



## Commission on Criminal and Juvenile Justice

### Minutes

October 8, 2010  
 U.S. Dept. of Transportation  
 12300 W. Dakota Ave., Lakewood, CO

#### Commission Members Attending:

Kathy Sasak, Chairman	Ari Zavaras	Mark Scheffel
David Kaplan, Vice-Chairman	Jeanne Smith	J. Grayson Robinson
Scott Storey for Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Claire Levy
Inta Morris	Regis Groff	Doug Wilson
Tom Raynes for John Suthers	Reo Leslie, Jr.	Michael Anderson
Alaurice Tafoya-Modi	Gilbert Martinez	Ken Tomlinson for Tom Quinn

**Absent:** Karen Beye, Rhonda Fields, Steven Siegel, John Morse, Debra Zwirn,

#### Call to Order and Review of the Agenda:

The Chairman, Kathy Sasak, called the meeting to order at 12:45 p.m. A schedule of the task force and Commission meetings for the next three months was distributed.

#### Juvenile Task Force Update:

Reggie Huerter stated that the Juvenile Task Force met for the first time two weeks ago. Because the juvenile system is so large and complex, the task force is focusing on educating its membership on the many issues. They have developed a calendar for bench marks and are working on developing a mission and vision. At the next meeting at the end of October, they will discuss the scope of work ahead of them and will break into working groups.

#### Sex Offender/Sex Offenses Update:

David Kaplan said this task force is working on developing legislative recommendations for presentation to the Commission. Seven potential problem areas were identified, two of which were identified for work in the short run. These areas are sex offender registration and refinement of indeterminate and determinate sentences.

The Registration Working Group is headed by Maureen Cain. The registration system is overwhelmed. The group is looking at whether the risk an offender poses to the public can be taken into consideration or reflected in the offender's registration profile. Juvenile registration

requirements and homeless registration are also issues. When discussing issues involving sex-offenders in the juvenile arena, the work will be done in the Sex Offender Task Force with updates given to the Juvenile Task Force. The group is also looking at the wide disparity from location to location in the fees required for an offender register.

The Refinement of Indeterminate Sentences Working Group is headed by Ted Tow. This working group has some short term issues they want to address for this legislative session. One concept is the creation of a determinate Class 4 felony offense. There are areas in the statutes that could be examined for redundancy and inconsistencies.

These working groups hope to make an initial report to the Task Force at its November 5<sup>th</sup> meeting with a presentation of recommendation concepts to the Commission in November and actual voting on recommendations during the December CCJJ meeting.

### **Comprehensive Sentencing Update:**

Jeanne Smith stated the Comprehensive Sentencing Task Force decided to start with an examination of theft statutes. This first area will allow the task force to develop a template to be used when examining other areas of sentencing. The next meeting will outline philosophies for sentencing and crime classifications.

A working group has been established to examine the sunrise review process. Before a new criminal law is brought to the Legislature, should it go through a process to see if something similar is already on the books? Can a process be developed so that duplications can be avoided and the full cost and consequences of the law are known before any legislative vote is taken? Rep. Levy will chair this working group.

### **Treatment Funding Work Group Update:**

The work of the Treatment Funding Group started a year ago as a result of the work of the Drug Task Force. The thought was if there were to be changes in drug laws, there was a corresponding need for treatment. Public safety and recidivism reduction requires synchronizing treatment with criminal justice sanctions. Research unequivocally finds that substance abuse treatment reduces both drug use and criminal behavior and that successful treatment occurs at the earliest possible opportunity.

Criminal behavior increases with addiction. Untreated substance abuse offenders are more likely to relapse into criminal behavior. Forced abstinence without treatment does not work.

Science has demonstrated that addiction is a brain disease. The brain chemistry fundamentally changes the reward structure of the brain. While addicts must take responsibility for their recovery, brain research explains why an addict cannot stop using drugs by sheer force of will alone. Relapses are expected and are part of treatment.

Colorado's problems are higher than the national average. In the past year, alcohol dependence among those 26 and older is twice the national average and illicit drug dependence is almost 20% higher than the national average.

In 2008, nearly 30,000 individuals were arrested in Colorado for DUI or DWAI. Division of Probation Services found that 27,255 individuals were evaluated in 2008. Of these, 23% had prior arrests for DUI/DWAI and 16% had at least 2 prior DUI/DWAI arrests. During this same year, 77% of offenders in Community Corrections had substance abuse needs. Nearly 80% of DOC inmates/parolees had moderate to severe substance abuse problems. In 2008, Arapahoe and Denver county jails reported more than 20% of their jail population had serious mental health problems.

