



**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

December 11, 2015

Employee Relations Training Room, Lakewood Civic Center  
480 South Allison Parkway, Lakewood, CO 80226

**Commission Member Attendance**

Stan Hilkey, Chair	Joe Morales	Scott Turner
Doug Wilson, Vice-Chair	Norm Mueller	Dave Weaver
Jennifer Bradford	Kevin Paletta	Michael Vallejos
John Cooke	Joe Pelle	Peter Weir
Kelly Friesen - <b>ABSENT</b>	Eric Philp	Robert Werthwein
Charles Garcia	Rick Raemisch	Meg Williams
Kate Horn-Murphy	Rose Rodriguez	Dave Young
Evelyn Leslie	Lang Sias	Jeanne Smith, <i>Ex Officio</i>
Beth McCann	Pat Steadman	Juv. Justice Rep. - <b>VACANT</b>

**CALL TO ORDER AND OPENING REMARKS**

**Stan Hilkey, Chair**

Stan Hilkey (Chair of the Commission and Colorado Department of Public Safety Executive Director) welcomed commissioners and additional attendees to the meeting. He noted that Kelly Friesen would be absent due to a death in the family. Mr. Hilkey asked for approval of the November Minutes and requested any additions, corrections or suggestions. No changes were offered and he subsequently requested a motion to approve the Minutes. The motion was entered and seconded and the Minutes for the November meeting were unanimously approved.

In reviewing the agenda Mr. Hilkey pointed out that there would be task force updates from the Re-entry, Data Sharing and Community Corrections Task Forces, and that both the Data Sharing and Community Corrections groups would provide preliminary recommendations at this meeting. He added that a final vote was also scheduled for two Mandatory Parole Subcommittee recommendations. He noted that at the end of the meeting commissioners would discuss legislative matters on the horizon.

**Re-entry Task Force**

**Update / Paul Herman, Commission Consultant**

Stan Hilkey, Chair of the Re-entry Task Force explained that he missed the last Re-entry Task Force meeting and that Paul Herman would provide this update instead. Mr. Herman noted that the Re-entry Task Force met two days ago and is continuing a number of discussions pertaining to re-entry and technical violations. He summarized that there have been

ongoing conversations in the task force about the assessment tool used by the major organizations (the Department of Corrections, Probation and Community Corrections) in Colorado. He noted that the conversation started as a discussion on race, ethnicity and gender, and concerns were noted about the possibility of bias present in the earlier versions of the assessment tool (the LSI) used by Colorado. Some literature suggests the newer version of the tool (the LS/CMI) may be a better instrument with less bias since it is newer and was created and normed on a larger and more diverse population. Mr. Herman shared that if Colorado were starting from scratch and trying to pick the best tool it might be worth using the LS/CMI, however, that is not the case and Colorado is currently using the LSI in tens of thousands of cases. Mr. Herman noted that after a significant amount of research on the possibility of switching to a new tool, moving to the LS/CMI would have a substantial cost both initially and into the future. A working group of the task force also held in-depth conversations with the LSI and LS/CMI developers in Canada and, without any solid evidence of the improvements the LS/CMI may have over the LSI, the group agreed a switch was not justified at this time.

Mr. Herman shared that the task force is also looking at race and ethnicity issues by tracking the work of the legislative PICLE (Profiling-Initiated Contact by Law Enforcement) Committee. The Department of Public Safety's legislative Liaison Jana Locke has been providing PICLE Committee updates to the task force. At this point it appears the PICLE Committee is moving toward a recommendation to use the Department of Motor Vehicles to be the repository of race and ethnicity information. The gist of the recommendation is that, as people apply for or renew their driver's license, they will be asked to voluntarily provide race and ethnicity data this information may be used in the future to study interactions with law enforcement.

Mr. Herman explained that another small working group of the task force, the Conditions Working Group, is assessing the purpose of the supervision conditions for Parole, Probation and Community Corrections. This is important as conditions drive both the behavior of the offender and the work of the person supervising the offender. The group is studying purpose statements of the conditions and considering what these should and should not include. The working group is basing their approach on the fact that supervision conditions should not create barriers or get in the way of success. The working group has reviewed the conditions from the Parole Board and the Parole Division. They will be assessing the conditions in Community Corrections and Probation next.

Another area under review by the Re-entry Task Force is an inmate's initial first few days of release from prison. While a lot of programs and initiatives are being implemented in regards to transitioning people out of the Department of Corrections, some people are still falling through the cracks. The discussion in the task force has centered on what can be done now about those folks falling through the cracks, even as implementation of new programs are underway. There are still people coming off the bus on a Friday night with no plan in place before they can meet with their parole officer on a Monday. The task force is looking at how to make the first three to seven days a successful period and how to help the people who may not be able to report to their parole officer right away.

## **Data Sharing Task Force**

### **Preliminary Recommendation Presentation / Jeanne Smith, Division of Criminal Justice**

Data Sharing Task Force Chair Jeanne Smith explained that the issue of data sharing has been discussed for many years in the Commission and therefore the work of this group is a bit of a reincarnation. She went on to say that this has always been a rather large issue to tackle so the current task force is addressing the issue element by element.

Ms. Smith reviewed the membership of the task force and went on to say that the group agreed early on that their purpose was not to fix all the data sharing and data collection issues and problems in the state because there is simply too much work to be done. Instead, she noted that task force members worked initially to educate themselves about efforts already ongoing in the state including an in-depth presentation from Adams County representatives about similar data sharing initiatives taking place there. The task force has also explored information from professionals in the behavioral health field about people continually bouncing back and forth from jails to community. She added that the Division of Criminal Justice was recently awarded a planning grant to study the integration of behavioral healthcare data with justice system data. There was another presentation to the task force from the Colorado Information Sharing Consortium (CISC) which is a group reviewing data issues in relation to law enforcement investigations, contacts and intelligence information sharing along with a handful of other areas.

