Colorado Commission on Criminal and Juvenile Justice

Sentencing Reform Task Force MINUTES

October 6, 2021 / 1:30PM-4:00PM Virtual Meeting

ATTENDEES:

TASK FORCE MEMBERS

Michael Dougherty, TF Co-chair/District Attorney, 20th Judicial District Taj Ashaheed, Second Chance Center Maureen Cain, Office of the State Public Defender Valerie Finks, Victim Compensation Program, DA Office, 1st Judicial District Bob Gardner, State Senator (Senate District 12) Julie Gonzales, State Senator (Senate District 34) Kristen Hilkey, Adult Parole Board Kazi Houston, Rocky Mountain Victim Law Center Jessica Jones, Defense Attorney Kazi Houston, Rocky Mountain Victim Law Center Sarah Keck, Court Services Andrew Matson, Colorado CURE Greg Mauro, Division of Community Corrections Heather McClure, Adams County Division of Community Safety & Well-Being Tom Raynes, Colorado District Attorneys' Council Dan Rubinstein, District Attorney, 21st Judicial District Glenn Tapia, Judicial Branch/ Director, Div. of Probation Services Amber Pedersen for Dean Williams, Department of Corrections

STAFF

Richard Stroker, CCJJ Consultant Jack Reed, Division of Criminal Justice Damien Angel, Division of Criminal Justice Kevin Ford, Division of Criminal Justice Laurence Lucero, Division of Criminal Justice Stephane Waisanen, Division of Criminal Justice

ABSENT

Rick Kornfeld, *TF Co-chair*/Defense Attorney Terri Carver, State Representative (House District 20) Jeff Chostner, District Attorney, 10th Judicial District Christie Donner, Colorado Criminal Justice Reform Coalition Serena Gonzales-Gutierrez, State Representative (House District 4) Henry Jackson, Metro State University Michael Rourke, District Attorney, 19th Judicial District Lisa Wayne, Defense Attorney

Welcome & Agenda	Discussion
Welcome, Approval of Minutes,	Michael Dougherty welcomed the group and explained that Rick Kornfeld
and Agenda	would not be in attendance and will likely be absent the next few meetings due
Michael Dougherty,	to a work conflict. Michael provided an overview of the agenda. A motion was
Task Force Co-chair	offered and seconded to approve the minutes from September 8, 2021. Task
	Force members unanimously approved the minutes.
Issue/Topic	Discussion
Update: Sentence Structure	Michael provided an overview of the work of the Sentence Structure Working
Working Group	Group (WG). He reminded everyone that the WG is developing a proposed
Michael Dougherty, WG Leader	felony grid that would ensure more certainty in sentencing, and would include
	sentencing ranges that more accurately capture what is needed in regards to
	justice, public safety, and the needs of victims, along with allowing for offender
	rehabilitation.
	The Working Group's (WG) ultimate goal is to produce four sentencing grids: a
	drug sentencing grid, a sex offense grid, a general felony grid, and a grid for
	victim-related felonies. As for the general felony grid, the next step by the
	Structure Study Group is to outline classifications and recommendations for
	each individual criminal offense. When that is completed, the grid will be
	shared with all the members of the WG for review. Regarding "certainty in
ACTION	sentencing," the WG is considering how much earned time should be allowed
Sentence Structure Working Group	for incarcerated individuals in an effort to provide more certainty for victims,
to continue its work and firm up	offenders, families, the community and the court. This work will take a few
recommendations in the coming	more weeks to complete and will be presented to the Task Force in the next
months	month or two.
	The Working Group (WG) plans to finalize a proposal regarding the general
	felony grid and "certainty in sentencing" in advance of the 2022 legislative
	session. However, it is important to note that this plan also includes delaying
	the actual implementation of those decisions until after the next legislative
	session in 2023. This would allow for the WG to continue its work on the
	victim-related felony grid during calendar year 2022, which will be a significant
	undertaking. The felony work is substantial and will allow for more time for a
	deliberate and thoughtful process, which includes time for all stakeholder
	groups to provide input, guidance and feedback.
	Michael asked for questions or feedback regarding the proposed plan. Seeing
	none, he moved on to the next agenda item.

