



**Commission on Criminal and Juvenile Justice**

**Minutes**

September 12, 2008  
Boettcher Mansion  
900 Colorow Rd. – Lookout Mountain

**Commission Members Attending:**

Peter Weir, Chairman	Ari Zavaras	Dean Conder
David Kaplan, Vice-Chairman	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Ellen Roberts	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Inta Morris	Steven Siegel	Ken Gordon
John Suthers	Karen Beye	David Michaud
Rhonda Fields	Gilbert Martinez	Tom Quinn
Regis Groff		Doug Wilson

**Absent:** Reo Leslie, Melissa Esquibel, Terrance Carroll and Ted Harvey

**Call to Order and Opening Remarks:**

The Chairman, Peter Weir, called the meeting to order at 9:00 a.m. Mr. Weir proposed that if the Commission cannot come to consensus today on a recommendation, the idea can be discussed at a later date.

Yesterday it took 70% of category “A” for the recommendation to go forward to the Governor and Legislature. It took 50% of category “C” for tabling the recommendation. Today there will only be three categories: “A - I support”, “B - I can live with it” and “C - I don’t support”.

Mr. Weir offered adjusting the thresholds. If a recommendation received 75% of the combined votes in categories “A” and “B,” the recommendation would move forward to the Governor’s Office and Legislature. If a recommendation received 25% of the votes in category “C,” the recommendation would be tabled. Discussion revolved around those recommendations that require further research or that do not have the support of the Commission. Can those items be discussed at the October meeting? Can those items be further discussed by the task forces?

Pete Hautzinger made the motion that 75% of the vote by the Commission in categories “A” and “B” will move the recommendation forward to the Governor and Legislature. It would take 30% of the category of “C-I don’t support” to take the recommendation off the table. Ari Zavaras seconded the motion. The motion passed unanimously.

**Recommendation P-2: Research shows that positive reinforcement is an important component of behavior modification. The use of incentives to facilitate successful completion of probation should be placed in statute. Such incentives should be interpreted as evidence-based efforts to encourage the offender's positive performance for the purpose of enhancing public safety and preventing victimization.**

Discussion took place concerning how this recommendation would be put forth. Should it be a directive in statute, or a statement in policy or business practice? By putting this in the statute, it would educate the legislature. Also, there are some in the field that do not utilize this as much as they should, and by having it in statute would provide clear direction. If you put this into statute, you will have to have a list of definitions and could result in litigation.

Can you define "incentives?" Examples would be later curfews, fewer home visits or visits to the office, or monetary assistance for treatment. The concept is to recognize individuals who are in a difficult situation and are making an attempt to comply.

The Commission voted on the recommendation as written. The recommendation failed.

The Commission voted on the recommendation with the language "placed in statute" stricken and replaced with "encouraged."

**Research shows that positive reinforcement is an important component of behavior modification. The use of incentives to facilitate successful completion of probation should be encouraged. Such incentives should be interpreted as evidence-based efforts to encourage the offender's positive performance for the purpose of enhancing public safety and preventing victimization.**

Recommendation passed as modified.

**Recommendation P-17: Because the loss of a driver's license is a significant barrier to employment, and because employment is linked to crime reduction, abolish those portions of a statute that require the mandatory revocation or suspension of the defendant's driver license for a conviction/adjudication of non-driving offenses. This recommendation does not apply to child support enforcement.**

The task force believed that one of the biggest barriers to successful completion of probation was employment. To be employed it was important to have a driver's license. It was not necessary to take away someone's driver's license for non-traffic related offenses. Is there a correlation between the possession of cocaine and driving?

Concern was expressed that Aggravated Motor Vehicle Theft should be considered a traffic offense and should have mandatory revocation or suspension of a defendant's driver's license.

There was discussion of how much detail needed to be in the recommendation so that it would be written correctly for legislation. Could the final recommendation include a discussion section that outlined issues? Yes.

Recommendation passed as written.

**Recommendation PIS-89: The Commission request that the Department of Corrections develop and implement a standardized policy regarding early terminations of parole and require parole officers to submit such requests to the parole board when a parolee has served at least half of the parole period, and has met other risk reduction benchmarks. In addition, the Department of Corrections should provide data on the numbers and decisions of early termination requests to the Division of Criminal Justice. The Commission further requires that such request comply with the Victim's Rights Act.**

If parolees know when they can be considered for early release from parole, it would serve as an incentive for them to complete the terms of their parole. It would require a parolee meet risk reduction benchmarks. The parole officer would be required by statute to request an early parole date at the half way mark of the parole period. The Parole Board would still have to vote on it.

