



June 24, 2020

Stan Hilkey, Chair
Colorado Commission on Criminal and Juvenile Justice
700 Kipling Street, Suite 1000
Lakewood, CO 80215

Dear Chair Hilkey,

Thank you and the entire Colorado Commission on Criminal and Juvenile Justice (CCJJ or Commission) for your service and commitment to promoting better outcomes in our justice system. After consulting key stakeholders, community members, and legislative leadership, including the Chief Justice of the Colorado Supreme Court and the majority and minority leaders of the House of Representatives and the Senate, we are transmitting this letter to you with suggested topics for the Commission to study in response to your request, per C.R.S. § 16-11.3-103(7).

The last several months have only further underscored the existing inequities and disparities that exist in our country and our state. Many are protesting right now, seeking justice and changes to our law enforcement, criminal, and juvenile justice systems. As Governor, I am focused on building a better Colorado for all. That means promoting public safety, reducing crime, and treating every individual with fairness and equity. Together, the Commission, community, and General Assembly have made great strides to promote these goals. However, it is time we tackle one of the most difficult issues affecting both adults and juveniles in the justice system, especially for people of color: sentencing recalibration.

Our sentencing scheme should be rational, just, and consistent so that the punishment fits the conduct. Sentences should be grounded in anti-bias principles and equity, regardless of race, ethnicity, gender, geography, socio-economic status, disability, or any of the other intersecting identities that may affect sentencing. Laws regarding supervision, detention, and incarceration should reflect our values of rehabilitation and public safety, rather than reflecting the inherent systemic biases in our justice system toward behavioral health conditions, poverty, inequity, or racial-bias. Lastly, incarceration and detention should be reserved for the most serious cases, and rehabilitation should be our goal in every case.

Many values should factor into sentencing decisions, including:

1. Maximizing community safety without excessive supervision or incarceration;
2. Providing restoration and healing for victims;
3. Ensuring fair and consistent treatment;
4. Eliminating unjustified disparity in sentences;
5. Providing effective deterrents to committing crimes;
6. Promoting rehabilitation, especially in community settings;
7. Addressing individual characteristics in an unbiased manner and reducing recidivism; and

8. Promoting acceptance of responsibility and accountability.

To achieve more effective sentencing across our justice system, the Commission should revisit its work creating sentencing grids, and apply this methodology to the entire criminal codes. We recognize that recalibrating sentencing is no easy task -- if it were, it would have already been completed. However, we are confident that the Commission possesses the expertise needed from the justice system, including district attorneys, defense attorneys, the judiciary, law enforcement, victim advocacy, and reform communities, as well as the academic rigor and thoughtful consideration needed for such a task. The Commission should ensure that victims are heard and respected and that offenders' sentences are not excessively punitive. The Commission should also build upon the work of the General Assembly to ensure that, wherever feasible, evidence-based strategies such as restorative justice are utilized.

We encourage the Commission to study, discuss, and return recommendations to the Governor on the following topics, deploying evidence-based practices when possible:

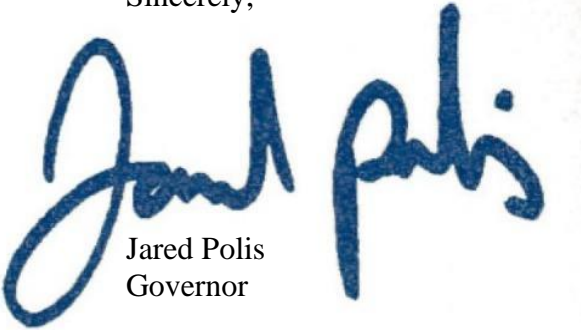
1. Analyzing prison population trends, and continually reviewing the implications of any changes in sentencing on the length of those incarcerated in the Department of Corrections (DOC). The Commission should recognize the finite resource of available beds in DOC, as well as the administration's effort to eliminate private prison capacity.
2. Developing a guideline approach to structuring dispositions.
3. Defining the purpose of probation, so that the terms and consequences of violations support best practices.
4. Ensuring statewide consistency in the application of sentencing guidelines that mitigate the effects of individual discretion by system actors.
5. Determining the appropriate degree of determinacy and where to strike a balance between "truth in sentencing" and ensuring that there are incentives for success throughout an offender's sentence. This includes reviewing:
 - a. The necessity of the extraordinary risk section in C.R.S. 18-1.3-401(10), to simplify the sentencing code while at the same time providing the prosecution with more discretion in charging and negotiations.
 - b. Habitual criminal provisions of C.R.S. 18-1.3-801 so that we are enhancing sentences for only those individuals who are truly public safety risks.
6. Optimizing how community resources are allocated to better align interventions that are more likely to reduce recidivism and provide meaningful sentencing choices.
7. Improving the interactions between those with behavioral health conditions (including individuals with intellectual and developmental disabilities, traumatic brain injuries, and dementia) and first responders, law enforcement, and healthcare workers, so that those with behavioral health conditions are not unnecessarily involved in the justice system due to unmet health needs.

The Commission should ensure that the workgroups it creates represent the people of Colorado and the communities the justice systems serve. It should leverage the membership of the Commission, as well as other justice system decision-makers that bring practical experience from their work adjudicating criminal cases. I encourage the Commission to be aggressive and flexible with their meetings and process so that we quickly, but thoughtfully, move recommendations. We

request that the Commission provide an update on their progress at the Department's SMART Act hearing during the winter, and encourage the recommendations to be completed so they may be enacted into law by the General Assembly during its 2021 legislative session. Finally, we hope that the Commission after completing this work for adults can then apply these same values and principles to the creation of sentencing guidelines for juveniles.

We hope that you will take up these suggestions this summer and fall, and complete this very important task. Together, we can continue to advance efficient and effective policies that improve outcomes, change lives, and make our communities across Colorado safer for all.

Sincerely,

A handwritten signature in blue ink, reading "Jared Polis". The signature is written in a cursive, flowing style. The first name "Jared" is written in a large, looped script, and "Polis" is written in a similar but slightly more compact style. The signature is positioned to the right of the typed name and title.

Jared Polis
Governor