Probation Task Force
Date: July 31, 2008, 2:30-5:00pm

Attendees:
Gil Martinez, Chair
Mike Riede, Task Force Leader
Christine Adams, DCJ/Facilitator
Larry Abrahamson, District Attorney
Paul Cooper, Chief Probation Officer: 8th Judicial District
Kevin Ford, DCJ/Research
Charlie Garcia, Community Corrections
Ken Gordon, Senator
Bill Kilpatrick, Golden Police Department
Kevin McGreevy, Defense Attorney
Shelby McKinzey, CU Student
Tom Moore, Community Corrections
Robert Mowatt, State Chief Probation Officer
Mary Clare Mulligan, Defense Attorney
Ken Plotz, Senior Judge
Steve Siegel, Victim's Right
Sara Steen, CU Prof
Ann Terry, CDPS

Absent:
Mike Biggio, The FREE Coalition
Sherri Hufford, Probation

Issue/Topic:	Discussion:
Introduction	**Introduction:** Gil Martinez provided an overview of the meeting agenda and offered thoughts on the writing of the task force recommendations.
Issue/Topic: **Overview of Recommendation Process**	**Recommendation process:** Christine Adams introduced the process by which the task force would construct its recommendations mentioning: • The report to be produced will be constructed in a readable outline or bulleted format. • A model presented at the recent Oversight meeting offers a rough guide for the construction of the final task force recommendations. • The recommendations should include impact statements addressing who will be impacted, whether statutory change will be necessary, and, where possible, an estimate of the cost impact. • Recommendations need not be completely detailed and specific. • A recommendation can be a suggestion for further study of an issue. There were questions and discussion of the timing of the recommendation report and the legislative cycle. Although it is not expected that the all the recommendations be "legislation ready," there may be some that could find their way into this coming legislative cycle. There was a discussion of the recommendation prioritization and filtering process. • Recommendations will be forwarded from each task force to the Oversight committee and then to the Commission who will then send a final report to the Governor's Office. • Task forces should rank their recommendations by importance for consideration by the Oversight committee. • Given the large number of recommendations coming forward from the 4 task forces, it should be realized that not all recommendations will pass from the Oversight Committee to the Commission level. • Actual recommendations (to be edited at the final task force meeting) are listed at the end of these minutes.
Issue/Topic: **Review of Recommendations**	The task force discussed a list of potential recommendations generated by members prior to the meeting within six topic areas: 1. Conditions of Probation 2. Sanction Guidelines 3. Discretionary Earned Time 4. Mandatory Earned Time 5. System/Agency/Organization Barriers to Successful Probation 6. Statutory Barriers
Action:	An "**Issues" handout** was provided (attached separately) that summarizes each topic as well as the comments forwarded by members to Christine Adams on each topic prior to the meeting. The discussion at the current meeting began with Item #5, returning to a sequential discussion order starting with the first item.

Issue/Topic:

Review of Recs: System/Agency/ Organization Barriers to Successful Probation

Action:

Discussion:

#5 System/Agency/Organization Barriers to Successful Probation
There was a list of 12 items generated by Gil Martinez comprising this topic (see "List for Tomorrow Items" below).

- The discussion began with item #3, labeled as the most controversial by Gil Martinez: "Waive costs or surcharges at sentencing, if appropriate as opposed to ordering and waiving later."
  - Martinez offered that this item can be removed, if there are too many problems with the item. An example is that this waiver could negatively impact the funding of programs.
  - If the system is working as it should, probationers should not receive technical violations solely due to an inability to pay.
  - This is probably not a high impact item.
  - An opposing point of view on the impact is that the seemingly insurmountable fees may create a feeling of helplessness among probationers that is discouraging to overall success. This appears to be true among parolees and may be true for probationers as well.
  - Judges have the option to suspend repayment for 90 days to allow probationers time to navigate their financial responsibilities, but it is unclear how often this is done.
  - Collections investigators in the Probation department should also look at the financial situation of probationers.
  - The guidelines for probation sanctions should provide an opportunity to address re-payment problems.
  - Does the current probation philosophy create a "support-for-success" environment or are there remnants of the old enforcement ("trail, nail, and jail") environment?
  - There is tension between the different units within Probation where these two approaches can be present simultaneously.

