

Mandatory Parole Subcommittee
Colorado Commission on Criminal and Juvenile Justice
Minutes

May 11, 2015, 1:00PM-5:00PM
1300 Broadway, Conference Room 1E, Denver

ATTENDEES:

CHAIR

Doug Wilson, Public Defender's Office

TASK FORCE MEMBERS

Brandon Shaffer, Parole Board

Charles Garcia, Colorado Bar Association

Kate Horn-Murphy, Victims Advocate, 17th Judicial District

Michael Dougherty, Jefferson County District Attorney's office

Christie Donner, Colo. Criminal Justice Reform Coalition

Alison Morgan for Kellie Wasko, Parole, Department of Corrections

Daniel Kagan, State Representative, House District #3

James Quinn, Attorney General's Office

OTHER ATTENDEES

Joe Cannata, Voices for Victims

Anne Carter, Parole Board

STAFF

Paul Herman/CCJJ consultant

Germaine Miera/Division of Criminal Justice

ABSENT

Ellen Roberts, State Senator, Senate District 6

Issue/Topic:	Discussion:
Welcome and Introductions	<p>Mandatory Parole Subcommittee Chair Doug Wilson welcomed the group and thanked everyone for their willingness to embark on the upcoming work. He added that this is the third time the Colorado Commission on Criminal and Juvenile Justice would be looking at the issue of Mandatory Parole since 2008. The goal over the next 6 months is to have some thoughtful discussions about where this group wants to go if anywhere, and report back to CCJJ this fall.</p> <p>CCJJ consultant Paul Herman also welcomed the group and asked subcommittee members to share their initial expectations and get their perceptions of the problem on the table.</p> <p>Norm Mueller stated he has lived through decades of legislative parole board changes. He added that like many other people, he finds the system incredibly confusing and lacking in transparency. Ideally he would like clarity and transparency brought to the system regarding decision making.</p> <p>Alison Morgan said she believes the technical violation revocation process is broken and that there is too heavy of a reliance on the Division of Adult Parole for revocations. She added that when an offender is revoked on a technical violation it does not make them <i>better</i> when they return to our communities - and in many cases it likely makes them worse. She believes we're not creating a better TV process through what we're doing today and that we need to be more effective in these processes, therefore increasing the likelihood of an offender NOT being revoked again.</p> <p>Representative Kagan hopes that the group can come up with some ideas about making parole more effective at turning an inmate into a law abiding, productive citizen so that they don't continue their criminal lifestyle. He added that if the state continues with discretionary release we need to come up with a system that makes release more readily available and counter-balances the tendency of the board to NOT grant discretionary because they believe that's the safer course. To summarize, he'd like to see an increase in overall effectiveness, making discretionary more readily available.</p> <p>Kate Horn-Murphy implored the group to incorporate victim notification issues and to include enhanced victim participation issues into any changes or processes regarding the parole process. She doesn't want the group to lose sight of the victim's voice and she also wants that voice to have a real opportunity when it comes to the victim notification process.</p> <p>Brandon Shaffer wants this group to focus on the efficacy of mandatory parole. He stated that this became an issue for him after looking at an analysis of the number of parolees who are revoked due to technical violations, commit new crimes, and those who actually succeed. He wants the group to explore whether we are actually keeping communities safer with mandatory parole. He's worried</p>

about the millions being spent to supervise people who are unsupervisable in the current system. He wants to know why revocation rates are so high and why more people aren't succeeding. He added that there are good people on the parole board doing the best they can on the front end but that on the back end no one is happy. He believes this is a structural issue and that it will take a statutory analysis to reverse engineer into a system that works. Brandon said he also worries about what is really possible? He wonders if the state needs to go back to a sentencing structure that is pre-1993. He would like to see parole "inside the sentence" because he believes it creates more clarity. He believes the 'mandatory parole experiment' has failed in the state and he thinks the money should be repurposed for treatment, housing, etc. He wants to take money from mandatory parole and put it toward other things.

