

Comprehensive Sentencing Task Force

October 11, 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

Dianne Tramutola-Lawson/CURE

Joe Cannata/Voices of Victims

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

Pete Hautzinger/DA 21st Judicial

Doug Wilson/State Public Defender

Judge William Hood III/Denver District Court

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

Christie Donner/Criminal Justice Reform Coalition

Jason Middleton/Public Defender

Claire Levy/State Representative

Joe Pelle/Sheriff, Boulder County (phone)

Charles Garcia/Denver Crime Prevention & Control Commission

J.P. Moore/DA 17th Judicial

Glenn Tapia/Division of Criminal Justice

STAFF

Paul Herman/CCJJ consultant

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

Jana Locke/CDPS

ADDITIONAL ATTENDEES

Dan Rubinstein/21st Judicial District (*phone*)

ABSENT

Tim Hand/DOC Division of Parole

Denise Balazic/Parole Board

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith welcomes the group and previews the agenda.</p>
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<p>Issue/Topic: Extraordinary Risk Update</p> <p>Action</p>	<p>Discussion: Doug Wilson reviews the revised Extraordinary Risk proposal.</p> <p><i>DISCUSSION POINTS – EXTRAORDINARY RISK</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> • The Extraordinary Risk recommendation has been revised after feedback from the CCJJ and is up for a vote again in the task force meeting today • The Ex. Risk working group consisted of Doug Wilson, Theresa Cisneros, Michael Dougherty and Charlie Garcia. • There was pushback from sheriff’s regarding the misdemeanor portion of the recommendation approved last month • Due to that conversation, some tweaks were made • The new proposal still includes moving 2 child abuses categories and one stalking category into COV • It includes eliminating Ex. Risk Completely and using the Ex. circumstances range • The proposal moves the minimum mandatories to the bottom of presumptive range • The proposal doesn’t change discretionary aggravation • Basically, we’re striking through Ex. Risk and leaving the rest of the ranges the same • Ex. Risk misdemeanors will still remain at 6 months to 24 • This is a compromise on all sides • This meets our goals of simplifying the sentencing code • Mandatory aggravators would stay at midpoint of the presumptive • JP voices concerns about COV being part of this proposal and part of reducing the maximum • Doug says that he had previously talked to Raynes, Dougherty and Pete – they were all in agreement on this. • Pete clarifies that he thought there was going to be a separate COV range • Look at the chart on page 3 of the recommendation – is there a way to know how many of these were affected? • These numbers don’t apply to the COV range • What was approved here at the task force last month and presented to the Commission included keeping the top end of the agg. Range where it was but eliminating discretionary aggravation
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- Then there were conversations about keeping discretionary aggravation in but bring down the top of the range
- It's important to move this recommendation through as this is a great area to work on simplifying the sentencing code
- Moving the couple of crimes (child abuse and stalking) into Crimes of Violence was a good thing
- What we're left with was the recommendation we voted on which was to leave the ranges and get rid of discretionary aggravation.
- Do we want to modify that?
- Do you want to address the concerns, modify the recommendation? Or if we do nothing the recommendation stands as it was at CCJJ.
- To change last month's recommendation we would need some different action today.
- COV is not included in this number - How long would it take for Peg to come up with COV numbers?
- This compromise eliminates the misdemeanor issue and puts discretionary aggravation back in. However, on F3's and below it takes away the upper range on Ex. Risk and takes it down to the regular aggravated range.
- How about this proposal - Child abuse and stalking go to COV, Minimum mandatories go to the bottom, eliminate ex. risk sentences and put discretionary aggravation back in
- The question now is whether or not folks want to support reducing the top end of the aggravated range for COV's
- Look at the graph on page 3 or the data analysis prepared by ORS for the task force on May 22, 2012. If we go with the proposed range we would be affecting the Exceptional/Extraordinary column or 'tan bar' of people (117 people were above the ex. Circumstances ex. Risk). That would be 117, plus 5 above that, out of 1789 people.
- That's 122 violent criminals whose sentences would've been reduced (possibly)
- However, there are challenges when it comes to figuring out whether there were multiple charges
- The data used here looks at top charge, but not the other charges.
- This change would affect less than 7% of the cases.
- Doug states he was under the impression that this compromise met the concerns of Pete and Judge Hood
- This compromise aims to make the sheriffs happy, makes the prosecutors semi happy and the bench semi happy.
- Can we go with the proposed change and revisit COV at another time.
- We need to simplifying the criminal code
- Judge Cisneros proposes taking the recommendations Doug made today, with the exception of changing the crime of violence top end.

