

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

March 8, 2017 1:30PM-3:00PM
700 Kipling, 4th Floor Conference room

ATTENDEES:

CHAIR

Stan Hilkey, Dept. of Public Safety

TASK FORCE MEMBERS

Tom Giacinti, Representing Community Corrections

Mark Evans, Public Defender's Office

Hassan Latif, Second Chance Center

Jessica Jones, Criminal Defense Attorney

Alfredo Pena, Parole Board

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)

Jennifer Bradford, Metro State University of Denver (phone)

Rick Raemisch, Dept. of Corrections

Monica Chambers, Department of Corrections (phone)

STAFF

Richard Stroker/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ABSENT

Christie Donner, Colo. Criminal Justice Reform Coalition

Gary Darling, Larimer County Criminal Justice Services

Sherri Hufford, Division of Probation Services

GUESTS

Carolyn Turner, Advocates for Change

David Johnson, Deputy Director of Adult Parole

Cassandra Carlton, United States Attorney General's Office

Jack Reganbogen, Colorado Center on Law and Policy

Issue/Topic:	Discussion:
Welcome and Introductions	Stan Hilkey welcomed the Task Force members, reviewed the agenda, and asked attendees to introduce themselves. He called for any additions or deletions to the January minutes (the most recent meeting of this group). Seeing none the minutes were approved and the meeting began at 1:36 p.m.

Issue/Topic:	Discussion:
<p>REPORT BACK Commission Retreat</p> <p>Action:</p>	<p>Commission consultant Richard Stroker provided information on the outcomes from the February CCJJ retreat.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • During the retreat Commissioners were provided with a status update on the work of each of the individual task forces. They then determined next steps for each group as follows: <ul style="list-style-type: none"> -The Data Sharing Task Force has been in existence since April 2015. Commissioners felt the Task Force has accomplished as much as possible at this juncture and that the group should be concluded to allow for other work to take place. -In-depth work is underway in the Juvenile Continuity of Care Task Force and that group will be coming forward with recommendations in the next two months. -In-depth work is also underway in the Mental Health/Jails Task Force. The group recently produced four recommendations and will be addressing the issue of Diversion in the coming months. -The Collateral Consequences Working Group of the Re-entry Task Force has finalized three recommendations that will be voted on during the meeting today. A handful of other recommendations will be coming forward in the next few months. As for the Housing Working Group, the Commission realizes that significant work is underway on the same issues by other agencies including the MICJS Committee. The CCJJ agreed that it would be useful for the Housing Working Group to meet with members from MICJS to discuss a possible collaboration. • Richard went on to explain that as work concludes in some Task Forces other work will likely begin with the creation of new Task Forces. One work area the Commission did agree to begin to pursue work on is in Pretrial Release. A Pretrial Release Task Force should launch in May of this year. • Richard added that DCJ released a report on the C.L.E.A.R. Act (Community Law Enforcement Action Report Act) and that the Commission expressed interest in a deeper dive of the report outcomes. • The CCJJ will also continue to address Minority Over-Representation Issues in the criminal justice system. <p>---</p> <ul style="list-style-type: none"> • At this point in the meeting Rick Raemisch addressed the Task Force members about issues he's facing in the Department of Corrections. • He went on to describe the case of four teenagers being charged for a

