



Commission on Criminal and Juvenile Justice

Minutes

January 8, 2010
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	Don Quick	Regina Huerter
Rhonda Fields	Reo Leslie, Jr	Debra Zwirn
Inta Morris	David Michaud	Doug Wilson
Claire Levy	John Morse	Tom Raynes for John Suthers
Mark Scheffel	Tom Quinn	Alaurice Tafoya-Modi
Bill Kilpatrick	Karen Beye	

Absent: Gil Martinez, Regis Groff, Steve Siegel, Mark Waller.

Call to Order and Opening Remarks:

The Chairman, Peter Weir, called the meeting to order at 10:40 a.m. Mr. Weir gave an overview of the day’s agenda and objectives of the meeting.

Commission Review:

Paul Herman revisited the history of the Commission and its mission. The primary mission of the Commission is to enhance public safety and ensure justice. The work of the Commission should keep in mind the rights of the victims.

The mandates of the Commission are:

1. To use evidence-based data on sentencing policies and practices;
2. To investigate effective alternatives to incarceration, the factors contributing to recidivism, evidence-based recidivism reduction initiatives, and cost-effective crime prevention programs;
3. To make an annual report of findings and recommendations, including evidence-based analysis and data;
4. To study and evaluate the outcomes of commission recommendations as implemented;
5. To conduct and review studies, including but not limited to work and resources compiled by other policies and practices in the criminal and juvenile justice systems.

6. The commission developed five priority areas:
 - adult re-entry process,
 - the juvenile justice system,
 - sentencing laws,
 - parole laws, and
 - minority over-representation.
7. To work with other state-established boards, task forces, or commissions that study or address criminal justice issues.

The 2008 Accomplishments include:

1. The first quarter saw the development of the Commission's mission, by-laws and mandates.
2. The second quarter saw the agreement to place the Commission's initial focus on adult re-entry.
3. During the third quarter, work occurred on re-entry and the development of 97 re-entry recommendations that were presented to the Oversight Committee on Re-entry. Of these, 74 recommendations were forwarded by the Oversight Committee to the Commission where 66 were ultimately approved.
4. As an example of the impact of the recommendations, the Arapahoe County jail has saved 3849 bed days between June and November of 2009. This outcome resulted from three CCJJ recommendations included in H.B.09-1263 that modified C.R.S. 17-26, sections 109 and 115.
5. As a result of recommendations implemented by Probation, several hundred fewer individuals have been sentenced to DOC because of technical violations.
6. DOC is likewise seeing positive impacts. The total growth rate has declined to about 15 individuals a month resulting in a decreasing population in DOC. For the first six months of the 2010 fiscal year, the DOC population has been decreasing by 15 males and 23 females a month. Each inmate costs approximately \$28,500 a year.

The 2009 Accomplishments include:

1. The Commission began discussion of sentencing issues and the development of a Sentencing Task Force with three work groups and a Drug Policy task force with three work groups.
2. There is ongoing work in the area of behavioral health in conjunction with the Behavioral Health Cabinet.
3. In the second quarter, the utilization of the CARAS system began. Eight of the 12 CCJJ statutory recommendations were signed into law.
4. In the third quarter, the CCJJ Annual Report provided an update on the 66 recommendations made on re-entry. JAG grants in the amount of \$4.3 million were awarded to fund behavioral health programs and a comprehensive training program.

2010 Preview (this list is NOT absolute):

1. A Status Report on Sentencing is due to the General Assembly on February 1.
2. A White Paper from the Treatment Funding Committee will be presented to the Commission in February.

3. In April the Commission will request progress reports from the departments implementing re-entry recommendations.

Future of the Commission:

Because the Governor announced that he will not be running for re-election, there may be some concerns about the future of the Commission. The Commission was established legislatively and will sunset in 2013. There will be some members whose appointments to the Commission will expire in July. A list will be prepared and presented in February.

Process and Protocols:

Paul Herman reviewed the procedural difficulties the Commission faced during the December meeting. The staff in the Division of Criminal Justice developed a process and protocol document to address these difficulties. Members of the Commission were asked to review this document.

When the Commission is reconsidering a topic, it would be helpful to have the history of the issue at hand. A request was made to provide and display the original wording of recommendations alongside changes to wording as recommendations evolve.

One goal of the Commission is to develop specific points and language that can then be developed into legislation, but not to actually draft legislation. The Legislative Committee of the CCJJ will work with the legislative sponsors to ensure that the intent of the Commission is reflected in the bill. Who is on the Legislative Committee for the CCJJ? Don Quick and David Kaplan will co-chair the committee along with additional Commission members Grayson Robinson, Dean Conder, Regi Huerter, and Bill Kilpatrick. Also participating will be a member of the Attorney General's Office and Ted Tow (Executive Director, Colorado District Attorneys Council). The Commission has legislative sponsors for all its recommendations except for the probation recommendation regarding the two-prior felony rule.

