Colorado Commission on Criminal and Juvenile Justice

Minutes

October 10, 2014
Lakewood Employee Relations Training Room
4800 Allison Parkway – South Building
Lakewood, CO

Commission Member Attendance

Stan Hilkey, Chair	Steve King - **ABSENT**	Walt Pesterfield for Rick Raemisch
Doug Wilson, Vice-Chr.- **ABSENT**	Judy Rodriguez for Julie Krow	Brandon Shaffer
Jennifer Bradford	Evelyn Leslie	Pat Steadman
Theresa Cisneros	Beth McCann	Alaurice Tafoya-Modi
Sallie Clark - **PARTIAL**	Jeff McDonald	Mark Waller (Resigned)
Matthew Durkin	Norm Mueller - **ABSENT**	Pete Weir
Kelly Friesen	Kevin Paletta	Meg Williams - **ABSENT**
Charles Garcia	Joe Pelle - **ABSENT**	Dave Young
Kate Horn-Murphy	Eric Philp	Jeanne Smith, *Ex Officio*

CALL TO ORDER AND OPENING REMARKS

Commission Chair, Stan Hilkey, called the meeting to order at 12:44 p.m. Mr. Hilkey acknowledged the passing of former Commission member, Senator Regis Groff, whose services occurred simultaneous to the Commission meeting. Jeanne Smith described Mr. Groff's collaborative spirit over the course of his career and his time as a member of the Commission. He was one of the original Commission members, served as Chair of the Transition Task Force, and was a strong voice on juvenile issues. (Representative McCann and Senator Steadman will join the Commission meeting following Mr. Groff's services.)

Eric Philp moved to approve the September 2014 CCJJ Minutes. Alaurice Tafoya-Modi seconded the motion. The Minutes were approved by unanimous vote.

THE NIC'S EVIDENCE-BASED DECISION MAKING (EBDM) INITIATIVE: UPDATE

Mr. Hilkey gave an update on the EBDM initiative. Colorado was unable to make an application to the National Institute of Corrections (NIC) for inclusion in Phase V of the EBDM Project. There was insufficient participation and commitment from enough local jurisdictions (Colorado needed interest from four to six jurisdictions) to allow a viable application.

The EBDM planning team will meet to determine whether CCJJ can play a role in assisting the individual jurisdictions that expressed an interest in using the concepts of EBDM. Additionally, NIC is offering a week-long Capacity Building Training in early November for representatives from each of the five states participating in Phase IV of the Initiative. NIC is holding spots for eight individuals from Colorado to participate in this training. In January, the planning team will

identify eight state and local representatives who not only participated in Phase IV, but who may also be able to share the skills learned at the training with others in their jurisdictions or offices to promote EBDM practices, regardless of Colorado moving forward with the Initiative.

CYBERBULLYING SUBCOMMITTEE: Update

Kevin Paletta updated the Commission on work done by the Cyberbullying Subcommittee. The General Assembly asked the CCJJ to look at cyberbullying and to determine if there is a need for legislation to address the issue. The Subcommittee is scheduled to meet twice more, but it currently appears that there will be no recommendations for new legislation. Cyberbullying legislation is very difficult to craft that does not criminalize a broad range of behaviors that can be common to adolescents. It was felt that there are more effective avenues and programs in school districts to address this behavior other than through the criminal justice system. It was felt there will not be formal recommendations from the Commission, but simply a summary of the topic and a few suggestions to the legislature based on the extensive study of the topic by the Subcommittee.

For example, the Subcommittee may ask the legislature to examine current laws, particularly the stalking and harassment statutes. The Subcommittee may suggest that provisions on direct and indirect communications from the stalking statute be included in the harassment statute. There may also be a suggestion to move the harassment statute from the public disorder section to the crimes against person section. These are all tentative ideas that are still under review.

The Commission's reply to the legislative directive is due on December 1st. Due to the tight timeline, the Subcommittee will forward a draft response letter to the Chair and Vice-Chair of the Commission for their approval. A copy of the final letter will then be shared with the entire the Commission.

Discussion:

- There appeared to be broad support for the bill last session, but the problem was in crafting specific and appropriate statutory language. How did the Subcommittee decide to shift from making specific language suggestions to a more broad response on the cyberbullying topic?
    - The Subcommittee didn't look at crafting language. The group found early in their review of the request, comprising six questions, that it did not ask for specific language. [*The request letter from the legislature may be found at: colorado.gov/pacific/ccjj/ccjj-mandates.*]

COMPREHENSIVE SENTENCING TASK FORCE: Recommendation Vote

Kate Horn-Murphy recapped Recommendation FY15-CS#01 from the Comprehensive Sentencing Task Force, which was initially presented at the September 2014 CCJJ meeting. The recommendation is inserted below.

This recommendation is to create a provision in the Lifetime Supervision Act to allow the early discharge of specific sex offenders on probation whose medical incapacitation prevents meaningful or any benefit from supervision. The recommendation was suggested by the Probation Division as a way to more effectively direct its resources to those cases where supervision can be beneficial.

FY15-CS #01. Early discharge from Lifetime Supervision Probation for sex offenders due to disability or incapacitation

Recommendation FY15-CS #01

Amend C.R.S. 18-1.3-1008 to provide that offenders sentenced to the Lifetime Supervision Act, who suffer from a severe disability to the extent they are deemed incapacitated and do not present an unacceptable level of risk to public safety, may petition the court for early discharge from probation supervision. Also, if necessary, make conforming amendments to the Colorado Victims' Rights Act regarding a "critical stage" for victim notification.

A mechanism to apply for early discharge from indeterminate probation sentences should be in place for sex offenders who, due to a significant mental or physical disability, are deemed incapacitated to the extent that he or she does not present an unacceptable level of risk to public safety and is not likely to commit a new offense. A severe disability can render a person unable to participate in or benefit from sex offender supervision or treatment. Also, continued supervision of an offender with a severe medical or mental health diagnosis (e.g., severe dementia, Alzheimer's, terminal illness, physical incapacitation) may be ineffective while also requiring ongoing allocation of resources with little benefit.

Proposed statutory language
Amend C.R.S. 18-1.3-1008 to include the additional provision as follows:
(The entire section is new, but is not displayed in caps for ease of viewing.)

18-1.3-1008.1 – Discharge from probation for a sex offender suffering from a mental or physical disability – definitions and procedure

(1) (a) Notwithstanding any provision of the law to the contrary, a sex offender may obtain early discharge from probation if the sex offender or his or her lawful representative, the probation department or the prosecutor files with the court a verified petition for early termination alleging that the sex offender is a special needs sex offender as defined in subsection (2) and, because of the special needs, the sex offender is unable to participate in or benefit from sex offender treatment or supervision and that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

(b) A verified petition filed pursuant to this section shall include:

(i) records from a licensed health care provider responsible for the treatment of the sex offender which include a summary of the sex offender's medical or physical condition, which shall include, but not be limited to, the diagnosis of the disability or incapacitation, a description of severity of the disability or

incapacitation, any information describing the permanent, terminal or irreversible nature of the disability or incapacitation;

(ii) information regarding the risk of the sex offender based upon the most recent evaluations conducted in accordance with the criteria established by the sex offender management board pursuant to section 18-1.3-1009.

(iii) a statement from the supervising probation department supporting the request for early discharge with a description of the sex offender's case history and the facts supporting the probation department position that the sex offender is no longer able to participate in or benefit from continued supervision.

(iv) information from the treatment provider for the sex offender outlining the history of the treatment of the sex offender, and a statement of whether, in the opinion of the treatment provider, the sex offender is able to participate in or benefit from continued treatment or supervision.

(c) If the verified petition is filed by the sex offender or the probation department, the prosecutor shall have thirty days to respond to the petition.

(d) The filing of a verified petition for early termination of probation due to a mental or physical disability shall operate as a waiver of any confidentiality of any and all relevant health records of the sex offender.