Task force members realized early on that the technology exists for systems to talk to each other and that it would be wrong to suggest that agencies should give up their individual data management systems while trying to move to a similar, singular system. Instead, the future of data sharing is for individual agencies and stakeholders to use whatever system they prefer to work with, but then figure out how to access and share the data in a way commonly called a “portal.” The task force does not believe there should be a mandate telling agencies how to collect data or what system to use, but rather the focus should be on developing something to aid in the ability to share the data. Governance agreements clarify who can access to the information, which agency submits it, who manages quality control and other similar issues. In the healthcare arena, health information is being shared and work is being done on governance agreements through organizations like CORHIO (Colorado Regional Health Information Organization) along with a number of other information sharing committees.

The task force believes that for the state to move forward on sharing information between criminal justice agencies, mental health and traditional health, there needs to be a governance group in place to look specifically at the development of a statewide portal. Ms. Smith added that after taking into consideration all of the aforementioned issues, the task force drafted a recommendation for the Commission to consider and approve.

Ms. Smith went on to present and outline Recommendation **FY16-DS #1/Information Sharing Council**. The recommendation suggests creating a strategic planning committee composed of municipal, county, and state representatives with expertise in criminal just and behavioral health data systems, governance structures, privacy laws, and related issues, and that it be supported by sufficient resources to develop a cross-agency data collection and information sharing system. She went on to say the initial survey work done by the task force indicated that the absence of

municipal data, for purposes of effective case management, was one of the biggest issues across the state. Probation officers and community corrections case managers who participated in focus groups undertaken on behalf of the Data Sharing Task Force agreed that it was extremely difficult and time consuming to have to try to contact every municipality to gather case history information on every client. The task force determined that both state and local information is critical to include in a portal, and that this effort must include information beyond traditional criminal justice data, such as information related to health and behavioral health. Another key part of this recommendation is that the work would require a multi-phase, multi-year effort supported by significant resources.

Ms. Smith pointed out that the task force did not talk a lot about the mechanism (such as legislation) that would be required to mandate empaneling a strategic planning committee. She continued that the task force felt it was important to bring this forward now. The task force would like the Commission, by approving this recommendation next month, to underscore the need for a comprehensive data collection system to address questions that are of concern to legislators. Currently, there is increased attention on the need for data collection for singular questions regarding, for example, officer involved shootings, law enforcement activity on school grounds, and race and ethnicity data collection, to name a few. Given the legislators' interest in criminal justice activity, the proposed information system would be comprehensive while allowing case managers to access, in a "portal" fashion, information that they believe would help them in their efforts to reduce recidivism..

Ms. Smith invited the other task force members to weigh in on the group's activities. Chief Kevin Paletta added that typically, with such a large endeavor, the method to accomplish change is by taking little chunks at a time. He pointed out that the technology exists to accomplish the task force vision: to share information on an individual from start to finish exists.

Ms. Smith clarified that this is just a preliminary presentation of the recommendation and that the Data Sharing Task Force welcomes all ideas, suggestions or input about the concept. Meg Williams asked juveniles would be part of this system. Ms. Smith answered that yes that is correct.

Mr. Hilkey asked about the next steps to solidify or create an action plan for the recommendation. Ms. Smith replied that when the task force first started talking about this it was more of a philosophy statement, but that it then evolved to look more like a recommendation for legislation. Chief Paletta added that the task force is open to guidance on next steps either from the Commission or possibly even the Department of Public Safety. He continued that the devil will be in the details and that even though this looks non-controversial at first blush, there could be significant issues down the road regarding data elements that pertain to protected information, such as that related to juveniles or mental health issues.

Charles Garcia asked where something like this would be housed. Ms. Smith replied that it could be anywhere, either in OIT or as a stand-alone endeavor under the Governor's office or the legislature, to name a few. Senator Steadman asked how a fiscal note for a bill would look if it were housed within DCJ. Ms. Smith replied that a fiscal note would focus initially on FTE to staff the committee and guide the development of governance agreements, but that without

having any idea on exact technology costs to create a portal she said it is hard for her to answer that.

Dave Young explained that the Adams County Criminal Justice Coordinating Council has been working on data sharing for the past two years. The Council funded the research phase of their project through grants but once the initial discussions took place a request was put into the county commissioners for one FTE to be the coordinator of the project. Debbie Allen fills that role and coordinates the commission. However this is a long-term project and in Washington D.C. it took them five years to develop and implement their data sharing portal. He added that the key is to get everyone together at the table. There are nine municipalities represented in the Adams County project and, while they are going in the right direction, it will take a while.

Ms. Smith summarized that this would be expensive and long term, but that if the desire is for a comprehensive data sharing system there will need to be an investment in the process. Senator Steadman pointed out that his interpretation is that the first year would be about convening a planning committee before even deciding on the technology and software needs to accomplish it. He asked if something like that could get off the ground with half an FTE in the first year, realizing that if a recommendation were to come to fruition it would then turn into something much more.

Norm Mueller asked if Adams County or Washington D.C. had been able to analyze if there are any cost savings once a data sharing portal is established. Mr. Young replied that cost savings would be realized through a reduction of crime. For example, the more information available about a juvenile, the better a county or jurisdiction can process or deal with the juvenile (e.g. through a diversion court rather than pushing them into state court), therefore resulting in better outcomes.

Mr. Hilkey summarized that basically this is the concept of building the engine by which everybody will contribute, and part of that process will include determining the rules about how to share and when to share and who has access. The efficiencies come not necessarily from actual dollars saved but more by being better informed.

