



Colorado Commission on Criminal and Juvenile Justice

Minutes

July 14, 2017

Employee Relations Training Room
Lakewood Civic Center
480 South Allison Parkway, Lakewood, CO 80226

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	Michael Vallejos - ABSENT
John Cooke - ABSENT	Joe Morales - ABSENT	Dave Weaver
Valarie Finks - ABSENT	Norm Mueller	Peter Weir
Kelly Friesen	Joe Pelle	Robert Werthwein
Charles Garcia	Rick Raemisch	Meg Williams
Mike Garcia	Rose Rodriguez	Dave Young
Jessica Jones - ABSENT	Joe Salazar - ABSENT	Joe Thome, <i>Ex Officio</i>

Substitutions: Jennifer Wagoner for Joe Morales

CALL TO ORDER AND OPENING REMARKS

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

Mr. Stan Hilkey, Chairman of the Commission and Executive Director of the Department of Public Safety, called the meeting to order at 1:04 pm. He thanked Commissioners for attending, explained that there were a handful of absentees, and asked those in attendance to introduce themselves. Mr. Hilkey acknowledged that this would be the final meeting for Commissioner Robert Werthwein and thanked him for his years of service. Mr. Werthwein introduced Tony Gherardini and explained that Mr. Gherardini would be the new Department of Human Services representative on the Commission. Mr. Hilkey reviewed the agenda and asked for any additions, deletions or comments on the June minutes. A motion to approve the minutes was made and seconded, and Commissioners unanimously approved the minutes.

Mr. Hilkey reminded Commissioners that during the June meeting they voted in favor of inviting the Chairs of the Legislative Interim Study Committees to attend an upcoming Commission meeting. The invitation has been extended to Representative Pete Lee, Senator Don Coram and Representative Brittany Pettersen and it is likely that at least one, if not all, of the legislators will attend the August Commission meeting.

JUVENILE CONTINUITY OF CARE TASK FORCE

FINAL RECOMMENDATION PRESENTATION (FY17-JCC #01, #02, & #03)

Robert Werthwein, Department of Human Services

Meg Williams, Juvenile Parole Board

Mr. Hilkey introduced Robert Werthwein and Meg Williams and noted that they will present the final Juvenile Continuity of Care Task Force recommendations for a vote today. Mr. Werthwein explained that the work of the Task Force centered on the specific population of crossover youth. He began a

PowerPoint presentation, the full content of which can be found on the Commission website at colorado.gov/ccjj. At the conclusion of his presentation Mr. Werthwein directed Commissioners to the recommendations in their packets as follows:

Recommendation FY17-JCC #01

Create a plan to formally recognize and address the needs of *crossover youth*.

Define *crossover youth*¹ and *crossover plan* in statute and require each local Juvenile Services Planning Committee, established in C.R.S. 19-2-211, to devise a crossover plan for the identification and notification of cases involving crossover youth.

- I. Add crossover youth definitions to 19-1-103 C.R.S.
- II. Add a new section to 19-2-211 C.R.S. numbered 19-2-211.5 C.R.S.
 - a. To require the Juvenile Service Planning Committee in each judicial district to adopt a plan for identifying and notifying the human/social services representatives, probation representatives, S.B. 94 coordinators, juvenile court representatives, public defenders, district attorneys, parents and guardians ad litem of a youth's crossover status.
- III. Add language to 24-1.9-102 (1)(e) C.R.S. (Collaborative Management Statute)
 - a. To explicitly include and permit local Collaborative Management Programs to establish memorandum of understanding with the local Juvenile Services Planning Committees for the coordination of services for crossover youth.
- IV. Add a new section to Title 19 Article 2 C.R.S.
 - a. To require the court to consider a youth's crossover status at all stages of the proceedings (i.e., pre and post adjudication) and not be used against the youth in a manner contrary to the principles informing the crossover youth practice model

DISCUSSION

Chairman Hilkey asked for discussion about recommendation FY17-JCC #01. Commission Consultant Richard Stroker pointed out that the recommendation provides the funding mechanism to carry out recommendations FY17-JCC #02 and #03.

