

*Colorado Commission on Criminal and Juvenile Justice*  
***Sentencing Reform Task Force***

**Sentencing Alternatives/Decisions & Probation Working Group**  
**MINUTES**

October 1, 2021 / 8:30AM-11:30AM  
Virtual Meeting

**ATTENDEES:**

**WORKING GROUP MEMBERS**

Glenn Tapia, Director, *Working Group Leader*, Probation Services/ Judicial Branch  
Chris Gallo, Deputy District Attorney/ 18<sup>th</sup> Judicial District (JD)  
Kristin Heath, Assistant Director, Jefferson County Justice Services  
Kazi Houston, Rocky Mountain Victim Law Center  
Heather McClure, Adams County Division of Community Safety and Well-Being  
Clay McKisson, Judge/ 3<sup>rd</sup> Judicial District  
Jenifer Morgen, Chief Probation Officer/ 17<sup>th</sup> JD  
Greg Otte, Deputy Chief Parole Officer/ 8<sup>th</sup> JD  
Megan Ring, Office of the State Public Defender

**STAFF**

Richard Stroker, CCJJ Consultant  
Laurence Lucero, Division of Criminal Justice  
Stephane Waisanen, Division of Criminal Justice

**ABSENT**

Matthew James, Denver District Attorney's Office  
Elaina Shively, District Attorney's Office/ 20<sup>th</sup> Judicial District  
Abigail Tucker, Psychologist/ Mental health services provider and consultant

**GUESTS**

Dana Wilks, Division of Probation Services  
Angel Weant, Division of Probation Services

<b>Issue/Topic</b>	<b>Discussion</b>
<p><b>Welcome &amp; Agenda</b>  <i>Glenn Tapia,</i>  <i>Working Group Leader</i></p>	<p>Glenn Tapia, Working Group Leader, welcomed attendees to the meeting. Glenn provided a brief overview of the meeting agenda and added that the primary goal is to finalize the discussion and possible recommendation around the first agenda item:</p> <ul style="list-style-type: none"> <li>● Discuss/Finalize Proposal #5 – Individualized Behavioral Responses &amp; Violations - §16-11-209, C.R.S., <i>Duties of probation officers</i></li> <li>● Presentation &amp; Discussion on over/under-supervision of Sex Offender Intensive Supervision Probation (SOISP), time permitting</li> <li>● Reschedule Next Meeting</li> </ul>

<b>Issue/Topic</b>	<b>Discussion</b>
<p>Regarding §16-11-209, C.R.S., <i>Duties of probation officers</i>.                      Discuss/finalize Proposal #5:                      Individualized Behavioral Responses &amp; Violations  <i>Glenn Tapia,</i>  <i>Working Group Leader</i></p> <p><b>ACTION</b></p> <p>Glenn will revise the recommendation based on input provided by the group.</p>	<p>Glenn explained the purpose of this agenda item is to finalize the discussion that started during the last meeting regarding §16-11-209, C.R.S., <i>Duties of probation officer</i>, and proposed improvements regarding revocations is in the realm of positive drug tests.</p> <p>Glenn reminded Working Group members that they entertained four options to address this issue:</p> <ol style="list-style-type: none"> <li>1. Do nothing</li> <li>2. Strike §16-11-209, C.R.S., <i>Duties of probation officers</i></li> <li>3. Adopt language from Senate Bill 2019-108(<i>Juvenile Justice Reform</i>)</li> <li>4. Amend §16-11-209, C.R.S., <i>Duties of probation officers</i> to provide more discretion and add evidence-informed options.</li> </ol> <p>After exploring these options last month, the group focused its attention on option #4, which will be discussed further today. The related recommendation under consideration, for the most part, is a mirror image of verbiage that can be found in the juvenile statutes pertaining responses to drug tests. Glenn presented the draft recommendation and highlighted the general changes in the bullets below.</p> <p><b>Recommendation Title: Implement Individualized Behavioral Responses to Probation Violations (Legislative Recommendation)</b></p> <ul style="list-style-type: none"> <li>● The Discussion Section in the recommendation explains the supporting reasons why it is needed, noting that, ideally, the goal is to move away from punishment-based options and move toward rehabilitative and accountability options.</li> <li>● There is an additional section in the proposal that discusses the conflict in statute. Whereas §16-11-209, C.R.S. (<i>Duties of probation officers</i>) was established in the 1980’s with a focus on punishment, §16-11.5-102 (<i>Substance abuse assessment-standardized procedure</i>), codified in 1991, encourages sanctions and motivational incentives.</li> <li>● The recommendation models provisions in Title 16 (Colorado Children’s Code) that were reformed via SB 19-108 and prioritizes rehabilitative over punitive responses to violation behavior for the juvenile justice system.</li> </ul>

