



Commission on Criminal and Juvenile Justice
Direct File Subcommittee
Minutes

November 5, 2008
 710 Kipling Street
 3rd Floor Conference Room

Attending:

Doug Wilson	Kim Dvorchak	Peter Weir
Ellen Roberts	Sherry Stwalley	Ann Terry
Steve Siegel	Joe Thome	Jeanne Smith
Ted Tow	Meg Williams	Don Quick
Pamela Wakefield	Stephanie Villafuerte	Maureen Cain
Gary Maas	Steve Hager	Pete Hautzinger (by phone)

Call to Order and Opening Remarks:

Peter Weir called the meeting to order at 1:40 p.m.

18 – 19 year olds in DOC including charges and length of stay by Steve Hager.

Steve Hager stated there are only four offenders under the age of 18 in all of the DOC facilities excluding YOS.

There are approximately 310 offenders in DOC between the ages of 18 and 20. Eighty-one are located in private facilities. He can break out the charges if the subcommittee wishes. There are an additional 80 youthful offenders in community corrections. Twelve offenders are pending charges - five are awaiting sentencing to YOS and seven are not YOS eligible because of the way the statutes are written. This means there are 402 total offenders in that age group.

Question from the committee: Of the 310 juvenile offenders in DOC, do you have a breakdown by classification by offense? No. Mr. Hager will email this information out by Friday.

Question from the committee: Of the 310, they were they 18, 19, or 20 at the age of the offense? No they were 18, 19 or 20 of age at the date the report was run. Information concerning their ages at the date of offense was requested. Also requested was

information about the offenses committed by juveniles sentenced to Community Corrections. Mr. Hager will obtain this information.

Number of DYC offenders who were transferred to DOC due to age by Joe Thome.

Mr. Thome stated information concerning the juveniles who were given consecutive sentences (split between adult and juvenile court) couldn't be obtained by their system. However, there are very few of those. He is aware of two juveniles who came to DYC under juvenile court and stay until 21 and then move to DOC under a separate adult charge. These juveniles are given a long adult sentence.

What is more common is a juvenile sentenced to DYC. While there, the juvenile has a new charge filed while in commitment, for example: escape.

There are eight or nine juveniles that are waiting for the juvenile mittimus is to expire and then they go to DOC.

Eligibility of 18, 19, 20 year old offenders for YOS. Expand the age of eligibility to 21 at time of sentencing.

The district attorneys' are comfortable with the general principal so long as it does not affect the efficiency of the YOS program and there is a danger of over expansion. If we fill YOS up with 18 and 19 year olds, there is a risk the system leaves out those individuals for whom the YOS was originally set up. The District Attorneys wanted to make sure there was a review process or an assessment tool used to ensure the correct juveniles are placed in YOS. The committee agreed the efficacy and success of the program must be maintained.

It was suggested starting with the 18 – 19 year olds first to make sure that the system is not overwhelmed.

Does YOS have the ability to handle the additional offenders? Yes.

What is the mechanism to know if they are YOS eligible? Currently, YOS willing to do the assessments prior to sentencing to see if the juvenile is a good fit. YOS takes a multi-dimensional team to look at the juvenile.

Are you looking at just 18 – 19 year olds who are direct files? Or all 18 – 19 year olds who are eligible? All 18 – 19 year olds who are eligible.

Will this adversely affect YOS? Right now, using existing resources, there should be no problem. They can accommodate more offenders in Phase 3. There are 256 beds and only 170 people in there. If they exceed the number of beds, then there will be budget issues. YOS would like to have one year to ascertain the impacts.

Any other comments on this proposal? This deals with 18 – 19 year olds and sentenced by age 21.

This will this require a legislative change in 2009.

Sealing of adult charges if adjudicated as a juvenile.

The District Attorneys said that for those cases that were direct filed as an adult, but adjudicated as a juvenile, they are in agreement to have the records sealed. The entire case would be put in the category of the regular dismissal.

The juvenile offender would still have a juvenile adjudication until they are eligible for expungement under Title 19. Most of these juvenile's charges would make them illegible for expungement.

