

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

December 7, 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, Department of Corrections, Parole

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

Daniel Kagan, State Representative, House District #3

Charley Garcia, Colorado Bar Association (late)

James Quinn, Attorney General's Office

Michael Dougherty, Jefferson County District Attorney's office

**ADDITIONAL CONTRIBUTORS**

Anne Carter, Parole Board

Michael Dohr, Legislative Legal Services

**STAFF**

Paul Herman, CCJJ consultant

Germaine Miera, Division of Criminal Justice

Christine Adams, Division of Criminal Justice

**ABSENT**

Norm Mueller, Defense Attorney

<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 noted that the purpose of today's meeting was to revisit the details of Recommendation FY16-MP#2 / Release Date Determined by COV/Non-COV and mandatory parole period based upon risk score.</p>
---	--

<p><b>Issue/Topic:</b></p> <p>Update since the November meeting</p> <p><b>Action:</b></p>	<p><b>Discussion:</b></p> <p>Doug reported on the updates since the November meeting.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Recommendation FY16-MP#1 (Update and rewrite the statutory purposes of parole to reflect contemporary and evidence-based common practices) passed at the November CCJJ meeting.</li> <li>• The next CCJJ meeting is scheduled for Friday, December 11<sup>th</sup> and a vote is scheduled for FY16-MP#2 (Prison release date determined by COV/Non-COV status AND mandatory parole period based upon risk score) at that time.</li> <li>• Doug told the group that members of this subcommittee continue to field and respond to questions from various groups about the details of this recommendation.</li> </ul>
---	---

<p><b>Issue/Topic:</b></p> <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>Discussion:</b></p> <p>Doug began a group discussion about recommendation FY16-MP#2.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Doug started by noting that this recommendation is now in its third version from where the subcommittee started. He also noted that it has been approved by, and officially passed out of this subcommittee during the October meeting.</li> <li>• He added that Michael Dohr has prepared a second version of draft legislation based on some of the changes made at the last subcommittee meeting.</li> <li>• Doug asked the group for any questions or feedback.</li> <li>• Joe Morales asked a question about the referral process to community corrections and whether it will stay with the Department of Corrections.</li> <li>• Doug clarified that there will be no changes to the referral process to community corrections as far as transition placements.</li> <li>• Melissa commented that the proposed legislation reads like achievement earned time would be deleted. Why is that?</li> <li>• Michael responded that while writing the draft he created a new earned time standard by marrying all the elements from the past statutes with this proposal, and put everything into one place as opposed to the way it is now with a bunch of different piecemeal earned time and good time</li> </ul>
---	--

statutes.

- He said he showed all the old language in the draft legislation to make sure he captured what it was intended to look like going forward.
- He said he's trying to get everything into one place and in one statute to make it simpler.
- A question was asked about whether the 75/50% criteria would be used going forward.
- Doug said his assumption was that the criteria would not change for earned time accrual. The only thing that changes is the cap.
- Doug asked for anything else.
- A question was raised about verbiage on page 28, line 21 – about the viability of special needs parole under this new system. Special needs as a separate issue would stay the same.
- Doug reminded everyone that there was never any discussion about how people got to earned time and the assumption was that DOC would continue to make those decisions.
- On page 9 there is a section about application for parole – technically how does that work, do offenders still have to apply?
- Doug answered that because the recommendations are for mandatory parole and not discretionary there would be no application.
- There was a question about presumptive parole and if that would go away as well because the discretionary aspect of that would go away?
- Doug replied that all of that would go away and it wouldn't apply to the population going forward.
- Page 28 addresses presumptive parole for drug offenders. This recommendation would take the presumptiveness out of the equation. Essentially that process would no longer be applicable.
- Doug clarified that, assuming this goes into effect in June 2016, there would still be presumption prior to June 30, 2016.
- Doug clarified that the way Michael Dohr has written it is correct.
- Kate pointed out that one of the problems from the perspective of the victim's community is that the Title 18 COV crimes don't include all the crimes under the VRA.
- She pointed out that the crimes not covered under COV include things like vehicular homicide, vehicular assault, manslaughter, criminally negligent homicide, third degree assault, menacing, robbery and child abuse among others.
- She said the way she reads the recommendation, people who commit these crimes would be eligible for release to parole at the 50% mark rather than at 75%.
- She stated that even though these are not title 18 crimes they are person crimes under the VRA and that's a concern to her and others in the victim community.
- Kate said the other thing she can't find in the proposed legislation was affirmative verbiage about a victim's right to be present and heard at hearings.
- Kate said she requested an affirmative right of victims to be present and heard at request for early termination hearings but didn't see that cross-referenced in the proposed legislation.

