

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

**Minutes**

June 11, 2013, 1:30PM-4:30PM  
710 Kipling, 3<sup>rd</sup> 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, 17<sup>th</sup> JD  
Mark Evans/ Public Defender's office (*non-voting member*)  
Jason Middleton/Public Defender  
Mary Kanan for Tim Hand/DOC Division of Parole  
Michael Dougherty/1<sup>st</sup> Judicial District  
Matt Durkin/Attorney General's office  
Dave Young/DA 17<sup>th</sup> Judicial District  
Maureen Cain/Colo. Criminal Defense Bar  
Claire Levy/State Representative

**STAFF**

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

**ABSENT**

Joe Pelle/Sheriff, Boulder County  
Dana Wilks/Judicial Department - absent  
Charles Garcia/Denver Crime Prevention & Control Commission - absent  
Judge Martin Egelhoff/Denver District Court - absent  
Denise Balazic/Parole Board - absent

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Norm Mueller welcomed the group and previewed the agenda.</p>
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<p><b>Issue/Topic:</b> 104 Habitual Offenders</p>	<p><b>Discussion:</b></p> <p>Mark Evans reviews the history of this recommendation. Dianne Tramutola-Lawson originally brought the proposal to the group for discussion last summer. The recommendation corrects a disparity in the habitual offender statute. The recommendation retroactively expands the availability of earned time credit to individuals sentenced under the “big” provision of the habitual criminal statute for crimes occurring between July 1, 1985 and June 30, 1993. People sentenced under the ‘Big Habitual’ in this time frame would’ve received a life sentence without being eligible for earned time.</p> <p>This refers to parole eligibility only offenders, not mandatory parole offenders.</p> <p>This change will apply to a total of 104 people. DOC has stated previously that recalculating parole eligibility for this group of inmates would not be an issue or problem (it is a staggered list of 104). This is basically an issue of fundamental fairness.</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> <li>• This makes a lot of sense but it could be a political firestorm.</li> <li>• It’s important to note that this only makes people eligible to <i>earn</i> Earned Time.</li> <li>• We talk about earned time as a behavior management tool – but since this would be applied retroactively it doesn’t necessarily fit into the management tool scheme</li> <li>• Will there be a set mechanism to notify victims? The same notifications that are in place now. Since it’s a small number of offenders, victim’s organizations could collaborate with DOC to notify victims. But we don’t currently notify victims every time there’s a change in the earned time schedule.</li> <li>• It’s important to recognize we’re not really reducing the sentence; the change would simply affect how the PED is calculated.</li> <li>• Offenders currently lose and gain earned time as an ongoing practice.</li> <li>• Should we amend the recommendation to say it would be the responsibility of ‘whatever group’ that DOC notify victim advocates in each judicial district of the time computation change.</li> <li>• DOC would have to notify the DA’s office.</li> <li>• DOC could notify the DA, and then it would be up to the DA’s office to locate the victim.</li> <li>• Friendly amendment – we should recommended a DOC policy change asking the Department to identify who the 104 offenders are, then making it DOC’s responsibility to notify the DA saying that ‘X person’ has been granted ‘X amount’ of earned time and to forward that information to the victim when possible.</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>104 Habitual Offenders</p>	<ul style="list-style-type: none"> <li>• That would help in the event these people do get parole, or hit whatever community placement.</li> <li>• These offenders are currently mostly in the 50+ range and most of them are a lot older than when then they went in.</li> <li>• When they hit their PED, even if they're eligible for Comm. Corr., they would still have to be accepted by Comm. Corr. – it's basically another layer of review.</li> <li>• This notification to DOC is in addition to any other statutorily mandated notifications.</li> <li>• This recommendation passes with a vote of 7 to 2.</li> </ul> <p><u>What's next</u></p> <ul style="list-style-type: none"> <li>• The friendly amendment verbiage needs to be added into this recommendation and then it will need to be a final sign off by the group.</li> <li>• This recommendation will be presented to the Commission later this summer or early fall with the other recommendations.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Sex Offense Working Group</p> <p><b>Action</b></p>	<p><b>Discussion:</b></p> <p>Kate updates the group on plans for the first Sex Offense Working Group meeting. This group will meet tomorrow afternoon at Norm's office. The group consists of approximately a dozen members and will be primarily looking at the issue of Indeterminate vs. Determinate sentencing and reviewing the potential for creating a new determinate F4 Offense. The group will also study Lifetime Supervision. Paul will be attending this first meeting for the group.</p> <p><u>What's next</u></p> <p>- There will be a report back from Kate and Norm at the next Sentencing Task Force meeting.</p>
