



Colorado Commission on Criminal and Juvenile Justice

Minutes

October 12, 2018

Jefferson County Department of Human Services
 900 Jefferson County Parkway
 Golden, CO 80401

Commission Member Attendance

Stan Hilkey, Chair	Jessica Jones - ABSENT	Megan Ring
Chris Bachmeyer	Daniel Kagan - ABSENT	Rose Rodriguez - ABSENT
Jennifer Bradford - ABSENT	Bill Kilpatrick	Joe Salazar - ABSENT
John Cooke - ABSENT	Rick Kornfeld	Lang Sias - ABSENT
Cindy Cotten	Cynthia Kowert	Jennifer Stith
Shawn Day	Andrew Matson	Glenn Tapia
Valarie Finks	Joe Pelle	Anne Tapp
Tony Gherardini	Rick Raemisch - ABSENT	Abigail Tucker
Kristen Hilkey	Tom Raynes	Karen Wilmes – ABSENT
Nancy Jackson	Cliff Riedel - ABSENT	Joe Thome, <i>Ex Officio</i>

Substitutions: David Johnson for Rick Raemisch

CALL TO ORDER AND OPENING REMARKS

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

Mr. Stan Hilkey, Chair of the Commission and Executive Director of the Department of Public Safety, called the meeting to order at 1:02 pm. He asked Commissioners to introduce themselves, reviewed the agenda, and asked for any additions or corrections to the September minutes. Seeing none, he asked for a motion to approve the minutes. A motion was made and seconded and the minutes were unanimously accepted by Commissioners.

ABUSE OF YOUTH IN CUSTODY SUBCOMMITTEE: UPDATE

Joe Thome, Division of Criminal Justice

Joe Thome, Director of the Division of Criminal Justice, reminded Commissioners that during the 2018 legislative session the General Assembly passed House Bill 18-1346, “Abuse of Youth under 21 in Care of Institution,” which directs the Commission to study whether existing criminal statutes address abuse of a child or youth in state-operated, state-contracted facilities and to issue corresponding recommendations concerning any identified gaps in law that may need to be addressed.

Mr. Thome explained that a Subcommittee has been formed to address this issue and membership includes himself and representatives from the Department of Human Services

(CDHS), the Colorado District Attorneys' Council, the Attorney General's Office, the Office of the Public Defender and the Child Protection Ombudsman. The group held its first meeting on September 27, 2018 and agreed to focus its efforts on the following identified issue areas:

- The inability to investigate allegations of child abuse/neglect of youth 18-21 years old in the custody of CDHS because they are not a child (by statute),
- Gaps in the system where mandated reporters of child abuse/neglect are not required to report when youth is 18 and older, and
- Needed review of the offense of Child Abuse by a Person in a Position of Trust.

The Subcommittee also identified a number of observations about complications with the state personnel system and discipline as it relates to staff accused of abuse. The Subcommittee determined those matters to be outside the scope of work, however, any recommendations from the Subcommittee may help CDHS move forward in addressing issues with the personnel system and the Department of Personnel and Administration.

The Subcommittee plans to meet monthly from October 2018 through March 2019. The work will be completed by May 2019 to allow for presentation to and input from the Commission before submitting the final report. The final report is due from the Commission to the General Assembly on or before July 1, 2019.

Bill Kilpatrick asked if the review will include an examination of how cases are investigated within the Department of Human Services. Mr. Thome noted that this issue is on the table and the Subcommittee includes Joseph Brozek from the Institutional Abuse Review Team at the Office of Children, Youth and Families. Chief Kilpatrick replied that the Golden Police Department is responsible for investigations of alleged offenses at the Lookout Mountain Academy and that while the state of Colorado investigates allegations of abuse in the state prison system, the state does not do the same for abuse allegations at the state-run Lookout Mountain facility.

A question was also asked about the frequency of allegations of abuse in state-operated and state-contracted facilities. Mr. Thome replied that the Subcommittee does plan to look into this issue as well.

PRETRIAL SERVICES AND ASSESSMENT TOOLS

Greg Mauro, Denver Community Corrections

Chair Hilkey introduced Greg Mauro, Director of Denver Community Corrections. Mr. Hilkey explained that Mr. Mauro is a member of the Pretrial Release Task Force which will be presenting four preliminary recommendations to the Commission today. In preparation for the recommendation presentation, Mr. Mauro offered an overview of pretrial services programs and the use of pretrial risk assessment tools, to frame the context of the recommendations. Mr. Mauro began a PowerPoint presentation, the full content of which can be found on the Commission website at, colorado.gov/ccjj. Discussion points following the presentation follow.

