



Colorado Commission on Criminal and Juvenile Justice

Minutes

December 14, 2018

Colorado Department of Transportation
 2829 W. Howard Place
 Denver, CO 80204

Commission Member Attendance

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

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. Joe Thome, Interim Vice Chair of the Commission and Director of the Division of Criminal Justice at the Department of Public Safety, called the meeting to order at 1:04 pm. He informed the group that Mr. Stan Hilkey was expected to join the meeting later. Mr. Thome reviewed the agenda and welcomed Gretchen Russo as a new CCJJ member representing the Juvenile Parole Board. Mr. Thome thanked the Commissioners for attending and asked them and staff to introduce themselves.

COUNCIL OF STATE GOVERNMENTS: IMPROVING OUTCOMES FOR YOUTH IN COLORADO

Nina Salomon, Council of State Governments and Adam Zarrin, Governor’s Office

Joe Thome introduced Nina Salomon from the Council of State Governments who conducted the presentation via phone and Adam Zarrin from the Governor’s Office. These guests will present on the Colorado Improving Outcomes for Youth (IOYouth) Task Force.

Mr. Zarrin started with a brief update on how the Council of State Governments (CSG) Justice Center reached out to several stakeholders from Colorado to engage on a nationwide project called “Improving Outcomes for Youth” (IOYouth). The CSG offered partnership in this project

by conducting a comprehensive assessment to identify policies and improve outcomes for youth in the juvenile justice system.

In May of 2018, Governor Hickenlooper established the Colorado Improving Outcomes for Youth (IOYouth) Task Force in partnership with CSG Justice Center. The Task Force has now finalized its work and is in the process of seeking legislation to introduce in February 2019. The IOYouth Task Force is seeking feedback from stakeholders and support from CCJJ in these efforts. Mr. Zarrin introduced Ms. Salomon who will talk about CSG assessment and findings.

Nina Salomon directed Commissioners to a handout in their packets titled “Executive Summary: Colorado Improving Outcomes for Youth (IOYouth).” The handout and the presentation can be found on the Commission website at, colorado.gov/ccjj. Discussion points following the presentation are provided below.

The CSG Justice Center is a national nonprofit, non-partisan organization that worked with state policy makers and all three branches of government. The CSG Justice mission is to provide strategic insights based on research data, criminal and juvenile justice issues.

The CGS engaged in a six-month comprehensive assessment process in conjunction with the newly established Governor’s IOYouth Task Force. The Task Force membership included members of diverse groups of stakeholders and was chaired and co-chaired by Senator Lee and Senator Gardner, respectively.

CSG Justice Center staff gathered feedback from stakeholders across the state. Since February 2018, staff visited 9 sites (1 in each DYS region), called and met with about 100 stakeholders and visited 6 facilities.

A survey was conducted in all 22 judicial districts to learn more about juvenile diversion. The following findings were discussed:

- There is no statewide data system or entity responsible for collecting, tracking, or evaluating diversion data.
- There is no comprehensive picture of how many youths get diverted statewide, who gets diverted, and what their diversion outcomes are.
- The Division of Criminal Justice (DCJ) collects data on diversion programs funded through DCJ grants; however, these data represent only a subset of youth that are diverted.
- The Juvenile Detention Screening and Assessment Instrument (JDSAG) is currently used to inform detention eligibility. The JDSAG was validated 20 years ago and many considered this instrument outdated.
- More than two-thirds of youth screened on the JDSAG received a mandatory hold to secure detention, yet more than half are not identified as a public safety risk.
- More than one-third of youth who screen at a level below secure detention on the JDSAG still end up in secure detention.
- 49 percent of petty offense cases in district court result in some form of system supervision.
- The majority of probation sentences are for misdemeanor offenses and these receive regular probation supervision.

- The majority of youth are sentenced to probation for one year or more; 41 percent of youth sentenced to intensive supervision probation receive sentences of 2 or more years.
- 62 percent of Division of Youth Services (DYS) sentence are for two years or longer.
- In 2017, youth spent an average of 834 days (2.28 years) in Commitment; of this, an average of 40 percent was spent in a secure facility.
- Juvenile probation varies statewide in the use of research-based policies and practices that are necessary to reduce recidivism.
- Of youth that receive a risk assessment when they start probation, more than half are assessed as minimum risk.
- Nearly 30 percent of youth starting probation fail while under probation supervision.
- 35 percent of youth completing probation have a subsequent case filed within three years of discharge.
- Almost half of youth are discharged from parole unsatisfactorily.
- Approximately half of youth that are discharged from Commitment receive new case filings (recidivism) after 2 or 3 years.

Mr. Zarrin proposed to share the full report which includes the research findings as well as the recommendations from the Colorado IOYouth Task Force. The full IOYouth report and recommendations can be found at on the Commission website at Colorado.gov/ccjj under the CCJJ meeting page.

