



## Commission on Criminal and Juvenile Justice

### Minutes

August 14, 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             | J. Grayson Robinson |
| Peter Hautzinger                    | Ellen Roberts (by phone) | Regina Huerter      |
| Bill Kilpatrick                     | Don Quick                | Debra Zwirn         |
| Inta Morris                         | Steven Siegel            | Doug Wilson         |
| Tom Raynes in place of John Suthers | John Morse               | David Michaud       |
| Rhonda Fields                       | Claire Levy              | Tom Quinn           |
| Regis Groff                         | Reo Leslie, Jr.          | Mark Scheffel       |

**Absent:** Karen Beye Gilbert Martinez

#### Call to Order and Opening Remarks:

The Chairman, Peter Weir, called the meeting to order at 12.50 pm and reviewed the day's objectives and agenda.

#### Post-Incarceration Supervision Subcommittee Update

Ari Zavaras (Executive Director, Department of Corrections) shared the Post-Incarceration Supervision Task Force Proposal regarding length of stay and length of parole. Early discharge from parole was proposed. First and foremost, this group considered public safety recognizing the impact and implications of the proposal. The group is in the process of developing front loaded services. Over 2 million dollars are allocated for services (substance abuse, mental health, housing, employment, etc.). Plan is to identify population, conduct monitoring for 180 days after release from prison to parole, submit this information to parole. The group believes this proposal will address the budget situation in the state.

David Kaplan added the population is taken within 180 days of the mandatory release date. Preliminary criteria developed by the group takes into consideration a number of factors: public safety, programs available, being aware of victim alert, what was the institutional behavior of an offender like, programs offender is involved in now, parole plan (homeless plans), etc. When the population comes to the parole board, the board will decide if it is comfortable with the parole release.

Peter Weir reminded the committee that request for early termination of parole once an offender has served 50% of his/her parole period is a part of the recommendation proposed by recommendation L-12.

Regina Huerter thanked the Commission for work completed and recommendations provided.

Doug Wilson asked what will be happening to those who were denied parole in the past, and whether they will be granted parole now.

David Kaplan and Ari Zavaras responded that the parole board will make a determination using the risk assessment tools when the parole eligibility date is known. An offender might be getting out 3 months before the planed parole date. This is the beginning not the end of ongoing efforts.

David Kaplan advised the Commission that the Post –Incarceration Supervision task force is looking at overall parole structure. He says occasionally there is a conflict between budgetary crisis and best practices. The group is looking at parole release decision; looking at what work can be done with the parole board. He says his group is trying to adopt best practices, along with structure revocation process, taking into account public safety and budget implications.

David Kaplan says the goal is to present the structure and look at the population and release it not because of the financial gun, but rather because of a solid parole release system.

### **Sentencing Task Force Update**

Peter Weir reminded the Commission of the 2 task forces: Sentencing Policy Task Force and Drug Policy Task Force.

He says as far as the Sentencing Task Force it has been determined that the group needs experts to help explore these important issues:

- Escape
- Eligibility
- Mandatory minimums
- Repeat Offenders

Pete is asking the two subcommittees to meet 1-2 times before the next Commission meeting.

### **Drug Policy Task Force presented by Grayson Robinson**

Grayson provided an update on the task force work. The group met for the first time yesterday, August 13<sup>th</sup>. They came up with working groups: overall policy, discussion around a matrix determining drug only offences and strictly criminal offenses and treatment. Treatment and incarceration may not be 2 separate things.

**Behavioral Health Update by Regina Huerter**

Behavioral Health Task Force developed a list of priorities, coordination is among most important as well as identification of tools being used across the state. There are many efforts being undertaken around the state. The BH group is looking at what is going on in screening and assessment, looking at issues around formulary (policies), etc. A JAG Grant was received regarding the cross training, assessment and screening

**Community Corrections by Paul Herman**

The Community Corrections subcommittee had a meeting with the Governor's Community Corrections Advisory Council on July 24<sup>th</sup>; by the end of that meeting we finalized a vision for the future. It will be presented to the full council for a vote during the next meeting.