After a protracted discussion members are still unsure whether to pursue or remove this item from consideration.

- A preliminary vote yields 5 in favor of and 5 opposed to the removal of the item (item # 3 on the "list for tomorrow").
- Because the vote falls along a prosecutorial/"system" versus defendant line, a question of the ability of the task force to compromise is raised.
- It is stated by several that the voting "blocks" are coincidental, giving the differing reasons members have for voting for or against, and not diagnostic of a deficiency in the task force to make compromised decisions.
- Maybe a general statement that addresses barriers would be appropriate, but from a more positive point of view…a list of conditions that lead to success rather than the focus on barriers might be appropriate.

List for Tomorrow Items

1. Summons on complaint and reports as opposed to arrest warrants
2. If set bonds on costs owing do it for "cash" only if amount small
3. Waive costs or surcharges at sentencing, if appropriate as opposed to ordering and waiving later.
4. Only impose "conditions" of probation that are based upon specific need. (theft class-why?)
5. Only have judicial reviews and court appearances if absolutely necessary. Make them meaningful court appearances. Helps probationer maintain employment.
6. Impose shorter periods of probation – standard five years – why?
7. Rethink the need of county jail as condition of probation (how does this help the long term success)
8. Get county court new cases resolved as soon as possible. Unresolved cases interfere with success of district court probation.
9. Motivational sentencing. Point out positives and advise them this is why they are getting probation.
10. More receptive to "home detention" as opposed to county jail time.
11. Continued judge training at new judge orientation to develop a culture of success for probationers.
12. Go over standard conditions of probation and see if appropriate

Gil Martinez

NOTE: This item list was also included in the July 17, 2008 minutes.

Issue/Topic:

Review of Recs: System/Agency/ Organization Barriers to Successful Probation (Cont'd)

Discussion:

#5 System/Agency/Organization Barriers to Successful Probation (cont'd)

- The question was posed regarding whether any of the barriers on the list of 12 are statutory? No, they are not.
- The question was posed whether there was general agreement on the "other" (excluding #3) items on the list? Yes, there was. The 12th item (condition of probation) will be discussed as a separate topic later in the meeting and will thus be excluded from this list in the final recommendations.

Discussion on the #3 item (Waiver of costs and surcharges at sentencing) is tabled. The task force discussion moves to other topics.

Issue/Topic:

Review of Recs: Conditions of Probation

#1 Conditions of Probation

Members spent some time reviewing information on the Issues handout as well as looking over the list of standard probation conditions before initiating a discussion.

Preliminary thoughts and questions before the recommendation discussion began included:

- Can the task force get a buy-in on these recommendations from the Probation Advisory Committee (Gil Martinez, Past Chair)?
- A question was posed as to whether any of the standard conditions are statutory. Sixteen are statutory, but they are not mandatory.
- There are a total of 19 conditions of probation listed.
- A proposal to condense the list of 19 to 4 as offered on the Issues handout is discussed with some in favor of a shortened conditions list.
- Some feel the 19 conditions are a basic starting point for probation officers and probationers that establish their working relationship. With the list already covering "low threshold" behaviors (i.e., behaviors typical of any law-abiding citizen) probation officers can focus attention on more individualized concerns for the success of particular probationers.

- There was a discussion of condition #13 ("You shall not use alcohol (to excess") or use unlawfully any controlled substance or other dangerous or abusable drug or substance) and the reason it is included among the standard conditions. The issue of "hot" urine analyses (UAs) is the reason #13 is included.

