



**Commission on Criminal and Juvenile Justice**  
  
**Minutes**  
**October 14, 2011**  
  
 Camp George West  
 15350 S. Golden Road, Building 100  
 Golden, Colorado

**Commission Members Attending:**

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

**Absent:** Regis Groff, Mark Waller, Rhonda Fields, David Kaplan, Julie Krow

**Call to Order and Opening Remarks:**

The Chairman, James H. Davis, called the meeting to order at 9:20 am and reviewed the day’s agenda. Reggie Huerter moved for the approval of the September minutes. Reo Leslie seconded the motion. The minutes of the September CCJJ meeting were approved by a unanimous voice vote.

**CCJJ Process and Protocols:**

Jeanne Smith outlined the revised draft of the policy related to the roles and responsibilities of Commission members regarding legislative recommendations. The revised document reflects changes requested during the September discussion. Tom Clements moved to vote on the proposed policy. Grayson Robinson seconded the motion.

Vote: I support it. 18                    I do not support it. 0

**Roles and Responsibilities Policy - PASSED.**

**Sex Offender/Offenses Task Force:**

Kevin Ford opened the discussion on the Sex Offender/Offenses Task Force recommendations. As part of the September presentation, a recommendation concerning transient offenders was introduced. As the recommendation was being refined, a wording issue was uncovered which required further clarification.

This recommendation, FY12-SO1, will be pulled from today's agenda and will be voted on in November.

Last month, the Commission was introduced to the issues surrounding housing restrictions and zoning ordinances that prohibit the residency of sex offenders. As more and more municipalities and counties issue housing restrictions, the locations and options available for sex offenders shrink. The Refinement Working Group has proposed a solution which will be presented today as Recommendation FY12-SO15. The Commission will vote on this recommendation in November.

FY12-SO15: This recommendation asks for the creation of a state statute prohibiting housing restrictions and zoning ordinances that limit where sex offenders can reside, with the exception of child safety zones. The number of municipalities and counties with ordinances restricting the housing of sex offenders has grown in the last few years. In 2004, there were 16 municipalities and 3 counties whereas in 2011, there are 32 total.

Limiting where sex offenders can live can result in unintended negative consequences. For example, in Florida, residency restrictions have limited where sex offenders can live to an area underneath a bridge. It also affects an offender's ability to find or retain employment.

Nationwide, estimates show that 90% of sex offenses by registered sex offenders were committed by family, friends and/or acquaintances of the victim and the remaining 10% of offenses were committed by strangers. The housing restrictions and zoning ordinances focus on the registered "stranger" offenders. Of the 10% stranger-offender group, the initial contact between the offender and victim was usually made more than one mile from the offender's residence (85% of the time). Of the 10% of stranger-offender group, only 15% of these stranger-offenses were made within 1 mile of the sex offender's residence, representing only 1.5% of the total offenses.

In a one-year time frame, roughly 90% of sex offenses are committed by first time offenders while the other 10% are committed by individuals with previous offences (i.e., registered offenders). Therefore, residency restriction and zoning ordinances only target .15% of potential offenders. However, the consequence of these restrictions is that housing and, consequently, employment, finances, supervision, and many other factors are disrupted for all registered sex offenders.

- What percentage of registered sex offenders are under Parole or Probation supervision? Last year there were 13,000 sex offenders registered in the state (Probation supervised approximately 3,000 and Parole supervised 1,500 sex offenders. The other 8500 were not under any supervision).

To translate the statistics, only 1.5 of every 1000 individuals committing sex offenses under "stranger circumstances" are the ultimate, potential target of housing restrictions or zoning ordinances. However, the life circumstances of many more offenders is disrupted which can result in increased instability that can increase the risk to re-offend.

- Are these numbers consistent with what is found in Colorado? Colorado data shows that 15% of offenders are arrested for a subsequent sex offense, as opposed to the national figure of 5-10%.
- Colorado has a higher percentage of re-offense because it uses a polygraph while the offender is under supervision. In essence, offenders self-report new offenses. The restrictions and zoning

ordinances do not affect enough offenders to counteract the negative consequences that result from the restrictions.

