



Commission on Criminal and Juvenile Justice

Minutes
March 9, 2012

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

Commission Members Attending:

James H. Davis, Chair	David Kaplan, Vice-Chair	
Theresa Cisneros	Bill Kilpatrick	Steven Siegel
Tom Clements	Reo Leslie, Jr.	Jeanne Smith
Michael Dougherty	Claire Levy	Alaurice Tafoya-Modi
Rhonda Fields	John Morse	Doug Wilson
Charles Garcia	Eric Philp	Anthony Young
Regis Groff	Don Quick	Debra Zwirn
Peter Hautzinger	Ellen Roberts	John Gomez for Julie Krow
Regina Huerter	J. Grayson Robinson	
Absent: Henry Jackson, Jr., Mark Waller		

Call to Order, Opening Remarks, Approval of Minutes:

The Chairman, James H. Davis, called the meeting to order at 12:46 p.m. and reviewed the agenda.

Mr. Davis recognized a new member of the Commission, Judge Theresa Cisneros. Judge Cisneros has been on the District Court bench for 15 years and prior to that was a private criminal defense attorney and a public defender. Judge Cisneros has worked extensively in the area of juvenile law. Judge Cisneros replaces Chief Judge Gil Martinez.

Steve Siegel moved to approve the minutes from the January meeting. Pete Hautzinger seconded the motion. The minutes were approved by unanimous vote.

Chair Conversations with Commissioners:

During the past two weeks, Mr. Davis held one-on-one meetings with almost all the Commission members to hear their concerns and visions for the future of the CCJJ. Mr. Davis summarized Commissioner's concerns regarding the direction of the Commission. Pursuant to HB 2007-1358, the Commission is scheduled to sunset on June 30, 2013 with the sunset review beginning this summer.

Mr. Davis reported that, in his conversations with CCJJ members, all felt the Commission's work should continue. CCJJ members did feel there is a declining level of productivity because of the difficulty in reaching consensus on complex and dividing issues.

Mr. Davis asked how the working culture could improve. Several members felt the Commission should return to its founding principles: reduce recidivism, reduce the cost of incarceration and enhance public safety. Members stated that the CCJJ should ensure its recommendations always take into account evidence-based research. Members also stated that the Commission should recognize that it can only control the crafting of its recommendations and not the changes that may occur in the legislative process. The Commission's success is its recommendations, not necessarily the legislative outcomes derived from those recommendations.

The role legislator's play on the Commission was also discussed. Legislators felt that participation on the Commission should not interfere with legislators' responsibilities to their constituents.

Mr. Davis reported that there was some dissatisfaction about task forces expressed during discussions with Commissioners. During the next six months, task forces should focus on producing what could be final recommendations for the next legislative session, if, in fact, the Commission will sunset. The make-up of the task forces, structure and membership is still viable, but will be reviewed for opportunities for improvement.

There was some concern that important issues and decisions on recommendations were being made by task forces before the Commission as a whole had an opportunity to weigh in. In other words, good ideas may not make it out of a task force (via an approval vote) for presentation to the Commission. Commission members want to see what the task forces are working on and make decisions themselves about ideas that should or should not move forward [Note: The Commission has previously stated that task forces should not be the final arbiter of the value and merit of solutions and ideas. Task forces should not overly filter or restrict the presentation of ideas to the Commission.]

Mr. Davis reminded CCJJ members that every Commissioner is required to participate in a task force. This is one of the responsibilities of being a member of the Commission. Commission member participation on task forces will better inform discussions at the Commission meetings when recommendations are presented for review. CCJJ members would be in a better position to advocate for recommendations coming out of their task force rather than being passive recipients of information about the recommendations.

CCJJ Sunset Review and Membership Status Update:

Membership status. There are eight commissioners whose terms are expiring this summer.* The Governor's Office has notified the Chair that the two district attorney positions will not be filled immediately. Because new DAs will be elected this fall, election results could affect the pool of district attorneys. Until that time, the current DAs will hold their positions. However, David Kaplan observed that the authority of the Commission's conclusions could be questioned if non-statutorily "extended" members participate and vote on recommendations prepared for FY 2013. Mr. Kaplan would like the Attorney General's Office to prepare an opinion. Michael Dougherty will study the matter.

