

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

January 7, 2014, 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*)  
Barry Partis/Department of Corrections  
Dana Wilks/Judicial Department  
Matt Durkin/Attorney General's office  
Dave Young/DA 17<sup>th</sup> Judicial District  
Denise Balazic/Parole Board  
Glenn Tapia/Division of Criminal Justice, Office of Community Corrections  
Jason Middleton/Public Defender  
Joe Pelle/Sheriff, Boulder County  
Maureen Cain/Criminal Defense Attorney  
Michael Dougherty/1<sup>st</sup> Judicial District

**STAFF**

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

**ABSENT**

Charles Garcia/Denver Crime Prevention & Control Commission  
Judge Martin Egelhoff/Denver District Court

<b>Issue/Topic:</b>	<b>Discussion:</b>
Welcome and Introductions	Jeanne Smith and Norm Mueller welcomed the group and previewed the agenda.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p data-bbox="120 501 509 564">First Degree Motor Vehicle Theft amendments</p> <p data-bbox="240 606 386 638"><b>Issue/Topic:</b></p> <p data-bbox="107 680 522 816">This will be presented preliminarily to the CCJJ this month (January), then presented in February for a final vote.</p>	<p data-bbox="561 501 1523 638">Jeanne informed task force members that the small working group that has been studying harmonizing value-based offenses with the theft revisions has come to consensus on 1<sup>st</sup> Degree Motor Vehicle Theft, the one remaining issue with this recommendation.</p> <p data-bbox="561 680 802 711"><i>DISCUSSION POINTS</i></p> <ul data-bbox="610 722 1523 1902" style="list-style-type: none"> <li>• Jeanne and Mark Evans clarified that consensus was reached actually reached by the value-based working group a while ago regarding first degree.</li> <li>• For that 1<sup>st</sup> degree the agreement was to modify it to create a class 5, class 4 and class 3.</li> <li>• The original hang up around Motor Vehicle Theft was about 2<sup>nd</sup> degree MVT. Ultimately the group was not able to reach a point of positive progress so they agreed to leave second degree as is and retained the original consensus around first degree.</li> <li>• For clarification - 2<sup>nd</sup> degree MVT is taking a car, the offense becomes first degree if an offender has taken a car along with something else from a whole list of other conditions.</li> <li>• With second degree the vehicle also has to be returned in 24 hours.</li> <li>• Second degree is a class one misdemeanor up to a class 5 felony.</li> <li>• The values on second degree are also entirely different than cut-off values on first degree.</li> <li>• Second degree is what was considered the old joy riding charge.</li> <li>• Occasionally you see true joy riding (16 year old), but not very often anymore.</li> <li>• Mark stated that when the working group talked about other value based crimes – they talked about harmonizing ALL value based crimes. However, this rational didn't hold true exactly for MVT.</li> <li>• The basis of the changes to first degree are reflected in the change in the value of vehicles.</li> <li>• The impetus was to change the classification to match the value of cars, current day.</li> <li>• Unlike the other offenses in the value-based category, it was agreed the bottom level for MVT should be an F5.</li> <li>• Mark explained to the group that this document shows new language in yellow and the red text shows the difference from the October recommendation.</li> <li>• The 'aggravation' is still in the statute.</li> <li>• This change supports what we're trying to do with proportionality.</li> </ul>

	<ul style="list-style-type: none"> <li>• There is a motion to forward this recommendation (specifically the addition of MVT to the original recommendation harmonizing value-based crimes already approved by this group) to the Commission.</li> <li>• We'll present this as its own recommendation to CCJJ Friday as preliminary, then CCJJ in February for a final vote.</li> <li>• Rep. McCann will be the Democratic prime sponsor for the harmonizing recommendation – still trying to confirm republican prime sponsor.</li> <li>• The hearing for this bill can be scheduled for after the February CCJJ meeting.</li> <li>• Can the rules be amended so CCJJ can vote on this Friday, since there's no real pushback?</li> <li>• Other questions – do we anticipate any opposition? Either from the Insurance industry or MV industry?</li> <li>• Is there a lobbyist for the auto insurance industry? Maureen will outreach to these folks.</li> <li>• Another issue – is there a need for an F2 (since the CCJJ voted to add an F2 to the other value based crimes).</li> <li>• There were discussions about an F2 in the working group for all of this.</li> <li>• F3 is defined by value and prior offenses.</li> <li>• For theft the F2 million dollar cut off (with the other crimes) that had to do with taking people's retirement accounts, etc.</li> <li>• If we were to go anywhere on a higher class felony, the only way to get there is to really talk about prior convictions.</li> <li>• This doesn't really have anything to do with value at that level</li> </ul> <p><u>What's next</u></p> <ul style="list-style-type: none"> <li>• This will be presented preliminarily to the CCJJ this month (January), then presented in February for a final vote.</li> </ul>
--	---

