



FY2022 RECOMMENDATION/FY22-SR05 Implement Individualized Behavioral Responses to Probation Violations [Statutory]

Status: Implementation Complete

Actions/Updates

2022 UPDATE (JUNE)

During the FY 2022 Legislative Session, this recommendation was included in House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses). The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.

With the passage and signing of this bill, this recommendation is considered complete.

2022 UPDATE (JANUARY)

This recommendation, approved by the Commission on January 14, 2022, involves statutory revisions and is first applicable for action during the FY 2022 legislative session.

Description

Amend §16-11-205, §16-11-209, §16-11-2?? (new section), §16-11.5-101, §16-11.5-102(1)(c), §16-11.5-105, §18-1.3-102, and any other required conforming revisions to statute to reflect contemporary best practice guidelines that serve people on probation and deferred sentences, especially those diagnosed and/or dealing with substance use disorders. Such practices provide corresponding systems that include a range of individualized and structured behavioral responses to substance use and other behaviors that violate typical conditions of probation. This recommendation specifically prioritizes modern methods of rehabilitative and reparative justice that align with the statutory purposes of probation (included in CCJJ Recommendation FY22-SR #01. Define the Purposes of Probation) rather than the finite and limited responses in current statute that reflect retributive, punitive, and deterrent-based justice methods. [See the "Recommendation Text" for the Proposed Statutory Language.]

Agencies Responsible

General Assembly, Probation Division

Discussion

Contemporary best practice guidelines for both probation and problem-solving court programs compel community supervision agencies to have smarter tolerance for substance use, especially for those with diagnosed substance use disorders. Agencies and programs that align with best

practices respond to substance use and other violation behavior with corresponding systems of individualized and structured responses. Ideal response systems prioritize cognitive-behavioral, motivational, psycho-educational, and therapeutic responses over retributive and punishment-based sanctions. This recommendation provides an opportunity to align probation's responses to violation behavior, including substance use, with the recommended statutory purpose of probation (included in CCJJ Recommendation FY22-SR #01. Purposes of Probation). This recommendation specifically prioritizes rehabilitative, reparative, and restorative justice methods over retributive, punitive, and deterrent-based justice methods.

§16-11-209, CRS (Duties of Probation Officers) was created as law during a period of the 1980s where the criminal justice system prioritized punitive rather than therapeutic responses as a response to drug and alcohol abuse for people on probation. As a result, current law is in conflict between CRS §16-11-209 (2) and (3) where responses to first and second and subsequent positive drug tests are primarily punitive; while law from 1991 legislation (§16-11.5-105) approaches drug use with a more balanced model that includes both punitive sanctions and motivational incentives. This recommendation is intended to create consistent and modernized law for community-supervision that establishes a system of individualized behavioral responses to positive drug tests and other violation behavior for persons supervised on probation.

Current law prioritizes rehabilitative over punitive responses to violation behavior for the juvenile justice system but not for the adult criminal justice system. CRS §16-11-209 (2) and (3) require responses to positive drug tests that are finite, limited, and primarily punitive rather than giving probation staff other behavioral tools, beyond punishment, to respond to ongoing substance use. The requirements in law are ineffective and misaligned with criminological and addiction medicine best practice standards. Our legislature recognized this when it reformed Title 19 (Colorado Children's Code) via Senate Bill 19-108 (Juvenile Justice Reform) to prioritize rehabilitative over punitive responses to violation behavior for the juvenile-justice system.

CRS §16-11-209 (2) and (3) also present potential legal and liability problems for probation staff and agencies. This can occur in cases where probation responds to positive drug tests with cognitive-behavioral or other intermediate responses that do not strictly adhere to the finite list of punitive response in sections (2)(a) through (d) and (3)(a) through (e). Probation cannot operate outside this legal requirement without compromising personal and organizational risks.

Colorado's probation and parole agencies engaged in a multi-state study of revocation trends with the Crime and Justice Institute (CJI) in 2020. The outcomes, findings, and recommendations of that work are expected to be published formally with a state report in late 2021 with the finding that positive drug tests are one of several drivers to probation revocations. The CJI has also drafted recommendations for Colorado to modernize state law to include CRS §16-11-209 as well as for the State Court Administrator's Office to revise the Standards for Probation in Colorado and Division of Probation Services training around the use of responses to violation behavior (see the Principles of Effective Intervention and Core Correctional Practices at cjainstitute.org). This recommendation, if implemented, will align with the findings and recommendations of this revocation study from the Crime and Justice Institute who will be publishing a national report of its work in early 2022 in addition to a Colorado-specific report.

Consequences for drug-related probation violations should not inherently be less discretionary than other types of violations with greater potential public harm, such as violations of protection orders and other contact with victims.

For the criminal justice system overall, there are downstream consequences of probation operating strictly within the limited requirements in CRS §16-11-209 (2) and (3). Specifically, people on probation with low level offenses such as Petty Offenses and Drug Misdemeanors could experience a premature escalation of criminal justice involvement due to revocations that originate from 2nd and subsequent positive drug tests. This can lead to not only collateral consequences for justice-involved people but also for the justice system itself in the misapplied use of public resources for jails and prisons. Because the list of required responses to positive drug tests is finite and primarily punitive, local criminal justice resources are squandered on unnecessary administrative and legal proceedings for revocation of those who test positive for substances. In this respect, current law consumes probation, court, prosecutor, defense, and victim resources for unnecessary revocation proceedings that are required by current law.