

***Mandatory Parole Subcommittee***  
***Colorado Commission on Criminal and Juvenile Justice***  
**Minutes**

November 9, 2015, 1:30PM-4:30PM  
Ralph Carr building

**ATTENDEES:**

**CHAIR**

Doug Wilson, Public Defender's Office

**TASK FORCE MEMBERS**

Joe Morales, Parole Board

Christie Donner, Colo. Criminal Justice Reform Coalition

Melissa Roberts for Kellie Wasko, Department of Corrections, Parole

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

Norm Mueller, Defense Attorney

Daniel Kagan, State Representative, House District #3

Michael Dougherty, Jefferson County District Attorney's office

Charley Garcia, Colorado Bar Association

James Quinn, Attorney General's Office

**ADDITIONAL CONTRIBUTORS**

Anne Carter, Parole Board

Steve Allen, Joint Budget Committee

Michael Dohr, Legislative Legal Services

**STAFF**

Paul Herman, CCJJ consultant

Germaine Miera, Division of Criminal Justice

Kim English, Division of Criminal Justice

Christine Adams, Division of Criminal Justice

**ABSENT**

<p><b>Issue/Topic:</b></p> <p>Welcome and Introductions</p>	<p><b>Discussion:</b></p> <p>Doug welcomed the subcommittee members and reviewed the agenda. He reminded the group that the purpose of today’s meeting was to revisit and possibly revise Recommendation FY16-MP#2 / Release Date Determined by COV/Non-COV and mandatory parole period based upon risk score. He also welcomed the additional attendees to the meeting.</p>
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<p><b>Issue/Topic:</b></p> <p>Update since the October meeting</p> <p><b>Action:</b></p>	<p><b>Discussion:</b></p> <p>Doug reported that a few meetings have been held between the October CCJJ meeting and today’s Mandatory Parole Subcommittee meeting to address specific details of the recommendation.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• The Community Corrections Task Force held a meeting on October 22<sup>nd</sup> and invited members of this subcommittee to attend and present the recommendation to the task force.</li> <li>• A handful of subcommittee members were in attendance at that meeting including Melissa, Christie, Joe and Kate.</li> <li>• During that meeting Melissa reviewed the proposal and subcommittee members answered questions.</li> <li>• The Governor’s Community Corrections Advisory Council meeting was held on November 6<sup>th</sup> and members of this subcommittee attended that meeting as well including Doug, Joe, Melissa and Christie.</li> <li>• Again, elements of this proposal were presented at that meeting as well with a question/answer session that followed.</li> <li>• Along with collecting feedback from both of those meetings, Germaine has been compiling feedback she has received through emails.</li> <li>• Doug explained that the purpose of today’s meeting is to talk about all of the feedback and concerns regarding the proposal and see if there are some compromise areas.</li> <li>• He recapped that for those people who weren’t in attendance at the October CCJJ meeting, there was a little consternation about holding a vote at the November CCJJ meeting on proposal number two.</li> <li>• Doug went on to suggest that it is likely there won’t be a vote at the CCJJ meeting on Friday, November 13<sup>th</sup>, but instead a vote will be held at the December Commission meeting.</li> <li>• The delay will give this subcommittee time to take suggestions into account.</li> <li>• Doug asked subcommittee members if they are in favor of postponing the vote by a month and nobody opposed his suggestion.</li> </ul>
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Issue/Topic:	Discussion:
<p>Recommendation Review: DOC Release Date Determined by COV/Non-COV and Mandatory Parole Period Based Upon Risk Score</p> <p><b>Action:</b></p>	<p><b>Individual Issue Areas to be Addressed/Community Corrections:</b></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Doug summarized that one of the concerns from community corrections stakeholders was around the distinction between COVs and Non-COVs in regards to lengths of parole periods.</li> <li>• Another concern is around the proposed 6 month parole period for low risk offenders.</li> <li>• The original proposal called for an option for Non-COV offenders to be placed in community corrections 6 months prior to the termination of their prison sentence. It also allowed for COVs to be placed in community corrections as a condition of parole at the termination of their prison sentence.</li> <li>• One concern raised by comm. corr. stakeholders was that they need a ‘carrot’ to incentivize offenders.</li> <li>• Another desire by stakeholders is for the referral or transfer to comm. corr. to take place one year short of the mandatory parole release date, with earned time still being available.</li> <li>• There’s an argument that without a carrot built into the system there’s no incentive to comply with comm. corr. and their programs.</li> <li>• Another option raised by stakeholders was that a 6 month parole period for low and very low risk people wouldn’t be problematic as long as a modification is made for people to go to comm. corr. one year before their mandatory parole date.</li> <li>• Doug reminded subcommittee members that any change that moves the potential release date to community corrections up will dilute the clarity of the sentence, there’s no way to adjust that date, then add earned time and have it not fool with clarity.</li> <li>• With the added change of earned time on a ten year at 75%, this could move that sentence length down to 70-ish%.</li> <li>• Christie offered that while it would affect the clarity a little bit, it more than anything erodes the original purpose of the recommendation.</li> <li>• In community corrections people do better on inmate status than they do on parole status, so this is the carrot.</li> <li>• The reason to adopt this suggestion from community corrections stakeholders is to give comm. corr. that whole extra year with a person.</li> <li>• Question - How many people in comm. corr. are not on inmate status? Not many.</li> <li>• Doug noted that if the referral date is moved up to a year before MRD, that will ensure there is enough for people to get through the Comm. Corr. programs, especially for Therapeutic Communities.</li> <li>• None of these changes affect the referral process to boards.</li> <li>• It may end up changing comm. corr. board decision making. It means there will only be one referral on a person; either they’re coming out on parole or their going through comm. corr. it’s one way or another.</li> <li>• Comm. corr. will either accept someone or they will be paroled.</li> <li>• Only 1/3 of people leaving prison are going through comm. corr.</li> </ul>

