

**Post-Incarceration Supervision Task Force**  
**Colorado Commission on Criminal and Juvenile Justice**  
**Date: January 6, 2010, 9:00AM - 12:00PM**

**Attendees:**

David Kaplan, Chair  
Christie Donner, Task Force Leader  
Tamara Brady, Colorado State Public Defender's Office  
Tim Hand, Deputy Director of Regional Operations (Parole)  
Greg Mauro, Community Corrections  
David Michaud, Parole Board Representative  
Maureen O'Keefe, DOC  
Carolyn Turner, Advocates for Change

Paul Herman, CCJJ Consultant, Center for Effective Public Policy  
Kevin Ford, DCJ

**Absent:**

Lacey Berumen, Executive Director, National Alliance for the Mentally Ill (NAMI)  
Carl Blesch, DCJ/Community Corrections  
Joe Cannata, Voices of Victims  
Pete Hautzinger, District Attorney  
Regina Huerter, Manager of Denver Public Safety  
Jeaneene Miller, Division Director (Parole)  
Dianne Tramutola-Lawson, CURE

<p><b>Issue/Topic:</b></p> <p><b>Welcome</b> David Kaplan</p>	<p><b>Discussion:</b></p> <p>David Kaplan opened the meeting with a recap of the last Colorado Commission on Criminal and Juvenile Justice meeting in December in regard to the PIS recommendations. Due to time constraints at the December 2009 CCJJ meeting, the recommendations were tabled until the Jan. 8, 2010 meeting. David briefly described the primary agenda item for the meeting: reviewing the rewrite of the parole guidelines statute (CRS 17-22.5-404).</p>
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<p><b>Issue/Topic:</b></p> <p><b>Parole Guidelines Statute (CRS 17-22.5-404)</b> Paul Herman / Christie Donner</p>	<p><b>Discussion:</b></p> <p>Paul Herman described the process by which the existing parole guideline statute (CRS. 17-22.5-404) was reviewed. Due to the extensive revisions necessary to introduce evidence-based practices into the statute, it was re-written rather than modified. Paul proceeded to review the newly written statute in detail. The proposed statute begins with legislative declarations and is followed by 5 subsections.</p> <p><b><u>Legislative Declarations.</u></b> As expressed by David Kaplan, some view legislative declarations as superfluous or politicizing while others prefer their inclusion to provide a historical context and the purpose of the statute. Paul Herman described each of the 5 legislative declarations and their basis, indicating that he has references to support the evidence-based statements. No suggestions for changes were offered by task force members. The legislative declarations follow with notes in brackets:</p> <p>Legislative declaration. (1) The General Assembly hereby finds that:</p> <ul style="list-style-type: none"> <li>• The risk of reoffense shall be a central consideration by the parole board in making decisions related to the timing and conditions of release on parole or revocation from parole.</li> <li>• Research demonstrates that structured assessment tools can predict the risk of reoffense more effectively than professional judgment alone. These studies show that seasoned professionals who rely exclusively on their experience and professional judgment predict recidivism rates no better than chance. The use of actuarial tools, however, has been demonstrated to improve prediction rates. The best predictive outcomes are derived from a combination of empirically-based actuarial tools combined with clinical judgment. [Draws on research comparing “unstructured professional judgment” and “structured clinical judgment” vs. actuarial assessment. For a review of the topic see, Andrews, D. A., Bonta, J., &amp; Wormith, J. S. (2006). The recent past and near future of risk and/or need assessment. <i>Crime &amp; Delinquency</i>, 52(1), 7-27.]</li> <li>• Although the parole board is made up of individuals, using structured decision-making unites the parole board members with a common philosophy and set of goals and purposes while retaining the authority of individual parole board members to make decisions that he or she believes are appropriate given the particular situation. [Draws on evidence-based practices as described in, Campbell, N. M. (2008). <i>Comprehensive framework for paroling authorities in an era of evidence-based practices</i>. Washington, D.C.: National Institute of Corrections.]</li> <li>• Structured decision making by the parole board also provides for greater accountability, standards for evaluating results, and transparency of decision-making that can be better communicated to victims, offenders, other criminal justice professionals, and the community. [Same source as above.]</li> <li>• An offender’s likelihood of success can be increased by aligning the intensity and type of parole supervision, conditions of release, and services with assessed risk and need level. [Draws on research on the “risk principle,” for example, Lowenkamp, C. T., Latessa, E. J., &amp; Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676</li> </ul>
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**Parole Guidelines Statute  
(CRS 17-22.5-404)**

Paul Herman / Christie Donner  
(cont'd)

**Section (1).** This section was presented by Christie Donner, during which, there were no suggestions for changes by task force members.

