



## Commission on Criminal and Juvenile Justice

### Minutes

July 13, 2012

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

#### Commission Members Attending:

James H. Davis, Chairman	John Morse	Peter Hautzinger
*David Kaplan, Vice-Chairman	Jeanne Smith	Bill Kilpatrick
Tom Clements (phone)	Mark Waller	Regina Huerter
Alaurice Tafoya-Modi (phone)	Don Quick	Doug Wilson
Henry Jackson, Jr.	Charles Garcia	Anthony Young
Michael Dougherty	Julie Krow	*Debra Zwirn
Rhonda Fields	Theresa Cisneros	*Reo Leslie, Jr.
*Regis Groff	*Steven Siegel	**Evelyn Leslie
**Norm Mueller	**Kate Murphy	

(\*) Denotes member whose term expires following this meeting.

(\*\*) Denotes newly appointed member in attendance whose term and voting privileges begin with the next meeting.

#### Absent:

Claire Levy, Steve King, Eric Philp, Grayson Robinson, \*\*Kelly Weimer

#### Call to Order and Opening Remarks:

The Chairman, James H. Davis, called the meeting to order at 12:49 p.m. Mr. Davis welcomed and recognized the new members of the Commission and acknowledged the service of departing members. Tokens of appreciation, including a mug and paper weight, were presented to the departing members to commemorate their service.

Regis Groff moved to approve the Minutes from the June 15<sup>th</sup> meeting. Reo Leslie seconded the motion. The motion was unanimously approved.

## COMPREHENSIVE SENTENCING TASK FORCE

### Recommendations / Final Vote

The Comprehensive Sentencing Task Force presented the following recommendation to the Commission for a final vote.

**Recommendation FY13-CS#1: Modify and expand C.R.S. 18-4-401, theft offenses.**

**Reclassify C.R.S. 18-4-401 to expand the sentencing options available for theft crimes. Specifically, reclassify theft C.R.S. 18-4-401 as specified in the following tables. Any cost savings from this recommendation should be reinvested in diversion and justice system programs.**

<b>Offense Level</b>	<b><u>CURRENT</u> Values by Theft Offense Level</b>	<b><u>PROPOSED</u> Values by Theft Offense Level</b>
F2		\$1M and up
F3	\$20K and up	\$100K - \$1M
F4	\$1K - \$20K	\$20K - \$100K
F5	\$1K - \$20K (rental property)	\$5K - \$20K
F6		\$2K - \$5K
M1	\$500 - \$1K	\$750 - \$2K
M2	Less than \$500	\$300 - \$750
M3		\$100-\$300
PO1		Less than \$100

#### Discussion:

1. The purpose of this recommendation is to expand and reclassify the sentencing scheme for theft crimes.
2. For voting purposes, those voting are only the existing (old) members whose terms officially conclude on July 22. The newly appointed members, who are seeing these recommendations for the first time, will not vote.
3. What will the impact be on victims' funds whose sources are the surcharges assessed on felony crimes? The Division of Criminal Justice will track the impact on those funds.
4. Was there any discussion about chronic shoplifting? The Task Force discussions on chronic offenders focused on the ability to aggravate an offense if similar arrests were conducted within a six-month period. A class 1 petty offense can still be given a 90-day jail sentence.

Charlie Garcia moved Recommendation FY13 CS#1 to a vote. Steve Siegel seconded the motion.

**VOTE:** I support it - 18  
I can live with it - 3  
I do not support it - 0

**Recommendation FY13-CS#1 passes.**

The Comprehensive Sentencing Task Force presented the following recommendation to the Commission for a final vote.

**Recommendation FY13-CS#2: Modify and consolidate C.R.S. 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. This recommendation contains language that repeals the crime of newspaper theft (for those papers that are distributed freely to the public). Since the newspapers were free, the crime did not fit in any monetary classification for theft. The Task Force also expanded this concept to discuss theft of any free item, such as items left at Goodwill Centers.
2. Senator Morse moved to sever the last sentence of the recommendation, repealing theft of newspapers, from the recommendation and asked that it be considered as a separate recommendation. Debra Zwirn seconded the motion.

Discussion:

- a. The crime of Theft of Newspapers was a result of a candidate stealing newspapers because the paper supported his opponent. One of the Task Force's goals is to simplify sentences and get rid of boutique crimes. This is a boutique crime.
- b. Senator Morse stated that members of the media have brought to his attention that there have been several recent events that would fall under this statute.
- c. Can there be a legislative bill that would establish the value of newspapers? The Working Group of the Task Force looked at changing the language concerning the value by including the cost to produce an item.