The average length of time spent in adult outpatient treatment is about five months; half were in treatment for three months or less. Those with drug problems had been using the drug for years prior to referral.

What resources are there in Colorado? The Division of Behavioral Health licenses more than 300 treatment programs in over 700 sites across the state. Drug courts work and have been found to be cost beneficial. In Colorado, there are 20 adult drug courts and 20 juvenile drug courts.

As a result of the legislation that came out of the recommendations made by the Drug Policy Task Force and the CCJJ last year, approximately \$8 million has been collected for drug treatment. As a result of HB-1347, the DUI bill increased the persistent drunk driver surcharge from \$50 to \$100 collecting \$250,000 during the first year. HB-1352 is estimated to create \$50 million for drug treatment over 5 years. Currently figures show that it has created approximately \$1.5 million. HB-1284 created the medical marijuana sales tax which has raised approximately \$2 million for treatment.

#### Recommendations of the Treatment Funding Group:

1. Convene a group to streamline and coordinate existing funding mechanisms as a means to expand data collection and reporting. Multiple funding authorities and funding sources complicate the allocation and evaluation of behavioral health treatment dollars. Currently there is no consistency among groups in the method of data collection. Common data fields need to be determined and approved. Finally, streamlining the data systems will come at a cost. The group would identify the costs associated with the streamlining process.
  - a. Isn't this part of the mandate of the Behavioral Health Council? Can we get a seat on that group? Doug Wilson asked that any duplication of efforts be reviewed before going forward with this recommendation.
2. Implement a standardized mental illness screening instrument as part of the presentence investigation and post-sentence intake processes. The goal is to have probation include mental health screening as part of their intake process. This would be an additional process and separate from the LSI and substance abuse assessments. An adjunct issue is, once the information is collected, who should it go to? Should it go to the prosecutors

and court system? This would not require a legislative recommendation, but more of a change in practice and procedure.

3. The Commission and decision makers in the criminal justice system should support HCPF's efforts to intervene early with health care problems and align resources to increase efficiency and patient access to services.
4. The State Court Administrator's Office should work with the Department of Human Services' staff administering TANF, along with other financial support systems, to develop a systematic method for leveraging social support funding to encourage sobriety and recovery for persons under supervision of the criminal justice system. This will not be an item up for formal recommendation and vote. It is a conversation the working group is having.
5. Consolidate and streamline resources, and develop a unified strategy for Colorado's behavioral health system. If this becomes an approved recommendation, there will be a need to work with the JBC.
6. Use the Commission's Evidence-Based Practices Training Initiative as a vehicle to maximize behavioral health treatment resources. This is already being done through the Evidence Based Practices Implementation for Capacity (EPIC) project.
7. Mandate that justice agencies refer offenders only to treatment programs that are licensed by the Department of Human Services to provide treatment for the population the program serves. This is specific to substance abuse treatment providers and does not include mental health treatment providers. This is to match the treatment provider with the need of the offender.

### **Drug Policy Task Force Recommendations:**

The Drug Policy Task Force continues to move forward. It is anticipated that the Drug Policy Task Force will vote on recommendations it wishes to bring forward to the Commission during its November meeting.

1. DUI Clean-up Issues: There were two unintended consequences from HB10-1347. There was no intention to change the law for a first offense. However, probation is now mandatory as is monitoring of sobriety. Second, juveniles charged with their second DUI are now required to go to jail. This cannot happen with a juvenile.
2. Marijuana Per Se: Do we need to establish a Per Se limit of THC in the blood system as a way to measure impairment? There are states with a zero tolerance policy compared to other states that have an 8 nanogram level of THC. The Task Force is using a 5 nanogram level as its basis for impairment.
3. Habitual Offender: At this time the Drug Policy Task Force has reached consensus around not having a Class 6 felony Possession case as a qualifying offense for filing habitual offender charges. Further discussion needs to be had around using the drug possession offenses as the predicate offense for the habitual charge. Other topics would be the district attorney's discretion in the filing of habitual charges. A request for data from the Judicial Department on 2009 habitual cases has been submitted.
4. Sealing Records: The working group is looking at sealing of records and keeping their work consistent with the ABA standards. The importance of sealing records is found in employment and housing issues. Currently, offenders can seal convictions for a

misdemeanor, petty offense, class 5 and 6 drug offenses after 10 years with no arrests. For these low-level crimes, can the length of time be shortened? They are looking at a tiered structure. For example, Class 2 -3 misdemeanor drug possessions, municipal ordinances or petty offenses could be sealed after three years. Class 1 misdemeanor drug possession could be sealed after five years from final disposition or release from supervision.

