

Comprehensive Sentencing Task Force

Colorado Commission on Criminal and Juvenile Justice

May 7, 2013, 1:30PM-4:30PM
710 Kipling, 3rd Floor Conference room

ATTENDEES:

CHAIR

Jeanne Smith, Chair/Division of Criminal Justice
Norm Mueller/Private Defense Attorney

TASK FORCE MEMBERS

Dianne Tramutola-Lawson/CURE
Kate Horn-Murphy/Victims Representative, 17th JD
Mark Evans/ Public Defender's office (*non-voting member*)
Jason Middleton/Public Defender
Dana Wilks/Judicial Department
Tim Hand/DOC Division of Parole
Charles Garcia/Denver Crime Prevention & Control Commission
Judge Martin Egelhoff/Denver District Court
Michael Dougherty/1st Judicial District (on phone)
Denise Balazic/Parole Board
Matt Durkin/Attorney General's office

STAFF

Paul Herman/CCJJ consultant
Germaine Miera/Division of Criminal Justice
Kim English/Division of Criminal Justice
Peg Flick/Division of Criminal Justice

ABSENT

Dave Young/DA 17th Judicial District
Maureen Cain/Colo. Criminal Defense Bar
Claire Levy/State Representative
Joe Pelle/Sheriff, Boulder County

<p>Issue/Topic:</p> <p>Welcome and Introductions</p>	<p>Discussion:</p> <p>Jeanne Smith welcomes the group and previews the agenda. Due to winter weather the last two months, this group hasn't met since February.</p>
<p>Issue/Topic:</p> <p>Legislative Update</p> <ul style="list-style-type: none"> • Theft consolidation bill • Theft reclassification bill • Diversion • Extraordinary Risk bill <p>Action</p>	<p>Discussion:</p> <p>Jeanne updates the group on the status of criminal justice bills going through the legislature that originated as Sentencing Task Force recommendations.</p> <p><u>Theft consolidation bill</u> Bill passed and waiting for the Governor's signature.</p> <p><u>Theft reclassification bill</u> Bill passed and waiting for the Governor's signature.</p> <p><u>Extraordinary Risk bill</u> This bill has been Postponed Indefinitely at the legislature. We can decide to revisit this as a task force if that's what the group desires. This bill proposal did not fail because it was a bad idea, but more so because the recommendation, which seemed doable at first, was very complex and hard to get into statutory bill language.</p> <p><u>Diversion</u> Bill passed and waiting for the Governor's signature.</p>
<p>Issue/Topic:</p> <p>Sentencing Task Force 101</p> <p>Action</p>	<p>Discussion:</p> <p>Kim English walks through a handout outlining the work accomplished by the Sentencing Task Force since its inception. Because there are a handful of new task force members in the room, the goal of this handout is to make sure everyone is on the same page with issues that have already been addressed. Details from the handout are outlined below.</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> • The CCJJ's first Sentencing Task Force was seated at the same time as the Drug Policy TF (August, 2009) • The original Sentencing Task Force (The Sentencing Policy Task Force) was in existence from August 2009-April 2010 • The issues studied by this group included- <ul style="list-style-type: none"> ○ Walk-away escapes from Community Corrections ○ Probation eligibility and Two Prior Felony rule ○ Aggravated Ranges, Extraordinary Risk and Mandatory Minimums

