

Comprehensive Sentencing Task Force

May 10, 2012, 1:30PM-4:30PM
710 Kipling, 3rd Floor Conference room

ATTENDEES:

CHAIR

Jeanne Smith, Chair/Division of Criminal Justice

TASK FORCE MEMBERS

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

Jason Middleton/Public Defender

Judge Theresa Cisneros/4th Judicial District, District Court Judge

Charles Garcia/Denver Crime Prevention & Control Commission

Claire Levy/State Representative

Pete Hautzinger/DA 21st Judicial

Joe Pelle/Sheriff, Boulder County

Doug Wilson/State Public Defender

J.P. Moore/DA 17th Judicial

STAFF

Paul Herman/CCJJ consultant (phone)

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

ABSENT

Steve Siegel/Denver District Attorney's Office

Judge William Hood III/Denver District Court

Jeff Clayton/Colorado State Judicial

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

Denise Balazic/Parole Board

Christie Donner/Criminal Justice Reform Coalition

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith welcomed the group and previewed the agenda.</p>
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<p>Issue/Topic: Consolidation Update</p> <p>Action</p>	<p>Discussion: Jeanne Smith and Michael Dougherty have been working on the Consolidation recommendation. Jeanne presented the revisions to the group.</p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> • Subparagraph one – should we change ‘knowing’ to ‘or believing’ the property to be stolen? • The current language in 18-4-410 states – ‘a reasonable person knowing or believing the thing of value has been stolen’. The Johnson case said knowing and believing is okay but the ‘reasonable person’ piece is unconstitutional. • Change to be made regarding this • As far as subparagraph 1 (e) – Did we talk about grace period on this? This one doesn’t change current law, just moves it into this section • What about subparagraph 2 regarding ‘taking free stuff’? If it’s offered for free, no intended individual is the recipient • The newspaper theft statute falls under this, and Goodwill has a similar issue with items being stolen from locations and the warehouse • Can this be written to deal with ‘charitable contributions’? • How does this language on (2) solve that problem? • Is it cleaner to just delete subsection 2, and recommend that the newspaper statute be abolished • Motion - Strike the language and add a paragraph saying ‘The task force recommends removing the newspaper theft statute’. • Do we need further discussion about the Goodwill type of situation? • The issue around value is one of the things we struggle with all the time. • Is this more of a signage issue? Does a sign outside Goodwill saying ‘items removed would be subject to theft, trespassing, etc.’ cover it? • The question is often ‘can we prove value or can’t we?’ • If it’s in the donation box, it belongs to Goodwill • This discussion brings up the whole problem of assigning value and depriving someone of a product • Between theft, criminal mischief and trespass – is there a factual scenario that could not be covered in another criminal code? • Under a situation where an item is left outside, setting value aside, is that something we want to put into the criminal code? • This feels like a broad response to a very narrow problem
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What's next

- The consolidation recommendations stands as written in the hand out with two exceptions –change 'knowing' to 'knowing or believing' and take out subparagraph 2 in the middle of the page.
- Motion moved by Charlie Garcia, seconded by Jason Middleton. All in favor. Changes to be made and this will be the first recommendation to send to CCJJ in June

Issue/Topic:
Classification Update

Action

Discussion:

Jeanne asks the group to pull out the old and new theft level analysis created in March and try to come to a final recommendation.

*DISCUSSION POINTS***Issues**

- Michael Dougherty has recommended we add an F2 for 500,000 and up
- One thing that is problematic here is organized shoplifting. Groups will hit retailers all in the same day, also multi-jurisdictional, etc.
- We can also use COCCA (Colo. Organized Crime Control Act) in theft?
- The revised grid is already a compromise
- If we're talking F2, we need to talk about equivalency
- How many times do we see the F2, \$500,000 case without multiple counts and multiple victims? We can achieve the same sentencing goals without adding the F2.
- We have had 1 person steal over \$500,000. The F2 would symbolize the amount of money stolen
- What we're doing is trying to break the theft crimes down with gradients. It's intellectually consistent to add a more aggressive F2 category at the top if we're adding F5's and F6's at the bottom.
- The fact that this amount is so devastating to the victim warrants something different
- The difference with this is that even though it is a class 2 felony, a F2 theft is still probation eligible and distinguishes it from a violent felony
- If there is fraud involved does that compound it? Are there other ways to distinguish this?
- What happens to the \$500,000 people that we can't accomplish with the F3? F2 is so often a 'physically hurt' level of crime
- With an F2, the victim could appear in court and argue their case
- So far, offenses like theft have not had a violent component (like other F2's). What happens with all the other F2's if theft is an F2? Where does the gang rape situation go? This would be nonviolent F2 and therefore distinguished.
- Also, F2 throws this into the habitual criminal category
- The goal is to come up with a theft level that fits our times. And we need to recognize these thefts do now happen at extreme amounts.

- There's a difference between a \$200,000 theft vs. an \$8M theft
- Doug makes a motion to move this forward for a vote and then to the Commission
- People are struggling with \$100,000 vs. a higher end offense.
- Should the F4 go higher and the F3 be reserved for higher amounts?
- Glenn ran this by folks in community corrections, the issue for the providers is changing when felons become misdemeanor and prison ineligible, they're also community ineligible
- How many community corrections eligible folks would this affect? About 100 per year.
- Moving this from district court to county court and putting this now on county jails and county courts – what's the impact?
- There is a motion on the floor – we can vote on the consolidation as a whole first or retract the motion and vote on the F2 addition
- Doug tables his motion
- Michael D. proposes adding an F2 for \$500K and up
- Should we rerun the numbers (Peg's numbers) at \$500k or more?
- Michael D. proposes raising the F2 amount from \$500k to \$1 million as a friendly amendment with the concurrent change that the F3 would require
- Vote - 8 in favor, 5 opposed, the change to add an F2 passes
- Motion to approve the entire package as submitted, consolidated levels with change to F2
- Unanimously approved

What's next

- This will be presented to the CCJJ for a preview in June and a vote in July.