There are two or three states that either have laws or rulings which prohibit or effectively prohibit such restrictions for a variety of reasons, including disruption of state-wide functions and/or denial of constitutional rights. In some states such laws have been challenged but upheld. Local governments will oppose the concept on the basis of home rule or necessity for municipalities to control their own zoning needs. The Colorado Municipal League and Colorado Counties will represent these entities right to home rule authority of local governments.

The deputy AG stated that the Attorney General's Office has not been asked to render an opinion of whether the residence restrictions impact statewide concerns.

- Can the Attorney General's Office render an opinion before the next meeting where the vote will be taken? The Commission needs to submit an official request before the work can be done.

What happens at community meetings when a sex offender is relocating into an area?

- The statute that requires community meetings are only for those sex offenders classified as a "Sexually Violent Predator" (SVP). In most jurisdictions, the initial few meetings were well attended and participants were vigilant. Now, in many jurisdictions, community attention and participation has waned as communities have become more informed and/or inured/adapted to the presence of sex offenders.
- How is the community notified? Typically they notify by door-to-door, mail, newspaper or radio. But the method of notification varies by community.

It was suggested that because we have a divided legislature and it is an election year this may not be the best time to bring this recommendation forward. The local control issue is something that is very important to several members of the legislature. Therefore, it was suggested that legislation derived from this proposal will most likely fail.

- Do we want to present something to the legislature knowing that it will fail?
- How will this affect other CCJJ bills?
- Are we supporting a bill that will spoil the whole bunch?
- It was stated that not everything that is approved by the Commission must go to the Legislature immediately. It can take several years.

Child Safety Zones prohibit registered sex offenders from being present within defined areas where children congregate or are frequently found except in limited and safe circumstances. It was stated that zoning and residency restrictions are put in place to make local residents feel safer. However, child safety zones do the same thing but without the adverse consequences. It was suggested that introducing this idea may be a more effective approach to replace restrictions rather than imposing prohibitions against restrictions and ordinances.

It was stated that recommendation FY12-SO15 asks to prohibit residency restrictions and zoning ordinances but that it does not prohibit or impose child safety zones.

- Are there any evidence based studies that support child safety zones? No. It was noted that having child safety zones is beneficial to the supervision of offenders on probation or parole.

- Are there any studies that show the impact of such zones on offenders who are no longer under supervision?

It was stated that starting the education process on this issue is important. The purpose of this Commission is to put forth good, evidence-based proposals. If we do the research, this body can have some influence on changing laws that were put in place based on perception or emotion. The political challenge to overcome issues of perception and emotion are substantial and means that there must be very convincing data to support the position. We have to be realistic, but we shouldn't abandon our obligation to put forth good evidence-based proposals.

This issue will be voted on next month. Before then members should give this recommendation some thought.

The Sex Offender Task Force shifted its presentation to the remainder of its recommendations that were discussed last month and were being presented for final consideration and vote.

### **FY12-SO2. Develop collaborative training programs.**

Individuals from, but not limited to, the Sex Offender Management Board, the Judicial Department, law enforcement, the Department of Corrections, and the EPIC project\* shall collaborate to develop and provide a uniform curriculum of sex offender training modules that could be offered to various groups (supervising officers, treatment providers, community corrections staff, State Board of Parole, judges, legislators, law enforcement, etc.). It is anticipated that training could be offered more frequently and consistently through this collaborative effort to address such topics as information on the Lifetime Supervision Act, an overview of the SOMB standards, motivational interviewing, and trauma informed treatment.

(\*The Evidence-Based Practice Implementation for Capacity project would require funding to continue beyond its current funding conclusion date. See [cdpsweb.state.co.us/cccj/epic.html](http://cdpsweb.state.co.us/cccj/epic.html))

#### Discussion:

- This is not a legislative recommendation but a recommendation for agencies to collaboratively work together in a time of declining budgets and resources.
- Will the motivational interviewing mentioned in the recommendation include skill training or is it overview training? The EPIC project does training on the actual skill. However, the status of EPIC is unknown. If EPIC does not continue, then the skill training would continue under this recommendation.
- Who is going to monitor / oversee the training? What does it look like? It would look different depending on the audience because each deals with different specific issues.
  - Is it not a standardized training? There would be sections that would be relevant across the agencies, but there may be specific modules that would be specific to an agency.
- Will this effort be perceived as superseding SOMB? Will this mesh with SOMB? SOMB would be involved. In some instances SOMB would be the lead.
  - Will any of the training conflict with the new duties of the SOMB? It would be complementary to what SOMB does.
- There are other agencies that do motivational interviewing that can assist in the process.
- It was stated that it is not clear in the recommendation who would be responsible. The response was that the SOMB staff assumed it would coordinate the training.

