

Mandatory Parole Subcommittee
Colorado Commission on Criminal and Juvenile Justice
Minutes

August 10, 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

Michael Dougherty, Jefferson County District Attorney's office

Christie Donner, Colo. Criminal Justice Reform Coalition

Alison Morgan 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

Daniel Kagan, State Representative, House District #3

ADDITIONAL CONTRIBUTORS

Anne Carter, Parole Board

Linda Harrison, Division of Criminal Justice

Steve Allen, Joint Budget Committee

STAFF

Paul Herman, CCJJ consultant

Kim English, Division of Criminal Justice

Germaine Miera, Division of Criminal Justice

ABSENT

Ellen Roberts, State Senator, Senate District 6

Issue/Topic:	Discussion:
<p>Welcome and Introductions</p>	<p>Doug welcomed the subcommittee members and reviewed the agenda. He reminded the group that two proposals were discussed at the July meeting – the first option considered discretionary release inside the sentence, the second option featured a system similar to the federal model with supervised release at a certain percentage of the sentence.</p> <p>Doug added that Brandon and Anne have some updated numbers and data to share regarding the percentage of people who are released on their first PED date. Doug also added that he spent a great deal of time studying both models and came up with a melded third model to present today. He asked Linda Harrison from the Division of Criminal Justice to run preliminary numbers on his proposal.</p> <p>Doug concluded his opening remarks by stating that the final item on the agenda will focus on agreement areas.</p>

Issue/Topic:	Discussion:
<p>Data Report Back -Parole board data -Early parole discharge</p> <p>Action:</p>	<p>Doug reminded subcommittee members that a request was made last month for Parole Board data regarding the release percentages for offenders at the time of their 1st parole board hearing by felony class and risk level, along with early parole discharge data.</p> <p>Anne Carter presented Parole Board Data as follows:</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> Anne reviewed her data handout. She explained that the data for CY14 release percentages for offender's at the time of the first parole board hearing are displayed in four categories: <ul style="list-style-type: none"> -Percentage of releases across felony class -percentage of releases within each felony class -percentage of releases across risk level -percentage of releases within each risk level She further explained that the green bar represents discretionary releases, the blue represents mandatory release and the orange represents defer. Anne then went through the outcomes in detail. Question - what about those people granted discretionary release who are past their PED? Anne clarified that these numbers are representative only of the people before the board for the very first time. Between 22-23% of people are released at their first hearing on

