



Colorado Commission on Criminal and Juvenile Justice

Minutes

December 10, 2021 / 1:00pm-4:00pm

Virtual Meeting

Commission Member Attendance

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

^ *appointment pending*

Call to Order and Opening Remarks

Abigail Tucker, CCJJ Vice-Chair, representing Mental Health Treatment Providers

Dr. Tucker, Commission Vice Chair called the meeting to order at 1:04 pm. Dr. Tucker thanked the Commissioners in attendance and explained that Mr. Hilkey was unable to attend the meeting. Dr. Tucker reviewed the agenda and solicited any additions or corrections to the November 12 minutes. A motion was offered and seconded to approve the previous minutes; Commissioners unanimously approved the November 12 minutes. Dr. Tucker introduced Ms. Gina Lasky, a consultant from Health Management Associates (HMA) who was invited to present an update on the Behavioral Health Administration (BHA) implementation. Dr. Tucker reminded Commissioners that the previous update on the BHA implementation occurred at a special Commission meeting on April 30, 2021.

PRESENTATION: Update on the Behavioral Health Administration (BHA) Implementation

Gina Lasky (HMA)

The full presentation by Ms. Lasky can be found on the Commission website under the December 10, 2021 meeting tab at ccjj.colorado.gov/ccjj-mtgs2021.

Below are the highlights of the presentation:

- The BHA is designed to build on partnerships and relationships between the many facets of Behavioral Health and the Criminal Justice system.
 - The BHA Advisory Council will include representatives from the criminal justice system
 - A Criminal Justice working group will be created to report to the Advisory Council
 - A core position will be created within the BHA to provide criminal justice expertise

- An Advisory Council will review and prioritize recommendations from the Behavioral Health Task Force and draw from a Statewide Needs Assessment for criminal justice and justice-involved populations. The Council will focus on continuum gaps, service changes and challenges, alignment of programs across the continuum, and recommendations from *Senate Bill 2019-222 Comprehensive Plan to Strengthen and Expand the Behavioral Health Safety Net System*.
- The BHA implementation date is July 2022 and initially will be established within the Colorado Department of Human Services. The BHA implementation plan continues to evolve with feedback from stakeholders, direction from the Governor's Office, and by mandates from the General Assembly through final authorization and future legislation.
- What is the BHA?
 - Will coordinate behavioral health efforts across agencies, create shared goals, improve collaboration, drive accountability and transparency, and provide an opportunity to streamline our overall system.
 - Will elevate the voices of consumers and family members with lived experience of behavioral health issues and the behavioral systems in Colorado.
 - Will ensure equity and address behavioral health disparities.
 - Will problem solve and implement solutions through collaboration and effective relationships.
 - Will impact the entire behavioral health system, including the commercial system from prevention to recovery.
 - Will enhance and focus on whole-person care and quality of care.
- The BHA will partner with all Colorado state departments to ensure there is a collaborative and networked approach across the behavioral health continuum from prevention to treatment and recovery. The BHA will also work with local governments, providers, and other key partners.
- The recommended governance model of the BHA will include Cabinet Members, a Behavioral Health Commissioner, an Advisory Council & Work Groups, and staffed core functions.
- The proposed BHA structure was described (see chart on page 13 of the presentation on the Commission website under the December 10, 2021 meeting tab at ccjj.colorado.gov/ccjj-mtgs2021.)
- For related information on behavioral health reform and the BHA implementation, see *Behavioral Health Reform*¹ and *Working Together to Create Colorado's Behavioral Health Administration (BHA)*²

DISCUSSION

Ms. Huitron emphasized the importance of learning from people with lived experience and asked how their feedback and knowledge will be integrated into the BHA implementation and future practices.

Ms. Lasky responded that one of the core philosophies of the BHA is to build a system based on consumer voices and that is aligned and responsive to consumers' needs. A lived-experience advocate will be included on the Advisory Council.

Senator Gardner explained that, as one of the co-sponsors of *House Bill 2021-1097. Establish Behavioral Health Administration*, he and his General Assembly colleagues envisioned the BHA as the single state agency to administer the entire behavioral health system in Colorado. The BHA should have sole oversight and authority to bring agencies together and ensure equitable access of care and services. Senator Gardner expressed disappointment in the BHA development and felt that the plan thus far

¹ cdhs.colorado.gov/behavioral-health-reform

² cdhs.colorado.gov/about-cdhs/featured-initiatives/behavioral-health-reform/change-management

appeared to represent just another bureaucratic layer without the ability to hold agencies or programs accountable for behavioral health services.

