



Colorado Commission on Criminal and Juvenile Justice

Minutes

July 10, 2020 / 1:00pm

(Virtual Meeting)

Commission Member Attendance

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

Guests: Audrey Weiss

CALL TO ORDER AND OPENING REMARKS

Stan Hilkey, CCJJ Chair, Executive Director/Colorado Department of Public Safety

Abigail Tucker, CCJJ Vice Chair, Chief Clinical Officer/Community Reach Center

Mr. Hilkey, Commission Chair called the meeting to order at 1:03 pm. Mr. Hilkey thanked Commissioners for attending and asked for any additions or corrections to the June 12 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Mr. Hilkey announced the recent appointment of Representative Terri Carver to the Commission and acknowledged the contribution and service of former Commissioner Representative Matt Soper.

Mr. Hilkey reviewed the agenda and explained that the goal of the meeting was to hear the final presentations of the recommendations from the Opioid Subcommittee and the Drug Offense and the Age of Delinquency Task Forces and to conduct a final vote on these recommendations.

PUBLIC COMMENT: No members of the public signed up to offer comment.

OPIOID INVESTIGATIONS SUBCOMMITTEE

Final Recommendation Presentation

Matt Lewis / Bill Kilpatrick, Subcommittee Co-Chairs

Sheriff Lewis directed Commissioners to the final recommendations provided in the meeting materials and reviewed the elements of three recommendations inserted below.

FY20-OP #01. Establish a Statewide Entity to Coordinate Strategy Regarding Dangerous Drugs

Establish a narcotics enforcement entity, the Dangerous Drugs Coordination Council (“the Council”), that facilitates and coordinates the sharing of information among law enforcement agencies across the state. The Council, to be housed in the Colorado Department of Public Safety, will provide a structure for collaboration, information sharing, and efforts to support local law enforcement agencies.

The Council:

- will coordinate strategic responses to emerging illicit drug trends, regardless of the drug type involved
- will orchestrate the implementation of an emergency medical service tracking and reporting system, the Overdose Detection Mapping Application Program (ODMAP)
- requires one full time employee (FTE) to coordinate the meetings and meet the analytical needs of the entity. The position will be housed in the Colorado Department of Public Safety where it can benefit from the work of the Colorado Information Analysis Center (CIAC)
- shall include at a minimum, representatives from the following:
 - Colorado Information Analysis Center
 - Colorado Coroners Association
 - Colorado Health Care Policy and Financing
 - Colorado Department of Public Health and Environment
 - 1 Police Chief, rural district
 - 1 Police Chief, urban district
 - 1 Sheriff, rural district
 - 1 Sheriff, urban district
 - Colorado Drug Investigators Association
 - Colorado District Attorney’s Council
 - Colorado Attorney General’s Office
 - Colorado Bureau of Investigations
 - Colorado Department of Public Safety
- To facilitate coordination and collaboration, shall invite important Federal partners and stakeholders that include but are not limited to the following:
 - U.S. Attorney’s Office
 - U.S. Homeland Security Investigations
 - U.S. Postal Inspection Service
 - U.S. Drug Enforcement Administration
 - Rocky Mountain High Intensity Drug Trafficking Area
 - Federal Bureau of Investigation
 - Bureau of Alcohol Tobacco Firearms and Explosives

FY20-OP #02. Establish a Statewide Dangerous Drugs Investigation and Enforcement Team

Establish a statewide Dangerous Drugs Investigation and Enforcement Team within the Colorado Bureau of Investigation (CBI) to assist and support law enforcement around the state to identify and investigate unlawful opioids and other dangerous drugs. Rural and frontier areas will be the priority for this team.