	<p>discretionary parole – but this is for new court commitments only.</p> <ul style="list-style-type: none"> • Brandon explained that for offenders who are released on mandatory after their first hearing – they’re in window where they have short sentences. He added that he believes it’s good for an offender in that scenario to “do a little more time in prison”. • Question – the data show that only 16% of people with a class 5 felony and 19% of people with class 6 felonies are released on their first PED, why? • Brandon replied that he doesn’t take a risk on releasing short term low level felony cases because he doesn’t believe those offenders have had enough time for drug treatment, etc. • Basically, the lower level felony the longer % of your sentence you’re going to serve - because the parole board doesn’t feel you’re ready. • Brandon defended this practice by saying class 5’s and 6’s are drug and DV offenders. He believes judges have tried to divert these people for a long time so he doesn’t mind them staying in longer. • Doug stated that he struggles with the graph that shows the percentage of releases within each risk level. If the board supports the CARAS – why are the deferral numbers so high (47% average) for low, very low and medium risk people? • Through all five risk categories the board only releases 23% of the time. What is the point of a risk instrument if it’s not followed? • Question – 23% of people are released on their MRD. How can MRD happen on the first parole hearing? • Alison answered that if the individual has been on supervision on the outside, they’ll get credit for that. The individual gets credit for time he or she spent in jail. • It was noted that the June 2013 DOC statistical report dashboard shows Overall Discretionarily parole releases declined slightly in FY13 - but the data on the DOC dashboard shows discretionary releases increasing somewhat in the last 6 months. • Anne then presented the numbers for CY13, 14 and 15 on the total early release applications and the total early release applications granted. • Parolees can be recommended for early release by their PO, it needs to be instigated from the parole officer to the parole board. <p>Kim and Linda presented outcomes on the Data requests regarding July’s small group proposals as follows:</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Kim explained that the Division of Criminal Justice produces annual prison population projections and that Linda Harrison used that information to respond to the data requests from the July meeting. • Linda distributed a handout and explained that she ran the numbers for “Scenario #1” which specifies “Release all new court commitments on their PED” (without factoring in full sentencing reform). • The first graph shows outcomes of simply releasing all new court
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	<p>commitments on their PED.</p> <ul style="list-style-type: none"> • She explained that the current DCJ projection is represented by the black line, the red line signifies what the numbers would look like if people were released on their first PED, and the blue line shows releases on PED excluding COV's. • She went on to describe her next table which shows the percentage reduction in prison population if the board released new court commitments on their parole eligibility date. • The projections show a 25% reduction by FY2021. • Linda explained that page 2 of her handout outlines the outcomes for "Scenario #2" which specifies the release of new court commitments at 70% (non-COVs) and 75% (COVs) of sentence, excluding life/indeterminate sentences. • She noted that currently the actual amount of time served is around 66% for COV's and 68% for non-COV. This includes time spent in prison following parole revocation. Note that sentence lengths for COVs are 2 to 3 times longer than those for non-COVs. • This information is in response to the data request regarding outcomes if everyone did 70% of their sentence, and what would that do to the prison population. • The original assumption was that the prison population would increase significantly if people were let out at a straight 70% of their sentence. However, given that people are currently released at 66% and 68% of their sentence this would increase the prison population by around 2% by FY2021. • This validates that if the group moves toward Scenario #2, we would either have to revamp the entire sentencing scheme or reduce the 70% scenario. • Kim summarized that this data represents the request from the group for outcomes to Scenario #1 and Scenario #2, or the Federal System model. • Question – it's surprising to see that the average length of stay for offenders is currently at 68%, doesn't that contradict common belief that it's closer to 50%? The 68% figure includes time spent in prison following a technical violation. • The potential impact of the federal model is dependent on LOS prior to release. Linda's numbers show an average LOS of 68% (including revocation time) - BUT in the 2013 DOC statistical report there's a chart on page 20 that shows average time served in DOC facilities, which is different from Linda's analysis. **Note: follow-up information clarified that Linda's numbers were indeed accurate for the COV and Non-COV populations excluding all sex offenders, and including habitual offenders and jail time served presentence confinement. DOC's numbers did not take into account jail time served and the DOC table separated out habituals. • Linda clarified that in her analysis she excluded all sex offenders, all indeterminate life sentences and all pre'93 sentences.
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Issue/Topic:	Discussion:
<p>Additional Proposal Option</p> <p>Action:</p>	<p>Doug explained that after reviewing Scenario #1 and Scenario #2 he created another option, Scenario #3 that he presented to subcommittee members as follows:</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> Doug summarized that Brandon's scenario would cut parole periods but would still rely on discretionary release. He added that the 'Norm and Christie' scenario would look similar to the federal model but would require full sentencing reform to make any significant difference. He described the concept for scenario #3 as "Release date is determined by Title 18 COV/Non-COV; Mandatory parole period based upon risk score. Cost savings split between wrap around services for victims and parolees". For 'Crime of Violence' or COV offenders they would be released to mandatory parole after serving 2/3 of a sentence. Release from DOC would be based upon earned time accumulation. Mandatory parole periods would be set by risk assessment as follows: <ul style="list-style-type: none"> -Very low and low risk would serve 6 months on parole -Medium would serve one year on parole, and -High and very high would serve 2 years on parole Non COV's would be released to mandatory parole after serving 1/3 of their sentence. Release from DOC would be based upon earned time accumulation. Mandatory parole periods would be set by risk assessment as follows: <ul style="list-style-type: none"> -Very low and low risk would serve 6 months on parole -Medium, High and Very high would serve one year on parole Basically, the actual mandatory parole period would be cut significantly and based on risk assessment. Doug added that cost savings would be equally divided between community-based services for victims and offenders. He said he came up with the idea of splitting cost savings after learning at the last CCJJ meeting that victim services only address short term and not long-term needs. Doug clarified that conditions of release would be set by the parole board and revocation would be set by the parole board as well. He noted that Title 17 and earned time provisions would have to be addressed. Under this scenario the Parole Board doesn't 'go away'. Doug also clarified that he asked Linda to take out sex offenders and indeterminate offenders from the analysis. Doug asked the subcommittee members to take a 15 minute break, think about the scenario and return to the table for discussion. BREAK