<p>Issue/Topic: Extraordinary Risk Update</p>	<p>Discussion:</p>
<p>Action</p>	<p>Doug Wilson presents his findings on Extraordinary Risk. Peg Flick worked with him on the analysis. Doug and Peg review the handout.</p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> • Table 1 shows extraordinary risk crimes as the most serious charge, and 65% of these are for drugs • Doug asked Peg to break that down by race – 15% are African American compared to 4% in general population in the state. • Because there's an overlap between extraordinary risk and exceptional circumstances, Aggravated Robbery was backed out from the analysis, resulting in 965 offenders with extraordinary risk crimes as the most serious conviction charge sentenced to DOC (the number in table 4) • 783 offenders were sentenced presumptive, or lower

- 85 of the 965 were sentenced around the presumptive
- Of the 965 people in questions (after backing out Agg. Rob) – there were 97 people sentenced higher than the presumptive but in the extraordinary risk range.
- All of this info can be found in table 5 and also figure 1
- Figure 1 shows 19% of offenders sentenced above the presumptive range
- Table 6 shows 'Reverse MOR' numbers
- Of the 732 sentenced within the presumptive range.. 65% are white
- In table 7 – we take those 732 and look at the most serious charge and the biggest category is for drugs (87%)
- If one of our goals is simplification – we have 32 people a year, in this study, in just these 3 offense categories
- If we're looking at simplification, are 32 people a year above the presumptive?
- Colorado statute has crime of violence, presumptive, aggravated, extraordinary circumstances, at risk adults, etc.
- Doug volunteered to start looking at this to really dig into all the different layering and check how this plays into revisions regarding sentencing.
- Child abuse is not a crime of violence, the way you get there is by piecing different statutes together.
- If we were to designate child abuse as a crime of violence we could feasibly back it out of the extraordinary risk category.
- Eliminate extraordinary risk crimes and add child abuse into a crime of violence – is this a proposal?
- Can the drug grid people take care of removing this – and let us have the crimes of violence discussion? Look at the numbers, think about the numbers, the numbers for 'outside the presumptive range for stalking' is 4 people, child abuse is 8. Can the drug grid people take up the majority of this issue?
- What is the history of extraordinary risk sentencing?
- Extraordinary risk came in before '97 – in the early 90's. There were a couple of headline cases that couldn't 'get there' with crime of violence
- Have we used this because we don't have the proper tool for child abuse cases?
- What would the fiscal note be to add child abuse to crime of violence and taking it away from drug?
- Prosecutors have the option to charge an F2 for child death, if that were built into the statute – that's another option short of going to an F1.
- We have to consider ranges and 'mandatory' that will wreak havoc with the fiscal note process.
- Should we look at criminal mischief crimes now rather than later, to look at value rather than going into violent?
- Criminal mischief for all the value based crimes

- Let's work on other value based offenses after getting the theft grid out of the commission.
- Criminal mischief in Denver is a big domestic violence issue

What's next

- What other info would be helpful at this point to move us forward?
- Part of the previous suggestion was to get rid of aggravated ranges but enlarge the presumptive ranges?
- We need a similar breakdown on minimum mandatory and crimes of violence
- Can we get info on why this didn't go forward last time (during the last Sentencing TF0? We have greater experience now, we have better data now, there's been some evolution with this group that really points to some things you don't see when just having a general conversation
- In the past we had broad numbers but nothing targeted.
- The ability to step back and say what's the different angle here, what's the different lens to look through
- One of the previous stumbling blocks was not just decreasing the low end of ranges but increasing the top end
- It's worth raising this issue again.
- Have Peg do the same analysis for COV's and minimum mandatories
- Make minimum mandatories as close as possible to apples and apples
- The point is we have multiple structures in place right now and we want clarity across the board
- Can we create only one place to aggravate and one place to mitigate?
- Would this also encompass vulnerable groups, etc?
- Hypothetically speaking, there may be one statute that lists the crimes that will go to aggravated ranges. Let's eliminate, rearrange and consolidate.
- Can we figure out if sentences changed pre '93 and post '93?
- In the last three years, only 10% went out of the presumptive range.
- There was an analysis in the early 90's to see where judges were sentencing. Unfortunately we're not able to do that again because those data are long gone. The data available now only goes back to '98
- If we need to know where judges are landing in sentencing ranges let's revisit.
- Let's just take the current chart and move it to COV and mandatory
- What about check writing – Didn't Jason's memo already break this out?
- Peg and Doug will go back to the drawing board on this and present more numbers in June

Issue/Topic: Next Steps	Discussion:
	<p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> • Peg to rerun numbers for next meeting • Germaine to bring revised CCJJ proposals for final approval

Future Meeting Dates:**Meeting Schedule 2012**

June 14 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
July 12 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
August 9 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
September 13 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
October 11 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
November 8 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room
December 13 th	1:30pm – 4:30pm	710 Kipling St., 3 rd floor conference room