¹ Crossover youth, sometimes referred to as "dually involved" or "multisystem" youth, are youth who are involved in both the child welfare and juvenile justice systems. In Colorado, it is estimated that upwards of 80% of the youth committed to the Division of Youth Services have a prior history of child welfare involvement. It is further estimated that 60% have experienced prior out-of-home care placement through the child welfare system. Research has found these youth to be at higher risk for poor developmental outcomes (see Haight, et.al. (2016) for a review) and to have higher recidivism rates compared to those involved only in the juvenile justice system (Huang, et al. (2015). Crossover youth are described as higher risk by juvenile justice decision-makers and receive harsher dispositions than their non-crossover counterparts (Ryan, Hertz, Hernandez, & Marshall, 2017; Morris & Freundlich, 2005; Conger & Ross, 2001; Jonson-Reid & Barth, 2000). Research reflects importance of designing comprehensive, integrated approaches for improving the outcomes of crossover youth (e.g., Cusick, Goerge, & Bell, 2009; Munson & Freundlich, 2005). Such approaches typically involve multisystem collaborations, minimally between child welfare and juvenile justice professionals, but also law enforcement, education, behavioral health, and court personnel (Wiig & Tuell, 2004; Siegel & Lord, 2004; Halemba & Lord 2005; American Bar Association, 2008; Herz & Ryan, 2008; Nash & Bilchik, 2009). Without integrated and comprehensive efforts—including coordinated case assignment, joint assessment processes, coordinated case plans and coordinated supervision—crossover youth are less likely to receive the appropriate services and placements they need to improve their outcomes in both the short- and long-term (Widom & Maxfield, 2001; Cusick, Goerge, & Bell, 2009).

Kelly Friesen reported that all three recommendations were discussed at length during the statewide Senate Bill 94 coordinators meeting this morning and that the general consensus of that group is that these initiatives are already taking place and that these recommendations will help to formalize the process. Mr. Wilson asked if the Judiciary was involved in the discussion and if there was any pushback on the recommendations. Ms. Williams replied that Bill Delisio from the State Court Administrator's Office attended the meetings and offered valuable input during the process.

Mr. Pete Weir thanked the members of the Juvenile Continuity of Care Task Force for their work and noted that he agrees with the direction of these recommendations. Mr. Weir asked for clarification on the verbiage in the recommendation that refers to the requirement of the court to "consider a youth's crossover status at all stages of the proceedings." Mr. Werthwein replied that the general goal of this recommendation is for the status of a child not to be used against them if, for example, a youth is being held in detention solely because they do not have a family to go home to. Mr. Weir agreed that it is an ongoing and frustrating situation when there are no alternatives or options for placement for crossover youth. He added that he believes there is continued tension between state Judicial and child welfare with respect to who pays for placement. Ms. Williams noted that members of the Task Force also believe this is a significant problem and that these recommendations will force local communities to come together to have those discussions. Mr. Weir emphasized that he is concerned about statements in the recommendation that mandate the implementation of this kind of plan. Ms. Friesen replied that some of the Senate Bill 94 coordinators had similar concerns but eventually agreed that the Juvenile Service Planning Committee (JSPC) in each judicial district could explain, in their individual plans, if there are funding challenges that would be prohibitive to implementation. Mr. Werthwein expressed that jurisdictions have found ways to fix this problem and that a lack of money should not be the reason to justify keeping a youth detained. Mr. Werthwein clarified that the recommendation mandates a plan be created, but does not mandate that the plan be executed. At a minimum it creates the opportunity for the JSPC to have the conversation.

Chairman Hilkey asked for a motion to approve recommendation FY17-JCC #01. Mr. Wilson moved to accept the recommendation as written and Mr. Werthwein 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 of:

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

Final Vote: FY17-JCC #01

Create a plan to formally recognize and address the needs of crossover youth.