<p>Issue/Topic: (continued)</p> <p>Sentencing Task Force 101</p> <p>Action</p>	<ul style="list-style-type: none"> • Of these recommendations, the only one to move forward out of this group was the probation eligibility/two prior felony rule. • In the summer of 2010, the CCJJ reprioritized areas of study, and during that time re-tooled and reconstituted the Sentencing group. The original task force (Sentencing Policy Task Force) was renamed the Comprehensive Sentencing Task Force, membership was reconfigured and the first meeting took place in September 2010 • This current Sentencing Task Force has been meeting consistently since September 2010 • Comprehensive Sentencing Task Force – Areas of Study and Outcomes <ul style="list-style-type: none"> ○ 2010/Work commences ○ 2011 <p>Classification working group - Created</p> <p>Habitual/Mandatory working group – Created</p> <p>-Recommendation – Remove walkaway escapes as crimes eligible for habitual criminal sentencing</p> <p><i>CCJJ Approved and Signed into law</i></p> <p>-Recommendation – Reduce the habitual criminal statutes’ sentence multiplier as applied to non-violent presenting offenses</p> <p><i>Not CCJJ Approved</i></p> <p>Consolidation working group - Created</p> <p>Diversion working group - Created</p> <p>Parole working group – Created</p> ○ 2012 <p>Classification working group</p> <p>-Recommendation – Modify and expand CRS 18-4-401, theft offenses.</p> <p><i>CCJJ Approved and Bill passed</i></p> <p>Habitual/Mandatory working group</p> <p>-Recommendation - Eliminate Extraordinary Risk and move child abuse and 2nd and subsequent stalking to the Crime of Violence Statute. Change COV and mandatory minimum ranges set to the minimum of the presumptive range. The upper end of the sentencing ranges for COV mirrors the current upper end ranges in the statute.</p> <p><i>CCJJ Approved but Postponed Indefinitely during session</i></p>
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<p>Issue/Topic: (continued)</p> <p>Sentencing Task Force 101</p> <p>Action</p>	<p>Consolidation working group</p> <p>-Modify and consolidate Colorado Revised Statute 18-4-401 to increase clarity and reduce duplication <i>CCJJ Approved and Bill passed</i></p> <p>Diversion working group</p> <p>-Recommendation – Expand the availability of adult pretrial diversion options within Colorado’s criminal justice system <i>CCJJ Approved and Bill passed</i></p> <ul style="list-style-type: none"> ○ 2013 <ul style="list-style-type: none"> ▪ Continued work on comprehensive non-violent sentencing grid ▪ Work to begin on Sex Offender issues
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<p>Issue/Topic:</p> <p>109 Habitual Offenders follow-up</p> <p>Action</p> <p>Take an official vote on the recommendation at the June meeting</p>	<p>Discussion:</p> <p>Jeanne Smith and Mark Evans lead a follow-up discussion on the issue addressed in January and again in February regarding the 109 Habitual Offenders not eligible for earned time.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Task force member Dianne Tramutola-Lawson originally presented this issue during the fall of 2012 • She introduced the idea of retroactively changing the 40 year parole eligibility date, affecting 109 offenders currently serving time in DOC • Mark’s involvement has been in drafting the verbiage for a possible recommendation • This change is a simple fix if we decide to create such a recommendation • To clarify, this would actually affect 104 offenders and not 109 offenders • Tim Hand adds that this recommendation was supported by Tom Clements before his unexpected death in March. • If this advances to the next level (a recommendation passed by CCJJ along with statutory change), DOC is prepared to make the change in the facilities. • At the last meeting in February, Peg provided an analysis showing that, if this recommendation proceeds, it would be a “trickling event” as people who are eligible get closer to their parole dates. • As far as timing, there is plenty of time to review this before the next session and vote on this proposal. It was agreed that the Task Force will vote on this proposal next month in June.
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Issue/Topic:	Discussion:
<p data-bbox="126 279 505 310">Non-violent sentencing scheme</p> <p data-bbox="180 422 448 520">Action Peg to consolidate the non-violent list</p> <p data-bbox="107 562 521 632">Value based group to convene and report back at the next meeting</p>	<p data-bbox="561 243 1495 317">Paul Herman leads the group on their continued discussion of the possibility of pulling together a non-violent sentencing scheme.</p> <p data-bbox="561 369 781 394"><i>DATA DISCUSSION</i></p> <ul data-bbox="581 405 1528 1346" style="list-style-type: none"> • Peg Flick starts the conversation with a data presentation • Peg presents the group with two different data analysis handouts. • The first handout is titled 'Non-Violent Crimes: Title 18 Articles, 4, 5, 5.5 and 8 statutes'. • The analysis contains current non-violent crimes from title 18, articles 4, 5, 5.5 and 8. Their statutes, descriptions and law classifications were taken from Judicial's ICON data system • Peg explains that Table 1 shows the law classification for each crime, grouped by crime category. • Table 2 shows crimes ordered by their law classification and Table 3 contains all articles in Title 18. • There are a couple tables starting on page 12 that provide a sense of how the crimes fit together • The second handout is titled Non-Violent Crimes: C.R.S. Articles 4, 5, 5.5 and 8 Charges and Sentences. • This document covers the actual charges and sentences for these statutes • Peg explains that she took five years of data and pulled out <ul data-bbox="618 1115 1528 1346" style="list-style-type: none"> -How many times each of these offenses was charged -How many times convicted -How many times amended -How many times was there something higher in the case that got dismissed -And was this the highest charge (sorted the charges on the case and picked out the top ones) <p data-bbox="618 1398 1179 1430">In looking at possible sentences the data shows</p> <ul data-bbox="618 1440 911 1671" style="list-style-type: none"> -Jail -Probation -DYC -Community Corrections -DOC and, -Other <ul data-bbox="581 1734 1406 1839" style="list-style-type: none"> • Peg points out a couple things to note <ul data-bbox="618 1766 1406 1839" style="list-style-type: none"> -There is no access to Denver county data, so this does not include misdemeanors

