

Comprehensive Sentencing Task Force

February 9, 2012, 1:00PM-3:45PM
700 Kipling, 1st Floor Conference Room

ATTENDEES:

CHAIR

Paul Herman/CCJJ consultant (for Jeanne Smith)

TASK FORCE MEMBERS

Gil Martinez/District Court Judge (phone)

Charles Garcia/Denver Crime Prevention & Control Commission

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

Denise Balazic/Parole Board

Judge William Hood III/Denver District Court

Jason Middleton/Public Defender

Michael Dougherty/ Deputy Attorney General

J.P. Moore/DA 17th Judicial

Glenn Tapia/Division of Criminal Justice

Doug Wilson/State Public Defender

Tim Hand/DOC Division of Parole

STAFF

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice (phone)

ADDITIONAL ATTENDEES

SHELBY MCKINZEY/CU BOULDER

ABSENT

Dianne Tramutola-Lawson/CURE

Joe Cannata/Voices of Victims

Pete Hautzinger/DA 21st Judicial

Jeff Clayton/Colorado State Judicial

Christie Donner/Criminal Justice Reform Coalition

Claire Levy/State Representative

Joe Pelle/Sheriff, Boulder County

Jeanne Smith, Chair/Division of Criminal Justice

Issue/Topic: Welcome and Introductions	Discussion: Paul Herman welcomes the group on behalf of Jeanne Smith and previews the agenda.
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Issue/Topic: Consolidation/Classification Working Group update Action Cost savings analysis by DCJ Get the proposal out to the retailers. Invite them to the next meeting. Present again at the next task force and depending on the outcome possibly present at the March CCJJ meeting	Discussion: <u>JP Moore and Jason Middleton present a summary of the outcomes from the Consolidation/Classification (C/C) Working Group meeting</u> <i>DISCUSSION POINTS</i> <u>Issues</u> <ul style="list-style-type: none"> ○ The C/C groups met in January to discuss which offenses could be consolidated and how to proceed ○ It was decided at that time to contact newspaper agency representatives, livestock assoc., the retail council, etc., about possible consolidation and restructuring of statutes ○ JP and Jason met with Colo. press association and retail council (which represents most of the big box stores), ○ The Newspaper Association is concerned about their issues being abandoned. They want people to know that if the law is changed they still want their interests identified someplace ○ How many cases have there been involving ‘theft of a newspaper’? There is one case pending in the 17th judicial district. The Newspaper Assoc. recognizes there is not a lot of use of this law ○ However, there was no way to prosecute this before the law ○ The Retail Council was presented with the hybrid chart of Doug and Pete’s combined proposed new theft grid ○ Conceptually, the Council was okay with it because they felt it provided clarity and filled in the gaps. ○ The Retail Council right now is working on legislation themselves, they’re focus is organized crimes, theft rings, etc. ○ The Retail Council may conceptually be okay with the changes, but it’s not on their radar right now. ○ They did say that they appreciated us trying to make sense of the value structure and fill in gaps ○ One of the big issues for the retail council is recidivism and restitution and a scheme that would help with restitution payments would be important for them ○ Michael Dougherty met with the retail folks yesterday and they informed him that they’re coming out with a bill tomorrow ○ What they’re proposing has quite a bit of overlap with what’s already in statute <u>Suggestions</u> <ul style="list-style-type: none"> ○ Would there be a cost savings with the recommendations regarding consolidation and the change in felony levels? Not sure at this point but we’ll
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ask Peg to run the numbers.

- Classification is one thing, consolidation may be something else
- Would we present these two together? Or separate?
- Even though all the bill titles are taken, the JBC can pick up and run anything that is proposed that saves money. Do we want to go this route?
- Could JBC run the re-classification this year if we got permission in March? It would have to come from Claire, but if we can show cost savings it might be great this year.
- Is that too fast?
- Classification is going to be easier to present than Consolidation, it's less clunky
- Let's break this up and concentrate on classification first
- The \$2,000 felony amount will be the big question
- Do we want to push it? Last time we attempted this we came up against a brick wall.
- Last time, we didn't have this kind of outreach ahead of time – the work done 'til now could really help
- Any cost savings we could show would be great
- Let's wait to hear back from the retail council and look at Peg's analysis
- We can do the cost analysis between now and the March meeting to see if the savings would be big enough to make a difference for the JBC
- In the meantime, can J.P. and Jason check back in with the retail reps?
- Let's do the cost savings analysis first, and see the outcomes, then loop back with retail folks
- If the retail council's bill fails tomorrow (Feb. 10) – it's unlikely, politically, that there will be support
- If we want to set this up for success we'll want to be careful about our timing
- Is there some way to dovetail the retail council's proposal and our recommendation?
- The lower dollar felony cases end up as misdemeanors and the retail council liked that they may have a 'home' in the felony classification scheme with the F5's and F6's
- Depending on how you look at it there's something for everyone – more felonies but still distinguishes the high end folks from the low end folks. Therefore maybe that is our landing spot as far as getting them on board at the 5 and 6 level
- Let's get the proposal together first
- Invite the retailers to our March meeting
- Make a presentation at the March sentencing meeting and subsequently the next day at the CCJJ
- Make it clear to them that we want to do this with their blessing

