

Re-entry Task Force
Colorado Commission on Criminal and Juvenile Justice
Minutes

January 11, 2017 1:30PM-3:00PM
700 Kipling, 4th Floor Conference room

ATTENDEES:

CHAIR

Stan Hilkey, Dept. of Public Safety (phone)

TASK FORCE MEMBERS

Tom Giacinti, Representing Community Corrections

Mark Evans, Public Defender's Office

Sherri Hufford, Division of Probation Services

Erin Crites, Division of Probation Services

Hassan Latif, Second Chance Center (phone)

Jessica Jones, Criminal Defense Attorney

Anne Andrews for Alfredo Pena, Parole Board (phone)

Rose Rodriguez, Community Corrections

Adam Zarrin, Governor's Office

Melissa Roberts, Parole Division

Regi Huerter, Denver Crime Prevention and Control Commission (phone)

Dave Young, District Attorney 17th JD (phone)

Hyon Namgung for Jennifer Bradford, Metro State University of Denver

STAFF

Richard Stroker/CCJ consultant

Germaine Miera/Division of Criminal Justice

ABSENT

Monica Chambers, Department of Corrections

Christie Donner, Colo. Criminal Justice Reform Coalition

Rick Raemisch, Dept. of Corrections

Gary Darling, Larimer County Criminal Justice Services

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Richard Stroker welcomed the Task Force members on behalf of Stan Hilkey, and explained that Stan would be joining the meeting via phone. Richard reviewed the agenda, and asked attendees to introduce themselves. He called for any additions or deletions to the November minutes (the most recent meeting of this group). Seeing none the minutes were approved and the meeting began at 1:40 p.m.</p>
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<p>Issue/Topic: REPORT BACK Housing Capacity Working Group</p> <p>Action:</p> <ul style="list-style-type: none"> • Discuss possible collaboration with MICJS Task Force at the CCJJ retreat in February 	<p>Discussion: Richard provided the Housing Capacity Working Group update and reminded Task Force members that the focus for this Working Group is on expanding housing capacity.</p> <p>He presented a document titled ‘CCJJ Re-entry Task Force / Housing Work to Date, January 11, 2017’ and noted that he wanted to cover three main topic areas regarding housing as follows:</p> <ol style="list-style-type: none"> 1. Provide a brief history/recap of the work to date 2. Discuss the focus on individuals leaving prison who are homeless (including a review of the work with DOC and Parole) 3. Discuss a possible MICJS collaboration <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Richard reminded the group that when the work on housing began, Task Force members determined the first area of interest would be to focus on individuals leaving prison who were homeless. • What came from that initial discussion was a commitment from DOC and Parole to determine what could be done to gather better data and to also determine if any reforms could take place outside of a formal recommendation(s). • Melissa noted that DOC and Parole have yet to make any firm policy changes but are exploring issues around housing placement prior to an inmate’s release from prison. • She reminded Task Force members that there are approximately 150 homeless parolees released from DOC every month. • DOC and Parole are working toward a mechanism to ensure that an offender’s pre-release investigation is made prior to the parole board hearing with the inmate. • Melissa added that oftentimes a release plan will sound good on paper, yet in reality it won’t be a valid plan. • There is currently a policy in place for DOC to rescind a parole release if it is determined someone needs a better plan, but the goal is to not deny parole to someone for lack of a plan. • Another goal is to not parole people ‘homeless’. • DOC is hoping to identify parole placement locations earlier. • Melissa added that she believes this issue can be fixed internally and that
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	<p>DOC and Parole simply need to coordinate on the process and possibly adjust workloads internally.</p> <ul style="list-style-type: none"> • As far as capacity, the work has included a review of topics including identifying felony friendly landlords, exploring rapid re-housing options, determining other work by agencies such as DOLA, and discussing possibilities for leveraging marijuana dollars. • In order to make a case to developers and landlords it is essential to have good data and provide good education. • Adam noted that the group may want to be cautionary about the availability of the marijuana money set-aside, since the general population will be competing against justice involved people for housing assistance. • Melissa noted that DOC's new case management system should be better suited to inform the discussion around connecting data to outcomes and status at revocation, status at discharge, etc. • Richard summarized that this topic is immense with a number of significant issues, and therefore it will be critical to funnel the work into a specific area in order to make a contribution. • Richard reminded the group that 25% of people leaving prison are homeless, which is the worst possible scenario for anyone to begin their supervision. • Richard also noted that in regards to the 3rd item for discussion, he and Commission staff met earlier in the week with representatives from the Mentally Ill in the Criminal Justice System (MICJS) Task Force, which is