currently.

- Doug stated he would first like to have a discussion about moving the community correction placement date up to cover both groups, COV and Non-COV. AS long as people understand there will be an inside DOC impact on length of stay, although not a bunch.
- COVs will still end up doing more time than they would have.
- Everyone will go into comm. corr. on inmate status, both COVs and Non-COVs.
- The maximum amount of time someone could be on inmate status in one year.
- The bigger concern from DOC is about the length of stay someone will be on inmate status.
- While we would lose some clarity, we would have one system for a community correction referral with no distinction for COV and non-COVs.
- The bulk of the savings from this recommendation would continue to be on the parole side.
- Based on current comm. corr. eligibility, we already know The Non-COVs are serving 68% of their sentence, so this will now mean they would serve even less.
- Christine Adams added that the 66 and 68% of sentence people are serving includes the amount of time people spend on inmate status.
- For COVs, that number will still be higher than what they're serving now.
- Doug summarized that the ask from community corrections stakeholders is for one year a one year referral time, with earned time, prior to mandatory release date for both COVs and Non-COVs.
- This alleviates some of the concern about the 6 month parole period for low risk and very low risk people. Having this year out eligibility answers the concerns about six months being too short.
- Low risk people in comm. corr. now are about 10% of the population.
- A motion was made and seconded to move forward with this revision.
- Final verbiage would be 'Individuals may be placed in community corrections 12 months prior to completion of his/her prison sentence, and can obtain earned time during this period.
- What if a CC facility says we'll take this person but won't have a bed for another month? Or what if someone gets pushed to the bottom of the line.
- Right now we don't have flexibility, it's 'placement at' – with some wiggle room.
- This group can't control a transfer of say 11 months and 19 days rather than 12 months out.
- Keep in mind this is going to roll out slowly, so if there are issues at an operational level we can manage that.
- Doug asked for a vote in favor of modifying the verbiage.
- Everyone voted in favor except for Melissa and Kate who both arrived later.
- The 2<sup>nd</sup> issue is about what to do with people headed to therapeutic communities.
- The suggestion for this issue is that instead of using COV, Non-COV