Ms. Lasky expressed appreciation for the Senator's comments and would relay his views to the implementation team. She explained that a program and agency consolidation model was reviewed and rejected because research showed that states following such a model became even more siloed due to the resistance from stakeholders to adopt a truly integrated system. Additionally, extracting system expertise from individual agencies and consolidating this expertise in the BHA would damage the functions and programs in these individual agencies. Ms. Lasky believed that the current BHA design would create the infrastructure necessary to streamline and integrate the fragmented behavioral health system and would be flexible enough to respond to current and future needs for behavioral health functions across the state.

Ms. Hilkey expressed appreciation to Ms. Lasky for the BHA update and asked whether the BHA will focus on training providers to assess and treat justice-involved individuals and on improvements in the accessibility of services for the criminal justice population.

Ms. Lasky responded affirmatively that the BHA will provide technical assistance and will hold providers accountable to serve this population. She added that substantial gaps have been documented in the provider network and in its capacity to serve individuals with the highest behavioral health needs in the state.

Mr. Tapia concurred with the concerns expressed by Senator Gardner, who remained skeptical of the current design, referencing the recent report ranking Colorado 51st in the nation in the prevalence of mental illness among and the access to care for the adult population in Colorado.³ Given this concerning assessment, he felt that assertive action is required to improve behavioral health services in general and specifically for individuals in the criminal justice system.

Ms. Jones was dubious that the varied criminal justice (CJ) perspectives could be fully represented by just a few positions on the BHA Advisory Council.

Ms. Lasky indicated that the composition of the BHA Advisory Council is still under consideration and development, but there are currently three CJ-related positions. She anticipated there will be several working groups, some standing groups (including the CJ Working Group) and, as needed, some short-term/topical groups, on which she expects there will be multiple voices to represent the different sectors of the criminal justice system and its diverse stakeholders.

UPDATE: Sentencing Reform Task Force

Michael Dougherty, Task Force Co-chair

Mr. Dougherty outlined the agenda items involving the Sentencing Reform Task Force (SRTF) to include updates from the two active Working Groups, a preliminary recommendation presentation, and the presentation and final consideration of two recommendations.

WORKING GROUP UPDATES

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

The Working Group continues to review and identify revisions related to *Senate Bill 2021-271. Misdemeanor Reform* for the successful implementation of the bill expected in March 2022. Mr. Dougherty commented that those adjustments are mostly technical in nature, except for a substantive

³ See, mhanational.org/issues/state-mental-health-america

change to the Possession of a Weapon by Previous Offender (POWPO) statute. A recommendation regarding the POWPO statute is being drafted and, if approved by the Task Force, will be preliminarily presented to the Commission at the January 14, 2022 meeting.

Earlier in the week, the Working Group presented an overview of the new “general felony” sentencing framework to the Sentencing Reform Task Force. The proposed general felony sentencing grid includes five general felony levels (GF1 to GF5) compared to the current six levels for felony offenses. A general felony crime chart was also presented that listed over 600 felony offenses and included the current and proposed felony classification, the number of times charged in 2020, the original sentence length and the average length of stay in prison for those sentences.

Mr. Dougherty noted that the Working Group continues to review sentencing data and conduct in-depth discussions on, for example, sentence ranges and habitual sentencing. The work will be ongoing through the new year followed by work on the “non-general” offenses and sex offenses.

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

Mr. Tapia reminded Commissioners that three of the five recommendation concepts presented at the October 2021 Commission meeting had been tabled by the Sentencing Reform Task Force in November for further work. The December 3 meeting of the Working Group focused on these three tabled concepts:

- *Reparative Intervention for Persons Convicted of Petty Offenses*: The Task Force felt the proposed solution was an “over-response” to the problem. The Working Group discussed at length different options to address petty offenses and will combine this issue with the overarching discussions of probation over-supervision. A request to the Task Force will be forthcoming regarding further guidance on this topic and the scope of related work.
- *Improve Collaborative Treatment for Justice-Involved People*: The Task Force asked the Working Group to determine whether the proposal could be framed as policy instead of statutory provisions. Because the focus of the proposal - the Behavioral Health Administration - is under development with a July 2022 implementation, a statutory proposal felt premature. The Working Group agreed to alter the approach and will revise the language of the proposal.
- *Implement Individualized Behavioral Health Responses to Probation Violation*: Members of the Task Force assisted with revisions and corrections of the statutory language in the proposal. The Working Group adopted the changes with minor revisions. This recommendation was approved by the Sentencing Reform Task Force and its initial presentation is offered to the Commission today.

PRESENTATION: Sentencing Reform Task Force - Preliminary Recommendation

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

The Sentencing Reform Task Force offered a preliminary recommendation developed by the Sentencing Alternatives/Decision & Probation Working Group. Mr. Tapia directed Commissioners to the draft recommendation forwarded electronically prior to the meeting and reviewed the elements of the recommendation provided below.

