



Colorado Commission on Criminal and Juvenile Justice

Minutes

February 8, 2019

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

Commission Member Attendance

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| Stan Hilkey, Chair - ABSENT | Nancy Jackson | Gretchen Russo |
| Joe Thome, Interim Vice Chair | Jessica Jones | Jennifer Stith |
| Chris Bachmeyer | Bill Kilpatrick - ABSENT | Glenn Tapia |
| Michelle Barnes - ABSENT | Rick Kornfeld | Anne Tapp |
| John Cooke - ABSENT | Andrew Matson | Abigail Tucker |
| Cindy Cotten | Angie Paccione - ABSENT | Dean Williams - ABSENT |
| Shawn Day | Joe Pelle | At-Large Representative - TBD |
| Janet Drake | Tom Raynes | CO House Rep. (D) - TBD |
| Valarie Finks - ABSENT | Cliff Riedel | CO House Rep. (R) - TBD |
| Kristen Hilkey - ABSENT | Megan Ring | CO Senate rep. (D) - TBD |

Substitutions: David Johnson for Dean Williams

CALL TO ORDER AND OPENING REMARKS

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

Mr. Joe Thome, Interim Vice Chair and Director of the Division of Criminal Justice, called the meeting to order at 1:05 pm and noted that Commission Chair Mr. Hilkey was unable to attend the meeting. Mr. Thome thanked Commissioners for attending and mentioned that Ms. Rose Rodriguez submitted her resignation due to additional responsibilities in community corrections.

Dr. Kevin Ford, Division of Criminal Justice, informed the Commission that legislative appointments to include two representatives from the House and one, perhaps two, from the Senate. The status of Senator John Cooke, who was selected assistant minority leader, is uncertain; he may continue with the Commission or, given his Senate duties, another representative from the Senate may be appointed.

Mr. Thome stated that the Commission leadership was working with Mr. Cooper Reveley, legislative liaison with Colorado Department of Public Safety, to fill the open legislative positions. Mr. Thome then asked Commissioners to introduce themselves.

Mr. Thome mentioned that, during the annual Commission retreat, Commissioners discuss pressing criminal justice issues and prioritize topics for study. The retreat lays the foundation for establishing goals for the upcoming year. When the Commission was reauthorized during last year's legislative session, its enabling legislation was modified to include that the Commission

would, on even-numbered years, request and receive a letter from the Governor's Office regarding topics of interest. He mentioned that instead of the annual retreat taking place as usual in the winter or spring, the retreat may be held in June or July this year, following the end of the legislative session. The General Assembly has introduced at least two bills this session that direct the Commission to study certain topics. Should these bills pass, the Commission would be quite limited in its ability to choose additional study topics this year, given finite staffing capacity.

Mr. Thome reviewed the agenda and asked if there were any additions or corrections regarding the January minutes. After two corrections were identified, Mr. Pelle moved to approve the minutes and Ms. Stith seconded the motion. The minutes were unanimously accepted by the Commissioners.

CCJJ ANNUAL REPORT & ACCOMPLISHMENTS: **Laurence Lucero, Division of Criminal Justice**

Ms. Lucero presented the highlights of the Commission's 2018 annual report. She mentioned that detailed information on meeting materials is available on the Commission's website at, colorado.gov/ccjj. Mr. Thome thanked the Division of Criminal Justice staff and Commission consultant Mr. Stroker for their work on behalf of the Commission.

LEGISLATIVE UPDATES: **Cooper Reveley, Colorado Department of Public Safety**

Mr. Reveley mentioned that the legislative session has been busy and several bills pertain to the Commission. He stated that Senator Lee reached out to Commission leadership regarding the pretrial recommendations, expressing his interest in developing these into bills for the current session. The following is a summary of Mr. Reveley's presentation.

