



Colorado Commission on Criminal and Juvenile Justice

Minutes

October 8, 2021 / 1:00pm-4:00pm

Virtual Meeting

Commission Member Attendance

Stan Hilkey, Chair	Julie Gonzales - ABSENT	Steve O’Dorisio
Abigail Tucker, Vice Chair	Serena Gonzales-Gutierrez	Angie Paccione - ABSENT
Taj Ashaheed	Kristen Hilkey - ABSENT	Tom Raynes
Terri Carver	Kristiana Huitron	Megan Ring - ABSENT
Minna Castillo-Cohen	Jessica Jones	Michael Rourke - ABSENT
Shawn Day	Bill Kilpatrick	Gretchen Russo - ABSENT
Janet Drake	Rick Kornfeld - ABSENT	Glenn Tapia
Valarie Finks	Greg Mauro	Dean Williams
Bob Gardner - ABSENT	Derek McCoy	^ <i>Sheriff</i>
Priscilla Gartner - ABSENT	Patrick Murphy	Joe Thome, <i>ex officio</i> - ABSENT

Guest: Phil Weiser, Attorney General; Ingrid Carlson Barrier, Department of Law

^ *pending appointment*

Call to Order and Opening Remarks

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

Mr. Hilkey, Chair of the Commission and Executive Director of the Department of Public Safety, called the meeting to order at 1:04 pm. Mr. Hilkey announced the re-appointments of Mr. Day, Ms. Finks, Ms. Jones, Mr. Kornfeld, Mr. Mauro and Ms. Tucker and welcomed Mr. Ashaheed, Ms. Huitron, Mr. McCoy, and Mr. O’Dorisio to their first meetings. Mr. Hilkey asked Commissioners to introduce themselves.

Mr. Hilkey acknowledged the contribution and service of former Commissioners Mr. Andrew Matson (Lived Experience/CO CURE), Ms. Jenny Stith (Victim/Survivor representative), and Ms. Anne Tapp (Victim Advocate representative). Ms. Stith and Ms. Tapp expressed gratitude and thanks for the opportunity to serve on the Commission and expressed appreciation for the new appointees, highlighting those representing the victim community. Mr. Hilkey read a prepared statement from Mr. Matson who similarly expressed his gratitude for the opportunity to serve and who noted the significant impact the Commission has on citizens of the State.

Mr. Hilkey reviewed the agenda and asked whether there were additions or corrections to the August 13 minutes. A motion was offered and seconded to approve the previous minutes; Commissioners unanimously approved the August 13 minutes.

BEST PRACTICES TRAINING: BOARDS AND COMMISSIONS**Ingrid Carlson Barrier, Attorney General's Office**

Mr. Hilkey introduced Ingrid Carlson Barrier (Senior Assistant Attorney General, Department of Law). He explained that Ms. Barrier is the attorney assigned to the Colorado Department of Public Safety and, therefore, is connected to the work of the Commission. Ms. Barrier explained that legislation was passed in 2018 calling for a robust, annual training for all of Colorado's boards and commissions (§24-3.7-102, C.R.S). The training addressed topics including, governing statutes, board/commission mission, staff duties, data-based decision-making, review of key communication and policy-making, role of a public representative, coordination with other organizations, annual review of management practices, conflicts of interest, and the Colorado Open Records Act. Ms. Barrier presented a PowerPoint presentation, the full content of which can be found on the Commission website, ccjj.colorado.gov/ccjj-mtgs2021.

Mr. Hilkey thanked Ms. Barrier for her presentation and welcomed Attorney General Phil Weiser who had joined the meeting.

Mr. Weiser thanked Commissioners for serving and expressed ongoing support for the work of the Commission. Mr. Weiser shared that he recently attended a conference and heard from law enforcement, justice representatives and health professionals' panel on the opioid epidemic. Mr. Weiser stated that the intersection between the criminal justice and behavioral health systems should remain an important focus for Colorado.