- g. It was estimated that to ensure that an individual is taken from no knowledge of motivational interviewing to a point where they are proficient would cost \$1200/person.
- h. Charles Garcia moved to vote on this recommendation. Reo Leslie seconded the motion.

VOTE: I support it. 19 I can live with it. 0 I do not support it. 0

**Recommendation FY12-SO2 - PASSED.**

**FY12-SO3. Improve the collection and consistency of data to evaluate the impact of the lifetime supervision act.**

A committee shall be created including, but not limited to, representatives from the Department of Corrections, the Colorado Bureau of Investigation, the Division of Criminal justice, and the Judicial Branch, to evaluate and improve the consistency of data collected across agencies to facilitate the study of the impact of the Lifetime Supervision Act. The collaborating agencies should identify and resolve the gaps and inconsistencies in electronic databases. The agencies shall review and provide recommendations to improve the annual Lifetime Supervision Report by July 1, 2012.

Discussion:

- 1. There was no discussion about this issue.
- 2. Steve Siegel moved to vote on the recommendation. Tom Clements seconded the motion.

VOTE: I support it. 17 I can live with it. 1 I do not support it. 0

**Recommendation FY12-SO3 - PASSED.**

**FY12-SO4. Identify a group to study sex offender specialty courts and determine their viability in Colorado. [General Concept]**

Gather information on other states' experiences with sex offender courts to determine the viability of sex offender courts in Colorado and whether such courts would increase communication, consistency, and public education and would result in more informed decisions regarding sex offender management in the criminal justice system. At a minimum, this group could include representatives from the Judicial Department, the Sex Offender Management Board, and the Department of Corrections and the work should be conducted within the Refinement Working Group of the Sex Offense/Offender Task Force, or a succeeding group as designated by the CCJJ.

Discussion;

- 1. What does the research show from other states? It was stated that other states are showing improvements.
- 2. It was noted that unless you have someone from CDAC and the defense bar in the group, this will not work. You also need to include judges who have worked in specialty courts. If you do this day in and day out, you can burn out.
- 3. What resources are deprived to others because some go through a specialty court? Specialty courts are expensive. How do we look at bringing these practices to courts in general? It was stated that, although the outcomes of specialty courts are good, due to their expense, specialty courts can't be introduced to address every type of complex offender issue.

4. Is SOMB in favor of this? It was stated that while the refinement group was selected to get this started anything that deals with sex offenders would include SOMB. It was assumed they would participate.
5. Has anyone spoken to the Chief Justice? No.
6. Reo Leslie moved to vote on the recommendation. Doug Wilson seconded the motion.

VOTE: I support it. 4      I can live with it. 7      I do not support it. 7

**Recommendation FY12-SO3 - FAILED.**

**FY12-SO5. Continue the funding of the enhanced per diem differential (\$33.02) that applies to specialized Diversion, Transition, Condition of Probation and Condition of Parole community corrections programs for sex offenders.**

The goal of this recommendation is to increase community corrections placement options and bed capacity for sex offenders as an intermediate alternative to placement in the Department of Corrections or Probation. When appropriate and warranted, based on evidence-based practice and public safety considerations, some sex offenders could be managed and treated more cost effectively in community corrections. Without this intermediate option, the only options are either the most expensive and possibly the most excessive option – incarceration; or the less expensive but possibly insufficient option - probation or continuing on parole.

Currently, the funding for the enhanced per diem differential is supported by a Justice Assistance Grant (JAG) that expires at the end of FY 2012. Without the enhanced per diem, most programs will not accept sex offenders because it requires higher paid, specialized staff to work with these individuals. Additional costs to programs are incurred because sex offenders are less able to pay the required subsistence fees due to the greater challenge for sex offenders to find and maintain employment while also paying for treatment and monitoring costs. The Office of Community Corrections (OCC) within the Division of Criminal Justice (DCJ) would define the program criteria and specialized scope of work to qualify for the enhanced per diem which would include having a minimum of 5 beds in each funded program. The implementation of this recommendation would be most effective in conjunction with Recommendation #6.

