

## Comprehensive Sentencing Task Force

April 7, 2011, 1:30-4:30PM

710 Kipling, 3rd Floor Conference Room

### **ATTENDEES:**

#### **CHAIR**

Paul Herman/Center for Effective Public Policy for Jeanne Smith/Division of Criminal Justice

#### **TASK FORCE MEMBERS**

Glenn Tapia/Division of Criminal Justice

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

Pete Hautzinger/DA 21<sup>st</sup> Judicial

Tom Quinn/Director of Probation Services

Dianne Tramutola-Lawson/CURE

Jeaneene Miller/DOC Division of Parole

Joe Cannata/Voices of Victims

Mark Evans/ Public Defender's office for Doug Wilson & Jason Middleton/ Public Defender

Gil Martinez/District Court Judge

Celeste Quinones, Parole Board

Christie Donner/Criminal Justice Reform Coalition -

#### **STAFF**

Kim English/ Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

#### **ADDITIONAL ATTENDEES**

Haley Wilmer/Denver DA's office

#### **ABSENT**

Michael Dougherty/ Deputy Attorney General

Charles Garcia/Denver Crime Prevention & Control Commission

Joe Pelle/Sheriff, Boulder County

Doug Wilson/State Public Defender

Claire Levy/State Representative

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| <p><b>Issue/Topic:</b><br/>Welcome and Introductions</p> | <p><b>Discussion:</b><br/>Paul Herman chairs the task force meeting, filling in for Jeanne Smith. Paul welcomes the group.</p> |
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| <p><b>Issue/Topic:</b><br/>Theft Sentencing Goals &amp; Pathways</p> <p><b>Action</b></p> | <p><b>Discussion:</b><br/>Paul reviews the completed Sentencing Goals and Pathways grid that was finalized during the March meeting.</p> <p><u>DISCUSSION POINTS</u></p> <ul style="list-style-type: none"> <li>• The group reviews the grid and agrees that it is accurate</li> </ul> |
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| <p><b>Issue/Topic:</b><br/>Sentencing Template Next Steps</p> | <p><b>Discussion:</b><br/>With the Sentencing Goals and Pathways grid completed Paul leads the group in a discussion regarding next steps as far as building a new Sentencing template.</p> <p><u>DISCUSSION POINTS</u> - <b>What have we learned from our conversations regarding the review of theft statutes?</b></p> <ul style="list-style-type: none"> <li>• The 2 most important things identified as far as a sentence for theft was restoration and recidivism reduction. However, when you look at the grid the thing that most addresses those goals (community corrections options, etc.) are often the trickiest to get people into. This means the availability/option of THOSE options is not often available.</li> <li>• There is some push back in Mesa County regarding aspects around this issue. Many defense attorneys aren't endorsing Diversion programs because the eligibility is up to the prosecutor and that doesn't work for the defense.</li> <li>• Community corrections is one of the very few options where the judge can sentence to a halfway house, and all sides can agree that this is the best option, and yet the Community Corrections Board can say no, or the program can deny as well.</li> <li>• Theft cases are the #2 most commonly referred offense of conviction to community corrections.</li> <li>• If an offender has the financial wherewithal to pay restitution up front, they have less likelihood of penetrating the system further.</li> <li>• The collapsing of categories is not as easy as we originally thought</li> <li>• Expectations around sentencing gets tricky depending on risk level of the individual. The behavior could be the same for two individuals, same severity, etc. But one offender could be low risk and one could be high risk.</li> </ul> |
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**DISCUSSION POINTS - In general**

- Historically, we focus on prior record and severity of current offense. Should we add in another factor of 'risk' when it comes to a revised sentencing scheme?
- Should there be other drivers and if so how does that change the scheme?
- Everyone agrees that a risk assessment is a good idea, but when it comes to administering an instrument early on in the process there is often push back from the Defense about disclosure.
- Risk assessment sounds great to everyone intuitively, but the devil is in the details.
- Current statutes do not include recidivism reduction as a specific goal
- HB1180 passed both houses and it will change the purposes of sentencing to add something akin to risk reduction.
- There is a risk assessment on the market that does a good job at more robust assessment without asking the client sensitive/trigger questions. That tool is the LSI-S.
- What about the Hawaii Proxy Scale? Three factors are taken into account; young current age, young age at first arrest plus high numbers of prior arrests are predictive of recidivism.
- One of the essential questions is that theoretically this sounds good, but trying to operationalize it is not an easy thing to do.
- As a matter of ethics, defense council has to zealously pursue the client's desires. Judges and prosecutors have a lot more freedom to look at the big picture than the defense bar does.
- We actually have made great strides - 10 years ago during policy meetings the defense was often not even involved and decisions were made without input from the defense side.
- When we're talking about risk scales, human judgment is always outperformed by actuarial risk scales. Human behavior always overestimates risk.
- When it comes down to the individual person, individuals always feel they can do better than an actuarial scale.
- We tend to confuse personal judgment with professional judgment.
- Actuarial plus professional judgment is the best outcome, but people blur the line between personal and professional judgment.

