

## Comprehensive Sentencing Task Force

March 8, 2012, 1:30PM-4:30PM

Location: Office of the Attorney General

### ATTENDEES:

#### CHAIR

Jeanne Smith, Chair/Division of Criminal Justice

#### TASK FORCE MEMBERS

Charles Garcia/Denver Crime Prevention & Control Commission

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

Denise Balazic/Parole Board

Michael Dougherty (and Matt Durkin)/ Deputy Attorney General

Glenn Tapia/Division of Criminal Justice

Doug Wilson/State Public Defender

Tim Hand/DOC Division of Parole

Dianne Tramutola-Lawson/CURE

Joe Cannata/Voices of Victims

Pete Hautzinger/DA 21<sup>st</sup> Judicial

#### STAFF

Paul Herman/CCJJ consultant

Peg Flick/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

#### ABSENT

Judge Cisneros/District Court Judge

Jeff Clayton/Colorado State Judicial

Jason Middleton/Public Defender

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

Judge William Hood III/Denver District Court

Christie Donner/Criminal Justice Reform Coalition

Claire Levy/State Representative

Joe Pelle/Sheriff, Boulder County

<b>Issue/Topic:</b>	<b>Discussion:</b>
Welcome and Introductions	Jeanne Smith welcomed the group, previewed the agenda and emphasized the importance of realistic expectations when it comes to prioritizing areas of study, recommendations, deliverables and timelines.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p data-bbox="134 537 495 604">Consolidation/Classification Working Group update</p> <p data-bbox="272 688 354 714"><b>Action</b></p> <p data-bbox="121 756 511 856">Jason and JP give us feedback on follow up meetings with stakeholders.</p>	<p data-bbox="560 537 1469 638">DCJ researcher Peg Flick presented the proposed revised theft grid analysis requested by the Consolidation/Classification working group at the February meeting.</p> <p data-bbox="560 680 803 705"><i>DISCUSSION POINTS</i></p> <p data-bbox="571 714 649 739"><u>Issues</u></p> <ul data-bbox="571 747 1526 1982" style="list-style-type: none"> <li>• Peg looked at the impact of previous theft levels and compared those with new proposed theft levels</li> <li>• Peg used NIBRS data (National Incident Based Reporting System), and specifically the property segment that contains the value of the property that was reported stolen</li> <li>• Data was pulled from 2005 to 2009</li> <li>• NIBRS data does have a few drawbacks. From 2005-2009 only 80% of law enforcement agencies were reporting to NIBRS</li> <li>• In NIBRS, properties are listed individually with values aggregated into single incident reports</li> <li>• Peg reports that in Table 1 of her handout, people are partitioned into two groups</li> <li>• Peg ran the numbers two ways, once including motor vehicle theft and then excluding MV theft.</li> <li>• Peg then took a sample of actual filings from FY11 regarding theft crimes in 18-4-401.</li> <li>• There were a large number of people with filings for F4's M1's and M2's</li> <li>• In the analysis NIBRS percentages were then applied to actual people to see where offenders would be placed with the new categories</li> <li>• After the new categories were utilized, there was no longer 'bunching' around F4s and F5s. With the new category scheme people were spread more evenly across the different filing levels</li> <li>• Table 4 shows the current classifications along with the new spread across the new crime categories</li> <li>• In general crimes shifted from higher felonies to lower felonies and even into misdemeanors</li> <li>• These numbers seem to suggest a possible significant fiscal savings</li> <li>• Currently, F4s are often pled to F5's as far as inchoate offenses (attempt, conspiracy, etc.)</li> <li>• We're assuming NIBRS percentages can translate into filings, but that won't</li> </ul>

be exact without court filing data (which we don't have)