Discussion:

1. It was stated that if you get more offenders transitioning out, the cost savings may help pay for the per diem.
2. Is the money the only issue that is preventing community corrections facilities taking sex offenders? More sex offenders were able to be placed in Community Corrections using this grant. The community corrections boards can be very selective regarding the offenders they will accept. In some cases, community corrections facilities/programs do not have the skill capacity to handle sex offenders and, therefore, the connected community corrections board would not see requests for sex offenders.
3. The Office of Community Corrections within the Division of Criminal Justice will have to define what the scope of work looks like.
4. In addition to the \$33.00 per diem, are you asking the person to also pay for treatment? The per diem pays for the polygraph, extra transportation, and a trained staff member.

5. Can DCJ Office of Community Corrections itemize the costs associated with treatments?  
Recommendation #7 looks at identifying costs and studying cost savings.
6. The Parole Board would prefer to have sex offenders receive treatment. What motivation would the various community corrections boards have to accept sex offenders if programs didn't have the enhanced per diem? The issue of how offenders are integrated into the community can be discussed when training Parole Board members. Would they prefer the offender go into parole without any treatment that can be provided in community corrections?
7. ComCor, Inc. in Colorado Springs has worked with sex offenders for several years and they have good data showing successful outcomes.
8. It was stated that there should be consistency across the state on handling offenders and the requirement to get into community corrections facilities.
  - a. There are some boards that have a standing policy to not accept sex offenders. Judges are then left with the option of probation or prison.
  - b. To "reward" community corrections programs with this funding stream is not right.  
[Note: This comment misunderstands the fact that programs do receive the enhanced per diem UNLESS they first accept sex offenders; addressed in #10 below.]
9. If you don't have some sort of policy, Colorado Springs will end up with all of the sex offenders. A sex offender from Grand Junction will have to go to DOC to then be sent to Colorado Springs.
10. The enhanced per diems are not just handed out. A request for proposal is sent out. Providers have to apply and agree to provide specific services and they are then audited to ensure that they are providing the services. Several agencies have applied for the funds and new places have accepted offenders.
11. Can we delay voting on recommendations 5 and 6 until we get better data from the report that Recommendation #7 produces? Yes.
12. Is the assumption in #7 that the population that would use these enhanced services otherwise be placed in DOC or would these offenders be placed in probation instead? The additional treatment funding/beds for sex offenders in community corrections would increase the community option for those deemed appropriate rather than sending or returning them to DOC.

**Recommendation FY12-SO5 - TABLED.**

**FY12-SO6. Change the DCJ OCC rule to remove the 30-day funding limit for treatment of sex offenders in community corrections. [Community Corrections Concept]**

There are instances where the Probation (housed in Judicial) has requested that the Office of Community Corrections (OCC) within the Division of Criminal Justice fund the placement of Condition of Probation (COPr) sex offenders in community corrections. The OCC enforces a contractual funding imperative that places a 30-day maximum for regular COPr offenders. This 30-day period is not a sufficient length of stay for sex offenders in residential supervision and treatment. It is recommended that given an enhanced differential per diem, the OCC should change this limitation for COPr sex offenders in order to provide a sufficient length of stay for supervision and treatment. This recommendation would enhance the implementation of Recommendation #5.

**Recommendation FY12-SO6 - TABLED.**

**FY12-SO7. Charge the Refinement Working Group of the Sex Offense/Offender Task Force or a succeeding group as designated by the CCJJ to work in collaboration with, but not limited to, the Division of Criminal Justice, the Department of Corrections, and Probation, to study the potential, long-term cost savings related to the placement of sex offenders in community corrections (with enhanced per diem) relative to the costs of the retention of sex offenders in or revocation of sex offenders to DOC. This work must be completed by January 1, 2012.**

It is expected that the intermediate placement option in community corrections for sex offenders determined to be appropriate for this placement will result in a cost savings relative to placement or retention in the Department of Corrections. This cost savings could fund the increased availability and the enhanced per diem of this intermediate community corrections option. The average length of stay for the treatment of specific and appropriate offenders may be shorter in community corrections than if these offenders are retained or returned to the Department of Corrections. Due to the potential wait time for treatment and for parole release, the length of stay in DOC is likely to extend well beyond the stay for the necessary treatment in Community Corrections

Discussion:

1. Charlie Garcia moved to vote on Recommendation #7 and not Recommendations 5 and 6. Pete Hautzinger seconded the motion.

