



Commission on Criminal and Juvenile Justice

Minutes

December 10, 2010
 U.S. Dept. of Transportation
 12300 W. Dakota Ave., Lakewood, CO

Commission Members Attending:

Kathy Sasak, Chairman	Ari Zavaras	Tom Quinn
Michael Anderson	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Rhonda Fields	Steven Siegel	Doug Wilson
Michael Dougherty for John Suthers	Debbie Rose for Jan Dempsey Simkins	Alaurice Tafoya-Modi
Regis Groff	Reo Leslie, Jr	John Morse

Absent: David Kaplan, Inta Morris, Karen Beye, Gilbert Martinez, Claire Levy and Mark Scheffel

Call to Order and Opening Remarks:

The Chair, Kathy Sasak, called the meeting to order at 10:46 a.m. Ms. Sasak welcomed everyone and reviewed the day's agenda.

Evidence-Based Decision Making in Local Criminal Justice Systems Initiative:

Pete Hautzinger outlined a new initiative of the National Institute of Corrections (NIC) and the Office of Justice Programs in which Mesa County is participating. Evidence-based practices have been the focus of the criminal justice system when looking at offender recidivism. However, there has been little done to inject evidence-based practices into the front end of a criminal case, specifically when determining what criminal charges will be filed. The NIC initiative was to identify seed sites for using an evidence-based decision making framework. Mesa County has been chosen as one of the seven sites. Part of the initiative is the use of an assessment tool at the beginning of the process. Mesa County will do a public opinion poll asking citizens what they want when looking at sentencing an individual.

Doug Wilson is the defense bar representative on the National Working Group on Using Risk and Needs Assessment Information at Sentencing convened by the National Center for State Courts. Risk assessments can include static variables which are more objective and dynamic variables which are more subjective and the training of the person who administers them is

important. The use of the assessment has far reaching implications for a defendant's case. Any time the defense is asked give input on a defendant prior to the offender's conviction, those comments can be used at a later time. What happens if a plea agreement falls through? What happens if the case is set for retrial? If you do a mental health screening today, and if you have a competency hearing tomorrow, the screening tool will be used.

DRUG POLICY TASK FORCE:

Treatment Funding White Paper

Kim English gave a brief overview of the Treatment Funding group's White Paper. The first section introduces an evidence-based drug policy paradigm. The following section describes the problem of unmet need for behavioral health treatment nationwide. The third section contains information on the most recent research in the area of addiction science. The fourth section covers addiction treatment challenges, efficacy, and outcomes. The fifth and last section addresses treatment availability and funding.

Recommendations (Treatment Funding Working Group)

Grayson Robinson stated the Drug Task Force met this week and the recommendations brought forth received unanimous support from the task force. Regi Huerter gave a brief overview of each of the six recommendations before the Commission voted. The vote totals are displayed in sets of three numbers indicating the Commission members voting in one of three categories: (A) I support it (the recommendation), (B) I can live with it, or (C) I do not support it. In order for an item to be approved the total of A and B combined must be at least 75%.¹

1. Respectfully request that the Criminal Justice Committee of the Behavioral Health Transformation Council meet with the appropriate stakeholders to develop a plan to (A) streamline and coordinate existing funding mechanisms related to offender treatment, and (B) expand data collection and reporting.

- a. This recommendation is asking the Criminal Justice Committee of the Behavioral Health Transformation Council to take on two issues that the Drug Task Force has determined important.

Vote: Passed unanimously

2. Implement a standardized mental illness screening instrument as part of the presentence investigation or, if none was completed, at post-sentence probation intake.

- a. There is a mental health screening tool that was created years ago, made up of 11 items. The current statute says that it "may" be used. Community Corrections already uses this tool. However, all of Probation does not use it because it says that they "may use", but not that they "shall use" the tool. Therefore, we may not have complete information on individuals in Probation.
- b. Probation must use a LSI and a substance abuse assessment tool. The mandatory use of an assessment tool for mental health was included in statute.

