



## Commission on Criminal and Juvenile Justice

### Minutes

July 10, 2009

National Enforcement Training Institute  
12345 W. Alameda Parkway

#### Commission Members Attending:

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

**Absent:** Mark Scheffel, Grayson Robinson, and Claire Levy

**Special guests:** Sen. Evie Hudak, Sen. Linda Newell, Rep. Beth McCann, Stephanie Villafuerte (Governor's Office), Jana Locke (OSPB)

#### Call to Order and Opening Remarks:

The Chairman, Peter Weir, called the meeting to order at 12:49 p.m.

The draft of the 2009 Annual Report has been sent to Commission members for their review. If members have corrections, thoughts or concerns, please send them to Kim English in the Division of Criminal Justice (DCJ).

Mr. Weir and members of the DCJ staff have had constructive discussions with the PEW Foundation concerning funding for speakers and possible research assistance. They are also being asked to supplement the marketing efforts of Tom Quinn and his subcommittee.

It was announced that Tom Quinn and Grayson Robinson will be sent to the National Association of Sentencing Commissions conference in Baltimore, Maryland in August. There were more requests to attend the conference than there was available funding.

Mr. Weir then discussed how the economic challenges facing the state have an impact on the work of the Commission. The state has been required to come up with over \$400 million in additional cuts. As it applies to the Justice Commission, reducing recidivism rates while

maintaining public safety has become more important. All state departments have been asked by the Governor to submit budget reductions of 10% by July 20<sup>th</sup>.

The Department of Public Safety (DPS) has a \$285 million budget; however, a significant portion of its budget comes from Highway Users Tax Fund (HUTF). The general fund portion is around \$87 million. DPS is looking at \$8.7 million in cuts. Their heaviest user of general funds dollars is Community Corrections. To make cuts in that division would put pressure on the Department of Corrections (DOC).

DOC budget reductions are around \$70 million. Ari Zavaras said DOC is looking at some of the recommendations made by the Commission - especially those concerning the length of stay. One question they are asking themselves is, "By using risk assessments, can DOC effectively shorten the length of stay?" With the cuts that need to be made, everything is on the table.

John Suthers said that when the Commission was formed, the primary goal was not to compromise public safety. The economic factors before the state will affect public safety. There is no way that it could not.

Stephanie Villafuerte said that the Commission's focus was on having fewer people in the \$30,000 DOC bed, then re-investing the money in DOC programs to further reduce recidivism. The state is no longer in the same position. Although savings and cuts made by DOC will not be reinvested in programs according to the initial plans, some treatment programs will have to be saved in order to stem recidivism. We can be smarter with funds to accomplish this.

Mr. Weir and Mr. Zavaras would like some Commission members to review proposals regarding length of stay and length of parole prior to their submission to the Governor. This group would be looking at the suggestions with an eye toward recognizing their impacts and implications for the general public and other law enforcement agencies. This work must be done quickly and those participating in the review of proposals must be available on short notice. These urgent decisions are not intended to circumvent or preclude the ongoing work of the CCJJ task forces and subcommittees. The following individuals agreed to participate: Ari Zavaras and/ or Jeaneene Miller from DOC, Regi Huerter, Steve Siegel, Pete Hautzinger, John Suthers, or Tom Raynes from the Attorney General's Office, Doug Wilson, Bill Kilpatrick, Don Quick, Dave Michaud, Pete Weir, Jeanne Smith, Kathy Sasak and Ann Terry from DPS, David Kaplan, Christie Donner (CCJRC), Ted Tow from Colorado District Attorney's Council and Joe Cannata from Voices of Victims.

### **Judicial Survey Update by Peter Weir:**

Members of the Commission and DCJ staff have put together a sentencing survey for the judiciary. Judges are prohibited from participating in policy making decisions. It is the concern of State Judicial that completing the survey could be considered participating in a possible policy making decision process. DCJ staff are working the Judicial staff to finalize the survey while addressing the judicial policy concerns allowing the survey to be disseminated very soon.

**Behavioral Health Update by Regie Huerter:**

Behavioral Health Task Force will meet on July 13<sup>th</sup> to flesh out 22 criminal justice related issues and develop a list of priorities. The Task Force will then send representatives to present the information to the Behavioral Health Cabinet.

