Colorado Commission on Criminal and Juvenile Justice

Drug Offense Task Force Minutes

March 12, 2020 / 3:00PM-4:00PM 2nd floor Meeting Room, 710 Kipling, Lakewood, CO

ATTENDEES:

TASK FORCE MEMBERS

Megan Ring, TF Co-Chair, Office of the State Public Defender Tom Raynes, TF Co-Chair, Colorado District Attorneys' Council Chris Andrist, Colorado Bureau of Investigation Maureen Cain, Office of the State Public Defender Janet Drake, Attorney General's Office Terri Hurst, Colorado Criminal Justice Reform Coalition Andrew Matson, Colorado CURE David Quirova, Office of the State Court Administrator Jack Regenbogen, Colorado Center on Law & Policy Joe Thome, Division of Criminal Justice (*Diversion Working Group Co-leader*) Abigail Tucker, Community Reach Mental Health Center Audrey Weiss, District Attorney's Office, 1st Judicial District (*Sealing Working Group Leader*) Adam Zarrin, Governor's Office (*Diversion Working Group Co-leader*)

STAFF

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

ABSENT

Glenn Tapia, Division of Probation Services

GUESTS

Fahad Khan, Governor's Office

Issue/Topic	Discussion
Welcome, & Introductions Tom Raynes, Task Force Co-chair	Tom Raynes, Co-Chair, called the meeting to order and explained that Megan Ring, Co-Chair, would join the Task Force via telephone.
	Following member introductions, Tom mentioned that the February and March minutes will be available for review and approval at the April meeting.
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Issue/Topic Working Group Updates	Discussion
Diversion Working Group	The Diversion Working Group submitted their draft recommendation for consideration. Joe Thome, Co-leader presented key points that are highlighted
Draft Recommendation Joe Thome, WG Co-leader	below:
	Recommendation FY20-DR #02. Fund and Support Four (4) Innovative Adult Diversion Pilot Programs [Statutory] This recommendation would establish statewide funding to support alternatives to filing criminal charges against adults with substance abuse issues who are contacted by law enforcement for drug-related offenses.
	 Pilot programs will be conducted for a minimum of four (4) grant cycle years to mitigate against the obstacles common in startup programs;
	 Programs will have an applicant advisor with appropriate knowledge/experience with the public health and criminal justice systems,
	• Four pilot projects will be funded, representing diverse communities:
	- Two metropolitan (one large and one mid-sized areas)
	- Two rural areas – high priority due to lack of resources available
	Diversion Pilot Program Elements: The following is a list of expected elements in the design of pilot programs:
	 Program participants must have a provable crime involving a drug related offense,
	 Underlying offense should not include any traffic offenses,
	 Screening tool that identifies appropriate services based on individual needs for rapid access to treatment,
	 Collaboration on diversion criteria between district attorney's, law enforcement, prosecutors, and local community providers of mental health/substance abuse,
	Data tracking metrics to assess efficacy of the program,
	• Structure that effectively serves first-time and high-frequency offenders,
	• Collaborative case management model (not just simple referrals); decision makers working with treatment specialists, to create and implement a case plan for diverted individuals,
	• Broad definition of successful completion allowing tailored treatment and better outcomes (reduced recidivism, improved service accessibility, etc.).

Issue/Topic	
Working Group Updates	 Programs should address basic needs - housing, employment, transportation, in addition to substance abuse/mental health treatment.
Diversion Working Group	Staff training that enables skills to customize need-based interventions,
Diversion working Group Draft Recommendation Review Joe Thome, WG Co-leader (Continued)	 Collaboration of professionals in a non-criminal justice, rehabilitation- focused environment,
	 Incentives for serving individuals with higher needs who commit higher classification crimes (of course, within the qualifying drug offenses),
	• Front line officers make direct referrals to the program adhering to locally determined selection criteria (as authorized by D. A. Offices),
	Adherence to the Victim Rights Act.
	Diversion Pilot Program Entry Process:
	 Adult diversion (drug offense) program participation substitutes for the initiation of formal court processes,
	 Adult diversion (drug offense) services are delivered to participants at the earliest possible stage (pre-filing of criminal charges),
	• Eligible participants must have committed a provable crime,
	• Eligible referrers list is broad enough to include necessary stakeholders, but narrow enough to provide efficient program administration and effective rehabilitation of participants.
	Discussion Points
	• Joe stated that this diversion model fits within a pre-filing approach rather than a deflection (pre-arrest) model. A deflection program could evolve from these pre-filing programs.
	 The primary offense by participants would be drug related and any subsequent offense would make an individual ineligible.
	 How do pilot programs ensure involved community stakeholders who identify eligibility requirements? Members raised concerns whether district attorney (D.A.) offices would be the only referral decision maker. Law enforcement and D.A. offices can develop agreements about the referral process.
	• There was concern regarding the definition of "program failure," how this affects participants' recovery process, and the goal of reduced criminal justice involvement. Was there discussion of establishing flexible, but mutually acceptable, termination requirements? "Failure" (treatment relapse) is inevitable for those in treatment for substance abuse disorders. Kim English and Abigail Tucker described the previous discussions of flexibility and innovation around program termination, eligibility criteria and participation requirements. Currently, with evidenced-based guidance, local jurisdictions will define these program aspects.
recommendation to the Task Force in April	The preliminary review of the recommendation concluded with the expectation that it will be presented by Joe and Adam for a final Task Force vote in April.

