



## Commission on Criminal and Juvenile Justice

### Minutes

September 14, 2012  
 Jefferson County District Attorney's Office  
 500 Jefferson County Parkway  
 Golden, CO 80401

#### Commission Members Attending:

James H. Davis, Chairman	Charles Garcia	Debbie Rose
Doug Wilson, Vice-Chairman	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Alaurice Tafoya-Modi
Henry Jackson, Jr.	Evelyn Leslie	Kelly Friesen
Michael Dougherty	Julie Krow	Anthony Young
John Morse	Theresa Cisneros	Eric Philp
Kate Horn-Murphy	Claire Levy	Tim Hand for Tom Clements

**Absent:** Steve King, Norm Mueller, Mark Waller

#### Call to Order and Opening Remarks:

Chair, James H. Davis, called the meeting to order at 12:50 p.m. and asked for members to introduce themselves.

Anthony Young moved to approve the minutes from the July 13, 2012 meeting. Julie Krow seconded the motion. The minutes were approved by unanimous vote.

Mr. Davis asked if there was any discussion concerning a letter from the Colorado press Association regarding the position the CCJJ took in July on newspaper theft. *[Ed., This motion was regarding FY12-CS#2 that was approved at the July 2012 Commission meeting.]* Regina Huerter moved to reconsider the recommendation that included a provision that would seek to repeal the crime of theft of free newspapers as a specific offense in statute. Don Quick seconded the motion.

#### Discussion:

1. When initially voting on the recommendation, the Commission had not received negative feedback regarding the elimination of the free newspaper theft law. The Commission was focused on consolidating theft statutes.
2. If CCJJ reconsiders recommendations every time it receives a letter from an interest group after the period of discussion has concluded, the Commission will be stymied. Although special interest groups can be heard at Commission Task Forces, special

interests should not outweigh the Commission's mandate to make evidence-based policy decisions. Special interest groups and stakeholders can still present their views during the legislative process regarding Commission recommendations.

3. The elimination of this particular theft law does not mean this theft cannot be addressed. There are other charges that can be used if a free newspaper is stolen.

**VOTE:** Motion to reconsider FY12-CS#2

**RECONSIDERATION:** I support: 3 I do not support: 17

Motion FAILS

*[Ed., A motion to reconsider a previously approved recommendation must be offered by a member who most recently voted in favor of the recommendation. Conversely, a motion to reconsider a previously rejected recommendation must be offered by a member who most recently voted against the recommendation. The vote on a motion to reconsider must reach 51% of members to result in reconsideration.]*

## **MINORITY OVERREPRESENTATION SUBCOMMITTEE**

### **Update**

Mr. Davis delivered an update on the work of the Minority Over-Representation Subcommittee and presented a status report on each of the seven recommendations created by the CCJJ in 2011.

**Recommendation #1 - Require comprehensive cultural competency training for all justice agencies and for all treatment and service organizations used by justice system agencies.** The Denver Crime Prevention and Control Commission is currently developing a template and working on this initiative locally. The CCJJ supports the work by the Denver Commission and will likely adopt outcome processes and protocols.

**Recommendation #2 - All justice agencies should track the racial and ethnic diversity of their staff. Every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.** The MOR Subcommittee is in the process of creating a legislative recommendation to couple with MOR Recommendation #4 for the upcoming legislative session.

**Recommendation #3 - State and local agencies should collect race and ethnicity information on the populations they serve.** A survey has been developed to assess current data collection practices. Upon final completion it will be sent out through the P.O.S.T. Board, CDAC and a majority of other criminal justice agencies.

Question: If the arrest report does not contain the race of the offender, will the prosecutor be expected to ask the defendant his/her race? Yes.

**Recommendation #4 - Develop a mechanism that requires a specific review of proposed justice legislation to determine whether the legislation will have an adverse impact on minority over-representation. Some states refer to this as a Minority Impact Statement.** The CCJJ approved this recommendation in late January 2012 and was unable to find a sponsor because of the late date. The recommendation will be submitted earlier in the

process during the upcoming legislative session. The Juvenile Task Force will want to submit a similar recommendation for juveniles.

Question: Can this recommendation be fulfilled through a Governor's Executive Order?

No. Law enforcement agencies and the Judiciary do not work for the Governor.

**Recommendation #5 - the Commission should develop and maintain a disproportionate minority representation web site to promote recognition and understanding of this problem. The site should have local, state and national data and link to educational resources.** Christine Adams presented the interactive Disproportionate Minority Contact webpage which can be found on the CCJJ website (<http://www.colorado.gov/ccjdir/DMC.html>). Mr. Dougherty reviewed the information found on the NALP website (<http://www.nalp.org/>). The NALP site is used by college students and others looking for work in the legal field and provides a variety of information including the diversity of the staff of various offices and agencies.