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Jail/DOC lengthy sentences</p> <p><b>Action:</b></p> <p>Could CSOC help us with data collection?</p> <p>Joe will try to gather information and send us an email. Wait to hear back from Joe</p>	<p>Jeanne informed task force members that 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.</p> <p>Sheriff Pelle brought the group up-to-date on what he knows about the issue.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• There is at least one instance of an inmate serving 9 ½ years in the Denver County Jail on multiple misdemeanors to be followed by a consecutive 18 years at DOC.</li> <li>• Gary Wilson contacted Joe Pelle about this issue to see if CCJJ could take a look.</li> <li>• The statute changed in 2007 to allow for this kind of sentencing.</li> </ul>

- The issue for sheriffs with this kind of lengthy sentence is around housing, programs, security and a variety of other issues.
- First of all, 9 ½ years is unheard of for jails.
- This kind of sentencing creates a long term secure housing situation for a high risk inmate.
- Also, transition programming in jails is out the window for this kind of an inmate.
- There is also no incentive for behavior modification.
- Gary Wilson, Joe Pelle and other sheriffs are concerned about this.
- The Sheriffs have meeting scheduled for tomorrow in Ft. Collins and Joe said he will bring it up there.
- Is there a better alternative?
- In this case – the guy went to trial and was convicted of one felony while acquitted of many other felonies. However, the offender had many other misdemeanors so the judge sentenced him to the maximum on all the misdemeanors with a consecutive to DOC afterwards.
- This case was more about the judge’s frustration around the felonies the offender was acquitted on.
- This statue was switched in 2007 (for jail time followed by DOC time) originally so that offenders serving a DOC sentence, wouldn’t have to go back to the county to serve misdemeanors there.
- With the old system, the Parole Board wouldn’t release these guys because there was no parole plan because the offender’s next move was to go to jail.
- Can counties work with DOC so that the jail can almost contract with DOC to serve the time in DOC?
- Contracting issues are problematic as well.
- This person is a fixed cost inmate of the jail.
- Jails can’t afford this.
- This is the first time this has happened in 15 years.
- If someone is being sentenced on misdemeanors, and has a DOC sentence hanging over them – is there a fix to not allow consecutive sentences like this in the future?
- This has happened one other time where a multi-year sentence to jail was followed by multi-decade DOC sentence.
- The idea about concurrent sentence would only be when a DOC sentence follows.
- 10 years in county jail followed by decades in DOC is ridiculous.
- This results in a high security risk inmate in jail for a long time.
- Since this is so rare, and apparently just one case, do we want to spend our energy tackling this at this point? Sounds like an outlier case.
- It’s better overall to have the jail sentence before the DOC sentence generally.
- This was flipped in 2007 for a good reason.
- Let’s find out if this is a bigger issue that we haven’t heard about. We need to know the extent of the problem.
- Could CSOC help us with data collection? Joe will try to gather information and send us an email. Let’s wait to hear back from Joe.