Issue/Topic	Discussion
Sentencing Alternatives, Decisions	Michael introduced Glenn Tapia to provide a presentation on five draft
& Probation Working Group:	recommendations on behalf of the Sentencing Alternatives, Decisions &
Recommendation Presentation	Probation Working Group. Michael added that, following the presentation,
Glenn Tapia, WG Leader	members of the Task Force will have the opportunity to move the
	recommendations to a vote, if they so desire. Michael clarified that, when
	recommendations are presented to the full Commission, there must be a one-
	month lag between the recommendation presentation and a final vote,

Issue/Topic	however, at the Task Force level, recommendations can be presented and
Sentencing Alternatives, Decisions	voted on during the same meeting.
& Probation Working Group:	
Recommendation Presentation	Glenn added that he will present all five recommendations at a conceptual
Glenn Tapia, WG Leader	level to begin, and then, at the request of members, he will return to the
(continued)	recommendations one-by-one for a more detailed, in-depth discussion. This
	presentation can be found under, "Materials - Task Force" (October 6, 2021) at,
	ccjj.colorado.gov/ccjj-srtf, with summary points as follows:
ACTION	Overview
Sentencing Reform Task Force to	• The Working Group consists of 12 members representing a broad range of
vote on the Sentencing	criminal justice constituencies who meet on a regular basis and are highly
Alternatives, Decisions & Probation Working Group recommendations	 engaged in the work. The original Scope of Work was determined by the Commission and the
at the Nov. 10, 2021meeting	Sentencing Reform Task Force.
	 The current recommendations focus on the following topics:
	- Area #1: Defining the statutory purpose of probation
	- Area #2: Avoiding over-supervision
	* Evaluate probation level of supervision in the interest of proper
	dosage and approaches (e.g., avoiding over-supervision level of
	supervision in the interest of proper dosage and approaches (e.g.,
	avoiding over-supervision)
	* Barriers to success on probation (Access to quality behavioral health
	treatment and telehealth)
	 Area #3: Examine probation practices regarding the use of conditions,
	length of supervision, responses to violations, and revocations
	The full recommendations were presented to the Task Force one at a time. The
	recommendation titles are presented below in bold followed by bulleted
	highlights, with questions and comments following.
	 Recommendation FY22-SR #01. Define the Purposes of Probation (Statutory): Glenn explained the proposed Purposes of Probation is a Legislative
	Recommendation and includes 7 statutory attributes. Statute does not
	currently provide a "purposes provision" (for probation), as exists for parole
	and community corrections.
	 The intention of the proposed Purposes of Probation is focused on
	reparation, cost coptrol and rehabilitation and less about prevention,
	deterrence, incapacitation, retribution and punishment.
	• This definition models the Purposes of Parole and the Purposes of
	Community Corrections, previously established by the Commission and
	solidified through legislation.
	Questions and Comments
	Does the bullet point describing role of "victim's voices" in probation fit the list
	of purposes? Glenn replied that the purposes should reference VRA compliance
	and ensuring those constitutional rights are specifically noted and upheld in the
	probation structure, including updates and notifications on revocation

Issue/Topic Sentencing Alternatives, Decisions & Probation Working Group: Recommendation Presentation <i>Glenn Tapia, WG Leader</i> (continued)	hearings. It doesn't change the constitutional, statutory obligations, but simply solidifies them in the purposes. Maureen Cain asked if all the specific items noted in the "purposes" are what actually occurs in probation currently. Glenn replied that the details in the "purposes" are very much in line with current culture and practices, and that behavior change is central to the work. Kazi Houston (WG member) highlighted that "purposes" language tends to be softer than statutory or constitutional language.
	Jessica Jones commented that it feels awkward to include language stating that one of the purposes of probation is to ensure the Victim Rights Act (VRA) is followed since the VRA already exists, and that it actually <i>is not</i> the purpose of probation to ensure the VRA is followed. She also asked about verbiage that refers to "people" in the recommendation and whether "people" refers to probationers. Glenn replied that the group often used person-first language instead of "offender" or "probationer." Kazi explained that compliance with the VRA actually is one of the purposes of probation and therefore it should be intentionally included in this statutory definition.
	Michael pointed out that Probation currently works to ensure that justice is provided for the victim in the case, not just that the victim has a voice or right to be heard. He suggested verbiage be added in bullet #5 that reads " for the repair of harm and consideration of public safety, <u>and justice for the victim."</u>
	Maureen asked about the meaning of the fourth bullet which reads, "To help people account for their behavior in the interest of supervision, harm reduction, serving justice, and safer community placement." Glenn replied the goal of the verbiage was to focus on accountability rather than punishment. Jessica suggested replacing " <u>in the interest</u> " with the word " <u>through</u> ."
	Tom Raynes inquired as to why the recommendation doesn't start with verbiage similar to that which defines parole, "to further all purposes of sentencing to include". Glenn replied sometimes punishment and rehabilitation don't go together well in the same place and the goal was to focus more on behavior change.
	Maureen also questioned the phrasing in the third bullet which reads, "To initiate behavior change through the coordination, brokering and provision of educational, therapeutic, and skill-building services", noting that there are people for whom that might not be necessary. Glenn offered adding the word " <u>individualized</u> " before the word "educational" to address the fact that some people may not need services. Glenn also proposed adding " <u>as needed</u> " at the end of the sentence.
	Tom reiterated the verbiage feels inadequate regarding accountability. Glenn replied that the group tried to address that with the phrase, "to moderate future criminal behavior and victimization." Tom suggested adding the word " <u>deter</u> " to the sentence.

