



COLORADO

Commission on Criminal & Juvenile Justice

Department of Public Safety
Colorado.gov/CCJJ

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TO: The Judiciary Committees of the Colorado House of Representatives and the Senate, the Public Health Care Committee of the House of Representatives, and the Health and Human Services Committee of the Senate

FROM: The Commission on Criminal and Juvenile Justice
Stan Hilkey, Chair

RE: Senate Bill 2019-008, Final Report

Background. Senate Bill 2019-008, *Concerning Treatment of Individuals with Substance Use Disorders Who Come into Contact with the Criminal Justice System*, mandated that the Commission study and make recommendations on the following issues:

- (A) Alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses;
- (B) Best practices for investigating unlawful opioid distribution in Colorado, including the potential creation of black market opioid investigatory entities at the state and local levels; and
- (C) A process for automatically sealing criminal records of convictions for drug offenses.

This information was to be presented to the above committees of the House and Senate on July 1, 2020. As described in our July 1, 2020 update to the General Assembly, due to the pandemic, on April 10, 2020, the Commission voted to suspend its work until June. A consequence of this suspension was a delay in providing the information by July 1, as mandated in Senate Bill 2019-008. We apologize for the delay; please find attached the Commission’s final products per the requirements of the bill.

Process. The Commission seated an Opioid Investigations Subcommittee and a Drug Offense Task Force to address the mandates of Senate Bill 2019-008. In the spring of 2020, three recommendations were developed and unanimously approved by the Subcommittee, and one recommendation was developed and unanimously approved by the Task Force while work continued on a second Task Force recommendation. The second Task Force recommendation pertained to diversion (issue (A), above) and, following the significant impact of COVID-19 on justice system practices and the state budget, the original recommendation was abandoned in favor of a public health response to drug involved





individuals. The revised recommendation was unanimously passed by the Task Force and forwarded to the full Commission for consideration, as were the other recommendations developed pursuant to Senate Bill 2019-008. Details about this work by the respective committees can be found on the Commission web site, ccjj.colorado.gov/ccjj-opinvsubc and ccjj.colorado.gov/ccjj-dotf.

Conclusion. The Commission approved the following recommendations:

- Recommendation FY20-DR #01, *Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses [Budgetary]*
- Recommendation FY20-DR #02, *Support a Public Health Model of Deflection [Policy]*
- Recommendation FY20-OP #01, *Establish a Statewide Entity to Coordinate Strategy Regarding Dangerous Drugs [Statutory, Budgetary]*
- Recommendation FY20-OP #03, *Implement Unified Drug Overdose Reporting and Tracking [Statutory]*

Note that one recommendation from the Opioid Subcommittee was not approved by the Commission. This recommendation specifically addressed issue (B), above, regarding developing a statewide entity for opioid investigations. However, given the impact of COVID-19 on the state budget and in light of social justice protests in Colorado and nationwide, this recommendation was not supported by the Commission.

Please find attached the four recommendations approved by the Colorado Commission on Criminal and Juvenile Justice in response to Senate Bill 2019-008.



DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

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

Recommendation FY20-DR #01

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 Investigation (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 Investigation (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,

DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

(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.
- A procedure should be enacted whereby defendants can confidentially view a website to determine whether their case has been sealed. Additionally, with proper safeguards in place, the defendant should be permitted to contact the district court where their case has been sealed to obtain a copy of the sealing order.

[Note: No statute placement or language has been prepared for this recommendation.]

Discussion

Colorado currently permits the sealing of a number of petty offense, misdemeanor, and felony drug convictions, pursuant to Sections 24-72-703 and 24-72-706, C.R.S. The current procedure requires the defendant to file a Motion to Seal with the Court in the jurisdiction in which the conviction occurred. The defendant is required to pay a \$65 filing fee or apply to have the fee waived if indigent. Once the case is sealed, the defendant is required to pay a \$20 fee to the Colorado Bureau of Investigation to seal the arrest record.

For many people, involvement in the criminal justice system leads to perpetual unemployment, housing insecurity, and the loss of income for themselves and their families. Colorado's system requires that an individual must affirmatively pursue relief by filing a motion or a petition with the court. This process, while beneficial to some, can be cumbersome for others. Additionally, there is a lack of awareness regarding who is eligible for sealing, and many people who have an eligible record may be unaware of the opportunities for relief. Moreover, the required fees associated with sealing can also be a barrier. Record sealing opportunities provide avenues for economic self-sufficiency. By removing barriers to employment and housing, expanded record sealing would provide a chance to move on and become more productive citizens.

DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

Research indicates that policies that reduce economic obstacles for those with criminal histories are effective at lowering recidivism and strengthening public safety, given the association between limiting access to an individual's record of conviction and a lower recidivism rate. A process for automatic sealing of drug convictions would eliminate the need to file a Motion to Seal with the Court and eliminate the payment of the fees as noted above.¹

The initial obstacle to automatic sealing of drug convictions is that not all Colorado courts are on a unified database system. None of the 215 municipal courts in Colorado are on the state court database. Therefore, this excludes municipal convictions as a reason for disqualification of automatic sealing. In larger municipalities throughout the state, such as Aurora, Denver, Colorado Springs, and Lakewood, many misdemeanor offenses are filed as municipal criminal offenses. Excluding these criminal convictions as disqualifiers for the sealing of convictions is inconsistent with the current language in Sections 24-72-703 and 24-72-706, C.R.S.

Additionally, the City and County of Denver is not on the state court database; therefore, those misdemeanor criminal cases are not accessible directly by the SCAO to review for potential automatic sealing. A unified, centralized database, including all courts in Colorado, would be required to permit all cases that qualify to be automatically sealed, and those that do not qualify due to subsequent criminal convictions to be removed from consideration. Due to this constraint, any legislation requiring automatic sealing of drug convictions would either need to require and fund the creation of a unified database throughout the state, or amend the language regarding subsequent convictions to be limited to only misdemeanors and felonies.

Utah and Pennsylvania are currently preparing systems for the automatic sealing of a limited number of criminal convictions. Both jurisdictions have provided information and suggestions in creating and implementing a process for automatic sealing. In Utah, the Administrative Office of the Courts (AOC) and the Bureau of Criminal Investigation (BCI) will require 3-4 years to fully implement the procedures required by their legislation. AOC requested \$1 million, but received \$400,00 the first year, then \$200,000 each subsequent year to implement the bill. BCI received \$500,000 for the development of the program. It is unknown whether they received funding for subsequent years. The Utah Division of Wildlife Resources received \$100,000 in funding in the bill. All courts throughout the State of Utah are on a unified database.

In Pennsylvania, the Administrative Office of the Pennsylvania Courts (AOPC) and the Pennsylvania State Police (PSP) were given one year to build and test an automated system. Many problems arose during this short implementation period, and they recommended a minimum of two years is necessary to create and test an automated system. APOC received \$3 million to implement an automated system, and PSP was given \$200,000 to upgrade the existing system to accommodate an automated process. PSP has requested funds for yearly maintenance of their systems, and that request is pending. All of the courts throughout the State of Pennsylvania are on a unified database.

¹ Pursuant to the current mandate, this recommendation only addresses automated sealing of eligible *drug-related* offenses. These same processes may serve as a model for other criminal records that become eligible for sealing.

[As Approved]

DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

The Colorado Bureau of Investigation estimates that two years will be required to upgrade its system to include an automatic sealing capability. The initial cost would be approximately \$2 million. No additional costs for ongoing maintenance would be requested by CBI for this specific function.

The Office of the State Court Administrator would request two years to complete an upgrade to their computer system to permit automatic sealing. The initial cost would be approximately \$224,640 for a software engineer to complete the upgrade and approximately \$950,000 to develop the programming, architecture, and software to communicate with the City and County of Denver database. The ongoing maintenance cost would be \$175,000 per year.

CBI maintains a contract with a sole source vendor for yearly maintenance and upgrades to their computer system. SCAO maintains its own database, and initiates external contracts with software engineers for specific projects. Code for America is a non-profit organization that is available to assist in an initial assessment review and implementation procedure for automatic record sealing. The cost of implementing this recommendation may be lower to the extent Code for America or similar organizations may be available to provide free technical assistance.