Mr. Garcia asked if the task force has been talking to the Governor's Office of Information and Technology. Ms. Smith answered that task force members discussed inviting the chief data collection officer within OIT to attend a task force meeting. She concluded that she will incorporate all suggestions and ideas into the final recommendation for the vote at the next meeting.

### **Community Corrections Task Force Preliminary Recommendation Presentation / Peter Weir, Jefferson County District Attorney**

Pete Weir, the Chair of the Community Corrections Task Force explained that the group is presenting a recommendation to the Commission regarding judicial education. During discussions about some of the gaps in community corrections, the task force identified that the Judicial Department would benefit from additional training. Mr. Weir added that the task force

also believes this could be easily accomplished. The recommendation envisions a partnership between the Division of Criminal Justice (DCJ) and local community corrections boards to develop judicial education curricula for judges, probation staff, and other stakeholders, on the topic of local community corrections programs. The goal would be for those stakeholders to have a greater understanding of programs and services available in communities.

Mr. Weir directed commissioners to a copy of the recommendation in their packets which lists suggested content for the curriculum for the training. He clarified that this is not intended as a top down approach and that it would be important for local boards to maintain their independence and autonomy. Some of the training elements would include a description of the purpose of community corrections, board criteria for accepting applications, length of placement earned time, among other topics. He noted that this is a recommendation to enhance the understanding of community corrections is directed primarily at judges and Probation staff. Mr. Herman added that this is basically a policy issue and not a legislative recommendation. Mr. Weir continued that the DCJ research staff may already have information about community corrections clients and programs that could assist local boards.

Robert Werthwein asked if DCJ already does this type of training in other areas. Ms. Smith replied that the Division is involved with trainings but nothing specific to the judiciary. Kate Horn–Murphy asked if the task force addressed differences around the state as far as local control and different local board practices especially around victim input and victim notification. Mr. Weir replied that there was general discussion about that issue and that even though it is not listed as a bullet point on the recommendation he believes it should be included.

Mr. Hilkey pointed out that it appears DCJ may be very much at capacity and asked Ms. Smith what this would look like for the Division. Ms. Smith in turn asked Glenn Tapia (the Director of the Office of Community Corrections in DCJ) for his perspective. Mr. Tapia replied that although he has not examined the nuts and bolts of this proposal, adding a couple of trainings a year should be fine without additional resources.

Dave Young added that training was held at his office in Adams County just this week for prosecutors in regards to community corrections and that it was enlightening. He suggested it would be good to contact the chief judges in the various judicial districts because each community corrections provider may operate under different criteria when it comes to acceptance of clients and revocations among other issues. He added that this would be good information for defense attorneys as well.

Eric Philp stated that the training of judicial officers needs to go through a judicial training committee and that he can provide that contact information.

**MANDATORY PAROLE SUBCOMITTEE  
RECOMMENDATIONS / DISCUSSION AND VOTE / Doug Wilson, Public Defender**

Doug Wilson, Chair of the Mandatory Parole Subcommittee, began his presentation by reminding commissioners that the subcommittee was established at the request of the (former) Parole Board Chair and commission member, Brandon Shaffer. The initial 'ask' was whether the system of mandatory parole should be eliminated with a move toward purely discretionary parole 'inside' the sentence. Mr. Wilson went on to list the membership of the subcommittee and pointed out that the group met nine times between May and December 2015. He added that different members of the subcommittee have also participated in meetings of the Community Corrections Task Force and the Governor's Community Corrections Advisory Council. He stated that Mandatory Parole Subcommittee members have engaged in numerous stakeholder discussions since submitting the original recommendation two months ago.

Mr. Wilson explained that as the subcommittee began its work it became clear very early that moving a system of discretionary-only parole did not make a lot of sense as few people get released on discretionary parole. He provided data showing that only 26% of people are granted parole at their first hearing. The subcommittee's review of parole board decision making underscored that how long an individual stayed in prison lacked clarity. Mr. Wilson noted that the discussion in the subcommittee then turned from "Should Colorado go to a purely discretionary parole system", to "How can there be greater clarity in terms of what length of prison sentence a person will serve" and "Is the period of parole too long?" At that point the subcommittee split into two working groups that came back with two distinct recommendations.

One of the recommendations was to eliminate parole and the parole board completely, which would result in great clarity regarding how long a person will stay in prison, with people serving a specific percentage of their sentence prior to release on parole. The second recommendation was NOT to do that but to go to a 100% discretionary parole based system. Neither of the recommendations met the original charge for the subcommittee, so the group then took the best parts of both proposals and came up with two different recommendations. The first was about redefining the purpose of parole statute (FY16-MP#1). The second recommendation (FY16-MP#2) contained two elements, one about release date determined by COV/non-COV and one about mandatory parole periods based on an offender's risk score as determined by the Colorado Actuarial Risk Assessment Scale (CARAS), an actuarial tool developed (per statute) by the Division of Criminal Justice for the parole board to use in release decisions.

Under FY16-MP#2, for a statutorily-defined Crime of Violence offense, the initial sentence would start at 100% with the ability for an inmate to earn their way to parole release at 75% of the prison sentence served (assuming the inmate received all earned time credits). For people serving a non-Crime of Violence offense their initial prison sentence would start at 100% with the ability to earn time to parole release at 50% of their sentence served. *Mr. Wilson emphasized that this proposal would not be retroactive.* He continued that the group ended up at a 50/75% cut-off after discovering that currently COVs were serving on average 66% of their original sentence and non-COVs were actually serving an average of 68% of their sentence (note that these figures include time spent in community corrections). He added that the group was surprised to learn that people serving time for a Crime of Violence were serving a smaller

percentage of their sentence than the non-COVs. Additionally, 2.3% of the commitments in 2013 were COVs while 98% were non-COVs. Mr. Wilson continued that, due to earned time provisions, the average time on parolees (across all felony classes) is 26 months. Further, data from DOC shows that most parolees, if they are going to be unsuccessful on parole, fail early in the supervision period. Shortening parole periods would still capture the great majority of individuals who fail this transition period.

