



Commission on Criminal and Juvenile Justice

Minutes
August 12, 2011

Camp George West
15350 S. Golden Road, Building 100
Golden, Colorado

Commission Members Attending:

James H. Davis, Chairman	Tom Clements	Alaurice Tafoya-Modi
David Kaplan, Vice-Chairman	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Steven Siegel	Regina Huerter
Bill Kilpatrick	Gilbert Martinez	Debra Zwirn
Inta Morris	Claire Levy	Doug Wilson
Michael Dougherty	John Morse	Anthony Young
Reo Leslie, Jr.	Charles Garcia	Eric Philp

Absent: Don Quick, Ellen Roberts, Reggie Bicha, Regis Groff, Rhonda Fields, and Mark Waller

Call to Order and Welcome:

The Chairman, James H. Davis, called the meeting to order at 12.55 p.m. Mr. Davis introduced Eric Philp who is the new Director of Probation Services; and Dr. Anthony Young who is the new Chair of the Colorado State Board of Parole. Eric Philp is filling the vacancy left by Tom Quinn (former Director of Probation Services) and Dr. Young is filling the position held by Michael Anderson (former Vice Chair of the State Board of Parole).

Tom Clements announced the Department of Corrections is hosting a symposium on Offender Re-entry on September 14th and 15th at Arapahoe Community College and would like to invite all the members of the Commission. Colorado's recidivism rate over the past three years is 52%.

Minority Overrepresentation Options:

Paul Herman led the discussion on Minority Overrepresentation. As a result of the June 2011 Commission meeting, seven recommendations were created.

Recommendation 1: Require comprehensive cultural competency training for all justice agencies and for all treatment and service organizations used by justice system agencies.

1. This is a policy, rather than a legislative, recommendation. Agencies and organizations interact with many clients and offenders who are cultural and ethnic minorities and such training could improve the quality and effectiveness of these interactions. The Commission could begin using its collaborative tools to work with others to help advance

this recommendation in Colorado. Who needs to participate in the collaboration? What agencies can be included in this?

Recommendation 2: All justice agencies should track the racial and ethnic diversity of their staff. Every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.

1. This is a recruitment issue. It can also be seen as a policy issue when working with other organizations in the criminal justice systems.
2. What agencies can be included in this recommendation?
3. It is important to track staff ethnicity, but it can be very difficult to satisfy the needs and preferences of applicants or staff members with the needs of the community that is served (for example, Latino applicants or staff members may not want to relocate to a rural or frontier area simply because the community has expressed a strong desire for more Latino staff or, like anyone else, their interests/skills may not converge with the focus of particular boards and commissions). The recommendation has merit, but it may have unintended consequences for agencies that are doing their best, or are being successful, in the recruitment and hiring of a diverse staff.
4. The recommendation is not intended to create quotas, but encouraging the enhanced diversity of recruiting pools.
5. There is a concern about this recommendation creating an unfunded mandate. Local criminal justice agencies are not currently tasked with tracking race and ethnicity of employees, and some cities do not collect such information. Although some areas may serve a diverse population, finding job candidates interested in placement in those locations can be difficult. If there were sanctions for not filling mandated positions, there could be consequences for agencies and organizations that were sincerely trying to fill the positions with a diverse staff. It was suggested that those agencies which already collect race should also collect ethnicity.

Recommendation 3: State and local justice agencies should collect race and ethnicity information on the population they serve.

1. This may be a legislative issue.
2. Again, there was concern this recommendation could result in an unfunded mandate to local agencies.
3. Concern was expressed about front-line staff collecting race and ethnicity information. It might make sense for law enforcement to collect such data during the booking process, but asking a police officer to ask for ethnicity during a simple traffic stop could be viewed as intrusive or inappropriate.
4. When looking at an offender's risk, needs, and responsivity to treatment, identifying culturally appropriate and sensitive treatment programs may yield more positive treatment outcomes.

Recommendation 4: Develop a mechanism that requires a specific review of proposed justice legislation to determine whether the legislation will have an adverse impact on minority over-representation. Some states refer to this as a Minority Impact Statement.

1. This is a complex issue and may require input from lots of stakeholders for the Commission to move it forward.

Recommendation 5: The Commission should develop and maintain a disproportionate minority representation web site to promote recognition and understanding of this problem. The site should have local, state and national data and link to educational resources.

1. This is doable without additional work by a new task force. DCJ can move forward with this. This information would be available on the Commission website.

Recommendation 6: To serve as a model for its expectations of criminal justice agencies, the Commission should develop and implement a Commission-specific mentoring program for minority juveniles and young adults who are interested in working in the criminal justice system.

