

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentencing Alternatives/Decisions & Probation Working Group
MINUTES

September 10, 2021 / 8:30AM-11:30AM
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
Kazi Houston, Rocky Mountain Victim Law Center
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
Megan Ring, Public Defender Office
Elaina Shively, District Attorney's Office/ 20th Judicial District
Abigail Tucker, Psychologist/ Mental health services provider and consultant

STAFF

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

ABSENT

GUESTS

Dana Wilks, Division of Probation Services

Issue/Topic	Discussion
<p>Welcome & Agenda <i>Glenn Tapia,</i> <i>Working Group Leader</i></p>	<p>Glenn Tapia, Working Group Leader, welcomed attendees to the meeting. He explained that until further notice, CCJJ Commissioner and Public Defender Megan Ring would be taking the place of Kathryn Herold as the representative from the Public Defender’s Office. Glenn provided a brief overview of the meeting agenda:</p> <ul style="list-style-type: none"> ● Overview of Criminal Proceedings - §16-11-209, C.R.S., <i>Duties of probation officers</i> ● Discuss feedback from the Sept. 8 Sentencing Reform Task Force meeting ● Finalize Proposal #4 – Improving Collaborative Treatment for Justice-Involved People ● Discuss next areas for consideration <ul style="list-style-type: none"> -§16-11-209, C.R.S., <i>Duties of probation officers</i> -Behavioral Responses to Drug Tests

Issue/Topic	Discussion
<p>Overview of Criminal Proceedings - §16-11-209, C.R.S., <i>Duties of probation officers</i> <i>Dana Wilks, Division of Probation Services</i></p>	<p>Glenn explained that the purpose of this agenda item is to examine §16-11-209, C.R.S., <i>Duties of probation officers</i> in the context of revocations, and that one area where there might be room for improvement regarding revocations is in the realm of positive drug tests. Glenn added that he believes this is an area that really gets in the way of probation from both a legal and best practices perspective.</p> <p>Glenn introduced Dana Wilks from the Division of Probation Services and explained that she will provide background and context on this subject. He added that, after the presentation, he will poll the group as to whether they believe there should be more study in this area and possibly a recommendation.</p> <p>Dana provided data and information from the State Court Administrator’s Office (SCAO), which is examining how to utilize existing research and best practices to improve long-term outcomes for probation clients. Dana offered an introduction to her presentation by highlighting the following historical background:</p> <ul style="list-style-type: none"> ● The SCAO believes §16-11-209, C.R.S., <i>Duties of probation officers</i> (“<i>Duties</i>”) is a barrier to the rehabilitation of individuals on probation and is contrary to current research in the behavioral health sciences. ● The “<i>Duties</i>” have the potential to increase revocations on technical violations due to the punitive responses to normal setbacks that occur during substance abuse treatment and recovery. ● “<i>Duties</i>” describes the duties of probation officers and has been in effect for many decades. However, in 1989 during the war on drugs, House Bill 1989-1335 added sections (2) and (3) to the statute, which is the focus area for the presentation. These sections enumerate specific mandatory sanctions that a probation officer MUST impose for positive drug tests. ● Another important statute when considering this issue is §16-11.5-102. <i>Substance abuse assessment-standardized procedure</i>, which is more rehabilitative in nature and has since become the basis for the risk-need-