In order to meet the expected investigative demands, the vast geographic area to be served and special considerations relating to officer safety, the Dangerous Drugs Enforcement Team will comprise 16 total staff members divided into two teams: one assigned to the western and one to the eastern slope. It is estimated that the total costs will range between \$2.6M to \$3.0M over the first 3 years of operation. These 16 team members will consist of the following:

- 10 Agents (Criminal Investigator II; 5 Grand Junction/Durango and 5 Douglas Co./Pueblo)
- 2 Agents in Charge (Criminal Investigator III; One supervisor assigned to each slope)
- 2 Intelligence Analysts (One assigned to each slope)
- 2 Administrative Assistants III (One assigned to each slope)

FY20-OP #03. Implement Unified Drug Overdose Reporting and Tracking

Implement and require participation by public safety and public health personnel in the Overdose Detection Mapping Application Program (ODMAP) in Colorado. The Washington/ Baltimore High Intensity Drug Trafficking Area's ODMAP is an emergency medical service tracking and reporting system. To facilitate expeditious public health and law enforcement responses to save lives in Colorado, the following entities should be required to implement and participate in this program:

- The statewide ODMAP implementation will require coordination and leadership. The Dangerous Drugs Coordination Council (created in Recommendation FY20-OP #01) will be responsible for directing the implementation of ODMAP, including outreach to rural agencies, and facilitating statewide participation.
- Emergency Medical Services (EMS), Coroners, Law Enforcement & Emergency Departments (ERs)

DISCUSSION

[The questions and comments occurring throughout the presentation of the three recommendations are reflected in the following summary.]

Mr. Hilkey commented that the Opioid Investigations Subcommittee developed the recommendations prior to the COVID-19 pandemic and that the focus was to address the gaps identified and present policy recommendations to address these gaps. Recs. #01 "the Council" and #02 "Investigation Team" require statutory provision and funds to support FTE and the implementation of an investigation team. Mr. Hilkey suggested that weighing budget considerations was the responsibility of the Legislature and that related legislation may only be possible at a future date when resources become available.

Relating to Rec. #02 (Investigations Team), Sheriff Lewis added that the Dangerous Drug Investigation Team is modeled after the CBI Black Market Marijuana Team.

Mr. Hilkey asked whether there was any further discussion of the recommendations. Seeing none, Mr. Hilkey requested a motion to approve the recommendations. A motion was offered by Sheriff Lewis to approve Rec. FY20-OP #01 and seconded by Dr. Tucker. The process for supermajority voting on a final recommendation was explained. To pass, a Commission recommendation requires approval by 66% of the members, combining the A and B votes of the following: A = I support it; B = I can live with it; or C= I do not support it

FINAL REVISED VOTE: FY20-OP #01. Establish a Statewide Entity to Coordinate Strategy Regarding Dangerous Drugs

A: 17 B: 1 C: 5

Recommendation FY20-OP#01 was APPROVED.

NOTE: An initial vote result occurring at this point in the meeting was revised and replaced at the end of the meeting (described below). Only the final revised vote is displayed above.

Sheriff Lewis moved to approve Rec. FY20-OP #02 and Mr. Clifford seconded.

FINAL REVISED VOTE: FY20-OP #02. Establish a Statewide Dangerous Drugs Investigation and Enforcement Team

A: 6 B: 6 C: 10 Abstention: 1

Recommendation FY20-OP #02 was NOT APPROVED

NOTE: An initial vote result occurring at this point in the meeting was revised and replaced at the end of the meeting (described below on p.9). Only the final revised vote is displayed above.

Sheriff Lewis moved to approve Rec. FY20-OP #03 and Ms. Paccione seconded.

FINAL VOTE: FY20-OP #03. Implement Unified Drug Overdose Reporting and Tracking

A: 19 B: 5 C: 0

Recommendation FY20-OP#03 was APPROVED.

FURTHER DISCUSSION: OPIOID INVESTIGATIONS SUBCOMMITTEE RECOMMENDATIONS

[At the end of the meeting, there was an additional discussion of the first two recommendations presented: FY20-OP #01 and FY20-OP #02. That discussion, appended here, led to a request by members to revise the previous vote on those two recommendations only. For additional information, see the section near the end of these minutes labeled, VOTE REVISION REQUEST.]

Ms. Stith requested whether any Commissioners who voted against Recs. FY20-OP #01 and FY20-OP #02 would be willing to share the reasons for their position(s) against the recommendations.