- FY19-PR#10 (S.B.19-036) – Create a Statewide Court Date Reminder System. This is technically not a Commission bill since it was drafted prior to the recommendation passing the Commission. Nevertheless, it is consistent with FY19-PR#10. This bill has been introduced and a vote will be held in the Senate Judiciary Committee next week.
- H.B.19-1149 – Age of Delinquency Study -- Senator Lee and Representative Gonzales-Gutierrez are sponsoring this bill which directs the Commission to study and make recommendations regarding “emerging adults” aged 18-20. (*Note that this bill was amended on February 14, 2019 to include the ages 18-24.*) The Department of Human Services has voiced concerns about the scope of the study.
- S.B.19-008 – Substance Use Disorder Treatment in Criminal Justice System. This bill mandates that the Commission study and make recommendations regarding (1) alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses; (2) best practices for investigating unlawful opioid distribution; and (3) a process for automatically sealing criminal records for drug offense convictions.

- H.B.19-1160 – Concerning Mental Health Facility Program. Senator Gardner, Representative Singer and Representative Landgraf are sponsoring this bill that focuses on a three-year mental health facility pilot program that will provide residential care, treatment and services for individuals with mental health and physical health diagnoses. The concept is similar to the Recommendation FY19-MH#01 that the Commission voted in favor of last month, however, it does not target individuals in jail.
- S.B.19-108 – Juvenile Justice Reform. Senator Lee and Senator Gardner have introduced the packet of juvenile justice reforms that came out of the Council of State Governments work in Colorado in 2018. This is an extensive piece of legislation, more than 60 pages long, that came out of a months-long stakeholder process.

Mr. Raynes mentioned that the Juvenile Justice Reform bill empanels a large juvenile justice commission in the Governor's Office and expressed that this might duplicate the activities of the Commission. Mr. Thome stated that we would be following this bill closely.

AGE OF DELINQUENCY TASK FORCE: PRELIMINARY RECOMMENDATION PRESENTATION

Joe Thome, Task Force Co-Chair

Jessica Jones, Task Force Co-Chair

Kelly Friesen, Grand County Juvenile Justice Department & S.B. 94 Services, 14th Judicial District

Recommendation FY19-AD#01

Develop a data-driven, cross disciplinary, comprehensive juvenile services plan addressing the full juvenile justice continuum in each judicial district by undertaking the following [Statutory]:

- In §19-2-211, C.R.S., expand the local Juvenile Services Planning Committee (JSPC) responsibilities to include the development of a data-driven three-year plan, with annual updates, targeting the full juvenile justice continuum in each judicial district;
- In §19-2-212, C.R.S., require the state working group defined therein to identify the specific components of the data-driven plan; and
- In §39-28.8-501, C.R.S., authorize the use of existing marijuana tax revenue distributed to Senate Bill 1991-94 to support data-driven plan development and implementation by the judicial districts.

Former Commissioner Ms. Friesen began her presentation by sharing that a committed group of people had worked on Recommendation FY19-AD#01. The Age of Delinquency Task Force first met in February 2018. She stated that a Working Group was established to focus on increasing collaborative efforts for the purpose of improving youth outcomes. The Working Group explored existing planning and reporting requirements and committees, and determined that, because there is a Juvenile Service Planning Committee (JSPC) in every judicial district, this committee would be the best target to improve/expand collaboration. The first part of the recommendation expands the membership of JSPCs to include representatives from the entire juvenile justice continuum, including the addition of a victim community service representative. It would also be important

to include representation from municipalities due to the lack of data available on youth in municipal courts.

The recommendation calls for the development of a data-driven, local, three-year plan (with annual updates) that describes the juvenile justice population across the system, the available services and gaps, and information about the validated risk assessments that are in use. These plans would be submitted to the Colorado Youth Detention Continuum Advisory Board no later than each March 1st. The plan would serve as the basis for applications submitted to state funding entities (e.g., to apply for juvenile diversion funding from the Division of Criminal Justice). The recommendation also calls for increasing and authorizing the use of existing marijuana tax revenue distributed per Senate Bill 91-94 to support technical assistance in the development and implementation of the plan.

DISCUSSION

Dr. Tucker asked whether juvenile assessment centers (JACs) have a role in the elements of the recommendation?

