

Comprehensive Sentencing Task Force Colorado Commission on Criminal and Juvenile Justice

Minutes

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

ATTENDEES:

CHAIR

Jeanne Smith, Co-Chair/Division of Criminal Justice

TASK FORCE MEMBERS

Dianne Tramutola-Lawson/CURE

Kate Horn-Murphy/Victims Representative, 17th JD

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

Maureen Cain/Colo. Criminal Defense Bar

Steve Hager/Department of Corrections

Judge Martin Egelhoff/Denver District Court

Claire Levy/State Representative

Jason Middleton/Public Defender

Glenn Tapia/Division of Criminal Justice, Office of Community Corrections

Matt Durkin/Attorney General's office

STAFF

Paul Herman/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ABSENT

Norm Mueller, Co-Chair/ Private Defense Attorney

Joe Pelle/Sheriff, Boulder County

Charles Garcia/Denver Crime Prevention & Control Commission

Denise Balazic/Parole Board

Michael Dougherty/1st Judicial District

Dave Young/DA 17th Judicial District

Dana Wilks/Judicial Department

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith welcomed the group and previewed the agenda.</p>
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<p>Issue/Topic: Extraordinary Risk</p> <p>Action: Norm, Jason and Matt to meet again and revisit the recommendation</p>	<p>Discussion: Jeanne leads the group in a discussion about the revised Extraordinary Risk bill. The Ex. Risk recommendation was originally passed by the task force in the fall of 2012, but the bill failed during the session. There is a new revised bill on the table for discussion.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • There were a couple different problems getting this through last time. • In looking at page 5, lines 20-22 of the revised bill – Crime of Violence (COV) has to have involved either a deadly weapon or death or serious bodily injury – stalking does not involve those things. • The recommendation last year did two things – it raised the top end to the old ex. Risk levels, doubling the top of the ex. Risk range. But it also reduced the minimum of the midpoint of the presumptive range to the bottom of the presumptive range. • However, we didn't want to do this with child abuse charges, from a policy standpoint. • Part of the review of Jessica's law (which the legislature mandated the CCJJ to research) shows how currently we sentence from 10-30 years. If this Ex. Risk were to pass we would be lowering that 10 years to 8 which may exacerbate a different issue. • If revisions are made to this proposal could we vote on it electronically as a group? No • If we're going to seal this up at a later date - let's have more substantive discussions now. • Stalking and child abuse both have a level of danger that we didn't want to lose by getting rid of Ex. Risk. • When we took the vote here last year, this task force agreed to <u>not</u> reduce the penalty for stalking and child abuse. • Second and subsequent stalking is what we wanted to maintain originally. • Because CCJJ already approved this recommendation last year, it's not necessarily on the same time frame as a new recommendation. • Under the definition of COV there is an A1 section that shows a list of offenses. Section B1 says COV also means any unlawful sexual offense. Could we do something like that showing "COV also means pursuant to stalking, etc." Yes, that's possible as a drafting issue, but maybe that comes into play when we talk about enhanced sentences. • COV could also be reclassified and defined in a way that distinguishes between annoying and dangerous stalking.
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<p>Issue/Topic: (continued)</p> <p>Extraordinary Risk</p> <p>Action:</p>	<ul style="list-style-type: none"> • Should we go back to the criminal code and make sure it's defined properly? • Currently second and subsequent is a class 4 felony. Could we redefine and reclassify this? • There are many different definitions when it comes to crime of violence. • We have a presumptive range and we have an aggravated range, if stalking makes something aggravated does this go back to Blakely issues? Yes. • There could be a stalking that does qualify as COV, if a deadly weapon is involved. • What should we tell the working group? <ul style="list-style-type: none"> -Go back and put stalking in as its own paragraph? -Or maybe redo another rec for CCJJ taking stalking out of the proposal, leaving it as a plain class 4? -If presumptive is 2 to 8 as ex. Risk, it would then be 2-12. But with aggravated Ex. Risk it would move up to 16 as a class 4. -The 2-8 presumptive doesn't matter too much, it's the maximum aggravated that would be different. -We want to make sure the statutes have some consistency, and we don't want to shoehorn things in. -When stalking originally went in as an ex. Risk crime, the discussion was that it wasn't LIKE other class 4's. We would have to be ready to go back and face stakeholder groups saying 'this is not like other class 4's'. -Should the working group redo stalking in its own paragraph in COV? -Or ask them to look at last year's data on second and subsequent stalking and not include it anymore. -There's a set of circumstance, elements of this kind of stalking, that leads to a need for a separate definition and the consequences should be reviewed. -How do we define this so it's a credible threat? -There's first offense and second offense. Especially if