



## Colorado Commission on Criminal and Juvenile Justice

### Minutes

December 13, 2019

Building 100  
Colorado State Patrol/Camp George West  
15350 S. Golden Road, Golden, CO

#### Commission Member Attendance

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

Substitutions: Brad Uyemura for Angie Paccione; Kelly Enright for Nancy Jackson

#### CALL TO ORDER AND OPENING REMARKS

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

Stan Hilkey, Commission Chair, called the meeting to order at 1:11 pm. Mr. Hilkey asked Commissioners to introduce themselves, reviewed the agenda and asked for any additions or corrections to the November meeting minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Mr. Hilkey reminded members that, last month, Commissioners identified five top potential topics of work for the Commission: 1) Uniform system to share criminal justice info, 2) Strategic criminal justice decision-making, 3) Evaluating victim services and identification of best practices, 4) Overrepresentation of minorities in the criminal justice system and, 5) Revisiting the sentencing grid.

Mr. Hilkey indicated that there might be some topics in this list that will overlap with initiatives that may be forwarded from the Legislature and the Governor's Office.

Mr. Hilkey mentioned a "Save the Date" announcement for the Criminal Justice Forum that will be held on March 4 and 5, 2020. The Colorado Department of Public Safety, along with other Criminal Justice Cabinet Working Group agencies, including the Colorado Department of Corrections and the Colorado Department of Human Services, is hosting several keynote presentations and panel discussions. The overarching purpose is to establish shared goals and values for criminal justice improvements in Colorado among the Criminal Justice Cabinet Workgroup and partner agencies and to create a roadmap for future policy initiatives. Mr. Hilkey added that there is still lot of work ahead in preparation of the Forum and invited Commissioners to participate.

**CCJJ ANNUAL REPORT & ACCOMPLISHMENTS****Kim English, Division of Criminal Justice**

Ms. English directed Commissioners to the Fiscal Year 2019 CCJJ Annual Report included in the meeting materials and presented the highlights of the Commission's 2019 annual report. A summary of the Commission's accomplishments was included in the first page of the report. Ms. English pointed out that detailed information is also available on the Commission's website at, [colorad.gov/ccjj](http://colorad.gov/ccjj).

**TASK FORCE UPDATES****Age of Delinquency Task Force****Joe Thome, Task Force Co-chair**

Mr. Thome recapped that the Age of Delinquency Task Force had created two Working Groups:

1) The *Youthful Offender System Working Group*--to study YOS eligibility, capacity and regulations. The Working Group toured the Youthful Offender System in Pueblo and discussions by this Working Group are ongoing to further explore issues related to eligibility criteria, information sharing, programming/operations and re-entry/violations/revocations.

2) The *Community Supervision Working Group*--to identify opportunities to develop sentencing and diversion options and to match community services to individual cases. The Working Group is currently discussing the potential implementation of a pilot program for young adults with a focus on case planning and engagement, staff recruitment, training, and specialized caseloads. A similar model is implemented in the 20<sup>th</sup> judicial district where 18-20 year olds are supervised by juvenile probation officers.

**Drug Offense Task Force****Megan Ring and Tom Raynes, Task Force Co-chairs**

Ms. Ring reported that the Working Groups of the Drug Offense Task Force have been very productive these past months.

*The Sealing Working Group* continues its work to review other states' automated processes and to discuss record-sealing processes by the Colorado Bureau of Investigation and the Judicial Branch.

*The Diversion Working Group* (WG) created small Study Groups (SG): the Diversion Services and Screening Tools SG, the Eligibility Criteria SG and the Process & Referral Authority SG. At the last meeting, the Diversion WG discussed the recommendation development timeline and will begin formalizing and drafting recommendations at the beginning of the new year.

**Opioid Investigations Subcommittee****Sheriff Matt Lewis and Chief Bill Kilpatrick, Subcommittee Co-chairs**

Sheriff Lewis reported that the Opioid Investigations Subcommittee recently heard several presentations from state, local and federal drug enforcement partners regarding different strategies and tools utilized to investigate opioid distribution. At the last meeting, the United States Postal Inspection Services (USPIS) Contraband Interdiction and Investigation team presented an overview of their approach to dark

web interdictions followed by a presentation of the Overdose Detection Mapping Application Program (ODMAP) from Mr. Burke (ODMAP Outreach Coordinator). Sheriff Lewis highlighted that the ODMAP provides near real-time suspected overdose surveillance data across jurisdictions and anticipated that a similar program would likely be part of the Subcommittee recommendation. The group has engaged in extensive discussions of state resources and has created an outline of recommendation concepts.

