

Sentencing Task Force

Date: September 9, 2009 1:00 p.m. – 5:00 p.m.

Attendees:

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

Tom Quinn/Director of Probation Services – Vice Chair

Task Force Members

John Suthers/Attorney General

Gil Martinez/District Court Judge, 4th Judicial District

Doug Wilson/State Public Defender

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

Claire Levy/State representative

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

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

Eva Wilson for Scott Storey/District Attorney, 1st Judicial District

Absent:

Pete Hautzinger/District Attorney, 21st Judicial District

Stanley Garnett/District Attorney, 20th Judicial District

Regis Groff/Former state senator

Ellen Roberts/State Representative

<p>Issue/Topic:</p> <p>Welcome and Review of Agenda</p>	<p>Discussion:</p> <p>Peter Weir welcomed the members and reviewed the day's agenda.</p>
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<p>Issue/Topic:</p> <p>CCJJ Guiding Principles, Goals and Ground Rules Review</p>	<p>Discussion:</p> <p>Paul Herman reviewed the guiding principles established by the Commission on Criminal and Juvenile Justice. He also reviewed the purposes of sentencing as defined by the Sentencing Task Force and the guidelines developed by the Task Force. Any recommendations made by this task force should be viewed with a specific question in mind, "Do they move us toward achieving the purpose of sentencing?"</p>
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<p>Issue/Topic:</p> <p>Escape Action</p>	<p>Discussion:</p> <p>Doug Wilson gave an update on the Escape working group. They examined escapes from DOC to walk-aways from Community Correction programs. In looking at 2008 statistics, there were 384 individuals sentenced to DOC whose main offense was Escape. During that year, there were 974 individuals serving a sentence in DOC whose primary sentence was Escape. 69% of the individuals whose primary crime was escape had no prior crime of violence.</p> <p>Two recommendations:</p> <p>E-1 states: Any sentence imposed following conviction of an offense under sections 18-8-201 to 18-8-208 or section 18-8-211 shall run consecutively and not concurrently with any sentence THAT the offender was serving at the time of the conduct prohibited by those sections EXCEPT THAT IF THE DEFENDANT IS CONVICTED OF AN OFFENSE PURSUANT TO SECTIONS 18-8-208 OR 18-8-208.1 AND THE DEFENDANT WAS NOT IN CUSTODY OR CONFINEMENT IN A CORRECTIONAL FACILITY DESCRIBED IN 17-1-104.3 C.R.S., OR A COUNTY JAIL FACILITY, THE ABOVE MANDATORY CONSECUTIVE SENTENCE SHALL NOT BE REQUIRED.</p> <p>Discussion:</p> <ol style="list-style-type: none"> 1. This recommendation's purpose is to take away the mandatory consecutive sentence requirement for the charge of Escape if an individual escapes from ISP, Community Corrections or county jail. If an individual escapes from a correctional facility, the sentence will be a mandatory consecutive sentence. Discretion is given to judges only on ISP, Community Corrections and county jail escapes. Did the individual commit a new crime? What does their prior record look like? 2. What does the research tell us? In fiscal year 2007, 33% of parole returns to prison were for escape as the most serious conviction of crime. In fiscal year 2008, offenders served an average of 20 months for a F5 or 34 months for a F4 before leaving prison when escape was the most serious conviction charge. 75% of DOC sentences for escape were consecutive in fiscal year 2007. 3. Are individuals on ISP parole eligible for Community Corrections? People on ISP are ineligible for Community Corrections for several reasons, such as their current offense, they have escaped before or they have a violent
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crime. When you have someone on mandatory parole and you are making them wear an ankle bracelet, you cannot charge them with escape because he is not incarcerated.

