

# Sentencing Task Force

**Date: 04-06-10 Time: 1:00pm – 5:00pm**

## **Attendees:**

### **Chair**

Tom Quinn/Director of Probation Services – Vice Chair

### **Task Force Members**

Susan White / Community Parole Manager, Dept. of Corrections

Dianne Tramutola-Lawson/Colorado CURE

Lee Foreman/Defense Attorney

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

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

Jeanne Smith/DCJ

Doug Wilson/State Public Defender

Tom Raynes for John Suthers/Attorney General

Beth McCann/State Representative

Stanley Garnett/District Attorney, 20<sup>th</sup> Judicial District

Mark Randall/DA's Council

Bonnie Barr/DOC

Paul Herman/DCJ

Kim English/DCJ

Germaine Miera/DCJ

Christine Adams/DCJ

### **Absent:**

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

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

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

Claire Levy/State representative

Mitch Morrissey/District Attorney, 2<sup>nd</sup> Judicial District

Regis Groff/Former state senator

Ellen Roberts/State Representative

Scott Storey/District Attorney, 1<sup>st</sup> Judicial District

Gil Martinez/District Court Judge, 4<sup>th</sup> Judicial District

Issue/Topic:	Discussion:
Welcome and review of agenda	Tom Quinn welcomes the attendees of the meeting and reviews the agenda. Most of today's meeting is in preparation for this Friday's CCJJ meeting, and to look at a plan for the upcoming 2 years.

Issue/Topic:	Discussion:
CCJJ Recommendations/Legislation Update	<p>Tom Quinn gives an update on the CCJJ bills being discussed at the Legislature:</p> <ol style="list-style-type: none"> <li>1. The bill concerning money laundering in appropriations</li> <li>2. 2 Prior Felony Rule Bill is making its way to the appropriations committee. This bill has a cost savings of over 2 million dollars in the first year.</li> <li>3. HB1347, This bill deals with DUI penalties. This bill has a fiscal cost as it will result in adding 1500 folks on probation. This reported out unanimously from house judiciary.</li> <li>4. HB1352, The Drug Sentencing reform bill. This bill establishes the principle to work with offenders in a treatment manner if they are not violent or predatory, more for <b>users</b> of drugs, etc. This bill has a cost savings that will be turned back into treatment dollars.</li> <li>5. Sentencing changes for escape yet to be heard, that will be next week.</li> <li>6. Changes to parole will also be heard on the 15<sup>th</sup> of next week.</li> <li>7. DUS bill signed into law this week</li> </ol>

Issue/Topic:	Discussion:
<p>Drug Policy Task Force Update</p> <p><b>Action</b></p>	<p>The Drug Policy Task Force met yesterday afternoon to discuss their plan for 2010.</p> <ul style="list-style-type: none"> <li>• A couple key points that came out of the meeting are that right now many of the people on that task force are very involved in the current legislative process and are focused on moving 1352 forward.</li> <li>• One of the other interesting points that came up was that on some of these bills, in regards to cost savings, we didn't add a caveat regarding where the cost savings should be allocated on CCJJ bills. Other than the drug bill nothing was really targeted. We should look at cost savings on all the CCJJ bills and think about where to direct the money.</li> <li>• The Drug Policy Task Force is very willing to continue to pursue their original recommendation #1 this coming year (after the legislative session).</li> </ul> <p>The last time the Sentencing Task Force met, this group agreed that the Drug Task Force should move forward on recommendation #1. They're willing to start that work after the end of the session, once they see what happens with the current bill.</p> <p>Assuming all the drug legislation passes, there will be a need for some infrastructure to be built. Between now and the next task force meeting we'll be working on that infrastructure.</p>

