



Commission on Criminal and Juvenile Justice

**Minutes
January 11, 2013**

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

Commission Members Attending:

James H. Davis, Chairman	Kate Horn-Murphy	Norm Mueller
Doug Wilson, Vice-Chairman	Regina Huerter	J. Grayson Robinson
Theresa Cisneros	Henry Jackson, Jr.	Debbie Rose
Sallie Clark	Bill Kilpatrick	A Laurice Tafoya-Modi
Tom Clements	Julie Krow	Peter Weir
Matthew Durkin	Evelyn Leslie	Dave Young
Kelly Friesen	Claire Levy	Anthony Young
Charles Garcia	John Morse	Jeanne Smith, <i>Ex officio</i>

Absent: Steve King, Eric Philp, Mark Waller

DOCUMENTARY: "THE HOUSE I LIVE IN"

(An optional presentation prior to the start of the Commission meeting that was not part of the official Commission agenda.)

At 11:40am, Doug Wilson, Vice-Chair of the Commission introduced a documentary entitled "The House I Live In," by stating that it confirms the work of the Commission, particularly in the areas of general and drug sentencing reform. The film also addresses the issue of minority over-representation in the criminal justice system which is also relevant to the work of the Commission. After the documentary, Commission members were given the opportunity to discuss the film.

CALL TO ORDER AND OPENING REMARKS

Commission Chair Jim Davis officially called the Commission meeting to order following the conclusion of the film and subsequent discussion. Mr. Davis reported on a meeting with a Denver detective concerning Denver's training on minority over-representation. The detective will be asked to make a presentation on the topic to the Commission at an upcoming meeting.

Grayson Robinson moved to approve the minutes from the November 9, 2012 meeting. Anthony Young seconded the motion. The minutes were approved by unanimous vote.

LEGISLATIVE UPDATE

Ms. Smith gave the legislative update via a handout listing ten bills. At the current time, all Commission legislative recommendations have sponsors with the exception of a 2011 recommendation concerning sentencing for unlawful sexual contact by force, threat, or intimidation (which was not included on the handout). All other bills are either being drafted or are ready to be introduced.

AMENDMENT 64 UPDATE

Mr. Davis gave an update on the Amendment 64 Task Force. The Task Force has been divided into five working groups. Mr. Davis is the Chair of the Criminal Issues Working Group. A topic that is consistently raised in public comment is Driving Under Influence of Drugs (DUID). However, the Criminal Issues Working Group voted against addressing the issue of DUID because it has already been addressed by the Commission.

Charlie Garcia is on the Amendment 64 Juvenile Working Group. This working group will look at juvenile sentencing for DUID. Because the Task Force is set to end on February 28th, he feels the likely outcomes from the group will be general concepts rather than detailed recommendations.

ANNUAL REPORT DISTRIBUTION

Kim English presented the CCJJ 2012 Annual Report and explained that it is shorter than it has been in the past. Previous reports included a large section devoted to tracking the implementation status of the recommendations previously generated by the Commission. This year's report does not contain that information because it is now available on the CCJJ website. Members' attention was directed to the newly updated Commission's policies on member roles and responsibilities regarding legislative recommendations which may be found in Appendices B and C.

Although the Commission only meets once a month, there are many additional meetings of task forces and subcommittees that occur each month. A report of the activities of the Commission and all its task forces and subcommittees are provided in the report. In addition, the annual report provides details of each of the 23 recommendations and related legislation from the previous year.

CHAIRS MEETING OUTCOMES

In December 2012, the Chairs of the CCJJ task forces met to discuss the ongoing efforts and proposals for future work by each task force. The Chairs also discussed ideas for the improvement of processes and procedures of the Commission itself, including the by-laws. Specifically, the Commission developed and follows some practices not currently outlined in the by-laws. Attendees also discussed how the Commission can expand and improve outreach to the entire state. In general, current representation of members extends in a direct line from Pueblo County to Adams County with the exceptions of Senator King, who represents Mesa County, and Kelly Friesen who directs the Juvenile Services Department in Grand County.

A draft version of the proposed changes to the by-laws was presented to the Commission. Members were asked to review the document and send any suggestions to Germaine Miera, of the Division of Criminal Justice. It is expected that changes will be discussed, amendments will be considered, and a vote will be taken on the final draft in February.

IDENTIFICATION OF ISSUES FOR 2013

As a follow-up to the discussions at the Chair's meeting mentioned previously, Paul Herman facilitated a discussion by Commission members to identify issues and priorities for the upcoming year. In the Chair's meeting, the planned and/or ongoing task force priorities were outlined and each task force chair was asked to prepare a summary presentation for Commission members. Each task force chair offered these summaries and Commission members asked questions and discussed these priorities. Following the presentations, the Commission members were asked to identify any additional issues they felt should be addressed by the Commission. Finally, Commission members participated in a straw poll to prioritize all the issues raised. The following is a summary of these presentations, discussions and the straw poll.