4. Do you have any evidence-based research that would show this works? No. Colorado is unique in that you can be charged with Escape if you leave Community Corrections etc. Other states use Escape charges if an individual escapes from incarceration.
5. This would help eliminate the habitual criminal filings on individuals who repeatedly walk away from Community Corrections.
6. Mitch Morrissey made an alternative proposal. Walking away from a Community Corrections facility would not be classified as an escape. Instead it would be considered as absconding from the program. When a party absconds from a direct sentence to Community Corrections, upon capture the sentence is changed to a DOC sentence. When a party absconds from a Community Corrections placement that was part of a DOC sentence, he or she will be returned to DOC to complete the sentence. A party who absconds from Community Corrections is not eligible to apply for a Community Corrections placement again while serving that sentence. This does not apply to escapes for intensive supervision parole. This proposal was not approved by CDAC.
 - a. Advantages. Don't file additional charges on an individual and thus creating habitual criminals. This is a system-saving provision. It helps the county jails, the D.A.'s, judges and DOC.
 - b. Cons. There are several types of offenders. There are those that are sentenced to CC on the front end of their sentence either in residential or non-residential settings. Residential or non-residential. There are also others who are transitioning out of DOC into Community Corrections. Someone serving a sentence in a DOC capacity and transitioning into Community Corrections, and escapes, that individual should be sentenced to a new crime.

Carl Blesch made a motion to adopt recommendation E-1 with a friendly amendment to add municipal jails. John Suthers seconded the motion.

Vote: Yes: 13 No: 4 Abstain: 1

Mitch Morrissey made a motion to adopt his alternative proposal. Steve Siegel seconded the motion.

Vote: Yes: 8 No: 9 Abstain: 1

Both proposals will be placed in front of the Commission.

Ken Plotz moved for an annual report by DCJ on the success of the recommendations. Second by John Suthers.

Vote: Yes. 13 No: 3

E-2 is a recommendation for a Walk-Away Pilot Project. Many community corrections walk-away offenders impulsively fail to return from work or job searches due to the potential for "hot" urines or as the result of family difficulties. Most do not commit new crimes, and many reportedly would return if the dire consequences associated with Escape charges did not assure a return to prison for a protracted additional sentence.

Discussion:

1. The purpose of the pilot project is to determine whether short-term walk-away offenders from community corrections can be safely and effectively managed by locally-determined intermediate sanctions.
2. The parties participating in each jurisdiction are: District Attorney, Community Corrections Board, Community Corrections Program, Sheriff, chief Judge/Chief Probation Officer and local representatives of the Department of Corrections.
3. Over a period of one to two years, the local community corrections board and programs would collect data regarding the underlying circumstances and length of each walk-away, the nature of intermediate sanctions imposed and the subsequent course of each participating offender in community corrections.
4. Intermediate sanctions would be developed.
5. Would like diversion clients to be in this program who would be sanctioned with the agreement of the judge.
6. The recommendation is for four pilot sites. There is no fiscal impact to this recommendation. Pete Hautzinger and Mitch Morrissey agreed to have pilot sites in their jurisdictions.
7. Is this an administrative action that an inmate can appeal using Rule 106? John Suthers suggested that this recommendation be structured to avoid such a problem. The prosecutor would recommend an individual be sentenced to the pilot project.

John Suthers moved to recommend the development of a Walk-Away Pilot Project. Diane Tramutola-Lawson seconded the motion.

Vote: Yes: by acclamation.

Issue/Topic:

Probation Eligibility and Two Prior
Felony Rule
Action

Discussion:

Tom Quinn presented the recommendations of the Probation Eligibility and Two Prior Felony Rule. In general, they tried to add clarifications, to expand some cases for judicial discretion that were previously in the DA waiver category and to put some crimes that weren't in the DA waiver category.

P-1 Application for Probation: 18-1.3-201(b) Changed to read: AN offender WHO HAS NOT BEEN FOUND GUILTY OR WHO HAS NOT PLEADED GUILTY TO A CRIME OF VIOLENCE as defined in section 18-1.3-406(2) SHALL BE eligible to apply to the Court for probation.

Discussion:

1. This gives the DA more discretion.
2. This recommendation eliminates the two-prior felony rule.
3. Stan Garnett would like to keep the two prior felony rule alive if the present crime is a crime of violence. If the prior felony was a crime of violence, it can be waived by the D.A. and approved by the judge.

