

## Comprehensive Sentencing Task Force

April 12, 2012, 1:30PM-4:30PM  
710 Kipling, 3<sup>rd</sup> Floor Conference room

### **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 (*non-voting member*)

Denise Balazic/Parole Board

Michael Dougherty/ Deputy Attorney General

Glenn Tapia/Division of Criminal Justice

Tim Hand/DOC Division of Parole

Dianne Tramutola-Lawson/CURE

Joe Cannata/Voices of Victims

Jeff Clayton/Colorado State Judicial

Jason Middleton/Public Defender

Judge William Hood III/Denver District Court

Judge Theresa Cisneros/4<sup>th</sup> Judicial District, District Court Judge

Steve Siegel/Denver District Attorney's Office

#### **STAFF**

Paul Herman/CCJJ consultant

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

#### **ABSENT**

Christie Donner/Criminal Justice Reform Coalition

Claire Levy/State Representative

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

Joe Pelle/Sheriff, Boulder County

Doug Wilson/State Public Defender

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

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Jeanne Smith welcomed the group and previewed the agenda. Jeanne introduced and welcomed Judge Cisneros as the replacement for Judge Gil Martinez.</p>
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<p><b>Issue/Topic:</b> Task Force Priorities and Timeline Review</p>	<p><b>Discussion:</b> Jeanne Smith reviewed the priorities grid that was established at the March meeting and reinforced the fact that the group needs to work at sticking to timelines as the Commission is planning to vote on recommendations in July.</p>
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<p><b>Issue/Topic:</b> Consolidation Working Group Update</p> <p><b>Action</b></p>	<p><b>Discussion:</b></p> <p>Jeanne Smith and Michael Dougherty have been working together on this topic with the goal of consolidating miscellaneous theft crimes. During the process Jeanne and Michael discovered that statutes based on value were easier to consolidate while those that were less straightforward presented more of a challenge.</p> <p><i>DISCUSSION POINTS</i></p> <p><b><u>Issues</u></b></p> <ul style="list-style-type: none"> <li>• Jeanne distributes a draft revision of theft statute 18-4-401. This first draft is an attempt at Collapsing theft, theft by receiving, rental property, theft of newspapers, etc.</li> <li>• The original goal was to collapse the theft statute by making it more clear and expanding different ways to commute value</li> <li>• Jeanne and Michael looked at statutes from multiple states and discovered no state has been able to solve this problem of misc. crimes</li> <li>• Jeanne and Michael went through an in-depth process trying to come to a simple conclusion, to no avail</li> <li>• Question – What’s the origin of theft of newspapers? This is a problem particularly during campaign season and in one instance someone in favor of one candidate took all the newspapers out of the stand so they would not be read by the public</li> <li>• Can you ‘steal’ something that should be free?</li> <li>• What about theft of other ‘odd’ items? Theft of farm equipment, etc., theft of or mutilation of library materials, theft by resale of a ski ticket?</li> <li>• This group did not address many of these as they were all very specific and odd in their own right with difficulty determining value</li> </ul> <p><b><u>What’s next</u></b></p> <ul style="list-style-type: none"> <li>• Although this work isn’t complete, this is a good measure of progress, something is better than nothing</li> </ul>
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- Should we check in with retail folks about consolidation (vs. classification)?
- This effort still needs to be presented to a larger group of folks, people on the retail side and law enforcement as well
- Jeanne suggests the group takes this draft home and think it over before the next meeting
- Let's vet legal language in this group and among law enforcement before we take this to retail organizations
- This is intended to collapse theft by receiving, theft of rental property, etc.
- Be sure to add a title to the top of this handout

