



Commission on Criminal and Juvenile Justice

Minutes June 15, 2012

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

Commission Members Attending:

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

Absent: John Morse, Claire Levy, Ellen Roberts

Special Guests: Judge Ben Strand (Sessions and Juvenile Judge, Jefferson County Tennessee), Linda Leathers (Director, The Next Door / Female Transitional Housing), Lee Ragsdale III (Tennessee Criminal Justice Coordinating Council)

Call to Order and Opening Remarks:

Kathy Sasak called the meeting to order at 12:37 p.m. Ms. Sasak explained that Jim Davis was stuck in traffic and that she would be sitting in for him until he arrived.

Ms. Sasak welcomed Dr. Henry Jackson who will replace Ina Morris and it was announced that Sen. Ellen Roberts resigned from the Commission and that Sen. King will be appointed as her replacement. Ms. Sasak welcomed the guests from Tennessee.

Reo Leslie made a motion to approve the minutes from the April meeting. Anthony Young seconded the motion. The motion was unanimously approved.

Justice Reinvestment Briefing:

Tom Clements spoke about the Sentencing and Corrections Policy Forum which was held in Denver on June 7th and 8th. The Forum was sponsored by the National Governor's Association, National Conference of State Legislators and the Pew Policy Center. During this two-day period, teams from Colorado and 10 other states met to identify and evaluate strategies to

improve state sentencing and corrections policies to reduce costs and improve outcomes. The teams were made up of members from the executive, legislative and judicial branches of government.

After hearing presentations on best practices being used in various parts of the country, the teams broke up by state to discuss what is going on in each state. The crime rate in Colorado has dropped by 32% between 2006 and 2011. The work of the Commission resulted in the development of new ideas and practices. The Colorado team examined the effectiveness of Community Corrections asking questions such as: “Is the state getting the best bang for the buck?” “Are Community Correction providers in alignment with best practices?” The team discussed the need to find a tangible method to connect the investment made and the outcome produced. Other issues were identified such as improving offender data sharing and how can CCJJ further justice reinvestment goals? Could the CCJJ sponsor training for stakeholders on evidence-based practices?

Pete Hautzinger asked if any discussion was held pertaining to creating a legislative mechanism to reimburse an individual who was improperly convicted and has been exonerated. Mr. Clements stated this concept was not discussed.

Judge Ben Strand (Jefferson County Tennessee) spoke on the process used in Tennessee to reimburse exonerated individuals. If an individual was improperly convicted and incarcerated, the matter would go before the Governor, the State Treasurer and two appointed individuals. This group would review the circumstances of the case and, if appropriate, recommend reimbursement. The recommendation would be presented to the legislature for an Act for reimbursement. If approved, the Act would then be written to reimburse just that individual.

Legislative Outcomes Update:

Jana Locke, the Legislative Liaison for the Department of Public Safety, outlined how CCJJ bills fared during the 2012 legislative session. The following bills passed:

1. HB12-1346 clarified registration requirements for sex offenders without a fixed residence.
2. The Commission also put forth a bill to consolidated three treatment funding resources into one Board. It passed as part of HB12-1310.
3. HB12-1213 also known as the “walk away bill” disallows the charge of escape when the offender walks away from community corrections or half way houses to be used as a predicate offense for habitual offender status.
4. SB12-163, while not a CCJJ bill, directs the Commission to examine drug crimes and penalties and report back to the Legislature in December. This bill was originally killed but was added to HB12-1310.

EPIC Recommendation:

The General Assembly should invest in EPIC as an evidence-based initiative that is consistent with the Commission’s mandate to focus on “*evidence-based recidivism reduction initiatives and the cost-effective expenditure of limited criminal justice funds.*” Permanent funding ensures the expansion of EPIC statewide, and would expand training to local justice agencies.

Kim English presented information on this recommendation. The cost of EPIC (Evidence-Based Practices Implementation for Capacity) is approximately \$880,000 a year. EPIC staff has received several requests from local agencies, such as pre-trial services, for training. An anticipated funding source for EPIC is some of the savings resulting from HB11-1352. If the recommendation is passed, the legislative process can go two ways: (1) A legislator could agree to carry the bill, or (2) A department could carry the proposal as one of its bills.

Discussion:

1. At what point is saturation reached in the number of trained staff? The science behind implementation training shows that training is a continual process and implementation could take up to 10 years, maybe more. Additionally, EPIC has been asked to present training for local agencies.
2. Are there other outcomes from motivational interviewing? Research has shown people who engage in motivational interviewing and mental health first aid also benefit from this training.
3. What sort of tracking is being used to ensure the organizations are actually using and embracing motivational interviewing? DCJ has the names of the trainees and a method of tracking the recidivism rates of offenders on the trainees’ caseloads.
4. If EPIC is funded and begins training agencies outside those of the state (i.e., local agencies), add juvenile and adult diversion programs as groups that should get the training.

