



Commission on Criminal and Juvenile Justice

Minutes

February 11, 2011
 U.S. Dept. of Transportation
 12300 W. Dakota Ave., Lakewood, CO

Commission Members Attending:

James H. Davis, Chairman	Tom Clements	Ellen Roberts
David Kaplan, Vice-Chairman	Jeanne Smith	Grayson Robinson
Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Inta Morris	Steven Siegel	Doug Wilson
Michael Dougherty for John Suthers	Reggie Bicha	Michael Anderson
Regis Groff	Claire Levy	Tom Quinn
Reo Leslie, Jr.		

Absent: Gil Martinez, Rhonda Fields, John Morse, Alaurice Tafoya-Modi, Charles Garcia

Call to Order and Opening Remarks:

The Vice-Chairman, David Kaplan, called the meeting to order at 12:46 p.m. and asked the members present to introduce themselves. Mr. Kaplan explained that some new members of the Commission attended an orientation session earlier in the day to be briefed on the Commission and the work the members have done.

CCJJ General Updates:

1. EPIC – Promising Practices: Jeanne Smith announced the EPIC program (Colorado’s Evidence Based Practices Implementation for Capacity) received recognition in the most recent National Institute of Justice Bulletin.
2. Prison Population Projections: Kim English reported that there has been a significant decline in the DOC population. One of the main factors has been fewer probation revocations which would have had those offenders being sentenced to DOC. DCJ researchers expect a 33% decline is expected by 2015 due to many progressive initiatives. With the reduction in inmate population, cost savings can be realized. Don Quick suggested that the Commission conduct some strategic planning on where these savings will be directed. This would be a long-

term plan. It is possible that there may be a shift in the type of offenders sent to DOC which would result in the level of supervision DOC may have to provide.

Legislative/Budget Update:

1. Status of CCJJ Recommendations

- a. SB11-96: *Concerning Excluding a Class 6 Felony Drug Possession Conviction as a Qualifying Offense Under the Habitual Statute.*
This will be heard by the Senate Judiciary Committee on February 14.
- b. HB11-1064: *Concerning a Parole Presumption Pilot Program for Certain Drug Offenders.*
Passed out of the House Judiciary Committee on February 8th.
HB11-1167: *Concerning the Petition Process for the Sealing of Certain Drug Offense Records.*
Scheduled to be heard by the House Judiciary Committee on February 24th.
- c. HB11-1189: *Concerning Bail Bond Conditions for Those Arrested for Subsequent Substance Abuse Driving Offenses.*
Assigned to the House Judiciary Committee but a hearing date has not yet been set.
- d. HB11-1239: *Concerning a Requirement to Include Additional Information in Fiscal Notes for Certain Bills Related to Criminal Offenses.*
This is scheduled to be heard by the House Judiciary Committee on February 24th.
- e. HB11-____: *DUI Clean Up.*
Has received late-bill status.
- f. HB11-1261: *Concerning the Establishment of a THC Blood Content Threshold for the Purpose of Charging a Person with the Criminal Offense of DUI Per Se.*
The Commission included in its recommendation that administrative revocation sanctions be included in the bill. However, the administrative revocation sanctions will result in a fiscal note. Rep. Claire Levy reports that she had the bill drafted without the revocation piece because any bills with a fiscal note will be difficult to pass this session. Rep. Levy asked if the bill should go forward with only setting the Per Se limit and wait on the administrative sanctions portion.
 - i. Pete Hautzinger would prefer to have the bill go forward without the administrative sanctions. The idea is too important to hold it back.
 - ii. Mr. Quick disagreed. When the commission voted on this, it was agreed that the DUI-D per se law should mirror the DUI Per Se law. Without the administrative sanctions, the laws are disparate.
 - iii. Is the fiscal note issue a killer for the bill? It is premature to say.
 - iv. The CCJJ Legislative Committee is the place a bill should go when, either through drafting or amendments, the bill changes form so much that it no longer reflects the intent of the Commission. It was agreed that without the legislative sanctions portion of the bill it would no

longer be a CCJJ bill.