Issue/Topic:	Discussion:
<p data-bbox="103 212 527 243">Sex Offense Working Group Update</p> <p data-bbox="272 281 358 312"><b>Action:</b></p> <p data-bbox="126 350 505 417">Finish gathering data from work teams</p> <p data-bbox="110 455 521 560">Present outcomes to Sentencing Task Force and CCJJ for advice and direction on next steps</p>	<p data-bbox="565 212 1438 243">Norm and Kate discussed the activities of the Sex Offense Working Group.</p> <p data-bbox="565 281 802 312"><i>DISCUSSION POINTS</i></p> <ul data-bbox="610 317 1528 1904" style="list-style-type: none"> <li>• There are four work teams within the Sex Offense Working Group, and all are actively pulling data and information on a variety of topics.</li> <li>• The four areas represented are Money, Classification, Front End Issues and Data.</li> <li>• The Classification team is chaired by Judge Bailin – so far they have had three meetings and are batting around the idea of a determinate class 4 and more flexibility regarding probation.</li> <li>• Members on that group include Roxanne Bailin, Erin Jemison, Tom Raynes, Laurie Kepros and Andrea Eddy.</li> <li>• This Classification team will be presenting findings to the Sex Offense Working Group tomorrow (January 8<sup>th</sup>).</li> <li>• The SO working group will bring all the findings back to this Task Force and let task force members know what the group is working toward.</li> <li>• Nothing will be proposed legislatively this year so this working group is not under any time constraints at the moment.</li> <li>• The second team is the Money group – they’re looking at what resources are allocated, where, and for what.</li> <li>• Membership on this group includes Maureen Cain, Kellie Wasko for DOC, Jeff Geist with Parole and Angel Weant from probation.</li> <li>• This group has only met once but Maureen is meeting individual with many agencies – JBC, Comm. Corr., all other agencies to get a good grasp on how sex offender money is flowing.</li> <li>• Maureen’s money notes are available if anyone wants to look at them.</li> <li>• Housing issues are surfacing across the board as a problem for sex offenders.</li> <li>• Maureen is schedule to meet with Kate next to talk about money and victims.</li> <li>• The money group also wants to look at victim’s issues because it’s on the fringe. The crime is unreported or underreported, and those who go through the system have often said they would not report the crime again due to the way the system treats victims.</li> <li>• The Sex Offense Working Group was originally looking at F4 determinate and the discussion was about if there was a new offense created, what would the funding issues be either in DOC or the community.</li> <li>• Lifetime Supervision was passed but was never appropriately funded.</li> <li>• The money group was created because to date nobody has ever looked at the details of funding and where it falls short.</li> <li>• Regardless of whether someone favors lifetime supervision or not, it has never been adequately funded.</li> <li>• The Sex Offense Working Group created this package of four issues in the hopes that drilling down into all these areas would make it easier to wrap up the totality of the question around determinate.</li> <li>• There’s also a data group and more info will be presented from them tomorrow.</li> </ul>

	<ul style="list-style-type: none"> <li>• There's also a Front End Users Team working on flow charting arrest through sentencing and detailing who the actors are, what information they have and what information they need.</li> <li>• Basically the Front End group is looking at 'What do prosecutors and law enforcement feel they're missing in regards to what are the needs out there in the CJ system regarding sex assault victims'.</li> <li>• This is a very good group, but there are political realities at play as well.</li> <li>• Are victims issues front end issues, or money issues?</li> </ul> <p><u>What's next</u></p> <ul style="list-style-type: none"> <li>• Once the four work teams have compiled the information they've been gathering, the Sex Offense Working Group will present those findings to this task force and hopefully CCJJ to get some guidance on what to do regarding next steps.</li> </ul>
--	--

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Sentencing Task Force Accomplishments</p> <p><b>Action</b></p> <p>Compile outcomes from this discussion</p> <p>Bring back to the group in February to identify priorities</p>	<p>Jeanne spoke to the group about the fact that before this group decides what they want to tackle next in 2014 and how to move forward, it's probably best to look back at all the accomplishments for the group, changes made and positive outcomes from prior work.</p> <p>To kick off this discussion Peg presented a preliminary analysis of the changes since the statutory revisions last year to the theft crime classifications.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Peg reports that she decided to take a quick look at the six months following the passage of House Bill 13-1160, the theft statute revisions produced by this group.</li> <li>• She compared six months of data since the passage this year from last year and walked the group through a handout showing the outcomes.</li> <li>• Peg explained that figure one shows the law classifications for theft before and after the statutory change.</li> <li>• In the pre-period there are gaps and inconsistencies, for example no F6, M3 or Petty categories.</li> <li>• The post-period shows the distribution of theft crimes since the law was passed and it is clearly much more logical.</li> <li>• In Table 3 it's interesting to note that 'Theft as the Most Serious Charge' has dropped due to the whole reclassification.</li> <li>• In this table the 'post period' shows slightly more cases including theft charges, but as most serious charge it has dropped.</li> </ul>

- This group talked at length about sentencing options in theft and that they didn't reflect the value of items being stolen.
- The new sentencing scheme has allowed more flexibility in the charging of theft to accurately reflect the value of what was stolen.

