



Colorado Commission on Criminal and Juvenile Justice

Minutes

October 11, 2019

Jefferson County Government Center
 100 Jefferson County Parkway
 Golden, CO 80401

Commission Member Attendance

Stan Hilkey, Chair	Serena Gonzales-Gutierrez	Tom Raynes
Abigail Tucker, Vice Chair	Kristen Hilkey	Cliff Riedel - ABSENT
Chris Bachmeyer	Nancy Jackson	Megan Ring
Minna Castillo-Cohen	Jessica Jones	Gretchen Russo - ABSENT
Shawn Day - ABSENT	Bill Kilpatrick - ABSENT	Matt Soper - ABSENT
Janet Drake	Rick Kornfeld	Jennifer Stith - ABSENT
Valarie Finks	Matt Lewis	Glenn Tapia
Bob Gardner – ABSENT	Andrew Matson	Anne Tapp
Priscilla Gartner	Greg Mauro	Dean Williams
Julie Gonzales	Angie Paccione - ABSENT	Joe Thome, <i>ex officio</i>

Guest: Leslie Schaefer, Chief Probation Officer’s, 1st Judicial District

CALL TO ORDER AND OPENING REMARKS

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

Mr. Hilkey, Chair of the Commission and Executive Director of the Department of Public Safety, called the meeting to order at 1:06 pm. Mr. Hilkey asked Commissioners to introduce themselves, and he acknowledged the presence of visitor Ms. Leslie Schaefer, Chief Probation Officer in the 1st Judicial District. Mr. Hilkey reviewed the agenda and asked for any additions or corrections to the September meeting minutes. A motion was made and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Presentation: Community Law Enforcement Action Reporting (CLEAR Act)

Ms. English provided a presentation on the analysis of data pursuant to the CLEAR Act (Community Law Enforcement Action Report Act; Senate Bill 15-185). Ms. English began her presentation by explaining that she would summarize some of the most important findings that surfaced in the CLEAR Act analyses. Ms. English handed out a document titled “Procedural Fairness/Procedural Justice – A Bench Card for Trial Judges.” The full content of the presentation along with the document can be found on Commission website under the October 11, 2019 meeting tab at, colorado.gov/ccjj/ccjj-mtgs2019. The highlights of the 2018 analysis are provided below.

- In 2015, the General Assembly passed Senate Bill 185, the CLEAR Act, mandating that the Division of Criminal Justice (DCJ) analyze and report data annually from law enforcement agencies, the Judicial Department and the adult Parole Board to reflect decisions made at multiple points in the justice system process.

- The CLEAR Act calls for the analysis of race/ethnicity and gender at the major decision points in the system, including arrests, court filings, case outcome and initial sentencing, revocation and parole.
- In 2018, statewide: Black/African Americans represented 4% of the adult state population and accounted for 12% of arrests and 11% of adult district court filings. Hispanic adults represented 28% of the population and accounted for 28% of arrests and 30% of adult district court filings.
- The 2018 statewide summary is that Black/African Americans were more likely to be arrested, Black/African Americans were less likely to get deferred judgements and more likely to receive a sentence to confinement.
- Regarding sentencing, many factors can influence a sentencing decision such as prior cases, prior convictions for specific violent crimes, concurrent cases, felony level, instant (current) offense type (drug, property, other, violent) and whether the instant offense was a specific violent crime. Statistically controlling for these factors, the analysis revealed significant disparities at sentencing for Black/African Americans and Hispanics.

Ms. English cited recommendations from the Brennan Center for Justice and the Task Force on 21st Century Policing aimed at addressing issues of disproportionate minority contact and the reduction of racial and ethnic disparities across many parts of the criminal justice system.

Ms. English mentioned that, in addition to the statewide report, full reports for the 22 judicial districts along with a data dashboard will be released by the end of the calendar year, and will be available on the Division of Criminal Justice's Office of Research and Statistics website at, colorado.gov/dcj-ors/ors-reports.

DISCUSSION

Ms. English indicated that the Judicial Branch's ICON data system does not distinguish between race and ethnicity. As a result, persons of Hispanic ethnicity are typically in the White race category, and thus significantly undercounted in the Hispanic category. In addition, the arrest data are plagued with random misclassifications of race and ethnicity, and both random and non-random missing race/ethnicity data. To improve upon the accuracy of the race/ethnicity designation in this analysis, a statistical model was developed to predict whether an offender was Hispanic. The model had an overall predictive accuracy of 94%. This model was used with both the arrest and court data.