The Comprehensive Sentencing Task Force will continue its work on finalizing the sentencing structure of non-violent crimes and of the remaining value-based crimes and property crimes that are not value-based. The following are issues the Comprehensive Sentencing Working Group feels it could take on:

1. Pathways to different sentencing alternatives to ensure consistency across jurisdictions.
2. Parole inside vs. outside of the sentence. The task force would like to explore the option of tailored parole periods that would be served "inside the sentence." Colorado has a parole structure that mandates a specific parole period after completing the DOC sentence. There are examples for study in other states where parole is "inside the sentence" as well as providing for tailored lengths of parole. In the past, the Parole Board was granted greater discretion to set the parole period. This ended when the Legislature mandated specific lengths of parole based on the offense classification.
3. Community Corrections and its role in criminal justice. How should Community Corrections be utilized? What routes are there into and out of Community Corrections? What treatment options are available to offenders in Community Corrections? If we decide to address Community Corrections, where in the CCJJ structure would the topic be assigned? Would the Governor's Community Corrections Advisory Council be the logical place such issues should be addressed? An opinion was expressed that the Advisory Council, given its composition (being provider driven) and perspective may not be ideal to explore the issues.

Grayson Robinson, Chair of the Drug Policy Task Force, outlined the issues the Task Force feels should be examined.

1. The cost/benefit analysis of treatment. What is the best return on investment of the available treatment options and programs?
2. Drug sentencing reforms that are still pending. There may be additional topics and issues worthy of discussion.
3. Evaluate the impact of previous Drug Policy Task Force recommendations.

4. Treatment and prevention including (but not limited to) possible civil remedies, prescription drugs, and integrating behavioral health and primary care with criminal justice.
5. Follow up on new Recommendations FY13-D2 through FY13-D6 [*Ed., information on these treatment-related recommendations may be found in the November 2012 Minutes*]. As identified in FY13-DP#2, the Summit View residential treatment program in Mesa County should be studied as a model for potential replication in other areas of the state. (*Ed., because this is an ongoing topic in the task force, it was not included in the straw poll.*)
6. Competency assessment/treatment models in jails. Jails would like to see improvements in the efficient acquisition of competency evaluations and treatment for individuals in county jails. Treatment must begin in the county jails, but, currently, an individual can sit in a county jail for up to 200 days waiting for a competency evaluation and, once the evaluation is done, wait several more months to receive treatment. As a result of a settlement agreement, jails are supportive of the effort to improve this lag in treatment by having the competency evaluation done within 30 days and the provision of treatment within 30 days of the evaluation. Would this topic be assigned to the Drug Policy Task Force? This could be assigned to another task force, but the issue is an important one and should be discussed.

Regina Huerter presented the issues that the Juvenile Justice Task Force would like to examine. [*Ed., these ongoing topics in the task force were not included in the straw poll.*]

1. Common vision for the structure of the juvenile justice system. The Task Force developed twelve guiding principles for its deliberations. The Department of Human Services has developed a system of wrap-around services that are consistent with this vision and guiding principles of the task force. There is new funding for counties to help triage juveniles for services. The common vision underlying these efforts is to identify the right treatment at the right time for juveniles.
2. System as a whole. Can we streamline the system and dismantle the silos? There are state systems, county systems and city systems. For example, a juvenile may have a human services caseworker and a probation officer while a sibling in DYC will have a case manager. These juveniles and their family will have several individuals assigned to their cases each with several intervention and supervision plans the family must follow. Can this be simplified? Ms. Huerter was asked whether the Children's Code (Title 19) will be a topic of study by the Task Force. The Task Force is attempting to identify the right process model first and then assess whether the Code supports the model.
3. Assessments. Review those in use and identify gaps.
4. Prevention. Identify the efforts by groups currently working on the topic and whether there are gaps in early prevention efforts.
5. Juvenile defense issues. Identify issues for consideration.

Mr. Davis spoke about the ongoing issues being addressed by the Minority Over-Representation Subcommittee. [*Ed., these ongoing topics in the subcommittee were not included in the straw poll.*]

1. The Subcommittee is following the efforts by Denver regarding the Cultural Competency Toolkit. The Subcommittee will study the potential to implement the toolkit statewide.
2. Race and Ethnicity data survey: The survey is in final revision and will be distributed to law enforcement next week.

3. Community outreach. The Commission will continue to encourage members to invite interns to CCJJ meetings.
4. Perspectives on Policing. Mr. Davis attended an excellent presentation from a Denver detective on bias in policing. The detective will be invited to present to the Commission at an upcoming meeting.

Other areas of interest: Mr. Herman requested that members of the Commission propose any other issues they felt should be addressed by the Commission.