Ms. Hilkey believed that, although supportive of law enforcement initiatives, the focus of opioid intervention should be on funding mental health and substance abuse treatments in the community. She added that a significant number of people are in prison for drug offenses and there is a lack of resources in the community for parole officers to refer parolees to evidence-based treatments.

Mr. Williams explained to the group that he agreed with coordinating responses and collecting data but questioned whether the response should solely reside within law enforcement. Dr. Tucker agreed, but also added that first responders should be part of the solution.

Mr. Matson agreed with Mr. Williams and believed that the extent of the problem should be better understood before funding a Dangerous Drugs Investigation and Enforcement Team with significant fiscal impact.

Ms. Ring echoed previous statements and added that the recent events related to the Black Lives Matter movement are leading to a culture shift regarding law enforcement and consequently the criminal justice system. With this opportunity for culture change in the criminal justice system, stakeholders should take a step back to examine and improve the system.

AGE OF DELINQUENCY TASK FORCE

Preliminary Recommendation Presentation

Joe Thome, Jes Jones, Task Force Co-Chairs

Mr. Thome presented the two preliminary recommendations derived from work on the mandates in House Bill 2019-1149 to study issues surrounding emerging adults and the age of delinquency. The Task Force reviewed best practices and brain development research to yield the most feasible ideas from the possible approaches that were explored. The first recommendation was shepherded by Task Force member Shawn Cohn and the Community Supervision Working Group members who gathered feedback and advice from chief probation officers around the state. The second recommendation was guided by Maureen Cain and the Youthful Offender System (YOS) Working Group that included representatives of YOS. The central elements of the two draft recommendations follow.

FY 20-AD #01. Incorporate Standards to Formally Recognize and Address the Needs of Young Adults in Probation Supervision [Policy]

Adult probation supervision standards promulgated by the Judicial Department should be modified and expanded by July 1, 2021 to create specific standards associated with probation supervision of young adults (18-24-year olds). These supervision standards should reflect current research and knowledge about age and brain development, especially regarding matters such as impulsivity, risk taking, and appreciating consequences of actions taken. Further, these standards should be guided by evidence-based or emerging best practices regarding the supervision of young adults, including case management approaches, involvement of the family in supervision efforts, responses to violations, the use of appropriate assessment tools, the use of restorative justice principles and practices, and partnerships with providers and the community to meet the needs of this population.

The implementation of this policy update should include the following:

- Training regarding brain development,
- Targeted interventions based on brain science,
- The need for development of partnerships with service providers and other community stakeholders to meet the needs of this population,
- Restorative justice,
- Assessment and case planning; case planning that incorporates educational/vocational training and life skills.
- Technical assistance should be provided to probation departments to facilitate the implementation of best practices.

FY20-AD #02. Revise Youthful Offender System Statutes [Statutory]

Expand the operational flexibility of the Youthful Offender System (YOS) program in the Department of Corrections; clarify the time credits that are awarded in YOS cases when a revocation occurs; address issues regarding payment of certain fees in YOS cases; and modify training requirements for DOC staff who work with inmates that are placed in YOS facilities.

Specifically, modify the following provisions in statute:

- 1) Delete in 18-1.3-407 (2)(a)(IV)(a.5) the prescriptive programming language;
- 2) Amend “may” to “shall” in 18-1.3-407 (2)(a)(IV)(b) regarding time credit;
- 3) Amend 18-1.3-407 (3.3)(c)(I) regarding placement in YOS Phase II;
- 4) Add “OR DESIGNEE” in 18-1.3-407 (3.5) regarding staff transfers to reflect current practice;
- 5) Amend 18-1.3-407 (3.5) to allow flexibility regarding staff training requirements;
- 6) Delete 18-1.3-407 (11) regarding district attorney data collection; and
- 7) Amend 18-1.3-407 (11.5)(a)(I) and (11.5)(c) to clarify court cost payments.

DISCUSSION

[The questions and comments occurring throughout the presentation of the two recommendations are reflected in the following summary.]