(e) Upon receipt of the petition and any responsive pleadings, the court shall determine of the verified petition is sufficient on its face. If the petition is sufficient on its face, the court shall set the matter for hearing. At any hearing, the court shall consider all relevant evidence including, but not limited to, the nature and extent of the physical or mental disability or incapacitation, the nature and severity of the offense or offenses for which the sex offender has been sentenced, the risk and needs assessments conducted in accordance with the criteria of the sex offender management board, the recommendations of the probation department, the recommendations of any treatment providers approved for sex offender treatment pursuant to the provisions of 16-11.7-103, and the statement of any victim of the sex offender, if available.

(f) The court shall make findings on the record if the court grants or denies the petition for early discharge. If the petition is granted, the court must find by clear and convincing evidence that the sex offender is a special needs offender as defined in subsection (2). If the court does not grant the petition, the court may enter any orders regarding probation consistent with the goals of sentencing as outlined in 18-1-102.5.

(g) If the court does not discharge the offender from probation after a hearing on a petition filed pursuant to this section, the sex offender or his or her lawful representative, the probation department or the prosecutor may file a subsequent petition once every year pursuant to this section, if the verified petition presents additional information not previously considered by the court which is relevant to the status of the sex offender as a special needs offender.

(2) A "special needs sex offender" as used in this section means a person who is sentenced to probation as a sex offender pursuant to section 18-1.3-1004, who, as determined by a licensed health care provider, suffers from a permanent, terminal or irreversible physical or mental illness, condition or disease, that renders the person unable to participate in or benefit from sex offender supervision or treatment and who is incapacitated to the extent that he or she does not present an unacceptable risk to public safety and is not likely to commit an offense.

Amend, if necessary, the Colorado Victims' Rights Act (Title 24, Article 4.1, Part 3):

> If necessary, make conforming amendments in C.R.S. 24-4.1-302 (2) (j.5) and/or (k.7), C.R.S., 24-4.1-302.5, and/or C.R.S., 24-4.1-303 (13.5) (a), to make this a "hearing stage" of the criminal justice process.

Kate Horn-Murphy moved to adopt Recommendation FY15-CS #01. Dave Young seconded the motion.

Discussion:
There was no discussion.

VOTE: (a) I support it 12
(b) I can live with it 3
(c) I do not support it. 0

Recommendation FY15-CS#01 was approved.
No legislators were currently present to address how the bill might be sponsored. Jana Locke will follow up with legislators who might serve as sponsors or with stakeholder organizations that might be interested in championing the bill that would be derived from the recommendation.

Mr. Hilkey thanked the Task Force members for their work as this represented the final piece of business from the Comprehensive Sentencing Task Force which has concluded.

JUVENILE JUSTICE TASK FORCE: Recommendation Vote

Mr. Hilkey described that he has initiated conversations with members of the Task Force in an effort to determine whether there are juvenile justice topics to be addressed in the future and how those topics may be addressed. Hr. Hilkey solicited any members of the Task Force who wish to provide feedback to contact his office to set up a meeting. These conversations will assist in the Commission's strategic planning to occur in the first quarter of 2015.

Kelly Friesen, Task Force Co-Chair, reviewed Recommendation FY15-JJ#02 from the Juvenile Justice Task Force that was first presented to the Commission at the June 2014 meeting. The text of the recommendation is inserted below.

Since the preliminary presentation, the Task Force continued refining the recommendation and eliciting feedback from stakeholders. Individuals working in the child welfare arena have expressed concern that this recommendation will force additional younger juveniles into child welfare services. Those in child welfare are supportive of the concept, but are concerned that there may be unintended consequences to child welfare resources. This recommendation is supported by Juvenile Justice Task Force members that juveniles under the age of 13 should not be placed in detention facilities.

FY15-JJ #02. Restrict the use of detention for children under the age of 13

Recommendation FY15- JJ #02

Amend C.R.S. 19-2-507 and 19-2-508 as amended to provide that children under the age of thirteen not be placed in a detention facility unless the child is alleged to have committed a class 1 or 2 felony or, a class 3 felony crime against persons or crime of violence. Specifically, C.R.S. 19-2-507, 19-2-508, and 19-1-103 should be amended to include the language in bold, below. Further, the Division of Youth Corrections' SB-94 State Advisory Board should amend the Detention Criteria to state that a child between the ages of 10 and 13, screened for detention is eligible to receive SB-94 services.

Proposed Statutory Language
C.R.S. 19-2-507
(1.5) NO CHILD UNDER THE AGE OF 13 SHALL BE PLACED INTO A DETENTION FACILITY UNLESS THE JUVENILE IS ALLEGED TO HAVE COMMITTED A CLASS 1 OR 2 FELONY OR A CLASS 3 FELONY CRIME AGAINST PERSONS OR CRIME OF VIOLENCE.
(2) The juvenile shall be detained if the law enforcement officer or the court determines that the immediate welfare or the protection of the community require that the juvenile be detained. In determining whether a juvenile requires detention, the law enforcement officer or the court shall follow criteria for the detention of juvenile offenders which criteria are established in accordance with section C.R.S 19-2-212**. THIS SUBSECTION (2) DOES NOT APPLY TO CHILDREN UNDER THE AGE OF 13 YEARS.**

C.R.S. 19-2-508 (3) (a)
(II.5) NO CHILD UNDER THE AGE OF 13 SHALL BE PLACED IN A DETENTION FACILITY UNLESS THE JUVENILE IS ALLEGED TO HAVE COMMITTED A CLASS 1 OR 2 FELONY, OR A CLASS 3 FELONY CRIME AGAINST PERSONS OR A CRIME OF VIOLENCE.

(III) (D) THE REBUTTABLE PRESUMPTION OF DANGEROUSNESS DOES NOT APPLY TO JUVENILES UNDER 13 FOR OFFENSES OTHER THAN CLASS 1 OR 2 FELONY, OR A CLASS 3 FELONY CRIME AGAINST PERSONS OR A CRIME OF VIOLENCE.

C.R.S. 19-1-103 (106)
"Temporary holding facility" means an area used for the temporary holding of a child from the time that the child is taken into temporary custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be separated by sight and sound from any area that houses adult offenders. **A CHILD CAN ONLY BE HELD IN A TEMPORARY HOLDING FACILITY FOR 48 HOURS EXCLUDING WEEKENDS AND HOLIDAYS.**

Discussion. Alternatives to detention should be in place throughout the state for children under thirteen who are accused of delinquent acts but not a danger to public safety. Late childhood and early adolescence is a formative period of development (Steinberg, 2008[1]). A significant body of developmental research indicates that, on average, youth under the age of thirteen differ significantly from older youth (see for example, Grisso, et. al., 2003[2]). Further, younger adolescents are susceptible to deviant peer influences from older youth housed in detention, particularly when those youth are perceived as dominant (Committee on the Science of Adolescence, 2011)[3].

Ms. Friesen continued her presentation offering the following:
How many juveniles aged 10-12 would this recommendation effect?

- DCJ staff found that from FY 2010 to FY 2013, the recommendation would have affected 18 to 24 children per month statewide. Over the same period, the average length of stay by those who were 10 ranged from 3 to 7 days, for those who were 11 from 5 to 11 days, and for those who were 12 from 11 to 12 days.
- Based on population estimates from 2010, the roughly estimated affect for two counties - Mesa and El Paso Counties - that have expressed specific impact concerns would have been an additional 8 children (in Mesa) in 2010 and an additional 30 children (in El Paso) in 2010.
- Additionally, in FY2013 this population of children accounted for 2,200.2 detention bed days; however, not one of these children was ultimately committed to the Division of Youth Corrections.

Regarding the possible alternatives to detention placement, Child Services, while acknowledging their service-impact concerns, does have programs available that can serve these children and their families (for example, Program Area 4). The Child Mental Health Act has funding to provide assessment of these children within a required 6-hour window of referral to a mental health provider and there is funding for placement in residential treatment, typically a home.