- A: 15
- B: 1
- C: 1

FY17-JCC #01 was APPROVED

Recommendation FY17-JCC #02

Utilize existing funds for local crossover youth plans and services.

Authorize the utilization of existing marijuana tax revenue distributed to Senate Bill 1991-94 entities to allow these funds to be used to support the development and implementation of local crossover youth plans and services.

DISCUSSION

Ms. Friesen reported that there was a question at the Senate Bill 94 coordinators meeting about whether the change would allow for the access of Senate Bill 215 funds for actual services, and not simply for the development of new programs. Mr. Werthwein replied yes, as long as the services are for crossover youth.

Mr. Hilkey asked if anyone from the Office of the Governor or the Office of State Planning and Budgeting offered information regarding how the funds are currently restricted and whether it is legally possible to expand the use of funds. Mr. Werthwein replied that the proposal has not yet been presented to the Governor's Office.

Chairman Hilkey asked if there were any other questions. Seeing none he asked for a motion to approve recommendation FY17-JCC #02. Ms. Friesen moved to accept the recommendation and Dave Weaver seconded the motion.

Final Vote: FY17-JCC #02

Utilize existing funds for local crossover youth plans and services.

- A: 16 (I support it)
- B: 1 (I can live with it)
- C: 0 (I do not support it)

FY17-JCC #02 was APPROVED

Recommendation FY17-JCC #03

The Colorado Department of Human Services, Division of Child Welfare, should promulgate rules that provide guidance on *permanency planning*² to county departments of social/human services under Social Service Rules Volume 7.³ These rules should provide guidance to counties in circumstances involving a *legally free*⁴ youth (where parental rights have been terminated and there is no legal guardianship) who is either returning to county custody after a period of DYS commitment or is projected to emancipate from Division of Youth Services (DYS).

DISCUSSION

Chairman Hilkey asked if there were any other questions. Seeing none, he asked for a motion to approve recommendation FY17-JCC #03. A motion was made to accept the recommendation and it was seconded.

Final Vote: FY17-JCC #03

Require permanency planning for legally free youth following a commitment to the Division of Youth Services.

- A: 17 (I support it)
- B: 0 (I can live with it)
- C: 0 (I do not support it)

FY17-JCC #03 was APPROVED

² Permanency for youth includes a permanent legal connection to a family, such as reuniting with birth parents, adoption, kinship care, or legal guardianship. Physical permanency is having a home or a place to be; relational permanency is having a relationship or connection with a caring adult (e.g., maternal and paternal kin, teachers, neighbors, former foster parents) (Mallon, 2011).

³ The majority of *Colorado* regulations affecting social services are included in the Code of Colorado Regulations under *CDHS: Social Service Rules, Volume 7*. See the Colorado Secretary of State CCR website at: sos.state.co.us/CCR/ (Browse to CDHS: 1008, Rule 12 CCR 2509).

⁴ *Legally free* is a term applied to children and youth where parental rights have been terminated and there is no identified "second" family or legal guardianship.

REENTRY TASK FORCE**PRELIMINARY RECOMMENDATION PRESENTATION (FY17-RE #04, #05, #06 & #07)****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 the final four recommendations from the Re-entry Task Force and its Collateral Consequences Working Group. He added that he will begin the presentation with a brief review of the work by both the Working Group and the Task Force and how they arrived at the recommendations. As background, he reminded Commissioners that the study of collateral consequences was one of the original duties 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. At the conclusion of his presentation Mr. Evans directed Commissioners to the preliminary recommendations in their packets as follows:

Recommendation FY17-RE #04**Promote housing opportunities for people with non-conviction, sealed, and expunged records.**

Promote community safety and economic growth by:

- Preventing adverse housing action on the basis of arrests that did not result in conviction, or criminal justice records that have been sealed or expunged.
- Allowing prospective tenants denied housing due to a criminal history or credit record to obtain a copy of the record.
- Correcting a statutory omission regarding landlords' inquiry into sealed records.
- Enacting protections for landlords in civil cases.

