



## Commission on Criminal and Juvenile Justice

### Minutes

August 13, 2010  
National Enforcement Training Institute  
12345 W. Alameda Parkway

#### Commission Members Attending:

Kathy Sasak, Chair	Ari Zavaras	Mark Scheffel
David Kaplan, Vice-Chair	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Reo Leslie, Jr.	Steven Siegel	Doug Wilson
John Suthers	Alaurice Tafoya-Modi	Becky Lucero
John Morse	Claire Levy	Scott Smith for Tom Quinn

#### Absent:

Karen Beye Inta Morris, Rhonda Fields, Regis Groff, Gilbert Martinez

#### Call to Order and Opening Remarks:

The Chair, Kathy Sasak, called the meeting to order at 12:45 p.m. The NETI facility is closing and, consequently, this may be the last meeting at this location. The location for the September meeting is still unknown, but when determined, an email will be forthcoming with location information. The Commission welcomed two new members, Becky Lucero who is the Chair and representative for the Parole Board and Debbie Rose who is the Chair of the Juvenile Parole Board.

#### Mini-Group Meetings Summary by Paul Herman:

At the last meeting of the CCJJ in June 2010, the Commission prioritized potential areas of study and requested the creation of four mini (planning) groups to explore particular issues: Sex Offenses/Offenders, Offender Profile/Data Sharing, Comprehensive Sentencing Review, and Juvenile Justice. The groups meet twice since the last CCJJ meeting and were guided by these questions: What are the issues? What is the potential for consensus on those issues? What will it take to resolve the issues?

The goal of the current CCJJ meeting was to determine whether the Commission should authorize the creation of task forces to address these four topic areas. Following a

presentation from the Chair of each of the mini groups, the Commission members were to vote on the decision to authorize task forces.

### **Sex Offender/Sex Offenses Mini-Group Presentation by David Kaplan:**

This group, which included three Commissioners, looked at issues surrounding sex offenders and sex offenses. It was apparent that members of this group felt there were several issues where consensus solutions could be found. The mini-group recognized that not all members of the Commission are as knowledgeable as others on this topic. There would be a need for presentations by subject matter experts to educate the task force and the Commission. Another concern is to ensure that we're not duplicating the work of other groups. The identified issues on the topic of sex offenses and offenders were:

1. Registration / De-registration / Failure to Register was a major issue. Registration is difficult if the offender is homeless. Resources are stretched, and there is not a way to prioritize offenders on the registry by risk. Can priorities be established so law enforcement resources can be utilized more effectively?
2. SOMB Sunset Review Bill: Given the Governor's veto message indicating CCJJ involvement in bill drafting, what degree of involvement will the Commission and task force have in the legislation for the Sex Offender Management Board?
3. Indeterminate Sentencing: The group does not suggest a review of indeterminate sentencing in general, but rather to address some inconsistencies in the statute. There is a belief that more determinate sentencing options would be beneficial.
4. Lack of Resources: Are there areas that cost savings could be realized so that other treatment options would be available and affordable?
5. Conditions of Supervision: The SOMB guidelines on the conditions of supervision are inconsistently followed or not followed. There are also inconsistencies in the response to technical violation.
6. Parole Release: Parole decisions are not well documented and there are no release guidelines for sex offenders serving determinate sentences.
7. Juvenile Sex Offenders: Will the issues surrounding these offenders be explored by the Juvenile Task Force or the Sex Offender Task Force?

The timeline is aggressive. The members of the mini-group felt some issues could be addressed and have possible legislation available for the 2011 session. However, for a variety of reasons, finding a sponsor for a bill in January may be challenging. Issues not addressed for the 2011 session would be reviewed and prepared for the 2012 session.

### **Offender Profile/Data Sharing Mini-Group Presentation by Regina Huerter:**

This group, which included three Commissioners, focused only on the adult system and identified the following issues:

1. Data handling: There is inconsistent use of common offender identifiers. This may not be a problem within one jurisdiction, but becomes more apparent as you cross jurisdictions. The data and information is used differently across the systems. DA's may view the information differently than a judge or probation

- officer. Not all offenders are subject to a pre-sentence investigation report (PSI) and such reports are not consistently prepared. Level of Service Inventory (LSI) assessments may be prepared, but the information may or may not appear on the PSI.
2. HIPAA and confidentiality issues: HIPAA does not preclude sharing information, but directs what can be shared and how it can be shared. Sometimes there are practices that preclude the sharing of information. There is no way to evaluate the types of treatment being given because of confidentiality issues.
  3. Electronic System: There are tools to share the information but protocols would have to be worked out. An accessible electronic system would be best. There are opportunities to create various, expansive data systems through the web. Where can original documents be stored? This may be an expensive proposition and, unless savings are somehow realized, the state doesn't have the money to support such an effort. However, web interface capabilities are in use around the country and offer cost effective solutions.
  4. Quality and integrity of the data: The reports are currently standardized and have little room for narratives.

