Colorado Commission on Criminal and Juvenile Justice

Sentencing Reform Task Force

Sentencing Alternatives/Decisions & Probation Working Group MINUTES

August 6, 2021 / 8:30AM-12:00PM
Virtual Meeting

ATTENDEES:

WORKING GROUP MEMBERS
Glenn Tapia, Director, Probation Services/ Judicial Branch, *WG Leader*
Chris Gallo, Deputy District Attorney/ 18th JD
Kristin Heath, Assistant Director, Jefferson County Justice Services
Kathryn Herold, Public Defender Office/ Boulder County
Matthew James, Denver District Attorney's Office
Heather McClure, Adams County Division of Community Safety and Well-Being
Clay McKisson, Judge/ 3rd Judicial District
Jenifer Morgen, Chief Probation Officer/ 17th Judicial District
Greg Otte, Deputy Chief Parole Officer/ 8th Judicial District
Elaina Shively, District Attorney's Office/ 20th Judicial District
Abigail Tucker, Psychologist/ Mental health services provider and consultant

ABSENT
Kazi Houston, Rocky Mountain Victim Law Center

STAFF
Richard Stroker, CCJJ Consultant
Laurence Lucero, Division of Criminal Justice
Stephane Waisanen, Division of Criminal Justice

GUESTS
Chris Lobanov-Rostovsky, Division of Criminal Justice
Yuanting Zhang, Division of Criminal Justice

Issue/Topic	Discussion
Welcome & Agenda Glenn Tapia, Working Group Leader	Glenn Tapia, WG Leader, welcomed everyone and then provided a brief overview of the meeting agenda: • Review and finalize Telehealth Proposal • Two Treatment Improvement Proposals • Next steps on proposals • Over-supervision in Probation

Issue/Topic	Discussion
Review and Finalize Telehealth Proposal **ACTION** Glenn to clean up final formatting of the recommendation prior to presentation to the full SRTF	Glenn provided background and context for the Telehealth Proposal including the following advantages: • With COVID, rural communities in particular have benefited from telehealth. It's important to ensure telehealth becomes a permanent part of moving forward as an option, but not as a replacement. • Previously, Dr. Abigail Tucker presented a white paper on the pros and cons of telehealth. Research shows telehealth has good potential as a supplement to traditional treatment, but there are still questions around whether in and of itself it's effective. • The WG has also discussed ethical standards around telehealth, including the fact that people under supervision who don't have a driver's license can benefit from telehealth while avoiding driving without a license. • Telehealth also helps in situations where people must spend a great amount of time on public transportation getting to and from appointments • There's another benefit for people on probation who want to keep their distance from others and possible bad influences. • It also helps people better manage competing requirements for their time. Glenn added that this proposal is envisioned as a policy recommendation rather than a legislative proposal. Glenn introduced Yuanting Zhang, a statistical analyst for DCJ. Yuanting provided a literature review and presentation originally created for the Sex Offender Management Board entitled, *Telemental Health for Justice-involved Populations after COVID*. The full presentation can be found under "Materials - Working Groups" at, ccjj.colorado.gov/ccjj-srtf. At the conclusion of the presentation, Chris Lobanov-Rostovsky, Program Manager for the Office of Domestic Violence and Sex Offender Management, shared his perspectives: • Chris noted that the research presented by Yuanting is consistent with the findings of the Working Group. • During COVID, the DVOMB and the SOMB both implemented the ability for providers to offer services through telehealth modalities.

