



Colorado Commission on Criminal and Juvenile Justice

Minutes

January 10, 2020

Lookout Mountain Room
 Jefferson County Government Center
 100 Jefferson County Parkway, Golden, CO

Commission Member Attendance

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

Substitutions: Matt Hansen for Dean Williams; Sarah Pak for Angie Paccione

Guest: Phil Weiser

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 1:08pm. Mr. Hilkey asked Commissioners to introduce themselves, reviewed the agenda and asked for any additions or corrections to the December meeting minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Mr. Hilkey mentioned that the CCJJ SMART Act hearing presentation to the Joint Judiciary will be Monday, January 13, 2020 and invited Commissioners to participate. Mr. Hilkey reported that Senator Pete Lee has expressed interest in sponsoring a Bail Bond reform bill based on Commission Recommendation FY20-PR#03 (Implement Bail Bond Reform), if the recommendation is approved by the Commission later in the meeting.

TASK FORCE UPDATES

Age of Delinquency Task Force

Joe Thome and Jes Jones, Task Force Co-chairs

Mr. Thome recapped that the Age of Delinquency Task Force had created two Working Groups and briefly described their efforts:

- 1) *The Youthful Offender System (YOS) Working Group* toured the YOS facility in Pueblo last month and are discussing issues related to YOS eligibility criteria, information sharing, programming & operations and re-entry/violations/revocations.
- 2) *The Community Supervision Working Group* are awaiting responses to a survey of juvenile probation officers and supervisors on the potential creation of a case management model tailored to 18 to 24-year olds, the role of community providers, and how to expand access to services for this population.

Mr. Thome anticipated that both Working Groups will be drafting recommendations next month and prepared to present at the Age of Delinquency Task Force meeting at the March 11 meeting.

Drug Offense Task Force

Megan Ring and Tom Raynes, Task Force Co-chairs

Ms. Ring reported that the Drug Offense Task Force and its two working groups have been very productive these past months and briefly described their efforts:

- 1) *The Sealing Working Group* continues its work to review other states' automated sealing processes and to discuss the current and potential record-sealing processes of the Colorado Bureau of Investigation and the Judicial Branch.
- 2) *The Diversion Working Group* created small Study Groups (SG): the Diversion Services and Screening Tools SG, the Eligibility Criteria SG and the Process & Referral Authority SG. Each of these groups continues to compile information and to develop concepts for potential recommendations.

Ms. Ring anticipated that recommendations will be drafted in the upcoming months.

Opioid Investigations Subcommittee

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

Chief Kilpatrick indicated that the Opioid Investigations Subcommittee is focused on three specific areas of illegal opioid distribution: through traditional criminal organizations, via the dark web, and the diversion of prescribed medications. The Subcommittee members have heard several presentations from local, state, and federal agencies and from health providers. According to professionals in the field, the extent of opioid overdose and addiction is not as predominant in Colorado as in other states while methamphetamine remains a growing concern.

At the last meeting, the group engaged in discussions related to information sharing, resources for regional and local communities, tracking overdoses, and prevention. Chief Kilpatrick anticipated that the recommendations developed by the Subcommittee will not only address opioid investigations but will also apply to enforcement efforts related to other drugs of choice. Chief Kilpatrick described that a survey was sent to law enforcement officers to determine the extent of drug-related problems and the type of drugs encountered in different jurisdictions.

Has the Subcommittee discussed the over-prescribing problem and its contribution to opioid addiction? Chief Kilpatrick confirmed that the group discussed this issue and was informed by the U.S. Attorney's Office that the Federal Drug Enforcement Administration is engaged in efforts to address this problem. Dr. Tucker added that the Colorado State Board of Pharmacy has partnered with the Department of Public Health and Environment and other agencies to track and record opioid prescription practices.

Pretrial Release Task Force
Stan Hilkey, Task Force Chair

Mr. Hilkey mentioned that the Pretrial Release Task Force did not meet in January and reminded Commissioners that the preliminary Recommendation FY20-PR#03 (Implement Bail Bond Reform) from the Task Force was presented at the December meeting, and that the vote on the final recommendation was scheduled later on today's agenda.

