



Colorado Commission on Criminal and Juvenile Justice

Minutes

May 9, 2014

Jefferson County District Attorney's Office
 500 Jefferson County Parkway
 Golden, Co 80401

Commission Member Attendance

Kathy Sasak, Interim Chair	Steve King - ABSENT	Rick Raemisch
Doug Wilson, Vice-Chair	Julie Krow - ABSENT	Brandon Shaffer
Jennifer Bradford	Evelyn Leslie	Pat Steadman
Theresa Cisneros	Beth McCann	Alaurice Tafoya-Modi
Sallie Clark - ABSENT	Jeff McDonald	Mark Waller - ABSENT
Matthew Durkin	Norm Mueller - ABSENT	Pete Weir
Kelly Friesen	Kevin Paletta	Meg Williams
Charles Garcia	Joe Pelle - ABSENT	Dave Young - ABSENT
Kate Horn-Murphy	Eric Philp - ABSENT	Jeanne Smith, <i>Ex Officio</i>

Guest Speakers: Jake Horowitz (Pew's Public Safety Performance Project), Regina Huerter (Denver Crime Prevention and Control Commission), Lisa Calderon (Denver's Community Reentry Project) and Ty Campbell (Denver Police Department)

CALL TO ORDER AND OPENING REMARKS

Kathy Sasak, called the meeting to order at 11:15 a.m. and reviewed the day's agenda. Kevin Paletta moved, and Meg Williams seconded, the motion to approve the Minutes from the April CCJJ meeting. The motion passed and the April 2014 Minutes were approved unanimously.

JUSTICE REINVESTMENT INITIATIVE

Jake Horowitz, State Policy Director for Pew's Public Safety Performance Project, presented information on the Pew Charitable Trust and one of its projects known as the Justice Reinvestment Initiative which was launched in 2006. The mission is to help states advance fiscally sound, data-driven policies and practices in criminal and juvenile justice that maintain public safety, hold offenders accountable and can tame corrections costs. This is done in three primary ways: conducting and publishing research; bringing policy makers together across states, within states and within regions; and providing direct technical assistance to states undertaking a review of their sentencing and corrections drivers. Pew fosters the creation of consensus-based policies that achieve the goals mentioned previously: public safety, accountability, and containing costs.

The presentation today was precipitated by contacts made when a partner with Pew, the Council of State Governments, worked with Mr. Raemisch (Executive Director, Colorado Dept. of Corrections and current CCJJ member) when he was in Wisconsin. Mr. Horowitz indicated he would review broad nation-wide trends in data and policy and proactive efforts across the country to rein in costs while investing in the best strategies for public safety. Through the 1970s, prison population was relatively flat, but accelerated in the last 40 years to an all-time high. Since 2009, the rate of growth has plateaued and has demonstrated a slight downturn.

Approximately 1 in 100 adults is now currently behind bars.¹ When including those on probation, parole or in community corrections, the number of adults under some form of correctional control is approximately 7.1 million, or 1 in 31 adults. Correctional costs across the country have exploded to roughly \$50 billion, representing the second fastest growing segment of state spending, behind Medicaid. Although 66% of offenders are in the community under some form of supervision, approximately 90% of a state's correctional budget is spent on institutions (prisons). One area of cost-benefit consideration is what could be done in the community with the money spent on one inmate who is housed in prison.

Policy choices made by states drive the size of its prison population and the costs associated with incarceration. Obviously, the size of the prison population is directly affected by the number of individuals sent to prison and the length of sentences. The growing prison population was not due to changing demographics or crime rates, but primarily due to the policy responses to crime. In comparing the length of time served from 1990 to 2009, inmates served 36% longer periods due to a variety of factors, including sentence length, parole eligibility, and parole practices. The additional cost of inmates in 2009 - based on an average 9-month longer stay - was about \$10 billion. However, over this period of time, the recidivism rate was not reduced.

Mr. Horowitz offered the example of Florida and New York between 1999 and 2009. In Florida, an increase in prison population (roughly, 70,000 to 100,000) was accompanied by a 28% decrease in the crime rate. In New York, there was a decrease in prison population (roughly, 70,000 to 60,000), but the crime rate decreased by roughly the same amount. Subsequent studies by Pew of Maryland, New Jersey and New York have demonstrated that this is not an aberrant finding - states can reduce their imprisonment rates while also reducing their crime rates.

