



Commission on Criminal and Juvenile Justice

Minutes

January 13, 2012
Jefferson County District Attorney's Office
500 Jefferson County Parkway
Golden, CO 80401

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	Charles Garcia
Michael Dougherty	Claire Levy	Anthony Young
Doug Wilson	Gilbert Martinez	Caren Leaf for Julie Krow
Alaurice Tafoya-Modi		

Absent: David Kaplan, Rhonda Fields, Regis Groff, Mark Waller, Eric Philp

Call to Order and Opening Remarks:

The Chairman, James H. Davis, called the meeting to order at 12:47 p.m.

Reo Leslie made a motion to approve the minutes from the November CCJJ meeting. Anthony Young seconded the motion. Before voting Jeanne Smith noted that there will be a language change in the minutes. The phrases “big bitch” and “little bitch” will be revised to read “four times the habitual range” and “three times the habitual range” respectively. The motion passed by a unanimous vote.

CCJJ 2011 Annual Report Distribution, Website and Facebook Launch:

Kim English announced that the 2011 CCJJ Annual Report has been completed and will be on-line soon. All Commission members have received a copy of the report in their documents for today's meeting. The annual report will be smaller this year, as the portion containing the tracking of prior CCJJ recommendations is being transferred to an on-line document on the CCJJ website.

The CCJJ website will be updated with a new look in the next couple of weeks [*Note: The redesign of the CCJJ website is complete; however, the implementation of the new design is a longer-term project involving collaboration with the State Internet Portal Authority (SIPA)*].

CCJJ will also have a presence on Facebook starting next week. This is a significant improvement as Facebook will allow for instant notification of schedule changes as well as dissemination of information.

Comprehensive Sentencing Task Force:

Jeanne Smith, Chair of the Comprehensive Sentencing Task Force, gave an update on the Theft sentencing grid being developed by this group. Members of the Task Force's Consolidation Working Group will begin contacting stakeholders and obtaining their input on the draft revisions. Today, the Commission will vote on the Habitual Criminal recommendations introduced by the Mandatory Minimums and Habitual Working Group last month.

Doug Wilson provided a general introduction to habitual sentencing. He explained the difference between the little habitual charge and the big habitual charge. If an offender has two prior felonies and is convicted of a third within a ten year period the offender would currently be sentenced to three times the maximum sentence. This is known as the little habitual multiplier. If an offender has four felony convictions over any period of time they can be sentenced to four times the maximum sentence. This is known as the big habitual multiplier.

Prior to 1993, habitual sentences were filed using any one of 14 offense categories. As of June 30, 2011, there are 170 individuals in DOC serving habitual sentences in DOC under the pre-1993 sentencing scheme.

After 1993, the sentencing scheme changed to the current three times and four times method. Along with the multiplier change, the sentence currently can be filed using any one of 23 offense categories. As of June 30, 2011, there are 743 individuals serving habitual sentences under the new scheme.

Who is charged/convicted of Habitual? Between January 1, 2007 to September 30, 2010, 2028 individuals were **charged** with Habitual. In 1,828 cases, or 90%, the habitual charges were **not** part of the final disposition. Of the 2028 individuals, 200, or 10%, **were** convicted of habitual charges: 44% of the crimes were for violent offenses, 29% were for property crimes, and 11.5% were for drug crimes.

QUESTION: Is there any information on how many of the cases ended in guilty pleas versus convictions? No.

The Sentencing Task Force requested information from the Department of Corrections asking what impact the habitual sentencing recommendations would have on the Department. In fiscal year 2010, DOC received 52 offenders sentenced under the big and little habitual sentencing schemes. Using these 52 offenders, DOC calculated savings of 184 future years, if the same group of offenders were sentenced under the Task Force's proposed recommendations. For this group, the savings would begin to be realized starting in fiscal year 2018.

Mr. Wilson proposed the following recommendations on behalf of the Comprehensive Sentencing Task Force:

FY12-CS #1 Remove walkaway escapes as crimes eligible for habitual criminal sentencing.**Recommendation: Add the following subsection to CRS 18-1.3-801:**

(2.6) THE PROVISIONS OF PARAGRAPHS (1.5) AND (2)(A) SHALL NOT APPLY TO A CONVICTION OF FELONY ESCAPE PURSUANT TO SECTION 18-8-208(1), (2) AND (3) OR FOR A CONVICTION OF ATTEMPT TO ESCAPE PURSUANT TO SECTION 18-8-208.1(1), (1.5) AND (2) UNLESS THE PLACE OF CUSTODY OR CONFINEMENT IS A CORRECTIONAL FACILITY AS DESCRIBED IN SECTION 17-1-104.3.