[Given that this recommendation is preliminary, only the title and general description are included.]

PRELIMINARY PRESENTATION:**Recommendation FY22-SR #05 - Implement Individualized Behavioral Responses to Probation Violations [Statutory]**

Amend §16-11-205, §16-11-209, §16-11-2?? (new section), §16-11.5-101, §16-11.5-102(1)(c), §16-11.5-105, §18-1.3-102, and any other required conforming revisions to statute to reflect contemporary best practice guidelines that serve people on probation and deferred sentences, especially those diagnosed and/or dealing with substance use disorders. Such practices provide corresponding systems that include a range of individualized and structured behavioral responses to substance use and other behaviors that violate typical conditions of probation. This recommendation specifically prioritizes modern methods of rehabilitative and reparative justice that align with the statutory purposes of probation (*included in CCJJ Recommendation FY22-SR #01. Purposes of Probation*) rather than the finite and limited responses in current statute that reflect retributive, punitive, and deterrent-based justice methods.

DISCUSSION

Mr. Tapia highlighted specific pending statutory language still at issue within the recommendation [*this draft statutory language is not displayed here*]. He explained that Sentencing Reform Task Force members were evenly split on whether probation officers should be authorized to arrest probationers to prevent potential harm *only* to self. Of course, arrest to prevent potential harm to others or the community was not in question. The Task Force asked the Commission for guidance on this issue.

Ms. Russo, who represents the juvenile justice system, asked whether the focus of this recommendation also included juveniles. Mr. Tapia indicated that the focus is only on adult probationers and he would clarify this point in the final version of the recommendation.

Commissioners unanimously agreed in theory that individuals experiencing a behavioral health crisis should not be “criminalized.” Members discussed at length the lack of behavioral health services in the community for justice-involved individuals. However, the behavioral health infrastructure (referenced in the earlier BHA presentation) does not yet exist and there is no behavioral health safety net for individuals in such circumstances. Unfortunately for now, jails will continue to remain the default, and sometimes the only available, response especially in those communities with limited crisis treatment options. Although conflicted on the issue, several members believed that limiting the arrest discretion of probation officers would remove the only option to prevent some people from harming themselves, and in uncertain circumstances, possibly others. Nonetheless, other Commissioners felt the criminal justice system should never be the default response for those individuals who are not a risk to the community.

An important point of clarification was offered that this recommendation only applied to a small group of authorized probation officers and that law enforcement officers would retain their discretion to arrest such individuals.

Dr. Tucker thanked the group for this initial discussion and encouraged Commissioners to discuss the preliminary recommendation with their respective stakeholders. The recommendation will be presented for final consideration at the January 14, 2022 Commission meeting.

FINAL PRESENTATIONS: Sentencing Reform Task Force Recommendations**Glenn Tapia, Sentencing Alternatives/Decisions & Probation WG Leader**

Mr. Tapia reminded members that the preliminary presentations of these two recommendations were provided at the November 12, 2021 meeting of the Commission. These two final recommendations were forwarded electronically to Commissioners prior to the meeting. In turn, Mr. Tapia provided brief overviews of each of the two recommendations for final consideration and discussion by members.

Public Comment

Public comment was solicited, but none was offered in advance of the final consideration of and votes on Recommendation FY22-SR #01 or Recommendation FY22-SR #03.

FINAL PRESENTATION:**Recommendation FY22-SR #01. Define the Purposes of Probation [Statutory]**

Amend Part 2 of §16-11, C.R.S. to include the following to define the purposes of probation:

- To serve as a sentencing option and a response to crime in order to moderate and deter future criminal behavior and victimization.
- To support persons in behavior-change through the coordination and provision of effective and individualized services which may include, but are not limited to, educational, therapeutic, restorative, and skill building services
- To hold persons accountable for their behavior through supervision and interventions that promote reparation of harm to community and victims which shall include, but is not limited to, restitution to victims.
- To serve as a cost-effective option for persons appropriate for community supervision.
- To honor the statutory and constitutional rights of victims of crime.