How does Colorado compare to the nation? Mr. Horowitz disclaimed his summary of the snapshot of Colorado, indicating that he was not an expert on Colorado, but merely providing statistics that are publically available. He provided various criminal justice statistics relative to other states in the west. Colorado is below the national average in imprisonment rate and below some states in the west. Additionally, Colorado has a higher community corrections supervision rate than the national average, a lower violent crime rate than the national average, and a property crime rate that is similar to the national average. The overall prison, parole, and probation populations have a similar trajectory to those found across the country...significant growth over the last decades with a slight plateau in the last few years.

¹ Warren, J., Gelb, A., Horowitz, J., & Riordan, J. (2009). *One in 100: Behind bars in America 2008*. The Pew Charitable Trusts, Public Safety Performance Project.

Correctional expenditures in Colorado were also similar in the growth rate found around the country. Colorado is ahead of some areas of the country in some measures, but looks very similar to others in regard to costs. The time served in Colorado grew by 33% across all crime types from 1990 to 2009, adding about \$100 million in costs for inmates released in 2009. Finally, Colorado looked similar to other states where both the imprisonment rate decreased (-17%) and the crime rate decreased (-11%).

Mr. Horowitz offered other points in the national dialog on the changes in correctional practices. There are changes in supervision technology, advances in behavior change, better triage of offender needs with risk assessment improvements, improvements in cost-benefit analyses, increased public support for alternatives to incarceration, and, of course, the necessity for greater efficiency and effectiveness resulting from budget pressures.

Mr. Horowitz offered one programmatic example that demonstrates the ability to reduce crime while at the same time also reducing correctional cost. This example also illustrates the value of implementing evidence-based practices. In 2004, Judge Steven Alm of Hawaii led a rigorous evaluation of its probation system and developed the Hope Program (Hawaii's Opportunity Probation with Enforcement; hopehawaii.net). Judge Alm felt that too many violations were tolerated with no behavioral consequence. Once the number of violations reached an intolerable threshold, a long and expensive jail consequence was imposed.

The HOPE program focuses on Hawaii's highest risk probationers and introduces swift, certain, but brief consequences for probation violations. For example, probationers are required to call an 800 number daily to learn if they are required to take a drug test that day. If the probationer has a dirty UA, they are sanctioned with a short, two-day jail stay (to be served on weekends, if the probationer has a job). If the offender provides clean UAs, the frequency of the required drug tests is reduced and, with continued compliance, the offender may earn release from supervision. The state also funded on-demand treatment services that are available to any probationer who requests such services.

Alm also set up a randomized trial where some offenders were supervised under the HOPE approach and others were supervised in the traditional way. Those supervised under the HOPE program had fewer - by half - skipped appointments, dirty UAs, revocations and arrests. The overall result was a reduction in jail bed days. Other states are now testing the HOPE model.

Mr. Horowitz described that more leaders from across the political spectrum realize that the old "tough on crime" approach is ineffective and is associated with huge costs. Major conservative politicians and leaders have joined the "Right on Crime" (rightoncrime.com) movement that encourages "smart on crime" policies (besmartoncrime.org). Governors, judges, legislatures, business leaders, and the public have shifted their views regarding sentencing and the use of prison in light of static rates of recidivism.

The Justice Reinvestment Project helps other states by gathering key criminal justice stakeholders to examine their criminal justice system. After examining a state's processes, stakeholders examine how their state's system compares to best practices instituted across the nation and then create a policy reform package.

The Justice Reinvestment Project has a goal that includes three elements:

1. Strengthen community supervision and resources, which...
2. Reduces prison populations, which...
3. Frees up resources to further invest in community resources.

A Justice Reinvestment Project typically has four stages:

1. Goal Setting: Agree on process and timeline; Determine cost of doing nothing.
2. Analysis: Identify reasons for prison population growth by auditing sentencing, corrections and supervision policies.
3. Policy Development: Develop policy options and model the implementation effects.
4. Consensus Building: Build broad support for reforms; Issue recommendations and draft legislation

Mr. Horowitz offered examples of the Justice Reinvestment Project stages in Arkansas, Mississippi, Missouri, Oregon and South Dakota. He described the key reforms implemented in Oregon that targeted more effective drug and property offense sentencing, emphasized community supervision, and reserved prison beds for violent offenders. As crime and the number of occupied prison beds decreased in Oregon, spending shifted from prisons to community resources and treatment.

