

Colorado Commission on Criminal and Juvenile Justice

Drug Offense Task Force

**Diversion Working Group
Minutes**

January 9, 2020 / 12:30PM-3:00PM
2nd Floor Meeting Room, 710 Kipling, Lakewood, CO

ATTENDEES:

WORKING GROUP MEMBERS:

Joe Thome, WG Co-leader, Division of Criminal Justice,
Bob Booth, Attorney General's Office
Bruce Brown, District Attorney's Office, 5th Judicial District
Jamie Keairns, Public Defender's Office, Alamosa
Matt Karzen, District Attorney's Office, 14th Judicial District
Benita Martin, District Attorney's Office, 2nd Judicial District
Andrew Matson, Colorado CURE
Emily Richardson, Office of Behavioral Health, CDHS
Megan Ring, Office of the State Public Defender (*also, Drug Offense Task Force Co-chair*)
Elaina Shively, District Attorney's Office, 20th Judicial District
Glenn Tapia, Probation Services, Judicial Branch
Abigail Tucker, Community Reach Mental Health Center

STAFF

Richard Stroker, CCJJ Consultant
Kim English, Division of Criminal Justice
Stephané Waisanen, Division of Criminal Justice
Damien Angel, Division of Criminal Justice

ABSENT

Mike Butler, Longmont Department of Public Safety
Terri Hurst, Colorado Criminal Justice Reform Coalition
Adam Zarrin, WG Co-leader, Governor's Office

GUESTS

Issue/Topic	Discussion
<p>Welcome, Introductions, Approval of Minutes & Agenda Overview Richard Stroker, CCJJ Consultant</p>	<p>Richard Stroker began the meeting with introductions and informed the group that Joe Thome, Working Group Co-leader, would be arriving shortly.</p> <p>Richard solicited a motion for approval of the meeting minutes. A motion was made and seconded, and with no objections the minutes were unanimously approved.</p> <p>Richard briefly described the meeting agenda and asked that the Study Groups offer updates to the Working Group.</p>

Issue/Topic	Discussion
<p>Study Group Updates</p> <p>Service Delivery and Screening Tools Study Group Abigail Tucker, Leader</p>	<p>Abigail Tucker expressed a preference by the Services Delivery and Screening Tools Study Group (SG) members to defer presenting their work. They are interested to hear the draft recommendations being presented by the other Study Groups. This will allow the Services SG to assess whether they should update or modify any of the details of their work for better integration with the work from the other Study Groups. Abigail felt that it may be opportune soon to recombine the Study Groups in the development of recommendations.</p>
<p>Process & Referral Authority Study Group Bruce Brown, Leader</p>	<p>The Working Group briefly discussed the strategy to integrate the efforts by the Study Groups to efficiently construct recommendations for the Working Group and for subsequent presentation to the Task Force.</p>
	<p>Bruce Brown provided a draft memo from the Process & Referral Authority Study Group that included an outline of an adult diversion pilot program focusing on drug offenders. The draft document can be found under "Materials" at, colorado.gov/ccjj/ccjj-cDOTF.</p> <p>Bruce highlighted specific philosophical aspects that guided the development of the pilot program structure:</p> <ul style="list-style-type: none"> • referral at the earliest opportunity to enhance the rehabilitative effects and to reduce negative effects of confinement • eligibility is dependent on the existence of a provable crime • opportunities for harm reduction and self-healing • public safety considerations • limit diversion referrers to specific individuals, with possible consultation from others; defense attorneys would be excluded (to reduce the potential for referral based on non-rehabilitative considerations) • individuals who participate in this diversion program do so as an alternative to prosecution, not in addition to prosecution <p>Bruce felt that implementation timelines should be fully explicated in the recommendation.</p>