**Recommendation #6 - To serve as a model for its expectations of criminal justice agencies, the Commission should develop and implement a Commission-specific mentoring program for minority juveniles and young adults who are interested in working in the criminal justice system.** The Commission meets once a month and may not be the best avenue for mentoring minorities. However, members are encouraged to include interns of color in the Commission process. Also, on the CCJJ/DMC webpage there are two website links to comprehensive sites on careers and internship opportunities in the CJ system.

Comment: The Center for Legal Inclusiveness may be able to make a presentation about their office.

**Recommendation #7 - The Commission's Comprehensive Sentencing Task Force, Drug Policy Task Force, Juvenile Justice Task Force and future task forces shall review recommendations to ensure those proposals do not have a negative impact on minority overrepresentation.** This recommendation has been fulfilled and is ongoing. All task forces are on board with this recommendation and proposals and recommendations generated by CCJJ Task Forces and Subcommittees to include minority impact data.

## **COMPREHENSIVE SENTENCING TASK FORCE**

### **Recommendation Preview and Discussion**

Doug Wilson gave an update on the Comprehensive Sentencing Task Force. Colorado's current sentencing structure is based on varied sentencing ranges for each crime and most sentences were doubled in 1985. Then in 1993, the category of Extraordinary Risk was developed.

### **Recommendation FY13-CS#3:**

Colorado's Revised Statutes pertaining to Crimes of Violence, Extraordinary Risk Crimes and Aggravated Ranges are complex, convoluted and often duplicative. The CCJJ Comprehensive Sentencing Task Force recommends the following changes:

Eliminate **Extraordinary Risk (18-1.3-401(10))** and move child abuse (18-6-401(1)(a);(7)(a)(I) and 18-6-401(1)(a);(7)(a)(III)) and 2<sup>nd</sup> and subsequent stalking (18-3-602(3)(b)) to the **Crime of Violence Statute (18-1.3-406)**, and strike 18-3-602(5) as follows:

If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against the person, prohibiting the behavior described in this section, the person commits a class 4 felony. ~~In addition, when a violation under this section is committed in connection with a violation of a court order, including but not limited to any protection order or any order that sets forth the conditions of a bond, any sentence imposed for the violation pursuant to this subsection (5) shall run consecutively and not concurrently with any sentence imposed pursuant to section 18-6-803.5 and with any sentence imposed in a contempt proceeding for violation of the court order.~~

Change **Crime of Violence** Range with mandatory minimum set to the bottom of the presumptive range.

Discussion:

1. Currently, if an offender is charged with a class 4 felony and the charge is neither a crime of violence nor a crime of extraordinary risk, but there were discretionary aggravating factors, the offender faces a sentence of 2 to 12 years. Under the proposed scheme, this same offender would face a sentence of 2 to 6 years.
2. This proposal creates a Crime of Violence (COV) range and sets the bottom of that range to the bottom of the presumptive range. This is for the new ranges as outlined on page 7 of the handout. The mandatory aggravators remain.
3. If you commit a crime of violence, it does not matter if the offender is on probation or parole.
4. Was there any discussion on parole and crimes against people?
5. All the minimums are now at the bottom of presumptive range for COV's.

**Recommendation FY13-CS#4**

Eliminate Discretionary Aggravation (18-1.3-401(6), (7), (8) (c)).

The goal of this recommendation is to simplify the sentencing code. Also, this recommendation is in response to the Commission approved FY10-S4 recommendation regarding Aggravated ranges, extraordinary risk crimes and mandatory minimum sentences. Also, this recommendation is in response to the Commission approved FY10-S4 recommendation regarding Aggravated ranges, extraordinary risk crimes and mandatory minimum sentences.

## Discussion:

1. By expanding potential sentences in the Crime of Violence ranges, the violent offenses that warrant increased sentences are available for plea negotiations and judicial discretion. This recommendation increases the sentencing possibilities for some child abuse and stalking offenses.
2. The recommendation eliminates discretionary aggravation. Mandatory aggravation remains in effect.

**Recommendation FY13-CS#5**

Eliminate extraordinary risk misdemeanors. To be consistent with FY13-CS#3 it is important to change the misdemeanor extraordinary risk classification as well.

## Discussion:

1. The Comprehensive Sentencing task force proposes increasing extraordinary risk M1's from 18 to 24 months. However, in July, the Commission passed a recommendation on theft statutes which would reduce F6's to M1's. There was a concern that people facing theft charges would be subject to the longer 24 month sentence under this proposal.
6. There was concern that this proposed change could have an impact on local jail bed space. It soon may be necessary for the Legislature to address funds for local jail expansion.
7. The Drug Task Force has discussed whether the limitations for using Intensive Supervision should be revised. The discussion addressed whether ISP could be expanded for misdemeanants.
8. Do we have data for the number of misdemeanants who receive the 18 – 24 month sentences for extraordinary risk? For the those who receive the 12 – 18 month sentence? Yes.
9. If this recommendation were to make it to the legislature – it could be one of those cases where a simple change in a bill would cause the final product not to reflect the will of the Commission, and possibly therefore lose Commission support.
10. Judge Cisneros suggested changing the name from Extraordinary Risk to Crimes of Violence for misdemeanors.