An automatic process of sealing drug convictions does not contemplate notice to each defendant that their case has been sealed. Once automatic sealing of drug convictions begins, a public service information campaign should be created and funded to alert defendants how to determine whether their prior drug conviction has been sealed. A procedure should be enacted whereby defendants can confidentially view a website to determine whether their case has been sealed. Additionally, with proper safeguards in place, the defendant should be permitted to contact the district court where their case has been sealed to obtain a copy of the sealing order.

An automatic process of sealing drug convictions will not preclude a defendant from filing a Motion to Seal Criminal Conviction Records pursuant to the current statutory authority, if the records are eligible to be sealed and automatic sealing has not occurred.

DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
September 11, 2020

FY20-DR #02. Support a Public Health Model of Deflection [Policy]

Recommendation FY20-DR #02

Fund public health interventions that strengthen community resources and expand alternatives to filing criminal charges against adults and youth with substance use issues who are at risk of justice involvement. By aspiring to a public health approach — which redirects adults and youth with substance abuse issues engaging in behaviors that can lead to incurring criminal charges from the justice system entirely — this recommendation shifts priorities in funding upstream, supporting the still inadequate system for care coordination and treatment. Recognizing that funding diversion programs that are post-arrest continues to inadvertently reinforce the justice system as the point of intervention for many adults and youth with substance use disorder treatment needs, notwithstanding potential for co-occurring mental health needs, true alternatives are still needed to avoid the justice system operating as a healthcare system of intervention and care.

To facilitate this approach, implement the following:

- Priority #1: Provide funding and improve access to coordinated treatment provider and care coordination systems so that adults, youth and families can access services, interventions, supports, and treatment modalities within their community, leading to a decrease in call volume for first responders and reliance on the justice system as a point of intervention and to improved community wellness.
- Priority #2: Continue to improve training and to enhance service provider collaboration with law enforcement including but not limited to expanding co-responder and law enforcement diversion programs and deflection models that also include the critical component of care coordination, treatment when and where necessary and community engagement. Without community supported and appropriately funded alternative case management and treatment options, first responders will continue to be left without options that match the complexity of needed care.
- Priority #3: Continue to increase post-arrest diversion opportunities to create multiple “off-ramps” from criminal and juvenile justice system entanglement and prioritize programs using a harm-reduction approach to address the underlying needs of individuals, the community, and victims.

Discussion

In response to worldwide shifts in our collective experience and perspective regarding racial and ethnic equity, as well as considering the dramatic changes implemented in response to the COVID19 pandemic, this public health model recommendation seeks to shift the primary response to individuals with substance and mental health needs to the behavioral and public health systems instead of relying on the criminal and juvenile justice systems to handle these health needs. This approach allows individuals to avoid justice system entanglement, and improves health and safety outcomes for individuals and communities.

To ensure integrity to the legislative mandate to the Commission specified in Senate Bill 2019-008, please see the abandoned recommendation in Appendix 1. However, the recommendation above reflects the current perspective of the Drug Offense Task Force in response to the mandate and outlines a larger system shift in resources.

DRUG OFFENSE TASK FORCE
ABANDONED RECOMMENDATION
September 11, 2020

Appendix 1: Abandoned Recommendation

This recommendation reflects the initial work by the Diversion Working Group of the Drug Offense Task Force on the legislative mandate to the Commission specified in Senate Bill 2019-008. This entire recommendation draft was abandoned and replaced by Recommendation FY20-DR #02 (Support a Public Health Model of Deflection [Policy]).

To reduce the number of persons with substance abuse issues committing offenses and entering the criminal justice system, establish statewide funding and support alternatives to filing criminal charges against adults with substance abuse issues who are contacted by law enforcement for drug-related offenses. Fund and support four (4) innovative Adult Diversion pilot programs targeting adults whose primary driver for intersecting the criminal justice system is a substance abuse disorder¹ and whose contact with law enforcement is for a drug-related offense.²

Because communities in Colorado vary significantly in the availability of resources, public safety risk tolerance, and community support for this approach, the design of pilot program should be based on local community assets and needs. The programs should focus on early and innovative ways to redirect participants away from the criminal justice system and toward effective services. The programs could either develop new initiatives or expand and innovate existing programs, but they should not merely fund/supplant pre-existing programs. In order to permit functional local control and provide the most efficient service to target populations across larger geographical areas, the program should serve a specific judicial district.

