



Colorado Commission on Criminal and Juvenile Justice

Minutes

May 10, 2019

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

Commission Member Attendance

Stan Hilkey, Chair	Kristen Hilkey - ABSENT	Cliff Riedel - ABSENT
Joe Thome, Interim Vice Chair	Nancy Jackson	Megan Ring
Chris Bachmeyer - ABSENT	Jessica Jones - ABSENT	Gretchen Russo
John Cooke - ABSENT	Bill Kilpatrick	Jennifer Stith
Cindy Cotten - ABSENT	Rick Kornfeld – ABSENT	Glenn Tapia
Shawn Day	Andrew Matson	Anne Tapp
Janet Drake	Greg Mauro	Abigail Tucker – ABSENT
Valarie Finks - ABSENT	Angie Paccione - ABSENT	Robert Werthwein
Julie Gonzales	Joe Pelle	Dean Williams
Serena Gonzales-Gutierrez - ABSENT	Tom Raynes - ABSENT	CO House Rep. (R) - TBD

Guests: Adam Zarrin, Governor's Office (on the phone)

CALL TO ORDER AND OPENING REMARKS

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

Mr. Hilkey, called the meeting to order at 1:08 pm and asked Commissioners to introduce themselves. Mr. Hilkey noted that the number of absentees was presumably due in part to the end of the legislative session. Given that a quorum was not reached, there will be no vote on the minutes from the March meeting.

Mr. Hilkey welcomed Mr. Greg Mauro as a new Commission member, replacing an at-large position left vacant with the resignation of Ms. Rose Rodriguez. He welcomed Dr. Werthwein who was attending for Ms. Minna Castillo-Cohen, recently appointed as the Colorado Department of Human Services representative, but who was unable to attend the meeting. Mr. Hilkey also thanked and welcomed Senator Gonzales to her first Commission meeting.

Mr. Hilkey reviewed the agenda and welcomed guests, Ms. Effie Seibold from the Public Defender's Office and Mr. Blake Harrison from the District Attorney's Office in the 2nd Judicial District for attending the meeting to present a preliminary recommendation from the Abuse of Youth in Custody Subcommittee.

Mr. Hilkey started the meeting by commending public safety officials who responded to the shooting at the STEM school in Douglas County this week. Mr. Hilkey expressed being very impressed with the heroic actions of the people inside the school and also the services put in place during this tragic event. The prompt intervention of public safety officials also included a well planned and executed

reunification strategy for parents and children while dealing with victims' assistance, suspects, crime scene protection and risk management. Mr. Hilkey concluded that he found remarkable how much Colorado has learned since the Columbine shooting twenty years ago and saluted responders from Douglas County, the school district, local law enforcement and the Department of Public Safety.

Commission members supported and echoed Mr. Hilkey's comments.

LEGISLATIVE UPDATE

Stan Hilkey, Colorado Department of Public Safety

Cooper Reveley, Colorado Department of Public Safety

Mr. Reveley invited Senator Julie Gonzales to share her thoughts and experience about the legislative session that ended last week.

Senator Gonzales indicated that this was her first year as a lawmaker and she was impressed to see a significant number of bi-partisan pieces of legislation. While there may not have been consensus and unity on all of the issues, Senator Gonzales believed that many legislators shared the same values which resulted in a very productive session.

Mr. Reveley explained that this was a very busy session with about 650 bills introduced and a great deal of activity in the last three weeks of the session. He directed Commission members to a handout titled "CCJJ Recommendations/CCJJ Bills" and "Criminal Justice Related Bills." Documents can be found on the Commission website at, colorado.gov/ccjj/meetings-2019.

House Bill 19-1226, Bond Reform, died on the calendar in the Senate. Mr. Hilkey noted that House Bill 19-1226 combined six recommendations approved by the Commission and the failure of this bill was a significant development for the Commission and for the Pretrial Task Force. During the legislative session, numerous stakeholders' meetings took place and many amendments were drafted to support the passage of the bill. The Commission's Legislative Committee met several times to ensure that the bill remained consistent with the intent of the Commission. It is believed that the bill died due to some interest groups, including strong lobbying by the bail bond industry, and the lack of funding, which would have ensured the development of pretrial services programs in judicial districts currently without them. The Pretrial Task Force met this week, agreed to continue its work, and will review the amendments made to the bill during the session. The Task Force has a Working Group which will continue its focus on preventive detention. Mr. Hilkey believed that these efforts will take place in Colorado, either by a proactive process or through widespread changes in bonding practices across the country. Mr. Hilkey added that he is hoping for the Governor's engagement in these efforts during next year's legislative session.

Ms. Drake said she wanted to recognize Pretrial Task Force member Ms. Maureen Cain from the Public Defender's Office and Mr. Hilkey for the tremendous amount of work they did to support the bill on behalf of the Commission. Mr. Hilkey thanked Ms. Drake, but believed that such recognition should be fully given to Ms. Cain.