VOTE: I support it. 14      I can live with it. 3      I do not support it. 1

**Recommendation FY12-SO7 - PASSED.**

**FY12-SO8. The Office of Community Corrections in the Division of Criminal Justice in collaboration with the SOMB shall work with the CACCB\* and the GCC0C^ on training for community corrections board members regarding the Lifetime Supervision Act and sex offender supervision.**

Community corrections board members are especially cautious about accepting sex offenders into community corrections programs. Training to address the standards and specifics of treatment and supervision of sex offenders could enhance understanding and inform the evaluation of sex offender application for community corrections programs. (\*Colorado Association of Community Corrections Boards; Governor's Community Corrections Advisory Council)

Discussion:

1. Reggie Huerter moved to vote on this recommendation. Eric Philp seconded the motion.

VOTE: I support it. 18      I can live with it. 0      I do not support it. 0

**Recommendation FY12-SO8 - PASSED.**

**FY12-SO9. Expand funding to the Division of Parole (DOC) to negotiate an increase in the number of beds in Community Corrections agencies and programs to house COPa (condition of parole) sex offenders for residential sex offender treatment.**

Currently there are only 10 beds funded through HB10-1360 that are designated for the residential treatment of sex offenders.



## Discussion:

1. There are ten beds available for parolees in Community Correction agencies that receive treatment under HB10-1360. These 10 parolees are individuals who were not doing well on parole and this gave them a place to continue treatment without going back to DOC. It was stated that this recommendation would allow for continued funding through the per diem.
  - a. Is the purpose of extending funding for these beds meant to increase the number of beds?
  - b. Is the cost of housing a parolee more expensive?
2. Where does the funding come from for 1360? It is DOC savings that is transferred from one department to another.
3. We lack the data to know if this is a good idea. The refinement working group would conduct the study. This would be folded into the study from Recommendation #7.
  - a. Is putting parolees in Community Corrections successful?
  - b. If not, why should we continue the funding?
4. There is a difference between Recommendation #7 and #9. Recommendation #7 discusses studying funding whereas Recommendation #9 addresses whether putting parolees in Community Corrections is a good idea.
5. There are sex offenders who have reached their mandatory release date and would be homeless without having these beds available. The need for sex offender parolees to have a place to continue treatment remains.
6. Are there parole candidates who are not being released because there are no beds available? A couple of years ago, the statistics were that 50% of parolees were being released into the community as homeless.
7. What is the breakdown of the continued cost? How much do the beds cost and what are the long-term savings? We will have the result of these questions in a couple of months after the study is completed.
8. Steve Siegel moved to table Recommendation #9 to go back to the Refinement Working Group and await the report findings. Michael Dougherty seconded the motion.
  - a. This is a 50% vote? It is a 51% vote.

VOTE: I support it. 10      I do not support. 9

**Motion PASSED.****Recommendation FY12-SO9 - TABLED.**

9. When this returns to the Commission for consideration, can the purpose of this recommendation be clarified? How big is the need to have beds set aside for parolees to have treatment? How big is the need for the 10 parolees that are currently receiving treatment?

**FY12-SO10. Increase treatment resources at DOC.**

Expanded treatment resources would increase the availability of treatment for the backlog of wait-listed lifetime supervision offenders (indeterminate sentence) and provide treatment for sex offenders with determinate sentences.

## Discussion:

1. It was asked how many offenders have been sentenced as life time sex offenders? About 1600.
  - a. How many are on parole? Approximately 80.