Issue/Topic Review and Finalize Telehealth Proposal (cont.)	• Between 50% and 66% of providers have been utilizing the practice since that time. • While people are gradually returning to in-person therapy, there are certain circumstances where telehealth is still in place. • DVOMB and SOMB providers are still currently allowed to provide services through Telemental health. • The DVOMB and SOMB are looking at whether there can be provisions for this to be used in some sort of capacity on an ongoing basis. • Boards are currently determining the client criteria and circumstances to permit the continued use of the Telemental health option, and the minimum requirements to address confidentiality, privacy, HIPAA, etc. • With that said, DCJ will likely generate some specific standards for providers around decision making criteria and minimum requirements related to Telemental health. • As long as DORA continues to allow Telemental health, the DVOMB and SOMB will also likely continue to allow it as well as a supplement. Glenn thanked Chris and noted that the premise of the Working Group's proposal appears to be aligned and consistent with that of the DVOMB and SOMB. The group discussed the importance of being careful with using Telemental health as a full replacement model, due to the possibility that some could use it to evade accountability and responsibility. There needs to be a good clinical discussion around the benefits and the needs of the client, and legitimate treatment matching as well. Glenn summarized the group's feedback and offered that there might be benefit in strengthening the proposal around situations regarding treatment team decisions (problem solving court, SO, and DV cases) to ensure all parties have a voice, recognizing that the context of the treatment circumstances is important. There will also likely be some trial and error with implementation, and a need for tolerance while trying to figure out how to make the options for all concerned. Elaina Shively noted that it is important in JV and DV cases to consider privacy, safety and boundary issues, since there is no way to determine who else might be in the room during a telehealth session. Glenn offered a proposed decision-making statement to add to the proposal if the group concurs with the statement. Heather McClure agreed that it's a great idea and pointed out that it might help an offender take more accountability for consequences if they have a little bit of say. The additional bullet/verbiage reads: • Decision Making – Decision making guidelines should be developed to serve or admit clients with telehealth services to include the preferences of

Issue/Topic	
Review and Finalize Telehealth Proposal (cont.)	the client, the provider, and the supervision/treatment teams where appropriate (e.g., problem-solving courts, community supervision teams). The working group agreed to the verbiage. Glenn then asked for any additional inclusions or edits before offering the proposal up to the Sentencing Reform Task Force. Richard Stroker pointed out that the recommendation text is the first element of a proposal, followed by more details in a discussion section (currently that piece of this proposal is referred to as "issues" and not "discussion"). Richard added it is also important to clarify who (which agency, division, etc.) is responsible for the actions in the recommendation, particularly regarding items #3, #4 and #5. Richard recommended and the group concurred with a few other formatting changes. He also pointed out that if there are going to be any costs or impacts for agencies as a result of the recommendation, those should be noted as well. The group agreed with the following edits, specifically to add: - (as suggested by Jenifer Morgen) under the Decision-Making bullet, "…the clinical reasoning of the provider and the agreement of the supervisor/ treatment teams drives the decision making," rather than simply "preferences of the client." - a bullet regarding Cost Considerations, and - (as suggested by Elaina Shively) a bullet titled 'Safety Considerations' with accompanying verbiage to address safety and privacy issues, particularly in JV and DV cases. Glenn welcomed Abigail Tucker to the meeting at this point and reviewed the work of the group thus far. Dr. Tucker was in support of the additions/edits made to the recommendation. She also stressed that when it comes to telehealth, in most cases one of the best practices is to actually start with in-person treatment so that a provider can make sure a client fully understands privacy issues (along with risk and benefits) of telehealth. She added that research shows some of the best outcomes in treatment are when services are provided in a hybrid-model, rather than in a singular modality. Greg Otte pointed out that sometimes a perpetrator might experience traumatic issues of their own during the course of a session, and while they may be more apt to bring that up to a provider if they were in-person – they might not pursue those issues and feelings with a provider in a telehealth session. Dr. Tucker agreed and added that it is challenging to create a virtual safety net around issues of trauma, substance use and suicide. She noted treatment providers need to be mindful of the dovetail between telehealth standards and just good standards of care when providing treatment. Glenn solicited further feedback and, seeing none, explained that he would review the entire recommendation and make final formatting changes before its presentation to the Sentencing Reform Task Force.

