



**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

June 12, 2020 / 1:00-4:00pm

**(Virtual Meeting)**

**Commission Member Attendance**

Stan Hilkey, Chair	Serena Gonzales-Gutierrez - ABSENT	Tom Raynes - ABSENT
Abigail Tucker, Vice Chair	Kristen Hilkey	Cliff Riedel
Chris Bachmeyer	Nancy Jackson	Megan Ring - ABSENT
Minna Castillo-Cohen - ABSENT	Jessica Jones	Gretchen Russo
Shawn Day	Bill Kilpatrick	Matt Soper - ABSENT
Janet Drake	Rick Kornfeld	Jennifer Stith
Valarie Finks - ABSENT	Matt Lewis	Glenn Tapia - ABSENT
Bob Gardner - ABSENT	Andrew Matson	Anne Tapp
Priscilla Gartner	Greg Mauro	Dean Williams
Julie Gonzales - ABSENT	Angie Paccione	Joe Thome, <i>ex officio</i>

**Guests:** Audrey Weiss

**CALL TO ORDER AND OPENING REMARKS**

**Stan Hilkey, CCJJ Chair, Executive Director/Colorado Department of Public Safety**

**Abigail Tucker, CCJJ Vice Chair, Chief Clinical Officer/Community Reach Center**

Mr. Hilkey, Commission Chair called the meeting to order at 1:30 pm. Mr. Hilkey thanked Commissioners for attending and reminded the group that this meeting reopens the Commission activities after the April 10 motion to suspend proceedings until June. He asked for any additions or corrections to the April 10, May 22 and May 27 minutes. A motion was offered and seconded to approve the three sets of minutes. Commissioners unanimously approved these previous minutes.

Mr. Hilkey reviewed the agenda and explained that the goal of the meeting was to hear preliminary recommendations from the Task Forces and Subcommittee for a vote in July and provide an overview of future work for the Commission.

**OPIOID INVESTIGATIONS SUBCOMMITTEE**

**Preliminary Recommendation Presentation**

**Matt Lewis, Bill Kilpatrick, Subcommittee Co-Chairs.**

Sheriff Lewis directed Commissioners to the preliminary recommendations provided in the meeting materials. The Subcommittee gathered feedback and data from law enforcement agencies, drug task forces, and federal agencies across Colorado that are engaged to address the opioid problem. The focus

of the work was to explore these agencies' efforts, learn how they work together, identify successes and, if gaps existed, whether there were opportunities to bolster inter-agency communication, response, and/or capabilities. The central elements of each of three draft recommendations follows.

**FY20-OP #01. Establish a Statewide Entity to Coordinate Strategy Regarding Dangerous Drugs**

Establish a narcotics enforcement entity, the Dangerous Drugs Coordination Council ("the Council"), that facilitates and coordinates the sharing of information among law enforcement agencies across the state. The Council, to be housed in the Colorado Department of Public Safety, will provide a structure for collaboration, information sharing, and efforts to support local law enforcement agencies.

The Council:

- will coordinate strategic responses to emerging illicit drug trends, regardless of the drug type involved
- will orchestrate the implementation of an emergency medical service tracking and reporting system, the Overdose Detection Mapping Application Program (ODMAP)
- requires one full time employee (FTE) to coordinate the meetings and meet the analytical needs of the entity. The position will be housed in the Colorado Department of Public Safety where it can benefit from the work of the Colorado Information Analysis Center (CIAC)
- shall include at a minimum, representatives from the following:
  - Colorado Information Analysis Center
  - Colorado Coroners Association
  - Colorado Health Care Policy and Financing
  - Colorado Department of Public Health and Environment
  - 1 Police Chief, rural district
  - 1 Police Chief, urban district
  - 1 Sheriff, rural district
  - 1 Sheriff, urban district
  - Colorado Drug Investigators Association
  - Colorado District Attorney's Council
  - Colorado Attorney General's Office
  - Colorado Bureau of Investigations
  - Colorado Department of Public Safety
- To facilitate coordination and collaboration, shall invite important Federal partners and stakeholders that include but are not limited to the following:
  - U.S. Attorney's Office
  - U.S. Homeland Security Investigations
  - U.S. Postal Inspection Service
  - U.S. Drug Enforcement Administration
  - Rocky Mountain High Intensity Drug Trafficking Area
  - Federal Bureau of Investigation
  - Bureau of Alcohol Tobacco Firearms and Explosives