- a. Have there been any discussions with DORA? In order to obtain licensure from DORA, all convictions need to be revealed.
  - b. If you are applying for a job and the application asks if you have been convicted of a felony, and you have had the conviction sealed, do you say no? With the ability to find almost everything on the web, the applicant should say yes, but that the record is sealed.
  - c. What is the cost to seal a record? \$464.00 filing fee to seal a conviction.
  - d. We need to figure out the process and fix the problem.
5. Parole: Last year, the Drug Policy Task Force recommended that possession of a controlled substance be considered a misdemeanor and not a felony. This passed as a result of HB10-1352. Are there individuals within DOC who are sentenced to prison with the highest charge being a felony conviction for possession of a controlled substance? Can this subset of DOC inmates be released on their Parole Eligibility Date (PED)?
- a. When the Parole Board decides to place an individual on parole, their release plan is also examined. Does the offender have a good release plan or, if he is to be released, is he being set up for failure? The behavior of an individual in DOC is also factored into their ability to parole early.
  - b. This sounds like a parole issue. If an offender is not yet ready for parole because they do not have a good exit plan, we should go back to re-entry preparation issues. This does not sound like a sentencing disparity issue.
  - c. There are issues about public safety and saving money. Can we take the funding that would have stayed with the offender while in DOC, and have it follow him into the community and be used for treatment?
6. School Zones: Last year we had discussions about the sentence enhancer for dealing/selling drugs within 1000 feet of a school zone or public housing. The question was whether the 1000 foot limit is valid? Should we consider just talking about the distance? Or do we look at other factors such "over a river or through the woods?" Do we insert the language "in a manner that can reasonably be determined to impact the school/public housing or the students/public housing residences?" Is it just being filed as a plea bargaining tool? The working group also needs to examine where the housing agencies and schools are coming from?
7. DUI-9: Bond Recommendation. This was approved by 85% of the Commission in December 2009 but was not included in the DUI bill. This will be brought back to the Commission for a vote in November to move forward as a legislative recommendation.

**CCJJ 2010 Performance Measures:**

One of the statutory requirements when the Commission was created is that the Division of Criminal Justice must prepare an annual report. As part of this annual report, a summary of the Commission's accomplishments are outlined and shared here.

1. In December 2008, sixty-six recommendations regarding re-entry were submitted to the Governor.
2. In 2009, forty-five recommendations went to the 2010 General Assembly.
3. In 2008, the CCJJ made a recommendation to decrease barriers to employment. One barrier identified was the inability to drive to work because of a loss the driver's license for non-traffic related offenses. In 2008, over 10,746 people had their licenses revoked because of defacing property, felony or misdemeanor drug use, first-time minor in possession of alcohol, forgery, and criminal mischief. In 2009, only 1,056 individuals had their license revoked which is a 90% decrease.
4. In 2008, three recommendations were focused on giving good time credits in jail. In a twelve month period, Arapahoe County jail had a savings of 7,220 bed days for a total of \$490,960. This was at no cost to public safety. Denver County jail estimated that is saved 29,200 bed days for a total amount of \$1,600,000.
5. In 2008, a recommendation was made on early termination of parole in specific instances. To date, the Parole Board has discharged 1,377 offenders.
6. \$8 million for behavioral health treatment will be available due to the recommendations made by the Commission in 2009.
7. Recommendations made to deal with technical violators (i.e. intermediate sanctions, implementing positive reinforcement and incentives) have been implemented by Probation and Community Corrections.
8. Some recommendations in 2008 revolved around training. The Department of Public Safety received a \$2.1M grant to implement this training.

Can we have a reporting mechanism concerning the recommendations that have not been implemented? Some of those recommendations could be grouped together and an agency can provide a status report. This will be an ongoing agenda item.

**Next meeting:**

Next meeting will be Friday, November 12, 2010 from 12:30 – 4:30 p.m. at the U.S. Department of Transportation. The December 10th meeting will probably be a lengthy meeting and we would like to go from 10:00 – 4:30. Ms. Sasak and Mr. Kaplan will be reaching out to the Governor-elect's transition team to provide the new Governor with information about the Commission.

The meeting adjourned at 4:01 p.m.