DISCUSSION

Mr. Werthwein asked if the Working Group or the Task Force considered the issue of sex offenders and the sex offender registry while creating this recommendation. Mr. Evans replied that this recommendation pertains only to situations where the person has not been convicted of an offense, or the record has been sealed or expunged.

Recommendation FY17-RE #05**Provide statutory guidance on public housing decisions.**

Promote community safety and economic growth by:

- Preventing public housing authorities from taking adverse action against individuals on the basis of arrests that did not result in a conviction, or convictions that have been pardoned, sealed or expunged.
- Requiring public housing authorities to consider other convictions using the same criteria the state currently applies for licensure and employment decisions.

DISCUSSION

Mr. Evans asked for any questions or comments on Recommendation FY17-RE #05. Seeing none he presented FY17-RE #06.

Recommendation FY17-RE #06**Limit the distribution of records concerning arrests that did not result in charges.**

Preserve the presumption of innocence by:

- Providing interpretation guidance with criminal record reports.
- Excluding arrests from the definition of “official action.”
- Limiting the distribution of criminal records concerning arrests that did not result in charges being filed.

DISCUSSION

Chief Bill Kilpatrick asked if the provisions in this recommendation apply only to the Colorado Bureau of Investigation (CBI). Mr. Evans replied that the recommendation would apply to any custodian of records and that the text of the recommendation specifies all custodians of records.

Sheriff Joe Pelle pointed out that the tracking of dispositions and the relation of dispositions to arrest would be onerous for jail staff. He explained that if this recommendation were to pass and become law he would have to hire a significant number of employees to carry out the details and that it is important for Commissioners to understand the burden this would put on local law enforcement as far as record keeping. Mr. Hilkey confirmed that for a Sheriff’s Department, as a custodian of records, they would be responsible under this recommendation for examining the records owned by the local department. He went on to explain that it will likely be more burdensome for the CBI with regards to their collection and management of records from all over the state. Mr. Hilkey added that this recommendation was created in the spirit of best policy, and that the mechanics of implementation is another, likely more difficult matter.

Sheriff Pelle went on to explain that his office and other Sheriff’s departments are inundated dozens of times a day with inquiries from the media and general public about arrest records. He explained that records are released routinely about people housed in the jails and that the majority of those are prelease and pretrial cases. He added that he understands and respects the intent of the recommendation but that the mechanics are problematic. Mr. Evans replied that after listening to Sheriff Pelle and Chief Kilpatrick’s concerns, he believes the Collateral Consequences Working Group may have overlooked some critical elements regarding the implementation of the recommendation. Mr. Evans then offered to meet with both Sheriff Pelle and Chief Kilpatrick before the August Commission meeting to look for ways to address their concerns.

Recommendation FY17-RE #07**Support pretrial diversion programs.**

Continue or expand financial support of Colorado’s adult pretrial diversion programs.

DISCUSSION

Mr. Werthwein asked if there was any consideration of juvenile diversion in the discussions by the Working Group. Mr. Evans replied that Colorado treats juvenile and adult diversion as distinctly different systems therefore the group focused only the adult diversion system.

Mr. Hilkey stated that the Commission would hold a final vote on the four Re-entry Task Force recommendations during its August meeting.

LEGISLATIVE RECOMMENDATIONS STATUS**Doug Wilson, State Public Defender**

Commission Vice-chair Doug Wilson directed Commissioners to a handout in their packets titled Legislative Recommendation Status 2008-2017. The document lists the number of recommendations produced by the Commission since its inception and the number of recommendations that were legislative in nature. The document also details the recommendations that were legislative in nature but never advanced as bills. Mr. Wilson explained that some of the bills that never advanced through the legislature were either Postponed Indefinitely after they were introduced, while some recommendations were never picked up by legislators.

ADJOURNMENT

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. He added that the next two meetings are scheduled for Friday August 11th and Friday September 8th. With no further business, Mr. Hilkey adjourned the meeting at 2:30 p.m.