**FY20-OP #02. Establish a Statewide Dangerous Drugs Investigation and Enforcement Team**

Establish a statewide Dangerous Drugs Investigation and Enforcement Team within the Colorado Bureau of Investigation (CBI) to assist and support law enforcement around the state to identify and investigate unlawful opioids and other dangerous drugs. Rural and frontier areas will be the priority for this team.

In order to meet the expected investigative demands, the vast geographic area to be served and special considerations relating to officer safety, the Dangerous Drugs Enforcement Team will comprise 16 total staff members divided into two teams: one assigned to the western and one to the eastern slope. It is estimated that the total costs will range between \$2.6M to \$3.0M over the first 3 years of operation. These 16 team members will consist of the following:

- 10 Agents (Criminal Investigator II; 5 Grand Junction/Durango and 5 Douglas Co./Pueblo)
- 2 Agents in Charge (Criminal Investigator III; One supervisor assigned to each slope)
- 2 Intelligence Analysts (One assigned to each slope)
- 2 Administrative Assistants III (One assigned to each slope)

**FY20-OP #03. Implement Unified Drug Overdose Reporting and Tracking**

Implement and require participation by public safety and public health personnel in the Overdose Detection Mapping Application Program (ODMAP) in Colorado. The Washington/Baltimore High Intensity Drug Trafficking Area's ODMAP is an emergency medical service tracking and reporting system. To facilitate expeditious public health and law enforcement responses to save lives in Colorado, the following entities should be required to implement and participate in this program:

- The statewide ODMAP implementation will require coordination and leadership. The Dangerous Drugs Coordination Council (created in Recommendation FY20-OP #01) will be responsible for directing the implementation of ODMAP, including outreach to rural agencies, and facilitating statewide participation.
- Emergency Medical Services (EMS), Coroners, Law Enforcement & Emergency Departments (ERs)

**DISCUSSION**

*[The questions and comments occurring throughout the presentation of the three recommendations are reflected in the following summary.]*

Regarding Rec. #01, "the Council" would require a statutory provision and funds to support one FTE that is also assigned to the work related to Rec. #03 (Overdose Reporting and Tracking). The group focused on developing recommendations that would effectively address the gaps identified, without taking into consideration the budget consequences due to the COVID-19 pandemic. This "Council" would be modeled generally on the design of the Colorado Fire Commission (Website: [colorado.gov/dfpc/fire-commission](http://colorado.gov/dfpc/fire-commission); See also, S.B. 2019-040).

Relating to Rec. #02 (Investigations Team), a survey sent to law enforcement agencies in February 2020, indicated that nearly all of the respondents (95%) reported that, if available, they would utilize additional investigative resources related to unlawful opioids and other dangerous drugs. The survey found that, although there are good resources available to those on the eastern and western slopes, many smaller agencies with the greatest need for resources were also in areas with significant opioid

problems. The Teams and CBI would provide whatever level of assistance is needed by the local agency, but such investigations would not fall under the jurisdiction of CBI. Additionally, Rec. #02 would have a budget impact. Sheriff Lewis stated that because funding priorities have shifted in response to COVID-19, the ability for jurisdictions to implement elements of recommendations FY20-OP#01 and #02 would be possible only when resources become available.

Rec. #03 (Overdose Reporting and Tracking) would mandate Colorado law enforcement and other state agencies participate in the use of ODMAP (Overdose Detection Mapping Application Program; see [odmap.org](http://odmap.org)). Although no one is a fan of mandates, the data available in the system is reported to be an invaluable resource and early warning system for law enforcement, public health agencies, and hospitals around the country who are using the system. Even if the service is reportedly free to implement, might there still be administrative costs associated with data tracking and entry? Sheriff Lewis indicated that ODMAP is a free web-based product and was assured there would be no administrative costs associated with implementation of the software, but this does not address whether there might be other associated administrative costs.