Charles Garcia agreed that another hard look needs to be taken at mandatory parole. He believes that currently there's no real incentive to do well on parole. Parolees are stuck with their entire parole sentence whether they do great or do poorly.

Christie Donner said she believes there are problems at an operational level and significant structural problems as well. She added that at a structural level there are a lot of different options to explore. First the group needs to get clear about what they're trying to accomplish (structure) and then the design needs to follow. The bottom line is that nobody knows what a sentence actually means in this state.

Michael Dougherty believes that under the current system it's difficult for the offender, the victim and the community to have a true understanding of what the sentence will actually look like. It would be better for everyone, including the offender, to establish a more accurate date at the start of someone's sentence. He hopes during this work to get a better understanding of the parole process. He added that more resources need to be targeted to the people who really need them. Parole is a complex issue because parole inherits both the good and bad from DOC. An end goal would be to simplify the parole structure, add resources, and figure out the best candidates for parole.

James Quinn said he believes it is essential to get everyone on the same page of what a sentence is. He said he sees numerous lawsuits filed against DOC because offenders don't know their sentence. He also added that it's critical for everyone to understand the actual purpose of parole. Is it to reintegrate, to monitor someone, or is it punishment. The defined purpose is essential in terms of directing resources.

Doug Wilson shared that he's been disappointed with the CCJJ and the lack of movement around this issue. He said it's hard to have a parole discussion because the Commission has never really looked at sentences in Colorado except for drug and property offenses. He reiterated that this is the third time CCJJ has tried to take a look at parole and he doesn't want to see another failed attempt to address the issue. He believes this subcommittee needs to have open and frank discussions. Doug added that at this point he doesn't know if the right call is to have parole inside or outside the sentence. He has looked at a lot of

	<p>different methodologies and one of the most important things for him is fidelity to the risk assessments currently being used. He does know that the longer people are 'on paper' the more revocations they're going to have. He said he would also like to NOT tie length of parole to the class of offense.</p> <p>Paul summarized that common desires of the group members include looking at structural issues, operation issues, financial issues and victims concerns along with determining the overall purpose of parole in the grand scheme of things.</p>
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Issue/Topic:	Discussion:
<p>Background</p> <p>Action:</p>	<p>CCJJ Consultant Paul Herman took the group through a description of the history of major changes in parole through a national lens.</p> <p><i>DISCUSSION POINTS</i></p> <p>History of parole Nationally–</p> <ul style="list-style-type: none"> • New York established the first good time system in 1817. • The first parole release was via a release ticket in 1876, with release made to “a guardian”. • Up until the late 90’s discretionary parole was the predominant method of release. • There’s a vast history of discretionary parole, but not as much on mandatory. • Every state has some kind of releasing authority. • 85% of board members across the country are appointed by a Governor’s office. In some states it’s a civil service job. • The average term for a parole board member (both full and part-time) is five years. • Parole Boards are set up in many different ways. • Release eligibility is set by statute 50% of the time, the court 33% of the time and parole boards themselves 17% of the time. • Parole systems have changed over the years due to a variety of reasons, but usually as a result of sentencing changes. • Truth in sentencing started the movement to mandatory parole which is the same time states started using guidelines. 16 states during that period of time abolished parole, but not parole boards. Parole boards remained in place even when parole was abolished. • The biggest change to parole in this country came about as a result of the truth in sentencing movement. • For 15-20 years after truth in sentencing was established prison populations increased. It was at that point that people started getting creative about earned time credits and other time credits, thus impacting the idea of truth in sentencing. • States like Arizona and New Mexico insist on inmates serving 85% of their time. Other states made it as complex as could be in terms of discretionary, mandatory, earned time, different sentences for different crimes, some determinate, some indeterminate.