Ms. Friesen stated that the Task Force had lengthy discussions about the JACs and their important role in the juvenile justice system. As the statute regarding JSPC membership states, “not limited to”, a representative from the local JAC could be placed on the JSPC by the chief judge.

Mr. Stroker mentioned that the group emphasized the importance of having risk and needs information available to decision makers across the juvenile justice continuum. The JACs play a critical role in helping obtain necessary information. Another aspect of the proposed comprehensive plan would require the identification of expanded risk/needs information: how it is received, how it is used, and what tools are used. The JACs could help answer those questions.

Dr. Tucker had questions about the Collaborative Management Program (CMP), asking whether some members from the CMP should also be on the JSPC? Ms. Friesen mentioned the need to clarify that the DYS position (already in statute) should represent the detention continuum, including commitment and parole/aftercare. Dr. Tucker asked whether there was any discussion regarding the inclusion of a victim perspective in the cases of children who have aged out of the juvenile justice system. Mr. Thome mentioned that there was not a decision to exclude the perspective.

Mr. Stroker explained that a data-driven approach would be the driving force underlying these plans. There should be research and analysis of the activities within juvenile justice in local jurisdictions.

Ms. Ring mentioned that IMPACT in Boulder has something very similar to this and that it has been very successful (bouldercountyimpact.org/). How would this recommendation affect the IMPACT program (the current collaboration of non-profit and government entities focused on youth in the justice system and their families)?

Mr. Thome replied that he did not see this proposal as a competing process, but rather as additional support.

Mr. Tapia asked whether this recommendation and the newly-introduced juvenile justice reform bill (Senate Bill 2019-108) were aligned.

Ms. Friesen stated that the juvenile justice reform bill does not address this particular issue, but that the recommendation would be consistent with S.B.19-108, regarding the value of risk/needs assessments.

PUBLIC COMMENT

No members of the public signed up to comment.

MENTAL HEALTH/JAILS TASK FORCE: FINAL RECOMMENDATION PRESENTATION AND VOTE

Sheriff Joe Pelle, Task Force Chair

Dr. Abigail Tucker, Community Outreach Center

Captain Jamison Brown, Colorado Jails Association

Dr. Tucker addressed the Commission regarding Recommendation FY19-MH#01 and explained that jails have limited capacity to provide the necessary treatments and services for individuals with acute, serious behavioral health needs who have committed crimes that make them ineligible for diversion and so are required to remain in jail. Jails are not authorized to provide involuntarily medication and not all jails in our state have nursing staff or mental health staff available daily, and very few have around-the-clock staffing. The Task Force sought to design a program that provides care for individuals who have acute behavioral health disorders that would be similar to services provided to individuals who have acute physical health needs while in jail.

Recommendation FY19-MH#01

Develop Collaborative Pilot Programs to Provide Care for Jail Detainees with Acute Behavioral Health Needs. *[Statutory; Budgetary]*

This recommendation creates pilot options to provide quality care for individuals held in jail who have acute behavioral health needs that are beyond the ability of the jail to manage and who do not meet criteria for diversion with the goals to develop information and experience necessary to advance a state-wide solution. This recommendation proposes the following:

- A care transitions partnership between local and regional acute care hospitals and county jails that provide quality care for jailed individuals who have acute behavioral health needs that are beyond the ability of the jail to manage.
- The target patient population includes those who are not eligible for diversion programs because of the serious nature of the criminal charge and whose behavioral health needs surpass the capacity of the jail to manage with existing in-house medical and/or mental health service providers.
- This partnership allows for the transfer of individuals in jail custody to acute care facilities for provision of appropriate services and is modeled after, and expands upon, the existing partnerships and transfer protocols for individuals experiencing a medical crisis while being held in jail.

- To support the development of initial pilot sites and to allow the one-time building modifications or other required changes, it is anticipated that additional states funds will need to be allocated to pilot this solution in one rural region and one urban region.