The group discussed that, while the Dangerous Drugs Coordination Council (FY20-OP#01) would be responsible to facilitate and coordinate the sharing of information among law enforcement agencies, it was suggested the recommendation might be amended to include a consequence for lack of participation in ODMAP data entry. The Subcommittee discussed a non-compliance penalty, but decided not to include such a provision in the recommendation, instead depending on “the Council” to demonstrate the value of participation. This might be a matter for additional discussion at the July CCJJ meeting.

### **AGE OF DELINQUENCY TASK FORCE**

#### **Preliminary Recommendation Presentation**

#### **Joe Thome, Jes Jones, Task Force Co-Chairs**

Ms. Jones shared that the Age of Delinquency Task Force started its work by agreeing on the following values:

- Young adults should be given an opportunity for growth and development while maintaining public safety.
- There are different levels of misbehavior with proportional public safety risks.
- Family support matters, even for those 18 and older.
- Accountability and consequences are of utmost importance, but responses to behavior should be individualized and informed by the developmental features of young adulthood.
- Understanding the influence of environmental factors and the influence of peers and others in a young adult’s life are critical to one’s ability to work with this age group.
- Trauma is not an excuse for one’s behavior, but it does inform how that behavior is addressed.
- Support a culture shift in the system and create standards and guidelines specific to this young adult population.

Mr. Thome presented the two preliminary recommendations derived from work on the mandates in House Bill 2019-1149 to study issues surrounding emerging adults and the age of delinquency. The Task Force reviewed best practices and brain development research to yield the most feasible ideas from the

possible approaches that were explored. The first recommendation was shepherded by Task Force member Shawn Cohn and the Community Supervision Working Group members who gathered feedback and advice from chief probation officers around the state. The second recommendation was guided by Maureen Cain and the Youthful Offender System (YOS) Working Group that included representatives of YOS. The central elements of the two draft recommendations follows.

**FY 20-AD #01. Incorporate Standards to Formally Recognize and Address the Needs of Young Adults in Probation Supervision [Policy]**

Adult probation supervision standards promulgated by the Judicial Department should be modified and expanded by July 1, 2021 to create specific standards associated with probation supervision of young adults (18-24-year olds). These supervision standards should reflect current research and knowledge about age and brain development, especially regarding matters such as impulsivity, risk taking, and appreciating consequences of actions taken. Further, these standards should be guided by evidence-based or emerging best practices regarding the supervision of young adults, including case management approaches, involvement of the family in supervision efforts, responses to violations, the use of appropriate assessment tools, the use of restorative justice principles and practices, and partnerships with providers and the community to meet the needs of this population.

The implementation of this policy update should include the following:

- Training regarding brain development,
- Targeted interventions based on brain science,
- The need for development of partnerships with service providers and other community stakeholders to meet the needs of this population,
- Restorative justice,
- Assessment and case planning; case planning that incorporates educational/vocational training and life skills.
- Technical assistance should be provided to probation departments to facilitate the implementation of best practices.

**FY20-AD #02. Revise Youthful Offender System Statutes [Statutory]**

Expand the operational flexibility of the Youthful Offender System (YOS) program in the Department of Corrections; clarify the time credits that are awarded in YOS cases when a revocation occurs; address issues regarding payment of certain fees in YOS cases; and modify training requirements for DOC staff who work with inmates that are placed in YOS facilities.

Specifically, modify the following provisions in statute:

- 1) Delete in 18-1.3-407 (2)(a)(IV)(a.5) the prescriptive programming language;
- 2) Amend “may” to “shall” in 18-1.3-407 (2)(a)(IV)(b) regarding time credit;
- 3) Amend 18-1.3-407 (3.3)(c)(I) regarding placement in YOS Phase II;
- 4) Add “OR DESIGNEE” in 18-1.3-407 (3.5) regarding staff transfers to reflect current practice;
- 5) Amend 18-1.3-407 (3.5) to allow flexibility regarding staff training requirements;
- 6) Delete 18-1.3-407 (11) regarding district attorney data collection; and
- 7) Amend 18-1.3-407 (11.5)(a)(I) and (11.5)(c) to clarify court cost payments.

