



Commission on Criminal and Juvenile Justice

Minutes

March 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	J. Grayson Robinson
Peter Hautzinger	Reo Leslie, Jr.	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Charles Garcia	Steven Siegel	Doug Wilson
Michael Dougherty	Reggie Bicha	Michael Anderson
Tom Quinn	Gilbert Martinez	Alaurice Tafoya-Modi

Absent:

Inta Morris, Rhonda Fields, Regis Groff, Mark Waller, Claire Levy, John Morse

Call to Order and Opening Remarks:

The Chairman, James H. Davis, called the meeting to order at 12:47 p.m., gave an overview of the day's agenda and called for introductions.

CCJJ Legislative Updates:

1. SB11-96: Concerning Excluding a Class 6 Felony Drug Possession Conviction as a Qualifying Offense Under the Habitual Offender Statute.
 - Passed the Senate 35-0.
 - Passed the House Judiciary 9-1.
 - Passed Second Reading in the House.
2. HB11-1064: Concerning a Parole Presumption Pilot Program for Certain Drug Offenders.
 - This bill creates a pilot program establishing a presumption in favor of granting parole for an inmate who is parole-eligible and serving a sentence for a drug use or possession crime that was committed prior to August 11, 2011. The inmate must meet other criteria related to previous criminal behavior and institutional behavior to be eligible.
 - Passed House Judiciary 11-0.
 - Has not yet been scheduled for House Appropriations.

3. HB11-1167: Concerning the Petition Process for the Sealing of Certain Drug Offense Records.
 - Passed in the House 64-.1
 - Assigned to the Senate Judiciary.
4. HB11-1189: Concerning Bail Bond Conditions for Those Arrested for Subsequent Substance Abuse Driving Offenses.
 - Passed the House 57-7.
 - Introduced in Senate and assigned to Senate Judiciary.
5. HB11-1239: Concerning a Requirement to Include Additional Information in Fiscal Notes for Certain Bills Related to Criminal Offenses.
 - Passed the House 64-1
 - Introduced in the Senate and assigned to Senate Judiciary.
6. HB11-1268: Concerning Penalties For Traffic 101 Offenses Involving Alcohol And Drugs. (Technical corrections to HB 10-1347).
 - Addresses the unintended consequences created by HB10-1347 for first-time DUI violations.
 - Introduced in the House and assigned to House Judiciary.
7. 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.
 - This sets a level of 5 nanograms of THC per liter of blood to determine drug impairment when driving. CCJJ's recommendation was that the DUI-D statute should mirror the DUI statute as closely as possible. (It was acknowledged there is no drug equivalent to the interlock system.)
 - The bill, as introduced, contained the following sanctions: point penalties against the license; an automatic 1-year suspension if a driver refuses blood test; upon conviction of DUI-D the offender would lose his license for 12 months, and an automatic 90-day suspension. The bill was introduced with all sanctions.
 - Introduced in the House and assigned to House Judiciary.
 - Passed in House Judiciary 6-2 with amendments.
 - Through amendments, the 90-day license suspension sanction was removed.
During the last meeting, the CCJJ decided that it would not be a CCJJ bill without all the administrative sanctions.
- a. Discussion. Does the CCJJ still want to support the bill without all of the sanctions?
 - The Commission could pursue the administrative sanctions next year. This bill is too important to withhold support because of the amendments.
 - A bill receives the label of a "CCJJ bill" based on how it is introduced in the Legislature. The bill, after that point, is subject to change. This bill is not the only bill that will change through amendments. What would the process be to bring a recommendation back to the Commission for a re-vote because it has changed through the legislative process?
 - Regina Huerter entered a motion for the CCJJ to reconsider its support of HB11-1261 as amended. Grayson Robinson seconded the motion. Discussion:
 - i. Doug Wilson expressed concern that a precedent is being set. Once a CCJJ bill has been introduced, it should not be re-voted on because of legislative changes. Other CCJJ bills are subject to amendments.

