Colorado Commission on Criminal and Juvenile Justice

Minutes

October 11, 2013
Jefferson County District Attorney's Office
500 Jefferson County Parkway
Golden, CO 80401

Commission Members Attending

James H. Davis, Chair	Norm Mueller	Alaurice Tafoya-Modi
Theresa Cisneros	Kevin Paletta	Mark Waller
Kelly Friesen	Joe Pelle	Peter Weir
Charles Garcia	Eric Philp	Dave Young
Kate Horn-Murphy	Rick Raemisch	Beth McCann for Clair Levy
Julie Krow	Debbie Rose	Shawn Clifford for Matthew Durkin
Evelyn Leslie	Brandon Shaffer	Jeanne Smith, *Ex Officio*
Jeff McDonald	Pat Steadman	

Absent: Sallie Clarke, Matt Durkin, Henry Jackson, Steve King, Doug Wilson (Vice-Chair), Claire Levy

CALL TO ORDER AND OPENING REMARKS

The Chair, James H. Davis, called the meeting to order at 10:11 a.m. Debbie Rose moved to approve the minutes of the August 9, 2013 meeting (the September 2013 meeting was canceled due to weather and flooding concerns). Jeff McDonald seconded the motion. The minutes were approved by unanimous vote.

Mr. Davis reminded members that they are required to sit on at least one Commission task force or subcommittee. Included in today's information is a document listing current CCJJ task force and subcommittee members. Mr. Davis asked members to review the list and, if not already a part of a task force or subcommittee, to contact Germaine Miera with a participation preference.

JESSICA'S LAW LETTER

Jeanne Smith presented information on the Commission's proposed response to a letter from the Governor, Speaker of the House, and Senate President dated April 29, 2013 (see, colorado.gov/ccjjdir/L/Mandates.html). The letter directs the Commission to study the potential impact Jessica's Law (the Jessica Lunsford Act, Florida House Bill 2005-1877) would have if adopted in Colorado. The Division of Criminal Justice has conducted this study on behalf of the Commission and prepared the proposed response. This letter is being presented like a recommendation for the group to discuss. The Commission must decide if this letter, as it is written, corresponds with the response members would like to send to the Governor's office.

The first point the letter outlines is the variety of responses and enactments by other states to Jessica's Law. Many states have adopted some of its provisions; however, very few have adopted the full version that Florida passed. The end of the memo includes a comparison of the provisions of Colorado Law and Jessica's Law prepared for the General Assembly by Jessika Shipley of the Colorado Legislative Council.

When looking at the law, several sections receive the most attention. One of these is the mandatory minimum 25-year sentence for sexual assault (including lewd and lascivious contact) on a victim under the age 12. Most sex offenders in Colorado are subject to the Lifetime Supervision Act which sets "Life" as the upper end of an indeterminate range.

Another prominent feature is the designation of "sexually violent predator." Jessica's Law says the designation cannot be removed for 30 years; whereas, Colorado law is more stringent, stating that the designation cannot be removed. In Florida, registration is required every six months. In Colorado individuals designated as sexually violent predators are required to register every three months.

The third prominent feature is in regard to electronic monitoring. Jessica's Law requires that, once offenders have completed their sentence, they must wear electronic monitoring for the rest of the indeterminate sentence. In Colorado, electronic monitoring is not mandatory, but it is available for individuals as a condition of probation and for those on intensive supervision parole (ISP). Jessica's Law requires mandatory electronic monitoring for life, but many states that have adopted portions of Jessica's Law have not included the mandatory electronic monitoring due to the expense. In Colorado, electronic monitoring is not mandatory, but it is usually required for a minimum of 6 months.

- Ms. Smith was asked if Florida requires "25 years TO Life" or is it "25 years OR Life?" There is a provision for a Life sentence or for 25 years up to Life. In Colorado, offenders are sentenced for a term that is UP TO Life.

Ms. Smith described how the variations from state-to-state are so wide it is difficult to do an apples-to-apples comparison of enactments of Jessica's Law. For example, the definition of "child" varies from state to state. The age varies from 12 to 16 years. In Colorado sexual assault on a child is anyone under 15 years, but, for some purposes, the definition of "child" can include those up to age 18.

DCJ staff also looked at the current structure of Colorado sentencing. The draft memo includes a summary of the lifetime supervision report and relevant portions from the DOC report of the number of lifetime sex offenders who are currently incarcerated. The research staff also provided a snapshot of the DOC admissions for child-related sex offense sentences found in the FY 2011 DOC Statistical Report:

- One person had class 2 offense and was sentenced to 16 to life.
- For the class 3 offenders:
    - The average sentence for 3 Aggravated Incest cases was 21 years (to life).
    - The average for 28 sex assault-position of trust cases was 23 years (to life).

  - The average for 11 sex assault on a child cases (force, threat, or intimidation or pattern) was 36 years (to life).
    [Class 3 cases are those that include most sex-assault-on-a-child cases, if it was accompanied by force, threat or intimidation, or a pattern of conduct.]
- Cases involving touching are class 4 offenses.

We don't know what they would actually serve; this is just the average. Jessica's Law would not have a significant impact on the class 3 felonies, given the 25-year minimum standard. Jessica's law would have the biggest impact on the class 4 offenses. The class 4 offenses have lower average sentences and are probation eligible, but a probation sentence could be for life. Additional details on class 4 offenses may be found in the memo.

Ms. Smith reiterates the point about the difficulty of apple-to-apple comparisons, given the variety of enactments of Jessica's Law across the country.

The Commission was directed to consider evidence-based sentencing. Evidence-based practices focus on sentencing based on an individual's risk and needs. DCJ found that treatment reduced parole violations and the SOMB found that offenders who complete treatment recidivated 2.6% less than those that didn't complete treatment. By following Jessica's Law, the sentence is based on a mandatory minimum of 25 years, thus moving away from evidence-based sentencing.

In sum, Colorado's sentencing scheme, actual practices, and supervision requirements meet or exceed Jessica's Law in many ways. Provisions that depart from Jessica's Law (the 25-year mandatory minimum and the electronic monitoring requirements) are not in keeping with evidence-based sentencing approaches to which the Commission tries to adhere. Colorado's law includes a broader range of acts when discussing sexual assaults. It is not possible to exactly assess the impacts of Jessica's Law in Colorado when the exact provisions that would be enacted in Colorado are unknown.

Ms. Smith asked Commission members to review the draft letter before the November meeting. Please submit any suggestions or comment to DCJ staff. The Commission will vote on the final letter in November.