### **Pretrial Release Task Force**

#### **Stan Hilkey, Task Force Chair**

Mr. Hilkey summarized that the Task Force was seated by the Commission 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 FY 2019 legislative session. The Task Force decided to revisit these Commission recommendations, along with some of the elements of H.B. 19-1226; to consider modifications of these recommendations; and to explore additional topics related to pretrial work. The recommendations presented today have been combined into one recommendation and are presented as a package. This proposal represents significant effort and compromises between members of the Task Force and stakeholders. Mr. Hilkey reminded members that the recommendation presented today is in preliminary (draft) form in order to allow Commissioners time to review and engage in stakeholder discussions over the next month as they see fit. The recommendation will be presented next month (January 2020) for final discussion and vote.

### **PRETRIAL RELEASE TASK FORCE**

#### **PRELIMINARY RECOMMENDATION PRESENTATION**

#### **Maureen Cain, Task Force Member**

Ms. Cain observed that many CCJJ Commissioners are also members of the Pretrial Release Task Force, including Mr. Hilkey, Judge Bachmeyer, Judge Day, Ms. Drake, Ms. Finks, Mr. Kornfeld, Mr. Mauro, Mr. Raynes, Mr. Riedel, Mr. Tapia and Ms. Tapp. Ms. Cain added that the recommendation presented today passed unanimously in votes by the Task Force. Ms. Cain directed Commissioners to the preliminary recommendation in their packet and the statutory language attached to the recommendation. She offered that she would present the statutory language, which was drafted in sequential pretrial process order. *[Given that the recommendation and proposed statutory language are preliminary, only the title of each element of the draft statutory language follows, along with points offered during the presentation. The number references below reflect the "article-title-section" of the Colorado Revised Statutes.]*

### **FY20-PR#03. IMPLEMENT BAIL BOND REFORM**

#### **16-4-102. Right to bail – before conviction**

This section will replace current statutory language.

#### **16-4-103. Pretrial assessment process – Development of criteria by each judicial district – Risk assessment and release program**

This section is new statutory language. Each judicial district shall develop a pretrial assessment, process, an administrative order and implement the written criteria through an administrative order.

**16-4-103.5. Duties of the Department of Public Safety - Development of best practice standards for pretrial release – Inventory and approval of pretrial assessment instruments - Measurement of risk factors and bias evaluation and monitoring**

The Division of Criminal Justice (Colorado Department of Public Safety) will be responsible for developing statewide standards and guidelines for both the pretrial release assessment process, the written criteria for immediate pretrial release, and standards for the setting of the type of bond and conditions of release. Any Pretrial risk assessment instrument approved for use must be validated in Colorado within three years of the start of its use to minimize bias on the basis of race, ethnicity and gender.

**16-4-104. Initial Hearing – Factors for setting type of bond – Presumption of release – Least restrictive conditions - Presumption of release without monetary conditions – Right to competent counsel**

Ms. Cain reported that the phrasing of “risk” in this section has been subject to lengthy discussion at the Task Force. A consensus was reached about the risk language as follows: “danger to the safety of the community or another person, attempt to flee prosecution or attempt to obstruct or other willfully avoid the criminal justice process.”

**16-4-104.5. Types of Bond**

This section describes types of bond and remains unchanged.

**16-4-105. Conditions of release**

The language in lower case is the current statutory language and upper case display the portions added. The new language includes least restrictive non-monetary conditions of release and that the court shall not order electronic monitoring as a condition of release for any municipal offense, petty offense, traffic offense, or misdemeanor offense unless certain exceptions are present.

**16-4-106. Pretrial services programs – Mandate for risk assessment and annual report**

Ms. Cain reported that representatives from the American Civil Liberty Union (ACLU) had concerns last year with this provision in House Bill 19-1226 and the Task Force discussed at length the use of for-profit agencies in pretrial assessment and supervision. The Task Force agreed that assessments should be conducted by government or county officials and that supervision services could be contracted and provided by a private entity.