Discussion:

1. Given Mr. Raemisch's connection to Wisconsin, what is the update from efforts in that state? There was a change in leadership and the reforms that lead to reductions in the prison population have been reversed. The prison population is now on the rise in Wisconsin. Successful implementation requires continued support of the reforms and oversight of the programs and outcomes. A variety of factors can result in a reversion to earlier, familiar policies that are less effective.
2. The Commission has a mature process in place and the Commission has addressed many policies, business practices and statutory concerns from an evidenced-based perspective. We have just recently completed our strategy-setting retreat and identified issues that are ripe for analysis and work. What has Pew identified as potential areas for attention in Colorado? Pew has no specific agenda regarding Colorado and is merely interested in what the state is doing that may inform Pew's work in other states. Colorado deserves kudos for the creation of the Commission and its work. Pew is very supportive of states that create entities like the Commission to address criminal justice issues. Pew can help create Commission-like entities, but it is also available to offer assistance to states that have existing entities like the Commission. That assistance may be extensive, like the Justice Reinvestment Project, may focus on very specific criminal justice issues or concerns or may simply involve public opinion polling on criminal justice policies and practices.
3. Some of the data on incarceration and crime rates in the presentation were confusing. Some data seemed to show that the incarceration and crime rates were growing whereas other data showed a decline.
 - a) The discrepancy is a result of different time frames. Data shows that from 1992 to 2012 the prison population grew. But, from 2007 to 2012 the prison population plateaued and had gradually declined.

- b) Another important factor is that time served is increasing across the country by roughly 33% with associated costs of \$1 billion. The lesson from the HOPE program is that severity of sentencing is not the only valid way of impacting offender performance and crime rates.
4. The issue of re-entry is being re-visited by the Commission. It may be that some of the issues surrounding re-entry will not be legislative, but, instead, will focus on modifications to practices and policies and determinations of implementation fidelity. Can a JRI effort contribute to that endeavor? Also, Pew has previously approached the Commission and the issue of control over the processes was an issue. Specifically, Pew requires buy-in by the Governor, the Chief Justice and the Legislature. What if suggested reforms are not legislatively based? What help can Pew provide if the Commission identifies issues that do not involve a legislative resolution? Who determines the direction of reforms? Who controls the processes and outcome?
 - a. There are several issues that are not the purview of Pew. The Commission sets the direction of its re-entry work. Overall, work on re-entry may not be the correct fit for Pew to provide assistance, but Pew may help locate technical assistance for that topic area.
 - b. Pew does want the Governor, Chief Justice and the Legislature to be invested in any the effort by Pew. In Mr. Horowitz's experience the conflicts of control are often between a state's three branches of government. Pew's goal is to keep the three branches working together and moving forward.
5. Mr. Horowitz introduced Abby Walsh of Pew who had worked closely with Mr. Horowitz in the preparation of the presentation to the Commission. He offered to provide any of the materials from Pew that might be helpful (pcs-experts@pewtrusts.org; pewstates.org/projects/public-safety-performance-project-328068).
6. The Commission's next step should be to define its focus on re-entry. Will it focus on probation and parole supervision? Barriers to reintegration? Are any of the issues related to the Pew work on population containment and reinvestment? Pew can help determine whether the Commission's work aligns with the focus of Pew's efforts and assistance.
7. Has Pew worked with any other state where the work has not been successful? Yes. The success of implementation is a multi-faceted process and there are a variety of reasons reform efforts may not be successful. It may be due to changes in leadership, to the failure to pass legislation, or to incomplete or improper implementation.
8. Is Pew interested in working on the juvenile justice system? Pew launched its initiative in the juvenile area about three years ago in Georgia. It subsequently worked with Kentucky and Hawaii and will soon announce partnerships with two other states. Pew's direction has been set for this year; however, Pew is always looking for potential engagements in other states with the partnership process beginning in late winter. Depending on the Commission's direction in the juvenile area, future discussions can determine whether a partnership with Pew would be advantageous.

Mr. Horowitz presentation and the discussion concluded.

The Commission will identify its focus in the area of re-entry and other areas. Once that has been completed, there may be an opportunity to reach out to Pew for a conversation around potential assistance.

LEGISLATIVE UPDATE

Jeanne Smith provided an update of the bills initiated by the Commission:

- House Bill 14-1266: Concerning the Penalties for Certain Value-Based Offenses will be signed by the Governor today, May 9, 2014. The Commission thanks the legislators who sponsored the bill, especially Commission members, Sens. King and Steadman and Rep. McCann.
- Senate Bill 14-129: Concerning Changes to Criminal Provisions Related to Marijuana has passed the Legislature and will be sent to the Governor. The Commission thanks the legislators who sponsored the bill, especially Commission member, Sen. Steadman.
- Senate Bill 14-163: Concerning Clarifying Changes to Provisions Related to the Sentencing of Persons Convicted of Drug Crimes was sent to the Governor. The Commission thanks the legislators who sponsored the bill, especially Commission members, Sens. King and Steadman.