Straw vote:

Recommendation to abolish the two felony rule:

Vote: Yes 6 Opposed: 9

Recommendation as proposed by Stan Garnett:
Vote: Yes: 3 Opposed: 8

To leave the two prior felony rule alone:
Vote: Yes 7 No: 8

Issue/Topic:

Aggravated Ranges, Extraordinary Risk and Mandatory Minimums
Action

Discussion:

Beth McCann made a presentation and **recommendations from the Aggravated Ranges, Extraordinary Risk and Mandatory Minimums (A1-A6):**

1. Where mandatory minimums are appropriate, they are to be set at the bottom of the presumptive range.
2. Eliminate crimes of violence from the Code.
3. Eliminate extraordinary risk crimes from the Code.
4. Single category of crimes is created as to which the Court may consider an enhanced sentence, and must sentence to a mandatory minimum. A broad range of possible sentences is established for these specified crimes as follows:
 - a. Class 2 8 – 48 years
 - b. Class 3 4 – 32 years
 - c. Class 4 2 – 16 years
 - d. Class 5 1 – 8 years
 - e. Class 6 1 – 4 years
5. Crimes for which a mandatory minimum and a possible enhanced sentence may be considered are the following: Murder in the 2nd Degree, Knowing Causing Death of Another; Assault in the First Degree with Intent to cause SBI or Causes SBI by Means of a Deadly Weapon; Assault in the First Degree with Intent to Disfigure or Disable permanently; Assault in the First Degree with Extreme Indifference; Assault in the First Degree with Intent to Cause Serious Bodily Injury to Police or Fireman – threatens with deadly weapon - Knowing they are performing duties; Assault in the First Degree With intent to cause serious bodily injury to Judges; Assault in the First Degree while in Custody; Assault in the 2nd Degree with Intent to cause bodily injury, causes such injury, by a deadly weapon; 2nd Degree Assault with Intent to prevent police or fireman from lawful duty; Assault in the Second Degree – recklessly causes serious bodily injury with a deadly weapon;
6. In reviewing the charges, the working group looked at specific categories of aggravators. Was it done knowingly? Did it create serious bodily injury? Was a weapon used?

Discussion:

1. John Suthers wants to retain a mandatory minimum for someone who commits a crime while on bond. He also would like to make sure that the Habitual Offenders that got a life sentence or is eligible for parole after serving 40 years are not affected.
2. If you eliminate the mandatory statute for a violent crime, do you also eliminate the courts ability to review the sentence after 90 days? No. Mandatory minimum sentence as provided allows the judge to provide a

with “shock” sentence. Judges can review the mandatory minimum for a violent crime. If a Judge changes his sentence, the decision must be in writing and filed.

3. What is the evidence-based reality? Are we making the change to make the change? Incarceration reduces crimes in the community by those who are incapacitated. Targeting high rate serious offenders is key to effectiveness. However, in reviewing the studies, official punishment alone has not reduced recidivism. In a study of more than 300,000 prisoners in 50 studies, incarceration was associated with an increase in recidivism when compared with community based sanctions. The longer time periods in prison compared with shorter sentences were associated with higher recidivism rates.
4. Is there any evidence-based research that shows greater judicial discretion leads to greater public safety or reducing recidivism?
5. Should there be a requirement of a written finding if the judge goes below the minimum mandatory?
6. The group would not recommend crimes of complicity.
7. Steve is uncomfortable with moving this forward.
8. Peter wants to narrow these down - item by item.
9. We need to have a clear statement why judges are doing what they are doing. There needs to be judicial accountability.
10. Whatever range we end up on with these MMOs, if the judge sentences less than the midpoint of the minimum mandatory, the judge provide a written finding. This provides accountability.
11. Bring this forward to the larger group as our recommendation. Need to talk more about judicial accountability and probation. Statutory impacts need to be discussed. Also the issue of what if you are on bond.

A-1 recommendation: Where mandatory minimums are appropriate, they are to be set at the bottom of the presumptive range.

Vote: Majority voted yes to bring this to the Commission

A-2 recommendation to eliminate the crimes of violence.

Vote: yes 10 No: 6

A-4 recommendation to develop a singled category of crimes created as to which the Court may consider an enhanced sentence, and must sentence to a mandatory minimum. A broad range of possible sentences is established for these crimes.

Vote: Yes – 13 No - 3

Meeting adjourned at 5:00 p.m.