- Programming should provide, at minimum, a four (4) year grant cycle to mitigate the obstacles common to start-up programs, such as delays in procurement, recruiting, contracting, or delays caused by intensive consensus building efforts. A four (4) year grant cycle will allow for meaningful data collection with regular efficacy assessments that inform appropriate course corrections.
- Grant applicants should have access to a CCJJ-based applicant advisor with appropriate knowledge of and experience with the public health and criminal justice systems.
- A total of four pilot projects representing a diversity of communities is recommended. Optimal diversity would include two metropolitan programs (one large and one mid-sized) and two rural programs, assuring broad and meaningful statewide impact. Rural districts are a high priority, given that the lack of financial and human resources presents the greatest challenge to sustained programming.

¹ It is recommended, subject to local needs, that this include co-occurring substance abuse/mental health disorders, given the frequency of such problems.

² It is recommended, subject to local needs, that this include any “lower impact” offense, the primary cause of which is substance abuse. For example, property crimes committed for the purpose of funding an addiction to narcotics. If programs are limited to Article 18 only (drug related offenses), the ideal target population will be neglected, as programs are inundated with persons whose triggering offense is a drug misdemeanor.

DRUG OFFENSE TASK FORCE
ABANDONED RECOMMENDATION
September 11, 2020

Pilot Description: Adult Diversion (Drug Offense) Program

Statewide Framework

Characteristics include:

Four pilot programs prioritizing innovative diversion programs to facilitate model diversification; local control of the programming; and a four-year grant cycle to support the extensive investment required to initiate any diversion program.

Diversion Program Elements

While diversity and customization of programming to meet local needs are desirable characteristics of an Adult Diversion (Drug Offense) Pilot Program, specific elements of program design are strongly encouraged to foster innovation and success, as follows:

- No person should be considered for participation in programming unless there is as a basis for contact, meaning a provable crime involving a drug-related offense, defined as any offense the primary cause of which is narcotics abuse and involving a person with a substance abuse/addiction disorder, consistent with the mandate in §16-11.3-103, C.R.S. (Senate Bill 2019-108);
- The underlying offense for diversion participants should not include any traffic offense when that is the primary law violation;
- A mechanism to respond to individuals with substance use disorders with rapid and reliable screening that links participants with appropriate services based on need.³ Rapid access to treatment increases the chance for optimal outcomes;
- Stakeholder collaboration to identify standardized criteria for participation and program structure, including - whenever practicable - representatives of the District Attorney, the Public Defender, local community providers of mental health and substance use disorder treatment, law enforcement, probation, and a representative of the local court. Diversity of representation is intended in part to ensure appropriate information sharing, continuity of services, and the unwanted consequence of service duplication.
- A mechanism for data tracking to measure program efficacy, including but not limited to, charges diverted, length of agreement, restitution, recidivism rates to local jail(s), jail population, and number of court cases, with no less than annual reporting. Programs are encouraged to use the collected data on an ongoing basis to refine program elements that are most effective and assure participant population diversity. Data reporting must include population categories for gender identity, race, nationality, participant annual income, and household characteristics.
- Program designed to serve diverse populations, from people involved in the justice system for the first time to high frequency system utilizers and all those eighteen and older. Pilots should not include service sites with exclusionary processes or practices that discourage participation by any

³ A myriad of screening tools have been identified. Research material and recommendations are available to local jurisdiction applicants upon request from the Division of Criminal Justice. A full clinical assessment is not recommended, but a basic intake screen for diversion intake should be sufficient to identify participant needs.

DRUG OFFENSE TASK FORCE
ABANDONED RECOMMENDATION
September 11, 2020

particular population group. Entry criteria should be needs based and, whenever possible, avoid arbitrary exclusions, such as limiting availability of candidates who previously participated in the same or similar programming, understanding that for many individuals, relapse is inherent in the recovery process and recidivism is likely to occur. In addition to serving diverse populations, programs should be incentivized to prioritize high need participants and higher crime type offense classifications, because this population represents a gap in existing adult diversion programs.