HUMAN TRAFFICKING REPORT

The Commission asked DCJ staff to review and prepare a report on the implementation of three statutes regarding human trafficking and slavery. Kim English presented an overview of the findings. The report includes the number of cases prosecuted and convicted, the number of inchoate offenses, the circumstance of the cases, and the sentences imposed.

It was found that
- 38 cases were filed between July 1, 2006 and August 15, 2013.
- These cases involved 34 individuals.
- Six inchoate crimes were charged.

- Two cases resulted in a conviction for Human Trafficking. Note that this does not reflect whether someone was convicted of a crime, only if they were convicted of human trafficking.
    - One of those two cases resulted in a 16-year prison sentence for trafficking in adults.
    - The other case resulted in an 8-year sentence for trafficking in children.
- Other cases may have included the charge of trafficking, but the final disposition resulted in convictions of pimping and prostitution.

Most trafficking cases were a result of law enforcement sting operations using the escort page of www.Backpage.com. It's important to not prosecute the victims as they are likely to go back to the perpetrator when they are released from custody.

The Appendices include: a table summarizing human trafficking cases; the United Nations Guidelines and Principals; juveniles in Colorado charged with prostitution; Safe Harbor Laws; Model Human Trafficking Laws; National Conference of Commissioners on Uniform State Laws; and a note from the United Nations regarding abuse of those in a position of vulnerability.

DRUG POLICY TASK FORCE:
UPDATES AND RECOMMENDATIONS PREVIEW

Charlie Garcia gave a brief overview of the mandate from the newly re-seated Drug Policy Task Force derived from SB13-283. The reconstituted Drug Policy Task Force was directed to study the six recommendations made by the Amendment 64 Task Force regarding how these recommendations affect criminal sanctions. The Task Force presented 4 recommendations for initial review by the Commission.

Amendment 64 was intended to:

1. Decriminalize the consumption of small amounts of marijuana.
    - Amendment 64 made the possession of a small amount of marijuana legal.
2. Create a lawful marketplace
    - The Amendment 64 Task Force outlined a method for regulating the lawful sale of marijuana.
    - The Department of Revenue was directed to establish rules and regulations for the sale of marijuana. However, these rules and regulations are not criminally oriented.
3. Protect youth against access to and consumption of marijuana.
    - Amendment 64 states that it is unlawful for anyone under 21 years of age to possess marijuana. However, Colorado law defines a juvenile as anyone under the age of 18. Therefore there is a gap in the law regarding those individuals who are over 18 but under 21.
    - The task force discussed this and decided that there is no conflict between Amendment 64 and current law. It was concluded that the need to consider penalties for the transfer of marijuana to those who are between 18 and 20 years was completed with SB 13-250. Should there be enhanced penalties if a recreational MJ store sells to an underage buyer? It's covered. It's a petty offense if they sell to someone over 18 and a felony to someone under 18.
4. Eliminate illicit drug marketplace.

- The Drug Policy Task Force looked at the consequences of an area banning the lawful sale of marijuana. Where would individuals go who want to legally purchase the drug? They would go to areas that make it lawful. What if such areas are not reasonably close to the purchaser? Does this create an illicit drug marketplace?

Discussion:

- If ballot Proposition AA (Taxes on the Sale of Marijuana) does not pass, how will the recommendations from the Amendment 64 Task Force be enacted? Should the Commission endorse AA?
  - The Drug Task Force discussed Proposition AA, but was decided that the Commission's role is not to endorse ballot issues.
- Without the adequate funding provided by Proposition AA, there will not be enough funds to properly monitor the impacts of Amendment 64.

The following recommendations from the Drug Policy Task Force were then reviewed:

FY14-DP #1 Revise C.R.S. 24-31-314 to clarify that Advanced Roadside Impaired Driving Enforcement (ARIDE) training should take place during POST (Peace Officer Standard and Training) continuing education and advanced training, rather than during basic academy peace officer training.

The Drug Policy Task Force recommends amending section C.R.S. 24-31-314 as follows:

24-31-314. Advanced roadside impaired driving enforcement training.

(1) ON AND AFTER OCTOBER 1, 2013, THE P.O.S.T. BOARD IS ENCOURAGED TO INCLUDE ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TRAINING ~~IN THE CURRICULUM FOR PERSONS WHO ENROLL IN A TRAINING ACADEMY FOR BASIC PEACE OFFICER TRAINING~~ AS AN ELECTIVE TO BASIC FIELD SOBRIETY TEST (BFST) TRAINING RECERTIFICATION.

(2) SUBJECT TO THE AVAILABILITY OF SUFFICIENT MONEYS, THE P.O.S.T. BOARD SHALL ARRANGE TO PROVIDE TRAINING IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TO DRUG RECOGNITION EXPERTS WHO WILL ACT AS TRAINERS IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT FOR ALL PEACE OFFICERS DESCRIBED IN SECTION 16-2.5-101, C.R.S.

Discussion:

- Officers that have had some experience will benefit more from this training than new recruits. Are there any recommendations to generate the moneys referred to in paragraph 2? No. This would go unfunded.

FY14-DP #2 Revise C.R.S. 42-4-1305.5 as it pertains to open marijuana container and motor vehicles to ensure that the marijuana container is open, has a broken

seal, contents are partially removed AND there is evidence of consumption.

The Drug Policy Task Force recommends amending C.R.S. 42-4-1305.5 as follows:

42-4-1305.5. Open marijuana container - motor vehicle - prohibited. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MARIJUANA" SHALL HAVE THE SAME MEANING AS IN SECTION 16 (2) (f) OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(b) "MOTOR VEHICLE" MEANS A VEHICLE DRIVEN OR DRAWN BY MECHANICAL POWER AND MANUFACTURED PRIMARILY FOR USE ON PUBLIC HIGHWAYS BUT DOES NOT INCLUDE A VEHICLE OPERATED EXCLUSIVELY ON A RAIL OR RAILS.

(c) "OPEN MARIJUANA CONTAINER" MEANS A RECEPTACLE OR MARIJUANA ACCESSORY THAT CONTAINS ANY AMOUNT OF MARIJUANA AND:

(I) THAT IS OPEN OR HAS A BROKEN SEAL;

(II) THE CONTENTS OF WHICH ARE PARTIALLY REMOVED; ~~OR~~ **AND**

(III) THERE IS EVIDENCE THAT MARIJUANA HAS BEEN CONSUMED WITHIN THE MOTOR VEHICLE.

(d) "PASSENGER AREA" MEANS THE AREA DESIGNED TO SEAT THE DRIVER AND PASSENGERS, INCLUDING SEATING BEHIND THE DRIVER, WHILE A MOTOR VEHICLE IS IN OPERATION AND ANY AREA THAT IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER WHILE IN HIS OR HER SEATING POSITION, INCLUDING BUT NOT LIMITED TO THE GLOVE COMPARTMENT.