Issue/Topic Sentencing Alternatives, Decisions & Probation Working Group: Recommendation Presentation <i>Glenn Tapia, WG Leader</i> (continued)	The group returned to the issue of the VRA-related text and how it relates to probation supervision. After further discussion, the group agreed to revise the bullet, " <u>To honor the statutory and constitutional rights of victims of crime</u> ." Task Force members reviewed and informally agreed to the revisions of the recommendation. Recommendation FY#22-SR #02. Develop a Swift Reparative Intervention Program for Persons Convicted of a Petty Offense (Statutory):
	 The Working Group discussed multiple areas where there is risk of oversupervision and focused first on the subject of petty offenses. A snapshot of an average day shows 650 people on probation (including 127 juveniles) for a case where the most serious convicted charge is a petty offense. The 3-year average of new sentences includes: 1391 adults and 248 juvenile cases a sentenced to probation (including deferred agreements) where the most serious offense was a petty offense. The successful completion rate is 50% with an average sentence of one year and a cost to the person on probation of \$1,000-\$1,500. Working Group members agree there should be an additional sentencing option for petty offense behavior that is swift, reparative, proportional and fair, and that the court should have additional options to use rather than just fines, probation and jail. The resulting proposal is to develop a Swift Reparative Intervention Program (SRIP) for Persons Convicted of a Petty Offense. Options for the Court would include: a fine, a jail term not to exceed 10 days, and a term of probation not to exceed 180 days. Additionally, the SRIP would include a service-oriented option for those convicted of a petty crime. SRIP Program is defined and executed at the local level with state funding support, where needed, and based on local resources/capacity. It is a service-oriented response to petty crime.
	<u>Questions and Comments</u> Heather McClure pointed out that, as a former offender, this recommendation would have been a game changer, given that many petty offenses are the result of someone lacking resources for simple things like a safe place to stay or even food, and making poor decisions in response.
	Tom asked about the funds required for the grant component of the recommendation. Glenn replied that the group specifically didn't monetize the recommendation and hoped that piece would be addressed during the fiscal note process. Glenn noted the problem the group hopes to avoid with a grant is to avoid pushing costs onto local governments.
	Michael also asked for more clarity around a proposed grant process. Glenn replied that conceptually, a community navigator would account for 1 full-time employee. However, it is indeterminate how often a court would actually use this option. Maybe \$100k for any jurisdiction that wants it – but Glenn noted it's a complete guess as to how to scale a grant program.

Issue/Tonic	
Issue/Topic Sentencing Alternatives, Decisions & Probation Working Group: Recommendation Presentation <i>Glenn Tapia, WG Leader</i> (continued)	Jessica noted the recommendation looks a bit like unsupervised probation, and asked how often unsupervised probation is even used. Glenn replied he doesn't believe unsupervised probation is even a recognized legal option, therefore there is no official data tracking. Glenn went on to say the goal is to not over- supervise people on probation who don't need it.
	Andrew Matson offered that maybe the amount of money the state spends managing those with a petty offense could be reallocated to the funds necessary to operate a grant.
	Maureen raised multiple concerns. She stated there is a mis-statement because 95% of petty offenses were decriminalized in Senate Bill 2021-271. Additionally, she believes Probation can already manage this process and internally establish self-directed, unsupervised probation without interventions. This recommendation refers to too many other possible interventions. She believes over-supervision is a bigger issue than managing 800 people with petty offenses. Maureen summarized she's simply not convinced regarding the philosophy or cost of this recommendation. Glenn countered that this is not <i>the</i> response to over-supervision, but rather <i>a</i> response to over-supervision, and that more work will follow in the coming year addressing the bigger issue of over-supervision.
	Tom agreed that the recommendation is quite complex and he agrees with Maureen that it feels the courts and probation can handle a lot of this on their own. Glenn reiterated the goal is simply to avoid "probationizing" those at this low level of offense, and that \$1500 (in fines and fees) for a \$50 offense doesn't make sense.
	Jessica shared that it appears to be a lot of effort to create an option that may not be used and that could be addressed via other avenues. Glenn replied this proposal formalizes something a creative judge could already do, but often doesn't. Michael asked whether there is data on the number of first-time petty offenders who receive probation, and that, typically, first-time petty offenders don't receive probation. Glenn replied they did not drill into such numbers specifically. Tom proposed that he would rather see this as a Chief Justice directive to judges.
	Kazi pointed out this proposal is the result of a lot of discussion around issues in rural districts where resources and alternative options are often lacking, and to encourage people to try a novel intervention.
	The group agreed to strike the last sentence of the first paragraph, and to strike the phrase, "who are first-time offenders" through the end of the third paragraph and, otherwise, to let the remainder of the text remain as is.