Ms. Friesen concluded her comments by stating that this recommendation is focused on reducing the trauma and negative criminogenic consequences to the placement of these young children in detention. She expressed her appreciation for the feedback and advice offered by the county Child Welfare Directors who have been very gracious providing assistance to strengthen the recommendation.

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[1] Steinberg, L. (2008). *Adolescence* (8th Ed). New York, NY: McGraw-Hill.

[2] Grisso, T., Steinberg, L., Woolard, J. Cauffman, E., Scott, E., Graham,S., Lexcen, F., Reppucci, N.D., & Schwartz, R. (2003). Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants. *Law and Human Behavior*, 27, 333-363.

[3] Committee on the Science of Adolescence, Institute of Medicine (US) and National Research Council (US). (2011). The Science of Adolescent Risk-Taking: Workshop Report. Washington (DC): National Academies Press (US).

Task Force Co-Chair Jeff McDonald thanked the members of the Task Force for all their hard work on the recommendation.

Discussion:

- Under the Child Mental Health Act mentioned previously, where would the children be placed?
    - The authorized, local Behavioral Health Organization (BHO) would identify the placement. They are also assigned a system navigator to help the family identify the necessary services. Placement can be found for durations up to 3-6 months. There are also home-visit therapy services and other wrap-around services available to serve these children.
- The Child Mental Health Act is primarily intended for children who are not offenders and who are no Medicaid eligible. If these children need mental health treatment and meet the criteria, they could be served under this Act. Also, parents can be charged a healthy fee for the services.
    - There are options to reduce or waive the fee if parents are unable to pay.
- If the BHO is unable to provide service, is it true that children still revert back to the Child Welfare Services Department?
    - It appears that under this funding stream, BHOs had options other than Child Welfare Services.
    - These services are new and are related to the new funding made available for crisis and intervention services across the state.
- What is the process a police officer follows with, for example, a juvenile at 10:00pm on a Saturday night?
    - That child will still be brought into a juvenile assessment center or existing screening process. The screener would then contact the BHO which must screen the child within 6 hours. Services and a plan would be put into place at that time.
    - FOLLOW-UP: How established is this procedure?
    - The proposal is in draft form at this time. There are several possible alternatives, but there would be a response of some kind within 6 hours. That may be to return the child to the home.
- What if the parent does not want the child in the home or there are no mental health issues? Are we forcing kids into the mental health system because there are no alternatives?
    - Children in these circumstances would all likely benefit from mental health crisis services, if only in the short term. Most of these children could be diagnosed with some form of conduct disorder.
    - FOLLOW-UP: If they have that diagnosis wouldn't they be a danger to the public?
    - These children with this diagnosis, among others, can be effectively served with mental health intervention.
- How do victims' groups feel about the provisions of the recommendation?
    - Juveniles will still be required to appear in court. The Task Force had not heard specific feedback from victims' groups.
    - FOLLOW-UP: Given that there are some violent crimes not covered by the recommendation, one would think victims would assume there is going to be an intervention. It appears there will be no intervention.

  - As mentioned previously, the children will still be assessed and will receive the services necessary based on the intervention. There will be a placement that is appropriate, whether that is to child welfare or to behavioral health. These children between 10 and 12 years of age would not be placed in detention.
- Given the potential threat to public safety posed by these children, placement in detention could be very helpful.
  - For children who are 10-12 years old, the potential harm and future negative consequences of a detention placement can be mitigated by these alternatives.
  - FOLLOW-UP: This still does not recognize the wishes by victims that these children be detained.
  - Juvenile facilities are just not an effective placement for children this young who may be exposed to teenagers who may be assaultive or violent. The recommendation is designed to prevent potential victimization of these 10-12 year old children by locating other placements, whether that is through child welfare or mental health services or with family or under kinship care. If we don't force the system to change, we will continue to create future perpetrators by exposing children to these environments.
- What types of crimes did these juveniles commit?
  - For 10-year olds during a three-year period, the top three crimes were assault (primarily misdemeanors), criminal mischief, and unlawful sexual behavior.
  - For 11-year olds over the three-year period, the top three crimes were assault (primarily misdemeanors), unlawful sexual behavior and criminal mischief.
  - For 12-year olds over the three-year period, the top three crimes were assault (primarily misdemeanors), criminal mischief and an equal number of public peace crimes and theft crimes.
- Who takes care of the children in the immediate hours following an arrest?
  - The police can hold a child up to six hours and some children will be transported to the local juvenile assessment center or temporary holding facilities for screening.
- Is it not true that the only felony crimes of violence not listed among the Felony 1, 2, or 3 classes are those for drugging a victim?
  - Assault on a police officer would be included and there may be others.
- Mr. Weir offered the following comments:
  a. the goal is laudable, but he has heard from many district attorneys throughout the state who have asked that this recommendation not be approved.
  b. Jurisdictions do not have viable alternatives to house these juveniles outside a detention facility.
  c. The dual goals of the protection of the child and the protection of the community must drive the decision-making.
  d. This recommendation does not allow for judicial discretion. Detention may be the best option for a short period of time.
  e. Placing the child with family may not be a viable option if a family member is the victim. For example, family placement may not be possible in cases where the victim is a family member of such crimes as criminal mischief, menacing, or some excluded weapons offenses.
  f. The fact that few, if any, children are committed following their detention is completely unrelated to the factors that led to the decision to detain.
  g. There may be some studies that indicate the potential for an increase in criminogenic factors, but they are not convincing. The potential for victimization of young detainees is a

much more serious matter and an issue that should be monitored, but sometimes there are just no other options, but to detain.

- Ms. Tafoya-Modi reiterated that these children are under the age of 13 and those committing Felony 1, 2, or 3 (crime of violence) crimes would not be eligible for this no-detention provision. By placing those who would qualify in a detention facility, you are presuming they are guilty. They are just children. Just because there may be a lack of available resources should not mean that we force children to bear the consequences of this lack of resources.
- This recommendation would force the jurisdictions to use the other options that are available or to find such alternatives.
- FOLLOW-UP: Presumption of guilt is not relevant; only the safety of the child and public safety are relevant. As has been stated, there are some serious offenses not covered by the eligibility restrictions. It is unlikely that the six-hour response would actually occur.

- Judy Rodriguez shared a few thoughts from Julie Krow on the recommendation:
  a. She supports the work of the Task Force, but she cannot support the recommendation.
  b. She supports the effort to exclude 10-12 year olds from detention when it's safe to do so.
  c. Stakeholder feedback indicated that there is still work to be done on the recommendation to reduce unintended consequences.
  d. The circumstance could arise where children are charged with a more serious crime than is warranted to ensure that the child is placed in detention.
  e. There are impacts to counties in the increase in the number of children in congregant care.
  f. There has been some good work, but more work needs to be done.
- Sallie Clark offered comments by phone that she agrees with many of the comments offered from Julie Krow. She is concerned about the financial consequences to counties and the impacts on the safety of children. There could also be problems by placing these children with foster children. Additional participation by county child welfare directors and Colorado Counties, Inc. is required to improve the plan.
- Ms. Friesen reiterated that aspects of the proposal:
  a. It would only apply to a small subset of 10-12 year olds. The child welfare system would not be flooded with large numbers of children.
  b. These children are 10, 11 and 12 years old and are currently being housed with 17 and 18 year olds.
  c. These children are being housed, but are not receiving any treatment. This is not a benefit to the juvenile.
- Charlie Garcia reiterated that the 213 children who were 10-12 years old and who were detained in FY 2013 were all released to the community and none were ultimately committed.
- It is very rare that members of this age group are detained. The larger concern is for the 12-year old who repeatedly menaces their neighborhood with a gun. The proposal prevents judges from detaining the child. Given that there are no placement options for these children, placement in the home may be more dangerous than placement in the detention facility. The father could be a member of a gang.
  - Children who are 9 years old cannot be detained. Apparently there are placement options in place across all jurisdictions for children of this age. There is nothing

magical that happens when the child turns 10 that would eliminate all the placement options that are currently in place for 9-year olds.