Ms. Jones commented that these recommendations are the result of significant work and discussion from the members of the Task Force. The group examined the appropriate uses of the juvenile justice system or YOS and the recommendations presented focus on processes within the Judicial Department (Probation) and the Youthful System Offender serving young adults.

With regards to Rec. #01 (Probation), Mr. Tapia indicated he discussed the recommendation with the Chief Probation Officers and that no full consensus position had been reached on this recommendation. It is believed that the research on brain development and correctional practices for this population is not yet conclusive but this issue will be revisited annually as the adult probation standards are updated each year and will reflect emerging research.

The group discussed possible combined training for parole and probation officers, emerging research, and the necessity to continue to examine best practices and approaches for this emerging adult population.

Mr. Williams (CDOC Executive Director) thanked the Age of Delinquency Task Force members for their work around the Youthful Offender System.

With no further discussion of the recommendations offered, Mr. Hilkey requested a motion to approve the recommendations by supermajority. Ms. Jones moved Rec. FY20-AD #01 for approval and Ms. Paccione seconded. [A = I support it; B = I can live with it; or C= I do not support it]

FINAL VOTE: FY20-AD #01. Incorporate Standards to Formally Recognize and Address the Needs of Young Adults in Probation Supervision

A: 19 B: 3 C: 0

Recommendation FY20-AD#01 was APPROVED.

Ms. Jones moved to approve Rec. FY20-AD #02 and Representative Gonzales-Gutierrez seconded.

FINAL VOTE: FY20-AD #02. Revise Youthful Offender System Statutes [Statutory]

A: 21 B: 1 C: 0

Recommendation FY20-AD#01 was APPROVED.

DRUG OFFENSE TASK FORCE

Preliminary Recommendation Presentation

Audrey Weiss, Task Force Member

Ms. Weiss briefly described one of the mandates in Senate Bill 2019-008 for the Commission to make recommendations concerning a process for *automatically* sealing criminal records for certain drug offense convictions. She also referenced House Bill 2019-1275 (*Concerning Increased Eligibility for the Sealing of Criminal Justice Records by Individuals Who Are Not Under Supervision*) that reenacted statutes related to the sealing of records via a simplified sealing process or a simplified petition process, depending on particular offenses and case circumstances. The work on automatic sealing is an extension of the groundwork laid by H.B. 19-1275. The Sealing Working Group engaged with individuals in Pennsylvania and Utah where similar automatic sealing efforts are under way.

FY20-DR #01. Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses

Create, implement, and fund a process that will permit the automatic sealing of criminal conviction records for drug offenses. The State Court Administrator's Office (SCAO), the Colorado Bureau of Investigations (CBI), and each district attorney's office will implement procedures to evaluate cases that

qualify for automatic sealing and will automatically seal eligible cases without associated fees, a Motion or a Petition to Seal being filed by the defendant.

The following describes the recommended process:

- The State Court Administrator's Office (SCAO) will prepare a list of drug convictions that are eligible to be sealed pursuant to Sections 24-72-703 and 24-72-706, C.R.S. from the current state database. Cases that qualify for automatic sealing will be based on the drug charge(s) of which the defendant was convicted, the lack of any subsequent criminal convictions during the requisite waiting period, the lack of any pending criminal cases, and the payment in full of all fines, fees, costs, and restitution. The current state database and the database used by entities not on the state system (for example, the City and County of Denver) will be reviewed for subsequent convictions and pending criminal cases. This review is name-based and a sufficient number of points of reference for identification validation will be determined by SCAO. If a sufficient number of points of validation are not present, the conviction is not eligible for automatic sealing. Convicted charges must be drug charges only and all charges must qualify to be sealed. Petty offense/misdemeanor drug convictions will qualify for automatic sealing seven years after the disposition of the case, and felony drug convictions will qualify for automatic sealing 10 years after the disposition of the case. The list will be categorized by judicial district.
- The SCAO will forward the list of eligible cases to the Colorado Bureau of Investigations (CBI). CBI will compare the list to criminal histories on file. This review is fingerprint-based, and a sufficient number of points of reference for identification validation will be determined by CBI. If a sufficient number of points of validation are not present, the conviction is not eligible for automatic sealing. CBI will disqualify any cases in which the defendant was convicted of criminal charges during the requisite waiting period.
- CBI will forward the amended list to the district attorney's office in each judicial district. The district attorney's office will disqualify cases in which a condition of the plea bargain agreement was not to seal the case and cases where the defendant has pending criminal charges.
 - (1) Each district attorney's office will forward the amended list to the SCAO. The SCAO may be given the authority by the presiding Chief Judge of each judicial district to sign off on a sealing order. If the SCAO is given this authority by the Chief Judge, then the SCAO will have a sealing order issued in each case, pursuant to this authority. SCAO will seal the court record. SCAO will transmit a copy of the sealing order to CBI, the law enforcement agency that investigated and filed the case, and the district attorney's office to seal their records.OR, if the Chief Judge does not give this authority to SCAO,
 - (2) The district attorney's office will forward the amended list to the district court(s) in their respective district(s) who will enter an order to seal each case. The list of sealed cases will be transmitted to the SCAO. The SCAO will seal the court records. A copy of the sealing order will be transmitted by SCAO to CBI, the law enforcement agency that investigated and filed the case, and the district attorney's office to seal their records.
- Reasonable efforts will be made to create and implement the programs and procedures necessary for automatic sealing. Development, creation, and testing of the process should be completed within two years.
- The generation of the list by SCAO of the backlog of eligible cases and the entry of the sealing order for the backlog cases should be completed within one year after the development, creation, and testing of the process is completed, subject to available resources.
- Once the backlog of cases is completed, SCAO will generate a list of eligible cases for sealing every 35 days. CBI and each district attorney's office will be allowed 35 days to complete their functions in reviewing the list of eligible cases under the statutory mandate. Each district court or SCAO under the authority of the district court will enter the order as soon as practical but no later than 14 days. Once

the sealing order is received, CBI, law enforcement and the district attorney's office shall seal their records as soon as practical but no later than 14 days.

- Funding should be provided for initial development and continued maintenance for each agency involved in the process.

DISCUSSION

Ms. Jackson, in reference to the fees related to record sealing, expressed concern that indigent defendants may not be able to pay such fees, which results in a barrier to sealing records for these individuals. Ms. Weiss responded that under the current statutes, indigent defendants have the opportunity to request a fee waiver.

The group discussed the short timeline of one year allowed for SCAO to generate a list of eligible cases. The initial task will be immense to work through the backlog of the potential cases. Ms. Weiss confirmed that the automatic sealing of felony drug cases would be retroactive, reaching back several years...assuming defendants have not been convicted of any subsequent crimes.

Mr. Tapia expressed concern that initiating the sealing process for several years of "backlogged cases" would represent significant research and effort to implement and will require funding for the SCAO and/or the Judicial Districts. Ms. Weiss indicated that the Colorado Bureau of Investigation estimated that the initial cost for an automatic sealing process was \$2M. The cost of such implementation for the judicial districts is unknown.

Mr. Hilkey reminded the group that this recommendation was developed in response to one of the mandates in Senate Bill 2019-008 for the Commission to make recommendations concerning a process for *automatically sealing* criminal records for certain drug offense convictions and that funding considerations would be decided at the Legislature.

Mr. Hilkey requested a motion to approve the recommendations. A motion to approve Rec. FY20-DR #01 was offered by Mr. Matson and seconded by Ms. Jones.

FURTHER DISCUSSION

Mr. Tapia explained that, due to the current economic environment resulting from the COVID-19 pandemic, the Judicial Branch must reduce its budget by \$11M, including about 150 FTE positions throughout the judicial districts. The SCAO is responsible for a portion of these budget cuts and this will significantly affect task capacity at the state and local levels. Mr. Tapia stated that although he would abstain from the vote, in light of these budgetary impacts, he was not in favor of this recommendation.

Judge Day echoed Mr. Tapia and expressed concerns for a possible unfunded mandate on municipal courts and cities. Because of the uncertainty of the funding aspect, Judge Day stated that he will also oppose the recommendation.

