

Mandatory Parole Subcommittee
Colorado Commission on Criminal and Juvenile Justice
Minutes

July 6, 2015, 1:30PM-4:30PM
1300 Broadway, Conference Room 1E, Denver

ATTENDEES:

CHAIR

Doug Wilson, Public Defender's Office

TASK FORCE MEMBERS

Brandon Shaffer, Parole Board

Christian Gardner-Wood for Michael Dougherty, Jefferson County District Attorney's office

Christie Donner, Colo. Criminal Justice Reform Coalition

Melissa Roberts for Kellie Wasko, Department of Corrections

Norm Mueller, Defense Attorney

James Quinn, Attorney General's Office

Charley Garcia, Colorado Bar Association

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

Melissa Roberts, Division of Adult Parole

ADDITIONAL CONTRIBUTORS

Anne Carter, Parole Board

STAFF

Paul Herman/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ABSENT

Daniel Kagan, State Representative, House District #3

Ellen Roberts, State Senator, Senate District 6

Steve Allen, Joint Budget Committee

Issue/Topic:	Discussion:
<p>Welcome and Introductions</p>	<p>Doug welcomed the task force members and noted that Representative Kagan would not be in attendance at the meeting. Christian Gardner-Wood introduced himself and said he would be representing Michael Dougherty and Melissa Roberts announced that she would be filling in for Kellie Wasko.</p> <p>Paul reviewed the Goals of an Ideal Parole System that task force members agreed on during the May meeting. Those goals are as follows:</p> <p><u>Goals of an Ideal Parole System</u></p> <ul style="list-style-type: none"> • To ensure PUBLIC SAFETY (the impulse to keep someone behind bars may not result in the outcome of public safety – except for short-term incapacitation) • CLARITY of sentence length / How much time actually served • SUCCESSFUL TRANSITION • To INCENTIVIZE good behavior • To encourage POSITIVE SOCIALIZATION

Issue/Topic:	Discussion:
<p>Small Group Outcomes / Norm</p> <p>Action:</p>	<p>Doug reminded the task force that at the conclusion of the May meeting, two small groups were established to create two different proposed parole systems that would include the five goals of an ideal parole system. Norm Mueller led one of the small groups that was tasked with exploring a system based on Supervised Release at a Certain Percentage of the Sentence.</p> <p>Norm presented his group's outcomes as follows:</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Christie Donner, Michael Dougherty, Christian Gardner-Wood, Melissa Roberts and Norm met to discuss this proposal. • The proposal is modelled after the federal system. • The plan would essentially eliminate the concept of parole. • Norm noted that in the '80s the system shifted from a broad range of determinate sentence and the idea was to eliminate parole, which didn't happen. • One advantage of this proposed system is that it would be transparent and everyone would know how much time a particular offender would actually do. • Norm walked the group through a handout with a flowchart that showed how the system would work. • Using a four year sentence as an example, there would be no parole eligibility date (PED) date. However, there would be a discharge date that would be entirely a function of earned time.

- If the offender received NO earned time he or she would have to do four years. That would be the maximum time served.
- The earliest possible mandatory release date (MRD) would be at 2 years and 10 months, which would be a 30% deduction for earned time.
- The advantage is that everyone would know the earliest and latest times someone could get out, using a 30% potential deduction for earned time.
- Norm noted that at the bottom of the handout is a series of questions that would need to be addressed with this proposal.
- Regarding the concept of supervised release – functionally it would still work like parole or probation.
- With this system there would be a right to a hearing for technical violations, but ideally these would be solved by the parole/probation officer – which is how it's handled in the federal parole system.
- In the federal system, a case is often just extended for a while until the person can get back in compliance, and then the case is eventually resolved.
- If we pursued this kind of model we would need to answer the question of what supervised release looks like.
- The next question would be what 'hammer', if any, is going to be over someone's head?
- If we adopted this system under the current sentencing scheme and did nothing to change amount of earned time or the sentencing structure, this would result in an increase in Prison population
- Norm noted that the small group agreed that if this system was pursued – the current sentencing structure would also need to be addressed.
- The group talked about also possibly increasing earned time.
- Plus there is the issue of the overlay of sex offenders.
- The parole board would continue to exist to deal with all of these issues.
- Question - Where does good time factor in? Good time would go away, good time would come off the books.
- Time served is simply the length of the sentence minus earned time. Period.
- Question – What about community corrections? Currently if someone is convicted of a non-violent offense, they can be referred at 19 months and placed at 16 months, violent offenders can be referred at 9 and placed at 6.
- We would still retain the 'inmate status' option in comm. corr.
- It's a much shorter period of time, lending more predictability for everybody.
- If this system were pursued there would also be a need to look at the escape statutes again.
- Question – Can we run data on how the current population would look if they were plugged into this system?
- Norm clarified that this proposal is not about cutting sentences – it's about clarity.
- Norm also wanted to be very clear that a move to this model would require a conversation about sentence lengths. This can't work with current sentence lengths.
- The purpose of the model is more about clarity in what a sentence

