

Comprehensive Sentencing Task Force Colorado Commission on Criminal and Juvenile Justice

Minutes

January 10, 2013, 1:30PM-4:30PM
710 Kipling, 3rd Floor Conference room

ATTENDEES:

CHAIR

Jeanne Smith, Chair/Division of Criminal Justice

TASK FORCE MEMBERS

Dianne Tramutola-Lawson/CURE
Joe Cannata/Voices of Victims
Mark Evans/ Public Defender's office (*non-voting member*)
Charles Garcia/Denver Crime Prevention & Control Commission
Glenn Tapia/Division of Criminal Justice
Tim Hand/DOC Division of Parole
Denise Balazic/Parole Board
Norm Mueller/Private Defense Attorney

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

ABSENT

Christie Donner/Criminal Justice Reform Coalition
Jason Middleton/Public Defender
Claire Levy/State Representative
Joe Pelle/Sheriff, Boulder County
Judge Theresa Cisneros/4th Judicial District, District Court Judge
Judge William Hood III/Denver District Court
J.P. Moore/DA 17th Judicial

| Issue/Topic: | Discussion: |
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| Welcome and Introductions | Jeanne Smith welcomes the group and previews the agenda. |

| Issue/Topic: | Discussion: |
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| <p>Extraordinary Risk recommendation follow-up</p> <p>Action</p> <p>Jana working with drafters to clean up language</p> | <p>A question has been raised about the Extraordinary Risk recommendation that came out of the Sentencing task force and was approved by the Commission. From August to October (2012) there were a handful of different versions discussed by both groups.</p> <p>There was a discrepancy between the final recommendation approved by the Commission and the verbiage used in the initial bill legislation. Jeanne led a discussion with the group about what happened.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • During the recommendation discussion the task force talked about moving child abuse and stalking to COV, but the group did not get into the details about the variations of child abuse • The ER recommendation and bill draft include only knowing or reckless child abuse causing serious bodily injury or death. Other forms of child abuse are not referenced. • Those forms of child abuse are covered under a different section in 801 with mandatory sentencing different from the new range. Do we have an inconsistency between 801 and the new COV range? • If this legislation goes through with just 'knowing or reckless child abuse' it would be inconsistent with the adult statute that is crime of violence (18-1.3-406) • Task force members did not talk about this in detail when originally working on the recommendation • In a conversation with Doug this morning, he said that this was indeed parsed out in the small working group but did not come to the whole task force for clarification • The detailed conversation never occurred at the task force level or with the Commission as a whole - therefore we wanted to bring it back to this group for a discussion • There are sections in the draft that refer to knowingly or recklessly causing death, and knowingly or recklessly causing serious injury • The distinction made in the working group was to take child abuse out of Ex. Risk, but pluck the most egregious ways that crime can be committed out of child abuse and shift it to crime of violence. Mark's understanding is that the distinction was drawn based on the mental state of the person committing the act. • The knowing/reckless has been shifted out of Ex. Risk and into COV, but the negligence resulting in death is a class 3 felony and does not shift to COV • The definition of 'criminal negligence' is that it results in someone being |

