



## Commission on Criminal and Juvenile Justice

### Minutes

April 9, 2010  
National Enforcement Training Institute  
12345 W. Alameda Parkway

#### Commission Members Attending:

Peter Weir, Chairman	Aristedes Zavaras	Tom Quinn
David Kaplan, Vice-Chairman	Jeanne Smith	Claire Levy
Peter Hautzinger	Regina Huerter	David Michaud
Bill Kilpatrick	Don Quick	Aularice Tafoya
Tom Raynes for John Suthers	Debra Zwirn	Inta Morris

**Absent:** John Suthers, Rhonda Fields, Regis Groff, Reo Leslie, Jr., John Morse, Gilbert Martinez, Steven Siegel, Karen Beye, Ellen Roberts, Dean Conder, J. Grayson Robinson, Doug Wilson, Mark Scheffel

#### Call to Order and Opening Remarks:

The Chairman, Peter Weir, called the meeting to order at 12:52 p.m. He welcomed meeting participants and reviewed the agenda for the day and meeting objectives.

Peter Weir welcomed Dr. Sara Steen (CU- Boulder) and her students who were present at today's meeting. Mr. Weir attended one of Dr. Steen's classes on April 7<sup>th</sup> as a guest speaker.

Dave Michaud submitted his resignation as the chair of The Colorado Parole Board and announced that he would thus no longer be a member of the Commission.

#### Legislation Update- *Christie Donner and Tom Raynes*

Tom Raynes and Christie Donner presented a synopsis of Commission bills making their way through the legislature.

**HB 1081: Concerning Money Laundering** sponsored by Representative Priola (R). This bill was approved by the House Judiciary Committee and House Appropriations Committee on April 9, 2010. This legislation is based on a recommendation approved by the Commission on Criminal & Juvenile Justice. The bill relocates the money laundering statute from the Controlled Substance Act to the fraud statutes and includes money

laundering in the definition of racketeering activity for purposes of prosecution under the Colorado Organized Crime Act.

***HB 1338: Concerning the Eligibility for Probation of a Person Who Has Two or More Prior Convictions*** sponsored by Representative McCann (D). This bill passed the House Judiciary Committee unanimously and is scheduled to be heard in House Appropriations Committee on April 16, 2010. Three bills are attached to this bill as a result of cost savings: HB 1081 (money laundering), HB 1277 (prohibiting sexual contact between staff and inmates in juvenile detention facilities and community corrections programs), and HB 1347 (DUI). The fiscal note on HB 1338 indicates a general fund cost savings of \$2,320,441 in FY 2010-11. The bill makes changes to the two-prior felony statute that makes a defendant with two prior felonies ineligible for probation without the district attorney's consent.

***HB 1347: Concerning Misdemeanor Penalties for Persons Who Are Convicted of Multiple Traffic Offenses Involving Alcohol or Drugs***, sponsored by Representative Levy (D) and Senator Morse (D) based on the recommendation of the Commission. This bill was approved by the House Judiciary Committee and House Appropriations Committee. There will be an amendment to the bill. It adjusts the penalties for a second offence of DUI, DWAI, and driving as a habitual user of a controlled substance and creates a new set of penalties for a third or subsequent offense.

***HB 1352: Drug Sentencing Reform*** sponsored by Representative Mark Waller (R) and Senators Steadman (D) and Mitchell (R). Co-sponsors: Representative Pace (D), Court (D), Gardner B (R), Gerou (R), Kagan (D), King S. (R), Levy (D), Looper (R), Masey (R), May (R), McCann (D), Miklosi (D), Nikkel (R), Roberts (R), Ryden (D), Stephens (R), and Senators Carroll M (D), Hudak (D), Morse (D), Newell (D), Penry (R), White (R).

This bill is also based on the recommendations from The Commission on Criminal & Juvenile Justice. It would reduce penalties for the crime of drug use or possession and redirect cost savings in corrections to substance abuse and mental health treatment. The bill also creates enhanced penalties for adults convicted of selling drugs to a minor. The bill also makes two changes to the special offender statute.