Mr. Wilson went on to explain one more change that occurred earlier in the week. He shared that the subcommittee met on Monday of this week and voted to split and restructure the original recommendation (FY16-MP#2) into two parts. The recommendation concept has not changed and the elements are exactly the same. The result is that currently one recommendation focuses on the ‘Release Date Determined by COV/non-COV (the new FY16-MP#2), and the other recommendation centers on the “Mandatory Parole Period Based upon the CARAS Risk Score” (FY16-MP#3).

Mr. Wilson continued that under the provision FY16-MP#2, the parole board would set supervision conditions and make revocation decisions. The board would also continue to make discretionary release decisions for all indeterminate sentences, and release decisions for all current inmates. As for Community Corrections, individuals may be placed in community corrections 12 months prior to completion of his/her prison sentence, and can receive earned time during this period. Additionally, any cost savings would be split equally between community-based services for victims and offenders.

Mr. Wilson reviewed some of the data the subcommittee used to arrive at their decisions on the recommendations and noted that the Parole Board is not following the release guidelines. In FY 2014 the parole board designated 25% of offenders for release and 75% of offenders for deferral, while the release guidelines recommended 49% of offenders for release and 51% for deferral. Breaking that down further the Board agreed with the Guidelines decision to DEFER 93% of the time, and the Board agreed with the Guidelines to RELEASE 43% of the time. He reiterated that this was partially what drove the subcommittee away from a discretionary parole model.

The newly restructured recommendation FY16-MP#3 calls for the mandatory parole periods to be based on risk score. In the initial recommendation (presented in October 2015) the mandatory parole periods were broken out by COV/non-COV as opposed to straight risk score. This demarcation was changed in November after recognizing that there are COVs who may be low risk and non-COVs that may be high risk and therefore the decision was made for mandatory parole periods to be based solely across the board on CARAS risk score. Those proposed parole periods are as follows:

- Very Low / Low Risk           1 Year
- Medium Risk                    18 Months
- High / Very High Risk         2 years

The recommendation requires that up to five days per month of earned time be allowed for parolees to ensure this incentive encourages individuals to participate in programming.



Mr. Wilson added that regarding victims, the recommendation calls for a mechanism for victim notification and for victim input by amending the definition of “critical stages” to include: setting of terms and conditions of parole, early terminations of parole, and revocations of parole. He added that as with Recommendation FY16-MP#2, any cost savings would be split equally between community-based services for victims and offenders.

Mr. Wilson pointed to a bar graph in his PowerPoint presentation that shows even with the shortening of the mandatory parole periods, the system would still pick up 87% of technical revocations because these happen early, within the first two years. Approximately 58% of parolees are expected to fall in the high risk category that would be required to serve two year parole periods.

Representative Beth McCann shared that she has heard from community corrections representatives about concerns over earned time and whether it is tied to good behavior or just automatic. She is concerned that if it is automatic people will not be motivated to participate in programs. She asked if there is a way for someone to earn early release if they are in community corrections. Mr. Wilson replied that initially the concept was that COVs would go directly to parole and community corrections as parolees in community corrections and that non-COVs would be eligible for parole six months prior to release. This revision was an attempt to address part of that problem so with the recommendation everyone could go into community corrections 12 months prior to release and still get earned time. The original concept allowed no earned time, but after talking to community corrections representatives who were concerned about offering incentives to facilitate program participation, the subcommittee decided to include earned time while on parole in the recommendation. The downside is the loss of some clarity on the length of the parole term and the fact that individuals would go into community corrections on inmate status.

Representative McCann followed up with a question about who would make the decision to place someone in a community corrections facility within that 12 month period. Mr. Wilson replied that nothing changes on the referral process and that the Department of Corrections will continue to refer people and local boards will continue to accept or not accept applications. Nothing in this recommendation modifies the decision making process by a community corrections board. He clarified that the referral process does not change; the only thing the subcommittee changed was to (a) put earned time back in the parole period, and (b) change from six months to 12 months when the placement in community corrections could occur.

Representative McCann asked if inmates are currently eligible for early referral to community corrections or if they have to wait until their referral date. Mr. Weir replied that currently they can make an application 19 months prior to their parole eligibility date and that they can be accepted 16 months prior to their parole eligibility date. He clarified that this is on Non-Crime of Violence offenders. Inmates serving time for a Crime of Violence can be referred nine months prior to their eligibility date and can be eligible for placement 6 months prior. These time frames are statutory, and DOC does not make the recommendations as to whether somebody should or should not be placed in community corrections. The referral is automatic.

Glenn Tapia added that he held a meeting with the executive directors of many Community Corrections boards and that that group is fine with the placement in community corrections 12 months prior to completion of a prison sentence, and fine with the recommendations overall.

Pete Weir continued by saying that he wants to commend the people on the subcommittee for their work on this recommendation. He believes that while this recommendation does address clarity, he is torn because he thinks 80% of this recommendation is positive public policy change. He went on to say that he is concerned that there are questions that remain unanswered. He explained that with respect to the District Attorney community, this recommendation did not pass that group's approval. It is the position of the DA community that there are some good things in the recommendation but that they want to examine it further.