- ii. Senator Roberts stated that it would be beneficial to the Commission to set a rule on how to handle legislation that is initially marked as a CCJJ bill but is materially altered through the Legislature.
 - iii. David Kaplan expressed his concern about bills that are amended but there is not enough time to have the full Commission review the changes before additional votes by the Legislature.
 - iv. Pete Hautzinger is willing to give up the administrative sanctions in order to have the law on the books. What is important is to get the bill passed.
 - v. If the Commission decides not to re-consider the issue, will the Legislature be told this is no longer a CCJJ bill? Yes.
 - vi. Can the issue be reopened? A motion to reconsider an approved recommendation can occur only when the motion and second are made by members who voted in favor of the original recommendation (Eleven members qualify, including Regina Huerter and Grayson Robinson who moved and seconded.). The motion to reconsider is successful when 51% of Commission members vote in favor.
VOTE TO REOPEN ISSUE: Yes: 16 No: 2.
The motion to reconsider passed.
- b. Does the CCJJ support the new version HB11-1261?
- Don Quick offered a motion to support HB11-1261 as amended without the 90-day revocation period. The CCJJ will continue to work to have the 90-day revocation sanction put back into the bill either on the House floor or through Senate proceedings. Grayson Robinson seconded the motion. Discussion:
 - i. What's been removed from the bill is the 90-day suspension with a high level of THC. The revocation of the license for a year upon conviction remained in the amended bill as did the sanction for refusing to take the blood test and the suspension of the license for one year.
 - ii. If the CCJJ decides to endorse the bill as amended, does that preclude the CCJJ from requesting that the 90-day suspension be put back in? No.
 - iii. Rep. Levy brought this issue to the Commission during the last meeting. She was concerned that the administrative sanctions would create a fiscal note that would inhibit the passage of the bill. The CCJJ stated that if the sanctions were not included in the bill, the CCJJ would not endorse the bill. Based on that discussion, Rep. Levy introduced the bill with all sanctions. It was later amended.
 - iv. Sen. Roberts said that when a bill is introduced with a CCJJ stamp of approval, and the bill begins changing, its support can be weakened.
 - v. In accordance with the motion, the Commission voted whether to support the bill without the 90-day revocation and work its re-instatement. The vote alternatives were, A=Support, B=Can live with, or C=Do not support. The motion would pass if those voting A and B combined were equal to 75%.
 - vi. Vote: (A) 4 (B) 5 (C) 8 Abstain: 2
Motion failed. The motion did not receive the necessary 75% approval to pass. Therefore, the bill as amended, does not have the support of the Commission. However, if the 90-day sanction is put back into the bill, it can once again be called a CCJJ bill.

2. HB11-1278: Concerning Sex Offender Registration.
 - This bill addresses a variety of issues with sex offender registration. Among other things, it creates a simultaneous termination hearing/de-registration process for juveniles and adults with a deferred judgment who are currently eligible for de-registration. It also establishes a consistent fee of up to \$25 for each registration event.
 - Introduced in the House and assigned to House Judiciary.
3. Sex Offender Sentencing.
 - Not yet introduced.
4. Creating a Standardized Mental Illness Screening Instrument.
 - Not yet introduced.
5. SB11-186: Concerning the Establishment of an Alternative Bond Program.
 - This bill allows for a bond to the court and special bond restrictions if the jurisdiction wants to create an alternative bond system.
 - Introduced in Senate and assigned to Senate Judiciary
 - Passed on 6-2 vote in Senate Judiciary and was sent to Appropriations.
 - There is concern there may be a loss of revenue from out-of-state bond insurance agencies.
 - Savings are expected for the counties due to saved jail-bed days and savings from reducing recidivism because of early treatment.
6. Other legislative issues:
 - HB10-1352 earmarked any savings from its enactment to go toward substance abuse treatment. The JBC was going to take these treatment dollars out of Judicial's FY11 budget and put them toward the budget deficit. With the support shown in letters sent from the Colorado Association of Chiefs of Police, the County Sheriffs of Colorado and the Commission, most of the \$1 million was restored in Judicial's budget. A 1352 Oversight Committee will meet March 24th to discuss the process for spending the money for treatment for this fiscal year. A bill still needs to be introduced to address the spending authority issue.
 - SB11-133: Concerning a Study of Disciplinary Actions Taken in Public Schools.
 - i. This bill is being monitored by the Commission and members of the Juvenile Justice Task Force.
 - ii. The concern is the language and amendments offered as they relate to the level of research and data needed to bring this forward as well as the fiscal impact on DCJ.

Current Criminal Justice Hot Topics:

[Note: The slides for the three presentations below are available on the CCJJ website at http://cdpsweb.state.co.us/cccj/2011_meeting_schedule.html].