**16-4-106.5. Pretrial services fund created**

Ms. Cain and Mr. Zeerip developed an equation to estimate the cost of pretrial services based on average salary, estimated amount of time to assess a case, and the number of cases by county. Within the Governor’s budget, there is a set-aside of \$5M to address the pretrial recommendation and to accommodate the 48-hour detention hearing model. The \$5M is a placeholder and the legislature will determine how the money will be split between the two concepts. The advocacy has begun for additional funds to be added next year.

**16-4-107. Time frames for commencement of action**

This section remains the same as last year’s recommendation.

**16-4-109. Reconsideration and modification of conditions of release – Hearing – Violation of conditions**

*[These comments also apply to aspects of Sections 104 and 107 of 16-4.]* For individuals who do not meet the criteria for expedited pretrial release, this section revises the initial bond hearing process and the consideration of monetary conditions of bond. Individuals shall be assessed before the hearing and the court is required to consider financial circumstances of persons when setting bond with a presumption that release to bond should be established with the least restrictive condition(s). The court shall further presume the release of the defendant without monetary conditions, unless the court finds one or more of the following exist: 1) no reasonable non-monetary conditions will address public safety and flight risk; 2) require the filing of felony charges within three days; 3) require consideration of monetary and/or non-monetary conditions of bond in misdemeanor and felony cases; 4) create an expedited docket for cases where the defendant is in custody on a monetary bond that the person has not posted.

**16-4-204. Appellate review of terms and conditions of bail or appeal bond**

This section establishes appeal processes and a requirement for the appellate court to address constitutional issues raised in the appeal. The current appeal process is cumbersome and does not provide adequate review of bond decisions by a higher court.

**16-4- 207. Contents of a summons – Court reminders**

This section is currently in statute and unchanged.

**16-4- 208. Summons in lieu of warrant or arrest – Mandatory summons – Exceptions – Presumptions**

This section expands the use of summons to include mandatory summons for misdemeanors, traffic and petty offenses and to give local jurisdictions discretion to use summons for felony offenses.

**18-8-212.5 Violation of bail bond conditions**

This section establishes the crime of violation of bail bond appearance conditions, establishes a contempt process for violation of non-appearance bail bond conditions, and clarifies the crime of protection order violation.

**18-1-1001. Protection order against defendant**

This section clarifies that a protection order is for the protection of an alleged victim or witness and not for the protection of a defendant, including the protection of a defendant from the use of alcohol or other substances. It also clarifies that the issuance of a protection order shall be supported by evidence and input of the victim, when available.

**18-6-803.5. Crime of violation of a protection order - Penalty - Peace officers' duties – Definitions**

This section is amended to clarify that a protected person shall not include the defendant.

Ms. Cain directed Commissioners to the Recommendation FY20-PR#03 document, indicating that, although the recommendation concepts have been discussed and included in the document, the statutory language has yet to be drafted.

**Element 3.11. Mandate Training for Stakeholders.**

Ms. Cain reminded members that the *policy* in Recommendation FY19-PR#08 approved by the Commission on January 2019 recommended training for stakeholders. Considering that nothing to

ameliorate existing issues has occurred to date based on the *policy* recommendation and there is continuing concern about the failure of stakeholders to adhere to current statutory mandates, the Task Force has proposed to include mandated training for stakeholders *in statute*. Ms. Cain reported that Task Force members discussed at length the concerns expressed by the Bail Blue Ribbon Commission (of the Judicial Branch) in regard to the issue of legislatively mandating training for judges.

**Element 3.13. Create a telejustice program fund in the state treasury.**

This element is based on details included in HB 2018- 1131 (*Concerning a program to facilitate conducting judicial proceedings via networking technology*).

Mr. Hilkey suggested that the legislative declaration for the overall recommendation and statutory language for Element 3.11 and Element 3.13 be drafted and forwarded two weeks prior to the January Commission meeting to allow time for Commissioners to review the language.

**PUBLIC COMMENT**

No members of the public signed up to offer comments.

**ADJOURNMENT**

The next meeting of the Commission is January 10, 2020 at 1:00 pm in the Lookout Mountain Room at Jefferson County Government Center (100 Jefferson County Parkway, Golden, CO 80419).

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

Seeing no further business, Mr. Hilkey adjourned the meeting at 3:44 pm.