

# Colorado Commission on Criminal and Juvenile Justice: Boards and Commissions Annual Training

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# Purpose of the Annual Training

- Section 24-3.7-102, C.R.S. requires annual training for Colorado boards and commissions on the following topics:
  1. Governing statutes;
  2. Mission of board or commission;
  3. Staff duties;
  4. Data-based decision-making;
  5. Reviewing key communications and policy-making;
  6. The role of a public representative;
  7. Coordinating with other organizations;
  8. Annual review of management practices;
  9. Conflicts of interest; and
  10. CORA.
  11. Fun Facts about the Centennial State.

# Governing Law and Policy

- C.R.S. § 16-11.3-101 et seq.: – Creation of Commission
- C.R.S. § 24-3.7-102: Best Practices for Boards and Commissions
- C.R.S. §§ 24-6-401 et seq.: Colorado Open Meetings Law
- C.R.S. § 24-72-201 et seq.: Colorado Open Records Act
- CCJJ Bylaws, adopted 2013, revised September 2020
- Process and Protocols, revised September 2020
  - <https://ccjj.colorado.gov/ccjj-bylaws-policy>

# CCJJ Purpose

- The Commission will conduct an empirical analysis of and collect evidence-based data on sentencing policies and practices, including but not limited to the effectiveness of the sentences imposed in meeting the purposes of sentencing and the need to prevent recidivism and re-victimization.
- The Commission will investigate effective alternatives to incarceration, the factors contributing to recidivism, evidence-based recidivism reduction initiatives, and cost-effective crime prevention programs.
  - 16-11.3-103

# Statutory Duties

- Annual report of findings and recommendations, including evidence-based analysis and data.
- Study and evaluate the outcomes of Commission recommendations as implemented.
- Conduct and review studies (including work done in other states) and make recommendations concerning policies and practices in the criminal and juvenile justice systems including:
  - reduction of racial and ethnic disparities within the criminal and juvenile justice systems;
  - Examine sentencing policies and practices, alternatives to incarceration, reducing recidivism
  - prioritized based on the potential impact on crime, corrections and the resources available for conducting the work

# Statutory Duties

- The Commission, using empirical analysis and evidence-based data and research, will consider the development of a comprehensive drug sentencing scheme for all drug crimes described in article 18 of title 18, C.R.S.
- The Commission will work with other state-established boards, task forces, or commissions that study or address criminal justice issues.
- The Commission, at its discretion, may respond to inquiries referred by members of the General Assembly, the Governor, and the Chief Justice of the Colorado Supreme Court, as resources allow.