interested in a possible collaboration around issues that both groups are currently working toward. • The MICJS focus includes homeless people coming out of prison and jails, but with mental illness as part of their circumstance. • The work done in CCJJ has traditionally been self-generated, but in this particular case there may be potential for collaboration. Additionally, the MICJS group may be ahead of this Task Force regarding work done around housing. • MICJS is also a legislatively appointed group. Their focus is on people coming out of prison and jail so it's a bit broader than this Task Force. They're also looking at opportunities for housing and wrap-around services. • Adam noted that those with a dual diagnoses or mental illness are the most vulnerable in all Colorado institutions. They're the highest users of all sorts of tax dollars and money should be leveraged for permanent supportive housing. • Rose asked about the homeless population going into and coming out of community corrections. • Melissa noted that there was a discussion at one of the Community Corrections Task Force meetings about whether comcor could be the right avenue for people who just need housing. She said there were mixed reactions. • Richard summarized that the consensus from the group is that it might be a good idea to think about partnering with other stakeholders. Next steps are for the Commission to discuss the issue at the February retreat.
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Issue/Topic:	Discussion:
<p style="text-align: center;">REPORT BACK</p> <p>Collateral Consequences Working Group</p> <p style="text-align: center;">Action:</p> <ul style="list-style-type: none"> • Task Force members were asked to provide any feedback or concerns to the Working Group on the preliminary proposals presented during the meeting • The Working Group will continue to meet and fine tune their proposals 	<p>Mark Evans, the lead for the Collateral Consequences Working Group presented a PowerPoint update on the group’s progress.</p> <p><i>DISCUSSION POINTS</i></p> <p>Mark explained that true consequences of conviction include direct consequences, collateral consequences and other consequences. <u>Direct consequences include:</u></p> <ul style="list-style-type: none"> • Prison or jail • Probation • Community corrections • Restitution • Fines, fees and costs, and • Community service <p>Direct consequences are basically the things that are issued on a mittimus that will end one day. <u>Collateral consequences include</u> things like:</p> <ul style="list-style-type: none"> • Employment • Public benefits • Family concerns • Immigration, and • Other rights, privileges and opportunities <p>Collateral consequences are prohibitions and disadvantages imposed on an individual as a result of the conviction of an offense. Both consequences are a product of the law but direct consequences are predictable, definite and generally expire, while collateral consequences are difficult to anticipate, potentially unknown at sentencing and may apply indefinitely. Other consequences can come from private employers, private landlords along with social stigma from friends and family.</p> <p>Judges, researchers and other criminal justice professionals have noted the negative impacts of collateral consequences on someone’s ability to reintegrate into society. Research shows that gainful employment and stable housing are key factors that enable people with criminal convictions to avoid future arrests and incarceration. Second chances are critical for re-entry success.</p> <p>Mark recounted that the Collateral Consequences Working group was formed in June of this year and was tasked with addressing collateral and other consequences. Group members include:</p> <ul style="list-style-type: none"> • Erin Crites, Probation • Christie Donner, CCJRC • Mark Evans, Public Defender • Jessica Jones, Private Defense • Jack Regenbogen, CCLP

- Melissa Roberts, DOC/Parole

The Working Group is identifying how collateral consequences are most critically impacting the reentry and reintegration prospects of people with a conviction. The group is also developing principles to guide efforts to achieve meaningful reform as follows:

- Involvement in the justice system should not result in collateral consequences that needlessly undermine individuals’ future success, are counterproductive to the safety and welfare of society, or exacerbate racial inequalities.
- Public policy should reflect emerging research indicating the predictive value of a past offense declines over time.
- The public’s access to criminal history information must be better balanced with individuals’ right to privacy and the safety and welfare of society.

Mark noted that with those principles in mind, the Working Group held a brainstorming effort in September, took their work, and turned it into concrete work areas. Those areas fall into three stages of development as follows:

1. Well-developed ideas including:

- State licensure and employment
- Private employment
- Orders of collateral relief

2. Initial ideas including:

- Housing
- Criminal background checks, and

3.Planned Future inquiry

Mark walked Task Force members through the draft proposals. Discussion points can be found below. He noted that in some of the handouts he has ‘block copied’ from Westlaw and then used track changes to detail recommended changes.