- b. How many offenders do you have on the wait list for treatment? Around 300 who are within four years of parole eligibility.
  - c. Can someone be denied parole from DOC if you have not received treatment? Yes.
  - d. So, there are 1300 offenders who are in DOC on a lifetime sentence. These 1300 individuals will not admit guilt if they are in the process of appealing their conviction. If they do not admit guilt, then they do not qualify for treatment. This is correct.
2. It was stated that the root of the problem is not with the availability of treatment programs, but the actual legislation that created lifetime offenders.
  3. DOC is looking at options to expand treatment programs within DOC, but it is unclear where this additional funding will come from.
  4. Would it be beneficial to DOC to have a CCJJ-supported recommendation? Yes.
  5. Steve Siegel moved to approve the recommendation. Eric Philp seconded the motion.

VOTE: I support it. 18      I can live with it. 1      I do not support it. 1

**Recommendation FY12-S10 - PASSED.**

**FY12-SO11. Continue the funding of the Sex Offender Victim Specialist (SOVS) FTE to work in coordination with the sex offender treatment program to continue the current DOC grant-funded SOVS services.**

This Specialist is assigned to provide education to victims (enrolled in the DOC victim notification program) regarding sex offender treatment in DOC, to prepare victims for parole release application hearings, and to prepare victims for the possible re-entry of sex offenders into the community. If victims are amenable, the specialist can provide an opportunity for victims to be informed and to provide input into the offender's treatment. The funding for this grant-funded position expires September 30, 2012.

Discussion:

1. It was stated that the purpose of this recommendation is to help provide better communication with the victim regarding the DOC sex offender treatment process, preparation for offender parole, and the treatment and containment of offenders in the community. The grant for a victim specialist is only in place for one year.
2. The funding for the victim advocate is a Bureau of Justice grant.
3. It was asked how this is different from the Victim's Right Act? Victims may be notified by letter that an offender is going to the parole board. A victim advocate would give the victim more information.
4. DOC has just begun the position and they will have better information in six months to know if this has been beneficial.
5. It was stated that the impact on a victim to handle the release of an offender is much more specialized than during trial (which is the focus of victim assistance in the Victim's Rights Act).
6. Is this a recommendation to ask for more General Fund money to support an FTE that was previously funded by a grant? Yes.
7. Charlie Garcia made a motion to table recommendation #11. Regie Huerter seconded the motion.

VOTE: I support it. 15      I do not support it. 5      **Motion PASSED.**

**Recommendation FY12-S11 - TABLED.**

**FY12-SO12. Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.**

The necessity for this training should be added to the list of topics in the annual training schedule in the Colorado State Board of Parole Policy Manual [CRS 17-2-201 (1) (e) and (3) (c)].

Discussion:

1. One of the trainings has occurred and this recommendation is to include the training in the Parole manual.
2. Bill Kilpatrick moved to approve Recommendation #12. Anthony Young seconded the motion.

VOTE: I support it. 19      I can live with it. 0      I do not support it. 0

**Recommendation FY12-S11 - PASSED.**

**FY12-SO13. The State Board of Parole and treatment staff of the DOC Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.**

Without creating liberty benchmarks, the intent is to increase the communication between parole board members and treatment staff.

Discussion:

1. Would this communication be subject to review by defense lawyers? There is some communication between treatment providers and the Parole Board that is confidential and would not be open to review by others. But the decisions made by the Parole Board are public.
2. It would seem important that the confidentiality of the communication be part of the recommendation.
3. Could a process be developed where information is communicated in a general manner?
4. Steve Siegel made the motion to approve Recommendation #13. Reggie Huerter seconded the motion.

VOTE: I support it. 17      I can live with it. 1      I do not support it. 1

**Recommendation FY12-S11 - PASSED.**

**FY12-SO14. Recommend there be multiple-member review of all parole release applications to the State Board of Parole (full board or 3-person review) when a sex offender meets all SOMB treatment criteria.**

This practice would avoid placing a single individual Parole Board member in a position to be solely accountable for sex offender release application decisions whether the decision is to release or to defer. This policy should be included in the Colorado State Board of Parole Policy Manual [CRS 17-2-201 (3) (c)].

Discussion:

1. It was stated that the current practice is for a member of the Parole Board to meet with an offender and make a recommendation for parole eligibility. A second Parole Board member must concur with the decision. By current practice, decisions to release are then brought to the

full Board for review and final decision. This recommendation is to have the full Board, in addition to release decisions, also review the decisions to defer when the sex offender has met all the SOMB treatment criteria.