¹ Detailed vote information can be found in the Excel files sent with these minutes. These files will be posted on the CCJJ website at http://cdpsweb.state.co.us/ccjj/2010_Meeting_Schedule.html.

- c. Doug Wilson asked to see the screening tool. The issue for him is the timing of the defendant's assessment. Unless the judge agrees that he/she will accept the plea agreement, the defense will not cooperate with the prosecution having the results of the mental health screening tool.
- d. Does Doug Wilson object to using this tool as part of the post-sentencing screening of an offender? No.
- e. This tool is already in existence but it is not used consistently. It would be invaluable as part of the intake process for Probation. Denver already uses it.
- f. Why was pre-sentence chosen? The real interest was its use in the post-sentence Probation intake.
- g. This is just adding a piece to the pre-sentence investigation. It would not take place before the plea agreement is reached. This would be a benefit for the judge in the sentencing process. The defendant has the right to refuse to participate in the presentence investigation.
- h. The court has the right to reject the plea agreement and anything in the presentence investigation can be used against the defendant. Mr. Wilson would like the protection that the risk assessment tool would not be used against the defendant. Or just use this at post-sentencing.
- i. The pre-sentence investigation could be seen as starting at the point of arrest. This tool could be extended to that point.
- j. If the mental health screening tool is used as part of the pre-sentencing investigation, the State Court Administrator's office needs to notify the JBC of its fiscal note.
- k. Current language in statute says that the use of the mental health screening tool does include confidential communication.
- l. The recommendation is that a screening process be used by Probation during the pre-sentence process. If none was done at pre-sentence, it should be done at post-sentence.

Vote: Passed 12 -2- 1

3. The Commission supports the efforts of the Department of Health Care Policy and Financing (HCPF) to prioritize early health care interventions and the alignment of resources to increase efficiency and patient access to services.

- a. This supports the efforts of Health Care Policy and Financing (HCPF) in its effort to prioritize early health care interventions.
- b. The goal of this recommendation is to increase the accessibility to Medicare for offenders who are non-custodial parents and offenders "on inmate status."

Vote: Passed unanimously.

4. Consolidate and streamline funding for the Division of Behavioral Health.

- a. This is a recommendation from February 2010 but it was not voted on at that time.
- b. This is a recommendation for the JBC to consolidate and streamline funding for the Division of Behavioral Health. State Judicial has already done this and it was a cost savings measure.
- c. This recommendation came from Janet Wood and Charlie Smith of the Division of Behavioral Health.

Vote: Passed unanimously.

5. Use the Commission’s Evidence-based Practices Training Initiative (EPIC) as a vehicle to educate criminal justice professionals in effective behavioral health treatment.

Vote: Passed unanimously

6. Respectfully request that the Criminal Justice Committee of the Behavioral Health Transformation Council discuss and identify potential strategies to expand access to Medicaid for Community Corrections clients.

- a. Due to the way individuals are identified in Community Corrections, some individuals are not eligible for Medicare.
- b. Is the distinction between those with or without Medicare access related to non-residential community corrections or residential? When an offender is labeled as “on inmate status,” these are the offenders not eligible for Medicare.
- c. The federal definition of “inmate status” is closely worded. The states must then interpret the federal definition. Transitional clients are considered inmates. Non-residential diversion clients may or may not be classified as an inmate. Their status depends on how HCPF interprets the offender’s type of diversion.

Vote: Passed unanimously.

SENTENCING TASK FORCE:

Sentencing Recommendation

A working group explored the possibility of creating a “Sunrise” review process for legislation related to crimes. The following recommendation addresses a method to accomplish this process.