It was suggested that if the members agree on 90% of a recommendation, that it not be sent back to the working group. Instead, the concerns should be hammered out in the Commission meeting. A Commission member may support a recommendation if there are certain elements included in it and may not support it if certain portions are turned down. Would it be possible to have multiple votes on one recommendation – one on each element and one with all the approved elements combined?

A vote "in favor" of a recommendation means you are behind it 100%. A vote of "I can live with it" means the recommendation has general support and that the Commission member will not be testifying against it at the Capitol. A vote of "no support" means a Commission member would be able to go down and testify against it at the Capitol. If a member is going to vote "no support," the member should express his/her concerns at the Commission about why he/she is not supporting the recommendation. All votes are recorded and available on the CCJJ website.

The Commission members understand the integrity of the group and also understand that they are part of a constituency group as well. A Commission member will not speak against a bill derived from an approved Commission recommendation. If a constituency group wants to speak against a Commission bill, their representative on the Commission will not be representing them at the Capitol.

Can a discussion portion be attached to the legislation that would outline the issues expressed by Commission members? This way, the Legislature could see a record of the debate by Commission members before a recommendation was approved.

- Discussion/explanation sections are attached to each recommendation and included in the CCJJ reports.

When does a Commission bill become the bill of the sponsor? A Commission bill may be vetted through the Legislative Committee, but the bill can change throughout discussions at the Capitol. Are we going to ask a sponsor to submit a bill and not allow any changes? Can sponsor changes be vetted through the Legislative Committee to ensure the change does not impact the overall intent of the Commission? When a sponsor is found, does the Commission ask that the sponsor not change the bill because the vetting of the issues was done by the Commission?

Will this also be true on bills that did not pass the Commission? No. If an item is not passed by the Commission, and someone else brings a bill forward, that bill would not have the designation as a Commission bill.

Pete Hautzinger moved to vote on the following: **a vote of “I do not support it” means Commissioners agree not to actively oppose a recommendation that passed the Commission when acting in their Commission role whenever possible; this does not preclude members of the Commissioner’s constituency from actively opposing the recommendation.** Grayson Robinson seconded the motion. Doug Wilson objected to the wording of “whenever possible” and asked that it be stricken. Pete Hautzinger accepted the friendly amendment to strike the wording “whenever possible.” Grayson Robinson’s second of the motion stands.

The final wording of the proposition voted upon: **Commissioners agree not to actively oppose a recommendation that passed the Commission when acting in their Commissioner role; this does not preclude members of the Commissioner’s constituency from actively opposing the recommendation.**

Vote: A – I support the motion: 15

B – I do not support the motion: 4

Based on the requirement of 51% (within rounding) approval on CCJJ policy decisions, **the policy was approved.**

DUI Update:

Rep. Levy will be submitting a DUI bill during the legislative session. Sen. Morse has agreed to be the Senate sponsor. Commission discussions during the October and November meetings highlighted concerns about repeat DUI offenders and the threat they pose to public safety. Rep.

Levy would like permission for her DUI bill to have the label of a Commission bill. She would like the DUI Task Force to review her bill.

Rep. Levy's draft bill has the following tentative components:

1. No changes to first offenses.
2. If the second offense is within three years of the first offense or if BAC is .20 or greater (and first offense is more than three years ago), minimum jail time is 45 days of which 10 must be served. Defendant is eligible for work release but only to go to an existing job. No credit allowed against the minimum 10 day jail sentence. No alternative sentences; i.e., no in-home detention or ankle monitor in lieu of jail.
3. If the second offense is more than three years after the first offense, the same minimum jail time and same mandatory of 10 days would apply, but time can be served as in-home detention. Work release available under same condition as above (must be for existing job).
4. Third offense within three years of a second offense, minimum of 90 days in jail or which 60 must be served. Defendant is eligible for work release for an existing job. No credit allowed against the minimum 60 days. No alternative sentences.
5. In addition to jail, for third and subsequent offenders judge may impose additional sanctions such as vehicle or license plate impoundment, wearing a continuous alcohol monitoring device, in-home detention during probation, mandatory ignition interlock device even while license is under suspension.
6. Probation is the same as CCJJ draft:
 - a. minimum of two years probation for second and subsequent offenses to be imposed as a separate component of the sentence.
 - b. Jail time is not credited against probation.
 - c. Alcohol treatment must be a condition of probation.
 - d. Judge may require regular return to court for active monitoring
 - e. Judge may impose additional two years if necessary for further monitoring and treatment
 - f. Offenders can petition the court to allow for early termination of probation by demonstrating compliance with all terms and conditions of probation and successful completion of alcohol treatment program.
7. In jurisdictions that have DUI court that meets effectiveness standards developed by office of state judiciary, existing DUI court program may be followed after offender serves minimum jail