**DISCUSSION**

*[The questions and comments occurring throughout the presentation of the two recommendations are reflected in the following summary.]*

Regarding Rec. #01 (Probation Standards), according to analyses conducted by the Division of Criminal Justice for the Task Force, in 2019, 63% of defendants who were 18-24 years old at the case filing date and were sentenced in district, county and juvenile delinquency courts received probation supervision. The Task Force concluded that probation standards specific to this emerging adult population would be invaluable to foster the success of these individuals serving a probation sentence. Shawn Cohn has indicated that the creation of such standards has been in the planning phase at the Probation Division.

Regarding Rec. #02 (YOS Revisions), the intent of the statutory revisions is to provide greater flexibility to implement best practices. Dean Williams (CDOC Executive Director) thanked the Age of Delinquency Task Force members for their work around the Youthful Offender System. Mr. Williams discussed Senate Bill 20-169 (*Concerning Housing Mentors in the Youthful Offender Facility*), that was approved by the Senate but was postponed indefinitely on May 26, 2020 by the House Judiciary Committee amid the COVID-19 related bill deliberations. Under existing law, offenders sentenced to YOS are housed and serve their sentences in a facility separate from, and are not brought into daily physical contact with, inmates older than 24 years of age who are sentenced to the general population of the Department of Corrections. The bill would have added an exemption that permits youthful offenders to be housed with a select group of inmates who are participating in a mentoring program. Mr. Williams is hopeful that the next legislative session will successfully address both the YOS recommendation and the complementary mentoring legislation.

**DRUG OFFENSE TASK FORCE****Preliminary Recommendation Presentation****Audrey Weiss, Task Force Member**

Ms. Weiss briefly described one of the mandates in Senate Bill 2019-008 for the Commission to make recommendations concerning a process for *automatically* sealing criminal records for certain drug offense convictions. She also referenced House Bill 2019-1275 (*Concerning Increased Eligibility for the Sealing of Criminal Justice Records by Individuals Who Are Not Under Supervision*) that reenacted statutes related to the sealing of records via a simplified sealing process or a simplified petition process, depending on particular offenses and case circumstances. The work on automatic sealing is an extension of the groundwork laid by H.B. 19-1275. The Sealing Working Group engaged with individuals in Pennsylvania and Utah where similar automatic sealing efforts are underway.

**FY20-DR #01. Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses**

Create, implement, and fund a process that will permit the automatic sealing of criminal conviction records for drug offenses. The State Court Administrator's Office (SCAO), the Colorado Bureau of Investigations (CBI), and each district attorney's office will implement procedures to evaluate cases that qualify for automatic sealing and will automatically seal eligible cases without associated fees, a Motion or a Petition to Seal being filed by the defendant.

The following describes the recommended process:

- The State Court Administrator's Office (SCAO) will prepare a list of drug convictions that are eligible to be sealed pursuant to Sections 24-72-703 and 24-72-706, C.R.S. from the current state database. Cases that qualify for automatic sealing will be based on the drug charge(s) of which the defendant was convicted, the lack of any subsequent criminal convictions during the requisite waiting period, the lack of any pending criminal cases, and the payment in full of all fines, fees, costs, and restitution. The current state database and the database used by entities not on the state system (for example, the City and County of Denver) will be reviewed for subsequent convictions and pending criminal cases. This review is name-based and a sufficient number of points of reference for identification validation will be determined by SCAO. If a sufficient number of points of validation are not present, the conviction is not eligible for automatic sealing. Convicted charges must be drug charges only and all charges must qualify to be sealed. Petty offense/misdemeanor drug convictions will qualify for automatic sealing seven years after the disposition of the case, and felony drug convictions will qualify for automatic sealing 10 years after the disposition of the case. The list will be categorized by judicial district.
- The SCAO will forward the list of eligible cases to the Colorado Bureau of Investigations (CBI). CBI will compare the list to criminal histories on file. This review is fingerprint-based, and a sufficient number of points of reference for identification validation will be determined by CBI. If a sufficient number of points of validation are not present, the conviction is not eligible for automatic sealing. CBI will disqualify any cases in which the defendant was convicted of criminal charges during the requisite waiting period.
- CBI will forward the amended list to the district attorney's office in each judicial district. The district attorney's office will disqualify cases in which a condition of the plea bargain agreement was not to seal the case and cases where the defendant has pending criminal charges.
  - (1) Each district attorney's office will forward the amended list to the SCAO. The SCAO may be given the authority by the presiding Chief Judge of each judicial district to sign off on a sealing order. If the SCAO is given this authority by the Chief Judge, then the SCAO will have a sealing order issued in each case, pursuant to this authority. SCAO will seal the court record. SCAO will transmit a copy of the sealing order to CBI, the law enforcement agency that investigated and filed the case, and the district attorney's office to seal their records.