Dr. Werthwein suggested adding to the "Criminal Justice Related Bills" document Senate Bill 19-223 which makes revisions regarding a defendant's competency to proceed. The document will be revised and forwarded to the group.

Ms. Russo asked whether anyone could offer an update on Senate Bill 19-108, Juvenile Justice Reform. Mr. Thome responded that he met this week with Mr. Zarrin from the Governor's Office to discuss the timelines of the bill and the committee created in the bill to run through September 1, 2022. (Committee on Juvenile Justice Reform). Mr. Thome encouraged interested parties to attend the first meeting that is required by June 30, 2019.

Ms. Jackson mentioned that county officials have been watching Senate Bill 19-191 which mandated that defendants release on bond within 48 hours under specific circumstances. While counties agree in principle, there is concern about the fiscal impact on counties that will need to open the courts on the weekend. The bill that passed was amended to require plans from each judicial district for implementation including cost estimates.

Mr. Williams discussed Senate Bill 19-259 which reopens one section of the Colorado State Penitentiary II to house inmates when DOC is at capacity.

Abuse of Youth in Custody Subcommittee

Preliminary Recommendation FY19-AYIC #01

Subcommittee Presenters: Blake Harrison, District Attorney's Office, 2nd Judicial District and Effie Seibold, Public Defender's Office

Mr. Hilkey directed Commissioners to the memorandum and preliminary recommendation in their packets.

In 2018, the Colorado General Assembly passed House Bill 1346, *Concerning child abuse related to youth who are under the continuing jurisdiction of the court in an out-of-home placement when they are younger than 21 years of age*. The bill, among other things, mandated that the Commission study whether existing criminal statutes address abuse of a child or a youth in a facility and issue corresponding recommendations concerning any identified gaps in law that may need to be addressed. The Commission must submit a report to the General Assembly by July 1, 2019.

The initial draft of the bill included a proposal to add language to the child abuse statute (C.R.S.18-6-401) to change the definition of a "child" to include 18-20 year olds. However, this change would affect a multitude of statutes with possible unintended consequences.

The group discussed the concerns that led to the study mandate, including that while the victims of the child abuse statute are defined as youth age 16 and younger, individuals may be held in a facility until their 21st birthday. *Note that "facility" includes all settings under the jurisdictions of the Department of Human Services (CDHS)*. Efforts to investigate alleged incidents of child abuse or, for older youth, assault, frequently fall to county social services where practices can vary across jurisdictions.

The Subcommittee examined CDHS assessment/investigation process starting from the calls to the hotline, county human services and law enforcement. All findings of abuse/neglect are entered in the CDHS database (TRAILS) Child Abuse Registry.

The Subcommittee reviewed multiple statutes and concluded that H.B. 18-1346 addressed a significant gap when it clarified the definition of "institutional abuse" (C.R.S. 19-1-103 (66)). Per this statute, CDHS

now has the authority to assess cases of abuse and neglect for those youth over 18 years old and residing at a CDHS facility.

The subcommittee determined that the statutory changes in the definition of institutional abuse, combined with a rule change in the Colorado Code of Regulations, Department of Human Services, 12 CCR 2509-1, Volume 7 (7.000.2, Definition Section), that aligned the definition of institutional abuse with the statutory definition, addressed major areas of concern.

However, a significant gap was identified in that there is no requirement for mandated reporting of child abuse/neglect when the youth is 18 or older. Youth who are institutionalized are a particularly vulnerable population, and mandatory reporting should be expanded to include individuals who are in an institution/facility. The group decided that, given the age range in the new definition of institutional abuse, an important gap exists in the protection of youth in facilities who are not covered by the current mandatory reporting statute.

To this end, the Subcommittee recommends that a new section of statute be included in reference to mandatory reporting in C.R.S. 19-3-304, entitled *Persons required to report institutional abuse*.

The group also discussed that Chief Kilpatrick from the Golden Police Department mentioned during a Commission meeting in November that his department responds to incidents at Department of Youth Services facilities such as Lookout Mountain. In his view, this burden on local law enforcement is an unfunded mandate, and the Chief inquired if a recommendation could be brought forth to reimburse local law enforcement agency expenses for these very time consuming investigations. While acknowledging this concern, the Subcommittee decided that this issue was beyond the scope of the legislative mandate. Additionally, problems with the state personnel system were identified, but these were determined to be outside the scope of the study mandate.

DISCUSSION

Chief Kilpatrick informed the group that he has had ongoing discussions with CDHS officials to discuss the unfunded mandate mentioned earlier and the legal obligation for his department to respond to incidents that occur at Lookout Mountain in Golden.