2. The function of the Parole Board is to determine who is eligible for parole and who is not. They look at offenders who have been incarcerated on murder charges, burglary etc. It was noted that the Parole Board does not feel that this segment should be treated separately. To add another person to a hearing would delay hearings. Adding an additional hearing officer increases costs.
3. Regi Huerter moved to vote on Recommendation #14. Pete Hautzinger seconded the motion.

VOTE: I support it. 3      I can live with it. 1      I do not support it. 16

**Recommendation FY12-S12 - FAILED.**

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

Tom Raynes and Maureen Cain outlined recommendations for their initial presentation from the Drug Policy Task Force that will be presented for a final vote at the November meeting.

The first recommendation presented by the Structure Working Group of the Drug Policy Task Force was a draft of a revised sentencing grid for drug crimes. This recommendation was also presented to the Sentencing Task Force.

1. Section 1 describes the background of the proposal.
2. There was a test run on some cases in Mesa County to see how this grid would work out. This is much simpler than the current sentencing structure under CRS. 18-18-101. Judges will still have judicial discretion to deviate from the grid. The Structure Working Group also examined the sentencing grids from other states.
3. The grid uses an XY axis. The Y axis takes into consideration the severity of the current offense based on their felony classifications and provides sentencing ranges for those classifications. For example, a D-3 felony has a sentencing range from 1 – 6 years.
4. The X axis takes into account the severity of the offender's criminal history. A minor criminal history includes arrests for misdemeanors, traffic or municipal offenses or one non-person conviction for a class 5 or 6 felony. A moderate criminal history includes convictions for three or more M-1 or M-2 convictions or prior felony convictions not listed in 18-1.3-201. A serious history has two or more felony convictions and one conviction listed in 18-1.3-201.
5. If a judge writes why he/she went outside the grid, would this be sufficient? Judges do not have to do findings of facts. Do the judges send their write-ups, and if so, where? Yes, they would send their findings to Judicial for tracking.
6. Do other states have advisory guidelines and grids for drugs and other offenses? Yes. Ms. Cain will check to see if there is any case law on this.
7. What were your thoughts in putting all misdemeanors in one classification? The M-1 and M-2 were put into a separate classification.
8. Is there going to be something to explain what a D-1 used to be? Will there be an explanation of why you moved things? The Structure Work Group has prepared an outline of what offenses fall within the new categories. A chart that shows where crimes currently fall versus where they would be under this new grid is in progress.
9. When are you eligible for a DOC sentence?

10. How does the exhaustion of remedies work? The Structure Working Group has agreed on an exhaustion of remedy standard. Prior to revocation of community supervision or sentence, the court must determine that all reasonable response options to the violation(s) have been exhausted by the supervising agencies given the nature of the violation(s), the treatment needs of the offender and the risk level of the offender. The court must determine that a sentence to prison is the only reasonable option given the facts and circumstances of the individual case.
11. Does this make sentences easier or harder on drug cases? Do you get less time or more time?
12. Are any dealer distribution cases under the grid? There are cut points on distribution. If you have someone who deals a large amount or has a gun present, and this is their first offense, they could get a low level sentence.
13. The presumption on D-1 Felonies is that there will be mandatory sentences.
14. Can you have a jail sentence as an additional hammer for a probation sentence?
15. Is a D-1 misdemeanor an automatic sentence to the county jail? It is not mandatory, it is a range.
16. Has there been discussion on the impact on juveniles? Juveniles go under separate juvenile sentencing scheme.
17. Have there been any projections on the impact to prison populations? The DA's have been asked to look at the grid against real cases to see what the impact would be.
18. We should have targets or measurables that can be examined five years down the road.
19. Probation will not support any effort making Probation a mandatory sentence.