**Sentencing Conference Update**

Tom Quinn and Grayson Robinson talked about the National Association of Sentencing Commissions Conference in Baltimore that they attended this month and provided a summary to the committee.

Many presentations can be found online at <http://www.msccsp.org/nasc2009>

Summary included some history to provide context

- Indeterminate Sentences (Min-Max) – prior to mid 70s
- Lots of discretion to judges
- Much flexibility in parole boards' release decision
- Risk assessment in "salient factor score" or equivalent
- Impressively stable incarceration rates
- Incarceration policy controlled by the CSJ

Sins of the scientists

- Evaluation of rehabilitation- narrow treatment technologies
- Results were largely "null-effects"
- Conclusion that nothing works

Political response:

- Initially from the left: "Do less"
- Response from the Right: "Lock 'em up"
- Support from the concerned public: "Do something"
- Legislative Field Day: mandatories, 3-strikes, determinate sentences
- Presumed effect on crime regardless of the evidence
- Escalating process: "Tough" vs. "Soft" on Crime
- Regime change: control moved from CJS to legislature to DAs
- Sentencing guidelines- only limited success:
  - Concerns were "disparity" (treat similar crimes similarly) and "proportionality" (right amount of time, incarceration for the nature of the crime and the criminal)
  - Sometimes guidelines "descriptive" (norm what is happening) and sometimes "prescriptive:-different results.

Changes in incarceration rates fueled by policy changes (Zimring 2001)

- 1973-mid-1980s- Borderline offenders go to prison vs. probation
- 1985 to 1992- Greater likelihood of incarceration and longer sentences for drug offenders
- 1993 onward- General lengthening of prison sentences: emphasis shifted from “Lock ‘em up” to “throw away the key”

Blumstein and Beck (2004):

- 88% of the tripling of the prison population from 1980 to 1996 could be explained by changes in imposition of punishment

Assessing the impact of the sentencing reform movement:

- Sentences today are more punitive than in the past
- Studies find small reductions in crime from expansion of prison population
- Sentences overall are more uniform but racial/ethnic and sex disparities in sentencing have not been eliminated

Where we are now:

- States facing serious budget crunches
- Emerging coalition of fiscal conservatives and those concerned with treatment and prevention
- Crime rates are at their lowest level since 1960s
- States looking for ways to reduce prison and jail populations
- Consequent constraints on sentencing guidelines

What makes a good investment?

- Target population: Keep marginal people from penetrating more deeply into the system has high payoff. Focus corrective interventions at those on the cusp, as they are the most likely to have behavior altered by the intervention.
- Program fidelity:
- Providers who deviate most from described program elements have the weakest results
- Scale: if a wing or a unit in prison can be closed, savings can be substantial

Consider the purposes of sentencing. Any policy change will have impact on each of these purposes:

- Incapacitation
- Deterrence
- Retribution
- Rehabilitation
- Restoration of victim and offender

## **JAG Grant Update**

Kim English provided an update on the JAG Grant. There is a a onetime grant totaling 4.3 million dollars. Three grants were presented as a package. Two of three pertain to mental health issues. Descriptions of how the grant money will be allocated follow below.

### **1. Metro Crisis Services *Crisis and Access Line* (\$745,000 to the City of Golden, estimated 80,000 calls annually by year two)**

The Crisis and Access Line will be the first point of triage in the new system-assessing the level of need and most appropriate point of service for each person who calls. Once established in the metro area, it will expand statewide services providing a nexus for emergency calls and service

referral options in the area of behavioral health for the public, police, 911 systems, hospitals, and criminal justice professionals.

**2. Criminal Justice Case managers in Mental Centers across the state** ( \$1,496,570 to Div of Behavioral Health)

Based on similar positions located at the Jefferson Center for Mental Health and Arapahoe-Douglas Mental Health Network, this project involves the placement of professionals with criminal justice expertise providing case management and/or offender based therapy in community mental health centers across the state. Case managers will serve a criminal justice population and be a liaison with criminal justice professionals from law enforcement, jails, probation, parole, other case managers, and re-entry and transition specialist to coordinate and provide referrals or services.