	<p>robbery spree and murder case that was featured in the Denver Post. He explained that this concerns the Re-entry Task Force because the Task Force and the CCJJ have worked on many reforms.</p> <ul style="list-style-type: none"> • Rick went on to explain that there is a housing crisis at DOC and that currently there are 90 women in county jails around the state awaiting transport to prison, and that there is only one available female prison bed. • Rick noted that he believes the four teens involved in the case he mentioned likely all have family in prison, and that the issue of generational incarceration needs to be addressed. Statistically, over 90% of inmates have children. • He added that the CCJJ and its Task Forces should be looking at a bigger picture including what age people are being charged with murder as an adult in Colorado. He said it's important to own the big picture and that everyone is a part of this. • He summarized by saying that the overwhelming majority of people in prison are in for non-violent offenses and that this should be addressed as well.
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Issue/Topic:	Discussion:
<p>COLLATERAL CONSEQUENCES WORKING GROUP Recommendation Presentation</p> <p>Action:</p> <ul style="list-style-type: none"> • The three recommendations were approved by the Task Force • The recommendations will be presented to the CCJJ during the May Commission meeting. A final vote will likely be held during the June Commission meeting 	<p>Mark Evans, the lead for the Collateral Consequences Working Group explained that the Task Force would be voting today on three recommendations created by the Working Group. The Working Group was formed in June and consists of Erin Crites from Probation, Christie Donner from CCJRC, defense attorney Jessica Jones, Jack Regenbogen from CCLP, Melissa Roberts from Parole and Mark himself.</p> <p><i>DISCUSSION POINTS</i></p> <p>Mark explained that true consequences of conviction include direct consequences, collateral consequences and other consequences.</p> <p><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.</p> <p><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

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.

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.

Mark went on to explain the process the group went through over the last 10 months to develop the recommendations being presented today. The three recommendations include:

- FY17-RE #01: Orders of collateral relief
- FY17-RE #02: Private employment
- FY17-RE #03: State licensure and employment

FY17-RE #01: Orders of collateral relief

Current practice:

Orders or collateral relief are a great tool but they are only available at the time of sentencing. They do not apply to successful deferred judgements and they are only for adults. Additionally they are not reliably tracked and are not eligible for certain offense types.

Proposed changes:

The recommendation calls for collateral relief to be available from the criminal court at any time. It could be requested following a successful deferred judgement and would be available for juveniles. The proposal recommends data tracking and the same eligibility exclusions would apply.

DISCUSSION POINTS

- Mark noted that it appears orders of collateral relief are currently very rarely used. There are four codes that can be entered into a database associated with the granting of collateral relief but there are questions as to whether the code is being used appropriately.
- These orders didn't exist until 2013.
- Based on limited available data it's a very small number of cases, just dozens since 2013.
- It makes more sense to have this option available to people after they've gotten back on their feet.
- Under this proposal orders of collateral relief would only be available to someone facing a community sentence including probation, community

	<p>corrections and home detention.</p> <ul style="list-style-type: none">• It is important to have this option available to people well after their sentence, because someone may not know at sentencing that they will eventually want to become something like a plumber or an electrician.• Adam asked about the filing fee in the recommendation and why it states 'blank dollars'. Stan added that it can be problematic to have to go back to the legislature to raise or lower fees and that it can be beneficial for a statute to outline that an agency set the fee (i.e. 'CDPS sets the fee'.) Stan added that this clarification to the recommendation could be addressed as an amendment either at the Task Force level, at the Commission or even in the legislative drafting process.• Stan reminded Task Force members that the CCJJ and the Legislative Committee both have eyes on a recommendation during the legislative process.
	<p><u>FY17-RE #02: Private employment</u></p> <p>Current practice: Currently Colorado places no restrictions on private employers and their use of criminal records information. There is no enforcement mechanism for inquiring about sealed records.</p> <p>Proposed changes: The recommendation would give meaning to Colorado's current sealing and expungement laws. It would remedy unfair employment practices that result in inquiries about records of non-pending arrests that did not lead to conviction, or records that have been sealed or expunged. This provision would be enforceable by DORA's Civil Rights Division.</p> <p>DISCUSSION POINTS</p> <ul style="list-style-type: none">• Mark explained that all of the recommendations presented today were sent to DORA, DORA's Civil Rights Division and the Governor's Office of Legal Counsel for feedback and input.• DORA responded that they could not remark on the merits of the recommendation but they did provide technical assistance. DORA pointed out that under current Colorado law someone <u>can</u> bring a disparate impact claim against a private employer.• Alfredo noted that any employer can request a background check.• CBI records should reflect convictions only, not arrests, expungements and/or cases where records have been sealed. There is no current mechanism to protect someone from an inquiry being made.• The goal of this recommendation is to establish a 'don't inquire', and 'don't act on' standard.• This policy would change job applications and would act as an incentive for employers to think differently about an arrest versus a conviction.• This change would be geared toward private employers. Currently for state employers there is already a 'ban the box' rule and state employers shouldn't be considering sealed records, expungements or arrests that don't end in conviction.