<p style="text-align: center;">Issue/Topic Study Group Updates</p> <p>Process & Referral Authority Study Group Bruce Brown (continued)</p>	<p>Bruce took questions regarding the draft memo and the group discussed its contents.</p> <ul style="list-style-type: none"> • Abigail asked whether it would be beneficial to explicitly state a hierarchy of referrers, identifying the ideal referral authorities...those who engage with target individuals the earliest (i.e., first/co-responders). <ul style="list-style-type: none"> ○ Bruce agreed with this concept, but noted that, if diversion commitments are offered at the early phases of involvement, there would have to be cooperative agreements with prosecutors to adhere to these early decisions or offers to divert. • The group discussed the importance of specifying referral sources, such as prosecutors and pre-trial entities, where all parties agree on referral authority, specifying referral criteria with input from all stakeholders, but also how to allow pilot program flexibility for potential pilot sites with innovative referral approaches. • This pilot program is dependent on the implementation of pretrial programs in general across the state (especially for those jurisdictions without pretrial services). <i>The CCJJ has approved a Pretrial Release Task Force recommendation (FY20-PR#03) to implement pretrial services statewide and a related bill has been introduced (Senate Bill 2020-161).</i> • Benita Martin mentioned the importance of program capacity and that funding is crucial to the expansion of services. • The group discussed engaging with and acknowledging other diversion efforts and pilots in the state to ensure that the objectives of this effort are not discounted - especially if inaccurate assumptions are made that the mental health diversion efforts already account for drug offense diversion. • The group discussed the synergy that is created by first/co-responders acting as referral authorities given their pivotal and early engagement with individuals. Elaina Shively observed that this synergy breaks down if existing resources and staff are lacking, specifically to support drug treatment and case management. <ul style="list-style-type: none"> ○ Abigail spoke to the Longmont model and how to creatively address limited resources for mental health and substance abuse treatment endeavors through innovative community involvement. Elaina commented that treatment resources available to communities vary greatly and that the proposal should not state or overstate that pilot program elements can be met with existing resources. • Joe Thome and Glenn Tapia had an exchange regarding the Correctional Treatment Board and whether that group offers an opportunity to creatively distribute funds from different “treatment streams” to support diversion programs focused on mental health treatment and those focused on substance abuse treatment. • Abigail spoke to the impact that competing assumptions and regulations can have on how much treatment funding will be required from different sources. Treatment providers must navigate complicated and sometimes
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<p style="text-align: center;">Issue/Topic Study Group Updates</p> <p>Process & Referral Authority Study Group Bruce Brown (continued)</p>	<p>competing definitions of “treatment program” versus “an individualized treatment plan.” For example, Medicaid criteria regarding “medical necessity” can affect the amount of available Medicaid funding, which then determines the amount of non-Medicaid funding necessary to support an individual’s treatment.</p> <ul style="list-style-type: none"> • Megan mentioned that cookie-cutter approaches to diversion treatment and monitoring can misapply services. Tailored approaches use funds much more efficiently by addressing individuals’ specific treatment needs, which, consequently, “stretches” the available treatment dollars. • The group discussed and agreed that each individual in diversion will have unique needs that require individualized treatment and services. They also emphasized that jail confinement/incarceration (a possible “by-default” sober living environment) is ABSOLUTELY NOT a substitute for treatment. • Can the group define the concept of “success in treatment?” Prosecutors and treatment providers can have very different expectations surrounding the definition of success. <ul style="list-style-type: none"> ○ In response, Bruce referenced that prosecutors are also weighing victim considerations. In cases of harm to persons, there should be an attempt to remedy the harm through restitution and, in Victim Rights Act cases, there is a duty to consult victims regarding the case, even when charges are