

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

March 11, 2014, 1:30PM-4:30PM
690 Kipling, 1st Floor Conference room

ATTENDEES:

CHAIR

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

TASK FORCE MEMBERS

Jason Middleton/Public Defender
Joe Pelle/Sheriff, Boulder County (phone)
Walt Pesterfield/Division of Adult Parole
Michael Dougherty/1st 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

Dianne Tramutola-Lawson/CURE
Kate Horn-Murphy/Victims Representative, 17th JD
Dana Wilks/Judicial Department
Glenn Tapia/Division of Criminal Justice, Office of Community Corrections
Charles Garcia/Denver Crime Prevention & Control Commission
Judge Martin Egelhoff/Denver District Court
Matt Durkin/Attorney General's office
Dave Young/DA 17th Judicial District
Maureen Cain/Criminal Defense Attorney
Mark Evans/ Public Defender's office (*non-voting member*)

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Jeanne Smith welcomes the group and acknowledges many absentees due to weather and the legislative session.</p>
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<p>Issue/Topic: Data Request Feedback/Habitual Offenders</p> <p>Action: Jason will put together a grave and serious list</p> <p>Jason to send a request to the district court from the group regarding the escape verbiage regarding habitual sentencing. The original statute language was supposed to include both prior walkaway escapes and current walkaway escapes.</p>	<p>Discussion: Peg Flick shared data outcomes and presented a handout to the group in response to questions raised last month about habitual offenders.</p> <p><i>DATA PRESENTATION</i></p> <ul style="list-style-type: none"> • During the February meeting data was presented in response to Jason’s request regarding ‘What kinds of crimes are being filed on’? • Michael also had a request about “Of all those who could be filed on, who IS getting filed on?” This is the data Peg prepared for the group for today. • Peg sought feedback from Jeanne, Jason and Matt Durkin before trying to gather the data and answer the question. • Peg distributed and walked the group through a 9 page document with her findings. • She stated the way the statute is written is very vague. • To answer the question it’s necessary to look at both the presenting crime (is it eligible) and priors. • There are some exclusions as well. • For example with escape – does it count as an eligible offense for the presenting crime and/or for the priors? • Peg’s first table (Table 1) breaks down info on the “Little Habitual” charge, which is a sentence that results in 3 times the max sentence, while the “Big Habitual” is 4 times the max. • The presenting offense for the little habitual ranges from an F1 to an F5. • The presenting offense for the big habitual is ANY prior felony conviction. • This data excludes all escapes because we can’t tell if the escape was a custodial escape or not. • Past drug convictions don’t count if they’re now not a felony. • Prior escapes were excluded as well. • Peg used one fiscal year of filings for this analysis. • Because charges do not distinguish between little and big habitual, Peg combined them. • To calculate priors, Peg pulled the offender’s name and date data. • However, this approach is not going to be 100% accurate. • For example, this doesn’t include out-of-state felonies. • For offenders with multiple cases, Peg went with the last case. • Peg identified prior felonies that are now misdemeanors due to 1352. • She applied 2013 criteria. • Peg identified 52 cases that didn’t look like they should’ve been eligible, but were still filed as habitual.
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<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Data Request Feedback/Habitual Offenders</p>	<ul style="list-style-type: none"> • Table one shows that of all the filings in 2013, 79% are not eligible for habitual based on the criteria Peg used. • 21 % were eligible. • Of those 21%, 7% were actually charged with habitual. • Therefore, only 7% of those that could have been filed on with habitual were actually filed on. • However, because the statute is vague DA’s and judges are doing different things. • Language was changed in the legislature and now states “cannot be used to adjudicate” - and some counties are applying that only to predicate offenses and not current. • The language from C.R.S. 18-1.3-801 is attached in appendix A. • Table 2 breaks out numbers by judicial district. • The data here shows that the 4th judicial district has one of the higher rates of charging habitual. • Figure 1 on page four also shows the charging rate and displays that the 4th charges habitual 20% of the time. • Table 3 breaks the numbers out by race. • Blacks represent 1/3 of the eligible cases for habitual, with 9% being charged. • Table 4 breaks out the cases filed in FY 2013 by most serious filing charge category and habitual charge. • Results show that there are jurisdictions that will charge habitual on escape. • For the two appendices, Appendix A is the statutory language and Appendix B breaks out crime categories. <p>Discussion and questions</p> <ul style="list-style-type: none"> • Question – Of the 52 cases that don’t appear to be habitual eligible but were still filed as habitual, do we have any idea as to why they were filed habitual? What are we missing or mis-categorizing? A couple things could be happening with this data, there could be out-of-state priors that don’t show up on our Colorado data – or our data may not be matching correctly on names. • 12 of these 52 cases had Escape as their presenting offense – so Peg threw them out as these cases are out of her control and she wouldn’t know if they were possibly out of state. • Peg said she also threw out prior drug convictions as well as it’s currently really hard to tell if something is considered a misdemeanor now but used to be considered a felony. • There are a lot of places error can creep in with this particular data. • How are people still being charged with habitual for walk-away escapes? • A judge can say ‘adjudicating’ only applies to the habitual portion of the equation and not the present offense. • The original statue language was supposed to include both prior walkaway escapes and current walkaway escapes. • Should CCJJ revisit this and work on language clarification? • Is it because if the escape took place in 2012 prior to the bill being signed, maybe that’s why they’re showing up as a presenting offense?.