* Rhonda Fields (At-Large), Regis Groff (At -Large), Pete Hautzinger (Elected DA), David Kaplan (Defense Attorney), Reo Leslie, Jr. (Mental Health Treatment Provider), Don Quick (Elected DA), Steve Siegel (Victim's Rights Organizations), and Debra Zwirn (County Commissioner).

Sunset Review. The Commission is scheduled to sunset in June 2013. The Department of Regulatory Agencies (DORA) has the responsibility for all sunset reviews. During the upcoming Sunset Review process, DORA will talk to a wide range of individuals about the Commission. They will ask questions such as, "Do you think the Commission should continue? Should there be any changes?"

DORA will begin interviews this summer and a report will be prepared this fall. It is DORA's responsibility to prepare the statute that goes before the legislature to determine whether or not the Commission should continue.

If the Commission does indeed "sunset," the statute allows for a period of 12 months for the group to wind down. This does not mean that the Commission has another 12 months to work. It also allows for one more legislative session in which the Commission can be reinstated.

Proposed Motion to Amend By-Laws:

Doug Wilson introduced a motion to amend the by-laws. Mr. Wilson stated that the Commission is an important body and everyone's voice should be heard. Assuming we survive the sunset process, the Commission will have to take a hard look at itself and where it wants to go. There is a core group of Commissioners who do a tremendous amount of the work. Attendance has not been consistent over the years and attendance is critical as the Commission begins to work on more contentious issues.

The current Commission By-Laws call for two obligations. As a member of the Commission, individuals are required to attend and participate in meetings and to actively participate in task forces. The task forces are the source of recommendations and where topics are initially discussed and vetted. To not participate in these meetings is a disservice to other members as well as the members' constituency.

Mr. Wilson proposed the following changes to the By-Laws:

Section 5.7.3: Commission members shall regularly attend and actively participate at meetings. Upon demonstration of compelling need, the chairperson of the Commission may authorize a Commission member to attend and participate in meetings by teleconference. Commission members with three or more ~~unexcused~~ absences per calendar year ~~may~~ shall be removed from the commission, ~~pursuant to section 5.8 of these by-laws.~~

Mr. Wilson moved the By-Laws amendment. Steve Siegel seconded the motion.

Discussion:

1. Some members (particularly legislators and members who do not live in the Denver area) cannot commit to participation in a task force.
2. The statute designates certain departmental heads be members of the Commission. Do we really have the right or authority to remove a department head?
3. If we strike Section 5.8 (on removal from the Commission), there is no discretion when considering removal.
4. Can we add a teleconference provision so that members who have to travel long distances can still participate? [Note: This provision already exists.]
5. Is there something that we can do with the current By-Laws that gives them more teeth? Can we remove the wording "excused absences?" After three absences, the Chair would talk to the

appointing authority. Then, the Chair would ask the individual to appear before the Commission to explain their repeated absence.

6. Working on the Commission is an honor. It is a working Commission. We do our best work when everyone is here. One shouldn't seek an appointment if one cannot make the commitment to participate.
7. We should allow proxies to vote [Note: The term "proxy" refers to a member asking an individual to substitute in their place for an occasional meeting. Proxies are not allowed to vote. A "designee" is an individual selected to permanently represent a statutory member or agency. A designee is allowed to vote.]. Referring to section 5.8, perhaps the Chair could be more aggressive with persistent absences. Appointing a designee is an option for departmental members, but would not work for members who are appointed at large.
8. Don Quick asked to table the motion for one meeting.
9. It is a disservice to the entire Commission when individuals don't work on task forces and don't attend the Commission meetings.
10. Legislators are considered to be in a special category. They are not criminal justice experts and they cannot be represented by a designee. Should we look at legislators differently?

Michael Dougherty moved a friendly amendment that comprised three elements. In Section 5.7.3, Mr. Dougherty proposed that, in the third sentence, the word "may" should be retained and that the proposed word "shall" should be stricken. He suggested that the following phrase at the end of the section be retained, "pursuant to Section 5.8 of these by-laws." In Section 5.8, he proposed that "may" in the fourth sentence be stricken and replaced by "shall."