- g. HB11-____: Concerning Sex Offender Registration.
This bill will include 15 recommendations passed by CCJJ from the Sex Offender/Sex Offenses Task Force. For example it creates a simultaneous termination hearing/de-registration process for juveniles and also for adults with a deferred judgment who are eligible for de-registration. The bill has sponsorship but is not yet out of drafting.
 - h. HB/SB11-____: Concerning Sex Offender Sentencing.
This bill will include 3 recommendations passed by CCJJ from the Sex Offender/Sex Offenses Task Force. For example it repeals the mandatory prison sentence for Unlawful Sexual Conduct by Force, Threat or Intimidation because this penalty is greater than the penalty for Sexual Assault by Force. Sponsors are being sought.
 - i. HB/SB11- ____: Concerning Creating a Standardized Mental Illness Screening Instrument.
Tom Quinn reported that a mental health screening tool has been developed. Probation will begin the screening as part of the presentence investigation by the beginning of the summer. Probation does not feel there will be a fiscal note to this portion. However, if Probation conducts a mental illness screening at the post-sentence probation intake there will be a fiscal note that needs to be attached. Sponsors are being sought. Rep. Levy said that she will speak with Tony Lombard about finding a sponsor.
2. HB10- 1352 dollars
- a. This was a CCJJ bill that was passed by the legislature last year. The bill was expected to result in cost savings and those savings were to be directed toward drug treatment. The first year savings were projected to be \$1.4 million dollars. The spending authority was not included in the initial bill and the funds have not been spent. The JBC proposed that \$1 million of those projected dollars be pulled to help balance the state's budget. However, nothing is final at this point.
 - i. Chief Bill Kilpatrick spoke on behalf with the Colorado Association of Chiefs of Police. The CACP drafted a letter outlining their concerns with the shift in treatment funds. As a member of the Commission, Chief Kilpatrick voted on the recommendation based on the assumption that any savings would go toward treatment. He stated that the loss of these funds will affect how he votes on items in the future.
 - ii. Rep. Levy and Sen. Pat Steadman brought this to the legislature as a package deal. Rep. Levy reported that some members of the JBC saw this bill as two separate issues. One being a decrease in sentences and the other being the funds for treatment. She believes members of the CCJJ will have to weigh in on the importance of keeping CCJJ bills intact.

- iii. Sheriff Grayson Robinson informed the group that the Colorado Sheriffs Association will also be drafting a similar letter. The Sheriffs supported this legislation because they believed drug and alcohol treatment would begin while the offenders were still in the local jails during the pendency of the case.
- iv. Mr. Hautzinger said the Colorado District Attorneys Council had heated discussions before supporting this legislation. It was so contentious that one district attorney left CDAC because of this legislation. This is a case where the government needs to keep its word. He asked that the Commission author a letter to the JBC stating that the reduction in sentences was contingent on funds for treatment.
- v. Sen. Ellen Roberts suggested that the Commission strategize before sending a letter. The JBC is making difficult budget decisions and everyone will be asking that “their” funds not be reduced.
- vi. Rep. Levy said that HB10-1352 is unique because it guided where the saved funds were to be spent. The CCJJ was saying that this specific population would be better served by not going to prison, but by receiving treatment instead.
- vii. Mr. Kilpatrick moved that the Commission draft a letter under the signature of Chairman Jim Davis indicating the CCJJ’s concerns with the actions of the JBC. Mr. Quinn seconded the motion.
 - a. Mr. Robinson offered a friendly amendment that every member of the Commission sign the letter. Both Mr. Kilpatrick and Mr. Quinn agreed to the amendment.
 - b. Ms. Smith suggested that the letter outline the Commission’s concern about two specific issues:
 - a. One complicating factor is the granting of spending authority. Spending authority for the \$1.4 million has just been granted and the fiscal year will be over on June 30.
 - b. The letter should also discuss the usage of any savings in subsequent years.
 - c. VOTE: 16 yes 2 abstain

3. Juvenile Discipline Bill

Where does the Commission want to weigh in on the Legislature’s direction to the Commission to address specific issues?