Mr. Matson asked whether information about plea bargains offered to defendants by race and ethnicity can be obtained. He added that it would of interest to know who is offered a plea bargain and whether there is disproportionate minority overrepresentation at this point of the system. Ms. English agreed and responded that the CLEAR Act report includes case outcomes of the most serious conviction charges, yet it is difficult to interpret the findings in the aggregate.

Mr. Hilkey reported that Iowa has developed an implicit bias program within the Judicial Branch which contains two phases. The first phase of the training is to recognize implicit bias and the second how to undo previous implicit bias court judgements. Mr. Hilkey informed the group that Ms. Jennifer Elek, who is the coordinator of the program in Iowa will present as part of a panel at the National Association of Judicial Educators in Denver on October 18-21 for any Commissioner interested in attended.

Ms. Jones stated that there is a program in Colorado that provides implicit bias training for jurors and will forward the information to the group.

Ms. Castillo-Cohen noted that the CLEAR Act includes information provided by the Adult Parole Board and suggested adding the same data for the Juvenile Parole Board. Ms. English will work with Ms. Castillo-Cohen to obtain this data for the next CLEAR analysis and report.

Mr. Hilkey thanked Ms. English for her presentation and suggested that the recommendations for addressing bias, cited in the presentation, be included in the CLEAR Act reports.

TASK FORCE UPDATES

The Task Force update presentations can be found on Commission website under the October 11, 2019 meeting tab at, colorado.gov/ccjj/ccjj-mtgs2019.

Age of Delinquency Task Force

Joe Thome and Jes Jones, Task Force Co-chairs

The Age of Delinquency TF is currently focused on exploring approaches regarding the management of emerging adults (ages 18-24) in response to a mandate from the General Assembly pursuant to House Bill 19-1149 (*Concerning directing the age of delinquency task force of the Colorado commission on criminal and juvenile justice to study serving emerging adults in the juvenile justice system*).

The Task Force has heard several presentations and gathered a significant amount of information and data regarding this emerging adult population. The Task Force recently established two Working Groups and identified specific topics for further study: 1) the *Youthful Offender System Working Group* to study YOS eligibility, capacity and regulations; and 2) the *Community Supervision Working Group* to identify opportunities to develop sentencing and diversion options, and match community services to individual cases.

Drug Offense Task Force

Megan Ring and Tom Raynes, Task Force Co-chairs

The Drug Offense Task Force was seated by the Commission in September 2019 in response to a mandate from the Colorado General Assembly pursuant to Senate Bill 19-008 (*Concerning treatment of individuals with substance abuse disorders who come into contact with the criminal justice system*).

The Task Force established two Working Groups: 1) the *Diversion Working Group* to study alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses; and 2) the *Sealing Working Group* to study a process for automatically sealing criminal records for drug offense convictions.

The *Diversion Working Group* created four study groups on the following topics: 1) Definition of drug-related offense and eligibility, 2) Diversion process, 3) Screening assessments and evaluations, and 4) Resources and services.

The *Sealing Working Group* is focused on reviewing other states' automated processes for sealing and discussing the Colorado Bureau of Investigation and Judicial Branch processes to seal records.

Opioid Investigations Subcommittee
Sheriff Matt Lewis, Subcommittee Co-chair

The Opioid Investigations Subcommittee was seated by the Commission in September 2019 in response to a mandate from the General Assembly pursuant to Senate Bill 19-008 (*Concerning treatment of Individuals with substance abuse disorders who come into contact with the criminal justice system*).

Based on the statutory mandate, the Commission charged the Subcommittee to study and make recommendations concerning best practices for investigating unlawful opioid distribution in Colorado, including the creation of black market opioid investigatory entities at the state and local levels.

Sheriff Lewis reported that the group is focused on exploring the different ways that opioids can be distributed such as distribution through dark web, by criminal organizations or by the diversion of legal products into illegal markets. The group also discussed a work plan to gather data and to identify successful investigatory entities around the state.

Pretrial Release Task Force
Richard Stroker, CCJJ Consultant
Greg Mauro, Task Force member

The Task Force was formed in June 2017 and developed ten recommendations (policy and statutory), that were approved by the Commission during 2018 and early 2019.

Six of the statutory recommendations were combined in House Bill 19-1226, which did not pass during the legislative session.

The Task Force decided to revisit the 2018 Commission recommendations along with some of the elements of H.B. 19-1226; consider modifications to these recommendations; and explore additional topics related to pretrial work. Three working groups have been created to address the following:

1. Revisit original recommendations and review H.B.19-1226. Explore modifications and potential improvements of previous recommendations.
2. Examine existing pretrial data and identify opportunities to improve information at many stages of the pretrial process.
3. Examine opportunities to enhance judicial engagement in pretrial reform.