	<p>means.</p> <ul style="list-style-type: none"> • As for revocations – in the federal guidelines currently there are specific limits about how long someone can be incarcerated for a revocation. Violations are categorized by A, B or C and there are specific limits on revocation time based on the category of violation. • The court sets the period of supervised release. • This system creates a structure of revocation. The structure is that at the hearing it's decided whether a violation took place and second, whether the person needs to be sent back. • This proposal is not meant to fully adopt the federal model – but to use it as a base for a new proposed system. • There's also a question of whether revocations would go back to the court. These are the questions that need to be answered if we were to go with this kind of a model. • Again - Clarity is the primary benefit. • We could try to make this as 'apples to apples' as possible with what people are currently serving. Sentence lengths could be approximately the same, but there would be clarity. Clarity is the primary benefit – it's not about reducing sentences. • A system where a parole board doesn't make release decisions would result in objective rather than subjective release mechanism. • The feds rely on supervised release because they believe there should be some transition for folks. • This system would also help improve transition planning, because without knowing a set 'out date' it's hard for all parties to plan. • Going before the parole board is stressful for the offender and the victim and it's re-traumatizing. This is not necessarily the board's fault – it's just that the process is really difficult. • Again, this doesn't get rid of the parole board – the issues of sex offenders and lifetime supervision will continue to need to be addressed. It's not an abolishing of the parole board, there will never be an abolishment of the parole board. • The parole board will be around for a lifetime for condition setting, etc. • Conditions can also be set administratively. • This system would result in no more parole as part of this sentence. • Doug clarified again that this is not about the parole board going away. It's not feasible with our population that the parole board is gone. • Question - Under this model, who would be the supervised release agents? DOC and the Division of Adult Parole. • For the feds it's one combined system of parole and probation – we could make it whatever we wanted. • The system would retain the supervision function of parole. • Question - Does there need to be a restricting of community corrections? No, we wouldn't need to restructure comm. corr. and that's not the intention. • There are not enough Comm. Corr. beds for everyone who wants to transition. • The rules would need to change on the 19 month scenario in community corrections.
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- Question - is this about reducing the prison population? What about sex offenders and how people are being rehabilitate? This is not about any of those things, this is about changing the actual parole release model.
- Question - What do we do about crimes of violence? Those people could do a longer minimum if decided.
- The model is flexible enough that you don't need the same amount of earned time across the board. It doesn't have to be a one-size fits all.
- Question - How do you differentiate this against another kind of system? This model contemplates the theory that "the sentence is done, now what do we do with supervised release?.
- This could be structured differently with different categories of crime.
- One option would be for the MRD, after doing a certain percentage of the sentence (X) then released for a certain percentage of the sentence (Y).
- 'X' percentage is in fact the 'service' of your sentence. 'Y' percentage would be the mandatory release percentage.
- Sentence length minus earned time is the formula that calculates release date.
- The difference is that the parole board wouldn't be making release decisions / its purpose would shift.
- Question - In looking at data are we excluding lifetime folks? This model doesn't fit those folks.
- Sex offenders are going to be a 'carve out' no matter what whether determinate or indeterminate. They will always be under a separate system.
- Question – Knowing that we have a current CCJJ re-entry group: does DOC have infrastructure to support providing services to inmates to move them out with a positive effect on public safety? To adopt a model like this?
- Question - What would be the motivation for inmates if there's no 'carrot' of seeing the parole board?
- Question - What about the impact on public safety? The parole model of release does not necessarily in and of itself have an impact on public safety.
- Brandon offered another variation around the philosophy of presumptive parole. Why not give someone a parole date certain, and say if you do everything you're told you'll go out on that date. However, if you don't do everything that date may go out further. There would be a sentence, a presumptive parole date, if you do everything you go out on presumptive. BUT that date can be extended if you refuse to participate in treatment programs. The carrot is out there but you still have the stick.
- One benefit to this model is the certainty of the 'out-date', so there's more certainty with programming, planning, and community corrections and for the victim and offender.
- Comm. corr. would be a reentry service for people on supervised release.
- Under this model people are doing their sentence, but comm. corr. currently is an extension of a sentence. Does CC make sense for people who have already served their sentence?