(2) (a) EXCEPT AS OTHERWISE PERMITTED IN PARAGRAPH (b) OF THIS SUBSECTION (2), A PERSON WHILE IN THE PASSENGER AREA OF A MOTOR VEHICLE THAT IS ON A PUBLIC HIGHWAY OF THIS STATE OR THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY OF THIS STATE MAY NOT KNOWINGLY:

(I) USE OR CONSUME MARIJUANA; OR

(II) HAVE IN HIS OR HER POSSESSION AN OPEN MARIJUANA CONTAINER.

(b) THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT APPLY TO:

(I) PASSENGERS, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, LOCATED IN THE PASSENGER AREA OF A MOTOR VEHICLE DESIGNED, MAINTAINED, OR USED PRIMARILY FOR THE TRANSPORTATION OF PERSONS FOR COMPENSATION;

(II) THE POSSESSION BY A PASSENGER, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, OF AN OPEN MARIJUANA CONTAINER IN THE LIVING QUARTERS OF A HOUSE COACH, HOUSE TRAILER, MOTOR HOME, AS DEFINED IN SECTION 42-1-102 (57), OR TRAILER COACH, AS DEFINED IN SECTION 42-1-102 (106) (a);

(III) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN THE AREA BEHIND THE LAST UPRIGHT SEAT OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK; OR

(IV) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN AN AREA NOT NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER IN A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK.

(c) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (2) COMMITS A CLASS A TRAFFIC INFRACTION AND SHALL BE PUNISHED BY A FINE OF FIFTY DOLLARS AND A SURCHARGE OF SEVEN DOLLARS AND EIGHTY CENTS AS PROVIDED IN THIS SECTION AND SECTION 42-4-1701 (4) (a) (I) (N).

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT OR LIMIT THE AUTHORITY OF ANY STATUTORY OR HOME RULE TOWN, CITY, OR CITY AND COUNTY TO ADOPT ORDINANCES THAT ARE NO LESS RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION.

Discussion:

1. Pat Steadman stated that the way the recommendation is written concerning open container is different than what he recalls from the Task Force meetings. He thought the recommendation was to be written as: sections (c)(1) or (c)(2) and (c)(3) whereas it is currently written as: section (c)(1) and (c)(2) and (c)(3).
    - It was stated that as long as we have (c)(3) there is evidence of consumption.
    - When we discussed this how law enforcement will be able to do their jobs was considered. This will be difficult to enforce. If I'm growing my own plants I may not be able to get a seal. That's why putting OR after (c)(1) would be useful.
    - The minutes of Task Force meetings were reviewed prior to today's meeting and the recommendation as written here (requiring all three elements) is consistent with Task Force discussions.
2. Was any consideration given to incidents where a child is present in the vehicle where marijuana was found? It was discussed at length by both the Amendment 64 Task Force and the Drug Policy Task Force. It was the consensus of both Task Forces that current statutes are sufficient to protect a minor in the vehicle. What about having a 2-year old in

a child seat in a vehicle where marijuana is being consumed? Can't the driver be charged with Child Abuse? The recommendation was drafted to mirror the alcohol statutes and how such situations are addressed.

FY14-DP #3 Funding for public education, prevention and treatment as these pertain to marijuana use.

The General Assembly should allocate resources from the marijuana cash fund (created in C.R.S. 12-43.3-501) toward the Adolescent Substance Abuse Prevention and Treatment Fund (C.R.S. 25-1.5-111) for the purposes of public education and prevention efforts focused on discouraging youth access.

Discussion:

1. None

FY14-DP 4 Revisions to the Minor in Possession Statute.

18-13-122 – Illegal Possession or consumption of ethyl alcohol, marijuana or marijuana paraphernalia by an underage person – legislative declaration – definitions – Adolescent Substance Abuse prevention and Treatment Fund.

This is a proposal designed to support education and treatment, as necessary and appropriate, for illegal use of alcohol and marijuana by persons under the age of 21. The original goal of the Drug Policy Task Force was to set up a system of civil infractions. The recommendation presented today is an alternative to that concept. The Task Force work focused on the Minor in Possession statute. Members of the Task Force agreed that marijuana and alcohol offenses should be treated similarly and that education and treatment are important for this population. In general, the Drug Policy Task Force agreed on most points, but couldn't decide between two alternative versions of penalties. Maureen Cain presented one version and Tom Raynes presented the other.

First, Maureen Cain presented her version of the penalty structure for Minor in Possession. She felt that her version more closely resembles the goal of lessening the impact by keeping juveniles out of the criminal justice system.

1. For the first offense (first offense: part 1), the juvenile will receive mandatory diversion. The court will order the juvenile to an approved substance abuse program. Upon successful completion, the case is dismissed and the case is sealed. She argued that the emphasis of the Task Force and Commission is to keep juveniles from developing a criminal history and penetrating further into the juvenile system. The mandatory diversion sentence upholds this belief. This is not a plea bargain as the juvenile will enter no plea and the judge will send the juvenile to diversion.
    a. Does every judicial district have a diversion program? No. But this wouldn't be a diversion program per se. It would be a requirement to participate in an education program. Currently this is paid for by the Adolescent Treatment Fund if the juvenile cannot afford to pay themselves. But we're hoping that this fund could be supplemented.

2. For a first conviction (first offense: part 2), the juvenile will pay a penalty up to $100 *or* be ordered to complete an approved substance abuse program *and* 8 hours of community service. Upon successful completion of all requirements, the case is sealed.
3. For the second conviction, a fine of up to $100 is given *or* drug education *and*, if appropriate, a treatment assessment and, if necessary, treatment. The juvenile is also sentenced to up to 24 hours of community service. If the juvenile successfully complies, the record can be sealed after one year.
   It was noted that the Division of Behavioral Health is developing an education program on substance abuse.
4. For third and subsequent convictions, the juvenile is fined up to $100 *and* shall be assessed for treatment and treatment will be ordered, if necessary *or* education may be ordered. The juvenile is also sentenced to up to 36 hours of community service. [The text inadvertently omitted this statement: If the juvenile successfully complies, the record can be sealed after one year.]
5. Unsealing. Any offense is unsealed if there is a subsequent offense.
6. The above would not preclude any prosecutor from entering into a diversion or deferred judgment agreement with a juvenile for any offense described in this proposal if the agreement would be consistent with the legislative declaration.

Second, Tom Raynes presented his version of the penalty structure for Minor in Possession.