CRS-1: Require that Legislative Council provide additional information in the fiscal note provided to the general assembly when a bill:

- **creates a new criminal offense;**
- **increases or decreases the crime classification of an existing criminal offense;**
- **changes an element of an existing offense in such a way that the offense would create a new factual basis for the offense.**

The additional information provided in the fiscal note would include:

- **what are the unique elements of the proposed crime;**
- **whether the offense proposed in the legislation can already be charged under current law;**
- **whether the crime classification and potential penalty proposed in the bill is appropriate given other offenses of a similar type; and**
- **what is the current or anticipated prevalence of the behavior the proposed legislation is intended to address.**

- a. Jeanne Smith stated that the Sentencing Task Force developed a list of questions that can be asked of Legislative Council when a new piece of legislation is proposed. The answers to these questions may be of assistance to legislators when deciding whether or not to support a specific piece of legislation.
- b. What does Legislative Council think about this? Legislative Council participated in the discussion and they feel that it is manageable.
- c. Does Legislative Council feel that this is necessary? These types of questions would help determine if a new crime could be charged under an existing statute or if having a more specific statute be beneficial or redundant?
- d. When Legislative Council presents a non-partisan explanation, a legislator can feel comfortable in basing their vote on the information.

Vote: Passes with a vote of 9-4-2

SEX OFFENDER / OFFENSES TASK FORCE:

SOMB Re-authorization Bill

Erin Jemison is the Executive Director of the Coalition Against Sexual Assault. She outlined the draft legislation for the reauthorization of the Sex Offender Management Board (a handout provided a summary of the stakeholders consulted and a brief outline of the bill highlights). The Coalition met with many 15-20 stakeholder organizations and additional individuals in preparing the re-authorization bill. The bill will not be a CCJJ bill.

When Governor Ritter vetoed last year's bill, part of his veto outlined the need for the CCJJ to participate in the subsequent drafting. Today's presentation is in the context of keeping the Commission up to date on the reauthorization bill.

- a. The purpose of this bill is to reauthorize the Sex Offender Management Board. Last year, the SOMB was set to sunset and a bill was put forth to retain its statutory authorization. Due to last-minute amendments to the bill that proved quite controversial, the bill (HB10-1364) was vetoed by the Governor.
- b. The current bill draft extends the Sex Offender Management Board until July, 2020.
- c. The membership of the Board is increased to twenty five members. The make-up of the membership sufficiently incorporates the various stakeholders.
- d. The coalition updated any reference to juvenile offenders with language that is less stigmatizing. They also made clear when the statutes are referring to adult sex offenders or juveniles who have committed a sexual offense.
- e. Language regarding the "no known cure" paradigm was vigorously discussed last year. In talking with the stakeholders, consensus was that the previous bill language was divisive. New language was drafted and included in this draft bill that was acceptable to both the victim/victim advocate and the offender advocate communities. Namely, the phrase, "no identified cure," was deemed more appropriate.
- f. Complaints and grievances against providers are to be referred to DORA.
- g. The bill does not contain the section introduced last year that allowed offenders to choose from three possible treatment providers. The offender advocate community would like a process implemented whereby offenders could seek out a better treatment match. This is not currently included in the bill. Probation and Parole will move offenders if there is a

belief that the provider does not match their needs. This is something that should be dealt with at the agency level and need not be in legislation.

- h. Any provisions in the bill that would require appropriations were removed. This includes appropriations for data collection for the evaluation of treatment providers and polygraph administration. Due to the current fiscal environment, it is felt that any fiscal notes could put the bill at risk. The amount included for data collection in last year's bill was inadequate and would lead to incomplete results. Comprehensive research needs to be done, but would be a multi-million dollar proposition.

Discussion:

- a. Earlier in the meeting, the Commission passed a resolution outlining the need for using evidence-based programs that produce positive outcomes. Yet we are asked to support the removal of data collection because of cost concerns. Data would show which treatment providers are successful and how offenders are doing in treatment.
- b. As the sunset bill went through the legislature last year, the collection of data was added to its mission. However, the type of data was not clarified.
- c. Another bill could be introduced that would require data collection and could delineate the types of data necessary to conduct the needed evaluations. Having a separate data collection bill removes a possible roadblock to the passage of the reauthorization bill.

