

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

**Minutes**

October 8, 2013, 1:30PM-4:30PM  
710 Kipling, 3<sup>rd</sup> Floor Conference room

**ATTENDEES:**

**CHAIR**

Jeanne Smith, Co-Chair/Division of Criminal Justice

Norm Mueller, Co-Chair/ 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*)

Steve Hager/Department of Corrections

Dana Wilks/Judicial Department

Julie Selsberg for Matt Durkin/Attorney General's office

Dave Young/DA 17<sup>th</sup> Judicial District

Denise Balazic/Parole Board

**STAFF**

Paul Herman/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

**ABSENT**

Claire Levy/State Representative

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

Jason Middleton/Public Defender

Joe Pelle/Sheriff, Boulder County

Charles Garcia/Denver Crime Prevention & Control Commission

Michael Dougherty/1<sup>st</sup> Judicial District

Judge Martin Egelhoff/Denver District Court

Maureen Cain/Criminal Defense Attorney

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Jeanne Smith and Norm Mueller welcomed the group and previewed the agenda.</p>
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<p style="text-align: center;"><b>Issue/Topic:</b></p> <p style="text-align: center;">Extraordinary Risk Revision</p> <p style="text-align: center;"><b>Issue/Topic:</b></p> <p style="text-align: center;">The bill draft to be presented to the CCJJ at its October meeting as an FYI only</p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Jeanne led the group in a discussion about the revised Extraordinary Risk bill. The Ex. Risk recommendation was originally passed by this task force in the fall of 2012, but the bill failed during the legislative session. There is a new revised bill on the table which is more clearly defined than last year’s bill.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• The new draft of the bill from Michael Dohr is in everyone’s packet.</li> <li>• This document lays out the fact that the working group helped draft a second penalty section under the stalking statute itself, rather than putting it under the second and subsequent provision.</li> <li>• With this change, it won’t be defined as a crime of violence but rather become a per se crime of violence, because it will be subject to those particular sentencing provisions.</li> <li>• The normal procedure for approving a recommendation is to ask the task force to vote on it, however, since this is simply a clarified recommendation from what was originally approved by this group a year ago – it will be presented directly to the CCJJ on Friday as an information update only.</li> <li>• The only change with this version is that rather than making stalking a statutory crime of violence (COV) it will become a per se crime of violence.</li> <li>• The range has been defined and is consistent with last year’s recommendation. The CCJJ resolution already passed, this is just clarification.</li> <li>• Representative Levy proposed possibly altering the recommendation at the last Sentencing Task Force meeting, but this is the proposal and is consistent with what the CCJJ already passed. Therefore this will be presented Friday.</li> <li>• The only change Michael Dohr made was in the last sentence of the summary.</li> <li>• The original draft showed an increase in penalties that aren’t accurate. This draft doesn’t have the increase.</li> <li>• On page 4 of the recommendation, rather than referring to the modified violent risk ranges, those ranges are the current Extraordinary Risk ranges.</li> <li>• It’s not accurate to say the penalties are increasing.</li> <li>• The CCJJ may need to tweak the last sentence before finding a sponsor.</li> <li>• That sentence can be tweaked even before the final CCJJ vote in November.</li> </ul>
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	<ul style="list-style-type: none"> <li>• This group should wrap up the conversation that began last month. The working group has discussed it and come back with the recommendation language that’s consistent with what the CCJJ passed last year.</li> <li>• The working group didn’t want to redefine stalking; therefore it made the sentencing range the same without calling it a COV.</li> <li>• This way – it actually has a much broader reach. Otherwise it would call for serious bodily injury and use of a weapon.</li> <li>• Are there any other proposals or suggestions on this bill draft?</li> </ul> <p><u>What’s next</u></p> <ul style="list-style-type: none"> <li>• The group agrees that next steps are simply a notification on the CCJJ agenda with the draft proposal. No vote is necessary.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Jail/DOC lengthy sentences</p> <p><b>Action:</b></p> <p>Forward this agenda item to the next meeting</p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>There is an issue surfacing in the Denver jail (and possibly other jails around the state) about lengthy jail sentences being ordered by judges (e.g. 9 years) consecutive to lengthy DOC sentences, causing a wide variety of obvious problems for local jails. Both Sheriff Pelle and Charlie Garcia are familiar with this issue, but since neither of them could make this meeting – the issue will be forwarded to the next agenda.</p> <p><i>NO DISCUSSION</i></p>
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<p><b>Issue/Topic:</b></p> <p>Upcoming work</p> <p><b>Action:</b></p> <p>Collect info from task force members on desired direction/topics that should be addressed</p> <p>Mark Evans to let the task force know if the value-based group is able to come to consensus on MVT for this session and the current recommendation</p> <p>Paul, Jeanne and Norm to meet about future possible directions</p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Paul Herman leads the group in a discussion of possible upcoming work for the Comprehensive Sentencing Task Force.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• At the October CCJJ meeting, this task force will be presenting the Habitual Criminal recommendation, the Extraordinary Risk recommendation and the Value-based Crimes recommendation.</li> <li>• Task force members will be updated on CCJJ outcomes.</li> <li>• Now that this group can declare success in a variety of areas, where do we go from here?</li> <li>• The Non value-based working group was established a few months back but has yet to meet.</li> <li>• While those team members haven’t met in person, they’ll be trying to sort non value-based crimes and look at issues like fraud, credit card crimes, and computer crimes to name a few. With these crimes, the level of seriousness is not necessarily defined by the damage that’s occurred.</li> <li>• Trying to lump these into categories that make sense has proven to be a</li> </ul>