The bill was unanimously approved by the House Judiciary Committee and House Appropriations Committee. At the Appropriations Committee two significant things happened:

1. One amendment was approved that increased the drug offender surcharge to backfill the anticipated loss of revenue from the lowering of the drug crimes included in HB 1352.
2. There was an appropriation clause approved that provided an increase in funding of \$263,377 to probation, \$36,528 to Public Safety/DCJ, and \$1,468,196 to substance abuse treatment. The appropriation clause also decreased funding of \$1,523,589 to DOC and \$244,512 to public defender's office.

Two funds – general and cash fund will remain separate.

Christie Donner thanked Tom Quinn for his help in preparing the numbers.

***HB 1373: Sentencing Changes for Escape Crime.*** The bill is based on the recommendations of the CCJJ. The bill will exclude diversion clients in community corrections and parolees on intensive supervision from the mandatory, consecutive sentencing requirement. A strike below amendment will better clarify the offenders who would be excluded.

***HB 1374: Changes to Parole.*** This bill is based on the recommendations of the CCJJ regarding changes to the statutory parole guidelines that encompassed three different recommendations: (1) changes to the statutory parole guidelines and also requirements that the parole board use structured decision-making in release and revocation hearings; (2) clarifies eligibility for enhanced earned time that was passed last year in HB 09-1351; and (3) repeals some archaic language in statute that mandates the arrest of a parolee under certain circumstances.

### **Treatment Funding Working Group – Regina Huerter**

Regina Huerter thanked Kim English, Erick Philp, Christie Donner and DOC for their help in preparation of the recommendations. The white paper will be presented within next couple of months. A bill will likely be proposed in the next legislative session.

The Commission originally sent five recommendations to the Treatment Funding Group (chaired by Regina Huerter) that were related to resources and funding of behavioral health treatment associated with the new drug sentencing/treatment recommendations. Two of the recommendations pertained to SB 08-318 funding; this issue requires additional study and discussion by the working group. The group clarified and expanded the remaining three recommendations and added one (TF2).

Recommendations to CCJJ:

#### ***TF-1 Consolidate and streamline resources, along with developing a unified strategy for Colorado's Behavioral Health system.***

A majority of adult and juvenile offenders have behavioral health problems and require services. Recommendation TF1 will eventually go to the legislature.

#### ***TF-2 Use the Commission's Evidence-Based Practices Training Initiatives as a vehicle to maximize behavioral health treatment resources.***

The Treatment Funding Working Group recommends that the "JAG Training Grant" includes the training of professionals to maximize treatment resources. This requires training of those involved in sentencing and supervision on strategies to enhance successful treatment completion. This also requires an understanding of the need to view behavioral health treatment as a response to a chronic rather than an acute medical condition.

***TF-3 Mandate that justice agencies refer offenders only to treatment programs that are licensed by the Department of Human Services to provide treatment for the population the program serves.***

***TF-4 Direct, in statute, savings from drug law modifications to fund supervisor and behavioral health treatment with the goal of reducing incarceration associated with technical violations.***

A specific amount or proportion [decided by the Commission] of the cost savings will be allocated to fund supervision and treatment and services. The main goal of this recommendation would be to reduce technical violations of individuals under community supervision. This recommendation would also aim to cut the programs that don't show results.

Discussion:

1. Jeanne Smith inquired as to whether the group talked about how to make this recommendation work around the state. JAG will take that information into consideration.
2. TF4 will continue to focus on assessments.
3. Regina Huerter stated that as a result of implementation of HB 1352 next year there will be an anticipated savings of six million dollars. This is the only bill that has it. Christie Donner asked if we want to make any changes to it given this.
4. Christie Donner - Medical marijuana bill is going to allocate sales tax for treatment.

Regina Huerter motioned to "include a clause that directs the savings from current CCJJ bills go to treatment, provided there are no corresponding clauses that already exist". Ari Zavaras seconded.

