



Colorado Commission on Criminal and Juvenile Justice

Minutes

August 12, 2022 / 1:30pm-2:40 pm

Virtual Meeting

Commission Member Attendance

Stan Hilkey, Chair	Julie Gonzales	Angie Paccione - ABSENT
Abigail Tucker, Vice Chair	Serena Gonzales-Gutierrez	Tom Raynes – ABSENT
Taj Ashaheed	Justin (JR) Hall	Megan Ring
Terri Carver (<i>appoint. pending</i>)	Kristiana Huitron	Michael Rourke
Minna Castillo-Cohen	Jes Jones – ABSENT	Gretchen Russo
Shawn Day	Rick Kornfeld – ABSENT	Glenn Tapia
Janet Drake	Greg Mauro	Dean Williams
Valarie Finks - ABSENT	Derek McCoy – ABSENT	<i>Chief of Police (appoint. pending)</i>
Jaime FitzSimons - ABSENT	Patrick Murphy - ABSENT	<i>Juvenile rep. (appoint. pending)</i>
Bob Gardner - ABSENT	Steve O’Dorisio – ABSENT	Joe Thome, ex officio

Guests: Michael Dougherty, David “Dave” Hayes, Mike Tessean, Betsy Molgano

Call to Order and Opening Remarks

Stan Hilkey, CCJJ 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 1:35 pm and thanked Commissioners and members of the public for attending. Mr. Hilkey welcomed Mr. Justin (JR) Hall, Parole Board Chair to his first Commission meeting and acknowledged the attendance of Dave Hayes, Louisville Chief of Police, and Mr. Tessean, Parole Board Director.

Mr. Hilkey reviewed the agenda and solicited any additions or corrections to the May and June minutes. A motion was offered and seconded to approve both sets of minutes; Commissioners unanimously approved the May and June minutes.

PRESENTATION: COLORADO PRISON POPULATION - TRENDS, FORECASTS, AND FACTORS

Linda Harrison, Senior Analyst/Division of Criminal Justice

M. Hilkey welcomed Linda Harrison of the Office of Research and Statistics in the Division of Criminal Justice. The presentation highlighted the prison population trends from 1980 to 2022, the forecasts of the prison populations and, factors affecting the accuracy of such projections.

The full presentation is available under the August 12, 2022 meeting tab on the Commission website at ccjj.colorado.gov/meetings/meetings-2022.

Some highlights of the presentation are provided below.

- The prison population trend was relatively flat prior to 1985
- Sentences doubled in 1985 extending the length of stay factor.
- The population began to fall in FY 2010 due to the implementation of the Accelerated Transition Programs (ATP), and new legislation passed in 2010, 2011, and 2012 that diverted many admissions, shortened sentence lengths, and expanded earn time. The population decrease continued through 2013.
- The Colorado prison population growth returned in 2013 and 2014 with an increase in admissions with new sentences, probation revocations to DOC increased by 17%.
- Short-term decline in 2015, which was due to reductions in admissions due to parole returns:
 - Legislation passed to provide reentry services and provide alternative sanctions to technical violations
 - Additionally, Initiatives within the DOC/Division of Parole also reduced the number of revocations due to technical parole violations
- Growth returned in late FY 2016 through mid-2018:
 - The impact of the legislation was short-lived
 - Criminal court filings increased 13% in FY 2016 and FY 2017
 - New sentences to prison increased by 12%
 - Passage of House Bill 15-1043 created a class of felony DUI offenders and increased admissions to prison beginning in 2016, and by over 200 in FY2017 and 2018. These have a median sentence of 3 years, so continue to push up the population.
- Population remained very flat across 2018 and 2019:
 - The increase in filings in 2017 provided upward pressure on admissions into 2018. However, filings concentrated on lower-level felonies, fewer admissions, and shorter sentences. Additionally, there was an increase in discretionary parole releases that coincided with new parole board appointments.
 - As a result, the growth of criminal filings slowed to 5% in FY 2018, contributing to a decline in FY 2019
- 2020 pandemic:
 - There was a significant decrease of the prison population in FY20. The majority of that total decline by year-end occurred in the final 3 months of the fiscal year (April-June):
 - On March 25, 2020 - Governor Polis issued an executive order to reduce the prison population.
 - On March 16, 2020, the chief justice of the Colorado Supreme Court ordered the suspension of certain court operations and suspended most jury calls.
 - Probation departments modified operations INCLUDING:
 - Drug testing of individuals on probation largely suspended,
 - Petitions for revocations were limited to cases with a potential risk of harm or new serious crimes.
 - Hearings were set to later months for those not in custody.
 - DOC implemented policies to expedite parole releases, including:
 - Special needs parole
 - Review of inmates within 6 months of parole eligibility date (PED)
 - Review of inmates nearing scheduled release
 - Requirements for tabled cases lifted
 - A moratorium was placed on revocations, which were to be filed only if there was a public safety risk