DISCUSSION

Ms. Stith asked whether the pilot sites could focus on jurisdictions with an existing physical and personnel infrastructure, including the capacity to gather data before more sites are added. Additionally, there is a lack of behavioral health services for everyone--how might our efforts improve services for all populations not just the criminal justice population?

Dr. Tucker stated that the Task Force was focused on the problem of individuals confined in jails, not the larger population. Regarding the pilot sites, we received feedback that this model is easier accomplish in the metro area, but much harder to implement in the rural areas. Nevertheless, the need exists in rural areas, too. Dr. Tucker also mentioned that, from her experience working in the jails, those with behavioral health problems are very often victims of crime as well.

Mr. Pelle noted that this recommendation is dependent on two things: (1) are the hospitals willing to take this on?, and (2) is there state funding in the amount necessary? The outcome of the recommendation could be severely limited depending on these two necessities.

Mr. Thome asked if there was further discussion on the recommendation. Seeing none, Mr. Thome asked for a motion to approve the recommendation. A motion was offered by Mr. Pelle, and Dr. Jackson provided a second. The process for supermajority 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 the following:

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

Final Vote: FY19-MH#01. Stabilization Care for Jail Detainees with Acute Behavioral Health Needs [Statutory; Budgetary]

A: 17

B: 0

C: 1

The recommendation FY19-MH#01 was APPROVED.

BAIL BLUE RIBBON COMMISSION UPDATE

Mr. Glenn Tapia provided this update and noted that there is consistency between Judicial's Bail Blue Ribbon Commission's final recommendations and the recommendations approved by the Commission that were developed by the Pretrial Release Task Force. The Bail Blue Ribbon's recommendations were approved by the Supreme Court in January. The recommendations are as follows:

- Pretrial release services programs and judicial officers should be required to use an empirically developed and validated risk assessment instrument in making recommendations and decisions concerning pretrial release.
- Pretrial release services programs should be established in every county in Colorado and should operate based on uniform protocols.
- The Judicial Branch should serve as an alternative operator of pretrial release services programs in limited circumstances.
- The State Court Administrator's Office in the Judicial Branch should provide centralized support for the development, implementation, and operation of pretrial release services programs throughout the state.
- The State Court Administrator's Office in the Judicial Branch should operate a statewide program to remind defendants of upcoming court dates.

PRETRIAL RELEASE TASK FORCE: FINAL RECOMMENDATION PRESENTATION AND VOTE

Richard Stroker, Commission Consultant

Glenn Tapia, Division of Probation Services

Mr. Tapia presented a recommendation from the Pretrial Release Task Force regarding the expansion of pretrial services throughout the state. He explained that this recommendation follows a series of pretrial recommendations (FY19-PR#01, FY19-PR#02, and FY19-PR#03) that were approved by the Commission in November 2018. The purpose of this recommendation is to provide an alternative for smaller counties that may lack resources to implement a full pretrial program. Counties are categorized in statute (§13-6-201, C.R.S.) into four classifications (A, B, C and D). The recommendation proposes that the counties without pretrial services in the C or D classifications may request that the Judicial Department provide pretrial services on behalf of those counties. Mr. Tapia explained that pretrial supervision strategies to mitigate risk and increase pretrial success are not available in each county and, for jurisdictions that have a small number of bond cases, developing a county-based pretrial program may not be the most effective service delivery model. State probation departments exist in all 22 judicial districts and may provide an infrastructure to complete limited pretrial assessments and supervision of pretrial defendants in jurisdictions that do not provide these services.

Recommendation FY19-PR#04

Create a Pretrial Services Alternative for Smaller Jurisdictions [*Statutory; Budgetary*]

Modify §16-4-106, C.R.S., such that pretrial services shall exist in all counties in Colorado and amend §13-6-201(1), C.R.S., to conform. A county identified as Class C or D pursuant to §13-6-201, C.R.S., may opt out of state formula funding for the provision of pretrial services and may, instead, request that the state Judicial Department utilize formula funding to provide services on behalf of counties within a judicial district. The recommendation includes these additional elements:

- The Judicial Department may directly provide services and establish inter-governmental agreements or contractual agreements as necessary to provide services upon request by counties and only upon approval of the chief judge of a judicial district.
- In these instances, judicial districts are authorized to use state appropriations to provide pretrial functions following a formal written request by a local government and upon approval of the chief judge of the judicial district.
- The Judicial Department shall assure that pretrial services conform to the standards of the State Court Administrator's Office and adhere to the underlying purpose of pretrial justice.