<p style="text-align: center;"><b>Issue/Topic:</b></p> <p style="text-align: center;">Revisit and Reaffirm <b>Action</b></p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>In August of 2009, the Commission had a conversation regarding “What are the purposes of sentencing”. This came after Judge Warren was here and provided information to the group.</p> <p>In the end the Commission came up with a statement on the purposes of sentencing. We need to take a step back, take a look at these, and see if they make sense or if we need more clarity as we move forward.</p> <p>This is very similar to recommendations on the criminal code from the bar association.</p> <p>The group goes over the “Purposes of Sentencing” handout.</p> <p>The following are discussion points-</p> <ul style="list-style-type: none"> <li>• In looking at point #3 on Purposes of Sentencing, it addresses everything but the kitchen sink and if the purpose is supposed to give you guidance, what guidance is that giving you? A purpose should give you direction, and does this give you direction?</li> <li>• If we pick among these purposes and prioritize them, won’t we be emphasizing the divisions that may already exist in the group and outside community? Shouldn’t we keep all of this in mind and not necessarily weight one thing over another.</li> <li>• Should we combine iii and iv?</li> <li>• Aren’t ii and iv the same?</li> <li>• If we combine iii and iv, it will give us more direction to look at the sentencing scheme. Should we really prioritize? Can we just combine iii and iv?</li> <li>• The word “punish” isn’t even in the Purposes of Sentencing, shouldn’t we add that in?</li> <li>• Taking these things as a whole is really what we have in our corrections community.</li> <li>• It’s a complex set of purposes but that’s the reality of the situation.</li> <li>• Guiding Principles were created to provide <b>guidance</b>. We need to keep them in mind as we look through our various lenses.</li> <li>• Perhaps as we begin working through what an ideal structure would look like, we’ll see that a different criterion will rise to a different priority level.</li> <li>• In other states, as they’re talking about purposes, incapacitation is often the driving force (as part of the punishment). INCAPACITATION.</li> <li>• Rehabilitation is often getting replaced by risk reduction piece. RISK.</li> <li>• Depending on your population, one or more of these become paramount.</li> </ul>
----------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p style="text-align: center;"><b>Issue/Topic:</b></p> <p style="text-align: center;">Previous Subgroups – Where do we go next?</p> <p style="text-align: center;"><b>Action</b></p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>The group discusses the previous subgroups and the work they accomplished last year (Escape, 2 prior felony, aggravated ranges, mandatory minimums, etc.)</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## 2 Prior Felony

- Are we done with this?
- Ken Plotz' recommendation all along was to eliminate this. Maybe we can revisit in another year or two?
- HB1338 is moving through but we need to keep an eye on this.

## Minimum Mandatory/Extraordinary Risk

- This group was not able to move anything forward for the current legislative session.
- Although the subcommittee came to a series of recommendations, they were criticized to a point.
- The group came to a consensus that it was impossible to address this issue in a vacuum. I think we decided that revising the entire sentencing structure would cover these revisions.
- Does this group have the mandate to recommend a complete revision of the code? Are we satisfied with the current code? Are we going to address this piecemeal? Are we starting with a fresh slate? Do we have the ability and authority to revamp the system ourselves?
- Do we start with a clean slate or parcel it out?
- Didn't we head in the direction we did because of the letter from the governor?
- We also have to factor in the revisions of the Drug code during this process.
- Do we need to have the overall structure agreed upon before we move forward?

## Escape

- This work did not go as smoothly as we thought.
- Mitch led the charge and resisted changes at the same time.
- There was a push to not have walk-aways be considered an offense at all.
- Can we go further? Did we go far enough? What is going through is a minimal change but can we get anything else?
- At one point we were coming to a place where we were trying to see what has worked with other states, but we abandoned that push. Can we revisit?
- We need results on some numbers from the current legislation outcome (pilot) before we can make any further recommendations. Let's put this on the back burner to revisit down the road.

<b>Issue/Topic:</b>	<b>Discussion:</b>
Review Sentencing Process Structure  <b>Action</b>	Paul reports that he has been working on a flow chart of sorts to try and lay out how we might be able to tackle the issue of sentencing reform from a blank slate approach.  We need to make some specific policy decisions before we do anything. Sentencing Guidelines is not a preferred term in Colorado. We often think of the feds when we discuss this. There are all sorts of sentencing guidelines and it is a reality that people have done some interesting things with guidelines.

The discussion of determinate vs. indeterminate is critical. In this state we have both. If you're going to develop a structure you must have this discussion. Focusing efforts on what produces the best results.

What about EBP? How much can we live with? In theory it's great but you may run into problems when it comes to operationalizing this. People have varying levels of tolerance when it comes to EBP.

Who should be incarcerated and under what circumstances?

Judicial discretion and Judicial Accountability are also critical.

So, you have the policy discussions and come to conclusions. After that, you need to address the issues of Offense Structure and Offender Characteristics. Paul references the Sentencing flow chart for the following discussion-

#### **Offense Structure-**

What are the options?

What about structure?

You have to look at the disposition piece and explore what Colorado doesn't have at this point.

In Colorado, deferred cases go through the prosecutor. In other states, you go in front of a judge who can suspend the imposition of a sentence. In Colo. there is a deferred prosecution and a deferred judgment.

#### **Offender Characteristics-**

In many states, on the offender side, what you look at is the offense and the behavior regarding that offense and the criminal history. As you look at how things are set up structurally those are the key factors.

In a number of places they've moved beyond the first two and now consider 'risk', a number of states now consider 'age' and 'special needs offenders'.

Historically we look at offense behavior and prior record, what we see today is a much more complex set of predictors.

Arguably this group could have the policy discussions as a whole, then break out into subgroups to look at offense Structure and Offender Characteristics. After those breakout groups do their work we could then look at..

