

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentencing Alternatives/Decisions & Probation Working Group
MINUTES

January 7, 2022 / 9:00AM-11:30AM
Virtual Meeting

ATTENDEES:

WORKING GROUP MEMBERS

Glenn Tapia, Director, *Working Group Leader*, Probation Services/ Judicial Branch
Chris Gallo, Chief Deputy District Attorney/ 18th Judicial District
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/ 3rd Judicial District
Greg Otte, Deputy Chief Parole Officer/ 8th JD
Megan Ring, Office of the State Public Defender
Abigail Tucker, Psychologist/ Mental health services provider and consultant

STAFF

Laurence Lucero, SRTF staff, Division of Criminal Justice
Stephane Waisanen, WG staff, Division of Criminal Justice
Kevin Ford, Commission staff, Division of Criminal Justice

ABSENT

Matthew James, Denver District Attorney's Office
Jenifer Morgen, Chief Probation Officer/ 17th Judicial District (JD)
Elaina Shively, District Attorney's Office/ 20th JD

GUESTS

Dana Wilks, State Court Administrators Office
Kristin Kubacki, Probation
Emily Tofte Nestaval, Rocky Mountain Victim Law Center
Jordan Sanchez, Brandeberry & McKenna Public Affairs
Jessica Dotter, Colorado District Attorney's Council

<p>Issue/Topic Welcome & Agenda <i>Glenn Tapia,</i> <i>Working Group Leader</i> Sentencing Alternatives/Decision & Probation Working Group</p>	<p>Discussion</p> <p>Glenn Tapia (Working Group Leader) welcomed attendees to the meeting. Glenn provided an overview of the meeting agenda and explained the main focus was to review the original scope of work for the Working Group (WG) and look prospectively at the year ahead. The WG will also begin to address the issues surrounding supervision of sex offenders that has been on the agenda but superseded during the last couple of meetings.</p>
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<p>Issue/Topic Working Group Scope of Work <i>Glenn Tapia, Working Group Leader</i></p>	<p>Discussion</p> <p>Glenn reminded attendees that at the last meeting, an issue was raised regarding the scope of work. He explained that the current scope of work had previously been presented to the Sentencing Reform Task Force (SRTF) and the Commission.¹ Glenn reintroduced the group to this current scope of work and provided a status update on each topic area:</p> <p><u>WG Approved Scope of Work</u></p> <ol style="list-style-type: none"> 1. Define statutory purpose of probation Accomplished and a recommendation was approved by the Commission. 2. Evaluate probation level of supervision in the interest of proper dosage and approaches (e.g., avoiding over supervision) This included the petty offense proposal the WG previously addressed, but was rejected by the SRTF. There is more work to be done on this issue that is specific to sex offenders and in the area of over-supervision in general. 3. Examine probation practices regarding the use of conditions, length of supervision, responses to violations, and revocations There is work to be done regarding conditions and responses to violations and revocations. Glenn reminded attendees that the Crime and Justice Institute evaluation will be published later this year concerning Colorado’s revocation trends, which will help inform the work. 4. Examine the impact of Traumatic Brain Injury (TBI) in revocations and other outcomes and recommend strategies to better accommodate persons with TBI This topic has not yet been addressed. 5. Examine ethnic and gender disparities in probation outcomes/practices and recommend strategies to abate disparate treatment and/or outcomes This topic has not yet been comprehensively addressed. 6. Examine impact on prison populations This topic is related to probation revocation and has not been addressed. 7. Consider alternatives that can be utilized at the time of sentencing As mentioned in #2, <i>Recommendation FY#22-SR #02. Develop a Swift Reparative Intervention Program</i>, focused on responses to petty offenses was proposed but not received favorably by the SRTF, which concluded that the proposal was over-designed for petty offenses.
<p>ACTION</p> <p>Glenn will continue discussions with the SRFT to help clarify and the scope of work</p>	

¹ See *Scope of Work Development* in the tab, “Materials - Working Groups (December 4, 2020),” at ccjj.colorado.gov/ccjj-srtf.