How this would impact mandatory parole requirements? Would this recommendation be trumping mandatory parole requirements? This would not have a significant impact on the workload of a parole officer.

Recommendation passed as written.

**Recommendation I-48: Inmates should be eligible for the College Opportunity Fund while they are still inmates.**

COP is not financial aid. It is a mechanism to move general funds money into the operating fund of a school. As an inmate, if you are enrolled in an institution of higher education you qualify for COP. There is only one Community College that allows inmates to be enrolled. This is Pueblo Community College and it is a pilot project.

Is there anything in statute that prohibits inmates from enrolling? Yes, if you are looking at the costs associated with the education. Federal guidelines do not allow financial aid to be given to inmates and the state guidelines follow the federal guidelines. There is a Colorado statute that says that inmates must pay for their academic education (i.e. not vocational or technical). The current programs with community colleges are technical and vocation education. The restriction does not apply to technical and vocational education. The restriction would apply to further efforts with four year institutions.

Ken Gordon moved to amend the recommendation to read: "Any statutory impediment to inmates' access to or funding of post secondary education should be eliminated." Grayson Robinson seconded the motion. Motion to amend the recommendation passed unanimously.

Why is this an issue in the first place? There is an issue with people wanting to know why they should have to pay for their child's education and inmates are given a free ride. The role of the Commission should be to make recommendations and let the political discussions take place at the Legislature.

**Any statutory impediment to inmates' access to or funding of post-secondary education should be eliminated.**

Recommendation passed as modified.

**Recommendation T-66: Ensure all parolees receive "gate money" upon release, including inmates who have been previously revoked.**

This has been in statute since 1972 and the amount of \$100 has not been increased since then. Could we increase the amount for first time parolees? Is there a significant number of inmates that get the gate money more than once? There are approximately 3,000 people that this would apply to. At \$100, the fiscal note would be \$300,000. Could a debit card be issued that could only be used for food or subsistence?

Pete Hautzinger made a motion to amend the recommendation as follows: "Ensure all parolees receive 'gate money' upon release." Ken Gordon seconded the motion. Discussion then revolved around all parolees or all eligible parolees? Gil Martinez suggested changing the language to include "all first time parolees". Ken Gordon accepted the change to amended motion.

**Increase "gate money" for first-time parolees upon release.**

Recommendation passed as modified.

**Recommendation I-60: Rule 35(b), the time to file the motion for reconsideration of sentence, should be increased from the current 120 days to 365 days to allow offenders sentenced to the Department of Corrections time to engage in programs and other positive activities that might demonstrate to the court some reason to reconsider the sentence.**

Should this recommendation be deferred to state Judicial to review their process? The judges in El Paso County thought it was a good idea. The recommendation may increase the transportation costs from DOC to the court of record.

One concern is victims will now have to wait longer to have final closure to the case. Another concern is that instead of giving the judge a period of time to review his

performance as is set by 35(b), our changes would make the period of time and the ability of the judge to review the behavior of the inmate, the judge would take on more of a Parole Board role.

All the recommendation does, is allow the defense additional time to file a motion to show the defendant is remorseful.

Recommendation was rejected and not discussed further.

**Recommendation I-22: Modify CRS 16-5-206 to empower the court to issue a summons in lieu of an arrest warrant, requiring the input but not the consent of the prosecutor.**

The purpose behind this recommendation is that some jurisdictions will not request a summons. Judges are conservative in these circumstances and heavily consider the recommendation of the prosecutors. The modification would give the judge the opportunity to ask more probing questions.

Can the language be changed to something like “A summons shall be issued in all class 4, 5 and 6s, except in situations where the prosecutors can show on a good faith basis that the public safety would suffer?”

Because Intimidation of a Witness is a class 4 felony, the victim community would not approve of this recommendation.

A prosecutor who relies heavily on summonses could not support this recommendation if it contains the second sentence.

John Suthers made the motion to approve the amended recommendation. Grayson Robinson seconded the motion

There will be resistance by police if, instead of arresting someone for a felony, they have to issue a summons. This recommendation does not deal with the warrantless arrest situations.

