



Colorado Commission on Criminal and Juvenile Justice

Minutes

June 10, 2016

480 South Allison Parkway
Lakewood, CO 80226

Commission Member Attendance

Stan Hilkey, Chair	Beth McCann - ABSENT	Scott Turner
Doug Wilson, Vice-Chair - ABSENT	Joe Morales - ABSENT	Dave Weaver
Jennifer Bradford	Norm Mueller	Michael Vallejos
John Cooke - ABSENT	Joe Pelle	Peter Weir - ABSENT
Kelly Friesen - phone	Eric Philp - ABSENT	Robert Werthwein
Charles Garcia - phone	Rick Raemisch - ABSENT	Meg Williams
Kate Horn-Murphy- ABSENT	Rose Rodriguez	Dave Young - ABSENT
Jessica Jones - ABSENT	Lang Sias - ABSENT	Police Chief Repr. - VACANT
Evelyn Leslie	Pat Steadman - ABSENT	Jeanne Smith, <i>Ex Officio</i>

Substitutes: Steve Hager for Rick Raemisch

CALL TO ORDER AND OPENING REMARKS

Stan Hilkey, Chairman and Executive Director of the Department of Public Safety

Stan Hilkey, Chairman of the Commission and Executive Director of the Department of Public Safety, called the meeting to order without a quorum. Mr. Hilkey reviewed the agenda and asked Commissioners to introduce themselves. He explained that due to the lack of a quorum, both the approval of the minutes and the vote on two Re-entry Task Force recommendations would be delayed until the arrival of a few more Commissioners. The agenda was reordered and the meeting began with a presentation from Jeanne Smith on the National Criminal Justice Reform Project.

While waiting for a quorum, Mr. Hilkey added that he wanted to take a moment to introduce Commissioners to the newest member of the Executive Director’s Office at the Department of Public Safety. He asked Patricia Billinger to stand while he explained that she is the new Public Information Officer for the Department. He said that while the Commission does not often interface with the media, Ms. Billinger is an excellent source for any media or emergency situations that may arise in relation to the Commission.

NATIONAL CRIMINAL JUSTICE REFORM PROJECT

Jeanne Smith, Division of Criminal Justice

Jeanne Smith directed Commissioners to a packet of information in their handouts outlining a new initiative by the National Criminal Justice Association’s (NCJA) Center for Justice Planning

entitled the National Criminal Justice Reform Project (NCJRP). The project is a joint effort by the NCJA and the National Governor's Association (NGA). Ms. Smith explained that this initiative is different from others in that it would enhance efforts already underway in Colorado. The project will support system-wide criminal justice reform and an offer of technical assistance will ultimately be awarded to five states. The NCJA and NGA partnership requires both the Governor's Office and State Administering Agency (SAA) to make the request to participate. She clarified that the Division of Criminal Justice is the SAA in Colorado.

Ms. Smith emphasized that this project aims to accomplish something different than what many other initiatives do, in that the goal is to simply 'meet states where they are' rather than to introduce an outside plan or program. The Laura and John Arnold Foundation is providing \$2 million which will help the five selected states work intensively on several key justice areas. The effort focuses on five areas of policy and practice as follows:

1. Pretrial release and bail reform
2. Reentry and offender recidivism
3. Mental health and substance abuse
4. Reducing incarceration, and
5. Information sharing and data integration

Ms. Smith noted that item #3 and item #5 are the two areas that might fit well with the current work of the Commission. She continued that the effort goes beyond planning and shifts focus to longer-term support for implementation to ensure transformational impact.

As for next steps, there is a Request for Information that will be released in June and we must write a letter to NCJA/NGA in response. After that, selected states will be invited to a 20-state convening in October of this year to be held in Denver. Interested states will then submit a Request for Proposal in the fall of 2016 and, of those 20 states, 5 will be selected to receive the awards by the end of the year. In conjunction with the Governor's Office, we have narrowed the scope to the two topics that are already on the Commission's priority list which are 1) Information sharing and data integration, and 2) Mental health and substance abuse. These two areas are not only of interest to the Commission, but a number of other agencies are working on them as well, including the extensive data sharing work in Adams County.