Mr. Weir said that there are a number of questions that come to mind for him. One of his concerns is around COV versus non-COV offenders. He said both populations consist of people who have worked their way into the Department of Corrections and that a majority of both populations have a prior record, and he believes many of them have prior crimes of violence. He said he thinks the group would be remiss if they did not take a closer look at that population and whether this is an appropriate way to make the distinction. Mr. Weir added that the CARAS is a great tool and could be helpful in trying to determine if someone should in fact be paroled. He then stated that he has talked to people in community corrections and that he does not believe there is a correlation between the CARAS score and level of programming that is needed. He said he believes someone may have a low CARAS score but still need a higher intensity of programming, but that conversely someone with a high CARAS score may not need such intensity of supervision and programming. Mr. Weir stated that he brought this matter in front of the Jefferson County Community Corrections Board and that the reaction there was the same and that they want an opportunity to be heard. He said that he and the Board believe this is going too fast.

Mr. Weir went on to say that this is a local-control state and each community zealously guards its responsibilities and its right to determine who is going to be placed in their community. He added that he believes there should be an opportunity for greater feedback.

Mr. Weir added that with respect to parole, this is the first time the Commission has heard the proposal to split the original recommendation into two recommendations. He believes that in a very general survey there may be support to say that five years of parole is too much, however, he said he would like to know more about it. He said that since people with a five year parole period are serving on average 37 months, and if there is a move to shorten parole periods, what is going to change? He asked if there will be changes in the way parole does business. He asked if 12, 18 and 24 months are appropriate. He asked if there should be a mechanism for additional consequence for those who do not comply. How are services going to be changed or front-loaded and what specific efforts are going to be put in place? Mr. Weir also added that he is hesitant to say there will be any real savings and he believes this must be done in a deliberative, thoughtful process. He said he believes there could be costs averted as far as DOC is involved, but he added that he hesitates to plan on an actual cost savings. Mr. Weir then added that it might be worthwhile to hear from offenders about this proposed change. He asked if it's worthwhile to ask those people who are actually in the Department of Corrections what they think and how

they view this. Mr. Weir summarized by saying that he likes a lot of what is in the recommendation and he thinks it is a step forward; he said he believes however that major policy shifts need to be done in a deliberate fashion.

Mr. Weir suggested that both of these recommendations be tabled and an additional working group be formed that integrates the work of the Mandatory Parole Subcommittee, the Community Corrections Task Force and the Re-entry Task Force to firm up the nuances of these recommendations. Without the answers to his questions he said he cannot support the recommendation right now, but that he also does not want to see the recommendations die. He said he also wants to make sure the scales are balanced for the victim community.

Mr. Wilson replied that he disagrees with Mr. Weir 100% and that to say that this was not a thoughtful and deliberate process is inaccurate. He noted that during the first six months of the Commission there were 64 recommendations produced, and yet this one subcommittee spent nine months creating three detailed recommendations. He added that the work around these two recommendations was done thoughtfully, it was data driven, and it was supported by the subcommittee members. Mr. Wilson continued by saying the requests of the community corrections stakeholders were taken into account and that two of the community corrections requests were in fact incorporated into this recommendation. The compromise of individuals being placed in community corrections 12 months prior to completion of their prison sentence and the element of risk-based release came about because of input by community corrections. So there was an active effort to work together.

Mr. Wilson added that he does not understand why the Commission is even talking about cost savings. He emphasized that this recommendation is about good public policy and that is the foundation of the Commission's work. He pointed out that cost savings would be ancillary. He said he always believed that at best the projected DOC bed savings were going to only hold the line and that it would be more likely that parole savings would be more significant. He added that regardless his best guess is there would be no cost savings until 2018 or beyond. Mr. Wilson also added that at no point was there ever any discussion about getting rid of parole officers; the concept was about seeing how the recommendation played out if there were cost savings to shift those into victim and offender services.

Mr. Wilson then replied to Mr. Weir's suggestion that this recommendation be vetted with offender populations. Mr. Wilson noted that offenders were not consulted when sentences were doubled in 1985 (House Bill 85-1320) or before the new Felony DUI law went into effect. He added that new laws are passed every year and offenders have never been consulted about statutory or policy changes. He said he does not ever recall a conversation regarding policy reform and the need to conduct offender focus groups. He recounted that the Commission has been organized over the last 8-years to be as non-political as possible and to make thoughtful public policy decisions, and that this is exactly what the Mandatory Parole Subcommittee did.

Charley Garcia, a member of the subcommittee, pointed out that currently the COV population is serving an average of 66% of their sentence and that this recommendation increases that to a minimum of 75% time served. He shared that currently the non-COV population is serving an average of 68% of their sentence and that that percentage will go down to 50%, but only if they

receive their maximum earned time award. He reiterated that if nobody gets their earned time, all of these people will serve 100% of their sentence.

Mr. Garcia added that, secondly, the subcommittee did indeed work with Community Corrections stakeholders on this recommendation, and that the referral part of this system is no different than the referral system that is already in place. He continued that as for the period of parole, it was the parole board chair (Brandon Shaffer) that told the subcommittee that currently people are on parole too long and for all of the wrong reasons. Mr. Garcia pointed out that per the bar chart in the PowerPoint (Figure 59 on page 44 of the FY13 annual DOC statistical report), the majority of technical violators will still be captured well within the parameters of this recommendation.

Senator John Cooke reported that he met with Brandon Shaffer to discuss the recommendation since Mr. Shaffer initiated the work of the subcommittee. Senator Cooke said that Brandon Shaffer reported he does not currently support the recommendation and does not support mandatory parole and that he believes parole release process needs a human element. Senator Cooke reported that Mr. Shaffer also believes the numbers on the Board's use of its administrative release guidelines are skewed because a parole board representative may feel a person needs a longer time in the Department of Corrections. Mr. Shaffer also feels that this is a back-door way to accomplish sentencing reform.