**The commission encourages law enforcement agencies to enact policies that are consistent with CRS 16-5-206 and 16-5-207, relative to issuing summonses rather than arrest warrants on appropriate Class 4, 5, and 6s. Modify CRS 16-5-206 to empower the court to issue a summons in lieu of an arrest warrant, requiring the input but not the consent of the prosecutor. A summons should be issued for class 4, 5, and 6 felonies unless there is imminent risk of flight or when victim or public safety may be compromised.**

Recommendation passed as modified. (Combines wording from I-21 and I-22.)

**Recommendation I-21:** Per CRS 16-5-206 and 16-5-207, a summons should be issued for class 4, 5, and 6 felonies unless there is imminent risk of flight or when victim safety may be compromised.

Combined with I-22, see above.

**Recommendation T-64 and 65:** Each judicial district should be required to conduct an inventory of the services and resources, including available housing and the capacity of those resources to address the needs of offenders in reentering the community. This information should be paired with an analysis of the risk/needs of offenders releasing from the Department of Corrections. Re-entry service gaps must be identified, along with the costs to fill those gaps. Using this information, a plan should be developed that identifies the appropriate parties to provide services and a funding scheme. Inventory reports should be provided to the Division of Criminal Justice, which will forward the information to the Commission.

Ms. Beye outlined what Department of Human Services is doing in inventorying services. This would be an overall statewide needs assessment.

Recommendation passed as written.

**Recommendation T-74:** The Task Force recommends the community corrections boards revise their policy regarding referrals to community corrections from DOC so that people who are going to be released homeless are prioritized over those with a parole sponsor. The application form to the community corrections boards would require revision to include this information.

While the homeless problem is a serious issue, should they be a priority over someone who has a family member willing to take in the inmate?

Recommendation was rejected and not discussed further.

**Recommendation I-30:** Representatives from probation, community corrections, DOC, and local jails must work together to develop and implement a protocol whereby a standardized, comprehensive profile of an offender, the offense, and the victim impact-- which may include the PSIR--and individual empirically-based assessment information (such as the Level of Supervision Inventory, and specialized assessments), should follow all individuals convicted of a felony throughout the system, from pre-sentence to release. This assessment should be regularly updated, at a minimum prior to significant decision points in custody or during community supervision, to assure that program placement is linked to criminogenic needs and to document treatment progress and new skills obtained. A systematic quality assurance procedure must be implemented with this initiative. Protocols

**to share this information while protecting the privacy of the individual must be developed and implemented within and across agencies.**

Concerns about sharing the PSRs with people on the outside were expressed. The PSRs are not always correct. Protocols should be established so the sharing of information is done appropriately.

The Attorney General's website contains direction on what information concerning a juvenile can be shared. Any document that describes the offenders' needs should follow the offender through the system so that he/she can get treatment. If the PSI and Victim Impact Statement is something that should not follow the offender through the system, then specify those documents not be included in the file. Another possibility is to create a document that can be included.

Recommendation passed as written.

**Recommendation I-26: Each judicial district should be encouraged to establish a bond commissioner and process that give authority to the specially trained commissioner or their designee to undertake an individual assessment of the accused and set bonds and/or summonses as appropriate.**

In Mesa County the Bond Commissioner is not authorized to issue a summons. The fiscal impact is approximately \$200,000 - \$250,000. How this would work in the rural areas since you specify a "specially trained commissioner or their designee?" Could it be someone on the jail staff? Yes.

Recommendation passed as written.

**Recommendation PIS-83: When someone has been transitioned out under inmate status, provide a date-certain release for offenders in community corrections while retaining the authority of the Parole Board to conduct a rescission hearing and extend or vacate the parole date in the event of noncompliance. Specifically, when an inmate is accepted in community corrections as a transition client, the Parole Board should set a parole date no later than 12 months from the date of placement in residential community corrections. Likewise, when an inmate has been placed in the Intensive Supervision Program-Inmate (ISP-I), the Parole Board should set a date for parole at 180 days from the placement on ISP-I.**

This is another attempt to promote success-driven motivation for inmates in Community Corrections. If they know their parole release date, they will work harder to complete their requirements.

Would this mean a violent offender would have less time in ISP-I? No.

John Suthers made a motion to amend the recommendation to include "With limited exceptions..." Don Quick seconded the motion. The motion passed unanimously.