Meg Williams asked if the program provides funding and/or technical assistance. Ms. Smith replied that the provision is for technical assistance only. Mr. Hilkey asked for more clarification about the (unrelated) planning grant work underway in the Division of Criminal Justice. Ms. Smith replied that the Second Chance Act/Recidivism Reduction grant from the U.S. Bureau of Justice Assistance is being shepherded by Peggy Heil in DCJ and currently centers on a planning grant that lasts for a one-year period (ending September 30, 2016), after which Colorado may be invited to apply for a three-year implementation grant.

Ms. Smith concluded by saying that a Letter of Interest regarding the NCJA/NGA project has to be submitted by June 30th (this date was later changed to July) and must be signed by both the Governor's Office and the SAA. She explained that she met with Mr. Hilkey and the rest of the Governor's criminal justice policy group last week to get approval to proceed, and she has also been in conversation with Adrienne Russman, the Governor's Criminal Justice Policy Advisor.

She summarized that everyone is on board and the letter will be submitted by the due date. She added that it would be helpful to also have the endorsement of the Commission on the effort if this is something the group feels strongly about supporting. Mr. Hilkey clarified that this initial step (the Letter of Interest) would be in the hopes of making it to the 20-state convening; the next step for the project administrators will be to narrow the field down to five states.

CONFLICT OF INTEREST

Jeanne Smith, Division of Criminal Justice

Ms. Smith directed Commissioners to the Conflict of Interest statement in their packets. She recounted that a draft version of the form was originally presented during the May meeting with a 30-day window provided for staff to collect feedback or edits from Commissioners. Seeing that no edits or corrections were submitted, Ms. Smith noted that staff would ideally like to collect as many signed statements by the end of the day as possible. She reminded Commissioners that the goal of the Conflict of Interest Statement is to ensure that everyone is in line with what is expected as a member of any public body, which is to ensure a process prohibiting Commissioner involvement in any recommendation, or decision, where an individual may have a personal or professional financial interest in the outcome.

The Conflict of Interest statements were signed and submitted. Ms. Smith thanked Commissioners and informed them that staff would compile the signatures and be in touch to collect any missing forms.

-- At this point in the meeting a quorum was reached and Mr. Hilkey asked for approval of the minutes. Following a motion and a second, the minutes were approved unanimously. Mr. Hilkey explained there was a second piece of business in need of a vote regarding the Letter of Interest required for the NCJRP initiative mentioned earlier in the meeting. He updated the late arriving Commissioners on the background of the project and explained the desire for endorsement by the Commission to move forward with the letter. Following a motion and a second, Commissioners unanimously agreed to support the Letter of Interest. --

RE-ENTRY TASK FORCE / RECOMMENDATIONS AND FINAL VOTE

Mark Evans, Office of the State Public Defender

Mr. Hilkey introduced Mark Evans from the Office of the State Public Defender and explained that Mr. Evans has been leading the work of the Conditions Working Group of the Re-entry Task Force. He added that Mr. Evans would provide a summary of the two recommendations preliminarily presented during the May meeting. He reminded Commissioners that this second and final presentation of the recommendations provides an opportunity for Commissioners to ask questions and raise any concerns they may have from their stakeholder organizations before the final vote at the end of the presentation.

Mr. Evans explained that he will present a recap of the presentation from last month outlining the two recommendations from the Re-entry Task Force and its Conditions Working Group. As background, he explained that the Re-entry Task Force was originally tasked with addressing

three issues including collateral consequences of conviction, continuity of mental health care and the failure rate of offenders under community supervision due to technical violations. As a component of the technical violations issue the Conditions Working Group was formed in August 2015 to look at conditions being imposed on those under supervision of probation, parole and community corrections.

Mr. Evans began a PowerPoint presentation by outlining the membership of both the Re-entry Task Force and the Conditions Working Group (please note the full PowerPoint presentation can be found on the Commission website). He noted that the Conditions Working Group was formed in September 2015 to take a look at whether Probation, Parole and Community Corrections were imposing appropriate conditions on people under their supervision. The working group included Mr. Evans, Jennifer Bradford, Tom Giacinti, Sherri Hufford, Alfredo Pena, Melissa Roberts, Glenn Tapia and Valarie Schamper.

Mr. Evans went on to explain that the process for studying supervision conditions included, first, defining the purposes of conditions and, then, reviewing the conditions for parole, probation and community corrections. The working group agreed that the primary purposes of supervision conditions should center on discouraging anti-social behavior, encouraging pro-social behavior, and maintaining the necessary level of control. In reviewing the conditions the working group looked at the following specific criteria:

1. Are individual conditions fulfilling a defined purpose?
2. Are individual conditions presently problematic?
3. Are individual conditions resulting in a disproportionate number of technical violations?
4. Whether conditions were being utilized in terms of evidence-based practices and research.