UPDATE: SENTENCING REFORM TASK FORCE**Michael Dougherty, Task Force Co-chair**

Mr. Dougherty indicated that the Sentencing Reform Task Force continues its work to address the sentencing topics delineated in the 2020 Biennial Governor's Letter [ccjj.colorado.gov/ccjj-mandates]. The Task Force created four working groups and previously presented two recommendations to the Commission during FY 2021, namely: 1) FY21-SR #01. *Revise Misdemeanor Sentencing and Offenses* [Senate Bill 2021-271. *Misdemeanor Reform* that passed during the 2021 legislative session was derived from this recommendation], and 2) FY21-SR #02. *Update the Standard Conditions of Parole and Revise the Additional Conditions of Parole*.

Mr. Dougherty referred to the Leaders of two Working Groups to offer updates on ongoing work in the Task Force: Michael Dougherty for the Sentence Structure Working Group and Glenn Tapia for the Sentencing Alternatives/Decisions & Probation Working Group.

WORKING GROUP UPDATES**• *Sentence Structure Working Group - Michael Dougherty, WG Leader***

The Working Group meets every other week and established a Study Group that meets once a week.

With the implementation of Senate Bill 2021-271 (*Misdemeanor Reform*) expected in March 2022, the Working Group continues to review and make necessary adjustments for the successful implementation of the bill.

The Working Group is engaged in the next phase of work on sentencing, specifically on felony sentencing grids and felony offenses and has conducted a series of stakeholder listening sessions, with

the most recent session occurring on October 5, 2021. Mr. Dougherty reported that the members of the Working Group have regularly heard from stakeholders about a common desire for greater certainty in sentencing. The Working Group remains committed to develop a sentencing framework in Colorado that promotes consistency and certainty in sentencing.

The group started the conversation with representatives from the Colorado Department of Corrections (CDOC) about the optimal percentage of good time and the amount of earned time an individual might accumulate to encourage good behavior and compliance with the CDOC rules and regulations.

Mr. Dougherty indicated that the state of Colorado currently has three sentencing grids: a drug sentencing grid, a sex offense grid, and a grid for all other felonies. The Working Group is exploring splitting the current “other” felony grid into separate categories of offenses: one grid would include “victim-related” felonies and the other for “general” felonies. The Working Group continues discussions about the crimes that will fall in these two grids and how best to conceptualize and label these two grids. At the last meeting on October 6, the Sentencing Reform Task Force agreed with the Working Group plan to prioritize the work, starting with the “general” felony grid and delaying the “victim-related” and sex offense grids. Mr. Dougherty expected that a recommendation focused on the “general” grid and related offenses will be forthcoming in the coming months.

Mr. Dougherty invited Commissioners to contact Working Group members with questions or to forward additional stakeholders who would like to be heard regarding the work on the felony grids and offenses.

DISCUSSION

Representative Carver encouraged thoughtful consideration of the “packaging” and labels used to represent the “victim-related” grid and felonies and the “general” grid and offenses. She relayed several conversations with members of her constituency on the impacts of property-related crime that, although often not labeled a “victim crime,” can have profound impacts on those affected. Mr. Dougherty concurred with the thoughts expressed by Rep. Carver and assured her that members of the Working Group are grappling with those distinctions and related concerns.

- ***Sentencing Alternatives/Decisions & Probation Working Group - Glenn Tapia, WG Leader***

Mr. Tapia offered a preview of several proposals under consideration by the Sentencing Reform Task Force (SRTF) on the topic of Probation. The presentation focused on the background, available data, problems identified and concerns addressed by each of the proposals. Depending on the outcome of the deliberations by the SRTF in November, the Commission may see some or all of the proposals in recommendation form. Throughout the presentation, Mr. Tapia indicated that the proposals are tentative, subject to revision, and, ultimately, may not be approved by the SRTF. Mr. Tapia offered a PowerPoint presentation, the full content of which can be found on the Commission website under “October 8, 2021” at ccjj.colorado.gov/ccjj-mtgs2021. Highlights from the presentation are found below:

The “Scope of Work” assigned by the SRTF and Commission was summarized, with the initial areas of focus highlighted in **bold**:

- 1. Define statutory purpose of probation**
- 2. Evaluate probation level of supervision in the interest of proper dosage and approaches (e.g. avoiding over-supervision)**
- 3. Examine probation practices regarding the use of conditions, length of supervision, responses to violations, and revocations**

4. Examine impact of Traumatic Brain Injury (TBI) in revocations and other outcomes and recommend strategies to better accommodate persons with TBI
5. Examine ethnic and gender disparities in probation outcomes/practices and recommend strategies to abate disparate treatment and/or outcomes
6. Examine impact on prison population
- 7. Consider alternatives that can be utilized at the time of sentencing.**

The proposals summarized below address points **1, 2, 3,** and **7.** The Working Group will continue to study the remaining topics during the remainder of 2021 and 2022.

Proposal #1 - Define the statutory purposes of probation

- Whereas provisions in Colorado statute include “purposes of parole” and “purposes of community corrections,” Colorado statute does not include a comparable “purposes of probation.”
- The proposed “Purposes of Probation” would include seven statutory attributes.
- The intention of the seven proposed elements is to focus on reparation, cost control, rehabilitation behavior change and public safety, which aligns with modern evidence-based practice, and not on the historical criminal justice emphases of deterrence, incapacitation, retribution and punishment.

Proposal #2 - Develop a Swift Restorative Intervention Program for Persons Convicted of a Petty Offense

- The Working Group discussed multiple circumstances within probation with a potential for over-supervision, focusing first on the those convicted of a petty offense. These discussions anticipate potential effects resulting from the compression of petty offense levels introduced in S.B. 2021-271.
- A snapshot of an average day finds 650 people on probation (including 127 juveniles) where a petty offense is the most serious conviction. The most frequent crime types are Disorderly Conduct (39.5%), Theft less than \$50 (25.8%), and Drug (mostly marijuana-related) (9.9%).
- The successful probation completion rate is 50% with an average sentence of one year and a cost to the person on probation of \$1,000-\$1,500.
- Working Group members agree that the court should have a diversion option for petty offense behavior that is swift, proportional and fair, rather than relying on fines, probation and jail. This option emphasizes a tailored, human services-oriented response including restorative justice, psycho-educational and/or therapeutic approaches, when warranted.
- The resulting proposal is a legislative recommendation to develop a grant-supported Swift Restorative Intervention Program (SRIP) for persons convicted of a petty offense. Options for the Court would include: a fine, a jail term not to exceed 10 days, a term of probation not to exceed 180 days and/or the SRIP. The SRIP would be defined and executed at the local level, based on local resources/program capacity, with state funding support, where needed.

Proposal #3 - Increase Access to Telehealth Services

- The group also addressed barriers to success on probation, including barriers to telehealth, and believed there should be an increase in telehealth services to: a) supplement weekly outpatient treatment, and/or b) provide an aftercare option for those completing inpatient treatment.
- A policy recommendation would be proposed that calls for relevant state agencies to modernize their respective regulatory and funding structures in order to facilitate easier, broader and more permanent access to telehealth services for those on community supervision. These services are

especially intended to *supplement* in-person primary care and to bolster service availability in under-served communities and/or where high-fidelity treatment capacity is limited.

- The proposal also calls for: clearer communication between agencies and providers; revised standards to incentivize providers to build capacity for telehealth services; and standards regarding licensing, certification and service delivery to maintain or increase quality of services and to remove duplicative or conflicting requirements for providers.