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| <p>Issue/Topic: (cont'd)</p> <p>Extraordinary Risk recommendation follow-up</p> | <p>less culpable than 'knowing/reckless'</p> <ul style="list-style-type: none"> • The other thing to keep in mind about child abuse is that there's not another crime that combines 'knowing/reckless'. • There's a logical reason to distinguish negligence from COV but how do we get back there? • Did we also separate just a piece of stalking? Yes, just felony stalking was taken out • There are other things in the bill draft that don't address the intent of this group • Jana reports that a revised draft came out earlier this week and none of the COV ranges had been reflected in the previous draft • Also – Jana asked the drafters to put back in 18-3-602 paragraph 9 which shouldn't have been struck. • The drafter also struck invasion of privacy for ER stalking • Mark points out that in the current bill draft, there's a list of offenses that if the DA charges, and it was committed with weapon, you have crime of violence. The other way to get to that range is through per se. • The COV statute includes possession of a weapon. COV also means unlawful sexual and you get that range automatically • Wasn't the idea to put the discretion in the hands of the district attorney? • Because the two Child abuse offenses we're talking about already include elements of physical injury they are automatically subject to the COV sentencing range • In the end, we never discussed whether COV would have to be separately charged to get to the new range. • Weren't we trying to add the two child abuse and stalking to the existing list? • By doing away with the midpoint and keeping the low end - the discretion became necessary. Now what we're dealing with is changing the upper range. There was never any discussion about separate charging of COV. • Knowing and Reckless child abuse injury and Knowing and Reckless ending in death and stalking should be added to list of COV • We would be taking the crimes that are no longer extraordinary risk crimes and adding them to the list of COV • Instead of having it as a separate paragraph, it would be listed as (2)(A)(II) (K), (L) and (M) in statute. • This is consistent with what the group talked about. • On page 3, line 15 of the current bill, instead of 2 (b) (V), COV also means – we're just taking 2 and adding (K) stalking, (L) child abuse and (M) other child abuse • The task force agrees that this is consistent with the original intent of the group • Status crimes on parole and probation midpoint went away (Charlie) • Do away with the midpoint on status crimes • If you're on probation you no longer go to the midpoint? • Charlie's concern - elimination of a mandatory minimum • As far as drug modifications, we're watching to make sure that by accident we haven't caused a conflict with something the drug grid working group worked on |
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| <p>Issue/Topic: (cont'd)</p> <p>Extraordinary Risk recommendation follow-up</p> | <p><u>What's next</u></p> <p>Jana will work with drafters on these clarifications</p> |
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| Issue/Topic: | Discussion: |
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| <p>109 Habitual Offenders follow-up</p> <p>Action</p> <p>-Tim check with DOC -Mark and Dianne T-L to write up draft recommendation verbiage for next month</p> | <p>Follow-up on the issue raised in November regarding the 109 Habitual Offenders not eligible for earned time.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Peg explains her data analysis regarding this issue and hands out a print out with graphs and tables • A letter from DOC showed 109 offenders fall into this category • In looking at this group 28 offenders failed parole and came back so we ignored those • That left 76 people • The first four tables show age, race and ethnicity and most serious crime • Table four is the crime they're currently incarcerated for • The next table shows the time that's been served • The bulk of this is 19-26 years served • Table 5 shows the time served and where DOC has estimated how much earned time • For example, the person who served 32 years could've earned 9 years • 14% of this offender group had no earned time • This removes any segregation time or COPD time • This information clarifies some of the questions but doesn't change the basic discussion of whether or not there should be some sort of remedy for persons who were convicted pre-93 • There was also a discussion about retroactivity and there's a letter from the AG's office that says it should be acceptable • The PD's office doesn't have a concern with retroactivity – all you're really affecting is parole eligibility date • Doesn't force the hand of the parole board or anything in DOC • There was a discussion about how to retroactively award earned time • If you look at COPD's and took that time, you would presume that otherwise they would've gotten 10 days a month, minus code violations, and this should be an easy and objective way to calculate in DOC • There's so few of these cases it shouldn't present a big problem for the parole board • Tom Clements also seems receptive to the idea of this |

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| <p>Issue/Topic: (cont'd)</p> <p>109 Habitual Offenders follow-up</p> | <ul style="list-style-type: none"> • What about victims? This will re-victimize them. If they've been told they don't have to deal with this for many more years and then they hear it is coming up, it could really traumatize them. • We don't have any law enforcement reps or prosecutor reps here today to get their input • The only way to get this in this session is with late bill status • Let's put this off for a month. Tim needs to recheck with DOC also. • There's only one offender this would affect this year anyway, the next person is four years away • Let's do this right rather than do this quickly • Motion to table this issue. Let's not rush this through. Can we talk about this at the next meeting? • Mark will work of verbiage with Diane T-L • This is tabled to the next meeting <p><u>What's next</u></p> <p>-Tim check with DOC</p> <p>-Mark and Dianne T-L to write up draft recommendation verbiage for next month</p> |
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| Issue/Topic: | Discussion: |
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| <p>2013 Goals/Direction/Action plan</p> <p>Action</p> | <p>Paul talks to the group about the exercise the task force participated in during the November meeting to prioritize goals for 2013.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • There were quite a few issues this group discussed taking on during the November 2012 meeting. • One of the possible areas of interest included studying Community Corrections, which started 30 years ago in a completely different scheme |