**DISCUSSION POINTS - Next steps**

How do you bring these things together? Do we want to look at something beyond current law in the state?

- Are we going to add other factors? Or are we going to look at current sentencing and just alter it a bit?
- In looking at just class and range (two dimensional).. is that the best way to deal with recidivism reduction?
- How about guidelines? Guidelines depend on one or more additional factors (along with current offense severity and criminal history) and that usually comes down to the category of risk.
- Guidelines would reduce judicial discretion correct? Actually, they would improve judicial decision making.
- 'Guidelines' actually pull things into narrower targets, and Guidelines are

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|  | <p>often voluntary.</p> <ul style="list-style-type: none"> <li>• In Guideline States, the power is in the plea negotiation, whether there are guidelines or not.</li> <li>• What often happens in Guideline States is that there is a greater certainty about judges following guidelines in general, so you get a good idea of what happens.</li> <li>• You want judges to be consistent 75-85% of the time. If you go outside those guidelines the judge has to submit a reason why.</li> <li>• People get into their practice and they get into a rhythm of guidelines.</li> <li>• In Guideline States there is more consistency of similar offenders, in similar situations, getting similar sentences.</li> <li>• In states that incorporate Guidelines how does that enforce the grid?</li> <li>• Right now there are two factors in analysis, current offense and criminal history. Guidelines add a third factor (risk).</li> <li>• North Carolina and Virginia are two examples of guideline states.</li> <li>• The grids we have currently are very broad and we don't apply a risk assessment tool in any systematic way.</li> <li>• Doesn't a valid and thorough risk assessment cost too much money to implement?</li> <li>• In large part, any risk assessment instrument is based largely on prior record. Prior record drives risk.</li> <li>• Only a handful of states mandate guidelines</li> <li>• In a couple of ways we've talked about observations – we need to keep coming back to population. Maybe it's not creating a mandatory framework – but to flush out in a little more detail what we <i>mean</i> in the offense (e.g. person of trust, etc.)</li> <li>• If our objective is to be consistent and create the right punishment for the right person, do we need to look at more than dollar value? With that in mind, do we give judge discretion but provide more information like position of trust, etc.</li> <li>• How do we make all of this not only simpler but smarter?</li> <li>• Value is more about charging than sentencing isn't it?</li> <li>• When you add risk/need into the formula and you actually follow it, the results are that fewer will go into prison.</li> <li>• We have always talked about the complexity of our system, but if we add the risk/need component would that help outcomes?</li> </ul> |
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| <b>Issue/Topic:</b> | <b>Discussion:</b>  |
| Next Steps          | The group goes over what we need for our next meeting –   |
| <b>Action</b>       | <ul style="list-style-type: none"> <li>• Provide LSI-R presentation (Glenn) for next meeting</li> <li>• Example grid - Bring Kerry's chart from the November meeting</li> <li>• Other States - How do they define theft</li> <li>• Define "seriousness" of theft. If you do not focus only on value (proxy).</li> </ul> |

- We need to cover Parole Eligibility Impact with a change of sentencing grid. Don't forget to include parole, parole eligibility, and get those factors into the grid. We need to know the 'out' end to make sure we're covering truth in sentencing.
- Don't forget we planned to present a template to CCJJ in July, which means we need to finalize it here in the task force by June

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| <b>Issue/Topic:</b> | <b>Discussion:</b>   |
| Adjourn             | The meeting adjourned at 3:45 pm. The next meeting is set for May 12, 2011 |

**Future Meeting Dates:**

**Meeting Schedule May-December 2011**

|                           |                        |  |
|---------------------------|------------------------|--|
| 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 |
| July 7 <sup>th</sup>      | 1:30pm – 4:30pm        | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| August 11 <sup>th</sup>   | 1:30pm – 4:30pm        | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| September 8 <sup>th</sup> | 1:30pm – 4:30pm        | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| October 13 <sup>th</sup>  | 1:30pm – 4:30pm        | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| November 17 <sup>th</sup> | <b>2:00pm – 5:00pm</b> | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| December 8 <sup>th</sup>  | 1:30pm – 4:30pm        | 710 Kipling St., 3 <sup>rd</sup> floor conference room |