<p>Issue/Topic: (continued)</p> <p>Non-violent sentencing scheme</p>	<p>-The other thing that makes this complicated is running the numbers on current statutes, noting that statutes have changed over the years</p> <p>-Because of this, the sentencing data is a little more prone to fuzziness</p> <p>-This information takes the conversation about non-violent data at the beginning and forwards it</p> <p>-We now have value based data defined</p> <p>-This also helps define the seriousness of charges</p> <p>-It also shows when the charge has not been filed at all</p> <p>-There are many things not filed but convicted</p> <p>-Peg clarifies that attempts are the lines underneath (in data lines) – they show attempts but not filings</p> <p><i>GROUP DISCUSSION</i></p> <ul style="list-style-type: none"> • Paul talks to the group about moving forward with the non-violent sentencing scheme • As a reminder, this group spent many hours working on efforts regarding theft consolidation – but once we really got into the weeds it was very difficult to ferret out the issues • Do we want to go down the same road with this exercise for the non-violent sentencing scheme? Trying to consolidate statutes/charges? • Is there a place for consolidation with a non-violent scheme? • If one of our projects is to take value based crimes and use that as a benchmark – the data here is very valuable • What's a good way to get us started and off the ground? • We will have to break this into chunks. • One of the potential goals is to possibly come up with a sentencing grid. Based on history, how did the drug task force manage to pull together a grid? • That group started down many different paths, and eventually stepped back and said 'If we're going to have a separate drug scheme, what would that look like?' – The Drug TF reduced the number of classifications, and in doing so it changed the vertical access point. This led them to try and fill in the rest of the grid. The key in doing this was to look at groupings, look at elements of the offense, the amounts, classifications, and then fill in the sentencing grid – which was one of the most difficult parts. • The drug grid group figured out their structure first, what goes into the structure, and then got into the debate regarding ranges • With that in mind, we could start with the Y access • Going down the Y access, we could look at how many classification levels • Currently across the country, there are states adding felony classes, and states reducing felony classes • You can start building and look at the Y access, then debate which way to go • Then we could look further at what are the options and what are the ranges
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<p>Issue/Topic: (continued)</p> <p>Non-violent sentencing scheme</p>	<ul style="list-style-type: none"> • Peg will whittle down and consolidate the list she already presented before the next meeting • Paul reiterates to the group that we should go ahead and create a smaller working group to look at value based and get that done, then we can start on our approach to the rest of them. • On one side we look at the offense, elements of the offense on the other side we look at the offender and offender characteristics • Jason Middleton looked at all of this when the group started on the theft consolidation project a couple years back - <ul style="list-style-type: none"> -The question we had with theft in the beginning was do we start with some new grid concept, and if so what characteristics and factors are in play. Or is the current grid sufficient? Most of the working groups said the ranges were right, but we were missing classification levels – which is why we changed the classification levels for theft • Do people feel the need to create something new for this next piece of work • What does the group think? • In looking at value based, do we go through every single one of them and decide if each range is appropriate the way it is now • If all we're trying to drill down to is: "What's the appropriate number of years if this person is going to prison?" – do we want to go there? • With the drug grid, that work was started with the notion that something was wrong with drug sentencing – do we think there's something inherently 'wrong' with the value based ranges? • This group has decided, with much input from CCJJ and other stakeholders, that the sentencing code is opaque and duplicative. That's why we started down this path of simplification • Computer theft and identity theft are on everyone's radar right now – so this will trigger a lot of push back? • Is the question, 'Is there something wrong with the non-violent sentencing scheme' - Is this a big problem? • Wasn't there a concern about matching changes in the monetary/theft crime structure with non-value based crimes? • This conversation may not be as precise. • If we don't know what we're trying to accomplish, why do we go down this road? • Are all non-violent crimes the same? Or are there categories where the motivation is different and therefore it should be looked at differently? • This group of offenses seem to have the same underlying concerns and implications – do we break crimes out by those categories? • Does throwing everything into a non-violent label really fit under non-violent?
