



**Commission on Criminal and Juvenile Justice**

**Minutes**

October 10, 2008  
National Enforcement Training Institute  
12345 W. Alameda Parkway

**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	Regis Groff	Ken Gordon
Tom Quinn	Reo Leslie, Jr.	David Michaud
Ken Gordon		Tom Quinn

**Absent:** Doug Wilson, Gil Martinez, Karen Beye, Rhonda Fields, Ted Harvey, John Suthers, Steve Siegel, Melissa Esquibel, Terrance Carroll.

**Call to Order and Opening Remarks:**

The Chairman, Peter Weir, called the meeting to order at 1:06 p.m. Today’s objective is to finalize the recommendations for the November Commission report. Ellen Roberts and Jeanne Smith will update the Commission on the work of the Direct File subcommittee.

Mr. Weir provided a staffing update. CDPS has received a grant from the JEHT Foundation which provides funds for a full time Executive Director for two years and a staff person. If you know of someone who would like to apply, please have them contact Peter Weir or Adrienne Loye. The Executive Director will be a member of the Governor’s Office but will be housed in the Department of Public Safety. Although the Governor has implemented a hiring freeze Mr. Weir is confident that this position will be classified as an exemption to the freeze.

**Status Report: Direct File Subcommittee by Rep. Ellen Roberts:**

The Direct File subcommittee met twice and each meeting was well attended by the folks who needed to be at the table. The subcommittee has had thoughtful dialogue about the issues from both the defense bar and the prosecution. Rep. Roberts feels this dialogue may result in some common ground.

Ms. Smith stated the subcommittee has been very careful about examining the data. A chart that shows many juveniles have been charged as an adult has been developed. About 1 - 2% of

juvenile cases are direct filed into adult court. Three types of violent crime and theft are the most frequent charges. The statistics were broken down by judicial district. The percentage of direct files was consistent across judicial districts. The statistics showed the prime age category is the 16 – 17 year olds with their age at sentencing being 17 – 18 years old. Average age of an offender in YOS is 19 years old. 87.5% are identified as active gang members or are associated or affiliated with gangs.

There has been dialogue revolving around who makes the decision to direct file. Currently it is the prosecutors that make the decision. Another contingent thought is that the judiciary should make this decision. They are also discussing what the best practices should be and where the juveniles are best served.

Another area being discussed is the feasibility to expand YOS jurisdiction to include 18 and 19 year olds. The subcommittee is gathering data on how many 18 – 19 year olds are in DOC and what kind of sentences are they serving. Without diluting the effectiveness of the YOS program, can it be expanded? Should YOS be opened up for specific sex offender issues?

The subcommittee is looking at the arrest record for juveniles. If a juvenile is arrested and subsequently filed on as an adult, that arrest stays on their records for the rest of their life. This happens even if the arrest results in a juvenile conviction. Can that be changed?

The next meeting will take up the issue of whether 14 – 15 year olds should be eligible for direct file or not. Also to be discussed is a proposal to allow the defense input in the direct file decision. Currently there is pressure to get a case filed quickly, if that pressure were removed, the DA might have more time to allow input by the defense.

### **Review of Recommendations from the ID Subcommittee by Carol Peoples:**

The subcommittee had two meetings and conducted a little research into what other states are doing with regard to their ID issues. A handout containing the recommendations from the ID subcommittee was distributed and discussed.

Header paragraph states: *Whenever feasible, ensure every offender leaving jail and prison ~~has~~ may obtain a driver's license or verifiable state identification ~~before~~ upon release to the community by implementing the following business practices. (Changes: Replace "has" with "may". Replace "before" with "upon")*

Paragraph C states: *When the DOC determines that the full legal name of the incarcerated individual differs from the name on that person's mittimus, the DOC will include that name with the individual's file. Upon release of that individual, the DOC will issue the individual a DOC photo inmate identification card bearing both the name entered on the individual's mittimus as well as the full legal name of that individual. (Changes: insert the word "sentencing" before mittimus. It is the sentencing mittimus that DOC uses in identifying an inmate. A local jail can have 15 or 20 mittimi in their file when an inmate is being transferred back and forth between jails.)*

Paragraph G states: *All district attorneys should investigate and confirm a person's full legal name at the time of prosecution, and prosecution should occur using that name. When a defendant's full legal name is ascertained by the district attorney's office and differs from the name under which the prosecution has commenced, that person's full legal name will be submitted to the court as an AKA and included on all subsequent documents. (Changes: – The Department of Revenue will ensure that its database will identify and link all AKAs so law enforcement can review the person's complete driving history during traffic stops.)*

Paragraph J is the only legislative change.