Mr. Zarrin discussed the recommendations from the IOYouth Task Force:

- Expand juvenile diversion programs in Colorado and establish a statewide policy and guidelines for diversion. There is also a subset in the recommendation to allocate a block grant all judicial districts. Currently, the Division of Criminal Justice serves about 15 judicial districts and this grant would extend to all 22 judicial districts. Another recommendation for the bill would be to establish a statewide definition of diversion.
- Develop clear criteria for detention eligibility in order to limit secure detention for juveniles who pose a risk of harm to others or risk of flight from prosecution when community-based alternatives are insufficient to mitigate this risk.
- Target CYDS resources more efficiently by focusing resources on juveniles most at-risk of secure detention in order to reduce admissions to secure detention and prevent over supervision in the community.
- Select and adopt a validated risk and needs assessment tool to inform court decision making and establish policies to require and support the use of the tool.
- Establish statewide standards for juvenile probation across Colorado that are aligned to research-based policies and practices.
- Improve the effectiveness of community-based services for youth on probation and parole.
- Expand the use of kinship care for juvenile justice involved youth in detention and commitment and under consideration for out-of-home placement.

These seven policy recommendations will be translated into legislative language and introduced in the 2019 legislative session.

The IOYouth Task Force will engage all task force members, media, policymakers, and other stakeholders to garner support during the legislative process and throughout implementation.

DISCUSSION

Mr. Raynes expressed that the statement regarding the establishment of a statewide definition of juvenile diversion is misleading as it implies that there is no diversion definition in the Colorado Statutes and this is not the case.

Mr. Zarrin and Ms. Salomon agreed and corrected that there is a diversion definition and that the recommendation would modify the definition and expand the accessibility of diversion.

Mr. Raynes added there were points of contention in these conversations, and he affirmed that none of the IOYouth Task Force members have seen this final executive summary and recommendations.

Mr. Zarrin responded that all recommendations have been voted on and approved by the Task Force. Additionally, press releases are posted on the Governor's website.

Dr. Tucker Abigail mentioned that many youths are screened into detention due to the risk of self-harm. Are there conversations around this issue and alternative ways to detention while ensuring youth safety?

Mr. Zarrin responded that there are some conversations about best practices but there is currently no infrastructure in place to provide appropriate alternatives for juveniles, especially in smaller jurisdictions.

Ms. Salomon suggested that the conversation was around mental health and detention. Research shows that detention is very harmful for youth because there is an increased risk of recidivism with deeper penetration in the justice system.

Mr. Thome suggested to follow the progress of these efforts and asked whether other discussions with the IOYouth Task Force should occur. Mr. Thome explained that the CCJJ is preparing for a strategy retreat and that these issues may be examined.

TASK FORCE AND SUBCOMMITTEE UPDATES

Mr. Stroker provided a powerpoint presentation, the full content of which can be found on the Commission website at colorado.gov/ccjj. A synopsis of that presentation follows below.

Mental Health/Jails Task Force

Commissioner Sheriff Joe Pelle is Chair of the Mental Health/Jails Task Force. Several recommendations have been produced in the three areas of focus. This Task Force has been addressing issues that have to do with individuals who are in the jail and have significant, acute behavioral health issues. The task force was created over two years ago and the mission of the

group is to “Redirect certain individuals with mental and behavioral health problems out of the criminal justice system while recognizing that some individuals with acute mental/behavioral health problems will need to be incarcerated and so effective response options should be available.”

The first area of work for the Task Force centered on opportunities to divert individuals early on from the criminal justice system who present a variety of mental health issues. The main components of this work were to strengthen a community-based crisis response system and to implement changes to the emergency mental health commitment statute. That work resulted in four recommendations and elements of two of those recommendations were eventually included in Senate Bill 17-207.

The second area of work explored opportunities to divert individuals in the criminal justice system from jail. That work resulted in one recommendation approved by the Commission (FY18-MH01) and a bill consistent with that recommendation was passed during the 2018 Session, Senate Bill 18-249 (Note: Other legislation on this topic was passed during the session; see Senate Bills 18-250 and 18-251).

The third and final issue the group is addressing centers on challenges with jail detainees who are not eligible for diversion and who present significant behavioral health needs that exceed jail resources. This population requires an appropriate setting for stabilization and treatment while maintaining inmate status. One option under consideration is to develop a process where local jails and regional hospitals or acute care facilities enter into partnerships to provide stabilization and necessary health services. The Task Force estimated that about 100 to 120 individuals on any given day are in need of these services. Dr Tucker chairs the working group that develop the language of this recommendation and a recommendation should be coming forward to the Commission in the next couple of months.

