

## Comprehensive Sentencing Task Force

September 8, 2011, 9:00-5:00PM  
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

Christie Donner/Criminal Justice Reform Coalition

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

Doug Wilson/State Public Defender

Dianne Tramutola-Lawson/CURE

Mark Evans/ Public Defender's office for Doug Wilson

Denise Balazic/Parole Board

Eric Philp/Colorado State Judicial

Judge William Hood III/Denver District Court

#### **STAFF**

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

Paul Herman/CCJJ consultant

#### **ADDITIONAL ATTENDEES**

Haley Wilmer/Denver DA's office

#### **ABSENT**

Tim Hand/DOC Division of Parole

Michael Dougherty/ Deputy Attorney General

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| <p><b>Issue/Topic:</b><br/>Welcome and Introductions</p> | <p><b>Discussion:</b><br/>Jeanne Smith welcomes the group and previews the agenda.</p> |
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| <p><b>Issue/Topic:</b><br/>Issues, Suggestions and Opportunities raised since the last meeting</p> <p><b>Action</b></p> | <p><b>Discussion:</b><br/><u>Paul Herman leads the group in a discussion reviewing the commonalities among group members and issues raised since the last meeting</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• There is a lot of agreement among task force members about where we are and where we want go.</li> <li>• Task force members are on the same page about wanting concrete outcomes from this task force meeting and moving forward.</li> <li>• Paul reviews the CCJJ Sentencing principles and purposes</li> </ul> <p>Paul then reviews the '<b>Issues</b>' raised in conversations before today's retreat. Those common "Issue areas" are as follows-</p> <p><u><b>Issues</b></u></p> <ul style="list-style-type: none"> <li>○ Blakely</li> <li>○ Charging decisions impact sentencing</li> <li>○ How do you factor de-escalation in criminal history?</li> <li>○ Community Corrections - Judges not sentencing to community corrections and boards not admitting offenders</li> <li>○ What's the role of RJ and Diversion for adults?</li> <li>○ Revisit mandatory minimum regarding non-violent offenses</li> <li>○ Revisit habitual for non-violent offenses</li> <li>○ Need more timely competency evaluations</li> <li>○ Be careful with 'non-violent' grid because some non-violent crimes are extremely impactful (e.g., burglary)</li> <li>○ PSI's (what, who, when)</li> <li>○ Reduce "Christmas treeing"</li> </ul> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• PSI's often get hung up at DRDC in DOC</li> <li>• DA's and defense attorneys often waive the PSI</li> </ul> <p>Paul reviews the '<b>Suggestions</b>' raised in conversations before today's retreat. Those 'Suggestion' areas are as follows-</p> <p><u><b>Suggestions</b></u></p> <ul style="list-style-type: none"> <li>○ More judicial guidance</li> <li>○ Judges need a PSI or similar</li> <li>○ Habitual should be different for violent vs. non-violent</li> <li>○ Can we give judges risk %'s and risk probability outcomes regarding sentencing options?</li> </ul> |
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- What about a permanent sentencing body?
- Need more alternatives to confinement (e.g. home detention, electronic monitoring, etc.)
- Criminal history conversation must include
  - Age of offender
  - Recency of priors
  - Nonviolent vs. violent priors
  - Risk

*DISCUSSION POINTS*

- Eric Philp reminds the group that the four pillars of ‘What Works’ in sentencing are risk, need, Responsivity and professional discretion. Let’s not forget this.