What's next

- Need to contact a couple other interested parties
- Figure out the actually statutory changes that would need to be made
- As far as the scheme, everyone in this group has seen it and seems to think it's a good idea.
- Not much more to do in terms of classification
- Follow up with the retail council after Friday, Feb. 10th with the feedback from the members

	<ul style="list-style-type: none"> ○ Part of the problem is if members of this task force end up testifying against the retailer's bill, there won't be a lot of support for this proposal ○ We don't have enough information to know if the timing is right just yet ○ Let's do two things.. cost savings analysis, and then J.P. and Jason send around the proposal (already in the works), retailers are circulating the proposed chart with the F5s and F6s
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Issue/Topic:	Discussion:
Parole Working Group update	<p><u>Paul Herman presents a summary of the outcomes from the Parole Working Group meeting</u></p>
<p>Action</p> <p>Tim will get the new proposal to Germaine by the end of Feb. for the next meeting</p>	<p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> ○ The group discussed placement of parole inside the sentence and outside the sentence ○ In Colorado It's outside the sentence ○ Other than some very unique circumstances in other states, Colorado is exceptional in regards to the 'outside the sentence' parole period. ○ Some states have it 'outside' if you're dealing with things like the 7 deadly sins, etc. ○ This group discussed truth in sentencing and talked about good time not accruing until after the PED? ○ This gets convoluted with our community corrections system, are they going to even get in, will it be discretionary? ○ This group also discussed MRD's (mandatory release dates) and the possibility of focusing more on that. However, this brings up the unintended consequences question. ○ There are people who are still inmates in community corrections, other people paroled to ISP or paroled to Comm. Corr. – there's a great deal of confusion on actual status. ○ The lack of clarity and the options are not always consistent and bump up against each other ○ We need to move back to where we were a few years ago with a focus on actually getting a date certain 'out' time solidified ○ Let's go back to date certain and incentivize offenders. If we could get that piece out there for some action we'd have a lot better success. The 'unknown' doesn't work as far as getting people done successfully ○ Tim will be proposing a 4 month ISP sentence for everyone that would include a clause that with good time they would drop the last two months. ○ The public safety argument of keeping them with 'the ball and chain' doesn't hold up ○ Tim is expanding on the original BP-58 recommendation that came out of the PIS group in 2008. That recommendation was 'To promote continuity of supervision, the Dept. of Corrections should develop consistent policies and trainings that promote uniformity in establishing and implementing discretionary conditions and privileges of parole supervision'. ○ There is now a trigger in the data system that if a parolee is doing well, it

	<p>automatically prompts a request for an action on part of the parole officer to initiate early discharge to the parole board. This is not exclusive of sex offenders.</p> <ul style="list-style-type: none"> ○ This is happening and those discharge numbers are starting to go up – Get this data for performance measures ○ The expansion of BP-58, the change in policy in regard to early discharge, could be pushed through without legislation ○ If we work on MRD.. it would result in a big fiscal impact on the state <p><u>Suggestions</u></p> <ul style="list-style-type: none"> ○ Having parole outside the sentence can actually work if we had a date certain component and did it right <p><u>What's next</u></p> <ul style="list-style-type: none"> ○ Still need to talk about the structuring of parole either outside, or inside the sentence <p>Tim will get the new proposal to Germaine by the end of Feb. for the next meeting</p>
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Issue/Topic:	Discussion:
<p>Diversion Working Group update</p> <p>Action:</p>	<p><u>Mark Evans presents an update on the Diversion Working Group</u></p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> ○ The group has not gotten together since the last meeting but information has been trickling in ○ Whatever the eventual solution or proposal is would not be 2012 legislation regardless, so this is a work in progress <p><u>Suggestions</u></p> <ul style="list-style-type: none"> ○ <p><u>What's next</u></p> <ul style="list-style-type: none"> ○

Issue/Topic:	Discussion:
<p>Mandatory Minimums/Habitual Offender Working Group Update</p> <p>Action:</p>	<p><u>Doug Wilson provides an update on the Escape and Habitual recommendations presented to the Commission in January</u></p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> ○ This group sent two recommendations to CCJJ ○ One was to remove the escape as habitual, this is moving through the legislature, Michael Dougherty is shepherding this CCJJ approved initiative ○ The other recommendation to move the habitual multiplier from 4 times to 3 times and 3 times to 2 times was not approved by the Commission ○ We're seeing an increase of juveniles being filed on with escape charges for