	<ul style="list-style-type: none"> • Melissa shared that ‘truth in sentencing’ in Wisconsin is that the whole thing is part of your sentence. Imprisonment plus extended supervision. but it’s all part of the sentence. • Question - Would presumptive parole impact an offender’s liberty interest? When you do a presumption (parole) you create an expectation which begs for inmate lawsuits. • Question - Do we need motivation for inmates? If we take away good time what’s the incentive for an inmate? No because earned time will affect release date. • What data do we need to understand the possible impact? <ul style="list-style-type: none"> -Need a snapshot of the population -Need to know which percentage get paroled at PED -If we don’t want to increase prison population we need to model after current percentages -Need to know average LOS prior to release? -Look at prison cohort as opposed to release cohort -Do you have to separate out revocations coming back in? -Have to take out revocations -Look at people sentenced today after – those that came out of court as opposed to revo?? -This has to do with new court commitments, not revos -DO COV’S vs. non- COVS -Legislature will want to know how much this will cost -If population goes up and people stay in longer we have to figure out something, whether it’s a higher percentage of earned time or reduction of sentence. -Are the majority of people awarded the maximum of earned time -Again, this has to be with first time population -Total non-COVs, COVs eligible for earned time, COVs not eligible for earned time -Break out by felony class?
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Issue/Topic:	Discussion:
Small Group Outcomes / Brandon	Brandon Shaffer led the other small group that was tasked with exploring a system of Discretionary Release Inside the Sentence .
Action:	Brandon presented his group’s outcomes as follows:
	<p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Brandon presented a PowerPoint to the task force based on parole inside the sentence. • He clarified that his group didn’t look at comm. corr. to see how it might fit into one of these models.

- This model considers several studies from PEW regarding 'max outs' and whether parole is worth it at all. There's a question of whether parole is doing more harm than good.
- Some PEW work shows that some period of supervision is a good idea.
- Brandon stated that his presentation will go through with a baseline of the current system in place.
- One challenge would be ensuring that legislators understand what the current system actually looks like.
- The group went through a lot of variations to come up with parole inside the sentence.
- Parole "inside" the sentence means that once an offender passes his or her parole eligibility date, the parole board can parole the offender for a discretionary amount of time up to and including the offender's statutory discharge date.
- Mandatory parole means that once an offender is eligible for parole, the board may grant discretionary parole; however, it is required to set a period prescribed by law. Additionally, once an offender serves his or her required prison sentence, he or she is still obligated to complete mandatory parole.
- Brandon reviewed a slide outlining the current mandatory periods of parole (see PowerPoint for more detail).
- Question - What's the enhancer noted on the slide for Drug Felonies 2, 3 and 4? Brandon answered that he can't explain it, it's something time and release uses.
- Brandon reviewed the current time-line on a 10-year sentence with PED after 5 years. The example is for an F3 crime with 5 years mandatory.
- He explained the piece legislators don't understand is in years 6 – 10 and how that 'disappears' and then someone is on a mandatory period of parole.
- Brandon reviewed a variety of alternative options including:
 - Parole inside the sentence
 - Parole inside the sentence (with a max of 3-years on parole)
 - Parole inside the sentence, plus mandatory parole plus shorter parole periods
 - Parole periods determined by CARAS (by risk assessment and readiness)
 - Mandatory parole with presumption for low risk
- His proposal includes a new time line for a mandatory 1 year tail only
- The benefits include:
 - Reduced recidivism rate (estimate 3-year recid. Rate would go from 46% to 14% because of no TPV's in years 2 and 3)
 - Cost savings: rough estimate from \$1.3M to \$11.25M
 - No 'max out' problem
 - Reduce over-crowding of county jails
 - Cost savings can be applied to treatment
 - More significant incentive to do well while on the inside
 - Easy to draft – relatively simple changes to the existing statute
 - Move from 252 to sure and swift (?)
- This would give someone an achievable goal of 6-12 months on parole and you're off paper, that's a goal/conversation that you can have with a