Additionally, the Legislature has requested assistance from the Commission to look at two areas of interest. These areas will be in addition to the areas of focus identified at the March retreat.

The Legislature has asked the Commission:

- To examine whether there should be increased penalties for certain crimes when the victim is an emergency medical service provider. This mandate may be found in House Bill 14-1214 (see p. 6, Section 7 of the bill). If signed by the Governor, this bill would require a report by the Commission to the Judiciary Committees of the Senate and House by March 1, 2015.
- To conduct a study of the issue of Cyberbullying. This request was made in an April 15, 2014 letter signed by Senate President Morgan Carroll and House Speaker Mark Ferrandino, along with the sponsors of a postponed bill on cyberbullying, House Bill 14-1311 (Concerning Harassment Against a Minor by Using An Interactive Computer Service). A report by the Commission is due to the Judiciary Committees of the Senate and House and the Governor's Office of Legal Counsel by December 1, 2014.

The Legislative members of the Commission offered updates on three additional bills of interest to Commission members.

- Sen. Steadman briefly described House Bill 14-1355 (Concerning Department of Corrections Reentry Initiatives for Successful Reintegration of Adult Offenders into the Community) which is related to the Commission's interest in addressing re-entry. The bill was derived from two days of hearings conducted by the Joint Judiciary Committee and sets aside nearly \$8 million of funding primarily to the Division of Parole for reforms. The Commission should be aware of the efforts connected to the requirements of the bill as it sets its priorities in the re-entry area.
- Rep. McCann made reference to Senate Bill 14-064 (Concerning Restricting the Use of Long-Term Isolated Confinement for Inmates with Serious Mental Illness) and the changes the bill requires of the Department of Corrections in its practices around administrative segregation (i.e., solitary confinement). The DOC has already modified the extent of the use of administrative segregation for inmates with mental illness. The bill also provides additional funding to conduct mental health evaluations throughout the criminal justice system.

- Rep. McCann also described her efforts to revise the human trafficking statutes in House Bill 14-1273 (Concerning Human Trafficking). In addition to clarifying human trafficking enforcement, the bill also creates a Human Trafficking Council that will be housed in the Colorado Department of Public Safety. The Council will include stakeholders and representatives from law enforcement, DAs offices, a variety of human trafficking organizations, and victim services. The statutory revisions were based on work by the Uniform Law Commission (uniformlaws.org). Although not given as extensive a charge as that given to CCJJ, the Council will still address many unresolved issues surrounding human trafficking in Colorado.

With the acclaimed support by members, the Commission will refer the emergency medical service provider issue (House Bill 14-1214) to its Legislative Subcommittee to begin work on that matter. The more extensive cyberbullying request is still under review by staff and will be discussed by the Commission at a subsequent meeting. The Commission should seek opportunities to better define the value of the Commission to the Legislature and engage in a dialog to determine how best to address the Legislature's emerging issues without displacing the ongoing work of the Commission. After the November election, the Commission will engage its Legislative members to assist in the best strategies to orient new and current legislators to the work of the Commission.

JUVENILE JUSTICE TASK FORCE

The Juvenile Justice Task Force Co-Chairs Jeff McDonald and Kelly Friesen, along with Task Force member Chief Bill Kilpatrick, offered the final presentation for a vote on a recommendation introduced last month on a Petty Ticket option for law enforcement. The Task Force has worked on the issues underlying the recommendation for about three years.

FY15-JJ #1. Create a petty ticket option for law enforcement as an alternative to initiating formal proceedings for youth.

Recommendation FY15-JJ #1: Amend 19-2-302, C.R.S., by adding a section that provides for a disposition of petty offenses committed by juveniles between the ages of 10 and 17 that gives law enforcement officers the option to do more than "lecture and release" but less than initiating formal proceedings. (The recommendation includes proposed statutory language.)

This recommendation provides an opportunity for law enforcement to do something different for the first-time juvenile offender who has engaged in a minor offense. Law enforcement is frequently the avenue by which a juvenile has access to needed treatment or counseling. This recommendation provides a means, other than arrest and involvement in the juvenile justice system, for the juvenile to be assessed and, if warranted, to receive treatment or other services. Chief Kilpatrick's interest is to allow law enforcement to engage in a problem-solving process with juveniles and their families in a way that, when appropriate, avoids justice involvement.

