



Colorado Commission on Criminal and Juvenile Justice

Minutes

March 10, 2017

480 South Allison Parkway
Lakewood, CO 80226

Commission Member Attendance

Stan Hilkey, Chair	Daniel Kagan	Lang Sias
Doug Wilson, Vice-Chair	Bill Kilpatrick - ABSENT	Scott Turner
Jennifer Bradford	Evelyn Leslie	Michael Vallejos
John Cooke - ABSENT	Joe Morales	Dave Weaver
Valarie Finks - ABSENT	Norm Mueller	Peter Weir
Kelly Friesen	Joe Pelle - ABSENT	Robert Werthwein
Charles Garcia	Rick Raemisch	Meg Williams
Mike Garcia	Rose Rodriguez	Dave Young
Jessica Jones - ABSENT	Joe Salazar	Joe Thome, <i>Ex Officio</i>

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 at 1:07 pm. Mr. Hilkey reviewed the meeting agenda asked Commissioners to introduce themselves. He also introduced Joe Thome and explained that he is the new Director of the Division of Criminal Justice, replacing outgoing Director Jeanne Smith who is retiring. Mr. Thome addressed Commissioners and provided background information on his work history and experience. He added that he hopes to connect individually with each of the Commissioners at some point in the next several months.

Mr. Hilkey asked for any corrections, suggestions or additions to the February minutes and seeing none he called for a motion to approve the minutes. Following a motion and a second the minutes were approved unanimously.

LEGISLATIVE UPDATE

Gabby Reed, Colorado Department of Public Safety, Legislative Liaison

Gabby Reed, the Legislative Liaison for the Department of Public Safety, provided an update on the status of Commission-inspired bills moving through the legislature. She thanked Representative Lang Sias for sponsoring House Bill 17-1147 and noted that the bill is scheduled to be heard in the Senate Judiciary on Monday, March 13th. Ms. Reed explained that the Commission recommendation calling for an update to the statutory conditions of parole is being shepherded through the legislative process by the Department of Correction’s Legislative Liaison Christina Rosendahl, but that it is still awaiting a sponsor. The recommendation calling for a new community corrections reentry referral process has yet to be picked up by any legislators as of

yet. Senate Bill 17-207 which calls for strengthening a community-based crisis response system and changes to the emergency mental health commitment statute is being sponsored by all four of the Commission's legislative members and has been introduced and assigned to the Senate Judiciary. The bill is scheduled to be heard on March 22nd.

Ms. Reed reminded Commissioners that in February they had asked for a handful of recommendations that had stalled in previous legislative sessions to be reintroduced during the current session. She noted that despite ongoing efforts none of those earlier recommendations are gaining traction. Those recommendations included: changes to discharge requirements from lifetime supervision for sex offenders due to disability or incapacitation, the elimination of Colorado's extraordinary risk statute, and a bill to address inconsistencies in the unlawful sexual contact statute. Ms. Reed noted that all three of these proposals were submitted for late bill status but that none were approved.

Mr. Hilkey thanked Ms. Reed for her update and added that there is a copy of a letter in Commissioner's packets from Colorado Counties Incorporated (CCI) which outlines CCI's support of Senate Bill 17-207. Mr. Hilkey noted that it is encouraging to have this kind of broad stakeholder support for Commission sponsored bills.

RETREAT OUTCOMES

Richard Stroker, Commission Consultant

Commission consultant Richard Stroker offered a recap of the outcomes from the February retreat. He directed Commissioners to a handout outlining the current projects, retreat decision, and projected goals and timelines for each of the Task Forces. He described the retreat outcomes for each Task Force as follows:

- **Data Sharing Task Force**
It was determined that this Task Force had completed its assigned mission and should conclude its work.
- **Re-entry Task Force**
The Re-entry Task Force continues to work on its two remaining focus areas of collateral consequences and housing capacity. Three preliminary recommendations regarding collateral consequences will be presented at the May Commission meeting. Members of the Housing Working Group are scheduled to meet with representatives from the Mentally Ill in the Criminal Justice System (MICJS) Task Force to determine if there might be areas ripe for collaboration on housing issues.
- **Juvenile Continuity of Care Task Force**
The Juvenile Task Force is proceeding with its work on the management and supervision of dual-status youth. Recommendations should be forthcoming from the Task Force in the next few months.
- **Mental Health/Jails Task Force**
This Task Force is looking at the issue of diversion of individuals from the criminal justice system who have been arrested and appear to exhibit specific mental illness or mental health concerns. The group will likely spend the next six months identifying specific ways to improve existing approaches to the management of this population with

an emphasis on shifting appropriate cases out of the criminal justice system and into the behavioral healthcare system.