1. Amendment 64. After only a brief period of existence, the Governor's Amendment 64 Implementation Task Force will sunset on February 28th and there may be untapped areas in need of attention. It is expected that the task force will develop many rules, regulations, and recommendations, but new consequences and questions are likely to arise as time goes on. For example, Amendment 64 allows 1 ounce of marijuana in one's possession, but, currently, possession of 1 to 2 ounces of marijuana is a petty offense. Anything over 2 ounces is sent to County Court. It seems unlikely and not feasible that law enforcement would measure marijuana in fractions of an ounce. Therefore, will the allowable possession-amount of marijuana be changed to "less than 2 ounces?"
2. Re-entry issues: During the first years of the Commission when re-entry was being addressed, there were issues left pending due to matters of timing or the prevailing environment. The time may be right to re-evaluate these issues. This would include re-entry concerns at the local level as well as those at the state level.
3. The second largest population in DOC is sex offenders. Part of the reason for the size of this group are laws requiring indeterminate sentences as well as creative plea agreements used to avoid the indeterminate sentence requirements. Can indeterminate sentencing be re-evaluated? Another issue contributing to the size of this group is the inability to meet the demand for sex offender treatment in prison. Also, can psycho-sexual evaluation be conducted prior to sentencing in a way that the victim community would find acceptable?
4. Collateral Consequences and sealing of records. The legislature has made some modest changes in the sealing of records for minor drug convictions. The Supreme Court has ruled that the statutes say there may only be one opportunity to request that records be sealed. The juvenile expungement law allows a juvenile to make such requests once a year. This could be categorized as a re-entry issue for study.
5. Specialty courts. Is there a repository of data regarding best practices so that effective specialty courts may be identified, utilized, expanded and/or replicated? There is a statewide committee on specialty courts. Judicial maintains performance standards regarding specialty courts and determines what is and is not working.
6. Study enhanced judicial discretion and accountability.
7. As a focus of re-entry and recidivism, study offender employment options and opportunities.

Each commissioner was allotted three "dot" stickers to vote on issues they felt were most important and should receive Commission attention. Commissioners could place all their dots on a single issue or on three separate issues. The following three topics received the largest number of Commissioner endorsements: Community Corrections, Sex Offenses, and Re-entry.

At the February meeting, the Commission will discuss and attempt to define each issue in greater detail and whether and how each issue may be addressed.

JUVENILE JUSTICE TASK FORCE**Recommendation Update and Vote**

Ms. Huerter gave an overview of the changes to the process for DUI/DWAI and DUID charges for a juvenile.

FY13-JJ#5. Give exclusive jurisdiction to the juvenile courts for DUI/DWAI/DUID offenses committed by persons less than 18 years of age**Recommendation:**

Give the juvenile courts exclusive jurisdiction over juveniles charged with driving under the influence, driving while impaired and driving under the influence of drugs by amending the juvenile jurisdiction statute to remove jurisdiction of such offenses from the county courts. Allow for expungement of a juvenile DUI/DWAI/DUID record after ten years. Bar the use of a prior conviction for sentencing purposes if ten years have expired between the juvenile adjudication and the first adult DUI/DWAI/DUID offense and no other offenses have occurred during the ten year period.

The following statutes would be affected: 19-2-104(1)(a), 19-2-910, 19-2-911, 19-1-103(48), 19-2-917, 42-4-1307 and 42-4-1301.1 C.R.S.

Charlie Garcia moved to discuss this recommendation. Regina Huerter seconded the motion.

Discussion:

1. The Public Defender's Office opposed this recommendation for the following reasons:
 - a. The juvenile loses the right to a jury trial. District Attorneys and the Juvenile Defender Coalition are also concerned about the loss of this right.
 - b. This recommendation would move 2000 cases from county court into the juvenile system with the expectation that the juveniles would be better served. What is the fiscal note?
 - c. County and juvenile courts have concurrent jurisdiction right now. This is sometimes used as a plea tool, depending on the juvenile.
 - d. If moved to the juvenile system, a finding of guilty will only appear on the juvenile's record as an adjudication. Three strikes against the child can result in mandatory out of home placement or detention.
 - e. Under this proposal, the expungement period is increased from three years to 10 years.
2. The purpose of the recommendation is that services for juveniles are best identified and provided through the juvenile courts. It is in the best interest of children that their cases be heard in juvenile court.
3. In response to the point regarding the loss of the jury trial option, it was recalled that in Denver, for example in the last year, there was only one jury trial requested by a juvenile. This jury trial option is chosen very infrequently.
4. It was stated that, typically, County Court judges only look at the number of previous convictions and sentence accordingly. They do not tend to divert offenders to treatment.
5. Can the recommendation be amended to state that these adjudications would not count in the three-strike rule? These charges should not be used to send a juvenile to detention.

6. There are public safety concerns around drinking and driving and those concerns extend to juveniles. Society has given juveniles the adult right to drive at age 16. Everyone must receive the same message – that drinking and driving is wrong – whether you drink and drive at 16, 17 or 29.
7. Treatment providers typically offer a curriculum for adults convicted of DUI. The treatment is geared toward and the classes are occupied predominantly by adults and not juveniles. This change would allow funding to be allocated for juvenile-specific treatment.

VOTE: I support it: 6 I can live with it: 1 I do not support it: 15

Recommendation FY13-JJ#5: FAILS

[Ed., with the 51% quorum requirement met, a recommendation is approved when the total of those choosing “support” or “can live with” is 75% of members voting. The threshold to reject a recommendation occurs when 30% of members vote, “do not support.”]

ADJOURNMENT

Next meeting will be February 8, 2013 from 12:30 – 4:30.

The meeting adjourned at 4:08 p.m.