



**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

August 11, 2017

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

**Commission Member Attendance**

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

Substitutions: Anne Andrews 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 1:05 pm. He thanked Commissioners for attending and asked them to introduce themselves. He also welcomed Tony Gherardini as the newest member to the Commission and explained that he is representing the Department of Human Services. Mr. Hilkey also welcomed two distinguished guests to the meeting: Representative Pete Lee and Senator Don Coram. He reported that two legislators were in attendance to share with Commissioners the details of the work taking place by two Legislative Interim Study Committees this summer. Mr. Hilkey reviewed the agenda and asked for any additions, deletions or comments on the July minutes. Scott Turner moved to approve the minutes and Norm Mueller seconded the motion. Commissioners unanimously approved the minutes.

**LEGISLATIVE INTERIM COMMITTEES / DISCUSSION**

**Representative Pete Lee, House District 18**

**Senator Don Coram, Senate District 6**

Mr. Hilkey introduced Representative Pete Lee, Chairman of the Sentencing in the Criminal Justice System Interim Study Committee, and Senator Don Coram, Chairman of the County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee. 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 a Commission meeting and share the work of their groups.

Representative Lee opened the discussion by stating that Colorado is recognized around the country as being in the forefront of criminal justice reform based on best practices and noted that most of that progress is attributable to the hard work of the Commission. He added that most of the proposals

generated by the Commission make it through the Judiciary Committee without much resistance. Rep. Lee went on to say that his legislative committee hopes to work in conjunction with the Commission in the coming months.

Rep. Lee outlined that his Legislative Interim Committee held its second meeting on Tuesday of this week and heard presentations from the State Public Defender, Doug Wilson and the Director of Parole, Melissa Roberts about a handful of proposals approved by the Commission, but that were not picked up by legislators. He noted that the information helps to give guidance as to the direction his Committee may want to take. Representative Lee then read the charge for the Sentencing in the Criminal Justice System Interim Study Committee as follows:

*To study Colorado's sentencing scheme; our charge as a committee is to consider offenses and penalties associated with specific criminal categories and how evidence based and cost effective changes could be implemented that would achieve the statutory goals of sentencing, simplify the sentencing structure and allow for prison resources to be used for highest risk offenders to promote the purposes of punishment, accountability and public safety. More specifically, we are charged with evaluating the use of mandatory minimums, continued viability of extraordinary risk crimes, examining habitual offender scheme in light of current research, best practices and resource limitations, and finally development of Second Look Legislation to address long sentences.*

The first meeting of the Committee focused on information gathering and the group heard from various stakeholders including the Division of Criminal Justice and the Department of Corrections. During the second meeting the group heard from the Colorado Organization for Victim Assistance and other victim advocates, district attorneys, the defense bar and other community members. Upcoming meetings will feature presentations outlining what other jurisdictions are doing around the country. The Committee will wait until it gathers more information before it determines desired outcomes; however, the Committee is authorized for five bills in the upcoming legislative session, all within the scope of the charge. Individual members of the Committee can bring their ideas forward as well. Rep. Lee added that public comment is encouraged at every meeting and, at the second meeting, the Committee heard an hour of public comment.

Mr. Hilkey asked how the Commission could be of assistance to the Committee and Representative Lee replied that it would be helpful to have access to the Commission's research and resources. He pointed out that the Committee will also be taking a closer look at the proposals put forth by the Commission in previous years that were not furthered by the Legislature. He also invited Commissioners to offer their input on bills they believe would have merit.

Pete Weir noted that he has concerns with respect to the process and the Committee's mandate to produce significant criminal justice decisions in such a short timeframe. He pointed out that the Commission has spent a great deal of time, often years, in vigorous debate to put forth excellent policy. He inquired about the role of the long-term work by the Commission if interim committees start taking on the role of creating legislation in the span of a few months. He added that some of the previous Commission recommendations being considered by the Committee may now be unnecessary in light of other changes through the years.