Paul continued the conversation with the group about Sentencing Task Force accomplishments and walked the group through a handout that shows issues identified by this group in 2011 as important, and the action steps taken in those areas-

#### *DISCUSSION POINTS*

- Three years ago Jeanne held one-on-one discussions with every member of the Sentencing Task Force and compiled a list of Issues/Suggestions/Opportunities that were important to individual members.
- Paul reviews the list of those items and action steps taken on each.
- In 2011 the group showed a desire to address Diversion and this group did indeed accomplish that goal and as of today money grants are being received by jurisdictions to assist with the new Diversion platform.
- The Drug Task Force addressed some of the issues identified around mandatory minimums and habitual.
- Three years ago the group identified the topic of **PSI's as one that needed work** - who needs it, how are they getting it, in what forms is it presented. That work has yet to be addressed.
- We've talked about the PSI issue periodically but haven't addressed it outright.
- This list gives the group an idea of places where we've been, places where we've had some success and places we may want to go in the future.
- It's good for us to keep in mind that this task force has had major impact on Colorado laws in many areas.
- With this info in hand, what does the task force want to do next? One of the challenges as a group is where do we want our passions and efforts to go in the future?
- The accomplishments are huge – just the six month theft analysis alone is impressive.
- As far as Diversion - probation has hired someone to perform the RJ coordination coupled with DA's executing more restorative justice and the newly founded Diversion program which starts in March.
- Peg is also tracking the drug bill to make sure we've accomplished our goals.
- As far as what's next, **there's a theme of looking at habitual again.**
- Should we talk about **county jail issues and overcrowding issues that are**

	<p><b>starting to surface as more crimes now are misdemeanors?</b></p> <ul style="list-style-type: none"> <li>• There's also a lot of research in other states about victims groups showing that families with victims are the same families as the offender families. There's a trend to work with communities to 'own' their own crime.</li> <li>• California has a new Victim's Center available to folks whether they report the crime or not, Oregon has some programs too. Victim/offender alliances.</li> </ul> <p><u>What's next</u></p> <ul style="list-style-type: none"> <li>• Staff will compile the outcomes of this discussion and bring it back to the group in February to identify priorities.</li> </ul>
--	--

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Sentencing Task Force Next Steps</p> <p><b>Action</b></p> <p><u>Areas of Interest</u> DUI and Comm. Corr. DUI and jail overcrowding Habitual Sentencing Pathways PSIR (plus new Assessment Summary Report) Return to Custody beds Parole issues Mandatory consecutives</p>	<p>Paul leads the group in a discussion about any other pressing issues/areas of interest.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• In Adams County there's a push to open doors in Comm. Corr. for DUI offenders so they can get treatment, keep their jobs, etc.</li> <li>• With mandatory sentences to jail for DUI the over-crowding is becoming a huge issue.</li> <li>• The repeat offender DUI issue in Colorado has big problems.</li> <li>• The DUI and DV populations are driving a lot of jail over-crowding.</li> <li>• This is the population we have to treat, particularly the DUI population.</li> <li>• In Mesa, the research showing to be most effective is residential treatment (re Comm. Corr.) for DUI's.</li> <li>• Do we have to make DUI offenders felons to get treatment?</li> <li>• A great goal would be for jails to have the same range of services that DOC has.</li> <li>• If you can move that population forward, it's more financially effective, reduces recidivism, make people commit less crime – it's the treatment for the DUI offenders.</li> <li>• Another issue is <b>habitual sentences for violent vs. non-violent offenders.</b></li> <li>• <b>Can we get new numbers now with the change of guard in Arapahoe County?</b></li> <li>• It was believed that most habitual sentencing came out of the 18<sup>th</sup> and not so much from other jurisdictions.</li> </ul>