(1) As to any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony who is eligible for parole pursuant to section 17-22.5-403, or a person who is eligible for parole pursuant to section 17-22.5-403.7, the board may consider all applications for parole, as well as all persons to be supervised under any interstate compact, and may parole any person who is sentenced or committed to a correctional facility when the board determines, by using the guidelines established by this section, that there is a reasonable probability that the person will not thereafter violate the law and that the person's release from institutional custody is compatible with public safety. The board shall consider the risk of violence to the public in every release decision it makes.

**Section (2).** This section was presented by Paul Herman and Christie Donner who described that the list of factors to consider was derived from research, the structured release guidelines, and practical considerations of practices in Colorado.

As per the note inserted into the meeting handout (also inserted below), the task force engaged in a discussion of the use of aggravating and mitigating factors (item h in the list of factors):

- One way of looking at the issue is that the aggravating and mitigating factors have already been taken into account by the legislature - when setting sentencing ranges and earned/good time provisions - and by judges - when the sentence was applied. The period of punishment has already been established. From this point of view, it is not considered the responsibility of the parole board to “re-sentence” or extend the punishment period of the inmate based on these factors. Rather, the parole board should determine the inmate’s risk of re-offense and readiness for re-entry.
- Information drawn from evidence-based practice indicates that aggravating and mitigating factors are not top considerations for release decisions except where they impact considerations of risk of re-offense.
- The parole board viewpoint, as offered by David Michaud, is that they are, in fact, re-sentencing inmates, if they feel that is warranted. Mr. Michaud does not feel it is necessary to include the long list of factors in the statute, but does prefer that a statement like (h) be included among the factors for consideration.
- David Kaplan feels the focus of the parole board should be the determination of the risk of re-offense, but does think acknowledging the factors with their inclusion on the list a good idea.
- David Michaud asked whether it is possible to address sentencing disparity in the statute. In response, it was stated that this Section provides items for consideration, but that the parole board “need not be limited” to the factors, choosing to consider any other relevant factors it feels is necessary.
- Another issue with the inclusion of the aggravating and mitigating lists is that the lists are not exhaustive. There may be other factors that are not considered simply because they are not on the lists. Creating lists that are exhaustive, accounting for every possible circumstance, is not feasible.
- It is most likely that the aggravating factors will be discernable from other parts of the inmate record, but mitigating factors may be less accessible.
- Will the inclusion of (h) result in the restoration of specific lists in subsequent years. Can this be prevented?

**Parole Guidelines Statute  
(CRS 17-22.5-404)**  
Paul Herman / Christie Donner  
(cont'd)

Other observations and suggestions were offered regarding other items in the considerations list of Section 2:

- Tammy Brady recommended that “while under sentence” be added to item (g). This phrase was added.

(2) In considering offenders for parole, the board shall consider, but need not be limited to, the following factors:

- (a) assessed risk of reoffense level
- (b) assessed criminogenic need level
- (c) program or treatment participation and progress
- (d) institutional conduct
- (e) adequacy of parole plan
- (f) the testimony or written statement of the victim of the crime or a relative of the victim, if the victim has died, pursuant to section 17-2-214
- (g) whether the offender has harassed or threatened the victim either verbally or in writing WHILE UNDER SENTENCE
- (h) aggravating or mitigating factors from the criminal case that are relevant in determining the risk of reoffense

NOTE: There are pros and cons of including aggravating and mitigating factors from the criminal case. The PIS task force should discuss and decide whether to include this (h) factor or not.