1. Mr. Raynes commented on the initial mandatory diversion proposition offered by Ms. Cain. Mr. Raynes version does not include a similar new provision and, instead, the discretionary considerations and practices under current law would prevail. Under the version outlined by Ms. Cain, there is no entry of plea. The Judge, in effect, would be entering a "plea bargain" from the bench. What are the enforcement tools? If the juvenile chooses not to follow through, does it become a regular case? Who supervises this? It's important to note that we're only talking about petty minor in possession cases. If anything else is charged the case would proceed as usual.
2. Mr. Raynes' model says that for the first conviction, the juvenile is fined $100 *and* sentenced to a substance abuse education program approved by the Court or Division of Behavioral Health. If the sentence is successfully completed, then the record is automatically sealed. This would keep the conviction out of the juvenile's criminal history.
3. For any second offense, the juvenile would be fined $100 - $250, sentenced to substance abuse education *and* be assessed for substance abuse treatment and required to get that treatment if appropriate. The offender is also sentenced to up to 24 hours of community service. If the sentence is successfully completed, the case is eligible for sealing after one year.
4. For third and subsequent offenses, the juvenile would be fined $250 - $500 *and* would undergo substance abuse assessment and treatment, if necessary, *and* would be sentenced to up to 36 hours community service. The case would be eligible for sealing after one year.
5. Unsealing. Any offense is unsealed if there is a subsequent offense.
6. The above would not preclude any prosecutor from entering into a diversion or deferred judgment agreement with a juvenile for any offense described in this proposal if the agreement would be consistent with the legislative declaration.

Discussion:

- The majority of the minor in possession crimes are prosecuted in municipal courts. When the juvenile appears in County Court, is that considered a second offense? How will prosecutors know that a juvenile has an offense in municipal court? It is up to prosecutors to determine how to track offenses. But honestly, tracking multiple offenses will be difficult for both models (Ms. Cain and Mr. Raynes) because we may not know what's happened in the municipal courts.
- What is the role of the prosecutor in these cases? The prosecutor would decide what offense (1st, 2nd, etc) this is. But under Ms. Cain's proposal, it's not a plea bargain because no plea would be entered.
- Do you want to leave it at the discretion of the District Attorney to determine the penalty on a petty offense? We have to decide if we want consistency across the state for first-time offenders to be sentenced to education or if we are we okay with some receiving education and some not.
- What impact would this have on those with prior records (not just minor in possession convictions)? This would allow diversion for the current minor in possession even if on probation for something else.
- Are we making a distinction between the underage user (18 – 20) and the minor (under 18)? No. The current minor in possession statute doesn't make this distinction.
- What are the penalties if an offender has not completed his/her education on the first offense? Then the Courts would take the plea.
- Is there a driver's license sanction on a minor in possession? That was discussed and discarded.
- If a juvenile goes to court on a first offense and completes the diversion and the case goes away, and reoffends again, isn't the new offense a first offense? The case is dismissed and the record is sealed, but the information is still out there. Our sealing laws state that law enforcement and the prosecution still have access to this information.
- Prosecutors do not have the resources to do a criminal history search on petty offenses. All the prosecutors have is the back of the summons. In a minor in possession of alcohol case, the prosecutor has the discretion to send the offender to alcohol class. Municipal cases are not found on criminal histories.

The Drug Policy Task Force is putting forth both recommendations to be voted on during the November meeting.

JUVENILE JUSTICE TASK FORCE: UPDATE

Kelly Friesen presented an update on the work of the Juvenile Justice Task Force. The Task Force is moving away from the concept of civil citations and is instead developing a "petty offense ticket." The creation of a "petty ticket" would provide law enforcement with an option other than detention. The juvenile could be directed into an alternative system such as a juvenile assessment center, being assessed a fine, or utilizing restorative justice. The goal is to avoid juvenile arrests and to remove the unintended consequences of moving a child into the system. This type of ticket would be used for first time offenders and for very low level offenders. The Task Force is set to meet on October 4 to vote on moving forward with this concept.

- If a juvenile does not respond to this option, then what? That hasn't been answered yet.

The Juvenile Justice Task Force also wants to examine other ideas. For example, can the age of delinquency be raised from 10 to 12? The Task Force is examining the offenses commonly committed by 10 and 11 year olds. Juveniles at this very young age are being placed in detention with 16 and 17 year olds and this is a concern. The discussion by the task force on this topic has just begun.

Discussion:

1. What is the impetus for this? Because they are so young. One risk factor for future crimes is the age at first arrest. It is hard to work with this population because they are so young. The Task Force is looking at what other states are doing. Data shows that the sooner a juvenile receives treatment for their delinquent behavior, the better the result. This includes juveniles charged with arson or sex offenses.
2. Are you looking at how 10 and 11 year olds are being treated by the juvenile system? Yes. The Task Force is also looking at brain development research.
    a. The juvenile justice system is different than the criminal justice system by design. The juvenile system is designed to address the needs of juveniles so they don't enter the criminal justice system.
    b. The Task Force is examining how the 10, 11 and 12 year olds are being treated in the juvenile system. Is the way they are being treated furthering their involvement in the juvenile system? Is there a way that they can be served differently that can prevent further penetration into the system? We don't want to traumatize them further by taking away their support systems. This would entail a transfer of resources. We typically have directed resources to adults in the justice system. Youth sometimes are pushed into the juvenile justice system because that is where the mental health and other treatment services can be delivered.
    c. A way to access these services without forcing them into the system would be to remove the delinquency label. Not everyone is worried about the label because the system provides the assistance these juveniles need. That may be true, but the Juvenile Parole Board sees kids who are 17 and have been in the system since they were 10 years old. Their life experiences are completely defined by being in the system. They may not want to go back into the community because, in some sense, they don't know how to function in the "real" world.
    d. We've transferred the discipline that schools used to provide to the juvenile justice system.
3. The Task Force is developing a Professionalism Working Group that will be tasked to establish standards for individuals serving juveniles.
4. We've also discussed human trafficking and safe harbor, but have decided not to move forward with these topics since others are already working on them. We have, however, made ourselves available to those groups.

COMPREHENSIVE SENTENCING TASK FORCE: RECOMMENDATIONS PREVIEW AND UPDATES

Jeanne Smith introduced two recommendations from the Comprehensive Sentencing Task Force for initial review by the Commission. Mark Evans provided an overview of the first recommendation on value-based offenses. Jeanne Smith gave an overview of the second recommendation on earned time credit for specific individuals sentenced as habitual criminals.

FY14-CS #1 Harmonize other value-based offense levels with the 2013 amendment to Colorado's theft statute.