**DRUG POLICY TASK FORCE  
Update and Discussion**

Over the last couple of years, the Structure Group has worked on drug sentencing reform. Last year, the work product was close to completion, but could not be finalized before the legislative session. The Structure Group anticipates at least one, and possibly two, recommendations to be presented to the Commission in October.

The DUID Working Group also expects to present a recommendation to the Commission in October. The recommendation will include two position papers, one "For" and one "Against."

The Treatment and Prevention Working Group has researched and begun to track treatment funds obtained through HB10-1352 and HB12-1310. The Working Group has begun to identify gaps in services and issues to address.

## **BAIL SUBCOMMITTEE**

### **Recommendation Preview and Discussion**

The Bail Subcommittee began meeting in December of 2011. The impetus for the subcommittee was to revisit the original bail recommendations passed by the CCJJ in 2008. Currently, pretrial detainees occupy approximately 60% of jail bed space across the board. Legally, there is a presumption that everyone is releasable on some sort of bail, except in cases where the defendant can be held without bail, such as 1<sup>st</sup> Degree Murder.

#### **Recommendation FY13-BL#1.**

**Implement evidence based decision making practices and standardized bail release decision making guidelines. Use a risk based assessment when making pre-release decisions. Using evidence-based practices at pretrial release is intended to increase the success rate of pretrial detainees, reduce failure to appear rates, reduce recidivism, and reduce jail crowding.**

#### Discussion:

1. A validated risk assessment tool has been created for the state of Colorado. It is called the Colorado Pretrial Assessment Tool or CPAT. Commission members requested additional information on the CPAT tool.
2. The matrix provided in this recommendation is based on and incorporates the CPAT for local jurisdictions that decide to use it.
3. The CPAT tool includes twelve questions. The responses to those questions identify whether a defendant looks more like other defendants who are less likely to appear in court (and therefore “higher risk”) – or looks more similar to other defendants who successfully complete bail and appear for their court dates (i.e., “lower risk”).

#### **Recommendation FY13-BL#2.**

**Discourage the use of financial bond for pretrial detainees and reduce the use of bonding schedules. Limit the use of monetary bond in bail decision making process, with the presumption that all pretrial detainees are eligible for pretrial release unless due process hearing is held.**

#### Discussion:

1. A risk assessment tool would be a necessary evaluative tool for this scenario.
2. The purpose of bail is to ensure the appearance of the defendant at trial and to protect the public. Studies have found that posting a monetary bond does not ensure a defendant’s appearance nor does it ensure that a new offense will be committed. Money bond does not correlate to risk.

3. A bond schedule unintentionally fosters the unnecessary detention of misdemeanants and the detention of indigents and non-dangerous defendants who are unable to afford the sum mandated by the schedule.
4. Individuals who do not have the money to make bail are often persons of color.
5. Kentucky and three other states have outlawed bail bondsmen. Did the Task Force consider moving toward the Kentucky model?
6. Releasing offenders on bail allows pre-trial release services staff the opportunity to manage offenders' needs and to explain the advantages of compliance – which in turn reduces failures to appear.

**Recommendation FY13-BL#3.**

**Expand and improve pretrial approaches and opportunities in Colorado. Only 12 of 22 judicial districts have pretrial services. Even among established programs, there is a lack of consistency in services and a lack of information provided to crime victims. Pretrial service programs can investigate and verify the defendant's background, stability in the community, risk to reoffend or flee and provide objective recommendations.**

**Recommendation FY13-BL#4.**

**Standardized jail data collection across all Colorado jurisdictions. This data collection instrument shall include, but not limited to, information on total jail population, index crime, crime class, type of bond, length of stay, assessed risk level, and the proportion of pretrial, sentenced and hold populations.**

Discussion: None

**JUVENILE JUSTICE TASK FORCE  
Recommendation Preview and Discussion**

**Recommendation FY13-JJ #3.**

**Revise the Sex Offender Deregistration Statute to allow a person who *committed* an offense while under 18 years of age to deregister as an adult after successful completion of the terms of the sentence.**

Revise the language of the current section of the sex offender deregistration statute 16-22-113 (1)(e) as follows (revisions are represented in bold and strikethroughs):

(e) **Except as otherwise provided in section (1.3)(b)(II), if the person was younger than eighteen years of age at the time of ~~disposition or adjudication~~, **the commission of the offense**, after the successful completion of and discharge from ~~the~~ **a juvenile sentence or disposition, and** if the person prior to such time has not been subsequently convicted ~~of~~ **or has a pending prosecution for**, ~~of~~**

unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (b) of subsection (1.3) of this section. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or community parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. Notwithstanding the provisions of this subsection (1), a juvenile who files a petition pursuant to this section may file the petition with the court to which venue is transferred pursuant to section 19-2-105, C.R.S., if any.