Discussion:

1. This recommendation removes the conviction of “walkaway escape” as a qualifier for habitual charges. This recommendation does not affect the ability to consider a habitual multiplier for a felony conviction on a new crime committed after the offender walked away.
2. How will this account for escapes from a secure county facility? How do the county jails feel about this? County jails should be included in the definition of a correctional facility. County jails contain serious offenders. DYC facilities are also a secured facility. What about escape from DYC?
3. DOC must list and identify its facilities annually, pursuant to Title 17. The recommendation only refers to walkaways from non-DOC facilities.
4. How does Community Corrections feel about this recommendation? Comm. Corr. uses the escape charge as a means to hold a client accountable to the rules and regulations of the facility. Comm. Corr. needs a so-called “hammer” (to help discourage and prevent walkaway escapes) but they have not said how big a “hammer” they need.
5. If you eliminate the ability to file habitual charges in connection with walkaways, what sentences are still available? If someone walks away, they can still be convicted of escape. The recommendation is that prosecutors cannot use that escape conviction as a contributing felony conviction when contemplating habitual charges.
6. Can we change the language to ... “someone in custody or confinement in county jails or correctional facilities as described in Section 17-1-104.3?” Can we use the language “escape from a secured facility”? If someone walks away on work release, that individual would be considered walking away from a county jail and be eligible for habitual charges.
7. If someone escapes from a secure county jail, the individual will be putting jail staff and the community at risk. The “attempted escape while in custody” should also be addressed. The offender could still be charged with, for example, felony assault or menacing of the jail staff that occurred during an escape.
8. Can we amend this recommendation to add verbiage such as “inside a county jail facility?” Would that address these concerns? Should the recommendation also include “escapes while being transferred from one facility to another”? Michael Dougherty suggested voting on the **concept** of the recommendation and having the Legislative Subcommittee work on the wording to include the jail’s concern.

Mr. Wilson moved to approve Recommendation FY12-CS#1 with the understanding the CCJJ's Legislative Subcommittee will work on the wording to include county jails. Grayson Robinson seconded the motion.

Vote: Support) 17 Live with) 2 Do not support) 0
Recommendation FY12-CS #1 PASSES: 100% to 0%
("Support" and "Live with" combined must total approximately 75% to pass)

Mr. Wilson will be the point person to find legislative sponsors.

FY12-CS #2 Reduce the habitual criminal statute's sentence multiplier as applied to non-violent presenting offenses.

Recommendation: Revise CRS 18-1.3-801 as follows:

(1.5) Every person convicted in this state of any class 1, 2, 3, 4, or 5 felony who, within ten years of the date of the commission of the said offense, has been twice previously convicted upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted, IF SUCH FELONY OFFENSE IS ONE LISTED IN SECTION 18-1.3-201(2.5)(B), by imprisonment in the department of corrections for a term of three times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class of felony of which such person is convicted. FOR ALL OTHER FELONY CONVICTIONS, THE ADJUDICATION AS A HABITUAL CRIMINAL PURSUANT TO THIS SUBSECTION SHALL BE PUNISHED BY IMPRISONMENT IN THE DEPARTMENT OF CORRECTIONS FOR A TERM OF TWO TIMES THE MAXIMUM OF THE PRESUMPTIVE RANGE PURSUANT TO SECTION 18-1.3-401 FOR THE CLASS OF FELONY OF WHICH SUCH PERSON IS CONVICTED.

(2)(a) Except as otherwise provided for in paragraph (b) of this subsection (2), every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted, IF SUCH FELONY OFFENSE IS ONE LISTED IN SECTION 18-1.3-201(2.5)(B), by imprisonment in the department of corrections for a term of four times the maximum of the presumptive range

pursuant to section 18-1.3-401 for the class of felony of which such person is convicted. FOR ALL OTHER FELONY CONVICTIONS, THE ADJUDICATION AS A HABITUAL CRIMINAL PURSUANT TO THIS SUBSECTION SHALL BE PUNISHED BY IMPRISONMENT IN THE DEPARTMENT OF CORRECTIONS FOR A TERM OF THREE TIMES THE MAXIMUM OF THE PRESUMPTIVE RANGE PURSUANT TO SECTION 18-1.3-401 FOR THE CLASS OF FELONY OF WHICH SUCH PERSON IS CONVICTED. Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information. Nothing in this part 1 shall abrogate or affect the punishment by death in any and all crimes punishable by death on or after July 1, 1972.