time. DUI court supervision may begin during period of in-home detention if defendant is eligible for in-home detention. (Note: I don't know whether the state judicial department currently oversees, supervises or approves DUI and other treatment courts.)

8. The increased alcohol surcharge funds will go into a separate alcohol treatment fund which can be drawn on for court-ordered alcohol treatment for indigent and income-eligible offenders, ignition interlock devices for indigent offenders, and for funding alcohol treatment programs in jails.

9. Ignition interlock devices may be required by the court on any offender's vehicle as a condition of probation, even during the period in which their license is under suspension.

Presentation points provided by Levy included:

1. A third time offender can be offered Probation as long as certain conditions are met – such as being employed.
2. A second offense has a minimum jail time of 45 days, of which 10 must be served. The defendant is eligible for work release but only to go to an existing job. No alternative sentences such as in-home detention or ankle monitors in lieu of jail are allowed. After discussion with others, Rep. Levy is open to allowing in home detention for a second offense because not allowing it may cause difficulties for third parties.
3. The third offense has a minimum of 90 days in jail of which 60 days must be served. Defendant is eligible for work release for an existing job. No credit allowed against the minimum 60 days.
4. We want to recognize the public's concern about repeat offenders but also take into consideration the lack of continuity between judicial jurisdictions.
5. Can we intervene between the first and second offense and allow a judge more discretion in offering alternative sentences?
6. In addition to addressing the problem of driving drunk, we also need to put equal weight and attention on the cause of the behavior – which is the drinking. Can we put additional restrictions on the offender such as interlock devices? Consider these early on even during the period when the license is suspended. A scam device for alcohol monitoring should also be used.
7. If we can itemize these suggestions this would give more direction to the court and give the public a sense that repeat DUI offenders will be taken seriously.

Discussion:

1. Rep. Levy would support an education release if the offender is currently enrolled in a program.
2. Defendants who are indigent will not be able to bond out of jail, nor will they be able to pay for the interlock system. An increase in the DUI surcharge could help pay for an indigent defendant's ability to pay for the interlock devices. Rep. Levy was informed of the issue about impound fees and their impact on the indigent.
3. Treatment should include both drugs and alcohol. There is a vast need for drug addiction treatment programs for individuals who have charges not related to dangerous drivers. The purpose of the alcohol surcharge would be geared to individuals who are dangerous drivers – not other individuals who have drug problems.

4. Being placed on in-home detention after the second offense is an alternative to the mandatory 10 day jail time. Work release would also be available if the offender has a job.
5. The Sheriffs Association is concerned about repeat DUI offenders. The short-term cost of mandatory 90 day incarceration will be outweighed by the long term benefits of having these individuals treated while incarcerated. The Sheriffs would also like to discuss out-of-county placement for those counties where their jails are at capacity.
6. Ted Tow (CDAC) said that a second offense has a minimum jail time of 90 days, 10 of which must be served. Rep. Levy's draft says that a second offender should have a minimum of 45 days. Such differences between current statute and components of the draft bill will be discussed by members of the DUI Task Force.
7. Are DUI offenders arrested in Colorado? Yes.

Ari Zavaras made a motion for the **DUI Task Force to take a look at Representative Levy's proposed bill. The DUI task force would take a comprehensive look at the DUI issue with the goal of creating a full and complete package for consideration by the Commission in February.** Tom Quinn seconded the motion.

Vote for the DUI Task Force to review Rep. Levy's bill:

A - I support it: 20

B - I do not support it: 0

Post-Incarceration Supervision (PIS) Task Force:

The PIS task force is bringing forward recommendations for the modification of three different statutes. The first addresses outdated statute language regarding mandatory arrest provisions for parolees. The second improves non-specific language in a statute addressing earned time and prison release. The third improves the organization of the statute regarding parole release and proposes a guideline for structured decision making for parole release decisions. The structured decision guideline for parole release decisions builds on the current system and uses evidence-based practices to improve the system. The discretionary guidelines provide a structured and systematic approach that can assist Parole Board members in parole deliberations.

PIS09-1. Modify CRS 17-2-207(3) to eliminate mandatory arrest provisions for individuals on parole.