Doug Wilson and Steve Siegel accepted the friendly amendment. The amendment to the By-Laws reads as follows,

Section 5.7.3: Commission members shall regularly attend and actively participate at meetings. Upon demonstration of compelling need, the chairperson of the Commission may authorize a Commission member to attend and participate in meetings by teleconference. Commission members with three or more ~~unexcused~~ absences per calendar year ~~may shall~~ be removed from the Commission pursuant to section 5.8 of these by-laws.

Section 5.8: If the appointing authority decides not to replace the member based upon the allegations, the Chair ~~may shall~~ bring the situation to the attention of the Commission.

VOTE on amended motion: Support: 19 Do not support: 4

Amendment to 5.7.3 and 5.8 PASSES

NOTE: This amendment was revisited later in the meeting (See page 10).

Sex Offender Task Force Final Report:

David Kaplan, Glenn Tapia and Peggy Heil presented the Sex Offense/Offender Task Force Final Report. The Task Force held its final meeting on February 29, 2012.

Sex Offense/Offender Task Force: Tabled Recommendations

On October 14, 2011, several recommendations were previously tabled by the Commission pending a request for additional information. Mr. Tapia and Ms. Heil began the presentation by reviewing the tabled recommendations and offering additional information in support of the recommendations.

FY12-SO5. Support funding an 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 become either the most expensive but possibly excessive option: incarceration; or the less expensive but possibly insufficient option: probation or 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 higher paid, specialized staff are required to work with them. Additional costs to programs are incurred because sex offenders are less able to pay the required subsistence fees due to the greater challenge for these individuals to find and maintain employment while paying for treatment and monitoring costs. The Office of Community Corrections (OCC) at 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.

Pete Hautzinger moved to approve this recommendation. Tom Clements seconded the motion.

Discussion:

1. How does treatment in prison factor in? Or is it assumed the offender would not have received treatment in prison? The offenders sentenced to lifetime supervision would very likely have received treatment in prison, but the continuation of treatment in the community is optimal.
2. The increased per diem is an incentive to Community Correction Boards to accept sex offenders by allowing Community Corrections to cover the higher cost of their treatment and supervision. For example, Larimer County was very reluctant to accept sex offenders. Once the per diem rate was increased, they allowed 10 beds to be used for sex offenders, but eventually increased their acceptance to 19 individuals into the sex offender treatment program.
3. This recommendation was proposed as a way to increase the options available to ease sex offenders out of prison and into the community (via community corrections). These community corrections beds also provide an alternative for offenders on Probation who are exhibiting risk factors. Those probationers could be placed in a more restrictive setting (community corrections) as an intermediate option rather than sending them to prison.
4. Would the treatment be different than what was received in prison? It would be the same treatment.

5. Does the statement “there were no new sex offenses during this time” mean there were other offenses committed? [This is a reference to the Larimer County report.] Yes. Two individuals had misdemeanor charges.
6. As compared to folks who did not participate in this trial period, how do their recidivism rates match up?
7. Given the enhanced per diem, how many more sex offenders do you feel would be treated over the next couple of years?
8. When this passes, would Community Corrections be seeking funding for FY 2013? No, they were planning on this being for FY 2014.
9. How did the Task Force derive the additional items being proposed? The option for Diversion, Transition and Conditions of Probation or Parole has been allowed, but not often utilized. Were these ideas found in practices in other states? The studies that were done showed that treatment started in prison and continued in the community reduced recidivism by 40%.
10. This can be seen as a promising practice and moving toward evidence-based decision making. The problem faced is the availability of the necessary funding.
11. What about offenders with determinate sentences? They are less likely to receive treatment in prison. How likely are those offenders to be able to use these services? The working group was tasked to look at lifetime supervision offenders and not offenders with determinate sentences.
12. This recommendation is to address the \$33.02 enhanced per diem only.

VOTE: Support: 16 Live with: 6 Do not support: 0

Recommendation FY12-SO #5 PASSES: 100% to 0%

(A recommendation passes when the combination of “Support” and “Live with” totals at least 75%)

FY12-SO9. Support funding for 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 in community corrections.

Tom Clements moved to approve this recommendation. Regi Huerter seconded the motion. It was felt the previous discussion applied.

VOTE: Support: 19 Live with: 3 Do not support: 0

Recommendation FY12-SO #9 PASSES: 100% to 0%

(A recommendation passes when the combination of “Support” and “Live with” totals at least 75%)

FY12-SO11. Support continued 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 applications 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 of and to provide input into the offender’s treatment. The funding for this grant-funded position expires September 30, 2012.