DISCUSSION POINTS

Colorado’s Department of Regulatory Agencies regulates a good portion of the state and local government jobs in Colorado. A criminal record can adversely impact an individual’s ability to obtain either a license necessary to work or direct employment with state or local governments. Additionally, society as a whole is diminished with more unemployed people.

When someone with a criminal record applies for a state job, statute governs the effect of that record on his or her employment prospects, and there are several shortcomings with the current statute. First, the only clear statutory guidance on how a criminal record should be considered does not apply to licensure decisions, only to actual employment by the state.

Additionally, the guidance provided for state employment decisions mandates

that the same criteria for evaluating convictions which have been pardoned, expunged or sealed applies to those that have not, therefore the guidance for state employment applies the same evaluation criteria to all conviction records. Additionally, existing guidance for licensure only applies when there is a need to make a finding of “good moral character”.

Mark noted that he spoke with DORA and that they don’t have a widespread practice of denying applications for licensure. However, there is an issue with the granting of conditional licenses and the fact that the conditional license remains on the DORA website into perpetuity. DORA says they don’t have the authority to remove the information after it’s posted.

Mark said he asked DORA if they would want the power to eventually remove the conditional licensure and they said yes.

Mark explained that this STATE LICENSURE AND EMPLOYMENT proposal contains six recommendations as follows:

1-Amend section 24-5-101
Currently the statute reads that for employment decisions, if someone has been arrested or charged but the case is pending; they can’t be considered for employment. The Working Group feels that defeats the purpose of mechanisms like pardons, expungement and sealing.

The Working Group is proposing that for licensure and state employment decisions there would be two categories of criminal records. Arrest, sealed, expunged, and issues of collateral relief would be one area that couldn’t be considered. Everything else would be funneled through a decision making rubric. The recommendation clarifies two different buckets.

2-Provide training to agencies

3-Empower DORA to delist certain conditional licenses
This gives DORA the ability that when someone applies for a license with a past conviction, DORA can give them the conditional license, but if an individual remains free of any other action, DORA may remove the condition, on request, after five years. If the person does well it gives them the ability to request that DORA remove the condition from the public record.

4-Collect data
DORA’s regulatory agencies are required to collect and report data on “the number of licenses or certifications that the agency denied, revoked, or suspended based on a disqualification and the basis for the disqualification”. These agencies are required to submit data on licenses and certifications that were denied based on qualifications of criminal context. DORA says agencies aren’t breaking the information out in a meaningful way. This recommendation will tweak that.

5-Encourage the elimination of unnecessary mandatory collateral

	<p>consequences</p> <p>This recommendation recognizes that criminal history based restrictions are necessary, but should be imposed on a case-by-case basis. Mandatory licensure sanctions, which applied automatically regardless of an individual’s circumstances, are rarely appropriate. Part of the sunset review process would include asking agencies to examine mandatory sanctions and see if they can be converted into discretionary qualifications. Most criminal history disqualifications are discretionary.</p> <p>6-Incentivize opportunity expansion by state contractors</p> <p>Colorado has purchasing preference for environmentally friendly goods; so if someone is producing good products, and it’s within five percent of a competitors cost, the state commits to buying the environmentally friendly product. This provides incentive for employers to adopt an equivalent policy to what the state does. The details of this recommendation are still in the works.</p> <p>Mark explained that once these recommendations and proposals are being seriously considered by the Task Force, then the Working Group will reach out to others stakeholders like the Governor’s office.</p> <p>Adam noted that DPA does a lot of procurement and hiring and suggested checking in with them as well. DPA and DORA would both want to provide feedback.</p> <p>Mark explained that the <u>PRIVATE EMPLOYMENT</u> proposal contains two recommendations as follows:</p> <p>1-Amend section 24-34-402 by adding the following</p> <p>Colorado currently places no restriction on a private employers’ ability to withhold or terminate employment based on an individual’s criminal record. Employers are prohibited from asking individuals to disclose criminal records that have been sealed, but there is no enforcement mechanism in place.</p> <p>This recommendation gives meaning to Colorado’s current record sealing laws and applies existing EEOC guidance. It would prevent private employers from taking adverse action against an individual based on arrests that did not result in convictions, sealed records and expunged records.</p> <p>Adam asked if this a currently a problem? Mark replied that record sealing puts people in a sticky position. When companies are performing a background check it is difficult to know if the sealed record is available on a private background check site. The whole idea behind sealing is to not have to report that the incident ever occurred.</p> <p>Adam asked if there is any data suggesting that it’s happening often. Mark replied that it is really difficult to get numbers and information on this. He added that when numbers aren’t available this kind of work is about doing the right thing and what people ought to be doing anyway. It gives employers incentive to</p>
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do the right thing.