OR, if the Chief Judge does not give this authority to SCAO,
  - (2) The district attorney's office will forward the amended list to the district court(s) in their respective district(s) who will enter an order to seal each case. The list of sealed cases will be transmitted to the SCAO. The SCAO will seal the court records. A copy of the sealing order will be transmitted by SCAO to CBI, the law enforcement agency that investigated and filed the case, and the district attorney's office to seal their records.
- Reasonable efforts will be made to create and implement the programs and procedures necessary for automatic sealing. Development, creation, and testing of the process should be completed within two years.
- The generation of the list by SCAO of the backlog of eligible cases and the entry of the sealing order for the backlog cases should be completed within one year after the development, creation, and testing of the process is completed, subject to available resources.
- Once the backlog of cases is completed, SCAO will generate a list of eligible cases for sealing every 35 days. CBI and each district attorney's office will be allowed 35 days to complete their functions in reviewing the list of eligible cases under the statutory mandate. Each district court or SCAO

under the authority of the district court will enter the order as soon as practical but no later than 14 days. Once the sealing order is received, CBI, law enforcement and the district attorney's office shall seal their records as soon as practical but no later than 14 days.

- Funding should be provided for initial development and continued maintenance for each agency involved in the process.

#### DISCUSSION

There were no follow-up questions or comments on the sealing recommendation.

**PUBLIC COMMENT:** No members of the public signed up to offer comment.

#### WRAP-UP DISCUSSION

Mr. Hilkey reminded Commissioners that, in accordance with the requirements of the reauthorization of the Commission in H.B. 2018-1287, the Commission must request a letter every other year from the Governor regarding suggested topics of study. In preparing the letter to the Commission, the Governor is encouraged to consult with the Chief Justice of the Colorado Supreme Court and Legislative leadership. Mr. Hilkey anticipated that the Governor's letter will be received in the coming weeks (This will be the first of these letters from the Governor since the bill was enacted in 2018). He also indicated that a special meeting might be called to review the topics outlined in the Governor's letter.

Mr. Hilkey commented that the COVID-19 pandemic has impacted almost every aspect of society. He engaged Commissioners to think about opportunities to study such impacts, particularly with regards to the correctional population and the criminal justice system. Are there significant policy changes implemented during the pandemic that might inform long-term systemic changes to the criminal justice system?

Chief Bill Kilpatrick expressed an interest in the effects on jail occupancy. He indicated that Jefferson County implemented a jail reduction program before the outbreak of COVID-19 and believed the reduction of the jail population accelerated significantly with the pandemic. Chief Kilpatrick was curious whether the intentional reductions in jail population affected public safety and/or resulted in increases in failures to appear for court dates. Pricilla Gartner indicated that there had also been considerable declines in the juvenile detention population and expressed a similar interest in whether there were any public safety impacts. Andrew Matson commented that other societal dynamics, such as the ongoing protests for social justice, might cloud the ability to isolate the effects of the pandemic.

The next regularly scheduled Commission meetings are 1:00pm on Friday, July 10 and Friday, August 14. Commissioners should watch for any special meeting notice prior to the regular meeting on July 10.

#### ADJOURNMENT

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. Seeing no further business, Mr. Hilkey adjourned the meeting at 2:31 pm.