#### **Disposition-**

PSIR's, etc. – how many are actually done? If practitioners are not using a PSIR is there something else that could provide good solid decisions?

Then we would talk about Duration and how long is long enough.

Do we have an incentive based system? No? Should we look at one?

Sanctions for non-compliance, etc.

This is basically a way we could use a blank slate if we choose to go that route.

#### Questions and Comments regarding the flowchart

- When it comes to policy decisions, should we consider how much money we want to spend in various forms of corrections? Services and remedies are not currently very well connected. Do we ever want to figure out what we have in the bank and where we want to put it the most?
- How do we consider the availability of resources? Should we build this piece in as far as what sentencing reform should look like. Consideration of resources and possible reallocation of resources.

- We will have to have the ability to build scenarios if we go down this route.
- For example, If we build “x” what will the impact be on “y”. We will need to KNOW the impact of decisions being made.
- We need to build some simulation models. Look at what we’ve been doing and consider the impact if we make changes. We need to make informed decisions as we move forward.
- What are we looking at as far as a timeline? What can we realistically do? When does the Commission sunset? We would need to do this in the next two years, but that doesn’t even include an implementation plan.
- Are we really waiting until 2012? Shouldn’t we have something prepared for next session? We can try to move some work forward on the drug task force or low hanging fruit by 2011?
- Are there certain things the legislature is struggling with now that we could address as far as sentencing?
- As you make more people eligible for services, you have to have more services available to treat them. If we put more non-violent offenders into services rather than prison, we have to shore up other areas.
- What about sex offenders? We’re not going to deal with sex offenders in an election year are we? Actually, the CCJJ provides a lot of political cover.
- Why can’t we work on pieces that are in conjunction with overall reform? Sex offenders, habituals, even to a certain degree minimum mandatory and extraordinary risk. Habituals and sex offenders are outside the regular sentencing scheme.
- All of us have concluded that this is too complex a sentence structure for any of us to understand. We need to bring these pieces into an integrated sentencing structure in the future.
- You can’t integrate if you don’t look at all the individual pieces to start with.
- As Paul suggests, let’s start with the big picture, and after we understand our policy we can integrate all the pieces. Strategically you can only do so much.

The last time we met here, we decided that the Drug Policy Task Force should (strategically) move forward and have their piece ready for 2011 and then have our piece ready for 2012. Strategically we wanted to be able to do something significant for next year (Drug work) and again for 2012. If we don’t tackle sentencing for this session, decisions will be made by legislators outside the Commission. If we don’t grab hold of the larger picture, nobody else will.

- Can’t we separate sex offenders out?
- We need to go forward with the big picture plan, but maybe set some themes up ‘overarching agreed rules’ that any new initiative is going to follow. For example, make sure we ensure public safety, provide risk reduction, and those pieces have to drive whatever decisions we make.
- Or, we can parcel out a piece of the code to cover along with the overall scheme.  
Minimum Mandatory  
Sex Offenders  
Habitual

Strategically we thought that if the drug task force finalizes their big package then that would be the legislative piece for 2011, with the full sentencing package in 2012.

- Do we have the capacity to work on drug task force, sex offender, and mandatory minimums while also working on the big picture?
- If we get too sidetracked in one very important area, aren't we going to miss the whole big goal?
- Is there room in the sex offender statute to strengthen and loosen at the same time?
- The big picture does a greater public good. Capacity is a really critical issue.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Identify Policy Decisions to be Made</p> <p><b>Action</b></p>	<ol style="list-style-type: none"> <li>1. The sentencing group will stay intact and continue to move forward on the 'big picture' idea.</li> <li>2. At the same time, let's identify smaller work groups, and the CCJJ can pick two issues to move forward with and give them two or three bite size pieces to move forward on, identify some folks and ask them as a study group what can be accomplished in the next year.</li> <li>3. One group goes forward with the big picture while smaller groups go forward to try and get something done for next legislative session.</li> <li>4. We would provide themes and parameters.</li> </ol> <p>This Sentencing Task Force is a decision making group, the policy conversations happen here, subgroups would work on structure and work on offender characteristics.</p> <p>If this group wants to break down further, then there's no way we can handle this and the Drug Policy group, plus multiple bite sized issues coming out of the subgroup.</p> <p>Sex offender issues are big and are unique. There is a lot of data around sex offenders in Colorado. Issue identification is easy, research is there, it's a matter of getting everyone together in a room.</p> <ul style="list-style-type: none"> <li>• Let's tackle SO's and habitual</li> <li>• Staffing is not just research</li> <li>• Can we staff this many groups? <ul style="list-style-type: none"> <li>Drug Policy task force</li> <li>Sentencing Task Force <ul style="list-style-type: none"> <li>Offender structure</li> <li>Offender characteristics</li> </ul> </li> <li>Habitual – staffed by Doug?</li> <li>Sex offender</li> <li>PIS</li> <li>Treatment Funding</li> <li>Behavioral Health</li> </ul> </li> </ul>

How much can be done without DCJ involvement?