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<p><b>Issue/Topic:</b></p> <p>Value-Based Non-Violent Working Group</p> <p><b>Action</b></p>	<p><b>Discussion:</b></p> <p>Michael Dougherty, Mark Evans and Matt Durkin met to discuss the current value cut points for value based crimes that aren't strictly theft based.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Changes that originated in this task force were made to the theft statute this session.</li> <li>• An F2 was created along with an F5, F6 and a petty offense for the theft category.</li> <li>• We are undertaking the process of looking at other value based crimes as well, to see if it makes sense to move other value based offenses into the same scheme.</li> <li>• What helped, when the group sorted through theft, was to look at the value</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Value-Based Non-Violent Working Group</p> <p><b>Action</b></p>	<p>of property stolen and value that could be charged.</p> <ul style="list-style-type: none"> <li>• This working group made a data request to Peg asking her to generate the same sort of data break out that was done with theft.</li> <li>• The task was to show the current value breakout and what the proposed breakout would look like.</li> <li>• Peg reports that to project the changes we would need to know the value of the property reported.</li> <li>• When Peg did the analysis for theft she was able to use NIBRS data which is reported to police and includes the value of the property reported.</li> <li>• When looking at this new set of crimes (criminal mischief, etc.), there was nothing that matched cleanly in the NIBRS data to show breakouts as far as values.</li> <li>• What she was able to do (in Figure 1 of her data handout) was to pull out the current distribution for cases with value-based charges from FY 08 to FY 12.</li> <li>• Unfortunately, the available data simply shows that numbers are all over the map.</li> <li>• On page two, Peg was able to pull out the comparison for MV theft using actual values with NIBRS data.</li> <li>• Table 3 shows the distribution value of individual automobiles and trucks reported stolen in Colorado.</li> <li>• The bulk of vehicles stolen have a value between 2,000 and 20,000 dollars – vehicles in the middle ranges.</li> <li>• Figure 2 shows where current Motor Vehicle Theft filings fall and what the proposed distribution would look like.</li> <li>• With Aggravated MV theft there’s a class one and class two, but NIBRS data shows just straight values, not classes. There’s no concept of class one or class two.</li> <li>• Peg reported that she could split out class one and class two’s and project those numbers, but again it’s not a true scenario.</li> <li>• Another data point to note is that vehicles most frequently stolen are older model cars.</li> <li>• This working group also discussed criminal mischief filings in combination with alleged DV and Peg pulled some data on that as well in Table 1.</li> <li>• This group started down this path trying to reconcile new theft amounts with other value-based amounts.</li> <li>• There are still issues around criminal mischief and arson - and if they fit into this group of value-based non-violent crimes.</li> <li>• With theft, the value of the loss is fairly straightforward.</li> <li>• In criminal mischief, the value of the loss can be secondary to the criminal mischief charge (for example, a boyfriend kicks in his girlfriend’s door, criminal mischief is charged but it may be coupled with something more violent).</li> <li>• The working group wanted to come back to the task force and ask what the</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Value-Based Non-Violent Working Group</p> <p><b>Action</b></p>	<p>larger group thinks about separating out Criminal mischief from value based.</p> <ul style="list-style-type: none"> <li>• The criminal mischief statute is essentially about ‘breaking stuff’.</li> <li>• The criminal mischief statute makes no mention of DV - There are separate statutes that deal with DV specifically.</li> <li>• If a crime involves DV at all there are different designations for that.