When DOR issues a driver's license under the correct name, will the street officer making the traffic stop be aware of the alias names? The officer on the street needs to get all the information. If the officer on the street contacts the DMV about a stop on Bill Jones, will the officer also get the information when Bill Jones was using the name of Bill Johnson? It needs to be made clear to DMV that when the license is issued under the name on the sentencing mittimus, that any information pertaining to the other alias names is not lost and is connected to the license.

#### **Vote on ID Working Group Recommendations:**

Is the Commission is comfortable to vote on these recommendations today? Or do you want to have additional time and vote on them in November? Mr. Hautzinger expressed his concern about paragraph J. He believes the district attorney's will not support it.

David Kaplan made a motion to vote on the recommendations, excluding paragraph J. The recommendations include the change in language in paragraphs C and G. Peter Hautzinger seconded the motion. The motion passed unanimously.

A vote of "A" means I support the recommendations. A vote of "B" means I support the recommendations with wording changes. A vote of "C" means I don't support the recommendations.

Peter Weir	A	Ari Zavaras	A	Dean Conder	A
David Kaplan	A	Jeanne Smith (non-voting)		Grayson Robinson	A
Peter Hautzinger	A	Ellen Roberts	A	Regina Huerter	A
Bill Kilpatrick	A	Don Quick	A	Debra Zwirn	A
Inta Morris	A	Regis Groff	A	Ken Gordon	A
Tom Quinn	A	Reo Leslie, Jr.	A		

Not voting because of absence: Doug Wilson, Gil Martinez, Karen Beye, Rhonda Fields, John Suthers, Steven Siegel, Melissa Esquibel, Terrance Carroll. David Michaud was present but stepped out of the room at the time of the vote.

#### **Review of Recommendation from the Earned Time/Cost Savings Subcommittee:**

The subcommittee had two meetings to discuss finding resources to fund the Commissions' recommendations. A number of alternatives were examined by the committee. Without hampering public safety, could we save money by reducing some time on an inmate's sentence? A handout containing the recommendations from the subcommittee was distributed and discussed.

The second page shows potential savings if each of these recommendations is passed.

Is the raising of the earned time by two days for all inmates? Yes, but they have to be compliant with the programs. The additional two days will only apply to those individuals who are eligible for earned time. Violent offenders are not eligible for earned time.

Adding two days of earned time is computed at the rate of 80%. The reason for the 80% is that it was adjusted for the inmates who are going to get discretionary releases or other early releases. The calculations also use the daily rate of private prisons that charge \$57.84/day.

On the shorter offenses it would move the Parole Eligibility Date (PED) from 22.5 months to 21.43 months. On the longer offenses that have an average of 45 months until their Mandatory Release Date (MRD), the MRD is reduced to 42.86 months.

The political reality is that there will be virtually little change for non-violent offenders, but the violent offenders will benefit from this. If the option to increase the earned time by two days, the people who are violent offenders and are serving the longer sentence will be the ones to benefit.

Don Quick and Pete Hautzinger can support the scenario that bumps the Mandatory Release Date by 30 or 60 days for non-violent offenders. They can take this to the DA's for their opinions. Mr. Quick and Mr. Hautzinger could not support giving violent offenders an additional 2 days of earned time, nor the scenario of combining both proposals. Could you take offenders whose violent history is older than 10 years and include them in the non-violent category? DOC said that the inmate population is young and very few have not had a violent offense in the last ten years. Evidence from the state of Virginia shows the "out-date" on offenders older than 55 can be shortened because these inmates have a low recidivism rate. Maybe we could look at shortening the "out-date" for the older offenders.

With what is happening to the economy now, the legislative session will be struggling with the budgets. One of the places that show continual growth is the criminal justice area. .

Tom Quinn stated that it appeared to him that the Commission has consensus on the non-violent offenders. We are not ready to deal with the violent offenders. Ellen wants to have the data, consensus and models in place before we move forward.

Paul Herman suggested the Commission vote on the 30/60 recommendation today. Then ask staff to provide research to the Commission on the violent offenders next month. The Commission voted on the recommendation:

*To allow for enhanced release planning and services, DOC case managers, time computation staff, and members of the parole board should schedule for release a certain category of offenders up to 60 (class 4 and 5) or 30 days (class 6) prior to MRD. This earned release time is available for individuals serving a sentence for a nonviolent conviction crime who meet the following criteria:*

- *No Code of Penal Discipline (COPD) violations;*
- *In compliance with recommended programming;*
- *No prior convictions for a violent crime.*

*(Violence is defined as all those identified in the Victim Rights Act plus false imprisonment, violation of a custody order, enticement of a child, internet luring of a child, internet sexual exploitation of a child, wrongs to children (C.R.S 18-7-402 through 18-7-407, arson, first degree burglary, weapons/explosives/incendiary devices (C.R.S. 18-12-102 through 109)).*

#### **Vote on Recommendation from the Earned Time/Cost Savings Working Group:**

A vote of “A” means I support the recommendations. A vote of “B” means I support the recommendations with wording changes. A vote of “C” means I don’t support the recommendations.