DISCUSSION

A question was asked about the Colorado Pretrial Assessment Tool (CPAT) and whether the defendant self-reports the answers on the assessment. Mr. Mauro replied that the information is obtained from both a defendant interview and a criminal history check. Commissioner Nancy Jackson noted that Arapahoe/Douglas has its own, locally-developed and validated assessment tool which has proven to be effective on their specific population. Another question was asked about the CPAT and success rates by type of bond. Kim English, the Director of the Office of Research and Statistics in the Division of Criminal Justice replied that data is available comparing success rates pre-2013 statutory changes versus post-2013 statutory changes. However, the bottom line is that there is no difference in outcome based on whether there is a money bond or personal recognizance bond.

A discussion was held about the predictive validity of the CPAT. Mr. Mauro explained that the predictive validity of the CPAT, measured with the statistic AUC (Area Under the Curve), is .58. Any score greater than .50 is better than chance, but in criminology we hope for an AUC of at least .65. Nevertheless, research has found that decision makers who do NOT use a risk instrument are wrong two-thirds of the time. So, given that human judgement is correct only 36-38%, the improvement offered by the CPAT is significant. The work underway by researchers studying the CPAT at the University of Northern Colorado aims to modify the current instrument and improve on its accuracy.

A question was raised about whether there has been a cost/benefit analysis on the use of assessment tools including information about things such as the cost of pretrial services and recidivism reduction rates. Mr. Mauro replied that information is available for Denver and that he would prepare a handout for distribution at the November meeting.

Dr. Abigail Tucker asked if there is any research that explains why mental health is one of the predictors for success or failure. Ms. English replied that people with mental health and/or behavioral health problems simply tend to fail more often. She added this is an issue with the assessment tool given that people who are in treatment and stabilized will sometimes still receive a negative score for this CPAT item. However, as noted above, revisions are underway for a new CPAT-R (revised) tool which will likely not include that variable.

PRETRIAL RELEASE TASK FORCE: PRELIMINARY RECOMMENDATION PRESENTATION**Greg Mauro, Denver Community Corrections**

Mr. Hilkey explained that Mr. Mauro's previous presentation sets the stage for the four recommendations coming forward today from the Pretrial Release Task Force. Mr. Hilkey began a PowerPoint presentation (available at, colorado.gov/ccjj) which reviewed the work of the Task Force and details how the group arrived at the recommendations. He reminded Commissioners that the Task Force was seated by the Commission in June 2017 to produce recommendations regarding potential improvement to bail practices and pretrial services.

Mr. Hilkey emphasized that the proposals presented today are preliminary (draft) recommendations in order to allow Commissioners time to study them over the next month and discuss them with stakeholder agencies as they see fit. This set of recommendations will be presented again next month (November) for a final vote. Mr. Mauro directed Commissioners to the preliminary recommendations in their packets. A summary of each draft recommendation follows here along with discussion points.

Recommendation FY19-PR #01

Establish and Require the Use of Pretrial Risk Assessment Tools in All Colorado Counties.

Pretrial Risk Assessment shall be available and utilized by Judicial Officers in all counties throughout Colorado for purposes of setting bond and establishing conditions of release for felony and misdemeanor level offenses. The court shall not use the results of any such instrument as the sole basis for setting type of bond and conditions of release. Other criteria may include those circumstances contained in C.R.S. 16-4-103 (5).

DISCUSSION

Mr. Mauro explained that in 2013, Colorado rewrote bail statutes encouraging all Colorado counties to use risk assessment, but also allowing for them to opt out. This recommendation aims to level the playing field and ensure everybody has the same opportunity throughout the state by requiring that a pretrial risk assessment be completed and that judges consider it when determining what types of bond to issue and conditions of release.

Mr. Hilkey highlighted that the full five-page recommendation includes an in-depth discussion with background information and research, a section about national best practices, and also a full-page table which shows the Colorado counties that are using a risk assessment tool and those that are not. He pointed out there are 37 counties not using risk assessment and 27 counties that are using risk assessments. However, there is a much larger population served by the 27 counties that are using risk assessment tools.

Mr. Mauro said that a decision was made in the Task Force to not identify any one specific risk assessment tool in statute in order to have flexibility as tools improve or are developed.

Sheriff Pelle pointed out that there are a number of small counties that do not even have their own jail and instead contract with neighboring counties for jail beds. It will likely be challenging for these counties to both perform an assessment and deliver the information back to the court of jurisdiction.

Recommendation FY19-PR #02

Implement Training Standards for the Administration of Pretrial Risk Assessment Tools and Compile an Inventory of Approved Pretrial Assessments.