Recommendations #1-#16 (Registration Working Group)

The Sex Offense/ Offender Task Force forwarded 20 recommendations for consideration by the Commission. Maureen Cain and Chris Labonov-Rostovsky presented the recommendations from the Registration Working Group of this task force. When drafting these recommendations, the Adam Walsh compliance was considered. The vote totals are displayed in sets of three numbers indicating the Commission members voting in one of three categories: (A) I support it (the recommendation), (B) I can live with it, or (C) I do not support it. In order for an item to be approved the total of A and B combined must be at least 75%.²

FY11-SO #1. Create a simultaneous termination hearing/de-registration process for those juvenile offenders currently eligible for de-registration under CRS 16-22-113 (e).

- a. Many offenders who are eligible to de-register fail to do so or are uninformed of the option.
- b. This would not change the substance of current law in CRS 16-11-113, only the procedures.
- c. This does not alter which juvenile offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction / supervision and registration. Proper notice can be given to all parties and the court will have treatment records for juvenile. This should apply to juvenile probation and juvenile parole. Victim notice would still be accomplished.
- d. This applies to de-registration for juveniles on probation and on parole.
- e. The Juvenile Committee did review this recommendation and supports it.
- f. This allows for a hearing – the process is not mandatory.

² Detailed vote information can be found in the Excel files sent with these minutes. These files will be posted on the CCJJ website at http://cdpsweb.state.co.us/ccjj/2010_Meeting_Schedule.html.

Vote: Passed unanimously.

FY11-SO #2. Create a simultaneous termination hearing/de-registration process for adult offenders with a deferred judgment who are currently eligible for de-registration under CRS 16-22-113 (d).

- a. Many offenders who are eligible to de-register fail to do so or are uninformed of the option.
- b. This would not change the substance of current law in CRS 16-11-113, only the procedures.
- c. This does not alter which adult offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties. This would not change the substance of current law, only the procedures. Victim notice would still be accomplished.
- d. This is permissive; the Court may or may not grant the de-registration.

Vote: Passed 14-1-0

FY11-SO #3. Modify CRS 16-22-108 (7) to establish a consistent fee structure for sex offender registration.

- a. This is a state-wide issue raised by law enforcement requiring attention due to the reported problems created by the inconsistencies in registration procedures and the wide disparity in registration fees.
- b. The registration fee was not intended to pay for the administration of registries. It is more important that sex offenders are registered than strict adherence to the collection of the registration fee.
- c. Change CRS 16-22-108 to allow for a fee up to \$25.00 for each initial annual or quarterly re-registration. There may be a push-back from municipalities because the funds go into the general fund.
- d. No allowable fee for updates to address, employment, email, etc or registration cancellations.
- e. It would allow for collection of fees civilly and would include specific language that allows a jurisdiction to waive the registration fee, if the offender is indigent.
- f. This would require law enforcement to accept sex offender registrations, even if the offender does not have the money to pay the fee.

Vote: Passed 12-3-0

FY11-SO #4. Create a simultaneous registration/cancellation of registration process in CRS 16-22-108 for registrations within Colorado.

- a. The lag time between a cancellation and a new registration would be eliminated along with unnecessary failure to register charges.
- b. This would reduce the burden on offenders who are often required to return to a previous location to cancel a registration before being allowed to register in a new jurisdiction.
- c. Law enforcement agencies would simultaneously submit a notice of registration cancellation to a previous jurisdiction when registering an offender.

- d. This would only apply to registries within the state of Colorado. An electronic registration system would allow for streamlined implementation of this improved process. For example, the STAR system developed in Douglas County and being implemented in Denver County is a secure, web-based system to manage sex offender registration, allowing for multi-jurisdictional access.
- e. How does this recommendation work with dual registrations? The working group does not want to cancel the dual registration. The question should be asked of the offender if they are registered in a single jurisdiction or registered in two areas (work in one jurisdiction during the week, and live in another on the weekends).

Vote: Passed 14-1-0

FY11-SO #5. Add and clarify language in CRS 16-22-106 (3) (a) regarding the registration of offenders sentenced to or held in jail.