<p style="text-align: center;"><b>Issue/Topic:</b> Classification Working Group Update</p> <p style="text-align: center;"><b>Action</b></p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Jason Middleton leads a discussion with the group around the Classification Working Group's endeavors.</p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> <li>• JP and Jason met with lobbyists from the retail council and showed them the proposed theft reclassification and asked for feedback</li> <li>• Jason has since sent out some follow-up emails with no response as of yet</li> <li>• How far should we go with vetting things through the retail council, etc. at this point? Is that more of a legislative issue vs. a Commission issue?</li> <li>• Jason forwarded the proposal to Lindy Frolich along with the presentation from the last meeting</li> <li>• Michael Dougherty shares that he has a couple of philosophical concerns regarding some of the levels in the proposal.</li> <li>• Michael proposes creating an F2 for theft of \$500,000 or higher to make sure high level ponzi schemes, etc. are accounted for.</li> <li>• Michael also expresses a concern that \$2k may be too high for the cutoff from M1 to F6</li> <li>• Michael presents a hypothetical forgery/theft issue – if someone forges a check that results in a theft of \$1900, the forgery is a felony and the money would be a misdemeanor, is this consistent for the original crime to be a felony and the secondary crime to be a misdemeanor?</li> <li>• When did we (as a state) go to \$1000 cut-off for misdemeanors? 2006?</li> <li>• How is theft determined? The retail price of an item.</li> <li>• Does the defendant end up getting punished for the mark-up of a retail item? Yes, the defendant is charged by the retail value of an item.</li> <li>• Has there ever been a \$500k theft alone case? Not sure.</li> <li>• These specific issues were all discussed pretty extensively in the fall</li> <li>• At that time everyone agreed we needed an F5, F6 and petty. The questions at that time were should there even be an F3?</li> <li>• The way the system is currently set up, there are plea cases from \$1,000-\$2,000.</li> <li>• When \$1,000 was enacted (in 2006) there was actually a push for a higher</li> </ul>
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level but retailers pushed back

- Last November when first considering these changes, this group assumed pushback on the \$2,000
- Anytime a large amount of money is involved there are going to be multiple victims and multiple counts and the ability to stack sentences – which is why this group stopped at F3's.
- There are major issues when we look at cases like theft vs. robbery
- The amount of theft committed in the white collar world has gone up, maybe this is not a bad message to send
- What did the retailers say about pushback in 2006 regarding the \$1000 vs. \$2000 issue? Don't know.
- The retail council was presented with this chart with the new level break-out. The retailers said 'Looks good initially but want to take back to others'
- Class 3 is 4 to 12 years presumptively, what do we accomplish with an F2 that we can't do already with what we have?
- As a practical matter, the F3 probably doesn't change how someone is sentenced.
- As far as robbery vs. theft – there's some value in discussing this.
- Robbery involves force and potential threat of violence
- Back in February, this Sentencing Task Force was on board with the classification scheme, but if there are legitimate questions now they should be discussed.
- The values in the revised chart are intended to reflect the fact that values have gone up in our society, \$1000 isn't what it used to be
- If it's a C.O.C.C.A. (Colorado Organized Crime Control Act) offense it would be an F2, but if it there's only one person involved it would be an F3. If the value is the same shouldn't the punishment be the same?
- The F2 would address the seriousness of white collar crimes
- Our intention is not to have a final vote today but to raise the issues, let people think about it, and take it back to stakeholders
- What about the line crossing from F6 to M1's? Does this make them eligible only, essentially for probation and county jails?
- As a practical matter, the \$2000 will be altered in the legislative process
- The retail council won't commit to a proposal until they see a bill
- As a comprehensive proposal this is pretty solid, the retail council won't commit until they see it – we should do what the Commission thinks is best policy and then float it out.
- CCJJ needs to make the best policy decisions without considering debates in the legislature

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

- This will be voted on at our next meeting (in May), assume there will be some amendments offered, have your positions ready

<p><b>Issue/Topic:</b> Parole Working Group Update</p> <p><b>Action</b></p>	<p><b>Discussion:</b></p> <p>Tim Hand addresses the group about the implementation plan for date certain release from Parole.</p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"><li>• Tim shares two pieces of email correspondence with the group</li><li>• The current statute says an inmate in our correction system is eligible at 19 months</li><li>• An inmate comes into DOC and spends whatever period of incarceration before becoming eligible for Comm. Corr. at 16 months. Somewhere at 16 months prior to their PED (Parole Eligibility Date) they can be placed in Comm. Corr.</li><li>• This sets a hard parole release date at 12 months for those who transition into community corrections</li><li>• Assuming an inmate does well, they get 120 days off, that makes them eligible (10 days a month good time)</li><li>• There are two moving targets with this. First, an offender knows they're coming out in 12 months, if they do well. If you make it to ISP that next date is 6 months out.</li><li>• Giving them a little more time on ISP would be of benefit of the offender</li><li>• The parole board retains the right to take away the date certain option</li><li>• Tim believes an implementation plan is doable by July</li><li>• If an inmate's original MRD falls before the revised out date, then they would obviously go with the original MRD</li><li>• When an inmate comes to DOC they have a projected PED that is not set in stone</li><li>• The PED date can move 'in' along with all the other dates dependant on good time.</li><li>• The offender goes to community corrections 16 months prior to PED. Can they be told at that point in time 'You're going to be paroled in 12 months' if there's not a parole violation? Yes</li><li>• The PED hits way inside the 16 month outset</li><li>• The two releasing authorities have worked independently until now, this is a chance for them to work more closely</li><li>• What's a 'sweet spot' in terms of length of stay as far as success in the community? Can we find this out?</li><li>• Say someone comes into Comm. Corr., struggles, spends 8 or 9 months before ISP, does the date certain go out?</li><li>• This does not apply to those who have to go to a full board hearing, correct? Yes, violent offenders have a different criteria.</li><li>• This includes vehicular homicide cases, etc.</li></ul>
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- What about people accepted into community, but denied by the parole board? If they come out at the 16 month window, spend 6 months in a halfway house and 4 months ISP, eligible for parole. The parole board would consider them and support that parole date at 12 months?
- This basically guarantees an offender’s parole after they’ve been in community corrections
- If they violate ANYTHING they don’t get the automatic parole
- This circumvents the sometimes emotional and not data driven responses that can happen with parole board members as far as “I didn’t like how they looked” decision making, etc.
- A lot of states do not have face-to-face hearings. There is no evidence that that criterion is any better or worse outcomes.
- The ‘automatic’ PED is not a guarantee but a possibility.

