



Colorado Commission on Criminal and Juvenile Justice

Minutes

February 11, 2022 / 1:00pm-3:30pm

Virtual Meeting

Commission Member Attendance

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

Guests: Phil Weiser, Kara Veitch, Michael Dougherty

Call to Order and Opening Remarks

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

Mr. Hilkey, Commission Chair and Executive Director of the Department of Public Safety, called the meeting to order at 1:05 pm and thanked Commissioners and members of the public for attending. Mr. Hilkey reviewed the agenda and solicited any additions or corrections to the January 14 and January 28 minutes. A motion was offered and seconded to approve both sets of minutes; Commissioners unanimously approved the January 14 and January 28 minutes.

Mr. Hilkey announced the recent appointment of Sheriff Jaime FitzSimons and welcomed him to his first Commission meeting. Mr. Hilkey acknowledged the attendance of Attorney General Phil Weiser and Ms. Kara Veitch from the Governor’s Office.

LEGISLATIVE UPDATES

Joel Malecka, Legislative Liaison Colorado Department of Public Safety

Joel Malecka provided an update on legislative activity. He noted that law enforcement and jail operations continue to be a significant topic of interest. He provided an update on criminal justice-related bills recently introduced at the 2022 legislative session. The summary of Mr. Malecka’s presentation follows:

House Bill 22-1063. Jails Standards Commission. This bill creates an advisory Commission to recommend jail standards and determine their feasibility for implementation.

Senate Bill 22-023. Deceptive Tactics Juvenile Custodian Interrogation. This bill prohibits deceptive tactics during the custodial interrogation of a juvenile.

Senate Bill 22-041. Pretrial Release for Repeat and Violent Offenders. This bill would prohibit a court from releasing a person accused of repeat or violent offenses on any unsecured personal recognizance bond.

Senate Bill 22-010. Pretrial Diversion for Person with Behavioral Health. This bill concerns pretrial diversion programs that are intended to identify eligible individuals who have behavioral health disorders in order to divert them from the criminal justice system into community treatment programs.

Senate Bill 22-099. Sealing of Records. This bill requires the development of a procedure for sealing of criminal records for nonviolent offenses, and, in connection therewith, addressing workforce shortages and minimizing barriers to employment for job seekers.

Senate Bill 22-113. Artificial Intelligence Facial Recognition. This bill relates to the use of personal identifying data, and, in connection therewith, creating a task force for the consideration of artificial intelligence, restricting the use of facial recognition services by state and local government agencies, and temporarily prohibiting the use of facial recognition services by public schools.

Senate Bill 22-049: Victim Rights Act. The bill updates the "Victim Rights Act" to align the VRA with recent criminal justice changes to ensure all victims of crime are protected by law enforcement agencies, prosecutors, and judges.

COLORADO CRIME TRENDS

Jack Reed, Division of Criminal Justice

Mr. Reed's full presentation is available under the February 11, 2022 meeting tab on the Commission website at, ccjj.colorado.gov/meetings/meetings-2022.

Some highlights of the presentation are provided below.

Offense and Arrests

- Total Crime Rate
From 2019 to 2020 the total Crime rate (violent and property) increased in Colorado by 8.6%. Colorado was ranked 5th highest in total crime rate increase in the country. The U.S. total crime rate decreased by -6.2%.
- Colorado Crime Rate Changes from 2019 to 2021

<ul style="list-style-type: none"> ○ Violent crime rate total: +17% <li style="padding-left: 20px;">- Murder: +47% <li style="padding-left: 20px;">- Sexual Assault: -6% <li style="padding-left: 20px;">- Robbery: +15% <li style="padding-left: 20px;">- Aggravated Assault: +31% 	<ul style="list-style-type: none"> ○ Property crime rate total: +20% <li style="padding-left: 20px;">- Larceny: +8% <li style="padding-left: 20px;">- Burglary: +15% <li style="padding-left: 20px;">- Commercial burglary: +48% <li style="padding-left: 20px;">- Motor vehicle theft: +86%
--	---
- U.S. and Colorado Violent Crime Rate Trend
In the early 90s, the violent crime rates peaked both nationally and in Colorado and then gradually decreased over time. Starting in 2014, Colorado's violent crime rates gradually increased and significantly spiked in 2020, while the national rate stayed constant.