[Ed., for information on EPIC, see www.colorado.gov/ccjdir/L/EPIC.html]

Pete Hautzinger moved to consider and approve the EPIC recommendation. Reo Leslie and Anthony Young seconded the motion.

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

Recommendation FY12-EPIC#1: **PASSED**

[Ed., The total of “support it” and “live with it” must reach ≈75% of members for approval.]

COMPREHENSIVE SENTENCING TASK FORCE**Recommendation Preview**

The Classification Working Group of the Comprehensive Sentencing Task Force is proposing the following recommendation. This recommendation will be voted on by the Commission in July.

Recommendation FY13-CS#1: Reclassify CRS 18-4-401 to expand the sentencing options available for theft crimes. Specifically, reclassify theft CRS 18-4-401 as specified in the following tables. Any cost savings from this recommendation should be reinvested in diversion and justice system programs.

Discussion:

1. Jeanne Smith discussed a handout prepared by the Comprehensive Sentencing Task Force. The first table illustrates the current theft offense levels. The current offenses do not include F-6, M-3 or PO designation. Some of the ranges are broad. For example the range for F-4 is \$1,000 - \$20,000. An F-3 charge ranges from \$20,000 up.
2. The second table illustrates proposed theft offense levels. It introduces new classification levels depending on the amount of the item stolen.
3. One difficulty faced was that some thefts are not valued based.
4. The research used to gather the information spanned a five-year term and used cases where theft was the highest offense.
5. Under the current classification, the break point between felony and misdemeanor cases was at the 75% mark (75% of the theft cases are classified as misdemeanors). Under the new classification the break point between felonies and misdemeanors would be at the 85% mark (85% of the cases would be misdemeanors).
6. Legislative liaisons for the commercial retailers were asked their opinion on these possible changes. They said they would remain silent until a formal bill was introduced.
7. This proposal will greatly expand misdemeanor theft crimes and will therefore impact the county jails because offenders who may have been sentenced to DOC under the old scheme could now be sentenced to county jails. County jails should be considered when looking for additional funding sources for mental health and substance abuse treatment.

The Consolidation Working Group is proposing the following recommendation. The recommendation will be voted on by the Commission in July.

Recommendation FY13-CS#2: Modify and consolidate Colorado Revised Statute 18-4-401 to increase clarity and reduce duplication. Consolidate theft, theft by receiving, theft of rental property, and fuel piracy. Repeal newspaper theft as an isolated offense.

Discussion:

1. A lot of clauses are repeated throughout the various theft statutes. By adding changes to 18-4-401, the charges of theft by receiving, theft of rental property and fuel piracy can be addressed.

CRS 18-4-401(1) A person commits theft when he knowingly obtains, **retains**, or exercises control over anything of value of another without authorization, or by threat or deception, **or obtains control over stolen property knowing or believing the property to have been stolen**, and:

(e) If the thing of value was for hire or lease, knowingly fails to return the thing of value within 72 hours of the time of the agreed return.

2. Newspaper theft was only charged five times (no convictions) over the last few years, so it is a rarely used statute.
3. There are many other types of boutique charges that need to be cleaned up. This is only the Working Group's first attempt.

JUVENILE JUSTICE TASK FORCE Recommendation Preview

The recommendations from the Juvenile Justice Task Force address truancy and education. Meg Williams (DCJ) presented information on truancy in Colorado including the two recommendations from the Task Force. See the slides from her presentation for more detailed information.

1. There are many long term consequences for juveniles who do not attend school. Truancy is one of the first indicators that a juvenile will end up in the criminal justice system. There is a need to respond as early as possible.
2. The official definition of truancy is four unexcused absences in any one month or ten unexcused absences during any school year. But it typically takes many more than this for action to be taken. There is an increase in number of truancy petitions filed in court.
3. Truants are often found to be living with multiple disadvantages. Effective responses to the problem of chronic absenteeism require looking beyond the individual truant. Missing school is a symptom of family, school and/or community issues.
4. Chronic early absence of 20 or more days in K-3 is clearly associated with poor achievement, truancy in middle school, school dropout and substance abuse. Each additional day absent from elementary school is associated with a 7% lower probability of graduating from high school.
5. However, sentencing juveniles to detention on truancy charges is not effective as they enter the juvenile justice system on a status offense and this fuels the likelihood that they will become delinquent.

The Truancy Committee proposes the following recommendation. This recommendation will be voted on during the July meeting.