- a. The added language requires re-registration of offenders held in jail pending court disposition for more than 5 days.
- b. This re-registration and notification to law enforcement will prevent unnecessary investigation into offenders presumed to have failed to register.
- c. The clarified language for offenders sentenced to jail would specify that the re-registration requirement applies to offenders sentenced to jail for *any offense* and not just sex offenses and would include a notification to the previous registration jurisdiction.
- d. Sheriffs only have an obligation to notify if an offender is sentenced to jail. They have no obligation to notify if someone is being held in jail. This recommendation would require an instance of re-registration when the individual is held for a period longer than five days for pending charges.
- e. This also clarifies for work release and weekend programs.

Vote: Passed unanimously

FY11-SO #6. Define “transient” in statute and provide a method to register those offenders who are homeless or have no permanent residence.

- a. The current method to register and track transient offenders is inadequate.
- b. Require law enforcement to register transient offenders.
- c. This would require law enforcement to issue a transient card to these offenders that can be “stamped” or otherwise validated to show compliance.
- d. This would require transient offenders to check in with law enforcement every 30 days to verify location and status. This “check-in” would not be considered re-registration.
- e. Failure to check in would be considered “disobedience of a lawful order” that is punishable by up to 10 days in jail.
- f. Monitor the effectiveness of the system to determine whether warrants and additional sanctions should be considered for missing the 30-day check-in.
- g. Determine whether “card-stamping authority” could be extended to officers on the street, parole officers and probation officers to increase the options for the 30-day check-in.
- h. Accounting for the definition of “transient,” this accommodates the elements necessary to describe those offenders who live in an automobile.

- i. The Chiefs of Police were concerned about the added workload on their departments with the 30-day registration. The Chiefs' Association would like further time to determine the fiscal impact of this recommendation.
- j. When, if ever, can a transient be charged with failure to register? What happens if they don't register for two years and the most they can be charged with is disobedience of a lawful order? The failure to register offense does not change. If an offender does not come in for their regular quarterly, semi-annual, or annual re-registration, they will be charged with failure to register. This merely offers a method by which transient offenders could be tracked more closely.
- k. The "card method" of tracking transient offenders is in use by Denver. The Denver officers in the registration Unit do not see this as a complete solution.
- l. This method would increase the workload on law enforcement. There may be those who attempt to use the transient registration to avoid providing their actual address. This would require that law enforcement conduct additional verifications to prove an offender is transient. The focus of effort changes from the sex offender to the offender.
- m. Wouldn't reducing the criminal penalty give an offender the ability to "work the system?" **Again, the penalty for failure to register and the required frequency of registration does not change. This recommendation introduces a new tracking system for offenders who are transient that is not in place and functions over and above the current registration requirements.**
- n. Ms. Cain indicated that, based on a very recent meeting with police chiefs, there are still some issues to work through. She asked whether the recommendation vote could be deferred to allow additional work with law enforcement stakeholders. Shall we defer the vote on this?

Deferred

The Task Force and Working Group will continue to refine and improve the recommendation.

FY11-SO #7. Modify CRS 16-22-108 (1) (b) to allow annual re-registration to occur within 5 business days of the offender's birthday.

- a. The change would eliminate a burden to time registration exactly on or around an offender's birth date. The change will allow offenders to register within 5 business days before or after their birthday.
- b. The time limit required by Adam Walsh is 3 business days as opposed to the 5 days. However, the 5 business-day period is common throughout Colorado statutes.

Vote: Passed 13-1-0

FY11-SO #8. Modify CRS 16-22-108 (3) to add "within 5 business days" as the time required to re-register due to the changes in life circumstances listed in the statute.

- a. The change will provide a clear expectation for this registration requirement to occur within 5 business days before or after the change in offender circumstances detailed in the cited subsection.
- b. Currently, there is no time period provided.

Vote: Passed unanimously

FY11-SO #9. Add to the place of trial venues in CRS 18-1-202 (12) the county where an offender completed his/her last registration.

- a. The change provides another option for law enforcement to deal with offenders who fail to register.
- b. This would apply in the circumstance where, for example, an offender is arrested who left DOC for Fremont County, but de-registers there on the way to Denver, but never arrives.