Discussion:

1. Could the Task Force panel review the petty ticket process?
The process may be implemented slightly differently in different jurisdictions, but it would follow these general steps. When encountering a juvenile between 10 and 17 who has committed a low level offense:
 - a. Law enforcement will have the opportunity to either “lecture and release” or to issue the petty ticket;
 - b. The juvenile would go before an assessment team or professional that would examine the circumstances of the offense;
 - c. Based on the needs identified in the assessment, a contract between the juvenile (their legal guardians) and law enforcement may be written;
 - d. The contract may include a variety of different conditions, including:
 - i. drug and alcohol assessment and, if necessary, treatment, or
 - ii. restorative justice reparation via payment, or
 - iii. other requirements as deemed necessary, and
 - iv. the necessity to complete the conditions within 90 days.
 - e. Following the 90-day period, the assessment team or responsible entity returns to law enforcement with a report of the outcome of the contract.
 - f. Law enforcement has the opportunity to either void the ticket, if the contract was successful, or, if the contract was not successful, pursue the matter through the normal municipal or district court process.
2. Rep. McCann, though initially reluctant due to concerns about disruptions to the diversion process, reported that she is convinced that this would be an effective tool. She believes it would be an important option to prevent juvenile penetration into the system for minor offenses.
3. Jefferson County already has a system that is similar to this concept and it has worked very well. The Jefferson County system is used by the Sheriff’s Office because it does not have a municipal court in which to file minor offenses.
4. The petty ticket brings about immediacy of consequences, uses voluntary compliance as opposed to mandatory compliance, and is a means to provide a juvenile treatment without having to go through the criminal justice system.
5. As proposed, the petty ticket option is not mandatory which allows jurisdictions with the assessment resources to implement the process, but does not require jurisdictions without such resources to implement it.
6. This approach is also supported by research that indicates that introducing juveniles to the justice system increases their future involvement in the system. Maybe this option will prevent the future involvement in the system for some juveniles.
7. Is it correct that local jurisdictions could do this today, if they wanted and had the resources? Is that accurate? Yes, but jurisdictions are not implementing such an option. This will help encourage law enforcement and give them the authority to implement such an option.
8. What is the funding source, given that this option may identify more juveniles for services? The court costs for specific offenses have been previously identified. The money is already there, but it is being used differently. Each community has its own resources that can be shifted from the savings in court costs to the costs associated with the petty ticket option.

There may be also funding available that was set aside for pre-filing options that is not being spent.

9. It appears in the proposal that prosecuting attorneys still must agree to each instance of the use of the petty ticket option. Is this correct?
[This statement refers to a provision found in the proposed statutory language under 19-2-302 (1) "...the officer may give the juvenile a petty ticket if:...(D) The prosecuting attorney does not object to the petty ticket or the contract upon review;..."]
10. The Task Force engaged in many discussion on this particular provision. The panel indicated some confusion as to whether the provision should have been deleted prior to the presentation of the recommendation to the Commission. The Commission members engaged in extensive discussion of this provision.
 - a. This infers that the prosecuting attorney has been informed of the ticket. This has not been the case in Jefferson County. Does this mean that the prosecuting attorney does not object to the entire program or does this mean that the district attorney would have to review each ticket and not object to each issuance of such a ticket? A DA representative indicated that DA's offices would not want to be in the position to review each petty ticket or each contract.
 - b. It seems unclear whether this provision refers to a DA office or a prosecuting attorney agreeing to the existence of the option or agreeing to each instance of its use. Should this section be moved, removed entirely, or amended to be made more clear?
 - c. Are these cases where the district attorney/prosecuting attorney normally expresses an interest? If that is the case, does it mean that it is up to the local law enforcement agency to opt for the petty ticket?
 - d. The idea underlying the option was to utilize the petty ticket in cases that normally would have to be brought to the attention of the District Attorney's Office because there was no other option. This concept was an attempt to keep the criminal justice system out of the process.
 - e. Some Commission members expressed support to keep the provision and others to remove the provision.

Sen. Steadman moved the approval of Recommendation FY15-JJ#1 as drafted, with the deletion of section 1(D). Doug Wilson seconded the motion. The modification made by the motion was as follows:

Create 19-2-302.1 to read as follows:

(1)

~~(D) THE PROSECUTING ATTORNEY DOES NOT OBJECT TO THE PETTY TICKET OR THE CONTRACT UPON REVIEW;~~

(D) ~~(E)~~ A PETTY TICKET WOULD BE IN THE BEST INTERESTS OF THE JUVENILE.