**With limited exceptions, when someone has been transitioned out under inmate status, provide a date-certain release for offenders in community corrections while retaining the authority of the Parole Board to conduct a rescission hearing and extend or vacate the parole date in the event of noncompliance. Specifically, when an inmate is accepted in community corrections as a transition client, the Parole Board should set a parole date no later than 12 months from the date of placement in residential community corrections. Likewise, when an inmate has been placed in the Intensive Supervision Program-Inmate (ISP-I), the Parole Board should set a date for parole at 180 days from the placement on ISP-I.**

Recommendation passed as modified.

**Recommendation P-12: When appropriate, and considering the safety of the victim, expand the use of home detention in lieu of jail, as a condition of probation or for a probation revocation.**

It was suggested to include the language, "...considering the public safety and the safety of the victim." (This language was added to the recommendation without a motion.)

What does "expand the use" mean? Would this be expanding the offenses that can offer home detention? Or expanding the length of time? It was expanding the use of home detention for people who are having difficulty in retaining employment. This would allow them to work.

It is being used in Denver and working well. This is being used on individuals who are having difficulty on Probation and who would be revoked and put into jail. They are revoked sooner and instead of being put in jail, they are placed in home detention and probation services.

Recommendation passed as written.

**Recommendation T-63: For individuals entering community corrections facilities provide the opportunity to waive the first two to four weeks of subsistence payments for those who are indigent.**

Are the fees going to be waived or deferred? Waived. What happens to the indigent who cannot pay? Their probation is revoked. Is there a definition of "indigent?" A definition is needed. When people leave DOC, they are usually indigent. People are revoked because they cannot pay for required treatments, such as a UA which costs \$6.00.

**For individuals entering community corrections facilities provide the opportunity to defer the first two to four weeks of subsistence payments for those who are indigent.**

Recommendation passed as modified.



**Recommendation I-61: Funding should be provided for programs for women who give birth while incarcerated that permit the child to live with the mother. The Commission supports the Department of Corrections' effort to expand parenting and bonding programs.**

This doesn't happen frequently with a birth once inside the facility. There are programs set up that address bonding. The infant does not live with the mother in the facility. There are few births while in DOC.

A concern was raised about why the mother is in jail. If she is in there for child abuse this would not be a good program. Why couldn't the infant bond with the father? How long would the infant be there?

John Suthers made a motion to strike the first sentence and make the recommendation read, "The Commission supports the Department of Corrections' effort to expand parenting and bonding programs." Ari Zavaras seconded the motion. The motion passed unanimously.

**The Commission supports the Department of Corrections' effort to expand parenting and bonding programs.**

Recommendation passed as modified.

**Recommendation P-6: Encourage the use of summons and "cash only" bonds rather than arrest and incarceration for offenders on revocation status when the total amount of fees and costs owed is minimal. The judge can convert the cash bond into costs owed.**

Can the Commission add clarifying language of for "nonpayment"?

This recommendation assumes the revocation is legitimate. With a "cash only" bond, you may be able to bond out with a \$50 or \$60 bond and contest it. This could be seen as coercive for an indigent person.

**Encourage the use of "cash only" bonds rather than arrest and incarceration for offenders on revocation status for nonpayment when the total amount of fees and costs owed is minimal. The judge can convert the cash bond into costs owed should the offender fail to comply with conditions of supervision.**

Recommendation passed as modified.

**Recommendation P-11: It is recommended that judges at the initial sentencing hearing consider the negative impact a jail sentence imposed as a condition of probation may have on the offender's ability to maintain employment, housing, and maintain SSI and SSDI benefits, and therefore successfully complete probation.**

Are we focusing on one thing when there are a number of things a judge has to consider for sentencing? One problem is when a judge gives a work release sentence, the offender doesn't have a job. It's ok if they can get out to look for a job.

There are typical sentences judges give. No matter what the defense in the courtroom, the judge will give 90 days as a condition of sentence.

How would this affect victims?

Recommendation was rejected and not discussed further.

**Recommendation P-9: To reduce docket overload and interruptions to the offender's employment, minimize court review hearings and appearances. Educate judges and probation officers on prioritizing support for the offender's employment since research shows that stable employment is linked to recidivism reduction. This does not apply to specialty courts.**

If there is a court appearance, make it a business practice to try to limit the number of times a defendant has to leave work to make court dates.

Regi Huerter made a motion to add "specialty courts or dockets." Don Quick seconded the motion. The motion passed.