- (i) the testimony or written statement from a prospective parole sponsor, employer or other community support that would be available to assist the offender if released on parole

**Section (3).** This section was presented by Paul Herman and Christie Donner who described paragraphs (a) through (f) of this section pointing to (b), (c), and (d), which address the structured release guideline. Paragraphs (a), (e), and (f) are derived from the existing statute. Paragraph (d) provides for the exclusion of sex offender release decisions which are directed in statute to use a different set of release guidelines.

There is uncertainty whether the details of paragraph (d) are written correctly.

- There was a discussion of sex offenders receiving indeterminate sentences (“Lifetime Supervision” offenders), those receiving determinate sentences, and those designated as “sexually violent predators.”
- The option of removing the second sentence was briefly discussed. The intent of the paragraph is to make sure that all sex offenders, regardless of sentencing type, are covered under some form of release guidelines.
- Some feel that the release guidelines could also be used for sex offenders with a few minor changes. However, there is current statute already in place that directs the Sex Offender Management Board regarding release guidelines. The full details of these requirements are not clear to the task force.
- Staff is instructed to follow-up and make necessary modifications to the paragraph to accurately reflect the disposition of sex offenders with determinate sentences and those with indeterminate sentences by the SOMB.

(3) (a) The parole board shall use the Colorado risk assessment scale as developed by the division of criminal justice of the department of public safety in considering inmates for parole or revocation from parole. This risk assessment scale shall include criteria which statistically have been shown to be good predictors of risk of reoffense. The division of criminal justice shall validate the Colorado risk assessment scale whenever the predictive accuracy, as determined by data

**Parole Guidelines Statute  
(CRS 17-22.5-404)**  
Paul Herman / Christie Donner  
(cont'd)

collection, falls below an acceptable level of predictive accuracy of the scale as determined by the state board of parole and the division of adult parole. Such validation shall be carried out at least every five years.

(b) The parole board shall also use an administrative release guideline instrument in evaluating an application for parole. This instrument will provide the parole board with consistent and comprehensive information relevant to the factors listed in subsection (2). The administrative release guideline instrument will also include a matrix of advisory decision recommendations for the different risk levels.

(c) The goal of this administrative release guideline instrument is to provide a framework for the parole board to evaluate and weigh the statutorily mandated factors and victim and community impact in their decision making and to offer decision recommendations. These guidelines are advisory and parole board members retain the authority to make the release decision that is most appropriate in any particular case.

~~(d) This administrative release guideline instrument shall not be used in considering those inmates for whom state law and the Sex Offender Management Board has established separate and distinct release guidelines. The parole board in consultation with the Sex Offender Management Board shall develop and use a specific sex offender release guideline instrument.~~

Following a meeting with Chris Lobanov-Rostovsky (Program Administrator, Sex Offender Management Board) the text of paragraph (d) was revised as follows:

(d) This administrative release guideline instrument shall not be used in considering those inmates classified as sex offenders with indeterminate sentences for whom the Sex Offender Management Board pursuant to 18-1.3-1009 has established separate and distinct release guidelines. The Sex Offender Management Board in collaboration with the department of corrections, the judicial department, the division of criminal justice, and the state board of parole shall develop a specific sex offender release guideline instrument for use by the state board of parole for those inmates classified as sex offenders with determinate sentences.

(e) The division of criminal justice shall, in cooperation with the department of corrections and the state board of parole, provide training on the use of the administrative guideline instruments and the Colorado risk assessment scale to personnel of the department of corrections, the parole board, administrative hearing officers and release hearing officers. Such training shall be carried out on a semiannual basis.

(f) The division of criminal justice, the department of corrections, and the state board of parole shall cooperate to develop parole board action forms consistent with this statute that captures the rationale for decision-making which shall be published as official forms of the department of corrections.

**Section (4).** This section was presented by Christie Donner, describing its purpose to address parole decisions for those offenders on inmate statute with placements in the community. There were a couple of minor modifications to wording which became moot when the task force decided to delete the section, determining that these offenders were already covered by Section 2.