<ul style="list-style-type: none"> ○ US Violent Crime per 100K inhabitants: <ul style="list-style-type: none"> - 1991: 758.2 (all-time high) - 2020: 398.5 ○ Colorado Violent Crime per 100K inhabitants: <ul style="list-style-type: none"> - 1992: 578.8 (all-time high) - 2020: 423.1 	
--	--

- Map of Violent Crime Rate Change, 2019-2021
Counties were displayed (see presentation) showing the violent crime rate changes from 2019 to 2021. For crime reporting purposes, the city of Aurora is included in Adams County.
- The total number of homicides in Colorado for 2021 reached an all-time high of 357, up 47% from 2019 (n=227).
- U.S. and Colorado Property Crime Rate Trends
In 1986, the all-time high property crime rate in Colorado was 6,508.3 per 100K inhabitants. The rate decreased until 2014 and gradually increased to reach 2,833.8 per 100K inhabitants in 2020.
- Motor Vehicle Theft
There was an 86% increase in motor vehicle thefts from 2019 (N=22,391) to 2021 (N=41,678). The metro area is significantly affected by motor vehicle thefts with, for example, Denver (+138%), Broomfield (+175%), Jefferson (+114%), Douglas (+114%), and Arapahoe (+113%) all seeing large increases in motor vehicle thefts.
- Burglary
There was little change in residential burglary, but a significant increase in commercial burglary (+48%).
- Identity Theft Rate
A significant increase from 2019 to 2021 relating to employment benefit fraud.
- Fentanyl Seizures
In 2020, there were 55,816 Fentanyl Dosage Units (DU) seized by the Rocky Mountain HIDTA Task Force which increased in 2021 to an estimated 367,424 DU seized. The increase in fentanyl seizures is similar in other RMHIDTA regions (Wyoming, Utah, and Montana). In 2020, the leading cause of death nationally among those 25 to 34 years old was fentanyl overdoses. Fentanyl overdoses accounted for more deaths than COVID-19 in the younger population.

Criminal and Delinquency Filings

- Between FY2020 and FY2021, there was slight variation in county court filings, but a significant *decrease in filings* in district criminal and juvenile courts. These decreases were highly variable across the 22 Judicial Districts, ranging from 0% to -31%.
- Drug Filings
Since 2019, there was a decrease in felony drug filings in district courts, possibly due to the changes in offense level for controlled substance possession from felony to misdemeanor (see *House Bill 2019-1263: Offense Level for Controlled Substance Possession*). This also resulted in an increase in the number of misdemeanor drug filings in county courts.

Correctional Populations

- The probation population declined 15% from 2019 (N=74,604) to 2021 (N=63,171).
- The average daily jail population declined between the first quarter of 2020 (N=12,599) and the third quarter of 2021 (n=8,096). This decrease can be explained by the reduction of bookings related to jail policies to limit the spread of COVID.
- The CDOC population was consistently around 20,000 inmates from 2013 to 2019, with a gradual decrease starting in June 2019 that accelerated downward starting in March 2020. This was due to a number of changes intended to reduce the prison population to better control the spread of COVID-19 in CDOC facilities. The December 2021 DOC population was 15,642 (-22% from June 2019) which is the lowest number since 1999.

- CDOC recidivism rates, measured as a return to prison, have consistently declined since 2014.
- Parole & Community Corrections
There was a 123% increase in discretionary parole releases from 2017 (N=2,557) to 2020 (N=5,711) while there was only a 21% increase in total parole releases during this same timeframe. Parole releases declined in 2021 because there were fewer people eligible for release from CDOC.
- The number of residents in community corrections declined 45% between 2019 (N=4,347) and 2021 (N=2,410).
- Since 2012, there has been a steady decline of juveniles in the custody of the Division of Youth Services.

DISCUSSION

Mr. O’Dorisio suggested it would be interesting to consider what other factors might have affected the recent crime trends, such as, law enforcement agencies experienced challenges in staffing, declining morale among officers, and changes in the day-to-day interaction with the public that might affect the crime trends.

Ms. Huitron asked whether there are known reasons for the sharp increase in motor vehicle thefts in Colorado.

Mr. Reed responded that Auto Theft task forces in Colorado would have more detailed information as part of their investigations. Mr. Reed offered that cars are sometimes stolen for monetary gain but, at other times, are used to facilitate the commission of other crimes.

Commissioners discussed additional data of interest, including fentanyl overdoses and human and sex trafficking.