How to deal with the issue: A task force would need to be formed. One focus would be to find other models in other states that can be used as a base. The timeline would be in phases: the first six months would consist of the creation of the task force, studying systems and gathering legal advice on privacy issues. Then the examination of various solutions/options and the development of implementation plans would take place.

What about attorney/client confidentiality? The sharing of information brings up ethical concerns. The defense bar has seen confidential information being used by the judiciary to hand down harsher sentences. The defense bar would be reluctant to give out information, especially when it is intended to be mitigating but may be used as aggravating evidence. There would need to be an education part about understanding data.

As a result of Columbine, an information sharing agreement that addressed confidentiality issues was developed for schools. We are having the same question and issues here.

### **Comprehensive Sentencing Mini-Group Presentation by Jeanne Smith:**

Identifying the issues in this area was not difficult for the group, given the previous year of work on sentencing by the Commission and the Sentencing Task Force. This group included six Commissioners. The issues identified were:

1. The sentencing structure is too complex and confusing
2. The structure is not flexible enough to allow for individual circumstances. You need some flexibility but not so much that sentences are inconsistent.
3. Sentencing laws are inconsistent.
4. Current laws are often based on anecdote or particular incidents.

5. Sentencing laws do not reflect the goal to enhance public safety through the multiple purposes of sentencing: rehabilitation, deterrence and punishment.

Consensus can be reached: Have to consider clarity of the sentencing structure – the victim, the offender and the public must understand what the sentence range is for a crime. There are fiscal realities in the state and tax dollars must be spent in the most efficient manner possible. The group would like to look at sentencing from point of conviction forward. Citizen input is important and citizens need to believe the sentence is fair.

In looking at what other states have done, it became apparent that there is no obvious method of sentence review. We may borrow approaches from other states, but will need to adapt these for best application to the Colorado system. The approach that the mini-group believes would work best is to start with small categories of crimes. In examining these smaller categories, policy questions would become apparent and a template could be developed that could be used when examining crimes in other, larger categories. Short-term gains would be made, but this approach would be long-term.

The complex and fragmented structure of the current sentencing code has resulted from a somewhat haphazard and reactive introduction of new sentencing legislation. A Sunrise Review would provide a method to integrate new offenses and new sentencing legislation to ensure alignment with the sentencing structure by assuring that newly proposed crimes and sentences are not covered by an existing crime/statute.

### **Juvenile Mini-Group Presentation by Regina Huerter:**

The Juvenile mini group included seven Commissioners. Juvenile matters are extremely complex due to the interdependence of the juvenile, family, and criminal justice systems. The mini-group identified the following interconnected issues:

1. There is not a clear vision around juvenile matters. Some of the large systems involved in the lives of juvenile offenders and their families are school systems, the courts, probation, DYC, Department of Human Services and child welfare, community based systems and faith based systems. The issues surrounding age are quite challenging: What to do with children who are younger than the typical juvenile offenders, for example, those 10 years old or even younger? What happens to 17 year olds in regard to direct file and issues surrounding “ageing out?” The complexities are immense for “cross-over youth” who are involved in the child welfare system and the truant system, as well as other systems. The multiple agencies make difficult the desire for a unified response to juvenile and family needs.
2. The various systems work in silos. They do not talk to each other which results in duplication. There are disputes between systems as to who is fiscally responsible for the juvenile.

3. The Children's Code needs to be reviewed and revised. The Children's Code needs to be aligned with the mission and vision for juvenile matters.
4. Information sharing across systems is a big issue.
5. There are inconsistencies between jurisdictions. In one area an action might be perceived as a childish action, whereas in another jurisdiction it could be perceived as a crime. There are practices that are known to work, but those practices are not uniformly applied across the state.
6. Truancy enforcement is an issue fraught with competing motivations. Schools have a funding formula based on attendance. Currently the "count day" is around October 4<sup>th</sup>. After that, there is no incentive for schools to maintain attendance. It would be beneficial to students if a new count system could be devised that encouraged schools to keep students in attendance throughout the year.
7. Access to training is not uniform. Training does not always include prevention, best practices or youth development. Budgets can change and funding in one area can be shifted to another area. There is a lack of training on substance abuse, mental health and working with families.
8. There are disincentives to reduce costs. If an agency becomes efficient, their funding is often cut.
9. Funding and services should meet the needs of the juvenile, not the needs of the multiple-silo systems.
10. Prevention efforts can be based on early and on-going assessments. Mental health and trauma are huge contributors to delinquency. Sometimes the only time a juvenile gets the help he/she needs, is to be committed to NYC.