Discussion:

1. Claire Levy- we require quantification of savings. I will resist earmarking all of those funds to go to treatment. We need to require savings to be quantified and decide if there will be a percentage of the savings that will be allocated for treatment.
2. Don Quick proposed the usage of language "quantifying and appropriate to reduce recidivism."
3. Regina Huerter agreed we need to shape her motion as it is open to amendments, and agreed we need to quantify savings. She emphasized however that if we don't take these savings now, education could pick it up.
4. Peter Weir- we discussed competing for dollars, recognizing that setting up a separate criminal justice repository fund, that could disperse the find to criminal justice could be a solution.
5. Are we talking about existing bills or future ones?
6. Clair Levy- most of the bills coming out of CCJJ are coming from the House. It is not too late to add these to the legislature as soon as they are quantified. That could become a fiscal note.
7. Kim English- can we try to also pick up two prior felonies and escape? Maybe we could prioritize them and try to prepare them for next sessions.

8. Claire Levy- Escape bill and two prior felonies are the two bills that come to mind as a start. It will be easier to vote for something that analyzes and earmarks something.
9. Don Quick – lets gather some numbers and invest the money the best way possible.
10. Will analysis be beyond the fiscal note? Analysis will go beyond what the fiscal note is.

Regina Huerter amended the motion for “pending appropriate CCJJ bills we will ask to have a clause included for projected analysis of cost savings. CCJJ supports amending HB 1338 and 1373 to include language that will direct DCJ (CDPS) to quantify the savings that result from those bills”. Ari Zavaras seconded the motion for discussion purposes.

This is a prospective analysis that directs DCJ to quantify the savings that actually occur, not just the projection.

Kim English reminded the group that the Fiscal note is based on analysis and shouldn't be ignored. Peter Weir added that the deeper analysis will give us more details.

Regina Huerter reminded the group being a bit greedier would be to the advantage. If it is not written now lots of people will want these monies and we will not get it. If we don't include language then we will not get it.

Tom Quinn motioned “request DCJ to work in cooperation with DOC to produce as accurate of an analysis as possible”. Motioned seconded by Ari Zavaras. The previous motion was withdrawn by Regina Huerter and Ari Zavaras.

Clair Levy suggested adding a statement “there is expectation there will be savings and we will proceed with them”. Motion was voted in favor unanimously.

Regina Huerter and Ari Zavaras discussed the referral issue to licensed vs. not licensed providers. DOC and State Judicial don't refer to providers without a license; however other agencies do as they don't have much of a direction or an oversight. It is unknown to them if municipal courts refer to licensed providers only or not.

### **Drug Policy Task Force – Tom Raynes**

Tom Raynes provided an update on the Drug Policy Task Force work. More energy is being spent to funding questions.

Peter Weir announced that membership for the Drug Task Force and Sentencing Task Force is being reopened and suggestions should submit names if they are interested in serving or if they want to make recommendations. Peter Weir said that we are asking for dedication and time commitment.

Regina Huerter asked for a list of current members to be resent. DCJ will resend the list to the commission members.

Tom Raynes and Peter Weir said that they will reconvene the Drug Task Force and hopefully we will get additional members and present it to the commission in June.

### **Sentencing Task Force- *Paul Herman***

A quick update on the Sentencing Task Force meeting was provided.

Jeanne Smith reminded everyone that the following commission subcommittees and task forces are currently operating and are staffed by DCJ: Post-Incarceration Supervision Task Force, Behavioral Health Task Force, Sentencing Task Force and Drug Policy Task Force. Two more subcommittees and task forces of the commission could be added and could be staffed by DCJ. If additional subcommittees are created, we would need help from other agencies to staff them.

### **Sentencing Work plan for 2010-2011- *Paul Herman***

No other state has done evidence- based sentencing - there is no other model for that. The Purpose of Sentencing in Colorado, Principles, Goals and Objectives were reviewed.