Leave in discretionary aggravation, take away extraordinary risk, and reduce the minimum sentence on the crimes of violence to mandatory minimum and don't touch the misdemeanors. Plus still move Child abuse and stalking.

- Let's just table for another day the issue of reducing the top end of the COV range
- Basically, this would be Doug's proposal minus COV
- There's a motion on the table to amend the current recommendation as made to CCJ by getting rid of the language regarding misdemeanors, which would leave Ex. Risk misdemeanors and by putting discretionary aggravation back in. It's basically a motion for two amendments.
- We would be withdrawing CS5 from last time
- IF COV drops to the minimum, can we bring aggravator to the bottom of the presumptive. If we're moving mandatory to the minimum in COV don't we want to drop the mandatory aggravator as well?
- The misdemeanor portion (recommendation CS-5) and the discretionary aggravation should stand alone.
- Christie D. motions to change mandatory minimums on mandatory aggravators to the bottom of the presumptive range. Seconded by Pete. This gives the judge the discretion to go lower. All you're getting rid of is exceptional mitigation on the bottom end. Just lowering the bottom sentence. Motion is for status aggravators, sinking 8 and 9 together (from the statute).
- This does away with the midpoint and basically gives the judges more ability to go lower.
- The Drug Task Force has adopted the drug grid where the aggravators stay the same
- The Drug TF members agreed to the numbers with the understanding that aggravators remain the same
- The way the drug grid was adopted it has a presumptive range
- Status aggravators go to the midpoint; we're just changing 8 to make it like 9.
- Christie's motion is to take 18-1.3-401(8) amend the language where it says if the court sentences to the DOC it will change from midpoint of the presumptive range to the bottom of the presumptive.
- This is directly related to what we've already done, we processed this more quickly – the compromises that were made with everyone on the first, hopefully we can get both passed.

Vote on the motion to maintain the original recommendation with the exception of leaving in discretionary aggravation, therefore keeping the higher end COV's in place.

	<p>Yes/11 No/3</p> <p>Vote to take the statute that indicates “sentence in the midpoint of presumptive range” and change to bottom of the presumptive range (take 18-1.3-401(8), sinking 8 and 9 status aggravators together)</p> <p>Yes/14 No/0</p> <p><u>What’s next</u></p> <ul style="list-style-type: none"> • This revised recommendation will be presented to CCJJ tomorrow for a vote.
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<p>Issue/Topic:</p> <p>Diversion Working Group</p> <p>Action</p>	<p>Discussion:</p> <p>Mark Evans presents his Diversion Proposal Update and Recommendation/PowerPoint to the group for discussion and a possible vote.</p> <p><i>DISCUSSION POINTS</i></p> <p><u>Issues</u></p> <ul style="list-style-type: none"> • The Diversion working group consists of Mark Evans, Judge Hood, Eric Philp, Dan Rubinstein and Joe Pelle • This proposal has the support of everyone in the working group • Today’s focus is to address the feedback from the last meeting • This revision makes for a much stronger proposal • Feedback regarding the prior version was that there was too much emphasis on post-filing and court-involved diversion. Also that the timeframe for diversion was too long and revocation and record sealing procedures were unclear. There was also a call to reinvest savings from theft reclassification and there wasn’t consensus on diversion eligibility for DV offenses. • Regarding the emphasis on post-filing diversion, subtle changes have been made to the language in the proposal to indicate that charges do not need to be filed. • The working group has also included a statement that Diversion programs may include, but are not limited to, programs operated by law enforcement upon agreement with a DA, DA internally operated programs, Programs operated by other approved agencies, RJ programs or supervision by the probation department.
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- This revision also includes a 4th goal of Diversion which is 'Limiting defendants penetration into the criminal justice system'
- The timeframe for Diversion in this proposal now stands at a two year maximum for any offense.
- As far as revocation procedures, the DA initiates by filing charges or giving notice to the court of intent to go forward. Within 14 days of first court appearance defendant can request a hearing to contest. The hearings are similar to probation revocation proceedings. If the court finds a violation, or no hearing is requested, the prosecution continues. Finally, if no violation is proven the court dismisses the case without prejudice.
- The basic framework is the same as what you saw in September, this just clarifies procedure
- In regard to record sealing – hoping to create a system by which records can be sealed at any point
- For divertees who don't ever enter into the actual court process it's difficult to seal
- There are too many different scenarios of how people may enter into this contract. The group decided the simplest way was to use current record sealing statute. 'Shall' language shall apply. Other than that record sealing remains the same.
- Agencies, CBI may have a record noted, but the court won't
- This version also includes the statement "To further encourage the expansion and use of diversion programs, CCJJ recommends that cost-savings associated with FY13-CS#1 (regarding the reclassification of various theft offenses) be used for that purpose consistent with this recommendation".
- What happens with inability to pay? Does that count as a revocation?
- The way this is set up right now is parallel to deferred prosecution.
- If restitution is the reason someone doesn't complete, the way it is set up allows an extension which allows for ability to pay.
- Are we using Diversion to collect a debt?
- This is all based on incentives to seal your record, not have a court case, etc. Collecting a debt for a victim. If this allows the victim to be restored and keep the case out of court.
- Page 4 clearly states that Diversion may extend for a year only, if defendant shows they will be able to pay.
- The alternative to this is that the DA could revoke; we would rather allow an extension of time than having the DA revoke.
- If one of the primary goals is restitution, that should be the first priority, classes, etc. should be secondary.
- These are low risk people, likely to be employable, the whole purpose is to keep the conviction off their records
- One thing we tried to get away from was a standard list of