Issue/Topic	Discussion
Review and Synthesize Two Treatment Improvement Proposals **ACTION** <u>Improving Collaborative Treatment for Justice-Involved People</u> Glenn will make edits to the proposal, encompassing and including a broader population. <u>Behavioral Health Certification – Criminal & Juvenile Justice Treatment Provider Endorsement</u> Dr. Tucker will take the feedback and make edits to the Behavioral Health Certification proposal	Following a short break, Glenn reconvened the group and explained that this portion of the meeting would be dedicated to reviewing the two Treatment Proposals. <u>Improving Collaborative Treatment for Justice-Involved People</u> Glenn offered some background and underpinnings of the proposal as follows: • Probation outcomes and treatment outcomes can't be disaggregated. • Probation and the criminal justice system as a whole are under a fair amount of scrutiny from reformists about measuring the degree to which treatment is effective. When you see a probation recidivism or failure rate it's difficult to conclude what the rate would have been with or without treatment or factoring whether the treatment was state-paid vs. self-paid. • The bigger more systemic aspect is that the CJ system is based on risk/needs/responsivity while the behavioral health sector is focused more on addiction sciences than criminal justice research. This results in two systems that often speak two different languages with mismatched and sometimes conflicting treatment protocols. • The goal with these recommendations is to marry those approaches for treatment matching purposes. • There's also the opportunity to cross-train on best practices in the criminal justice sector for the benefit of the treatment providers, and to train on best practices in behavioral health for those that supervise criminal justice clients in the community. • Additionally, there is some stigma toward criminal justice (CJ) clients from some treatment providers who would rather work with self-paid, self-motivated clientele rather than people under any sort of (CJ) supervision. • Part of this recommendation focusses on incentivizing providers to treat those that are justice involved. • There are no formal protocols to measure treatment quality. This proposal calls for the state to recommend some actual quality assurance for treatment. There is a movement to introduce a special endorsement for treatment providers to require certain standards and training in order to work with justice-involved clients. Richard asked Glenn whether this is a policy or legislative recommendation. If legislative, it's important to identify specific statutory language. Glenn replied that this is one of the issues for the group to determine, whether it should be a bill or rather a recommendation to specific state agencies. Glenn feels there are at least pieces of the recommendation that require legislative action due to some of the treatment matching paradigms that are already in statute. Dr. Tucker explained that oftentimes, it's extremely difficult to get 'good ideas' and policy changes off the ground and implemented without legislative action. Glenn agreed that from a policy standpoint, the behavioral health reforms under HB 21-1097 and the safety net reforms under SB19-222 have similar

Issue/Topic	
Review and Synthesize Two Treatment Improvement Proposals (cont.)	attributes to these recommendations. This would mirror a lot of that work but strengthen it with legislation. Richard explained that the group will need to determine where, in current statue, this legislation should sit and identify if any elements need to be addressed or corrected in other statutes related to this. Jenifer offered that this work could possibly result in a group similar to DVOMB or SOMB that could provide oversight. Glenn thought this may result in statutory change in several places, but asked the group to focus on content and language primarily during this meeting, and then identify pieces of law where the recommendations might live eventually. Judge McKisson clarified that there appears to be two separate provisions that would likely reside in separate statutory locations: the treatment provider endorsement piece and the piece concerning aligning the criminal justice and behavioral health treatment certification. The group agreed to spend time during this meeting to reach consensus and review actual content, then at a later date determine where recommendations might live statutorily. Chris Gallo emphasized the need for clarity regarding whether these proposals focus on general probation clients or more specific populations such as sex offender and DV clients, and that the latter would require specific consideration. Dr. Tucker noted that there is already frustration with providers regarding different agency requirements (DOC, community corrections, probation, DVOMB) all requiring different criteria. Providers are eager for some standardization across criminal justice agencies. If the goal is to "move the needle" as a state on outcomes for justice-involved individuals then separate and complex standards, rules, referrals, assessments and outcomes, etc., for the many client types need to be streamlined. Kristin Heath agreed but pointed out that the DV slice and SO slice will always be different from other behavioral health clients – and it's a big task to streamline all of those pieces. Chris Gallo suggested a tiered response framework starting with a baseline and adding overlays for specific sub-populations. Abigail agreed that would also help clarify what roles and responsibilities lie with the behavioral health treatment provider vs. the justice entities vs. the individual clients – allowing for more accountability. Glenn explained that when he originally crafted the proposal, he was looking at it through a probation lens, but that it should be reworded and streamlined more broadly to apply to community supervision (probation, parole, community corrections) in general. Glenn offered to edit the proposals, encompassing and including a broader population, and share them with the group at the next meeting.