The working group compared the criteria against the conditions currently used in probation parole and community corrections, all the while keeping the purposes of conditions in mind. While looking specifically at Probation, the working group determined that the probation conditions were generally fine since they underwent major revisions in the past few years by the Division of Probation Services. However, the working group did feel a need to prepare recommendations concerning both parole and community corrections supervision conditions.

Mr. Evans noted that the consensus around recommendations is that a lengthy list of mandatory conditions for everyone is counter to *individualizing* supervision conditions. Some mandatory conditions are inappropriate as they apply to everyone in every case. Mr. Evans noted that the recommendations presented today go hand in hand with the Commission recommendation and subsequent bill sponsored by Representative McCann concerning individualizing the purpose of parole.

Recommendation FY16-RE #01

Mr. Evans directed Commissioners to the recommendation in their packets titled 'FY16-RE#01 Update the Statutory Conditions of Parole to Reflect Contemporary and Evidence-Based Common Practices.' He explained that Colorado statute currently requires a lengthy list of conditions for parole supervision that are imposed on everybody who is on parole. Those

conditions are imposed on every parolee by the parole board, and then when the parolee meets with their individual officer they receive a directive that includes additional conditions. The consensus of the working group was that the lengthy list of statutorily mandated conditions is antithetical to the idea that conditions of supervision should be individually tailored. Many are appropriate for some parolees but some are inappropriate when applied to everybody. Mr. Evans added that it is important to note that what this recommendation does is return to the parole board and the community parole officers the ability to impose individually tailored conditions. What it does not do is prevent the parole board or parole officers from imposing any condition on anyone. The recommendation simply removes the requirement that all conditions apply to everyone.

Mr. Evans explained to Commissioners that the recommendation FY16-RE#01 in their packets contains an exact copy of C.R.S. 17-2-201 with the current statutory verbiage along with a mark-up of suggested revisions (see the Commission website for a complete copy of this 17 page document). The following is a brief description of the recommended changes to the statute:

- **Restitution. 17-2-201 (5) (c) (I)**
The first change is on page 7 of the handout and is a housekeeping matter regarding restitution. The statute currently states that it is the parole board that orders the defendant pay restitution which does not comport with the actual practice. This clarifies that restitution is determined by the court and not fixed by the parole board as a condition of parole.
- **Notification of residence change. 17-2-201 (5)(f) (I)(B)**
Page 8, subsection (f) (1) (B) requires that a parolee obtain consent from his or her parole officer before changing residence of record. The working group concluded that this is unduly burdensome for a population that frequently struggles with housing issues. The recommendation is for a change to simply require prior notification of the parole officer.
- **Area restriction. 17-2-201(5)(f)(I)(B)**
The same subsection requires parolees “not to leave the area” without permission. That provision has generally been interpreted to mean “county” which is overly burdensome especially for parolees who have to cross county lines for work. The recommendation is to change the statute to read that a parolee not leave the state without permission. However if a parole officer feels a more restrictive geographic area is required they are at liberty to impose that.
- **Urinalysis and drug tests. 17-2-201 (5)(f)(I)(D)**
The next area to be addressed is (f) (1) (d) which requires all parolees submit to urinalysis and other drug tests. The consensus was that that is inappropriate as applied to ALL parolees and the new language allows a parole officer to require testing when that is appropriate.
- **Association. 17-2-201 (5)(f)(I)(F)**
Item (f) (1) (f) requires parolees not associate with people who are either on parole, probation or have a criminal record. The working group felt this was problematic on a number of different levels considering a huge percentage of the population has a criminal record and it is impossible in a community corrections setting for parolees not to come into contact with other parolees. Mr. Evans added that nobody could find any research that this is either necessary or helpful as applied to everybody.
- **Testing frequency. 17-2-201 (5.5)(a)**

Mr. Evans noted that the suggested changes on pages 10 and 11 go with drug testing. The statute currently mandates that parole test all parolees at very specific intervals. This would be removed to give parole officers the discretion to perform testing either less frequently or more frequently as they feel is appropriate for the individual. There is also some confusion about the use of alcohol by parolees. One portion of the statute reads that parolees cannot abuse alcohol or use illegal substances. But because parole is required to test everybody for alcohol, this is being interpreted as a blanket ban on alcohol.