<p style="text-align: center;">Issue/Topic</p> <p>Overview of Criminal Proceedings - §16-11-209, C.R.S., <i>Duties of probation officers</i> <i>Dana Wilks, Division of Probation Services</i> (continued)</p>	<p>responsivity approach, and matches appropriate treatment to the individual client. It also specifically states that when it comes to punitive sanctions for positive tests, the criminal justice system should allow for appropriate responses to each occurrence of a positive test by an offender.</p> <p>Discussion points during and after the presentation are as follows:</p> <ul style="list-style-type: none"> ● The statute forces the officer into punitive sanctions that may not be suitable for the situation. ● Additionally, individuals may test positive after the initial test who don't necessarily need substance abuse treatment, but rather interventions such as mental or behavioral health treatment. ● The statute limits the probation officer's ability to use intermediate sanctions. ● The prescriptive sanctions in statute are contrary to current research on behavior change and lends itself to increased technical violations. ● Working Group members discussed the information provided and generally agreed that the statute appears to be draconian and is deserving of further attention. ● Judge McKisson shared that in his experience, these practices do not seem to accurately reflect the actual state of probation practices in his district. ● Glenn summarized three critical components raised by working group members to keep top of mind when considering this issue: <ul style="list-style-type: none"> -Concerns regarding VRA crimes, resources, and strong mandatory responses to violations that don't involve any risk to the community, -How these practices intersect with problem solving courts, and -The contrarian piece that's at odds with best practices ● Chris Gallo raised another concern in that some experienced probation officers don't even consider the "<i>Duties</i>" provisions in their day-to-day work. If a technical violation for drugs isn't going to send someone back to prison anyway, why is it even being considered? ● Elaina noted this is also hard for victims who may not understand the risk/needs/responsivity model and struggle with an offender who gets a revocation, but continues to be re-granted probation, repeatedly. ● Another issue is the resources required from all parties (victims, court, etc.) to process these types of technical violations and the repeating revoke/re-grant cycle. ● It would be helpful to see the data on when the required responses in "<i>Duties</i>" are being used. Is it in high level or lower-level cases? Glenn replied that data will be forthcoming from the Criminal Justice Institute eventually. ● Elaina noted mixed-messaging around what's actually taking place "on the ground" in different types of cases. ● Dana re-emphasized the problem with the two statutes providing contrary guidelines. ● Greg Otte explained that when he was an ISP (intensive supervision) officer in the late 1990s, a warrantless arrest approach was more effective with
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<p style="text-align: center;">Issue/Topic</p> <p style="text-align: center;">Overview of Criminal Proceedings - §16-11-209, C.R.S., <i>Duties of probation officers</i> Dana Wilks, Division of Probation Services (continued)</p>	<p>high-risk clients. Filing on someone who was a true addict didn't make sense.</p> <ul style="list-style-type: none"> ● Dana outlined potential alternative options being explored by the SCAO: <ol style="list-style-type: none"> 1. Do nothing 2. Strike §16-11-209, C.R.S., <i>Duties of probation officers</i> 3. Adopt language from SB19-108 4. Amend §16-11-209, C.R.S., <i>Duties of probation officers</i> to provide more discretion and add evidence-informed options. ● Working Group members discussed the pros and cons of codifying such recommendations in law vs. simply revising language in the standards for probation practices. ● Dr. Abigail Tucker noted that, if the group does consider any proposed recommendation language, to be mindful that someone missing or failing a urinalysis test doesn't necessarily always require action, especially if sobriety isn't a treatment goal. ● Heather McClure agreed and explained the complexity of addiction and recovery in regards to different substances like cocaine, marijuana and alcohol. ● Jenifer Morgan agreed that it's important to maintain the flexibility to address the unique circumstances of the probationer, while ensuring responses are not so prescriptive that a probation officer is forced into any particular response. ● Megan Ring pointed out the Working Group members appear to agree that this statute needs to be addressed one way or another. Judge McKisson shared that he would be most inclined to support something along the lines of Option #4. ● A lengthy discussion ensued regarding the use of SHALL vs. MAY language in Option #4, or alternatively supporting Option #3, with various options explored and discussed by the group. ● Richard Stroker summarized that the use of Option #3 and building in other concepts and verbiage would be more consistent with work underway in other jurisdictions. Many other jurisdictions are moving away from mandatory drug testing and mandatory punitive responses for negative drug tests. He suggested building in verbiage about individualized responses, current literature and best practice. ● Glenn summarized that the group appears to be in favor of: <ul style="list-style-type: none"> -Striking subsections (2) and (3) of the statute, -Replacing that with language that encourages more flexible responses and standards set by the SCAO, and -Adding language about collaboration with other stakeholders of the justice system. <p style="text-align: center;">*At this point in the meeting, members took a short break*</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Overview of Criminal Proceedings - §16-11-209, C.R.S., <i>Duties of probation officers</i> <i>Dana Wilks, Division of Probation Services</i> (continued)</p>	<p>Upon reconvening from the break, Glenn asked if his “pre-break” recap of the discussion conclusions were accurate.