



Commission on Criminal and Juvenile Justice

Minutes

October 16, 2009
National Enforcement Training Institute
12345 W. Alameda Parkway

Commission Members Attending:

Peter Weir, Chairman	Stephanie Villafuerte	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	Ari Zavaras	Doug Wilson
John Suthers	John Morse	David Michaud
Rhonda Fields	Gilbert Martinez	Tom Quinn
Regis Groff	Claire Levy	Mark Scheffel
Alaurice Tafoya-Modi		

Absent: Karen Beye, Reo Leslie, Steve Siegel,

Call to Order and Opening Remarks:

The Chairman, Peter Weir, called the meeting to order at 9:20 a.m. Mr. Weir welcomed the Commission members and gave an overview of the day’s agenda.

Position Statement and Policy Recommendations presented by Don Quick and Doyle Forrestal:

The recommendations blend a public health approach and evidence-based treatment into how the criminal justice system approaches drug and alcohol offenses. It is better public safety to come up with treatment for those addicted to drugs and alcohol so that the cycle can be broken. People who are incarcerated need to be treated while they are incarcerated and then get credit for the treatment they have done when they get out.

After Mr. Quick and Ms. Forrestal gave an overview of the recommendations, general discussion ensued.

1. Maybe we should have a separate group established that can research where the funds for treatment can come from. We do not want this work to be just an intellectual exercise.

2. The biggest challenge is a change in philosophy – that in some cases, treatment is more important than incarceration. This change needs to take place not only with the defense and prosecution, but also with the judiciary and probation.
3. A lot of the recommendations can be done right now and without a fiscal impact.
4. The use of intermediate sanctions will result in more offenders being sentenced to local jails as opposed to DOC.
5. Any decisions that are made at the Capitol that result in a push-down of costs to the local jails will be strongly fought by the local entities.
6. There can be tremendous cost savings that can be realized if offenders do not end up in DOC.

Structure Modifications and Recommendations presented by Tom Raynes and Maureen Cain:

What is the current law? There are four pillars to the current law that drive the sentences. These pillars are: What kind of drug? What did the defendant do with it? How much did it weigh? Does the defendant have any prior criminal history?

Examination of the sentencing framework: Drug offenses are sentenced under the same sentencing code as other crimes. What were the prior offenses and weights? There are no statewide treatment boards or statewide models for drug courts. They examined the classification known as “Special Offender”. They found there are no unique probation or parole provisions in drug sentencing.

Issues and Problems: Data collection becomes difficult because possession, use, sale and distribution are all in one statutory provision. There should be a distinction between the addict and the individual engaging in criminal behavior. Current statutory scheme promotes a “slow road” to prison for addicts. Failure is part of the recovery process. How do we recognize this? The lack of current funding for effective drug treatment programs was discussed. The inability to seal records on a split plea felony deferred judgment. Another problem is the application of the two prior felony rule and habitual criminal issues.

The sentencing grid:

1. The Level 1 felony aggravated range offenders will be going to prison. They treated meth differently by specifically putting it in the aggravated range.
2. By developing an aggravated range, you are willing to give up simplicity for more judicial discretion. It is simpler because you are tying a specific crime to a specific sentencing range. There is no Blakely issue here either.
3. What about people being on bond, deferred sentence or on parole? Are those circumstances something that would put a new offense into the aggravated range? This still needs to be worked out.
4. For a new crime of sale, distribution of any controlled substance to any minor with more than a 2 year age differential between the seller and the minor. Do you want to treat someone who sells a drug to someone close to their age differently from someone who is much older selling drugs to someone young?

5. The possession of the date rape drugs were put into a higher classification than some other drugs because of the impact of the crime.
6. The level II felonies are sentenced to non-DOC placements for the first two offenses. It is only after the third offense that they can be sentenced to DOC. This is an attempt to have the offender get treatment and keep them out of the revolving door. This is the area where there are the most cases, and the most need for treatment dollars. This has the potential to adversely affect the county jails for offenders with the first or second offense.
7. All the levels allow for fines. Do judges actually give out fines now? It doesn't happen often.
8. When looking at drugs, how does the drug relate to public safety?