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<p>Issue/Topic: (continued)</p> <p>Non-violent sentencing scheme</p>	<ul style="list-style-type: none"> • Non-violent and violent is not a statutory designation – DOC has their own schema • The questions we’re discussing seem to show that the group is currently not as settled as it should be to talk about a new scheme • Let’s continue this discussion with the full task force at this point rather than convening a working group. • However, we can convene a Value-based working group to start looking at those issues • This group will consist of Michael Dougherty, Matt Durkin, Charlie Garcia and Jason Middleton
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<p>Issue/Topic:</p> <p>Additional Issues</p> <p>Action</p> <p>To be put on the agenda for the Sentencing Task Force and the CCJJ</p>	<p>Discussion:</p> <p>Tim Hand raises an issue to be addressed by both the Comprehensive Sentencing Task Force and the Colo. Commission on Criminal and Juvenile Justice</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> • Tim informs the group that Colorado is currently violating federal law under Interstate Compact of Adult Offender Supervision rule. • This issue concerns municipalities that are charged with managing probationers outside of the state judicial system and their noncompliance to federal law concerning Colorado’s federally mandated responsibility to comport with following the interstate compact pertaining to certain cases contained in ICAOS Rule 2.105 • Tim requests that this item be put on the agenda for both this task force and the Commission. • Tim is currently working with the Attorney General’s office but requests input and discussion by the Commission as well. • Jeanne Smith affirms that this request will be pursued in both this task force and the full Commission.
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<p>Issue/Topic:</p> <p>Sex Offense Working Group discussion</p> <p>Action</p>	<p>Discussion:</p> <p>In January, the Commission requested that the Sentencing Task Force pursue the issue of indeterminate vs. determinate sentences for sex offenses. As a follow-up to that request, a working group is being created to study the issue.</p> <p><u>DISCUSSION POINTS</u></p> <ul style="list-style-type: none"> • Kate Horn-Murphy and Norm Mueller will co-chair this working group • Kate and Norm have met to discuss membership and an outline for the work and have identified stakeholders
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<p>Issue/Topic: (continued)</p> <p>Sex Offense Working Group discussion</p>	<ul style="list-style-type: none"> • Kate and Norm hope to announce Friday at the full CCJJ meeting that they have the group together. • This working group will be capped at no more than 12 people • Members being considered are - <ul style="list-style-type: none"> -Maureen Cain/CCDB - Laurie Rose Kepros/Public Defender -Angel Wendt/Probation -Erin Jemison/ C-CASA -TBD/SOMB staff member -Leora Joseph/DA's office, 18th JD (Tom Raynes recommendation. New to Colo. From Mass.) -Kelly Wasco/DOC -Birgit Fisher/Treatment provider at MH institute in Pueblo -Norm Mueller -Kate Horn-Murphy • The goal is to get this group together for a preliminary meeting before the June Sentencing Task Force and June CCJJ meeting • The scope of work is detailed and narrow and deals with determinate and indeterminate sentencing • The scope of work is clear and limited to three basic items primarily having to do with determinate and indeterminate sentencing
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<p>Issue/Topic:</p> <p>Community Corrections Task Force</p> <p>Action</p>	<p>Discussion:</p> <p>Paul informs the group that per the request of the Commission, a Community Corrections Task Force has been created to study the Comm. Corr. system in Colorado</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Community Corrections was the top issue voted on by the Commission at the January meeting to be addressed in 2013. • This is pertinent for this group as the Sentencing task force has talked a lot about Community Corrections, and we want to pass along our input to the newly established Comm. Corr. group • The Community Corrections Advisory Council focusses its work on standards, assessments, etc. • The Advisory Council hopes that their work will correlate with the CCJJ Comm. Corr. Task Force. • At the most recent Advisory Council meeting there was some trepidation in the room about the creation of the CCJJ Comm. Corr. Task Force.