VOTE: I support it: 13 I can live with it: 3 I do not support it: 1

Recommendation FY15-JJ #1 (with modification) was approved.

(Approval requires 75% across "support" and "live with.")

Representative Beth McCann agreed to sponsor legislation derived from the recommendation.

CREATING A CULTURALLY RESPONSIVE CRIMINAL JUSTICE SYSTEM

Ms. Sasak introduced the next presentation by offering a brief background of the previous work and exposure to the topic. In February 2013, the Commission was offered a presentation by Ty Campbell and other members of the Denver Police Department on the cultural sensitivity training provided to officers in the department. This presentation is a follow-up to the previous presentation regarding a cultural awareness program that is more broadly applicable to those in the criminal justice system.

Regina Huerter (Director, Denver Crime Prevention and Control Commission), Lisa Calderon (Director, Denver Community Re-Entry Project) and Ty Campbell (Detective, Denver Police Department) presented information on a training program being developed through the Denver Crime Prevention and Control (DCPC) Commission and with the participation by a variety of stakeholders and subject matter experts. The DCPC Commission has developed a training program called “Creating a Culturally Responsive Criminal Justice System” as a result of research that examined the issue of minority over-representation in the Denver criminal justice system. This training is a component of a broader toolkit to address culture, bias, and disparity in the criminal justice system. The training has been piloted a few times and the training team will lead Commission members in an abbreviated (3 hour) version of the training which alternatively has been delivered via a two-day and a single-day training sessions.

The goals for this presentation to CCJJ members were to:

- provide some history of the development of the training,
- define racial disparity,
- explore the concept of culture,
- look at bias and the expression of social power, and
- identify culturally responsive practices within the criminal justice system.

The objectives of the training are to:

- Increase awareness of racial disparity in the criminal justice system,
- Examine unconscious bias,
- Discuss how culture and power intersect in the criminal justice system, and
- Review culturally responsive practices.

The mission of the DCPC Commission, seated in 2005, is “to reduce crime and delinquency in Denver through an evidence-based, accountable, and efficient public safety strategy.” The DCPC Commission comprises 32 members who are either appointed by the Mayor’s Office or designated based on position. The DCPC Commission issued a resolution on racial and gender disparity that condemns racial and gender disparity in the Denver adult and juvenile criminal justice system. Ms. Huerter reviewed the concept of decision points in the criminal justice system and how evidence of racial disparity may be found at these various decision points (for example, contact, arrest, filing, bonding, sentencing, etc.)

Mark Soler, with the Center for Children’s Law and Policy, identified key areas within the goal to reduce racial and ethnic bias in the system:

- reducing over-representation as represented by evidence of disproportionality and the relative rate index,
 - disparate treatment, and
 - unnecessary entry and movement deeper into the criminal justice system.
- Commission members were asked to offer examples of the above key areas.

The training shifted from a general introduction to the first unit on “Defining Racial Disparity.”

Presenters offered a video example of perceptual blindness. It’s easy to miss something important and seemingly obvious when one’s attention is drawn to specific aspects of the perceptual environment. Biases can be conscious or, as the video example demonstrated, unconscious. Racial disparity in the criminal justice system (CJS) exists when the proportion of a racial/ethnic group within the CJS is greater than the proportion of said group in the general population. For example, the following was offered examples of disparity in the CJS:

- | | |
|---|--|
| • One in 56 of all women is involved in the CJS | • One in 9 of all men is involved in the CJS |
| • One in 111 white women is involved | • One in 17 white men is involved |
| • One in 17 Latina women is involved, and | • One in 6 Latino men is involved, and |
| • One in 8 Black women is involved. | • One in 3 Black men is involved. |

The Commission members were asked to generate examples of these potential causes of racial disparity:

- Legislative policies (e.g., powder versus crack cocaine, sealing of records).
- Institutional/structural decisions (e.g., hiring decisions and the presence of a criminal record).
- Overt or covert bias in discretionary decision making (e.g., death penalty, assessment tools).
- Dissimilar treatment of similarly situated people (e.g., under-representation of minorities in diversion or treatment; services for the homeless may differ depending on race or ethnicity).
- Differing levels of criminal activity (e.g., if police are in an area where crime has occurred they are more likely to see additional crimes)
- Law enforcement emphasis on particular communities (e.g., hot-spot policing).
- Targeting characteristics correlated with race (e.g., gang contacts, traffic stops, driving while black or brown, or mental illness).