- After the break Linda distributed and explained another packet of data in regards to Scenario #3.
- Question - COV's account for about 2% of the prison population per year. Isn't that a surprising percentage?
- Question – What is the difference between the 2% in the first table (COV population) and the 12.8% in the second table (COV population).
- Linda explained that table 2 slices table 1.
- Doug clarified that in actually looking at people serving 2/3 of their sentence, we're only talking about 2% of the population.
- 2% of the prison population (COV's) will do 2/3rds time – 98% (Non-COV's) will do 1/3 time.
- The second question is "What is the % of LOS COV's vs. LOS for non-COV?"
- Currently, COV's today are doing 66% (including prison-time following revocation).
- Question - the Non-COV's serving 68% seems higher than expected but this figure includes time in prison following a revocation.
- In a nutshell: 98% of people going in are non-COV and they're staying a longer percentage of time than the COV's, but their sentences are much shorter.
- Is Doug's Scenario #3 even publically viable? The 2/3 and 1/3 split might be a hard sell.
- Question for Rep. Kagan "Do you see people being receptive to a different %?" Rep. Kagan "Yes, 50% might be less of a heart attack issue".
- Data from the DOC annual report shows that PED is set at ½ the sentence for most offenders. That number is further reduced by earned time credits. In reality parole eligibility with earned time is currently at 37.5% of sentence.
- Christie shared that one of her biggest hopes is to provide more clarity and predictability for everyone (offender, victim, system). A system is needed that will be enduring over time.
- Question - Is there enough support in the room to look at the federal model? Sentencing reform would have to be part of the proposal.
- The Sentencing TF made some good changes, but it took years and years to make finite changes. Full, global sentencing reform would take many, many years, and there's reason to doubt whether it could actually be done.
- Alison Morgan stated that she must disagree with Brandon's proposal. DOC is about improving partnerships. Five years of parole is entirely too long and sets anyone up for failure.
- She shared that while working in DOC for 18 years she has seen a myriad of different parole boards. We never get to that 'something else' that's going to result in a better system.
- 23% of DOC offenders release on their first discretionary parole hearing. We have no clue what that will look like under Governor "X" 10 years from now.
- Paul reminded the subcommittee that the previous Sentencing Task Force struggled with the question of sentencing reform, and whether there's an attempt to try to tackle it now or in the future – it will need to

