

## Comprehensive Sentencing Task Force

December 8, 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 21<sup>st</sup> Judicial

Christie Donner/Criminal Justice Reform Coalition

Charles Garcia/Denver Crime Prevention & Control Commission

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

Denise Balazic/Parole Board

Jeff Clayton/Colorado State Judicial

Judge William Hood III/Denver District Court

Jason Middleton/Public Defender

Michael Dougherty/ Deputy Attorney General

Joe Cannata/Voices of Victims

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

Dianne Tramutola-Lawson/CURE

Glenn Tapia/Division of Criminal Justice

#### STAFF

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice (phone)

Paul Herman/CCJJ consultant

#### ADDITIONAL ATTENDEES

Tom Raynes

Steve Siegel

#### ABSENT

Doug Wilson/State Public Defender

Claire Levy/State Representative

Tim Hand/DOC Division of Parole

Joe Pelle/Sheriff, Boulder County

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| <p><b>Issue/Topic:</b></p> <p>Welcome and Introductions</p> | <p><b>Discussion:</b></p> <p>Jeanne Smith welcomes the group and previews the agenda.</p> |
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| <p><b>Issue/Topic:</b></p> <p>Parole Working Group Update</p> <p><b>Action</b></p> | <p><b>Discussion:</b></p> <p><u>Christie Donner presents a summary of the outcomes from the Parole Working Group meeting</u></p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> <li>○ The group met once in October</li> <li>○ Group members started the conversation about mandatory parole, and parole inside the sentence or outside of the sentence</li> <li>○ Christie presents a pro/con list put together from the meeting</li> <li>○ A number of things the PIS committee worked on in 2008/2009 are being revisited</li> <li>○ Tom Clements, Jim Davis and David Kaplan have talked about revisiting the ongoing parole issues and have decided to move forward together with a Parole Task Force</li> <li>○ The key issue has to do with the scope of work for this group, which is still an undecided question</li> <li>○ Under the current structure offenders can have parole inside their sentence, or actually beyond the sentence</li> <li>○ This group also wants to talk about MRDs, eligibility for parole, community corrections role, etc. However, for now they've just looked at inside/outside the sentence issues</li> <li>○ Colorado is unique in that we have both models in place simultaneously</li> <li>○ This system both lengthens and shortens the sentence</li> <li>○ If discretionary parole exists, its normally inside the sentence</li> <li>○ For folks that have a longer sentence, say 32 years, and is released at 16 on parole, if this was 'inside' the sentence the offender would serve the remaining 16 years on parole</li> <li>○ When parole is 'outside' the sentence, once an inmate is put on parole their 'sentence length' is deemed completed, and then a separate length of parole starts (say 5 years).</li> <li>○ History – Colorado used to see an increase in the number of people in prison who waived a parole hearing and killed their number inside prison</li> <li>○ The legislature wanted everyone to come out on parole, so the legislature instilled parole outside the sentence</li> <li>○ 18% of people are discharging their number in prison and not going</li> </ul> |
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through parole

- The legislature wanted people supervised rather than walking straight out
- Back then, the perspective of parole (from an offender's point of view) was that you wouldn't be successful on parole, so why get out on the chance that you would likely get a technical violation and be revoked back in (late 80s, early 90s).
- These conversations are best had with practitioners in the courtroom
- The issues of when punishing ends and rehabilitation begins are more of sentencing issues
- Mandatory parolees have a higher revocation rate than discretionary parolees
- Flat timers are much more successful than those who are released on parole because parole is about surveillance, and even though a parolee may not commit a new crime, he's could be likely to violate a parole condition.
- Parolees in their hearings often say "I don't want to be on parole"
- The state doesn't want people to go out unsupervised, but offenders who go out without parole complete more often successfully
- Current parole periods are based on felony class, not risk
- How do we define success? Not returning to prison, or being a more productive member of society

#### **Suggestions**

- How can we use county jails and community corrections as step down options?