Ms. Huerter described the calculation of the relative rate index and offered examples of the index in the Denver criminal justice population. The relative rate index is used to identify where disproportionate minority contact may exist. The relative rate index (RRI) represents the volume of minority individuals relative to the volume of majority individuals (adjusted by population) at stages in the criminal justice system.

The training transitioned to the next unit on “Exploring Culture.”

Ms. Calderon asked Commission members to give examples of the concept of culture. Culture is the characteristics of a particular group of people including norms, practices, beliefs, values,

traditions, customs, history and expressions. Culture affects how we analyze, judge and interpret persons and situations. Culture is typically transferred to those who are newer members of a group, whether that is family/kin, organizations, professions, or other informal groups. The concept of culture is broader than race, ethnicity and gender. The aspects of culture may be visible (overt) or invisible (covert).

What are some examples of the visible aspects of the criminal justice system culture?

- Attire as indicators of authority or power (professional attire v. orange jumpsuits; a judge's robes), symbols (flags, badges), security (having to be buzzed into a building; having a badge allows one to pass through security).

What are the invisible aspects of the criminal justice system?

- Education (lawyers), language (jargon), processes/rules, motivations, values, preferences/biases, privileges (knowledge), and perceptions.

Mr. Campbell asked Commission members to:

- identify 5 cultural groups, excluding one's profession, to which each belonged
- identify any 2 people in the room who share any of one's identified cultural groups and were asked to describe how they identified the shared culture (e.g., by appearance)
- rank the groups in regard to their importance in one's life with and without one's profession

Often one's profession is ranked much higher than all other aspects of our lives. We tend to under-emphasize the other aspects of our lives relative to the importance we place on our jobs.

Ms. Calderon described that our cultural groups define those with whom we identify ("In-groups") and those with whom we do not identify ("Out-groups"). These boundaries of "in" and "out" define for us the ways we interact with and the expectations we hold for others. We tend to have more positive views of the in-group and are more willing to resolve differences with members of our in-group. Of the culture groups members identified previously, would any be labeled as part of the societal "mainstream"...an in-group? Would any be labeled as outside the mainstream...an out-group?

Ms. Calderon continued by describing the interaction of thoughts, emotions, motivations, and behaviors. How we interpret our environments can lead to certain emotions, motivations and behaviors. Taking the time to re-think/re-interpret our environments can often lead to a different sequence of emotions, motivations, and behaviors. A video example of what can be labeled "cultural collisions" or how actions can be misinterpreted across cultural boundaries was shown.

After a break, the training moved to a unit on "Bias and Social Power." This unit covered unconscious bias, the bases of social power, and micro-aggression or micro-inequities.

Implicit bias is an unconscious preference for a group based on our stereotypes and attitudes. Explicit bias is a conscious preference. Both preferences develop early in life and shape our daily perspectives. Commission members offered examples of conscious and unconscious biases. Mr. Campbell asked Commission members to interpret a case of two offenders and how stereotypes might lead one to conclude the race of the perpetrators from details of the sample pre-trial reports. The samples were drawn from a study that found that pre-trial reports tended to make negative internal attributions (e.g., dangerous person; unremorseful; immoral) for the

behavior of minorities and external attributions (e.g., from a broken home; peers influenced negatively; needs substance abuse treatment) of behavior for majority members.

Mr. Campbell described five bases of power in social communication and influence (from French & Raven, 1959). Power is the force that allows individuals to mobilize others to act or to influence others' beliefs. The five social power bases were described as:

- Legitimate power: rank or title
- Expert power: skills and knowledge
- Referent Power: reciprocity or mutual respect
- Reward Power: ability to give and take away rewards
- Coercive Power: ability to punish or threaten

The use of the different types of power in social situations can be positive or negative, depending on the circumstances. The most prevalent combination is legitimate/coercive power. The best pair for inclusivity is expert/referent. Excessive use of legitimate/coercive power can have long-term deleterious effects.

Micro-messages are small, sometimes unspoken and often unconscious messages that are constantly sent and received. They can have a powerful impact on our interactions with others. These messages can be either negative (micro-inequities or micro-aggressions) or positive (micro-affirmations).

- Micro-inequities are intentional or unintentional messages conveying disrespect or disregard based on power differentials such as race, gender, sexual orientation, religion, class, disability or status. Individuals are singled out, overlooked, ignored or discounted. These messages are subtle and have cumulative effects.
- Micro-affirmations convey inclusion, respect, trust and willingness to see others succeed. They foster a healthy work environment.

