

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

September 3, 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**

Walt Pesterfield/Division of Adult Parole  
Denise Balazic/Parole Board  
Dianne Tramutola-Lawson/CURE  
Jason Middleton/Public Defender  
Kate Horn-Murphy/Victims Representative, 17<sup>th</sup> JD  
Dana Wilks/Judicial Department  
Glenn Tapia/Division of Criminal Justice, Office of Community Corrections  
Dave Young/DA 17<sup>th</sup> Judicial District  
Maureen Cain/Criminal Defense Attorney

**GUESTS**

Angel Weant, Judicial Department  
Erin Jemison, Director Colorado Coalition against Sexual Assault  
Tom Raynes, Colorado District Attorney's Council  
Jana Locke, CDPS  
Landon Gates, COVA  
Joe Cannata, Voices of Victims

**STAFF**

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

**ABSENT**

Matt Durkin/Attorney General's office  
Mark Evans/ Public Defender's office (*non-voting member*)  
Joe Pelle/Sheriff, Boulder County  
Michael Dougherty/1<sup>st</sup> Judicial District  
Charles Garcia/Denver Crime Prevention & Control Commission  
Judge Martin Egelhoff/Denver District Court

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| <p><b>Issue/Topic:</b><br/>Welcome and Introductions</p> | <p style="text-align: center;"><b>Discussion:</b></p> <p>Jeanne Smith welcomed the group.</p> |
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| <p><b>Issue/Topic:</b><br/>Sex Offense Working Group Outcomes</p> <p><b>Action:</b></p> | <p>Jeanne reminded the task force members that the goal of the meeting is to review the outcomes from the Sex Offense Working Group. She added that this is and always has been a thorny issue (Sex Offense issues) and she thanked everyone for their time and attention to the work.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• The goal of this meeting is to discuss outcomes from the Sex Offense Working Group meetings, June 2013 through August 2014.</li> <li>• The discussion began with a review of the ‘Sex Offense Working Group of the Comprehensive Sentencing Task Force/September 2014 Report’.</li> <li>• A recommendation was made to omit the footnote on page 1 altogether since the working group wasn’t charged with studying the original charge, but undertook the work anyway.</li> <li>• What the group did as a practical matter was to go through the current sentencing scheme, look at F4’s and look at whether there were some F4’s that could be classified as a Determinate F4. They moved forward from there.</li> <li>• A lot of hard work and thought went into this process</li> <li>• Page 3 contains a very short summary of months of detailed discussion.</li> </ul> <p>Determinate F4-</p> <ul style="list-style-type: none"> <li>• Norm provided background and history to the task force members about the issues that were discussed.             <ul style="list-style-type: none"> <li>-The group looked at two charges: 1.) should there be a Determinate F4 and 2.) The possibility of early release from probation supervision.</li> <li>-The team that looked at Determinate F4 agreed that it wasn’t a good idea to pick a few crimes and reclassify them. They proposed taking a look at the whole scheme instead.</li> <li>-The Sex Offense Working Group proposed this idea (a comprehensive review and possibly reclassifying the entire scheme) to the CCJJ.</li> <li>-The CCJJ rejected the idea, which leads to the report being reviewed now.</li> <li>-Norm shared that there was a lot of discussion, a lot of meetings, a lot of arguments</li> <li>-The report briefly summarizes arguments in favor of creating a Determinate F4 and against creating a Determinate F4.</li> <li>-In conclusion, the working group was interested in looking at the entire classification scheme but the CCJJ said no – this group had a limited scope and that’s what the report reflects.</li> </ul> </li> </ul> |
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## Lifetime Supervision-