	<p>parole periods, there should be just one set of parole periods.</p> <ul style="list-style-type: none"> <li>• Instead of basing parole periods on COV/Non-COV AND risk, we would just make them based on CARAS risk score.</li> <li>• This would give TC providers a 2 year minimum time period with people.</li> <li>• People who would have been Non-COV will be put into a longer parole period if their risk score warrants it.</li> <li>• There are currently less than 200 people in TC's. 98% of them are Non-COVs.</li> <li>• The concern was about Non-COVs who were high risk, and we weren't capturing this. But this modification does capture it.</li> <li>• Neither the offender nor the victim will know risk level until parole time rolls around.</li> <li>• With this change it doesn't matter what offense someone is in on. This is now purely risk based. Because part of the concern from comm. corr. was they wouldn't have enough time.</li> <li>• The Risk assessment made at point of release.</li> <li>• This impacts clarity because it will be based on time at release.</li> <li>• Christie asked if there will be any legal problem with saying length of stay on parole is based on risk. Would there be any equal protection challenges? James answered that he can't see a problem with it.</li> <li>• Christie made a motion to adopt one range of mandatory parole period based on risk with eligibility for earned time.</li> <li>• Joe noted that the CARAS level will change at the point it's administered.</li> <li>• Norm asked that when a judge is imposing a sentence, it would now be 'parole <u>up to</u> two years' or similar verbiage. Parole would be 6 months to two years, or however defined in statute.</li> <li>• Rep. Kagan offered that the group should decide about the earned time element of this piece of the proposal first, then work on the rest of the recommendation regarding time periods.</li> <li>• What's on the table now is a motion and second regarding the parole periods of 6 months, 1 year and 2 years regardless of COV and Non-COV.</li> <li>• Rep. Kagan moves motion on the table to amend that earned time is included.</li> <li>• A discussion ensued on the amendment regarding earned time.</li> <li>• Michael Dougherty says he's okay with earned time piece, but would like to talk more about specific time periods.</li> <li>• Rep. Kagan suggested the group not address time periods on parole until the issue of earned time is either accepted or rejected.</li> <li>• The amendment on the floor is about allowing earned time during the periods of mandatory parole.</li> <li>• Kate noted that if there was a 30% earned time allowed on 2 years that it would bring the whole lengths of parole down to 16 months.</li> <li>• She noted that earned time on parole won't garner support if the parole periods are too short.</li> <li>• Michael said he agrees with Kate. He's open to earned time but he's worried about the proposed time periods for periods of parole. He added that people already think they're too short.</li> <li>• Rep. Kagan asked if the community at large might be more comfortable if there is a reduced earned time allowed.</li> </ul>
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- The purpose of period of parole needs to be appropriate period of time.
- Kagan noted that the whole process of applying for early termination from parole is currently fraught with lack of clarity and goes against the goal. He doesn't support the idea being of the carrot being at the discretion of the parole officer and that being accepted by the parole board. This goes against clarity. Earned time with a floor is a much more predictable basis on which to do this.
- Rep. Kagan moved to grant earned time to offenders on parole not to exceed five days per month, Christie seconded the motion.
- Michael said that if the group is including earned time, and thereby lowering the period of parole, and given some of the concerns raised by victim's community, shouldn't we increase parole periods?
- He explained that it's hard to vote in favor of earned time without knowing the lengths of parole periods.
- Rep. Kagan clarified that the vote can be taken on the 5 days, and then the discussion can be had about the length of time on parole.
- Doug asked for a vote on earned time on parole not to exceed 5 days.
- 5 were in favor, 3 abstained (Michael, Joe and James).
- The earned time amendment passed.
- --10 minute break here--
- Melissa stated that she would have issues with the six month parole period if earned time was allowed.
- Doug reminded everyone that the purpose of this change is to try to build some incentives on the parole periods, make them risk based, and allow for 'carrots'. That's the rationale for going with 5 days earned time instead of 10.
- Rep. Kagan asked Melissa if it would be a deal breaker going from 6 months down to 5 months.
- She replied that it's not necessarily a deal breaker but that 6 months is already a short period of time as it is.
- Kate shared that she has received negative feedback on parole periods being reduced.
- The DOC survivability tables on parole show no one fails later. If people have been successful for two years they're going to succeed.
- Would a year for low/very low people and two years for the rest work?
- We need a different option for the medium risk people.
- Feedback from COVA is that 6 months is far too short.
- Melissa shared that there are a lot of ways to incentivize parolees in the community.
- Christie pointed out that one of the most influential incentives is time off the parole period.
- What about doing three, two, one years with ten possible days off per month?
- Christie replied that the whole point is certainty and clarity. That proposal wouldn't accomplish that.
- Earned time on parole would have to be at least five days.
- And it doesn't make sense to go to three years when the research shows parolees don't need that long.
- Rep. Kagan proposed one year parole for low, very low and medium risk,

then two years for high and very high, with 5 day earned time.

- Christie seconded the motion.
- Michael said he appreciates that the amendment gets us closer to consensus and believes this is a significant step. He believes one year for low and very low makes sense, but he has trouble with one year for medium. He offered 12 months for low/very low, 18 months for medium and 24 months for high/very high.
- He added that if we believe the risk instrument and we believe in risk based decision making it's hard to not have a distinction between low and medium.
- Michael said that if the group agreed to 12, 18 and 24 months he could live with earned time at 5 days.
- Kate concurred and Melissa said she could live with it too.
- Rep. Kagan asked if the 1, 1 and 2 years has legs or not. Michael replied that there needs to be a distinction for medium.
- He then proposed 12, 18 and 24 but with 10 days earned time.
- Kate asked if the purpose of this is to offer incentive or to cut back parole periods.
- Kate said she's not in support of 10 days.
- Christie asked that isn't 1 year long enough for medium risk people to get through comm. corr.?
- Kate said if we're doing truly risked base there should be a different number for medium risk people.
- Paul agreed that from a risk principle there are reasons you separate low, medium, high.
- In regard to treating low, medium and high people differently – yes it matters.
- There is sense in differentiating time periods.
- We want to end up with something valid on its face that is supported by principles that there IS research on. We accomplish this by separating out three levels. Then we do as little as possible with low risk people. Medium and high risk you do other things.
- Principles of research suggest that's the way you would look at that.
- There's little we can look to that says what's right and what's not.
- As a citizen I would want to see the minimum time of a year, beyond that you get diminishing returns.
- There's some research suggesting dosage but we're not there yet, that's down the road.
- Clear principles say delineate the three, look at survivability, then it meets the taste test.
- Michael reminded everyone that at the CCJJ meeting Rick Raemisch said if someone is going to make it or not, that will happen in the first year.
- Joe replied that he's comfortable with 12, 18, 24 with 5 days. There should be differentiation of low, medium, high. No differentiation between COV and Non-COV.
- Joe made a motion was made for mandatory parole periods to be risk-based low very low 12 months, medium 18 months and high/very high 24 months with a max 5 days earned time per month.
- Rep. Kagan seconded the motion.