This concept would require a statutory change.

Detention v. Jail prior to conviction/sentence.

The District Attorneys believe there is already a shortage of detention beds. If you place a direct file juvenile in detentions, the danger to other juveniles is heightened. The goal is to put the right juveniles in the right place.

Colorado law requires physical separation between adult offenders and juvenile offenders. No detention facility that is used for juveniles is allowed to accept juveniles who are direct filed on.

The availability of beds in DYC and detention facilities was discussed. Some juveniles are in detention pending placement or are there on a truancy charge and are waiting to be picked up by a parent. Can the use of beds in detention facilities be used more efficiently? What about emergency release beds? Statewide, there are 480 beds for emergency release.

All juveniles who enter a detention facility have a risk assessment done. Can the risk assessment drive this decision? The worst place for a juvenile is jail. It doesn't have any programs. It puts them in solitary. It has the worst possible impact on them.

What about 19-2-508? Mr. Tow will take the following to the D.A.'s board: If a juvenile is direct filed upon with a charge that is not a crime of violence or use of a weapon, can the court decide which non-violent direct file juvenile can go to detention?

Is the DA is the right person to make the decision as to where the juvenile is placed? Or should the decision be made by the people who do the risk assessment? Or should the courts make the decision?

Is there some room to carve out special circumstances where the juvenile does not need to be held in a jail? For example, juveniles charged with vehicular homicide. Those individuals are different from the person who commits the first degree assault or sex assault.

If the D.A. could know in advance that the case is a weak direct file case or that it will be pled down to a juvenile, don't put the offender in the adult jail. Juveniles who have been put in the adult jail, then placed in the juvenile system are very hard to work with. Most D.A.'s do not know how the case will play out at the beginning of the case.

Don Quick will meet with Maureen Cain, Dave Bennett, Joe Thome and Steve Hager to look at the usage of the risk assessment instrument. Ms. Cain would like the district attorneys to look at the mental health issues as part of the risk assessment.

Discussions will continue on this issue. If any agreement is made, a statutory change will need to be made.

30-day delay for direct file for opportunity to review case and present mitigation. Risk assessment.

The district attorneys generally believe that they would benefit for additional time to review a case before making a direct file decision. A voluntary 30-day waiting period is something some D.A.s would support. However a mandatory 30-day waiting period brings up the issue of placement of the juvenile.

If both sides were allowed to ask for a 30 day delay on the direct file decision, then the risk assessment can be done. The ultimate decision for the direct file is the D.A.'s. The defense bar would like more input in the direct file decision itself.

The law says that the decision needs to be made in a reasonable time. Does this mean 48 hours? What if you define "reasonable time" as no more than 30 days? There is no definition of what "reasonable time." Are there Constitutional issues?

The first hurdle for the district attorney is where the juvenile can be placed while the direct file decision is made. Then there is the hurdle of federal law.

Further discussion needs to occur.

Remove 14 and 15 year olds from direct file except for Class 1 felonies.

Mr. Tow was unaware of the exception of Class 1 felonies. Mr. Tow will ask the district attorneys' board if they would be amenable to removing 14 and 15 year olds from direct files except in instances of F-1 and F-2 felonies.

A status report to Criminal and Juvenile Justice Commission will be given on November 14th.

Meeting adjourned at 3:23 p.m.