- Should treatment services be included as part of the recommendation and a requirement for detention facilities?
- One aspect of the mission of this Commission is to make recommendations that increase public safety. We cannot ignore public safety in regard to these dangerous 10-12 year old children. This recommendation does not ensure public safety.
- One of the goals of the Commission is to develop good policy and to be a catalyst for change. It doesn't appear the issue will be addressed unless someone advocates and forces the issue.
- It appears there is plenty of sentiment in support of the concept and the research also appears to support the proposal as well. Studies show a juvenile's development is cumulative. By holding 10-year olds in a facility with older juveniles where gang activity prevails is counterproductive when trying to reduce criminogenic behavior. Even a single day has a negative impact for children at such a young age, given that they are receiving no services while they are detained. It is the role of the Commission to provide evidence-based recommendations to improve the justice system. If the obstacle is implementation, then passing the recommendation, even if it is only symbolic, can serve as a catalyst for change.
- The opinion was expressed that the mission of the Commission has nothing to do with evidence-based practices and making proposals lightly. The focus of the mission statement is primarily public safety. This proposal is suggesting that we experiment with children and their families who may not want them in the home. There is no certainty around the outcome of the proposal. There is a significant public safety issue posed by 10-12 year old children who are a danger to others.

  [For reference: "The mission of the Commission is to enhance public safety, to ensure justice, and to ensure protection of the rights of victims through the cost-effective use of public resources. The work of the Commission will focus on evidence-based recidivism reduction initiatives and the cost-effective expenditure of limited criminal justice funds.]

  - It is unfair to state that families don't want their children. Again, the average length of stay in FY 2013 for 10-year olds was 3.4 days, for 11-year olds was 7 days, and for 12-year olds was 11.8 days. These children are most likely being released to their homes with services after spending those numbers of days in detention.
- The opinion was expressed that no evidence has been presented that would indicate that the recommendation is evidence-based. We can agree that we would like to avoid placing children under 13 in detention. However, no evidence was presented that states that children of this age should never be placed in detention. In fact, the data could indicate that the system is working, given the small number of children being placed in detention. The average lengths of stay are minimal; the stays are not 30 or 60 or 90 days, they are 3 or 7 days.
  - Members of the Commission were provided the research evidence to support the proposal during the initial presentation of the recommendation at the June 2014 Commission meeting.
  - FOLLOW-UP: Many of those studies appeared dated. Did they actually observe negative impacts of the 3- or 7-day detention experience?
- It was reported that many of the crimes were sex offenses. Where were these 10-12 year old sex offenders placed? Where were their victims located?

- Although the child may not receive any services during their detention, there are several planning steps being undertaken to prepare for the release of the child from detention. It is not the case that nothing is happening during this period of time.
- The assessments in use are not validated with children this young. It may not seem that 3 to 7 days is that much time to spend in detention, but for children this young, the impact can be profound, as evidence has shown.

Charlie Garcia moved to adopt Recommendation FY15-JJ#02. Evelyn Leslie seconded the motion.

Additional discussion points:
- Sallie Clark indicated that more work should be done on the recommendation with additional stakeholders. Ms. Clark indicated she would violate Commission policy and publicly oppose the recommendation, if it is approved.
- Would prosecutors support the recommendation if other crime exceptions were included?
- Although this would be advantageous, there is not enough time to develop the list of these exceptions in today's meeting.
- The prohibition in the use of detention as an option is another aspect that prevents prosecutors from supporting the recommendation.

VOTE: (a) I support it 8
(b) I can live with it 0
(c) I do not support it 10

Recommendation FY15-JJ#02 was not approved.

Ms. Friesen expressed her thanks to the staff for their work and support of the Task Force. With the conclusion of the vote, the Task Force is concluded until which time the Commission determines there are more juvenile justice matters to address. Mr. Hilkey reminded members that he will continue to gather feedback on juvenile issues from Juvenile Justice Task Force members.

COMMUNITY CORRECTIONS TASK FORCE

Preliminary Recommendations

Theresa Cisneros and Pete Wier (Co-Chairs of the Task Force) summarized the group's activities since its inception. The Commission was reminded that the Community Corrections Task Force has been meeting for two years. Many months were spent educating members about the system and relevant issues. The Task Force produced the following mission statement:

> *The purpose of community corrections is to ensure public safety and further the sentencing goals of the State of Colorado. This is accomplished by utilizing community corrections boards and the local community to identify appropriate individuals to be placed in the community, implement research-based policies, practices and programs to assist individuals so that they may successfully function in the community.*

Three Working Groups were created to study emerging issues and to develop recommendations:
- Boards Group - Focus on how local Board membership and processes can be improved

- Target Population Group - Focus on who the target population should be (medium, high risk and very high risk and low risk/high stakes)
- Referral Group - Focus on how the referral system for Transition offenders can be improved

Several preliminary recommendations will be presented to the Commission. The recommendations were presented by the Working Group Chairs or Co-Chairs (David Lipka - Boards, Glenn Tapia - Populations, and Greg Mauro- Referral) and are scheduled for a vote during the November 2014 Commission meeting. Thanks were offered to staff for their support of the study and work by the Task Force and its Working Groups.

Ms. Cisneros introduced Glenn Tapia to begin the presentation. Mr. Tapia provided a general overview of community corrections and the work of the Task Force:

- Many of the proposed recommendations are interrelated although they are presented as separate recommendations.
- The Task Force attempted, where possible, to devise recommendations based on evidence from the field and was guided by the Commission's Guiding Principles.
- Community corrections in the 1970s was an alternative intended for low-risk offenders.
- Today, the paradigm has shifted for several reasons:
    - Community corrections is not as inexpensive as it once was
    - The risk level of those being served is higher.
    - About 20% of offenders are housed in specialized beds and by definition these offenders are categorized as high-risk / high-need offenders.
    - Of the regular population (the remaining 80%), 51% are high-risk offenders and 8% are low risk offenders. Of these high-risk offenders, about 30-40% are very high-risk offenders and most of the program failures and recidivism occurs in this part of the population.
    - Therefore, the proposals are designed to address the issues related to these community corrections realities. Another goal was to look at the roles and processes of the Division of Criminal Justice, the Department of Corrections, community corrections programs, and local Community Corrections Boards. The proposals are designed to address long-standing problems that have gone unresolved despite past efforts and to respond to the shift to higher-risk community corrections clients.

The order of presentation of recommendations will be to present those related to the Boards by Mr. Lipka, those related to Populations by Mr. Tapia, and those related to Referrals by Mr. Mauro.

BOARDS WORKING GROUP

Preliminary Recommendations (Presented by David Lipka)

Mr. Lipka described that these recommendations provide a basic roadmap, but were not designed to include a complete plan to implement the proposals. This set of Board-related recommendations is intended to balance local control with the creation of basic standards to guide the operation of local boards.

FY15-CC#01. Community Corrections Board Member Training

Recommendation FY15-CC#01

The Department of Public Safety shall work with local community corrections boards and key stakeholders to develop and implement a mandatory introductory orientation and an annual continuing education curriculum to ensure appropriate and consistent community placement decisions by board members.

Background. To promote the use of evidence-based correctional practices along with an understanding of the larger criminal justice system and local community concerns, new community corrections board members must complete an introductory orientation within the first six months of membership on the board. After the first year, all members must participate in continuing education annually which may be tailored to the local community's needs.

There should be some minimum level of training necessary to participate on a community corrections board. For example, there should be a basic level of understanding of how community corrections works, the underlying philosophy of community corrections, and a familiarity with statutes related to community corrections. This training should occur within the first six months of board membership. Subsequent training could address the availability of local resources and cross-training to understand other criminal justice entities.

This recommendation is considered statutory.

Discussion:

- Diverse stakeholders should be at the table when developing the orientation curriculum.