Mr. Wilson moved to approve Recommendation CS-2. Alaurice Tafoya-Modi seconded the motion.

Discussion:

1. In the proposed recommendation regarding the little habitual scenario, assuming the present offense is not on the prohibited probation list, the maximum sentence would be reduced from three times the maximum to two times. In the big habitual scenario, assuming the present offense is not on the prohibited probation list, the maximum sentence would be reduced from four times the maximum to three times.
2. Colorado's current system is a discretionary habitual criminal system (not mandatory). Some stated that the current system is working well. The habitual statute is geared toward the worst criminals, not those that can be rehabilitated.
3. Some stated that this recommendation ties the hands of the prosecutors. An offender can be charged with Theft (present offense), but have three prior sex assaults. In a case such as that, the prosecutor should have the ability to file habitual charges.
4. There is a possibility that if this goes through, there will be an unintended consequence of an increase in habitual filings.
5. Colorado may be a discretionary system, but some feel it is a system where the prosecutor dominates the process. The 2,028 habitual filings is just a fraction of the number of cases where prosecutors *threaten* to file habitual charges.
6. There are crimes that are not within those listed in CRS 18-1.3-201(2.5)(b) that are still predatory in nature and some stated that these should be allowed to be considered for habitual. Those include; ID theft, Crimes against the Elderly, Witness Intimidation, etc. Part of sentencing is about rehabilitation, part of sentencing is punishment, and part of sentencing is incapacitation.
7. Some stated that one should not lose sight of the essential question. What *should* the maximum sentence be? Are the sentence lengths logical, given the purposes of sentencing, and do all the crimes included on the list of qualifying offenses make sense?
8. It was stated that the change suggested by the recommendation may ignore the potential extremity of an offender's prior criminal history. Should an offender who is convicted of Theft go away for 24 years? At first glance, the answer would be no. But, the 24 years may be deserved if all of the prior convictions were violent.
9. The point was reiterated that the sentence lengths resulting from the current habitual multipliers are poorly integrated or connected to the current sentencing structure and

appropriate degrees of punishment for given offenses. If we look at the data, we are sentencing individuals to prison for a very long time and some may not have previously served a prison sentence.

10. It was stated that the prison population has decreased for the past three years and that violent crime is also down. The data presented in the handout shows that, in fact, prosecutors are not sending individuals to prison for the maximum allowable sentence length. Another check within the system is that, whenever a DA files a case, the judge has the ability to indicate the appropriate sentencing range. A better strategy would be to review specific charges for abuse rather than modifying the entire habitual sentencing multiplier process. Members were advised to recall that a habitual criminal charge involves both **the charge** and **the criminal history** and the decision to file such a charge is based on both.
11. The comment is often made that “we should be tough on violent criminals.” Are there drug dealers that are being sentenced as habitual offenders who do not pose a violent threat to society? This is a legitimate question worthy of discussion.

Vote: Support) 10 Live with) 3 Do not support) 6
 Recommendation FY12-CS #2 FAILS: 68% to 32%
 (A recommendation does not pass when “Do not support” totals approximately 30% or more)

The vote on this recommendation does not meet the threshold for Commission approval.

Temporary Change in Procedure to Consider New Commission Recommendations:

Mr. Davis informed the Commission that there were three new recommendations for consideration and vote. These recommendations had not been presented to the Commission prior to the current meeting for discussion. The standard Commission procedure is for recommendations to be presented in one meeting for discussion and to be subject to a vote at the following meeting, which allows time for research and discussion by commission members with various stakeholders. Mr. Davis asked Commission members whether they will agree to suspend the standard procedure and hear and vote on these new recommendations in the current meeting.

Vote: Support) 19 Do not support) 0
 Procedural motion PASSES: 100% to 0%
 (Commission votes on “business matters” require a majority to pass.)

The motion to suspend temporarily the standard recommendation procedure passed allowing discussion and votes on the following three recommendations: FY12-JJ#1, FY12-MOR#1, and FY12-MOR#2.

Juvenile Justice Task Force:

Regina Huerter presents the following recommendation to commission members on behalf of the Juvenile Justice Task Force:

FY12-JJ #1 School boards to provide education and materials to juvenile detention facilities as outlined in the Colorado model content standards.

Recommendation: Revise CRS 19-2-402(3)(a) as follows:

The school boards of the school districts that a juvenile detention facility serves or in which the juvenile detention facility is located shall satisfy the requirements as defined by C.R.S. 22-33-104 and shall furnish teachers, materials, and content that are designed to meet the Colorado model content standards.

