

Comprehensive Sentencing Task Force

November 17, 2011, 1:30PM-4:30PM
710 Kipling, 3rd Floor Conference Room

ATTENDEES:

CHAIR

Jeanne Smith, Chair/Division of Criminal Justice

TASK FORCE MEMBERS

Gil Martinez/District Court Judge

Pete Hautzinger/DA 21st Judicial

Christie Donner/Criminal Justice Reform Coalition

Charles Garcia/Denver Crime Prevention & Control Commission

Doug Wilson/State Public Defender

Mark Evans/ Public Defender's office for Doug Wilson (*non-voting member*)

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

Jason Middleton/Public Defender

Claire Levy/State Representative

Michael Dougherty/ Deputy Attorney General

Glenn Tapia/Division of Criminal Justice

Tim Hand/DOC Division of Parole

Joe Cannata/Voices of Victims

J.P. Moore/DA 17th Judicial

Joe Pelle/Sheriff, Boulder County

Dianne Tramutola-Lawson/CURE

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith welcomes the group and previews the agenda.</p>
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<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Diversion Working Group Update</p> <p style="text-align: center;">Action</p> <p>Mark to reconvene his group and bring in Sheriff Pelle if he's available, contact Judge M. about bringing in someone from Weld, talk to Meg (DCJ) and talk to Probation</p>	<p style="text-align: center;">Discussion:</p> <p><u>Mark Evans presents a summary of the outcomes from the Diversion Working Group meeting. (See attached PowerPoint)</u></p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> ○ Diversion means a lot of different things to a lot of different people ○ Pre-plea diversion programs happen rarely, mostly in the 17th ○ Why are we not seeing more pre-plea programs? ○ The difference to the accused in pre-plea versus deferred judgment is huge ○ The problem is with resources to supervise deferred prosecution, Probation says they won't supervise deferred prosecution ○ The Executive Branch can't order the Judicial Branch to supervise a deferred prosecution ○ Could there be a funding mechanism through DA's? Or a new way to fund statewide? ○ Denver gives a lot of deferred judgments ○ Is the report of the arrest on both def. judgement and def. prosecution? A lot of times people on Diversion are on summons, not arrest ○ Weld County is trying to implement a pre-plea program ○ Let's add a judge from Weld to this working group <p><u>Suggestions</u></p> <ul style="list-style-type: none"> ○ Would there be some usefulness in designing two Diversion programs; one would be a pre-plea program and the other looking at traditional deferred judgments. Maybe we can recommend two options rather than one of the other. ○ Would there be any benefit to consulting with a group of folks who manage the JV diversion programs and figure out how locals are funding this? ○ Portland, OR was caught between establishing a system of Deferred Judgment vs. Deferred Prosecution and came up with a different option. A stipulation plea of sorts.
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What's next

- Include a Sheriff's rep in the discussion (Joe Pelle)
- Mark will contact Judge Martinez about contacting someone from Weld as they move toward implementing the system there.
- DCJ will take care of finding out budget info re juveniles, Mark to contact Meg
- Work with Mary K to get numbers from the 17th
- Talk to probation
- Should we develop a small group of financial budget people to work with us on these kinds of things?
- As we go through all this, funding is always going to be an issue; do we need a financial advisory group for all our proposals?

Issue/Topic:

Consolidation Working Group Update

Action

Consolidation Working Group to work with Classification Working Group

Discussion:

Jeanne Smith presents a summary of the outcomes from the Consolidation Working Group meeting (see attached grid, handed out at the meeting)

DISCUSSION POINTS

- There was an earlier working group that also looked at consolidation issues and laid the groundwork as far as going through statutes. That group outlined where we currently are with theft
- At the last discussion, Pete H. put together a list of "Where we could start"
- This group pulled out and looked at value based theft crimes as non-value based crimes were harder to tackle

Issues

- Theft of rental property and theft by receiving – there is language in both of these that is not in the 'regular' theft category.
- Perhaps add 'retain' to regular theft.
- Perhaps define "exercise control" to include "abandonment"
- Looking at Theft by Receiving – there is a subparagraph we would have to take in whole and move under theft statute. There's an 'intent' problem that would need to be specified.
- Theft by 'receiver' has to know or have good reason to believe something was stolen
- Need one single definition on value of newspaper theft

- With the full chart, the group attempted to outline the differences on why these statutes are unique and it's difficult to clump everything together.

Suggestions

- What are we gaining by spending a lot of time right now trying to consolidate things that may not make that big of a difference?

What's next

- Is this group okay with putting this work on the back-burner?
- We could actually get bad publicity and push back on our proposals around these issues
- We would need buy-off from the Commission to stop work on this (since its part of the simplification/consolidation charge given to the task force by the Commission).
- What should this group do as far as next steps regarding this working group?
- This group could try to redraft the statute if the group wants to look at that.
- Should we work on these issues in concert with the Classification Working Group?
- Let's combine these two working groups as they seem to overlap
- Do other states define value much more broadly than we do? Looking to other states would not be helpful. All states have struggled with this.

<p>Issue/Topic:</p> <p>Classification Working Group Update</p> <p>Action:</p> <p>Consolidation and Classification working groups to work together next. Bring this back at the December Task Force, then go to the wider interests groups</p>	<p style="text-align: center;">Discussion:</p> <p><u>Gil Martinez presents a summary of the outcomes from the Classification Working Group meeting</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ● Judge Martinez reviews the memorandum put together by Jason and the working group <p><u>Issues</u></p> <ul style="list-style-type: none"> ○ One of the big issues was changing the amounts and adding F5's and F6's ○ Did not change sentencing ranges ○ The group didn't think a 'grid' was feasible at this point
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Suggestions

- Theft by receiving and criminal mischief should be changed to match the classification scheme proposed for the general theft statute.