DISCUSSION

Mr. Raynes asked about the fiscal impact of this proposal. Funding is a critical piece, and, if not funded, these pretrial recommendations have no chance of success.

Mr. Tapia stated that, to estimate the fiscal impact, he collected information from counties that currently operate pretrial services: the cost per day, the average salary, the average daily population, and the cost of bonds. He used the average of all the variables in a starting estimate, then adjusted this estimate higher because some counties will pay staff more than others. Also, staff of the Judicial Department may be paid higher salaries than county staff. Mr. Tapia would advocate for using the higher cost estimate to ensure enough funding, given the potential county variations. The Judicial Department will be responsible for the fiscal note, should this recommendation become a bill.

Mr. Thome asked if there was further discussion on the recommendation. Seeing none, Mr. Thome asked for a motion to approve the recommendation. A motion was made by Mr. Riedel and seconded by Mr. Pelle.

Final Vote FY19-PR#04: Create a Pretrial Services Alternative for Smaller Jurisdictions [Statutory; Budgetary]

A: 18

B: 0

C: 0

The recommendation FY19-PR#04 was APPROVED.

Following the vote, Mr. Stroker mentioned that the Pretrial Release Task Force had completed its work on two of the three study topics originally identified for the group. The Preventive Detention Working Group (PDWG) is likely to present a recommendation to the Commission this summer. During this period of continuing effort by the PDWG, the Task Force would like to explore two additional issues that have surfaced. The first is a review of the potential use of audiovisual technology by courts and jails to expedite the release of people in jail. This may have particular utility for out-of-county cases when individuals are in jail awaiting transfer to the other jurisdiction. Is there any objection from the Commission for the Task Force to undertake the study of this topic?

There was no objection from the Commission.

The second topic that the group would like to explore is jail/pretrial data collection. Pretrial agencies do gather data, but there is still quite a bit of absent data that would be useful. The Task Force would review the data that is collected and determine whether gathering additional data might be helpful in understanding developments in the pretrial area. Would the Commission approve this as an additional topic of study by the Task Force?

There was no objection from the Commission.

Dr. Jackson asked the appropriate way to introduce new topics to the Commission for study.

Mr. Stroker stated that the Commission's annual retreat would allow members to discuss and review issues for task forces to study. A retreat this summer will allow us to discuss study topics, keeping in mind our legislative obligations and the work underway in current task forces.

Mr. Thome provided an update to the Commission on the work of the Abuse of Youth in Custody Subcommittee. The group is exploring whether there are sufficient protections in statute for individuals that are placed in a Department of Human Services facility. The Subcommittee and Commission has a deadline of June 30 to submit a report to the General Assembly. The group is focusing on three questions. First, how do we ensure that Colorado Department of Human Services is aware of abuse allegations that are investigated at the county level? Second, how do we ensure that the relevant and appropriate officials have information on the alleged abuser? Third, what are the sanctions/penalties for individuals who commit abuse? The Subcommittee will bring a preliminary recommendation to the Commission in March or April in order to adhere to the June deadline.

Mr. Stroker thanked Kelly, Abigail and Glenn for their work on their respective recommendations, and for explaining them to the Commission.

ADJOURNMENT

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

Mr. Thome thanked all the Commissioners for their time and asked if there were any questions or any final comments. Seeing none, Mr. Thome adjourned the meeting at 3:05 p.m.

The next meeting of the Commission is March 8, 2019 at 1:00pm at the regular meeting location: Jefferson County Department of Human Services, 900 Jefferson County Parkway, Golden CO 80401