



Colorado Commission on Criminal and Juvenile Justice

Minutes

December 8, 2017

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

Commission Member Attendance

Stan Hilkey, Chair	Jessica Jones	Joe Salazar - ABSENT
Doug Wilson, Vice-Chair	Daniel Kagan - ABSENT	Lang Sias - ABSENT
Jennifer Bradford	Bill Kilpatrick - ABSENT	Scott Turner
John Cooke - ABSENT	Evelyn Leslie	Michael Vallejos - ABSENT
Valarie Finks	Joe Morales - ABSENT	Dave Weaver
Kelly Friesen	Norm Mueller	Peter Weir
Charles Garcia	Joe Pelle	Meg Williams
Mike Garcia	Rick Raemisch - ABSENT	Dave Young
Tony Gherardini	Rose Rodriguez	Joe Thome, <i>Ex Officio</i>

Substitutions: Melissa Roberts for Rick Raemisch

CALL TO ORDER AND OPENING REMARKS

Stan Hilkey, Chair and Executive Director of the Department of Public Safety

Mr. Stan Hilkey, Chair of the Commission and Executive Director of the Department of Public Safety, called the meeting to order at 1:06 pm. He congratulated Commissioner Dave Weaver on his recent appointment to serve as Colorado's next U.S. Marshal. Mr. Hilkey thanked Commissioners for attending and asked them to introduce themselves. He reviewed the agenda and asked for any additions or corrections to the November minutes. Scott Turner moved to approve the minutes and Mike Garcia seconded the motion. Commissioners unanimously approved the minutes.

Mr. Hilkey directed Commissioners to a handout in their packet titled 2018 Legislation Preview, the full content of which can be found among the December meeting documents on the Commission website at colorado.gov/ccjj. He explained the document contains the details of nine legislative recommendations from the Commission along with the names of legislators who have confirmed sponsorship of four of the recommendations. Sponsorship of the other five recommendations is yet to be determined but Mr. Hilkey noted that a couple legislators have expressed interest in carrying at least four of the remaining recommendations in the upcoming legislative session. Mr. Hilkey asked for assistance from one or more Commissioners to help shepherd the juvenile continuity of care recommendations (FY17-JCC #01 and FY17-JCC #02) through the legislative process and Tony Gherardini offered to assist with this task. Mr. Hilkey also expressed his hopes that Commissioners help promote the Re-entry recommendation (FY17-RE #07) which calls for continued or expanded support of Colorado's adult pretrial diversion programs. This is the one recommendation that has yet to receive attention from any legislators and Mr. Hilkey noted that lack of attention is likely due to the fact that the recommendation would carry a fiscal note.

REAUTHORIZATION CONSIDERATIONS**Richard Stroker, Commission Consultant**

Mr. Hilkey explained that the Department of Public Safety's Legislative Liaison, Gabby Reed, has been speaking with legislators about the upcoming Commission renewal and that she has gleaned from those discussions that legislators would like the Commission put forth some ideas to demonstrate possible improvements to the Commission. With that in mind, Mr. Hilkey asked Commission consultant Richard Stroker to facilitate a conversation about the Commission's operational practices and areas of possible improvement. Mr. Stroker reminded the group of the Commission's Mission Statement and asked Commissioners to think specifically about things the Commission could do to improve its work and processes. He explained there are four general areas for potential improvements:

1. The process by which the Commission determines areas of study
2. Commission membership
3. The Commission's internal recommendation/approval processes
4. The process for implementing recommendations (legislatively or procedurally) after they are approved

Mr. Stroker highlighted outcomes from the conversation as follows:

Regarding the **Process for determining Commission areas of study:**

- Request suggestions from the Governor's Office and the Legislature to help provide direction. This could occur in a formalized structure, perhaps annually, in the form of a written letter to the Commission, on topics of interest.
- Seek feedback and suggestions from other constituent/stakeholder groups and develop a timeline and/or method for the feedback.
- Engage the Chief Justice/Judicial Branch in planning discussions.

Regarding **Commission membership:**

- Include people with "lived experiences" (justice-involved) representatives.
- Include more robust representation from Judicial.
- Consider more representation from Victims' Advocates (community organizations and/or direct experience advocates).
- Add Veterans' (or other specialty court) representatives.
- Increase juvenile representation (youth corrections/child welfare).
- Include a representative from mental health/substance abuse services.
- Reconsider the representation from the Department of Higher Education, possible a less academic representative and someone with experience more relevant to criminal and juvenile justice.
- Include Department of Labor and Employment representation.
- Membership considerations should be informed by whether the majority of work is to take place at the Commission level, or the Task Force level.
- Consider not simply adding membership positions but possibly eliminating some current positions.