What's next

- This is the recommendation coming out of the working group - they are done with that part
- Where does THIS group want to take this?
- The next step would be to engage the retail community, some rental property folks and some agricultural representatives.
- The next thing we could ask the working group to do is bring in other interest groups.
- Can we come out with a recommendation today? No, let's bring in retailers now.
- In the absence of objections from anyone in this group, let's have the two groups meet, synthesize their proposals, bring it back to the task force and the Commission.
- Yes, but let's consult interest groups first, before presenting to the Commission
- For transparencies sake, before you bring in a constituency groups, we should have a final, synthesized proposal.
- **Consolidation and classification to work together next. Bring this back at the December Task Force, then go to the wider interests groups**
- Let's be strategic about WHO we're going to talk to and how
- **We will bring the two working groups together, go ahead at least with values, bring in special interest groups (retailers, etc.), then retool with sentencing ranges (Christie D. and a possible grid), and bring to CCJJ**
- Vocal groups are the cable lobby, agriculture, etc.
- The new (combined) working group should come up with a plan on how to do outreach to special interest groups

<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Mandatory Minimums/Habitual Offender Working Group Update</p>	<p style="text-align: center;">Discussion:</p> <p><u>Doug Wilson presents a summary of the outcomes from the Mandatory Minimums/Habitual Offender Working Group meeting.</u> (See attached PowerPoint)</p>
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Action:

Jeanne to send an email to the group about Doug's proposal and next steps

Christie Donner to translate theft values into a drug grid sort of scheme

DISCUSSION POINTS

- This group consisted of Doug, Judge Hood, Joe Cannata, Tom Raynes
- The group looked at what, if anything, could be done as far as habitual issues
- The data shows that 10% of those charged with Habitual were actually convicted (200 of 2028)
- Many jurisdictions file a lot more Habituals than are actually convicted
- Denver is the #1 non-leveraging jurisdiction, they mean it when they file it
- Habitual charges are used **a lot** to leverage plea bargains
- Colorado has gone from 14 habitual crime categories (pre '93) to 28 (post '93)
- Pre 93 the average sentence was 35 years on habitual
- Post 93 the average sentence went up 8 years on the big bitch and 6 on the little bitch
- The purpose in '93 was more definitive sentences, but after 93 we've driven up sentences

Suggestions /Issues

- The group is proposing a couple of different options for changes
- Take escape 'out' as far as presenting offense
- Proposal #1 - For felonies that were eligible on the big Bitch, instead of 4x's it would drop to 3x's the presumptive. This would follow the same statutory scheme as the 2 Probation felony eligible statute
- Proposal #2 changes 18-1.3-801 to take out F4 thefts and walk-aways
- The changes would save both years and money
- As far as escape, between 2007-2010 there were 11 'real' escapes altogether, 1 from a private prison, 8 from state correctional facilities and 3 from a court or hospital
- When considering escape in habitual offenses it should only be incorporated when it is a presenting offense
- The CDAC is strongly opposed to these revisions for three reasons; lowering of sentences, excluding theft and excluding escape
- Would we be changing the whole scheme just to go after two districts who abuse the habitual filings?
- Do we think theft should be eligible for habitual? Is 3 times the top of the presumptive enough? Do we really need 4 times?
- Is it appropriate to sentence someone to 4 times the top for theft and walk away?
- Transitional walk-aways are still mandatory consecutive
- Tunneling out is different than walking away
- We would to a disservice by presenting this to the Commission as a package only vote

	<ul style="list-style-type: none"> ○ Denise (Parole Board) offers an example of an offender she just saw who stole no more than \$500 worth of goods, but the system has spent more than \$100,000 dollars to lock him up (due to habitual walk away) <p><u>What's next</u></p> <ul style="list-style-type: none"> ○ This is not nearly enough people to go forward on a vote about this ○ The purpose of the work is to look at theft across the board ○ So.. what's next? ○ Take theft out, sell the 3 to 2, move the escape ○ Next step, we need more people at this meeting ○ This group says okay to 'move' escape, but we only have 9 (of 18) voting members in attendance ○ We need numbers to move theft and 4 to3 and 3 to 2 ○ Should we send an email on escape to the group and wait to run the other two segments. Jeanne to send out an email we'll reconvene next month ○ Christie to try to translate theft values into a drug grid sort of scheme.
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<p>Issue/Topic:</p> <p>Parole Working Group Update</p>	<p>Discussion:</p> <p><u>Christie Donner presents a summary of the outcomes from the Parole Working Group meeting</u></p> <p>The meeting adjourned before the issue of Parole could be addressed</p>
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<p>Issue/Topic:</p> <p>Next Steps</p>	<p>Discussion:</p> <p>Diversion - Mark to reconvene his group and bring in Sheriff Pelle if he's available, contact Judge M. about bringing in someone from Weld, talk to Meg (DCJ) and talk to Probation</p> <p>Consolidation and Classification – These working groups to get together before the next task force meeting, and bring this back at the December Task Force, then go to the wider interests groups</p>
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Habitual – Jeanne to send an email to the group about Doug’s proposal and next steps

Christie Donner to translate theft values into a drug grid sort of scheme

Future Meeting Dates:

Meeting Schedule May-December 2011

December 8th 1:30pm – 4:30pm 710 Kipling St., 3rd floor conference room