- Regarding the issue Lifetime Supervision:
  - Working group members discussed the possibility of creating an early termination possibility for all offenders on both the 10 and 20 year minimum terms.
  - This proposal was not well received by many members of the group, which in turn lead to exploring the possibility of early release from probation specifically for special needs offenders.
  - Maureen and Tom worked on the proposal and the final result was a recommendation with a vote of 9 to 2 in favor of this option.
  - A special needs offender is defined as someone who suffers from a permanent, terminal or irreversible physical or mental illness, condition or disease, that renders the person unable to participate in or benefit from sex offender supervision or treatment and who is incapacitated to the extent that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.
  - In this recommendation, if the prosecutor is not the one who filed the petition then he or she has 30 days to respond.
  - if there is a dispute then there is a process for a hearing.
  - As for Probation's stance on the recommendation, Angel Weant spoke to PO's and this came from actual problems occurring in the system now.
  - These offenders can't engage in or benefit from continued supervision.
  - Participants in the Sex Offense Working Group agreed this would be a limited number of folks.
  - Lifetime Supervision has been in effect since 1998, and we're just now seeing some folks who have completed the 10 year mark. But as the population ages over time there will be a slowly increasing number of people this will affect going forward.
  - With this process, even if the PO agrees to end supervision but the judge decides there shouldn't be termination - there is a mechanism that in a year another petition could be filed in terms of changing health needs.
- In the end, the working group agreed on a mechanism for early termination for a disability, but did NOT reach consensus on a mechanism for just an 'ordinary' offender to request early termination on the 10 to 20.
- There was not a majority supporting this proposal so you don't have that in front of you today.
- Those in favor of the possibility of early termination for all offenders argued that for virtually every other offense there is the ability of the system to allow for early release.
- Norm reviewed the list the pros and cons from the report and included the fact that the group had lengthy discussion over a long period of time.

*REVIEW OF PROPOSAL FOR DISCHARGE FROM PROBATION DUE TO DISABILITY OR INCAPACITATION FOR OFFENDERS SENTENCED PURSUANT TO THE LIFETIME SUPERVISION ACT*

- Parole has a similar process to this for their disabled offender population.
- It doesn't exactly mirror parole's system - but parole's special needs request to discharge was considered during the creation of this proposal.
- Parole sees these kinds of offenders every week.
- What happens in these cases is that parole gets an application from the offender, along with a recommendation from several layers of other people, along with reports from medical professionals.
- This is a pretty straight forward procedure and DOC has learned you can usually hang your hat on the medical testimony.
- Maureen said she took verbiage from existing legislation and tried to make this recommendation consistent with what was already on the books.
- This probation recommendation is actually more stringent than the parole procedure.
- The reason the recommendation requires the offender or offender rep to pursue is due to HIPAA restrictions. Medical records have to be provided; probation has to agree to the recommendation moving forward, and then there is also input from the TX provider.
- Is there a mechanism for the DA to have an evaluation of his/her own? If the prosecution has not signed on or initiated the petition, the DA's office has 30 days to respond and to fight the request. There's no prohibition but there's no provision either.
- With this process there is a waiver involved.
- Should the waiver piece be a little more specific? It may not be HIPAA compliant to simply have the waiver.
- If the offender wants to proceed with this – they will be required to produce the medical records sufficient to satisfy the court.
- This may be similar to current language when a defense is entered around mental illness.
- Currently under HIPAA a court order is enough for records release.
- Issues were raised regarding Section 1, paragraph B, section iii:
  - There was concern that the 'statement' and 'case history' may not be equivalent.
  - statement is one thing, but case history could be pretty lengthy
  - What could be included in this statement is something along the lines of: "This person has been on supervision for 6 years, the last two years in a nursing home, PO visits him once a month, incapacitated, was a problem first two years of supervision but not a problem now". It's a statement just so the court has a bit of 'history'. It's all dependent on what a specific judge wants.
  - Add verbiage that the description is a 'summary'
  - There was a suggestion to modify this with the words 'relevant summary'.

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|  | <p>-Strike the word 'description' and insert 'relevant summary'.<br/>                 -Also, the verbiage 'continued treatment or' is not in the purview of the officer<br/>                 --scratch the words 'continued treatment' and keep the word 'supervision'.</p> <ul style="list-style-type: none"> <li>• The task force voted on these amendments as follows: All in favor of the proposed amendments.</li> <li>• VOTE on the full recommendation / all in favor: This passes and will go forward to the CCJJ.</li> <li>• Are there any other comments or general discussion about other issues the SO group addressed or worked on?</li> <li>• This proposal will be presented to CCJJ at next Friday's meeting (September 12<sup>th</sup>), and hopefully voted on in October.</li> <li>• This will conclude Sentencing Task Force in its current state.</li> <li>• Thanks to TF members and WG members who have spent a lot of time and energy on this.</li> </ul> |
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| <p><b>Issue/Topic:</b></p> <p>Adjourn</p> <p><b>Issue/Topic:</b></p> | <p><b>Discussion:</b></p> <p>The meeting adjourned at 2:45pm.</p> |
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