Mr. Wilson stated that he is surprised to hear that feedback from Mr. Shaffer. He added that it took three months to get numbers from Mr. Shaffer on the percentage of people released at their first hearing and that Mr. Shaffer's reason was that he did not want to provide the numbers because it would make the board look bad. Mr. Wilson added that Mr. Shaffer felt the sentence lengths were not long enough which is why the board was inclined to not release people on their first parole eligibility date. Mr. Wilson went on to state that he is completely in support of sentencing reform, but that this is not about sentencing reform because the length of sentence does not change unless people change their behavior in the institution, and are awarded earned time. He repeated that the recommendation actually increases sentence lengths for people who committed a Crime of Violence and that sentence lengths for those people would go up 9% even if they accrue all their earned time (From 66% to 75% of sentence served).

Dave Young replied that the criminal justice system is not a cookie cutter system and that each individual is unique. Even if people are charged with the same crime, defendants have a unique set of circumstances. He went on to say that under this system someone convicted of a non-COV could have 10 prior convictions while someone else with a non-COV could have 4 prior convictions and they would both serve the same amount of time. He believes that what this does is take away the discretion of handling those people appropriately. He asked Mr. Wilson what the harm is in waiting on this initiative and tabling the issue until DA's across the state can have a chance to look at it and weigh in.

Mr. Wilson commented that he agrees the system should not be cookie cutter, but that in fact that is how they system has ended up where it is now. He pointed out that mandatory minimums and doubling sentence lengths were both cookie cutter measures. He pointed out that discretionary "everything" results in lack of clarity, or there can be a mix of certainty and discretion, which is

what this recommendation attempts to accomplish. In addressing Mr. Young's comment about "What's the harm in tabling", Mr. Wilson replied that there is no harm but that the subcommittee has gone through their process and has brought a recommendation to the Commission for a vote today. He added that the Division of Criminal Justice did an amazing job of providing a huge amount of data and analysis to answer every question the subcommittee asked and that he is not sure what there is left to study. If the Commission votes today to table then the recommendation will be tabled, but there is nothing left for the subcommittee to do.

Norm Mueller, a member of the subcommittee, addressed Senator Cooke's comment by adding that when Mr. Shaffer started the discussion at the subcommittee level, the minutes show that he (Mr. Shaffer) stated one year of parole was long enough. Mr. Mueller added that Mr. Shaffer was adamant that the length of parole was counter-productive and too long. Mr. Mueller added that the other thing this group is losing site of that was a driving motivation was the issue around clarity and the ability to let both offenders and victims know how much time someone is going to serve. He added that what he has seen with parole decisions are two things that are contrary to the new purposes of parole recommendation. The first problem is that the current system is arbitrary and the second problem is that release decisions are driven by an individual, gut reaction by a parole board member as to an offender's original crime rather than what they have accomplished since that time. What this body just voted to approve is that the purpose of parole is NOT to be part of the punishment phase of the sentence. Sentencing is up to judges, prosecutors and defense attorneys as cases are tried. Mr. Mueller added that if this recommendation goes into place everyone in the system will have a very firm idea about how much time will be served, which will affect plea bargaining and the length of sentence handed down. Right now nobody really knows when that person will be released and how much time will be served in prison. That clarity is a really important factor and is why the subcommittee came to its decision after nine months of work.

Kate Horn-Murphy, a member of the subcommittee, explained that she was the driving force behind the reason the original recommendation was split into the two proposals before the Commission today. She continued the group has done hard work and that DCJ staff has been incredible in its support of the subcommittee's need for data. She added that there have been some very heated discussions on all the matters brought before the group. She explained that when she cross-referenced the COV statute and the Victim Rights Amendment statute she discovered there were serious crimes involving personal injury that are not included in COV statute. She feels that as a victim service provider there is a lack of clarity with that element. She added that COV does not include crimes of vehicular homicide, vehicular assault, manslaughter, criminally negligent homicide, menacing, child abuse or any crime identified as domestic violence. She concluded that people who committed those crimes would now have the possibility to serve 50% of their sentence and that this became a deal changer for her. She noted that after she raised that issue the subcommittee responded by trying to address the issue by parsing the recommendation into two pieces.

Ms. Horn-Murphy added that a letter was forwarded to Ms. Smith and Mr. Hilkey from five different victim organizations requesting that the recommendation process be slowed down-- not to derail it but to slow it down. Ms. Horn-Murphy added that she agrees some very hard and positive work has been done. She clarified that the main issues are around the 50/75 proposal

(FY16-MP#2) and not the second proposal (FY16-MP#3). Mr. Wilson asked for clarification on the letter and who was the recipient. He noted that he, as the chair of the subcommittee, has never seen such a letter, nor was it addressed to him or forwarded to him from those who received it.

Mr. Wilson asked Ms. Horn-Murphy to clarify that the concern is not about the length of parole periods but more so about the 50/75% release determination. Ms. Horn-Murphy agreed that this is indeed the main problem but added that there is some concern from one group about the length of parole periods. Mr. Wilson offered a correction and clarification and reiterated that people will not get an automatic reduction in their sentence to 50%. He noted that nobody gets any sort of reduction if they don't earn it and that any reduction in the sentence is based entirely on an inmate's behavior. He commented that to say it's a 50% vs. a 68% sentence is simply not accurate.

Joe Morales, who joined the subcommittee when Mr. Shaffer left, commented that he conducts thousands of parole hearings and that everyone is different. He noted that as far as Recommendation FY16-MP#3, all the stakeholders are working toward a common goal of offender success because most of these people will be coming back to the community. He added that a lot of resources and thought goes into a parole hearing and the setting of conditions. Mr. Morales continued that the length of current parole periods are predicated on many events from the past like the summer of violence (in the early 1990s) and that sometimes the four and five year periods of parole are simply not effective. He noted that his point is if parole periods were to be shortened from five years to two years and those cost savings and resources could be rolled into increased dosage and intensity of treatment, there would be better outcomes in the end.