Issue/Topic Review and Synthesize Two Treatment Improvement Proposals (cont.)	<u>Behavioral Health Certification – Criminal & Juvenile Justice Treatment Provider Endorsement</u> Dr. Tucker provided an overview of the draft recommendation, explained the reasoning behind the proposal, and the elements that might be included in an endorsement. She framed the document as a high-level base standard that would serve as a one-time certification. Operationally, this concept would ideally be rolled out via a stream-lined, web-based, Learning Management System. This certification would be in addition to a degree and in addition to a license. The Certification Courses contains three buckets: 1. Behavioral health training specific courses/requirements 2. Justice system specific training courses/requirements, and 3. Continuing education opportunities Working group members provided feedback and input as follows: • Jenifer noted one of the benefits for the justice-involved individual may be reduced exposure to stigma. Also, regarding continuing education opportunities, it's important to highlight required concepts without being specific to the 'type' of training that's offered because specific training courses might not be readily available to everybody in the state. • Dr. Tucker explained she didn't want to be too prescriptive in exactly how people accessed training, but to encourage ongoing learning opportunities. • In regards to the Continuing Education Opportunities section in the proposal, Dr. Tucker proposed the idea of removing the entire list of instruments and replacing it with 'themes' around accessing local, community and state options for learning. Glenn proposed instead of naming instruments, simply referring to 'Risk, Need, Responsivity' and 'Risk/Need' assessment tools. • Dr. Tucker agreed to reduce the section to themes and accessibility. Elaina recommended including an intellectual or developmental disability (IDD) and conduct disorders section, and maybe family accountability. The group agreed to incorporate verbiage of themes, topics and specialties. • The group discussed risk, need, responsivity (RNR) aspects and the inclusion of RNR in the behavioral competency base. Glenn stressed the importance of behavioral health providers understanding which of the needs influence criminal behavior and which don't, to ensure all parties are working together on elements that do influence criminal behavior. • Kristin added that behavioral health practitioners tend to focus more on responsivity while criminal justice focuses on RNR. Elaina explained there are also other pieces to consider (e.g., victim impact, severity of crime) rather than just RNR. • Glenn emphasized the issue around different interpretations of what risk is, and is not. In CJ, through an RNR lens, risk means one person is more likely to commit another crime than another. Treatment providers often think 'high risk' means dangerousness or seriousness of an offense, which is not correct. It's about probability to re-offend not severity.

Issue/Topic	
Review and Synthesize Two Treatment Improvement Proposals (cont.)	• Judge McKisson returned to the continuing education piece and the discussion earlier about flexibility around training components, emphasizing that not all trainings are created equal. If the goal is accreditation, there will need to be an element of 'approved' trainings to ensure quality and content. Dr. Tucker agreed that baseline trainings would need to meet a quality benchmark, while there could be a little more flexibility around CEU's. • Glenn brought up the issue of a governance structure and the possibility that it could live in the (hopefully) forthcoming Behavioral Health Administration (see H.B.21-1097; cdhs.colorado.gov/behavioral-health-reform). • Dr. Tucker will incorporate the feedback into the draft proposal.