The Comprehensive Sentencing Task Force recommends amending statutes that define the following value-based crimes, thereby harmonizing their offense levels with the General Assembly's recent revisions to the theft statute:

- Criminal Mischief, § 18-4-501
- Fraud by Check, § 18-5-205
- Defrauding a Secured Creditor, § 18-5-206
- Unauthorized Use of a Financial Transaction Device, § 18-5-702
- Computer Crime, § 18-5.5-102

For all of these the maximum sentence and crime classification remain the same. These changes were unanimously supported by the Working Group and Task Force.

Discussion:

1. Theft levels were revised to create a class 2 Felony Theft with values of $1 million or above. Why are there no class 2 felonies created for the five offenses above? Doing so would equate a property crime with second degree murder which we didn't think was rational. Other than for a computer crime offense, offenders can still be prosecuted for theft if they do one of these things and walk away with that much money.
2. Jefferson County has had arson cases which have destroyed over $1 million in assets. In such cases an offender would also be charged with Criminal Mischief.

FY14-CS #2 Retroactively expand the availability of earned time credit to individuals sentenced under the "big" provision of the habitual criminal statute for crimes occurring between July 1, 1985, and June 30, 1993.

Recommendation FY14-CS #2:

The Comprehensive Sentencing Task Force recommends amending section 17-22.5-104 as follows:

(1) Any inmate in the custody of the department may be allowed to go on parole in accordance with section 17-22.5-403, subject to the provisions and conditions contained in this article and article 2 of this title.

(2)(a) No inmate imprisoned under a life sentence for a crime committed before July 1, 1977, shall be paroled until such inmate has served at least ten calendar years, and no application for parole shall be made or considered during such period of ten years.

(b) No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, but before July 1, 1985, shall be paroled until such inmate has served at least twenty calendar years, and no application for parole shall be made or considered during such period of twenty years.

(c) **(I)** No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(II) This paragraph (c) shall not apply to any inmate sentenced pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for any crime committed on or after July 1, 1985, and any such inmate shall be eligible for parole after the inmate has served forty calendar years less any time authorized pursuant to section 17-22.5-403.

(d)(I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. ~~No inmate imprisoned under a life sentence pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.~~

(II) This paragraph (d) shall not apply to any inmate sentenced pursuant to section 18-1.3-801(2), C.R.S., for any crime committed on or after July 1, 1993, and any such inmate shall be eligible for parole in accordance with section 17-22.5-403.

(III) No inmate imprisoned under a life sentence pursuant to section 18-1.3-801(2.5), C.R.S., and no inmate imprisoned under a life sentence pursuant to section 18-1.3-801(1), C.R.S., on and after July 1, 1994, for a crime committed on and after that date, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(IV) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), an inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 2006, who was convicted as an adult following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S., may be eligible for parole after the inmate has served at least forty calendar years. An application for parole shall not be made or considered during the period of forty calendar years.

Ms. Smith discussed how this recommendation will affect Habitual Criminals. The habitual criminal classification can be divided into two groups: the little habitual offender and big habitual offender. Prior to 1993 an individual sentenced on the big habitual charge would be given a life sentence with parole eligibility after 40 calendar years and no earned time was received. In 1993, the law was changed and offenders convicted of the big habitual charge were allowed earned time which would affect their parole eligibility.

There are 104 offenders in DOC that fall into the pre-1993 offense category. Of those 104 offenders, some have been paroled and have been re-sentenced into DOC. Thus, there are about 76 individuals that would be affected by this recommendation. Because it is such a small number, DOC has said that they will manually go back and calculate earned time for these 76 individuals retroactively based on their behavior in DOC.

The victims of these crimes were told at the time that the offender would be sentenced to 40 calendar years before becoming eligible for parole so they would have to be notified that this had changed. The Comprehensive Sentencing Task Force has received assurances by victim representatives that the victim advocates will take it upon themselves to notify the victims or their families that parole eligibility could occur prior to the 40 years. If the victim wants to be notified, they will be included on the parole notification list.

Discussion:

1. What is the motivation behind this recommendation? The rational is based on fairness for the few that were sentenced between 1985 and 1993.
2. Victim notification will primarily be the responsibility of the District Attorney as they'll have the most victim information. Victims may have signed up for the notification program, but some of these cases occurred before the victim notification system was established.
3. This may be difficult for smaller jurisdictions due to the archiving of cases.
4. Only one is expected to be eligible for parole in the next year and then more will become eligible as the years pass. They have still been sentenced to life. The only thing that will change is their parole eligibility date. It will not affect their actual release, just their eligibility.

Additional Comprehensive Sentencing Task Force Updates:

Ms. Smith offered an update on the Extraordinary Risk Working Group that continues to fine-tune the recommendation submitted to the Legislature last year regarding the elimination of extraordinary risk as a separate sentencing issue. It expects that a resolution will be found that will keep the intent of the initial recommendation intact and resolve any conflicts.

Norm Mueller and Kate Horn-Murphy provided an update on the Sex Offense Working Group that has split into four study groups. At this time, they do not anticipate any legislative proposals this year that would be forwarded to the Task Force or Commission. They are exploring:

- how sex offenses are classified,
- the allocation of treatment and treatment resources,
- the needs of law enforcement and prosecution, and

- data concerns surrounding the annual report on the Lifetime Supervision Act. The Sex Offender Management Board is currently exploring this issue (based on Commission Recommendation FY12-SO03: Improve the Collection and Consistency of Lifetime Supervision Data (available at colorado.gov/ccjjdir/L/Recommendations.html) and will present findings to this study group on these data matters.

The Working Group is forgoing an October meeting to allow the study groups to meet instead.

COMMUNITY CORRECTIONS TASK FORCE: UPDATE

Judge Cisneros gave an update on the Community Corrections Task Force summarizing the following:

- This group has identified issues surrounding the referral process and how information is transmitted to providers.
- The Department of Corrections conducted a LEAN Project on how inmates are transitioned from DOC to Community Corrections. That project resulted in 52 recommendations. Of those recommendations, the LEAN Project group identified four as the highest priority. The Task Force will avoid reinventing the wheel and will explore these four recommendations. The Task Force will determine if these recommendations are consistent with the goals of the Task Force and Commission and, if so, determine whether, working with DOC's LEAN Project group, the Commission can contribute in any way to the efforts surrounding these recommendations.
- In addition to working on those recommendations, the Task Force is working on defining the purpose and role of Community Corrections in general.

AFFORDABLE CARE ACT AND COLORADO'S OFFENDER POPULATIONS

A panel of individuals was invited to present information to the Commission on the Affordable Healthcare Act (ACA) and its impacts on the criminal justice system and offenders in Colorado.