~~(4) (a) In addition to the factors identified in subsection 2, if an offender is on inmate status in community corrections or on intensive supervision, the parole board may consider, but need not be limited to, the following factors when considering an application for parole:~~

~~(b) whether the offender has substantially observed all of the rules and regulations of the community corrections program and supervision requirements;~~

~~(c) whether the offender has made good faith efforts to obtain or maintain employment or occupation or enrollment in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment;~~

~~(d) whether the offender has made a good faith effort to make restitution to the victim of his conduct for the actual damages that were sustained, pursuant to section 17-2-201 (5) (c).~~

**Parole Guidelines Statute  
(CRS 17-22.5-404)**

Paul Herman / Christie Donner  
(cont'd)

**Section (5).** Presented by Paul Herman and Christie Donner, this section was described as new to the statute to address parole revocation. The discussion by task force members yielded suggestions for modifications:

- The term in (a), “contractor,” was replaced with “administrative hearing officer.”
- The phrase in (IV) “required by parole officer” was modified to “required by the parole board or parole officer.”
- the letter designations of the paragraphs was corrected.
- David Michaud expressed concern about (5)(b) regarding the development of a revocation instrument due to a lack of resources to undertake this effort. Time Hand and Paul Herman described that the Parole Division is already underway on this project.
- At the beginning of paragraph (b), this phrase was added, “The department of corrections in consultation with.”
- David Michaud is concerned whether the provisions from S.B. 03-252 should be included. Tim hand mentioned that the “252 provisions” can be folded into the revocation guidelines that will soon be under development with the assistance of Madeline “Mimi” Carter of the Center of Effective Public Policy.

(5) (a) In reviewing a complaint for parole revocation, the parole board and administrative hearing officer ~~contractors~~ shall consider, but need not be limited to, the following factors:

(I) assessed risk of reoffense level

(II) seriousness of the technical violation

(III) frequency of technical violation(s)

(IV) effort by the parolee to comply with previous corrective action plan or other remediation plan required by the parole board or parole officer

(V) the imposition of intermediate sanctions by the parole officer in response to the technical violations which form the basis of the complaint for revocation

(VI) whether modification of parole conditions is appropriate and consistent with public safety in lieu of revocation

(b) ~~(c)~~ The department of corrections in consultation with the parole board shall develop and use an administrative revocation guideline instrument in evaluating complaints filed for parole revocation. This instrument will provide the parole board with consistent and comprehensive information on the factors identified in 5(a). This instrument will also include a matrix of advisory decision recommendations for the different risk levels.

(c) ~~(d)~~ These administrative revocation guidelines are advisory and the board members and contractors retain the authority to make the decision that is most appropriate in any particular case regarding parole revocation.

(d) ~~(e)~~ Prior to revoking parole for a technical violation, the board or contractor must make a factual finding that the parole officer has fully utilized intermediate sanctions, and that the modification of conditions of parole or the imposition of additional intermediate sanctions is not appropriate or consistent with public safety.

**Section (6).** Christie Donner described how this section adopts the language of the existing statute. There were no suggestions for changes.