- All the while prison populations continued to grow.
- At the time the Feds were pushing hard on truth in sentencing and were pushing for inmates to serve at least 85% of their sentence. They supported it so much so that they gave states money to build prisons.
- After prison populations exploded the Feds switched from providing money to build prisons to offering money for re-entry initiatives.
- Re-entry money through the Second Chance Act has been one of the Feds major initiatives to date.
- Many states not only went to truth-in-sentencing but then to enhanced penalties as well.
- The parole population grew as follows-
1980 – Under 200,000
1990 – 500,000
2000 – 650,000
2013 – 853,200
- Violators as % of Prison Admissions
1890 – 16%
1990 – 28%
2000 – 33%
2013 – 27%
- The correctional population that has continually grown are those on parole and those in county jails
- What are other states doing? Looking at parole across the country, it is very complex and very few jurisdictions do it the same way. Many states have parole ‘outside’ the sentence, but there is a lot of nuance.
- No other state has an enviable structure.
- Christie stated that it has worked as an incentive in the past when offenders thought there was a connection between good behavior and release.
- Because of determinate sentencing in a majority of the country many people flat-timed their sentences to go straight out.
- There was a big push at that time to say people should not just walk out of prison without some assistance and supervision.
- Many states that went to truth in sentencing had built in a conditional release period.
- States have tinkered with their parole laws for decades and the system that set the initial changes in place decades ago has changed.
- Many states have a discretionary parole period and a mandatory.

Paul then discussed parole changes specific to Colorado, including a legislative history, guidelines legislation and mandated reporting of parole board decisions.

History of parole in Colorado

- Paul asked Norm to present the Parole Laws in Colorado document included in subcommittee member’s packets.
- Norm informed subcommittee members that he was the Public Defender in Colorado from 1974-1980. He said at that time the Public Defender’s office was not active in the legislature at all.

- Before 1979 there was a wide indeterminate sentencing scheme. Class 5 felonies were indeterminate up to 10 years. Class 4 felonies were indeterminate from 5 – 40 years.
- There was a wide sentencing range for all offenses and the Parole Board in those days determined when and how people got out.
- In 1979 the General Assembly adopted what is known as the "Gorsuch bill," which was part of truth in sentencing and radically changed felony sentencing in Colorado.
- Wide sentencing ranges with indeterminate periods of confinement were replaced with narrow ranges and more specific release dates. The Parole Board had sole discretion to determine release.
- The parole period was set within the sentence but could not exceed time left on the sentence, or 5 years, whichever was less.
- With the fixed period of supervision people thought they didn't need the parole board.
- Then with the Milky bill the DA's council lobbied for longer sentences and everything was doubled in a short period of time.
- With an increase in prison populations it was determined that the parole board would make those decisions.
- When Colorado began having mandatory outside the sentence, the length of time became the DOC sentence plus "X" number of years on parole.
- At that time it went from the Parole Board making all the decisions, to them making none, to then making MORE decisions, to now making some of the decisions.
- Charley shared that in 1993 clients started wanting to kill their number, and clients in plea bargain situations were much more concerned about getting rid of 'the tail' (parole) than the time inside.
- Brandon stated that by 1995 there was an uptrend. From '95-'99 there was a 16% increase in revocations and re-incarceration rates.
- Going back to '93, accounting for a year and a half lag time – the rate of return goes up 16%.
- There were similar trends in the US at this time. 30 years ago Colorado ranked lower than average compared to all other states.
- Brandon said he believes Colorado's violations are increasing because SB-252 put caps on the amount of time served for drug crimes. Many low level drug crimes are revoked for 90 days. He thinks this is why the line goes up.
- Everything that is called a revocation isn't really a revocation. If the goal is to get someone into treatment is by revoking them, that's different than revoking back to DOC.
- Norm added that what he sees happening federally is that when there is someone with supervised release, their PO has usually worked on many other options. Revoking is the last resort. There is a real effort in the Fed system to not revoke people for things like technical violations or to get someone into mental health treatment.
- The federal system used to be less progressive than the state systems in terms of treatment issues, but that's changed.
- Generally, Colorado has been under the same structure since '93. One of