- Since this isn't an exact science, some charges will be higher and some charges will be lower
- Table 5 shows filings that include MV theft. When MV theft is included there are more offenders that fall into higher categories
- Table 6 applies NIBRS %s to the filings, and shows the new 'Ns' on where people would fall with classifications
- Table 7 shows a shift to lower level misdemeanor offenders. The green highlighted area shows 351 fewer prison eligible folks plus an addition of 1571 new petty offenders
- If this group decides to go ahead and lump MV theft in with the rest of the theft categories, that would be consistent with the work of the consolidation working group
- The biggest problem with this analysis is using reported theft (NIBRS) vs. actual filings data
- The arrest clearance rate for theft in all property crimes is low – 40% or less
- Also, assuming many of these offenders got probation instead of prison, the success rates would be higher due to the fact that probation success rates are higher---But this would have to factor into criminal history
- However, the shift with the new grid would still be in the direction of cost savings
- The category of 'petty offense' could be problematic for law enforcement as the number of shoplifting thefts are very high
- This is dependent on who makes the filing decisions: is the police officer making the misdemeanor decisions? Is the DA making felony decisions?
- The clearance rate issue will be significant as far as calculating a fiscal impact analysis
- This would be like any other fiscal note analysis – it's hard to be really clear with any fiscal analysis/note
- NIBRS is the data source that will get us closest to an accurate fiscal analysis
- Basically, not only will fewer people go to prison but the chart shows a more even distribution across crime categories. We often talk about how monetary cut points are too arbitrary, but this distribution seems reasonable
- Not only will fewer people go to prison, but they'll be going for fewer years and subsequently less time on parole. Therefore, the clearance rate is important for number of actual cases – but there will also be cost savings associated with both bed savings and parole duration
- This new grid could result in a multi-faceted fiscal notes savings
- The bar chart, with the more even distribution of cases across crime classification categories, makes it clear we're giving more options to the system
- This also moves the eligibility for community corrections up, people could transfer sooner because their parole eligibility date (PED) would be shorter
- Thefts and drugs are the two most prevalent sentences in community

corrections

- This would also result in a cost savings because it moves county misdemeanors to petty offenses

**What's next**

- Jason and JP met previously with a rep from the retailers association and a rep. from the newspaper council. Let's proceed and continue to present to stakeholder groups. Jason and JP give us feedback on follow up meetings with stakeholders.
- A couple of these slides would be powerful to plug into a PowerPoint for retailers and legislators

<p><b>Issue/Topic:</b> Parole Working Group update</p> <p><b>Action</b></p> <p>Tim, Glenn and Denise to get together, relook at this recommendation, finalize and come up with an implementation plan</p>	<p><b>Discussion:</b></p> <p><u>Tim Hand presented a summary of the outcomes from the Parole 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>• Tim presents his date certain concept and the original BP60 recommendation that came out of the Commission in 2008 (see handout)</li> <li>• The problem is that people go before the community corrections boards, get approved, and then remain idle</li> <li>• Offenders go to ISP inmate status and can stay with that status in community corrections for a long time before transferring to parole</li> <li>• Tim presents what he calls Scenario #1</li> <li>• The goal with Tim's proposal is to give people incentives so they could move on with their life</li> <li>• This gives folks a date certain time to aim for parole</li> <li>• The idea is set a date a year out for residential, if they progress to ISP then establish a 6 month window</li> <li>• Tim has talked to Anthony Young (parole board) about this concept and says that he is receptive. However, there are some programming issues, etc.</li> <li>• If there is negative behavior with an offender there's always the right to take them back before the board for a possible rescission hearing</li> <li>• This would help DOC manage the ISP population</li> <li>• Tim also presents what he calls 'Scenario 2'</li> <li>• In scenario #2 the offender would move to parole 2 months faster than in scenario #1 based on their behavior and the incentive based system of moving from the community corrections center to community ISP</li> <li>• Question – Under scenario #2 does that mean the offender would move out in 4 months? It's largely dependent upon employment, other factors, etc.</li> <li>• Currently Transition offenders do about 5 months time in community corrections, Diversion do about 5 and some change</li> </ul>
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- Successful completers are doing about 5 months (transition)
- You could do well, go to classes, have a job, and get shot down for a year.
- Tim says that the goal is not to try to take away discretion, but to work with the theory of intrinsic motivation – more of an ‘I’m in control of my own future’ type of situation for the offender
- This would need a partnership decision making process with parole and community corrections.
- Providers would probably look favorably upon this with a tie in to level progression.
- Parole would still look at serious COPD’s, continuous COPD’s etc.
- This could be a way to better manage populations, etc.
- **Can we take this to providers and the Governor’s Community Corrections Council for feedback?**
- Yes, there has to be some motivation for people to change their behavior. There have been people who have done years of community corrections, ISP successfully and then go back before the board and get turned down.
- Victims may be annoyed if someone is able to get out and move through community corrections and parole too quickly.
- This change would tie into the theory of people being rewarded for positive change and good behavior.
- If a community corrections board was made up of a diverse body, and they already agreed to let someone come to community corrections, isn’t that a good enough nod that someone should be allowed to move through the system (post prison) as well?
- Folks need some wiggle room within a structure, to change their behavior – a level system gives them an opportunity to move forward or move back incrementally without throwing the baby out with the bath water.
- Oftentimes inmates say ‘what in the world else do I have to do.. I’ve been here for years’
- This recommendation was approved by the Commission as a whole four years ago – the problem at that time was implementation.
- Since then, things have changed as far as the parties that are involved
- **It seems a deliverable from this perspective is that the Sentencing TF could insure the implementation of this. Should we relook at the document and see if there are changes needed to meet the consensus of the board, community corrections, ISP, etc. to get buy in, come up with an implementation plan and move forward.**
- The Commission already said yes, does this need to be a parole board policy decision?
- This takes a large workload off of the parole board
- The parole board would essentially just have to implement conditions.
- **We would need to involve the time and release folks to get their input, make sure there’s a tracking system regarding the date an inmate goes into community corrections.**

