

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentencing Alternatives/Decisions & Probation Working Group
MINUTES

December 2, 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 (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
Jenifer Morgen, Chief Probation Officer/ 17th JD
Greg Otte, Deputy Chief Parole Officer/ 8th JD
Thea Reiff, Office of the State Public Defender
Elaina Shively, District Attorney's Office/ 20th JD
Abigail Tucker, (*CCJJ Vice-Chair*) Psychologist/ Mental health services provider and consultant

STAFF

Richard Stroker, CCJJ Consultant
Stephané Waisanen, WG staff, Division of Criminal Justice
Jack Reed, Research Director, Division of Criminal Justice
Laurence Lucero, SRTF staff, Division of Criminal Justice

ABSENT

Matthew James, Denver District Attorney's Office/2nd JD
Clay McKisson, Judge/ 3rd JD

Issue/Topic	Discussion
<p>Welcome Glenn Tapia, Working Group Leader</p>	<p>Glenn Tapia, WG Leader, welcomed members and stated that the objective for the meeting was to review the feedback from the Sentencing Reform Task Force on the <i>Standardize Early Termination</i> proposal.</p>

Issue/Topic	Discussion
<p>Early Termination Recommendation Review & Revisions All</p>	<p>Glenn reviewed the following areas of concern:</p> <ul style="list-style-type: none"> • Clarification of whether the draft recommendation proposes a mandatory <i>PETITION</i> for early termination at 50% of the probation sentence or a mandatory <i>REVIEW</i> by probation to consider whether to petition for early termination. • How was 50% of the sentence length determined? <ul style="list-style-type: none"> ▪ It was suggested that the Working Group should add an explanation in the discussion section regarding how the timing at 50% of the sentence was decided. • Some Task Force members expressed concern about the potential overload of court hearings if all probationers were to be considered for early termination. • Should standard criteria be developed for probation officers to determine which cases should be eligible for such a petition? • Should there be a development of mandatory, exclusionary, or inclusionary criteria? • Some stakeholders expressed hesitation to notify victims of a possible early termination hearing in cases where the offender would not actually get a hearing because he/she might not be ready for early termination. <p>The group reviewed the DRAFT recommendation, and after a lengthy discussion, the following revisions were made with additions in <u>BOLD</u>, <u>UNDERLINED CAPS</u> and deletions in <u>BOLD strikethroughs</u>:</p> <p><u>FY23-SR #01. Standardize Early Termination Review in Probation and Reduce Over Supervision for Adults on Probation</u> [Policy]</p> <p><u>Recommendation FY23-SR #1</u></p> <p><u>IN ORDER TO REDUCE THE POTENTIAL FOR OVER-SUPERVISION IN PROBATION</u>, there should be a standardized process within Colorado Probation among all judicial districts to ensure a transparent, consistent, and timely review of each adult case for early termination. Following these recommendations, (Appendix A) is a list of technical considerations and areas that will need to be addressed by a working group for this process to be successful.</p> <ul style="list-style-type: none"> • <u>Process development</u>: The State Court Administrators Office (SCAO) and the Division of Probation Services (DPS), in collaboration with probation staff, stakeholders (e.g.: treatment providers, prosecuting and defense attorneys), and victim representatives, should develop a protocol for the standardization of reviewing adult cases for early termination by June 30,