	<p>the other changes that occurred was the movement to guidelines.</p> <ul style="list-style-type: none"> • Nationally, the majority of releasing authorities use a system or guidelines to release. • For many years parole boards didn't want guidelines to impede their discretion. 80% of boards now report using an instrument of some sort. • In 2008/2009 CCJJ recommended guidelines be developed through SB10-1374 and those guidelines have been in place since 2010. • The General Assembly requires a parole board report on guidelines outcomes. The most recent report was released a couple weeks ago. • Brandon said it's significant to note that there are three different release guideline instruments. One is for non-sex offenders, one is for sex offenders, and the third is used for those being revoked off of parole • Brandon stated they can't use the PBRGI on sex offenders because it incorporates the CARAS score. • It was noted that the guidelines instrument also includes the LSI score and in fact the CARAS has predictability for sex offenders.
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Issue/Topic:	Discussion:
<p>Data Review</p> <p>Action:</p>	<p>Paul presented a PowerPoint overview of current practices regarding parole in Colorado by looking at a variety of data points.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Paul walked the group through the information on slide 1 which shows Parole Board Release Decisions by Release Type from 1996-2014. • He explained that the graph shows an unusual trend between mid-2005 and mid-2008 because during this period the practice at DOC was to release people on Thursday who had a Friday, Saturday or Sunday mandatory release date. That procedural change resulted in mandatory releases being counted as discretionary releases. • Colorado has an antiquated parole system. The MRD can be a moving target due to earned time and the practice of releasing on a Friday, Saturday makes for false discretionary release numbers. • The assumption with this graph is that both those lines (MRD and Discretionary Parole) should be re-tracked. • Brandon shared that the parole board is working with an outside/independent group (the Robina Institute) that is studying why the board deviates so significantly from the PBRGI. • Brandon states that when it comes to mandatory parole he doesn't believe the "concur/not-concur" discussion. • Paul returned to his presentation stating that Slide 2 shows Release Decisions by Release Type, 2010-2014. • Slide 3 shows the key factors in release decision making through the PBRGI matrix, including: • Risk

