



Re-entry Task Force

Final Recommendation Presentation to the Colorado
Commission on Criminal and Juvenile Justice

June 9, 2017

Re-entry Task Force

MEMBERS

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Public Defender's Office

Community Corrections

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Probation Services

Criminal Defense Attorney

Offender Representative

Behavioral Health Provider

Parole Board

Department of Corrections

Parole Division

Community Corrections

District Attorney's Office, 17th Judicial District

Governor's Office



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Collateral consequences working group:

- Formed in June 2016.
- Tasked with addressing collateral and other consequences.
- Members:
 - Erin Crites, Probation
 - Mark Evans, Public Defender
 - Jessica Jones, Private Defense
 - Jack Regenbogen, CCLP
 - Melissa Roberts, DOC/Parole
 - Scott Turner, Attorney General's Office

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True consequences:

- Direct.
- Collateral.
- Other.

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Direct consequences:

- Prison or jail.
- Probation.
- Community corrections.
- Restitution.
- Fines, fees, and costs.
- Community service.
- All things that end one day.

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Collateral consequences:

- Mandatory sanctions and discretionary disqualifications.
 - “Collateral sanction” means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. “Collateral sanction” does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

§ 18-1.3-107, C.R.S. 2016.

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Collateral consequences:

- Mandatory sanctions and discretionary disqualifications.
 - “Disqualification” means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

§ 18-1.3-107, C.R.S. 2016.

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Collateral consequences:

- Employment.
- Public benefits.
- Family concerns.
- Immigration.
- Other rights, privileges, and opportunities.

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Other consequences:

- Private employers perform background checks.
- Private landlords perform background checks.
- Social stigma.
 - Friends and family.
 - Widely available records checking.
 - Limited opportunities for records sealing.

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Why consequences matter:

- Gainful employment and stable housing are key factors that enable people with criminal convictions to avoid future arrests and incarceration.
- Restitution.
- Second chances are important.
- Negative economic repercussions.
- Negative community repercussions.
- Disparate impact.

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Process:

- Identify how collateral consequences are most critically impacting the reentry and reintegration prospects of people with a conviction.
 - Piton Foundation 2007 study regarding barriers to reentry.
 - Richard Morales presentation, with data from Latino Coalition organizations.
 - Hassan Latif presentation, with information from the Second Chance Center.
 - Maureen Cain presentation, with information from the Colorado Relief Project.
 - Anecdotal information from practice.

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Process:

- Develop principles to guide efforts to achieve meaningful reform.
 - Involvement in the justice system should not result in collateral consequences that needlessly undermine individuals' future success, are counterproductive to the safety and welfare of society, or exacerbate racial inequalities.
 - Public policy should reflect emerging research indicating the predictive value of a past offense declines over time.
 - The public's access to criminal history information must be better balanced with individuals' right to privacy and the safety and welfare of society.

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Process:

- Brainstorm various ideas for reform.
- Further investigate those ideas.
- Refine ideas into seven formal recommendations.

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Current recommendations:

- FY17-RE #01: Orders of collateral relief.
- FY17-RE #02: Private employment.
- FY17-RE #03: State licensure and employment.

Note: The presentation of these recommendations was not in numerical order, but proceeded from Recommendation #01 to #03 to #02. The slide order below reflects this presentation order.

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Forthcoming recommendations:

- FY17-RE #04: Private housing.
 - Parallels private employment recommendation (RE #02).
 - Same requirements apply to private housing decisions as apply to private employment decisions.

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Forthcoming recommendations:

- FY17-RE #05: Public housing.
 - Parallels state licensure and employment recommendation (RE #03).
 - Same requirements apply to public housing authorities in the housing context as apply to the state in the employment context.

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Forthcoming recommendations:

- FY17-RE #06: Criminal records information.
 - Protects individuals' right to privacy by limiting the distribution of records concerning arrests that did not result in charges.

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Forthcoming recommendations:

- FY17-RE #07: Pretrial diversion.
 - Non-statutory request to continue support of pretrial diversion programs.

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Principles:

- Involvement in the justice system should not result in collateral consequences that needlessly undermine individuals' future success, are counterproductive to the safety and welfare of society, or exacerbate racial inequalities.
 - Private employment.
 - State licensure and employment.
 - Private housing.
 - Public housing.
 - Pretrial diversion.

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Principles:

- Public policy should reflect emerging research indicating the predictive value of a past offense declines over time.
 - Orders of collateral relief.

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Principles:

- The public's access to criminal history information must be better balanced with individuals' right to privacy and the safety and welfare of society.
 - Criminal records information.

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Recommendation FY17-RE #01

Orders of collateral relief:

Current:

- Only available at sentencing.
- Do not apply to successful DJS.
- Only for adults.
- Not reliably tracked.
- Certain offense types and consequences not eligible.

Proposed:

- Available from criminal court at any time.
- Can be requested following successful DJS.
- Same for juveniles.
- Tracking recommended.
- Same eligibility exclusions apply.

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Recommendation FY17-RE #03

State licensure and employment:

Current:

- Guidance applies only to employment.
- Same considerations for pardoned, expunged, or sealed records.
- Same considerations for all convictions.

Proposed:

- Guidance applies to licensure and employment.
- Pardoned, expunged, and sealed records cannot be considered.
- Same considerations for all other convictions, unless order of collateral relief.

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Recommendation FY17-RE #03

State licensure and employment:

Current:

- Conditional licenses granted frequently and permanent.
- Vague data collection by agencies.
- Guidance applies only to discretionary disqualifications.

Proposed:

- Empowers DORA to remove initial conditional designation.
- Clarifies data collection requirements.
- Encourages elimination of mandatory sanctions.

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Recommendation FY17-RE #03

State licensure and employment:

Current:

- Applies strictly to State licensure and employment decisions.
- Policies not readily available.

Proposed:

- Provides incentive to private employers who contract with the State.
- Recommends increased transparency.

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Recommendation FY17-RE #02

Private employment:

Current:

- No enforcement mechanism for asking about sealed records.
- No state restrictions on other use of criminal records information.

Proposed:

- Unfair employment practice to inquire about or act on records of non-pending arrest that did not lead to conviction, or records that have been sealed or expunged.
- Enforcement by DORA Civil Rights Division.

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Recommendation FY17-RE #02

Private employment enforcement:

DORA:

- Expertise in issues relating to fairness.
- Pre-existing mechanisms for enforcement.
- Facilitates private enforcement.

CDLE:

- Expertise in issues relating to industry.
- Pre-existing mechanisms for enforcement.
- Would not permit private enforcement.
- But... no obvious parallel enforcement mechanism for housing recommendations.

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Benefits:

- Individuals attempting to improve their lives.
- The families who rely on them.
- The neighborhoods that need them.
- The State of Colorado.

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Questions?