**3. CCJJ Evidence-Based Practices Training Center** (\$2,104,497 to Colorado Department of Public Safety, Executive Director's Office)

This Multi-Agency Training Center on Evidence-Based Practice will develop and implement a training initiative that expands Colorado's capacity to provide evidence based offender supervision, case management and services.

This training initiative includes evidence based practice; motivational interviewing, cognitive behavioral training and social networking, criminal justice education, Mental Health First Aid, contingency management, mentoring, and coaching. Approximately 1100 professionals will be trained over 2 years, 22 Train the Trainers, across all organizations.

Probation/parole officers, re-entry specialists and their supervisors, DOC case managers and their supervisors, behavioral health treatment providers, judges, DA's, defense attorneys, victim community, members of the community will be among the training audiences.

### **Judicial Survey Results**

Kevin Ford (DCJ) presented the findings of the Judicial Survey, the Sentencing Survey of Colorado district and county court judges.

The findings of the survey in summary:

- Sentencing structure is complex/confusing
- Lacking discretion and flexibility
- Limit use of mandatory minimums
- Inadequate sex offender and HTO statutes
- Should differentiate escape types in statute
- Increase sentencing alternatives and resources

Sample size: 98 district and county court judges, response rate ~36%.

### *Purposes of Sentencing*

Although judges report general satisfaction with the statute (85%) and there is no need for modification (41%), when provided an example judges appear open to statute modification (64%).

*Sentencing Structure*

Although opinion is somewhat split, more judges report dissatisfaction (36%) with sentencing structure/laws and largely agree that sentencing statutes are complex and confusing (61%).

*Sentencing discretion*

A majority of judges indicate adjusting sentences to account for actual time served (57%). With a healthy majority in opposition (31%), judges largely (59%) report a perceived balance between sentence consistency and discretion, but disagree (72%) with mandatory minimums as an approach to achieve sentencing consistency.

When presented a hypothetical sentencing option, judges would overwhelmingly prefer that the statute allow community corrections placement option (82%). This does not imply that the judges would necessarily use the option.

*Sentence Aggravators*

There is greater agreement than disagreement by judges regarding the appropriateness of current statutes concerning crime of violence (50% vs. 22%) and extraordinary risk (50% vs. 27%). However, opinion is evenly split on statutes addressing habitual traffic offenders.

*Two-prior felony statutes*

More judges disagree (44%) than agree that, in general, the two-prior felony statutes are appropriately written. However, judges overwhelmingly agree (71%) with the aspect of the current statutes that allows DA's to waive a mandatory prison sentence under the two-prior felony condition.

*Sentencing latitude (discretion)*

When sentencing drug (51%) and all other crimes (58%), judges tend to agree that there is sufficient sentencing latitude. However judges disagree that sentencing latitude is sufficient for sex crimes (61%).

*Escape statutes*

Large proportion of judges agree that escape statutes should differentiate between escaping from a secure correctional facility and either walking away from community corrections (70%) or absconding from parole (70%).

*Mandatory sentencing*

Judges indicate greater agreement than disagreement with the imposition of mandatory sentences for four crimes: murder (81%), 1<sup>st</sup>/2<sup>nd</sup> degree assault (42%), Aggr. Robbery (49%) and 1<sup>st</sup> degree arson (45%).

*Sentencing priorities*

When asked what issues you feel the Commission should prioritize regarding sentencing reform judges responded as follows.

Additional Judicial Discretion, Consistency in Statutes and Revising Drug Statutes (T.18, A.18) were ranked #1 and #2 (48%, 43% and 36% respectively).

If you could direct additional resources in your district to expand sentencing options, how would you prioritize the following? Drug treatment and mental health treatment were ranked #1 and #2.