	<p>guy on the inside.</p> <ul style="list-style-type: none"> • Question - Legislators will want to know if this impacts public safety. • There are four questions that would need to be addressed: <ul style="list-style-type: none"> -How does this impact public safety? -Are 6 month and 1 year mandatory parole periods the appropriate periods? -Does it make sense to simply discharge the Very Low and Low risk offenders instead of insisting on 6 months on parole? -Should there be a “presumption of parole” so offenders are released closer to their PED? • Kentucky went to a 6-12 months system and had a positive impact. • This system is very practical given the current sentencing structure. • Questions/clarification: <ul style="list-style-type: none"> -In this scenario, the mandatory release date no longer exists, correct? No. Mandatory release date is year 10 if you’ve done all your time. -current system, totally inside, eligible year five, if you get parole on year five then on parole five years -Situation number one - you can do ten years, kill your number, no parole -Situation number two - you do ten years, and do a mandatory one year parole • What about keeping the current system in place and simply reduce the parole period? In a nutshell it’s the same system with a reduced parole period. • Question - What affect will this have on parole board decision making? Not sure it has that great of an impact. • Brandon stated he doesn’t make his decision based on felony class. • People can’t be on paper 10, 20, 30 years – it’s not feasible. • Brandon believes we need to significantly decrease and reduce periods of parole. • Charley noted that the incentive to do well while on parole is not present in either scenario. • Doug said he’s still concerned about parole board decisions based on ‘the offender has not served enough time’, the discretionary release decision. • How do we make the parole board accountable for not releasing people when the release instrument says release? • Brandon replied that there many things to take into account that CARAS just doesn’t cover. He said it’s essential to have the human element make the decision. • There’s another earned time issue on parole – would earned time shorten the parole period? • This proposed system does nothing for clarification – the only thing that is concrete on this is that you’ve got to do a year parole. • This cuts down the amount of supervised release time but does nothing on clarity. • Question – If a ten year sentence can be done in 6 years. What is the impact on public safety at that point? What’s the evidence based data on public safety? In broad terms of length of supervision nobody has been
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	<p>able to go in and take multiple systems and determine the magic ultimate length of time that is evidence-based. Nobody knows this</p> <ul style="list-style-type: none"> • There's a general thought that less is better than more, but there's not a lot of data to say where the cutoff is. That combined with what we know about all of this becomes a policy decision. • In the end it's a policy decision of where you're going to draw that line. • Data requests <ul style="list-style-type: none"> -How do we find data that says we're safer with what length of parole period / public safety 1, 2, 3, 4, 5 -People fail early in their parole period -Returns for 'any reason' are not about public safety if it's a TV. -Do a break-out on just new crimes -Can public safety be measured by new crime? New crime charge. Kim will pull this with filing data, and also with violent crime vs. property crime. -Doug wants to know new offenses, not revos by felony classification and risk, what's the percentage that get out at their first PED. Excluding mandatory and technical. No sex offenses. -The parole board already has some discretion around early termination of parole, how many are currently eligible for early termination and how many are granted? -is there a way to show how many are in county jails on revocations. Guys in county jails based on a technical violation -DOC can tell us how many in jails on TV's
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Issue/Topic:	Discussion:
<p>Ares of agreement</p> <p>Action:</p>	<p>Doug brought up what he believes are areas of agreement the task force has come to consensus on:</p> <ol style="list-style-type: none"> 1 - Rewriting the statutory definition of parole 2 - Assuming we stay with a similar parole release concept – mandatory period paroles would be shortened. In other words, elements we agree on are that mandatory parole supervisions period should be changed to reduce the amount of time. Christie stated she's not sure about this. 3 – Regarding the release decision, Should there be more accountability on the release decision with the parole board. Brandon stated he wants the process to be fair to board members). But should there be some accountability on release decisions – is that a concept people can agree with? The group needs to have a discussion about criteria relative to accountability 4 – A review of statutorily required conditions of parole and review statutorily mandated items the board must consider for release

Issue/Topic:	Discussion:
Adjourn and Next Steps Issue/Topic:	Doug stated that during the next meeting the group will sift through the outcomes of the data requests.

Next MeetingAugust 10th, (Monday)

1:30pm – 4:30pm

1300 Broadway, Conference Room 1E