**VOTE (on Senator Morse's motion to sever):**

I support it - 6

I do not support it - 16

**The motion to sever fails.**

[Note: The vote was conducted as a majority vote, but should have been conducted as a supermajority vote (75%/30%). The supermajority vote threshold to fail (30%), in this case with 22 voting, would only have required 7 votes of "I do not support it." The subsequent vote indicated that there were 17 votes to support the recommendation without changes.]

Steve Siegel moved Recommendation FY13-CS#2 to a vote as originally presented. Doug Wilson seconded the motion.

**VOTE:**I support it - 17

I can live with it - 4

I do not support it - 1

**Recommendation FY13-CS#2 passes.**

**JUVENILE JUSTICE TASK FORCE****Recommendations / Final Vote:**

The Juvenile Justice Task Force presented the following recommendation to the Commission for final vote.

**Recommendation FY13-JJ #2: Revise the Enforcement of Compulsory School Attendance statute to address issues including the definition of absence, policies and procedures regarding attendance, identification of at-risk students, truancy charges, and parental roles.**

- **More definitively define “absence” which, in the current definition, can include a scheduled school day or portion thereof;**
- **Add language to the Enforcement of Compulsory School Attendance Statute (CRS 22-33-107) requiring state school boards to adopt policies and procedures regarding student attendance including 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 and provision 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; and**
- **Clarify that when a parent(s) 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 dependence or neglect petition can be an appropriate course of action.**

**Discussion:**

1. During last month’s presentation, one question was asked surrounding the issue of multi-disciplinary plans. What might a multi-disciplinary staff and plan development process look like? What are we already doing? This recommendation does not create any new initiatives. There are other initiatives where schools are already engaged with other systems.
2. The model truancy program’s key component is collaboration. Juveniles often have other issues in their lives that are not education-related. Schools cannot provide the emotional and behavioral support these juveniles need.
3. Multi-disciplinary team models already exist. For example, the Systems of Care Communities of Excellence program is being used in 10 counties. The Collaborative Management Program (CMP) is available in 32 counties.
4. Doug Wilson stated that the New Mexico case of “Julia S” found that you cannot take away the Court’s contempt powers. The New Mexico decision limited, but did not abrogate, the court’s power. The New Mexico law requires a juvenile to have had at least three absences and it limits the amount of detention time. Mr. Wilson would like to

amend this recommendation to include a requirement of three absences or contempt hearings. The maximum amount of detention should be five days.

5. Judge Cisneros said that the age-old problem is that we have never been able to get everyone on the same page to deal with these kids before they become criminals. Other opinions expressed included:
  - It is unfortunate that we need to make people collaborate to work with these kids.
  - The educational needs of truants are at the bottom of the priority list.
  - Districts will take the position in favor of detention because the school districts don't know what to do with them [the juveniles who are truant].
  - The majority of juveniles who end up in detention facilities are minorities.
6. It is unfair to punish juveniles because adults cannot get together. If we limit the number of days that truants can be incarcerated, then maybe we could sit down and work things out.
7. There is no hard evidence that threatening or imposing incarceration changes behavior. The same groups of individuals who have difficulty staying in school are also the ones who end up in a more punitive environment later in life. We are talking about minorities. This recommendation may keep minority juveniles out of the system and, ultimately, affect minority over-representation.
8. Charlie Garcia spoke with truancy judges. Their response to Mr. Garcia was, "I am not putting juveniles in jail because they are not going to school. I am putting them in jail because they are thumbing their noses at me."
9. Incarceration does not increase a juvenile's likelihood to attend school. The committee would not be opposed to the use of detention being more restrictive.
10. Did the Task Force involve all the counties? No.
11. Colorado statutes currently say detention should be used as a last resort and only after a collaborative effort to assist the juvenile.

Doug Wilson moved to amend section C.R.S. 22-33-108(7)(c) to read,

If the court finds that the child has failed to comply with the appropriate written multidisciplinary plan prepared by the child's school district pursuant to 22-31-107(3)(b), signed by the juvenile and his/her parent/guardian/legal custodian, and approved by the court pursuant to 22-33-108, the court may impose on the child as a sanction for contempt of court a sentence to incarceration **for a maximum of five days** to any juvenile detention facility operated by or under contract with the department of human services pursuant to section 19-2-204, CRS and any rules promulgated by the Colorado supreme court.

David Kaplan seconded the motion.

**VOTE on the above amendment:** I support it - 19  
 I can live with it - 0  
 I do not support it - 2

**This amendment to Recommendation FY13-JJ #2 passes.**

Julie Krow moved to amend the fifth bullet point to read:

Clarify that when a parent(s) 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~~ **assessment** for educational neglect or filing of a dependence or neglect petition can be an appropriate course of action.