- Michael Dohr pointed to page 49, lines 15 and 16 and asked if there is something in that language that doesn't cover Kate's concerns.
- Kate replied that the request for early termination of parole and parole revocation is not covered.
- Michael explained that he amended title 24 to include all critical stages.
- Kate asked if that needed to be cross referenced earlier in the bill.
- On page 11, line 14 - Does that need to be cross-referenced or is it sufficient where it is currently placed?
- Joe Morales responded that 'special needs' is different from early discharge request.
- Christie clarified that this needs to be reconciled so special needs is still applicable after 2016.
- In the 'special needs' section the protocol is explained.
- The whole concept of title 24 was to define and implement the VRA into the Constitution.
- What the legislature has done is define the words critical stages.
- Could the areas that need to be added then be referenced back to the Constitution? It would make it Constitutional for parole hearings, revocation and early termination?
- The VRA references the Constitution; therefore adding those other procedures under critical stages meets the need. Michael Dougherty said he agrees that the need would be met.
- Christie asked if victims are currently allowed to add their input on settings for MRD.
- Doug requested a change to the definition of critical stages adding these three procedures on or after July 2016.
- Christie asked if the addition of setting of conditions, revocation and early termination to critical stages would only be applied moving forward, or is it the desire that it would apply to anyone currently AND going forward.
- Kate replied that ideally it would apply across the board. This would be expanded to current and future offenders.
- Joe Cannata shared that victims are already participating in this piece.
- This is already happening but is it statutory or simply happening because of parole board guidelines?
- It falls under the VRA currently.
- Michael Dohr added that it is his recollection that when he drafted the language on 49, early terminations and revocations are already covered. What was not there was the conditions of parole participation. Since this doesn't apply currently he thought this should only apply going forward. That language was added to make it clear. If there is a small subset now that does have these conditions being set, this would apply to them.
- Joe Morales replied that this is currently done on file reviews.
- Currently victims are notified that it's a file review for clarification.
- Michael Dougherty said he agrees with Kate that it's important to ensure the setting of conditions of parole.
- Early termination isn't currently covered; it's not in the VRA.
- Joe Morales said that when offenders are moved internally victims are notified.

- Doug asked for verbiage to be added to Page 49 about parole hearings and to add a request for early termination of parole as a critical stage definition.
- Michael Dougherty noted that the bill draft originally sent out can no longer be accessed.
- Christine said she will resend the link to access the bill.
- Michael Dougherty said he believes that the modifications discussed will address Kate's concerns.
- Joe Cannatta said victims do show up at setting of conditions which is usually the last discretionary parole hearing.
- Christie asked if they show up for the MRD hearing file review at the last discretionary hearing.
- Christie asked Kate to clarify if one of her concerns is that not all VRA crimes require 75% minimum sentence served. Kate said yes that's the problem.
- Kate clarified that her concerns are centered on the notification and the 75% crimes. She said she believes all VRA crimes not included in this will negatively impact the success of this recommendation.
- Doug noted that including all VRA crimes would be starting over with a new data set.
- Michael Dougherty said that in talking to people in the victim community the concern is that title 18 doesn't capture all VRA crimes that have a 'person' impact.
- Christie reminded subcommittee members that for Title 18 COV offenders sentences will increase from 68 to 75% for many folks.
- Doug noted that making a switch to include all VRA crimes is a different set of data. Including all VRA crimes would look more like sentencing reform.
- He added that this group intentionally looked at Title 18 crime of violence and adding in the VRA would bring the group to full sentencing reform. This would be mean starting over with a different data set and a completely different discussion.
- This task force isn't authorized to do this.
- Michael Dougherty said that from the beginning many subcommittee members advocated a broad look at sentencing to avoid ending up with this Christmas tree approach. There's an opportunity for meaningful reform if the group looks at all ramifications. That's a more holistic approach and the group would be more successful across the board.
- He added that in focusing on COV crimes, those offenders will do more time under this proposal. However, victims say this is too narrow and the gains aren't significant enough to overcome the obstacles.
- Doug pointed out that the Commission had huge success regarding drug law reform and property crime reform but that those efforts took years each. He said the time delay comes directly from prosecutorial objections, which adds years to every process.
- Michael replied that sometimes it takes time to get people onboard with good proposals. He added that there's a lot of good with this, but the overriding concern is that this is moving too quickly.
- Part of the reason we've moved fast here is that there is a common goal