After Mr. Raynes and Ms. Cain gave an overview of the structure recommendations, general discussion ensued.

1. Can you phase in Recommendation number 1 and begin gathering the savings? Some said yes, others no.
2. Define treatment? How comprehensive would it be? What would the mental health benefits be? This would have to be clarified on a statewide basis and how do we make it accountable? Does the treatment out there work? How do we know it works? What about lack of treatment facilities in rural areas. We don't have a lot of therapeutic treatment centers out there and there is a need for those.
3. "How does this general approach look to the elected members of the Commission?" John Suthers favors recommendation number 1 approach but shares the concern about adequate funding for treatment programs. There is a public perception out there that there are a lot of folks in prison on drug charges alone. Sen. Morse is encouraged with the direction the Commission is taking. The two presentations have been thoughtful and show an immense amount of work. Senator Scheffel says his constituents are concerned about the Commission being soft on crime. He needs more specifics on the cost benefit of the recommendations. He needs tangible evidence-based specifics. Rep. Roberts is concerned that there is a heavy emphasis on an increase in treatment, but the services that are out there now aren't able to handle the current need. How can we reconcile this? Regie Huerter was concerned about the process to divert DOC funds to local entities. Denver is concerned there is an unfunded mandate in this process. What about individuals who have a firearm on them at the time of the arrest? Pete Hautzinger stated these issues cannot be discussed in a vacuum, we need to look at them in relation to the entire code. Don Quick stated we need to take a treatment focus for offenders. The current methods are not working. However, he cannot go back to his citizens and say that treatment is good for public safety, if the treatment is not there.
4. "How do we deal with the medical marijuana issue?" John Suthers said the current situation has resulted in an explosion of dispensaries and grow operations. The number of patients a provider can have is limited. However, there is no limit on the number of providers a patient can have. Claire Levy said the issues are still crystallizing. Ms. Zwirn asked if the Department of Health shouldn't be the agency to monitor the medical marijuana discrepancies. This would require legislation. She also expressed concern about the lack of treatment facilities in her area.

DUI Statutory Recommendations

When we get to voting, there will be three options: (a) I support this proposition, (b) I can live with this proposition, and (c) I cannot support this proposal. It takes a 75% of categories (a) and (b) for it to earn the title of a Commission recommendation. If a recommendation receives 26% or more votes in category (c), the recommendation will be referred back to the task force for further work.

Grayson Robinson gave an overview of the DUI recommendations and the rationale behind each.

DUI-1 The Commission does not support a statute that creates a felony for driving under the influence of alcohol and drugs.

Discussion:

1. Incarceration is not a deterrent to driving under the influence. Adding additional felonies is not a good idea.
2. Did the task force find any data that would indicate having a felony attached to a DUI would act as a deterrent? Sanctions along with treatment are effective. Just incarceration alone is not effective.
3. There is a felony HTO charge out there that is based on multiple DUI convictions. It routinely gets pled down to a misdemeanor. You are better off in County Court with judges who are familiar with DUI treatment that can look at the appropriate sanctions, than you are in District Court and having a felony DUI pled to a misdemeanor and not have a judge familiar with treatment options.
4. What is the cost for an interlock system? Can that be used on habitual DUI drivers? Who will pay for the device? The costs associated with probation, treatment etc., is already prohibitive for offenders.

Vote: (a) 15 (b) 3 (c) 4

DUI-2a Eliminate non-alcohol related Driving Under Revocation (DUR) Driving under Suspension (DUS), and Driving under Denial (DUD) as major offenses for consideration by the Division of Motor Vehicle (DMV) for a habitual traffic offense.

Discussion:

1. This recommendation is for DUR offenses that are NOT alcohol related. In the Arapahoe County jail, there were 518 inmates responsible for 2600 bed days that fell into this category.
2. A lot of people who are categorized as DUR are those who have no insurance and will not get insurance. In state statute, those who are driving without insurance have a mandatory four (4) day sentence. This will not change.