Representative Lee responded that the Legislature gives every bill that arises a full and robust hearing. He added that questioning the timeframe that the Committee is operating under is a misrepresentation of the process of the Legislature. He noted that oftentimes bills are not even thoroughly considered until they enter the hearing process at the legislature. He added that the Committee would be cognizant of changes that have taken place since the Commission recommendations were created.

Senator Coram addressed Commissioners and explained that the County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee is also taking its work very seriously. He outlined the charge of the Committee as follows:

*The County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee was created pursuant to Interim Committee Request Letter 2017-15, as approved by the Legislative Council on April 28, 2017. The committee is charged with studying the following policy issues:*

- *The current cost of maintaining and staffing county courthouses, jail facilities, and justice centers in each county;*
- *The current availability of state resources to aid in the funding of county courthouse facilities, including the Underfunded Courthouse Cash Fund and the Courthouse Security Cash Fund;*
- *The current availability of state resources to aid in the funding of, and overcrowding issues in, county jail facilities;*
- *Approaches to increasing state funds for county courthouses and jails, including the creation or alteration of grant programs for courthouse and jail construction, maintenance, and staffing;*
- *Reforms in sentencing, probation, or parole policies that encourage the use of county jail facilities in place of Department of Corrections facilities or diversion programs; and*
- *Approaches to addressing the growing problems of heroin and prescription opiate addiction and mental health issues that result in growing jail populations, including those of drug courts, mental health courts, rehabilitation efforts, and other diversion methods.*

Senator Coram explained that the Committee has met twice with another meeting scheduled for August 21<sup>st</sup>. One of the main focuses of the Committee is around the issue of funding and the cost to counties required to house inmates waiting for a bed at the Department of Corrections (DOC). The Committee is also studying issues around maintenance of court houses, jail facilities and justice centers. Additionally, there are problems with sentencing and the, oftentimes, extremely lengthy sentences given to non-violent offenders. He summarized that the Committee's scheduled five meetings may be expanded to six.

Mr. Wilson pointed out that the Commission is also studying jail over-crowding, pretrial release and issues surrounding mental health in the criminal justice system. Senator Coram added that in regards to sentencing, his Committee is also looking at people charged with non-violent crimes who cannot make bail. He added that the Committee would welcome any assistance from the Commission regarding bail/bond and pretrial release reform.

Rick Raemisch thanked both of the legislators for their time and attention to these criminal justice matters. He explained there are 190 people back-logged in county jails waiting for a bed at the Department of Corrections and that this should not be the responsibility of sheriffs and local communities.

Representative Lee and Senator Coram thanked Commissioners for their time and emphasized that they believe their Committees and the Commission can work in a collaborative and cooperative process.

**DEPARTMENT OF CORRECTIONS / POPULATION DRIVERS**  
**Kim English and Linda Harrison, Division of Criminal Justice**

Kim English, Research Director for the Division of Criminal Justice, introduced herself and Senior Analyst Linda Harrison. Ms. English explained that she and Ms. Harrison were asked to present to Representative Lee's Interim Committee a month ago on the factors driving the increase in the prison population. The intent of the presentation today is to share with the Commission the information that was provided to that Committee. Ms. English pointed out that Commissioners were provided with a handout in their packets entitled Factors Influencing the Increase in the Prison Population. Additionally, Ms. English and Ms. Harrison offered a PowerPoint presentation, the content of which can be found among the August meeting documents on the Commission website at [colorado.gov/ccjj](http://colorado.gov/ccjj).