not filed. ○ Benchmarks for success may differ from case to case, complicating the creation of a fixed set of success criteria. ○ There could be some basic information provided to prosecutors or others at several points in the process: <ul style="list-style-type: none"> ▪ <u>intervention/treatment entry information</u>, for example, who referred...to what intervention...for how long. ▪ <u>intervention/treatment progress information</u>...whether individuals are engaging, are not engaging, or are not ready for treatment. ▪ <u>upon treatment conclusion</u>, provide intervention/treatment termination or outcome details. Determine and define the necessary elements of this outcome feedback. ○ Information on repeat referrals and stints in treatment would be valuable. • Substance abuse treatment can proceed very differently for different people. For some, treatment may be completed quickly relative to others for whom treatment may actually require a lifetime, involving multiple relapses. How do we construct an approach that acknowledges and accommodates the potential for relapse in the criminal justice context that has traditionally demanded punishment for failure? We must accept the reality that multiple treatment stints may be necessary before an individual finds the approach that finally breaks their addiction cycle.
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<p style="text-align: center;">Issue/Topic Study Group Updates</p> <p style="text-align: center;">Process & Referral Authority Study Group Bruce Brown (continued)</p>	<ul style="list-style-type: none"> • The group discussed diversion eligibility criteria, both from a risk (crime) perspective and a clinical (assessment/treatment) perspective. Diversion decision-making is affected by the “crime seriousness” continuum. Diversion becomes less likely with increasing seriousness and with increasing seriousness, prosecutor input will play a larger role. • Abigail voiced concern that the group may construct recommendations that address these details and nuances, but that the fine points and intent may be lost during the legislative process and, later, in the funding processes. Matt Karzen stated that an emphasis on local control of diversion programming is essential to ensure that the final legislation allows the development of flexible programs designed to meet local needs and local considerations of program eligibility. • Emily Richardson reiterated the importance of communication between case managers and prosecutors. Emily outlined how effective communication can provide transparency regarding client engagement and how those who are progressing are differentiated from those who are not. She also felt that pre-file/pretrial services that offer truly individualized programming can also help address an aspect of local control concerns by accommodating the specific variety of substance abuse problems encountered by specific communities.
<p style="text-align: center;">Eligibility Criteria Study Group / Draft Recommendation Review Matt Karzen</p>	<p>Following this discussion, Matt Karzen presented a draft recommendation that proposes an Adult Diversion Pilot Program (for individuals with substance use disorders). He had incorporated the points from previous Working Group discussions and was noting any new points offered in the current meeting. The draft can be found under “Materials” at, colorado.gov/ccjj/ccjj-cDOTF.</p> <p>Matt highlighted specific elements of the recommendation draft (<i>feedback by members on this summary is provided in the section below</i>):</p> <ul style="list-style-type: none"> - there are references to recent related legislation: Senate Bill 2019-008 (initiated the Drug Offense Task Force) and House Bill 2019-1263 (reduced penalties for lower level drugs crimes and created a grant program to support diversion and treatment) <p style="padding-left: 40px;"><i>[NOTE: Scheduled to be heard on February 13, 2020 by the House Judiciary Committee, House Bill 2020-1150 would repeal provisions of H.B.19-1263, including the “Community Substance Use and Mental Health Services Grant Program” in DOLA to support diversion programs.]</i></p> <ul style="list-style-type: none"> - acknowledgment of critical components, such as local community assets, resources, needs and opportunity for program customization - addiction is a significant driver for entry into the criminal justice system - inclusion of the benefits of adult diversion - pilot program aspects that are required versus preferred - reflecting concerns regarding the ability to obtain or maintain funding and resources (recognizing the differences in sophistication of services and programs across jurisdictions and, in some jurisdictions, their absence)