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<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Data Request Feedback/Habitual Offenders</p>	<ul style="list-style-type: none"> • For each individual person, Peg says she looked at ‘were you eligible’ and ‘did you get filed on’. • She first pulled all filings, and then pulled the number eligible to get filed on, and then looked at all habitual filings. At that point is when she discovered that 52 received this charge – but didn’t show up in the eligible category. • The eligible population is actually somewhat bigger when taking into account the fact that we don’t have access to out of state info. • There are a variety of places the algorithm could not be working. • The 7% is actually probably smaller if we knew the true universe numbers. <p><u>What’s next</u></p> <ul style="list-style-type: none"> • Should Michael distribute the info to DA’s and see if they have any feedback? • Where are we in terms of the questions we asked, and now that we have the info, how does that inform what we do next? • Does 7% indicate a problem? Or does it indicate there’s a fair amount of discretion being used? • Is this issue of such a nature that we think it needs to be reined in or corrected? • 85-90% of the cases are being pled out rather than going to trial, so is habitual any different from that in any regard? • Another problem that is how hard this is to capture statistically. A fair number are property or drug offenses, but they’re being filed upon because the judge says I wouldn’t do this except for the statute mandates. • Could there be an exemption where the judge could depart if he sees fit? • Habitual is a one-size fits all sentence, an offender can have all priors that are F4 thefts vs. all priors that are sex assault or child abuse, etc. • Is there a safety valve, similar to the COV safety valve, where there’s a mandatory minimum, but with certain circumstance a judge can depart from the prescribed sentence? • These cases are rare, but it’s that extra level of judicial discretion that should be allowed. • Should we narrow habitual to the more serious offenses like violent classes of offense? Class 4 offenses are quite different from robbery, personal offense, etc. • Creating a relief valve would be bestowing upon a judge to say ‘in this particular case, for these reasons, I’m going to change this because, etc.’ • Jeanne lets the group know that the CCJJ will be discussing this it at the retreat. • Today, we want to know WHY we would want to study this. • How can we decide by looking at percentages what the right percentage is? • For habitual – are we clear about the purpose and what we’re trying to achieve? • The question in terms of what the high is and the low is and assigning good or bad to those is important to think about.
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<p>Issue/Topic:</p> <p>Data Request Feedback/Habitual Offenders</p>	<ul style="list-style-type: none"> • Does everybody know what the habitual range is for these offenses? • If we want to say there are classifications of offenses we don't want to be habitual - where do we start with that? • If we were to step back and say 'what should this look like' vs. what are our current practices, how would that be different? Should we have discretion built in? Should habitual be mandatory? People often get uncomfortable with discretionary. What should this look like? What about possible misuse of discretion? • Many people agree that a habitual charge is necessary, but the lack of discretion case to case is a problem. • Do we still want to keep this on our plates and suggest to CCJJ for further study? Yes • Jason – one thing that's associated with habitual criminals is the 'grave and serious offense' label. For the most part felony charges are grave and serious. Do we want to look at what offenses are 'grave and serious', would there be a benefit to looking at that? • Jason will put together a grave and serious list • Is clarifying the whole escape issue on the table as well, as far as in statute? We probably don't need a working group for this – maybe the courts can work on that. Jason to send the district court a request from the group.
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<p>Issue/Topic:</p> <p>Identified areas for future study</p> <p>Action:</p>	<p>Discussion:</p> <p>Norm reminds the group that at the last meeting the task force brainstormed possible areas for future study and where this group may want to go next.</p> <p><u>Review of outcomes from last month</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Task Force members had a lengthy discussion at the last meeting about desired areas of interest for future study. • The group voted (via dot voting system) and came up with the following feedback (Norm reviews handout with results)- <ul style="list-style-type: none"> -The handout details where the votes came down (highest interest first) in the following order: <ul style="list-style-type: none"> Recent Impact on County Jails Mandatory Consecutive Sentences Parole Issues Pathways PSI's -We've identified and defined these five issues that are prominent and ripe to make some policy decisions. • Joe Pelle shared data from the Boulder jail. The population with mental health issues when he started was at 18% when he started, and just a couple weeks ago it was at 36% and continues to climb.