FY15-CC#02. Reliable and Consistent Information from DOC

Recommendation FY15-CC#02

The Department of Corrections (DOC) shall include the following information in the community corrections referral packet: current objective offender risk information, projected release dates, official accounts of the current crime(s) of conviction, criminal history, institutional conduct, programming completed, re-entry plan, victim statement (if Victim Rights Amendment case), offender statement, and a recommendation concerning the appropriateness of placement in community corrections.

Background. Currently, information on DOC transition referrals received by community corrections boards is often incomplete and dated. Local community corrections boards must have the information in order to make the best placement decision. Approximately one-third of DOC inmates are released through the state's community corrections system. DOC should immediately develop a process that ensures complete, relevant, and timely information is available to local boards.

This recommendation identifies information and documents that should follow an offender transitioning from DOC to community corrections. The information should be the most current possible. This will allow boards to make more informed decisions. This will assist in reducing idiosyncratic decision-making, either by case workers or by community corrections board members.

This recommendation is considered a policy change and not statutory.

Discussion:

- If there is no Victim Impact Statement, who is responsible to contact someone to get the victim impact statement.
    - If a victim is registered it is expected that the victim statement will be included. For non-victim rights cases, this point is left open.
    - FOLLOW-UP: In VRA instances where the victim has previously not supplied a victim statement or there is no victim statement for any reason, will there be an effort to acquire a victim statement?
    - Yes, that is the intent underlying its inclusion in the list of materials. However, victims must "opt in" to the victim notification program and may or may not provide a statement as they wish.
    - FOLLOW-UP: Victims may not want to "opt in" at the "front-end" of the process, but they may feel differently about "opting in" when the offender is being transitioned to the community. Victim representatives would like there to be another solicitation of victims at this point in the process. Victim representatives also feel that victims shouldn't have to "opt in" in order to have a voice. Solicitations for victim statements should occur for victims who do not want to "opt in."
    - Mr. Garcia stated that sometimes DOC does not have the information to begin with. Has this circumstance improved?
    - There have been improvements in the transfer of materials from the court to DOC. Other recommendations will address improvements in offender records.
    - Eric Philp from Probation described that there have been improvements in the number of PSIRs (pre-sentence investigation reports) that are forwarded to DOC. There is a system to track the receipt of these materials. DOC keeps electronic and paper copies of PSIRs, non-confidential informational records and victim statements that are sent by the Probation Division. DOC reports a 97% receipt rate of PSIRs.

FY15-CC#03. Community Corrections Board Membership and Composition

Recommendation FY15-CC#03

Colorado community corrections boards from every judicial district must have a mandatory minimum membership that includes representatives from the offices of the district attorney, public defender, law enforcement, probation, the Department of Corrections, and a citizen member. Board membership should strive to reflect the composition and values of the local community.

*Background***.** To ensure consistency across jurisdictions, and to ensure that the voices of key stakeholders are heard, local community corrections boards must

include, at a minimum, the perspectives of the multidisciplinary group described above. Further, board membership should represent the configuration and the values of the local community.

This recommendation outlines the mandatory minimum number of members on the Board and which groups should be represented in addition to whoever else the local community sees as important. An informal survey of community corrections boards was conducted and the Working Group concluded that every board has input from law enforcement, district attorneys, and citizens. Some did not have input from the defense perspective. The proposal only suggests the minimum and not the maximum number and types of members.

This recommendation is considered statutory.

Discussion:

- Although it might be advantageous, it would probably be difficult to have a representative from DOC on every board. Also, Denver has always had a local legislator (for example, boards could include a city council or a county commissioner). Was this concept discussed?
    - Yes, this was discussed. There is a concern regarding the time commitment possible for these individuals. In Denver, there are many local legislators. However, rural counties may have a representative whose district is comprised of several counties and including a local legislator on all those boards is less feasible.
- There should be a designated spot for a victim service representative or a crime survivor?
    - If that perspective is not already represented by district attorney input, that is a position that could be established by boards.
    - FOLLOW-UP: Every community has a domestic violence or sexual assault program from which such individuals could be recruited.

FY15-CC#04. Community Corrections Board Member Reappointment Procedures

Recommendation FY15-CC#04

Each judicial district and appointing authority shall review how often each community corrections board member should apply for reappointment to the board.

Background. Jurisdictions vary considerably in the length of the members' appointments to the local community corrections board. Because it is important to retain local control, this variation is appropriate as long as membership is reviewed periodically to allow for the rotation of individuals on and off the board.

This is another recommendation where the advantage of standardization must be balanced against local control. State boards have standard of lengths of tenure and procedures for re-appointment. The Working Group did not want to prescribe such detailed standards, but there should be a way for heads of local boards to address chronic absenteeism that might imbalance the perspective of the board or overload participating members with additional work. This recommendation would encourage boards to focus on healthy functioning.

This recommendation is considered statutory.

Discussion:
There was no discussion.

POPULATION WORKING GROUP
Preliminary Recommendations (Presented by Glenn Tapia)
There were two sources of directives for this Working Group. The Comprehensive Sentencing Task Force had questions about whether community corrections can offer viable alternatives to incarceration for low-risk/high-stakes offenders. The other area of study was whether community corrections could better address re-entry for high-risk offenders.

FY15-CC#05. Funding for Very High Risk Offenders

Recommendation FY15-CC#05

The General Assembly should provide funding for a specialized program in the community corrections budget for very high risk offenders. This program requires a differential per diem, appropriate standards of practice, and services to address what criminologists term the "top four criminogenic needs."

*Background***.** The target population for this specialized program is very high risk offenders as identified by the Level of Service Inventory (LSI-R). According to research,[4] the program should provide:

- 60 days of intensive behavioral change/Cognitive Behavioral Therapy (CBT) interventions prior to community access;
- 150 hours minimum of direct therapeutic contact (within 60 days) with a CBT intervention; and
- Minimum of 50% of overall time structured in clinical, psycho-educational, and re-entry services.

Programming should prioritize antisocial attitudes, peer relations, and impulse control over all other criminogenic or non-criminogenic needs. The risk profile, based on the LSI, of the current community corrections population is as follows:

- Very high: 14%
- High: 37%
- Medium: 41%
- Low: 8%

Specifically, this proposal is to develop a specialized program with funds from the General Assembly for high-risk offenders that score high on the top four criminogenic needs (for example, anti-social thinking, criminal-peer associations, and impulse control skills). Currently, regardless of the offender's risk level, employment is the primary focus upon entry into community corrections. After a brief orientation, offenders are asked to find a job. For high risk

[4] See for example Sperber, K.G., Latessa, E.J., & Makarios, M.D. (2013). Establishing a risk-dosage research agenda: Implications for policy and practice. *Justice Research and Policy, 15,* 123-141.

offenders, focusing on employment immediately is actually counter-productive to effective behavior change. The proposal suggests that these offenders participate in a specialized program for at least 60 days to focus on criminogenic needs. After that therapeutic intervention, the focus would shift to employment readiness and the job search.

Research indicates that high-risk offenders should participate in at least 300 hours of clinical work over at least 90 days of treatment and that 40-70% of their time should be spent in structured activities. The details of the proposal above include guidance shaped from these research findings. The proportions of offenders by risk indicate how many of the community corrections transition clients may participate in this specialized program.

This recommendation is considered a budgetary initiative.

Discussion:

- What is the recidivism rate for high risk offenders? Is the rate for very high-risk offenders notably higher?
    - In looking at our research on recidivism and program failure, there is a disproportionately high risk of recidivism and program failure for high risk offenders. Because one-third of the funding for community corrections is derived from offender fees, the focus is on offenders finding employment as quickly as possible. As mentioned, this is not the approach that will lead to offender success.
- Is there any evidence-based research regarding this topic?
    - As mentioned previously, the research states that offenders should have 300 hours of therapeutic interventions over at least 90 days. We are proposing that 150 of these 300 hours occur prior to the search for a job and that this should occur in the first 60 days. We are suggesting 50% of the offenders time be spent in structured activities.
- Is there a suggested per diem to fund the program?
    - No. If the recommendation passes, the work will be undertaken to determine the necessary funding rate.
- Does the recommendation require every community corrections board to undertake this approach?
    - No. Another recommendation addresses this specific point. Instead, it will only be targeted to specific community corrections programs that have the necessary resources and engage in the evidence-based practices that will allow the program to be successful.