<p style="text-align: center;">Issue/Topic Study Group Updates</p> <p style="text-align: center;">Eligibility Criteria Study Group / Draft Recommendation Review Matt Karzen (continued)</p>	<ul style="list-style-type: none"> - that the diversion of traffic (DUI) offenders alone can exhaust all the available resources - “A mechanism for stakeholder collaboration” in the proposal refers to those who would participate in the design of the diversion program - data collection/tracking should be built into program implementation - depending on local concerns, interventions should be targeted to those with higher levels of need and whose criminal activity has reached a consequential level - the pilot program should reside outside criminal justice settings and utilize aspects of the Community HUB Model (for example, see pchi-hub.com) <p>During the review of the recommendation, the group suggested points that might be revised or included in the language of the recommendation:</p> <ul style="list-style-type: none"> - the draft should include a pilot/grant timeline - decide on the specific label/title of the pilot program to better identify the exact niche this particular diversion program will fill (“pre-file,” “deflection,” “redirection,” etc.) - emphasize early, and wherever appropriate in the document, that the recommendation focus is on innovation in pre-filing diversion/deflection versus pre-trial (post-filing) diversion - explicitly state in the initial recommendation description that the recommendation aims to introduce first responders, in addition to traditional referrers, as new gatekeepers for entry to diversion programs. Provide verbiage that positions this approach as distinct from both LEAD (Law Enforcement Assisted Diversion) and the typical diversion decision process - revise “2) in “Funding Adult Diversion is the Best Option” to state... “Provides opportunities for individuals with substance use disorders to be re-directed to services that support harm reduction and recovery and avoids involvement with the formal criminal justice system;” - designate particular representatives who would participate with or at least consult with the grant application review board (for example, a CCJJ member familiar with the recommendation intent and/or a person familiar with criminal justice and mental health/substance abuse treatment) - include, from the “Referral Sources and Processes” recommendation (described above), the expeditious nature of pre-file treatment referral - describe in, “Current State of Adult Diversion in Colorado,” that the “hampering” is due not only to resource deficiencies, but also due to the existing referral procedures - include additional supporting statistics? - include in, “Recommended Pilot Model,” another reference to innovation and early re-direction - include or acknowledge serving individuals with co-occurring disorders?
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<p style="text-align: center;">Issue/Topic Study Group Updates</p> <p style="text-align: center;">Eligibility Criteria Study Group / Draft Recommendation Review</p> <p style="text-align: center;">Matt Karzen (continued)</p>	<ul style="list-style-type: none"> - clarify that referral connects individuals only to the services that are needed and that “services” may not be substance abuse treatment or any treatment at all, but instead may be case management to address critical needs. - in the “Required” or the “Preferred” aspects, whichever is appropriate, include options for screening tools (to identify appropriate services, not program eligibility). Or, should screening tool options be a separate recommendation? - Should there be consistency in tool use (if so, place in “Required”) or is this a matter of local control (if so, place in “Preferred”)? Might tool choice be “Required” for pilot programs for study purposes, but be more flexible for post-pilot program implementation? - in the “Required” program aspects, explicitly list the diversion referrers who serve as “access points?” (for example, law enforcement, first responders, co-responders, early contacts) - in order to promote buy-in, eligibility criteria that are need-based and outcome-based are listed as “Preferred” program aspects, rather than “Required” aspects - include an opportunity for input by private defense counsel in the eligibility/referral determinations - shift the statement about an effective corps of staff to “Required” aspects from “Preferred” aspects - add in “Preferred” aspects that desirable pilot programs will connect clients to healthy living/fitness options - in the “Preferred” aspects section, clarify the “housed and managed” statement regarding potential grantees. Specifically, define examples of who is/is not included in “traditional criminal justice system, if possible” - include protocols for VRA compliance and opportunities for restitution - the funding derived from this recommendation, and subsequent legislation, should create additional or expand diversion programming and not pay for existing diversion programming. Preference should be given to communities with no diversion program. - it would be prudent to avoid over-specifying the recommendation and proposed pilot details, which might deter potential applicants - potential funding figures for the pilot project proposal should be compiled in a grant application. Applications should delineate how much funding will support the diversion referral aspect of the program and how much, if any, will support client interventions and services?
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Issue/Topic	Discussion
<p data-bbox="170 220 479 321">Meeting Recap, Wrap-up & Adjourn Megan Ring/ Joe Thome</p> <p data-bbox="276 577 373 604">ACTION</p> <p data-bbox="162 613 487 709">Bruce, Matt, & Abigail will prepare and share updated recommendations drafts</p>	<p data-bbox="565 220 1494 321">Richard summarized the progress achieved during the day’s meeting, drawing attention to points of consensus and major themes that had emerged. Members outlined the recommendation development timeline:</p> <p data-bbox="565 336 743 363"><u>For February...</u></p> <ul data-bbox="581 378 1510 730" style="list-style-type: none"> • Bruce, Matt, & Abigail will prepare updated drafts of their Study Group recommendations • These drafts will be shared with the Working Group just prior to the Feb. 13 meeting • Review the recommendation elements from the Service Delivery/Screening Tools Study Group • Prepare a synthesized report draft to frame the three recommendations • Provide an update to the Drug Offense Task Force, indicating that the preliminary presentation will occur in March <p data-bbox="565 745 711 772"><u>For March...</u></p> <ul data-bbox="581 787 1510 903" style="list-style-type: none"> • The Working Group completes preparation of the report, recommendations and presentation • Provide a preliminary presentation to the Drug Offense Task Force <p data-bbox="584 940 1494 1066"><i>At this point, the Drug Offense Task Force must decide whether to integrate the Diversion Working Group materials with the Sealing Working Group materials in a combined presentation to CCJJ or whether these recommendation sets will be presented on different timelines to CCJJ for integration after CCJJ approval.</i></p> <p data-bbox="565 1108 695 1136"><u>For April...</u></p> <ul data-bbox="581 1155 1477 1270" style="list-style-type: none"> • Provide the final presentation to the Drug Offense Task Force for vote • Provide a preliminary presentation to the full Commission (Diversion recommendations only or in conjunction with Sealing recommendations) <p data-bbox="565 1281 678 1308"><u>In May...</u></p> <ul data-bbox="581 1327 1477 1390" style="list-style-type: none"> • Provide the final presentation to the full Commission for vote (Diversion recommendations only or in conjunction with Sealing recommendations) <p data-bbox="565 1402 698 1430"><u>By June 30</u></p> <ul data-bbox="581 1449 1477 1512" style="list-style-type: none"> • All CCJJ/Drug Offense Task Force recommendations and materials will be combined into a single report for submission to the General Assembly <p data-bbox="565 1554 987 1581">Joe Thome adjourned the meeting.</p>

Next Meetings

Thursday, February 13, 2020

Diversion Working Group

12:30 pm – 3:00 pm

Drug Offense Task Force

3:00 pm - 4:00 pm

2nd Floor Meeting Room

710 Kipling St., Lakewood, CO 80215