<p style="text-align: center;">Issue/Topic</p> <p style="text-align: center;">Early Termination Recommendation Review & Revisions All (continued)</p>	<p>2024. <u>THE PROTOCOL SHOULD INCLUDE INCLUSIONARY AND EXCLUSIONARY CRITERIA USED TO INFORM PROBATION OFFICERS DECISIONS TO PETITION THE COURT FOR EARLY TERMINATION BASED ON INDIVIDUAL CIRCUMSTANCES OF EACH PERSON UNDER REVIEW AS WELL AS VICTIM CONSIDERATIONS FOR VICTIM’S RIGHTS ACT (VRA) CASES.</u></p> <ul style="list-style-type: none"> • (See Appendix A –Technical Process Areas to be Addressed) • <u>Policy and Standards</u>: The protocol should result in a statewide policy that provides direction on the process. The <i>Standards for Probation in Colorado</i>, issued by the Supreme Court, should also incorporate mandatory petition for review of adult cases once a probationer completes 50% of their sentence <u>IN ORDER TO ADVANCE A CERTAIN AND TRANSPARENT TIMEFRAME AT WHICH AN INITIAL REVIEW WILL OCCUR.</u> The <i>Standards</i> should be revised by June 30, 2024. • <u>Structured Tools</u>: The protocol should rely on standardized forms and structured tools to ensure consistency statewide. There should be a form provided to the probationer at the beginning of probation that describes the behavioral response system and the incentive for early termination, as well as a checklist for the probation staff to determine eligibility for early termination. • <u>Specialized Intensive Programs</u>: Standards should be developed to assure that probationers placed on intensive supervision serve at least 6 months on regular supervision before being submitted for early termination or that judicial officers at least consider the amount of time served on regular supervision before granting early termination at 50% of the sentence period for those who were assessed at higher risk and higher need at intake on probation. • <u>Stakeholder Education</u>: Stakeholders should be informed of the early termination protocol. The workgroup that develops the protocol should decide if stakeholder education should happen at the state level (e.g.: presentations to victims’ groups, the chief judges’ council, the public defenders’ office, district attorneys’ council) or at the local level. • <u>Victim Notification</u>: There should be procedures developed such that victims of eligible crimes are given appropriate education and time to opt in for notification in Victim Rights Act (VRA) cases, <u>WHERE A PETITION FOR EARLY TERMINATION IS INDICATED.</u> • <u>Training</u>: The Division of Probation Services should develop and administer a stand-alone training on the protocol for all current employees. After statewide implementation, this training portion should be incorporated into the Probation Academy, which is mandatory for all new probation officers. • <u>Quality Assurance</u>: The protocol should result in additional data entry to track the frequency and timeliness of early termination reviews. Staff at DPS/SCAO should annually review district compliance with the protocol and provide feedback to districts on the metrics.
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<p style="text-align: center;">Issue/Topic Early Termination Recommendation Review & Revisions All (continued)</p>	<ul style="list-style-type: none"> • Implementation: The SCAO/DPS should develop a strategy to consider district-level workload impact, docket impact, victim transparency, and victim impact in implementing the new policies and standards for current cases for those are newly eligible and those who are pending eligibly for early termination under the new model as of June 30, 2024. <p>Discussion</p> <p>The Sentencing Alternatives/Decisions & Probation Working Group was interested in finding ways to reduce the over-supervision of adult probationers, as it can lead to increased rates of recidivism and collateral consequences for those on supervision. Probation has addressed several areas, where over- supervision has occurred and continues to explore methods to safely reduce over-supervision while also achieving the Sentencing Reform Task Force and Commission broader goals of consistency, CERTAINTY, and transparency in sentencing.</p> <p>To further address over-supervision of individuals on probation, the following proposal recommends standardizing the process for requesting early termination of adult probation sentences. This recommends criteria, while using an individualized approach with probationers that acknowledges</p> <p>behavioral compliance and readiness for early termination. In considering the criteria, community and victim safety have been paramount.