conditions.

- Currently Diversion tops out at 2 years on this current proposal.
- As far as domestic violence eligibility - Kate Horn Murphy distributed the proposal to DV groups to get feedback and there was pushback regarding this DV issue
- The position of the working group now is that if for any offense Deferred Prosecution wasn't available for DV before, then it won't be available here.
- The proposal maintains the status quo that anything you couldn't do under deferred pros. can't be done here either.
- Nobody has discretion to offer anything less than deferred sentence at this time, this would be the most we can do at this point.
- Can we revisit the DV issue possibly down the road? Can we put a placeholder clause in here now regarding DV?
- Joe says he doesn't want to see this proposal DOA because we try to rush this through. We need to forward this the way it is, then work to amend it down the road.
- Let's move a proposal through now that will pass as is
- Let's be clear that we don't want language that CCJJ *opposes* allowing Diversion for DV.
- If the DV statute were changed, this would change too.
- A deferred prosecution is a Diversion by definition
- Victims groups don't take deferred prosecution seriously. The best way to give Diversion credibility is get this through as is, show victims groups we're doing something to restore victims, and then start the conversation about DV down the road.
- Deferred prosecution is a form of Diversion. This replaces deferred prosecution.
- How do we capture the hope that we keep talking about this (DV)?
- This recommendation needs to be black and white. As part of the discussion at CCJJ we can talk more about this.
- Should we leave the recommendation the same but include a paragraph in the first explanatory part that we would like to leave open the possibility of exploring something down the road?
- We're voting this as is but the group believes there needs to be future discussion around the DV issue.
- The Drug Policy task force yesterday passed a recommendation that would supply funding for Diversion.
- Could the theft AND drug proposals supply funding here? Cost savings in theft should be enough to fund Diversion.
- The cross reference to this is in the drug recommendation. Should there be a cross reference here, too?
- The drug savings have been identified to fund treatment, the theft savings will help fund Diversion

	<ul style="list-style-type: none"> • CCJJ bills that cost money get paid for by CCJJ bills that save money <p>Vote taken to approve the Diversion proposal - Yes/14 No/0</p> <p><u>What's next</u></p> <ul style="list-style-type: none"> • Present preliminarily to CCJJ tomorrow for a preview, then in November for a final vote
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<p>Issue/Topic: Next Steps</p>	<p>Discussion:</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> • The group discusses a proposal to change the date/time that the task force meets starting in 2013. Meeting on the Thursday before CCJJ proves to be problematic • This discussion will continue at a later date
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Future Meeting Dates:

Meeting Schedule 2012

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