FY13-JJ-2: Revise CRS 22-33-107 Enforcement of Compulsory School Attendance to address the following: More clearly and definitively define "absence" which in current definition can include a scheduled school day or portion thereof. Add language to Enforcement of Compulsory School

Attendance Statute (CRS 22-33-107) requiring state school boards to adopt policies and procedures regarding student attendance including a development of a multi-disciplinary plan to address when the child reaches a 10% absence rate including excused and unexcused absences. To provide early identification of provisions of services to at-risk students to avoid future truancy. Provide more clarity about when a school should file truancy charges by adding that a multidisciplinary plan be developed and in place that addresses the social, medical, economic and/or academic needs of the child and family before the school can file a truancy petition. Clarify that when a parent refuses to abide by a court order for them or their child to access needed services to address his/her truancy and the child does not attend school as also ordered by the court, ordering a social services investigation for educational neglect or filing of a dependency or neglect petition can be an appropriate course of action.

Discussion:

1. There may be some push-back from the school districts especially with the creation of a multidisciplinary plan.
2. Should detention be used at all for truants? A legislative mandate to prohibit such a sentence would violate the separation of judicial and legislative functions. The legislature cannot prohibit a judge for ordering detention as a sentence for contempt of court (contempt of court is often called when a juvenile disobeys orders to attend school).
3. Can you provide more details on how school districts can form a multidisciplinary plan? Who should be involved in the plan?
4. Another issue to be addressed is the advancement of students into the next grade level when the students cannot do grade level work. A student will not go to class in a high school if they can't read.
5. There are twelve school districts who are the main users of detention centers as a means to punish truants. Could there be discussions with those twelve school districts to provide them with incentives to choose another tract?

The Education Workgroup of the Juvenile Justice Task Force proposes the following recommendation. This recommendation will be voted on during the July meeting.

FY13-JJ#1: Amend Colorado Department of Education rules regarding age restrictions for the General Equivalency Diploma. Request the Colorado Department of Education (CDE) amend its rules (1 CCR 301-2) to permit the General Equivalency Diploma (GED) option be opened for 16 year old juveniles appearing before the court when provided sufficient information to determine it is in the best interest of the youth.

Discussion:

1. All children should be provided the opportunity to achieve a high school diploma but this is not always feasible. Obtaining a GED is better than nothing at all.
2. This recommendation does not require a legislative change but is a rule change.

3. The rule change would state that “Upon approval by a judicial officer or administrative hearing officer, and when the candidate is currently subject to the court’s jurisdiction and where it has been determined that such request is in the best interest of the juvenile. This determination will be based on the following: the number of credits earned to date and the number of credits needed to graduate; the outcome of credit recovery and school reengagement plans; and the wishes of the juvenile and/or his/her parent/guardian.”

TASK FORCE UPDATES

Drug Policy Task Force:

The Drug Policy Task Force met earlier this week. The members of the Task Force reaffirmed their commitment to the work of the group. Last year the Structure Working Group focused their efforts on developing a sentencing grid for drug charges. They were unable to come to consensus before the beginning of the legislative session. SB12-163 was not a CCJJ bill, but its purpose mirrored the sentencing grid developed by the Structure Group.

SB12-163 did not pass in the regular Session. However; as part of HB12-1310, the Commission (via the Drug Policy Task Force) was tasked with developing a drug sentencing grid and reporting back to the legislature by December 2012.

The work of the Structure Working group will continue throughout the summer and a report to the Commission is anticipated for the September CCJJ meeting.

In addition, the DUID Working Group will recommence as well the Treatment and Prevention Working Group.

Bail Subcommittee:

One of the bills passed this session concerned the Bail Bonds sunset review. The Bail Subcommittee will have something to the Commission by September. Thus far, the Subcommittee has had presentations made by the bail bonds stakeholders and has identified three issues: the presumption of release; public safety; and reducing the Failure to Appear (FTA) rates. Bail bondsmen are represented on the subcommittee.

MOR Subcommittee:

One of the goals assigned by the Commission to the Subcommittee is the ability to obtain quality data from state systems. Often arrestees self-report their ethnicity or their ethnicity is determined through observation. This results in unreliable data collection. Arapahoe County has obtained a grant to be used to focus on ethnicity data reporting. In addition, DCJ staff is continuing to work on creating an MOR website that should be available within the next few months.

Next Meeting:

The next meeting is scheduled for July 13, 2012. This will be the last meeting for eight members of the Commission. Hopefully new members will be identified and appointed by then to allow for a transition month. The application process remains open until the end of June and then the Governor's office will make selections. Applications can be found on the Board and Commissions link on the Governor's Office website (<http://www.colorado.gov/cs/Satellite/GovHickenlooper/CBON/1249674847715>).

The meeting adjourned at 3:18 p.m.