<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Regarding §16-11-209, C.R.S.,  <i>Duties of probation officers.</i>                  Discuss/finalize Proposal #5:                  Individualized Behavioral                  Responses &amp; Violations  <i>Glenn Tapia, WG Leader</i>                  (continued)</p>	<ul style="list-style-type: none"> <li>● The proposal also includes a recommendation from the Crime and Justice Institute which cites §16-11-209 as a barrier to successful probation.</li> <li>● Another section in the proposal addresses the collateral consequences of over-revocation and the “down-stream” effects when using punitive responses.</li> <li>● Glenn highlighted the new, proposed statutory language in capital letters and included a strike-through of the original text for first, second and subsequent drug tests.</li> </ul> <p>QUESTIONS AND COMMENTS</p> <ul style="list-style-type: none"> <li>● Kazi Houston recommended including the following language, “Consequences for drug-related probation violations should not be inherently less discretionary than other types of violations with greater potential public harm, such as violations of protection orders and other contact with victims.”</li> <li>● Judge McKisson highlighted the language regarding incentives and sanctions that indicates the State Court Administrator’s Office (SCAO) is going to develop a statewide system. He noted it reads similarly to probation efforts regarding strategies for behavior change, and asked if the plan is for that the framework to include similar language. Glenn confirmed that the Strategies for Behavior Change (SBC) program is currently an optional model, and this language would require Probation Departments to use the state model or a model that would ensure more consistency and uniformity.</li> <li>● Megan Ring reiterated that, as she stated in the previous meeting, this change doesn’t feel like a logical approach and that the duties of the SCAO appear misplaced under the “<i>Duties</i>” of a probation officer.</li> <li>● Following Megan’s comment, the group discussed whether there is a more appropriate place in the statute for this verbiage, or whether it should be cut altogether. Glenn added that the major part of these changes can be found in the statute under “<i>Duties</i>,” and the drug portion was already in those “<i>Duties</i>.” This proposal calls for striking the part that is drug-use specific, and replacing it with this general verbiage about how Probation responds to violations.</li> <li>● Glenn offered that the verbiage could possibly fall under a different heading altogether rather than under “<i>Duties</i>.”</li> <li>● Judge McKisson noted that paragraph 3 in the Discussion Section points to aligning adult responses with juvenile responses, and he believes the verbiage should be more about aligning responses with best practices.</li> <li>● Kristin Heath pointed out that the language in the recommendation still refers to “offender” rather than using person-first language.</li> <li>● Glenn directed the group to language in the recommendation that reads as follows:  <p style="text-align: center;">“WHENEVER A PROBATION OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON HAS COMMITTED A VIOLATION OF THE TERMS AND CONDITIONS OF PROBATION AND THAT STRUCTURED AND INDIVIDUALIZED</p> </li> </ul>