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<p>Issue/Topic: (continued)</p> <p>Community Corrections Task Force</p> <p>Action</p>	<ul style="list-style-type: none"> • The Advisory Council is fairly heavily attended by providers and the make-up of the Comm. Corr. Task Force is going to look a little different. • Community Corrections has been a highlight of legislative interest the last many years • Comm. Corr. started out as a place to house people inexpensively, and now it's more of a specialty offender one-stop-shop with a wide variety of offender needs being addressed • This is a big shift from the original community corrections composition of 'half transition/half diversion' and low risk offenders. It's now higher risk, specialized, condition of parole, condition of probation, etc. • Needless to say, there have been many changes in Colorado's Community Corrections system • Could the Comm. Corr. Task Force address criteria of acceptance? • Yes, everything is on the table for this group at this juncture • At this Thursday's meeting (the second meeting for the CC Task Force) – Greg Mauro is slated to talk about the structured decision making process in Denver • Eric Philp is going to talk about offender typology issues • This group is currently in the midst of its education process • There's another issue – Some people on the Commission have no idea what really happens in Comm. Corr., what the set-up is even all about. • The Commission needs a backgrounder presentation about what is going to be addressed by the CC Task Force. Yes, this has been addressed and the Commission is slated to get a presentation at Friday's meeting. • Do county run facilities do a better job than privates and have better outcomes? That would be a good issue to look at. Why can't facilities be managed solely by the state across the board and not by privately run organizations? • The issue of acceptance can also be problematic. A board will reject someone coming out of prison and simply say 'That person didn't get enough time in DOC' – why is there so much local control? There's no local control for regular parole, why so much local control for Condition of parole offenders? • Structure / Accountability and local control – these are areas that need to be addressed. • What about verbiage. There's a proposal to use the verbiage 'Local Participation' instead of Local Control. • If we want to be openly candid about Community Corrections, let's also look at SB252 – which is harmful to offenders we're trying to serve • SB252 beds are managed within Tim Hand's division, and there are a couple issues with Revoked Inmate Status. • A typical parole violation charge doesn't always accurately represent what's
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<p>Issue/Topic: (continued)</p> <p>Community Corrections Task Force</p> <p>Action</p>	<p>going on.</p> <ul style="list-style-type: none"> • An offender gets revoked to Community Return to Custody – now there are many parolees still engaged in our community, considered parole technical violators, but the real problem is Tim can only contract with seven providers for these offenders. • Getting revoked to a return to custody bed means the offender has to be revoked to one of only seven facilities, like one in Sterling, CO • Once the offender gets transferred there, they are told to go out and get a job, but in 180 days they get sent back to their originating jurisdiction. • So, yes, 252 Bed usage should be studied by the Community Corrections Task Force. • Moving people from one community to the next (e.g., Durango to C. Springs for 180 days then back to Durango) results in it being hard for an offender to be successful.
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<p>Issue/Topic:</p> <p>Next Steps</p> <p>Action</p>	<p>Discussion:</p> <p>At the June meeting, the group will..</p> <p><u>NEXT STEPS</u></p> <ul style="list-style-type: none"> • Revisit the issue of how a non-violent scheme/grid might look • Get a data consolidation/revision from Peg on the non-violent crimes • Check in with the Value Based Working Group • Get a report back from the Sex Offenses Working Group • Discuss the issue of the violation of the Interstate Compact of Adult Offender Supervision rule • Vote on the 104 Habitual Offenders recommendation
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Future Meeting Dates:**Meeting Schedule 2013**

June 11th 1:30pm – 4:30pm 710 Kipling St., 3rd floor conference room