The Colorado Pretrial Assessment Tool (CPAT) shall be the assessment tool utilized, however, any jurisdiction may use an alternative assessment tool to improve pretrial decision making subject to the approval of the Chief Judge of the Judicial District. The State Court Administrator

is directed to compile an inventory of approved pretrial risk assessments available and authorized for use in Colorado. Any alternative tool approved by a Chief Judge must be empirically developed and consistent with setting the type of bond and conditions of release; however, this does not prohibit a jurisdiction from utilizing additional assessment tools to advance pretrial decisions.

Any individual authorized to administer a pretrial risk assessment for the Court, shall receive introductory training. The Office of the State Court Administrator (SCAO) in consultation with the Colorado Association of Pretrial Service Agencies (CAPS) shall develop and provide standards for training and fidelity measurement of the Colorado Pretrial Assessment Tool (CPAT).

If an alternative pretrial risk assessment tool is approved for use by the Chief Judge of a judicial district, the SCAO shall also review and approve any training protocol and plan to ensure measures are in place to measure assessor fidelity to the instrument. In order to preserve neutrality in the assessment process, prosecutors and criminal defense attorneys shall not be authorized to administer a pretrial risk assessment for purposes of setting bond and establishing conditions of release.

DISCUSSION

Mr. Mauro summarized that this proposal recommends the use of the CPAT instrument but also calls for the Office of the State Court Administrator (SCAO) to compile a list of other tools that any Chief Judge or Judicial District can select and implement in their jurisdiction. The recommendation also calls for the SCAO to develop and provide assessment tool training. Additionally, it provides guidance on who shall not be allowed to administer a risk assessment.

Recommendation FY19-PR #03

Establish Pretrial Programs Statewide and create a State Administered Grant Program to support development efforts in jurisdictions without current pretrial program.

Pretrial Services shall exist in all counties in Colorado. The Commission on Criminal and Juvenile Justice respectfully recommends the General Assembly create a state grant program to incentivize local jurisdictions (counties) to develop and continue supporting pretrial programs and services. Jurisdictions without pretrial programs shall be prioritized to receive funding.

On or before July 1, 2021, pretrial services programs shall be established within each of Colorado's counties. Counties may directly provide pretrial services or enter into agreements with other municipalities, counties or other entities to provide such services. The Office of the State Court Administrator in consultation with the Colorado Association of Pretrial Service Agencies (CAPS) shall develop minimum standards governing the operation of pretrial service programs. Any pretrial services program established pursuant to this recommendation shall, at a minimum, provide the Court with an empirically developed and validated pretrial risk assessment for the purpose of setting bond and establishing conditions of release, provide research -based supervision services to mitigate pretrial misconduct such as

court date reminder notification, and align with legal and evidence informed practices found in the CAPS Standards.

DISCUSSION

Mr. Mauro explained that this recommendation addresses the funding component for the implementation of a statewide risk assessment tool, standardization and training and calls for the General Assembly to fund the initiative on or before July 1, 2021.

Mr. Mauro noted that, during the development of this proposal, task force members discussed the pros and cons of how best to fund the initiative, either through a grant or via a formula-funded model. Glenn Tapia, who is a member of the Pretrial Release Task Force, clarified that feedback from some Counties was that the word “grant” implies discretionary funding and temporary funding. He noted that when a vote is held on this recommendation next month he will be offering a friendly amendment to change the word “grant” to “formula funding.” Mr. Raynes agreed with Mr. Tapia saying it is critical to ensure there is an established legislative funding stream. A question was raised about whether there are any preliminary estimates on the cost of this proposal. Mr. Tapia replied that Judicial is attempting to monetize potential cost and hopes to bring that information to the Commission in the near future. Mr. Hilkey reminded Commissioners that a fiscal note process also takes place during the legislative session, should this recommendation go forward.

Recommendation FY19-PR #10

Create a statewide court reminder system for criminal defendants in state court.

On or before July 1, 2020, the state court administrator shall develop and manage a program that is responsible for reminding criminal defendants to appear for their scheduled court hearings in the county (Denver County and Municipal Courts may be excluded from this requirement) and district courts of the state.

DISCUSSION

Mr. Mauro described that court reminders are the one research-informed method in pretrial intervention that has shown to have significant positive outcomes in terms of reducing failure to appear rates, and the Task Force strongly supports this research-informed initiative. The statutory language was left purposefully broad in the recommendation as the group did not want to develop the process at the level of the Task Force. The group hopes the SCAO and stakeholders will draft the final legislation.

The recommendation excludes Denver County and Municipal Courts and Mr. Raynes asked Judge Shawn Day about the best method to overcome obstacles with those two entities. Judge Day replied that he can't speak for Denver County, but that there are municipalities that are interested in opting-into this initiative and, as far as he knows, there is capability to do so. Mr. Mauro added that Denver County Court is exploring a system outside of this proposal and is likely to move forward with a similar initiative.

A question was asked about whether court reminders are used only for the pretrial phase of a case, or if they would continue throughout a case. Mr. Mauro replied reminders would occur up until the point of case disposition.

Mr. Hilkey reminded Commissioners that all four recommendations are still in a draft/consideration phase and have not yet been approved by the Commission. Therefore, until a final vote is held on a proposal, Commissioners have a responsibility to refrain from referring to them as a “Commission recommendations” when speaking with the media, legislators or others. Commissioners should, however, use the time between now and the next meeting to engage stakeholder groups. Also, any amendments or language changes will be considered at the next meeting before a final vote is held.

Mr. Hilkey also clarified the reason this last recommendation is numbered FY19-PR #10 instead of sequentially as FY19-PR #04, is that some of the other working groups of the Task Force were also working on recommendations and the numbers are assigned to recommendations as they are produced.

BOARDS AND COMMISSIONS: BEST PRACTICES TRAINING

Ingrid Carlson Barrier, Attorney General’s Office

Mr. Hilkey introduced Ingrid Carlson Barrier from the Attorney General’s Office. He explained that Ms. Barrier is the attorney assigned to the Colorado Department of Public Safety and is also connected to the work of the Commission. Ms. Barrier explained that legislation was passed in 2018 calling for a fairly robust, annual training for all of Colorado’s Boards and Commissions. The training highlights items ranging from statutory mandates and staff duties to appropriate decision making norms, the Sunshine Law, and Colorado Open Records Act. Ms. Barrier provided a PowerPoint presentation, the full content of which can be found on the Commission website at, colorado.gov/ccjj.

COMMISSIONER HOUSEKEEPING ISSUES

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

➤ Vice-chair assignment vote

Mr. Hilkey revisited an issue that was raised during the September meeting about the vacancy of the Commission Vice-Chair position. At that time, he suggested the Commission’s ex-officio member, Joe Thome, serve as Vice-Chair on an interim basis until after the start of the new year. This would allow for November elections to take place as the outcomes will likely have an impact on Commission membership. Commissioners agreed with the suggestion at the September meeting, but Mr. Hilkey requested a formal vote during this meeting for documentation purposes. Chair Hilkey asked for a motion to approve the assignment of Mr. Thome to Interim Vice-Chair of the Commission and that Commissioners grant voting privileges to Mr. Thome during this interim assignment period. Cynthia Kowert moved to accept the assignment and Judge Chris Bachmeyer seconded the motion. A hand-vote was held and (18) Commissioners

voted unanimously in favor of the interim assignment and to grant voting privileges during the interim assignment period.

➤ **Task Force participation**

Mr. Hilkey revisited another topic that was raised during September which is that all Commissioners are expected to participate on at least one Task Force. He pointed out, however, that the current Task Forces are in a bit of flux with one group winding down, another close to finishing its work and a third Task Force that is mid-stream in their process. Chair Hilkey explained that the Commission will likely create new Task Forces after the start of the new year and after the Commission retreat in the Spring – and more opportunity will be available for Commissioner participation at that time.

➤ **Homework for November**

Mr. Hilkey directed Commissioners to a packet of materials at their tables and asked members to review the information before the November meeting. The material is from the Pretrial Release Task Force and the Task Force is scheduled to vote on it the Tuesday before the next Commission meeting. If the proposal is indeed voted on and approved at the task force level, it will then be presented preliminarily to Commissioners at the November meeting. Mr. Hilkey emphasized that formal presentation to the Commission could also be delayed, but that the proposal is a significant piece of work and he wants to ensure Commissioners have ample time to become familiar with and digest the general concept of the initiative. He also re-emphasized the importance of not getting ahead of the Commission process and stressed that the proposal has not yet been approved by the Task Force.

➤ **Public Comment**

Mr. Hilkey explained that at the end of every Commission meeting there is an opportunity for public comment. One person signed up to offer public comment and Chair Hilkey introduced Kara Martin from the Office of the State Court Administrator. Ms. Martin addressed Commissioners and explained she will be working on the mental health diversion program and wanted to introduce herself to Commissioners as they were responsible for creating the model. Ms. Martin said she hopes to meet and work with Commissioners in the coming months.

ADJOURN

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

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. Seeing none, the meeting was adjourned at 3:34 p.m.