FY15-CC#06. Professional Judgment and Research-Based Decision Making

Recommendation FY15-CC#06

Community corrections boards shall develop and implement a structured, research-based decision making process that combines professional judgment and actuarial risk assessment tools. This structured decision making process should sort offenders by risk, need and appropriateness for community placement. The Division of Criminal Justice shall receive resources to assist local boards in developing these processes.

Background. Evidence-based correctional practices include the use of structured and data-informed decision making processes that include considerations of risk of recidivism combined with needs assessments and service availability. Community corrections boards should develop and build an empirically-supported decision making process for the purpose of identifying and accepting higher risk offenders when services are available to meet their needs. Recidivism rates are reduced an average of 30% when medium and high risk offenders receive appropriate behavior changing programming.[5] Conversely, offenders assessed as low risk to reoffend do not benefit from behavior changing programming[6] and are slightly more likely to recidivate when they are overly supervised or programmed.[7]

The purpose of this recommendation is to equip community correction boards with the necessary resources to advance decision making. Boards could improve decision-making by utilizing actuarial risk assessments along with knowledge and experiences when deciding who should and should not be accepted into the community. This proposal is related to other recommendations that will request additional data to help improve the actuarial risk assessment of offenders.

This recommendation is considered a budgetary initiative unless the Commission wishes to make this a statutory recommendation.

Discussion:

- This recommendation is not intended to totally replace clinical judgment with actuarial risk assessment but that the two will be combined.
- Are there tools other than the LSI that are being considered for use?
    - Specific risk assessment tools were not named because DOC is currently working on a project using multiple case planning tools.
- Who would be responsible for training the boards in the correct use of the decision-making tools?

[5] See for example Andrews, D. A. (2007). Principles of effective correctional programs. In L. L. Motiuk and R. C. Serin (Eds.), *Compendium 2000 on effective correctional programming*. Ottawa, ON: Correctional Services Canada. Andrews, D. A., & Bonta, J. (2007). *Risk-need-responsivity model for offender assessment and rehabilitation* (2007-06). Ottawa: Public Safety Canada; Lipsey, M. W., & Cullen, F. T. (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science, 3*, 297–320. Smith, P., Gendreau, P., & Swartz, K. (2009). Validating the principles of effective intervention: A systematic review of the contributions of meta-analysis in the field of corrections. *Victims and Offenders, 4,* 148–169.

[6] Ibid.

[7] See for example Andrews, D. A., & Bonta, J. (2007). *Risk-need-responsivity model for offender assessment and rehabilitation* (2007-06). Ottawa: Public Safety Canada; Bonta, J., Wallace-Capretta, S., & Rooney, R. (2000). A quasi-experimental evaluation of an intensive rehabilitation supervision program. *Criminal Justice and Behavior, 27*(3), 312–329; Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. In J. Horney (Ed.), *Criminal justice 2000: Policies, processes, and decisions of the criminal justice system.* Washington, DC: U.S. Department of Justice, National Institute of Justice; Lowenkamp C. T., Latessa E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs? *Crime and Delinquency, 52,* 77–93.

- Boards would have access to professional consultation for such training. It is also important to conduct follow-up work on the effectiveness of the tools and the degree to which board decisions correspond with tools. Denver's experience following its implementation of structured decision making has been very positive. Board members are more consistent and more able to describe how they make their decisions and, overall, the decision-making process is more transparent.
- Ultimately, access to both factors, good information and validated risk measures, are essential to improvements in decision-making. Improvement cannot be made if either is lacking.

- Will there be funding attached to this training component?
  - Yes. This must be a sustainable enterprise that is implemented with fidelity.

FY15-CC#07. Flexibility within Programs

Recommendation FY15-CC#07

The Colorado Community Corrections Standards developed by the Division of Criminal Justice (DCJ) shall be changed to allow flexibility within a program to provide appropriate and effective supervision and treatment of sex offenders in accordance with the Sex Offender Management Board (SOMB) Standards and Guidelines, and to provide effective and appropriate supervision and treatment of low, medium, high and very high risk offenders.

Background. Currently, DCJ's Colorado Community Corrections Standards are inflexible and do not allow for differential supervision of low, medium and high risk clients. Community Corrections programs would benefit from more flexibility in the Standards with respect to supervision and monitoring of low risk versus high risk clients. The current one-size-fits-all Standards could have a negative impact on a program's ability to effectively manage clients. Examples of standards that can be modified include:

- 4-110 Interim UA Testing
- 4-130 BA and UA for Alcohol
- 4-220 On Grounds Surveillance (Pat Searches and Room Searches)
- 6-070 Weekly Meetings with Case Managers
- 4-160 Off Site Monitoring (Frequency and Method)
- 4-170 Passes
- 4-260 Escape (keep timeframes at 2 hours but encourage programs to consider offender risk level as part of decision to keep or terminate an offender who returns from escape status)
- 4-161 Job Search Accountability

This recommendation requests that the Office of Community Corrections in the Division of Criminal Justice modify its standards to allow community corrections programs the flexibility to differentially supervise offenders based on risk level. Currently, program standards are "one-size-fits-all" and, regardless of the offenders risk level, the programs treat all offenders the same. Based on the risk-needs-responsivity principle, it is more effective to supervise offenders based on this principle. The caveat is that sex offenders, who often score low on risk assessments, may

not actually be low risk. Therefore, sex offenders would be supervised according to SOMB Guidelines, regardless of their assessment on standard risk tools.

This recommendation is considered a policy change and not statutory.

Discussion:
There was no discussion.

FY15-CC#08. Develop Program Evaluation Tool

Recommendation FY15-CC#08

The Division of Criminal Justice (DCJ) shall develop a program evaluation tool that will assess each programs' adherence to evidence-based principles and practices and identify each program's capacity for providing appropriate programming to very high risk offenders. The DCJ should receive funding from the General Assembly to obtain expert consultation on the development of the instrument and to complete a statewide assessment of community corrections programs using the new tool. The current Risk Factor Analysis requirement of DCJ shall be removed from statute (C.R.S. § 17-27-108).

Background. The current DCJ Risk Factor Analysis for community corrections programs does not measure the quality of programming nor does it measure adherence to the Principles of Effective Correctional Intervention.[8] The new instrument should be rooted in best practice principles. With project-specific funding, DCJ's Office of Community Corrections should hire a consultant to review the new instrument and hire temporary staff to immediately assess all community corrections programs.

This recommendation requires DCJ to develop a tool to assess community corrections programs' adherence to the principles of effective intervention. Funding would be requested from the General Assembly to provide professional consultation and temporary staff assistance to develop the tool and to establish a baseline measurement. This would also require a statutory change to eliminate the language regarding the Risk Factor Analysis process tool that is currently mandated and that is no longer effective. This new assessment will help identify those community corrections sites that could effectively manage the specialized program for higher-risk offenders mentioned previously.

This is a policy recommendation that requires a statutory change.

Discussion:
- To which stakeholders are these recommendations directed? Can you identify the stakeholders who will be responsible for implementing these recommendations?

[8] For more information about the "risk principle" and evidence based correctional practices, see http://www.colorado.gov/ccjjdir/Resources/Resources/Ref/CCJJ_EBP_rpt_v3.pdf.

  - To an extent these responsible parties are already identified. Some were identified in earlier "shall statements" such as DOC, DCJ, and community corrections boards. This can be clarified, if necessary.
- Standards must be vetted through the Governors' Community Corrections Advisory Council. Why is it missing from these recommendations?
  - Community Corrections Advisory Council is not mentioned because they are not mandated to develop standards nor can they override decisions about standards. The Council serves only in an advisory role.