Issue/Topic	Discussion
Discuss Next Steps on Telehealth and Treatment Proposals **ACTION** Glenn to present a PowerPoint to the full SRTF at the September meeting outlining a high-level view of the recommendations Glenn to distribute the revised recommendations to the Working Group before the September meeting	Glenn outlined the plan to finalize recommendations soon for presentation to the full CCJJ this fall. With that in mind, he explained that the he plans to present a high-level conceptual overview (in PowerPoint format) to the Sentencing Reform Task Force in September and offer the full detailed recommendation presentation and request a final vote in October. If the recommendations are approved, the preliminarily presentation to CCJJ would occur in October and a vote scheduled in November. Glenn explained that Dr. Tucker's proposal (Behavioral Health Certification – Criminal & Juvenile Justice Treatment Provider Endorsement) will fold into the larger recommendation, Improving Collaborative Treatment for Justice-Involved People. Glenn also noted that the revised recommendations will be distributed to the group for review prior to the next meeting.

Issue/Topic	Discussion
Potential Areas of Work **ACTION** The Working Group will begin studying both of these issue during the next meeting	Glenn outlined two areas of work the group may want to consider addressing at the next meeting: over-supervision and responses to positive drug tests. He added that an ambitious goal for the group is to possibly put forth reforms in these areas to the CCJJ this year. <u>Sex Offender Intensive Program (SOISP) Reform</u> One area of possible work is around the risk in Probation of both over-supervision and under-supervision individuals in regards to the SOISP (Sex Offender Intensive Program). The primary issue is that people admitted to SOISP are there due to the crime of conviction and not necessarily due to risk and needs. It's the only specialized program remaining that uses the 'type' of offense to drive a person into intensive supervision. The result is that some low risk people receive intensive supervision because the law requires it, and, conversely, some high-risk sex offenders are supervised, possibly under-supervised, in regular probation.

Issue/Topic	
Over-supervision in Probation (cont.)	Is the group interested in restructuring intensive supervision to ensure intensive supervision for those with high probabilities of recidivism, and regular supervision for those with low probability of sex offender recidivism? <u>Current law conflicts on second subsequent positive drug tests</u> Another area of possible future work centers on the issue of drug tests. Glenn shared a copy of §16-11-209 (3), C.R.S., *Duties of probation officers,* as follows: *(3) If any probationer described in subsection (2) of this section is subjected to a second or subsequent test for the illegal or unauthorized use of a controlled substance and the result of such test is positive, the probation officer shall take one or more of the following actions:* *(a) Make an immediate warrantless arrest;* *(b) Seek a probation revocation in accordance with sections 16-11-205 and 16-11-206;* *(c) Immediately increase the level of supervision;* *(d) Increase the number of drug screenings for the illegal or unauthorized use of controlled substances;* *(e) Refer the probationer to a substance use disorder treatment program.* Due to the use of "shall," the options to use behavioral methods to deal with positive drug tests is limited. Additionally, another provision of law requires the criminal justice system, in cases of positive drug tests, to develop a continuum of sanctions and incentives. Basically, one piece of law says to use a continuum of sanctions and incentives while the other directs arrest or revocation after a second positive test. There might be opportunities to revise these provisions to allow probation officers to choose behavioral options rather than to require immediate revocation. The group agreed to initiate discussions both issues at the next meeting.

Issue/Topic	Discussion
Public Comment	Glenn opened the floor for public comment. No public comment or concerns were offered.

Issue/Topic	Discussion
Next Steps & Adjourn	Glenn pointed out the next meeting is scheduled for the Friday before Labor Day, September 3, 2021, and asked whether to keep that meeting date/time or to reschedule. Members agreed to reschedule to Friday, September 10, 2021. Elaina asked about the longer-term plans for this working group. Glenn replied there is still work to be done in the areas of revocations, ethnic disparities and other supervision areas. He predicted the work of the group will continue through the next calendar year (2022).

Issue/Topic Next Steps & Adjourn (continued) **ACTION** Glenn to make changes to the recommendations from today's meeting	Wrap up discussion/planning: Glenn recapped that he will make changes to the recommendations, then incorporate Dr. Tucker's changes into the primary recommendation document. The group will then wordsmith together during the September 10th meeting. Hearing no further comment, Glenn adjourned the meeting.

Next Meeting

Friday, September 10, 2021 / 8:30am – 12:00pm
Virtual Meeting

Meeting information will be emailed to members and posted at, colorado.gov/ccjj/ccjj-meetings