The Pretrial Task Force will present today two recommendations developed by the *Data Working Group*.

The Recommendations Review/HB19-1226 Working Group has developed recommendations that are being reviewed at the Task Force. Mr. Greg Mauro offered a preview of the upcoming recommendations. It is anticipated that preliminary recommendations will be presented at the December 2019 Commission meeting.

**Pretrial Release Task Force
Preliminary Recommendation Presentation
Monica Rotner, Task Force member**

Chair Hilkey introduced Task Force member Monica Rotner, with the Boulder County Community Justice Services, to present two preliminary recommendations to the Commission. Ms. Rotner explained that the preliminary recommendations were developed by the Pretrial Task Force's Data Working Group, and she directed Commissioners to the documents in their packets. A summary of each draft recommendation follows.

**FY20-PR#01. Implement Pretrial Measurement and Data Requirements [Policy]
Recommendation FY20-PR#01**

Local pretrial service programs, the State Court Administrators' Office and other data repository entities shall gather and submit specific case and/or person level data elements to the Division of Criminal Justice (DCJ) annually. These data must include distinct performance and outcome measures (the detailed data elements may be found in the appended Addendum). The Division of Criminal Justice in consultation with a statutorily created statewide pretrial services data advisory group (see Commission Recommendation FY20-PR#02) will establish the required data elements [Note: The required 1.0 FTE and the one-time appropriation for information technology requirements related to these functions are found in FY20-PR#02.]. The elements of this policy recommendation include:

- To promote statewide data consistency, a statewide central repository for all pretrial services data is required. This central repository will be located in the Division of Criminal Justice in the Colorado Department of Public Safety.
- The following distinct categories of pretrial services data to be utilized by pretrial services entities and reported to DCJ as outcome and performance measures have been identified:
 - Crime rate, arrest and demographics;
 - Initial bond period, including assessment, bond recommendations, bond ordered, and jail pretrial data;
 - Jail pretrial population data and sentencing outcomes; and
 - Supervision related outcomes.
- The statewide pretrial services data advisory group is to use the Recommended Pretrial Services Data Elements to guide oversight of data collection for pretrial outcomes and to gain agreement among system stakeholders for performance measurement of pretrial programs.
- Implementation timelines for the collection and submission of required pretrial data by the required pretrial entities will be determined by DCJ in collaboration with the statewide pretrial services data advisory group.
- DCJ shall also undertake the following:
 - Risk assessment instruments must be evaluated and validated in Colorado to maximize accuracy and to statistically minimize bias on the basis of race, ethnicity and gender.
 - Data analysis and evaluation for bias on the basis of race, ethnicity and gender regarding the outcomes of the bond setting process, including the type of bond set, the amount of any

- secured monetary condition of bond, and any other conditions of release on bond must be performed.
- Develop training, technical support processes and software to assist the impacted entities in the collection and submission of the required data elements.

FY20-PR#02. Create a Statewide Pretrial Services Data Advisory Group [Statutory]**Recommendation FY20-PR#02**

Create a statewide pretrial services data advisory group staffed by the Division of Criminal Justice with a sunset of five years from legislation enactment. The data advisory group must include representation of pretrial stakeholders, including the State Court Administrator's Office. The Division of Criminal Justice is the central repository for all pretrial services data (see Commission Recommendation FY20-PR#01). One (1.0) FTE is required for staffing the statewide pretrial services data advisory group and for pretrial services data management, analysis, and annual reporting and an additional one-time appropriation will be necessary to meet the information technology requirements.

The current statutory pretrial data reporting requirement language in §16-4-106, C.R.S., should be revised to include the following:

- Remove specific data elements from §16-4-106 to be replaced with recommendations from the statewide pretrial services data advisory group made to the DCJ office responsible for implementation of the defined data requirements.
- Replace the State Court Administrator's Office as the reporting body with the Division of Criminal Justice.
- Create a statewide pretrial services data advisory group appointed by the Executive Director of the Colorado Department of Public Safety and staffed by the Division of Criminal Justice.
- Data reporting will be annual, consistent with current language in statute §16-4-106.

PUBLIC COMMENT

No members of the public signed up to offer comment.

WRAP-UP AND ADJOURNMENT

The next meeting of the Commission is November 11 at 1:00 pm at the same location, the Lookout Mountain Room, Jefferson County Government Center.

Mr. Hilkey thanked Commissioners and asked the group for any final comments. Seeing no further business, Mr. Hilkey adjourned the meeting at 2:41 pm.