1. Perhaps the Commission could develop a model mentoring system. How could we identify some young adults to mentor?

Recommendation 7: The Commission's Sentencing, Drug, and Juvenile Task Forces shall review recommendations to ensure those proposals do not have a negative impact on minority over representation.

1. The Commission can ask its task forces to examine all ongoing and future work to ensure there are no proposals or recommendation that inadvertently increase minority overrepresentation.

Ms. Smith reminded members that these were the issues that surfaced from the previous Commission discussions. Does the language found in the recommendations represent the intent of the Commission? If so, Commission members who are developing the next steps in the process could meet. Ms. Smith stated those individuals interested in working further on the minority overrepresentation recommendations contact Germaine Miera by a week from today. Volunteers are not limited to Commission members.

Task Force Reports:

Drug Policy Task Force:

1. The Marijuana Per Se (DUID) working group continues to work on this issue that stalled in the legislature last year. This group will submit a list of recommendations next month. The recommendations will cover issues such as:
 - a. Data collection and sharing relative to traffic crashes and fatalities across the state is important.
 - b. The state needs to increase the number of drug recognition experts (DRE's). There are approximately 200 DRE's across the state and they are located mainly along the front-range. The group is also exploring the possibility of DRE's not needing to be peace officers.
 - c. The working group came to the consensus that people should not drive while impaired by drugs or alcohol.
 - d. There is a need for a broad educational campaign on driving while impaired. Dispensaries should also participate in this educational campaign and information should be distributed through the dispensaries. Some people in the medical marijuana industry have agreed that they need to join law enforcement to educate people. There

- is some consensus that 133,000 medical marijuana cards across Colorado seem too many. The average age of a cardholders is 22.
- e. The working group has a list of things on which they do not agree and will continue to discuss those issues over the next three weeks. They expect to have recommendations to the Drug Policy Task Force during the first week of September and to the Commission in September or October.
2. The Structure Working Group is looking at three issues. Treatment funding; designer drugs; and a drug sentencing grid.
 - a. Treatment Funding - The Interagency Advisory Committee on Adult and Juvenile Correctional Treatment (IAC) is designated as the group responsible for policy (derived from three different pieces of legislation with different operating rules) surrounding substance abuse treatment funding. Representatives of various agencies have been asked to join a subgroup of the IAC (coined the 'Uber Group') that is discussing the possibility of consolidation of funding streams and functions. Eric Philp is chair of this subgroup.
 - b. Designer drugs - how do we handle new drugs that pop up on an ongoing basis?
 - c. Drug sentencing grid – Work is underway examining the current sentencing scheme and looking at two different sentencing grid options. One is an enhancement to the current structure. The other builds upon the current structure but also looks at the criminal history of the offender.
 3. The Prevention Working Group is currently focusing on community models. Their work includes developing transition standards (from elementary school to middle school; and middle school to high school).

Comprehensive Sentencing Task Force:

Jeanne Smith gave an update on the work of the Comprehensive Sentencing Task Force. The initial phase of work began with the examination of factors that go into charges filed and sentencing decisions. One of the Task Force's working groups is focusing on theft statutes before tackling the broad range of crime categories. The group thought that, by beginning with a narrow area such as theft, it could develop methods and approaches that could then be applied more broadly to other areas of sentencing reform; however, this was not as easy as first believed. The group also looked at how other states structure their sentencing grids and found the information is neither easy to understand nor directly applicable to, or necessarily an improvement on, Colorado's current system.

The working group agreed that, ideally, there should be three sentencing structures: drugs; non-violent crimes; and violent crimes. They agreed the primary purpose for sentencing for non-violent crimes is reducing recidivism. They are also looking at a more effective way to use a criminal history.

The Sentencing Task Force has planned an all-day work session for September 8th.

Juvenile Justice Task Force:

The Juvenile Justice Task Force consists of a three working groups that are targeting a variety of specific areas of study.