- Even prior to the events following March of 2020, the prison population had been declining:
 - Small declines occurred between July and February of FY 2020 and are attributable to legislation passed in 2019 (Senate Bill 19-143) which resulted in fewer parole denials, increases in discretionary parole releases, and far fewer parole revocations.
 - Changes in the composition and leadership of the Parole Board led to efforts to address the capacity issues of the DOC and expedite releases.
 - Lengths of stay fell for certain types of offenders - in particular, those incarcerated for escape. This is likely the long-term result of legislation passed in 2010, which shortened the lengths of stay for escape convictions
 - The prison population fell 5% in April alone, and by 10% between the end of March and June 30 - these are the largest declines seen in over 2 decades, possibly much longer. To date, a single-month decline had not exceeded 1.5%
- Admissions and Releases FY2014 – FY2020
 - There was a significant change in the final quarter of FY2020. Small fluctuations in admissions and releases across the years have created significant changes in the size of the population. It took this magnitude of increase in releases and decrease in admissions to realize a such level of decline in the population.
 - At the lowest point there were only 360 people admitted to prison in a month. This trend has reversed in FY 2022.
- FY2020-FY2022 Prison population
 - There has been continual growth throughout FY 2022.
 - After the profound 12.6% decline in the prison population seen in fiscal year FY 2020 in the wake of the COVID-19 pandemic and subsequent criminal justice system responses, the prison population continued to decline throughout FY 2021. Overall the population declined 11.6% through FY 2021, with a slow return to growth beginning in early FY 2022, accelerating through the end of the fiscal year.
- DCJ November 2021 and June 2022 prison population forecasts
 - The trend of admissions and releases has dramatically reversed, and strong growth is predicted in upcoming years. Note the most recent forecast is very slightly higher than that produced in November; this adjustment was based on the trajectory and rate of growth observed in the first half of 2022.
 - The degree of growth observed in the last quarter of the year exceeds any quarterly growth observed across the past decade, which prompts this expectation of continued robust growth.
 - The total inmate population is expected to increase 45% between the ends of FY 2021 and FY 2028. The total population would reach 16,439 by year-end FY 2022 and 22,364 by the end of FY 2028.
 - The female population is expected to increase 60.7% over the same time frame, from 1,216 to 1,954 (while 60% appears to be a very large number – note that such a small denominator can result in what appears to be large changes).
 - While the rate of growth predicted in the most recent forecasts appears alarming, note the population is not expected to reach the levels expected back in 2018, and barely surpass those expected back in 2019. This is due to a variety of factors, including parole board decision-making and legislation put into place since that time (i.e., escape and drug felony modifications)
 - Margins of error in prison forecasts: confidence intervals are a common measure used in all statistical analyses. While these are not by strict definition confidence intervals, they do display the degree of error that has been observed in prior forecasts. As is expected with the

case of confidence intervals, the degree of error increases the further out the forecast goes in time.

- Excluding the unexpected error caused by the pandemic in 2020 the average error in year 1 is less than 1% and grows to approximately 5% by the fourth year after the forecast
- Why the return to growth?
 - The current growth is attributable to increases in new commitments to prison.
 - Despite the declines in admissions due to drug felonies and escape attributable to House Bills 19-1263 and 20-1019, new commitments increased by 26.0% in October alone
 - Monthly counts of new commitments to prison hit a low of 233 in November 2020, the lowest seen in over 20 years. However, these increased 74.3% over the following 12 months
 - SB 19-143 eliminated determinant periods of time a parolee could be returned to prison.
 - Consequently, the length of stay in prison for those returned on technical parole violations increased by 84.4%
 - However, even with the increase in length of stay, the reduction in parole returns has had resulted in little impact on the size of the future population compared to the rise in new commitments.
 - The expected increases in future new commitments are driving the projected growth in upcoming years:
 - This influx of new inmates will remain in prison for an estimated 3 years on average. Additionally, larger proportions of new admissions are currently made up of those who committed violent crimes and have longer average sentences
 - Releases from prison declined by 23.1%.
 - While releases far exceeded overall admissions throughout FY 2021, this differential reversed in FY 2022
 - Probation revocations provide an additional source of new commitments to prison. These also slowed along with court operations during 2020, and are expected to increase in the upcoming year.
 - The female prison population appears to have been particularly affected by the events of the past year:
 - The proportion of the population made up of women has fallen from 10.0% in early FY 2020 to 7.9% by the end of FY 2021.
 - This was the lowest ratio of women to men in Colorado prisons observed in the past 20 years.
 - This trend appears to have stabilized, with the proportion of the population made up of women now rising fairly consistently. It is expected that this trend will continue and gradually return to the proportions witnessed in prior years.

DISCUSSION

Chief Hayes asked whether the jail inmates awaiting transfer to prison are counted in the prison population and admissions. Ms. Harrison responded that only those admitted to prison intake are counted and exclude jail backlog.

Mr. Williams commented that the significant drop in admissions and the increase in jail backlog are explained by CDOC admission operations in the first months of the pandemic. For the first thirty days, the intake population was moved into an empty facility and the admission operations slowed down in the following months to manage the pandemic outbreak, which resulted in a drop in admission and an increase in jail backlog. Mr. Williams added that the level of admission has since returned to normal.

