

Comprehensive Sentencing Task Force

May 12, 2011, 1:30-5:00PM
710 Kipling, 3rd Floor Conference Room

ATTENDEES:

CHAIR

Jeanne Smith, Chair/Division of Criminal Justice

TASK FORCE MEMBERS

Glenn Tapia/Division of Criminal Justice

Pete Hautzinger/DA 21st Judicial (phone)

Tom Quinn/Director of Probation Services

Dianne Tramutola-Lawson/CURE

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

Gil Martinez/District Court Judge

Christie Donner/Criminal Justice Reform Coalition

Michael Dougherty/ Deputy Attorney General

Joe Pelle/Sheriff, Boulder County

Claire Levy/State Representative

STAFF

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

Kim English/ Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ADDITIONAL ATTENDEES

Haley Wilmer/Denver DA's office

ABSENT

Charles Garcia/Denver Crime Prevention & Control Commission

Jeanne Miller/DOC Division of Parole

Joe Cannata/Voices of Victims

Doug Wilson/State Public Defender

J.P. Moore/DA 17th Judicial

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith welcomes the group and previews the agenda.</p>
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<p>Issue/Topic: Two approaches to looking at risk</p> <p>Action</p>	<p>Discussion: LSI-R Presentation/Glenn Tapia (see PowerPoint attachment for full detail)</p> <p><u>DISCUSSION POINTS</u></p> <ul style="list-style-type: none"> • LSI-R is one instrument of many that are administered in CO. • The instrument looks at substance abuse, MH, and risk assessment • LSI came out of a law in the 90's when the legislature declared substance abuse is a problem in the CJ system • The law focused on treatment and therefore assessment • LSI then based on a risk paradigm • When LSI was brought into the whole SA package - risk was a factor • Risk means probability of recidivism • Concept of risk is about predicting recidivism • When predicting risk we look at criminal background, have they done well in supervision, have they been in treatment, do they have MH history, etc. These are all static factors • LSI takes into account 'needs' as well (needs being dynamic risk factors) • Static and dynamic factors are both used together to predict risk • LSI has 10 subscales or domains • The instrument is set up to look at risk factors, need factors • Glenn takes the group step-by-step through the LSI-R score sheet and the drivers • One of the biggest predictors of risk is "attitudes/orientation" • People with low scores have substantially less possibility of recidivism than those with high scores • It's important to look at what's 'there' in risk factors, but also what's missing (they may have 0 priors, 0 escape, etc. • A more extensive criminal history doesn't necessarily mean greater risk to recidivate • The idea of risk is to look at the WHOLE picture • Professional judgment – people tend to overestimate an offender's risk to recidivate if it's left to professional judgment • LSI in Community Corrections is used to assess risk and develop a case plan that correlates with needs • Question – where do gambling issues go? Into the alcohol/drug category. • LSI done with client early on • A 27 for one person can mean something different than a 27 for another person, based on where the numbers are weighted in the LSI
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CARAS Presentation/Kim English (see PowerPoint attachment for full detail)

DISCUSSION POINTS

- The difference between LSI and CARAS is that the LSI is done on the front end and CARAS is done back end (parole)
- LSI should not be used just for the score because the usable information from the LSI includes all the info it contains
- The 'needs' aspects of the LSI can change over time which makes the instrument 'less stable' because the items are more flexible
- Needs are dynamic, risk is also dynamic but the indicators are not so much
- The LSI is used nationwide, the CARAS is Colorado specific (and has been in the works since 1984)
- CARAS is updated constantly
- CARAS is developed in the same way an insurance company would develop a risk instrument
- First, identify group of individuals you're interested in (offenders)
- Then collect info about each individual in that group that might predict failure (see the "Here's how it's done" slide for detail)
- Innovations in CARAS
 - More than 5,000 people used in the sample to develop the instrument
- CARAS has 9 items
- Final risk scores range from 4-79
- Has 5 risk categories: very low, low, medium, high, very high
- Technical violators are not a distinct group (they both succeeded and failed)
- Overall recidivism rate for Colo. is 48%
- You can affect someone's risk level by addressing their needs

Issue/Topic:

How do other state's deal with the severity of the offense, criminal history of the offender and risk to public safety?

Discussion:

Paul Herman talks to the group about how other states are dealing with the problems of offense severity and risk assessment

DISCUSSION POINTS -

- We're looking at sentencing schemes, how states structure their sentences and then use that to come to a decision
- The differences you see state to state reflects how each state determines offense severity and how they then apply prior criminal history
- The structure and application of structure varies greatly from state to state
- Many states have a drug offense grid and an 'other offense' grid
- Some states have 12-15 different grids for different offenses
- This happens often because there are different purposes for sentencing for different types of offenses.