#### **What's next**

- Does this group want to continue to meet and come back with a recommendation on how parole in general should be structured and come back with how sentencing schemes should look in the state
- Yes, this group will continue to work on these issues and meet again

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| <p><b>Issue/Topic:</b><br/>Diversion Working Group Update</p> <p><b>Action</b></p> | <p><b>Discussion:</b></p> <p><u>Mark Evans presents a summary of the outcomes from the Diversion Working Group meeting</u></p> <p><i>DISCUSSION POINTS</i></p> <p><b><u>Issues</u></b></p> <ul style="list-style-type: none"> <li>○ The group met Monday and is still in an 'information gathering' stage</li> </ul> |
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- The group is looking at what programs are out there and how they're funded
- Mark prepared a handout that compares programs in the 1<sup>st</sup> and the 17<sup>th</sup> along with the Boulder County Sheriff's office restorative justice program and the proposed Weld county adult diversion services program.
- There are a lot of different points at which an offender can be diverted, from pre-plea to post
- Programs vary vastly across the state
- Some programs are all inclusive and other programs funnel folks through to services in the community
- Savings are complicated because they come from a different pot
- Cost savings often impact state judicial and state probation more than counties
- The word Diversion is a very big word, including low level and low risk cases, but it's more challenging to make a difference in the churning of crime as offenders get older. We need proper services in the community to treat these folks, otherwise the outcomes could be worse and not measurable.

#### **Suggestions**

- If funding were available would more communities be interested?  
Yes

#### **What's next**

- The group will meet again and come back with more in January or February

| <b>Issue/Topic:</b>   | <b>Discussion:</b>   |
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| <p>Consolidation/Classification Working Group Update</p> <p><b>Action:</b></p> <p>Consolidation and Classification working groups to work together next. Bring this back at the February Task Force meeting, then go to the</p> | <p><u>Jeanne Smith presents a summary of the outcomes from the Classification/Consolidation Working Group meeting</u></p> <p><i>DISCUSSION POINTS</i></p> <p><b><u>Issues</u></b></p> <ul style="list-style-type: none"> <li>○ At the last task force meeting, this group requested the Classification and Consolidation working groups combine their efforts</li> </ul> |

wider interests groups

- Jeanne and Michael met twice to see if they could consolidate anymore categories
- There are a lot of Theft of Public Transportation cases
- There is a proposal to remove Theft of Public Transportation from the theft statute because on background checks the first word that shows up is 'theft'
- The city and county is spending about \$250K per year on this and the effort to move this into title 42 and make this a traffic infraction
- Take this off the list
- MV sanctions will be wiped out
- RTD just wants to be able to write tickets and collect outstanding fares
- Should we put theft into a grid like drugs?

#### **Suggestions**

- If we're going to eventually have a whole new theft grid should we reach out to the community now? Or will that complicate things down the road?
- What are the timelines for taking this out into the community?
- We need to classify the theft categories and put crimes where they should be before we talk to people
- At this point let's just talk to retailers etc. about crime classifications and sentences, etc. rather than grid or no grid

#### **What's next**

- The two groups will get together in January for a report back in February
- At the Feb. meeting the group will report back on the consolidation and the feedback of reasoning on any opposition.
- In Feb. we can vote up or down on the classification system

#### **Issue/Topic:**

Mandatory Minimums/Habitual  
Offender Working Group  
Update

#### **Discussion:**

Mark Evans (on behalf of Doug Wilson) presents a summary of the outcomes from the Mandatory Minimums/Habitual Offender Working Group meeting

#### *DISCUSSION POINTS*

#### **Issues**

- Mark goes through the PowerPoint that was presented at the last

**Action:**

meeting

- There are four different ways a person can end up a habitual criminal, mostly the little bitch and the big bitch
- In 93 there were 53 People incarcerated in DOC on habitual charges
- Prior to 93 there were 14 categories of crimes people were 'bitched' on
- Post 93, there are 28 different categories of crimes where habitual is used including forgery, fraud, perjury.
- Most of the people currently bitched (743 or 74%) come out of 4 counties
- Currently, 90% of the time, the habitual criminal charge isn't used to put people behind bars, but it is used more as a plea bargain hammer
- Estimated 90-95% of cases reach a plea disposition
- How many people plead to a plea bargain that's not habitual? Many
- This recommendation in its current form doesn't include predicates
- The threat of the higher plea bargains influences habitual
- An important highlight is that this isn't the case in every jurisdiction
- Where's the data regarding cases where habitual is eligible and not filed upon?
- Let's also talk about removing walkaways as a presenting and a predicate offense