<p>Issue/Topic Working Group Scope of Work <i>Glenn Tapia, Working Group Leader</i> (continued)</p>	<p>As apparent in the overview, Glenn observed that there was still a considerable amount of work ahead in 2022. He referenced the SRTF feedback that the WG was addressing issues outside of its scope. Glenn has requested time on the next SRTF meeting agenda to request more clarity on the scope of work. In the meantime, the WG will continue its work based on the standing scope of work.</p> <p><u>Questions and Comments</u> Megan Ring relayed her awareness of the feedback and concerns regarding the WG, and that she was pleased these will be addressed with the SRTF. She asked about the strategy to address the seven “scope items,” especially the need to broadly address over-supervision, in light of the agenda item to discuss the very narrow topic of probation supervision of sex offenders. Glenn replied that there are a significant number of sex offenders in the Sex Offender Intensive Supervision Program-Probation (SOISP) and that he believed Probation is over-supervising some individuals and under-supervising others. He will share data today to delineate those issues.</p>
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<p>Issue/Topic Presentation: Sex Offender Intensive Supervision <i>Glenn Tapia, Working Group Leader</i></p> <p>ACTION Glenn will draft a proposal changing SOISP supervision from an offense-based to an RNR-based intensive program</p>	<p>Discussion</p> <p>Glenn reminded the group that, during a previous meeting, Dana Wilks (State Court Administrator’s Office; SCAO) provided a broad overview of sex offender-related statutes. He will highlight some of her points to re-orient the group to the topic and will provide pertinent data.</p> <p>Glenn displayed the presentation, “Sex Offenders and SOISP Basic Data.”² Bulleted highlights from the presentation are below, along with a few member comments, followed by questions and discussion:</p> <ul style="list-style-type: none"> ● On an average day there are 2,763 active Sex Offenders on Probation, with about half sentenced to SOISP and the other half on regular supervision. ● Of the new cases sentenced to probation in a given year, approximately 2/3 are felonies and 1/3 are misdemeanors. ● Assessed risk level distributions are approximately the same for both the regular and SOISP populations, which is a primary source of the problem. Ideally, the SOISP population would be primarily high-risk, while the regular population would be primarily low and medium risk. This is not currently the case because statute drives certain offenses into SOISP. ● Of the SOISP population, 51% are low risk, while a similar 48% of the Regular Supervision population is low risk, which demonstrates the over-supervision of low-risk individuals. The literature is clear that over-supervision of low-risk persons increases risk of revocation and recidivism. ● Also, the percentage of the maximum risk population is similar in both groups: regular supervision at 22% and SOISP at 17%. ● The risk level should drive the level of supervision, rather than offense-based requirements in statute. Probation could have better outcomes if SOISP placement is determined and calibrated by risk rather than offense.
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² See the tab, “Materials - Working Groups (January 7, 2022),” at ccjj.colorado.gov/ccjj-srtf. [Re-presented 2/4/22]