- Some grids are in response to federal initiatives or a particular incidence
- One logical thing in terms of multiple schemes is being able to determine different purposes in sentencing
- Nationally, many states are talking about “how do we reduce recidivism reduction”?
- No state has done recidivism reduction very well
- There is no right or wrong way to do this, voluntary structures can be powerful and mandatory structures can be powerful, too
- Who is tracking all of this? For example, Michigan abolished their sentencing commission but no one was tracking outcomes so it was impossible to make course correction
- Mission statements differ vastly from state to state
- What happens when a state gets rid of parole?
 - This is where you get truth in sentencing.. kind of
 - Some states who have abolished parole just got rid of the *word* and now call it “community supervision”
 - there’s often a parole board still in place for old code cases and returns
 - sometimes a parole board gets abolished and a new group is named. The ‘post prison transfer board’ is an example of a name change in place of the parole board.
- All states agree that you need to be very clear on definitions and very clear on policy
- Virginia offers extensive training on their sentencing scheme as do other states
- Focusing on recidivism requires an assessment, which can increase complexity
- Can we be three dimensional without being too complex?
- Traditionally we look at severity and prior criminal history. In VA they decided they want to include ‘risk’ in their scheme. They decided to put their foot in the water but only for certain offenses, larceny, fraud, and drug. They used their current scheme to get to a presumptive sentence. The General Assembly said for those three offenses, people destined for prison should have a risk scale applied to them AND those who are high risk go to prison (those who are not high risk don’t go to prison). Utilize the risk scale AFTER the normal decision of ‘in or out’.
- Another option is to take away prior criminal history and just use risk and severity of offense. If the goal is recidivism reduction then risk assessment is more critical than prior criminal history.
- Should we go by risk only? Or risk/need?
- There is a fear that more people will go to prison if we use a risk scale rather than just criminal history. Therefore the risk vs. risk/need decision is critical.

Issue/Topic:	Discussion:
Parole and Parole Eligibility	<p><u>DISCUSSION POINTS</u> - Thoughts about parole inside the sentence, outside the sentence</p> <ul style="list-style-type: none"> • It's not only WHEN you're released but under what conditions • One thing that causes a lot of problems is the unpredictability of when you're going to get parole along with when you may go to community corrections etc. That uncertainty does not support any of the evidence based findings on letting someone know what the expectations are and how they can be met • It's not as critical if parole is inside the sentence or added on later.. that's more semantics • But we do need more definition on 'when' you're going to get it • If we're looking at length of parole let's consider risk/need issues. • The PA legislature mandated sentencing commission and parole guidelines in concert. Part of the data they had was that in terms of their guidelines, the board released people 85% of the time to what the guidelines say • Over the years they've been in the 78-85% range • Currently here, mandatory parole is solely tied to the severity of the crime, regardless of the need, regardless of whatever • Recidivism rate is higher for MRD's than discretionary release date. This is partially due to the fact of the severity of the offender. Folks that go out at their MRD are highest risk. People who kill their number straight out with no parole have the highest recidivism rate • Clarity is the single most important thing when it comes to sentencing. Truth in sentencing is so important and you want some flexibility that's behavior based. We can't do anything without know the out date. The lack of clarity is intolerable.

Issue/Topic:	Discussion:
<p>Next Steps</p> <p>Action</p>	<p>The group goes over next steps for the next meeting –</p> <ul style="list-style-type: none"> • We need to determine what scenario we want to pursue • Do we want traditional, do we want to replace criminal history with risk score • Do we want to do traditional plus risk • Do we want to do traditional plus risk, plus need • We need research, can the 'LSI short' be validated on a Colo. population • Another question is what does it actually DO to sentencing based on a sample population of folks? • Risk on one axis is too radical a change • The goal is a structured decision making paradigm • Consistency is important on how we set this up • How important is each of our statutory mandates of sentencing

- What about the fact that every criminal justice decision along the way can be subjective and then we get to sentencing and try to use a scientific method
- How does MRD play into consistency
- First thing next meeting let's begin the conversation of what are the elements you're going to take into consideration in terms of severity. (Paul will pull together elements that other states are using to have this conversation).
- Do any states have non-value based theft
- BRING THEFT GRID NEXT TIME
- We need to decide if we are fixing sentencing at the front end and the back end
- Decision elements
 - Decide on which grid, risk, criminal history, risk need which element,, how does parole fit in
- How about three grids, Drug, Property offenses, Person offenses
- Focus on severity next time; give examples of how people have defined this (habitual, etc.). Then go to the next axis and talk about multi-dimensional. We'll bounce theft up against this the whole way through.
- Concern next time – How do you incorporate this set-up with jurisdictions. Someone who gets sentenced in Cherry Creek vs. someone sentenced in Aurora.

Issue/Topic:	Discussion:
Adjourn	The meeting adjourned at 4:45 pm. The next meeting is set for June 9, 2011

Future Meeting Dates:

Meeting Schedule May-December 2011

June 9 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
July 7 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
August 11 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
September 8 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
October 13 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
November 17 th	2:00pm – 5:00pm	710 Kipling St., 3 rd floor conference room
December 8 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room