PRETRIAL RELEASE TASK FORCE: FINAL RECOMMENDATION PRESENTATION
Maureen Cain, Task Force Member

FY20-PR#03. IMPLEMENT BAIL BOND REFORM. [Statutory]

Ms. Cain directed Commissioners to the final recommendation document in their packet comprising the 14 recommendation text "ELEMENTS" and the proposed statutory language. She provided a brief review of the elements of the recommendation and, in greater detail, described the proposed statutory language for ELEMENT 3.11-Mandated training for pretrial stakeholders and for ELEMENT 3.13-Telejustice program fund.

ELEMENT 3.13

13-3-117. TeleJustice Program Fund.

This recommends the creation of a TeleJustice program within the State Court Administrator to implements telephonic or internet-based networking software for courts to conduct hearings and other judicial procedures with remote participants.

16-4-xxx. Mandated pretrial stakeholder training. [Section to be determined by drafter]

Ms. Cain reminded Commissioners that prior Recommendation FY19-PR#08 (approved by the Commission in January 2019) included a *policy statement* that the State Court Administrator's Office should provide stakeholder training on sound pretrial processes and best practices. Considering that nothing to ameliorate existing issues in pretrial practices has occurred to date in response to the *policy* recommendation and there is continuing concern about the failure of stakeholders to adhere even to existing statutory mandates, the Task Force has proposed to include mandated training for stakeholders *in statute* with a requirement for an annual report on training delivery (for example, the number of people trained, description of the training, number of hours, etc.). Ms. Cain reported that Task Force members extensively discussed the concerns expressed by the Bail Blue Ribbon Commission (of the Judicial Branch) specifically regarding the issue of legislatively mandating training for judges.

Senator Gardner shared that, while the Judicial Branch supports the general concept of training for judges and judicial officers, the wording of the recommendation raises concerns regarding separation of powers. Should the General Assembly tell the Judicial Branch how to educate their judicial officers?

Mr. Tapia thanked Senator Gardner for his remarks and provided some context around the concern expressed by the Bail Blue Ribbon Commission (BBRC). The State Court Administrator's Office supports pretrial reform and is committed to developing and delivering a neutral training curriculum on pretrial practices. While agreeing with the necessity to train judicial officers, the concern, as expressed by Senator Gardner, is specific to the separation of powers issues inherent in statutorily mandating judicial officer training. A suggested revision was offered to de-emphasize or remove the term, "mandated," and this revision was made.

Raising a separate, but related point, Mr. Riedel described that district attorneys may raise concerns with the implied requirement that elected district attorneys must receive training from the Colorado District Attorneys' Council. Mr. Riedel suggested revising the language akin to, "CDAC should make training available." Commissioners agreed with the change.

Funding

Ms. Cain reminded members that there is a set-aside of \$5 million in the Governor's budget to address the goals of the pretrial recommendation and to accommodate the 48-hour detention hearing model.

Ms. Cain discussed in-depth how she and Task Force member Bo Zeerip estimated the annual costs to fund statewide pretrial services. With the assistance of stakeholders and data gathered from all Colorado counties, the following cost elements were compiled and considered: the number of misdemeanor and felony filings per year; the anticipated increase in number of summons; the number of pretrial assessments for those arrested; and, for pretrial supervision caseloads involving high or higher risks defendants, estimates were generated for the number of assessment and supervision hours and their associated costs for supervision and assessment FTEs, other support salaries, and overhead and start-up costs. Additionally, costs were included for the pretrial mandates assigned to the Division of Criminal Justice.

DISCUSSION

Mr. Raynes was concerned that implementation of the 48-hour detention hearing model, which would be quite expensive, would compete with the pretrial reforms for the funding set aside in the Governor's budget. The 48-hour proposal, if funded, would draw from the available funds, and could prevent the full implementation of pretrial services reforms. Ultimately, this undermines the extensive collaborative efforts of Commission and Task Force members and stakeholders to produce the comprehensive pretrial and bail bond reforms.