#### Treatment Funding Consolidation and Reporting:

1. There is an attempt to consolidate the three funding streams and respective boards into one statewide group. The three funding streams/boards are: Interagency Task Force on Treatment (ITFT), the Interagency Advisory Committee on Adult and Juvenile Correctional Treatment (IACAJCT) and HB-1352.
2. The statewide group will have one voting representative from each statutorily named department, division, office or professional services. The new body will have eight voting members.
3. The purpose for the funds will be consolidated and expanded to include data collection, analysis and administrative support. Screening is mentioned, but not assessment. It was suggested that assessment and evaluation not be left out.
4. The Division of Behavioral Health has a TMS system. Probation has a system that measures blood alcohol levels for DUI offenders. That information transfers into DBH's system. Treatment providers are also required to put information into the probation site. This information is contained and is sent to DHS.
5. The populations to be served with funds shall be: Diversion (does not include pre-plea diversion); Probation (adult and juvenile); Parole (adult and juvenile); Community Corrections; Jail. It was asked why pre-plea diversion cases were excluded? The funds were to be going toward adjudicated cases that may result in a DOC population.
  - a. You are creating a silo where we could be making the most change – the juveniles who are in the pre-plea diversion areas. If the new grid saves money, then it can be sent to the juvenile offenders.

The Drug Policy Task Force asked for more information about addiction and its ramifications. A fact sheet was distributed that gave information about addiction, substance use disorders, mental illness, marijuana use and the effect on adolescents, and risk factors. This fact sheet will be sent to Commission members electronically.

### Prevention Working Group

1. This working group envisioned developing a statewide plan that includes a “train the trainers” system. Best practices would be available to local communities.
2. Colorado is one of the lowest states in spending prevention dollars.
3. They recommend investing in an annual youth survey to collect substance use data.
4. They would like to expand the use of Juvenile Assessment Centers.
5. They would like to expand the use of evidence-based substance abuse prevention programs, policies and practices.
6. They recommend the standardization and expansion of juvenile diversion programs.
7. Some of the funding issues are being discussed at the IACAJCT meeting in October. Regi would like to see the original 1352 recommendation.
8. If we are focus on public safety and saving money, juvenile diversion needs to be a part of the discussion. All stakeholders need to come together before the November meeting to get a consensus.

### DUID Working Group:

1. The Task Force will not be coming back in November with a new DUID recommendation. There is no consensus within the Working Group on the science. Over the summer the working group heard presentations from several scientists whose information was inconsistent with other researchers.
2. The working group had trouble finding any reliable data on the affects of THC on driving. The Arapahoe County Sheriff’s Office will be doing a research project on the effects of THC.
3. Government entities need to collect statistics on fatalities involving DUI and DUID. Alcohol related offenses are easier to prove due to the ease of detecting alcohol.
4. The working group suggests increasing the number of Drug Recognition Experts (DREs) to make sure there is coverage in the rural and frontier areas of the state.
5. Working group members support a strong public education campaign that focuses on disseminating information to marijuana dispensary owners, customers, and the public to enhance public safety on the roadways.
6. Should efforts to pursue a per se blood THC level proceed, legislators should not consider a tiered penalty system regarding THC levels.
7. We now have 125,000 registered medical marijuana users in the state of Colorado. It was suggested that there is no scientific research showing the benefits of medical marijuana use. Instead we have relied on anecdotal statements made by users. It was stated that we lack the courage to have a THC level established in Colorado.
8. Who is going to come up with the science to establish a level? Many of the working group members believed we should move forward with the 5 nanogram level. There were others that wanted more research. Others wanted higher levels. Part of the discussion in the working group revolved around the length of time where THC had a hallucinogenic effect and the timing if marijuana was ingested or inhaled.
9. The primary argument against charging for DUID is that there is no level where impairment definitely is reached. It may vary by person.
10. It was suggested that we still submit something and not let the legislature off the hook.
11. It will be difficult to get through the Senate Judiciary committee because they will ideologically oppose the concept.

- a. Do we have the science to prove a certain level of THC leads to impairment? No. It was stated that there is a level that impedes driving. If we set a level with an arbitrary number, then do it. Just don't medicate and drive. Is there a neutral source of information that can give us a level? It was again stated that many presentations were heard over the summer that conflicted with one another on this issue.
12. There was one question that Sheriff Robinson asked of all researchers - If your wife and children got into a car with a neighbor who had ingested marijuana, at what level would you no longer feel safe to allow them to drive with the neighbor?

The next CCJJ meeting will be November 18<sup>th</sup> from 12:30 – 4:30pm. The Drug Task Force recommendations will be voted on next month as well as two delayed recommendations from the Sex Offender/Offense Task Force. Next month's meeting will be held at the Jefferson County District Attorney's Office.

The meeting adjourned at 3:48 p.m.