</p> <p>Pursuant to §16-11-201.5, C.R.S., probation is a sentencing option used to moderate and deter future criminal behavior by supporting individuals in behavior change. For criminal justice-involved individuals,</p> <p>research has shown that the effective use of incentives and sanctions can promote behavior change. Colorado Probation has a structured system of incentives and sanctions in place, which includes the</p> <p>potential to request early termination; however, the filing of petitions for early termination has been inconsistent throughout the state and has, at times, been confusing for victims and the community.</p> <p>State probation and parole have opted into a study of revocation trends for their respective system in Colorado. WHILE NOT WITHOUT ITS LIMITATIONS, the Crime and Justice Institute (CJI) recently reported high rates of variability in early termination policies and rates in a sample of cases among the Judicial Districts in Colorado. The CJI report recommended to expand and streamline the existing early termination policies used by probation with a goal of increasing consistency among districts on such practices.</p> <p>This proposal will describe an approach to create more consistency, CERTAINTY, and transparency to probationers, victims and other stakeholders in the criminal justice process. Because probation can only petition the court for early termination and the final decision is made solely by a judicial officer,</p>
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<p style="text-align: center;">Issue/Topic Early Termination Recommendation Review & Revisions All (continued)</p>	<p>pursuant to §18-1.3-204(4)(a), this recommendation will focus specifically on the steps probation SHOULD take to standardize its process. This proposal is intended to influence but not to control judicial or prosecutorial discretion applied to individual cases in early termination considerations. <u>BOTH PROSECUTORIAL AND JUDICIAL DISCRETION SHOULD BE PRESERVED UNDER THIS RECOMMENDATION. THIS PROPOSAL ALSO ACKNOWLEDGES THAT THE PROBATION OFFICER IS BEST SUITED TO DETERMINE WHEN A PETITION IS APPROPRIATE BASED ON APPLICATION OF STANDARDIZED CRITERIA AND TOOLS AS WELL AS INDIVIDUAL CIRCUMSTANCES OF EACH INDIVIDUAL CASE AND PERSON UNDER REVIEW.</u></p> <p><u>THE GOAL IS TO CREATE A STANDARDIZED PROCESS TO REVIEW ALL CASES ONCE 50% OF THE SENTENCE LENGTH HAS BEEN SERVED, WITH THE EXCEPTION OF DEFERRED JUDGMENTS, INDETERMINATE SENTENCES, AND SEX OFFENDER CASES WITH INDETERMINATE SENTENCES. CONSIDERATIONS BEYOND THE INITIAL MANDATORY petition REVIEW FOR EARLY TERMINATION WILL REMAIN DISCRETIONARY.</u> Probation’s review will result in a determination whether to file a petition for early termination, based on the individual’s progress and in conjunction with victim input, pursuant to §24-4.1-303(13.5)(a)(III), C.R.S. Local policy will be required to provide direction to the probation staff, based on the results of the standardized review process.</p> <p>If implementation and use of the protocol is successful, there are several positive outcomes to be expected. First, data should indicate a decrease in non-compliant behavior, resulting from the use of meaningful incentives. Change in behavior may be observed through decreasing risk scores and increasing protective factors on validated assessments, as well as completion of treatment, court orders, and other case plan goals. The number of petitions for early termination should increase, resulting in more probationers successfully completing their sentence sooner. Recidivism rates should decline slightly, as probationers’ behaviors become more pro-social, their protective factors increase, and they are not exposed to the iatrogenic effects of over-supervision.</p> <p>APPENDIX A: Technical Process Areas to be Addressed:</p> <p>The following technical and procedural areas will need to be addressed, as part of the process development. This list should not be considered exhaustive and is not in any particular order.</p> <p>PROBATIONERS WITH MULTIPLE CASES: It will be important that there be consistency across districts, procedural fairness for clients and victims, and individualized consideration of early termination granting by judicial officers. In order to address over-supervision, it may be prudent to request early termination at 50% of the length of the sentence, regardless of the number of concurrent or consecutive cases. The early termination may provide an incentive and motivation to complete the additional cases. Furthermore, a later revocation in another case would not impact the first case, which was terminated early; thus, reducing the violations for cases in which the client has been compliant.</p>