<p>Issue/Topic Presentation: Sex Offender Intensive Supervision Glenn Tapia, Working Group Leader (continued)</p>	<ul style="list-style-type: none"> ● Regarding probation outcomes, those on: <ul style="list-style-type: none"> - Non-SOISP probation have higher success rates and lower revocation absconder rates. - SOISP have lower success rates, possibly due to over-supervision. Because risk levels and supervision levels are not aligned with the research, it is impossible to explain the success rates. ● Regarding the reasons for probation revocation, 85-90% of revocations are for technical violations (rule violations) with the remainder attributable to new misdemeanors and new felonies. ● There is no alternative to revocation for technical violations by those in SOISP. Currently, the supervision level cannot be increased because these offenders are at the maximum level of supervision. ● Greg Otte added that the amount of money spent on those specific offenders is staggering. ● Glenn reiterated that studies show placing low risk individuals in intensive programs increases their risk of re-offense and program failure. ● Glenn suggested that, if SOISP becomes a risk-based intensive program, revocation rates are likely to decrease because officers will not over-supervise clients. ● Risk/Need/Responsivity (RNR) based SOISP will allow for the imposition of more intensive supervision, like a referral into SOISP, when indicated, rather than the requirement that probation be revoked. Fewer revocations means fewer referrals to the more expensive options of community corrections, jail or the CO Department of Corrections (CDOC). <p><u>Questions and Comments</u></p> <p>Judge McKisson asked for clarification regarding the populations being discussed. Glenn confirmed that all those in SOISP are sex offenders and that this population was being compared to the “non-sex offender” or “regular” supervision population.</p> <p>Kazi Houston asked how this data compares to sex offender outcome data in other arenas, not just probation (for example, CDOC, Diversion, etc.). Dr. Abigail Tucker suggested the outcomes are similar in other treatment settings because referral to treatment is similarly driven by the offense and not by risk. Glenn added that, historically, in the days when “regular” Intensive Supervision Probation (ISP) was offense-related and not risk related, the outcomes were poor and similar to these outcomes. It wasn’t until after regular supervision switched to a risk/need model did the outcomes improve. While the legislature drafted the use of the risk/need-based model, rather than the offense-based model, for “regular” supervision, the SOISP program was excluded.</p> <p>Kristin Heath reported interactions with the Probation Sex Offender Unit that reflected similar concerns and that these stakeholders were glad the Working Group was examining the issue. That group suggested that all sex offenders might be assigned to the intensive level <i>to start</i>, allowing for an in-depth risk assessment. Subsequently, offenders would be moved to the appropriate level of supervision based on risk. Dr. Tucker asked about the promptness of the assessment/placement process. Kristin confirmed timeliness would be the goal.</p>
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<p>Issue/Topic Presentation: Sex Offender Intensive Supervision <i>Glenn Tapia, Working Group Leader</i> (continued)</p>	<p>Glenn asked whether aspects of the (already completed) Presentence Investigation (PSI) might contribute to the assessment process. Kristin felt that, until a sex-history polygraph was completed, the early (PSI) risk assessment process may miss important details.</p> <p>Jessica Dotter, the Sexual Assault Research Prosecutor with the Colorado District Attorney’s Council (CDAC) and a member of the public, relayed that every sex offender sentenced to probation is mandated to complete not only the PSI but also an offense-specific evaluation, which contains a number of risk assessments specific to the risk of sex re-offense.</p> <p>Returning to the “Sex Offenders and SOISP” presentation, Glenn shared an overview of <i>§18-1.3-208, C.R.S., Intensive Supervision Probation Programs – Legislative Declaration</i>. He clarified that this overview was the “regular” intensive supervision statute and not the sex offender intensive statute. This shows how the old offense-driven ISP statutes were replaced by risk/need.</p> <ul style="list-style-type: none"> ● Statute outlines that when Probation establishes supervision programs, the agency should collaborate with other criminal justice entities. ● Offenders in the intensive program are required to receive the highest level of supervision and that Probation shall complete an initial assessment of risk and needs using validated tools and those at highest risk should be placed in the intensive program. ● The statute gives the Judicial Department power to establish and enforce standards and criteria for the administration of ISP programs ● High-risk offenders in probation can be managed in the community with the appropriate supervision and the use of evidence-based treatment programs and practices. ● Offenders may not be placed in or transferred out of an ISP program without meeting established criteria. <p>Glenn reiterated that the statute above related to “regular” intensive probation established risk/need assessment, rather than offense, as the basis for placement in the intensive program. By comparison, the overview of the SOISP-related statute <i>§18-1.3-1007, C.R.S, Probation – intensive supervision program</i> shows the offense-based approach:</p> <ul style="list-style-type: none"> ● The statute requires individuals convicted of specific sex offenses to participate in SOISP, reflecting the offense-, rather than the risk/need-, based model of supervision. ● The court may require any person convicted of the felony “failure to register as a sex offender” to participate in the SOISP program. <p>He concluded by noting the opportunity to revise the SOISP-related statutes to a risk/need-based system similar to the statutes for the (regular) intensive supervision program.