Chris Underwood, Deputy Finance Office Director from the Colorado Department of Healthcare Policy and Financing (HCPF, often referred to as "Hic-Puf"; colorado.gov/hcpf) and resident expert on helping offenders receive coverage, spoke on the Affordable Care Act and how it will affect Medicaid eligibility (Note: Mr. Underwood referred to PowerPoint slides throughout the presentation). Colorado is the only state currently doing "real time" Medicaid eligibility determination starting October 1st through the Colorado Peak application process (coloradopeak.force.com) and the health benefit exchange also launched its application Connect for Health Colorado (C4HCO; connectforhealthco.com) on the same date. The coverage doesn't actually begin until January 1, 2014 for those enrolling.

Currently, Medicaid covers kids and families at incomes up to 133% of the federal poverty level, but, in January, this coverage will apply to all adults up to 133% of the federal poverty level. Incomes between 133% and 400% above the federal poverty level will be addressed through the benefits exchange marketplace where these individuals can access subsidized coverage. Individuals qualify for Medicaid at incomes up to $15,000 and a family of four is covered by

Medicaid at incomes up to $31,000. Within the exchange, the subsidized coverage applies to incomes up to $58,500 (roughly 400% above poverty level for a family of four). The big impact of the expansion is for adults with no children who were not previously eligible for Medicaid. Adults with children were covered at 100% of the federal poverty level, but the expansion will cover them up to 133% of the poverty level.

It's estimated that by 2026 the Medicaid expansion will add about $4.4 billion to the state's economy and create 22,400 jobs across the state with the first 14,000 to occur in the first 18 months of the expansion. The federal government will cover the costs for the first three years and, when the state begins to cover the cost, the expansion will be paid through Colorado hospital provider fees which, therefore, will not impact the General Fund (see information about the hospital provider fee in House Bill 2009-1293: The Colorado Health Care Affordability Act).

Mr. Underwood described the features and experience of applying online. The system is connected to the federal system that confirms income levels for eligibility determination and also requests an applicant's information on any current insurance coverage. As mentioned previously, the main online access to apply for Medicaid is Colorado Peak, but individuals may also apply in person or by phone to their local county departments of human or social services or by using mail-in applications. Offering these multiple approaches emphasizes the goal that there is no wrong door to access coverage. The informational website, Colorado.gov/health, describes the changes to healthcare coverage in Colorado, how the ACA works, and how to get health coverage in Colorado.

Elisabeth Arenales, Health Program Director at the Colorado Center on Law and Policy (CCLP; 501c3; cclponline.org) discussed new opportunities for coverage and the new health benefits exchange. Ms. Arenalas stepped through PowerPoint slides that provided a broad overview of the ACA and the Connect for Health Colorado systems and the impact on individuals and small businesses in Colorado.

Medicaid is the platform for this program, but now it will allow many more Coloradoans access to healthcare coverage and better continuity of care. Medicaid covers up to 133% of the federal poverty level and children are covered up to 250%, but other programs allow a subsidy for higher incomes. For those just above the Medicaid eligibility cut-off, there are opportunities for Advanced Premium Tax Credits (APTC) for those between 133% and 400% of the federal poverty level (for a family of four, that means $31,000 to $94,000 in income per year). This also means families would not spend any more than 3.0% to 9.5% of income on health insurance premiums. There are other subsidies for cost-sharing applicable to co-payments, deductibles, and other out-of-pocket expenses that apply to those under Medicaid and those participating in the exchange.

The health benefit exchange, Connect for Health Colorado (C4HCO; connectforhealthco.com), came online on Oct 1. It's a new marketplace to shop for coverage and it is available for individuals and small businesses that don't have other opportunities for insurance. Small businesses with fewer than 50 employees have opportunities not previously available to access coverage for their employees. Also, these employees may choose from different plans rather than every employee having to be covered by the same plan. The plans on the exchange must

meet minimum coverage requirements. One must go through C4HCO and not through individual markets in order to find and be matched to subsidies and advanced premium tax credit.

The application choices are designed to create the "no wrong door" access to coverage. There are Health Coverage Guides in every county who are trained to help understand the coverage choices and to assist with the application process. There are also about 1300 Agents and Brokers working with the exchange as well as a Customer Service Network with 200 customer service representatives to help people get through the application process (for information on Guides, Agents/Brokers, and Assistance Centers see, connectforhealthco.com/get-started/health-coverage-guides/assistance-network).

In regard to specific benefit changes, the Affordable Care Act creates mental health parity, meaning that mental health treatment will not be limited as has been the case in the past. The number of visits per year for mental health treatment will be the same as for physical health treatment. There are also expanded substance abuse treatment benefits. There are ongoing conversations about the duplication of behavioral health treatment services in the Medicaid system and the criminal justice system and whether the services offered align and whether there can be coordination between these systems in the future.

One must be screened for Medicaid eligibility first before screening and qualification for the APTC. Those entering through the "exchange door" will be screened for Medicaid and moved to that system, if they qualify, or, if they do not, they will be referred back to the Connect for Health Colorado to complete the application process.

Ms. Arenelas then described the notion of "churn" as a metaphor for the swirl of changes in income levels that affect eligibility for different types of coverage that can make healthcare coverage more complex. Individuals can shift back and forth between Medicaid and APTC eligibility due to family status or income changes which can cause gaps in insurance coverage. There are different kinds of "churn" that additionally affect those in the criminal justice system and can cause gaps in coverage. An offender who is incarcerated is not eligible for Medicaid and is not eligible for the APTC, unless one is still pending disposition. These "churning circumstances" can mean the changes in enrollment or shifting enrollment types might result in gaps in coverage. Depending on the time to receive a coverage change notice, the time to complete an application for a different level of coverage, and the time to process an application, an individual may not be covered for particular periods of time (2 weeks to 1.5 months).

As is the case now, there are limited periods when one can modify the choice of coverage, except when there is a specific qualifying event. One of these qualifying events is release from an institution of confinement. One can actually apply for Medicaid at any time; the qualifying event requirement does not apply to Medicaid.

A final point is that a lot of offenders are using the Colorado Indigent Care Program (CICP) because they do not qualify for Medicaid. CICP is a great program, but it is not healthcare coverage and it is not considered comprehensive. HCPF is working on a plan to shift as many

CICP clients as possible to either Medicaid or to APTC, if they qualify. Of those in CICP, the estimate is that 75% will be eligible for Medicaid or APTC.

Christie Donner, Executive Director of Colorado Criminal Justice Reform Coalition (CCJRC) explained that an ACA Stakeholder group (which includes Criminal Justice representatives) is estimating that there will be 100,000 people on Jan. 1 in the criminal justice system that will become Medicaid eligible. This is an enormous opportunity and a significant change in public policy for the criminal justice population.

