

Sentencing Task Force

Date: September 23, 2009, 1:00 – 5:00 PM

Attendees:

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

Pete Hautzinger/District Attorney, 21st Judicial District (by phone)

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

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:

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

Regis Groff/Former state senator

Ellen Roberts/State Representative

Issue/Topic:	Discussion:
Welcome and Review of Agenda	The Vice-Chairman, Tom Quinn, welcomed the members of the Task Force and reviewed the day's agenda. Today the group will be looking at recommendations to move forward. The recommendations will be finalized on the September 30 th meeting and be brought to the full Commission in October.

Issue/Topic:	Discussion:
<p data-bbox="110 426 521 485">Update on Probation Eligibility and Two Prior Felony Rule</p> <p data-bbox="272 495 358 525">Action</p> <p data-bbox="99 567 532 741">The recommendation on the two-prior felony rule will be taken to the Commission in two forms. One with the 10-year time limit, one without the 10-year time limit.</p>	<p data-bbox="560 426 1529 525">Tom Quinn stated that draft recommendations from his working group were sent out to members of the CCJJ and feedback was received. The feedback and suggestions were discussed.</p> <p data-bbox="560 567 1518 665">The two prior felony rule prohibits an offender who has been convicted of two prior felonies from being eligible for probation. The <u>Chism</u> decision clarifies that this does not apply to individuals who have had non-violent felony convictions.</p> <p data-bbox="560 707 792 737">Recommendations:</p> <ol data-bbox="609 743 1529 1627" style="list-style-type: none"> 1. Clarify language. <ol style="list-style-type: none"> a. Agreed to revise the language to comport with <u>Chism</u> b. Define violent similar to mandatory statute. Are you talking about as presently defined? Or under the new aggravated crimes section? Either definition could be used. c. Eliminate attempts to define non-violent. DOC relies heavily on the definition of non-violent. The definition would only pertain to the two prior felony rule. 2. Nature of past criminal record: <ol style="list-style-type: none"> a. Felony rule does apply if at least 1 prior felony was violent (as newly defined). b. Time frame – a crime of violence that occurred more than 10 years ago would not be considered. c. Requires prior felonies be separately brought and tried. d. Disallow prior felonies that are no longer considered a felony. e. Cases which are felonies today but were not felonies at the time of the commission of the offense, would not count. f. Disallow prior felonies if based on crime in another state for act which would not be a felony in Colorado. 3. Define violent felony: <ol style="list-style-type: none"> a. Define violent as found in current mandatory statute 18-1.3-406(2). b. If that section is deleted, use the list of aggravated crimes under discussion by the Aggravated Sentences working group. 4. Use Ken Plotz draft allowing DA to waive the rule even if defendant has prior violent felony. <p data-bbox="560 1669 695 1698">Discussion:</p> <ol data-bbox="609 1705 1518 1978" style="list-style-type: none"> 1. Why are we not giving the judges more sentencing discretion? The recommendation allows for DA discretion in the form of a waiver. Some individuals in the task force do not feel comfortable with giving judges more discretion. Some individuals in the task force feel that some district attorneys abuse their discretion and not waive the rule when appropriate. If you have one felony that is not violent, then you don't need a DA waiver. This is the compromise that the working group developed.

2. Why did you select the 10 year time limit? Because the habitual criminal filings also use the 10 year limit. What about an offender who commits a violent felony and received 11 years DOC? The individual who comes out and commits another felony, the first felony doesn't count. Would these individuals being sentenced to probation anyway? Is there any sentiment that would say that some crimes of violence are too old to count? No. Can we use the time frame similar to a weapons offense - 10 years from release from supervision or DOC? 18-12-108
3. Doug Wilson made the motion to have a 10 year time limit starting at post release or post supervision. Straw vote: Yes: 8 Opposed. 9 This will go forward with a split decision.
4. Carl Blesch moved to adopt recommendations with the exception of the 10-year time limit. John Suthers seconded the motion. Straw vote: Yes: 15 Opposed 1

Issue/Topic:

Update on Escape
Action

The recommendation for eliminating the mandatory consecutive sentence on escapes from Community Corrections and ISP parole will be taken to the Commission

On the hybrid recommendation: Escape work group will take the five categories (regular parole, ISP parole, ISP inmate, diversional, transitional) and list out current law and status for everyone to look at. This will be sent out via email.

Discussion:

Doug Wilson discussed the outcome of the Escape presentation to the Commission. He was asked to bring back the following two recommendations for clarification.

1. The first proposal was to eliminate the mandatory consecutive sentence for Community Correction walk-aways.
2. The hybrid proposal focuses the ability to file escape charges based on the status of the individual. Transitional placements who walk away from Community Corrections would be eligible to be charged with escape as their status is the same as a DOC inmate. A limited number of inmates who have been transitioned directly to the community corrections on ISP inmate status would be eligible for escape. Diversion clients, parolees and ISP parolees who would away would be considered absconders.