A *HealthWatch* report (No. 118; Jan. 2020) from the Colorado Department of Public Health & Environment tracking drug overdoses will be forwarded to the group and posted at, ccjj.colorado.gov/meetings/meetings-2022. Mr. Reed will gather the data related to human and sex trafficking and will share it with Commissioners.

The group discussed the potential causes resulting in the correctional population decline and the increase of parole releases. Regarding the increase in the number of discretionary parole releases, Mr. Dilworth explained that the Adult Parole Board actively reviewed cases of people close to their mandatory eligibility dates for release to limit congregate sheltering and the spread of COVID-19.

Mr. Hilkey asked Mr. Reed about gathering data for recent years regarding people released on bond and the outcomes. He reminded Commissioners that in 2020 the Commission approved a comprehensive bail bond reform and aspects of the recommendation were included in Senate Bill 2020-161. During the FY2020 legislative session that was abbreviated due to COVID-19, the bill was postponed indefinitely by the Senate Appropriations Committee in June 2020.

Mr. Reed commented that such research will soon be underway by the Division of Criminal Justice. Mr. Reed also explained that one of the expected challenges is that people are more likely to receive summonses for lower-level offenses, rather than being arrested, and therefore the data might show a decrease in bond settings.

PUBLIC COMMENT

Ms. Eileen McCarron from Colorado CeaseFire thanked members of the Sentencing Reform Task Force for all of their work on the Possession of Weapons by Previous Offenders recommendation.

SENTENCING REFORM TASK FORCE (SRTF): FINAL RECOMMENDATION**Michael Dougherty, Task Force Co-chair**

Mr. Dougherty reminded members that the SRTF: Sentence Structure Working Group (WG) offered a CCJJ Question & Answer Session on the Possession of Weapons by Previous Offenders (POWPO) recommendation on February 4.

FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO [Statutory]

Amend §18-12-108, C.R.S., Possession of Weapons by Previous Offenders to include additional non-VRA felony offenses based on public safety considerations.

Mr. Dougherty directed Commissioners to the final recommendation forwarded electronically prior to the meeting, reviewed the elements of the recommendation, and described the process that led to the proposal to add sixty-one felony charges to the POWPO statute. The SRTF: Sentence Structure WG identified this substantive and necessary revision in *Senate Bill 21-271: Misdemeanor Reform* related to Possession of Weapons by Previous Offenders (§18-12-108, C.R.S.). POWPO originally allowed for the prosecution of anyone with a previous felony conviction who was found in possession of a firearm. *Senate Bill 21-271* limited the list of eligible offenses from any previous felony to the 49 felonies identified in the Crime Victim's Rights Act (VRA) (§24-4.1-302, C.R.S.).

Upon further review, the Working Group collaborated with the Colorado District Attorneys' Council, Colorado Ceasefire, and other stakeholders to examine the list of POWPO-eligible felonies. The feedback from stakeholders yielded a list of additional felonies that was recommended for inclusion. The Working Group recommended adding this list of 61 offenses in addition to the 49 VRA offenses included in *SB 21-271*. Specifically, the expanded list includes offenses with a potential impact on public safety or direct harm to victims.

Mr. Dougherty described that there was input and feedback from multiple viewpoints. He noted that some in the district attorney community felt the list should be expanded and others felt the list should be reduced. Mr. Dougherty reported that the Colorado District Attorneys voted on this list at their monthly board meeting and unanimously supported the recommendation. He added that *Senate Bill 21-271* also secured mandatory prison sentences for those who use or threaten the use of a weapon while committing POWPO and also added 2nd Degree Burglary of a Dwelling as a VRA offense, as part of the compromise and consensus around POWPO changes in *SB 21-271*.

He reminded the group that an amendment to the recommendation was offered at the SRTF to expand the list with specific offenses: "*Distribution of Hard Drugs*" and "*Aggravated Motor Vehicle Theft*," but the amendment failed.

DISCUSSION

Mr. Raynes reiterated that the process leading to the recommendation represented a significant amount of work and consideration from all the members of the Working Group, along with input from stakeholders. He urged Commissioners to vote for the recommendation as presented.

Mr. Ashaheed described feeling conflicted as both someone with lived experience in the justice system who could be impacted by the POWPO statute as well as a recent gunshot victim. He informed the group that he will support the recommendation as presented.