1. The Education Working Group is dovetailing its work with the goals outlined in SB11-133 (Concerning a study of disciplinary actions taken in public schools - which created a Task Force not connected to the Commission, The Legislative Task Force to Study School Discipline. See <http://www.colorado.gov/LCS/SchoolDisciplineTF>).
 - a. The working group is examining the School Code of Conduct and how schools report offenses. The Code of Conduct contains language about what actions should be reported, and when discretionary reporting can be used. School districts are coding actions differently. Alternatives to sanctions are being examined as well as the over-representation of children of color.
2. The Truancy Working group is primarily looking at juveniles incarcerated for truancy and making sure their education continues.
 - a. When juvenile are released, their credits are often transferred as electives, not core classes. This further impedes the timeliness of their graduation.
 - b. Another issue is the school-to-jail pipeline – What are the roles of the School Administration and the School Safety Officers?
3. The Assessments Working Group is focusing on the following questions - Are we over-assessing? Under-assessing? What tools are being used? Are the correct assessments being used? What training is available for the assessments? This group is also examining cross-over youth – those who are involved in both the juvenile justice system and child protective services.
4. The Judicial Working Group is examining four areas-
 - a. DYC – Who is in there? How did they get there? Why are they in there?
 - b. DUI's and the unintended consequences around DUI's. How should minors with DUIs be adjudicated? What happens when a minor is picked up for first DUI at age 17 and, subsequently, after reaching the age of majority? The sentencing for second offenses is mandatory jail. What about a 16 year old who is arrested for DUI and then again at 17?
 - c. Another area is the professional standards for individuals who work with juveniles. There is quite a bit of turnover in the components of the juvenile system.
 - d. The final issue is municipal courts. A municipal ticket equals a misdemeanor charge in the state system (county court). If a juvenile gets a municipal charge, there is no assessment or case management that might be provided in county court. Juveniles who accrue a large number of municipal tickets may be sentenced to jail due to their history.

Sex Offense/Offender Task Force:

There are two working groups under the Sex Offense/Offender Task Force.

1. Registration Working Group:
 - a. This group is developing a definition of “transient” for the purpose of sex offender registration. The group needs more time to iron out differences and develop a

- consensus around the definition of transient and the issue of check-ins, community notification and the penalty for not registering.
- b. They are also reviewing the use of a different risk assessment tool for sex offenders and applying it to the registration system. On which offenders should additional containment efforts be focused? What offenders pose the highest risk? There may be a better use of law enforcement time and resources than applying all registration procedures and follow-up to all registered sex offenders.
 - c. Adam Walsh Act: Where are we on compliance to Adam Walsh? Depending on how the SMART Office evaluates Colorado's compliance, the advantages and disadvantages of compliance will be examined.
2. Refinement Group:
- a. The focus of this group is to develop recommendations regarding lifetime sex offender treatment and management. They are exploring the theory and purpose behind lifetime registration and whether expectations are being met?
 - b. This group is preparing a general recommendation on the need for information gathering, developing data bases, and using collaborative training programs.
 - c. They are looking at other issues such as a statute prohibiting residency restrictions that are disruptive to offender management and the benefits of specialty courts.
 - d. The working group is looking at the issue of sex offenders sentenced to ISP or Community Corrections. Can we increase the placement of appropriate offenders in Community Corrections as an alternative to DOC? This could help reduce costs.
 - e. Sex offender treatment requirements and the resources in DOC are being explored. Some offenders are unable to be paroled because the treatment resources are not readily available in DOC.
 - f. Also being discussed are Parole Board release and decision making factors for sex-offenders.

SOTAR System/Sex Offender Tracking and Registration:

Captain Hayden of the Douglas County Sheriff's Office led a presentation on the Sex Offender Tracking and Registration system (SOTAR). The system was developed by the Douglas County Sheriff's Office as a means to track sex offenders as they moved from one city within the county to another. Fifteen other law enforcement agencies, including Denver, now use SOTAR with the goal of creating a unified registry and database. Not all of the agencies are in Douglas County. Douglas County has made presentations to other law enforcement agencies that are looking to use the SOTAR system.

The system can be used to track offenders as they move across jurisdictional boundaries. The system has a public site where citizens can sign up to receive email notifications when a sex offender moves into their area. In addition to their home address, citizens can receive notices if offenders are placed in the vicinity of their children's school address and the addresses of family members.

The law enforcement interface of the site provides more information than can be found on the public site. The law enforcement site can show the transfers between agencies as well as inform

officers what house checks need to be done. If an offender transfers out of Douglas County to an agency that is not using SOTAR, the file is sent to an “external holding area” so the information is not lost. If the offender returns to a SOTAR agency, the file can be retrieved from this “holding area.”

Questions:

1. What is the push-back from agencies that do not want to join SOTAR? When Douglas County shows its demo, they receive positive feedback. If an agency decides to use SOTAR, there is a lot of time required to enter the paper files into the database.
2. When you talk about web-eligible, what does that mean? It is written into the criminal offense whether an offender is web-eligible or not. Law enforcement is not eligible to show specific information concerning an offender on the Internet. A citizen would have to go into the local law enforcement agency to get the sex-offender list.
3. As this system gets larger, funding mechanisms will need to be identified. The Sex Offender Management Board is trying to identify grant opportunities.

Commission Legislative Policy/Process and Protocol Update:

In past Commission meetings, members discussed what happens to a Commission recommendation once it is approved and sent on to legislative drafting. Questions were asked such as, “Who finds the sponsors? Who is responsible for lobbying a bill and who is not? Who will represent the Commission during testimony and who will not?”