Sheriff Pelle commended Mr. Stroker for helping the Task Force in moving ahead and publicly acknowledged Dr. Tucker for her lead in these efforts.

Age of Delinquency Task Force

This Task Force was created in February 2018 and is co-chaired by Jessica Jones and Joe Thome. The Task Force has identified the following three areas of focus:

- 1) Examine intervention options, treatment services, and alternatives for 10-12 year olds, which currently includes placement in the juvenile justice system.
- 2) Explore options and approaches regarding the management of “transitional” populations (18-21 year olds).
- 3) Review repercussions associated with “mingling” younger (10-12 year olds) and older juveniles.

In the current Colorado Statutes, children 10-years and older are eligible to be placed in a juvenile justice system.

The Task Force discussed that assessment tools should be effectively used in jurisdictions as a guide to decision making and how to better use these tools to guide decision making. The group is now exploring the value of restorative justice approaches, how to improve collaboration between key partners and development of effective solutions and how to expand pretrial juvenile diversion efforts. A working group has been established to work on developing a recommendation with the focus of strengthening collaboration and planning at the local level particularly with the juvenile service planning committees (JSPC).

Abuse of Youth in Custody Subcommittee

Mr. Thome welcomed Commissioner Gretchen Russo as a new Subcommittee member. Mr. Thome provided a brief background of the mandate from the General Assembly and the context of the study assignment to the Commission. CCJJ was assigned by the General Assembly to look at gaps in the Colorado statutes related to abuse of youth placed in Colorado Department of Human Services (CDHS) residential settings. Ms. Gretchen brought some clarification with regards to last year legislative actions and the group is currently discussing potential gaps in the statutes.

The Subcommittee engaged the following topics of discussion:

- Protection of 18+ youth who are in DYS custody
- Prosecution of abusers for youth 16+ / child abuse vs. assault
- Mandatory reporting of abuse of youth over 18
- Law enforcement unfunded mandates
- 18-21 year olds commit offenses to younger youth population
- Who goes on the child abuse registry and under what circumstances.

A report from the Subcommittee will be completed and submitted to the General Assembly by June 2019.

Ms. Russo clarified that “youth in custody” means foster homes, group homes, kids in foster care and not just Division of Youth Services facilities. Youth can be in child welfare until age 21 and until last year (before last year’s legislation), the CDHS was not able to investigate allegations of abuse and neglect when youth were past 18 years old. The Subcommittee is looking at potential gaps in the criminal statutes. In the criminal code, someone can be charged with child abuse if the youth is under the age of 16 and the Subcommittee is discussing whether youth over 16 are sufficiently protected in the criminal code. Are youth protected the same way whether an alleged abuser is charged with child abuse or assault?

Pretrial Release Task Force

The Task Force was formed in 2017 and is chaired by Mr. Hilkey. Mr. Stroker acknowledged that many Commissioners participate in this Task Force, and thanks to the members for all the work, time and consistence over the years. The group identified three areas of focus.

- 1) The first area consists of developing recommendations regarding the use of pretrial services and risk assessment tools on a statewide basis and the Task Force developed four recommendations that were approved by CCJJ in November 2018. These involved the use of risk assessment tools, training, expanding of pretrial services and court reminder systems.
- 2) The second area focuses on opportunities to improve implementation of 2013 statutory changes associated with pretrial services, and Ms. Cain will be presenting four preliminary recommendations later today.
- 3) The third area focuses on the development of a possible pretrial or preventative detention approach in the system.

Mr. Stroker mentioned that another recommendation from the Assessment and Supervision Working Group will be considered by the Task Force in January 2019. This recommendation involves pretrial service options for smaller jurisdictions.

PRETRIAL RELEASE TASK FORCE: PRELIMINARY RECOMMENDATIONS

Interim Vice Chair Thome introduced Task Force members, Maureen Cain, with the Office of the Public Defender, and Dr. Jen Bradford, to present the four preliminary recommendations to the Commission. Ms. Cain directed Commissioners to the preliminary recommendations in their packets. A summary of each draft recommendation follows here along with discussion points.

Ms. Cain reiterated that many CCJJ Commissioners are members of the Pretrial Release Task Force and include Mr. Hilkey, Dr. Bradford, Mr. Raynes, Judge Day, Mr. Riedel, Ms. Finks, Mr. Tapia and Mr. Kornfeld. Ms. Cain added that the recommendations presented today passed unanimously in votes by the Task Force. The working group was tasked by the Pretrial Release Task Force with examining opportunities to improve implementation of 2013 statutory changes as little changes in practice were observed after the passing of the 2013 law. Ms. Cain reminded that the 2013 statutory change was the result of a CCJJ recommendation.