During the retreat Commissioners also discussed possible future areas of study if and when current Task Forces conclude their existing work. Commissioners agreed that the issue of pretrial release was their top priority area for future work and to that end planning is underway for the creation of a Pretrial Release Task Force to commence in the next few months. Mr. Hilkey added he recently learned that State Judicial is also working on pretrial release and that it will be essential to both avoid overlap with that group and possibly even determine if there are opportunities for collaboration. Mr. Stroker noted that there may also be an opportunity for the Commission to take on yet another study area later in the year if another current Task Force concludes its work.

Mr. Raemisch apologized for being unable to attend the retreat and said that he is dealing with significant issues in the Department of Corrections (DOC) that he believes are worthy of the Commission's attention. He explained that there has been significant negative media coverage concerning parole, the management of parolees and plans by the Governor to manage the prison population. Mr. Raemisch pointed out that there is a housing crisis at DOC and that currently there are 90 women in county jails around the state awaiting transport to prison, but there is only one available female prison bed. He added that the prisons are at maximum capacity for both women and men. He went on to describe the case of four teenagers in Colorado Springs arrested recently on charges stemming from a robbery spree and murder, and that he believes the Commission and its Task Forces should be looking at the bigger picture of sentencing reform.

Mr. Raemisch summarized that he believes Colorado needs to make some choices going forward including either inviting Justice Reinvestment into the state to help with reform or possibly reopening Colorado State Penitentiary II which has 1000 beds. He reemphasized that he feels the number one issue the Commission should be pursuing is sentencing reform.

Mr. Stroker thanked Mr. Raemisch and reminded Commissioners that as Task Forces conclude their work it will open up the opportunity for the creation of new Task Forces and an opportunity to prioritize different study areas.

CLEAR ACT

Germaine Miera, Office of Research and Statistics, Division of Criminal Justice
Kim English, Office of Research and Statistics, Division of Criminal Justice

Mr. Stroker stated that another topic discussed at the retreat was the Community Law Enforcement Action Report Act (CLEAR Act) and that Commissioners called for a more in-depth presentation on findings from the CLEAR Act at this (March) Commission meeting.

Kim English took a moment to explain why the Division of Criminal Justice wanted to present the findings of the CLEAR Act report to Commissioners. She noted that during the legislative SMART Hearings at the start of the legislative session a question was raised about the Commission and whether it was addressing issues concerning disproportionate minority contact (DMC). Ms. English explained that the goal of this presentation is to inform Commissioners

about all the work that has taken place regarding DMC and to also provide in-depth data from the CLEAR Act report.

Ms. English explained that the Commission held its first meeting in 2008 and then in 2009 a bill was passed requiring the Commission to consider minority over-representation (MOR) as part of its work. She went on to say that the first part of the upcoming presentation would include the history of the Commission's work in regards to MOR and DMC, and that the second part of the presentation would include the new data from the CLEAR Act report pursuant to Senate Bill 15-185.

CCJJ Minority Over-representation History

Germaine Miera provided a PowerPoint presentation outlining the MOR work of Commission and the Minority Over-representation Task Force from 2009 through today. The full presentation can be found on the Commission website at colorado.gov/ccjj.

To summarize, the Commission spent four months of targeted work identifying the original seven MOR recommendations and subsequently created the Minority Over-representation Task Force to further work on those recommendations. When the MOR Task Force finalized the implementation of the original seven recommendations in 2015, it was deemed that the group was 'on hiatus'. Ms. English explained, while the MOR Task Force completed its work on behalf of the larger Commission, that does not mean that the Commission lost sight of MOR issues. She explained that what is happening today is the same thing that happened in 2009, which is to elevate the conversation of MOR back to the full Commission instead of delegating it to a Task Force or smaller Committee.

CLEAR Act Presentation

Ms. English provided a presentation based on the analysis of data pursuant to the CLEAR Act (Community Law Enforcement Action Reporting Act, Senate Bill 15-185). The CLEAR Act calls for the analysis of race/ethnicity and gender at the major decision points in the system, including arrests, filings, and sentencing. Ms. English began her presentation by explaining that she would summarize some of the most important findings that surfaced in the writing of the CLEAR Act report. The presentation will include information on the background of the Act and then selected findings. Ms. English said that she would not be presenting gender information at this point and has instead narrowed the scope of the discussion to race/ethnicity, focusing primarily on district court and juvenile court. The full presentation can be found on the Commission website at colorado.gov/ccjj. The findings show that, in 2015, Blacks were arrested at a rate 4 times their distribution in the population at large, and were more likely to receive sentences to incarceration and less likely receive a deferred judgment (a deferred judgment is a way to avoid a criminal conviction). These findings held when controlling for number of concurrent cases and number of prior cases. Ms. English referred the Commissioners to the full summary report, available at <http://cdpsdocs.state.co.us/ors/docs/reports/2016-SB15-185-Rpt.pdf>.