we can further define within COV or within stalking. -Stalking can be susceptible to over-charging; it can be a little bit squishy. It needs more of a definition. Victim's groups would tell you it's not charged enough. -How many people are getting sentenced in the 12-16 (double the max) year gap? -Does this have to do with the same victim? -Should we include, or leave 2nd and subsequent as a regular class 4? -Do we ask the working group to revisit this, or leave this as it is but take second and subsequent stalking out? -Advocates say stalking is not charged enough. -Instead of charging felony stalking, people will charge violation of protection order. -Stalking is hard to prove, so it's not charged often at the felony level. -It's hard to imagine a second offense felony stalking without another charge rolled in.
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<p>Issue/Topic: (continued)</p> <p>Extraordinary Risk</p> <p>Action:</p>	<p>Peg retrieved info from this discussion from last year and reviews some of the data for the group:</p> <ul style="list-style-type: none"> -73% got probation -Broke this into below the presumptive, the presumptive, etc. for stalking 67% were right in the presumptive, 16% in Ex. Risk, 15% above that. -These numbers are just for stalking -12 people above the ex. Risk range <ul style="list-style-type: none"> • What does this tell us? Let's drill down on crime classifications that we're conversing about. If people are falling into the higher range then we need to talk about it. If it's not being used, that can tell us that what we would be contemplating would be sufficient to address most cases. • Question - Does the above and beyond range distinguish between the normal and the aggravated range? 2/3 of the cases are still getting in the presumptive range. • It looks like there's really only one case that falls within this. It's the same philosophical argument. • Even with the data we'll end up at the same place we are now. • If second and subsequent is a COV - it would be up to 16 at the ex. Risk range. That would not change the sentence; it would just be called COV instead of Ex. Risk. • Again, let's ask the working group to work on draft language keeping stalking in as COV. Or do we want to come back to CCJJ with a recommendation change to take OUT stalking? • Ask working group to take out stalking. • Consider reclassifying. • Should working group come back with clear defined options? Yes. • Ask working group to explore all options other than keeping it as COV. <p><u>What's next</u></p> <ul style="list-style-type: none"> • Norm, Jason, Matt to meet and discuss what to do with stalking second and subsequent. • New direction, stalking not to be in COV, leave alone, reclassify.
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Issue/Topic:	Discussion:
<p data-bbox="256 247 370 275">Diversion</p> <p data-bbox="269 352 357 380">Action:</p>	<p data-bbox="560 247 1498 310">A recommendation approved by the CCJJ last year and signed into law expands the availability of adult pre-trial diversion programs.</p> <p data-bbox="560 352 800 380"><i>DISCUSSION POINTS</i></p> <ul data-bbox="609 394 1528 1900" style="list-style-type: none"> • At the last meeting, we discussed that the fact that the Diversion recommendation had gone through, but where does that leave CCJJ with implementation? • CCJJ passes policy, business practice or legislation. It's agreed on but what is our responsibility to make sure recommendations are proactively implemented? • Implementation is a downfall in all systems and in life in general. This is a good example of something everyone agreed upon, it can provide some options, but do we have a responsibility beyond that? • We want judicial to help with implementation, but what is our responsibility beyond that? • Money went to judicial, there's a request for RFP's being distributed to DA's to apply for the money. • Christie and Maureen are working on this and a method for tracking where the money goes. • Christie & Maureen are developing a data collection form to start in October. • If we make recommendation but don't watch what we're doing about follow-up, things can fall flat. • We should figure out a way to monitor and implement this recommendation – but is there something prior to that? Things don't happen on their own, so is there a responsibility to ensure implementation rather than just data collection? • 500K went to Diversion so we'll see what happens. Maybe DA's and counties still don't want to do it. • Greeley DA's office is hoping to do some before and after data collection. But the evaluation is going to be a tough piece. • Is this more of a CCJJ level question? Is there a responsibility in every bill that there's a report back. Should there be a required three-year review of all legislation? • Or is this more about walking people through the implementation processes, etc.? • What is striking in this case is that while there are resources, who is shepherding the recommendation through the process? • There's implementation, and then there's implementing well. • What is CCJJ? A policy recommendations body or an over-seer of some kind? • We can assign the work in legislation. • There's implementing, there's data collection and follow-up, Judicial is putting out an RFP. Whether DA's submit a response and use the money and offer Diversion – this may not be this body's responsibility. It's not within the CCJJ's purview.