- This would apply to local municipalities as well but it is hard to say to what extent locals will follow it.
- This is both less and more restrictive than ban the box. The recommendation takes a limited subset of questions and basically says "Don't ask, period." But that subset is what employers shouldn't have access to anyway.
- It's already against the law to ask about sealed or expunged records, but there's no enforcement.
- The actual CBI report is also very confusing and a recommendation is forthcoming about the report calling for it to only show convictions and not arrest.
- Even if CBI issues can be fixed, employers still have access to the information via private companies. This would just reinforce that it is discriminatory to ask for arrest information. It would be more of a value statement since it would be extremely hard to prove.
- Stan offered an analogy – He explained that Colorado changed the law banning the amount of bullets that went into a magazine for a weapon even though there was no data on which to base the law. But the law has changed the behavior of people who sell weapons and ammunition. There are positive outcomes around changing behavior that sometimes can't be measured.
- This would be a value statement to all employers, and at the same time would get employers away from asking the question "Have you ever been arrested."

FY17-RE #03: State licensure and employment

Current practice:

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.

Proposed changes:

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.

DISCUSSION POINTS

- Currently conditional licenses are granted frequently and are permanent. Data collection is vague and guidance applies only to discretionary disqualifications.
- The proposal empowers DORA to remove the initial conditional designation, clarifies data collection requirements and encourages the elimination of mandatory sanctions.
- The proposal also recommends establishing an incentive program to private employers who contract with the state, which would be modeled

	<p>after an existing purchasing preference program.</p> <ul style="list-style-type: none">• Adam noted that the state is currently overhauling its entire procurement code.• Melissa added that under this proposal an arrest in isolation shouldn't be considered at all. <p>SUMMARY</p> <ul style="list-style-type: none">• Mark reminded task force members that this is as far as the working group has gotten to date, but that they have plans to also address:<ul style="list-style-type: none">-Public and private housing-CBI criminal records availability-Diversion program support-Driver's license availability-Firearms and DJS-Excessive fines, fees and surcharges, and-Pervasive escape charges• Richard reminded task force members that legislators consistently inquire about substantive recommendations coming forward from the CCJJ and that these are essential proposals that the General Assembly will appreciate. <p>Stan informed attendees that the next step would be for the Task Force members to vote on the three recommendations presented by the Working Group.</p> <p>FY17-RE #01 A motion to vote was made and seconded on recommendation FY17-RE #01. The recommendation passed unanimously with one abstention.</p> <p>FY17-RE #02 A motion to vote was made and seconded on recommendation FY17-RE #02. The recommendation passed unanimously with one abstention.</p> <p>FY17-RE #03 A motion to vote was made and seconded on recommendation FY17-RE #03. The recommendation passed unanimously with one abstention.</p> <p>Stan thanked the group for their participation and noted that the three recommendations would be presented to the CCJJ in May for preliminary consideration. A final vote will then be taken at the Commission meeting in June.</p>
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Issue/Topic:	Discussion:
<p>NEXT STEPS</p> <p>Action:</p> <ul style="list-style-type: none">• The Collateral Consequences Working Group will continue to meet and study other recommendation areas• The Housing Working Group will attend the next MICJS Housing Group meeting	<p>Richard summarized that the Collateral Consequences Working Group will continue to meet and report back to the Task Force with additional proposals over the next few months.</p> <p>Richard also explained that the April Task Force meeting would be cancelled but that the Collateral Consequences Working Group would continue to meet. The Task Force will reconvene in May.</p> <p>Additionally, members of the Housing Working Group will likely meet with the MICJS Housing Group to discuss possible collaborative efforts.</p>

Next Meeting

May 10, 2017 1:30pm – 4:30pm 700 Kipling, 4th floor training room