The working group began its efforts by looking at cases and initiatives that address equal protection and due process with regard to the use of monetary bail as well as the bail hearing process in different size jurisdictions around the state.

Recommendation FY19-PR #06: Establish an Expedited Pretrial Release Process

Establish, through a locally-determined research-based administrative order, an expedited screening process for persons arrested for an offense committed in that jurisdiction which shall be conducted as soon as practicable upon, but no later than 24 hours after, arrival of a person at the place of detention, allowing for the immediate release of certain low/medium risk persons. If a person does NOT meet the criteria for release as determined by administrative order, the person SHALL BE HELD until the initial court appearance. Also, expand the definition of “bonding commissioner.”

Recommendation FY19-PR #07: Revise the Initial Bond Hearing Process and the Considerations of Monetary Conditions of Bond

For individuals who do not meet the criteria for expedited pretrial release (see Recommendation FY19-PR #06), revise the following statutory elements related to the initial bond hearing process, including the considerations of the conditions of monetary bond:

- Assess the person for risk before the hearing, require the court to consider financial circumstances of persons when setting bond, and presume release on bond without monetary conditions unless no reasonable non-monetary conditions will address public safety and flight risk.
- Require the filing of felony charges within three days, excluding Saturdays, Sundays and legal holidays, unless good cause is shown.
- Require reconsideration of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a second look) when good cause is shown and expand the definition of bonding commissioner.
- Create an expedited docket for cases where the defendant is in custody on a monetary bond that he/she has not posted.

DISCUSSION

Commissioner Jackson asked if the group discussed the issue of homeless individuals who often end up in jails because of their failure to appear to court.

Ms. Cain agreed with the importance of dealing with this issue and responded in the affirmative. The group had significant discussions about this population and hoped that the recommendations presented today to develop pretrial services program would address this issue. She added that Denver County jail recently released a report which shows that about fifty percent of Denver jail population have been diagnosed with mental health illness.

Dr. Bradford presented the following recommendations.

Recommendation FY19-PR #08: Encourage Best Practices for Pretrial Training and Data Collection

To improve pretrial-related services throughout Colorado through education and improved data collection, this recommendation proposes the following:

- Request the State Court Administrator's Office (SCAO) to establish, identify, and develop a core curriculum around the best practices of pretrial and the pretrial process to disseminate to participating stakeholders;
- Encourage major pretrial stakeholders to participate in new hire and regular pretrial training via the SCAO curriculum. The major stakeholders recommended for inclusion are the Colorado District Attorneys' Council (CDAC), SCAO, State Public Defender, Alternate Defense Council, Pretrial Services, and law enforcement;

- Recommend the SCAO have primary oversight over curriculum development and maintenance, dissemination, and follow-up of individual stakeholder training protocols;
- Recommend the SCAO implement evaluation protocols assessing the effectiveness of pretrial process through appropriate and data collection procedures.

Recommendation FY19-PR #09: Clarify Defense and Prosecution Involvement in Bail Hearings

Clarify in statute that a person is entitled to counsel at the initial bail setting hearing. Clarify that counsel shall have adequate time to prepare for an individualized hearing on bail. Retain language that the DA has the right to appear and pretrial information shall be shared.

Under this proposal, there will be no bail schedules so persons not released pursuant to administrative order shall be held until the court hearing and will not be allowed bail. Therefore, the public defender should be on the case pursuant to the Chief Justice Directive.

DISCUSSION

Sheriff Pelle thanked Ms. Cain and Dr. Bradford for their presentations and expressed support for the recommendations presented today. He also asked whether there is ongoing work from the Task Force regarding preventative detention as there is a national discussion towards removing monetary cash bonds all together.

Ms. Cain responded that the Preventative Detention Working Group chaired by Mr. Zeerip has been working on a constitutional amendment on this issue. Therefore, the Task Force agreed that, first, efforts should be implemented to strengthen pretrial services to prepare for a preventative detention release system.

Mr. Riedel expressed concern that district attorneys should be able to bring information to judges when there is a strong presumption that a breach of bond conditions is about to occur but has not yet and invited the CCJJ members to consider language that would amend the recommendation.

Mr. Thome thanked the presenters and reminded the Commission 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 recommendation will be presented again next month (January) for final vote.

PUBLIC COMMENT & ADJOURNMENT

Joe Thome, Interim Vice-Chair and Director of the Division of Criminal Justice

Mr Thome called for any public comment and seeing none moved to the adjournment portion of the meeting. Before closing the meeting, Mr. Thome asked Commissioners for any final comments and seeing none the meeting was adjourned at 2:57 p.m. The next meeting of the Commission is January 11, 2018 at 1:00pm at the regular CCJJ meeting location, Jefferson County Department of Human Services, 900 Jefferson County Parkway Golden, CO 80401.