FY15-CC#09. Three-Quarter House Living Arrangement

Recommendation FY15-CC#09

The General Assembly should increase the community corrections appropriation to include a specialized Three-Quarter House or Shared Living Arrangement program for lower risk offenders that includes a specialized per diem, appropriate program standards, and access to services to address stabilization and the minimum supervision needs of lower risk offenders.

Background. This new program should focus on life skills rather than clinical behavior change; the per diem rate should be between that of residential and non-residential programs; and offenders should augment funding with a small subsistence fee.

This recommendation addresses the request from the Comprehensive Sentencing Task Force to identify a place in community corrections appropriate for low-risk / high-stakes cases. An example might be a low-risk offender with a vehicular homicide conviction. Probation would not provide the appropriate level of punishment, but a DOC sentence would be inappropriate as well.

The Three-Quarter House model (also referenced as a shared living arrangement) is conceptually placed on the supervision continuum as an intermediate step between residential supervision and non-residential supervision in community corrections. This is envisioned as structured housing in an apartment community or shared living circumstance where the offender would live with staff supervision. These offenders would not be combined with the high-risk offenders, who comprise such a large part of the current community corrections population.

A secondary benefit of the proposal is that it would offer an additional option to fulfill the need of some offenders for housing and minimal supervision. New standards and a new contract structure must be developed to implement this option. There may be zoning issues that would be impacted by this recommendation resulting in a challenge to locate sites for these programs. The per diem rate would be set somewhere between those for residential and nonresidential programs.

This is a budget initiative related to policy.

Discussion:

- Without this option, are these offenders currently being sentenced to prison?

  - Yes. These individuals could be sentenced directly to a Three-Quarter House rather than to DOC.
- The funding would probably derive from a re-allocation from DOC to the Community Corrections system, rather than requiring new funds. Would this generate cost savings?
  - Some offenders are already sentenced to community corrections, but currently they are being housed with the population of high-risk offenders that this proposal would avoid. There probably would not be a cost savings associated with the option. There may even be a few offenders who would be directed to this option from Probation.
  - Chronic DUI offenders might also be re-directed to this option rather than to another stint in Probation.
  - This option existed on a very limited basis in community corrections as recently as 12 years ago.
- It may be that the community corrections of the 1970s no longer exists and is not an option for the placement for low risk offenders. This model may be the method by which low-risk offenders may be effectively served in community corrections. Now that 92% of community corrections offenders are classified as either a medium or higher risk offender, it's important to adapt community corrections to be an option for lower risk offenders who need more supervision than is found in Probation.
- Who determines the best placement of these offenders and how would the decision be made?
  - Courts and the boards would still determine the initial decision whether to place the offender in community corrections. Community corrections would perform an evaluation of the offender to determine his/her risk factors and to determine the best placement for treatment. In some cases, based on advice from Probation, the court will sentence offenders to specific programs in community corrections, like Pier I.
- Could the Three-Quarter House be used as an option to step-down the level of supervision?
  - Yes. That is one of the secondary benefits of this model. Offenders could be transitioned from residential to a Three-Quarter House then to a non-residential placement, if it would increase the likelihood of success for certain offenders. It could also serve as an option for parolees with community corrections as a condition of parole.

REFERRAL WORKING GROUP

Preliminary Recommendations (Presented by Greg Mauro)

This Working Group was tasked to explore the transition referral process and determine whether the principles for effective intervention could be embedded into the referral process. The current process is primarily time-driven (namely, eligibility is determined by the number of months prior to the parole eligibility date, PED). The volume of offenders that can be accommodated is the other driving factor. The goal was to include matters of risk and readiness into the transition decision.

FY15-CC#10. Risk Informed Referral Process

Recommendation FY15-CC#10

The Department of Corrections (DOC) shall adopt a risk-informed process for referring inmates to community corrections. This process should mirror the decision making flow charts that accompany this recommendation.

Background. As illustrated in the accompanying flow charts, the DOC referral process should allow for early and immediate referral of low risk offenders; automatic referral at 19 months for moderate-high risk offenders (or 9 months to the PED for a crime of violence); and referral at the parole eligibility date (PED) for very high risk offenders. Research supports assessing offender risk/need levels by using an actuarial instrument to determine the appropriate level of intervention.[9] An actuarial risk assessment, such as the Colorado Actuarial Risk Assessment Scale (CARAS),[10] can determine the probability of re-offense.

The intent of this recommendation is to match offenders with available services. There are three flow charts to describe its related processes to place low, medium-to-high, and very-high risk offenders in community corrections. Risk could be determined by whatever instrument is in use, whether that be the CARAS (the Colorado Actuarial Risk Assessment Scale) or the ORAS (the Ohio Risk Assessment Scale, which is currently being introduced as part of the Colorado Transitional Accountability Plan or CTAP program at DOC).

Mr. Mauro described each of the three referral tracks:

- Low risk offenders should be treated with minimal services as quickly as possible. Specifically, these offenders would be referred to ISP-I or a short-term stint in residential community corrections. Those who committed a "VRA crime" would not be eligible for this placement track. Placement would occur at 16 months prior to PED for non-violent offenders and 6 months prior to PED for those convicted of a violent crime.
- The medium-to-high risk track is similar to the process that currently exists. Referral would occur at 19 months prior to PED for non-violent offenders (placement at 16 months) and 9 months prior to PED for those convicted of a violent or VRA-related crimes (placement at 6 months).
- The very high risk track would require offenders to remain in DOC until the PED is met to receive a community corrections referral.

This is a policy recommendation directed to DOC that would involve statutory change.

[9] For more information about the "risk principle" and evidence based correctional practices, see http://www.colorado.gov/ccjjdir/Resources/Resources/Ref/CCJJ_EBP_rpt_v3.pdf.

[10] For more information see http://www.colorado.gov/ccjjdir/ORS2/pdf/docs/CARAS/2-14-11%20CARAS_V5-BriefDescription.pdf and for an example see http://www.colorado.gov/ccjjdir/Resources/Resources/Handout/2009/021309_R_2%202008-ActuarialRiskAssessmentScale.pdf.

Discussion:

- Pete Weir described his misgivings about the recommendation that he reported were not shared with any of the other Task Force members.
  a. The focus of the recommendation is how to match the offender with the appropriate level of service. A broader consideration involves the principles of sentencing and the philosophy of punishment and deterrence.
  b. Whether an offender has appropriate services is important, but whether they have served enough of their sentence must also be considered.
  c. How does this recommendation comport with the expectation of the community regarding sentencing?
  d. For example, the vast majority of murderers is often measured at low risk and is not likely to recidivate. If risk is the only consideration, how do you weigh the criminal deed and how much time should be served?
  e. The General Assembly has stated by virtue of statute that punishment and deterrence are appropriate considerations. Although Mr. Weir agrees with the majority of the recommendations, it seems, in this case, that the Task Force has focused only on the needs of the offender and not considered some of these broader sentencing considerations.

FY15-CC#11. Allow for Objective Recommendation

Recommendation FY15-CC#11

The Department of Corrections (DOC) shall develop a process that allows appropriate personnel familiar with the offender to provide a current recommendation, positive or negative, based on objective factors, for community placement.

Background. Currently, the DOC does not allow staff to make a recommendation. Transition cases are referred based on time-driven eligibility only.

This recommendation is related to Recommendation FY15-CC#02 from the Board Working Group. This and following recommendations are somewhat interdependent. This recommendation would require DOC to develop a process that would allow appropriate personnel to offer an objective recommendation regarding the appropriateness of placement in community corrections. This would allow community corrections boards to make a more informed acceptance decision. There are instances where referrals, based only on time determinations, are made to community corrections for offenders that case managers do not feel are appropriate.

Codifying this process in statute might provide DOC staff a degree of protection from liability. The Task Force could not decide whether the recommendation should be framed as a legislative change. There were also discussions about who the "appropriate personnel" should be. Aside from the liability issues, there could be concerns regarding objectivity and impartiality of DOC employees embedded in the organization with a vested interest in the outcome of the decision. It would probably be prohibitively expensive to create an outside party to provide such recommendations.