(NOTE: A strikethrough of words indicates suggested deletions from existing statute.)

CRS 17-2-207

(3) ~~Offenders on parole shall remain under legal custody and shall be subject at any time to be returned to a correctional facility. If any paroled offender leaves the state without lawful permission, he shall be held as a parole violator and arrested as such. If any parolee not paroled to reside in a county in which a correctional facility is located is found within the boundaries of such county without lawful permission, or if any parolee who is paroled to reside in such county~~

~~or is in such county without lawful permission is found within the boundaries of state property without lawful permission, he shall be arrested as a parole violator.~~

Discussion:

1. The three elements of this paragraph should be eliminated. These violations are better managed using parole officer discretion which, if appropriate, may involve intermediate sanctions rather than arrest and revocation. In addition, the expansion of correctional and “state property” in most counties makes prohibitive the travel restrictions mandated by this statute.
2. There are some county jails that will not accept technical violators unless the violator is a clear danger to the local community. DOC has made provisions for instances in these circumstances. Some county sheriff’s have space and DOC will send a technical violator to those county jails.

Peter Hautzinger made a motion to approve this recommendation. Ari Zavaras seconded the motion.

Vote to approve this recommendation as written:

- A- I support it: 17
- B – I can live with it: 2
- C – I do not support it: 0

Based on the requirement of 75% (within rounding) approval or 30% (within rounding) disapproval on CCJJ recommendation decisions, **the recommendation was approved.**

PIS09-2. Modify CRS 17-22.5-405 to clarify eligibility exclusions, program compliance, and criminal history disqualifications.

(NOTE: Capital letters indicate suggested new material to be added to existing statutes; a strikethrough of words indicates suggested deletions from existing statute.)

CRS 17-22.5-405

(1.5) (a) Earned time, not to exceed twelve days for each month of incarceration or parole, may be deducted from an inmate's sentence if the inmate:

- (I) Is serving a sentence for a class 4, class 5, or class 6 felony;
- (II) Has incurred no CLASS I code of penal discipline violations WITHIN THE PREVIOUS TWENTY-FOUR MONTHS AND NO CLASS II CODE OF PENAL DISCIPLINE VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS OR SINCE BEING CURRENTLY INCARCERATED IF LENGTH OF INCARCERATION TIME ON CURRENT CONVICTON IS LESS THAN TWENTY-FOUR MONTHS. while incarcerated
- (III) IS CURRENTLY has been program-compliant; and
- (IV) Was not convicted of, and has not previously been convicted of a felony crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., or section 18-12-109, C.R.S., SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306, or a crime listed in section 24-4.1-302 (1), C.R.S.

(6) Earned release time shall be scheduled by the parole board and the time computation unit in the department of corrections for inmates convicted of class 4 and class 5 felonies up to sixty days prior to the mandatory release date and for inmates convicted of class 6 felonies up to thirty days prior to the mandatory release date for inmates who meet the following criteria:

(a) The inmate has INCURRED no CLASS I code of penal discipline violations WITHIN THE PREVIOUS TWENTY-FOUR MONTHS AND NO CLASS II CODE OF PENAL DISCIPLINE VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS OR SINCE BEING CURRENTLY INCARCERATED IF LENGTH OF INCARCERATION TIME ON CURRENT CONVICTON IS LESS THAN TWENTY-FOUR MONTHS.

(b) The inmate is CURRENTLY program-compliant; and

(c) The inmate was not convicted of, and has not previously been convicted of a felony crime in sections 18-7-402 to 18-7-407, C.R.S., section 18-12-102, C.R.S., or section 18-12-109, C.R.S., SECTION 18-6-701, SECTION 18-3-303, SECTION 18-3-305, SECTION 18-3-306 or a crime listed in section 24-4.1-302 (1), C.R.S.

Discussion:

