

Sentencing Task Force

Date: August 26, 2009, 1:00 – 5:00

NETI 12345 W. Alameda Pkwy.

Attendees:

Peter Weir/Executive Director, Dept. of Public Safety - Chair

Tom Quinn/Director of Probation Services – Vice Chair

Commission Members

John Suthers/Attorney General

Doug Wilson/State Public Defender

Pete Hautzinger/District Attorney, 21st Judicial District

Steve Siegel/Victim's Representative, 2nd Judicial District

Claire Levy/State representative

Task Force Members

Beth McCann/State Representative

Carl Blesch/Manager, Office of Community Corrections, Division of Criminal Justice

Mitch Morrissey/District Attorney, 2nd Judicial District

Joe Cannata/Voices of Victims

Dianne Tramutola-Lawson/Colorado CURE

Lee Foreman/Defense Attorney

Ken Plotz/Senior district court judge

Stanley Garnett/District Attorney, 20th Judicial District

Charlie Garcia/Chair, Denver Crime Prevention and Control Commission

Kathy Sasak/Deputy Executive Director, Dept. of Public Safety

Susan White / Community Parole Manager, Dept. of Corrections

Scott Storey/District Attorney, 1st Judicial District

Absent:

Regis Groff/Former state senator

Gil Martinez/District Court Judge, 4th Judicial District

Ellen Roberts/State Representative

<p>Issue/Topic:</p> <p>Welcome and Review of Agenda Action</p>	<p>Discussion:</p> <p>Peter Weir welcomed the attendees and introduced guests from the Pew Institute and Vera Institute.</p>
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<p>Issue/Topic:</p> <p>Escape Action</p>	<p>Discussion:</p> <p>Doug Wilson reported back on the discussion of the escape statues.</p> <ol style="list-style-type: none"> 1. 384 inmates were sentenced on Escape charges in FY 2008. As of June 30, 2009, 974 individuals were incarcerated in DOC whose primary sentence was escape. 2. 69% of individuals who are sentenced for escape have no history of crime of violence. 3. Ultimate focus of this discussion should be on the offenders who walk-away from transitional places, Community Corrections or supervised probation. 4. The first recommendation from the working group is to eliminate mandatory consecutive sentences in the category of “walk-aways” from Community Corrections and ISP. According to DOC, the proposal could save \$20 million. 5. Second recommendation is to run a pilot project using intermediate sanctions as opposed to escape filings. 6. Scott Storey took these ideas to CDAC at a board meeting. The District Attorney’s concur with the elimination of mandatory consecutive sentences in the category of “walk-aways.” The DAs wanted a five year sunset on this to allow for its reinstatement if unintended consequences are discovered. 7. Peter Weir asked if Community Corrections could issue a report on the outcome of eliminating the mandatory sentencing after three years. Community Corrections has the capability to track the statistics. 8. Escapes from Community Corrections are at a historic low. They are at 12% state-wide. DCJ does not know why they are low but the statistics are likely to go up no matter what is done. 9. In Mesa County, the average length of a sentence given for escape went down from 4.7 years to 1.3 years and the number of escapes more than doubled. 10. In Denver, the plea bargaining policy changed with regard to escapes, and no financial benefit was found. The final sentence is still determined by the judge. The only way to make a financial savings is to make walking-away not a crime. 11. The filing of a new felony charge of escape increases the number of felony convictions of an individual. The offenders quickly become eligible for Habitual Offender charges. 12. The district attorneys will not support the total elimination of escape as a crime. They will concur to eliminating the sentence being a mandatory consecutive sentence. 13. The Community Correction program managers feel that if escape is eliminated as a crime, the result would be an increase in management issues. 14. Claire Levy made a motion to vote on the recommendation eliminating the mandatory consecutive sentence on walk-aways. The motion was seconded by John Suthers. 17 yes 1 no (Mitch Morrissey) 1 abstain
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(Steve Siegel).

15. Another vote was taken on the five-year sunset provision as put forth by the CDAC. Charlie Garcia made a motion to direct DCJ to compile statistics for the next five years and make a report of their findings to the Judiciary Committees of both houses, the Governor and the Chief Justice. Dianne Tramutola-Lawson seconded the motion. 17 yes votes. 1 no vote.
16. Pilot project recommendation. Community Corrections would approach four jurisdictions to see if intermediate sanctions, such as weekends in jail, would work as a deterrent to escape. The intermediate sanctions would be an alternative to asking the district attorney to file felony escape charges. The sanctions would be for individuals who walk away from Community Corrections, voluntarily return and have committed no new crimes while gone. The pilot project would involve bringing the issue to an advisory board to determine if intermediate sanctions are used. The local law enforcement authority will be included as part of the advisory board. The Community Correction program directors appreciate having the discretion to work with the offender. They would like to see if this wouldn't also reduce technical violations. John Suthers moved to forward the pilot project recommendation. Claire Levy seconded the motion. The motion passed unanimously.
17. The third recommendation is to take the same walk-away groups (ISP and Community Corrections) and take them out as predicate offenses for habitual filings. This recommendation was developed outside the meeting of the working group. The group voted via email with the following results: 3 yes votes. 2 no votes, 1 abstained.
18. This issue is tabled and to be taken back to the working group for further discussion.

Issue/Topic:

Probation Eligibility and Two Prior Felony
Action

The Probation group is scheduled to meet again September 9, 2009 from 11:30am-1pm at 710 Kipling to finalize wording on recommendations.

Discussion:

Tom Quinn reported back on the discussion of probation eligibility and the two prior felony rule.