3. The recommendation is to take away a mandatory consideration for an habitual traffic offender. The judge still has discretion. There was no discussion about habitual traffic offenders and DUI.

Vote: (a) 13 (b) 3 (c) 6

DUI-2b Eliminate non-alcohol related Driving Under Revocation (DUR), Driving under Suspension (DUS) and Driving under Denial (DUD) as major offenses for consideration by the DMV as a predicate offense to classification as a Habitual Traffic Offender. Eliminate mandatory jail sentences for DUR while still retaining them as discretionary.

Vote: (a) 18 (b) 3 (c) 1

DUI-3 Increase the minimum alcohol surcharge provided in C.R.S. § 42-4-1301(7)(d) from \$50 to \$100. The additional funding shall be directed to a persistent impaired driving fund to be used for community and jail-based treatment as provided in C.R.S. § 43-3-313, for reimbursement to county jails, evaluation of treatment programs and, if warranted (see Recommendations DUI-11 and DUI-12), DUI Court expansion.

Discussion:

1. The fees collected would be reimbursed to the County jails and used for evaluation of programs and their effectiveness. .

Vote: (a) 13 (b) 5 (c) 4

DUI-4 Any fiscal savings realized through the implementation of effective efforts shall be reallocated for developing and sustaining viable, evidence-based treatment programs related to DUI and associated behavioral health problems.

Discussion:

1. How would you do that? Can you capture both state and county savings? They made the assumption that there would be savings, but did not know how much. In the event there are savings, they wanted to protect any savings and direct them to treatment and not filling pot holes. There is a long-term potential for savings.
2. Do any states have any software that would track the savings?
3. Sen. Morse is happy to support the concept, but a legislature cannot bind a future legislature.

Vote: (a) 17 (b) 2 (c) 3

DUI-5 Treatment provided while incarcerated must be accepted by private sector providers during post-release treatment. This means that any treatment module or level successfully completed by the offender while incarcerated shall not be required to be repeated once released.

Vote: (a) 20 (b) 2 (c) 0

DUI-6 To increase consistency in sentencing DUI offenders, initiate mandatory and expanded jail sentences for 2nd and subsequent offenders.

- **Second offense should receive a minimum of 45 days in jail. Thirty (30) days must be served.**
 - **The remaining jail time may be suspended upon completion of a drug assessment and completion of treatment as currently set forth in C.R.S. § 42-4-1301(7)(e) and C.R.S. § 42-4-1301.3(2)(a).**
 - **Home detention, suspended sentence, and other non-jail alternative are not allowable. In-patient treatment facility time may be credited against time in jail.**
- **Third and subsequent offenses receive a minimum of 90 days in jail. Sixty (60) days must be served.**
 - **Home detention, suspended sentence, and other non-jail alternative are not allowable. In-patient treatment facility time may be credited against time in jail.**
- **Current law, in four separate subsections of C.R.S. 42-4-1301, distinguishes among DUI and DWAI as current conviction and DUI and DWAI as prior. Consolidate these statutes and provide for an aggravated sentence for second and another for third and subsequent alcohol- and drug-related driving offenses regardless of level of current or prior convictions.**

Discussion:

1. Inpatient treatment time may be credited toward treatment. There may be individuals who have money and can pay for treatment outside the jail. Is there a way to make sure these individuals do not obtain low cost treatment that could be better given to someone who is indigent?
2. Does this assume there will be treatment in jail for all those who need it? Or do we need a provision for treatment release if it is not provided?

Vote: (a) 13 (b) 6 (c) 3

DUI-7 C.R.S. § 42-4-1301(7)(IV)(e), allows for two years of probation plus two additional years of treatment and monitoring. Modify this statute to clarify that the time periods do not begin to run until after any jail sentence is served.

Discussion:

1. When referring to “time periods” does this refer to the time of probation? Don’t you have to get the jail sentence as a condition of probation? How will this recommendation work? The intent was to try to extend the treatment time in probation.