	<p>be tackled at some point.</p> <ul style="list-style-type: none"> Essentially, the greatest issues remain around: <ol style="list-style-type: none"> 1: When someone gets released 2: How much time is enough time served, and 3: Who makes the decision As for parole decision making, 4 years from now we don't know who is going to be on the parole board. We can't count on a parole board being able to follow decisions made years prior. It would be unfortunate to just change mandatory parole periods here and nothing else. Doug noted that he, Norm, Kate, Michael and Charley were all on the Sentencing Task Force. They were able to get the theft grid approved but couldn't achieve separate sentencing for violent vs. non-violent offenders. That issue wouldn't budge. Norm said he agrees with Doug and the federal model won't work unless it includes full sentencing reform. Alison noted that Doug's proposal substantially gets us down the road. As much as we want sentencing reform we can't achieve it any other way. Doug's percentages are low enough that full sentencing reform is unnecessary. Does Doug's proposal include earned time? An offender would still have to earn earned time. That gives DOC incentives. Do we front load good time? Yes, good time would be front loaded rather than earned time in the back. Currently – 2/3rds of a sentence are served to MRD. 9 years means six years. Keep in mind that under Scenario #3, 9 years would mean three years. If people are currently serving 2/3rds, and we move it to 33 1/3% - that will be perceived as halving sentences. Rep. Kagan asked if it's possible to achieve certainty and clarity by going to 2/3rds? It gives clarity, and then the short period of mandatory parole. This doesn't reduce sentences but gives clarity and reduces parole. That proposal is status quo at best. The whole country is reducing prison populations for a reason. You take that savings and put it into programs. Anything less than 50% for a non-violent offense is going to be tough to get through. People will not be satisfied with less than 50% This scenario needs to allow for the system to be developed in such a way so that when the board says 'release', an offender is released by the end of the week – not in 90 days. Doug reminds the group that their job is to say "This is the best thing we can produce and it's the right thing to do". The longer we keep guys under supervision on parole, the more potential there is for them to come back. Being or not being on parole is not going to keep someone from not committing a new crime. One thing the data doesn't capture is that no one who is on parole is refraining from committing another crime. Do we all feel that way?
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	<ul style="list-style-type: none"> • We don't know if someone doesn't commit a crime because they're on parole. • At a certain point on parole there are diminishing returns on investment for the amount of time served on parole. • If we determine that we can't go 'there' with a new parole model, let's at least do something like mandate CARAS be followed. The guidelines recommend for low and very low to actually release at PED and that's not happening with the board. • Could we get 50% for non-COV's and 75% for COV's and look at the same model for length of time on parole? • The average LOS on parole was 15.8 months in 2003, in 2010 it's 13.5 LOS on parole. • These numbers include all parole termination discharges. This is not remarkable or indicative of parole period and successful reentry because this includes technical violations. • We will improve the system if we can get people off paper sooner. • Our goal is to work on parole and come up with a viable proposal. • We can always ask CCJJ to look again at Sentencing as a viable effort down the road. • WE haven't really touched on community corrections and sentencing. When this group reports back to the CCJJ let's talk about areas we've discussed but haven't delved into so the Commission knows they were considered and on the table. • Let's focus on our current mission and also report to CCJJ at the the end of the day about all the things we want to also address (sentencing reform and community corrections, etc.) • Let's present the challenges we faced to CCJJ while coming back with proposals on other reforms. • Would like to know more about average length of parole sentences. • Can we look at the average length of parole by CARAS risk and felony class? • Yes, let's look at the average length of time on parole either successful termination or non-successful termination by risk.
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Issue/Topic:	Discussion:
Agreement Areas	The subcommittee will start the next (September) meeting by looking at agreement areas.
Action:	

Issue/Topic:	Discussion:
<p>Adjourn and Next Steps</p> <p>Issue/Topic:</p>	<p>Doug asked the group if they would reschedule the September meeting so he can attend. The meeting was rescheduled for Wednesday morning, September 9, 9am – Noon on the CDPS campus.</p> <p>Brandon announced that he is leaving the parole board at the end of this month to take another position.</p> <p>At the next meeting the subcommittee will start by looking at agreement areas, deciding on the purpose of parole, and then determine what changes need to be addressed. After those steps are taken the group will THEN determine recommendations.</p> <p>Paul asked subcommittee members to review the Purpose of Parole document in their packet and send any thoughts or feedback to Germaine.</p> <p>Paul explained the remainder of documents in the packets as follows:</p> <p>There are copies of standard conditions There are copies of revised and reduced conditions Statutory language slightly different than parole conditions – look at them not matching Paul has two other examples from Ohio and Georgia Both states reduced standard conditions to six</p> <p>We'll talk about purpose, conditions and considerations at the September meeting.</p>

Next Meeting

September 9th, (Wednesday) 9:00 am – Noon

CDPS Campus / 6th and Kipling