Ms. Cain believed that, because implementation of the reforms is distributed across a multi-year period, the funding required during the first year of implementation would be less than the projected set-aside.

Mr. Hilkey agreed that the set-aside funding of \$5 million will meet the *initial* goals of the pretrial recommendation and also accommodate the 48-hour detention hearing model. The funding amount was established with the assistance of members of the Pretrial Release Task Force and stakeholders and should be sufficient to begin the work that is described. Additional funds will be added in the following years of implementation. Mr. Hilkey shared that the Department of Public Safety (CDPS) and the Governor's Office of State Planning and Budgeting are currently discussing a mechanism to allow CDPS to submit budget decision items on behalf of the Commission.

Mr. Mauro asked whether the creation of the Telejustice Fund will also compete with the same set-aside funds and commented that Telejustice will likely be costly due to the new requirements for counties to track records and conduct universal screenings.

Ms. Cain responded that the Telejustice proposal was not factored into the current estimate. Mr. Tapia added that the Judicial Branch is currently looking at various options to implement a Telejustice process and will provide additional information when available.

Commissioners discussed the preventive detention model previously developed by the Pretrial Release Task Force. This proposal was tabled until the statewide pretrial framework and processes are in place. Dependent on the legislative outcomes this session, it is anticipated that the Task Force work on comprehensive preventive detention proposal will resume after the session.

Mr. Tapia explained that, due to the reasons he explained earlier in the meeting regarding separation of powers, he will abstain from voting on the recommendation. Judge Bachmeyer will also abstain.

PUBLIC COMMENT

Mr. Hilkey provided an opportunity for members of the public to offer comments in advance of the Commission vote on Recommendation FY20-PR#03 (Implement Bail Bond Reform).

Ms. Elisabeth Epps (ACLU of Colorado & the Colorado Freedom Fund) commended the CCJJ/Pretrial Release Task Force for engaging the community and the American Civil Liberties Union (ACLU) in the process. Ms. Epps, who participated in the discussions at the Task Force, indicated her appreciation that the preventive detention model proposal and the pretrial reform recommendation were being addressed separately by the Commission. Ms. Epps and colleagues at the ACLU hold different views regarding these two proposals. They are supportive of and committed to continue to work on behalf of the pretrial reform effort.

Mr. Zeerip (21st Judicial District Attorney's Office), a member of the Pretrial Release Task Force and Leader of its Preventive Detention Working Group, spoke on behalf of himself (and not on behalf of either the 21st Judicial District or the Colorado District Attorneys' Council). While he supports the recommendation presented today, Mr. Zeerip expressed concern that the core issue of money bail is not included in this recommendation and urged Commissioners to continue efforts to eliminate the cash bail system as the method to detain dangerous people, but that is also applied with extremely deleterious effects to all other justice-involved persons.

GOVERNOR'S VISIT

Mr. Hilkey welcomed Governor Jared Polis and reminded Commissioners that Gov. Polis mentioned pretrial reforms during his State of the State Address on January 9, 2020.

Governor Polis began his comments by acknowledging the importance of the Commission's work and recognizing that the work of the Commission carries strong credibility and value thanks to the broad involvement of stakeholders in Commission efforts.