- Would there be pushback about treating nonviolent and violent offenders the same way – maybe there should be two lengths of times for violent and non-violent offenders.

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

- **Let's have Tim, Glenn and Denise get together, relook at this recommendation, finalize and come up with an implementation plan**
- Run this past all scenarios
- The board never looks at 'how long are they going to be in community after accepted'
- Build in some presumptions
- Let's revisit this as we come back to our priorities settings.
- Are we sure there are no statutes that require tweaking? Let's double check

<b>Issue/Topic:</b>	<b>Discussion:</b>
Risk/Needs Assessment Update	<p><u>Paul Herman spoke to the group about Evidence-Based Decision Making (EBDM) in terms of assessment at the pre-plea or pre-sentence phase.</u></p>
<b>Action:</b>	<p><i>DISCUSSION POINTS</i></p> <p><b><u>Issues</u></b></p> <ul style="list-style-type: none"> <li>• Several things happening with the EVDM project out of the Dept. of Justice and Nat'l Institute of Corrections to implement Evidence based decision making from beginning to end</li> <li>• The group is in phase 3 of this and there is a big focus on sentencing in phase 3 (Mesa County is one of the sights)</li> <li>• What are people doing about the old PSI? If people decide Risk/Needs Assessments (RNA's) are essential - how are they dealing with that? Several jurisdictions weren't conducting PSI's regardless.. or weren't conducting them correctly</li> <li>• Paul distributes a sample to the group.</li> <li>• Conceptually, the conversation has been about getting information to the judge, prosecutor and defense attorney in a timely manner.</li> <li>• This is possible with a case analysis form</li> <li>• A jurisdiction can sit down and decide what they want on the form and avoid duplication info.</li> <li>• Paul reviews the sample R/N Assessment form</li> <li>• The form includes criminogenic needs along with a corresponding recommendation in terms of programming and hours of programming, etc.</li> <li>• The form also includes risk management concerns (along with specific conditions and rationale).</li> <li>• This form drills down on the fact that there can be better, more concise ways of trying to inform sentencing decisions</li> </ul>

- Charlie Garcia says he met with the Chief Justice last week who is excited about the Mesa County pilot program
- Mesa county is going down the road of looking a different kind of PSIR's
- PD, DA's in Mesa met with judges to go over the new pilot program
- Some pushback in Mesa is that there aren't enough resources in probation
- All 7 sites of EBDM met in Colorado recently, a specific small group conversation centered on diversion. Diversion funds have been slashed around the country but there are a number of self-funded Diversion programs. Maybe we could look at this.
- There's a Nat'l Diversion workshop at the end of May
- What it all really boils down to is it's only more information to take into account to fashion the right charging, sentencing, decisions, etc. How can anyone object to having better information?
- The entire Mesa EBDM project has brought up the most compelling point that the best outcomes in criminal justice are arrived at through a combination of professional judgment and research based practices.

