

# **Comprehensive Sentencing Task Force Colorado Commission on Criminal and Juvenile Justice**

## **Minutes**

February 5, 2013, 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**

Dianne Tramutola-Lawson/CURE

Joe Cannata/Voices of Victims

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

Glenn Tapia/Division of Criminal Justice

Norm Mueller/Private Defense Attorney

Jason Middleton/Public Defender

Dana Wilks/Judicial Department

Tim Hand/DOC Division of Parole

Denise Balazic/Parole Board

#### **STAFF**

Paul Herman/CCJJ consultant

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

Shelby McKenzie/CU Boulder

#### **ABSENT**

Charles Garcia/Denver Crime Prevention & Control Commission

Christie Donner/Criminal Justice Reform Coalition

Claire Levy/State Representative

Joe Pelle/Sheriff, Boulder County

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

Judge William Hood III/Denver District Court

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

<b>Issue/Topic:</b>	<b>Discussion:</b>
Welcome and Introductions	<p>Jeanne Smith welcomes the group and previews the agenda.</p> <p>At the CCJJ's January meeting the Commission voted on its goals and priorities for 2013. There should be further action this Friday (February 8<sup>th</sup>) at the CCJJ meeting that will help define the work of the Sentencing Task Force.</p> <p>The Commission gave priority status to Community Corrections and Sex Offender determinant sentencing issues and both of these issues could have an impact on this group.</p>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Legislative Update</p> <ul style="list-style-type: none"> <li>• Theft consolidation bill</li> <li>• Theft reclassification bill</li> <li>• Extraordinary Risk bill</li> </ul> <p><b>Action</b></p> <p>Jeanne to update the group again next month</p>	<p>Jeanne updates the group on bills going through the legislature that originated as Sentencing Task Force recommendations.</p> <p><u>Theft consolidation bill</u></p> <p>The theft consolidation bill is going through but with some changes at the legislature that could affect the original intent from this group and from the Commission. Jeanne will keep the group updated.</p> <p><u>Theft reclassification bill</u></p> <p>There was some pushback from the Retail Council on the \$100 theft level for petty offense. The compromise is at \$50 currently and the Retail Council has withdrawn their pushback.</p> <p><u>Extraordinary Risk bill</u></p> <ul style="list-style-type: none"> <li>• This bill has been difficult to draft</li> <li>• There were a couple principles the group wanted to push forward. The main push was to change some ranges and get rid of Ex. Risk as a category</li> <li>• We may need to revisit this next year to get some more specificity.</li> <li>• In the original recommendation the group talked about child abuse but didn't get into the detail and that has been a bit of a struggle. It's been difficult trying to reconcile what the working group, task force and commission all agreed and voted on.</li> <li>• Child abuse won't be included in Ex. Risk. anymore</li> <li>• Child abuse F2's and F3's will be COV's, lesser Child Abuse convictions will not. Where F3 Child Abuse is discussed the top end will be the old Ex. Risk range topping out at 32 years.</li> <li>• So part of those decisions will have to come in as an amendment. This will happen during the hearing on Feb. 19<sup>th</sup> at 1:30pm</li> </ul> <p><u>What's next</u></p> <p>Jeanne will keep the group updated</p>

Issue/Topic:	Discussion:
<p>109 Habitual Offenders follow-up</p> <p><b>Action</b></p> <ul style="list-style-type: none"> <li>• Peg to rerun numbers and data</li> <li>• Get prosecutorial feedback</li> </ul>	<p>Follow-up on the issue discussed in January regarding the 109 Habitual Offenders not eligible for earned time.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• This issue deals with the group of habitual offenders that fell between the cracks of habitual sentencing from July '90 to July '93</li> <li>• One of the reasons we postponed this discussion from January was because there isn't sufficient DA representation currently on this task force. Those positions are still currently empty.</li> <li>• DOC's response to implementing earned time retroactively is that they can indeed do it (as far as the mechanics)</li> <li>• The whole point of this recommendation would be to go back in time and retroactively apply earned time for this group of offenders</li> <li>• It would be easier for DOC to do this one offender at a time rather than write a computer program for it</li> <li>• 1993 is when the habitual sentencing switched from a life sentence to term of years</li> <li>• Those who got a life sentence under the "Big Habitual" with a 40 year parole eligibility in place really started in 1985</li> <li>• If what we're trying to do is take this group of people not eligible for parole for 40 years and apply earned time, we would need to go back to 1985. Not sure to what extent that changes the number of folks being considered.</li> <li>• For today we have feedback from DOC that it is possible and the draft recommendation, but we still don't have prosecutor representation.</li> <li>• Is it possible to push this through legislatively this year? As was mentioned at the last meeting, it might make more sense to do this carefully rather than do it quickly, especially with the timeframes for the legislature and for the CCJJ</li> <li>• Can Peg rerun the numbers with the 1985 offenders?</li> </ul> <p><u>What's next</u></p> <p>-Peg will rerun the numbers</p> <p>-We'll get prosecutor feedback on this issue</p>