Issue/Topic:

Review of Recs: Conditions of Probation (cont'd)

Action:

Discussion:

#1 Conditions of Probation (cont'd)

- The discussion continued regarding the length of the list of standard probation conditions.
- A proposal to eliminate all standard conditions was made. It was suggested that any list of conditions be individually constructed and tailored to each probationer as they are deemed necessary and appropriate.
- In some cases of direct sentencing there is no pre-sentencing investigation report (PSIR) and, therefore, nothing upon which to build a tailored set of probation conditions (thus standard conditions may be appropriate).
- Probation officers need the long list of conditions as a way to control offenders.
- Having a delineated set of conditions also serves as a contract that benefits probationers who have a starting set of expectations that allow for considerations of due process (preventing probation officers from randomly creating probation conditions).
- It was stated that probation conditions are only valid if they are reasonably and logically related to the crime committed by the probationer. Why is it necessary to have conditions that govern legal (behavioral) standards they've never violated?
- Violation of probation conditions are said to be "thrown out," if they are violated by probationers whose crime is unrelated to these conditions.
- Reducing the long list of conditions to only 4 would be a step in the direction of altering the probation culture (from enforcement to support).
- POTENTIAL RECOMMENDATION: Need to review standard conditions for the necessity of inclusion of particular conditions.
- POTENTIAL RECOMMENDATION: To better conform to evidence-based practices regarding behavioral practices, the conditions of probation should be customized to address offenders as individuals.

Issue/Topic:

Review of Recs: Sanction Guidelines

Discussion:

#2 Sanction Guidelines

The view is expressed with verbal concurrence from various members that this is the most important issue among those being addressed by the Probation Task Force.

- The districts are so different. How can there be a statewide set of uniform guidelines?
- A starting point will be to provide training to Probation Supervisors who must sign off on complaints filed by Probation Officers.
- It should be apparent to Probation Supervisors when the complaints filed by Probation Officers for revocation of probationers are due to a failure in case management. Filing for a technical violation is described as a "lazy way" to deal with probationer issues. Probation officers should deal with technical violation issues.
- Do loss-of-liberty sanctions always involve a judge? Not necessarily. Probation officers have the authority to order such sanctions as house arrest, brief jail stays, and community service hours.
- In general, sanction guideline changes would not require statutory change.
- POTENTIAL RECOMMENDATION: Study sanction guideline models from other states such as Maryland and Connecticut, even if the models require a shift to intensive supervision (ISP) for technical violations. The ISP goals should be specific to probationer success.
- POTENTIAL RECOMMENDATION: There should be further study, leading to a pilot program, of internal enhanced intervention programs to reduce the number being sent to jail/prison while maintaining public safety.
- POTENTIAL RECOMMENDATION: Change necessary statute(s) to allow and fund incentives to be administered by probation officers. Such a statute would provide legitimacy for the use of incentives by probation officers.

Issue/Topic:	Discussion:
Review of Recs: Discretionary Earned Time	**#3 Discretionary Earned Time** The "discretion" referenced to in this term refers to the discretion of the Probation Officer to employ methods to grant earned time. Additionally, the term reflects the option for jurisdictions to optionally implement an earned time option. • There was a return to a previous discussion topic (from previous task force meetings) contrasting discretionary earned time versus early termination. • If earned time is made available then the likelihood of early termination is assumed to be less likely to be offered. • How often does early termination actually occur? The consensus is that it almost never occurs. • Earned time allows probation officers to better manage their resources • It was expressed that all time off probation periods should be earned (and not mandatory). • Can a chief judge put this into effect in their jurisdiction if the DAs office is against it? • "Incentivizing" in a manner that places the rewards under the behavioral control of the probationer is more likely to have a positive effect on behaviors. There was a vote called to determine if the task force was to focus solely on a recommendation that discretionary earned time be required (mandatory) in jurisdictions. There were nine in favor and one against this motion. Thus, discretionary earned time was taken off of the table.
Issue/Topic: **Review of Recs: Mandatory Earned Time**	**#4 Mandatory Earned Time** As a result of the 9 to 1 vote on the previous discussion, the task force will make recommendations that earned time should be made mandatory in all jurisdictions but the specific practices (i.e., implementation) are to be at the discretion of the probation officer. Additional discussion points were: • There should be statutes to legitimize the practice. • Details of an earned time proposal will be hammered out during Phase 2 of the Task Force. • Examples should be provided but made clear that any list of examples is not exhaustive. • POTENTIAL RECOMMENDATION: A mandatory system of earned time should be created that, assuming that conditions of probation are met, probationers may earn time off their probation sentence for the completion of accomplishment goals (e.g., education, program participation milestones and completion, treatment, etc.)