Mr. Morales said when he and Mr. Shaffer worked on this previously they agreed that the purpose of parole is not about punishment but rather about treatment, stability and reintroduction. He came back to the point that when recommendation FY16-MP#3 was developed the subcommittee agreed that the purpose of parole was more about treatment and reintroduction to the community, and that a shortened parole period would be more effective. The group wanted to be inclusive of community corrections and other stakeholders and this recommendation considers effective public policy especially if it is done incrementally.

Mr. Weir commented that he agrees with the concept laid out by Mr. Morales but that he struggles with the details. He believes there are other things that need to be discussed and explored including details of the plan for front-loading services to better serve those individuals in the first six to 24 months. He noted he embraces the purpose and philosophy of parole but that there are other things that need to be discussed and explored.

Rick Raemisch followed up by saying that he agrees with Mr. Weir that this is a good start but that he has some serious questions about money. He noted that there are real issues including things like the fact that the legislature gave DOC 6.5 million dollars based on achieved earned time and that he does not see reference to that anywhere in the recommendation and assumes that means it will probably be gone. He added that DOC has 2,000 inmates in the community and he has always wondered whether any inmates other than minimum security should be out in the community. Mr. Raemisch said he is concerned about Colorado's Community Corrections

system and that it may actually need to be rebuilt and redesigned. He added that when an inmate completes his/her community corrections program but is then refused parole by the parole board, there is something wrong with that system. He then continued to say that he feels this recommendation looks too much like truth in sentencing and that truth and sentencing is not the way to go. He noted that he is a firm believer in the carrot and the stick and does not want to take away any opportunities for inmates to exercise positive behavior change and earn their way out. He said he would like to see what other states have done and added that he does not want to see this recommendation killed, but he fears if it is voted on today it will be dead. He added that because of that he would like to see it tabled and does not want to see it die.

Mr. Wilson replied that he addressed the achieved earned time issue with people at DOC and that no one identified this as a problem. He noted nobody on the subcommittee even knew about the \$6.5 million and there was never any intent to get rid of that.

Robert Werthwein stated the he probably knows the least about these issues and that he contacted the Division of Criminal Justice and requested a policy paper on this recommendation but was told none was available. He said that he struggles with making a major policy decision without an actual policy paper that shows pros, cons, costs and the minority position, evidence-based practices and background.

Ms. Smith replied that it is not the Commission's practice to produce a policy paper on each task force's recommendation. She noted that all of the minutes and handouts from the meetings are on the website in hopes that people can look at those resources to better understand the context of any recommendation (for example, see [cdpsdocs.state.co.us/ccjj/Committees/MandatoryParoleSub/Materials/MandParoleSubc-DataCompilation.pdf](http://cdpsdocs.state.co.us/ccjj/Committees/MandatoryParoleSub/Materials/MandParoleSubc-DataCompilation.pdf)). She went on to explain that the discussion during the Commission meetings is very thorough and that producing a full white paper has not been asked of staff previously.

Charley Garcia stated that regarding inmates going through community corrections this proposal actually helps to resolve that problem. Currently an inmate can apply for community corrections 19 months prior to their parole eligibility date, but with this recommendation the soonest an inmate can apply is 12 months prior to release date.

Mr. Hilkey asked for clarification regarding recommendations and asked that if a vote were taken today and the recommendation did not pass, would that mean the recommendation is permanently dead. Mr. Wilson replied that in order for a recommendation to come back up and be reconstituted, someone who had originally voted against the recommendation would have to bring it back to the group. He continued that there can always be a revised or amended recommendation brought back to the Commission.

Mr. Hilkey asked if there was any more discussion or if anyone is ready to make a motion. Mr. Weir made a motion that FY16-MP#2 and FY16-MP#3 be tabled subject to further analysis. Mr. Hilkey asked Mr. Weir if there is a suggested timeframe on the motion to table. Mr. Weir replied that he does not want this recommendation to die and that he recommends the Mandatory Parole Subcommittee and other interested individuals form a separate committee to look at

supplemental information. Senator Cooke seconded the motion. Mr. Hilkey asked for any further discussion.

Mr. Wilson replied that there needs to be a lot more clarity about the people who would be involved in looking at this further, the mechanism for even gathering those people in the room, and what exactly needs to be discussed. Mr. Weir replied that he hoped the members of the Mandatory Parole Subcommittee would stay involved and that others would be appointed as Mr. Hilkey and Mr. Wilson deem appropriate. Mr. Weir added that he believes there needs to be a forum to address the issues around categories of COV vs. non-COV offenders and whether the distinction should be more definitive than that. He added that he would also like to take another look at the actual prison-time served and does not understand the 68% time served figure, which includes time in community corrections. He continued that it would be beneficial to poll community corrections boards on their input. He would like to know specifically what parole services are provided right now and how that would change or look differently. He would like to know what savings are projected. He would like to look at whether it is necessary to let someone out a year before their mandatory parole date. He summarized that these are just a few of the issues off the top of his head.

Mr. Wilson replied that he asked for direction on specifics to be fair to whatever group may be formed to continue working on the issue. However, he also added that the Commission is set to sunset in two years and that would not allow enough time to address all of the concerns raised by Mr. Weir.

Mr. Hilkey reminded the group that there was a motion and a second on the table to create a new group to continue to work on the parole recommendations.

Sheriff Joe Pelle shared that he heard two distinct groups of questions and issues during the discussion from both the district attorneys and community corrections representatives. He proposed that rather than create another new subcommittee, those two associations could spend some time working on the recommendation and bring back their findings to the Commission with their concerns and recommendations for revisions to the existing proposal. The work could be done by the associations that currently exist and that have the concerns about the recommendation. He noted that he is already on a couple of Commission committees and he does not have the time to be on another group. He added that he assumes this is the same for the other commissioners. He said he agreed with Mr. Wilson that Mr. Weir's list of questions is exhaustive and that there is no way to address everything in the next two years.