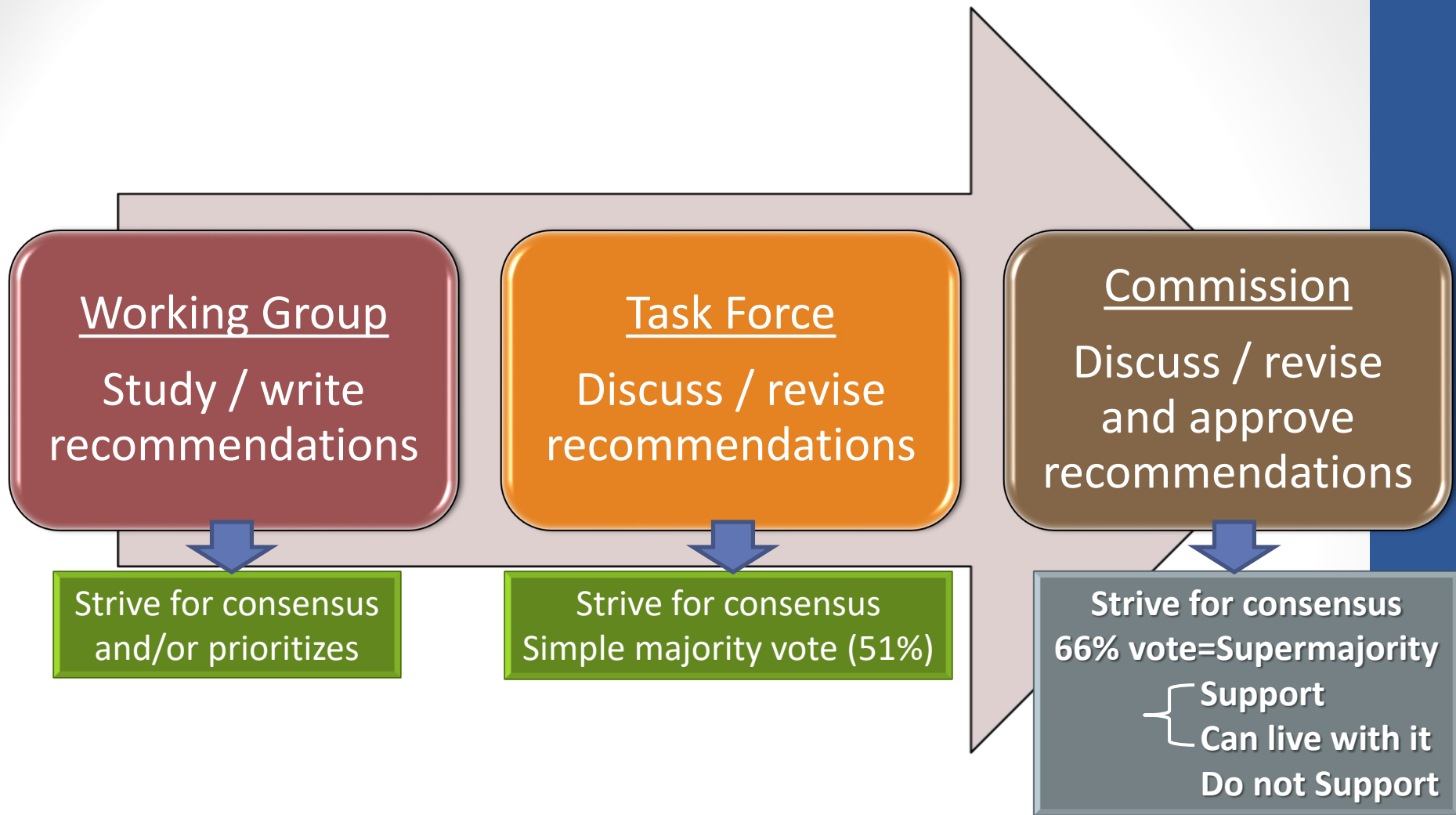
# CCJJ Membership

- 29 members and one Ex-officio (non-voting) member.
- Sixteen members are designated appointments based upon their position (no service terms).
- Fourteen members are appointed by the Governor to represent a broad spectrum of disciplines and constituencies. (These members serve no more than two, three-year terms.)
- Only members of the Commission are permitted to participate in the Commission's formal decision making (voting) process.\*
  - \*Members may designate a substitute who may participate in Commission discussions, but this individual is not granted voting privileges.
  - CCJJ By-Laws Section 5.3/ C.R.S. 16-11.3-102.2 & 3

# Additional Robust Process

- Work groups, task forces and committees of the CCJJ
- Work flow guidance in place
- Membership expectations:
  - not intended to be used to promote individual political, religious or social ideologies;
  - Attendance and participation expectation;
- Voting Protocols
- Recommendation Development Protocol





# Miscellaneous

- The department of public safety and Commission may accept and expend gifts, grants, and donations for the purpose of assisting the commission in fulfilling its duties
- Sunset Review in 2023
- Members, employees and consultants shall be immune from civil suit based upon any official act performed in good faith
- AG advises and represents the Board as an entity
- Secretary of State is statutorily authorized to issue advisory opinions to Board members if questions arise about their conduct

# Other Best Practices

- Data-based Decision-Making:
  - Council decisions and recommendations should be based on sufficient, relevant information gathered and discussed in public meetings
- The role of a public representative:
  - To serve the public
- Coordinating with other organizations:
  - Other boards, commissions, and councils
  - Agencies represented on the CCJJ
  - Local governments
  - Private non-profits and other organizations
- Annual review of management practices:
  - The Department has a policy to govern all CDPS Boards and ensure consistency

# Board and Commission Conduct

- A member of a board or commission that receives no compensation shall not perform an official act which **may** have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.
- Proof beyond a reasonable doubt of any act enumerated in this section is proof the actor has breached his or her fiduciary duty.
  - 24-18-108.5, C.R.S.

# Conflicts of Interest

- **CCJJ Bylaws Section 5.12: Conflict of Interest.** Any Commission member who is present at a meeting at which any matter is discussed in which he or she has a private, pecuniary or property interest shall declare that he or she has a potential conflict of interest. He or she shall refrain from attempting to influence the decisions of the other members of the Commission in voting on the matter, and shall abstain in respect to such matter.

# Conflicts of Interest

- Outside employment and compensation cannot be incompatible with Council duties
  - Financial
  - Or other interest
  - Note: If member is uncertain whether there's a conflict, the member can disclose the issue in writing to the Secretary of State and get an advisory opinion.
- If member has an actual *or apparent* conflict, that member cannot perform any official act, including
  - participating in discussion or
  - voting on a matter that directly affects that interest.