Issue/Topic:	Discussion:
Review of Recs: Statutory Barriers to Successful Probation	**#6 Statutory Barriers to Successful Probation** There is a long list of statutory barriers including, drivers' licenses, bail issues, fines and costs, pre-sentence reports, revocations, probation conditions, probation eligibility, and length of probation. Although statutes in all the areas are deemed relevant for review, due to time constraints the task force only focused on the one deemed most salient, drivers' licenses. • POTENTIAL RECOMMENDATION: Review the statutes to determine which non-driving offenses, currently leading to driver's license loss, can be changed. • POTENTIAL RECOMMENDATION: Does the potential loss of license actually result in a deterrence effect? Is there an actual link between the threat of a lost license and the avoidance of drugs or keeping child support payments current?
Issue/Topic: **Meeting conclusion**	There was a brief discussion regarding the possibility that the task force recommendations will make their way onto the legislative calendar this year. There was a brief discussion of the plan for the next task force meeting where the final recommendations will be reviewed, prioritized and approved.

Probation - Phase 1 Recommendations

1. **Sanction Guidelines**
    a. It is recommended that the idea of Sanction Guidelines be further studied. This should include the examination of existing models in other states (which can then be altered to accommodate Colorado specifics).
    b. Because research suggests that positive incentives lead to more success than negative sanctions it is recommended that a statutory change be created to allow for incentives to be a part of Probation. Furthermore, it is recommended that the incentive to sanction ratio be 4:1.
2. **Standard Conditions of Probation**
    a. It is recommended that the standard conditions of probation be reviewed with the goal of reducing them such that conditions are tailored to the individual. Aside from those that are statutorily mandated it is suggested that repetition be eliminated and simplicity be implemented without impeding public safety.
        i. It is suggested that the specifics of the standard conditions be examined in more detail during Phase II of the Probation Task Force.
3. **Mandatory Earned Time**
    a. As a way to provide incentive without sacrificing public safety it is recommended that a statute be created to grant those probationers that are in compliance with the terms and conditions of their probation and successfully complete certain requirements (such as, but not limited to, drug treatment as well as attaining gainful employment) receive mandatory earned time.
        i. It is suggested that the specifics of Mandatory Earned Time be examined and detailed further during Phase II of the Probation Task Force.
4. **System, Agency, and Organizational Changes to Ensure Successful Probation**
    a. It is recommended that each judicial district go over the following suggestions and address related potential barriers to successful probation. It is further recommended that these changes be made a priority for the Probation Advisory Committee.
        i. Implement existing statutes (CRS 16-5-206 and 16-5-207) that allow for a summons to be issued as opposed to arrest warrants.
        ii. Allow for “cash” only if set bonds on costs owed are small.
        iii. Waive costs or surcharges at sentencing, if appropriate as opposed to ordering and waiving them later.
            1. It should be noted that the group is evenly split in support (or lack of support) for this recommendation.
        iv. Only impose special conditions of probation that are based upon specific needs.
        v. Make court appearances meaningful by only having judicial reviews and court appearances when absolutely necessary. This will also help the probationer maintain employment.
        vi. Impose shorter periods of probation when appropriate.

vii. It is recommended that judges rethink the need of county jail as a condition of probation. This imposition may not help with long term success. Quite the contrary, it may hinder success.

viii. Resolve new county court cases as soon as possible as unresolved cases interfere with the success of district court probation.

ix. It is recommended that motivational sentencing be implemented. Judges should point out positives and inform the individual that this is why they are receiving probation.

x. It is suggested that judges become more receptive to "home detention" as opposed to county jail time.

xi. It is recommended that judges as well as probation officers expand their training (at new judge orientation) to develop a culture of success for probationers.

5. Statutory Barriers to Successful Probation

a. It is recommended that existing legislation which requires the mandatory revocation of one's driver's license in non-driving related offenses be examined and possibly changed and/or eliminated. It is believed that this revocation creates an obstacle to the successful completion of probation (e.g., it may inhibit one's ability to work and make appointments in a timely manner).

b. It is suggested that during Phase II of the Probation Task Force research be conducted and/or examined to determine whether or not individuals even realize that their ability to drive legally is at risk when they commit non-driving crimes.