	<p>for a good outcome, but if the group goes too quickly the outcome might be too negative.</p> <ul style="list-style-type: none"> <li>• Michael Dougherty stated if you want to go fast go alone, if you want to go far go with others.</li> <li>• He noted that the group has been aggressive in how quickly it has moved. He shared that he's never been on a task force or subcommittee that moved this quickly and had never been on one where there was a bill draft in front of the collective group.</li> <li>• Doug replied that the CCJJ just got the authority two sessions ago to have a bill drafter in these groups to make sure everything was captured that happens in task forces.</li> <li>• Michael Dougherty said he believes the money savings piece should be finalized before moving forward.</li> <li>• Doug replied that this recommendation was never about cost savings and that cost savings is only a byproduct of good policy decision making.</li> <li>• Cost savings is not the reason this is good legislation. It may ultimately help services down the road but that's at least two years out.</li> <li>• Michael says he feels cost savings are critically important to any proposal.</li> <li>• Doug replied that it is actually an ancillary benefit to good policy change. Money is not the reason to do this.</li> <li>• Paul interjected to make three points pertaining to the discussion:       <ol style="list-style-type: none"> <li>1- His first point was in regards to the speed of work for this subcommittee and complaints that this was a fast timeline for a CCJJ task force to make a recommendation. He reminded the group that the first four task forces of the Commission produced 64 recommendations in the first 6 months of work in 2008. He added that some groups have taken years to produce recommendations (Drug Task Force, Sentencing Task Force) and some groups, especially subcommittees (with the targeted nature of the work) usually only take months (e.g. the Bail Subcommittee).</li> <li>2- Historically the Commission has looked at good policy first and if there is a cost saving or other ancillary benefits, that's second. This is what CCJJ has done all along. CCJJ has always stood behind moving good policy forward.</li> <li>3- In regards to savings – if anyone believes that the methods utilized to predict cost savings (e.g. savings from the drug bill) have been reliable; they haven't looked at the numbers. Policy is number one and the factual reality is that the fiscal impact and estimates have been inaccurate at best. Good policy has always been the driver in the CCJJ and cost benefit is secondary.</li> </ol> </li> <li>• Christie asked Kate if the original intention of this recommendation was about more clarity in a sentence (which this proposal does) and not how much time is spent for every single crime.</li> <li>• Christie asked Kate if her belief is that for any violent crime someone should serve 75% and without that she won't support the recommendation.</li> <li>• Kate answered that for herself and for COVA she would say no, she won't support anything that is less than 75% for all violent crime.</li> </ul>
--	--

- Christie replied that she can't support the current sentencing scheme and a 75% minimum on all violent crimes.
- Doug noted that early on the Commission began with a desire to create three separate sentencing schemes: one for drug crimes, one for property crimes and one for person crimes. CCJJ got through drugs, part way through property and then stopped.
- To go to a 75% on all person crimes under the current sentencing scheme is not going to fly.
- The goal of this subcommittee was not to revise the entire sentencing structure, but to find a way to provide more clarity on the length of time someone would serve, so offenders, victims and other stakeholders would really know what a sentence meant. This recommendation achieves that.
- This task force wasn't about sentencing reform.
- Christie asked Kate what she wants to do in regards to this recommendation.
- Kate replied that she believes the world is different now than in 2009 when 64 recommendations were passed. She said she's feeling the magnitude of the work that's trying to be pushed through and is concerned that there's already a 50 page bill draft that hasn't been made available to the public.
- Christie replied that the conversation here is the conversation that will be had at the legislative floor. A preliminary bill draft is just that, preliminary.
- Kate added that the subcommittee could walk out of the meeting believing the recommendation is great and agreeing on its components, and yet every victims group will oppose this because it doesn't parallel the VRA.
- Kate added that the charge for this group was to look at the efficacy of the five year parole period and that all she wants to do is incorporate all VRA crimes.
- Christie replied with a "firm no" on rolling in all VRA crimes. She added that there's no data on that proposal and that without data it would be a completely uninformed decision.
- Christie asked Kate if there is any feedback about the proposed parole periods. Kate replied that there's skepticism about the CARAS. Christie asked why there's skepticism about a validated, proven tool. Kate replied that the skepticism is due to people's lack of knowledge about the CARAS.
- Kate added that the stopping point for her on the 50/75% is around crimes like vehicular homicide.
- Christie noted that there are two components to this recommendation, the 75/50% and the parole periods piece. She wondered if there is someplace to land on common ground.
- She asked if there is support on the risk based parole terms. She asked Kate if she can live with the risk based parole periods.
- Kate said she supported the 12, 18 and 24 month parole periods because of programming they would get through this. This had to do with the 75% of time.