Peter Weir,	A	Ari Zavaras	A	Dean Conder	A
David Kaplan,	A	Jeanne Smith (non-voting)		Grayson Robinson	A
Peter Hautzinger	A	Ellen Roberts	A	Regina Huerter	A
Bill Kilpatrick	C	Don Quick	A	Debra Zwirn	A
Inta Morris	A	Regis Groff	A	Ken Gordon	A
Tom Quinn	A	Reo Leslie, Jr.	A	David Michaud	A

Not voting because of absence: Doug Wilson, Gil Martinez, Karen Beye, Rhonda Fields, John Suthers, Steven Siegel, Melissa Esquibel, Terrance Carroll.

#### **Proposal for Executing the Recommendations and Critical Issues Identified by the Task Forces:**

The handouts distributed today also included a document entitled “Proposed Re-entry Working Groups.” This document lists the critical issue groups (formerly overarching issues) and the recommendations the Commission felt needed further examination. The document outlines the methodology to sort these recommendations into working groups.

Also feel there will be an executive director and areas for him/her to lead.

Mr. Weir asked the Task Force chairmen to contact their members and resume meetings before the November Commission meeting to:

- Identify issues that surfaced over the summer but you did not pursue because you knew you didn't have enough time.
- Look at the recommendations that were approved in September and placed back under your task force. Identify ways for them to move forward.
- There are issues that have not been pursued by the Task Forces. There are things you really didn't dig into. Look at your charters. There are many questions asked in the charter but not answered.

Send note out to task force chairs with these three things.

### **What is the Role of the Commission Regarding Advocating for the Recommendations?**

How will the Commission advocate their recommendations? The outcome on the legislative issues will be easily measured. Either the legislation will pass or it won't. The recommendations on cost savings will be easy to measure by the amount of money found.

How do we measure the outcome on recommendations classified as "general principals?" Can we build up measures? Can we develop a structure for reporting back to the Commission? Was the recommendation implemented? Did it accomplish what the Commission thought it would? During the September retreat the Commission said that if a recommendation affects a general principal or business practice of an agency, the agency would report back to the Commission of the outcome. Since these are recommendations, an agency does not have to follow through with them. But the agency could tell us why they didn't want to utilize the recommendation. Was it cost? Not realistic? If the agency did implement the recommendation, what was the outcome?

Can DCJ come up with performance measures for those recommendations thought of as general principals or business practices? Then in November the Commission can look at these performance measures to see if they would be practical.

- **The Division of Criminal Justice will develop the performance measures and present them to the Commission in December.**

What is the role regarding advocacy? All the recommendations will have been forwarded on to the Governor's Office and there will be a discussion with his policy people. Don't we want to see what recommendations will be embraced before we go further?

The role of the commission is to probe on certain issues. Does the Commission proceed and publish a report and leave it at that? Does the Commission ask that public constituent groups further the recommendations that they like? Or should the Commission be more active?

Senator Gordon suggested finding sponsors, lobby other legislators, determine which items the Governor's Office will support and move those recommendations through the Legislature. Rep. Roberts agreed. Other commissions have come up with reports, but did not go further.

How will the Commission move on those recommendations that do not end up in the Governor's agenda for next year? Not everything can fit into the Governor's legislative agenda. The Commission also will need to figure out which of the recommendations will be "hot buttons"

that a strategy might need to be developed for. The general principals and business practices will be easier to move forward.

What if you are contacted by the press? Anyone can come forward and speak about their role on the Commission and, if they desire, the group which they represent (i.e. Sheriffs Association, DA Association, Chiefs' of Police). There will be people and organizations that will have questions or concerns about some of the recommendations.

This discussion will be continued in November. We will have a better feel on where the Governor will stand on the recommendations.

### **Review and Discussion of the Outline for the CCJJ November Report Plan for Commission Review. Distribution of the Report.**

The full report will be emailed to the Commission the week prior to the November meeting. Following the November meeting, any feedback and / or corrections will be made. The final report will be on the website on November 21. Hard copies to be distributed to JBC, the leadership of House and Senate, the Chairs of both Judicial Committees and the Judiciary will be sent out in December.

### **Brief Overview of November Meeting Agenda:**

- Report from Task Forces on critical issues and the recommendations the Commission felt needed further examination.
- Review of the final Report and feedback from the Governor.
- Data on the Cost Reduction recommendation to increase earned time by two (2) days a month.

The meeting adjourned at 4:33 p.m.