1. Right on Crime (presented by Doug Wilson): A group of individuals identifying with the conservative movement have created a website and prepared a statement of principles regarding criminal justice reform. These principles are based on the goals of constitutionality, transparency, individual liberty, personal responsibility, free enterprise and the centrality of the family and community. The authors of this statement looked for more cost-effective approaches while preserving public safety. Incarceration is not always the best option. It can make minor criminals into hard-core criminals. One of

several contributors to the statement is the Texas Public Policy Foundation which found spending money on rehabilitative approaches positively impacts the drop in crime rates. The following are some key concepts found in the statement:

- a. The criminal justice system must be transparent and include performance measures that hold it accountable.
- b. Crime victims, along with the taxpayers, are among the key consumers of the criminal justice system.
- c. The corrections system (probation, parole and prisons) should emphasize public safety, personal responsibility, work, restitution, community service and treatment.
- d. An ideal criminal justice system works to reform amenable offenders who will return to society through harnessing the power of families, charities, faith-based groups and communities.
- e. Because incentives affect human behavior, policies for both offenders and the corrections system must align incentives with our goals thereby moving from a system that grows when it fails to one that rewards results.
- f. Criminal law should be reserved for conduct that is either blameworthy or threatens public safety, not wielded to grow government and undermine economic freedom.

[The Right on Crime Statement is available at www.rightoncrime.com/]

2. Smart on Crime Coalition (presented by Don Quick): This report was coordinated by the Constitution Project (constitutionproject.org) who worked with 40 organizations to develop over 100 recommendations. The participating parties endorsed the specific report chapters and associated recommendations to which they contributed. Not all parties of the project endorsed all the recommendations found across the sixteen chapters of the report.

- a. When contemplating improvement to the criminal justice system, one should consider the principles of fairness, accuracy, effective evidence-based programs, and be cost-efficient.
- b. A few examples of the recommendations in the report include: Adopt rules and reporting requirements to stem over-criminalization and over-federalization; support eyewitness identification reform measures; ensure adequate funding, staffing and training for state indigent defense systems; prevent crime and divert youth from the justice system; help youth successfully reenter their communities, expand federal statutory authority for deferred adjudication; expand alternatives to incarceration in federal sentencing guidelines; clarify and expand good time conduct credit calculations; permit sentence reductions for extraordinary and compelling circumstances; reduce recidivism and increase effective rehabilitation; establish and fund a National Commission on Restorative Justice; and evaluate and limit racial and ethnic disparities.

[The Smart on Crime report is available at www.besmartoncrime.org/]

3. Aging Out in Prisons (presented by Tom Clements). Many state correctional systems define a minimum age for “elderly” differently.

- a. For people who are involved in crime, the offender’s physiological age, on average, is 10 years older than their chronological age. This is due to substance abuse, improper diets, lack of adequate health care, poor lifestyle choices and the stress of incarceration.

- b. From 1991 to 2009, Colorado inmates aged 50+ increased by 720% as compared to the total Colorado inmate population which grew by 208%. The national trend was 313% and 130%, respectively.
- c. There are fewer minorities and more Caucasians among Colorado's aging inmate population.
- d. Older inmates are more likely to enter prison as a court commitment than a parole return.
- e. Older inmates are a larger proportion of those incarcerated for serious offenses. Fifty-seven percent have committed a class 1, 2 or 3 felony compared to 35% of younger offenders. [Note: Over time, those committing more serious offenses comprise a larger proportion of each inmate age cohort as inmates committing less serious offenses within the cohort are paroled or discharge their sentence.]
- f. Inmates over 55 have an average of three chronic conditions. Additional costs for medical care and associated needs such as transportation to a hospital, security of the inmate while in the hospital, or managing disabilities within prison facilities are increasing.
- g. Prisoners over 50 years of age face significant challenges when released from prison. These challenges include health problems and ongoing medical care; employability; absence of a social support system; illicit drug and alcohol use risks; mental health issues; lack of appropriate housing; and transportation.
- h. Recommendations focus on special need re-entry systems. This includes what happens in prison just before the offenders are paroled.

[The presentation was based, in part, on a report by the Vera Institute of Justice available at www.vera.org/content/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release]

The Commission was asked if, after hearing these presentations, there are any areas on which they would like to focus attention. It was felt that the consequences of inmates with behavioral health issues should also be considered? We have seen a reduction of community-based approaches to serve this population. There is lack of access to private providers by incarcerated individuals. Private practitioners can see these individuals within 48-72 hours whereas it could take a week or more to see a counselor in prison.