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<p><b>Issue/Topic</b>                  Regarding §16-11-209, C.R.S.,  <i>Duties of probation officers.</i>                  Discuss/finalize Proposal #5:                  Individualized Behavioral                  Responses &amp; Violations  <i>Glenn Tapia, WG Leader</i>                  (continued)</p>	<p>BEHAVIORAL RESPONSES DEVELOPED PURSUANT TO SUBSECTION (insert CRS citation here) OF THIS SECTION HAVE PREVIOUSLY BEEN APPLIED OR WHEN THE NATURE OF THE VIOLATION POSES A SUBSTANTIAL RISK OF SERIOUS HARM TO <b>SELF OR</b> OTHERS, THE PROBATION OFFICER, FOLLOWING THE APPROVAL OF HIS OR HER CHIEF PROBATION OFFICER OR THE CHIEF'S DESIGNEE, SHALL PETITION THE COURT FOR REVOCATION AND SHALL FILE WRITTEN INFORMATION WITH THE COURT CONCERNING THE PERSON'S VIOLATION BEHAVIOR HISTORY AND THE BEHAVIORAL RESPONSES APPLIED PURSUANT TO SUBSECTION (insert CRS citation here) OF THIS SECTION.</p> <p>UNLESS THERE IS REASON TO BELIEVE THAT A PERSON WOULD NOT APPEAR, WOULD INTERFERE WITH THE JUVENILE OR CRIMINAL JUSTICE PROCESS, OR POSES SUBSTANTIAL RISK OF SERIOUS HARM TO <b>SELF OR</b> OTHERS, PROBATION OFFICERS SHALL ISSUE A SUMMONS, OR OTHER METHOD APPROVED BY LOCAL COURT RULE, RATHER THAN A WARRANT WHEN FILING A PETITION FOR REVOCATION.”</p> <ul style="list-style-type: none"> <li>● Glenn explained that Chief Probation Officers discussed whether the words (in bold above) “self or” should be included, and asked for feedback. Megan expressed concern about this inclusion given the number of people in jail with severe mental illness. Jenifer Morgan pointed out that this response would likely only be applicable when a person is in crisis and there are no other viable options to help someone. Judge McKisson pointed out this verbiage under §16-11-205 (1)(e), C.R.S. (<i>Arrest of probationer-revocation</i>): “...arrest of the probationer is necessary to prevent physical harm to the probationer or another person....” Therefore, the issue is already addressed and authorized in another statute. After an in-depth discussion the group agreed to strike the words “self or” from the proposal.</li> <li>● Glenn asked for any additional edits or concerns and, seeing none, concluded this portion of the agenda.</li> </ul> <p style="text-align: center;"><i>*At this point in the meeting, members took a short break*</i></p>
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<p><b>Issue/Topic</b>                  Over/Under-supervision of Sex                  Offender Intensive Supervision                  Probation (SOISP)  <i>Dana Wilks &amp; Angel Weant,</i>  <i>Division of Probation Services</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Glenn introduced Dana Wilks and Angel Weant from the Division of Probation Services and explained that they would provide background and history on Sex Offender Intensive Supervision Probation (SOISP). He added that, after the presentation, he will poll the group as to whether they believe there should be more study in this area in regards to over and under-supervision, and possibly a recommendation.</p> <p>Dana offered an introduction to her presentation by highlighting the following historical background:</p> <ul style="list-style-type: none"> <li>● SOISP was created in statute in 1998 to provide the highest level of supervision for “Lifetime” cases.<sup>1</sup></li> </ul>
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<sup>1</sup> The legislation enacting the Lifetime Supervision Act of sex offenders (§18-1.3-1004, §18-1.3-1006, and §18-1.3-1008, C.R.S.) affected persons convicted of sex offenses committed on or after November 1, 1998.