# Conflicts of Interest

- Dealing with conflict of interest:
  - If you believe you have an actual or apparent conflict of interest, you should:
    - Disclose it to the Chair, Director, or counsel.
    - The safer course is to recuse.
    - Declare the conflict when it comes up on the agenda. DO NOT describe the nature of the conflict; merely state that one exists.
    - This must occur before any discussion, deliberation, vote, or other formal action.
    - Leave the room during all discussions, deliberations, and votes.
  - If the matter comes up again in a later meeting, the same process should apply.
  - Narrow Exception: Rule of Necessity
    - Allows conflicted board member to remain in room if her presence is necessary for a quorum, but conflicted board member should not participate or influence the decision

# Let The Sun Shine In

- Colorado's Open Meetings Law or Sunshine Law ensures that the formation of public policy is public business and may not be conducted in secret.
  - § 24-6-401, C.R.S. et seq.
- Citizens should be given the opportunity to obtain information about and to participate in the legislative decision-making process. *Gumina v. City of Sterling*, 119 P.3d 527, 531 (Colo. App. 2004).
- Therefore, all Board meetings are subject to the Open Meetings Law.
- But what is a Board meeting?



# What is a Meeting?

- Meeting = “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.”
  - § 24-6-402(1)(B), C.R.S.
- Therefore, if of a state body discuss (in person, by phone, by email) any **2 or more members** public business or take any formal action (policy, rulemaking, legislation, policy making, interpretation of policy, rules, regulations), that’s a meeting.
- If 2 Board members are attending the same function, they can talk – just not about Board business.
- In one case, two board members violated the Open Meetings Law by chatting by phone about possible changes to a proposal after a board meeting.
  - Colorado Off-Highway Vehicle Coal. v. Colorado Bd. of Parks & Outdoor Recreation, 292 P.3d 1132, 1134 (Colo. App. 2012).
- Email cautions: BCC everyone; do not “reply all.”

# Ask the “Magic 8-Ball - Is this a Public Meeting?”

All meetings of two or more members of any state public body at which public business is discussed or at which any formal action may be taken”	Is it a public meeting?
Rule making session and work session	Yes, decidedly so.
Side conversations and bathroom break chat about a rule	May seem informal, but yes!
Thursday night dinner and drinks	Shouldn't be, but keep talk of board business to a minimum or not at all!
Phone call to Board Chair with a question about the agenda	Basic meeting info? No
Phone call to another Board Member with a comment about a rule	"Signs" point to yes!
Phone call to a Board Counsel	Definitely not

# What Does OML Require?

- Public notice (“full and timely notice” of all meetings)
- The notice must be sufficient to allow interested members of the public to know about the meeting in advance and find it if they want to attend.
- If the OML is violated:
  - any action taken could be invalidated;
  - any members who engage in secret meetings could be found to have engaged in willful misconduct and be removed from the Board;
  - there could be negative publicity.
- Violations of OML may be subject to court action including costs and attorney fees

# Except - Executive Session

- Exception to meetings being open to the public
- Upon announcement to the public the topic(s) for discussion in executive session
  - Special process to initiate executive session
  - Identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized
- Potentially applicable if discussing matters required to be kept confidential by federal law or rules, state statutes (such as medical or mental health records)
- Special Rules:
  - Must be electronically recorded (retain for 90 days)

# Attorney Advice in Executive Session

- Conferences with an attorney representing the state public body concerning disputes involving the public body that are:
  - the subject of pending or imminent court action,
  - concerning specific claims or grievances,
  - or for purposes of receiving legal advice on specific legal questions.
- Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of executive session
  - C.R.S. § 24-6-402(3)(a)(II)

# No Formal Action in Executive Session

- No adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session shall occur at any executive session that is not open to the public.
  - Section 24-6-402(3)(a)
- Vote in open session
- The record of an executive session of a state public body is NOT open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body
  - 24-6-402(2)(d.5)(I)(D)

# Not Your Aunt CORA

- The Colorado Open Records Act: It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times.
- Three business day turnaround.
- Protection for certain personal information, medical or mental health files, personnel files, trade secrets.
- Challenge denial of records to district court:
  - If improper denial, the court will order inspection, and shall award attorney fees and costs to requestor

# CORA Requests to CCJJ

- Requests for records maintained by CCJJ are handled by DOL and CCJJ staff and attorneys.
- If a request asked for records maintained by individual Board members, we would need your cooperation.
- Remember: anything you write about Board matters is public record and could be requested by any member of the public or the press.
  - Emails between Council members could also be subject to open records request: Don't type it if you don't want it on the front page of the Denver Post!



# Checklist for Ethical Behavior

- Conflicts:
  - Always disclose ASAP
  - Don't influence others on the matter
- Remember that when two or more members discuss Board matters, it constitutes a “meeting” subject to the Open Meetings Laws.
  - Do not discuss Board matters with other members outside of meetings.
  - Do not make decisions regarding Board matters outside of meetings.
- If you have any questions, contact Laurence Lucero and DCJ staff.