Vote: Passed 13-0-1

FY11-SO #10. Eliminate the language requiring mandatory ISP as a condition of probation or parole for failure to register in CRS 18-3-412 (2) (b) and 18-1.3-1007 (1.5).

- a. The change provides judicial discretion to determine whether ISP is appropriate.
- b. The change also provides discretion by the Parole Board who may require, as a condition of parole, that the person participate in an intensive supervision parole program.

Vote: Passed 12-0-2

FY11-SO #11. Add affirmative defense for failure to register from Adam Walsh.

- a. Although in practice charges may infrequently be filed under these circumstances, an affirmative defense for failure to register should be established in statute to accommodate uncontrollable circumstances. The Adam Walsh Act provides a model for this affirmative defense.
- b. The affirmative defense allows an argument that there were uncontrollable circumstances that prevented the individual from complying with registration requirements; the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and the individual complied as soon as such circumstances ceased to exist. This is from the Adam Walsh Act.

Vote: Passed 12-1-1

FY11-SO #12. Request State Public Defender's Office to create informational documents for offenders on registration/re-registration and de-registration.

- a. Many offenders are uninformed regarding requirements to register and eligibility to de-register. There are instructions on the state judicial web site but more substantive documentation and timely distribution of information with advice would be advantageous.
- b. Request the Colorado State Public Defender's Office (SPDO) to prepare a registration and re-registration information fact sheet and a de-registration fact sheet that public defenders, local law enforcement and other law enforcement agencies can use to advise eligible persons on the registration, re-registration and de-registration processes. The SPDO should collaborate with relevant agencies and stakeholders to create these factsheets. These documents should be provided to CCJJ and the Sex Offender/Offense Task Force or any successor subcommittee for review.

Vote: Passed 13-2-0

FY11-SO #13. Add language to CRS 16-13-902 (and relevant sections in Title 18) on SVP equivalency criteria.

- a. Currently missing from statute is the language to establish the process and who is responsible to evaluate sex offenders entering from other states who may meet the definition of sexually violent predator. This has led to inconsistencies across jurisdictions when dealing with offenders from particular states.
- b. The language for this statutory fix was included in the vetoed HB 10-1364.
- c. Has DCJ constructed a document that matches the Colorado SVP (sexually violent predator) criteria and designation to the designations currently used in each of the other 49 states? No. When a sex offender enters Colorado, DCJ checks the current criteria and designation in use in the state of origin against the Colorado criteria and makes a determination whether the SVP designation is appropriate.

Vote: Failed 8-2-5

FY11-SO #14. Add Second degree kidnapping, CRS 18-3-302 (3) (a), as a sex offense when the underlying offense is the offense of sexual assault.

- a. It was assumed that offenders convicted of the second degree kidnapping where a sex assault was involved would simultaneously be convicted of the sex offense. This has not occurred. Some violent offenders convicted of second degree kidnapping have not been convicted of the associated sex crime and are therefore not required to register.
- b. There have been instances when an offender comes out of DOC based on a kidnapping charge that included a sexual assault, but no registration is required. Although, offenders may be classified as a sex offender in DOC records, this may be based on case facts and not on the conviction offense. DCJ finds this situation unclear in determining whether an offender was actually convicted of sex assault.

Vote: Passed 11-1-2

FY11-SO #15. Add tribal and territorial offenders in the list of those required to register, CRS 16-22-103 (1) (b), pursuant to Adam Walsh Act requirements.

- a. To enhance compliance with Adam Walsh requirements and improve consistency in Colorado statute.

Vote: Passed 13-0-1

FY11-SO #16. Create an improved risk assessment classification of registered sex offenders and a public notification system that is more functional to law enforcement and more informative to the community.

- a. The current registry does not provide gradation of risk beyond those categorized as SVP and everyone else. An improved risk designation would be helpful to law enforcement and would inform the public which offenders may be a public risk.
- b. The degree of risk would determine the method by which public notification could occur. Not all registrations necessarily warrant a public meeting, which could be reserved for those offenders who may present the greatest risk to the public.
- c. The authority to do this is already in statute.

No vote was taken, encouraged to keep working.