<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Over/Under-supervision of Sex Offender Intensive Supervision Probation (SOISP)  <i>Dana Wilks &amp; Angel Weant, Division of Probation Services (continued)</i></p>	<ul style="list-style-type: none"> <li>● A significant change was made in 2001 with House Bill 2001-1229, which mandated that all felony sex offenders, convicted on or after July 1, 2001, were statutorily mandated to be supervised by the SOISP program.</li> <li>● Dana reminded the group of the risk-need-responsivity (RNR) principles, and emphasized that RNR is well-established in literature as a proven way of managing offenders in the criminal justice system.</li> <li>● She highlighted the risk principle as matching the programming with the risk of the individual to reoffend, which is the focus of intensive programs. Alternatively, lower risk individuals should be managed with as few interventions as possible.</li> <li>● People who are assessed at low risk typically have numerous protective factors in their lives, such as family or a job. Research shows intensive interventions with low-risk people can produce worse effects than if there was no contact at all.</li> <li>● Currently, there are approximately 1,500 people on SOISP and an additional 1,300 on regular supervision.             <ul style="list-style-type: none"> <li>- Of the 1,500, 61 were revoked last year, with approximately 90% being revoked for technical violations (rule violations, rather new crimes).</li> </ul> </li> <li>● Probation conducts assessments and determines placements (assignment to specific programs), based on risk and needs, which is aligned with evidence-based practices.</li> <li>● Dana summarized that current SOISP practices are out of alignment with research and that 46% of people on SOISP are low risk. Several studies show when low-risk individuals are supervised in intensive programs their recidivism actually increases, potentially creating more victims.</li> </ul> <p><b>QUESTIONS AND DISCUSSION</b></p> <ul style="list-style-type: none"> <li>● Kazi asked why community supervision isn't an option for low-risk offenders, and also asked how the Sex Offender Management Board (SOMB) fits into the supervision scheme.             <ul style="list-style-type: none"> <li>○ Dana clarified that risk assessment includes a determination of general recidivism risk and the risk to reoffend sexually. When people who are at low-risk to reoffend receive more interventions, there is greater disruption of their protective factors (e.g., a place to live, a job) due to things like intensive treatment, intensive probation appointments, GPS tracking, etc. Additionally, there are multiple negative effects when mixing high-risk and low-risk individuals in programs. Therefore, the issue has less to do with community supervision options and more to do with tailoring risk-appropriate interventions. Jenifer added that, within community supervision settings, there are low-, medium- and high-risk levels of supervision.</li> </ul> </li> </ul> <p>Angel Weant introduced herself, noting that she previously represented the Judicial Department on the SOMB and currently is a Probation Supervisor in the 4<sup>th</sup> Judicial District, overseeing an adult sex-offender unit.</p>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Over/Under-supervision of Sex Offender Intensive Supervision Probation (SOISP)  <i>Dana Wilks &amp; Angel Weant,</i>  <i>Division of Probation Services</i>                  (continued)</p>	<p>Angel explained how the statute creates challenges with actual day-to-day programming and highlighted the following issues:</p> <ul style="list-style-type: none"> <li>● The most prominent challenge is that only individuals convicted of felony sex offenses qualify for a judge to impose specialized programming and intensive supervision.</li> <li>● The main problem is that the criminal behavior very rarely reflects the actual conviction. Most often, felony sex offense convictions fit a low-to-moderate risk category based on dynamic risk assessment, yet these same felony sex offenses are the only crimes that qualify for SOISP. Alternatively, the presumably less serious misdemeanors are often over-looked for SOISP, although they are oftentimes the most challenging behaviors to address. While misdemeanors might be low-level crimes (e.g. exposure), the behavior is often repetitive, impulsive, and habitual with co-occurring characteristics. Such individuals score high on anti-social behaviors, but, based on the aforementioned eligibility issue, often don't receive needed programming. As described, this results in treatment and monitoring gaps in the system.</li> <li>● What the public understands about SOISP is not consistent with actual practice. The behavior of misdemeanants is typically higher-risk than than the behavior of individuals in felony cases. The restrictions in statute limit judicial officer discretion.</li> <li>● Another issue is that the transfer of someone off SOISP to regular probation requires a court order. This requires extensive work by the probation officer who may simply choose to maintain the individual on SOISP, rather than undertake the burdensome transfer process. If probation officers had greater flexibility, there would likely be an increase in the number who progress through the treatment phases. Additionally, District Attorneys often do not favor the transfer off SOISP.</li> <li>● The SOMB has purview over treatment providers. Although troublesome for some victims/survivors, the SOMB is updating treatment standards based on research indicating the best approach for positive outcomes.</li> <li>● Probation officers and treatment providers work in concert to provide a wrap-around environment for the probationer.</li> <li>● The SOMB is not involved and does not have oversight regarding SOISP in the Probation Division.</li> </ul> <p><b>QUESTIONS AND DISCUSSION</b></p> <ul style="list-style-type: none"> <li>● Glenn summarized that, because the law is offense-based rather than risk-based, he feels some are over-supervised on SOISP and others are under-supervised.</li> <li>● Jenifer added that the level of crime does not indicate risk and shouldn't be used to determine the level of supervision, the intensity of supervision and the level of treatment assigned. Assessments should be used to guide decision-making.