Issue/Topic Sentencing Alternatives, Decisions & Probation Working Group: Recommendation Presentation <i>Glenn Tapia, WG Leader</i> (continued)	 Recommendation FY22-SR #03 - Increase Access to Telehealth Services (Policy): The Working Group also addressed barriers to success on Probation including barriers to telehealth, and believed that increased access to telehealth services should be available as: al a Supplement to weekly outpatient treatment, or b) as an aftercare option for those completing inpatient treatment. The proposal calls for relevent state agencies to modernize their respective regulatory and funding structures in order to facilitate easier, broader, and more permanent access to telehealth services for those on community supervision. The proposal also calls for: clearer communication between agencies and providers; revised stadards to incentivize providers to build capacity for telehealth services; and standards around licensing, certification and service delivery to maintain or increase quality of services and to remove duplicative or conflicting requirements for providers. Questions and Comments Tom shared that at the recent Sentence Structure Working Group Listening Session, Tim Hand (Director of Community Corrections, Larimer County) expressed reservations regarding telehealth, and that in-person care is often preferred. Tom also asked for clarification regarding the phrase "persons with justice involvement." Glenn replied that the intent is simply to use first-person terminology, and to be cognizant of stigma. Senator Bob Gardner noted he supports person-first language only for statuses where someone's condition is not of their own doing (e.g., person with a disability, etc.). Michael explained that one of the public defenders in his jurisdiction is opposed to alternatives such as virtual court appearances because they are described as dehumanizing. He also asked if the agencies is a policy recommendation are in support of the recommendation. Glenn replied that he has familiarized this fairly widely with multiple people in multipl
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Issue/Topic Sentencing Alternatives, Decisions & Probation Working Group:	Recommendation FY22-SR #04 - Improve Collaborative Treatment for Justice- Involved People (Statutory):
-	 Glenn emphasized the importance of treatment quality and fidelity and pointed out that, currently, neither the justice system nor the behavioral health system provides good measurement of quality. Ideal outcomes in this area would include integrated service delivery, integrated sharing of information, and improved treatment matching. This proposal would be a <i>legislative recommendation</i> requiring that the state criminal justice system and behavioral health agencies collaborate with input from local jails and behavioral health entities to integrate ASAM (American Society of Addiction Medicine), Social Determinates of Health, and Risk/Need Responsivity frameworks for more effective treatment matching and delivery. The proposal also calls for better alignment of treatment matching criteria and the development of fiscal and regulatory methods to incentivize behavioral health providers to accept and treat justice-involved people.
	<u>Questions and Comments</u> Tom started the discussion by pointing out the significant amount of detail in the recommendation and explained he would be opposed to voting on it today to allow sufficient time to study the elements and components.
	Michael agreed with Tom and added that there is a significant amount of "must" language, and multiple agencies involved that should be at the table. Glenn responded that the Office of Behavioral Health is in support of the recommendation, and that several people in the treatment community have been involved as well. Glenn also agreed with Tom and Michael that it is a lot to vote on today.
	Jes Jones asked if, in summary, this would create a governing council that would oversee treatment providers and regulators. Glenn explained that the Behavioral Health Administration was conceptualized without any input from the criminal justice system. This recommendation essentially forces all the agencies who work on offender-based treatment to work together to find ways to modernize standards, training, licensure, funding, treatment gaps, data, outcomes, etc. This creates a framework for a treatment system that works with the criminal justice system, and where regulatory controls are influenced by a collaborative structure with the both the criminal justice AND behavioral health systems.
	In the interest of time, Glenn offered that members continue to review the recommendation and to revisit it at the next meeting. Michael agreed and the recommendation should be discussed again at the November meeting.
	 Recommendation FY22-SR #05 – Implement Individualized Behavioral Responses to Probation Violations (Statutory): Glenn explained that this recommendation is new from the Working Group and focuses on responses to violations and revocations.