- Doug took a vote on the proposal.
- All in favor – unanimous.

**Individual Issue Areas to be Addressed/Other Issue Areas:**

*DISCUSSION POINTS*

- Christie said there are still two questions to be addressed.
- She suggested adding that if someone is in comm. corr. on inmate status and they don't finish residential, then we should require completion of comm. corr. as a condition of parole.
- Currently they're hitting their MRD and leaving program before they complete it.
- Melissa said make it part of the parole agreement that they must complete comm. corr. program as part of their parole period.
- Should we put Christie verbiage in writing in the recommendation?
- Doug asked if this is as much of a problem now with the revised time periods.
- With earned time 12 months prior to MRD, someone could hit MRD prior to 12 months, which is a couple months shy of that.
- Christie said the second issue is around the verbiage with grant programs and whether we're okay leaving this with community-based organizations.
- Doug asked Ken Gaipa that as for therapeutic communities go, is a one year release to comm. corr. prior to MRD, plus longer parole periods, enough time that TC's will not be harmed?
- Ken replied that the key ingredient would be the mandate of completion.
- Inmate status to parole status has been the leverage.
- The sense that there are teeth connected to working the program and the most important thing is completion. The residential part of that and outpatient. Ken added they can certainly work with that. This verbiage needs to be in.

**Individual Issue Areas to be Addressed/Revised numbers from Linda and Steve :**

*DISCUSSION POINTS*

- Doug explained that Michael Dohr has written a 50-page draft bill on this recommendation already.
- Kim has revised numbers as does Steve. However, with the outcomes from today's discussion those estimates are moot.
- Steve added that it's important to know when changes are going to become active in order to make more accurate predictions and estimates.
- Michael Dohr said he's written the bill at this point for crimes committed on or after July 1, 2016.
- This would become law on July 1, 2016.
- Start dates will affect first or second year savings.



<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Public Comment</p>	<ul style="list-style-type: none"> <li>• Glenn Tapia shared that he appreciates all the collaboration that has gone into revising the recommendation.</li> <li>• Beverly Kacey shared that she has seen that those who complete comm. corr. are much more successful. It's boot camp for surviving on the outside. Successful completion is the key.</li> <li>• Joe Cannatta says he's concerned that this proposal takes out the opportunity for victims to see the behavior change. Doug asked why. Joe replied because of the hearing process and that with discretionary release the parole board and victims can see behavior change. Joe said he likes a lot of it, but is concerned about losing discretionary parole.</li> <li>• Christie asked that wouldn't a victim want more certainty and clarity in knowing about sentence and parole lengths rather than going bback to parole board hearings. Joe replied that going to parole board hearing is part of the healing process.</li> <li>• Kate asked if under mandatory release parole they board is envisioning a full board hearing about conditions of parole. Anne replied that she thinks that's part of Joe's desire for victims to be present and heard at conditions hearings.</li> <li>• Should that be articulated in the proposal and clarify that VRA statute mirrors what takes place now.</li> <li>• Kate – it may be the current practice of parole board, but parole board leadership changes and want to make sure this is in the recommendation.</li> <li>• Kate added language – victims would be afforded the right to be informed present and heard at setting of conditions or parole. It's already in the recommendation.</li> <li>• Michael Dohr said he'll get the bill out this week or next.</li> <li>• Doug will report out on the recommendation on Friday at CCJJ. This will allow everyone to look at the bill and then come back.</li> <li>• Doug will present on Friday at CCJJ that gives us time to tweak some more, roll it out, talk to people.</li> <li>• Let's come back December 7<sup>th</sup> for another Mandatory Parole Subcommittee meeting.</li> <li>• Vote at CCJJ Friday on FY16-MP#1</li> </ul>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Adjourn and Next Steps</p>	<ul style="list-style-type: none"> <li>• The recommendation will be presented to the CCJJ this Friday.</li> <li>• The Mandatory Parole Subcommittee will meet again on December 7<sup>th</sup>.</li> </ul>

**Upcoming Meetings**

December 7<sup>th</sup>, 2015

1:30-4:30pm

Ralph Carr Judicial Building