Vote: (a) 15 (b) 5 (c) 2

DUI-8 The Colorado Bureau of Investigation (CBI), in cooperation with the Division of Motor Vehicle (DMV), should work toward sharing all alcohol and drug related driving convictions, including impaired driving, documented in the Colorado Crime Information Center (CCIC) to ensure information is available to peace officers regarding offenders with multiple DUI convictions.

Discussion:

1. The intent here is to have a flag that would indicate two prior felony convictions. This is something that might drive a fiscal note for CBI.

Vote: (a) 17 (b) 3 (c) 2

DUI-9a Modify existing bond statutes to enhance the consequences for defendants accused of 3rd and subsequent alcohol and drug related driving offenses, including impaired driving, as follows.

CLARIFICATION

- ~~Require a bond hearing in every case, consistent with domestic violence bonding practices,~~
- Increase bond amounts,
- Include specific bond conditions requiring sobriety monitoring (e.g., pre-trial supervision, alcohol testing, and SCRAM devices),
- Include stipulations restricting alcohol and drug consumption, particularly when operating a motor vehicle, and
- As an incentive for engaging in treatment, provide for consideration of a reduced bond upon an offender’s immediate participation in meaningful substance abuse treatment.

Discussion:

1. Isn’t it a \$10,000 bond on a DUS? Yes if it is a DUI. This makes a penalty for DUS more severe than DUI. There is concern about the increasing of bond amounts.

2. When you put these conditions on bond, we are seeing more and more violations of the conditions on bond. Then the charges turn into felonies.
3. Doug Wilson would like to have further research done on the impacts on increasing the bond. He requested that both recommendations 9a and 9b be deferred until the November meeting.
4. Grayson Robinson made the motion to vote on recommendation on 9a as written and come back to the Commission with research in November. Regis Groff seconded the motion. Vote: (a) 15 (b) 3 (c) 3

Vote: (a) 12 (b) 6 (c) 4

DUI-9b Bond hearing only required when a defendant seeks a bond without the above conditions. The court must make findings that the conditions are not necessary.

Discussion:

1. If you want a bond hearing in every case, then recommendation 9a is appropriate.
2. If you want a bond hearing only when the defendant is not willing to agree to the conditions as listed in 9a, then recommendation 9b is appropriate.
3. There is a presumption of innocence that is being lost here. This recommendation appears to make the defendant unbondable if he/she objects to the conditions listed in 9a above. Being charged with 1st Degree Murder used to be the only charge that was unbondable.
4. The issue is the increase in bond amounts listed in 9a. If you take that section out, then there might be more agreement. If you want to discuss the increase in a bond amount for a second or subsequent arrest, then that can be addressed in another recommendation.
5. After much discussion, items 9a and 9b are tabled until November.

DUI Non-Statutory Recommendations

DUI-10 The Commission should identify a working group to develop a short training curriculum on evidence based sentencing practices for multiple DUI offenders. This information should be presented at the annual Judicial conference and the annual conferences of the Colorado District Attorneys Association, and the Colorado Defense Bar.

Vote: (a) 21 (b) 1 (c) 0

DUI-11 Examine DUI evaluation studies from other jurisdictions and evaluate Colorado DUI courts.

Vote: (a) 21 (b) 1 (c) 0

DUI-12 If DUI court evaluation findings show positive outcomes, the Task Force strongly supports expanding DUI courts statewide by developing local demonstration projects that have local stakeholder commitment and adequate funding. When appropriate, funding sources for DUI courts should be actively explored by local officials.

Vote: (a) 19 (b) 3 (c) 0

Senator Morse stated he would sponsor this legislation in the Senate.

ESCAPE

Doug Wilson presented an overview on the issue of Escape. The working group looked at three recommendations. The first one is to modify the mandatory consecutive sentences in the category of “walk-aways” from community corrections and Intensive Supervision Parolees. The second recommendation involves the development of a pilot project involving intermediate sanctions for individuals who could be charged with escape. The third recommendation did not have consensus of the working group and is not being voted on here. The third recommendation revolved around the status of the individual as to whether he/she escaped or he/she absconded.