Regarding the **Commission's internal recommendation/approval processes:**

- Provide advance notice/timing of initiatives to garner constituent feedback.
- Revisit this issue at the next retreat and examine the current Commission methods and practices to be more effective.

The process for implementing recommendations (legislatively or procedurally) after they are approved:

- Revisit this issue at the next retreat.

At the conclusion of the discussion, Mr. Stroker summarized that staff would compile the suggestions offered today and present a synopsis at the January, 2018 meeting. At that time Commissioners can revisit the recommendations and determine which should be presented to legislators who are interested in exploring the proposals as part of the reauthorization of the Commission.

**MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE:
FY18-MH #01 PRELIMINARY RECOMMENDATION PRESENTATION**

Sheriff Joe Pelle, Boulder County

Abigail Tucker, Community Reach Centers

Patrick Fox, Office of Behavioral Health

Sheriff Pelle addressed Commissioners and offered a PowerPoint presentation outlining the history of the Task Force, its scope of work, and background of the recommendation being preliminarily presented today. The full presentation can be found on the Commission website at colorado.gov/ccjj. Following the presentation Dr. Abigail Tucker of Community Reach Centers and Dr. Patrick Fox from the Office of Behavioral Health gave a more detailed account of Recommendation FY18-MH #01 (also available on the Commission website). In sum, the proposal calls for the development of a post-arrest, pre-file diversion pilot program specifically for individuals experiencing mental health disorders who meet specific criteria and are determined able to benefit from diversion to treatment rather than being processed through the criminal justice system. Discussion points following the presentation are noted below the synopsis of the recommendation. The full context of the preliminary recommendation can be found on the Commission website.

FY18-MH #01. Pre-File Mental Health Diversion Program

Recommendation FY18-MH #01

Develop post-arrest, pre-file diversion programs specifically for individuals experiencing mental health disorders and who meet specific criteria and are determined able to benefit from diversion to treatment rather than being processed through the criminal justice system.

Promote the utilization of Adult Pretrial Diversion Programs as created by CRS 18-1.3.101 for implementing and funding these programs.

Pre-file mental health diversion programs should utilize a stakeholder created, reviewed, and approved model.

DISCUSSION

One benefit of the program is that participants would be in treatment rather than being housed in jail, and could therefore be Medicaid eligible. If the clinician (that is affiliated with community health program) performs the mental health assessment in jail, that appointment is not reimbursable through Medicaid, however, once the diversion occurs, the initial appointment in the community and all other services that take place outside the jail are covered. Therefore, this should result in significant cost-savings. The recommendation includes verbiage that is intentionally generic including statements such as “behavioral health screen,” and, “partners,” which was purposeful so that the program could be adaptable across various jurisdictions and communities. Additionally, the identification of eligible participants should not be difficult because they are the same people who are often identified as frequent utilizers of the criminal

justice system, and therefore their histories are well known. Eligibility for the program would be limited to petty crimes and misdemeanors, and not Victims' Rights Amendment (VRA) crimes.

Sheriff Pelle explained that the Task Force is asking the Commission to approve the recommendation, at which point the Task Force will actively seek participation from pilot sites. District attorneys, public defenders and the courts from each pilot site would all have to agree to participate in the program. Additionally, the pilot sites would have to agree to cooperate with the Office of Research and Statistics in the Division of Criminal Justice in regards to data collection.

Sheriff Pelle noted that while nothing prohibits any county from adopting the model, the Task Force will select just two or three sites to participate in order to ensure a level of quality control, and to ensure the ability to report back on the effectiveness of the program. Mr. Stroker stated that a number of local jurisdictions have already expressed interest in participating in the pilot and that the Task Force will develop a process for evaluating applications and determining eligibility. The Task Force hopes to have pilot sites selected by April, 2018.

Sheriff Pelle concluded by saying that once the pilot programs are operational the Task Force will shift its focus to its third and final item of business, which is to improve the provision of mental health services for people who are in custody and not eligible for diversion, but who are remanded to custody for one reason or another.