Mr. Dougherty responded to a question concerning whether this would affect a Federal prosecutor's ability to bring POWPO charges against an individual under Federal law. Mr. Dougherty indicated that federal law will continue to hold and this will not change the opportunity to prosecute or levy punishment in that circumstance.

Mr. Hilkey expressed the concern that Motor Vehicle Theft has become, in recent years, a more frequent and serious crime and has also become a platform for additional victimization. He stated that motor vehicle theft is often associated with reckless driving, high speed pursuits, roadway fatalities, weapons charges, and other violent crime. He illustrated his concern by sharing the number of aggravated assaults on peace officers reportedly linked to motor vehicle thefts. Although he would not propose an amendment, he suggested that such an amendment would likely occur during this legislative session.

Ms. Russo reported that, as she could not share the recommendation with the Juvenile Parole Board in time for review prior to today's meeting, she will abstain from voting. She shared her appreciation for Mr. Dougherty's presentation and the additional context it provided to the recommendation.

Ms. Huitron raised questions regarding the addition of unlawful termination of a pregnancy as a felony on the POWPO-eligible list, as well as the gender balance of the SRTF. Mr. Dougherty indicated that the felony statutes regarding unlawful termination of a pregnancy have a nexus with violence that makes them appropriate for inclusion. Mr. Dougherty responded that the Sentence Structure Working Group that created the recommendation is composed of five women and three men *[Staff noted that the SRTF comprises 11 women and 14 men]*.

Michael Rourke explained that, although he was one of the District Attorneys who felt the list of offenses is too long, he still supported the work and the recommendation in its current state. He did not support the amendment to include Aggravated Motor Vehicle Theft because he believed this charge does not appear to fit the public safety considerations. The types of aggravated assault and other violent crimes that may accompany a motor vehicle theft would still be POWPO-eligible so that charge could still be brought in the context of other violent crime committed during the motor vehicle theft.

Mr. Hilkey asked whether there was any further general discussion or questions on **Recommendation FY22-SR #09. Possession of Weapons by Previous Offenders (POWPO) [Statutory]**. Seeing none, he requested a motion to approve the recommendation. A motion to approve *Rec. FY22-SR #09* was offered and seconded. There was no further discussion on the recommendation. *[Staff note: Staff indicated that there was an addition to the recommendation of two elements regarding "special offender with a weapon" and the "juvenile POWPO provision" which, due to a drafting error, were not included in SB 21-217 even though they were previously approved Recommendation FY21-SR #01]*. 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 alternatives of A = I support it; B = I can live it; or C = I do not support it. The vote was conducted and yielded the following result:

FINAL VOTE: FY22-SR #09. Possession of Weapons by Previous Offenders (POWPO) [Statutory]

A: 10 B: 5 C: 0 Abstentions: 1

Recommendation FY22-SR #09 was APPROVED

Discussion followed regarding the protocols of the CCJJ Legislative Subcommittee.¹ The decision processes of the Legislative Subcommittee are dependent on the urgency of the decision timeframe during which the Subcommittee determines whether bill amendments retain the intent of the underlying CCJJ recommendation. To prepare for an expected amendment to the bill during the legislative process, Mr. Raynes suggested Commissioners agree today whether the expected amendment to the POWPO-related bill would adhere to intent of the CCJJ recommendation.

Mr. Raynes moved to withdraw the CCJJ support of any eventual POWPO-related bill that is amended to include Aggravated Motor Vehicle Theft as a POWPO-eligible crime. Ms. Drake seconded the motion.

The process for the applicable majority vote requires approval by 51% of the members from the following alternatives: A = I support it; B= I do not support it. With no further discussion, the vote was conducted with the following result:

FINAL VOTE: Withdraw CCJJ Support of any eventual POWPO-related bill that is amended to include Aggravated Motor Vehicle Theft as a POWPO-eligible crime.

A: 13 B: 1 Abstentions: 2

Motion to withdraw support of any POWPO-related bill amended as described was APPROVED

WRAP-UP AND ADJOURNMENT

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

**The next meeting of the Commission is on Friday, March 11, 2022, at 1:00 pm.
Information on all Commission-related meetings can be found at, ccjj.colorado.gov/ccjj-meetings.**

[NOTE: This March 11 CCJJ meeting was subsequently canceled.]

¹ The decision protocols of the CCJJ Legislative Subcommittee can be found on the Commission website at, ccjj.colorado.gov/ccjj-bylaws-policy.