**Definition of Sentencing by Paul Herman:**The purposes of sentencing as outlined in Colorado statutes (18-1-102.5):

- a) To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense;
- b) To assure the fair and consistent treatment of all convicted offenders by eliminated unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed and establishing fair procedures for the imposition of sentences;
- c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses; and
- d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders.

The purpose of sentencing as found in the Model Penal Code on Sentencing:

- a) To render sentences in all cases within a range of severity proportionate to the gravity of offenses;
- b) To achieve offender rehabilitation [risk reduction], general deterrence, incapacitation of dangerous offenders, and restoration of crime victims and communities ..., provided these goals are pursued within the boundaries of proportionality ...;
- c) To render sentences no more severe than necessary to achieve the above.

Is there something missing in the current law that needs to be inserted?

- 1. Colorado statute focuses only on offender. Need to include victims and communities.
- 2. The purpose of sentencing, as contained in the Model Penal Code on Sentencing, is more comprehensive.
- 3. Eliminate disparity.
- 4. Recidivism reduction is different from risk reduction. Recidivism reduction is not discussed in either definition.
- 5. Justice should be part of the equation.
- 6. Public Safety is a key issue.
- 7. What about rehabilitation which is defined as providing the individuals the opportunity to obtain the skills to be successful when released.
- 8. Sentencing cannot be "one-size-fits-all". Need to know about the individual.
- 9. Cost beneficial.
- 10. A definition of sentencing may be stated, but the reality of sentencing is a result of the specific judge, the location and politics.

The Commission agreed to use the definition of the Model Penal Code on Sentencing as a base for their definition with the modifications listed above.

**Guiding principles:** What are the measures that we will use to see if sentencing is successful?

1. Keep the purpose in mind.
2. Should be internally consistent from top to bottom.
3. Transparent. Change should have clarity to it.
4. Pay attention to the issues of disparity.
5. Incentives tools to reward good behavior.
6. Give appropriate judicial discretion.
7. Judge would have the ability to take in new information based on what we have learned through evidence-based practices – to the extent possible.
8. Underlying respect for victims and community impact.
9. Consistency across judicial districts.
- ~~10. Swift and sure.~~ Discussion: this might work in specific instances but should not be included in the overall scheme of sentencing reform. Strike #10.
11. Developmentally appropriate.
12. Judicial accountability blended with discretion.
13. Need a risk assessment that the judge can use when sentencing.
14. Consideration of resources and their availability. Resources and the financial ability to pay for alternative sentences effects the disparity in sentencing.
15. Punishment

**Task Forces:**

1. Drug Policy Task Force would include DUI and alcohol related DUS.
2. General Sentencing Task Force includes non-alcohol related DUS, extraordinary risk, aggravated ranges, escape, probation eligibility, mandatory minimums. This task force would work on isolated issues, and if other Commission members identify other issues they want examined, this is the task force for that.

What about sex offender sentencing? This topic might best be examined by its own task force, or a sub-committee of the General Sentencing Task Force. Federal laws have put serious expectations on all the states. Do we want to give up the funding attached the federal laws?

Are the two task forces supported by the Commission? Yes.

**Subcommittee membership:** Who wants to be on which Task Force? Please submit names to Kim English by Wednesday, July 15. If a Commission member is aware of someone who should appropriately sit on the Task Force, send those names to Kim English.

1. Drug Policy Task Force will meet on July 23, August 13, August 27, September 10, and September 24. Members: Hal Morgan (Denver Drug Court Chief), Bill Kilpatrick, Don Quick, Reo Leslie, Regi Huerter, DOC will offer resources to help with impact.

2. General Sentencing Task Force: July 22, August 12, August 26, September 9 and September 23. Members: Doug Wilson, John Suthers, Dean Conder, Gil Martinez, Steve Siegel, Regie Huerter, Regis Groff, Pete Hautzinger.

**Wrap-up and Next Meeting:**

Next meeting will be August 14, 2009 from 12:30 - 4:30 at the NETI facility.

The meeting adjourned at 4:03 p.m.