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<p style="text-align: center;">Issue/Topic Early Termination Recommendation Review & Revisions All (continued)</p>	<p><u>CONTINGENCY PLANNING: REVIEW FOR EARLY TERMINATION BEYOND THE MANDATORY INITIAL REVIEW SHOULD BE DISCRETIONARY. PROBATION SHOULD DEVELOP PRACTICES FOR SITUATIONS WHEN</u> the probationer doesn't meet eligibility requirements halfway through the sentence, <u>SUCH AS A</u> contingency plan when the probationer finishes treatment <u>OR COMPLIES WITH OTHER REQUIREMENTS.</u> Creating a contingency plan may be considered a best practice. It could be motivating for a probationer to know what they must finish, in order to have an early termination petition filed. Although a best practice, a contingency plan is not required, when an individual doesn't meet the early termination requirement or the early termination petition filed halfway through the sentence is denied.</p> <p><u>COURTESY AND INTERSTATE COMPACT CASES: THE PROTOCOL SHOULD ADDRESS THE DEGREE TO WHICH</u> local policy <u>MIGHT</u> have an impact on courtesy cases and interstate compact cases.</p> <p><u>PRIVATE PROBATION PROCEDURES:</u> Private probation will need to incorporate all procedures. <u>PROBATION SHOULD CONSIDER THE DEGREE TO WHICH THIS SHOULD BE MEASURED IN THE</u> current private audit tool <u>TO ENSURE COMPLIANCE IN PRIVATE PROBATION.</u></p> <p><u>TREATMENT CONSIDERATIONS:</u> Treatment requirements may be longer than a year for some populations, when they have a two-year sentence <u>OR OTHERWISE LAST BEYOND THE 50% SENTENCE CRITERION. THE PROTOCOL SHOULD ADDRESS THESE SITUATIONS. THERE MAY BE CERTAIN TYPES OF TREATMENT OR CLASSES THAT DON'T NECESSARILY NEED TO BE COMPLETED FOR EARLY TERMINATION CONSIDERATION. THIS ISSUE, AND THE INCLUSION OF INPUT FOR TREATMENT PROVIDERS OR MULTI-DISCIPLINARY TEAM MEMBERS, WILL NEED TO BE ADDRESSED BY THE PROCESS DEVELOPMENT GROUP.</u></p> <p><u>AUTOMATED CASE MANAGEMENT INFORMATION: THE SCAO SHOULD AUTOMATE INFORMATION TO THE BEST DEGREE POSSIBLE IN EXISTING OR NEW CASE MANAGEMENT SYSTEMS. FOR EXAMPLE:</u></p> <ul style="list-style-type: none"> • <u>IMPORTING</u> information from JPOD into the early term checklist, such as LSI and rater box scores. • <u>AN AUTOMATED TRIGGER WHERE</u> ITS programs an automated review date by calculating one-half of the sentence. • <u>CONSIDERATION OF</u> an event or narrative code to document the results of the review for quality assurance <u>PURPOSES.</u> <p><u>SUPERVISORY REVIEW OF PROCESS: THE PROTOCOL SHOULD ADDRESS THE DEGREE TO WHICH A FORMAL</u> supervisory <u>REVIEW IS APPROPRIATE AS PART OF THE INITIAL QUALITY ASSURANCE PROCESS.</u></p> <p><u>INFORMATION TO THE COURT: THE PROTOCOL SHOULD IDENTIFY THE TYPE OF INFORMATION SUBMITTED TO THE COURT. FOR EXAMPLE:</u></p> <ul style="list-style-type: none"> • A list of incentives and sanctions previously used. • <u>A CASE PLAN PROGRESS, CONSIDERATIONS, AND GOAL ACHIEVEMENT.</u>
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<p>Issue/Topic Early Termination Recommendation Review & Revisions <i>All</i></p>	<ul style="list-style-type: none"> • <u>RISK REDUCTION AND OTHER BEHAVIORAL PROGRESS ACCOMPLISHED DURING THE FIRST 50% OF THE SENTENCE.</u> <p>COURT ORDERS: THE PROTOCOL SHOULD ADDRESS WHICH court orders cannot be completed, yet still lead to a petition for early termination.</p> <p>LOCAL POLICIES: SCAO/DPS should develop a model policy template for districts to use and adapt.</p>
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Issue/Topic	Discussion
<p>Next Steps & Adjourn <i>Glenn Tapia, WG leader</i></p>	<p>Glenn asked whether members would like to alter the current “first-Friday” meeting schedule during 2023. The group agreed to continue meeting on the first Friday of the month at 9:00 am.</p> <p>Glenn stated there would be no meeting in January to allow the Division of Probation and Division of Criminal Justice staff to gather available data on race/ethnicity disparity in the Presentence and Investigation Report (PSIR) & the Level of Service Inventory-Revised (LSI-R). Findings will be presented on the subsequent meeting on the February 3, 2023.</p> <p>Glenn will present the revised <i>Standardize Early Termination</i> recommendation to the Sentencing Reform Task Force next week on December 7.</p> <p>With no further comments or questions Glenn thanked members and adjourned the meeting.</p>

Next Meeting

Wednesday, January 11, 2022 / 1:30-4:00 pm

Details of the next meeting will be forwarded to the group and posted on the CCJJ web and calendar (ccjj.colorado.gov/ccjj-meetings & ccjj.colorado.gov/ccjj-calendar).