Proposal #4 - Improve Collaborative Treatment for Justice-Involved People

- Data was provided regarding the relationship between treatment quality and fidelity and related recidivism rates of clients. Currently, neither the justice system nor the behavioral health system provides good measurement of quality, and practitioners in each system function under separate standards, practices and client expectations.
- Ideal outcomes in this area would include integrated and collaborative service delivery, integrated sharing of information, and improved matching of treatment to needs.
- A legislative recommendation would be proposed that requires the state criminal justice system and behavioral health agencies to collaborate with input from local jails and behavioral health entities to integrate ASAM (American Society of Addiction Medicine), Social Determinates of Health, and Risk/Need Responsivity frameworks for more effective treatment matching and delivery.
- The proposal also calls for better alignment of treatment matching criteria and the development of fiscal and regulatory methods to incentivize behavioral health providers to accept and treat justice-involved people.
- Under this proposal, the Behavioral Health Administration (BHA) would: 1) develop and implement formal methods to objectively analyze and report data on treatment gaps for justice-involved persons, especially for those with higher probabilities of recidivism; 2) objectively measure fidelity to evidence-based serviced delivery, 3) develop a criminal justice treatment provider endorsement license and client placement criteria; 4) develop a certification and training program for counselors to better address justice-involved individuals; and 5) intentional collaboration with state criminal justice system leadership for implementation of behavioral health reforms that involve justice system consumers.

Proposal #5 – Implement individualized behavioral responses to probation violations

- Mr. Tapia discussed current statute, §16-11-209, C.R.S. (Duties of Probation). This statute mandates specific, immediate sanctions when probationers test positive for specific instances of illegal or unauthorized use of a controlled substance. Mr. Tapia stated that the mandated, “across-the-board” responses are primarily punitive and cannot be tailored to individual client needs.
- The Crime and Justice Institute conducted a Colorado Probation Revocation analysis and found that the most common violations resulting in a probation revocation are for missed appointments and for missed or positive urine analyses (UAs). The responses to such behaviors are inconsistent across the state.
- A legislative recommendation would be proposed to repeal limited, finite, punitive responses to violations and replace these with individualized responses tailored to individual behavioral needs.
- The proposal would also: 1) strike the limiting language in §16-11-209 (2) and (3), C.R.S.; 2) model the structure used in Senate Bill 19-109 (*Juvenile Justice Reform*); 3) require the State Court Administrator’s Office to revise the *Colorado Probation Standards* to use individualized behavioral responses, with the consultation of CCJJ; 4) require districts to use the existing statewide system or

an equivalent locally-developed model; 5) require probation to consider multiple factors in a petition for revocation, after exhausting all other appropriate community based behavioral options; 6) require a petition for revocation be approved by a Chief Probation Officer; 7) prioritize a summons over a warrant in revocation situations; 8) change legislative intent language to be consistent with best practices as reflected in the "Purpose of Probation;" and 9) use "person-first" language.

Mr. Tapia reiterated that this presentation represents an overview and background of the concepts from the Working Group and that the related proposals will be reviewed by the Task Force at the November 10 meeting. The proposals and related elements that are approved by the Task Force, will be offered as draft recommendations for preliminary presentation at the November 12 meeting of the Commission.

DISCUSSION

Mr. Raynes echoed Mr. Tapia's comment that the proposals described may be revised or may fail to achieve approval by the Task Force prior to the Commission meeting in November.

PUBLIC COMMENT

No members of the public offered comment.

WRAP-UP AND ADJOURNMENT

Mr. Hilkey reminded Commissioners that a Member Orientation is scheduled on Friday, November 12 at 11:00am-12:30 pm for the new Commissioners, as well as the few Commissioners who have not yet participated in an orientation due to recent circumstances, including the pandemic.

The next regular meeting of the Commission is scheduled on Friday, November 12 at 1:00pm and the subsequent meeting is scheduled at the same on December 10, 2021 (*Note: The upcoming Sentencing Reform Task Force meeting mentioned frequently during this Commission meeting is scheduled on Wednesday, November 10 at 1:30pm*). Information on all Commission-related meetings can be found at, ccjj.colorado.gov/ccjj-meetings.

Mr. Hilkey, again, acknowledged the new and re-appointed members, thanked members for their time and attention and, with no further business, adjourned the meeting at 3:15 pm.