Reggie Bicha spoke about the Behavioral Health Council. The Council continues to work and think about how to transform change for those who have serious mental health issues. Governor Hickenlooper will be looking at the impact of health care reform on these individuals. This can broaden access and benefit coverage for individuals with mental health issues. Are offenders who are being released into the community automatically signed up for Medicaid? No. Why not? Are they not eligible because of federal rules? Or are they not eligible because the state does not have a process? Released inmates are not automatically signed up because of Colorado's interpretation of the federal definition of "inmate." If an offender is released to Community Corrections, he/she is still considered on "inmate status" and not eligible for Medicaid. It appears that there is a population for whom the state interpretation of "inmate" is blocking from access. Is there any easy fix? There was a group that met with the Department of Health Care Policy and Financing (HCPF) but were unable to get anywhere at the time. There is a subcommittee of the CCJJ that will be approaching HCPF again. The federal definition cannot be changed. If an offender has access to Medicaid, do they have access to the services? That is also an issue.

Colorado has a compassion and release statute. Is it used? The Parole Board receives those recommendations from DOC and since 2007 they have honored 17 out of 48 requests.

Disproportionate Minority Contact/Minority Overrepresentation

DCJ Staff member Christine Adams presented information concerning minority overrepresentation and how it is handled by other states.

1. Wisconsin created a commission to reduce racial disparities. They developed 57 recommendations, including: The development of professional training regarding racial disparity; Prisons should maintain and expand reentry programs to ensure valid ID or driver's licenses are provided; Prisons should also develop a mentoring program that no longer prohibits inmates who mentor during incarceration from continuing to do so once released.
2. Illinois created a commission to study its issues. It recommended that legislators have the ability to request that a Racial and Ethnic Impact statement be attached to bills or appropriation measures that impact criminal offenses. A Racial & Ethnic Impact Research Task Force was created to ensure the standardized collection and analysis of data on racial and ethnic identity of arrestees. It established a task force to review drug laws and review the effectiveness of laws and the potential for unintended consequences. Each district attorney's office should conduct felony reviews for filing of charges to new cases. It was recommended that the state prohibit the inclusion of drug-related arrests that do not result in conviction in criminal histories collected for employment related purposes. The establishment of an automatic sealing procedure for F4 possession charges was also suggested.
3. Virginia's juvenile justice system has examined minority overrepresentation. They created a demographic web page. They encourage training and assistance to local officials and detention staff in disproportionate minority confinement. A race-neutral risk assessment was created within the Department of Juvenile Justice for use at intake.
4. North Carolina passed the Racial Justice Act in an effort to prohibit seeking or imposing the death penalty because of race. This law establishes a process by which relevant evidence can be presented to show that race was a significant factor when the death penalty was pursued. Kentucky passed a similar law.
5. Twenty-nine of the U.S. State patrol agencies require their officers to record the race or ethnicity of the drivers for the initial stop. Fifteen agencies depend exclusively on the officer's observation to determine the race/ethnicity of the driver, while nine others also used information from the state's motor vehicle division (2 use DMV information exclusively).
6. The Colorado State Patrol (CSP) is prohibited through its policies and procedures to ask the racial ethnicity of an individual. However, as of 2010, CSP is required to collect race and ethnicity information for all traffic contacts based on the officer's observation.
7. Racial Impact Statements estimate the disparate racial impacts of criminal justice policies. Those states that have formally incorporated racial impact statements into their criminal justice policy development process have focused their use on sentencing and corrections policy. Iowa, Connecticut, Oregon and Wisconsin have Racial Impact Statements.

8. How do you address minority over-representation? We need to acknowledge the cumulative nature of racial disparities. Encourage communication across players at all decision points in the system. Recognize what works at one point may not work at another. Work toward systemic change.
9. We will hear next month from the Minority Over-Representation Committee about their work. Regina Huerter will present information about the work done by the Denver Crime Control Commission.

After the presentation, Commission members weighed in on this issue. In examining minority overrepresentation, we need to look at poverty, despair and societal racism. Has the work done by these other states made any difference? Virginia has collected data that shows it has made improvements.

Is there any research on the causes of racism? In addition to looking at the criminal justice system, we should go further and look at the causes. We can improve the system. But we should also hook up with the P20 effort to limit high school drop outs. Another thing not talked about is the under-representation of minorities in the law enforcement side of the criminal justice system.

A community re-entry study was done by Illinois. Family and couple therapy was researched in Illinois and found that this is an important component in the reduction of recidivism.

There has been research done on children who have family members in prison. It has been found that those children are 7% more likely to also be incarcerated one day. For individuals who did not follow family into prison, it was found that the role of family and spiritual advisors was significant.

This will be discussed more next month.

The meeting adjourned at 3:55 p.m. The next meeting will be April 8, 2011.