*DISCUSSION*

Mr. Raemisch thanked Ms. English and Ms. Harrison for the presentation and observed that they had provided several informative factors that are driving the prison population. He stated that he believes there are additional factors contributing to prison overcrowding including: the population of people over 60 years old who are in the system for non-violent crimes (255), people in minimum camps with a non-violent crime and an average stay of seven months (634), and those housed in minimum security settings (578). Additionally, 54% of the current Department of Corrections population is eligible for parole. There are 1,318 females incarcerated at DOC for non-violent crimes and 742 non-violent offenders have been incarcerated for more than five years. Mr. Raemisch summarized that he believes this is a problem the state is inflicting upon itself. He added that 77% of the DOC population is addicted to drugs, alcohol or both, and that his facilities were not built to manage this population, nor does he have the resources to treat this population. Programs in the community have proven to be the most successful at reducing recidivism rates; therefore, instead of paying \$30,000 a year to house someone in prison, that money would be better spent treating them in the community. Mr. Raemisch summarized by imploring Commissioners to consider exploring these issues and viable alternatives to the current system.

Tony Gherardini asked about the increase in the ratio of arrests to filings from 21% to 25% and the factors behind the increase. Ms. Harrison replied that there could be many reasons for the increase and that it may be a measure of system efficiency. She noted that regardless of the reason, it remains simply a driver and exerts upward pressure on the prison population. Ms. English added that the information prior to 2012 is not available for the analysis because that is when the arrest data became complete in Colorado. She noted that other scholars with other data sets show the ratio of filings to arrest have increased considerably over time. Mr. Gherardini asked if the Judicial Branch has been part of the conversation around the increase in the prison population. Mr. Wilson replied that Judge David Shakes from Colorado Springs testified at Representative Lee's Interim Committee meeting this week on behalf of Judicial.

Mr. Gherardini commented on the steady decline in prison releases to parole since 2013 and why that is occurring. Ms. Harrison replied that currently there are many people eligible for parole in DOC but there are declines in both mandatory and discretionary releases, and pointed out those discretionary releases are at the discretion of the Parole Board. Anne Andrews, statistical analyst to the Board and attending for Parole Board Chair Joe Morales, replied that releases decreased quite a bit in the last year but that there have been increases in the last three months. She said the board is hopeful that through a handful of reforms, particularly House Bill 17-1326, inmates will be fast-tracked and released more quickly.<sup>1</sup>

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<sup>1</sup> HB 2017-1326 included, among other elements, provisions that require a parole plan investigation to occur prior to an inmate's parole hearing; allows a file review to determine release (instead of a hearing), if the inmate is assessed at "low" or "very low" risk and victim notification is not required; and provides for a variety of re-entry infrastructure enhancements.

Commission consultant Richard Stroker thanked Ms. English and Ms. Harrison for their presentation. He reminded Commissioners that they recently completed work on two Task Forces (the Juvenile Continuity of Care TF and the Re-entry TF) and that during the September meeting Commissioners will spend some time discussing what might be an appropriate topic for the next task force(s) to be seated. Some of the material and discussions from today will help inform that conversation next month.

### **REENTRY TASK FORCE**

#### **FINAL RECOMMENDATION PRESENTATION AND VOTE (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 among the August meeting documents on the Commission website at [colorado.gov/ccjj](http://colorado.gov/ccjj). At the conclusion of his presentation Mr. Evans directed Commissioners to the final recommendations in their packets. He noted that Recommendation FY17-RE #06 garnered the most conversation at the July Commission meeting and therefore that recommendation will be discussed last.

#### **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. Evans asked if there were any questions or comments about FY17-RE #04. Seeing none Chairman Hilkey asked for a motion to approve the recommendation. Mr. Mueller moved to accept the recommendation as written and Evelyn Leslie 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-RE #04***

Promote housing opportunities for people with non-conviction, sealed, and expunged records.

- A: 12
- B: 4
- C: 0

***FY17-RE #04 was APPROVED***

**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 if there were any questions or comments about FY17-RE #05. Seeing none Chairman Hilkey asked for a motion to approve the recommendation. Sheriff Pelle moved to accept the recommendation and Dave Weaver seconded the motion.

***Final Vote: FY17-RE #05***

Provide statutory guidance on public housing decisions.