1. Found that the statutes in this area are confusing and unnecessarily confining.
2. The working group is leaning toward giving more discretion to DAs to waive the two-felony rule. Sex offenses will probably be excluded.
3. The working group is looking at specific categories of offenses that could move into probation eligibility. The working group will come back with specific sections and categories to be revised and in what fashion.
4. Stan Garnett spoke on behalf of the DAs who like the two-felony rule. Taking some of the inherent confusion in the statute and giving the district attorneys more discretion on offering probation is something that CDAC will support.
5. A non-violent offender is eligible to apply to the Court for probation. A "non-violent offender" means a person convicted of a felony other than a crime of violence as defined in section 18-1.3-406(2), or one of the felonies set forth in section 18-3-104, 18-4-203, 18-4-301 or 18-4-401(2)(c), (d) or 5. These definitions include burglary of a building, robbery without a weapon, theft over \$1,000 but less than \$20,000 and theft from a person without the use of force. These are perceived as being non-violent. However, they are classified as a violent crime. It is still common practice is to offer probation to these individuals.

Issue/Topic:	Discussion:
<p data-bbox="110 205 521 275">Aggravated Ranges, Extraordinary Risk and Mandatory Minimums</p> <p data-bbox="272 279 358 306">Action</p> <p data-bbox="110 348 521 417">Scott Storey will take to CDAC the following two issues:</p> <ol data-bbox="142 422 521 737" style="list-style-type: none"> 1. Reducing the minimum sentence from the mid-point of the range to the minimum of the range. 2. Look at eliminating the extraordinary risk crime category and making one category of aggravated crime <p data-bbox="110 779 521 915">The Aggravated Ranges group is scheduled to meet again Friday August 28, at 8:30am at the Public Defender's office.</p>	<p data-bbox="560 205 1370 275">Beth McCann reported back on the discussion of aggravated ranges, extraordinary risk and mandatory minimum statutes.</p> <ol data-bbox="609 279 1526 1978" style="list-style-type: none"> 1. General consensus of the working group was to combine these sentencing schemes into one aggravated crime category. These would be crimes with serious bodily injury. 2. If we are to continue mandatory sentences for these crimes, instead of having the sentence be mandatory in the mid-point range, it should be mandatory at the minimum range. If the judge gives a sentence less than the mid-point of the range, then the judge should be required to make written findings supporting their decision. 3. Certain crimes were agreed to be aggravated crimes: 1st Degree Murder, 2nd Degree Murder, 1st Degree Kidnapping; 1st Degree Assault, 1st Degree Sexual Assault; Aggravated Robbery with a Weapon; Child Abuse Resulting in Death or SBI; Aggravated Witness Intimidation. 4. The working group recommended removing escape, criminal extortion, misdemeanors and drug offenses from the category of aggravated crime. 5. The working group is still discussing where to put charges of Stalking, 2nd Degree Assault, 1st Degree Burglary, 1st Degree Arson, Witness Intimidation, and Child Abuse. 6. If we are going to have an aggravated crime category, should there be mandatory minimum requirements? Or should it be left up to the discretion of judges? 7. Is a life sentence for sexual assault appropriate? What about doing away with indeterminate sentences for sex offenders? Can they be sentenced to a specified number of years and then subject to lifetime supervision? This issue needs to be examined further but cannot be handled by a November deadline. 8. Is there a more precise definition of "deadly weapon"? 9. Claire Levy said she was comfortable with developing a list of aggravated crimes and keeping those crimes ineligible for probation. 10. If you come up with a good list of aggravated crimes, can you get rid of the two-felony rule? 11. From a victim's perspective, when an offender becomes parole eligible but has not completed a specified program because of prison back-log, the victim repeatedly has to go to parole hearings to keep the offender from being paroled. They are re-victimized. 12. Any opposition to eliminating the category of extraordinary risk crime? 13. Should any other crimes be listed as aggravated? If you use this list, there is no more 1st Degree Sex Assault, 2nd Degree Sex Assault, and 3rd Degree Sex Assault. Beth McCann said they would take the sex assault charges out of this. Add 2nd Degree Murder in the Heat of Passion. Include all the Child Abuse charges resulting in Death or with SBI (the Class 2 and Class 3 felonies). It was suggested to put some 2nd Degree Assaults back into the aggravated category as well as all Witness Intimidation offenses. 14. Can you reduce the mandatory minimum from the midpoint down to the minimum of the range? Mitch Morrissey is against this. Scott Storey would look more favorably on this if the maximum range on the crime is increased. The District Attorneys' Council would not be in favor of this. 15. Mandatory sentences are only important because of the role the DA

plays in the plea agreement. If the sentence range is 4 – 12 years, the DA can say as part of the plea agreement, the defendant gets no less than 6 years.

16. What about sentencing revolving around a crime that involves multiple violent crimes? In those instances, the sentence on each crime has to be consecutive, not concurrent.

17. If you have one range for the crime, you get rid of Blakely issues.

Issue/Topic:	Discussion:
<p data-bbox="126 457 503 520">Timeline Review and Work plan Development</p> <p data-bbox="272 531 357 562">Action</p> <p data-bbox="103 604 526 699">Doug Wilson's Working Group will look at the Graying of Prisons along with non-alcohol DUS.</p> <p data-bbox="97 741 532 804">DCJ will gather some information on graying of prisons.</p>	<p data-bbox="610 457 1526 552">1. What about the issue of Graying of Prisons? Can this be looked at by one of the working groups? Or is it something to be examined later? Can Doug Wilson's working group look at this issue?</p>

The meeting adjourned at 4:36 p.m.