	<p>CARAS 9-item risk instrument COPD violations 60+ years of age Escape history</p> <ul style="list-style-type: none"> • Readiness <p>LSI Treatment/program participation Parole plan Medical condition/Manageable in the community</p> <ul style="list-style-type: none"> • CARAS is a “Risk to Reoffend upon Release” assessment, with re-offense defined as a new filing. There are a number of definitions for “reoffend” including re-arrest, filing, conviction, and return to incarceration. • When the board is looking at a case they consider risk scale, conduct violations, age, escape history. • The way things are set up currently, COPD violations result in a “double hit” because violations are included in the CARAS and again on PBRGI. • The original goal for the PBRGI was to balance risk and readiness. • Paul explained that slide 4 showed the actual matrix for the Release Decision: Key Factors PBRGI, with CARAS risk scores on the vertical axis and readiness categories on the horizontal axis. • Research shows that static factors provide the best indicator of risk for reoffending. • The risk info is attainable and verifiable, but it’s more difficult on the readiness side to quantify things like treatment participation, parole plans, etc.) • Slide 5 shows some of the significant outcomes from the DCJ analysis of FY2014 parole board decisions as follows: <ul style="list-style-type: none"> -The Board designated 25% of offenders for release and 75% for deferral -The PBRGI recommended 46% offenders for release and 51% for deferral -68% of all decisions agreed with the PBRGI and 32% of all decisions departed from the PBRGI. • Brandon stated he makes up his mind during a parole interview and then uses the PBRGI score as a “tie-breaker” when he can’t make up his mind. • Slide 6 showed that the Board agreed with the PBRGI decision to DEFER 93% of the time. • However, the Board agreed with the PBRGI decision to RELEASE 43% of the time. • Slide 7 outlined average CARAS score by Release Type and Release Type by Risk Level for 2014. • Slide 8 showed the profile of parolees on June 30, 2013 at follows: <ul style="list-style-type: none"> Discretionary 51% Mandatory 35% Reparole 13% <p>• Slide 8 outlined the “3-year Return-to-Prison rate for calendar year</p>
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	<p>2014” as follows:</p> <table style="margin-left: 20px;"> <tr> <td>New Crime</td> <td>13.9%</td> </tr> <tr> <td>Technical Violation</td> <td><u>32.2%</u></td> </tr> <tr> <td>Total</td> <td>46.1%</td> </tr> </table> <ul style="list-style-type: none"> • The next slide showed 3 year return-to-prison rates by release type as follows: <table style="margin-left: 20px;"> <tr> <td>-Discretionary</td> <td>42%</td> </tr> <tr> <td>-Mandatory</td> <td>56%</td> </tr> <tr> <td>-Mandatory Re-parole</td> <td>59%</td> </tr> <tr> <td>-Sentence discharge</td> <td>21%</td> </tr> </table> • A discharge is less likely to return to prison because they have no conditions they have to deal with. • The next slide detailed returns to prison by type of new crime. • The following slide showed revoked offenders by LSI Risk Level. This slide was presented by Alison at the April CCJJ Re-entry meeting and she explained that data was hand-picked because DOC hasn’t yet built a revocation data to date system. • The slide covers the time period from July 1 – Sept. 30, 2014 and shows that 78% of the offenders revoked during that time had an LSI ‘High Risk’ level (please note that DOC uses their own cut points for LSI risk levels). • The next slide listed revocation reasons for those revoked. • Brandon added that revocation reasons including report violations and residence violations are considered absconders. • Charley added that in Denver there is a high population of parole violators in the Denver County jail. He said that if someone self-revokes they are considered a TV. If a new crime is pending they’ll stay at the Denver jail until the new crime is resolved. • The final slide of the presentation was titled “Percentage of Prison Admissions that were Parole Violators or other Conditional Release Violators”. • This slide shows the proportion of prison admissions that were due to parole violators for Colorado along with the average for all other states. • In 2013 Colorado had a high of 47% admissions that were parole violators. The average for ALL other states in the nation was 27%. 	New Crime	13.9%	Technical Violation	<u>32.2%</u>	Total	46.1%	-Discretionary	42%	-Mandatory	56%	-Mandatory Re-parole	59%	-Sentence discharge	21%
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Issue/Topic:	Discussion:
<p>Next Steps and Timeline for Work</p> <p style="text-align: center;">Action:</p>	<p>At 4:45pm the subcommittee was only halfway through the agenda. Paul and Doug outlined action steps for the next meeting.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Paul asked subcommittee members to think about what the purpose of parole should be between now and the next meeting. • At the June meeting the group will discuss the purposes of parole AND how it fits with these purposes of sentencing. • Before getting into more problem identification the group needs to examine and discuss the purpose of parole.

	<ul style="list-style-type: none"> • Brandon stated that he has two other slides that haven't been projected that he would like the group to see at the next meeting (one is bell curve slide) • Brandon says parole board members look at a lot more than just a risk assessment. • Christie added that Colorado does in fact have a 'Purpose of Parole' statute (17-22.5-102.5) that highlights the following three resolutions: <ul style="list-style-type: none"> - To punish a convicted offender by assuring that his length of incarceration and period of parole supervision are in relation to the seriousness of his offense; - To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in length of incarceration, and establishing fair procedures for the imposition of a period of parole supervision; and - To promote rehabilitation by encouraging the successful reintegration of convicted offenders into the community while recognizing the need for public safety. • Paul stated that the statute will be prepared for the next meeting and that the group will reconvene on June 8. • Paul stated that he and staff will pull notes together and a synopsis for the next meeting.
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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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Next Meeting

June 8th, (Wednesday) 1:30pm – 4:30pm 1300 Broadway, Conference Room 1E