Steve Siegel moved to approve this recommendation. Michael Dougherty seconded the motion. It was felt the previous discussion applied.

VOTE: Support: 19 Live with: 2 Do not support: 1

Recommendation FY12-SO #11 PASSES: 95% to 5%

(A recommendation passes when the combination of “Support” and “Live with” totals at least 75%)

The Task Force concluded the following recommendation was MOOT and suggested no further action. Upon further study, it was determined that this rule change was already within the authority of the Office of Community Corrections.

FY12-SO6. Change the DCJ OCC rule to remove the 30-day funding limit for treatment of sex offenders in community corrections.

There are several instances where Probation has requested that the Office of Community Corrections (OCC) of the Division of Criminal Justice (DCJ) fund the placement of COPr (Condition of Probation) 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. 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.

NO ACTION: This recommendation was set aside.

Task Force Status Reports and Future Planning:

Sex Offender / Offenses Task Force:

David Kaplan stated there has been an on-going conversation in the Task Force concerning Colorado’s compliance with the Adam Walsh Act.

Adam Walsh Compliance. At the final meeting, the Task Force voted 6-5 to urge the State of Colorado to not implement any requirement that the employer address be a part of the public access portion of the sex offender registry. Does the Commission want to take a position on this issue?

The Division of Criminal Justice within the Department of Public Safety received a letter from the SMART Office reporting that Colorado is not substantially compliant with Adam Walsh. The specific element preventing a conclusion of compliance is the failure to list the employer address. Colorado will be penalized 10% (approximately \$400,000) of our JAG grant funds for failure to comply. However, Colorado has received permission to use that 10% to support efforts to implement processes to achieve future compliance with Adam Walsh.

There are several states with the same position as Colorado regarding this particular requirement. It might be counterproductive for the Commission to take a stand at this time.

Data Limitations. There were additional reforms explored by the Task Force that were not achievable due to a lack of criminal justice data necessary to draw conclusions. In the future, if the Commission creates a data collection task force, sex offender and sex offenses are areas needing improvements in data collection.

Acknowledgements. David acknowledged the participation and efforts by the members of the Sex Offense/Offender Task Force and all public members who participated in the Task Force and the Registration and Refinement Working Groups. Public participant Carolyn Turner (Advocates for Change) was recognized for her dedication and participation in nearly every meeting of the Task Force and the Working Groups.

Drug Policy Task Force:

Grayson Robinson reported that the Drug Policy Task Force identified five areas of study it would like to address. One of the recommendations proposed by the Task Force was to use the Healthy Kids Survey to help obtain data. The hope was to attach the recommendation to SB12-046. However, Senator Hudak believes at this time that the survey is not relevant to the bill.

Voting Protocol. In the past, the Task Force has conducted its business using a super-majority vote. As more complex issues are discussed, the Task Force will begin using a simple majority vote to allow more items to be presented to and discussed by the Commission.

Priorities. The Task Force identified three priorities. The first is drug sentencing reform, specifically to continue the development of a drug sentencing grid. To make efficient and effective progress on the grid, it will be presented to the Commission in increments. Further work on the grid will require more voices from the bench. If this topic remains in the Drug Policy Task Force, a work product can be brought to the Commission by November 2012.

The second issue surrounds treatment. The Task Force foresees a significant amount of work on such topics as the development of a treatment template with a continuum of options applicable to the needs of offenders that would be available in all levels of criminal justice; the sharing of treatment records between entities as the offender moves through the system; and the evaluation of a 5-step treatment model. The Drug Policy Task Force estimates it can have a work product back to the Commission by October 2012.

The third objective is to continue to focus on the critical issue of prevention. Although there may be limited funds available in this area, the need for meaningful prevention work is a necessity. The goal is to have a recommendation to the Commission by December 2012.

Regina Huerter discussed an issue found in SB12-104. Ms. Huerter asked Denver County Probation how they are using the funds allocated by HB11-1352 [A bill that modified drug sentences with resultant savings allocated to drug treatment.]. She found that Denver County does not receive those funds because it is a home-rule county. Denver pays into the drug surcharge fund, but does not receive any of the dollars. The County Court of Denver is obligated to follow state statute. Municipal courts are encouraged to follow state statute, but they decide which fees and fines they will collect.