Paul reviews what we want to come out of the meeting with, or ‘What’s Next?’ Those suggestion areas are as follows-

**What’s next?**

- Need a representative from the business community
- Need more judicial input
- Working groups
  - PSI
  - Parole
  - How to value criminal history
  - Ranges
  - Restorative Justice in the adult system
  - Restitution

Paul reviews the ‘Desired Outcome and Concrete Deliverables to the CCJJ’ for today. Those deliverables areas are as follows-

**Desired Outcomes for September meeting/ Concrete deliverables to CCJJ**

- Non-violent Sentencing Scheme framework
- Clean up theft overlap (in response to previous report)
- Address F5, F6, M1 (re Theft)
- Appropriate Working Groups identified
- Concrete plan to move forward

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| <p style="text-align: center;"><b>Issue/Topic:</b><br/>Drug Task Force/Structure Working Group Presentation</p> | <p style="text-align: center;"><b>Discussion:</b></p> <p><u>Tom Raynes and Maureen Cain present the work being done by the Drug Policy Task Force regarding a revised Drug Sentencing grid/scheme</u></p> <ul style="list-style-type: none"> <li>● The Structure Working Group started with the premise of ‘Let’s look at the drug code in its entirety and come up with revisions that make sense</li> <li>● One of the main goals is to separate out drug addicts and users from distributors and sellers.</li> <li>● In 2009 there was a proposal called ‘Option 1’ presented to CCJJ from the</li> </ul> |
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Drug Task Force. At that time, the CCJJ said it looked good but needed much more work. That's the starting point for this group's work.

- Another goal is to make treatment dollars more rational and accountable
- In looking at revamping Colo.'s drug grid structure, the group analyzed other states. The group wanted to keep what works in Colorado, but add in the good elements from other states.
- The group decided on an X/Y axis concept. The Y axis contains items that happen 'inside' the crime and the behavior that makes those things more serious.
- The X axis contains things 'outside' of the crime, prior criminal history, etc.
- The group decided on four levels for felonies.
- Criminal history is decided with minor/moderate/serious-violent
- Minor is prior misdemeanor offenses, traffic, possible one non-violent prior
- The moderate range has the widest range
- Did not factor in risk or LSI, thought that would be left to the court
- The group then started allocation of drug offenses into different categories
- D1 is special offender, sale to children, more serious
- D2 is more of your drug dealer type person and is based on quantities. This is when things get serious with this amount of money, this amount of drugs.
- D3 are moderate drug dealers
- D4's are mere possession offenses
- The group did not address presumptive deferred or misdemeanor

#### Questions-

What was your basis for range of years?

- Ranges are significantly lower, we looked at other states who did major sentencing reform, Washington, Kansas and New York
- Organized crime and habitual ranges (higher levels) are still included

How do we handle gray areas?

- A, B and C aren't really gray areas
- Someone could officially fall into B, but given mitigating or aggravating factors you could suggest going one way or another

#### Discussion Points-

- States with ongoing monitoring of advisory guidelines can make changes necessary as data becomes available
- The goal with advisory guidelines is 85% compliance
- Just because guidelines aren't mandatory doesn't mean in the end that you DON'T get what you ask for
- In terms of ranges – there's not a lot of science around ranges, ultimately it's a policy decision
- The group pulled a number of cases and looked at the previous outcomes and plugged the cases into the new grid

Questions-  
 How do you plug in felonies, crimes and sentences from other states?  
 For a first time offender, the judge would have complete discretion to impose the maximum?  
 • Judge may sentence outside the guidelines. Still working on departure to go outside the presumptive range.  
 Have you addressed the Blakely issue? When you create boxes but allow judges to go 'outside' the boxes and do not account for Blakely. You can call it advisory but when you set guidelines outside it doesn't work.  
 What about F3 and F4 felony thefts?  
 Did you have a judge on your working group? No.

Discussion Points-

- D4's are the hardest group to deal with. Includes immaturity, addiction, but also those people who are chronically involved in the criminal justice system and fail to abide by rules.
- Let's give this to some judges to play with and see how it works
- One goal would be to have DCJ model this new scheme and sentencing ranges. Maybe this could be combined with the 1352 annual report.
- Drug group should have a judge on their task force
- Habitual – Last year we decided that F6's couldn't be the triggering case but could be used for predicate offenses. Let's put in statutes some criteria on what cases are appropriate for habitual, guidelines, etc.
- Habitual criteria is different across jurisdictions

Questions-

Under felony D4 'must exhaust remedies' – does that mean you have to digest the 180 days of jail?  
 • No, this is more like the wiretap statute where you have to prove you've exhausted all the other options, not the full sentence. Please clarify.  
 You need to be able to answer 'How you got to these years' – you need to be able to say 'why' to the Commission.