- The services specified need not be limited to treatment only, but may include case management and other social support services. The focus should be to increase participant access to the service options that are the most necessary and access to providers that address social determinates of health.
- Successful client completion should not be determined by accomplishment of standardized objectives, such as attendance at a specific number of sessions or completion of specific tasks, but instead could be based on lowering criminogenic needs and risks and allowing participants to create contacts that may prove useful later. Programs should emphasize principles of harm-reduction by addressing basic needs such as housing, employment and transportation, and, when critical to client success, substance abuse and mental health issues.
- Those administering programs, such as case managers, should possess the skills to customize interventions to an individual's needs and the ability to network with other service providers, such as the Veterans Administration, Medicaid, housing authorities and employment services.
- Collaboration is critical, but where practicable, daily program operations should be managed by designated professionals in a non-criminal justice, rehabilitation-focused environment. Establishing healthy connections for the participant is critical to success. Aspects of the Community Hub Model should be considered (see for example, pchi-hub.com).
- Access points to diversion both prior and subsequent to the filing of formal charges, including, where feasible and following locally derived criteria, a route for front line officers to make direct referrals to the program.
- A mechanism for compliance with the Victim's Rights Act.

Diversion Program Entry Process

Each grant proposal shall be accompanied by a description of the eligible referrers and referral processes of the proposed Adult Diversion (Drug Offense) Pilot Program. Identification of the referring entity (or entities) and process should include a brief statement addressing how the Pilot Program objectives are met through the proposed process and should identify all eligible referrers. Pilot Program objectives for referrers and process include:

- That Adult Diversion (Drug Offense) program decisions substitute for the initiation of formal court processes, whenever possible;
- That Adult Diversion (Drug Offense) services are delivered to participants at the earliest possible stage (pre-arrest and pre-filing of any criminal charge(s));
- That persons who are eligible participants must have committed a provable crime, assuring that those who have not engaged in criminal conduct are not unnecessarily engaged with criminal

DRUG OFFENSE TASK FORCE
ABANDONED RECOMMENDATION
September 11, 2020

justice processes, which avoids the potential for deleterious impacts experienced by those involved in traditional criminal justice processes; and

- That the class of eligible referrers is broad enough to include important stakeholders but narrow enough to provide for efficient program administration enhancing effective rehabilitation for participants.

Diversion Program Referral Process

Better outcomes will occur in Adult Diversion (Drug Offense) Pilot Programs when there are expeditious interventions for persons who have committed criminal acts (for example, such outcomes as reduced recidivism and treatment of core issues that drive criminal behavior). Traditional intervention provided through the criminal justice system can take several months, delaying the delivery of services and treatment. This is just one among other shortcomings of delay that are often connected to honoring important and constitutional rights afforded to people.

For those individuals who seek wholistic outcomes and take non-judicially determined accountability for their actions at an early stage, there should be methods via adult diversion programming - as described in this document - to provide opportunities for harm reduction and self-healing, so long as any risk to public safety is not undue. The following describes those who might act as “referrers” to such diversion programs:

- Law enforcement officers and prosecutors continue their role as primary determiners of whether traditional or non-traditional methods are employed after a criminal offense is committed. The advantage of maintaining law enforcement and prosecutors as the referral source for these diversion programs is that any participation agreement, in most cases, provides a legally enforceable path to avoid formal criminal prosecution.

There exists an increasing trend in referrals by law enforcement officers and agencies as the method to implement diversion programs.⁴ Law enforcement officers often have unique knowledge of the “high-utilizers” in their communities, providing opportunities to identify offenses whose genesis is largely related to drug addiction and mental health issues. Allowing officers to make direct referrals to diversion is sensible and practicable. Law enforcement promises that are proffered to potential diversion participants, in certain circumstances also bind prosecutors (for example, where law enforcement officers have been granted such “promise authority” by prosecutors). This allows agencies to provide programming to eligible participants in exchange for such promises of non-prosecution that are therefore legally enforceable.⁵

- With greater frequency, emergency dispatchers are alerting persons trained in mental health evaluation and treatment, often referred to as “co-responders,” to respond to crime-related calls for assistance. Therefore, similar to law enforcement officers, these co-responders are in a position

⁴ See the City of Longmont website describing their “*Angel Initiative*” (a PAARI partnership program...see also, paariusa.org/), (<https://www.longmontcolorado.gov/departments/departments-n-z/public-safety-department/community-programs/police-assisted-addiction-recovery-initiative-paari>)

⁵ *Lucero v. Goldberger*, 804 P.2d 206, 210 (Colo. App. 1990) [Where a person is induced by law enforcement promises to take an action, a prosecution for a crime may be stopped.]