Discussion:

1. If a juvenile under the age of 18 is convicted of a sexual offense, he/she can deregister after completing their sentence. This recommendation addresses circumstances where a juvenile under the age of 18 commits a sexual offense, but is adjudicated after the age 18. These juveniles would have the same benefits of deregistration that the other juveniles have.
2. This does not include juveniles who received a “direct file” (to adult court)

**Recommendation FY13-JJ #4.**

**Revise C.R.S. 18-8-208 Escapes to provide that an adjudicated juvenile who turns 18 while in custody, but is not in custody in a state-operated facility, commits a class 3 misdemeanor rather than a felony if convicted of an escape.**

Add C.R.S. 18-8-208(4.1) to provide (additions are in bold):

**(4.1) A person commits a class 3 misdemeanor if, having been adjudicated for a delinquent act and is over 18 years of age, escapes from a staff secure facility as defined in C.R.S. 19-1-103(101.5) other than the Adams Youth Services Center, the Gilliam Youth Services Center, the Foote Youth Services Center, The Mount View Youth Services Center, the Platte Valley Youth Services Center, the Grand Mesa Youth Services Center, the Lookout Mountain Youth Services Center, the Pueblo Youth Services Center, the Spring Creek Youth Services Center, and the Zebulon Pike Youth Services Center .**

Amend C.R.S. 18-8-208(9) to provide (revisions are represented in bold and strikethrough):



(9) The minimum sentences provided by sections 18-1.3-401, 18-1.3-501, and 18-1.3-503, respectively, for violation of the provisions of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part; except that the court may grant a suspended sentence if the court is sentencing a person to the youthful offender system pursuant to section 18-1.3-407. **The provisions of this section, however, shall not apply to section (4.1) of this statute.**

Delete C.R.S.18-8-208(10):

~~(10) Any person held in a staff secure facility, as defined in section 19-1-103 (101.5), C.R.S., shall be deemed to be in custody or confinement for purposes of this section.~~

Discussion:

1. This proposes a change in the way we treat juveniles in cases of walk-away escapes.
2. Is there a way to clarify the definition of “staff-secure facility?” This will be changed to “state-operated, locked facility”.
3. A formal discussion will take place next week at the Juvenile Task Force.

## **COMPREHENSIVE SENTENCING TASK FORCE**

### **Update on Diversion**

HB12-1310 directed the Commission to examine the development of resources for additional pretrial diversion programs around the state for drug offenders. The Comprehensive Sentencing Task Force will bring a recommendation to the Commission in October regarding Diversion.

Diversion is a voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a prescribed set of conditions or complete a formal program designed to address, treat or remedy issues related to the allegation. Upon successful completion of the program, the charges against the defendant are dismissed.

A higher percentage of offenders sentenced to Diversion pay restitution relative to offenders actually convicted of a crime.

The basic components of diversion are: a determination of eligibility; developing an agreement outlining the expectations and term of sentence; a system of monitoring the agreement; and termination depending on compliance.

This proposal is to expand the statewide availability of pretrial diversion programs. There are resources available to set up Diversion programs. Some funds can be found in HB12-1310, contingent upon adopting pretrial diversion policies and guidelines. The cost savings from FY13-CS#1 (modifications of theft offenses) could also be used for the development and operation of diversion programs.

## Discussion:

1. Why isn't diversion being used more? The District Attorney's do not have the resources to screen and counsel clients. If the District Attorney cannot counsel the diversion client, Probation could provide this service. However, external supervision (outside the DA's Office) could complicate the ability to follow through efficiently with the prosecution of the case.
2. Has there been any consideration for the use of HB12-1310 dollars in juvenile diversion programs? Yes.
3. Could diversion be done outside the DA's office with no connection to the DA? No. Why? The Constitution says the district attorney is responsible for making filing decisions.
4. If a client is successful, they must apply to seal the record. Why can't the sealing of records be automatic? Because records are not just maintained in Courthouses; other people have that information. A court order must be issued to these other parties to have the information sealed. The proposal includes an attempt to simplify the sealing of records upon successful completion.
5. Law enforcement officers have the discretion to bring a case to the district attorney. Could law enforcement agencies coordinate their own pretrial diversion programs? There should be a conversation between the district attorney and a local law enforcement agency regarding how such a program would be created.

Next meeting will be October 12, 2012 and will start at 9:00 a.m.

The meeting adjourned at 4:10 p.m.