Issue/Topic	Discussion
Working Group Updates:	
Sealing Working Group Draft Recommendation Review	Audrey Weiss presented the draft recommendation on automatic sealing of qualifying drug convictions.
Audrey Weiss, WG Leader	Recommendation FY20-DR #01. Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses [Policy] This recommendation would 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 or a Motion or Petition to Seal filed by the defendant.
	The following describes the recommended process:
	 The State Court Administrator's Office (SCAO) prepares a list of drug convictions that are eligible for sealing (disqualifying those with any subsequent criminal convictions during the requisite waiting period).
	 Petty offense/misdemeanor drug convictions - sealed seven years after case disposition.
	 Felony drug convictions - sealed ten years after case disposition.
	 SCAO forwards the list of eligible cases to the Colorado Bureau of Investigation (CBI) to review criminal histories for identification and validation.
	 CBI forwards the amended list to district attorneys' offices in judicial districts. The D.A. office will disqualify cases with a conditional plea- bargain agreements or individuals with a pending criminal charge.
	• Each district attorney's office will forward the revised list to the SCAO.
	 If authority granted to SCAO to sign off on the sealing order by Chief Judge, the SCAO transmits a copy of sealing order to CBI, appropriate law enforcement agencies and district attorney's offices to seal each case, or
	 If authority is not granted to SCAO, district attorney's offices will forward amended list to the district courts who will enter an order to seal each case.
	• SCAO will generate a list of eligible cases every thirty-five days. CBI and district attorney's office have thirty-five days to review the list of eligible cases. District courts under SCAO will enter the order no later than fourteen days.
	Audrey offered the following additional points:
	 The development, creation, and testing phases of the automated system should be completed in two years.
	 Subsequently, identification of eligible backlog cases and the entry of sealing orders should be completed within a year.

Issue/Topic Working Group Updates:	• Funding should include initial development and continued maintenance for state agencies involved in the process.
Sealing Working Group Draft Recommendation Review Audrey Weiss, WG Leader (continued)	 Colorado currently permits sealing of a number of petty offense, misdemeanor, and felony drug convictions. The current procedure requires a defendant to file a Motion to Seal with the Court in the jurisdiction in which the conviction occurred for a \$65 filing fee (a fee waiver is possible, if indigent). If needed, there are self-help centers and advocates in every county throughout Colorado to assist with the necessary application forms.
	 Colorado's current system to seal requires an individual to pursue relief by filing a motion or a petition to the court. While beneficial to some, this process can be cumbersome for others. An automated sealing process would remove the filing requirement and fees. An automatic sealing process would benefit those individuals who are unable to pay or are unaware of the sealing process. The existing petition process would remain as an option, even if automatic sealing were implemented.
	• The initial challenge to implement automatic sealing of drug convictions is that Denver city/county and the 215 municipal courts are not on the state system. This would exclude municipal convictions from sealing consideration. The recommendation requires that state judicial be allowed to "reach in" to the Denver city/county database to check an individual's record for subsequent convictions.
	 There are no cost estimates in the recommendation for district attorneys' offices, law enforcement or courts because they will not be part of the <i>initial</i> identification and confirmation of cases. The estimated costs to state agencies to upgrade and implement automatic sealing capability include: Colorado Bureau of Investigation:
	• Two years to upgrade
	 Initial cost, approximately \$2 million The Office of the State Court Administrator:
	• Two years to upgrade
	 Initial cost for software engineer, \$224,620 Setup programming, architecture, and software to communicate with Denver city and county database, \$950,000 Continuing maintenance, \$175,000/year
	• The automatic process does not propose that sealing notifications be sent to defendants. Once automatic sealing of drug convictions is implemented, public service campaigns should be funded to inform defendants how to determine whether prior drug convictions have been sealed.
ACTION	VOTE
If available, Audrey Weiss will present the preliminary Recommendation FY20-DR #01 to CCJJ in April.	The approval of Recommendation FY20-DR #01 was moved and seconded. With no further discussion, a voice vote was conducted with no members opposed to its approval. The recommendation was approved for preliminary presentation to the Commission at the April meeting. Audrey will provide that presentation.

Issue/Topic Next Steps & Adjourn	Discussion
Tom Raynes	Tom thanked members of the Sealing Working Group and all those who contributed to Recommendation FY20-DR #01 on sealing.
	With the completion of its work, the Sealing WG canceled a tentative meeting that had been scheduled for Friday, April 3. Given that neither the Sealing nor the Diversion WG will meet in April, Tom suggested that the Task Force shift the Task Force meeting on Thu., April 9 to 1:30pm (from 3:00pm). Members agreed to the time change and acknowledged that the next meeting may be conducted virtually due to COVID-19 accommodations.
	Joe Thome and Adam Zarrin will present the Diversion Working Group preliminary Recommendation FY20-DR #02 to the Task Force at the April meeting for final consideration and vote.
	Tom thanked the group for their contributions and adjourned the meeting.

Next Meeting

Virtual Meeting Thursday, April 9, 2020 / 1:30 - 4:00PM Virtual meeting details will be forwarded to Task Force members by email and will be posted on the Commission website for members of the public.