Dave Young explained that Adams County has a very effective Pretrial Diversion program that serves people who have mental health issues. He added that the clients are never booked into the jail and are often not even given a summons. Operationally, either a police officer or a filing deputy will recommend diversion for an eligible candidate before they go to court. That person is then invited to join the diversion program and they only receive a summons if they refuse the invitation to diversion. A screening takes place at the diversion program and most of the people invited to diversion are accepted. Both adults and juveniles are eligible for the program and it has a 95% success rate. Mr. Young noted that he is concerned this pilot program will adversely impact the current program in Adams County and that if someone is booked into jail they would not be eligible for his program. He noted that this proposal is a good example of how a new program could interfere with the discretion of the District Attorney's office and that it could negatively impact the way diversion currently works in Adams County.

Dr. Fox replied that this model pilot program is not compulsory and therefore the proposal would not impact Adams County in any way. He clarified that the two programs are fundamentally different because the pilot program under discussion is focused on post-arrest, pre-file cases. He added that the program is not intended to disrupt current diversion programs that are already working. Mr. Stroker explained that the availability of diversion programs varies greatly across the state and that while some jurisdictions may have effective programs in place, others could benefit significantly from implementing a diversion program such as this. Sheriff Pelle explained that there are a number of points in the continuum of justice-involvement where people can be diverted from the system. This program is different from 'sidewalk' diversion or front-end diversion. This is diversion at the second point in the system where someone has already been arrested, often because of behavioral issues.

Pete Weir noted that he has concerns about the program and that Jefferson County also has very robust adult and juvenile diversion programs which are independent and do not receive any state funds. He said there may be other district attorneys who would be willing to abrogate their responsibilities and authority to participate in this model, but he believes that blurs the distinction and responsibility of the key players. The collaborative process described in the model has been used successfully in problem solving courts like Drug Recovery Court or Veterans Treatment Court but only on a post-filing basis. Mr. Weir added that he would welcome the assessment and the information that could be provided by the experts in

making appropriate decisions, but that there is often an obstacle from the defense perspective when it comes to sharing sensitive information outside the sanctity of the attorney/client privilege. He explained it is frustrating as prosecutors do not have full access to information up-front. He summarized that he would not participate in a program where he would have to defer his responsibility as a prosecutor to a committee comprised of a prosecutor, a judge and a defense attorney. Mr. Weir offered that instead of this kind of proposal, the Commission should recommend to the Legislature the need for funding and alternatives for enhanced services and options in the community so the criminal justice system is not the default position. He summarized that he believes the state needs to greatly expand opportunities and services provided to people with mental health issues.

Doug Wilson highlighted a few points about the program and emphasized that the proposal calls for pilot sites, which means that the program is voluntary and no jurisdiction is required to participate, therefore it would not interfere with any diversion programs already operating. He explained that what the program does offer is an opportunity to collect data that is currently unavailable. Additionally, specialty courts are problematic in that people are required to plead guilty in order to receive mental health treatment and services, and this model offers an alternative to that process. Finally, Mr. Wilson said that he does not believe the collaboration outlined in the model abrogates a district attorney's prosecutorial decision making. The concept provides a framework where all stakeholders have an opportunity to determine whether someone with a low-level, misdemeanor, petty, non-VRA offense would be better served in a community-based diversion program. It also does not prohibit a district attorney from eventually filing charges if something does go awry. The Task Force is simply looking for communities who are interested in becoming involved in a pilot project while understanding if jurisdictions do not want to participate they do not have to.

COMMUNITY LAW ENFORCEMENT ACTION REPORTING (CLEAR) ACT FOLLOW-UP
Kim English, Division of Criminal Justice, Office of Research and Statistics

Mr. Hilkey introduced Kim English from the Division of Criminal Justice and reminded the group that in March, Ms. English gave a presentation on the CLEAR Act which calls for the analysis of race, ethnicity and gender at major decision points in the system, including arrests, filings, and sentencing. The major findings of the original (2015) analysis were that blacks are more likely to be arrested, blacks are less likely to get deferred judgements, and blacks are more likely to receive a sentence to confinement. After that presentation Commissioners asked Ms. English to disaggregate the statewide data by individual judicial districts. Ms. English explained that she is at the meeting today to update Commissioners on the status of that request and to report the findings of the new (2016) analysis. The full presentation can be found on the Commission website at colorado.gov/ccjj.

