collateral consequences than diversion, but less than full conviction
- More expensive to the defendant than diversion

POPULATION

- Criminal History (no prior conv.)
- Ability to pay

**JAIL SENTENCE/WORK RELEASE and EDUCATION AUTHORIZED**

EXPECTATIONS from Jail-

- Punitive
- Incapacitation
- Sobriety
- Progression- next time more
- Victim 'Pound of Flesh'

UNIQUE FEATURES

- 24 hour supervision

- Less of a public perception of rehabilitation

**POPULATION**

- Medium to High risk
- Repeat offenders
- Have used up their TX resources
- Low motivation to change
- Cannot make restitution

**DISCUSSION POINTS**

- Consequence only appeal to people who are pro-social to begin with
- What about the indigent population

**HOME DETENTION/ELECTRONIC or GPS MONITORING**

**EXPECTATIONS-**

- Cost Savings
- Monitoring
- Incapacitation
- Specific deterrence

**UNIQUE FEATURES**

- Ability to determine where a person is at a given time
- Client personally responsible for all their own living expenses

**POPULATION**

- Those with significant medical problems
- Low risk
- Primary caretakers for family
- Location of Residence
- Misdemeanors

**DISCUSSION POINTS**

- People who can't pay are going to have a different outcome

| <b>Issue/Topic:</b>   | <b>Discussion:</b>   |
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| <p>CCJJ 2011 Timeline and Benchmarks</p> <p><b>Action</b></p> | <p>Jeanne goes over the CCJJ 2011 timeline and asks the group for input regarding our goals for the coming year.</p> <p>March- wrap up prison, community corrections, probation options, then fit into rubric</p> <p>April/May – Construct sentencing structure template</p> <p>June – Template presented to Sentencing task force for approval</p> <p>July – Template presented to Commission</p> |

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| <p><b>Issue/Topic:</b></p> <p>Next Steps</p> | <p><b>Discussion:</b></p> <p>The meeting adjourned at 4:30pm. The next meeting is set for March 10, 2011</p> |
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**Future Meeting Dates:**

**Meeting Schedule**

|                       |                 |  |
|-----------------------|-----------------|--|
| April 7 <sup>th</sup> | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| May 12 <sup>th</sup>  | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| June 9 <sup>th</sup>  | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |