



**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

May 12, 2017

Lookout Mountain Youth Services Center  
2901 Ford Street, Golden, CO 80401

**Commission Member Attendance**

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

Substitutions: Melissa Roberts 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 at 1:10 pm. Mr. Hilkey thanked Robert Werthwein for hosting the meeting at the Lookout Mountain Youth Services Center. He reviewed the agenda, explained that a number of Commissioners would be absent, and asked the Commissioners and guests that were in attendance to introduce themselves.

Mr. Hilkey noted that due to the lack of a quorum he would delay asking for a motion to approve the minutes until later in the meeting.

**LEGISLATIVE UPDATE**

**Doug Wilson, State Public Defender**

Doug Wilson, Vice-chair of the Commission and State Public Defender, noted that the legislative session has concluded and that the Commission produced a number of recommendations that resulted in legislation this year. He extended a special thank you to the legislative representatives on the Commission for their combined effort in supporting the recommendations. In total, four Commission recommendations resulted in three bills including Senate Bill 17-207 (strengthening Colorado's statewide response to behavioral health crises, and, in connection therewith, making an appropriation), House Bill 17-1147 (defining the purposes of community corrections programs), and House Bill 17-1308 (allowing individualized conditions of parole). There were four other recommendations from this year and previous years that did not receive legislative sponsorship.

Mr. Wilson added that House Bill 17-1207 (concerning the requirement for the Department of Human Services to place a juvenile who is ten years of age and older but less than thirteen years of age in a detention facility unless the juvenile is charged with a serious offense, and, in connection therewith, reducing an appropriation) was not the result of a Commission recommendation. However, Mr. Wilson wanted to remind the group that a similar Commission recommendation in Fiscal Year 2015 also called for the “restriction of the use of detention for children under the age of 13” but the proposal did not receive enough Commissioner support to move forward as a legislative recommendation.

Mr. Wilson pointed out that three Interim Committees were also established during this legislative session that touch on criminal justice issues. One committee in particular (Comprehensive Sentencing Reform in the Criminal Justice System) deals with complex topics that the Commission examined for four years (mandatory minimums, extraordinary risk crimes, and the habitual offender statute). The other two committees call for the study of opioid and other substance use disorders in Colorado, and the study of state and local public safety solutions.

Mr. Hilkey thanked Mr. Wilson for the update and also provided Commissioners with the details of the date and location for the signing of Senate Bill 17-207.

## **TASK FORCE UPDATE**

### **Richard Stroker, Commission Consultant**

Commission consultant Richard Stroker offered a synopsis of the work underway in the Task Forces as follows:

- **Juvenile Continuity of Care Task Force**  
This Task Force approved a recommendation earlier in the week regarding Crossover Youth that is scheduled to be presented to Commissioners at the June meeting. The Task Force is also working on a few additional recommendations that should be completed and ready for Commission consideration in the next two months.
- **Mental Health/Jails Task Force**  
The first effort of this Task Force resulted in the passage of Senate Bill 17-207. The next area of focus centers on the early diversion of individuals from the criminal justice system who have been arrested and appear to exhibit specific mental illness or mental health concerns. The Task Force will likely spend the next few 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.
- **Re-entry Task Force**  
The Re-entry Task Force is moving forward with work in the area of collateral consequences and will be presenting three preliminary recommendations later in this meeting. The Collateral Consequences Working Group of the Re-entry Task Force is also finalizing another set of recommendations that will likely be presented in the next couple of months. Members of the Housing Working Group are also continuing their work and

exploring possible collaborative efforts with representatives from the Mentally Ill in the Criminal Justice System (MICJS) Task Force.

➤ **Pretrial Release Task Force**

The Pretrial Release Task Force has been established and the launch meeting for this group is scheduled for June 21<sup>st</sup>. Commission Chairman Stan Hilkey will be chairing this Task Force and the group will be studying issues identified at the Commission retreat earlier this year.

## **REENTRY TASK FORCE / PRELIMINARY RECOMMENDATIONS**

### **Mark Evans, Office of the State Public Defender**

Mr. Hilkey introduced Mark Evans from the Office of the State Public Defender. Mr. Evans explained that he will present three recommendations from the Re-entry Task Force and its Collateral Consequences Working Group. As background, he reminded Commissioners that the study of collateral consequences was one of the original charges given to the Re-entry Task Force from the Commission.

Mr. Evans began a PowerPoint presentation, the full content of which can be found on the Commission website at [colorado.gov/ccjj](http://colorado.gov/ccjj). At the conclusion of his presentation Mr. Evans directed Commissioners to the recommendations in their packets as follows:

#### **Recommendation FY17-RE #01**

##### **Allow Orders of Collateral Relief after the time of sentencing.**

Update statutory orders of collateral relief to:

- Allow eligible individuals to request a court order of collateral relief after the time of sentencing,
- Eliminate duplicative statutory language regarding orders of collateral relief; and
- Create an order of collateral relief in the Children's Code.

Encourage the judiciary to develop a mechanism that will allow the identification of instances when orders of collateral relief are requested, granted, or denied.

#### *DISCUSSION*

Mr. Evans noted the biggest impact of this recommendation would be in expanding the timeframe in which court orders of collateral relief could be requested. He asked if there were any questions about this recommendation and seeing none, he went on to explain the second recommendation.

#### **Recommendation FY17-RE #02**

##### **Prevent adverse private employment actions on the basis of non-conviction, sealed, and expunged records.**

Promote community safety and economic growth by preventing adverse employment action on the basis of arrests that did not result in a conviction, or criminal justice records that have been sealed or expunged.

*DISCUSSION*

Mr. Evans explained that this recommendation would give meaning to Colorado's current record sealing and expungement statute by applying existing Equal Employment Opportunity Commission (EEOC) guidance. He clarified that this recommendation applies strictly to private employment and that the third recommendation in this series applies to public employment. The goal of this recommendation the goal is to discourage employers from making employment decisions based on an arrest record alone.

Representative Salazar commented that this would be a huge shift in the Civil Rights statute particularly in regards to investigation and enforcement, and noted that he believes this would result in a contentious fight in the legislature. He then suggested that Ban the Box legislation might provide a better balance. Mr. Evans replied that this proposal is simultaneously narrower and broader than a Ban the Box proposal and that under Ban the Box an employer can ask any question they want, they just cannot ask it until later in the hiring practice. This recommendation specifies one or two very specific questions that employers are not to ask at all. In order to achieve fair employment practices an employer should not be permitted to discriminate against anyone on the basis of an arrest that does not lead to a conviction. Representative Salazar asked if there was any way to strike a balance on this recommendation by not involving the Civil Rights Division of the Department of Regulatory Agencies (DORA).

Melissa Roberts noted that Ban the Box legislation has failed twice in Colorado. Senator Cooke agreed with Representative Salazar that this proposal would likely not receive support from the legislature because he believes it creates a new protected class. Mr. Evans replied that the recommendation puts forth that the record of the arrest itself is not a sufficient reason to deny employment. He added that if the main pushback is the identification of DORA as the enforcement agency, there are alternative mechanisms that could be explored. Representative Salazar noted that the legislature just passed a juvenile criminal expungement bill and that maybe a similar bill to automatically seal arrest records that do not result in conviction could be applied here. Commissioner Mueller explained that while the process of record-sealing has become more streamlined in recent years it is not automatic and that the accused still must remember to ask the judge to seal a record. Commissioner Jones pointed out that private background check companies are not regulated and arrests can still show up on a criminal history record, even if it has been officially sealed.

Mr. Evans summarized that Colorado would not be alone if this recommendation became statutory and that there are other states with similar provisions including Hawaii, Massachusetts, New York, Pennsylvania and Wisconsin.

**Recommendation FY17-RE #03****Revise statutory guidance on state licensure and employment**

Promote community safety and economic growth by:

- Preventing consideration of arrests that did not result in a conviction, and convictions that have been pardoned, sealed, or expunged, in state licensure and employment decisions;

- Empowering the Department of Regulatory Agencies to delist certain conditional licenses;
- Collecting data;
- Encouraging the elimination of mandatory collateral consequences;
- Incentivizing opportunity expansion by state contractors; and
- Increasing transparency of agency policies.

### *DISCUSSION*

Mr. Evans asked if there were any questions about this recommendation and seeing none he concluded his presentation. He also asked commissioners to contact him if they had any further thoughts or concerns about the recommendations. Mr. Hilkey reminded commissioners that the three recommendations would be presented for a final vote at the June meeting.

### **LOOKOUT MOUNTAIN YOUTH SERVICES CENTER**

#### **Robert Werthwein, Office of Children, Youth and Families, Department of Human Services**

Robert Werthwein thanked commissioners for attending the meeting at the Lookout Mountain Youth Services Center. He noted that the Division of Youth Corrections (DYC) has received a lot of attention the last six months and explained that he believes there is some misinformation being circulated. He went on to say that he hoped to provide some background to commissioners in order to better explain the work done by the Division, the clientele that are served and the goals of DYC.

Mr. Werthwein began a PowerPoint presentation, the full content of which can be found on the Commission website at [colorado.gov/ccjj](http://colorado.gov/ccjj).

### *DISCUSSION*

Ms. Jones asked if there was any crossover between services provided to youth in DYC facilities and youth in the Youthful Offender Services (YOS) facility. Mr. Werthwein replied that the two entities serve different populations and that the youth in YOS have typically committed more severe crimes. Ms. Williams added that DYC and YOS also use different definitions of recidivism. Mr. Werthwein noted that there is a detailed recidivism report on the Department of Human Services website.

Mr. Werthwein acknowledged that DYC has come up against some negative reports and speculation over the past year about the physical management of some of the youth in DYC facilities. In response to those concerns DYC plans to work with national tactical experts on better management techniques for violent young adults. The legislature also approved money this year for more staff, which was much needed. Mr. Werthwein went on to explain that 92% of the DYC population is not engaged in assaultive behavior and that violence only occurs with 8% of the youth. With that in mind DYC is looking for the best way to manage all youth while keeping both the staff and youth safe. He also acknowledged that there are approximately 1000 DYC staff members and that there has been some trouble with inappropriate and abusive staff, which

management is working to address. He reiterated that the hurdle is in balancing safety for both youth and staff.

## **ADJOURNMENT**

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

Mr. Hilkey noted that during the meeting enough commissioners had arrived to reach a quorum and with that in mind he asked attendees if they had had the opportunity to read the minutes from the March meeting. Mr. Hilkey asked for a motion to approve the minutes and, after receiving a motion and a second, the minutes were approved.

Mr. Hilkey thanked Mr. Werthwein and Mr. Evans for their presentations and asked the group for any final comments. With no further business, Mr. Hilkey adjourned the first part of the meeting and announced that the second part of the meeting would include a tour of the Lookout Mountain Youth Services Center. Commissioners dispersed and at the conclusion of the tour the full meeting adjourned at 3:30 p.m.