DISCUSSION

Dr. Tucker asked whether there were clarifying questions regarding the recommendation. Seeing none, Dr. Tucker requested a motion to approve the recommendation. A motion to approve *Rec. FY22-SR #01* was offered and seconded. 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 it; or C = I do not support it. With no further discussion, the vote was conducted and yielded the following result:

FINAL VOTE: Recommendation FY22-SR #01. Define the Purposes of Probation [Statutory]

A: 19 B: 0 C: 0

Recommendation FY22-SR #01 was APPROVED

FINAL PRESENTATION:**Recommendation FY22-SR #03. Increase Access to Telehealth Services for Behavioral Health [Policy]**

Agencies in the state should develop policies to standardize and increase access to telehealth services for behavioral health treatment for those individuals on community supervision within the criminal justice system. This recommendation includes the following propositions:

1. The Office of Behavioral Health in the Department of Human Services, the Behavioral Health Administration (being established pursuant to House Bill 2021-1097), and the Department of Health Care Policy and Financing should 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.
2. The Division of Criminal Justice, in the Department of Public Safety should revise its standards for the Sex Offender Management Board (SOMB) and Domestic Violence Offender Management Board (DVOMB) in order to facilitate easier, broader, and more permanent access to fiscally and structurally accessible telehealth services for those on community supervision without compromise to identified crime victims.
3. These agencies should also establish a clear intent and formal communication with providers to support telehealth services as an adjunct to in-person treatment.
4. Standards should be revised to not only limit barriers to telehealth, but to incentivize providers to continually build capacity for telehealth services as an adjunct to in-person treatment. There should be fiscal and regulatory incentives for providers to serve rural areas in Colorado.
5. Standards around licensing, certification, and service delivery should be developed or revised to maintain or increase quality of service whether in person or via telehealth adjunct services and to remove duplicative or conflicting requirements for providers. Increased access to treatment should not compromise quality of treatment.

At a minimum, state standards for behavioral health treatment should address the following key areas of telehealth services and infrastructure:

- Competency of the Provider - Providers can and should have continuing education credits/demonstrated course knowledge of telehealth practices in addition to practice itself.
- Ethical Considerations in Standards of Care - Ask how providers will ensure ethical considerations and how client rights will be thoroughly upheld before, during and after any telehealth service.
- Informed Consent - Should be proactive, continuous, and responsive to changing consumer circumstances.
- Diversity and Inclusivity Considerations - How will providers ensure they are aware of and appropriately address any diversity or inclusivity concerns related to telehealth? Special considerations should be given to people who are indigent and cannot easily afford access to either telehealth or in-person treatment.
- Confidentiality of Data & Information - How will client information remain confidential?
- Security & Transmission of Data & Information - How will client information remain secure?
- Guidelines and Criteria - Delineation of criteria or guidelines regarding appropriate population for telehealth participation and measures used to assess or evaluate engagement/participation in treatment.
- Decision Making - Decision making guidelines should be developed to serve or admit clients to telehealth services that include the preferences of the client, the provider, and the supervision/treatment teams where appropriate (e.g. problem-solving courts, community supervision teams)

DISCUSSION

Senator Gardner and Mr. Raynes stated that their concern for the use of “person-first” language would necessitate a vote of, “Can live with.” Representative Carver indicated she would not approve the recommendation due to the “person-first” language. She believed this usage diminishes personal accountability and undermines ongoing efforts to improve the criminal justice system.

Dr. Tucker solicited and received a motion and second to approve *Rec. FY22-SR #03*. With no further discussion, Dr. Tucker proceeded with the vote that yielded the following result:

FINAL VOTE: FY22-SR #01 Define the Purposes of Probation [Statutory]

A: 9 B: 7 C: 1 Abstention: 1

Recommendation FY22-SR #01 was APPROVED

PUBLIC COMMENT

No members of the public offered general comment.

WRAP-UP AND ADJOURNMENT

Mr. O’Dorisio asked whether a glossary of terms was publicly available or could be developed as a helpful resource for new Commissioners.

Several Commissioners observed that across the country a shift had begun in the use of “person-first” language in the criminal justice system. For example, instead of referring to individuals as “offenders,” the term “justice-involved” is used. Ms. Jones suggested the Commission invite experts to offer a presentation on person-first language at a future Commission meeting.

Dr. Tucker asked Commission members to save the date for a tentative additional Commission meeting on Friday, Jan. 28, 2022 to consider recommendations from the Sentencing Reform Task Force. This would not affect the regularly Commission scheduled meetings upcoming on Friday, Jan. 14 or on Friday, Feb. 11. When members receive materials prior to the next meetings, she encouraged members to study the proposals and prepare their questions in advance of these January and February meetings. She encouraged attendance at the meetings where Commissioners will undertake final consideration of the preliminary recommendation presented earlier and will hear initial presentations of new preliminary recommendations from the Sentencing Reform Task Force.

Dr. Tucker thanked Commissioners for their attention and participation. With no further business, Dr. Tucker adjourned the meeting at 3:25 pm.

**The next meeting of the Commission is Friday, January 14, 2022 at 1:00 pm.
Information on all Commission-related meetings can be found at, ccjj.colorado.gov/ccjj-meetings.**