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| <p>Issue/Topic: (cont'd)</p> <p>2013 Goals/Direction/Action plan</p> | <p>than today.</p> <ul style="list-style-type: none"> • Do we want to talk about standardizing how community corrections boards operate? For example attorneys can attend the board in Boulder but not in Denver • Rep. Levy brought up the criteria for decision making for boards, etc. • This was part of the discussion of where do we want to go now that we've wrapped up some of our non-value based work • The Governor's Comm. Corr. Advisory Council meets every quarter, maybe we can work together with them • The issue of standardization has been raised here and at the legislature. • The Comm. Corr. Advisory board should want to know that these issues are out there • There's a lot of discussion about community corrections here and at the capitol • At the conclusion of the last meeting, we asked what is it about community corrections, how did it look then (30 years ago), how should it look now? • It's hard to have state-wide consistency with local control • When the parole board says no but the community corrections board says yes, that's a problem. And in reverse, when the PB says yes and the CC board says no • Where does this fit as far as priorities for this group? • This group also talked about continuing the work regarding value based crimes • As we think about issues that need to be addressed and look at finalizing a non-violent sentencing scheme and having recs ready by the fall and if we think about how we address the process we used with theft – what was effective, what was ineffective, what have we learned • As we try and approach this, what other major issues do we need to address • The value-based discussion was easy, consolidation was harder – we spent a lot of time on consolidation for what we got out of it. • As a task force, should we factor in political realities or not? • Should we push what we know is right? Or what we know has a chance? • <i>In the parking lot- Habitual criminal</i> • Let's distinguish crimes against property, crimes against person • A major touchstone for this group in discussing a non-violent scheme is restoration and recidivism reduction • The purpose we're trying to achieve with non-violent offenders is different than with violent offenders • The criminal code helps you come up with a number, but if you rewind back about a year – we talked about what should sentences <i>look like</i> • We had a lot of discussion about whether it was a worthwhile effort to look at different options and different offenders • PSIR was one of the items as well • The reality is we looked through a lot of different state sentencing structures and it could be a lot worse than it is right now • Recreating a new grid for non-violent just for the sake of doing it may not be in our best interest • We're looking at restoration and recidivism reduction, that's what the end |
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| <p>Issue/Topic: (cont'd)</p> <p>2013 Goals/Direction/Action plan</p> | <p>number ought to be based on</p> <ul style="list-style-type: none"> • In trying to set out a comprehensive look at sentencing, the focus was to look at those items, rather than the six or seven in statute. • This group has the same ability to take non-violent and violent and establish what the drug group did • Drug group may have had an easier time coming up with the same common thread – it could be harder with this group • Targeting the crime can be less effective than targeting the criminogenic need of the individual • On the N-V if you're clear about what you're trying to accomplish, it's going to be easier. • When we look at additional value-based, are you looking at the same drivers? • What about public safety and public education? The public has been educated on not putting addicts in jail, but what about the non-violent folks? What about public education around this. • Do we need some education among ourselves about the literature out there about public opinion and alternative sentencing • When we talk about what is the driving goal of the task force, if it's recidivism reduction we might be going one way, cost savings may take us in another direction, and simplification could be another direction • We'll need to come up with a way to compare a non-violent crime with other non-violent crimes when the value is not obvious (for example societal damage from something like ID theft) • This group should do what we think is right, and then try to sell it, not work on what's just politically feasible • Peg can pull data regarding sentencing practices, can we look at how sentences would play out with changes • Kim should present her "Who goes where" presentation for the pathways discussion • Let's come up with what we think is a fair, reasonable grid, Non-violent, keeping sentences the same • Or go bigger and come up with changes • In Washington, it's different if someone is home. • Do the feds do a larger scale victim impact survey on what people think are the most serious crimes? <p><u>What's next</u></p> <p>Jan 2013 -----through September 2013 (from the white board)</p> <p>*Finalize non-violent sentencing structure Value based (doable, in theory) Other</p> <p>*Issues to be addressed ID the Non-value based (need list)</p> |
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| <p>Issue/Topic: (cont'd)</p> <p>2013 Goals/Direction/Action plan</p> | <p>Policy – what’s best</p> <p>-what can pass</p> <p>Small group – ID task – work on it – come back</p> <p>Definition of Non-violent</p> <p>-Burglary (outlier) -Property</p> <p>-Criminal mischief / domestic violence (outlier) -Persons</p> <p>Review of Literature – Recidivism reduction</p> <p>- Drug</p> <p>- Other</p> <p>Define severity of (non-violent) – current design – assess (elements)</p> <p>Penalty – what should it be</p> <p>ID Sentencing Practice – Where do people go</p> <p>In the Parking lot</p> <ul style="list-style-type: none"> - Habitual criminal - Pathways |
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| Issue/Topic: | Discussion: |
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| <p>Next Steps</p> <p>Action</p> | <p><u>NEXT STEPS</u></p> <ul style="list-style-type: none"> • This discussion gives us a pattern on where the group might want to go • Before this group moves forward the Commission will be voting on individual task force items from all the groups as far as priorities |

Future Meeting Dates:**Meeting Schedule 2013**

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| February 5 th (Tue.) | 1:30pm – 4:30pm | 710 Kipling St., 3 rd floor conference room |
| March 5 th (Tue.) | 1:30pm – 4:30pm | 710 Kipling St., 3 rd floor conference room |