Don Quick moved to approve Recommendation JJ #1. Mr. Dougherty seconded the motion.

Discussion:

1. This recommendation addresses the continuity of education in detention facilities. There are eight detention facilities in the state. The average length of stay is 14.2 days. The educational services provided in the eight facilities are not standardized. There are also juveniles in detention for extended periods of time and this is their only source of education during their stay.
2. The existing statute reads that the detention facility shall furnish teachers “when requested by the judge of the juvenile court.” This recommendation strikes that language so a request by the judge is not needed.
3. The existing statute also says that the school district provides the teachers and equipment needed for the proper education.” This allows for variance in standards.
4. Would this recommendation require teachers to be available during the summer, when school is not in session? This issue was addressed by adding the language “as outlined in the Colorado model content standards.”

Vote: Support) 17 Live with) 0 Do not support) 0

Recommendation FY12-JJ #1 PASSES: 100% to 0%

The vote on this recommendation meets the 75% threshold for Commission approval.

The DAs will jointly run point with the Public Defender’s Office on this recommendation.

Minority Over-Representation Subcommittee:

Mr. Davis, the Chair of the Minority Over-representation Subcommittee, presents the following two recommendations to the Commission for approval.

FY12-MOR#1: Inclusion of minority data in legislative fiscal notes.

Modify legislation to include gender and minority data in all fiscal notes written for criminal justice bills.

Mr. Leslie moved to approve Recommendation FY12-MOR#1. Mr. Dougherty seconded the motion.

Discussion:

1. According to Legislative Council, this recommendation has no fiscal impact. It addresses inclusion of data.
2. Which department will be responsible to provide the data? The data can be obtained from the Judicial Department.
3. Is this for new crimes? Is this for any bill that addresses criminal justice issues? Is this to educate legislators on the issue of Minority Over-representation? This is to hopefully emphasize ongoing disparate representation issues.
4. Legislators are only looking at one thing in the fiscal note and that is the cost to the state.
5. What is the overall goal of the inclusion of this information? This will hopefully initiate conversation and deliberation about MOR. This is just a beginning. The goal is for lawmakers to grasp and effectively address issues of race and the justice system. It will take a while to change the system.
6. Another way to get the information across is to have a section in the annual briefings to the Legislative Committees.

Vote: Support) 16 Live with) 0 Do not support) 1

Recommendation FY12-MOR #1 PASSES: 94% to 1%

The vote on this recommendation meets the 75% threshold for Commission approval.

The Department of Public Safety will be the point agency on this recommendation.

FY12-MOR#2: Inclusion of a minority impact statement in Commission legislative recommendations.

Ms. Huerter moved to approve Recommendation FY12-MOR#2. Mr. Dougherty seconded the motion.

Discussion:

1. This will require the Commission's task forces and subcommittees to assess racial impact of the recommendations that are proposed.
2. Some agencies that are involved in various recommendations are not state agencies.
3. The information will be limited to state agencies only.

Vote: Support) 17 Live with) 0 Do not support) 0

Recommendation FY12-MOR #2 PASSES: 100% to 0%

The vote on this recommendation meets the 75% threshold for Commission approval.

Task Force & Subcommittee Updates:

Drug Policy Task Force: Grayson Robinson stated the Drug Policy Task Force will not present any recommendations at this time. The February Drug Policy Task Force meeting will focus on the group's strategic plan and its direction for the next fiscal year.

Sex Offense/Offender Task Force: The transient (“lacks a fixed residence”) registration recommendation is in drafting. Tom Raynes and Maureen Cain will have something soon for the Legislative Subcommittee. The February 29th meeting will be the last meeting of this Task Force and it will present a wrap-up briefing during the March meeting of the CCJJ.

Bail Subcommittee: Mr. Robinson stated that this subcommittee has met twice. Presently it is working on educating its members about the issues surrounding bail, bond and pre-trial processes. After the education has been completed, Subcommittee members will decide which issue(s) they will focus on first.

Next Meeting:

The February CCJJ meeting is cancelled; the Task Force Chairs will meet instead for some strategic planning. The next meeting of the Commission is scheduled for March 9th.

Mr. Wilson announced to the group that he’s working on a re-write of the CCJJ by-laws specifically in the area of member attendance. He presented a motion to amend the CCJJ by-laws. According to the by-laws, he needs to give 30-days notice of the request. The motion will be sent out to members of the Commission.

Next meeting will take place March 9th.

The meeting adjourned at 4:19 p.m.