Mr. Williams discussed the shortage of prison staffing observed across the nation and expressed concern about the capacity to maintain prison operations as the staff vacancy rate at CDOC reached an overall 25% compared to the pre-pandemic rate of 11%. Ms. Castillo-Cohen echoed Mr. Williams's concern about the ability to hire staff and shared that the personnel vacancy rate at the Division of Youth Services reached between 30% to 40%.

Commissioners discussed that while recent legislation related to drug felonies (*House Bill 2019-1263*) and escape (*House Bill 2020-1019*) could be attributable to some declines in prison admissions, it is expected that the prison population will continue to grow and return to pre-pandemic volume with increases in new commitments.

Mr. Hilkey shared slides on drug filings prepared for a presentation to the Substance Abuse Response and Trends Task Force on August 5, 2022. [*The slides were subsequently added as an excerpt in the presentation and can be found ccjj.colorado.gov/meetings/meetings-2022.*]

House Bill 2019-1263. Offense Level for Controlled Substance Possession makes possession of 4 grams or less of a controlled substance listed in schedule I or II a level 1 drug misdemeanor. This legislation has resulted in a significant drop in drug felony filings in the district, county, and juvenile courts. However, the increase in misdemeanor filing cases has not seemed to reach the same level to equate to the drop in felony filings. Mr. Rourke believes that in most instances drug charges are associated with other felony crimes and would show in a felony case as opposed to a misdemeanor drug case standing alone.

UPDATE: SENTENCING REFORM TASK FORCE (SRTF)

Michael Dougherty, SRTF Co-chair

The SRTF met this week (8/10/22) and heard reports from the Working Groups (WG).

SRTF WORKING GROUPS

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

The Sentence Structure WG met this week (8/10/22) and continues the review and analysis of the Enhanced Felony severity classification chart, felony sentencing grid, sentencing ranges, habitual sentence enhancers, mandatory consecutive sentences for crimes of violence, certainty in sentencing, and length of stay for felony offenses. The immediate focus is on the crime severity chart and Mr. Dougherty expected that the crime severity chart proposal will be presented to the Task Force in the coming months.

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

The WG is focused on probation sentence length and particularly on early termination for selected people on probation. At the last meeting, the group reviewed the elements of a preliminary proposal and received feedback from stakeholders that would address inconsistency across the judicial districts regarding the accessibility and policy of early termination. Mr. Tapia mentioned the upcoming report on probation and parole to include data from Colorado from the Crime and Justice Institute (CJI). Mr. Tapia expected a preliminary proposal will be presented to the Task Force in the coming months and if approved, submitted to the Commission in the fall.

- ***Sentence Progression Working Group – Greg Mauro, WG Co-leader***

The WG is tasked with examining the end-of-sentence and transition-to-community options for people serving their sentences in the Department of Corrections. The first meetings focused on background information and examining existing community transition options (Community Corrections, Intensive Supervision Inmate-Program, and Parole). At future meetings, the WG will look at additional data and will define and prioritize its scope of work. The timeline established by the group is to develop a proposal by the winter of 2022.

UPDATE: COMMUNITY CORRECTIONS TASK FORCE (CCTF)**Stan Hilkey, CCJJ Chair**

The Community Corrections Task Force held its first planning meeting on July 22, 2022, to review the mandate of the Task Force, membership, establish timelines/dates of future meetings, and agenda for the full first Task Force meeting. Mr. Tapia was appointed Chair of the Task Force. Mr. Hilkey reminded the group that *House Bill 2022-1368* defined the membership of the CCTF and that staff has reached out to stakeholders to invite them to participate in the work of the Task Force. A welcome email to appointed members will be sent in the coming days, including details of the next meeting on August 22 from 10:30 am- 12 pm.

OTHER UPDATES

Ms. Russo announced that the Colorado Juvenile Parole Board is seeking applications to fill two open public at-large seats starting in October 2022. Applications can be submitted on the Governor's Boards and Commissions website at, colorado.gov/governor/boards-commissions-application. More information about the vacant positions can be found at, co4kids.org/blog/juvenile-parole-board-open-seats.

Ms. Russo provided an update on the Pre-adolescent Services Task Force established by *House Bill 2022-1131*. The Task Force membership comprises 32 statutorily-defined members and held its first meeting on August 1, 2022. The Task Force will examine potential gaps in services for juveniles who are 10-12 years of age and whether the minimum age of prosecution of juveniles should increase from 10 to 13. Details about future meetings, agendas and minutes, memberships, and other resources can be found on the Colorado Department of Human Services website at, cdhs.colorado.gov/pre-adolescent-services-task-force. A report of findings is required by December 30, 2022.

PUBLIC COMMENT

No members of the public offered comment.

ADJOURNMENT

Dr. Tucker acknowledged the attendance of Ms. Betsy Molgano from the Colorado Behavioral Health Council and invited her to continue attending the Commission meetings.

Mr. Hilkey thanked the Commissioners for their attention and participation. With no further business, Mr. Hilkey adjourned the meeting at 2:38 pm.

**The next meeting of the Commission is Friday, September 9, 2022, at 1:30 pm.
Information on all Commission-related meetings can be found at, ccjj.colorado.gov/ccjj-meetings.**