Open ended questions analysis shows the judges feel the current statute is one size fits all situations. The next Sentencing and Drug Policy task force meetings will take place Aug 26<sup>th</sup> and 27<sup>th</sup>. We'll look at open ended comments and provide the analysis.

### **Sentencing Panel Discussion**

Paul Herman facilitated the Sentencing Panel Discussion. Five different panels including: victims, offenders, community representatives ( Jay Flynn, MHCD; Cheryl Frenette, Denver District Court Probation; Julie Prine, Denver Dept. of Human Services), DAs ( Don Quick, Pete Hautzinger, Scott Storey) and Defense Attorneys ( Doug Wilson, Jennifer Ahnstedt, Janele McCabe) offered their perspective and answered the following questions:

1. Describe your involvement with justice system
2. Was justice achieved in your case?
3. What did the system do right?
4. What could the system do better?
5. Do you have questions to your DA?
6. What is one change you would change in our system?

### ***Victim Perspective***

*Was justice achieved in your case?*

- I don't believe it was. Family wanted the case to go to trial. Sentence was not sufficient.
- It was. I had a great attorney.

*What did system do right?*

- They put the person into trial.
- Victim assistance program was very helpful.
- Appointed victim's advocates.
- Opportunity to speak at sentences.
- My sense of involvement with the case helped, called DAs , I had a sense of control, it helped me to get through

*Would you name an obstacle that sticks out in your mind?*

- You (victim) are at disadvantage, at lowest point of your life. You walk into a system and people appear to be human, however they don't want you to be there. We were a burden. People have fullest days; someone who is broken comes in and needs attention.
- Clarity about the sentencing.

*Questions/comments re: sentencing to defense Atty you would like to address?*

- Sentencing system is extremely complicated. We have to make changes earlier: "Broken Window program". 1<sup>st</sup> broken window is a sign; we need to get this person in some kind of program.

### ***Offender Perspective***

*Was justice achieved in your case?*

- My kids were up for adoption. I didn't have \$30,000 for treatment; \$350,000 was the cost to put me in prison for 6 years.

- In 1996 I was an animal who was to be taken away from the streets. In 1996 justice was served. I could be in prison till death. I was given an opportunity to go to therapeutic community. I graduated 3 years ago. It gave an opportunity to accept responsibility; I can't play a victim anymore.

*What did the system do right?*

- They locked me up for a period of time, I needed to be.
- I was incarcerated, I needed it. I was able to study; I dropped out of high school with an academic scholarship.
- Treatment, ability to get treatment, I was diagnosed with several problems. If only these were addressed prior to sentencing.

*What is your major obstacle?*

- I am felon until this day. I don't have the same opportunity as other people.
- Learning to deal with me: I've got to be in several places, doing certain things like seeing a parole officer, coming to the house at a certain time, etc.

*Questions/Comments to your DA?*

- To the prosecution and public defender that are looking at the behavior, not looking at the reasons for that behavior. Substance abuse is not often an issue, there is a reason.

*What is one change you would change in our system?*

- Stop putting people with mental health to prison instead of giving them treatment.
- I was a victim. We are human beings and should be able to get on with our life.
- Get people the treatment, to those who need it. When putting offenders in treatment separate those in groups according to the actual problem (i.e. drug addicts).

### ***Community members***

#### *Your involvement*

Jay Flynn (MHCD). We have a social services team helping people to put their lives together helping with housing, jobs, transportation, etc. We work specifically with people coming out of jail, majority of those have substance abuse problem.

Cheryl Frenette, Denver District Court Probation. The program was started in 1996 and is very effective.

Julie Prine, Denver Dept. of Human Services. We don't deal with offenders. We are dealing with what is left behind: kids whose single parent was sentenced to several years in prison, etc.

*Purpose of sentencing?*

- A lot of kids we see, who don't have a parent, who had a parent a week ago. We have to explain to a child that your parent is going to be gone for several years.

*What is your biggest challenge?*

- To work with people who come out of prison with nothing. Money to take care of this is missing. We can't give back to victims' needs.