- Christie asked directly if there's a way to move the shortened parole periods forward.
  - Melissa stated that obviously the 75/50% is about clarity and for DOC that also helps with programming on the inside for clarity and how to prioritize. The two pieces do work cohesively together.
  - Rep. Kagan reiterated Christie's question and asked whether the two elements are so intertwined that if the group doesn't move on one can they not move on the other. He said he wants to know that without the 50/75% can't the group still support shortened periods.
- Doug called for a 15 minute break---
- Kate said that she spoke to the members of her community and the feedback during the break was that there is more support for shortened periods of parole than the 50/75%, however she said she would like to confirm that and go over the research again. She thinks she can support that but it doesn't mean that the coalition will feel the same.
  - She said that wherever \*she\* might land there may still not be support from the entire coalition.
  - Doug reminded the group members that they have already passed this recommendation out of the task force, it has already been presented to the CCJJ and it will be up for a vote Friday.
  - He added that he is prepared to make the recommendation as is on Friday.
  - Christie asked if it would be useful for the Commission to vote on these as two separate things. One vote for the risk-based parole periods and the other around the 75/50%.
  - Or can the CCJJ vote on risk based parole periods and then continue the work on 75/50.
  - Christie asked what people think about that proposal. This subcommittee has the authority to offer to the CCJJ that they bifurcate the recommendation and vote on just one element.
  - The other possibility is to bifurcate now at this meeting and offer both as separate recommendations.
  - Rep. Kagan asked if the assumption here is that the 75/50% will fail and that the risk based periods would pass.
  - Joe Morales added that the 4 and 5 year tails are ineffective. He then said that if the group can at least shorten parole periods that is what the group originally wanted to do. 4 and 5 year parole periods are ineffective.
  - Christie asked if the group should move the shortened periods forward. Joe Morales replied yes, the group should look at this as incremental reform.
  - Christie asked if this subcommittee can request the CCJJ vote on the elements independently. What is the group authorized to do procedurally?
  - Paul shared that the CCJ has handled this issue in a handful of different ways. One time they looked at all the pieces individually on something that was meant to be a whole, which can cause some consternation.



- Another approach is to look at the recommendation as a whole and separate out the pieces. That's what could happen here – it would be two separate pieces.
- Also, the CCJJ has taken a whole recommendation, separated the parts and voted on them individually.
- CCJJ often looks at the parts of the whole, but doesn't vote down the whole thing just because people don't like one part.
- One solution is for the CCJJ Chair to recommend it be considered as a whole or the Chair could also recommend it be considered as two recommendations not necessarily dependent on each other and then vote on each section.
- The recommendation does not have to be pushed out for a vote in just one piece.
- Rep. Kagan said that he would like to float the idea that this subcommittee vote on a motion to require the Chair (Doug) move CCJJ to sever the two parts and vote on the two parts separately.
- Paul said if this is done at the CCJJ meeting, he believes the CCJJ Chair would have to ask the CCJJ if they would be willing to bifurcate. Then there would be a majority vote on whether to sever and then move forward.
- Doug asked how the comm. corr. piece fits in assuming this happens. The comm. corr. components have to do with the 50/75% piece.
- If the rec is severed then the comm. corr. piece goes with the 50/75% part of the recommendation.
- Michael Dougherty asked about the role of parole board and the victim notification piece.
- Kate said she still wants victim notification piece included and offered that maybe that could be a standalone recommendation.
- There's a possibility for three components: 50/75%, shortened parole periods and the victim notification chunk.
- Christie made a motion to sever the recommendation into two pieces:
  - One recommendation based on risk based parole periods 12, 18, 24 and as part of this it would include early termination of parole specific to VRA plus the cost savings piece.
- The second rec would include everything else.
- Christie added that the cost savings allocation piece for victim and offender services be put in both recommendations.
- Is there a second to that motion?
- Rep. Kagan asked if by making a motion the group is doing the undoable and if Doug should just do this at the CCJJ.
- No, it's easier to split the recommendation here and know that there is support from the task force for the split.
- Rep. Kagan seconded Christie's motion.
- Charley arrived late and asked to be brought up to speed and if the group is doing this because one element will pass and one will fail. He said he would like to see the whole thing pass but he understands the practicality of splitting the elements.
- Doug called for a vote of those in favor of severing the recommendation into two pieces.

	<ul style="list-style-type: none"> <li>• As the Chair, Doug abstained, all other subcommittee members voted in favor to split the recommendation.</li> <li>• Paul clarified that the funding piece prohibits governmental agencies from accessing the funds.</li> <li>• Doug clarified that this is the concern of Kathy Otten from Jeffco and that he not heard it expressed from anyone but Jefferson County.</li> <li>• The concern is that county based community corrections won't be able to access the funds</li> <li>• Christie said that yes, that is correct and that the goal is to build community based capacity. This was asked for by Kate representing victim's interests and Christie representing offender interests. Capacity in the community needs to be bolstered and that's where this came from.</li> <li>• Doug asked if there was anything else the group needed to discuss. Hearing no response he adjourned the meeting.</li> </ul>
--	---

<p style="text-align: center;"><b>Issue/Topic:</b></p> <p style="text-align: center;">Adjourn and Next Steps</p>	<p style="text-align: center;"><b>Discussion:</b></p> <ul style="list-style-type: none"> <li>• The two restructured recommendations will be presented to the CCJJ this Friday.</li> </ul>
--	---