</li> <li>• There is an over-arching statute that deals with any crime that involves DV. If you are convicted of an offense that involves DV and you’ve already been convicted of DV, you can be charged as a DV offender (habitual DV offender if this repeatedly happens).</li> <li>• All the same protections that apply with DV currently would continue to be applied if we changed the values on criminal mischief.</li> <li>• The appropriate sentence in an offense where someone’s property is damaged intentionally is different from a straight theft offense. It’s the criminal intent aspect of the crime.</li> <li>• The value is not a good proxy to look at loss.</li> <li>• For the 60% of criminal mischief offenses that <u>don’t</u> involve something else going on and there’s an inflated crime level just to address the <i>possible</i> seriousness of a DV case is disparate.</li> <li>• It’s a difficult question to answer.</li> <li>• Is it all or nothing with criminal mischief? If we don’t sync up the crimes we have different monetary values different - And the goal now is to try to simplify.</li> <li>• There is indeed a difference with criminal mischief that involves DV.</li> <li>• Maybe a DV Criminal mischief designation could be some sort of an aggravator?</li> <li>• Should criminal mischief be driven by financial values to begin with?</li> <li>• Does criminal mischief really need to be bound by what we did with theft?</li> <li>• Right now Crim. Mischief is defined monetarily, but it’s not a spectrum of zero to a million. There are currently chunks, class one or class two misdemeanors, then it jumps to felony. This is just an argument that it should be graduated the same way theft is now graduated.</li> <li>• If criminal mischief involves anything else, the other crime is always added on as DV or whatever the other charge is.</li> <li>• What about Arson? We stuck to the offenses where you could arguably apply amounts. Arson is a completely different animal.</li> <li>• The group came to consensus that commercial, computer crime, financial transaction device and fraud can for the most part be lined up with theft levels.</li> <li>• The presenting question is – what are we going to do with criminal mischief?</li> <li>• Computer crimes are often about unauthorized access.</li> <li>• There’s only one subsection that talks about loss, damage, value of services, things taken.</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Value-Based Non-Violent Working Group</p> <p><b>Action</b></p>	<ul style="list-style-type: none"> <li>• Intent to defraud is using computer systems to defraud a system, a variation of theft.</li> <li>• Simplification in our sentencing statutes is important but rationality is important as well, maybe some of these crimes don't line up exactly with theft.</li> <li>• Are we trying to get off easy on a complicated task – maybe there isn't a direct correlation?</li> <li>• Criminal mischief includes such a broad spectrum of conduct, from graffiti to intimidation in a DV setting – these aren't necessarily comparable offenses, which raises the question of correlation.</li> <li>• There are criminal mischief/theft type offenses and there are criminal mischief/DV/intimidation types of offenses.</li> <li>• Can we separate out violent criminal mischief from straight criminal mischief, not just coupled with DV?</li> <li>• At the end of the day the actual crime is just one factor of the offense.</li> <li>• The crime in and of itself is a very difficult, granular unit to look at – that's why we struggle with what's the right thing to do with that crime.</li> <li>• This <i>should</i> be a difficult decision, it's a complicated process.</li> <li>• What are our criteria to determine severity of offense? In other states you determine the criteria first, and then apply that to all other crimes.</li> <li>• Maybe we ought to look at criminal mischief and value based vs. a violence element.</li> <li>• Criminal Mischief was drafted broadly enough to take into account all the different scenarios. It's intentionally broad.</li> <li>• The gradient of crime is determined on value only in criminal mischief – it is the amount of property damage.</li> <li>• Criminal mischief is currently a value based crime. Should it continue to be a value based crime and under what circumstances?</li> <li>• Can we move forward with getting structure for other value based offenses to at least have something to look at, then separate out Crim. Mis. on a temporary basis at least?</li> <li>• What we have now is a group of value based crimes. These are already value based.</li> <li>• Clarity, consistency, rationality, fundamental fairness, use of resources – this was the package conversation as we looked at Sentencing in Colorado.