- What we can do to nonviolent offenders. Deferring people from jail. Keep the community safe by keeping the person out of jail.

*What did the system do right?*

- Keep the community safe. We are talking much more. We are looking at people at DOC, we are doing better job getting together: hospital, jail treatment.
- Victims services
- Specialized courts- beneficial and helpful
- Training probation officers, teaching officers how to work with offenders.
- More discussion about how do we coordinate our efforts, there is a lot of discussion how do we utilize it to the benefit of offender and the family.

*What is one change you would change in our system?*

- Childcare system, there is a benefits of keeping the children out of the system. Better coordination on the front end (guardianship, food stamps, health insurance) will make backend process better.
- Working together as a team, we will be more successful. Community based resources. Homelessness in CO has a waiting list. Following evidence based programs. Better knowledge of what each system does.
- Coordination, better access to information. To show what we do works, for consumer and society.

*Questions/comments?*

- It is hard to develop trust when diverting a nonviolent offender to a program (mental health).

***Defense Attorneys and DAs***

*What was the most surprising thing you've heard today.*

- Most people thought justice was served. There are always exceptions to the rules
- Nothing.
- The fact the offender accepts responsibility for what he did. I find this consistency from people who went through Pier 1 program.
- The agreement between the victims' panel and offenders' panel about the programs (or lack of) that are available to them.
- What stuck me is how hard it is to get to justice. Judges want more discretion in sentencing. And victims' dissatisfaction with the discretion of judges. One size fits all and at the same time wanting people with similar offences to have similar sentences.
- More need for discretionary sentences. What lead to the behavior, husband death, the story on the accused side is different. We have no empirical evidence that a killer sentenced for 6 years of prison is doing better than the person who was sentenced to death for a similar crime.
- Cookie cutter approach we use is not effective: it has to be alcohol treatment, mental health, etc.
- Consistency between the panels, however there are 2 problems:
  - Getting to the route of the problem;
  - Lack of resources.

- Justice means different thing to diff people: offender, victims have different. My duty is to try to the right thing, not just lock people up.

**Define justice:**

- Do no harm, mitigate the harm, and enhance public safety.
- Ethical duty is to pursue justice. Plea bargaining –try to the offender as well as the crime.
- Justice has to be looked at from 3 sides - victim, offender, community. Sometime it is easy and sometimes it is not. You have to try as best as you can.
- Justice is individual; victim may feel differently, so will offender and his family. Minimum mandatory sentences are different from community judges who decide what's best for that community.
- Misconception exists about the role of a defense attorney.
- Common ground is mental health treatment, drug treatment.
- Two-prior felony condition makes you not eligible for parole. Although we are starting to think about alternatives to prison, we are not there yet. Not all my clients can get into treatment, obtain resources then need ( i.e. housing);
- Exercising discretion on two-prior felony rule it is also how discretion is being used is important.
- We are reactive, not proactive, putting funds into juvenile justice system, trying to look at offenders, not just offenses.
- Diversion program in Jeffco, juvenile assessment center, trying to get a systemic view of kids.
- We are now trying to see who is locked in prison who is not supposed to be there.
- Clients who don't have money to get the treatment, don't get a better plea, we need more resources to get treatment.

**Open forum:**

- Getting into no ability to address drug /alcohol/mental health issue. Meaningful programs, therapeutic community (Pier 1) are helpful.
- Making this a priority, making some policy changes, we have to be committed to this effort.
- Prevention is most important, mentoring programs are to be supported.
- Defenders' saying "it is not my role to seek justice" is not right. I think we all have social contract to seek safe community.
- Seeking justice is done on both sides in the court room. Being smart. Not to waste resources, look for alternatives if they are of value to the system. Commission can do that. Money we save can minimize the debt.

**Wrap-up and Next Meeting:**

Next meeting will be on September 11, 2009 at 12:30 pm -4:30 pm, 12345 W. Alameda Parkway.

The meeting adjourned at 4:30 p.m.