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| <p><b>Issue/Topic:</b><br/>                 Sentencing Proposals</p> | <p><b>Discussion:</b><br/>                 Two proposals regarding possible reform of the current theft scheme are presented, one from the Public Defender's office and one from a District Attorney's perspective.</p> <p><b><u>PUBLIC DEFENDER PROPOSAL #1</u></b><br/>                 Doug Wilson lays the groundwork for the basis of the Public Defenders Proposal</p> <ul style="list-style-type: none"> <li>• Value based is where we are and probably where we're going to end up</li> <li>• Stayed with sentencing scheme, stayed with value based theft concept</li> <li>• If we did something different on theft, what does it look like in a broader scheme?</li> </ul> |
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Mark Evans presents a PowerPoint to the group-

- The idea of this presentation is to pitch some ideas around our common ground areas
- Three main proposals
  1. Creation of a statewide diversion program
  2. Statutory presumption of non-DOC sentencing for first and second time nonviolent offenders
  3. Revision of theft offenses
- Common ground areas – recidivism reduction, restoration, punishment and cost effectiveness
- We need to move beyond broad-based policy discussion to concrete proposals

*DISCUSSION POINTS*

- Comment - The 17<sup>th</sup> and 1<sup>st</sup> have existing Diversion programs run by DA's office who could help work on a statewide project/J.P. would volunteer
- We need to look at current value amounts.

**DISTRICT ATTORNEY PERSPECTIVE PROPOSAL #2**

Pete Hautzinger lays the groundwork for the basis of his proposal

- Agrees with a lot of what the Public Defender has to say
- However, his scheme is less “radical”
- Through the DA lens of theft, it makes all the sense in the world to have a much wider range of options (add F5, F6, M1)
- Took the existing penalty scheme for non-violent but got rid of aggravators and mitigators
- This scheme allows for great judicial discretion
- Let's get rid of the Christmas Treeing offenses
- Value is an awkward, inappropriate and cumbersome way to deal with theft, but there just doesn't seem to be a better way to do it.
- We are supposed to come out of this with a functional template that can be applied to lots of areas of the criminal code.

*DISCUSSION POINTS*

- The business community is not going to buy the levels in the first proposal, they will in the 2<sup>nd</sup> proposal
- We need to bring the business community into this
- How do we give up Blakely without decreasing the top end of the range?
- 4-24 on an F3 is too wide. F3 at 30,000 is one car
- Questions for a workgroup - Should an F3 exist in theft? Are we comfortable with the shift from M to F and with the ranges? Blakely issues? X/Y axis? Take into consideration about what has happened historically

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| <b>Issue/Topic:</b>   | <b>Discussion:</b>  |
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| <p>Conversation wrap-up from this morning and formation of working groups</p> | <p>Paul leads the group in a discussion about the group’s consensus, which is that we want to pursue a grid for theft similar to what was presented this morning (by the Drug Policy Task Force), and work on other targeted areas as well. In terms of a grid, the common ground areas are:</p> <p>Common Ground</p> <ul style="list-style-type: none"> <li>• F3</li> <li>• Cut points – P/M/F Value</li> <li>• Ranges</li> <li>• Blakely</li> <li>• X/Y axis</li> </ul> <p>The group identifies multiple areas of agreement that would be worthy of working groups. Those working groups, the possible membership and the focus and scope of work are as follows</p> <p><b><u>Classification Working group-</u></b><br/> This working group would focus on revamping the current classifications for theft and adding in an F5, F6 and M1 category. At the first meeting for this group, it will be decided who needs to be at the table and the scope of work.</p> <p>Volunteers to participate on this working group include the following-<br/> J.P. Moore – Co-lead<br/> Jason Middleton – Co-lead<br/> Joe Pelle<br/> Gil Martinez<br/> A business community rep<br/> Victims (ID theft, White Collar, Elder advocates)</p> <p><b><u>Statewide Diversion (and adult RJ model?)-</u></b><br/> This group is tasked with investigating the possibility of a statewide Diversion program. Is there any way these programs can be partially funded by offenders?</p> <p>Volunteers to participate on this working group include the following-<br/> Mark Evans<br/> Steve Siegel</p> |