Sentencing Task Force:

Jeanne Smith outlined the five priorities of the Sentencing Task Force. The Task Force expects to complete its work on classification and consolidation regarding the theft statute and determining the impact of the new classifications. The revised classifications were provided to various stakeholders for

feedback. The consolidation recommendation will include value-based crimes. This information will be presented to the CCJJ in July or August 2012.

The Task Force's second priority is to expand adult pre-trial diversion programs. Recommendations in this area of work are expected to be complete by May 2012.

The third priority surrounds parole issues and date-certain release. This topic further examines a 2008 CCJJ recommendation (FY08 BP-60 Date-Certain Release for Community Corrections and Intensive Supervision Parole.) This recommendation has not been implemented but the Task Force is working toward an implementation recommendation by July 2012.

The fourth priority is to look at whether the period of parole should exist "inside" or "outside" the sentence. A working group seated to explore this topic will prepare an analysis and recommendation to present to the Task Force by August 1st.

The fifth area of focus concerns extraordinary risk crimes. This is an issue discussed often by the Commission and considered a next step to begin a broader review of sentencing. The group working on this priority expects to bring information to the Task Force by May 31st.

Juvenile Justice Task Force:

Ms. Huerter stated the Juvenile Justice Task Force has developed its vision and mission statements. They have identified several areas where improvements in juvenile issues can be made, more specifically:

1. Revising the Children's code
2. Education and assessment
3. The sharing of information between educators, social workers and the criminal justice system.
4. Continued assistance and counseling throughout the system. Work is being done at the time of the juvenile's first contact. The rest of the work is done when the juvenile is sentenced to DYC. However, there are many juveniles that never make it to DYC.
5. Adequate representation for the juvenile
6. Diversion
7. Sex offenders and juvenile escapes.

What can the Task Force accomplish before the sunset date? The Juvenile Task Force feels they can make strides in the area of DUI, professionalism, class credits and truancy before the possible sunset. Preliminary work will be done by the end of this legislative session. Additionally, the Task Force will work on specific segments of the Children's Code (although there is not enough time for a full revision).

Proposed Motion to Amend By-Laws (revisited):

Doug Wilson made a motion to reconsider his amendment to the By-Laws discussed earlier in the meeting. Michael Dougherty seconded the motion.

Mr. Wilson would like to amend 5.7.3 to read:

Commission members shall regularly attend and actively participate at meetings. Upon demonstration of compelling need, the chairperson of the commission may authorize a commission member to attend and participate in meetings by teleconference. Commission members, other than those appointed by the legislature, with three or more absences per calendar year may be removed from the Commission pursuant to Section 5.8 of these by-laws.

After further review, reasons for removal in Section 5.8 as agreed upon earlier in the meeting would target legislators and likely drive them off the Commission.

Doug Wilson moved to amend the By-Laws as stated above. Michael Dougherty seconded the motion. There was no discussion.

The motion passed by unanimous voice vote.

Legislative Update:

Representative Gardner will sponsor a bill based on two Sex Offender Task Force recommendations: FY12-SO1 concerning the registration requirement for sex offenders who lack a fixed residence and FY12-SO16 concerning quarterly registrations occurring within 5 business days around the required registration. The bill will be introduced in the coming weeks.

SB12-104 (Drug Treatment Funding Consolidation) is scheduled for Senate Appropriations.

HB12-1213 (Walk Away Escapes) passed out of committee 10-1.

Recommendation FY12 – JJ1 (School boards to provide education and materials to juvenile detention facilities as outlined in the Colorado model content standards) was approved by the Commission in January. As of this date, no sponsor has been found.

Recommendation FY12-MOR1 (Inclusion of minority data in legislative fiscal notes) was passed by the Commission in January. However, there was insufficient time for the bill-drafting process. It has been postponed until the 2013 Legislative session.

It was hoped the Healthy Kids Colorado Survey recommendation from the Drug Policy Task Force would be attached to SB12-046. The bill sponsor asked that this recommendation proceed separately from the bill because, as stated earlier, it is not believed to be relevant to this bill. The recommendation may be introduced next session.

The meeting adjourned at 4:30 p.m.