Recommendations #17 - #20 (Refinement Working Group)

Laurie Kepros presented the recommendations from the Refinement Working Group of the Sex Offense/Offender Task Force.

FY11-SO #17. Repeal the current mandatory prison sentence provisions for commission of Unlawful Sexual Contact by Force, Threat, or Intimidation, 18-3-404 (3).

- a. Unlawful *Sexual Contact* by Force, Threat, or Intimidation is an F4 with a mandatory prison sentence, whereas *Sexual Assault* by Force, Threat, or Intimidation (which involves sexual penetration or intrusion, not merely sexual contact) is an F3 and is probation eligible.
- b. The less egregious conduct should not carry a greater penalty.
- c. The district attorneys are not opposed to this recommendation.

Vote: Passed 10-2-2

FY11-SO #18. Extend the amount of time available on a deferred judgment and sentence for a sex offense requiring treatment, and clarify when the period of the deferred begins.

- a. For the majority of sex offenders, treatment will take longer than 4 years. However, the statute currently only permits a maximum of 4 years for a deferred judgment.
- b. Because a sex offense requires an evaluation before treatment can begin, there is often a two-month lag between the entry of the plea for the deferred and the beginning of that treatment. The period of the deferred needs to begin at the time supervision and treatment can begin.
- c. Would this occur at the end of the deferred sentence? If someone who is sentenced to four years deferred can complete their treatment, they would be sentenced to four years. The sentence could be extended rather than just sentencing someone to six years or more.

Vote: Passed 10-3-1

FY11-SO #19. Fix the currently unconstitutional provision in C.R.S. 18-1.3-1004(4).

- a. This section of the statute purports to permit the sentencing court to convert an otherwise determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography (often called commercial or economic sex crimes). This can be done if the Court finds, based on an SVP analysis, that the defendant is likely to commit sexual assault or sexual assault on a child in the future.
- b. It is unconstitutional, as it permits increasing the maximum penalty to which a defendant is exposed based on fact-finding by the Court, rather than a jury. This is unconstitutional under the *Blakely* ruling because it relies on judicial fact findings.
- c. Even if such a Court finding were sufficient, the SVP analysis is, by definition, inapplicable to these cases because the first question in the SVP analysis is whether the defendant was convicted on a sexual assault or sexual assault on a child.
- d. The “fix” proposed would require that the defendant consent to allow the judge to make a determination that the sentence be converted to indeterminate from determinate.

- e. Tom Quinn will abstain from this vote.

Vote: Passed 7-4-2

FY11-SO #20. Lower the availability of the “mistake of age” defense from 15 years to 14 years.

- a. Current law provides that if a child victim was 15, 16, or 17 years old, the defendant can offer as an affirmative defense that he reasonably believed the child was 18.
- b. However, if the victim was 14 or younger, no such evidence can be offered, regardless of whether the belief was reasonable or not.
- c. Given the scientific evidence that children are physically maturing at an earlier age, and the fact that 14-year-olds are generally in high school, there are likely to be more cases now than there used to be where it would be reasonable to believe that a 14-year-old is 18. Instances were mentioned where 14-year olds have displayed IDs of an 18-year old in a bar, misleading the adult offender.
- d. This does not change the criminality of the charge. It just provides a defense.
- e. This did go to the juvenile group and they had no concern.
- f. The AG’s representative stated that the line should be drawn at the age of 14. Other states don’t have a “mistake of age” defense. In those states, the defendant is responsible for his/her action if he/she engages in sex with someone under 18.
- g. There are ten states that say there is no mistake of age. There are four states that have a mistake of age. There are 23 states that do not address this issue.
- h. Steve Siegel stated that research has shown the greatest reduction in age of menarche to be found in African American and Latino children. The reduction in age of puberty can be attributed to trauma and poverty.
- i. The Defense stated that prosecutors are willing to charge 14-year olds as adults in certain crimes. Yet prosecutors do not feel they are of an age to consent to sex. The reply was that when charging 14 year olds as adults, prosecutors are looking at the mental level of the child. When charging someone with having sex at the age of 14, prosecutors are looking at the mental state of the individual charged, not the child.
- j. The intent of the 14-year old is irrelevant. Any person choosing to have sex with someone who looks young should be aware they risk having a sexual encounter with a person who is underage, regardless of the proof the underage individual may display to mislead age determination. The offender should be responsible for determining that the child is over the legal age.