DRUG OFFENSE TASK FORCE
ABANDONED RECOMMENDATION
September 11, 2020

criminal justice system evolve to facilitate rehabilitation and community integration for these individuals, thereby avoiding recidivism? Diversion programs should be viewed as the proactive complement to the appropriate, but initial and primarily foundational, effort established through H.B. 2019-1263.

Funding that expands and innovates adult diversion is the best option, which has the following benefits:

- (1) Involves all necessary stakeholders, including those already familiar with the interplay between substance abuse and criminal justice;
- (2) Provides opportunities for persons with substance use disorder to be redirected to services that support recovery, uphold harm reduction, and avoid formal criminal justice system involvement;
- (3) Reduces the number of cases processed through the courts;
- (4) Reduces, if not eliminates, the unintended collateral consequences typical of criminal justice system involvement wherein employment, education and housing access can all be negatively impacted;
- (5) Diversion can be customized to an individual's needs and to the needs, resources and priorities of the local community/jurisdiction to maximize effectiveness, including strategies to address relapse risk factors such as employment, housing and transportation;
- (6) Increases capacity for criminal justice professionals to focus on crimes that involve far more harm to innocent victims, such as sexual assault and other serious violent offenses; and
- (7) Works on an expedited timeline compared to the traditional criminal justice intervention available through the courts, which can take several months before meaningful assessments are completed and interventions offered.

For these reasons, there is consensus that adult diversion as described in this document is currently the most effective and easily assimilated model for integration into the criminal justice system to more effectively respond to the members of our communities facing the challenges of addiction.

Current Adult Diversion Programming in Colorado

In the fall of 2019, the 22 District Attorney's Offices were surveyed regarding diversion programs and practices, and 18 responses revealed the following:

- Currently, statewide government grants total \$3.9 million for juvenile diversion and \$400,000 for adult diversion.
- Of the existing District Attorney programs, 16 have some form of adult diversion program and 2 have no program. The two jurisdictions without adult diversion are rural and cite the following factors prohibiting program creation: a lack of funding for staff and a lack of treatment providers that are geographically and economically accessible to the target population.
- Offices with any of the existing forms of adult diversion programs also cited staff funding and treatment provider/program availability as factors that restrict the number who could be served.

DRUG OFFENSE TASK FORCE
ABANDONED RECOMMENDATION
September 11, 2020

- The existing programs seek to accommodate approximately 50-100 persons on an active caseload, and some jurisdictions may divert as many as 600 annually.
- Interestingly, the size of diversion caseloads does not necessarily correlate with the size of the jurisdiction, with smaller jurisdictions reporting some of the higher number of referrals. This supports the necessity of customization of diversion programs to meet the specific needs and provide the most effective services to local populations.
- Another reason for local control is that at least one office reported that the unilateral imposition of diversion program funding criteria might result in significantly underserving the unique target population in that jurisdiction. Such “process hurdles” must be avoided.
- Lastly, there were frequent reports that the target population often is suffering from the co-occurring disorders of substance abuse and mental health.

In sum, a lack of resources, the process associated with *post-arrest* diversion, and/or the inability to customize diversion programs to meet local needs often hamper existing programs.

ABANDONED

OPIOID INVESTIGATIONS SUBCOMMITTEE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

**FY20-OP #01. Establish a Statewide Entity to Coordinate Strategy Regarding Dangerous Drugs
[Statutory; Budgetary]**

RECOMMENDATION FY20-OP #01

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:
 - 1 Police Chief, rural district
 - 1 Police Chief, urban district
 - 1 Sheriff, rural district
 - 1 Sheriff, urban district
 - Colorado District Attorneys’ Council
 - Colorado Attorney General’s Office
 - Colorado Coroners Association
 - Colorado Drug Investigators Association
 - Colorado Dept. of Health Care Policy & Financing
 - Colorado Dept. of Public Health & Environment
 - Colorado Dept. of Public Safety
 - Colorado Bureau of Investigation
 - Colorado Information Analysis Center
- 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

Proposed Statutory Language

No specific statute placement or language has been prepared for this statutory provision.

[Note: This “Council” would be modeled generally on the design of the Colorado Fire Commission (Website: colorado.gov/dfpc/fire-commission; See also, S.B. 2019-040)].