The motion was seconded.

**VOTE:** The above amendment to bullet point five (5) passed by acclamation.

Pete Hautzinger moved Recommendation FY13-JJ#2 to a vote as amended. Reo Leslie seconded the motion.

**VOTE:** I support it - 19

I can live with it - 1

I do not support it - 1

**Recommendation FY13-JJ #2 passes with two amendments.**

The Juvenile Justice Task Force presented the following recommendation to the Commission for final vote.

**Recommendation 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. This option would only be available if a judge or a magistrate feels it would be in the best interest of the juvenile.
2. Does this include DYC offenders? No. DYC offenders do not fall under the purview of the Court once they are in DYC. The educational status of DYC is tangled. It does not fit in any educational section and any classes taken while in DYC are accepted by schools as electives, not core requirements. DYC was not consulted for this recommendation because of the complexities involved in its status.
3. Can the Juvenile Task Force take the matter back to try to resolve the DYC issue? This will not be resolved in 30 days.

Pete Hautzinger moved Recommendation FY13-JJ#1 to a vote. Steve Siegel seconded the motion.

**VOTE:** I support it - 20

I can live with it - 0

I do not support it - 1

**Recommendation FY13-JJ #1 passes.**

**COMMISSION BUSINESS****CCJJ Continuation Recommendation Discussion and Vote:**

**FY13-CCJJ #1: Continue the Colorado Commission on Criminal and Juvenile Justice beyond the statutory terminate date of June 30, 2012. The critical mission of the Commission--to study and make recommendations that ensure public safety, respect the rights of crime victims, and reduce recidivism, and that are evidence-based, cost-effective, and sensitive to disproportionate minority overrepresentation—requires ongoing effort. C.R.S. 16-11.3-101 should be amended to remove the termination date.**

Reo Leslie moved Recommendation FY13-CCJJ #1 for consideration and subsequent vote. Michael Dougherty seconded the motion.

## Discussion:

1. Pete Hautzinger expressed reservations about the continuation of the Commission. He is disillusioned about how the Commission's work has gone the last couple of years as opposed to the first three years. He would like to know that the Governor and the Legislature will reaffirm their commitment prior to renewing it. The Commission hasn't been as successful because this Governor has not been as supportive as the previous Governor. Also, the legislators who sit on the Commission sometimes run their own bills on recommendation topics that did not receive CCJJ approval which can undermine the Commission.
2. The Governor has shown his commitment to the Commission by being prepared to veto SB12-163 if it passed. He was in favor of the bill's issues (regarding a comprehensive drug sentencing scheme) being addressed through the CCJJ process. Given that the legislature altered the language in HB12-1310\* to send the topic to the Commission for the development of recommendations is indicative of its views regarding the value of the Commission.  
(\* The topics addressed in SB12-163 were addressed in HB12-1310, Section 28.)
3. Mark Waller: Wishes the Governor would weigh in more on the Commission and the value it has. It is easy to talk about vetoing a piece of legislation after the legislation dies. It would have been nice to have that commitment at the beginning of the process. Sometimes the decisions made here are hard, but the decision was vetted through the subject matter experts. That is the value of this Commission. Any legislator can run any piece of legislation they want. This Commission should have such credibility that no legislator would want to run any legislation that didn't come through the Commission. That is the focus that this Commission has lost. It doesn't carry the political weight it once did. The Commission should have more weight behind it.
4. Doug Wilson: Agrees with Rep. Waller. We cannot blame this entirely on the Governor. We are now discussing the tough issues. We are going to have to look at sex offenses and sentencing ranges. It is a harder discussion regardless of who is sitting around the table. The letter signed by then-Governor Ritter and Attorney General Suthers pushed the Commission to a place it wasn't ready to go. It is not just the support of the Executive Branch but the support of the leadership of both Houses that needs to be felt.