Issue/Topic:	Discussion:
<p>2013 Goals/Direction/Action plan</p> <p><b>Action</b></p> <ul style="list-style-type: none"> <li>• Peg to pull the last five years' worth of data on laws that are currently on the books</li> <li>• Let's pull out the value based non-violent from this lens and see if they could be put into a similar scheme as theft – A SMALL GROUP TO DO THIS</li> </ul>	<p>Paul talks to the group about the outcomes from the January CCJJ meeting regarding priorities for this group in the coming year and how to address the issue of non-violent sentencing.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Last year at this time (2012) this task force identified the areas of focus for 2012. In March of last year this group identified five priorities, and the group actually completed four out of the five</li> <li>• This group tackled theft consolidation and reclassification, pretrial diversion, date-certain parole (DOC is close to wrapping up the date certain parole piece) and work on Ex. Risk</li> <li>• Tim Hand updates the group on how the parole issues have been addressed <ul style="list-style-type: none"> <li>-Parole is being worked on by a re-entry steering team through a 'lean' event.</li> <li>- Last week a group convened to revamp parole conditions (which hasn't been done in 30 years)</li> <li>- As far as parole and Community Corrections - anyone who comes into CC within 16 months of their out date will be reviewed at 12 months instead. They have to see the parole board one time face-to-face, then the parole board will do a paper review and set conditions accordingly</li> <li>-This will help folks get stable in the community before going on parole. For those in community they'll see a light at the end of the tunnel.</li> <li>-Within 16 months an offender is looking at an out date rather than not knowing. The only way they won't progress is if they do something on their end to sabotage</li> <li>-The parole board has been morphing their own behavior as well</li> <li>-Glenn states that Community Corrections is working on a parallel process with a level system for the offenders to incentivize them toward positive progress.</li> <li>-Now offenders will both know when they're getting out of community corrections and exactly what they can do to either speed that up or slow it down – It's a much more transparent process</li> <li>-Offender in DOC may be more inclined to go the community corrections route with this date certain system in place</li> <li>-This system has a good combination of freedom and rules</li> </ul> </li> <li>• The one priority we didn't hit was parole inside/outside the sentence</li> <li>• All in all, this group accomplished a lot in the last 12 months</li> <li>• Turning to the non-violent issue, there's a one pager in your packet that directly reflects what we put on the white board at the last meeting</li> <li>• This group identified many issues that will need to be addressed regarding</li> </ul>