Mr. Campbell offered the short film "The Lunch Date" (1990) as a stimulus for discussion. He asked Commission members how they interpreted the circumstances and actions of the characters in the "clash of cultures" portrayed in the film.

Ms. Calderon introduced audio of a conversation between a correctional officer and an inmate in Oklahoma that was recorded following the screening of a film about prison life. Commission members were asked to listen to the conversation and to make notes on the perspectives expressed by the two individuals. Mr. Campbell and Ms. Calderon led a discussion with Commission members who offered their reactions and interpretations of the recorded conversation. The takeaway from the audio is how significant an interaction can be to offenders when those who supervise them take the time to employ positive engagement.

The final unit of the training, "Identifying Culturally Responsive Practices" was introduced by Ms. Calderon. This unit covered culturally responsive practices and how these contribute to the reduction in disparity. She posed the question to Commissioners, "How does one demonstrate that they are culturally competent or culturally responsive?"

Cultural competence: A set of congruent behaviors, attitudes and policies that come together in a system, agency or among professionals that enable that system, agency or professionals to work effectively in cross-cultural situations. There are five primary elements characteristic of the acquisition of cultural competence: valuing diversity, having the capacity for cultural self-assessment, being conscious of the dynamics inherent when cultures interact, having institutionalized cultural knowledge, and adapting service delivery to reflect an understanding of cultural diversity.

There are six stages in the path to cultural competence:

- cultural destructiveness (i.e., forcing individuals to give up cultural identity; for example, native dress or language),
- cultural incapacity, (i.e., maintaining inequitable policies that support the status quo),
- cultural blindness (i.e., viewing everyone the same and ignoring important cultural differences),
- cultural pre-competence (i.e., addressing cultural differences with training, but making no structural changes),
- cultural competence (i.e., addressing culture in a fundamental manner and altering policy and practices), and
- cultural proficiency (i.e., implementing cultural change and integrating cultural perspectives and diverse staff in key decision-making)

The core elements of a culturally competent system include:

- Commitment from top leadership and resources,
- Strategic plan with meaningful involvement of diverse people,
- Needs assessment/data collection (organizational self-assessment, evaluations/research activities, on-going feedback),
- Mission statements, definitions, policies and procedures reflecting the values and principles, and
- Recruitment and retention of diverse staff, including training and skill development in leadership positions
- Certification, licensure, and equitable contract standards
- Targeted service delivery strategies.

Ms. Calderon referred the Commission to a 2008 publication by the Sentencing Project (sentencingproject.org) titled, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*. This manual offers the following ways to address disparity:

- Acknowledge that racial disparity builds at each stage of the system.
- Encourage communication across players at all decision points in the system.
- Know that “what works” at one decision point may not work at others.
- Work toward systemic change.

Mark Soler of the Center for Children’s Law and Policy suggests these key strategies to reduce race and ethnic disparity:

- Governance, oversight, and collaboration with all stakeholders

- Regular collection, analysis, and reporting of data at key decision points
- Local focus
- Data-driven interventions
- Objective screening instruments and reports
- Alternatives to detention
- Regular monitoring of results
- Address policy and practices as appropriate
- Workforce education

The training concluded and Ms. Huerter provided some final comments. Because this was the first time the training had been offered in a 3-hour version, she welcomed any feedback on the training, as well as, how the training might be customized for specific criminal justice audiences. Important elements mentioned include how one can translate awareness gained through the training to informed action and how to assess these actions. Evaluating processes through data collection is the way that actions can be assessed. The method to assess the impact of training should be included as part of the training plan.

NEXT MEETING:

The next meeting of the Commission will be Friday, June 13th. Topics for that meeting will include a follow-up discussion regarding how the cultural competence training can be employed. The Juvenile Justice Task Force may present another recommendation for consideration. There will also be updates from each of the Task Forces.

The preliminary EBDM (Evidence-Based Decision-Making) Subcommittee will hold its first meeting on Monday, May 12th, at the Ralph Carr Justice Center at 9:00 a.m. There will be an introductory presentation in the morning on the EBDM initiative and, in the afternoon, there will be a specific report on the next steps required in order to advance to the next phase of the EBDM project. Only the morning portion of this meeting will be open to the public. The afternoon portion will be for the preliminary Subcommittee members to hear about the next steps from the national representatives. For those Commissioners expressing the desire to participate on the Subcommittee, but who are unable to attend on Monday, the opportunity to join is still open. An update on the May 12 EBDM meeting will be presented at the June 13th meeting.

The meeting was adjourned at 4:25 p.m.