

Sentencing Task Force

Date: 02-03-10 Time: 1:00pm – 5:00pm

Attendees:

Chairs

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

Tom Quinn/Director of Probation Services – Vice Chair

Task Force Members

John Suthers/Attorney General

Doug Wilson/State Public Defender

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

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

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

Joe Cannata/Voices of Victims

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

Scott Storey/District Attorney, 1st Judicial District

Gil Martinez/District Court Judge, 4th Judicial District

Absent:

Claire Levy/State representative

Beth McCann/State Representative

Mitch Morrissey/District Attorney, 2nd Judicial District

Dianne Tramutola-Lawson/Colorado CURE

Lee Foreman/Defense Attorney

Regis Groff/Former state senator

Ellen Roberts/State Representative

Stanley Garnett/District Attorney, 20th Judicial District

Issue/Topic:	Discussion:
Welcome and review of agenda	<p>Tom Quinn welcomed the attendees of the meeting. .</p> <p>Paul Herman started the meeting by asking if the members if they still perceive the need for sentencing reform. The consensus of the group was in the affirmative.</p> <p>Peter Weir gave an update on the CCJJ bills being discussed at the Legislature:</p> <ol style="list-style-type: none"> 1. The purpose of the Escape Bill is to change mandatory consecutive sentencing by defining the status of the escapee. For example, someone who is not on inmate status may or may not have mandatory sentencing. This bill is in good shape right now. It still needs to be vetted by all the prosecutors. 2. The DUI Bill is being fine-tuned. The purpose of this bill is to simplify the DUI statutes, increase consistency and strengthen the law. It also recognizes the importance of a treatment component. First offense consequences stay the same. Under the bill, the Second DUI offense will include a mandatory 10 day jail sentence as part of a 10 day to 1 year jail sentence. The sentence for a second DUI offense also includes mandatory 2 years of probation with the possible addition of another year of probation as a deterrent for non-compliance. For a third DUI offense, the offender gets a minimum of 60 consecutive days in jail and no work release. If the third offense is older than 7 years, the offender may be eligible for work release. Can be released if they have a current job, education or treatment. DUI surcharge is being increased to \$100 to help with the treatment components. 3. Parole Eligibility Bill: If someone has a code of penal discipline entry on their record, the offender is not eligible for parole. The change from current statute is that if someone has a COPD early in their prison sentence and have not had a problem for a while, they will be parole eligible. 4. Guidelines for Parole Board Bill: This bill sets out a standardized approach to parole. It is discretionary and advocates the CARAS and LSI assessments. 5. Two-prior felony rule: This bill allows probation eligibility for offenders with multiple felonies, so long as a crime of violence, manslaughter, robbery and burglary, is not one of the felonies. 6. The DUS/DUR Bill: The lessening of penalties on repeat DUI, DUS and DUR are only for those offenses that are NOT drug/alcohol related. 7. The Drug Sentencing Bill: The Governor is concerned about the reduction of the parameters around low income housing units from 1000 feet to 100 feet. This bill may end with a compromise of 500 feet.

Issue/Topic:	Discussion:
2010 Sentencing Work	<p>What are the issues? What are the problems? How do you define sentencing reform? The five critical issues:</p> <ol style="list-style-type: none"> 1. Sentencing structure is too complex and too confusing. 2. Sentencing structure does not allow for individualized sentencing while maintaining accountability. Is that still an issue? Yes. 3. There is a need to ensure the predictability, consistency and rationality of sentencing laws.

4. Too many laws are based on anecdotal information not evidence.
5. Sentencing laws have lost sight of the goal to enhance public safety through rehabilitation, deterrence and punishment.

What are some other issues that have been missing:

1. Taking into account the victim's needs.

Five definitions of sentencing reform: Are they still valid? Was there something that was missed? The concept of research and the use of evidence-based practices are missing from these.

1. Clearly define the goals of sentencing from a defendant, victim and systemic perspective.
2. Top to bottom re-evaluation of the entire criminal code, parole and related statutes.
3. Examination of the direct and collateral consequences of the conviction.
4. Improved clarity and ability to determine and communicate the legal consequences of the conviction.
5. Develop a model of statutory drafting and construction that promotes consistency and can be replicated.