OPIOID INVESTIGATIONS SUBCOMMITTEE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

DISCUSSION

The Council is necessary to coordinate statewide strategic responses to emerging illicit drug trends, regardless of the drug type involved. Drug cartels are typically poly-drug organizations; the focus on a single drug type (for example, only opioids) impedes the necessary flexibility required by law enforcement agencies to combat drug problems in Colorado. Drug trends change quickly, vary by region, and are highly likely to involve multiple drug types in combination.¹

A survey of law enforcement agencies, conducted by the Subcommittee on behalf of the Commission, found that agencies perceive a significant need for additional resources; 63% of respondents reported insufficient resources to address the drug problems in their jurisdictions. The need to focus on poly-drug operations is highlighted by the fact that, in Colorado between 2013 and 2018, the simple count of overdose deaths increased across a variety of drugs: 230% increase due to methamphetamine, 94% increase due to heroin, and 133% increase due to cocaine.² Additionally, methamphetamine seizures by law enforcement increased 156% between 2013 and 2018.³

In order to expand assistance to law enforcement agencies, the Dangerous Drugs Coordination Council (“Council”) will meet quarterly to share data and case intelligence that promotes proactive and collaborative responses to dangerous drug issues. Enhanced information sharing and collaboration is necessary as it increases the capacity of law enforcement agencies for strategic planning, situational awareness, and safety.

An invaluable tool to assist with this collaborative effort is the Overdose Detection Mapping Application Program (ODMAP; odmap.org). ODMAP is managed by the Washington/Baltimore High Intensity Drug Trafficking Area (HIDTA) organization and is free to government agencies. ODMAP has been developed to provide real time information about fatal and non-fatal drug overdoses with the purpose of assisting drug investigations. ODMAP serves to bridge a data gap in overdose reporting that hampers timely responses by law enforcement and public health professionals. While ODMAP is free, its implementation will need the organization and guidance that the Council can provide.

¹ Drug Overdose Dashboard (Opioid Overdose Prevention Program, Colorado Department of Public Health and Environment). (See, colorado.gov/cdphe/opioid-prevention; “Drug Overdose Dashboard”; accessed 03/2020.)

² See Footnote 1.

³ *Exploring the Increase in District Court Filings in Colorado, 2013-2018* (October 2019). Office of Research and Statistics, Colorado Division of Criminal Justice. (See, colorado.gov/dcj-ors/ors-reports; accessed 3/2020.)

OPIOID INVESTIGATIONS SUBCOMMITTEE
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FY20-OP #03. Implement Unified Drug Overdose Reporting and Tracking [Statutory]

RECOMMENDATION FY20-OP #03

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)

Proposed Statutory Language

No specific statute placement or language has been prepared for this statutory provision.

DISCUSSION

Currently, studying or tracking overdose trends in Colorado requires the aggregation of data from multiple sources across public health, medical, and law enforcement agencies. These sources report overdose data at differing degrees of timeliness, in differing formats, in differing amounts of detail, and at differing levels of accessibility. The disjointed nature of Colorado's current overdose reporting makes producing actionable data difficult, given that many reports are published with significant lag times. A unified system with mandated reporting requirements would enable Colorado's public health and public safety entities to track overdoses in real time and to deploy timely responses.

ODMAP (Overdose Detection Mapping Application Program) is a free web-based product created and maintained by the Washington/Baltimore HIDTA with federal support from the Office of National Drug Control Policy.¹ The ODMAP platform offers APIs (application programming interface) that support integration with a variety of existing data platforms. The ODMAP system is recommended because of its ease of use, affordability, compatibility, as well as data integrity and security. The system was designed to minimize data entry effort and time especially by first responders.

The ODMAP system, and the data it contains, is available for use only by vetted government (tribal, local, state, and federal) entities serving the interests of public safety and/or public health. Once the ODMAP system is fully implemented, public health and public safety entities will have access to real-time local and national information on overdose rates, mortality, geographic data, opioid antagonist use (e.g. Narcan, Naloxone), and the illicit drugs connected to overdoses.

¹ For information about ODMAP, see odmap.org, and the information page provided by the Washington/Baltimore HIDTA at, hidta.org/ODMap/.