<p><b>Issue/Topic:</b> Diversion</p> <p><b>Action:</b></p> <p>Jeanne and Pete H. to talk with Don Q. about including a DA (who ISN'T currently running a Diversion program) in the Diversion discussion with Mark's working group</p>	<p><b>Discussion:</b></p> <p>Mark Evans discusses the ongoing work around exploring Diversion programs and Diversion opportunities.</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> <li>• Mark has been working with reps from preexisting programs</li> <li>• He notes that once the group moves into a stage of batting around ideas for the future, those who need to make decisions about WHEN diversion happens will need to be more involved in this discussion</li> <li>• Need to include a DA once we start talking about this</li> <li>• There are basically two programs in the state now</li> <li>• The 17<sup>th</sup> JD (Adams Co.) offers a 'true' pre-plea diversion program. In the 1<sup>st</sup> JD (Jeffco) an offender actually has to enter a guilty plea before getting involved in the program.</li> <li>• Mark requests some assistance from JP or Pete H. regarding DA input.</li> <li>• Someone is needed from a jurisdiction that isn't doing this. Don Quick is already doing this in the 17<sup>th</sup>; DA's who aren't doing it need to get involved.</li> </ul> <p><b>Jeanne and Pete H. will talk to Don Q. about this</b></p> <ul style="list-style-type: none"> <li>• This working group needs to know what they're up against as far as pushback from DA's who aren't currently doing this.</li> </ul>
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Issue/Topic:	Discussion:
<p data-bbox="115 317 516 380">Task Force Priorities and Timeline Discussion</p> <p data-bbox="269 459 358 485"><b>Action:</b></p> <p data-bbox="99 531 532 667">Germaine will put together the new priorities grid and get it out to everyone with dates for deliverables so we're all on the same page</p>	<p data-bbox="561 279 1507 415">Jeanne Smith discusses the fact that the Commission will be meeting this Friday to review all the priorities from all of the task forces. The CCJJ wants to make sure all the groups are on task to accomplish outcome goals in the next 12 months, on the offhand chance that the CCJJ sunsets in July 2013.</p> <p data-bbox="561 459 808 485"><b>DISCUSSION POINTS</b></p> <ul data-bbox="573 495 1528 1957" style="list-style-type: none"> <li data-bbox="573 495 1474 527">• Jeanne asked for email feedback from the group regarding 'top priorities'</li> <li data-bbox="573 537 1507 604">• From the emails – a list was pulled together of the top issues that had more than one vote</li> <li data-bbox="573 615 1528 682">• Those issues are as follows: Classification and Consolidation, Prioritization of parole issues and Adult Diversion</li> <li data-bbox="573 693 1520 760">• Other issues included Mandatory Minimums, Extraordinary risk, reduction in ranges, RNA for judges, JV absconder/escape issues</li> <li data-bbox="573 770 1495 896">• Tomorrow (March 9<sup>th</sup>), the CCJJ will be asking this task force what we think we can accomplish in the next 12 months of meetings, or shorter if legislative.</li> <li data-bbox="573 907 1463 974">• This task is to prioritize our goals for the next year. Not that other things aren't important, but what can we actually get accomplished?</li> <li data-bbox="573 1035 948 1060">• <b>Classification/Consolidation</b> <ul data-bbox="607 1073 1325 1434" style="list-style-type: none"> <li data-bbox="607 1073 781 1104">-Has a product</li> <li data-bbox="607 1115 1024 1146">-Needs to go to stakeholder groups</li> <li data-bbox="607 1157 1268 1188">-Within 2-3 months could have most of their work done</li> <li data-bbox="607 1199 1154 1230">-C&amp;C deliverable by May/June – early summer</li> <li data-bbox="607 1241 1308 1272">-'Deliverable' means a draft statute by classification system</li> <li data-bbox="607 1283 1325 1314">-Deliverable means something presented to the Commission</li> <li data-bbox="607 1325 1138 1356">-How do the CCJJ term limits factor into this?</li> <li data-bbox="607 1367 1268 1398">-Could come up with some language in the next 60 days</li> <li data-bbox="607 1409 1081 1434">-Let's put a deadline on this by May 31<sup>st</sup></li> </ul> </li> <li data-bbox="573 1486 724 1512">• <b>Diversion</b> <ul data-bbox="607 1524 1507 1675" style="list-style-type: none"> <li data-bbox="607 1524 1507 1591">-We need a framework (enabling legislation) for a deliverable. A template / draft statute for when diversion is appropriate and how that would play out</li> <li data-bbox="607 1602 1243 1633">-A deliverable would include draft enabling legislation</li> <li data-bbox="607 1644 992 1675">-Enabling legislation by May 31<sup>st</sup></li> </ul> </li> <li data-bbox="573 1728 686 1753">• <b>Parole</b> <ul data-bbox="607 1766 1507 1957" style="list-style-type: none"> <li data-bbox="607 1766 1507 1833">-One of the main issues here is the issue of whether parole should be <b>Inside or Outside</b> the sentence</li> <li data-bbox="607 1843 1487 1911">-A parole period outside the sentence can be a great opportunity for us to incentivize offenders</li> <li data-bbox="607 1921 1463 1957">-Parole and release should not be driven by who is under the gold dome</li> </ul> </li> </ul>