</p> <p>Group feedback:</p> <ul style="list-style-type: none"> ● Elaina noted it would be helpful to leverage stakeholder feedback if possible. ● Jenifer suggested using verbiage in the recommendation along the lines of “in consultation with a multidisciplinary task force” and designating which stakeholders to highlight. ● Glenn pointed out that it might be easiest just to vet this through the Commission, and then the Commission would account for the representation of all the stakeholder groups. ● Megan asked for clarity around why the group isn’t simply modifying the current statute and adding language. ● Elaina expressed it’s important to her that there should be some general guidelines from the SCAO that governs all of Probation, and some kind of baseline around modernization, standardization and best practices. ● The group went on to discuss the pros and cons and various issues around immediate arrest, revocation, increased supervisions, and other elements. ● Judge McKisson pointed out that if Sections (2) and (3) were scrapped, it doesn’t appear it would necessarily affect Probation and the ability to leverage sanctions and consequences. ● Glenn summarized that the strategy is to improve the language with the assurance that the intent is to better serve probationers and that public safety is maintained. ● Megan reiterated that it feels more like a bandage to amend the statute rather than address the broader issues within Probation’s Terms and Conditions. ● Dr. Tucker offered that it is important to determine the ‘lane’ of this Working Group, compared to what might be a larger issue. She doesn’t want to be so worried about potential pushback that the group doesn’t stay true to their recommendations. ● Glenn agreed that when it comes to the Commission and proposed changes, it’s often about threading the needle between what’s right and what’s acceptable. ● Glenn presented proposed verbiage that he borrowed from the Juvenile Justice Reform Bill, Senate Bill 2019-108. The language reads: <i>(4) Before January 1, 2021, the State Court Administrator shall establish rules to develop a statewide system of structured community-based graduated responses, including incentives and sanctions, to guide probation officers in determining how best to motivate positive juvenile behavior change and the appropriate response to a violation of terms and conditions of juvenile probation. Graduated responses means an accountability-based series of sanctions and services designed to respond to a juvenile’s violation of probation quickly, consistently, and proportionally and incentives to motivate positive behavior change and successful completion of probation and his or her treatment goals. Juvenile Probation shall adopt and use a state juvenile graduated responses and incentives system developed pursuant to this subsection</i>
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Issue/Topic	Discussion
<p>Discuss Feedback from Sentencing Reform Task Force meeting <i>Glenn Tapia,</i> <i>Working Group Leader</i></p>	<p>Glenn explained that he presented the first four recommendation concepts from the Working Group to the Sentencing Reform Task Force at its monthly meeting on Wed., Sept. 8. The feedback from that meeting on the concepts was as follows:</p> <p>Purposes of Probation concept: No negative feedback from the Task Force.</p> <p>Swift Reparative Intervention Program (SRIP) concept: Would the SRIP program for petty offenses by adults be applicable and available to juveniles?</p> <p>Telehealth concept: No negative feedback from the Task Force.</p> <p>Improving Collaborative Treatment for Justice-Involved People concept: Questions were raised by the Colorado Criminal Justice Reform Coalition (CCJRC) regarding program funding and the role of the Correctional Treatment Board.</p> <p>Glenn elaborated regarding the feedback from the CCJRC which asked...Should the Correctional Treatment Board (CTB), through the funds it manages, already be addressing the collaborative treatment issue? Should funds be moved from the CTB to the Behavioral Health Administration? Glenn noted he doesn't support taking money out of the justice system to support treatment as part of the recommendation to improve treatment. He added that he believes the CCJRC's concerns about the CTB are derived from perceptions that the CTB is not doing an adequate job of measuring outcomes of the treatment programs that it funds. Glenn, who is a member of the CTB, indicated that treatment evaluation is a very complicated endeavor, but that the CTB is studying this issue.</p> <p>Glenn summarized the Task Force feedback by posing three questions to the Working Group:</p> <ol style="list-style-type: none"> 1. Is the SRIP strategy for petty offenses inclusive of juveniles? 2. What more can be added to the treatment recommendation in regard to the CTB role and its funds? 3. Is the treatment recommendation sufficient and, if not, what work is left to be done? <p>Working Group points on Question #1/SRIP and juveniles.</p> <ul style="list-style-type: none"> -There was concern about simply "layering" an adult program onto the juvenile system. -This recommendation was crafted as a response to the restructuring of adult sentencing around misdemeanors and petty offenses, and juveniles are under a completely different sentencing scheme. -This was also rooted in the idea that adults are autonomous and have some self-determination whereas juveniles don't always have that ability.

Issue/Topic	Discussion
<p data-bbox="191 247 454 346">Next Steps & Adjourn <i>Glenn Tapia,</i> <i>Working Group Leader</i></p> <p data-bbox="272 426 373 453">ACTION</p> <p data-bbox="121 464 527 598">Glenn will present potential revisions to §16-11-209, C.R.S., <i>Duties of probation officers</i> at the October 1st meeting.</p>	<p data-bbox="565 283 1421 346">The focus for that meeting will be to discuss and determine the specific changes to §16-11-209 (2) and (3), C.R.S., <i>Duties of probation officers</i>.</p> <p data-bbox="565 388 1485 451">Glenn reminded members that the next Working Group meeting is scheduled for the first Friday in October...Friday, October 1, 2021 at 8:30am.</p> <p data-bbox="565 493 1282 525">Hearing no further comment, Glenn adjourned the meeting.</p>

Next Meeting

Friday, October 1, 2021 / 8:30am – 11:30am

Virtual Meeting

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