



**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

August 14, 2020 / 1:00pm

**(Virtual Meeting)**

**Commission Member Attendance**

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

Guest: Adam Zarrin, Governor’s Office

**CALL TO ORDER AND OPENING REMARKS**

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

Dr. Tucker, Commission Vice Chair called the meeting to order at 1:03 pm. Dr. Tucker thanked Commissioners for attending and explained that, at the request of the Governor, Mr. Hilkey was required to attend a different meeting. Dr. Tucker asked for any additions or corrections to the July 10 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Dr. Tucker outlined the agenda, which included a preliminary recommendation presentation from the Drug Offense Task Force, a proposed revision of the CCJJ Bylaws regarding voting protocol and the forthcoming task force on sentencing.

**DRUG OFFENSE TASK FORCE**

**Megan Ring / Tom Raynes, Task Force Co-Chairs**

**Preliminary Recommendation Presentation**

**Adam Zarrin / Joe Thome, Diversion Working Group Co-Leaders**

Mr. Zarrin directed Commissioners to preliminary Recommendation FY20-DR #02 (Support a Public Health Model of Deflection [Policy]) provided in the meeting materials. He explained that the current recommendation replaced a previous recommendation that was developed and subsequently abandoned [*the abandoned recommendation can be found in Appendix 1*].

Rec. FY20-DR #02 reflects a transformation in perspective by the members of the Diversion Working Group and Drug Offense Task Force away from a law enforcement centered approach to diversion for those with substance abuse issues who have committed drug offenses. Rather, the recommendation takes a public health approach that incorporates the collective experiences and perspectives drawn from recent events, including the budget challenges related to COVID-19, efforts to achieve racial equity and justice, and the need to redirect responses to social problems from criminal justice.

Mr. Zarrin thanked Dr. Tucker and Ms. Shively for their contributions in the preparation of the re-envisioned recommendation for the Diversion Working Group. He reported that the recommendation was unanimously approved by members of the Task Force. Mr. Zarrin reviewed the elements of the draft recommendation inserted below.

**FY20-DR #02. Support a Public Health Model of Deflection [Policy]**

Fund public health interventions that strengthen community resources and expand alternatives to filing criminal charges against adults and youth with substance use issues who are at risk of justice involvement. By aspiring to a public health approach — which redirects individuals with substance abuse issues engaging in behaviors that can lead to incurring criminal charges from the justice system entirely — this recommendation shifts priorities in funding upstream, supporting the still inadequate system for care coordination and treatment. Recognizing that funding diversion programs that are post-arrest continues to inadvertently reinforce the justice system as the point of intervention for many individuals with substance use disorder treatment needs not withstanding potential for co-occurring mental health needs, true alternatives are still needed to avoid the justice system operating as a healthcare system of intervention and care.

To facilitate this approach, implement the following:

- Priority #1: Provide funding and improve access to coordinated treatment provider and care coordination systems so that individuals and families can access services, interventions, supports, and treatment modalities within their community, leading to a decrease in call volume for first responders and reliance on the justice system as a point of intervention and to improved community wellness.
- Priority #2: Continue to improve training and to enhance service provider collaboration with law enforcement including but not limited to expanding co-responder and law enforcement diversion programs and deflection models that also include the critical component of care coordination, treatment when and where necessary and community engagement. Without community supported and appropriately funded alternative case management and treatment options, first responders will continue to be left without options that match the complexity of needed care.
- Priority #3: Continue to increase post-arrest diversion opportunities to create multiple “off-ramps” from criminal justice system entanglement and prioritize programs using a harm-reduction approach to address the underlying needs of individuals, the community, and victims.

**DISCUSSION**

Judge Bachmeyer asked whether this approach to diversion opportunities would be extended to defendants who have committed non-drug related crimes while under the influence of drugs.

Ms. Ring explained that the eligible charges had been discussed at the Drug Offense Task Force when drafting the original, abandoned recommendation. This recommendation proposes a broader systematic response with a focus on early intervention by the behavioral and public health systems (see “Priority #1”).

Representative Gonzales-Gutierrez asked whether a process had been defined for post-arrest intervention to help guide law enforcement officers and district attorneys.

While the recommendation focuses on early community intervention by behavioral and public health systems, "Priority #3" suggests the continuation of post-arrest diversion opportunities. Mr. Raynes clarified that post-arrest diversion decisions would remain at the discretion of district attorneys.

Commissioners expressed concerns about the fiscal implications should this recommendation become legislation. The point was clarified and re-emphasized that this *policy* recommendation is a statement of principle that focuses on *public health* as the primary mode of response. The recommendation does not propose statutory language or suggest a specific fiscal commitment.