<p>Issue/Topic: (continued)</p> <p>Diversion</p> <p>Action:</p>	<ul style="list-style-type: none"> • Data collection doesn't solve the implementation problem. • Judicial has taken the lead, DA's will hopefully fall in line. • How we're doing what we're doing is as important as the 'what' – if you have alignment at the front end it helps move things forward rather than force at the back end. • There is a variety of forward movement with the Diversion legislation and we will continue to track implementation efforts.
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<p>Issue/Topic:</p>	<p>Discussion:</p>
<p>104 Habitual Offenders</p>	<p>The task force approved this recommendation last June. At that time, there was a friendly amendment to include verbiage about notifying victims of the change. We need to firm up that verbiage before this is presented to the CCJJ.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • This has to do with the habitual offenders sentenced between 1985 and 1993 and the applicability of the earned time statute for this population. • This group already voted to support this recommendation in June. • But we need to further the discussion on whether and how victims should be notified. • There is new language under consideration. • Currently the law does not require victim notification to be proactive. • As a policy, the state does not require affirmative duty to notify victims. • The new proposed verbiage states that DOC would be required to notify the victim if the offender becomes eligible for parole. That is <u>if</u> the victim has opted in, DOC would notify the DA and the DA would make reasonable effort to notify. • The triggering event could happen when the offender reaches parole eligibility. • Is there any advantage to trying to notify victims when the law passes so that the victim could opt in for notifications? • We want to avoid an agency contacting the victim right before the offender is due to get out. • The VRA wasn't in place when this law (the habitual offender law) was passed. • We are going to have to work backwards on this victim population. • But we don't want the burden to be created outside the normal operations. • Since this will only affect 76 offenders – it seemed like a doable task. • We should plan on notifying victims sooner rather than later. • We could say that when the law passes - DOC to let DA's know that the 76 will be eligible. • Between Monica Crocker at DOC and the DA victims' representatives, this particular part of the process is manageable as a business practice and doesn't need to be legislated. • The DA's victim's representatives were the last people to have contact with the people who would be affected.

<p>Issue/Topic: (continued)</p> <p>104 Habitual Offenders</p>	<ul style="list-style-type: none"> • Maureen to redraft and detail that the DOC is to determine if the victim has requested notification. • Notification to be done. • DA's office would be notified of the change. • Use verbiage 'To notify victim of their rights prior to any parole hearing'. • Monica Croker to reach out to folks ahead of time and have it programmed into the system. • Maureen or Jeanne to contact Nancy Feldman about this as well. <p><u>What's next</u></p> <ul style="list-style-type: none"> • Clarify verbiage. • Present to CCJJ in September. • Mark to present. • Mark and Maureen to take statutory reference out.
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Issue/Topic:	Discussion:
<p>Value-Based Non-Violent Working group</p> <p>Action</p> <p>The value-based working group to meet and continue to discuss MV theft and other value-based issues like pawnbroker, etc.</p>	<p>Mark Evans and Matt Durkin updated the group on the working group's discussions. They walk the group through the newly revised recommendation.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • The working group has come to a lot of common ground. • An additional discussion section has been added to the recommendation to bring it into compliance with the CCJJ recommendation format. • The final four recommendations in this packet have to do with property offenses and it makes sense to import the new theft levels into these. • The group came to an understanding that criminal mischief is basically about "breaking stuff", but it's sometimes committed in a way that involves more culpability. • What is adopted in the recommendation is the same offense level as theft, but the floor for class 6 has been pushed down to \$1000 dollars. • The working group would like to go forward with the recommendation as it stands currently, and then come back and work something in for MV theft at a later date. • Clarifying question on computer crime – as far as the evaluation due to loss, damage, value of services, (page 12) Paragraph 1D – is the value about the <u>theft</u> or is the value the damage to the computer, the system of the software. What is the value based on? During the discussions, if you successfully make out with a certain chunk of money, you can be charged with theft for the \$ amount. So the value would be the value of the theft. • Are we valuing the amount of the theft? Or the amount to fix the damage? • That would be charged under 'E'. Cost of frustration to repair the violation. • Motion to approve and send to CCJJ – all in favor.

<p>Issue/Topic: (continued)</p> <p>Value-Based Non-Violent Working group</p> <p>Action</p>	<ul style="list-style-type: none"> • Matt and Mark to present at the CCJJ. • This group will keep working on MV theft and hope to add this in. • Any other crimes not currently value based that should be represented- like pawnbroker issues? • The non-value based working group to meet and continue to discuss. <p><u>What's next</u></p> <ul style="list-style-type: none"> • The value-based working group to meet and continue to discuss MV theft and other value-based issues like pawnbroker, etc • Also, the non-value based working group to meet and begin their discussions.
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<p>Issue/Topic:</p> <p>NEXT STEPS</p>	<p>Discussion:</p> <p><u>What's next</u></p> <ul style="list-style-type: none"> • The value-based working group to meet and continue to discuss MV theft and other value-based issues like pawnbroker, etc • Also, the non-value based working group to meet and begin their discussions.
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Future Meeting Dates:**Meeting Schedule 2013**

October 8th (Tuesday) 1:30pm – 4:30pm 710 Kipling St., 1st floor conference room