**To reduce docket overload and interruptions to the offender's employment, minimize court review hearings and appearances. Educate judges and probation officers on prioritizing support for the offender's employment since research shows that stable employment is linked to recidivism reduction. This does not apply to specialty courts or dockets.**

Recommendation passed as modified.

**Recommendation I-28: Advisory criteria should be established for departing from the actual bond schedule and setting a reduced bond based on a defendant's ties to the community. It is recommended that judges be advised to take the defendant's income into consideration when establishing a bond amount. However, the task force recognizes that certain public safety issues may require an enhanced bond.**

Because these are recommendations from the Commission, the wording needs to change from the "task force" to the Commission.

Recommendation was rejected and not discussed further.

**Recommendation P-13: Resolve new county court cases as soon as possible because unresolved cases may interfere with the success of district court probation.**

This should be a “best practice” for the prosecution. The county court deputies should be talking to their district court counterparts.

Recommendation passed as written.

**Recommendation P-14: When explaining the rationale for a probation sentence, judges should verbalize the defendant’s positive behaviors (such as participation in treatment, employment, family responsibilities) that support a community-based sentence. This approach is supported by research findings that link positive reinforcement to behavior change.**

The task force thought it was important because a new judge may sentence someone to probation and tell the defendant what can happen if they don’t comply with probation. If you start out by expressing how a defendant can be successful, the probation starts out on a positive note.

Recommendation was rejected and not discussed further.

**Funding proposal: Offering 60 days good time for non-violent new intakes and current population, excluding technical violations.**

Good time is different than earned time. Good time doesn’t exist in statute. The good time proposal would affect the date on which an inmate is eligible to first meet with the Parole Board. The date is usually at the half way mark of the sentence. For example, for an 8 year sentence, the Parole Eligibility Date (PED) is half of the sentence or 4 years.

Statute states that earned time can be given for up to 10 days per month to reduce the sentence by no more than 25%. Earned time is not automatic, it has to be earned. Each offender has criteria he/she has to meet. Once the offender has earned the earn time, it cannot be taken away. If you have a behavior issue in prison, as a punishment, you may not be eligible to earn the earn time for a period of a month or two.

The average length of stay on a new court commitment is 29 months for all offenders except life. They have an average governing sentence of a 51-month sentence. Jail time is credited off of the 51 months. There are a lot of offenders who have a huge amount of jail credits on the front end who go into DRDC already past their release date for mandatory parole.

On a class 4 drug conviction, the average length of stay is just over a year. Class 5 is just over 7.5 months. If you try to have them complete a drug treatment program and you are reducing their sentence, it pinches the ability to complete the treatment.

Perhaps one of the things to consider is to create some sort of state and local agreement that treatment be available at the county jail, for those individuals who arrive at DOC already beyond their release date.

It would be valuable to look at adding more people to Community Corrections or other places within the system. The Commission is trying to figure out a way to find money to be able to fund more probation / ISP / Community Corrections. Could we draft legislation that would mark any savings as going toward other projects such as Community Corrections, etc?

Ari Zavaras made a motion for the Commission to support the concept of identifying a specific population of offenders whose time might be reduced (due to increased earned time) to reallocate funds for the implementation of Commission recommendations for the purpose of reducing recidivism and increasing public safety. Don Quick seconded the motion. The motion passed unanimously.

A subcommittee was formed to identify the specific population and develop figures by the October meeting. The funds should be put in recidivism reduction programs. The Chiefs of Police and the public would have difficulty in agreeing to reduce a sentence on individuals who should be in prison longer.

Regi Huerter, Nancy Feldman, Kristi Rosten, Don Quick, Grayson Robinson, Tom Quinn, and Ann Terry will comprise this subcommittee.

Inta Morris volunteered to write a recommendation to federal representatives encouraging a change in financial aid requirements to allow inmates to enroll in higher education facilities and access financial aid.

### **Overarching Issues:**

Regi Huerter discussed how several overarching issues were identified as the task forces were developing their recommendations. These issues were training, minority over-representation, Community Corrections, substance abuse, gender issues, data, victim's rights and mental health. How do we reassign these issues?

Should this be discussed during the October meeting? What we do here will impact the juvenile and sentencing issues.

Pete Weir suggested a briefing on these overarching issues and how they impact the task force issues. The Mental Health Council should also be taken into account. Karen Beye asked that the developmentally disabled be included in the examination of mental health and substance abuse.

The meeting adjourned at 2:43 p.m.