This is a policy recommendation directed to DOC that might involve statutory change.

Discussion:

- In some states, the case managers do provide recommendations to such boards.
- Would one person be responsible to provide all the recommendations or a group of people?
    - It would be those individuals who are best able to make the determination, probably the case manager. It would not be based solely on opinion, but on objective factors.
- According to an Administrative Regulation of DOC, employees cannot provide the type of recommendation being proposed.
  [The following was read: "During the performance of their duties or as representatives of the DOC, DOC employees, contract workers, and volunteers may not sign any petition, letter, affidavit or recommend in any way to the Courts or representatives of the Courts, leniency pardon, parole or any other form of criminal case disposition on behalf of any offender."]
- This may be designed to offer protection to DOC employees on a number of levels. This may prevent the DOC employee from being sued. It may also render moot any attempt to influence the recommendation whether that influence comes from inside or outside the institution.
- There is also a risk that recommendations may not be consistent across all personnel.

FY15-CC#12. Readiness-To-Change Assessment

Recommendation FY15-CC#12

The Department of Corrections (DOC) shall research readiness-to-change assessment options and implement an offender readiness assessment to assist with the community placement decision.

Background. Community corrections board members need more information about DOC offenders who are referred for community placement. The readiness-to-change assessment should be conducted as of the community corrections referral process for transition offenders. Examples of such instruments include the University of Rhode Island Change Assessment Scale (URICA)[11] and the Stages of Change Readiness and Treatment Eagerness Scale (SOCRATES).[12]

This recommendation bolsters the information that is forwarded from the DOC to community corrections boards. It requires the DOC to investigate and implement readiness-to-change assessments as part of the referral documentation. The combination of readiness-for-release with actuarial risk would enhance the transition referral decision.

[11] For more information see http://alcoholrehab.com/drug-addiction-treatment/university-of-rhode-island-change-assessment-scale-urica/ and http://www.uri.edu/research/cprc/Measures/urica.htm for an example of the measure.

[12] For more information see http://alcoholrehab.com/drug-addiction-treatment/readiness-to-change-socrates/ and http://casaa.unm.edu/inst/SOCRATESv8.pdf for an example of the measure.

This is a policy recommendation directed to DOC.

Discussion:
There was no discussion.

FY15-CC#13. Disallow Refusal To Be Referred

Recommendation FY15-CC#13

The Department of Corrections shall revise Administrative Regulation (AR) #250-03, which currently allows inmates to refuse a referral to community corrections, to disallow this refusal option.

Background. Currently, offenders may refuse a referral to community corrections. It is believed that this often occurs when they anticipate being denied placement by the local community corrections board. This likely reduces the number of offenders who could benefit from placement. Note that offenders would still retain the right to refuse placement if accepted.[13]

Currently, DOC Administrative Regulations allow the offender to refuse the application to community corrections. Offenders will refuse due to previous rejections by community corrections boards or they may have an expectation that the Parole Board will release them to parole. The proposal would allow the application to be submitted. If an offender is accepted, he/she still has the right to refuse placement. The case manager could then engage the offender to explore the reasons for the refusal or the perceived obstacles regarding placement in the community.

This is a policy recommendation directed to DOC.

Discussion:

- Mr. Weir expressed misgivings about this recommendation:
  a. His jurisdiction has been inundated with transition referrals from DOC in the last several months. If there is an offender who would refuse the placement, it is a waste of time for the board to consider that offender.
  b. If an offender has no interest in community corrections placement, why would a board want to accept that offender into their community?

FY15-CC#14. Feedback on Referral Rejection

Recommendation FY15-CC#14

Community corrections boards and programs, in conjunction with the Department of Corrections (DOC) shall develop a communication mechanism to provide appropriate feedback to the inmate regarding the decision to reject placement for a transition referral.

[13] This right is in compliance with C.R.S. § 18-1.3-301(j)(2)(a, b, and c). See also, AR Form 250-03A at http://www.doc.state.co.us/sites/default/files/ar/0250_03_060114.pdf.

Background. Currently, community corrections boards notify DOC that a case was rejected and do not provide the rationale for the decision. Details regarding the reasons for the placement denial would assist the inmate to prepare for future release to community corrections. This information is particularly useful if there are dynamic risk factors that can be addressed that allow the offender to be a more suitable candidate in the future.

This recommendation would require community corrections boards and programs to devise a mechanism to provide meaningful feedback regarding the decision to deny placement in community corrections. This would allow an elaboration of the generic reasons that are currently reported. If there are dynamic reasons for rejection, the case manager could work with the offender to address these matters and improve the chances for acceptance in the future.

Representatives of boards and programs felt this would be very difficult to achieve, but that there would be value to case managers and offenders in providing this feedback.

This is a policy recommendation directed to DOC.

Discussion:

- Mr. Weir expressed misgivings regarding this recommendation:
  a. From a practical perspective, it would be very difficult for a local board with several members to provide concise feedback when there may be as many opinions on the decision to reject as there are board members.
  b. There is a lack of understanding of the value of the programs an offender has completed and of the programs available in DOC that might address the reasons for rejection.
  c. The offender may be unable to change some of the factors (for example, punishment and deterrence) that lead to the rejection.
- If there were a checklist of these meaningful reasons, it might be easier for boards to provide this feedback.
- This is similar to the process in use by the parole board.
- If this were required, there would be an opportunity to use the checklist responses to explore boards' decision behaviors.

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FY15-CC#15. Limit Referrals to Two Options

Recommendation FY15-CC#15

Transition referrals from the Department of Corrections (DOC) to community corrections shall be to a *primary* and *alternate* release destination only. A primary referral shall be a viable and verified county of parole destination or county of conviction. County of conviction shall not be used for crimes occurring within a Department of Corrections facility.

Background. Currently, DOC provides up to four location recommendations. However, due to low acceptance rates by the 3rd and 4th level referrals, this process requires significant additional work for DOC staff and local boards.

Additionally, these options are not typically associated with a relevant parole plan.

This recommendation alters the current process to send referrals to a primary site, an alternate site, and up to two other community corrections jurisdictions. The pattern of decisions shows that the acceptance rates at the third and fourth sites is very low, possibly because these sites are often not geographically preferable to the offender or the community corrections site. Limiting the application to two sites would also reduce the review caseload by limiting the number of applications that boards receive from DOC.

This is a policy recommendation directed to DOC.

Discussion:

- This may also address the concerns from victims who must repeatedly provide statements or feedback or even travel to multiple community corrections board meetings.

FY15-CC#16. Intensive Residential Treatment (IRT) Referral Process

Recommendation FY15-CC#16

The Department of Corrections shall collaborate with community corrections stakeholders to develop an Intensive Residential Treatment (IRT) and Residential Dual Diagnosis Treatment (RDDT) referral process that is focused on where the individual will eventually parole.

Background. Currently, the DOC sends a single referral to each of the four IRT programs, regardless of where the offender will live and work upon release. The first IRT program to respond with an acceptance decides placement. Similar concerns exist for the RDDT placement referral process.

This recommendation requests that DOC collaborate with community corrections programs, boards and the Division of Criminal Justice to develop referral processes directed toward Intensive Residential Treatment (IRT) and Residential Dual Diagnosis Treatment (RDDT) programs that are more logical and more geographically based.

There are only six IRT programs in the state and referrals are sent to all six. The first to respond will serve as the official placement for the offender when the offender may actually be located in a different jurisdiction. Another problem arises when a program accepts an offender but requires the offender to wait for an opening when there may be openings in other programs. The lack of logic and functionality in the referral process has been a long-standing problem that produces discontinuity of treatment.

This is a policy recommendation directed to DOC and other community corrections stakeholders.

Discussion:
There was no discussion.

The Community Corrections Task Force concluded its update by reporting the creation of a Finance Working Group to examine the costs associated with the proposed recommendations.

NEXT MEETING

The next meeting will be at 12:30pm on November 14, 2014 at the Jefferson County District Attorney's Building.

The meeting adjourned at 3:53 p.m.