Someone from JV?  
 Someone from DCJ  
 Someone from the 1<sup>st</sup> and the 17<sup>th</sup>  
 Who can address funding on a statewide level?  
 Norm Brisson

**Consolidation Working group-**

Work in the area of consolidation may be accomplished without the formation of an official working group. The area of work here includes examining the technical piece to make sure everything is covered. This work includes getting rid of 'Christmas tree' crimes and rolling them into a new theft scheme (that has F5's, F6's and M1's). This work should be done under the assumption that there will be a new scale to work with.

Possible volunteers-  
 Michael Dougherty and Jeanne Smith

**Parole**

The work in this area will focus on the role that parole plays in sentencing. The group will identify issues and develop a strategy.

Volunteers to participate on this working group include the following-  
 Claire Levy  
 Christie Donner  
 Denise Balazic  
 Joe Cannata  
 Tim Hand

**Mandatory Minimums and Habitual Working group**

We can't address these issues with just the representatives in this room, we need to include other stakeholders and experts.

A working group should consist of at least the following members-  
 Doug Wilson  
 Judge – William Hood  
 Probation rep  
 CCJ rep  
 D.A. rep  
 Victim community rep

**Criminal History (Risk/Needs) Working group-**

This group would look at what value is placed on criminal history. There is lots of research to guide what factors go into risk. In Colorado we use # of priors. Can this be refined, using theft as a template? Can a group look at this as something to factor in to the Y axis? There are instruments that do not violate defendant's constitutional rights. The group tends to agree that criminal history is a proxy for risk.



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| <p><b>Issue/Topic:</b><br/>Wrap up and what's next</p> | <p><b>Discussion:</b></p> <p>Paul takes the group through a feasibility and impact exercise to determine which areas of focus should be tackled first and where task force members should concentrate their energies. The exercise resulted in the following three phases of work.</p> <p><b>Phase 1-</b><br/>Classification working group<br/>Consolidation working group<br/>Mandatory Minimums and Habitual working group<br/>Statewide Diversion Working group<br/>Parole</p> <p><b>Phase 2</b><br/>Criminal History (Risk/Needs) (Waiting on outcomes from Colo. Judicial Report and the Nat'l Center for State Courts report: Using Offender Risk and Needs Assessment Information at Sentencing)</p> <p><b>Phase 3</b><br/>Community Corrections</p> <p><u>Feasibility/Impact Discussion</u><br/> <span style="background-color: #90EE90;">High Impact/Medium feasibility</span> Diversion, Consolidation, Classification<br/> <span style="background-color: #FFFF00;">Medium impact/medium feasibility</span> - Parole<br/> <span style="background-color: #FFFF00;">Medium Impact/Medium Feasibility</span> - Risk/Needs and PSI<br/> <span style="background-color: #FF0000;">High Impact/Low feasibility</span> – Community Corrections</p> |
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| <p><b>Issue/Topic:</b></p> | <p><b>Discussion:</b></p> <p>Instead of an October meeting, the working groups will meet over the next two months and will reconvene in November with report backs.</p> |
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**Future Meeting Dates:**

**Meeting Schedule May-December 2011**

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|---------------------------|------------------------|--|
| 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 |