



Re-entry Task Force

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

July 14, 2017

Re-entry Task Force

MEMBERS

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Public Defender's Office

Community Corrections

Denver Crime Prevention and Control Commission

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

Re-entry Task Force

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.

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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 #04: Private housing.
- FY17-RE #05: Public housing.
- FY17-RE #06: Criminal records information.
- FY17-RE #07: Pretrial diversion.

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Approved recommendations:

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

*[The recommendations above were approved
at the June 2017 meeting of the CCJJ.]*

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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.

Recommendation FY17-RE #01 was approved at the June 2017 meeting of the CCJJ.



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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.

Recommendation FY17-RE #02 was approved at the June 2017 meeting of the CCJJ.

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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.

Recommendation FY17-RE #03 was approved at the June 2017 meeting of the CCJJ.



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Recommendation FY17-RE #03 (cont'd)

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.

Recommendation FY17-RE #03 was approved at the June 2017 meeting of the CCJJ.



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Recommendation FY17-RE #03 (cont'd)

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.

Recommendation FY17-RE #03 was approved at the June 2017 meeting of the CCJJ.



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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 #04

Private housing:

Current:

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

Proposed:

- Unfair housing 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.
- Same for covenants.
- Enforcement by DORA Civil Rights Division.

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Recommendation FY17-RE #04

Private housing:

Current:

- No opportunity to review records.
- Landlords only prohibited from asking about sealed conviction records.
- No liability protection for landlords.

Proposed:

- Copy can be requested from landlord.
- Landlords also prohibited from asking about sealed non-conviction records.
- Liability protection similar to employers.

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Recommendation FY17-RE #05

Public housing:

Current:

- No statutory guidance for public housing authorities.

Proposed:

- Division of Housing to provide guidance.
- Public housing authorities evaluate criminal records the same way the state does for licensure and employment.
- Enforcement by DORA Civil Rights Division.

Criminal records information:

Current:

- Arrest records required to be open for inspection.
- CBI reports arrest information, regardless of whether charges filed.
- Lexis and BIS report arrest information, unless charges filed.

Proposed:

- Arrest records not required to be open.
- Custodians deny access to records of arrests without charges, to all but the victim or accused.
- Others denied arrest records can obtain by showing public interest.

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Recommendation FY17-RE #07

Pretrial diversion:

Current:

- Six new programs started.
- Nine total programs receiving funding.

Proposed:

- Continue or expand financial support of adult pretrial diversion programs.

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Recommendation FY17-RE #07

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?