Discussion ensued on the third recommendation:

1. If you were a diversion or ISP parole inmate, you would be treated as an absconder. If you are an ISP inmate, then you would be charged with Escape. The difference is the status between diversionary clients and ISP parolees (not considered an inmate of a correctional facility) and ISP inmates (considered an inmate of a correctional facility).
2. Community Corrections providers were concerned about disparate treatment of offenders. Two offenders could walk away. Based on their status, one could be charged with absconding, and the other could be charged with Escape and subject to the mandatory one year consecutive sentence.

E-1 Modify C.R.S. 18-8-209 to eliminate mandatory consecutive sentences in the category of “walk-away” from community corrections and Intensive Supervision Parolees (non-inmate status).

CLARIFICATION

- **This modification would not eliminate mandatory consecutive sentences for those that escaped from Department of Correction Facilities or County Jails.**
- **This modification would allow the sentencing court to sentence for the walk-away to a sentence concurrent with or consecutive to the sentence presently being served.**
- **This modification would not limit the prosecution from filing any additional charges if new offenses were committed while on walk-away status.**

Vote: (a) 11 (b) 4 (c) 7 DISAPPROVED

E-1 revised: John Suthers made a motion that **any individual who is on inmate status irrespective of the facility in which they are held will be subject to mandatory consecutive sentencing. Any individual not in inmate status is eligible for consecutive sentences but it is not mandatory.** Pete Hautzinger seconded the motion.

Vote: (a) 13 (b) 1 (c) 8

E-2 Study the viability of responding to offenders who abscond from community corrections and ISP by imposing intermediate sanctions instead of escape filings in designated pilot sites. Data from the pilot sites would be combined with community corrections escape data to determine whether intermediate sanctions appear to be safe and effective in the management of walk-away offenders.

Vote: (a) 20 (b) 2 (c) 0

Does the Commission want to provide direction to the Escape working group on the third recommendation that involves the status of the offender? Regi Huerter made a motion to have the Escape working group continue to look at creating an absconder classification as it relates to escape. Ari Zavaras seconded the motion. One person opposed to the motion.

Grayson Robinson, Don Quick and Doug Wilson will work with the legislative representatives to work on wording of legislation.

A subcommittee was established that would look at identifying funding sources for the treatment programs that are needed for the Drug and DUI recommendations. The following individuals volunteered for this subcommittee: Regi Huerter (chair), Don Quick, Inta Morris, Tom Quinn or designee, Christie Donner, Rep. Ellen Roberts, Janet Wood, and Sen. Pat Steadman.

PROBATION ELIGIBILITY AND TWO PRIOR FELONY RULE

Tom Quinn presented an overview of the recommendations concerning the two prior felony rule.

P-1a Modify C.R.S. 18-1.3-201, Application for Probation, clearly addressing the crimes eligible for a sentence to probation (see bulleted list below); require one of the two prior felonies to be violent as defined by C.R.S. 18-1.3-406(2); exclude in the prior felony restriction those crimes which were not felonies at the time of the commission of the crime; disallow as a prior felony any crime that is a felony in another state but not a felony in Colorado.

The following crimes are specified in C.R.S. 18-1.3-201(4)(a)(II) are recommended to be omitted from the list of disqualifying offenses for probation eligibility allowed with DA waiver:

- Manslaughter,
- Second degree burglary,
- Robbery
- ~~Theft of property worth \$500 or more,~~
- Theft from the person of another by means other than the use of force, threat or intimidation, and
- Felony offense committed against a child. (This does not mean child support charges.)

Discussion:

1. The district attorneys are giving up their ability to waive the two prior felony rule if none of the prior felonies were for violent crimes.
2. This recommendation now gives the district attorney the ability to waive the two prior felony rule if one of the felonies was a crime of violence. The current law does not allow the waiving of the two prior felony rule if the offender has a conviction for crime of violence.
3. Disqualifying offense, why did you take out felony offense committed against a child. Child abuse and manslaughter are serious crimes.
4. As an alternative, can some of these offenses that are listed can be waived upon recommendation of the DA.