Discussion:

1. There was a lot of discussion about which populations were more at risk. An LSI score reflects the need of the offender. The more needs an individual has, the higher the LSI risk score.
2. Inmate status means that they are not on parole. ISP inmates have done well in prison and have been released into the community without having to go through the parole board. These individuals always wear an ankle bracelet. These individuals are supervised by the Community Corrections Parole officer.
 - a. ISP inmates have an LSI score of 26.3.
 - b. ISP Parole individuals have an LSI score of 31.
 - c. Regular parolees have an LSI score of 24.8
3. ISP parolees have made their parole eligible date. They may be some of the most high risk parolees, and that is why they are on ISP parole.
4. A straw poll of providers does not favor the status-based proposal. This would cause more problems.
5. Doug Wilson made motion to take both proposals as defined back to CCJJ. The straw vote: Yes: 8 No: 9
6. Doug Wilson made another motion to move forward the recommendation to eliminate mandatory consecutives for walk-aways from Community Corrections. John Suthers seconded the motion. Straw vote: Yes: 12 No: 5:

7. Scott reported back on a straw vote taken at the CDAC conference. The DAs wanted to eliminate mandatory consecutive only for diversion walk-aways. CDAC liked the mandatory annual reporting.

Issue/Topic:	Discussion:
<p>Update on Aggravated Ranges, Extraordinary Risk and Mandatory Minimums</p> <p>Action</p> <p>This recommendation will be taken back to the Commission.</p>	<p>Beth McCann reported on the work of the Aggravated ranges working group. The Commission did not take the recommendation on aggravated ranges well. The working group decided to continue to make the recommendation.</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. To lower the mandatory sentence from the midpoint to the bottom of the presumptive range on violent crimes. 2. Instead of three categories – aggravated sentences, extraordinary risk and mandatory minimums – there would be one category, combining everything. 3. The sentencing ranges would be expanded to be: <ol style="list-style-type: none"> 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 4. The working group would like to add the caveat for judicial accountability. They would recommend that the Judicial Performance Commission would compare how judges sentence on these crimes as compared to other judges within the same judicial district. <p>Discussion:</p> <ol style="list-style-type: none"> 1. Judges need more information when doing sentencing. They should be provided risk assessments. The judges should also be required to write findings as to why they sentenced the way they did. There could be many factors that weigh in on a sentence that would be unique to a case. 2. DOC pulled a sample of offenders who are in DOC under a mandatory sentence. These individuals are required to serve 75% of their sentence. In the sample group, one person sentenced for 2nd degree murder that fell below the midpoint of the range (16 years). Five sentences were above the midpoint of the range because the offenders were habitual offenders. 18% were sentenced to the current mandatory minimum of the aggravated range. 3. 37% are sentenced to the minimum (16 years) to midpoint (32 years.) of the aggravated range. 4. 75% of the population in DOC is there on non-violent crimes. Maybe we should look at these sentences. We are not going to get consensus on violent offenses. 5. The DAs have a legislative committee that is looking at the sentencing issues. One of the ideas that was raised is that there should be a complete combination of crimes. So there is one box of sentencing ranges for any felony. The DAs would then go through each crime to determine if there is a mandatory minimum needed. 6. Is the Colorado District Attorneys' Council going to determine the direction this working group is going to take? The CDAC has agreed to have their legislative committee look at sentencing and see if they could not come up with a proposal that could be presented to the Commission.

	<ol style="list-style-type: none"> 7. Gil Martinez said that if the working group passes the sentencing ranges there is a strong possibility it will increase the prison population. Judges tend to sentence at the midpoint of the range. 8. Carl Blesch stated the legislature will be looking at passing some sort of legislation. Can we examine smaller sections? 9. Lee Foreman said the Commission did not like the initial recommendation and the working group was asked to look at it again. The working group did look at the recommendation and decided the recommendation is what they could agree on. Should we take it back to the Commission and if it is voted down, so be it. 10. The best that we can do for the Commission is to say this is an important issue and a large issue. It will need further time for examination. 11. Do we take this recommendation back to the Commission? <p>Straw vote: Yes: 9 No: 8</p>
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<p>Issue/Topic:</p> <p>Review Timeline and preview next meeting</p> <p>Action</p> <p>The next meeting is set for Wednesday Sept. 30th, 1pm-5pm at NETI</p>	<p>Discussion:</p> <p>Paul Herman stated that one of the big tasks of this Commission is to look at things from top to bottom. Came to the conclusion that additional assistance is necessary. The PEW Charitable Trust has agreed to provide funds for:</p> <ol style="list-style-type: none"> 1. To bring in an outside group called ARS from Atlanta. They do data collection and analysis. They would be able to run a variety of different scenarios. 2. Will get some additional expertise in sentencing reform. The Vera Institute has this expertise. PEW has agreed to fund Vera Institute to develop a roadmap on sentencing. 3. PEW sees their role as providing support for the Commission so the Commission can look at good data. 4. There will be two people from Vera in November. The folks from ARS have already talked to Kim English (DCJ) and they have spoken to Judicial. They need to talk to DOC. Mr. Jerome will be trying to set up a meeting with Mr. Zavaras around October 5th or 6th.
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The meeting adjourned at 3:55 p.m.