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<p style="text-align: center;">Issue/Topic:</p> <p>Identified areas for future study</p>	<ul style="list-style-type: none"> • Jefferson County is starting a veteran’s court, and developing an adult MH court. • El Paso has a MH court as does Arapahoe County. But the Arapahoe MH court is dramatically different from the 4th • Locals are starting to implement more specialty courts, but is this something we would want to see consistently jurisdiction to jurisdiction? • There is an ongoing lack of resources in the court, and lack of resources in the community. • We might think about inviting some presenters in to talk about specialty courts. Brennidy Rice with Judicial could give us an overview of what’s going on in the state with specialty courts, with funding, and show us how each jurisdiction is addressing these issues. • Eight Sheriffs have grants from OBH to do ‘in reach’ with MH providers into the jails so offenders can work on transitioning out. • We could get more info about that and more info from comm. corr. providers about what they’re doing. • We could lend some assistance as far as ideal recommendations legislatively. • With years and years of budget cuts, the MH system continues to take a hit. • There’s a huge void in the number of places to take anyone for treatment. • The cop on the street confronting a person in crisis can either go to the ER or the County jail - those are the only two choices available. • This is not just a local issue. • People are doing lots of different things, but a lot of things are being done in isolation. • MH folks take up a massive amount of resources. <p><u>What’s next</u></p> <ul style="list-style-type: none"> • Germaine to set up a presentation from Brennidy at Judicial. • The PACE program in Boulder takes people with an axis one and co-occurring disorders. The take 50 people and put them under one roof. • We need to get counties to try and finance this. If we had programs like PACE combined with MH courts we could make an incredible difference. • PACE was grant funded through Byrne JAG grant, but funded permanently through offender management sales tax expansion. • The economics of a well-run successful program should sell anywhere. • Part of the stumbling block is that, like with Substance Abuse, there are a lot of treatment options available, MH does not have so many options. • Is CSOC looking at AHA and MH treatment? Not so much, trying to figure out how it will impact healthcare costs. • Denver and Broomfield have started pilot projects; after an inmate has been there 72 hours the jail staff initiates Connect for Health Colorado. Staff gets everything ready to go so that when they’re released the application is submitted. • ACA doesn’t benefit those actually in custody, but it does if someone is in hospital care more than 24 hours. • It’s an opportunity to get them registered and enrolled and ready to go with treatment services for MH in the community when they leave. • All PACE folks are on probation so it’s a bit of a hammer to force participation.
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<p>Issue/Topic:</p> <p>Identified areas for future study</p>	<ul style="list-style-type: none"> • There’s a bill under consideration to address ‘civil commitment’ verbiage. • A lot of jails contract health services so there’s no continuity of care. <p>OTHER ISSUES</p> <p>Mandatory Consecutive Sentences</p> <ul style="list-style-type: none"> • What are these sentences? Sex assault, Crime of violence. Those two result in an extraordinary amount of offenses. • Could Peg do some analysis here? Is it just title 18? • The problem is that in the past, some of the statutes were called something a little different. • Why is this compelling at this point? • Based on a particular offense, you end up with extraordinarily long sentences with no relief valve. • It’s about spending a lot of time/money incarcerating people for much longer than needed to result in public safety. • Can we identify how often these sentences are used? • Anecdotally we’ve seen some extraordinarily long sentences. • It looks like we have a full plate with the Sex Offense issues, Habitual, Impact on Co. Jails, Mandatory Consecutive. • Walt adds that one thing being implemented in the next five weeks is a lower risk supervision level in parole. This change is a result from the fact that we know if you over supervise low and really low offenders it increases recidivism. • This change will put more parole officers on the tougher folks. <p>Sex Offense</p> <p>This group meets tomorrow and will discuss at that time.</p> <p><u>Discussion of upcoming CCJJ presentation-</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • DUI issues need to be discussed in Comm. Corr. AND this group as well. • Another problem with this population (DUI folks) is that it’s a group of tough customers. • Are there behavior change alternatives out there that we haven’t explored? <p><u>What’s next</u></p> <ul style="list-style-type: none"> • Michael adds two other issues of possible areas to study <ul style="list-style-type: none"> -The first has to do with DNA evidence. There is a significant storage and resource issue here along with a huge backlog. -The other has to do with 1st degree murder and 2nd degree murder. The drop down for 2nd is too far. A life sentence for first degree vs a minimum of 16 years for second seems too wide. If 2nd degree murder had a higher minimum sentence it could result in less time served.
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<p>Issue/Topic:</p> <p>Next steps</p> <p>Action:</p>	<p>Discussion:</p> <p>Jeanne and Norm will take the four issues identified, present them to the CCJJ and ask for guidance and direction. Jeanne and Norm will report back to the task force with the Commission’s feedback at the April meeting.</p>
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<p>Issue/Topic:</p> <p>Adjourn</p> <p>Issue/Topic:</p>	<p>Discussion:</p> <p>The meeting adjourned at 4:45pm.</p>
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Future Meeting Dates:

Meeting Schedule 2013

April 8th, Tuesday

1:30pm – 4:30pm

710 Kipling St., 1st floor conference room