<p><b>Issue/Topic: (cont'd)</b></p> <p>2013 Goals/Direction/Action plan</p>	<p>the restructuring of a complete non-violent sentencing scheme</p> <ul style="list-style-type: none"> <li>• The first thing the group requested was a list on all non-violent crimes and Peg has compiled that list</li> <li>• Peg distributes her analysis</li> <li>• The orange boxes on the handout refer to each law class</li> <li>• Value based crimes can be found on the left hand side of the handout in blue</li> <li>• Robbery is included in this analysis, while Robbery is considered a violent crime it sits in the non-violent category in statute</li> <li>• Nothing in this data appears to be inconsistent, and nothing jumps out</li> <li>• This is a reflection of laws on the books only, but this does not show exact charging frequencies</li> <li>• Do we want an analysis on exact frequencies? Yes, the more information the better</li> <li>• Peg to pull the last five years' worth of data on laws that are currently on the books</li> <li>• Is there any other critical information to pull at this time while Peg is conducting this work?</li> <li>• Should we break this out by straight category? Overall burg, bribery, subtotals, etc.?</li> <li>• Peg to pull out data for each statute, how many cases charged</li> <li>• We already have some of this for theft</li> <li>• Do we want to stick with these four articles? Yes</li> <li>• Let's include the NV from article 8 as well</li> </ul> <p><u>Non-Violent Definition</u></p> <ul style="list-style-type: none"> <li>• What is the best way to come to the definition of non-violent</li> <li>• It seems like an easy task at first but when you get into it it's more difficult</li> <li>• There are a lot of crimes that can be on the cusp of non-violent</li> <li>• In looking at the charges in the data analysis, are there offenses at a quick perusal that jump out as far as questionable when it comes to violent and non-violent</li> <li>• Arson, Robbery, Burglary, menacing, Agg. Rob (some per se, some not)</li> <li>• Breaking into a vending machine is 3<sup>rd</sup> degree burglary. Shoplifting is charged as a robbery as soon as a security person says "Excuse me" to an offender. What about dwelling vs. occupied dwelling?</li> <li>• What moves something from non-violent to violent? <ul style="list-style-type: none"> <li>- What's the POTENTIAL of injury to a person</li> <li>-or is it INTENT to injure</li> <li>-or EXTREME INDIFFERENCE</li> <li>-or CAUSED SERIOUS INJURY</li> </ul> </li> <li>• What makes arson NOT a crime of violence? It's about the property</li> </ul>
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<p><b>Issue/Topic: (cont'd)</b></p> <p>2013 Goals/Direction/Action plan</p>	<ul style="list-style-type: none"> <li>• The criteria we're talking about has to do with the level of an individual case, a case by case basis, how do we apply to general law and statute?</li> <li>• Even if you meant to place people in danger (fire in a stadium) you're going to be charged with something additionally too</li> <li>• 1<sup>st</sup> through 3<sup>rd</sup> degree arson are about property - 4<sup>th</sup> degree has to do with people</li> <li>• The outlier in all of this is 'places a person in danger'</li> <li>• What was compelling about adding this 4<sup>th</sup> degree into a statute about property? It was the 'knowing and reckless' element</li> <li>• Why did robbery get put in with property crimes to begin with? Dual components - taking anything of value then coupling that with the other</li> <li>• Shoplifting just doesn't seem to rise to the robbery standard, why isn't it theft from person? Because the force can be what makes it robbery, the force of trying to get away. It's the <i>potential</i> of violence in a face-to-face encounter.</li> <li>• What else as far as non-violent vs. violent             <ul style="list-style-type: none"> <li>-Aggravated robbery</li> <li>-Weapon vs. no weapon (the finger in the pocket gun)</li> </ul> </li> <li>• Other states that have had this debate discuss a scheme of violent vs. non-violent <u>VS</u> property vs. person crime</li> <li>• If we're thinking about three sentencing grids, we don't have too much disagreement about the non-violent. Let's debate some of the burglary and some of the arson, but after that we should be good to go. This seems doable</li> <li>• Where does violence stop and non-violence begin? This should not be too complicated of a discussion</li> <li>• What about value based crimes into theft reclassification?</li> <li>• Let's pull out the value based non-violent from this lens and see if they could be put into a similar scheme as theft – A SMALL GROUP TO DO THIS</li> </ul> <p><u>What about consolidation</u></p> <ul style="list-style-type: none"> <li>• Based on lessons learned in the theft consolidation exercise, should we do the same practice with the non-violent? What is our return on investment if we try to figure this out?</li> <li>• There's a lot to be said regarding simplification, but rather than trying to clump, as we're looking at classes of offenses – is everything in the proper <u>classification</u>? This is more important than <u>consolidation</u>.</li> <li>• There would be broader impact by trying to make the sentencing classification scheme consistent</li> <li>• Let's take consolidation off the table for the moment - our time is better spent elsewhere</li> <li>• What about the last page of Peg's analysis</li> </ul>
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<p><b>Issue/Topic: (cont'd)</b></p> <p>2013 Goals/Direction/Action plan</p>	<ul style="list-style-type: none"> <li>• Look within class first, and across classes second, but does this lead us to anything?</li> <li>• Then look within the offense</li> <li>• A smaller work group should tackle this</li> <li>• Will we add governmental operations, how far do we want to go down this road?</li> <li>• Should we take a look at the data and run the number of cases that come out of an article before we devote a lot of time to revising? (articles 4, 5 and 8 for example)</li> <li>• There are some Articles we could take out right off the bat (Article 1.5 is the Commission, 1.8 is a Task Force, 1.9 is a Task Force, do we deal with inchoates at this time, what about unlawful termination of a pregnancy, what about Misc. Offenses in Article 13?)</li> <li>• The Articles we could take out start around 7, 8 and up</li> <li>• Consistency and transparency should be kept in mind during this exercise</li> <li>• What we're trying to do in the long run is recidivism reduction and restoration</li> <li>• Do we have the options available in the law that people are seeing they need? Are we giving the justice system the tools needed to address the offenders and offenses specifically?</li> <li>• We went through this same process and struggled when we started theft.</li> </ul> <p><b><u>What's next</u></b></p> <ol style="list-style-type: none"> <li>1. Small Group Value Based <ul style="list-style-type: none"> <li>- Put in similar scheme as theft <ul style="list-style-type: none"> <li>*amount</li> <li>*class of offense</li> </ul> </li> </ul> </li> <li>2. Small Group Classification – Consistency (vs. Consolidation) <ol style="list-style-type: none"> <li>A. Look within class</li> <li>B. Look across the classes</li> <li>C. Look within the offense - proportionality</li> </ol> </li> </ol>
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Issue/Topic:	Discussion:
Next Steps	<u>NEXT STEPS</u> <ul style="list-style-type: none"><li>• In March after changes in membership we'll start the work in earnest</li></ul>

**Future Meeting Dates:****Meeting Schedule 2013**

March 5<sup>th</sup> (Tue.)      1:30pm – 4:30pm      690 Kipling St., 1<sup>st</sup> floor conference room