Dr. Werthwein followed up on an anecdotal situation discussed at the Subcommittee where CDHS did not terminate an employee who abused a youth in a Division of Youth Services facility. At the time of the incident, the state personnel rules only allowed for progressive discipline when there were no criminal charges and no findings from the child protection investigation. Dr. Werthwein confirmed later during the meeting that a bill, recently passed during this legislative session, allows for the termination of an employee based on a child welfare finding only.

Mr. Williams asked whether there is a statewide entity that could take on the responsibility of investigating abuse and neglect cases to allow more aligned processes and relieve the counties from allocating time and resources in those cases. Many states around the country have created their own centralized juvenile systems and responsible for their investigation processes.

Ms. Russo offered that the Institutional Abuse Review Team is an independent citizen panel established to review institutional assessments/investigations and determine whether a county conducted a thorough assessment; provide technical assistance to facilities and county staff; provide feedback to the

counties through the child welfare case management system; and provide the county that completed the assessment with guidance regarding missing information.

Dr. Werthwein explained that the structure described by Mr. Williams exists at CDHS, but, when there are allegations of abuse and neglect, it creates a heavy burden on local law enforcement as these agencies are required to investigate every claim. CDHS and law enforcement agencies will discuss this issue in the coming months.

Mr. Thome shared that the Subcommittee examined this issue and concluded that there appears to be a lack of training and educational resources for local law enforcement and counties to align around standards of practice. The Subcommittee determined this issue was outside the scope of its mandate.

Ms. Russo reminded Commissioners that the intended population of House Bill 18-1346 also includes children placed in foster care, child care homes and group homes, and not only youth in the Division of Youth Services facilities.

Mr. Hilkey thanked the presenters and reminded the Commission that the proposal presented today is a preliminary draft recommendation and next month the group will vote on the final recommendation. This two-month process allows Commissioners time to study the proposal and discuss it with stakeholder groups.

Mandates from the General Assembly **Kim English, Division of Criminal Justice**

Ms. English directed Commissioners to the Legislative Updates document included in the meeting materials and discussed the new legislative mandates to the Commission.

House Bill 2019-1149 – Age of Delinquency Study

This bill was sponsored by Representative Serena Gonzales-Gutierrez and asks the Commission to study emerging adults in the justice system. The Commission is to compile data regarding criminal filings for individuals who are 18 to 24 years of age; study the established brain development research; and study the potential impacts on the Division of Youth Services and the DOC's Youthful Offender System if these also served emerging adults, and make recommendations to the General Assembly by June 30, 2020. The Commission's Age of Delinquency Task Force has started this work and had educational presentations from the Department of Public Health and Environment on brain development, the Division of Youth Services and the Youthful Offender System.

Senate Bill 2019-008 -- Substance Use Disorder Treatment in the Criminal Justice System.

This bill mandates the Commission to study and make recommendations concerning:

- A) Alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses;
- B) Best practices for investigating unlawful opioid distribution; and
- C) A process for automatically sealing criminal records for drug offense convictions.

For this mandate, Ms. English proposed the creation of a Drug Offense Task Force to tackle topics (A) and (C). Topic (B) will be undertaken by staff as a research project, including literature reviews and interviews with experts in this field, and will likely involve working with an advisory board.

Ms. English reminded the group that there are currently three task forces. The Age of Delinquency and the Pretrial Task Forces (and associated working groups) will continue their work this year. The Mental Health/Jails Task Force is likely to conclude in June after hearing about the impact of the recommendations from this Task Force.

Ms. English also reminded the group that, due to the requirements of the “Sunshine Law,” Commission staff must be present to record minutes of any meetings that include two or more Commissioners. This means that working groups, which previously were not part of the staff workload, now must be staffed with minutes recorded and posted. The Commission has limited resources available to staff a large number of Task Forces and working groups. Because recent legislative mandates have directed the Commission’s areas of study (and, relatedly, staff support), Commissioners have a reduced opportunity to suggest and promote new areas of work. However, she believed that there might still be an opportunity for the Commission to create an additional task force this year. There will be a discussion at a future Commission meeting of potential areas of interest.

Mr. Hilkey commented that an initial component of Senate Bill 19-008 (topic (B) above) was to mandate that the Colorado Bureau of Investigation take on the issue of the illegal distribution of opioids. However, due to CBI’s lack of resources to take on this additional work, the bill was amended to direct the Commission to study best practices regarding the investigation of opioid cases. Mr. Hilkey mentioned that there are numerous drug task forces across the state that are engaged in these investigations, which are not limited to opioids, but also address methamphetamine, cocaine, illegal marijuana, etc. Additionally, there are investigations and litigation that happen in the state regarding opioid distribution through pharmaceutical manufacturers, pharmacies and doctors who over prescribe.

WRAP-UP AND ADJOURNMENT

The next meeting of the Commission is on June 14 preceded by a New Commissioners Orientation from 10am-12pm. The full Commission meeting will start at 1:00 pm.

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments.

Seeing no further business, Mr. Hilkey adjourned the meeting at 3:05 pm