</li> <li>• The mandate was a broad mandate and in the end we grabbed onto theft as it seemed like a manageable piece. Sometimes narrowing in takes away from what we started talking about which was a broader question.</li> <li>• Let's pull out the list of crimes that the value-based group considered for the next meeting and actually show the elements to the full task force to demonstrate how that it played out. (Germaine to pull out the packet and analysis that Mark, Michael, Matt did and put on the screen to show the group).</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Value-Based Non-Violent Working Group</p>	<ul style="list-style-type: none"> <li>• What do we, as a group, believe criminal mischief is about? Should we get rid of a financial structure for criminal mischief? Would that work?</li> <li>• These discussions are long and involved. Intent and state of mind are things addressed in other parts of the statute.</li> <li>• Is there a way to address certain concerns around criminal mischief, or should we think about how to make criminal mischief not value based. How do you make this distinction?</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Non-violent Sentencing Scheme</p>	<p><b>Discussion:</b></p> <p>Paul brings up the issue of the comprehensive Non-violent Sentencing Scheme and the fact that this group hasn't yet addressed the task.</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> <li>• The group not made much progress in this area.</li> <li>• Paul suggests that the group come up with a mechanism to see if they can even accomplish this.</li> <li>• Let's take 4 to 5 non-value based, non-violent crimes and really analyze them. Let's start with questions along the lines of 'Why is this an M1?' and then look at how we get to the variations.</li> <li>• What do task force members think about taking 4 to 5 crime areas and having a few folks look at them and do a preliminary analysis?</li> <li>• What differentiates classification of felony, what characteristics seem to be common to getting any crime to an 'F whatever' and an 'M whatever'?</li> <li>• How and why is serious Aggravated Robbery at the same class level as murder?</li> <li>• Jeanne, Michael and Maureen agree to take a look at this task. We'll also check with some of the absentees.</li> <li>• Again, the task is to take a handful of crimes, look at them and then come back to the group.</li> <li>• Possible crime areas include bribery, trespass, escape, and fraud by check, forgery.</li> <li>• Could we also pick a felony level and just go horizontally, rather than looking at the randomness of picking 4-5 crimes? The group could go both ways. This is the first foray to say 'What are the elements'?</li> <li>• Basically, let's analyze <i>what</i> elements get you <i>where</i> on a handful of cases.</li> <li>• Jeanne to coordinate this group.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Extraordinary Risk</p>	<p><b>Discussion:</b></p> <p>Norm brings up the issue of the 2013 Extraordinary Risk bill which passed out of this task force and the Commission, but failed in the legislature.</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> <li>• This task force passed a recommendation to eliminate Extraordinary Risk sentencing which lowered crimes of violence, among other things.</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Extraordinary Risk</p>	<ul style="list-style-type: none"> <li>• The recommendation went through the CCJJ but ran into problems with the sponsor who didn't understand the intricacies.</li> <li>• The recommendation also faced challenges in the drafting process.</li> <li>• Jason Middleton and Norm have volunteered to work with legislative drafter Michael Dohr on this.</li> <li>• The revised recommendation will still have to come back to this group and go through the entire CCJJ process again.</li> <li>• Is anyone else willing to work on this?</li> <li>• Matt agrees to work with Norm, Jason and Michael Dohr.</li> <li>• Norm to coordinate this working group.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Next Steps</p>	<p><b>Discussion:</b></p> <p><u>NEXT STEPS</u></p> <ul style="list-style-type: none"> <li>• Let's look at what the value-based non-violent working group has accomplished so far and drill down into the criminal mischief statute and what it's about.</li> <li>• Germaine to get with Maureen on the friendly amendment verbiage for the 104 Habitual Offenders.</li> <li>• Working groups to continue to meet.</li> </ul>
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**Future Meeting Dates:**

**Meeting Schedule 2013**

August 6<sup>th</sup> (Tue.)      1:30pm – 4:30pm      710 Kipling St., 1<sup>st</sup> floor conference room