- A: 15
- B: 1
- C: 0

***FY17-RE #05 was APPROVED***

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

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

*DISCUSSION*

Mr. Evans asked if there were any questions or comments about FY17-RE #07. Mr. Wilson asked if there are any data reflecting outcomes from the diversion programs that are currently operating. Mr. Evans replied that the annual report by the Adult Diversion Funding Committee gives outcomes in terms of the number of people the programs are accepting, the percentage that successfully complete and the percentage that unsuccessfully terminate. However, there are no recidivism statistics yet in part because all of the programs are so new. Mr. Weir commented that he appreciates the recommendation and the outcomes. He added that the text of the recommendation does not include information about certain jurisdictions that may have already been operating their own diversion programs for years, as is the case in Jefferson County. He noted that his colleagues in rural areas believe these types of programs (adult diversion funding) have been a very valuable resource. He thanked the Re-entry Task Force for their work to create and support these valuable programs. Chairman Hilkey asked for any more questions or comments and seeing none he asked for a motion to approve the recommendation. Scott Turner moved to accept the recommendation and Sheriff Pelle seconded the motion.

***Final Vote: FY17-RE #07*** Support pretrial diversion programs.

- A: 16
- B: 0
- C: 0

***FY17-RE #07 was APPROVED***

**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*

Mr. Evans explained that recommendation FY17-RE #06 addresses criminal records availability and that it would remove arrests from the class of records that have to be open to public inspection at all times. It would also direct record custodians to deny access to arrest records unless charges have been filed or unless the requesting person is the alleged victim or the alleged perpetrator.

Mr. Evans explained that while the Collateral Consequences Working Group received no pushback from members of the Re-entry Task Force about the overall policy goals of the recommendation, an issue was raised at the last CCJJ meeting about practical implementation. For organizations that provide computerized records like the Colorado Bureau of Investigation and LexisNexis, this proposal would require a data-filtering change. However, the proposal could present a somewhat more complicated problem for local law enforcement agencies that also keep records. Due to the concerns expressed by Sheriff Pelle and Chief Kilpatrick at the July meeting, the Working Group would like to pull this recommendation and not vote on it today, revisit it, and try to address the implementation issues. Mr. Evans reiterated that the fundamental policy objective of the proposal is to keep a person’s name clean until charges are filed. He then asked if the Commissioners would like the Working Group to continue to explore concerns regarding the recommendation and potential solutions.

Sheriff Pelle said he appreciated the dialogue about the implementation and mechanical issues related to this recommendation. He added that there are other issues related to the handling of historic/archival records along with public policy implications. For example, he raised the point of citizens in the community who believe they have a right to know when someone suspected of a serious crime has been arrested.

Chief Kilpatrick expressed that he has similar concerns as Sheriff Pelle and that there are policy and ethical issues about the public’s ‘right to know’. He added that there is probably a particular time threshold, maybe a month or a year, when it would make sense to cut off the availability of arrest records, but that a more in-depth conversation should take place around the issue. Mr. Gherardini noted that the Department of Human Services (DHS) has similar concerns and that DHS has passed specific recommendations to keep vulnerable populations safe. Mr. Raemisch said he supports the positions of the sheriffs, the chiefs and human services, but agrees that this issue is worthy of further conversation.

Mr. Wilson pointed out the alternative perspective is that the public exposure of individuals who have been arrested, but never charged with a crime, can be extremely damaging. He stated that the public’s ‘right to know’ should not automatically override an individual’s right to privacy.

Mr. Hilkey summarized the discussion and asked Commissioners if they would support a proposal to withdraw the recommendation in its current state and convene a small group of stakeholders to take another look at the mechanics of the recommendation. Seeing no opposition Recommendation FY17-RE #06 was tabled.

**ADJOURNMENT**

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. He added that the next meeting is scheduled for Friday September 8<sup>th</sup>. With no further business, Mr. Hilkey adjourned the meeting at 3:11 p.m.