- **Refusal. 17-2-201 (5.5) (c)**

Finally on page 12, the statute currently treats the refusal to submit to urine testing as a positive test. Parole indicated that this is a population of people where things come up such as somebody missing their test because they missed their bus and that treating that as a positive test is problematic. Because of this, that part of the statute is recommended for removal.

Mr. Evans summarized that this recommendation has the support of the Division of Parole, the Parole Board, the Working Group and the Re-entry Task Force. Mr. Evans asked if anyone had any questions about this recommendation.

Scott Turner asked for clarification on the element of the recommendation referring to refusal to submit a urine test and whether there is a difference between somebody who actually misses a test versus somebody who refuses to submit a test. Mr. Evans replied that he believes the rationale behind the Division of Parole's support of this recommendation is that they are trying to affect a cultural change in their ranks to move from "trying to catch people" and sending them back to prison, to trying to help people make that transition back to civilian life. Ms. Smith added that the parole officer is still free to require testing as a condition of supervision and if someone refused it would still be treated as a failure to comply with discretion by the parole officer in regards to sanctions.

Meg Williams asked for clarification on which conditions are still mandated. Mr. Evans replied that in the handouts, the items that are not struck through remain in place as mandatory conditions of supervision. Mr. Evans clarified that the underlying discussion around this recommendation was about giving discretion to parole officers and also a real recognition that there is a cost associated with every condition imposed on someone. He said it is not just a financial cost associated with enforcement but there is also an intellectual and emotional cost as well. He said the idea was to focus on what is really important and to ensure that what is being imposed as a matter of law, is imposed on everybody. However, for other conditions of supervision, the goal is to allow discretion for an officer to impose or not impose as the circumstance dictates.

Paul Herman pointed out that after attending most of the working group meetings he believes that in regard to the issue of conditions, the goal was not to have blanket conditions that may not be relevant for everyone, instead, if a parole officer requests a parolee to give a urine test and the parolee refuses, the officer then indeed does have the grounds to submit a violation.

Mr. Evans mentioned that should this recommendation pass and eventually become statute, the Parole Board will need to change their hearing documents.

Mr. Hilkey asked Commissioners if they had any more questions on the first recommendation. Seeing none he asked Mr. Evans to explain the details of the second recommendation.

Recommendation FY16-RE #02

Mr. Evans directed Commissioners to the next recommendation in their packet, Recommendation “FY16-RE #02 - Provide Model Conditions of Placement in Community Corrections.”

For background, Mr. Evans explained that DCJ’s Office of Community Corrections (OCC) has administrative authority over more than 30 programs statewide. Historically, each of those programs have set conditions of placement and established their own protocol for dealing with violations. In FY2014 the successful completion rate for people in community corrections was 48%, and 25% of people who enter community corrections end up being terminated unsuccessfully due to technical violations. To improve these outcomes, the OCC is working under a grant to develop the Behavioral Shaping Model and Reinforcement Tool (BSMART). BSMART aims to provide programs with model conditions of placement and response protocols for condition violations, incentive implementation for residents, and software upgrades to support these practices.

The OCC has been working to implement BSMART independent of the work of this working group and task force. The Conditions Working Group reviewed drafts of OCC’s model conditions of placement and facility expectations. The consensus of the working group was that the drafts it reviewed represent a vast improvement over current practices. With that said this recommendation encourages the OCC to complete the process of refining those conditions and make them available to programs statewide. The working group believes this serves two purposes. The first is that the hope is this recommendation will motivate the OCC to complete and finalize the work on BSMART. The second hope is that since programs around the state are not currently under any sort of statutory obligation to implement model conditions of supervision, at least a strong recommendation from a well-respected body of criminal justice experts might encourage them to pay attention to this issue. He summarized that compared to the prior recommendation concerning Parole supervision conditions, this is a ‘soft’ recommendation for the OCC to continue with its work on BSMART.

Ms. Williams asked for clarification about one of the items on the document entitled Conditions of Community Corrections Placement (Level 1), specifically, Condition #100 – Law Abiding Behavior. The conditions states “Individuals placed in community corrections must comply with local, state, and federal law and shall demonstrate pro-social and non-criminal behavior at all times”. Ms. Williams asked for clarification on how that is determined.