<p><b>Parole Guidelines Statute (CRS 17-22.5-404)</b> Paul Herman / Christie Donner (cont'd)</p>	<p>Christie Donner described why Section (4)(a) of the existing statute was deleted. This section addresses inmate under the age of 18. These offenders are covered in a different statute that addresses juveniles.</p> <p>VOTE: With the changes described above, the task force was unanimous in approval of the proposed revision to CRS 17-22.5-404.</p>
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<b>Issue/Topic:</b>	<b>Discussion:</b>
<p><b>Parole Division Updates:</b></p> <p><b>DOC: Administrative Regulation - Offender Driving Privileges</b> Tim Hand (CCJJ Recommendation BP-51: Standardize Driver's License Restrictions in Parole)</p>	<p>Tim Hand updated the task force on the developments regarding the Administrative Regulation (AR) on Offender Driving Privileges.</p> <ul style="list-style-type: none"> <li>• The policy is under 30-day review</li> <li>• There are discussions underway to address the “elevation of problems” and finding the right balance between supervisor oversight and parole officer discretion.</li> <li>• There is planning on the best way to integrate the driving privilege policy into the initial office visit (IOV) between the parole office and parolee.</li> <li>• There is investigation of how to ensure that the driver or potential driver has vehicle insurance.</li> <li>• The driving privilege AR will be reviewed yearly to determine how the policy is working and whether there are necessary changes.</li> </ul>
<p><b>Parole Reform Efforts</b> Tim Hand</p>	<p>Tim Hand reported on the upcoming PVDMI (Parole Violation Decision-Making Instrument) Summit on January 20<sup>th</sup> and 21<sup>st</sup>.</p> <ul style="list-style-type: none"> <li>• The PVDMI concept is based the model created in California (See <i>Parole Violations and Revocations in California</i> (2008) at <a href="http://www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf">http://www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf</a> and the CDCR webpage at <a href="http://www.cdcr.ca.gov/PVDMI/index.html">http://www.cdcr.ca.gov/PVDMI/index.html</a> ).</li> <li>• Madeline (Mimi) Carter of the Center for Effective Public Policy (CEPP; <a href="http://www.cepp.com/">http://www.cepp.com/</a>) will perform “reconnaissance” of the Parole Division on the 20<sup>th</sup> and meet with Parole Division management on the 21<sup>st</sup>.</li> </ul>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p><b>Parole Board Update</b> David Michaud</p>	<p>David Michaud reported that a training session on the new Parole Board Hearing Application Portal occurred at the Department of Corrections on December 28, 2009. The portal is a secure web-based application that provides parole board members the case file information for the parole hearing electronically. There are still some technology glitches (for example, slow loading times, connectivity problems) that must be addressed. There is also an intent to increase the use of video hearings to reduce travel expenses.</p>

Issue/Topic:	Discussion:
<p data-bbox="220 205 409 268"><b>PIS09-2</b> Christie Donner</p>	<p data-bbox="561 201 1479 264">Christie Donner requested that the task force return to the recommendation, labeled PIS09-2 that was approved at the previous task force meeting.</p> <ul data-bbox="597 275 1528 625" style="list-style-type: none"> <li>• This recommendation modified CRS 17-22.5-405 (derived from S.B.09-1351) to clarify eligibility exclusions, program compliance, and criminal history disqualifications for earned time and earned release time.</li> <li>• Christie found that additional crimes against persons should be added to the list of excluded crimes, namely, 18-3-303 (false imprisonment), 18-3-305 (enticement of a child), and 18-3-306 (internet luring of a child).</li> <li>• According to her research, there have been 7 offenders released under SB09-1351 that would be excluded by the addition of these additional crimes.</li> <li>• The modified portions of the statute should appear as below.</li> </ul> <p data-bbox="561 663 1516 814">17-22.5-404 (1.5) (a) (IV) (IV) Was not convicted of, and has not previously been convicted of a <b>felony</b> crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., <del>or</del> section 18-12-109, C.R.S., <b>SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306</b>, or a crime listed in section 24-4.1-302 (1), C.R.S.</p> <p data-bbox="561 852 1516 993">17-22.5-404 (6) (c) (c) The inmate was not convicted of, and has not previously been convicted of a <b>felony</b> crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., <del>or</del> section 18-12-109, C.R.S., <b>SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306</b>, or a crime listed in section 24-4.1-302 (1), C.R.S.</p> <p data-bbox="561 1041 1516 1104">VOTE: The task force was unanimous that the proposed modifications should be included.</p>

Issue/Topic:	Discussion:
<p data-bbox="248 1255 378 1287"><b>Next steps</b></p>	<p data-bbox="561 1224 1252 1255">Potential items for discussion at the next meeting include:</p> <ul data-bbox="573 1262 1474 1423" style="list-style-type: none"> <li>• Update by Tim Hand on the outcome of the “PVDMI Summit”</li> <li>• Review of PIS recommendations approved by CCJJ.</li> <li>• Update on bill sponsorship of PIS recommendations.</li> <li>• Discussion of the future direction and focus of the Post Incarceration Task Force.</li> </ul>

**Next meeting:**  
**Wednesday, February 17, 2010**  
**9AM-12PM**  
**150 East 10<sup>th</sup> Avenue**