</li> <li>● Dana explained there was a similar situation with the (general) adult Intensive Supervision Probation program. Previous criteria allowed a judge</li> </ul>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Over/Under-supervision of Sex Offender Intensive Supervision Probation (SOISP)  <i>Dana Wilks &amp; Angel Weant,</i>  <i>Division of Probation Services</i>                  (continued)</p>	<p>to sentence only those with felonies to the ISP program, while misdemeanants who had displayed a much higher risk were not eligible. After a legislative change, Probation was allowed to perform an assessment prior to sentencing, and, regardless of crime type or class, people could be admitted to ISP based on their risk.</p> <ul style="list-style-type: none"> <li>● Christopher Gallo pointed out situations where a deeply concerning offense does not appear to correspond with an offender’s lower-risk assessment result. These instances result in tough conversations with victims and community members. While he understands the issue intellectually, it places prosecutors in a very difficult position.</li> <li>● Glenn added that, in terms of resources and outcomes, those with heinous crimes should go to prison, but for those on probation, high-risk individuals should be supervised intensively and those at low-risk should not.</li> <li>● Angel noted that the worst-case scenario is when there is a re-offense. It is critical to do everything possible during the time someone is under supervision, without the constraints of ill-applied legislative mandates.</li> <li>● Kazi expressed hesitancy in statutory changes that could result in fewer convictions or reduced supervision. Currently, the chances of someone actually being convicted of a sex-offense is extremely rare and uncommon (due to under-reporting and many other factors). She added that she would be vehemently opposed to anything that would remove a court appearance and limit victim input.</li> <li>● Judge McKisson agreed that he, too, would not support transferring an offender out of SOISP without victim notification and a hearing. He added that research showing increased recidivism (for over-supervision) is very concerning and, even though the optics could be challenging, he would support change that ensures increased public safety.</li> <li>● Heather pointed out that the concerning trend that the number sex offenders experiencing homelessness is disproportionately higher than other justice-involved individuals. She explained the very serious issue that this population often cannot find employment or housing. The system is not working to either provide adequate support or to limit their potential for negative impact on the community.</li> <li>● Kristin agreed that these are all significant issues that warrant attention and study by the Working Group.</li> <li>● Dana reiterated data mentioned earlier and added these points for consideration:                         <ul style="list-style-type: none"> <li>- As of June 30, 2021, there were 1,531 people in the SOISP program.</li> <li>- 82% completed SOISP successfully.</li> <li>- During fiscal year 2020/2021, 67 people were transferred from SOISP to non-SOISP.</li> <li>- 90% of revocations were for technical violations.</li> <li>- Of the 1,531 SIOSP participants, five were re-arrested for felonies and one was re-arrested for a misdemeanor.</li> <li>- 15 people absconded.</li> </ul> </li> </ul>
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<p><b>Issue/Topic</b>                  Over/Under-supervision of Sex Offender Intensive Supervision Probation (SOISP)  <i>Dana Wilks &amp; Angel Weant, Division of Probation Services (continued)</i></p> <p><b>ACTION</b>                  The Working Group agreed to formally pursue the issue of SOISP regarding possible over/under-supervision.</p>	<ul style="list-style-type: none"> <li>● Kazi asked how many technical violations (TV) were due to sex offenders being in or near restricted locations, like playgrounds. Dana noted that those violations are included among the TV total and are part of the reason the revocation rate for sex offenders is so high (at 90%) relative to other probation populations.</li> <li>● Angel agreed that, when determining whether to revoke, probation officers carefully and consistently operate from a risk-oriented perspective, determining whether a TV represents an individual’s prior offense-related behavior(s).</li> <li>● Chris explained that when his office records technical violations, there is often an accompanying violation for non-compliance with and discharge from treatment. He added that sex offenders often display higher numbers of revocations and “re-grants” (to continue probation), as well as subsequent rounds of violations.</li> </ul> <p>Glenn summarized that it appears the group is open to addressing and examining this issue further. Glenn proposed this issue of SOISP be revisited at the December 3<sup>rd</sup> meeting, allowing everyone time to seek feedback from colleagues. The goal is to fully engage and include interested stakeholders.</p>
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<p><b>Issue/Topic</b>                  Public Comment, Next Steps &amp; Adjourn  <i>Glenn Tapia, Working Group Leader</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Glenn opened the floor for public comment. No public comment or concerns were offered.</p> <p>Glenn asked Working Group members to maintain the November 12, 2021 meeting date with an option to cancel if the Sentencing Reform Task Force forwards no task requests derived from the October 6 presentation of the five Probation WG recommendations.</p> <p>The Working Group will reconvene on December 3, 2021 with a focus on the issue of SOISP and over/under-supervision.</p> <p>Hearing no further comment, Glenn adjourned the meeting.</p>
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**Next Meeting**

TENTATIVE - Friday, November 12, 2021 / 9:00am – 11:30am (Virtual Meeting)  
 Subsequently, Friday, December 3, 2021/ 9:00am – 11:30am (Virtual Meeting)  
 Meeting information will be emailed to members  
 and posted at, [colorado.gov/ccjj/ccjj-meetings](http://colorado.gov/ccjj/ccjj-meetings)

*NOTE: The Working Group meeting on November 12 was canceled.*