</p> <p>Judge McKisson felt the data does indeed support moving to a risk/need-based model, particularly given the finding that over-supervision results in higher recidivism. He added that such a proposal could be met with resistance, given the emotion and (possibly) misinformation about this population. However, current practice is contrary to the data.</p>
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<p>Issue/Topic Presentation: Sex Offender Intensive Supervision <i>Glenn Tapia, Working Group Leader</i> (continued)</p>	<p>Kazi was curious about the number of people convicted of the crimes listed in §18-1.3-1007, and where they were sentenced. She wondered whether there were sex offenders who need the intensive treatment, but were unable to access it, given the narrow list of offenses. Glenn clarified that the advantage of the regular supervision program is that the three levels of risk to which individuals can be assigned allows supervision adjustments, which avoids under-supervision. However, because SOISP requires the highest level of supervision, over-supervision is more likely because moving a person to minimum supervision is not an option. Dana explained that an additional advantage to this change would be to allow the placement of high-risk misdemeanants into SOISP.</p> <p>Kazi felt that an RNR-based system could create more challenges when trying to resolve cases, and that it could be logistically problematic if there is no “stick” for use in plea negotiations. Glenn offered that if the <i>Purposes of Probation</i> is the guide (e.g., holding people accountable and changing behavior), then SOISP should be an extension of that, and a plea negotiation leading to probation should be focused on helping a person repair harm and to be held accountable. If the goal is mainly to punish, Probation isn’t the right placement.</p> <p>Glenn asked the guests and members of the public for their feedback on this issue. Jessica Dotter asked whether technical violations (TVs) are the actual reason for a probation revocation complaint or for a probation revocation. She questioned whether those TVs are the result of a plea deal to maintain an individual on probation, rather than a person pleading guilty to a new crime. She added that oftentimes “revoke and reinstate” (to continue one on probation) is the outcome of a revocation hearing, rather than a placement in jail, DOC, or community corrections. Jessica pointed out that even the lowest-risk sex offenders are still the highest risk people in the community. Low-risk sex offenders are often familial-pattern child sex offenders. She believed there is a disconnect in the assessed risk versus the perceived risk by the community and victims who feel that familial and child sex offenders are the highest risk persons in our society.</p> <p>Jessica agreed that the biggest challenge with statutory reform would be the effect on the plea negotiation process, because, when discussing possible penalties with a victim, a prosecutor might guarantee them that probation will offer intensive supervision. Public trust and confidence in the supervision system is paramount to its acceptance and its success.</p> <p>Megan countered that it is the job of professionals in the criminal legal system to make communities safer and address risk and other factors, so that ultimately the community is safer. People being supervised at a level that is more likely to make them successful and less likely to recidivate is paramount. She believed all parties need to do a better job educating people about the evidence of what actually works to foster probation success. Long-term, there will be more trust from everyone, including the victim community, when</p>
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<p>Issue/Topic Presentation: Sex Offender Intensive Supervision <i>Glenn Tapia, Working Group Leader</i> (continued)</p>	<p>people are appropriately supervised and do not recidivate. This communication must impart the data and evidence behind supervision decisions.</p> <p>Dr. Tucker believed that, no matter where someone may stand on the issue, everyone acknowledges that this is an extremely sensitive and important topic. One way to address this tough issue and start the conversation is to “level-set” and inform people regarding the issues, to create shared understanding of the issues, and to ascertain the differences or disagreements on the issues. If all sides aren’t given the time necessary, strong resistance can surface before there has even been time to thoroughly explain the process. When it comes to justice reform, criminal justice stakeholders tend to attempt to fix the entire system all at once, when in actuality many reform efforts are not the sole responsibility of the justice system. Other players in the system such as human services, treatment providers, and advocacy groups also play a role. In this case, the role of Probation is not to fix the entire issue.