There is no quick fix for these complex and interrelated issues. There are efforts in the state addressing the myriad juvenile issues. It will take approximately 3 years to address these issues, although small steps may be taken more quickly. For example, next year mental health and addiction counselors are expected to have 20 hours a year of continuing education on juvenile issues.

There is an inherent conflict between what a prosecutor is statutorily mandated to do versus what may be the right thing to do. Diversion is an area where defense attorneys and prosecutors can come to consensus to treat the juvenile. However, one of the first areas subject to budget cuts are juvenile diversion programs because district attorney's offices are not mandated to provide these services, although they may be the best option for the child and, in the long term, for the community. As a professional path, legal work in the juvenile area is not seen as a preferred area of practice, given the emphasis on motions and paperwork rather than trial work.

One aspect of the conflicting vision that must be addressed is the extent to which the juvenile code is a penal code or a rehabilitative code. Previously, the latter was the case; however, there has been a shift to the former in recent years.

### **Discussion and Voting:**

Following a meeting break, Commissioners returned to a general discussion of each of the proposed areas under consideration for the creation of a Commission task force.

Discussion:

1. How does the Adam Walsh law affect registration? The federal law requires registration for certain levels of offenses in order to qualify for JAG grants. If you don't comply, then you risk losing federal funds. If we pursue the Sex Offender / Sex offenses topic then the Commission would need to be educated on the Adam Walsh Act.
2. What does it mean that Parole Board decisions were not adequately documented [as stated on the presentation slide]? A risk assessment tool was developed for lifetime (indeterminate) offenders, but nothing has been developed for the determinate-sentence offenders. At the time, in previous work by CCJJ task forces, sex offenders were considered a different category and any attention to issues surrounding this group was deferred. The mini-group wanted to address this gap in focus.
3. Can we save money by diverting low-risk individuals from an indeterminate sentence at DOC to parole, probation or Community Corrections? This may save money at DOC but you would need to target the savings and direct it to treatment outside of DOC.

Voting:

The vote to be taken will answer the question "Should the Commission commit its time and resources to this issue (by creating a task force)?" Between now and July, 2013, are the Commissioners interested in committing their time and energy on any of the four topics or a combination of them?

What other Commission task forces are currently active? The Drug Policy Task Force remains active and the Commission will continue involvement in behavioral health efforts via representation on the Behavioral Health Transformation Council.

The Commission members can vote "yes" on all four topics. However, there was concern that, if that was the agreed upon plan, a discussion of the use of staff resources should occur. The staff of DCJ believes that, if all four issues are going to be pursued, two of the topics could be staggered. In reviewing the past task forces, it is imperative that the victims' perspective needs to be better represented.

There will be a yes/no vote on each of the potential topics individually. The vote is "yes" I want the Commission to create a task force or "no" I do not want the Commission to create a task force. The vote threshold is 51% to approve/authorize the creation of a task force.

The outcome of the votes was as follows:

**Sex Offense/ Offender**                      Yes (78%)      No (22%)

\*Due to an entry error by one Commission member, this vote was corrected:

    Yes (72%)      No (28%)

**Offender Profile/Data Sharing**      Yes (50%)      No (50%)

Rather than casting the tie-breaking vote, the CCJJ Chair Kathy Sasak proposed that this topic be deferred for further discussion after the Sex Offense/Offender Task Force has completed its work. This proposal was unanimously accepted.

**Comprehensive Sentencing**              Yes (89%)      No (11%)

**Juvenile Justice**                              Yes (89%)      No (11%)

Therefore, the Commission authorized the creation of three task forces: Sex Offense/Offender, Comprehensive Sentencing, and Juvenile Justice. The decision to create an Offender Profile/Data Sharing Task Force was deferred.

**Nest Steps:**

CCJJ Staff person Germaine Miera will disseminate an announcement to solicit individuals to volunteer for one or more of the task forces. The task force members must be willing to meet once a month for approximately ½ day. The composition of the task forces should be balanced to represent constituencies relevant to the task force focus. Each task force, with approximately 15 members, should include Commission members who will act as a liaison between the task force and the Commission.

Next meeting will be Friday, September 10, 2010 from 12:30 – 4:30 p.m.

The meeting adjourned at 4:00 p.m.