Commissioners discussed the issue of funding at length. Members were reminded that, via the statutory mandate to address this issue (in Senate Bill 2019-008), the Legislature had requested that the Commission develop recommendations for an automatic sealing process. Funding considerations and decisions will be made by legislators, if a bill is introduced.

Mr. Hilkey requested any further discussion of the recommendations and, seeing none, the group proceeded to the supermajority recommendation vote. [A = I support it; B = I can live with it; or C= I do not support it]

FINAL VOTE: FY20-DR #01. Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses

A: 13 B: 5 C: 3 Abstention: 1

Recommendation FY20-DR#01 was APPROVED.

VOTE REVISION REQUEST

*[At this point in the meeting, additional points of discussion were raised regarding two recommendations considered at the beginning of the meeting: FY20-OP #01 and FY20-OP #02. See a summary of this discussion above in, **FURTHER DISCUSSION: OPIOID INVESTIGATIONS SUBCOMMITTEE RECOMMENDATIONS.**]*

Representative Serena Gonzales-Gutierrez referred to the brief initial discussion and vote on Recs. FY20-OP#01 and #02 at the beginning of the meeting while referencing the new points raised in “FURTHER DISCUSSION: OPIOID INVESTIGATIONS SUBCOMMITTEE RECOMMENDATIONS.” She asked whether one may revise one’s vote on previously considered recommendations during the same meeting.

Ms. Stith and Ms. Jackson added that subsequent discussions on other recommendations later in the meeting and the new information from those who had previously voted in opposition had altered their opinions of Recs. FY20-OP#01 and #02. They also expressed interest in the opportunity to revise their previous votes.

Considering that the CCJJ Bylaws do not address this unprecedented request, Mr. Hilkey engaged the group to discuss allowing members to revise their votes regarding recommendations presented earlier in the meeting and how the membership might proceed.

DISCUSSION

Some Commissioners expressed support to allow vote revision for those who were no longer comfortable with their previous vote and because the request had proceeded the meeting adjournment. Others argued that this permission would set a troubling precedent, if it resulted in an iterative process of repeated requests to revise one’s vote following each completed vote.

The group was directed to *Robert’s Rules of Order*. This online edition* indicated, “A member has the right to change his vote up to the time the vote is finally announced. After that, he can make the change only by permission of the assembly, which may be given by general consent; that is, by no member’s objecting when the chair inquires if any one objects. If objection is made, a motion may be made to grant the permission, which motion is undebatable.” [* Note: Without a current edition at hand, a 1915 4th edition in the public domain available online was referenced.]

Deciding to conduct a simple majority vote applicable to this limited instance and this meeting only, Mr. Hilkey requested any further discussion. Seeing none, he solicited a motion to allow the revision of votes on only Recommendations FY20-OP#01 and #02. Senator Gonzales offered a motion that was seconded by Mr. Matson.

VOTE: To allow an opportunity for Commissioners to revise previous votes only on Recs. FY20-OP #01 and FY20-OP #02.

Support: 17 Do not support: 4

The motion to allow the limited vote revision opportunity was APPROVED. A few members revised their prior votes. Only the final revised vote totals are reported in these minutes above.

Mr. Hilkey indicated that the CCJJ staff will be tasked to study vote revision alternatives. A protocol will be presented to Commissioners prior to the August meeting for discussion and for a vote in September *[Note: CCJJ Bylaws require written notice thirty days prior to any motion to amend the Bylaws.]*.

WRAP-UP DISCUSSION

Mr. Hilkey referred to the letter from Governor Polis included in the meeting materials. He commented that the Commission has been tasked to address several important topics including a broad sentencing reform. Mr. Hilkey appointed Mr. Rick Kornfeld (CCJJ) and Michael Dougherty (20th JD District Attorney) as Co-Chairs of the Task Force. Considering the limited staffing capacity, the other topics for study will be addressed at a later date. Mr. Hilkey invited any Commissioner member who was interested to contact staff to volunteer to participant on this task force.

ADJOURNMENT

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 3:36 pm.