5. Rhonda Fields: This is beyond the leadership. There were a lot of folks who left the legislature because of term limits. There needs to be outreach and education [regarding the mission and work of the Commission for new members and, actually,] for everyone in the state house.
6. Mark Waller: Sometimes the legislation that is put forward is something that does not go through the Commission. CDPS supported the most significant piece of legislation that didn't go through the Commission. That was the juvenile direct file legislation. As this was discussed, legislators were told how that piece of legislation would not have made it through the Commission. How can the leadership in the Houses understand the importance of the Commission when we go around it?
7. Regis Groff: The value of this Commission is that the level of discussion and the staffing far exceeds what you get in the Legislature. The Legislature gets bogged down with politics and you lose sight of valuable work. Legislators do not have the depth of discussion because there isn't time, staffing or wherewithal to deal with the issues. This Commission deals with issues far more seriously than most Legislative discussions. The wide range of interests is incredibly valuable. Governor Hickenlooper does not come to the table with the same background as former Governor Ritter. CCJJ is dealing with issues that the Legislature won't deal with. People come and go thru the legislature and they never get the chance to fully understand the issues.
8. Charlie Garcia: Several senators asked why SB12-163 was not a CCJJ bill. In terms of the Governor, when the Commission started, it started out by not doing much [in the realm of legislation] at all. The Governor got things going. Governor Ritter was much more invested in the Commission. If Governor Hickenlooper was not invested, he would not have spent the time he just spent in deciding who the new members would be.
9. Reo Leslie: Reo reported that he went to the Capitol and testified on a bill that had nothing to do with the CCJJ. When legislators found out he was on the CCJJ, they consistently said how they appreciated what the Commission does. A lot of the incoming candidates have an understanding of the Commission's work. Our reputation was being underrated by the previous comments.
10. Debra Zwrn: Can you look at it as a positive sign that Governor Hickenlooper has left this Commission alone? He has dissolved and merged a lot of Boards and Commissions.
11. Don Quick: In late November or early December maybe we can present what is going to come before the Legislature. Maybe it is time for defense council and prosecution to put their heads together and find some consensus items. There is universal agreement for different sentencing for property crimes versus personal crimes.
12. Steve Siegel: In reference to comments made by Rep. Waller early in the discussion, a lot of the changes CCJJ promoted were to reduce the costs associated with incarceration with any savings directed to the "front end" of the system. We are incarcerating the same number of offenders that were incarcerated in 2004, but it costs the state \$104 million more. The only cost savings that we have incurred have been cost avoidances. Someone needs to come to the table that can back up these savings.
13. Steve Siegel: The Commission has not produced a single proactive recommendation for victims. This should be added to the Commission's agenda.
14. David Kaplan: The Commission has established itself in the culture of policy-making in the area of criminal justice and public safety. The Commission is looked to for evidence-based policy discussions. It is a much better place than the Legislature to discuss policy.



We are at a point where we have done a lot of good, but some of the big issues have yet to be tackled. Kaplan expresses apprehension that disagreements on difficult issues will create reluctance on the part of the Commission to address tough topics such as, sex offenses, drugs and sentencing. Nonetheless, given the Commission's focus on evidence-based approaches, these topics should be tackled. Even if the Commission anticipates a difficult process to develop particular policy recommendations and anticipates that such policies may not pass in the legislature, these topics should still receive Commission's attention, effort, and discussion and should still be forwarded to the legislature.

15. Tom Clements: If you compare the situation present in other states that don't have a vehicle like the Commission, it is in the state's best interest to continue the Commission. The recidivism rate can be lowered below 52%. We need look at strategies that make the most sense, not only from the DOC [institutional/penal] perspective, but also look at efforts at the "front end."
16. Pete Hautzinger: He thinks the conversation has to go forward – is there a purpose of having subject matter experts' work on an issue if the legislature won't look at or rely on the products coming from the Commission? There is more work to be done and the legislature and the Governor should allow us to continue to do the work.
17. John Morse moves to adopt this recommendation and offered to carry the bill in the Senate and asked Representative Waller to carry it in the House.
18. David Kaplan: This bill ultimately should be carried by many legislators.

**VOTE:** I support it - 20

I can live with it - 1

I do not support it - 0

**Recommendation FY13-CCJJ #1 passes.**

#### **FINDING LEGISLATIVE SPONSORSHIP:**

What is the process for Task Forces to identify legislative sponsors for approved recommendations? The legislators on the Commission should help find sponsors. Presently, there are three education-related issues. Rep. Fields agreed to sponsor one of the items.

One problem is that legislators are limited to carrying five bills. Is there a way to get this Commission outside of the five bill limitation? It is possible but it would be difficult. The five-bill rule is a joint rule of the House and Senate. It would take passing a Resolution by both houses for that to happen. Or, bills can be sponsored as a late bill.

Another way to avoid maxing out the five-bill limitation is to widen the bill title to include, for example, three juvenile recommendations [rather than running them as separate bills]. The danger is that other things can be attached to bills with a broad title.

Last year Jana Locke, on behalf of CDPS, was the first person to find sponsors. If CDPS could not take on that role, then the CCJJ Legislative Committee would look for sponsors. There was one recommendation that fell through the cracks after a point person was identified.

The discussion of who should be the legislative sponsor should occur once a recommendation has been approved. Often, it is not on the big issues we have trouble finding a sponsor, but, rather, on the smaller issues.

We are not going to meet during the month of August. Next meeting will be September 14, 2012.

The meeting adjourned at 4:00 p.m.