Rose Rodriguez explained that in her experience (as a community corrections provider) this situation mostly occurs in relation to drugs or drug use, and that violations by transition clients are usually handled in conjunction with the Department of Corrections. She added that the facilities are seeing more and more incidences of people violating local, state and federal law.

Judge Vallejos pointed out that in his experience, these infractions result in an administrative decision rather than a new conviction, and if someone is charged with a new offense they are often revoked.

Mr. Evans added that these occurrences are much trickier with community corrections since community corrections serves different populations (Diversion and Transition). Judge Vallejos shared that most of the time somebody will not even get a hearing if there is a recommendation for revocation.

Mr. Hilkey asked if there were any more questions on Recommendation #2. Seeing none he added that as a recap, recommendation FY16-RE #01 is in alignment with the Statutory Purposes of Parole recommendation (FY16-MP#01), which was approved by the Commission in November, 2015. That recommendation calls for an update to the statutory purposes of parole to reflect contemporary and evidence-based practices.

Mr. Hilkey asked Commissioners if they were ready to vote on the recommendation and asked for a motion. Sheriff Pelle moved to vote and Ms. Williams seconded the motion.

The process for voting on a final recommendation was explained. To pass, a Commission recommendation requires approval by 66% of the members, combining the A and B votes.

- A = I support it
- B = I can live with it
- C = I do not support it

Final Vote:

Recommendation FY16-RE #01 Update the Statutory Conditions of Parole to Reflect Contemporary and Evidence Based Common Practices

- A: 12
- B: 2
- C: 0

Recommendation FY16-RE #01 - PASS.

Mr. Hilkey asked if the group was ready to vote on the second recommendation. He reminded Commissioners that unlike the first recommendation, this one is not statutory. Mr. Hilkey asked if there were any questions and seeing none, he asked if there was a motion to vote. Ms. Williams moved to vote on the recommendation and Evelyn Leslie seconded the motion.

Final Vote:

FY16-RE #02 Provide Model Conditions of Placement in Community Corrections

- A: 12
- B: 2
- C: 0

Recommendation FY16-RE #02 - PASS

Mr. Hilkey thanked Mr. Evans for his work on both the Reentry Task Force and the Conditions Working Group. He added that Mr. Evans gave a very thorough and enlightening presentation on collateral consequences to the members of the Re-entry Task Force earlier in the week as that is the next order of business for the Task Force.

CONSULTANT TURNOVER

Stan Hilkey, Chairman and Executive Director of the Department of Public Safety

Mr. Hilkey informed Commission members about an important change taking place within the Commission. He announced that after more than eight years with the Commission, consultant Paul Herman is retiring. Mr. Herman has been with the Commission since its inception in 2007. Mr. Hilkey recounted that Mr. Herman has attended an untold number of Commission, Task Force and Working Group meetings during his time with the Commission and has consistently added value in moving the groups forward. He noted that the Commission and the staff have been grateful for his many years of leadership.

Ms. Smith pointed out that while Commissioners see Mr. Herman at the monthly Commission and Task Force meetings, they do not see the amount of work that goes on behind those meetings. She explained that it takes hours and hours of work to pull together meeting materials, create agendas, schedule presenters, review research and collect data in order to ensure meaningful and productive meetings. She pointed out that this has all been made possible because of the leadership of Mr. Herman. She closed by saying his direction has been invaluable.

Mr. Hilkey explained that Richard Stroker will be taking over as the Commission consultant starting in July. He pointed out that there is a handout in the Commissioner packets describing Mr. Stroker's background and experience. Mr. Herman shared that he and Mr. Stroker have known each other for 30 years and that they have similar backgrounds and work experience in the criminal justice system. He said that one of the additional skills Mr. Stroker brings to the table is that he is an attorney and that could be beneficial to the group. Mr. Herman concluded by saying that he believes Mr. Stroker will be a tremendous asset to the future work of the Commission. Mr. Stroker thanked Mr. Herman and stated that he looks forward to working with the Commission as it continues its important work. He explained that he will do his best to help further the goals of the Commission and looks forward to sharing his knowledge and information as the important work continues.

ADJOURN / NEXT STEPS

Stan Hilkey, Chairman and Executive Director of the Department of Public Safety

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. With no further business, Mr. Hilkey adjourned the meeting at 1:44 p.m.