Issue/Topic:	Discussion:
<p>Exploring Practical Options for Sentencing Review Action</p>	<p>Do we look at sentencing reform using a blank slate? Or do we take the existing sentencing structure and fine tune it? Can you do both at the same time?</p> <p>Comprehensive reform: When we started our work, the task force originally said we should have a comprehensive analysis, but during the past six months we've had to meet immediate short-range goals set forth by the Governor and the Attorney General.</p> <ol style="list-style-type: none"> 1. We got here piecemeal. We don't have the two years that it took New York to do their review. We are now in an economic crunch and have to do something now. 2. The public will focus not on that sentencing reform needs to happen because it is too confusing but on the fact that it is being done to save money. 3. The 'low-hanging fruit' of sentencing reform consists of the non-violent crimes, both in misdemeanor and felony level crimes. This would include the drug law. 4. Does the Commission want to delve into the particulars? OR does the Commission want to set up a framework for someone else to delve into the particulars? <p>Tom Quinn presented an example of a blank slate approach: It is a culture shift from where we are.</p> <ol style="list-style-type: none"> 1. Before a crime, the victim and community are fine. After the crime, the victim and community is worse off. Is the offender better off? After we spend money in the criminal justice system to prosecute the offender, is the victim and community better off? We are spending the money on the offender. We need to measure the satisfaction with the victim. Were the victim's needs met? 2. Our system of sentencing is out of control and consuming a large

percentage of the state budget. We lock up more than most in the US. Most in prison are in for non-violent crime. Most offenders are on the extremes of the sentencing continuum. The current system is dysfunctional by design and is not sustainable. Offenders need to be accountable to the criminal justice system, but the criminal justice system is not accountable to the public.

3. We have a lot of people on the low end of the criminal justice sanctions (i.e. alcohol monitoring, probation) and the high end of sanctions (prison). The intermediate sanctions (ISP, Community Corrections) are not being used as well as they can. Because of the lack of intermediate options, it forces the prosecutors, parole officials and judges to place an offender where they do not belong.
4. When looking at the cost for sanctions in Colorado, the majority of the money is going into prison. Colorado is unique. If you reduce the number of private prison beds being used, the state can see a cost savings. Private prisons used to be paid for the beds that are available, now they are paid for the beds that are in use.
5. If we advocate the expansion of mid-level sanctions, it would allow the lower level offenders to be sanctioned proportionately. The most serious violent offenders could eventually work their way out and benefit from a graduated reduction of sanctions. An increase in length of time for violent offenders could be a trade-off.
6. Steps to common sense sentencing: replace in/out with a structured continuum of sanctions that would be used for offenders going into and out of prison. Assign existing options into that conceptual scheme. Assign offenders into accountability levels and their length of stay based on crime and criminal history.

Approaches that can be taken:

1. The blank slate approach means a change in policy. For example, create a placed based structure with varying levels of sanctions and make a policy decision to expand the use of the middle sanctions.
2. An example would be the approach taken by the drug task force. The group started out with a goal of what they wanted to accomplish. Then the focus was on the "how" to accomplish the goal. Finally, they looked at the reality of resources - they needed assessment tools and treatment.
3. If you start the discussions about the amount of funds that are available, it limits the discussion and "out of the box" ideas. You should start with what we want to do and then cost it out.
4. How do you build the structure without discussing which offenses go into which category? It is a piecemeal approach.

What approach will be suggested to the Commission? The comprehensive and blank slate approach gives us more freedom. It allows us to decide what the system should be. As we go through the comprehensive approach, if we find areas that can be fixed, go ahead and fix them and not wait until the end. You can't build the model without looking at the specific offenses. Each community will have its own priority. By addressing some items piecemeal it might expedite fixing some high priority problems.

Issue/Topic:	Discussion:
Drug Task Force	<p>The drug task force strongly supported their Option 1 recommendation (which proposed a wholesale revision of the drug code and sentencing options by creating a separate drug sentencing schedule and sentencing grid designed to better address drug cases and the needs of judges, prosecutors and defendants and their attorneys), but the resources to fulfill this option were not available.</p> <p>If we as the Sentencing Policy Task Force take the comprehensive approach, does the drug task force continue looking at their Option 1? Or should we stop the drug task force from continuing on and include them in the comprehensive approach?</p> <p>Gil Martinez suggested that the drug task force should proceed. Also, we should be asking the drug task force if they feel if they can continue with their work while the rest of the sentencing structure begins a comprehensive study.</p> <p>Could the drug task force be the legislative piece for the 2011 legislative year and the broader, sentencing piece be focused on legislation for 2012?</p> <p>The consensus of the attendees was that the Drug Task Force should continue its work on Option 1 with possible legislation for 2011.</p>

Issue/Topic:	Discussion:
<p>Summary of Today's Outcomes and Next Steps</p> <p>Action</p>	<p>The group agreed to a "dual track" approach to sentencing reform. This current group, the Sentencing Policy Task Force will study the entire sentencing system from a comprehensive blank slate perspective. During the Sentencing Task Force's study, some target-specific areas (low-hanging fruit) can be identified and prioritized. The other group, the Drug Task Force will continue their work on Option 1 while still only looking at the adult system.</p>

Meeting adjourned at 4:14 p.m.