An example of the impact of a policy recommendation was provided by Adam Zarrin who indicated that such positions can contribute to guiding budget priorities at the Governor's Office. Ms. Ring reinforced the importance of offering policy guidance for those making difficult budget decisions.

Ms. Ring thanked the Task Force and Working Group members for their time, commitment and effort.

### **CCJJ BYLAWS: PROPOSED REVISION**

Dr. Tucker referred to the proposal for a Commission *Bylaws* amendment sent electronically to Commissioners on August 10 and included in the meeting materials. *Bylaws* amendments require written notice 30 days prior to the motion to amend. Therefore, the amendment vote will be held at the September 11 CCJJ meeting. The proposed amendment (in **CAPS/bold**) is as follows:

Section 7.4: Decisions shall be made, as defined in the *CCJJ Process and Protocols* document, by majority or supermajority vote of Commission members present at any scheduled Commission meeting. **UPON THE ANNOUNCEMENT OF VOTE RESULTS, VOTES ARE CONSIDERED FINAL.**

Dr. Tucker described the derivation of the amendment. On July 10, 2020, due to a notable lack of pre-vote discussion on particular recommendations earlier in the meeting and points raised in later recommendation discussions, some felt that their earlier votes no longer reflected their stances on the issues. These members requested and were allowed to revise specific recommendation votes that occurred early in the meeting (*Note: The Bylaws are silent on the issue of vote revision.*).

It has become apparent that an unfortunate consequence of teleconferencing may be a reduction in deliberative discussion. That is, individuals are more likely to remain silent during a video meeting compared to an in-person meeting. Bill Kilpatrick was dubious that the medium had so curtailed discussion that vote revision was necessary. Nonetheless, in future, efforts will be made to enhance and encourage discussion prior to votes. In addition, staff will confirm that votes conducted during virtual meetings have been recorded accurately before a vote result is announced. Because the events of July 10 appear related to process concerns that will be addressed, the *Bylaws* amendment was proposed to disallow the option of vote revision [The Commission *Bylaws* and *Process and Protocols* documents are available at, [ccjj.colorado.gov/ccjj-bylaws-policy](http://ccjj.colorado.gov/ccjj-bylaws-policy).]

**SENTENCING REFORM EFFORT**

Dr. Tucker referenced the recent *2020 Biennial Letter\** from Governor Polis which tasked the Commission to address several important topics, including several sentencing issues. Mr. Kornfeld (CCJJ member representing criminal defense) and Michael Dougherty (District Attorney, 20<sup>th</sup> J.D.) have been appointed as Co-chairs of the forthcoming task force. [*\*The "Biennial Letter" may be found on the Commission website at, [ccjj.colorado.gov/ccjj-mandates](http://ccjj.colorado.gov/ccjj-mandates).*]

**Forthcoming task force on sentencing (Rick Kornfeld, Task Force Co-chair)**

Mr. Kornfeld offered a general overview of the plans for the task force (the presentation is available on the Commission website under "Meetings" at, [ccjj.colorado.gov/ccjj-mtg2020](http://ccjj.colorado.gov/ccjj-mtg2020)). The highlights of the presentation are as follows:

**PLAN**

- First meeting: Wed., Sept. 9, 2020 @ 1:30pm [*virtual meeting details to be posted*].
- Membership: There are 22 members who represent diverse perspectives and expertise, including prosecution, defense, victim concerns, lived experience, and disparity in justice.
- Structure: The Task Force may seat two to four Working Groups to develop recommendations on the assigned topics.
- Topics: Address specific, assigned topics.  
Members will more fully delineate the assigned topics and task strategy during the first meetings of the task force.

**ASSIGNED TOPICS**

- Analyze prison population trends and population implications for any sentence length changes (*including, limited CDOC bed resources & private prison elimination*).
- Develop guidelines to structure dispositions.
- Ensure statewide consistency to mitigate effects of discretion in the application of sentencing guidelines.
- Determine balance between sentence determinacy and opportunities for incentives. Also, review necessity, simplification and/or specificity of Extraordinary Risk and Habitual Criminal provisions.

**DISCUSSION**

Mr. Kornfeld welcomed any input or ideas from Commission members to inform the development of the workplan of the task force.

Ms. Russo, who represents the juvenile system, asked whether the task force focus will be on adults and not on juveniles. Mr. Kornfeld confirmed that the focus will be on adult sentencing. Mr. Thome added that the adult sentencing topic is quite complex and the task force's charge is already quite challenging.

**PUBLIC COMMENT**

No public comment was offered.

**WRAP-UP AND ADJOURNMENT**

Details of the upcoming Commission meeting on September 11 at 1:00 pm will be forwarded to Commissioners and posted on the CCJJ website. The. Dr. Tucker thanked members for their time and, with no further business raised by members, adjourned the meeting at 1:54 pm.