- a. SB11-133 directs the Juvenile Task Force of the CCJJ to study and collect data concerning the use of criminal justice sanctions and specific school discipline practices. The bill mandates the study be completed by November 15, 2011.
- b. Regina Huerter is the Chair of the Juvenile Task Force. She stated that the topic of juvenile justice is complex and the Task Force is just beginning to educate itself on all of the issues. The bill is asking for just one segment to be studied. This cannot be done within the timeframe outlined in the bill.

- i. Isn't this issue something that the Task Force would have been doing anyway? Yes. But the bill is requiring a report back in November. The time frame is too short for a thorough examination of the issue.
- ii. The Commission needs some guidance from Governor Hickenlooper. Does the Governor see this Commission as a tool to be directed by the legislature?
- iii. What kind of numbers are we talking about? Just going by the number of referrals by schools to law enforcement would not be a good measure of which juveniles receive official law enforcement action. More research would have to be done. Is the referral of a juvenile based on one act or a series of acts and warnings that have been ignored?
- iv. The schools have received legislative directives that there is zero tolerance of specific actions in schools. Actions that were once viewed as a kid being a kid are now treated as crimes.
- v. Another concern is that the bill directs the Task Force on how the study is to be done and when the study is to be completed. These directives are given without thought to best practices. Is the manner of study based on best practices?
 - a. Receiving approval from an Institutional Review Board (IRB), which is necessary to work with data from human subjects, could take 3+ months alone. And then to receive all of the necessary data, conduct the analyses, and write a report would put us well past the November due date.

Sex Offender/Offenses Task Force Update and Voting (presented by Chris Lobonov-Rostovsky and Laurie Kepros):

1. Registration Working Group Update:
 - a. The Registration Working Group developed a recommendation that involves transient offenders. The word "transient" is currently not defined in statute. The recommendation does not change the terms of registration, just the addition of the term "transient."
 - b. Another issue this Working Group is examining is compliance to the Adam Walsh Act. Does the cost of Adam Walsh implementation outweigh the penalty of non-compliance? If we comply, in what capacity do we do so?
 - c. The third issue revolves around risk assessment and community notification. Colorado currently notifies the community about sexually violent predators in the area. Should Colorado rank sex offenders through a risk assessment and use this ranking to expand the notification system?
2. Refinement Working Group Update:
 - a. This Working Group is examining the efficacy of indeterminate sentencing. Can it be improved? There are needs for better data.
 - b. This group will also examine parole decisions for sex offenders. Again, there are data needs. Can there be improvements? If so, what?

3. Recommendations and Voting:
 - a. Define “transient” in statute and require registration of offenders who are homeless or have no permanent residence.
 - i. Mr. Quick made the motion to vote on the above recommendation. Mr. Robinson seconded the motion.
 - ii. VOTE: 15 in support, 1 can live with it, 0 do not support
 - b. Add language to CRS 16-13-902 (and relevant sections in Title 18) on SVP equivalency criteria in a manner that ensures the assessment procedure is constitutional.
 - i. Previously, this recommendation was presented but not approved by Commission members at the December 10, 2010 meeting. Since the December meeting, a revision was made to address a problem where there may be a state-to-state mismatch in the sex offense severity categories. An offender categorized as a “Sexually Violent Predator” in Colorado may equate to multiple levels of high categories in other states. The fix should also ensure that there is equal protection for incoming out-of-state offenders.
 - ii. The first vote is a reconsideration vote to answer, “Should the CCJJ reconsider this recommendation?” Mr. Quick made the motion to vote on reconsideration of this issue. Steve Siegel seconded the motion. (In compliance with voting protocol the motion and second were made by members who previously voted against the recommendation.)
 - iii. VOTE: 17 in support, 0 do not support. Reconsideration was approved.
 - c. New language: Add Language to CRS 16-13-902 (and relevant sections in Title 18) on SVP equivalency criteria.
 - i. Ms. Huerter made a motion to vote on the new language: Mr. Siegel seconded the motion.
 - ii. VOTE: 12 in support, 4 can live with it, 0 do not support.