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Issue/Topic Sentencing Alternatives, Decisions & Probation Working Group: Recommendation Presentation <i>Glenn Tapia, WG Leader</i> (continued)	 Current statute §16-11-209 (2), C.R.S., Duties of probation officers, states that anyone on probation who has an initial positive drug test for a controlled substance <u>shall</u> be subject to any or all of the following: An immediate warrantless arrest; An immediate increase in the level of supervision; Random screenings for the detection of the illegal or unauthorized use of a controlled substance, which use may serve as the bases for additional punishment or any other community placement; Referral to a substance use disorder treatment program. Current statute §16-11-209 (3), C.R.S., states a second or subsequent positive test requires a probation officer to take one or more of the following actions: Make an immediate warrantless arrest; Seek a probation revocation in accordance with sections §16-11-205, C.R.S., Arrest of probationer revocation, and §46-11-206, C.R.S., Revocation Hearing; Immediately increase the level of supervision Increase the number of drug screenings for the illegal or unauthorized use of controlled substances; Refer the probationer to or substance use disorder treatment program. Therefore, if someone is under ISP I supervision and has a second positive drug test, the only pext step is an immediate arrest or revocation. §16-11-209 is also counter to §16 h1.5-102, Substance abuse assessment-standardized procedure, which calls for the development of a range of incentives for offenders to discontinue abuse of alcohol or controlled substances. The Working Group proposes more flexibility and behavioral health options (other than punitive) in response to people who test positive for drugs. Glenn shared preliminary findings and draft recommendations from a study by the Crime and Justice Institute (CII) on the probation division: those who are revoked typically have 3 or more violations and that the most common reasons for revocation are 1) missed UAs, 2) positive UA
	violations and with individualized behavioral responses.
	Questions and Comments Discussion began on the point of whether the recommendation would be moved to a vote. In regard to this, as well as, all of the recommendations

Issue/Topic	presented, Commission staff pointed out that there a quorum was no longer,
Sentencing Alternatives, Decisions	which would prevent voting.
& Probation Working Group:	Tom pointed out that, throughout the recommendation, there is verbiage that
Recommendation Presentation	states "risk to harm or others," and that in each of those instances it should
Glenn Tapia, WG Leader	read, "risk to harm or others, <u>or the community."</u>
(continued)	
	Kristen Hilkey thanked Glenn and the Working Group for their efforts regarding petty offenses. She added that she is in support of finding phrasing other than "defendant" and "offender" when describing people involved in the criminal justice system. Jes Jones agreed and added that she would be interested in viewing the webinar or video referenced earlier regarding the harmful effects of stigmatizing language.
	Jes also asked whether more direct language could be used to reflect the importance of behavioral health and individualized risk/needs responsivity in the first recommendation (purposes of probation). Glenn thanked Jes for her comments and asked that members are invited to send him further feedback and suggestions prior to the November Task Force meeting.
	Michael reiterated that, with the lack of a quorum, the recommendations would be revisited for a vote at the November Task Force meeting.

Issue/Topic	Public Comment
Public Comment Michael Dougherty, WG Leader	Michael called for public comment, noting that Karen Yacuzzo had added this comment in the chat box: "Could the Sentence Structure Working Group please indicate whether it intends to propose legislative changes to address the civil infraction issues the Judicial Department raised regarding Senate Bill 21-271." Michael asked Karen to contact him offline to discuss the work that has been done on that request.
	Seeing no additional comments, Michael moved to the final agenda item.

Issue/Topic	Conclusion
Next Steps and Adjournment	Richard Stroker, CCJJ Consultant, thanked Glenn and the Working Group for the
Richard Stroker, CCJJ Consultant &	effort on the recommendations and for the informative presentation. Richard
Michael Dougherty, WG Leader	reiterated that Glenn is scheduled to provide a broad informational overview of
	the five proposal concepts at the October Commission meeting (Fri., Oct. 8).
	Depending on the recommendations approved by the Task Force in November,
ACTION	he would provide a preliminary presentation of the (draft) recommendations at
Sentencing Reform Task Force to	the subsequent Commission meeting (Fri., Nov. 12).
vote on the recommendations at its	
November meeting	Michael thanked everyone for their time and hearing no further comment
	adjourned the meeting. The next Sentencing Reform Task Force meeting is
	11/10/2021, 1:30-4:00 pm

Next Meeting

November 10, 2021; 1:30-4:00pm (Virtual Meeting)

Virtual meeting information will be emailed to members and posted at, colorado.gov/ccjj/ccjj-meetings