Vote: (a) 18 (b) 3 (c) 0

P-1b This modification should include the imposition of a 10 year time limit starting at post release or post supervision.

IF ABOVE RECOMMENDATION IS APPROVED IT WOULD HAVE THE FOLLOWING EFFECTS

1. *Gives the District Attorney authority to recommend probation eligibility for crimes of violence.*
2. *An affirmative D.A. waiver of ineligibility for probation is not needed for felonies which are not crimes of violence.*

Discussion:

1. The ten year time frame was used because the little habitual offender charges become ineligible after 10 years.
2. The district attorneys can still waive the two-prior felony rule.

Vote: (a) 10 (b) 2 (c) 9 DISAPPROVED

AGGRAVATED RANGES, EXTRAORDINARY RISK, AND MANDATORY MINIMUMS

John Suthers presented an overview of the recommendations concerning aggravated ranges, extraordinary risk crimes and mandatory minimums. We have developed too much complexity in our system for having both categories for aggravated crimes and extraordinary risk crimes. The general conclusion was combine these categories while keeping the general sentencing ranges we have now and maintain a minimum mandatory at what used to be the presumptive range.

Discussion:

1. If someone is on parole or probation or on bond, what happens to their sentencing?
See recommendation A-7.
2. The district attorneys unanimously feel that reduction of the minimum mandatory on crimes of violence is drastic and needs further study. This is a complex issue and should be carefully studied.
3. Are these recommendations mutually exclusive? Or are they a package. They are a package.
4. Doug Wilson expects that this recommendation will increase the sentences. Studies show that judges usually sentence at the mid-point of the range. The ranges are increased through this proposal.
5. If the proposals as set forth by the working group, A-1 was drafted. This recommendation is an endorsement of the work that has been done, but an acknowledgement that this is an area that will take more time to examine.
6. Claire Levy encouraged the Commission to continue to look at aggravated sentences with an eye toward developing something to be brought to the legislature this year.

A-1 The complex nature of Colorado statutes pertaining to aggravated, extraordinary risk, and mandatory minimum sentences requires detailed analysis and careful study to ensure that any recommended modifications conform to broader sentencing policies and structures, and to ensure that the consequences of any modifications are analyzed and well understood by stakeholders. The Commission must first undertake this analysis to guarantee that any recommended statutory reforms must be consistent with evidence-based practices and recidivism reduction.

Vote: (a) 14 (b) 4 (c) 3

Vote on A-2, A-3 and A-4 as a package. If the package does not pass, then we vote on A-1.

Vote: (a) 6 (b) 4 (c) 11 DISAPPROVED

A-2 We eliminate crimes of violence and extraordinary risk crimes from the Code and instead have one category of crimes that carry a mandatory minimum sentence with a broad range of possible sentences (no presumptive range to avoid Blakely problems).

A-3 A single category of crimes is created as to which the Court may consider an enhanced sentence, and must sentence to a mandatory minimum not a mandatory midpoint. The range of possible sentences for these crimes incorporate the minimum and maximum sentences currently provided for crimes of violence and extraordinary risk crimes. A broad range of possible sentences is established for these specified crimes, as follows:

Class 2	8 – 48 years
Class 3	4 – 32 years
Class 4	2 – 16 years
Class 5	1 – 8 years
Class 6	1 – 4 years

Note: DA Pete Hautzinger suggests that if we are moving to a minimum mandatory rather than a mid-point mandatory, that the top end of the sentences should be increased.

A-4 We concluded that the most important factors in considering whether a crime should require a mandatory sentence were the following: 1) mental intent 2) serious bodily injury; 3) use of a deadly weapon (some discussion about a clearer definition of deadly weapon). We recommend that the following crimes require a mandatory minimum:

**18-3-103(1) Murder in the Second Degree
Knowingly Causing Death of Another
Class 2 (Not Class 3)**

**18-3-202(1)(1) Assault in the First Degree
Intent to cause serious bodily injury
Causes serious bodily injury
By means of a deadly weapon
Class 3 — 4-32**