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<p>for this group</p> <p>The November meeting will remain on the books at this point – but may end up being cancelled</p> <p>Dana to send Diversion link on Judicial website to Germaine to forward to the group</p>	<p>challenge.</p> <ul style="list-style-type: none"> <li>• It’s difficult to dump these categories into current definitions, so the group may be exploring new definitions.</li> <li>• The question remains as to whether this group should attempt to put these non-value based crimes into a grid.</li> <li>• The grid previously discussed by this group consisted of criminal history on one side (the horizontal axis) and the offense level on the other side (vertical axis), which is just one option for a grid.</li> <li>• This proposal goes back to earlier conversations in this task force regarding its scope of work.</li> <li>• This task force looked at the 16+ states that utilize a grid – but came to the conclusion not to do a grid. The consensus was that Colo. has its own grid system and the desire is to utilize that system.</li> <li>• Thus, the work that came out of this group over the last two years was on other value based crimes. Keep in mind that at the same time the Drug Task Force was working on a comprehensive overhaul of Drug sentencing laws.</li> <li>• The Drug Policy Task Force created a new drug scheme and grid, but under the current scheme in Colorado (<b>not</b> using the horizontal axis for offender issues and offense classification on the vertical).</li> <li>• What we’re seeing in the literature today regarding sentencing shifts across the nation has to do more with changes to drug laws and enhancing opportunities available for those convicted of drug crimes to be dealt with, punished and treated in the community.</li> <li>• These changes (in drug laws) are consistent with the National Courts and PEW charitable trust. Basically, the sea change in criminal justice in the U.S. is around drugs.</li> <li>• Some states are starting to address mandatory minimums, but mostly just drugs.</li> <li>• With that in mind, does it make sense at this point to take these non-violent, non-value based offenses and look at them through a different lens? And if so, what is the positive impact and common ground this group is hoping for?</li> <li>• Has this task force gone as far as it can go?</li> <li>• If so, what about the lingering 3<sup>rd</sup> group of violent criminals and person-to-person crimes?</li> <li>• There’s not a lot of assistance from other states as far as changes regarding anything outside of the drug grid.</li> <li>• Should this task force as a whole take a step back and reassess its goals?</li> <li>• The easy question is ‘what are other states doing?’ – What you’re left with is “Is there value to go in this direction?”</li> <li>• So – looking at the agenda for the coming year, the value-based working group is pretty much wrapped up except for MVT. That’s the one outstanding issue.</li> <li>• The group looked at everything that could honestly be called value based and came to agreement on five of the obvious, but MVT has been difficult, primarily in regards to 2<sup>nd</sup> degree MVT.</li> <li>• At this point we may not come up with a good alternate proposal for 2<sup>nd</sup> degree.</li> </ul>
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	<ul style="list-style-type: none"> <li>• If the Value-based working group continues to work, it would be very limited in scope.</li> <li>• As far as the Non-value based working group – we still need to determine which direction to go if any.</li> <li>• The Sex Offense working group continues to meet and discuss a handful of issues. Norm and Kate updated the Sentencing Task Force on the work of the Sex Offense Working Group:             <ul style="list-style-type: none"> <li>-This is a very knowledgeable and involved group.</li> <li>-The working group has divided into four work teams that are looking at various Sex offense issues.</li> <li>-One work team is examining <b>Crime Classification</b> issues.</li> <li>-Crime classification issues cover items such as “Does it make sense that a class 4 Sexual Contact results in a mandatory sentence while an actual sexual assault is non–mandatory?”</li> <li>-The second work team is looking at <b>Money</b>, with one of the main topics being that a significant reason the current system has a lot of problems is that the lifetime supervision act was never thoroughly funded</li> <li>-Maureen Cain is leading that work team and currently gathering all the various stakeholder budgets specific to funding.</li> <li>-The <b>Front-end</b> working group is looking at what prosecutors, law enforcement, probation and other ‘front end’ agencies need at the onset of dealing with a sex offense.</li> <li>-Then there’s the <b>Data Group</b>, which is focused on data issues longitudinally from someone entering the system through the end and how to make that consistent.</li> <li>-The Sex Offense Working Group didn’t hold its October meeting to give these teams a chance to get some work done.</li> <li>-The working group will reconvene in November.</li> <li>-However, none of these working teams or the Sex Offense Working Group will come with any finished products anytime in the near future; however, everyone is willing to take this more comprehensive look.</li> <li>-The Sex Offense Working Group will continue under the umbrella of the Sentencing task force</li> </ul> </li> <li>• Are there any other issues the Sentencing Task Force should be dealing with? This group shouldn’t take things on just to take them on.</li> <li>• The commodities metal group has seen an inordinate loss from copper pipes, etc. being stripped out of buildings. That group feels those issues are not being addressed adequately with our theft statutes.</li> <li>• The commodities group was told that the Sentencing TF focusses on broader issues, but they were also told the issue would be brought up here.</li> <li>• Another issue that has come up is whether or not there is a need to form a sub-group to focus specifically on victim needs.</li> <li>• Those two issues (commodity metals and victims) have both come up at times.</li> <li>• Are there other areas in individual task force member arenas we should be looking at?</li> </ul>
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- The Sex Offense working group has talked about victim issue as well and the CCJJ's involvement or lack of involvement.
- In the victim's arena overall there has never been much research.
- This is frustrating for victims groups when funding is repeatedly brought up to go toward offender issues but not victim issues.
- COVA will be running legislation with CDAC to address victim issues this coming session.
- There's a lack of balance for weight given to victim issues as compared with offender issues.
- If it turns out that the work of the Sex Offense group is our main area of focus that's fine – and the Sentencing meetings can be adjusted accordingly.
- Keep in mind the political climate this year will be different from the last few years. There will be less incentive to do anything that looks like leniency in the Criminal Justice arena.
- There has been a lot of negative publicity around criminal justice in Colorado and the CCJJ may not find sponsors for a lot of current CCJJ issues.
- However, while nobody wants to do anything politically risky this year, we need to keep in mind the widespread CCJJ political support.
- Human trafficking, Jessica's law and Amendment 64 issues were moved to the CCJJ from the legislature this year.
- CCJJ will decide Friday whether to approve the Jessica's letter response that has been drafted.
- This Sentencing Task Force also started work on sentencing pathways in the past, but never finalized that work.
- It's a piece we've talked an awful lot about but never came to a conclusion.
- There was a time when we were saying maybe one of the roles for this group should be to define offender characteristics.
- Jeanne updated newer members of the task force about when Paul talks about "pathways" – it refers to a discussion around 'What does each point in the system do well with which kind of offenders'. It's fascinating work but heavy duty lifting.
- Part of this discussion is about the decision making process to send somebody somewhere, based on decisions that may or may not be accurate – in a nutshell, that is what 'pathways' is about.
- What this group was trying to look at was, what's the basic expectation, who is going where and for what reason.
- At that time we had a lot of conversations about what are we trying to achieve.
- We would like to reduce recidivism but are we going about it correctly?
- Would it make sense to have Norm, Paul and Jeanne talk about what