There's an awful lot on the plate, we can't do everything immediately, we haven't figured out how to make that happen.

We are maxed at 5 subgroups

The general recommendation from this group is to go forward, additional staff resources are needed and will be provided by the Public Defender.

All in favor except Carl to move this concept forward.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p data-bbox="217 741 409 772">2010 Work plan</p> <p data-bbox="272 814 354 846"><b>Action</b></p>	<p data-bbox="558 741 980 772">The Overall 2 year sentencing plan-</p> <p data-bbox="558 814 1463 877">Regarding the Policy Decision box on the Sentencing Flow Chart, what other issues need to go into that box? Are we up for deciding this today?</p> <p data-bbox="558 919 1224 951">Paul goes over the Proposed Policy Task Force Timeline.</p> <p data-bbox="558 993 1479 1056"><u>Let's decide 'What are the policy issues' that need to be discussed.</u> Get Paul's flipchart notes too</p> <ul data-bbox="607 1066 1520 1392" style="list-style-type: none"><li>• Resources - How much do you want to spend? And on what?</li><li>• What are you going to do with the \$ you're saving?</li><li>• Risk/Reward issue (some of your drug addicts in need of high level treatment are not necessarily your highest offending criminal). A serious offender may have less serious treatment needs. How much public risk are we willing to take?</li><li>• Simplicity</li><li>• Clarity in Sentencing</li><li>• Clear message on what a sentence means.</li></ul> <p data-bbox="558 1434 1528 1497">Can we earmark funds? Can we take savings from one CCJJ bill and apply it to the fiscal note of another CCJJ bill? Let's pose this question to representative Palmer.</p> <p data-bbox="558 1539 1170 1570">Back to Policy issues that will need to be discussed-</p> <ul data-bbox="607 1581 1528 1854" style="list-style-type: none"><li>• Simplification</li><li>• Truth in Sentencing (you can't have truth in sentencing and earned time)</li><li>• How much of the sentence is punishment, how much is treatment of rehabilitation (if we have \$10 for a person's sentence, does \$7 go to containment and \$3 to treatment?) What is the role restitution and containment plays.</li><li>• Retribution, containment and treatment are 3 different things. Restoration is a 4<sup>th</sup> component.</li></ul>



#### Determinate vs. Indeterminate

- Discretion falls with DOC
- Some people are able to work their way through prison on a class 3 in 18 months.
- Where some will fail, others will succeed who can make the benchmarks
- What data would you need in front of you to make this determination?
  - must work different than the current system
  - research what others are doing/what others have found
  - what was the average length of stays in the 70s? Not much data.
  - parole shouldn't determine how long a guy should stay in
  - we do know that 90% of folks who are released are released at their mandatory date
  - indeterminate sentencing doesn't work in truth in sentencing
  - judges used to gravitate toward the middle, now they're gravitating toward the top
  - Clarity in sentencing, not truth in sentencing
  - Who has selected which route (as far as states) and for what reason
  - Is there a way to find out who went to determinate sentencing then maybe changed their minds?
  - Not Judicial Discretion/Judicial Accountability, how about System Discretion/System Accountability

#### Sentencing Guidelines

- What have other states done? Pros and Cons. Start with the Feds
- Many people think about the Feds or what a variety of states have done
- What does the US Sentencing Commission say about this?
- There is a good deal of info from the feds and from the individual states
- This began because there was a fear of too much judicial discretion. Now a judge must calculate correctly what a guidelines sentence may be, and then show findings outside that range. Has created a whole new level of appellate litigation.
- A lot of this happened in the 80s 'get tough' era

#### Define who should be incarcerated and under what circumstances?

- We largely have this info already, we have some idea of who recidivates and under what circumstances
- We know who is a lesser risk of containment and who would be amenable to treatment.
- Risk assessments at the front end
- It's how we apply the data to the other questions we've already discussed
- How much extra benefit do we get from each extra year or extra month in prison? We know we can make people worse with inappropriate LOS
- If you incarcerate but fail to treat the reasons for the bad behavior then the public will be less safe
- There are some people who will not be amenable to treatment period

Age-Based Risk

- Data out of Virginia, too many older folks in prison
- Is there a way to determine the long term impact of the programs we are presently offering? Are we actually making changes in people's lives outside the 3 year recidivism rate? It is hard to really get this info.

**Issue/Topic:**

Adjourn  
**Action**

**Discussion:**

The group reviews the possible meeting schedule and adjourns. The group decides to wait and see what comes out of Friday's CCJJ meeting and then embark on an action plan.