The Commission needs to appoint a group of individuals whose responsibility it will be to follow Commission items as they proceed through the legislative process. A proposal outlining the makeup of the Commission’s Legislative Subcommittee and its role was presented. The proposal was set forth as a draft and the basis for discussion.

1. What is the role of Department of Public Safety (CDPS) on recommendations approved by the Commission that result in bills on which the Governor does not take a position or does not support? CDPS is responsible for the “care and feeding” of the Commission. If the Commission produces a recommendation leading to a bill that the Governor does not support, no Cabinet official will be leading the charge on that bill. In those instances, will there be active support against the bill by Cabinet officials sitting on the Commission? No.
2. If the Governor’s Office supports a Commission bill, then departmental lobbyists would be the first choice to follow and coordinate efforts on the bill. If departmental lobbyists are not able to work the bill, then other individuals will be identified.
3. What are the role and obligations for Commission members with regard to Commission-derived bills? There was a conversation about the issue, and a policy around this issue should be drafted. It was not included in the current draft proposal, but will be addressed in the next draft.
4. What about the role and obligations of Task Force Members? This will also be developed and placed into the draft policy. What is the role of the bill sponsor?
5. The membership of the Legislative Subcommittee shall be: Either the Chair or Vice-chair of the Commission, who shall act as the Chair of the Legislative Subcommittee; the

Attorney General or his/her Commission designee; the State Public Defender; a representative of a local governmental entity; and an Ad Hoc representative.

- a. The Public Defender is named, but would there be no representative of law enforcement or victims? They could be included in “a representative of a local governmental entity.”
- b. Can the wording be, “the membership shall be *at least* as follows,” which would allow more than the five designated individuals to participate, if additional expertise is needed? Having a Legislative Subcommittee with only five individuals would be beneficial to the procedures outlined in Paragraph 5(b) of the Legislative Policy (which addresses the necessity to contact the members quickly for decisions).
- c. How are positions on the Legislative Subcommittee filled? Should members be appointed by the Commission Chair. Members shall be appointed by the Chair.

A proposed Commission Legislative Policy was presented. The proposal was set forth as a draft and served as the basis for discussion. The legislative process is very dynamic and the policy attempts to outline the procedures to be used as a Commission-derived bill works its way through this process.

1. Paragraph 5(a) addresses the circumstances when a Commission-derived bill has been amended and there is enough time for a Commission meeting to occur to address the changes. A “simple majority will be needed to ratify the change or withdraw Commission support.” Is this the same standard used to pass the recommendation out of the Commission? No. After the recommendation has been approved by the “super majority,” the question regarding bill changes is solely whether the change in the bill is consistent with the intent of the Commission’s original recommendation? It is not a new vote on the merits of the Commission-derived bill.
2. Paragraph 5(b) addresses the circumstances when a Commission-derived bill has been amended, but there is not enough time to wait for a Commission meeting to occur to discuss the change. At those times, DCJ staff will contact the Legislative Subcommittee who will vote by simple majority to either maintain or withdraw Commission support.
3. Paragraph 5(c) addresses the circumstances when changes are made to a Commission-derived bill and there is no time to contact all five members of the Legislative Subcommittee. The policy states that feedback from only two members is necessary? Who are these two members? During the legislative session, the members should be prepared to be “on call” and accessible to reduce the time necessary for the feedback.
4. Tom Clements suggested that if the conditions found in 5(b) or 5(c) occur, the members of the Legislative Subcommittees involved in any particular decision on a bill should present the details of the bill change and explain their deliberation and decision at the next Commission meeting.

Pete Hautzinger stated that, prior to voting on the proposed policy, the role and obligation of all Commission members be edited to reflect the current discussions. Regina Huerter added it should be stated that members of Task Forces or Working Groups that are not full Commission members cannot speak on behalf of the Commission or any of its task forces or working groups.

The Commission Legislative Subcommittee positions and the Commission Legislative Policy will be presented for a discussion and vote at next month’s meeting.

DCJ prepared a draft outline of a Legislative Fact Sheet. Does the Commission agree with the format? Can you change the question, “What is the problem?” to “What is the issue?” The rest of the Fact Sheet was approved.

Performance Measures Feedback:

Tabled for September meeting.

Next Meeting:

In September, the Drug Policy Task Force will present its preliminary recommendations for discussion. Also in September, the Legislative Policy and Legislative Subcommittee positions will be authorized.

In October, final recommendations from the Drug Policy Task Force will be presented for a vote. Additionally, the Juvenile Task Force will be presenting its draft recommendations for a preliminary discussion.

Next meeting will be September 9, 2011.

The meeting adjourned at 4:25 p.m.