	<p>future agendas look like?</p> <ul style="list-style-type: none"> <li>• Should we say next time we get together is when we have something to bring forward to the group – give us some time to develop strategy and tactics on where to go in the next year?</li> <li>• Let’s ask members for feedback on what should we be addressing in this group.</li> <li>• Has this group ever tracked data on who is in DOC, when they got out on parole, looking at the data on how much time someone actually spends in DOC? Most inmates only serve a third of their sentence, why aren’t we looking at that?</li> <li>• From a system perspective, you would want to look at everybody in the system, their sentence, length of sentence and time served, release patterns, etc.</li> <li>• Peg ran this for theft and stalking, etc. – we run this kind of data when we’re trying to get as much information as possible about a specific recommendation coming forward.</li> <li>• What’s the end game with this, why would we do this? There’s a public perception that everyone goes to prison, but the truth is it takes a lot of repeat offenses to get to prison.</li> <li>• Let’s find out who goes to prison and why before we try to change the scheme.</li> <li>• There’s a problem in matching some of these data bases. Matching name and date of birth has been problematic. It can be difficult to do the disposition matching in regards to “Did this offense result in a sentence”.</li> <li>• If we take on an issue of pathways, maybe we could look at how people are getting into the system to begin with – we would need to be more specific about what question we’re trying to address.</li> <li>• The conversation should be based more on how you get the right information, to the right person, at the right time to make sure sentencing decisions are appropriate regarding where someone goes and why.</li> <li>• There was also a discussion at one point of sitting down and grouping all crimes levels (like all F3’s) to see if everything is falling at the right level.</li> <li>• Can we look at classifications rather than the elements of every single offense?</li> <li>• We did hold focus groups several years ago looking at what are the real issues – one of the main things that came up was Truth in Sentencing, we can revisit that</li> <li>• Is there anything happening with the EBDM project in Mesa County that would be worthwhile talking about here and elevating to a statewide level?</li> <li>• There are seven places across the country taking part in EBDM, so we could look at what Milwaukee is coming up with as it relates to Denver</li> </ul>
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(rather than Mesa, which is smaller and a lot different than Denver).