1. COPD means Code of Penal Discipline violations.
2. The proposed wording changes to the statute would make the following changes to the earned time statute that was enacted in HB 09-1351, including:
 - Clarify that the exclusion from eligibility for disciplinary convictions while incarcerated would be time bound rather than the current language which disqualifies an individual who has any Class I or Class II COPD violation. The new language limits the period to the following:
 - If someone had been incarcerated for more than 24 months, s/he could not have received:
 - A Class I COPD conviction during the previous 24 months AND
 - A Class II COPD conviction during the previous 12 months.
 - If someone had been incarcerated for less than 24 months, s/he could not have received:
 - A Class I COPD conviction during the course of their current incarceration, or
 - A Class II COPD conviction during the past 12 months.
 - If someone had been incarcerated for less than 12 months, s/he could not have received:
 - A Class I or Class II COPD conviction during this period of incarceration.
3. These changes limit the period for which a COPD violation would disallow earned time and earned release time, rather than leaving this period undefined, potentially including old violations which no longer are characteristic of an offender's behavior.
 - Clarify that, in order to be eligible, an inmate must be currently program compliant. This update replaces the current language that suggests an inmate could have been program compliant in the past, but who may not currently be compliant.
 - Limit the disqualification due to criminal history only for certain felony convictions. This update replaces "crime" with "felony crime" because several of the disqualifying offenses derived from the enumerated statutes include misdemeanor offenses.
 - Add "contributing to the delinquency of a minor" as a disqualifying offense (CRS 18-6-701). This update adds this specific disqualifying offense.

4. DOC supports this proposal. It requires compliant behavior by the offender. It fits with their program of positive reinforcement.
5. When you add Contributing to the Delinquency of a Minor, most of those crimes do not rise to the level of the other offenses (providing alcohol to a minor). The purpose of adding this was for times when an adult is grooming someone for felonious acts. Sex assault on a Child often results in a plea to the reduced charge of Contributing to the Delinquency of a Minor. To get a prison sentence on this charge, would require a more severe crime.

Ari Zavaras made a motion to approve this recommendation as written. Pete Hautzinger seconded the motion.

Alaurice Tafoya-Modi made a motion to amend the recommendation by striking the statute concerning the Contributing to the Delinquency of a Minor. Doug Wilson seconded the motion to amend the recommendation.

Vote on the amendment to the motion:

A – I support it: 11

B – I can live with it: 2

C – I cannot support it: 6

Based on the requirement of 75% (within rounding) approval or 30% (within rounding) disapproval on CCJJ recommendation decisions, **the recommendation amendment did not pass.**

Vote on the recommendation as drafted:

A – I support it: 12

B – I can live with it: 6

C – I cannot support it: 1

Based on the requirement of 75% (within rounding) approval or 30% (within rounding) disapproval on CCJJ recommendation decisions, **the recommendation was approved.**

PIS09-3. Introduce a structured decision-making guide for use by the Parole Board.

The form for the Administrative Release Guideline Instrument is appended. The parole guidelines statute (17-22.5-404) has been revised to accommodate the proposed Guideline Instrument. This revised statute is appended.

This structured decision-making guide was designed:

- *To enhance public safety*
- *To reflect evidence-based practice.*
- *To include existing data elements and practices employed by members of the State Board of Parole, the Division of Parole, and the Department of Corrections.*
- *To focus on considerations of offender risks and criminogenic needs.*
- *To include, as an essential element, considerations of re-entry readiness.*

- *To provide greater consistency in parole decision making.*
- *To further the process of systematically collecting data on parole decisions.*

Discussion

1. The Parole Board Release Guideline Instrument relies on CARAS scores and LSI scores that have been compiled by DOC personnel. These scores are used when deciding the risk factors for releasing an inmate.
2. How do mental health issues come in on the LSI score? 25% of the population in DOC has mental health issues. LSI scores capture mental health issues under the “Emotional/Personal” section.
3. There is nothing mandatory about this form. It is a guide.
4. Currently there is no form like this. The Parole Board has several documents and forms that they use when making their decision.
5. DOC supports this instrument; however there will be some resources needed to accomplish this. There will be a fiscal note attached to this. DOC will have to run some numbers.

Regi Huerter made a motion to accept the guideline as written. Ari Zavaras seconded the motion. Can the Parole Board use the guideline without legislative changes? Yes, but they would not be compliant with the law. The legislative declaration should be included to explain why the instrument is a good idea. Regi Huerter and Ari Zavaras withdrew their motion and second to allow further discussion.

Sen. Morse moved that we make a recommendation to the Parole Board to go forward and use the instrument and include the legislative declaration as the reason why the Commission feels this is a good instrument. Ari Zavaras seconded the motion.

Vote on recommendation that the Parole Board use the instrument (but delay the review of the statutory part of the recommendation):

- A – I support it: 11
- B – I can live with it: 4
- C – I do not support it: 2

Based on the requirement of 75% (within rounding) approval or 30% (within rounding) disapproval on CCJJ recommendation decisions, **the restricted recommendation was approved.**

The Commission will look at the proposed statutory changes in the recommendation in February.

Discussion of February 2010 Sentencing Report/Memo:

Sentencing Policy Committee will be reconvened before the February meeting to examine the requests made by the Governor and the Attorney General.

The meeting adjourned at 4:34 p.m.