	<p>walking away from NYC or YOS</p> <ul style="list-style-type: none"> ○ They're then moved to DOC because in the meantime they became adults ○ Any ballpark on the numbers? ○ Should this group look at this? ○ What would the proposal be? ○ We've never addressed the escape/walkaway issue in regards to juveniles ○ Maybe there should be changes regarding offense and classification? ○ The JV group could address this but in actuality it's an adult sentencing issue ○ We put JV's in Comm. Corr. and they walk away, too ○ Whether the numbers are big or small.. we probably want to prevent them from getting big ○ These are basically walkaways from juvenile halfway houses who are then sentenced on an adult escape charge ○ Yes, let's look at this ○ The answer is, we need to redefine escape ○ The real issue is the population 18-21 year olds – we would need to focus on a really specific age group stemming from juvenile adjudication. Are there different possibilities for this group other than what's happening now? ○ Kids on JV parole serving a DOC escape at the same time
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<p>Issue/Topic: Risk/Needs Assessment Info at Sentencing presentation</p> <p>Action: Judge Hood to help explore how to get RNA training out to new judges</p>	<p>Discussion:</p> <p><u>Kim English presented a PowerPoint synopsis of the Nat'l Center for State Courts report regarding the use of offender risk/needs assessment information at Sentencing (see attached PowerPoint for details)</u></p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> ○ The number one rule in EBP Sentencing is that high risk offenders need appropriate treatment services while low and moderate risk offenders should receive less intense services. ○ Individual jurisdictions need to tailor their risk assessments ○ Tying the benches hands is not a good thing ○ The judge needs to be able to tailor the sentence, allowing the bench to have as much info as possible from the beginning. ○ Ensuring as much info as possible from all parties is critical to getting us to reduce recidivism ○ Risk/needs assessments are an additional tool, but should not be the only thing looked at. Along with that, judges need to consider much more than just the offense ○ The Risk Principle means matching risk level with supervision and treatment levels ○ The Need Principle refers to the fact that services should match the NEEDS linked to criminal behavior ○ The Responsivity Principle means cognitive behavioral treatment should be tailored to the offenders learning style, motivation, and strengths ○ The more criminogenic needs that can be identified and targeted the better outcomes for the offender ○ This challenges judges to be consistent with RNR principles –and this is the
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	<p>whole problem with human judgment</p> <ul style="list-style-type: none"> ○ With specialty drug courts, we address the substance abuse issue but not necessarily the other criminogenic needs that may have a bigger impact ○ Judicial training needs to bump up for this <p><u>Discussion Points</u></p> <ul style="list-style-type: none"> ○ No time is currently spent at “new judges” training regarding this RNA sentencing ○ This needs to be pulled out and presented probably by itself (not included at the initial training, but as a separate endeavor) ○ Can we pull this out as a separate presentation? Yes. ○ A lot of judges would be interested in learning more about this ○ There are a lot of new judges in Colorado ○ The pre-plea issues are going to be pretty tricky ○ The reality is that this all falls apart without guarantees regarding pre-plea ○ Judge Hood to help explore how to get this out to the new judges ○ Do all the departments need to agree on which risk/needs tool to use? ○ The LSI structures the questions to ask around the criminogenic domain, it is so targeted on needs that it actually doesn’t focus as much on risk ○ Each jurisdiction could develop their own tool ○ Colorado has been fortunate in regards to the LSI. CO gets the LSI for a flat 10-grand every year. ○ Everyone is looking for simplicity, but simplicity may not necessarily correlate with clarity. ○ Clarity is more important than simplicity. ○ The implementation of any instrument with dynamic indicators affects inter-rater reliability, and that Inter-rater reliability plummets
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Issue/Topic: Next Steps	Discussion:
	<p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> ○ Let’s explore the issue of judicial education regarding RNA. How do we get this info out? And what should a document look like? A new PSIR? ○ The judicial conference will take place this fall. Can there be a training regarding this report? What would that look like? ○ Talk to Gil about who does the trainings ○ Glenn, who will let us know about the work already in motion? ○ 6 jurisdictions in the Evidence Based Decision Making project – Get this info from Paul. Paul to let us know where their jurisdictions are ○ Should we talk to juvenile folks about their RNA tool? ○ Pull this info together for the next meeting and see what comes of it

Meeting Schedule 2012

March 8th 1:30pm – 4:30pm 710 Kipling St., 3rd floor conference room
 April 12th 1:30pm – 4:30pm 710 Kipling St., 3rd floor conference room
 May 10th 1:30pm – 4:30pm 710 Kipling St., 3rd floor conference room

Same time and location as above:

June 7th, July 12th, August 9th, September 13th, October 11th, November 8th, December 13th