YOS data for Crime Commission
Office of Planning and Analysis
Updated 11/6/08

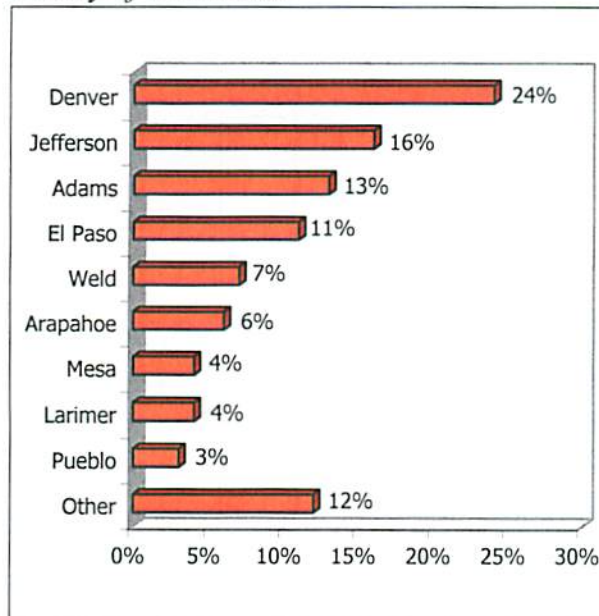
Young offenders in DOC Adult System

- 330 offenders aged under 21 yrs are incarcerated in the adult DOC prison system
- 14 of these had previously participated in YOS
- Age at intake into DOC:

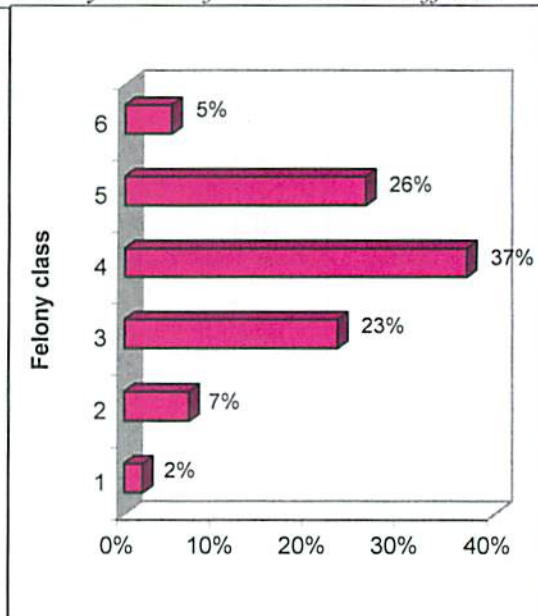
Age at Offense	Age at Intake					Total
	16	17	18	19	20	
14	1	0	0	0	0	1
15	4	3	3	1	0	11
16	1	8	4	5	1	20
17	0	3	13	11	3	31
18	0	0	33	121	47	201
19	0	0	0	33	33	66
20	0	0	0	0	2	2
Total	6	14	53	171	86	330

- Sentence lengths:
 - 10 offenders are serving life sentences
 - Median sentence length is 4.0 yrs ¹

County of Conviction



Felony Class of Most Serious Offense



¹ Note. Median distributions are reported because means (averages) are unduly influenced by a relatively small number of offenders who have very lengthy sentences.

Type of Offenses

Assault (1 st /2 nd degree)	14%	Sexual Assault/Failure to Register	5%
Robbery/ Aggravated Robbery	14%	Escape/ Attempted Escape	5%
Drug Poss/Dist/Manf/Sale	12%	Weapons	3%
Murder (1 st /2 nd degree)	10%	Trespassing/Crim Mischief	3%
Burglary	10%	Vehicular Eluding	2%
Theft/Aggravated Motor Veh Theft	8%	Veh Hom/Manslaughter/Kidnap	2%
Menacing	7%	Other	5%

Youthful Offender System information

YOS average age at admission is 16.8 yrs (standard deviation = 1.0)

Current average age of YOS offenders

- 19.4 yrs for facility-based offenders (IDO, Phase I, Phase II)
- 21.4 yrs for community-based offenders (Phase III)
- 19.8 yrs for all offenders

Sentence lengths of YOS offenders

- Median YOS sentence = 4.0 yrs
- Median adult suspended sentence: For this analysis, the presumptive range periods found in CRS 18-1.3-401 were used, although we acknowledge that in some cases the parole board has discretion in setting the parole period.
 - Prison term = 9.0 yrs (this excludes 2 offenders who received adult lifetime supervision sentences)
 - Parole period = 3.7 yrs

Actual lengths of stay in YOS program

- YOS sentence completion = 3.5 yrs
- YOS termination/revocation = 2.2 yrs
- YOS other termination = 2.2 yrs (includes release to probation, court ordered discharge, appeal bond, death)