- The board is a political creature
- Parole really has 2 issues, Inside/Outside and Date Certain
- Date certain** won't take statutory change (BP60)

Part of the concept here was giving people full information and light at the end of the tunnel.

Deliverable – Implementation plan

Date – July 1st

- Inside/Outside** will take statutory change
- Deliverable – A recommendation can be made to this group in the next few months
- Inside/Outside is part of sentencing scheme, mandatory's, length, etc. It's blended with parole but more of a sentencing issue. This is a truth in sentencing issue. If we're going to take on sentencing issues, inside/outside has to be part and parcel.
- We need to get serious about this issue
- Deliverable- An analysis of the assets and liabilities of the inside/outside – a recommendation or no recommendation could be presented to this group by August
- Date – August 1<sup>st</sup>
- Need to look at the composition of this group, need some folks from time comp
- Who else needs to be at this table for this to get done?
- Possible overlap with Tom Clements group

- **Other Issues**

Escape JV – Judges often make sentences consecutive, finish DYC, then when you're done go to DOC. **Send this issue to the JV group**

Extraordinary risk crimes – Complicate sentencing scheme and result in unfair sentences.

We need to elimination and/or decreasing the number of extraordinary risk crimes.

Extraordinary risk is needlessly complicating – but not by itself. This should be part of the global reform

The problem here is it deals with violence, and it's hard to target alone without looking at the bigger picture view.

Deliverable – Doug will put something together by April

**Always keep in mind three criteria with our recommendations and proposals-**

Public safety, Recidivism reduction, and Cost savings

The group agrees that the Consolidation/Classification work should be # 1.

<p><b>Issue/Topic:</b> Task Force and Commission House Keeping Business</p> <p><b>Action:</b></p>	<p><b>Discussion:</b></p> <p>Jeanne Smith advises the group on the following:</p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> <li>• Some Commission members will be leaving in July, Judge Martinez has retired.</li> <li>• The CCJJ Chair and co-chair will be reviewing membership on task forces.</li> <li>• Do you want to continue, not continue, do we need more members, is there a voice not being heard?</li> <li>• There will be some changes going forward in the task force membership</li> <li>• Can we have an ex-offender on the commission, maybe as an at large?</li> </ul>
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<p><b>Issue/Topic:</b> Next Steps</p>	<p><b>Discussion:</b></p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> <li>• Germaine will put together the new priorities grid and get it out to everyone with dates for deliverables so we're all on the same page</li> <li>• Jason and JP give us feedback on follow up meetings with stakeholders (retailers, etc.)</li> <li>• A couple of the slides from Peg's theft analysis would be powerful to plug into a PowerPoint for retailers and legislators</li> <li>• Tim, Glenn and Denise get together, relook at the Date Certain recommendation, finalize and come up with an implementation plan</li> <li>• Jeanne and Pete H. to talk with Don Q. about including a DA (who ISN'T currently running a Diversion program) in the Diversion discussion with Mark's working group</li> </ul>
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**Future Meeting Dates:**

**Meeting Schedule 2012**

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