**What’s next**

- Tim believes an implementation plan is doable by July
- Need to pull together stakeholder feedback from Victims, Parole Board, I.T., Etc.
- This is not a recommendation as the recommendation has already been approved by the Commission (in 2008), it is about implementation of the recommendation
- Can this be looked at as a LEAN project as a July 1<sup>st</sup> kick-off date? Yes.

<p><b>Issue/Topic:</b> Diversion</p> <p><b>Action:</b></p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Mark Evans presents a PowerPoint and discusses the ongoing work regarding the study of Diversion programs and Diversion opportunities.</p> <p><i>DISCUSSION POINTS</i></p> <p><b><u>Issues</u></b></p> <ul style="list-style-type: none"> <li>• The goal of this work is ‘where are we at and how might we move forward’</li> <li>• The Task Force agreed in September to move this initiative forward</li> <li>• So far, the working group has met 5 times with a proposal sent to the working group members March 9<sup>th</sup></li> <li>• The proposal has not yet been approved or voted on, it was simply sent for consideration</li> <li>• Preliminary feedback is incorporated into this presentation, but not final</li> <li>• We want to make sure we have the right people on board as the discussion moves forward.</li> <li>• Proposed Diversion definition: A voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a prescribed set of conditions or complete a formal program designed to address, treat, or</li> </ul>
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remedy issues related to or raised by the allegation. Upon successful completion of the conditions or program, the charges against the defendant are dismissed.

- The beauty of Diversion is that the process provides education, reparation, and good solid hope that people can move forward without a lifetime struggle of a collateral consequences from a true conviction
- Diversion Goals are:
  - Preventing defendants from committing additional criminal acts
  - Restoring victims of crime
  - Reducing the number of cases within the criminal justice system
- The proposal at hand addresses the rare reasons that there are not many diversion programs out there now
- The Basic Proposal is:
  - Defendants can be considered at any point before plea or trial
  - Appropriate defendants enter an agreement with the DA
  - A statement of fact can be completed
  - The agreement is filed with the court, and the judge orders the defendant to the supervision of a supervising agency.
  - Outcome depends upon compliance
- The DA could consider someone appropriate for diversion for all traffic, petty, misdemeanor cases?
- This doesn't force DA's to do anything, just offers the option
- Could this live in the probation department?

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

- Do we have the right people at the table? Jeff Clayton will join this group
- We need a DA who doesn't have an existing diversion program at the table
- We're looking at 2013 legislation at the earliest
- We need to work with existing resources and prosecutors to make this happen
- There are a lot of people out there who don't need a lot of supervision resources.
- How about inviting a private probation provider to attend the meetings and maybe give some feedback about having the supervision done privately
- Who would this benefit? Non-violent felony offenders.
- The first judicial requires a guilty plea to enter program
- The 17<sup>th</sup> runs a pre-plea arrangement, more of a true diversion program
- In Boulder it's a one person shop with a lot of volunteers
- Be careful when looking at existing diversion programs, as many of them are based on a concept that's very old in terms of who the individual is and what you need to do with them. It's a different playing field now.
- Need to rethink who goes in and how you deal with people.
- Revisit as this develops further

<p><b>Issue/Topic:</b> Next Steps</p>	<p style="text-align: right;"><b>Discussion:</b></p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> <li>• Voting on May 10<sup>th</sup> regarding Consolidation and Classification</li> </ul>
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**Future Meeting Dates:**

**Meeting Schedule 2012**

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