



Commission on Criminal and Juvenile Justice

Minutes

December 9, 2011
Jefferson County District Attorney's Office
500 Jefferson County Parkway
Golden, CO 80401

Commission Members Attending:

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

Absent: Rhonda Fields, Doug Wilson, Mark Waller, Gil Martinez

Call to Order and Opening Remarks:

The Chairman, James H. Davis, called the meeting to order at 12:59 p.m. and reviewed the day's agenda. Regi Huerter moved for the approval of last month's minutes. Anthony Young seconded the motion. The minutes were approved by unanimous vote.

EPIC Update and Sustainability Planning:

Diane Pasini-Hill explained how the EPIC program conducts intensive trainings for "change agents" (officers in probation, parole, community corrections, etc.) on Motivational Interviewing (MI), as well as how the EPIC team follows-up with the training. A short video was shown featuring change agents explaining how Motivational Interviewing and the EPIC project improved their ability to motivate offenders to improve their behavior. The EPIC project currently has over 250 change agents.

David Bonaiuto stated that the first guiding principle for risk/recidivism reduction is to identify the risks and needs of the offender. The next step is to find a way to motivate the offender to engage in treatment and pro-social, positive behavior and avoid reoffending. Motivational Interviewing is a communication style adopted by the change agent (probation or parole officer) that helps the offender develop his/her commitment to change.

There are areas that act as a barrier between the offender and his/her successful re-integration into the community. These areas include: family matters, criminal companions, criminal history, low self-control, education/employment, leisure recreation, substance abuse, and anti-social attitudes. When officers focus on helping motivate the offender to change in these areas, they have better effects on reducing recidivism.

One caveat is that if an officer is simply *trained* in Motivational Interviewing, without follow-up and ongoing coaching, training and support, they often lose the MI skills within six months. The way to keep skills fresh is by focusing on ongoing *coaching and feedback* to improve the probation and parole officers' skills.

The result of the EPIC project on change agents has been significant. Change agents across Colorado are now asking more open-ended questions, which allow offenders to explore their own ambivalence about changing. When at least 70% of the questions are open-ended, there are better results. In reviewing the first interview tape of a change agent, the average skill level for active listening is 21%. After five tapes and coaching sessions, the skill level has improved to 86%.

Question: Is this information getting back to the individual departments (probation, parole, etc.)?
Answer: EPIC has an advisory board and the results have been given to the Board. The Advisory Board is trying to ascertain the cost of getting someone from a "no skill" level to "competency." Currently it appears the cost is \$1,500 per person.

Question: Are there expectations about the change agents to increase the number that have reached competency?

Answer: To date, 1/3 of the change agents have reached the level of competency.

Motivational interviewing has been around since 1983. In 1996, probation sent six people to become trained in MI and another six were trained in 2003. However, none of those officers had the follow-up coaching and feedback that's currently being practiced with the EPIC system. EPIC starts with training, but then concentrates on guidance to hone MI skills.

The EPIC project will analyze results by comparing the recidivism rate of offenders for each probation/parole officer prior to and after reaching competency in MI training.

Sex Offender/Offenses Task Force:

Commission members were presented with the following recommendation:

FY12-SO #16: Modify CRS 16-22-108(1)(d)(I) to allow quarterly re-registration to occur within 5 business days before or after the offender's required re-registration date.

David Kaplan outlined the proposed modification of the statute. This modification was unanimously supported by the Task Force. For quarterly sex offender registrants, the statute currently requires re-registration to occur on a specific date. If the required date falls on a weekend or holiday, the offender is to re-register on the next business day. The recommendation

proposes allowing an offender who registers quarterly to re-register within 5 business days before or after their required re-registration date. This 5-day modification was already enacted by HB11-1278 for annual registrants. This recommendation will allow consistency across re-registration procedures for all sex offenders and for law enforcement.

Pete Hautzinger made a motion to approve recommendation FY12-SO #16. Charlie Garcia seconded the motion.

Discussion:

1. Does the subsequent 90 day period begin on the date they register? The 90 day period starts from the last registration date. Initially an offender registers when he/she comes out of a facility. From that point, the offender registers every 90 days until reaching their birthday. Then their birthday becomes their anniversary date. An offender would then have five days before or after his/her anniversary date to re-register.
2. Is there something on the registry that makes it clear to the registrant when the next registration date is? Does the registrant get a slip of paper saying when they should come in again? Most forms have an area to indicate the individual's next review date.
3. Could there be one place for an offender to look, such as a website? Having a date posted on a website makes sense for larger and mid-sized law enforcement agencies but the smaller agencies may not have that ability.

VOTE: SUPPORT IT: 14 CAN LIVE WITH IT: 7 DO NOT SUPPORT IT: 0
Recommendation FY12-SO1 passes: 100% to 0%

The Sex Offender/Offenses Task Force was asked to review recommendations from the Community Notification Technical Assistance Team (CNTAT). CNTAT is a subcommittee of and works in collaboration with the Sex Offender Management Board (SOMB). Of the eleven elements presented, seven were supported by the Task Force whereas three were not. The information was to be taken back to the Sex Offender Management Board. Mr. Kaplan presented a handout containing these recommendations to the Commission for informational purposes only.

The Sex Offender/Offenses Task Force will meet again in January to determine if there are any issues left for them to discuss that the Commission had directed them to examine. If not, then the work of the Sex Offender/Offenses Task Force will conclude.

Task Force/Subcommittee Updates:

Drug Policy Task Force:

Grayson Robinson updated the Commission on the work of the Drug Policy Task Force. The Structure Working Group is working on a sentencing grid that would modify current drug

sentences. Its focus is on consistencies and cost savings. The Structure Group anticipates that recommendations (possibly, but probably not, including a new grid) will be completed and be brought to the Commission for a vote in January.