Mr. Hilkey noted that the Commission cannot force associations to do this work but if they are willing to that would be great. Dave Young offered that he can certainly bring this issue to the Colorado District Attorney's Council (CDAC) and ask for their input. He said he cannot speak on behalf of the CDAC but that he and Mr. Weir can bring it to their attention.

Mr. Hilkey asked for any modifications to the motion. Mr. Weir said that if there is time he would be happy to come back to the Commission with the CDAC's stance on some of these issues. Mr. Hilkey replied that the next steps are still not clear as far as forming a new committee and who should be involved. Mr. Weir replied that his motion is simply to table the two



recommendations for 90 days. Judge Vallejos said he believes that there should be a fixed time for the CDAC or other groups to provide feedback before a vote is scheduled to be taken.

Ms. Horn-Murphy added that one of the primary concerns with this recommendation was the perceived lack of inclusivity. Her concern with groups voluntarily looking at things is that there is no point person to facilitate. She added that it took a whole room of multidisciplinary subcommittee members and an incredible amount of work by DCJ to create the recommendations in the first place. If there is a push to look at something substantive and sustainable it would likely need facilitation.

Mr. Weir noted that as far as the DAs are concerned, they will have a position in 90 days. Mr. Hilkey asked what 90 days would do to the recommendation legislatively and Mr. Wilson replied that it would kill the possibility of legislative action this coming session. CDPS legislative liaison Jana Locke added that there may be the possibility for late bill status.

A discussion ensued among commissioners about whether 60 days would be a sufficient amount of time for associations to bring their concerns back to the Commission. The consensus was that 60 days is not enough time for groups to respond. Mr. Young stated that he will bring this issue up at the next DAs meeting but that there are 21 elected district attorneys and that it will take more than 60 days to pull everyone's responses together.

The motion was restated to table both recommendations for 90 days. A vote was taken and passed by a majority of commissioners to table both recommendations for 90 days. Mr. Hilkey reported that the issue will be returned to the Commission meeting agenda in 90 days.

Ms. Smith asked if the Commission would like DCJ to act as a repository for collecting comments. Commissioners agreed and Kim English from the Office of Research and Statistics offered to be the point of contact. Ms. Smith offered that all correspondence received by DCJ on the recommendation will be compiled and distributed to commissioners before the March 2016 meeting. Mr. Garcia asked that all submissions also be accompanied by proposed solutions.

## **LEGISLATIVE PREVIEW**

### **CCJJ Legislators, Agency Directors, Association Representatives**

Mr. Hilkey asked commissioners and anybody else working on legislation for the 2016 session to provide that information to the group.

Sheriff Joe Pelle explained that the County Sheriffs of Colorado are working on several bills including one concerning emergency mental health services in local jails. Another bill deals with reimbursement on the costs for drug and alcohol testing and a third bill has to do with an issue on the calculation of good time in county jails. Another bill has to do with a cap on damages for the destruction of marijuana.

Chief Kevin Paletta shared that the Chief's Association has been involved in discussion with legislators on a number of bills. One of those bills has to do with issues around "gypsy cops" and

background information used prior to hiring those law enforcement positions. The Chief shared that he will be meeting with Representative Fields soon to talk about police reform bills and where those stand one year after they were created and where to go from here. The District Attorneys Council is looking at a bill to amend sexting statutes and how they relate to juveniles. Chief Paletta shared that he has been asked to be involved in discussions around domestic violence and habitual offenders. DA Mitch Morrissey is interested in reintroducing last year's DNA collection bill. He finished by saying that the Police Chief's Association is working on a bill related to when in the process the testing of blood occurs.

CDPS Legislative Liaison Jana Locke explained that the Department of Public Safety is working on three criminal justice bills. One allows the State Patrol to issue electronic citations. Another bill would change the date that the annual Parole Board Decisions report is due from the Division of Criminal Justice. The third bill would clean up some of the requirements outlined in a previous bill for marijuana data collection.

Mr. Garcia stated that uniformed law enforcement officers and Senator Steadman will be introducing a bill requiring enforcement and recognition of Canadian domestic violence protection orders.

Senator Steadman offered that he will be introducing a bill to reform the criminal statutes that require the 12% interest rate on restitution orders. He will also be including a few other issues the Judicial Branch is facing in relation to the restitution interest requirement. He added that two bigger issues include restoring discretion to whether interest be added to restitution orders, particularly in the case of plea agreements that stipulated the amounts of restitution. He went on to say the other larger question he is working on is to what extent any policy changes in this area can be retroactive.

Representative McCann reported that she will be sponsoring the bill that resulted from the Commission's recommendation to revise the definition of parole.

Scott Turner stated that he is the chairman of E-discovery Committee and that the law requires e-discovery to be up and running by December 1, 2016. He explained that because the RFP process took longer than expected he will be going before the legislature and requesting a six month delay to late spring 2017.

## **Adjournment**

Mr. Hilkey offered that the January 2016 meeting be a telephonic meeting with the main agenda items to be a final vote taken electronically on the Data Sharing and Community Corrections Task Force recommendations presented during this meeting. His motion was moved and seconded and the Commission agreed to an electronic meeting in January 2016.

Mr. Hilkey also reminded commissioners that the February 12, 2016 meeting would be an all-day retreat and asked commissioners to reserve the whole day. He thanked commissioners for their participation and asked the group for final comments. With no further business, Mr. Hilkey adjourned the meeting at 3:10 p.m.