Major points from the Governor's address are summarized here:

- The criminal justice reform has two main goals: to achieve justice for victims and their families and to increase public safety by keeping dangerous individuals detained and by reducing crime and recidivism.
- There should be rationalization of sentencing to ensure proportionate sentences and to reduce disparities in sentencing. This will strengthen public confidence in the criminal justice system and ultimately reduce the fiscal impact of incarceration.
- The juvenile detention system is looking at ways to integrate more programs that provide pro-social behavior changes and personal skills development to increase the successful pathway to re-entry in the community.
- Several efforts are ongoing in the juvenile justice arena, including the expansion of diversion services aimed at reducing juvenile justice involvement in the criminal justice system. There are significant concerns with and attention on the intersection of delinquency, neglect, dysfunctional environments and involvement in the juvenile justice system. There is also ongoing work in the juvenile detention facilities to ensure that juveniles are provided with safe and secure home-like environment.
- It's important to maximize the use of diversion and pretrial interventions in the adult criminal justice system. The decision to detain should be based on factors such as public safety, justice, fairness to victims, and reducing recidivism and not whether the offender has the means to post bond.
- Many criminal justice reforms passed last year with bipartisan support were mentioned, including the elimination of cash bail for petty and municipal offenses; the ability for defendants to post bond under certain circumstances within 2 hours and be released 4 hours after posting bond; the "Ban the box" efforts that address collateral consequences for those with a felony conviction who encounter barriers to finding a job or place to live; juvenile justice reforms; and the change in offense level from felony to misdemeanor for possession of controlled substance combined with a focus on treatment for addiction.
- The pretrial recommendation presented today addresses the front end of the system and will bring more equity and rationalization to the process. There are individuals detained in jails for minor crimes who do not have the money to post bond and the current monetary bail system criminalizes poverty/financial insecurity and distracts from more fair and effective considerations of risk factors.

Governor Polis encouraged Commissioners to vote in favor of and to continue to support the pretrial recommendation in its entirety. He thanked the Legislative members of the Commission and the Attorney General for their leadership in shepherding and fostering criminal justice reforms. He encouraged these individuals to maintain the complete package of reforms included in the recommendation.

Governor Polis mentioned that he will soon be working in consultation with the Chief Justice and Legislative leadership to submit the biennial letter to the Commission outlining possible areas of work. He thanked Commissioners for their continued work on the overarching goals of making the criminal justice system more rational, keeping people safer and honoring the rights of victims.

Mr. Hilkey thanked Governor Polis for his time, attention and thoughts.

PRETRIAL RELEASE TASK FORCE: FINAL RECOMMENDATION VOTE

Mr. Hilkey requested a motion and second to approve the recommendation. A proper motion was established and, with no further discussion, Mr. Hilkey called for a supermajority vote. *[Required for the approval of all Commission recommendations, the supermajority threshold is 66% of the quorum, combining votes for the A and B alternatives from the following:*

A = I support it, B = I can live with it, or C = I do not support it.]

Final Vote: FY20-PR #03: Implement Bail Bond Reform. [Statutory]

A: 16, B: 6, C: 1 with 2 Abstentions

Recommendation FY20-PR #03 was APPROVED.

Mr. Hilkey commented that the passage of this recommendation is the result of significant work and thanked Task Force members and participants for their time and contributions.

ADJOURNMENT

In light of the recent passage of Commission recommendations that involve statutory revisions, Mr. Hilkey described the responsibilities and membership of the CCJJ Legislative Subcommittee. He explained that, on behalf of the full Commission, the Legislative Subcommittee members follow bills derived from CCJJ recommendations and monitor the language and amendments to such bills. The Subcommittee determines whether a bill continues to reflect the original recommendation intent.

Former CCJJ member Sheriff Joe Pelle, who completed his final Commission term on June 30, 2019, was the “local government entity representative” on the Legislative Subcommittee and, since that date, the position has been vacant. Mr. Hilkey solicited expressions of interest from those Commission members qualified to occupy the position. Commissioners discussed and approved the appointment of Judge Shawn Day to the Subcommittee. Also, Ms. Maureen Cain was approved to occupy an *ex officio* position on the Subcommittee during the 2020 Legislative Session, given her vital work on Recommendation FY20-PR#03 and the focus of upcoming legislative efforts on that recommendation.

The next meeting of the Commission is February 14, 2020 at 1:00 pm in the Lookout Mountain Room of Jefferson County Government Center.

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments. Seeing none, Mr. Hilkey adjourned the meeting at 3:44pm.