DISCUSSION

Ms. English explained that the 22 reports, one for each Judicial District, plus the statewide report, are available at colorado.gov/dcj-ors/ors-SB185. The Office of Research and Statistics disseminated the reports to all of the (mostly larger) judicial districts that have a criminal justice planner and a criminal justice coordinating council. Tom Raynes, Executive Director of the Colorado District Attorney's Council, distributed the report to all of the district attorneys. Doug Wilson emailed the report to all of the state's public defenders. The reports were also sent to the County Sheriffs of Colorado (CSOC) and will be circulated soon to the Colorado Association of Chiefs of Police. Ms. English asked Commissioners to contact her if they are aware of anyone else or any other organizations that would benefit from the information.

Mr. Hilkey thanked Ms. English for the presentation and noted that oftentimes an analysis such as this lead can lead to even more questions. He asked if there is any sort of comprehensive list of some of the other reasons that influence disparity in the criminal justice system such as poverty and socioeconomic

status. Ms. English replied there is research that indicates certain circumstances put individuals at greater risk for criminal activity, but the multivariate analyses conducted for the larger judicial districts included factors that are included in criminal justice case decision making (past violence, current violence, criminal history, etc.) and that significant disparity was found nevertheless. Mr. Hilkey noted that the logical next step is for local jurisdictions to utilize the information from this analysis in conjunction with their own local data and knowledge, to study how choices are made at various decision points. Ms. English agreed that individual jurisdictions can examine their local data, in conjunction with local practices, to augment the information available in this analysis. The more localized the data is the more actionable it is. Melissa Roberts noted that it is also important for state agencies to examine their practices around revocations, regression and termination decisions as that impacts operations on a local level as well.

Sheriff Pelle observed that the role of the state and the Commission at this point is to be available to provide assistance and guidance to local jurisdictions as needed. Ms. English added that the information provided in the report from the Brennan Center offers guidelines and a method by which local jurisdictions can examine their decision making processes and procedures. Mr. Hilkey thanked Ms. English and her team in the Office of Research and Statistics for their hard work on this issue.

SUNSHINE LAW DISCUSSION

Stan Hilkey, Chair and Executive Director of the Department of Public Safety

Chair Hilkey began a discussion about Colorado's Sunshine Law, which provides parameters by which public meetings are conducted. The law states that all meetings of two or more members of any state public body where any public business is discussed must be open to the public. Mr. Hilkey reported that a question was raised by one of the working groups of the Pretrial Release Task Force about whether working group meetings are considered open meetings. After researching the issue and talking to counsel it was determined that the Commission itself would be considered the "public body" and therefore when two or more members of this group are present at a meeting it becomes an open meeting.

The Commission acknowledges that the monthly Commission meeting and monthly task force meetings have always been considered open meetings, but that most of the time the smaller working group meetings usually have only one official member present, and sometimes even no Commission or Task Force members. Further, the working groups study issues and do not make decisions; rather, they bring the information back to the larger task force for discussion. With that in mind, the group agreed that it is the policy of the Commission that the smaller working group meetings are not open to the public but that all task force and Commission meetings are open.

Mr. Hilkey offered a couple of options for proceeding: the group can leave the practice as-is and address it if it is challenged in the future, or the Commission can request a formal position from the Attorney General's Office. Mr. Stroker clarified the working groups are largely tasked with gathering information, developing ideas and reporting back to the task forces, but that they take no formal action on their own. As far as open meetings, any and all decision-making actually takes place only at the Task Force or Commission level. Mr. Hilkey asked for input from Commissioners on the will of the group going and the desired position of the Commission going forward. Commissioners agreed to move forward with the current practice of considering Commission and Task Force meetings open to the public, while working group meetings are to remain closed.

ADJOURNMENT

Before adjourning the meeting Mr. Hilkey noted that planning is underway for the newly created Age of Delinquency Task Force. He reported that Scott Turner and Jessica Jones have offered to co-chair the group, and that they met with Commission leadership prior to this meeting to discuss task force membership, charge and logistics. The first meeting of the group is scheduled for Wednesday, February 7th and Mr. Hilkey asked Commissioners if any of them would like to participate. Kelly Friesen, Meg Williams and Tony Gherardini volunteered to take part in the task force.

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. He pointed out that starting in 2018 the Commission will hold its meetings in a new location at the Jefferson County Department of Human Services. Mr. Hilkey added that the annual retreat is typically held in February but since the Commission renewal is still to be determined the retreat will be rescheduled until summer, after the formal renewal takes place. Seeing no further business Mr. Hilkey adjourned the meeting at 2:45 p.m.

**Starting January 2018, the Commission meeting location will be:
Jefferson County Dept. of Human Services
900 Jefferson County Pkwy, Golden, CO 80401**