- The judicial branch is looking at judges and sentencing grids, and how do judges make ‘good’ decisions on what they have in front of them.
- The goal is to get assessment info to judges before they make those decisions so they are making wise decisions.
- Prosecutors in Milwaukee are looking at this too.
- When we talk about EBDM and sentencing the discussion is largely focused on selecting the right **category** of sentencing option rather than the exact number of years.
- EBDM is less about sentencing structure and more how to take a state’s sentencing structure and apply evidence decision making to their particular structure.
- Shall we get back together as a group to continue this discussion, or can Norm, Jeanne and Paul chew on this and come back to you?
- Let’s have the Sex Offense working group continue to meet – but they won’t have anything to come back to this group with for a while.
- What about postponing November, gather input from everyone about what they feel next steps should be for this group, then meet in December to talk about outcomes.
- As far as the value-based group. If they are able to reach a consensus about MVT, we can we strap that into the current proposal.
- DANA brought up an issue for the good of the order:
  - This group had discussed efforts aimed at putting the new Diversion form on the public judicial website and it is indeed now on the public website.
  - The form will be on its own page.
  - Dana will send link to Germaine and Germaine will forward it to the group.
  - Judicial has also now hired someone to work on Diversion funding specifically.

What’s next

- Collect input from task force members about what issues they feel should be addressed by this group next.
- Mark says his working group will probably agree on first degree MVT theft but nothing more.



<b>Issue/Topic:</b>	<b>Discussion:</b>
<p data-bbox="233 212 394 239">Next meeting</p> <p data-bbox="272 281 355 308"><b>Action</b></p>	<ul style="list-style-type: none"> <li data-bbox="610 212 1446 281">• Collect input from task force members about what issues they feel should be addressed by this group next.</li> <li data-bbox="610 296 1487 323">• Keep the November meeting scheduled but then cancel if we need to.</li> <li data-bbox="610 338 1471 407">• Mark says his working group will probably agree on first degree MVT theft but nothing more.</li> <li data-bbox="610 422 1341 449">• Dana to send the Diversion link to Germaine to distribute.</li> </ul>

**Future Meeting Dates:**

**Meeting Schedule 2013**

November 5<sup>th</sup> (Tuesday)      1:30pm – 4:30pm      710 Kipling St., 1<sup>st</sup> floor conference room