

## Comprehensive Sentencing Task Force

July 7, 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

Joe Cannata/Voices of Victims

Gil Martinez/District Court Judge

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

Sherry Stwalley/Colorado Judicial Department

Christie Donner/Criminal Justice Reform Coalition

#### **STAFF**

Germaine Miera/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

#### **ADDITIONAL ATTENDEES**

Haley Wilmer/Denver DA's office

Jana Locke/Colorado Dept. of Public Safety

#### **ABSENT**

Jason Middleton/Public Defender

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

Joe Pelle/Sheriff, Boulder County

Claire Levy/State Representative

Charles Garcia/Denver Crime Prevention & Control Commission

Tim Hand/DOC Division of Parole

Doug Wilson/State Public Defender

Michael Dougherty/ Deputy Attorney General

Dianne Tramutola-Lawson/CURE

Mark Evans/ Public Defender's office for Doug Wilson

Michael Anderson/Parole Board



complicated. The easy part of risk is criminal history (e.g., 2 prior felonies). However, it's hard to factor in elements such as mental illness and drug addiction issues. It's hard to put risk in the graph; it doesn't measure well in a numeric fashion.

- So – the suggestion now is that on the X axis, we put only criminal history. However, this still needs to be more refined than just the number of priors. We need to consider the recency of prior criminal events, we also need to consider previous violent vs. non-violent
- After we make decisions the X and Y axis decisions, there should then be a decision tree, which is where we take into account the risk and need factors.

Feedback regarding the X and Y axis discussion-

-Does this move the professional judgment away from probation and give the responsibility to the judge? The decision tree helps place the offender in the right 'pocket', but what happens as far as an individual offender is still up to probation.

-One of the issues with the PSI is that it isn't a consistent tool.

-Risk and needs are covered in PSI's, but again, PSI's aren't always performed

-This goes back to our construct of risk, are we talking about recidivism, violence potential, not completing the program, etc.

**If we put a risk decision tree aside, should we look at severity different than we currently do and criminal history different than we currently do?**

-Currently, one axis looks at the offense (y axis) and the other axis (x axis) looks at the offender. Basically, the Crime vs. the Person who committed the crime.

-Yes, this makes sense, but how? How do we factor in criteria for considerations in sentencing?

-How do you allow for individualization of a sentence but offer to an offender what the likelihood of their sentence will be?

-How does this add more certainty to the process since judges all do what they decide to do regardless?

-Is the problem with "Christmas treeing" more about the creation of new crimes (and new statutes) than it is about Sentencing? Those statutes haven't necessarily affected current sentencing

-Would simply creating the three grids help us get clarity

**If we're thinking about a 'non-violent' scheme, how would we look at that differently than we currently do?**

-Doesn't our currently sentencing scheme already basically cover the X/Y scenario? Yes, but where judges "fall down" is in explaining why we do what we do

-It's about the 'right' people getting prison, the 'right' people getting probation, etc. It's about the right person getting to the right sentence.

-Is there value to being more refined about criminal history and why and how a person got to where they are? Yes, there is value there and it might make it more transparent.

-What about the role of plea-bargaining? Would a more refined criminal history actually end up in more distortion than we currently have with plea-bargaining? We wouldn't even get to a grid until after plea bargaining.

-Would the system benefit from a more robust and mandatory PSI? Even if this happens, does that impact our goals for consistency in decision making accountability? This doesn't equate to consistent or apparent judge decision making.

-We need more of an explanation behind a sentence. Is it practical for a judge to issue a written rationale? No, not practical.

#### AREAS OF UNRESOLVED ISSUES

##### *DISCUSSION POINTS*

- Maybe we should table a new scheme and look instead at sexual assaults, habitual, etc. Should we just be trying to figure out specific areas?
- We have identified a strategy for structural changes. Should we streamline and consolidate statutes, and of those crimes what makes sense in a sequence of F1, F2, etc.
- Maybe our final finding from the work of the Comprehensive Sentencing Task Force is that we can't make the big changes we thought we could after all.
- The X/Y axis is not working for the group. Maybe our discussion needs to be around statutes, current values, do we want to readdress habitual?
- First let's decide what we do with the X/Y discussion, and then let's decide what to do next.
- Risk is important – but probably not in a sentencing 'grid'.
- NO state is currently doing this right.
- Should we still be looking at risk at this stage of a sentencing decision? The group consensus is no.
- The group has also researched the possibility of collapsing statutes and discovered that was a much more complicated task than it appeared at first.

#### PROPOSAL FOR HEADING IN A NEW DIRECTION

##### *DISCUSSION POINTS*

**The group has agreed on recidivism reduction**

**The group has agreed on the logic behind having 3 sentencing schemes**

**The group has agreed on transparency, simplicity and certainty** - but how do we go about that in regards to theft?

-Should we look at each crime individually? Should we look at a philosophy for each F category?

- There is another problem. Why is there no felony 5 or 6 for thefts? Why does the current scheme start at a level 4 felony? Because when we started there were only 1-4's, 5's and 6's were added but never wrapped around theft.
- We've talked about 'value' and whether it's an appropriate delineation

	<p>around felony class?</p> <ul style="list-style-type: none"> <li>• Can we look at theft statutes as a starting point? Can we just start looking at theft ranges? Can we look at what delineates from an M and an F and then go from there?</li> <li>• Other crimes look at 'degrees' (like burglary). Should we do this with theft? Should we look at more than value, include victim impact, etc. Still have a 'degree' but have the degree not tied to dollars.</li> <li>• How would we define 'impact on a victim'?</li> <li>• How about a victim impact statement (high, medium, low impact)? No, WHO you stole from (and the individual impact on the victim) should not impact a sentence, a forgiving victim vs. an adamant victim doesn't mean an offender should get a lesser sentence.</li> <li>• Should we redefine value and carve out additional F5, F6 and carve out the 'at risk' victim.</li> <li>• What about aggregations?</li> </ul> <p>Let's have a one day meeting to go over and really delve into all of this. We'll hold an all-day meeting on Sept. 8<sup>th</sup>, and we'll go ahead and cancel the August 11<sup>th</sup> Sentencing Task Force meeting.</p> <p><u>Possible agenda items for September 8<sup>th</sup>-</u></p> <ul style="list-style-type: none"> <li>• Individual aggravators</li> <li>• Value</li> <li>• Getting rid of risk</li> <li>• F5 and F6 value, no M3?</li> <li>• Update values</li> <li>• Inconsistencies</li> <li>• Current issue of values being the same in different felony classes</li> <li>• Theft of trade secrets?</li> <li>• Reevaluate ranges</li> </ul>
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<b>Issue/Topic:</b>	<b>Discussion:</b>
Adjourn	The meeting adjourned at 3:40. Jeanne will send out an email to the group about the full day meeting and cancelation of the August meeting.

**Future Meeting Dates:**

**Meeting Schedule May-December 2011**

August 11 <sup>th</sup>	1:30pm – 4:30pm	710 Kipling St., 3 <sup>rd</sup> floor conference room
September 8 <sup>th</sup>	9:00am – 5:00pm	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