Discussion evolved around:

1. **Policy Decisions:**
  - a. Are we going to determinate, indeterminate or a combination? In Colorado we have a combination.
  - b. Sentencing Guidelines (Mandatory vs. Voluntary)
  - c. Focus Efforts on what produces the best results
  - d. How much evidence based practice can we have?
  - e. Define who should be incarcerated and under what circumstances
  - f. Judicial Discretion/Judicial Accountability
  - g. Building scenarios
  - h. Varying community values in different areas of Colorado
  - i. What is the most crucial issue in Colorado?
  - j. Overall sentencing strategy should include an overall resource review and recommendations; the kinds of people we are spending it on, how much money we are spending, what happens to them when they are sentenced.
  - k. Treatment and its access. DOC has a wait list for treatment. If treatment is not there none of this works.
2. **Analysis of Crime Categories** (public policy considerations including harm to community/individual; effective offender interventions → consider data and evidence based practice → review scope of category → weigh offense structure and offender characteristics)
3. **Offence – Offence Structure**

What is the most appropriate for Colorado? Most of the time – range is determined.

#### **4. Offender - Offender Characteristics**

Offender involvement/behavior in the offense, prior record, and risk, special needs duration, etc. What kind and importance of information is to be provided to the court, prosecutor?

Regina Huerter advocated considering 18-24 year old population.

Peter Weir reminded the group there was a lot of discussion around recommendations to the legislature. He said we hope that the drug task force will have recommendations for the upcoming legislative session. He said our hope is to make the wider sentencing policy recommendations the following year. He reminded the group that the Commission has a good reputation and everything that has come out of it has a positive outcome.

What we are looking for are some specific guidelines. There was an approach suggested regarding the analysis of crime categories. We will look at the big picture, and then select a couple of categories to test it out.

Going forward with this methodology was supported by all present committee members.

#### **Discussion:**

1. Current statutes give us framework, what we are looking for is the relative danger for the community and the individual.
2. Do we work with a category and if it works, do we pick another category? We will be applying this process to most if not all categories.
3. There are limits to how many categories we can review at a time.
4. Peter Hautzinger remarked that the worst place to start would be sex offense crimes as it is a highly charged issue.
5. Clair Levy considers sex offense crimes to be a good place to start. It is broadly categorized; it has the greatest consequences for the offender and the community. Rather than backing off, it is better to dive in.
6. David Kaplan stated that sex offences need to be looked at now.
7. Peter Weir suggested two areas that could be selected: property crimes and sex offence crimes.
8. Tom Raynes warned the commission to not become a special group concentrating on a hot issue and becoming a mini legislature. Analysis makes sense.
9. We are looking at offences against property and sex offence crimes as a singular.
10. Is this an attempt to come up with recommendations? Select a category- apply a process and see what recommendations there are.
11. There is concern that there is no quorum at this meeting and we shouldn't be making any big picture decision.
12. Having a subgroup look at other states was suggested. Can we gather the information how sentencing is done in other states. What will the knowledge of this information give us?
13. Claire Levy - how does categorizing help us to deal with other crimes? We are trying to make sure that offenders are given the right amount of sentence to

- protect the public and reduce recidivism. We need to focus on the offender and consequences.
14. There should be some common approach.
  15. Tom Raynes- I don't think that a certain block of crimes are lower or higher.

Peter Weir recommended setting up two subcommittees under the Sentencing Policy Task Force possibly including crimes against property since the quorum is lost. We can report back in June how things are going. Regina Huerter suggested graffiti and vandalism to be looked at as well.

**Minority Over-Representation Update** – *Tom Quinn, Heather Wells, Eileen Kinney*

Heather Wells and Eileen Kinney presented a PowerPoint regarding Minority Overrepresentation in the Criminal Justice System.

In brief: Minority overrepresentation is a problem nationwide and at every stage of the criminal justice system. The research and evidence for what works to reduce racial/ethnic disparity is limited; however the following considerations have some theoretical and/or empirical support: a multimodal approach may be most effective, because many factors contribute to minority overrepresentation; collaboration between agencies is essential, considerations fall into four categories (equalizing access to services; improving cultural competence; system change and research), considerations from the CU law school conference on overrepresentation should be explored.

The meeting adjourned at 4:13 p.m.

**Wrap-up and Next Meeting:**

Next meeting will be June 11, 2010 12:30 pm – 4:30 pm at NETI 12345 W Alameda Pkwy, Lakewood.