Vote: Did not pass 4-0-9

PERFORMANCE MEASURES UPDATE AND REVIEW:

Paul Herman presented an update on the performance measures for recommendations approved previously by the Commission. While the performance measures are contained in the annual report, the Commission has not been updated on them individually. A small group of 14 of the original the 66 recommendations were discussed (these recommendations were originally presented in the CCJJ December 2008 annual report).

1. **L-1.** Driver's license retention: The difference in 2010 from 2008 is significant. The number of driver's licenses that were revoked went from 10,746 to 1,055.
2. **L-2, L-3, L-4.** The recommendations concerning the revision of the trustee calendar statute, the good time credit for jail inmates and earned time credits for jail inmates involve a statewide look at jail populations. Data will be requested from the Colorado Sheriff's Association.
3. **L-5.** The Department of Corrections will gather data concerning removing the barriers to education funding.
4. **L-6.** The recommendation concerning summons in lieu of arrest warrant: How do you collect data to determine their impact?
5. **L-7, L-8, L-9.** Recommendations concerning (1) the bond-to-the-Court system; (2) the Court retention of bond in bond-to-the-court system; and (3) bond applied to priority of payments have had minimal action taken. The L-9 recommendation was partially addressed by House Bill 10-1215. These recommendations were not sponsored by the Governor's office because there was a need to work with the bondsmen. Mr. Herman will talk to Mr. Kaplan to bring these recommendations back to the legislative group.
6. **L-10.** The recommendation to increase "gate money" (upon release from DOC, inmates are given \$100.00 as a source of funds until they can become reintegrated): The Department of Corrections has put in budget requests to support this recommendation, but they have not yet received support. The economic conditions are not conducive to asking for additional funding from the legislature at this time.
7. **L-11.** The recommendation to promote partnerships for correctional facilities as a means for better use of funds: Denver has initiated two related initiatives. They have bed space that they have been using for newly released inmates. Denver is creating a re-entry facility that will be used in conjunction with DOC to get these individuals stabilized. The initial thought was to build a stand-alone facility. However, there are other ways to implement the concept without building a new facility. Can successes by alternative means be brought to the Commission so that other jurisdictions can be made aware of such alternatives? Community Corrections can be an area where this recommendation can be implemented.
8. **L-12.** The recommendation on early termination of parole has been moved forward. Policy was re-written and training took place. The Department of Corrections is trying to tie this recommendation to evidence-based practices. As of October 2010, the Board has discharged 1,377 offenders under the program.
9. **GP-13.** The recommendation on probation's response to technical violations addressed the issue of a non-standard response to technical violations. Probation obtained a grant from JAG and is making progress. Probation reduced the number of technical violators sent to DOC by 371. At the same time, the successful completion of probation has gone up. This effort is still underway. The Parole Board has developed a parallel process. A pilot program was initiated that will run from November 1, 2010 to January 1, 2011 with the program is scheduled to be rolled out state-wide in April 2011.
10. **GP-14.** The recommendation on standard conditions of probation contained seventeen items. Probation has gone through several of the items identifying some for elimination and would like to give a report at a later time.

Future meetings.

Jana Locke will prepare a list of the recommendations that will be drafted as legislation and send it out to the Commission.

The future meetings listed below will be held at the U.S. Department of Transportation, 12300 W. Dakota Avenue, Lakewood, CO.

January 14, 2011	12:30pm-4:30pm
February 11 2011	12:30pm-4:30pm
March 11, 2011	12:30pm-4:30pm
April 8, 2011	12:30pm-4:30pm
May 13, 2011	12:30pm-4:30pm
June 10, 2011	12:30pm-4:30pm

The meeting adjourned at 3:50 p.m.