CCJRC and Ms. Arenelas (CCLP) are augmenting the Stakeholder group to bring together individuals from the health care, behavioral health and criminal justice realms to focus on barriers and how to address the lack of experience with health care that is common for the criminal justice population. They are attempting to identify the specific barriers to this special population and to determine how criminal justice will partner with offenders' primary care physicians and health networks.

The stakeholder group uses the concept of the "income churn" that describes how individuals will pop in and out of different qualification statuses (between Medicaid and the Benefits Exchange). Ms. Donner described how this is more complex for offenders who may pop in and out of this "income churn," but who will also pop in and out of the "incarceration churn" that affects eligibility status (between qualifying for or losing Medicaid status). This will bring enormous challenges to maintain the continuity of care for this group.

One issue that Ms. Donner would like the Commission to address is that offenders in community corrections are in a "doughnut hole" where the eligibility status is unclear or where offenders will be ineligible. Residential community corrections offenders who are DOC transition inmates or who are in diversion from probation will not be Medicaid eligible. Some non-residential offenders will be eligible. The eligibility status of offenders who are in community corrections as a condition of parole or as a condition of probation is still unclear. DOC is not responsible for the healthcare of transition offenders and these offenders are not eligible for the Colorado Indigent Care Program (CICP) or Medicaid. If offenders are involuntarily residing in a *public* institution, they are not eligible. Even though many community corrections facilities are private institutions, it is unclear whether involuntary commitment at one of these institutions is considered public or private for the determination of eligibility. There may be a way to address this problem for offenders who are "on escape status" by altering the escape statute, but the exact solution is uncertain.

Ms. Donner concluded by referring to the Stakeholder Group and their goal to address the challenges of healthcare for the criminal justice population.

Mr. Underwood provided additional comments specific to criminal justice populations. When an inmate in jail or prison requires medical treatment and is moved to a hospital as an inpatient, they will become Medicaid eligible, as long as they are there for at least 24 hours. This will save DOC approximately $10 million a year and will save on jail budgets as well.

- Would the same apply to those moving to and from community corrections in the same way? If community corrections inmates are treated similar to other inmates, shouldn't they also become eligible?

  Yes, but, HCPF has a goal to advocate to the Centers for Medicare and Medicaid Services (CMS) and its regional partners to broaden eligibility for those in community corrections. HCPF is starting a letter-writing campaign to get this changed and addressed because we're the only state that uses community corrections as a pre-parole placement (i.e., those released to parole, but with community corrections as a condition of parole). Mr. Underwood stated that he welcomes anyone who would like to assist with this campaign.

If DOC is saving $10 million in hospital fees as mentioned previously, Mr. Underwood would like DOC and jails to become "points of eligibility" where pre-release services would assist offenders in the process to apply for Medicaid coverage. Currently, DOC begins the process to determine Medicaid eligibility 180 days before release, but this has only been possible for the disabled (due to the limitations on eligibility for childless adults). Hopefully, this would reduce returns to incarceration and confinement. However, this will result in a significant increase in workload for both DOC and jails. To that end, HCPF is encouraging confinement facilities to partner with department of human and social services who can provide the expertise to apply for these services. The savings described above could provide the ability to bring eligibility technicians to criminal justice institutions to complete and submit applications. Another opportunity is found in Denver where a plan is being evaluated to have kiosks and outreach workers available to provide information on healthcare alternatives to those in waiting areas.

- Could the definitions related to the hospital provider fee be expanded (see House Bill 2009-1293: The Colorado Health Care Affordability Act) to provide funds for some of these eligibility determination and application services or outreach services? That may be possible. The 24-hour "rule" mentioned above may help hospitals recapture some of the costs associated with serving those with no coverage, like those in community corrections mentioned previously, who are most likely served through emergency rooms.

Mr. Underwood recapped the challenges of re-enrolling individuals who have lost their coverage due to a stay in jail or prison and the challenge of tracking individuals who are being discharged to ensure that they are re-enrolled, thereby reducing the disruption in their coverage. The minute an individual is booked into jail Medicaid coverage is terminated. Denver gets around this by taking arrestees needing medical treatment directly to the hospital before booking so that Medicaid still covers the costs. Individuals on parole and those on probation who reside at home, even if they are monitored with an ankle bracelet, can also be covered by Medicaid. The difficulty, again, is for those residing in community corrections. There may be a nuance that will allow probationers placed in community corrections to be covered, but this must be explored further.

- Didn't Colorado pass a law that would suspend Medicaid eligibility when one enters a prison or jail and then resume immediately upon release, without the person losing eligibility? There was a bill that passed to suspend benefits, but previously there was no Medicaid eligibility category in which to place non-disabled, single adults, so there was

no way to implement the law (see Senate Bill 2008-006: Suspend Medicaid for Confined Persons). However, as of January 1, 2014, single adults will have an eligibility category and HCPF has included this matter with all the other changes in their implementation plan. The implementation goal for all these changes is the first quarter or first half of 2014. Unfortunately, this will also require a person to initiate the suspension and release the suspension at confinement facilities. In reality, it's unlikely that individuals serving short stints in confinement will have their benefits suspended. There is no "data feed" between jails and those monitoring Medicaid that provides notification of admissions and releases from jail. The loss of eligibility for these short jail stints will likely only occur for those whose case is somehow already under review by a family case worker or an eligibility technician.

Lastly, HCPF is working with DOC to reduce the time necessary for re-entering offenders to have access to benefits and to determine an offender's managed care entity and physician. The goal is to make these connections prior to release. The literature indicates that in the first two weeks following discharge, offenders are at high risk for suicide, drug overdose, or a return to prison. Connecting individuals with their healthcare provider can hopefully reduce these outcomes. One positive model is the relationship between DOC and the Telehealth Program at Aurora Mental Health Center that allows individuals with mental health needs to meet with physicians prior to release.

Gary Wilson of the Denver Sheriff's Office provided an overview of some of the ongoing activities regarding health care and offenders in Denver and preparation for ACA implementation. In June 2013, the Sheriff's Office began to study the implications of the ACA and how to prepare for the changes.

Denver's plan:

1. The Denver Sheriff's Department books approximately 40,000 per year with an average daily pop of 2,300 in jail.
2. Denver has partnered with individuals at HCPF, Denver Human Services, and Denver Health on a collaborative to prepare for ACA implementation.
3. Between June and October, Denver conducted an informal survey regarding healthcare coverage and found that roughly 70% of the individuals going through intake at the Denver County jail did not have insurance.
4. With this information in hand, the Denver Sheriff's Department met with its partners to get ACA information and to develop a plan. The focus has been on how the Medicaid expansion and the exchange program (and the Advanced Premium Tax Credit) will affect the jail.
5. Denver has recognized that adding an enrollment process is critically important.
6. As a part of the intake process, a few simple screening questions about insurance will be added. Authorization will be acquired that will give the jail the authority to enroll individuals, if they are taken to the hospital for treatment.
7. The Denver Sheriff's Department has a $15 million budget for medical expenses. Mr. Wilson has asked for funding to hire two enrollment technicians who will carry out the pre-authorized enrollment, if an individual is taken to the hospital. One technician will be assigned to the jail and the other will be assigned to the hospital.