- 18-3-292(1)(b) Assault in the First Degree**
Intent to disfigure or disable permanently
Causes such injury
Class 3 — 4-32
- 18-3-202(1)(c) Assault in the First Degree**
With Extreme Indifference
Creates grave risk of death
Causes serious bodily injury
Class 3 — 4-32
- 18-3-202(1)(e) Assault in the First Degree**
With intent to cause serious bodily injury to police or fireman
Threatens with deadly weapon
Knowing they are performing duties
Class 3 — 4-32
- 18-3-202(1)(e.5) Assault in the First Degree**
Same for Judges
- 18-3-202(1)(f) Assault in the First Degree**
While in custody
Intent to cause serious bodily injury
Threatens staff with deadly weapon
- 18-3-203(1)(b) Assault in the Second Degree**
Intent to cause bodily injury
Causes such injury
By a deadly weapon
Class 4 — 2-16
- 18-3-203(1)(c) Assault in the Second Degree**
Intent to prevent police or fireman from lawful duty
Intentionally causes bodily injury
Class 4 — 2-16
- 18-3-203(1)(d) Assault in the Second Degree**
Recklessly
Causes serious bodily injury with a deadly weapon
Class 4 — 2-16
- 18-3-203(1)(f) Assault in the Second Degree**
In lawful custody
Applies physical force to police, fireman, judge, guard, etc.
(This offense may not be subject to an enhancement now. See 18-3-203(2)(c) for those limited versions of Second Degree Assault that are considered crimes of violence. This is not among them.)
- 18-3-203(1)(f.5) Assault in the Second Degree**
With intent to infect, injure, or annoy
Causes to come in contact with blood, saliva
(See 18-3-203(2)(c). This is not currently a qualifying offense.)
- 18-3-203(1)(g) Assault in the Second Degree**

- Intent to cause bodily injury**
 - Causes serious bodily injury**
- 18-3-301 First Degree Kidnapping**
 - Class 1 or Class 2**
- 18-3-302 Second Degree Kidnapping**
 - All means and methods**
 - Could be Class 2, 3 or 4**
- 18-4-202 First Degree Burglary**
 - Enter building or occupied structure**
 - Assault or menace on a person, or**
 - While armed with a deadly weapon**
- 18-4-302 Aggravated Robbery**
 - All kinds**
 - Class 3 — 4-32**
- 18-6-401 Child Abuse**
 - Resulting in death or serious bodily injury**
 - Acting knowingly or recklessly**
 - Class 2 or 3 felony**
- 18-8-705 Aggravated Intimidation of a Witness**
 - Class 3 felony**

- A-5 Offenses that are currently subject to a mandatory sentences which are not included: Stalking, Escape, Criminal Extortion, controlled substance offenses, and First Degree Arson.**
- A-6 We discussed putting certain kinds of sexual assault into this grid, which could have the effect of a sentence to a set term of years rather than indeterminate to life.**
- A-7 There are other provisions in the code which require mandatory minimum sentences. For example, see 18-1.3-401(9)(a) which requires a mandatory minimum sentence at the bottom of the presumptive range for any offense if the defendant was on bond for another felony when committed. Also some offenses committed while on parole or probation fall in this category. We did not make a final recommendation with respect to these.**
- A-8 We concluded that we would recommend leaving inchoate offenses such as complicity and accessory as they are so the sentences would be the same as for the primary offenses. We also recommend not changing the elevation of one grade of certain crimes when they are committed against an at risk adult or child (although we thought the age of 60 might be low for an at risk adult.)**

- A-9** We also acknowledge that we need to look at how these changes impact the application of the habitual criminal statutes.
- A-10** There was also quite a bit of discussion about how to build in more judicial accountability; for example, requiring written findings if the judge is sentencing below the midpoint of the range or incorporating risk factors for judges to consider in legislation. We did not have consensus on that issue. Judges noted the need for more risk factor analysis prior to sentencing.
- A-11** It was also noted that judges currently have the ability to review a mandatory sentence 120 days after imposition and change it to probation. Do we want to continue this provision?

The meeting adjourned at 4:08 p.m.