- **Can we get revised data on habituals and what it looks like now?**
- For example, it would be good to know how many filed vs. how many convicted and the percentage by judicial district.
- What about those eligible for habitual?
- From the DA's perspective, even in offices that are careful about filing habitual, it's not an easy decision and not easy to manage.
- The discretion cuts both ways.
- **Would it be wise to add a potential motion to reconsider on habitual to give judges the ability for a second look at habitual?**
- There are some offices (like in Dan Rubinstein's) with habitual guideline criteria.
- The group is clearly interested in DUI and habitual issues, what about non-legislative policy issues?
- The Comm. Corr. Task Force just started three working groups. One of them will be studying populations that follow into the rubric of low risk/high stakes crimes that might be appropriate for modified Comm. Corr. sentences. For example, the vehicular homicide where probation isn't enough, DOC is too much.
- There will probably be discussions at some point about what crimes, besides typical felonies, are appropriate for Comm. Corr.?
- If we do go down that road – let's not lose sight of risk. We don't want to put low risk in with high risk.
- Another item the Comm. Corr. group is looking at is the whole idea of parole inside and/or outside the sentence. This issue has segued into presumptive issues, etc. as well.
- Paul reminds the group that early on they talked about pathways people go through and info available to key decision makers (prosecutors etc. and judges as well).
- The issue of pathways came up a number of different times and in other groups as well.
- **The pathways conversation focusses on what information is available and when.**
- **This group had also talked about the PSIR and what information would be most appropriate for the parties involved at what stage to make those decisions – much like EB decision making protocol NIC established years ago.**
- For example - If someone has a class five or six felony, is non-violent, then violates parole as an absconder, they're placed in a county jail, as a technical violator. Since they have the pending charge they can be there three or four months. Now they're eligible for community return to custody. There's no discretion on revoking. It gets tricky and the Comm. Corr. task force is meeting with DOC on who performs community placement.

- Many offenders are being placed as Community Return to Custody.
- **However, the big problem is that there are only 270 beds in the entire state for community return to custody.**
- All beds are currently full and 300 people are waiting.
- These folks are moving from county jail to a halfway house for 30 days to 6 weeks in a community they don't live in and they're never going to live in. They have to try and get a job in a place they're never going to live. The whole arrangement is over in 6 to 8 weeks, but they still have to get jobs.
- 252 beds are a significant issue – they don't give comm. corr. an opportunity to apply a dosage of the program that's even effective.
- This sweeps them under the rug.
- The offender may have a place to live and a job but we pull them out and start them all over again – again for 6 to 8 weeks.
- This is frustrating for the parole officer who thinks "If I revoke this guy he's got 28 days left".
- **This is a biggie – does CCJJ want to venture into parole issues?**
- Several months ago CCJJ decided to go back to the issue of re-entry.
- It's likely that when CCJJ hits re-entry, parole will fall under that purview.
- **Parole could either fall under Re-entry or become its own thing.**
- We're not asking for you the group to decide today about where we're going, but we wanted to open up the topic.
- Mesa EBDM project – NIC is about to start phase 3 on this project. They will select one state to participate in this phase. Due to Mesa counties involvement in previous phases Mesa is a site they are considering.
- **If so, this could help move the conversation forward.**
- Is probation looking at the structure of PSI's? Yes, over last 18 months they put together some new options for districts. The new version is more digestible than a full PSI. There's a template out there for districts to use. Some are using the modified PSI. It's called the Assessment Summary Report and it provides risk and criminogenic needs.
- **Dana could provide more info on this.**
- Some judges are looking for more info on PSI's.
- PSI'S are a resource issue. Criminal history simply takes a certain amount of time to verify.
- **Should the group look at mandatory consecutive sentences? Have we looked at statutes in Colorado that mandate mandatory consecutive sentences and how those play out?**
- Is there an organized effort among sheriffs to look at consecutive sentences? Per Joe, some jurisdictions are doing internal assessments of each other and working with NIC on this.
- The problem is it's such a diverse state and the issues are so different from county to county.

	<ul style="list-style-type: none"> <li>• There's no requirement for Sheriff's to conduct programming.</li> <li>• <b>A small coalition of five sheriffs is working on this. Joe to report back at the next meeting.</b></li> </ul> <p><u>What's next</u></p> <ul style="list-style-type: none"> <li>• Staff to compile outcomes from today's meeting for the group to delve into further in February.</li> </ul>
--	---

<b>Issue/Topic:</b>	<b>Discussion:</b>
Next meeting	<ul style="list-style-type: none"> <li>• Staff will compile all the outcomes from today's discussion.</li> <li>• During the February meeting the task force will discuss priorities.</li> <li>• Maybe we'll know more about the proposed CCJJ Re-entry group at that time.</li> </ul>
<b>Action</b>	

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

February 11<sup>th</sup>, (Tuesday)      1:30pm – 4:30pm      710 Kipling St., 1<sup>st</sup> floor conference room