8. Even though arrestees cannot be enrolled while they are confined, the authorization paperwork can be in place and ready, if they are taken to the hospital or upon their release.
9. If an inmate requires medical treatment while in jail and the inmate's treatment will meet the 24-hour inpatient requirement, Medicaid will cover this treatment (if the individual is covered). The enrollment tech at the hospital can immediately access the pre-authorized application that is on file and complete the required Medicaid application to cover the hospital stay.
10. Denver is also exploring the placement of kiosks in the lobby area to provide individuals visiting the jail with information on ACA and how to obtain health care. There will also be a phone line where individuals can connect with assistance to complete the application process from collaboration partners Denver Health, Denver Human Services and Denver Servicios de La Raza (serviciosdelaraza.org)
11. When individuals are released from jail, the Denver Sheriff's Office will write prescriptions with the hope that the individual will immediately walk to the hospital and have the prescription filled.
12. A final point is in regard to those covered through the exchange. It is unclear whether those in the exchange can continue their coverage while they are in jail and, if so, whether payments to continue coverage will be made by the Sheriff's Office from the medical expenses budget.

Discussion

- Even if the Medicaid authorization paperwork is prepared before an inmate is moved to a hospital, how is coverage for a more-than-24-hour stay enacted and the inmate covered in such a brief time?

  Medicaid coverage is retroactive for up to 90 days. This will allow that 24-hour or more stay to be covered. The 90 days starts from the date of the application.

- Does private insurance cover individuals who are incarcerated? Can costs be recovered from private insurance?

  No. Private coverage is very limited in these cases. Coverage for medical services is possible before booking, as described before for Medicaid, but not after booking.

- Are there any other products available for those incarcerated?

  No. Only the specific circumstance mentioned regarding a 24-hour stay in a hospital.

- What if an inmate is injured while working in the institution for a sub-contractor providing services inside the institution? Can there be small business coverage for inmates working under this circumstance?

  Offenders in this circumstance are still inmates in custody and they would still not be eligible. It may be possible, but it is unlikely.

- There have been instances where DOC inmates did keep their insurance because they could afford it. However, most let their coverage lapse because they know that DOC will

be covering these costs. The proposition (of private insurance or small business coverage) is also problematic because an inmate cannot adhere to the requirements to receive services from specific network providers or doctors. DOC can't transport inmates all over the state in order to meet such network requirements.

- It was noted that the ability of insurance carriers to deny coverage for pre-existing conditions will no longer exist after January 1, 2014. Offenders that come in with an existing workman's compensation case will continue to be covered by workman's comp, but it requires quite a bit of coordination with all the relevant entities.

- The lack of coverage by private insurance will probably apply also to those entering community corrections programs. An instance was described of an offender who was performing successfully in community corrections, but who had to be moved to prison so that the offender's breast cancer could be treated.

- A question previously raised by the Probation Division, and pertaining to both probation and parole, does not yet have an answer. When someone signs up for Medicaid they are assigned a primary care provider. Currently, when a court orders substance abuse or mental health treatment, it is the probation or parole officer who makes the referral to the contracted or approved treatment provider. Under the new system, the Medicaid primary care provider will make the referral to a treatment provider. How does the coordination work between the parole/probation office and the Medicaid primary provider to make a referral to treatment providers who are capable and willing to offer services to criminal justice clients? Some providers do not serve criminal justice clients.

  In 2012, the legislature expanded the substance abuse benefit under Medicaid and these services are being integrated with Behavioral Health Organizations (BHOs) that will provide both mental health and substance abuse treatment services. As long as these providers with criminal justice experience are part of the Medicaid network the referrals shouldn't be a problem. The providers willing to serve criminal justice clients can be enrolled, if they are not already, as Medicaid authorized providers.

- There are still some gaps of service in locations where there is no BHO or Managed Service Organization (MSO) and these issues still remain to be resolved for those being referred to Medicaid-related services.

- Another development for BHOs is that, as of July 1, 2014, new contracts require that providers must meet with re-entering offenders within 2 weeks of release which should address some mental health and psychotropic medication concerns. This applies to those offenders who have been classified by DOC as requiring intervention for mental health needs.

  HCPF is modifying contracts for physical health with managed care entities effective on January 1, 2014 to require direct coordination with the DOC to provide medical services upon release to those who are Medicaid eligible. HCPF is modifying contracts for behavioral health effective on July 1, 2014 with BHOs to require direct coordination with DOC to provide behavioral health services upon release to those who are Medicaid eligible. Ideally, this service coordination

will occur prior to release, but the prohibition against the delivery of any Medicaid services (even preparatory coordination) for those incarcerated must be resolved.

- Finally, Mr. Underwood assured those running jails that they should not feel pressure to have new processes up and running on January 1, 2014. HCPF can work with county partners to help develop viable processes. In fact, HCPF is looking for pilot counties to develop demonstration processes that subsequently can be shared with other counties.

- Is there communication and coordination with Colorado Counties, Inc. (CCI) and county commissioners?
  HCPF is working with county representatives, including CCI, but the initial focus was getting the Connect for Health Colorado system up and running. Now that the October 1 milestone has been reached, most counties are just now beginning to focus on the January 1, 2014 milestone and those related implementations.

- Currently, there is no connection to kids in DYC on the current stakeholder group.
  Julie Krow stated that she oversees DYC and will work with Ms. Donner to find representation for the group.

The ACA presentation and discussion concluded.

CCJJ COMMUNITY OUTREACH: UPDATE

Jeanne Smith offered a brief update on the community outreach efforts. On October 1, Kelly Friesen, Jeff McDonald, and Ms. Smith appeared at a state-wide Senate Bill 94 Conference and provided the CCJJ 101 Presentation along with information about the work of the Juvenile Justice Task Force. On October 29th, Kate Horn-Murphy, Tom Raynes and Ms. Smith will give similar presentation to the annual conference of the Colorado Association for Victim's Assistance (COVA). Please let Jeanne Smith know of any other groups that may benefit from such a presentation.

NEXT MEETING

The next meeting will be November 8, 2013 from 12:30 – 4:30 at the Jefferson County DA's Office. That meeting will include votes on the recommendations previewed at this meeting.

Meeting adjourned at 3:35 p.m.