Task Force Updates:

1. Comprehensive Sentencing. The sentencing subgroup is asking itself “what would sentencing look like under the theft statutes?” Once a pattern of study is developed, it can then be used to study other crimes. The goal is to develop a template by July.
2. Juvenile Justice: Their next meeting will be next week (Thursday, February 17th). The Task Force has created vision and mission statements. The Task Force has also been working on educating its members on the education system, prevention and identifying areas of work. At the next meeting, they will look at early intervention (schools or law enforcement) and how a juvenile progresses throughout the system. Juveniles are touched by many entities, such as school districts, human services, and the justice system (municipal and/or state systems).

They will also examine disproportional minority contact, what areas of Title 19 are in conflict and what can be examined. This Working Group will hold a retreat in March.

3. Drug Policy: During the last meeting, the Task Force created a hierarchy of where they are going.
 - a. Over the next three months, this group will develop a spending plan for HB10-1352 funds to suggest to the IACAJCT/ITFT/1352 group; the group will be informed of how drugs and alcohol affect other criminal behavior; and members will be meeting with the JBC to discuss HB0-1352.
 - b. Over the next 6 months, this group will develop a template for a drug sentencing grid. This grid could then be used by the Sentencing Task Force as it works on other crimes. In addition, a new working group will be created to identify issues related to drug prevention and education. Other topics of education will be the work done by the Transformation Council, and treatment efficacy.
 - c. Over the next year the Task Force wants to develop recommendations about monitoring the impacts and unintended consequences that came out of earlier Drug Policy Task Force recommendations.

Accomplishments and Year Ahead

1. 2010 Accomplishments: In 2010, the re-entry work by the Commission began to wrap up and the work began on sentencing.
2. 2011 Timeline & Benchmarks: Paul Herman reviewed the 2011 Timeline and Benchmarks document with the Commission. The document presents a rough timeline of future activities of the four Task Forces.
3. Is there something out there that needs to be addressed by the Commission that is currently not being examined? There are some items that are not “big picture” things, but have a high impact on the criminal justice system. For example:
 - a. Pawn shops and scrap metal shops present inconsistencies between jurisdictions on regulations and practices.
 - b. Another issue is the non-payment of light rail passes. These tickets are flooding the courts.
 - c. Aging out of our prison systems should be addressed.
 - d. Minority overrepresentation and gender disparity is a huge issue that has not been addressed.
 - e. The issue of whether savings realized by DOC are reinvested. The Commission cannot assume that the JBC will have the ability to follow reinvestment intentions.
4. How do items get on the CCJJ agenda? If there is an existing task force working on the area, the task force could be asked to take it on. The current task forces are Sentencing, Juvenile, Sex Offenders/Sex Offenses and Drug Policy.
5. It is critical that the Governor meet with this Commission to give his vision hope for the Commission.

Next steps:

- 1 Watch your email for a letter to be drafted by Mr. Quick and Mr. Kaplan concerning HB10-1352 funds. Rep. Levy informed the Commission that the recommendations of the JBC are included in SB 11-142 (supplemental appropriations bill). This bill is going to Appropriations on Monday and part of this bill will address the treatment funding issue. This is an area where showing up and testifying will be effective.
- 2 Will continue to monitor legislation as it moves forward.
- 3 There will be another orientation meeting for new members who could not attend today's orientation before the March CCJJ meeting.

Next meeting will be March 11, 2011 from 12:30 – 4:30 at the U.S. Dept. of Transportation, 12300 W. Dakota Avenue, Lakewood, Co.

This meeting adjourned at 4:02 p.m.