Jessica said that she frequently writes letters for clients applying for jobs.

Mark added that this isn't a change in law; it already is law in Title 7. It's the EEOC guidance interpretation of it.

2-Add section 24-72-710 to Colorado's record sealing statutes

Mark explained that the ORDERS OF COLLATERAL RELIEF proposal contains four recommendations as follows:

1-Amend section 18-1.3-107
 Colorado currently allows judges to issue an order or collateral relief. The statutory mechanism is new and it's a great idea, but there are critical shortfalls limiting its effectiveness and use. The biggest problem is that that it's only allowed at the time of sentencing which means nothing to someone who completed a sentence years ago and is trying to move on with their life.

2-Eliminate duplicative statutes
 When the General Assembly created orders of collateral relief, it enacted substantively duplicative statutes in parts 1, 2, and 3 or article 1.3 of title 18.

3-Establish an equivalent mechanism as section 19-2-927 of the Children's Code
 Orders of collateral relief should be available to eligible individuals who are subject to collateral consequences resulting from a juvenile adjudication.

4-Track orders of collateral relief

Dave asked how often orders of collateral relief are used. He noted that he doesn't see them at all and doesn't hear from deputies that they're hearing it at court. He thinks it's really uncommon.

Mark noted that the Working Group is still in the preliminary phase of Housing and Records Availability proposals.

Possible recommendations around HOUSING may include:

- Public housing to follow federal guidance
- Unfair practice for private landlords to take adverse action on the basis of an arrest without conviction, sealed records, or expunged records
- Possible transparency increase
- Possible incentive modeled after the Work Opportunity Tax Credit

Possible recommendations around RECORDS AVAILABILITY may include:

	<p>-Limit CBI reporting of arrests -Possible limit on CBI reporting of charges -Enhance readability of CBI records -Possible better mechanism for correcting CBI records</p> <p>As for records availability, the biggest part of the recommendation would be that access to the report for the general public should not include arrest information. People are presumed innocent until proven guilty and that should be the case with a criminal history report. Additionally, the Working Group would like to improve the readability of a report.</p> <p>Mark thanked the Task Force members and asked for any input to come forward now on the recommendations that are already in process.</p> <p>Richard summarized that the goal today was to get ideas out in front of everyone early on and to see if there are any big problem areas, and to let the Working Group know so they can factor feedback into the proposals.</p>
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Issue/Topic:	Discussion:
<p style="text-align: center;">NEXT STEPS</p> <p style="text-align: center;">Action:</p> <ul style="list-style-type: none"> • Collateral Consequences Working Group will continue to meet and flesh out recommendations • Recommendations to be voted on in July of this year, with preliminary presentation in June • Housing recommendations will follow the same timeframe • Possible collaboration with MICJS around housing will be discussed at the February Commission retreat • March Re-entry meeting to be cancelled 	<p>Richard summarized that the Collateral Consequences Working Group will continue to meet and work to firm up recommendations in the next 4-6 months.</p> <p>He added that he would like to see all the recommendations voted on by the Task Force in July of this year so they can be moved to the CCJJ by August. That way there could be a preliminary presentation to the Commission in August with a final vote scheduled for September. This will allow for time to put a legislative package together.</p> <p>He added that the same timeframe holds true for any Housing recommendations.</p> <p>Richard also explained that the request from MICJS to work with the Re-entry Task Force around Housing would be discussed at the CCJJ retreat in February.</p> <p>The Task Force agreed to cancel the February meeting with a plan to preview more recommendations from the Collateral Consequences Working Group in March.</p> <p>Sherri added that she appreciates all of work done so far. She added that the proposals present a nice balance between tidying up, making things “right”, and encouraging people to think differently. She believes it’s a lot of good effort to improve, promote and encourage good practice.</p>

Next Meeting - CANCELLED

February 8, 2017

1:30pm – 4:30pm

700 Kipling, 4th floor training room