DISCUSSION

Scott Turner noted the wide variation in the racial and ethnic make-up in different regions around Colorado and asked if the statistics were broken out geographically. Ms. English replied

that the statutory mandate only calls for a statewide breakdown of the data. Mr. Wilson asked if there is a reason the data could not be broken down by judicial district. Ms. English replied that the data does exist and could be broken down by judicial district, but that she would need to advise Judicial that future analyses would be disaggregated by judicial district. Mr. Wilson said that he agreed with Mr. Turner and that the data would be much more informative if it could be broken down judicial district.

At this point in the discussion Mr. Hilkey called for a break and asked Commissioners to resume the conversation afterwards.

--BREAK--

Website Demonstration and Recommendations from other Organizations

Ms. English directed Commissioners to the overhead screen and walked them through the Race/Ethnicity at Major Decision Points data dashboard that is available online at www.colorado.gov/dcj-ors/ors-SB185. She explained that the website was developed as part of an effort to comply with the requirements of Senate Bill 15-185 which required that the information be disaggregated by crime type. She clarified that the website and dashboard were created internally by the Division of Criminal Justice.

Ms. English also reviewed a handful of recommendations from various national organizations aimed at addressing issues of disproportionate minority contact and the reduction of racial and ethnic disparities across many parts of the criminal justice system.

DISCUSSION

Mr. Hilkey asked Commissioners for their feedback about both the presentation and possible next steps regarding this topic.

Norm Mueller asked if a prior case will appear on the dashboard if a case has been sealed. Ms. English responded that the case would show up for data analysis in the aggregate.

Charlie Garcia commented that with most data analysis it is hard to determine what really happens with the *patterns* of cases where someone is originally charged with one crime (for example drug distribution) yet convicted of something else (e.g., possession).

Mr. Hilkey said it would be critical to not only look at data by judicial district, but to also dig deeper into what is occurring at specific decision points and why. Ms. English replied that a breakdown by judicial district would help local stakeholders start to think about what might be happening in their jurisdictions and what criteria or practices agencies might be using to make decisions. She clarified that it is the people who actually work in the system at the local level who might have some idea of what the numbers mean and how the data may or may not reflect their experiences.

Representative Sias pointed out that a breakdown by judicial district would not necessarily include decisions being made by police departments and other local agencies, which is where

many of the decisions are made early in the system. Ms. English noted that regarding law enforcement data, there is a little more information available at the local level than she covered in her presentation. Mr. Hilkey added that some judicial districts have several police departments and some even have several counties.

Judge Vallejos observed that if a judge is asked if there is racial disparity statewide, he or she would likely answer yes. If that same judge is asked whether there is racial disparity in their district they would likely reply 'maybe', and if you ask that same judge if there is disparity in their courtroom they would reply 'absolutely not'. He said that because of these misperceptions it is very important to have the numbers broken down by individual districts because it forces individual judges to look at their sentencing practices.

Mr. Hilkey asked Ms. English and Mr. Thome if there is capacity among her staff in the Office of Research and Statistics at the Division of Criminal Justice to dig deeper into the data on behalf of the Commission. Ms. English said that it could be as simple as adding another 'click' or tab to the website identifying individual judicial districts. She said it would also be necessary to replicate the tables in the summary report by the 22 Judicial Districts. She stated that she did not believe it would cause a major workload problem.

Mr. Hilkey asked for the will of the group and whether Commissioners would like to request that the data be broken down further. Representative Kagan made a motion to move forward with the request and Mr. Turner seconded the motion. Mr. Hilkey called for any further discussion and seeing none asked for a vote by Commissioners, which was unanimously in support of the request. Mr. Hilkey noted that at some point in the future the Commission may want to discuss the feasibility of creating a Task Force or Committee to support local jurisdictions in their efforts to understand and use the data. Ms. English added that it may be helpful for the Commission to consider making a recommendation that would direct officials in each judicial district to create their own task force to dissect the data and determine next steps.

Meg Williams pointed out that the Office of Adult and Juvenile Justice Assistance (OAJJA) in DCJ, following a federal mandate, provides this information on the juvenile population to judicial districts every year. She expressed that it is critical to provide the context for this process and that it is important to communicate with judicial districts early on in the process. She added that once the data is available it is also critical to be able to physically go to the Judicial District and explain the data and the nuances while providing them with background and framework to understand the information. She said there can be a lot of resistance to the process and it is helpful to provide support.

Mr. Garcia noted that there are many other factors including things like poverty and education that affect decision making and are not reflected in this kind of data analysis. He asked Commissioners to be mindful of other contributing factors that are not studied by the Commission.

Joe Morales added that as a result of a settlement agreement in the 90's, there was a significant amount of money set aside for training on racial disparities for law enforcement.

ADJOURNMENT

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

Mr. Hilkey noted that the April meeting of the full Commission would be cancelled and that the New Member Orientation would be held in its place. Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. With no further business, he adjourned the meeting at 3:57 p.m.