**Suggestions**

- Putting aside the argument for a change, the purview is to say what value should society place on this?
- For nonviolent crimes, non person-to-person crimes, if an offender has 2 priors - rather than multiplying the max by 3 we would multiply by 2. And if an offender has 3 priors or more we would multiply by 3 rather than 4.
- The result would be 184 prison years, 5.8 million dollars for one year's prison admissions.
- Appropriately allocating public resources is important
- Let's vote on these two initiatives separately. We'll vote on the walkaway proposal and then vote on the 3 to 2/ 4 to 3 proposal.

**What's next**

- Let's talk about the non-violent guy with 3 priors, can we handle that with a 36 year sentence or do we need 48
- What if the three priors are all violent? You would look at that habitual differently
- Should a DA have the discretion to pursue 48? Yes
- From a filing and decision making perspective, it's difficult as this is all situational. When filing habitual, DA's look at original cases
- The multipliers were originally put in place in '93

- The commission has focused on efforts aimed at lower end criminals, not higher end.
- The savings you can realize by doing something like this will help put funds toward the front end lower level folks
- Maybe we can tweak this to include the priors as only non violent
- Do we have data showing WHERE within the habitual range these people were sentenced?
- More data would be helpful. More info regarding the current habitual case.
- This is jurisdictionally specific. Every district is going to be absolutely different.
- We need to be careful as this could also backfire. DA's may be more likely to go for the highest multiplier if there's less range. This may actually induce **more** habitual filings. This is a risk.
- If we could ensure we're talking about non-violent predicate behavior this would be much easier to discuss.
- Is there any other way to frame this discussion? Should we vote on this and give direction to the working group?
- The DA's will be opposed regardless. DA's believe all grids need to roll out at once.
- Let's take a vote

### **Voting**

The group votes on the issues (individually) that are currently on the table (removing walkaways from habitual and the reduced multiplier).

#1 – Removing walkaways as a PRESENTING offense from habitual

- Results – All in favor (16 votes)

#2 – Removing walkaways as PRESENTING and PREDICATE offenses from habitual

- Results – All in favor (16 votes)

#3 – Reducing the multiplier for habitual from 4 times to 3 times and from 3 times to 2 times

- Results – 12 in favor/4 opposed

### ***DISCUSSION POINTS***

- Pete H. would like to note that his 'in favor' vote on #1 and #2 was only conditional on #3 NOT passing. If #3 were to pass than he would remove his 'yes' vote from #1 and #2.
- Due to the fact that these recommendations passed they will now be presented to the Commission.

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| <b>Issue/Topic:</b> | <b>Discussion:</b>   |
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| Next Steps          | <p><b>Parole-</b> This group to meet again and report back</p> <p><b>Diversion –</b> This group to meet again and report back</p> <p><b>Consolidation and Classification –</b> This group to meet again and report back. Germaine to help set up.</p> <p><b>Habitual –</b> Recommendations to be forwarded to the Commission</p> |

**Future Meeting Dates:**

**Meeting Schedule 2012**

|                            |                 |  |
|----------------------------|-----------------|--|
| January 12 <sup>th</sup>   | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| February 9 <sup>th</sup>   | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| March 8 <sup>th</sup>      | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| April 12 <sup>th</sup>     | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| May 10 <sup>th</sup>       | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| June 7 <sup>th</sup>       | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| July 12 <sup>th</sup>      | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| August 9 <sup>th</sup>     | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| September 13 <sup>th</sup> | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| October 11 <sup>th</sup>   | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| November 8 <sup>th</sup>   | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |
| December 13 <sup>th</sup>  | 1:30pm – 4:30pm | 710 Kipling St., 3 <sup>rd</sup> floor conference room |