A second area being discussed by the Task Force surrounds prevention issues, especially at the juvenile level. However, the recommendations coming out of the Prevention Working Group involve a fiscal note. Between now and the February CCJJ meeting, the Working Group will explore alternatives and seek out funding from community groups. In addition they will work with the Juvenile Task Force so as not to cross paths.

Comprehensive Sentencing Task Force:

Jeanne Smith gave an update on the work done by the Comprehensive Sentencing Task Force. The Adult Diversion Working Group has gathered data on programs across the state. The Parole Working Group is addressing a critical issue surrounding the calculation of parole: Is it inside or outside the judge's sentence?

The Classification/Consolidation Working Group will take their proposals to private entities for their input. Once this has been done, this group's recommendations will be brought to the Commission.

The Habitual and Mandatory/Minimum Working Group has developed the following two recommendations. After today's discussion, any questions will be returned to the Working Group to answer before the recommendations are brought back to the Commission for a vote in January.

Recommendation 1: Remove walk-away escapes as crimes that can be used as either a presenting offense or a predicate offense for a habitual filing.

Discussion:

1. The Working Group passed this recommendation unanimously on the condition that Recommendation #1 and Recommendation #2 are stand-alone and separate recommendations.
2. In Colorado, when an offender has two prior felonies within a ten-year period, he/she is eligible for the small Habitual Offender sentence. The small Habitual Offender sentence is three times the maximum of the presumptive range for the predicate crime. When an offender has three prior felonies within any amount of time, an offender is eligible for the large Habitual Offender sentence after the fourth felony. This sentence is four times the maximum of the presumptive range.
3. An escape from community corrections or from a diversion program is a felony crime. With this recommendation, the penalties for escape would not change. However, the recommendation would remove the crime of walk-away escape as being eligible for a habitual sentence.

4. How can a judge tell if a prior or current escape is an actual escape from a locked down correctional facility (for example: "tunneling out") or the less serious "walk-away" offense from a community corrections facility? The current statute is the same for both, therefore, the district attorney would have to review the file.
5. How many escapes are walk-aways versus hard wall escapes? As stated in the white paper put out by the Post Incarceration Task Force, of 1100 escapes there were only 10 escapes from a secured facility. The rest were walk-aways.
6. Are there any statistics that would show if another felony was committed within 24 hours of an escape? It is rare that an individual would commit a crime after a walk-away. It does happen, but it is rare.
7. What are other states doing? Many other states have stopped calling walk-aways "escapes." Other states often use the term "abscond" instead of "escape" for walk-away offenses.
8. If other questions arise before the next meeting, please submit them to Jeanne Smith.

Recommendation 2: For non-violent presenting offenses (i.e. crimes other than those listed in 18-1.3-201(2.5)(b), relating to the probation eligibility rules for individuals with 2 prior felonies) the habitual sentence penalty would be reduced to three times the maximum sentence for the "big bitch" under 18-1.3-801(2)(a), and two times the maximum sentence for the "little bitch" under 18-1.3-801(1.5). Currently the sentence is four times and three times the maximum, respectively.

Discussion:

1. The Task Force passed this recommendation with a 75% approval rating.
2. With this recommendation, instead of the large habitual being four times the top end of the presumptive range it would be three times. And instead of the sentence being three times the top end of the presumptive range for a small habitual, it would be two times.
3. If this recommendation is adopted, you will have a three times and two times scenario in place for the following crimes: murder, manslaughter, 1st degree arson, sex offenses, most of your child victim offenses.
4. The recommendation would pertain to non-violent crimes only.
5. This does not change the predicate offenses, just the presenting offenses. If an offender has three prior non-violent felony offenses and receives a fourth on a non-violent offense, they would be looking at a 3 times sentence for the large habitual. If an offender's three prior felonies were violent offenses and the fourth offense is a non-violent, then the offender would still be given 3 times.
6. Most of the people you see serving habitual charges are serving them on non-probation eligible offenses.
7. In looking at 2010 figures only, there were 2000 habitual cases filed. Of the 2000 filed, only 200 resulted in a conviction. Of those 200, there were 31 offenders sentenced as large habitual offenders based on non-violent offenses. If these 31 offenders were sentenced under this new scheme, DOC would save 184 inmate years, equating to \$5.8 million dollars.
8. Question: Isn't this recommendation geared toward one DA in particular? And to change the whole scheme because of that one outlier limits the discretion of the other DAs across the state. It is wrong to push statewide legislation in reaction to one DA.

9. Non-violent offenses include human trafficking, crimes against the elderly and witness intimidation. These are serious offenses.
10. What is the sentencing range for non-probation eligible charges? What alternatives are available?
11. The potential unintended consequence would be that the other DAs will begin to file more habitual charges.

Juvenile Justice Task Force:

Regi Huerter presented an update on the Juvenile Task Force. They continue to meet and discuss issues around DUI's and minors. One issue whether persons who are minors and have a DUI conviction should be sentenced under Title 19 or under Traffic? Another issue is working around education and detention. Can a formula for detention schools be created? Finally the Task Force is looking at educational standards for those working in the juvenile field.

Bail Subcommittee:

The first full meeting of this group was held last Friday, December 2nd. The purpose of the meeting was to discuss the scope of work to be done and to begin the education process of its members. The goals of the members were also discussed. They will begin meeting monthly starting in January, 2012.

Next Meeting:

The next meeting will include a discussion on the Commission's strategic plan and the work ahead. The Commission is set to sunset in 18 months. What still needs to be done? Members of the Commission will be asked what they would like to accomplish under the current sunset time frame.

The meeting adjourned at 4:00 p.m.