</p> <p>Jessica pointed out that statutorily, the Sex Offender Management Board (SOMB) has the responsibility and duty to create the standards of treatment for supervision in monitoring and management of sex offenders, which is an interesting crossover with Probation. Additionally, those standards are based on the risk/needs/responsivity model and the SOMB may have valuable input on any statutory changes as well.</p> <p>Glenn revisited the issue of “revokes/re-grants” (to continue one on probation) and noted that a recent external evaluation by the Crime and Justice Institute (CJI) studies revocation trends. Revokes/re-grants are an option used by courts and probation in cases of revocation; however, CJI found that they do not change the actual outcome, but rather simply extend the period of probation. Essentially, redirecting a person is not an effective strategy for successful outcomes. It essentially swells the probation population and simply extends the term of probation.</p> <p>Glenn added that the term “risk” is used in many different contexts and is often conflated. He clarified that he is referring specifically to the “probability of recidivism.” Someone could have a very low probability of recidivism, but have committed a crime that was very harmful to another person. People will sometimes assume “low risk” means that the crime had only minor effects on another person.</p> <p>Glenn believed that, in a plea negotiation process, a victim can sometimes be given a false sense of security regarding probation supervision. For example, a victim may assume that 24-hour GPS monitoring means any incident will be addressed and resolved immediately, when in fact an infraction on a Friday night may not be relayed to a probation officer until Monday morning. Intensive supervision does not translate to 24-hour, round-the-clock surveillance of a person; therefore, electronic monitoring is not the tool people assume it is. More education and transparency around those terms would be a benefit to victims and the community.</p>
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<p>Issue/Topic Presentation: Sex Offender Intensive Supervision <i>Glenn Tapia, Working Group Leader</i> (continued)</p>	<p>Kazi agreed with Glenn’s point regarding electronic monitoring and thanked Jessica for the description of challenges in the plea-bargaining process.</p> <p>Glenn summarized the possible move toward an RNR-based system, adding that the group must also identify the possible impacts on plea negotiations, victim impacts, and cases where risk, in and of itself, may not fully represent the situation. In terms of next steps, he offered to draft the ideas and concepts and to share these at the next meeting. He will draft the SOISP language based on the “regular” ISP program. Kazi emphasized that input from pertinent stakeholders be included in the review/revision process. Glenn agreed and added that input from the SOMB will also be vital.</p>
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<p>Issue/Topic Public Comment, Next Steps & Adjourn <i>Glenn Tapia,</i> <i>Working Group Leader</i></p> <p>ACTIONS <i>(from above)</i></p> <p>Glenn will continue to seek clarity regarding the scope of work</p> <p>Glenn will draft a proposal changing SOISP supervision from an offense-based to an RNR-based intensive program</p>	<p style="text-align: center;">Discussion</p> <p>Glenn assured members that the sex offender supervision proposal draft would be distributed at least one week prior to the next WG meeting and then opportunity for review/feedback by stakeholders would follow.</p> <p>DCJ staff updated the group on the progress of <i>FY22-SR #5. Implement Individualized Behavioral Responses to Probation Violations (Statutory)</i>. While this recommendation did receive approval at the last SRTF meeting, it passed with the unresolved issue of whether probation officers have arrest authority regarding “harm to self.” Glenn provided the preliminary presentation of the recommendation to the Commission on Dec. 10, which garnered debates similar to those that occurred among Working Group and SRTF members. The final consideration and vote on the proposal were planned for the January 14th Commission meeting, including resolution of the “harm-to-self” arrest issue.</p> <p>Glenn reminded members of the pending working on petty offenses within the over-supervision rubric and the conversion of <i>Recommendation FY22-SR #04. Improve Collaborative Treatment for Justice-Involved People (Statutory)</i> to a policy recommendation. Glenn reiterated that he will also continue to address the clarity and direction in the scope of work with the SRTF and Commission.</p> <p>Glenn opened the floor for public comment. No public comment or concerns were offered. The Working Group will reconvene on February 4, 2022.</p> <p>Hearing no further comment, Glenn adjourned the meeting.</p>
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Next Meeting

Next Meeting - Friday, February 4, 2022 / 9:00am – 11:30am (Virtual Meeting)

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